


OPEN ACCESS	Global Journal of Arts Humanity and Social Sciences			
	ISSN: 2583-2034			
	Abbreviated key title: Glob.J.Arts.Humanit.Soc.Sci			
	Frequency: Monthly			
Published By GSAR Publishers				
Journal Homepage Link: https://gsarpublishers.com/journal-gjahss-home/				
Volume - 4	Issue - 12	Dec 2024	Total pages 1277-1281	

LEGAL AND INSTITUTIONAL FRAMEWORK OF WARD TRIBUNALS IN TANZANIA

By

Alphonse Paul Sebukoto¹ and Dr. Damas Fransisco²

¹2nd year LL.M Student, St. Augustine University of Tanzania, Mwanza, Tanzania

²Lecturer, School of Law, St Augustine University of Tanzania



Article History

Received: 11- 12- 2024

Accepted: 21- 12- 2024

Published: 24- 12- 2024

Corresponding author

Alphonse Paul
Sebukoto

Abstract

This article explores the legal and institutional framework of Ward Tribunals in Tanzania through a doctrinal legal research methodology, which involves a detailed analysis of primary and secondary legal sources. Ward Tribunals, established under the Ward Tribunals Act, serve as a key mechanism for resolving minor criminal and civil disputes and maintaining social harmony at the local level. By focusing on statutory provisions, case law, and scholarly interpretations, this study investigates the structure, powers, jurisdiction, and procedural aspects of Ward Tribunals, evaluating their effectiveness and alignment with broader principles of natural justice.

Key Words: Tribunals, Procedural fairness, Local level.

1.1 Introduction

This article examines the legal and institutional framework governing Ward Tribunals in Tanzania by assessing their role in the country's justice system, particularly within the context of criminal justice. Ward Tribunals were established to provide accessible, cost-effective, and community-oriented mechanisms for handling minor criminal disputes and civil matters at the grassroots level. This study explores the legislative foundation, structure, functions, and jurisdiction of these tribunals, as well as their operational challenges and limitations.

1.2 Foundation of the Ward Tribunal

A Ward Tribunal is a local adjudicatory body established under Tanzanian law, primarily designed to handle minor civil and criminal disputes at the community level.¹ Ward Tribunals are part of Tanzania's decentralized judicial system, aimed at providing accessible justice, especially in rural areas.² They operate at the ward level, which is a local administrative division in Tanzania.

¹ Byabato, Stephen. "Mal-administration of justice by ward tribunals in Tanzania: an assessment of their legal setup." LLM Thesis, Mzumbe University, Morogoro Tanzania (2016).

² Ibid

Ward Tribunals in Tanzania were established under the Ward Tribunal Act of 1985, as part of the efforts to decentralize the justice system and make it more accessible to ordinary citizens.³

The ward Tribunal has jurisdiction of both Civil and criminal matters occurred within a respective ward. Ward Tribunals play a vital role in the Tanzanian justice system by providing a bridge between formal legal institutions and local communities. Their focus on mediation and reconciliation aligns with traditional dispute resolution practices. Although their authority is limited to minor disputes, they serve an important function in easing the burden on higher courts and ensuring that justice is available at the grassroots level.

1.3 Evolution of Ward Tribunals in Tanzania

Prior to invasion, African nations, including Tanzania, had their own methods for settling conflicts. For example, mediation is as ancient as humanity. It exists in every human society. In daily life, we see the involvement of purportedly impartial third-party

³ Venugopal, Varsha, and Serdar Yilmaz. "Decentralization in Tanzania: An assessment of local government discretion and accountability." *Public Administration and Development* 30, no. 3 (2010): 215-231.



mediators to settle disagreements between neighbors, parents mediating between their young offspring, and in close-knit groups and tribes. Respected members of the community, such as chiefs, tribal elders, or representatives of the people, arbitrate a variety of civil issues.⁴

