

**MAL -ADMINISTRATION OF JUSTICE BY WARD TRIBUNALS IN
TANZANIA:
AN ASSESSMENT OF THEIR LEGAL SETUP**

By

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**A Dissertation Submitted in Partial fulfilment of the Requirements for the Award of
Degree of Master of Law 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 paper entitled **Mal -Administration of Justice by Ward Tribunals in Tanzania; An Assessment of Their Legal Setup**, in partial fulfillment of the requirement for the award of the degree of Masters in Law in Constitutional and Administrative Law (LL.M-CA) of Mzumbe University.

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DEDICATION

This work is dedicated to my lovely wife, *Alicia Audax* and my two lovely kids, *Alvin Nganyirwa Byabato* and *Adrian Mugizi Byabato*.

ABBREVIATIONS

A.G	Attorney General
CA	Court of Appeal
CAP	Chapter
CCM	Chama cha Mapinduzi
DLHT	District Land and Housing Tribunal
FY	Financial Year
HC	High Court
KB	Kings Bench
No.	Number
PCCB	Prevention and Combating of Corruption Bureau
R.E	Revised Edition
The (establishing) Act	The Ward Tribunals Act No. 7 of 1985
The Tribunal	The Ward Tribunal
TLR	Tanzania Law Report
WT	Ward Tribunal
WTs	Ward Tribunals

TABLE OF STATUTES

The Constitution of The United Republic of Tanzania (1997) Cap 2 R.E 2002
The Economic Sabotage (Special Provisions) Act of 1983
The Land Act No.4 of 1999
The Land Disputes Courts Act No.2 Of 2002
The Land Dispute Court (The District Land an Housing Tribunal) Regulations of 2003,
GN No. 174 of 2003
The Law of Marriage Act, Cap 29 R.E 2002
The Magistrates' Courts Act, Cap 11 R.E 2002
The Tax Revenue Appeals Act Cap 408 R.E 2002
The Village Land Act No. 5 of 1999
The Ward Tribunals Act No. 7 of 1985

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- Jvan Makobrad v Miroslavkatic, Vesna Paladinand Ingra (1999) TLR 448
- Mwalimu John Paul Mhozya v. AG (1996) TLR 130
- Ridge v Baldwin [1964] AC 40
- R v Sussex Justice, ex p McCarthy (1924) 1KB 256
- Rashid S. Katungunya V Abdallah S. Katungunya, Civil Appeal No. 68 of 2002, Dare Es Salaam High Court Registry (Unreported)

ABSTRACT

It is the duty of the government of the day to serve its citizens in a manner upon which the government can justify its presence in power and command to stay in power. In making sure it stays in power to save people, the government employ new means now and then to try to meet the needs of people in a speed, just, fair and low cost means.

Way back to 1985 in Tanzania, there were established the Ward Tribunals (which are under the Executive arm of the state) for the purpose of lessening the bulk load of cases to the judicially, attaining the decisions of disputes at a great speed and low costs without much technicalities. With time, the functions of these Ward Tribunals have expanded from being the mainly mediation bodies to an institution giving a binding decision upon which the appeal from its decision can be preferred from the DLHT level until the Court of Appeal.

There have been claims of these WTs to mishandle justice to the litigants before them. This Mal Administration of Justice is claimed to arise out of different corners, the major one being the legal setup of the WTs as established under the establishing Act.

The researcher here conducted a research to determine how far the legal setup of the Ward Tribunal affects the administration of justice in disputes referred before.

Choosing Bukoba District to be a survey study (specifically in Bakoba, Nshambya, Kashai, Nyakato and Karabagaine WTs), through observation, interviews and questionnaires, the researcher concentrated to find out as to how the administration of justice in the WTs is affected by their legal frame work on the aspects of members statutory qualifications in relation to the discharge of their functions, the Ward Tribunal's financial capacity to run itself, the controversy on the authority and procedure to discipline the WT members as a whole, and the proper discharge of the functions by the appropriate authorities as all of those are established under the establishing laws.

The study draws a conclusion that there is Mal Administration of Justice in WTs caused by their legal setup under the establishing law on the aspects shown herein before.

Lastly, this work recommends the major amendment of the establishing law and specifically on the areas of concern mentioned above, this being the best way to do away with the mal administration of justice by the Ward Tribunal in Tanzania.

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CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Tanzania being one of the democratic countries exercises the principle of separation of powers in its administrative and legal system. The Constitution of the United Republic of Tanzania¹ declares the state authority to be exercised and controlled by two organs vested with executive powers, two organs vested with judicial powers and two organs vested with legislative and supervisory powers over the conduct of public affairs. Thus dual system appears as a result of the Union of Tanganyika and Zanzibar but in actual fact, it is a normal democratic state with three organs of the state.

Further to that, to be specific on the matter at hand, administering and dispensing justice is respectfully solely under the judiciary as provided for under the same Constitution² that *“The Judiciary shall be the authority with final decision in dispensation of justice in the United Republic of Tanzania.”*

The judiciary has been in the front line to safeguard and protect the principle of separation of power. In the famous case of **Mwalimu John Paul Mhozya v. AG**³ Sammata J.K was of the opinion that *“the principle that the functions of one branch of government should not encroach on the functions of another branch is an important one to ensure that the governing of a state is executed smoothly and peacefully.”*

Nevertheless, due to the growth and expansion of the state’s functions and human needs, there has been a relaxation on the implementation of the principle of separation of powers. Judicial powers and functions has recently been done and exercised by the executive through its established bodies in the style and name of administrative tribunals.

¹ Cap 2 R.E 2002, Article 4

² Cap 2 R.E 2002, Article 107(1)

³ (1996) TLR 130

Different scholars have defined Administrative Tribunal or Tribunals to refer to a person or body of persons or administrative agency not forming part of the Judiciary with limited statutory powers to determine disputes and pass binding decisions between individuals, or individuals and officers in the Department of the Government.⁴

These organs are also known as quasi-judicial bodies.⁵ These administrative tribunal or quasi-judicial bodies are of many type and purpose. For instance there are Military Tribunals, Economic Tribunal, and The Ward Tribunal⁶ just to mention a few.

To substantiate the necessity of tribunals in Tanzania, in 1983, The Anti-Economic Sabotage Tribunal⁷ was formed to specifically deal with economic sabotage in Tanzania. The then president of Tanzania, Mwalimu Nyerere stated that the reason for establishing these tribunals was the way the court work in some daily activities. Summarily, that the racketeers could use their ill-gotten money to engage lawyers or use that money to twist the law to their favour.”⁸

The great concern of this study is the Ward Tribunals (also to be referred to as WTs herein after). These WTs were established in Tanzania way back to 1985. The rationale for the establishment of Ward Tribunals was to dispense justice among the local people through conciliation and amicable resolution of dispute an ambition which has not been a reality in practice.⁹

The legal setup of the WTs in Tanzania was meant to enable the people at the local level to settle their disputes by mediation as one way of enhancing both social and economical

⁴ Jaba, S. (2011,May). “Administrative Tribunal in Tanzania”. Public Presentation held at The University of Dar Es Salaam, Dar Es Salaam. (Unpublished paper).

⁵ Chonya, A.B. (2014). Local Government Interventions in the Administration of Justice in Land Related Disputes Through Ward Tribunals in Tanzania: A critical Analysis. Unpublished Masters Dissertation, Mzumbe University Morogoro.p.1

⁶ Established under Act No 7 of 1985

⁷ Established under the Economic Sabotage (Special Provisions) Act of 1983

⁸ Chonya A,B (2014) as quoted it from Peter.C.M. Independence of Judiciary in Tanzania: Many Rivers to Cross.www.kituochakatiba.org

⁹ Makombe, A.M. and Sikalumba, A.J. (2004). The role of Ward Tribunals in Enhancing the Administration of Justice in Tanzania: The Case Study of Selected Ward Tribunals in Sumbawanga Urban and Rural District Unpublished Research Report No. 40, Mzumbe University Morogoro. p.5

development. Unfortunately, with the social development and increase in executive functions, this role has not been discharged adequately, one of the reason being that these tribunal have been tasked with more serious functions than the initial functions. This study is an attempt to assess the legal setup of the Ward Tribunal in Tanzania and expose how it bars its effectiveness in the administration of justice in Tanzania.

1.1 Background of the Research Problem

Many of the world's countries were at a time colonized by other powerful countries who introduced their traditions and norms into the colonized countries. The western history says that, in Africa, civilization came with colonialism.

There has always been an assumption that society is or should be at some kind of balance. Anyone who disturbs this balance is viewed as a wrongdoer. The wrongdoer will normally be subjected to some kind of disadvantage in order to cancel out the harm or ill-gotten gain and restore the balance.¹⁰

After independence in Tanzania, the colonial ruling system was reviewed including the colonial courts, the Primary Court were chosen to be the court closer to the people. This lowest court was established in every district by the Magistrates Courts Act 1963 (repealed and replaced by the Magistrates Court Act, 1984).

Section 3¹¹ establishes in every district, primary courts which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the respective districts in which they are established. A number of these lowest courts (the primary courts) were established as many as nearly three in every division. It was intended that, they serve the local people in a manner friendly and useful to them. To justify this, the procedures at the primary courts are too informal and the decision reached is of the majority as they sit in every proceeding, a magistrate and at least two assessors.¹²

¹⁰ Court of Appeal of Tanzania. (2004). The Administration of Justice in Tanzania, (1st ed.) Dar Es Salaam: Methews Bookstore Stationeries.p. 1

¹¹ The Magistrates' Courts Act, Cap 11 R.E 2002

¹² The Magistrates' Courts Act, Cap 11 R.E 2002, Section 7

Regardless of this establishment, the intended people to be served were not adequately relieved from their legal and justice problems. An overall assessment of the primary courts system establishes a significant deficiency. Primary courts are fewer and exercise jurisdiction over a wider territory, with obvious limitation on the accessibility and efficiency.¹³

As a result, there has been growing a low speed efficient functioning judiciary characterized by delay in hearing disputes and hence creating a backlog of cases leading to administration of justice a myth. It has to be remembered, 'Justice delayed is Justice denied'. Consequently, peace, order and tranquility are barely maintained and this justifies the failure of the executive on administration of justice.

The Government at large realized the problem facing the judiciary. It then came up with what was seen as a solution to the problem at hand, the Ward Tribunal. Established by The Ward Tribunal Acts,¹⁴ they came at the necessary time to lessen down the burden of the court.

These are not courts per se, as said above, these are quasi-judicial organ in place to dispense some of the courts business for the purpose mentioned above. As vividly seen, it was established by the executive and it falls within the executive arms as per the powers vested in them (the executive) under the Constitution of The United Republic of Tanzania of 1977¹⁵ as amended from time to time which provides that, "*the civic rights, duties and interests of every person and community shall be protected and determined by the courts of law or other state agencies established by or under the law*". (emphasis is mine).

The number one aim of the WTs since their establishment has been to amicably settle disputes by mediation and arbitration as opposed to litigation so as to secure peace and harmony in the area for which it is established.¹⁶ On the other hand, the Ward Tribunals

¹³ Court of Appeal of Tanzania (2004). p. 59

¹⁴ Act No. 7 of 1985

¹⁵ Cap 2 R.E 2002, Article 13(3)

¹⁶ The Ward Tribunals Act, No. 7 of 1985, Section 8

were established to relieve the primary court of their work load, not to replace the Primary Courts but to supplement them.

It is upon that approach that it is evident that the WTs are entrusted with powers to dispense justice to the local people around its area of jurisdiction to achieve about peace and harmony, maintain and improve their social and economical development and generally help out the court with a burden of cases. In exercising this judicial function of dispensing justice, the principles of natural justice are to be adhered to.

Ever since its establishment in 1985, the functions of the WTs have been expanding now and then but sticking to the original set up as established under the Act.¹⁷ While speaking of the set up of the Ward Tribunal, the researcher refers to the system of the Ward Tribunal including the procedures for appointing the members, procedures for conduct of works, qualification of members, composition of members, financing and remuneration of the Ward Tribunal members, disciplinary procedures and authority of WTs members and the discharge of function by the appropriate authority, in its totality, those components make up the legal setup of the WT.

Tracing way back to 1985 when they were established, the Ward Tribunal had the jurisdiction to entertain the minor offences as laid down under sections 8,9,10 and the schedule to the Act.¹⁸ Later in 1996, the tribunals were in addition vested with jurisdiction to entertain marriage issues. It only deals with reconciliation of the marriage issues, upon which if the reconciliation fails, the parties have to take their matter to the primary court with jurisdiction and has to have (the party refereeing the dispute to the Primary Court) a certificate from the Board (WT) that reconciliation has failed.¹⁹

All of this time, the composition of the tribunal was as laid down under section 4²⁰ which consist of not less than four nor more than eight members elected by the Ward Committee, a Chairman appointed by the Appropriate Authority (the Local Government Authority

¹⁷ The Ward Tribunals Act, No. 7 of 1985

¹⁸ The Ward Tribunals Act, No. 7 of 1985

¹⁹ The Law of Marriage Act, Cap 29 R.E 2002, Section 101

²⁰ The Ward Tribunals Act No. 7 of 1985

concerned) and a secretary of the Tribunal who shall be appointed by the local government authority. With this general provision not specifying the composition as to male and female members, gender equality was ignored. In the finding of his research, Lawi Q.Y²¹ said that, the composition of the Ward Tribunal is skewed in favor of male elders and hence in the absence of gender, some group of people in the society like that of women and young people may be prejudiced of their rights.

On the other hand, the establishing Act states the qualification of the members of the Ward Tribunal under section 5,²² along with other qualification, the challenging qualification is given under section 5(d) which forbids a person with legal knowledge to become a member of the tribunal. This prima facie is a problem as far as the jurisdiction of the Ward Tribunal is concerned as mentioned above.

On top of that, there are no legal procedures laid down for work of the Ward Tribunal, the tribunal regulates their own procedures as they think fit and this result into a non uniform standard of the decision of the tribunal.

The other problem arising out of the legal setup, is the financing and remuneration of the tribunal. The tribunals are supposed to be financed by the District Authorities in which they are established, but this is not done, they are left to operate themselves from the revenue they collect in the cases filed before them. Makombe and Sikalumba²³ had found out that, lack of guaranteed allowance and poor remuneration were the main constraints among the constraints facing the Ward Tribunals.

On another occasion, though the secretary is mentioned as the employee of the District Authority of the concerned district,²⁴ he is not in the Scheme of Service of the Local Government as one of the employee, hence he cannot be salaried.²⁵

²¹ Lawi, Q.Y. (1997, January). "Justice Administration Outside The Ordinary Courts of Law in Mainland Tanzania: The Case of Ward Tribunals in Babati District". A paper presented at Boston University, Boston.

²² The Ward Tribunals Act, No. 7 of 1985

²³ Makombe, A.M. and Sikalumba, A.J. (2004). pp 26 & 28

²⁴ The Ward Tribunals Act No. 7 of 1985, Section 6(3)

²⁵ Nyaraka za Maendeleo ya Utumishi za mwaka 2002.

In 2002, the functions of the WTs multiplied again under the Land Disputes Courts Act.²⁶ The Ward Tribunal is now vested with exclusive jurisdiction over land disputes valued at less than three million Shilling arising out of its area of jurisdiction. Also, the said Act categorizes the gender issue in the composition of the member while dealing with land disputes, there must be a woman.²⁷

From those lacunas explained above which of course are embedded in the legal setup of the Ward Tribunal, it is the thinking of the researcher that Mal Administration of Justice in the Ward Tribunal is caused by the above elaborated incomplete legal setup of the Ward Tribunal as a whole. This research identifies how and why each segment of the elaborated legal setup causes mal administration in the Ward Tribunal.

