

THE LAND DISPUTE SETTLEMENT IN TANZANIA MAINLAND AND ZANZIBAR: A COMPARATIVE ANALYSIS

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Abstract

Land disputes settlement in Tanzania Mainland and Zanzibar has been there for decades. The mechanisms for settlement have varied from the informal to the more formal practices. Since land forms one common source of disputes, various efforts to address them have been forged. The efforts range from the community participatory forms to judicial-based forms which are more adversarial. In the Mainland, the land dispute settlement regime is governed by various laws but the principal statute is the Land (Disputes Courts) Act, No. 2 of 2002. [Cap 416 R.E. 2002]. The Act provides for the framework of institutions that constitute land dispute machinery. While in some of the institutions the procedures are less formal accommodating non-lawyers, others are purely judicial adopting the traditional judicial procedures. In Zanzibar, the trend is not much different. The Land Tribunal Act of 1994 as amended provides for the framework of Land Tribunals and procedures thereto. Although the initial plan was to have less-formal institutions which would accommodate informal procedures the amendment to the Land Tribunal Act has made the procedural requirements more formal especially on legal representation and evidentiary matters.

Key Words: Land Disputes-Courts, Tribunal Settlement- Jurisdiction

1.0 Introduction

This article endeavours to examine the land dispute settlement in Tanzania Mainland and Zanzibar. Since land is not a Union matter each part of the Union namely; Zanzibar and Tanzania Mainland has its own land governance structures although both sides of Tanzania share the highest court (the Court of Appeal of Tanzania). The article surveys the Land Disputes Courts Act 2002 of Tanzania Mainland Cap. 216 of the Laws of Tanzania R.E. 2002 as amended from time to time and the Zanzibar Land Tribunals Act of 1994. The analysis in the article focuses on the established courts under the laws, their functions, jurisdiction and procedure governing the conduct of proceedings. It is well established in this article that although the goal of establishing the courts was to speed-up administration of justice, that goal has not been realised. There have been institutional and procedural issues that have clogged the tribunals making them inefficient in resolving land disputes. More importantly, it has been established that land disputes have continued to increase making the courts incapable of catching-up.³ Also, the rules of procedure have not been simple as most of the normal rules of procedure apply in both the courts and the tribunals save for the Village Land Council and Ward Tribunals in Tanzania Mainland.

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3 Massay, G. E., Adjudication of Land Cases in Tanzania: A Bird Eye Overview of the District Land and Housing Tribunal paper prepared for Land Rights Research and Resources Institute -HAKIARDHI in July 2013 notes that the District land and Housing Tribunal is overburdened by increment of an average of 2000 pending cases every year. p 1.

2.0 Land Tenure Rules and Land Disputes

Disputes over land generally result from market distortions and suppressions of property rights.¹ They result from struggles on consumption patterns and interference with property rights that create competing claims. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. Sackey notes that competing demands over land can stimulate disagreements especially when the object contested for and the parties involved belong to different groups and have different interests. The demands over land and natural resources often lead directly to conflicts. Since conflicts are an integral part of human interaction, one must learn how to manage them and come up with innovative and creative ideas to resolve them.⁴

When assessing the complex nature of land disputes, the Food and Agriculture Organization of the United Nations (FAO) notes that,

‘[L]and tenure constitutes a web of intersecting interests which include:- Overriding interests [involves] a sovereign power (e.g., a state institution has power to allocate or reallocate land through expropriation, etc.), overlapping interests [arises] when several parties are allocated different rights to the same parcel of land (e.g., one party may have lease rights, another may have a right of way, etc.); complementary interests [are] when different parties share the same interest in the same parcel of land (e.g., members of a community share common rights to grazing land, etc.); competing interests [arise] when different parties contest the same interests in the same parcel (e.g., when two parties independently claim rights to exclusive use of a parcel of agricultural land.’⁵

Thus, rules of tenure define how property rights are to be accessed, governed and enjoyed. They define rights to use, control, transfer, responsibilities and restraints. The rules determine who can use what resources for how long, and under what conditions.⁶ Land tenure relationships and the ensuing disputes may be enforceable in established courts of law. Tanzania has not been spared from disputes arising from multiple land-based claims. Multiplicity of such disputes necessitated the formation of specialized courts as shall be discussed in the following sections.

2.1 The Need for Specialised Land Courts System

The Commission of Inquiry into Land Matters recommended a system of specialized Circuit Land Courts within the judiciary and with participation of the people.⁷ The recommendation was in view of the multiplicity of land disputes which were recorded. The National Land Policy (1995) also points out that ordinary courts were loaded with other disputes and very little time was given to land disputes.⁸ The Policy provides for the need to have well-established land dispute settlement machinery while the existing quasi-judicial bodies should be

4 Sackey, G., *Investigating Justice Systems in Land Conflicts Resolution: A Case Study of Kinondoni Municipality, Tanzania*. M.Sc., Dissertation in GEO-Information Science and Earth Observation, University of Twente Enschede, The Netherlands, March 2010. p.1&2.

5 FAO, Land Tenure Studies 3: *Land tenure and rural development* 2002. p 7.

6 Tenga W.R., & Mramba S. J., *Theoretical Foundations of Land Law in Tanzania*, 2014. Law Africa. Nairobi. p 95.

7 URT, *Presidential Commission of Inquiry into Land Matters*, 1994. pp. 197-202.

8 URT, National Land Policy (1995) p. 21.

strengthened to deal with such disputes.⁹ In response to the Land Policy, two legislation, namely the Land Act, Act No. 4 of 1999, [Cap. 113 R.E. 2002] and the Village Land Act Act No. 5 of 1999, [Cap. 114 R.E. 2002] were enacted. While the former provide for matters concerning registered land the latter gives legal guidelines for the matters pertaining to land in villages and rural areas. The two Acts, the Land Act and the Village Land Act in particular, establish legal avenues for adjudicating land disputes. The Land Act outlines what is to be the legal structure for the land dispute settlement structure in the country. Though with limited clarification, the Act provides for the first time under section 167 the categories of courts vested with power to hear and determine land disputes.

The section provides that;

‘[t]he following courts are hereby vested with exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land, that is to say, the Court of Appeal, the Land Division of the High Court (as established by relevant law), the District Land and Housing Tribunal, Ward Tribunals, and Village Land Councils.’

The section only names the land courts to be established.¹⁰ The Village Land Act also provides under sections 60-62 for the establishment of village land courts. In particular section 60 provides for the establishment of the Village Land Council, section 61 for the function of the Village Land Council and section 62 for reference of the dispute to a court having jurisdiction over the subject matter of the dispute. In addition, it defines the courts vested with exclusive jurisdiction, to hear and determine all manner of disputes, actions and proceedings concerning land that is to namely; Court of Appeal; Land Division of the High Court; District Land and Housing Tribunal; Ward Tribunal; and Village Land Council.¹¹

Despite the naming of the courts by the two sister statutes, the United Republic of Tanzania (URT) Constitution 1977 (as amended), which is the overriding law on the land provides for the solemn role of the judiciary in the dispensation of justice. It accordingly provides that the judiciary is the sole authority with final decision in dispensation of justice in the United Republic of Tanzania.¹² In delivering decisions the established court is obliged to observe the principles of: - impartiality to all without due regard to one's social or economic status; not to delay dispensation of justice without reasonable ground; to award reasonable compensation to victims of wrong doings committed by other persons, and in accordance with the relevant law enacted by the Parliament; to promote and enhance dispute resolution among persons involved in the disputes; and to dispense justice without being tied up with technicalities which may obstruct dispensation of justice.¹³ Furthermore in exercising the powers of dispensing justice, all courts are free and only required to observe the provisions of the Constitution and those of the laws of the land.¹⁴

⁹ *Ibid.*

¹⁰ Section 167 of the Land Act 1999, Cap. 113.

¹¹ See section 62 of the Village Land Act.

¹² Art. 107A (1) of the URT Constitution 1977 (as amended).

¹³ *Ibid.*, Art. 107A (2).

¹⁴ *Ibid.*, Art. 107B.

Hence, the process for the establishment of the land courts structure is a culmination of strenuous efforts and took account of established legal and constitutional principles towards improving land governance in the Country. The Courts were designed to mimic the existing courts but to incorporate principles of access to justice,¹⁵ public participation in decision making,¹⁶ independence of the courts, speedy and justice,¹⁷ efficiency, effectiveness, economy and transparency.¹⁸ Eventually, the Parliament enacted the Land Disputes Courts Act No. 2 of 2002 to give effect to the structure, composition and powers of the Courts.

However, on the other side of the coin, the move towards the enactment of these two laws may be interpreted at a deliberate effort to have the executive arm of the State have a role in the administration of justice in land matters. Section 4 of the Interpretation of Laws Act, Cap. 1 of the Laws of Tanzania R.E. defines the word "court" as meaning "any court in the United Republic, of competent jurisdiction." It implies that there is nothing untoward in the two Land Acts recognizing the Village Council, the Ward Tribunals and the District Land and Housing Tribunals as courts. However, these are institutions which are created under the Local Government Laws and therefore responsible to the Ministry responsible for Local Government. It is no wonder that they are financed and maintained by the Local Government set up and the Ministry for Lands, with the ultimate administrative control in the Registrar as appointed under section 28 of the Courts (Land Dispute Settlement) Act Cap. 216. The law attempts to separate between the administrative role of the Registrar appointed under section 28 of this Act and the Registrar of the High Court of the United Republic of Tanzania as appointed under section 27 (1) of the Judicial Administration Act, No. 4 of 2011.

