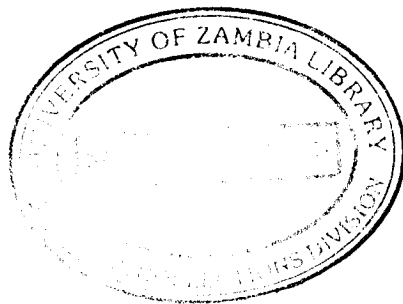


# THE UNIVERSITY OF ZAMBIA

## SCHOOL OF LAW

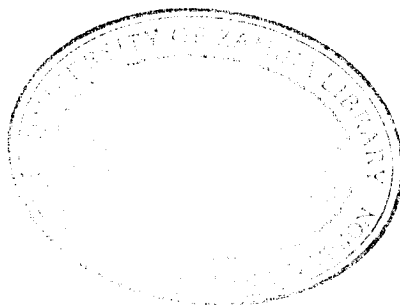


SPR  
LAW  
No. /  
2015  
/

THE ASSESSMENT AND IMPACT OF THE LANDS TRIBUNAL IN  
RESOLVING LAND DISPUTES UNDER THE NEW LEGISLATIVE  
FRAMEWORK.

By **Muyunda Maimbolwa Gloria**

THE ASSESSMENT AND IMPACT OF THE LANDS TRIBUNAL IN  
RESOLVING LAND DISPUTES UNDER THE NEW LEGISLATIVE  
FRAMEWORK



Gloria Maimbolwa Muyunda

Computer Number: 26013240

A Dissertation submitted to the University of Zambia in partial fulfilment of the Requirements for the award of the Degree of Bachelor of Law (LLB) May 2012.

THE UNIVERSITY OF ZAMBIA

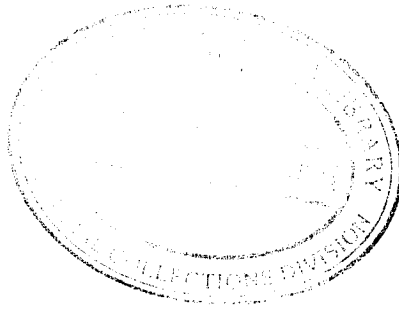
LUSAKA

(2012)

## DECLARATION

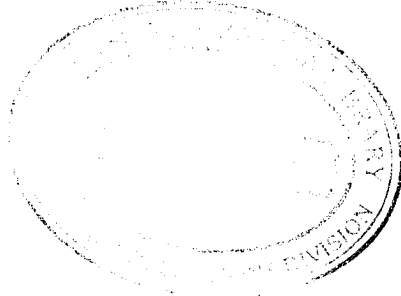
I Gloria Maimbolwa Muyunda do hereby declare that this dissertation represents my own original work, and it has not previously been submitted for a degree at the University of Zambia or another University.

Sign: of. .....



## RECOMMENDATION FOR EXAMINATION

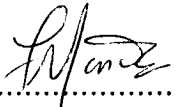
I FATIMA MANDHU recommend that the Obligatory Essay prepared under my supervision by Gloria Maimbolwa Muyunda of Student Number 26013240 entitled:



THE ASSESSMENT AND IMPACT OF THE LANDS TRIBUNAL IN RESOLVING LAND DISPUTES UNDER THE NEW LEGISLATIVE FRAMEWORK

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements pertaining to the format as laid down in the requirements governing Obligatory Essays

Ms Fatima Mandhu

Sign: 

Date: 11<sup>th</sup> MAY 2012

## **DEDICATION**

To my late grandmother for making me what I am, I will be forever indebted. To my son, you are the reason I do not give up.

## ABSTRACT

The Lands Tribunal was set up with the aim of creating a forum through which land-related disputes could be disposed of in a quick, flexible and cost effective manner. However, its functions were greatly undermined by jurisdictional restrictions imposed by the Lands Act as well as the various decisions of the Supreme Court. This extremely narrowed the number of cases the tribunal could deal with to an extent that it was almost rendered defunct. In view of the foregoing, the Lands Tribunal Act was enacted. This Act seeks to extend the jurisdiction of the Lands Tribunal. This dissertation seeks to make an assessment as to whether the jurisdiction of the Lands Tribunal under the Lands Tribunal Act has been extended and whether it has had any impact in resolving land disputes.

A qualitative study has been used in this research. It has invoked desk research based mostly on secondary data which included, *inter alia*, Acts of Parliament, statutory instruments, cases law, parliamentary debates and parliamentary committee reports. and case law. It also involved interviews with the Registrar of the Lands Tribunal and litigants who appeared before the Tribunal.

This study revealed that the jurisdiction of the Tribunal has indeed been extended in that the Tribunal is now able to hear and determine land disputes which are on title, disputes under customary land as well as those under site and service schemes. However, the Lands Tribunal Act took over a year to become operational after it was enacted and in the meantime there has been no continuity in the operations of the Tribunal. Secondly, as at the time of this study, members of the Tribunal had not yet been appointed. Invariably, the Act confers a lot of discretionary powers on the Minister in so far as the making of such appointments is concerned; as a result, external control is difficult. Consequently, the Tribunal is completely non-functional and as such has had a negative impact in resolving disputes under the new legislative framework, in that it is not available for resolution of land disputes.

Several recommendations have been made among them that members of the Tribunal should be employed on a permanent basis in order to allow for continuity and total dedication. There should also be provision for ad hoc arbitration to deal with land disputes while waiting for the Tribunal to become operational.

## **ACKNOWLEDGEMENTS**

Where do I begin? I feel like my life up to this point, owes so many people who in their own small way, have contributed to what has culminated into this paper.

My husband, for making it extra hard for me during this journey, however, in a way I have come to comprehend that that was your way of loving and supporting me.

My supervisor, Ms. Fatima Mandhu, for being patient, tolerant and guiding me throughout this period. For always being available when I needed assistance. I take the blame for all the errors in this work. For any glory I may receive, I gladly hand to you the lion's share.

My friends, too numerous to list, I owe to you more than I can express. Though we may go vast distances from each other, may the story of friends forever be ours.

All these special people mentioned and those not mentioned, but locked in my heart nonetheless, this dissertation and the degree it unlocks is as much yours as it is mine.

**STATUTES**

The Constitution of Zambia, Cap 1 of the Laws of Zambia

The High Court Act, Cap 27 of the Laws of Zambia

The Housing (Statutory and Improvement Areas) Act, Cap 194 of the Laws of Zambia

The Lands Act, Cap 184 of the Laws of Zambia

The Lands and Deeds Registry Act Cap 185 of the Laws of Zambia

The Land (Conversion of Titles) Act of 1975 (Repealed)

The Lands Tribunal Act No 39 of 2010

The Local Court Act, Cap 29 of the Laws of Zambia

The Subordinate Courts Act, Cap 28 of the Laws of Zambia

The Northern Rhodesia (Crown land and Native Reserves) Order-in-council of 1928

The Northern Rhodesia (Trust Land) Order-in-Council of 1947

Statutory Instrument No. 140 of 2011

## CASES

Adetayo Oduyeni and Two Others v Atlantic Investments Ltd SCZ Appeal No. 130 of 2000.

Adetayo Oduyeni and Two Others v Atlantic Investments Ltd SCZ Appeal No. 20 of 2001.

Attorney-General and Another v Frazer (2001) Z.R. 87 SC

Chibwe v Chibwe SCZ No.38 of 2000

Chikuta v Chipata Rural Council (1974) Z.R 241

Diocese of Monze v Mazabuka District Council and 3 Others SCZ Judgment No. 16 of 2005-  
Appeal No. 115 2002

Goswami v The Commissioner of Lands (2001) ZR 31

Guaranty Trust Company of New York v Hannay & Company [1914-15] All E.R 24

Jammu Forest Co v State of Jammu and Kashmir, AIR [1968], J&K 86

Miyanda v the High Court (1984) Z.R 62

Mwangela v Nsokoshi and Another SCZ Judgment SCZ Judgment No 29 of 2005

New Plast Industries v The Commissioner of Lands and Attorney-General (2001) ZR 51

Roselyn Chibuno v Choma District Council LAT/17/2007

Siulapwa v Namusika (1985) Z.R 21

The People v The Registrar of the University of Zambia Ex Parte Chitalu Gozo Lumbwe,  
SCZ/8/40/1997

Tineneji Daka v Raymond Handawo LAT/15/99

William Charles Ernest Holman v Zambia National Commercial Bank Limited LAT/79/2000

Zambia National Holdings and UNIP v the Attorney General Selected Judgment No 3 of 1994

## TABLE OF CONTENTS

<b>CONTENTS</b>	<b>PAGE</b>
Declaration.....	iii
Recommendation for Examination.....	iv
Dedication.....	v
Abstract.....	vi
Acknowledgements.....	vii
Statutes.....	viii
Cases.....	ix
Table of Contents.....	x
<b>CHAPTER 1</b>	
<b>GENERAL INTRODUCTION TO THE RESEARCH</b>	
1.0 Introduction.....	1
1.1 Background to this Study.....	2
1.1.0 Brief History of the Dispute Resolution Mechanism in Zambia.....	4
1.2 Operational Definitions of terms.....	8
1.3 Statement of the Problem.....	10
1.4 Objectives of the Study.....	11
1.5 Research Questions.....	11
1.6 Significance of Study.....	12
1.7 Research Methodology.....	12
1.8 Chapter Content.....	13

CHAPTER 2

**THE LANDS TRIBUNAL IN ZAMBIA**

2.0 Introduction.....15

2.1 Establishment..... 15

2.2 Challenges.....17

2.2.0 Jurisdiction .....17

2.2.1 Multiple Land Disputes Resolution Channels.....22

2.2.2 The High Court for Zambia and its Powers to Hear Land Matters.....23

2.2.3 The Subordinate Court’s Role in hearing Land Disputes.....24

2.2.4 The Local Court’s Jurisdiction on Customary Land Issues.....24

2.2.5 The Quasi-Judicial Function of the Registrar of the Lands and Deeds Department .....25

2.2.6 Difficulties in Constituting a Quorum.....26

2.3 Conclusion.....27

CHAPTER 3

**THE LANDS TRIBUNAL ACT**

3.0 Introduction.....28

3.1 Salient features of the Act.....28

3.1.0 Short Title and Commencement .....28

3.1.1 Continuation of the Tribunal.....29

3.1.2 Jurisdiction of the Tribunal .....31

3.1.3 Composition of the Tribunal .....34

3.1.4 Tenure of Office and Vacancies.....35

3.1.5 Registrar of Tribunal.....35

3.1.6 Application to Tribunal .....	35
3.1.7 Proceedings of the Tribunal.....	36
3.1.8 Powers of the Tribunal with Respect to Proceedings.....	37
3.1.9 Judgments of Tribunal.....	37
3.1.10 Publication of Judgment.....	38
3.1.11 Frivolous and vexatious Proceedings.....	38
3.1.12 Immunity of Members and Staff of Tribunal.....	38
3.1.13 Appeal to High Court.....	39
3.1.14 Rules.....	39
3.1.15 Offences .....	40
3.2 Conclusion .....	41
 CHAPTER 4	
<b>RECOMMENDATIONS AND CONCLUSION</b>	
4.0 Introduction.....	42
4.1. Recommendations.....	42
4.1.0 Operations of the Tribunal .....	42
4.1.1 Jurisdiction .....	43
4.1.2 Appointment of Members.....	43
4.1.3 Duties of the Registrar .....	44
4.1.4 Declaration of Interest .....	45
4.1.5 Delivery of Judgments .....	45
4.1.6 Rules of Evidence .....	46
4.1.7 General Recommendations .....	46

4.2 Conclusion.....	46
4.2.0 Rationale for Establishing the Tribunal.....	46
4.2.1 Challenges Faced by the Tribunal.....	47
4.2.2 Purposes of Enacting the Lands Tribunal Act.....	48
4.2.3 Impact of the Lands Tribunal in Resolving Land Disputes.....	49
BIBLIOGRAPHY.....	51

# **CHAPTER ONE**

## **BACKGROUND**

### **1.0. INTRODUCTION**

Land is a very important resource and forms the basis of all human survival in terms of social and economic advancement in Zambia. Land is a productive asset. It is a very durable and therefore, capable of providing a huge source of income for many people. Thus, it is imperative that there exists a land tenure system that will ensure that rights and interests in land are fully protected. From time immemorial, disputes relating to land have always arisen and different mechanisms of resolving these disputes have devolved. With the urge of wanting land disputes to be adjudicated upon in a cheap and fast way, the Lands Tribunal in Zambia was established under the Lands Act<sup>1</sup> and was expected to invariably attain this goal. The establishment of the Lands Tribunal was a new innovation in so far as settlement of land disputes was concerned in Zambia.

