

**THE UNITED REPUBLIC OF TANZANIA
THE LAW REFORM COMMISSION OF TANZANIA**



**REPORT ON THE REVIEW OF LEGAL
FRAMEWORK GOVERNING LAND DISPUTE
SETTLEMENT IN TANZANIA**

**Minister for Constitutional and Legal Affairs,
Dodoma**

APRIL, 2020

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Ref. No. **CA.70/198/01/75**

2nd April, 2020

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Hon. Minister,

RE: REPORT ON THE REVIEW OF LEGAL FRAMEWORK GOVERNING LAND DISPUTE SETTLEMENT IN TANZANIA

In terms of section 4(2) of the Law Reform Commission of Tanzania Act, Cap. 171 the Commission may, whether on its own instance or otherwise review any law or branch of the law and propose measures necessary for:-

- (i) bringing that law or branch of law into accord with current circumstances of Tanzania;
- (ii) eliminating anomalies or other defects in the laws; and
- (iii) proper codification and simplification of that law or branch of law.

By a letter of reference No.CAB.378/379/01 dated 20th February 2018, the Ministry of Constitutional and Legal Affairs requested the Commission to undertake Review on Legal Framework Governing Land Dispute Settlement in Tanzania by examining the Commission Report on the Review of the Legal Framework on Land Dispute in Tanzania (2014),

Report on the Programme for Assisting and Enhancing Ward Tribunals in Administration of Justice (2011) and other relevant reports.

The Commission has accomplished the review of the Legal Framework Governing Land Dispute Settlement in Tanzania after conducting a comprehensive desk review and extensive consultative meetings with various stakeholders for the purpose of gathering data, views and recommendations which form part of this report.

Honourable Minister, subject to section 14 (1) of the Law Reform Commission Act, Cap. 171, the Commission is pleased to submit the following documents:

- (i) The Report on the Review of Legal Framework Governing Land Dispute Settlement in Tanzania;
- (ii) A Matrix on stakeholders' views and recommendations; and
- (iii) A Draft Bill on Land Disputes Courts (Repeal and Transitional Provisions) Act 2020.

I remain,
Yours sincerely,



January Henry Msoffe, J.A (Rtd)

A handwritten signature in blue ink, appearing to read 'J. H. Msoffe', written over a dotted line.

CHAIRMAN



Mr. Julius Kalolo-Bundala

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Commissioner



Mr. Idd Ramadhani Mandi

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PREAMBLE

“When I use my energy and talent to clear a piece of ground for my use it is clear that I am trying to transform this basic gift from God so that it can satisfy a human need. It is true, however, that this land is not mine, but the efforts made by me in clearing the land enable me to lay claim of ownership over the cleared piece of ground. But it is not really the land itself that belongs to me but only the cleared ground which will remain mine as long as I continue to work on it. By clearing that ground I have actually added to its value and have enabled it to be used to satisfy a human need. Whoever then takes this piece of ground must pay me for adding value to it through clearing it by my own labour.”

J. K. Nyerere ¹

¹ Nyerere J.K, *Freedom and Unity: A Selection from Writings and Speeches 1952-1965*, Oxford University Press: Dar es Salaam, 1966, p.53.

THE COMMISSION

The Law Reform Commission of Tanzania ("the Commission"), is a permanent statutory body established by the Law Reform Commission, Cap.171. It has been in operation since 1983. Its functions include; taking and keeping under review all the laws of the United Republic of Tanzania with a view to its systematic development and reform. In the exercise of its powers, the Commission may review any law or branch of law and propose measures necessary for bringing that law or branch of law into accord with current circumstances. It may also consider such reforms of any laws or branch of laws of Tanzania as may from time to time be referred to it by the Minister responsible for Constitutional and Legal Affairs, Attorney General, MDAs, private institutions and individual persons.

COMMISSIONERS

1. Hon. Justice (Rtd) January H. Msoffe Chairman
2. Mr. Julius Kalolo-Bundala Commissioner
3. Mr. Idd R. Mandi Commissioner

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ACKNOWLEDGMENT

The Commission would like to express its sincere appreciation to the Judiciary of Tanzania and the World Bank for the financial support. The Commission is also indebted to the Judiciary of Tanzania; Drug Control and Enforcement Authority; and the School of Law of the University of Dar es Salaam for allowing their staff to form a vibrant working team.

Further, the Commission acknowledges the great support from the Offices of Regional Commissioners of Dodoma, Iringa, Mbeya, Songwe, Shinyanga, Mwanza, Tanga, Kilimanjaro, Arusha and Dar es Salaam for organizing stakeholders' meetings. The Commission extends its gratitude to all stakeholders who provided valuable information. In the final analysis, the Commission bears full responsibility for both the form and contents of this Report.

EXECUTIVE SUMMARY

In addressing the challenges facing land disputes settlement system, the Government has taken various initiatives aimed at an improved land disputes justice delivery. Among the notable initiatives is the promulgation of National Land Policy which advocates for the establishment of an independent, expeditious and accessible land dispute settlement system and the enactment of land legislation which establish the land disputes courts. Despite the initiatives taken by the Government there are challenges facing land dispute settlement system ranging from ineffective coordination, inaccessibility to cumbersome legal technicalities.

The Ministry of Constitutional and Legal Affairs requested the Commission to undertake a review on the land dispute settlement by examining the challenges facing it. Having conducted research on the subject, the Commission found that despite achievements which have been registered by the land courts still there are a number of institutional hitches facing the system. These include constitutionality of adjudicatory organs which are outside the court system, funding and insufficient personnel in District Land and Housing Tribunals (DLHTs) and Ward Tribunals (WTs) and absence of DLHTs in some districts. Thus, it is recommended that Village Land Councils (VLCs) and WTs should have and exercise mediatory powers only. Adjudicatory powers of the WTs should be transferred to Primary Courts. DLHTs should be aligned with the Judiciary of Tanzania and their functions be taken by District Courts. There should be simplified and friendly procedures for land disputes at all levels so that there is uniformity in all land courts.

Independence of land courts was one of the issues that emerged during field research. It was found that VLC, WTs and DLHTs are under the executive arm of the State hence prone to directives of political nature that politically impair their impartiality. It is, thus, recommended that VLC

and WT remain under the Ministry responsible for local government to perform mediatory functions only. Powers and functions currently held by DLHTs be transferred to the District Courts.

The findings also reveal that VLC and WTs are under-funded. Therefore, it is recommended that sufficient funds be allocated to enable them to effectively perform their functions.

Regarding accessibility of VLC, WTs and DLHTs, it was found that there are villages, wards and districts in which VLC, WTs and DLHTs have not been established respectively. Thus, it is recommended that VLC, WTs be established and maintained in all villages and wards respectively. Powers and functions of DLHTs be transferred in the District Courts.

It was noted that there are no rules to govern fees structure in the VLC and WTs, as a result, filing fees and charges are imposed arbitrarily. It is, thus, recommended that rules be made to provide for fees structure in VLCs and WTs.

The research found that members of VLCs and WTs do not have adequate knowledge and skills to deal with land disputes. It is, thus, recommended that VLCs and WTs remain with the mediatory role in land matters and that the local government authorities should prepare training programmes to ensure that relevant officials have mediatory skills.

On the issue of pecuniary jurisdiction of WTs, it was disclosed that some litigants devalue landed properties in order to fit within pecuniary jurisdiction of WTs.

Regarding the expeditious determination of land cases, research disclosed that hearing is often times adjourned mainly due to absence of assessors, chairman, parties and advocates. It is recommended that

DLHTs be aligned with the Judiciary of Tanzania. The law should allow discretion of land courts to use assessors only at the request of the parties. Moreover, the law should provide for the qualifications of assessors in terms of age and knowledge.

Another issue that emerged during field research was the lack of procedural guidelines for WTs in handling land matters. It was found that since WTs are empowered to regulate their own procedures, absence of uniform procedures is likely to lead to a miscarriage of justice. Simple regulations to regulate proceedings in WTs are necessary and should actually be made in Kiswahili.

As for taxation of bill of costs in the DLHTs, it was revealed that the law is silent on who is the taxing master. In practice, it is the chairman who acts as a taxing master. In view of the recommendation to merge the DLHT with the District Courts the challenge about taxation of bill of costs will be resolved.

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ABBREVIATIONS

Cap	-	Chapter
CPC	-	Civil Procedure Code
DLHT	-	District Land and Housing Tribunal
GN	-	Government Notice
MDAs	-	Ministries, Departments and Agencies
PO-RALG	-	President's Office- Regional Administration and Local Government
VC	-	Village Council
VLC	-	Village Land Council
WDC	-	Ward Development Committee
WEO	-	Ward Executive Officer
WT	-	Ward Tribunal

POLICIES

The National Land Policy, 1995

National Trade Policy, 2003

Programme on Business Environment Strengthening for Tanzania (BEST), 2005

National Five Years Development Plan 2016/17 – 2020/21 (FYDP II)

LIST OF LAWS

PRINCIPAL LEGISLATION

The Constitution of the United Republic of Tanzania, Cap.2.

The Land Act, Cap. 113.

The Land Disputes Courts Act, Cap. 216.

The Village Land Act, Cap.114.

The Civil Procedure Code Act, Cap.33.

The Ward Tribunal Act, Cap.206.

The Advocates Act, Cap. 301.

The Law Reform Commission Act, Cap.171.

