



Research Article

LAND ADJUDICATION PROCESS FOR LAND RIGHTS IN MAINLAND TANZANIA: IS IT A REMEDY TO VILLAGE LAND DISPUTES?

*Sigsbert Ngemera

Tanzania

ARTICLE INFO

Article History:

Received 24th September, 2016
Received in revised form
22nd October, 2016
Accepted 15th November, 2016
Published online December, 30th 2016

Keywords:

Similarly,
Adjudication,
Categories.

ABSTRACT

Land is vital for human survival. It serves human interests in almost all spheres including but not limited to political and socio-economic aspects. However, the struggle for acquiring land rights has been influenced by various issues which involve among other things, determination of boundaries over a particular tract of land. This process, commonly known as land adjudication has been tainted with procedures through which prescribed owners of land have been vested with such land rights upon identifying clear boundaries of land. This has been implemented particularly at a village land. In so doing, it is well established that security of tenure over the village land is maintained as well as village land use planning. Notwithstanding the above proposition, this paper provides the overview on land rights adjudication in Mainland Tanzania. Meanwhile this paper examines the entire process for land adjudication over the village land. Similarly, an appraisal on legal framework on how land adjudication is implemented has been a concern of this paper. Furthermore, this paper reveals contradictory issues in the course of land adjudication and the likelihood of causing village land dispute. The lines of argument within which such circumstances exist have been well expressed within this paper. In this regard therefore, this paper highlights specific parts of the law which need attention for effective operation of the village land adjudication in Mainland Tanzania.

Copyright©2016, Sigsbert Ngemera. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

INTRODUCTION

In Tanzanian jurisprudence, it well settled that there is only one land tenure which vests land occupiers with land rights in Mainland Tanzania. This is termed a Right of Occupancy.¹ The law defines it to mean a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent using or occupying land in accordance with customary law. The Right of occupancy in an independent Tanzania traces its way back from the Government Leases (Conversion of Rights of Occupancy) Act.² By this Act, all government leaseholds were abolished with immediate effect from 1st April 1970 through the Government Notice No. 85 of 1970. The rationale for maintaining this Right of Occupancy is not far to trace.

*Corresponding author: Sigsbert Ngemera,
Tanzania.

*An Assistant Lecturer, The Open University of Tanzania, Diploma in Education (Mpwapa Teachers' College Tanzania), LL.B (Hons), PGD Legal Practice (Law School of Tanzania), LL.M (Civil Procedure) OUT, Ph.D Candidate, Mzumbe University Tanzania, (Land Law), Advocate of the High Court of Tanzania and Subordinate Courts thereto save for Primary Courts, Partner MNL Law Chambers, Dar Es Salaam.

¹ See Section 2 of the Village Land Act, Cap. 114 R.E 2002 and Section 2 of the Land Act, Cap. 113 R.E 2002

² Act No. 44 of 1969

It is to assume ownership of the entire land in Tanzania by the State while excluding the idea of private interest over land leaving the holder of such land right as a mere trustee.³ The land therefore transformed from free-holding to lease holding and again remained a public property.⁴ To date, Mainland Tanzania, sails in the same yacht of a right of occupancy. It is now is now categorized as a Granted Right of Occupancy and Customary Right of Occupancy.⁵ The former is governed by the Land Act while the latter which is the concern of this paper is governed by the Village Land Act. At a village level therefore, the land right that may be obtained therefrom is a Customary Right of Occupancy which may be registered and a Certificate of Customary Right of Occupancy may be issued to the holder of such rights. It is well settled that, before a certificate is issued, the right boundaries over that land must be established,⁶ thus adjudication process over the village land,

³ R.W. James (1971), *Land Tenure and Policy in Tanzania*, 1st Ed. East African Literature Bureau, Dar Es Salaam, p.227

⁴ See J.K. Nyerere, (1967), *Freedom and Unity: A Selection from Writing and Speeches*, 1st Ed. Oxford University Press, Dar Es Salaam, pp. 53-54

⁵ See A.Rwegasira (2012), *Land as a Human Right: History of Land Law and Practice in Tanzania*, 1st Ed. Mkuki na Nyota, Dar Es Salaam, p.72

⁶ See Section 48 of the Village Land Act, Cap. 114 R.E 2002

which now the author intends to establish whether its underlying procedure are healthy enough to remedy the existing land disputes in Tanzania or otherwise. In Tanzania Mainland, where land disputes have been reported oftenly,⁷ gives focus of this paper which is to scrutinize on the entire process of land adjudication over the village land in Mainland Tanzania to ascertain whether its implementation as per law may curb the existing land disputes in Mainland. This article therefore, is divided into five parts of which this introduction forms part of it. The second part examines the concept of village land, the concept of land disputes under the laws of Tanzania and concept of village land adjudication. In this part schools of thought on what village land is, are examined. Similarly the concepts of village land and the historical set up of village land rights are well explained. Lastly the concept of land adjudication, its categories and the underlying procedures are well explained in this part. The third part of the article has examined connection of village land disputes in Mainland Tanzania in relation to land adjudication process. In this case the law that governs the adjudication process is expressed as well as the likely gaps that may in one way or another lead to land conflicts if complied with in express terms. The fourth part includes a conclusive remarks.

