International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Land Disputes Resolution Mechanism in Zanzibar: Highlights and Challenges

Dr. Abdul-Nasser Hikmany

Part-time lecturer, Faculty of Law and Shariah, Zanzibar University

ABSTRACT

The backbone of the land dispute mechanism in Zanzibar lies on the Land Tribunal, mandated as the primary organ to decide land disputes. This work presents the strengths and weaknesses of the Land Tribunal. The objective is to assess the practicality of the Tribunal through a qualitative legal research methodology. This paper discusses that the Tribunal has been successful in providing a proper channel for people to lodge their cases, a medium of research and aligning the decisions as per the Tribunal's assessors and experts. However, the Tribunal is faced with challenges including applicability of legal technicalities in its procedures, few sub-offices as well as limited manpower and inadequate financial support. Apart from recommending suitable support for the Tribunal, a revisit of the law is also essential to address unnecessary legal technicalities.

Keywords: land disputes, land tribunal, land dispute mechanism.

1. Introduction

Resolving a dispute is a day-to-day routine for many; be it elders or respected persons and even Magistrates or Judges – they all clench their level best to reach a decision of an amicable level. This applies the same to land disputes, in need of not only a person to decide but proper established avenue. The procedures, jurisdiction and establishment of the resolution mechanisms usually differ depending on whether the land is legally or customary regulated. The legal mechanisms have introduced well written laws since colonial rules. In Zanzibar, land dispute resolution mechanisms are regulated by laws passed by the House of Representatives. For the customary mechanisms, these have been in place days beyond colonial era.

The aim of this paper is to investigate the highlights and challenges of the Land Tribunal in Zanzibar. Recommendations are drawn at the end of this paper with the intention to let lawmakers and policy makers carry out necessary modification of the laws. As with the scope, the official institute mandated to receive, entertain and give out decisions on land disputes is the Land Tribunal. It has primary jurisdiction on land matters and therefore this study will concentrate on the Tribunal.

1.1. Definition of 'land'

The context of 'land' in Zanzibar differs very much from other East African countries. The Land Tenure Act 1992, principal legislation on land, defines land to mean "land covered by water, all things growing on land, and buildings and other things permanently affixed to land, except trees when specifically classified and owned separately" (Land Tenure Act, 1992, s.2). The definition of 'land' is built-up with five features: firstly, all areas covered by water are to be treated as land and secondly, all things growing (naturally) are to be dealt as land. The definition then states that all unexhausted improvements are to be

considered as part of land and that ownership of trees differs to that of land. Similar with other neighbouring jurisdictions, the right to land does not include water, mineral or foreshore (Land Tenure Act, 1992, s.8(2)(g)).

1.2. Ownership of 'land'

All land in Zanzibar, occupied or unoccupied, is known as public land. Disposition of public land is vested under the President of Zanzibar. In other words, the Government of Zanzibar is the sole administrator of all land. The Land Tenure Act 1992 does not grant private land ownership. As a matter of fact, Act 1992 does not refer a person having the right to use the land as an 'owner' but a 'holder'. A 'holder' is defined as a person who has the right to the interest of a right of occupancy (Land Tenure Act 1992, s.2).

1.3. Objectives

The aim of this paper is to analyse the prospects and challenges of the Land Tribunal in Zanzibar. Recommendations are drawn at the end of this paper with the intention to let lawmakers and policy makers carry out necessary modification of the laws.

1.4. Outline

This paper starts with a description of the research methodology and literature review. It continues by discussing the highlights and challenges facing the Tribunal whereby each argument is given a unique analytical opinions flowing one after the other. At the end of this paper, a summarised discussion is presented in the conclusion to produce practical recommendations.

2. Research Methodology

In order to gather an understanding of the legal dispute settlement mechanism in Zanzibar and the reason of having a well-structured mechanism, this study has applied a qualitative technique to conduct the study and providing a detailed report. Traditional doctrinal legal research that involves analysis of primary and secondary sources of law has been applied in this study to address the focus and aim of this study. This is the methodology that is overwhelmingly used in similar legal studies. The library research has involved a review of relevant legal instruments and materials for the study from various libraries and documentation centres. These include, but not limited to, the Open University of Tanzania, University of Dar es Salaam library and Office of the House of Representatives. Various materials including the Constitution of Zanzibar and associated amendments, legal instruments, law cases, articles in journals and books, thesis and dissertations, reports and newspapers will be critically analysed. Some other documents and information, related to or on the subject under study, has also been retrieved from the internet.

Furthermore, a field work method has been applied to assess capability of the legal framework in land dispute settlement in Zanzibar. The assessment has involved observation of the decision-making process; therefore, the Land Tribunal in Unguja and Pemba have been visited during and after trials. Some of the information have been obtained through group discussions at different places of Unguja and Pemba by exchanging people's views and ideas. Group discussions have involved different people with experience and wisdom on land dispute settlement. These included for instance government officials, political personals, non-governmental organizations, parties to the suit and citizens at large.

