

**THE EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION ON  
LAND DISPUTES SETTLEMENT IN ZANZIBAR**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE  
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS  
DEPARTMENT OF PUBLIC LAW  
THE OPEN UNIVERSITY OF TANZANIA**

**2025**

**CERTIFICATION**

The undersigned certifies to have read and hereby recommends for the acceptance by The Open University of Tanzania a Dissertation titled, *“The effectiveness of Alternative Dispute Resolution on land Disputes Settlement in Zanzibar”* in partial fulfillment of the requirements for the award of a Degree of Master of Laws.

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**Date**

**DEDICATION**

This work is dedicated to my beloved wife Kaije Mcha Ali and my sons Abdillah Machano Pandu, Ashura Machano Pandu and Rukayya Machano Pandu. Also, to my Farther Pandu Machano Pandu and Mother Mtumwa Juma Haji for encouraging me and being my fountain of inspiration with their heartfelt love and closeness, thus making me hereby declare my feeling of being highly indebted to them

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## **ABSTRACT**

The study focuses on the effectiveness of Alternative Dispute Resolution (ADR) in resolving land disputes in Zanzibar, specifically on Unguja Island. It aims to assess how useful the current ADR legal framework is for settling land conflicts and to provide insights on how it could be improved. The research was guided by four specific objectives: analyzing the positive impacts of ADR on land dispute resolution, identifying enforcement mechanisms that administer justice in land matters, assessing the strengths of the legal framework for ADR in promoting its use in land disputes and exploring challenges obstructing the use of ADR in Zanzibar's land dispute settlement. Data for the study was collected through interviews with key informants and a review of relevant official documents. A thematic analysis, using qualitative content analysis techniques, was applied to examine the collected data. The study gathered information from a diverse group of respondents, including advocates, legal officers, magistrates, land department officers, local government representatives (Sheha), and ordinary citizens.

The findings indicate that while ADR is incorporated into the legal framework for land disputes at the Land Tribunal level, there are significant barriers to its effective implementation. These include a lack of skills and competency among stakeholders to facilitate the ADR process. The research also highlights that, despite the potential benefits of ADR, it has not been fully realized due to these challenges.

In conclusion, the study suggests that for ADR to be more effective in resolving land disputes in Zanzibar, the legal framework should be reviewed and improved.

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- Attorney General Vs Lohay Akonaay and Joseph Lohay (1995) TRL 80 (CAT)
- Silanga Kimenanga vs. Mevongori Mosoni (1941) James RW & Fimbo G M at 298
- Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd, AIR 2007 Delhi 284
- Alipipi v Mathias Karugendo (2007) Land Case No. 31 of High at Court Mwanza Registry
- Karatta Ernest D. O and Others vs. Attorney General, (2014) Civil Appeal No. 73 of the Court of Appeal at Dar es Salaam (unreported)
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Land Transfer Act No.8 of 1994

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(miscellaneous Amendment) Act No.2 of 2010

The Zanzibar Commercial Court (High Court Division) Act No.9 of 2013

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**LIST OF ABBREVIATIONS**

|          |  |
|----------|--|
| ADR      | Alternative Dispute Resolution                       |
| AFS      | Amendments to the First Schedule                     |
| BATNA    | Best Alternative to a Negotiated Agreement           |
| ICC      | The International Chamber of Commerce                |
| e.g      | Example  |
| EAC      | East African Community                               |
| ENE      | Early Neutral Evaluation                             |
| NGO      | Non-Governmental Organization                        |
| TLR      | Tanzania Law Reports                                 |
| PR       | Public Relations                                     |
| V.       | Versus/against                                       |
| OUT      | The Open University of Tanzania                      |
| NLP      | National Land Policy                                 |
| RMC      | Regional Magistrate's Court                          |
| CPD      | Civil Procedure Decree                               |
| LT       | Land Tribunal  |
| Pg       | Page   |
| ZLSC     | Zanzibar Legal Service Center                        |
| CPC      | Civil Procedure Code                                 |
| NCC      | National Construction Council                        |
| UNCITRAL | United Nations Commission on International Trade Law |
| ICC      | The International Chamber of Commerce                |

|      |   |
|------|---|
| UN   | United Nations                                    |
| US   | United State                                      |
| URT  | United Republic of Tanzania                       |
| FARE | Foreign Awards (Recognition and Enforcement) Act. |
| NATO | The North Atlantic Treaty Organization            |
| RSA  | Republic of South Africa                          |
| MTI  | The Mediation Training Institute                  |
| NO.  | Number  |
| ED.  | Edition   |
| DHU  | Dispute Handling Unit                             |

## CHAPTER ONE

### INTRODUCTION AND BACKGROUND TO THE PROBLEM

#### 1.0 Introduction

Land is the most valuable property of all assets that a human being can have as it is the determinant of social and economic development of any society<sup>1</sup>. Land is a reflection of the status of a given community in the sense that, economics of a community is defined by the nature of land it has<sup>2</sup>. The value of land in terms of economic growth and development of any given country is enormous. In Tanzania for example, majority of the population (82%) derives their main livelihood from agriculture and livestock sector activities which all depend on land<sup>3</sup>. Being most valuable land has to be administered with due process. The foregoing is reflected in the High Court of Tanzania decision in the case of **Raphael Simon vs. Adrehem Mgima**,<sup>4</sup> when deliberating on mechanism used to control or to monitor ownership, disposition and other related matters of the like nature and put it as follows:

*“Legally Land is a real property. Land as a property in legal sense it has an aggregate of rights attached to it which are guaranteed and protected by law. Its domination or indefinite right of use or disposition which one may lawfully exercise over particular thing or subject is what gives its value and therefore protection of its interest. Land as real property is inherent in every sovereign state by exercising its powers of eminent domain to expropriate land without owners consent. In other words there is no deprivation of real property (land) without any sanction of the law.”*

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<sup>1</sup> Lendita, Simon W,(2013) “Investment and Land Disputes in Tanzania: A vehicle for Investment Legal Reform”, Dissertation submitted in partial fulfillment of the requirement for award of Degree of Master of Laws in Commercial law of Mzumbe University, pg 1, available at [scholar.mzumbe.ac.tz.../LLM-Dissertation-SIMON%20WILSON%20LENDITA-201...](http://scholar.mzumbe.ac.tz.../LLM-Dissertation-SIMON%20WILSON%20LENDITA-201...), accessed on 26 July 2022

<sup>2</sup> Ibid

<sup>3</sup> URT National Strategy for Growth and Reduction of Poverty, Vice President’s Office, June 2005 pg 6 at [www.povertymonitoring.go.tz/Mkukuta](http://www.povertymonitoring.go.tz/Mkukuta) last visited 26 July 2022

<sup>4</sup> Land Case Appeal No. 26 of 2008, High court Land Division at Tanga (unreported)

Moreover, land is dispute-prone in Tanzania and around the world due to inter alia competing demands over the same which call for judicial and non-judicial methods of dispute resolution. The problem is fuelled by the fact that land does not expand while people and other living organisms relying on it for survival, keep on increasing, putting pressure on the limited available land. On these premises land disputes if not dealt with swiftly and equitably especially where there is inefficient means of dealing with land disputes can result to devastating effects on individuals, groups and even the entire society and sometimes loss to life.

Land is not only a source for livelihoods of living organisms and non-living organisms but also takes an important aspect in economic development.<sup>5</sup> Poor uses of land resources create problems to the country economic and also it threatens the peace and security in the societies. It is for that reasons, there is a need to have good land management for the benefit of the societies. Land disputes have large outcomes on suppressions over land property rights. These circumstances tend to lead the situations of misunderstanding between authorities, communities and individuals, whereby same time ADR used to settle those misunderstandings. Security of land tenure is an important element in addressing and avoiding land disputes. Legal maintenance of land borders and boundaries play important role in keeping away unwanted elements of land disputes.<sup>6</sup> Everybody has a rational interest in access the

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<sup>5</sup> Is-haka A. Khamis. (2015) Causes of Land disputes in Zanzibar and applicability of land legislations, unpublished Master dissertation, Zanzibar University.

