

**VIABILITY OF WARD TRIBUNALS IN DISPENSATION OF  
CRIMINAL JUSTICE IN MAINLAND TANZANIA: A SURVEY OF  
BUKOBA DISTRICT IN KAGERA REGION**

**By**

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**A Dissertation Submitted in Partial Fulfillment of the Requirements for Award of the  
Degree of Master of Laws (LL.M) in Constitutional and Administrative Law of  
Mzumbe University**

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## CERTIFICATION

We, the undersigned, certify that, we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation titled, **Viability of Ward Tribunals in Dispensation of Criminal Justice in Mainland Tanzania: A Survey of Bukoba District in Kagera Region** in fulfillment of the requirements for award of the degree of Master of Laws (LL.M) in Constitutional and Administrative Law of Mzumbe University.

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I, **Charles Samson Uiso**, declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other university for a similar or any other degree award.

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I say thank you and may the good Lord bless you all.

## **DEDICATION**

I dedicate this work to my beloved family, my darling wife Grace Mnaku and my sweet, adorable daughters Florida, Glory and Aisa I love you so very much.

## **LIST OF STATUTES**

The Constitution of the United Republic of Tanzania, 1977 [Cap.2 R.E.2002]

The Land disputes Courts Act [Cap. 216 R.E. 2002]

The Law of the Child Act, No. 21 of 2009

The Local Government (District Authorities) Act [Cap.287.R.E. 2002]

The Magistrates' Courts Act [Cap. 11 R.E. 2002]

The Penal Code [Cap. 16 R.E. 2002]

The Ward Tribunals Act [Cap. 206 R.E. 2002]

## LIST OF CASES

*Juan Makobrad v. Miroslautic Vesna Paladinand Ingra* [1999] TLR 448.

*Katoto Kaitila v. Grigory Henerico*, District Land and Housing Tribunal for Bukoba at Bukoba, Case No 54 of 2013 (unreported)

*Laurent Tibeikibwe v. Gaston Dionise*, District Land and Housing Tribunal for Bukoba at Bukoba, Case No 228 of 2012 (unreported)

*R v. Home Secretary, Exp Fine Brigades Union* [1995]2 AC 513

*R. v. Altrincham Justice Exp, Pennington* [1975] Q.B 549

*Rashid S. Katungunya v. Abdallah S. Katungunya* [2002] Civil App. No. 68 High Court of Dar Es Salaam (Unreported)

*Ridge v. Baldwin* [1964] AC 40

*Rudovick Kahwa v. Pachazia Rwechungura*, District Land and Housing Tribunal for Bukoba at Bukoba, Case No138 of 2014 (unreported)

*Sylivester Nkangaa v. Raphael Albertho* [1992] TLR. 110.

*Verantine Gozberty v. Dazio Audax*, District Land and Housing Tribunal for Bukoba at Bukoba, Case No 219 of 2012 (unreported)

## **LIST OF ABBREVIATIONS AND ACRONYMS**

AC	Appeal Cases
CAP	Chapter (used in relation to citing of laws, for example, cap16 means chapter 16)
DLHT	District Land and Housing Tribunal
etc.	Et cetera
i.e	id est ( that is)
Ibid	Ibidem
No.	Number
p.	Page
R.	Republic
R.E.	Revised Edition
TLR	Tanzania Law Report
URT	United Republic of Tanzania
v.	Versus (Against)

## **ABSTRACT**

In any society or community disputes are unavoidable due to the reason that people do strive to acquire properties and wealth. Like any other country Tanzania is not an exception and as population increases so are the number of disputes. The increase in the number of disputes as a result of the growth of population resulted to back log of cases in ordinary courts of law and therefore, the introduction of Ward Tribunals which are manned by personnel with no legal knowledge.

The establishment of Ward Tribunals was perceived as a solution to the problem of backlog of cases in ordinary courts. This research addresses the viability of Ward Tribunals in dispensation criminal justice which is a function of the ordinary courts, to see whether these Tribunals have helped to solve the problem of backlog of criminal cases in ordinary courts.

The study used survey design and selected Bukoba District as a study area. Data Collection was done through questionnaires, observation and interviews. The study also used Secondary data, like law reports, text books and journals. Furthermore, a sample of sixty five respondents, who are members of Ward Tribunals, ordinary citizens, magistrates and lawyers. The study at the end came up with findings that Ward Tribunals are not viable to dispense criminal justice due to the fact that they are staffed with laypersons in the field of law and that, Ward Tribunals in dispensing criminal justice are exercising a function already being performed by the Primary Court.

The study finally recommends to the government to amend the Ward Tribunal Act to remove completely the Ward Tribunals criminal jurisdiction in dispensing criminal justice.

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## **CHAPTER ONE**

### **GENERAL INTRODUCTION**

#### **1.1 Introduction**

In the modern world, various kinds of tribunals have been established, with quasi-judicial powers to adjudicate, on specific, specialized matters that cannot be dealt with by ordinary courts of law. These tribunals have some attributes of ordinary courts of law, adjudicating upon both matters of civil and criminal nature, for example the Income Tax Tribunal in India.<sup>1</sup>

These Tribunals are also found in Tanzania and they deal with matters of both civil and criminal nature. Examples include: The Fair Trade Competition Tribunal, the District Land and Housing Tribunal and the Ward Tribunal. However, the establishment of these quasi-judicial bodies has created problems in justice dispensation. One of the problems is that, they are not staffed with personnel trained in the field of law.

This study focused on Ward Tribunal's dispensation of criminal justice, a function ordinarily reserved for ordinary courts of law. The study revealed that, Ward Tribunals are ill equipped to dispense criminal justice, as members of Ward Tribunals lack the necessary knowledge in the field of criminal law. The study also revealed that, in dispensing criminal justice; the Ward Tribunals abrogate the doctrine of separation of powers.

This chapter gives a general introduction to the study, it contains, the background to the study, statement of the problem, objectives of the study and significance of the study. The chapter also reviews various literature states the hypotheses and shows the research methodology.

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<sup>1</sup> Thakker, C.K.,(Takwani) (1998). Lectures on Administrative Law, Lucknow. Eastern Book Company. p.204

## 1.2 Background to Research Problem

The quest for effective administration of justice to people pre-dates the colonial administration in Tanzania. Pre-colonial societies had their own way of pursuing justice in case of a dispute between individuals in any particular community at a local level. There were informal institutions constituted by community elders, mostly men with reputation in their societies. Women were subordinate to men and were regarded as inferior beings who could not have any viable contribution to discipline maintenance in their society.<sup>2</sup> The remedies for disputes varied from compensation to penal sanctions, including social casting of any person with bad behavior. The essence was to change the behavior of the people so that they could become acceptable members of society.<sup>3</sup>

Colonialism came up with formal institutions for the administration of justice in the form of ordinary courts. These formal institutions operated in English legal traditions on the basis of common law principles, of party prosecution and precedent whereby the alleging party had to assert his /her facts and the party complained of had to make his/ her defence in open court. The subordinate courts were bound by the decisions of their superiors.<sup>4</sup>

During the colonial era, the courts in Tanzania were racially discriminatory. In the hierarchy of these courts, there were local courts essentially established to deal with matters arising from local people in their local communities. Other courts were meant for the whites only. This classification ended with the integration of the court system after independence. The primary court was designated in every district by the Magistrates Courts, Act, 1963 (repealed and replaced by the Magistrates Courts Act, 1984) to be the closest court to the people. However, a number of primary court stations could be established in a district.<sup>5</sup>

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<sup>2</sup> Makombe I. M and 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 Morogoro, Mzumbe University p. 1

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

The courts could not operate smoothly as one would have expected.<sup>6</sup> For example, not only were there very few primary courts established in every district in response to increased demand for settlement of disputes but also even those established could not be manned adequately. This resulted in low efficiency in the judiciary and general denial of justice to many citizens, due to delays in hearing disputes and growing backlog of cases. Nevertheless, the situation could not be easily intervened by the local authorities, as these formal courts were not subject to their control.<sup>7</sup>

The problems inherent in the courts necessitated the establishment of Ward Tribunals as supplementary organs that would lessen the burden on the courts in the administration of justice.<sup>8</sup> The goal behind the establishment of these tribunals at ward level was to bring justice closer to the people by ensuring that there is access to justice by all in rural areas that could not normally be achieved through formal judicial organs such as the primary courts.<sup>9</sup> That meant the government did not consider the primary courts as suitable organs to undertake the function of justice administration at that time.<sup>10</sup>

Primary function of Ward Tribunals is to secure peace and harmony in their areas by mediating and endeavoring to obtain just and amicable settlement of disputes. If an amicable settlement cannot be reached, the tribunals have to decide the case<sup>11</sup>. In general they adjudicate on offences such as minor assault and threats, brawling, abusive language, abduction of girls below 16, illegal gambling, fouling water and failure to send a child to primary school.<sup>12</sup> Civil matters include minor disputes relating to dowry and adultery, although most civil cases concern land disputes.

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<sup>6</sup> Makombe I. M. and Sikalumba, A.J Op- cit p. 2

<sup>7</sup> Ibid p. 2

<sup>8</sup> Ibid p. 2

<sup>9</sup> The South Law Chambers (2010). Report On Defining, Preparing And Delivering a Programme For Enhancing Scope, Impact, Effectiveness And Efficiency of Ward Tribunals In Administering Justice. A draft report submitted to the Prime Minister's Office Regional Administration and Local Governments. Dar es salaam, Tanzania p. 10

<sup>10</sup> Ibid p 11

<sup>11</sup> Sulgo (2010) Ward Tribunals: How to Enhance the Rule of Law at local level GT 2 p. 3

<sup>12</sup> Part one of the schedule to cap 206

Ward Tribunals are quasi judicial and mediatory institutions established with the objective of revitalizing the local government machinery in the performance of their functions, and to relieve the primary courts from the backlog of cases.<sup>13</sup>

Despite the government's good intention of aiming to provide access to justice at the grassroots level, Ward Tribunals face the problem of being staffed by laymen with insufficient legal knowledge hindering their ability to dispense criminal justice, resulting to miscarriage of justice, to parties who appear before them in a criminal matter.

### **1.3 Statement of the Problem**

Ward tribunals have been conferred with criminal jurisdiction to determine and impose penalties on criminal offences, such as going armed in public, using abusive language, threatening with violence, common assault, criminal trespass, etc.<sup>14</sup>

Ward tribunals, however, are staffed with professionally incompetent personnel made up of laymen equipped with inferior academic qualifications, very scanty knowledge of law and hopelessly poor physical infrastructure and facilities. Since it is a fact that ward tribunals are run by laymen, it is an overestimation to expect them to perform well the legal responsibilities imposed upon them by the law.<sup>15</sup> It is hardly credible to expect them to be the custodians of justice at grassroots level.

Therefore, ward tribunals are ill prepared, in terms of professional competence, to perform the functions given to them by the law. The basic qualification for ward tribunal members is the ability to read and write. This is not sufficient. They also need knowledge in the ABCs of the law.<sup>16</sup> Failing to be equipped in the ABCs of criminal law, results to miscarriage of justice to individuals who appear before the Ward Tribunal in criminal matters.

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<sup>13</sup>Draft Report Op. Cit p. 10

<sup>14</sup> Part 1 of the schedule to cap 206

<sup>15</sup> Draft report Ibid p. 12

<sup>16</sup>Sulgo (2010) Op.Cit p. 5

Ward tribunals are quasi - judicial bodies established and subject to the control of their respective local authorities, that is, the district council or urban authorities in other words the executive branch of government, yet they have the power to dispense criminal justice a function primarily reserved for the ordinary courts of law. By creating this administrative structure to handle judicial functions the state was committing a constitutional misbehavior which must never have been committed unless it is a matter of absolute necessity for the democratic system to survive.<sup>17</sup> Good grounds to justify this abrogation of the doctrine of separation of powers should have been given. No good reasons were given and over and above that no review of the ward tribunals has ever been undertaken to ascertain whether they exist and work in harmony with the objectives for which they were established. Good governance demands that the state adheres with the rule of separating executive, judicial and legislative functions of the state so they are performed by different sets of personnel.

The judiciary has now employed Resident Magistrates who hold qualifications of a law degree to preside in Primary Courts<sup>18</sup> and they have been stationed in primary courts in most parts of the country. Therefore, it can be argued that the need to have ward tribunals dispense criminal justice, the core function of the ordinary courts of law, no longer arises.

## **1.4 Objectives of the study**

### **1.4.1 General objective**

The general objective of this study was to examine the viability of Ward Tribunal's dispensation of criminal justice.

### **1.4.2 Specific objectives**

- i. To examine whether Ward Tribunal's dispensation of criminal justice is relevant
- ii. To examine whether Ward Tribunals in dispensing criminal justice abrogate the doctrine of separation of powers.

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<sup>17</sup> Draft Report Op. Cit p. 11

<sup>18</sup> Section 6(1) of the magistrates court Act cap 11 was amended by section 8 of the written laws (miscellaneous amendment) Act 2013 by adding the word resident magistrate to mean a magistrate to preside in a primary court.

## **1.5 Hypotheses**

This research was guided by three hypotheses:

- i. Ward Tribunals are incompetent to administer criminal justice.
- ii. Dispensation of criminal justice before Ward Tribunals is not relevant.
- iii. Ward Tribunals in dispensing criminal justice violates the doctrine of separation of powers.

## **1.6 Significance of the study**

The study is expected to reveal the deficiencies facing Ward Tribunals in the dispensation of criminal justice. Therefore the findings of this study will reveal the need for law reform.

