

VILLAGE LAND MANAGEMENT AND ADMINISTRATION IN TANZANIA: THE AUTONOMY OF VILLAGE COUNCILS

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Abstract

This article examines the control, management and administration of village land in Tanzania. It addresses the autonomy of village councils in the management and administration of village land. The article has generally showed that management and administration of village land is vested in the village council and the village assembly. The land allocating authority as far as village land is concerned is the village council. In some cases, however, approval of the village assembly may be required. Involvement of the village assembly shows that the village council is not autonomous in exercising its powers of control, management and administration of village land. In addition to involvement of the village assembly the village council is bound by the advice, directives and guidance issued from time to time by the Commissioner and/or the district council as the case may be. It has been shown that the Commissioner or the district council has a stake in the control, management and administration of the village land.

Keywords: *Village Land, Customary Right of Occupancy, Management and Administration, Land Dispute Resolution, Village Council, Village Assembly, Village Land Council.*

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1. INTRODUCTION

The continued existence and survival of human race depends on land. Land is a resource upon which other resources depend. It is the source of all wealth; from it we get everything that we use including food, water, fuel, shelter, metal and precious stones. All individuals and communities in Tanzania need and depend on land to sustain their livelihoods. According to Shivji land is an important resource and central to the life of a nation.¹ Centrality of land touches at the heart of democracy. About 80% of the Tanzanian population depends on land. The population is organized in some 8,300 villages where this large majority of countrymen and women and children produce, shelter and socialize.²

Since land is so central to the lives of the majority of the Tanzanian population it should be managed in such a way that it sustains the present and future generations and avoids the chances of land use conflicts. The use of land among living beings is a matter of death and life. Improper management and administration provide for high chances of escalation of land disputes leading to bloodshed. To address that, governments have enacted laws for regulating the use, management and administration of land. In Mainland Tanzania, land is regulated by several pieces of legislation including the Land Act,³ the Village Land Act,⁴ the Land Acquisition Act,⁵ the Land Registration Act,⁶

¹ Shivji G. I., *Not Yet Democracy: Reforming Land Tenure in Tanzania*, (Dar Es Salaam: IIED/HAKIARDHI/Faculty of Law, University of Dar es Salaam, 1998), p. 46.

² Maoulidi S., *Critical Analysis of the Land Laws - A Study*, (Dar es Salaam: Land Rights Research and Resource Institute, HAKIARDHI, 2004), p. 1.

³ Cap. 113 [R.E. 2002].

⁴ Cap. 114 [R.E. 2002].

⁵ Cap. 118 [R.E. 2002].

and the Urban Planning Act.⁷ The main pieces of legislation for management and administration of land in Tanzania are the Land Act and the Village Land Act. In Tanzania land is grouped into three categories of general land, reserved land and village land.⁸ General land and reserved land are regulated by the Land Act while village land is regulated in accordance with the provisions of the Village Land Act. The management of general and reserved land under the Land Act is vested in the Commissioner for Lands while that of the village land is vested in the village council. This paper addresses the autonomy of the village councils in Tanzania in the management and administration of village land.

2. HISTORICAL BACKGROUND TO LAND ADMINISTRATION IN TANZANIA

The pre-colonial Tanzanian societies were basically in the primitive mode of production and lived communal life characterized by communal ownership of land which by then was the major means of production. Land was communally owned by a family, a clan or a tribe. No one could claim exclusive ownership over the land. Individuals were not able to claim titles over the land as the title belonged to the community as a whole. Rights in land could be exercised as long as the land was used. Distribution of land to families and individuals for cultivation and other purposes was carried out according to their customary land law.⁹

⁶ Cap. 334 [R.E. 2002].

⁷ Act No. 8 of 2007.

⁸ Land Act, Cap. 113 [R.E. 2002], section 4(4). The provision makes it clear that the categorization is for the purposes of the management of land under the Act and all other laws applicable to land in Tanzania.

⁹ Juma I., *et al.*, "Tanzania: Peri-Urban Land Insecurity in Dar es Salaam" in *Local Land Law and Globalization: A Comparative Study of Peri-Urban Areas in Benin, Ghana, and Tanzania*, eds. Woodman G.R., *et al* (Munster: LIT VERLAG. (2004), 224. See also Tenga R. W. and Mramba S. J. *Theoretical*

Chiefs, clan heads and heads of family had powers over land administration in trust for the community. There were no uniform land use and management customary laws applicable generally to all 120 tribes.¹⁰

As a result of the Berlin Conference, Tanganyika fell under the Germany rule and was known as *Deutsche Ostafrika* (German East Africa) which also included Burundi and Rwanda. Even before Germany took control of German East Africa this country was under a German company called German East Africa Company. While under German East Africa Company, Decree No. 3 of 1888 was passed. This Decree required all persons who claimed to have rights in land located in the coastal region to apply within six months for registration by the German District Officer in charge of keeping the newly established register of real estate. Land which was not evidenced as private property at the end of this period was considered to be public land, with the consequence that the German East Africa Company could occupy it without compensation.¹¹ The 1888 Decree was followed by the Imperial Decree (the Crown Land Ordinance) which was promulgated in 1895. This Decree vested exclusive right of

Foundations of Land Law in Tanzania, (Dar es Salaam: Law Africa Publishing (T) Ltd, 2014), p. 28.

¹⁰ Tenga R. W. and Mramba S. J., *Theoretical Foundations of Land Law in Tanzania*, p. 28.

¹¹ Juma I, et al; Juma I., et al., "Tanzania: Peri-Urban Land Insecurity in Dar Es Salaam" p. 225, see also Sippel, H., 'Aspects of colonial land law in German East Africa: German East Africa Company, Crown Land Ordinance, European Plantations and Reserved Areas for Africans', pp 3 -38 in Debusmann, R. and Stefan A. (eds.), *Land Law and Land Ownership In Africa. Case Studies from Colonial and Contemporary Cameroon and Tanzania*, (Bayreuth: African studies Breitinger, 1996), pp. 15 – 17.

occupation of unowned land (Crown land) in the empire.¹² Claims to ownership or other claims which private persons, chiefs or village communities could prove were also recognized by the Decree. The Decree introduced the concept of a right of occupancy or a lease arrangement from the Crown; concepts which were different from customary communal ownership of land.