2.3 The Land (Disputes Courts) Act No.2 of 2002 and the Land Courts Structure

The enactment of this law was a result of culmination of efforts. But essentially it focuses at addressing the challenges that have throughout faced the society. The Act is divided into VIII parts. The Act deals with land disputes. Under the Act, a dispute has been defined as including any case where a person complains of and is aggrieved by the actions of another person or any case in which a complaint is made in an official capacity or is a complaint against an official act.¹⁹ This definition is very wide, but it will invariably cover matters such as land ownership and the incidences thereof, leases, mortgages, licences etc.

2.3.1 Establishment and Jurisdiction of Village Land Councils

According to the Act, the Village Land Council²⁰ is established with the motive to mediate and assist parties to arrive at a mutually acceptable solution²¹ on

¹⁵ Section 4(1)(m) & (l) Land Act; see Article 107 A(2) of the URT Constitution 1977.

¹⁶ Section 4(1) (i) Land Act.

¹⁷ *Ibid*, section 4(1) (m).

¹⁸ *Ibid*, section 4(1) (h), see also Tenga W.R., & Mramba S. J., *Theoretical Foundations of Land Law in Tanzania*. Law Africa. Nairobi. 2014. pp. 87, 92, 94 and 95.

¹⁹ Section 2 of the Land (Disputes Courts) Act, No.2 of 2002.

²⁰ Section 19 (1) of the Local Government (Urban Authorities Act) Cap. 288 provides for the establishment of village council for every village in the urban area and section; section 25 of the Local Government Authorities (District) Authorities Act, Cap. 287 provides for village council for every village as per the Act.

²¹ Section 60 Village Land Act.

any matter concerning village land.²² It would appear therefore that the judicial framework was designed not only with a view to administer justice in land matters but ensure peace and tranquillity. According to the Act the Council cannot make a decision but will only mediate the parties so that they can reach (at) a mutual solution acceptable by the parties. This approach has endeavoured to envisage some of the traditional methods of disputed settlement where the winner does not take all but wins a little and loses a little. As it has been pointed out elsewhere in this paper, land can be the subject of countless and even endless disputes. It does not exist in vacuum and has boundaries which in most cases are the foci of conflicts. The likelihood of the disputes to increase the closer one gets to the community and with poor tenurial rules. At the community level land remains to be the most important resource upon which one can survive and earn respect. Although the Village Land Councils do not guarantee that disputes pertaining to village land will come to an end they can minimize them. The proximity of the courts to the community may also reduce the expenses incurred to pursue trivial matters. It also enables higher courts in the hierarchy to concentrate on more serious matters, thus minimizing the multiplicity of cases in those courts. The composition of the Council must consist of seven persons of which three must be women.²³ The Council is required to exercise its functions of mediation in accordance with:- (a) any customary principles of mediation, (b) natural justice not provided in any customary principles (c) any principles and practices of mediation in which the members may have received any training.²⁴

The key function of the Council is to mediate the parties. In doing so it is required to employ different principles of mediation both customary and contemporary as long as they can assist the parties to reach at an amicably solution. In doing so they Council must observe principles of natural justice even if they do not form part of the customary law of the given area. These principles include right to be heard, rule against bias, a member of the council not to be an interested party in the case and the right to be given reasons.²⁵ It is definite that some of these principles are not common to the majority of the people including the members of the Village Land Council. Before one can expect an effective compliance by the Council of such foreign principles there has to be a deliberate educational programme. So far it raise doubts as to the level of knowledge that has been imparted to the incumbent and how sustainable if any the training can be. Under the law where

22 Village land includes (a) Land within the boundaries of village registered in accordance with the provision of section 22 of the Local Government (District Authorities) Act 1982,

(b) Land designated as village land under the land tenure (Village Settlement) Act 1965,

(c) Land, the boundaries of which have been demarcated as village land under any law or administrative procedure whether approved or not, (d) Land, the boundaries of which have been agreed upon between the village council claiming jurisdiction over that land and :- The VC of a Contiguous Village, the Land Commissioner in case the contiguous land is general land, official/public organisation in case reserved area, local authority in case the surrounding land has been declared to be urban land or peri-urban land, A person/body where the surrounding land is occupied by a person. (e) Land other than reserved land which the villagers have been during the 12 years preceding the enactment of the Act, regularly occupied and used such land as village land. It includes land lying fallow at any time for 12years/land used for de-pasturing stock belonging to villagers/persons using the land with agreement of the villagers or according to customary law/land customarily used for passage or de-pasturing cattle.

23 Section 60(2) Village Land Act.

24 *Ibid*, section 61(4).

25 See *Mwanza Restaurant & Catering Association v. Mwanza Municipal Director*, (High Court Mwanza) Misc. Civ. Cause No. 3/1987.

the parties or any of them do not accept the conclusion of the mediation, they may refer the dispute to a court having jurisdiction over the subject matter.²⁶

As per section 8 of the Village Land Act, the Village Council is the administrator of the Village Land. It is in view of that that the Village Land Council has been empowered to nominate the members of the Village Land Council and have their names approved by the Village Assembly.²⁷ However, such nomination is governed by certain criteria. A member must be:- an ordinary resident in the village in which the village land council is to function, not a Magistrate having jurisdiction in the District in which the village land council is to function, not below 18 years, mentally fit, not convicted of a criminal offence involving dishonesty/moral turpitude, and must be a citizen.²⁸ It seems that the qualification puts special emphasis of the residence of the members because they are expected to reconcile the parties based on customary principles of the given area. What is crucial is not only resident but ordinarily resident i.e., a person whose permanent place of stay is at the village not a person who just stays occasionally. A Magistrate may interfere with the process if the matter will be taken for appeal. As for the requirement of age, under the Local Government (District Authorities) Act, No. 7 of 1982 a person can be a member of a Village Assembly after attaining 18 years of age.²⁹ The behaviour of the member carries with it powerful trust from the villagers and the complainants as the outcome of the settlement.

An appointed member can serve for 3 years but will be eligible for re-appointment.³⁰ The quorum of a meeting of the Village Land Council is four and at least two should be women.³¹ In the event of equality of votes the chairperson has an additional vote.³² The law intended to bring about some gender balance in the nomination of the members of the Council and the decision is by majority. It seems that the inclusion of women in the composition of the members of the Council emanates from the inherent problem of discrimination of women in land ownership. This is quite interesting because what promotes women's rights to land is not necessarily their participation in the adjudication organs but solid rules of justice. Where the rules are clear and certain no matter who makes the decision, he will be bound to follow such laid down rules. Contrary to that, decision will be made basing on the whims of the quorum and not legal rules.

Again section 61 of the Village Land Act provides that the Village Land Council shall have no adjudicative jurisdiction but mediatory and counselling functions.³³ Further, section 61(6) of the Act expressly provides that a person is not compelled to use the mediation services of the village land council concerning land matters. This seems to be the source of the problem in resolving disputes in many rural areas. As a result, the conflicts of law have been used by many people to deliberately refuse to use the service and even appearing before the Council when summoned to that effect. Experience shows that people who appear before

²⁶ Section 62(1) and (2) of the Village Land Act.

²⁷ *Ibid*, section 60 (2).

²⁸ *Ibid*, section 60 (5).

²⁹ See section 55 of the Local Government (District Authorities) Act, No. 7 of 1982.

³⁰ *Op. cit* section 60 (7).

³¹ *Ibid*, section 60 (9).

³² *Ibid*, section 60 (10).

³³ *Ibid*, section 61(3) & (4).

the Council decline to be mediated. As a result, the Councils seem to lose the envisaged legitimate authority. Generally disciplinary matters involving judicial officers are dealt with by the Judicial Service Commission but it would appear that because the Village Land Council is more of a quasi-judicial organ it does not fall under that regulatory body. In fact, it is an arm of the executive as it is nominated by the Village Council which is an executive organ at the village level. Thus, they are more executive though they perform judicial functions and the Judicial Service Commission has no control over them.³⁴

Assessing the legal and judicial nature of the Village Land Council Guer remarks that,

'[S] trictly speaking, [the Village Land Council] is not even a quasi-judicial body and the Government chose to delimit its powers to the extent of stripping it of any legal judicial standing. [To him the status of the Council is contrary to what the Presidential Commission of Inquiry's] principal purpose behind establishment of Elders' Land Council, was. [He sees the proposed council as aimed] to bring the judicial system within the reach of the common villager and to set it in a context that would be more understandable and legitimate [while] the Village Land Council does not serve this bridging function, as long as any party to a dispute can lawfully choose to ignore it.³⁵

The functions of the Village Land Council include: - to receive complaints from parties in respect of land, to convene meetings for hearing of disputes from parties, mediate between and assist parties to arrive at a mutually acceptable settlement of the disputes on any matter concerning land within its area of jurisdiction.³⁶ The procedure for mediation is as provided for under section 61 Village Land Act. Section 61 (2) provides two options of binging a matter to the Village Land Council. The section provides that,

'[w]here the parties to a dispute referred to in subsection (1) agree to call in the village land council, the convener of the village land council shall, after discussing the matter with the parties to the dispute, either- (a) convene a meeting of the village land council; or (b) appoint one or more members of the village land council, to act as mediators between the parties to the dispute.'

Once a party (parties) have referred their dispute to the Village Land Council the convener of the village land council shall have two options. He may convene a meeting of the village land council; or appoint one or more members of the village land council, to act as mediators between the parties to the dispute. What is important is the best outcome for the interest of the parties and justice. It is therefore, upon the Village Land Council to take judicious approach to ensure that parties to disputes are provided with immediate service which should

³⁴ See the establishment and functions of the Commission sections 112 and 113 of the URT Constitution 1977 as amended.

³⁵ Sundet Guer, *The Politics of land in Tanzania*, Dec 2004, p. 131.

