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Examination of the effectiveness of ward tribunals in mediating land disputes in Tanzania: A case study of Kibaha District Council

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Abstract

Tanzania has established a separate system for dealing with land disputes, which is less formal than ordinary civil courts and more accessible to citizens with less formal education. The Village Land Act and the Land Dispute Courts Act provide the institutional framework for land dispute settlement, including the Ward Tribunal, District Land and Housing Tribunal, High Court, and Court of Appeal of Tanzania. Ward Tribunals are established by the Ward Tribunal Act in 1985 to secure peace and harmony in their areas by obtaining justice and amicable settlement of land disputes. However, some cases have been decided without considering customary principles of mediation, as seen in *Cosmas Matimila v John Cosmas Matimilia* and *Fredrick Leonald v Ezekiel Maganga*. This study aims to examine the effectiveness of Ward Tribunals in dealing with land disputes in Tanzania through the application of customary principles of mediation using Kibaha District as a case study. The research methodology was a qualitative approach, employing documentary and field research methodologies, primary and secondary sources of data, and non-probability sampling. A sample size of fifteen respondents was selected, including seven respondents from Kibaha District Ward Tribunals, five respondents from mediation practitioners and experts, and five respondents who were beneficiaries of mediation through customary principle from Kibaha District. The data analysis was content analysis, interpreting canons of statutory interpretation, including inductive reasoning and deductive reasoning. The Findings of this study shows that; 1 that although Ward tribunals are very important in disputes mediations through customarily principles face ineffective application in land disputes mediations in Tanzanian context. The study recommends deliberate intervention by the judiciary system to ensure enforceability of customarily principles in land disputes mediations.

Keywords: Ward Tribunals; Mediating; Land Disputes; Mediating; Kibaha District Council

1. Introduction

Before 1994, Tanzania's land dispute resolution was primarily governed by customary laws and practices, with traditional authorities playing a significant role. These laws were based on communal ownership and traditional authorities, and were often binding on parties involved. Colonial administration, such as the Land Ordinance of 1923, introduced Western concepts of land ownership and tenure, leading to conflicts between customary and statutory systems (Mashamba, C. J. 2014).

Key aspects of land dispute resolution before 1994 included limited access to formal justice, land registration, traditional conflict resolution mechanisms, and land tenure reforms. Traditional authorities played a significant role in resolving disputes, and the lack of formal documentation contributed to disputes over land ownership and boundaries. Land tenure reforms, such as the Land Ordinance of 1923, 1954, and 1967, aimed to clarify land ownership but also led to new challenges and conflicts. Overall, Tanzania's land dispute resolution before 1994 was a blend of customary and statutory systems, with traditional authorities playing a significant role (Mashamba, C. J. 2014). The Village Land Act (Cap 114 [R.E 2019] and the Land Act (Cap 113 [R.E 2019]). were enacted in 1999 and came into force in 2001 (GN. No.

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486 of 2001). Among its principles are to establish an independent, expeditious and just system for adjudication of land disputes aiming to hear and determine land disputes without undue delay compared to the former system of resolving land disputes which experienced an undue delay (See the Land Act Cap 113 [R.E 2019] S. 3(1)(m) and the Village Land Act Cap 114 [R.E 2019] S 3(1)(a))

In 1985, Ward Tribunals were established by the Ward Tribunal Act, Cap 206 of 1985 as administrative bodies under the executive arm of the government to secure peace and harmony in the area for which it is established by mediating to obtain just and amicable settlement of disputes.

In 2002, the Land Disputes Courts Act (Cap 216 [R.E 2019]). Was enacted and it designated Village Land Council, Ward Tribunal, District Land and Housing Tribunal, High Court, and Court of Appeal as a new land dispute machinery in Tanzania. The Village Council has jurisdiction within the Village it is established. Its function is to receive complaints from parties concerning land, convene meetings for hearing, and mediate between and assist parties to arrive at a mutually acceptable settlement of the dispute on any matter concerning land within the area of jurisdiction (Id, S. 7).

Section 13(1) and (3) (a) of the Land Disputes Courts Act provides that the Ward Tribunal once it performs its function of settling land disputes within its jurisdiction must have regard to the customary principles of mediation. The Ward Tribunal is responsible for mediating land disputes in its established area and it has functions of maintaining peace and harmony, secure the amicable settlement of disputes, reconcile marriages and enforce by-laws passed by the relevant council. This tribunal handles disputes regarding both registered and unregistered land. Its jurisdiction as Land Court is established under section 167 of the Land Act and section 10 of the Land Dispute Courts Act, with a pecuniary jurisdiction in land cases limited to TZS173 million. It has a maximum of eight members (including at least three women), who are appointed by the Ward Development Committee. If it fails to settle the matter amicably within thirty days, it must certify that it has failed to do so, allowing parties to file a dispute with proper jurisdiction. If the Tribunal fails to settle the dispute, the aggrieved party can proceed to the District Land and Housing Tribunal without the certificate. If not satisfied, the party can appeal to the High Court and the Court of Appeal of Tanzania.

Before 2002, the primary courts were the primary machinery for settling land disputes. Primary courts had original jurisdiction over land governed by customary or Islamic law, including land disputes related to title or interest in land not registered under the land ordinance. They also had jurisdiction over short-term right of occupancy disputes. Appeals from the primary court were filed in the District Court, then to the High Court, and finally to the Court of Appeal of Tanzania. The Ward Tribunal is required to use customary principles of mediation, but its composition varies among tribes and cultures. The research aims to examine the feasibility of using customary mediation principles in a ward tribunal.

