

RUAHA CATHOLIC UNIVERSITY



(RUCU)

CRITICAL ASSESSMENT OF THE DELAY OF CASES AT THE DISTRICT LAND AND HOUSING TRIBUNAL: LESSON LEARNT FROM MARRIAGE CONCILIATION BOARD AND COMMISSION FOR MEDIATION AND ARBITRATION

**A Compulsory Research Paper Submitted In Partial Fulfillment of the
Requirements for the Award of the Bachelor of Laws Degree (L.L.B) Of the
Ruaha Catholic University**

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CERTIFICATION

The undersigned certifies that he has read and hereby recommends for the acceptance by the Ruaha Catholic University a research paper entitled “*Critical Assessment on Delay of Cases at the District Land and Housing Tribunals: lesson learnt from Marriage Conciliation Board and Commission for Mediation and Arbitration.*” In partial fulfillment of the requirements for the Degree of Bachelor of Laws of Ruaha Catholic University.

.....

Dr. Ana Luis Haule

(SUPERVISOR)

Date

DECLARATION

I, Marwa Yusufu, do hereby declare that this research paper is my own original work and that no aspect of it either in part or whole has been submitted for a similar degree in any other university other than Ruaha Catholic University, Iringa, Tanzania.

Signature.....

Date

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However, I stand to be solely responsible for any mistakes arising from this research.

DEDICATION

This research paper is dedicated to my father WAMBURA GICHOGO & my beloved mother MARY SWIBE for their moral and financial support, without forgetting my young sister Lucia Rhobi Wambura and my young brothers Isaac Wambura and Nicodemus Wambura Gichogo.

ABSTRACT

This research paper has pointed out the problem facing District Land and Housing Tribunal in Tanzania, leading to a backlog of cases at the District Land and Housing Tribunal. Due to the existence of the backlog of cases there is a delay of cases at the District Land and Housing Tribunals. Thus, the research has discussed the lessons that should be learnt from the Marriage Conciliation Board and CMA; it has used various authors' work and research methodologies used to collect and acquire data was both doctrinal and non-doctrinal research method.

In addition, the research findings obtained from the field has proved that there is delay of cases leading to the District Land and Housing Tribunals which lead to backlog of cases. Also both respondents have agreed that there is importance of making application of ADR methods as compulsory as it is in other tribunals. Apart from that, it has been proved that there are various reasons which lead to the occurrence of the challenge of delay of cases at the District Land and Housing Tribunal and the lessons that should be learnt so as to overcome the challenge facing District Land and Housing Tribunals in Tanzania.

LIST OF CASES

Zinat Khan vs Abdulla Khan [1973]LRT 57

Modesta Kagambo vs Yahya Kagambo [Matrimonial cause No 1 of 2018]

Shillo Mzee vs Fatuma Ahmed [1984]TLR 112

Anatori vs TaidiniSnaga Matrimonial (primary court) Civil Appeal No 35 of 1977

*Hector Sequeraa vs Serengeti Breweries Ltd High Court of Tanzania, Labour Division,
Labour Complaint No. 20 of 2009.*

LIST OF LEGAL INSTRUMENTS

The Constitution of the United Republic of Tanzania of 1977 Cap 2, as amended time to time.

The Law of Marriage Act, Cap.29 R.E.2019

The Land Disputes Courts Act [CAP 21 R.E 2019]

The Court (LAND Disputes Settlement) Act No 2 of 2002.

The Civil Procedure Code [CAP 33 R.E 2019]

The Arbitration Act [CAP 15 R.E 2019]

The Labour Institution Act [CAP 300 R.E 2019]

The Labour Institutions (Mediation and arbitration) Rules, 2007

The Employment and Labour Relation Act [CAP 366 R.E 2019]

ACRONYMS AND ABBREVIATIONS

BAKWATA	Baraza Kuu La Waislamu Tanzania
CA	Court Of Appeal
CMA	Commission For Mediation And Arbitration
DLHT	District Land And Housing Tribunal
GN	Government Notice
LDHC	Land Division High Court
USA	United States Of America
VLC	Village Land Council
WT	Ward Tribunal

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CHAPTER ONE: GENERAL INTRODUCTION

1.1 INTRODUCTION

This chapter introduces the legal problem regarding delay of cases in the District Land and Housing Tribunal. Likewise this chapter has discussed on historical background, the statement of the problem, also various authors work have been used, and also this chapter has also include an hypothesis, objectives of the study, research methodology used, research design and also the scope and limitation that the researcher has faced.

1.2 BACKGROUND OF THE PROBLEM

The misuse of land specifically in African countries including Tanzania cause the frequent outbreaks of land conflicts especially between the farmers and the pastoralists leading to low economic development¹. It should be noted that many people in Tanzania who reside in rural areas are farmers and pastoralists who depend much on land for the production of variety of food and cattle grazing and due to the importance of land.²

In rural areas of most Sub-Saharan Africa, land is not only the primary means of generating a livelihood but often a main vehicle to invest, accumulate wealth and transfer it between generations.³ Land has both social and economic importance for residents and its importance has led to land conflicts among land users and it is due to the high demand and importance of land.⁴ By 1974 Tanzania embark upon villagization program whereby millions of peoples were uprooted from their ancestral land and were settled in communes.⁵ The

¹<https://www.researchgate.net> (accessed on 28th November 2020)

²L.K.Nkonya, *Rural Water Management in Africa, the Impact of Customary Institutions in Tanzania*. Cambria press, New York 2008.

³R.A.Bluffstone& G.Kohlin, *Agricultural Investment and productivity, Building Sustainability in East Africa*. Rff press London 2011.

⁴<https://www.economicdiscussion.net> (accessed on 28th November 2020)

⁵<https://www.culturalsurvival.org> (accessed on 6th February 2021)

villagization program lost steam, village authorities started their own reallocation of land and the prime and was taken out of communal ownership and allocated to favorite villagers and due to that conflict began among the members of the society.⁶

In order to improve capacity for land management and disputes prevention, the government of Tanzania has established various institutions at different levels and these institutions includes; the Court of Appeal hereinafter (CA), Land Division High Court hereinafter (LDHC), The District Land And Housing Tribunal hereinafter (DLHT), Ward Tribunals hereinafter(WT) and Village Land Council hereinafter (VLC).⁷ For the purpose of managing land disputes, the Land Disputes Court Act⁸ was enacted, and it should be noted that the Land Dispute Courts Act provides on the establishment,⁹ composition,¹⁰ functions and powers of the District Land and Housing Tribunal.¹¹

Furthermore, once a party to the land dispute is not satisfied with the order made by the District Land and Housing Tribunal. He may the appeal to the High Court (Land Division) by the way of petition. Not only that but also The District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court (Land Division).¹²

It should be noted that the High Court (Land Division) has original jurisdiction, appellate and revisional jurisdiction over all District Land and Housing Tribunal. Any person who is aggrieved by the decision of the High Court (Land Division) he may with the leave

⁶<https://www.culturalsurvival.org> (accessed on 6th February 2021)

⁷Section 3(2) of The Land Disputes Courts Act [CAP 216 R.E 2020]

⁸ The Land Disputes Court Act [CAP 216 R.E 2020]

⁹ Section 22 of the Court (Land Disputes Settlement) Act No 2 of 2002.

¹⁰ Section 23 of the Court(Land Disputes Settlement) Act No 2 of 2002

¹¹ Part V (B) of the Court(Land Disputes Settlement) Act No 2 of 2002

¹² Section 38 of The Land Disputes Courts Act [CAP216 R.E 2002]

from the High Court (Land Division) appeal to the Court of Appeal in Accordance with the Appellate Jurisdiction Act.¹³

Increasing of land disputes among the society members as tend to be a challenge that face land dispute solving institutions including the District Land and Housing Tribunal leading to the delay of cases due to backlog of cases in the land institutions, and due to this there is a need of applying ADR method which will help in reducing backlog of cases. The Alternative Dispute Resolution as it is a process of resolving a dispute between parties and also it is a way of settling disputes outside the court.¹⁴ The modern Alternative Dispute Resolution movement began in USA in 1970 aiming at better quality process and outcomes in the judicial system and also need for efficiency of justice.¹⁵

Later on the Modern way of solving disputes spread all over western states including Canada, Australia, and United Kingdom. Not only that, but also the Modern way of solving dispute spread in African society and it was very important to reduce some of chronic problems including backlogs of cases, unnecessarily long delay of finalization of cases, and also high costs involved in case management and litigation and this has seen to succeed in many African states.¹⁶ It should be noted that the Alternative Dispute Resolution method was introduced in Tanzania in 1994 through Government Notice No.422 which amended the first schedule of the Civil Procedure code Act of 1966.¹⁷ Therefore, in solving land dispute the Alternative Dispute Resolution Methods are not used as a compulsory procedure as it has been in marriage disputes and employment disputes and while both of the arise out of contract.

