

# Ouster of Adjudicatory Powers of the Ward Tribunals on Land Disputes Resolution in Tanzania: Justice Denial?

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**Abstract:** *An Establishment of Land Disputes Resolution mechanism in Tanzania as a distinctive tier to deal with issues of land disputes resolution since the Presidential Commission of Enquiry in Tanzania has been clapped hands for. Both The Land Act and the Village Land Act of 1999 are said to have had stood as a bright light in the heavy darkness of the Land Conflicts resolution in Tanzania due to their contents under Section 167 and 60-63 consecutively. It is under the said provisions of the laws formerly stated were Land Disputes resolution institutions were and are reflected. The Land Disputes Courts Act ('the LDCA') was a legislation later on enacted for special Land Conflicts Dealings via conflict resolutions institutions established. This adjusted the light to the society with handsome participatory procedures in containing and resolving land disputes via adjudicatory and mediation services. Of all matters, the Ward Tribunal Act ('the WTA') enjoyed adjudicatory and mediation powers in land disputes on titles or interests there in, whereby, the District Land and Housing tribunal ('the DLHT') was both an appellate court over the matters arising from the ward tribunal ('WT') and of original jurisdiction unlike the WT. Recently via the Written Laws Miscellaneous amendments Act No.5/2021, several changes have been done, whereby the WT's adjudicatory powers was eradicated leaving it with Mediation only powers only. Law makes it mandatory for any dispute in land to be instituted in the DLHT after being admitted in the WT for mediation and within one month from day one of admission of the sag in the WT and obtaining a Certificate of Mediation. This study intends to find out on doles, failure, reasonability, reality and how the changes are celebrated in the society. It appears that changes have decreased adjudicatory judicial stages in land disputes judicial structure and established compulsory mediation for one to institute the land dispute in the DLHT that would in one way or another be a pivot to delay justice or re commemorate land disputes backlog in courts hence blessing the theory of justice delayed is justice denied.*

**Keywords:** Ward tribunal, adjudicatory powers, Mediation, Land Courts, Land Disputes, Commission of Inquiry in Land Matters, justice denied, justice delayed.

## 1. Introduction

Following innumerable land Conflicts in Tanzania, several laws, amendments, repeals, replacements and the good land policy was inevitable. A report to The commission of Enquiry into the Land Matters appointed by the President of the United Republic of Tanzania to enquire on Land Matters<sup>1</sup> among other things, suggested for legal, administrative and institutional dimensions on land. Two laws, that is, the Land Act<sup>2</sup> and the Village Land Act<sup>3</sup> are as the fruits of the commission coming up with reflection for the Land Conflicts Dimensions under Sections 167 and 60-62 consecutively. The Land Disputes Courts Act ('the LDCA')<sup>4</sup> after a long journey followed. It is this LDCA<sup>5</sup> that extends its hands to the WTA making it part of the Land Disputes Courts becoming the second in the hierarchy after the Village Land Council established under section 60 of the Village Land Act.<sup>6</sup> A note is to be taken that the WT had an original jurisdiction over the Disputes where it could mediate and adjudicate it pursuant to section 8 of the WTA<sup>7</sup> provided that the jurisdiction it had was to be taken into account. Recently the legislator's trough written laws

miscellaneous amendments Act No. 5 of 2021 came up with changes in the LDCA<sup>8</sup> and the WTA<sup>9</sup> taking a new dimension in Land Conflicts resolution structure and jurisdictional powers by waiving the WT's adjudicatory powers in land disputes leaving it with mediation jurisdiction only. Although it is said that, it is in the intention of the governments that the establishment of the mode of Land disputes resolution mechanism would save in reconciliatory, informal, flexible and observance of the local culture (Pius, 1977)<sup>10</sup> see also (Goldham,1995),<sup>11</sup> the said amendments in the Laws takes this study back to land conflicts and establishment of Disputes resolution organs in Tanzania so as to correlate the forma reason for adjudicatory powers of the WT in relation to the current powers of mediation taking into account the Land conflicts trends.