THE CONCEPT OF VILLAGE LAND, LAND DISPUTE AND ADJUDICATION OF VILLAGE LAND IN MAINLAND TANZANIA

The Concept of Village Land and Village Land Dispute

It is prudent for the right understanding of the village land adjudication in connection with land disputes over the village land to deal, first and foremost, with what a *village land* and *land dispute* are, in the context of Mainland Tanzania legal system. The term *village land* takes a scope from various historical and legal perspectives that have shaped the land tenure system in Mainland Tanzania. However, the village land in Tanzania is governed by the Village Land Act which defines the *village land* to mean the entire land which has been declared to be a village land and which includes the transfer land transferred to a village land.⁸ From different legal perspective in Mainland Tanzania, it is well document on what consists of a village land. On one side of thought the Village land is viewed as a land within the boundaries of a village which has been registered. This is in accordance with Local Government (District Authorities) Act.⁹ This obtains force and validity only when the Registrar is satisfied that the defined boundaries and a number of households who have settled within the locality meets the requirement and thus the village is worthy a registration. The entire land thereof constitutes a village land on that perspective. The other side of the law, views a village land to constitute the whole land designated as a village land under the Land Tenure (Village Settlement) Act.¹⁰ By virtue of this Act, the Rural Settlement Commission was granted a right of occupancy commonly termed as

settlement rights. In this context, the villagers in the area were entitled with a derivative right of occupancy by way of lease, easement or licenses. This trend based on an approach which involved transforming traditional agriculture in terms of land use and tenure by organizing the peasants in a governmentally supervised settlement schemes.¹¹ The reason for so doing was, among other things, to allow the movement of scattered rural hamlets into compact villages. This is where the village settlement commenced the concept of land which in details defined the derivative rights of the members in such land schemes as being rights of users. In this regard, in case of any alienation by any relevant authority, the user was entitled to compensation thereof to the extent of the value of the improvements. It is this land which The Village Land Act has now recognized as such to fall within the ambit of the village land.¹² The third side of the village land to be recognized as such is that land whose boundaries have been demarcated as a village land.¹³ This may be so termed in reference to any law or any administrative procedure in force before the establishment of the Village Land Act. It is immaterial for that matter to digest on whether that administrative procedure based on or was conducted in accordance with any statute or principles received or under customary laws applying in Tanzania. It is also immaterial to establish whether the said demarcation of the said land was formerly approved or gazetted. Any land of the like therefore within the village shall be termed as a village land.

In terms of village land management and administration, the other part of the law recognizes the village land by virtue of the boundaries agreed between the Village Council and any other neighboring entity be it a legal person or ordinary person within the locality.¹⁴ This setting of the boundaries over this land may be agreed between the village Council of a particular village with either the surrounding village council of the contiguous village, the Commissioner for lands, public organization, urban authority or an individual person under a right of occupancy as the case may be. Upon entering the binding agreement to both interested parties, for that matter, the said part of the land may be termed a village land. The last category of the law, terms village land as any other land than the reserved land, which the villagers occupy under adverse possession.¹⁵ It is declared in the event when the villagers have been using the said land as lying fallow, depasturing cattle belonging to villagers or land customarily used for passage to land used for cattle despaturing. All these in case of any interpretation or understanding thereof, means one and the same thing as a village land in Mainland Tanzania. It is also prudent for the purpose of this paper, and without prejudice to the above, to understand what a *land dispute* is for ease follow up of the concepts herein. Over ages land has been a point where livelihood for survival is met. It has been a confluence where individuals, groups, communities and nations strive for its acquisition, occupying and owning for sustainable development of such groups. As it has correctly been said by Rwegasira (2012), that land question, involving struggles to

⁷See the United Republic of Tanzania, *Budget Speech*, 2015/2016 Financial Year, Dodoma: Ministry of Lands, Housing and Settlement Development, 2015 pp.26 item 32; See also See the United Republic of Tanzania, *Budget Speech*, 2016/2017 Financial Year, Dodoma: Ministry of Lands, Housing and Settlement Development, 2016 p.21 and 22 items 27 and 28

⁸ See Section 2 of the Village Land Act, Cap. 114 R.E 2002

⁹ See Section 22 of The Local Government (District Authorities) Act, Cap. 287 R.E 2002

¹⁰ The Land Tenure (Village Settlement) Act Act No. 27 of 1965

¹¹ R.W. James (1971), *Land Tenure and Policy in Tanzania*, 1st Ed. East African Literature Bureau, pp. 23 to 26; See also A. Rwegasira, (2012), *Land as a Human Right: History of Land Law and Practice in Tanzania*, 1st Ed. Mkuki na Nyota, Dar Es Salaam, p.70

¹² See Section 7(1)(b) of the Village Land Act, Cap. 114 R.E 2002

¹³ See Section 7(1)(c) *ibid.*

¹⁴ See Section 7(1)(d) of the Village Land Act, Cap. 114 R.E 2002

¹⁵ See Section 7(1)(e) *supra.*

acquire land and disputes for or against land ownership, is an age-old enterprises not only in Tanzania, but also worldwide because it is shown to be linked with survival.¹⁶ The same proposition has been reiterated by Fimbo (2004), that historically land has always been an arena of struggles between the contending forces and has cited some instances worldwide which included land struggle between the feudal lords and emerging bourgeoisie from 16th to 19th centuries in England, like in Africa it was a tussle between the colonized and the colonizers.¹⁷ The reason is not far to trace. Land as a real property is an appreciating commodity on daily basis in terms of value. This therefore has something to do with what Nyerere (1966) pointed out that when someone clears the ground adds value to it and in case it is deprived from him a prompt and fair compensation has to be effected to the victim.¹⁸ This is why in most Court proceedings there has been a need for a valuation report over a particular land in dispute as to establish the pecuniary jurisdiction of the Court or tribunal when entertaining a land dispute. The case of *Rweshabura Nzinja Vs Julieta Jacob*, Rugazia, J. puts an emphasis that the Court cannot estimate the value of the subject matter (land) on speculation.¹⁹ Going by the same stance, Tanzania is not unique from what takes place in the entire world as regards land and the underlying disputes. The existence of such disputes over land seems inevitable for that matter. A *dispute* is defined to mean a controversy that stipulates the assertion of a claim by one party and its denial by the other.²⁰ In Tanzanian jurisprudence the term *dispute* is defined to include any case where a person complains of and is aggrieved by the action of another person, or any case where a complaint is made in an official capacity or is a complaint against an official act.²¹

The term *land dispute* is not statutorily define save that Act No. 2 of 2002 has provided for the proper forum to handle land disputes. It provides,

s.3(1) '*Subject to section 167 of the Land Act, 1999, and section 62 of the Village Land Act, 1999, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area*'.

s. 3(3) '*Unless otherwise provided by the Land Act, 1999; no Magistrates' Courts established by the Magistrates' Courts Act 1984 shall have civil jurisdiction in any matter under the Land Act, 1999 and the Village Land Act, 1999*'.

