



**In re Estate of Josef Konrad Reith alias Josef Konrad Beith alias Josef Reith Ritz (Deceased) (Probate & Administration E025 of 2024) [2025] KEHC 13921 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13921 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
PROBATE & ADMINISTRATION E025 OF 2024  
JM OMIDO, J  
SEPTEMBER 25, 2025**

**IN THE MATTER OF THE ESTATE OF JOSEF KONRAD REITH ALIAS JOSEF KONRAD BEITH ALIAS JOSEF REITH RITZ (DECEASED)**

**BETWEEN**

**CASSEY MANDELA REITH ..... PETITIONER**

**AND**

**RUTH O. OPOTI ..... 1<sup>ST</sup> OBJECTOR**

**KENT J.O. LIBISO ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. The Objectors’ Summons for Revocation of Grant dated 23<sup>rd</sup> January, 2025 seeks the following orders:
  1. [Spent].
  2. [Spent].
  3. That the Grant of letters of Administration Intestate made herein to Nelson Cassey Mandela Reith and confirmed on 27<sup>th</sup> December, 2024 be revoked.
  4. That all steps taken by the Petitioner herein pursuant to the confirmation of grant to him be declared a nullity in law.
  5. That the Petitioner herein be cited for perjury reason being despite full knowledge of Grant of Representation having been issued to the Applicants in Kisumu High Court Succ. Cause No. 251 OF 2005 wherein LR. No. Kisumu/municipality Block 12/195 formed part of the deceased estate therein failed to disclose the same to court.
  6. That the costs of this application be provided for.



2. The grounds upon which the application is premised are set out on its face and are as follows:
  - a. That on 27<sup>th</sup> December, 2024 the Honourable Court confirmed Grant of Representation to the Petitioner herein to handle the deceased estate being land parcel known as LR. No. Kisumu/municipality Block 12/195.
  - b. That the parcel of land known as LR. No. Kisumu/municipality Block 12/195 which forms the basis of the suit herein is registered in the name of Dorothy Mariamme Opoti and Josef Konrad Reith.
  - c. That the Applicants are the Administrators of the estate of Dorothy Mariamme Opoti which grant was issued to them in Kisumu High Court Succ. Cause No. 251 OF 2005.
  - d. That the Petitioner despite full knowledge that Grant of Representation had been granted to the Applicants in Kisumu High Court Succ. Cause No. 251 OF 2005 wherein the deceased estate formed part of land parcel known as LR. No. Kisumu/Muni/block/12/195, concealed this material fact to this court with an intention of duping the court.
  - e. That as a result of the non-disclosure of the material fact, the court confirmed Grant of Representation on 27<sup>th</sup> December 2024 in favour of the Petitioner.
  - f. That the Petitioner despite full knowledge that Grant of Representation had been issued to Ruth O. Opoti And Kent J. O. Libiso In Kisumu High Court Succ. Cause No. 251 OF 2005, conveniently failed to serve Ruth O. Opoti with the court documents as regards the Petition herein thus denying her an opportunity to be heard contrary to the rules of natural justice and Article 50 of *the Constitution* of Kenya.
  - g. That neither has the Grant issued on 14<sup>th</sup> October, 2005 in Kisumu High Court Succ. Cause No. 251 OF 2005 been set aside and or varied.
  - h. That it is only fair and just that Grant of Representation confirmed on 27<sup>th</sup> December, 2024 be and is hereby revoked as Grant of Representation in respect of the suit property herein was already issued in Kisumu High Court Succ. Cause No. 251 OF 2005 and in any event the same has not been set aside and or varied.
  - i. That the Petitioner herein shall not be prejudiced in any manner whatsoever as he is at liberty to move the court in Kisumu High Court Succ. Cause No. 251 OF 2005 if he so wishes to have the Grant of Representation issued therein to the Applicants set aside or reviewed.
  - j. That it is in the interest of Justice that the Application herein is allowed failure to which Ruth O. Opoti one of the Applicants herein and Administrator of the estate subject of this Petition will be ousted out of the seat of justice as she was never accorded an opportunity to be heard.
  - k. That the application has been made in good faith and is not a subversion of justice.
3. The Petitioner herein, a son of the deceased, resists the application and to that end filed a replying affidavit that he swore on 30<sup>th</sup> March, 2025.
4. From the 1<sup>st</sup> Objector's affidavits, the position urged is that the grant that was issued herein was obtained fraudulently as the Objectors were not notified of the proceedings and that there was concealment of material facts by the Petitioner.
5. The 1<sup>st</sup> Objector states that she has an interest in the estate of the deceased and ought to have been served with the petition and other court process. She explains that her interest is in respect of the property



known as LR No. Kisumu/Mun/Block 12/195 which is or was registered in the name of Dorothy Mariamme and Josef Konrad Beith (the deceased herein).