Ward Tribunals are established by the Ward Tribunal Act in 1985 (The Ward Tribunal Act Cap 206 R.E 2010). to secure peace and harmony in the area in which they are established, by endeavoring to obtain justice and amicable settlement of land disputes. The Ward Tribunals are vested with the power to determine land disputes based on principles of mediation. According to Section 13(1) and (3) (a) of the Land Disputes Courts Act, (Cap 216 R.E 2019) the Ward Tribunal should perform its function of settling land disputes within its jurisdiction and must regard the customary principles of mediation (Land Disputes Courts Act, Cap 216 [R.E 2019], S. 13(1) and (3)(a)). However, as a matter of practice, the Ward Tribunals conduct mediation without considering the customary principles of mediation, therefore this being a big problem which cause many disputants parties who involve in the process to lose their rights by losing sometimes the lands that in one or another way they are supposed to own, it goes far even by creating enmity among the disputants parties since the ward tribunal does not mediate according to the customary principles in mediation process, when mediating disputants parties on their land dispute. This is reflected in some of the case decided by the Tribunals, for example in *Cosmas Matimila v John Cosmas Matimilia (Shauri la Madai No.88/0015 Keko Ward Tribunal (unreported))*. where the Applicant sued the Respondent claiming ownership of land. The Ward Tribunal though sat to mediate the parties; it did not state any customary principle of mediation which is used to mediate the parties until it ended up in deciding the case in favour of the Applicant that the respondent should handle the house to the Applicant. Similarly, this was in the case of *Fredrick Leonald v Ezekiel Maganga, (Shauri la Madai 30/2021 Somangila Ward Tribunal (unreported))*. *Esther Mkangala Ibrahim v Wilson Gabriel Gondwe, (Lalamiko Na27/2021 Chamazi Ward Tribunal (unreported))*. *Oswald Kaseka v Anthony Mabula* in which the question at issue was ownership of land. The Ward tribunal decided the case without indicating if they used any customary principle of mediation.

The effectiveness of land conflict settlement depends on the legal framework established for that purpose and the awareness of the community on the mechanisms of how to settle the conflict amicably whenever arises. However, Kibaha is still mentioned as having land conflict despite of the existence of ward tribunal. It is not known on whether the land conflicts are not handled well by the ward land tribunals (Ndimitu, 2018). Therefore, this study intends to

examine the effectiveness of Ward Tribunals in dealing with land disputes in Tanzania through the application of customary principles of mediation using Kibaha District as a case study.

2. Conceptualization of Key Terms

2.1. Land

Tanzanian land encompasses both the earth's surface and below it, excluding minerals and petroleum, naturally growing things, permanent structures, and land covered by water, as well as all substances, including minerals and petroleum, naturally growing things, and buildings (The Land Act Cap 113 [R.E 2019], S. 2). Land encompasses both tangible and intangible rights, including the right to walk across a neighbor's land, control the use of their land, and the right to take something from another's land. This concept extends beyond the physical aspects of land, such as soil and permanent structures (Dixon M, 2002). It is essentially both the physical assets and the rights which the owner or others may enjoy over such land (Dixon M, 2002).

Land is a crucial aspect of our lives, forming a constant reliance on it for various aspects of our existence. Tenants worry about landlords failing to make necessary repairs, while homeless individuals seek temporary housing. Landowners may contemplate mortgaging or paying off mortgages, all relying on it for everything. This is what makes land special, as it is always present beneath our feet and under our noses (McFarlane B, et.al, 2012).

For a purpose of managing land, the government of Tanzania under section 4(4) of the Land Act (Cap 113 (Revised Edition 2019) categorized land into three, namely; general land, village land and reserved land. However, the grant of the land on either of the category will be given by president. Therefore, general land means all public land which is not reserved land or village land and includes unoccupied or unused village land. Reserved land referred to the land described under section 6 of the Land Act (Cap 113 (Revised Edition 2019) that to say reserved land is that land set aside by the government for the use and benefits of a nation and lastly is a village land which described under section 7 of the Village Land Act (Cap 114 (Revised Edition 2019) means is that land declared to be village land under and in accordance with section 4 of the Village Land Act (Cap 114 (Revised Edition 2019) and includes any transfer land transferred to the village land.

Under common law on the concept of land goes far by considering that, the things which form part of the land itself deemed to be owned with it (Parkers, P., A New Land Law, 20023). This is due the Roman law doctrine of 'quicquid plantatur solo solo credit'. This doctrine has been taken to form part of the common law. Under the common law this rule was somehow relaxed in favor of a tenant for years. The tenant was allowed to remove two types of fixtures, namely; articles attached to the land for the purpose of carrying on his particular trade and ornamental or articles of convenience. They can be removed without overwhelming damage to the fabric of the land, but they become part of the land by affixed to it. These articles including fittings in a bar petrol pumps in a garage and brewing vats.

Some of the decided cases on the above concept of land in common law, a case of *Taylor vs Hammer* ([2002] EWCA Civ. 1130) the appellant in this case inspected a property which was offered for sale for the first time as a potential purchaser on 22 February 1997. The appellant visited the property on a number of other occasions before exchanging contracts. The property included a number of separate gardens on a couple of the visits he saw the dog garden, a substantial part of which was covered in the old flagstones in question. It was also laid at with trees and shrubs and was partially surrounded by a stone wall. There was no finding that the respondent made any representation to the appellant about the dog garden or the flagstones apart from the answer to the enquiry before contract referred below, or that there was any other communication between them about the dog garden. There were sales particulars for the property in the form of glossy brochure with photograph or description of the dog garden as such but the property was said to include landscaped gardens. On the last page of the sales particulars, there was the following caveat.

