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ASSESSMENT ON THE LEGAL CHALLENGES ON THE JOINDER OF ATTORNEY GENERAL IN LOCAL GOVERNMENT'S LAND SUITS AND ACCESSIBILITY OF JUSTICE IN TANZANIA.

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Abstract

Access to justice is a cornerstone of the legal sector reform programme in Tanzania, underpinned by constitutional guarantees of equality before the law and fair trial under Articles 13(1) and 107A of the Constitution of the United Republic of Tanzania (1977). However, a persistent tension exists between these constitutional ideals and the procedural hurdles encountered in land litigation involving local government authorities.

Land suits involving local government bodies are increasingly frequent due to competing social and economic demands, family disputes, and administrative conflicts. Despite the existence of specialized lower dispute resolution forums, litigants face severe procedural barriers among them being the mandatory requirement under Section 6(3) of the Government Proceedings Act (Cap 5 R.E. 2023) to join the Attorney General as a necessary party. Under Section 6(4), failure to effect this joinder operates as an incurable jurisdictional defect that automatically renders the suit a nullity, compounded by layered pre-trial arbitration and court-annexed mediation requirements under the Civil Procedure Code (Cap 33 R.E. 2023) and the centralization of proceedings in the High Court, these rigid statutory rules create inordinate delays, high costs, and procedural complexity.

This Article aims to examine the legal and institutional framework governing joinder requirements in land suits against local governments in Tanzania, evaluates their practical impact on access to justice, and identifies the regulatory friction between state centric procedural safeguards and citizens' constitutional right to a speedy and substantive remedy.

The article employed a doctrinal and analytical review of statutory frameworks including the Government Proceedings Act, the Land Disputes Courts Act, and the Civil Procedure Code alongside relevant case law, the paper reveals that strict statutory prerequisites prioritize state-centric oversight over fluid adjudication. This framework bypasses specialized grassroots mechanisms such as District Land and Housing Tribunals and subjects litigants to duplicative and prohibitive procedural hurdles.

The paper recommends legislative and administrative reforms, including streamlining mandatory pre trial mechanisms, revisiting the absolute nullification rule for non joinder of the Attorney General, and enforcing strict adherence to the core values of Article 107A of the Constitution to ensure affordable, fair, and expeditious dispensation of justice.

guarantee unimpeded access to justice, land suits involving local government authorities face severe procedural bottlenecks that undermine these constitutional ideals. Among these barriers is the mandatory requirement under Section 6(3) of the Government

Introduction

Tanzania's legal sector reforms and Article 13(1) of the Constitution of the United Republic of Tanzania, 1977 as amended



Proceedings Act (Cap 5 R.E. 2023) to join the Attorney General, where failure to do so acts as an incurable defect under Section 6(4) that automatically voids the proceedings. Compounded by duplicative pre-trial mediation and arbitration requirements under the Civil Procedure Code and the centralization of cases in the High Court, these rigid statutory rules bypass specialized grassroots tribunals, prioritize state-centric oversight over substantive justice, and impose prohibitive hurdles on aggrieved citizens.

Terms used; Access to Justice, Land suit, Joinder of the Attorney General, Local Government Authorities.

“Access to justice” is the phrase chosen as encapsulating the ideals guiding the ongoing legal sector reform programme and the draft 2008 Legal Sector Policy in Tanzania. At the root of this motto lies the determination of the government of Tanzania to ensure that the administration of justice is made available to all and with consideration to equality, equity, and fairness. In making sure that access to justice is practical, it must be real, effective, comprehensive, and unimpeded. All persons must be afforded access to equitable justice and legal services no matter their rank in society. As Sir Jack Jakob put it, “the ends of access to justice will include the dismantling of the barriers obstructing the road to justice and put in place a new or restructured framework towards the attainment of justice. The barriers include the legal costs of civil litigation and delays, the uncertainties, formalities, technicalities and complexities of legal process.”ⁱ

Access to justice is a composite concept including elements of access to formal and informal justice as well as legal representation and legal aid.ⁱⁱ

