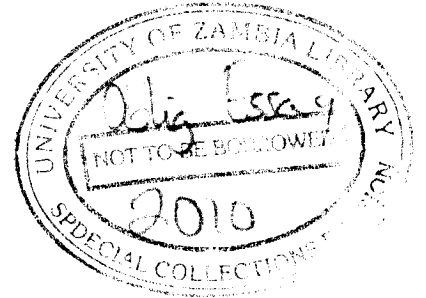


**Title: An Evaluation of the Town and Country Planning Tribunal and its Contribution to
the Justice System of Zambia.**

By

JOY-RACHEL MUTEKI



A dissertation submitted to the University of Zambia in partial fulfillment of the requirements of the degree of Bachelor of Laws (LLB).

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DECLARATION

I **Joy-Rachel Mutemi of computer number 26100380**, do hereby declare that this dissertation represents my own work and that to the best of my knowledge, no similar piece of work has been previously been submitted for the award of a degree at this University or another University. Where work of another has been used, it has been duly acknowledged.

A handwritten signature in black ink, appearing to read 'JRM', is written above a horizontal dotted line.

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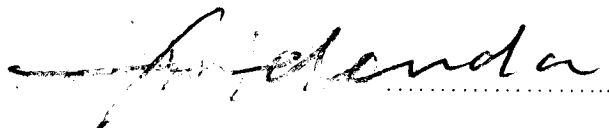
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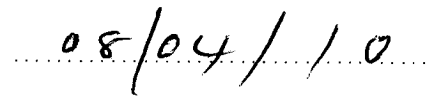
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ABSTRACT

Tribunals are usually preferred to ordinary Courts because firstly, its members have specialized knowledge on the subject matter, procedures are informal and they are usually cheaper, more accessible and expeditious than Courts of law. It is for this reason that this essay set out to evaluate the Town and Country Planning Tribunal and thereafter determine its contribution to the justice system of Zambia. In order to achieve this the essay begins by giving a background to the study, sets out the benefits of Tribunals and thereafter, the essay points out the shortcomings in the operations of the Tribunal. In order to understand and appreciate the Tribunal in its current form, the essay ventures into the past in order to find out factors that led to the establishment of the Tribunal. The essay also points out the various mechanisms that were put in place by the Legislature during enactment of the Town and Country Planning Act as well as the Town and Country Planning Appeals Regulations in order to enable the Tribunal to carry out its functions such as, conferring it with jurisdiction, and providing for a president and three members to sit with the president when determining matters. This was done through desk research in which relevant literature, case law and legislation was consulted. Moreover, interviews were conducted with members of the Tribunal and planning officers. The essay concluded that, although the Tribunal has cushioned the spiraling court fees and also the all to legalistic court procedures, it has not efficiently carried out its function of providing speedy resolution of disputes due to inadequate staff and members of the Tribunal. In addition, the absence of default procedures has equally delayed the time that the Tribunal ought to take in disposing off cases. The Tribunal has not efficiently performed its role of hearing and determining planning disputes because it is sparingly used by the Public the majority of whom are unaware of the existence of the Tribunal. Despite the fact that proceedings of the Tribunal are equally as lengthy as courts of law, the Tribunal is contributing to the justice system of Zambia by providing redress to parties aggrieved by a decision of the planning authority.

DEDICATION

To my beloved parents Mr. Watson Mwape and Mrs. Dorothy Mutemi for their unconditional and endless love, support and instruction.

To my siblings Josiah, Monty and Dorothy Gloria Mutemi.

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First and foremost, I thank the Lord my rock and my redeemer for always been at my right hand. In him I sought refuge and strength and never was I put to shame. I thank the lord for having made ways for me where there seemed to be none and for seeing me through my four years of study at the University of Zambia

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CHAPTER ONE

1.0 INTRODUCTION

The aim of this research is to evaluate the effectiveness of the Town and Country Planning Tribunal in resolving disputes that arise as a consequence of implementation of the provisions of the Town and Country Planning Act¹ of Zambia as well to assess whether the Town and Country Planning Tribunal in its current form has served its intended purpose. The main reason for this is to determine its real impact and contribution to the justice system of Zambia. In this regard, this chapter gives the background upon which evaluation of the effectiveness of the Town and Country Planning Tribunal hereinafter called the Tribunal is premised. In doing so, the paper will consider the rationale behind the establishment of the Tribunal as well as the supposed advantages of a Tribunal over Courts of law. Lastly, the paper will also consider the shortcomings in the operations of the Tribunal and this will form the statement of the problem.

The need to provide for a rational and integrated pattern in the process of land use and development necessitated the involvement of the Legislature², hence the creation of the Town and Country Planning Act which is a statutory arrangement to control or regulate the use of land that is, development and sub-division of land in Zambia. It is also the statute law governing planning. The primary objective of planning is to ensure that all land is put to the use which is best from the point of view of the community³. Other objects are;

- (1) to prevent development of land along lines contrary to the public interests,

¹ Chapter 283 of the Laws of Zambia

² F.S. Mudenda, Land Law in Zambia, Cases & Materials. (Lusaka: Unza Press, 2007) p 665

³ Ibid p 665

(2) to plan for the enlightened and orderly arrangement on the available land of such things necessary to the community, as houses, roads, open spaces, industries, shops, offices, schools and places of recreation and entertainment⁴.

Under the Town and Country planning Act, the above objects are achieved by structure and local plans as well as the statutory requirement that planning permission is necessary before any development may be carried out. Further planning authorities are entrusted with the responsibility of making administrative decisions to administer and implement the Act. In order for them to effectively carry out their functions, discretion is vested in planning authorities to; refuse planning permission for development which conflicts with the development plans, to impose conditions when granting planning permission, to revoke a planning permission and to order removal or discontinuance of unauthorised developments. However sometimes the decision of the planning authority may be based on irrelevant considerations as they may misunderstand their legal position, moreover, where there's discretion, there is room for arbitrariness.

In anticipation that disputes may arise in implementation of policies under the Town and Country Planning Act, the administration has provided an internal statutory mechanism to resolve disputes and provide a check. Consequently, section six of the Town and Country Planning Act establishes the Town and Country Planning Tribunal which has jurisdiction, power and authority conferred upon it by the Act as well as any regulation made there under.⁵ Therefore, the Tribunal was established as a quasi-judicial body to provide machinery for determination of such disputes

⁴ L.A. Blundell & G. Dobry, Town & Country Planning. (London: Sweet & Maxwell, 1963) p.1

⁵ Chapter 283 of the Laws of Zambia

and the mandate laid upon it is to hear and determine the matter of the appeal as provided in section 11(b) of the Town and Country Planning Act.

The Tribunal is one of the principal actors that ensure that the Town and Country Planning Act is effectively and efficiently implemented without which it would be difficult to achieve orderly coordinated and efficient development of cities and towns. Others include the Minister of Local Government and Housing, and planning authorities.

1.1 THE BENEFITS OF A TRIBUNAL

It must be emphasized that Zambian courts have played a vital and leading role in justice delivery, however, experience has shown that sometimes litigation is a seemingly endless exercise and also a self torturing ordeal⁶. Moreover, serious concerns have been expressed over spiraling costs, fees, delays in litigation procedures, congestion in courts as well as the all too legalistic procedures and the intimidating court room atmosphere⁷. The response to this predicament has been the development of more flexible means of resolving disputes that provide alternatives to court based litigation and one of the means has been through creation of Tribunals. In accordance with the raison d'être of Tribunals, Tribunals are usually preferred to ordinary Courts because firstly, its members have specialized knowledge on the subject matter and its decisions will usually be reached by a panel rather than by a single judge, secondly it may be better at finding facts, applying flexible standards in that their proceedings are informal in comparison to Courts and also exercising discretionary power. Thirdly, they are usually cheaper,

⁶ W.S. Mwenda, Paradigms of Alternative Dispute Resolution & Justice Delivery in Zambia (PHD Thesis). (Johannesburg: University of South Africa, 2006)

⁷ Ibid

more accessible and expeditious than Courts of law⁸. Therefore, Tribunals are instituted with objectives to provide an expedient and inexpensive way of resolving disputes, to avoid lengthy court procedures as well as to provide less formal methods of dispute resolution.

Tribunals are a machinery of justice which are able to adjudicate upon a specified matter with a panel of people possessing expertise in a special field unlike courts which adjudicate on a wide range of issues.⁹ They are described as those bodies whose functions like those of courts of law are essentially judicial and independent of the executive, they decide the rights and obligations of the private citizens towards each other and towards public authorities¹⁰. Public authority in this context means planning authority under the Town and Country Planning Act and includes the Minister of Local Government and Housing, the Director of Physical Planning as Strategic Planning Authority as well as Councils and Municipal councils.

1.2 STATEMENT OF THE PROBLEM

The real impact of the Town and Country Planning Tribunal as machinery for redress of grievances in respect of planning decisions is very limited because, the Tribunal remains unknown amongst the public and its members have done little to publicize its existence. This was evident to the researcher who in an attempt to find the location of the Tribunal went to Lusaka City Council and the people in administration did not know that the Tribunal does conduct its hearings from the Council Chambers. This lack of publicity is a reason behind the low number of appeals that are lodged with the Tribunal.

⁸ P. Matibini, Revisit the Jurisdiction of the Lands Tribunal. Unpublished, 1998

⁹ B.L Jones, Garners Administrative Law, 7th ed. (London: Butterworths, 1989) p 275

¹⁰ Ibid p 275

In relation to the lack of publication of the Tribunals existence, in an instance where a party unaware of the Tribunals existence applies to the High Court for judicial review, such a party will be caught by the administrative law requirement for the remedy of judicial review. This requirement is that before such an application can be made, all administrative channels must be exhausted. One such channel is the Tribunal, consequently, section 29 of the Town and Country Planning Act sets out the procedural requirements for lodging an appeal by an aggrieved party that is, 'that an applicant may within 28 days from receipt of notification of the decision or such longer period as the Tribunal may agree in writing appeal to the Tribunal'. To illustrate the above assertion is the case of *George Bulaya and Other's v the Attorney General*,¹¹ the High Court found it to be incompetent to entertain the application for judicial review by the applicants on grounds of non-compliance with procedural law set out in section 29 of the Town and Country Planning Act. Procedural law in this case required aggrieved parties to appeal to the Tribunal which they did not do. Therefore, in view of the provisions of section 29 of the Act, where no exceptional circumstances exist, applicants who are not aware of the existence of the Town and Country Planning Act and the Tribunal will be caught by the provisions of section 29 of the Act and where an application for judicial review is made, leave will be denied.

