

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 2696 OF 2024**

**ELIAS KIGUHA MARWA.....APPLICANT**

***VERSUS***

**VOLEX ELECTRICAL & DECORATORS LTD.....1<sup>ST</sup> RESPONDENT**

**HAMDUN SALIM HAMDUN.....2<sup>ND</sup> RESPONDENT**

**SAID SALIM HAMDUNI.....3<sup>RD</sup> RESPONDENT**

**ADMINISTRATOR GENERAL.....4<sup>TH</sup> RESPONDENT**

**REGISTRAR OF TITLES.....5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL.....6<sup>TH</sup> RESPONDENT**

**RULING**

22<sup>nd</sup> to 27<sup>th</sup> March, 2024

**E.B. LUVANDA, J**

This application is made under the enabling provisions of section 2(1) and (3) of the Judicature and Application of Laws Act, Cap 358 R.E. 2019 and sections 68(e) and 95 of the Civil Procedure Code, Cap 33 R.E. 2019. Basically, the Applicant above is seeking for an interim order to restrains the Respondents from transferring the ownership and distribution of proceeds of sale of the landed property title No. 58753 Plot No. 34 Block 57 Narung'ombe/Sikukuu, Kariakoo Area, Dar es Salaam.

Facts gleaned from the affidavit deposition by the Applicant, are as follows: on 20/07/2012 the Applicant purchased the suit property from the Second and Third Respondents who were legally appointed administrators of the estate of the late Salim Hamduni proprietor of the suit property. The agreed purchase price was USD 1,050,000, where the Applicant managed to pay a sum of Tsh 210,000,000. At the verge of transferring the right of occupancy, one Shamsa Salim Hamdun (one of the beneficiaries to the estate) presented a caveat to the office of the Registrar of Titles along an application for revocation of letters granted to the Second and Third Respondents, which was filed before the probate court. After hearing the concern by the beneficiary, the probate court appointed the Fourth Respondent as a co-administrator along the Second and Third Respondents. After some deliberation with administrators, ensured misunderstanding among family members, where the Fourth Respondent sought withdrawal to administer the estate, which necessitated the probate court to revoke the appointment of the Second and Third Respondent, retaining the Fourth Respondent as a sole administrator.

Meanwhile it was agreed for the Applicant to be refunded a sum of 210,000,000. On 22/12/2023 the Applicant was served with a notice

requiring him to give vacant possession in respect of the property, and was given a deadline up to 8/01/2024. This was after new development that the property was sold to the First Respondent.

In the counter affidavit, the First Respondent stated that the Applicant claim if any can be remedied by lodging a complaint to the probate court for Probate and Administration Cause No. 8 of 2010 so that he can be considered as part of beneficiary of the purchase price for the said property paid by the First Respondent.

The Fourth, Fifth and Sixth Respondents, in their joint counter affidavit stated that temporary injunction to restrain transfer process should not be issued for reason that the Applicant claim does not touch ownership rather to be refunded the debt in which the Applicant can be (sic) recover through probate cause.

Mr. Shabiri Nuah Bigirwa learned Counsel for the Applicant submitted that in this matter there was no dispute of ownership over the deceased property, rather the dispute emanates from the contract entered between the Applicant and the former administrators before were revoked. He submitted that the Applicant in actual sense is not disputing over ownership of the

landed property owned by the deceased, rather the contract of sale entered with the Second and Third Respondents at their capacity as administrators of the estate. He submitted that this matter does not arise from probate cause as there was no dispute over ownership of the landed property by the deceased in his lifetime, rather the contract entered between the Applicant and the former administrators.

In reply, Mr. Sosten Mbedule learned Counsel for First Respondent submitted that the Applicants claims stated in the ninety days notice should have been brought (sic) before the probate court so that the said court can determine the actual amount the Applicant should be given by the Fourth Respondent upon proof to the satisfaction of the court, before distributing the rest of the money to the beneficiary of the estate of the deceased.

Mr. Thomas Mahushi learned State Attorney for the Fourth, Fifth and Sixth Respondents, submitted that since the Applicant does not dispute the sale of the said Property by Fourth Respondent to First Respondent but rather claims to be refunded the amount of money which he claims to arise from the contract between him, Second and Third Respondents, argued the process of transfer of the suit land will not affect the Applicant in any way. He submitted that the matter before this honourable court, based on the

averments of the Applicant's affidavit and submission, the nature of dispute is not a land dispute but rather a contractual dispute which is overtaken by event, between the Applicant and previous Administrators (Second and Third Respondent) if at all is true and according to the case of **Mgeni Seif Versus Mohamed Yahaya Khalfani**, Civil Application No. 1 of 2009. He submitted that the Applicant's claims (if any) are best suited to be dealt with by the probate court for Probate and Administration Cause no. 8 of 2010 (which is yet to be closed) and not this Court. He submitted that the Applicant has not exhausted remedy provided under section 50(1) and (2) of The Probate and Administration of Estates Act, Cap 352 R.E. 2002, which provide for remedies for the payments made to a revoked administrator before revocation.

Principally this application was wrongly made to this Court. Whatever interpretation can be made, but the same cannot defeat the truth that the claims by the Applicant whether contractual or otherwise, arose in the course of administering the estate of the late Salim Hamdun by the Second and Third Respondent as erstwhile administrators. At paragraph two of the affidavit, the Applicant made clear that,

*'That, before the appointment of the 4<sup>th</sup> Respondent as the administrator of the estate of the late Salim Hamdun, on*

*20<sup>th</sup> July 2012 the applicant entered into the sale agreement of the landed property title No. 58753 Plot No. 34 Block 57 Narung'ombe/Sikukuu, Kariakoo Area, Dar es Salaam with the 2<sup>nd</sup> and 3<sup>d</sup> Respondents, at the time when they were administrators of the Estate of the late SALIM HAMD (sic) before revoking them and appointed the 4<sup>th</sup> Respondent as the sole-administrator. The purchasing price agreed at the tune of USD \$ 1,050,000...'*

It is elementary knowledge that all questions relating to sale, division, apportioning of shares, or disposal of the property and assets comprised in the estate of the deceased person for purpose of paying off the creditors or distributing the property, assets or shares to the beneficiaries or creditors, or any act or transaction done by the executor or administrator in furtherance of administering the estate of the deceased person, determination of such question is exclusively under the domain of the probate court. To my view, recourse may be to this Court where and only if the probate court advise parties in case of contention, to revert into this Court for purpose of establishing ownership as to whose title is vested at any given time.

According to the provision of section 50(1) of Cap 352 (supra), provide,

*'Where any probate is, or letters of administration, revoked, all payments bona fide made to any executor or administrator under such probate or are administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same'*

Therefore, this is a wrong forum, in a sense that the question for the alleged refund of contractual sum and its determination regarding quantum, ought to be referred to the probate court, where it is alleged final inventory and account are yet to be submitted.

Literally this Court cannot grant orders of interim injunction to restrains the Respondents for the alleged transferring the ownership and distribution of proceeds of sale of the landed property, which will eventually have the effects of halting the process of administering the deceased's estate which is done under the superintendent of the probate court.

The Application is dismissed. The Applicant is spared t foot costs.



E. B. LUVANDA  
**JUDGE**  
27/03/2024

Ruling delivered in the presence of Ms. Lilian Rutaiganwa learned Counsel holding brief Mr. Shabir Nuah Bigirwa learned Counsel for Applicant, Frida Mollel learned State Attorney for the Fourth, Fifth and Sixth Respondents and in the absence of Mr. Sosten Mbedule learned Counsel for First Respondent.



E. B. LUVANDA  
**JUDGE**  
27/03/2024