Non-structured interviews with the government officials, political personals, non-governmental organizations, parties to the suit and citizens at large have been interviewed with regard to the land dispute settlement framework in Zanzibar.

This study has used qualitative data analysis methods. After observation of the existing land dispute settlement framework and examining perceptions, views, feelings and attitudes; the data have been subjected to content analysis approach. Data analysis presentation have been based mainly on narrative and descriptive reporting of the information.

3. Literature Review

Article 12(6)(a) of the Constitution of Zanzibar 1984 provides for a settlement of a case in a fair and equal manner. As with Art.17, it provides for a right to own property as well as protection of the property. This can well be elaborated that any person can own property and where any dispute arises, should have proper means of settling the dispute.

The land dispute mechanism is built on the Land Tribunal Act 1994, Act No. 7 of 1994; though the Tribunal was established in 2006. The Tribunal has been given primary jurisdiction to settle land matters (Land Tribunal Act, 1994, s.13) and designed to be more accessible to the public and therefore less expensive, less complex, and speedier; because the rules allow them a measure of discretion and flexibility in due process (MKURABITA, 2008). The situation changed in 2008 as per the Land Tribunal Amendment Act where procedures of the Tribunal was changed from informal to formal means. Moreover, the Tribunal can no longer remove a person as of possession or eviction from land (Land Tribunal (Amendment) Act, 2008, s.12(i)).

As far as the Land Policy (2008) is concerned, it states that land dispute is the bane of land administration in Zanzibar and the Land Tribunal was established to deal with the problem. The Tribunal is nevertheless faced with shortage of personnel, court venues and limited financial capacity.

The Policy (2018) cites lack of identifiable ownership and clearly defined land boundaries through land registration as among the main cause for land disputes. The Policy estimates that about 40% of cases lodged with the Tribunal would not have been filed had the lands been properly demarcated and registered. Other causes for land disputes include delayed inheritance of land rights and weak enforcement and non-compliance of laws and regulations. The Policy calls for strengthening the capacity of the Land Tribunal, encouraging Alternative Dispute Resolution (ADR) mechanisms involving mediation by community leaders and elders, promoting awareness of land administration and management issues, supporting systematic land registration process and promoting cooperation between the Commission for Lands and the Wakf and Trust Commission.

On the concept of court-substitute, Rees (2006) has assessed the work of the tribunals in the judicial and administrative frameworks. Rees has stated that a ‘tribunal’ is directed by the legislative instrument to perform specific activities which are preparatory to its decision-making functions. A tribunal must work in a different manner to the way in which those activities may be performed in a court. This is typically done by directing the tribunal not to re-quire strict compliance with procedural rules and not to insist upon the application of the rules of evidence.

This is why a tribunal is usually described with the terms of 'administrative', 'merits review', 'private rights', 'quasi-judicial', 'party and party', 'civil' and 'court substitute'. These terms describe a tribunal to the work they are supposed to perform by a particular legislation. It is often said of tribunals that they have the advantages of timeliness, informality, fairness, economy and flexibility. By way of contrast there are widely held perceptions that courts are formal, inaccessible, costly and slow.

This is evident in the manner the tribunal are required to work without adhering to the rules of procedure and evidence. This allows the tribunal to work informally and accessible. The aim of establishing

tribunals by the legislature is that the tribunals should not 'permit form to prevail over substance when conducting proceedings'.

Rees has raised doubts that the tribunal must nevertheless work according to the formalities and concept of natural justice. The formalities require the tribunal to abide by a certain rules of procedures and evidence. Though these rules are different to the courts, the tribunal must apply them. Unless there are few or no procedural and evidentially rules, Mohammed claims that the tribunal are not different to courts.

Technicalities are therefore applicable in the tribunal as any appeal will be based on either error of law or by way of judicial review for jurisdiction error. The tribunal are required to record their proceedings and any decisions they make must be aligned with the requirements of the rules for which the tribunal was established.

In practical terms, a tribunal has a clear duty to provide reasons in support of its findings of fact and to explain the reasoning by which those findings of fact support the decision in the case. It is not easy to identify and apply the freedom of the tribunal to depart from the rules of law concerning the use of evidence. This remains to be subject to limits, including the rules and procedures for which the tribunal is required to abide with.

With regard to the situation of the land disputes in Zanzibar and the most relevant paper, Furaha (2012) has demonstrated the most cause and effect of land disputes in Unguja and Pemba, the functioning of the Land Tribunal and other land dispute settlement mechanisms and provides some recommendations for improvement (Furaha, 2012). The spirit of having productive use of land is to address all sources of land disputes as conflicts take land out of land market until settlement is reached. Furaha has therefore called for the Government to remove the current bottlenecks to the established system, and decentralise the services so as to reach as many land users and owners as possible.