Moreover the Tribunals jurisdiction does not extend to customary areas¹², Statutory and Improvement Areas as well as Mine Townships¹³. The exclusion of the Tribunal's jurisdiction over customary area's is because Zambia has a dual legal system which recognizes both customary and leasehold tenure¹⁴, consequently, each tenure has its own individual and separate

¹¹ (2005) HP/1113

¹² Section 3(2) of the Town & Country Planning Act, Chapter

¹³ Section 48 of the Housing (Statutory & Improvement Areas) Act, Chapter 194

¹⁴ Preamble to the Lands Act CAP 184

laws by which it operates namely customs and statutory law respectively. In this regard, the Town and Country Planning Act which creates the Tribunal only applies to land falling in, (a) an area in respect of which there's an order to prepare a Structure or Local plan (b) an area subject to an approved Structure or Local plan (c) in such areas as are within the boundaries of any mentioned in either of the above.¹⁵ Therefore, unless the president by statutory order applies all or any of the provisions of the Act to any customary area, the Act will not apply to a customary area. In addition, the exclusion of the Tribunals jurisdiction is because of lack of machinery that is human and financial resources to administer land under customary areas which constitutes 94% of land mass in Zambia.¹⁶ With respect to Statutory and Improvement areas, the non-application of the Town and Country Planning Act among other enactments was to make dealings in land as simple and as cheap as possible.¹⁷ The Housing (Statutory and Improvement Areas) Act makes the National Housing Authority the planning authority for such areas.¹⁸

Moreover, by virtue of section 4(2) of the Act, in an event where there's a disagreement between the Republic and the Planning Authority concerning the carrying out of any development or subdivision of land, written submissions ought to be made to the Minister who shall refer them to the Tribunal which shall consider the submissions and render an opinion to the Minister. The Minister thereafter has to make a decision and in doing so shall not be bound by the opinion of the Tribunal and the decision of the Minister shall not be challenged in any proceedings whatsoever. This provision has the effect of rendering the Tribunal toothless since its ruling in

¹⁵ Section 22 of the Town & Country Planning Act, Chapter 283

¹⁶ Interview with Professor M.P. Mvunga, 3rd October 2009

¹⁷ The Housing Statutory & Improvement Areas Bill 1972, cited in F.S. Mudenda, Land Law in Zambia. (Lusaka: UNZA Press, 2007) p 729

¹⁸ Section 40 of the Housing Statutory and Improvement Areas Act, Chapter 194.

this instance is not enforceable. Further, it jeopardizes the whole basis of town and country planning and can bring it to naught.

The Tribunal has no fixed place of operation as the Tribunal secretariat is based at the Ministry of Local Government and Housing while hearings are conducted from the Council Chambers at Lusaka City Council. Moreover its impartiality is subject to doubt when the hallmark of any Tribunal is that it must be independent¹⁹. This is so because its proceedings are held from the Council Chambers located within the Lusaka City Council building which at times may be the planning authority over whom the Tribunal has jurisdiction.

Lastly, Tribunals are ordinarily supposed to provide speedy resolution of grievances as opposed to the courts. As a result, Regulation 14 of the Town and Country Planning Appeals Regulations²⁰ provides that ‘determination of every appeal shall be pronounced either immediately after the termination of the hearing or as soon as is reasonably practicable thereafter at some subsequent date.’ However, this is not the case with the Town and Country Planning Tribunal. Therefore, in light of the above, the essay intends to suggest ways in which the Tribunal can become more effective thus enhance its role in the justice delivery system as an efficient complaints system to the courts.

1.3 SIGNIFICANCE OF THE STUDY

This study is relevant and timely in view of the lengthy court processes as courts are backlogged with cases and deal with a wide range of cases unlike Tribunals which specialize in particular types of cases. Consequently, there’s an expectation that the Town and Country Planning

¹⁹ Ibid

²⁰ No. 50 of 1963

Tribunal will hear disputes arising in the pursuit of policy objectives under the Act more expeditiously as well as be accessible to the public. In this respect, there is need for an efficient Tribunal which unlike courts is cheaper, informal, more accessible and more expeditious and efficient than courts and will have members with specialized knowledge of the subject matter in dispute. This study seeks to determine to what extent the Tribunal has sought to attain these, this is so because it is only through such studies that the strengths and shortfalls which affect operations of the Tribunal can be detected and relevant proposals for reform can be made to strengthen its operations.

1.4 RESEARCH OBJECTIVES

- To investigate the rationale and purpose for the establishment of the Town and Country Planning Tribunal.
- To assess the effectiveness and relevance of the Tribunal in resolving planning disputes and in so doing critically analyze its impact and contribution to the justice system.
- To determine whether the Town and Country Planning Tribunal has effectively achieved its intended purpose.

1.5 RESEARCH QUESTIONS

1. How were planning disputes resolved before establishment of the tribunal?
2. What factors precipitated the creation of the Tribunal?
3. Is the Tribunal serving its purpose?

4. Is there a forum other than the Tribunal available for resolution of planning disputes?
5. Are the Tribunals rulings of quality in relation to courts which have jurisdiction to entertain planning disputes?
6. Factors constraining effectiveness of the Tribunal.
7. Does the fact that the Town and Country Planning Act is based on British law which is now outdated have an effect on the Tribunal?
8. Would operations of the Tribunal be different if it had wider jurisdiction?
9. How are planning disputes resolved under Customary as well as Statutory areas under the Housing (Statutory & Improvement Areas) Act?
10. What measures are necessary for reform and efficiency?

1.6 METHODOLOGY

The research will mainly be done by desk research. Relevant Literature, Case law and Legislation will be consulted. In addition, interviews will be conducted with members of the Tribunal, Planning officers and officers from the ministry of Local Government and Housing. In addition, where necessary, questionnaires may be used as well as internet searches.

1.7 ESSAY OUTLINE

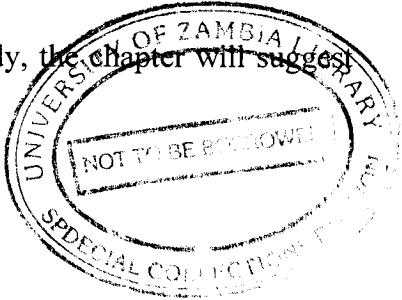
Chapter one gives an introduction to the study and outlines the background on which the study is premised. It also explains the objectives of the study and thereafter explains how the said objectives will be achieved.

Chapter two will give a historical background to the establishment of the Town and Country Planning Tribunal. The chapter will also outline and explain the legal regime that establishes and governs the operation of the Tribunal.

Chapter three is an evaluation of the Tribunal in its day to day operations. It looks at the composition, jurisdiction and function of the Tribunal. It also examines the nature of disputes before the Tribunal, procedures before the Tribunal and also the remedies that the Tribunal grants.

Chapter ^{Four} examines the extent to which the Tribunal has served its purpose as well as the contribution made by the Tribunal to the justice system of Zambia. In doing so, the chapter examines factors legal and none legal that have hampered the operations of the Tribunal. The chapter also examines resolution of planning disputes in areas not covered by the Town and Country Planning Act such as statutory areas.

Chapter five concludes the study and based on the results of the study, the chapter will suggest recommendations that ought to be implemented by the Tribunal.



1.8 CONCLUSION

This chapter has outlined the background upon which evaluation of the Tribunal is premised as well as the objectives, significance and method of the study. The Town and Country Planning Act establishes the Town and Country Planning Tribunal as a machinery for redress of grievances in respect of planning decisions. In addition, the rationale behind establishing administrative Tribunals which are quasi-judicial in nature, side by side with the court system is that, since courts are chocked with numerous cases thereby making litigation a seemingly endless

exercise, Tribunals ought to be more accessible and expeditious than courts of law. However, to a greater extent, the Town and Country Planning Tribunal has not realized its mandate because it remains unknown to the public and for the few who are alive to its existence, cases presented to it are not expeditiously disposed off. In addition the Tribunals jurisdiction is limited and it lacks sufficient members to expeditiously dispose off cases hence, this papers avocation for reform.

CHAPTER TWO

HISTORICAL BACKGROUND TO THE ESTABLISHMENT OF THE TOWN & COUNTRY PLANNING TRIBUNAL

This chapter gives a historical account of the establishment of the Town and Country Planning Tribunal in Zambia starting from the colonial administration and through post independence legislation. This is so because it will not be easy to appreciate what is obtaining today without an insight of the planning system inherited and developed from the past. In doing so, a historical background to the establishment of the Town and Country Planning Act of Zambia will be given, this is so because this act establishes the Tribunal which is the focus of this study. This chapter also examines the legislation which brought the Tribunal into being and which also prescribes conditions under which an appeal can be lodged.

2.0 Colonial Foundations of Town and Country Planning in Zambia

The present system of town and country planning in Zambia is largely a British import, as such, it is imperative to trace how town and country planning laws evolved in Britain. Before the advent of town and country planning legislation, the right to develop land was limited by common law rights of neighbor's and by legislation of specialized application such as public health laws²¹. At common law, any land owner was free to use and develop land in any way he wished provided he did not commit a nuisance or trespass against his neighbor's property²². Thus, he could erect whatever

²¹ L.A. Blundell & G. Debry, Town & Country Planning, (London : Sweet & Maxwell, 1963) p.3

²² D.J. Hayton, Megarry's Manual on the Law of Real Property (6th ed). (London: Stevens & Sons, 1982) p. 553

building he wished however unsuitable and injurious it was to the amenities of the district.

