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# Justice at the Grassroots: The Impact of Ward Tribunals in Tanzania Mainland

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## ABSTRACT

*The article explores the effectiveness of the ward tribunals in Tanzania in promoting justice at the grassroots level. Ward Tribunals are community-based institutions that aim to provide accessible and affordable justice to local communities. However, the article finds that Ward Tribunals have been faced with some challenges such as the tribunals are sitting once a week thus legal services are not provided timely and most of the cases take longer to be heard at an average of six months. The challenges in handling cases in the tribunals have made the quality of legal services in tribunals unsatisfactory. This notion has been associated with residents' limited understanding of by-laws passed by tribunals, corruption, limited understanding of laws and legal procedures among tribunal members, poor working infrastructures like courtrooms, offices, and inadequate rooms to accommodate the claimants and defendants stationeries. Both analyses of primary and secondary data revealed that poor governance of ward tribunals affects their effectiveness in dispensing justice as ward tribunals. However, despite the challenges, ward tribunals have not been without important achievements. Ward Tribunals also, have been successful in improving access to justice, reducing case backlog, and increasing community participation in disputes in dispute resolution. The above analysis and conclusion indicate that, the establishment of ward tribunals was a good idea, but its governance has to be improved so that they can be effective in dispensing justice. It is hereby recommended that to improve the effectiveness of ward tribunals in dispensing justice, ward tribunals need to have good facilities like buildings, furniture, and remunerations to members and secretaries be permanent and pensionable employees of the local government where the ward tribunal situates as required by law. The study underscores the importance of community-based justice mechanisms in enhancing justice delivery at the grassroots level in Tanzania.*

**Keywords:** Justice, Impact, Ward Tribunal, Tanzania.

## I. INTRODUCTION

Since back days of the colonial era, justice administration in what is now mainland Tanzania, has invariably involved arbitral procedures alongside the more court-based litigation process<sup>2</sup>.

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<sup>2</sup> Mirindo, F. 2011. "Administration of Justice in Mainland Tanzania." Law Africa Publishing (K) Ltd

The British colonial government in Tanzania (then Tanganyika) systematized and put in place a system of customary arbitration which, although distinct, formed part of the colonial legal system. At first, the post-colonial state adopted this system without any alteration, but in 1969 a statutory provision was made for the creation of a more formal and village-based structure known as the Arbitration Tribunals (1969). In 1985, a parliament Act,<sup>3</sup> replaced these with more formalized and regularized organs called the Ward Tribunals. In contrast to the Arbitration Tribunals, the latter organs are based in wards and are meant to function under the overall control of the district-based local government authorities. This act clearly states that these organs ought to function primarily through mediation and arbitration, as opposed to litigation<sup>4</sup>, as such, they would achieve justice at the local community level through amicable settlement of disputes and, in this way, enhance the spirit of reconciliation and understanding among community members<sup>5</sup>. On the other hand, it is well documented that the Tribunals also were established to relieve the primary courts of their increasing workload. It follows that they were meant to supplement rather than replace the ordinary courts of law at the lowest level<sup>6</sup>. It would be worthwhile to note that the establishment of the Ward Tribunals took place at a time when the central government had decided to consolidate and revitalize local governance. Some lip service had been paid to giving power to the people to determine their own affairs since the early days of independence, but actual practice largely contradicted the often neatly presented manifestos in this regard<sup>7</sup>. The re-establishment of the local government system in 1984, after it had been abolished in 1967, was officially explained as aiming at enhancing popular participation in development efforts<sup>8</sup>. The newly established local government system encompassed a network of administrative structures and institutions. At times these local governance structures and institutions, which include district/town councils and village governments and cooperative unions, have been coordinated by a full-fledged ministry. However, more often they have worked under the umbrella of the Prime Minister's office. University of Florida Board of Trustees<sup>9</sup>, a public corporation of the State of Florida. Ward Tribunals were to function as part of the Ward Committees which, together with village governments, work under the direction of district councils. Taking the Ward as an

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<sup>3</sup>No. 7 Cap 206 of 1985 [Revised Edition 2019]

<sup>4</sup>Parliament Act no. 7 of 1985, section 8 .

<sup>5</sup>Msekwa, P. 1977. Report of the Judiciary System Review Commission. Dar es Salaam, pg. 111

<sup>6</sup>*Ibid*

<sup>7</sup>Ngware, S. and Haule M. 1993 "The Forgotten Level: Village Governments in Tanzania." Hamburg African Studies., pg.6

<sup>8</sup>Meshack, M. V. 1987. Party Policies on Popular Participation and Their Impact in Tanzania. Conference Paper, Arusha. March.

<sup>9</sup><http://www.africa.ufl.edu/asq/v1/2/1> retrieved on 13/04/2024 at 11:58 A.M.

administrative unit, the above sketched structural and institutional arrangement presents some degree of conformity to the modern ideal of separation of powers in governance<sup>10</sup>. While the functional government officials at the Ward level (headed by the Ward Executive Officer) discharge executive duties, and while the Ward Committee in liaison with the District Council performs functions close to those of the legislature in nature, the Ward Tribunals' functions, as specified by law, are essentially judicial.

## **II. METHOD**

### **(A) Participants**

The study was conducted with 40 respondents who represent a random sample of ward tribunal officers 10, lawyers 12, law lecturers, 10 and clients 8 in research the population of all ward tribunal officers, lawyers, law lecturers and clients were invited to participate in a task. The ward tribunal officers were 7 females and three male with the age of between 30 to 45 years, lawyers were both male with age between 28 to 3, law lecturer 6 were female and 4 were male age between 45 to 60 and clients were 7 female and 3 male age between 25 to 50. However the purpose of this study was deepen understanding of legal reasoning, to explore how these description vary across individuals in this specific group of students.