Another interesting piece of literature is that of Mramba and Lamwai (2017) who have compared the land dispute resolution approach between the Mainland and Zanzibar. The authors have argued that the Land Tribunal in Zanzibar is a judicial organ as it operates under the judiciary. One thing to understand is that the Tribunal in Zanzibar is a quasi-judicial as it has administrative functions derived from the Ministry of Lands and judicial functions derived from the Judicial as well as from the Land Tribunal Act 1994. As the Tribunal is supposed to work on informal procedures, it is suggested to put in place an informal process whereby a hearing which is publicly affordable and accessible.

The authors proceed to explain that claims are not solely required to be filed in the Tribunal but can be filed in other courts. This statement remains to be contested. Unless one party of the case is the government, then all cases must be filed to the Tribunal. Any dispute at the Tribunal must commence by a reconciliation.

By amending the Land Tribunal Act in 2008, the Tribunal is required to follow the rules of the Civil Procedure Decree c.18 (1917) which, however, have conservative rules of compliance and technicalities. A step forcing the Tribunal to work similar to an adversial system applied in other ordinary courts. A formal procedure is much more practical where both parties are presented by advocates. This is true in cases where one party is legally represented and thereby taking advantage of the formal procedures while leaving the other party in distress.

Apart from the Civil Procedure Decree, the Tribunal is also required to apply the Evidence Act, No. 9 of 2016, which prior to the 2008 amendment, it had no applicability for the Tribunal. The authors have argued that the amendment is not clear whether evidence is to be presented on issues of relevancy or

admissibility. The former is based on the facts established to the fact in issue while the latter is purely guided by the provisions of the Civil Procedure Decree. As for the enforcement and execution of a judgment or decree, the Tribunal is also required to apply the Civil Procedure Decree. The only available remedy currently is an appeal before the High Court.

In fact, the amendment of 2008 has dropped some its jurisdiction including dealing with issues on registration of land, removal from possession or eviction from land, succession of land and all other claims where the government is a party to the case. One thing to note is that as Zanzibar is heavily dependent on Islamic laws and customs, disputes on succession of land are much more dealt by the Kadhi's Court or the High Court for non-Muslims.

Mussa (2009) gives an historical appraisal on the idea of having specialised courts in Tanzania dealing with land cases. Mussa's research has similarity to Zanzibar as it highlights the reasoning behind the establishment of specialised courts was efficiency in the delivery of justice in land cases which seemed to spear up leading to delay of disposing of cases. However, a lot of land disputes remain unsolved or unattended for a long time thereby adding considerable uncertainty to a major means of production, which is land, in addition to disrupting social and political life of the people.

There are numerous reasons for land dispute to arise, including uncontrolled urbanisation and developments (Juma, 2012). These usually appear in the coastal zones, famous for attracting tourism investment, of Zanzibar which usually causes social and economic imbalances. For instance, an increase in land use pressures for housing, social services and hotel development, diversion of public easements, encroachment of public land, irregular change of land use (Juma, 2012; Haji, 2014). In addition, uncontrolled urbanisation in these tourism areas disturb access to coastal resources for the local. As a result, the peoples are displaced from their original spaces and relocated to other settlements which have unacceptable conditions and few work opportunities.

In the West District of Unguja, it has been revealed that 90% of the respondents identified to be involved or understand the existence of land conflicts in the study area (Haji, 2014). These disputes are related to forest encroachment and building along water catchment areas. Similar as stated by Juma (2012), tourism investment has a role in the land disputes as the forest areas are invaded by local who are relocated from their original spaces. Other reasons for land disputes include lack of knowledge on land laws and regulations. Haji's study was located in the West district of Unguja which is believed to possess a large quantity of land conflicts in Zanzibar. The study observed five common forms of disputes. These are between the government and community (40%), community and community (15.2%), community and military camps (10.4%) and farmers and pastoralists (10.4%) and others land conflicts.

Zahor (2021) has studied the conflict situation in the Ngezi Forest and has shown that western and southern zones of Unguja are prone to frequent and chronic land disputes. The Sheha (area administrative head) expressed the reason for this is poor cooperation between the people and the Forest Department, resulting to local communities' breach regulations on forestry in the Ngezi Forest. Other reasons include economic hardships of the people, lack of alternative sources of living, rapid population growth, poor forest management, and illegal exploitation of the forest reserve and agricultural expansion which together have led to environmental changes in the Reserve.

The consequences of these disputes have resulted in decline of income for the people as well as for the Government, high demand for agricultural land, decrease in the number of tree species of high value, agricultural encroachment into the forest reserve and shortage of land. The author has called for practical

measures to be taken to regulate human pressure in the Ngezi Forest Reserve to reduce disputes over resources surrounding the Ngezi.