The planning system in England today originated from and is closely tied with the emergence of the welfare state and the resultant expansion of the regulatory functions of government²³. With the emergence of the Industrial revolution which begun in the 1700s, industries begun to grow and this resulted in a boom in population and unplanned developments around towns and cities. Houses were built cheaply and quickly in disregard of sanitation. They were also built side by side with factories without any attempt at zoning. The bad state of housing led to epidemics and death in cities²⁴. With the growth of medical knowledge, it was realized that there was need for proper planning control of standards of housing, sanitation and zoning of factories. This led to the enactment of the Public Health Act of 1848 which was directed at creating adequate sanitary conditions.²⁵

Following this, the National Housing Reform Council, local government as well as professional associations campaigned for the introduction of town planning²⁶. As a result, the 1909 Housing Town Planning Act was enacted, it included some minor powers of planning control by giving general powers for local authorities to control the development of land²⁷. This Act required preparation of a scheme by local authorities for controlling developments of new housing units. A number of successive statutes

²³ P. Matibini, The Urban Housing Problem For Low income Groups With Specific Reference to the City of Lusaka: A Social Legal Perspective. (Master's Thesis). (Lusaka: UNZA Press, 1982) p. 50

²⁴ Ibid p. 50

²⁵ L.A. Blundell & G. Deby, Town & Country Planning. (London: Sweet & Maxwell, 1963) p.14

²⁶ K. Waluzimba, Town and Country Planning Act: A need for Reform (Obligatory Essay). (Lusaka: Unza Press, 2005) p.4

²⁷ Ibid p.4

namely Acts of 1919 and 1925 strengthened and extended the control culminating in the Town and country Planning Act of 1932, which vested planning powers over land in the country as opposed to towns²⁸. The essence of this Act was the requirement for preparation of a scheme by local authorities indicating what development would be permitted in each part of the towns or districts²⁹.

It was found in practice that rigid planning schemes did not work satisfactorily because as time passed and development took place, people's needs changed rendering the machinery of planning defective in several ways. In response, the 1947 Town and Country Planning Act was enacted in England, under this Act, local authorities were required to prepare development plans showing the allocation of land for all uses³⁰. This Act provided for appeals in the event of a dispute between a planning authority and a developer. The 1962 Town and Country Planning Ordinance of Northern Rhodesia which was the first Legislation to provide for appeals, was a replica of the Town and Country Planning Act (1947) of England³¹. However, unlike the 1962 Act as well as the present Town and Country Planning Act of Zambia which provide for appeals to the Tribunal, the 1947 Act of England provided for appeals to the Minister of Housing and Local Government³². The Minister could allow or dismiss the appeal, or could reverse or vary any part of the decision of the planning authority. Provision was also made for an appeal to an independent Tribunal instead of the Minister only in

²⁸ F.S. Mudenda, Land Law in Zambia, Cases & Materials. (Lusaka: UNZA Press, 2007) p. 665

²⁹ *Ibid* p.665

³⁰ J.J Clark, The Gist of Planning Law 2nd Ed, (New York: St Martin's Press, 1968) p.9

³¹ K. Waluzimba, Town & Country Planning Act: A need for Reform (Obligatory Essay). (Lusaka: UNZA Press, 2005) p.8

³² J.J Clark, The Gist of Planning Law, 2nd ed. (New York: St Martin's Press, 1968) p.10

an instance where a development order made provision. Thus an appeal could be made to the Tribunal in case of decisions of a planning authority being decisions relating to, the design or external appearance of a building or other similar matters³³. These laws eventually found their way into Northern Rhodesia as part of the colonial law of the territory.

Before the advent of colonialism in Northern Rhodesia as Zambia was then known in 1889, all land in the territory was administered in accordance with 'African Customary Law'. This customary land tenure system regulated the manner in which indigenous people could acquire, exercise and enjoy rights in land. On 29th October 1889, the British South Africa Company (BSA Co) was incorporated under a Royal Charter and under this Charter, the Company was *inter alia*, entrusted with administration of North Western Rhodesia and North Eastern Rhodesia protectorates which were created under the provisions of North Western and North Eastern Rhodesia Orders in Council³⁴. The Company's right to rule the territory was derived from two sources namely the Royal Charter of Incorporation of the BSA Co and also the North Western and Eastern Rhodesia Orders in Council (1889). In 1911, the two territories were merged and later in 1924, the Crown relieved the BSA Co of administration of Northern Rhodesia and the Crown obtained unfettered control over all the other land of the territory with the exception of Barotseland where Native Rights in land had already been secured by treaties.³⁵ Administration of the territory was entrusted to a Governor appointed by the British sovereign.

³³ Ibid p.10

³⁴ F.S. Mudenda, Land Law in Zambia, Cases & Materials. (Lusaka: UNZA Press, 2007) p 351

³⁵ M.P. Mvunga, The Colonial Foundations of Zambia's Land Tenure System. (Lusaka: NECZAM Zambia Ltd, 1980) p.33 & 39

When the colonialists entered the Territory, they introduced English law to regulate the system of land administration. They either misunderstood the existing African tribal tenure system or disregarded it altogether and, therefore, transplanted the tenure system based on English law or statutory tenure since that was what they understood and believed could fully protect their interests. The current dual land tenure system in Zambia is therefore a result of the colonial history which brought with it Western tenure concepts.

Following the termination of the BSA Co.'s mandate to administer the Territory in 1924, Sir Hubert Stanley was appointed as the first Governor of the territory and formed a land reservation policy which was approved by the colonial office³⁶. A Native Reserves Commission East Luangwa (1924-1925) was appointed to inquire into what land could be set aside for African occupation in Fort Jameson (Chipata) and Petauke Districts. The Northern Rhodesia (Crown Lands and Native Reserves) Order in Council 1928 gave effect to the recommendations of the commission and by this order, land other than land in Barotseland and the three Freehold areas vested in the Company was divided into Crown land and Native Reserves³⁷.

Crown Lands were established for the occupation of the White settlers, it was for non-native settlement and for mining development and included land certified as a result of geological survey to be suitable for European development, and all land known to contain potential mineral resources³⁸. Most of this land was located along the line of rail from today's Livingstone to Chililabombwe. Native Reserves on the other hand referred to land that was set apart in perpetuity for the sole and exclusive use and occupation of the natives. Reserves were essentially

³⁶ F.S. Mudenda, Land Law in Zambia, Cases & Materials. (Lusaka: UNZA Press, 2007) p 365

³⁷ Ibid p 365

³⁸ F. Sichone, 'Land Administration in Zambia With Particular Reference To Customary Land'. A Paper Presented @ A Seminar Organized By Zambia Land Alliance, 28th June 2008.

a permanent habitat of the indigenous people. African Customary Law regulated tenure in reserves while English Law regulated interests in Crown Land which were those known to English Law i.e. Freehold and Leasehold Estates³⁹. The 1928 Order in Council was the genesis of the Dual Land Tenure system present in Zambia today namely, statutory tenure which existed in Crown Land and customary tenure in Native Reserves.

The first planning law in Northern Rhodesia was considered in 1928 and a bill was passed through the Northern Rhodesia Legislative Council in 1929. Therefore, the 1929 Town Planning Ordinance was the first planning law in Northern Rhodesia and only applied to Crown Land. Before the advent of this ordinance, Village Management Boards were established in 1913 and initially were composed of 18 white settlers⁴⁰. These boards were empowered to control and manage the Township and to take adequate measures in respect of lighting, health and water. These boards as urban institution of Local Government remained in existence until 1924 when the Crown took over direct responsibility for Northern Rhodesia and the scope of administration also expanded. As a result, Village Management Boards soon proved to be unsuitable to cope with the increasing pace of urban development which was accelerated by the rapid growth of copper mining in the newly established Copperbelt. Therefore, municipalities were established under the Municipal Corporations Ordinance in 1927, which was enacted not necessarily to control the development of land but, was mainly concerned with the formation of townships into Municipalities.⁴¹ A similar ordinance was the Public Health Ordinance which was concerned

³⁹ F.S. Mudenda, Land Law in Zambia, Cases & Materials. (Lusaka: UNZA Press, 2007) p 366

⁴⁰ M.L.M. Mbaao, Law and Urbanization In Zambia.PHD Thesis. (London: University of Cambridge, 1987) p. 65

⁴¹ Ibid p. 65

with the prevention and suppression of diseases and generally regulation of matters connected with public health in the territory⁴².

The 1929 Ordinance gave powers to Local Authorities to prepare planning schemes for proclaimed or private townships with very restricted powers of control and to control subdivision under 20 acres⁴³. The general object of the Ordinance was to secure proper sanitary conditions, amenity and convenience in connection with laying out and use of land⁴⁴. In this respect the Ordinance provided for the appointment of a Town Planning Board with the power to prepare a plan for any Town referred to it by the Governor and impose building standards. Under this ordinance, no provision was made for appeal and it can be inferred that aggrieved parties had recourse to the courts of law for determination of planning disputes. The 1929 Ordinance was influenced by the British town planning legislation and was only applicable to Crown land while subdivision of land and erection of buildings of any type went on unlimited and uncontrolled in the freehold areas outside the Municipal boundaries and town ship management Boards⁴⁵.

Several amendments were made to the 1929 Ordinance making 12 in all. In 1959 and 1960, the Town Planning Board considered drafts for new legislation. Hence on 16th November 1962, the Town and Country Planning Ordinance was enacted thereby repealing the Town Planning Ordinance of 1929⁴⁶. This Ordinance was a replica of the 1947 British Town Planning Legislation and only applied to Crown Land with the possibility of extension. Unlike the 1929 Town Planning Ordinance, the 1962 Ordinance provided for the control of all subdivisions, wider powers of control of development over peri urban areas, of relevance to this study was the

⁴² M.L.M. Mbao, Law and Urbanization In Zambia.PHD Thesis. (London: Cambridge University, 1987) p.112

⁴³ F.S. Mudenda, Land Law in Zambia, Cases & Materials. (Lusaka: Unza Press, 2007) p 666

⁴⁴ Ibid p 666

⁴⁵ M.L.M. Mbao, Law and Urbanization In Zambia.PHD Thesis .(London: University of Cambridge,1987)

⁴⁶ F.S. Mudenda, Land Law In Zambia, Cases & Materials. (Lusaka: UZA Press, 2007) p 666

provision for appeal⁴⁷. Further, the 1962 Ordinance also provided for compensation, planning of regions and the inclusion of Reserves and Trust land if needed⁴⁸. Therefore the 1962 Ordinance marked the birth of Zambia's Town & Country Planning Tribunal.