Apart from all those meaning of land above, the researcher chosen to send with the meaning of land provided by the position of Tanzania since the researcher intended to examine the effectiveness of ward tribunal in applying customary principles while mediating disputants' parties on the land disputes and Kibaha district chosen as a case study where the said district found in Tanzania.

2.2. Disputes

Dispute, includes any case where a person complains of and is aggrieved by the actions of another person, or any case in which a complaint is made in an official capacity or is a complaint against an official act (The Land Disputes Courts Act [CAP. 216 R.E. 2019]).

Disputes, means any disagreement, misunderstanding or conflict of interest on matters of law or fact between the parties to the dispute where its settlement is pending before the director, minister or court (The Zanzibar Cooperative Societies Act of 2018).

A dispute means that, the confrontation between the parties who do not reach to final solution. And for the purpose of this research disputes refers to land disputes.

2.3. Land Disputes

Land disputes refer to disagreements over the ownership or use of land (Nolon, Ferguson, & Field, 2013). These disputes can occur between individuals, groups, or even nations and can stem from different interpretations of laws or historical claims to the land (Engerman, & Metzger, 2004).

Land disputes can be understood as disputes that determine who has the right to use the land (Nolon, S., Ferguson, O., & Field, P. 2013). Disputes related to land use rights can be disputes over common property such as land use rights between husband and wife upon divorce or disputes over transactions of land use rights, housing (Wanjala, 1990).

Land so pervasively underpins human activity that it usually plays some role during war and civil violence Murtazashvili, & Murtazashvili, (2021). Land-related issues figure into many violent disputes around the world (Unruh, & Williams, 2013). Ongoing communal violence in Nigeria and Sudan is tied to competition over scarce fertile land and poor resource governance. Disputes over access to land and valuable mineral resources drove wars in Liberia and Sierra Leone, and the nearly 25-year war in Sri Lanka was fought over geographic claims to an ethnic homeland for the country's minority population (Komey, 2010).

Understanding the role land plays in the conflicts of so many nations can help policymakers develop strategies to ease tensions among groups, limit conflict, and potentially avoid violence and the poverty trap that comes from cyclical violence. Failure to address these bedrock issues may increase the likelihood of conflict and perpetuate poverty (Winchester, 2021).

Land is the object of competition in a number of potentially overlapping ways: as an economic asset, as a connection with identity and social legitimacy, and as political territory. Competition over land and its resources is at the center of the nexus between land and conflict (Engerman, & Metzger, 2004). Competition can occur between any number and type of identity groups, whether based on ethnicity, religion, class, gender, or generation. When that competition involves groups of people, rather than individuals, the risk of larger-scale violence increases (Nolon, Ferguson & Field, 2013).

Some conflicts grow directly out of competition for land, but land is often not the sole cause of conflict; other factors, such as ethnic or religious tensions or political marginalization contribute to conflict. When land lacks adequate legal, institutional, and traditional/customary protection it becomes a commodity easily subject to manipulation and abuse (Nolon, Ferguson, & Field, 2013).

Weak governance leads to weak tenure systems, often depriving individuals and communities of essential rights and access to land and other natural assets and contributing to poor land and resource management practices, which further degrades the limited resource base (Winchester, 2021)

Resolving land injustices may be a stated objective of a war or civil violence. The objective may be achieved, but more often it is not. In such cases, the competition over land may be repressed during the post-conflict period, only to erupt later. The violence may at the same time have transformed the conflict, so that the role land plays and even the player's change Wanjala, (1990). With its major displacements of civilian populations, can give rise to new conflict over the land to which the displaced have resorted for refuge and sustenance, or when displaced persons try to return to lands they fled and find them occupied by others.

2.4. Tribunal

As provided under Section 2 of the Ward Tribunal Act, it provides that "means the ward tribunal established under section 3" (The Ward Tribunal Act [Cap 206 Revised Edition 2019]).

Tribunal, A tribunal is an independent mediatory body which is normally set up by statutes to deal with certain disputes arising under the particular statute or other statutes (Edwards, M.M (2017). Tribunals share some characteristics of the ordinary court of law although they are not courts per se (Edwards, 2017).

Tribunal means a Customary Land Tribunal established under the provision of Section 8 (The Customary Leasehold (Enfranchisement) Act, No. 47, 1968).

Tribunal, refer to the forums where justiciable disputes that involve government agencies, in one or another form, are being mediated by a panel of impartial decision makers (Yohannes & Michael, 2009). These are bodies established outside the structure of ordinary courts to adjudicate disputes that involve the government as a party on matters pertaining to governmental functions. The dispute could be between two or more government agencies, or between government agencies or between one or more individual parties.

In this research tribunal, means an administrative body for mediating land disputes arising in the society these tribunal they act like normal ordinary courts even though they are not under the hierarch of the court system of the country.

2.5. Ward Tribunals

Tanzania's Ward Tribunals are local bodies established under the Local Government Acts, Cap 287 R.E 2002 and Cap 288 R.E 2002, responsible for resolving local disputes, including land disputes. They consist of members appointed by the District Executive Director or Municipal or City Director, depending on the local government authority, and have jurisdiction to hear and determine disputes within the ward (Massay & Godfrey. (2013).