### **(B) Interviews**

In the study used a qualitative approach with interviews as the data collection method. The interviews were semi structured meaning that there were some predetermined questions but also space for participants' voices and follow up questions. The interviews concentrated on the participants' descriptions of legal reasoning. The ward tribunals officers, lawyers, law lecturers and clients were asked to elaborate on the meaning of justice, and ward tribunal, the overall question was: how would you describe the administration of justice? how do you access justices through ward tribunal? The participants were interviewed and data was recorded. The interview lasted and all personal information was removed before the analysis phase. Finally, the interview data were transferred to the computer program for analysis.

### **(C) Data Analysis Process**

The data collected from the respondents were analyzed by using qualitative mode of analysis. The purposes of applying qualitative content analysis was to identify various descriptions of administration of justice by ward tribunal to grassroots level. The analytical process involved both deductive and inductive approaches which means that the various categories identified in

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<sup>10</sup> Carolan, E. 2009. *The New Separation of Powers: A Theory for the Modern State*. Oxford University Press.

the interview were connected to theoretical frameworks from previous studies. The analysis process included three main phase and was non-linear in nature moving back and forth between the data and understanding acquired from various materials. In the first phase the author read the transcript several times to acquire inductively an overall view of the different legal reasoning descriptions reflected in the interview. In the second phase, all four authors met to discuss various materials elated to the study ward tribunals in relation to the dispensation of justice.

### **III. PROBLEMS WERE EXISTING BEFORE THE ESTABLISHMENT OF WARD TRIBUNAL AND ITS ESTABLISHMENT**

Before the establishment of ward tribunals in Tanzania, there were several problems in the justice system and governance that, there was limited access to justice, many citizens, especially those in rural arrears, faced with challenges in accessing formal justice systems due to factors such as distance, cost, and complexity of the legal process<sup>11</sup>. Delays in the resolutions of disputes, the formal court system in Tanzania was often slow and inefficient, leading to significant delays in resolving disputes and delivering justice. There was also lack of awareness of legal rights, many citizens were not fully aware of their legal rights and responsibilities, which hindered their ability to seek redress for grievances or resolve disputes effectively<sup>12</sup>. Centralization of justice, prior to the establishment of ward tribunals, the justice system in Tanzania was largely centralized, with most courts located in urban areas. This made difficult for rural communities to access justice services. High costs of litigation, legal proceedings in formal courts could be expensive, preventing many individuals, particularly those from low-income backgrounds, from seeking justice through the formal system<sup>13</sup>.

The establishment of ward tribunals in Tanzania aimed to address these challenges by providing a more accessible, efficient and community based mechanism for resolving disputes and delivering justices at the grassroots level<sup>14</sup>. Ward tribunals were designed to be closer to the people, less formal and costly, and more responsive to the needs of local communities<sup>15</sup>.

The combination of the goals and intentions for the establishment of the Ward Tribunals, together with the statutory specification of their functions, jurisdiction, and powers, raises a

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<sup>11</sup> Issa Shivji et al Constitutional and Legal System of Tanzania:A Civics Source Book Mkuki na Nyota

<sup>12</sup> Omari, A. *Challenges of Strengthening Access to Justice in Tanzania: A Governance Point of View*.

<sup>13</sup>Newman, D., & Gordon, F. (Eds.). 2023. *Access to Justice in Rural Communities: Global Perspectives*. Bloomsbury Publishing.

<sup>14</sup>Makombe, I. A. M., & Sikalumba, A. J., 2005. *The Role of Ward Tribunals in Enhancing the Administration of Justice in Tanzania: The Case of Selected Ward Tribunals in Sumbawanga Urban and Rural Districts*. Mzumbe University

<sup>15</sup> Kalabamu, F. T., 2020, *Land Conflicts and Alternative Dispute Resolution in Sub-Saharan Africa: The Case of Botswana*. In *Land Issues for Urban Governance in Sub-Saharan Africa*.

number of questions which are general as well as specific in character. On one hand, there is an obvious need to appraise the performance of the Tribunals on the basis of their stated aims and objectives<sup>16</sup>. In view of the goals stated above, one question, therefore, has to do with the extent to which these organs have been effective in achieving justice through their mediation and reconciliation activities. Another obvious question is whether the Tribunals have had a notable impact with regard to easing the primary courts' work pressure<sup>17</sup>. At a more general level it is imperative to consider the question whether justice may be achieved through the implementation of the stated goals and working principles of the Ward Tribunals. The Presidential Commission, which recommended the establishment of these organs, envisaged that they would be reconciliatory, flexible, informal, and sensitive to local culture in their functioning<sup>18</sup>. These principles were resounded by the Act establishing the Tribunals. The question, therefore, is whether the implementation of these principles would insure justice to everyone in the context of rural Tanzania<sup>19</sup>.

#### **IV. MEANING OF ADMINISTRATION OF JUSTICE**

The administration of justice is defined as a set of theoretical concepts, research methods and techniques, aiming to investigate the management processes associated with the use and articulation of resources, knowledge and institutions, at different levels of the justice system, and their influence on the provision of justice in a given social context<sup>20</sup>. As social phenomena, four levels of analysis are proper to investigate the justice system, societal, inter-organizational, organizational and operational. Innovation, performance, governance and legitimacy are central themes of the administration of justice<sup>21</sup>.