“A land suit” (or suit for land) is a civil court case that deals with the ownership, use, possession, or boundaries of a piece of real estate or immovable property.ⁱⁱⁱ Land disputes in Tanzania are increasing everyday due to competing demands of land for different social, economic activities, other land disputes are product of family disputes, conflict between customary right of occupancy and granted right of occupancy as well as corruption practices among those Government officials responsible for land allocation. The Land Act,^{iv} under Section 167(1) provides for the institutions or courts responsible for settlement and adjudication of land disputes. Those institutions include among others Village Land Council, District Land and Housing Tribunal, High Court and Ward Tribunals. The Land Disputes Court Act,^v evolved a new system for adjudication on land disputes, the aim being to adopt a procedure which is fast and not tied to legal technicalities meanwhile not being strictly bound by the rules of practice or procedure with the mission for delivering substantive justice. The Land Disputes Courts Act,^{vi} provides the functions and powers of the court and tribunals vested with power to adjudicate land matters. Section 5 of the Act,^{vii} provides for the functions of the Village Land Council which among others have power receive complaints on land issues, convene meetings and mediate the parties to reach into mutual and amicable settlement on issues concerning land. The Act furthermore provides for the powers and

functions of District Land and Housing Tribunal which have powers to adjudicate matters.

“ Attorney General ” the office of Attorney General is the creature of the Constitution of the United Republic of Tanzania,^{viii} as provided under Article 59 and the OAG (Re-Structure) Order, 2018.^{ix} The main role of this Office is to advise the Government on matters of law, especially legislative drafting, and negotiation of contracts and treaties on behalf of the Government and provide legal advice to Ministries, Department Agencies (MDAs) and Local Government Authorities (LGAs) in Tanzania Mainland. The Government restructured the Office of Attorney General on February, 2018 through the Office of the Attorney General (Re-structure) Order.^x

The OAG-MIS is designed for the internal and external use as a modern solution of collaboration between Public Institutions and the OAG aiming to increase quality of legal operations and transparency in decision making.^{xi} The Solicitor General of Tanzania, established under the Constitution and Constitution of the United Republic of Tanzania (Office of the Solicitor General (Establishment) Order,^{xii} is the principal officer responsible for managing civil litigation, arbitration, and legal disputes involving the government. The solicitor general has locus standi to represent the government in courts, take over cases, and summon public officers for information regarding litigation.^{xiii}

“Joinder and Non Joinder ” is a procedural rule of law dictating that certain parties must be included in a lawsuit because their legal rights or institutional interests are so intimately tied to the subject matter that a final, equitable decree cannot be rendered in their absence. In civil litigation, parties are generally categorized as either proper parties (whose presence is convenient for a complete adjudication) or necessary/indispensable parties (without whom the court cannot proceed at all).^{xiv}

The rationale behind is to promote judicial efficiency and fairness by ensuring that all parties with a significant interest in the litigation are present. This prevents piecemeal litigation and assures that issues are resolved with all interested parties present, thereby reducing the risk of future disputes arising from the same transaction or occurrence. The courts engage in a two-part test to determine whether a party is necessary and, if so, whether they can be feasibly join The Government Proceedings Act^{xv}, provides that joinder of the Attorney General in suits involving public bodies is statutory and mandatory rather than discretionary, transforming a rule of procedural convenience into a rigid jurisdictional prerequisite.^{xvi} This mandatory statutory framework strips the judiciary of its inherent discretion to cure non-joinder through subsequent amendments or oral applications to join the party during trial.^{xvii} Consequently, the failure to join the Principal Legal Adviser to the Government at the inception of the suit operates as an incurable defect that automatically renders the suit incompetent.^{xviii} This layout elevates a standard rule of civil procedure to the status of a strict jurisdictional bar, prioritizing state-centric oversight over the fluid and flexible adjudication of

civil and land grievances.^{xix} failure to join the Attorney General renders the suit incompetent.^{xx}

(4) Non-joinder of the Attorney General as prescribed under subsection (3) shall vitiate the proceedings of any suit brought in terms of subsection (3) ”

“**The local Governments**” in Tanzania are a public bodies operating at the regional, district, or village level that gives people power to manage their own local affairs and development. Under Articles 145 and 146 of the Constitution of the United Republic of Tanzania,^{xxi} these authorities transfer decision-making and public service responsibilities closer to local communities. Local Government Authorities are autonomous corporate bodies.

