In re Estate of Dorcas Njoki Mwangi (Deceased) (Succession Cause E077 of 2022) [2025] KEHC 12570 (KLR) (16 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12570 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE E077 OF 2022

RN NYAKUNDI, J

SEPTEMBER 16, 2025

IN THE MATTER OF THE ESTATE OF DORCAS NJOKI MWANGI (DECEASED)

BETWEEN

DANIEL G KARANJA GAKIO ..... 1ST APPLICANT

SAMUEL MWANIKI GAKIO ..... 2ND APPLICANT

FAITH TABITHA NYANJORA GAKIO ..... 3RD APPLICANT

AND

NAOMI WANJIRU GAKIO ..... 1ST ADMINISTRATOR

NELSON MWANIKI GAKIO ..... 2ND ADMINISTRATOR

RULING

1. Following the Ruling of the court dated 15th November, 2024 additional evidence was taken orally from the following witnesses:

2. PW1 Samuel Mwaniki who filed the petition before court on oath stated that the Respondents are his step siblings. That the marriage between his mother was initially under customary law but later formalized in 1973. Though his mother is still surviving but she separated with the deceased in 1974. The witness invited the court to adopt his affidavit as his evidence in chief with annextures as regards the estate distribution in this matter. It was the testimony of PW1 that he is claiming the estate which devolved to his step mother who is called Njoki on the basis that part of it was the net estate of his late father in terms of acquisition and ownership and there will be no justification why that estate should only be shared among his siblings. In his evidence in chief, PW1 stated that the parcel of land No. 13/284 where they lived with his parents was actually bought by the family and after the separation between his father and mother, the step mother came and occupied that estate. In the acknowledgment of PW1, this property was subdivided as proved by the green card giving rise to parcel No. 277,278,284.

It is from part of that subdivision 3.7 Acres sold and the proceeds used to develop the present parcel of land before his father passed on in 2012 and was followed soon thereafter in 2019 with the death of his step mother Dorcas. From that time henceforth, they have had discussions with the step siblings on how to manage the rental income intestate estate of the deceased but there is no agreement.

3. In response to the evidence of the petitioner, Samuel, the respondents also led evidence in answer to the petition. This evidence came from Naomi Wanjiru who relied in his replying affidavit in which she highlighted the following:

    a. The 2nd administrator and I are the only children of the deceased thus the lawful heirs to the estate of the deceased in accordance with section 66 of the *Law of Succession Act* this the applicants are strangers to the estate of the deceased hereto and lacks locus standi in the first place to lay any claim to properties belonging to our mother and/or seek for orders sought vide the instant application.

    b. That the instant application is bad in law, incurably defective given that properties namely: Eldoret Municipality/block 13/277, Municipality/block 13/278 Municipality Block 13/284 And Eldoret Municipality/block 15 (Huruma) 33 belong to the deceased hereto due to the principle of survivorship.

    c. The properties namely Eldoret Municipality/block 13/277, Municipality/block 13/278 Municipality Block 13/284 And Eldoret Municipality/block 15 (Huruma) 33 were acquired and owned jointly by the late Evanson Gakio and our mother Dorcas Njoki Mwangi, also deceased.

    d. That our late father was a joint tenant with our late mother Dorcas Njoki Mwangi of the said properties hence the deceased interests automatically passed to Dorcas Njoki Mwangi being the surviving joint tenant upon the demise of our father by virtue of principle of survivorship given that our father and Dorcas Njoki Mwangi had undivided interests in the aforesaid parcels.

    e. That the intention of the principle of survivorship and/or jus accrescendi is to remove jointly owned property from the operation of the law of succession upon death of the joint tenants.

    f. That the honourable court jurisdiction is limited to only dealing with properties already ascertained for distribution among the lawful beneficiaries.

    g. That the instant application hereto is a mischievous one aimed at misleading the honourable court to usurp its powers to grant the orders sought.

    h. That the late Evanson Gakio has no properties available for distribution in view of the principle of jus accrescendi.

4. The applicants filed written submissions through their legal counsel whose submissions can be summarized as hereunder:

5. Learned Counsel gave a background and submitted that the properties are Eldoret Municipality plots numbers 277, 278 and 284 located in Pioneer Estate, and Eldoret Municipality Block 15 (Huruma) property situated in Huruma area of Eldoret Municipality. He submitted that properties 277, 278 and 284 are sub-divisions arising from Eldoret Municipality Block 13/29, referred to as 'the mother parcel', as confirmed by official searches.