A tribunal is perceived as machinery of justice which is able to adjudicate upon a specific matter by a panel of people with the necessary expertise in land matters. The Lands Tribunal having been established in 1995<sup>2</sup>, was intended to be a way in which land related disputes could be disposed of in a quick, flexible and cost effective manner by a group of experts on this subject.

However, despite the good intentions behind its establishment, the Lands Tribunal did not perform according to its expectations. To begin with, the jurisdiction of the tribunal was confined

---

<sup>1</sup>The Lands Act, Cap 184 of the Laws of Zambia, s 20

<sup>2</sup>The Lands Act, Cap 184 of the Laws of Zambia, s 20

only to land disputes under the Lands Act<sup>3</sup>, this meant that it could not hear issues of land *inter alia* under customary law, the Land and Deeds Registry Act<sup>4</sup> and under the Housing Act<sup>5</sup>. Further, the Lands Tribunal was rendered almost non-functional following the Supreme Court's interpretation of the Tribunal's legal framework in most cases that were presented before it. This can be evidenced from the case of *Diocese of Monze v Mazabuka District Council*<sup>6</sup>, where the court stated that the tribunal had no jurisdiction to hear any matter in which the land in issue had title deeds. This decision made the Tribunal to be almost irrelevant in resolving land disputes since customary land was excluded from the onset and statutory tenure was judiciary excluded by case law. By virtue of the restriction imposed by the Lands Act with regards to the various legislation related to the Tribunals activities as well as the interpretation of its jurisdiction by the Supreme Court in most cases such as the one cited above, the tribunal did not have jurisdiction over land disputes in customary land, housing and statutory improvement areas and over titled land.

Thus, in the spirit of wanting to strengthen the operations of the Tribunal, the Lands Tribunal Act<sup>7</sup> was enacted, which increased the powers and functions of the Tribunal under its own piece of legislation. It is against this background that this study seeks to make an assessment of the impact of the Lands Tribunal in resolving land disputes under the new legal framework.

## **1.1.BACK GROUND TO THIS STUDY**

Zambia's quest for a land policy that would spearhead land developments has taken various forms both in the pre and post-independence eras. The different political ideologies pursued by

---

<sup>3</sup>The Lands Act, Cap 184

<sup>4</sup>The Lands and Deeds Registry Act Cap 185 of the Laws of Zambia

<sup>5</sup> The Housing (Statutory and Improvement Areas) Act, Cap 194 of the Laws of Zambia

<sup>6</sup> SCZ Judgment No. 16, Appeal No 115 of 2002

<sup>7</sup>No. 39 of 2010

each government are reflected in the different policies championed by every reigning government<sup>8</sup>. During the advent of colonialism, in the then North Eastern and North Western Rhodesia, a new system of land tenure was superimposed on the existing indigenous customary land holding system, thereby creating a dual land holding system.<sup>9</sup> 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 Northern Rhodesia (Crown land and Native Reserves)<sup>10</sup> and the Northern Rhodesia (Trust Land)<sup>11</sup> respectively. According to *Mvunga*<sup>12</sup>, the creation of various categories of land was influenced by many factors hinging on socio-economic interests. Interests in crown land were subject to English land law whereas, the interests in both Reserves and Trust land were primarily governed by customary law.

At independence, the dual system of land tenure was inherited by the new government of 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 hand. Since freeholds entailed loss of control over the land so alienated, leaseholds were much more preferred. In order to realize this, the government enacted the 1975 Land (Conversion of Titles) Act<sup>13</sup>, which *inter alia* abolished the freehold tenure by converting it to statutory leasehold of 99 years. It also provided for the abolition of sale or transfer of bare land for value. This Act was highly criticized for not providing 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

---

<sup>8</sup> Moses Kaunda, *Land Policy in Zambia: Evolution, Critique and Prognosis*. Unpublished Ph.D thesis 1993. P 6

<sup>9</sup> K Mukata *Land Law Policy in Zambia. Analysis of the Post Independence Land Law and Policy in Zambia (1964-1995)*. (1994 LLB thesis University of Zambia)<sup>12</sup>

<sup>10</sup> Order-in-council of 1928

<sup>11</sup> Order-in-Council of 1947

<sup>12</sup> Patrick M Mvunga. *The Colonial Foundations of Zambia's Land Tenure System*. (Lusaka Kenneth Kaunda Foundation 1980)<sup>1</sup>

<sup>13</sup> Land (Conversion of Titles) Act of 1975 (repealed)

Act which mainly pertained to the alienation of land to non-Zambians. The issue of the appellant mechanism still remained unresolved.

The ushering in of the new government of the Movement of Multiparty Democracy in 1990 meant another change in the land policies. The new government pledged to liberalize the economy as well as the land tenure system by 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 *inter alia* the continuation of freehold and leasehold tenure, to provide statutory recognition and continuation of customary tenure, to provide for conversion of customary tenure to leasehold tenure and the establishment of the Lands Tribunal.

### **1.1.0 Brief History of the Dispute Resolution Mechanisms in Zambia**

Moses *Kaunda*<sup>14</sup>, 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 political conditions. Prior to colonization, land disputes were settled by traditional leaders, in the colonial era, by the dual legal system that was established. The 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. The institution of the chiefs continued to address land disputes within chiefdoms while formal courts had jurisdiction over state land.

The one party state political structure added some dimensions to land dispute resolution particularly in urban areas. In that, in addition to the courts and the traditional settlement of disputes, the political party structure also offered arbitration in land dispute resolutions.

---

<sup>14</sup>Moses, Kaunda. *Land Policy in Zambia, Evolution, Critique and Prognosis*. (Unpublished Ph.D thesis, Kings College Cambridge (1993)) 8

Arbitration by political party officials assumed very popular proportions<sup>15</sup>. Political party officials were often selected as a tool for dispute resolution on the basis of being accepted leaders. Eventually, this became standard practice. Party officials were also responsible for the apportionment and allocation of plots and hence they were regarded as appropriate people through which land disputes could be settled. They also witnessed such transactions as purchasing and sale of houses. This created a filtering system, as a result, a good number of disputes were settled out of court. The most plausible reasons for this trend were that firstly, it was cheaper, it did not create animosity and it preserved peoples' reputations<sup>16</sup>. To a large extent this lessened the need to go to court for litigation. Parties to a land dispute would first wish to have their grievance addressed by an appropriate party official or traditional leader as a starting point. It was only in the event of failure to settle the dispute that the matter was referred to the formal court<sup>17</sup>.

*Siame*<sup>18</sup> observes that the advent of the Third Republic in 1991 ushered in a multi party political structure. This followed that disputes could not be settled through a political party structure. This is because no single political party could be trusted with this responsibility, thus, only the chiefs and the courts could be perceived as the only non-political and therefore impartial and fair institutions for land dispute resolution. There was a clear need to review legislation to ensure the existence of effective legal institutions where land disputes could be resolved expeditiously. In

---

<sup>15</sup> Moses Kaunda, Land Policy in Zambia, Evolution, Critique and Prognosis. 8

<sup>16</sup> Moses, Kaunda, Land Policy in Zambia, Evolution, Critique and Prognosis. 6

<sup>17</sup> Moses, Kaunda, Land Policy in Zambia, Evolution, Critique and Prognosis. 6

<sup>18</sup> L Siame, "*The Lands Tribunal*", A Paper Presented to the Forum For Copperbelt University Student Surveyors, (Kitwe Unpublished(2000)) 6

1995, the Lands Act came into being and the lands Tribunal was established under an Act of Parliament<sup>19</sup>. Subsequently, the Tribunal was established under its own independent Act.

*Matibini*,<sup>20</sup> has meticulously laid down a number of cases that have been decided upon by the tribunal thereby exposing deficiencies in the way the Supreme Court has interpreted the Tribunal's jurisdiction. In *Mwangela v N Nsokoshi and Another*<sup>21</sup>, 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 a circular released by government on the purchase of houses. In the considered view of the Supreme Court in reading Sections 15 and 22 of the Lands Act, stated that the Tribunal's jurisdiction was limited to settlement of disputes under the Act. The court further stated that the Lands Tribunal was not an alternative forum to the High Court where parties could go to, even for the issuance of prerogative writs like mandamus.

It is not surprising that the Land Tribunal in the case of *William Charles Ernest Holman v Zambia National Commercial Bank Limited*<sup>22</sup>, refused to entertain a dispute arising out of the sale of a company house. 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 applicant. However, the Supreme Court has made some decisions on the jurisdiction of the Tribunal which do not 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 sections of the Act. This meant that the Tribunal did not have jurisdiction on land located in the Statutory Housing and Improvement areas which

---

<sup>19</sup> Lands Act, Cap 184 No 29 of 1995

<sup>20</sup> Patrick, Matibini. *The Post independence system of Land Holding*. Zambia Daily Mail, 11<sup>th</sup> October 1998

<sup>21</sup> SCZ Judgment No 29 of 2005

<sup>22</sup> LAT/79/2000

are governed by the Statutory (Housing and Improvement) Areas Act.<sup>23</sup> It is no doubt that disputes that arise under these statutes need quick and cheap resolution and the Lands Tribunal would have been the ideal forum to achieve this goal.

In addition, the Supreme Court was very categorical with regards the Tribunal's powers to order cancellation of Certificate of Title. In the case of *Attorney-General, Ministry of Works and Supply v Frazer and Another*<sup>24</sup>, 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 on a number of cases emanating from the Lands Tribunal. One such case was *Oduyeni and Two Others v Atlantic Investments Ltd*<sup>25</sup>, 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, the jurisdiction to order cancellation of Certificate of Title lies with the High Court and not the Tribunal.