The lands alienated to European settlers under documentary titles were regarded as owned lands, while for indigenous lands there was no provision for documentary titles of ownership.¹³ In order to administer this Decree, statutes were enacted that introduced ownership as a concept that could be proved only by documentary evidence issued by the State. In practice, only settlers or immigrants could provide documentary evidence and thus enjoyed granted rights of occupancy and State's guarantee of tenure security. In this way indigenous land rights were not legally recognized, that is, they were, at best, left with permissive rights of occupation.¹⁴ Indigenous lands were treated as unowned and the radical title therein was vested in the political sovereign State save for the lands alienated to settlers under documentary titles. Settler lands were therefore owned lands while, indigenous lands were unowned, and which by virtue of the Decree were owned by the State. The State did not only rule but also owned land.¹⁵

¹² Section 1 the Imperial Decree, cited in Fimbo G. M., *Land Law Reforms in Tanzania*, (Dar Es Salaam: Faculty of Law University of Dar Es Salaam, 2003), p. 3.

¹³The United Republic of Tanzania, *Report of the Presidential Commission of Inquiry into Land matters: Land Policy and Tenure Structure*, vol. 1. (Uppsala, Sweden: Ministry of Lands and Urban Development in co-operation with the Scandinavian Institute of African Studies, 1994), p. 9.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

Ulrike Wanitzek and Harrald Sippel argue that the Imperial Decree granted the colonial State the exclusive right of occupation of 'ownerless land' situated within the colony.¹⁶ The administration and management of land was vested in the German Emperor/Governor. For instance, natives could not transfer land to non-natives for more than 15 years without obtaining consent of the governor.¹⁷ The Governor mainly safeguarded interests of the Colonial Government. This approach of the colonial government vesting ownership of land in itself is important as it helps to understand the historical roots of the concept of public land since it is a result of colonial legacy by Germany.

After the First World War,¹⁸ Tanganyika was put under a British mandate by the League of Nations in 1922 and after the Second World War it became a British trusteeship endorsed by the United Nations in 1945. This implied that a new legal framework and policy for the administration and management of land in then Tanganyika was put in place.

The British Land Policy was guided by the Mandate Agreement which was in *pari materia* with Article 8 of the Trusteeship Agreement. This British Land Policy provided that:

In framing laws relating to the holding or transfer of land and natural resources, the Administering Authority shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests, both present and future, of the native population. No native land or natural resources may be transferred, except

¹⁶ Wanitzek U. & Harrald Sippel "Land Rights in Conservation Areas in Tanzania" *Geo Journal*, Vol. 46, No. 2, (1998), pp. 113-128, p. 114.

¹⁷ Proviso to section 1 of the German Imperial Decree.

¹⁸ The Germans lost all the colonies as they were condemned by the victorious Triple Alliance to have caused the First World War (WWI).

between natives, save with the previous consent of the competent public authority. No real rights over native land or natural resources in favour of non-natives may be created except with the same consent.¹⁹

The status of Tanganyika as a mandate territory influenced the British land management and administration. They were required to take into account native laws and customs and safeguard the rights of the natives.²⁰

The British colonial government passed the Land Ordinance in 1923²¹ as its major land tenure legislation.²² Section 2 of the Land Ordinance declared all land, whether occupied or unoccupied, to be public land except for land lawfully acquired before the commencement of the Ordinance. Save for the preamble, customary land rights were not given legal weight and recognition as required by the Mandate Agreement.²³ The control over the

¹⁹ Article 6 and 7 of the Mandate Agreement, 1919.

²⁰ The United Republic of Tanzania, Report of the Presidential Commission of Inquiry into Land Matters, p. 11

²¹ Ordinance No.3 of 1923.

²² The United Republic of Tanzania, Report of the Presidential Commission of Inquiry into Land Matters, p. 11. The Ordinance was based on the Northern Provinces of Nigeria ruled by the British. See: Sayers, G. F. (ed.) *The Handbook of Tanganyika*, London: Macmillan & Co., 1930, pp 244 – 248; Maini, K. M., *Land Law in East Africa*, Oxford University Press, Nairobi, 1967, pp. 83 – 109.

²³ The United Republic of Tanzania, Report of the Presidential Commission of Inquiry into Land Matters, p. 11. It should be noted that according to Section 25(1) of the Interpretation of Laws Act, Cap. 1 R.E. [2002] a preamble is part of the law in Tanzania and is used to assist in the interpretation of the statute. However, a claim cannot be raised based on the preamble. It has been held that although a preamble forms part of the law, it is not an enforceable part of the law. In *Attorney-General v. Lesinai Ndenai and Two Others* [1980] T.L.R. 214. Justice Kisanga in his separate judgment observed that: “a Preamble is a declaration of our beliefs in these rights. ... one cannot bring a complaint under the Constitution in respect of violation of any of these rights as enumerated in

management and administration of all public land and the rights therein was vested in the Governor.²⁴ In 1928 after criticism from the Mandates Commission which doubted the recognition of the natives' land rights, the Land Ordinance was amended to include the recognition of the title of a native or native community lawfully using or occupying land in accordance with native law and custom.²⁵ This amendment gave customary law titles a statutory recognition. As a result, customary law titles became known as 'deemed rights of occupancy'.²⁶ Land use by natives was regarded as permissive, that is, they could use land for their reasonable requirements of residence and sustenance without any special grant for individuals. Sir Graham Paul in *Muhena Bin Said v. (1) The Registrar of Titles, (2) The Land Officer*²⁷ observed that:

It seems to me, examining the evidence in the light of exhaustive argument of appellant's advocate, the possession has been proved for the requisite period but that the obviously difficult thing is to prove adverse possession as against the German or British governments who undoubtedly as a matter of policy permitted the inhabitants generally of the territory to use land for their reasonable requirements of residence and

the Preamble." Therefore, it is argued that the Land Ordinance did not protect customary land rights of the natives.

