



REPUBLIC OF KENYA



**In re Estate of Elizabeth Anyango Bitu Luyera (Deceased) (Succession Cause 307 of 2009) [2025] KEHC 9809 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9809 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 307 OF 2009**

**WM MUSYOKA, J**

**JULY 4, 2025**

**IN THE MATTER OF THE ESTATE OF EABL (DECEASED)**

**RULING**

1. This estate relates to the estate of EABL. She died on 2<sup>nd</sup> September 1992, according to certificate of death, dated 2<sup>nd</sup> August 1993, serial number XXXXXX.
2. Her estate comprises of ½ share of Samia/Budongo/XX. There is a certificate of official search, dated 23<sup>rd</sup> October 2009, which indicates that the other ½ share belongs to RA.
3. There is a letter from the Assistant Chief of Ojibo Sub-Location, dated 10<sup>th</sup> October 2009, which identifies RA as a co-wife of the deceased, EAB. The letter indicates that the deceased had two daughters, whose names are not disclosed, and who are said to be married. RA is said to have had five children, being three sons and two daughters. The sons are listed as the late RB, who had died in 1995, and was survived by six children; SWB, who died in 2002 and EMB, who was said to be still alive, and to have six children.
4. There is another letter, from the Chief of Agenga Location, dated 16<sup>th</sup> December 2009, which gives contrary information. It identifies RAB, as a co-wife of the deceased herein, EAB. EAB is alleged to have had four sons, said to be FO, SO, CO and WO. It is indicated that RAB was still alive, and her children are said to be the late RO, the late SW, EM, AB and BNa. The two daughters are said to be married. The letter of 19<sup>th</sup> December 2009 purports to revoke that of 10<sup>th</sup> October 2009.
5. Representation to the estate of the deceased herein was sought by the co-wife, RAM, and her stepson, EMB. They did not describe the relationship between themselves and the deceased. They initially only listed themselves as the survivors of the deceased, but they later amended their papers to include Godfrey Onyango Oduori, FO and SO. The relationship between the deceased and the additions was not disclosed.
6. Letters of administration intestate were made to the co-wife, RAM, alone, on 25<sup>th</sup> February 2010, and an undated grant of letters of administration intestate was issued, signed by the Judge. I shall refer to RAM hereafter as the administratrix.



7. The said grant was confirmed on 4<sup>th</sup> November 2011, on the application of the administratrix, dated 19<sup>th</sup> July 2011. In the application, the deceased was said to have been survived by four children, namely, RAM, EM, FO and SW. Two individual SW listed as beneficiaries, being GO and SIA. In there, it was proposed that the estate be distributed to a total of twelve individuals, being the four purported survivors, two purported dependants and FO, GO, PO, JO, JO and [Particulars Withheld]. A certificate of confirmation of grant was issued, dated 4<sup>th</sup> November 2021, distributing Samia/Budongo/XX to the twelve individuals.
8. The estate was not transmitted, in terms of the distribution ordered on 4<sup>th</sup> November 2011.
9. The co-wife of the deceased, as administratrix herein, has come back to court, by an application, dated 6<sup>th</sup> November 2024, asking that the distribution, of 4<sup>th</sup> November 2011, be rectified, ostensibly to deal with the shares due to some of the beneficiaries who have since died. Only two individuals are said to have died, EMM and ROM. Of the two, only EMM was a beneficiary. ROM was not. His name did not feature in the application for confirmation of grant, dated 19<sup>th</sup> July 2011, and he does not feature in the certificate of confirmation of grant, dated 4<sup>th</sup> November 2011. His death, therefore, that is of ROM, should be of no consequence to these proceedings. The application introduces several individuals, whose names did not feature initially, ENO, EAJ, CA, MJM, JO, EAO, BBO, CAM and SJM.
10. There is a letter from the Chief of Agenga Location, dated 4<sup>th</sup> September 2024. It provides some answers, but it creates part of the problem. It identifies the beneficiaries of the estate of the deceased as the three individuals listed as sons of the deceased, and the buyer, said to be EAJ. The other beneficiaries are said to be RAB, and her son, the late EMM, and two buyers, Consolata Akhenda and SIA. The late EMM is said to have sold what he perceived to be his share to JOW and [Particulars Withheld]. The third beneficiary is said to be the late ROM, who was survived by children, and who also had purported to sell his share to CAM and Susan Janet Musungu.
11. The application, dated 6<sup>th</sup> November 2024, was placed before me, on 20<sup>th</sup> March 2025. Several individuals, purported to be beneficiaries, attended court before me, being FM, RA and PFOO. A section agreed with the proposed rectification, while a section did not. I directed those opposed to file their responses to the application. I also directed that AB and BNa file papers renouncing their share in the estate.
12. FOM filed a document in court, dated 14<sup>th</sup> May 2025, attaching a purported distribution, a survey map and various other papers.
13. On 14<sup>th</sup> May 2025, I conducted an oral hearing, where I took evidence viva voce, from those opposed to the application, as well as from the applicant, the administratrix herein.
14. The applicant, RAB, was the first to take the stand. She is the administratrix. She claimed that the deceased was her aunt, and that the deceased had distributed her land to two sons, SO and FO. She explained that her application sought to re-distribute the land and add beneficiaries to the same land distributed to Stephen and FO. She then said she did not understand why she was changing the distribution ordered or approved in 2011. She said that WO and Chrispinus Obala went to Uganda, and, on account of that, they were not available to be given land.
15. WO testified next. He said that he was from Uganda, and the deceased was his grandmother, being the mother of his mother TA, who passed on in 1993. He asserted that the land ought to have been shared out equally, as agreed, but the administratrix and others had gone against that, and had shared the property without following the court orders. It was claimed that the court shared the land equally