Ward Tribunals use mediation to resolve disputes, involving a neutral third party. Advantages include speed, cost-effectiveness, informality, and empowerment. They appoint a mediator and provide a venue for sessions. Ward Tribunals oversee the mediation process to ensure fairness and compliance with the law. If a settlement is reached, they can enforce the terms as if it were a court order.

Tribunals are extra-judicial bodies that settle disputes without falling within the judiciary hierarchy. They focus on specific areas or subject matter and are administrative bodies, adhering to principles like natural justice. Ward Tribunals are established in every ward in Mainland Tanzania (The Ward Tribunals Act, Cap 206 [R.E 2010], S. 3). Their primary goal is to promote peace and harmony in their designated area by mediating and resolving disputes, including land disputes (Id, S. 8(1) read together with the Land Disputes Courts Act Cap 216 [R.E 2019], S. 13(1)).

2.6. Land Disputes the property included

Land disputes in Tanzania are a significant issue, impacting livelihoods, agriculture, and economic development. Historical factors, such as Tanzania's colonial history and policies, have led to the displacement and marginalization of indigenous communities, resulting in unresolved land claims. Rapid population growth has increased competition for land, leading to conflicts over land ownership and use. Weak land governance, including unclear tenure systems, overlapping rights, and corruption, create opportunities for land disputes (Nyamhanga & Kabote, (2017).

Large-scale investments in agriculture, mining, and infrastructure development can lead to conflicts with local communities over land rights and compensation. Climate change impacts, such as changing rainfall patterns and land degradation, can exacerbate land disputes, especially among pastoralist communities. Land disputes can lead to social tensions, displacement, economic losses, and legal challenges, as they can overwhelm the legal system and lead to lengthy and costly litigation processes (Nyamhanga, & Kabote, (2017).

Land disputes are a complex term that may seem superficial, but they are not as superficial as commonly thought. In *Elizabeth Minza v Paul Tubeti and Access Bank Tanzania Limited*, (High Court of Tanzania at Shinyanga, Land Appeal No. 10 of 2020) the court ruled that a dispute involving a mortgage land was a land matter, not a contractual one. The District Land and Housing Tribunal (DLHT) was asked whether the application related to the loan agreement or the issue of trespass to land. The court used tests to determine the facts and reliefs claimed, determining the case was a land dispute.

2.7. Principles governing Land Disputes Settlements

There are various principles that govern land disputes settlements including: legal title to the land is key factor in resolving land disputes. The party with legal title is generally considered the rightful owner of the land. Adverse possession is another principle where in some cases, a party may claim ownership of land through adverse possession which is the legal principle that allows person to claim ownership of land if they have openly and continuously used the land for a certain period of time. Equitable principle used by the court such as fairness and justices, when resolving land disputes. This may involve considering factors such as hardship or unjust enrichment. The principle like statutory law being governed by specific law and regulations that outlines the procedures for solving land dispute and another

principle is an alternative dispute resolution principle where the parties involved in the land disputes may also consider alternative dispute resolution methods such as mediation, arbitration and other methods of it to reach a settlement outside of the court.

So, on all the said above some principles a researcher will use alternative disputes settlement especially a mediation mode on looking on how is effectively the ward tribunal use customary principles when mediating the disputants' parties on the land dispute.

2.8. Land Dispute Mechanisms

Land dispute mechanisms are the process and procedures put in place to resolve conflicts related to land ownership, boundaries land use, and other land related issues.

2.9. Legal proceedings

This involves resolving land disputes through the court system. Parties may file lawsuit or petitions to have a judge to decide on the legal rights and obligations of each party.

2.10. Mediation

Mediation is a dispute resolution process where parties seek help from a mediator to structure negotiations, including private consultations. The mediator has no authority to impose a solution, leaving it to the parties. The process is flexible and depends on the parties' willingness to continue until they agree on the terms of settlement or one party terminates it. It is consensus-oriented and depends on the willingness of the parties (Faris, 1995)

Tanzania's land law promotes mediation as a means of resolving disputes amicably, efficiently, and cost-effectively. The Land Act, 113 R.E 2019, and the Land (Disputes Settlement) Act CAP 216 R.E 2019, provide the legal framework for mediation in land disputes in Tanzania. The mediator's role is to facilitate negotiations between parties, helping them identify issues, explore options, and reach a mutually acceptable agreement (Gwaleba & Silayo, (2019).

The mediation process in Tanzania typically begins with parties agreeing to mediate and selecting a qualified mediator. The mediator conducts a preliminary meeting to explain the process, establish ground rules, and clarify issues. They facilitate negotiations, helping parties explore options and reach a settlement. If an agreement is reached, it is documented and signed as legally binding.

Mediation offers several benefits, including cost-effectiveness, faster resolution, flexibility, and confidentiality. However, challenges such as lack of awareness, cultural barriers, and limited access to qualified mediators exist. There is also a need for greater institutional support and capacity building to promote mediation in land disputes.

2.11. Arbitration

The parties agree to submit their dispute to a neutral third party, known as arbitrator, who will listen to both sides, consider evidences and make a binding decision on the dispute. The proceedings under this, is being generally less formal and more flexible than court proceedings. Parties have more control over the process, including the scheduling of hearings, the presentation of evidences and the rules of procedure. The decision thereof are generally enforceable in court, meaning that if one party fails to comply with the arbitrator's decision the other party can seek enforcement through the judicial system.

2.12. Negotiation

Parties involved in land disputes can also engage in direct negotiations to reach a settlement without involving third parties. This can be a more informal and collaborative approach to resolving disputes. The method helps to promote gains for both parties to a conflict since it based on consensual negotiations by stakeholders identifying their own needs and interests and thereby finding ways to promote mutual gains (Engel & Korf, 2005).