The Local Government Authorities (District Authorities) Act, Cap.287.

The Local Government Authorities (Urban Authorities) Act, Cap.288.

SUBSIDIARY LEGISLATION

The Land Dispute Courts (The District Land and Housing Tribunal) Regulations, GN. No. 174 of 2003.

The District Land and Housing Tribunal Code of Conduct GN. No.177 of 2016.

The Advocates Remuneration and Taxation of Costs Rules, GN. No. 515 of 1991.

LIST OF CASES

Azania Bank Corp Ltd Vs Edgar Kahwili, Civil Appeal No.154 of 2015, Court of Appeal at Iringa (unreported).

Godbless Lema Vs Musa Hamis Mkanga, Civil Appeal No. 47/2012, (unreported).

Moses David Vs Alouis Anthony Ghiselli, Land Appeal No. 16 of 201, High Court Bukoba, (unreported).

Kanda v. Government of the Federation of Malaya (1962) A.C. 322.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Mandate of the Commission

The Law Reform Commission of Tanzania (Commission) is an independent government institution established in 1983 by the Law Reform Commission of Tanzania Act.² The main function of the Commission is to take and keep under review all the laws of the United Republic of Tanzania with a view to ensure its systematic development and reform.³

The Commission performs its functions in two ways. First, on a reference from the Minister, the Attorney General or any other Department or Institutions of the Government, then the Commission will examine the matter referred to it and make recommendation.⁴ Second, on its own initiative and subject to informing the Attorney General, the Commission may undertake the examination of any matter for the purpose of reform.⁵

1.2 Background to the Review

Following the prevalence of land disputes and public complaints on the operation of land courts, the Commission on its own accord decided to review the legal framework governing land disputes settlement in Tanzania in 2003. In 2014, the Commission submitted to the Minister responsible for constitutional and legal affairs, a Report entitled “The Review of the Legal Framework on Land Dispute Settlement in Tanzania”. The Report revealed that although the land dispute settlement system was established to speed up resolution of land disputes, its efficiency has been considerably poor owing to various factors including legal and institutional constraints, lack of adequate personnel and challenges related to integrity of part of officials.

2 Cap. 171 section 3.

3 *Ibid.*, section 4.

4 *Ibid.*, section 8.

5 *Ibid.*, section 9.

Experience has shown that the land disputes settlement system has inherent flaws relating to governance and accountability. For instance, land disputes adjudicating organs are under different ministries. As the VLCs and WTs are under the ministry responsible for local government, the DLHTs are managed by the Ministry responsible for land matters and the High Court and Court of Appeal which determine land disputes at their level do form part of the Judiciary.

The report highlighted the technical and practical problems created by the current system of land dispute settlement and recommended for the necessary legal reforms which could incorporate necessary initiatives for addressing the highlighted challenges in the current system.

In addressing the challenges facing land disputes settlement system, the Government has taken various initiatives geared towards improved land disputes justice delivery. Despite such initiatives the system efficiency in terms of expeditious, accessibility and just system for adjudicating land disputes has been significantly poor.

It is on this basis the Ministry of Constitutional and Legal Affairs requested the Commission, vide letter with reference **No. CAB.378/379/01** dated 20th February 2018 to undertake another review of the settlement of land disputes by examining the Commission Report on the Review of the Legal Framework on Land Dispute, Report on the Programme for Assisting and Enhancing Ward Tribunals in Administration of Justice and other reports.

1.3 Statement of the Problem

The fundamental principle of land policy in land disputes settlement envisages the establishment of an **independent, expeditious, accessible** and **just** system for the adjudication of land disputes which will determine

and dispose cases without undue delay.⁶ Consequently, section 167(1) of the Land Act vests exclusive jurisdiction to entertain and determine land matters to the Court of Appeal, High Court, DLHT, WT and VLC.⁷ However, it has been noted that these courts and other quasi-judicial bodies have been ineffective in delivering justice as expected for various reasons ranging from inaccessible location due to long distance from service centres, lack of adequate financial and human resources and ineffective coordination among the organs falling under the Judiciary and the quasi-judicial organs.

In terms of separation of powers between the executive and the judiciary, it has been noted that VLCs, WTs and DLHTs are under the executive thereby threatening their independence in dispensing justice.

It is further noted that, the rate of filing fees in these courts is still too high to be afforded by ordinary citizen. For instance filing an application in DLHT ranges from 40,000/= up to 80,000/=.⁸

Besides all the initiatives that the Government has taken towards revamping land dispute resolution there has been little achievement in terms of timely and expeditious delivery of justice.

The current legal framework on land disputes settlements is characterized by multiple and uncoordinated organs with different lines of accountability coupled with cumbersome legal technicalities that defeat independence, expeditious, accessible and just dispute settlement system and thereby lead to miscarriage of justice.

These challenges render the land disputes settlements system to be ineffective, inaccessible and untrustworthy by key stakeholders thus calling for immediate supplementary review.

6 The Land Act, Cap. 113, section 3(1) (m).

7 Cap.113. Also see sections 62 and 3 of Cap. 114 and Cap.216 respectively.

8 Second Schedule to GN. 174/2003.

1.4 Significance of the Review

The findings of this review assisted the Commission to make concrete and constructive recommendations to the government for addressing the challenges facing the land dispute settlement system in Tanzania.

1.5 Methodology of the Review

In carrying out this review, the Commission used documentary review and field research as methods of collecting primary and secondary data. Documentary review targeted the collection and analysis of secondary data whereby various materials were accessed and reviewed. This included policies, legislation, international instruments, reports, books, journals, cases and newspapers. Likewise, various websites and database were accessed to collect more information on land disputes settlement.

In field research, the Commission conducted stakeholders' consultative meetings and validation workshops. In achieving this, stakeholders in Shinyanga, Mwanza, Tanga, Kilimanjaro Arusha, Dodoma, Iringa, Mbeya, Songwe and Dar es Salaam were consulted.

1.6 Scope of the Review

The Commission reviewed and examined various reports relating to land dispute settlement system in Tanzania and evaluated government initiatives that have been taken to address the challenges facing land disputes in Tanzania. The Commission further considered the gaps in the reports and proposed appropriate recommendations to the government.

CHAPTER TWO

POLICY AND LEGAL FRAMEWORK GOVERNING LAND DISPUTE SETTLEMENT IN TANZANIA

2.1 Introduction

This Chapter analyses policy and legal framework governing land disputes settlement in Tanzania. It identifies policies and laws governing land disputes settlement through courts and quasi-judicial bodies.

Land as a means of production cuts across all spheres of socio-economic development. Owing to this fact, the National Land Policy, the National Trade Policy and other policies have set policy directions and government commitments to creating an independent, expeditious and just judicial system. The policies emphasized on the affordable and improved access to court.

The legal framework governing land disputes settlement is regulated by various pieces of legislation. This chapter also analyses these pieces of legislation and examines their coverage, strength and weakness in terms of land disputes settlement matters.

2.2 Policies

2.2.1 The National Land Policy, 1995

The National Land Policy provides for recognition that all land in Tanzania is public land vested in the President as a trustee on behalf of all citizens.⁹ It provides for efficient, effective, economical and transparent system of land dispute administration.¹⁰ It also enables all citizens to participate in the decision making on matters connected with their occupation and/or use of land.

⁹ National Land Policy, 1995, p. 9.

¹⁰ *Ibid.*

The Policy further directs the establishment of an independent, expeditious and just system for adjudication of land disputes which will hear and determine cases without undue delay.

2.2.2 National Trade Policy, 2003

The National Trade Policy aims at, among other things, establishing an enabling business environment through a process of continuous adjustment of the legal and regulatory framework impacting on the performance of the business sector.¹¹

The Policy advocates for legal and regulatory reforms with a view to lower transaction costs, enhance business compliance and improve efficiency and competitiveness. The Policy requires the Government to take measures to stimulate international competitiveness through, among other things, reduction of unnecessary bureaucratic procedures that lead to high transaction costs for the business sector and expediting the establishment of market-supporting institutions in the area of better regulation to ensure coordinated legal and regulatory reforms and improvement of commercial justice delivery.¹²

The Government commits itself to providing enabling policy environment that will facilitate the private sector to become the engine of the economic activity and growth through efficiency and better performance. In this respect business transactions need regulatory system and conducive environment which allow business to prosper at reduced transaction costs. These involve among other things, speedy and non-bureaucratic court processes in resolving cases arising from investors' transactions so as to allow investors to engage well in production, both in agriculture and industries.

11 National Trade Policy, 2003, p. 21.

12 *Ibid.*

The Government pledges to implement measures to promote better regulation and enhance efficient commercial justice delivery with an objective of stimulating private sector service providers.¹³

2.2.3 Programme on Business Environment Strengthening for Tanzania (BEST), 2005

The Programme on Business Environment Strengthening for Tanzania (BEST) is designed to create an enabling business environment which enhances economic growth for rapid and sustainable poverty reduction.¹⁴ The Programme aims at reducing the burden on businesses by eradicating procedural and administrative barriers and improving the quality of services provided by the Government to the private sector.

Under the component of commercial disputes resolution, the Programme aims at improving access to the court system for formal and informal businesses, speeding up determination of commercial disputes and diversification of channels for commercial justice delivery, including alternative dispute resolution.¹⁵ It points out that a well-functioning commercial justice system can encourage lenders to provide capital necessary for business growth.