Biblically, acquiring land (Ngemera, 2017),<sup>12</sup> land market distortion and suspension of owners' property rights has

<sup>8</sup> Cap 216

<sup>9</sup> ibid

<sup>10</sup> Pius Msekwa (1977), Report of the Judiciary System Review Commission, Dar es Salaam

<sup>11</sup> Simon Goldham, Land Tenure Reform in Tanzania. Legal Problems and Perspective, The Journal of Modern African Studies, Vol. 33, Issue 2, June 1995, pp 227-242 accessed on 13/10/2023 available at <https://www.Cambridge.org> .Cambridge University Press

<sup>12</sup> Gemera, Sings Bert (2017), Land Disputes Machineries :Is inaccessibility a source of Villages Land Disputes in Morogoro? International Journal of Scientific and Research Publications,

<sup>1</sup> The United Republic of Tanzania(1994).Report of Presidential Commission of Inquiry into the Land Matters, Vol. 1 and 2.

<sup>2</sup> Cap 113 of the Laws of Tanzania

<sup>3</sup> Cap 114 of the Laws of Tanzania

<sup>4</sup> Cap 216,

<sup>5</sup> Ibid

<sup>6</sup> Cap 114 of the Laws of Tanzania

<sup>7</sup> ibid

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resulted into land disputes (Mramba and Lamwai, 2017).<sup>13</sup> This is still the case in our contemporary society. These land conflicts touches individual persons and institutions that is natural and legal persons (Sackey, 2002).<sup>14</sup> This tells us that the enactments of the formerly stated laws will not bring conflicts to an end and thus, Land dialogue is continuous.<sup>15</sup> Following such land battles, categorical arrangements to deal with such land matters are set by the countries to deal with them (Mangure, 2017)<sup>16</sup> in a legal composed structure. Conventionally, in Tanzania in particular, the duty to determine disputes between individuals in the society is practically in an exclusive domain of the ordinary court of Law (Rushagama, 2021).<sup>17</sup> Determination of the said disputes go through steps which include instituting them in the appropriate forum with competent jurisdiction, admission, hearing, judgment and hence execution of the judgment (Lamwai, 2006).<sup>18</sup> At the disposal of the Judgment, the aggrieved party enjoys measures to go for review, revision or appeal in the appropriate court (Taisamo, 2018).<sup>19</sup> With the Court of Law as the fountain of justice of in Tanzania mean executive tribunals in which some judicial powers are vested in them making part of the court structure and or hierarchy (Nyanduga and Manning, 2006).<sup>20</sup> The theme and or above contents are supported by the provisions of Article 4(1) and (2) read together with Article 107A(1) of the Constitution of the United Republic of Tanzania<sup>21</sup> that cements on the powers of the judiciary in determination of disputes. Equally, Section 5A(2) of the Constitution of Zanzibar.<sup>22</sup>

Without prejudice to the contents of articles 4(1) and 107A (1) of the Constitution of Tanzania,<sup>23</sup> The Land Act,<sup>24</sup> under section 167, the Village Land Act<sup>25</sup> under Sections 60-62 and the LDCA Act<sup>26</sup> red together with Section 8 of the WTA<sup>27</sup> do establish the Land conflicts resolution mechanisms actually on the Land matters for the purpose of this study. The Written Laws Miscellaneous Amendments No.5 of 2021<sup>28</sup> came with amendments that affected the provisions of section 45 of the LDCA and Section 8 of the WTA whereby the laws hand cuffed the jurisdictions of the WT while establishing procedural requirements for instituting the case in the DLHT.

## 2. The Ward Tribunals in Tanzania and their Jurisdiction over Land Disputes:

WT are established under section 3 of the WTA.<sup>29</sup> Among other duties, the WT established under the WTA, along with its inherent function of mediation, was also an adjudicatory organ to the land disputes not exceeding Tanzanian Shillings three million (3,000,000) only.<sup>30</sup> This is on the civil matters related to land or proprietary jurisdiction which was extremely crucial; see also the decision in **Makame Makes v Zaituni Msoni**<sup>31</sup> when the High court re cited it for approval re discussing the paramount nature of observing the jurisdiction of the forum in the cause of determining the matter before that forum.

Out of the Land disputes, the WT was under Section 10 able to impose penalties and charges in criminal matters, default of penalties on decision made, impose fine within the parameters of the law applicable and convict and commit a culprit to prison, and so on.

Section 8 (1) of the WTA is to the effect that the primary function of each WT shall be to secure peace and harmony in the area for which it is established by mediating and endeavoring to obtain just and amicable settlement of disputes. Its Jurisdiction is extended to all matters before it relating to a dispute, whereby the intention remains its attempt to reach a settlement by mediation before exercising its compulsive jurisdiction. Further, the tribunal has jurisdiction in relation to all matters and disputes arising under all laws and directives passed by the appropriate authority, and laws and orders for the time being in force in relation to or affecting the business and affairs of the ward made or passed by a local government authority or any other competent legislative authority within the area of the Tribunal's jurisdiction.