¹³ Section 47 of The Land Disputes Courts Act [CAP216 R.E 2002]

¹⁴<https://www.legalmatch.com> (accessed on 1st December 2020)

¹⁵C.J.Masamba, *Alternative Dispute Resolution in Tanzania*, Mkuki na nyota publishers, DarEs Salaam. 2014

¹⁶ Ibid12

¹⁷<https://www.m.grin.com> (accessed on 2nd December 2020)

1.3 STATEMENT OF THE PROBLEM

In solving disputes arising within the society various procedures are basically used including the use of arbitration methods like mediation. In Tanzania, the alternative dispute resolution technique was introduced in 1994 through the Government Notice No 422 and it has been used as methods of solving dispute instead of going through normal proceedings and it has succeeded due to the fact that parties to the disputes can now solve their misunderstanding without going through normal proceedings.¹⁸

Not only that but also it should be noted that the Alternative Dispute Resolution in Tanzania has succeed in various area including in marriage conflicts where parties are supposed to pass through the conciliation board first as a compulsory procedure so as to solve their disputes and this has succeed hence it tend to reduce the backlog of cases in the courts.¹⁹ Land disputes in Tanzania are solved in various land institution such as Village Council, Ward Tribunal, District Land and Housing Tribunal, the High Court(Land Division) and also the Court of Appeal.²⁰

Apart from having the laws to govern the procedures of allowing the parties to the dispute access justice in the District Land and Housing Tribunal, the Alternative Dispute Resolution technique are not used as a compulsory procedure to be followed before proceeding with normal court procedure. Hence the laws governing District Land and Housing Tribunals have not stated on it as it is in marriage conflicts where in 2009, 260 cases out of 316 were reconciled and also in 2010, 388 cases out of 599 were reconciled during that period.²¹ Also in employment disputes.²² Therefore this basically leads to backlog of cases in

¹⁸<https://www.m.grin.com> (accessed on 2nd December 2020)

¹⁹<https://www.academia.edu> (accessed on 2nd December 2020)

²⁰ Section 3(2) of The Land Disputes Courts Act [CAP216 R.E 2002]

²¹ A.Hamisi, *The Weakness of the Tanzania Law of Marriage Act, 1971 Concerning the Practical Aspect of the Marriage Conciliatory Boards*. Ruaha Catholic University At the Faculty of Law, June 2012.

²²<https://www.m.grin.com> (accessed on 29th November 2020)

District Land and Housing Tribunal a factor that leads to delay of justice. For instance, from January 2020 up to December 2020, 618 cases were still pending at the Iringa District Land and Housing Tribunal, also 275 cases were pending at the Dodoma District Land and Housing Tribunal and therefore, Alternative Dispute Resolution methods should be made compulsory procedure to be followed in the District Land and Housing Tribunal as it is in other disputes including marriage dispute and employment dispute.

1.4 LITERATURE REVIEW

There are many literatures relating to the problem of delay of cases. Some authors have tried their best to analyze the aspect of delay of cases in courts, although most of them have not paid attention on the delay of cases in the District Land and Housing Tribunal, and some of the authors includes;

Rwegasira.A,²³ in his book *Land as a human right*, he has discussed on land disputes in Tanzania as he has looked on the establishment of land tribunals by the land dispute courts Act of 2002 and also the author has discussed on the composition of the District Land and Housing Tribunal, its original jurisdictions including the appellate jurisdiction, pecuniary jurisdiction, revision jurisdiction and also the author has shown that the tribunal has the power to hear disputes concerning land registered under the land registration ordinance Cap 334, although the author has not shown the procedural challenges that face the district land and housing tribunal and that gave a wide room to the researcher to research on the same aspect but focus on the procedural challenges.

²³A.Rwegasira, *Land as a Human Right; a history of land law and practice in Tanzania*, MkukinaNyota publishers, Dar Es Salaam. 2012

Mashamba C.J²⁴ in his book *Alternative Dispute Resolution in Tanzania*, he has discussed on the concept of alternative disputes resolution methods in Tanzania which includes the mediation, negotiation and also arbitration in court, also the author has shown on the process and steps to be followed in both methods, but the author has not discussed on whether the alternative dispute resolution methods should be used in solving land disputes in the District Land and Housing Tribunal and this has made the researcher to research on the same aspect but focus on the District Land and Housing Tribunals.

Dancer.H,²⁵ in her book *Women, Land and Justice in Tanzania*, the author has discussed on the aspect of land as she has shown on making legal claim about the land, access justice in local courts and also the power relation and representation, the author has not discussed on whether the alternative dispute settlement should be used in solving disputes in the District Land and Housing Tribunal and due to that, the researcher has decided to research on the same aspect but will focus on the challenges facing the District Land and Housing Tribunal.

Benjaminsen.T.A, &Lund.C,²⁶ in their book *Securing Land Rights in Africa*, they have discussed on the aspect of land conflicts which may be between family and clan member, between rural and family dwellers and also the conflict may be between men and women. Also the author has discussed on the aspect of land tenure in Tanzania and also land articulation of land rights in Iringa. Apart from that, the author have not discussed on the procedure and arbitration methods to be used in District Land and Housing Tribunals, and this has made the researcher to research on the same area but focus on the ways to be used to solve disputes in the District Land and Housing Tribunals.

²⁴C.J.Masamba,*Alternative Dispute Resolution in Tanzania*,Mkukinanyotapublishers,DarEs Salaam. 2014

²⁵H.Dancer,*Women, Land, and justice in Tanzania*.Boydell and Brewer inc,woodbridge.2015

²⁶T.A.Benjaminsen& C. Lund. *Securing Land Rights in Africa*,Frankcass publishers, London. 2003 Pg 71

Robert.J,²⁷ in his book *Sustaining and Sharing Economic Growth in Tanzania* has discussed on the land aspects that land appears to be ample, rural areas tend to suffer from frequently disputes over land and insecurity of tenure, and also in reducing land conflict arising in the villages the village land council was established. Although the author has not discussed on the aspect of solving disputed under the District Land and Housing Tribunals and the arbitration methods to be used before going through normal proceedings. Therefore, this gave a researcher a wider room to research on the same aspect of land disputes but will focus on the method to be used in solving disputes in the District Land and Housing Tribunals.

1.5 HYPOTHESIS

It seems that the absence of ADR method in the District Land and Housing Tribunal has led to the delay of cases.

1.6 OBJECTIVE

1.6.1 Main objective

The main objective of this research is to assess the lessons to be learnt by District Land and Housing Tribunal from Marriage Conciliation Board and CMA.

1.6.2 Specific objectives

- To assess how important the Alternative Dispute Resolution methods are in solving land disputes.
- To analyze the reasons that lead to the delay of cases at the District Land and Housing Tribunals.
- To evaluate how lack of the arbitration methods in District Land and Housing Tribunals lead to delay of Justice.

²⁷J.Robert, *Sustaining and Sharing Economic Growth in Tanzania*, World Bank Publishers. Washington D.C 2008. Pg 106

1.7 SIGNIFICANCE

The research will raise awareness to the majority on Tanzanians who were not aware on the use of ADR methods in resolving their disputes. Not only that but also the study will help in reducing land conflicts that arise among the society members due to the fact that, the aims of ADR is basically to make sure both disputed parties reach a common agreement.

The study is to attract the attention of the law interpreters and the government at large so as to act upon the challenges facing the District Land and Housing Tribunal. The research will also help the researcher to attain his L.L.B Degree at Ruaha Catholic University.

1.8 METHODOLOGY

The researcher has used various methods in obtaining accurate data; and the methods have enabled the researcher to obtain both primary and secondary data which has been useful in the collection of data and has helped the researcher to easily obtain his required data.

1.8.1 RESEARCH DESIGN

The design for this research has been both doctrinal and non-doctrinal research methodology. In this methodology there have been examinations of laws and data from the field. This design has been chosen because the researcher has obtained accurate data required direct from the field.

1.8.2 SAMPLING AND SAMPLE SIZE

The researcher has used purposive sampling method due to the nature of the information needed to be obtained as it is by approaching key informants such as members of staff working at the District Land and Housing Tribunals.

In total, the study have covered two District Land and Housing Tribunals in various areas in Tanzania, two chairman from the District Land and Housing Tribunal, and six staff members working in the District Land and Housing Tribunal.

1.8.3 RESEARCH METHODS

1.8.3.1 Questionnaire method

This has been used by the researcher as he has used questionnaires of both open and closed questions where the respondents were requested to respond on both questions. Also the respondents had also the chance to respond in any way without being limited by determined answers. The researcher preferred to use questionnaire because it allowed him to collect information and opinions from respondents in relation to the research problem in hand. The researcher found this method useful in order to assess the effectiveness of dispute settlement in the District Land and Housing Tribunal. Also this method was useful because it enabled the respondent to answer confidently without fearing anything.

1.8.3.2 Interview method

This method has been used by the researcher as he used fully structured interview where the researcher interviewed chairman of various District Land and Housing Tribunal, and this method has enabled a researcher obtain accurate data. Also Interviews provided the researcher with the opportunity to collect information from respondents face to face; it enabled the researcher to get the facts of the study through an in-depth understanding of respondents in relation to the research problem. It will enable the researcher to make verification by asking questions in case of vague and unqualified issues.

1.8.3.3 Documentary Analysis

The researcher has used various documentary analysis methods including primary data collection which basically includes various statutes including the Land Act Cap 113, Land Dispute Courts Act Cap 216, and also the village land Act Cap 114. And this basically has enabled the researcher be updated with the laws governing land disputes in Tanzania.

