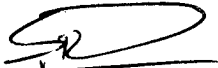


**UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

I recommend that the Obligatory essay prepared under my supervision by KAPULWA KAUNDA.

Entitled: THE SIGNIFICANCE AND FUNDAMENTAL IMPORTANCE OF ADMINISTRATIVE TRIBUNALS: WHAT IS THEIR ROLE IN THE LEGAL MACHINERY.

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


.....
Prof/Dr/Mr/MS.....
(Supervisor)

25.11.2003
Date

DECLARATION

I KAPULWA KAUNDA COMPUTER NO. 97110213 DO HEREBY declare that the contents of this Directed Research paper are entirely based on my own findings and that I have not in any manner used any person's work without acknowledging the same to be so.

I therefore bear the absolute responsibility for the contents, errors, defect any omission therein.

Date:..... Signature:.....

DEDICATION

This Directed research paper is dedicated to Lt. C. Bufuku and Yenkana Bufuku.

ACKNOWLEDGEMENTS

The main focus or area of interest of this Directed Research is to analyse the main importance and effectiveness of Administrative as well as Appeals Tribunals in Zambia. The study shall also focus on how well these Tribunals have carried out public awareness of their existence.

Special thanks are tendered to Dr Margaret Munalula, the Obligatory Essay Co-ordinator.

My heartfelt gratitude goes to Simon Kulusika, for accepting to supervise this difficult task, for his patience and for having made himself available all the time for consultations. I also wish to thank the following people for their generous support and assistance; my sister Kombe Kaunda and my brother Chishala Kaunda for their unconditional love and support. Ms Roydah Chanda for having typed my work. The staff at both the Lands Tribunal and Town and Country Planning Tribunal especially Mr Kalala for having assisted me with a number of materials during my research.

Finally, I would like to thank all my numerous friends and colleagues who helped me and above all I would like to thank our almighty heavenly father whose grace and mercy has seen me excel through out the years.

PREFACE

The main essence of this Directed Research is to analyse the main importance of the presence of Administrative as well as Appeals Tribunals in Zambia. The analysis shall also endeavour to bring out the issues concerning their effectiveness as well as their drawbacks in their road to achieving progress.

This research is divided into the introduction and four chapters. The first chapter focuses mainly on the background analysis and problem statement as well as the scope and significance of study. The second chapter deals with the brief Historical Account of the Development of Land Tenure System in Zambia. This chapter also goes on to talk about the Lands Tribunal with respect to its achievements in pursuing its objectives. The third chapter basically focuses on the Revenue Appeals Tribunal and the Town and Country Planning Tribunal. This chapter shall try to illustrate the jurisdiction and powers of the two respective tribunals.

The fourth chapter marks the climax of the study on Administrative as well as Appeals Tribunals. The same chapter also provides for Recommendations and conclusions of the study so as to bring out the actual significance of the issue on tribunals.

ABSTRACT

The subject of Administrative and Appeals Tribunals is one of the most important subject under the Socio-economic areas of every citizen in this country. This is why it should be brought to at least everyone's attention and also make it known that the state is looked at for the management and provision of socio-welfare services.

Therefore, the Tribunal's main concern is to look into the appeals of citizens as regards the disputes arising from government agencies and individuals or between two individuals in a less formal manner than is normal in a court of law. However, it should be pointed out that the main difference from the ordinary courts is their composition, their members being lawyers, judges or laymen with a specialised knowledge of the field in which the tribunal operates.

In light of the foregoing it can clearly be said that the effectiveness of these tribunals is not very sound due to a few drawbacks here and there. Their progress is still in transition and these Tribunals are yet to achieve steady progress.

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ABBREVIATIONS

BSA Co.

British South African Company

MMD

Movement for Multiparty Democracy

UNIP

United National Independence Party

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INTRODUCTION

The growth of social legislation in the twentieth (20th) century has resulted in many new types of disputes which in the wake of modern welfare has led Administrative tribunals to become associated with a range of responsibilities as regards the citizen. These disputes are often well suited to a procedure, which is comparatively cheap, quick and informal. The disputes are also far too numerous to be dealt with by the ordinary courts. Tribunals are a creation of the Executive and the legislative organs of government, which have come in to help the ordinary courts. It should be pointed out that Tribunals are noted for their openness, expediency, fairness, inexpensive and impartial qualities.

Therefore, Tribunals are of two kinds, that is, those of which result from the granting of adjudications, powers by statute to the governmental exercise, office or department to settle matters arising in such office or department. These kind of Tribunals often referred to as statutory tribunals or simply administrative Tribunals whose main objective is to deal with disputes between government agencies and individuals or between two individuals in a less formal manner than is normal in court. There are also special Tribunals, which have a composition to settle matters between citizens and the bureaucracy of administrative apparatus. The main difference from the ordinary courts is their composition, their members being lawyers, judges or laymen with a specialised knowledge of the field in which the tribunal operates. There is a Council on Tribunals and reports on them from time to

time. The lands Tribunal and Rent Tribunal are examples of Tribunals, which are subject to the scrutiny of the Council.

Zambia has quite a number of Administrative Tribunals out of which the concern of this paper will be restricted to the Lands Tribunal, the town and country planning Tribunal and sparingly the Tax Appeals Tribunal. The above Tribunals all fall under the Socio-economic areas, which are of great concern to each and every citizen in our country. The three Tribunals will be looked at separately but with a common perspective as to their instrumentality in the pursuit of the effective role, which they hold.

The Lands Tribunal will be evaluated in accordance with the object as the chief custodian of all land issues in our country. The paper will also look at the abilities and disabilities of the town and country Planning Tribunal in its quest of improving structures in both the town and country sphere of our nation. It should be brought to at least everyone's attention that the state is therefore now being looked to for the management and provision of socio-welfare services, cultural facilities, land use regulations, educational facilities and town and country planning processes. On the other hand, the Tax Appeals Tribunal's main concern is to look into the appeals of citizens as regards the valuation of taxes. The question is how effective and sound is this kind of Tribunal?