## **1.7 Literature Review**

The researcher reviewed both theoretical and empirical literature. It is generally accepted that there are three main categories of governmental functions, that is, legislative, executive and judicial. These three functions are carried out by three main organs of a state, which are the legislature the executive, and the judiciary.<sup>19</sup> Traditionally, the duty of determining disputes between individuals in the society is viewed as an exclusive domain of the ordinary courts of law.

The conception of a court as a central adjudicative body found acceptance in most of the classical scholars writings such as Montesquieu (separation of powers) and contemporary jurist such as Dicey ( rule of law).<sup>20</sup> Today the functions of the state have increased to the extent that it exercises not only sovereign functions, but also seeks to ensure social security and social welfare for the common masses. That is why tribunals are established to decide various quasi- judicial issues in place of ordinary courts of law, because it is not possible for the ordinary courts of law to deal with all socio – economic problems in our society today.<sup>21</sup>

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<sup>19</sup> Thakker C.K Op cit p. 34

<sup>20</sup>Jaba Shadrack (2011) Administrative Tribunals in Tanzania, Department of Public Law, School of law. University of Dar es salaam

<sup>21</sup>Thakker C.K Ibid p. 34

According to **Thakker and Thakker**<sup>22</sup> the expression tribunal includes within its ambit, all adjudicating bodies, provided they are constituted by the state and are invested with judicial as distinguished from administrative or executive functions. The author went further to add administrative tribunals are, therefore, established to decide various quasi-judicial issues in place of ordinary courts of law. This is because today governmental functions have increased to such an extent that it is no longer possible for the ordinary courts of law to deal with all socio – economic problems of our society.

The author's work is relevant to this research, as he talks about the rationale for the establishment of administrative tribunals, that due to increase of governmental functions it is no longer possible for the ordinary courts of law to deal with all social – economic problems. This research intends to examine, whether at all there is any rationale for ward Tribunals to perform the function of dispensing criminal justice and whether criminals justice dispensation before ward tribunals, fall within the category of the increased governmental functions that, is no longer, possible for the ordinary courts of law to deal with. The dispensation of criminal justice falls squarely within the functions of the ordinary courts of law.

**Thakker and Thakker**<sup>23</sup> emphasize that, tribunals have certain characteristics which often give them advantages over the courts, expert knowledge of the particular subject.

**Jaba**<sup>24</sup> contends that administrative tribunals have required expertise, specialty and experience in their field of operations. The author cites, as an example, doctors disciplinary matters are dealt with by persons with intimate knowledge and experience of the problems involved.

Both authors' works are pertinent to this research as they help identify a lacuna in the law establishing Ward Tribunals. The Ward Tribunals Act<sup>25</sup> bars members of the Ward Tribunal to possess any legal qualifications, in other words they lack the required expertise, specialty, experience and knowledge in the field of law yet they perform the function of

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<sup>22</sup>Thakker, M.C and Thakker C.K., (2004). Lectures on Administrative Law, Lucknow. Eastern Book Company. at p. 194

<sup>23</sup> Ibid

<sup>24</sup>Jaba Shadrack Op. Cit

<sup>25</sup> Section S(1) of Cap 206

administering criminal justice. In light of these reviewed literature, this study intends to examine, whether dispensation of criminal justice in Ward Tribunals is viable.

**Makombe and Sikalumba,**<sup>26</sup> researched on Ward tribunals in Sumbawanga rural district and all respondents underlined the need of members of Ward tribunals to undergo formal training relevant to their work. They complained that they had never gone through any such training and that they only perform their duties through experience. They all acknowledged that, they needed a kind of training that would equip them with requisite skills for their work.

A Similar position is maintained by **SULGO** (Support for Local Governance processes)<sup>27</sup>. The author states that, Committee members of ward tribunals are lay persons with little formal education and no professional expertise. The author states further that, the basic qualification for ward tribunal members is the ability to read and write. This is not sufficient the author said. The author stated, they also need knowledge in mediation, arbitration and in the ABCs of the law. The foregone two works of literature help identify a gap in the law governing wards tribunals which this research intends to fill. The law does not have any provision, requiring members of Ward Tribunals to undergo any training that would acquaint them with the ABCs of the law, which would enhance their ability to administer criminal justice.

This study aims to reveal that, the lack of adequate training on the ABCs of the law, is a deficiency which diminishes Ward Tribunals ability to dispense criminal justice, which causes injustice to persons involved in criminal matters before Ward Tribunals.

**Sangi,**<sup>28</sup> writes on the ignorance of the law by the members of the Ward tribunal. He has emphasized that, when he visited Mbagala Ward Tribunal, he witnessed the members of the Ward Tribunal being ignorant on land laws and procedures.

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<sup>26</sup> Makombe I.M. Sikalumba A.J Op. Cit p. 28

<sup>27</sup> SULGO (2010) Op. Cit p. 5

<sup>28</sup> Mabaraza ya ardhi na ulimbukeni wa sheria, article in Raia mwema, issue no 362 dated 16/07/2004 accessed at [http://www.raia.mwema.co.tz/mabarazaya\\_ardhi\\_naulimbukeni\\_washeriaon5/2/2016](http://www.raia.mwema.co.tz/mabarazaya_ardhi_naulimbukeni_washeriaon5/2/2016).

Apart from that, he has touched on the composition of the Ward tribunal, the competence and age of the members, the general procedures of the Ward tribunal. He is of the opinion that, with the current trend of expanding economy, people buying and selling land, it is no longer meaningful to have an institution to determine land disputes while constituted with members having no legal knowledge.

Sangi's article is useful to this Research as it highlights members of Ward Tribunals incompetence to deal with land matters; the same incompetence is extended to Ward Tribunal members' ability to dispense criminal justice as well.

However, the author focuses on Ward tribunals' Jurisdiction on land matters only. The article does not cover criminal jurisdiction of ward tribunals. The Research intends to focus on Ward Tribunals in their adjudication of criminal matters.

**Shvji**<sup>29</sup> defines separation of powers to mean *inter alia* that one organ of government be it the executive, legislature and judiciary should not exercise the function of another. **Jaba**<sup>30</sup> states one of the criticisms leveled against administrative tribunals is that the practice violates the principle of separation of powers. However, the author fails to offer any explanation as to how tribunals violate the principle of separation of powers, a vacuum this research intends to fill.

**The South Law Chambers**<sup>31</sup> in its draft report on enhancing scope, impact, effectiveness and efficiency of Ward Tribunals in administering justice states that, by creating Ward Tribunals to handle judicial functions the state was committing a constitutional misbehavior which must never have been committed unless it is a matter of absolute necessity for the democratic system to survive. Good grounds to justify this abrogation of the doctrine of separation of powers should have been given, No good reasons were given and over and above that no review of the ward tribunals have ever been undertaken to

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<sup>29</sup> Shivji, I.G., et. al, (2004). Constitution and Legal System of Tanzania: A Civics Source Book. Dar es salaam.. Mkuki na Nyota Publishers Ltd, p. 42.

<sup>30</sup> JabaShadrack Op. Cit

<sup>31</sup> Draft report Op. Cit p. 11

ascertain whether they exist and work in harmony with the objectives for which they were established.

**Mushi**<sup>32</sup> takes a different view from the previous two authors that administrative tribunals' functions do not automatically violate the doctrine of separation of powers. He states that since administrative tribunals are not courts, and they are quasi judicial bodies, the fact of establishing tribunals and other quasi judicial bodies and assigning them functions does not by itself constitute violation of the doctrine of separation of powers. The extent of the powers given to which they are subject and the authority which has the final say on what they are assigned to do are all important matters to be considered in determining whether the doctrine of separation of power has been violated or not.

The above authors' works are useful in this research. However, neither author has covered the area of dispensation of criminal justice before Ward Tribunals. There is a lacuna in the law establishing Ward Tribunals which the researcher intends to fill by exploring the law that gives Ward Tribunals power to administer criminal justice, by examining the deficiencies in the establishing law and to find out whether that, extent of power to administer criminal justice violates the doctrine of separation of powers and if at all any good grounds were given to justify the abrogation of the said doctrine.

## **1.8 Research methodology**

### **1.8.1 Research design**

The researcher used a survey study with the aim of bringing a deeper insight and better understanding on the viability of Ward Tribunals in dispensation of criminal justice.

### **1.8.2 Area of study**

The researcher visited two Ward Tribunals in Bukoba Urban district, namely Kashai and Nshambya, five Ward Tribunals in Bukoba rural District, namely Nyakato, Katoma, Karabagaine, Buhendangabo and Maruku.

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<sup>32</sup> Mushi, E.G.(2009). Judicial Review and the Changing Trends In Public Administration. An Assessment of the High Court Response in Mainland Tanzania. Unpublished Ph.D Dissertation, Mzumbe University.

The researcher opted for Bukoba district as these Ward Tribunals within Bukoba District dispense criminal justice hence, there is availability of data and the area is logistically accessible and affordable to him.

### **1.8.3 Data collection methods**

The researcher collected both primary and secondary data. Primary data was collected by way of interviews, with the aim of gathering information from Respondents, questionnaires formulated, within view of the research hypothesis and observation by visiting ward tribunals, to observe how criminal justice is dispensed. Secondary data was collected through review of books, journals, reports and articles. The researcher collected secondary data from Mzumbe University Library, Bukoba Regional Library and the High Court Library at Bukoba.

### **1.8.4 Sampling techniques**

The researcher applied purposive/ deliberate technique by purposely handpicking the following group of respondents who include 35 members of ward tribunals, 21 ordinary citizens, 5 magistrates presiding in primary courts, from both Bukoba Urban and Rural District, who determine appeals from ward tribunals and 4 advocates who practice criminal justice within Bukoba District.

The researcher opted to use purposive/ deliberate sampling technique, because it is not possible to randomly hand pick respondents such as magistrates and advocates, as they are knowledgeable persons in the field of criminal law.

### **1.8.5 Data analysis**

The researcher used qualitative method to analyze the data after summarizing the research findings.

## **1.9 Conclusion**

In this chapter we have seen a general introduction to the study, which contained, the background to the problem, the statement of the problem, objectives of the study and significance of the study. The chapter also reviewed various literatures; it stated the hypotheses and showed the research methodology, which included data collection methods whereby, both primary and secondary data was collected. Primary data was collected by way of interviews, questionnaires and observation. Secondary data was collected through review of books journals, reports and articles. Also the methodology showed sampling techniques whereby, the researcher applied purposive technique, by deliberately hand picking respondents that, included magistrates presiding in primary courts and advocates who are knowledgeable persons in the field of criminal law. Lastly in regards to the methodology, the researcher used qualitative method to analyze the data.

**CHAPTER TWO**  
**CONCEPTUAL FRAMEWORK FOR WARD TRIBUNALS IN THE**  
**ADMINISTRATION OF CRIMINAL JUSTICE**

**2.0 Introduction**

This chapter provides, for the conceptual framework for Ward Tribunals in administration of criminal justice in Tanzania. The chapter will define the concept of tribunals, their, characteristics and how they are distinguished from courts of law.

The chapter will also define the meaning of Ward Tribunals and proceed to define the concept, of criminal justice and discuss the attributes of a good criminal justice system, the focus being on dispute resolution bodies in the administration of criminal justice.

It is the expectation of the researcher that, at the end of this chapter, the concept of tribunals, criminal justice and how criminal justice relates to Ward Tribunals will be understood.

**2.1. Concept of Tribunal**

**2.1.1. Meaning of a Tribunal**

A tribunal is an administrative body which exercises the power to adjudicate. Although tribunals are not courts of law, they adhere to the principles of natural justice to reach a fair decision.<sup>33</sup>

Tribunals are extra – judicial dispute settlement bodies. They are empowered to determine issues which affect the rights of individuals.<sup>34</sup>

Tribunal has also been defined to mean a group of people with an authority to settle certain types of disputes<sup>35</sup>

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<sup>33</sup> Upadhyaya, J.J.R(2004). Administrative Law, 5<sup>th</sup> Edition, Allahabad. Central Law Agency,, at p.127, 143.

<sup>34</sup> Salwan, S.L. and Narang, U; (1997). Academics Legal Dictionary. 12<sup>th</sup> Edition. New Delhi, Academic. , p. 294

<sup>35</sup> Crowther, J. (1995). Oxford Advanced Learners Dictionary of Current English, 5<sup>th</sup> Edition. London, Oxford University Press. p. 1276.

In this study the term tribunal is conceived as an adjudicating body constituted by the state and invested with judicial, as distinguished from purely administrative or executive, functions. Tribunals decide disputes in place of ordinary courts of law. A tribunal's power of adjudication of disputes does not necessarily make the body a tribunal. In order to be a tribunal, it is essential that such power of adjudication must be derived from a statute and not from an agreement between the parties.<sup>36</sup>

According to Takwani,<sup>37</sup> Administrative tribunals have the following characteristics.

- An administrative tribunal is a creation of a statute and thus, it has a statutory origin.
- It has some of the trappings of a court but not all.
- An administrative tribunal is entrusted with judicial powers of the state and thus, performs judicial and quasi-judicial functions, as distinguished from pure administrative or executive functions and is bound to act judicially.
- Even with regard to procedural matters, an administrative tribunal possesses powers of a court; e.g. to summon witnesses, to administer oath, to compel production of documents, etc.
- An administrative tribunal is not bound by strict rules of evidence and procedure.
- The decisions of most of the tribunals are in fact judicial rather than administrative inasmuch as they have to record findings of facts objectively and then to apply the law to them without regard to executive policy. Though the discretion is conferred on them, it is to be exercised objectively and judicially.
- Most of the administrative tribunals are not concerned exclusively with the cases in which government is a party; they also decide disputes between two private parties, e.g. Election Tribunal, Rent Tribunal, Industrial Tribunal, etc.
- Administrative tribunals are independent and they are not subject to any administrative interference in the discharge of their judicial or quasi-judicial functions.
- The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals.

