

Legal Alert!

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Joint Tenancy vs Tenancy in Common: When Registration Overrides Intention

Key points

In Uganda, the form of co-ownership registered on a Certificate of Title is legally decisive and will be enforced by courts regardless of the parties' intentions, contributions, or subsequent agreements. Recent High Court judgments have affirmed over time that a property registered as a joint tenancy passes automatically to the surviving co-owner upon death, completely bypassing inheritance laws and testamentary provisions.

1. INTRODUCTION

The distinction between joint tenancy and tenancy in common has profound implications for property succession in Uganda. Recent decisions of the High Court Family Division have reinforced the principle that the form of ownership appearing on a land title certificate determines the legal consequences upon a co-owner's death, irrespective of contributions to the purchase price, business arrangements, or family relationships.

This legal alert examines the critical differences between these two forms of co-ownership and their impact on estate planning, business partnerships, and family wealth preservation. Property owners, investors, and legal practitioners must understand these distinctions to avoid unintended disinheritance and costly succession disputes.

2. JOINT TENANCY AND THE RIGHT OF SURVIVORSHIP

2.1 Legal Framework

Joint tenancy arises under common law principles where four essential unities are present:

- (a) Unity of title:** all co-owners must derive their title from the same document or transaction;
- (b) Unity of Time:** all interests must vest at the same time;
- (c) Unity of Interest;** each co-owner must hold an equal interest in the whole property; and
- (d) Unity of Possession:** each co-owner must have the right to possess the entire property.

Where these four unities exist, the law treats the co-owners as forming a single composite owner. The defining characteristic of joint tenancy is the **right of survivorship (jus accrescendi)**, under which the interest of a deceased joint tenant automatically vests in the surviving co-owner(s) by operation of law, without passing through the deceased's estate.

2.2 Recent Judicial Pronouncements

Yunia Harriet Elon Gwokibulira Ssali vs Godfrey Luyimbazi & Others [2025] UGHCFD 172

In this landmark decision, the High Court Family Division considered matrimonial property held in joint tenancy between spouses. Upon the husband's death, the widow claimed sole ownership by survivorship, while the deceased's children from a previous marriage sought to include the property in the estate for distribution under the Succession Act Cap 268.

The Court held unequivocally that property held in joint tenancy does not form part of the deceased's

estate for purposes of succession. Upon the death of one joint tenant, the property vests wholly and automatically in the surviving joint tenant(s) by operation of law. The right of survivorship operates independently of and takes precedence over succession law, notwithstanding the existence of children, dependents, or testamentary provisions.

The practical effect of this judgment is stark: children and other beneficiaries of a deceased joint tenant have no legal claim to the property, regardless of their relationship to the deceased or their dependency on the estate.

Nantongo vs Konde (Civil Suit No. 148 of 2022) [2023] UGHCFD 160

This case reinforced the position that where the four unities exist, joint tenancy arises by operation of law, and the right of survivorship is automatic unless the joint tenancy is expressly severed during the parties' lifetime through a formal legal process.

The Court emphasized that severance requires clear evidence of an intention to convert the joint tenancy into a tenancy in common, typically through registration of a new title or execution of a formal deed of severance. Mere informal agreements, verbal understandings, or unequal contributions to maintenance costs are insufficient to sever a joint tenancy.

2.3 Legal Consequences of Survivorship

The operation of survivorship in joint tenancy has the following critical legal effects:

- (a) Exclusion from estate:** The property does not form part of the deceased's estate and is not available for distribution to beneficiaries under the Succession Act, Cap 162.
- (b) Testamentary provisions ineffective:** Any provision in a Will purporting to bequeath the deceased's interest in jointly-held property is void and of no legal effect. The property passes by survivorship, not by testamentary disposition.
- (c) Dependants' claims excluded:** Dependants of the deceased cannot claim provision from jointly held property under Section 27 of the Succession Act, as the property never enters the estate.
- (d) Automatic vesting:** The surviving joint tenant(s) become sole owner(s) immediately upon death without the need for a grant of probate or letters of administration.

No subdivision: The deceased's 'interest' cannot be subdivided or partially distributed. Survivorship operates on the entire interest held by the deceased joint tenant.