1.2 Statement of the Problem

The Ward Tribunals were established with a primary function of securing peace and harmony in the area for which it is established by solving local disputes mainly by mediation and endeavoring to obtain just and amicable settlement of disputes in alternative to the technical procedures of the courts of law.²⁸

Being quasi judicial organs, they have gradually been tasked with further technical and sensitive exclusive jurisdiction over land matters, still the intention is to lessen up the burden of case workload to the normal court, and settle dispute at a greater speed and than that of the courts.

Despite that great functions it has to perform, it obvious that the Ward Tribunal has been disregarded and rendered an irrelevant institution in the administration of justice. Since the rationale for their establishment was to serve the community around the area it has been established, in a just and speedy manner by ensuring harmony, peace and order, a task which they have failed to deliver, it has become important to investigate into the factors limiting the proper functioning of the Ward Tribunals and suggest the possible reforms.²⁹

²⁶ Act No. 2 of 2002

²⁷ The Land Disputes Courts Act No 2 of 2002, Sections 11 and 14(1)

²⁸ The Ward tribunals Act No. 7 of 1985, Section 8

²⁹ Makombe, A.M. and Sikalumba, A.J. (2004).p.5

Literatures have shown that the legal set up of the Ward Tribunal as expounded in the Ward Tribunals Act³⁰ on the qualification of members, appointment of members, procedure for work, composition of the tribunal, financing and remuneration, unspecified disciplinary procedures and authority as well as the discharge of functions by the appropriate authority greatly influence the non performance of the Ward Tribunal and hence Mal administration of justice.

1.3 Literature Review

This section presents both the theoretical and empirical literature review. On theoretical literature review, documents reviewed are books, cases and thesis while on empirical literature review, different research reports, thesis, dissertation public presentations, journal articles and books have been reviewed. This section begins with theoretical literature review and will conclude with empirical literature review.

Administrative Tribunals are not new institutions in the 21st century neither had it been a new phenomenon in the past few decades.

Creyke, R. and Sutherland, P.³¹ giving the reasons for the emergence and growth of the tribunals in Australia, they said it was until Ward War II when government expanded its role. Tribunals were then established to regulate aspects of the expanding economy, adjudicate disputes arising from the administration of new social programs, bring expertise to complex issues and remove certain matter from the purview of the courts.

When a government starts to act responsibly on community issues, it is when the need to introduce other system of solving problems seems necessary, then the introduction of different commissions to solve particular issues in a particular field. These fields include land, labour and other related matters.³²

Ward Tribunals in Tanzania under the Ward Tribunals Act³³ were established not to substitute the courts but to assist them in dispensing justice. The Ward Tribunal is not

³⁰ The Ward tribunal Act No 7 of 1985

³¹ Creyke, R. and Sutherland, P. Tribunals in the Common Law World. Sydney: Federation Press.

³² Chonya, A.B. (2014). p.5

³³ The Ward Tribunals Act No. 7 of 1985

presided over by a legally qualified personnel and the possession of legal knowledge is a disqualification for membership and hence cannot outweigh the court.³⁴

Different scholars had grievances against the Ward Tribunals, that they offend the principles of natural law. The law and practice has already made it clear as to the applicability of the principle in the tribunal. In the famous case of **Ridge v Baldwin**³⁵ 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 administrative tribunal.

On the other hand, **Mushi E.G.**,³⁶ observes that, the fact of establishing tribunals and other quasi-judicial bodies and assigning them functions does not by itself constitute a violation of the doctrine of separation of power. The extent of the powers given to these bodies, the controls 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 position has recently changed in Tanzania, the Ward Tribunal has been designated in some situations as a court of competent jurisdiction. Some laws including the Land Disputes Courts Act³⁷ designate the Ward Tribunals as courts for their purposes.³⁸ For that purpose, the legal setup of the Ward Tribunals as of now is not anymore fit for the purpose as they were established originally to be the quasi-judicial organs and not courts. It is from that footing that different literature to be reviewed herein under has shown concern on the capacity and willingness of the Ward Tribunals to properly administer justice.

Makombe A. M. and Sikalumba A. J.³⁹ in their research report emphasize on the rationale of establishing the Ward Tribunals. They are of the opinion that, these tribunals

³⁴ Makombe, A.M. and Sikalumba, A.J. (2004) p.9

³⁵ [1964] AC 40

³⁶ Mushi, G.E. (2009). Judicial Review and the Changing Trends in Public Administration: An Assessment of the High Court Response in Mainland Tanzania. Unpublished doctoral dissertation, Mzumbe University Morogoro.

³⁷ Act No. 2 of 2002

³⁸ Makombe, A.M. and Sikalumba, A.J. (2004)p.9

were established to serve the local communities in the Local Authorities to settle their disputes amicably by mediation as one way of enhancing both justice delivery and social economic development. They are of the opinion that, it would seem that the Ward Tribunal has been disregarded and rendered irrelevant institution in the administration of justice. Since the rationale for their establishment was to make them serve the public by ensuring harmony, peace and order in their respective territorial jurisdiction, a task they have failed, they saw it proper to investigate into the factors limiting their proper functioning and suggest the proper reforms.⁴⁰

This work is more concerned and addresses the challenges on the qualification of the members of the Ward Tribunal and not the other factors affecting the proper functioning of the Ward Tribunals.

This work is very relevant to the current researcher's work, this is based on the fact that the subject matter of the research is partly the same. The departure comes at the research topics. The authors being reviewed aimed at taking the bulk Ward Tribunal and come to discover what are the main obstacles for the non performance and a solution to it. This research has already identified that the problem is their legal setup embodied in the statute establishing them, and hence it has to prove and justify to what extent is the legal setup a problem. With that view, the approach will slightly differ for the purpose of attaining the solution.

On the other hand, the reviewed research is limited to Sumbawanga Urban and Rural Districts. They did not cover other material areas like Bukoba where there are a lot of disputes before the Ward Tribunals. The researcher of this research has covered other uncovered area, that is Bukoba District.

Chonya, A. B.⁴¹ had written on the local government intervention in the administration of justice through Ward Tribunals. It should be taken in mind, Ward Tribunals are

³⁹ Makombe A.M and Sikalumba A.J. (2004) "The role of Ward Tribunals in Enhancing the Administration of Justice in Tanzania: The Case Study of Selected Ward Tribunals in Sumbawanga Urban and Rural District", Research Report No. 40, Morogoro. Mzumbe University.

⁴⁰ Makombe, A.M. and Sikalumba, A.J. (2004) p.5

⁴¹ Chonya, A.B. (2014). Local Government Interventions in the Administration of Justice in Land Related Disputes Through Ward Tribunals in Tanzania: A critical Analysis. Unpublished Masters Dissertation, Mzumbe University Morogoro.

established under the local governments concerned and they operate under it. The author had two great concerns. One sided on the capacity and willingness of the Ward Tribunals to deal with matters, specifically land matter of which the local government (their boss and establisher) has an interest in. Second, the concern was raised on the proper functionality of the Ward Tribunals on the adherence to the principles of natural justice.

This author had added to the knowledge gap left by the first authors reviewed above. She has pointed out matters concerning the qualification of members and the capacity to work as the first reviewed work. On top of that, she has gone further to discover another challenge facing the Ward tribunal to the absence of the laid down procedures for work. This second matter was not dealt by the first authors.

On her findings, the author has come to a conclusion that, the local government intervention in the administration of justice through Ward Tribunals in determining land disputes has great impact though with several ups and down.⁴²

The author also found that, Ward Tribunals due to the relationship they have with the local government authorities it is difficult to avoid conflict of interest especially in the area of adherence of principles of natural justice.⁴³

The research found this work relevant to the current study. This is based on the fact that, the author had conducted a research on the same Ward Tribunals. The difference between the two will come on some point to differentiate the works.

The author has dealt mainly with finding how positive was the intervention by the local government in the administering of justice, and later, how successful has it been. Also, the author has mainly taken the non adherence of the principles of natural justice to be one of the great weaknesses of the Ward Tribunal.

This study has examined how the legal set up of the Ward Tribunal affect that intervention of the local government and the adherence of natural justice by the Ward Tribunals. That is the central theme of this study.

⁴²Chonya, A.B. (2014). p.58

⁴³Chonya, A.B. (2014). p.56

Apart from different area of studies, since it is known that the Ward Tribunal are established by or under the local government, now this study bridges the gap on how does the legal setup of the Ward tribunal affect the general theme of dispensing justice as initially intended.

Rweyemamu, J. S. and Katela, I. J.⁴⁴ had an opportunity to write a book on the Ward Tribunal and among other things stressed matters were the fees for filling cases in the Ward Tribunals. They discussed that, the fees for filling cases in the Ward Tribunals are not certain nor provided for but the members of the tribunal decide by themselves what to be paid for them to discharge their functions.

They also gave their concern on the composition of the Ward Tribunal and came up with a guideline to the members of the Ward Tribunal.

This work adds knowledge on the above reviewed works. To be specific, it touches on the procedures for work as narrated in last above reviewed work. That, the Ward Tribunals are left to decide by themselves what to charge on what matter as the official fees.

The researcher has found this work relevant to his research as it touches some specific matters of the tribunals which is the area of concern of this research. The researcher has nevertheless gone further to cover the uncovered gap by the authors of the said book. The authors did not cover any specific area, this researcher has covered a specific area and came up with the tangible evidence and propositions from the area of study, that is Bukoba District.

Also, the authors did not cover the new functions of the Ward Tribunals, to wit the land matters as they were not yet in operational as far as the land matters are concerned. Lastly, the researcher unlike the authors has covered the Ward Tribunal in its totality and not to choose only few constrains.

⁴⁴ Rweyemamu, J. S. & Katela, I. (2000). Mwongozo wa Mabaraza ya Kata, Bukoba: Rumuli Printing Press.

Lawi, Q. Y. ⁴⁵ has mainly discussed the composition and capacity of the Ward Tribunal to administer justice. He has analyzed the main aim of establishing the Ward tribunal in Tanzania and tried to see whether they have been successful in achieving the establishment objectives. The author is of the view that, the Presidential Commission, which recommended the establishment of these organs, envisaged that they would be reconciliatory, flexible, informal, and sensitive to local culture in their functioning. These principles were resounded by the Act establishing the Tribunals. The question, therefore, is whether the implementation of these principles would insure justice to everyone in the context of rural Tanzania in the 1990s.

In a whole, the author wanted to identify how justice is administered outside the normal court, to achieve the purpose he took Babati District as his area of study. He formulated three main questions to guide him, in general, the first question directed itself on the composition of the Ward Tribunal, to see how its composition affect the administration of justice.

The second set of questions concerned the manner in which disputes characteristically find their way into the Ward Tribunals, this question aimed at determining whether people are willing to submit their disputes in the Ward Tribunals. Third and lastly, a series of questions were raised concerning the actual work of the Ward Tribunals. Here, too, the primary objective has been to establish whether or not justice in its broad sense was being upheld in the manner in which they actually settled disputes. The major concern here has been to know how the conciliatory functions of the Ward Tribunals are carried out, and whether the Tribunals have been consistent in this respect.

The researcher is adding up to the already obtained knowledge on the challenges facing the Ward Tribunals arising out of the fact they have the unfair composition not balancing the gender. Also, he talks about the procedure for work of the tribunal. A new knowledge introduced is the willingness of the litigants to approach the tribunal and giving his findings as follows.

⁴⁵ Lawi, Q.Y. (1997, January). "Justice Administration Outside The Ordinary Courts of Law in Mainland Tanzania: The Case of Ward Tribunals in Babati District". A paper presented at Boston University. Boston

In the finding, he said that, the composition of the Ward Tribunal is skewed in favor of male elders and hence in the absence of gender, some group of people in the society like that of women and young people may be prejudiced of their rights. He also found out that, disputes are taken to the Ward Tribunal and they have become popular to ordinary people, that the upper stratum of society has been conspicuously missing from them. This tendency, while contrary to the respective study hypothesis, tells something about the nature of the Tribunals. Had the Tribunals generally taken a corrupt stature, the well-to-do people would not have failed to take advantage of them.

This author's work is very relevant to the current researcher. There are several lacunas which have to be filled by this research. The author is of the view that, the tribunal generally has not taken a corrupt stature and it reached by the ordinary people. Since there have been a lot of complaints about its performance, this researcher has investigated and saw that, there are corruption practices as there are pending cases in court over this matter. As the title presupposes, this researcher has assessed the whole legal setup. Also, the author's research was conducted before the introduction of Act No. 2 of 2002 which recognizes the gender balance and gives the directives on that.⁴⁶ This work has examined and saw that other matters (other than land matters under Act no.2 of 2002) presented before the tribunal are dealt by taking in consideration gender balance though not given by the law.

On the other hand, the author concentrated on Babati District only, the current researcher had ventured on an uncovered area with a lot of disputes before the Ward tribunals, that is Bukoba District.

Lastly, the researcher unlike the author has given recommendations on the best way to amend the Act to come to an acceptable legal framework, a thing which has not been done by the author.

⁴⁶ The Land Disputes Court Act No 2 of 2002, Sections 11 and 14

Sangi, A.⁴⁷ is writing 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 openly ignorant on land laws and procedures.

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, migrating from one area to the other, it is no longer meaningful to have an institution to determine land disputes while the same is under the members who have no any legal back up in their minds rather than traditional norms of which are no longer applicable in many areas.

This article has been found to be relevant as summarized above. The researcher has used it to expand his knowledge. He has identified some gaps which need to be filled. It is openly seen that the writer has added on the available knowledge on the qualification and competence as well as composition.

The author of the article has confined himself on the Ward Tribunal when exercising function on land matters only, he has not in any way touched the other criminal and civil functions, the researcher has covered the whole of the functions of the Ward Tribunal.

Also, the author has stressed only on the need to have members of the Ward Tribunal who have the legal knowledge. The big concern of his article is the ignorance of the law by the members. The researcher has examined the legal setup of the Ward tribunal as a whole and come up with all of the major problems leading to the non performance of the Ward Tribunal.

Shadrack, J.⁴⁸ in his presentation titled Administrative Tribunal in Tanzania⁴⁹ gave a general overview of what are the administrative tribunals in the large aspect. Along with

⁴⁷ Sangi, A. (2004, July 16). Mabaraza ya Ardhi na Ulimbukei wa Sheria, Raia Mwema, Retrieved October 10, 2015 from World Wide Web: <http://www.raiamwema.co.tz/mabaraza-ya-ardhi-na-ulimbukei-wa-sheria>

the general definition of what are the administrative tribunals, he went on to mention the types including The Military Tribunal (Court Martial), The Tax Revenue Appeals Board, The Environmental Appeals Tribunal, The Fair Competition Tribunal, The District Land and Housing Tribunal, The Ward Tribunal and etc.

The author also made a comparison and contrast between the Administrative Tribunal and the normal courts, he has a stand that, administrative tribunal like other courts are not exempted from adhering to the principles of natural justice, that it has been revealed that, practice shows that, tribunals violates the principle.