Zahor (2021) established that communities change land use without adhering to the formal community agreement or bylaws. As a result, small pieces of land are divided which are not suitable for habitat conservation. Each community in the forest area is allotted community land causing disputes within and outside the communities. The nature of the disputes evolves around boundaries disagreement of the land zones and disagreements on the established bylaws that protect community members in utilizing forest resources in community forests.

Myers (2010) research focused on peri-urban places and alternative planning in Zanzibar for the Welezo area (West A district of Unguja). Due to rapid urbanisation, major neighbourhoods in the Welezo are facing bitter land disputes. Much of the land around Welezo are dedicated for the army, hospital, water pipelines and public uses (e.g. bus stop). No area for development of the people (residential or agricultural). Some of the residents have received notices to vacate or demolish their own houses. The people's concern is that investment took long to materialise and now Welezo is heavily populated by residents. Integrating national developments in the area has witnessed hostility between the government and its people.

On investment opportunities in Zanzibar with comparison to Chinese circumstances, Mohammed (2021) has stated that conflicts are a result of disagreements. There must be an avenue for resolving conflicts and for investment conflicts in Zanzibar, it is the Zanzibar Commercial Court. Mohammed has also advised for the use of Alternative Dispute Resolution in resolving conflicts, and most importantly arbitration.

Alternative Dispute Resolution (ADR) mechanism is supported to be one of the significant tool in solving disputes related to investment on land (Mohammed, 2021; Mwaniki, 2017; Land Policy, 2018). Management of conflicts is important and if left unmanaged it could lead to serious consequences such social and economic gap (Mwaniki, 2017). ADRs are recommended by the author to address land related disputes. It is not a problem to financially invest for ADR in Africa, rather the problem lies on finding legitimacy within the current judicial framework of many African countries to apply ADR. This is much more problematic for countries that have portions of civil, common and customary laws. In order to ensure the success of enforcement of ADR decisions, it is important that ADR must be structured within the judicial system. Other avenues of ADR for international investments include the UNICTRAL and the New York Convention which could assist enforcement of rules which are likely to favor the investors (Mwaniki, 2017).

The Arbitration Decree c.25 (1928) in section 1(2) allows the application of arbitration in the courts of Zanzibar. It is paramount to explain that the goal of the ADR and the judiciaries is to resolve conflicts, including investment, in a timely, efficient, and effective manner, ensuring that the judiciaries act as catalysts for economic growth, is the driving force behind the creation of commercial courts. Mohammed (2021) has claimed that the goal is hindered to be achieved due to corruption, bureaucracy and slow decision-making processes. The research indicates that the image of Zanzibar as an efficient, secure and profitable location for foreign investment has been affected due to the courts being regarded as lacking capability, cases backlogged, inefficient, capable of influence and easily corruptible. This result to companies having a sense of vulnerability when doing business in Zanzibar.

One significant element of Mohammed's research is that it cautions using local laws to resolve conflicts involving international capital as it is likely to provide substantially less protection for foreign investors

especially when it is acknowledged that emerging economies such as Zanzibar require bilateral agreements to attract and promote foreign direct investments. As a result, if Zanzibar targets to apply local laws in resolving investment disputes, agreements should be carefully drafted to ensure the interest of Zanzibar is protected, including reviewing and introducing new laws and regulations to adapt to the changing business environment.

Another available mechanism to resolve dispute is through participatory approach. Masore (2011) has researched on the approaches for dispute resolution and has widely acknowledged the application of participatory approaches. This will enable the parties to select the stakeholder they think fit to be involved in resolving the dispute. Participatory approach assists the parties to reach expectations by addressing land dispute and follow-up changes. Masore has also desired the participatory approach in order to identify negotiable positions whereby the parties can opt any process they deem appropriate, something different with the top-down legislation which is non-negotiable. However, participatory approach could result to inadequate resources as it requires efficient time and financial support to sustain the peoples and witnesses involved in the land disputes. In addition, personal behaviours and attitudes could result to a barrier in reaching an amicable decision. Though participatory approach could not be the win for all land dispute resolution, it is nevertheless a valid approach as it help to pin-point where land use conflicts are likely to occur and provide a way forward in addressing the conflicts.

4. Results and Discussion

4.1. An Appropriate Avenue

With the rise of foreign investments in Zanzibar (Mohammed et. al., 2021), demand for land in Zanzibar has increased tremendously leading to speculation, increase of land value which somehow end up encroaching people's land and as a result land conflicts emerge. The Land Tribunal exists as per the Land Tribunal Act, No.7 of 1994, which was promulgated on the onset of economic liberalization in the 1990s to resolve land disputes. The Tribunal was supposed to litigate with the prime objective of having a speedy litigation process, though amicable for both parties.

The Tribunal, however, never came into being until 2006. A gap of twelve years passed by since the law to establish was passed. This is, without doubt, a long duration for an organ not to come into practice. Up until the Tribunal came to be established in 2006, much has changed in Zanzibar from political, economic and social situations. While the Constitution and many other laws were amended to make them respond with the twenty first century, the legislation for the Tribunal was left impractical.

