

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TEMEKE SUB-REGISTRY**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**PROBATE AND ADMINISTRATION CAUSE NO. 3 OF 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE**

**IBRAHIM MISOJI NTEMBANDA**

**AND**

**IN THE MATTER OF THE APPLICATION FOR LETTERS OF**

**ADMINISTRATION BY**

**HAPPY IBRAHIM NTEMBANDA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR REVOCATION OF  
APPOINTMENT OF HAPPY IBRAHIM NTEMBANDA AS ADMINISTRATRIX  
OF THE ESTATE OF THE LATE IBRAHIM MISOJI NTEMBANDA**

**BY**

<b>SABINA SENDAMA NTEMBANDA .....</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>LOYCE IBRAHIM NTEMBANDA</b>	
<b>@ ROSE HOLO MISOJI .....</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>ISAAC IBRAHIM NTEMBANDA .....</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>LYDIA ZELAMULA .....</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>ESTHER IBRAHIM NTEMBANDA .....</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>BOAZ IBRAHIM NTEMBANDA.....</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>NAOMI IBRAHIM NTEMBANDA .....</b>	<b>7<sup>TH</sup> APPLICANT</b>
<b>PAULINA IBRAHIM NTEMBANDA .....</b>	<b>8<sup>TH</sup> APPLICANT</b>

**VERSUS**

**HAPPY IBRAHIM NTEMBANDA (Administratrix of the  
Estate of the late Ibrahim Misoji Ntembanda) ..... RESPONDENT**

## **RULING**

22<sup>nd</sup> January & 29<sup>th</sup> February, 2024

**BARTHY, J.**

Before this court is an application for revocation of the grant of letters of administration of the respondent over the estate of the late Ibrahim Misoji Ntembanda. The applicants, via chamber summons, came before the court with the following prayers;

- i. That this Honourable court be pleased to make an order revoking the appointment of Happy Ibrahim Ntembanda as an administratrix of the estate of the late Ibrahim Misoji Ntembanda vide probate and administration cause No. 03 of 2023*
- ii. Costs be provided for*
- iii. Any other and further orders as this Honorable Court deem just and equitable to grant.*

The application was found under section 49(1) of the Probate and Administration of Estates Act, Cap 352 (PAEA), and rule 14(1) of the Probate Rules (the Rules) supported with the joint affidavit of the applicants named above.

At the hearing, the applicants enjoyed the services of Mr. Mayenga Silvanus and Dina Magori, learned advocates. Whereas the respondent enjoyed the services of learned advocated Ms. Shaheri Richard.

The brief background revolving to this matter follows the death of late Ibrahim Misoji Ntembanda who passed away on the 24<sup>th</sup> day of June, 2019, survived with the first applicant Sabina Sendama Ntembanda being the first wife of the deceased, the respondents Loyce Ibrahim Ntembanda@ Rose Holo Misoji, Isaac Ibrahim Ntembanda, Lydia Zelumula, Esther Ibrahim Ntembanda, Boaz Ibrahim Ntembanda, Naomi Ibrahim Ntembanda and Paulina Ibrahim Ntembanda being the children of the deceased from the womb of the first applicant.

Whereas the respondent Happy Ibrahim Ntembadna is also the daughter of the deceased among five siblings from the other wife who has also passed away.

The respondent herein applied for and was granted the letters of administration of the deceased estate by this court on the 11<sup>th</sup> day of July, 2023. She continued to discharge her duties, then lodged an inventory and accounts of the estate as ordered by this court. The court then summoned

all beneficiaries to appear in court to approve or disapprove the said inventory and accounts of the deceased's estate

The applicants having learned the existence of the said matter they lodged the present application, seeking this court to revoke the appointment of the respondent herein as an administratrix of the deceased estate, advancing four grounds for consideration of this court.

During the hearing, the applicants' counsel Mr. Mayenga adopted the contents of their affidavit and further submitted that, the applicant's complaint is over the conduct of the respondent where she acquired the letters of administration without the consent of other heirs.

Also, it was stated that family meeting has appointed Gregory Mpelwa and not the respondent herein, authorizing him to seek for letters of administration.