Notwithstanding the above decisions the Supreme Court in *Diocese of Monze v Mazabuka District*<sup>26</sup> further limited the jurisdiction of the Tribunal by Stating that it should not hear any case in which the land in issue had title deeds. These cases have lead to the Tribunal being defunct in that, according to *Mudenda*<sup>27</sup>, it even stopped accepting any complaints in which a Certificate of title was issued. The Tribunal went further by stopping to adjudicate on cases involving title deeds that were already in the process of being heard. As a result, the Tribunal was rendered defunct by limitations placed on its jurisdiction.

---

<sup>23</sup> Cap 194 of the Laws of Zambia

<sup>24</sup> (2001) Z.R 87

<sup>25</sup> Appeal No 20 of 2001

<sup>26</sup> SCZ Judgment No16 of 2005-Appeal No 115 of 2002

<sup>27</sup> Fredrick Mudenda, *Land Law in Zambia: Cases and Materials*.(UNZA press.2007)450

Thus, there was need to strengthen the Tribunal in order to enhance its effectiveness in its operations. The *Mungomba Constitutional Review Commission*<sup>28</sup> recommended that the jurisdiction of the Lands Tribunal should be widened to cover all land disputes under the Lands Act and those arising under the Housing Statutory and Improvement Areas Act and that the lands Tribunal should be decentralized.

On the 16<sup>th</sup> of September, 2010, the Lands Tribunal Bill<sup>29</sup> was presented to Parliament with objects of *inter alia*, continuing the existence of the Lands Tribunal and to provide for its powers and functions under its own piece of legislation. The Bill was adopted and it received the presidential assent on the 14<sup>th</sup> of November, 2010. Under the Lands Tribunal Act, the jurisdiction of the Tribunal has been widened,<sup>30</sup> its appeal procedure lies to the High Court,<sup>31</sup> the composition has been improved by adding a representative from the House of Chiefs and the Law Association of Zambia and its operations have been decentralised by creating a circuit court.

It is therefore, the aim of this study to harness the literature stated above by, making an assessment and impact of the Lands Tribunal under the new legislation and suggesting how the system of resolving land disputes can be made more expeditious.

## **1.2. OPERATIONAL DEFINITION OF TERMS**

Land: In pursuant to section 2 of 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

---

<sup>28</sup> The Interim Report of the Constitution Review Commission 783

<sup>29</sup> N.A.B. 42 2010 p1

<sup>30</sup> Lands Tribunal Act, No 39 of 2010, s 4

<sup>31</sup> Lands Tribunal Act, No 39 of 2010, s 16

mines and minerals Act in respect of any land<sup>32</sup>. From the definition provided in the Land Act it suffices to say that land includes “the surface and all that is above- houses, trees and so on and also all that is below except minerals<sup>33</sup>”. That notwithstanding, land should not be thought of in terms of area alone but also volume, thus, this is best explained by the Latin maxim “*cujus est solum eius est usque ad coelum et usque ad inferos*”, that is, possession of land extends upwards to infinity and downwards to the centre of the earth. From the aforementioned, land includes the minerals and all the other substances below the earth as well as those above the earth’s surface in the air space up to infinity. This paper will apply the definition expulsed by the Lands Act.

**Dispute:** According to the Oxford Advanced Learner’s Dictionary, a dispute is defined as a disagreement. It refers to a clash of preferences. It has been held that if one party asserts a right and the other repudiates the same that is a dispute<sup>34</sup>.

**Resolution:** Means to reach a settlement. It might also mean diffusing or settling a dispute.

**Tribunal:** Is a group of people given authority to settle a particular type of dispute. Tribunals are noted for their openness, expediency, fairness, inexpensive and impartial qualities. According to the Lands Tribunal Act, Tribunal means the Lands Tribunal established under the Lands Act, 1995, shall continue to exist as if established under this Lands Tribunal Act<sup>35</sup>.

**Interest:** According to *Betsi-Enchill*, interests are a bundle of rights vested in a holder of land<sup>36</sup>. The concept of right in its legal context means an interest recognized and protected by a rule of law. It is an interest in respect for which it is a duty and disregard for which it is a wrong. This

---

<sup>32</sup> The Lands Act 1995 Cap 184 of the Laws of Zambia

<sup>33</sup> Carol, Murdoch and Scorfield. *Law for Land Management Studies*. (London, Butterworth and Co Ltd 1981)20

<sup>34</sup> Jammu Forest Co v State of Jammu and Kashmir, AIR [1968], J&K 86

<sup>35</sup> The Lands Tribunal Act No 39 of 2010 s 2 & 3

<sup>36</sup> “Do African systems of Land Tenure Require a Special Technology?” Vol 9 of Journal of African Law 1965

means that people have a duty not to interfere and interference may attract a legal penalty.

Interests in Land may take the form, inter alia of leaseholds, licenses or easements.

**Tenure:** This simply describes how land is held. It has been defined as a legal and contractual or customary arrangement, especially the rules and procedures, governing the rights, obligations and the control of land resources. It is the condition or terms upon which land is held.

**Court:** Can be defined as a duly constituted judicial institution in which the task of identifying enforceable rights is claimed<sup>37</sup>.

### **1.3. STATEMENT OF THE PROBLEM**

The Lands Tribunal was set up with the good intentions, of creating a forum through which land-related disputes could be disposed of in a quick, flexible and cost effective manner. However, its functions were greatly undermined by jurisdictional restrictions imposed by the Lands Act itself as well as the various decisions of the Supreme Court. This extremely narrowed the number of cases the tribunal could deal with to an extent that it was almost rendered defunct. In view of the foregoing, the Lands Tribunal Act<sup>38</sup> was enacted. This Act seeks to extend the jurisdiction of the Lands Tribunal to cover all land disputes falling under customary tenure, housing and improvement areas as well as titled land thereby harmonizing the existing statutes regarding the land dispute resolution mechanism. This study seeks to make an assessment as to whether the extended jurisdiction of the Lands Tribunal under the Lands Tribunal Act has had any impact in resolving land disputes.

---

<sup>37</sup>Patrick Mvunga. *Land Law and Policy in Zambia*. (Lusaka, NECZAM Ltd 1982)6

<sup>38</sup> No.36 of 2010

## **1.4. OBJECTIVE OF THE STUDY**

The main objective of this study is to make an assessment as to whether the Lands Tribunal under New Act<sup>39</sup> will in any way ameliorate the operations of the Tribunal insofar as settling of land related disputes in a quick, flexible and cost effective manner is concerned. Thus, this paper will investigate the following:

1. The intended purpose of the Lands Tribunal
2. The rationale behind the enactment of the new Act
3. Whether the jurisdiction of the Tribunal Under the new Act has been extended
4. What impact the Tribunal has had under the new legislative framework
5. Recommend ways in which the settlement of land related disputes could be improved.

## **1.5. RESEARCH QUESTIONS**

The following questions will be considered:

1. What was the rationale behind establishing the Lands Tribunal?
2. What was the purpose of enacting the Act No 39 of 2010?
3. Has the current provisions under the Act No 39 of 2010 served their intended purpose so far?
4. What is the impact of the Lands Tribunal in resolving disputes under the new legal framework?

---

<sup>39</sup> No.39 of 2010

## **1.6. SIGNIFANCE OF STUDY**

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. It is important, therefore, to have reliable systems of dispute resolutions to enforce the various rights and obligations placed on the parties in an event of land dispute. There is also a need to constantly examine and review the performance of land dispute resolutions to ensure that efficiency and effectiveness are introduced and maintained. The effectiveness of any dispute resolution mechanism depends largely on the following:

1. The ability to dispose of a matter efficiently between the parties
2. Expedience in the delivery of justice
3. Jurisdiction wide enough to allow the institution to adjudicate on a range of matters affecting land
4. Clarity in its establishment and relations vis-à-vis other dispute resolution institutions.

The significance of this research is to assess whether the new Act has in any way improved the operations of the Lands Tribunal insofar as resolving land disputes is concerned and also make relevant recommendations.

## **1.7. RESEARCH METHODOLOGY**

The study is going to be qualitative; it will invoke desk research and field research. It will include primary and secondary data. Primary data will be collected from interviews with key resource personal from the Lands Tribunal such as:

1. The registrar of the Lands Tribunal

2. The Chairperson or deputy of the Tribunal
3. Any other appropriate resource persons

Secondary data will include:

1. Acts of parliament
2. Statutory instruments
3. Law journals
4. Text books
5. Relevant articles unpublished and published
6. Case law analysis
7. Internet

## **1.8. CHAPTER CONTENT**

Chapter 1: will comprise the proposal. It will contain inter alia, the main area of study which in this case is the assessment and impact of the Lands Tribunal in resolving land disputes under the new legal frame work of the Lands Tribunal.

Chapter 2: will consider why the tribunal was set up as a means of settling land disputes and the hurdles that impinged on the realization of its goals.

Chapter 3: This chapter will highlight the salient provisions of the Lands Tribunal Act of 2010 and will consist of the assessment of the current status of the tribunal. With the aid of legal principles, procedures, juristic works, case law and other pieces of legislation which have a bearing on the activities of the Tribunal, an analysis will be made as to what extent the legal framework of the Tribunal has been strengthened.

Chapter 4: will comprise the conclusion. It will contain the outcome of the analysis, that is, its findings. Then recommendations will be provided on every strength or weakness identified and also on what aspects of the New Act need to be either amended or repealed to improve the functions of the Lands Tribunal.

## CHAPTER TWO

### THE LANDS TRIBUNAL IN ZAMBIA

#### **2.0 INTRODUCTION**

The traditional legal response to a dispute between parties has been for a lawyer for one of the parties to initiate the litigation process.<sup>1</sup> During the last few decades, however, increased concern has been expressed by both professionals who are engaged in litigation and the public at large, about judicial systems.<sup>2</sup> Litigation has been criticized for being too slow and costly and as failing to provide a resolution of disputes that is fair and that the parties will respect.<sup>3</sup> Therefore, chapter two seeks to look at the rationale of establishing the Lands Tribunal in Zambia as a mechanism of resolving land disputes and the hurdles that impinged on the realization of its goals.