During the period of German colonial rule, the administration of justice was fundamentally based on race, featuring two distinct systems: one for natives and another for non-natives. The decision at this time was rendered by the governor and other administrative officials. The legislation concerning Native matters was, in fact, ambiguous. The German administration operated under direct rule, which restricted the application of traditional laws, permitting only foreign laws, except within the Traditional Judicial Institutions located in areas where German control had minimal interest.⁵

In the course of the British Colonial Era, the British established two distinct frameworks of judicial hierarchies, a process facilitated by the Tanganyika Order in Council.⁶ Later, in order to control the way justice was administered in the area, Britain passed the Courts Ordinance. The Courts Ordinance preserved the old system of distinct adjudication for foreigners and local people, notwithstanding the possibility of sending native courts' appeals to the colonial High Court.⁷

After Tanzania gained its independence, its legal system mostly adopted British law, but with notable modifications. Nevertheless, these advancements were insufficient to guarantee Tanzania's criminal justice system was administered fairly and correctly.

Tanzania, post-colonialism, had individuals who expressed concerns about the inherited laws from the colonial authority, which were discriminatory and oppressive to the indigenous population. The Msekwa Commission, also known as the Judicial System Review Commission, was founded by the Tanzanian government in 1974 with the aim of assessing the legal system and suggesting improvements to tackle current issues. The goal of the Ward Tribunal plan is to reduce the backlog of cases on primary courts, which the Commission said were overburdened by a lack of personnel, a small number of courts, and intricate procedural requirements. The formed tribunals were required by the Commission to have conciliatory traits, flexibility in their operation, informality, and sensitivity to the local context and culture. This will alleviate the primary court's case burdens while ensuring effective governmental service to the public.

The Msekwa Commission's recommendation was implemented, resulting in the 1977 permanent Constitution of the United Republic of Tanzania. Article 13(3)⁸ of this Constitution permitted

the establishment of additional tribunals, granting the government the authority to create tribunals for issues not covered by the courts. The Ward Tribunal was established through this process and is endowed with powers and responsibilities under various statutes that recognize it as a court, necessitating its involvement in the administration of justice. The fundamental laws are delineated as follows: -

1.3.1 The Ward Tribunals Act

The Ward Tribunals Act⁹ (here in referred as the Act) serves as the fundamental legal framework for establishing Ward Tribunals. Section 3¹⁰ establishes a tribunal for each ward in Tanzania, designated as the Ward Tribunal for the respective ward. This Act functions as the primary legislation governing the Ward Tribunals. The Act delineates the tribunals' jurisdiction, authority, practices, and procedures, guiding its operations to achieve the primary objective of amicably resolving disputes through mediation and fostering mutually agreed solutions, thereby promoting peace and harmony in the designated area. The Act instituted an open procedure designed to address disputes between parties with flexibility, devoid of strict evidentiary rules, and allowing for self-regulation of its proceedings.¹¹

The Appropriate Authority, which is the District Council or the Urban Authority within the authority of the Tribunal's site, is in charge of supervising the tribunals. The body in charge of a tribunal must guarantee, enable, and encourage the efficient and successful execution of the tribunal's duties in addition to creating the overall policy that directs the tribunal's activities.

1.3.2 The Land and Village Land Act

In 1999, Tanzania enacted two important legislative measures to tackle land issues: the Land Act and the Village Land Act.¹² The goal of this Act was to carry out the National Land Policy that was created in 1995, after the suggestions made by the Presidential Commission on Land Matters, often known as the Shivji Commission, which offered remedies for problems pertaining to land.¹³

The Land Act's and the Village Land Act's sections 167(1)(e) and 62(2)(d) provide Ward Tribunals sole authority to decide instances involving land disputes. The provisions of existing law pertaining to land disputes occasionally classify the Ward Tribunals as courts.¹⁴

1.3.3 The Land Disputes Courts Act

This is a significant legal foundation regarding the activities of the Ward Tribunal. Following 1999 land's legal reform, the Land Disputes Courts Act¹⁵ was passed to facilitate the use of the courts

⁴ Lukumay, N. Z. *A Reflection on Court - Annexed Mediation in Tanzania*. *LST Law Review*, Vol. 1, Issue 1 January-June 2016. P.51

⁵ *Ibid*

⁶ *Tanganyika Order in Council of 1920*.