<sup>6</sup> Krain, Eberhard (1994) National Coconut Development Programme Farming Systems Research Zanzibar Land Tenure in Zanzibar. Unpublished Discussion Paper. Bad Berleburg

land resources as much as possible without being interfered by any one<sup>7</sup>. Land dispute can be defined as a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. A land conflict, therefore, can be understood as a misuse, restriction or dispute over property rights to land (Wehrmann, 2005).

### **1.1 Background of the Problem**

Zanzibar is a semi-autonomous country. It is part of the United Republic of Tanzania, which formed after the merger of the then Tanganyika and Zanzibar on 26th April 1964. The Constitution of the United Republic of Tanzania gives Zanzibar autonomy to do its internal affairs such as law-making for non-union matters through the Zanzibar House of Representatives and its judiciary up to the level of High Court<sup>8</sup>. Historically Zanzibar was known as a Centre for commercial activities for many centuries. This encouraged people from different Nations such as Arabs of Oman, British, Indians, Persian and Portuguese to have interest in Zanzibar. Their commercial interest also developed into political interest. This made Zanzibar becomes under the two colonies for the same time the Omanis and the British during the 18th Century.<sup>9</sup> Like other residents of East Africa, the people of Zanzibar lived in a communal society with traditional dispute settlement based on reconciliation under

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<sup>7</sup> [www.uneca.org/sites/landandconflictstudy](http://www.uneca.org/sites/landandconflictstudy). Accessed on 15, October 2021

<sup>8</sup> Refer to Article 114 of the Constitution of the United Republic of Tanzania of 1977

<sup>9</sup> Greenwood, A (2016), *the Colonial Medical Service and the Struggle for Control of the Zanzibar Maternity Association, 1918–47*, In Greenwood, A *Colonialism; Medicine; Colonial Service; Empire; Missionaries; Government*, Manchester: Manchester University Press.

the council of elder<sup>10</sup>. However, after the British occupation, the British established dispute settlement through the Court process and extended via the subsequent Orders in Council made pursuant to the Foreign Jurisdiction Act, several laws that were valid in India became applicable in Zanzibar<sup>11</sup>. For instance, the Civil Process Decree of 1884, an Order in Council, expanded the 1882 Civil Procedure Law of India to include Zanzibar. This statute continues to play a significant role in how civil cases are handled in Zanzibar. Alternative Dispute Resolution, which is now encouraged and urged, hasn't been included in the law very much, though. On the other hand, the employment of the Alternative Dispute Resolution method in dispute resolution is permitted under the Arbitration Decree, Arbitration Clauses (Protocols) Decree, and Arbitration (International Awards) Decree. Although most agreements contain a clause requiring reference to alternative dispute resolution procedures, experience suggests that most individuals do not use these procedures to resolve their land problems. Due to the current circumstance, resolving property conflicts mostly through litigation has become necessary, which reduces the effectiveness of ADR in this area. Thus, the government of Zanzibar formed a land tribunal department through the land tribunal statute in 1994 in order to secure a swift resolution of the land dispute through ADR<sup>12</sup>, Where Section 13 of the land tribunal act<sup>13</sup>, illustrates the land tribunal's authority to hear cases involving parties with competing land claims. Additionally, the Act makes it possible for the land dispute to be settled

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<sup>10</sup> Stockreiter, E.E. (2010), "British Kadhis" and "Muslim Judges": Modernization, Inconsistencies and Accommodation in Zanzibar's Colonial Judiciary," *Journal of Eastern African Studies*, Vol. 4, No. 3.

<sup>11</sup> Greenwood, A (2016), *the Colonial Medical Service and the Struggle for Control of the Zanzibar Maternity Association, 1918–47*, In Greenwood, A *Colonialism; Medicine; Colonial Service; Empire; Missionaries; Government*, Manchester: Manchester University Press.

<sup>12</sup> No.7 of 1994(Law of Zanzibar)

<sup>13</sup> Ibid

amicably. This is a brand-new development in Zanzibar's approach to settling land disputes. As a result, this study examines the impact of alternative dispute resolution on the resolution of land disputes and offers some suggestions for improvement. In addition, today, the ADR has gained international recognition and is widely used to complement the conventional methods of resolving disputes through courts of law. Basically, the term "Alternative dispute resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. The term can be used to describe anything from mini-trials that closely resemble courtroom proceedings to arbitration systems, to facilitated settlement negotiations in which parties to a dispute are encouraged to directly negotiate with one another before engaging in any other legal process. Processes intended to ease interpersonal conflict or assist with community development issues can also be categorized under ADR. ADR simply refers to all methods of resolving disputes besides the conventional methods, which involve going to court. Specifically, these include: arbitration, conciliation, mediation, and negotiation.<sup>14</sup> Most of the methods of ADR that are promoted for inclusion in African justice systems are similar to pre-colonial African dispute settlement mechanisms that encouraged restoration of harmony and social bonds in the justice system.<sup>15</sup> The ADR was first implemented in Tanzania in 1994 through Government Notice No. 422, which changed the First Schedule to the Civil Procedure Code Act (1966). It is now an integral part of the legal framework in the nation. ADR was first

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<sup>14</sup> Nuhu S. Mkumbukwa, the impact of pre-trial protocols and Alternative Dispute Resolution (ADR) mechanisms in the expeditious disposal of civil suits – the case study of Dar es Salaam Region, LL.M Dissertation submitted at UDSM, 2009.

<sup>15</sup> Barrett, J. T. & Barrett, J. P. *A history of alternative dispute resolution: the story of a political, cultural, and social movement.* San Francisco, CA: Jossey-Bas. 2004.

implemented in Zanzibar in part in 1928 under Chapter 25 of the Arbitration Decree. The Government of the Protectorate is a party to the submission or arbitration to which this Decree was applied.<sup>16</sup>

The Revolutionary Government of Zanzibar, therefore, has taken measures in attempt to come up with solutions to land problems by enacting different laws concerning with land issues, those laws are; the Land Tenure Act,<sup>17</sup> the Registered Land Act<sup>18</sup>, the Land Tribunal Act<sup>19</sup>, the Land Adjudication Act<sup>20</sup>, the Land Survey Act,<sup>21</sup> Town and Country Planning Decree Act<sup>22</sup>and the Land Transfer Act,<sup>23</sup> and The Zanzibar Condominium Act.<sup>24</sup> In an effort to provide substantive justice, these laws created a new system for resolving land disputes. The goal is to use a procedure that is quick and not constrained by legalese, while also not being strictly bound by rules of practice or procedure. It makes sense that these laws include some types of ADR. The existing of that legislations assist in resolving land dispute through ADR, now many land disputes in Zanzibar resolving amicable than to use ordinary ways which called Court.

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<sup>16</sup> See section 1(2) of the Arbitration Decree Chapter 25

<sup>17</sup> No.12 of 1992 (The Law of Zanzibar)

<sup>18</sup> No.10 of 1990 (The Law of Zanzibar)

<sup>19</sup> No.7 of 1994 (The Law of Zanzibar)

<sup>20</sup> No.8 of 1990 (The Law of Zanzibar)

<sup>21</sup> No.9 of 1990(The Law of Zanzibar)

<sup>22</sup> No.85 of 1995(The Law of Zanzibar)

<sup>23</sup> No.8 of 1994 (The Law of Zanzibar)

<sup>24</sup> No.10 of 2010(The Law of Zanzibar)

## **1.2 Statement of the Research Problem**

The land use systems in Zanzibar are rapidly changing, together with a changing social transformation process, due to the information revolution, technological advancement, and market intervention and globalization processes. Access to land has become concentrated and some groups experiences both social and spatial marginalization which tends to encourage conflicts if rules and regulation regarding resource use and access are not clearly defined. Increasing population is exerting extreme pressure on land resources. Extreme skewed land distribution pattern as a product of socio-cultural, economic and environmental systems are causing poverty, injustice and social exclusion.

In 1994, The House of Representative of Zanzibar enacted two laws; the Land Transfer Act No. 8 of 1994 and the Land Tribunal Act, No.7 of 1994, in order to regulate Land Dispute. These two Laws came into force in 2006, completely replacing the old, fragmented laws which were seen to be less effective in maintaining the Land Dispute, the importance of the promotion of effective dispute resolution was emphasized as one of the primary objectives of the Land Tribunal Act.