#### **2.1 ESTABLISHMENT**

The Lands Tribunal was a new innovation of settling land disputes in Zambia introduced by the MMD government after being ushered in to office in 1991. As stated previously, it was established by section 20 (1) of the Lands Act.<sup>4</sup> The rationale for its establishment was basically two-fold: to have a fast tract court that would efficiently dispense land disputes and to have a cost effective land dispute resolution mechanism. The objective of the Lands Tribunal was to achieve speedy and cheap justice which would ultimately lead to the development of the

---

<sup>1</sup> J.M.N Haley, *Alternative Dispute Resolution* (West Publishing Company, 1992) 1

<sup>2</sup> J. Murray, A.S Ray and E. F. Sherman, *Process of Dispute Resolution: The Role of Lawyers 2<sup>nd</sup> Ed* (Foundation Press Incorporation 1996) 1

<sup>3</sup> J Murray, A.S Ray and E. F. Sherman, *Process of Dispute Resolution: The Role of Lawyers. 6*

<sup>4</sup> Cap 184 of the Laws of Zambia of 1995

country.<sup>5</sup> The tribunal was seen to be more flexible than the judicial system as it was not bound by the rules of evidence.<sup>6</sup>

As a result of the realization that taking cases before the High Court can be protracted and expensive which most of the people in Zambia could not afford, it was therefore, felt that a Lands Tribunal which is friendly (as parties do not require a lawyer) should be put in place.<sup>7</sup> A Tribunal where rules are simple and every citizen would have access to the justice system. In the case of *Goswami v The Commissioner of Lands*,<sup>8</sup> it was stated by the Supreme Court that, “the Tribunal is in fact not 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.” Moreover, it was meant to be easily accessible and disputes were expected to quickly resolve by way of summary trials. According to *Mudenda*,<sup>9</sup> the Lands Tribunal was established under the Lands Act to make provision for the dispensation of justice and efficient resolution of disputes as well as a way of reducing the cost of litigation in land matters.

Among the factors that precipitated the creation of the Lands Tribunal was section 13 of the Land (Conversion of Titles) Act.<sup>10</sup> This section provided that; “no person was permitted to subdivide, sell, transfer, assign, sublet, mortgage, charge or in any way manner whatsoever encumber or part with the possession of his land without the prior consent in writing by the President.”

---

<sup>5</sup> The Lands Tribunal Bill, 2010-Second Reading. Parliamentary Debates, (13<sup>th</sup> October, 2010) 1

<sup>6</sup> The Lands Act, Cap 184, s 23(5)

<sup>7</sup> The Lands Tribunal Bill Second Reading Parliamentary Debates. 1

<sup>8</sup> (2001) ZR 31

<sup>9</sup> Fredrick Mudenda, *Land Law in Zambia: Cases and Materials*. (UNZA Press Lusaka 2007) 273

<sup>10</sup> Land (Conversion of Titles) Act of 1975 (Repealed)

This section raised a number of problems; one of them included was that, even the sale of a village hut had to comply with the requirement of obtaining consent.<sup>11</sup> Another problem was that the Act did not have an appellate system, such as an Appeals Tribunal to which aggrieved parties could appeal against decisions of the commissioner of lands whose office had delegated authority to exercise the power of the president in matters pertaining to land. Hence, if a vendor was dissatisfied with the maximum price which the president had determined as a condition for giving his consent, he/she could not appeal against that decision. In practice, in an event of disagreement over the maximum price, the applicants were advised to withdraw their applications and submit fresh ones so that valuation could be repeated.<sup>12</sup> This practice was very inconveniencing and time consuming.

## **2.2 CHALLENGES**

Like any other new innovation, the Lands Tribunal has, over time, been exposed to a number of challenges. The then Minister of Lands, Ms *Lundwe*, when presenting the Lands Tribunal Bill for second reading to parliament<sup>13</sup> summarized its challenges as follows:

1. Limited mandate (jurisdiction)
2. Multiple land dispute resolution channels; and
3. Difficulties associated with constituting a quorum

### **2.2.0 Jurisdiction**

Justice Pickford in *Guaranty Trust Company of New York v Hannay & Company*<sup>14</sup> stated that, in its narrow and strict sense, the “jurisdiction” of a validly constituted court connotes the limits

---

<sup>11</sup> Siulapwa v Namusika (1985) Z.R 21

<sup>12</sup> A. Mulimbwa, *Land Policy and Economic Development in Zambia*. Special Edition, Zambia Law Journal 1998

<sup>13</sup> The Lands Tribunal Bill Second Reading P1

which are imposed on its power to hear and determine issues between persons seeking to avail themselves of its process by reference to:

1. The subject matter of the issue or
2. The person between whom the issue is joined or
3. 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 v the Attorney General*<sup>15</sup>. Similarly in *Miyanda v the High Court*,<sup>16</sup> where the court was faced with the question whether the Supreme Court of Zambia had original jurisdiction to entertain an application for an order of mandamus directed against the High Court. The Supreme Court added on to the definition of jurisdiction by stating 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 of actions or matters of which a particular court has cognizance or the area over which the jurisdiction extends or both.

The newly established Lands Tribunal derived its jurisdiction from the Lands Act<sup>17</sup>. Section 15(1) provided for appeals where one was dissatisfied with the decision of a person in authority. It stated that “any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination.” And subsection (2) of the same section stated that “in this section ‘a person in authority’ means the President, the Minister or the Registrar”.

---

<sup>14</sup> [1914-15] All E.R 24 at 35

<sup>15</sup> Selected Judgment No 3 of 1994

<sup>16</sup> (1984) Z.R 62

<sup>17</sup> The Lands Act, Cap 184 ss.15 & 22

Thus, by this provision, the problem of lack of an appeal procedure created by section 13 of the Land (conversion of Title) Act was remedied.

However, under section 22 of the Lands Act, the Tribunal had its jurisdiction limited only to:

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

This implied that the jurisdiction of the Lands Tribunal was restricted to matters arising only from the Lands Act. This meant that if a particular case did not fall within the ambit of the Lands Act, then that case could not be handled by the Tribunal. For instance, in *Mwangela v Nsokoshi and Another*<sup>18</sup>, 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 a circular released by government on the purchase of houses. In the considered view of the Supreme Court in reading Sections 15 and 22 of the Lands Act, stated that the Tribunal's jurisdiction was limited to 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 these proceedings the appellant was seeking to impugn a Certificate of Title

---

<sup>18</sup> SCZ Judgment No 29 of 2005

issued to the 1st respondent and under the Lands and Deeds Registry Act, only the High Court has jurisdiction to entertain such proceedings. The Supreme Court stated that “although the point was not taken up before us, the Lands Tribunal had no jurisdiction to entertain these proceedings.” As a result, the jurisdiction of the Lands Tribunal to that extent was very limited a consequence that follows is the inefficiency in its operations.

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. This principle was reiterated by the Supreme Court in a number of cases or appeals emanating from the Lands Tribunal. In *Attorney General, Ministry Of Works And Supply v Frazer And Another*,<sup>19</sup> *Sakala, J.S* (as he then was) in delivering the judgment of the Supreme Court observed and commented thus in relation to the powers of the Lands Tribunal to order cancellation of title deeds:-

...The question of the Lands Tribunal’s jurisdiction to cancel Certificates of Title for any reason has already been settled by this court in a number of cases emanating from the Lands Tribunal. One of the recent cases is that of *Adetayo Oduyeni and Two Others v Atlantic Investments Ltd*<sup>20</sup>. Where the appeal in that case was against a decision of the Lands Tribunal ordering that a Certificate of Title deeds be cancelled. We said in that case: Our short answer to the submissions is that the Lands Tribunal has no jurisdiction to order cancellation of Certificate of Title in land matters. In terms of the Lands and Deeds Registry Act<sup>21</sup>, the jurisdiction to order cancellation of Certificate of Title Deeds lies with the High Court and not the Lands Tribunal. The Lands Tribunal can only recommend cancellation. This is what in effect we said in *Mwangela V Nsokoshi and Ndola City Council*. Although the Lands Tribunal was correct in doing substantial Justice, their power is limited to recommending to the Commissioner of Lands as to what to do with a Certificate of Title Deeds in issue and not to order cancellation of the same.<sup>22</sup>

---

<sup>19</sup> (2001) ZR 87 (SC).

<sup>20</sup> SCZ Appeal No. 130 of 2000.

<sup>21</sup> Cap 185 of the Laws of Zambia

<sup>22</sup> (2001) ZR pp 91-92

Furthermore, its credibility and efficacy were greatly undermined by the Supreme Court's decision in cases like the *Diocese of Monze*,<sup>23</sup> where the court stated that the Tribunal should not entertain any case in which the land in question was on title.

In Zambia, most of the people reside on customary land which forms over 90 per cent of the country's land. Thus, the jurisdiction of the Lands Tribunal being limited to matters arising only from the Lands Act meant that the Tribunal had no power hear or determine land disputes regarding customary land. This resulted in the majority of people who had land disputes being denied an opportunity to have their disputes resolved in an efficient and cost effective manner.

Equally, a large proportion of Zambia's population lives in housing statutory and improvement areas such as site and service schemes. Unfortunately, the Housing (statutory and Improvement Areas) Act, which governs land in these areas expressly excluded the Lands Tribunal from exercising jurisdiction in such areas. This Act states that "any person aggrieved by any order of the Registrar may appeal to the court within thirty days of the receipt of a copy of any such order."<sup>24</sup> Further, section 3 of the same Act states that "court" means any Subordinate Court. These two provisions when read together implied that a person having a dispute with a piece of land situated in a site and service scheme could have it resolved in the Subordinate Court and not the Lands Tribunal. This, consequently, narrowed the jurisdiction of the Tribunal even further, thus disadvantaging a large proportion of the population from the benefits of accessing a Tribunal to resolve land disputes.

---

<sup>23</sup> *Diocese of Monze v Mazabuka District Council and 3 Others* SCZ Judgment No. 16 of 2005-Appeal No. 115 2002

<sup>24</sup> The Housing (Statutory and Improvement) Areas Act, Cap 194 s33(3) (as amended by Act No 13 of 1994)

### **2.2.1 Multiple Land Dispute Resolution Channels**

Like stated in the preceding chapter, courts of law have traditionally handled land disputes from the time the courts system was introduced by the colonialists. Land disputes can be determined through various channels such as the High Courts, Subordinate Courts and the Local Courts in addition to the Lands Tribunal. According to *Matibini*,<sup>25</sup> “it is important to re-call the *raison d’etre* of Tribunals. Tribunals are usually preferred to ordinary courts because its members have specialized knowledge of the subject matter, a tribunal may be better at finding facts, applying flexible standards and exercising discretionary powers. They are usually cheaper, more accessible and even more expeditious than the courts of law.”

However, while tribunals maybe preferred to courts, they are inherently lower in hierarchy and in jurisdiction than the courts, particularly the High Court. For example, decisions of Tribunals like the Zambia Revenue Appeals Tribunal lie to the High Court. The Lands Tribunal did not fit perfectly into the above description especially that the High Court had no jurisdiction to entertain any appeals from the decision of the Tribunal<sup>26</sup>. An appeal from the Lands Tribunal used to lay in the Supreme Court, to this extent the Tribunal was hardly distinguishable from a court at law. This created an anomaly in that the Lands Tribunal was placed at the same level with the High Court as is the case with the Industrial Relation Court as a result, a person who took a matter before the Tribunal was as good as the one who had taken it to the High Court since both appeals lay with the Supreme Court.

### **2.2.2 The High Court for Zambia and its Power to hear Land Matters**

---

<sup>25</sup> “*The Post Independence system of Land Holding in Zambia.*” Zambia Daily Mail, 11<sup>th</sup> October 1998

<sup>26</sup> Lands Act, Cap 184 s29

The Zambia Constitution provides that<sup>27</sup>:

There shall be a High Court for the Republic which shall have (except as to the proceedings in which the Industrial and Labour Relations Court has exclusive jurisdiction under the (Industrial and Labour 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.