Local government authorities are divided into two main groups: urban authorities manage cities, municipalities, and towns. They include city councils, municipal councils, and town councils. Rural authorities manage rural districts. They include district councils, township authorities, and village councils. They are mainly tasked with; providing local public services like primary education, health care, and water management, create and carry out local economic and social development programs, enforce local by-laws, keep public peace, and protect community safety.^{xxii}

The Background of the Study.

The Constitution of the United Republic of Tanzania under Article 13(1) guarantees access to justice and the right to a fair trial. These rights ensure that every person can seek and obtain effective remedies through the courts without undue hindrance, thereby upholding the rule of law, equality before the law, and the protection of individual liberties.^{xxiii}

However, land disputes form a significant category of litigation in Tanzania, given the critical role of land as an economic, social, and cultural asset. Local government authorities and their agencies play a pivotal role in land administration, including allocation, planning, and dispute resolution at the grassroots level. Nonetheless, when land suits involve local government authorities, substantial procedural constraints undermine these constitutional guarantees.

The challenges include procedural complexity, inordinate delays, the dilution of local authority powers, and the centralization of proceedings in the High Court. These issues are primarily driven by the mandatory requirement to join the Attorney General as a party, as stipulated under Section 6(3) of the Government Proceedings Act,^{xxiv} under Section 6(4) of the same Act, failure to join the Attorney General renders the entire proceedings a nullity.

This consequence is exemplified in Emmanuel Maduhu Mbiti v. The Village Council for Mwantimba Village & Others,^{xxv} in this case, the matter was struck out solely because the Attorney General was not joined as a party. Similarly, structural delays arise from the duplication of mandatory pre-trial mediation and arbitration processes before a matter can be heard on its merits in court. Section 13 of the Civil Procedure Act,^{xxvi} requires a litigant, prior to instituting a civil suit, to take bona fide steps by referring the matter to an arbitrator for reconciliation. Meanwhile, Order VIII,

Rule 24 of the same Act provides for court-annexed mediation before a civil matter proceeds to a full hearing.

The cumulative effect of these legal and practical challenges reveals a tension between the need for accountable government litigation, on the one hand, and the constitutional guarantee of accessible justice, on the other. Despite the progressive framework of the Constitution, the current legal regime under the Government Proceedings Act imposes disproportionate procedural hurdles in land suits involving local government authorities. This regulatory and operational gap necessitates a comprehensive examination of the existing legal framework and its real world application.

Notably, if a land dispute is filed directly in the High Court, a litigant is subjected to both arbitral and mediating tiers. These layered hurdles could otherwise be streamlined if proceedings were conducted through the District Land and Housing Tribunals, which only require prior conciliation before the Ward Tribunal before being filed for trial. Illustrative cases where the High Court declined to entertain suits and subsequently dismissed them solely because litigants failed to submit the matter to arbitration include; Baka Trading Company Limited & Another v. Tanzania Electrical Mechanical & Another^{xxvii}, Benard Kilamala Alipinde & Another v. Saed Yeslam Saed,^{xxviii} John Alex Kapama v. Chande Ally Chande.^{xxix} These dismissals are largely a direct consequence of centralizing such proceedings in the High Court rather than utilizing specialized lower tribunals.

LEGAL FRAME WORK GOVERNING JOINDER OF ATTORNEY GENERAL

The Constitution of the United Republic of Tanzania, 1977 as amended

The Constitution of the United Republic of Tanzania^{xxx} serves as the supreme foundational standard against which ordinary statutes. Article 13(1) of the Constitution of the United Republic of Tanzania proclaims that “All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.” This guarantee access to justice and the right to a fair trial. It ensures that every person can seek and obtain effective remedies through the courts without undue hindrance, thereby upholding the rule of law, equality before the law, and the protection of individual liberties.

Article 30 (5) of the Constitution of the United Republic of Tanzania,^{xxxi} allows a person whose rights has been violated to seek redress before the Court of law.

The Government Proceedings Act (Cap 5 RE 2023)

The core legal requirement governing suits against local authorities and government entities flows from the Government Proceedings Act^{xxxii}. Section 6(3) of the Government Proceedings Act,^{xxxiii} provides that in any civil proceedings where a local government authority or government agency is implicated in a manner that triggers state liability or public administration interests, the Attorney General must be joined as a necessary party. Section 6(4) of Government Proceedings Act^{xxxiv}, it explicitly states that the non joinder of the Attorney General vitiates the entire proceedings. In



legal terms, failure to include the Attorney General renders the suit completely dead, void, and a total nullity, rather than a curable defect.