One might ask why the already established courts of law would not be appropriate to settle land disputes. The first reason to be inferred for establishing the Tribunal is that the Government's plan for having all rights or occupancy registered in developments involves a sorting out of boundaries, unwritten transfers and claims on such a scale that would hamper the normal functioning of the civil courts. The second reason could be that "the Government wants a specialised court capable of doing justice to the land practices of the people and the social policies of the Government" (Hassan, 1997).

4.2. The Professional Arm

Two persons are assigned to the Tribunal who must be a qualified surveyor and valuer with experience in their specialisation. The surveyor and valuer are to perform survey and valuation functions for the Tribunal, whenever it is required (Land Tribunal Act, 1994, s.12).

The Tribunal is permitted to call in experts when technical evidence is required. The parties to the case must agree for the expert to appear. The expert can testify from government or non-government bodies

or any other source deemed appropriate by the parties to the action and the members of the panel. A neutral person can be called by the adjudicator to advise on the appropriateness of the expert, if the parties fail to agree. The members of the panel can accept or reject the opinion of the expert. The experts are of assistance and therefore helps the Tribunal to make decisions not only on facts and laws but also on technical point of view.

4.3. Legal Representation

Any party can attend in person and for a judicial person must be a duly authorized legal representative (Land Tribunal Act, 1994, s.18). A legal practitioner or any other representative is also permitted, at the party's own expensive. Land disputes normally affect indigent persons but they are eligible to receive legal aid service from a legal aid provider (Legal Aid Act, 2018, s.25). Act 2018 therefore provides legal representation for an indigent person. This is done through legal aid activities and to ensures the right to representation. It helps to safeguard equality before the law and right to a fair hearing. During its debate at the House of Representatives, the members suggested that there are persons who cannot make it before the Tribunal due to sickness or even cannot fluently express themselves; these should be allowed to be presented legally and freely (Hansard: House of Representatives, 1994).

4.4. Judgement Based Upon Assessors

A final judgment or an interim matter of the Tribunal can be decided by a majority vote of three members of the panel (Land Tribunal Act, 1994, s.37); this means the adjudicator and two assessors. It is of course clear that the assessors make up two third of the panel and can easily vote in favor of their decisions. However, the adjudicator has a deciding vote in all questions of law. It is noted that in question of facts, members of the panel will have the same powers to vote i.e. one vote for one member.

4.5. Appeals and Judicial Review

Any party aggrieved by the decision of the Tribunal has a right to appeal to the High Court (Land Tribunal (Amendment) Act, 2008, s.35). Prior to 2008, an aggrieved party had a right for judicial review which is resolved by the Tribunal (Land Tribunal Act, 1994, s.41). The decision of the Tribunal is final in issues of facts. This implies that an aggrieved party had no right for an appeal for issues of law and the Land Tribunal Act 1994 failed to address an appropriate body for such an appeal.

In cases where the respondent does not appear when judgment is found against him, he loses the right to petition to a High Court for an appeal (Land Tribunal Act, 1994, s.38(3)). This is contrary to the rule of law as the respondent may have a valid genuine reason for his absence. Giving him a right of being heard is important prior to a final decision being made. It is for this reason that the provision has been amended in 2008. Currently, appeals from the Tribunals can be lodged before the High Court (Land Tribunal (Amendment) Act, 2008, s.35).

As per the Constitution of Zanzibar 1984, an aggrieved party is entitled to not only a fair hearing but also 'the right of appeal or other legal remedy against the decision of the court' (Constitution of Zanzibar 1984, art. 12(6)(a)). Hence, the amendments made in 2008 aimed to align the Tribunal with the constitutional requirements of right to appeal.

4.6. A Centre of Research

The Tribunal has a duty to maintain an official record of each proceeding consisting of all issued notices, pre-hearing order, parties' requests, petitions for intervention, written evidence, issued judgment and any other relevant record (Land Tribunal Act, 1994, s.42). The provision necessitates keeping of record of all cases in a register system for purpose of statistics and future references. It is possible and important to save records of the quantity of cases, their nature of dispute, status of the case, parties' biodata and area

location. In the long run, this information could be linked with the current ongoing projects on spatial data infrastructure. This would be helpful to understand the status of a land; whether it is before the court or not in order to avoid unnecessary fraudulent sales transaction.

Table 1 and Table 2 below reveals that from January 2019 to December 2023, a total of 952 cases have been filed. Of these, 588 cases are in Unguja and 364 in Pemba. Of the decided 829 cases, remaining cases stands at 123 which accounts for only 15% of outstanding cases. The number of cases remaining in Unguja is higher compared to those in Pemba. Out of 123 cases, Unguja has 91 cases remaining equivalent to 74% while in Pemba is 32 cases equivalent to 26%.

