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A Cross-Sectional Study of Land Laws as an Antithesis to an Amicable Resolution of Land Disputes in Mkuranga District

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ABSTRACT

Tanzanian land tenure laws define who holds which pieces of land and under what conditions, which sometimes results in conflicts among various landholders. This Article cross-sectionally examines the extent to which land laws impede the resolution of land disputes and the nature of the challenges faced by landholders. At local levels, the land dispute settlement structures are devoid of the power to effectively make decisions, resulting in all the cases being referred to courts of law leading to a massive backlog due to legal technicalities.

The mediatory spirit that Village Land Councils are enjoined to apply is equally undermined by executive interference, lack of personnel, and village-level corruption, leading to underutilization.

The resource base and human capital capacity of Village Land Councils need to be re-assessed in order to strengthen it by giving the institutions more muscle and teeth to dispose of land disputes in their areas of jurisdiction.

Keywords: *Cross-Sectional, Land Dispute, Mkuranga District.*

I. INTRODUCTION

Land laws in Tanzania create significant barriers to the amicable resolution of land disputes, primarily due to their complex legal frameworks, procedural rigidity, and the adversarial nature of the judicial system relating to land dispute resolution.²

Mkuranga District Council is one of eight administrative districts of Pwani Region in Tanzania. The District covers an area of 2,827 km.² It is bordered to the north by Dar es Salaam's Kigamboni, Temeke, and Ilala Districts. To the east by the Mafia Channel, to the south by Kibiti District, and the west by the Kisarawe District. The district is comparable in size to the land area of Samoa. The town of Mkuranga serves as its administrative capital. The district is home

¹ Author is a LL.M. student at School of Law and Justice, Dar es Salaam Tumaini University DarTU), Tanzania.

² Sackey, Gertrude. *Investigating justice systems in land conflict resolution: A case study of Kinondoni Municipality, Tanzania*. MS thesis. University of Twente, 2010.

to the Vikindu Forest Reserve, one of the last remaining East African coastal forests³.

II. BACKGROUND OF THE STUDY

Land has been noted to be an emotive issue because apart from being a key resource it is also a means of production⁴. The Presidential Commission on Land Matters that was established in the year 1995 in her report found that the primary courts that had original jurisdiction in land matters only determined 40% of the disputes while the remaining 60 % were determined by the executive arm of government.

The resolution of land disputes has been practiced for decades. The mechanisms for settlement have been wide-ranging from the informal to the more formal practices involving the courts of law. It has been noted that landforms one common source of disagreements, and various efforts to address them have been put in place. The efforts range from the community participatory forms to judicial-based forms which are more adversarial. In the Mainland, the land dispute settlement regime is governed by various laws but the principal statute is the Land (Disputes Courts) Act⁵.

The Act provides for the framework of institutions that constitute land dispute machinery. While in some of the institutions, the procedures are less formal accommodating non-lawyers, others are purely judicial adopting the traditional judicial procedures. The procedural requirements in land dispute resolution are now more formal, especially on legal representation and evidentiary matters.

This article endeavors to examine the land dispute settlement at Mkuranga district in Tanzania mainland. Land is not a Union matter and each part of the Union has its land governance structures although the Court of Appeal of Tanzania is a union matter. The article surveys the Land Disputes Courts Act 2002⁶ of Tanzania Mainland of the Laws of Tanzania R.E. 2002 as amended from time to time has been analyzed in this article focusing on the established courts under the laws, their functions, jurisdiction, and procedure governing the conduct of proceedings.

It is well established in this article that although the goal of establishing the courts was to speed-up the administration of justice, that goal has not been realized due to a range of factors. There have been institutional and procedural issues that have clogged the tribunals making them

³ <https://www.tamisemi.go.tz>

⁴ Burton, Rob JF. "Seeing Through the 'Good Farmer's' Eyes: Towards Developing an Understanding of the Social Symbolic Value of 'Productivist' Behaviour." *Sociologia ruralis* 44.2 (2004).

⁵ No. 2 of 2002. [Cap 416 R.E. 2002].

⁶ Cap. 216

inefficient in resolving land disputes. More importantly, it has been established that land disputes have continued to increase making the courts incapable of catching up. Also, the rules of procedure have not been simple as most of the normal rules of procedure apply in both the courts and the tribunals save for the Village Land Council and Ward Tribunals in Tanzania Mainland.

(A) Statement of the problem

The article is premised on the fact that the Village land councils at Mkuranga District are underutilized partly because the law unfairly undermines them and the existing land dispute resolution regime does not adequately advance the utilization of the Village land Councils.

The Constitution of the United Republic of Tanzania enjoins institutions making decisions on land matters to only observe the Constitution and other enacted laws⁷. There have been incidences where the executive arm of the government sought to interfere with valid decisions on land matters.

The rules for resolving land conflicts are complex and make it hard for laymen to adequately exercise the Village Land Councils and District Land and Housing Tribunals which makes no distinction at these lower levels to the rules applicable in courts.⁸

The idea of the presidential commission was for the operationalization of circuit land courts that could have specialists solving land disputes through the participation of the people this did achieve the necessary backing.⁹ In recent times the minister for lands who is part of the executive has been receiving complaints in his regional tours and handing out decisions even in matters of legal significance touching on land.

(B) ISSUES

The study sought to respond to the following key questions:

- i. What are the main problems facing Village Land Councils at Mkuranga District?
- ii. What are the key factors in evaluating the success of land dispute reforms?

III. CHALLENGES FACING LAND DISPUTE RESOLUTION IN TANZANIA

i. Complex Legal Framework

The primary legislation governing land disputes in Tanzania includes the Land Disputes Courts

⁷ Laltaika, Elifuraha. "Constitutional Protection of Natural Resources in Tanzania: Examining Principles, Paucity and Conundrums." *Tuma L. Rev.* 7 (2021): 1.