Therefore, in relation to the researcher study among of these all mechanism for land dispute settlement will use mediation so as to ascertain the effectiveness of ward tribunal in using customary principles when mediating the disputant parties on the land disputes.

2.13. Theoretical Framework

2.13.1. Theory of Land conflict

Conflict theory as was advocated by Karl Marx. According to the conflict theory, economic organization especially the ownership of property regulates the organization of the rest of a society (Sackey, 2013). Struggle for ownership especially when the resources are scarce is likely to create class conflicts. This conflict leads to two classes i.e. dominant and dominated classes. When the dominated class gains awareness on their true interests is when they form the organization to overturn the dominant class. The cornerstone of the conflict theory is all about the distribution of scarce resources including ownership and power. According to Tenga and Mramba, (2014), the term property in Tanzania Jurisprudence includes Land. Having Land conflict in any society, there must be a legal instrument to resolve, by declaring the rights of each party either on ownership or related interests to the property. This theory has application in this study in the view that, Tanzania has concerned with the conflicts which are taking place in different regions and districts hence develop machineries to resolve these conflicts and create peace and harmony. In Kenya Land conflict requires extra care by the legal institution. This theory dedicates that land is a scarce resource and is vulnerable to multiple users which in turn can result into conflicts, and so, resolution bodies are inevitable. During the struggle of the parties may be within the family or among the villagers, Conflicts arises. Sometimes it is between one village and another or between two individuals. In this instance, the theory implicates mechanisms for settling the disputes, especially through mechanisms that try to eradicate the classes and reduce misunderstanding between the contending parties.

2.13.2. Alternative Dispute Resolution

Alternative dispute resolution (ADR) is a contemporary approach to dispute resolution. It applies methods of dispute resolution which are non-adversarial in nature; these are mediation, conciliation, arbitration, and negotiation. The concept behind this approach is to study the patterns of social ordering. The main idea behind this approach was to involve society in solving its own disputes and preserve social harmony. According to Sackey, (2010), this approach was introduced in India, Bangladesh, Latin America, and African states. The approach has been considered the solution to backlogs of unsolved cases. According to Wehrmann (Wehrmann, (2008), this approach is called the consensus approach which can best re-establish peace, respect, and friendship among the parties. It has been pointed out that the main goals of Alternative Dispute resolution are releasing court overcrowding, reducing unnecessary costs and delays of the matters at the court, improving community participation in the process of dispute resolution, helping to increase access to justice and providing a more effective resolution of a dispute.

Alternative Dispute Resolution has been taken as an approach that offers a cheaper, faster, and more accessible approach for ordinary citizens, particularly the poor who have no access to state justice, either because they don't have financial resources, social marginalization, or lack of physical access to the state justice. In most countries, land conflict is resolved through this approach whereby Alternative Dispute Resolution (ADR) ranges from those in which there is a third-party intervention to those which does not involve third-party intervention, followed by facilitative means in which the third party becomes a facilitator to the discussion and negotiation, but becomes less influential in the conclusion reached by the disputants (Vlassenroot, (2012). The methods used under facilitative processes include facilitative mediation, facilitation, conferencing, and certain types of conciliation. Another process is the advisory process, where the third party can make recommendations and/or give advice about legal, technical, or other issues but does not decide the dispute. In summary, Alternative Dispute Resolution includes negotiation, mediation, facilitation, conciliation, and arbitration. Alternative Disputes Resolution approach to dispute resolution has its root in the movement called "Access-to-Justice", which postulates that a broader approach to access to justice was needed, in order to cater to the different situations of disputes by looking at a particular case and type of dispute.

The explanation made above; it has a connection to the researcher study as a reason from this perception the researcher will concentrate on looking one mode which is mediation as the research based on examination the effectiveness of ward tribunal on applying customary principles when mediating the disputant parties on the land disputes.

2.13.3. Empirical Literature review

Many scholarly works have addressed how the Ward Tribunals are effective in resolving land disputes through mediation and trial when mediation fails. However, each scholar referred to a particular area or community. In their works nobody addressed the Ward Tribunals in resolving land disputes in Tanzania by using customary principles of mediation as discussed hereunder;

Tenga and Mramba, (2020) in their work on Land Disputes Settlement in Tanzania observed that the ward Tribunals, which are established with the spirit to secure peace and harmony by mediating the parties, and where mediation fails, they should adjudicate the dispute and pronounce a decision. Most tribunals do not start with mediation rather they go

direct to adjudication which is not their primary function. It is worth noting that, the authors did not emphasize the essence of the Ward Tribunals mediating land disputes through customary principles of mediation, and their study was done before the recent amendment which left the Ward Tribunal with the jurisdiction of mediation only (Written Laws (Miscellaneous Amendments) (N0.3) Act No.5 of 2021 Section 45 (a).). The literature is nevertheless relevant in providing a conceptual and legal framework of land disputes in Tanzania Thus, this study intends to fill the gap left by the authors by examining to what extent the Ward Tribunal mediates land dispute through customary principles of mediation in Kibaha District.