The Tribunal commenced its functions in 2006 when there was only one adjudicator. The ratio of the adjudicator against cases to be decided at that time was alarming at a level of 1:24 a month. With such a chaos, more adjudicators were appointed when the 2008 enactment came into enforcement. These include the Deputy Chairmen and Regional Magistrates. The ratio is currently pleasing at a rate of 1:2 a month.

In all 952 cases filed from 2019 to 2023, 33 per cent arise from the West Urban Region (WUR), an indication that the WUR is faced with higher rates of disputes. With over population of 530 per sq. km and urbanisation (Tanzania National Census Bureau, 2022), it is not uncommon to find that the WUR has the uppermost rates of land transactions. Of all land transfer applications in Unguja and Pemba, the WUR makes up 30 per cent (Land Transfer Statistics, Nov'23-Feb'2024).

The below tables portray a reality of filed and decided cases at the Tribunal from Jan'2019 to Dec'2023:

Table 1: Land Cases, Jan'2019-Dec'2023

REGION	2019		2020		2021		2022		2023		TOTAL	
	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT
Urban West	71	70	66	57	62	41	50	79	69	40	318	287
North Unguja	11	11	40	33	17	7	40	21	28	38	136	110
South Unguja	19	18	20	17	27	14	30	24	38	27	134	100
North Pemba	24	23	27	22	35	27	27	36	30	29	143	137
South Pemba	41	40	36	34	55	30	37	44	52	47	221	195
Total	**166**	**162**	**189**	**163**	**196**	**119**	**184**	**204**	**217**	**181**	**952**	**829**

Source: Land Tribunal 2024

Table 2: Summary of Filed and Solved Cases, Jan'2019-Dec'2023

	2019	2020	2021	2022	2023	TOTAL
IN U	101	126	106	120	135	588
IN P	65	63	90	64	82	364
OUT U	99	107	62	124	105	497
OUT P	63	56	57	80	76	332
IN U+P	166	189	196	184	217	952
OUT U+P	162	163	119	204	181	829

Source: Land Tribunal 2024

IN=Filed cases OUT=Solved cases (U)=Unguja (P)=Pemba

4.7. Tribunal Procedure and Evidence

A Tribunal is supposed to have local formalities (adhoc) in its procedures. This is what the Land Tribunal Act 1994 used to imply. The Act permitted conciliation (Land Tribunal Act, 1994, s.14), expediting (Land Tribunal Act, 1994, s.15) the process with no necessity in following the Civil Procedure Decree 1917 or Evidence Act 2016. The parties can reconcile at any stage of a case while the Chairman can issue an order to speed up (expedite) the process. Noting that the Land Tribunal Act 1994 allowed hearings of the cases in an informal manner; the purpose to which is to dispense justice (Land Tribunal Act, 1994, s.16).

With the coming of the Land Tribunal (Amendment) 2008 Act, the procedures have changed to the Civil Procedure Decree 1917 (Land Tribunal (Amendment) Act, 2008, s.15). Any informality has to comply with the Civil Procedure Code 1917. Many of the provisions under the Civil Procedure Code are drafted to a non-informal way, for example all cases have to be instituted by a written plaint (O.IV, r.1; O.VII, r.1).

Other available informal opportunities are a voluntary exchange of information offered to both parties before the trial (Land Tribunal Act, 1994, s.27). This allows the parties to simplify the issues, shorten the hearing or lead voluntary exchange of information which might promote a settlement of the dispute amicably (Land Tribunal Act, 1994, s.28).

In addition, the rules on evidence seem to merge formalities and informalities. While the Tribunal is required to follow the Evidence Act 2016 (Land Tribunal (Amendment) Act, 2008, s.31), the adjudicator is given an option to receive evidence in writing, only when it could speed up the process (Land Tribunal Act, 1994, s.36(3). The adjudicator can also limit the presentation of evidence which is irrelevant, immaterial and unduly repetitious. The main objective of the limit is not to delay the normal progress of the hearing (Land Tribunal Act, 1994, s.36(2)).

4.8. Constitutionality of the Tribunal

The establishment of the Tribunal has not been an easy process as the constitutionality of the Tribunal has once been challenged before the High Court as in the case of *Ali Ismail Bapoomia v Zanzibar Attorney General's Chamber* (2007). The case originated from the Tribunal with the same applicant against two different defendants; Mr. Nassor Abdalla Nassor and Director General of Stone Town Conservation Development Authority. The case at the Tribunal was filed on a dispute of land ownership but with another linked claim on succession. The case was filed at the Tribunal on 27 July 2006 and given a case number 36 of 2006. The plaintiff was not satisfied with the procedure and settlement processes of the Tribunal, including its establishment. He therefore filed an appeal to the High Court of Zanzibar against the Tribunal via the Attorney General's Chamber.