Sections 167 and 62 of the Land Act and the Village Land Acts respectively, show what courts shall deal with all manner of disputes, actions and proceedings concerning land as they are dealt with by these Acts.

¹⁶ See A. Rwegasira, (2012), op.cit, p.7

¹⁷ See G.M.Fimbo (2004), *Land Law Reforms in Tanzania*, 1st Ed. Dar Es Salaam University Press Ltd, Dar Es Salaam p.2

¹⁸ J.K.Nyerere, (1967), *Freedom and Unity: A Selection from Writing and Speeches*, 1st Ed. Oxford University Press,

Dar Es Salaam, pp. 53-54; See also the case of *Attorney General V Lohay Akonaay And Joseph Lohay* (1995)

TLR 80 (CAT)

¹⁹ *Rweshabura Nzinja Vs Julieta Jacob* Misc. Land Appeal No.7 of 2005, High Court Tanzania(Land Division), Dar

Es Salaam, p. 3

²⁰ See Justice Ar Lakshmanan, (2012), *Wharton's Concise Law Dictionary*, Universal Law Publishing Co, 15th

Ed.New Delhi, India p.314

²¹ See Section 2 of the Courts (Land Dispute Settlement) Act, No.2 of 2002

But there is no proper definition that has been issued to define what a land disputes is. Likewise case laws have not been in a position to define what a land dispute per se means. It has been a common practice of the Courts of law to define the term in accordance to what a case at hand is all about at a material time. In the case of *Rombo Green View Investment Ltd Vs Cadasp Tanzania Ltd*,²² Mziray, J., stated that,

'...before deciding whether the matter or dispute is related to land hence giving the court with jurisdiction, two matters have to be looked upon. The first thing you look at the pleaded facts that may constitute a cause of action, and two you look at the reliefs claimed...' page 4

As per this case it is what someone pleads as to his claim and the reliefs he prays that determines whether it is land dispute to be determined by the land courts or not.

In the case of *Charles Akwilini Makoi Vs Gapoil Tanzania Limited*,²³ Massat J, (as he then was) had this to say,

'...It is common ground that the suit is founded on the contract formed through the lease agreement and fuel supply...whose legality is not challenged...I...hold that there was a landlord-tenant relationship between the parties. The supply of fuel is in my view subsidiary to the lease agreement...' page 4

In this case, the matter was determined as land dispute and not a commercial matter as it dealt with lease agreement which is a part governed by the Land Act.²⁴

In the case of *Mariam Ghahae Vs Fatuma Ghahae*,²⁵ the Court defined the term *land dispute* to mean complaints on ownership or occupation of land which includes building and other structures permanently affixed to land. Meanwhile in the case of *Patrick Kimilo Vs Seweji and Another*,²⁶ the *land dispute* meant the claim against the trespass of the respondent into the applicant's, while in the case *Mtumwa Shahame Baya Kondo and 111 Others Vs Principal Secretary, Ministry of Works and another*²⁷, the *land dispute* was established to entail a claims over compensation in case unlawful and illegal eviction. This being the case, the Courts of law as well have not been able to define specially what the term *land dispute* in a general term means. They have been giving definitions in accordance to material facts of the cases as they fall in their judicial capacity thus fix them within the pigeon holes in such manner they are identified by the Village Land Act and the Land Act. To be brief therefore, the term *land dispute* may mean any controversy emanating from actions, proceedings on any matter governed by the Village Land Act and the Land Act postulating

²² *Rombo Green View Investment Ltd Vs Cadasp Tanzania Ltd*, Land Case No. 268 of 2008, High Court of Tanzania(Land Division) at Dar Es Salaam

²³ *Charles Akwilini Makoi Vs Gapoil Tanzania Limited*, Commercial Case No. 1 of 2006, In the High Court

(Commercial Division) at Dar Es Salaam (Unreported)

²⁴ See Part IX of the Land Act, Cap.113 R.E 2002

²⁵ *Mariam Ghahae Vs Fatuma Ghahae*, Civil Appeal No. 43 of 2009, CAT, at Dar Es Salaam(Unreported)

²⁶ *Patrick Kimilo Vs Seweji and Another*, Civil Application No. 99 of 2001 CAT, Dar Es Salaam, (Unreported)

²⁷ *Mtumwa Shahame Baya Kondo and 111 Others Vs Principal Secretary, Ministry of Works and another*, Land

Case No. 31 of 2004, High Court of Tanzania (Land Division), Dar Es Salaam (Unreported)

the assertion of claim by one party and its denial by the other. It will be therefore a village land dispute if such circumstances in controversy take place over the village land.

Adjudication of Interest over village Land

In Tanzania, the idea of village land use planning is now regarded as an opportunity for villagers to support land tenure security over their land. This is so when an individual, family or groups in the form of organizations, as the case may be, intend to secure their land rights over the village land through certification. In this case the Certificate of Customary Right of Occupancy. By so doing the objectives of land use planning would be met, which include among others, ensuring security and equity in land access as well as facilitating the establishment of a framework for the prevention of land use conflicts.²⁸ This has been emphasized by Government Institutions, individuals and land rights activists in Mainland Tanzania.²⁹ Furthermore, it has been a trend for determining that a certain person is entitled to customary right of occupancy and determination of boundaries.³⁰ Similarly, it is argued that adjudication is all about conclusively ascertaining and determining rights and liabilities that are necessary in order to register land parcels at a village level.³¹ The concept of land adjudication comes in place when any person, group of persons or organization, intends to secure land rights over the village land in terms of Customary Right of Occupancy but the boundaries over that land are not well established. This way, no Certificate of Customary Right of Occupancy may be issued to that effect save when the adjudication over that land is endured. The term adjudication, either, has been defined to mean the process of investigating and determining the boundaries and owner of a parcel or plot of land.³² As aforesaid, this process comes in existence where one wants to register his interest in land but the information is not sufficient to warrant registration particularly on the boundaries and ownership of the premise.