It is of utmost importance to note that a Tribunal can be very informal. This means that it is not obliged to follow all the strict rules of evidence and procedure of courts of law. This is in line with what De Smith says on Tribunals that tribunals shall not be bound by the rules of evidence applied in civil proceeding¹. However it is clearly indicated that special qualifications are demanded for one to be a member of the Tribunal. The qualified personnel and an informal structure would make possible for an ordinary person who cannot afford a lawyer not to be prejudiced before a Tribunal.

De Smith has pointed out that a special Tribunal may include persons with desired initial qualifications.² The Tribunal members can take active participation in finding the facts for themselves. They may adopt inquisitorial procedures probing away with the questions not acting as detached empires that rely entirely on the material as presented to them by the parties or their advocates. Although they must observe those minimum requirements of procedural fair play called the rules of national justice, they can draw on their own expert and acquired knowledge in drawing inferences from facts found.

Tribunals have however, brought their own kind of problems. Issues relating to the extent of Tribunals jurisdiction, that is, whether they should be brought under control of courts at all or whether an organ Administrative Appeals Tribunal should be established. Whether there should be a separate system

¹ Sangwa John P. (1994) Control of Administrative actions in Zambia (unpublished), LUSAKA, ZAMBIA Pg 26

² Ibid, Pg 27

of administrative courts or whether the Tribunals are subverting the judiciary which is an authoritative vehicle of dispute settlement in the land, and also a necessary check and traditional upholder of individual interests and liberties against the legislative and Executive organs of government. All these though admittedly with a bearing on the success or necessity of tribunals will not be discussed at length in this paper. The exigent question to be dealt with will be whether the tribunals have attained their purpose vis-à-vis maintenance of national standards in the management and provision of welfare services.

CHAPTER ONE

This chapter focuses mainly on the background analysis and problem statement as well as the scope and significance of study.

As already noted in the introduction, the executive branch of government is responsible for the administration of the country. This branch or organ has the power to formulate and implement policies. Although by no means of recent origin, tribunals and inquiries have become of great importance in a consideration of administrative law. That is, more often than not the legislation on the statute books stem from specific government policies. These government policies are realised by formulating a piece of legislation, which provides various ways of achieving these policy objectives. For instance, one of the reasons of enacting the Town and Country Planning Tribunal is to provide for statutory recognition of regulating the development and sub-division of land in Zambia.

In addition to providing statutory means of realising government policies, the administration has often gone further, in many cases, to provide an internal statutory mechanism for addressing problems, which may arise in the implementation of the policies.³ The arrangements of providing these statutory means is broad and diverse. Nevertheless these institutions can be grouped into two broad categories. In the first category the administration creates statutory bodies with authority to review on appeal any decision of an

³ Ibid, Pg 27

administrative officer.⁴ These are often referred to as appeals boards or tribunals.

As part of the background analysis, the only thing, which is common to all arrangements, is that they are supposed to provide a speedy and inexpensive way of resolving disputes arising in the pursuit of the policy objectives underlying the Act. The objective of the tribunal is to establish the facts of the case and render a decision that is fair and just in the circumstances of the case. An Administrative Tribunal exercising Adjudicatory powers differs from ordinary judicial court in certain respects. It should be noted that Administrative Tribunals operate with a degree of informality which suits the nature of issues involved and formal rules of evidence as found in the common law courts may not be observed. The issue of the legal counsel may not be needed in many matters requiring adjustment and in some kinds of cases, the facts may be developed by question and answer and conclusion reached without delay. Most of the decisions are reached by persons expert in the subject matter as well as in the law for instance, many disputed cases concerning claims for workmen's compensation are settled every year finally and speedily by these informal hearings.⁵

⁴ Sangwa John P (1994). Control of Administrative actions in Zambia (unpublished) LUSAKA, ZAMBIA.

⁵ White, L.D, The Civil Service in the Modern State. A collection of documents. The University of the Chicago Press. Pg 23

Thus the elaborate requirements of judicial proof with the appeal to the higher courts and expenses out of all proportion to benefits finally decreed may be avoided.⁶

CAUSES OF GROWTH OF ADMINISTRATIVE ADJUDICATION (ADMINISTRATIVE TRIBUNALS)

The following causes have led to the growth of administrative adjudication:

- (a) A by-product of the welfare state – The Administrative Tribunal rendering Administrative justice constitute a by-product of the welfare state. In the 18th and 19th century when laissez faire theory held away, law courts emerged out as the custodian of the rights and liberties of the individual citizens. At times they protected the rights of the citizens at the cost of state authority. With the emergence of welfare state, social interest began to be given precedence over the individual rights. With the development of collective control over the conditions of employment and manner of living and the elementary necessities of the people, there has arisen a need for a technique of adjudication better fitted to respond to the social requirements of the time than the elaborate costly system of decision provided by litigation in the courts of law.⁷ In brief the law system of administrative

⁶ Ibid, Pg 487

⁷ Vishnoo Bhogwan. Public Administration. Schand & Company Ltd. 2001 Pg 569.

adjudication suited new social ends espoused by a welfare state. It proved a potential instrument for enforcing social and legislation.