Therefore, according to Kelsen<sup>22</sup> said, no other question has been the object of so much intensive thinking by the most illustrious thinkers from Plato to Kant; and yet, this question is today as unanswered as it ever was. The act of doing justice implies making decisions on the

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<sup>16</sup> Makombe, I. A. M., & Sikalumba, A. J., 2005. *The Role of Ward Tribunals in Enhancing the Administration of Justice in Tanzania: The Case of Selected Ward Tribunals in Sumbawanga Urban and Rural Districts*. Mzumbe University

<sup>17</sup> Mangure, D. W. (2017). Effectiveness of Ward Tribunals in Dispensing Justice as Land Courts in Tanzania: Case of Arusha City. *International Journal of Science and Research (IJSR)*, 6(5).

<sup>18</sup> Msekwa, P. 1977. Report of the Judiciary System Review Commission. Dar es Salaam, pg. 111 & 116

<sup>19</sup> Twaib, F., 2009. *Legal Empowerment of the Poor: Access to Justice and Rule of Law in Tanzania*. Open University of Tanzania.

<sup>20</sup> Guimaraes, T. A., Gomes, A. O., & Guarido Filho, E. R., 2018. Administration of justice: an emerging research field. *RAUSP Management Journal*, 53(3), 476-482.

<sup>21</sup> Guimaraes, T. A., Gomes, A. O., & Guarido Filho, E. R., 2018. Administration of justice: an emerging research field. *RAUSP Management Journal*, 53(3), 476-482.

<sup>22</sup> Kelsen, H. (2000), "What is justice", *Justice, Law and Politics in the Mirror of Science*. Collected Essays, University of California Press, Berkeley

freedom, and often on the life, of human beings<sup>23</sup>. Justice is an abstract concept studied in different areas of knowledge including philosophy, law, economics and administration, that why it is not easy to define the term word justice. So, at the broader societal level, administering justice involves maintaining the social structure in harmonious operation. Rawls<sup>24</sup>, expressed justice as the first virtue of social institutions, basic structure of society, way in which the major social institutions distribute fundamental rights and duties. The concept of system a set of interdependent and recursive elements and subsystems, is important in understanding how justice organizations function, how legal processes are developed and how services of justice are provided.<sup>25</sup> Resolving litigation and promoting social order involves the orchestrated functioning of various organization influence several others. One could argue that this is a true for other social systems, such as economic organizations. However, the concept of system is very important for justice because of the recursive nature of interactions between organizations and the many procedures and resources that go through the various levels of justice.<sup>26</sup>

In Brazil the justice system comprises many organization working in very different contexts, according to their constitutionals roles and objectives. The judicial branch is the central subsystem also includes the Public Prosecutor's office, the public Defender's office and administrative courts, as well as advocacy, police and person organizations.<sup>27</sup> In addition, other organizations contribute to the provision of justice services, with specific responsibilities, such as notaries, consumer protection organizations, professional associations and mediation and conciliation bodies. Most of these organizations, especially the courts, police and prisons, are highly institutionalized and legitimated in the sense that their existence and functioning are taken for granted. For this reason, when analyzing the justice system, the terms institution and organization often overlap. Based on the notion of justice system, the concept of administration of justice involves different levels of analysis, each dealing with a specific type of issues, problems and challenges.<sup>28</sup> Considering the specificities of the justice system and the fact that the term administration is associated with the functioning of formal social systems in general.

In Australia, the case of Attorney General for New South Wales v Love<sup>29</sup>, the appellant argued that section 24 of the Act 9 Geo 4 c 83 did not have the effect applying the Nullum Tempus Act

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<sup>23</sup> Rawls, J.,1971. *A theory of justice*. Belknap Press

<sup>24</sup> Rawls, J.,1999, *A theory of Justice*, Revised edition, Harvard University Press, Cambridge

<sup>25</sup> Greenspan, R., Aviram, H., & Simon, J. (Eds.). 2019. *The legal process and the promise of justice: Studies inspired by the work of Malcolm Feeley*. Cambridge University Press. <https://doi.org/10.1017/9781108234979>

<sup>26</sup> Capra, F., & Luisi, P. L. (2014). *The systems view of life: A unifying vision*. Cambridge University Press

<sup>27</sup> Oliveira, L. (Ed.),2010. *The Brazilian Legal System: History and Contemporary Issues*.

<sup>28</sup> Neubauer, D. W., & Fradella, H. F., 2019. *America's Courts and the Criminal Justice System (13th ed.)*. Cengage Learning

<sup>29</sup> (1898) AC 679 at 685, PC.

(9 Geo 3 c 16)<sup>30</sup>, to New South Wales. Counsel for the appellant said that *Whicker v Hume*<sup>31</sup> decided that section 24 referred not to laws generally, but only to laws as to modes of procedure, and that the *Nullum Tempus* Act did not deal merely with procedure. The Lord Chancellor said that Act 9 Geo 4 c 83 *prima facie*, applied the *Nullum Tempus* Act to the colony in question as much as if it had re-enacted it for that colony, he then said: section 24 of that Act provides that “all the laws and statutes in force within the realm of England at the passing of this Act, shall be applied in the administration of justice in the courts of New South Wales” and it is sought by construction to limit the words, “all laws and statutes” by introducing into the section the words, “having relation to procedure” or some equivalent expression. At least that is the only intelligible mode in which the argument can be supported because the words which do occur in the section, in the administration of justice would certainly include a limitation of time within which actions can be brought, and their Lordships are of the opinion that the language of the section cannot be limited so as to exclude the statute, which for the reasons pointed out by the learned judges were and are so important in the administration of justice in the colony<sup>32</sup>.