Among the major weaknesses of the old repealed laws was the manner in which Land disputes were handled. Too ineffective of these Land laws, Nassoro, (2004)<sup>25</sup> had this to say, “The net effect of these statutes was a lot of confusion, overlap and

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<sup>25</sup> Ng'ingo, B. (2010) Concept Paper on Mediation and Arbitration, Dispute Handling Unit, Zanzibar

general inefficiency that did not conform well with the development of the Land sector and obviously it was one of the hindrances to the investors”.

The enactments of the new Land laws were the only salvation for the Land sector and for the success of the economic reforms which were in place in the Zanzibar, and to attract foreign direct investment (FDI). Whereas the Land Tribunal Act provides for the rights and obligations to the petitioner and respondent when they have Land dispute, the Land Transfer Act established the Board of Transfer of Land, which Board empowers to handling land dispute during the Transfer as stimulated under section 7 of the Act<sup>26</sup>. While the Land Tribunal empowered to mediate and arbitrate Land matters brought before it as encouraged under section 14 of the Act<sup>27</sup>.

Despite of the effort made by the Government of Zanzibar to establish the Land Transfer Act and the Land Tribunal for Mediation and Arbitration to settle Land disputes between petitioner and respondent but the number of Land disputes increases since 2006 when the Land Tribunal established. Therefore, this study intends to find out the Effectiveness of Alternative Dispute Resolution on Land Disputes Settlement in Zanzibar.

### **1.3 Research Objectives**

The research intended to achieve the following objectives:

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<sup>26</sup> The Land Transfer Act No.8 of 1994

<sup>27</sup> The Land Tribunal Act No.7 of 1994

### **1.3.1 General Objective**

The study's general objective is to examine in detail the effectiveness of alternative dispute resolution (ADR) on land disputes Settlement in Zanzibar.

### **1.3.2 Specific Objectives:**

Specifically, the research intends:

- (i) To analyze the positive effects of using ADR to land dispute resolution on Zanzibar Island.
- (ii) To identify the enforcement mechanism dealing with administration of justice in land matters in Zanzibar Island.
- (iii) To ascertain the strengths of the legal framework for ADR in Zanzibar in promoting the use of ADR in land matters.
- (iv) To explore and highlights the obstruction of using alternative dispute resolution methods in land dispute settlement in Zanzibar.

### **1.4 Research Questions**

This study is based on questions and tries to propose answers to them

- (i) What are the enforcement mechanisms that deal with administration of justice in land matters in Zanzibar Island?
- (ii) What are the strengths of the legal framework for ADR in Zanzibar Island in promoting the use of ADR on land matters?
- (iii) What are the challenges faced in the implementation of ADR in resolving land dispute in Zanzibar Island?
- (iv) What is the effectiveness of resolving land dispute via ADR in Zanzibar?

### **1.5 Significance of the Research**

The importance of this study is that the achievement of the aim and objectives of this study looking at the application of ADR in the national land law and its practice in land disputes settlement, it provided a room for providing lessons to learn about what can be done to improve the methodologies used in land problem solving issues and the interpretations arising out of the decisions made in the implementation of the law in Zanzibar. Research helped to find out the gap exist in resolving land dispute in Zanzibar particular Zanzibar Island and provide the way forward to fill that gap. In addition, this research used in other social services by providing inputs to the government authorities and any other interested parties who may ultimately come up with suggestion on how to solve land dispute with no side effects. Moreover, research stimulated further research to the students from Open University and other Universities when they were in the course of conduct research concerning with ADR.

### **1.6 Scope of the study**

The research was specifically concerned with the examination of the effectiveness of alternative dispute resolution (ADR) on Land Disputes Settlement in Zanzibar. Unfortunately, the researcher conducted his work at Unguja Island only. There was not impediment for the author to reach both Island, but because the Governing system in whole Zanzibar is the equivalent and matching, so there were no much more demands to conduct this research in both islands simultaneously. The three regions or seven districts of Zanzibar Island had been the destination of this research. It was sufficient to cover such area due to the nature of topic and available resources.

The research under hand was confined to the study of land disputes in Zanzibar, the practical wrathfulness of the study has been found to be government. The study is also limited to all individuals, firms and organizations that have been excluded in the data collection method. The analysis, findings, suggestions, and conclusion that have been proposed are significantly playing important role for the upcoming researchers whether underground or obsessed ones.

### **1.7 Literature review**

Few legal authors have attempted to discuss the use of ADR in resolving land disputes in Tanzania, specifically Zanzibar, and the rest of the world, as the literature may confirm. The following works of literature were taken into account when putting this academic work into exposition. As a result, this study is crucial to generating the evidence and updating existing knowledge or thinking regarding the existing legal framework's apparent inability to support the resolution of land disputes through ADR.

In his book titled 'Alternative Dispute Resolution in Tanzania Law and Practice', published in 2004, Clement Mashamba notes that the ADR system is not natural in Tanzania as in many other African countries. In Tanzania, it was transplanted from the West. The author examines ADR approach in African cultural contexts and the role of Ubuntu in dispute resolution in Africa, and then makes a comparison between formal ADR and traditional justice system in Africa. As he laments, the ADR approach was introduced in Tanzania by GN No. 422 of 1994, amending the 1st

schedule to the Civil Procedure Code introducing three new orders: Order VIIIA; Order VIIIB; and Order VIIC. As he depicts, the implication of the 1994 amendment for the Civil Procedure Code is that all civil cases filed in courts must be referred to ADR in the form of mediation. In putting the law into practice, this legal position was buttressed in **Fahari Bottlers Ltd & Another vs. Registrar of Companies & another**.<sup>28</sup> In this legal matter, the Court of Appeal of Tanzania held that the requirement for a suit to be referred to mediation first before full trial begins is a mandatory one under the Civil Procedure Code.

Mashamba discusses deeply the significance of ADR in civil courts in Tanzania in that the demand for alternative ways to deal with legal disputes other than conventional courts arose out of the ever-increasing heavy caseloads and backlogs in Tanzania civil cases. So, the primary rationale for the introduction of ADR in Tanzania was to reduce the heavy caseloads as well as the backlogs. He adds that the ADR system was also meant to avoid resort to unnecessary procedural technicalities prevalent in traditional courts as well as reducing expenses involved in pursuing litigation in courts of law. In this regard, the court-annexed ADR system in Tanzania was designed in an informed way to allow parties to participate easily in this process and ensure that the relationship between the parties is preserved after they had undergone the ADR process. Even thou, the author's work help the researcher to know for what extent ADR are used in land issues in Tanzania.

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<sup>28</sup> Civil Revision No. 1 of 1999, Court of Appeal of Tanzania at Dar es Salaam (unreported)

Mandepo<sup>29</sup>, explains various issues relating to arbitration, citing the Arbitration Acts the principal legislation regulating arbitration in Tanzania. Mandepo<sup>30</sup> makes a comparative analysis of the arbitration carried out under this Act and its rules and the one carried out under the National Construction Council (NCC) Rules. He also addresses issues of arbitration under the Civil Procedure code, pointing to the NCC is a statutory body that was established in 1979 through the National Construction Act 1979, Cap 162, as amended in 2007.

Pursuant to section 4 of the Act, among functions of NCC include promoting and providing strategic leadership to the stakeholders for the development of the construction industry as well as advice the government on all matters relating to the construction industry in Tanzania. Apart from the main statutory mandates in the Act of its establishment, the Council is also engaged in facilitating construction dispute settlements through adjudication and arbitration under the NCC Arbitration Rules.

Mandepo further observes that currently the Rules applicable in the arbitration are the Arbitration Rules, 2001 Edition. These replaced the old Rules of 1984. The Rules are in the form of guiding procedures for regulating arbitration between parties who seek to resolve their construction dispute through NCC. NCC is the only semi-government institution facilitating arbitration of construction disputes in Tanzania.