²⁴ Land Ordinance, 1923, section 3.

²⁵ Section 22 of the Ordinance defines a 'Native' as "any native of Africa, not being of European or Asiatic origin or descent, and shall include a Swahili and a Somali." Also James, R.W. (1971), *Land Tenure and Policy in Tanzania*, East African Literature Bureau, Dar es Salaam, pp. 196 -197.

²⁶ The United Republic of Tanzania (1992) *op cit*, p. 11.

²⁷ [1949] EACA 79.

sustenance without any special grant for any individuals.²⁸

When Tanganyika gained its independence from the British in 1961, the then Tanganyika's (later Tanzanian) government retained the same colonial legislation on land in its colonial spirit.²⁹ The word Governor was substituted with the word President wherever it appeared in the Ordinance. It was possible for the President to acquire land although not with a similar motive as it was for the Governor. All lands in Tanzania continued to be public land. The President became the custodian of all land on behalf of the citizens of Tanzania.³⁰ Several other statutes which had a bearing on land matters were enacted to suit the prevailing socio-economic and political environment.³¹

Under the Land Ordinance,³² the Minister would grant a right of occupancy to the Rural Settlement Commission for the purpose of village settlement.³³ Such right was called a "settlement right" which villagers as members of the settlement would hold land

²⁸ Fimbo G. M., *The Land Law of Tanzania: A Case Book*, Faculty of Law University of Dar es Salaam, 2010, p. 145. Also the case of *Mtoro Bin Mwamba v. Attorney General (1953)* 2 TLR 327.

²⁹ Mvungi S. and Mwakyembe H. "Populism and Invented Traditions: The New Land Tenure Act of 1992 and Its Implications on Customary Land Rights in Tanzania" in *Africa Spectrum*, Vol. 29, No. 3 (1994), pp. 327-338, at p. 331.

³⁰ Tenga R. W. and Mramba S. J *Theoretical Foundations of Land Law*. p. 55.

³¹ The Freeholds Titles (Conversion) and Government Leases Act, No. 24 of 1963, the Range Development and Management Act, No. 51 of 1964, the Nyarubanja Tenure (Enfranchisement) Act, No 1 of 1965, the Land Tenure (Village Settlements) Act, No. 27 of 1965, the Land Acquisition Act, No. 47 of 1967, and the Customary Leaseholds (Enfranchisement) Act, No 47 of 1968.

³² Ordinance no. 3 of 1923.

³³ The Commission was established in 1963 under The Rural Settlement Commission Act, Cap. 534 with the view of implementing village settlements as a response to the 'transformation approach' to agricultural development. See also Section 3(1) of the Land Tenure (Village Settlements) Act, No. 27 of 1965, and section 6 of the Land Ordinance, No. 3 of 1923.

under specified derivative rights. The settlement schemes were not successful and were eventually abandoned or closed down.³⁴

There were also range development lands under the Range Development and Management Act,³⁵ whereby it was expected that ranch associations would be formed and would be granted rights of occupancy. Where associations held rights of occupancy, existing customary rights would be extinguished.³⁶ The range development schemes as well failed. A number of reasons have been given for their failure including over-capitalisation, lack of community participation in the planning and running of the schemes and top-down management.³⁷

The implication of statutory systems in both the village settlements and the range development was to remove land tenure from the customary law domain and assimilate it into the statutory right of occupancy. Furthermore, there was an implied perception on the evolution of the tenure system into some form of individual tenure under the firm supervision of a statutory body or a government department.³⁸

In 1967, the government proclaimed the Arusha Declaration which was followed by massive villagisation programme in the 1970s.³⁹ There was a total disregard of the existing customary land tenure systems. Moreover, there was virtually no thought about the future of land tenure in the newly established villages. While the existing

³⁴ The United Republic of Tanzania, Report of the Presidential Commission of Inquiry into Land Matters, p. 44, paras. 8 & 10.

³⁵ No 51 of 1964, Cap 569 Rev.1964.

³⁶ Section 26 (3) (b) and (c).

³⁷ The United Republic of Tanzania, Report of the Presidential Commission of Inquiry into Land Matters, p. 41, para. 9.

³⁸ Fimbo, G. M., Land Tenure Reforms in Tanzania, p. 15.

³⁹ Involved living and working together in *Ujamaa* villages.

customary land rights were expropriated, the land rights established in the new villages and locations were not secured in law. This was a case of major reform of the land tenure system being carried out without having been conceived as such resulting into land tenure confusion and numerous disputes.⁴⁰ Peasants whose land had been taken and handed to other peasants sued in courts of law for restoration of those lands and succeeded in most cases. The government reacted by enacting “the Regulation of Land Tenure (Established Villages) Act,⁴¹” which purported, *inter alia*, to extinguish customary rights of occupancy.⁴² When tested in court, in *Attorney General v. Lohay Akonaay and Joseph Lohay*⁴³ it was held that:

A law should not be interpreted to lead to an absurdity. The indigenous population of this country is validly in occupation of land as beneficiaries of such land under customary law and any disposition of land between them under customary law is valid and requires no prior consent from the President.⁴⁴

The Court of Appeal of Tanzania further went on to hold that:

Customary or deemed rights in land, though by their nature are nothing but rights to occupy and use the land ... their deprivation without fair compensation for unexhausted improvements and even where there are

⁴⁰ The United Republic of Tanzania, Report of the Presidential Commission of Inquiry into Land Matters, p. 43 para 15.

⁴¹ Act No. 22 of 1992.

⁴² Section 3(1) of the Regulation of the Land Tenure (Established Villages) Act, 1992.

⁴³ [1995] TLR 80.