2.1 The Town and Country Planning Tribunal

The Minister of Land and Natural Resources sir John Moffat in 1961 stated that,

“The most important provision in the Town and Country Planning Bill is the provision for the Tribunal. This is an independent Tribunal with qualified personnel and is essential for the successful working of the Ordinance. It functions first in draft schemes and plans and is in effect the arbitrator between planning authorities and private individuals and secondly, in the actual planning approval, it will hear and determine appeals⁴⁹. ”

At independence this Ordinance became an Act and provided a basis for the present Town and Country Planning Act and was amended by the Town and Country Planning Ordinance Amendment Act No. 16 Of 1965. In 1997, the Act was revised to cater for changing development trends. The planning system prior to the amendment of the Town and Country Planning Act in 1997 was a top down approach which did not involve participation of residents or communities, as such, this planning did not respond to the development needs of the community⁵⁰. In the light of the above, the amended Town and Country Planning Act, has appointed local authorities in the country as planning authorities for the respective councils under the Director of Physical Planning who have been designated to make strategic plans. Secondly, the definition of development plan which was more physically oriented has now been changed to Structure and

⁴⁷ K. Waluzimba. Town & Country Planning Act: A Need for Reform (Obligatory Essay). (Lusaka: UNZA Press, 2005) p.8

⁴⁸ F.S. Mudenda, Land Law In Zambia, Cases & Materials. (Lusaka: UNZA Press, 2007) p 666

⁴⁹ Northern Rhodesia, Parliamentary Debates, 27th July 1964. Pg 906-16

⁵⁰ A.K. Tembo, The Case of Kitwe & Kabwe City Council's in Zambia. MA Thesis Unpublished. May 1999

Local plans which are supposed to encompass not only physical but other aspects of development such as, economic, social and environmental⁵¹.

From the foregoing, it is evident that the Tribunal was statutorily created on 16th November 1962 as an independent body to arbitrate between planning authorities and private individuals.

Secondly that as the Town and Country Planning Ordinance only applied to Crown Land with the possibility of extension, the Tribunal only had jurisdiction to entertain appeals that arose from Crown Land unless by statutory order, the Crown extended application of the Ordinance to Native Reserves and Trust Land.

Case law reveals that by 1964 the Tribunal was functioning, to concretize this is the case of Total Oil Products (Rhodesia) PVT Ltd v Municipal Council Of Livingstone,⁵² the Tribunal had occasion to elucidate on the relevant criteria for planning consideration. The appellant wished to build in stages a petrol filling station and a block of flats on their site which was subject to the provisions of an approved development plan. On applying for planning permission, it was refused *inter-alia* on ground that the council required the proposed development to be carried out concurrently and not in stages. The Tribunal observed that the respondent council rejected the appellant companies application because of the manner and in particular the sequence and timing of the implementation of that development. The Tribunal held that the conditions which the respondent council sought to impose had the effect of making planning permission contingent upon the due execution of what was a collateral project which did not itself require permission for its implementation. The Tribunal stated that, the respondent council attempted to use their powers for an ulterior object, namely to ensure that flats were erected on part of the site which was not a planning consideration.

⁵¹ Ibid

⁵² (1964) Appeal TPT/06/7/5/1. Unreported.

At independence, Zambia inherited the 1962 Town and Country Planning Ordinance, thereafter Crown Land became State land, Native Reserves became 'Reserve land' and Native Trust Land became 'Trust land.' The Lands Act of 1995⁵³ merged Reserve and Trust Land into customary areas a term that is used to date. The Tribunal's jurisdiction as it currently does today, continued to extend only to State Land unless the president by statutory order extends application of the Town and Country Planning Act to Customary areas. Case law⁵⁴ further reveals that the Tribunal continued to function and has since been functioning although not undisturbed as its operations came to a complete halt during the nineties and also in 2007⁵⁵.

2.2 LEGAL FRAMEWORK

The legislation which brought the Tribunal into being and which also prescribes conditions under which an appeal can be lodged is the Town and Country Planning Act and is further supplemented by the Town and Country Planning Appeals Regulations (Government Regulation 50 of 1963). The Town and Country Planning Act is concerned mainly with the mechanisms of planning, to let authorities have sufficient power to do their work but not so much as to permit them to take autocratic action in disregard of individuals' rights. This is done by giving authorities power to plan and act as well giving the individual the right to object and then providing the machinery to reconcile the two under an independent Tribunal.

Section 6 of the Town and Country Planning Act which establishes the Tribunal and confers upon it jurisdiction provides that:

⁵³ Chapter 184

⁵⁴ *Ball v Western Planning Authority*. (1966) ZR 1 TCPT, & *Papenfus v The Lusaka City Council* (1967) ZR 3 TCPT

⁵⁵ Interview with the President of the Town & Country Planning Tribunal, (Dr P. Matibini). 18th November 2009

There is hereby established a Tribunal to be known as the Town and Country Planning Tribunal which shall have the jurisdiction, power and authority conferred upon it by this Act and by any regulation made hereunder.

Section 25 vests the Minister or planning authority with power to either grant or refuse permission to develop or subdivide land. The section provides that:

where an application is made to the Minister or planning authority for permission to develop or subdivide land, the Minister or planning authority may grant permission either unconditionally or subject to such conditions as he thinks fit or may refuse permission and, in dealing with any such application, the Minister or said planning authority shall have regard to the provisions of the structure plan or local plan.

Sections 29 (1) and (2) prescribe the rights of appeal to the Tribunal. Section 29(1) Provides:

Where an application is made to the Minister or planning authority for permission to develop or subdivide land, and that permission or approval is refused by the planning authority, or is granted subject to conditions then if the applicant is aggrieved by the decision, he may appeal to the Tribunal.

Section 29(2) confers a right to appeal against an unfavorable decision not only on applicants for development and subdivision of land but also on objectors to an application. The section provides that:

Any person other than an applicant or any local or township authority, who is dissatisfied with any decision made by the planning authority in connection with any application for permission to develop or subdivide land, may appeal to the Tribunal.

Section 31(7) provides that:

If any person on whom an enforcement notice is served is aggrieved by the enforcement notice, he may appeal against the enforcement notice to the Tribunal, and the Tribunal

may in respect of such enforcement notice make any order which it is empowered to make under the provision of section eleven.

The effect of these provisions is to give a right of appeal to those persons to whom they apply in virtually unqualified terms and the only criterion is to be “aggrieved” or “dissatisfied.” Further, they set out the powers of the Tribunal in relation to applications for planning permission.

This chapter has looked at the historical evolution of the Tribunal. The Tribunal was statutorily enacted in 1962 by the 1962 Town and Country Planning Ordinance. The Tribunal has since been functioning though not undisturbed. The chapter has also tabulated the legal regime under which the Tribunal operates namely specific provisions of the Town and Country Planning Act. This Act also establishes the Tribunal and confers it with authority, jurisdiction and power to perform its functions.

CHAPTER THREE

THE TOWN AND COUNTRY PLANNING TRIBUNAL IN ACTION

In the previous chapter, the historical background to the establishment of the Tribunal and also the legislation establishing the Tribunal were considered. This chapter will consider the Tribunal in action, in doing so, the paper will discuss the composition, jurisdiction and operation and the nature of disputes before the Tribunal.

3.0 COMPOSITION OF THE TRIBUNAL

Section 7(3) of the Town and Country Planning Act provides that the Tribunal shall consist of the President or Vice President and such other members, not less than two in number, as may be appointed by the Judicial Service Commission from time to time to sit with the President or Vice President as members of the Tribunal, for determination of any matter before the Tribunal. The Tribunal does not have a vice President and at present the quorum only has 3 members when ideally it ought to consist of 6 members⁵⁶.

3.1 THE PRESIDENT

According to section 7(1) of the Act, the President of the Tribunal is appointed by the Judicial Service Commission and shall hold office for such period and subject to such conditions as may be agreed. The President of the Tribunal shall be a barrister or solicitor entitled to practice in Zambia, or a person who holds or has held judicial office⁵⁷. The current President of the Tribunal is Judge Patrick Matibini and has held office since 30th March 1999⁵⁸. The functions of the President are several, firstly, he presides over the Tribunal when hearing and determining the matter of the appeal. Moreover when considering any matter

⁵⁶ Interview with the Secretary of the Tribunal (Mr. Benson Chongo). 18/11/09

⁵⁷ Section 7(2)

⁵⁸ Interview with the President of the Tribunal (Dr. Patrick Matibini). 11/11/09

brought before the Tribunal, the president solely makes decisions on a matter of law or on whether a matter for determination is a matter of fact or law⁵⁹. In accordance with the provisions of section 11(1) (i) the President can also summararily fine a person who without reasonable excuse fails to comply with provisions of a notice in writing which requires either attendance of a witness, adducing of evidence or production of documents in his/her possession. In addition by virtue of section 12(2) the president has power to administer oaths in an instance where the Tribunal takes evidence on oath.

Another role to be performed by the president is that where an appeal has been made under section 29 and it appears to the President that permission for development or subdivision could not have been granted otherwise than subject to the conditions imposed, he can refuse to entertain an appeal and he shall by notice served on the appellant and respondent give reasons for his decision not to entertain the appeal⁶⁰. Lastly, as soon as possible after the receipt of a notice of appeal, the President shall cause to be published in a newspaper circulating in the area where premises at which the subject of appeal are situated, an advertisement calling upon any objector to serve written notice of his intention to be heard on the hearing of the appeal therein⁶¹.

3.2 THE SECRETARY

The secretary to the Tribunal is appointed by the Minister of Local Government and Housing in accordance with the provisions of section 7(5) of the Town and Country Planning Act. Records of proceedings of the Tribunal are kept and filed in the office of the secretary (section 10). Moreover in accordance with Regulation 16 of the Appeal Regulations, a notice shall be sufficiently served on the Tribunal if it is served on the secretary at the official address of the Tribunal. The secretary shall

⁶⁰ Regulation 5 of the Town and Country Planning Appeals Regulations 1963

⁶¹ Regulation 6 of the Town and Country Planning Appeals Regulations 1963

also serve notice on every objector informing him that he may during normal office hours at the office of the secretary inspect and take copies of the notice of appeal⁶². Lastly, the secretary serves to notify the applicant and the respondent of the date of hearing of the application.