The researcher has also used secondary data collection whereby he has visit various libraries such as the library at Ruaha Catholic University, and other libraries located in Tanzania, and this enabled the researcher to get various law books, articles, and also journals. This helped the researcher to generate more information from different authors concerning the topic and obtain more and correct data.

1.9 SCOPE AND LIMITATIONS.

The scope of this study basically involve Tanzania mainland particularly on the delay of cases at the District Land and Housing Tribunal and also the lessons to be learnt by the District Land and Housing Tribunal from the Marriage Conciliation Board and CMA.

The author is aware of a number of limitations to this study. First limitation which has faced the researcher is a monetary: traveling to different regions and other expenses has been limited to the funds of the author. The second limitation is little cooperation from the respondents and also time limit. Therefore, in order to overcome the limitations faced the researcher has visited only two District Land and Housing Tribunals located at Iringa and Dodoma.

1.10 CONCLUSION

This research has basically look on the lessons to be learnt by the District Land and Housing Tribunals from other tribunals in Tanzania, also the research has assessed on how important the Alternative Dispute Resolution methods are in solving land disputes. Analyze how backlog of cases in District Land and Housing Tribunals can be reduced by applying ADR methods and also assess the lessons to be learnt by District Land and Housing Tribunal from other tribunals in Tanzania. Also the research has raised awareness to the majority on Tanzanians who were not aware on the use of ADR methods in resolving their disputes. Not

only that but also the research has attracted the attention of the law interpreters and the government at large so as to act upon the challenges facing the District Land and Housing Tribunal.

CHAPTER TWO: CONCEPTUAL FRAMEWORK ON THE DELAY OF CASES IN DISTRICT LAND AND HOUSING TRIBUNALS; LESSON LEARNT FROM OTHER TRIBUNALS IN TANZANIA.

2.1 INTRODUCTION

This chapter basically examines the conceptual framework of ADR in Tanzania as it includes the history of land Disputes in Tanzania. The chapter also examines the objectives of ADR and the forms of ADR in order to find out how they are relevance to the Land Dispute Resolution, and also how they have been used in Tanzania.

2.2 HISTORY OF LAND IN TANZANIA

Land as an area of ground especially one that is used for a particular purpose such as farming and also building.²⁸ Land also may be referred to as a part of the earth's surface that is not covered by water.²⁹ In 1967, Tanzania adopted the Arusha Declaration whereby major holdings were acquired and invested in public, and by 1974 the state embark upon villagization program whereby millions of peoples were uprooted from their ancestral land and were settled in communes.³⁰ The idea behind this program was that it would be easier to provide social service to the people living together, and the program was not had no basis or its implementation hence it was ill-conceived and ill-prepared and this led many Tanzanian to become very bitter towards the state.³¹

As the villagization program lost steam, village authorities started their own reallocation of land and the prime and was taken out of communal ownership and allocated to favorite villagers. Likewise, the reallocations of land was quite naturally, exacerbated the

²⁸<https://www.collinsdictionary.com> (accessed on 23rd January 2021)

²⁹<https://www.lexico.com> (accessed on 23rd January 2021)

³⁰<https://www.culturalsurvival.org> (accessed on 6th February 2021)

³¹ Ibid28

anger, frustration and disaffection of those who were uprooted from their ancestral land and resettled in communes, they witnessed their land slowly slipping into the hands of others, and due to that conflict began among the members of the society.³²

Moreover, currently all land in Tanzania is public land vested in the president on behalf of all citizens and it is divided into three categories which are general land, village land and also reserved land.³³ The public land is categorized into general land, village land and also reserved land which includes conservation areas and for public utilities.³⁴ General land in Tanzania refers to all public land which is not reserved land or village land as it has been stipulated by the Land Act Cap 113, also it is the land that is managed by the Commissioner for lands and the certificate of a granted right of occupancy can be granted.³⁵ Meanwhile reserved land includes all land reserved for forestry, national parks, and areas such as public games parks and game reserves.³⁶ Also village land is the land within the area than has been declared to be a village and is managed by the village council in a customary right of occupancy may be issued.³⁷

The Land Act retains two forms of tenure including granted right of occupancy and the customary right of occupancy. The village Land Act provides that a right of occupancy is a title to the use and occupation of land includes the title of a Tanzanian citizen of African descent or a community of Tanzania citizen of African descent using or occupying land in accordance with customary law. Hence customary right of occupancy means right of occupancy created by means of the issuing a certificate of customary right of occupancy. Under the village Land Act, the customary right of occupancy tend to includes deemed right

³²<https://www.culturalsurvival.org> (accessed on 6th February 2021)

³³<https://www.lexology.com> (accessed on 23rd January 2021)

³⁴<https://www.velmalaw.co.tz> (accessed on 5th February 2021)

³⁵<https://www.clydeco.com> (accessed on 5th February 2021)

³⁶<https://www.land-links.org> (accessed on 5th February 2021)

³⁷<https://www.clydeco.com> (accessed on 5th February 2021)

of occupancy which must have been allocated by the village council. Therefore, customary right of occupancy includes land allocated by the village council and land acquired under customary law, through purchase, clearing forest, gift, inheritance and held by the villagers. Likewise a person who wants to occupy land is supposed to apply and be issued the granted right of occupancy.

Due to high demand of land in Tanzania especially for farming activities and pastoralists activities conflict has seen to take place. Other roots of land conflicts involve different interest over the property right to land, the right to use land, manage land and also the right to compensation for it,³⁸ also conflict have tend to take place due to the reallocations of land to others and uprooted from the previous owners their ancestral land.

2.3 ALTERNATIVE DISPUTE RESOLUTION

2.3.1 WHAT IS ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution as it involves settling disputes outside the courtroom, and typically it includes negotiation, mediation and also arbitration.³⁹ Alternative Resolution may also be defined as the procedures for settling disputes without litigation and the disputes arose are to be sold through various methods including mediation, arbitration, or negotiation.⁴⁰ Alternative dispute resolution is also referred to as a collective description of methods of resolving disputes otherwise that through the normal trial process.⁴¹ Also Alternative Dispute Resolution may be referred to as a method by which legal conflicts and disputes are resolved privately other that through litigation in a pubic court.⁴² Apart from that,

³⁸ B.Wehrmann,.*Land Conflicts, A Practical guide to deal with land dispute*.Deutsche Gesellschaft Publishers. Germany. 2008

³⁹<https://www.law.cornell.edu> (accessed on 18th December 2020)

⁴⁰<https://www.findlaw.com> (accessed on 18th December 2020)

⁴¹S.C.Hill&K.Elder,*civil litigation handbook*, 6thEd.,oxfordpublishers.United Kingdom. 2013

⁴²<https://www.duhaime.org> (accessed on 24th April 2021)

alternative dispute resolution refers to a process in which a neutral third party referred to as a mediator or arbitrator helps parties who are in a dispute to come into an agreement.⁴³

2.3.2 PURPOSE OF ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution systems was designed to meet a wide variety of different goals and some of these goals are directly related to improving the administration of justice and the settlement of particular disputes.⁴⁴ ADR programs also aimed at supporting and complementing court reform, increasing popular satisfaction with dispute resolution, increase access to justice for disadvantaged groups.⁴⁵

Not only that but also ADR aimed at Reducing delay in the resolution of disputes, Reducing the cost of resolving disputes and also Helping reduce the level of tension and conflict in a community.⁴⁶ ADR also aimed at protecting the relationship and reputations of the parties, prevent unnecessary cost and delay likewise to minimize the number and frequently disputes that usually arises among the community members.⁴⁷

2.3.3 TYPES OF ALTERNATIVE DISPUTE RESOLUTION

A. MEDIATION

This is basically confidential and it is conducted without prejudice to continue litigations between parties and apart from that mediation may basically take place at any time before or during litigation, and it can normally be setup at a very short notice.⁴⁸ The process is also non-binding until a final written agreement has been signed by the parties and also the parties to the dispute appoints a neutral intermediary who endeavors to facilitate settlement

⁴³<https://www.pon.harvard.edu> (accessed on 24th April 2021)

⁴⁴<https://www.researchgate.net> (accessed on 3rd January 2021)

⁴⁵Ibid7

⁴⁶<https://www.sciencedirect.com> (accessed on 3rd January 2021)

⁴⁷<https://www.lawyersnjurists.com> (accessed on 24th April 2021)

⁴⁸ Ibid3

and the mediator does not act as a judge and does not rule on the merit.⁴⁹ Mediation is very important hence it can foster cooperation and understanding also its much less expensive than litigation and it's a quicker process than litigation.⁵⁰

Furthermore, for a mediation to be successful there are various steps to be followed including, deciding when to mediate, learning more about your mediator, analyzing your case early and often, preparing an effective and persuasive mediation statement, deciding who will attend and who will speak at the mediation and also mastering the mediation etiquette.⁵¹ Not only steps but also there are various stages that should be followed during mediation including preparation and mediators opening statement, parties statements and mediators summaries, followed by agenda setting, and joint exploration discussion then there will be a private meeting, joint negotiation followed by the final session.⁵²

It should be noted that, all communications at a mediation session and the mediation notes and records of the mediator shall be confidential and a party to a mediation may not rely on the record of statement made at or any information obtained during the mediation as evidence in court proceedings or any other subsequent settlement initiatives, except in relation to proceedings brought by either party to vitiate the settlement agreement on the grounds of fraud.