⁴⁴ *Ibid* at pg 89.

no unexhausted improvements but value is added to the land, is prohibited by the Constitution.⁴⁵

This position has been incorporated under section 14(2) of the Village Land Act, 1999 which affirms occupation of land under customary right of occupancy by a person who occupies land in an urban or peri-urban area as his principal place of residence provided he does not occupy that land as a tenant of another person to whom the Urban Leaseholds (Acquisition and Regrant) Act⁴⁶ could be applicable or under a granted right of occupancy. And where such land is compulsorily acquired or declared to be part of any scheme which extinguishes all private rights, that person is entitled to receive full, fair and prompt compensation from the loss or diminution of the value of that land, the buildings and other improvements on it.

Village land was under control of the villages that were registered under section 4 of the Villages and Ujamaa Villages (Registration, Designation and Administration) Act,⁴⁷ and the Directions made under the Act. Land was allotted to villages by the District Development Council.⁴⁸ During this time land was allocated to the villages which in turn would give “derivative right of occupancy” to the villagers.⁴⁹ In this sense villagers did not legally own land but rather it was the village council which had the right of occupancy. That is to say titles to land were vested in the villages and not individual villagers. Individual villagers could only acquire land for their personal use from the village council depending on the need

⁴⁵ *Ibid* at pg. 90.

⁴⁶ No 22 of 1968, Cap 62 [R. E. 2002].

⁴⁷ Act No. 21 of 1975.

⁴⁸ Direction 5 (1) and 9(1) of Directions issued under G.N. 168 of 1975.

⁴⁹ Direction 9 (2) of Directions issued under G.N. 168 of 1975.

and ability to develop it.⁵⁰ It can be rightly argued that during this time the village council was not a land management organ but rather a land owner of the respective villages.

3. POLICY AND LEGAL FRAMEWORK FOR LAND IN TANZANIA

In the late 1990s Tanzania carried out massive land policy and law reforms on the administration of land in the country. It is worth noting that the 1990s reforms were initiated by the Presidential Commission of Inquiry into Land Matters in 1991. The report of the Commission formed the basis of all land reforms that took place in the 1990s.⁵¹

In 1995, the National Land Policy was made to address various matters pertaining to land. The Policy calls for the enactment of new land legislation for the purposes of operationalizing it. In 1999, the Parliament of Tanzania enacted two pieces of legislation, namely, the Land Act,⁵² and the Village Land Act⁵³ for the management of land matters in Tanzania. Fimbo⁵⁴ argues that the major concern of the policy makers in the land law reforms has been the tensions between, on the one hand, freedom to deal with land in the market and on the other, security of tenure or protection of users and occupiers of land. A detailed discussion on these reforms follows hereunder.

⁵⁰ Direction 5 (1), (3) of Directions issued under G.N. 168 of 1975.

⁵¹ The Commission is also commonly referred to as Shivji Commissions due to the fact that Prof. Issa Shivji was the chairperson of the Commission.

⁵² Cap. 113 [R.E. 2002].

⁵³ Cap. 114 [R.E. 2002].

⁵⁴ Fimbo, G. M., *Land Law Reforms in Tanzania*, Faculty of Law University of Dar es salaam, Dar es Salaam, Tanzania, 2003, p. 44.

3.1 The National Land Policy, 1995

As already noted, the national Land Policy was made in 1995. The Policy addresses the then existing pertinent issues on land in Tanzania. The policy addresses among other issues, the administration and management of village land in the country. This was based on the proposal by the Shivji Commission that the control, administration and management of village land should be vested in the village assembly. It was in the opinion of the Commission that discussion and decisions on land allocation, disposition and compulsory acquisition of land be made the village assembly. The Commission also recommended that the powers of village assembly over land matters should not be delegable to the village council. Thus, deliberations of the village council touching on land would have to be forwarded to the Village as proposal for approval by the village assembly.⁵⁵

The National Land Policy clearly states that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens.⁵⁶ It further recognizes the Commissioner for Lands as being the sole authority responsible for land administration in Tanzania.⁵⁷ The Minister for Lands is vested with sole policy responsibility on land matters. This arrangement, it is believed, would help to reduce conflicts and malpractices in land administration.⁵⁸ On the administration of the village land, the Policy mandates it on the village councils and that their powers will be subject to limitations embedded in the laws and

⁵⁵ The United Republic of Tanzania, Report Of the Presidential Commission of Inquiry into Land Matters. p. 158, see also Shivji G. I., Not Yet Democracy: Reforming Land Tenure in Tanzania, p. 52.

⁵⁶ The National Land Policy, 1995 para 4.1.1(i)(a).

⁵⁷ *Ibid*, para 4.2.2(i).

⁵⁸ *Ibid*, para 8.1.1(i).

procedures.⁵⁹ On the administration of the village lands, the Policy requires village councils to report all decisions on land allocations to the village assembly.⁶⁰

It can be generally observed that the Minister for Lands and Commissioner for Lands are recognized as having overall powers of administration and management of public land in Tanzania, village land being inclusive. Village councils and village assemblies on the other hand are recognized as the administrative organs over village land of their respective villages subject to the limitations set by statutes.

3.2 The Legal Framework

As observed above, the National Land Policy, 1995 formed the basis for the legislating of the Land Act and the Village Land Act of 1999. The two statutes recognize all land in Tanzania as being public land⁶¹ vested in the President who holds it as a trustee on behalf of all citizens of Tanzania.⁶² The Minister is responsible for policy formulation and for ensuring the execution by officials in the ministry of the functions connected with the implementation of the National Land Policy and the Land Act which are allocated or delegated to him by the President and in pursuance of this responsibility.⁶³ Land is centrally managed by the Commissioner for Lands exercising full control over all the public land in Tanzania. The Commissioner is the principal administrative and

⁵⁹ *Ibid*, para 4.1.1 (ii).

⁶⁰ *Ibid*, para 4.2.2(iii).

⁶¹ The National Land Policy defines "Public land" to mean all land in Tanzania whether granted, customary or unoccupied. See also s. 2 of the Land Act, 1999 and Village Land Act, 1999.

⁶² Land Act, no. 4 of 1999, s.3 (1)(a) and s. 4(1), Village Land Act, no.5 of 1999 s.3(1)(b).

