

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TEMEKE SUB-REGISTRY
(ONE-STOP JUDICIAL CENTRE)
AT TEMEKE

MISC. CIVIL APPLICATION No. 57 OF 2023

*(Arising from PC Probate Appeal No. 38 of 2023 from the High Court at Temeke One-Stop
Judicial Centre)*

FATMA MOHAMED (Administratrix of Estate of the Late Mohamed Khamis Abdallah).....**APPLICANT**

VERSUS

ABDULLATIF MOHAMED HAMIS (Administrator of Estate of the Late Mohamed Khamis Abdallah).....**RESPONDENT**

RULING

15th January & 23th January, 2024

BARTHY, J.:

In the matter before the court, the applicant sought inter-parties' orders made under a certificate of urgency under section 2(3) of the Judicature and Application of Laws Act, Cap 358 R.E. 2002, and section 3A (1)(2), 3B(1)(a), section 68(e) and 95 of the Civil Procedure Code, Cap 33 R.E. 2019 and any other enabling provision, seeking for the following reliefs:

- (i) The honourable court be pleased to issue an order to maintain status quo in respect of the property with certificate of title No. 56967 located at plot No 9 Block*

A, Kariakoo, Dar es salaam city with the view of restraining any disposition, among others pending hearing of Probate Appeal No. 3 of 2023.

(ii) Cost of this application be provided for.

(iii) Any other relief this honourable court may deem fit to grant.

At the hearing of the matter the applicant was represented by Ms. Yusta Kibuga, learned advocate, and the respondent appearing in person. Before the court set for hearing date of this matter, the respondent raised preliminary objections challenging the jurisdiction of this court to hear and determine the matter, claiming the provisions used to move the court are not applicable.

The court determined that limb of objection among others with the findings that there is no provision of law governing the stay of probate matters, thus the party cannot apply to stay the execution of probate matter pending the court.

The findings based on the facts that, once a party is appointed as the administrator/administratrix of the estate of the deceased, he is entitled to fulfill the duties associated with this role. These duties include collecting the assets of the deceased, settling the debts owed to creditors, and distributing the assets to the heirs/beneficiaries.

In the discharge of these responsibilities, there is no specific provision of the law that designates these duties as the execution of probate decree. This is because such duties are not carried out through an application to execute the decree of the trial court but rather, they are inherent in the responsibilities of the administrator/administratrix's office.

This court therefore used its inherent powers under section 68 and 95 of the Civil Procedure Code, as well as section 2(3) of JALA, to address matters where no specific provisions apply. Having the court established its jurisdiction, this court continued to try the matter.

The parties, by consensus, opted for a written submission hearing as per the court's order. Pursuant to the said order, the applicant filed her submission timely as scheduled.

In the applicant's submission, as presented by Ms. Yusta Kibuga, learned advocate, she argued that the applicant seeks an order to maintain the status quo, preventing the respondent from proceeding with the administration of the estate of the deceased on the property with Certificate of Title No. 56967, located at Plot No. 9, Block A, Kariakoo, Dar es Salaam, pending the determination of PC Probate Appeal No. 38 of 2023.

In further submission, she prayed for the court to adopt the application and supporting affidavit of the applicant as part of their

submission. Ms. Kibuga stressed that, referencing paragraphs 14, 15, 16, 17, and 18 of the supporting affidavits, the applicant challenges the respondent's appointment as the co-administrator of the deceased estate. She argued that if this power is not halted by the court over the mentioned property, then the appeal before this court will be rendered useless.

She further argued that the respondent never recognized the duties exercised by the applicant, causing chaos to the tenants, as admitted in the respondent's counter-affidavit. Ms. Kibuga stressed that, if the application is granted, it will prevent further destruction, and no one will be prejudiced. She added that the reasons to consider this kind of application were referred to in the case of **Sultan bin Ally Hilal El Esri v. Mohamed Hilal & others**, Miscellaneous Commercial Cause No. 64 of 2014, the court held that that the order to maintain status quo seeks to have the property/thing left/kept as it is at the date of issuance of such order.

She further stressed by citing the case of **Quality Corporation Limited and 4 others v. Forester Auctioneer and 2 others**, Misc. Commercial Application No. 55 of 2019, High Court Commercial Division at Dar es Salaam. It was also argued that the surrounding circumstances of this case indicate that the property in question needs to be preserved as it is in danger of being wasted, damaged, and disposed of for the

second time by the respondent to the detriment of the applicant and other beneficiaries who had bought the property since 2006.

The applicant therefore prayed to this court for this application to be granted pending final determination of the appeal pending before this court.

In the reply submission, the respondent contended that, with respect to this application where the applicant is seeking this court to give an order to halt the powers of administration of the respondent, so as to restrict him from doing anything in the estate asset on Plot No. 9, Block A, Agrey Street, Kariakoo, with Certificate of Title No. 56967.

The respondent, in line with his counter-affidavit, contended that, for this court to make a proper determination of this application, it should consider the current status quo of the estate asset. It was his argument that Mehboob Yusuf Osman, the buyer of the estate asset, instituted Land Case No. 329 of 2015 to force the applicant to enforce the terms of the sales agreement. The claim was dismissed by the Court of Appeal through Civil Revision No. 6 of 2017.

The respondent, in line with his counter-affidavit, contended that, for this court to make a proper determination of this application, it should consider the current status quo of the estate asset. It was his argument that Mehboob Yusuf Osman, the buyer of the estate asset, instituted Land

Case No. 329 of 2015 to force the applicant to enforce the terms of the sales agreement. The claim was dismissed by the Court of Appeal through Civil Revision No. 6 of 2017.