Mr. Mayenga further argued that, some of the beneficiaries were not included in the petition, and therefore prejudice against them. He added that the respondent made herself the beneficiary and has been collecting rent from the house at Kinondoni. She was said to have also withheld title

deed related to the deceased estates, which has made it difficult for the other beneficiaries to benefit from the estate.

Ms. Richard in her rebuttal to the applicant's counsel submission in chief, she at first adopted the content of counter affidavit and submitted that, the procedure for the appointment of an administrator has been provided for under section 56 of the PAEA. She was content the respondent herein had followed all the required procedures.

She went on to argue that, the deceased had two wives, the first being the 1<sup>st</sup> Applicant herein and the second one being one Tabitha Mussa Ntembanda (now also the deceased). Whereas, the 1<sup>st</sup> Applicant along with her children are residing in Mwanza, where there is one property. The respondent who belongs to the other family, resides in the property located in Dar es Salaam.

She went on to submit that, the law provides for grounds for revocation, as provided for under Section 49 of PAEA. She further contended that the reasons advanced by the learned counsel for the Applicants do not fall within the ambit of the law.

To buttress her arguments, she cited the case of **Yotam Mtezikiba v. Aidan Lazaro (as administrator of the estate of the late Mjori Kalonza)**, Pc Probate Appeal No. 04 of 2022, High Court of Tanzania, at Kigoma, in which the court held at page 5 that,

*"a clan meeting is not mandatory but a practice that is accepted by the court."*

She went on to submit that, after much friction between the two families regarding who should be the administrator, the family meeting appointed the respondent on 20/12/2022. Additionally, she resisted the claim made against the respondent for not having included some of the beneficiaries. On this ground, she was firm that the claim is unfounded, since the respondent had intended to distribute the deceased's assets to all the children, as seen in the accounts of the estate filed before this court on 17/8/2023.

Ms. Richard further recounted that both families are enjoying the houses situated in their respective residences, that is, in Dar es Salaam and Mwanza regions. She concluded by stating that the respondent adhered to

the letter of the law and that the present application should be dismissed with costs.

Mr. Mayenga on his rejoinder submission he maintained his argument made earlier on and further added that the requirements of the law were not complied with in seeking the grant of the letters of administration. Also, making reference to the provision of section 49 of PAEA cited by the applicant's counsel, under sub-section (b), it provides for fraud as one of the grounds for revocation for grant of letters.

He maintained his arguments, stating that the respondent, in her petition for letters of administration, attached a copy of the minutes of the clan meeting authorizing her to petition. However, in her counter affidavit, she attached a different copy of the clan meeting minutes.

Furthermore, he emphasized that, even in the attached minutes of the clan meeting, it shows not all beneficiaries attended. Additionally, he stressed that, in the case cited by the respondent's counsel, the court did not state that a clan meeting is unnecessary, but rather it underscoring on its importance.

Regarding the claim made by Ms. Richard, emphasizing that the deceased had two wives, Mr. Mayenga was firm that the purported second

marriage certificate was based on fraud as it bore different names from Thabita Mussa Ntembanda. In conclusion, he maintained his argument that even in the account of the estate, the 8th applicant was not included in the distribution of the deceased's assets.

Having heard the contending arguments, this court is tasked to determine whether the applicants have advanced sufficient reasons for this court to revoke the letters of administration granted to the respondent.

With respect to the issues raised, the applicants have moved this court to revoke the respondent's letters of administration under section 49(1) of PAEA. The grounds raised for consideration were; the absence of consent from heirs; petitioning without proper family/clan meeting; excluding some beneficiaries without reason and self-benefitting from the deceased's estate.

I will begin my deliberation by addressing the ground of the family meeting first. Mr. Mayenga argued that the respondent petitioned for letters of administration without clan meeting approval, but Ms. Richard countered, stating that the law doesn't require the petitioner to attach minutes of clan meeting.