Under the NCC Arbitration Rules, 2001, the role of NCC on issues of arbitration is

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<sup>29</sup> George Mandepo, Resolving Construction Disputes through Arbitration: An overview of Tanzania Legal Framework, Dissertation submitted for the Degree of LL.M in Construction law at University of Strathclyde Law School, 2010 available at <https://www.scribd.com/doc/104535724> accessed on October 23,2021

<sup>30</sup> Ibid

only to facilitate the appointment of arbitrators and coordination of all proceedings as the parties may agree. However, even the present author does not address anything concerning the challenges faced in the implementation of ADR in resolving land dispute in Tanzania. But the author helps the researcher to understand how arbitration is used.

Mkumbukwa,<sup>31</sup> provides a broad knowledge on the categories and scope of ADR by giving the meaning, merits and demerits of various ADR mechanisms such as arbitration, conciliation, negotiation, early neutral evaluation, mediation, partnering, expert determination and mini-trials. He also addressed other hybrid ADR models such as litmed, medlit, med-arb, arb-med, conc-arb and arb-conc; and argued that categories of ADR are not closed as there is room for parties or courts to be innovative by coming up with new ways of settling disputes out of court or aside from litigation by virtue of the phrase “such other means not involving trial” in order VIII A Rule 3(1) of the CPC, and that by this phrase the mechanisms of ADR mentioned herein above are invocable in Tanzania. This author’s observations and remarks are relevant to my research as it provides a detailed account of the ADR mechanisms that are invocable in Tanzania. The added advantage of my study is that it is specific by addressing models of ADR currently in use in Tanzania by looking at their actual practice including case laws. The latter author has not discussed the

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<sup>31</sup> Nuhu S. Mkumbukwa, the impact of pre-trial protocols and Alternative Dispute Resolution (ADR) mechanisms in the expeditious disposal of civil suits – the case study of Dar es Salaam Region, LL.M Dissertation submitted at UDSM, 2009.

strengths of the legal framework for ADR in Tanzania in promoting use of ADR on land matters, and this is a knowledge gap the present researcher wished to fill.

According to Olson,<sup>32</sup> the traditional ADR holds no clear distinction regarding the elements of the process and the roles of the facilitator. The boundaries are elusive, and the rules are dynamic. For example, in the case of the *Semai Senoi*, it is unclear if bechara is mediation, facilitation or arbitration. Often there is also no difference between informal and formal processes because traditional ADR does not always function within the framework of a structured legal system. However, the author does not comment anything regarding the challenges faced in the implementation of ADR in resolving land dispute in Tanzanian, courts and outside these premises, and this is another reason why the present researcher decided to look into in his exploration for this study.

Mwenda,<sup>33</sup> traces the development of ADR internationally. Although the author assesses the impact of ADR on the justice delivery system particularly in Zambia, her work has contributed greatly to my study as it contains very useful information on the use and benefits of ADR. In her words, the ADR was developed as another option besides the traditional dispute resolution mechanism - namely 'litigation' which was found to be costly, time consuming, not giving parties control over the

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<sup>32</sup> Olson, E.G. Leaving Anger outside the Kava Circle: A Setting for Conflict Resolution in Tonga. In D.P. Fry, & K. Björkqvist (Eds.), *Cultural Variation in Conflict Resolution*: 1997.

<sup>33</sup> Winnie Sithole Mwenda, *Paradigms of Alternative Dispute Resolution and Justice Delivery in Zambia*, Thesis submitted for the Degree of Doctor of Laws at the University of South Africa, 2006 available at [uir.unisa.ac.za/handle/10500/2163/thesis.pdf?sequence=1](http://uir.unisa.ac.za/handle/10500/2163/thesis.pdf?sequence=1), accessed on September 26, 2020

outcome of their disputes, and was generally cumbersome. The author describes ADR as referring to a variety of techniques for resolving disputes without resort to litigation in the courts. However, like the above cited authors, she does not address the challenges faced in the implementation of ADR in resolving land dispute in Tanzania.

Dr. Tripathi S.C. (2010),<sup>34</sup> explains the importance of ADR. No doubt system of judiciary or adjudication needs drastic improvement and policy makers are compelled to innovate alternate mechanism. The need of Alternative means because amicable settlement of disputes, speedy justice, economic settlement, time saving management, legal recognition. The matrimonial issues are directly effect on individual and life. Hence the need of speedy justice is very important. Every individual has not only right to justice but also right to speedy justice, but the author failed to described land dispute settlement via ADR.

Gary Born (2013),<sup>35</sup> explains the Supreme Court given the importance to ADR. The Supreme Court of India handed down a landmark judgment in *Bharat Aluminium v. Kaiser Aluminium* (“*Bharat Aluminium*”) on 6 September 2012. The Court held that Indian courts would no longer exercise authority to annul awards, or remove and appoint arbitrators in arbitrations seated outside India. In that the Court relied on international authority to domestic decisions in which Indian courts had claimed the

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<sup>34</sup> Dr. Tripathi S.C.(2010)Alternative Dispute Resolution (ADR) Central Law Publications; Edition: 3 Ed 2018

<sup>35</sup> Maniruzzaman, A. F. M., International Arbitration: Law and Practice by Gary B. Born [Book Review] (January 27, 2013). Available at SSRN: <https://ssrn.com/abstract=2207622> or <http://dx.doi.org/10.2139/ssrn.2207622>

right to set aside awards made outside India. It is important to recall that India was one of the first signatories to the New York Convention in 1958 and that the Indian Parliament was one of the first national legislatures to give effect to the Convention, through its enactment of the 1961 Foreign Awards (Recognition and Enforcement) Act. The FARE Act was, in the words of the Supreme Court, calculated and designed to facilitate and promote international trade by providing for speedy settlement of disputes arising in trade through arbitration. It means Supreme Court also prefer the arbitration, however, like the above cited authors, she does not address the effectiveness in the implementation of ADR in resolving land dispute.

Former Chief Justice of India Sabyasachi Mukharji (1990)<sup>36</sup> has said, an alternative to litigation should be found to resolve disputes. We must develop a new theory of resolving differences through the intervention of neutrals, role of law school in the delivery to legal service to rural poor. The voluntary agencies and social workers are being motivated to public for alternatives. Opportunities should be provided to youths, especially law students, to participate legal services to poor. The average fifty percent of the cases are civil miscellaneous petitions and family matters. Hence the registry of court is overburdened by the court. Hence the implementation of alternatives is needed.

Myneni (2004),<sup>37</sup> explains the advantages and limitation of ADR in his book *Alternative Dispute Resolution Arbitration, Conciliation and Alternative Dispute*

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<sup>36</sup> [https://wikimili.com/en/Sabyasachi\\_Mukharji](https://wikimili.com/en/Sabyasachi_Mukharji), site visited on 12 August 2022

<sup>37</sup> <https://www.researchgate.net/scientific-contributions/Satyanarayana-Myneni>. site visited 12 August 2022

Resolution Systems. It can be used at any time before filing case, even pending case before court, better solution at less cost, its flexible hence not wasting time for technical procedure, ADR can used with or without lawyer while permission to parties to choose neutral person who is specialist for solving disputes. The ADR is not favored in cases like when any one party not agreed for amicable settlement, in criminal cases etc. But in matrimonial cases most of matter of sentiments and emotions hence the method of ADR is perfect for these matters.

Banerji k.Milon (1997),<sup>38</sup> describe the topic of Arbitration through Arbitration versus litigation, these are the two methods of resolving dispute which are mutually contradictory or incompatible. Litigation and arbitration are both methods of resolving the dispute, one in court of law and other is through private tribunal. When the dispute resolves through court of law then the individually advocates will not leave or sacrifices the less paying hence, they are not agreeing for solving the dispute through arbitration. But collectively all advocates agree for the adoption of procedure of ADR for solving the disputes. It means like French philosopher Montaigne said that, I have gathered posy from other man's flower and nothing but the thread binds them is my own. The author failed to capture land issues in his concern.

**B. D. Chipeta,**<sup>39</sup> in all jurisdictions, various modes of settling disputes have been put in place for orderly and efficacious settlement of disputes. These modes are usually created by the statutes and in some cases by practice in the relevant tribunals. In

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<sup>38</sup> [https://en.wikipedia.org/wiki/Milon\\_K.\\_Banerji](https://en.wikipedia.org/wiki/Milon_K._Banerji) site visited 12 August 2022

<sup>39</sup> The Manual for Mediation Training in Tanzania, prepared by Hon. D. P. Mapigano, J, Hon. B. D. Chipeta, Hon. J. A. Mrosso J, Hon. J. M. Mackanja, J, Mr. J. E. Mtotela, PRM and Mrs. R. A. Temba, SRM.