⁶³ The Land Act, s. 8.

professional officer and adviser to, the Government on all matters connected with the administration of land and is responsible to the Minister for the administration of matters contained in the Land Act.⁶⁴

The Land Act vests responsibility over land matters squarely on the Commissioner for Lands. Likewise, it provides for Land Allocation Committees, appointed by the Minister at central, urban and district authorities. Supervision over land matters is the responsibility of the Minister for Lands who is advised by the Land Advisory Council.⁶⁵

Both the Land Act and the Village Land Act recognize the dual land tenure system, i.e. the statutory or granted rights of occupancy and customary rights of occupancy. However, customary land rights are not only “deemed” but are now also “granted” in cases where grants have been made in accordance with the Village Land Act. In that regard, the Village Land Act recognizes granted rights of occupancy and customary rights of occupancy as having equal status and effect.⁶⁶

The law empowers the village council to allocate and manage all village land.⁶⁷ In this regard the village councils allocate parcels of village land or grant customary rights within their respective villages to a citizen, a family of citizens, a group of two or more citizens whether associated together under any law or not, a

⁶⁴ *Ibid*, s. 10(1).

⁶⁵ *Ibid*, s. 17(4).

⁶⁶ Village Land Act, no. 5 of 1999 s. 18. However, it should be noted that the equality in terms of status and effect referred to under s. 18 of the Village Land Act is rendered redundant when read together with sections 34(3) and 181 of the Land Act which have the consequences of according Granted Right of Occupancy a superior status when compared to the Customary Right of Occupancy.

⁶⁷ Village Land Act, Cap 114 [R.E. 2002], s. 8(1).

partnership or a body corporate provided the majority of its members or shareholders are citizens.⁶⁸ The powers of allocation of village land by the village council is, however, subject to the approval of the village assembly, the supreme authority on all matters of general policy making in relation to the affairs of the village.⁶⁹ Furthermore, a village council is responsible to maintain the certificate of village land.⁷⁰ In the administration and management of the village land, the Council is required to have regard to the principle of sustainable development in the use of the land, other natural resources and the environment.⁷¹ This is intended to ensure sustainable use of village land which will also take into account sustainable use of natural resources and conservation of the environment.

4. ADMINISTRATION OF VILLAGE LAND

Village land is defined to mean the land declared to be village land under and in accordance with section 7 of the Village Land Act and includes any land transferred to a village.⁷² The Land Act⁷³ employs the same wording in defining village land. According to the Land Act village land is defined to mean land declared to be village land under and in accordance with section 4 of the Land Act.⁷⁴ Reading from the spirit of section 4 of the Land Act and section 7 of the Village Land Act.⁷⁵ It can be said that village land is any land which is within the designated boundaries of a registered village and any land which has been transferred by the

⁶⁸ *Ibid*, s. 18(1)(a).

⁶⁹ *Ibid*, s. 8(5).

⁷⁰ *Ibid*, s. 7(8).

⁷¹ *Ibid*, s. 8(3)(a).

⁷² Section 2 of the Village Land Act, Cap 114 [R.E. 2002].

⁷³ Cap. 113 [R.E. 2002].

⁷⁴ *Ibid*.

⁷⁵ Cap. 114 [R.E. 2002].

President from general or reserved land to become village land in accordance with the provisions of the law.⁷⁶

As it has already been observed, the Village Land Act⁷⁷ gives mandate of administration and management of village land to two authorities, namely, the village council and the village assembly. The authorities administer village land on behalf of beneficiaries, that is, the village assembly and villagers in the village.⁷⁸ The rules for the administration and management of village land are contained in the Village Land Act⁷⁹ and customary laws of the respective place.⁸⁰

Administration of village land includes exercising the function of land allocation. In allocating land the village council is required to get approval of the village assembly before such allocation of land is made in order to protect interests of villagers and the village as a whole.⁸¹ The village council is also required to report to the village assembly at its every ordinary meeting and take account of the views of the village assembly on the management and administration of village land.⁸²

Furthermore, village assembly is involved in considering and voting on the joint village land use agreement. "Joint village land use agreement" refers to an agreement entered into by a village council with any other village council concerning the use by any one or more groups of persons, of land traditionally so used by

⁷⁶ Section 5 of the Land Act, Cap. 113 [R.E. 2002] and see also section 5 of the Village Land Act, Cap 114 [R.E. 2002]

⁷⁷ Cap. 114 [R.E. 2002].

⁷⁸ Section 8(1)&(2) of the Village Land Act, Cap 114 [R.E. 2002].

⁷⁹ Cap. 114 [R.E. 2002].

⁸⁰ Section 18(1)(d) of the Village Land Act.

⁸¹ Section 8(5) *ibid.*

⁸² Section 8(6) (a) *Ibid.*

those groups, being the land which is partly within the jurisdiction of one village and partly within the jurisdiction of another village.⁸³ This arises when land resources located in one village are also of importance for users living in one or more of the neighbouring villages. This helps to solve or avoid land conflicts between two or more neighbouring villages, and to improve the management of the 'shared' area.⁸⁴ A village assembly may propose changes in the draft joint management arrangement.⁸⁵ This is regarded as a way of involving villagers in making decisions that affect the use and administration of their village land. It can be rightly concluded that village assembly has direct control on the management and administration of village land.

4.1 The Role of the Commissioner for Lands in the Administration of Village Land

As observed above, the Commissioner for Lands is mandated with overall functions of land administration of all public land in Tanzania. Since by definition village land is public land, the Commissioner has his hand in the administration and management of village land as well.

Section 8(7) of the Village Land Act gives the Commissioner for Lands discretionary powers to give any advice, either generally to all village councils or to a specific village council on the management of village land which he considers necessary or desirable. Village councils to which the advice is given are required to have regard to that advice. This means that where the

⁸³ Section 11 of the Village Land Act.

⁸⁴The National Land Use Planning Commission, *Guidelines for Participatory Village Land Use Management in Tanzania*, (Peramiho: Peramiho Printing Press, 1998), p. 64.

