

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**LAND DIVISION**  
**AT MOSHI**

**LAND APPEAL NO. 18 OF 2022**

(C/F Land Application No. 88 of 2015 of the District Land and Housing  
Tribunal for Moshi at Moshi)

**MARIA PAULO TARIMO..... APPELLANT**

VERSUS

**GODLIVING JOSEPH URIO..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS MICHAEL SHAYO ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

19/07/2023 & 07/08/2023

**SIMFUKWE, J.**

This appeal originates from the decision of Moshi District Land and Housing Tribunal (trial tribunal) in Land Application No. 88 of 2015. The appellant herein unsuccessfully instituted a land dispute before the trial tribunal against the respondents praying to be declared the lawful owner of the land measured 2 acres (disputed land) located at Nayema village, Tarakea Ward in Rombo District. The respondents herein averred before the trial tribunal that they had purchased the said land from one Anna Paulo Tarimo (the appellant's mother) and Onesmo Paulo Tarimo (the appellant's brother) respectively.

After full trial, the trial Tribunal dismissed the suit with costs and decided that the respondents herein lawfully purchased the disputed land.

Aggrieved, the appellant preferred this appeal on the following grounds:

- 1. That, the trial tribunal did error in law and in fact by finding that, the Applicant is not the rightful owner of the suit land without determine her legal status as to the ownership of the said land, thus this instant appeal. (sic)*
- 2. That, the Trial Tribunal did error in law and in fact by delivering the contradictory judgment.*
- 3. That, the Trial Tribunal did error in law and in fact by confirming that, the respondents is (sic) the lawful owner of the disputed land while the contract purported to grant ownership is a forged documents, thus this appeal. (sic).*
- 4. That, The Trial Tribunal did error in law and in fact by confirming that, respondents' testimony prove their case to the required standard.*

The appellant prayed that the whole judgment of the trial tribunal be quashed and set aside and the appellant be declared the lawful owner of the disputed land.

The hearing of the appeal was conducted through filling written submissions, whereas the appellant was represented by Ms. Elisante Kimaro learned counsel while the respondents enjoyed the service of Mr. Martin Kilasara, learned counsel.

Mr. Kimaro craved leave to adopt the petition of appeal and its annexures to form part of his submission. On the first ground of appeal Mr. Kimaro

condemned the trial tribunal for finding that the appellant is not the rightful owner of the suit land without determining her legal status as to the ownership of the said land. He argued that, it is not disputed that, the Appellant herein is the administratrix of the estate of the late PAUL MMEKU TARIMO, and that, the said land in dispute was owned by the late PAUL MMEKU TARIMO. That, it is not disputed that, the seller of the said land in dispute was not administrator or administratrix of the estate of the late PAUL MMEKU TARIMO. On that basis the learned counsel posed a question *"who is the right person to sell the estate of the deceased?"*

Submitting on the raised issue, the appellant's advocate was of the view that the administrator has the unenviable heavy responsibility which he has to discharge on behalf of the deceased. That, the administrator's duty is to collect the properties and distributing the same to the entitled heirs as it was held in the case of **SEKUNDA MBWAMBO vs ROSE RAMADHANI [2004] TLR 439**. It was submitted further that the administrator or administratrix of an Estate of the deceased is the only person allowed to sell the property owned by the deceased person, as long as there are no surviving joint owners or clauses in the Will that prevent selling of the property. That, such powers to sell or lease the landed property are for the interests of the heirs only. To support his argument, Mr. Kimaro referred to the case of **Mr. Anjum Vicar Saleem Abdi vs Mrs. Naseem Akhtar Saleem Zangie, Civil Appeal No. 73 of 2003**, (CA) which postulated that, *unless disposed by the deceased inter vivo, distribution upon death must be governed by the laws on probate and administration of deceased's estates.*

In respect of the present matter, the learned advocate told this court that the disputed land was alleged to be sold by ANNA PAULO TARIMO and ONESMO PAULO TARIMO in the year 2010 and 2013 respectively which was seven years after the death of the said Paul Mmeku Tarimo. He said that the action of selling was not governed by the laws on probate and administration of deceased's estates. That, neither ANNA PAULO TARIMO nor ONESMO PAUL TARIMO was administrator of the estates of the late PAUL MMEKU TARIMO. It was the opinion of Mr. Kimaro that the said act is contrary to the laws of the land. He urged this court to declare the said sale agreements illegal for being contrary to the law.