3. TENANCY IN COMMON AND INHERITANCE RIGHTS

3.1 Legal Nature

Under a tenancy in common, each co-owner holds a distinct and separately identifiable share in the property. The shares may be equal or unequal and can be depicted on the title.

Critically, there is **no right of survivorship** in a tenancy in common. Upon the death of one tenant in common, that person's share does not pass automatically to the surviving co-owner(s). Instead, it forms part of the deceased's estate and devolves either:

- (a) According to the terms of a valid Will (testacy); or
- (b) Under the rules of intestate succession prescribed by the Succession Act.

3.2 Judicial Recognition

Zachary John Olum vs Bongomin John Odora & Others (HCCA No. 120 of 2015)

In this case, the Court confirmed that a tenant in common retains individual and independent proprietary rights over their defined share. These rights include:

- The right to seek partition or sale of the property;
- The right to alienate their share without consent of other co-owners;
- The right to charge or mortgage their individual interest; and
- The right to bequeath their share by Will or have it devolved under intestacy laws.

The Court underscored that these proprietary interests are independently alienable and inheritable, distinguishing tenancy in common fundamentally from joint tenancy.

3.3 Estate Planning Advantages

Tenancy in common offers significant advantages for estate planning:

- (a) Testamentary freedom:** The co-owner can direct the disposition of their share through a Will, ensuring chosen beneficiaries inherit.
- (b) Proportionate contributions:** Shares can be registered unequally to reflect actual financial contributions (e.g., 80-20 split where one party contributed 80% of purchase price).
- (c) Family wealth preservation:** Property can be structured to remain within bloodlines or pass to children rather than automatically vesting in a surviving spouse.

- (d) Business continuity:** In commercial partnerships, tenancy in common allows shares to pass to the deceased partner's estate rather than the surviving business partner.

4. PRACTICAL CASE STUDY: BUSINESS PARTNERS

Scenario

Mr. A and Ms. N are business partners who jointly purchase a commercial building in Kampala Industrial Area for UGX 1.2 billion. Mr. A contributes UGX 840 million (70%) from his personal savings and bank loan. Ms. N contributes UGX 360 million (30%) from her business profits.

The property is registered in their joint names. The Certificate of Title is silent on whether they hold as joint tenants or tenants in common, and no separate co-ownership agreement is executed. The partners operate from the building and share rental income from tenants.

Five years later, Mr. A dies in a motor accident. His Will, executed three years earlier, provides:

"I give, devise and bequeath my 70% share in Plot 123, Kampala Industrial Area to my three children in equal shares, to be held in trust until each attains 25 years of age."

Legal Outcome: Joint Tenancy

If the property was registered as a joint tenancy or if registration was silent and the four unities were present:

1. The entire property vests immediately in Ms. N by operation of survivorship.
2. Mr. A's Will is ineffective regarding this property; the testamentary provision is void.
3. Mr. A's children receive nothing from the property, despite their father's 70% contribution and clear testamentary intention.
4. Ms. N becomes sole proprietor without compensation to Mr. A's estate, effectively receiving a windfall of UGX 840 million.
5. Mr. A's estate cannot seek partition, compensation, or any remedy; the transfer is automatic and complete.

This outcome is precisely what occurred in Yunia Harriet Elon Gwokibulira Ssali vs Godfrey Luyimbazi & Others, where the court confirmed that testamentary intention cannot override survivorship, regardless of contributions or family circumstances.

Alternative Outcome: Tenancy in Common with contribution clearly depicted

If the property had been registered as a tenancy in common with documentation to depict everyone's contribution.



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1. Mr. A's 70% share forms part of his estate.
2. The Will is effective; his three children inherit his 70% share
3. Ms. N retains her 30% share only.
4. The children and Ms. become co-owners or tenants in common
5. Either party can seek partition or division of their shares respectively if the co-ownership becomes unworkable.

This outcome reflects the actual contributions, honors Mr. A's testamentary wishes and provides inheritance protection for his children.

5. CRITICAL TAKEAWAYS FOR PROPERTY OWNERS

1. Registration Is Legally Decisive

Ugandan courts will enforce the form of ownership appearing on the Certificate of Title, not the parties' presumed intentions, contributions, verbal agreements, or subsequent arrangements. The registered form of co-ownership is conclusive. Therefore, it is important to notify the registrar and provide the necessary documentation to ensure that the right entry is made without presumptions.