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<sup>36</sup> Thakker M.C and Thakker C.K op cit p. 194

<sup>37</sup> Takwani op cit p. 200

Ward Tribunals have the above characteristics, as they are a creation of a statute, are entrusted with judicial powers, to perform judicial functions, they have the power to summon witnesses, they are not bound by strict rules of evidence and procedure and their decisions are in fact judicial, rather than administrative.

### **2.1.2 Administrative Tribunals Distinguished from Courts of Law**

An administrative tribunal is similar to a court of law in certain aspects. Both are constituted by the state, invested with judicial powers and have a permanent existence. Thus, they are adjudicating bodies. They deal with and finally decide disputes between parties which affect the rights of subjects.<sup>38</sup>

But at the same time, it must not be forgotten that an administrative tribunal is not a court. The line of distinction between a court and a tribunal in some cases is indeed fine though real. A tribunal possesses some of the trappings of a court of law, but not all, and therefore, both must be distinguished.<sup>39</sup>

- i. A court of law is part of the traditional judicial system. Where judicial powers are derived from the state. On the other hand, an administrative tribunal is an agency created by a statute and invested with judicial powers. Primarily and essentially, it is part and parcel of the Executive branch of the state, exercising executive as well as judicial functions.
- ii. Whereas ordinary civil courts have judicial power to try all suits of a civil nature, excepting those whose cognizance is either expressly or impliedly barred, tribunals have power to try cases in special matters statutorily conferred.
- iii. The mere lack of general jurisdiction to try all cases of a civil nature does not lead to an inference that the forum is tribunal and not a court. A court can also be constituted with limited jurisdiction.

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<sup>38</sup> Takwani op cit p. 198

<sup>39</sup> Ibid

- iv. Judges of ordinary courts of law are independent of the executive branch of government in respect of their tenure, terms and conditions of service, etc. On the other hand, members of administrative tribunals are entirely in the hands of the government in respect of those matters.
- v. A court of law is generally presided over by an impartial arbiter and he cannot decide a matter in which he is interested. On the other hand, an administrative tribunal may be party to the dispute to be decided by it.
- vi. A court of law is presided over by an officer trained in law, but the president or members of a tribunal may not be trained as well in law.
- vii. A court of law is bound by all the rules of evidence and procedure but an administrative tribunal is not bound by those rules unless the relevant statute imposes such an obligation.
- viii. A court must decide all the questions objectively on the basis of the evidence and materials produced before it, but an administrative tribunal may decide the question taking into account the departmental policy or expediency and in that sense, the decision may be subjective rather than objective. The real distinction is that courts have an air of detachment.
- ix. While a court of law is bound by precedent, principles of *res judicata* and estoppel, an administrative tribunal is not strictly bound by them.
- x. A court of law can decide the *vires* of a legislation, while an administrative tribunal cannot do so.

Ward tribunals as an administrative tribunal, are also distinguishable from ordinary courts of law, as their judicial powers are not derived from the state, they are created by statute and invested with judicial powers. A court of law is bound by all the rules of evidence and procedure but Ward Tribunals are not bound by rules evidence and procedure. Judges and

magistrates of ordinary courts are independent of the executive branch of government in respect of their tenure, terms and conditions of service, while members of ward tribunals are entirely in the hands of the local government authority establishing them. Ordinary courts are presided over by an officer trained in law, but members of ward tribunal are not trained in law. Also a court of law is bound by precedent, principles of res judicata and estoppels, Ward Tribunals are not strictly bound by those principles.

## **2.2 Ward Tribunal**

In this study the term Ward Tribunal is used to refer to tribunals established in every ward, in Tanzania mainland, having quasi-judicial power to adjudicate upon civil and criminal matters. The 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.<sup>40</sup>

## **2.3 Criminal Justice**

Criminal justice is conceived as the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. Those accused of crime have protections against abuse of investigations and prosecution powers.<sup>41</sup> Criminal justice aims to reduce crime, by bringing more offences to justice, and to raise public confidence that the system is fair and will deliver for the law abiding citizen.

Criminal Justice is made up of a variety of agencies and organizations each with its own responsibilities and areas of decision making authority<sup>42</sup>.

- i. Police, who have the power to stop, search, whose role it is to decide whether there is sufficient evidence and public interest to prosecute a suspect and if there is enough evidence, to prosecute the case in court.
- ii. Courts who hear and sentence all summary offences.
- iii. Agencies who deal with those who have been sentence by the courts, prisons and probation services.

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<sup>40</sup> See in chapter three the Legal Framework of Ward Tribunals.

<sup>41</sup> <http://en.wikipedia.org/wiki/criminaljustice> accessed on 15/06/2016

<sup>42</sup> Noel C. (2010). Criminal Law and Justice. An Introduction. London, Sage Publication Ltd. p. 12

In this study, Criminal Justice is the sum total of society's activities to defend itself against the actions it defines as criminal. These activities reflect a broad range of social, legal, economic, political, and moral interests. Criminal justice functions as a system, run by professionals and increasingly assessed, evaluated, and advanced by social scientists.<sup>43</sup>

To be successful and effective the criminal justice system must be perceived as having authority by the community that it serves. The perception of authority and its legitimacy require confidence in the criminal justice system, the police, courts, and correctional agencies strive for the public's confidence.<sup>44</sup>

Criminal justice presupposes the existence of a criminal justice machinery like, the investigating machinery, (police) the courts of law,(dispute resolution body) the prosecution, and the prison as the corrective machinery. This study focuses, on the aspect of dispute resolution in relation to criminal justice, and in particular Ward tribunals, as quasi-judicial bodies invested with the power to dispense criminal justice.

In a good criminal justice system, a court of law or the adjudicating body is governed by prescribed procedures that must be followed, in order to determine the guilt or innocence of a person accused of a crime.

First and foremost in any criminal proceeding before the court or adjudicating body, a person accused of a criminal offence, is presumed innocent until he is proved guilty.<sup>45</sup> This means an accused person has the right to a fair trial and not to be condemned until his guilt has been established, beyond all reasonable doubt.<sup>46</sup>

The next stage is the arraignment, whereby, the accused person appears before a court or adjudicating body to answer to a charge or formal complaint. A charge is usually in writing, made before a court or adjudicating body, alleging that a particular person has

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<sup>43</sup> Mueller, A. (2009) Criminal Justice an Introduction, Fifth Edition. USA, McGraw – Hill Education p. 6.

<sup>44</sup> Ibid

<sup>45</sup> Massawe A.A.F. (2000). The Burden of Proof. How to Defend Yourself in Criminal Cases. Morogoro, Mzumbe University. p. 74

<sup>46</sup> Ibid p. 3

committed an offence, hence moving the court of law or adjudicating body to inquire into or try the case<sup>47</sup>.

The accused person will then be required, to answer to the charge, by pleading either guilty or not guilty. If an accused person pleads guilty to a charge, the court or adjudicating body will proceed to convict the accused on his own plea.<sup>48</sup>

The court or adjudicating body will then proceed to sentence the accused, after taking down the accused mitigating factors.

If an accused person pleads not guilty to the charge, then the court or adjudicating body will proceed to the hearing stage, or trial of the criminal matter before it. The purpose of trial is to give the prosecution or complainant, the opportunity to prove his case against the accused person, by producing witnesses and documentary evidence, to prove the accused guilt and at the same time, the trial gives the accused person the opportunity, to contradict the prosecution's or complainant's allegations leveled against him.<sup>49</sup>

In a good criminal justice system, it is imperative that, a court of law or an adjudicating body, provides for the right to cross- examination at the trial stage. The parties involved in the criminal matter, should be given the opportunity to cross – examine each other and their witnesses. Cross – examination serves two main purposes:

First to discredit the witness in order to neutralize or weaken his evidence and second to build up the case of the cross – examiner, by extracting from the witness facts which are favourable to the case of the cross – examiner, who could either be the accused, prosecution or the complainant<sup>50</sup>.

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<sup>47</sup> Chipeta B.D. (1987). A Magistrate's Manual. Tabora, T.M. P. Book Department. p. 26

<sup>48</sup> Ibid

<sup>49</sup> Ibid p. 87

<sup>50</sup> Ibid p. 89

When a witness is cross-examined he may be asked any question which tend to test his accuracy, veracity or credibility; to discover who he is and what is his position in life; to shake his credit by injuring his character, even though the answers to such questions might incriminate him.

In a good criminal justice system, it is of paramount importance that, a court of law or an adjudicating body adheres to the rules of evidence. For instance, the court or adjudicating body has to take into account, the competence of the witnesses who testify before the court or adjudicating body.

The general rule is that all person are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease, or any similar cause<sup>51</sup>. For example, young children who do not understand the nature of an oath, or the meaning of truth, will not be permitted to give evidence although in certain circumstances children of tender years will be permitted to give evidence . An elderly witness who has reached the age of senility, or who is not conscious of the proceedings, will not be permitted to give evidence. The fact that a person is mentally disordered or a lunatic will not make him incompetent to testify unless he is prevented by his conditions from understanding the questions put to him and giving answer to them. A dumb witness is competent to testify by means which are intelligible to the court e.g by the use of signs.

Also a good criminal justice system requires a court or adjudicating body, to have a fair or prescribed manner of admitting documentary evidence that might be used to secure a conviction against an accused person, to ensure that fabricated or doctored evidence is not used to the detriment of an accused. The general rule is that, the prosecution or complainant must prove the document, to be used against the accused by producing the original document<sup>52</sup>.

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<sup>51</sup> Massawe A.A.F Op. cit p. 124

<sup>52</sup> Ibid p. 127

However, for reasons to be disclosed to the court or adjudicating body, the court or adjudicating body may admit secondary evidence as evidence against an accused person, once satisfied that, the original document cannot be obtained<sup>53</sup>.

Moreover, when the trial or hearing has led to a conviction and the judgment has been rendered, the court or adjudicating body, is required in a good criminal justice system, before passing sentence, to afford the accused person the right to say anything in mitigation of sentence, that is to say something which the court or adjudicating body may consider as justifying leniency.<sup>54</sup>

Mitigation is an important right afforded to an accused person and the court or adjudicating body should always ensure that, the accused is given the chance to exercise it because, he may have something to say which could, influence the court or adjudicating body to exercise discretion in his favour hence, be given a reduced sentence or be discharged absolutely.<sup>55</sup>

The court or adjudicating body will then proceed to sentence the accused person taking into account, the gravity of the offence, previous criminal record of the accused or lack of it, mitigating factors and any other considerable factors.

Therefore, the procedures before a court of law or dispute resolution body require in a good criminal justice system, the existence of highly trained and expert personnel, in the field of criminal law, to ensure that, from the moment a charge has been laid, and an accused person has been arraigned in court, up to the moment sentence has been passed against him, justice is served in a professional and competent manner.

Hence, Ward Tribunals as bodies invested with the power to dispense criminal justice, ought to be manned, by trained personnel in the field of criminal law, to have the viability to dispense criminal justice.

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<sup>53</sup> Massawe A.A.F. op-cit p.127

<sup>54</sup> Chipeta B.D op-cit p. 135

<sup>55</sup> Ibid

## **2.4. Conclusion**

In this chapter we have seen the conceptual framework for Ward Tribunals in the administration of criminal justice in Tanzania. We have seen that, a tribunal means an adjudicating body constituted by the state and invested with judicial, as distinguished from purely administrative or executive, functions.

Ward Tribunals are such adjudicating bodies, invested with judicial functions, to adjudicate upon matters of criminal and civil nature within the wards of their establishment. Ward Tribunals as part of the criminal justice system in Tanzania, a system which includes, the police, dispute resolution bodies, such as ward Tribunal and corrective institutions, is a system that, is run by professionals in order to bring perpetrators to justice and maintain public confidence in the criminal justice system.

We have seen in this chapter that, a dispute resolution body in a good criminal justice system, has laid down procedures to be followed, to ensure the criminal justice system brings criminals to justice. This can only be achieved by having highly trained and expert personnel, presiding over criminal matters, in dispute resolution bodies.

Therefore, there is a need for Ward Tribunals to be manned with professionals in the field of criminal law to ensure that, the criminal justice system, brings criminals to justice.

**CHAPTER THREE**  
**THE LAW REGULATING WARD TRIBUNALS IN DISPENSATION OF**  
**CRIMINAL JUSTICE IN MAINLAND TANZANIA**

**3.0 Introduction**

This chapter examines the law regulating Ward Tribunals in dispensation of criminal justice in mainland Tanzania. Criminal justice dispensation is a function which arguably, should be performed by the ordinary courts of law. This chapter will examine whether, the law regulating Ward Tribunals in dispensation of criminal justice provides, for fair and justice procedures and whether Ward Tribunals have the necessary competence to dispense criminal justice.