B. NEGOTIATION

Negotiation is a preeminent mode of dispute resolution which allows the parties to the dispute to meet each other in order to settle their dispute.⁵³ In this mode of solving dispute parties begin their talk without interference of any third person and the aim of this method is

⁴⁹S.C.Hill&K.Elder,*civil litigation handbook*, 6thEd.,oxfordpublishers.United Kingdom. 2013

⁵⁰<https://www.lawshef.com> (accessed on 19th December 2020)

⁵¹<https://www.lercheearly.com> (accessed on 2nd April 2021)

⁵²<https://www.aat.gov.au> (accessed on 2nd April 2021)

⁵³<https://www.law.cornell.edu> (accessed on 22nd December 2020)

to settle dispute by exchange of views and issues concerning the parties.⁵⁴ Negotiation is done voluntarily hence no party is forced to negotiate and the negotiation can involve two or more parties in conflict, and no other party is allowed as there is no prescribed rule to be followed.⁵⁵

C. ARBITRATION

Arbitration is a legal technique used in resolving dispute outside the courts, and also its decision is binding upon the parties.⁵⁶ Arbitration method may also be referred to as a procedure in which a dispute is submitted by agreement of the parties to one or more arbitrators who make a binding decision on the dispute and this can take place only if both parties have agreed to it.⁵⁷ In arbitration the parties have no say on the solution found by the arbitral tribunal which is imposed on them in final and binding manner.⁵⁸ This method also is confidential as no one has the idea of what is taking place in the process and also sharing of any information or document with any third party is completely prohibited.⁵⁹ Arbitral award is final in nature and no appeal can be made against it, except in case where there is unfair procedure, parties' incapacity, invalid arbitral agreement and also biases of the arbitrator.⁶⁰

It should be noted that, the arbitral proceedings tend to commence where the arbitrator is named in the arbitration agreement and one party serves on the other party or parties a notice in writing requiring it to submit that matter to the person so named. Not only that but also where the arbitrators are to be appointed by the parties whereby both parties agree on the appointment of the arbitrator in respect of their matter. Likewise, the arbitral proceedings are

⁵⁴<https://www.legalservicesindia.com> (accessed on 22nd December 2020)

⁵⁵<https://www.justice.gc.ca> (accessed on 22nd December 2020)

⁵⁶<https://www.lawteachers.net> (accessed on 22nd December 2020)

⁵⁷<https://www.wipo.int> (accessed on 22nd December 2020)

⁵⁸<https://www.international-arbitration-attorney.com> (accessed on 22nd December 2020)

⁵⁹<https://www.businessjargons.com> (accessed on 22nd December 2020)

⁶⁰ Ibid10

commenced in respect of a matter when one party gives notice in writing to that person requesting him or her to make appointment of that matter.⁶¹

Apart from that, the parties may also agree on the circumstances upon which the appointment of an arbitrator may be revoked, and the revocation of the appointment of an arbitrator by the parties acting jointly shall be agreed in writing.

D. CONCILIATION

This is an alternative dispute resolution process whereby a third party is appointed as a neutral and unbiased person to help parties involved in a dispute to settle their misunderstanding.⁶² Conciliation is a voluntary, flexible, confidential and interest based process as the parties to the dispute seek to reach amiable dispute settlement with the assistance of a third party known as a conciliator who act as a neutral third party.⁶³

2.4 HOW ADR HAS BEEN USED IN TANZANIA

2.4.1 IN MARRIAGE DISPUTES

Alternative Dispute Resolution in Tanzania was introduced in 1994 through the Government Notice No 422 and it has been used as a method of solving disputes instead of going through normal proceedings.⁶⁴ ADR in Tanzania has been used and succeed in various areas including in marriage conflicts where the parties are supposed to pass through the conciliation board first as a compulsory procedure s as to solve their dispute and this has succeed in reducing backlog of cases in the courts.⁶⁵

⁶¹<https://www.simmons-simmons.com> (accessed on 2nd April 2021)

⁶²<https://www.jmw.co.uk> (accessed on 22nd December 2020)

⁶³<https://www.dispute-resolution-hamburg.com> (accessed on 22nd December 2020)

⁶⁴<https://www.m.grin.com> (accessed on 27th December 2020)

⁶⁵<https://www.academia.edu> (accessed on 27th December 2020)

2.4.1.1 MEANING OF MARRIAGE CONCILIATION BOARD

There is no direct meaning of Marriage Conciliation Boards however it may be referred from the word “conciliation” which means ending disagreement or feeling of anger in a friendly way by an independent advisor whom is brought to conciliate between the disputed parties.⁶⁶ Also section 2 of the Law of Marriage Act Cap 29 has defined a “Board” to mean a Marriage Conciliation Board established under the provision of section 102.⁶⁷

2.4.1.2 TYPES OF MARRIAGE CONCILIATORY BOARDS IN TANZANIA.

As soon as the Law of Marriage Act Cap 29 come into force, a number of such Boards were established and most of the Boards are Religious Boards, ward tribunals and also Boards established under the commissioner for social welfare. These Boards are meant to settle Marriage in an amicable way and there are no penal sanction provided.

A. RELIGIOUS BOARDS

These were established to cater for different religious and they operates under Islamic laws for Muslims and Christian boards for Christian couples as reflected by the law of marriage which recognizes those types of marriage. Also BAKWATA as conciliation Board out to apply Islamic laws and it has been established a board in every ward and it based on the Holly Quran. Also BAKWATA as a conciliation Board in Arusha succeeded in its role and the data that were obtained from BAKWATA, regional office in Arusha and between January to March 12/2012, the Board received a total of 27 cases and succeeded to reconcile 22 cases.⁶⁸

Not only that but also the churches have their own conciliatory board which has been designated as required by law to deal with matrimonial difficulties and once a board is unable

⁶⁶ Cambridge International Dictionary of English, 1995, Cambridge University Press, 281.

⁶⁷ Section 2 of the Law of Marriage Act [CAP 29 R.E 2019]

⁶⁸ A.Hamisi, *The Weakness of the Tanzania Law of Marriage Act, 1971 Concerning the Practical Aspect of the Marriage Conciliatory Boards*. Ruaha Catholic University At the Faculty of Law, June 2012.

to resolve matrimonial disputes or matter referred to it to the satisfaction of the parties, then it shall issue a certificate setting its findings. Whenever disputes arise out of marriage the church through their leaders, insist their followers to approach church conciliation boards for advice and reconciliation instead of talking other measures.

B. WARD TRIBUNALS

These Boards are established in every ward and they are established under Act No 9 of 1996 and regulated by the Ward Tribunal Act. Their jurisdictions are to resolve marriage disputes arising within the wards.

C. BOARDS UNDER THE COMMISSIONER FOR SOCIAL WELFARE

These Boards under the Commissioner of social welfare deal withal kind of marriage disputes. The minister responsible under the Law of Marriage Act, 1971 has a power to establish in every ward a board to be known as Marriage Conciliation Board and may establish two or more such boards in any word, if he considers it desirable so to do.⁶⁹

Also there were cases attended by Social Welfare Board department in Arusha. The data showing the number of couples cases and the cases that were reconcile was greater than those who did not reconciled for instance in 2009, 260 cases out of 316 were reconciled and also in 2010, 388 cases out of 599 were reconciled during that period.⁷⁰ Therefore this basically shows that the higher number of cases that were to be taken to the courts was resolved by the Board without going through normal court procedure and this basically helped in reducing backlog of cases in the courts.

⁶⁹ Section 102 of The Law of Marriage Act [Cap 29 R.E 2019]

⁷⁰A.Hamisi, *The Weakness of the Tanzania Law of Marriage Act, 1971 Concerning the Practical Aspect of the Marriage Conciliatory Boards*. Ruaha Catholic University At the Faculty of Law, June2012.

2.4.1.3 RATIONALE AND IDEAS FOR MARRIAGE CONCILIATORY BOARDS

The rationale for establishing Marriage Conciliatory Board is to save marriage and to make sure that the spouses do not separate but leave together in peace and harmony. The idea of Marriage Conciliatory Board come as a result of marriage breakdown principle which was called for the need to reconcile the parties rather than to separate them whenever dispute arises among them.

2.4.1.4 INFORMALITY AND SIMPLICITY

The Marriage Conciliatory Boards are adopting informal methods and due to that it is easier for any person to present his or her case compared to the formal court procedure which involve a lot of technicalities. Also it is inexpensive as compared to resolving a dispute through normal courts as there is no involvement of lawyers. It is easier to raise complaint before the Boards than to the courts.