- (b) Suitable to industrialised and urbanised society – Administrative Adjudication suits modern industrialised and urbanised society as well. The latter necessitates positive and prompt action, which is possible; if the problems arising out of the new order are not left to the mercy of ordinary courts. In the words of Robson, "Parliament did not overlook the courts of law but they found the possibility of setting up new organs of adjudication which would do the work more rapidly, more cheaply and more efficiently than the ordinary courts, which would possess greater technical knowledge and fewer prejudices against government, which would give greater weight to the social interests involved and show less solicitude for private property rights which would decide with a conscious effort at furthering the social policy embodied in the legislation. This prospect offered solid advantages which induced the legislature to extend in one sphere after another the administrative jurisdiction of governmental departments so as to include judicial functions affecting the social services."⁸

Ordinary law courts not competent – law courts, on account of their elaborate procedures, legalistic forms and attitudes can hardly render justice to the parties concerned, in technical cases. Ordinary judges brought up in the

⁸ Robson, W.a., Justice and Administrative Law (1951) ed. Pg 33.

traditions of law and jurisprudence are not capable enough to understand technical problems, which crop up in the wake of modern complex economic and social processes. Only administrators having expert knowledge can tackle problems judiciously.⁹ The expedient adopted by the courts is to examine the experts of the subject. the expert witnesses are only too often hired assassins of the truth; and even if they were just men made perfect, the assimilation of technical facts at short notice, through the testimony of another individual, is a different thing from a first hand knowledge of the ground work based on personal experience or training.

The above causes of growth of Administrative adjudication are not exhaustive because there are other causes, which have not been put down for discussion. Therefore, having discussed the background analysis concerning tribunals it would be incumbent to look at the issue arising from the statement of problem that is, the issue of the need to have a just and fair oriented legal machinery in Zambia. Zambia's quest for justice in the legal sector that would spearhead legal development has taken various forms in the course of its thirty-nine (39) years of independence. The differences in the policies pursued by different governments to a great extent reflect differences in the political ideologies championed by the government of the day. The importance of a just and fair oriented legal system in Zambia, as indeed in the sub-Saharan Africa cannot be over emphasised. Despite the problems and controversies in the country's quest of attaining this kind of a

⁹ Vishnoo, Public Administration, Schand & Company Ltd. 2001 Pg 570

legal system attention is being focused on ensuring that a positive goal is reached.

Furthermore, the objective of this chapter is to review the legal framework in the context of its suitability or lack thereof for fostering economic and social development through a just and fair oriented legal machinery. This review is all the more important at this time on account of the new administrative policies ushered in by the government of the Movement for Multi-party Democracy (MMD) under for instance, the Land Act, the Town and Country Planning Act, the Rent Act, to mention only a few.

At this instance, one would pose a question that what role has the system of multipartism played in the legal machinery of Zambia. Does it guarantee broad-based representation in governance and development? With regard to the role of the government in ensuring that the administrative tribunals work impartially and according to the expectations of the public, it is important to mention that political decisions cannot be divorced from the activities of these tribunals. If these tribunals have to work towards achieving steady progress there is need for the people in authority to acquire the political will so as to win a lot of people in achieving progress as a nation. That is, with the advent of Plural Politics and in particular the MMD government, the administrative tribunals can be said to be still in transition. It cannot be said that there is steady progress in their management. The ills of the nation as regards the need for accountability and good governance are still yet to be achieved.

Another problem, which the plural politics have not yet considered with regard to tribunals, is lack of funds and publicity. The issue of lack of funds has made the performance of these administrative tribunals to go down. The authorities fail to hold consistent sittings so as to settle disputes in good time. Apart from that, the officers of a tribunal fail to visit areas where they are supposed to administer and settle disputes. Publicity is also another vital element, which must be present to ensure that the people are aware that these administrative tribunals exist. There is need to have notices put up and reading materials made available to the public in order to educate the nation about what steps the aggrieved parties are supposed to take for them to achieve redress. The issue of lack of funds come in when it comes to publicity. These administrative tribunals have made publications as already mentioned above and also probably come on Radio and Television with educative programs of making known to the people what is not known. But for all these activities to take place there is every need to buy airtime in the case of Radio and Television by use of appropriate funds.

On the other hand, the advent of plural politics has led to a more flexible way of settling disputes. In most cases, people are ready to voice out when they are aggrieved than it was in the past. This is because a lot of people have realised that they have rights, which they need to protect. This means that quite a number of people have become aware and conscious of what is wrong and what is right. It is also important to note that society is not static and so are the people who live in it. Therefore, this problem of social control has

become of increasing complexity and importance, for instance the change in the accepted role of the state. From its original limited powers in respect of defence and law and order, the modern state has assumed responsibility for a wide range of social services and for the regulation of a vast field of everyday affairs. It follows from what has been said that the greater the part played by the state in society, the more important administrative law becomes as a branch of law.

CHAPTER TWO

Land development in Zambia has taken many forms with regard to achieving meaningful development concerning land matters. There have been a number of land policies pursued by different governments since Zambia got its independence. Land has been perceived to be a free good and therefore it has given way to the perception of land as a valuable commodity for development and commerce.

This chapter will therefore seek to look into the historical summary of the evolution of land policy in Zambia. In order to achieve this, the chapter will precisely talk about what land law is all about and then proceed to analysing how dispute settlement concerning land is managed. This will be done in reference to the institution whose main function is to deal with the settlement of land disputes in Zambia. The land Act, under section 20¹⁰ provides for the establishment of this institution called the Lands Tribunal.

The main concern of Land law is found in the various aspects of ownership of land and with the interests in land held by persons other than the owner. The nature of these interests in land include mortgages, leases, licences, easements (rights of way, rights of support etc) or profits (right to enter another's land and take something from the land which is a natural produce of soil). Land law also deals with the rights and liabilities of landowners. However, it should be noted also that another concern of land law is found in

¹⁰ Lands Act, CAP 184 of the Laws of Zambia.

the sphere of regulating certain matters affecting land, designed to give effect to economic, social or environmental policies of the state. This sphere covers such subjects as rent control, environmental and pollution control and planning law.

"Land in the legal signification comprehendeth any ground, soil or earth whatsoever, as meadows, pastures, woods, moor, waters, marshes, furzes and health... It legally includeth also all castles, houses and other buildings".¹¹ This clearly shows that in the law the word 'Land' extends to a great deal more than in ordinary parlance or meaning. The general rule or maxim of common law is *quic quid plantantur solo solo cedit* meaning that what ever is attached to land becomes part of the land. Land therefore *prima facie* includes the soil; the buildings and objects attached to it. From the definition of land itself, it can be concluded that a review of the legal framework within which land holding and land utilisation is permitted and an evaluation of this framework in the context of its suitability or lack thereof, for fostering economic development through investment in land development is of utmost importance.¹² Therefore, the uses of land are a matter of common knowledge. Each and every human being depends on the land and it has countless uses whose list is endless. Land for example can be used as security for a loan of money where such money is lent by way of mortgage or charge. If the borrower defaults then the lender can sell the land and recoup himself.