On the second ground of appeal, Mr. Kimaro faulted the trial Tribunal for delivering the contradictory judgment. To support his averment, he referred to page 4 of the trial tribunal judgment where it was stated that:

*"Hili (sic) madai ya mdai yawe sawa kisheria alitakiwa kwenye madai haya awanganishe (sic) wauuzaji ambao ni Anna Paul Tarimo na Onesmo Tarimo pamoja na wanunuzi (wadaiwa). Kutokuunganisha wauzaji kunaweza kubatilisha mwenendo mzima wa shauri kama ilivyoamriwa na mahakama kuu kwenye shauri JUMA B. KADALA VS LAURENT MKANDE (1983) TLR103 HC ambapo iliamua kama ifuatavyo: -" (sic)*

*"Failure to join the seller renders the whole proceedings a nullity"*

Relying on the above quoted words, Mr. Kimaro noted the contradiction which is to the effect that the trial chairman agreed that once a party had failed to join a seller in any land matter, renders the whole proceedings a

nullity, but disagreed with the said principle of law by delivering a contradictory judgment.

Also, Mr. Kimaro argued that having agreed that the seller was not joined, the trial tribunal should have nullified the said proceedings for non-joinder of parties and direct parties what to do. That, declaring the respondents as lawful owners presuppose that the proceedings were proper and parties were heard fully on the issue of ownership/trespass which is contrary to the principle of natural justice as it was held in the case of **Juma B. Kadala vs Laurent Mkande [1983] TLR 103 HC**. On that basis, the appellant's advocate prayed this court to order trial de-novo of this matter so that the parties including the sellers shall be heard fully on the issue of ownership or trespass.

On the third and fourth grounds of appeal the learned advocate challenged the findings that the respondents are the lawful owners of the disputed land while the contracts purported to grant ownership are forged documents. On the fourth ground of appeal, the appellant blamed the trial chairman for confirming that, the respondents' testimonies proved their case to the required standard. He argued that the alleged sellers (**Onesmo Paulo Tarimo** and **Anna Paul Tarimo**) were not among the witnesses of the respondents who could prove that they were the ones who sold the disputed land to the Respondents. That, this court must draw its attention on the validity of the said agreements.

Mr. Kimaro continued to say that it is settled law that failure to call material witnesses without sufficient reason may cause the Court to draw an inference adverse to the party who was supposed to call those witnesses. He cited the cases of **Aziz Abdallah Vs Republic, [1991]**

**TLR 71** and **Hemed Said Vs. Mohamed Mbilu [1984] TLR 113**, to cement his argument. He commented that failure to bring those two important witnesses who were the sellers of the said land, lead this court to draw adverse inference against the respondents that they miserably failed to prove their case to the required standard.

Mr. Kimaro implored this court to allow the appeal with costs.

In his reply to the first ground of appeal on the grievances that the legal status of the appellant was not determined; Mr. Kilasara submitted that the Appellant claimed to be the Administratrix of the estate of the late Paul Mmeku Tarimo but in the title of the case and the statement of facts as envisaged under paragraph 6(a), she did not appear or at all state to sue under such capacity. That, in her pleadings particularly in the Application, she never pleaded that the suit land forms part and parcel of the estate of the late Paul Mmeku Tarimo or at all that the said deceased was the owner thereto and or she was claiming in his behalf. That, in the relief clause at paragraph 7 (1), the appellant prayed to be declared the lawful owner of the disputed land in her own capacity.

Mr. Kilasara continued to submit that; it is trite law that parties are bound by their pleadings as it was held in the case of **James Funke Gwagilo v. Attorney General (2001) TLR 455** that:

*"The defendant is bound by his pleadings and the additional grounds or points raised are rejected for not having been pleaded."*

Also, Mr. Kilasara cited the case of **Gandy v. Gaspar Air Charters Ltd (1956) 23 EACA 139** in which it was held that:

*"As a matter of general principle, an appellate Court cannot allow matters not taken or pleaded in the court below, to be raised on appeal."*

On the basis of the cited case, Mr. Kilasara submitted that the Appellant cannot be allowed to travel outside her pleadings.