The intention of this study being sided on the Land Disputes, the duty of the WT remains mediating the Land dispute as its primary issue. The mediation is provided for under

Vol.7, Issue 3, 2017, pp. 332. Available at <https://www.ijsrp.org> accessed on 14/10/2023

<sup>13</sup> Sist Joseph Mramba and Masumbuko Roman Lamwai (2017) The Land Disputes Settlements in Tanzania and Zanzibar, LST Law Review, Vol.2, Issue No.1, January-June 2017 p.1, available at <https://www.lstjournal.lst.ac.tz> accessed on 16/10/2023

<sup>14</sup> Getrude Sackey, (2010). Investigating Justice System in Land disputes resolution, A case study of Kinondoni Municipality. Available at <https://www.essay.utwente.nl> accessed on 14/10/2023

<sup>15</sup> Ibid Shivji, G.I

<sup>16</sup> Doris Wilson Mangure, (2017). Effectiveness of Ward Tribunals in Dispensing Justice as Land Courts in Tanzania: Case of Arusha City. International Journal of Science and Research (IJSR) Vol.6 Issue 5, 2017 available at <https://www.ijsr.net> pp. 2045, accessed on 13/10/2023

<sup>17</sup> A thesis submitted in Partial fulfillment of the Requirement of Master of Laws of the Open University of Tanzania. Available at <https://www.out.ac.tz> accessed on 03/10/2023

<sup>18</sup> Masumbuko Lamwai, Lectures on the Civil Procedures for Undergraduate Students of Tumaini University Dar es Salaam College, 2006, Dar es Salaam

<sup>19</sup> Godfrey Taisamo, 2018, Civil Procedures and Practice Lectures to Postgraduate Students of the Law School of Tanzania, Dar es Salaam.

<sup>20</sup> Nyanduga, B.T. and Manning, G. (2006). Guide to Tanzania Legal System and Legal Research. Housa Global Law School . Available at [https://www.newLawglobal.org](https://www.newlawglobal.org) accessed on 7/10/2023

<sup>21</sup> Cap 1 of the Laws, as amended from time to time

<sup>22</sup> The Constitution of Zanzibar is of 1984. The reason behind referring to this instrument is due to the fact that Zanzibar is one part of the Union of the Republic of Tanzania the other Part being Tanganyika. In the Union, the union instrument provides for union and non-union Matters, whereby in the very particular part of the Judiciary, the judiciary is among non-union matters save for the Court of Appeal of the United Republic of Tanzania. All these union and nonunion matters are constitutionalized in the

Constitution of the United Republic of Tanzania of 1977 as amended.

<sup>23</sup> Supra

<sup>24</sup> Cap. 113

<sup>25</sup> Cap. 114

<sup>26</sup> Cap. 216

<sup>27</sup> Cap. 206

<sup>28</sup> ibid

<sup>29</sup> ibid

<sup>30</sup> Section 15 of Cap 216 Supra

<sup>31</sup> Appeal No. 30 Of 2021, High Court of Tanzania, Dar es Salaam.

Section 8(1) of the WTA read together with PART VIII of Act No.5/2021.<sup>32</sup> Where a party to the dispute refers a land matter to the WT, the matters shall be mediated for settlements within thirty days failure of which it shall issue a certificate of settlements. The issues certificate by the WT shall be part of the documents to be filed by the aggrieved part preferring the remedy before the District Land and Housing Tribunal 'the DLHT'. However, the party who referred the dispute to the WT may take the matter to the District Land and Housing Tribunal without a certificate of non-settlement provided that he will have to prove that the WT failed to mediate the dispute within 30 days after receipt of the complaint.

With the Written Laws (Miscellaneous Amendments) Act No.5 of 2021, no any land disputes on title or interests in land may be instituted in the DLHT unless and until the dispute has been verified to have been mediated unsuccessfully as per the requirement provided for under Section 45(2) of the Land Disputes Courts Act ('the LDCA').<sup>33</sup> Mediation being the only Primary duty of the WT as per the current position of the Law therefore, it can no longer stand as the Land Court with original jurisdiction as it was before.