He is also much concerned with the fact that, the tribunal practice violates the principle of separation of powers. The main challengers of the use of administrative tribunals are professor **Dicey** (rule of law), and **Montesquieu** (separation of powers). Lastly gave the advantages and disadvantages of the tribunal system as a whole from experience and practice.

This work is relevant to the current researcher's work. The author has given a brief detailed information on the tribunals as a whole, mentioning the Ward Tribunal as one type of them. This work has stimulated awareness of several unknown facts to the researcher hence to be discovered during the research process. The work of the author differs with this current research on several aspects.

First, the author's work it too general to cover the specific matters arising from a single and specified segment of the administrative tribunal group. It is not disputed that, one tribunal and the other differs in practice, challenges and strength, hence the current author has dealt with one tribunal only, the Ward Tribunal and hence has discovered more appropriate concerns and information arising out of it.

⁴⁸ Law Lecturer, Department of Public Law, School of Law (Formerly, Faculty of Law) at the University of Dar es Salaam, Tanzania

⁴⁹ Jaba, S. (2011, May). "Administrative Tribunals in Tanzania". Public Presentation held at The University of Dar Es Salaam, Dar Es Salaam. (Unpublished Paper)

Second, the author of the above mentioned work relied upon the already written works and did not conduct a research by himself to identify the gaps and problems faced by the tribunal. His work is not supported by any field information or data and hence not strongly reliable to him. The current author has conducted a field research and came to discover the truth as to some of the mentioned facts given by the author.

Third, the author did not recommend anything at the end of his work on how to make good the discrepancies he has discovered. This means, his work has left lacunas to be filled. This work has at the end proposed the measure and steps to be taken to solve the challenges identified during the research process.

Lastly, the work by the author has a general area being administrative tribunal in Tanzania, he did not narrow down his work in anyway. The current researcher has narrowed down to Ward Tribunal and specified the area of study to be Bukoba District.

Chamani, A. K.⁵⁰ a practicing advocate and a writer, wrote a book on the land courts of which he has something to say on the Ward Tribunals. In his book, *Mahakam za Ardhi*, he adopted a question and answer style to write his book upon which he had posed question on the contents of the Land Disputes Courts Act⁵¹ and went on to give answer. Generally, he has simplified the contents of the statute into a document which can easily be ready by normal people.

I have found his book relevant as it states the procedures, compositions and litigation mechanism of the Ward Tribunal.

The researcher differed with the author in mainly two aspects. One, the researcher has researched on the Ward Tribunal as a whole, the author has just dealt with the function of the Ward Tribunal on land matters as provided for by the Land Disputes Courts Act.

Two, the researcher has covered a specific area and gathered information from the field while the author has just interpreted what is provided for in the statute and did not go further to recommend the solutions as he has not raised them from the field but the law and practice.

⁵⁰ Chamani, A.K. (2008). *Mahakama za Ardhi Tanzania*. Bukoba: North Western Publishers.

⁵¹ Act No. 2 of 2002

In summary, all of the writers above are of the opinion that, there was a genuine need of establishing the Ward Tribunals in Tanzania. Some arguments have been advanced to the non performance of the same to the extent of some of the writers wanting a critical review on the Ward tribunals to identify the problem.

The reviewed writers have generally and seriously commented on the need to have the members in the Ward Tribunal with legal knowledge and to establish the uniform procedures for work for the Ward Tribunals. The researcher has through those literatures observed a gap and it is yet to be covered. Literatures are not covering the aspects of appointment of members, financing and remunerations of the members. It is the opinion of the researcher that, only members with legal knowledge and having guidelines of work will not make the tribunal perform to the fullest.

The researcher has researched and came up with the concrete and comprehensive answers on what are the challenges facing the Ward Tribunal which is rooted from its legal setup as a whole and suggested the possible reform.

1.4 Hypothesis

- i. Mal - Administration of Justice by Ward Tribunals in Tanzania is caused by their legal setup as formulated by their establishing Act.

1.5 Objectives of the Study

1.5.1 General Objective

This research was aimed at determining how far does the legal setup of the Ward Tribunal affect the administration of justice in disputes referred before it and proposed a solution to eliminate the problem.

1.5.2 Specific Objectives

- To examine the legal setup of the Ward Tribunals.
- To examine the challenges facing the Ward Tribunals in dispensations of justice.
- To identify the causes of mal administration of justice in the Ward Tribunals.
- To investigate the efforts employed to curb the challenges facing the Ward Tribunals.

1.6 Significance of the Research

After assessing the legal setup of the Ward Tribunal and identifying its effect in dispensation of justice, it has therefore proposed the actions and mechanisms to be taken to rectify the situation.

The results of this research will also add to the present scarce literatures available on the subject matter. It is also intended to be used as a tool to develop guidelines, policy and laws by the Ministry and parliament and other responsible organs for the facilitation of justice delivery.

Lastly, to academicians, it will be used for further studies and be an endeavor at fulfilling the requirements for attaining a Masters Degree in Law at Mzumbe University.

1.7 Scope of the Study

This study has focused on assessing the legal setup of the Ward Tribunal in Tanzania and through that assessment, it has been seen the extent to which they administer justice in Tanzania. Hence, the key issue has been to assess how the legal setup of the Ward Tribunals affects the administration of justice in determining matters/disputes before them.

1.8 Research Methodology

1.8.1 Research Design

This study has used the limited survey study design as it has proved to be reliable for academic studies like the one at hand. It is also relevant taking in consideration the nature of the study topic done. It is specific and aimed at gathering the true information from the area of study.

1.8.2 Study Area

This study was conducted in Bukoba District. Bukoba District is located in Kagera Region in the north part of Tanzania. Bukoba District has two councils, Bukoba Municipal Council and Bukoba District Council.

The researcher has chosen Bukoba District to be the area of study mainly for reasons that, it is easy for him to access and collect information and data at the affordable cost since

resources are available there. Also, Bukoba (known as Kyamutarwa during chiefdom) being one of the areas in Tanzania which had chiefdom under the chiefs (Bakama) system before colonialism⁵² formal administration of justice and dispute settlement is a thing well known to the residents for so long, also, during colonialism, the colonists established their settlements there. On top of that, it is an area with permanent crops farming since the pre colonial era like banana and coffee,⁵³ hence the residents have known and valued land as a precious property to own. For such reasons, Bukoba has been said to have a lot of land disputes which are also resolved by the Ward Tribunal hence the reliable area for information gathering.

1.8.3 Sampling and Sample Size

As mentioned above, the study area was Bukoba District. Having two councils with a total of 45 Wards, the researcher chose five wards. Three wards from Bukoba Municipal Council (Kashai, Nshambya and Bakoba Wards) and two from Bukoba District Council (Nyakato and Karabagaine Wards). The selection purposely based on the area known with many disputes and those with few disputes and that of medium level as was told by the Local Government Officers at the head quarters.

The research had a sample size of 30 respondents in a following sampling unit:- 14 members of Ward Tribunals, 4 Ward Executive Officers, 5 litigants/stakeholders (claimants and respondents/accused), 3 magistrates, 1 chairman for the District Land and Housing Tribunal, 2 local government officers stationed at the head quarter of the Local Government Authority and 1 political leaders (councilors).

This mixed up population is based on the knowledge of the researcher that the population and sample size lead him to the true answers as to the effect of the legal setup of the Ward Tribunal in administration of justice. This was based on the fact that, all the respondents above are the great stakeholders of the Ward Tribunals in different aspects as they appear.

⁵² Tibazarwa, C.M. (1994). Economic Revolution in Bahaya History. Chippenham: Anthony Rowe Ltd, pp 50 & 72

⁵³ Tibazarwa, C.M. (1994). pp 42 & 69

1.8.4 Data Collection Method

The researcher collected data through two methods, the primary data and secondary data collection methods.

1.8.5 Data Collection Tools

In primary data collection method, the researcher employed three tools, observation, interview and questionnaires while in secondary data collection method, the tools used were documentary review of books, reports, journals, magazines and newspapers.

In primary data collection method, the tools used and the reasons for each were as follows:-

i. Observation

The researcher visited the selected Ward Tribunals and observed what transpires in there. The researcher has randomly visited the selected tribunals for 4 months from January 2016 to April 2016, for three to five hours, three times a week on working days. This tool helped the researcher to crosscheck and confirm the information which was gathered through other tools.

ii. Interview

The researcher made interviews with four categories of respondents. The first category involved 2 Local Government officer stationed at the head quarters of the Council. Those are the Human Resource Officers. From these officials, the researcher obtained the information as to the skills and financial capacity of the Ward Tribunal as facilitated by the Local Government concerned. This information was reliable because the Local Government concerned through these officers is responsible to make sure the tribunals have members, and that they are remunerated, trained and the office facilities are available.

The second category was one political leader, the councilor. The Councilor is a people trusted representative and always people brings complain to them on many matters including the performance of the Ward Tribunals and hence reliable for information. The third category was 3 litigants/stakeholders. These fed the researcher with the information of the day to day performance of the tribunals as viewed from outside.

Lastly, the fourth category was half the selected members, 7 out of 14 were interviewed and they were selected randomly among the members.

iii. Questionnaires

The other tool used in collecting the primary data was through questionnaires. Four categories were supplied with questionnaires to fill and submit after the requested period of time. Here, 7 members (including the chairman, secretaries and normal members) were given questionnaires to give answer. Also, 3 magistrates and one Chairman for the District Land and Housing tribunal, 4 Ward Executive Officers and 5 litigants/stakeholders were availed with questionnaires. These are officials and normal people whom work very closely in official capacity with the Ward Tribunal and hence they were useful in giving concrete written answers.

The researcher used the qualitative and quantitative methods in analyzing the data. In qualitative, description was used to analyze the collected data while the quantitative data were managed manually by counting and merging them into groups and summarize them to obtain the contents.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

2.0 Introduction

This chapter explores the conceptual framework of the tribunals generally and the Ward Tribunal specifically. It specifically seeks to establish the concept of the tribunal before embarking into the real practicable part of the latter. This chapter generally looks to bring into mind the expanded knowledge of the Tribunals in Tanzania. Stating the origin of the concept and defining the key terms.

This chapter will go further to show the adherence to the concept of separation of power in the existence of the tribunals which are under the executive arm but discharge the functions commissioned to the judicially, a thing which is generally against the doctrine of separation of power. The challenges and solutions or answers to that contra verse will be given to that matter.

It is expected that, at the end of this chapter, every reader will have grasped the necessary concept about the Tribunals in Tanzania.

2.1 Definitions and Explanations of Key Concepts

To start with the tribunal, there has been different definitions and explanation from different scholars giving what it means by a tribunal. Justice C.K. Takwani, a prominent Indian books writer and Justice of the Supreme Court defines Tribunal to be the adjudicatory bodies which decides controversies between the parties and exercises judicial powers as distinguished from purely administrative functions and thus posses some of the trappings of a court, but not all.⁵⁴

Further definitions defines tribunal to be to mainly adjudicative organs and act as court substitute by hearing appeals against decision; further, generally finding facts and applying legal rules derived from statute and regulation. However, unlike the ordinary courts, the doctrine of biding precedent does not strictly apply to them.⁵⁵

⁵⁴ Takwani, C.K. (2003). Lectures on Administrative Law. Lucknow: Eastern Book Company.p.194

⁵⁵ Leyland, P. & Woods, T. (2002) Text Book on Administrative Law. New Delhi: Oxford University Press.

Tribunal is an administrative body set up to discharge quasi judicial duties.⁵⁶

In the normal wording of the English dictionary, the term justice is referred to as fairness in the way people are treated. It is also explained as the system by which people are judges in court of law and criminals are punished.⁵⁷ The term justice is derived from the term just, meaning morally right and fair, disserved by someone.⁵⁸

In the eyes of the law, justice in its common acceptation is the rendering of everyman his due the constant and perpetual desire to render everyone his due; the dictate of right according to the consent of mankind generally, or of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals.⁵⁹

As with the normal English, the word justice derives its meaning from the word just. Being defined as an adjective of fair; adequate; reasonable; probable; right in accordance with the law and justice, right in law or ethics; rightful, legitimate, well founded, conformed to rules of natural justice.⁶⁰

Mal administration is a word composed up of two words, Mal and administration. The Advance Learners English Dictionary⁶¹ defines a word Mal as bad or badly. It defines administration as an activity which relates to running a company, school, or other organization.⁶² Hence, in the translated meaning, mal administration of something is bad administration.

⁵⁶ Kagzi, M.C.J. (2002). The Indian Administrative Law. New Delhi: Universal Law Publishing Co. Ltd.

⁵⁷ Longman Dictionary of Contemporary English. (2005). Essex: Pearson Education Limited. p 879

⁵⁸ Longman Dictionary of Contemporary English. (2005). Essex: Pearson Education Limited. P 879

⁵⁹ Aiyar's, P.R. (2001). The Law Lexicon: The Encyclopaedic Law Dictionary with Legal Maxims. Latin Terms and Words and Phrases. New York: Oxford University Press. p.1029.

⁶⁰ Aiyar's, P.R. (2001). P.1027.

⁶¹ Marriam-Webster's Advanced Learner's Dictionary. (2008). Advance Learners English Dictionary. Massachusetts: Marriam-Webster, Incorporated.. p.990

⁶² Marriam-Webster's Advanced Learner's Dictionary. (2008). p. 21

The Oxford English Dictionary defines mal administration to mean faulty administration; inefficient or improper management of affairs, especially public affairs.⁶³ In the legal meaning, mal administration is defined as wrong administration.⁶⁴

From those definitions and explanations, it is obvious that, mal administration refers to wrong administration, bad administration, improper administration and the like, just to mention a few. This wrong, bad improper administration may be intentional from the people administering the matter or may be unintentional, just influenced or caused by the external factors of which the person doing the administration has no control over.

By the phrase mal administration of justice as used in this research, the researcher herein refer to the wrong, bad improper administration of people's right, not being fair in administration of the right of people or not being adequate; reasonable; probable in administering the people's right.

The researcher has used the phrase legal set up in his research to refer to the key statutory provided components composing of the WT. That, by the phrase legal set up, the researcher refers to the law which establishes and governs the WT and the components put up to make it work. For instance, by legal set up, the researcher refers to the composition of the WT, the statutory qualifications of members, the procedures of their work, the finance and remuneration of the WT, the disciplinary authorities and ways of the WT members and also, the legal functions supposed to be exercised by the appropriate authority. As a whole, those legal components form up a legal set up of the WT which of course the research is interested in, to look at them and come to a conclusion as to whether, the way they are now, they cause the failure, wrong or improper administration of justice by the WT or not.

2.2 Origin of Tribunals

A word tribunal originates from the latin word tribunus and in English tribune. The tribune was the title of various elected officials in Ancient Rome. The term now derives its origin

⁶³ The Oxford English Dictionary. (1989). (2nd ed.) New York: Oxford University Press. p. 254

⁶⁴ Aiyar's, P.R. (2001). p. 1171

from the elevated seat where the tribunes administered justice.⁶⁵ From then, different ruling boards with judicial functions but in the executive arm of the state have adopted the name tribunal.

While giving the reasons for the emergence and growth of the tribunals in Australia, Creyke, R. and Sutherland, P.⁶⁶ observed that, it was until Ward War II when the government expanded its role. Tribunals were then established to regulate aspects of the expanding economy, adjudicate disputes arising from the administration of new social programs, bring expertise to complex issues and remove certain matter from the purview of the courts.