**3.1 The Constitutional Basis for Establishment of Ward Tribunals**

A written constitution is often regarded in most democratic countries as the fundamental source of law. It is often called the “Supreme law of the land” as it supersedes and provides the basis for all other national legislation. In Tanzania, for instance, where any other law or legislation enacted by parliament or any other body is in conflict with any provision of the constitution or is inconsistent with it, such law or legislation shall be null and void to the extent of its inconsistency.<sup>56</sup> Since the United Republic of Tanzania is governed by the principles of democracy, justice and freedom, the Constitution therefore establishes various institutions like courts of law and other state agencies which perform quasi-judicial functions and shall be responsible for justice dispensation without fear or favour in determination of rights affecting individuals.<sup>57</sup>

Ward Tribunals fall within the ambit of other state agencies established to perform quasi-judicial functions having power to determine the rights, interests and duties of every individual in the community, by protecting and determining their rights as empowered by the law without fear or favour.

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<sup>56</sup> The Constitution of the United of Republic of Tanzania, 1977 Cap 2. (R.E. 2002) article 64(5)

<sup>57</sup> Ibid article 13 (3)

### **3.2 Statutory Basis for Establishment of Ward Tribunals**

The Ward Tribunals Act establishes the Ward Tribunal and caters for its jurisdiction, powers, procedure and practice on how the Tribunal is governed in its dispensation of justice and its primary function is to secure peace and harmony in amicable and fair settlement of disputes, by mediation and assisting parties to reach at mutually acceptable dispute resolution, on any matter before the Tribunal within the limits of its jurisdiction. Among other reasons for the establishment was to reduce concentration of cases in the primary court and to enhance participation of citizens in the administration of justice.<sup>58</sup>

The Ward Tribunals Act, which came into operation on 1<sup>st</sup> July, 1988 gives power to the Minister responsible for local government authorities to establish more than one tribunal in a ward in which he is of the opinion that, there are special circumstances that would warrant the establishment of a second Ward Tribunal by publishing a notice in the Government Gazette.<sup>59</sup> Therefore, it means that each ward in Tanzania mainland, be it in a town or rural area, is required to have a Ward Tribunal from the date the Act came into operation.

The coming into existence of the Ward Tribunal came with a vital element that, in its function the tribunal shall not be bound by any rules of procedures or evidence like in the ordinary courts of law.<sup>60</sup> Instead they are supposed to work in a flexible manner hence, vested with the power to choose and govern their own procedures and practice as may be reasonable for the aim of doing justice to the parties and to reach a decision which will secure peaceful and amicable resolution of disputes, reconciliation of the parties and the pursuance of the social and economic interests, of the ward as a whole in which the dispute arose.

### **3.3 Role of Ward Tribunals**

Ward Tribunals are entrusted with the duty to do justice to disputing parties and reach decisions that would secure peace and amicable resolution of disputes, reconciliation of the parties and the furtherance of social and economic interests of the village or ward as a

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<sup>58</sup> URT. (1996). The Report of the Presidential Commission of Inquiry Against Corruption.. p.131.

<sup>59</sup> Section 3 of Cap. 206. R.E 2002

<sup>60</sup> Ibid, section 15(1)

whole.<sup>61</sup> The rationale is that, when people in their respective areas are assured of peace and harmony, they would do the most to produce and improve their socio-economic conditions of life.

However, in Ward Tribunals, mediation of disputes is far more desirable than adjudication of criminal matters. This is because in mediation, parties feel to have fully taken part in the proceedings and do see the results as theirs. In adjudication of criminal matters in particular there are a lot of technicalities involved in the decision making process whereby Ward Tribunals are not staffed with legally qualified personnel to adjudicate on criminal matters. Adjudication is only fit for ordinary courts, as there are legal experts. In Ward Tribunals members therein are not legal experts.

### **3.4 Composition of the Ward Tribunal**

It is provided that, every Ward Tribunal shall consist of not less than four or not more than eight other members elected by the Ward Committee from amongst a list of names of persons resident in the ward, compiled in the prescribed manner.<sup>62</sup> The Secretary of the Tribunal is appointed by the local government authority in which the Ward in question is situated, upon the recommendation of the Ward Committee.<sup>63</sup>

The quorum at a sitting of the Tribunal shall be one half of the total number of members.<sup>64</sup>

At any sitting of the Tribunal a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote.<sup>65</sup>

### **3.5 Nomination of Members of Ward Tribunals**

Members of Ward Tribunals are appointed by the Ward Committee<sup>66</sup> which is under a particular Local Government Authority in the ward in which the tribunal is established. The law<sup>67</sup> has set the qualification of members under section 5 as follows;

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<sup>61</sup> Section 8 and 16(1) of Cap 206. R.E.2002

<sup>62</sup> Ibid, section 4(1)(a)

<sup>63</sup> Ibid, Section 4(2)

<sup>64</sup> Ibid, Section 4(3)

<sup>65</sup> Ibid, section 4(4)

<sup>66</sup> Ibid, Section 4(1)(a)

<sup>67</sup> Ibid, section 5(1)

No person shall be entitled to be nominated as a member of a Tribunal if he is-

- i. A member of the National Assembly;
- ii. A member of a village Council or a Ward Committee;
- iii. A civil servant;
- iv. A legally qualified person or any person who is employed in the Judiciary;
- v. A person under the apparent age of eighteen years;
- vi. A mentally unfit person;
- vii. A person who has previously been convicted of a criminal offence involving moral turpitude; or
- viii. A person who is not a citizen of the United Republic of Tanzania.

In addition, those members should be residents of the named Ward. The names of these members are from the villages and Mtaa forming the Ward. In the Ward Development Committee, the Secretary of the committee is the Ward Executive Officer<sup>68</sup> who is the employee of the Local Government will table the names of the people who want to be appointed.

Then the Committee under the chairmanship of the Councilor of a particular Ward<sup>69</sup> will discuss the names. The Committee will scrutinize the names submitted and then come up with names of those qualified as members of the tribunal, after that the Ward Executive Officer will submit the names to the District Executive Director. The District Executive Director after receiving those names confirm them, and then appoints The Chairman of the tribunal.<sup>70</sup>

### **3.6 Tenure of Ward Tribunal Members**

The Tenure of Ward Tribunal members are that of perpetual succession, having a limited term upon the expiry of which one can be re- appointed. Section 6(1)<sup>71</sup> provides for the tenure of office for the members of Ward Tribunal to be three years from the date of his election and shall be eligible for re-election. However, when their offices fall vacant due to various reasons such as death, resignation or upon expiry of time to serve or any other

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<sup>68</sup> Section 35(3) of the Local Government (District Authorities) Act cap 287.

<sup>69</sup> Ibid, section 35(2)(a)

<sup>70</sup> Section 4(1)(b) of Cap. 206 R.E. 2002

<sup>71</sup> Cap. 206. R.E. 2002.

cause the District Executive Officer makes an appointment to fill the vacancy until the date of the next election.<sup>72</sup>

The Act in this part is very clear that members should hold the office for three years consecutively and one will be removed only for the reasons mention above. The aim is to protect the members from arbitrary use of power especially from the appointing authority from miss using their power of appointment by removing a member at their will. A member will have confidence in performing his duties because his tenure is secure as only from the mentioned reasons can a member lose his membership in the tribunal.

### **3.7 Supervisory Bodies over Ward Tribunals**

#### **3.7.1 Primary Courts as a Supervisory Body over Ward Tribunals**

The Primary Court is vested with jurisdiction to supervise the Ward Tribunals within the area of its Jurisdiction over Ward Tribunals.<sup>73</sup> The appellate Jurisdiction of the Primary Court is justified to be to be vast enough to be mentioned here as stated under Section 20 (3)<sup>74</sup> that except on points of law where the final appeal lies with the District Court from a decision of a Primary Court.

On any appeal made to it shall be final and conclusive.

The same stand was taken in the Case of *Rashid S. Katungunya v. Abdallah S. Katungunya*,<sup>75</sup> where the Court held that, all appeals originating from matters before Ward Tribunals do not go to the High Court, the appeals end in the primary court unless a point of law is involved. The High Court dismissed the appeal for being incompetent.

It must also be noted that the Primary Court's power to revise a decision of a Ward Tribunal or entertain an appeal there from is strictly limited to non-land matters. It is therefore, acceptable to state; Primary Courts are without a doubt a Supervisory organ over Ward Tribunals. The supervision may be done via revision or appeal preferred by an aggrieved party from the decision made by a Ward Tribunal, to the Primary Court in the area in which the said Tribunal is situated.

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<sup>72</sup> Section 6(2) of Cap. 206. R.E. 2002.

<sup>73</sup> Ibid, Section 21(1)

<sup>74</sup> Ibid

<sup>75</sup> Unreported Civil Appeal No 68 of 2002, HC Dar es Salaam.

### **3.7.2 The Local Government Authorities as Supervisory Bodies over Ward Tribunals**

Local Government Authorities are at the grassroots level of government having close proximity to the people hence responsible for catering for peoples' political and material needs at a specified local area that includes a district, rural or urban, a township and a city.<sup>76</sup>

Within the confines of the Local Government Authorities, Ward Tribunals operate as part of the Ward Development Committee. Together they work under the direction of the district councils, the appropriate bodies responsible for the control and supervision of the said Ward Tribunals under the directions given by the Minister responsible.<sup>77</sup>

The appropriate authority as stipulated in the Act<sup>78</sup> is the authority with the mandate for ensuring the proper functioning of Ward Tribunals in their jurisdiction including formulation of policy regarding the operation of the tribunal and shall facilitate, and promote the smooth and effective performance by the tribunal of its functions.<sup>79</sup>

It is therefore, clear from the above provisions of the laws that Ward Tribunals are subjected to the direct control and supervision of the Local Government Authorities, the executive branch of government, yet they perform a purely judicial function in dispensing criminal justice without any legal qualification or training.

### **3.7.3 District Land and Housing Tribunal as a Supervisory Body over Ward Tribunals**

Since the year 2002, the Land Disputes Courts Act<sup>80</sup> conferred upon Ward Tribunals jurisdiction to entertain land matters arising out of land disputes and designated them to be a court. In this hierarchy, there is the village Land Council, Ward Tribunals, District Land and Housing Tribunal, High Court and the Court of Appeal.<sup>81</sup>

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<sup>76</sup> [http://www.pmoralg.go.tz/history/history20%of20%local government PDF](http://www.pmoralg.go.tz/history/history20%of20%local%government%PDF) (accessed on 5/5/2016)

<sup>77</sup> Section 29(2) of the (Miscellaneous Provision Made Under Part iv) of the Ward Tribunal Act, 1985

<sup>78</sup> Section 3 of the Local Government ( District Authorities) Cap. 287 R.E. 2002.

<sup>79</sup> Section 7 of Cap. 206. R.E. 2002.

<sup>80</sup> Cap. 216 R.E. 2002

<sup>81</sup> Ibid

The immediate supervisor of Ward Tribunals in relation to land matters in the above mentioned hierarchy is the District Land and Housing Tribunal, which supervises Ward Tribunals first by way of appeal under sections 19 and 20<sup>82</sup> which provide, any person aggrieved by the decision of the Ward Tribunal may appeal to the District Land and Housing Tribunal within 45 days.

Second, the District Land and Housing Tribunal has the power to revise the proceedings and decisions of the Ward Tribunal in order to determine any contravention with the Acts of Parliament or delegated legislations as well as the observance of the principles of natural justice<sup>83</sup>.

When Ward Tribunals were conferred with the powers to adjudicate over land disputes, the same power which previously, exclusively belonged to the ordinary courts was taken away from them, save for the High Court and Court of Appeal. Hence, ordinary courts were ousted from having jurisdiction to entertain land matters; Ward Tribunals were given an additional function on top of their adjudication of criminal and civil matters. It is therefore, a burden for Ward Tribunals to still perform the function of dispensation of criminal justice while, they have been given a very crucial and sensitive function of adjudicating over land disputes. The ordinary courts of law are better equipped and staffed to dispense criminal justice without Ward Tribunals having to perform this function, already performed by the ordinary courts of law.

### **3.8 Financing Ward Tribunals**

The Ward Tribunal like any other institution needs financial support in order for it to dispense justice to the parties who appear before the Tribunal. Since it is not an income generating institution, the appropriate authority has the duty and obligation to finance the Ward Tribunal established in the area of its jurisdiction.

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<sup>82</sup> Cap. 216. R.E. 2002.

<sup>83</sup> Ibid , section 36.

This duty and obligation is provided for under section 7<sup>84</sup> which provides that the appropriate authority in respect of a Tribunal shall be responsible for the general policy regarding the operation of the Tribunal and shall ensure, facilitate and promote the smooth and effective performance by the Tribunal of its functions.

From the above provision the Minister responsible for local government, has the duty and obligation to ensure members of Ward Tribunals, receive adequate training through seminars to equip them in their functions which also includes the function of dispensing criminal justice. Therefore, lack of adequate financial assistance from the Ministry responsible for local government can definitely hamper Ward Tribunals dispensation of criminal justice.

### **3.9 Jurisdiction of Ward Tribunals in Criminal Matters**

First and foremost, Ward Tribunals are conferred with the general jurisdiction of securing peace and harmony in the area for which they are established, by mediating and endeavoring to obtain just and amicable settlement of disputes.

In the adjudication of criminal offences Part I of the schedule to the Ward Tribunals Act<sup>85</sup>, stipulates the offences and penalties Ward Tribunals have jurisdiction over under the Penal Code.<sup>86</sup> Such offences include, *inter alia*, going armed in public, affray, using abusive language, threatening with violence, abduction of girls under 16 years, desertion of children, common assault, etc.

If you look at primary courts criminal jurisdiction under the Penal Code<sup>87</sup>, you will find apart from some additional criminal offences, primary courts criminal jurisdiction and that of Ward Tribunals are very similar. Primary courts entertain the same offences as mention above such as, going armed in public, affray, using abusive language, etc.

