



**SAID MPAMBIJE KAMAGA & ANOTHER v. NYAMENDE SWETU
FUNDIKIRA & 3 OTHERS (Administrators and administratrix of the estate
of the late Sweta Nsimba Fundikira)**

COURT OF APPEAL OF TANZANIA

AT TABORA

(Mkuye, Galeba and Masoud, JJ. A)

CIVIL APPEAL NO. 430 of 2022

(Appeal from the Judgment of the High Court of Tanzania at Tabora,
Rumanyika, J.I, dated 6th day of June, 2016 in Civil Case No. 17 of 2015)

*Law of Probate and Administration of Estates – Powers of Administrator/ix -
Whether an administrator is obligated to obtain the consent of the heirs
before administering the deceased's estate.*

*Law of Probate and Administration of Estates - Whether the sale of the
deceased's estate property by the 2nd Appellant to the first appellant
was valid.*

This appeal is against the judgment and decree of the High Court of Tanzania in Land Case No. 17 of 2015, which was decided in favor of the respondents. The dispute concerns a house on Plot No. 16 High Density, Salim Street, Tabora Municipality, which was part of the estate of the late Swetu Nsimba Fundikira. The second appellant, a former administratrix of the estate, sold the suit house to the first appellant on 9th September 2014 for TZS. 80,000,000.00 Without the consent of all heirs, despite a lodged caveat. The respondents, who are heirs to the estate, challenged the sale and successfully obtained the revocation of the second appellant's letters of administration, leading to their appointment as co-administrators on 11th February 2015.

Held:

- (i) There is no law which demands the administrator to seek and obtain consent of the heirs when administering the deceased's estate



- (ii) Once an administrator has lawfully discharged their duties, including the sale of estate property, such transactions cannot be invalidated unless fraud or illegality is duly established on record.

Appeal Allowed.

Statutory provisions referred to:

- (i) The Probate and Administration Act, [Cap. 352 R.E. 2002] (the Act), under section 99.
- (ii) The Primary Courts (Administration of Estates) Rules, GN 49 of 1971 under rule 9 (2) (a)

Case referred:

- (iii) Mohamed Hassani v. Mayasa Mzee and Mwanahawa Mzee [1994] T.L.R. 225,
- (iv) Dativa Nanga v. Jibu Group Company Limited and Another, Civil Appeal No. 324 of 2020 (unreported)
- (v) Ahmed Mohamed Al Laamar v. Fatuma Bakari and Another, Civil Appeal No. 71 of 2012 (unreported)
- (vi) Joseph Shumbusho v. Mary Grace Tigerwa and 2 Others, Civil Appeal No. 183 of 2016 (unreported)
- (vii) Aziz Daud v Amin Ahmed Ally & Another, Civil Appeal No. 30 of 1990:

Mr. Kamaliza Kamoga Kayaga, for the appellants

Mr. Kamaliza Kamoga Kayaga holding brief for Mr. Musyani Emmanuel, for the respondents,