### 3. Effects of the amendment

#### a) On the Land Act :

The Land Act<sup>34</sup> under provisions of section 167 establishes the Land disputes settlements machinery. Such powers under the law are exclusively vested in the Court of Appeal as the last appellate court in Tanzania, the High Court as an appellate court on the matters arising from the DLHT and actually with original jurisdiction over the matters beyond the jurisdiction of the DLHT, WT and Village Land Councils ('the VLC'). However, Section (167 (2) is to the effect that the Ward Tribunals established under the WTA shall have jurisdiction in relation to its area of a district Council. Further that, for the purposes of this Act and shall be competent courts as are or may be established by a written law for the time being relating to the establishment and powers of magistrates and other courts of mainland Tanzania. The Law recognizes the presence of the enlisted courts under section 167(1) (a) to (e).

The Land Act under Section 167(3) was not affected by the amendments via Act No.5 of 2021. The provisions to section 167(3) of the Land Act still recognizes the WT as an appellate court of the matters actually the land disputes despite the fact that it does not state as to where the appeal is arising from. This is because the Village Land Council mediations only and one is not mandated to seek for the services from the Village Land Council, that is, the services from the Village Land Council is optional and has no adjudicatory powers. Did the legislator ignore the provision to section 167(3)? Would one move the DLHT under Section 167(3) of the Land Act? This remains an ignominy to determine.

<sup>32</sup> Ibid

<sup>33</sup> Supra

<sup>34</sup> Cap 113

#### b) On the Village Land Act:

The Village Land Act<sup>35</sup> Every village is mandated to establish a Village Land Council ("the CLC") to mediate between parties to assist them arrive at a mutually acceptable solution on any matter concerning village land (s.60(1)).<sup>36</sup> The Village Council Only mediates the matter failure of which, a good case was to be instituted to the Ward Tribunal which is not the case today. This duty may use customary or modern means of mediation provided that peace and tranquility is maintained and an amicable solution too (Mramba and Lamwai, 2017).<sup>37</sup>

The functions of mediation to apply involve principles of natural justice, principles of mediation, and customary principles of mediation (Mramba and Lamwai, 2017).<sup>38</sup> The question as to whether they are known to the council or not, especially principles of natural justice remain questionable. It should be noted that, mediation before the Village council in the village is not mandatory and therefore one is not mandated to utilize services at the village level as per Section 61(6) VLA. The Challenge among other this has so far stands, remains that, he who goes for mediation at the Village Land Council and an amicable solution is not found, and shall there after resume the service at the WT as per the today's position of the law.

#### c) On Land Disputes Courts Act :

The Land Disputes Court Act<sup>39</sup> 'the LDCA' under section 3 establishes the jurisdictional organs of the Land Disputes Settlements Machinery. Provisions to Section 3 of the Law, read together with section 167 of the Land Act and Sections 60 to 62 of the Village Land Act provides for that every dispute or complaint concerning land to be instituted in the Court having jurisdiction to determine land disputes in a given area. Sub Section (2) of Section 3 of the law goes further to articulate the courts as the machinery referred to by the law to include, the Village Land Council, the Ward Tribunal, the District Land and Housing Tribunal, the High Court and the Court of Appeal of Tanzania.

### 4. The Seating and Composition of the WT in Land Disputes Settlements:

The seating in the tribunal must be a minimum of four members and a maximum of eight, three of which must be female.<sup>40</sup> For being a WT member, one must be a citizen of the United Republic of Tanzania, aged 18 years and or above and whose place of abode is within the ward s/he is appointed.<sup>41</sup>

Further, the appointee must not be a member of the Village Land Council, a public servant, a Village council member, a legislator, is of no good brain health and one who has ever been convicted of any criminal matter moral turpitude.<sup>42</sup>

<sup>35</sup> Cap 114

<sup>36</sup> Ibid

<sup>37</sup> Ibid Mramba and Lamwai

<sup>38</sup> Ibid

<sup>39</sup> Cap 216

<sup>40</sup> Paragraph 2.3 of PR-RALG guidance

<sup>41</sup> Ibid Paragraph 2.2.1

<sup>42</sup> Ibid paragraph 2.2.2

According to Section 4(1) and (2) of the WTA<sup>43</sup>The WT is chaired by the Chairperson appointment by the District council from among the members of the WT referred to above. An appointment shall put into consideration one's ability to understand and resolve conflicts and others as the Council shall consider fit.<sup>44</sup>

On the other hand, The Ward Developments Committees shall submit to the District Director one member with qualities to be pointed the WT Secretary. The proposal of the appointment shall put into consideration one's level of education, and ability to perform duties of the WT.<sup>45</sup> The Guidance from the President's Office, Regional Administration and Local Government (the 'Guidance') does not clarify on which education nor does it state over the level of education to consider.