⁷ Kenneth McK. Norrie (1989). *Administration of Justice in Tanzania and Zanzibar: A Comparison of Two Judicial Systems in One Country*, 38 *INT'L & COMP. L.Q.* P.398.

⁸ *Article 13(3) of the Constitution of the United Republic of Tanzania, 1977*

⁹ *The Ward Tribunals Act No. 7 of 1985*

¹⁰ *The Ward Tribunals Act No.7 of 1985, Section 3*

¹¹ *The Ward Tribunals Act No. 7 of 1985, Section 8*

¹² *Act No. 4 and 5 of 1999*

¹³ *Shivji Commission*

¹⁴ *Ibid n12*

¹⁵ *The Land Disputes Courts Act of 1999*



created under the two original statutes concerning land matters which are the Land and village Land Acts.

The Land Act establishes the fundamental legal framework regulating land, except village land, as well as the administration of land dispute settlement, and other issues. This Act delineates the norms regulating the Ward tribunal for land disputes, including procedural principles, administration of procedures, and other relevant aspects directly pertaining to property problems.

The Ward Tribunal is defined under Sections 10 and 13 of the Land Disputes Courts Act,¹⁶ in compliance with the Ward Tribunals Act, and is granted exclusive jurisdiction over land disputes arising from the Land Act and the Village Land Act.¹⁷ This suggests that the Ward Tribunal has jurisdiction over property issues in addition to other crucial responsibilities assigned to it.

1.4 Nomination and composition of the Ward Tribunal

The Ward Tribunals Act mandates that tribunals be set up in each mainland Tanzanian ward and staffed by members of the ward community. A minimum of four and a maximum of eight members must be appointed by the Ward Committee to each tribunal, chosen from a list of ward residents generated in accordance with the established protocol.¹⁸ The chairman is chosen from among the elected members by the authorized authority.

The Ward Executive Officer gathers candidate applications in his role as the secretary of the Ward Development Committee and submits them to the committee for review and election as part of a predetermined procedure for the nomination process. The councilor for the relevant ward serves as the committee's chair. Following that, the Executive Director of the relevant District or Urban Authority receives the names of the selected candidates, and the chairman is immediately appointed.

The local government body of the relevant ward selects the Tribunal's secretary, following a recommendation from the Ward Committee. The secretaries are legally designated as employees of the local authority; however, they are not included in the local government's service plan and, as a result, are ineligible for a salary. The individuals have the requisite qualifications to serve on the Ward Tribunal as mandated by law; however, the existing challenge stems from the restriction preventing individuals with legal expertise from becoming tribunal members, especially as the jurisdiction of the Ward Tribunal has developed to mirror that of a court in specific statutes.¹⁹

A minimum of 50% of the entire membership must be present for there to be a quorum at a Tribunal meeting. A majority vote of the present members of the Tribunal establishes the Tribunal's decision in any given session. The Chairman is entitled to a casting vote in addition to their first vote in the case of a tie.

¹⁶ Sections 10 and 13 of the Land Disputes Courts Act

¹⁷ Ibid

¹⁸ The Ward Tribunals Act No. 7 of 1985, Section 4(1)(a)

¹⁹ The Ward Tribunals Act No. 7 of 1985, sections 3 and 4

1.5 Tenure of Ward Tribunal Members

It is widely acknowledged that no governmental position is permanent. The members of the ward Tribunal in Tanzania, like other authorities, serve for a limited term, after which reappointment is possible. Section 6(1)²⁰ establishes that the term of office for Ward Tribunal members is three years from the election date, with eligibility for re-election. The legislation mandates that in the event of a vacancy in an office due to death, resignation, term expiration, or other causes, the appropriate authority must nominate a qualified individual to fill the position until the subsequent election of members.²¹