Meanwhile, Section 6(5) of the Government Proceedings Act,^{xxxv} channels matters involving government suits or mandatory state representation upward. When a local government land dispute is forced to comply with High Court thresholds due to joinder complications, it bypasses specialized grassroots mechanisms like the District Land and Housing Tribunals (DLHT).

However, before a suit involving a local authority and the Attorney General can even be properly entertained, the law imposes preliminary hurdles. Notice of intention to sue under Section 6(2) of the Government Proceedings Act,^{xxxvi} a mandatory statutory notice of not less than ninety (90) days must be issued to the concerned government entity/local authority and copied to the Attorney General before filing the suit. Failure to properly frame the joinder results in an incompetent suit that courts routinely strike out with cost penalties against the aggrieved citizen.

The Attorney General Discharge of Functions Act, Cap 268 R.E. 2023

Section 6A of the Attorney General Discharge of Function Act,^{xxxvii} empowers the Attorney General (acting through the Solicitor General) to intervene in any suit or matter instituted by or against ministries, local government authorities, independent departments, and other public institutions.

The Civil Procedure Code, Cap 33 RE 2023

Section 13 of the Civil Procedure Code,^{xxxviii} requires prior reference to arbitration, while Order VIII Rule 24 the Civil Procedure Code^{xxxix}, commands court-annexed mediation. When local government suits are sucked into the High Court framework due to these mandatory joinder and institutional rules, litigants find themselves trapped in duplicate layers of alternative dispute resolution.

Local Government (Urban Authorities) Act (Cap 288 RE 2023)

Urban authorities (such as town, municipal, and city councils) are established as bodies corporate with perpetual succession and a common seal, possessing the legal capacity to sue and be sued in their corporate names.^{xl} As per section 110 of the Local Government (Urban Authorities) Act,^{xli} stipulates that before any suit is commenced against an urban authority, a written notice of intention to sue must be formally served upon the authority.

Local Government (District Authorities) Act (Cap 287 RE 2023)

Section 12 of the Local Government (District Authorities) Act^{xlii} provides that district councils are bodies corporate, possessing perpetual succession and a common seal, with the capacity to sue and be sued in their corporate name. Also, Section 193 of the Local Government (District Authorities) Act,^{xliii} sets out provisions under its legal proceedings and notices sections requiring a written notice of intention to sue to be formally served upon the authority (such as the Chairman or Director/Executive Officer) before the commencement of any suit against a district or village authority.

BASIC PRINCIPLES ON THE ACCESSIBILITY OF JUSTICE

In his Report, "Access to Justice" of July 1996 to the Lord Chancellor on Civil Justice System in England and Wales, Lord Woolf, Master of the Rolls, identified the following principles as fundamental in ensuring access to justice in any civil justice system, namely, the system must (a) be just in the results it delivers, (b) be fair in the way it treats parties to a dispute, (c) offer appropriate procedures at a reasonable cost, (d) deal with cases with reasonable speed, (e) be understandable to the stakeholders or those who use it, (f) be responsive to the needs of those who use it, (g) provide as much certainty as the nature of particular cases allows, and (h) be effective for being adequately resources and organized.^{xliv}

CHALLENGES ON JOINDER OF ATTORNEY GENERAL IN LAND SUITS INVOLVES LOCAL GOVERNMENTS.

In 2006, Dr Angelo Mapunda reviewed the main Act governing civil procedure (the Civil Procedure Code 196612) He observed the serious divergence from the principles set out in Article 107A of the Constitution of the United Republic of Tanzania. He noted that the civil justice system suffered from "too expensive litigation which only few can afford; delays in bringing cases to conclusion; lack of equality between parties; uncertainty; unpredictability; too complex and incomprehensible procedures; too adversarial and difficulty in realizing or enforcing decrees and orders."^{xlv}