When a government starts to act responsibly on community issues, it is when the need to introduce other system of solving problems seems necessary, then the introduction of different commissions, organizations and institutions (like the tribunals) to solve particular issues in a particular field becomes necessary. These fields include land, labour and other related matters.⁶⁷

Having that in mind, it is not disputed that tribunals are necessary in the state organizational structure and hence Tanzania being one the countries with the expanded governmental functions needs to have a diversity of tribunals working as per the law.

2.3 Doctrine of Separation of Power versus Tribunal

It is well known from ages that, one of the systems of the governments of the world is the system with the divided functions of the state being performed by different organs. The popular one in the principle of separation of power is that with the three organs, the executive (which has powers to execute and enforce rules of law), the judiciary (to interpret the rules of laws) and the legislature (which makes, amends and repeals laws).

The three organs of the government have been entrusted according with the Constitution with different functions. Judiciary as one of those organs has been vested with

⁶⁵ <https://en.wikipedia.org/wiki/Tribune>. Retrieved May 31, 2016

⁶⁶ Creyke, R. and Sutherland, P. Tribunals in the Common Law World. Sydney: Federation Press.

⁶⁷ Chonya, A.B. (2014). p.5

adjudicative functions. Ward tribunals which are under the executive organ of the government performs adjudicative functions which according to the doctrine of separation of power are supposed to be exercised by the judiciary. This is viewed as the violation of the doctrine of separation powers since each organ of government must perform only those functions which it has been given by the law and not more.

The famous French jurist (philosopher) by the name of Biron J. Montesquieu put the meaning of doctrine of separation of power in three sentences that:-

- i. That the same person should not form part of more than one of the three organs of government, for example, that ministers should not sit in parliament;
- ii. That one organ of government should not control or interfere with the work of another, for example, that the executive should not interfere in judicial decisions;
- iii. That one organ of government should not exercise the functions of another, for example, that ministers should not have legislative powers.

From his formulation, it is observed that, in real practice, it is not possible to implement the doctrine as formulated hence the principle of checks and balance came into existence. While going about the doctrine of separation of power, it is incomplete without mentioning the measures for checks and balance.

The principle of checks and balance entails that, each organ of the state shall be entrusted with special powers formulated to keep a check and balance the exercise of the functions by the others in order that the separation of powers may be adhered to.

In Tanzania, the doctrine of separation of powers is envisaged under article 4⁶⁸ which entails that, the state shall have three organs, the legislature, the executive and judiciary. Each of these organs has the separate paramount function as mentioned above.

In order to meet the standards, the same constitution provides for the means to check and balance the three organs. For instance, while the parliament is the sole organ entitled to legislate, the proposed bills cannot become laws until the assent of the president (who is the head of executive) has been obtained.⁶⁹

⁶⁸ The Constitution of the United Republic of Tanzania Cap 2 R.E 2002

⁶⁹ The Constitution of the United Republic of Tanzania Cap 2 R.E 2002 Article 99(1)

On the other hand, the executive appoints the judges of the court⁷⁰ and at the same time, the Chief Justice is the chairman of the committee composed if the parliament proposes to impeach the president.⁷¹ At all, the parliament is the sole organ which passes the budget for all of the three organs.⁷² In those wordings, checks and balance is a must and it keeps all state organs in line and under proper control.

2.4 Limitations on Separation of Powers

Practice has shown that, no country in the world which has succeeded in applying the doctrine of separation of powers strictly and absolutely. Legislature and executive functions are not clearly separated by a straight line given the nature of the functions performed. For the purpose of making sure that the functions of the state are properly performed, legislature and executive intermingle very much and hence making it impracticable to draw a line.

In modern countries like Tanzania therefore, there is always some overlapping of functions. For instance, government functions have multiplicity expanded and have no proper timing, hence legislation by the parliament must leave details to be filled in by regulations made by other authorities, usually Minister, in this way, the executive branch must be given some law-making powers.

In the same vein that the government has expanded so greatly, many decisions which affect people's lives are 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 is increasingly given judicial powers. This is not necessarily undesirable so long as the tribunal obeys the basic standards of fairness laid down by the law and so long as the courts are able to review their decisions.

It is in essence undisputed that there is nothing like pure separation of powers, each organ of the state depends on the other and the one's decision greatly affects the other one. It is

⁷⁰ The Constitution of the United Republic of Tanzania Cap 2 R.E 2002 Article 109(2)

⁷¹ The Constitution of the United Republic of Tanzania Cap 2 R.E 2002 Article 46A (4)

⁷² The Constitution of the United Republic of Tanzania Cap 2 R.E 2002 Article 90(2)(b)

for such a reason, **Mushi, E.G.**⁷³ observes that, the fact of establishing tribunals and other quasi-judicial bodies and assigning them functions does not by itself constitute a violation of the doctrine of separation of power. The extent of the powers given to these bodies, the controls 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.

In real sense, he was trying to say that, there is no pure separation of powers, but there are some criteria upon which one can rely upon to expunge the presence of the violation of the doctrine of separation of powers.

2.5 Tribunals in Tanzania

Tanzania being one of the countries having the multi sector functions, tribunals are inevitable since the government strives to serve its citizens in a manner which will at least meet the goals of the government and the needs of the citizens. These tribunals are of different functions and powers, size and areas and having different subject matters.

Tribunals in Tanzania are of different kinds including those straight forward stated by the law, those which are just mentioned that they can be made to perform a certain function and those which are not mentioned but the authority can still establish them. On the other part, the functions of the tribunal could be of a civil nature (like labour, tax matters, land matters) and the counterpart being those of criminal nature.

In Tanzania, all of these tribunal originates for the mother law, the Constitution of The united Republic of Tanzania of 1977⁷⁴ as amended from time to time which provides that, *“the civic rights, duties and interests of every person and community shall be protected and determined by the courts of law or other state agencies established by or under the law”*.(emphasis is mine).

⁷³ Mushi, G. E. (2009). Judicial Review and the Changing Trends in Public Administration. p. 17

⁷⁴ Cap. 2 R.E 2002, Article 13(3)

2.6 Conclusion

This chapter has explored in details the necessary key terms and concepts involved in this research. The chapter has narrowed down and deep to address the tribunals in Tanzania. In totality, all of the tribunals in Tanzania originate from the above quoted provision of the mother law. From there, different laws establish different tribunals in different forms and style for different purposes and functions. The target of this research is the Ward Tribunals of which their functions are also established under different laws as discussed in the following chapter.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK OF WARD TRIBUNAL IN TANZANIA

3.0 Introduction

This chapter looks to explore the legal and institutional framework of the Ward Tribunals in Tanzania. It specifically seeks to establish the real practicable part of the Ward Tribunal. This chapter generally looks to bring into mind the expanded knowledge of the Ward Tribunals in Tanzania. Starting from their origin, the establishing laws in Tanzania, the composition, roles and their supervisory bodies to mention a few.

It is expected that, at the end of this chapter, every reader will have grasped the necessary concept about the Ward Tribunals in Tanzania.

3.1 Establishment of Ward Tribunals in Tanzania

Tanzania being one of the countries which passed through colonialism, its citizens were having grievances with the available laws as being inherited from the colonial government, they were not in favour of the native, they were discriminatory in nature and oppressive in total.

The government of Tanzania in 1974 composed a Judicial System Review Commission (famously known as the Msekwa Commission) to conduct a review of the legal system and recommend the better way to go about in order to improve the ups and down of the moment in time.

Among other recommended changes, it was the establishment of the Ward Tribunals to help lessening the burden and load of cases to the primary courts after the Commission was satisfied that the primary court and other courts in general are being over burdened by the cases because of different reasons including them being few, insufficient manpower and technical and complicated court procedures. The Commission commissioned that, those tribunal to be established shall be reconciliatory in nature, flexible in performance, informal and sensitive to the local culture and environment and by achieving this, the

primary court will have been relieved of the burden of cases while at the same time, the citizen will be properly served by the government of the day.

The proposal by Msekwa Commission was taken on board, the 1977 permanent Constitution of the United Republic of Tanzania under Article 13(3) made a room to establish more tribunals by giving the executive the power to establish any tribunal to deal with a matter if not dealt by the court.

Through that channel, the Ward Tribunal came into existence and has been imposed with powers and functions under different laws which recognize them as court but also make their presence a must in the administration of justice. The establishing laws are as follows:-

i. The Ward Tribunals Act

The Ward Tribunals Act⁷⁵ is the establishing law of the Ward Tribunals. It is stated under section 3⁷⁶ that, *”There is hereby established a tribunal for every ward in Tanzania to be known as the Ward Tribunal for the ward for which it is established”*. This Act serves like the mother law to the Ward Tribunals.

Among other things, it provides for the jurisdiction, power, practice and procedure on how the tribunal should conduct itself in reaching the paramount goal of its establishment which is to settle dispute amicably by mediation and assisting the parties to reach their mutually agreed solution for the purpose of maintaining peace and harmony in the area which it is established.⁷⁷

For the purpose of making that paramount goal achievable, the Act came with an open procedure that while striving to settle a dispute as between the parties it shall be flexible and shall not be bound by rules of evidence, on top of that, it shall regulate its own proceedings.⁷⁸

⁷⁵ Act No. 7 of 1985

⁷⁶ The Ward Tribunals Act No. 7 of 1985

⁷⁷ The Ward Tribunals Act No. 7 of 1985, Section 8

⁷⁸ The Ward Tribunals Act No. 7 of 1985, Section 15

The tribunals were not left as orphans, it states that, these Ward Tribunal shall be under the guidance and care of the Appropriate Authority (when used in relation to a Tribunal, means the District Council or the Urban Authority within whose area the Tribunal is established). 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.⁷⁹

In that regards, the appropriate authority is responsible for the day to day upkeep of the tribunals, this research has explored as to whether this function is performed as ordered under the law.

i. The Land and Village Land Act

The above mentioned tribunal served as the quasi judicial organs for several years in all matters as the Act gives it jurisdiction to be discussed in the foregoing chapter. In 1999, two paramount pieces of legislations were made to govern the land matters in Tanzania, the Land Act and the Village Land Act.⁸⁰ The main aim of these laws were to implement the National land Policy which was made in 1995 after the Presidential Commission on Land Matters famously known as the Shivji commission has submitted its recommendation of how to rectify the problem in land matters.

Under sections 167(1)(e) and 62(2)(d) of the Land Act and the Village Land Act, the Ward Tribunals are vested with exclusive jurisdiction of being courts to determine and decide matters arising out of the land disputes. With those provisions of those paramount legislations in land matters, the Ward Tribunals are sometimes posed as the courts.

ii. The Land Disputes Courts Act

This is another crucial legislation when it comes to the functions of the Ward Tribunal. After 1999, The Land Disputes Courts Act⁸¹ came into force for the purpose of making the use the courts established under the two initial legislations in and matters.

⁷⁹ The Ward Tribunals Act No. 7 of 1985, Section 7

⁸⁰ Act No. 4 and 5 of 1999

⁸¹ Act No 2 of 2002

This Act provides for the basic law in relation to land other than the village land, the management of land, settlement of disputes and related matters. It is under this law when the dos and don'ts of the Ward tribunal in land matters are provided, the procedures for Work, the regulation of proceeding and other related matters are provided in here, but, it is limited to only land matters.

Sections 10 and 13 of the Land Disputes Courts Act⁸² confirm the establishment of the Ward Tribunal as established under the Ward Tribunals Act⁸³ and vests it with exclusive power on land disputes arising out of the Land Act and the Village Land Act. This shows that, altogether with other initial functions vested in the Ward Tribunal, it has jurisdiction on land matters.

Since there is no any Act disowning the Ward Tribunal with its initial functions, it goes without saying that, the Tribunal is Vested with jurisdiction in criminal matter and civil matter as will be discussed in the forgoing chapters.

3.2 Nomination and composition of the Ward Tribunal

The Ward Tribunals Act⁸⁴ is louder and clear that, the tribunals shall be established in every Ward in Tanzania Mainland and it is very clear that it has to be manned by the people who are the ordinary resident of the said Ward. It is provided that, every tribunal shall consist of not less than four nor more than eight members elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner.⁸⁵ The chairman is appointed amongst the elected members by the appropriate authority as explained prior.

Shortly, the nomination takes a simple procedure where by the Ward Executive Officer who is the secretary of the Ward Development Committee receives the applications from the applicants and table them in the committee which is chaired by the Councilor of the concerned Ward for discussion and election. The names of those who are elected are

⁸² Act No. 2 of 2002

⁸³ Act No. 7 of 1985

⁸⁴ Act No. 7 of 1985

⁸⁵ The Ward Tribunals Act No. 7 of 1985, Section 4(1)(a)

presented to the Executive Director of the District or Urban Authority within which the ward is situated and the appointment of the chairman is done immediately.

The secretary of the Tribunal is appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee. These secretary are said by the law to be the employees of the local authority⁸⁶ but in reality, they are not as they are not appearing in the scheme of service of the local government scheme of service hence cannot be salaried at all.

These members have the prerequisite conditions to become the members of the Ward Tribunal as provided for under the law, but the awkward of all at this point in time when the Ward tribunal jurisdiction has expanded to attain the status of the court in some Acts is the one forbidding any person having the legal knowledge to become a member of the tribunal.

The quorum at a sitting of a Tribunal shall be one half of the total number of members. 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.⁸⁷

3.3 Tenure of Ward Tribunal Members

As well known, no post is for forever in the government setup. Like any other authorities, the members of the ward Tribunal in Tanzania have a limited time to serve upon the expiry of which one can be re-appointed. Section 6(1)⁸⁸ 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 although they are eligible for re-election. The law further provides that, when the office fall vacancy for reasons including death, resignation or effluxion of time or any other cause the appropriate authority shall appoint an appropriate person to fill the vacancy until the date of the next election of members.⁸⁹

⁸⁶ The Ward Tribunals Act No. 7 of 1985Section 6(3)

⁸⁷ The Ward Tribunals Act No. 7 of 1985, sections 3 and 4

⁸⁸ The Ward Tribunals Act No. 7 of 1985

⁸⁹ The Ward Tribunals Act No. 7 of 1985, Section 6(2)

The Ward Tribunal member's tenure is straight forward put open for the reason of safeguarding the members from the power full appropriate authority which has mandate and power over the Ward Tribunal upon which it is contained that, when the appropriate authority has some interest to protect, it shall not do that illegally at the expenses of dismissing opposing members. This provision of tenure empowers the members to work freely and confidently.

The reasons for creating a vacancy in the office of the Ward Tribunal are not exhaustive, there has been given a room of any other reasonable cause which may be interpreted that, the appointing authority may also remove the member in office for any reasonable cause⁹⁰, there is a lacuna in the said law as it does not mention what amounts to any other reasonable cause nor does it give the laid down procedures on how to go about removing the member from office, if the appointing authority is motivated by ill motive, it can misuse the power given to it.

Having seen the importance of tenure, the need to safeguard it and the reasons for having it, it would be best for the interest of strengthening the administration of justice in Tanzania to make sure that, as a whole, the Ward tribunal members are strictly protected of their tenure to maintain their performance.

3.4 Financing the Ward Tribunals

Like any other organizations, the Ward Tribunal needs fund and financial capacity to deliver the proper and undefeated justice to the litigants before it. Since it not an income generating entity, the appropriate authority is tasked with a function to finance the Ward Tribunals which are established in the area of its jurisdiction.

