

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**SUCCESSION CAUSE NO. 307 OF 2009**

**IN THE MATTER OF THE ESTATE OF ELIZABETH ANYANGO BITA**  
**LUYERA (DECEASED)**

**RULING**

1. On 4<sup>th</sup> July 2025, I delivered a ruling, where I declared that Samia/Budongo/20 was registered equally between Risper Auma Mbita and Elizabeth Anyango Bita Luyera. Risper Auma Mbita is alive, while Elizabeth Anyango Bita Luyera is deceased. The estate herein is of Elizabeth Anyango Bita Luyera. Only the  $\frac{1}{2}$  share, in Samia/Budongo/20, due to Elizabeth Anyango Bita Luyera is available for distribution in these proceedings.
2. I declared that Risper Auma Mbita and her children were not entitled to participate in these succession proceedings, as the  $\frac{1}{2}$  due to Elizabeth Anyango Bita Luyera should devolve upon her children or descendants, which did not include the children of Risper Auma Mbita. I revoked the grant made to Risper Auma Mbita, and appointed the grandchildren of Elizabeth Anyango Bita Luyera to administer their grandmother's estate.
3. What I am invited to determine is a summons for confirmation of the grant, dated 15<sup>th</sup> July 2025, which appointed the said grandchildren of Elizabeth Anyango Bita Luyera. They propose to distribute the whole of Samia/Budongo/20, instead of the  $\frac{1}{2}$  share of Elizabeth Anyango Bita Luyera. However, they allocate 5.15 hectares to Risper Auma Mbita, and share the other 4.03 hectares amongst themselves. The sharing is not exactly at 50:50, but, if that is how the position is on the ground, I shall leave it as such. The beneficiaries of the 4.03 hectares are said to be Wilfred Oundo Obara, Chrispinus Magero Obara, Francis Ojiambo Magero and Stephen Wafula Okumu; while the 5.15 hectares is allocated to Risper Auma Mbita, wholly, as it should be.
4. The application was heard on 17<sup>th</sup> December 2025. 9 individuals attended court, being Francis Ojiambo Magero, Moses Juma, Lucy Makokha, Stephen Ouma Ogola, Chrispinus Magero Obara, Wilfred

Oundo Obara, Silas Onyango, Miriam Makokha and Risper Auma Mbita. I heard from each of them.

5. Moses Juma identified the deceased as his step-grandmother, and Risper Auma Mbita as his biological grandmother. That would mean that he is from the house of Risper Auma Mbita. He complained that the administrators were seeking to displace them. He confirmed them to be from the house of Elizabeth Anyango Bitu Luyera, but dismissed them as Ugandans. Lucy Makokha was also from the house of Risper Auma Mbita, being a daughter in law. Her husband, the late Emmanuel Makokha Bitu, was a child of Risper Auma Mbita. He said that her late husband had been given a portion of the share due to Elizabeth Anyango Bitu Luyera, by his father. She claimed that the portion was taken away from her by Ojiambo. She identified them as the children of Teresa, a daughter of Elizabeth Anyango Bitu Luyera.
6. Silas Onyango was from the house of Risper Auma Mbita. He did not support the application. He was a son of the late Emmanuel Makokha Bitu. He asserted that his father had been given the land of Elizabeth Anyango Bitu Luyera by their father. He claimed that Okumu had been given land elsewhere by his mother, Teresa, which was part of Elizabeth Anyango Bitu Luyera's land. He asserted that the rest were given land in Uganda. Miriam Makokha was also from the house of Risper Auma Mbita, and a son of the late Emmanuel Makokha Bitu. He did not support the proposals, saying they had been given Elizabeth Anyango Bitu Luyera's land.
7. Risper Auma Mbita said Elizabeth Anyango Bitu Luyera was her aunt and co-wife. Their late husband, ostensibly the original owner of the land, had shared Samia/Budongo/20 equally between them. She said that her share was meant for her and her children, while Elizabeth Anyango Bitu Luyera's share was meant for her, that is Elizabeth Anyango Bitu Luyera, and the late Emmanuel Makokha Bitu, who was a son of Risper Auma Mbita. She said Elizabeth Anyango Bitu Luyera had 2 daughters, Marita and Teresa. Marita had no children; while Teresa's children were the 2 administrators and the others, being Obara, Okumu and Francis. She said 2 of Elizabeth Anyango Bitu Luyera's children lived in Uganda. She did not support the application, saying that Elizabeth Anyango Bitu Luyera had taken the late Emmanuel Makokha Bitu as her own child, to live with. She stated Okumu and his Ugandan brother should sort out the issues without involving her.

8. Stephen Ouma Ogola was from the house of Elizabeth Anyango Bitu Luyera, being a grandson, whose mother was a daughter of Elizabeth Anyango Bitu Luyera. He supported the application. Magero Chrispinus was from the house of Elizabeth Anyango Bitu Luyera, being a grandson of Teresa Apondi, a child of Elizabeth Anyango Bitu Luyera. He supported the application.
9. On 4<sup>th</sup> July 2025, I delivered a comprehensive ruling on the ownership and sharing of Samia/Budongo/20, as between Elizabeth Anyango Bitu Luyera and Risper Auma Mbita. As Elizabeth Anyango Bitu Luyera is now dead, I also gave directions on how her ½ share was to be shared out. If anyone did not agree with me, they should have appealed, for I had given leave, of 30 days. The issues being raised, by members of the house of Risper Auma Mbita, seek to re-open the matters that I addressed and resolved in the ruling of 4<sup>th</sup> July 2025. Those matters are now water under the bridge. The ½ share due to Elizabeth Anyango Bitu Luyera should devolve to the children of her daughter, Teresa, who have been identified. They appear to have agreed on that sharing. The issue relating to the entitlement of the late Emmanuel Makokha Bitu, falls under what I have discussed above. An appeal should have been filed against my findings and holdings, relating to the ½ share of Elizabeth Anyango Bitu Luyera, in the ruling of 4<sup>th</sup> July 2025.
10. The offspring of Elizabeth Anyango Bitu Luyera may be Ugandans. No proof has, however, been provided. Anyhow, nothing prevents them from inheriting what is due to their grandmother, who died in 1992, after the Law Act, Cap 160, Laws of Kenya, had come into force.
11. I note, though, that the applicants, in the affidavit in support of the application, have listed the late Emmanuel Makokha Bitu, as one of the dependents of Elizabeth Anyango Bitu Luyera. They have not listed his siblings. That would be acknowledgement of what Risper Auma Mbita said, that the late Emmanuel Makokha Bitu could have been given a portion of that land, and was probably utilising it. The administrators ought to provide for the late Emmanuel Makokha Bitu out of the ½ share due to Elizabeth Anyango Bitu Luyera. I shall not confirm the grant for now. I shall postpone the application, to allow time to the administrators to provide a share for the late Emmanuel

Makokha Bitu, for they have listed him as a beneficiary/dependent, which would mean entitlement.

12. The matter shall be mentioned, on 17<sup>th</sup> March 2026, by which date the applicants ought to file an affidavit, proposing provision to the estate or family of the late Emmanuel Makokha Bitu. Final orders, or further directions, shall be made or given thereafter.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON  
THIS 16<sup>TH</sup> DAY OF FEBRUARY 2026.**

**WM MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Messrs. Francis Ojiambo Magero, Wilfred Oundo Obara, Stephen Okumu Wafula, Chrispinus Oundo Obara and Risper Auma Bitu.**