



**In re Estate of Canute Okelo Rapudo (Deceased) (Succession Cause
E1326 of 2021) [2025] KEHC 518 (KLR) (Family) (21 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 518 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1326 OF 2021
EKO OGOLA, J
JANUARY 21, 2025
IN THE MATTER OF CANUTE OKELO RAPUDO (DECEASED)**

BETWEEN

MARYLYNE OCHOLA RAPUDO PETITIONER

AND

FARNICE JERIDA LIYALA & 5 OTHERS OBJECTOR

JUDGMENT

1. The deceased died intestate on 16th February 1993. He was survived by two houses. The deceased first wife was Judith Rapudo Liyala (pre-deceased him). She bore Marylyne Ochola Rapudo and the late Martin Rapudo. The deceased widow, Farnice Jerida Liyala, heads the second house. The children from the second house are: Melvine Justine Makhulo Rapudo, Marion Achieng' Rapudo, Melksadek Ochupo Rapudo, Mathew Liyala Rapudo, and Matchel Rapudo Odipo.
2. The estate of the deceased comprised of Nairobi/Block 76/150 (hereinafter, 'the Buruburu house'), LR No. Busia/ Municipality/315, and Land in Marchi, Busia County, and the ancestral land.
3. On 30th September 2021, Marylyne filed an application praying that the rental income from the BuruBuru house be deposited in an estate account to be held and maintained jointly by the beneficiaries. On 21st March 2023, the Court adopted as a Ruling of the Court, the Consent of the beneficiaries dated 20th July 2022. In the said consent, the beneficiaries agreed on the issue of the administrators. Consequently, on 21st March 2023, Letters of Administration intestate were issued to Marylyne Ochola Rapudo and Mathew Liyala Rapudo. The beneficiaries also agreed that a joint account be opened for purposes of depositing rental income from the BuruBuru house; the rent to be utilised for caretaker fees, water, and electricity expenses, and the residue to be divided between the beneficiaries.



4. On 17th April 2023, Marylyne filed a Summons for Confirmation of grant. Her proposed mode of distribution was as follows:
 - i. The BuruBuru house

This property is registered in the name of the deceased and his first wife, Judith Liyala Rapudo as joint tenants. Marylyne stated that this was the deceased and her mother's matrimonial home of Judith died in 1980. The deceased remarried, and after the death of the deceased in 1993, The deceased widow, Farnice, assumed control of the property. She contended that the property was acquired and held in trust for her and her late brother.

Therefore, Marylyne prays that the BuruBuru house be wholly allocated to her.
 - ii. LR No. Busia/ Municipality/315

Marylyne alleged that the said property (unregistered) was sold by Farnice sometime in 2004 to third parties without her knowledge and consent.

Therefore, she should benefit from the proceeds of the sale.
 - iii. Land in Marchi, Busia County.

Marylyne stated that this is ancestral land. Therefore, it should be divided between Farnice and her.
5. Farnice, in her Affidavit of Protest, stated that during her union with the deceased, they lived in the BuruBuru house as the matrimonial home. She stated that since the BuruBuru house was jointly own by the deceased and Judith, after the demise of Judith, the deceased acquired all proprietary interest in the said property. Her proposal is that the property be sold and income distributed equally amongst the beneficiaries.
6. As for land known as Title No. Central Marachi/Esikoma/1703, Farnice stated that the land was acquired by the defunct County Council for non-payment of land rent and rates.
7. Farnice stated that there is an ancestral land in Busia County, that should be equally divided amongst the beneficiaries.
8. The Summons for Confirmation of Grant was canvassed by way of viva-voce evidence in open court and written submissions of the beneficiaries. I have considered all these.

Determination

9. I have read and considered the Summons for Confirmation of Grant, the Affidavit of Protest, the testimonies of the beneficiaries, the rival submissions, and the entire record of the court.
10. The first issue for determination is on the BuruBuru house. It was registered under the Registered *Land Act*, Chapter 300, Laws of Kenya (now repealed). Registration of land in the names of more than one person was provided for in Sections 101, 102 and 103 of the RLA the relevant provisions of which state as follows:
 - “ 101. An instrument made in favour of two or more persons, and the registration
 - (1) giving effect to it, shall show-
 - (a) whether those persons are joint proprietors or proprietors in common; and



- (b) where they are proprietors in common, the share of each proprietor.