In the readings of section 6 of the WTA,<sup>46</sup> the appointed WT member expires within three years from the first date of his/her appointment; however he/she may be re-appointed. The appointees may cause their position to be vacant if he dies and or by any other cause.<sup>47</sup> The WDC shall fill in the vacancy within 30 days. In addition to the above, it is provided for under Section 14 of the LCA, that, the session must have a Colum of three members one of which must be a woman/female. All mediation sessions shall be preceded by the Chairperson who shall be appointed by the members during the mediation.<sup>48</sup>

## 5. The Law and Practice of the Disputes Resolution Mechanisms under the Current Changes:

### i. The Law:

Following the current amendment of the LCA<sup>49</sup> the society unlike formally, witnesses the DLHT hands tied to the effect that it shall not hear any disputes affecting title or interests in land unless and until the WT has certified that it has failed to settle the matter amicably. This requirement is provided for under Section 45(2).<sup>50</sup> In other words, no any Land Disputes shall be instituted in the DLHT unless and until the same is admitted in the WT and mediated within a month, certified that the same has been mediated; it is when it matures to be instituted in the DLHT.

The WT formally under Section 13(1)<sup>51</sup> read together with Section 8(1)<sup>52</sup> was duty bound to discharge its mediation function for securing peace and harmony by mediating parties to rich a mutual solution in its territorial jurisdiction on one hand and on the other hand, the WT had powers to enquire into and determine disputes arising under the Land

Act and the Village Land Act as per the defunct Section 13(2).<sup>53</sup> The provisions of Section 45<sup>54</sup> has repealed section 13(2)<sup>55</sup> by reducing powers of the WT and therefore remaining with the sole duty of mediating Land Disputes only.

Section 15<sup>56</sup> red together with section 10<sup>57</sup> had set a pecuniary jurisdiction of the WT on proceedings of civil nature within which Land is a target or to the disputed land or property to be three million Tanzanian shillings only. The WT had also powers to order the recovery of possession of land, order the specific performance of any contract, and make orders in the nature of an injunction both mandatory and prohibitively, award any amount claimed and 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. These powers have been repealed and therefore Section 16<sup>58</sup> was repealed too.

The Defunct sections 20 and 21<sup>59</sup> entitled any aggrieved person with the decisions of the WT to appeal in the DLHT by the procedures and time given. That is to say and in other words, the WT had an original jurisdiction to adjudicate the land disputes on title or interests in that land provided that it did not exceed three million. A change via Act no.5/2021, the WT has no longer having such adjudicative jurisdiction.

According to section 3(1) and (2)<sup>60</sup>With the Institutional structure in relation to the Land disputes, on the Top, there is the court of Appeal of the United Republic of Tanzania, The High Court of the United Republic of Tanzania bellow the Court of Appeal, the District Land and Housing Tribunal, the Ward Tribunal and the Village Land Councils. The intention being the WT, the study goes direct to take little on the Functions of the Village Land Council versus The WT as the Land Courts. Section 60 of the Land Act<sup>61</sup> read together with section 61<sup>62</sup>establishes the VLC and function of the Village Land council to include receiving complaints from parties in respect of land, convening meetings for hearing of disputes from parties; and mediating between and assisting parties to arrive at a mutually acceptable settlement of the disputes on any matter concerning land within its area of jurisdiction. A note is to be taken that each village deals with the said dispute within its boundaries. Equally, the WT has remained with the similar function of mediating as per section 8(1)<sup>63</sup> and Section 13(1)<sup>64</sup> hence similar services in different jurisdiction.

<sup>43</sup> Supra

<sup>44</sup> Ibid paragraph 2.4.3.