2.2.4 National Five Years Development Plan 2016/17 -2020/21 (FYDP II)

One of the objectives of the National Five Years Development Plan is improving the environment for doing business and positioning the country as a regional production, trade and logistic hub.¹⁶ Among the key interventions provided under the Plan in order to achieve the above stated objective include; enhancing measures to promote conducive and enabling business environment through reduction in the cost of doing business; undertaking legal, institutional and regulatory reforms through amending laws and simplifying regulations.¹⁷

13 *Ibid.*

14 tanzaniagateway.org/docs/BESTProgrammeSnapchat.pdf (Assessed on 13th March, 2020).

15 *Ibid.*

16 National Five Years Development Plan, 2016/17-2020/21, p.2.

17 *Ibid.*, p.126.

The Plan also aims at ensuring that necessary measures are taken to ensure equal access and timely justice for all people. These measures include improving efficiency of adjudication of cases and deepening of legal sector and law reform.

Independent, expeditious and just land disputes settlement system play a decisive role in capital accumulation, encourage people to use land as collaterals and improve investments in land for agricultural purposes and real estates.

2.3 Laws

2.3.1 The Constitution of the United Republic of Tanzania, Cap. 2

The Constitution is a mother law of Tanzania which guarantees every citizen the right to own property which includes land.¹⁸ It vests the authority of final decision in dispensation of justice in the United Republic under the judiciary of Tanzania.¹⁹ The Constitution provides that in delivering decisions in matters of civil and criminal nature the court has to observe impartiality.²⁰

The Constitution also provides for the independence of the Judiciary while dispensing justice. The Constitution requires that in exercising the powers of dispensing justice, all courts have to be free and are only required to observe the provisions of the Constitution and those of the laws of the land.²¹ However, with regard to land courts, some of them like the WTs and the DLHTs are still under the executive arm of the state and therefore their independence in dispensing justice is questionable.

2.3.2 The Land Act, Cap. 113

The Land Act was enacted as a response to the policy directives enshrined in the National Land Policy. It provides for the legal framework on the general management of land and settlement of disputes and

18 The Constitution of the United Republic of Tanzania, Cap.2 Article 24.

19 *Ibid.*, Article 107A (1).

20 *Ibid.*, Article 107A (2).

21 *Ibid.*, Article 107B.

other related matters. It establishes and vests exclusive jurisdiction over land matters to the Court of Appeal of Tanzania, the High Court, the DLHT, WT and the VLC.²²

The Act further provides for the procedure of recovering land rent by the Government through judicial process.²³ It provides that where a person who is liable for rent for a granted right of occupancy, fails to pay rent or any installment on the due date, an authorized officer may serve or cause to be served on such person a written notice calling upon such person to pay such rent or installment within fourteen days.²⁴

The Act provides further that if the defaulter fails to comply with the notice, the authorized officer may cause a copy of the notice to be filed in the DLHT or District Court within which the area in which the land is situated. The law provides that upon such copy being filed, it deems to be a decree passed by such court against the person to whom the notice is addressed for payment by him. The execution of the decree may be done by the court on the application made ex parte by the authorized officer.²⁵

The provisions of section 50 creates new procedure sui generis to be followed by courts in proceedings for recovery of land rent. However, it contravenes the procedure provided in the Land Disputes Courts Act, the Government Proceedings Act and the Civil Procedure Code Act.

2.3.3 The Village Land Act, Cap. 114

The Village Land Act provides for legal and institutional framework for the administration and management of land in Mainland Tanzania. With regard to dispute settlement, the Village Land Act²⁶ establishes the VLC in every village with the mandate to mediate between and assist parties to arrive at a mutually acceptable solution on any matter concerning

22 Land Act, Cap. 113, section 167.

23 *Ibid.*, section 50.

24 *Ibid.*, section 50(1).

25 *Ibid.*

26 The Village Land Act, Cap. 114, section 60.

village land. The composition of the VLC is not less than five and not more than seven members of which not less than two must be women.²⁷

Generally, the role of the VLC is to mediate between the parties. However, where the parties to the dispute do not accept the conclusions of any mediation into a dispute or decline to make use of the services of the village land council, are permitted to refer the dispute to a court having jurisdiction over the subject matter of the dispute which may be either the WT, DLHT or the High Court.²⁸

2.3.4 The Land Disputes Courts Act, Cap. 216

The Land Disputes Courts Act establishes the land courts and provides for powers of such land courts over land matters. The Act provides for procedures on conducting proceedings of land matters in these courts. This Act gives the following courts an exclusive jurisdiction over land matters; the VLC, WT, DLHT, the High Court and the Court of Appeal.²⁹

In 2017 section 2 of this Act was amended³⁰ to redefine the term “district council” to have the meaning of “Council” ascribed to it under the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act” and deleting the word “District Council” in section 10(1) of the Act. The amendment was made to cure the contradiction as to whether the WTs in urban areas, municipalities and city councils have jurisdiction over land matters regardless of the values of the subject matter.

Furthermore, section 23 of the Act was amended by deleting the words “one chairman” appearing and substituting for it the words “at least a Chairman” to allow the DLHT to have more than one chairman. This allows the appointing authority to appoint more than one chairman in one tribunal depending on the workload.

27 *Ibid.*, section 60(2).

28 The Village Land Act, section 62.

29 Land Disputes Courts Act, Cap. 216, Section 3.

30 Written Laws (Miscellaneous Amendment) No. 13 of 2017.

Section 28 of the Act was amended by inserting a new subsection (2) to require the Registrar of DLHTs to have an additional qualification of having a degree in law from a recognized university and experience in the field of law for the period of not less than ten years. This was done to ensure that the Registrar of DLHTs has sufficient knowledge and experience for proper management of DLHTs.

Additionally, section 33 of the Act was amended by raising the pecuniary jurisdiction of DLHTs from fifty million Tanzanian shillings to "three hundred million" for recovery of possession of immovable property; and on other claims from forty million Tanzanian shillings to two hundred million Tanzanian shillings. This was done to provide a wider range of DLHTs' pecuniary jurisdiction so as to reduce the number of cases which were filed in the High Court.

Section 44 of the principal Act was also amended by adding subsection (2) that require the High Court after having made any findings as to the correctness, legality or propriety of any decision, order or regularity of any proceedings on the matter forwarded to it under subsection (2), to remit the file to the DLHT within fourteen days from the date of the order. The amendment was made to cure the problem of unnecessary prolonged delays in dispensing justice in land matters caused by delays in remitting files to the trial tribunals by the High Court.

Furthermore, section 55 of the Act was amended by making a provision for the protection of chairman, member, officer, servant or agent of a VLC or WT and DLHT.

Section 56 was amended to empower the Minister responsible for land matters to make regulations for conduct, appointment and removal of chairpersons and assessors. The amendment was effected to avoid arbitrary removal of a chairman from office.

The Minister is also empowered to make regulations prescribing the general guidance and conduct of court brokers. The regulations are intended to regulate the operations of tribunals' brokers.

In 2018, the Act was further amended by adding a new section 41A empowering the Chief Justice to vest any resident magistrate with jurisdiction ordinarily exercisable by the High Court after consultation with the Minister responsible for legal affairs and the Attorney General.³¹ The objective of this provision is to reduce backlog of land cases in the High Court.

2.3.5 The Civil Procedure Code Act, Cap. 33

The Civil Procedure Code Act is the main piece of legislation which regulates all civil proceedings in all courts. With regard to land disputes, the Civil Procedure Code Act applies in the High Court but pursuant to section 51 of the Land Disputes Courts Act, it applies to the DLHTs where there are lacunae in the Regulations.³² This Code provides on how to institute suits, conduct of proceedings, hearing, how to write a judgment and decree, how to execute the decree and how to appeal among others.

2.3.6 The Ward Tribunals Act, Cap.206

The Ward Tribunals Act establishes WTs and provides for their jurisdiction, power, practice and procedures and other related matters. According to section 3 of the Act, the WT is established in every ward in Mainland Tanzania. The composition of the WT is not less than four and not more than eight members who are elected by the Ward Development Committee (WDC) of the particular ward. The quorum for inquiry is half of the members appointed in particular tribunal.³³

The primary function of WTs is to secure peace and harmony in the area for which they are established, by mediating between and assisting,

31 Written Laws (Miscellaneous Amendments) No.3, 2017, Section 8.

32 GN.174/2003.

33 Cap.206, section 4(1) & (2).

parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.³⁴

With regard to land disputes, the WTs are empowered by the Land Disputes Courts Act,³⁵ to determine land disputes provided that the value of the subject matter does not exceed three million Tanzanian shillings.

The WTs are vested with powers to adjudicate when mediation fails.³⁶ However, in practice WTs do not perform their primary role instead they opt for adjudication which is the secondary function.

2.3.7 The Local Government (Urban Authorities) Act, Cap. 288

The Local Government (Urban Authorities) Act provides for establishment, composition, functions and legislative powers of the powers of town, municipal, city councils and village authorities.

Section 59 of the Act provides for the functions of the Authority among others; to maintain peace, order and good government within the area of its jurisdiction; promote the social welfare and economic well-being of all persons within the area of its jurisdiction.

The Act empowers the town, municipal and city council to be planning and allocating authorities over land situated within their area of jurisdiction. By so doing the authorities are also involved in land administration. The Act provides for the establishment of Wards under which WTs are established and registration of villages under which the VLCs are established.

