

# Effectiveness of Ward Tribunals in Dispensing Justice as Land Courts in Tanzania: Case of Arusha City

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**Abstract:** *Ward Tribunals are creatures of law. They were established in 1985 by the Ward Tribunals Act, 1985 CAP 206 R.E. 2002 when the central government decided to revitalize local government authorities. They are thus part of the decentralization reform. They are lower courts consisting of lay persons with limited jurisdiction and they help relieve the primary courts of their increasing workload. Section 8 (1) of the Ward tribunals Act of 1985, provides that; the primary function of each tribunal is to secure peace and harmony in their areas by mediating and endeavoring to obtain just and amicable settlements of disputes. If a settlement cannot be reached, the tribunals have to decide the case. In 2002 after the enactment of The Land Disputes Courts Act, Act No. 2 of 2002, CAP 216 R.E 2002, ward tribunals apart from its original functions, they became land courts. Ward tribunals as land courts were now charged with the duties and responsibilities, among others in dealing with and adjudicating upon land and housing disputes within the area they are established. This study was conducted in Arusha city focusing on understanding the effectiveness of ward tribunals in dispensing justice as land courts in Tanzania: A case of Arusha City. Basically, it explored the availability and accessibility of legal services, quality of legal services, procedures and considerations in opening and handling cases. The study embraced both quantitative and qualitative methods but it was predominantly qualitative in nature. During data collection phase, interview technique was employed using a set of questionnaires designed for each group of respondents who were ward tribunal members, DHLTOs, Mitaa executive officers, Ward Executive officers, councilors, tribunal secretaries and Arusha city residents (Refer Figure 3.1) and interview guide. Secondary data was through review of published and unpublished literature. Data collected through interviews and documentary review was analyzed using content and contextual analysis technique. In fact, the study shows that; In procedure and consideration in opening cases, the study found out that the law has made a room for other people other than ward tribunal members to initiate proceedings of ward tribunals. The study revealed that, that has two effects, one, the procedure and consideration in opening and handling cases is tedious and cumbersome. Secondly, it gives room of the ward tribunals to be interfered by other authorities like the mitaa executive offices, ward executive officers thinking provided they participated in opening and initiating cases, and then they can also participate in decision making. The legal services in ward tribunals found to be available but are not obtainable timely. The tribunals are sitting once in a week thus legal services are not provided timely and most of the cases take long to be heard at an average of six months. Most of the cases in Ward tribunals found taking more than six months to be heard the situation which cause people to distrust these Tribunal operations and its effectiveness. Challenges in handling cases in the tribunals have lead to quality of legal services in tribunals as land courts to be unsatisfactory. This notion has been associated with residents limited understanding on by-laws passed by tribunals, corruption, limited understanding of laws and legal procedures among tribunal members, few female tribunal members, poor working infrastructures like court rooms, offices and inadequate rooms to accommodate the claimants and defendants stationeries and lack of sitting allowances to members and salary to the secretary. Both analyses of primary and secondary data revealed that poor governance of ward tribunals affects its effectiveness in dispensing justice as land courts. However, despite the challenges, ward tribunals have not been without important achievements. Its establishment has met with considerable enthusiasm and their performance on whole seems to have maintained hope among the respective communities that this organ will continue to be useful to them. The above analysis and conclusion indicates that, establishment of ward tribunals as land courts was a good idea, but its governance has to be improved so that they can be effective in dispensing justice. There are other factors which have significance influence in the effectiveness of ward tribunals in dispensing justice. It is hereby recommended that to improve effectiveness of ward tribunals in dispensing justice, ward tribunals needs to have good facilities like buildings, furniture, remunerations to members and secretary be permanent and pensionable employee of the local government where the ward tribunal situates as required by law. I recommended to the government of Tanzania in general*

**Keywords:** Effectiveness, Ward Tribunals, Justice Administration, Land Courts, Dispute Resolution

## 1. Introduction

Land being one of the most valuable resources under the sun, and the fact that it is limited while population is growing every single minute, has been a source of many disputes. This has made a lot of jurisdictions set a separate system in dealing with disputes arising from land matters. In England, The Lands Tribunal was created by the Lands Tribunal Act, 1949 that had jurisdiction in England, Wales and Northern Ireland (HM Courts & Tribunals Services, 2012). Although in the Northern Ireland context the term Lands Tribunal normally refers to a different body. The Lands Tribunal for Northern Ireland was unusual in having both first instance and appellate jurisdiction. The functions

of the Lands Tribunal were transferred to the Upper Tribunal in June 2009 by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (Farmer, 1974).