3.3 OTHER MEMBERS

The two other members together with the President hear and determine the matter of appeal and make orders therein in addition to and in substitution for the matter appealed against⁶³. They are appointed by the Judicial Service Commission to sit with the President as members of the Tribunal for determination of a matter. The Act provides that one of the members of the Tribunal shall be a chartered planner of the Town Planning Institute of the United Kingdom or hold such similar qualifications as the Minister may approve⁶⁴. The requirement that one of the members should be a chartered Planner of the Town Planning Institute of the United Kingdom is one of the obsolete provisions of the Town and Country Planning Act because it is totally inapplicable to Zambia and only applicable to the United Kingdom.

3.4 JURISDICTION OF THE TRIBUNAL

Unlike the Revenue Appeals Tribunal Act⁶⁵, which in section 3 sets out the jurisdiction of the Revenue Appeals Tribunal, the Town and Country Planning Act does not do so. It can be inferred that the Tribunal has jurisdiction to perform such acts and duties as may be prescribed under the enabling Act. From this Act the Tribunal assumes jurisdiction under the following instances namely; when a there's a disagreement between the planning authority and the republic

⁶² Regulation 8(3) of the Town & Country Planning Appeals Regulations 1963.

⁶³ Section 7(3) of the Town and Country Planning Act.

⁶⁴ Section 7(3)b of the Town and Country Planning Act.

⁶⁵ Act No. 11 of 1998

concerning the carrying out of any development or subdivision of land, and the Minister refers them to the Tribunal⁶⁶. When a person has an interest in land that may be affected by any decision of an appeal before the Tribunal and that person requests to appear and be heard by the Tribunal, the Tribunal assumes jurisdiction. By virtue of section 29, The Tribunal also has jurisdiction to entertain an appeal lodged by an applicant aggrieved or dissatisfied with the decision of the Minister or planning authority to refuse or grant planning permission subject to conditions. The Tribunal also assumes jurisdiction when any person other than an applicant or local or township authority who is dissatisfied with the decision of the Minister or planning authority appeals to the Tribunal⁶⁷.

In accordance with section 31(7) when a person on whom an enforcement notice is served is aggrieved and appeals to the Tribunal against the notice, it assumes jurisdiction. In all the above matters, the Tribunal has jurisdiction to inquire, hear and determine the matter and thereafter make awards. However, as has been spelt out in chapter 1, the Tribunals jurisdiction like that of other appeals Tribunals is limited in that it does not have the mandate to adjudicate over planning disputes that arise in mine township areas and statutory areas under the Housing(Statutory and Improvement Areas) Act

3.5 DISPUTES BEFORE THE TRIBUNAL

The following are disputes entertained by the Tribunal; planning permission disputes, land use and change of use disputes and sub-division of land disputes. These disputes arise in this manner; the central concept under the Town and Country Planning Act is planning permission

⁶⁶ Section 4(3) of the Town and Country Planning Act.

⁶⁷ Section 29 (2) of the Town and Country Planning Act.

which is required for any development or subdivision of land⁶⁸. This is so because under section 15 of the said Act, the Minister may by statutory notice order a Development plan to be prepared for any area specified in such notice. These indicate the manner in which it is proposed that land in the area should be used and the stages by which any such development should be carried out⁶⁹. In this regard before land can be occupied, a structure or local plan is made which provides for all land uses i.e. provision for a bank, road, university, hospital and school⁷⁰. When this plan is prepared, planners give land uses to a particular piece of land and require it to be implemented in that manner.

Once an area is subject to either a structure or local plan or there is an order to prepare such plans or it falls within a distance of 20 miles from the boundaries of any of the areas mentioned, land must remain within that given use hence the requirement for planning permission from the planning authority before use can be changed⁷¹. Planning permission is required for any development or subdivision of land. Section 22(3) of the Act defines subdivision in relation to land to mean, the division of any holding of land into two or more parts, whether subdivision of land is effected for purposes of conveyance, transfer, partition, sale, gift e.t.c. Section 22(4) defines development to mean the carrying out of any building, rebuilding or other works or operations on or under land or the making of any material changes in the use of land or buildings.

⁶⁸ Section 29 of the Town & Country Planning Act.

⁶⁹ Interview with the Tribunal Secretary (Mr. Benson Chongo). 2nd December 2009.

⁷⁰ Ibid

⁷¹ Interview with the Tribunal Secretary (Mr Benson Chongo). 2nd December 2009.

An application for planning permission must be filed in the prescribed manner accompanied by prescribed plans and drawings⁷². On receipt of an application for planning permission, the planning authority consults other local authorities especially the chief Health and Factories inspector, the chief fire officer and the Roads and Traffic Commission representative so as to ensure that proposed developments do not violate public health, safety and road traffic laws.⁷³ In deciding whether or not to grant planning permission, the planning authority must have regard to the provisions of the structure plan or local plan in so far as they are material to the application and to any other material considerations such as preservation of amenities and beautiful surroundings, the desirability of preserving existing land uses and buildings as well as social, economic and financial implications⁷⁴.

Section 25 of the Town and Country Planning Act vests the planning authorities with power to grant planning permission either unconditionally, subject to conditions or it may be refused. Section 25(2) further states instances where conditions may be imposed on the grant of permission to develop or subdivide land. Victor Moore⁷⁵ observes that almost all planning permissions that are granted are granted subject to conditions which may be imposed not only to enhance the quality of development, but to ameliorate any adverse flow from the development. However, it is important to note that although section 25 of the aforementioned Act is couched in wide terms, the power to impose conditions is not unlimited. In Pyx Granite Company limited v Ministry of Housing and Local Government⁷⁶, Lord Denning observed that;

⁷² Town & Country Planning (Appeals) Regulation, No.50 of 1963

⁷³ Ibid

⁷⁴ M.L.M. Mbaio, Law and Urbanization In Zambia,(PHD Thesis). (London: University of Cambridge, 1987) p.66

⁷⁵ V. Moore, A Practical Approach to Planning Law. (Blackstone Press limited, 1994) p. 220

⁷⁶ (1958) 1QB 554, at P 572

“although planning authorities are given very wide powers to impose such conditions as they see fit, nevertheless the law says that those conditions to be valid must fairly and reasonably relate to the permitted development. The planning authorities are not at liberty to use their powers for ulterior purposes however desirable the object may seem.”

However, in certain instances, the conditions imposed by the by the planning authorities are not imposed for planning purposes, they are unreasonable and do not reasonably relate to the permitted development. In such an instance, an aggrieved person can appeal to the Tribunal and the onus is on the appellant to show that the decision he is appealing against is wrong. Where the Tribunal finds that the conditions were not of a planning nature and where unreasonable, it can hold and direct that the conditions should be set aside. In Ball v Western Planning Authority⁷⁷, the appellant acquired a ‘bottle store licence,’ that is to say a license to sell liquor at his store for consumption off the premises. Subsequently, the appellant became desirous of extending his business activities to include provision for sale and consumption of liquor off the premises. The appellant accordingly applied for planning permission, which was rejected. At the hearing, it was for the council to show that they had such an interest in land that would be affected by the decision on the appeal before the Tribunal. The interest contended by the council related to the possibility of competition between the appellants bar lounge and the council’s own institutions of similar character which it would be installing within the municipal boundaries. The Tribunal held that, even if the council had succeeded in showing an affectible interest so as to entitle it to be heard, the possible effect contended for, namely reduction of trading profits because of competition, would not be a proper planning consideration to take into account in deciding whether or not to grant planning permission.

⁷⁷ (1966) ZR 1 [TCPT]

In the case of Manda Hill Center Limited v Lusaka City Council⁷⁸, an appeal was made against a decision of the respondent to grant planning permission subject to specified conditions. The appellant mooted the idea of creating a vibrant, sophisticated, modern world class center on the property by way of refurbishment and additional buildings on land that formed part of land to which the respondent had title. The appellants applied for planning permission which was granted subject to the following conditions among others; namely that the council obtained title in respect of the land the appellants applied for, secondly that the proposed alteration and development of new buildings would create shortage of parking space unless the appellant showed evidence of future developments such as high rise parking aimed at increasing and maximizing parking space. The Tribunal held that the conditions imposed by the respondent were not of a planning nature and were not reasonably and fairly related to the development of the shopping center.

These two cases illustrate the role and relevance of the Tribunal in dispute resolution. Where the Tribunal hears a matter and finds that the conditions imposed by the planning authority were unreasonable, it provides relief to an aggrieved party by setting aside such conditions. In doing so, the Tribunal ensures that the authorities act within the ambits of their authority and do not exceed such authority.

Most disputes before the Tribunal revolve around the concept or what amounts to material change. This is evident from the two cases excepted above as well as others such as; Papenfus v The Lusaka City Council⁷⁹, the issue was whether the applicant's action by trying to make a change in the use of her stand as a registered nursery to a play center constituted development

⁷⁸ (2008) TCPT/01

⁷⁹ (1967) ZR 3

thereby requiring planning permission. The appellant had town planning permission to run a day nursery which had been duly licensed and registered under the Day Nurseries Ordinance 1957. However, her license was subject to certain condition that she was precluded from entertaining in that nursery any children above the age of 7years. In order to accommodate children above the age of seven, the appellant made an application to establish a play center on the said premises. Her application was refused by the respondent council because of the predominantly residential nature of the neighbourhood and the nuisance that may be caused thereby. The Tribunal came to the conclusion that the appellant's application to the council was misconceived and should not have been entertained by the respondent council for that reason. That the appellant only required planning permission for the use to which she wished to put the premises on her stand only if that use amounted to development as defined in the then Ordinance. Making a change of use of the premises by opening her registered nursery there to children over the age of 7 could not be regarded as material change thereby constituting development.

In Northmead Supermarket Limited & others v Lusaka City Council⁸⁰, the appellants applied to the Director of City Planning of Lusaka City Council for change in use from supermarket to café and restaurant. The Director's response was that, carrying on the business of a bar, bottle store and discothèque were incompatible to the area because of the presence of the adjoining church as well as residential flats on top of the premises and consequently, the application was rejected. The primary question to be determined was whether or not the refusal by the respondent to grant permission was reasonable in the circumstances and, whether the appellants in their application proposed any material changes in the use of the premises? The Tribunal held that the application to change use of the premises from a supermarket to a café cum restaurant did not constitute

⁸⁰ 2006 [TCPT] Cited on page 717 in F.S. Mudenda, Land Law In Zambia.(UNZA Press: Lusaka)

material change and therefore did not require planning permission. This was so because the proposed change in the use of the premises and the existing use fell under the same use group.