³⁶ Section 7 of the Land Disputes Courts Act.

take into account the availability of the required quorum for a full meeting of the Village Land Council or to appoint one or more members to ensure speedy administration of justice in line with Article 107 (2) A of the URT Constitution. No fixed and certain procedures are used in the process of mediation and the Council is free to regulate its own procedure. Suffices to say that, the procedure in the Council is very informal with no rules of procedure or evidence. The main intention is to secure a compromise between the disputing parties and thus it would have been counter-productive to institute formal procedures and rules.

What is vital in appointing a member to act as mediators is to avoid possible conflict of interest, ensure impartiality, non-partisanship and his social standing. In most cases however, the trend has been to call for a meeting of the Village Land Council which has in most cases delayed the resolution of disputes. Since the appointment of the members of the Village Land Council are normally done by the Village Council the proposed establishment of impartial body, free from government influence and which commended respect and legitimacy free from the executive influence is still not guaranteed.

It should be borne in mind that the Village Land Council has been set up to cater for disputes arising in villages established under the Local Government (District Authorities) Act, 1982. In that respect, these do not function in urban areas where instead of villages we have "mitaas". The law does not have local Government institutions in the urban areas that are of the same status as the Village Council in the rural areas. Under section 12 of the Local Government (Urban Authorities) Act 1982 Cap. 288, the Minister responsible for Local Government may cancel the registration of any village established or deemed to have been established in urban areas. This has invariably been done where an urban area has been designated a planning area. There are what are called "mitaa" which are parts of any urban ward established under section 16 (3) of the Act. A question arises as to whether in such a situation, the "mitaa" authorities which unlike the Village Council, are not legal entities can be taken to be the successors of the Village Land Council. This is a significantly grey area which can only be resolved by the necessary Statutory amendments to the law.

2.3.2 Ward Tribunals: Functions, Powers and Mandates under the Act

Where the parties to the dispute before the Village Land Council are not satisfied with the decision of the council, the matter has to be referred to the Ward Tribunal under section 62 Village Land Act.³⁷ Basically, Tribunals established by the Ward Tribunals Act, Act No. 7 of 1985 have been treated as courts for the purposes of settlement of land disputes.³⁸ They have jurisdiction and powers in relation to the area of a District Council in which they are established. Each tribunal must consist of not less than four and not more than eight members of whom three are women elected by the ward committee.³⁹ The Ward tribunals are competent courts and any person aggrieved by a decision of a ward tribunal may appeal to the District Land and Housing Tribunal having jurisdiction over the area in which the land is situated.⁴⁰

³⁷ *Ibid*, Section 9.

³⁸ *Ibid*, section 10.

³⁹ *Ibid*, section 11.

⁴⁰ Section 167 Land Act.

As provided under section 5(1) of the Ward Tribunals Act 1985, a person that can be nominated as a member of the tribunal must not be :- a member of the National Assembly; a member of village council or a Ward Committee; a civil servant; a legally qualified person or any person who is employed in the Judiciary; a person under the apparent age of eighteen years; a mentally unfit person; a person who has previously been convicted of a criminal offence involving moral turpitude, or a person who is not a citizen of the United Republic of Tanzania. It would seem that the qualification of the members of the Ward Tribunal has been reproduced almost in verbatim from the composition of the members of the Ward Tribunal Act of 1985. Even the composition of the Tribunal is essentially the same as it is provided under section 4 of the Ward Tribunals Act.

The functions of the Ward Tribunal are to: - (i) secure peace and harmony in the area for which it is established by mediating the parties to arrive at a mutually acceptable solution, (ii) enquire into and determine disputes arising under the Land Act and the Village Land Act.⁴¹ In matters of mediation the tribunal must consist of three members at least one of whom has to be a woman. In case of equality of vote the presiding member has a casting vote.⁴² The pecuniary jurisdiction of the Ward tribunal in all civil matters relating to land is limited to 3 million Shillings.⁴³

Just as it is for the Village Land Council, the Ward Tribunal is also a quasi-judicial organ with functions partly executive and partly judicial. It is established under section 3 of the Ward Tribunals Act Cap. 206. This Tribunal has been recognized as a Land Court for the purposes of the Land Act 1999 and Village Land Act 1999 under section 10(1) of the Courts (Land Disputes) Act 2002. However, section 10(2) of the latter Act provides that in case of conflict between the provisions of the Ward Tribunals Act and the Courts (Land Disputes) Act, the latter should prevail. Also, unlike the Ward Tribunals Act Section 4 (1) (a) which does not provide for gender in the composition of the Ward Tribunal, Section 11 of the Courts (Land Disputes) Act provides that the Tribunal shall comprise of not less than four members and not more than eight, members, and at least three of them have to be women. The requirement provides for the number of women when the Tribunal is made up of eight members but does not provide for their number in case it is made up of less than eight members. Is this another grey area?

Under section 16 of the Ward Tribunals Act, the Ward Tribunal is supposed to follow the principles of natural justice, i.e. give the parties before it the right to be heard and present their evidence before a decision is made. It is not, according to section 15 of the Ward Tribunals Act, not bound by any rules of evidence or procedure applicable to any Court. It has the power of regulating its own procedure.

A decision by the tribunal is appealable to the District Land and Housing Tribunal. Just as it is for the Village Land Council, it seems that matters entertained by the Ward Tribunal are mostly those involving village land disputes due to the

⁴¹ *Op cit*, section 13 of the Act.

⁴² *Ibid*, section 14.

⁴³ *Ibid*, section 15.

monetary limitation of the tribunal. Most properties exceeding 3 million shillings are located in townships and or urban areas where land is largely held under customary tenure. This is vivid as the law provides the principles to be applied by the Tribunal namely:- any customary principles of mediation; natural justice in so far as any customary principles of mediation do not apply; any principles and practices of mediation in which members have received any training.⁴⁴ These are the same principles which apply in adjudication of village land disputes. In its efforts to promote peace by mediating the parties the Tribunal may adjourn any proceedings if it thinks by so doing a just and amicable settlement of the dispute may be reached.⁴⁵

On the territorial and legal jurisdiction of the Tribunal the Court in several cases⁴⁶ have delved on the matter. In the case of *Jumanne Kinyota v. Lilian Aston*,⁴⁷ Mlyambina Y. J. the Chairman of the Ilala District Land and Housing Tribunal did an analysis of the different stands taken by Judges. Of emphasis is that;

'...the general analysis of the filed cases in the Ward Tribunals [imply] that unless it is appreciated and reconfirmed that the establishment of Ward Tribunals as Land Courts was meant to resolve land matters in each Ward Tribunal regardless of being situated in District Council, Township, Municipality or Cities. Basing on the that fact, land courts were established with a view of determining land matters without undue delay, ... ousting the jurisdiction of the ward court which was purposely conferred upon it by the legislature will not only amount to anarchy by the parties but to the District Land and Housing Court itself. The detriment of ousting jurisdiction of Ward tribunals in Townships / Municipalities / Cities on land matters would flood cases at the District Land and Housing Tribunal and thereby cause delay of adjudication of land and housing matters...I can hold with certainty that Ward Tribunals in Township, Municipalities and Cities alike in District Councils have jurisdiction to handle land and housing matters.' [emph ours]

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'the primary function of the Ward Tribunal is to secure peace and harmony in the area of which it is established by mediating and endeavoring to establish just and amicable settlement of dispute.' ... [F]urthermore, [...] section 8(2) of the Act is to the effect that in all matters before it relating to [land] dispute, the tribunal shall attempt to reach a settlement by mediation before exercising its compulsory jurisdiction.' In line with that section 13(1) of the Land Disputes Courts Act...' The court found that *mediation is a compulsory procedural*

⁴⁴ *Ibid* section 13 (3).

⁴⁵ *Ibid* section 13(4).

⁴⁶ *Salum Ally v. Abdallah Said Kichimba*, Land Revision No. 37 of 2011 High Court of Tanzania at Dar es Salaam District Registry (Unreported), *Robert Tuninga v. Paulina Werema* Misc. Land Appeal No. 98 of 2009 High Court of Tanzania Land Division at Dar es Salaam (Unreported), *Rehema Hamisi and 4 others v. Fauzia Hussein Awadhi*, Misc. Land Case Appeal No. 129 of 2009 (Unreported), *Zubeda Rajabu v. Hussein Seseme & 2 others*, Misc. Land Appeal No. 67/2008 High Court of Tanzania Land Division at Dar es Salaam (Unreported), *Amina Bakari Mtima v. Hamis S. Mkwango & 15 Others*, Misc Land case Appeal No. 3 of 2012 (Unreported).

⁴⁷ Appeal No.8 of 2013, in the District Land and Housing Tribunal for Ilala.

⁴⁸ For further reasoning one may wish to go through the decision of *Lilian Mbwana v. Peter Singu* Land Appeal No. 34 in the District Land and Housing Tribunal for Ilala (Unreported).

requirement before adjudication...calling vendor as witness and visiting the locus in quo may be one of the best ways of bringing the parties to a just agreement. The inspection of the locus in quo helps the court to understand or relate to the evidence given in court by the witness.'