This great task is envisaged under section 7⁹¹ 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**

⁹⁰ The Ward Tribunals Act No. 7 of 1985, Section 6(2)

⁹¹ The Ward Tribunals Act No. 7 of 1985

performance by the Tribunal of its functions. Specifically, section 27⁹² makes it a duty of an appropriate authority to pay sitting allowance or other allowances to the WT members as it deems fit.

It is from those wordings that the appropriate authority cannot escape this task. This task is not limited to a single unit, the appropriate authority has to pay allowances to the members, pay salary to the secretary (since he is the employee as explained above), facilitate the tribunal to obtain stationeries, working infrastructures, transport for visiting sites when needed and meet any other expenses as necessary to run the Ward Tribunal.

Further to that, the appropriate authority in conjunction with the Minister shall, in co-operation with any other Minister, Ministry, Department or other public authority formulate suitable programmes, schemes and seminars for the information and education of the public and the **officers and members of Tribunals** on the methods of performing the functions of the Tribunals, for the purposes of ensuring their efficient and just operation.⁹³

There has been an outcry from these tribunals that the appropriate authorities does not perform this function and hence leading into the tribunal to engage into corrupt practice and failure to deliver the best as expected from them. This research will look into this and come up with the answer on this matter.

3.5 Roles of Ward Tribunals

The paramount role of the Ward Tribunal is to secure peace and harmony in the area for which it is established by mediating and endeavouring to obtain just and amicable settlement of disputes⁹⁴. It is in the interest of justice for the tribunals to reach amicable decision for the litigants, involving them and helping them to mediate their disputes makes it an organ of much importance in the area which it is established.

⁹² The Ward Tribunals Act No. 7 of 1985

⁹³ The Ward Tribunals Act No. 7 of 1985, Section 26

⁹⁴ The Ward Tribunals Act No. 7 of 1985, Section 8(1)

The rationale for mediation is to make sure that people in their respective areas are assured of peace and harmony, in that environment they would do the most to bring about and improve their socio-economic conditions of life as there is no time waste in litigations and creation of enmity which makes the social disunity.

As one of the means to ensure mediation, the adherence of the principles of natural justice, especially the right to be heard and right against bias are the must in the proceedings of the Ward Tribunals. Tribunal must in all proceedings seek to do justice to the parties and to reach a decision which will secure the peaceful and amicable resolution of the dispute, reconciliation of the parties and the furtherance of the social and economic interests of the village or ward as a whole in which the dispute originates.⁹⁵

The tribunal is forbidden to make a decision on any complaint unless it has given an equal opportunity to each party to explain his part of the matter and to present his witnesses and also, to make sure that, any member of the Tribunal having any personal or financial interest in the complaint has disclosed it and not taken part in the proceedings.⁹⁶

The wordings of the statute are not from a blue sky nor are they confined in a box, the same position was given by the court in the famous case of **Ridge vs. Baldwin**⁹⁷ whereby it was decided that, the tribunals are not exempted from adhering to the principles of natural justice, they have a role to observe them and whenever they give a decision on any matter touching the rights of an individual, the principles of natural justice must be observed.

With those wordings of the statute, the main role of the Ward tribunal is to secure peace and harmony in the area upon which it is established by mediating the litigating parties to reach into their own decision for the purpose of motivating social-economical development of the concerned society.

⁹⁵ The Ward Tribunals Act No. 7 of 1985, Section 16(1)

⁹⁶ The Ward Tribunals Act No. 7 of 1985, Section 16(2)

⁹⁷ [1964] AC 40.

3.6 Supervisory Bodies of Ward Tribunals

Ward Tribunals in Tanzania are the body established under the law as prior mentioned. They are the lowest bodies in the hierarchy of authorities upon which they are established, be it in the normal court system, the land tribunals system or the local government system. These superior organs supervises the Ward Tribunals in two ways, administratively and appeals/revision supervision. Hereunder are the supervising organs of Ward Tribunals.

i. The Local Government Authorities

The Act establishing the Ward Tribunals mentioned them to be situated in every ward.⁹⁸ A ward is a bigger unit of the composition of a local government authority. The Ward Tribunals are established and they are put under the supervision, control and regulation of the local government authority in which they are established.⁹⁹

As per the said law, the local authority concerned (called the appropriate authority in the Act) is 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. This include the provision of staffs (secretary of the tribunal), payment of allowances, capacity building by personnel and provision of material and equipment for work, establishing and de-establishing them as well as removal of members. By those wordings of the law, it is undisputed that, the Ward Tribunal is under the supervision of the local government authority upon which it is established.

ii. The District Land and Housing Tribunal

As mentioned above, from the year 2002, under The Land Disputes Courts Act,¹⁰⁰ the Ward Tribunals were given functions to entertain matters arising out of land disputes as a court. In this hierarchy, there are Village Land Council, Ward Tribunals, District land and Housing Tribunals, High Court and the Court of Appeal.

The immediate supervisor of the Ward Tribunal in the mentioned hierarchy is the District Land and Housing Tribunal. The District Tribunal supervises the Ward Tribunal in two

⁹⁸ The Ward Tribunal Act No. 7 of 1985, Section 3

⁹⁹ The Ward Tribunal Act No. 7 of 1985, Section 7

¹⁰⁰ Act No. 2 Of 2010

ways. First, by way of appeal, section 19 and 20¹⁰¹ provides that, any person aggrieved by the decision of the Ward Tribunal may within 45 days appeal to the District Land and Housing Tribunal. Through this mechanism, the District Tribunal supervises the conduct of the Ward Tribunal in all procedural matters, including the adherence to the principles of natural justice, examination of witness and evidence in general and observance of the general rules laid down for the running of the tribunal.

Second, under section 36,¹⁰² the District Tribunal is vested with power to revise the proceedings of the Ward tribunal and see whether there any contravention with the Acts of Parliaments or subsidiary legislations as well as the observance of the principles of natural justice. While doing the revision, the tribunal has powers as those vested to it on appeals. It is because the Ward Tribunal works under the supervision of the District Tribunal, once Prof. Anna Kajumulo Tibaijuka¹⁰³ recommended that, all District Councils should strengthen and capacitate Village Land Councils and Administrative ward tribunals in order to reduce backlog of cases in District Land and Housing Tribunals.

It is sufficient to say, the Ward tribunal is put under the supervision of the District Tribunal by the provision of the law as clearly explained, that the District Land and Housing Tribunal has a duty under the law to supervise the Ward tribunal in its day to day dealings to bring about its success and intended goals.

iii. Primary Courts

In the normal court hierarchy in Tanzania, the primary Court is the lowest court serving as the trial court in several matters upon which it is vested with jurisdiction. The Primary Courts being established under the Magistrates Courts Act,¹⁰⁴ they are established in every district which subject to the provisions of any law for the time being in force, exercise jurisdiction within the respective districts in which they are established.

¹⁰¹ The Land Disputes Courts Act No. 2 of 2002

¹⁰² The Land Disputes Courts Act No. 2 of 2002

¹⁰³ Minister for Lands, Housing and Human Settlement Development, in the Budget Speech of FY 2013/2014 item 28

¹⁰⁴ Cap 11 R.E. 2002, Section 3(1)

The primary courts are the only courts established closer to the public/society for which it intends to serve. This is witnessed by the composition and power to make decision by the primary court, it is a majority decision being composed of the assessors and a magistrate, the many wins, the few loses,¹⁰⁵ that is why sometimes, a primary court is referred to as the court of facts not court of law since the assessors are discouraged to be legal personnel,¹⁰⁶ but still when they out weight the magistrate then their decision is the decision of the court.

The primary court is charged with jurisdiction to supervise the Ward Tribunals within the area of its jurisdiction. The primary courts have appellate and revisional jurisdiction over the Ward Tribunals.¹⁰⁷ The procedure, timing and nature of the appeal (civil and criminal) relating to the appeal and revisional jurisdiction of the Primary Court is elaborated under the above cited provisions of the law.

The appellate jurisdiction of the Primary Court is justified to be vast enough to be mentioned here as stated under section 20(3)¹⁰⁸ that, except on points of law where the final appeal lies to the District Court, decision of a Primary Court on any appeal made to it shall be final and conclusive.

The same firm stand was taken in the case of **Rashid S. Katungunya V Abdallah S. Katungunya**¹⁰⁹ where the court held that:

“Categorically, all appeals matters originating from Ward Tribunals do not come to the High Court, the appeals end in the Primary Court unless a point of law is involved and therefore the appeal is incompetent”.

Having that mentioned, it is acceptable to state that, the Primary Court is without doubts a supervisory organ over the Ward tribunal, the supervision may be done via a revision,

¹⁰⁵ The Magistrates Courts Act, Cap. 11 R.E. 2002, Section 7(1&2)

¹⁰⁶ The Magistrates Courts Act, Cap. 11 R.E. 2002, Section 8(2)

¹⁰⁷ The Ward Tribunals Act No. 7 of 1985, Sections 20 & 21

¹⁰⁸ The Ward Tribunals Act No. 7 of 1985

¹⁰⁹ Civil Appeal No. 68 of 2002, Dare Es Salaam High Court Registry (Unreported)

review or an appeal preferred by the aggrieved party from the decision made by the Ward Tribunal to the Primary Court upon which the said tribunal is situated.

3.7 Conclusion

In this chapter, the concept about the existence of the tribunal has been aired. The origin of the tribunal and different types of tribunals has been put in place. Further to that, it has been established that Tribunals are in existence in Tanzania and more specifically, the Ward Tribunal. Their presence is safeguarded by the legislation of the parliament and hence expected to be functioning as established. On top of that, it has shown that there are not free from challenges and obstacles. More of importance, it has been shown that they help the court with the burden of case and still the court has the power over them.

The notion of separation of power and the principle of checks and balance has been established in this chapter and the reality about them has clearly been shown to put the concept of tribunal at a larger picture for understanding it.

After this chapter which has laid down the necessary information through a concept, the next chapter will explore the performance of the tribunal, specifically, the Ward Tribunal in Tanzania.

CHAPTER FOUR

ADMINISTRATION OF JUSTICE BY WARD TRIBUNAL IN TANZANIA

4.0 Introduction

This chapter explains the mode of operation by Ward Tribunals in Tanzania. There may be some slight differences between one tribunal to the other as far as the operating procedures are concerned, since the law states that they shall regulate their own proceedings,¹¹⁰ but principally, they share so much in the operation as justice is one and they way to reach to it is always known.

Mainly this chapter will give out the procedure followed in receiving the complaints, hearing them and then giving a decision, to be precisely, the process of delivering justice will be demonstrated in this chapter.

4.1 Jurisdiction of Ward Tribunal

The Ward Tribunals are vested with the general jurisdiction of making sure that, it secure peace and harmony in the area for which it is established by mediating and endeavouring to obtain just and amicable settlement of disputes. It goes without saying that, the Ward Tribunal territorial jurisdiction is limited to the ward upon which it is established.

On top of that, the Ward Tribunal has the pecuniary jurisdiction on both criminal and civil matters arising out of the disputes and falling within its jurisdiction. The Ward Tribunal in the exercise of its jurisdiction is limited to the awards and penalties, in criminal matters, a fine not exceeding ten thousand shillings, in default of payment of a fine which does not exceed one thousand shillings. In case of the convicted person, he/she have to be committed to work on an on-going communal project for not more than ten days. The law further provides that, in case of default of payment of a fine exceeding one thousand shillings, the matter shall be referred to the Primary Court for committal of the convicted person to prison or any other appropriate action under the law.¹¹¹

¹¹⁰ The Ward Tribunals Act No. 7 of 1985, Section 15(2)

¹¹¹ The Ward Tribunals Act No. 7 of 1985, Section 10

The penal offences triable and the civil matters upon which the Ward Tribunal has jurisdiction including the punishments or award are listed in the First schedule to the Ward tribunal Act 1985. In addition to that, a Tribunal have and exercises jurisdiction in relation to all matters and disputes arising under all laws and directives passed by the appropriate authority (Local Government Authorities upon which they are established), and laws and orders for the time being in force in relation to or affecting the business and affairs of the ward made or passed by a local government authority or any other competent legislative authority within the area of the Tribunal's jurisdiction.

The Ward Tribunals were officially and straight forward awarded with the jurisdiction on land matters under The Land Disputes Courts Act.¹¹² The Ward Tribunal has jurisdiction to entertain matters concerning land within the area of its jurisdiction provided it does not exceed the value of three million shillings.¹¹³

That is to say, a Ward Tribunal has criminal and civil jurisdiction in its territorial area to inquire and determine matters arising out of the disputes from people who seek justice from the tribunal. All of these being done, the number one function of the tribunal remains to be to secure peace and harmony in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter brought before it.

4.2 Receiving/Admission of Disputes

At this stage, the tribunal receives complaints from the litigants who feels and thinks that any wrong has been committed and it has to be cured by the tribunal. A complaint may be made to the tribunal through the secretary of a Tribunal, the Chairman of a Village Council or a ten-cell leader.¹¹⁴

A complaint may be made orally or in writing, but if made orally shall be reduced in writing by the person to whom it is made and, in either case, shall be signed by the complainant and the person to whom it is made. When a complaint is made to any person,

¹¹² Act No. 2 of 2002

¹¹³ The Land Disputes Courts Act No 2 of 2002, Sections 10 and 15

¹¹⁴ The Ward Tribunals Act No. 7 of 1985, Section 11(1)

that person shall, if he is not the Secretary of the Tribunal, cause it to be submitted to the Secretary of the Tribunal who shall enter it in the records of the tribunal and arrange for it to be heard and determined by the tribunal in accordance with the procedure of the tribunal for the hearing and determination of disputes submitted to it¹¹⁵.

4.3 Procedures, Hearing, Decision Making Execution, Appeals and Revision

Like any other justice delivering institution, the Ward Tribunal has the procedures and practice on how to go about in delivering justice. Since they are not the formal courts, the law has allowed them to be free from technicalities, to regulate their own procedures and conduct itself in a proper manner fit for the purpose of meeting its paramount function of ensuring peace and harmony.¹¹⁶

During this stage, the tribunal passes through several steps until when it comes to the point of issuing its decision, executing it and preferring appeals or revision if necessary. Hereunder are the steps passed through;

4.3.1 Preliminary Stages

At this stage, the tribunal receives the complaints under the above elaborated ways, the secretary register it and sees as to whether it is a claim to be lodged in a tribunal. After satisfying one another that the claim is maintainable, then the arrangement of scheduling the mentioning date and issuance of summons and other directives are done at this stage.

4.3.2 Summons for Appearance and Hearing

Every person has to be called to the tribunal whenever he/she is needed, the means to call him is by way of a summons. The summons is issued by the secretary in a manner as specified for the purpose of securing the parties to the dispute to attend the tribunal, have their matter scrutinized and determined as deemed fit.¹¹⁷.

¹¹⁵ The Ward Tribunals Act No. 7 of 1985, Section 11 (3&4)

¹¹⁶ The Ward Tribunals Act No. 7 of 1985, Section 15

¹¹⁷ The Ward Tribunals Act No. 7 of 1985, Section 12

The importance of a summons was underlined in **Jvan Makobrad v Miroslavkatic, Vesna Paladinand Ingra**¹¹⁸ 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. On those grounds, summons is a must to serve justice delivery.