⁸ Fatima, Sumbul. "Dispute Resolution Instrument in relation to Land Acquisition." (2015).

⁹ Domingo, Pilar, and Tam O'Neil. "The politics of legal empowerment." *Legal mobilisation* (2014).

Act of 2002 and various other statutes that establish different levels of courts and tribunals, such as the Village Land Council, Ward Tribunals, and District Land and Housing Tribunals.

Every single one of these bodies has specific jurisdictions and procedural rules, which can be cumbersome and confusing for the average citizen. The existence of multiple forums for dispute resolution often leads to jurisdictional overlaps and confusion, making it difficult for parties to navigate the system effectively.

ii. Procedural Rigidity

The procedures established under these laws tend to be formal and legalistic. For instance, while some local councils aim to provide fewer formal mechanisms for dispute resolution, amendments have increasingly imposed stricter procedural requirements, including the necessity for legal representation in certain cases.¹⁰ This shift has made the process less accessible and more intimidating for individuals without legal training, thereby discouraging amicable resolutions.

iii. Adversarial Nature of the Judicial System

The adversarial nature of the legal system in Tanzania further complicates the resolution of land disputes. The emphasis on formal litigation rather than mediation or negotiation means that disputes are often framed as battles between opposing parties, which can exacerbate tensions and lead to entrenched positions. This adversarial approach not only prolongs the resolution process but also diminishes the likelihood of reaching mutually agreeable solutions.

iv. Limitations on Alternative Dispute Resolution

Additionally, land disputes are generally not subject to arbitration under Tanzanian law, which restricts the ability of parties to choose alternative, potentially less contentious methods of dispute resolution. This limitation forces parties into the formal court system, where they must adhere to strict procedural rules and timelines, further complicating the resolution process.

IV. CONCLUSION

The complex legal framework, procedural rigidity, an adversarial judicial environment, executive interference, and restrictions on alternative dispute resolution mechanisms contribute to the challenges faced in achieving amicable resolutions to land disputes in Tanzania. These factors create a landscape where disputes are often prolonged and contentious, rather than resolved through cooperative dialogue and negotiation

¹⁰ Priest, George L. "The common law process and the selection of efficient rules." *The Journal of Legal Studies* 6.1 (1977): 65-82.

(A) Recommendations

Integrating Alternative Dispute Resolution (ADR) into the resolution of land disputes in Tanzania can significantly enhance the efficiency and effectiveness of the legal system. Here are several recommendations based on the current landscape of ADR and land dispute resolution in Tanzania. The study gives recommendations for Integrating ADR in Land Disputes among other recommendations as follows:

i. Legal Framework Enhancement

Amend Existing Laws such as the Land Act and related statutes should be reviewed to explicitly allow for ADR mechanisms, such as mediation and conciliation, in land disputes. Currently, land disputes are primarily adjudicated through formal judicial systems, which can be slow and cumbersome

Establishment of clear Guidelines and the development of unambiguous guidelines and procedures for the use of ADR in land disputes, ensuring that all parties understand their rights and obligations under these mechanisms.¹¹

ii. Capacity Building and Training

Training for Mediators: Invest in training programs for mediators specializing in land disputes. This can include workshops and certification programs to ensure mediators are well-versed in both ADR techniques and land law. Legal Education can be furthered by Incorporating ADR training into legal education curricula to prepare future lawyers and judges to effectively utilize these methods in practice.

iii. Public Awareness Campaigns

Community Engagement and collaborations. Conduct outreach programs to educate communities about ADR options available for resolving land disputes. This can help demystify the process and encourage parties to consider ADR as a viable alternative to litigation. Information Dissemination by Utilizing various media platforms to disseminate information about the benefits of ADR, such as cost-effectiveness, time efficiency, and the preservation of relationships among disputing parties.¹²

iv. Collaboration with Local Institutions

¹¹ Belay, Abebaw Abebe. "Alternative Dispute Resolution Rules in the Rural Land Laws of Ethiopia from Access to Justice and Women's Land Rights' Lens." *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique* (2024): 1-13.

¹² Subhashini, S. "The use of ADR in resolving disputes related to social media and online platforms." *Russian Law Journal* 11.3 (2023): 2462-2473.

Partnerships with Local Leaders: Collaborate with village councils and local leaders to facilitate community-based mediation processes, leveraging traditional dispute resolution mechanisms that resonate with local customs and practices

Integration with Existing Structures that Integrate ADR processes within existing land dispute resolution as complementary structures, such as the Village Land Councils and Ward Tribunals, which can handle disputes in a less formal environment.¹³

v. Monitoring and Evaluation

Establish Monitoring Mechanisms: Create systems to monitor the effectiveness of ADR in land dispute resolution, collecting data on outcomes, satisfaction levels, and the efficiency of the processes used. Feedback Loops need to be urgently addressed by implementing feedback mechanisms for participants in ADR processes to continuously improve the system based on user experiences.¹⁴

vi. Encouraging Voluntary Participation

The government should promote voluntary submission to ADR because while ADR can be mandated in some cases, promoting voluntary participation can lead to more amicable resolutions. Encourage parties to agree to ADR clauses in contracts related to land transactions. By focusing on these areas, Tanzania can effectively integrate ADR into its land dispute resolution framework, thereby enhancing access to justice and reducing the burden on formal judicial systems.

¹³ Adler, Daniel, et al. "Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution." *A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution* (2006).

¹⁴ Mendler, Bridgit Claire. *OurStory: Dispute System design technology for stakeholder inclusion*. Diss. Massachusetts Institute of Technology, 2020.