However, it should be noted that Article 13 of the Constitution of the United Republic of Tanzania,^{xli} provides for the fundamental rights of fair trial, but when suits involve Local Governments, there are constraints undermine the Constitutional guarantee. These includes procedural complexity for instance duplicity of mediation as provided under Section 13 and Order VIII Rule 24 of the Civil Procedure Code,^{xlvii} centralization of proceedings to the High Court and convey of local governments power. This is caused by mandatory requirement of joinder of Attorney General, as provided under Section 6 (3) of the Government Proceedings Act.^{xlviii} In the case of Emmanuel Maduhu Mbiti vs the Village Council for Mwantimba Village and & Others,^{xlix} the matter was struck out only because the Attorney General was not joined in a suit. Also, in the cases of; Baka Trading Company Limited & Another vs. Tanzania Electrical Mechanical & Another^{li}, Benard Kilamala Alipinde & Another vs. Saed Yeslam Saed and John Alex Kapama vs Chande Ally Chande^{lii}, the Court refrained to entertain the matter only because litigants did not take the matter before the Arbitrator thus dismissed them.

Recommendations

- Adherence to Article 107A of the Constitution of Tanzania 1977 which provides core values pertaining to the dispensation of justice by the judiciary.^{liii} The Key principles include (a) impartiality to all, without due regard to one's social or economic status, (b) not to delay dispensation of justice without reasonable grounds, (c) to

award reasonable compensation to victims of wrong doings committed by other persons, and in accordance with the relevant law enacted by the Parliament, (d) to promote and enhance dispute resolution among persons involved in the disputes, (e) to dispense justice without being tied up with overly technical provisions which may obstruct dispensation of justice.

- Amending Legal Capacity for Local Government Authorities by amending section 12 of the Local Government (District Authorities) Act (Cap 287) and section 14 of the Local Government (Urban Authorities) Act (Cap 288). This will make it clear that local authorities have full, independent legal capacity to defend land disputes without needing to automatically include the Attorney General.
- Reforming mandatory Joinder under the Government Proceedings Act by amending Section 6 of the Government Proceedings Act (Cap 5) to make the inclusion of the Attorney General in local government land disputes optional rather than automatic.
- Parliament and the Rules Committee should amend Order I of the Civil Procedure Code (Cap 33) to state that failing to join the Attorney General is a remediable procedural error rather than a fundamental flaw requiring the immediate dismissal of a case.
- The Chief Justice should issue binding practice directions instructing all judges and magistrates to strictly enforce Article 107B(2)(e) of the Constitution, which mandates that "courts shall do substantive justice without being unduly fettered by procedural technicalities."
- Amend the Land Disputes Courts Act (Cap 216) to grant District Land and Housing Tribunals both pecuniary and territorial jurisdiction over suits involving Local Government Authorities.
- The Ministry of Constitutional and Legal Affairs, in partnership with civil society organizations and legal aid providers, should conduct community legal education seminars. These programs will educate citizens on

statutory procedures, proper party joinders, and court jurisdictions, helping private landowners protect their property rights and avoid losing cases due to a lack of legal awareness.

Conclusion

The paper demonstrates a profound tension in Tanzania's legal framework between the constitutional promise of accessible, fair, and expeditious justice and the rigid procedural demands of state centric litigation. While mechanisms like Village Land Councils and District Land and Housing Tribunals were designed to offer fast, substantive justice at the grassroots level, land suits involving local government authorities are systematically obstructed by strict statutory hurdles.

Foremost among these barriers is the mandatory joinder requirement under Section 6(3) of the Government Proceedings Act (Cap 5 R.E. 2023), coupled with the draconian penalty of absolute nullification under Section 6(4) for non-compliance. When combined with cumulative pre-trial mediation and arbitration mandates under the Civil Procedure Code and the subsequent centralization of cases in the High Court, litigants are forced into expensive, delayed, and overly technical litigation. Rather than safeguarding public administration, this regime transforms procedural technicalities into absolute jurisdictional bars that routinely strike out meritorious claims and disenfranchise citizens.

To uphold the core judicial values enshrined under Article 107A of the Constitution of the United Republic of Tanzania, 1977 as amended which commands the dispensation of justice without undue delay or being bogged down by technicalities remedial legislative and administrative interventions are urgently needed. Streamlining alternative dispute resolution layers, decentralizing jurisdiction back to specialized lower tribunals, and softening the absolute nullification rule for non-joinder of the Attorney General will bridge the gap between state accountability and the fundamental right to accessible justice in Tanzania.