In Canada under section 92(4)<sup>33</sup>, known administration of justice power, grants the provincial legislatures of Canada the authority to legislate on administration of justice in the province, including the constitution, maintenance, and organization of provincial courts both of civil and criminal jurisdiction, and including Procedure in Civil matters in those courts.

However, if you come to England, the concept of administration of justice is a prerogative of the crown. It may be exercised only through duly appointed judges and courts<sup>34</sup>

Justice administration, the process by which conflicting interests are reconciled using the principles of fairness and equity, historically has been both a judicial and governmental-administrative function. Even though in modern society this function is assigned to the judiciary, which in principle ought to work independently from the executive arm of the government, in practice it has been part and parcel of government administrative functions.<sup>35</sup> Accordingly, the nature and functioning of the Tanzanian Ward Tribunals has to be understood in the light of the mission and administrative role of the government. Like the British Administrative Tribunals, after which they have mainly been styled, the Tanzanian Ward Tribunals are primarily a part of the administrative system. This is clear first of all in regard to

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<sup>30</sup> (1768).

<sup>31</sup> (1858) 7 HL 124.

<sup>32</sup> *Attorney General for New South Wales v Love* 1898, AC 679 at 685, PC

<sup>33</sup> Constitution Act, 1867

<sup>34</sup> Phillips.HO., 1960, *A First Book of English Law*. Fourth Edition. Sweet & Maxwell, pg. 19

<sup>35</sup> Peak, K. J.,2001. *Justice Administration: Police, Courts, and Corrections Management*. Prentice Hall



their historical roots, which are quite clearly traceable to the British colonial administration system. In Tanganyika, as elsewhere in their colonial empire, the British used their so called indirect rule principle to maintain or create customary courts to operate at the bottom of the judiciary system. As mentioned earlier the Ward Tribunals were a modification of the customary courts, left in place by the colonial government.<sup>36</sup> The purported primary aim of both institutions was to control ordinary social strife at the local community level for the purpose of keeping peace and tranquility by the cheapest possible means<sup>37</sup>. Moreover, it is quite clear that the Ward Tribunals were intended to be an organ of the local government in the respective government administrative districts. This is evidenced by the fact that, although the Tribunals are supervised by the primary courts, they are responsible to, and are directly controlled by, the local government authorities.<sup>38</sup> Furthermore, in accordance with the provisions of the Act, Ward Tribunals have often been used by village and Ward government authorities to enforce certain regulations relating to social and economic development.

## V. ADMINISTRATION OF JUSTICE BY WARD TRIBUNAL IN TANZANIA

This part explains the mode of operation by Ward Tribunals in Tanzania. There may be some slight differences between one tribunal to the other as far as the operating procedures are concerned, since the law states that they shall regulate their own proceedings,<sup>39</sup> but principally, they share so much in the operation as justice is one and they way to reach to it is always known. Mainly this part will give out the procedure followed in receiving the complaints, hearing them and then giving a decision, to be precisely, the process of delivering justice will be demonstrated hereunder.<sup>40</sup>

### (A) Jurisdiction of Ward Tribunal

The Ward Tribunals are vested with the general jurisdiction of making sure that, it secure peace and harmony in the area for which it is established by mediating and endeavoring to obtain just and amicable settlement of disputes. It goes without saying that, the Ward Tribunal territorial jurisdiction is limited to the ward upon which it is established. On top of that, the Ward Tribunal has the pecuniary jurisdiction on both criminal and civil matters arising out of the disputes and falling within its jurisdiction.<sup>41</sup> The Ward Tribunal in the exercise of its jurisdiction is limited

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<sup>36</sup> Heussler, R.W. (1971). *British Tanganyika: An Essay and Documents on District Administration*. Duke University Press

<sup>37</sup> Msekwa, P. 1977. Report of the Judiciary System Review Commission. Dar es Salaam.

<sup>38</sup> Reynolds, O. M. Jr. (2009). *Local Government Law (3rd ed.)*. West Academic Publishing

<sup>39</sup> The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 15(2)

<sup>40</sup> Commonwealth Ombudsman. *Better Practice Complaint Handling Guide*. Commonwealth Ombudsman

<sup>41</sup> Balthazary Kinasha v. Paula Bernad Nindi, Misc. Land Appeal No. 69 of 2020, [2021] TZHCLandD 6 (High Ct. Tanzania).

to the awards and penalties, in criminal matters, a fine not exceeding ten thousand shillings, in default of payment of a fine which does not exceed one thousand shillings. In case of the convicted person, he/she have to be committed to work on an on-going communal project for not more than ten days<sup>42</sup>. The law further provides that, in case of default of payment of a fine exceeding one thousand shillings, the matter shall be referred to the Primary Court for committal of the convicted person to prison or any other appropriate action under the law<sup>43</sup>. The penal offences triable and the civil matters upon which the Ward Tribunal has jurisdiction including the punishments or award are listed in the First schedule to the Ward tribunal Act<sup>44</sup>. In addition to that, a Tribunal have and exercises jurisdiction in relation to all matters and disputes arising under all laws and directives passed by the appropriate authority (Local Government Authorities upon which they are established), 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 Ward Tribunals were officially and straight forward awarded with the jurisdiction on land matters under The Land Disputes Courts Act<sup>45</sup>. The Ward Tribunal has jurisdiction to mediate matters concerning land within the area of its jurisdiction<sup>46</sup>. That is to say, a Ward Tribunal has criminal and civil jurisdiction in its territorial area to inquire and determine matters arising out of the disputes from people who seek justice from the tribunal except land disputes where it has only mediating jurisdiction over the disputant parties. All of these being done, the number one function of the tribunal remains to be to secure peace and harmony in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter brought before it.