The Lands Tribunal in England was established to replace the Panel of Official Arbitrators which had previously determined disputes as to compensation payable to the owners and occupiers of land affected by compulsory purchase (HM Courts & Tribunals Services, 2012). It additionally acted as the appellate Tribunal for Rating Appeals from the Valuation Tribunals, and had jurisdiction in relation to ordering the discharge or modification of

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restrictive covenants affecting land, under section 84 of the Law of Property Act 1925 (Farmer, 1974)

In the Republic of Vanuatu, a pacific island nation located in South Pacific Ocean, at independence in 1980, alienated land in Vanuatu was returned to custom owners. The effect of this constitutional provision was to nullify all registered titles that had been granted during the colonial period. Though the framers of the Constitution did provide for a procedure to deal with land disputes, they did not anticipate that the problem would grow to become one of the most disruptive issues in Vanuatu society today. During the 1980s and 90s, numerous land disputes over the ownership of custom land were brought before the island courts, especially on the island of Efate, Malakula and Santo, the islands where the greatest number of formerly alienated properties were located (Simo & Trease, 2010). More recently, a the number of land disputes has increased as a result of a surge in land speculation by foreigners attracted to Vanuatu to take advantage of new subdivision developments especially along coastal areas offered for leasing. (Simo & Trease, 2010)

Reflecting the difficulty of working through opposing accounts and interpretations of custom, the decisions were often disputed and, as allowed under the Island Court Act, many were appealed to the Supreme Court for final judgment. In February 1999, the Chief Justice announced that the Court would no longer accept land cases due to the huge backlog that had accumulated and gave the Government one year to come up with an alternative solution (Simo & Trease, 2010). While there must have been a large number of cases before the Court, it is clear from an examination of the judgments that the main issue for the Chief Justice was the complexity of the cases and his lack of knowledge about custom principles in the various areas, despite the fact that he was allowed to have to custom advisors to assist him.

This led the Lands Department to organize a survey of the islands to try to find another solution to the difficult task of dealing with the increasing number of land disputes. The result of subsequent discussions was the passage of the Customary Land Tribunal Act (CLTA) of 2001, which mandated the establishment of customary land tribunal in place of the island courts, (Simo & Trease, 2010). To deal with the fact that the Supreme Court was not able to deal adequately with the issue of custom, the new system that was introduced turned to the only institution within Vanuatu society with the expertise and capability, the chiefly system through the Malvatumauri (the National Council of Chiefs) as the guardian of custom. The system allows anyone with a dispute about customary land to request the establishment of a tribunal within a community to attempt to find a resolution involving chiefs and people knowledgeable of custom principles, (Simo & Trease, 2010).

The United Republic of Tanzania was born on 26<sup>th</sup> April, 1964 when the Republic of Tanganyika and the Peoples Republic of Zanzibar united and formed a single country in the name of Tanzania. Administration of justice in Tanzania is an exclusive constitutional mandate of the judiciary of Tanzania (JOT) vides Article 4, 107A and 107B of the

Constitution of the United Republic of Tanzania 1977, CAP 2 of the laws of Tanzania. Due to backlog of cases in ordinary courts, the government has established in Tanzania mainland a separate system of dealing with land disputes from the ordinary civil courts. This separate land dispute settlement system is less formal compared to the complex civil procedures in the ordinary courts of law; and is intended to make it more accessible as well as comprehensible even to those citizens with less formal education. In accordance with section 62 of the Village Land Act (1999) and section 3 of the Land Dispute Courts Act (2002), Chapter 216 of the laws of Tanzania, land dispute settlement structure starts from the Village Land Council, the Ward Tribunal, The District Land and Housing Tribunal, the Land Division of the High Court.