Mangure (2021) writes on the effectiveness of Ward Tribunals in dispensing justice as land Court in Tanzania. She observes that the legal services in ward Tribunal available are not obtainable timely hence many cases take a long time at an average of six months. This is because the Tribunals operate once per week. As cases take long times it makes people distrust tribunal operations and it's effective. Mangure (2021) also observes that due to the challenges facing the ward Tribunals have led the quality of legal services in tribunals to be unsatisfactory hence affecting its effectiveness. However, the author also observes that despite the challenge the ward Tribunals have some achievement as there is considerable enthusiasm from the community and their performance maintains hope among the respective communities the organ to be useful to them. Thus, this study intends to fill the gap left by the authors by examining to what extent the Ward Tribunal mediates land dispute through customary principles of mediation in Kibaha District

The Law Reform Commission of Tanzania in its report of 2014 The Law Reform of Tanzania, (2014) in reviewing legal framework on land dispute settlement in Tanzania, observes that the stakeholders were of the view that, Ward Tribunals are effective and useful because they work proximity to the society which they serve at ward levels, appreciate the speed the dispute is mediated by members of the same society acquainted with the parties to the dispute, understand the nature of their land and disputes, who also understand the customs and practice of the relevant community. Unfortunately, the Law Reform Commission of Tanzania did not address how the Ward Tribunals use customary principles of mediation in resolving land disputes. Thus, this study intends to fill the gap left by the authors by examining to what extent the Ward Tribunal mediates land dispute through customary principles of mediation in Kibaha District

Balula S. (2019) the author observes that Ward Tribunals use reconciliation, mediation, and arbitration in resolving land disputes. The measures used to implement its decision bring peace and harmony because parties to the dispute obey and comply with the decision of the tribunal. Balula also, observes that despite the ward Tribunals enforcement measures succeeding to bring peace and harmony there are elements of corruption, favoritism, and delay in concluding the land dispute in a timely manner. This literature, therefore, is relevant in analysing the establishment of the Ward Tribunals and using customary principles of mediation as a primary function.

Kironde, (2009) is of the view that the current institutions which deal with land disputes are not helped in speeding up disputes resolution as intended for their establishment. According to him the court-type of proceeding takes a long time and is expensive to parties, He adds that the machinery does not fit well into the existing justice delivery mechanism since the village and ward tribunals are under Local government, the District Land and Housing Tribunals are under the Ministry of Lands while the High Court is under the judiciary thus creating the problem of accountability. Instead of court - like proceedings system, he suggests that other alternative methods should be used to solve land disputes and the system should be decentralized. If managed by different sectors good results are likely to be attained. The author fails to recall that the reason why Land Courts were established was to avoid forum shopping which was causing a lot of confusion since land matters were administered by different institutions. Furthermore, land matters are vulnerable if the system is to be decentralized which was the fate of the victims. Thus, this study intends to fill the gap left by the authors by examining to what extent the Ward Tribunal mediates land dispute through customary principles of mediation in Kibaha District

Coldham, (1995) writes on the mechanisms for settlement of land disputes as they were under the old law. He reviews the recommendations made by the 1992 Presidential Commission of Inquiry into land matters and concludes that the machinery for the settlement of land dispute appears to have broken in the same way as the system of land administration. He notes with concern that the existence of multiple overlapping authorities dealing with disputes (government land officers, party officials, customary land tribunals, and the courts) as being the cause for delays, lack of certainty and finality in the resolution of dispute, an arbitrariness in the procedures followed, and manifold opportunities for favouritism and corruption (*Id*, p.234). He briefs that the machinery for the settlement of land disputes is widely discredited, and this at a time when their number and intensity are on the increase. He considers the Commission's recommendations as being not likely to be implemented. However, the author did not able to discuss the way how the ward tribunals are effectively applying customary principles in mediating disputants' parties on land

disputes. Thus, this study intends to fill the gap left by the authors by examining to what extent the Ward Tribunal mediates land dispute through customary principles of mediation in Kibaha District

3. Material and methods

3.1. Research Methodology

Traditional doctrinal legal research methodology was mainly applied in this study. However, taking into account the nature of the research, doctrinal legal research was complimented by empirical legal research. Combination of these two methods facilitated collection of in-depth information which assisted in obtaining comprehensive knowledge on the existing legal position in relation to jurisdictional compliance by Ward Tribunals in mediating land disputes through customary mediation principle. This study used qualitative approach as it enabled the researcher to study and analyze various concepts underlying this work such as customary means of mediation and the lack of compliance of the Ward Tribunal to effectively apply the position of the law in its functions.

3.2. Research Method

Given the focus and nature of the research problem, this study employed a documentary and field research methodology because the study looks at the legal provisions, its development and applicability in the Tanzanian society. The study also involves the use of primary and secondary sources of information.

3.3. Sampling Methods and Procedures

Non probability sampling specifically purposeful was employed in selecting the unity of enquiry of this study. The researcher employed Purposive sampling technique because this is qualitative research. Purposive sampling is type of sampling technique in which the researcher selects samples basing purely on his or her knowledge, experience or credibility. The researcher selects only those people who deem fit to participate in the study.

The study is based on fifteen (15) respondents of which Seven (7) respondents were from Kibaha District Ward Tribunals, five (5) respondents from mediation practitioners and experts preferably from Tanzania Institute of Arbitration (TIArb) (3) and Tanzania International Arbitration Centre (TIAC) (2) and five (5) respondents was beneficiaries of mediation through customary principle from Kibaha District.

3.4. Data Collection Techniques

In preparing this report, researcher employed interview so to acquire relevant information. Interview method was administered to selected respondents from both government and private institutions such as Kibaha District Ward. The type of interview was semi-structured which allowed both pre-determined and un-pre-determined answers.