102(1). Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently –

- (a) dispositions may be made only by all the joint proprietors; and
- (b) on the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly...

103(1). Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate. ...”

11. Section 118 of the RLA provides that:

“If one of two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof to his satisfaction of the death, shall delete the name of the deceased from the register.”

12. The RLA was repealed by the *Land Registration Act*, 2012 which has similar provisions in sections 91, which states as follows in subsection (4):

“If land is occupied jointly, no tenant is entitled to any separate share in the land and consequently –

- (a) a dispositions may be made only by all the joint tenants;
- (b) on the death of a joint tenant, that tenant’s interest shall vest in the surviving tenant or tenants jointly; or
- (c) Each joint tenant may transfer their interest inter vivos to all the other tenants but to no other person and any attempt to so transfer an interest to any other person shall be void.”

13. From the aforementioned provisions, joint tenancy arises whenever land is conveyed or devised to two or more persons without any words to show that they are to take distinct and separate shares. There is a thorough and intimate union between joint tenants. Together, they form one person. A joint tenancy imparts to the joint owners, with respect to all other persons than themselves, the properties of one single owner. Joint tenancy carries with it the right of survivorship (*jus accrescendi*). That is, when one joint owner dies, his interest in the land passes on to the surviving joint tenant. A joint tenancy cannot pass under a Will or intestacy of a joint tenant so long as there is a surviving joint tenant as the right of survivorship takes precedence.

14. In this instant case, Judith died and all interest passed to the deceased. After the deceased death and since there are no other surviving joint tenants, the property rights are to be passed to the beneficiaries. Therefore, the property rights of the BuruBuru house belong to the estate of the deceased. No share belongs to the estate of Judith.

15. Marylyne argued that the BuruBuru house was Judith’s matrimonial house. However, when Judith died and the deceased remarried, the deceased, his widow and all the children lived in that house. Farnice also claims that the said house was her matrimonial home.



16. It is for these reasons that the house should be equally divided among the beneficiaries of the deceased estate in equal share. No beneficiary is superior to the other. Since previously there have been challenges with sharing the income from the house, the house should be sold and proceeds be equally divided amongst the beneficiaries.
17. Furthermore, according to the Consent Ruling dated 21st March 2023, the beneficiaries had agreed that the rent would be utilised for caretaker fees, water and electricity expenses, and the residue to be divided between the beneficiaries. This shall subsist, and Marylyne shall be entitled to 1/7 of the NET rental income until such time that the house will be sold.
18. With regard to LR No. Busia/ Municipality/315, the evidence on record is that it is registered to a third party. Farnice testified that she indeed sold that property and that she used it to educate the children who were still in school. She testified that Marylyne and her late brother did not get or benefit from any share of the sale proceeds. From the foregoing, I direct that Farnice gives 1/7 share of the purchase price to Marylyne.
19. As for Land in Marchi, Busia County, Farnice claimed that it was reclaimed by the county council without her knowledge and consent. Therefore, it is not part of the estate. Marylyne testified that she does not have any proof of title that the land belongs to the deceased.
20. As for any ancestral land, Marylyne proposed that the same be divided in half. One half to be hers and the other half to be shared amongst the second house. Farnice proposed that it be equally divided among all the beneficiaries. Since Marylyne does not have substantial evidence and reason for her proposal, I direct that the same be divided equally amongst the beneficiaries.

Disposition

- a. That Nairobi/Block 76/150 (the Buruburu house) to be sold and the proceeds be shared equally among the seven beneficiaries.
- b. That Marylyne Ochola Rapudo shall be entitled to 1/7 of the NET rental income of the aforesaid Nairobi/Block 76/150 (the Buruburu house) from 1st April 2023 until that time the house is sold and proceeds distributed equally among the beneficiaries.
- c. That 1/7 of the sale proceeds from LR No. Busia/ Municipality/315 be given to Marylyne Ochola Rapudo.
- d. That the ancestral land be divided equally among the beneficiaries.
- e. Certificate of Confirmation of Grant be issued forthwith.
- f. Costs be in the cause
Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JANUARY 2025.

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E.K. OGOLA

JUDGE

In the presence of:

Mr. Sichangi for the Petitioner



Mr. Ondieki for the Objector
Gisiele Muthoni Court Assistant
E. OGOLA J.