4.3.3 Appearance, Adjournment and Dismissal in Ward Tribunal

The person has to enter appearance in person before the tribunal in the specified date, give explanations and evidence and answer all questions put to them by any member of the Tribunal. If on the date specified in the summons the complainant does not without reasonable cause, appear, the Tribunal shall dismiss the complaint and it shall not subsequently be brought before it, but if the Tribunal considers that the absence of the complainant is due to a reasonable cause or if the person complained against is absent, the Tribunal shall adjourn the hearing to some other date.¹¹⁹

Representation in the Ward Tribunal may be done through a parent, guardian, relative or friend for a child below eighteen years of age, or a person who for any sufficient cause cannot adequately put his case or defend himself. At this juncture, the tribunal is working like any other court dispensing justice.

Further to that, appearance before the Ward Tribunal in any proceeding to which a body corporate is a party, its director, secretary, member or a person in the employment of the body corporate and duly authorized in that behalf, other than an advocate, may appear and act on behalf of that party.¹²⁰

4.3.4 The Hearing

This is a crucial stage during the justice delivery at the tribunal. In fact all of the other procedures are subsidizing the accomplishment of the two main stages, the hearing and the decision itself which comes from the hearing.

¹¹⁸ (1999) TLR 448

¹¹⁹ The Ward Tribunals Act No. 7 of 1985, Section 13 (1&2)

¹²⁰ The Ward Tribunals Act No. 7 of 1985, Section 18(3)

During the hearing stage, the parties present their case one by one, being given a time to examine and cross examine the evidence given by the other party for the purpose of proving or disproving the allegation before the tribunal.

For the same reason and purpose mentioned prior, the tribunals are not bound by legal technicalities and any rules of evidence or procedure applicable to any court. They are left free to deal with the matter at hand for the purpose of attaining a fair decision. A Tribunal regulates its own procedure as directed by the Act itself.¹²¹

Although it is left to regulate its own procedures, but still there are the underlying principles of which are put forward to help the tribunal reach a fair decision. During the hearing, the tribunal has power to hear statements of witnesses produced by parties to a complaint, and to examine any relevant document produced by any party.

Under section 13(1),¹²² it is provided that, on the date mentioned in the summons, the parties shall appear before the tribunal, give their evidence and answer question posed to them. This means, the production of documentary evidence and oral evidence is done at this stage.

The witnesses brought are subject to cross examination as the law allows them to be asked questions and give answers. Cross examination in the Ward Tribunal comes from both, the tribunal and the parties themselves,¹²³

Like any other organ, the Ward Tribunal is bound to adhere to the principles of natural justice. A Tribunal shall in all proceedings seek to do justice to the parties and to reach a decision which will secure the peaceful and amicable resolution of the dispute, reconciliation of the parties and the furtherance of the social and economic interests of the village or ward as a whole in which the dispute originates. For the purposes of securing a just determination of a complaint, the Tribunal shall not make a decision on any complaint unless it has given an equal opportunity to each party to explain his part of the matter and

¹²¹ The Ward Tribunals Act No. 7 of 1985, Section 15

¹²² The Ward Tribunals Act No. 7 of 1985

¹²³ The Ward Tribunals Act No. 7 of 1985, Section 13(1)

to present his witnesses and any member of the Tribunal having any personal or financial interest in the complaint has disclosed it and not taken part in the proceedings.¹²⁴

On adhering to the principle of natural justice, which are in three categories, right to be heard, right against bias and right to a decision, the Ward Tribunal is wanted by the law to act accordingly in meeting those legal needs. In the already cited case of **Ridge v. Baldwin**, the court fairly ruled that, even the tribunals are bound to adhere to the principles of natural justice and specifically the right to be heard. It is from that footing that even the Ward Tribunals in Tanzania are supposed to adhere to it.

On the other hand, right against bias has also been mentioned clearly in the above cited provision of the law. That, once a member sees that he has any interest in the matter to be determines, whether personal or financial interest, he must retire from the panel. To be biased need necessary be done and proved, a mere suspicion of the same suffices to discredit the decision reached at by the tribunal.

In the famous case of **R. v Sussex Justice, ex p McCarthy**,¹²⁵ the court held that, justice should not be done, but seen to be done. The court was of the opinion that, it is not what the clerk actually said or done to influence the decision by the panel (if at all he did anything) but the mere likelihood of bias and the impression that was created by his presence aroused a reasonable suspicion of bias.

4.3.5 Decision Making

The Ward Tribunal has criminal and civil jurisdiction as mentioned above. It can impose fine and imprisonment in matters of criminal nature where it finds proper to so do and may award compensation and grant other orders as stipulated under the law.

Its criminal jurisdiction is limited, for instance, it cannot jail a person without the confirmation by the Primary Court.

¹²⁴ The Ward Tribunals Act No 7 of 1985, Section 16

¹²⁵ (1924) 1KB 256

The tribunal may order the party in default to redress the situation by apologizing to the other party; to pay back what is due to the other party; to pay compensation or to carry out any other sanction acceptable in the village or ward concerned; or to perform any customary act or acts which signify reconciliation.¹²⁶

4.3.6 Enforcement of Judgment and Execution of Decrees

As above explained, the WTs have both criminal and civil jurisdiction. The Ward Tribunals Act¹²⁷ provides that, the appropriate authority shall devise an appropriate system for facilitating and securing the proper and full performance of the measures imposed and orders made by the Tribunal at the conclusion of the proceedings in relation to any matter referred to it.

It put a sanction to a person who fails to abide to the directives and without reasonable cause, a failure for which no other penalty is prescribed under the law to be guilty of an offence and shall be liable, on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or to both that fine and imprisonment. For avoidance of doubt, any imprisonment punishment passed by the WT must be endorsed by the Primary Court in its area of jurisdiction.

On the other hand, the means of enforcing or executing the decision of the WT arising out of the civil claim on land is expounded under Regulation 3,¹²⁸ that the execution shall be done by filling Form No. 3. Within the District Land and Housing Tribunal and then the latter shall hear and determine the application and then order for the execution to be done by the Court Broker or the District Commissioner as it thinks fit.

4.3.7 Appeals and Revisions from Decisions by Ward Tribunal

Any person aggrieved by a decision of a Tribunal in any matter not relating to land may within sixty days appeal in writing to a Primary Court. Not all appeal are viable, exception are put and the leave of the Primary Court is needed to appeal in a case of criminal nature

¹²⁶ The Ward Tribunals Act No. 7 of 1985, Section 17

¹²⁷ Act No. 7 of 1985 , Section 18

¹²⁸ The Land Dispute Court (The District Land and Housing Tribunal) Regulation of 2003

in which the fine imposed does not exceed five hundred shillings or in civil matters where the award does not exceed eight hundred shillings.

Further to that exception, only appeals on points of law lies to the District Court, otherwise, decision of a Primary Court on any appeal made to it shall be final and conclusive.

On revisions, a Primary Court may act suo motto to call and examine the proceedings and decision of the WT to satisfy itself on the adherence to the law. The time limit or any revision is twelve months from the conclusion of such proceedings in the Tribunal.

The primary court upon which the appeal or revision lies may confirm the decision, quash the decision or order the matter to be dealt with again by the Tribunal, and may, if it deems appropriate, give an order or direction as to how any defect in the earlier decision may be rectified.

On matters relating to land, the appeal and revision procedures look alike with the normal civil and criminal matters. The procedure and time limit is provided for under the Land Disputes Courts Acts¹²⁹ that, the appeal shall be filed within 45 days of the decision to the District Land and Housing Tribunal.

On giving a decision of appeal or revision, a District Land and Housing Tribunal may confirm the decision, reverse, or vary in any manner the decision, quash any proceedings or order the matter to be dealt with again by the Ward Tribunal, and may, if it deems appropriate, give an order or direction as to how any defect in the earlier decision may be rectified.

4.4 Conclusion

This chapter has explored the stages upon which the Ward Tribunal passes in making its decision to afford the litigants with justice they look for when they approach the tribunal. The underlying information here is that, though the Ward Tribunal is not strictly bound

¹²⁹ Act No 2 of 2002, Sections 19 and 20

by the rule of procedures, but it has to follow the principles to reach a fair and just decision.

Adherence to the principles of natural justice, the right to be heard and right against bias are the paramount need to be adhered by the tribunal to reach the decision. It is not only provided in its establishing Act but also the case laws has already set a minimum standard on what amounts to a fair hearing and the declaration of interest in the matter at hand.

CHAPTER FIVE

DATA ANALYSIS, FINDINGS AND DISCUSSIONS

5.0 Introduction

This chapter present and discuss the data collected from the field to show out the findings. The data collected from the five selected Ward Tribunal in Bukoba District reflects the hypothesis set as answered by the selected respondents. At the end, the hypothesis that, Mal - Administration of justice by Ward Tribunals in Tanzania is caused by their legal setup as formulated by their establishing Act will be tested.

In this chapter, the researcher presents data collected from different social groups in the community, including the litigants, members of the WTs, public servants and political leaders of the District Council as interviewed and responded to the questioners presented to them.

5.1 Presentation of Findings and Discussions

The researcher collected the data by using three methods, observation, interviews and questionnaires. From those methods, the researcher has collected information which will enable the reader to understand the essence of this research.

Being guided by the hypothesis that Mal - Administration of justice by Ward Tribunals in Tanzania is caused by their legal setup as formulated by their establishing Act, the researcher collected data from the sampled respondent to reflect the knowledge of the respondents in so far as the formation of the Ward Tribunals is concerned, the sufficiency of the members statutory qualifications and provided trainings in relation to the discharge of their functions, the Ward Tribunal's financial capacity to run itself, the controversy on the authority and procedure to discipline the WT members as a whole, and the proper discharge of the functions by the appropriate authorities as established under the establishing laws.

The collected data are presented and discussed as follows hereunder:-

5.1.1 Awareness on the Procedure for Formation of the Ward Tribunal

In this first question, the researcher wanted to obtain the rate of awareness of the respondents in the procedure for formation of the Ward Tribunals. Since the whole research is embedded on the Ward Tribunal, it was crucial and important to know and show how popular are the Ward Tribunal, from the formation process to its existence at large. The table below shows the response of the respondent.

Table 5.1: Shows response on awareness of formation of Ward Tribunal

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	26	86.7	86.7	86.7
No	4	13.3	13.3	13.3
Neutral	0	0	0	0
Total	30	100	100	100

Source: Researcher's Own Findings

In this question, twenty six respondents (equal to 86.7%) out of thirty respondents showed that they know how the Ward Tribunals are formed. They even went further to give the process of which at the end creates a legal binding institution called the Ward Tribunal, with the blessing of the ward and the district council within which it is established.

Out of thirty respondents, only four respondents (equal to 13.3%) percent two from Bakoba Ward one from Nyakato Ward and one from Nshambya Ward showed that they are unaware on the process of formation of the Ward Tribunal. In that regard, the researcher did not get any respondent who was neutral, they all either knew or did not know a thing about it.

The big percentage of the respondents showed that they are aware of the formation of the Ward Tribunal gives a picture that, the Ward Tribunal are in existence and they are known to people, people even know how they are formed, this means, their existence is a thing which is wide open and known to a large group of people.

That question was tied with a question of the procedures on how to form a Ward Tribunal. All of the respondents who replied in affirmative gave the procedure of how to establish a WT. Generally, giving from the first step of advertisement by the Ward Executive Office, then applications being lodged to him/her, then the interview/discussion by the Ward Development Committee, then the choosing and sending the names to the District Council for appointing the Chairman and the secretary.

Though the respondents did not quote the law, but tried the best to give the procedures as laid down under section 4¹³⁰. This means, the Councils have been abiding to the law in forming the WTs. The researcher generally observed that, there are no great challenges in the formation of the WT, from the sampled respondents, people are aware and happy about it, this concludes that, a WT is an institution known in the society and needed.

5.1.2 Statutory Qualifications versus Discharge of the WT Functions

In this question, the researcher intended to gather information as to the sufficiency of the statutory qualification of the members of WT in relation to the capacity and appropriateness of the discharge of the tribunal's functions. Generally, it intended to obtain, whether the set legal qualification causes mal administration of justice by WT. Hence the gathered data show the respondents who agreed, that the statutory qualification causes mal administration, those who denies and the other who are neutral.

The table below shows the response of the respondent.

Table 5.2: Shows response on statutory qualifications versus discharge of the WT functions

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	15	50	50	50
No	12	40	40	40
Neutral	3	10	10	10
Total	30	100	100	100

Source: Researcher's Own Findings

¹³⁰ The Ward Tribunal Act, No. 7 of 1985

In this question, out of thirty respondents, fifteen (equal to 50%) respondents divided randomly from all Wards were of the opinion that, the statutory qualifications set for the members of the WT are one of the main cause of mal administration of justice in the WT. twelve respondents (equal to 40%) out of thirty respondents denied the fact and said, the qualifications are sufficient. 3 respondents (equal to 10%) two from Karabagaine Ward and one from Bakoba Ward remained neutral.

The respondents who were of the view that, the current statutory qualifications specifically as provided under section 5(1)(d)¹³¹ are insufficient and render the mal administration by the WT were basing on mainly three grounds. One, they were of the opinion that, while the WT were first established in 1985,¹³² they were more of a social institution to resolve matters amicably and without involving the technicalities of laws, under section 8(1)¹³³ the number one and primary function of the WT is to secure peace and harmony in the area for which it is established by mediating and endeavoring to obtain just and amicable settlement of disputes. This means, it was not a court like organ, just an institution for resolving minor disputes and helping the Local Government achieve about its functions of maintaining peace and order.

Further to that, under section 20,¹³⁴ the appeals from the WT hardly goes up, the law makes the final appellate court to be the District Court in matter of law only, otherwise, the decision of the primary court in any appeal is final and conclusive, section 20(3)¹³⁵.

It is because of lack of sufficient legal knowledge that, members to the tribunal go against the law, always unknowingly of course. It is provided under section 14(1)¹³⁶ that, during mediation, the member shall sit male and females. Because of the diverse reasons sometimes female are not present but the WT for good faith decides to continue with the process, at the end failure of justice occurs and hence causing the mal administration of justice.

¹³¹ The Ward Tribunal Act, No. 7 of 1985

¹³² The Ward Tribunal Act, No. 7 of 1985

¹³³ The Ward Tribunal Act, No. 7 of 1985

¹³⁴ The Ward Tribunal Act, No. 7 of 1985

¹³⁵ The Ward Tribunal Act, No. 7 of 1985

¹³⁶ The Ward Tribunal Act, No. 7 of 1985

Hon. Karua J, quashing the proceeding and decision of the WT in the case of **Anyosisye Pombona v. Iman Mwamsigwa**¹³⁷ held inter alia that “...there was no female member, this is against the law which requires that the tribunal members should not be less than four nor more than eight of whom three shall be female members”.

It is believed that, if the members could be possessing a bit of the legal qualification, mal administration like those could not have been happening.

The second base of their opinion on qualification was based on the capacity/qualification of the secretary to the WT. Section 5(2)¹³⁸ gives the qualification of the secretary as follows, “No person shall be recommended as a Secretary of a Tribunal unless he is, in the opinion of the Ward Committee, sufficiently literate and educated and capable of satisfactorily discharging the duties of Secretary”.

The respondents claims are that, there are no given qualification in the wording of the law, and further to that, the respondents were of the opinion that, they are not open and that blanket statement leads into getting the secretaries who are not worth of becoming secretaries.

It was revealed by a chairman of the DLHT that in some occasions, he has encountered the secretaries of the WT who do not know how to read and write but yet they are secretaries of the WT.