6. Learned counsel Mr. Gachua submitted that the Applicants and the Respondents share a patriarch (Evanson Gakio Mwaniki) but have different mothers. He submitted that the Applicants' mother was the first wife of the patriarch, having been married in 1964 in a marriage that was formalized into a

Christian marriage in September 1974. The Applicants' mother, Grace Wairimu Gakio, separated with their father in 1984 but the Applicants continued to live with their father.

7. Learned counsel submitted that after separating with the Applicant's mother, the patriarch sub-divided the mother title into 11 units of different sizes, sold a bigger part thereof (3.7 acres) retaining 3 plots numbers 277, 278 and 284 all cumulatively measuring 1.26 acres, developed plots numbers 277 and 284 while 278 remains un-developed and used the remaining amount to acquire and develop the Huruma property. He emphasized that these four properties, having arisen from sub-divisions of the sole property (the mother parcel) that was in the patriarch's name at the time of the deceased's marriage, were therefore acquired by the parties' (Applicants and Respondents) joint patriarch.

8. Learned counsel Mr. Gachua submitted that while the family patriarch managed the properties himself, upon his demise in 2012 up to the demise of the deceased in 2019 and further up to June 2023, the Applicants and the Respondents have been jointly managing the four properties and sharing equally the surplus of the rent derived from the rental houses thereon. He submitted that the rent was channelled through a joint bank account in the names of the Applicants and the Respondents as children of the family patriarch who was the owner of the properties from their beginning, and this was done with the blessings and approval of the deceased.

9. Learned counsel submitted that upon the unfortunate and contrary directive of the Respondents of June 2023 diverting all the rental income to another account away from the Applicants' control and without their approval, the Applicants were forced to engage advocates who discovered that on 28.11.1994 the deceased was introduced into the 3 pioneer plots number 277, 278 and 284 and introduced on 05.07.2005 with respect to the Huruma property and registered as a joint owner of their father (the patriarch) who was all along the sole registered owner thereof.

10. Learned counsel Mr. Gachua submitted that the finding was shocking as the deceased did not during her lifetime (even after the demise of the family patriarch in 2012 at which time she would have assumed ownership over the property as the sole owner) behave as though she had any iota of overriding right over the properties. He submitted that indeed, the Applicants and the Respondents started jointly managing the four properties (being the deceased's estate) and sharing the profits derived therefrom equally upon the patriarch's demise. He submitted that this has been the case for over a decade up to June 2023, and it was in this spirit of equality amongst the five of them that the 1st Respondent went to such lengths as paying for rent (Kshs. 7,000/- one of the units she occupied as a tenant).

11. Learned counsel Mr. Gachua submitted that the doctrine of jus accrusendi is a principle of law, and the Applicants have brought the present proceedings in a matter relating to the estate of Dorcas Njoki Mwangi. He submitted that this is a succession court which can only deal with properties of a deceased person. By bringing the present application, the Applicants recognize the deceased as having some ownership rights (through registration) over the property.

12. He submitted that their claim is based on dependency as explained throughout their court pleadings, evidence and submissions to court. As children of the family patriarch who acquired and developed the properties wherefrom they have been deriving incomes during the patriarch's lifetime to his demise on 2012 and further to the deceased's aforesaid 8 years between 2012-2019 and further up to June 2023, they can only apply to be considered as dependants.

13. Learned counsel Mr. Gachua submitted that the doctrine of jus accrusendi is a principle of law, and the Applicants have brought the present proceedings in a matter relating to the estate of Dorcas Njoki Mwangi. He submitted that this is a succession court which can only deal with properties of a deceased person. By bringing the present application, the Applicants recognize the deceased as having some ownership rights (through registration) over the property.

14. He submitted that their claim is based on dependency as explained throughout their court pleadings, evidence and submissions to court. As children of the family patriarch who acquired and developed the properties wherefrom they have been deriving incomes during the patriarch's lifetime to his demise on 2012 and further to the deceased's aforesaid 8 years between 2012-2019 and further up to June 2023, they can only apply to be considered as dependants.