It was contended that even if it is assumed for the sake of argument that the mere wording in the title of the case to wit, (Administrator of estate) of anonymous deceased was adequate to show her status, the fact which they strongly dispute, still such fact alone would not legally suffice. The learned advocate referred to the case of **Ngusa Mabula vs. Maduhu Subuya Sungas, Land Appeal No. 30 of 2013** which at page 3 held that:

*"The pivotal issue is whether the respondent had the locus standi. This is answered in the negative. Because whereas the former posed, presented the case in such capacity, having referred (as annexure 'A' to the Application) to the copy of letters of administration apparently issued on 23/11/2012, in Probate Cause No. 22 of 2012 by Kimali Primary Court-Meatu, the letters were not tendered in evidence."*

It was the argument of Mr. Kilasara that the trial court was legally justified to disregard the Appellant's alleged capacity as Administrator; and her

frivolous claim of ownership over the suit land. He was of the view that the cited cases of **Sekunda Mbwambo** and **Anjum Vicar Saleem** are distinguishable and inapplicable in the circumstances of this case.

Mr. Kilasara averred that one may be lured to rely on the letters of Administration annexed to the Application, while admission of the same was rejected on 01/08/2017 upon the Respondents' objection and no further attempt to tender it was made. Secondly, annexures are not evidence as was held in the case of **Japan International Cooperation Agency (JICA) v. Khaki Complex Limited [2006] TLR 343** where the Court of Appeal quoted with approval its decision in the case of **Sabry Hafidh Khalfan vs. Zanzibar Telecommunication Limited, Civil Appeal No. 47 of 2009**, which held that:

*"We wish to point out that annexures attached along with either plaint or written statement of defence are not evidence. Probably it is worth mentioning at this juncture to say the purpose of annexing documents in the pleadings. The whole purpose of annexing documents either to the plaint or to the written statement of defence, is to enable the other party to the suit to know the case he is going to face. The idea behind is to do away with surprises. But annexures are not evidence."*

It was insisted that, neither letters of administration nor even probate cause judgment showing the suit land as amongst the assets listed by the Appellant were tendered in evidence at the trial despite the ample opportunity availed to the appellant. The learned advocate asserted that



the said letters of administration cannot be treated as part of evidence. Thus, any reference to the Appellant as Administratrix of the estate of the late Paul Tarimo is unfounded and grossly misconceived.

Responding to the second ground of appeal on non-joinder of the parties as well as contradictory judgment; Mr. Kilasara submitted that this ground is without any substance and should be dismissed. He referred to the case of **J.B. Shirima and Others v. Humphrey Meena t/ a Comfort Bus Service [1992] TLR 290** at page 292 where it was held that:

*"It is not for the Defendant to figure out from the plaint the possible wrong complained of. It is for the Plaintiff to make it absolutely clear in the plaint what the cause of action is so as to enable the Defendant to file a proper defence."*

On the strength of above authority, it was submitted that it is apparent from the pleadings, that the Appellant simply alleged that the Respondents trespassed the suit land but she never pleaded that the suit land belonged to who or at all how and when it was acquired. Nonetheless, on the relief clause, the appellant prayed inter alia to be declared owner of the suit land, permanent injunction and eviction. She never prayed any relief in respect to the sale agreement between the Respondents and the said Anna Paul Tarimo and Onesmo Paul Tarimo respectively.

Mr. Kilasara noted the issues framed during the trial to be: **one**, who is the lawful owner of the suit land between the parties; **two**, whether the Respondents unlawfully occupied the applicant's land and **three**, what reliefs the parties are entitled to. That, no issue was ever framed

concerning the vendors or at all the sale of the suit land because in essence as per the pleadings the Appellant did not raise any dispute over the sale or at all state cause of action against the vendors. Mr. Kilasara buttressed his argument with the case of **Abdullatif Mohamed Hamis vs. Mehbob Yusuf Osman and Another, Civil Revision No. 6 of 2017** in which the Court of Appeal of Tanzania at page 25 -26 held that:

*" ... there are two tests for determining the questions whether a particular party is necessary party to the proceedings: First, there has to be a right of relief against such a party in respect of the matters involved in the suit and; second, the court must not be in a position to pass an effective decree in the absence of such a party."*

In this case, it was argued that as per the facts pleaded and the reliefs sought by the Appellant, the presence or joinder of the said vendors as necessary parties was superfluous to this case.

It was stated further that it is apparent that during the trial, the Appellant herein, who was duly represented by an advocate, never raised any concern and or sought to amend and join the alleged necessary parties to the suit. As such she cannot condemn the tribunal or at all plead this new issue at this appellate stage as stated in **Gandy v. Gaspar Air Charters Ltd.** (cited earlier). Mr. Kilasara also made reference to the decision of the Court of Appeal in the case of **Georgia Celestine Mtikila v. Registered Trustees of Dar es Salaam Nursery School and Another [1998] TLR 512** which held that:

*"Appellate court cannot consider relief that ought to have been sought in the trial court below but was not."*

It was elaborated further that; this court cannot readily interfere in order to give remedy where the party seeking such remedy sat on his right and did not act with reasonable promptitude as it was held by the Court of Appeal in the case of **Zilaje v. Feubora (1972) HCD 3**. He submitted that the issue of non-joinder has indeed come too late in the day and should be disregarded.