Despite the nature of the Tribunal, it has the jurisdiction to issue most orders which can otherwise be issued by ordinary courts. The orders include: - order for recovery of possession of land, order for specific performance of any contract, make orders in the nature of injunction, award any amount claimed, award compensation, order the payment of any costs and expenses incurred by a successful party or his witnesses or make any other order which the justice of the case may require.⁴⁹

Given the status of the tribunals and nature of the proceedings Sackey⁵⁰ in his research observed that,

'[m]ost people use the ward tribunal as a stepping stone to reach to the District Land and Housing Tribunal (DLHT). Eventually, the disputants disregard the decision of the ward tribunal and sometimes realize that the dispute was not within the jurisdiction of the ward tribunal. [But also, given] the value of land in the Kinondoni Municipality has continued to be high any dispute relating to such lands falls within the mandate of the DLHT. Since many people have more trust with the DLHT unlike the ward tribunals, when it comes to estimating the value of the property they hike-up the value so that they may file the matter in the DLHT. Apart from the mandate of the ward tribunals to issue most orders which can be issued by ordinary courts the other weaknesses of the tribunals is the non-appearance of advocates and failure to execute their own decisions except the DLHT. This makes some to question if they ought to form part of the framework of courts that deal with land disputes.'

The above view has been taken further by the Law Reform Commission which points out that,

'land value has continued to appreciate rapidly. As a result, land courts suffer low pecuniary jurisdiction. This increases the work load of DLHTs and the High Court in land disputes thereby leading to considerable delay in the disposal of cases and appeals from land tribunals.'⁵¹

As it is for the Village Land Council advocates cannot appear at the Ward Tribunal.⁵² Obviously, this is due to the understanding of members of the organs and the limitation of the applicable principles to mostly customary principles of the area which must however not be in conflict with the fundamental principles of the national land policy. Appeal from the Ward tribunal can be made to the

⁴⁹ *Ibid*, section 16.

⁵⁰ Sackey G. *Op cit.* p.53.

⁵¹ URT, Law Reform Commission, *Report on the Review of the Legal Framework on Land Dispute Settlement in Tanzania*, 2014. p. 49.

⁵² *Ibid*, section 18.

District Land and Housing Tribunal within 45 days after the date of decision disputed.⁵³

Common to both the Village Land Councils and Ward Tribunals is the fact that, Local Government Authorities have not been able to establish Village Land Councils (VLCs) and Ward Tribunals (WTs) in all villages and wards respectively. This results into land disputes which would otherwise be resolved by VLCs or WTs have to be lodged with DLHTs. For instance, in Iringa District, there are 25 wards but only 11 Ward Tribunals have been established. In Njombe District there are 36 wards but only 18 wards have Ward Tribunals. In Morogoro Municipality there are 29 wards but only 11 wards can boast of having ward tribunals. This observation was made by the Law Reform Commission in its review of the Land Dispute Courts Review.⁵⁴

2.3.3 Establishment of the District Land and Housing Tribunals: Functions and Jurisdiction

The Act empowers the Minister to establish in each district, region, or zones a court to be known as District Land and Housing Tribunal.⁵⁵ The jurisdiction of the Court will be the district, region or zone in which it is established.⁵⁶ Despite the good intention to establish the tribunals in various geographical limits it has been noted that, some of the established tribunals prove to be more expensive for some villagers to access them due to geographical distance. As a result, they are forced to travel long distances, incurring heavy costs to carter for shelter and food costs.⁵⁷ The composition of the District Land Housing Tanzania is a chairperson and not less than two assessors.⁵⁸ The chairperson is required to consider the opinion of the assessors but is not bound by it. Where he differs, he must give reasons in the judgment. The qualification of Assessor are that; he must be an ordinary resident in the area, not member of District Council, Village Council, Village Land Council or Ward Tribunal, mentally fit, not convicted of an offence involving violence, dishonesty or moral turpitude, a citizen of Tanzania.⁵⁹

A District Land and Housing Tribunal hearing an appeal may-(a) confirm the decision, or (b) reverse, or vary in any manner the decision; or (c) quash any proceedings; or (d) order the matter to be dealt with again by the Ward Tribunal, and may, if it deems appropriate, give an order or direction as to how any defect in the earlier decision may be rectified.⁶⁰ The District Land and Housing Tribunal when hearing an appeal against any decision of the Ward Tribunal must sit with not less than two assessors. In dealing with the appeal it may: - (a) consider the

⁵³ *Ibid*, section 19.

⁵⁴ URT, *Law Reform Commission, Op cit* p. 39.

⁵⁵ Land Dispute Courts Act, section 22.

⁵⁶ *Ibid*, section 22.

⁵⁷ Massay, *Op cit*, p 3, gave an example of a villager from Tanganyika Masagati village in Kilombero District can travel a distance of 270 km by bus for 5 to 7 hours to Ifakara where the nearest DLHT is located. And a villager from Makelele village in Kilindi District can travel a distance of 280 km by bus for 6 to 8 hours to Korogwe where the nearest DLHT is located.

⁵⁸ Sections 23 and 24 of the Land Disputes Courts Act., see proposed amendment to section 23(1) of the Act that not one Chairman but at least a Chairman...Bill for the Written Laws (Miscellaneous Amendments) (N0.4) Act, 2017.

⁵⁹ *Ibid*, section 27. See the proposed amendment to section 28 (2) that, a person shall not be appointed to be the Registrar unless he holds a degree in law from a recognized university and has experience in the field of law for the period of not less than ten years. See Written Laws (Miscellaneous Amendments) (No. 4) Act, 2017.

⁶⁰ *Ibid*, section 35(1).

records relevant to the decision; and (b) receive additional evidence if any, and (c) make such inquiries, as it may deem necessary.⁶¹

Tribunal has original jurisdiction in all proceedings under the Land Act and Village Land Act.⁶² In the case of *Anderson Chale v. Abubakari Sakapara*,⁶³ it was stated that the Land Act or the Land Disputes Courts Act, does not oust the jurisdiction of the ordinary courts in suits based on tort and in particular, the tort of trespass to land. Since tort is not necessarily on some lawful interest in land, other than possession and the Land Act deals with rights and interests in land while the Land Disputes Courts Act, deals with how disputes arising from the interest in land, will be settled and institutions having jurisdiction to settle them. In the case of *Olam Tanzania Limited and 3 Others v. Selemani S. Selemani and 4 Others*,⁶⁴ the Court of Appeal stressed that District Land and Housing Tribunals have jurisdiction to hear and determine all land disputes arising under the Land Act, regardless of whether the said land is registered or not. The debate whether tribunal have jurisdiction in the respective district councils only or district councils, municipalities and cities, this seem to be addressed in the Written Laws (Miscellaneous Amendments) (No. 4) Act, 2017. The amendment deletes the definition of the word district council and substitutes it with a broader meaning under the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act.⁶⁵

The pecuniary jurisdiction of the Tribunal for immovable property does not exceed 50 million shillings and in other properties which can be estimated should not exceed 40 million shillings.⁶⁶ The amendment to the Act raises the limit to 100 million shillings for immovable properties and 80 million shillings for other properties.⁶⁷ The Tribunal has power to execute its own orders and decrees.⁶⁸ As to how to estimate the value in the case of *Charles Damian v. Juvenari Joseph Laswai*⁶⁹ it was stated that, 'the value of the land cannot be ascertained by mere word or from the bar. The value must be ascertained by a [certified valuation report from a certified] valuer taking into consideration the current market value of the land and its improvements at the time the suit was instituted.'

Regarding appearance, a person can appear in the District Land and Housing Tribunal in person, by an advocate, or any relative or any member of the household or authorised officer of a body corporate.⁷⁰ Apart from the procedure provided under the Land Disputes Courts Act, the District Land and Housing Tribunals Regulations (2003) Government Notice No. 174, provides more detailed procedures

⁶¹ *Ibid*, section 34(1).

⁶² *Ibid*, section 37.

⁶³ Civil Appeal No. 121 of 2004, High Court of Tanzania at Dar es Salaam (Unreported).

⁶⁴ Court of Appeal of Tanzania at Mtwara, Consolidated Civil Revisions No. 2,3,4,5, &6 of 2010, ruling made on 11th October 2010 (Unreported); see a previous decision of the High Court, *Olam Tanzania Limited Property International v. Baraka Mkondola*, High Court of Tanzania (Land Division) at Mtwara, Land Appeal No 14 of 2007 (Unreported) Judgment delivered on 25th September 2009 which had decided that the DLHT had no original jurisdiction to adjudicate matters concerning land registered under the Land Registration Ordinance, Cap 334.

⁶⁵ See Proposed Bill section 4 which amends section 2 of the Land (Disputes Courts) Act 2002.

⁶⁶ *Op cit*, section 33.

⁶⁷ See Section 8 of the Written Laws (Miscellaneous Amendments) (No. 4) Act, 2017 which amends section 33 of the Act.

⁶⁸ *Ibid*, section 33.

⁶⁹ District Land and Housing Tribunal Kinondoni Land Appeal No 147 of 2013 District at Mwananyamala, see also *John Malombola v. Remmy Kway*, Misc Land Appeal No. 91 of 2009 High Court Land Division (Unreported).

⁷⁰ *Ibid*, section 34 (2).

to regulate proceedings in the DLHTs. Although section 51(1) of the Land Disputes Courts Act provide that, in the exercise of their respective jurisdictions, the High Court and District Land and Housing Tribunals shall apply the Civil Procedure Code, 1966 and the Evidence Act, 1967, it is only where the matter is not specifically provided for in the Act or Regulations that the Tribunal can resort to procedures under the Civil Procedure Code (1966) otherwise the procedure should be that under the Regulations.⁷¹ As it is for normal suits, proceedings before the Tribunal are commenced by an application filled by an applicant or his representative and upon payment of the required fees. Any aggrieved party may appeal to the High Court Land Division. The Chairman has special powers to decide on certain matters alone, such as objections based on points of laws, applications for execution of orders and decrees and interlocutory applications.⁷²

2.3.4 Establishment, Functions and Jurisdiction of the High Court

Part VI of the Act establishes the High Court (Land Division) where the appeals and revision lies. Rule 5E of the High Court Registries Rules⁷³ provides, that [t] here shall be a land division of the High Court within the Registry at Dar es Salaam and at any other registry or sub-registry as may be determined by the Chief Justice in which, subject to the provisions of any relevant law, appellate proceedings or original proceedings concerning land may be instituted.' The proceedings relating to land disputes of a civil nature are governed by the Civil Procedure Code, 1966.