- in 2009, adding that he had documents to prove that. He asked that a surveyor be directed to go and distribute the land between the administratrix and the estate of the deceased.
16. The parties SW unrepresented, and, therefore, they did not submit, whether orally or in writing.
  17. The parties have complicated this straightforward matter and caused it to unnecessarily drag in court.
  18. This succession cause is about the estate of EABL. It is not about the distribution of the estate of her late husband, who she shared with her co-wife, the administratrix herein, RAM. Yet, there is a sense in which these proceedings are, so far, being handled as if the property to be shared herein belongs to their husband, to be shared out between his two wives, their children and persons who have bought portions of it. That should not be the case. The property being distributed here belongs to EABL.
  19. The property in question is ½ share of Samia/Budongo/20. It is not the whole Samia/Budongo/XX being shared out. EABL owned only one ½ share of that property, Samia/Budongo/XX. The other ½ share belongs to RAM, who is alive. These succession proceedings should only relate to the ½ share due to EABL. RAM is not dead, and her share is not subject to these succession proceedings, and even if she were dead, the succession to her ½ share would not even be the subject of these proceedings. Yet, these proceedings have been carried on as if the whole of Samia/Budongo/XX is being distributed, as if it wholly belonged to EABL.
  20. What RAM, as surviving co-owner of Samia/Budongo/XX, should have done is to approach the land registrar, at the lands' registry, where the register for Samia/Budongo/XX is housed, for partition the said property between her and the estate of the late EAB. Under the *Land Act*, Cap 280, Laws of Kenya and the *Land Registration Act*, Cap 300, Laws of Kenya, she is not required to conduct succession proceedings to get her ½ share of Samia/Budongo/20. What is required, in the circumstances, is that proof of the death of the co-owner be provided, so that the two interests, in Samia/Budongo/XX, are separated. She only needed to approach the lands office with a certificate of death of EABL, and an application for partition. Once the two interests separated or partitioned, the estate of EABL would move to court for succession, while RAM should be issued with a title deed for her ½ share.
  21. A succession to the estate or property of EABL should not involve RAM. RAM is not a survivor of EABL. She is not her child either. She was her co-wife. As a co-wife she had no interest in her estate or property. The persons who are entitled to a share in the property of EABL, according to Part V of the *Law of Succession Act*, Cap 160, Laws of Kenya, are her own children, the children of EABL. If their husband were alive, he would have had a life interest in the property of EABL. However, since he died, the property ought to devolve upon the children of EABL, equally, according to section 38 of the *Law of Succession Act*.
  22. RAM was not a child of EABL. The children of RAM were equally not children of EABL. Both had no interest in the estate. RAM should not have sought confirmation to the estate of EAB, and she should not have been appointed administratrix with respect to it. So long as she is not entitled to the property of EABL, in any capacity, she cannot administer it. She should not have listed her own children as beneficiaries of the estate of EABL, because only the biological children of EABL are entitled to that property. To that extent, these proceedings started on the wrong footing.
  23. The land registrar should partition Samia/Budongo/XX between RAM and the estate of EABL, and issue title deeds in respect of the two portions created out of Samia/Budongo/XX. After that, RAM should deal with her own children, in terms of sharing her portion amongst them, if she so wishes. She should also deal with the persons to whom she and her children sold land.
  24. The estate of EABL should be left to deal with the children of EABL, in terms of dividing the part of Samia/Budongo/20 due to EABL amongst the said children. If EABL had sold land to anyone, then