<sup>45</sup> Ibid paragraph 2.5.3

<sup>46</sup> Supra

<sup>47</sup> Ibid paragraph 2.8.1

<sup>48</sup> Ibid para 4.4.2

<sup>49</sup> Amendments done Via Written Laws Miscellaneous amendments Na. 5 of 2021

<sup>50</sup> Written Laws Miscellaneous amendments Na. 5 of 2021

<sup>51</sup> Cap 216

<sup>52</sup> Cap 206

<sup>53</sup> Cap 216

<sup>54</sup> Written Laws Misc. amendments No.5/2021

<sup>55</sup> Cap 216

<sup>56</sup> ibid

<sup>57</sup> Cap 206

<sup>58</sup> Cap 216

<sup>59</sup> Cap 216

<sup>60</sup> Cap 216

<sup>61</sup> Ibid

<sup>62</sup> Cap 114

<sup>63</sup> Cap 206

<sup>64</sup> Cap 216

Along with the position of the laws above touched, the Under the United Republic Of Tanzania's Elders Policy,<sup>65</sup> there some other mediation service organs so claimed to have established national wise to among other things, these organs are alive in some areas, Karatu District inclusive. In summary the nation in some areas has so far an instrument known as the (Elders Council "the EC") alternatively known as the "Mabaraza ya Wazee" in the Kiswahili language. They enjoy participatory decisions over society humanistic categorical developments at different levels in accordance with the National Elders' Policy of 2003. The policy under Paragraph 3.14 of the policy.<sup>66</sup> In some areas, the policy is in use. The Elders Council at District, Ward, Villages were and are organized and alive giving maximum and reasonable corporation in categorical matters including alternative disputes resolution via Mediation services in an area. Although it has remained difficult to get other official instruments so as to get clarity as to what are their legal functions, mandates and modes of resolving disputes, the study has not ignored the reality that among disputes they have been dealing with, include the Land Disputes. The society has responded positively in their services compared with that in the WT. The destination of their services and outcome are reported to the District Authorities. The EC makes no difference with the VLC in mediating parties only that the VLC is a law establishment instrument.

To the High Court of Tanzania in particular, is established by the Constitution of the United Republic of Tanzania.<sup>67</sup> For the purpose of this study and as the court with original jurisdiction in some matters of Land Disputes, its inherent powers and with unlimited jurisdiction unless the law states otherwise. With inherent powers, simply means powers over and beyond those explicitly granted in the constitution or reasonably to be implied from an express grant.<sup>68</sup> The powers of the High Court of Tanzania is only limited by the law if so states as it was stated in the Appeal case of *Tanzania- China Friendship vs Our Lady of the Usambara Sisters*.<sup>69</sup> Further, the high court is tied its hands in adjudicating issues with which parties have waived intentionally as it was resolved in the Case of *East African Breweries vs GGM Company Ltd*.<sup>70</sup>

Pertaining to the Land Disputes, once again, the amendments in Act No.5 of 2021 has not disturbed its powers anyhow. No restrictions of the requirements for mediation at the WT so as to be able to access services in the High Court, however, it should be remembered that the High Court just like others, subjects the dispute to mediation before hearing as the case may be.

## 6. Discussion and Analysis

### i. How vital is has the functional changes in the Disputes Resolution Mechanisms brought about by Act No.5/2021 in Quickening Justice:

The speedy trial as the basis and principle of administration of justice is what is expected in the struggle to hasten justice not only in criminal cases but in civil too. Time taken in disposing justice is said to be a critical factor to the society to consider if the justice system is just and fair or not (Tania and Burstyner, 2014).<sup>71</sup> But what amounts to delay as opposed to hastening in relation to justice would be useful to define so as to avoid an egg and chicken dilemma for the purpose of this study. Generally as it is seen by Feltes (1992)<sup>72</sup> there is no easy answer and or definition for delay. Often the who have tried to come up with the meaning of delaying justice to mean denying justice, have been confining themselves in the within the four angles of the matters in the courts and applicable procedures. An example goes to Bhongale who observes that delaying justice, is commonly understood via long drawn legal procedures, political and bureaucratic structures, overlapping on jurisdiction point and change of lawyers by clients (Bhongale,2012).<sup>73</sup>

It is said and observed that every society advances its own traditional insouciance to its land (Davys, 2013).<sup>74</sup> It is also are known experience that man's existence in the society involves an unforeseeable and inevitable conflict of his own desire (Nyerere, 1965). It is further noted that individual reality wants freedom to pursue his own interests and inclinations as it was once stated by J.K.Nyerere.<sup>75</sup> Likewise, the society of Tanzania has advanced an alternative creation over Land Conflicts resolution among other things by restructuring the Land conflicts adjudicatory organs so as to come up with the conflicts solutions so called.