2.3.8 The Local Government (District Authorities) Act, Cap. 287

The Local Government (District Authorities) Act establishes district councils, township authorities, ward and village authorities and their

34 *Ibid.*, section 13(1).

35 Cap. 216.

36 *Ibid.*, section 16(1).

composition. It further provides for the procedure of the meetings, functions and duties and legislative powers of making bylaws. The Act empowers the local government authorities to perform and execute economic development such as agriculture industry and pastoralism.

Furthermore, the district authorities are empowered as a planning and allocating authority over land situated within their area of jurisdiction. The district authorities being responsible for planning and allocating committee over land, it also implies that the authorities are also involved in land administration.

The Law provides for the registration of villages in which the VLCs³⁷ are established. On the other hand, the law establishes the wards under which the ward tribunals are also established. The organs that are responsible for dispensation justice at village and ward levels are established managed and regulated by district authorities.

However, the general administration and supervision of the wards and villages have been placed under the Ministry responsible for local government while appeals from WT are lodged at DLHT which is under the Ministry responsible for lands.

2.3.9 Conclusion

The analysis of the pieces of legislation reveals that in 2003 the Laws established land courts with exclusive jurisdiction with the objective of ensuring expeditious, timely and just delivery of justice.

In furtherance of this objective various legal and administrative initiatives have been taken by the government in order to improve the land disputes settlement system. Some of the initiatives taken include the amendment of laws to improve the legal framework for land disputes settlement.

37 Cap.114, section 62.

The government also took initiatives to reduce backload of land cases in the High Court by raising the pecuniary jurisdiction of the DLHTs from fifty million to three hundred million shilling and empowering the Chief Justice to vest any resident magistrate with extended jurisdiction over land matters.

Besides these initiatives, the objectives for which the land courts with exclusive jurisdiction have been established have not successfully been achieved.

CHAPTER THREE

RESEARCH FINDINGS AND ANALYSIS

3.1 Introduction

This chapter analyses the views and observations on land disputes settlement system in Tanzania made by stakeholders during field research in selected regions. The chapter also covers the observations and recommendations advanced by the Commission on the same issues. Further, the chapter discusses the recommendations previously made by the Commission's Report on the Review of the Legal Framework on Land Dispute Settlement in Tanzania and Prime Minister's Office Regional Administration and Local Government's Report on the Programme for Assisting and Enhancing Ward Tribunals in the Administration of Justice.

3.2 Land Courts with Exclusive Jurisdiction

Stakeholders' Observations

Stakeholders observed that the establishment of land courts with exclusive jurisdiction had registered some achievements; these include friendly procedures as opposed to technicalities in ordinary courts; reduction of case backlog; peace and tranquility between parties as a result of successful mediation sessions, especially in VLCs and WTs.

They further observed that despite the achievements the land courts face several legal, institutional and administrative challenges. For example, it was observed that the WTs and DLHTs are sometimes interfered by political and government leaders. It was further observed that WTs and VLCs do not have enough resources in terms of finance, equipment, office accommodation and personnel, absence of procedural guidelines for WTs and VLCs and establishment of DLHTs in few districts.

In view of the above challenges, stakeholders recommended that certain measures should be taken in order to enable land courts achieve the objective of their establishment. Therefore some stakeholders recommended that: number of personnel in all land courts should be

increased to cater for the ever increasing demands; secondly and every district should have at least one DLHT with enough personnel and equipment. On the other hand, other stakeholders were of the view that land courts should be integrated into the judicial system; members and secretaries of WTs and VLCs should have at least a Certificate or Diploma in Law; and the need for increased funding in respect of DLHTs, WTs and VLCs.

Commission's Observations

The Commission observed that the idea behind establishing land courts with exclusive jurisdiction over land matters was to ensure that there was a friendly atmosphere within which land disputes could be timely disposed of. According to the National Land Policy, before the enactment of the current Land Acts,³⁸ land had become a source of frequent disputes due to lack of efficacy in land administration.³⁹ Institutions involved in resolving land disputes had no any hierarchical arrangements.⁴⁰ On land dispute settlement system, the Policy directs that there is a need to have well-established dispute settlement machinery, comprising *Mabaraza ya Wazee ya Ardhi* (translated as "Elders' Land Councils") quasi-judicial bodies at district, regional and national level.⁴¹

The need for efficient and specialized land dispute settlement machinery is reflected in relevant land legislation. One of the fundamental principles of the National Land Policy is to establish an independent, expeditious and just system for adjudication of land disputes.⁴² The Court of Appeal of Tanzania, the High Court of Tanzania, the DLHT, the WT and the VLC are designated courts with jurisdiction over land disputes.⁴³

38 The Land Act, Cap 113, Revised Edition 2018 and the Village Land Act, Cap 114, Revised Edition 2018.

39 United Republic of Tanzania, Ministry of Lands, Housing and Human Settlements Development, National Land Policy 1995, paragraph 4.2.25.

40 *Ibid.*

41 The National Land Policy, paragraph 4.2.26.

42 The Land Act, section 3(1) (m) and Village Land Act, section 3(1) (n).

43 The Land Act, section 167(1)(a) – (e), the Village Land Act, section 62(2) (a)-(e) and the Land Disputes Courts Act, Cap 216, Revised Edition, 2018, section 3(2) (a) – (e).

Despite registering some achievements, land courts still face several administrative, legal and political challenges. These include, lack of funds and insufficient personnel especially in DLHTs; lack of DLHTs in some districts; and lack of procedural guidelines for VLCs and WTs.

The Commission notes that, according to Article 4(2) of the Constitution of the United Republic of Tanzania (the Constitution), organs with mandate to dispense justice are the Judiciary of the United Republic of Tanzania and the Judiciary of the Revolutionary Government of Zanzibar. The Constitution also provides that the Judiciary is the authority with final decision in the dispensation of justice in Tanzania.⁴⁴

The Commission understands the challenges that the Judiciary faced thereby necessitating the establishment of land courts outside the Judiciary.

However, the Commission is of the firm view that establishing land courts with exclusive jurisdiction outside judicial system at the level of village, ward and district defeats the principle of separation of powers as stipulated under Article 4 of the Constitution.

The Commission also is aware that currently the Judiciary has made massive improvements in terms of resources mobilization (finance, human and equipment) infrastructural development and e-governance.

The Commission takes note on the need to create and maintain peace and harmony at village and ward levels. Therefore, the Commission is of the firm view that dispute resolution at VLCs and WTs should focus on mediatory and reconciliatory results.

Commission's Recommendations

The Commission recommends that:

- (a) VLCs and WTs should have mediatory powers only;

⁴⁴ The Constitution of the United Republic of Tanzania, article 107A (1).

- (b) Adjudicatory powers of the WTs should be transferred and vested in Primary Courts;
- (c) DLHT should be aligned with the Judiciary and their functions be taken over by District Courts;
- (d) There should be simplified and friendly procedures in respect of land disputes at all levels so that there is uniformity in all land courts;
- (e) There should be capacity building initiatives on dispute settlement on land matters at all levels.

3.3 Independence of Land Courts

Stakeholders' Observations

Stakeholders observed that management of land courts is placed under three different ministries. Whereas, the Court of Appeal and the High Court are under the Portfolio of the Ministry of Constitutional and Legal Affairs. DLHTs are under the Ministry of Lands, Housing and Human Settlements Development while WTs and VLCs are under the President's Office- Regional Administration and Local Government. It was pointed out that this state of affairs negates the independence of land courts. An example given was that of cases involving recovery of land rent through DLHTs where the Ministry of Lands, Housing and Human Settlements Development becomes a party through authorized officers; since the Ministry is directly involved in administering the DLHTs, the rule against bias is likely to be violated.

Stakeholders further observed that contractual form of employment offered to chairmen of DLHTs affects the integrity and impartiality when discharging duties is impacting their independence. They also pointed out that DLHT chairmen are not impartial when discharging their duties where the central government or local government authority is a party to a case.

Other stakeholders were of the view that the appointment of chairmen of the DLHTs by the Ministry responsible for land matters is a cause of conflict of interest as in some instances chairmen of DLHTs handle disputes which the Ministry responsible for land matters is involved.

Stakeholders also argued that in WTs, members of the WT are appointed by WDC an executive arm at the ward level. The Committee has power to remove any member of the WT. In VLCs stakeholders were of the view that the appointment of members of WT is done by a VLC which is also an executive arm of the government.

Stakeholders recommended that DLHT chairmen should be employed on permanent and pensionable terms and land courts be placed under one Ministry. Other stakeholders had the view that contractual terms of Chairmen of the DLHTs should be maintained to make them responsible and accountable.

Commission's Observations

The Commission observes that placing land courts under the Executive arm of the government offends the principles of separation of powers and has negative impact on the independence of land courts. For example, VLCs, WTs⁴⁵ and DLHTs are supervised by the executive and receive administrative and political directives which at times may impair their freedom in delivery of justice.

The Commission once observed that the existing land disputes settlement system has triple chain of command as the land courts are administered by three different ministries; ministry responsible for legal affairs to which the High Court and Court of Appeal of Tanzania belong, the Ministry responsible for lands, which administers the DLHTs and the Ministry responsible for local government that administers WTs and VLCs.