¹¹ Curzon L.B. Dictionary of Law.

BRIEF HISTORICAL ACCOUNT OF THE DEVELOPMENT OF LAND TENURE SYSTEM IN ZAMBIA

THE COLONIAL LEGACY

Land tenure systems are not static because of the response to change taking place in society. The word 'tenure' refers to the system of rules and practices under which persons exercise and enjoy rights in land or objects fixed unmoveable to land such as houses.¹³

Northern Rhodesia as Zambia was known was before 1924 under the indirect rule of the British South African Company (BSA Co.). However, the British government assumed control of the territory from the BSA Co. and the Governor, Herbert Stanley, favoured freehold tenure in crown land. This was due to the fact that at the time of independence, a dual system of land tenure was inherited by the new government of the United National Independence Party (UNIP) led by Dr Kenneth kaunda – the dual system of land was the received English land tenure system of freeholds and leaseholds on the one hand, and the autochthonous or indigenous customary on the other. Before the coming of the European settlers the indigenous people lived in accordance with their customs and traditions which differed and still continue to differ

¹² Zambia Law Journal, Special Edition 1998.

¹³ Mudenda F. Notes on Land law. (unpublished) Pg 16.

from tribe to tribe. However, the continuation of the policy of the British South Africa Company (BSA Co.) which was evident in the crown grants of freehold estates. This was seen as a permanent security for European because Northern Rhodesia was perceived by Stanley as a permanent home for Europeans. Therefore crownland was essentially land which was not so reserved and outside reserves. Native reserves were set aside for the indigenous people because the natives could acquire and exercise interests and rights in land in accordance with customary law. Europeans could acquire land in reserves for a five-year period if this was considered by the governor to be in the interest of indigenous people.

The two categories of land (Crown and Reserves) continued to exist until 1947 when a further category called Native Trustland Reserves was carried out of the then existing Crownland. This was made possible by the 1947 Native Trustland order in council. This third category of land came about because of the pressure for land in reserves. The native trust land reserve was created "for the use of common benefit direct or indirect of the natives"¹⁴ Basically the only difference between Trustland Native Reserves and Native Reserves lay in the duration of alienable interest to a non native. In Reserves the interest that could be granted to a non-native could not exceed five (5) years where as in Trustland Reserves the alienable interest to a non-native called right of occupancy was 99 years.

¹⁴ Mudenda F. Notes on Land Law. Unpublished

INDEPENDENCE 1964

At independence the three categories of land mentioned above continued to exist. There were no immediate and substantial changes implemented except that the changes, which were present, were purely in nomenclature. For instance under the orders, the word crown was substituted for the 'state' and the word 'native' preceding reserves and trustland was deleted. However, the United National Independence Party (UNIP) embarked on a search for a new land policy and on 24th November 1964 a cabinet land policy committee was established to review all aspects of land policy which were inherited on independence and to submit recommendations on a comprehensive Zambian land policy. It was also decided that better results would be achieved in this exercise if this committee could appoint a commission under an independent chairman, to collect data for the use of the committee. In June 1965, a land commission was appointed to collect information on various aspects of land law, in particular land tenure, and report to the cabinet committee together with recommendations. The commission was well-briefed regarding government views on land policy, to the effect that it must be geared towards confirming the use of agricultural land to agricultural uses; controlling the quantity of land that may be held by a single person; enforcement of proper land use; and securing, for the benefit of the community, any increments realised through public expenditure.¹⁵ The above mentioned commission submitted its report in 1967 and in general terms of its report, the commission recommended inter alia that the orders-in-council creating the

various categories of land should be revoked and replaced by a land Administration Act.

The land (Conversion of Titles) Act was the most significant legal reform in the life of postcolonial state. This was the first Act to affect tenure and estate in a general way in Zambia. Exorbitant prices in the sale of vacant urban state land prompted the enactment of this Act. UNIP's land policy was influenced largely by its socialist ideology and its perception of the African traditional conception of land ownership. In its policy document entitled *Humanism in Zambia and a Guide to its Implementation*, it is stated that land must remain the property of the state in accordance with what the party perceived as the society's traditional values: 'Land was never bought'. It came to belong to individuals through usage and the passage of time. Even then the chief and elders had overall control although... this was done on behalf of the people.¹⁵ Therefore, according to the philosophies of humanism and socialism, land was a gift or heritage from God and hence could not be sold.

In effect the Land (Conversion of Titles) Act introduced radical reforms. The objective of the Act was summarised in its long title to land; the imposition of restrictions on the size of agricultural holdings; and the imposition of control over dealings in land. The subjection of transactions in land to prior

¹⁵ James R.W. Mulungushi Land Reform Proposals; *Zambia 4 East Africa Law Review* 109 (No. 2, 1971)

¹⁶ Kaunda K.D. *Humanism in Zambia and a Guide to Its Implementation* 14 (1965).

presidential consent was the cure for the exorbitant sale of vacant urban land. In granting consent, the president could also regulate the cost of sale of land.

However, in 1985 concerns were voiced in parliament on the amount of land that was being alienated to non-Zambians. An amendment to the 1975 Act was passed in Parliament, which in effect restricted the ability of the Government from parcelling out land to foreigners. The Act allowed some exceptions to certain non-Zambians such as approved investors, non profitable charitable organisations and transactions to which the president had given his consent in writing and other minor exceptions.