3.6 PROCEDURES BEFORE THE TRIBUNAL

Proceedings of the Tribunal are informal in comparison to judicial decisions. An individual or group of persons can institute an appeal to the Tribunal by serving on the secretary a written notice of appeal in quadruplicate signed by the appellant or his legal representative⁸¹. Unlike courts of law, there is no prescribed form that the notice of appeal and also the plaintiff's case should take. The Town and Country planning Appeals Regulation 6, empowers the President or Vice President to as soon as possible after the receipt of the notice of appeal, to cause to be published in a newspaper circulating in the area where the premises at which the subject of the appeal are situated an advertisement calling upon any objector to serve on the secretary, within twenty-eight days from the date of publication of the advertisement, written notice of his intention to be heard on the hearing of the appeal therein referred to. Further, within fourteen days from the date of receipt of the copy of the appellant's case, the respondent shall lodge with the secretary a statement in writing called the "respondent's case."

Thereafter, the secretary shall, when the president or the vice-president has appointed the place and date of hearing of an appeal, cause notice thereof to be served on the appellant, the respondent and all objectors, if any, and shall forthwith cause an advertisement to be published in a newspaper circulating in the area where the premises which are the subject of the appeal are situated⁸². The Tribunal may hear an appeal without any appearance by the parties to the appeal

⁸¹ Town and Country Planning Appeals Regulation 4(1)

⁸² Regulation 9 of the Town & Country Planning Appeals Regulation 50 of 1963

if an appellant not less than 7 days before the date of hearing files a written notice requesting that the appeal be heard without appearances by the parties thereto on the notice of appeal⁸³. If the president or the vice-president considers that such request is reasonable, the appeal may be determined on such notice of appeal⁸⁴.

During the hearing of the appeal, the Tribunal shall afford the appellant, the respondent and any objector or their legal representatives a full opportunity of being heard and of calling such evidence and producing such documents at the hearing of the appeal as may be deemed relevant and material⁸⁵.

In an appeal to the Tribunal, the onus lies on the appellant to show that the decision he is appealing against was wrong. In **Ball V Western Planning Authority**, it was stated that this could be done in the following ways:

- (1) By showing that the planning authorities decision was perverse or unreasonable to the extent of being unsupportable having regard to the evidential material before it, or that it was founded upon some mistake.
- (2) By showing that the planning authority in coming to its decision, misinterpreted the provisions of any legislation regarding planning or any development plan.
- (3) Generally by showing that the planning authority either failed to take into consideration matters which it ought to have considered or took into consideration matters which it ought not to have considered.

⁸³ Town and Country Planning Appeals Regulation 10.

⁸⁴ Ibid

⁸⁵ Regulation 11 (1) of the Town & Country Planning Appeals Regulation 50 of 1963

The Tribunal is not bound by rules of evidence applicable in civil proceedings, any party to the dispute can appear either in person or through counsel at his own expense. In addition, it can and normally will, proceed by way of rehearing, however, a rehearing is not obligatory⁸⁶. How the appeal is heard will largely depend upon the election of the parties as to the mode of presentation of their cases, and it will also depend upon the views of the Tribunal. All matters to be determined by the Tribunal shall be decided by majority provided that any decision on a matter of law shall be made solely by the President⁸⁷. In addition, unlike courts of law where fees are payable in respect of anything done in respect of any matter before the court, services of the Tribunal are free of charge and parties only incur costs when they seek services of a solicitor.

3.7 REMEDIES AND QUALITY OF RULINGS

The Tribunal after hearing and determining an appeal shall make such order therein in addition to or in substitution for the matter appealed against as it thinks fit including the award of costs to any party to an appeal⁸⁸. The Tribunal can also hold and direct that the conditions imposed by the planning authority should be set aside and that the appellant's application be granted. If the Tribunal considers that the appeal should be allowed, it shall before making the above orders afford the Minister or planning authority an opportunity of making representations as to any conditions which they consider ought to be included in the order and afford the appellant an opportunity of replying thereto⁸⁹. According to section 11(c) of the Town and Country Planning Act, the orders made by the Tribunal shall be binding upon the Minister, planning authority and the appellant.

⁸⁶ Ball v Western Planning Authority (1966) ZR 1

⁸⁷ Section 11(d) of the Town & Country Planning Act.

⁸⁸ Section 11(b) of the Town and Country Planning Act.

⁸⁹ Section 11(c) of the Town and Country Planning Act..

Section 11(2) of the Town and Country Planning Act empowers any person who is dissatisfied with the decision of the Tribunal to appeal to the High Court within 28 days of such decision. In relation to the quality of rulings, an interview with the president disclosed that there is yet to be a decision of the Tribunal that has been set aside by the High Court. The Tribunal comprises members with specialized knowledge on town and countries planning, therefore, its rulings are credible such that they are published in the Zambia Law Reports.

In conclusion, this chapter has outlined the composition, jurisdiction, procedures and disputes before the Tribunal. Case law cited reveals that most disputes before the Tribunal revolve around change of use and what amounts to material change. Secondly, it has been shown that the procedures of the Tribunal are informal as compared to courts, in addition, it is evident that the Tribunal has power to set aside unreasonable and arbitrary conditions imposed by the planning authority as well as make orders in addition to or in substitution for those made. Lastly that the rulings of the Tribunal are binding on the Minister, planning authority and the applicant. It is evident that the Tribunal has cushioned the spiraling costs, fees, the legalistic procedures and the intimidating court room atmosphere.

CHAPTER FOUR

AN EVALUATION OF THE TOWN AND COUNTRY PLANNING TRIBUNAL AND ITS CONTRIBUTION TO THE JUSTICE SYSTEM OF ZAMBIA

The preceding chapter examined the Tribunal in action. This chapter will assess the performance of the Town and Country Planning Tribunal in order to determine to what extent the Tribunal has fulfilled its mandate. It must be noted that the Town and Country Planning Tribunal is one of the means of protecting the citizens against abuse by administration. Other means include; the Courts through the power of judicial review, seeking the intervention of parliament through a member of parliament, other administrative Tribunals and lastly is the office of the Ombudsman⁹⁰.

4.0 A Review of cases disposed off by the Tribunal

This research was constrained by the unavailability of certain information and statistics at the Tribunal. However, an evaluation of the operations of the Town and Country Planning Tribunal over a period of 3 years revealed the following;

Year	# of Appeals	# of Rulings	# of Appeals to the High Court	Backlog
2007	7	0	0	7
2008	7	4	0	3
2009	11	1	0	10

Source: Town and Country Planning Tribunal Vice Secretary Mr. M. Ngosa

From the above table, it is evident that the Tribunal has not expeditiously dealt with cases as was intended by the Legislature during the enactment of the Town and Country Planning Act. The researcher took time to visit the High Court in order to find out the number of civil cases that have been dealt with by the court as well as those that are pending. The research only yielded

⁹⁰ J. Sangwa, Administrative Law in Zambia. Unpublished

information covering the year 2009. According to the Assistant Registrar of the High Court (Mr. Moffat Phiri), in the year 2009, 1,570 civil cases were lodged at the Principle High Court Registry (not the commercial registry). In addition, 1,359 cases were carried over from the year 2008. That out of these 2,929 cases, 2,021 were dealt with and 883 were carried over to the year 2010. In terms of percentage, 68% of the cases were dealt with. In comparison with the Town and Country Planning Tribunal, it is evident from the above table that in 2009, 11 cases were lodged, in addition 3 cases were carried over from 2008. Out of these 14 cases, only 1 was disposed off. In terms of percentage, this amounts to 7%. From the above, it can be concluded that the High Court in 2009 disposed off more cases than the Tribunal when the Tribunal was created to expeditiously deal with cases in comparison to courts.

Secondly, it is evident from the table that the number of appeals that are lodged with the Tribunal are few. Therefore this chapter will answer why, by looking at factors that have constrained the operations of the Tribunal.

4.1 None-Legal Factors Constraining the Operation of the Tribunal

4.1.0 The Tribunal is Unknown to the Public

A survey was conducted by the researcher in various parts of Lusaka among 50 individuals. Of the 50, 30 were females and 20 males. The survey reviewed the following pertaining to people's knowledge of the Tribunal as well as the Town and Country Planning Act which establishes it.

# of participants	# aware of the Tribunal	# unaware of the Tribunal	# aware of Town & Country Planning Act	# unaware of Town & Country Planning Act	# aware of other Tribunals
50	15 (30%)	35 (70%)	25	25	18

From the above, it is evident that out of the 50 participants, 70% of the people were not aware of the existence of the Tribunal and only 30% were. In addition, only 25 people knew of the Town and Country Planning Act while the remaining 25 did not. In relation to this, the researcher discovered that out of the 25 people who knew about the Town and country planning Act, only 13 knew of the Tribunal. In addition, out of the 50 participants, 30 own residential and business premises while 20 do not own land at all. In this regard, the researcher found that owning residential and business premises is not linked to knowledge of the Town and Country Planning Act as well as the Tribunal.

In addition, that some members of the public are aware of other Tribunals especially the lands Tribunal and ad-hoc Tribunals such as the one constituted to investigate the conduct of the current Minister of Education Mrs Dora Siliya. In addition, the few who know of the Town and Country Planning Tribunal learnt about it through the media, others through daughters and sisters studying Law at UNZA and for others, it was through their jobs as Engineers and Architects. Two respondents were lawyers who disclosed that they learnt about the Tribunal doing their study of law at UNZA.

The survey disclosed that the majority of the people in Zambia do not know about the Tribunal as well as planning legislation. That unless one constantly listens to the Radio, buys news papers, studies Law, Architecture, Engineering, one will not know of the existence of the Town and

Country Planning Tribunal as well as other Tribunals. Moreover, it is not automatic that owning land entails knowledge of the Tribunal. It is also true that the Tribunal has done little to publish its existence to the public. In addition, an interview with the Tribunal president disclosed that despite the existence of the Tribunal since its creation, the public whom it is intended to serve know very little about its existence. As a result, the Tribunal is not efficiently performing its role of hearing and determining planning disputes because it is sparingly used and is not accessible to the public since its inception 48 years ago.

