

FOREWORD

"Born with a body, it is in the natural order of things that a man should have property rights over it, to deny him these would make him a slave"

Professor D.R. Denman.

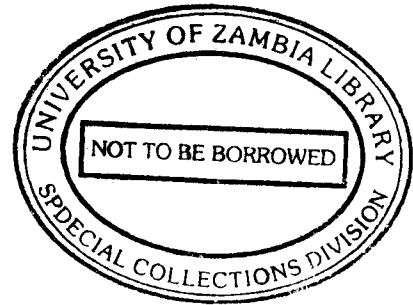
THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that this obligatory essay under my supervision,

By Francis Masuzgo Ngoma

Entitled



CONSTRAINTS IN THE SYSTEM OF LAND DISPUTE RESOLUTION IN ZAMBIA: A CRITIQUE OF THE LANDS TRIBUNAL

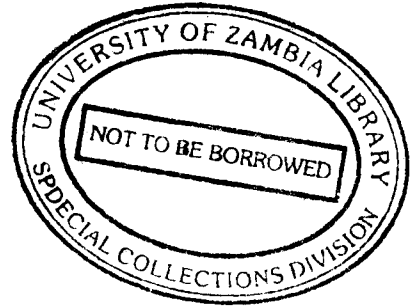
be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to the format as laid down in the regulations governing obligatory essays.

Date. 11th JAN 2006

Supervisor.....
Patrick Matibini

Obligatory Essay

On



**Constraints in the System of Land Dispute Resolution in Zambia: A Critique
of the Lands Tribunal**

By

FRANCIS MASUZGO NGOMA
Computer No.21078157

Submitted to the University of Zambia in partial fulfilment of the
requirements for the award for the degree of Bachelor of Laws (LLB)

School of Law
University of Zambia
Lusaka

By

Francis Masuzgo Ngoma

An obligatory essay paper submitted to the University of Zambia faculty of law in partial fulfilment of the requirements for the award for the degree of Bachelor of Laws (LLB)

UNZA

DECLARATION

I Francis Masuzgo Ngoma do hereby declare that this obligatory essay is my own work and to the best of my knowledge, no similar piece of work has previously been produced at the University of Zambia or any other institution for the award of a degree qualification.

All other people's work consulted has been duly acknowledged. The preparation of this obligatory essay was supervised by Mr Patrick Matibini.

..........Francis Masuzgo Ngoma

(Author's Signature)

DEDICATION

To My Wife, Jean, And My Son, Waza, For Their Endurance And Support.

ACKNOWLEDGEMENTS

Many people were inevitably involved in the process of producing this essay, I would therefore, like to express my sincere gratitude to them all, some of whose names may not appear here, for making this study a success.

I remain deeply indebted to God for his mercy and grace bestowed upon me in accomplishing great a feat as this one.

I am particularly indebted to Mr Matibini, my supervisor, for his unwavering guidance.

I am also grateful to Charles Wale Kabuka for his inestimable and unfailing efforts in going through my draft essays.

I am grateful to Mr Mumba Malila, my coordinator, for his support

Special thanks go to Mr Inambao, former Commissioner of Lands, Mr Sichone, the Commissioner of Lands, Mr Wamunyima and Eddie for the unexpected roles they played during my study at UNZA.

I appreciate the assistance of the following: - Mr Khunga, Lynn, and Kevin Kaunda.

I appreciate the friendship of the following: Adel, Charles Mwila, Chile, Fleeft, RSH Hatoongo, Barnaby, Mabuchi, Mwiza, Masheta, Jane Mr. Mungeya, Mukena, Bernair, Helen, Sara, Cecelia, Mukela, Mr Banda, Mr. Chilembwe, Mudenda and all my work mates at the Ministry of Lands.

To my parents, brothers, sisters and my in-laws, I say thanks for your emotional support through out these years when I was reading law at UNZA

Lastly, the author is responsible for all the views, understatement and/or overstatements in this Essay.

ABSTRACT

Land is the cornerstone of all human activity. This activity might relate to holding an interest in land or even to transactions of the commodity. Thus disputes arise. Land dispute resolution as a process must, therefore, be re-enforced with the potential of alleviating delays in the delivery of justice.

An inadequate system of land dispute resolution frustrates the very essence and purpose for which the land dispute resolution process was established.

Against this background, the study conducts a critique of the Lands Tribunal.

The study contends that the Lands Tribunal has failed to meet the expectations of the members of the public. In conclusion, the study provides recommendations that provide a basis on which Government may improve justice delivery system.

TABLE OF CONTENTS

Dedication.....	i
Acknowledgement.....	ii
Abstract.....	iii
Table of Contents.....	iv
Chapter One: <i>INTERESTS IN LAND IN ZAMBIA</i>	1
1.0.0 Introduction.....	1
1.1.0 Interests In Land In Zambia Today.....	3
1.2.0 Customary Tenure.....	4
1.3.0 Statutory Tenure.....	5
1.4.0 Conversion From Customary Tenure To Statutory Tenure.....	7
1.5.0 Statutory And Customary Land Contrasted.....	9
1.6.0 Conclusion.....	10
Chapter Two: <i>LAND DISPUTES COMMON IN ZAMBIA</i>	12
2.0.0 Introduction.....	12
2.1.0 Breach of Procedure In The Conversion Of Customary Tenure.....	12
2.2.0 Re-Entry to Land.....	16
2.3.0 Lapse of an Offer.....	17
2.4.0 Land Encroachment.....	19
2.5.0 Multiple Allocation of the Same Piece of Land.....	20
2.6.0 Grants of Different Plots But Shown The Same Plot.....	21
2.7.0 Conclusion.....	21
Chapter Three: <i>THE LANDS TRIBUNAL</i>	22
3.0.0 Introduction.....	22
3.1.0 Composition of the Lands Tribunal.....	22
3.2.0 Jurisdiction.....	24
3.3.0 Proceedings in the Lands Tribunal.....	25
3.4.0 Funding Of the Lands Tribunal.....	31
3.5.0 Conclusion.....	32
Chapter Four: <i>ANALYSIS OF THE CONSTRAINTS OF THE LANDS TRIBUNAL</i>	33
4.0.0 Introduction.....	33
4.1.0 Jurisdiction	33
4.2.0 Enforcement.....	38
4.3.0 Centralised Operations of the Lands Tribunal	38
4.4.0 Personnel.....	39
4.5.0 Limited on the Methods of Alternative Dispute Resolution (ADR).....	40
4.5.0 Funding To the Tribunal	41
4.7.0 Lack of Public Awareness.....	42
4.8.0 Conclusion.....	42
Chapter Five: <i>RECOMMENDATIONS AND CONCLUSION</i>	43
5.0.0 Conclusions and Recommendations.....	43
5.1.0 Recommendations.....	44
Table of Cases.....	47
Bibliography.....	48

CHAPTER ONE –INTERESTS IN LAND IN ZAMBIA

1.0.0 INTRODUCTION

Modern writers are agreed that no satisfactory description of land is possible. It is a term that has attracted different descriptions depending on whether one is a lawyer, economist and so forth. However, to an ordinary man, land is simply physical ground. Land is a unique commodity in that it is of a finite quantity, and several people may have rights and obligations in the same piece of land at the same time. Land is a productive asset. It is a very durable good, capable of providing a huge source of income. To this end, it is important that an effective mechanism is put in place to enforce the various subsisting rights and obligations placed on the parties in case of a dispute. Thus, if land disputes are left unresolved, they have the potential to wreck havoc beyond proportions unimagined – personal, ethnic boundaries, national and international. Currently, there is a raging dispute concerning the allocation of land next to Baobab School, Makeni, in Lusaka. Israel and Palestine continue to clash over Israel occupation of Arab land with each group claiming a right over disputed territories. The land redistribution exercise in Zimbabwe from the white settlers to natives still remains unresolved.

The common problems confronting holders of interest of whatever kind in land are over boundaries, ownership and use. Land disputes if left unchecked are known to create embarrassment, loss of good reputation, severance of harmony among neighbors and can be very costly in so far as litigation is concerned¹. In view of the foregoing, it becomes imperative that effective dispute resolution mechanisms are put in place. These mechanisms must meet or satisfy the needs of the people.

The quest to find an efficient system of land disputes resolution has dodged this country for a long time. Prior to 1995, land disputes were mainly resolved through litigation in the courts of law or through arbitration by traditional or political leaders. However, in 1995, the Lands Tribunal was established by the Lands Act, in order to relieve the over burdened courts. The establishment of the tribunal was meant to expedite delivery of justice so as to mitigate the problems that are associated with land disputes. Surprisingly, the Lands Tribunal takes long to settle disputes. There is a backlog of cases that are as a result of delays in proceedings in the tribunal. Disputants have lost confidence in the system and in fact

¹ Kaunda, M. (1993), *Land Policy in Zambia: Evolution, Critique and Prognosis*, Unpublished PhD Thesis, University of Cambridge

prefer formal court process². This is unsatisfactory because it is a notorious fact that delayed delivery of justice in land matters, negatively affects land development. It is in this spirit that this study investigates the constraints facing land dispute resolution mechanisms in Zambia, with a view to recommend on how to improve on the system.

1.1.0 INTERESTS IN LAND IN ZAMBIA TODAY

The Lands Act of 1995³, did not make significant changes to the land tenure system. All land in Zambia has continued to vest absolutely in the President who holds it in perpetuity for the people of Zambia, and land in a customary area, held under customary tenure before the commencement of the Act continues to be so held and recognized⁴. The Zambian land tenure system is therefore two-fold: customary rights applying to the Customary Land, (formerly old Native Reserve and Trust Land), and statutory tenure applying to State Land (formerly Crown Lands)⁵. Owing to the

² Matibini, P. (1998) 'The lands Tribunal" An article written for the Legal Desk Column in the Zambia Daily Mail(unpublished Work)

³ Lands Act Chapter 184 Of the Laws of Zambia

⁴ Section 7 of the Lands Act Chapter 184 of the Laws of Zambia

⁵ (Loenen,Bastian Van (1999) "*Land Tenure in Zambia*" Pg:3 A paper presented to the Department of Spatial Engineering, University of Maine

differences that exist between them, the two are best considered separately.

1.2.0 CUSTOMARY TENURE

Ninety-four (94) percent of Zambia's 752610 square kilometers consists of customary land⁶. Land so held, only guarantees the protection of use and occupancy rights without the registration of ownership rights. At any rate, an individual enjoys only a right to use. Consequently, this right of use is distinguished in three ways: individual ownership, concurrent interests and communal interests⁷. Individual ownership refers to that landholder or occupant who has more rights and interests in the land than any other person. That individual owns the land for as long as he likes. Conversely, concurrent interests occur where people, besides the landholder, can go onto a person's land and use it for their own purposes. Finally, communal interests entail the local people using certain tracts of land, which are not individually owned. Chiefs control customary lands. The chiefs function as regulators of the acquisition and use of land. They hold land on behalf of the whole community. Ownership of land is that of the community and the

⁶ Angus-Leppan, (1994) ' On security of Title: The Mabo Decision and Need for Cadastral Surveys' South African Journal of Surveying and Mapping, Volume 22 Part 5

⁷ ibid note 1 pg 4

individual members of the community have mere possession⁸. Chiefs allocate land to family heads who in turn re-allocate among their family members. However, there are variations among different tribes in the distribution of the "interests of control" and "interests of benefit". Other notable ways through which land is acquired in customary areas are: by clearing of virgin bush, as a gift, sale of land, transfer of land in exchange for services, and marriage.⁹ The security of rights in customary land is to a large extent determined by the state of mind of a chief. This system suffers from a major defect in the security of rights in that if the chief dies or changes his opinion, there is always a possibility that a disliked person may suffer ejectment from the land¹⁰.

1.3.0 STATUTORY TENURE

Statutory Tenure is at times called leasehold tenure. It entails formal registration of land ownership as set out in the Lands and Deeds Registry (amendment) Act of 1994. The Act covers only land known as State Land¹¹ As has been noted, all land in Zambia vests in the President; however the day to day administration of

⁸ Matibini, P. 'The Post Independence System of Land Holding: Laws Policy and Practice', Unpublished

⁹ Mvunga, M.P. (1982), 'Land Law and Policy in Zambia' **Zambian Papers Number 17** University of Zambia, A National Educational Centre of Zambia (NECZAM) Ltd Publication, Lusaka

¹⁰ *ibid*

¹¹ *ibid* note 2 pg 294

land is delegated to the Commissioner of Lands. An application for ownership of land is deemed successful, once the President acting through the Commissioner of Lands gives his consent by way of an issuance of an offer letter and subsequently execution of the lease in respect of a subject parcel of land to the applicant. The procedure for the alienation of land is provided for in the Land Circular Number 1 of 1985¹²The procedure is that all councils are responsible for and on behalf of the Commissioner of Lands, in the processing of applications and making recommendation of those suitable as may have decided upon.

Recommendation from the council are to be accepted unless, in cases where it becomes apparent that doing so would cause injustice to others or if a recommendation so made is contrary to national interests or public policy. However, the Commissioner of Lands can receive and process application directly from members of the public, as the said circular is not directed at the President and therefore does not in any way impede his power to alienate.

Thus, in the matter of **Sweetrade Investments Limited and**

¹² Ministry of Lands and Natural resources , procedure on the Land Alienation, Land circular Number 1 of 1985(Government Printers, Lusaka, 1985)

Chibombo District council and others¹³, the Lands Tribunal observed that the appellant went through the procedures and that the Commissioner was satisfied that the appellant had complied with the procedures and proceeded to offer the land in issue. The Tribunal allowed the appeal. As has been noted, the President may alienate State Land to any Zambian, but may also alienate to non-Zambians. However, such alienation is normally under detailed prescribed conditions¹⁴. Once the lease has been signed by the person to whom land has been alienated, pursuant to that lease, title is issued by the Chief Registrar. The Lands and Deeds Registry Act provides that every document purporting to grant, convey or transfer land, or any interest in land, or to be a lease or an agreement for a lease or permit occupation for a longer term than one year, or to create any charge upon land, whether by mortgage or otherwise, must be registered.¹⁵ It is in view of the aforesaid that a registered proprietor of a certificate of title is protected against ejectment, or adverse possession

¹³ LAT 77/99

¹⁴ Lands Act, 1995, Section 3 (2) and Section 3 (3)

¹⁵ Land and Deeds Registry Act Section 4 (1)

1.4.0 CONVERSION FROM CUSTOMARY TENURE TO STATUTORY TENURE

If a person wants to convert his or her customary rights into leasehold, he or she has first to obtain the chief's permission before applying for a leasehold grant with the President.¹⁶ Statutory Instrument Number 89 of 1996, outlines the procedure of converting customary tenure into leasehold tenure. To this end, the Chief is empowered to grant or refuse consent to convert customary tenure to leasehold. Where consent has been refused, the chief is required to communicate such refusal to the applicant and the commissioner of lands stating reasons for such refusal¹⁷.

Consent for conversion is a two tier process in the sense that the Council has to 'consent' as well. It is a requirement that the application for conversion is referred to the council in whose area the land to be converted is situated. In considering the application, the council will take into account whether or not it is in the interest of the community to convert such parcel of land¹⁸

Controversies exist as to whether after conversion, the leasehold situate on customary land remains subject to local customs and

¹⁶ Lands Acts, 1995, Section 8

¹⁷ *supra* note 5 at page 37

¹⁸ *ibid*

traditions. In fact, this appears to be one of the reasons why some traditional rulers have refused to embrace the Lands Act of 1995.¹⁹ Thus, in the matter between Makwati and Senior Chieftaness Nkomesha²⁰, the Lands Tribunal observed that once a certificate of title has been issued, in the absence of irregularity, in respect of customary land, it ceased to be customary land and the chieftainess ceased to have control over the land.

5.0 STATUTORY AND CUSTOMARY LAND CONTRASTED

Formal land registration is broadly recognized for its advantages over customary systems. However, formal land registration in Zambia has not lived to people's expectations. It has been noted that although the demand for land has been on the increase, the volume of formal transactions is very small. A comprehensive explanation for such a trend could be attributed to the fact that with the rigorous survey standards required for 99 year lease holds, the many steps and procedures required by the leasehold process, the different levels of national and local bureaucracy involved and one central registry to process applications, it is clearly understandable why there are long delays in processing

¹⁹ Lungu, J (1994), Land Tenure and Agricultural Development in Zambia, Unpublished Ph.D Thesis, University of Aberdeen

²⁰ LAT/60/97

leasehold applications²¹. It is submitted that this could explain why many Zambians ignore the formal procedures and occupy and use land illegally. This, certainly, is not an encouraging state of affairs for a developing country like Zambia. In a bid to mitigate the delay, the State simply grants 14 year leases in either type of land while awaiting the usual formal procedure of conversion to be carried out (14 year leases are not available in big towns).²² This has, however, been ineffectual.

The Ministry of Lands has to further decentralize most of its functions to district level so as to access most potential applicants. Without decentralization of the land registration centers for people to understand the process, and where to go to apply for a grant, there is little hope for stimulating the use of formal land registration²³

Demand for land in urban areas is very high. Government has failed to meet that demand. The scarcity of land in urban areas, more so in Lusaka and other cities, has led to urban sprawl by increased squatters owing to people taking the law into their own hands. Because these are unplanned and unwanted

²¹ Roth, M (1995) " Land Tenure, Land Markets and institutional transformation in Zambia" A research paper presented to the land tenure centre, University of Wisconsin- Madison as in Loenen, Bastian Van (1999) " *Land Tenure in Zambia*" **A paper presented to the department of Spatial Engineering**, University of Maine

²² *ibid* note 9

²³ *ibid*

developments, planning authorities have threatened those informal compounds with demolition and at times actually demolished. But in most instances the squatter settlements have survived due to political pressure

1.6.0 CONCLUSION

The foregoing discussion provides only a threshold in seeking to explain the nature of interest in land available in Zambia .We will, proceed, in the next chapter, to examine the common land dispute associated with administrative decisions.

CHAPTER TWO

LAND DISPUTES COMMON IN ZAMBIA

2.0.0 INTRODUCTION

This chapter reflects on the types of land dispute common in Zambia as a result of administrative decisions. Disputes are in many forms and definitely new circumstances are still arising. The type of disputes discussed in this chapter do not in any way present an exhaustive list of land problems encountered in Zambia. However, these problems are prominent and have been recognized by various researchers to be common disputes in Zambia²⁴. Basically five land disputes have been identified as common in Zambia.

2.1.0. BREACH OF PROCEDURE IN THE CONVERSION OF CUSTOMARY TENURE

Pursuant to section 8 of the Lands Act²⁵, Customary tenure may be converted into a leasehold tenure. The conversion of rights from a customary tenure to a leasehold tenure shall have effect after the

²⁴ Supra note at 6

²⁵ Lands Act Chapter 184 Of the Laws of Zambia

approval of the chief and local authorities in whose area the land to be converted is situated. In certain circumstances the consent of the director of National Parks and wildlife Service (now Zambia Wildlife Authority) if the land is in a game management area²⁶. The applicant for the leasehold title in a customary area must obtain prior approval of the local authority and the chief. If proof of breach of procedure exists, then a dispute is likely to erupt with a suggested thrust that the subject land retains its original status i.e. customary tenure.

In the case of **Chenda and another v Phiri and others**²⁷, the appellant challenged the acquisition of an interest in the land by the respondents in total disregard of the section 3(4) of the Lands Act. That is to say, the respondents acquired title to land in respect of which the appellant's family had lived on for so many years and therefore had an interest in it. It was proven that the appellants were not consulted prior to the acquisition contrary to section 3(4) (c) of the Act. The second respondent, as new headman Mupwaya, recommended the issuance of Title deeds to the first respondent. He did not have the authority to do so as the land in question falls within the jurisdiction of Chieftainess Mungule. Chieftainess Mungule had the authority to recommend allocation

²⁶ subsection 2 of Section 8 of the Lands Act Chapter 184 Of the Laws of Zambia

²⁷ LAT/80/98

to the responded provided other procedures were followed. By law, only the president can and does alienate or give land to those who apply for it. The president through the Commissioner of Lands exercises this power. The Commissioner of Lands in turn uses the local authorities through out Zambia as his agents, who interview interested persons. Successful candidates are given letters of recommendation to the Commissioner of Lands who has final say whether he should take the recommendation or not.

There was no evidence on record that the council wrote to the commissioner of Lands recommending the allocation of this land to the first respondent. The Tribunal observed that even if the chief had given consent, the fact that the council did not approved the application operated to render title so issued a nullity and therefore allowed the appeal.

Further, conversion of land held under customary tenure to statutory tenure requires the consent of the people whose interest might be affected by such conversion.

Thus, in the case of **Henry Siwale and 6 others v Ntapalila Siwale**, the appellants and respondent are all children of the late Donald Siwale, who in 1928 was allocated the subject land by the local chief. After the death of Mr. Donald Siwale, the respondent who had earlier been called to stay with the deceased applied to the

council and obtained authority from chieftainess Nawaitwika for issuance of Title Deeds to himself without consulting his brothers. Quite clearly the appellants were persons who were affected by the grant of the Title Deeds and they were not consulted before this was done. The Supreme Court allowed the appeal and order and directed that the register be rectified in terms of section 11(2) of the Lands and Deeds Registry Act by the inclusion of the names of the appellants on Certificate of Title relating to the subject land. The other area of conflict is lack of understanding on the consequence of conversion on the part of the traditional leaders. Once customary land has been converted to statutory leasehold the chief has no control over the land and cannot thereafter withdraw the consent to convert. Thus in **Major Makwati V Senior Chieftainess Nkomeshya**²⁸, the appellant was refused permission by the responded to settle on land, which had been lawfully converted from customary tenure to statutory tenure by the seller, Mr. Mapulanga. The Lands Tribunal held that once title deeds are issued on traditional land, it ceased to be traditional land and the responded ceased to have any control over it. Upon acquiring title deeds he was free to sale it to anybody he chose without

²⁸ LAT/60/97

obligation on the part of the appellant to seek authority from village headman or the respondent.

2.2.0. RE-ENTRY TO LAND

The re-entry to land by the commissioner of lands is two-fold. Firstly, under the Land Acquisition Act by way of compulsory acquisition and secondly, under the Lands Act.

The Land Acquisition Act gives the power to the President to resolve in his sole judgment when and if it is desirable or expedient in the interest of the republic to acquire any particular land²⁹. Quite clearly the President's resolve cannot be challenged in the Lands Tribunal as it is not under the Lands Act.

Under the Lands Act³⁰, the Commissioner of Lands has power to re-enter where a lessee breaches a term or a condition of a covenant. The Commissioner of Lands will serve notice of intention to re-enter and subsequently re-renter where the lessee fails to rectify the breach within 3 months of service of the notice. That is to say, if the lessee does not within three months make the representations required or the representation is not satisfactory, the president may cause the certificate of re-entry to be entered

²⁹ section 3 of the Land Acquisition Act

³⁰ section 13 of the Lands Act Chapter 184 Of the Laws of Zambia

in the register. The grounds on which the Commissioner of Lands may consider to give chance to the lessee are if the breach was not intentional or was beyond the control of the lessee. A lessee aggrieved with the decision of the Commissioner may within thirty days appeal to the Lands Tribunal for an order that the register be rectified. After the successful re-entry, the Commissioner of Lands will then re-allocate the plot to someone else. However, if it can be proved that the notice was either not sufficient or not given at all, before the Commissioner of Lands re-allocated the plot to someone else, complaints will result

In the case of **Yousif Ahmed Ali V Commissioner of Lands, the Attorney General and Siamanzu Chembe**³¹ the appellant challenged the re-entry on his property by the respondent in total disregard of section 13 of the Lands Act. That is to say the respondent had not served the appellant notice of intention to re-enter and that the respondent had in fact at the material time developed and improved the said property. It was held that if it is proven that the notice was either not sufficient or not given at all then the re-entry is null and void.

³¹ LAT/56/98

2.3.0 LAPSE OF AN OFFER

The Commissioner of Lands allocates property by way of issuance of an offer letter. However, an offer is not conclusive evidence of ownership but in the absence of any adverse claim, one can trace ownership through the same. The offer lapses after 30 days of being issued to the offeree if it is not accepted. Generally the principles of contract law on offer and acceptance apply. The offer letter contains a number of clauses that are to be contained in the lease. The breach of clauses entitles the Commissioner of Lands to terminate the lease. It is interesting to note that the Commissioner of Lands does withdraw offers based on these clauses. There is no legal procedure for withdrawing an offer that has been accepted. This remains a potential area for disputes.

In the case of **Mahesho Haish Patel V. Commissioner of Lands**³² -

The appellant was appealing against the decision of the Commissioner of Lands by which on 15th October 1999 withdrew the offer in respect of Plot No. 19066 Lusaka, which was offered to him. He applied for an order restraining the Commissioner of Lands, his servants or agents or howsoever from offering or allocating or alienating the said piece of land to a third party. The

³² LAT/25/2000

appellant had accepted the offer by making requisite payments to enable the Commissioner of Lands to prepare title for him.

The Lands Tribunal found that the letter of offer was not breached in that the Commissioner of Lands relied on the clauses that were to be contained in the lease when withdrawing the letter of offer. The lease was not yet offered to the Appellant and was therefore not breached.

2.4.0. LAND ENCROACHMENT

People tend to encroach into lands that belong to other people or outside their boundaries. This often kindles conflicts.

The Lands Act³³ states that a person shall not without lawful authority occupy or continue to occupy vacant land. Any person who occupies land without lawful authority is liable to be evicted.

In the case of **Roberts V Bandawe and Others**³⁴, the respondents established a village on a farm belonging to the appellant. The appellant had made several requests to the respondents to vacate his premises and even went as far as offering an alternative piece of land. The respondents refused, arguing that they had been offered the same piece of land by Chieftainess Nkomesha. The tribunal allowed the appeal and ordered the

³³ Section 9 of the Lands Act Chapter 184 of the Laws of Zambia

³⁴ LAT/20/99

respondents to vacate as the chief had no authority to offer land that was held on title.

Some disputes arise because wrong surveys have been conducted by local authority surveyors or Government surveyors. When a person with an initial 14 year lease proceeds to carry out developments in preparation for a 99 years lease it may be found that some developments that the applicant carried out on what he believed to be his land will in fact fall in a plot belonging to another person because the final survey has created a different boundary for his plot. An environment for a dispute to break out is hence created.

Chief's boundaries are another concern for land disputes as was the case in **Chief Malembeka Vs Robert and heather Gibbons**; and **Chief Malembeka Vs Senior Chief Mushili**.³⁵ It would appear that conflicts arise out of loss of boundaries because elders who knew the boundaries well are deceased and nobody appears to give guidance. Perhaps what is worse is that those maps that are found in Government offices are sometimes not very clear as a result of wear and tear. Much of the ambiguity could be largely attributed to this factor.

³⁵ Times of Zambia 14TH February , 1998 and 12TH December 1998

2.5.0 MULTIPLE ALLOCATION OF THE SAME PLOT OF LAND

The Commissioner of Lands more often issues letters of offer in respect of the same piece of land to two persons or more. This brings about disputes. This tends to reflect poorly on the officials administration.

2.6.0 GRANTS OF DIFFERENT PLOTS BUT SHOWN THE SAME PLOT

Another area of dispute arises when two people have been given two different plots bearing different plot numbers but they have been shown one plot by two different surveyors. This also reflects badly on the surveyors as the same plot cannot be shown to two people when these are very distinct plots and should therefore create no confusion. Such inefficiency tends to be costly especially when viewed from a litigation point of view.

2.7.0 CONCLUSION

Generally, the foregoing are the common disputes in Zambia that have being before the Lands Tribunal. We will, proceed, in the next chapter, to examine the land dispute resolution system – the Lands Tribunal

CHAPTER THREE

THE LANDS TRIBUNAL

3.0.0 INTRODUCTION

The need for introduction of radical and sustainable reforms in Zambia's land law system and institutions was recognized in 1995, when the Lands Act was enacted. One interesting innovation of the Lands Act is the establishment of the Lands Tribunal³⁶. The Lands Tribunal as an institution is mandated to resolve disputes relating to land.

3.1.0 COMPOSITION OF THE LANDS TRIBUNAL

The Act provides for the appointment of members of the Tribunal by the Minister as follows³⁷:-

1. A Chairman who shall be qualified to be appointed as judge of the High Court;
2. A Deputy Chairman who shall be qualified to be appointed as a judge of the High Court;

³⁶Section 20 of the Lands Act of 1995 of the Laws of Zambia

³⁷Subsection 2 of Section 20 of the Lands Act of 1995 of the Laws of Zambia

3. An advocate from the Attorney General's Chambers;
4. A registered Town Planner;
5. A registered Land Surveyor;
6. A registered valuation Surveyor, and
7. Not more than three persons from the public and private sectors.

The appointment of the Chairman and the Deputy Chairman is made after consultation with the Judicial Service Commission³⁸

The Act³⁹ vests power in the Lands Tribunal to appoint persons who have ability and experience in land, agriculture, commerce or other relevant professional qualifications as assessors for purposes of assisting it in the determination of any matter under the Act.

The establishment of the Lands Tribunal is a significant development in the administration of land in Zambia. Decisions in the general field of administrative law are committed to special

³⁸Subsection 3 of Section 20 of the Lands Act of 1995 of the Laws of Zambia.

³⁹Section 21 of the Lands Act of 1995 of the Laws of Zambia.

Tribunals established by statute. As an institution, therefore, the Lands Tribunal provides checks and balances in the manner land management and land administration is conducted.

3.2.0 JURISDICTION.

The jurisdiction⁴⁰ of the Tribunal as stipulated in the Lands Act is as follows:-

- a) to inquire into and make awards and decisions in any dispute relating to land under this Act;
- b) to inquire into, and make awards and decisions relating to any dispute of compensation to be paid under this Act;
- c) generally to inquire and adjudicate upon any matter affecting the land rights and obligations, under this Act, of any person or the government, and
- d) to perform such acts and carry out such duties as may be prescribed under this Act or any other written law.

The Tribunal is possessed with Jurisdiction relating to disputes arising out of decisions made by public officers, as narrowly defined in Section 15 of the Act, but not as broadly defined as in section 22 of the Act. The Supreme Court construed Sections 15 and 22 of the

⁴⁰ Section 22 of the Lands Act of 1995 of the Laws of Zambia

Lands Act, to the effect that the jurisdiction of the Lands Tribunal is limited to settlement of land disputes under the Lands Act. In the case of **Oduyeni and Others and Atlantic Investments Limited**,⁴¹ the court held that the jurisdiction to order cancellation of certificate of title lies with the High Court and not the Tribunal. The Tribunal can only recommend cancellation. Parties to a dispute can not go to the Lands Tribunal for the issuance of prerogative writs such as mandamus, as the jurisdiction of the Lands Tribunal is limited to settlement of land disputes under the Lands Act, and is therefore, not an alternative forum to the High Court. In a decided case of **Mwangala and Nsokoshi and another**,⁴² where the Appellant sought to impugn a certificate of title issued to the first respondent, the Supreme Court held that the Tribunal had no jurisdiction to entertain such an action.

3.2.0 PROCEEDINGS IN THE LANDS TRIBUNAL

When hearing a matter, only the Chairman or the Deputy Chairman must preside over the sittings and the quorum for Tribunal sittings must be five members inclusive of either the Chairman or the Deputy Chairman⁴³. The Tribunal is not bound

Appeal number 130 Of 2000
SCZ Judgment Number 29 of 2000
Section 23 (2).of the Lands Act of 1995 of the Laws of Zambia

by rules of evidence applied in civil proceedings⁴⁴. Nevertheless, the Chief Justice may make rules regulating the procedure of the Tribunal. He also prescribes the procedure for the summoning and appearance of witnesses and the production of any document or other evidence before the Tribunal.⁴⁵ To this extent, Chief Justice Mathew Ngulube, as he was then, laid down the Lands Tribunal Rules⁴⁶.

Accordingly, the Lands Tribunal Rules⁴⁷, stipulates how an appeal to the Tribunal against any directive or decision may be instituted by sending to the secretariat, in duplicate, a written notice of appeal stating:

The name and address of the appellant and respondent;

The date, reference number and particulars of the directive or decision;

The description of the land or hereditament including where appropriate, a plan identifying the land to which the appeal relates;

The question which the appellant requires the Tribunal to determine, including a statement of the figure representing the

Section 23 (5) of the Lands Act of 1995 of the Laws of Zambia

Section 24 of the Lands Act of 1995 of the Laws of Zambia

Statutory Instrument Number 90 of 1996

Rule 3 of the Lands Tribunal Rules, Statutory Instrument Number 90, of 1996

amount or value, where necessary, which the appellant requires the Tribunal to determine

The grounds of appeal

Whether the appellant does not propose to call an expert witness to give evidence

The address for service of notices and other documents upon the appellant; and

Such other information as may be necessary for the hearing of the appeal.

The rules⁴⁸ empower the Chairman to determine the places and times of the Tribunal's sittings. Evidence before the Tribunal may be given orally or if the parties to the proceedings consent or the Chairperson of the Tribunal so orders, by affidavit⁴⁹. The foregoing notwithstanding, the Tribunal may at any stage of the proceedings make an order requiring the personal attendance of any respondent for examination and cross-examination.

It is provided that a party to the proceedings shall produce to the Secretariat, on request, any documents or other information which the Tribunal may require and which is in the power of that party to

⁴⁸ Rule 8 of the Lands Tribunal Rules

⁴⁹ Rule 12 of the Lands Tribunal Rules

produce and shall afford to every party to the proceedings an opportunity to inspect those documents or copies of them and to take copies of the document⁵⁰. The Proviso to the foregoing rule, stipulates that nothing shall be deemed to require any information to be disclosed contrary to public interest. This means that ordinary citizens can represent themselves and that they would not lose on technicalities.

On failure to produce relevant documents, Rule 14 is salient in that it provides that if it appears to the Tribunal that any party to the proceedings has failed to produce a copy of any document required under these rules to be sent to any party or to the Secretariat, the Tribunal may direct that a copy of the document be sent as may be necessary and that further hearing of the proceedings be adjourned and the Tribunal may in such a case require the party at fault to pay any additional costs occasioned by that failure.⁵¹. It is also provided that on the hearing of an appeal, the appellant shall not be entitled to rely upon any grounds not stated in his notice of appeal, unless the Tribunal thinks it just, on such terms, as to costs or adjournment or otherwise as it

⁵⁰ Rule 13 of the Lands Tribunal Rules

⁵¹ Rule 15 of the Lands Tribunal Rules

may think fit. This is not different from the formal courts. It enables the other party to prepare themselves for the case.

On appearance of a party to the proceedings⁵², it is provided that in any proceedings a party may appear and be heard in person or through an advocate or any other person appointed for that purpose, with the consent of the Tribunal or in the case of a person in authority by an official appointed for that purpose. This is important because it gives the aggrieved party an option either to handle the case in person or seek legal representation. This is in line with the principles of rule of law.

On matters in respect of any point of law, of the Lands Tribunal Rules⁵³, it is provided that the Chairman may, on the application of any party to the proceedings, order any point of law, which appears to be in issue in the proceedings to be disposed of at a preliminary hearing of the Tribunal. Besides, if, in the opinion of the Tribunal, the decision on the point of law substantially disposed of the proceedings, the Tribunal may order that the proceedings be treated as the hearing of the case or make such other order as may be just.

⁵² Rule 16 of the Lands Tribunal Rules

⁵³ Rule 20 of the Lands Tribunal Rules

Regarding default of appearance at hearing, the Lands Tribunal Rules⁵⁴, are not ambiguous. It provides that if on appeal, the appellant, or any other party to the proceedings does not appear at the time and place appointed for the hearing, the Tribunal may either dismiss the appeal, or hear and determine the appeal in his absence and may make such order as to costs as it thinks fit. A proviso stipulating grounds for appeal exists. But, where the Tribunal is satisfied that the reasons given by a party are sufficient to set aside the dismissal or determination, the Tribunal may set aside that dismissal or determination.

Concerning the decision of the Tribunal it is provided that the decision of the Tribunal on an appeal shall be given in writing, together with a statement of the Tribunal's reason for its decision. In fact, the Lands Act⁵⁵ provides that any person aggrieved by an award, declaration or decision of the Tribunal may, within thirty days, appeal to the Supreme Court. An appeal lies to the Supreme Court. Hence, it is hardly distinguishable from a court of law. It is in this context that it can be argued that tribunals should therefore be properly regarded as machinery provided for by parliament for adjudication, rather than as part the machinery of administration.

⁵⁴ Rule 22 of the Lands Tribunal Rules

⁵⁵ section 29 of the Lands Act of 1995 of the Laws of Zambia

The Lands Tribunal Rules clearly manifest this adjudicatory role. The English legal system, itself, shows no clear mark of distinction between a court of law and a tribunal. They exhibit (i) permanence of existence (ii) no marks of being convened ad hoc to determine cases, and (iii) both will hear and determine cases, and (iii) both will hear and determine disputes⁵⁶.

2.4 FUNDING OF THE LANDS TRIBUNAL

Section 27 of the Lands Act of 1995, pertains to the expenses of the Lands Tribunal. It provides that the expenses and costs of the Tribunal shall be paid out of the funds appropriated by Parliament for the performance of the Tribunal's functions under this Act.

However, in practice the Tribunal is funded through the Ministry Lands. This has only served to demean the standing of the Lands Tribunal in the eyes of the Judicature. What this implies is that the Lands Tribunal is a mere department in the Ministry of Lands such as the Survey Department, Lands Department, Administration Department and the Lands and Deeds Registry Department. This could explain in part the woeful Government funding suffered by the Lands Tribunal. Contrary to Section 27 of the Land Act (1995), it does not get direct Government funding.

⁵⁶ Supra note 8.

Another grave concern is that the Lands Act of 1995 and the Lands Tribunal Rules, have not clarified the true status of the members Lands Tribunal. The question as to whether they are civil servants remains to be established. This position is worsened by the fact that all members of the Lands Tribunal are appointed part-time⁵⁷. Besides, with the exception of the Chairman and the Deputy Chairman, who are appointed after consultation with the Judicial Service Commission, the appointment of the other members of the Lands Tribunal seems to rest on the discretion of the Minister of Lands.⁵⁸

3.5.0 CONCLUSION

The Lands Tribunal is in fact a part of the machinery of justice. That the High Court has no jurisdiction to entertain any appeal from the decision of the Lands Tribunal is sufficient testimony. An appeal lies to the Supreme Court.

In the next chapter we propose to identify various constraints in the land dispute resolution system that hinders timely delivery of justice.

⁵⁷ supra note 8

⁵⁸ (Section 20 (3) and (4) of the Lands Act

CHAPTER FOUR

ANALYSIS OF THE CONSTRAINTS OF THE LANDS TRIBUNAL

4.0.0 INTRODUCTION

The Lands Tribunal was created as an alternative dispute resolution mechanism with the sole objective of achieving speedy and efficient means of settling disputes that arise over land. The Tribunal is also supposed to provide a cheap way of settling land disputes as compared to formal courts. Admittedly, courts are clogged with cases and pursuing cases in courts is expensive.

This section presents the constraints identified that impede on the effective and efficient operations of the Tribunal.

4.1.0 JURISDICTION

The jurisdiction of the Lands Tribunal is provided for under sections 15 and 22 of the Lands Act. The Tribunal has power to inquire into, make awards and decisions in any dispute relating to land under the Lands Act. The Tribunal's jurisdiction also is to generally inquire and adjudicate upon any matter affecting land rights and obligations under the Act, of any person or the government.

It is provided under the Act that any person aggrieved with a direction or decision of a person in authority, may apply to the Lands Tribunal for determination. Any person in authority means the President, the Minister or the Registrar⁵⁹. It is very clear from these provisions that the operation of the Lands Tribunal is restricted to statutory land or leasehold.

This in itself restricts the jurisdiction of the Tribunal. The tribunal does not have jurisdiction to handle disputes arising from customary land. There are many disputes arising from customary land. The Lands Tribunal would have been appropriate fora to resolve the disputes since customary land is recognized by the Lands Act. In any case, the people involved in customary tenure disputes require cheap methods of land dispute resolution as envisaged by the Lands Act. However, section 15 of the Lands Act clearly provides that only when the person is aggrieved by the decisions made by the Commissioner of Lands, Minister or Registrar of Lands and Deeds, that person can petition the Tribunal for redress. This excludes the institutions of chiefs. It follows, therefore, that when a chief has a dispute with one of his subjects, such disputes cannot be entertained by the Tribunal. The dispute in this case will have to be subject of the formal court and it will be exposed to the

⁵⁹ Section 15(e) of the Lands Act

disadvantages of the courts as opposed to the Tribunal. The other constraint related to jurisdiction of the Tribunal is that the Tribunal is the creation of the Lands Act and only entertains disputes arising from this Act. However, there are many land disputes arising from other Acts, such as the Land Acquisition Act or the Housing (Statutory and Improvement Areas) Act. This in itself denies disputants a chance to resolve their differences before the Tribunal which is a cheaper mode of dispute resolution.

This is a contradiction to the spirit behind establishment of the Tribunal to operate at the same level as the High court. As a result, the role of the Tribunal as an alternative land dispute resolution mechanism to the High Court, has limited jurisdiction as regards to customary land.

The Supreme Court, in the case of **Mwangala V Nsokoshi and Ndola City Council**⁶⁰, held that the jurisdiction of the Tribunal is limited to the settlement of land disputes under the Act and is not an alternative forum to the High Court where parties can go to even for the issuance of prerogative writs such as mandamus. In the aforementioned case, the appellant was seeking to impugn a Certificate of Title issued to the first respondent under the Lands and Deeds Registry Act. The Supreme Court held that, only the

⁶⁰Supreme Court of Zambia judgment number 29 of 2000

High Court has jurisdiction to entertain such proceedings. In the recent case of **Diocese of Monze V Mazabuka District Council and Others**⁶¹, the Supreme Court held that the Lands Tribunal had no jurisdiction to entertain the complaint that entailed making an order for cancellation of certificate of title, by way of rectification of the register because the power to do so was vested in the High Court.

In the afore-mentioned case, even if the tribunal did not make any specific order to cancel the certificate of title, it is nevertheless, not supposed to accept any complaint in which a certificate of title is involved. The Tribunal has no jurisdiction to cancel title either expressly or impliedly. The import of the court's ruling is that the jurisdiction of the Lands Tribunal is limited to only disputes that do not entail varying or cancellation of title deeds. In practice, however, most disputes before the Tribunal involve pieces of land on title. This means that the Tribunal will have few cases to preside on. What purpose is it to serve then, if its jurisdiction has been so severely curtailed? Further, if the power to vary or cancel title deeds, as section 11 of the Lands and Deeds Registry Act, was correctly interpreted by the Supreme Court, vests with the High Court, then it means the Tribunal is not a

⁶¹ SCZ Judgment No. 16 of 2005 Appeal No. 115 of 2002

competent court in so far as adjudicating over titled land is concerned. This is in total agreement with the provisions of the Lands and Deeds Registry Act rather than the Lands Act. Whereas the Lands Act makes the Registrar of Lands and Deeds' decisions (including issuance of certificates of Title) amenable to the Lands Tribunal, it is not so under the Lands and Deeds Registry Act. Under the Lands and Deeds Registry Act, the competent court to hear matters concerning the Registrar's decision is clearly interpreted to be the High Court.

Admittedly, the two pieces of legislation, namely the Lands Act and the Lands and Deeds Registry Act, are at variance in so far as which court the Registrar is amenable to. What the Supreme Court has done in this case is to, therefore, reconcile the apparent contradiction arising from the provisions of the two statutes.

However, this decision has neither addressed nor preserved the well conceived intentions that precipitated the creation of the Lands Tribunal. Complainants of humble status may not afford the high fees associated with the High Court process, such as legal representation. The issue of quick disposal of disputes has also suffered due to this decision.

It is the view of this author, that the Lands Act should be amended so that the Lands Tribunal and the High Court should rank *pari pasu*. The decisions of the Tribunal should refer to the Supreme Court for interpretation as opposed to been declared a nullity for want of jurisdiction as was the case in the aforementioned matter.

4.2.0 ENFORCEMENT

The power of the Lands Tribunal is limited merely to recommending⁶² . The Tribunal has no power to enforce its orders, thereby rendering it ineffective. The lack of enforcement mechanism has impacted adversely on the overall operation of the Tribunal. People have a tendency of opting to formal courts which have the means of enforcing orders. Both the secretariat at the Tribunal and Commissioner of Lands are in agreement that the role of only making recommendations places a constraint on the effective and efficient operation of the Lands Tribunal⁶³.

4.3.0 CENTRALISED OPERATIONS OF THE LANDS TRIBUNAL

One of the main objectives of the establishment the Lands Tribunal is to enable as many people as possible to have access to the

⁶² The Attorney General, Ministry of Works and supply V Frazer
⁶³ interview of Registrar of the Lands Tribunal, Mr. A. Chimulu and The Commissioner of Lands, Mr. F. Sichone

justice system. However, the Tribunal rarely travels to handle cases outside Lusaka. In fact, most land disputes are to be found in rural areas and particularly such as in resettlement schemes⁶⁴. The Tribunal has only one office in Lusaka, and the secretariat at Mulungushi International Conference Centre. All complaints through out the country have to be filed through the secretariat. The decentralization of operations would have the impact of dealing with complaints in the places or areas where they were coming from. The Tribunal has not sat outside Lusaka for over three years. The net effect is that many people outside Lusaka have been denied the opportunity of having their disputes resolved by the Tribunal. The Registrar of the Tribunal observed that the tribunal must have centers in every Provincial centre where appeals must be lodged. It must be mandatory for the Tribunal to hear cases in places convenient to the disputants. This will reduce the costs on the part of the disputants, as they will not incur huge transport costs.

⁶⁴ Zambia Land Alliance, *the role of the Lands Tribunal in har general and traditional land in particular*, memorandum s/ Agriculture and Lands of the National Assembly of Zamb

4.4.0 PERSONNEL

The survey findings showed that the Tribunal secretariat is headed by a Registrar with a number of clerks serving under him. However, it was observed that the secretariat needs more personnel to make it operate effectively. For example, there is need to have a post of Deputy Registrar created to assist the Registrar.

4.5.0 LIMITED ON THE METHODS OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

The main ADR mechanisms currently applying in the High Court of Zambia are Mediation and Arbitration. Mediation is enshrined in the High Court Rules and Arbitration is applied in relation to the Arbitration Act of 2000.

The Registrar of Lands Tribunal admitted having knowledge of ADR. It was the view of the Registrar that ADR mechanisms have not received sufficient recognition in the Zambian judiciary. In the context of the Lands Tribunal, he revealed that ADR mechanisms are not yet developed. To this end, the Zambian Lands Tribunal could employ ADR mechanisms in the resolution of land disputes. In suitable cases, the Lands Tribunal can refer matters to either arbitration or mediation. There is a lot of room for the Lands Tribunal to manoeuvre to enhance its

performance and curb on delays together with the consequent backlogs. Delivery of justice should thus be expedited.

4.5.0 FUNDING TO THE TRIBUNAL

The Lands Tribunal, like many Government institutions, faces financial difficulties. To handle a number of cases at a time, the Tribunal requires several days of sitting as opposed to the current system. A sitting of the Tribunal entails hearing in at least five consecutive working days per month. With the huge public demand for its services, the Tribunal should ideally be sitting every week. However, for the Tribunal to be able to sit every week, it would mean that members should be full time. It is evident that the operations of the Tribunal have been hampered due to lack of funding. This is why, as a strategy, the Tribunal has resorted to waiting until about three months for funds to be available before it can sit to hear cases. The waiting results in delay of delivery of justice.

The Lands Tribunal plays a very important role in resolution of land disputes. However, its importance is diminished by under funding. This explains why it cannot perform its functions to the satisfaction of the majority of the public. The level of under funding is

indicative of the lack of political will on the part of government to ensure that the Tribunal operates effectively. The Tribunal has been unable to visit most Districts where in fact its services are mostly required.

4.7.0 LACK OF PUBLIC AWARENESS

Many people all over the country do not know about the existence of the Tribunal. It was discussed, further, that the Tribunal does not have a training programme for its staff. Owing to the nature of the complexity of land matters, there is need for staff, especially, the Registrar who in practice offers advice to the public on land disputes in absence of members of the Tribunal, to undergo refresher training in dispute resolution mechanism.

4.8.0 CONCLUSION

The Lands Tribunal is an important institution in Zambia's development process. As more people continue to appreciate their land rights, there is need for dispute resolution system that is efficient and effective.

CHAPTER FIVE

5.0.0 CONCLUSIONS AND RECOMMENDATIONS

This chapter provides general conclusions of the previous chapters and gives recommendations, which, may, in recognition of the importance of land, ensure an effective and efficient system of land dispute resolution. The conclusions will serve to focus on facts and arguments highlighted in the previous chapters, thus emphasizing in the appraisal of the land dispute resolution mechanism and identifying the constraints militating against efficient delivery of justice.

The recommendations also embody the basis on which Government may improve justice delivery system in land disputes. It has been observed that the Lands Tribunal is no longer effective in land dispute resolution. The legal provisions and institutional framework for the Lands Tribunal are contributory factors in the effectiveness of the Lands Tribunal in meeting public expectations.

A review of literature and cases has furnished adequate evidence to support the assertion that the jurisdiction of the tribunal is very limited to the point of rendering the Tribunal ineffectual. The

CHAPTER FIVE

5.0.0 CONCLUSIONS AND RECOMMENDATIONS

This chapter provides general conclusions of the previous chapters and gives recommendations, which, may, in recognition of the importance of land, ensure an effective and efficient system of land dispute resolution. The conclusions will serve to focus on facts and arguments highlighted in the previous chapters, thus emphasizing in the appraisal of the land dispute resolution mechanism and identifying the constraints militating against efficient delivery of justice.

The recommendations also embody the basis on which Government may improve justice delivery system in land disputes. It has been observed that the Lands Tribunal is no longer effective in land dispute resolution. The legal provisions and institutional framework for the Lands Tribunal are contributory factors in the effectiveness of the Lands Tribunal in meeting public expectations.

A review of literature and cases has furnished adequate evidence to support the assertion that the jurisdiction of the tribunal is very limited to the point of rendering the Tribunal ineffectual. The

authority and status as a 'Lands court' is not provided for in the constitution of Zambia. It lacks power to enforce its decisions. Lack of adequate and regular funding to support the sittings has also led to the poor performance of the Lands Tribunal. Despite pronouncement made about its autonomy, the Tribunal has however remained a subsidiary entity of the Ministry of Lands in practice as it is funded through the same.

5.1.0 RECOMMENDATIONS

The Lands Tribunal is an important institution doing much more than more administering and managing land matters. It is also a potential means of diffusing land disputes in their places of origin. There is, therefore, need to restore public confidence and morale in the resolution of land disputes. Thus, in the light of the preceding chapters, the following prescriptive and reform measures are proposed as the premise of the system of land law in Zambia.

1. The constitution of Zambia should be amended to include the Lands Tribunal so as to entrench its authority in enforcing its decision.

. The jurisdiction of the Tribunal must be expanded to include the power to cancel or vary title deeds whenever necessary. Its jurisdiction should include making determination in traditional land. It should vest with powers not only to deliver judgment but also enforce its decision by prosecution of offenders.

. The law must be amended to decentralize the structure and operations. Unnecessary bureaucracy is created when all disputes have to be filed through one office, in Lusaka. Each District or Province should have an office through which all land disputes can be launched and heard in due course by the Tribunal. This will enable more people to have access to justice with regard to their rights.

. The law should be amended to safeguard the autonomy of the Lands Tribunal. To this end, the Tribunal should fall under the Ministry of Justice as apposed to the Ministry of Lands.

. Since the Tribunal, like the Industrial Relations Court, is a court of substantial justice, the composition of the Tribunal should change to include interest groups such as organization working in land matters.

The operations of the Tribunal should be publicized so that people should know about and use it widely.

Government must provide regular and improved levels of funding together with necessary logistics.

TABLE OF CASES

Adetayo Oduyeni, the Attorney General, the Commissioner of Lands V.
Atlantic Investment Limited S.C.Z Appeal No. 130 Of 2000

Henry Mpanjiliwa Siwale and His Six Brothers V. Ntapalila Siwale. (1999) SCZ
Judgment NO. 24

Kawana Mwangala V. Bwale Nsokoshi and Ndola City Council, S.C
Judgment No. 29 Of 2000

Major Makwati V. Senior Chieftainness Nkhomesha. LAT/60/97.

Sweetrade Investments Limited and Chibombo District Council and others
LAT/77/99

Chenda and another v Phiri and others LAT/80/98

Yousif Ahmed Ali V Commissioner of Lands, the Attorney General and
Siamanzu Chembe LAT/56/98

Mahesho Haish Patel V. Commissioner of Lands LAT/25/2000

Roberts V Bandawe and Others LAT/20/99

Diocese of Monze V Mazabuka District Council and Others SCZ Judgment
No. 16 of 2005 Appeal No. 115 of 2002

BIBLIOGRAPHY

Augus-Leppan, Pamela And Augus-Leppan Peter (1994), "On Security of
: The Mabo Decision And Need For Cadastral Surveys" South African
Journal Of Surveying And Mapping, Volume 22 Part 5 As In Loenen,
Hiaan Van (1999), "Land Tenure In Zambia", **A PAPER PRESENTATION TO
DEPARTMENT OFF SPATIAL INFORMATION ENGINEERING, UNIVERSITY OF
NE**, Maine (Unpublished Work)

nda M. (1993), **Land Policy in Zambia: Evolution, Critique and
gnosis**, Unpublished Ph, D. Thesis, University of Cambridge, Cambridge

ibini, P. (2002), "Resort to Arbitration", an article written for the legal
column in the Zambia Daily Mail, Lusaka (Unpublished Work).

pitini P. (2000) Development of ADR in Zambia' an Article Written For
LEGAL DESK COLUMN in the Zambia Daily Mail, Lusaka (Unpublished
k)

pitini P. (2000) Re-Visit the Jurisdiction of the Lands Tribunal" an article
en for the **LEGAL DESK COLUMN** in the Zambia Daily Mail, Lusaka
ublished Work)

pitini P. (1998), "The Lands Tribunal" an article written for the **LEGAL
K COLUMN** in the Zambia Daily Mail (Unpublished Work)

nga, M.P Land Law and Policy in Zambia: (1982) University of Zambia.
atural Education Centre of Zambia (NECZAM) Ltd Lusaka, Zambia.

And Smith S. G. (1995), Land Tenure, Land Markets and Institutional
ormation in Zambia". **A RESEARCH PAPER PRESENTED TO THE LAND
RE CENTRE UNIVERSITY OF WISCONSIN – MADISON**, as in Loenen,
an Van (1999), " Land Tenure In Zambia", **A PAPER PRESENTED TO THE
RTMENT OF SPATIAL ENGINEERING**, University Of Maine, Maine
ublished Work).

DICALS REPORTS AND GOVERNMENT DOCUMENTS

A.N. Acquisition And Alienation Of Rights In Land And Readings, In
al Of Africa Law Vol. 1. School Of Oriental and Africa Studies:
rsity Of London, London.

ar No. 1 of 1985: Procedure on Land Alienation I Zambia.

bwa A.C.; Land Policy and Economic Development in Zambia, In
ia Law Journal (1993): The University Of Zambia.

and Policy Draft Document: (1994) Ministry Of Lands, Lusaka.

ATORY ESSAYS:

oe M; the Effect of Lands Act, A Customary Land Tenure and
ltural Development: Is This the Way Forward? (2000) School of Law,
sity Of Zambia. Lusaka

za R; The jurisdictional of the Lands Tribunal: Should it be revisited,
School Of Law, University Of Zambia.

INTERVIEWS

Interview with Mr. Sichone, Commissioner of Lands Department: Ministry Of Lands, Lusaka.

Interview with Mr. Chimulu, Registrar of Lands Tribunal, Lusaka

STATUTES

The Constitution: Cap 1 of the Laws of Zambia.

The Lands Act: Cap 184 of the Laws of Zambia

The Lands and Deeds Registry Act: Cap 183 of the Laws of Zambia

The Housing (Statutory and Improvement Areas) Act 1974

NEWS PAPER

A. Times of Zambia

- I. 19th December 2001.
- II. 8th November 2001
- III. 16th April 2000
- IV. 22nd April 2000
- V. 15th April 2000
- VI. 14th February, 1998
- VII. 12th February 1998
- VIII. 2nd December 1997

B.Zambian Daily Mail

1. 20th May 2002
2. 7th April 2002

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FOURTH YEAR

DIRECTED RESEARCH (L410)

RESEARCH PROPOSAL

CONSTRAINTS IN THE SYSTEM OF LAND DISPUTE RESOLUTION IN ZAMBIA:

A CRITIQUE OF THE LANDS TRIBUNAL

FRANCIS NGOMA

COURSE COORDINATOR: MR. MUMBA MALILA

RESEARCH SUPERVISOR: MR MATIBINI

2005

1.1.0 INTRODUCTION

Modern writers are agreed that no satisfactory description of land is possible. It is a term that has attracted different descriptions depending on whether one is a lawyer, economist and so forth. However, to an ordinary man, land is simply physical ground. Land is a unique commodity in that it is of a finite quantity, and several people may have rights and obligations in the same piece of land at the same time. Land is a productive asset. It is a very durable good, capable of providing a huge source of income. To this end, it is important that an effective mechanism is put in place to enforce the various subsisting rights and obligations placed on the parties in case of a dispute.

Thus, if land disputes are left unresolved, they have the potential to wreck havoc beyond proportions unimagined – personal, ethnic boundaries, national and international. Currently, there is a raging dispute concerning the allocation of land next to Baobab School, Makeni, in Lusaka. Israel and Palestine continue to clash over Israel occupation of Arab land with each group claiming a right over disputed territories. The land redistribution exercise in Zimbabwe from the white settlers to natives still remains unresolved.

The common problems confronting holders of interest of whatever kind in land are over boundaries, ownership and use. Land disputes if left unchecked are known to create embarrassment, loss of good reputation, severance of harmony among neighbours and can be very costly in so far as litigation is concerned¹,

Kaunda, M. (1993), *Land Policy in Zambia: Evolution, Critique and Prognosis*, Unpublished PhD Thesis, University of Cambridge

from the foregoing it becomes imperative that effective dispute resolution mechanism are put in place. These mechanisms must meet or satisfy the needs of the people.

1.2.0. STATEMENT OF THE PROBLEM

The quest to find an efficient system of land disputes resolution has dodged this country for a long time. Prior to 1995, land disputes were mainly resolved through litigation in the courts of law or through arbitration by traditional or political leaders. However, in 1995, the Lands Tribunal was established by the Lands Act, in order to relieve the over burdened courts. The establishment of the Tribunal was meant to expedite delivery of justice so as to mitigate the problems that are associated with land disputes. Surprisingly, the Lands Tribunal takes long to settle disputes. . There is a backlog of cases that are as a result of delays in proceedings in the tribunal. Disputants have lost confidence in the system and in fact prefer formal court process². This is unsatisfactory because it is a notorious fact that delayed delivery of justice in land matters negatively affects land development. It is in this spirit that this study investigates the constraints facing land dispute resolution mechanisms in Zambia with a view to recommend on how to improve on the system.

1.3.0 AIMS AND OBJECTIVES

The aim of this study is to generally appraise the Zambian land dispute resolution mechanisms with a view to identifying the constraints militating

² Matibini, P. (1998) 'The lands Tribunal' An article written for the Legal Desk Column in the Zambia Daily Mail(unpublished Work)

experienced in litigation have been manifested in the Lands Tribunal. There is need, therefore, to constantly examine and review the performance of the system of land dispute resolution to ensure that efficiency is introduced and maintained. This study, therefore, investigates the constraints which impede on quick delivery of land dispute resolutions. The justification of this study lies on the fact that it is through identifying and addressing constraints facing our system of land dispute resolution that we can improve on the existing arrangement to come up with a system that will fit the Zambian needs.

1.6.0. LITERATURE REVIEW

1. The Johnson's Land Commission Report³ was tasked with the responsibility of proposing what land law was required to meet the needs of the people. The commission observed that the function of law is not merely to command and prohibit the doing of acts; it also has the function of providing facilities for the conduct of social life by regulating and enabling the activities of persons with one another to be carried on in an orderly and generally accepted manner. Land law reforms this latter function by defining the rights which a person may enjoy over land and by providing means for obtaining certainty and security in their enjoyment.

2. Mvunga's⁴ thesis on land law has taken a broader look at the subject. He sets out to discuss the evolution of the land tenure system of Zambia over the years and this was carried out by tracing government land policy from the

³ Report of the Land Commission, 1967

⁴ Mvunga P. M. (1977) *Land Law and policy in Zambia*, PhD, University of London.

establishment of colonial rule in 1924, to post independence government in 1964. His study includes an examination of colonial attitudes towards the concept of ownership and nature of title to land under customary law, analysis of the creation of reserves and trust lands respectively, explanation of category of interests existing under statute law.

3. Moses Kaunda⁵ in his study about property rights under formal and informal systems of law observes that land dispute resolution mechanism in Zambia has continued to change to suit changing conditions. Prior to colonisation, land disputes were settled by traditional leaders. During the colonial era, a dual system was established. The colonial heritage conferred on Zambia formal courts, and in particular the High Court, in which all forms of disputes in land could be commenced, heard and adjudicated upon as a machinery of justice. The institution of chiefs continued to address land disputes within chiefdoms while formal courts had jurisdiction over state land. After independence, the dual system remained intact. The one party state political structure added some dimensions to land dispute resolution particularly in urban areas. The existence of a filtering' system was ideal because a good a number of disputes were settled out of court, most plausible reasons for this trend was that (i) it was cheaper, (ii) it did not create animosity, and (iii) it preserved people's reputations⁶. To a large extent this lessened the need to resort to courts for litigation.

⁵ Moses Kaunda – (1993) *Land policy in Zambia, Evolution, Critique and prognosis*, unpublished, PhD- thesis), Kings College Cambridge

⁶ *ibid*

Parties to a land dispute may first wish to address their grievance with an appropriate political party official. It was only in the event of failure to settle the dispute that the matter was referred to the formal court ⁷

5. Siame⁸ observes that the advent of the Third Republic in 1991 in Zambia ushered in a multi party political structure. This followed that disputes and conflicts among people of different political affiliations could not be settled through a political party structure. This is because no single political party could be trusted with this responsibility and only chiefs and courts could be perceived as the only non-political and therefore impartial and fair institution for land dispute resolution. A review of legislation was inevitable. Such revision was meant to ensure the existence of effective legal institution whereby land disputes were addressed expeditiously. In 1995, the Lands Act came into being and the Lands Tribunal was established by an Act of parliament⁹

6 Matibini¹⁰ argues that the circumstances precipitating the model of an efficient land dispute resolution system is devoid of the above ingredient¹¹. He has meticulously laid down a number of cases that have been decided upon by the tribunal thereby exposing deficiencies in the way the tribunal decides cases. It is the aim of this paper to harness the literature here exhibited by, among other things, suggesting how the system can be made expeditious.

⁷ ibid

⁸ Siame, L (2001) 'The Lands Tribunal', **A PAPER PRESENTED TO THE FORUM FOR COPPERBELT UNIVERSITY STUDENT SURVEYORS**, Kitwe (unpublished)

⁹ Lands Act No. 29, 1995

¹⁰ Matibini, P ' The Post Independence System Of Land Holding

¹¹ Matibini, P. (2000) 'Resort to Arbitration' An article written for the Legal Desk Column in the Zambia Daily Mail (unpublished Work)

1.7.0. METHODOLOGY OF STUDY AND SOURCES OF DATA

The study focuses on the various institutions involved in resolutions of land disputes. It should be noted that much primary data will be through interviews with appropriate resource persons. Thus;

Primary data sources

Through questionnaires/interviews to be administered to local chiefs, in particular chief Nkomesha whose chiefdom is dogged with land disputes, Town Clerks/Council Secretary, Commissioner of Lands, Chairman of Lands of tribunal, Secretariat of Lands tribunal and High Court of Zambia Registry.

Secondary data

Obtained from a review of relevant and modern literature as found in published and unpublished articles, books, law journals, law reports, Newspapers and workshop papers on land dispute resolution and legislation governing land in Zambia. This method is going to be employed so as to review past studies on the same subject as well as to identify new ground fertile for research

1 .8.0. ORGANISATION OF THE STUDY

The study approach will be arranged to cover the study into four chapters.

Chapter one, introduces the problem and discusses the nature of land interests under the land tenure system in Zambia. It will form the basis for analysing, in depth, the subject matter in the chapters to follow.

The second chapter, will aim at outlining an overview of the types of land disputes and factors that bring about the same.

The third chapter will set out to discuss the system of land dispute resolution in Zambia. Emphasis will be placed on the review of institutional and statutory framework relating to the Lands tribunal. This is aimed at identifying areas that are ineffective insofar as efficient delivery of justice is concerned.

The fourth chapter, will analyse the constraints of the Lands Tribunal that hinder effective and timely delivery of justice.

Chapter five will set out to give conclusions of the whole study and recommendations