Moreover, the respondent's counsel submitted that there was no any dispute of ownership and or boundaries between the Respondents and or the said vendors. The vendors freely sold their respective pieces of land, received the agreed considerations and then handed over the suit lands to the Respondents. That, there was ample and credible evidence both oral (DW1 - DW5) and documentary (sale agreements – Exhibits D1 and D2) on when, how and from whom the suit lands were acquired. That, those witnesses also testified that the vendors were the lawful owners of their respective lands. The sale agreements were duly witnessed and endorsed. Their testimonies were not traversed at the trial. That, the Respondents (DW1 and DW2), testified further that at the time of purchasing the suit land, there was no any subsisting third party interest and that the same formed part and parcel of the estate of Paul Tarimo.

It was the comment of Mr. Kilasara that as a matter of fact and law, the Respondents never had any cause of action against the said Vendors; and the evidence adduced at the trial was sufficient and credible enough to enable the tribunal to exhaustively and completely adjudicate upon all the framed issues and thereby resolve the dispute between the parties herein.

Contesting the third and fourth grounds of appeal, Mr. Kilasara submitted to the effect that the Appellant purports to fault the decision of the trial tribunal for holding that the Respondents were the lawful owners of their respective suit lands alleging that the sale agreements were forged. He said that these grounds are frivolous, unfounded and devoid of merits. The learned counsel referred to the decision of the Court of Appeal in the case of **Hotel Travertine Ltd. vs National Bank of Commerce Ltd. [2006] TLR 133 at page 141** which held that:

*"As a matter of general principle, an appellate court cannot allow matters not taken or pleaded in the Court below, to be raised on appeal."*

In the instant matter, Mr. Kilasara explained that from the record, no facts of forgery of the sale agreements were ever pleaded and no proof that any criminal case was ever filed against the Respondents and no evidence was ever led at the trial by the Appellant to substantiate such serious allegations. He added that the purported allegations of forgery, serious as they may be, the Appellant has failed to expound them in her written submission. To support what he stated, the learned counsel made reference to the Court of Appeal case of **City Coffee Ltd. vs. The Registered Trustees of Iloilo Coffee Group, Civil Appeal No. 94 of 2018** in which at page 10 - 12 it was held that:

*"We have considered this argument by the Appellant. The position of the law on allegations of this nature has long been settled."*

The respondent's counsel cemented the above position with the case of **Ratilal Gordhanbhai Patel v. Lalji Makanji (1957) EA 314** in which at 316, the Court of Appeal of East Africa articulated that:

*"Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as require proof beyond reasonable doubt, something more than a mere balance of probabilities is required."*

Mr. Kilasara made further reference to the case of **Omari Yusufu v. Rahma Ahmed Abdulkadir [1987] TLR 169** at page 174 where it was held as follows:

*"It is now established that when the question whether someone has committed a crime is raised in civil proceedings that allegation need to be established on a higher degree of probability than that which is required in ordinary civil cases."*

At page 12 the court went on to state that:

*"It is well established that where the party relies on fraud, that fraud must be specifically be pleaded and that particulars of fraud alleged must be stated on the face of the pleadings."*

Relying on the above authority, Mr. Kilasara argued that as long as those allegations of forgery were never pleaded or at all strictly proved at the trial, they remain frivolous, unfounded and afterthoughts and they cannot now be raised and entertained at this appellate stage.

In the upshot, Mr. Kilasara submitted that the question for determination in this case may be whether there was sufficient evidence on balance of

probabilities to prove that the Respondents were the lawful purchasers and owners of their respective suit land, as held by the Tribunal. In support of his point, he referred to the Court of Appeal decision in the case of **Catherine Merena v. Wathaigo Chacha, Civil Appeal No. 319 of 2017** which at page 14 held that:

*"It should be underscored that an agreement for sale of land is essentially as good as any other contract, and therefore whether it is oral or written provided that the conditions of a valid contract fall within the ambit of section 10 of the Law of Contract Act, Cap 345 RE 2002, it is a contract. In essence, vital elements include free consent of parties competent to contract, for a lawful consideration and with lawful object."*