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<sup>84</sup> Cap. 206 R.E. 2002

<sup>85</sup> Ibid

<sup>86</sup> Cap. 16 R.E.2002

<sup>87</sup> Found under the first Schedule of the Magistrates' Court Act Cap 11 (Revised Edition 2002)

Members of Ward Tribunals are laymen in the field of law and also barred from possessing any legal qualifications.<sup>88</sup> Yet they exercise the function of adjudication over the same criminal jurisdiction with Primary Courts, who on the other hand are staffed with legally qualified personnel.

Apart from Ward Tribunals jurisdiction to entertain criminal matters, they are also conferred with jurisdiction to entertain land disputes under the Land Disputes Courts Act.<sup>89</sup> The Ward Tribunal has jurisdiction to entertain land related disputes within the area of its jurisdiction provided it does not exceed the value of three million shillings.

### **3.10 Receiving a Criminal Complaint**

Any person who has cause to believe that, any person has committed an offence may lodge a complaint to the secretary of the tribunal or to the specified local authority.<sup>90</sup> A complaint may be made orally or in writing and shall be signed by the complainant and the accused person. The secretary of the tribunal, once the complaint has been lodged, shall enter it in the records of the tribunal and make arrangements for it to be heard and determined.<sup>91</sup>

From the above provision of the law it is evident that, there is no prescribed or standard form to be filled in by the complainant or to be drafted by the secretary of the Tribunal when a criminal complaint has been lodged. Hence, the procedure for lodging a criminal offence lacks uniformity. Moreover, as the Secretary of the Ward Tribunal has no legal qualification or knowledge in the field of law, there is always the danger of a Ward Tribunal entertaining a criminal matter it has no jurisdiction to entertain hence, causing miscarriage of justice.

### **3.11 Procedure, Hearing and Sentencing**

Ward Tribunals like any other institution in the administration of justice has a laid down procedure on the manner it delivers justice. Since they are not formal courts, the law has allowed them to be free from technicalities, to regulate their own procedures and conduct

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<sup>88</sup> Section 5 (1) (d) of Cap. 206. R.E. 2002

<sup>89</sup> Cap. 216 R.E 2002

<sup>90</sup> Section 11 (1) of Cap. 206 R.E. 2002

<sup>91</sup> Ibid, Section 11 (3) & (4)

itself in a manner befitting its paramount function of ensuring peace and harmony.<sup>92</sup> During this stage the tribunal passes through several steps until it comes to the point of rendering its decision.

### **3.11.1 Summons for Appearance and Hearing**

The Secretary of the Ward Tribunal shall issue summons to the parties involved in a complaint requiring them to attend before the Tribunal on the date specified in the summons for the complaint to be investigated and determined.<sup>93</sup>

The rationale behind the issuance of a summons was underlined in the case of *Juan Makobrad v. Miroslautic Vesna Paladinand Ingra*<sup>94</sup> by Ramadhan J. A (as he then was) that, 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. It is a basic principle of natural justice that in any proceedings notice to the other shall be given, a non- performance of which amounts to the violation of natural justice.

### **3.11.2 Appearance, Adjournment and Dismissal of Criminal Cases**

On the date specified in the summons the parties shall, appear in person before the Tribunal, give their evidence and answer all questions put to them by any member of the Tribunal.<sup>95</sup>

On the date issued in the summons, if the complainant fails to appear without just cause, the tribunal shall dismiss the complaint and the matter shall not be brought before it again. However, if the tribunal regards the complainant's absence is due to a reasonable cause or if the accused person is absent, the tribunal shall adjourn the hearing to another specified date.<sup>96</sup>

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<sup>92</sup> Section 15 of Cap. 206. R.E. 2002

<sup>93</sup> Ibid, Section 12

<sup>94</sup> (1999) T. L. R p. 448

<sup>95</sup> Section 13 (1) of Cap 206 R.E. 2002

<sup>96</sup> Ibid, Section 13 (2)

It is worth noting that, the procedure governing adjournment and appearance of parties in a criminal case before a Ward Tribunal is silent on what to be done in case the person complained of or the accused person, fails to appear on the next date fixed by the tribunal, after the matter had been adjourned due to the non-appearance of the accused person. The law offers no redress to the complainant, if the accused without reasonable cause, fails to appear once summoned to answer to a criminal complaint. There is no procedure in the law in question, that permits the Tribunal to proceed to hear the complainant's case or evidence in *absentia* or in other words in the absence of the accused person. This deficiency in the law concerning adjournment and appearance before the Tribunal, causes the tribunal to be less effective in its ability to deliver or dispense criminal justice.

### **3.11.3. Hearing**

First and foremost, all proceedings before Ward Tribunals including criminal proceedings are open to the public, unless in the opinion of the Tribunal, it is in the public interest that the public or any person be excluded from any part of the proceedings.<sup>97</sup>

Proceedings before Ward Tribunals are not bound by any rules of evidence or procedure applicable to any Court. They have the power to regulate its own procedure.<sup>98</sup> In other words, Ward Tribunals have the mandate to make its own rules as it goes a long in the dispensation of criminal justice hence, the manner and way it dispenses criminal justice lacks uniformity and consistency. Ward Tribunals have the power to hear statements of witnesses produced by parties to a complaint, and to examine any relevant document by any party. The procedure on how documents in relation to a criminal matter are produced and tendered before the Tribunal is not provided for hence, the tribunal can admit and rely on secondary evidence or even doctored documents or statements, to secure a conviction of a person accused of a crime before the Tribunal. Therefore, Ward Tribunals not being bound to adhere to the rules of evidence or the normal procedures applicable to courts of law, in their dispensation of criminal justice can lead to grave miscarriage of justice, leading to injury to an accused person in particular who stands charged with a criminal offence before the Ward Tribunal.

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<sup>97</sup> Section 14 of Cap. 206. R.E. 2002.

<sup>98</sup> *Ibid*, Section 15 (1) (2)

Moreover, a child below the age of eighteen (18) can be charged with a criminal matter before a Ward Tribunal and the hearing of the case will proceed before the Tribunal as per section 13(3) of the Act<sup>99</sup> which states to the effect that, where the complainant or accused is a child below 18 years of age, that person may appear before the tribunal together with his parent or relative and they will assist the complainant or accused in the examination or cross examination of witnesses before the tribunal.

Ward Tribunals' power under the said law, to entertain a criminal matter against a child below the age of eighteen is contrary to section 98(1) of the Law of the Child<sup>100</sup>, which establishes and gives jurisdiction to the Juvenile Court, the power to hear and determine a criminal charge against a child. The law of the child has laid down special procedures in hearing and determining criminal matters brought against a child, with the paramount interest of protecting the child that, is why proceedings are held in camera. No such protection is afforded to a child accused of a criminal offence before a Ward Tribunal, as all proceedings before a Ward Tribunal are open to the public.

In pursuance of adhering to the principles of natural justice, Ward Tribunals shall not make a decision on any complaint, unless first it has given an equal opportunity to each party to explain his part in the matter and to present his witness. 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>101</sup>. The observance of the principles of natural justice were extended to Tribunals such as the Ward Tribunals in the case of *Ridge v. Baldwin*,<sup>102</sup> whereby the House of Lords held to the effect that, any decision touching the right of an individual must adhere to principles of natural justice even if issued by an administration tribunal. Tanzania has adopted these common law principles of natural justice, the right to be heard and the rule against bias which have been incorporated in the ward tribunal Act.

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<sup>99</sup> Cap. 206. R.E. 2002.

<sup>100</sup> Act no. 21 of 2009

<sup>101</sup> Section 16(2) (a) (b) of Cap 206 R.E 2002

<sup>102</sup> [1964] AC 40

### **3.11.4 Right to Cross-examine**

Parties in any criminal matter before a Ward tribunal have to appear and answer questions posed to them by members of the Tribunal. This is provided for under section 13(1) of the law<sup>103</sup> which need the parties to answer questions posed to them by members of the Tribunal.

If the mode of hearing is oral as what happens in Ward Tribunals the importance of cross-examination comes.<sup>104</sup> At this juncture, the issue of cross-examining the witnesses in Ward Tribunals is a vital stage due to the reason that the said section need the parties to appear and answer questions which will be raised. That means any witness called before the tribunal should be cross-examined so as to scrutinize the truth of evidence testified.

However, the above section does not provide the right to the parties involved in a criminal matter before the Ward Tribunal to cross-examine each other. The complainant is not afforded the right to cross-examine his accused person and likewise the accused is not afforded the right to cross-examine his accuser. Only the Tribunal has the right to cross-examine the parties to a criminal matter before it hence, denying a person accused of a criminal offence before the Tribunal the right to properly defend himself, by cross-examining the complainant in order to ascertain the truthfulness of the complainant's testimony and to pose questions that would cast a doubt on the complainant's case against him. It can therefore, be said that the members of Ward Tribunals in their dispensation of criminal justice play a more active role in reaching a decision on an accused person's guilt or innocence, as the law empowers them to pose all the questions to parties in a criminal matter before it and not the parties themselves, who take a passive role when it comes to cross-examination.

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<sup>103</sup> Cap. 206. R.E. 2002

<sup>104</sup> Jain, S.N & Jain. M.P., (2005). Principles of Administrative law, (4<sup>th</sup> ed) Nagpur, wadhwa and company at p. 225.

### 3.11.5 Right against Bias

This is another rule in the principles of natural justice after that of the right to be heard. It is the rule which provides that no man should be a judge in his own cause. This rule emanates from the fact that a judge is supposed to decide impartially the matter before him or them. Therefore, in order to be able to do so successfully he should have no interest in the subject matter in the subject matter of inquiry which would lead him to decide the matter in favour of one of the parties. The rule applies to all with duty to make decisions which affect others from the highest courts to those sitting in other tribunals.

In Ward tribunals this rule has been emphasized under section 16(2) (b)<sup>105</sup> the law which states to the effect that, the tribunal shall not make a decision on any compliant unless, any member of the tribunal having personal or financial interest in the matter has disclosed it and not taken part in the matter before it.

That means any member of the Ward tribunal who finds he has interest in the subject matter of the dispute should disqualify himself from the case. The interests described by the above section are personal and financial interest. Financial interest goes to pecuniary interest while personal interest extends to different relationships to members of the tribunal. These relationships are like close relationships, business, employer-employee and animosity relationships.<sup>106</sup> It has been said that if such relationship exists the likelihood of bias will be established.

This position has been amplified in *R v. Altrincham Justice exp, Pennington*<sup>107</sup> where prosecution for selling vegetables underweight to a local school was heard before a magistrate who was a member of the said authority's education committee. The decisions of the court were quashed in the essence that the same member acts in two different capacities under the same case. It is obvious the person will be biased to favour his interest.

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<sup>105</sup> Cap. 206. R.E 2002

<sup>106</sup> Peter, C.M. (1997). Human Rights in Tanzania, Selected Cases and Materials. Rudiger Koppe Verlag, Koln. at p. 428.

<sup>107</sup> (1975) Q.B.549

### 3.11.6 Sentencing

Ward Tribunals in criminal matters can sentence an offender to pay a fine, to pay compensation or to do some specific community work.<sup>108</sup>

An order of imprisonment imposed by Ward Tribunals shall have no force or effect unless endorsed by the primary court magistrate for the area in which the Tribunal is established.<sup>109</sup> The Tribunal after making an order for imprisonment shall present it to the primary court magistrate for endorsement.<sup>110</sup> The Primary Court Magistrate to whom the order is presented for endorsement, shall endorse the order without delay, unless he believes that, the Tribunal acted without Jurisdiction or in excess of its powers.<sup>111</sup>

If the Primary Court Magistrate is of the opinion that, the Tribunal has acted without jurisdiction or in excess of its powers, he shall exercise the power of revision.<sup>112</sup>

The endorsed order of imprisonment of the Ward Tribunal by the primary Court shall have the same effect as any sentence of imprisonment imposed by a Primary Court.<sup>113</sup> Although Ward Tribunals refer a convicted person to the primary court for endorsement of imprisonment hence, not committing a convict to prison itself, still Ward Tribunals perform the vital function of determining the offender's guilt without having any expertise in Criminal law whatsoever. The above provisions of the law are also silent as to whether a person convicted of a criminal offence before the Tribunal, is offered an opportunity to give any mitigating factors before any sentence is passed or meted out against him. Mitigation is of the utmost importance in any criminal proceedings, as it provides an accused person the chance to state factors, if found reasonable by the adjudicating body will result to a reduced sentence or being discharged absolutely.

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<sup>108</sup> Section 17(c)(e) and (f) of Cap. 206. R.E 2002

<sup>109</sup> Ibid, Section 19(2)

<sup>110</sup> Ibid, Section 19(3)

<sup>111</sup> Ibid, Section 19(4)

<sup>112</sup> Section 19 (5) of Cap. 206. R.E. 2002.

<sup>113</sup> Ibid, section 19(6)

Therefore, the absence of a provision in the law clearly providing for mitigation before sentencing of a person charged with an offence before a Ward Tribunal, can result into an accused being harshly sentenced.

### **3.12. Conclusion**

In this chapter we have seen the law regulating Ward Tribunals in dispensation of criminal justice in mainland Tanzania. We have seen the jurisdiction of Ward Tribunals in criminal matters, which is very similar to the criminal jurisdiction of primary courts, who are staffed with qualified personnel, in the field of law while, ward tribunals are not.