The respondents were of the opinion that, at least the only person with a great knowledge and skill in the field of law could be the secretary, so as to lead the other from committing the unnecessary mistakes in law. These mistakes of course results into mal administration of justice in WT and costs the litigants.

Giving a court decision in the case of **Ibsen Shawala v Nelson Selela**,¹³⁹ Hon. Nyaruka J held inter alia that;

“However, when I was perusing the file I found two cases on the same subject matter. They were cases number 127 and 128 of 2010. Whereas in the former

¹³⁷ Civil Appeal No. 2 of 2010, Iringa High Court Registry (Unreported).

¹³⁸ The Ward Tribunals Act, No. 7 of 1985

¹³⁹ Civil Appeal No. 15 of 2012 Iringa High Court Registry (unreported).

case the respondent sued the appellant and in the later case the appellant sued the Mtaa Executive Officer (MEO) of Mpoji Street. As both cases involve one piece of land, I think they ought to be merged together but the trial court (ward tribunal) dealt with them separately. We quash the decision of both cases and order the retrial de-novo as one case”.

If the secretary could have been having legal knowledge could have applied it and make sure that there are no multiplication of cases whether one to wait for the other or merge both of them to form a single suit to avoid the de novo order by the higher courts as it happened.

The third and last base was equipped on the fact that, even the training to the WT members are not given and hence, on top of that they are having no any legal knowledge, as having it is a disqualification to become a member at law, they are not trained as layman to give a fair and just decision on the matters presented before them to avoid mal administration.

The other respondents who were of the opinion that, the set qualification does not affect the capacity of the WT to discharge its function and cause mal administration were mainly the members of the WT. On this area, they emphasized that, all they miss is a frequent training from the responsible authority. They are of the opinion that, regardless of the changes and expansion of functions of the WT, they can still perform better if they are trained now and then.

While responding to the questionnaires, a big number shows that they got training lastly three years back, so in case of new members, they are open minded, no training and no experience.

On the other hand, three respondents remained neutral, they could not decide whether the current statutory qualification causes mal administration or not.

It is evident that, objective number two of this research has been met. The examination of the challenges facing the Ward Tribunal has been thorough conducted. That, the challenges facing the Ward Tribunal members by virtue of having no legal qualification has been explained above including the cases upon which the court gave decisions

showing that justice failed to the aggrieved parties came out of missing the legal qualification to decide matters in a legal way.

Also, objective number three of this research has been met too. In the above findings, it has been revealed that, one of the statutory qualification (which forbids a person with legal knowledge to be a member) of members of WT causes mal administration in some cases. That, in the above findings, vivid examples of failed justice has been demonstrated through the referred court cases.

On the other hand, objective number four of this research has been met also. That, this work has showed that the respondent interviewed said that they have not been given any training for a long time and hence this clearly shows that, no initiatives and efforts are taken to curb the challenges facing the WT.

After that discussion, the researcher finds it open that lack of legal qualification and frequent training on the operation of the WT causes mal administration of justice at the WT since members do not decide per the law but what seems better to them.

5.1.3 Ward Tribunal's Financial Capacity

In this question, the researcher wanted to obtain information as to the financial position of the WT. It is known from the establishing law that, the WT is supposed to be financed by the Council in which it is established¹⁴⁰.

As funds are one of the main components for each part to meet his/her responsibilities, it was intended to see if the Council meet this statutory obligation, and if it does not meet it, what is the financial status and capacity of the WT and how does the WT financial position in general cause mal administration of justice in the WT.

The table below shows the response of the respondent.

¹⁴⁰ The Ward Tribunal Act, No. 7 of 1985, Sections 7 and 27

Table 5.3: Ward Tribunal's financial capacity to run itself

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	1	3.3	3.3	3.3
No	28	93.3	93.3	93.3
Neutral	1	3.3	3.3	3.3
Total	30	99.9	99.9	99.9

Source: Researcher's Own Findings

As table three shows above, the respondent in this question were of the view that, the WT have no financial capacity to run themselves and yet they are not supported by the Council as mandated under the establishing law. Twenty eight respondents out of thirty respondents (equal to 93.3%) from the selected Wards were of the opinion that the WT have no financial capacity to run themselves. Only one respondent (equal to 3.3%) from Nshambya Ward claimed that the WT can financially run themselves while the remaining one respondent (equal to 1%) from Nyakato Ward had no clear answer.

The respondent made it wide open that, the WT expect financial resource from two sources, the fund from the Council and the collections gathered by the WT through charges of opening cases, running the cases, visiting locus and purchasing copies of judgments. The fines charged on criminal matters are remitted at once to the Council hence not a source of income.

While giving their answers, all WT members said that they have not received any fund from the Council for financing the WT for quite a long time, some of the members who are serving the 2nd time (equal to 6 years) do not remember when they were remitted with a single sent from the Council for running the day to day activities at the WT. They all complained that they are not paid their dues as stipulated under the law¹⁴¹ and they work under the un-conducive environment which to the researcher's opinion endangers justice. The WTs are charging different fees for the filing a case, running a case, visiting the locus and obtaining a copy of the judgment, it is from those items that their monthly allowances are collected, this means, when it comes a months when the cases have not been opened,

¹⁴¹ The Ward Tribunal Act, No. 7 of 1985, Section 27

there is no allowance for a month, or if the fund available have been utilized to get the office running in stationeries, then the members goes back home empty handed that month.

As far as the secretary is concerned, section 6(3)¹⁴² put the secretary in the permanent employment of the Council, astonishingly, no secretary is paid by the Council just like what happens with the other members.

While interviewing the Human Resource Officers of the Councils selected, they made it clear that fund to be remitted to the lower lever have not been sent because there has been insufficient fund for a long time now at the Council level, the government budgets have been decreasing with time while the needs are increasing. They further said, the Council is supposed to remit 20% of its total own source collection to the lower lever government, i.e Village and Mitaa government, but they have failed to meet that prerequisite condition which makes them qualify for attaining the foreign grants from the central government, how can they be able to send money to the WT, which of course is among the 20%.

On the secretary to be a public servant under the service of the Council, they aired out that, it is impracticable as of now to get the secretary into the Council payroll since the secretary to the tribunal is not mentioned in the Public Scheme of Service as one of the public servant of Council, that is to say, he is mentioned by the Ward Tribunal Act¹⁴³ to be a permanent employee of the Council but he is not appearing anywhere in the local government establishments. Hence, if one tries to set him in at the Council level the system will punch him and he will never be salaried until rectification of the establishment.

This fact reflects the truth that, the WT cannot run themselves financially, either from its own collected money nor the Council fund which never goes there. The question remains how they survive. The researcher gathered through the interview and questionnaires the answers which were at different times said by the litigants and the tribunal members.

¹⁴² The Ward Tribunals Act, No. 7 of 1985

¹⁴³ The Ward Tribunals Act, No. 7 of 1985, Section 6(3)

First, each WT have set its own costs for the mentioned items, from one tribunal to the other costs ranges from 1,000/- to 10,000/- for filing a case, 1,000/- to 5,000/- for running a case (some other tribunal do not have this cost), 10,000 /- to 50,000/- to visit the locus and 5,000/- to 30,000/- for obtaining a copy of the judgment. These costs are not uniform at all, some WT got the consent of the Ward Development Committees, some did not bother, they set as they sees better.

Second, as for the law states, each dispute referred to the tribunal has to be mediated first before embarking into litigation¹⁴⁴. Given the nature of the need for fund to run the tribunal and mediation does not pay much, the WT jumps into litigation so as to acquire that money which will enable the tribunal to survive, by so doing, the paramount aim of establishing the WT perishes, only because they are insufficient financially.

Thirdly, we have witnessed several members of the WT being dragged to court for the corruption allegation, some of them have been proved, it is the observation of the researcher that, the corrupt practices are motivated by the insufficiency to run the WT while the members are there considering that as their employment and expecting to gain from there.

After that evaluating the presented findings, it is open that objective number two of this research has been met. The researcher aimed at examining the challenges facing the WTs. The examination of the lack of fund above and its impacts fulfill the targeted objective. On the other hand, objective number three has been met. Lack of fund to run the WT and pay the members allowances is one of the causes of Mal administration of justice in the WTs. As explained above, the tribunal sometimes engages in the corrupt practices because of insufficient fund to run the tribunal and pay their dues. It goes without saying after the analysis of the findings that, non remittance of fund to the WT causes mal administration of justice.

It is the observation of the researcher that, the financial position of the WTs leads into mal administration of justice for the reasons above discussed.

¹⁴⁴ The Ward Tribunals Act, No. 7 of 1985, Section 8.

5.1.4 Disciplinary Authority of Ward Tribunal Members

The researcher under this question wanted to obtain information as to whether there are any disciplinary taking guidelines in place and known to the WT members against them if they go against the law.

This question intended to put it open as to the presence of the disciplinary authority for the WT members, the procedures if any misconduct is done and the reality as to whether the disciplinary measures are taken or not.

It has been important to look into this since the discipline and administration of justice are two faces of the single coin. If there is no discipline, then justice is far away to be done by those who are mandated to dispense it. With the WTs, there has been a multiplication of overseeing authorities and making it a challenge as to who can take the disciplinary actions action against the member of the WT of he/she misbehave in his dairy duties.

The table below shows the awareness of the presence of the disciplinary authority and the procedures.

Table 5.4: Awareness of the Presence of the Disciplinary Authorities and Procedures

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	8	26.6	26.6	26.6
No	12	40.0	40.0	40.0
Neutral	10	33.3	33.3	33.3
Total	30	99.9	99.9	99.9

Source: Researcher's Own Findings

As the table shows above, the respondents themselves have given the trend of the awareness of the presence of the disciplinary authority and the procedures to undergo in disciplining a member who has mis-conducted himself in his duty. eight respondents (equal to 26.6% of all respondents) five members from Kashai Ward, two from Bakoba and one from Nyakato Ward were of the opinion that, there is in place the disciplinary authority and the procedures to deal with a person who contravenes his rules of work.

On the other hand, twelve respondents (equal to 40% of all respondents) were of the view that, there is no in their awareness, the disciplinary authority and procedures laid down to be used in case of the WT member misconducts himself. The last ten respondents (equal to 33.3% of all respondents) randomly from the selected Wards were of the view that, they are neutral, they think the disciplinary authorities and procedures are there, but could also not be there or they are insufficient.

This contradiction upon the respondent is caused by the fact that, the WT are supervised by different organs of the state under different department/institutions. While they are established under the Ward Tribunals Act No.7 of 1985, section 6(2) of the said Act states the tenure and makes it clear that, if any vacancy occurs because of death, effluxion of time or ***any other reason, the appropriate authority may cover such a vacancy.***(emphasis is mine).

This shows that, the appropriate authority is disciplinary authority in that purpose since it can use ***“any other reason”*** to remove the member and appoint another member to cover the vacancy. In that regard, the appropriate authority is a disciplinary authority, but, there is no guidelines set to go about taking the disciplinary actions, neither has the misconduct to be dealt with mentioned and prescribed, hence this can be used unwisely by both parties, the appropriate authority and the WT members when it has to be employed to make sure that mal administration of justice is avoided by taking disciplinary measures against the WT member.

On the other hand, we have two supervisory bodies over the WT, the judiciary (the Primary court and District court) and the Ministry for Land and Human Settlement, through the District land and Housing Tribunal. Because of having different organs to supervise the WT, it becomes challenging to take any disciplinary measure against the WT members as they can misconduct themselves in matters reported to the organ which has no direct discipline authority over them.

For instance, all criminal appeals and civil appeals other than those originating from the land matters are supposed to be referred to the Primary Court¹⁴⁵, while land matter have to go to the District Land and Housing Tribunal¹⁴⁶. Given that fact, it becomes challenging when the WT member misconduct himself in deciding a certain matter, all the appellate organ can do is to reverse the decision reached to by the WT and nothing more, if it want to discipline the members, it has to report the matter to the appropriate authority, or report the matter to the other organ like Prevention and Combating of Corruption Bureau (PCCB) to deal with the matter, of which is the long way and taking in consideration that, *justice delayed is justice denied*.

In its totality, the absence of the direct powers and procedures to deal with the WT members who misconduct themselves in the line of their duty makes the WT members relax and control the WT as their own property under no maximum supervision.

For instance, while interviewing the Chairman of the District Land and Housing tribunal, he said to have once received a secretary of the WT who did not know how to read and write, he had brought the written proceedings and judgment of the WT, he wondered how that happens. It is because the WT members does not interact with the appropriate authority of who has the mandate to declare him unfit and appoint another, the chairman had to take trouble to inform the Council for its further actions and nothing more could have been done by the chairman of the DLHT.

By the foregoing explanations, it is evident that, objective three of this research has been met. That, the analysis of the data collected in answering this question of the awareness of the disciplinary authority of the WT members shows that, a big number does not know the means to discipline the members. Those who know still claim that it not practicable as it either a long way or not possible at all. This is taken as a challenge as there is no clear known way of disciplining the member of the WT once he misconduct himself and this leads into mal administration as the member misconduct themselves knowing that for sure nothing will be done against them.

¹⁴⁵The Ward Tribunal Act, No. 7 of 1985, Section 23A

¹⁴⁶The Land Disputes Courts Act No 2 of 2002, Section 13(2)

This reflects the fact that, some of the mal administration of justice in the WT are caused by this system of uncertain disciplinary taking methodology of which makes the WT members relax and become free from being dealt by with the proper organ once they happen to have contravened their principles of work.

5.1.5 Discharge of Function by Appropriate Authority

The researcher under this question wanted to obtain information as to the meeting of the obligation of discharging function by the appropriate authority as established under the law. In this regard, the researcher posed a genera question to the respondent as to whether the appropriate authority is discharging its functions to the satisfaction of the law. The same question had the sub questions to direct the answers in the specific functions so as to understand the discharge done or non discharge.

The table below shows the response of the respondent on the discharge of functions by the appropriate authority;

Table 5.5: Discharge of Function by Appropriate Authority

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	5	16.6	16.6	16.6
No	22	73.3	73.3	73.3
Neutral	3	10.0	10.0	10.0
Total	30	99.9	99.9	99.9

Source: Researcher's Own Findings

As the table shows above, the respondents themselves have given the trend of the insufficiency performance of the appropriate authority in the discharge of its functions. The non performance of functions by the Council has a great impact on the administration of justice by the WT.

In a table above, five respondents (equal to 16.6% of all respondents) two from Nshambya Ward, 1 from Kaabagaine and two from Bakoba Ward were of the opinion that, the appropriate authority discharges its functions as per the law. Twent two respondents

(equal to 73.3% of all respondents) randomly from the selected Wards declared openly that the appropriate authority does not discharge its functions as per the law and the remaining three respondents (equal to 3% of all respondents) from Nyakato Ward were of the opinion that, they do not know whether the functions are discharged or not.

Under section 7,¹⁴⁷ the Act 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”*

Through the respondents reply to the questions administered to them, a big number were of the opinion that the appropriate authority has failed to perform its functions as stipulated under the law above. The appropriate authorities have failed to facilitate the smooth and effective performance by the tribunal of its functions by failing to remit funds (for running the office) as stipulated under section 27,¹⁴⁸ to conduct frequent trainings, to facilitate the process of renewing the tribunal members’ tenure when expired and to avail the WT with working infrastructures like the building and transport.