Mr. Kilasara averred further that, from the evidence on record it is clear that Anna Paul Tarimo (wife of the late Paul Tarimo) and Onesmo Paul Tarimo (son of the late Paul Tarimo) were the lawful owners of their respective lands. That, they have been in possession thereof for over twelve years and used the area for cultivating season crops until 2010 and 2013 when they sold the same to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively. That, the facts on the acquisition were pleaded in their joint Written Statement of Defence and during the trial. The sale agreements were produced for the inspection of the Tribunal and tendered without objection as **Exhibit D1 and D2**. Their authenticity was not traversed at the trial. Mr. Kilasara believed that those exhibits are self-explanatory as to which parcels of lands were sold; their description and location of the same. He said that it would be wrong at this appellate stage, to doubt

their genuineness as it was held by the Court of Appeal in the case of **Mkamangi Elifuraha vs. Mwinyishehe Mwinyishehe [1991] TLR 191** at page 193.

Concerning evidence of the appellant who was the complainant, it was argued that her primary duty was to prove her case. However, at paragraph 6 (a) of the Application the appellant failed to state how, when and or from whom she acquired the suit land. Also, she failed to prove that she was duly appointed as administratrix of the late Paul Tarimo and that the suit land formed part and parcel of the deceased's estate. That, during cross examination, the appellant herein admitted that her mother also owned the suit land but she evasively denied to be aware of the sale transactions.

It was emphasised that the appellant's claim according to her pleadings and her testimony, is uncertain and unconceivable. Thus, the trial Tribunal was legally justified to dismiss her claim since it was devoid of merit.

Responding to the argument that the respondents did not call material witnesses to wit Anna Paul Tarimo and Onesmo Paul Tarimo, it was Mr. Kilasara's reply that when PW2 Kasmiri Steven was cross examined, he admitted and stated that the said Anna Paul Tarimo was then elderly and disabled. Regarding Onesmo Paul Tarimo it was stated that the respondents restlessly made efforts to secure his attendance but the appellant's threats kept him at bay. That the reasons for failure to call those material witnesses were duly disclosed at the trial; and the Respondents cannot now be condemned allegedly for being indolent. Thus, the cited case of **Hemed Said** (supra) is in the circumstances of this case, distinguishable and inapplicable.

Mr. Kilasara had a settled mind that on balance of probabilities there was ample and credible evidence adduced by the Respondents at the Tribunal that pointed to irreversible conclusion that the Respondents duly acquired ownership of their respective lands by way of sale and that the Appellant has no any equitable claim thereto.

In the final analysis, the learned advocate implored the court to dismiss this appeal in its entirety with costs and uphold the trial tribunal's decision.

I have keenly considered the grounds of this appeal, submissions by the learned counsels of both parties and trial Tribunal's records. In the due cause of resolving the raised grounds of appeal, I will be guided by the following ever cherished principles of law; *first*, this being the first appellate court the court has a duty to re-evaluate the entire evidence in an objective manner and arrive at its own findings of fact if necessary. See the case of **Future Century L.T.D v. Tanesco, Civil Appeal No. 5/2009. Second**, in civil cases the standard of proof is on balance of probabilities. See the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaha (Civil Appeal No. 45 of 2017) [2019] TZCA 453** (11 December 2019) [Tanzlii].

Starting with the first ground of appeal, the appellant's advocate faulted the trial tribunal for failure to determine the legal status of the appellant in respect of ownership of disputed land. His argument based on the fact that the appellant was administratrix of the late Paul Mmeku Tarimo alleged to have owned the disputed land. In that regard, Mr. Kimaro was of the opinion that the appellant being the administratrix of the estate of the deceased, was the one who was supposed to sale the disputed land.



Disputing this ground, Mr. Kilasara was of the view that the appellant did not sue as Administratrix of the late Paul Mmeku Tarimo and she never pleaded such fact in her application. That, she prayed to be declared lawful owner of the disputed land.

What I have discerned from the appellant's submission and her pleadings before the trial tribunal, is that the appellant was not certain as to what exactly she wanted the court to do for her. Was she claiming as administratrix of the estates of the deceased or was she seeking to be declared lawful owner of the disputed land in her personal capacity? In her application at paragraph 6(a) she stated that the respondents **occupied her land** measured two acres. Also, at paragraph 7(1) she prayed to be declared lawful owner of the disputed property. Yet, she alleged that the disputed property belonged to her deceased father.

