



REPUBLIC OF KENYA



In re Estate of Atanasi Murembani Kasuti (Deceased) (Succession Cause 101 of 2021) [2023] KEHC 2832 (KLR) (24 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2832 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT VIHIGA

SUCCESSION CAUSE 101 OF 2021

WM MUSYOKA, J

MARCH 24, 2023

(FORMERLY KAKAMEGA HCSC NO. 643 OF 2011)

IN THE MATTER OF THE ESTATE OF ATANASI MUREMBANI KASUTI

(DECEASED)

RULING

1. This matter is part-heard. Evidence was taken on November 27, 2019, from 1 witness, John Kasudi Mulembani.
2. The matter has stalled at that stage, as a Motion, dated January 27, 2022, was filed by the said John Kasudi Mulembani, who I shall refer to as the applicant. He seeks that the Chief of Mau Summit Location be compelled write a letter, making certain confirmations, with respect to ownership and occupancy of Mau Summit/Mau Summit Block 2/130 (Baraka) (Plot No. 130), by the deceased herein, Atanasi Murembani Kasuti. It is alleged that the deceased had bought that parcel of land from the Catholic Diocese of Nakuru, under the Makao Project, and upon his demise, the widow, Rosemary Chiteri Mulembani, continued to use it. It is said that the same was not transferred to the name of the deceased, and the Land Registrar, Nakuru, had advised that the area Chief write a letter to show that the deceased was a resident of that area. When approached, it is said, the said Chief declined to write the letter, hence the application.
3. The application is resisted by Rosemary Chiteri Mulembani, by way of a preliminary objection, on grounds that there was no reasonable cause to compel the Chief to write the letter.
4. It would appear that the applicant is collecting evidence to boost his case, and he would want the court to compel the Chief to do certain things to aid his case. A locational Chief has no role in ownership and registration of property. The best a Chief can do, with respect to probate proceedings, is to indicate whether or not a particular person was a resident of a particular area or not. Details of the land he occupied and whether the same belonged to him may be matters beyond his jurisdiction. In this case, the property was allegedly acquired from the Catholic Church, and it would appear that that is where the applicant should be looking for evidence to support his case.



5. I am not persuaded that I should grant the orders sought in the application, in the manner they are framed. The best I can do is to order that the Chief of Mau Summit Location to write a letter to the court, confirming whether or not the deceased herein, Atanasi Murembani Kasuti, ever resided within his area of jurisdiction.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 24TH DAY OF MARCH 2023

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Maosa, instructed by Maosa & Company, Advocates for the administrator.

Mr. Mukabi, instructed by Mukabi & Company, Advocates for John Kasudi Mulembani.