## 2. Research Methods

The study adopted descriptive survey design covering a total population of 879 ward tribunal members from 25 wards in Arusha city, ward tribunal secretaries, Ward Executive Officers, Mitaa Executive officers; Arusha based practicing advocates and public in general. The table of sample size for a given population was used. As per this table, the minimum number size for population of 879 is 100 and this is the size used in this study. A 5% margin error (which is measurement of accuracy of the results of a survey) and a 90% response rate (which is percentage of persons in sample who responded to a survey or the actual percentage of questionnaires completed and returned) were assumed. During data collection phase, interview technique was employed using a set of questionnaires designed for each group of respondents who were ward tribunal members, DHLTOs, Mitaa executive officers, Ward Executive officers, councilors, tribunal secretaries and Arusha city residents and interview guide. Secondary data was through review of published and unpublished literature. Data collected through interviews and documentary review was analyzed using content and contextual analysis technique. The study collected both qualitative and quantitative data. The qualitative data was processed and themes were developed for categorization. Related themes were combined and compared to research objectives. Data collected through interview were analyzed as they were collected; only relevant data that answers objectives were recorded. Data from questionnaires was grouped based on the questions for all respondents. Tables and themes were developed. Data collected through documentary review was grouped into themes as they were collected by using documentary review check list.

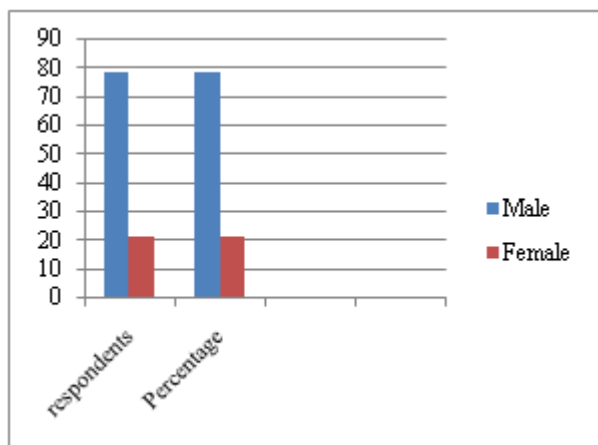
## 3. Results and Analysis

The study first considered the general question as to how the ward tribunals as land courts are effective in dispensing justice to the public in Arusha city. This was tested by analyzing primary and secondary data. The secondary data was analyzed by using graphs and tables. Both type of analysis showed that there are shortcomings at the ward tribunals which are attributed by its governance thus affect its effectiveness in dispensing justice. The result of secondary data shows that there is general trend of improvement in the number of registered and completed

cases in the ward tribunals signifying that there is improved perception and confidence in ward tribunals as land courts on one hand and on the other hand the law force people to file cases at the ward tribunals due to pecuniary and territorial jurisdiction of ward tribunals as provided under section 3 of The Ward Tribunals Act, 1985, CAP 206 R.E 2002 and section 15 of The Land Disputes Courts Act, 2002, CAP 216 R.E 2002.

**Table 4.1:** Respondents who replied the Questionnaires

| Gender | No. of Respondents | Percentage |
|--------|--------------------|------------|
| Male   | 79                 | 79%        |
| Female | 21                 | 21%        |
| TOTAL  | 100                | 100%       |



**Figure 4.1:** Respondents who replied questionnaires

The analysis of primary data showed that poor governance of ward tribunals affects its effectiveness in dispensing justice. This was done through getting frequency distribution of the results and calculations of averages. Most of response which were from ward tribunal officials, parties to cases (disputants), lawyers, Mtaa executive officers, ward executive officers councilors and general public were in the region between strongly agree and agree, these made up a total of 84% of all the response on how governance of ward tribunals affect its effectiveness in dispensing justice. This reinforces the need to improve governance of ward tribunals as land courts.

The result from the two sources of data, pointed to the same inference, thereby strengthening the argument that poor governance of ward tribunals affects its effectiveness in dispensing justice in land related cases.

### 3.1 Availability and access of legal services in Ward Tribunals

The research also assessed the availability and accessibility of legal services in ward tribunals as land courts. Availability was measured by physically availability of the tribunals and a number of sittings. The findings show that ward tribunals are dissolved at the whim of councilors or divisional secretaries simply because they are operating in their offices, therefore the availability of ward tribunal to the society are at risk. In most cases only ward tribunals' sits only once in a week to hear and determine land cases given the number of cases filed it compromises the availability of the tribunals as people have to wait for it to sit on a planned

day while disputes are emanating on increase every single day. On further investigation on the availability and accessibility of legal services at ward tribunals, out of which 46.5% of the respondents contacted reported that legal services are not located near to their residential area. The availability of legal services in tribunals has been revealed to be not easy and friendly. Moreover, the study showcased that legal services are not provided timely and most of the cases take a long time to be heard at an average rate of six months in Ward,

### 3.2 Procedures and considerations in opening and handling cases

The procedure of opening a case before the ward tribunal is provided under the provisions of section 11 (1) of The Ward Tribunals Act and for clarity I quote it;

“Proceedings may be instituted by making of a complaint to the secretary of the Tribunal, the Secretary of an appropriate authority, Chairman of a Village Council or a ten-cell leader.”