The Commission also takes note on the findings of the Prime Minister's Office Report on the Programme for Assisting and Enhancing Ward Tribunals in Administration of Justice ⁴⁶ which reveals that the presence of the WTs is a duplication of the primary courts at a lower level in terms of standard and jurisdiction. According to the Report, the WT are not

45 Section 6 of Cap. 216; Registrar is vested with administrative roles of both VLCs and WTs.
46 2011, p. 17.

vested with adjudicatory jurisdiction, hence, some decisions have to be referred to primary courts for confirmation and enforcement. The standard of justice in WTs is questionable and hence the need to have the decision confirmed by a primary court.⁴⁷

On land matters, the WT refers its decision for the enforcement to the DLHT where a party to a dispute fails to comply with its decision. In view of the Prime Minister's Report, the process is unnecessary time wasting, nugatory expenditure and, in most cases, wastage of resources. It was thus recommended for merging of primary courts with WTs to form Ward Courts or Division Courts.⁴⁸

The Report also recommended for merging of the District Courts with DLHTs to form the District Court with jurisdiction over land matters. In so doing, all courts will be placed under the Judiciary of Tanzania with a defined chain of command.⁴⁹

The security of tenure of judicial officers within the hierarchy of land courts varies from court to court. Apart from judges of the High Court and the Court of Appeal of Tanzania whose appointment and tenure of service are well defined under the Constitution of the United Republic of Tanzania, the Chairmen of the DLHT are appointed by the Minister responsible for land matters.⁵⁰ The Commission is of the view that the appointment of DLHT Chairmen by the executive arm gives room to interference of judicial work thus affecting their impartiality.⁵¹

The Commission notes further that DLHT Chairmen after being appointed by the Minister hold office for a term of three years, the term which is subject to renewal at the pleasure of the Minister. The fate of renewal of contracts may, in one way or the other, be determined by decisions

47 *Ibid.*

48 *Ibid.*, p.23.

49 *Ibid.*

50 Cap. 216, section 25(1).

51 Law Reform Commission Report on The Review of Legal Framework on Land Dispute Settlement in Tanzania (2014), p. 46.

made in the course of discharging duties. This scenario impacts negatively on chairmen, impartiality in decision making especially when the appointing authority is party to the matter or has interests.

The Commission had once recommended that the DLHTs be re-aligned with the Judiciary of Tanzania so that persons presiding in dispensing land justice be employed on permanent basis.⁵² Despite this recommendation, currently the chairmen are still appointed by the Minister responsible for land matters on three years term. The Minister has discretionary powers to either renew the contract or not.

The Commission further notes that the WT members are elected by WDC from the list of people who reside in a specific ward,⁵³ whereby the Chairman of the WT is appointed by the local authority from amongst the elected members.⁵⁴ It was also noted that the secretary of the tribunal is required to be a permanent employee of the local authority.⁵⁵ The appointed members of WTs are required to serve for three years from the date of election and are eligible for re-election.⁵⁶ On the other hand, members of VLCs are appointed by the Village Council of a particular village where the VLCs is established and approved by the Village Assembly.⁵⁷

In practice the removal and re appointment of the members of the VLCs and WTs depend on the discretion of the appointing authority. This has effect in the independence of members in their daily activities. Experience shows that often times interference happens when differences occur between members of the tribunals and members of the appointing authority. For example in Kinyamshindo WT in Chemba District Council, a member of the WT was removed from the office by a

52 *Ibid.*, p.45.

53 Cap. 206, section 4(1) (a).

54 *Ibid.*, section 4 (1) (b).

55 *Ibid.*, section 4 (2).

56 *Ibid.*, section 6 (1).

57 Cap. 114, section 60 (1) & (2).

mere statement by the Ward Councilor at the meeting of parents at a Secondary School. Later on WDC nominated other members of the WT.⁵⁸

It is the Commission's observation that courts are mandated to administer justice and, in that regard, they should be independent so that justice is administered without fear or favour. To achieve independence, courts should not be interfered with by other state organs.

Commission's Recommendations

The Commission recommends that:

- (a) The VLCs and WTs should administratively remain under the Ministry responsible for local government;
- (b) The VLCs and WTs should mediate and assist parties to arrive at amicable settlement;
- (c) The functions and powers of DLHTs be transferred to and vested in the District Courts;
- (d) The Land Dispute Courts Act be repealed.
- (e) The Land Act and Village Land Act be amended accordingly.

3.4 Funding of VLC, WTs and DLHTs

Stakeholders' Observations

Members of the VLCs and WTs are not paid allowance for their duties due to the fact that terms of engagement are not clear. Stakeholders observed that VLCs and WTs encounter operational budget constraints for stationeries, visiting locus in quo and other incidental costs. It was recommended that members should be paid salaries and other benefits to be stipulated by law. It was further recommended that the operations of VLCs and WTs should be funded by the Ministry of Constitutional and Legal Affairs.

58 Tanzania Natural Resource Forum: Accessed on 8/01/2020 at 16:20hrs at www.tnrf.org/en/content/ward-tribunal-training-iringa-ane-chemba.

It was also observed that all staff of DLHTs are paid salaries according to their ranks. However, the working environment is poor due to insufficient working tools, supporting staff and office accommodation.

Commission's Observation

VLCs and WTs are supposed to be funded by respective local government authority according to their line of establishment.⁵⁹ Unfortunately, this responsibility has been imposed under the Land Dispute Courts Act which does not form part of the laws applicable in the regular operations of the Local Government Authority. Consequently, funding of VLCs and WTs is not a matter of priority to the Council Directors.

Furthermore, DLHT is funded by the Ministry responsible for lands.⁶⁰ Despite the fact that DLHT is being funded by the Ministry, the fund allocated is not sufficient enough to cater for operational costs particularly office accommodations. This situation compromises independence when discharging their duties. It is further observed that this is not the case in judiciary where under the Judicial Administration Act⁶¹ a special fund for judiciary is established for its operations.

Commission's Recommendation

The Commission recommends that:

- (a) Ministry responsible for local government authorities should allocate sufficient funds to VLCs and WTs.
- (b) Local government authorities should be under legal obligation to prepare and conduct training programmes for members of VLCs and WTs across the country.

59 Cap. 216, section 6.

60 *Ibid.*, section 28 (2) (c).

61 Act No. 4 of 2011, section 52 (1).

3.5 Accessibility of VLC, WTs and DLHTs

Stakeholders' Observations

Stakeholders observed that the laws which establish the VLCs, WTs and DLHTs intended to establish the same at each village, ward and district respectively. Stakeholders observed further that, to date VLCs, WTs and DLHTs are not yet established in all villages, wards and districts respectively.

Moreover, it was pointed out that in villages where VLCs have been established, they perform their duties efficiently despite the existing challenges including budget constraints, poor supervision, poor record keeping lack of capacity building. Thus, they proposed that Council Directors should make sure that VLCs and WTs are established in all villages and wards respectively. They also proposed that VLCs and WTs be financially supported and the public be informed on their existence and functions.

Stakeholders observed that although the law provides for the establishment of the DLHTs in every district, region or zone still they have not been established in every district. As a result, most of the DLHTs serve regions instead of districts as it was intended. Further, DLHTs are inaccessible due to geographical location as in some cases parties have to travel a long distance to access them. Therefore, it is costly in terms of time and finance. In addition, due to inaccessibility parties resort to approach political leaders to resolve their dispute. They suggested that DLHT be placed under the Judiciary of Tanzania in order to enhance their accessibility.

Commission's Observation

Commission noted that according to law, VLC needed to be established in each Village.⁶² The Council Directors are Registrars of these VLCs, hence they are the chief executives in terms of budget estimates and expenditures.⁶³ The Commission also is aware that WTs are required to be established in each ward.

62 Cap.114, section 60(1).

63 Cap 216, section 6.

It was revealed also that establishment of VLCs and WTs faces challenges due to the nature and functions of VLCs and WTs. The local government authorities functions are not directly related to dispute settlement, rather, they relate to revenue collection, implementation of development projects and provision of social services within their areas of jurisdiction. They focus on their main duties and forget that they are also responsible for establishing and maintaining VLCs and WTs. This difference in the nature of functions between VLCs and WTs on one hand and local government authorities on the other hand makes their establishment to be optional in most local government.

Commission's Observations

The Commission notes that as regards to DLHTs, the law empowers the Minister responsible for land matters to establish them in every district, region or zone.⁶⁴ It was further observed that Tanzania has a total of 139 districts of which only 97 DLHTs have been established and only 55 are operation. This means that very few Districts in Tanzania have DLHTs. Consequently, some of the DLHTs serve more than one district.

The Commission had once recommended for the realignment of DLHTs with the Judiciary of Tanzania so as to facilitate public access to justice in relation to land disputes.⁶⁵ However, to date the DLHT are still outside the court system making DLHT inaccessible as they are not established in every district.

Commission's Recommendation

The Commission recommends that:

- (a) VLCs and WTs be established and maintained in all villages and wards respectively.
- (b) Local government authorities be required to provide enough resources (finance, equipment and office) to VLCs and WTs.
- (c) Functions and powers of DLHTs be transferred to and vested in the District Courts.

64 Cap. 216, section 22.

65 The Law Reform Commission of Tanzania: Report on the Review of the Legal Framework on Land Disputes Settlement in Tanzania, 2014, p.5.