The Lands Act 1995, which came into force on 6th September, 1995, repealed the Land (Conversion of Titles) Act. The enactment of the Act was largely in response to the free market economic policies being pursued by the Movement for Multiparty Democracy Government, which came into power in 1991. The preamble of the Act provides among other things that it is an Act to provide for the continuation of lease holds and leasehold tenure, to provide for continued vesting of land in the president and alleviation of land by the president, provide for statutory recognition and continuation of customary tenure, to provide for the conversion of customary tenure into leasehold tenure, to establish a Land Development Fund and a Lands Tribunal.¹⁷ It should be noted however that, the lands Act 1995 comprises salient provisions but focus will be centred on Section 20(i) of the Act which

¹⁷ The Lands Act 1995, CAP 184 of the Laws of Zambia.

establishes the Land Tribunal.¹⁸ Under the repealed 1975 Act there was no tribunal to deal with land matters and in cases where presidential consent was denied under section 13 of the repealed Act the decision of the president was final and could not be questioned in any court or tribunal.¹⁹

THE LANDS TRIBUNAL

The Lands Tribunal is constituted under the Lands Act, which was enacted amid serious opposition from civic organisations and other interested parties. The Land Act has among other things re-organised the entire land tenure system in Zambia, which was previously governed by various statutes and orders in council. In any such exercise there are always possibilities of disputes. It was out of the realisation of this fact that the Lands Tribunal was established under section 20 of the Act.²⁰ The creation of the tribunal is in line with Article 54 of the constitution.²¹

The Jurisdiction of the tribunal is contained under section 22 and is to:

- (a) Inquire into and make awards and decisions in any dispute relating to land under the Act.
- (b) Inquire into and make awards and decisions relating to any dispute of compensation to be paid under the Act.

¹⁸ *Ibid.*

¹⁹ *The Land (Conversion of Titles) Act CAP 289 of the Laws of Zambia.*

²⁰ The Lands Act, 1995 CAP 184 of the Laws of Zambia.

²¹ The Constitution of Zambia.

- (c) Generally to inquire and adjudicate upon any matter affecting the land rights and obligations under the Act, of any person or the Government and
- (d) To perform such acts and carry out such duties as may be prescribed under the Act or any other written law.²²

With respect to the jurisdiction of the tribunal it appears that its area of concern involves all land matters except disputes that relate to planning permission under the Town and Country Planning Act and disputes relating to rating of properties under the Rating Act. In other words the jurisdiction of the tribunal is limited to matters touching on the various aspects of the Lands Act. For instance the Lands Tribunal has no jurisdiction to entertain a dispute between the parties over the completion or non-completion of the contract to sale land. This is merely a matter of contrast between two interested parties and the Act does not cover such matters.

Similarly the Tribunal has no jurisdiction to entertain a dispute between the Government and an individual over the sale of Government pool houses. The right of any civil servant who is a sitting tenant and who qualifies to own land in Zambia pursuant to section 3 of the Lands Act, to buy the property he occupies is not founded on any provision of the Lands Act.²³ The right to buy stems from Government's decision contained in Cabinet Office circular No. 12 of 1996. "Disputes over the alienation of customary land by the president

²² The Lands Act, 1995 CAP 184 of the Laws of Zambia.

falls within the category of cases, which can be entertained by the Lands Tribunal. The President's right to alienate customary land is specifically provided for in section 3 of the Land Act.²⁴ The Lands Tribunal can adjudicate upon any dispute over the conversion of customary land tenure to leasehold.²⁵

It should be pointed out that it is not possible to catalogue the kind of cases, which can be entertained by the Lands Tribunal. The only adequate criterion is that the dispute must involve something done or not done pursuant to the provisions of the Lands Act. Under the Act, apart from section 22, there are provisions that allows an aggrieved person to appeal to the tribunal. These are:

- (a) Under section 5, where a person applied for a consent to sell, transfer or assign land and where the president refuses to grant consent within thirty (30) days and has given the reason for the refusal (he is obliged to do so) a person aggrieved with the decision of the president to refuse consent may within thirty days of such refusal appeal to the Tribunal for redress.²⁶
- (b) Under section 13 of the Act (already referred to) which deals with re-entry a lease aggrieved with the decision of the

²³ The Lands Act, 1995 CAP 184 of the Laws of Zambia.

²⁴ The Lands Act, 1995 CAP 184 of the Laws of Zambia.

²⁵ Sangwa John P. (1994) Control of Administrative actions in Zambia (unpublished) LUSAKA, ZAMBIA.

president to cause a certificate of re-entry to be entered in the register may within thirty (30) days appeal to the tribunal for an order that the register be rectified.²⁷

- (c) Under section 15 (1) any person aggrieved with a direction or decision of a person in authority (defined to mean the president, the minister or the registrar) may apply to the tribunal for determination. The powers of the president in land matters have since 1969 been delegated to the commissioner of land.²⁸

On the other hand the composition of the tribunal is provided for under section 20 and comprises of the following members appointed by the minister.²⁹

- A Chairman who shall be qualified to be a judge of the High Court.
- Deputy Chairman who shall be qualified to be appointed as a judge of the High Court.
- An advocate from the Attorney General's chambers.
- A registered town planner.
- A registered valuation surveyor
- Not more than three persons from the public and private sectors.

²⁶ The Lands Act, 1995 CAP 184 of the Laws of Zambia.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

In addition, the tribunal under section 21 may appoint persons who have ability and experience in land, agriculture, commerce or other relevant professional qualifications as assessors for purposes of assisting it in the determination of any matter under the Act.³⁰

PROCEEDINGS OF THE TRIBUNAL

The proceedings of the tribunal are informal in comparison to judicial proceedings. The proceedings are presided over by the chairman and there must be at least five members including either the chairman or the vice-chairman for the Tribunal to transact its business. The determination of any matter before the Tribunal is according to the opinion of the majority of the members hearing the case. 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. Here the rule of natural Justice applies that no one shall be a judge in his own cause.