We have seen how a criminal complaint is received before Ward Tribunals, whereby the law establishing Ward Tribunals, does not provide for a prescribed, uniform manner of drafting a criminal complaint, to be lodged before the ward tribunal. The law regulating Ward Tribunals in criminal matters fails, to offer redress to a complaint in the event, the person he has lodged a criminal complaint against, fail to appear before the tribunal to answer to the complaint.

We have also seen in this chapter, the law regulating dispensation of criminal justice in Ward Tribunals, does not provide for the procedure on how documentary evidence is admitted hence, even doctored documents or statements, can be admitted before the Ward Tribunal to secure a conviction.

The law regulating dispensation of criminal justice in Ward Tribunals, also fails to offer to the parties in dispute, the right to cross examine each other, which is very useful to ascertain the truthfulness of a witness' testimony.

The law also fails to provide, the right for an accused person to state any mitigating factors, before sentenced is passed against him. Mitigation is of utmost importance, as it may result to a reduced sentence.

It can, therefore, be said that the law regulating the dispensation of criminal justice in Ward Tribunals does not provide for just procedures expected of a good criminal justice system, for purposes of enabling the Ward Tribunals to properly perform the function of dispensation of criminal justice.

**CHAPTER FOUR**  
**VIABILITY OF WARD TRIBUNALS IN DISPENSATION OF CRIMINAL**  
**JUSTICE: A SURVEY OF BUKOBA DISTRICT**

**4.0 Introduction**

The previous chapter covered the law regulating Ward Tribunals in dispensation of criminal justice. The chapter revealed that, the law fails to provide for just and adequate procedures for Ward Tribunals to properly discharge its function of dispensing criminal justice.

This chapter presents and analyses the research findings on the viability of Ward Tribunals in dispensation of criminal justice, using field data collected from seven selected Ward Tribunals in Bukoba District in Kagera Region. As already stated in chapter one of the study, the said data was collected from various social groups in the study district including members of the Ward Tribunals, ordinary citizens (who are stakeholders of the Ward Tribunals), advocates practicing criminal law and magistrates presiding in primary courts.

**4.1 Presentation and Analysis of Findings**

**4.1.1 Competence of Ward Tribunals in Criminal Justice**

The first hypothesis guiding this study was that, Ward Tribunals are incompetent to administer criminal justice. In order to test this hypothesis the researcher posed a question intended to solicit respondents' opinion on whether the members of Ward Tribunals are competent or not to administer criminal justice. A total of 21 respondents who were ordinary citizens responded to the question, on whether or not members of Ward Tribunals have knowledge on criminal law.

The data collected shows that 16 respondents who are ordinary citizens which, is 76.2% confirmed that members of Ward Tribunals do not possess sufficient knowledge of criminal law. While 5 respondents which are 23.8% said yes they possessed the necessary knowledge. Therefore the above data suggests that, members of Ward Tribunals do not possess sufficient knowledge of criminal law hence, incompetent to administer criminal justice.

The Researcher collected data from 35 respondents who are members of a total of seven Ward Tribunals which are Kashai, Nshambya, Buhandangabo, Nyakato, Katoma, Karabagaine and Maruku Ward Tribunals located within Bukoba District and the researcher wanted to know from these respondents if they had gone through any formal training to equip them in their endeavor to dispense criminal justice.

The data collected from these respondents show that, 22 respondents which represents 62.8% of members of Ward Tribunals never went through any formal training in criminal law, while 13 respondents which is 37.1% had undergone training in criminal law. It is apparent from the above that, the majority of the members of the Ward Tribunals selected by the Researcher lack the necessary training to deal with criminal matters despite the law conferring upon them criminal jurisdiction.

The Researcher interviewed the above respondents, while responding to the same question the respondents told the Researcher that since their appointment they have never received any training whatsoever neither on criminal, civil nor on land matters, they said their lack of training diminishes their capability of administering quality justice.

One respondent went further, when he told the Researcher that he was not even aware that Ward Tribunals had jurisdiction to entertain criminal matters hence, under scoring the lack of training of members of Ward Tribunals in relation to dispensation of criminal matters. If the Secretary of a Ward Tribunal has no formal training on how to dispense criminal justice, taking into account he plays such a vital role in justice administration in Ward Tribunals, then the other members will be just as ignorant, in regards to criminal justice delivery.

Section 26 of the Ward Tribunal Act<sup>114</sup> empowers the Minister responsible for local government to provide members of Ward Tribunals with training. The section provides that, the minister shall in cooperation with any other ministry or department formulate suitable programmes, schemes and seminars for information and education of the public and members of the tribunals on methods of performing the functions of the tribunals.

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<sup>114</sup> Cap. 206. R.E 2002

From the wording of the above provision, the Minister responsible for local government has a mandatory obligation to ensure that members of Ward Tribunals are provided with the necessary training to enable them to, including other functions dispense criminal justice efficiently and just. Gathering from the above findings, it is apparent that the Minister concerned has not fulfilled his obligations provided for under the law, as most of the respondents who were members of Ward Tribunals have never received any training or seminar to equip them, with the necessary know how on how to administer criminal justice.

The Researcher also posed the same question via questionnaires to respondents who were five magistrates presiding in primary courts, within Bukoba district from Bukoba Primary Court, Katoma Primary Court and Kolekero Primary Court, seeking for their opinion as to whether Ward Tribunals are incompetent to administer criminal justice.

The data collected from these respondents show all 5 Respondents 100% said members of Ward Tribunals do not possess sufficient knowledge in criminal law hence, approving the Researchers hypothesis that Ward Tribunals are incompetent to administer criminal justice. While being interviewed by the Researcher, one respondent said in most proceedings before Ward Tribunals in relation to criminal matters, fail to show that the principles of natural justice are observed, that the proceedings do not show whether the parties in a criminal matter, the accused in particular was afforded the right to be heard. The respondent told the Researcher that, members of Ward Tribunals lacked sufficient knowledge in criminal law therefore, making them incompetent to dispense criminal justice.

To illustrate the fact that members of ward tribunals are incompetent to administer criminal justice, the Researcher was able to obtain several decisions from the District Land and Housing Tribunal for Kagera region, which point out that ward tribunals fail to draw a distinction between a criminal matter and a civil matter in relation to land.

In the first case<sup>115</sup> before the above mentioned DLHT, an appeal arising from Katerero Ward Tribunal located in Bukoba district, whereby the Appellant before the Ward Tribunal was convicted on the offence of criminal trespass while the matter before the Tribunal was a civil matter in relation to ownership of land. Advocate J.S Rweyemamu representing the Appellant before the Appellate District Land Tribunal in his written submission in support of the appeal, referred the Tribunal to the case of *Sylvester Nkangaa v. Raphael Albertho*<sup>116</sup> whereby Mwalusanya, J (as he then was) held among other things that, a charge of criminal trespass cannot succeed where the matter involves land, in which ownership is in dispute. The High Court held, a criminal court is not the proper forum for determining ownership of land.

The Appellate District Land Tribunal upheld the appeal, holding the Trial Ward Tribunal erred in treating the matter before it as a criminal matter, while the matter was instituted as a civil matter in relation to ownership of land.

In another case<sup>117</sup> before the DLHT, arising from Gera Ward Tribunal, whereby the Appellant was convicted before the Ward Tribunal in a dispute over ownership of land, and sentenced to pay a Tshs. 25,000 or serve a six month prison sentence. Advocate J.S. Rweyemamu again appearing for the Appellant argued in his written submission that, the Trial Ward Tribunal held the Appellant committed an offence of theft, hence stealing the property in dispute. Advocate stated that was a mess! Failing to comprehend as to how immovable property can be stolen, stating that anything capable of being stolen must be movable property with value.

The Appellate DLHT, in its judgment held that the matter before the Trial Ward Tribunal was a civil case, but in the end the Ward Tribunal decided the case as a criminal case by meting out a fine of Tshs. 25,000 or six months imprisonment. The Appellate Tribunal held the issue of land ownership cannot be determined in a criminal case hence, quashing the proceedings and decision of the Trial Ward Tribunal.

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<sup>115</sup> Appeal no 54 of 2013

<sup>116</sup> [1992] T.L.R 110

<sup>117</sup> Appeal no. 138 of 2014

Also in another case<sup>118</sup> before the said DLHT, arising from Kimuli Ward Tribunal the Appellants were convicted and sentenced to pay a hefty fine of Tshs. 150,000 each for uprooting of land boundaries and encroachment of land in a civil suit in relation to a land dispute. The Appellate District Land Tribunal held, in its judgment that the case before the Trial Ward Tribunal was filed as a criminal case while, tried as a civil case hence, the matter was wrongly instituted and quashed the entire proceedings and judgment of the Ward Tribunal holding, that the Trial Ward Tribunal failed miserably to address the issue before it when it treated the matter as a criminal case instead of a civil case.

In the last case<sup>119</sup> before the afore mentioned DLHT, arising from Lubafu Ward Tribunal, Advocate Nathan Alex representing the Appellant argued in his written submission, that astonishingly, the trial Ward Tribunal at the end decided the case as criminal trespass and destruction of property and thereby convicted the Appellant. Advocate for the Appellant quoted the last page of the trial Ward Tribunal's judgment which read. "*Baraza linato amri kulingana na kifungu cha Kanuniya Adhabu Sura ya 16 Mlalamikiwa anaonekana na hatia ya kuharibu mazao ndani yashamba ya mlalamikaji...*" loosely translated to mean, the Tribunal orders in light of a provision in the Penal Code Cap 16 that, the accused is found guilty of, destroying crops inside the complainant's land.

Advocate for the Appellant argued that, the trial Ward Tribunal erred in law and fact for it being seated with civil jurisdiction to decide the case as criminal trespass and destruction of property and convict the Appellant. The Appellate District Land Tribunal upheld the appeal holding that, the trial Ward Tribunal erred in treating a civil matter as a criminal matter.

It is crystal clear from the above cases that, Ward Tribunals are hopelessly incompetent to dispense criminal justice this is due, to their lack of training in criminal law. From these cases, we can see members of Ward Tribunals failing to comprehend the difference between a matter of a criminal nature to that of a civil nature, imposing criminal sanctions in civil land related matters therefore, causing anguish and injustice to parties appearing before them. It can also be seen from these cases that, members of Ward Tribunals impose

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<sup>118</sup> Appeal no. 219 of 2012

<sup>119</sup> Appeal no. 228 of 2012

finances well above their sentencing jurisdiction, fines ranging from Tshs. 25,000 up to Tshs. 150,000 causing hardship to parties in disputes before them, taking into account that Ward Tribunals serve mostly people who have limited economic means.

The above cases have therefore approved the Researcher's hypothesis, that Ward Tribunals are incompetent to administer criminal justice, due to their lack of legal qualification and training, which is a stumbling block in the strive to dispensation of quality criminal justice.

#### **4.1.2. Qualifications of Members of Ward Tribunals**

Out of the 35 members questioned by the Researcher, 23 members possessed primary school level education, the rest failed to complete primary education. Section 5 (1)<sup>120</sup> exempts a legally qualified person to be nominated as a member of tribunal.

One Advocate practicing law within Bukoba District told the researcher that, at least the secretary of the Tribunal should have legal knowledge for proper keeping of records and to provide guidance to the other members especially where principles of natural justice are involved and interpretation of the laws itself. A decision made by a non legally qualified member of the tribunal in dispensing criminal justice, can cause a great miscarriage of justice hence members should be qualified in the field of law. Section 5 (2) of the Act also does not give specific qualifications of the secretary, the section should provide for a qualified secretary who shall be well conversant with the laws and the legal procedure.

This was also echoed by a Primary Court Magistrate at Bukoba Primary Court who told the Researcher that the Act does not provide that members of Ward Tribunals should possess any formal education hence, doubting their ability to administer criminal justice, because criminal justice requires legal knowledge. The respondent also insisted that the Secretary of the Ward Tribunal should at least hold a certificate in law and train the other members of the Ward Tribunal on the ABCs of criminal law.

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<sup>120</sup> Cap. 206 R.E. 2002

A notable weakness as far as qualification of members of Ward Tribunals is concerned is that the above qualifications do not indicate that, for one to be a member of the Ward Tribunal, he or she should at least be literate. Only the secretary of the Tribunal is required to be literate. This means that even illiterate persons are eligible for membership of Ward Tribunals. This deficiency is one of the factors that render Ward Tribunals to be inefficient and ineffective in dispensing criminal justice at the community level.

This problem of having illiterate persons as members of Ward Tribunals also leads to many decisions of Ward Tribunals to be incorrect as far as matters of procedure and the law applicable are concerned, like as seen earlier in this chapter in the cases before the District Land and Housing Tribunal for Kagera region, appeals arising from different Ward Tribunals within Bukoba district, the decisions before those Ward Tribunals were quashed on appeal for being incorrect as far as the laws applicable were concerned. Members of those Ward Tribunals failed to draw a distinction between matters of a criminal nature and matters of a civil nature. And also one conviction was secured without citing under what provision of the law the accused was found guilty of. The Ward Tribunals in question also imposed fines well above their sentencing jurisdiction, failing to take into account the law applicable governing Ward Tribunals sentencing jurisdiction.

The root cause of the above, is that a legal qualified person does not qualify to be a member of the Ward Tribunal despite the fact that, on determining especially criminal matters some legal issues need to be determined and laypersons are not well placed to do so. The jurisdiction vested in Ward Tribunals requires them to be manned by legally qualified personnel.