The combined effect of the failure mentioned above has lead to the WT to fail to deliver justice as guaranteed by the law and hence causing mal administration of justice to the litigants who present their matter for determination before the tribunals. The failure by the appropriate authority in remitting fund to the tribunal, has lead to the tribunal members to get bribed and deliver unjust decisions, this is caused by the fact that the WT members works for free in some tribunal as no money to pay their dues.

On the other hand, the failure of the appropriate authority to conduct frequent trainings to the WT members has lead into the new formed tribunals to sit against the quorum as provided for under the law, to give improper orders to the litigants, including telling them that the time for appeal is 60 days, deciding the matters which were received as civil matter in a criminal way, visiting the locus and taking new evidence while already both

¹⁴⁷ The Ward Tribunals Act, No. 7 of 1985

¹⁴⁸ The Ward Tribunals Act, No. 7 of 1985

parties has already closed their cases, just to mention a few, all these irregularities in turn affect the other part while an appeal is preferred and some of the mentioned irregularities tabled as grounds of appeal, hence the mal administration of justice due to the failure of the appropriate authority to discharge its statutory function.

On the same vein, some tribunal expires their time as provided for under section 6(1)¹⁴⁹, but the appropriate authority does not renew the same at once and hence the tribunals ceases to exercise its functions or exercises them unlawfully and then causing failure of justice when the appeal is preferred. Lastly, the WT sits to conduct their session in different areas including, the CCM buildings, the individual's building and the like, now when the case has one party who has given accommodation to the WT, obvious there must be biased decision by the WT.

On those circumstances, the WT will exercise its power without being fair and hence mal administration of justice to the affected part.

While presenting the collected data, it is obvious that, objective number three of this research has been met. That, the failure to discharge function by the appropriate authority causes mal administration given the elaborated examples, injustice is sometimes caused by lack of fund and unavailability of good working environments which causes mal administration.

On the other hand, objective four of this research has been met. The data collected shows that no efforts have been employed to curb the challenges facing the WT. the collected data shows that, there has been no remittance of funds to the WT, there have not been conducted seminars to the members, there is no any recent amendment of the law to rectify matters which people claims to be a problem. Having that observation put open, it is obvious that objective four has been met though the answers are not in affirmative.; This also proves the hypothesis that mal administration of justice in WT is caused by their legal setup.

¹⁴⁹The Ward Tribunals Act, No. 7 of 1985

5.2 Other General Matter of Concern leading to Mal Administration of Justice in WTs

Apart from five main five reasons causing the Mal administration of justice in the WTs, during the interviews and observation, the research encountered other challenges facing the WTs and hence important to discuss them as they affect administration of justice by the WTs in Tanzania.

5.2.1 Outdated Penalties under the Law

Referring o the jurisdiction of the WT, it has two types of jurisdiction, those being the civil and criminal one. On the criminal jurisdiction, the WT is empowered to give fines and jail time to the offenders who are convicted before them. For instance, the schedule to the Act¹⁵⁰ provides for the criminal offence under the Penal Code¹⁵¹ and other law which are triable by the WT, it gives the punishment range from Tshs 100 - 2000 and a jail time ranging from 1 – 24 months.

It was the observation of the respondents that, the fines given are no longer matching with the economical situation at hand, and whichever offence the accused is charged and convicted with, he can pay the fine easily and walk away without being transformed into a good citizen as per the aim of the Act. With that observation they proposed the Act to be amended and incorporated with the fines which are in reality with the current financial situation for the purposes of meeting the aim of the punishment.

5.2.3 Double Standard on the Right to Appeal

The WT has jurisdiction over civil matters and criminal matters are aforementioned. Taking the good example of the civil jurisdiction, it can deal with matters originating out of land matters and other normal cases. Hike in normal cases, section 20¹⁵² makes the final appeal to lie to the District Court, if at all there is a point of law to be determined by the higher court, otherwise, the final appellate court is the primary court.

¹⁵⁰ The Ward Tribunals Act, No. 7 of 1985

¹⁵¹ The Penal Code, Cap 16 R.E 2002

¹⁵² The Ward Tribunals Act, No. 7 of 1985

At the same time, section 48¹⁵³ allows appeal from the High Court to be preferred the Court of Appeal, the High Court in turn receives appeals from all way down to the WT, this means, a matter coming from the WT in a land channel may be heard by the High Court but a matter in other channel, hardly gets to the District Court, this is not fair since then WT is composed of the same people and same everything while deciding the two types of cases.

The respondents were of the view that, to curb this double standard problem, all of the appeals from the WT should be given floor of appeal to the top stage where one gets satisfied with the decision rather than being blocked by technical laws.

5.3 Conclusion

This chapter has dwelt itself on the presentation and discussion of the collected data from the 30 respondents who gave out their answers through questionnaires and interview, also the researcher observed some information through the visit in the WT sessions at different times.

Generally, it has been presented that there is mal administration of justice by ward tribunal and it is greatly caused by their legal set up. This comes from the nature of the set up of the tribunal as provided for under the law, the statutory qualification versus the capacity to discharge function by the WT members, the financial provision of the WT as set under the law, the uncertain disciplinary authority and procedures to discipline the wrong doers and lastly the failure to discharge function by the appropriate authority leads into the mal administration of justice in the WT, the source of it is their legal setup as above mentioned.

The next chapter will give the conclusion of the research work, explore the recommendations to solve the established setbacks for the better performance of the WT and avoiding the avoidable mal administration.

¹⁵³ The Land Disputes Courts Act No. 2 of 2002

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.0 Conclusion

This chapter looks to give a conclusion and recommendation of the research. The conclusion herein is based on the data collected and the analysis done and then there will be recommendations for every observed matter as per the hypothesis, objective and findings. The hypothesis that mal administration of justice by WT in Tanzania is caused by their legal setup as formulated by their establishing Act has been proved in affirmative in chapter five above. That, the objective of the research was met, the determination of how far does the legal setup of the WT affect the administration of justice in disputes referred to it was done through examining the legal setup of the WT and analyzing the challenges facing the WT in dispensation of justice. That, after meeting the objective, hereunder is the conclusion and recommendation by the researcher.

This study has dealt with the mal administration of justice in the Ward tribunals as caused by their legal setup in Tanzania. The survey was conducted in Bukoba District Kagera region. Several means were used to accomplish the data collection step for the proper analysis of the work, those are primary data which the researcher gathered through interviews, questionnaires and observation and secondary data which the researcher gathered through documentary review of materials such as books, newspapers, journal and reports.

During the interviews, observations and questionnaires, the respondents revealed that, the WT are in existence and they are trying to perform their functions to their best, but there are mal- administration of justice in the course of transaction which ranges from being caused by the human error to the unfriendly legal setup of which they are established upon. The conducted research has identified that, the mal administration of justice in the WT in Tanzania is caused by their legal setup in the following reasons:-

First, there is a great awareness of what the WT does in the group of people who are concerned and associated with the WT, but the outside members does not know the real functions of the WT, hence the members of the tribunal are sometimes taking advantage of

performing the functions which are not vested to them, or perform their functions in an appropriate manner. For instance, they sometimes entertain criminal trespass to land and award punishments which are not in law. This is because people are not so much aware about their function that is why a good number of people refer them “*Ward Land Tribunals*” instead of “*Ward Tribunals*”. This unawareness of people is rooted from the nature of the setup of the WT and the WT members take advantage of the ignorance of the people to satisfy their own needs which results into mal administration of justice.

Second, it has been observed that, the statutory qualification of members of the tribunal causes mal administration of justice in the WT in Tanzania. 50% of the respondents were of the view that, having a person who has no legal knowledge and backup but still has to determine the right of a person accruing from the statute, causes mal administration of justice. They gave example of the violation of the principles of natural justice where by the same panel of members who are involved in the mediation are later the same panel giving a binding decision to the litigants, they become biased as they already knew the case of each side before. On top of that, there have been many cases which have failed at the appeal level for technical points including but not limited to, the decision reached without a proper quorum, deciding the matters without jurisdiction and giving general improper decision because of having no legal knowledge.

That, the respondent who were of the view that, statutory qualification is not a problem which causes mal administration of justice but lack of frequent training, seminars and capacity building sessions were the members of the WT who of course are in fear of losing their posts if the law require a legal personnel to attend the tribunal. In general, it was observed that, the mal administration of justice in the WT is partly caused by the lack of legal knowledge and insufficient trainings and seminars given to the members. The legal setup, the legal requirement forbidding any one with legal knowledge to be a member of the WT leads into the members being ignorant and taking advantage of committing the human errors in the name of ignorance of the procedures and laws and hence causing mal administration of justice.

Third, the researcher also encountered that, the legal setup of the WT which makes them under the council upon which they are established causes the WT inefficiency by not remitting the needed fund for running the institutions. The WT needs fund for payment of members allowances, purchasing of office stationeries, transport costs where there is a need to visit the locus and other incidental costs there to, but as per the set up, the fund has to come from the council of which they never remit the needed funds. This habit has made the WT member to suffer and find the means to survive, this has leaded them to the corrupt transactions and bribes and hence causing mal administration of justice in the WT.

Out of thirty respondents, only one respondent is the one who said the tribunal can run itself financially, other one respondent replied that he does not know, all of the remaining twenty eight respondents were of the view that, the tribunal cannot run itself but still it does not receive the facilitation fund from the council, hence it is open that fund to run the tribunal must come from the litigants themselves, this causes mal administration of justice. Fourth, a big number of the respondent as shown in the table in the previous chapter said that there is no known and laid down mechanism for taking the disciplinary actions against those who misconduct themselves in the line of their duty. This has made the WT members relax and feel free of fear of mis-conducting themselves as there has been no known mechanism to deal with them. One of the reason is the diversified authorities to look over the tribunal, from the same tribunal, different institution receive the matters from there, these being the District Land and Housing Tribunal, the Primary Court and the District Council, all of them have the supervisory role over the tribunal but does not have the disciplinary role save for the district council. This diversity of powers make the WT members free of discipline and causes mal administration of justice as they are not fearing to be dealt by, for instance, if they commit any wrong against the primary court, the judiciary has to tell the council to deal with it, this long procedures as set up by their legal setup, more impossible.

Fifth, the respondent showed that the appropriate authority has totally faired to run these tribunals. They do not do any of their functions properly in relation to the WT. That, after they facilitate the formation, they leave the tribunal to sail on their own and hence this

causes mal administration as they are not overseen by their immediate boss who could have made them run in line.

6.1 Recommendations

Taking in consideration of the conclusion given in the above paragraphs, the following recommendations are given to rectify the current situation:-

Since it has been revealed that the legal setup of the WT as established by the establish law causes mal administration of justice in Tanzania, it is generally recommended that, those provisions which leads into the mal administration should be repealed to provide for the better provisions. Hereunder are the best recommendations as proposed by respondents, evaluated by the researcher and hence recommended.

6.1.1 On the Procedures for formation of Ward Tribunals

It is recommended that, the law should be amended to provided for the strict procedure of forming a Ward Tribunal, these procedures should be narrated in a the law or regulation to specify the specific qualification of a secretary, the straight means to get the members of the tribunal and the timing of the process. This will help the tribunal to be in existence all the time and avoiding having a dead tribunal, working against the law or not working at all.

This recommendation is based on the information partly gathering while working on objective number one of this research which concerned with the examination of the legal setup of the WT in general. It is through that examination that it has been revealed that always, the tenure of members expires and it takes time to have a new tribunal in place simply because the law does not provided for the time limit to have a new tribunal when the existing one expires.

6.1.2 On the Statutory Qualification versus Discharge of the WT Functions

The qualification of the members of the tribunal should be updated to incorporate a person with legal knowledge in the law. That, initially the WT we just for solving minor conflicts of which their appeals hardly reached the District Court, but as of now, their appeals channels until the Court of Appeal, and for a matter to go to the Court of Appeal form the

WT, there must be a point of law to be determined, then you go to determine a point of law from the proceedings and judgment originating from the total layman, this is the period in time to have at least two people with legal knowledge, including the secretary who always is the compass to show the direction of the tribunal.

On top of that, the law must make it a must for the members of the tribunal to get the trainings and seminars to build their capacity of making a fair and just decision affecting the litigant's rights and interests.

While working on objective two of this research, examination of the challenges facing the WT in dispensation of justice, it has been revealed that, having no legal knowledge to all members of the tribunal poses a threat when the matter is having legal technicalities, or even if the matter is not technical, but while there are new members of the tribunal, having no legal back up at all, without any training nor seminars on their work, it becomes challenging.

On the other hand, giving answers to objective three, non possessing of legal knowledge and non training of WT member is one of the causes of mal administration of justice in the WT.

6.1.3 On the Ward Tribunal's Capacity to Run Itself

The Ward tribunals budget should be adhered to, since the appropriate authority has failed in total to meet the needs of the tribunal, the law should make it a procedure that the funds of the tribunal come directly to their account from central government. That, as of recently, the primary and secondary schools in Tanzania are free from money problems as their fund is not any more passing through the council but going direct to the school bank account, this method should be employed in tackling the fund problem in the WT.

Also, the fees and costs of the tribunal should be raised and upgraded to meet the reality and the current financial/economical situations, there should be, through an act itself or a regulation, a schedule of costs and fees to be applied to all tribunals as it is with the

Primary courts. This will minimize the misuse of taxing powers which leads into mal administration of justice in WT.

This has revealed objective two, the W have challenges in running the office, allowances of members are not paid, if paid not in full and out of time. On the other hand, it has revealed objective three that, the unavailability of fund in the WT is a cause of mal administration of justice in the WT as explained above.

6.1.4 On the Disciplinary Authority of Ward Tribunal Members

It was recommended by the respondents during the interviews that, in order to maintain the discipline of the members of the WT, the law should specify the disciplinary authority of each organ which supervises the tribunal in one way or another. That, the appropriate authority, the Primary Court and the District Land and Housing Tribunal should concurrently be vested with disciplinary powers over the tribunal in relation to their area of interaction, the laid down disciplinary procedures will make the tribunal members cautious and avoid themselves from misconducting themselves as they will be aware that they can be dealt by easily rather than now where there is no laid down procedures to discipline the tribunal members when they misbehave. This responds to objective number three of this research.

6.1.5 On the Discharge of Function by Appropriate Authority

Taking in consideration that, the appropriate authority has failed to discharge its functions in relation to the WT, it is recommended that some of the functions be transferred to other organs, like the funding as recommended above. Then, those few functions to remain under the appropriate authority should be made strictly by the law so as not to be avoided and ignored. The other recommendation is that, since there is a District Land and Housing Tribunal which has a great influence over the WT, the big portion of the functions of the WT should be put under that District Tribunal for the effective monitoring.

6.1.6 Other General Matters Leading to Mal Administration of Justice in WTs

During the data collection, it was recommended that, the Act should be amended on the provision of the punishment awarded on criminal matters. That, the fines provide by the law now are too minimal and un-equivalent to the current economical situation and hence when needed to be paid, it is paid easily and the payer does not feel the pinch and hence cannot be reformed from doing the same wrongs he has committed before. So it is recommended that the fines should be upgraded to meet the current financial and economical situation so that it becomes a real fine to deter the wrong doer.

On top of that, it is recommended that the appellate matters of the WT should go on the same channel, the land matter and criminal and other civil matter should all go till the Court of Appeal unlike now where the other goes and the other doesn't.

It is recommended that, if those recommendations are taken on board, it will minimize or clear away the mal administration of justice in the WT in Tanzania.

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