⁸⁵ Regulations 30 & 31 of the Village Land Regulations, 2001.

Commissioner gives the advice, the village councils have no option other than complying with it in the course of administration and management of the village land.

It should also be borne in mind that the Commissioner for Lands and a district council may take over the management of village land. This is where the village assembly or not less than one hundred villagers have lodged a complaint with the district council that the village council is not managing the village land in accordance with the laws or with due regard to the principles applicable to the duties of a trustee.⁸⁶ In the same spirit, the district council may also provide advice and guidance to any village council within its areas of jurisdiction concerning the administration of village land. The advice and guidance may be given as a response to a request by the village council or on its own motion. Such advice and guidance should not contradict or conflict with directive or circular issued by the Commissioner.⁸⁷ According to the Village Land Act, the district council is required to provide advice and guidance to the village councils on the exercise of their functions of setting aside portions of village land as communal village land and the purposes for which such portions will be used for. Village councils are required to have regard to any such advice and guidance.⁸⁸

The law vests in the Commissioner for Lands and the district council power to control management of village land in relation to occupation of village land by non village organizations. A non-village organization is defined to mean:–

⁸⁶ Village Land Act, Cap. 114 [R.E. 2002], s. 8(d) when read together with s. 9 of the Village Land Act, *op cit*.

⁸⁷ *Ibid*, s. 9(1) & (2).

⁸⁸ *Ibid*, s. 13(4).

- a) a government department or any office or part of it;
- b) a public corporation or other parastatal body or any office, part, division or its subsidiary body;
- c) a corporate or other body, a majority of whose members or shareholders are citizens registered or licensed to operate under any law for the time being in force in Tanzania applicable to that corporate or other body which does not consist of a majority of the members of the village; or any similarly composed subsidiary of that corporate or other body.⁸⁹

If a non-village organization occupied village land under a granted right of occupancy at the commencement of the Village Land Act, that granted right of occupancy would continue to be a granted right of occupancy for the remainder of its term and the Commissioner would continue to be responsible for the management of the right of occupancy regardless of the fact that the land is village land.⁹⁰ However, the Commissioner may in writing delegate such powers to the village councils if he is satisfied that a village council is managing the village land in an efficient manner subject to any conditions which he thinks fit to include in the instrument of delegation.⁹¹

The Commissioner has a direct control on the village council when determining the grant of village land to a non-village organization. On receiving the application for land from a non-village organization the village council is required to recommend to the Commissioner for the grant or refusal of such grant.⁹² The village

⁸⁹ Village Land Act, *op cit.* s. 17(1).

⁹⁰ *Ibid*, s. 17(2).

⁹¹ *Ibid*, s. 17(4).

⁹² *Ibid*, s. 17(5).

council is required to have regard to any guidance from the Commissioner concerning an application from a non-village organization.⁹³ The law puts it categorically that in the event no guidance has been received from the Commissioner in respect of an application from a non-village organization, the village council should have regard to any advice which has been given to the application by the district council or as the case may be the urban authority having jurisdiction in the area where the village is situate.⁹⁴ This implies that a village council has no absolute powers when it comes to deciding whether to grant or refuse to grant village land to non-village organizations. Its powers are subject to advice and guidance issued by the Commissioner for Lands or the district council as the case may be.

The Commissioner has also his hand on determination of premiums payable and annual rent payable in respect of village land. The law categorically requires the village council to seek and take account of the advice of the Commissioner in determining the amount of any premium payable in respect of the village land.⁹⁵ A similar requirement is imposed on the village council when exercising the powers to determine the amount of annual rent payable in respect of village land.⁹⁶ Therefore, the village council does not have absolute mandate in determining the amount of the premium and rent payable. It is finally the advice of the Commissioner which prevails as village councils are required to take into account such advice.

⁹³ *Ibid*, s. 23(2)(b).

⁹⁴ *Ibid*, s. 23(2)(d).

⁹⁵ *Ibid*, s. 26(2).

⁹⁶ *Ibid*, s. 28(4) (a) & (b).

4.2 The Role of the District Authorities in the Administration of Village Land

The district council has also mandate in the management and administration of village land on adjudication of interests in land. Section 48 of the Village Land Act prohibits the grant of a customary right of occupancy to be made to any person, group of persons or non-village organization unless and until the boundaries of/and interest in that land have been adjudicated. An exception is made where the boundaries of/and interest in land is registered under any law applicable to the registration of village land, or the boundaries and interests in land are fully accepted and agreed to by all persons with an interest in that land and in respect of the boundaries of that land and land bordering that land.

Adjudication can be either village adjudication or district adjudication. The responsibility for village adjudication is vested in the village council while the responsibility for central adjudication is vested in the district council.⁹⁷ The district council is required to investigate complaint presented to it by not less than twenty persons with interests in land the subject of village adjudication that the adjudication is applied improperly or unfairly. If it is satisfied with the accuracy of the complaint, the district council is required to: first, issue any directive which it considers necessary to the village council to correct and improve the process of village adjudication; or in the alternative, secondly, issue a directive to the village council to: (i) cease exercising any powers under the process of village adjudication, (ii) send all records and other information specified in the directive to the district council, (iii) cooperate fully with any officers authorized by the district council

⁹⁷ *Ibid*, S. 50(1-3).

to apply central adjudication to the land to which village adjudication was being applied.⁹⁸ In the event the district council takes the second alternative, the issuance of such directive operates to terminate village adjudication and apply central adjudication to the land to which village adjudication was being applied.⁹⁹ Where the district council applies central adjudication to the land, it is thereupon empowered to re-examine, cancel, revise, add to and make any other decisions which seem just in relation to any determination made by any person or body in the village in connection with village adjudication of that land.¹⁰⁰

It should also be noted that in cases where the village assembly or an applicant for adjudication rejects recommendations of village adjudication, the district council may direct that village council to apply spot adjudication¹⁰¹ to the land of the applicant notwithstanding the determination made by the village council. A village council must comply with a directive issued to it by the district council regarding such adjudication.¹⁰²

It can, therefore, be said that a village council is not autonomous in the adjudication of interests in land. It is clear from the provisions of the law that district councils and in some cases the village assembly may intervene the process of village land

⁹⁸ The Village Land Act, *op cit.*, s. 50(4).