#### **4.1.3. Dispensation of Criminal Justice by Ward Tribunals and Their Relevance**

The second hypothesis guiding this study was that, dispensation of criminal justice before Ward Tribunals is not relevant. In order to test this hypothesis the researcher posed a question intended to solicit respondents' opinion on whether or not dispensation of criminal justice before Ward Tribunals is relevant. The number of respondents in this question was 30. The respondents consisted of magistrates, advocates and ordinary citizens.

Out of the above 30 Respondents 24 (80%) of the respondents agreed with the statement that, dispensation of criminal justice before Ward Tribunals is not relevant while only 6 respondents (20%) disagreed with the said statement. On the basis of the above findings it is clear to see that, Ward Tribunals' dispensation of criminal justice is no longer relevant.

Three out of the four respondents, who are advocates practicing criminal law, agreed that dispensation of criminal justice in Ward Tribunals is not relevant while only one said that it is relevant. The Advocates agreeing with this hypothesis in questionnaires supplied to them by the researcher, stated further that members of Ward Tribunals possess no knowledge of criminal law or its procedures. One of the advocates went further to state that, dispensation of criminal justice in Ward Tribunals is not relevant because criminal justice is well administered in Primary Courts and that, Ward Tribunals are now more<sup>121</sup> focused on settling land disputes. He contended that the Ward Tribunals established in 1985 basically do not exist and have been replaced by Ward Tribunals dealing with land matters. Hence, he stated the law conferring Ward Tribunals with criminal jurisdiction is defunct only existing in the statute book.

From the above discussion it is evident that, the criminal jurisdiction conferred upon Ward Tribunals does not hold any significance. Hence, there is need for reform that, the Ward Tribunal Act which gives the tribunal the power to dispense criminal justice ought to be repealed.

The members of Karabagine Ward Tribunal when interviewed by the Researcher stated that, they do not receive and entertain any criminal matter when brought before them. They said any criminal complaint brought before them, they refer the complainant to Karabagine Primary Court insisting that criminal matters are for the courts to deal with, that they only adjudicate upon land matters. Their response is a clear indication that they do not see any relevance in Ward Tribunals having jurisdiction to dispense criminal justice.

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<sup>121</sup> Land disputes Court Act Cap. 216 R.E. 2002.

Members of the remaining six Ward Tribunals, when interviewed by the Researcher failed to respond to the question as to whether there is a need for Ward Tribunals to continue to dispense criminal justice.

One Resident Magistrate presiding in Bukoba Primary Court when interviewed by the Researcher said that the Judiciary is now employing Resident Magistrates who are holders of Law degrees like herself and stationing them in primary courts located within most wards across Tanzania mainland. Therefore, she said primary courts are now capable and qualified to dispense criminal justice and the dispensation of criminal justice before Ward Tribunals is not relevant. She recommended that, the law empowering Ward Tribunals to entertain Criminal justice be scrapped from the statute books and that Ward Tribunals should only be left with the jurisdiction to adjudicate on land matters.

Some respondents who were ordinary citizens interviewed by the Researcher stated that, primary courts are better suited to dispense criminal justice than Ward Tribunals as they are the courts closer to the people at the grassroots level and are staffed with legal qualified personnel, fully capable to dispense criminal justice efficiently than Ward Tribunals therefore, stating that dispensation of criminal justice before Ward Tribunals is not relevant hence, approving the Research hypothesis.

The researcher also by observation, observed that out of the seven Ward Tribunals visited by the Researcher only three of them actually adjudicate upon criminal matters, them being Kashai, Nshambiya and Kolekero Ward Tribunals and the common offence they adjudicate upon is criminal trespass due to the nature of the offence being closely tied or related to land disputes, disputes which are now the focal point of Ward Tribunals dispensation of justice. The other remaining four Ward Tribunals visited by the Researcher do not entertain criminal matters at all; they adjudicate exclusively on land disputes and sit as marriage reconciliation boards approving this hypothesis that, dispensation of criminal justice before Ward Tribunals is not relevant.

#### **4.1.4. Penalties by Ward Tribunals**

The penalties imposed by Ward Tribunals in criminal matters, as indicated in the schedule to the Ward Tribunals Act,<sup>122</sup> are undoubtedly in the very low side. For easy reference on the said penalties, see Appendix V.

The said penalties are almost outdated compared to the gravity of the offence and thus unlikely to offer adequate redress to victims of criminal offences and have little, if any, deterrent effect on criminals and society as a whole.

This is generally in line with the findings of this study that dispensation of criminal justice by ward tribunals has lost its relevance.

Commenting on imposition of penalties by Ward Tribunals, members of Buhendangabo and Kashai Ward Tribunals within Bukoba District strongly lamented that, “the Ward Tribunals Act imposed fines which are too low hence, not correlating with the sentences offered”. For example, the offence of abduction of girls under 16 years<sup>123</sup>, imposes a sentence of a maximum fine of Tsh. 1000 or two years imprisonment. Taking into consideration of the current economic climate, the fine of Tsh. 1000 cannot make criminals of such an offence feel the severity of the punishment and such a low fine adds insult to injury to the victim of the crime. Since the penalties issued to the offender is in alternative of either fine or imprisonment, then it will be easy for the convicted person to pay the fine, without feeling the pinch, due to the fact that the amount is easily affordable, as compared to being sentenced to serve a two year prison sentence.

As we saw in this chapter, some Ward Tribunals impose fines way exceeding the fines stipulated under the above law. Fines of up to Tshs. 150,000. Perhaps members of Ward Tribunals impose excessive fines in order to do justice to the parties appearing before them, because as seen above a fine of Tshs. 1000 fails to offer any punitive sanction and justice to an injured complainant, as a result of the crime committed against him by an accused person.

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<sup>122</sup> Schedule to the Ward Tribunals Act, Cap. 206. R.E. 2002

<sup>123</sup> Ibid

Therefore, due to the lack of sufficient fines imposed by the law the respondents advocated for repealing of the said law which will reflect with the current economic and social situation.

#### **4.1.5. Criminal Jurisdiction of Ward Tribunals and the Doctrine of Separation of Powers**

Basing on the third hypothesis of this study, the Researcher wanted to know whether Ward Tribunals in dispensing criminal justice violate the doctrine of separation of powers. The number of respondents in this question was 65. The respondents consisted of members of Ward Tribunals, magistrates, advocates and ordinary citizens.

In this hypothesis, out of 65 Respondents, 35 (53.8%) who were tested on this hypothesis agreed with the statement that, Ward Tribunals in dispensing criminal justice violate the doctrine of separation of powers while 30 respondents (46.1%) did not agree with the statement.

The margin between those who agreed with the statement and those who did not from the above data was close however, the slim majority approved the Research hypothesis when they responded in the affirmative to the question posed to them that, Ward Tribunals in dispensing criminal justice are exercising the core function of ordinary courts of law hence, violating the doctrine of separation of powers.

One advocate when interviewed by the Researcher said Ward Tribunals in adjudicating on land matters do not violate the doctrine of separation of powers, as the subordinate courts no longer exercise the function of adjudication of land matters. But he said that Ward Tribunals do violate the doctrine of separation of power in their dispensation of criminal justice, as criminal justice is a function already being exercised by subordinate courts and in particular primary courts, which have a similar criminal jurisdiction to that of Ward Tribunals.

Most government systems in the world are governed by three main organs of institutions, the executive which has the power to execute and enforce rules of law, the legislature which enacts the law and the judiciary which interprets the law. These three organs of government have been entrusted by most Constitutions in the world to perform different functions.

The Judiciary as one of those organs has been vested with adjudicative functions. In Tanzania the judiciary has been given this adjudicative function as having been vested as the authority with final decision in dispensation of Justice.<sup>124</sup>

Ward Tribunals which are under the executive organ of the government, perform adjudicative functions such as dispensing criminal justice, which according to the doctrine of separation of powers is supposed to be exercised by the judiciary. This is viewed as an abrogation of the doctrine of separation of powers, since each organ of government must, perform only those functions which it has been given by law and no more.

The principle of separation of powers states that, “in every state there are three sorts of power, the legislative (making of laws), the executive (or administrative) (the carrying out of laws) and the judicial (the interpretation and application of the laws in particular disputes).<sup>125</sup> The principle requires that, the said three functions should be kept distinct (in the hands of separate institutions) and be exercised by separate persons. The idea here is to avoid concentrating all governmental powers in the same hand, as such would create a room for their abuse.<sup>126</sup>

Historically, it was Montesquieu (a French jurist) who was the first among political philosophers to see the need and importance of separating governmental powers, and to keep those powers into three distinct institutions of the government.<sup>127</sup>

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<sup>124</sup> The Constitution of the United of Republic of Tanzania, 1977 Cap 2. (R.E. 2002) Article 107 A (1)

<sup>125</sup> Foulkes, D. (1995). *Administrative Law*, 8<sup>th</sup> Edn. London: Butterworths. p. 41

<sup>126</sup> Mushi, E.G.(2014). *Administrative Law of Tanzania*, Morogoro, Mzumbe University. p. 27

<sup>127</sup> *Ibid* p. 28

Montesquieu defined the doctrine of separation of powers to mean:-

- i. That the same person should not form part of more than one of the three organs of government
- ii. That one organ of government should not control or interfere with the work of another
- iii. That one organ of government should not exercise the functions of another

Montesquieu propounded that, if there is concentration of executive, legislative and judicial powers in one body, there will be no liberty. If these powers are united in one person or institution there will be no liberty.

The principle of separation of powers is clearly visible in the United States constitution.<sup>128</sup> The provisions of their constitution stand out as evidence. Article 1 provides, all legislative powers shall be vested in Congress. Article II all executive powers shall be vested in the President. Article III all judicial powers shall be vested in the Supreme Court.

From the above a clear inference can be drawn, that Ward Tribunals in dispensing criminal justice are performing a function entrusted with the judiciary, taking into account they are formed under the administration or executive arm of government. However, there is no country in the world in which the doctrine of separation of powers is applied absolutely. There are not always clear dividing lines between executive, legislative and judicial functions jurists have wasted oceans of ink and mountains of paper in trying to define those terms precisely and in a modern state there must be great deal of co-operation and interaction between the executive and the legislature, in particular, if the state's business is to be efficiently conducted.

In modern countries, therefore, there is always some overlapping of functions. For example: Legislation has become so far-reaching and complex that Parliament cannot enact all of it. Acts of parliament must leave details to be filled in by regulations made by other authorities, usually Ministers. Hence the Executive branch must be given some law-making powers.

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<sup>128</sup> 1787

At present all subsidiary legislation must be laid before parliament, but parliament has no power to repeal it. It would be closer to the ideal of separation of powers if parliament did have such a power.

The role of government has expanded vastly that many decisions which affect people's lives must be made quickly and some of these decisions require specialized knowledge which is not possessed by judges or magistrates.

Many of these decisions are made by administrative tribunals established by and answerable to Ministers, hence the Executive branch of government is increasingly given judicial powers. This is not necessarily undesirable, so long as the tribunal obey the basic standards of fairness laid down by the law and so long as the courts are able to review their decisions.

It is generally recognized that in a legal system such as ours, judges do not just interpret the law, they develop and adapt the law to take into account of changing circumstances, and in that way they actually make law. It can therefore be said the judicial branch has some law-making or legislative powers, but this power should not go beyond refining and developing existing law.

In principle, the executive should not resolve legal disputes between individuals and the judiciary should not execute the laws. In many instances the doctrine of separation of power is the fountain of the independence of the judiciary. Independence requires that the judges should be impartial in the sense that requires absence of interference at an institutional level and at the level of decision-making by each judge.

However, upon looking at the above discussed limitations of the doctrine of separation of power, Ward Tribunals as administrative tribunals, in dispensing criminal justice do not fall under any of the limitations, as they do not possess any specialized skill in criminal law, judges and magistrate do nor are they capable of dispensing quality and speedy justice in criminal matters before them.

Ward Tribunals in dispensing criminal justice exercise a function reserved for the judicial branch of government hence, an abrogation of the doctrine of separation of powers.

Although primary courts under the principle of checks and balance, check the powers of Ward Tribunals in relation to their adjudication of criminal matters under their supervisory powers of revision and appeal, there is really no justification for Ward Tribunals to exercise this judicial function, it has only created a duplicity of functions between Ward Tribunals and primary courts hence, overburdening primary courts who have the double task of adjudicating on both criminal and civil matters and acting as a supervisory body over Ward Tribunals exercise of their criminal jurisdiction, the very same criminal jurisdiction conferred upon primary courts.

It has been said however. The fact of establishing Tribunals such as Ward Tribunals and assigning them functions does not by itself constitute violation of the doctrine of separation of powers. The extent of the powers given to them and the authority which has the final say on what they are assigned to do are all important matters to be considered in determining whether the doctrine of separation of power has been violated or not.<sup>129</sup>

As we saw in chapter three, when making a comparative analysis of Ward Tribunals criminal jurisdiction and that of primary courts we saw that both organs' criminal jurisdiction is quite similar. Hence, the extent of powers with regard to the dispensation of criminal justice between Ward Tribunals and Primary Courts are similar, a fact that has to be considered as an abrogation of the doctrine of separation of powers. This is because Ward Tribunals in dispensing criminal justice are exercising a function already vested in Primary Courts.

The government by creating ward Tribunals to dispense criminal justice was committing a constitutional misbehavior which must never have been committed unless it is a matter of absolute necessity for the democratic system to survive.

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<sup>129</sup> Mushi, E.G. (2009). *Judicial Review and the Changing Trends In Public Administration. An Assessment of the High Court Response in Mainland Tanzania*. Unpublished Ph.D Dissertation, Mzumbe University.