6. It is further proffered by the 1<sup>st</sup> Objector in her affidavit that Dorothy Mariamme is also deceased. Although the exact date or year of death of Dorothy Mariamme is not stated, one can discern from the record that she met her demise before the deceased herein. That fact is discernible from the undisputed depositions made by the 1<sup>st</sup> Objector's in her affidavits that the Objectors petitioned for and were issued with a grant of representation in respect of Dorothy Mariamme's estate vide Kisumu High Court Succession Cause No. 251 of 2005. It is however to be noted that the Objectors did not provide any evidence to show that the said succession cause is concluded.
7. On the basis of the above, the 1<sup>st</sup> Objector claims that she and her co-objector have an interest in the estate of the deceased, particularly with respect to the property known as LR No. Kisumu/Mun/Block 12/195 being the administrators, by virtue of the fact that it was jointly registered in the names of the deceased and Dorothy Mariamme and following their appointment as administrators of the estate of Dorothy Mariamme.
8. The basis upon which the Petitioner opposes the application is that the Objectors have not demonstrated that they have an interest in the deceased's estate and have therefore not established any of the grounds available under Section 76 of the Law of Succession Act, under which a grant may be revoked.
9. It is the argument of the Petitioner that although the property known as LR No. Kisumu/Mun/Block 12/195 was jointly registered in the name of the deceased and that of Dorothy Mariamme, the same stood transmitted, by law, to the deceased as the sole proprietor upon the demise of the said Dorothy Mariamme and did not, therefore, form part of her estate.
10. Having considered the respective positions of the two sides as presented by the documents filed, I deduce the issues for determination to be as follows:
  - a. Whether the Objectors have demonstrated the existence of grounds that would warrant the court to revoke the grant made herein to Nelson Cassey Mandela Reith and confirmed on 27<sup>th</sup> December, 2024.
  - b. Subject to (a) above, whether this court should proceed and revoke the said grant.
  - c. A determination as to costs.
11. I will proceed to determine the three issues together.
12. From the copy of the certificate of official search that is annexed to the affidavit in support of the application, Dorothy Mariamme and Josef Konrad Beith (the deceased herein) were issued jointly with a certificate of lease on 6<sup>th</sup> January, 1997, as lessees of LR No. Kisumu/Mun/Block 12/195. The regime under which title deeds for freehold interests and certificates of leases for leasehold interests were issued at the time was the Registered Land Act, Cap 300 Laws of Kenya (now repealed by the Land Registration Act, No. 3 of 2012).
13. Sections 101 to 103 of the Registered Land Act recognized the principle of survivorship in co-ownership or joint ownership or tenancy of land. Section 101 provided that a parcel of land or a lease could be registered in the names of two or more persons as joint tenants or tenants in common. Section 102 stated that where land or a lease was registered in the names of two or more persons as joint tenants, the doctrine of survivorship or jus accrescendi applied. The doctrine provides that upon the death of one joint tenant, their interest automatically accrued to the surviving joint tenant(s). Section 103 on



- the other hand provided that where persons were registered as tenants in common, each held a distinct, undivided share and the doctrine of jus accrescendi was inapplicable in the circumstances.
14. Under the *Land Registration Act*, the doctrine is still recognized under Section 91. Certificates of lease that were issued under the *Land Registration Act* are therefore recognized under the present law, as were under the repealed statute.
  15. The certificate of official search is silent on the nature of interests held by Dorothy Mariamme and Josef Konrad Beith in the lease. Whereas Section 91(2) of the *Land Registration Act* provides that where the nature of interest is not expressly stated, a presumption of tenancy in common in equal shares prevails unless the contrary intention is expressed, the repealed statute did not have such a presumption.
  16. While dealing with the same subject under the repealed statute, the Court of Appeal in the case of *Mukazitoni Josephine vs Attorney General of Kenya* [2015] eKLR held that where the title document was silent as to the nature of interest held by the registered proprietors, such property was deemed to be under joint tenancy. The court stated thus:

“The document to the property has two names and this is concurrent ownership. There is no indication as to whether the property is held on a tenancy in common or joint tenancy or tenancy in entirety. When a property is registered in more than one name in the absence of a contrary entry in in the register, the property is deemed to be held in joint tenancy and not tenancy in common or tenancy in entirety. A tenancy in common or tenancy in entirety means that the interests of each registered owner is determinable and severable; in a joint tenancy the interests of each owner is indeterminable each owns all and nothing.”
  17. The *Land Registration Act* was assented to on 27<sup>th</sup> April, 2012 and its date of commencement was set as 2<sup>nd</sup> May, 2012. That being the case, Section 91(2) of the Act cannot affect a lease that was issued under the Registered *Land Act* and any interests that accrued thereunder. The proper position regarding interests that are not clearly stated to be joint tenancy or tenancy in common, is therefore that as enunciated by the Court of Appeal in *Mukazitoni*, which, pursuant to the doctrine of stare decisis, is binding upon this court.
  18. My understanding of the law as applicable in the matter before me is therefore that, as the property LR No. Kisumu/Mun/Block 12/195 was under joint tenancy in the names of the deceased and Dorothy Mariamme, the same was not subject to succession after the demise of Dorothy Mariamme. That is because the interest of Dorothy Mariamme automatically accrued to the deceased, who was the surviving tenant at the time of her death. Such property was subject to the doctrine of survivorship or jus accrescendi. There being no dispute that Dorothy Mariamme predeceased the deceased herein, her interest in the property known as LR No. Kisumu/Mun/Block 12/195 automatically accrued to the deceased and did not, therefore, form part of the estate of Dorothy Mariamme.
  19. Being of that finding, I reach the result that the Objectors herein, being the administrators of the estate of Dorothy Mariamme have no interest in the estate of the deceased. The Objectors have failed to demonstrate grounds under Section 76 of the *Law of Succession Act* that would warrant this court to issue an order upsetting the grant issued herein and confirmed on herein on 27<sup>th</sup> December, 2024. As consequence thereof, the other prayers in the application are not available.
  20. Consequently, the summons for revocation of grant dated 23<sup>rd</sup> January, 2025 lacks merit. I proceed to dismiss the application in its entirety. Each party shall bear their own costs.
  21. This file is hereby closed.



**DELIVERED (VIRTUALLY), DATED & SIGNED THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**JOE M. OMIDO**

**JUDGE**

For The Objectors/applicants: No Appearance.

For The Petitioner/respondent: No Appearance.

Court Assistant: Mr. Ngoge.