⁹⁹ *Ibid*, s. 50(5).

¹⁰⁰ *Ibid*, s. 50(6).

¹⁰¹ Spot Adjudication is applied in response to a demand from an individual applicant of CCRO. A person, group of persons or non-village organisation makes an application to a village council for a customary right of occupancy. They have to apply on a prescribed form to that village council for "spot adjudication" to be applied to that land in respect of which they have applied for a customary right of occupancy. S. 49(1) of the Village Land Act, Cap. 114 [R.E. 2002].

¹⁰² *Ibid*, s. 49(6) & (7) read together with s. 56 of the Village Land Act, no. 5 of 1999.

adjudication. The district council is empowered in some cases to take over the process of adjudication of interests in a village land. This is supervisory powers of the village assembly and district council over village land.

4.3 The Transfer of Village Land

The control, management and administration of village land may also be affected by the powers of the President to transfer it to general or reserved lands. The President is empowered to direct the Minister to transfer village land to general or reserved land for public interest.¹⁰³ Public interest is defined to include investments of national interest.¹⁰⁴ The question that remains unanswered is who determines and what factors are used to determine if an investment is of national interests? It is opinioned that this provision renders village land vulnerable as it can easily be transferred to general land and the same be allocated to investors on the basis that the investment is of national interest. Once village land is transferred to general land or reserved land, it ceases to be under the control, management and administration of the village council and village assembly.

Despite the fact that the proposal to transfer village land goes through the process of approvals in the village council and village assembly, it does not help, in anyway, to protect the land from being transferred if the government is so determined.¹⁰⁵ It is the

¹⁰³ Ibid, s. 4(1). The most important justification for it is that the land is made available for public interest which is considered is for protection and enhancement of benefits to the wider community or society.

¹⁰⁴ Ibid, s. 4(2) .

¹⁰⁵ The Village Land Act, s. 4(6). It should be born in mind that, in addition to powers under the Village Land Act, Cap. 114 [R.E. 2002] the President can still invoke the provisions of the Land Acquisitions Act, Cap. 118 [R.E. 2002] compulsorily acquire village land for public interests.

position of the law that village land cannot be transferred unless and until those affected by the transfer agree with the Commissioner of the amount, method and timing of payment of compensation.

It is thus argued that the powers of the President to transfer village land render the holders of the village land rights insecure. That is to say they are not guaranteed with the protection of their land tenure security.¹⁰⁶ Furthermore, as it has already been observed the transfer of village land into general or reserved land takes away the control and management of village land from the village council and vests the same in the Commissioner for Lands.

5. THE ROLE OF VILLAGE COUNCIL IN VILLAGE LAND DISPUTES RESOLUTION

Land being a resource upon which the continued existence and survival of human race depends has made people to have different and competing interests and demands over land and thus resulting into land disputes.¹⁰⁷ Disputes over land are therefore regarded as integral part of human interaction. However, prolonged land disputes and inefficient mechanisms of dealing with these disputes can result in disastrous social and economic effects. That being the case new land laws have come up with separate land disputes resolution machineries.

Prior to the enactment of the Land Act and the Village Land Act in 1999 all ordinary courts of competent jurisdiction, *i.e.*, Primary

¹⁰⁶ See the Village Land Act, s. 4(10).

¹⁰⁷ Sackey, G., Investigating Justice System in Land Conflict Resolution: A Case Study of Kinondoni Municipality, Tanzania, Thesis Submitted in Partial Fulfillment of the Requirements of the Degree of Master of Science in Geo-Information Science and Earth Observation (Land Administration), University of Twente Enschede The Netherlands, 2010, p. 1.

Court, District Court, the Court of Resident Magistrate, the High Court and the Court of Appeal of Tanzania had powers to determine all disputes, including land disputes, in Tanzania. However, ordinary courts proved to be very inefficient in the hearing and determination of land disputes. As a result, the government decided to set up a distinct machinery for settlement of land disputes. Sections 167 and 62(2) of the Land Act, 1999 and the Village Land Act, 1999 respectively establish special and distinct organs to deal with land related cases. The ladder of these organs include Village Land Council, Ward Tribunal, District Land and Housing Tribunal, the High Court and finally the Court of Appeal of Tanzania. This was followed by a specific law, the Land Disputes Courts Act,¹⁰⁸ which is an Act providing for the establishment of land dispute settlement machinery and for matters incidental thereto.¹⁰⁹

This paper, however, examines the role and position of the village council in the settlement of land disputes over village land only. The first role of village council starts with its involvement in the establishment of the village land council which is mandated with land disputes settlement. A village land council is established by the village council.¹¹⁰ Village land councils are established in each village and are vested with powers of mediating between and assisting the parties to arrive at a mutually acceptable solution on any matter concerning village land.¹¹¹ A village land council is designated as the lowest land court mandated to mediate and assist parties to a land dispute arising in that particular village to

¹⁰⁸ Cap. 216 [R.E. 2002].

¹⁰⁹ See the Long Title to the Act.

¹¹⁰ The Village Land Act, s. 60(2).

¹¹¹ *Ibid*, s. 60.

achieve an amicable solution.¹¹² Part III of the Land Disputes Courts Act provides for the functions and powers of the village land council.

The second role of the village council is on the appointment of the members of the village land council. Members of the village land council are appointed by the village council and approved by the village assembly.¹¹³ The village land council is composed of seven members of whom three must be women. Members of the village land council are supposed to be persons of integrity and knowledgeable in customary land law.¹¹⁴ The law excludes the following from being members of the village land council, namely, a non-village resident, a member of National Assembly, a magistrate having jurisdiction in the district in which the village land council is to function is situate, a minor, a mentally unfit person, person convicted of criminal offence involving dishonesty or moral turpitude and a non-citizen.¹¹⁵ Members of the council serve for three years and are eligible for reappointment.¹¹⁶

A quorum at a meeting is constituted by four members of whom at least one is to be a woman.¹¹⁷ Decisions are taken by simple majority vote. In case of equality of votes, in addition to his

¹¹² *Ibid* ss. 60 and 62(2); section 167(1)(e) of the Land Act, 1999 and section 3(2) of the Land Disputes Courts Act, 2002.