The tribunal is not bound by the rules of evidence applicable in civil proceedings. This is provided for under section 23(5) of the Lands Act.³¹ A person appearing as a party before the tribunal may appear in person or through a legal practitioner at his own expense. A person aggrieved with the award, declaration or decision of the tribunal may within thirty days appeal to the Supreme Court.

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APPEALS TO THE SUPREME COURT

It should be noted that the Lands Tribunal is the only administrative tribunal whose decisions can be appealed against directly to the Supreme Court. This is unusual and it is difficult to establish the reasons for this position. This has prompted some members of the tribunal to contend that on matters of land the Land Tribunal shares the same jurisdiction as the High Court for Zambia, a position similar to that enjoyed by the Industrial Relations Vis-à-vis the High court in Industrial relations matters, until 1996. Members have further contended that the decisions of the Lands Tribunal are not amenable to review by the High Court.

The Lands Tribunal is different from the Industrial Relations Court. Article 94 of the constitution establishes the High Court and confers on it unlimited and original jurisdiction to hear and determine any matte civil or criminal proceedings under any law, except matters which are exclusively reserved for the Industrial Relations Court by the Industrial and Labour Relations Act,³² Although the Industrial and Relations court is a creation of statute its existence is recognised by the constitution, and is now part of the judicature.

There is no such provision in the constitution concerning the Lands Tribunal. The Lands Tribunal is merely an administrative institution and not a court. Its decisions are amenable to review by the High Court. Section 29 of the Lands Act to the extent to which it purports to oust the jurisdiction of the High Court

³¹ The Lands Act 1995, CAP 184 of the Laws of Zambia

in its decisions is unconstitutional. It violates Article 94, which confers upon the High Court original and unlimited jurisdictions to determine any matter *civil or criminal*.

Even with section 29 of the Lands Act in place, the High Court still has jurisdiction over the actions and decisions of the Lands Tribunal. Section 29 refers to appeals against the decisions of the Lands Tribunal. The high Court can entertain applications concerning the operations or activities of the lands Tribunal, other than reviewing its decisions on appeal. Section 22 of the Lands Act stipulates the extent of the jurisdiction of the Lands Tribunal. Where the Lands Tribunal exceeds its jurisdiction and entertains a dispute, for instance, between a mortgagee and mortgager, such proceedings and decisions are reviewable by the High Court under its inherent power of review. Where the Lands Tribunal act in want of jurisdiction its decision will be quashed by the High Court. The challenge will not be on its decisions but its authority to entertain the dispute arising from a mortgage.

EVALUATION OF THE LANDS TRIBUNAL

More and more people are presenting cases to the Lands Tribunal, which is a clear sign that although it is a fairly new institution it is actually making steady progress. This is likely to continue provide it promptly decides the cases and remains impartial in its decisions, especially in cases involving the Government.

³² The Zambian Constitution CAP 1 of the Laws of Zambia

There are, however, serious contradictions in the procedure of the Lands Tribunal and also in the supervising ministry. Section 24 of the Lands Act confers power upon the Chief Justice to make regulations to govern the procedure of the Tribunal and for summoning witnesses to appear before the Tribunal. The regulations issued by the Chief Justice in 1996 appear to limit the jurisdiction of the Lands Tribunal. For instance regulation 3(1) provides: "An appeal to the Tribunal against any directive or decision may be instituted by sending the secretariat, in duplicate, a written notice of appeal..."

The rules are framed on the assumption that the Lands Tribunal is an "appeals tribunal" and not a tribunal with jurisdiction to hear any matter arising under the Lands Act. According to Rule 3(1) for the Lands Tribunal to be moved there must be a decision or directive made under the Lands Act and one must be aggrieved by such decision or directive. The role of the Lands Tribunal is therefore to review such a decision or directive. This is contrary to section 22 of the lands Act. The Act does not make reference to appeals. The Lands Tribunal has the power to hear any matter concerning land provided it can be related to some provision of the Lands Act. This is not the case from the Regulations. According to the regulations, the lands Tribunal cannot entertain a dispute between two chiefs over the extent of their customary lands. This is so since no decision has been made in the matter.

This is contrary to section 22. The said section employs the expressions such as the Tribunal shall "inquire into and make awards and decisions in any disputes", inquire and adjudicate". They connote original jurisdiction on the part of the Lands Tribunal to hear and determine any matter covered by the Act.

The jurisdiction of the Lands Tribunal is not limited to appeals, as the Regulations appear to suggest. The Lands Tribunal has authority to hear and decide any matter, whether or not, it has been decided by a person in authority. Section 15(1) of the Lands Act provides that any person aggrieved with a decision or directive of a person in authority may apply to the Lands Tribunal.³³ Section 15(2) defines a person in authority as the president, the Minister or Registrar.³⁴

Matters of land in Zambia fall under the Ministry of Lands. The Lands Tribunal as an administrative agency is supposed to be under the Ministry of lands. However, this is not the case. Section 28 provides that the Ministry responsible for legal affairs will provide secretarial and accounting assistance to the Lands Tribunal. The rationale for this arrangement is difficult to establish. The right Ministry to provide such assistance is the Ministry of Lands.³⁵

³³ Sangwa John P (1994) Control of Administrative actions in Zambia (unpublished) LUSAKA, ZAMBIA PG 30

³⁴ Ibid, Pg 30

³⁵ Ibid

CHAPTER THREE

This chapter shall focus on the Revenue Appeals Tribunal and the Town and Country Planning Tribunal. It should be noted from the outset that the majority of the tribunals in Zambia are appeals tribunals. The distinguishing characteristic is that they review decisions of people in authority presented to them by an aggrieved person. The most important appeals tribunals in Zambia are the Town and Country Planning Tribunal and the Revenue Appeals Tribunal.

REVENUE APPEALS TRIBUNAL

The Revenue Appeals Tribunal is one of the most important appeals tribunal, which was established in 1998 by Act No. 11.³⁶ There are a number of statutes regulating the collection of government revenue, which until 1998 provided an administrative arrangement for dealing with disputes, which arose in the enforcement of the various legal provisions. However, all the administrative institutions, which were dealing with disputes before 1998, have been repealed by the Revenue Appeals Tribunal Act. This Act has provided for one appeals tribunal to deal with all the disputes arising from the various implementation of the various Acts of Parliament.