The tenure of Ward Tribunal members is specifically structured to safeguard them from the influential authority that holds jurisdiction over the Tribunal. The authority, when possessing vested interests, is required to refrain from unlawful actions that result in the dismissal of dissenting members. This tenure provision allows members to function independently and with confidence.²²

The clause for any other reasonable cause suggests that the appointing authority may also remove a member from office for any reasonable cause, therefore the justification for establishing a vacancy in the Ward Tribunal is not all-inclusive.²³ The aforementioned legislation is deficient since it does not specify the grounds for removal of members from office and does not define what constitutes an acceptable reason. The appointing authority may abuse its powers if it is swayed by hidden agendas. Acknowledging tenure's significance and the need of safeguarding it, Tanzania's justice system must be improved in order to guarantee that members of the Ward tribunal have sufficient protection throughout their tenure to preserve their efficacy.²⁴

1.6 Financing the Ward Tribunals

The Ward Tribunal, like other institutions, necessitates funding and financial resources to administer effective and impartial justice to the litigants it serves. The district authority is responsible for financing the Ward Tribunals established under its jurisdiction, as it does not function as a revenue-generating entity.²⁵

Section 7²⁶ delineates the substantial responsibility of the relevant authority for a Tribunal, which includes overseeing the general policy that governs its operations and ensuring, facilitating, and promoting the Tribunal's efficient and effective performance of its functions. Section 27²⁷ stipulates that the designated authority is tasked with the distribution of sitting allowances or other compensatory allowances to the Ward Tribunal members as considered appropriate.

The wording suggests that the pertinent authorities cannot avoid this obligation. This task involves several components: the relevant

²⁰ The Ward Tribunals Act No. 7 of 1985

²¹ Ibid

²² The Ward Tribunals Act No. 7 of 1985 Section 6(3)

²³ The Ward Tribunals Act No. 7 of 1985, Section 4(1)(a)

²⁴ The Ward Tribunals Act No. 7 of 1985

²⁵ Ibid

²⁶ The Ward Tribunals Act No. 7 of 1985

²⁷ The Ward Tribunals Act No. 7 of 1985



authority must allocate allowances to members, compensate the secretary (as he is an employee, as previously indicated), supply the tribunal with stationery, ensure working infrastructure, provide transportation for site visits when necessary, and cover any additional expenses essential for the operation of the Ward Tribunal.

The relevant authority, in conjunction with the Minister and other governmental entities, shall formulate programs, schemes, and seminars aimed at informing and educating the public as well as Tribunal officers and members regarding the operational methods of the Tribunals, thereby ensuring their efficient and equitable functioning. Tribunals have raised concerns regarding the inability of relevant authorities to fulfill their responsibilities, leading to the engagement of corrupt practices and a failure to meet established expectations. This study will examine the issue and propose a resolution.

1.7 Roles of Ward Tribunals

The main role of the Ward Tribunal is to uphold peace and harmony within its jurisdiction by mediating and seeking fair and equitable conflict resolutions. The tribunals must attain peaceful resolutions for litigants by engaging them and facilitating conflict mediation, thereby underscoring their significance in the respective domain.

Mediation aims to facilitate peace and harmony within communities, allowing individuals to concentrate on improving their socio-economic conditions without the distractions of litigation and the animosity that can result in social disunity.

Respecting natural justice principles namely, the right to due process and the right to be free from discrimination is necessary for effective mediation while using the Ward Tribunal process. In every case, the tribunal must uphold the rule of law while striving to achieve a conclusion that advances the social and economic goals of the concerned ward or village, promotes the peaceful settlement of conflicts, and fosters reconciliation between the involved parties.²⁸

Before rendering a ruling on any complaint, the tribunal must provide all parties an equal chance to present their case and call witnesses. Any tribunal member who has a financial or personal stake in the complaint must also declare it and decline to take part in the proceedings.