### **(B) Receiving/Admission of Disputes**

At this stage, the Ward tribunal receives complaints from the litigants who feels and thinks that any wrong has been committed and it has to be cured by the tribunal. A complaint may be made to the tribunal through the secretary of a Tribunal, the Chairman of a Village Council or a ten-cell leader<sup>47</sup>. A complaint may be made orally or in writing, but if made orally shall be reduced in writing by the person to whom it is made and, in either case, shall be signed by the complainant and the person to whom it is made. When a complaint is made to any person, that

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<sup>42</sup> Ward Tribunal Act No. 7 Cap 206 [Revised Edition 2019]

<sup>43</sup> The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 10

<sup>44</sup> Cap 206 Revise Edition 2019

<sup>45</sup> Act No. 2 Cap 216 [Revised Edition 2019]

<sup>46</sup> The Written Laws (miscellaneous Amendments No. 3) Act, 2021 as amended Section 13(2) of the Land Disputes Courts Act

<sup>47</sup>The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 11(1)

person shall, if he is not the Secretary of the Tribunal, cause it to be submitted to the Secretary of the Tribunal who shall enter it in the records of the tribunal and arrange for it to be heard and determined by the tribunal in accordance with the procedure of the tribunal for the hearing and determination of disputes submitted to it<sup>48</sup>.

### **(C) Procedures, Hearing, Decision Making Execution, Appeals and Revision**

The Ward Tribunal has the procedures and practice on how to go about in delivering justice. Since they are not the formal courts, the law has allowed them to be free from technicalities, to regulate their own procedures and conduct itself in a proper manner fit for the purpose of meeting its paramount function of ensuring peace and harmony<sup>49</sup>. During this stage, the tribunal passes through several steps until when it comes to the point of issuing its decision, executing it and preferring appeals or revision if necessary. Hereunder are the steps passed through;

#### **a. Initial Stages**

At this stage, the tribunal receives the complaints under the above elaborated ways, the secretary register it and sees as to whether it is a claim to be lodged in a tribunal. After satisfying one another that the claim is maintainable, then the arrangement of scheduling the mentioning date and issuance of summons and other directives are done at this stage. The stage is very important since it tries to put all important details about the claim between the disputants so as to be able to proceed with the matter under proper record and insurance<sup>50</sup>.

#### **b. Summons for Appearance and Hearing**

The summons is issued by the secretary in a manner as specified for the purpose of securing the parties to the dispute to attend the tribunal, have their matter scrutinized and determined as deemed fit<sup>51</sup>. The whole purpose of service of notice and document is to enable the other party to prepare and that he should not be taken by surprise. On those grounds, summons is a must to serve justice delivery.

#### **c. Appearance, Adjournment and Dismissal in Ward Tribunal**

The person has to enter appearance in person before the tribunal in the specified date, give explanations and evidence and answer all questions put to them by any member of the Tribunal. If on the date specified in the summons the complainant does not without reasonable cause, appear, the Tribunal shall dismiss the complaint and it shall not subsequently be brought before

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<sup>48</sup>The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 11 (3&4)

<sup>49</sup> The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 15

<sup>50</sup> Ward Tribunal Act No. 7 Cap 206 [Revised Edition 2019]

<sup>51</sup>The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 12

it, but if the Tribunal considers that the absence of the complainant is due to a reasonable cause or if the person complained against is absent, the Tribunal shall adjourn the hearing to some other date<sup>52</sup>. Representation in the Ward Tribunal may be done through a parent, guardian, relative or friend for a child below eighteen years of age, or a person who for any sufficient cause cannot adequately put his case or defend himself. At this juncture, the tribunal is working like any other court dispensing justice. Further to that, appearance before the Ward Tribunal in any proceeding to which a body corporate is a party, its director, secretary, member or a person in the employment of the body corporate and duly authorized in that behalf, other than an advocate, may appear and act on behalf of that party<sup>53</sup>.

#### **d. The Hearing**

During the hearing stage, the parties present their case one by one, being given a time to examine and cross examine the evidence given by the other party for the purpose of proving or disproving the allegation before the tribunal. For the same reason and purpose mentioned prior, the tribunals are not bound by legal technicalities and any rules of evidence or procedure applicable to any court. They are left free to deal with the matter at hand for the purpose of attaining a fair decision. A Tribunal regulates its own procedure as directed by the Act itself<sup>54</sup>. Although it is left to regulate its own procedures, but still there are the underlying principles of which are put forward to help the tribunal reach a fair decision. During the hearing, the tribunal has power to hear statements of witnesses produced by parties to a complaint, and to examine any relevant document produced by any party. Under section 13(1)<sup>55</sup>, it is provided that, on the date mentioned in the summons, the parties shall appear before the tribunal, give their evidence and answer question posed to them. This means, the production of documentary evidence and oral evidence is done at this stage. The witnesses brought are subject to cross examination as the law allows them to be asked questioned and give answers. Cross examination in the Ward Tribunal comes from both, the tribunal and the parties themselves<sup>56</sup>, the Ward Tribunal is bound to adhere to the principles of natural justice. A Tribunal shall in all proceedings seek to do justice to the parties and to reach a decision which will secure the peaceful and amicable resolution of the dispute, reconciliation of the parties and the furtherance of the social and economic interests of the village or ward as a whole in which the dispute originates. For the purposes of securing a just determination of a complaint, the Tribunal shall not make a decision on any complaint

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<sup>52</sup>The Ward Tribunals Act No. 7 Cap 206 [Revised edition 2019], Section 13 (1&2)

<sup>53</sup> The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 18(3)

<sup>54</sup>The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 15

<sup>55</sup>The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019]

<sup>56</sup>The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 13(1)

unless it has given an equal opportunity to each party to explain his part of the matter and to present his witnesses and any member of the Tribunal having any personal or financial interest in the complaint has disclosed it and not taken part in the proceedings<sup>57</sup>. On adhering to the principle of natural justice, the Ward Tribunal is wanted by the law to act accordingly in meeting those legal needs.