2.4.1.5 ROLES OF MARRIAGE CONCILIATION BOARDS.

The Marriage Conciliation Board conduct various roles including settling the dispute between parties without showing bias.⁷¹ Also the Board has a duty to invite or summons another person to attend the board sessions, and the Marriage Conciliation Board usually provide advice to the parties to the dispute on further steps that they may take after the failure of the reconciliation board to reconcile them.⁷² Not only that but also no one can be accepted at the court without starting at the ordinary level like BAKWATA for Muslims and Church Boards for Christians.⁷³

⁷¹<https://www.tanzanianweb.co.tz> (accessed on 1st January 2021)

⁷² <https://www.clydeco.com> (accessed on 5th February 2021)

⁷³<https://www.tanzanianweb.co.tz> (accessed on 24th January 2021)

2.4.2 IN LABOUR DISPUTES

ADR has been used in employment disputes whereby parties to the disputes are supposed to pass through the Commission for Mediation and Arbitration and this has seen to succeed in reducing backlog of cases in courts due to the fact that many cases are successfully solved by the Commission for Mediation and Arbitration.⁷⁴ Therefore, ADR has been used in Tanzania and it has seen to succeed for instance in marriage disputes and also in employment disputes.

2.4.2.1 Commissions for Mediation and Arbitration

The Commission for Mediation and Arbitration (CMA) as established by the Labour Institution Act of 2004 is empowered to mediate and arbitrate labour disputes within a given time frame. Also the conducts of the mediators and arbitrators is basically governed by Labour Institution (mediation and arbitration) Rules GN No 64 of 2007 and the Labour institutions (mediation and arbitration guidelines) Rules GN No 67 of 2007. Apart from that, the conducts of mediators and arbitrators is regulated by Labour Institution (Ethics and code of conduct for mediators and arbitrators) Rules GN No 66 of 2007. Likewise It should be noted that one of the key incentives for employers, employees and the investors is the presence of clear, time conscious, just, and effective dispute resolution mechanism.

2.4.2.2 Functions of Commission for Mediation and Arbitration (CMA)

The Commission for Mediation and Arbitration performs various functions including determining any dispute referred to it by arbitration. Also the Commission offer to mediate a dispute that has not been referred to it.

⁷⁴<https://www.researchgate.net> (accessed on 3rd January 2021)

2.5 CONCLUSION

Alternative Dispute Resolution as it's a procedure of settling dispute out of court and it involve various methods including Negotiation, mediation, conciliation, and also arbitration. Not only that but also it was introduced with the aim of increasing popular satisfaction with dispute resolution, reducing delay in the resolution of disputes, reducing the cost of resolving disputes and also helping reduce the level of tension and conflict in a community. In Tanzania ADR has seen to succeed in various areas including in matrimonial disputes where cases are resolved through the application of ADR methods done by the Marriage Conciliation Board instead of going to court and also in employment disputes.

CHAPTER THREE: LEGAL FRAMEWORK

3.1 INTRODUCTION

This chapter examines the legislative framework for Alternative Dispute Resolution in Tanzania in order to establish their effectiveness in facilitating resolution of Land Dispute. The chapter also examines areas where ADR has been successfully used including in marriage disputes and in labour disputes also how they are relevant to land dispute resolution in District land and Housing Tribunal in Tanzania.

3.2 LEGAL FRAMEWORK FOR LAND DISPUTES

Alternative Dispute Resolution in Tanzania is basically found on the following legal framework.

3.2.1 THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA.

The Constitution of the United Republic of Tanzania of 1977 as amended time to time embodies Alternative Dispute Resolution basically by virtue of Article 107A (2)(d)⁷⁵ that requires courts to be guided by certain principles, inter alia, a need to encourage mutual settlement. It stipulates that:-

*“ In delivering decisions in matters of civil and criminal nature in accordance with the law, the court shall observe the following principles, that is to say; to promote and enhance dispute resolution among persons involved in the disputes ”*⁷⁶

Therefore, the Constitution of the United Republic of Tanzania obligates the courts to ensure that they promote and support alternative dispute resolution.

⁷⁵ Article 107A (2) of The Constitution of The United Republic of Tanzania of 1977 as amended time to time.

⁷⁶Article 107A(2)(d) of The Constitution of The United Republic of Tanzania of 1977 as amended time to time

3.2.2 THE CIVIL PROCEDURE CODE

The legal foundation of Alternative Dispute Resolution in Tanzania is governed by the Civil Procedure Code⁷⁷ particularly Order VIIC Rule 24 have mentioned three methods of ADR to be applied namely, negotiation, mediation and arbitration⁷⁸ as it states that:-

“Subject to the provisions of any written law, the court shall refer every civil action for negotiation, conciliation, mediation or arbitration or similar alternative procedure, before proceeding for trial”.⁷⁹

Likewise the parties are required to choose their mediator of their disputes within fourteen days as it has been stipulated under Order VIIC Rule 25(1) which states that;-

“The court shall require the parties to appoint and submit the name of a mediator of their choice within fourteen days after pleadings are complete.”⁸⁰

Also where the parties fail to select a mediator, then the court shall, manually or electronically, appoint a mediator and notify the parties accordingly.⁸¹ And Order VIIC rule 26 has stipulated on the Purpose and nature of mediation.⁸² Not only that but also the Civil procedure Code Cap 33 particularly under order VIIC Rule 31 has stipulated on the aspect of confidentiality stating that:-

“ All communications at a mediation session and the mediation notes and records of the mediator shall be confidential and a party to a mediation may not rely on the record of statement made at or any information obtained during the mediation as evidence in court proceedings or any other subsequent settlement initiatives, except in relation to proceedings brought by either party to vitiate the settlement agreement on the grounds of fraud.”

⁷⁷ The Civil Procedure Code [CAP 33 R.E 2019]

⁷⁸ Order VIIC Rule 24 of The Civil Procedure Code [CAP 33 R.E 2019]

⁷⁹ Order VIIC Rule 24, of The Civil Procedure Code [CAP 33 R.E 2019]

⁸⁰ Order VIIC Rule 25(1), of The Civil Procedure Code [CAP 33 R.E 2019]

⁸¹ Order VIIC Rule 25(2), of The Civil Procedure Code [CAP 33 R.E 2019]

⁸² Order VIIC Rule 26 of The Civil Procedure Code [CAP 33 R.E 2019]

The mediation shall not exceed thirty days as it has been also stated under rule 32 Order VIIIIC stating that:-

“The mediation period shall not exceed a period of thirty days from the date of the first session of mediation.”

Therefore, the Civil Procedure Code obligates the courts to ensure that they promote and support the use of alternative dispute resolution.

3.2.3 ARBITRATION ACT

This is the principle legislation regulating arbitration in Tanzania as it regulates both domestic arbitral proceedings and enforcement of foreign arbitral award.⁸³Section 5⁸⁴ allows the parties to the arbitration agreement to agree on the name of an arbitrator to be appointed by a third person or appointment body. As it states that:-

“The parties to a submission may agree that the reference shall be to an arbitrator or arbitrators to be appointed by a person designated therein and arbitration may be designated either by name or as the holder for the time being of any office or appointment.”

Likewise, the parties may agree on the number of arbitrator to form an arbitral tribunal as it has been stated under section 17(1) which states that:-

*“The parties may agree on the number of arbitrators to form the arbitral tribunal and whether there is to be a chairman or umpire.” (2) “Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other number shall be understood as requiring the appointment of an individual arbitrator as chairman of the arbitral tribunal.”*⁸⁵

⁸³<https://www.m.grin.com> (accessed on 2nd January 2021)

⁸⁴ Section 5 of The Arbitration Act [CAP 15 R.E 2019]

⁸⁵ Section 17 of The Arbitration Act [CAP 15 R.E 2020]

Also where there is no agreement as to the number of arbitrators the arbitral tribunal shall consist of a sole arbitrator.⁸⁶ Apart from that, the parties may also agree on the circumstances upon which the appointment of an arbitrator may be revoked, and the revocation of the appointment of an arbitrator by the parties acting jointly shall be agreed in writing as stated under section 25.⁸⁷

The award is basically enforceable as decree of the court by filing the same in the High Court by virtue of section 12.⁸⁸ Therefore, the Arbitration Act stipulates on the use of Alternative Dispute Resolution Methods.

3.2.4 THE LABOUR INSTITUTIONS ACT.

Any employment dispute arising among the parties should be referred to the Commission for Mediation and Arbitration. The commission was established under section 12⁸⁹ which states that:-

“There is hereby established a commission for Mediation and Arbitration”

The commission also shall be an independent department as it has been clearly stipulated under section 13(1) stating that:- *“The commission-*

- a) Shall be an independent department of Government.*
- b) Shall not in the performance of its functions be subjected to the direction or control of any person or authority; and*
- c) Shall be an independent of any political party, trade union, and employers’ associations, federal of trade unions or employers’ associations.”⁹⁰*

⁸⁶Section 17(3) of The Arbitration Act [CAP 15 R.E 2020]

⁸⁷Section 25 of The Arbitration Act [CAP 15 R.E 2019]

⁸⁸Section 12 of The Arbitration Act [CAP 15 R.E 2019]

⁸⁹Section 12 of The Labour Institution Act [CAP 300 R.E 2019]

⁹⁰Section 13(1) of The Labour Institution Act [CAP 300 R.E 2019]

Not only that but also the commission shall mediate any dispute that has been referred to it also it may determine any dispute that has been referred to it.⁹¹ In performance of its function the Commission for Mediation and Arbitration shall appoint a director, mediator and arbitrators and assign them to mediate and arbitrate disputes in accordance with provisions of any labour laws, establish offices in areas and at administrative levels as it may determine.⁹² Apart from that, the commission may make rules that will regulate its internal administration and the practice and procedures for mediating disputes.⁹³ Likewise, the commission may publish guidelines or publish a code of ethics for mediators and arbitrators.⁹⁴