The Tariff Appeals Court established under the customs and Excise Act, the Tax Appeals Court established under the Income Tax Act and the value Added Tax Appeals established under the value Added Tax Act have been abolished

and in their place the Revenue Appeals Tribunal has been created. An important fact to note is that the Zambia Revenue Authority created under section 9 of the Zambia Revenue Authority Act is responsible for the collection of revenue on behalf of the Republic.³⁷ The implementation of the intentions of Government are contained in the three principal pieces of legislation namely the custom and Excise Act, the income Tax Act and the Value Added Tax. With regard to the above implementation of the intentions of government contained in the above-mentioned pieces of legislation, disputes are inevitable.

These pieces of legislation confer powers of varying degrees on the Zambia Revenue Authority to carry out a number of decisions and actions in furtherance of the objectives outlined in the Acts. Power is likely to be abused in the process. In response to these potential problems the Revenue Appeals Tribunal has been created.

JURISDICTION OF THE REVENUE APPEALS TRIBUNAL

The Authority of the Tribunal is limited. In relation to matters arising under the provisions of custom and Excise Act the Tribunal can hear and determine an appeal in three situations. First where an importer of goods feels that the goods he has imported are incorrectly classified by the commissioner under the Customs Tariff. Before the tribunal can be moved the importer must pay the duty due and payable. The importer must appeal within three months

³⁶ Ibid

from the date of the payment of the duty. The essence of the appeal is to allow the Tribunal to review the decision of the commissioner to classify the item in issue in the manner it is been classified. If the Tribunal finds that the classification is wrong, it will make such a declaration. The effect of the finding is that the duty paid will have been improperly paid and a refund will be ordered.

The second situation arises where a person intends to import or manufacture an item, which he is of the opinion that the Commissioner General has wrongly classified it. In such a situation the intention is to secure the correct classification of the item in the Customs Tariff.

The third situation applies where the commissioner General has determined the value of the goods intended for importation into Zambia or manufactured within Zambia for purposes of taxation and the party involved is aggrieved by the value fixed by the Commissioner General.

In relation to the provisions of the Value Added Tax Act, the Tribunal has authority to hear appeals stemming from the decision by the Commissioner General on the registration, or cancellation of registration of a supplier. The decision to refuse the registration of a supplier can be a subject of appeal to the Tribunal. The Tribunal has authority to hear and determine an appeal on the tax assessed on the supply of goods and services or on the importation of

³⁷ The Lands Act 1995 CAP 184 of the Laws of Zambia

any goods. Any person aggrieved by the decision of the Commissioner General on the amount of the input tax that may be credited to him as a supplier can appeal to the Tribunal. The decision to allow or disallow the apportionment of input tax is founded on the application of various administrative rules. Where a person dissatisfied with the rules applied in this case, has the right to appeal to the Tribunal.

The Commissioner has power under section 25 of the Value Added Tax Act to require a taxable supplier to pay any tax or interest due before the period expires.³⁸ This power can only be exercised where the Commissioner General is of the view that such tax or interest may not be paid within the time allowed under the Act by reason of loss, transfer or disposition by the supplier of his assets. Where such a notice has been issued the aggrieved person has the right to appeal against the commissioner General's decision to issue such a notice. The Commissioner General has power under the Value Added Tax Act to require security from a supplier. Any such decision can be a subject of appeal before the Tribunal.

In relation to the income Tax Act the Tribunal has authority to hear any appeal against an assessment of tax. The Tribunal has authority to hear and determine any matter, which the Minister has prescribed by regulation is a subject of Appeal under the Act.

COMPOSITION OF THE REVENUE APPEALS TRIBUNAL

The Revenue Appeals Tribunal in all is made up of seven members appointed by the Minister of Finance. Three of the members must be legal practitioners of not less than seven years standing recommended by the Judicial Service Commission and who in the opinion of the commission have sufficient knowledge and experience in tax matters. It is difficult to see the relevance of the judicial service commission in the appointment of the three members. The commission has nothing to do with the legal practitioners. The body that is better placed to recommend such members would be the Law Association of Zambia, which has direct dealings with the legal practitioners. It can easily determine who among its members has sufficient knowledge and expertise on tax matters. Two other members must be accountants certified as such by the Zambia Institute of Certified Accountants. The last two members must be from the community. The Minister must appoint the Chairman and Vice-Chairman of the Tribunal from among the three members who are legal practitioners. Membership to the Tribunal is for a period of four years from the date of appointment and a member once appointed is eligible for re-appointment for another term of four years.

One may cease to be a member, other than through death, where he absents himself from three consecutive meetings of the Tribunal without any reasonable excuse. One can also lose his membership of the Tribunal if he is an undischarged bankrupt. Members who are members of the Law

³⁸ Sangwa John P. (1994) sControl of Administrative actions in Zambia (unpublished), LUSAKA,

Association of Zambia or the Zambia Institute of Certified Accountants will cease to be members of the Tribunal when they are no longer members of such bodies. In the event of a vacancy under any of the situations, the Minister can appoint a new member who will hold office for the remainder of *the period held by one who has ceased to be a member.*³⁹

APPEAL TO THE HIGH COURT

Any person dissatisfied with the decision of the Tribunal has the right to appeal to the High Court against such a decision. The appeal may be founded on a question of law or mixed law and facts. An appeal to the High Court cannot be based on facts alone.

Upon hearing the appeal the High Court has the power to send the case back to the Tribunal for rehearing, confirm, increase, deduce, or annul the assessment or decision of the Tribunal. The High Court can also make such orders on costs as it may deem fit in the circumstances of the case.