#### e. **Decision Making**

The Ward Tribunal has criminal and civil jurisdiction as mentioned above. It can impose fine and imprisonment in matters of criminal nature where it finds proper to do so and may award compensation and grant other orders as stipulated under the law except land disputes where it has a mediating power only over the disputant parties. Its criminal jurisdiction is limited, for instance, it cannot jail a person without the confirmation by the Primary Court. The tribunal may order the party in default to redress the situation by apologizing to the other party; to pay back what is due to the other party; to pay compensation or to carry out any other sanction acceptable in the village or ward concerned; or to perform any customary act or acts which signify reconciliation<sup>58</sup>.

#### f. **Appeals and Revisions from Decisions by Ward Tribunal**

Any person aggrieved by a decision of a Tribunal in any matter not relating to land disputes may within sixty days appeal in writing to a Primary Court. Not all appeal are viable, exception are put and the leave of the Primary Court is needed to appeal in a case of criminal nature. Further to that exception, only appeals on points of law lies to the District Court, otherwise, decision of a Primary Court on any appeal made to it shall be final and conclusive.<sup>59</sup> On revisions, a Primary Court may act suo motto to call and examine the proceedings and decision of the Ward Tribunals to satisfy itself on the adherence to the law. The time limit or any revision is twelve months from the conclusion of such proceedings in the Tribunal. The primary court upon which the appeal or revision lies may confirm the decision, quash the decision or order the matter to be dealt with again by the Tribunal, and may, if it deems appropriate, give an order or direction as to how any defect in the earlier decision may be rectified<sup>60</sup>. On matters relating to land, the appeal and revision procedures look alike with the normal civil and criminal matters, may confirm the decision, reverse, or vary in any manner the decision, quash any proceedings or order the matter to be dealt with again by the Ward Tribunal, and may, if it deems appropriate,

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<sup>57</sup> The Ward Tribunals Act No 7 Cap 206 [Revised Edition], Section 16

<sup>58</sup> The Ward Tribunals Act No. 7 Cap 206 [Revised Edition 2019], Section 17

<sup>59</sup> Lucas, K. (2024). *Appeal Procedures and Practice in Tanzania*

<sup>60</sup> Ward Tribunal Act No. 7 Cap 206 [Revised Edition 2019]

give an order or direction as to how any defect in the earlier decision may be rectified.<sup>61</sup>

## VI. FINDINGS

The big percentage of the respondents showed that they are aware of the formation of the Ward Tribunal gives a picture that, the Ward Tribunal are in existence and they are known to people, people even know how they are formed, this means, their existence is a thing which is wide open and known to a large group of people. That question was tied with a question of the procedures on how to form a Ward Tribunal. All of the respondents who replied in affirmative gave the procedure of how to establish a Ward Tribunals. Though the respondents did not quote the law, but tried the best to give the procedures as laid down under section 4<sup>62</sup>. This means, the Councils have been abiding to the law in forming the Ward Tribunals. The researcher generally observed that, there are no great challenges in the formation of the Ward Tribunals, from the sampled respondents, people are aware and happy about it, this concludes that, a Ward Tribunal is an institution known in the society and needed, since it has many significances attached directly to members of the society.

In another part the researcher come to find that, The respondents who were of the view that, the current statutory qualifications specifically as provided under section 5(1)(d)<sup>63</sup> are insufficient and render the mal administration by the Ward Tribunal were basing on mainly three grounds. One, they were of the opinion that, while the Ward Tribunals were first established in 1985<sup>64</sup>, they were more of a social institution to resolve matters amicably and without involving the technicalities of laws, under section 8(1)<sup>65</sup> the number one and primary function of the Ward Tribunal is 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. This means, it was not a court like organ, just an institution for resolving minor disputes and helping the Local Government achieve about its functions of maintaining peace and order. Further to that, under section 20<sup>66</sup>, the appeals from the Ward Tribunals hardly goes up, the law makes the final appellate court to be the District Court in matter of law only, otherwise, the decision of the primary court in any appeal is final and conclusive, section 20(3)<sup>67</sup>. It is because of lack of sufficient legal knowledge that, members to the tribunal go against the law, always unknowingly of course. It is provided

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<sup>61</sup> Lucas, K. (2024). *Appeal Procedures and Practice in Tanzania*, *ibid*

<sup>62</sup>The Ward Tribunal Act, No. 7 Cap 206 [Revised Edition 2019]

<sup>63</sup>*Ibid*

<sup>64</sup>*Ibid*

<sup>65</sup>*Ibid*

<sup>66</sup>*Ibidi*

<sup>67</sup>*Ibid*

under section 14(1)<sup>68</sup> that, during mediation, the member shall sit male and females. Because of the diverse reasons sometimes female are not present but the Ward Tribunals for good faith decides to continue with the process, at the end failure of justice occurs and hence causing the mal administration of justice. The second base of their opinion on qualification was based on the capacity/qualification of the secretary to the Ward Tribunals. Section 5(2)<sup>69</sup> gives the qualification of the secretary as follows, “No person shall be recommended as a Secretary of a Tribunal unless he is, in the opinion of the Ward Committee, sufficiently literate and educated and capable of satisfactorily discharging the duties of Secretary”. The respondents claims are that, there are no given qualification in the wording of the law, and further to that, the respondents were of the opinion that, they are not open and that blanket statement leads into getting the secretaries who are not worth of becoming secretaries. It was revealed by a chairman of the ward tribunal that in some occasions, he has encountered the secretaries of the Ward Tribunals who do not know how to read and write but yet they are secretaries of the Ward Tribunals. The respondents were of the opinion that, at least the only person with a great knowledge and skill in the field of law could be the secretary, so as to lead the other from committing unnecessary mistakes in law.