²⁸ See Section 4 (d) and (e) of the Land Use Planning Act, No. 6 of 2007

²⁹ See the United Republic of Tanzania, *Budget Speech*, 2015/2016 Financial Year, Dodoma, Ministry of

Lands, Housing and Settlement, 2015 p. 26,27,27.; See the United Republic of Tanzania, *Budget Speech*,

2013/2014 Financial Year, Dodoma, Ministry of Lands, Housing and Settlement, 2014 Item 22: See the United

Republic of Tanzania, *Budget Speech*, 2016/2017 Financial Year, Dodoma, Ministry of Lands, Housing and

Settlement, 2016 p. 25; See also See L.A. Willy, (2003), '*Community-based land tenure management, Question*

and Answers about Tanzania's Village Land Act, 1999' A Paper issued by the International Institute for

Environment and Development, Drylands Programme, Issue No.120 of 2003 p. 40; E. L. Mvula, (2014), *Land*

Rights and Governance Baseline Survey in Dodoma, Morogoro and Iringa Regions, Tanzania, A report submitted

to PELUM Tanzania USAID Funded CEGO in Agriculture Project, p.36

³⁰ See G.M.Fimbo (2004), *Land Law Reforms in Tanzania*, 1st Ed. Dar Es Salaam University Press Ltd, Dar Es

Salaam p.38

³¹ See F.Lugoe, '*Tanzania's Experience with Land Administration And Land Policy Reforms. Part 6: Demarcating*

Land Rights'-DILAPS, A Paper initially prepared for the CBU/CASLE/AfRES Conference on Sustainable

Human Settlements held in Livingstone, Zambia from 2 – 5 May 2007

³² See L.A. Willy, (2003), '*Community-Based Land Tenure Management: Question and Answers about Tanzania's*

Village Land Act, 1999' A Paper issued by the International Institute for Environment and Development,

Drylands Programme, Issue No.120 of 2003 p. 40

It is loud that where the information is certain on what boundaries are and who owns that parcel of land then adjudication needs not be done.³³

Categories of Land Adjudication Over the Village Land

Land adjudication process is categorized into two major parts: that is village adjudication and District Adjudication.³⁴ For the purpose of this paper, adjudication has been so categorized depending on who conducts the adjudication within a given village.³⁵ This has been so due to the express provision of the law and thus sub-categorization of the village adjudication as spot and village adjudication shall serve the purpose on a reason that such categorization depends on who conducts the adjudication. In this case it is the Village Council which conducts either spot or village adjudication on one hand and the District Council conducts District/Central adjudication on the other.

The first category is *Village Adjudication*: This is categorized into two: Spot adjudication and Village Adjudication. The latter is initiated by an individual person or group of persons or non-village organization where only one parcel of land is to be adjudicated. The interested party who intends to secure a Customary Right of Occupancy applies to the Village Council for adjudication. The applicant fills the Village Land Form No.44. The forms has two parts: Part One shows the names of the Applicant(s), location of the land, name of the Village, District and the size of the area. Furthermore, the names of adjacent occupiers and the signature of the Applicant are found here. Part Two of the form contains the correspondence from the Village Council which show the decision of the Village Council, Names and Signatures of the of the Members of the Village Council, Decision of the Village Assembly(where necessary) containing the names and signatures of the Chairman and the Secretary, decision of the District Council. In case it is not approved, the reasons for the decision and lastly the signature and the names of the Chairman of the District Council. As soon as the Village Council receives the application, it may decide whether spot adjudication must be applied to the requested area or that the same applied to next areas touching the area applied for. In case the Village Council determines that adjudication be done as requested, then adjudication process starts immediately. If it is determined that adjudication must be done to other areas near the area of which spot adjudication has been applied for the Village Council is bound to submit the determination to the Village Assembly through Village Land Form No.45 for approval. The District Council shall be informed and the applicant(s) shall be informed with the reasons for so doing.³⁶ If there is an approval from the Village Assembly and there is no objection from the Applicant, then adjudication may commence.

³³ See Section 48 of the Village Land Act, Cap 114 R.E 2002

³⁴ See Section 50 *ibid*

³⁵ This is different from the context of G.M.Fimbo(2004) *Land Law Reforms in Tanzania*, 1st Ed. Dar Es Salaam University Press Ltd, Dar Es Salaam p.40 who classifies it in three modes depending on participation of local communities, but it is at one with L.A. Willy, (2003), '*Community-Based Land Tenure Management: Question and Answers about Tanzania's Village Land Act, 1999*' A Paper issued by the International Institute for Environment and Development, Drylands Programme, Issue No.120 of 2003 p. 40 who provides two ways of carrying out land adjudication.

³⁶ See Section 49 (4) of the Village Land Act, Cap. 114 R.E 2002

In case the Village Assembly rejects the recommendation presented to it by the Village Assembly or the Applicants raise an objection to that effect, the Village Council notifies the District Council which may allow the Village Council to proceed with spot adjudication.³⁷ It is a mandatory obligation for the Village Council to proceed with spot adjudication. The second sub-category is village adjudication per-se. This is initiated by the Village Council itself upon not less than fifty villagers to have applied for grant of customary rights of occupancy over the whole or particular portion of land.³⁸ This is subject to the approval of the village assembly. In case the Village Assembly withholds its approval it will not be a bar to any interested person within the same group to apply for adjudication.³⁹ A recommendation to apply village land adjudication shall contain:⁴⁰ a brief statement of reasons for recommendation, specify the size of the area, and summarize the procedures to be followed in the process of adjudication. Furthermore the recommendation shall be, within fourteen days before the meeting of the village assembly, posted in public places within the village and a copy shall be sent to the Commissioner for Lands. The adjudication commences on approval by the Village Assembly.