With respect to this ground, the documents required to be attached in the petition under rule 39 of the Rules include; a certificate of death; an affidavit regarding the deceased's domicile; an administrator's oath and others. For easy reference rule 39 is quoted below;

*A petition for letters of administration shall be in the form prescribed in Forms 26 or 27 set out in the First Schedule, whichever is appropriate, and shall be accompanied by the following documents*

- (a) subject to the provisions of rule 63 a certificate of death of the deceased signed by a competent authority;*
- (b) an affidavit as to the deceased's domicile;*
- (c) an administrator's oath;*
- (d) subject to the provisions of rule 66, an administration bond;*
- (e) a certificate as to the financial position of the sureties;*
- (f) subject to the provisions of rules 71 and 72, consent of the heirs; and*

*(g) In the case of an application for a grant to a sole administrator, an affidavit as required by rule 32.*

Despite the clarity of the law, customary practice often requires family involvement in selecting an estate administrator. As highlighted by Mr. Mayenga and cited in the case of **Hadija Said Matika v. Awesa Said Matika**, Pc Civil Appeal No. 2 of 2016, High Court of Tanzania at Mtwara, (Unreported) on page 23, Mlacha J (as he then was) held that;

*"...the clan or family will usually sit to discuss the matter and propose someone to be the administrator. He will be sent to court with some minutes. This practise is encouraged because it makes the work of court easy..."*

The court has always emphasized the customary nature of family meetings in proposing the administrator. While not legally required, such meetings streamline court proceedings and foster cooperation among heirs.

Therefore, while convening a family meeting is not legally obligatory, it is strongly recommended to mitigate potential conflicts. However, in the present matter, the court notes there were two separate family meetings

convening to nominate different person to administer the deceased estate, indicating familial disharmony.

As the respondent was nominated in a subsequent meeting after the initial nominee could not petition for letters of administration within 3 years period since his appointment. In the second meeting that nominated the respondent to petition for grant of letters, it is noted that the applicants did not participate, claiming non-involvement in the latter meeting.

This completely shows that the families were not in one accord and it is impossible to have resolution. The respondent claiming that the first person nominated by the clan meeting never petitioned for letters of administration since clan meeting was convened on 2019, then the respondent was nominated through another meeting and petitioned. On the other hand, the applicants claiming that they were not involved in the latter clan meeting as the beneficiaries.

While the minutes of family meetings hold significance, their absence does not invalidate the petition. The law under section 33(1) of the PAEA it allows any interested person to petition for letters of administration. The law prioritizes the petitioner's interest in the estate, rather than the

specifics of family involvement. Thus, the absence of comprehensive family meeting alone does not warrant revocation of the grant. Therefore, the court dismisses this ground for lacking legal merit.

The next ground concerns the respondent's alleged self-benefitting from the deceased estate. However, as the administratrix, the respondent is entitled to collect estate assets of the deceased before filing the inventory and final account of deceased estate where she will be required to give true account of what has been collected for distribution to the heirs.

The respondent had lodged the inventory and account of estate before this court, where the beneficiaries were summoned to appear before the court to approve or disapprove it. However, the applicants had lodged this application for revocation.

Since the inventory and account of the estate were filed, suggesting that proper procedure was followed, the two forms will show what the administrator has collected in her office and the manner in which it will be distributed to all beneficiaries. Therefore, the court finds that this ground has been prematurely raised and lacks merit for consideration as the basis for revoking the grant of letters.

Another ground raised is the failure to include all beneficiaries in the petition; Looking on the petition, on paragraph 2 it mentions the beneficiary except one Paulina Ibrahim Ntembanda (the 8<sup>th</sup> applicant).

In addressing this point, I would like to clarify that in probate of letters of administration proceedings, after the petition has been properly lodged and its citation has been issued and duly published, there are four crucial stages involved:

The first stage entails the appointment of an administrator/administratrix. The second stage involves the collection of all assets and liabilities comprising the deceased estate by the appointed administrator/administratrix. The third stage encompasses the distribution of these assets and liabilities to the legal heirs after confirmation of the inventory and accounts.

Lastly, the fourth stage involves the closure of the matter, where the appointed administrator ensures the transfer of title on bequeathed assets to all beneficiaries, and then returns the grant or letters to the court upon completion, vacating the office.

What prompted me to outline the above steps is that the respondent was in the second stage of identifying and collecting the estate, then filing the inventory and accounts of the estate. Before the confirmation of the accounts, legal heirs must be identified, which is now the basis of the applicants' claim/ground. This stage had not yet been determined by the court. Even if the court had found that one of the beneficiaries was not included, amending to add her would have sufficed to rectify the problem.