15. He argued that any other claim by other parties going to the root of the title can only be raised in different foras, not a succession court, and the doctrine of jus acrusendi by itself can only be flashed as a defence in a matter brought before another court (ELC Court to be precise) challenging the title and which is not the matter herein.

16. Learned counsel Mr. Gachua submitted that it is not surprising that the deceased did not leave any will vesting the properties in her children alone (the Respondents). He submitted that she willed and desired throughout her life to have the properties jointly and equally enjoyed by the Applicants and the Respondents which was apparent in the way she treated the children of the two households as her own up to her untimely demise.

17. Learned counsel cited various decisions and submitted that that the Applicants have demonstrated their dependency on the properties and their entitlement to reasonable provision from the estate of the deceased. He argued that the properties that they have been dependant upon are identifiable and therefore this honourable court is called upon to reinstate what has always been practiced and observed by the Applicants and the Respondents voluntarily up to June 2023, confirming them as equal owners of the said property.

Respondents' submissions

18. Learned counsel submitted that the instant application is bad in law, incurably and fatally defective given that the properties namely Eldoret Municipality Block 13/277, Municipality Block 13/278, Municipality Block 13/284 and Eldoret Municipality Block 15 (Huruma) 33 belong to the deceased due to the principle of survivorship. He submitted that the properties were acquired and owned jointly by the late Evanson Gakio and their mother Dorcas Njoki Mwangi, and were registered in their joint names.He further submitted that their late father was a joint tenant with their late mother Dorcas Njoki Mwangi of the said properties, hence the deceased interests automatically passed to Dorcas Njoki Mwangi being the surviving joint tenant upon the prior demise of Evanson Gakio Mwaniki by virtue of principle of survivorship, given that the deceased and Dorcas Njoki Mwangi had undivided interests in the aforesaid parcels.

19. Learned counsel Mr. Kagunza submitted that the intention of the principle of survivorship and/or jus accrescendi is to remove jointly owned property from the operation of the law of succession upon death of the joint tenants. He submitted that the honourable court jurisdiction is limited to only dealing with properties already ascertained for distribution among the lawful beneficiaries.

20. Learned counsel submitted that the instant application is a mischievous one aimed at misleading the honorable court to usurp its powers to grant the orders sought. He submitted that the late Evanson Gakio Mwaniki has no properties available for distribution in view of the principle of jus accrescendi, and that the applicants do not have any cause of action against the Respondents and thus the instant application must be struck out with costs.

21. Learned counsel Mr. Kagunza submitted that the Respondents are the only children of the deceased and therefore the only lawful heirs in accordance with section 66 of the *Law of Succession Act* Cap 186 laws of Kenya. He submitted that the applicants are strangers to the estate of the deceased and lack

locus standi in the first place to lay any claim to properties belonging to their mother and/or seek for orders sought vide the instant application.

22. Learned counsel submitted that the summons filed by and/or on behalf of the 1st and 3rd Applicant relates to two applicants, but was expected to be accompanied by a supporting affidavit sworn by every individual applicant in accordance to Order 4 Rule 1(3) of the Civil Procedure Rules 2010. He submitted that despite the clear provisions of the law, the 1st and 3rd applicant did not execute and/or sign any authority to mandate the 2nd applicant to swear the supporting affidavit, which renders the entire summons fatally defective, incompetent and a non-starter.

23. In support of his argument, learned counsel cited the decisions in Savala & another v Ndanyi (Environment and Land Case Civil Suit 248 of 2021) [2022] KEELC 2536 (KLR) (5 July 2022) and Andrew Ireri Njeru - Embu Nyangi Ndiiri Proposed Society Chairman & others – Versus - Daniel Nganga Kangi & another [2015] eKLR, in Chalicha Farmers Co-operative Society Limited – Versus - George Odhiambo & 9 others (1987) eKLR.

24. Learned counsel submitted that the late Evanson Gakio Mwaniki estate does not have any properties available for distribution in view of the principle of jus accrescendi. He submitted that the four properties belong to Dorcas Njoki Mwangi-deceased due to the principle of survivorship, as they were acquired and owned jointly by Evanson Gakio Mwaniki who died in 2012 and his wife Dorcas Njoki Mwangi who also passed on 11th December 2020.