The Second Category of land adjudication is District/Central Adjudication:⁴¹ This is initiated by the Villagers who are not less than twenty. These must have an interest in land under which village adjudication is taking place. These persons must be complaining to the District Council to the effect that village land adjudication is improperly and or unfairly done. The District Council therefore is vested with various powers after it has conducted the investigation of its own in respect to the complaint.⁴² First, the District Council may order the Village Council to proceed with adjudication of the village land. If it so does, directives to are issued to the village Council either to correct and or improve the adjudication process.⁴³ The second avenue is to extinguish the Village Council from exercising any obligation over the land under adjudication. If this so happens, then the Village Council shall issue directives to the effect that the Village Council surrenders the records as per directives and cooperate fully with the Officer whom the District Council shall authorize to conduct the central adjudication. It is very interesting to note here that when the Village Council is so extinguished, central adjudication starts with immediate effect terminating village adjudication forthwith. That said the District Council may re-examine, cancel, revise, add to or give directives as it deems fit for proper operation of the district adjudication.⁴⁴ This is to say, Central Adjudication is solely left at the District Council with a mercy of the Village Council to cooperate with the appointed personnel by the District Council.

Procedures for Conducting Land Adjudication

It has been discussed above that the categorization of land adjudication at a village level has depended solely on who puts

³⁷ See Section 49(6) *ibid*

³⁸ See Section 51 *supra*

³⁹ See Section 51 (4) of the Village Land Act, Cap. 114 R.E 2002

⁴⁰ See The Village Land Regulation 2001-Village Land Form No. 45

⁴¹ See Section 56 and Section 50(4) of the Village Land Act, Cap. 114 R.E 2002

⁴² See Section 50(4) and (5) *ibid*

⁴³ See Section 5(4)(a) *ibid*

⁴⁴ See Section 50(6) of the Village Land Act Cap. 114 R.E 2002

the adjudication into force. In each category there are different procedures employed to furnish the task of land adjudication depending on each category.

Village and or Spot Adjudication

The procedure for putting in force village land adjudication is established under the Village Land Act and the Village Land Regulations.⁴⁵ As soon the village assembly has approved that the adjudication be done right away, the Village Council is bound to appoint the village adjudication adviser.⁴⁶ The qualification of the adviser is appointed either from: a person known and respect to have been knowledgeable in the matters of land, or a qualified person in prescribed discipline/profession or any public servant appointed by the Commissioner for lands for the purpose or, any official from local authority with responsibilities on land matters or Magistrate Appointed by the Judicial Service Commissioner at the request of the village council.⁴⁷ It well settled that the advisor need not be a villager. That means there is no requirement for the adviser to be a resident with the village. The functions of the Adjudication Adviser are well documented and he is accountable to the Village Adjudication Committee.⁴⁸ He entrusted to assist the Committee to implement and manage adjudication processes. That is why the Adviser is bound to receive orders from the Committee. In the course of assisting the Committee he may put to attention some errors done by the Committee in the process. The adviser makes claims of any person who is absent from the village or is under disability as to avoid any injustice that may occasion from the process. The adviser is also a conciliator of disputes in existence before they reach the Committee. Lastly he may conduct an inquiry as he may be directed by the Committee.

The next step for village adjudication process to take its swing, the Village Council appoints the Village Adjudication Committee. It is the Village Assembly which is vested with powers to elect the members of the Committee.⁴⁹ The tenure for the Committee is three years though the Village Assembly may elect the same Committee for the next term. The quorum of the Committee is well established under the law.⁵⁰ It is vital that Committee must have gender balancing and since the Committee is obliged to have nine members at least four of them should be women. For the quorum to be complete in decision making process when the presiding members are six, at least four are enough to pass a decision out of which two shall be women. The meetings of the Committee shall be presided over by the Chairperson who will be appointed by the members amongst themselves. It is the Adjudication Adviser who shall be the Executive Officer of the Committee and is the one keeping records of the Committee. The Committee is guided by various principles in the course of conducting particularly when a hearing is conducted for determining who owns what parcel of land or what boundary separates what interests over the land. The first principle is a strict compliance to the rules of natural justice.⁵¹

⁴⁵ See Cap. 114 and Government Notice No. 86 issued on 04th May 2001

⁴⁶ See Section 52 of the Village Land Act, Cap. 114 R.E 2002

⁴⁷ See Section(1)(a),(b), (c), (d), (e) *ibid*

⁴⁸ See Section 52(2) *supra*

⁴⁹ See Section 53 (1) *ibid*

⁵⁰ See Section 53(2) *ibid*

⁵¹ See Section 53(9) *supra*

In ordinary circumstances these are deemed universal principles of the wise which do not worthy derogation. These include a right to be heard, rule against bias and rule to advance reasons for the decision. The Constitution,⁵² Statutory laws,⁵³ case laws,⁵⁴ and jurists,⁵⁵ have pioneered for these principle for the best interest of justice. In the course of implementing its duties and in compliance to the rules of natural justice, the Committee is supposed to hear evidence and may call upon evidence of its own or use evidence in official records and shall stand to determine its own procedures.

The third step commences when the Adviser and the Committee open business. The notice to the general public must be issued. When the notice has been so issued, it will be published and fixed unto prominent places and at the place which adjudication intends to take place.⁵⁶ It will also call upon interested parties to appear and give their evidence before the Committee and thus an interested party must mark the boundaries which he knows relate to his property. The date of adjudication is also specified. At the directives of the Committee as it may be prudent, may adjourn the matter for the Adviser to make further investigation on the matter. When hearing the matter on adjudication the emphasis shall mediation spirit between the rivals to the process. In the course of adjudication the Committee shall be guided by the provision as they are prescribed in the Village Land Regulations, 2001.⁵⁷ The Committee shall demarcate the boundaries, certify the boundaries, clear and mark the boundaries; maintenance of the boundaries by the applicant(s), the unit of measurement to be identified shall be meter, preparation of the sketch of the land, recording of the rights to easement. The sketch shall be prepared in tripartite (for the Committee, Applicant and the Village Council). The fourth step comes in only when the parties are satisfied to the proceedings that is the when the matter is no contentious. Then, the adjudication provisional record shall be prepared, posted and published into public and prominent places for the villagers to see. The provisional record shall contain, the name of the claimant, nature and content of interest in land claimed, the size of the land, length of time the claimant has been in possession of the said land, location and boundaries of the plot, route and rights as to easement and last a determination by the Committee with reasons thereto. It is very important to accompany the record with a sketch of the land.⁵⁸ In case there is no any appeal that has been preferred from the either part, the provisional adjudication record shall be entered into the Register of the Village Land as a final Adjudication Record within thirty days from the date the provisional record was so published. The Land Parcel Identification Number shall be issued to the customary right of occupancy bearer. In case there is any aggrieved party to the proceedings, an appeal may be preferred