The Court has original jurisdiction and is responsible for the day to day supervision of all the activities performed by District Land and Housing Tribunal also all appeals to the High Court (Land Division must be made by way of petition and must be filed in the District land and Housing Tribunal. As stated the High Court Land Division is governed by Court rules and other codes of conduct of judicial personnel, the Chairman has no such kind of regulation instead he is responsible to the Minister. As a result, it is unclear as to how can he act as an executive perform judicial functions and at the same time make judges supervise the executive in their functions. In 2010, section 17 of Act No. 2 of 2010 Written Laws (Miscellaneous Amendments) amended section 167 (1) (b) thereby disestablished the land division of the High Court. Henceforth, land matters became just part of civil matters as it was before the establishment of the Land Division. The Land Disputes Courts Act was also amended by No. 2 of 2010 by substituting everywhere in the Act where it is read the word 'land division' with the word High Court. Such amendment has however, been challenged for creating a hiatus of jurisdictions. In the case of *Samwel George Mhina v. Justine Ernest Massawe and Another*,⁷⁴ the Commercial Division of the High Court ruled that the Land Division has been disestablished.⁷⁵ In 2009, the then Chief Justice

⁷¹ See the Written Law Misc. Amendment No. 2 of 2010.

⁷² See Gastorn K. The Dynamics of Change and Continuity in Land Dispute Mechanisms in Mainland Tanzania: The Jurisdictional Debate p. 575, Regulation 22 Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002 (GN 174/2003). *Ramada Investments Limited v. Plastech Company Limited*, Land Revision No. 5 of 2005, High Court of Tanzania (Land Division) at Dar es Salaam (Unreported).

⁷³ G.N. No. 96 of 2005.

⁷⁴ Commercial Case No. 118 o 2011 (Unreported).

⁷⁵ See also the case of *Petro Nyasa, Julius Nsabi and Pasi Seni v. Simon Domela, the District Natural Resources Officer Urambo District, the District Commissioner Urambo District, and the Hon. Attorney General*, decided on 9th July, 2009.

of Tanzania, His Lordship Mr. Justice Augustino Ramadhani appointed all judges of the High court to be judges of the High Court (Land Division), with effect from the 1st day of December 2009.⁷⁶

The Court has original jurisdiction in all matters under the Land Act and Village Land Act. The limitation of the jurisdiction of the High Court was a subject matter exceeding 50 million shillings for immovable property and 40 million shillings for property that can be estimated into monetary value. The threshold has raised from 50 million to not less than 150 million shillings for immovable properties and from 40 million to not less than 100 million shillings.⁷⁷ The pecuniary value creates a risk of accumulating cases in the High Court and eventually delay cases in the Court. As it can be seen from the Magistrates Courts Act of 1984, the Court entertains all cases that were formerly dealt with by the District Magistrates' and Resident Magistrates' courts.⁷⁸ It can also entertain proceedings involving public corporations relating to rent restrictions and other disputes of national interest. Likewise, all proceedings under the TIA (1997), Land Act, Land Acquisition Act 1967 in respect of proceedings involving the Government are within the jurisdiction of the court. Apart from the specified matters where the issue relates to land and the jurisdiction is not limited to any particular court or tribunal it can be dealt with by this Court.⁷⁹ In case of an appeal to the High Court Land Division on any rule of customary law, the court may refer the question of customary law to an expert or panel of experts constituted under the MCA 1984. The Court will however not be bound by such opinion.⁸⁰

There has been a question on when a landed dispute should be treated as a commercial matter or a land dispute. In the case of *Shabani Saidi Shabani v. CRDB Bank Limited*,⁸¹ the matter whether land auctioned for default to liquidate a mortgage was just a contract matter since the sale proceeded upon the default in the payment of a loan that was secured by the landed property, which in essence was a breach of contract. The Court held that those were just contractual matters and not land matters hence inappropriate for High Court (Land Division) but for the High Court (Commercial Division). There have been diverse opinions at the commercial division of the High Court, however, where judges have ruled that a dispute on land sold in public auction was still a land matter because that was just disposition of land through public auction, hence it should be filled in the land court which has exclusive jurisdiction on land matters. In *Rasilimali Limited v. M.I.C Tanzania Limited*,⁸² Hon. Kalegeya, J.(as he then was) stated that the court may define a case as commercial though not listed provided such a case has commercial⁸³ trappings or resemblance.⁸⁴ As far as mortgage disputes are concerned, these have been deemed to pose a special problem since their nature straddle between commerce and land. In the case of *Ilabula Investments & Others*

⁷⁶ See further Gastorn *supra* 580-582.

⁷⁷ See amendment to section 37(1) vide Written Laws (Miscellaneous Amendments) (No. 4) Act, 2017 section 9.

⁷⁸ See section 40 of the Magistrates' Courts Act No 2/1984.

⁷⁹ *Ibid*, section 37.

⁸⁰ *Ibid*, section 39.

⁸¹ Land Case No. 210 of 2004 (Unreported).

⁸² Commercial Case No. 121 of 2002, High Court of Tanzania (Commercial Division) at Dar es Salaam (Unreported).

⁸³ Under Rule 2 of the High Court Registries Rules, 1984 as amended by the High Court Registries, (Amendment) Rules, 1999 (GN 141/1999) a commercial case is defined as any matter considered of commercial significance.

⁸⁴ See Rule 2 of the High Court Registries Rules, 1984 as amended by the High Court Registries (Amendment) Rules, 1999 (GN 141/1999).

v. Tanzania Investment Bank & Another,⁸⁵ it was noted that there was duplicity of jurisdiction between the High Court Land Division and the Commercial Division of the High Court while in *Michael Mwailupe v. CRDB Bank Limited & Others*,⁸⁶ it was held that;

‘[w]hen land becomes the collateral in a loan agreement and an issue arises where the court is required to determine whether or not the sale of the land in issue was proper in recovery of the loan, then the Land Division of the High Court would be the proper court to determine such issue; where another type of property, other than land is pledged as a security, that makes the matter to be of a purely commercial nature and the Land Division would not be the proper place for it.’

It is the view of the authors that since the essence of a mortgage is a Commercial transaction the land is only used or as a security to that transaction which does not turn it into a land matter.

2.3.5 Jurisdiction of the Court of Appeal

A party aggrieved by a decision of the High Court can appeal to the Court of Appeal established under Article 117(1) of the URT Constitution (1977) Cap 2. as amended. The functions of the Court are to hear and determine every appeal brought before it arising from the judgment or other decision of the High Court or of a magistrate with extended jurisdiction.⁸⁷ Section 48 of the Land Dispute Courts Act provides for the application of the Appellate Jurisdiction Act No. 15 of 1979, [Cap. 141 R.E. 2002]. Regarding the procedure for appealing the matter has been in issue in several cases. One of the contention has been on the procedure for appealing on a land matter originating from the Ward Tribunal by a person wishing to access the Court of Appeal on a third appeal. In the case of *Jerome Michael v. Joshua Okanda*,⁸⁸ the appellant lost a land dispute over ownership of land. Under the provisions of section 47 (1) and 47(2) of the Land Disputes Courts Act (2002) he had to apply for leave to appeal to the Court of Appeal. The section provides thus;

‘Appeals from the High Court (Land Division) (1) Any person, who is aggrieved by the decision of the High Court (Land Division) in the exercise of its original revisional or appellate jurisdiction, may with the leave from the High Court (Land Division) appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act. (2) Where an appeal to the Court of Appeal originates from the Ward Tribunal the appellant shall be required to seek for the Certificate from the High Court (Land Division) certifying that there is a point of law involved in the appeal.’

It was stated that an appellant who wishes to access the Court of Appeal for a third appeal for a land dispute which originated from the Ward Tribunal is required to seek two orders from the High Court of Tanzania (Land Division).

⁸⁵ Commercial Case No. 27 of 2002, High Court of Tanzania (Commercial Division) at Dar es Salaam (Unreported).

⁸⁶ Land Case No. 7 of 2003, High Court of Tanzania (Land Division) at Dar es Salaam (Unreported).

⁸⁷ See Art. 117(3) of the URT Constitution (1977) (As amended).

⁸⁸ Civil Appeal No. 19 of 2014, Court of Appeal of Tanzania at Mwanza (Unreported).

The first one is an order seeking for leave to appeal. In the case of *Lucy Daniel and two others v. Finca and two others*⁸⁹ the Court had to address the issue whether or not the suit being a land matter, the appellants had sought and obtained leave to appeal in the High Court as required under section 47(1) of the Land Disputes Courts Act.⁹⁰ The court said that the appeal against that order was not properly before the Court as the appellant had not obtained any leave from the High Court as is mandatorily required under section 47 (1) of the Land Disputes Courts Act.⁹¹

The second requirement that the appellant has to comply with under section 47(2) is to get a certificate from the High Court that a point or points of law are involved in the matter for the determination of the Court of Appeal. In the case of *Lucy Daniel and two others (supra)* the issue before the Court for determination was whether an order from the High Court refusing to certify whether an issue of law was involved in the matter was appealable to the Court. The High Court refused to grant him the two orders. The Court had to determine the same issue in the case of *Eustace Kubalyenda v. Venancia Daud*,⁹² where the appellant appealed against an order refusing a Certificate that the case had a point of law for the determination of the Court. That case started from the Primary Court. The Court held that:

‘It is patently clear, therefore, from the provisions of section 5, this Court and the High Court have concurrent jurisdiction in granting leave to appeal to the Court, to any aggrieved person. But it is the High Court only which has been granted exclusive jurisdiction to certify to the Court that a point or points of law is or are involved in the impugned decision or order in respect of the proceedings falling under head (c) of Part III of the Magistrates’ Courts Act, [Cap.11 R.E. 2002] (the MCA). The said provisions of the MCA deal with the appellate and revisional jurisdiction of the High Court in matters originating from the primary courts.’