> The House of Representatives may establish other courts subordinate to the High Court and without prejudice to the provisions of this Constitution, those courts so established shall be vested with power and jurisdiction as shall be provided by law."
>
> *Article 100, Constitution of Zanzibar, 1984.*

In his plaint, the plaintiff claimed that the Land Tribunal Act 1994 is "unconstitutional until it is declared so … and the tribunal continues to enforce hopelessly". The High Court ruled that the Tribunal is subordinate court to the High Court as per article 100 of the Zanzibar Constitution which states that the House of Representatives of Zanzibar could "establish other courts subordinate to the High Court" and "those courts … shall be vested with power and jurisdiction as shall be provided by law." The High Court highlighted that the allegation was invalid and ordered the House of Representative to correct any

defect. Act 1994 was therefore amended in 2008 to allow land dispute cases being entertained by more than one adjudicator. As a result, currently more than four Regional Magistrates have been appointed to settle land disputes in the Tribunal.

4.9. Financial and Human Resource

Finance is an important instrument of the Tribunal that comprises those abilities needed for the Tribunal to independently manage its function in a manner consistent with the jurisdiction. Currently the Tribunal is financially constrained to further expanding its offices, recruiting qualified officers, paying regular incentives to staffs and assessors, adding up more vehicles, managing ICT facilities, just to mention a few.

As for human resource, the Tribunal has an increasingly important role in the definition of land rights and interests. This right is crucial for people's welfare and survival. As a consequence, individuals regularly turn to the Tribunal for the protection of their land rights. Furthermore, the evolution of land administration in Zanzibar (including land distribution, transfer, markets, planning, survey, mapping and registration), has made the Tribunal ever more important for the people and the public as a whole. For these, the workload of the Tribunal has increased considerably, and the work of the adjudicators has become far more complex (UNODC, Resource Guide on Strengthening Judicial Integrity and Capacity, 2011).

4.10. Accessibility of the Tribunal

The Tribunal has been continuously serving the community for more than twelve years. Today, the Tribunal has a total of four offices in Unguja and Pemba. Many of these offices are not close to people in the rural districts. It is hard for them to access the Tribunals. A call has been made for extension of the Tribunal in a district level so that "women and people with disability may easily access them" (TAMWA, 2019).

4.11. ICT Facilities

Information and Communication Technology (ICT) remains to be a useful tool in text creation, storage and retrieval; improved access to the law, recording of Tribunal proceedings, case management and producing data for administrative purposes, continuing education and communication (Ntende, The Role of Information Technology in Modernising the Courts, 2005). However, ICT for the Tribunal is not fully functional and not a reliable database or network system exist. Network accessibility and ICT usages is low in the Tribunal processes which directly impact litigants and the staffs as well. Some of the consequences of ICT failures include delay in concluding cases resulting into loss of value and time, cost incurred by dedicating human resources to attend to Tribunal cases and in managing legal risks and cost related to over-reliance on paperwork (Kibodya, 2007, 2007. It is therefore vital for the Tribunal to embrace ICT in its service delivery.

4.12. Parallel Dispute Resolution Mechanisms (Quasi-Judicial)

Much as the Tribunal is the main judicial organ that has been tasked with the resolution of land disputes arising in Zanzibar, the Tribunal continues to function in a quasi-environment whereby financial and human support is provided from the Ministry of Land and for the judicial support, it derives from the High Court. It is acceptable for the Minister of Land to issue Rules of the Tribunal while appointment of the Chief Clerk and Clerks, Assessors, Magistrates and Deputy Chairman is performed by the Judicial Service Commission.

The advantages of having a Tribunal that is quasi in nature are many including: lessening the burden of the High Court, expertise, accessible, flexibility, *suo moto* power (can enquire on their own

proceedings), independent in their functioning, simplicity, low cost and fast judgements. Nevertheless, there are loopholes in such a quasi-judicial body comprising limited manpower, jurisdiction and knowledge (Ashish Kumar, 2018).

5. Conclusion and Recommendations

The importance of establishing and managing a judicial functioning of the Land Tribunal cannot be understated. As demonstrated that the ratio is one to two which indicates that, at this moment, the Tribunal is working very well, and decisions are made timely. In order to further strengthen the capability of the Tribunal efficiently, the following recommendations are provided:

1. Adequate resources be allocated to expand the working space, intensify members of the staff and manage ICT facilities.
2. An informal system where the use of legal technicalities are limited is preferable to make it reachable for any person to open-up a case as well as reaching a decision in a speedy manner.
3. A line of powers in a three-tier structure is advised to be drawn. The Chairman and the Deputy Chairmen will be alleviated to receive appeals only, while the Regional Magistrates decides the cases in the early stages. Administrative functions are to be practiced by a different officer, preferably the Registrar of the Tribunal, who will be chief administrator.
4. Given the consideration that many of the clients are from the grassroot, introducing sub-offices at District level would be rewarding for the many.

Hence, a revisit of the Land Tribunal Act 1994 and other related laws is recommended, significantly to the preceding three paragraphs.