to the Village Land Council within thirty days from the date of publication. The Council shall be vested with mandate as the Adjudication Committee and shall comply with the procedures that the Committee complies to. The Council is empowered to exercise its powers by effecting amendments to the Adjudication Record, correct errors therein or it may direct the Committee adviser to conduct further investigation. Though this Council still sits as body for mediation,⁵⁹ may issue the decision which is appealable with leave of the District Land Court. In this context, it is District Land and Housing Tribunal and that power is not vested to the Ward Tribunal which is the next to the hierarchy possibly avoiding the possibility of subjecting the parties to the Court which has both mediation and trial capacity.⁶⁰

District or Central Adjudication

This category of adjudication is done by the District Council over the village land. It is in place only when a complaint has been lodged to the District Council by not less than twenty persons where village land adjudication is taking place. These complainant must satisfy that the Council that the Committee is conducting the village adjudication unfairly or improperly. The Council upon investigation, may among other things, apply central adjudication. It is emphasized here that village land adjudication shall cease to operate. That is the Council may come up with its own findings by reexamining, cancel, revise or add anything as it deems fit when conducting central adjudication.⁶¹ The Council is empowered to conduct district adjudication over the village land as it is to village adjudication Committee after it has appointed an adjudication officer.⁶² In case any party is so aggrieved by the decision of the Council, an appeal is preferred to the Commissioner and thereafter to the High Court.⁶³ The entire process of adjudication, be it village or district adjudication are governed by the general principles which are meant to govern either the adjudication Committee or the Adjudication officer in the course of determining whether a right of customary right of occupancy must be issued.. These are well established under the law. These include but not limited to the doctrine of adverse possession, the interest of any person who obtained land and or inherited it from Operation Vijiji, interests of the occupiers of the land uninterruptedly for pastoral activities for twelve years, interest of the people under operation vijiji area but at that time was a pastoral area, an interest of a person in occupation of land for such a long period not either a customary right or granted right off occupancy, and an interest of a non-villager or non-village organization shall hold land as a licensee.⁶⁴

INCONSISTENCIES THAT MAY LEAD TO VILLAGE LAND DISPUTES IN THE COURSE OF LAND ADJUDICATION

Notwithstanding the advantages of land adjudication over the village land it is still an enigma which needs a solution on how best the same can be done without causing much hurdle which may accelerate land disputes.

⁵² See Article 12(6) (a) Cap. 2 R.E 2002

⁵³ See Section 53(9) of Cap. 114 R.E. 2002

⁵⁴ *Mhindi Ahmad Ndolanga And Others V National Sports Council And Another* (1996) T.L.R 325, *James Gwagilo Vs Attorney General* (1994) T.L.R 73; *The National Muslim Council of Tanzania Vs The Registered Trustee of Mpwapwa Islamia Trust*, Civil Appeal No. 2006, High Court of Tanzania at Dododma.

⁵⁵ See F. Mirindo, (2014), *Administration of Justice in Mainland Tanzania*, 1st Ed. Law Africa, Dar Es Salaam pp.62 to 72; E.G.Mushi(2014), *Administrative Law of Tanzania*, 1st Ed.Mzumbe University, Mzumbe pp.242 to 281

⁵⁶ See Rule 61 of The Village Land Regulation,2001 and Village Land Form No. 1

⁵⁷ See Rules 61-74 supra

⁵⁸ See Village Land Form No.49 under the Schedule of the Village Land Regulation, 2002

⁵⁹ See Section 9 of the Courts(Land Dispute Settlement) Act No. 2 of 2002

⁶⁰ See Section 13 ibi

⁶¹ See Section 50(6) ibid

⁶² See Section 56 ibid

⁶³ See Section 56(5) ibid

⁶⁴ See Section 57 of the Village Land Act

This paper has observed the entire legal procedures and the substantively of the land registration over the village land. It is observed that the land rights over the village land may still be protected even if the same interests are not registered.⁶⁵ In terms adjudication process, it seems too procedural for any interested person to bear particularly when the dispute is under the heat of passion between the parties. For instance for spot adjudication which commences on individual basis to the Village Council, the Council may of its own motion reject the adjudication. The reason is that the Council needs other contiguous parts to the applicant to be adjudicated as well. The time frame is not well set. The procedure under Section 49(2), (4) is unnecessary to the applicant. It subjects the Applicant to unnecessary procedures to the District Council which in most occasions allows the adjudication to proceed. But furthermore where the village assembly rejects the adjudication, under section 49(4) the intervention by the District Council seems to aggrieve the interests of the Village Assembly which is the supreme body over the village land. There is nowhere, it is established that the District Council consults the Village Assembly before an order of compliance to the adjudication is issued by the Village Council. Under Section 49(6),⁶⁶ empowers the District Council to order the Village Council to proceed with adjudication process despite the fact that the Village Assembly has rejected the adjudication. The Village Council is ordered to comply to the order.⁶⁷ This may lead to unnecessary disputes between the Village Council and the Village Assembly at a village level.

The entire process of adjudication seems to vest no-villagers with more powers than villagers themselves. For instance: When there is a complaint by the Villagers who are not less than twenty villagers lodged to the District Council, that the adjudication Committee is not properly operating, the claim ought to have been lodged to the Village Council which appointed the Committee and then subject the claims at the Village Assembly for opinion and decision because it is the Village Assembly that appoints the Committee. There is nowhere the Village Assembly is consulted by the District Council at the first instance before commencing any proceedings.⁶⁸ The Village Assembly is just informed after the proceedings have been commenced by the District Council. The Village Assembly in most cases may feel jealous of its powers and thus turn a deaf ear to the appointed body in district adjudication process. On the other hand the likelihood of impartiality and fairness may not be seen. The Village Council on district adjudication is ordered by the District Council to cooperate with the adjudication officer who has been appointed by the District Council.⁶⁹ It is the same body (Village Council) that was by-passed by the Complainants to the District Council. This paper observes that the powers vested to the Adjudication adviser, who is not a villager, seems to be less practical. For instance: he may act as a reconciliatory body on disputes over the boundaries arising out of adjudication process before the adjudication Committee comes in.