These mistakes of course results into the administration of justice in Ward Tribunals and cost the litigants. Giving a court decision in the case of *Ibsen Shawala v Nelson Selela*,<sup>70</sup> Hon. Nyaruka J held inter alia that; “However, when I was perusing the file I found two cases on the same subject matter. They were cases number 127 and 128 of 2010. The respondent sued the appellant and in the later case the appellant sued the Mtaa Executive Officer (MEO) of Mpoji Street. As both cases involve one piece of land, I think they ought to be merged together but the ward tribunal dealt with them separately. We quash the decision of both cases and order the retrial de-novo as one case”. If the secretary could have had legal knowledge could have applied it and made sure that there were no multiplication of cases whether one to wait for the other or merge both of them to form a single suit to avoid the de novo order by the higher courts as it happened<sup>71</sup>. The third and last base was equipped on the fact that, even the training to the Ward Tribunals members is not given and hence, on top of that they have no any legal knowledge, as having it is a disqualification to become a member at law, they are not trained as a layman to give a fair and just decision on the matters presented before them to avoid mal administration.<sup>72</sup>

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<sup>68</sup>The Ward Tribunal Act, No. 7 Cap 206 [Revised Edition 2019]

<sup>69</sup> *Ibid.*

<sup>70</sup> Civil Appeal No. 15 of 2012 Iringa High Court Registry.

<sup>71</sup> Land Disputes Courts Act Cap 216 [Revised Edition 2019]

<sup>72</sup> Law Reform Commission of Tanzania. (2020). *Report on the Review of Legal Framework Governing Land Dispute Settlement in Tanzania*. Dar es Salaam: Law Reform Commission of Tanzania

The other respondents who thought that, the set qualification does not affect the capacity of the Ward Tribunals to discharge its function and cause maladministration were mainly the members of the Ward Tribunals. On this area, they emphasized that, all they miss is frequent training from the responsible authority. They are of the opinion that, regardless of the changes and expansion of functions of the Ward Tribunals, they can still perform better if they are trained now and then. While responding to the questionnaires, a large number shows that they got training lastly three years back, so in the case of new members, they are open-minded, with no training and no experience<sup>73</sup>. On the other hand, three respondents remained neutral, they could not decide whether the current statutory qualification causes mal administration or not.

The examination of the challenges facing the Ward Tribunal has been thoroughly conducted. That, the challenges facing the Ward Tribunal members by having no legal qualification has been explained above including the cases upon which the court gave decisions showing that justice failed to the aggrieved parties and came out of missing the legal qualification to decide matters legally. In the above findings, it has been revealed that, one of the statutory qualifications (which forbids a person with legal knowledge to be a member) of members of Ward Tribunals causes mal administration in some cases. That, in the above findings, vivid examples of failed justice have been demonstrated through the referred court cases.<sup>74</sup> That, this work has shown that the respondent interviewed said that they have not been given any training for a long time and hence this clearly shows that, no initiatives and efforts are taken to curb the challenges facing the Ward Tribunal. After that discussion, it is therefore found it open that lack of legal qualification and frequent training on the operation of the Ward Tribunals causes mal administration of justice at the Ward Tribunals since members do not decide per the law but what seems better to them, but also the law keeps met some amendments that it found is not known to members of tribunals even also the society change every day, every time so it has to be equipped with new idea, training that can enable them to grow up in the environment of the law and justice<sup>75</sup>

Furthermore, it found that, through the respondents reply to the questions administered to them, a big number were of the opinion that the appropriate authority has failed to perform its functions as stipulated under the law. The appropriate authorities have failed to facilitate the smooth and effective performance by the tribunal of its functions by failing to remit funds (for

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<sup>73</sup> Ward Tribunal Act No.7 Cap 206 [Revised Edition 2019]

<sup>74</sup> Marwa, Paxton J. *Effectiveness of the Ward Tribunal in Solving Land Disputes in Tanzania: A Case of Tarime District Ward Tribunals*.

<sup>75</sup> Nchia, Devotha. *The Role of Ward Tribunals in Solving Land Disputes in Tanzania: A Case of Karatu District*