25. Learned counsel submitted that the late Evanson Gakio Mwaniki was a joint tenant with Dorcas Njoki Mwangi of the said properties, hence the deceased interests automatically passed to Dorcas Njoki Mwangi being the surviving joint tenant upon the prior demise of Evanson Gakio Mwaniki by virtue of principle of survivorship, given that the deceased and Dorcas Njoki Mwangi had undivided interests in the aforesaid parcels and co-owned the same.

26. Learned counsel Mr. Kagunza submitted that the mother title was acquired in the year 1986 whereas Dorcas Njoki Mwangi got married to Evanson Gakio Mwaniki in the year 1980. He submitted that on cross examination, the 1st applicant admitted that he could not tell the mother title was bought from whom, could not tell the mother title was acquired at how much and also admitted that Dorcas Njoki Mwangi was gainfully employed at the time when the mother title was being acquired.

27. In support of his argument on joint tenancy principles, learned counsel cited the decision in Kiunga & 2 others v Kooru & another (Succession Cause 5 of 2020) [2024] KEHC 12604 (KLR) (17 October 2024) (Ruling) where the honorable court observed:

> " On the allegation that property namely NYAKI/MULTHANKARI/82 was left out in the distribution, this Court finds in the negative. From the evidence adduced, it is apparent that the said property is registered in the joint names of the deceased and his brother, M'Ncebere M'Ringiru. This was evidently a joint tenancy. The position in law is clear that in such joint tenancies, when one of the tenants passes on, the remaining tenant automatically becomes the new sole owner under the doctrine of survivorship. This implies that the property is not up for distribution as the surviving tenant is now the new owner. The property will only be up for distribution upon the demise of the new sole owner, and even then, this property would only be the subject of the Estate of this new owner. This is the hallmark of the principle of jus accrescendi which provides for the right of survivorship."

28. Learned counsel Mr. Kagunza submitted that the *Land Registration Act*, 2012, which repealed the Registered *Land Act*, Pap 300 laws of Kenya, retained the same principles on joint proprietorships and

proprietorships in common. He submitted that section 91(3) now requires registration of two or more persons to show whether they were registered as joint tenants or tenants in common, and if they are registered as tenants in common, the share of each tenant. By dint of section 91(4) (b) of the 2012 Act, upon the death of a joint tenant, his interest is to vest in the surviving tenant.

29. Learned counsel submitted that Section 29 of the *Law of Succession Act* sets out the meaning of the term 'dependant' and it is trite law that he who alleges must prove. He submitted that Section 107 (1) of the *Evidence Act* provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist.

30. Learned counsel submitted that the applicants insinuate that they are dependants to the estate of Dorcas Njoki Mwangi by dint of the fact that they are children of the late Evanson Gakio the husband to Dorcas Njoki-deceased. He submitted that the applicants did not produce even a single document to prove dependency on the late Evanson Gakio immediately prior to his demise, and during cross-examination, the 2nd applicant admitted that he had not produced any document to prove that the applicants depended upon the late Evanson Gakio for provision of food, medical, maintenance, clothing, education among other needs.

31. Learned counsel submitted that during cross-examination, the applicant admitted that he is aged 64 years of age and has his residence in Nairobi where he is working, admitted that the 1st applicant is aged 66 years is already retired and the 3rd applicant who was born in 1971 is working in the United Kingdom as a barrister and that prior to the demise of the late Evanson Gakio, the applicants were already in gainful employment.

32. Learned counsel Mr. Kagunza submitted that the applicants and their mother did not even attend the deceased funeral and on cross-examination the 2nd applicant insisted that they attended the late Evanson Gakio funeral but did not tender any evidence to that effect. He submitted that if the applicants were dependants of the late Evanson Gakio as alleged they would have featured as being part of the deceased's family and even in the time of eulogy reading, but on further cross-examination, the 2nd applicant conceded that he did not any have photograph or biograph in court to prove that the applicants attended the funeral of the late Evanson Gakio.

33. Learned counsel Mr. Kagunza submitted that evidence is the life of law which gives reason to convince the mind of the court and it is not the duty of the court to speculate and/or infer as the court relies on evidence as the source from which facts are obtained and the case upheld/dismissed. He submitted that the orders sought by the applicants are untenable and the instant summons application has no legal basis and should be dismissed with costs.