As Bentham's utilitarianism legal philosophy stands, the purpose of the law is to liberate an individual from the servitude and limitation upon his freedom (Singh, 2006),<sup>76</sup> similarly, the current changes of the WTA and LCA would be tested on that so as to conclude as to whether or not, the changes intended for emancipating the society of Tanzania from the bondage of his freedom. The reality remains staggering because mediation of the land disputes is made

<sup>71</sup> Sourdin Tania and Naomi Burstyner (2014) 'Justice Delayed is Justice Denied' Victoria University Law and Justice Journal.Melbourne,Australia,4(1),pp.49-62.doi:10.15209/vulj.v4i1.61

<sup>72</sup> Thomas Feltes (1992). Delays in the Criminal Justice System-Cause and Solutions.Council of Europe Criminological Research , Vol.XXVIII, Strasbough 1992, s.47-84

<sup>73</sup> Jaykumar Bhongale,(2012) Delay Justice,Justice Denied(With Reference to Customer Litigation) Civil and Military Law Journal,ISSN:0045-7043,Vol. 48 issue 2. Available at <https://papers.ssrn.com> accessed on 27/10/2023.

<sup>74</sup> Mark Davys,(2013), Land Law,8<sup>th</sup> Edn,Palgrave Macmillan.

<sup>75</sup> Julius Kambarage Nyerer, (1966).Freedom and Hunity/Uhuru na Umoja, Oxford University Press, Dar es Salaam

<sup>76</sup> Avitar Singh,(2006) Introduction to Jurisprudence, 2<sup>nd</sup> Edn. Wadhwa Nagapur, India.

<sup>65</sup> National Elders Policy,2003

<sup>66</sup> The National Elders Policy/Sera ya Taifa ya wazee of 2003.

<sup>67</sup> Chapter 1 of the Laws of Tanzania

<sup>68</sup> Blacks Law Dictionary

<sup>69</sup> Civil Appeal No. 84 of 2002, Court of Appeal of Tanzania at Dar es Salaam.

<sup>70</sup> [2002]TLR 12

compulsory in the WT only, leave, away the court annexed mediations which is compulsory due to different reasons such as reducing backlog of cases in the courts, reduce expenses in the course of looking for justice, need for judicial better quality outcome and maintenance of relationship, etc, (Hamis,2022).<sup>77</sup> With Court annexed Mediation simply means a form of mediation conducted under auspices of the court in the pretrial stages of the case giving the part an opportunity to explore whether the dispute can be settled amicably before going to court.<sup>78</sup>

The land conflicts may be between individual persons, legal entities and the Governments. The Laws of Tanzania for instance, allows any persona to sue the government at any level that is the central and local governments. Among procedural requirements, the government can only be sued in the High court as per section 6(4) of the Government Proceedings Act.<sup>79</sup> See also Section 25 of the Written Laws Misc. amendments No. 1 of 2020. With these amendments, the government includes the Local government Authorities. No amendment that substitutes the parties to mediation before instituting the case at the High Court. Further, at the institution of the proprietary jurisdiction that mandates the case to be instituted at the High Court, no preliminaries establishing compulsory mediation. No doubt that, that this amendment places the society under the empire of pleasure and pain due to prolonging and subjecting parties in land conflicts in prolongation of the procedural requirements, costs of time and finance and other procedural malice before the unskilled service providers.

## ii. Does the Law time server actor?

In responding to this enquiry, a number of matters would raise some questions attracting reasonable answers. How the law does intend to speeding or delaying the case hence justice? How does the amendment minimize the Land Conflicts in the Society of Tanzania? What is the practice and reality?

In responding one after another question, making a choice from another alternative would save the purpose. With alternative choices, the knowledge of public policy comes in. With public policy simply means the relationship of the government unit to its environments. It is whatever the government choses to do or not to do (Dye, 1972).<sup>80</sup> It is a purposive course of action or inaction followed by an actor or set of actors in dealing with a problem or matter of concern (Anderson, 2006).<sup>81</sup> One of the reasons behind the

WT to be assigned adjudicatory services on the land conflicts was among other things, the control of the backlog cases in the land issues following the Presidential Commission's proposal.<sup>82</sup> Has today the function proved failure or outdated? It is a question of doubt. Should this mediation be considered the compulsory pretrial conference and settlements, some views are in its support while others are of the view that it is wastage of time.