The final ground revolves around lodging the petition without the written consent of the beneficiaries, under rule 39(f), which refers to rule 71(1) of the Rules providing for the requirement to have the said consent. For ease of reference, it is reproduced hereunder as follows

***"Where an application for the grant of letters of administration is made on an intestacy the petition shall, except where the court otherwise orders, be supported by written consent of all those persons who, according to the rules for the distribution for the estate of an intestate applicable in the case of the deceased, would be entitled to the whole or part of his estate."***[Emphasis is supplied].

The wording of the statute is clear that every beneficiary is required to give consent for an application for letters of administration. It is needless to point out the significance of the incorporation of the word 'shall' in a provision and its importance when used in the law, as stated under section 53(2) of the Interpretation of the Laws Act, Cap. 1 [R.E 2019] which provides;

*"Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed"*

The exception to that rule, is provided under rule 72(1) of the Rules, which would have remedied the situation of lodging the petition without the written consent of other beneficiaries, as the respondent had attached the affidavit as required by law. However, in her affidavit supporting her petition for letters, the respondent deposed that the applicants refused to give their consent.

However, Ms. Richard, in her rebuttal, she stated that the applicants were residing in Mwanza, in the other house of the deceased. Whereas in the applicants' affidavit, they claimed that their consent was never sought,

the fact that was never contested by the respondent. Therefore, this clearly indicates that the respondent knew where to find the applicants, but did not seek their written consent as required by law. Thus, the respondent had no justification for disregarding the legal requirement as there is the proof of non-involvement of the applicants to give their consent.

Therefore, I find that the affidavit in support of the respondent's petition for letters of administration of the estate was in contravention of Rule 72(1) of the Rules. Consequently, under section 49(1) (c) of the PAEA, and it constitutes a valid ground for revocation of the letters of administration granted to the respondent. Accordingly, Happy Ibrahim Ntembanda's grant of letters of administration in Probate and Administration Cause No. 3 of 2023, over the estate of the late Ibrahim Misoji Ntembanda, is hereby revoked.

Having revoked the granted letters of administration to the respondent, the court considers that the deceased in this matter passed away on the 24th day of June, 2019. It was until 2023 when the respondent decided to petition, as the person nominated by the family to petition for letters of administration never did.



Furthermore, this court recognizes the apparent strong strife between the beneficiaries, given that they were born to different mothers, but share the deceased as their father. Therefore, in the interest of justice, it is imperative to appoint a neutral party to administer the deceased estate.

In this regard, since the potential heirs or beneficiaries have conflicts of interest that could hinder the smooth and fair distribution of assets, and considering concerns about mismanagement or misappropriation, the appointment of the administrator general is essential to safeguard the estate until distribution.

The court contemplates that this appointment would be in the best interest of the estate and its beneficiaries, prioritizing the efficient and equitable distribution of assets, as held in the case of **Sekunda Bwambo v. Rose Ramadhani** [2004] TLR 439.

Given the nature of this matter, the Administrator General is appointed under section 49(2) of the PAEA to administer the estate of the late Ibrahim Misoji Ntembanda. The respondent shall surrender to this court within fourteen (14) days of this ruling the letters of administration

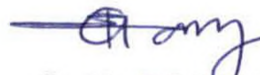
issued to her in Probate and Administration Cause No. 3 of 2023 in terms of section 51 of the PAEA.

The court further orders that all assets currently in the possession of the respondent and any beneficiaries shall be surrendered to the Administrator General. Additionally, the administrator is required to file the inventory and accounts of the estate in court within six months from the date of this appointment. The application is therefore partly granted to this extent. Given the probate nature of this matter, no order as to costs is issued.

It is so ordered.

**Dated at Dar es Salaam this 29<sup>th</sup> of February, 2024.**



  
**G. N. BARTHY**  
**JUDGE**

Right of appeal has been fully explained.

  
**G. N. BARTHY**  
**JUDGE**

Delivered in the presence of Ms. Dina Magori the Learned Counsel for the Applicants and Ms. Shael Richard for the Respondent and RMA. Ms. Bernadina Tayari.