2. Joint Tenancy Excludes Succession Law

Property held as joint tenancy passes entirely by survivorship and does not form part of the deceased's estate. Succession law does not apply. Wills, Letters of Administration, and dependants' claims are all ineffective against survivorship.

3. Tenancy in Common Supports Estate Planning

Tenancy in common allows shares to devolve through Wills or intestacy laws to chosen beneficiaries. It preserves testamentary freedom, reflects unequal contributions, and maintains family wealth structures across generations.

4. Contributions Are Irrelevant Without Proper Registration and documentation

Evidence of whom paid what proportion of the purchase price, mortgage instalments, or maintenance costs does not alter the legal effect of joint tenancy. A party who contributed 90% will lose everything to the survivor who contributed 10% if registered as joint tenants.

5. Early Legal Advice Is Essential

The form of co-ownership must be determined at the time of acquisition and registration. Errors made at this stage are often irreversible upon death because severance of joint tenancy requires agreement of all parties. Once a co-owner has died, it is too late to change the registration.

6. Review Existing Titles Where Succession Planning Matters

Property owners with existing co-ownership arrangements should urgently review their Certificates of Title to confirm the registered form of ownership and whether this reflects their true intention. If joint tenancy was registered inadvertently or circumstances have changed, severance should be considered while all parties are alive and capable of consenting.

6. PROFESSIONAL RECOMMENDATIONS

6.1 For Spouses and Domestic Partners

Joint tenancy may be appropriate where:

- The parties intend for the surviving spouse to inherit the entire property automatically;
- There are no children or dependants requiring protection;
- The matrimonial home is the couple's only significant asset;
- Speed and certainty of transfer on death is prioritized over flexibility.

However, tenancy in common should be considered where:

- Either party has children from a previous relationship who should inherit;
- Contributions to purchase are significantly unequal;
- Family wealth preservation across generations is important;
- The property is high-value and forms a substantial part of the estate.

6.2 For Business Partners and Investors

Joint tenancy is rarely appropriate for commercial co-ownership unless the owners agree that it is their intention. Business partners should almost always register as tenants in common with shares reflecting capital contributions or agreed ownership percentages.

Key considerations:

- Each partner's share should vest in their estate to preserve investment value for heirs and can help to avoid disputes among families ;
- Buy-sell agreements and right of first refusal provisions can be incorporated alongside tenancy in common;
- Unequal contributions must be reflected in registered share percentages;
- Partnership or shareholders' agreements should address succession and transfer restrictions.

6.3 For Family Land and Generational Wealth

Where property is intended to remain within a family line or be passed to specific heirs, tenancy in common is essential. Joint tenancy between siblings, parents and adult children, or extended family members creates a significant risk of unintended disinheritance.

Consider:

- Registering ancestral land as tenancy in common with defined shares per family branch;
- Documenting oral family understandings in written co-ownership agreements;
- Using trust structures or life estates where appropriate for multi-generational planning.

7. CONCLUSION

The recent High Court decisions in Yunia Harriet Elon Gwokibulira Ssali and Nantongo vs Konde have crystallized the law on co-ownership in Uganda: registration is decisive, and form overrides undocumented intentions.

Joint tenancy provides certainty and automatic transfer upon death, making it suitable for spouses in straightforward matrimonial situations. However, it completely excludes succession law and can cause devastating unintended consequences in business partnerships, blended families, or where wealth preservation is important.

Tenancy in common preserves testamentary freedom, reflects unequal contributions, and supports comprehensive estate planning. It should be the default choice for commercial investments, family land, and situations where inheritance by specific beneficiaries is intended.

Property owners, legal practitioners, registrars of titles and financial advisors must ensure that the form of co-ownership is deliberately chosen at acquisition and properly reflected on the Certificate of Title. Existing co-owners should urgently review their titles and consider severance or rectification where current registration does not align with succession intentions.

Disclaimer

This Legal Alert is provided for general informational purposes only and does not constitute legal advice. The legal effect of joint tenancy or tenancy in common depends on the specific facts and registration details of each case. Readers are advised to seek professional legal guidance before making decisions relating to co-ownership or succession of property.

For further assistance, contact KTA Advocates corporate@ktaadvocates.com