Another attempt was made by the buyer to institute Land Case No. 220 of 2023 before the district land and housing tribunal of Ilala, a matter that was also dismissed. As the buyer has also instituted Land Case No. 304 of 2023 before the high court Land Division seeking to enforce the performance of the contract, a matter that was dismissed.

He further contended that the court had ordered the respondent to give the applicant a share in the said estate asset on the decision of the high court via Probate and Administration Cause No. 48 of 2020. The primary court gave an order that the estate asset was not sold, and therefore the respondent was ordered to include the applicant in the name of the title by the order dated 11/12/2018.

It was his contention that, since the applicant has not filed an inventory or Form No. 5 and 6, yet there are several court decisions ordering the applicant to file the same since 2015, orders which have never been challenged in any appeal.

He added that the certificate of title of the estate asset is still in the names of the deceased and that of the applicant. However, the respondent is in total control of the said property, as the orders of the

various courts have required the respondent to be given his shares of the estate. He added that, the applicant has been denying the respondent his shares through multiple legal processes, claiming the house was sold while there is no legal proof to that effect.

He went further to state that the records of the original probate and administration cause No. 81 of 2006 show that the applicant has never administered the estate of the deceased from 2006 to today. He thus prayed for the application to be dismissed with costs.

In rejoinder, Ms. Kibuga maintained her arguments made in her submission in chief and added that the respondent did not contest the application, as the response is based on the matters that do not relate to this case. She added, the cases cited by the respondent did not originate from the present application.

She also rejoined that the applicant's failure to file the inventory was due to the fact that the original file was involved in other appeals. However, the same has been lodged before the court in the year 2020. On the issue of title, it was argued that the respondent had entered the caveat, which hinders the transfer of the said title to be effected.

To wind up, Ms. Kibuga stated that all matters listed by the respondent were not determined on merit; therefore, she maintained her

prayer to this court to grant the application for the same reasons stated in her submission in chief.

Having gone through the rival submissions of both sides, the court consider the gist of this matter is dwelt on the prayer of the applicant who seeks an order to maintain the status quo by preventing the respondent from proceeding with the administration of the estate of the deceased on the property with Certificate of Title No. 56967, located at Plot No. 9, Block A, Kariakoo, Dar es Salaam (the estate asset).

The basis for this application lies in the pending appeal, PC Probate Appeal No. 38 of 2023 (the appeal case), where the applicant challenges the respondent's appointment as the co-administrator of the deceased estate.

In consideration for determination of the application at hand, Ms. Yusta Kibuga argued that the respondent's powers over the property should be halted to preserve the status quo until the appeal is determined. She further contends that the respondent has not recognized the applicant's duties, causing chaos on the estate asset. Citing legal precedents, Ms. Kibuga emphasized that maintaining the status quo is essential to prevent further destruction and prejudice.

The respondent argued that the applicant has failed to administer the estate since 2006, and court orders directing her to file inventory have been ignored.

The respondent highlighted various legal proceedings initiated by the buyer of the estate asset, demonstrating the complexity of the situation. The respondent stated that he is in control of the property as per court orders, and the applicant's claims lack legal proof.

Ms. Kibuga maintained her original arguments and stated that the respondent's contentions do not address the present application. She added that, failure to file the inventory was attributed to the involvement of the original file in other appeals, but it has been lodged before the court in 2020.

Upon careful consideration of the submissions made by the parties, this court acknowledges the complexity of the legal history surrounding the estate asset. However, the crux of this matter is rooted in the prayer for an interim order to preserve the deceased estate from being wasted.

In determining the merit of this matter, the applicant seeks to maintain the status of the estate asset pending the determination of the appeal involving the parties before this court. Based on the facts gathered, the current state of affairs indicates that the respondent, who is the co-

administrator of the deceased estate, is in control of the estate asset, as stated in his counter-affidavit.

Therefore, the applicant is seeking an order to maintain the status of the subject property, ensuring it is not disposed of by the respondent pending the determination of the appeal matter.

The legal justification for the court to grant an interim order to maintain the status quo of the subject matter is to ensure that the ends of justice are not defeated before reaching a final decision. The status quo order aims to keep the subject property in its current state.

To grant an interim order, the party seeking it must demonstrate that he is at risk of imminent danger. If no such step is taken or order is given, the consequences and hardships to be faced will be greater than the order been granted. Additionally, when this order is issued, its intention is to ensure that the status remains as it was when the application was submitted.

On the applicant's side, she argues that if the respondent is allowed to exercise his duties as the administrator of the deceased estate, he will cause more chaos, as he does not recognize the applicant's role. The respondent's arguments concerning previous legal actions are not determinative of the present application.

However, the applicant has not provided this Court with sufficient information to be considered, leading the Court to exercise its discretion to grant an order to maintain the status quo of the estate asset.

The facts in this matter reveal that the title deed of the estate asset bears the names of both the deceased and the applicant. In these settings, the court finds that there is no immediate danger of the property being disposed of. In the case of **Quality Corporation Ltd & Others v. Forsters Auctioneers & General Traders & Another** (Misc. Commercial Application 55 of 2019) [2019] TZHC ComD 162, the court also considered that there was no sufficient information for the determination of the court.

In these circumstances, I find no reason to address other determinant factors for consideration of this court in granting the application. In the upshot, I find the application without merit, and I accordingly dismiss the matter with no order as to costs.

It is so ordered.

Dated at Dar es Salaam this 23th of January, 2024.



A handwritten signature in black ink, appearing to read "G.N. Barth", is written over a horizontal line.

**G.N. BARTHY
JUDGE**

Delivered in the presence of Mr. Adolf Kadio for Ms. Yusta Kibuga for the applicant, the respondent in person and Ms. Beranadina RMA.