Tanzania until late 1994, the mode of settling the disputes were; Adversarial procedures, Reconciliation procedures and Arbitrator procedures. In some jurisdictions they apply the modes of inquisitorial procedures, in 1994 there was introduced a fourth mode of settlement of disputes, that is, the Alternative Disputes Resolutions (ADR) procedure simply called mediation. In the year 2000, the mediation process was incorporated into the supreme law of the land, that is the constitution of the united republic of Tanzania and that was done by the thirteenth amendment of the constitution provides.<sup>40</sup>

It is obvious to take note that the piece of the literature accounted for above for this study is not exhaustive of all the works done before in this area of dispute settlement for land related matters, but the selected articles shed light to motivate the current author to use them for reference purposes while making this study case justification. Unfortunately, in Zanzibar there are limited writers who wrote about ADR on how it's used on land disputes resolution.

### **1.8 Research methodology**

This area described the various methods used in carrying out the research. It covers the research design, area of the study, target population, Sampling and Sampling Procedure, sample size, Methods and tools for data collection and data analysis.

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<sup>40</sup> Ibid

### **1.8.1 Research Design**

This refers to the plan for carrying out research. The study was carried out using the existing literature reviews survey research design pertaining to the research topic. In this research topic the research has employed a qualitative research method in order to gain a total or complete picture of the problem under investigation. Qualitative research method was used in this research because this method deals with the society, which in turn deals with the human context; this method itself allows the researcher to conduct studies in the field under the natural setting. Qualitative approach allows the researcher to collect opinions. Attitude and interpretation of selected respondents of the areas that were directly touched by the study. Qualitative technique enabled the researcher to give details based on the quality of data as good. Fair or bad.

### **1.8.2 Study Area**

The study was conducted in Zanzibar Island. This place is surrounded by the Indian Ocean and geographically is a remoted area where natives of this Island facing with many land disputes, hence the study critical wanted to access the effectiveness of ADR in resolving those land disputes in this Island. Also, there was no research conducted in this area concerned to the effectiveness of ADR on land dispute resolution, hence influenced researcher to select this marginalized area of Zanzibar Island.

### **1.8.3 Population of the study**

The population is defined as the distinctiveness of the precise group of individuals from which a sample is to be produced (Pandey, 2015)<sup>41</sup>. The study was carried out particularly in three regions of Unguja Island of Zanzibar. The population of this study included magistrates, officers of the land departments, lawyers, Masheha (Chairmans of the Shehia Government) and clients of the Land Tribunal so as to understand causes of land disputes in Zanzibar and applicability of ADR in its resolution.

### **1.8.4 Sampling and Sampling Procedure**

Sample as subset of units selected from a large set of the same units. The subset provided data for use in estimating the characteristics of the large set. In other words, researcher used measurements of the characteristics of a sample for forecasting similar characteristics about larger samples or populations.<sup>42</sup> Sample data were used to predict how a population would act or reacted under the same conditions in some future situation or event.<sup>43</sup> Sampling procedure refers to how cases are selected from a sampling frame. Many researchers have identified two ways of creating a sampling frame. The first one is to list all the cases in the population. The second one is establishing a rule that defines membership in the population. Ideally, a sampling

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<sup>41</sup> World Journal of Engineering and Technology-Vol.4, No.3D, October 20,2016

<sup>42</sup> Mugenda, O. M.& Mugenda, A.G. Research Methods Qualitative and its Quantitative Approaches (ACTS Press, Nairobi:(1996) p.3

<sup>43</sup> McNabb, David E (2002), Research Methods in Public Administration and Non Profit Management, Qualitative and Quantitative Approaches, Armonk, New York, M E Sharpe. P25.

frame consist of all the members of the target population.<sup>44</sup> The study involved small section of a population that was selected for interview and analysis, the characteristics of which can enable the researcher to make certain inferences about the population from which the sample was drawn as sample and sampling procedure. In fact, no sample size could be regarded the best; it was the nature of the study and the reflection of an actual profile of population. The sample size was drawn that could determine its acceptability. On the basis of this study random sampling technique was employed. A total number of 150 respondents are going to be included in this study.

#### **1.8.4.1 Sample Size**

This related to the number of items to be selected from the universe to constitute a sample. In this step, the number of elements or units of the population to be sampled will be decided. The size should be optimal and it can be neither excessively large not too small.<sup>45</sup> The sample size will be obtained from the total number of 400 respondents in the study area; however, questionnaires were administered to one hundred ordinary members, seven magistrates, ten lawyers, ten sheha, and twenty three officers from land department situated in Unguja Island and that together counted for 150 respondents both from Unguja Island.

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<sup>44</sup> Folz, David H (1996) Survey Research for Public Administration, Thousand Oaks, Sage Publication p.68.

<sup>45</sup> Folz, David H (1996) Survey Research for Public Administration, Thousand Oaks, Sage Publication p.74.

### **1.8.5 Methods and tools for data collection**

Data collection refers to the gathering of information to establish some facts.<sup>46</sup>

Survey is the method of data collection through exploratory or form of standardized questionnaires. Questionnaires were the major tools to collect data in survey method.

Interview is the method of data collection that occurs as conversation between researcher and respondents or a subject. To keep the conversation focused, the researcher uses a conversation guide (also called as interview guide or interview schedule or protocol) in which are listed the key points that are to be covered in this interview.<sup>47</sup>

In this study the author dominantly employed interview as a method of collecting data.

Interview will be mainly applied to respondents selected at random to avoid misunderstanding. Precisely the following instruments were used for data collection:

#### **1.8.5.1 Interview**

The study used interview schedules that have been administered to the magistrates, lawyers, Sheha, officers from the land department and ordinary peoples for gathering information. These interviews helped the researcher to collect in – depth information direct from the interviewees in which all the means of communication were open to them. Through interview the researcher explained the purpose of the study and what information he wanted for the study. The researcher also evaluated the sincerity and insight of the interviewees. Interview schedules assisted the interviewer to get the

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<sup>46</sup> <sup>46</sup> McNabb, David E (2002), *Research Methods in Public Administration and Non Profit Management, Qualitative and Quantitative Approaches*, Armonk, New York, M E Sharpe. P.8.

<sup>47</sup> Folz, David H (1996) *Survey Research for Public Administration*, Thousand Oaks, Sage Publication p.74.

story behind the interviewee's experiences and hence helped the researcher to pursue in-depth information about research.

#### **1.8.5.2 Questionnaire**

Structured and unstructured questionnaires were used in this study. Questionnaire was used as a tool of collecting information as it was easy to get information from a many people quickly. This was used so as to generate information and data, which subsequently was be used for qualitative analysis. general questionnaires for categories were designed.

#### **1.8.5.3 Documentary Review**

As previously mentioned, official visits were made to search for documents for review, including statutes, case laws, books, journals, articles, and internet resources as well as other publications, in relevant sources like university libraries, courts, advocates' offices, government offices in the Ministry of Land and Housing development. These documents aided the researcher in gathering pertinent data for the investigation.

#### **1.8.6 Data Processing**

Immediately following their collection, data were examined for completeness and relevance in terms of quality. Cleaning was done by removing all the information that wasn't necessary or pertinent to achieving the goals of the study. The key messages from the questionnaires were filled out by the respondents, while the key

messages from the notes were handwritten on a standard guide during in-person interviews with key informants and typed electronically using a personal laptop for each storage and additional word processing, as well as for later analysis.

### **1.8.7 Data Analysis**

To determine the key messages that emerged from each of the interviewees' answers to the interview questions and those discovered in the documents examined, a qualitative content analysis technique was used. Relevance of the response in light of the study's specific or main objective(s) and each topic or theme explored would be taken into account. According to suggested social related research methodologies, similarities and differences in the messages presented by various respondents or authors would be determined based on the opinions given on the study topic. Depending on the information contained in the messages gathered and the corresponding interpretations as presented in the previous section, the final conclusion regarding the knowledge and application of ADR in the relevant study in Zanzibar.