⁶⁵ See See L.A. Willy, (2003), 'Community-Based Land Tenure Management: Question and Answers about Tanzania's Village Land Act, 1999' A Paper issued by the International Institute for Environment and Development p.39 See also, G.M.Fimbo(2004) *Land Law Reforms in Tanzania*, 1st Ed. Dar Es Salaam University Press Ltd, Dar Es Salaam

⁶⁶ Cap. 114 R.E 2002 R.E 2002

⁶⁷ See Section 49(7) *ibid*.

⁶⁸ See Section 49(4) *supra* and Section 56

⁶⁹ See Section 50(4) (b) (iii) of the Village Land Act, Cap. 114 R.E 2002

The person who is not conversant of the locality, say it is a Magistrate or a person qualified in a profession or certain discipline, for sure cannot deal with such a reconciliation in an harmonized way as he is not conversant with the boundaries of a given locality. There is nowhere it is established that he will undergo and induction for the task. Even if it were the case, no time frame is set for him to make an inquiry thereof, and then understand it with a view of reconciling the parties. Even if the inquiry power is given,⁷⁰ it is just persuasive and in most cases may prolong the process unnecessarily at the detriment of the parties.

Delay of the proceedings is a resultant outcome of adjudication in most cases. Despite all the efforts employed in adjudication, an appellate body is the Village Land Council.⁷¹ This at all times has been vested with powers to mediate the parties. In case the Village Land Council has not been able to resolve the matter under adjudication the aggrieved party is availed an avenue of appealing to the District Land Court.⁷² The most likely Court for this matter is District Land and Housing Tribunal. The aggrieved party accesses the Court at the first instance for leave purposes. The procedure for leave is not provided for the law itself. It may be invoked that Section 51 of Act No. 2 of 2002,⁷³ may be used to move the Court. In this case, the Civil Procedure Code may be used to move the Court in the normal cause through a Chamber Summons supported with an affidavit.⁷⁴ But still one would ask a question on how many District Land and Housing Tribunals we have to serve the purpose over such disputes emanating from the village level. In Tanzania today, there are only 50 District Land and Housing Tribunal.⁷⁵ In Kigoma Region there is only One District Land and Housing Tribunal situated at Kigoma. The entire Region consists of three Districts that is Kasulu, Kibondo and Kigoma.⁷⁶ Meanwhile the entire Region constitutes of almost 48 villages. Despite other cases lodged to the District Land and Housing Tribunal of Kigoma which are almost 201 pending in the Tribunal,⁷⁷ yet it stands to entertain appeals from the Village Land Council. It is of concern as well on how accessible the Court is for a person who travels for justice from Rubanga Village in Bitare Ward from Kibondo District striving to access a District Land and Housing Tribunal at Kigoma. The likelihood of having such bold persons for justice are very few if not that the majority will end in despondency. On the same stance, in Kilimanjaro Region, there are only two District Land and Housing Tribunal situated at Same and Moshi with a view of serving almost 75 village while having almost 433 ordinary cases are pending;⁷⁸ In Morogoro Region the second largest Region in Tanzania has only three District Land and Housing Tribunals situated at Morogoro, Kilosa and Ifakara.

⁷⁰ See Section 52(e) *ibid*

⁷¹ See Section 55(1) *supra*

⁷² See Section 55(5) *ibid*,

⁷³ See Section 51 of the Courts(Land Dispute Settlement) Act

⁷⁴ See Order XLIII of the Civil Procedure Code, Cap.33 R.E 2002

⁷⁵ See the United Republic of Tanzania, *Budget Speech*, 2016/2017 Financial Year, Dodoma, Ministry of Lands, Housing and Settlement, 2016 p. 31

⁷⁶ Government Notice No. 173 of 7th May 2010 pp. 28 to 30

⁷⁷ See the United Republic of Tanzania, *Budget Speech*, 2016/2017 Financial Year, Dodoma, Ministry of Lands,

Housing and Settlement, 2016 –Jedwali No.7A p. 118

⁷⁸ *Ibid* p. 118

Taking this Region as a concern where village land disputes have been reported on daily basis,⁷⁹ consists of almost 103 villages.⁸⁰ In the presence of only three District Land and Housing Tribunals cannot suffice to make the adjudication process healthy in terms of accessibility and timely justice. Thus parties may resort to the means best known to them rather than accessing legal trend which may not do justice in terms of geographical location. This paper has observed as well on the existing conflicting laws on appeal, in case a person is aggrieved by the decision of the Village Land Council. Section 55(5) of the Village Land Act,⁸¹ sets a District Land Court within the locality as an appellate body in case a person is aggrieved by the decision of the Village Land Council on appeal. Meanwhile the Courts (Land Dispute Settlement) Act⁸² provides all grievances from the Village Land Council to lie with to the Ward Tribunal through reference. But on the same footing, the Village Land Act under Section 62(1) directs that in case the parties have ceased to use the service of the Village Land Council shall refer the matter to a court of competent jurisdiction.

Though these might be different instances but touching the same interested parties (villagers) may not deliver an appropriate end to the villagers due to lack of consistence on how disputes are handled. With such a confusion the villagers might not resort to either mechanism, and then opt to a non-amicable way of settling disputes which may accelerate endless disputes. It has been such fatal in the course of adjudication processes as well that no one is entitled to access Courts of law in any matter of civil nature save with the consent of the Chairman of the village adjudication.⁸³ This happens when there is an arrangement between the parties who have a village land sharing agreement. The proceedings are so stayed till when a final record is issued. Yet still an appeal has to be lodged to the Village Land Council. In case aggrieved the party may appeal to the Court of Competent jurisdiction. The entire process ousts temporarily the jurisdiction of the Court, but later on opens the door after things have gone worse and possibly at a cost of blood to the villagers.⁸⁴ It is important to note that ousting the jurisdiction of the Court may lead to unfavorable consequences. It is better; the parties to be availed room to access justice (Courts of law) and then operate at the directives of the Court.