Those who oppose it are of the views against the actors who lack knowledge and authority to enter and bind stipulations (Belli,1981).<sup>83</sup> The position to the study at hand is more or less similar. Although the WT is as of now duty bound to mediate parties in land matters, its members are suffering from skills applicable in mediation. This would seem the procedure to be a ceremonial one or a mere step towards litigation whereby parties are forced by the requirement of the law without which no institution of the case at the DLHT would be effected as there is no forum shopping with which had it been there, there number of bodies would have assisted in mediations with full and reasonable skills. Perhaps, the Village Land Tribunals/Councils would have been compulsory points to take over as the case would be. The current Law dictates that under any mediation that parties would go, be it to private practitioners, Legal Village Tribunals of Land and whatever, provided that parties would not have their matter settled amicably, they must channel their issue before the WT which remains duplicity of the services hence unwarranted delays.

## 7. Conclusion

Mediation as an important disputes resolution mechanism,(Lukumay,2016),<sup>84</sup> still in the road of Land Disputes resolution structure is still a challenge and may be considered to delay justice, the reason behind being that, mediation by itself is a tactical procedure that needs skills,(Mraba and Lamwai,2012) of which mediators in the WT have no such skills. Successful mediation at the WT ought to have legal directives to be accommodated as a settlement judgment, which is not the case as of now.

Much as mediation could be done by private practitioners, are done by the Village Land Council under section 60 of the Village Land Act,<sup>85</sup> however this is not compulsory (Sisti and Lamwai,2012)<sup>86</sup> those who might have passed through mediation elsewhere would go on wasting time when need to go for adjudication comes in as they would further be compulsorily demanded to go for mediation in WT whether they may go for the service seriously or ritualistically. The law would as well be twisted to allow forum shopping at the mediation stage to avoid repetitive mediation in land disputes hence wastage of time. In so doing, it is suggested that the WT retain adjudicatory powers in the landed dispute

<sup>77</sup> Hamis T.Hamis,(2022).Court Annexed Mediation in Tanzania: Success, Challenges and Prospects, International Journal of Innovative Research and Advance Studies (IJIRAS),Volume 9 Issue 11,November 2022. Available at [www.ijiras.com](http://www.ijiras.com) accessed on 25/10/2023

<sup>78</sup> European Union, Court Annexed Mediation and Dialogue: EU JULE POLICY BRIEF NO.7 (2020), Justice and Legal Empowerment Program in Vietnam (EU JULE) and Ministry of Justice in Viet Nan, available at <https://www.undp.org> accessed on 26/10/2023

<sup>79</sup> Chapter 5 of the Laws of Tanzania

<sup>80</sup> Thomas R.Dye,(1972)Understanding Public Policy,Prenticehall, Englewoodcliff

<sup>81</sup> James E.Anderson,(2006).Public Policy Making )8<sup>th</sup> Edn,Cebgage Learning,USA.

<sup>82</sup> Supra,Sisti and Lamwai.

<sup>83</sup> Melvin Belli,(1981).The Law's Delays: Reforming Unnecessary Delay in Civil Litigation. Journal of Legislation,Vol.8:16, available at <https://scholarship.law.nd.edu> accessed on 26/10/2023

<sup>84</sup> Zakayo N. Lukumay,A reflection of Court-Annex Mediation in Tanzania,(2016)1(2)LS'TLR, Pp. 49-58

<sup>85</sup> Ibid

<sup>86</sup> Ibid

matters of its capacity or be enabled powers to registered settlements so as to become a judgment settlement. There would as well be a need to have another Tribunal as an appellate court receiving appeals from the DLHT so as to save the purposes of the strong judicial hierarchy inclusive of oversight of the lower court/tribunal. This should go hand in hand by empowering the WT members acquire necessary skills in mediation short of which the position by elites that there is a correlation between judicial performance and quality of Justice (Ramello et al. 2021).<sup>87</sup> In the conclusion there of, by considering the nature of disputes, tribunals, good whims of the government to bring all disputes to the speed end, this study considers the current position of the laws over disputes resolution in the Ward tribunal a bearing with in elements to delay justice.

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<sup>87</sup> Alessandro Melcarne, Giovanni B.Ramello and Rok Spruk, (2021). Is Justice Delayed justice denied? An Empirical Approach, *International Review of Law and Economics*, vol. 65 available at <https://www.sciencedirect.com> accessed on 17/10/2023