3.6 Land Courts Costs

Stakeholders' Observations

Stakeholders observed that there are no rules or guidelines on costs and other fees in VLCs and WTIs in matters relating to filing of complaints, visiting locus in quo, copies of proceedings, and other related issues. This makes the tribunals acting arbitrarily when determining fees on parties in need of the tribunals' services. It was recommended that rules on costs and other fees payable to VLCs and WTIs by parties should be prescribed by relevant organs. Stakeholders also were of the views that although the law provides for payment of fees to DLHTs, the fees are high, and thus, defeating the objective of ensuring that services provided by land courts are accessible and affordable.

Commission's Observations

The Commission agrees with stakeholders' view that absence of rules on fees in VLCs and WTIs is an obstacle to access to justice as such fees and charges are arbitrarily determined by the tribunals unlike in other courts where fees are provided for under the rules. For example, fees payable to the High Court, Resident Magistrates' Courts and District Courts are regulated by the Court Fees Rules.⁶⁶

Regarding fees for filing cases and pleadings, fees in DLHTs are stipulated in the regulations. For example, fees for filing an application in the DLHT ranges from 40,000/= to 80,000/= excluding annexure, and it also depends on the value of the suit landed property.⁶⁷ The fees are too high to be afforded by an ordinary citizen.

Commission's Recommendation

The laws should be amended to provide for fees and other charges payable by parties in VLCs and WTIs.

⁶⁶ G. N. No. 247 of 2018.

⁶⁷ The Land Disputes Courts (District Land and Housing Tribunal) Regulations, GN. 174/2003, in the Second Schedule.

3.7 Language of Land Courts

Stakeholders' Observations

Stakeholders observed that unlike VLCs and WTs where the official language is Kiswahili, language in the DLHT, the High Court and Court of Appeal is English although proceedings may be conducted in Kiswahili (but records must be in English). They further stated that considering the fact that most of the litigants are not conversant with English language, the use of English is an obstacle to access justice. It was recommended that all land courts should be allowed to use both English and Kiswahili as official languages. The use of either of the two languages should depend on the nature of parties.

Commission's Observations

The Commission observed that the provisions of section 32 of the Land Disputes Courts Act provides that the language of DLHT is either English or Kiswahili but records and judgment should be in English. The Commission further observed that according to rule 5 of the Court of Appeal Rules⁶⁸ the language of the court is English or Kiswahili but judgment, order or decision of the court should be written in English language. The Commission is of the view that the use of English language is a challenge to parties who cannot read and write English.

Commission's Recommendations

The Commission recommends that:

- (a) The Civil Procedure Code Act and the Court of Appeal Rules be amended to include Kiswahili as an official language in recording court proceedings and writing judgment.
- (a) The choice of language should depend on the competence of the litigants in terms of knowledge of Kiswahili and, or English language.

68 G.N. No. 368 of 2009.

3.8 Execution of Decrees

Stakeholders' Observations

Stakeholders observed that there are challenges in executing WT orders by DLHTs. In cases where there is no DLHT in the respective district, the execution of the orders of the WT is done by nearby DLHT, hence, high costs to the decree holder.

Stakeholders recommend that DLHTs should be established in every district and be placed under the hierarchy of the Judiciary of Tanzania.

Commission's Observations

The Commission notes that the law empowers the Minister responsible for land matters to establish a DLHT in every district, region or zone.⁶⁹ However, to date, there are only 55 DLHTs in Mainland Tanzania while there are a total of 139 districts. This means that there are several districts which have no DLHTs. As a result, a party who has won a matter in the WT located in a district which has no DLHT must travel long distance to a nearby district which has DLHT. This is costly in terms of money and time. Sometimes the costs which are incurred to execute an award exceed the decretal amount granted.

Commission's Recommendations

The Commission recommends that:

- (b) WTs should remain with mediatory and reconciliatory powers on land disputes.
- (c) DLHTs should be aligned with the Judiciary of Tanzania.

69 The Land Disputes Courts Act, section 22(1).

3.9 Qualifications of Members of the VLC and WT

Stakeholders Observation

Stakeholders noted that the criteria set for a person to be eligible for appointment as a member in the VLC should be revisited in some areas. They suggested that at least a person should have a legal knowledge in land matters, being a person of good integrity and having an alternative work for earning money for living.

Stakeholders further stated that capacity building to the newly appointed members of the VLCs in terms of seminars on how to settle land disputes is very important. Training will simplify the whole process of amicable settlement through mediation and reconciliation.

Members of the WTs do not have any legal knowledge, yet they are mandated by the law to adjudicate land matters which are very technical complex and involve legal issues. Thus, most of the matters end up being resolved per incuriam, hence, many appeals in the DLHTs. Some of the appeals end up being struck out due to legal technicalities.

Stakeholders had different opinions regarding the qualifications of the members of the WT. Some stakeholders suggested that the qualifications for the appointment of members of the WT should remain the same. Some recommended that members of the WT should possess basic knowledge of law (Certificate) as they deal with legal matters. Other stakeholders were of the view that among the members of the WTs one or two of them should possess legal knowledge and the secretary of the WTs should possess legal knowledge or secretarial course. On the other hand, some stakeholders were of the view that members of WTs be paid allowance to avoid corrupt practices.

Commission's Observations

The Commission noted that for a person to be appointed as a member of the VLC, one needs to be well conversant with customary land law of the locality where he serves. According to section 60(4) of the Village Land Act,⁷⁰ two aspects are considered before a person is nominated for appointment as member of the VLC namely; reputation and standing of the nominee in terms of integrity and knowledge of the nominee on customary land law.

In terms of section 60(5) of the Village Land Act, a person is not eligible for appointment as VLC member if he is: not ordinarily resident in the respective village; a member of the National Assembly; a magistrate having jurisdiction in the district in which the VLC is situated; being of apparent age under eighteen years; mentally unfit; a convict of a criminal offence involving dishonesty or moral turpitude; or non-citizen. The reason behind these restrictions is that all disputes in the village should be settled as per customary laws governing land ownership in the specific locality which are well known to everyone in the community.

Stakeholders also noted that in the process of appointing members of VLC the appointing authorities do not adhere to the procedure provided under the law. For example, the law says that VLC members should be proposed by Village Council and approved by Village Assembly,⁷¹ but in practice, it is the Village Chairman who appoints them.

The Ward Tribunals Act disqualifies persons who have legal knowledge for appointment as members.⁷² At the same time, the WT is empowered to adjudicate. According to section 16(1) of the Land Disputes Courts Act, WTs have powers to perform the following functions: ordering recovery of possession of land; ordering specific performance of any contract;

70 Cap. 114.

71 *Ibid.*, section 60 (2) (a & b).

72 The Ward Tribunals Act, section 5(1) (d).

making orders in the nature of mandatory and prohibitive injunctions; awarding any amount claimed; awarding compensation and payment of costs; and making any other order which the justice of the case may require.

It is the Commission's observation that the functions can only be well stipulated performed by an organ with adjudicatory powers. If that is the case WT was expected to have members with legal knowledge.

Commission Recommendations

The Commission recommends that:

- (a) The criteria provided under the law are sufficient only that the appointing authority and the public at large should be aware of the criteria before approving a person to be a member of VLC.
- (b) Local government authorities should ensure that members of VLC are trained in mediation and reconciliatory skills.

3.10 Pecuniary Jurisdiction of WT

Stakeholders' Observation

Stakeholders observed that WTs have power to deal with land matters the value of which does not exceed three million shillings. However, stakeholders observed that most of the WTs deal with land disputes referred to them without knowing the actual value of the relevant subject matter. This is mainly attributed to, among other things, lack of guidelines which may assist in evaluating landed properties in dispute. Furthermore, there is no valuation report to rely on in valuation of land for the purpose of WTs pecuniary jurisdiction. Some Stakeholders observed that some litigants devalue or overvalue land so as to fit the pecuniary value of WTs or DLHTs for their personal interests. It was also pointed out that the pecuniary jurisdiction of the WT is low and the value of land is not uniform since it depends mainly on the location of the land.

Commission's Observations

The Commission notes that in some cases litigants do not know the actual value of landed properties since the value of land is not static, it appreciates or depreciates due to several reasons. In order to appreciate the actual value of land, the disputed land has to be valued. Procedures for land valuation are provided under the Valuation and Valuers Registration Act⁷³ and the Valuation and Valuers Registration (General) Regulations.⁷⁴ In a nutshell, valuation may be carried out by either the Government Valuer or a licenced valuer and the valuation report must be approved by the Chief Government Valuer.

Since the costs of valuating land is high majority of people cannot afford. As a result most of individuals do not know the actual value of their properties. They just file their matters in the WTs without ascertaining the value of the disputed land.

The Commission observes that valuation of landed property is complicated and costly and that if it is imposed as requirement it will defeat the rationale behind establishment of land courts, namely, putting in a place a simple and friendly dispute settlement mechanism. The Commission observes further that, in practice a party who disputes the actual value of the disputed land has the burden to prove it.

Commission's Recommendation

The Commission recommends that:

- (a) The adjudicatory function of the WT be transferred to primary courts;
- (b) WTs be vested with mediatory powers only;
- (c) Members of WTs should be trained regularly so as to equip them with knowledge and skills for settling land disputes.

73 No. 7 of 2016.

74 G.N. No. 136 of 2018.

3.11 Expeditious Determination of Disputes

Stakeholders' Observations

It was observed that adjournments are, in most cases, caused by absence of chairmen, advocates or assessors in DLHTs. In some districts, one chairman serves more than one district and this leads to regular and prolonged adjournments. Some chairmen do not have their contracts renewed. It was recommended that each district should have DLHT and more than one chairman. It was also recommended that there should be timely renewal of employment contracts for DLHT Chairmen so as to avoid unnecessary adjournments.