As the court confirmed in the seminal decision of *Ridge v. Baldwin*, which established that tribunals must follow the natural justice standards, the statute's wording is neither arbitrary nor restricted. When making choices that affect an individual's rights, these principles must be followed.

According to the legislation, the Ward tribunal's primary responsibility is to maintain peace and harmony within its borders by facilitating mediation between disputing parties and so fostering socio-economic growth in the affected community.

²⁸ *The Ward Tribunals Act No. 7 of 1985, Section 16(1)*

1.8 Supervisory Bodies of Ward Tribunals

As was previously noted, ward tribunals in Tanzania are legally recognized organizations. In the structure of power that underpins their establishment, whether it is in the traditional court system, the land tribunal system, or the local government framework, they are the lowest institutions. These organizations oversee the Ward Tribunals in two capacities: they keep an eye on appeals and changes and provide administrative supervision. The following is a summary of the Ward Tribunal governing bodies.²⁹

1.8.1 The Local Government Authorities

The Ward Tribunals were required to be established in each ward under the statute that established them.³⁰ One important component of a local government authority's organizational structure is a ward. The local government entity that founded the Ward Tribunals is the one that oversees, regulates, and has control over them.³¹

The appropriate local authority, designated in the Act as the competent authority, is in charge of the overall policy that directs the Tribunal's activities and is tasked with facilitating, ensuring, and encouraging the efficient and effective exercise of the Tribunal's jurisdiction. This includes hiring workers (such as a tribunal secretary), giving out allowances, training new hires, supplying supplies and equipment for work, forming and dissolving organizations, and expelling members. The Ward Tribunal operates under the supervision of the local government authority that constituted it, as the statute language makes explicit.

1.8.2 The District Land and Housing Tribunal

Ward Tribunals now have the legal capacity to consider land dispute claims in a court of law according to the Land Disputes Courts Act of 2002.³² Among the institutions that comprise the hierarchy are the Village Land Council, Ward Tribunals, District Land and Housing Tribunals, High Court, and Court of Appeal.³³

In the designated hierarchy, the Ward Tribunal's immediate supervisor is the District Land and Housing Tribunal. The District Tribunal supervises the Ward Tribunal in two capacities. Under sections 19 and 20, anybody who disagrees with the Ward Tribunal's ruling has 45 days to seek an appeal with the District Land and Housing Tribunal.³⁴ The District Tribunal is in charge of the Ward Tribunal's procedural operations, making sure that established tribunal procedures are followed, that witnesses and evidence are examined, and that natural justice principles are respected.

Second, in accordance with section 36,³⁵ the District Tribunal has the authority to examine the Ward Tribunal's procedures to look for any infractions of legislative statutes or subsidiary laws, as well as any observance of the principles of natural justice. The tribunal's

²⁹ *The Ward Tribunals Act No. 7 of 1985, Section 16(2)*

³⁰ *The Ward Tribunal Act No. 7 of 1985, Section 3*

³¹ *The Ward Tribunal Act No. 7 of 1985, Section 7*

³² *The Land Disputes Courts Act of 2002*

³³ *Act No. 2 of 2010*

³⁴ *The Land Disputes Courts Act No. 2 of 2002*

³⁵ *The Land Disputes Courts Act No. 2 of 2002*



authority in the revision process is equivalent to that of the appeals process.

It is the responsibility of the District Tribunal to oversee the functioning of the Ward Tribunal. All District Councils should strengthen and empower Village Land Councils and Administrative Ward Tribunals in accordance with the guidelines offered by Professor Anna Kajumulo Tibaijuka in order to eliminate the backlog of cases that are currently being heard in District Land and Housing Tribunals.³⁶

As mandated by legislation, the District Land and Housing Tribunal oversees the Ward tribunal and makes sure that its goals are fulfilled by monitoring the Ward tribunal's day-to-day activities.