4.1.1 Centralized Operations

The Tribunal's operation is centralized in that it only operates in Lusaka. According to the President, during his 10 years of presidency, occasion has never arisen for the Tribunal to sit outside Lusaka and most cases handled involve the LCC as Planning Authority. As a result, appellants have to travel to Lusaka or appoint a legal practitioner to represent them in the event that they are unable to travel themselves. This leads to increased cost of litigation, and delays in justice to the very people that the institution was created to serve.

4.1.2 Lack of Personnel or Staff

An interview with the current president of the Tribunal disclosed that the Tribunal has no full time secretariat or staff and depends for its operation on officers from the Ministry of Local Government and Housing. That these are committed to full time service of the Ministry and as a result, support is not very efficient because these have other commitments. To illustrate this, the current secretary to the Tribunal is the principle planner and development controller at the Ministry of Local Government and Housing and is in charge of development control. His

position has rendered it difficult for him to serve the tribunal because he constantly travels outside Lusaka. On the day that the researcher interviewed him 18/11/09, he told the researcher that he was given the task of preparing an integrated development plan for cities and towns in Zambia and on that date, he was preparing one for a town in southern province and would travel there on the 29/11/09. There is need for development of human resources to manage the Tribunal.

4.1.3 Inadequate Membership

An interview with the Tribunal secretary disclosed that in addition to the problem of staff, the Tribunal equally has inadequate membership and this has greatly hampered its operations making it difficult to expeditiously deal with cases. Under section 6(3) of the Town & Country Planning Act, the Tribunal shall consist of the president or vice president of the Tribunal and such other members not less than two in number to sit with the president or vice president as members of the Tribunal for determination of a matter before the Tribunal.

Ideally the Tribunal ought to have 6 members but according to the current secretary of the Tribunal Mr. Chongo, the Tribunal lacks members in that the present quorum consists of only 3 members. Consequently, sittings can only take place when the 3 are available. Further, that it is difficult to form a quorum because meetings can only take place when Tribunal members are free. That in certain instances, when time is available only 1 member will be available to sit in the morning and the only time when the 3 are available is in the afternoon hence, rendering it impossible for Tribunal to sit the whole day. The same applies to lawyers of aggrieved parties especially LCC lawyers who have to be consulted before sittings can take place. Thus the Tribunal is only taken as a by the way thing and can only sit when lawyers and others are free.

The effect of this inadequate membership is evident from the few number of awards that have been made by the Tribunal.

4.1.4 Accommodation

One of the preconditions required for establishing and maintaining the independence and integrity of Tribunals include proper administrative support in terms of trained support staff as well as provision of adequate and appropriate hearing accommodation in premises which are not connected with one of the parties⁹¹. The tribunal has no permanent house for operation, at present, the Tribunal secretariat is housed at Ministry of local government while hearings of the tribunal are conducted at Civic center in the Lusaka City Council chambers. One may doubt the impartiality of the Tribunal since Lusaka City Council most of the times is a party to disputes that it adjudicates on. However, in the case of Manda Hill Center Limited V Lusaka City Council,⁹² an appeal was made against a decision of the respondent to grant planning permission subject to specified conditions. The appellants applied for planning permission to refurbish and construct additional buildings on land to which the respondent had title. This permission was granted subject to conditions The Tribunal held that the conditions imposed by the respondent were not of a planning nature and were not reasonably and fairly related to the development of the shopping center. This case proves the contrary, that despite the fact that the Tribunal is housed in a building connected with one of the parties, it maintains its impartiality. The Tribunal in this case ruled against Lusaka City Council when it set aside conditions imposed by the

⁹¹ Lord High Chancellor. Tribunals: their Organisation and Independence. A Report presented to Parliament in England, August 1997.

⁹² TCPT/01/2008.

Council. The conditions were set aside because they were not of a planning nature and did not fairly and reasonably relate to the development of the shopping complex.

However, the researcher discovered that this lack of a permanent house rendered impossible to trace some information necessary for the research. This is so because the Tribunal has no library to store records of cases. The Tribunal only has records of proceedings going as far back as 2008. However, this did not render the research impossible.

4.2 LEGAL FACTORS

4.2.0 Time taken to dispose of f cases

The Tribunal has not done well in expeditiously disposing off cases and according to the president, the process and not the Tribunal is inefficient. This is so in that, when one looks at the Town and Country Planning appeal regulations as well as the Act, there are no time limits for disposal of cases or rules for default hearings when default procedures would expedite the process. As a result, the Tribunal President said that LCC which most of the times is the respondent tends to be slow when responding to appeals. An appeal in such an instance will only take place when Lusaka City Council responds and not within time limits set by the Tribunal. In contrast, rules that regulate mediation⁹³, which is another alternative to the court process, provide for default procedures. Section 24 of the of the Industrial Relations Court (Arbitration and Mediation Procedure) rules provides that, where a party fails to comply with the order of reference to arbitration, judgment or other order, the court or judge shall;

⁹³ Statutory Instrument No. 26 of 2002. The Industrial Relations Court (Abitration and Mediation Procedure) rules.

- (a) Make a default judgment or an appropriate order against the party if that party is a respondent;
- or
- (b) Strike out or dismiss the case where the party is the applicant or complainant.

This essay recommends that the tribunal should have power to hear a matter in case of default.

4.2.1 Tribunals Opinion is not Binding On the Minister

Section 4(2) of the Town and Country Planning Act in part provides that the Minister of Local Government and Housing shall not be bound by the opinion of the Tribunal in the event that a dispute arises between the Republic and a planning authority. The effect is to limit the jurisdiction of the Tribunal and undermines its authority in that it can only render an opinion and not an award. Moreover, this renders the Tribunal toothless.

4.2.2 Limited Jurisdiction

This essay is of the view that the extent of the Tribunals jurisdiction is limited to appeals on defined grounds in that the Town and Country Planning Act, does not provide for an appeal in default of a decision made by the planning authority. Therefore unless a decision has been made by planning authority, there can be no appeal. Due to serious administrative constraints, it takes time for the planning authorities to decide matters referred to them⁹⁴. In addition, the Tribunals jurisdiction does not extend to customary areas, mining townships and statutory and improvement areas⁹⁵.

⁹⁴ J.Sangwa, Administrative and Appeals Tribunals. Unpublished

⁹⁵ Sections 3(2), 3(5) of the Town and Country Planning Act and Section 48 of the Housing (Statutory and Improvement Areas) Act. CAP 194

This essay will now consider how disputes are resolved in some of the areas not covered by the Town and Country Planning Act.

4.3 Statutory and Improvement Areas.

Section 48 of the Housing (Statutory and Improvement Areas) Act provides for non-application of certain statutes to Statutory and Improvement Areas. These include; the Lands and Deeds Registry Act (Chapter 185), the Lands Survey Act (Chapter 188), the Rent Act (Chapter 206) of the Laws and the Town and Country Planning Act. As was stated in chapter one, the rationale behind this in using the words of the Minister of Local Government and Housing in 1982 was to get rid of all complications and make dealings in land as simple and as cheap as possible. Exclusion of the Town and Country planning Act removes the areas covered by the Housing (Statutory and Improvement Areas Act) from planning authorities covered under the Act⁹⁶. This implies that the Tribunal has no jurisdiction and individuals in such areas do not have recourse to the Tribunal.

Statutory Housing Areas are planned housing developments while improvement areas are not since they are former squatter settlements. This is so because the irregular pattern of housing presented a formidable barrier to established survey techniques, thus it was impossible to divide land into little parcels by means of ground survey⁹⁷. Thus planning disputes do not arise. In case of Statutory Housing Areas, Council certificates of title are issued with a sketch map showing the location of the plot and the dimension of land⁹⁸. These areas are planned and occupants aggrieved by a decision of the National Housing Authority must seek redress in courts of law.

⁹⁶ P .Matibini, The Urban Housing Problem for Low Income Groups with Specific Reference To the City of Lusaka: A Social Legal Perspective. ,Masters Thesis,. 1989 UNZA. p.45

⁹⁷ Ibid p.28

⁹⁸ Ibid p.28

Part 1 of the Housing Statutory and Improvement Areas Act interprets court to mean any Subordinate Court. This means that these do not enjoy the benefits of a cheap, informal and expeditious Tribunal.

4.4 Customary Areas

Land under customary areas is not planned because customary areas fall outside the administration of planning authorities⁹⁹. As a result, there is no planning regime to regulate orderly development and planning disputes do not arise for reference to the Tribunal. However, there are chiefdoms which are demarcated by boundaries. As regards land law, Customary law plays a vital role in the settlement of land disputes that may arise under land held under customary tenure¹⁰⁰. Customary law has no uniform application in Zambia but varies from tribe to tribe or locality. Therefore, the law that governs customary tenure in Zambia is the customary land law of the area or district where the land is situated.

4.5 Evaluation

Although the Tribunal has cushioned the spiraling court fees and also the all too legalistic court procedures, it has not efficiently carried out its function of providing speedy resolution of disputes due to inadequate staff and members of the Tribunal. This has greatly delayed time taken to dispose off cases. For a Tribunal to demonstrate its independence and Integrity, it must show that it has in place proper administrative support, staff, and legal textbooks¹⁰¹. This is not true of the Tribunal. In addition, the absence of default procedures has delayed the time that the

⁹⁹ Interview with Tribunal President (Dr Matibini). 11/11/2009

¹⁰⁰ F.S. Mudenda, Land Law in Zambia. (Lusaka: UNZA Press, 2008) p. 22

¹⁰¹ Lord High Chancellor. Tribunals: their Organization and Independence. A Report presented to Parliament in England, August 1997.

Tribunal ought to take in disposing off cases. The effectiveness of any dispute resolution mechanism depends largely on the ability to dispose off a matter efficiently between the parties as well as expediency in the delivery of justice¹⁰². The Tribunal was created to provide redress between planning authorities and private individuals but is not effectively doing so because it is sparingly used due to the fact that very few know about its existence. Only those connected in some way to the legal fraternity are alive to its existence and those who do not know sleep on their rights which should not be the case. The Tribunal cannot serve as many people as possible with the centralization of its operations in Lusaka as only those who can hire lawyers and also afford transport costs for themselves as well as their witnesses access the Tribunal. Moreover, with the lengthy proceedings, parties from outside Lusaka incur accommodation and food costs which would not be the case if there were offices outside Lusaka.