### **1.8.8 Ethical Issues**

The individuals approached to respond to the study were all informed adequately about the study purpose, expected legal and policy benefits, a non-paid participation for those who were willing to take part as respondents and confidentiality in case one can give any confidential information. Appointment for interviews had been arranged in advance of the interview day with each individual targeted to respond to the study.

### **1.9 Limitation of the study**

This study faced with some limitations, such as shortage of funds and time for a wider coverage. Another key limitation was the interpretation of certain legal words into Swahili for easy picking up by the respondents of what had been asked about. Also, inadequate cooperation from the respondents, some of the stated numbers of respondents failed to return the questionnaires to the researcher. In addition to that, some respondents were not ready to answer research questions especial those questions which contained negative interest to them, some participants' hesitated in cooperating fully with the researcher for fearing the disclosure of their shared information. Moreover, access to data need to much effort since many land cases are confidential as laws requires parts to not disclose the information that will give advantage to either of the parts.

### **1.10 Delimitations of the Study**

Due to the time limitation allocated and financial constraints, this study covered only one of the legally established authorities responsible for of land disputes resolution in Zanzibar. This is the Land Tribunal (LT) in Urban West Region which is responsible for land conflicts resolution in Zanzibar. Under this, the main focus was on their effectiveness in resolving those conflicts but also their likely challenges that hinders their effectiveness. On top of that the study was only limited to Urban West Region hence it is the expected that the results of this study will be only a pointer to a possible existence of similar factors in other Regions or Districts in Zanzibar.

### **1.11 The Organization of the Research**

This document was divided into six chapters. The first one provided an introduction and background to the problem. The second one provided overview of the principles of ADR applicable in resolution of disputes, describing various concepts and definitions underlying the subject of this study which revolved around land disputes. Chapter three examined the Legal framework for the resolution of land disputes in Zanzibar. Chapter four analyzed the application of ADR principles in resolution of land disputes in Zanzibar. Chapter five highlighted on Data Presentation, data analysis and discussion of findings while the last Chapter finally presented Summary of findings, conclusions and recommendations.

**CHAPTER TWO**  
**OVERVIEW OF THE PRINCIPLES OF ADR APPLICABLE IN**  
**RESOLUTION OF DISPUTES**

**2.0 Introduction**

In this chapter, the conceptual and theoretical framework of the study is presented. The chapter presents a description of various concepts and definitions underlying the subject of this study ‘‘the effectiveness of alternative dispute resolution on land disputes settlement’’. Some of the key concepts underlying ADR include land, land dispute, concept of Alternative Dispute Resolution, negotiation, conciliation, mediation, and arbitration. These concepts are briefly presented in the next following sub-chapters.

**2.1 Land**

Land includes all areas that are not covered by water, all vegetation that grows there, buildings, and other objects that are permanently fixed there, with the exception of trees that are specifically identified and owned separately. In accordance with Conveyancing and Law of Property Act (1881) Section 2(ii),<sup>48</sup> it was provided that land unless the contrary intention appears, includes land of any tenure, and tenements and here determents, corporeal and incorporeal, and houses and other buildings, also an undivided share in land. The Interpretation Act 1889 UK also states inter alia that the expression land include tenement, houses and buildings of any tenure.

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<sup>48</sup> (44 & 45 Vict. C. 41) of U.K

Furthermore, the term 'Land' as defined in section 2 of the Land Act,<sup>49</sup> includes 'the surface of the earth and the earth below the surface and all substances other than minerals and petroleum things that naturally grow on the land, things that are a part of it or below it, buildings, and other structures that are firmly anchored to it. Thus, it should be noted that while land contains surface and subsurface materials, it does not contain minerals like gold, diamonds, tanzanite, copper, etc. Some sort of historical factor is to blame for this. Under common law, ownership of the mines and minerals below the earth's surface followed that of the soil above, with the exception of gold and silver, which belonged to the Crown as a result of royal prerogative. By that point, the colonial masters had transferred ownership of all mines and minerals to the Tanganyika state (currently Tanzania's mainland).

Even after gaining independence, this concept was maintained and all resources remained the President's public property, including minerals. However, in this interpretation, land includes anything permanently associated with land. For example, a building cannot be viewed in isolation from the land on which it is built and vice versa. For items other than buildings, the degree to which they are fortified determines whether or not they are part of the property. As noted above, the degree of annexation and the purpose of the annexation are crucial in deducing whether an object is part of the property or not. Simply resting on the floor is not enough. Even if the purpose was to improve quality or enjoy the land better, it can be part of the land. So this needs to be dealt with on a case-by-case basis.

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<sup>49</sup> (1999) Cap 113 R.E 2002

In the case of **Virji v. Abdulrahman**,<sup>50</sup> according to the Kenyan Interpretation and General Provisions Act and the Indian Transfer of Property Act, which define land and immovable property, the court had the following to say when deciding whether an object was a part of the land: "The expressions used are attached to what is so embedded for the beneficial enjoyment of that to which it is so attached and permanently fastened to anything so embedded and again permanently to anything at."<sup>51</sup>

Since it determines the social and economic development of any society, land is the most valuable asset a person can possess.<sup>52</sup> Land is a reflection of a community's status in that a community's economics are determined by the type of land it has.<sup>53</sup> Land is extremely valuable for the development and growth of any given nation's economy. For instance, the majority of people (82%) in Tanzania depend on land-based activities in the agriculture and livestock sectors for their primary source of income.<sup>54</sup> The most valuable land must be administered according to the law. The High Court of Tanzania's ruling in the **Raphael Simon vs. Adrehem Mgima** case reflects the aforementioned.<sup>55</sup>, which stated the following when discussing the

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<sup>50</sup> (1950) 24 K.L.R. 24

<sup>51</sup> See also Saleh bin Hadi v. Eljofri (1950) 24 K.L.R. 17, Shaw v. Devshi (1923) 17 K.L.R. 20, Singh v. Singh 11 E.A.C.A. 48, Commonwealth v. N.S. Wales (1923) 33 C.L.R.1, Francis v. Ibitoye (1936) 13 N.L.R. 11.

<sup>52</sup> Lendita, Simon W, (2013) "Investment and Land Disputes in Tanzania: A vehicle for Investment Legal Reform", Dissertation submitted in partial fulfillment of the requirement for award of Degree of Master of Laws in Commercial law of Mzumbe University, pg 1, available at [scholar.mzumbe.ac.tz.../LLM-Dissertation-SIMON%20WILSON%20LENDITA-201...](http://scholar.mzumbe.ac.tz.../LLM-Dissertation-SIMON%20WILSON%20LENDITA-201...)

<sup>53</sup> Ibid

<sup>54</sup>URT National Strategy for Growth and Reduction of Poverty, Vice President's Office, June 2005 pg 6 at [www.povertymonitoring.go.tz/Mkukuta](http://www.povertymonitoring.go.tz/Mkukuta)

<sup>55</sup> Land Case Appeal No. 26 of 2008, High court Land Division at Tanga (unreported)

methods used to regulate or keep an eye on ownership, disposition, and other similar matters:

*“Legally Land is a real property. Land as a property in legal sense it has an aggregate of rights attached to it which are guaranteed and protected by law. Its domination or indefinite right of use or disposition which one may lawfully exercise over particular thing or subject is what gives its value and therefore protection of its interest. Land as real property is inherent in every sovereign state by exercising its powers of eminent domain to expropriate land without owners consent. In other words, there is no deprivation of real property (land) without any sanction of the law.”*

Moreover, there are many competing claims to land in Tanzania and around the world, which necessitates both judicial and extrajudicial methods of dispute resolution. The issue is exacerbated by the fact that land does not expand as populations of people and other living things who depend on it for survival continue to rise, placing pressure on the limited amount of land that is currently available. On these premises, land disputes can have disastrous effects on people, groups, and even the entire society, and even result in fatalities, if they are not resolved quickly and fairly, especially when there are ineffective methods for resolving land disputes.