The Court noted that the same position applies in the case because the matter originated from the Ward Tribunal and the appeal before the Court was the third one.⁹³

From the above judicial postulation, it is clear that, an appeal from the High Court to the Court of Appeal requires application for leave from the same High Court. This is paradoxical. It raises juridical questions on the justification for asking the court that handed the judgment for permission to make further appeal to challenge its decision. It could be different if the requirement was to file the petition of appeal in the High Court but seeking leave before appealing gets to the core of dispensation of justice itself. Gastorn on the same point raise concerns for the rationale for the requirement of leave of the court before one can appeal from the decisions of the High Court (Land Division) as not clear. He notes that the requirement does not exist in respect of appeals from decisions made in the

⁸⁹ Civil Appeal No.96 of 2013 (Unreported).

⁹⁰ [Cap. 216 R.E. 2002].

⁹¹ On the same point also see the case of *Morris Hamza Aziz v. Angelina Somon Mhavile and Another* Civil Appeal No. 73 of 2012.CAT (Unreported).

⁹² Civil Appeal No.70 of 2011(Unreported).

⁹³ See Tenga & Mramba, *Conveyancing and Disposition Law and Procedure*. (Law Africa, forthcoming)

ordinary registries of the High Court or even in the Commercial Division. He thus recommended for its removal as it poses unnecessary hindrance in the quest of accessing justice.⁹⁴

However, one has to look at this position from the point of view of the Shivji Commission which made its recommendations on the assumption that land disputes had to be brought to finality as quickly as possible. The basic intention was to make the High Court the final appellate court on matters of land except where there was an important point of law to be determined by the Court of Appeal. In ordinary civil cases, the requirement of leave of the High Court to appeal to the Court of Appeal is in respect of second appeals.⁹⁵ Section 5 (2) (c) of the Appellate Jurisdiction Act imposes a requirement for a certificate on a point of law if the matter originated from the Primary Court. The requirement for leave and a certificate on a point of law is there to control what matters can be taken to the Court of Appeal and to ensure that litigation comes to an end. One may therefore argue that the requirement for leave imposed by section 147 (1) of the Land Disputes Courts Act⁹⁶ may not be out of order.

3.0 The Approach and the Legal Implication

The appointment of chairmen and Assessors are greatly covered under part VI of the Act, Part VI of the Land Dispute Courts (the District Land and Housing Tribunal) Regulations 2002,⁹⁷ under the said Act it is upon the Minister responsible to appoint an assessor as per qualifications provided under Rule 22(1) also Rule 34(1) expresses the procedures on how the Assessors can be removed from office but the Act has does to show the criteria for removing the chairman in the Office. Regulation 35 states that, the Minister may after inquiry conducted under section 18(2) of the Land Act remove the Chairman from the Office. The power of the Minister is neither well checked under the Land Courts Act nor the Regulations with its code of conduct.

While the members of the village land councils are appointed by the village Council and approved by the Village Assembly the District Land and Housing Tribunal Chairperson and the members are directly appointed by and responsible to the Ministry responsible for lands. From this set up people who govern these land tribunals are not positioned to receive orders from the Chief Justice who is the head of the judiciary in Tanzania or the Registrar of the High Court which entertains appeals from the Tribunal. Indeed, there have been several occasions where the Registrar of the High Court has called for the original record of proceedings before the District Land and Housing Tribunal and met with opposition and/or be given a copy of the record.

In 2005, the Government amended the Act vide the Written laws Miscellaneous Amendment Act 2005 No. 12 where section 25(2) was deleted and substituted with a provision that the chairman of the Tribunal shall before holding office take an oath before a Judge of the High Court. The amendment went further

⁹⁴ See Gastorn K., *supra* p. 577.

⁹⁵ See section 5 (1) (c) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2002].

⁹⁶ Cap. 216, R.E 2002.

⁹⁷ G.N. No. 174 of 2003.

by introducing sub-section 3 which provides that the provision of sub-section 2 shall not apply where a Resident Magistrate is appointed to be a Chairman of the Tribunal. Despite the Amendment the Chairman of the District Land and Housing Tribunal is still responsible to the Ministry of Lands. This quagmire has set in confusion in the whole structure and principle of separation of powers. The dispute settlement mechanism puts to gallows the principle of separation of powers, rule of law and independence of the judiciary. This problem also applies to other established land dispute settlement organs like the Ward Tribunals which are under Ministries responsible for Local Government. The appointment and the duties performed by the tribunals bring legal hikeups.

Despite the Presidential Commission of Inquiry's recommendations, discouraging the involvement of the government machinery in land dispute in rural areas⁹⁸ the trend is still intact and unresolved. Under the village land Act the Village Land Council is one of the courts with exclusive jurisdiction to hear and determine all matters of dispute, actions and proceedings concerning village land. It is somewhat surprising that the Council falls under the ambits of the judicial ladder as far as land adjudication is concerned. This leaves much to be desired regarding the competence of the officers. Generally, judicial function commands a mastery of legal principles some of which are technically cumbersome. Looking at the qualification of the members of the Village Land Council it does not warrant that such knowledge is demonstrable. The essential requirements are those that an ordinary resident of the village can possess. It does not require specialized skill in legal issues. This raises the crucial question as to what was intended and if it can be achieved with the current organs. Reflecting back to what the Presidential Commission envisaged it would appear that some of the court organs proposed were intended to make land adjudication more democratic through the principles of participation, accessibility, equality and subsidiarity. The adoption of this approach as suggested by the Commission is yet to bear fruits as justice cannot be guaranteed by liberal rules of representation but fairness, certainty and competency of the officers.

In addition, the judiciary occupies a special position in any democratic society. It is part and parcel of the state within the framework of the doctrine of separation of powers. Under this doctrine, the legislature is supposed to make the laws, the judiciary to interpret and administer them and the executive to enforce them. For the judiciary to be able to undertake its functions fairly and impartially, it is required to be independent of the other two organs of the State and independent from political and other societal pressures. The judiciary embraces both the institution of courts and the persons who compose it, judges and the magistrates. As one of the principal organs of the State it is vested with the exercise of judicial power, i.e. that power which the State exerts in the administration of justice as opposed to the power it possesses to make laws and the power of executing them. It is the power to decide controversies between subjects of the State, or between the State itself and its subjects on matters of legal rights. On the basis of the principle of separation of powers, the State surrenders judicial power to the judiciary, which will have compulsory jurisdiction to inquire into disputes and then give binding, authoritative and enforceable decisions.

⁹⁸ URT, *Presidential Commission of Inquiry into Land Matters*, (1994) p. 199.

Although the intention of the legislature was to reduce the flood of land litigation in ordinary courts, the Land Dispute Courts Act is yet to be effective enough for that intention to be realized. Under the Land Dispute Courts Act No. 2 of 2002 and Regulations G.N. 174 of 2003, Land Tribunals have been established in 23 Districts since October, 2004. The High Court Land Division is also in place. By April, 2006, 5,583 cases had been filed in the Land Tribunals and 2,632 have been decided, 2,951 cases are pending. Most disputes are about ownership of land, land boundaries, non-payment of house rents, inheritance of land/houses, etc. The District Land and Housing Tribunals have not been established in every district. Some are established regionally which makes it difficult for people to access it. Also, the efficiency of the lower courts raises doubts. The cost for putting in place a vibrant operating structure is invariably expensive.

While the land courts in Tanzania mainland are governed by the *inter alia* the Land Disputes Courts Act, in Zanzibar, Land dispute settlement is regulated under the Land Tribunal Act of 1994. The section below analyses the jurisdiction, functions and mandates of the tribunal as compared to the Mainland.

4.0 Land Disputes Machinery in Zanzibar: The Framework of the Land Tribunal Act 1994

Land disputes in Zanzibar are primarily dealt with under the Land Tribunal Act No. 7 of 1994. The Act establishes the Land Tribunal of Zanzibar. Section (1) of the Act provides that the Tribunal shall be established in Pemba and Unguja. The Tribunal is chaired by a Chairman⁹⁹ with two deputies, one in Unguja and another in Pemba. Unlike the Mainland, the Chairman and his deputies are assisted by magistrates and assessors. The Chairman is appointed by the President in consultation with the Chief Justice while the deputies are appointed by Judicial Service Commission.¹⁰⁰ Unlike the mainland, the Chairman must be a person with knowledge in law with experience in dispute settlement. The magistrates are also appointed by the Judicial Service Commission.¹⁰¹ When the Tribunal is presiding over a dispute it must sit with two assessors who are appointed by the Chief Justice. Unlike the Mainland where the Land Tribunals are under the Ministry of Lands, the Land Tribunal in Zanzibar is a judicial organ and it operates under the judiciary. This departure in establishment creates a safeguard against interference by the executive or political affiliates conferring a sense of independence. Of course, this is subject to other variables such as the relationship between the judiciary and the executive. Further discussions below address the jurisdiction, evidence and enforcement of execution orders.