The commission shall basically consist of a chairman who shall be a member, official or office bearer of a trade union, employers' associations or federation, and he shall be appointed by the president.⁹⁵ Not only the chairperson but also there shall be appointed a director and a deputy director of the commission who are skilled, knowledgeable and have experience in labour matters, and they shall be responsible for carrying out the policy decision of the commission and the day to day administration and management of the affairs of the commission.⁹⁶

There shall be appointment of arbitrators and mediators by the commission on either full-time or part-time basis, and when appointing the mediators and arbitrators the commission should have due regard to the need to constitute an independent and professional commission.⁹⁷ The mediators and arbitrators appointed may be removed from the office when

⁹¹Section 14 of The Labour Institution Act [CAP 300 R.E 2019]

⁹²Section 15(1) of The Labour Institution Act [CAP 300 R.E 2019]

⁹³Section 15(1) of The Labour Institution Act [CAP 300 R.E 2019]

⁹⁴Section 15(1) of The Labour Institution Act [CAP 300 R.E 2019]

⁹⁵Section 16(1) of The Labour Institution Act [CAP 300 R.E 2019]

⁹⁶Section 18 of The Labour Institution Act [CAP 300 R.E 2019]

⁹⁷Section 19 of The Labour Institution Act [CAP 300 R.E 2019]

there is serious misconduct, incapacity and also material violation of the code of conduct.⁹⁸

The mediators and arbitrators shall basically have power to summon any person for questioning or to attend the mediation, summon any person who is believed to have possession of any book, document or any object relevant to the resolution of the dispute, and also administer oath or accept an affirmation from any person called to give evidence and question any person about any matter relevant to the dispute.⁹⁹

Therefore, the Labour Institution Act provides and supports the use of alternative dispute resolution methods in labour disputes that arise.

3.2.5 THE LABOUR INSTITUTIONS (MEDIATION AND ARBITRATION GUIDELINES) RULES, 2007

The Labour Institution Rules has also provided various aspects in support of the use of ADR methods whereas rule 3 has basically stated on the mediation process as it states that:-

*“Mediation is a process in which a person independent of the parties is appointed as mediator and attempts to assist them to resolve a dispute and may meet with the parties either jointly or separately, and through discussion and facilitation, attempt to help the parties settle their dispute”.*¹⁰⁰

Not only that but also it's a fundamental principle of mediation that the parties ultimately choose whether to settle the dispute or not and also the recommendation of the mediators shall not be binding unless the parties have agreed.¹⁰¹ The mediation process basically involves various stages as it has been stipulated under rule 9 stating that:-

⁹⁸Section 19(6) of The Labour Institution Act [CAP 300 R.E 2019]

⁹⁹Section 20(1) of The Labour Institution Act [CAP 300 R.E 2019]

¹⁰⁰Rule 3 of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹⁰¹ Rule 4 of The Labour Institutions (Mediation and arbitration) Rules, 2007

“Each mediation may vary depending on the parties involved, style of the mediation, the nature of the dispute and the circumstances involved and mediations may involve four distinct stages;-

- a) Introduction*
- b) Gathering information;*
- c) Exploring options and developing consensus; and*
- d) Conclusion.”¹⁰²*

The mediator therefore is supposed to go through those stages and also he shall be prepared, having read the referral documents and any law applicable to the dispute.¹⁰³ The mediator also shall introduce and welcome the parties determine the language in which proceedings are to be conducted and if there is a need for translation he ensure that there is a presence of an interpreter.¹⁰⁴ Apart from that, the mediator also shall declare the conflict of interest if any before the mediation.¹⁰⁵ Likewise during the introduction stage, the mediator should give the parties an outline of how the mediation will be conducted and dealt with any concerns or queries raised by the parties about the process.¹⁰⁶ Furthermore it should be noted that during the information gathering stage the law provides that the mediator shall gather information about the dispute from the parties in a joint session, by.

- a) Inviting each party to give their views on the dispute;*
- b) Allowing each party an opportunity to ask questions for clarification and to respond to any version given;*
- c) Asking question to the parties in an attempt to understand the real interest of the parties, the causes of the conflict, and what the parties expect to achieve; and*

¹⁰² Rule 9 of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹⁰³ Rule 10 of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹⁰⁴ Rule 10(2) of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹⁰⁵ Rule 10(3) of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹⁰⁶ Rule 10(5) of The Labour Institutions (Mediation and arbitration) Rules, 2007

d) *Summarizing the issues that need to be addressed during the mediation.*¹⁰⁷

Also the mediator may commence exploring options with the parties either in a joint session or separately with any of the parties.¹⁰⁸ And the mediator shall keep the record obtained during the mediation process and without prejudice mediation should be a confidential process aimed at helping the parties to the dispute reach an agreement.¹⁰⁹

The Labour Institution rules has also provided on arbitration as a process in which a person is appointed as an arbitrator to resolve a dispute, and the process also involves a hearing where parties present evidence and argument.¹¹⁰ Apart from that it should be noted that the arbitrator's decision is provided in written award which is enforceable before the court of law.¹¹¹ In arbitration process the arbitrator has the power to administer an oath or accept affirmation from any person called to give evidence, summon a person for questioning attending a hearing, and order the person to produce a book, document or object relevant to the dispute, if that person's attendance may assist in resolving the dispute.¹¹² There are five stages involve during the arbitration process as it has been stipulated under rule 22(2) that:-

“The arbitration process involve the following five stages-

- a) *Introduction;*
- b) *Opening statements and narrowing of issues;*
- c) *Evidence;*
- d) *Argument; and*
- e) *Award.”*

¹⁰⁷ Rule 11 of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹⁰⁸ Rule 12 of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹⁰⁹ Rule 8 of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹¹⁰ Rule 18 of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹¹¹ Rule 18 of The Labour Institutions (Mediation and arbitration) Rules, 2007

¹¹² Rule 19 of The Labour Institutions (Mediation and arbitration) Rules, 2007

Therefore, the Labour Institution (Mediation and Arbitration Guidelines) Rules, tend to provide and supports the use of alternative dispute resolution methods including the mediation method and also arbitration method in labour disputes that arise.

3.2.6 EMPLOYMENT AND LABOUR RELATION ACT

In employment disputes Alternative Dispute Resolutions also taking place for instance section 86¹¹³ provides that the dispute referred to the commission for Mediation and Arbitration should be in a prescribed form and each party should be served with a copy. The commission also shall appoint a mediator to mediate the dispute and decide the time, date and place of the mediation hearing and provides advice to the party.¹¹⁴

In accordance with section 88(2)¹¹⁵ stipulates that if the parties fail to resolve a dispute referred to the mediation, the commission shall appoint an arbitrator to decide the dispute, determine the time, date and place of the arbitration hearing and also provide advice to the parties. Therefore, ADR in employment disputes has been stipulated in the Employment and Labour Relation Act¹¹⁶ and seen to be applied and taking place in situations where conflict arise on matters relating to employment.

3.3 MARRIAGE

In Tanzania, Alternative Dispute Resolution is basically used whereas conciliation as a method of resolving disputes is commonly used in matrimonial disputes,¹¹⁷ and Under the Law of Marriage Act¹¹⁸ matrimonial disputes cannot be instituted in court before going to Marriage Conciliation Board and this is a mandatory procedure.¹¹⁹ Under section 102¹²⁰ the

¹¹³Section 86(1) of The Employment and Labour Relation Act [CAP 366 R.E 2019]

¹¹⁴Section 86(3) of The Employment and Labour Relation Act [CAP 366 R.E 2019]

¹¹⁵Section 88(2) of The Employment and Labour Relation Act [CAP 366 R.E 2019]

¹¹⁶Employment and Labour Relation Act [CAP 366 R.E 2019]

¹¹⁷<https://www.tanzanianweb.co.tz> (accessed on 3rd January 2021)

¹¹⁸The Law of Marriage Act [CAP 29 R.E of 2019]

¹¹⁹<https://www.vemmaattorneys.co.tz> (accessed on 1st January 2021)

Boards are established by the responsible Minister in every Ward.¹²¹ The aim is to enable matrimonial disputes to be resolved amicably, also it should be noted that Section 104¹²² has stipulated on the proceedings of the Board. The law of marriage especially under section 101¹²³ has stipulated clearly that:-

“No person shall petition for divorce unless he or she has first referred the matrimonial dispute or matter to a Board and the Board has certified that it has failed to reconcile the parties.”