ENDNOTES

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^{iv} The Land Act, Cap. 113, R.E 2023.

^v The Land Disputes Courts' Act, Cap 216 R.E 2023

^{vi} Ibid

^{vii} Section 5 of the Land Disputes Courts' Act, Cap 216 RE

2023

^{viii} 1977

^{ix} Government Notice No. 48 of 2018.

^x Ibid

^{xi} <https://oagmis.oag.go.tz/> accessed on 18th February 2026,

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^{xiii} Ibid

^{xiv} A. ZUCKERMAN, (2021), *Civil Procedure: Principles of Practice*, 4th edn, Sweet & Maxwell, pp 421-425.

^{xv} Section 6(4) of the Government Proceedings Act [Cap 5 R.E. 2023].

^{xvi} Section 6 of the Government Proceedings Act [Cap 5 R.E. 2023].

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- ^{xviii} Mwanza District Council v John Doe & Another (Land Appeal 12 of 2022) [2024] TZHC 104.
- ^{xix} Section 6 (2) of the Government Proceedings Act [Cap 5 R.E. 2023].
- ^{xx} The Government Proceedings Act, Cap 5 RE 2023.
- ^{xxi} The Constitution of the United Republic of Tanzania, 1977 as amended.
- ^{xxii} M.J. CHALLYA, (2017) The Functions of the Local Governments, NGL Resources 18 August, page 78.
- ^{xxiii} Article 13(1) of the Constitution of the United Republic of Tanzania (Chapter 2, RE 2023)
- ^{xxiv} The Government Proceedings Act (Cap 5 RE 2023).
- ^{xxv} Land Case No. 3 of 2022, High Court – Shinyanga Registry.
- ^{xxvi} The Civil Procedure Act (Cap 33 RE 2023)
- ^{xxvii} Civil Case No. 10631 of 2025 TZHC.
- ^{xxviii} Land Case No. 32909 of 2024 TZHC.
- ^{xxix} Land Case No. 332 of 2023 TZHC.
- ^{xxx} Article 64 (5) of The Constitution of the United Republic of Tanzania, 1977, Chapter 2, as amended.
- ^{xxxi} The Constitution of the United Republic of Tanzania, 1977, Chapter 2, as amended.
- ^{xxxii} Government Proceedings Act, Cap 5 RE 2023.
- ^{xxxiii} Government Proceedings Act, Cap 5 RE 2023.
- ^{xxxiv} Government Proceedings Act, Cap 5 RE 2023.
- ^{xxxv} Government Proceedings Act, Cap 5 RE 2023.
- ^{xxxvi} Government Proceedings Act, Cap 5 RE 2023.
- ^{xxxvii} The Attorney General Discharge of Functions Act, Cap 268 R.E. 2023.
- ^{xxxviii} The Civil Procedure Code, Cap 33 RE 2023.
- ^{xxxix} Ibid
- ^{xl} Section 14 of the Local Government (Urban Authorities) Act (Cap 288 RE 2023).
- ^{xli} Local Government (District Authorities) Act (Cap 287 RE 2023).
- ^{xlii} Local Government (District Authorities) Act (Cap 287 RE 2023).
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- ^{xlv} Angelo M. Mapunda, Comprehensive Review of the Civil Justice System in the United Republic of Tanzania: A Position Paper on Review of the Government Proceedings Act, (Cap. 17), the Arbitration Act (Cap. 15), the Appellate Jurisdiction Act (Cap. 141) and (iv) the Civil Procedure Code (Cap. 33), submitted to the Law Reform Commission of Tanzania in March 2012.
- ^{xlvi} The Constitution of the United Republic of Tanzania, 1977

as amended.

^{xlvii} The Government Proceedings Act, Cap 5 RE 2023.

^{xlviii} Land Case No. 3 of 2022 High Court – Shinyanga Registry.

^{xlix} Civil case No. 10631 of 2025 TZHC.

ⁱ Land case 32909 of 2024 TZHC.

^{li} Land case 32909 of 2024 TZHC.

^{lii} Land Case No. 332 of 2023 TZHC.

^{liii} The Constitution of Tanzania 1977