The study also employed secondary sources of data found in the library, laws and legal instruments, personal books collection and by reviewing various literary works from online sources. Domestic and foreign judicial decisions, journals, articles, papers, and reports written by renowned scholars, law reform commissions, and other bodies or institutions were reviewed to provide further insight into the study. A review of the relevant laws related to the use of the land dispute settlement machinery was also considered. In this study, different libraries were visited; The University of Dar es Salaam and Haki Ardhi Institute. Researcher was able to access books, reports, journals, cases and statutes on land dispute settlement mechanism for purposes of reading and critically pulling together themes and other associated issues.

3.5. Data Analysis

Since the study was a qualitative study the method of data analysis that was employed is content analysis. The data was interpreted by canons of statutory interpretation, namely inductive reasoning which was used to directly address the fundamental rules; deductive reasoning, which was used to analyze previous knowledge as well as an analogy in analyzing case laws (*Id n.66*) as data analysis tools. Accordingly, the study focused on a review and analysis of the legal texts, including cases relevant to the research area. Subsection 4.1 presents the examination of Ward Tribunals in Mediating Land Disputes through Customary Principles in Tanzanian context.

4. Results and discussion

To answer the question is

4.1. Examination of Effectiveness of Ward Tribunals in Mediating Land Disputes through Customary Principles

The effectiveness of ward tribunals in this regard can be assessed based on several key factors: cultural understanding, ward tribunals need to have a deep understanding of the community's cultural norms, traditions and customary practices related to land ownership and dispute resolution. This cultural understanding is essential for applying customary principles effectively and ensuring that the outcomes are culturally appropriate and acceptable to all parties involved. Neutral and impartiality, on this the ward tribunals must maintain neutrality and impartiality when mediating land disputes. They should not show favoritism towards any party and should strive to facilitate a fair and balanced resolution that takes into account the interests of all stakeholders. Neutrality and impartiality are essential for building trust and credibility in the dispute resolution process. The other issue to consider is a mediation skill, effective mediation skills are crucial for ward tribunals to successfully facilitate dialogue, negotiation, and resolution of land disputes. Mediators need to have strong communication, conflict resolution, and problem-solving skills to help parties reach mutually acceptable agreements. Training and capacity building programs can help enhance the mediation skills of ward tribunal members and other key factors relevant to the effectiveness of ward tribunals in mediating land disputes through customary principles. It is to say that now, the effectiveness of ward tribunals in mediating land disputes through customary principles depends on the factors such as cultural understanding, neutrality, mediation skills, community participation, enforcement mechanisms, and conflict prevention efforts. When these factors are taken into consideration and addressed effectively, ward tribunals can be valuable institutions for resolving land disputes and promoting peace and stability in traditional communities.

The respondents were asked on how effective they perceive the services received from ward tribunals. The respondents from study reported that tribunals are ineffective and only few respondents reported that ward tribunals are effective in providing services. However, at general, the majority of the respondents at Kibaha district reported that tribunals are not effective comparing to the required standard of providing rights to the people in the society. The reason was given by District Land Officer (DLO) in Kibaha who reported that awareness in Kibaha district was created by non-governmental organizations particularly Legal and Human Rights Centre. The results conform with Institutional theory which claims that ineffectiveness of the authorities which engage in land management are caused by the failure in practicing good governance at workplaces. In similar cases, Property rights theory argues that investor who has economic power tries to force poorer people to leave their productive land which hence land disputes.

The study also investigated on what prompted ineffectiveness of ward tribunals in Kibaha district. It was found through the respondents who reported that, the shortage of labor force caused ineffectiveness of tribunals hence provision of poor services. This imply that the studied villages had a very few workers in the tribunals' offices hence failure in delivering services, Results from the study area. The respondents given more details by revealing the absence of good working environment in the courts due to limited infrastructure. This has resulted into poor performance of tribunals. The effectiveness of many courts needs outlay of resources so as to increase the effectiveness in providing services to many people in rural and urban areas.

4.2. Non-Applicability of Customary Principles in Land Dispute Resolution

Members of the Ward Tribunal in Kibaha District admit that there are great challenges when it comes to the Ward application of customary principles in the mediation of land disputes. It is said by respondents that the application of customary principles of mediation is impossible as parties do not belong to the same customs. The rule for the application of customary laws depends on several conditions as established by law. One is that it is applicable in civil matters, between members of a community in which rules of customary law relevant to the matter are established and accepted, relating to any matter of the status of or succession involving a person who is or was a member of such a community and relevant customary law is applicable, or, where it is appropriate for the defendant to be treated as a member of the community so that customary law applies. In most instances, the wards exist in an urban area where there is a mixture of people from different areas having different customs and the land there is governed by statutory laws being the Land Act and customs does not apply in such circumstances. It can therefore be said that customary law is not applicable in the resolution of land disputes in such circumstances as it practically; the conditions for the application of customary law are not complete in urban areas.

The permission to apply customary principles in mediation seems to be vague, wide, and is subjected to abuse as these customary principles are heterogeneous and do vary from one society to another. Even where the principles of

mediation are applied, the members of the tribunal act as arbitrators instead of mediators, they have the power to decide on the dispute.

There are several factors that can contribute to the non- application of customary principles by ward tribunals in mediating land disputes like in some Tanzania is one of the countries which value custom and traditions but its legal framework does not prioritize these customary principles. This creates a disconnection between the customary practices followed by ward tribunals and the formal legal system, leading to challenges in applying customary principles in mediation processes. The external factor is also another thing which can impose new rules and regulations that conflict with or undermine customary practices therefore, ward tribunals may face pressure to conform to these external influences, which can limit their ability to apply customary principles in mediating land disputes. The ward tribunals may also lack the necessary resources, training, or support to effectively apply customary principles in mediating land disputes. Limited capacity in terms of mediation skills, legal knowledge, or institutional infrastructure can hinder the ability of ward tribunals to navigate complex disputes and ensure culture appropriate outcomes rapid social changes, urbanization, migration, and other factors can alter traditional community structures and relationships, making it challenging forward tribunal to uphold customary practices in mediating land disputes. New social dynamics and values may conflict with or challenge existing customary norms, creating tensions and obstacles in the dispute resolution process.