- the estate should provide for such buyers. If any child of EABL had sold land to anyone, then such buyers should wait for the land to be devolved to the child, who sold to them, who should then transfer the portion of the land devolved to him or her as his or her share of the land to the persons that they had sold it to. Persons who did not buy land from EABL directly, but from her children, have no direct claim to the estate. Such buyers are not creditors of the estate of EABL. They should look up to the child of EABL, who sold the land to them. The only legitimate claimants are the buyers who dealt directly with EABL.
25. Let me put names behind what I am saying above. The children of RAM, from material filed here, the pleadings, affidavits, letters and other documents, are Robert Oduori, SWB, BNa and EM. These are the persons entitled to the ½ share of Samia/Budongo/XX belonging to RAM. They are not entitled to the other ½ share of Samia/Budongo/20 belonging to EABL. They should not be participating in these succession proceedings, as they are not meant to distribute the ½ share of EABL, instead they should be getting a share from the ½ share due to their mother, RAM. I reiterate that RAM should not be the administratrix of the estate of EABL, as she has no share in that estate, and so should be the case with her children.
  26. RAM is said to have sold portions of her ½ share to Consolata Akhenda and SIA. These two have no interest in the estate of EABL and they should not be in these proceedings. RAM is still alive. Consolata Akhenda and SIA should approach her to get their share from her ½ share of Samia/Budongo/XX, while she is still alive. If she does not cooperate, then they should move the courts with jurisdiction to pursue their interests.
  27. The sons of RAM, being EMB and ROB, both sold portions of their mother's ½ share of Samia/Budongo/XX to third parties. Those said sons have no claim to EABL's ½ share of Samia/Budongo/XX, and that means that the persons who bought those portions from them have no claim against EABL and both sides should not be in these proceedings. The buyers should approach either RAM or the estates of EMB and RB, so that they can be allocated the land they bought. The estate of EABL has nothing to give them. I am talking about JOW, [Particulars Withheld], CAM and SM.
  28. The composition of the house of EABL is not altogether clear. There are three letters from the Chief. Some of them allege that she only had daughters, two in number, whose name SW not disclosed; while the others say she had sons only. The letter which talks about sons purports to cancel that about daughters only. At the oral hearing, I got the sense that she might have had both sons and daughters, but some clarity will be necessary before the estate is distributed.
  29. Whatever the case, whoever is identified to be a child of EABL is the person entitled to a share in the estate of EABL. Section 38 of the [Law of Succession Act](#) requires equal distribution, unless someone renounces their share or they surrender or sell them. Those said to be the children of EABL are SO Wafula, FOM and TA. The name of the other daughter has not been disclosed. WO testified to be the son of TA. Chrispinus Obala is also associated with that house, but in an unknown and undisclosed capacity. These should be the key players in the estate of EABL, and the administrators of her estate should come from amongst them, to take over from RAM, as she ought not have been appointed administratrix in the first place. The ½ share of EABL in Samia/Budongo/XX should be distributed amongst the persons who shall be established to be her sons and daughters.
  30. The documentation identified one buyer, from the ½ share due to EABL. It is not disclosed whether that person bought from EABL or from one of her children. If the buyer transacted with EABL, then that buyer should get their share from the estate. If the buyer bought from one of the children, then the buyer shall get their portion from the share that shall be devolved upon that child that the buyer dealt with.