Since Land disputes are classified as civil matters, it would therefore mean that, the High Court has original and unlimited jurisdiction in land dispute resolution. In terms of cancellation of Certificate of Title, the only body that had legal authority to order the Chief Registrar of Lands and Deeds to rectify the register and cancel a Certificate of Title was the High Court<sup>28</sup>. The statute that governs the issuance and registration of title is the Lands and Deeds Registry Act<sup>29</sup>. Under this Act all disputes and matters arising therefrom, were to be determined by the High Court. This was in pursuant to section 2 of this Act which provided that, “in the Act, unless the context otherwise requires “court” means the High Court.

Thus, in *Mwangela v N Nsokoshi and Another*<sup>30</sup>, the Supreme Court stated that the Lands Tribunal was not an alternative forum to the High Court where parties could go to, even for the issuance of prerogative writs like mandamus. Furthermore, in *Diocese of Monze v Mazabuka District Council*,<sup>31</sup> the Supreme Court stated that the tribunal had no jurisdiction to hear any matter in which the land in issue had title deeds. The effect of these provisions and this case law was that the High Court was therefore, adequately equipped to handle all land matters in the Republic. However, the Tribunal’s jurisdiction was blocked and it adversely affected the number of cases that the Tribunal could hear leading to failure for it to attain its objectives.

---

<sup>27</sup> The Constitution of Zambia, Cap 1 Art 94 (1)

<sup>28</sup> Attorney-General and Another v Frazer (2001) Z.R. 87

<sup>29</sup> The Lands and Deeds Cap 185

<sup>30</sup> SCZ Judgment No 29 of 2005

<sup>31</sup> SCZ Judgment No. 16, Appeal No 115 of 2002

### **2.2.3 The Subordinate Court's role in Hearing Land Disputes**

The jurisdiction of the Subordinate Courts in land matters is expressly defined under the Subordinate Courts Act<sup>32</sup>. Section 23 of the same Act provides that:

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 here 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.

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 Housing (Statutory and Improvement Areas) Act, a statute that governs issuance and registration of title in the statutory and improvement areas mandates the Subordinate Courts to determine all disputes and matters arising from these areas<sup>33</sup>. This is pursuant to the interpretation of "court" in this Act which states that, "in this Act, unless the context requires "court" means the Subordinate Court<sup>34</sup>." In effect what this meant that disputes from site and service schemes cannot be handled by the Lands Tribunal and yet a very large proportion of the Zambian people reside in these areas. Consequently, these people are being denied access to the Tribunal to settle any land dispute.

### **2.2.4 The Local Court's Jurisdiction on Customary Land Issues**

The Local Courts have been vested with the jurisdiction to hear disputes regarding customary land. The Local Court Act provides that, the Local Court shall administer the African customary law applicable to any matter before it in so far as such law is not repugnant to natural justice<sup>35</sup>. By virtue of this provision, the Local Courts are vested with the mandate to determine disputes

---

<sup>32</sup> Cap 28 of the Laws of Zambia

<sup>33</sup> Housing (statutory and Improvement) Areas Act, Cap 194 ss 3 &33 (3)

<sup>34</sup> Housing Act, Cap 194 s 3

<sup>35</sup> The Local Court Act Cap 29 s12 (1) (a)

involving customary land. For instance, in the case of *Chibwe v Chibwe*<sup>36</sup> in a divorce petition, the Local Court set off to consider the adjustment of property which included land (houses) upon dissolution of marriage under *Ushi* customary law.

### **2.2.5 The Quasi-Judicial Function of the Registrar of Lands and Deeds Department**

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<sup>37</sup> provides that:

Where any person alleges that any error or omission has been made in a Register or that any entry or omission therein 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 background that “any person aggrieved by any entry or omission made in a Register after application to the registrar may apply to the High Court for an order that the Register may be rectified<sup>38</sup>”. The legislators of this Act took cognizance that disputes were likely to arise from the 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<sup>39</sup>.

---

<sup>36</sup> SCZ No.38 of 2000

<sup>37</sup> The Lands and Deeds Registry Act. Cap 185, s11

<sup>38</sup> The Land and Deeds Registry Act, Cap 185 s87

<sup>39</sup> The Lands and Deeds Registry Act, Cap 185 s89

In the case of *New Plast Industries v The Commissioner of Lands and Attorney-General*<sup>40</sup> in this judgment 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. Similarly, this court in *Chikuta v Chipata Rural Council*<sup>41</sup> held 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 declaration. The same is applicable here. Thus, where any matter under the Lands and Deeds Registry Act should be 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.

These multiple options for land dispute resolution posed further challenges of overlapping statutory provisions relating to the affected statutes such as the Lands Act, the Lands and Deeds Registry Act, the Subordinate Courts Act and the Local Courts Act as has been cited above.

**2.3.6 DIFFICULTIES OF CONSTITUTING A QUORUM**

In terms of the proceedings of the tribunal the Chairman or the Deputy Chairman presides over the sittings of the tribunal.<sup>42</sup> The quorum consists of five members, including the Chairman or the Deputy Chairman.<sup>43</sup> A member of the tribunal or an assessor shall not sit at a hearing if he has any interest direct or indirect, personal or pecuniary in any matter before the tribunal.<sup>44</sup> As a result, it was difficult to constitute the required number of members for the committee to sit. For instance, the fact that members of the Tribunal were employed on a part-time basis<sup>45</sup>; their time

---

<sup>40</sup> (2001) ZR 51  
<sup>41</sup> (1974) Z.R 241  
<sup>42</sup> The Lands Act, Cap 184 s 23(1).  
<sup>43</sup> The Lands Act, Cap 184 s 23(2).  
<sup>44</sup> The Lands Act Cap 184 s 23(4).  
<sup>45</sup> Report of the Committee on Delegated Legislation on the Lands Tribunal Bill N.A.B. (No. 42 of 2010) 5

had to be divided between their full time jobs and their commitments to the Tribunal. As a consequence, they would not always be available when the Tribunal was scheduled to sit.

Another problem was that the number of members required to form a quorum, that is five, was too large<sup>46</sup> and as such it was difficult to meet the required number most of the time. The result was that cases before the Tribunal could not commence as per the schedule time. The delays have resulted in aggrieved parties lying in limbo. Access to other forums or courts by the aggrieved parties was restricted and the Tribunal remained as a framework without performing its functions.

### 2.3 CONCLUSION

As a result of these hurdles, over time, the Tribunal has been rendered almost non-existent following the Supreme Court's decisions<sup>47</sup> which, were rightly made in the course of interpreting the various statutes that governed land dispute resolution. However, taking into consideration the advantages that a Tribunal offers to the citizens, parliament decided to strengthen the operations of the Lands Tribunal by providing for its powers and functions under its own enabling piece of legislation.

---

<sup>46</sup> The Lands Tribunal Bill Second Reading 2

<sup>47</sup> Diocese of Monze v Mazabuka District Council and 3 Others SCZ Judgment No 16 of 2005-Appeal No. 115 2002

## **CHAPTER THREE**

### **THE LANDS TRIBUNAL ACT**

#### **3.0 INTRODUCTION**

The Lands Tribunal Act<sup>1</sup> is an Act that seeks to strengthen the operations of the Tribunal by continuing its existence and to provide for its powers and functions under its own enabling piece of legislation. The aim of the Act is to extend the jurisdiction of the Tribunal and harmonize the existing statutes regarding the land dispute resolution mechanism thereby necessitating consequential amendments to the other statutes. These statutes include the Lands and Deeds Registry Act, the Housing (Statutory and Improvement Areas) Act and the Lands Act. This chapter three seeks to highlight the salient features of the Lands Tribunal Act of 2010 as set out hereunder and will make an assessment as to what extent the Lands Tribunal has been strengthened by the New Act. The assessment will be done with the aid of legal principles analyzing to what extent the legal framework of the Tribunal has been strengthened.

#### **3.1 SALIENT FEATURES OF THE ACT**

##### **3.1.0 Short Title and Commencement**

Section 1 provides for a short title and commencement of the Lands Tribunal Act. The Act can only become operational on such a date as the Minister may, by statutory instrument, appoint. The use of “may” in this provision does not mandate the Minister to bring the Act into operation within a specific time frame. The Minister is at liberty to decide when the Act can be in operation. In the case of *The People v The Registrar of the University of Zambia Ex Parte*

---

<sup>1</sup> Lands Tribunal Act No 39 of 2010

*Chitalu Gozo Lumbwe*,<sup>2</sup> the Supreme Court held that the determination of the election procedure by the staff of the unit was not mandatory but discretionary due to the use in the section of the word “may”. The conferring of such discretionary powers on the Minister by the Lands Tribunal Act poses a very serious problem, in that, from its very nature, discretionary power is not susceptible to external controls.

As a result, the Minister is not mandated to answer to anyone as to why he/she has not been able to make the Act operational within a specific period of time. It is not surprising that, the Lands Tribunal Act though enacted on the 14<sup>th</sup> of November 2010 only became operational on the 23<sup>rd</sup> of December 2011<sup>3</sup>. This delay has resulted in the ordinary citizen being denied access to a speedy and cost effective land dispute resolution mechanism.

### **3.1.1 Continuation of the Tribunal**

Section 3 provides for the continued existence of the Lands Tribunal as established under the Lands Act as if the Tribunal were established under the Lands Tribunal Act. Being a continuation of the of the Lands Tribunal established under the Lands Act, the reasons for its establishment remain the same, that is;

1. To act as a fast track court that would speedily resolve land disputes by ensuring unnecessary delays are removed from the process.
2. To perform as a cost effective land dispute resolution mechanism that would operate under simple rules and procedures<sup>4</sup>

---

<sup>2</sup> SCZ/8/40/1997

<sup>3</sup> Statutory instrument No. 140 of 2011

<sup>4</sup> The Lands Tribunal Bill, 2010-Second Reading Debates (Wednesday, 13<sup>th</sup> October, 2010) 1

However, despite these good intentions for setting up the Tribunal, the Tribunal has been non-functional from 2009 to date. The last case that was adjudicated by the full Tribunal being that of *Roselyn Chibuno v Choma District Council*<sup>5</sup> on 30<sup>th</sup> June 2009. This is where the land in issue was granted to Ms *Chibuno* by the Office of the Vice President under the settlement scheme program, however, she could not immediately occupy the land as she had to nurse a sick relative. As a result the land was re-allocated to someone else by the *Choma* District Council. The Tribunal held that the land had to be given back to her.

Pursuant to section 5(1) of the Lands Tribunal Act, the Minister is also empowered to appoint members of the Tribunal. At the time of writing this paper, that is April 2012 the members of the Tribunal had not yet been appointed. This entails that the Tribunal cannot function as there are no members to hear and determine any matter brought before the Tribunal. This coupled with the fact that the Lands Tribunal Act has been non-operational since 2009 has been a major setback in providing access to a land dispute resolution mechanism which is cost effective and efficient to the ordinary citizen. The implication is that people have had to take their land disputes to the High Court and be subjected to a protracted and expensive exercise. On the other hand, taking a matter before the Lands Tribunal is not protracted and expensive, in that, filling of complaints or applications as well as litigation is free<sup>6</sup> and judgments are on average delivered within ten to ninety days. Whereas, in the High Court the filling of applications or complaints on costs about K70,000 and a lawyer requires on average a down payment of K5 million in order to litigate<sup>7</sup>.