Customary dispute resolution may not always legally recognized or supported by formal legal systems Wamalwa., & Akello, (2016).. This can make it difficult to enforce rulings made by ward tribunals as parties may feel legally bound to comply with the decisions that are not recognized by the state. Some community members may resist the enforcement of rulings based on customary principles if they perceive the decisions as unfair or biased. Resistance to change and a reluctance to accept the authority of traditional leaders or tribunals can hinder the enforcement process.

Power imbalances within communities or between disputing parties can affect the enforcement of rulings. Parties with greater influence, resources or social status may be able to circumvent or ignore decisions made by ward tribunals, leading to challenges in ensuring compliance. Land disputes are often complex and multifaceted, involving competing claims, historical grievances, and overlapping interests. Resolving these disputes through customary mediation requires careful consideration of various factors, and enforcing rulings in such cases can be particularly challenging.

Despite these challenges, efforts to enforce rulings resulting from the application of customary principles in mediating land disputes can be successful with strategic planning, community engagement, capacity building, and collaboration with formal justice systems. By addressing the obstacles to enforcement and implementing effective strategies, ward tribunals can promote compliance with their decisions and contribute to peaceful resolution of land disputes within the community.

These conclusions are consistent with studies done elsewhere such as Adedeji & Oluyemi (2015), Enanga & Kajumba (2019), Kofi & Appiah (2017), Mukiza & Ngoma (2018), Nyakinda & Chemweno (2016), . Obi & Okeke (2019), Omondi & Ouko (2017), Tumusiime & Kiconco (2018); Udo & Okoro (2018) and Wamalwa & Akello (2016)

5. Conclusion

This analysis intended to examine the extent to which the ward tribunal apply customary principles in mediating land disputes in the society. Based on the findings of this study it can be concluded that although Ward tribunals are very important in disputes mediations through customarily principles face ineffective application in land disputes mediations in Tanzanian context.

According to the parties to the disputes at the time their view is that the Ward Tribunal does not fully apply, sometime not at all the customary principles in mediating land disputes in the society because of the cultural variety among the disputant parties in the matter.

Officers of Ward Tribunal their views are that, the Tribunal help much on minimization of land disputes in the society though it is found to be difficult to associate the application of customary principles in a mediation of land disputes among the disputant parties this is due to of the nature and changes occurs in the world which affect even to some culture to be not understandable to some youth generation in the society. This is making a difficult because, it is not a right to mediate an individual on a principle that does not understand at all.

Officers from TI Arb and TIAC, also their view is that the Ward Tribunal has great significance toward the minimization of land disputes in the society in which large number of cases ended at the Tribunal though it is being a problem for this

ward tribunal to have effectively apply customary principles in mediating land disputes among the disputant parties in the society.

The beneficiaries of mediation through customary principles, their views also are of the same to other respondent that the Ward Tribunal played great role in reducing number of land disputes in the society, however it is problem is the failure of the application of customary principles when mediating land disputes among the disputant parties in the matter.

Ward Tribunals are quasi-judicial bodies that have powers, among others, to resolve land disputes by way of mediation. In the resolution of such disputes, they are also allowed to use customary principles involved. This becomes a challenge as Ward Tribunals do not apply these principles even where they need to be used. The researcher had set out to find out why Ward Tribunals do not use these principles and other challenges that exist in their execution of land dispute resolution function.

There are a number of laws that govern Ward Tribunals in their functions. They include the Constitution of the United Republic of Tanzania, the Ward Tribunals Act, and the Land Disputes Courts Act. Even with the laws at hand, the findings show that the Ward Tribunals at Kibaha District do not apply customary principles of mediation as they are in urban areas which do not have a single applicable custom to members of the society. Ward Tribunals further have challenges in their compositions and the qualifications of the members. The challenges render the Ward Tribunal unable to properly execute its function of land dispute resolution through mediation.

5.1. Recommendations

This study recommends that the parliament should amend the Ward Tribunals Act and the Land Disputes Courts Act by providing a legally requirement of the customary principles in a mediation process of a land disputes in a ward tribunal. It can go further by doing research of the custom and traditions of varies tribes in Tanzania and try the best way of codifying them so as to be easily applied by the officers of the ward tribunal when mediating the land disputant parties on their matter. On the qualifications of the members of the Ward Tribunal must create a system of taking members who are knowledgeable with various tribal customary principles in Tanzania.

Compliance with ethical standards

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This study acknowledged all literatures and other sources which are presented from parties other than the authors. Even when previous works of the authors have been used proper citations have been done and well referenced.

Disclosure of conflict of interest

Authors of this study have no any conflict pf interest with any second or third part. The authors of this work are independent and have produced original work which under any case it does not interfere with any other individuals' rights or authorities at any capacity.

Statement of ethical approval

This study is a product of a research work that does not contain any studies performed on animals/humans' subjects by any of the authors.

Statement of informed consent

All data used in this study observed the ethical principle of informed consent, where the respondents declared their willingness to participate in the research after clear information on what the research is all about was given to them. No respondent was forced at any capacity to give information without their consent

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