¹¹³ The Land Disputes Courts Act s. 5(1) and section 60(2) of the Village Land Act.

¹¹⁴ The Village Land Act, s. 60(4) and section 5(2) of the Land Disputes Courts Act.

¹¹⁵ The Village Land Act, s. 60(5).

¹¹⁶ *Ibid* s. 60(7).

¹¹⁷ *Ibid* s. 60(9).

deliberative vote the chairperson has a casting vote.¹¹⁸ Here, the village council has no role to play.

The village land council has the functions of receiving complaints from parties in respect of land, convening meetings for the hearing of disputes from parties and mediating between and assisting the parties to arrive at a mutually acceptable settlement of the dispute over village land.¹¹⁹ Therefore, mediation is the main function of the village land council.

There are several things to note in relation to village land councils. First, the village land council has unlimited pecuniary jurisdiction in all land disputes within the village. Second, parties are not compelled to use the services of the village land council;¹²⁰ parties are at liberty at any time and any stage of mediation to cease and withdraw their dispute from it.¹²¹ Third, the village land council has no powers to enforce its decisions¹²² and an aggrieved party can prefer a reference to the Ward Tribunal as the next land organ in the ladder. Fourth, advocates have no right of appearance in the village land councils.

Apart from the village land council, some of the disputes over village land are resolved by appointment of inquiry and/or appointment of a mediator by the Minister.¹²³ This happens in disputes over boundaries between villages or between village and individual person or a corporate organ and that the parties are unable to agree. The Minister is required on being satisfied that

¹¹⁸ *Ibid* s. 60(10).

¹¹⁹ *Ibid* s. 60(1) and section 7 of the Land Disputes Courts Act.

¹²⁰ *Ibid* s. 61(6).

¹²¹ *Ibid* s. 62(1).

¹²² This is due to the fact that technically, there are no "decisions" in mediation.

¹²³ See section 18 of the Land Act.

every effort has been made to try and reach an agreement on the boundaries either appoint a person to act as a mediator between the village and the person or body with which the village is unable to reach agreement, or in the event mediation fails, upon being so advised by the mediator appoint an inquiry under section 18 of the Land Act to adjudicate on and demarcate the boundaries of that village land.¹²⁴

An inquiry team may also be appointed where a complaint has been made to a district council by a village assembly or by not less than one hundred villagers. The complaint should be in respect of the failure if the village council to manage village land in accordance with the provisions of the Village Land Act and other laws applicable to village land or with due regard to the principles applicable to the duties of a trustee. In such a situation, the district council is required to inform the Commissioner of the matter and subject to any agreement he may make with that district council, the council is required among other things to recommend to the Commissioner on the appointment of an inquiry under section 18 of the Land Act to investigate the complaint and make recommendations on it.¹²⁵ This has the consequence of removal of the village council from the jurisdiction of the village either for a fixed or an indeterminate period and its mandate being transferred to the district council or to the Commissioner. Where that happens the Commissioner will be required to re-establish the lawful management of that village land and the proper allocation of interests in that village land.¹²⁶

¹²⁴ s. 7(2) & (3) of the Village Land Act.

¹²⁵ *Ibid*, s. 8(8)(d).

¹²⁶ *Ibid*, s. 8(9) & (10).

6. CONCLUSION

As a general rule, the control, management and administration of village land is vested in the village council and the village assembly. The land allocating authority as far as village land is concerned is the village council though in some cases the approval of the village assembly may be required. The village council is not fully autonomous in exercising its powers of control, management and administration of the village land. Village councils have a certain limited degree of autonomy in the management and administration of village land in Tanzania. This is due to the fact that, at the same time, the Village Land Act under which they gain the authority also take the opportunity to lay down quite substantial parameters for administration. Village councils are, in most cases, required by law to obtain approval and consent of the village assembly in the management and administration of the village land. In addition in most cases the village council is bound by the advice, directives and guidance issued from time to time by the Commissioner and/or the district council as the case may be. In some cases, the Commissioner or the district council take over the powers over the control, management and administration of the village land from the village council. It can thus be rightly concluded that, the village councils' autonomy in land management and administration is subject to other institutions, i.e., the village assembly, the district council and the Commissioner for Lands, as the case may be.

7. RECOMMENDATIONS

The author suggests the following recommendations which if implemented will help to improve the management and administration of village land in Tanzania.

First, the transfer of village land to general land by the President on the basis of public interest/purpose should be exercised only on matters of purely public interest and not allocation to foreign investors which in most cases is used as a vehicle for village land alienation. Village land holders should be involved in the process of determining the land relocation compensation where the President acquires land for public purpose. Compensation must reflect land market rates instead of the set indicative prices so as to reduce compensation dissatisfaction among villagers.

Second, village councils, being the land managers at the village levels, should ensure that village land councils are effective in amicably resolving land disputes in their respective villages. This will enable village land holders to perform their productive activities without fear of losing their land. It also enhances land tenure security to villagers.

Third, District Councils and their Land Officers should only advise rather than dictate the village councils in the management and administration of village land. This is due to the fact that the intentions of local government reform is that the role of District bodies is to act as advisers to the real place for governance; the village level.

Fourth, the role of the central Government Commissioner of Lands should be limited to supervise the management and the administration of village land and not to intervene in the running of village land administration. This will enhance the autonomy of the village councils.

Fifth, the village councils should be provided with technical and expertise support on matters of land management and administration. They should be provided with land use planners,

surveyors, and other technical, professional and administrative staff to directly work with each village councils when needed. However, the ultimate decision particularly on village land use should be made by the village council.