---

<sup>5</sup> LAT/17/2007

<sup>6</sup> *TinenejiDaka v Raymond Handawo* LAT/15/99

<sup>7</sup> Interview with 1<sup>st</sup> defendant in the case of *PAZA Trading v Thomas MalamaKalokoni and Others* 2012/Hp/35

Those who could not afford these court expenses have had their cases pending with the Tribunal since 2009 with the hope that once the Tribunal is fully functional their disputes will be settled<sup>8</sup>.

### **3.1.2 Jurisdiction of the Tribunal**

Section 4 (1) provides that subject to the Constitution, the Tribunal shall have jurisdiction to hear and determine disputes relating to land. Section 4 can be described as the main section of the Lands Tribunal Act, in that, the section seeks to achieve one of the main objectives of the Act which is to provide for powers and functions of the Tribunal. As stated by Justice Pickford in *Guaranty Trust Company of New York v Hannay & Company*,<sup>9</sup> in its narrow and strict sense, the “jurisdiction” of a validly constituted court connotes the limits which are imposed on its power to hear and determine issues between persons seeking to avail themselves of its process. Before the enactment of the Lands Tribunal Act, the former Tribunal only had power to hear and determine disputes under the Lands Act<sup>10</sup> and it had no jurisdiction to entertain any matter where the land in issue was on title<sup>11</sup>. This resulted in the jurisdiction of the Tribunal being extremely limited to an extent that over time the Tribunal became non-functional.

In an effort to try and strengthen the operations of the Tribunal section 4 (1) has extended the jurisdiction of the Tribunal. In particular section 4 (1) (a) mandates the Tribunal to inquire, make awards and decisions in, any dispute relating to land under the Lands Act, the Lands and Deeds Registry Act, the Housing (statutory and Improvement Areas) Act or any other law. This is an improvement in jurisdiction when compared with the provision in the Lands Act which was only restricted to matters under that Act. In fact this provision was supported by the Supreme Court’s

---

<sup>8</sup> Interview with Acting Registrar, Mrs Chanda on the 13<sup>th</sup> Of December 2011

<sup>9</sup> [1914-15] All E.R 24 at 35

<sup>10</sup> The Lands Act Cap 184, s22

<sup>11</sup> *Diocese of Monze v Mazabuka District Council and 3 Others* SCZ Judgment No. 16 of 2005-Appeal No. 115 2002

decision in *Mwangela v Nsokoshi and Another*<sup>12</sup>, where in its considered view, in reading Sections 15 and 22 of the Lands Act, stated that the Tribunal's jurisdiction was limited to settlement of "land disputes" under the Act. Thus, the inclusion of hearing and determining land disputes under the Lands and Deeds Registry Act and the Housing (Statutory and Improvement areas) Act is an extension of the Tribunal's jurisdiction.

This means that the Tribunal will be able to hear and determine land matter where the land in issue is on title and where it is situated in statutory and improvement areas. To that effect, both the Lands and Deeds Registry Act and the Housing Act have been amended<sup>13</sup>. The interpretation of "court" in the Lands and Deeds Act has been amended to refer not only the High Court<sup>14</sup> but also to the Lands Tribunal. Similarly, the Housing Act has also been amended and the word Court wherever it appears in the Act not only refers to the Subordinate Court,<sup>15</sup> but also to the Tribunal. In effect what this means is that the Tribunal is now able to hear land disputes from site and service schemes as well as any land that is on title.

Further by virtue of section 4(1) (g), the Tribunal is mandated to make orders for the cancellation of Certificates of Title that it considers to have been erroneously issued or to have been obtained fraudulently, or that it otherwise considers necessary to cancel. As will be recalled in *Adetayo Oduyeni and Two Others v Atlantic Investments Ltd*<sup>16</sup> the Supreme Court held that the Lands Tribunal had no jurisdiction to order cancellation of Certificate of Title in land matters. It further stated that in terms of the Lands and Deeds Registry Act<sup>17</sup>, the jurisdiction to order cancellation

---

<sup>12</sup> SCZ Judgment No 29 of 2005

<sup>13</sup> Lands and Deeds Registry (Amendment) Act and Housing (Statutory and Improvement Areas) (Amendment) Act respectively.

<sup>14</sup> Lands and Deeds Registry Act, Cap 185 s2

<sup>15</sup> Housing Act, Cap 194 s 3

<sup>16</sup> SCZ Appeal No. 130 of 2000.

<sup>17</sup> Cap 185 of the Laws of Zambia

of Certificate of Title Deeds lies with the High Court and not the Lands Tribunal. However, as a result of section 4(1) (g) of the Lands Tribunal Act, the Tribunal has been empowered to order cancellation of Certificates of Title. Consequently, the Lands and Deed Registry Act was amended by the insertion of the words “or Lands Tribunal” wherever the word “Court” was appearing. As a result of this amendment, not only does the High Court have the power to order the cancellation of Certificates of Title but also the Lands Tribunal.

Furthermore, by virtue of Section 4 (1) (b), the Tribunal has also been given the mandate to inquire into, and make wards or decisions in any dispute relating to land under customary tenure. However, customary land disputes may currently be determined through various channels such as the Local Court, Subordinate Courts, Lands Tribunal and the High Court. The Local Court Act provides that, the Local Court shall administer the African customary law applicable to any matter before it in so far as such law is not repugnant to natural justice<sup>18</sup>. Similarly, the Subordinate Courts also have the mandate to hear disputes on customary land, provided the parties to the dispute give their consent<sup>19</sup>. Furthermore, the Lands Tribunal has also been given the mandate to hear disputes relating to customary land. That notwithstanding, the High Court has original and unlimited jurisdiction to hear and determine any matter, land matters inclusive.

These multiple options for customary land dispute resolution pose a further challenge of overlapping statutory provisions relating to the affected statutes. Consequently, this will affect the number of cases under customary tenure that will be heard by the Tribunal, as there will be multiple options for settling customary land disputes. As a result, though the Tribunal’s jurisdiction has been extended to hear and determine customary land disputes, the number of

---

<sup>18</sup> The Local Court Act Cap 29 s12 (1) (a)

<sup>19</sup> The Subordinate Court Act, Cap 28 s23

cases to be determined by the Tribunal will be very limited. This is not in line with the objectives of the Lands Tribunal Act which aims at harmonizing the existing statutes regarding the land dispute resolution mechanism thereby necessitating consequential amendments to the other statutes so as to avoid such overlapping statutory provisions.

### **3.1.3 Composition of the Tribunal**

Section 5 of the Lands Tribunal Act provides for the composition of the Tribunal. This section has expanded the composition of the Tribunal by including a representative from the Law Association of Zambia and a representative from the House of Chiefs. The inclusion of a representative from the House of Chiefs<sup>20</sup> is very advantageous especially when dealing with customary land disputes, because such a person is expected to have wide knowledge of customary land matters. Whereas the representative from the Law Association of Zambia, has been empowered to preside over sittings of the Tribunal when it sits as a circuit court. Additionally, as a result of the increase in composition of the Tribunal, the Tribunal will be able to sit in three different places at the same time; in that, the Chairperson, Deputy Chairperson and the representative from the Law Association of Zambia can each together with any other two members constitute a circuit court. This will allow the Tribunal to determine a large number of cases at the same and in a short period of time, unlike where only one circuit court is formed at any given time. Thus, this will make the Tribunal to be much more efficient in providing access to the justice delivery system. Under the former Tribunal, there was no provision for the Tribunal to sit as a circuit court, as all matters were centrally heard in Lusaka. This had negatively affected access to the by parties that reside outside Lusaka.

---

<sup>20</sup> Lands Tribunal Act, No 39 of 2010.s5(1)

### **3.1.4 Tenure of Office and Vacancies**

Section 6 stipulates that the term of office of a member of the Tribunal shall be five years, subject to re-appointment for a further term of five years. This is a new innovation in that the Tribunal under the Lands Act did not contain a similar provision. This provision creates security of tenure for the members and thus, enhances their performance which ultimately improves the efficiency of the Tribunal.

### **3.1.5 Registrar of Tribunal**

Section 7(1) provides for the appointment, by the Judicial Service Commission, of the Registrar of the Tribunal who shall be a legal practitioner of five years legal experience. The former Tribunal had no provision for the appointment of the Registrar, this provision is important in that, there is need to have someone who would be able to issue summons and keep record of the proceedings of the Tribunal. Section 7(2) provides for the functions of the Registrar, includes determining interlocutory applications. This seems to be inappropriate because the jurisdiction to handle such applications, especially injunctions was supposed to be reserved for the Tribunals Chairperson and Deputy. So as to keep up with the settled practice both in the High Court and the Industrial Relations Court, where only judges are empowered to hear and determine such applications. The section also mandates the Ministry of Lands to provide other staff that may be necessary for the performance of the functions of the Tribunal.

### **3.1.6 Application to Tribunal**

According to section 8, a person may apply to the Tribunal for a determination on any matter which falls within the jurisdiction of the Tribunal. This provision seems to suggest that any

person who has a land dispute can bring a matter before the Tribunal for as long as that matter is within the jurisdiction of the Tribunal.

### **3.1.7 Proceedings of Tribunal**

Three members of the Tribunal duly constitute the Tribunal<sup>21</sup>; this is an improvement from the previous provision which required five members. Constituting a larger number had proved difficult in the past given the fact that these members are not employed on a full time basis. According to this provision the quorum should be made up of either the Chairperson or the Deputy Chairperson. The section also provides for the sitting by the Tribunal as a circuit tribunal. This implies that members of the Tribunal would be able to conduct hearings in all the provinces even though they have no structures on scheduled times. The provision further states that the circuit tribunal shall be duly constituted by three members of the Tribunal provided that each circuit includes the Chairperson or the Deputy Chairperson or the representative of the Law Association of Zambia.

Furthermore, the Act provides for a member or assessor to recues oneself from proceedings of the Tribunal in a matter if that member's spouse is directly or indirectly interested in a private capacity<sup>22</sup>. It is worth noting that areas of interest where a member could recues oneself from proceedings were not only restricted to spouses. There are other categories of interest that members could have and which could jeopardize the proceedings if interest is not declared by a member, thus, such interests should be captured by this section. Since, decisions of the Tribunal are made through voting by the members, if their interest on a matter whether personal or

---

<sup>21</sup> The Lands Tribunal Act No 39 Of 2010 s10

<sup>22</sup> The Lands Tribunal Act No 39 Of 2010 s10(11)

pecuniary is not delayed members would naturally vote in favour of their own interests and thus, may not result in justice being done to the parties.

### **3.1.8 Powers of the Tribunal with Respect to Proceedings**

The Tribunal is empowered *inter alia* to<sup>23</sup>:

- a) Order the parties or either of them to produce to the Tribunal such information as the Tribunal considers necessary for purposes of the proceedings; or
- b) Take any other course which may lead to just, speedy and inexpensive settlement of any matter before the Tribunal.