Effectiveness of any dispute resolution mechanism depends on provision of wide jurisdiction to allow the institution to adjudicate upon a range of matters affecting that particular issue. Planning disputes do not only occur in areas covered by the Town and Country Planning Act, but in Statutory Areas covered by the Housing (Statutory and Improvement) Areas Act and Mining Townships. If town and country planning is to succeed, it is vital that everybody who is connected with it should be bound. In addition, grounds of appeal are limited in that unless a decision has been made, one cannot appeal against it. An appeal in default of a decision would have the effect of compelling the planning authority to make a decision in an instance where advantage is taken and a deliberate decision is made by the authority not to make a decision for an illicit or irrelevant purpose.

¹⁰² K. Kaunda, Land Dispute Resolution in Zambia: A Critical Analysis of the Lands Tribunal Kitwe. (CBU Obligatory essay). 2002

Justice can be defined as maintenance or administration of what is just by law by judicial and other proceedings.¹⁰³ Despite the fact that its proceedings are equally as lengthy as courts of law, the Tribunal is contributing to the current justice system by providing redress to parties aggrieved by a decision of a planning authority. It establishes and determines rights according to law and also provides a check on administrative actions so as to ensure that power is not abused.

This chapter has examined the extent to which the Tribunal has fulfilled its mandate. By enacting the Town and Country planning Act, parliament took an important step in the quest for enhancing the justice delivery system in Zambia. However, the Tribunal has not effectively served its purpose because of a several factors legal and non-legal that have constrained its operations. It has not served a large number of its clients. For those of whom it has served, it has not done so expeditiously and justice delayed is justice denied.

¹⁰³ B. Gibson, Law, Justice and Mediation. (Waterside Press: United Kingdom). Define Justice@ Dictionary.com

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

This paper sought to examine the Town and Country Planning Tribunal and determine whether the Tribunal has in its current form served its intended purpose. It has been found that the Tribunal is serving its intended purpose by acting as machinery to reconcile disputes between planning authorities and aggrieved parties. Further that certain mechanisms have been put in place to enable the Tribunal carry out its role, such as appointing a highly qualified legal practitioner as president with specialized knowledge of planning legislation as well as two other members equally possessing specialized knowledge of planning legislation to sit with the president from time to time. In addition, the Tribunal has been conferred with jurisdiction to hear and determine matters under the Act. Lastly, the Tribunal is funded by government to enable it perform its functions. However, it has been determined that the Tribunal has and is not efficiently serving its purpose and the paper has highlighted factors legal and non-legal that have hampered the efficient operation of the Tribunal.

The paper contains five chapters and each of these contains information explaining the title: An Evaluation of the Town and Country Planning Tribunal and its contribution to the Justice System of Zambia. The paper will now proceed to give a summary of these chapters.

Chapter one gave a background to the study and explained the rationale behind the study. In addition, it outlined the objectives of the study as well as how these objectives were to be achieved. It was said that the need to provide for a rational and integrated pattern in the process of land use and development necessitated the involvement of the legislature hence the creation of

the Town and Country Planning Act. Under this Act planning authorities are given sufficient power to plan and grant planning permission so that orderly development prevails. That in carrying out such functions, disputes may arise between these authorities and individuals towards whom the authorities act and the Tribunal was statutorily created to resolve such disputes. However, it was stated that the real impact of the Tribunal as a machinery for resolving disputes is limited due to the fact that the Tribunal remains unknown to the public, it has not provided speedy resolution of cases and has limited jurisdiction.

Chapter two gave a historical background to the establishment of the Tribunal and it was stated that the Tribunal was statutorily established in 1962 under the 1962 Town and Country Planning Ordinance as it then was. That this ordinance including its provision for the Tribunal was a replica of the British Town Planning Act of 1947. It was said that before the advent of colonialism in 1889, all land in the territory was governed by customary law and that the 1929 Town Planning Ordinance was the first planning legislation although it only applied to Crown land. Several amendments were made to this Ordinance culminating into the 1962 Town and Country planning Ordinance. The Tribunal has since been operating though not undisturbed.

Chapter three examined the Tribunal in action and looked at the organizational structure of the Tribunal and it was said that the quorum of Tribunal consists of the president and two other members. In addition, the Tribunal has a secretary with whom appeals are lodged. It was shown that the nature of disputes before the Tribunal are those pertaining to planning permission disputes, change of use disputes and those pertaining to enforcement notices. To enable the Tribunal efficiently carry out its function, it has been conferred with jurisdiction though this jurisdiction is limited. In chapter five, it was evident that the Tribunal has an advantage in

comparison to courts of law in that its procedures are informal and the chapter has explained how. In addition, the Tribunal has jurisdiction to make awards which are binding on the parties and its rulings are of quality but, it does not have power to enforce these rulings.

Chapter four assessed the performance of the Tribunal in order to determine the extent to which the Tribunal has fulfilled its mandate. It was evident that factors such as; inadequate staff and members, lack of publicity, accommodation and centralized operations have affected the operations of the Tribunal. It was equally evident, that the Town and Country Planning Act as well as the Town and Country Planning Appeals Regulations of 1963 under which the Tribunal operates do not provide for default procedures and this has contributed to the lengthy proceedings. Moreover, planning disputes do not only arise in areas covered by the Town and Country planning Act but also in mine townships and statutory areas and yet the Tribunal has no jurisdiction over such because the Town and Country Planning Act does not extend to such areas. It was said that in order for town and country planning to succeed, it is necessary that everyone connected with it should be bound by the Act.

5.1 Analysis of Research Objectives

The first objective was to investigate the rationale and purpose for the establishment of the Tribunal and it has been found that the Tribunal was established to hear and determine disputes between planning authorities and individuals aggrieved with decisions of the planning authorities. It arbitrates between the two and provides redress to aggrieved parties by setting aside the decision in appropriate cases. It must be noted that the functions of the planning authority are administrative and as such likely to be abused, consequently, the Tribunal provides a check on such administrative discretionary powers and ensures that the actions of the planning

authority are within the ambits of the enabling Act. Tribunals are usually preferred to ordinary Courts because firstly, its members have specialized knowledge on the subject matter and its decisions will usually be reached by a panel rather than a single judge. Secondly, it may be better at finding facts, applying flexible standards in that their proceedings are informal in comparison to Courts and exercising discretionary power. Thirdly, they are usually cheaper, more accessible and expeditious than Courts of law¹⁰⁴.

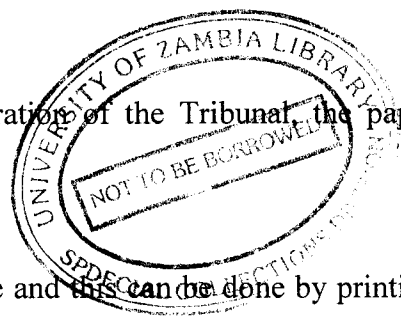
The second objective of this paper was to assess the effectiveness and relevance of the Tribunal in resolving planning disputes and in doing so analyze its impact and contribution to the justice system. It has been found that the Tribunal remains relevant as machinery necessary for resolution of planning disputes in Zambia. However that it is not effective when it comes to resolution of disputes. The Tribunal hasn't had a great impact in the justice system and the courts continue to play a vital role. However, it still has a role to play in the justice system by establishing and determining rights of parties according to law as well as providing redress. In doing so it maintains what is just by law.

The third objective was to determine whether the Tribunal has effectively served its purpose and it has been determined that although the Tribunal remains relevant and necessary for dispensation of justice, the Tribunal is not efficiently serving its purpose due to factors that have been outlined.

¹⁰⁴ P. Matibini, Revisit the Jurisdiction of the Lands Tribunal. Unpublished, 1998

5.2 Recommendations.

In order to overcome the factors affecting the efficient operation of the Tribunal, the paper recommends the following;



- (1) There is need for the Tribunal to publicize its existence and this can be done by printing brochures, producing newsletters, placing adverts on radio and television as well as coming up with radio and television programs where the Tribunal and services that it offers can be discussed. This will require increased funding from the government.
- (2) There is need for an independent office to provide proper hearing accommodation in premises that are not connected with either of the parties to the appeal. In addition, the necessary equipment and technology must be provided and this will equally entail increased funding to the Tribunal. Moreover, the Tribunal needs to employ permanent staff to operate from the offices and provide proper training of staff.
- (3) There is need for amendments to the Town and Country Planning Act as well as the Town and Country Planning Appeals Regulations so as to provide for default procedures as well as time limits within which cases must be disposed off.
- (4) There is need for decentralization of the Tribunal and establishment of offices in provincial centers covered by the Town and Country Planning Act.
- (5) The Tribunal should be conferred with jurisdiction to entertain appeals from individuals in statutory housing areas as well as mining townships.

- (6) There is need to recruit more members of the Tribunal, it has been stated in the main text that at present, the quorum consists of three members when it ought ideally to have six. This will increase the number of sittings and cases will be dealt with expeditiously.
- (7) The Tribunal should be given power to enforce its orders.

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RESEARCH QUESTIONNAIRE

Part A (Background Information)

- (1) What was your age on your last birthday?
- (2) What is your profession?
- (3) What is your sex? Male (.....) Female, (.....)
- (4) Do you own land i.e. specify Residential or Business premises
(.....)
- (5) If you answered yes to (4) where is the land located?
.....



PART B

Participants are required to respond by indicating Yes or No to the following questions.

- (6) Are you aware of the existence of Tribunals in Zambia? (.....)
- (7) How many Tribunals do you know of? (.....)
- (8) Are you aware of the existence of the Town and Country Planning Act? []
- (9) Are you aware of the existence of the Town and Country Planning Tribunal for purposes of resolving planning disputes? []
- (10) If so how did you hear about it (Specify)?
[.....]
- (11) If your answer to 4 is no, do you know of any member of your family (extended or nuclear) who has had recourse to the Town and Country Planning Tribunal? []
- (12) Are you aware of any decision of the Town and Country Planning Tribunal? []