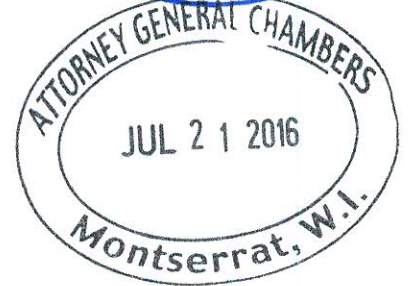


IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE COLONY OF MONTSERRAT

(Civil)



CASE NO: MINIHCV 2011/0009

BETWEEN:

Ashton McCall (The Executor of the estate of James P. Osborne deceased)
William Osborne

Paul Payne

Paul Payne (as representative of Priscilla Osborne Daley)

David Payne

David Payne (as representative of the estate of James Osborne deceased)

Claimants

AND

Eleanor Elizabeth Osborne Bardoule (Personally and as personal of the
estate of James Osborne deceased)

Registrar of Lands

Defendants

Appearances:

Mr. Khari Markham for the Claimants

Mr. David Brandt for the first Defendant

Ms Cedricia Shiell for the second Defendant

2016 April 07

2016 July 19

Judgment

Whether the first named Claimant had title to the land of his deceased grandfather. Whether the first named Claimant had the legal authority to alienate the land of his deceased grandfather. Whether the first named Claimant could acquire a prescriptive title to his deceased grandfather's intestate estate

- [1] **Redhead, J. (Ag):** On the 16th December 1958 James W. Osborne died. At the time of his death, he owned lands described as Block 13/19 Parcel 6 in the St Peter's Registration Section. James W. Osborne died intestate leaving 12 legitimate children. They are all now deceased.
- [2] The first named Claimant Ashton was the grandson of James William Osborne, James P Osborne also known as "Teacher Jim" was the father of Ashton McCall. James P Osborne appointed by his last will and testament of 8th September 2000, the said Ashton McCall to be the executor of the said will.
- [3] On 7th May 2008 the late John Kelsick wrote to James P. Osborne, inter alia in the following terms:

Mr. James P. Osborne

"Dear Mr. Osborne,

I write to you with reference to your father James William Osborne who died in St. Peter's Montserrat, on 16th day of December 1958 on behalf of your niece Mrs. Elenor E Bardouille Nee Osborne of Roseau, Dominica.

A search of the Register of Probates in the Registrar's Office at Brades, has revealed that on the 31st July, an application to the Montserrat High Court for a grant of Letters of Administration of the Estate of James William Osborne filed by Kenneth Allen, Attorney at Law, on behalf of your late Sister Sarah Elizabeth Payne Nee Osborne and yourself. The application was accompanied by a bond entered into by late Sarah E. Payne, yourself and Mr. John Osborne. However no declaration of Assets was filed and no order issuing a grant was made.

The result of this is that the Estate has remained unadministered thus depriving the beneficiaries of the estate under the provision of their due rights and benefits therein.

As you have been advised on the death of your late father intestate and a widower, his estate has passed under the act to his lawful children in equal shares.

On the demise of any of those children leaving issue born in wedlock in the case of male children and issue whether born in or out of wedlock in the case of female children their issue would be entitled to share or shares in the estate in which their parent or parents would have taken, had the estate been administered according to the provisions of the Act by a person or persons to whom a grant of Letters of Administration was issued by the Court.

Mrs. Elenor Osborne Bardouille has instructed me that she is the daughter of your late sister Mary Ellen Osborne also called Mary Elenor Osborne who was born on the 27th July 1913. Mrs. Osborne Bardouille is therefore legally entitled to share with her siblings in the estate of James William Osborne to which her mother was entitled. Having regard to the foregoing I have been instructed that you, your legal advisers and myself meet to discuss the most expeditious way in which the estate can now be administered so that members of the family entitled, can if they wish obtain the portion or portions of the estate to which they are legally entitled. I am also instructed to ask that you let me have a response by 22 March 2008.

Yours Very Truly,
Kelsick & Kelsick
John C Kelsick”

- [4] I am of the opinion that the above letter was well written, simple and legally clarifies all the issue in this case. By simple I mean, that the letter was written in such a manner that it could be understood by the average man.

“Section 4 (1) mandates:-

- (a) The residuary estate of an intestate shall be distributed in the manner or to be held on the trust mentioned in this section namely.....”