This provision is important in improving the Tribunal's efficiency in that by empowering the Tribunal to make orders to the parties; this will ensure that all the necessary information proceedings are obtained on time. This will consequently lead to speedy settlement of any matter before the Tribunal.

### **3.1.9 Judgment of Tribunal**

The Tribunal is compelled to deliver judgment on any matter within sixty days after the conclusion of the hearing of the case<sup>24</sup>. This provision though ideal, was criticized by the Parliamentary Committee on delegated legislation<sup>25</sup> on the Lands Tribunal as not being tenable as could be evidenced from past cases. This is because, firstly, the Tribunal members are not on full time basis or exclusively dedicated to the Tribunal. Secondly, institutions such as the High Court had failed to adhere to such requirements in election petitions, for example. Lastly, there

---

<sup>23</sup> The Lands Tribunal Act No 39 Of 2010 s11

<sup>24</sup> The Lands Tribunal Act No 39 Of 2010 s12

<sup>25</sup> Report of the Committee on Delegated Legislation on the Lands Tribunal Bill N.A.D No. 42 Of 2010

were no sanctions under the Act if a judgment was not delivered within the recommended sixty days. Besides this would raise questions of the status or effect of a judgment that is delivered out of time.

### **3.1.10 Publications of Judgment**

The Registrar is placed with the responsibility of communicating every award, decision or judgment of the Tribunal to the parties concerned<sup>26</sup>. This provision would raise difficulties in the reckoning of time for the purposes of one's right to appeal pursuant to section 16 of the Act which provides that an appeal to the High Court should be made within thirty days. The two sections should be harmonized in line with existing and settled practice obtaining in both the High Court and Industrial Relations Court in relations to judgments and orders of courts.

### **3.1.11 Frivolous and Vexatious Proceedings**

The Tribunal is empowered where it determines that any application to the Tribunal is frivolous or vexatious, to order an applicant to pay the applicant's costs, that of the other party and that of the Government in connection with the proceedings<sup>27</sup>. This will deter frivolous or vexatious applications from being taken to the Tribunal and wasting the tribunal's time in the process.

### **3.1.12 Immunity of members and staff of Tribunal**

Members and staff of the tribunal are immune from any actions or proceedings for any act or thing done or omitted to be done in good faith in exercise or performance, or the purported exercise or performance of any of the powers and functions conferred under the Act<sup>28</sup>. By

---

<sup>26</sup> The Lands Tribunal Act No 39 Of 2010 s12

<sup>27</sup> The Lands Tribunal Act No 39 Of 2010 s 14

<sup>28</sup> The Lands Tribunal Act No 39 Of 2010 s15

providing immunity to members and staff, it will allow them to perform their duties without fear of being persecuted for non performance of their duties though done in good faith.

### **3.1.13 Appeal to High Court**

Under section 16 an aggrieved person may appeal to the High Court against a decision of the Tribunal within thirty days of the receipt of its decision. Under the former Tribunal, appeal lay directly to the Supreme Court. This prompted some members of the Tribunal to contend that on land matters the Tribunal shared the same jurisdiction with the High Court, a position similar to that enjoyed by the Industrial Relations Court. Further it was contended that, the decisions of the Tribunal were not amenable for review by the High Court<sup>29</sup>. However, the Tribunal is not recognised by the Constitution as being part of the judicature<sup>30</sup>. Article 94 of the Constitution<sup>31</sup> establishes the High Court and confers on it unlimited and original jurisdiction to hear and determine any matter and administratively confers it with powers to review decisions of administrative tribunals. Section 29 of the Lands Act<sup>32</sup> purported to oust the jurisdiction of the High Court to review its decisions and to that extent it was said to have been unconstitutional. Thus, section 16 which allows for appeals to lie in the High Court is Constitutional as it does not seem to oust the jurisdiction of the high Court to review the Tribunals decisions.

### **3.1.14 Rules**

The Chief Justice has power to make rules by way of statutory instruments, prescribing the procedure to be followed and the rules of evidence to be observed in the proceedings before the

---

<sup>29</sup> Interview with Mr Sangwa, 11<sup>th</sup> April 2012.

<sup>30</sup> The Constitution of Zambia, Cap 1, art 91

<sup>31</sup> The Constitution of Zambia, Cap 1, art 94

<sup>32</sup> The Lands Act, Cap 184, s29

Tribunal<sup>33</sup>. It is trite law that rules of evidence are complex and require legal representation which is equally costly. This is a departure from section 23(5) of the Lands Act which stated that the Tribunal shall not be bound by rules of evidence applied in civil proceedings. The requirement of observing rules of evidence is contrary to the rationale of establishing the Tribunal as a forum where ordinary citizens could take their cases without legal representation. The Supreme Court in *Goswami v The Commissioner of Lands*,<sup>34</sup> stated that, “the Tribunal is in fact not 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.” Thus, if the Tribunal is to follow rules of evidence, then it can be reasonably submitted that there is no need of having the Tribunal when there is already the High Court handling land matters in a similar manner. Preferably, land matters should either be settled on an ad hoc basis or by arbitration.

### 3.1.15 Offences

Section 20 creates offences under the Act. Under this section, it is an offence for a person who is summoned to give evidence or to produce any book, document or thing;

- a) Without reasonable cause, fails to attend as required
- b) Refuses to be sworn or affirmed as a witness
- c) Having been sworn as a witness, refuses to answer any questions lawfully put to that person; or
- d) Without reasonable excuse, fails to produce the book, document or thing.

This section also makes it an offence for a person to knowingly give false testimony regarding any matter which is material to a question in any proceedings before the Tribunal. Criminalising

---

<sup>33</sup> The Lands Tribunal Act No 39 Of 2010 s 18(d)

<sup>34</sup> (2001) ZR 31

the giving of false testimony or evidence by a witness who has been summoned will ensure that the Tribunal obtains the information it requires, thus make its operations much more efficient.

### **3.2 CONCLUSION**

As previously stated in the preceding chapter, the Lands Tribunal as established under the Lands Act experienced a lot of hurdles in performing its function as a mechanism of settling land disputes in Zambia. It is in view of the foregoing that the Lands Tribunal Act was enacted. The Lands Tribunal Act seeks to extend the jurisdiction of the Lands Tribunal to cover all land disputes falling under customary tenure, housing and statutory improvement areas as well as to properties on title, thereby harmonizing the existing statutes regarding the land dispute resolution mechanism.

The Lands Tribunal Act has indeed extended the jurisdiction of the Tribunal by mandating the Tribunal to hear and determine land disputes relating to land on title, site and service schemes, customary land, as well as to order the cancellation of title. However, despite this extended jurisdiction, the Tribunal is non-functional due to the fact that up to now the minister has not appointed members of the Tribunal. Furthermore, the Chief Justice has also not made the rules by way of statutory instruments, prescribing the procedure to be followed and the rules of evidence to be observed in the proceedings before the Tribunal. As a result of the delay in appointing the members and not making the rules of procedure to be followed by the Tribunal, the extended jurisdiction has not been of benefit to the ordinary citizen since the enacted of the Lands Tribunal Act in November 2010.

## **CHAPTER FOUR**

### **RECOMMENDATIONS AND CONCLUSION**

#### **4.0 INTRODUCTION**

A properly functioning land dispute resolution system is yet to be realised in Zambia. The Lands Tribunal as established in 1995<sup>1</sup>, was intended to be away in which land related disputes could be disposed of in a quick, flexible and cost effective manner by a group of experts on this subject. However, since its establishment, the Tribunal has been faced with a number of problems such as having limited jurisdiction to resolve most disputes which relate to land, thus rendering it defunct. The enactment of the Lands Tribunal Act<sup>2</sup>, whose aim *inter alia* is to extend the jurisdiction of the Tribunal, was seen as a solution to the land dispute resolution mechanism in Zambia. To the contrary, since the enactment of the Lands Tribunal Act in November 2010, the Lands Tribunal is still non-functional up to this date. This chapter seeks to make the relevant recommendations on how the Tribunal could be of service to the aggrieved parties to a land dispute and thereafter it will give a conclusion.

#### **4.1 RECOMMENDATIONS**

##### **4.1.0 Operations of the Tribunal**

Despite the Minister of Justice having finally made the Lands Tribunal Act operational, it has been noted that the Tribunal is still non-functional because the Minister of Lands has not appointed new members to sit on the Tribunal. Therefore, it is being suggested that the old members be allowed to sit on the Tribunal, but continue performing their functions based on the new Act, until the new members are appointed in accordance with the provisions of the new Act.

---

<sup>1</sup> Cap 184 of the Laws of Zambia

<sup>2</sup> Lands Tribunal Act, No 39 of 2010

This is to allow for the continuity in the operations of the Tribunal, unlike what is currently obtaining where no cases are being heard on the reasoning that the members have not yet been appointed. In terms of qualifications, all the old members still meet the qualifications stipulated in the new Act. Thus, the decisions of the Tribunal will not be compromised on the basis of qualification. Additionally, the Act provides that the validity of any proceedings shall not be affected by any defect in the appointment of any member<sup>3</sup>.

#### **4.1.1 Jurisdiction**

With regards to extending the jurisdiction of the Tribunal to hear disputes relating to customary land, it has been noted that no consequential amendments have been made to the other statutes that are involved in customary land dispute resolution mechanisms. Thus, in order to deal with these overlapping statutory provisions relating to dispute resolution under customary land, there is need to harmonize the various statutes regarding dispute resolution under customary land in Zambia. This is in order to synchronize them with similar amendments that have been made to the Lands and Deeds Registry Act as well as the Housing (Statutory and Improvement Areas) Act. In all these Acts, wherever the term “court or judge” is appearing the words “or Lands Tribunal” has also been inserted to show that reference to “court or judge” also means reference to the Lands Tribunal thus recognising its jurisdiction in matters pertaining to all these Acts.

#### **4.1.2 Appointment of Members**

In term of the qualifications of the Chairperson and Deputy Chairperson of the Tribunal, as provided in section 5(a) and (b), it is being suggested that instead of being qualified to be a High Court judge, they should be at the level of a commissioner. This is because in order to qualify to

---

<sup>3</sup>The Lands Tribunal Act No 39 Of 2010 s 10(13)

be a judge one needs a minimum of ten years legal experience where as these two section require such person to have seven years legal experience. Additionally, the Chairperson and Deputy should of necessary have a bias to land law, for example they should have a Masters Degree in land law. Alternatively, the Chairperson or Deputy can sit with an advocate well vested in matters of land law, who can serve the tribunal on part time basis.

It has also been noted that section 5 (4) (d) and section 6 (2) (e) have similar provision which both seem to suggest that a member who had been convicted and sentenced for commission of a crime, with the option of paying a fine could be considered for appointment as a member of the Tribunal or shall not have his office declared vacant respectively. In order not to have the integrity of the Tribunal compromised, both these sections should be rephrased so as not to give the impression that a person though convicted as long as there is the option of paying a fine, can be considered for appointment as members of the Tribunal. For instance, both provisions could read as “a person shall not be appointed as a member of the Tribunal if the person has been convicted of an offence under any law and sentenced to imprisonment or fine”

#### **4.1.3 Duties of the Registrar**

It has been noted that the functions of the Registrar, includes determining interlocutory applications<sup>4</sup>. It is being suggested that the jurisdiction to handle such applications, especially injunctions be reserved for the Chairperson and Deputy of the Tribunal. So as to keep up with the settled practice both in the High Court and the Industrial Relations Court, where only judges are empowered to hear and determine such applications. The Registrar can have powers to arbitrate on matters that are simple and do not require a full Tribunal.