Commission's Observations

Adjournment is regulated by Order XVII of the Civil Procedure Code Act. The guiding principle is that a case can be adjourned if sufficient cause is shown.⁷⁵ It is further observed that DLHTs adjourn cases due to absence of assessors, chairmen, parties or advocates and this result in delays in disposal of cases. The Commission agrees with stakeholders that adjournments are also caused by lack of DLHTs in some districts and untimely renewal of chairmen's contracts.

Commission's Recommendations

The Commission recommends that:

- (a) DLTHs should be aligned with the Judiciary of Tanzania;
- (b) The law should be amended to provide for discretion by the land courts to use assessors where circumstances of the case demand.

⁷⁵ The Civil Procedure Code Act, Cap. 33, Order XVII (1) (1).

3.12 Application of the Evidence Act in the DLHTs

Stakeholders' Observations

Stakeholders observed that though the Evidence Act is the basic law regulating admissibility of evidence in judicial proceedings, the Land Dispute Courts Act is silent on the application of the Evidence Act.

Commission's Observations

The Commission noted that the Land Disputes Courts Act⁷⁶ is silent on the applicability of the Evidence Act instead it directs the application of Land Disputes Courts (District Land and Housing Tribunal) Regulations⁷⁷ in all proceedings at DLHTs. The Land Disputes Courts Act also restricts the application of the Civil Procedure Code Act unless there is a lacuna in the regulations. It is from this mischief that each DLHT has its philosophy on applicability of the Evidence Act. Thus, this position in some cases leads to miscarriage of justice.

The Commission observed that uncertainty on the application of the Evidence Act by DLHTs has led to each tribunal to derive its own mode of admitting evidence.

Despite uncertainties regarding the application of the Evidence Act in the DLHT, the Court of Appeal emphasized on the importance of adherence to the principles of evidence in order to or at least minimizes the chances of a miscarriage of justice as stated in the case of **Godbless Lema vs Musa Hamisi Mkanga**.⁷⁸ The Court observed that the Evidence Act was intended to provide guidance

Commission's Recommendation

The Commission recommends that in view of the recommendation to merge the DLHT with the District Courts, the challenge about application and non-application of the Evidence Act will be resolved.

76 As amended in Miscellaneous Amendments Act No.13 of 2010.

77 GN.174 of 2003.

78 Civil Appeal No. 47/2012 (unreported).

3.13 Mediation in DLHTs

Stakeholders' Observation

Stakeholders observed that the law is silent on whether mediation should be conducted in DLHTs as it is in WTs. It was also observed that DLHTs are adjudicatory in nature rather than mediatory. Stakeholders were of the view that the law should provide for mediation as a part of the process in resolving land disputes in DLHTs.

Commission's Observations

Mediation is one of the alternative dispute resolution mechanisms provided in the Civil Procedure Code Act for the purposes of encouraging amicable and expeditious settlement of disputes.⁷⁹ It is observed that mediation is very useful as sometimes cases are settled before hearing.⁸⁰

It is further noted that, the Land Dispute Courts Act and the Land Disputes (District Land and Housing Tribunal) Regulations 2003 are silent regarding the application of mediation as one of the methods of land dispute settlement in the DLHT. This is unlike ordinary courts where mediation is mandatory under Orders VIIIA, VIIB and VIIC of the Civil Procedure Code Act (the CPC).⁸¹ However, it is observed that the exclusion of mediation in the DLHTs was done deliberately in order to speed up the determination of land cases.

Regardless of that position, parties are not prohibited to mediate their matter out of court and submit their settlement to DLHT for record as a consent judgment. The method is not commonly used or encouraged due to absence of provision for the use of mediation as an alternative dispute resolution.

79 The Civil Procedure Code, Cap. 33, Order VIII C Rule 1.

80 Massay, G.E., Adjudication of Land Cases in Tanzania: A Bird Eye Overview of the District Land and Housing Tribunal, Open University Law Journal 2013, Vol.4, No.2, pp.173-174.

81 Cap. 33, Revised Edition 2018.

Commission's Recommendation

The Commission recommends that:

- (a) The DLHTs should be aligned with the Judiciary of Tanzania;
- (b) The law should be amended to provide for mandatory requirements that all land courts of first instance should conduct mediation before adjudication.

3.14 Assessors in the DLHTs

Stakeholders' Observations

Stakeholders observed that assessors in the DLHTs were introduced in order to advise Chairmen of the DLHTs when determining land disputes matters. However, sometimes their frequent absence has led to adjournments of cases hence delays of justice.

Stakeholders also observed that the requirement for DLHTs to sit with assessors is no longer necessary. They proposed that assessors be removed taking into account that their opinions do not bind the presiding Chairman. Others were of the different view that assessors should be retained. However, the law should provide that absence of one assessor in the proceedings should not nullify the decisions of the DLHTs.

Commission's Observations

The Commission is aware that DLHT is duly constituted when it is presided over by a chairman and not less than two assessors.⁸² It is also noted that absence of assessors in the cause of proceedings does not bar the chairman to proceed with the matter at hand.⁸³

Moreover, opinion of the assessor does not bind the chairman in making the decision. The chairman is required to give reason for differing with assessor's opinion.⁸⁴ It is worth to note that the law requires the presences

82 Cap. 216, Section 23 (2).

83 *Ibid.*, section 23 (3).

84 *Ibid.*, section 24.

of two assessors to fulfill the quorum on the commencement of hearing.⁸⁵ This position of the law was overruled by the High Court in the case of **Moses David Vs Alouis Anthony Ghiselli**.⁸⁶ The court was of the view that there cannot be a tribunal without assessors. The same position was upheld by the Court of Appeal where it was held that at least one of the assessors must be among the assessors who must be in attendance throughout the trial so as to enable the DLHT to make an informed and rational opinion.⁸⁷

The Commission also noted that, the law does not provide for the age limit of a person who could be appointed as an assessor.⁸⁸ Consequently, some of the appointed assessors are too old to effectively participate in the long sessions, hence, failure to adequately advise the court before making the decision.

The Commission had once recommended that the use of assessors be at the option of the parties. The recommendation was based on the fact that the assessors are mere judges of fact and are more useful under customary law. As of today the era where customary law is gradually diminishing due to integration of various ethnic groups, assessors may not be such useful.

Commission's Recommendation

The Commission recommends that, in the view of the recommendation to transfer functions of DLHT to District Courts the challenge will be resolved.

85 *Ibid.*, section 23 (3).

86 Land Appeal No 16 of 2017 HC Bukoba (unreported) P. 15 – 16.

87 Azania Bank Corp Ltd vs Edgar Kahwili Civil Appeal No. 154 of 2015 CA at Iringa (unreported) p. 3.

88 Cap. 216, section 26(2).

3.15 Quorum of WT

Stakeholders' Observation

Stakeholders were of the view that there are contradictions regarding the requirement for quorum under the Ward Tribunals Act and the Land Disputes Courts Act. Whereas the former states that the required quorum is one half of all members, the latter provides that the quorum is three members (one of whom must be a woman) when conducting mediation. The Land Disputes Courts Act is silent on quorum when the WT sits to perform adjudicatory functions.

Commission's Observation

The Commission observed that each WT is supposed to have not less than four and not more than eight members of whom three shall be women⁸⁹ who shall be elected by WDC.⁹⁰ It was observed further that according to section 4(3) of the Ward Tribunals Act, the tribunal is duly constituted if there is one half of all members. It was noted that the tribunal must have not less than four and not more than eight members.⁹¹ When conducting mediation, the WT must be composed of at least three members one of whom must be a woman. Section 4 (1) of the Ward Tribunals Act and section 11 of the Land Disputes Courts Act stipulate that the composition of WT must consist of not less than four but not more than eight members.

The Commission further observes that quorum for WTs can be classified into a quorum for mediation and a quorum for compulsive jurisdiction. The Land Disputes Court Act only prescribe quorum for WTs when conducting mediation to be three members and at least one of whom must be a woman. The Land Disputes Courts Act does not expressly provide for a quorum for WTs when exercising powers of adjudication. The absence of express provision has led to emergence of various schools of thought. One school considers a quorum of three members as minimum number.

89 Cap. 216, section 11.

90 Cap. 206, section 4 (1).

91 The Ward Tribunals Act, section 4(1) (a).

Another school considers four members as a minimum number for the quorum. While the last school of thought refers to the provision of section 4 of Ward Tribunals Act which provides that the quorum has to be half of the members sitting at WT. That notwithstanding, section 4(4) is not clear as it may amount to improper procedure on determination of land matters. The law is silent on the number of women required when WT is exercising power of adjudication.

The Commission recommended earlier that section 4 of the Ward Tribunal Act be amended to reflect on the question of gender when exercising mediatory powers.⁹²

Commission's Recommendations

The Commission recommends that:

- (a) The WT should play mediatory roles only;
- (b) WTs adjudicatory roles be transferred to primary courts.

3.16 Procedural Guidelines for WTs

Stakeholders' Observation

There are no procedural guidelines of handling land disputes before the WT. Consequently, each WT has its own procedure in handling land disputes in terms of how to lodge complaints, determination of filing fees, hearing of the dispute, visiting locus in quo and how to write the decision and filing fees.