Analysis and determination

34. The central issue in this succession matter concerns the interplay between statutory principles of joint property ownership and the practical realities of family relationships spanning over two decades. While the Respondents assert that the four properties in question passed automatically to the deceased Dorcas Njoki Mwangi through survivorship upon her husband's death in 2012, the Applicants contend that these properties originated from their father's sole ownership and should be treated as family assets based on the pattern of joint management that continued with the deceased's approval until June 2023. The resolution of this dispute requires this Court to examine not only the technical application of the doctrine of jus accrescendi but also the circumstances surrounding the original property acquisition, the timing and purpose of the joint registration, and the subsequent conduct of all parties over more than a decade.

35. The undisputed evidence establishes that Evanson Gakio Mwaniki was the original sole registered owner of the mother parcel, Eldoret Municipality Block 13/29, which was acquired in 1986. This acquisition occurred six years after his marriage to Dorcas Njoki Mwangi in 1980, but during a period when he was still legally married to his first wife, Grace Wairimu Gakio, whom he had married in 1964 and with whom he had formalized a Christian marriage in September 1974. The evidence shows that Grace separated from Evanson in 1984, two years before the mother parcel was acquired, but their three children (the Applicants) continued to reside with their father on the property that would later be subdivided.

36. The subdivision of the mother parcel occurred while it remained in Evanson's sole name, creating plots 277, 278, and 284, with 3.7 acres being sold and the proceeds used to acquire and develop the Huruma property. Critically, Dorcas Njoki Mwangi was only introduced as a joint owner much later, on 28th November 1994 for the three Pioneer Estate plots and on 5th July 2005 for the Huruma property. This timeline is significant because it demonstrates that the joint registration occurred 8 to 19 years after the properties were originally acquired and developed by Evanson, and well after his separation from his first wife whose children continued to reside on and benefit from the properties. I have also should mention that this joint tenancy was not between any ordinary people but between a husband and wife.

37. In re Estate of Johnson Njogu Gichohi (Deceased) Succession Cause No. 112 of 2016 [2018] eKLR the court stated as follows:

> " Section 60 of the *Land Registration Act* provides: 'If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of death delete the name of the deceased tenant from the register by registering the death certificate.' This means that where property is in the names of joint owners, upon the death of one of them, the surviving owner automatically becomes the owner upon presenting the evidence of death of the joint tenant i.e death certificate to the registrar. The property automatically passes to the surviving joint tenant. This principle of survivorship over jointly owned property operates to exclude the property from the *Law of Succession Act* upon the death of one of the joint tenants".

38. It is also in Re Estate of M'kiunga M'rinviru (Deceased) [2021] eKLR where the court held that: -

> " This was evidently a joint tenancy. The position in law is clear that in such joint tenancies, when one of the tenants passes on, the remaining tenant automatically becomes the new sole owner under the doctrine of survivorship. This implies that the property is not up for distribution as the surviving tenant is now the new owner. The property will only be up for distribution upon the demise of the new sole owner, and even then, this property would only be the subject of the Estate of this new owner. This is the hallmark of the principle of jus accresendi which provides for the right of survivorship.
>
> "If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of death delete the name of the deceased tenant from the register by registering the death certificate."

39. Finally, in the case of Isabel Chelangat -v- Samuel Tiro [2012) eKLR, where the principle of survivorship, also known as 'jus accrescendi', was expounded thus:-

> " A joint tenancy imparts to the joint owners, with respect to all other persons than themselves, the properties of one single owner. Although as between themselves joint tenants have separate rights, as against everyone else they are in the position of a single

owner. Joint tenancy carries with it the right of survivorship and "four unities." The right of survivorship (jus accrescendi) means that when one joint owner dies, his interest in the land passes on to the surviving joint tenant. A joint tenancy cannot pass under will or intestacy of a joint tenant as long as there is a surviving joint tenant as the right of survivorship takes precedence".The principle of survivorship dictates that jointly owned land passes automatically to the surviving owner upon one's death without the need to file a Succession Cause. W. M. Musyoka, in his book Laws of Succession at page 3, states: "Property is capable of passing upon death other than by will. It may pass by survivorship..... This applies in cases of joint tenancies that is, where property is jointly owned. Where a co-owner of property is a beneficial joint tenant of the property, their interest will automatically/pass to the surviving tenant upon their death by virtue of the principle of survivorship..... The principle of survivorship operates to remove jointly owned property from the operation of the law of Succession upon the death of one of the joint tenants".