---

<sup>4</sup> The Lands Tribunal Act No 39 Of 2010 s 7(2)

#### **4.1.4 Declaration of Interest**

It was also noted that Act provides for a member or assessor to recues oneself from proceedings of the Tribunal in a matter if that member's spouse is directly or indirectly interested in a private capacity<sup>5</sup>. Areas of interest where a member could recues oneself from proceedings should not be restricted to which spouses are directly or indirectly interested in a private capacity. It should also include other categories of interest that members could have and which could jeopardize the proceedings if that interest is not declared by a member. An example would include, where a member is personally or pecuniary interested in the matter in issue.

#### **4.1.5 Delivery of Judgments**

The requirement to deliver judgments within sixty days by the tribunal as stipulated in section 12 though ideal was, it was noted that it is not tenable. Therefore, it is being proposed that either sanctions should be imposed if a judgment is not delivered within the sixty days or the alternative should be to require the Tribunal to deliver judgments promptly and within reasonable time taking into consideration the circumstances of the case. Another option would be to employ the members of the Tribunal on a full time basis so that they are exclusively dedicated to the Tribunal. Furthermore, there should be research assistants attached to the Chairperson and his Deputy to help research on complex issues so that judgements can be delivered on time. A Deputy Registrar can be appointed who can do case management so that matters before the Tribunal are heard within the time limit.

---

<sup>5</sup> The Lands Tribunal Act No 39 Of 2010 s 10(11)

#### **4.1.6 Rules of Evidence**

It has been noted that the Act also provides that the Chief Justice shall prescribe the procedure to be followed and the rules of evidence to be observed in proceedings before the Tribunal<sup>6</sup>. It is being suggested that the rules of evidence should be left out in keeping with the rationale of the Tribunal for being created as a forum where ordinary citizens could take their cases without legal representation. Alternatively, a possibility of providing for a forum for arbitration should be created for less complex matters.

#### **4.1.7 General Recommendation**

The Tribunal should be transformed into a division of the High Court to handle land matters. The advantage to this approach is that there would be specialisation and retention of staff on a permanent basis as is the case with the commercial division of the High Court.

### **4.2 CONCLUSION**

#### **4.2.0 Rationale for Establishing the Tribunal**

The Lands Tribunal was a new innovation of settling land disputes in Zambia introduced by the Movement for Multiparty Democracy government after being ushered in to office in 1991. As a result of the realization that with the introduction of multi party politics, the political structure could no longer be used as a mechanism for settling land disputes. Furthermore, the taking of cases before the High Court had proved to be protracted and expensive which most of the people in Zambia could not afford, it was felt that a Lands Tribunal should be put in place.<sup>7</sup> The rationale for its establishment was basically two-fold: to have a fast tract court that would efficiently

---

<sup>6</sup> The Lands Tribunal Act No 39 Of 2010 s 18(d)

<sup>7</sup> The Lands Tribunal Bill Second Reading Parliamentary Debates. 1

dispense land disputes and to have a cost effective land dispute resolution mechanism. The objective of the Lands Tribunal was to achieve speedy and cheap justice which would ultimately lead to the development of the country.<sup>8</sup> The tribunal was seen to be more flexible than the judicial system as it was not bound by the rules of evidence.<sup>9</sup> A Tribunal where rules are simple and every citizen would have access to the justice system.

#### **4.2.1 Challenges Faced by the Tribunal**

Like any other new innovation, the Lands Tribunal had over time been exposed to a number of challenges. Firstly, the Tribunal had limited jurisdiction in that it was only mandated to hear and determine land disputes under the Lands Act.<sup>10</sup> As a consequence it had no mandate to hear and determine any dispute regarding customary land. It also did not have power to hear and determine disputes on land held on title<sup>11</sup> as well as disputes relating to land in statutory housing and improvement areas.

Secondly, there were multiple land dispute resolution channels such as the Local Court, Subordinate Courts, Lands Tribunal and the High Court. The Local Court is mandated to hear disputes on customary land. Subordinate Courts are also mandated to hear land disputes regarding customary land, provided the parties to the dispute consent. The Subordinate Courts are equally mandated to hear disputes on statutory housing and improvement areas. On the other hand the Lands Tribunal was only mandated to hear disputes arising from the Lands Act while the High Court has the original and unlimited jurisdiction to hear and determine any matter, land disputes inclusive. These multiple options for land dispute resolution posed a further challenge in

---

<sup>8</sup>The Lands Tribunal Bill, 2010-Second Reading. Parliamentary Debates, (13<sup>th</sup> October, 2010) 1

<sup>9</sup> The Lands Act, Cap 184, s 23(5)

<sup>10</sup>Mwangela v Nsokoshi and Another SCZ Judgment No 29 of 2005

<sup>11</sup>Diocese of Monze v Mazabuka District Council and 3 Others SCZ Judgment No. 16 of 2005-Appeal No. 115 2002

that it created overlapping statutory provisions relating to the affected statutes such as the Lands Act, the Lands and Deeds Registry Act, the Subordinate Courts Act and the Local Court Act.

In terms of the composition of the Tribunal, the quorum consisted of five members, including the Chairman or the Deputy Chairman.<sup>12</sup> A member of the tribunal or an assessor shall not sit at a hearing if he has any interest direct or indirect, personal or pecuniary in any matter before the tribunal.<sup>13</sup> As a result, it was difficult to constitute the required number of members for the committee to sit. For instance, the fact that members of the Tribunal were employed on a part-time basis<sup>14</sup>; their time had to be divided between their full time jobs and their commitments to the Tribunal. As a consequence, they would not always be available when the Tribunal was scheduled to sit. Another problem was that the number of members required to form a quorum, that is five, was too large<sup>15</sup> and as such it was difficult to meet the required number most of the time. The result was that cases before the Tribunal could not commence as per the scheduled time. However, the Lands Tribunal Act has reduced the number of members required to form a quorum to three and in the composition it has added on two other members, that is the representative of the Law Association of Zambia and House of Chiefs. This will help in having three concurrent hearings at the same time especially when the Tribunal is sitting as a circuit court.

#### **4.2.2 Purpose of Enacting Lands Tribunal Act**

The Lands Tribunal Act is an Act that seeks to strengthen the operations of the Tribunal by continuing its existence and to provide for its powers and functions under its own enabling piece

---

<sup>12</sup>The Lands Act, Cap 184 s 23(2).

<sup>13</sup>The Lands Act, Cap 184 s23(4)

<sup>14</sup>Report of the Committee on Delegated Legislation on the Lands Tribunal Bill N.A.B. No. 42 of 2010 at 5

<sup>15</sup> The Lands Tribunal Bill Second Reading 2

of legislation. The aim of the Act is to extend the jurisdiction of the Tribunal and harmonize the existing statutes regarding the land dispute resolution mechanism thereby necessitating consequential amendments to the other statutes. The jurisdiction of the Tribunal has indeed been extended in that the Tribunal is now able to hear and determine land disputes under the Lands and Deeds Registry Act, the Housing (Statutory and Improvement Areas ) Act and disputes under customary land. Furthermore, consequential have been made to the Lands Act, the Land and Deeds Registry Act and the Housing (Statutory and Improvement Area) Act.

#### **4.2.3 Impact of the Lands Tribunal in Resolving Land Disputes**

The study on the assessment and impact of the Lands Tribunal in resolving land disputes under the new legislative framework has proved that there been little or no impact insofar as land dispute resolution is concerned. This is despite the jurisdiction of the Tribunal having been extended in the Lands Tribunal Act. This is because firstly, the Act has taken too long to become operational after its enactment and in the meantime there was no continuity in the operations of the Tribunal. Additionally, up to the now new members of the Tribunal have not yet been appointed. Invariably, the Act confers a lot of discretionary powers on the Minister in so far as the making of such appointments is concerned as a result, external control is difficult. Consequently, the Tribunal is completely non-functional and as such has had no impact at all in resolving disputes under the new legislative framework.

The Supreme Court stated that,“the Tribunal is in fact not 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<sup>16</sup>.” Thus, the requirement that the Tribunal should follow rules of evidence,

---

<sup>16</sup>Goswami v The Commissioner of Lands(2001) ZR 31

also has a negative effect on the operations of the Tribunal in that only people who can afford the cost legal representation will be able to have access to it. Thus, despite having a widened jurisdiction, its operations will still be limited as it will be dependant on affordability.

## **BIBLIOGRAPHY**

### **BOOKS**

Carol, Murdoch and Scorfield. *Law for Land Management Studies*. London, Butterworth and Co Ltd, 1981

Haley J.M.N, *Alternative Dispute Resolution* West Publishing Company, 1992

Mudenda, F. *Land Law in Zambia: Cases and Materials*. UNZA Press, 2007.

Murray J, Ray A.S, Sherman E F, *Process of Dispute Resolution: The Role of Lawyers 2<sup>nd</sup> Ed.* Foundation Press Incorporation 1996

Mvunga M P. *The Colonial Foundations of Zambia's Land Tenure System*. Lusaka: KKF 1980

Mvunga, P. *Land Law and Policy in Zambia*. Lusaka, NECZAM Ltd 1982

### **DISSERTATIONS**

Kaunda, M Land Policy in Zambia: Evolution, Critique and Prognosis. Unpublished Ph.D thesis 1993.

Matibini P, The Post independence system of Land Holding. (unpublished)

Mukata K, Land Law Policy in Zambia. Analysis of the Post Independence Land Law and Policy in Zambia (1964-1995). 1994 LLB Thesis

Siame, L. "The Lands Tribunal", A Paper Presented to the Forum For Copperbelt University Student Surveyors, Kitwe (Unpublished) 2000

### **JOURNALS AND ARTICLES**

Betsi-Enchill "Do African systems of Land Tenure Require a Special Technology?" Vol 9 of Journal of African Law 1965

Mulimbwa, A Land Policy and Economic Development in Zambia. Special Edition, Zambia Law Journal 1998

The Zambia Daily Mail, 11<sup>th</sup> October 1998

**PARLIAMENTARY REPORTS AND DEBATES**

The Interim Report of the Constitution Review Commission

The Lands Tribunal Bill N.A.B. No 42 of 2010

The Lands Tribunal Bill, 2010-Second Reading. Parliamentary Debates, 13<sup>th</sup> October, 2010

The Report of the Committee on Delegated Legislation on the Lands Tribunal Bill N.A.B. No. 42 of 2010

**INTERVIEWS**

Interview with Acting Registrar, Mrs Chanda on the 13<sup>th</sup> of December 2011

Interview with 1<sup>st</sup> defendant in the case of PAZA Trading v Thomas Malama Kalokoni and Others 2012/HP/35

Interview with Mr Sangwa, 11<sup>th</sup> April 2012.