## **2.2 Land Dispute**

Global land disputes as a concept are not new. It has to do with the conflict theory that Karl-Max,<sup>56</sup> a German Scholar and a revolutionist by 1818 to 1883 which was improved by Ralf Dahrendorf,<sup>57</sup> dispute(1929–2009) Every society is characterized by power relations in which members of the society exercise power over other

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<sup>56</sup> Bruce, J. (2011) Land and conflict, land disputes and land conflicts. USAID Issue Brief, Property Rights and Resource Governance Briefing Paper No.12.Washington, DC: US Agency for International Development in Cancino, K (2014) Tensacalma en el predio Santa Lucía. Diario de Xalapa,

<sup>57</sup>Ibid

members, and each member of the society contributes to the change of the society, according to the social conflict theory, which bases its argument on the assumption that struggle for property ownership through class structure leads to revolutionary class conflicts because of the scarce resources. Additionally, change is a constant and ever-present part of every society. The final presumption is that social conflicts are known in every society. These fundamental presumptions open the door to developing strategies, procedures, and methods for managing social and economic conflict.<sup>58</sup>

Land dispute can be defined as a social fact involving at least two parties in an actual or perceived competition of interests over the property rights to land<sup>59</sup>. Conflicts of interest may arise from "the right to use the land, the management of the land, the ability to profit from the land, the ability to exclude others from the land, the ability to transfer the land, and the ability to receive compensation from the land."<sup>60</sup> Therefore; a land dispute can be understood as misuse, restriction, or dispute over property rights to land.<sup>61</sup> Although there are many different types of land disputes, they can be broadly categorized by: (i) the type of land involved, such as privately or publicly owned, common property of a community, or natural resources; (ii) the parties involved and their interests, such as individuals, families, communities,

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<sup>58</sup> IBruce, J. (2011) Land and conflict, land disputes and land conflicts. USAID Issue Brief, Property Rights and Resource Governance Briefing Paper No.12. Washington, DC: US Agency for International Development in Cancino, K (2014) Tensacalma en el predio Santa Lucía. Diario de Xalapa

<sup>59</sup> Adam, A.G. Peri-Urban Land Tenure in Ethiopia. Ph.D. Thesis, Royal Institute of Technology (KTH), Stockholm, Sweden, 2014

<sup>60</sup> Ibid

<sup>61</sup> ibid

private sector, and official actors; (iii) the scale of the dispute, from small-scale, localized disagreements to large-scale conflicts between ethnic groups or even countries; and (iv) the nature of the dispute:<sup>62</sup>

- **Boundary disputes:** Disagreement on where the property of one individual, community or administrative unit ends and another's begins, especially where physical boundary markers may have been altered, destroyed or overgrown in the course of conflict.

- **Land and Property Disputes:** Competing claims over land between the state and indigenous communities over land seen as their traditional domain or land grabbing by elites or land invasion by the poor. Disputes may also arise from policies such as land reform or registration ("titling"), nationalization, collectivization or privatization, particularly where poorly conceived, politically contentious or implemented in a faulty, corrupt or incomplete manner. Existing disputes may also be aggravated or new ones sparked by conflict.

- **Access and Use Disputes:** Disagreements between parties regarding overlapping uses of land resources may relate to access to water, minerals, timber, grazing land or transit rights.

- **Inheritance Disputes:** Conflicts over the distribution of land rights following the passing of the property's recognized owner may be made worse in societies where polygamy is prevalent or where inheritance laws are a product of conflicting custom, religious, and/or statutory law.

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<sup>62</sup> Global Land Tool Network, Land and Conflict: A Handbook for Humanitarians: September Draft 2009

The courts' (Land Disputes) Act of 2002<sup>63</sup> defines disputes to include any use where a person complains of and is aggrieved by the action of another person or case in which a complaint is made in an official capacity or is a complaint against an official. Mmuya 2001.<sup>64</sup> defines land dispute as a situation of confrontation, lack of consensus between two or more parties within society. According to him, there are two ways to understand argument; Viewing conflict as a necessary evil stem from the observation that conflict situations in turn lead to destruction, injury, or a general intoxication of order and stability. The second way to understand conflict is to look at it as a necessary feature of a society or organization.

As development progresses, conflicts may erupt due to group differences in society. As many authors in the field note, the concept of land disputes is not new to the world. Land disputes arose due to various circumstances which have now determined the mechanism to be used to settle a particular dispute in Zanzibar. This includes borders above the village land<sup>65</sup>, issues emanating from land adjudication in the course of granting a certificate of customary right<sup>66</sup>, or in any matter, which the parties deem a controversy over land, which may include any other interest over the village land<sup>67</sup>. This position was also shared in Tanzania, in the case of **Attorney General Vs Lohay Akonaay and Joseph Lohay**<sup>68</sup>. These disputes must be

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<sup>63</sup> Courts (Land Disputes Settlements) Act, 2002 (Act No. 2 of 2002).

<sup>64</sup> <https://www.escr-net.org/sites/default/files/landconflictsguide-web-20170413>. Visited on 25 august, 2022

<sup>65</sup> Discussion with Hassan Ali Issa, On 11<sup>th</sup> April 2022 who is a chief clerk of the Land Tribunal of Urban West Region Zanzibar

<sup>66</sup> Ibid

<sup>67</sup> See section 56 of the Act No. 12 of 1992 (The Land Tenure Act, Law of Zanzibar)

<sup>68</sup> Attorney General Vs Lohay Akonaay and Joseph Lohay (1995) TRL 80 (CAT)

governed by legally binding documents in each community where they arise in order for them to be settled by stating each party's rights, whether regarding ownership or any related interest in the property. In Zanzibar, it is well known that neighbor disputes, neighbor disputes with investors, and neighbor disputes with public officials are the most common types of land disputes at the village level.<sup>69</sup>

This means, the existence of land disputes at a village level is not in dispute. The issue at hand is whether the inaccessibility of the set legal machineries is one of the causes for the persisting land conflicts at a village level.

In **Rashidi bin Ali v. Bakari bin Kayanda**<sup>70</sup>, A rice-farming plot that was a portion of a larger area where the appellant exercised his "Mzengakaya" rights in Tabora was at the center of the conflict. The territory in question was a portion of the Mzengakaya's claimed territory, which his sister had been farming. The respondent married that sister about eight years before the conflict, and the appellant then gave him permission to reside there. It was generally accepted. that the respondent had maintained an active employment during that time and increased its agricultural value. In **Silanga Kimenanga vs. Mevongori mosoni**,<sup>71</sup> it was also stated that, according to local customary law, land belonged to the first person to actually clear it, unless he had completely renounced his rights thereto. In **Ishaku vs. Hadejia**,<sup>72</sup>

According to Islamic Law, if someone planted any uncultivated land, it became their

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<sup>69</sup> Speech of the Minister for Lands, Housing and Settlement Development issued in June 2015 before the National Assembly when debating on the Annual Budget of 2015/2016, pp. 26 and 27

<sup>70</sup> (1941) James RW & FimboG M at 298

<sup>71</sup> James R. W and Fimbo G.M at 299

<sup>72</sup> Ibid at 300

property, and even an emir could not take it away from them. In the case of **Mariam bin Chaulembo vs. Hamisi Waziri**,<sup>73</sup> According to Rufiji law, the plaintiff claimed that the contested land was his by inheritance. There were 400 coconut trees on the property, and it was established that the defendant—who had owned it for a considerable amount of time, including during the deceased owner's life—had planted them there. When the defendant took possession of the property, there were eight coconut trees there. The defendant was ordered to leave the property after receiving payment for the improvements he had damaged, according to the plaintiff, who claimed that the defendant was trespassing.

In this part of the Territory, land can only be obtained through effective cultivation, and a claim to an area with 400 trees cannot be supported by eight trees' worth of cultivation. In this case, the plaintiffs asserted ownership of a piece of land through Mwana-isha bint Mwichande's inheritance, the ruling stated. The location has never been specified, but it was said to be fairly large and to contain 400 coconut trees. There was no other material cultivation on the land besides these trees.

A land dispute arises when two different entities feel they each have a strong legal claim to a specific parcel of land. This could be due to a clerical error that resulted in two legitimate owners, a bank foreclosure, or a disagreement over property lines.<sup>74</sup> This means that a land dispute can be characterized as a social fact involving at least two parties and arising from divergent interests in the property rights to land,

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<sup>73</sup> Ibid at 301

<sup>74</sup> <https://www.mylawquestions.com/what-is-a-land-dispute.htm>. Visited on 9 July 2022

including the right to use, manage, generate income from, exclude others from, transfer, and receive compensation for, as well as the right to compensation.