However, in view of the Researcher findings criminal justice does not fall within the parameters of the limitations of the doctrine of separation of powers as members of Ward Tribunals do not possess any specialized knowledge in criminal law to quickly decide criminal matters, that knowledge is possessed by judges and magistrates in exercising their judicial function of dispensing criminal justice. Although Primary Courts check the powers of Ward Tribunals in their dispensation of criminal justice, as they have provisional jurisdiction over Ward Tribunals in criminal matters only,<sup>130</sup> the data collected by the researcher shows that Ward Tribunals are ill equipped to dispense criminal justice and that, Ward Tribunals in dispensing criminal justice are already performing the functions of Primary Courts. Hence, this duplicity of functions to check the powers of Ward Tribunals in their dispensation of criminal justice is no longer viable.

There is therefore, a need for reform that will ouster Ward Tribunals jurisdiction to dispense criminal justice.

#### **4.2. Conclusion**

Before doing this research, the Researcher had formed three hypotheses. The collected data in this chapter shows that the three hypotheses are true. Therefore, it is the finding of this research that Ward Tribunals are not viable to dispense criminal justice hence, there is a need for law reform to rid Ward Tribunals of the jurisdiction to entertain criminal matters.

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<sup>130</sup> Section 21 of Cap. 206 R.E. 2002

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATION**

#### **5.0 Introduction**

This chapter provides a conclusion and recommendation basing on the research findings. The conclusion herein is based on the data collected and the analysis done followed by recommendation as per the approved hypotheses, approved in the affirmative and see whether the objectives of this research have been met.

The recommendation will basically aim to bring about law reform as the approved hypotheses have proved Ward Tribunals are no longer viable in administering criminal justice. Here under is the conclusion and recommendation of the research.

#### **5.1. Conclusion**

The objectives of this study were three, the first was to examine the viability of Ward Tribunal's dispensation of criminal justice, in tandem with the first hypothesis which is Ward Tribunals are incompetent to administer criminal justice whereby, the findings of this research have revealed that, Ward Tribunals are staffed with incompetent personnel made up of laymen ill equipped to dispense criminal justice.

Also the cases obtained from the District Land and Housing Tribunal for Kagera region revealed that, members of Ward Tribunals fail to draw a distinction between cases of a criminal nature and cases of a civil nature. Members of Ward Tribunals entertain civil matters in relation to land as if they were criminal cases and therefore, impose criminal sanctions to the detriment of parties in matters before them. The cases also showed that, the sentences meted out by those Ward Tribunals were far too excessive, in regards to fines imposed which exceeded their sentencing jurisdiction permitted by law. One of the cases showed that members of the Ward Tribunals have no knowledge on what constitutes the offence of theft declaring that, a party to a land matter before it stole the complainant's land, while under criminal law only immovable property is capable of being stolen. Hence, these cases highlight Ward Tribunals deficiencies in dispensing criminal justice and their incompetence in that regard.

The researcher also wanted to examine whether Ward Tribunal's dispensation of criminal justice is relevant, in which 80% of the respondents proved that Ward Tribunals dispensation of criminal justice was no longer relevant.

The last objective was to point out how Ward Tribunals in dispensing criminal justice abrogate the doctrine of separation of power, whereby the research findings, from the response of respondents, magistrates and Advocates in particular proved that Ward Tribunals in dispensing criminal justice were exercising a function already being performed by the ordinary courts of law, hence, causing duplicity of functions between them.

In order to achieve the objectives of this study the researcher had formulated three statements of hypotheses. The first was that Ward Tribunals are incompetent to administer criminal justice; this hypothesis was approved by three categories of respondents, ordinary citizens, members of Ward Tribunals and magistrates presiding in Primary Courts, whereby the first category of respondents 76.2% of the respondent proved this statement to be true, 62.8% of the second category of respondents proved the first hypotheses to be true and 100% of the third category of respondents proved the first hypothesis to be true.

The second hypothesis was that, dispensation of criminal justice before Ward Tribunals is not relevant in which 80% of the respondents supported this statement. The last statement of hypothesis was that Ward Tribunals in dispensing criminal justice violate the doctrine of separation of power in which 53.8% of the Respondents supported it.

In conclusion the findings of this research reveal that Ward Tribunals are incompetent to administer criminal justice and that dispensation of criminal justice before Ward Tribunals is not viable.

## **5.2. Recommendation**

The function of Ward Tribunals in dispensing criminal justice is in fact a duplication of the function of the Primary Courts, albeit at a lower level, standard and jurisdiction. Ward Tribunals dispense criminal justice without possessing any legal qualification or training hence, the need to have their decisions confirmed by the Primary Court. The work done by Ward Tribunals in dispensing criminal justice amounts to duplication, this process is in fact time wasting, expensive and in most cases wastage of resources.

It is recommended that, the Government should amend the Ward Tribunals Act with a view to removing criminal jurisdiction of the Ward Tribunal and vest in it only the jurisdiction to entertain land disputes, small civil disputes and to function as a marriage conciliation board.

This is because primary courts are now staffed with competent legal qualified personnel, holders of law degrees, capable of dispensing criminal justice.

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**APPENDECIES**

**APPENDIX 1: QUESTIONNAIRE TO ADVOCATES PRACTICING CRIMINAL  
LAW WITHIN BUKOBA DISTRICT**

These questions have been prepared by a master of laws student at Mzumbe University with the aim of collecting information to know the viability of ward tribunals dispensation of criminal justice.

1. Name of advocate .....
2. Do you practice criminal law  
Yes .....No.....
3. Are the decisions rendered by ward tribunals in criminal cases in accordance with the principles of criminal law?.  
Yes .....No.....
4. Is the dispensation of criminal justice before ward tribunals still relevant?  
Yes .....No.....  
Please briefly explain your answer to the question above  
.....  
.....
5. Do ward tribunals in dispensing criminal justice exercise a function of ordinary courts of law?  
Yes..... No.....

Thank you for your cooperation

**APPENDIX II: QUESTIONNAIRE TO MAGISTRATES PRESIDING IN  
PRIMARY COURTS**

These questions have been prepared by a masters of laws student at Mzumbe University with the aim of collecting information to know the viability of ward tribunals dispensation of criminal justice.

1. Name of magistrate
2. Do members of ward tribunals possess the necessary knowledge in criminal law  
Yes..... No .....
3. Are the decisions rendered by ward tribunals in accordance with the principles of criminal law?  
Yes..... No.....
4. Is the dispensation of criminal justice before ward tribunals still relevant?  
Yes..... No.....  
Please briefly explain your answer to the question above  
.....  
.....
5. Do ward tribunals in dispensing criminal justice exercise a function of ordinary courts of law?  
Yes..... No.....

Thank you for your cooperation

**APPENDIX III: QUESTIONNAIRE TO MEMBERS OF WARD TRIBUNALS  
WITHIN BUKOBA DISTRICT**

Maswali haya yameandaliwa na mwanafunzi wa shahada ya uzamili wa sheria katika Chuo Kikuu Mzumbe ili kupata taarifa zinazoweza kusaidia kufahamu kama utoaji wa

haki jinai mbele ya mabaraza ya kata unaridhisha na pia kufahamu kama kuna umuhimu wa haki jinai kutolewa na mabalaza ya kata Tanzania Bara.

**SEHEMU A: DODOSO LA WAJUMBE WA BARAZA LA KATA WILAYA YA BUKOBA**

Tafadhali toa taarifa sahihi kwa kadri ya uelewa wako.

Baraza la kata .....

Katika halmsahuri ya .....

(wilaya/manispaa/Bukoba.....wilaya ya .....

1. Jina lako .....
2. Taja nafasi yako katika baraza ni .....( mwenyekiti, katibu au mjumbe)
3. Je una kiwango gani cha elimu?.....
4. Kama jibu la swali la 4 ni hapana, je kutopewa mafunzo kuhusu sheria jinai unakwamisha utoaji haki jinai mbele ya mabaraza ya kata ndio ..... hapana .....
5. Je unajua faida za baraza la kata kutoa haki jinai?  
Ndio ..... Hapana .....  
Kama jibu la hapo juu ni ndio zitaje faida hizo.
  - i. ....
  - ii. ....
6. Je unadhani baraza la kata katika utoaji wa haki jinai inaingilia jukumu la msingi la mahakama?  
Ndio .....Hapana.....

Asante sana kwa ushirikiano

**APPENDIX VI: QUESTIONNAIRE TO ORDINARY CITIZENS/  
STAKEHOLDERS OF WARD TRIBUNALS WITHIN BUKOBA DISTRICT.**

Maswali haya yameandaliwa na mwanafunzi wa shahada ya uzamili wa sheria katika Chuo Kikuu Mzumbe ili kupata taarifa zinazoweza kusaidia kufahamu kama utoaji wa haki jinai mbele ya mabaraza ya kata unaridhisha na pia kufahamu kama kuna umuhimu wa haki jinai kutolewa na mabalaza ya kata Tanzania Bara

Tafadhali toa taarifa sahihi kwa kadri ya uelewa wako

Baraza la Kata ..... katika halmashauri ya ..... (Wilaya/ Manispaa) Wilaya ya .....

1. Jina lako ni .....
2. Taja nafasi yako katika baraza ni ( mshitaki/malalamikaji/mshtakiwa/mdau tu)
3. Je unadhani wajumbe wa kata wana uelewa wa kutosha kuhusu sheria ya jinai  
Ndio ..... Hapana
4. Je unaridhika na namna mabaraza ya kata yanavyotoa haki jinai?  
Ndio ..... Hapana .....
5. Je unadhani kunahaja ya baraza la Kata kuendelea kutoa haki jinai?  
Ndio..... Hapana.....
6. Je unadhani baraza la kata katika utoaji wa haki jinai inaingilia jukumu la msingi la mahakama?  
Ndio..... Hapana .....

Ahsante sana kwa ushirikiano

**APPENDIX V: PENALTIES IMPOSED BY WARD TRIBUNALS UNDER THE  
PENAL CODE**

<b>Offence</b>	<b>Section</b>	<b>Maximum penalty</b>
Going armed in public	s.84	Fine shs 500 or 2 years in prison
Forcible detainer	s.86	Fine shs 800 or 2 years in prison
Affray	s.87	Fine shs 500 or 6 months in prison
Challenge to fight a duel	s.88	Fine shs 800 or 2 years in prison
Using abusive language and brawling	s.89(1)	Fine shs 500 or 6 months in prison
Threatening with violence	s.89(2)	Fine shs 400 or 1 year in prison
Dissuading from participating In self -help scheme	s.89c	Fine shs 1000 or 6 months in prison
Disturbing religious assembly	s.126	Fine shs 1000 or 2 years in prison
Abduction of girls under 16 yrs	s.134	Fine shs 1000 or 2 years in prison
Insulting the modesty of a Woman	s.135(3)	Fine shs 800 or 1 year in prison
Desertion of children	s.166	Fine shs 1000 or 2 years in prison
Neglecting to provide food	s.167	Fine shs 400 or 2 years in prison
Idle and disorderly persons	s.176	Fine shs 500 or 3 months in prison
Wearing uniform without Authority	s.178(1)	Fine shs 200 or 1 month in prison
Bringing contempt on uniforms.178(1)		Fine shs 400 or 3 months in prison
Fouling water	s.185	Fine shs 2000 or 2 years in prison
Common assault	s.240	Fine shs 1000 or 1 year in prison
Omitting to take precaution against probable danger from any animal in his possession	s.233(d)	Fine shs 1500 or 2 years in prison
Attempting suicide	s.217	Fine shs 300 or 6 months in prison
Concealing the birth of a child	s.218	Fine shs 1000 or 2 years in prison
Other negligent acts causing harm not specified in s.233	s.234	Fine sh 1000 or 6 months in prison
Criminal trespass	s.299	Fine shs 800 or 1 year in prison

**APPENDIX VI: INTERVIEW GUIDE**

**PART A: Kwa wananchi wa kawaida**

1. Je , umewahi kushitakiwa katika baraza la kata ?
2. Je, umewahi kupeleka mashitaka katika baraza la kata?
3. Je unadhani kuna haja ya baraza la kata kuendelea kutoa haki jinai?
4. Je, unadhani baraza la kata katika utoaji haki jinai inaingilia jukumu la msingi la mahakama?.

**PART B: Kwa wajumbe wa baraza la kata**

1. Je umeshapata mafunzo yoyote kuhusia na na utoaji haki jinai?
2. Je unadhani kuna haja ya baraza la kata kuendelea kutoa haki jinai?
3. Je unadhani baraza ya kata katika utoaji haki jinai inaingilia jukumu la msingi la mahakama?
4. Je viwango vya faini sheria inayo ruhusu kutozwa na baraza la kata vinakidhi, katika utoaji haki jinai?

**PART C: To Magistrates presiding in primary courts**

1. Are decisions rendered before ward tribunals in accordance with the principles of criminal law and practice?
2. Is dispensation of criminal justice before ward tribunal still relevant?
3. Do ward tribunals in dispensing criminal justice exercise a function performed by courts of law?
4. Do members of ward tribunals possess knowledge in criminal law?

**PART D: To Advocates Practicing Criminal Law**

1. Are decisions rendered before ward tribunals in accordance with the principles of criminal law and practice?
2. Is dispensation of criminal justice before ward tribunal still relevant?
3. Do ward tribunals in dispensing criminal justice exercise a function performed by courts of law?
4. Do members of ward tribunals possess knowledge in criminal law?