



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 81 OF 2012

PHILIP OKWAMA ADOGO.....APPLICANT

VERSUS

MICHAEL T. ADEDE.....1ST DEFENDANT

CLERK TOWN COUNCIL OF AHERO.....2ND DEFENDANT

JUDGMENT

Philip Okwama Adogo, hereinafter referred to as the Plaintiff has come to court against Michael T. Adede and the Clerk Town Council of Ahero claiming that suit land No. 23 Onjiko/Otto Market belonged to the late Philip Othwele Isaka Mbede who is the father to the Plaintiff.

The Plaintiff obtained a grant of letters of administration intestate in respect of his father's estate. The Plaintiff claims that the 2nd defendant fraudulently transferred the property to the 1st Defendant. The particulars of fraud are misrepresentation, collusion and conversion. The Plaintiff prays for a declaration that plot no. 3 Onjiko Otto market belongs to the estate of mzee Philip Othwele Mbeche.

The 1st Defendant filed statement of defence denying the plaintiff's claim on ownership of the property. He denies any fraud or wrong doing. He claims to have been in occupation of the property since 1956.

The 2nd Defendant denies that the suit property belonged to the Plaintiff's father. He is not aware that the plaintiff is the administrator of the estate of his father. He prays that the suit be dismissed with costs.

When the matter came up for hearing the plaintiff testified that his father Philip Othwele Isaka Mbede is deceased and the plaintiff is the administrator of his estate. He produced a certificate for confirmation of grant issued on 19.12.2011 in HCC Succ Cause No. 101 of 2008. He states that the suit property Onjiko Market No. 17 is part of the properties of the deceased. His father had inherited the plot from his grandfather Isaac Mbeche Okage. He produced a copy of the certificate of confirmation of grant in Succession cause No. 12 of 1998 and an order of the court.

He knows Muchelet T. Adede the 1st Defendant as a son to Abenedgo Migwaka Isaac Mbeche who is now deceased. Abenego Migwalla was a brother to the plaintiff's father and the 1st Defendant is therefore his cousin. The transfer document for plot 17. Onjiko was signed by only the 1st Defendant as Isaac Mbeche had died in December 1956 and could not have signed that application in 1992. He produced a copy of the affidavit by Abenego Migwalla Isaka to the effect that his father gave plot No. 17 to 1st Defendant who has been in occupation and paying rent. It was sworn in 1991. Isaac Mbeche could not have given the plot to 1st Defendant as in 1956, he was only 20 years old.

He showed the court Succession Cause No. 685 of 2004 indicating that Abenego Migwalla died in 1993 and his wife was appointed the administrator of his estate and he is not aware whether plot No. 17 was included in that estate.

He produced a letter dated 29th June 1998 on plot No. 17 Onjiko market. He cannot tell whether the 1st defendant attended the council clerk as requested. He produced the letter dated 29th September 2007 faulting the transfer of Plot No. 17 and reverting it to his father's name. According to the plaintiff, there is nothing going on the plot. Nobody is building on it but he wants the court to give him authority to take possession.

Though the Ahero Town Council claims that they had not included the 1st Defendant as proprietor of plot No. 17, the letter dated 28.9.2007 indicates they had done so and the plot should be awarded to the plaintiff as the administrator of his father's estate. The 1st Defendant had claimed in Succession Cause No. 12 of 1998 that his father died soon after his birth in 1936. The plaintiff further produced an invoice for rent.

The defendants did not give evidence at all.

I have considered the evidence on record and do find that the plaintiff is the legal representative of the Estate of Philip Othwele Isaka Mbede (deceased). Mr. Philip Othwele Isaka Mbede had died by 1992 when the transfer of plot number 17 which later became plot no. 23, was signed and therefore the transfer is null and void.

I do find that all relevant documents indicate that the plot belonged to the deceased Philip Othwele Isaka Mbede and the transfer to the 1st Defendant by the 2nd Defendant was fraudulent.

The upshot of the above is that a declaration is hereby issued that plot no. 23 Onjiko/Otto market belongs to the Estate of Mzee Philip Othwele Isaka Mbeche. Cost of the suit to the Plaintiff. Orders accordingly.

DATED AND DELIVERED THIS 22ND DAY OF MAY, 2020.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

This judgment is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID -19 pandemic and in light of directions issued by the Honourable Chief Justice on 15TH March 2019 and with the consent of the parties.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE