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TITLE: The relevance of the Lands Tribunal in the resolution of land disputes.

By

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

I Bwalya Chilufya, do hereby declare that this obligatory essay is my own work and that 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 have been duly acknowledged. The preparation of this obligatory essay was coordinated by Dr. Margaret Munalula and supervised by Mr. Fredrick Mudenda.

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February 2008
Dedication

To my mother, Eta Muyunda for doing more than parents are supposed to, for the selfless sacrifices that you have made and the never ending support, I owe it all to you.

To my father, Gen. Chilufya for teaching and showing me the importance of education.

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I have no doubt that the work that I have produced here is a collage of the various contributions people have made in my life in almost all spheres and I’m glad to have this opportunity to say thank you.

My being here is truly by the grace of God, my classmates from second year will attest to that. It has not been easy and thanks and praise are in order.

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I would like to thank my family who have supported me all through my years of University. Mum and Dad I love you, thank you for being such great parents I’ll always appreciate you, Thank you.

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ABSTRACT

Land is a very important aspect of the livelihoods of Zambians. It is for this reason that a land tenure system is one that will ensure that rights and interests in land are fully protected. It is not an argument that disputes will arise relating to land, hence the creation of the Lands Tribunal by the 1995 Lands Act. Tribunals are a machinery of justice which are able to adjudicate upon a specific matter with a panel of people with expertise in a specific field. Particularly, the Lands Tribunal in being a machinery of justice would be a cheap and fast way in which disputes pertaining to land could be resolved. With good intention behind its creation the Lands Tribunal has not performed as was anticipated. Recent decisions of the Supreme Court have had a negative impact on the Lands Tribunal as it has interpreted the jurisdiction of the Lands Tribunal in a narrow fashion, limiting its jurisdiction. As if that were not enough the decision of the Supreme Court in the case of Diocese of Monze Vs. Mazabuka District Council, has rendered the Lands Tribunal not only toothless but possibly irrelevant in the resolution of land disputes. It is against this that this paper seeks to establish the relevance of the Lands Tribunal in resolving land disputes. Chapter one in forming the foundation of this paper also defines some important concepts to be used regularly through this paper. Chapter two discusses Zambia’s land tenure system from the colonial foundations of land policy in Zambia to the current land tenure system under the 1995 Lands Act. A look at this chapter reveals the need for the Lands Tribunal and the evolution of land dispute resolution prior to its creation. Chapter three of this paper forms the substance as it is a critical analysis of the Lands Tribunal. Its establishment, composition, rules are discussed in great detail and it is illustrated here that the job of the Lands Tribunal is to do substantial justice to the parties. In looking at the jurisdiction of the Lands Tribunal case law is very important as it is from here that what goes on in practice apart from the legal framework is illustrated. The chapter concludes with a discussion on the Lands Tribunal as a court or a tribunal, while established as a court in many respects the Lands Tribunal operates as a court particularly with the same standing as the High Court. Chapter four concludes the paper with a conclusion and recommendations.
CHAPTER ONE

1.0 Introduction

The importance of land in Zambia, as indeed is the case in the rest of sub-Saharan Africa cannot be over emphasized.1 Despite the high rate of urbanization, the majority of the Zambian population lives off the land. The importance of land in a community could be further illustrated by a statement made by the current president of Zimbabwe Robert Mugabe in which he states,

“... for us land is about life and death. Many wonder why the issue of land is such a fundamental national question in Zimbabwe and elsewhere in our Southern African region. They need not go very far. It remains a principal and loaded marker of frontiers of our being both as individuals and as sovereign nations, a marker whose utility and symbolism runs the whole gamut, right down to the common man and woman in the village. For us life comes from, flourishes on and ultimately ends in land....”2

The importance of land can therefore never be underscored as it 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. It is therefore of fundamental importance to have a system regulating the relationships among the various parties holding different interests in a subject parcel of land. A reliable system with effective mechanisms to enforce the various rights and obligations placed on the parties in the event of a land dispute is required.

2 Foreword by President Robert Mugabe to the “Zimbabwe Land Reform Programme Paper.” June 2001
Land disputes relate to disagreements or conflicts on land matters. If unresolved or ill-resolved they may build the potential of breaking beyond personal and ethnic boundaries to assume national and international proportions. It is therefore, imperative to put an effective dispute settlement mechanism in place. Land disputes in Zambia prior to the enactment of the Lands Act were a matter for the courts to handle; they were assisted by adjudication by traditional rulers, the Commissioner of Lands and through arbitration by political party leaders, parliament and the minister responsible for land.\(^3\) In an effort to place an effective settlement mechanism the 1995 Lands Act established the Lands Tribunal to resolve disputes pertaining to land. Because land subject to dispute could neither be productively used nor developed within the stipulated period there was need to create an alternative land dispute resolution mechanism. Also, to avoid lengthy court processes and to assist people with less means led to the establishment of the Lands Tribunal.

The Lands Tribunal is not the only institution in land dispute resolution; however, its centrality and the pivotal role it plays cannot be disputed. Being established from a background needing an efficient mechanism of resolving land disputes it is the basis of this study to investigate the relevance of the lands tribunal in resolving such land disputes.

### 1.1. Background to the Study of the Lands Tribunal

Zambia’s quest for a land policy that would spearhead land development has taken various forms since independence. The differences in the policies pursued by different

governments reflect differences in the political ideologies championed by the government of the day. 4 At the time of independence, a dual system of land tenure was inherited by the new government led by Dr. Kenneth Kaunda, this system constituted the received English land tenure system of freeholds and leaseholds on the one hand and autochthonous or indigenous customary law on the other. Leaseholds were much favored as freeholds meant loss of control over the land so alienated. In search for a new land policy the government under Dr. Kenneth Kaunda created the 1974 Land (Conversion of Titles) Act. This Act inter alia abolished freehold tenure converting it to statutory leasehold of 99 years and provided for the abolition of the sale or transfer of land for value. Many criticisms were leveled against the 1975 Act and included inter alia the absence of an appeal mechanism such as a tribunal to appeal the decision of the President in land matters. In 1985 amendments were made to the 1975 Land (Conversion of Titles) Act which pertained mainly to the alienation of land to non-Zambians. The issue of an appellant mechanism had not been addressed.

In 1990 with the coming in of a new government, the Movement for Multi-Party Democracy pledged to liberalize the economy undertaking to remove all obstacles to a free land market under the 1975 Act. The land reforms introduced by the MMD government under the Lands Act of 1995 included the continuation of freehold and leasehold tenure, the continuation of vesting land in the President and the alienation of land by the President, to provide statutory recognition and continuation of customary tenure, to provide for conversion of customary tenure into leasehold tenure, established a land development fund and a lands tribunal to adjudicate land disputes was introduced.

4 Ibid.
In debating the Lands bill in 1995 as was presented by the then Minister of Lands Dr. Shimaponda he states, “the bill reinforces the protection of persons both legal and natural against any action of the President by providing that every person aggrieved has the right to seek redress from the Lands Tribunal.”\(^5\) Dr. Kalima in 1994 stated as follows, “The Lands Tribunal, Mr. Speaker is a straight forward innovative addition which is going to speed up the conveyancing of land by quickly solving land disputes.”\(^6\) After being put into practice it has been revealed that the Lands Tribunal is not so straight forward as a lot of its facets have been questioned leading people to wonder whether or not it is relevant in the resolution of land disputes.

Firstly, contrary to the rationale of its establishment, that is, to achieve speedy and cheap justice, to enhance the development of the country, to be more flexible than the judicial system, to be easily accessible and to have disputes quickly resolved by way of summary trials. The tribunal due to under funding handles on average 65 cases per year and 5 cases per month. They are unable to visit districts outside Lusaka and so its operations are centered in the Capital.\(^7\)

Secondly, the Lands Tribunal has limited jurisdiction. This is because the Lands Act confines the jurisdiction of the Lands Tribunal to matters arising from the Lands Act.\(^8\)

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\(^5\) Official Verbatim Report of the Parliamentary Debates of the 4\(^{th}\) Session of the 7\(^{th}\) National Assembly Vol. 101
\(^6\) Official Verbatim Report of the Parliamentary Debates of the 3\(^{rd}\) Session of the 7\(^{th}\) National Assembly Vol. 98
\(^7\) The Lands Tribunal Secretariat, June, 2002
\(^8\) Section 20 of the Lands Act, Cap. 185 of the Laws of Zambia
This jurisdiction does not extend to customary land, land held on title and land held under the Statutory Housing and Improvement Areas Act. This has contributed largely to the inefficiency of the Lands Tribunal, bringing into question its relevance to the resolution of land disputes.

Thirdly, the status of the Lands Tribunal vis-à-vis the Supreme Court and the High Court though clear is anomalous. The Lands Tribunal for Northern Ireland, for example though a tribunal is not a tribunal at all but a proper court. It is treated as such and appeals from its decisions lie to the Court of Appeal.\(^9\) However, the Lands Tribunal in Zambia is not so straightforward. The Tribunal is established by the Lands Act and does not appear on the hierarchy of courts as per Article 92 of the Constitution. Its establishment does not in anyway oust the jurisdiction of the High Court in land matters as was expressly done by the constitution in relation to the establishment of the Industrial Relations Court. The High court therefore has original and unlimited jurisdiction in land dispute resolution. This creates a situation where the High Court and the Lands Tribunal both have jurisdiction to hear the same matter. It is then largely up to the parties to decide before which court to commence their action.

Fourthly, tribunals are inherently lower in hierarchy and in jurisdiction than an established court. The practice in many jurisdictions including Zambia is that decisions of tribunals are appealed against in the High Court. However, appeals from the Lands Tribunal lie to the Supreme Court which is anomalous as it places the Tribunal at the same level with the High Court.

\(^9\) The Lands Tribunal of Northern Ireland [www.landtribunal.com](http://www.landtribunal.com) 14\(^{th}\) September 2007
Lastly, the question as to whether the Lands Tribunal is relevant in the resolution of land disputes especially where the decisions of the Lands Tribunal serve simply as recommendations to the Commissioner of Lands who is at liberty to effect or not to effect the ruling.

1.2 Definition of Concepts

1.2.1 Land

According to the Lands Act, land means, any interest in land whether the land is virgin, bare or has improvements, but does not include any mining right as defined in the Mines and Minerals Act in respect of any land.\(^\text{10}\) Land includes “the surface and all that is above – houses, trees and the like… and all that is below.”\(^\text{11}\) Considering that land should not be thought of in terms of area alone but also volume- the solution is expressed in the latin maxim: ‘cujus est solum eius est usque ad coelum et usque ad inferos’ that is, possession of the land extends upwards to infinity and downwards to the centre of the earth. The term land thus refers to more than just the surface of the earth, it includes the underlying soil and things that are naturally attached to the land. Land also includes the minerals and substances below the earth’s surface together with the air space above the land up to infinity.

1.2.2 Dispute

\(^{10}\) Section 2 Cap 184

\(^{11}\) Card, Murdoch and Schofield Law for Land Management Studies London: Butterworths and Co. Ltd 1981 pg. 20
According to the Oxford Advanced Learner's dictionary a dispute is defined as a disagreement. It refers to a clash of preferences. In this paper, a dispute will refer to a conflict of interests' that is, vested interests or otherwise.

1.2.3 Resolution

Resolution means to 'reach a settlement'. It might also mean diffusing or settling a dispute.

1.2.4 Tribunal

A tribunal is a group of people given authority to settle a particular type of dispute. They are noted for their openness, expediency, fairness, inexpensiveness and impartial qualities. According to the Lands Act, section 2 a Tribunal means the Lands Tribunal established by section nineteen.

1.2.5 Interest

According to Bentsi-Enchill interests are a bundle of rights vested in a holder of land.¹² The concept of right in its legal context means an interest recognized and protected by a rule of law. It is an interest respect for which is a duty and disregard for which is a wrong. This means that people have a duty not to interfere and interference may attract a legal penalty. Interests in land may be in the form of leaseholds, licenses, easements etc.

1.2.6 Tenure

Simply tenure describes how land is held. It has been defined as the legal and contractual or customary arrangements, especially the rules and procedures, governing the rights, obligations and liberties of individuals and groups in the use and control of land resources.\textsuperscript{13} It is the conditions or terms under which the land is held.

1.2.7 Court

A court can be defined as a duly constituted judicial institution in which the task of identifying enforceable rights is carried out.\textsuperscript{14}

1.3 Problem Statement

The Lands Tribunal while set up with good intention has been undermined by the various decisions of the Supreme Court. These decisions have greatly affected the jurisdiction of the Lands Tribunal in a way that has narrowed by far its jurisdiction to an extent that limits the cases that it can deal with. The relevance of the Lands Tribunal in the resolution of land disputes has since been brought to question. In addition, the standing of the Lands Tribunal vis-à-vis other dispute resolution mechanisms is not clear. This is a possible source resulting in the questioning of the relevance of the Lands Tribunal in dispute resolution. It is against this background that this paper seeks to investigate the relevance of the Lands Tribunal in the resolution of land disputes and making recommendations in order to make it relevant.

\textsuperscript{13} Ibid.

\textsuperscript{14} Mvunga, P. \textit{Land Law and Policy in Zambia} Lusaka: NECZAM Ltd 1982 Pg. 6
1.4 **Research Objectives**

The main objective of this paper is to establish whether the Lands Tribunal is relevant in resolving land disputes. It is against this background that the paper will investigate:

i) the rationale behind the establishment of the Lands Tribunal  
ii) the intended purpose of the Lands Tribunal  
iii) the jurisdiction of the Lands Tribunal  
iv) the status of the Lands Tribunal as a tribunal or a court  
v) the status of the Lands Tribunal vis-à-vis the High Court and other institutions established to resolve land disputes  
vi) recommendations for improvement

1.6 **Research Questions**

1. What was the rationale in the establishment of the Lands Tribunal?  
2. Has the Lands Tribunal effectively served to its purpose?  
3. Is the Lands Tribunal relevant in the resolution of land disputes?

1.7 **Methodology**

The research was qualitative; it involved desk research and field investigations. It therefore included primary and secondary data. Primary data was collected through interviews with key informants on the topic. These were,

- the Registrar of the Lands and Deeds Registry  
- the Legal Officer Ministry of Lands  
- and other key informants that may be appropriate resource persons.
Secondary data sources included,

- Text books
- Law journals
- Statutory Instruments
- Periodicals
- Relevant Articles unpublished and unpublished
- The Internet

Case analysis was also of great importance in this study as it is based on these that we can determine the objective of this study. Case law is a great source as there is very limited literature on the subject by textbook writers. It also has the advantage of providing information of what is actually obtaining on the ground.

1.8 **Significance of the Study**

Land is a unique commodity in that it’s of a finite quantity, and several people may have rights and obligations in the same piece of land at the same time. It is important therefore to have a reliable system with effective mechanisms to enforce the various rights and obligations placed on the parties in the event of a land dispute. It is the hope of this research to establish the relevance of the Lands Tribunal in resolving land disputes in order that recommendations for its improvement may be made.

1.9 **Organization of Study**

**Chapter One- Introduction**

This Chapter forms the foundation of the study and introduces the nature of the research, justifying the need for the effective resolution of land disputes.
Chapter Two- Historical Events Leading to the Creation of the Lands Tribunal

This Chapter will look at historical events that led to the creation of the Lands Tribunal. It will delve into the Land tenure system of Zambia, the historical development of the 1995 Lands Act and land dispute resolution mechanisms in effect prior to the Lands Act.

Chapter Three- The Lands Tribunal- A Critical Analysis

Recognizing that the limited jurisdiction of the Lands Tribunal is a factor limiting its efficiency, this Chapter will analyze the jurisdiction of the Lands Tribunal as is stated by the Lands Act and the interpretation of this jurisdiction by the High Court and the Supreme Court. This Chapter will further analyze the concept of a court and a tribunal in order to establish where the Lands Tribunal stands.

Chapter Four- Conclusion and Recommendations

This will be the concluding Chapter establishing whether the Lands Tribunal is relevant in the resolution of land disputes and providing recommendations for improvement.
CHAPTER TWO

ZAMBIA'S LAND TENURE SYSTEM

This Chapter will look at Zambia's land tenure system from the pre-colonial era to the present. It will analyze the events that led to the establishment of the Lands Tribunal in the 1995 Lands Act. Further, for the purpose of analysis, Tanzania's land tenure system will be looked at comparatively. This chapter will conclude by looking at the evolution of land dispute resolution in Zambia.

2.0 Tenure

The study of a land tenure system analyses the socio-political relationships between man and land and between man and man in respect of land. These relationships have always been fundamental in any economy or society, and they remain particularly so in pre-industrial societies where land usually constitutes the primary form of wealth and source of power, an indispensable factor of production, and a major determinant of social structure. In a narrow legal sense land tenure is concerned merely with the differential distribution of ownership and usufructuary rights in land and water among persons or groups in society. Tenure relationships can regulate the security of the individual or group and hence influence social stability. They can dominate access to credit and to new technologies, and they may also help to determine the levels of capital formation and investment. Tenurial relationships may also present a primary obstacle to economic

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16 Ibid.
development, to new enterprises, and to social change.\textsuperscript{17} They may reduce or frustrate economic opportunities; legitimize existing inequalities; limit the power of choice and action of families or individuals; or curtail rights of association and prevent the achievement of minimal social and political freedoms. Through land reforms governments are able to alter the land tenure system of a country. Land reform involves changes in restructuring of these rules and procedures in an attempt to make the land tenure system consistent with the overall requirement of economic, political and social development.

The adaptation of tenure to the prevailing circumstances has been evident in Zambia’s land tenure system as it has changed as much as governments have changed. From the discussion below it will be evident that through tenure the various leaders were able to infiltrate the system with their various beliefs and ideologies.

2.1 \textbf{Colonial Foundations of Land Tenure in Zambia}

Land law and policy during colonial rule was largely expressed through the land tenure system prevailing at the time. The land policies were detrimental to native interests as tenure determines not only the relationship between land and man but that between man and man. At the advent of colonialism in the then North Eastern and North Western Rhodesia, a new system of land tenure was super imposed on the existing indigenous customary land holding system, thereby creating a dual land holding system.\textsuperscript{18}

\textsuperscript{17} Dickson, W. L. \textit{Land Tenure and the Developing Society} in \textit{Land, Policy and Agriculture in Eastern and Southern Africa} 1986

When the British government took direct control of the territory in 1924, the dissatisfaction by both the settlers and natives with the way land was managed continued, leading to a series of land designations up until independence in 1964.\textsuperscript{19} The land policy under the British government ended in the creation of reserves and crown land in 1928 and native trust land in 1947 pursuant to the Northern Rhodesia (Crown land and Native Reserves) Order-in Council 1928 and the Northern Rhodesia (Trust land) Order-in-Council 1947 respectively.

Crown land comprised the narrow strip for about twenty or thirty miles on either side of the railway line from Livingstone to the Copperbelt.\textsuperscript{20} This land was available for non-native settlement and for mining development, and thus was to include land certified by the British government to be suitable for European development and all land known to contain mineral resources. Interests in crown land were subject to English Land law. This meant that there existed freehold and leasehold tenure.

The Reserves and Trust land were vested in the Secretary of the Colonies, in the case of reserves as "land set apart in perpetuity for the sole and exclusive use of natives..., and in the case of Trust land, as land set apart for the use and common benefit, direct or indirect of the natives."\textsuperscript{21} The nature of interests in land in both reserves and trust land was

\textsuperscript{19} Mvunga, M. P. \textit{The Colonial Foundations of Zambia’s Land Tenure System} Lusaka: Kenneth Kaunda Foundation 1980 pg. 1
\textsuperscript{20} Ibid. 10
\textsuperscript{21} Ibid. 3
primarily governed by customary law. Non-natives could also acquire interests in land governed by English law.

According to Mvunga, the creation of the various categories of land was influenced by many factors all hinging on economic interests. There was need to assure European settlers with land for their settlement and exploitation. But this could not be achieved without designating reserves within which to confine the indigenous people. But the latter also needed good and adequate land for their utilization. The reconciliation between the two groups was not an easy one. Then of course the mineral deposits of Northern Rhodesia necessitated the exclusion of those areas known or believed to have minerals from land under African occupation.

2.2 **Post Independence Land Policy from 1964 to 1975**

The land policy that existed in the colonial days like was already stated was oppressive to the natives as it was tailored for the benefit of the European settler population at the expense of native interests. In spite of its rigors against the natives the nationalist government after independence in 1964 was not quick to rid the system of the colonial influences which were still a threat to the economic independence of Zambia.

The government however divested the British government of all powers conferred upon it by various orders in council to be exercised though the Queen, the Governor or the

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22 Siame, L. "The Lands Tribunal" A paper presentation to the forum for Copperbelt University Student Surveyors
23 Ibid, at p. 41
Secretary of State. However, although the President of the independent Republic of Zambia assumed control over the land resources, safeguards were included in the legislation to protect neo-colonial interests in land, estates and other immovable property which had been grabbed, granted and recognized in the colonial period. Although political power was now in the hands of nationalists, economic interests of the departing colonialists were still secured. This is because Government could not legally acquire the land due to the Constitutional provision under section 18 of the Independence constitution which provided for the protection against the deprivation of property.

In a search for a new land policy the government on 24th November 1964, established a Cabinet Land Policy Committee to review all aspects of land policy which were inherited on independence and to submit recommendations on a comprehensive Zambian Land policy. A commission working together with the committee was appointed and submitted its report in 1967. The Commission's report was neither officially rejected nor adopted by government, but later legislation showed total disregard for its recommendations.

In 1970, the Land Acquisition Act was passed aimed at compulsorily acquiring land which was lying idle. In passing this Act the government sought a way out of the legal difficulties of Article 18 (i) of the 1964 Constitution which forbade the acquisition of private property except under an Act of Parliament which allowed for compensation by amending the Constitution and then repealing the inadequate Public Lands Acquisition

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24 Zambian Statute Law 2007 pg. 372
25 F. Mudenda Land Law in Zambia: Cases and Materials University of Zambia Lusaka 2007 pg. 372
Act. The enactment of this Act was therefore in line with the broadening of the scope of development requiring land and also with the fact that government had become more concerned with the vast tracts of land which were idle either for speculative purposes or because the owners had since left the country.

2.3 The 1975 Land (Conversion of Titles) Act

The Land (Conversion of Titles) Act introduced radical reforms to Zambia’s land tenure system. On 30th June 1975, in his opening speech to the 6th National Council of UNIP the then President Kaunda announced changes in land ownership and tenure in Zambia. These reforms were prompted by rampant speculation in urban land. The test case was provided by the allocation of a vacant plot opposite the city council library in Lusaka, which transaction the President termed as not only mere profiteering but insanity to which an immediate stop must be put and further went on to denounce it as a rotten exploitation of the worst order.27 In reaction to such commercialism, the uncertainty in land policy which characterized the first decade of independence in Zambia came to an end with President Kaunda’s June 30 1975 ‘Watershed Speech,’ in which he announced far-reaching land reforms. Also behind the spirit of these reforms were the humanism and socialist ideologies which emphasized the African concept of ownership emphasising the community.

The Land (Conversion of Titles) Act vested all land in the President, it further provided for the conversion of titles to land; the imposition of restrictions on the size of

27 See Address by His Excellency the President Dr. K. D. Kaunda to the National Council of the United National Independence Party, Mulungushi Hall, 30 June-3 July 1975
agricultural holdings and for the abolition of sale, transfer and other alienation of land for value.

2.4 The 1995 Lands Act

The 1975 land reforms being tailored along socialist lines had the aim of curbing speculation in land and also ensuring that there was no exploitation of man by man where land was concerned. Nonetheless, the 1975 Land (Conversion of Titles) Act still created a number of difficulties as they largely hampered development of land as mortgages could not be created on bare land, the requirement of Presidential consent to the price charged for land precipitated long delays in the processing of land transactions. In light of these shortcomings, the MMD government in its manifesto called for the following reforms in its land policy:

The MMD shall institutionalize a modern, coherent, simplified and relevant land law code intended to ensure the fundamental right to private ownership of land as well as to be an integral part of a more efficient land delivery system. To this end an MMD government will address itself to the following fundamental land issues. A review of the Land (Conversion of Titles) Act of 1975 and 1985, the Trust lands and Reserves Order-in-Council of 1928-1947, the Land Survey Act, and the Town and Country Planning Act, in order to bring about a more efficient and equitable system of tenure conversion and land allocation in customary lands; land adjudication legislation will be enacted and be coordinated in a way that confidence shall be restored in land investors; the planning system and related legislation shall evolve such land strategy as not only to merge Reserve and Trust lands, but also to meet varied development needs in the country. The MMD government will attach economic value to undeveloped land, encourage private real estate agency business, promote
the regular issuance of title deeds to productive land owners in both rural and urban areas, and clear the backlog of cadastral surveys and mapping.28

With the intention of bringing land into the market and to spur development, and with the aim of rectifying the elements inhibiting development under the 1975 Act, the 1995 No. 29 Land Act was passed and came into force on the 6th September, 1995.

2.4.1 Features of the 1995 Lands Act

The principal features of the Act are:

i. Abolished reserves and trust land under section 32 (2).

ii. Expressly recognizes and provides for the continuance of customary holdings under section 7.

iii. Re-introduced the land market by attaching value to bare land in section 4.

iv. Provides for the conversion of customary holdings or tenure into leasehold tenure in section 8.

v. Has established in section 20 (i) a Lands Tribunal.

vi. Has established in section in section 16 (i) a Land Development Fund.

vii. Has in section 6 abolished the head lease system and replaced it with a direct lease system.

viii. Has gone further in section 2, in the definition of improvements on land to include other expenses incurred in the development or towards the development of land.

28 See Paragraph M (under Socio Economic Perspective) the manifesto for the Movement for Multi-party Democracy (MMD) 1990
ix. Provides in section 14 (2) I for the imposition of a penalty for failure to pay rent after the day on which it became due.

2.4.2 The Lands Tribunal

The Lands Tribunal is established by section 20 (i) of the Act, its function is to handle all disputes concerning land arising from the Act. The creation of a specialized agency such as this, to handle land disputes it was intended would bring about efficiency in the disposal of cases as the High Court was overburdened with many matters to execute this role efficiently.\textsuperscript{29} It was also hoped that the quality of the decision of the Tribunal will no doubt be enhanced considering the fact that it will be a specialized agency with qualified members who are experts in land matters as provided for under sections 20 (2) and 21.\textsuperscript{30}

2.5 Tanzania’s Land Tenure System

A lot of the policies governing Zambia were similar to that of Tanzania.\textsuperscript{31} It is the view of this paper that a discussion on Tanzania’s land tenure system would be ideal especially for the purposes of comparison. Particularly of interest would be how Tanzania approached and dealt with the resolution of land disputes prior to having a liberalized economy.

\textsuperscript{30} Ibid.
\textsuperscript{31} S. D. Mtetwaunga Social Implications of Land Reforms in Tanzania in Land, Policy and Agriculture in Eastern and Southern Africa Japan: The United Nations University
In 1976, the Arusha Declaration and Tanganyika African Nation Union Policy on Socialism and Self-Reliance were adopted in Tanzania. On land, the declaration states:

‘Land is the basis of human life and all Tanzanians should use it as a valuable investment for future development. Because the land belongs to the nation, the Government has to see to it that it is not used for the benefit of one individual or just a few people … it is the responsibility of the Government and the co-operative societies to see to it that our people get the necessary tools, training and leadership in modern methods of agriculture.’

The Government of Tanzania just like that of Zambia established a land tenure system on the similar ideologies of socialism and humanism, what they called in Tanzania ‘ujamaa’. The Government emphasized the creation of more state farms, but most of its attention was directed towards the creation of ujamaa villages, which were to be given priority in credit, servicing and extension services, at the expense of the individual producer if necessary.\(^{32}\) Following the above declarations of intent, the Government took revolutionary steps in implementing land reforms the success of which various legislation was put in place to decentralize government functions so that much of the decision making and implementation of projects is done in the respective regions and districts, the leaders of which would be more conversant with the social and economic realities of their people.\(^{33}\)

The Government of Tanzania realized the importance of a dispute resolution mechanism in a land tenure system and passed the Customary Leaseholds (Enfranchisement) Act

\(^{32}\) Ibid.

\(^{33}\) Ibid.
1968, in which a customary land tribunal was formed. The duty of the tribunal was to ascertain the landlords and tenants in each such customary case. Once the tenant or tenants are known, the land dispute is measured and a judgment is given in which the tenants are enfranchised. The proceedings of the tribunal were quasi-judicial and the appeals were made to the minister responsible for lands, whose decision is final and conclusive. The tribunal was empowered to grant exparte judgment once it was shown that the landlord intentionally disobeyed the summons.

2.6 The Evolution of Land Dispute Resolution in Zambia

Land disputes did not only begin upon the creation of the Lands Tribunal. Colonial heritage conferred on Zambia formal courts, 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. However, a number of disputes were settled out of court as it was cheaper, it did not create animosity and it preserved people's reputation.

Also there existed a 'valuable filtering system' which to a large extent lessened the need to resort to courts for litigation. This entailed a party to a dispute first addressing his grievance with the village headman or chief, or in urban centers 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. Arbitration by party officials assumed very

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34 Ibid.
36 Ibid.

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popular proportions.\textsuperscript{37} They were often selected as a tool for dispute resolution on the basis of being accepted leaders, that this was their standard practice, that they apportioned and allocated plots and hence should settle land disputes and that they witnessed such transactions as purchasing and sale of houses. But those who opted for court action were drawn by apparent finality of settlement and prominent hopes of a fair trial. They feared that a possibility of bribery could be occasioned by taking a matter to a party official for settlement.

The advent of the Third Republic in Zambia meant disputes and conflicts among people of different political affiliation were likely, as such no political party could assume a position to demand and receive total submission and respect for its decisions.\textsuperscript{38} Without controversy, therefore, courts have been perceived as the only apolitical and therefore impartial and fair institution for dispute resolution.

A factor that precipitated the creation of the Lands Tribunal was section 13 of the 1975 Land (Conversion of Titles) Act. This section provided that no person was permitted to ‘subdivide, sell, transfer, assign, sublet, mortgage, charge, or in any manner whatsoever encumber or part with the possession of his land without the prior consent, in writing to the President.’ This section raised a number of problems including the absence of an appellate system, such as a land tribunal to which aggrieved parties could appeal decisions of the Commissioner of Lands whose office had delegated authority to exercise the powers of the President in matters pertaining to land. The Act did not provide for any

\textsuperscript{37} Op. Cit
\textsuperscript{38} Op. cit
appeal by a vendor who was dissatisfied with the figure which the President had determined as a condition for giving his consent. In practice, in cases of disagreement over the maximum price, was that applicants were advised to withdraw their applications and submit fresh applications for consent so that valuation could be repeated. This practice was very inconvenient and time consuming. An appellate system, which would have involved the engagement of valuers, would have been a more satisfactory solution.39

CHAPTER THREE
THE LANDS TRIBUNAL: A CRITICAL ANALYSIS

3.0 Introduction

The effectiveness of any dispute resolution mechanism depends largely on the following:

a. The ability to dispose of a matter efficiently between the parties.
b. Expedience in the delivery of justice.
c. Jurisdiction wide enough to allow the institution to adjudicate on a range of matters affecting that particular issue.
d. Clarity in its establishment and relations vis-à-vis other dispute resolution institutions.\textsuperscript{40}

To this end, this chapter undertakes to explore the above in relation to the Lands Tribunal. The first part will look at prevailing land dispute resolution mechanisms in Zambia apart from the Lands Tribunal. The second part will be an in depth analysis of the Lands Tribunal; its establishment and operations. The third part will continue by analyzing the role of the Lands Tribunal in dispute resolution. The fourth and concluding part will analyze the jurisdiction of the Lands Tribunal and its status as a court or a tribunal.

3.1 Current Land Dispute Resolution Mechanisms in Zambia

Like was stated in the preceding Chapter, courts of law have traditionally handled disputes in land in lieu of chiefs and political party officials. The common methods of

\textsuperscript{40} Kaunda, K. Land Dispute Resolution in Zambia: A Critical Analysis of the Lands Tribunal Kitwe: Copperbelt University 2002
dispute settlement have been litigation and court annexed arbitration. Under the Republican Constitution, the Judicature of the Republic consists of:

a. the Supreme Court of Zambia  
b. the High Court of Zambia  
c. the Industrial Relations Court  
d. the Subordinate Courts  
e. the Local Courts; and  
f. such lower courts as may be prescribed by an Act of Parliament.\(^{41}\)

3.1.1 The High Court

Article 94 (1) of the Zambian Constitution provides that:

There shall be a High Court for the Republic which shall have (except as to the proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial and Labor Relations Act) unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

This means that the High Court has original and unlimited jurisdiction in land dispute resolution. In terms of cancellation of certificate of title the only court that has legal authority to order the Chief Registrar of Lands and Deeds to rectify the register and cancel a certificate of title is the High Court.\(^{42}\) The statute that governs the issuance and registration of title is the Lands and Deeds Registry Act.\(^{43}\) Under this Act all disputes and matters arising therefrom are to be determined by the High Court. This principle is derived from the statutory interpretation wherein the Lands and Deeds Registry Act provides that, 'in this Act, unless the context otherwise requires “Court” means the High

\(^{41}\) Article 92 of the Constitution of Zambia Cap. 1 of the Laws of Zambia  
\(^{42}\) A-G and another Vs. Frazer and Frazer (2001) Z. R. 87  
\(^{43}\) Cap. 185 of the Laws of Zambia
Court. It is important to note that the jurisdiction of the High Court though unlimited is not limitless, since the court must exercise its jurisdiction in accordance with the law. In order to place the word unlimited in Article 94 (1) of the Constitution in its proper perspective, the jurisdiction of the High Court should be contrasted with that of lesser tribunals and courts whose jurisdiction in a cumulative sense is limited in a variety of ways. For example, the Industrial Relations Court is limited to cases under a single enactment over which the High Court has been denied any exclusive jurisdiction. The Local Courts and subordinate courts are limited as to geographical area of operation, types and sizes of awards and penalties, nature of cases they can entertain and so on.\textsuperscript{44} The High Court therefore is adequately equipped to handle all land matters in the Republic.

3.1.2 \textbf{The Subordinate Court}

The jurisdiction of the Subordinate court in land matters is expressly defined under the Subordinate Courts Act.\textsuperscript{45} Section 23 of the Act provides that:

\begin{quote}
"if, in any civil cause or matter before a Subordinate Court, the title to any land is disputed, or the question of the ownership thereto arises, or where the question of title to land is in issue, the court may adjudicate thereon, if all parties interested consent; but, if they do not all consent, the presiding magistrate shall apply to the High Court to transfer such cause or matter to itself."
\end{quote}

The subordinate court therefore has the mandate to adjudicate upon all land matters in State land provided that all parties to the cause have consented. In addition, the statute that governs issuance and registration of title in the Statutory and Improvement areas is

\textsuperscript{44} Zambia National Holdings & UNIP Vs. A-G (1993/94) Z. R. 115

\textsuperscript{45} Cap. 28 of the Laws of Zambia
the Housing (Statutory and Improvement) Areas Act, all disputes and matters arising from these areas are determinable by the Subordinate Court.\textsuperscript{46} This principle is derived from the statutory interpretation wherein the Housing (Statutory and Improvement) Areas Act provides that, “in this Act, unless the context requires “Court” means the Subordinate Court.”

3.1.3 \textbf{The Registrar of Lands and Deeds}

The Registrar of Lands and Deeds is empowered to hear matters relating to the Land Register where an allegation has been presented to him by any aggrieved or interested party. The Lands and Deeds Registry Act provides that:

“where any person alleges that any error or omission has been made in a Register or that any entry or omission there in has been made or procured by fraud or mistake, the Registrar shall, if he shall consider such allegation satisfactorily proved, correct such error, omission or entry as aforesaid.”

The Registrar in determining such allegation is deemed to play a quasi judicial function equivalent to the judicial powers exercised by the Magistrate of the first class. It is against this interpretation that “any person aggrieved by any entry or omission made in a Register after application to the Registrar under subsection (1) may apply to the High Court for an order that the Register may be rectified, and the High Court may either refuse such application with or without costs to be paid by the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the Register in such a manner as it shall direct.”

\textsuperscript{46} Cap. 194 of the Laws of Zambia
The Lands and Deeds Registry Act further confers powers upon the Registrar by stating that "every Registrar, in addition to the powers hereinbefore vested in him, may exercise all or any of the powers following, that is to say:\footnote{47}{Section 84 of the Lands and Deeds Registry Act Cap. 185 of the Laws of Zambia}

a) the Registrar may require production of instruments  
b) he may require any person to produce such document or instrument which he has in his possession or control such as Certificate of Title or mortgage for endorsement within a given time  
c) he may, if in his opinion the number or nature of the entries on any folium of the Register renders it expedient to close the same, or if any document of title has become worn, defaced or mutilated so as to justify his so doing, require the holder of the outstanding document of title to surrender the same for cancellation; and upon such cancellation, a duplicate shall be issued to the person entitled thereto upon payment of the prescribed fee  
d) he may enter caveats for the protection of any person who is under the disability of infancy, lunacy, unsoundness of mind, or absence from Zambia, or, on behalf of the President, to prohibit the transfer or dealing with any land belonging or supposed to belong to any such persons as hereinbefore mentioned, and also to prohibit the dealing with any land in any case in which it appears to him that an error has been made by misdescription of such land or otherwise in any Provisional Certificate, Certificate of Title or other instrument, or for the prevention of any fraud or improper dealing;  
e) he may administer oaths, or may take a statutory declaration in lieu of administering an oath;  
f) he may, if satisfied that any State Lease, lease or other interest in land has been wholly surrendered, forfeited, merged or expired or that any mortgage has been wholly discharged, strike out from and cancel in the Register all entries relating to such State Lease, lease, interest or mortgage
The Registrar in his or her performance of functions refuses to perform any act or duty which he is required or empowered by the Act to perform, or if a Registered Proprietor or other interested person is dissatisfied with the direction or decision of the Registrar in respect of any application, claim, matter or thing under this Act, the person deeming himself aggrieved may appeal to the Court. Furthermore, the Registrar may, by special case, submit for the decision of the Court any question arising under this Act which appears to him to require such decision; and the court shall give its judgment thereon as if such question had been raised in due form upon an appeal from the decision of a subordinate court.\(^{48}\) The legislators of this Act were mindful of the disputes likely to arise from the Lands and Deeds Registry Act and as such, the Act places a quasi-judicial function on the Registrar of Lands and Deeds so that his or her decisions could be appealed against in the High Court. In the conduct of appeals from the Registrar of Lands and Deeds to the High Court, the same rules shall apply as are in force or exist for the time being in respect of ordinary appeals to the High Court from a subordinate court.

In the case of New Plast Industries Vs. The Commissioner of Lands and Attorney-General\(^{49}\) in a judgment delivered Justice Sakala re-emphasizing that appeals to court from the Registrar are to be commenced by way of appeal, stated that, "we are satisfied that the practice and procedure in the High Court is laid down in the Lands and Deeds Registry Act…. We therefore hold that this matter having been brought to the High Court by way of Judicial Review, when it should have been commenced by way of an appeal, the court had no jurisdiction to make the reliefs sought. This stand was taken by this court

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\(^{48}\) Section 88 of the Lands and Deeds Registry Act  
\(^{49}\) (2001) Z.R. 51
in Chikuta Vs. Chipata Rural Council, where we said that there is no case in the High Court where there is a choice between commencing an action by a writ of summons. We held in that case that where any matter is brought to the High Court by means of an originating summons when it should have been commenced by a writ, the court has no jurisdiction to make any declarations. The same comparison is applicable here. Thus, where any matter under the Lands and Deeds Registry Act is brought to the High Court by means of Judicial Review when it should have been brought by way of an appeal, the court has no jurisdiction to grant the remedies sought.”

3.2 The Lands Tribunal

3.2.1 Establishment

The Lands Tribunal like has already been stated was established by section 20 (1) of the 1995 Lands Act. The rationale for its establishment was basically two-fold: to have a fast track court that would efficiently dispense of land disputes and to have a cost effective land dispute resolution mechanism. The objective of the Lands Tribunal is to achieve speedy and cheap justice and to enhance the development of the country. The tribunal was seen to be more flexible that the judicial system. Moreover, it was easily accessible and the disputes were quickly resolved by way of summary trials. According to Mudenda, the Lands Tribunal was established under the Lands Act to make provision for the dispensation of justice and efficient resolution of disputes as well was a way of reducing the cost of litigation in land matters.

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50 1974 Z.R. 241
51 According to Section 23 (5) the Lands Tribunal is not bound by the rules of evidence.
52 F. Mudenda, F. Land Law in Zambia: Cases and Materials University of Zambia Lusaka 2007
3.2.2 Composition

Subsection 2 of section 20 of the Lands Act provides for the members of the Lands Tribunal who shall be appointed by the Minister of Lands. It consists of:

a. a Chairman who shall be qualified to be appointed as a judge of the High Court,
b. a Deputy Chairman who shall be qualified to be appointed as judge of the High Court;
c. an advocate from the Attorney-General’s Chambers;
d. a registered town planner;
e. a registered land surveyor;
f. a registered valuation surveyor; and
g. not more than three persons from the public and private sectors.

The Chairman and the Deputy Chairman shall be appointed after consultation with the Judicial Service Commission. In addition, section 21 provides that the Tribunal may 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 this Act. The Zambia Land Alliance is of the view that the composition of the Lands Tribunal is too limited and is not representative of the general public. It gives examples of the church and civil society organizations working in land matters.\(^{53}\) The composition of the lands tribunal is not intended to represent the general public by appointing a number of representatives from society. The composition is based on appointing a team who working together will have sufficient expertise to resolve efficiently a matter.

\(^{53}\) Zambia Land Alliance The Role of the Lands Tribunal in Handling Land Disputes in General and Traditional Land in Particular Memorandum submitted to the Committee on Agriculture and Lands of the National Assembly of Zambia, 15 April 2005. www.zla.org.zm
3.2.3  **The Lands Tribunal Rules**

Statutory Instrument Number 90 of 1996 lays down the rules governing the procedure to be followed before the Lands Tribunal. Accordingly Rule 3 of the Lands Tribunal Rules 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:

a. the name and address of the appellant and respondent;
b. the date, reference number and particulars of the directive or decision;
c. the description of the land or hereditament including where appropriate, a plan identifying the land to which the appeal relates;
d. the question which the appellant requires the Tribunal to determine, including a statement of the figure representing the amount or value, where necessary which the appellant requires the Tribunal to determine;
e. the grounds of appeal;
f. whether the appellant does not propose to call an expert witness to give evidence;
g. the address for service of notices and other documents upon the appellant; and
h. such other information as may be necessary for the hearing of the appeal.

Rule 12 (1) of the Lands Tribunal Rules, provides that evidence before the Tribunal may be given orally or if the parties to the proceedings consent or the Chairperson so orders, by affidavit. Notwithstanding this rule the Tribunal may at any stage of the proceedings make an order requiring the personal attendance of any respondent for examination and cross-examination.
Rule 13 of the Lands Tribunal Rules provides 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 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 document. The proviso to this rule stipulates that nothing in this rule shall be deemed to require any information to be disclosed contrary to public interest. 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.

On limitation of the scope of an appeal, Rule 15 is precise. It provides 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 may think fit.

On appearance of a party to the proceedings, Rule 16, of the Lands Tribunal Rules, is salient. It provides 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.

The Lands Tribunal in its operations is supposed to be a cheap, simple and efficient mechanism for the resolution of land dispute. This is why the rules governing the Lands Tribunal are not as strict as those that may govern the High Court. They are for instance not bound by the rules of evidence; this means that hearsay is accepted in the Lands Tribunal. The Tribunal can therefore be very informal in its operations. They could adopt inquisitorial procedures probing but not acting as detailed umpires who rely entirely on the material as presented to them by the parties or their advocates. Although minimum requirements of procedural fair play called for the rules of natural justice to be observed the members of the Tribunal could, however, draw on their own expertise and acquired knowledge in drawing inferences from the facts. In the case of Goswami Vs. The Commissioner of Lands it was stated by the Supreme Court that, “The Tribunal is in fact not one fettered by legalistic formal pleadings or technicalities and it is expected to do justice to the parties on the case as found after it has conducted its inquiry.”

3.3 **Jurisdiction of the Lands Tribunal**

In looking at the jurisdiction of the Lands Tribunal it is the aim of this section to answer the following questions.

1. Should the jurisdiction of the Lands Tribunal be limited to determining disputes arising out of decisions made by the President, Minister and

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54 Section 23 (5) of the Lands Act
Registrar as narrowly defined in section 15 of the Act, or should it relate to any dispute relating to land generally as defined by section 22 of the Act.

2. Should appeals against decisions of the Lands Tribunal continue to lie to the Supreme Court or should they instead lie to the High Court.

3. Should the Lands Tribunal be invested with powers to issue coercive orders or should it merely possess powers of recommendations.

3.3.1 The Legal Framework and Case Law

The jurisdiction of the Lands Tribunal is provided for by section 22 of the Lands Act which provides as follows:

The Tribunal shall have the jurisdiction to:

a. 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.

Justice Pickford in Guaranty Trust Company of New York Vs. Hannay and Company\(^{56}\) stated that, in its narrow and strict sense, the "jurisdiction" of a validly constituted court

\(^{56}\) (1914-15) All E. R. 24 at 35
connotes the limits which are imposed on its power to hear and determine issues between persons seeking to avail themselves of its process by reference:

i) to the subject matter of the issue or

ii) to the person between whom the issue is joined or

iii) the kind of relief sought or any combination of the factors.

Jurisdiction as defined by the English Court in this case was reiterated and applied by the Zambian Courts in the case of *Zambia National Holdings and UNIP Vs. A-G.* In *Miyanda Vs. the High Court* it was stated that jurisdiction is the authority which a court has to take cognizance of matters presented in a formal way for its decision. The limits of authority of each of the courts in Zambia are stated in the appropriate legislation. Such limits may relate to the kind and nature which the actions and matters of which the particular court has cognizance or to the area over which the jurisdiction extends or both.

The jurisdiction of the Lands Tribunal can therefore be said to be limited to matters arising from the Lands Act. This means that if a particular case does not fall within the ambit of the Lands Act that case is outside the jurisdiction of the Lands Tribunal. Section 15 of the Act further provides for the jurisdiction of the Lands Tribunal and states as follows:

1. Any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination.

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57 Selected Judgment No. 3 of 1994
2. In this section “person in authority” means the President, the Minister of the Registrar.

The jurisdiction of the Lands Tribunal was not as straightforward as it seemed in section 20 of the Lands Act and the Supreme Court of Zambia handed down decisions that have touched on and precisely in a narrow fashion defined the jurisdiction of the Lands Tribunal. In *Mwangela Vs. N. Nsokoshi and Another* 59 the Lands Tribunal was requested to determine the question whether or not the appellant was entitled to purchase a house in question as an occupier and by virtue of the circular. In the considered view of the Supreme Court in reading sections 15 and 22 of the Lands Act, the jurisdiction of the Lands Tribunal is limited to settlement of land disputes under the Act. The Supreme Court also stated that the Lands Tribunal was not an alternative forum to the High Court where parties can go to, even for the issuance of prerogative writs such as mandamus. The principle established by the Supreme Court in relation to the Lands Tribunal’s powers to order cancellation of title deeds is that the Tribunal had no jurisdiction or powers to do so under the Lands Act and that it could only recommend to the Commissioner of Lands as to what to do with a certificate of title in issue and not to order cancellation of the same. This principle was further illustrated in the case of *Attorney-General, Ministry of Works and Supply Vs. Frazer and Another* 60 where the Supreme Court stated that the question of the Lands Tribunal’s jurisdiction to cancel Certificates of Title for any reason has been settled by this court in a number of cases emanating from the Lands Tribunal. One of the cases was *Oduyeni and 2 Others Vs. Atlantic Investments*

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59 SCZ Judgment No. 29 of 2000  
60 (2001) Z. R. 87
Ltd\textsuperscript{61} where the appeal was against a decision of the Lands Tribunal ordering a certificate of title to be cancelled. The Court stated, “Our short answer to the submissions is that, the Lands Tribunal has no jurisdiction to order cancellation of a certificate of title in land matters. In terms of the Lands and Deeds Registry Act, Cap. 185, the jurisdiction to order cancellation of Certificate of title lies with the High Court and not the Lands Tribunal. The Lands Tribunal can only recommend cancellation. Although the Lands Tribunal was correct in doing substantial justice, their power is limited to recommending to the Commissioner of Lands on what to do with a Certificate of Title deed in issue and not to order cancellation of the same.” Furthermore, a case that is also of interest to the jurisdiction of the Lands Tribunal is the Attorney-General Vs. Luguru.\textsuperscript{62} This case involved the sale of government pool houses to a civil servant who was not a Zambian citizen. The dispute therefore involved construction of a cabinet circular dated September 13, 1996 on the implementation of the Civil Service Home Ownership Scheme. The state argued that the dispute arose out of construction of the conditions of service and therefore the Lands Tribunal had no jurisdiction to entertain such a complaint. The Supreme Court concluded that the evidence had shown that the dispute between the Government or employer and employee was not about land, but whether or not the respondent was qualified to be offered to buy the house which he was occupying as a civil servant.

It is interesting to note here that the limitation on the jurisdiction of the Lands Tribunal as interpreted in the cases above leave much to be desired. The decisions of the Supreme Court narrowing the jurisdiction of the Lands Tribunal have greatly diminished the

\textsuperscript{61} Appeal No. 130 of 2000
\textsuperscript{62} SCZ No. 20 of 2001
jurisdiction of the Lands Tribunal even further. It has been interpreted by the public as having been demeaned. It is important to note here that the recommendations as made by the Lands Tribunal are just that, recommendations, the Commissioner of Lands is at liberty whether or not to follow them. According to the Permanent Secretary of the Ministry of Lands, “the implementation of the Tribunal decisions depended on the goodwill of whoever was directed to implement.”

It follows that many people regard the decisions of the Lands Tribunal as being toothless. The Permanent Secretary for the Ministry of Lands further stated that, “from the experience of the operations of the Lands Tribunal however, it had been observed that a large fraction of cases that were brought for arbitration before the Tribunal were cases outside the Lands Act. These cases could not be brought before the Commissioner of Lands, the Registrar of Lands or the Minister responsible for land as they were outside the ambit of the Lands Act.”

By limiting the jurisdiction of the Lands Tribunal to cases arising from the Lands Act, the Lands Tribunal has no jurisdiction in land located in the Statutory Housing and Improvement Areas which are governed by the Statutory (Housing and Improvement) Areas Act. It is no doubt that disputes arise in these areas which need quick and cheap resolution. The poor mostly occupy these areas and they are unable to benefit from the cheap, express and efficient services of this “fast-track” tribunal whenever they have disputes. The Lands Tribunal seemed to have conceded to the position as stipulated by the Supreme Court in the case of William Charles Ernest Holman Vs. Zambia National

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63 In Report of the Committee of Agriculture and Lands on the 4th session of the 9th National Assembly Appointed on 21st January, 2005 pg. 3
64 Ibid.
65 Cap. 194 of the Laws of Zambia
Commercial Bank Limited.\textsuperscript{66} In this case the applicant sought a declaration that he was entitled to benefit from the sale of company houses, the Tribunal stated that, “it is true that the Lands Tribunal has previously entertained cases similar to the one brought by the appellant. However, the Supreme Court has made some decisions on the jurisdiction of the Tribunal which do bind the Tribunal.” It was further held that, although the house under dispute was a land issue it does not fall under Sections 15 and 22 or any section of the Act.

A more recent decision of the Supreme Court pertaining to the jurisdiction of the Lands Tribunal is \textit{Diocese of Monze Vs. Mazabuka District Council and 3 Others}\textsuperscript{67}. The facts of this case are that, the appellant acquired the piece of land sometime in 1988 through the first respondent who recommended the application to the third respondent for the issuance of title deeds. As the appellant began to develop the land for the development of the Youth Project under the auspices of the appellant, the 2\textsuperscript{nd} respondent who had initially supported the application of the appellant as Councillor for the area told the appellant he had been given 39 hectares of the same land. The 2\textsuperscript{nd} respondent moved on the land sometime in 1992 with a certificate of title over subdivision B of Farm No. 576 and started to construct his house. Apparently he had acquired a 99 year lease to the same land as opposed to the 14 year lease held by the appellant. It was on this basis that the appellant complained to the Lands Tribunal. The Tribunal ordered re-planning of Farm No. 576 in Mazabuka District. It is the appeal that is of great interest to this paper.

\textsuperscript{66} LAT/79/2000
\textsuperscript{67} SCZ Judgment No. 16 of 2005- Appeal No. 115 of 2002
as it additionally coupled with the case law above limits the jurisdiction of the Lands Tribunal.

The Supreme Court stated in this case that, even if the Tribunal did not make any specific order to cancel the certificates of titles, "the order to re-plan the farm consequentially meant, in our considered view, that the existing title deeds held by both the appellant and the 2nd respondent were to be cancelled to allow for the re-numbering and re-surveying of two new portions that were to be created as a result of the re-planning exercise before fresh title deeds could be issued. We have said in many of our decisions that the Lands Tribunal has no jurisdiction to entertain a complaint over land if either party to the complaint has title; .... Until the Lands and Deeds Registry Act is amended, to shift the power to cancel title deeds to the Lands Tribunal from the High Court, the former has no choice but to come up with deliberate policy not to accept any complaint in which certificate of title is involved. That way the Lands Tribunal will be genuinely involved in the dispensation of quality justice, which will not only reduce litigation costs but also enhance accessibility to justice."

The principle in this decision that, if either party to a matter holds a certificate of title that matter is outside the jurisdiction of the Lands Tribunal is a further limitation as it means that the Tribunal may not hear a matter where title deeds are issued. This is almost a fallacy as a look at possible cases that the Lands Tribunal may deal with shows that this is land usually held on title. For example, under section 5, where a person applied for a consent to sell, transfer or assign land and where the President refuses to grant consent
within thirty (30) days and has given the reason for the refusal (he is obliged to do so) a person aggrieved may within thirty days of such refusal appeal to the Tribunal for redress. Usually land that is held on title is the one that is subject of sell, transfer or assignment. In this regard it is clear that the principle from the above case and particularly section 5 of the Lands Act are not compatible. Another example is section 13 of the Act which deals with re-entry, a lessee aggrieved with the decision of the President to cause a certificate of re-entry to be entered in the register may within thirty (30) days appeal to the tribunal for an order that the register may be rectified. Again land upon which a re-entry can be entered is land that is on title, if no title deed has been issued that land is simply withdrawn from the offeree. Again this section of the Lands Act is in contravention with the principle as stated in the Diocese of Monze Case. Lastly, a person aggrieved with a direction or decision of a person in authority may apply to the Tribunal for determination. People in authority have been said to include, inter alia, the Registrar, as was stated earlier the decisions of the Registrar are governed by the Lands and Deeds Registry Act and appeals from his or her decisions go to the High Court. It is not clear what the intention of the Lands Act was in defining the Registrar as a person in authority whose decision can be appealed against. In reality, the decisions of the Registrar emanate from land that is on title as his/her mandate stems from land appearing on the register.

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68 Interview with the current Legal Officer at the Ministry of Lands, Lands Department, Anna Mwitwa on the 10th of November 2007
69 Ibid.
70 Section 15 of Lands Act
71 Section 89 of the Lands and Deeds Registry Act
72 Interview with Lynn Habanji Sianziba Registrar at Ministry of Lands, Lands and Deeds Registry 16th November 2007
The above analysis shows the demeanded position in which the Lands Tribunal stands. By the courts decision in the Diocese of Monze Case the court has seemingly taken away the little jurisdiction the Lands Tribunal had. According to Mudenda, "The jurisdiction of the Lands Tribunal is, however, very limited to the extent that the Tribunal has not been effective in its operation. The Diocese of Monze decision effectively undermined the credibility and efficacy of the Lands Tribunal."\(^7^3\)

3.4 The Lands Tribunal - A Court or a Tribunal

Tribunals are of two kinds, that is, those of which result from the granting of adjudications powers by statute to the governmental office or department or to settle matters arising in such office or department. These kinds of Tribunals often referred to as statutory tribunals or simply administrative tribunals, whose main objective is to deal with disputes between government agencies and individuals or between two individuals in a less formal manner that is normal in court. There are also special Tribunals which have a composition to settle matters between citizens and the bureaucracy of administrative apparatus.

According to Matibini, "it is important to recall the raison d'etre of tribunals. Tribunals are usually preferred to ordinary courts because; its members may have specialized knowledge of the subject matter; it may be better at finding fact, applying flexible standards, and exercising discretionary powers, they are usually cheaper and are more accessible and more expeditious than the courts of law."\(^7^4\) Tribunals should be properly

\(^7^3\) Op. Cit. pg. 453
\(^7^4\) 1998 The Lands Tribunal an article written for the LEGAL DESK COLUMN in the Zambia Daily Mail
regarded as machinery provided by Parliament for adjudication as opposed to machinery for administration.\textsuperscript{75} There is no doubt therefore that the Lands Tribunal is necessary and would benefit the common man as this adjudicatory role is clearly manifested by the Lands Tribunal rules. However, while tribunals may be preferred to courts they are inherently lower in hierarchy and in jurisdiction than courts, particularly the High Court. This is why the practice in many jurisdictions is that decisions of Tribunals, like the Zambia Revenue Appeals Tribunal, are appealed against in the High Court rather than the Supreme Court. Also Tribunals are inherently narrow in scope and tend to focus on specific issues that require specialized expertise to determine. Lastly, tribunals are statutory creatures as opposed to courts that are constitutional.

The Lands Tribunal does not fit perfectly into the above description of a tribunal especially that the High Court has no jurisdiction to entertain any appeals from the decisions of the Lands Tribunal. An appeal from the Lands Tribunal lies to the Supreme Court, to this extent the Tribunal is hardly distinguishable from a court of law. It is no wonder that the Supreme Court in the cases discussed above have confined the Tribunal to matters strictly arising from the Act establishing it. It is the view of this paper that to provide that appeals from the Lands Tribunal lie with the Supreme Court is anomalous as it amounts to placing the Lands Tribunal at the same level with the High Court as is the case with the Industrial Relations Court. However, exception is given to the Industrial Relations Court as it is equally established by the constitution and not just an Act of Parliament. According to Matibini, “in practice, there is really no clear mark of distinction between a court of law and a tribunal, usually both will have a permanent

\textsuperscript{75} Ibid.
existence and charged with a task of hearing and determining disputes." This is however an obvious role as both are components of the machinery of justice. It is important that the law is clear on whether the Lands Tribunal is a tribunal or a court as opposed to establishing it as a court but in practice treating it as a court. This will reduce on the anomalies that arise when the Lands Tribunal adjudicates on matters and the ambiguities surrounding its existence.

76 2002 Re-visit the Jurisdiction of the Lands Tribunal in Legal Desk Column in the Zambia Daily Mail Lusaka
CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.0 SYNOPTIC REVIEW OF THE STUDY

This paper is divided into four chapters, each of which puts forward distinctive and relevant data necessary to support the assertion; the relevance of the Lands Tribunal in the resolution of land disputes.

Chapter One formed the foundation of this study and established that the Lands Tribunal was a cause for great concern as far as dispute resolution was concerned. Land was identified to be a very important commodity and there was therefore a need for an effective land dispute resolution mechanism. The problems for analysis and research were identified and stated in detail in the first chapter, with this, the author sought to determine by examining the Lands Tribunal its relevance.

Chapter Two aimed at giving a background of how the Lands Tribunal was established by discussing in great detail Zambia’s Land Tenure system from its colonial foundations to the current tenure system governed by the Lands Act 1995. It was established that land tenure systems evolved just as many times as the country changed its governments. In the various land tenure systems it can be concluded that there existed no formal institutions for the resolution of land disputes and in these systems informal methods were used. For example, party
officials were identified as effective during the second republic. This chapter revealed the events that led to the creation of the Lands Tribunal in the Lands Act 1995, which emanated mostly from the 1975 Land (Conversion of Titles) Act. This Chapter concluded by looking at the evolution of land dispute resolution in Zambia.

Chapter three forms the substance of this paper as it looks in detail at the Lands Tribunal; its establishment, composition, rules, jurisdiction and an analysis of the Tribunal as a court or tribunal. In looking at the establishment it was simply stated that the Lands Tribunal was established by the 1995 Lands Act, particularly section 20 (1). The Lands Tribunal is therefore a statutory tribunal created as part of the adjudicatory machinery by Parliament. The composition of the Lands Tribunal one may conclude is straightforward and aims, just as most tribunals do, at having a composition of experts in the field concerned in order that matters are effectively disposed of. The rules of the Lands Tribunal centre on the fact that the sole purpose of the Lands Tribunal is to do substantial justice to the parties to a case. Most of the rules render the Lands Tribunal an informal institution with simplistic procedure fit for the lay man. A discussion of the jurisdiction of the Lands Tribunal followed, one can conclude that this has greatly rendered the Lands Tribunal irrelevant. It was shown that the decisions of the Supreme Court have limited further the jurisdiction of the Tribunal. Lastly, a discussion of the Lands Tribunal as a court or a tribunal followed.
4.1 EVALUATION OF RESEARCH OBJECTIVES

The main objective of this paper was to establish whether the Lands Tribunal is relevant in resolving land disputes. It is against this background that the paper investigated:

I. The rationale behind the establishment of the Lands Tribunal

This paper has clearly discussed the rationale behind the establishment of the Lands Tribunal. The coming of the new government in 1990 presented a situation where the then land dispute resolution mechanisms were ineffective, for example, party officials. The courts had become backlogged with cases and there was need for an institution to which people could appeal the decisions of the persons on authority such as the President. There was need for an institution which would dispense of cases on land quickly and cheaply, hence the establishment of the Lands Tribunal in the Lands Act 1995.

II. The intended purpose of the Lands Tribunal

It was established in Chapter three that the intended purpose of the Lands Tribunal was to adjudicate on land matters arising from the Lands Act. Whether this was the intention of the legislators is not clear, as in actuality the intended purpose greatly limits the jurisdiction of the Lands Tribunal on land matters. It is a wonder why it was not intended to adjudicate upon land matters whether arising from the Lands Act or not. A look at the possible cases that the Lands Tribunal can adjudicate upon reveals a limited nature of cases.
III. The jurisdiction of the Lands Tribunal

The jurisdiction of the Lands Tribunal was discussed in depth. The legal framework of the Lands Tribunal is provided for by sections 15 and 22 of the Lands Act. However, this paper has clearly shown that in addition to the description of the jurisdiction of the Lands tribunal by the above sections, the Supreme Court has defined the jurisdiction of the Lands Tribunal through judgments and has limited it in addition to cases arising from the Lands Act to cases where no certificate of title is involved. This has greatly undermined the Lands Tribunal and its relevance in the resolution of land disputes.

IV. The status of the Lands Tribunal as a tribunal or a court

A discussion of the above reveals that the Lands Tribunal stands as an exception to the structure of tribunals. It is indeed established as a tribunal, however, in practice it operates as a court. For example, appeals from the Lands Tribunal lie with the Supreme Court. As has been shown this has led to a lot of anomalies which the Supreme Court sought to cure through its decisions.

V. The status of the Lands Tribunal vis-à-vis the High Court and other institutions established to resolve land disputes

This paper has established that although the Lands Tribunal is central in the resolution of land disputes it is not the only institution mandated to resolve lands disputes. As has been discussed the Lands Tribunal may only adjudicate on matters arising from the Lands Act. This means that it may not adjudicate upon
matters arising from the Housing (Statutory and Improvement) Areas Act. Those that are aggrieved and reside in Statutory and Improvement areas may go to the Subordinate courts for determination. The Subordinate Court also may hear a land dispute where both consent to having their cause heard by the subordinate court. The High Court has the jurisdiction to hear appeals from the decision of the Registrar of Lands and Deeds and is the only court that may order cancellation of certificate of title. Lastly, the Registrar has power to determine issues between parties aggrieved. The relation of the Lands Tribunal as it stands vis-à-vis the High Court can be said that the High Court has no jurisdiction to hear appeals from the Lands Tribunal. Whether this makes the Lands Tribunal of same standing as the High Court is uncertain but what must be borne in mind is that tribunals are inherently lower in rank than Courts.

4.2 GENERAL CONCLUSION

This paper has clearly investigated the relevance of the Lands Tribunal in the resolution of land disputes through scientific research. It can be therefore concluded that while the various decisions of the Court have seemingly undermined the Lands Tribunal, it still remains central in the resolution of land disputes and recommendations for its improvement should be made. It is clear from the history of Zambia’s land tenure system that there was a need for the Lands Tribunal, changes however ought to be made to its structure and establishment in order that it may be efficient.
4.3 RECOMMENDATIONS

The most cardinal recommendation is that the jurisdiction of the Lands Tribunal ought to be increased as its jurisdiction is a great obstacle.

1. The Lands Tribunal should be able to adjudicate not only on matters arising from the Lands Act but on all land issues.

2. The Tribunal should be given jurisdiction to hear matters arising from the Statutory (Housing and Improvement) Areas Act.

3. The Lands Tribunal should be established by the Constitution and given exclusive jurisdiction in matters pertaining to land just as was done with the Industrial Relations Court.

4. The Lands Tribunal should have the authority to order cancellation of title and it may exercise this authority concurrently with the High Court.

5. The Lands Tribunal should be decentralized in order that it may be easily accessed by people around Zambia.
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