REFERENCES

1. Ali Ismail Bapoomia vs. Zanzibar Attorney General's Chamber (2007) 35 (HC) Vuga (Unreported).
2. Ashish Kumar, Quasi-judicial Bodies-Advantages & Disadvantages, 2018, Online Civil Services Preparation Platform <secureias.com>
3. Haji, A.A. (2014). Determinants of Rural Land Use Conflicts in West District – Zanzibar (Master of Arts Dissertation, Sokoine University of Agriculture).
4. Hansard: House of Representatives (1994) Land Tribunal Bill. [debate] 27 – 28 September 1994.
5. Hansard: House of Representatives (2008) Land Tribunal Amendment Bill. [debate] 23 – 24 January 2008.
6. Hassan, A.A. (1997). Land Adjudication in Zanzibar (Bachelor of Laws Research, University of Dar es Salaam).
7. House of Representatives. Budget Speech 2019/20. Ministry of Land, Housing, Water and Energy, Zanzibar.
8. Juma, A.O. (2012). Land Governance for Small Island Developing States (Master of Science thesis, University of Twente).
9. Kibodya, F.G. (2007). The Role of ICT in the Administration of Commercial Justice. African judges and Legal Practitioners Conference. Tanzania.
10. Lugoe, F.N. (2012). Sector Study on Land Disputes in Zanzibar. Sustainable Management of Land and Environment, Zanzibar.
11. Masore, F.M. (2011). Analysis of Land Use Conflict in Zanzibar: A participatory approach (Master of Science thesis, University of Twente).

12. Mohammed, N. K., Guo, D. and Elizabeth, Y. N. (2021). Legal Protection of Foreign Investment (FI) in Zanzibar: Lesson for China Investments. *Beijing Law Review, 12,* 1191-1214.
13. Mramba, J. and Lamwai, M.R. (2017). The Land Dispute Settlement in Tanzania Mainland and Zanzibar. *LST Law Review, 2(1),* 1-27.
14. Mussa, L. (2009). Factors Contributing to Delays in Disposal of Land Disputes in Tanzania: A case study of the High Court of Tanzania (Land Division) Dar es Salaam (Master of Laws dissertation, University of Dar es Salaam).
15. Mwaniki, D. The Place of ADR in Land Disputes in Africa. In Spedding, A. et. al. (2017). Sustainable Development Goals: A Time for Innovations and Investment in Land Administration and Management. CASLE. Dar es Salaam. 155-164.
16. Myers, G.A. (2010). Social Construction of Peri-Urban Places and Alternative Planning in Zanzibar. *African Affairs, 109,* 575-595.
17. Ntende, F. E. (2005). The Role of Information Technology in Modernising the Courts. Paper Conference. Southern African Judges Commission. Entebbe Uganda.
18. Rees, N. (2006). Procedure an Evidence in 'court substitute' Tribunals. *Australian Bar Review, 28,* 41-78.
19. Revolutionary Government of Zanzibar. Land Transfer Statistics, November 2023-February 2024, Commission for Lands, Zanzibar.
20. Revolutionary Government of Zanzibar. Ministry of Land Housing Water and Energy (2018). National Land Policy of Zanzibar. Zanzibar Government Printing Agency, Zanzibar.
21. Tanzania Media Women's Association – TAMWA (2019). Review of Polices and Laws Relating to Women's Rights to Property.
22. United Nations Office on Drugs and Crime (UNODC), Resource Guide on Strengthening Judicial Integrity and Capacity, 2011, Vienna.
23. United Republic of Tanzania. National Bureau of Statistics (2022). Tanzania National Census Bureau, Popular Version – Key Findings.
24. United Republic of Tanzania. Property and Business Formalisation Program – MKRUBITA (2008). Property Formalisation Reform Outlines and Packages for Zanzibar.
25. Zahor, Z. (2021). The Role of Participatory Geographic Information Systems in Conflict Resolution: A Case Study of Ngezi Forest in Pemba, Zanzibar. *Tanzanian Journal of Population Studies and Development, 28(1),* 109-132.
26. Zanzibar Government (1917). Civil Procedure Decree (c.8), Zanzibar Government Printing Press, Zanzibar.
27. Zanzibar Government (1984). Constitution of Zanzibar. Zanzibar Government Printing Press, Zanzibar.
28. Zanzibar Government (1992). Land Tenure Act Number 12. Zanzibar Government Printing Press, Zanzibar.
29. Zanzibar Government (1994). Land Tribunal Act Number 7. Zanzibar Government Printing Press, Zanzibar.
30. Zanzibar Government (2008). Land Tribunal (Amendment) Act Number 1. Zanzibar Government Printing Press, Zanzibar.
31. Zanzibar Government (2016). Evidence Act Number 9. Zanzibar Government Printing Press, Zanzibar.

32. Zanzibar Government (2018). Legal Aid Act Number 13. Zanzibar Government Printing Agency, Zanzibar.