Stakeholders proposed that guidelines for WTs in land cases in a simple language be developed and applied.

92 Law Reform Commission Report on the Review of Legal Framework on Land Dispute Settlement in Tanzania, pp. 39 & 40.

Commission's Observation

The Commission noted that the law empowers the Minister responsible for land matters to make rules regulating appeals from WTs to the DLHT.⁹³ To date, however, no rules have been made. Moreover, WT's are empowered to regulate own procedures while determine land matters.⁹⁴ As a result, each WT has developed own procedure in handling several matters such as filing fees, fees for visiting locus in quo, steps to follow in each stage and determination of relevance of documents. This may lead to miscarriage of justice.

The Commission recommended earlier that the Ministry responsible for local government authorities should make procedural guidelines for mediation by WTs. To date, there are no procedural rules to guide WTs when exercising its adjudicatory function.

Commission's Recommendations

The Commission recommends that:

- (a) Simple regulatory procedure/rules to guide proceedings in WT be made in Kiswahili language;
- (b) The Ministry responsible for local government should prepare and conduct regular training programmes to members of WT on mediation of land disputes.

93 Cap. 216, section 21.

94 Cap. 206, section 15 (2).

3.17 Taxation of Bill of Costs in the DLHTs

Stakeholders' Observation

Stakeholders observed that the Advocates Remuneration Order⁹⁵ is silent on who is the taxing master in DLHTs. As a result there is a challenge due to the fact that most often there is only one chairman in the DLHT. Stakeholders recommended that Order should be reviewed to provide for taxing master for DLHT.

Commission's Observations

The Commission understands that the DLHTs do award costs to litigants. However, the Land Disputes Court Act is silent on whether the DLHTs are empowered to determine Bills of Cost. The Advocates Remuneration Order defines taxing officer as registrar, Deputy Registrar of the High Court, Resident Magistrate Court or District Court and other officers appointed by the Chief Justice.⁹⁶ The chairman is not mentioned anywhere as being taxing officer. The Commission had previously recommended for amendment of the law to include the Chairman in charge of DLHTs in the definition of the taxing officer.⁹⁷

Commission's Recommendation

The Commission recommends that following the decision to merge DLHTs and District Courts the same procedures currently applicable to District Courts will apply to District Court Land Division.

95 GN. No. 263 of 2015.

96 *Ibid.*, Order 3.

97 The Law Reform Commission of Tanzania, Report on the Review of the Legal Framework on Land Disputes Settlement in Tanzania, 2014, p.52.

3.18 Code of Conduct for WT and VLC

Stakeholders Observation

Stakeholders appreciate the important roles of VLC and WTs in land dispute resolution. They stated that persons who are vested with powers to dispense justice need to be guided by a code of conduct as a tool to guide their conducts while performing their functions.

Stakeholders observed that no code of conduct has been developed for WT and VLC members. They recommended that a code of conduct for members of WT and VLC be introduced to regulate the members.

Commission's Observations

The Commission observes that a Code of Conduct is a vital tool for officials performing functions of a judicial nature. The Commission notes that DLHT's Chairmen are regulated by the public service code of conduct which is applicable to all public servants and the Code of Conduct for Chairman.⁹⁸ The Commission is of the view that lack of Code of Conduct potentially attracts unethical behaviour to members of WT and VLC.

The Commission had earlier recommended to the Ministry responsible for local government authorities to make specific regulations for overseeing the conduct of members of the VLCs and WTs.⁹⁹ To date, there is no code of conduct for members of VLCs and WTs.

Commission's Recommendation

The Commission recommends that the Ministry responsible for local government authorities should develop a code of conduct that will govern the conduct of members of the VLCs and WTs.

98 The Law Reform Commission Report on the Review of Legal Framework on Land Disputes Settlement, 2014 p.56.

99 *Ibid.*

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

The review analyzed the legal framework governing land dispute settlement system and pinpointed out challenges which hinder its effectiveness. Reference has been made to various policies and pieces of legislation to examine their strength, weakness relating to land dispute settlement matters. The review reveals that the establishment of land courts with exclusive jurisdiction has brought in some success. These include friendly and simplified procedures contrary to the technicalities in regular courts; peace and tranquility between parties due to the opportunities to mediate especially in VLC and WT.

The review further reveals that regardless the aforementioned success, the land dispute settlement system is characterized by legal and institutional challenges which hinder its efficiency and waters down the main objectives of establishing it. For example, it was disclosed that the WTs and DLHTs are interfered with political and government leaders, VLCs and WTs do not have enough resources in terms of finance, equipment, office accommodation and personnel, absence of procedural guidelines for WTs and VLCs and absence of DLHTs in most of the districts in the Mainland Tanzania.

4.2 Recommendations

In view of the highlighted challenges, a number of measures to be taken have been recommended in order to have a land dispute settlement system which is independent, expeditious, accessible and just. These are as follows;

4.2.1 Land Courts with Exclusive Jurisdiction

The Commission recommends that:

- (a) VLCs and WTs should have mediatory powers only;
- (b) Adjudicatory powers of the WTs should be transferred and vested in Primary Courts;
- (c) DLHTs should be aligned with the Judiciary and their function be taken over by District Courts;
- (d) There should be simplified and friendly procedures in respect of land disputes at all levels so that there is uniformity in all land courts;
- (e) There should be capacity building initiatives on dispute settlement on land matters at all levels.

4.2.2 Independence of Land Courts

The Commission recommends that:

- (a) The VLCs and WTs should administratively remain under the Ministry responsible for local government;
- (b) The VLCs and WTs should mediate and assist parties to arrive at amicable settlement;
- (c) The functions and powers of DLHTs be transferred to and vested in the District Courts;
- (d) The Land Dispute Courts Act be repealed.
- (e) The Land Act and Village Land Act be amended accordingly.

4.2.3 Funding of VLC, WTs and DLHTs

The Commission recommends that:

- a) Ministry responsible for local government authorities should allocate sufficient funds to VLCs and WTs.
- b) Local government authorities should be under legal obligation to prepare and conduct training programmes for member of VLCs and WTs across the country.

4.2.4 Accessibility of VLC, WTs and DLHTs

The Commission recommends that:

- (a) VLCs and WTs be established and maintained in all villages and wards respectively.
- (b) Local government authorities be required to provide enough resources (finance, equipment and office) to VLCs and WTs.
- (c) Functions and powers of DLHTs be transferred to and vested in the District Courts.

4.2.5 Land Courts Costs

The Commission recommends that:

The laws should be amended to provide for fees and other charges payable by parties in VLCs and WTs.

4.2.6 Language of Land Courts

The Commission recommends that:

- (a) The Civil Procedure Code Act and the Court of Appeal Rules be amended to include Kiswahili as an official language in recording court proceedings and writing judgment.
- (b) The choice of language should depend on the competence of the litigants in terms of knowledge of Kiswahili and, or English language.

4.2.7 Execution of Decrees

The Commission recommends that:

- (a) WTs should remain with mediatory and reconciliatory powers on land disputes.
- (b) DLHTs should be aligned with the Judiciary of Tanzania.

4.2.8 Qualifications of Members of the VLC and WT

The Commission recommends that:

- (a) The criteria provided under the law are sufficient only that the appointing authority and the public at large should be aware of the criteria before approving a person to be a member of VLC.
- (b) Local government authorities should ensure that members of VLC are trained in mediation and reconciliatory skills.

4.2.9 Pecuniary Jurisdiction of WT

The Commission recommends that:

- (a) The adjudicatory function of the WT be transferred to primary courts;
- (b) WT be vested with mediatory powers only;
- (c) Members of WT should be trained regularly so as to equip them with knowledge and skills for settling land disputes.

4.2.10 Expeditious Determination of Disputes

The Commission recommends that:

- (a) DLTHs should be aligned with the Judiciary of Tanzania;
- (b) The law should be amended to provide for discretion by the land courts to use assessors where circumstances of the case demand.

4.2.11 Application of the Evidence Act in the DLHTs

The Commission recommends that in view of the recommendation to merge the DLHT with the District Courts, the challenge about application and non-application of the Evidence Act will be resolved.

4.2.12 Mediation in DLHTs

The Commission recommends that:

- (a) The DLHTs should be aligned with the Judiciary of Tanzania;
- (b) The law should be amended to provide for mandatory requirements that all land courts of first instance should conduct mediation before adjudication.

4.2.13 Assessors in the DLHTs

The Commission recommends that, in the view of the recommendation to transfer functions of DLHT to District Courts the challenge is resolved.

4.2.14 Quorum of WT

The Commission recommends that:

- (a) The WT should play mediatory roles only;
- (b) WTs adjudicatory roles be transferred to primary courts.

4.2.15 Procedural Guidelines for WTs

The Commission recommends that:

- (a) Simple regulatory procedure/rules to guide proceedings in WT be made in Kiswahili language;
- (b) The Ministry responsible for local government should prepare and conduct regular training programmes to members of WT on mediation of land disputes.

4.2.16 Taxation of Bill of Costs in the DLHTs

The Commission recommends that following the decision to merge DLHTs and District Courts the same procedures currently applicable to District Courts will apply to District Court Land Division.

4.2.17 Code of Conduct for WT and VLC

The Commission recommends that the Ministry responsible for local government authorities should develop a code of conduct that will govern the conduct of members of the VLCs and WTs.

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