It should be noted that the Marriage Conciliation Board conduct various roles including settling the dispute between parties without showing bias.¹²⁴ Also the Board has a duty to invite or summons another person to attend the board sessions, and the Marriage Conciliation Board usually provide advice to the parties to the dispute on further steps that they may take after the failure of the reconciliation board to reconcile them.¹²⁵

For instance in the case of *Zinat Khan V Abdulla Khan*¹²⁶ where the petitioner petitioned to the court for divorce without referring the matrimonial dispute to the Board and her petition was unaccompanied by the certificate issued by the Board and the petitioner stated that she has not referred the dispute to the Board because of the extraordinary circumstances which make reference impracticable and mentioned threat of the respondent to kill her and their children, and in hearing the petitioner claimed to live in threat and constant fear of death and therefore reference to the Board will put her life at a great peril. The Court basically held that the stated incidences are suitable for reference to the Board so that it can

¹²⁰Section 102 of the Law of Marriage Act [CAP 29 R.E 2019]

¹²¹Section 102(1) Of The Law of Marriage Act [CAP 29 R,E of 2019]

¹²²Section 104 of The Law Of Marriage Act [CAP 29 R.E of 2019]

¹²³ Section 101 of The Law of Marriage Act [CAP 29 of 2019]

¹²⁴<https://www.tanzanianweb.co.tz> (accessed on 1st January 2021)

¹²⁵Ibid33

¹²⁶*Zinat Khan V Abdulla Khan* [1973]LRT 57

inquire in to the allegations, make inquiries and try to reconcile the parties and therefore the parties where to refer their dispute to the Marriage Conciliation Board first.

Also in the case of *Modesta Kagambo v Yahya Kagambo*¹²⁷ whereby the petitioner claimed that his husband of fifty three years stay in same wedlock, and Mr.Yahya Kagambo is aggressive, cruel and deserted her since 2004. However the petition was registered in the court without a certificate issued by the Marriage Conciliation Board to show that the Board has failed to reconcile the parties as it required by section 106(2),¹²⁸ and the court Held that the petition is incompetent for want of the certificate issued by the Board and the parties were supposed to refer their dispute in the Marriage Conciliation Board before registering the petition in the court.

Likewise in the case of *Shillo Mzee v Fatuma Ahmed*¹²⁹ the petitioner filed the petition for divorce without certificate from the Marriage Conciliation Board and the court Held that the dispute was supposed to be referred to the Marriage Conciliation Board before filing it to the court. In the case of *Anatori V Taidini Snaga*,¹³⁰ whereby the High Court found a simpler way of resolving the matter and thus avoiding going into the merits of the case, and it nullified the proceedings of the Primary Court on the ground that the matter had not been referred to a Marriage Conciliatory Board as its required by the law.

Therefore, ADR method in Tanzania especially in marriage disputes has seen to succeed in reducing backlog of cases hence it's a compulsory procedure that one should pass through the Board before proceeding to the court and thus how ADR is used in matrimonial disputes.

¹²⁷Modesta Kagambo V Yahya Kagambo [Matrimonial cause No 1 of 2018]

¹²⁸ Section 106(2) of The Law of Marriage Act [CAP 29 R.E 2019]

¹²⁹ShilloMzee v Fatuma Ahmed [1984]TLR 112

¹³⁰Anatori VsTaidiniSnaga Matrimonial (primary court) Civil Appeal No 35 of 1977

3.4 EMPLOYMENT

Alternative Dispute Resolution has been used in employment disputes whereby parties to the conflict are supposed to refer their dispute to the Commission for Mediation and Arbitration which was established under section 12,¹³¹ aiming at mediating any dispute that has been referred to it also it may offer to mediate a dispute that has not been referred to it.¹³² It should be noted that, in performance of its function the Commission for Mediation and Arbitration shall appoint a director, mediator and arbitrators and assign them to mediate and arbitrate disputes in accordance with provisions of any labour laws.¹³³ Meanwhile section 88(2)¹³⁴ provides that if the parties fail to resolve a dispute referred to the mediation, the commission shall appoint an arbitrator to decide the dispute, determine the time, date and place of the arbitration hearing and also provide advice to the parties.

In the case of *Hector Sequeraa Vs Serengeti Breweries Ltd*¹³⁵ whereas the Labour Court dismissed the case as incompetent due to the fact that it was filled directly to the court without first pursuing mandatory Commission for Mediation and Arbitration.

3.5 CONCLUSION

Therefore Alternative Dispute Resolution as a method used to solve disputes without going to normal proceedings has been applied in various areas including in marriage disputes whereby parties are supposed to pass through the Marriage Conciliation Board as a compulsory procedure. Also in employment disputes parties are required to pass through the Commission for Mediation and Arbitration. Apart from that, various laws have stipulated on the aspect of Alternative Dispute Resolution including The Constitution of the United

¹³¹ Section 12 of The Labour Institution Act [CAP 300 R.E 2019]

¹³² Section 14 of The Labour Institution Act [CAP 300 R.E 2019]

¹³³ Section 15(1) of The Labour Institution Act [CAP 300 R.E 2019]

¹³⁴ Section 88(2) of The Employment and Labour Relation Act [CAP 366 R.E 2019]

¹³⁵ *Hector Sequeraa vs Serengeti Breweries Ltd* High Court of Tanzania, Labour Division, Labour Complaint No. 20 of 2009.

Republic of Tanzania as amended time to time,¹³⁶ The Labour Institution Act¹³⁷ and also The Civil Procedure Code.¹³⁸

¹³⁶ The Constitution of The United Republic of Tanzania of 1977 as amended time to time.

¹³⁷ The Labour Institution Act [CAP 300 R.E 2019]

¹³⁸ The Civil Procedure Code [CAP 33 R.E 2019]

CHAPTER FOUR: RESEARCH FINDINGS.

4.1 INTRODUCTION

This chapter basically presents a critical analysis of findings of the research. It is in this part of the work where data and information gathered and collected at the field in various District Land and Housing Tribunal located in Tanzania. The chairmen and the clerks of the District Land and Housing Tribunal were so supportive to the study and they provide various data, comments and their experience as far as delay of cases in District Land and Housing Tribunal are concerned.

4.2 ANALYSIS

As already noted in chapter one, this research work was guided by the following hypotheses: that using the ADR method in the District Land and Housing Tribunal could resolve the issue of delay of cases. Therefore the field study which was done in various District Land and Housing Tribunal in Tanzania was geared to test this hypothesis.

The study revealed that there is a delay of cases in the District Land and Housing Tribunal, and in support of this various interviews were done at the Dodoma District Land and Housing Tribunal, where the 1st respondent stated that there is a delay of cases and the reason behind this is that advocate involved tend to appear before the High Court and their cases at District Land and Housing Tribunal tend to be adjourned.¹³⁹

Not only that but also the respondent went on stating that the ADR method is a method of resolving disputes by the way of mediation, and this method should be used in District Land and Housing Tribunal. Not only to be used but also the ADR methods should

¹³⁹ The response from the second respondent which was done on 9th April 2021.

be made compulsory as it has been seen in marriage disputes and also employment disputes. By applying ADR methods as a compulsory it will help in solving the challenges of delay of cases in district land and housing tribunal.¹⁴⁰

Apart from that, the first respondent at Dodoma District Land and Housing Tribunal provided data in support whereby from January 2020 up to December 2020, 625 cases were received and 275 cases are still pending, due to that the application of ADR method could help in resolving disputes and the number of pending cases would be solved.¹⁴¹

The second respondent at the Iringa District Land and Housing Tribunal asserted that land dispute is a situation whereby two sides enter into conflict in searching for their rights over the land, and due to the occurrence of land disputes there is a delay of cases at the District Land and Housing Tribunal. Not only that but also the chairman went on and stated that the reason behind the delay of cases is the death of the parties to the case as it takes long time to choose another representatives to proceed with the case, also advocates having other schedules at the higher courts a factor which makes many cases be adjourned and also cases taken to the tribunal tend to be many. This situation could be resolved by increasing the number of workers.¹⁴²

Likewise, in answering the questionnaire submitted to the respondents of various District Land and Housing Tribunal, the third respondent at Iringa District Land and Housing Tribunal provided that a land dispute is a dispute that tend to involve two or more person conflicting on land, and she agreed that there is a delay of cases and she stated that the reason behind this is that there are few staff members for example in the Iringa District Land and Housing Tribunal there is only one chairman, and once the members have retired it takes long

¹⁴⁰ The response from the first respondent which was obtained on 9th April 2021.

¹⁴¹ The data obtained from the District Land and Housing Tribunal at Dodoma, basically provided by the first respondent on 9th April 2021.

¹⁴² The response from the second respondent which was responded on 16th April 2021.

time for them to be appointed by the minister responsible and this makes cases be adjourned and tend to take long time.¹⁴³

In solving this problem of delay of cases the respondent stated that the government should employ enough staff members in the District Land and Housing Tribunal. She went ahead stating that the ADR method is very important and should be used as a compulsory method because once parties settle their dispute through ADR method there will be no misunderstanding among them and there will be no need to take the matter into the court and this will help in solving the challenge of delay of cases in District Land and Housing Tribunal.¹⁴⁴

The fourth respondent at Iringa District Land and Housing Tribunal responded to the questions provided by stating that a land dispute is the act whereby a single person or more person enter into dispute claiming a piece of land and this dispute may be among family members, institutions and citizens or investors and society members. She also responded that there is a delay of cases and in solving this problem the number of chairman should be increased for instance in Iringa there is only a single chairman.¹⁴⁵ Apart from that, the respondent went on stating that the use of ADR method will help in solving the challenge of delay of cases hence families will be able to resolve their misunderstanding without going to court. Therefore, she went further and states that there is a need to make the use of ADR methods compulsory hence it will help in resolving the challenge of delay of cases in the District Land and Housing Tribunal.¹⁴⁶

¹⁴³ Response from the clerk obtained on 16th April 2021 at Iringa District Land and Housing Tribunal to the questions submitted

¹⁴⁴Response from the clerk obtained on 16th April 2021 at Iringa District Land and Housing Tribunal to the questions submitted.