The applicant attached copy of letters of administration to her application. However, she did not implead such documents in her application. It is settled that an exhibit which is not pleaded cannot be relied upon. See the case of **YARA Tanzania Limited vs Ikuwo General Enterprises Limited (Civil Appeal 309 of 2019) [2022] TZCA 604** (5 October 2022) [Tanzlii] which held that:

*"It is settled that parties are not allowed to depart from their pleadings by raising new claim which is not founded in pleadings or inconsistent to what is pleaded."*

In the case at hand, the court cannot grant the reliefs sought by relying on the attached copy of letters of administration in absence of other additional evidence. The issue on whether there is enough evidence to

prove that the disputed land belonged to the appellant herein pursuant to her application, will be answered on the 4<sup>th</sup> ground of appeal.

On the second ground of appeal, the appellant's advocate blamed the trial Chairman for delivering contradictory decision. The noted contradiction is that the trial Chairman on one hand decided that non-joinder of parties is fatal which renders the proceedings a nullity, while on the other hand he proceeded to decide in favour of the respondents herein instead of nullifying the proceedings.

The respondents' advocate argued that neither during framing issues nor in her pleadings did the appellant raise the issue of non-joinder of parties. He added that, there is no dispute of ownership of the disputed land between the appellant and the alleged vendors.

This issue will not detain me since it is the appellant herein who opted to institute the dispute before the trial tribunal without joining the sellers. Having stated under paragraph 4(ii) of the Written Statement of Defence that the respondents purchased the disputed land from Anna Paulo Tarimo and Onesmo Paul Tarimo, the appellant herein was duty bound to seek leave to join them. However, the appellant did not raise such issue during the trial. Therefore, I am of considered opinion that there is no contradiction in the judgment since the Chairman gave reasons for not opting to nullify the proceedings basing on non-joinder of the sellers whereas at page 4 of the judgment, he stated that:

*"Hata hivyo kwakuwa ni mdai aliyefungua Shauri dhidi ya wanunuzi lakini akawaacha mama na kaka yake ni wazi hili haliwezi kumnufaisha kubatilisha Shauri hili."*

Basing on the above finding, I also find the second ground of appeal has no merit.

On the 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal it has been asserted that the sale agreements purported to grant ownership to the respondents are forged documents. On the 4<sup>th</sup> ground of appeal, the appellant condemned the respondents for failure to call material witness who are Onesmo Paulo Tarimo and Anna Paulo Tarimo.

Mr. Kilasara did not agree with the above noted allegations. On his side, he submitted that the allegations of forgery were never pleaded or at all proved at the trial. He added that, the sale agreements exhibit D1 and D2 were admitted without objection.

Starting with the allegation that the sale agreements were forged documents, I am at once with Mr. Kilasara that this issue was not raised during the trial and the same was not among the framed issues during the trial. In addition, the appellant did not produce any evidence to support the assertion that the sale agreements were forged. It has been established that issues not raised during the trial cannot be transacted at the later stage.

Lastly, on the allegations that the respondents did not call material witnesses to wit the sellers of the disputed land, with due respect to Mr. Kimaro, in law there is no specific number of witnesses required to prove a fact. This is provided for under **section 143 of the Evidence Act, Cap 6 R.E 2019**, that:

**143.** *Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact.*

In the circumstances of this case, the respondents herein tendered sale agreements which were admitted as **exhibit D1 and D2** which I am of the view that suffice to prove the fact that the disputed land was sold to the respondents by Onesmo Paul Tarimo and Anna Paul Tarimo. The sale agreements were admitted without any objection from the appellant herein. I am of considered opinion that challenging the said sale agreements at this stage is an afterthought.

Looking at the appellant's evidence, there is no proof that the disputed land belonged to her as she averred under paragraph 6(a) of her application. Also, there is no evidence to prove that she is administratrix of the estate of her late father. I am convinced that before the trial tribunal, the appellant herein miserably failed to prove her case on balance of probabilities and she is not justified to blame the respondents. In the case of **Paulina Samson Ndawavya** (supra) at page 15 it was insisted that:

*"It is again trite that the burden of proof never shifts to the adverse party until the party on whom onus lies discharges his and that the burden of proof is not diluted on account of the weakness of the opposite party's case..."*

Based on the above findings, I conclude that all the grounds of appeal have no merit. Consequently, I hereby dismiss this appeal with costs and uphold the decision of the trial tribunal.

It is so ordered.

Dated and delivered at Moshi this 7<sup>th</sup> day of August, 2023.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

**07/08/2023**