4.1 Jurisdiction of the Land Tribunal of Zanzibar

Section 13 provides for the jurisdiction of the Tribunal. It can preside over all land disputes arising from: - actions involving claims to right of occupancy/possession in respect of any land, demarcation of land, registration, review of any transfer or lease, use, partition, valuation, evictions expropriation, land contracts, property transfer, etc. Since the Tribunal is vested with immense authority is

⁹⁹ Section 4(1) of the Land Tribunal Act.

¹⁰⁰ *Ibid*, section 3(2).

¹⁰¹ *Ibid*.

requires people with high command of wisdom and with abundant knowledge and experience on land law and land related disputes. Although the Act confers jurisdiction on land claims by way of interpretation, it can be argued that the law has not barred a claim on land from being filed in other courts.

4.2 Civil Procedure Decree Cap. 8 and the Tribunal Procedure

Section 4 (1) of the Civil Procedure Decree (CPD) provides that,

‘the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.’

The law remains the principal law on conduct of civil proceedings. In the case of *Christopher Mtikila v. Attorney General*,¹⁰² it was stated *inter alia* that; the Civil Procedure Code is the principal law which provides for an alternative procedure or in case there is a lacuna set by another law. This case can be applied to Zanzibar by analogy because the provision of the Code cited above is *in pari materia* with the provision found under Section 7 of the Civil Procedure Code Act which is applicable to courts on the mainland.

The procedure under the Land Tribunal Act is outlined under sections 20 to 42 of the Act. Section 14 directs that the procedure of conduct of disputes must start with a reconciliation of the parties by the Chairman. The sole purpose of this procedure is to shorten the process and minimize the duration.¹⁰³ The Chairman, Deputy Chairman or Magistrate may unilaterally issue an order which is designed to expedite the process if he deems it appropriate.¹⁰⁴

Section 16 of the Land Tribunal of the 1994 Act before being amended aimed to put in place a system of land dispute hearing upon which the public could afford and easily access. It allowed informal procedures and only in rarely could the chairman adopt formal procedures. This had advantages and disadvantages however, since in some tribunals the chairmen could adopt total informal procedures and since there was no limit for the threshold of informality some of the proceedings could be more of a mockery of justice. On the other hand, since there was room to adopt some formal procedures some of the chairmen could balance between informality and formality to arrive at a just end. Yet, there was the possibility of some parties inclining more on the formality like an ordinary court since the law did not bar that. In any case, adopting more formal or purely formal procedure could be appropriate only in case both parties are represented by advocates. In case both parties are not represented, that could not help them apart from tying a grinding stone on their necks. Also, in case one party was represented and another was not this again could result into injustice since it was only the represented party that could take benefit of the formal procedures. Consequently, most appeals could result from the procedural aspects.

Generally, an effective land administration would ensure that there is easy access to justice and timely decision. Technicalities though not the fountain of justice

¹⁰² Civil Appeal No. 40 of 2002.

¹⁰³ Section 14 of the Land Tribunal Act.

¹⁰⁴ Section 15 of the Act.

have remained to be a bar for the ordinary people to access justice.¹⁰⁵ With the amendment of the Act in 2008 the system has changed whereby the Tribunal has to follow the rules under the CPD.¹⁰⁶ The rules of the CPD require strict compliance with technicalities. So the current system is not different from the adversarial system employed in ordinary courts apart from the tribunal assessors. Essentially, the tribunals are not supposed to follow the spirit of the CPD but its rules.

So, the only difference now is that there is a different approach in the way to institute a case. Instead of a plaint the tribunal uses a petition. Also, section 28 requires the Chairman / Magistrate to provide time for a pre-trial conference before the hearing of the case. The purpose of this approach is to shorten or simplify the hearing of the case.

According to section 18 of the Land Tribunal Act any party may participate in the hearing in person or, if the party is a judicial person, by a duly authorized legal representative.¹⁰⁷ The section further provided that any person could be advised and be represented at his expense by a legal practitioner or where allowed by law, any other representative.¹⁰⁸ This section was important as it acknowledged the informality that the Tribunal allowed by allowing any kind of representative to represent the complainant.¹⁰⁹ With the amendment of the Tribunal Act in 2008, it is only advocates who can represent parties. The amendment however limits the scope of Order 3 Rule 1&2 as the Order does not only recognize advocates but also recognized agents. A recognized agent under the CPD includes persons holding Powers of Attorney, persons carrying on business for and in the name of parties not resident within the local limits of the jurisdiction of the court.¹¹⁰

4.3 Evidential Procedures before the Tribunal

Unlike Tanzania Mainland, evidential procedures under the Tribunal raise interesting discussion. Under section 36, before the amendment of the Tribunal Act, there was no limitation in the giving of evidence. In particular, there was no rule applicable to presentation of evidence during hearing.¹¹¹ Evidence could either be made orally or in writing. The Tribunal had the power to accept any kind of evidence if it thought the evidence could help in determining the matter before it.¹¹² It was also possible to produce copies of documents.¹¹³ Hence, the Evidence Decree had no application in the hearing of cases in the Tribunal. After the amendment, section 36(1) was repealed and replaced by another section which provides that evidence shall be produced as per the procedure under the Evidence Decree Cap. 5. The obvious question is whether the new provision is only related to how evidence between the parties shall be given or shall include issues of relevancy and admissibility. It is also debatable if the new section is only concerned with how parties shall express themselves or shall include the procedure for relevancy and admissibility of the evidence.

¹⁰⁵ Section 20 for instance emphasizes on use of plain language in pleadings.

¹⁰⁶ Section 16 of the Act as amended.

¹⁰⁷ Section 18(1) of the Land Tribunal Act.

¹⁰⁸ *Ibid.*

¹⁰⁹ Section 18 of Land Tribunals Act as amended.

¹¹⁰ Order 3, Rule 2 (a) & (b) of the Civil Procedure Decree.

¹¹¹ Section 36(1) of the Land Tribunal Act.

¹¹² *Ibid.*, section 36(2) & (3).

¹¹³ *Ibid.*, section 36(4).

There should be a procedure for admitting evidence under the Tribunal where copies can be admitted and for admitting evidence under the evidence Decree. For instance, if the Evidence Decree shall be followed the tribunal cannot admit copies as evidence except where the strict provisions of the Evidence decree regarding admissibility of secondary documentary evidence have been complied with. However, under section 36(4) of the Land Tribunal copies of documents can be admitted while the Evidence Decree requires original documents to be produced to avoid possibility of forgery.

4.4 Enforcement and Execution of Orders and Judgments

The enforcement and execution of orders and judgments require some discussion. With the exception of orders of the Ward Tribunals in the Mainland being executed by the District Land and Housing Tribunals, the High Court and the Court of Appeal execute their orders. However, for Zanzibar enforcement and execution adopts a different procedure. Section 39 provided for the enforcement of judgments. Enforcement of any final judgement could proceed through any means available under the law, regulations or rules and deemed appropriate and in force under the laws of Zanzibar.¹¹⁴ Following the amendment, enforcement and execution of any judgment or decree shall proceed in accordance with the provisions available under the rules of the Civil Procedure Decree.¹¹⁵ A decree holder may as soon as practicable after the pronouncement of a judgement or decree, apply before the tribunal for the execution of the decree.¹¹⁶ Such application shall be made as provided for under the rules of the CPD.¹¹⁷ After the expiration of 14 days and no application for stay of execution has been made, the Presiding officer shall make an execution order as prayed for by the decree holder.¹¹⁸ In case there is an application for stay of execution the Presiding officer shall require all parties to appear before the Tribunal for hearing and determination of the application for stay of execution.¹¹⁹ Upon hearing the parties the Presiding officer shall proceed to make order for stay of execution.¹²⁰ No order for stay of execution shall be issued unless it is established that substantial and irreparable loss will result if the order is not made or security has been given by the judgment debtor to the performance of such decree.¹²¹ In case the Tribunal has issued an order that involves payment of money, it may direct that such payment be made in instalments setting out a schedule of payment over a stated period of time.¹²² The Tribunal can also change the payment schedule if it is shown that the judgment debtor cannot effect payment in the time and manner stipulated¹²³ but any extension of time cannot exceed three years.¹²⁴

The remedy that the law afforded to an aggrieved party was application for judicial review by filing a notice for judicial review in the office of the clerk where

¹¹⁴ Section 39 of the Land Tribunal Act.

¹¹⁵ Section 39(1) of the Act as amended.

¹¹⁶ *Ibid*, section 39(2).

¹¹⁷ *Ibid*.

¹¹⁸ *Ibid*, section 39(3).

¹¹⁹ *Ibid*, section 39(4).

¹²⁰ *Ibid*, section 39(5).

¹²¹ *Ibid*, section 39(5 (a) & (b).

¹²² *Ibid*, section 40(1).

¹²³ *Ibid*, section 40(2).

¹²⁴ *Ibid*, section 40(3).

the original petition was filed provided the matter involves a point of law.¹²⁵ In case no point of law is involved the decision of the tribunal would be final.¹²⁶ After the amendment, the only remedy today under the Act is an appeal to the High Court. Section 41 provides that any party aggrieved by the decision of the Tribunal shall have the right to appeal to the High Court.