Conclusion

It is with no doubt that land adjudication at a village level in an important step for maintaining security of tenure over the village land rights.

⁷⁹ Lilian L., (17th November 2012), 'Wawili Wadaiwa Kujeruhiwa na Wafugaji-Kilosa', Mwananchi, Issue No. 04528, p. 9, Venance, G., (9th November 2012), 'Ataja Mbinu za Kumaliza Migogoro ya Ardhi Nchini',

Mwananchi, Issue No. 04520, p. 17; Daily News Writer, (16th January 2014), 'No to greedy Investors', Daily

News, Issue No. 11,083, p.6; Majaliwa, C and Mwakyusa, A., (3rd February 2015), 'Law Makers decry countless

Land Conflicts', Daily News, Issue No. 11355, p. 2, Hamida S., (15th December 2015), 'Mtihani wa Kwanza wa

Rais Magufuli', Mwananchi, Issue No. 5619, pp. 1 and 4.

⁸⁰ Government Notice No. 173 of 7th May 2010 pp. 28 to 30

⁸¹ Cap. 114 R.E 2002

⁸² See Section 9

⁸³ See Section 59 and 58 of the Village Land Act, Cap. 114

⁸⁴ See Mabwegere saga in Kilosa as it is evidenced in the case of *Halmashauri ya Kijiji cha Mabwegere Vs Hamisi (Shaban) Msabaa and 32 Others*, Civil Appeal No 53 of 2010, Court of Appeal of Tanzania (Unreported)

It is a tool for transforming land as a means for socio-economic development among the villagers. If properly utilized it may reduce land disputes emanating from land use in terms of boundaries. However, it would have been important if the villagers were to be involved in total thus avoiding unnecessary imposition of decisions from the top authorities. It is a sign of pride that villagers at their own will plan and implement reasonably their own decision of which they will feel obliged to abide to rather than being imputed to the melody which they swing-to with hurdles.

REFERENCES

- Chande O.M. 2011. 'Access to justice and Justice Delivery in Tanzania, Unblocking the arriers', Zanzibar Yearbook of Law, Vol. 1, published by Zanzibar Legal Services Center p.5
- Daily News Writer, 16th January 2014. 'No to greedy Investors', Daily News, Issue No. 11,083, p.6;
- Fimbo, G.M. 1997. 'The Land Delivery Systems in the Two Acts', The Tanzania Lawyer, by the Tanganyika Law Society, Vol. 1 No. 1 pp. 7-14
- Geir S. 'The 1999 Land Act and the Village Land Act: A technical analysis of the practical Implications of the Acts', A Paper Presented to the Symposium of the 1999 Land Acts held at the Courtyard Hotel, Dar Es Salaam, March 2005 (unpublished)
- Hamida S. 15th December 2015. 'Mtihani wa Kwanza wa Rais Magufuli', Mwananchi, Issue No. 5619, pp. 1 and 4.
- James, R.W. 1971. Land Tenure and Policy in Tanzania, 1st Edition, Dar Es Salaam: East African Literature Bureau.
- James, R.W. and Fimbo G.M. 1973. Customary Land Law of Tanzania, 1st Edition, Dar Es Salaam: East African Literature Bureau.
- Lilian L. 17th November 2012. 'Wawili Wadaiwa Kujeruhiwa na Wafugaji-Kilosa', Mwananchi, Issue No. 04528, p. 9
- Lugoe, F. N. 'A century of Government Regulated Land Access in Tanzania', A Discussion Paper for the Videoconferencing Workshop on Land Administration in Africa, Covering Ghana, Tanzania, Malawi and South Africa), Dar Es Salaam, May 2008.(unpublished)
- Majaliwa, C. and Mwakyusa, A. 3rd February 2015. 'Law Makers decry countless Land Conflicts', Daily News, Issue No. 11355, p. 2,
- Mirindo, F. 2014. Administration of Justice in Mainland Tanzania, 1st Ed. Dar Es Salaam, Law
- Rwegasira, A. 2012. Land as a Human Right: A History of Law and Practice, 1st Edition, Dar Es Salaam: Mkuki na Nyota Publishers Ltd.
- Shivji, I. 1998. Not yet democracy: reforming land tenure in Tanzania, 1st Edition, Dar Es Salaam: Haki Ardhi and the Faculty of law of the University of Dar Es Salaam.
- Shivji, I. 2006. Let the people speak: Tanzania Down the Road to neo-liberalism, 1st Edition, Dakar: Imprimerie Graphilus.
- Tenga W.R., and Mramba S.J. 2014. Theoretical Foundations of Land Law in Tanzania, 1st Ed. Dar Es Salaam: Law Africa Publishing (T) Ltd.
- United Republic of Tanzania, 'Land Administration and Customary Tenure Dynamics in Post-Independence Mainland Tanzania', DILAPS- Review Paper No.6 of October 2006.

United Republic of Tanzania, *Budget Speech*, 2014/2015
Financial Year, Dodoma, Ministry of
Lands, Housing and Settlement, 2014
United Republic of Tanzania, *Budget Speech*, 2015/2016
Financial Year, Dodoma: Ministry of
Lands, Housing and Settlement Development, 2015
United Republic of Tanzania, *Budget Speech*, 2016/2017
Financial Year, Dodoma, Ministry of
Lands, Housing and Settlement, 2016

United Republic of Tanzania, *Report of the Parliamentary
Committee on Land, Natural Resources
and Environment*, 2014/2015, Financial Year, Dodoma,
Ministry of Lands, Housing and Settlement Development,
2015
Venance, G. 9th November 2012. '*Ataja Mbinu za Kumaliza
Migogoro ya Ardhi Nchini*', Mwananchi, Issue No.
04520, p. 17