THE TOWN AND COUNTRY PLANNING TRIBUNAL

The Town and Country Planning Tribunal is established by section 6 of the Town and Planning Act.⁴⁰ The Act seeks to regulate the development and sub-division of land in Zambia. Although the Tribunal is not called an "appeals tribunal", its character is that of an appeals tribunal. This is inferred

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³⁹ The Zambia Revenue Authority Act CAP of the Laws of Zambia.

from its jurisdiction. The Act confers authority upon the planning authorities and the Minister to make certain decision regarding the development of various pieces of lands. The Tribunal has jurisdiction to review any such decision made by the planning authority or Minister. Anyone aggrieved by the decision of the Tribunal has the right to appeal to the High Court against the decision.

The most cardinal point about the Town and Country Planning Act is that of Planning permission which is found under section 22 of the Act.⁴¹ This entails that for anyone to start building or carrying out any material change concerning land matters, permission from the planning authorities has to be sort. However, with regard to any change of use with respect to any structure, a person has to apply to the Minister in the Ministry of Lands. It should be noted that any change of use with respect to land has to be coupled with a notice to the public after an application has been answered by the Minister. Within thirty (30) days, the public has to either object to the change of use or let the change of use take place. The bottom line of all this is that if anyone goes on to carry out any changes or material changes concerning land it has to be done in line with what is provided for by the planning authorities failure to which an enforcement notice can be issued to have the building demolished on any development stopped. If anyone is

⁴⁰ Sangwa John P. (1994), Control of Administrative actions in Zambia (unpublished), LUSAKA, ZAMBIA Pg 33

⁴¹ Ibid

aggrieved by this or any decisions of the planning authorities the matter can be taken to the Town and Country Planning Tribunal to be resolved.

The Town and Country Planning Act also has the powers to resolve the problem of squatters. In this country this is becoming a problem of great concern. More and more compounds are being formed due to squatters. These are illegal and they need urgent attention. But the problem seems to be hard to solve because most of these squatters are allowed by the politicians who actually allocate these pieces of land. Most of these politicians are people like councillors who try to win the popularity of people in their area. Therefore, the problem cannot be solved without first changing the attitudes of politicians.

With regard to the above explanation, the conclusion is that the Town and Country Planning Tribunal settles disputes concerning sub-divisions of land and any material changes concerning land.

CHAPTER FOUR

This chapter marks the climax of the study on Administrative as well as Appeals Tribunals. The Recommendations and conclusions of the study shall be discussed in this chapter so as to bring out the actual significance of the issue on these tribunals.

RECOMMENDATIONS

It should be pointed out that although there are quite a number of administrative and appeals tribunals on the statutes, their real impact in controlling administrative decisions and action is very limited. This is because the majority of the tribunals are not known both among legal practitioners and the general public. Therefore, there is need to promote public awareness of the existence of these Tribunals. The institutions have done very little to publicise their existence and functions. The main reason of this kind of situation is that there is no proper and adequate funding to these tribunals by the government. The tribunals are neglected to almost alarming levels by the central government. This is the more reason why the Ministry of Finance should do every thing possible to ensure that every annual budget seriously look into the problem of tribunals with regard to funding. It is also interesting and sad to note that most of these administrative and appeals tribunals do not have libraries where they can put books, files and other necessary documents in a much orderly fashion. Most of the information is just piled up anyhow in their small offices.

To many legal practitioners, the judicial system is still the only viable institution for resolving disputes between the administration and people who have been affected by the decisions and actions of the administrative agencies and officers. This is because of the less public awareness which has been carried out. However, recourse to the tribunal is not mandatory. That is, one may choose to move the tribunal or pursue his grievances through the courts. Even where there is provision to appeal to the High Court against the decision of the tribunal, there is no obligation on the part of the dissatisfied party to present his case before the High Court.

Another serious constraint is that the extent of the jurisdiction of the tribunals is very limited, especially in the case of appeals tribunal. This means that there are very defined grounds on which one can present his case to the tribunal. In relation to the Revenue appeals Tribunal, the real problems facing interested parties lies in the exercise of power by various officers of the Zambia Revenue Authority in the course of performing their duties. For instance section 37 of the Value Added Tax Act places an obligation on any person who is involved in the supply of goods in the course of a business to furnish the Commissioner General or any other authorised person information which he has access to.⁴² The information must relate to goods or their supply. The Commissioner General must specify the time and manner in

⁴² Value Added Tax Act CAP of the Laws of Zambia

which the information should be made available. Failure to comply with such a demand is a crime under section 39 of the Act.⁴³

Very often officers of the Zambia Revenue Authority do not conduct themselves according to law. They have been known to enter premises and forcefully take any such documents or books, which in their opinion are necessary. They do not have such authority to forcefully enter business premises and seize various records of the business without a warrant. Section 38(2) of the Value Added Tax Act empowers officers of the Authority to obtain search warrants.⁴⁴ A person aggrieved by the conduct of the officers cannot lay a complaint before the Tribunal, as this is beyond its jurisdiction. The case of abuse of authority are much more than cases of dissatisfaction with the classification of an item by the commissioner in the Customs Tariff. The Tribunal cannot entertain such complaint. The only forum where such a case of abuse of power can be entertained is in the High Court.

Ordinarily the administrative and appeals tribunals are supposed to provide speedy resolutions of grievances as opposed to the judiciary, but this is not the case. More often than not appeals take just as long as the cases before the courts to be determined.

⁴³ Ibid

CONCLUSION

An important conclusion of this study is that the general collapse of the economy in Zambia has also seriously undermined the effectiveness of the administrative and appeals tribunals. For instance there can be no appeal before the Town and Country Planning Tribunal unless a decision has been made either by the Minister or a planning authority. Due to serious administrative constraints it takes time for either the Minister or the planning authority to decide matters referred to them. The presentation of an application before the Minister or Planning Authority is dependent on the existence of an effective institutional capacity to enforce various provisions of the Town and Country Planning Act. This is not possible because the inspectors are not enough.

⁴⁴ Ibid

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