40. There is therefore no doubt that there existed a joint tenancy between the deceased and her husband Evanson. Perhaps, most compelling is the pattern of conduct exhibited by all parties from 2012 until June 2023, a period spanning over eleven years. Following Evanson's death in 2012, and continuing throughout Dorcas's lifetime until her death in December 2020, and thereafter until June 2023, all five children jointly managed the properties and equally shared the rental income derived therefrom. This arrangement was not merely tolerated by Dorcas but actively approved by her, with rental proceeds being channeled through joint bank accounts in the names of all children.

41. The evidence reveals that this equal sharing arrangement was so entrenched that even the 1st Respondent, Naomi Wanjiru Gakio, paid rent of Ksh. 7,000 for a unit she occupied, treating herself as a tenant rather than asserting ownership rights. The Google meeting minutes of 8th July, 2021, demonstrate that all parties, including both Respondents, actively participated in discussions about forming a management company for all properties, indicating a shared understanding of collective family ownership rather than exclusive ownership by Dorcas's biological children.

42. This conduct is particularly significant because it continued for nearly four years after Dorcas's death, suggesting that even the Respondents initially understood the properties as family assets rather than exclusively their inheritance. The sudden change of position in June 2023, when the Respondents diverted all rental income away from the Applicants, appears to have been triggered not by any legal revelation but by a decision to assert strict legal rights after over a decade of treating the properties as family assets.

43. That said, I am of the considered view that, the application of this doctrine must be considered within the specific factual matrix of each case. The principle operates on the premise that joint tenants intended to hold property with survivorship rights, but where the evidence suggests that joint registration was for purposes other than creating true joint beneficial ownership, the presumption may be rebutted.

44. This is an ideal moment for me to emphasize that the father to both the petitioners and the objectors during his lifetime had initial immovable assets not registered in the name of his wife now deceased. The question of joint tenancy was a creature effected and perfected much later as between spouses duly having a recognized valid marriage. It does not follow therefore that the intention of the late father to the objectors was to enter into joint tenancy with his late wife so as to discriminate or oust the inheritance rights as premised in the *law of Succession Act*. This court has discussed elsewhere on the doctrine of ius accrescendi but as a matter of emphasis I also sight the case of Mukazitoni Josephine v

Attorney General (2015) eKLR in which the court held inter-alia on the four unites of joint tenancy namely:

a. Unit of interests: The interest of each owner is equal

b. Unit of time: The interest of the owners is acquired at the same time

c. Unity of possession: The owners have the right of survivorship and

d. Unity of title: The documents must specify a joint tenancy vesting. If a vesting not specified, it is presumed to be a tenancy in common.

45. This is not a case where the deceased parents to both the petitioners and the objector during their lifetime agreed to purchase the property together so as to register their interest in a joint tenancy. In practical terms, :Plainly the essence of the concept of a universal partnership is an agreement about joint effort and the pooling of risk, and reward. Upon termination of the universal partnership, what follows is an accounting to one another, the poorer partner becomes the richer partner's creditors. Accordingly, it is the contract that is the foundation of the universal partnership, not the mee fact of the consortium and the mere contributory efforts to building wealth. a tacit agreement suffices. (See Khan v Shaik (2020) ZASCA 108. In my view, invoking the doctrine of pari materia the elements of a universal partnership has some seminal resemblance where properties owned in joint ownership or under the doctrine of joint tenancy. In the real sense of the concept, each co-owner in a joint tenancy has an undivided share in such a property and a right to share it. The various shares need not to be equal but every co-owner in a joint tenancy is entitled to use the joint property reasonably and in proportion to his or her share. The joint tenancy during the survivorship of the joint tenants can also be a subject of severance or termination. In the event there is a dispute, on how the shares in a joint tenancy should be divided the court has the powers to exercise discretion to have the joint tenancy or joint ownership of property terminated. In this respect, the court is mandated to follow a method or a model that is fair and equitable to each of the parties taking into account the peculiar circumstance of each case. At its score of this dispute, is the fact that the objectors enjoyed common usage, benefit, maintenance, and sustainability of some of the key assets in question before their late father converted the shares into a joint tenancy. I do not agree with the petitioners respondents that the joint tenancy envisages an action by their late parents to occasion discrimination, oppression, or unfairness against inheritance rights of the sons from the other house hold. There can be no doubt in light of the above to rule that the objectors are not entitled to their shares primarily owned by the deceased father but now are traceable to the joint tenancy.