31. As indicated hereabove, the certificate of official search, for Samia/Budongo/20, indicates that the property is held in two distinct portions, which are equal, between RAM and EABL. As only EABL has passed on, this cause should relate only to the ½ share due to her, that is EABL. The petition did not disclose that EABL only held ½ share of Samia/Budongo/XX and created the impression that she owned the whole of it. That mistake was carried into the confirmation application; hence the whole of Samia/Budongo/XX was distributed. The court was misled, and that error should be corrected. The share of RAM, who is living, cannot be distributed together with the share of the dead. That error must be corrected. That correction will mean that RAM, her children and the buyers, claiming from her and her children, shall be removed from these succession proceedings. It shall also mean RAM shall have to be removed as administratrix, so that members of the family of EABL can take over.
32. The orders that I shall make, at this stage, are to facilitate partition of Samia/Budongo/XX between RAM and the estate of EABL. After the partition, each side should be issued with title deeds, that is to RAM and to the estate of EABL. After the estate of EABL gets its title deed, proceedings shall be conducted herein to distribute that share amongst the children of EABL and buyers from EABL. To facilitate that, I shall have to revoke the grant made to RAM and appoint new administrators from amongst the children of EABL. I shall also vacate the distribution orders made on 4<sup>th</sup> November 2011, of the whole of Samia/Budongo/XX, so that only the ½ share due to EABL is distributed in these proceedings.
33. The application seeks rectification, under section 74 of the *Law of Succession Act*. Rectification, under section 74, is only available for or with respect to grants of representation, for errors and misdescriptions. The instant application is not about rectification of a grant. It raises no issues around errors or misdescriptions. It seeks a re-distribution of the estate, and that is about tinkering with the orders of 4<sup>th</sup> November 2011. Rectification orders cannot be utilized to achieve that. The applicant ought to have sought review of the distribution orders of 4<sup>th</sup> November 2011. I would not propose appeal, as the issues raised do not point to the parties being unhappy with the orders. However, as the parties are laypersons, I have chosen to treat their application as one for review, and I shall dispose of it as such. There were errors, which, no doubt, have come out clearly, from the discussions above.
34. Removal of an administratrix is achieved through revocation of a grant. I have no revocation application before me, and none of the parties have asked me to revoke the grant. However, under section 76 of the *Law of Succession Act*, the court has inherent power to revoke. It can revoke a grant on its own motion or suo moto, without being invited by the parties to do so, where grounds exist for it to revoke. Those grounds exist, with respect to these proceedings. RAM is not entitled to a share in the estate of EABL. She should not have been appointed the administratrix of that estate, when EABL had adult children of her own, surviving her, who had not consented to RAM being appointed as administratrix. Secondly, RAM misled the court into believing that the whole of Samia/Budongo/XX was up for distribution, yet only the ½ share due to EABL was to be distributed.
35. The final orders are:
  - a. That the grant made to RAM, on 25<sup>th</sup> February 2010, is hereby revoked;
  - b. That the orders, confirming that grant, made on 4<sup>th</sup> November 2011, are hereby set aside, and the certificate of confirmation of grant, issued based on those orders, and dated 4<sup>th</sup> November 2011, is hereby cancelled;
  - c. That I appoint FOM and WO Obara, administrators of the estate herein, of the late EABL, and a grant of letters of administration intestate shall be issued to them;



- d. That the new administrators, appointed under (c) above, shall file, within the next 45 days, an application for confirmation of their grant, to distribute the ½ acre share of EABL in Samia/Budongo/20, amongst the beneficiaries of that estate;
- e. That the matter shall be mentioned, after 45 days, on 24<sup>th</sup> September 2025, to confirm filing of the said confirmation application, and for further directions;
- f. That RAM and the new administrators shall be at liberty to approach the Busia County Land Registrar, with a certified copy of this ruling and the certificate of death of the deceased herein, for partition of Samia/Budongo/20, between RAM and the estate of EABL, in the terms of the registration details;
- g. That each party shall bear their own costs; and
- h. That any party aggrieved by these orders has leave of 30 days to move the Court of Appeal, by way of appeal, appropriately.

36. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 4<sup>TH</sup> DAY OF JULY 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. RAM, administratrix, in person.

Messrs. FOM and WO Obara, in person.