running the office) as stipulated under section 27<sup>76</sup>, to conduct frequent training, to facilitate the process of renewing the tribunal members' tenure when expired and to avail the Ward Tribunals with working infrastructures like the building and transport. The combined effect of the failure mentioned above has led to the Ward Tribunals to fail to deliver justice as guaranteed by the law and hence causing mal administration of justice to the litigants who present their matter for determination before the tribunals.<sup>77</sup> The failure of the appropriate authority to remit funds to the tribunal has led the tribunal members to get bribed and deliver unjust decisions, this is caused by the fact that the Ward Tribunals members work for free in some tribunals as no money to pay their dues. On the other hand, the failure of the appropriate authority to conduct frequent training to the Ward Tribunals members has led to the newly formed tribunals sitting against the quorum as provided for under the law, to give improper orders to the litigants, including telling them that the time for appeal is 60 days, deciding the matters which were criminally received as a civil matter, visiting the locus and taking new evidence while already both parties have closed their cases, just to mention a few, all these irregularities, in turn, affect the other part while an appeal is preferred and some of the mentioned irregularities tabled as grounds of appeal, hence the mal administration of justice due to the failure of the appropriate authority to discharge its statutory function. In the same vein, some tribunal expires their time as provided for under section 6(1)<sup>78</sup>, but the appropriate authority does not renew the same at once and hence the tribunals cease to exercise their functions or exercise them unlawfully and then cause failure of justice when the appeal is preferred. Lastly, the Ward Tribunal sits to conduct their session in different areas including, the CCM buildings, the individual's building and the like, now when the case has one party who has given accommodation to the Ward Tribunal, obvious there must be a biased decision by the Ward Tribunal<sup>79</sup>. In those circumstances, the Ward Tribunal will exercise its power without being fair and hence mal administration of justice to the affected part. That, the failure to discharge function by the appropriate authority causes mal administration given the elaborated examples, injustice is sometimes caused by lack of funds and unavailability of good working environments which causes mal administration. The data collected shows that no efforts have been employed to curb the challenges facing the Ward Tribunal. The collected data shows that, there has been no remittance of funds to the Ward Tribunals, there have not been conducted seminars to the members, and there is no recent amendment of the law to rectify matters which people claim to be a problem. This also proves the hypothesis that the

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<sup>76</sup> The Ward Tribunals Act, No. 7 Cap 206 [Revised Edition 2019]

<sup>77</sup> Balthazary Kinasha vs Paula Bernad Nindi (Misc. Land Appeal 69 of 2020) [2021] TZHC Land D 6

<sup>78</sup> The Ward Tribunals Act, No. 7 Cap 206 [Revised Edition 2019]

<sup>79</sup> Tribunal Edition 2-2018 Tribunals

administration of justice in Ward Tribunals is caused by their legal setup.

Other general matters of concern leading to Mal administration of justice in Ward Tribunals apart from those discussed above are; outdated penalties under the law referring to the jurisdiction of the Ward Tribunal, it has two types of jurisdiction, those being the civil and criminal ones. On the criminal jurisdiction, the Ward Tribunal is empowered to give fines and jail time to the offenders who are convicted before them. For instance, the schedule to the Act<sup>80</sup> provides for the criminal offense under the Penal Code<sup>81</sup> and other laws which are triable by the Ward Tribunal. It was the observation of the respondents that, the fines given are no longer matching with the economic situation at hand, and whichever offence the accused is charged and convicted with, he can pay the fine easily and walk away without being transformed into a good citizen as per the aim of the Act. With that observation, they proposed the Act to be amended and incorporated with the fines which are in reality with the current financial situation to meet the aim of the punishment.

Double standard on the right to appeal the Ward Tribunal has jurisdiction over civil matters and criminal matters are aforementioned. Taking the good example of the normal cases. Like in normal cases, section 20<sup>82</sup> makes the final appeal to lie to the District Court, if at all there is a point of law to be determined by the higher court, otherwise, the final appellate court is the primary court. At the same time, section 48<sup>83</sup> allows appeal from the high court to be preferred by the court of appeal, the high court in turn receives appeals from all the way down to the Ward Tribunal, The respondents were of the view that, to curb this double standard problem, all of the appeals from the Ward Tribunals should be given floor of appeal to the top stage where one gets satisfied with the decision rather than being blocked by technical laws.

## **VII. RECOMMENDATIONS**

Taking in consideration of the discussion did in the above there, the following recommendations are given to rectify the current situation. The qualification of the members of the tribunal should be updated to incorporate a person with legal knowledge in the law. That, initially the Ward Tribunals we just for solving minor conflicts of which their appeals hardly reached the District Court, but as of now, their appeals channels until the Court of Appeal, and for a matter to go to the Court of Appeal from the Ward Tribunals, there must be a point of law to be determined, then you go to determine a point of law from the proceedings and judgment originating from

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<sup>80</sup> The Ward Tribunals Act, No. 7 Cap 206 [Revised Edition 2019]

<sup>81</sup> The Penal Code, Cap 16 [Revised Edition 2022]

<sup>82</sup> The Ward Tribunals Act, No. 7 Cap 206 [Revised Edition 2019]

<sup>83</sup> The Land Disputes Courts Act No. 2 Cap 216 [Revised Edition 2019]

the total layman, this is the period in time to have at least two people with legal knowledge, including the secretary who always is the compass of show the direction of the tribunal. On top of that, the law must make it a must for the members of the tribunal to get the training and seminars to build their capacity to make a fair and just decision affecting the litigant's rights and interests. While working on the collection of data from the field, and examination of the challenges facing the Ward Tribunals in the dispensation of justice, it has been revealed that, having no legal knowledge to all members of the tribunal poses a threat when the matter is having legal technicalities, or even if the matter is not technical, but while there are new members of the tribunal, having no legal back up at all, without any training nor seminars on their work, it becomes challenging. On the other hand, giving answers to objective three, non-possessing of legal knowledge, and non-training of Ward Tribunal members is one of the causes of the failure of the administration of justice in the Ward Tribunal.

During the data collection, it was recommended that the Act should be amended on the provision of the punishment awarded on criminal matters. That, the fines provided by the law now are too minimal and unequal to the current economic situation and hence when needed to be paid, it is paid easily and the payer does not feel the pinch and hence cannot be reformed from doing the same wrongs he has committed before. So it is recommended that the fines should be upgraded to meet the current financial and economic situation so that it becomes a real fine to deter the wrongdoer. It is recommended that, if those recommendations are taken on board, it will minimize or clear away the mal administration of justice in the Ward Tribunals in Tanzania. It is expected to handle matters in all situations in the Ward Tribunals by observing principles of natural justice since this is the foundation of justice over the whole world.

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