

## *Land ownership and dispute resolution mechanisms in Tanzania.*

The Population and Housing Census report released last year by the National Bureau of Statistics shows that population of Tanzania is 63.59 million people whereby vast majority depends entirely on land as source of food and income generation.

For purposes of proper management of land in Tanzania, the same is divided into three categories: village land, general land and reserved land.

It is important to note that all land in Tanzania is public land vested to the President as trustee on behalf of all citizens. Therefore, all persons who own land in this country are just leaseholders for periods of time namely 99 years, 66years or 33 years subject to article 24 of the Constitution of the United Republic of Tanzania as amended from time to time. Foreigners or non-citizen are also allowed to own land for investment purposes only.

Due to various human activities conducted through land, dispute or misunderstanding between the parties occurs, mostly relating to ownership, boundaries or leasing among others.

This article intends to shed some light on the existing legal mechanisms for resolving land disputes in Tanzania. Section 60 of the Village Land Act No 5 of 1999 Cap 114 and Section 167 of the Land Act No 4 of 1999 Act No. 4 Cap 113 vest exclusive jurisdiction to courts to deal with land disputes.

The said courts are the Village Land Council, the Ward Tribunal, the District Land and Housing Tribunal, the High Court of Tanzania and Court of Appeal of Tanzania.

Procedures and the manner of handling land disputes are regulated in the Land Disputes Courts Act No 2 of 2002, Cap 216 R.E 2019. We shall demonstrate some silent features of each court mentioned above and its jurisdiction for purposes of general understanding.

In the Village Land Council, the law does not lay down pecuniary value in which the council shall have jurisdiction to deal with land dispute. Therefore, any land dispute falling under customary law, regardless of its value, can be mediated by the council.



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There is no formality of receiving complaints at the council; rather, it can be presented formally or informally. Once the complaints are lodged, the council which is constituted of seven members, three of whom must be women, proceeds to mediate the dispute once both parties are present before it.

The core function of the Council is to mediate land disputes between parties with the purpose of arriving at a mutual understanding. The manner and procedure of conducting mediation is informal and very user-friendly for parties.

In the event of parties failing to reach mutual settlement on the issue, then the same should be referred to Ward Tribunal for further legal process. Mandate of the Council is limited to either successful mediation or failure and not to issue decision.

Therefore, the law does not allow appeal or revision but to refer the dispute to the Ward Tribunal. Despite the fact that the law is silent on the manner of referring the dispute to the Ward Tribunal, we advise that a dispute be referred from the council to the Ward Tribunal formally for purposes of record keeping for future use.

Further, in the event of parties having reached mutual understanding, then it is imperative also the said settlement should be enforced by law, by registering the same at the District Land and Housing Tribunal so that an order can be issued.

The Ward Tribunal was adopted through the Ward Tribunals Act and its mandate was extended to deal with land disputes within its jurisdiction, namely that particular ward. Formerly, jurisdiction of the Ward Tribunal was limited for determination of land disputes whose value does not exceed 3mn/-.

The law has since been amended through Written Laws (Miscellaneous Amendment) Act No 3 of 2021 in which such jurisdiction of determination of land disputes have been stripped off, hence Ward Tribunal has now remained with the mandate to mediate land disputes between parties such as village land council.

However, the only new feature which makes it different from the Village Land Council is that in case parties fail to reach amicable settlement, the tribunal is mandated to certify that parties have failed to settle hence the said certificate shall be used as evidential

proof while initiating dispute at the District Land and Housing Tribunal.

Procedures for dealing with disputes at the District Land and Housing Tribunal are more formal compared to the Village Land Council and Ward Tribunal. Here, it is pure litigation whereby the trial chairperson is required to decide the dispute based on the law and facts presented before the tribunal.

Winner takes all which is a typical adversarial system practice is applicable. As per the recent amendment of the law, without attachment of certificate from Ward Tribunal which indicates that parties have failed to reach settlement, the claim is not entertained by the Tribunal. The reference is the case of Issa Iddi Kauzu vs Ally Abdalla Mkoko, Land Appeal No 08 of 2022.

The complainant or applicant initiates proceedings through form number one with some similarity with plaint. Thereafter, the Tribunal issues summons requiring service to be effected to the respondent by court process server along with claim form presented to the Tribunal.

Once received, the respondent is required to file a written statement of defence within 21 days from the date of service, unless extension of time is granted.

Upon completion of the pleading stage, including disposal of some of the preliminary objections raised such as issue of jurisdiction of the tribunal to deal with the dispute or limitation of the dispute, then the dispute commences by hearing the parties and their witnesses. The dispute shall be head by the trial chairperson with two assessors, in which evidence shall be received and recorded in accordance with the law.

Normal procedure of abduction of evidence is applied but with less strictness as compared to the ordinary court of law. Once the same is done, the Tribunal delivers a judgment based on facts presented and the law of the land.

The aggrieved person may prefer an appeal to the High Court of Tanzania or revision subject to the circumstances. The jurisdiction of the Tribunal is limited to the district where the land in dispute is located and with pecuniary value estimated to be not more than 200,000,000/- for the movable property while for the immovable property with estimated value of not more than 300,000,000/-.

The High Court of Tanzania has appellate, original jurisdiction and supervisory power on land disputes. In the first instance, the person aggrieved by a decision of the District Land and Housing Tribunal can appeal to this court.

The law requires an appeal to be filed within 45 days from the date of decision unless leave is granted to appeal out of time. On the other hand, when exercising original jurisdiction, proceedings are initiated by filing fresh case whereby normal procedure provided in the Civil Procedure Code Cap 33 R.E 2019 are applied.

Supervisory power is in scenarios when either party applies for revision in the High Court of Tanzania or the court itself initiates revision proceedings on its own motion upon becoming aware of any material irregularity which occasioned injustice to the parties.

Proceedings which are subject to revision are proceedings and orders issued in District Land and Housing Tribunal.

When a party is aggrieved by the decision of the High Court of Tanzania, an appeal can be preferred to the Court of Appeal of Tanzania within 60 days from the date of decision.

Otherwise, some few procedures need to be complied with in the event a party has not been supplied with required documents within time to enable filing of the appeal within given time. Appellate Jurisdiction Act and its rules are the major laws which regulate procedures of initiating appeal or revision to the Court of Appeal.

**Note:** The material and information contained in this article are for general information purposes only. They only provide either elementary or basic legal knowledge on the above subject. Anyone considering legal action should consult an experienced lawyer to understand current laws and how they may affect a case in question.