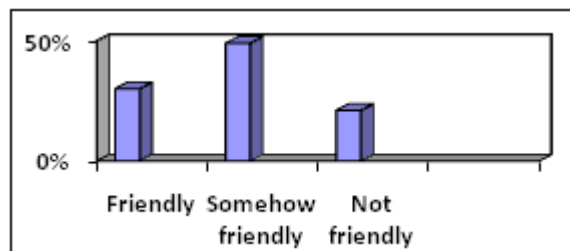
Subsection 2 of the provision of section 11 provides that, any person who reasonably believes that any person has committed an offence may make a complaint about the matter to any of the persons specified in subsection (1)

From the above provision of law and analysis of both primary and secondary data it was revealed that the law has made a room for other people who are not members of the Ward Tribunals to initiate proceedings of the ward tribunal, this has two effects, one, the procedures and considerations in opening and handling cases is tedious and cumbersome, as a party to a case has to go to the person to whom his claim was made other than the secretary to see if the said claim has been submitted to the secretary, whom upon receipt shall enter it into records of the tribunal and arrange for it to be heard and determined by the tribunal according to the procedure of the tribunal for hearing and determination of disputes submitted to it. Secondly, it gives a room of the Ward Tribunals to be interfered by those other authorities by thinking that provided they participated in opening and initiating cases, then the can also participate in deciding cases filed before Ward Tribunals.

Most respondents who replied the question whether procedure and consideration in filling cases at the WTs are friendly to the public and allows them to file cases easily, were of the view that procedure and consideration in opening and handling cases is not very friendly. 49% of the respondent responded that the procedure of opening and handling cases is somehow friendly, 21% not friendly against 30% who replied that it is friendly.

**Table 4.2:** Frequency Distribution of Respondents who replied the Question: whether the procedure and consideration of filling cases at Ward Tribunals are friendly

| Answer Code      | Frequency | Percentage |
|------------------|-----------|------------|
| Friendly         | 49        | 49%        |
| Somehow Friendly | 21        | 21%        |
| Not Friendly     | 30        | 30%        |
| Total            | 100       | 100%       |



**Figure 4.2:** Percentage Distribution of Respondents who replied the Question: whether the procedure and consideration of filling cases at Ward Tribunals are friendly

### 3.3 Provision of legal services fairly and in time to the public

The essence of establishing ward tribunals was due to the effect that members of ward tribunals being residents of those areas it will be easy for them to determine cases arising from their wards because first they know the parties, and secondly, from the set up of families in the ward each and every clan or family land is known by all the members of the village and even at the ward level. Both analysis of primary and secondary data revealed that, provision of legal services at the ward tribunal is not fairly and timely to the public due to the short comings in the ward tribunals. In all the ward tribunals visited by the researcher the tribunals are sitting once or twice a week, therefore, they cannot hear the cases timely as expected. Members of the ward tribunals visited are not paid sitting allowances, therefore they depend on the fees paid by parties to the case when filling their cases and when visiting locus in quo. The Ward Tribunals Act has not set up regulations for fees for ward tribunals, thus giving a wide room for ward tribunals to determine fees as they wish. The study found out that the parties who fail to pay fees especially for visiting the land in dispute are likely to fail in their cases. These fees charged are very high even at a walking distance area and in most cases the land in dispute is a walking distance area. There are also acts of corruption at the Ward Tribunals, a person who sees an elder is assured of victory. It is researchers considered view that if these tribunal members were being paid sitting allowances, they would not accept bribe, but they are forced to as they also have families to provide for and when other fellow villagers are going to attend their farms or doing other activities for income generation they are going to the Ward Tribunals where they are not paid.

This study revealed that cases take long time; corruption; poor governance; insufficient tribunals; long distance to tribunals; no specified time for a case; too many cases in tribunals; services are not provided timely and high cost of running of case are factors that hinder availability of legal services in Ward Tribunals as land courts.