4.5 The Land Tribunal Amendment Act, 2008 and its Practical Implication

With the amendment of the Land Tribunal Act of 2008 various changes have been brought about. While the Chairman was appointed by the President, with the amendment, the chairman can be appointed after consultation with the Chief Justice of the High Court of Zanzibar. Instead of the chair being appointed for a whooping five years term he is now appointed for three years with a possibility of reappointed to three more years.¹²⁷ This not only limits the independence of the appointees but also instils a sense of discipline and hard-working. The amendment has introduced a cadre of two deputy chairmen for Unguja and Pemba appointed by the Judicial Service Commission.¹²⁸ This not only swallows up the Tribunal within the realm of the judiciary but also ensures check and balance between the two organs of the state namely; the executive and the judiciary. It makes the Tribunal more of a creature of the judiciary unlike the Mainland District Land and Housing Tribunals which are headed by Chairmen appointed by the Minister for Lands. In addition, the amendment introduces Magistrates who are also appointed by the Judicial Service Commission.¹²⁹ Assessors of the court who were initially appointed by the Chief Justice *suo motto* are now appointed by him but in consultation with the Chairman of the Land Tribunals¹³⁰ and are not deemed to be members of the judiciary.¹³¹

On the appointment of the Chairman, deputy Chairman and the incumbent must be a *Zanzibari*, have a degree in Law with an experience of not less than three years of service, has knowledge of land issues, has general leadership abilities, have skill necessary for the resolution of disputes. While the criterion for some of the attributes is not clear, the spirit is clear that whoever has been appointed for the post must have sufficient skill, knowledge and experience to resolve a land disputes.¹³² It could be implied in the provision that a law degree is not a sufficient qualification but knowledge of land related issues more so to have passed land law. Indeed, this is a justified requirement since land disputes emanate from land tenure rules and the rules require a chequered knowledge of theories and principles which in most cases are not simplified.

As for the qualification of assessors, these must be residence of Unguja or Pemba, of high status in one's community for fairness, wise and learned in terms of culture and social practices [often]looked up for decisions, special knowledge in matters of land, and has acceptable sense of integrity.¹³³ The qualifications

¹²⁵ *Ibid*, see section 41 (1).

¹²⁶ *Ibid*, section 41(2).

¹²⁷ See section 4(1) of the Land Tribunal Act and Section 4(1) as amended.

¹²⁸ *Ibid*, section 4(2) of the Land Tribunal as amended.

¹²⁹ *Ibid*, section 4(3).

¹³⁰ *Ibid*, section 5.

¹³¹ Section 5(4) of the Land Tribunal Act.

¹³² Section 6(1) of Land Tribunal as amended.

¹³³ See section 6(2) of the Land Tribunal.

may draw curiosity since measuring one's sense of fairness, acceptable sense of integrity, wisdom or one sought after for decisions are may be abstract and hard to measure. This may lead into appointment of people basing on one's own whims and not factual.

In every session, the law requires that the Chairman, Deputy Chairman or Magistrate when presiding over matter must sit with two assessors.¹³⁴ The Act provides for special panel members who can be maintained as reserve list for both presiding officers and assessors in case the prescribed schedule of hearings cannot be adhered to.¹³⁵ It is assumed that the Special Land Tribunal Presiding officers shall have the same qualification as for appointed Chairmen or Deputy Chairmen. With this reserve list, it is apparent that it will help in ensuring not only there is access to justice but also the same is expedited since time is at the essence of justice delivery. Together with the assessors who are there to provide advice, the other key officer to assist in the determination of the matter is a land surveyor. Section 12 provides for the employment of a person qualified as surveyor with experience in valuation to perform the functions of a surveyor for the Land Tribunal whenever necessary. Since land disputes are based on land rights and interests and sometimes boundary contentions, it is of utmost importance for land related tribunals to have such an officer.¹³⁶ Although the same could be procured as an expert witness but having him as an officer of the Tribunal to help in analysing any maps, plans and drawing of the disputed land may provide a great help for the tribunal to fast-track the case and ensure fairness.

The Amendment Act makes few amendments to section 13 of the Principal Act which deals with jurisdiction and court process. The Tribunal could deal with issues involving *inter alia* registration of land, removal from possession or eviction from land, succession of land and all other matters related to land but these issues are now omitted. The omission of the issues from the previous list could imply that the power of the tribunal is now limited to only issues prescribed under the section. However, if careful consideration is made, the provision relating to actions involving claims to a right of occupancy and /or possession in respect of any land could go a long way. It could include actions for removal from possession or eviction from land, succession provided the estate does not fall under the Wakf and Trust Commission Act No 2 of 2007. As for omission of registration, section 160 and 161 provide recourse for action in case of breaches under the Registered Land Act No. 10 of 1990. Any expenses incurred by the Registrar shall be recovered summarily in the appropriate court¹³⁷ while any sum of money ordered to be paid by the Registrar shall be deemed to be a decree of the High Court to be enforced as such.¹³⁸ Under section 162 civil suits, and proceedings relating to proprietorship of land or a lease or a charge registered under this Act, or to any interest in any such land, lease or charge, being an interest which is registered or registrable under the land registration Act or if it is an overriding

¹³⁴ Section 7 of the Land Tribunal Act as amended.

¹³⁵ Section 8(1) of the Land Tribunal Act.

¹³⁶ See further section 19 for experts to provide technical evidence.

¹³⁷ Section 160 of the Registered Land Act.

¹³⁸ *Ibid*, section 161.

interest¹³⁹ shall be tried by the High Court or if the value does not exceed forty thousand shillings by the High Court or subordinate Court. So, having a different forum for registered land would be in conflict with the Land Tribunal Act and the Registered Land Act which had already provided another forum. With the omission of inclusion of all other matters related to land it now means that the Tribunal will be limited to only dealing with the matters listed under section 13 as amended. Should an issue touches on land but is not specifically mentioned the parties will be at liberty to bring it to the ordinary courts.

5.0 Rationale for Land Tribunals in Land Dispute Settlement Framework

There have been contradicting arguments regarding the rationale behind the establishment of Tribunals. To some, Tribunals have often been preferred to courts because they have the advantages of speed, cheapness, informality and expertise. These advantages are of particular importance in areas involving mass administrative justice such as the distribution of social welfare benefits. It would be extremely difficulty for the ordinary courts to cope with the large increase in case load if these matters were assigned to the ordinary judicial process. The creation of a tribunal system can also alleviate problems for the courts which can become inundated by judicial review applications within a particular area. Another argument is that the ordinary courts might not be sympathetic to the protection of the substantive interests contained in the legislation that lay the foundation of the welfare state at the turn of the century and that the matter should be assigned to a tribunal instead. Having realized that the judiciary is not always on its side, there have also been attempts by the executive to avoid crossing paths with the courts of law. And the executive has not been shy about it. It has publicly aired its distrust of the courts.¹⁴⁰ Thus, the introduction of the Tribunal system may be an attempt at the executive to embed itself in the administration of justice in land related matters, which is in fact an important political issue.

Yet another argument considers the creation of some Tribunals as a symbolic means of giving the appearance of legality in a particular area in order to render more palatable unpopular changes in the substantive benefits to which individuals were entitled.¹⁴¹ The essential problem could be the ability to make final, legally enforceable decisions, subject to review and appeal, independence from any department of Government; the holding of a public hearing that is judicial in nature; possession of expertise; a requirement to give reasons and provision for appeal to the High Court on points of law. A vast number of

139 Under section 30 of the Registered Land Act... unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same without there being noted on the register: (a) rights or way, rights of water and profits subsisting at the time of first registration under the Act (b) natural rights of light, air, water and support, (c) rights of compulsory acquisition, resumption, entry, search and user conferred by any other law, (d) leases or agreements for lease for a term not exceeding two years, periodic tenancies and indeterminate tenancies within the meaning of section 46 of the Act, (e) charges for unpaid taxes, rates or other moneys which without reference to registration under the Act are expressly declared by any law to be a charge on land, (f), rights acquired on or in process of being acquired by virtue of any law relating to limitation of action by prescription, (g) the rights of person in actual occupation of land or in receipt of rents or profits therefrom save where enquiry is made of such person and rights are not disclosed, (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, and dams erected, constructed or laid by virtue of any power conferred by any law.

140 Peter C., *Independence of the Judiciary in Tanzania: Many Rivers to Cross*, paper presented at a seminar hosted by Kituo cha Katiba February, 2008.

141 Craig P.P; *Administrative Law*. (2003). Sweet & Maxwell. London at 253.

questions that arise from day to day affecting the interests of thousands of people must be disposed of much more easily than can be in the stately and costly courts of law.¹⁴² They facilitate the disposition of cases without the delay that would clog the administrative machinery by adoption of simpler speedy procedures than it is under ordinary courts. It will be noted that the tribunals are not bound by such complex rules of procedure or such strict rules of evidence as do prevail in ordinary courts. For instance they may admit hearsay evidence while at the same time observing rules of natural justice.¹⁴³ Yet, in the recent amendment to the laws relating to the land tribunal system both in Zanzibar and the Mainland the Tribunals are now operating as conventional courts with the attendant delays in the disposal of matters before them, which was not the intendment of the respective laws when they were first enacted.

6.0 Concluding Remarks

Despite the simplicity of procedures inherent in tribunals what should be most guarded is justice and not the volume of cases adjudicated within a given time. Apart from the attributed benefits of establishing tribunals, the tribunal system in relation to matters of land disputes has been plagued with several problems. The use of assessors has in a way made progress in the litigation process slow. These lay people are mostly ignorant of their responsibilities and powers. They end up cross-examining the parties and their witnesses. They deliver their opinions based on law while they are not trained in law. On a number of occasions in Tanzania Mainland, Assessors in the District Land and Housing Tribunals have been seen to be directly involved in execution of orders and decrees of the Tribunal despite the fact that there are Tribunal Brokers appointed for such purposes.

On the other hand, the Tribunals have in most cases tried to conduct their business closely following the procedures that are followed by the ordinary courts. This has led to delays in the disposal of the litigation before the Tribunals just as in the ordinary courts.

¹⁴² Phillips O. H & Jackson P.; *Constitutional and Administrative Law*. (2001). Sweet & Maxwell, London at 686.

¹⁴³ *Ibid*, at 687.