¹⁴⁵Response from the clerk obtained on 16th April 2021at Iringa District Land and Housing Tribunal to the questions submitted.

¹⁴⁶ Response from the clerk obtained on 16th April 2021at Iringa District Land and Housing Tribunal to the questions submitted.

Also the data obtained from the Iringa District Land and Housing Tribunal shows that from January 2020 up to December 2020, 1067 cases were received and 618 are still pending while 449 cases were solved, and therefore due to this data its very true that there is a need of applying the use of ADR methods as a compulsory method at the District Land and Housing Tribunals.¹⁴⁷

It was also responded by the fifth respondent that land dispute is a dispute that involve two parties conflicting each other caused by land issues, he went further and states that; there is delay of cases in the District Land and Housing Tribunal and the reason behind is that there is no compulsory application of ADR methods which could help in resolving land disputes and reduce the number of cases.¹⁴⁸ Not only that but also the ADR methods are ways used to solve conflict concerning land arising among two or more parties and this methods are supposed to be used as a compulsory procedure as it is in other tribunals, hence they are very important because they give parties big chance to solve their matter themselves and it simplify the resolution of the dispute in hand, and the application of this methods will help in resolving the challenge of delay of cases at the District Land and Housing Tribunals in Tanzania.¹⁴⁹

Furthermore, the sixth respondent to the questionnaire stated that; land disputes is a situation whereby two or more persons be in conflict in their plot of land, and therefore there is a delay of cases in District Land and Housing Tribunal and the reason is that chairman are very slow in deciding the cases, and apart from that the ADR methods are the process whereby a set of practices and technique aimed at solving the disputes will be taken at

¹⁴⁷ Data obtained by the researcher at the District Land and Housing Tribunal at Iringa on 16th April 2021.

¹⁴⁸ The response from staff member on 9th April 2021 at Dodoma District Land and Housing Tribunal on the questions provided by the researcher.

¹⁴⁹ The response from staff member on 9th April 2021 at Dodoma District Land and Housing Tribunal on the questions provided by the researcher.

solving disputes out of court and this involve mediation and arbitration.¹⁵⁰ Not only that, but also he went on stating that the ADR methods should be applied as a compulsory method in the District Land and Housing Tribunals hence help in reducing the challenges of delay of cases.

Fig:1.1 A table showing the reasons for the delay of cases in The District Land and Housing Tribunals in Tanzania

Sn	Reason for the delay of cases	Number of respondent agreed
1	Appearance of advocates at higher courts a factor which make cases at the District Land and Housing Tribunals be adjourned.	2
2	Death of parties to the case a factor making it long to choose another representative.	3
3	Few staff members at the District Land and Housing Tribunals	4
4	No application of ADR methods as compulsory method	4
5	Long time in appointing assessors of the tribunal after they have retired.	2

4.3 CONCLUSION

Therefore, it has been observed that the challenge of delay of cases at District Land and Housing Tribunal is existing and the main reasons provided by various respondents includes the number of staff member is still small for instance at Iringa District Land and Housing Tribunal there is only a single chairman, not only that but also there is a single tribunal in the whole region, therefore the tribunal tend to receive many cases hence leading to the backlog of cases. For instance from January 2020 to December 2020, 618 cases were pending cases

¹⁵⁰ The response from a clerk on 9th April 2021 at Dodoma District Land and Housing Tribunal on the questions provided by the researcher.

and due to that the application of the use of ADR methods as compulsory procedure would help in reducing that number due to the fact that many cases could be resolved by parties themselves without going through normal procedures as it has been experienced at other tribunals dealing with marriage disputes and also employment disputes. For instance, in 2009, 260 cases out of 316 were reconciled by the Marriage Conciliation Board and also in 2010, 388 cases out of 599 were also reconciled by the Marriage Conciliation Board during that period.¹⁵¹

¹⁵¹A.Hamisi, *The Weakness of the Tanzania Law of Marriage Act, 1971 Concerning the Practical Aspect of the Marriage Conciliatory Boards*. Ruaha Catholic University At the Faculty of Law, June 2012.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATION

5.1. INTRODUCTION

This chapter basically intends to make a general conclusion and give recommendations on what should be done so as to ensure that there is no delay of cases at the District Land and Housing Tribunals and what to be learnt from other tribunals for instance tribunals dealing with marriage and employment disputes.

5.2 SUMMARY OF RESEARCH FINDINGS

Alternative Dispute Resolution as a methods used in resolving disputes out of court including the negotiation method, mediation and also arbitration method tend to be important in resolving land disputes, as it should be noted that in District Land and Housing Tribunal there is a challenge of delay of cases for instance from January 2020 up to December 2020, 275 cases were still pending at Dodoma District Land and Housing Tribunal,¹⁵² not only there but also at Iringa District Land and Housing Tribunal 618 cases were pending from January 2020 up to December 2020.¹⁵³ Therefore, from the data obtained from the field it shows clearly that there is a need of making ADR method be applicable as a compulsory procedure as it is in other tribunal and this will help in resolving the challenge of delay of cases at the District Land and Housing Tribunal in Tanzania. Therefore, the hypothesis has been proved and likewise the objectives have been achieved.

The aspect of delay of cases has been among the challenges facing the District Land and housing Tribunal in Tanzania. During the collection of data from the field the researcher noticed that there are backlog of cases at the District Land and Housing Tribunal leading to

¹⁵² Data provided by Mr Jackson, the chairman of the District Land and Housing Tribunal at Dodoma on 9th April 2021.

¹⁵³ Data obtained by the researcher at the District Land and Housing Tribunal at Iringa on 16th April 2021

the delay of cases and among the reasons includes the death of parties to the case a factor making it long to choose another representative, few staff members at the District Land and Housing Tribunal. For instance, at Iringa there is only a single chairman who is supposed to listen all matters at Iringa region. Also lack of the application of ADR as a compulsory method, few numbers of the tribunals and taking long time in appointing assessors of the tribunal after they have retired tend to be among the factors leading to the delay of cases at the District Lands and Housing Tribunal in Tanzania leading to the delay of justice. Therefore, the hypothesis has been proved and likewise the objectives have been achieved.

Therefore, among the lessons learnt by the District Land and Housing Tribunal from other tribunals include the aspect of making the use and application of the ADR methods as a compulsory procedure to be followed as it is in disputes arise out of marriage, whereby the parties are supposed to pass at the marriage conciliation board as a compulsory procedure, also matter arising out of employment the parties are required to pass through the commission for mediation and arbitration as a compulsory procedure.

5.3 RECOMMENDATIONS

AS in view of what is stated above, there is a need of applying and use ADR methods as a compulsory method as it has also be seen in other tribunals including the tribunals dealing with marriage disputes and also labour dispute. Basing on what was revealed at the field study, I have come-up with the following recommendations:

- a) The government should enact laws or make amendments on the laws governing District Land and Housing Tribunal to includes provisions which will enable the use of ADR methods as a compulsory method to be followed by the parties to the disputes as it has been seen in other tribunals, and that will help in the solving the challenge of delay of cases at the District Land and Housing Tribunal.

- b) The number of District Land and Housing Tribunals should be increased as ensuring that each district have at least a single District Land and Housing Tribunal in a district a factor which will help in resolving the issue of delay of cases at the District Land and Housing Tribunal. the researcher in collecting data from the field he has noticed that all land disputes arising in a region are solved by a single District Land and Housing Tribunal, for instance in Iringa region there is only one tribunal.
- c) The government also should make sure that the number of staff members at the District Land and Housing Tribunal is increased and this has been observed during the collection of data whereby the district land and housing tribunal at Iringa has only one chairman who is supposed to listen and provide decision on all cases referred to it. Therefore increasing the number of staff members working at the District Land and Housing Tribunal is a factor which will help in resolving the challenges of delay of cases at the district land and housing tribunals in Tanzania.
- d) A lesson should also be learnt from other tribunals for instance in marriage disputes the party to the disputes are required to pass through the marriage conciliation board before going to the normal proceedings a factor which has reduced backlogs of cases at the tribunal hence many disputes are resolved by the board, and also the same has been seen in employment disputes where parties are supposed to pass through the Commission for Mediation and Arbitration herein referred to as (CMA). Therefore in District Land and Hosing Tribunal the ADR methods should be made compulsory and parties before going through normal proceedings they have to be mediated first a factor which will help in resolving the challenge of delay of cases in the District Land and Housing Tribunals in Tanzania.

5.4 CONCLUSION.

Delay of cases has been amongst the challenges that basically face the District Land and Housing Tribunals in Tanzania, and among the factors leading to the delay of cases include few numbers of Tribunals for instance in one region there is only one tribunal, and this has been proved whereby at Iringa Region there is only a single District Land and Housing Tribunal, also few numbers of staff workers whereby a tribunal has one chairman, and apart from that, the government should ensure that in each district there should be a single tribunal, and also the number of staff member should be increased so as to resolve the challenge of delay of cases at the District Land and Housing Tribunals in Tanzania.

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