### 3.4 Challenges in handling cases and claims in the tribunals

From the data collected both primary and secondary from ward tribunals and other respondents. It is shown that there are several challenges which hinder proper handling of cases and claims at Ward tribunals. These include but not limited to: residents' limited understanding on by laws passed by tribunals; tribunal members are not paid sitting allowances

and salaries to secretaries, lack of office stationeries, financial constraints, few female members in the tribunals, poor office infrastructure and in most cases there are no offices at all, low level of education among residents and or disputants, long distance which residents have to travel to follow services and corruption.

Analysis of data in this study revealed that on the issue of financial constraints, 93% of members of tribunals revealed that they are not getting funds from the government and the rest do not know but what they know is that they get money from payments done during opening the cases. They further do not know whether this is what can be called government money or what. In fact, there are no incentives to tribunal members and secretary who are handling cases at the ward tribunals. There is no government budget provided for at Ward tribunals which is contrary to the provisions of section 27 (1) of the Ward tribunals Act of 1985, which provides to the effect that; the members of the-Tribunal shall be paid such sitting or other allowance as the appropriate authority may, in collaboration with the Ward Committees, determine. This demoralizes workers and enhances corruption.

Regarding working environment to ensure justice to parties, this study revealed that working environment is not conducive. According to data collected 92% of respondents revealed that there is no good environment due to limited infrastructure and the rest see that as long as there is a place where cases can be conducted it is okay as long as being a tribunal to them is additional activity and they do not bother and concentrate as their livelihood activity.

From collected data, the main reasons for absence of conducive environment; includes lack of working premises, facilities like computer, photocopier and personnel for typing proceedings, judgments and orders, document storage facilities, lack of fund for visiting disputed land and tribunal members are not recognized and respected by government and other legal institutions.

## 4. Conclusions

From the above analysis and findings the following conclusion can be drawn;

The above discussion suggests that, ward tribunals are not dispensing justice effectively as were intended due to their governance; however, although faced with several notable shortcomings, the Ward Tribunals have not been without important achievements. Their establishment has met with considerable enthusiasm and their performance, on the whole, seems to have maintained hope among the respective communities that this organ will continue to be useful to them.

It has been noted that the most of the people in the society finds that it is easy for their cases to be heard at the ward tribunal as they are close to their residents so it relieves them with travelling and other costs going to other courts seeking for their rights, they are manned by people who knows the area well so it is likely for justice to be done. This situation can possibly lead to the effective dispensing of justice to the

largely excluded social groups that is women and young people.

The study established that while the Tribunals have everywhere proved to be popular among the common people, However if its governance is not taken care of a lot of people will lose faith in them and they will sought to seek their rights elsewhere

## 5. Recommendations

Based on the findings, the study made the following recommendations to the Government of Tanzania Ministry of State, President's Office: Regional Administration and local Government, Civil Service and Good Governance should allocate funds for functioning of Ward tribunals in delivering services to the public. This would help in delivery of justice in time and fairly as the Ward tribunals as land courts will not be interfered with other organs of the government. The Ministry of State, President's Office: Regional Administration and local Government, Civil Service and Good Governance should introduce and maintain attributes such as remunerations, trainings to ward tribunal members and secretaries and provide good working environment since they seemed to be the strong motivation that may attract tribunal members and secretaries to work hard towards fair and timely decision making. Local Government authorities where the ward tribunals are located also find ways and means of making sure that appointment of ward tribunal members are well supervised so that right people can be appointed and taking care of recruitment of ward secretaries and making sure that their employment is well taken care of this will enable them to have a high spirit of working and reduce incidences of corruption and make sure that there is sensitization of public in general about ward tribunals as land courts in order to achieve the goals of its establishment.

The Ministry of Justice and Legal Affairs in Tanzania is the Ministry which has mandate to make sure that all the laws enacted in the country are proper. When the land courts were established from the village level there were no procedural laws which were enacted save at the district level, the ward tribunals continued to use the Ward Tribunals Act, 1985, which was later on in 2010 revised. Unfortunately the revised version of the law, The Ward Tribunals Act, CAP 206 R.E 2002, revised mainly the role of the appropriate authority in relation to the Tribunal under the provisions of Section 6 (1), (2), and (3). Therefore for ward tribunals to operate well and in just manner evidence rules and civil procedure to ward tribunals should be enacted for effective functioning of ward tribunals.

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## Author Profile



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