1.8.3 Primary Courts

In Tanzania, the Primary Court is the trial court for a variety of cases falling within its purview, and it is the lowest tier of the legal hierarchy. The Magistrates Courts Act³⁷ established the Primary Courts, which are constituted in each district and have authority within their respective districts according on relevant legislation.³⁸

The only judicial bodies situated close to the communities they are meant to serve are the main courts. The main court operates on a majority decision that comprises assessors and a magistrate, thus its makeup and decision-making power are evident. Since assessors are forbidden from practicing law, the many wins and few setbacks show why the main court is usually referred to as a court of facts rather than a court of law. Their decision is the courts when it takes precedence over the magistrate's.³⁹

Within its authority, the Ward Tribunals are under the main court's supervision. The main courts are empowered to consider appeals and carry out changes related to the Ward Tribunals.⁴⁰ The aforementioned legislative laws outline the procedure, timeframe, and character of appeals (both civil and criminal) with respect to the appeal and revision authority of the Primary Court.

As stated in section 20(3)⁴¹, the Primary Court's appellate authority is noticeably broad. This clause states that the judgments of a Primary Court on any appeal are final and conclusive, with the exception of legal concerns where the District Court has the last say in the case.

Similar reasoning was used by the court in *Rashid S. Katungunya v. Abdallah S. Katungunya*,⁴² where it was stated that "the Primary Court is the final court to hear appeals originating from Ward Tribunals unless a legal issue is raised, in which case the appeal is deemed incompetent." The Primary Court oversees the Ward

Tribunal in its capacity as its supervisor by editing, examining, or considering appeals of decisions rendered by the Ward Tribunal to the Primary Court at the Ward Tribunal's location.

1.9 Conclusion

This chapter examines the notion of the tribunal's existence. The tribunal has been instituted, along with the execution of various tribunal forms. Furthermore, it has been confirmed that Tribunals function within Tanzania, notably the Ward Tribunal. Their existence is safeguarded by parliamentary legislation, thereby ensuring its operation aligns with intended purposes. Furthermore, certain challenges and obstacles have been recognized that necessitate careful consideration. Their contributions to case management are substantial, while the court maintains oversight of their roles.

References

Books and journal Articles

1. Byabato, Stephen. "Mal-administration of justice by ward tribunals in Tanzania: an assessment of their legal setup." LLM Thesis, Mzumbe University, Morogoro Tanzania (2016).
2. Venugopal, Varsha, and Serdar Yilmaz. "Decentralization in Tanzania: An assessment of local government discretion and accountability." *Public Administration and Development* 30, no. 3 (2010): 215-231.
3. Lukumay, N. Z. A Reflection on Court - Annexed Mediation in Tanzania. *LST Law Review*, Vol. 1, Issue 1 January-June 2016. P.51
4. Kenneth McK. Norrie (1989). *Administration of Justice in Tanzania and Zanzibar: A Comparison of Two Judicial Systems in One Country*, 38 I NT'L & COMP. L.Q P.398.

Statutes

1. The constitution of the United Republic of Tanzania
2. The Ward Tribunals Act No. 7 of 1985
3. The Magistrates Courts Act, Cap. 11 R.E. 2002
4. Tanganyika Order in Council of 1920
5. The Land Disputes Courts Act of 1999
6. The Village land Act No.4 of 1999
7. The Land Act No. 5 of 1999

Cases

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

Reports

1. Minister for Lands, Housing and Human Settlement Development, in the Budget Speech of FY 2013/2014 item 28 - Shivij Commission

³⁶ *Minister for Lands, Housing and Human Settlement Development, in the Budget Speech of FY 2013/2014 item 28*

³⁷ *Cap 11 R.E. 2002, Section 3(1)*

³⁸ *The Magistrates Courts Act, Cap. 11 R.E. 2002, Section 7(1&2)*

³⁹ *The Magistrates Courts Act, Cap. 11 R.E. 2002, Section 8(2)*

⁴⁰ *The Ward Tribunals Act No. 7 of 1985, Sections 20 & 21*

⁴¹ *The Ward Tribunals Act No. 7 of 1985*

⁴² Civil Appeal No. 68 of 2002, Dare Es Salaam High Court Registry (Unreported)