46. The authorities cited establish that survivorship operates to exclude property from succession law, but they do not preclude a court from examining whether true joint tenancy was intended in the first place. Where the evidence suggests that joint registration was a legal convenience rather than a reflection of beneficial ownership intentions, the court retains discretion to examine the substance behind the form.

47. Courts of equity have long recognized that strict application of legal principles may sometimes work manifest injustice, particularly in family matters where parties have acted on reasonable expectations created by the conduct of the deceased. In the present case, Dorcas's consistent behavior in treating the properties as family assets, approving equal sharing arrangements, and never asserting exclusive ownership rights created legitimate expectations among the Applicants that they would continue to benefit from these properties.

48. The Respondents' affidavit reveals that Dorcas's estate is valued at approximately Ksh. 90,000,000, with only two beneficiaries. This substantial estate context makes the equitable argument more

compelling, as recognizing the Applicants' rights to the disputed properties would not impoverish the Respondents but would acknowledge the legitimate expectations created by decades of family conduct.

49. The principle that equity will not permit a statute to be used as an instrument of fraud applies where parties have acted on representations or conduct that would make strict legal enforcement unconscionable. While the Respondents may not have committed actual fraud, their participation in the equal sharing arrangement for over eleven years, followed by sudden assertion of exclusive rights, raises questions of good faith and equitable conduct.

50. Regarding the procedural challenges raised by the Respondents concerning the Applicants' locus standi and the technical defects in the summons, this Court finds that these arguments, while legally sound in isolation, must be considered within the broader context of the substantive issues. The Applicants are not strangers to the properties in question but have been actively involved in their management with the deceased's approval for over a decade.

51. This Court concludes that while the doctrine of jus accrescendi remains a fundamental principle of property law, its application must be considered within the specific factual and equitable context of each case. Where joint registration, like in this appears to have been motivated by what I would call estate planning, rather than recognition of true joint beneficial ownership, and where the subsequent conduct of all parties suggests a different understanding of beneficial ownership, the question of joint tenancy may be rebutted.

52. The evidence in this case supports a finding that Evanson Gakio Mwaniki intended the properties to benefit all his children equally, regardless of their mothers, and that Dorcas Njoki Mwangi understood and actively supported this intention throughout her lifetime. Her conduct in approving equal sharing arrangements and never asserting exclusive ownership rights is inconsistent with the technical legal position now advanced by the Respondents.

53. While this Court has found that the properties in question should not be treated as passing exclusively to the deceased through survivorship, the Court must still operate within the framework of succession law in determining the appropriate remedy.

54. The Court finds that the most appropriate remedy, given the specific circumstances of this case, is to recognize that while the properties technically form part of Dorcas's estate, the Applicants are entitled to reasonable provision reflecting both their connection to the properties through their father's original ownership and the legitimate expectations created by over a decade of joint family management with the deceased's approval.

55. Taking into account the substantial nature of the estate (valued at approximately Ksh. 90 million), the fact that the disputed properties originated from the Applicants' father's sole ownership, and the pattern of equal sharing that operated with the deceased's blessing for over eleven years, this Court finds that justice and equity require that the four properties be distributed equally among all five children of Evanson Gakio Mwaniki.

56. Accordingly, the Court orders that the properties Eldoret Municipality Block 13/277, Block 13/278, Block 13/284, and Block 15 (Huruma) be held in equal shares by all five children. The rental income from these properties, from the date of this judgment going forward, shall be distributed equally among all five children in the same proportions. Any rental income that was diverted to the Respondents' exclusive control from June 2023 to the date of this judgment shall be accounted for and distributed equally among all parties.

57. There shall be no order as to costs, given the family nature of this dispute

58. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 16TH DAY OF SEPTEMBER, 2025

.....

R. NYAKUNDI

JUDGE