Therefore, a misuse of, restriction of, or disagreement over the ownership rights to land can be considered a land dispute (Wehrmann 2005).<sup>75</sup> Land dispute defined as such can be aggravated if the social positions of the parties involved differ greatly<sup>76</sup>. Even though conflict and disagreement are typically seen as destructive, they can actually be beneficial. Sociological conflict theories hold that social conflict is crucial for social change.<sup>77</sup> Land disputes can act as change agents if they lead to widespread protest and a change in policies and their implementation. Therefore, rather than ignoring them or merely attempting to stop them, it's imperative to amicably resolve land disputes.<sup>78</sup> In any event, conflict theorists agree that conflict is unavoidable for any society:<sup>79</sup>

*“Conflict/dispute is an inevitable aspect of human interaction, an unavoidable concomitant of choices and decisions. [...] Conflict can be prevented on some occasions and managed on others, but resolved only if the term is taken to mean the satisfaction of apparent demands rather than the total eradication of underlying sentiments, memories, and interests. Only time really resolves conflicts, and even the wounds it heals leave their scars for future reference. But short of such ultimate healing, much can be done to reduce conflict and thereby release needed energies for more productive tasks”*

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<sup>75</sup> Zakout, W., Wehrmann, B., Törhönen, M.-P: Good Governance in Land Administration. Principles and Good Practices. Washington 2006. Zaninelli, S. M.: Interkulturelle Kommunikation. Trainings manual. München/New York 2001

<sup>76</sup> Deininger, K.: Land Policies for Growth and Poverty Reduction. A World Bank Policy Research Report Washington 2003. Pgs 9.

<sup>77</sup> Ibid

<sup>78</sup> Ibid

<sup>79</sup> Ibid

Land disputes come in a variety of shapes and sizes. There are disputes between single parties, such as sibling inheritance conflicts and neighbor boundary disputes. These disagreements are typically easy to resolve. The most challenging land disputes to settle involve unethical land administration, frequent state capture, and a power imbalance. Examples of situations that are more challenging to handle because they involve multiple parties include group invasions and evictions.

It is common for land disputes to arise at anytime and anywhere. Both need and greed can contribute to them, and as resources become scarcer and land values rise, they could get worse. Whether the land is public, common, or privately owned, they frequently occur when there is an opportunity to acquire it for nothing or at a very low cost.<sup>80</sup>

Conflicts over land and other natural resources result from disagreements both inside and outside of communities, according to Mohamed & Ventura's (2000) explanation. Examples include boundary disputes involving outsiders and communities, boundary disputes involving community members, resource use disputes involving outsiders and communities, land use disputes involving outsiders and communities, and land use disputes involving community members..<sup>81</sup> This means that conflicts in land uses and other natural resources is associated with opposing interests over land uses,

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<sup>80</sup> Deininger, K. and R. Castagnini 2005. "Incidence and impact of land conflict in Uganda," *Journal of Economic Behavior and Organization*, forthcoming

<sup>81</sup> Mohamed, M, & Ventura, S. (2000). Use of geomatics for mapping and documenting indigenous tenure systems *Society and Natural Resources*, 13(3), 223-236

limited access and uses, unclear ownership and unclear boundary delineation. Population pressure and poverty are the root cause of most land resource conflicts.

When parties with an interest in the land disagree about the best use for a single piece of property that can accommodate several uses, a conflict over land use results, it is possible to use land use conflict as a sign of conflicting interests, inefficient land resource allocation, and ineffective land use systems. Land use conflict happens between or within stakeholder groups and is characterized by a shared disagreement over interests and competing goals, according to Mann & Jeanneaux (2009).<sup>82</sup>

According to Wehrmann (2008), the main causes of disputes over land uses are poverty, institutional changes, and societal changes (such as changes in demography and environmental conditions). These trigger powerful psychological fears of insecurity, existence, and a desire for recognition, which in turn give rise to intense material and emotional needs (shelter, a productive base, seeking power and wealth). People's needs shape their interests, which alters their attitudes and positions, defining their behavior contrary to the established institutions and leading to conflict.<sup>83</sup> In general, Sub-Saharan Africa is increasingly turning to land as a source of conflict, despite the fact that access to land has historically been seen as being fairly egalitarian. Local land disputes have the potential to escalate into widespread civil unrest and political movements, as has been demonstrated. Numerous

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<sup>82</sup> Mann, C. & Jeanneaux, P(2009). Two approaches for understanding land-use conflict to improve rural planning and management. *Journal of Rural and Community Development (JRCD)*, 4(1), 118-141

<sup>83</sup> Wehrmann, B. (2008). *Land conflicts: A practical guide to dealing with land disputes*. Eschborn, Germany: Deutsche Gesellschaft für Technische Zusammenarbeit (gtz).

underlying factors, including population growth, may be to blame for the rising number of land conflicts. Pressure, agricultural commercialization, and urbanization, and current land tenure structures in Africa may not be adequate to resolve such conflicts.<sup>84</sup>

In many African countries, formal institutions for land administration were often simply superimposed on traditional structures without a clear delineation of responsibilities and competencies, implying that they lack both outreach and social legitimacy.<sup>85</sup>

### **2.3 Concept of Alternative Dispute Resolution**

Dispute is an inevitable occurrence in human relations. Traditionally, man devised litigation as a means of settling dispute and has used this over the years. Owing to certain inadequacies associated with litigation such as, formality of court proceedings and procedure, technicalities, in ability to foster relationship through a win-win outcome, lack of confidentiality, time consuming, relative expensive nature, etc. there has been a search for an appropriate or complimentary dispute resolution option(s). This search has led to the emergence of Alternative Dispute Resolution (ADR)<sup>86</sup> which is a non-adversarial way of resolving disputes that is being

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<sup>84</sup> Cotula, L., C. Toulmin, and C. Hesse. 2004. *Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues*, International Institute for Environment and Development, London.

<sup>85</sup> Ibid

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increasingly used in the public and private sectors, especially in developed countries which is about solving problems rather than imposing solutions through litigation.

To date, “alternative dispute resolution” – or as also called in certain circles: “appropriate dispute resolution”<sup>87</sup> (ADR) – is increasingly becoming a common practice in many judicial processes around the world. This is because of its many benefits as compared to other judicial mechanisms of dispute resolution. Some of the benefits of ADR include its capability to reduce litigation costs as well as less time involved in the determination of disputes.

In every basic level of human interaction, there is invariably bound to be disputes or differences ensuing over inexhaustible number of issues ranging from commerce, trade, business, property, domestic etc. Whenever this state of affair occurs, it becomes not only desirable but really pertinent to fashion out a viable means of resolving these disputes in an effort to engender constant human social, economic cultural and political development. Over time, various means have emerged through which disputes are resolved, most prominent of which is the traditional or formal method known in common parlance as LITIGATION.<sup>88</sup> Litigation albeit laudable and far-reaching in effect, is not without its attendant insurmountable problems which principally are that of undue technicality, high cost implication, inflexibility etc. The aggregate of these challenges when not nipped in bud constructively defeats

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<sup>86</sup>Abimbola, A. O., “Prospects in Arbitration: An Overview” *Diverse Issues In Nigerian Law, Essays in Honour of Hon. Justice Okanola AkintundeBoade*, Olatunbosun, A. I., and Laoye, L., (Eds.) (Ibadan, Zenith Publishers, 2013) page 27.

<sup>87</sup> Ibid

<sup>88</sup> En.m.wikipedia.org/wiki/alternative – dispute resolution visited on the 27<sup>th</sup> July,2014

the cause it is meant to serve i.e. see to proper tackling of differences between or among contending parties in the best way possible.

The need to therefore ensure social justice in a way that is better, quicker, desirable, satisfactory and more socially acceptable especially in the face of increasing untold hardship and inconvenience occasioned by the ragouts of litigation on disputants has culminated in the evolution of a global trend in justice administration and accessibility known as ALTERNATIVE DISPUTE RESOLUTION.<sup>89</sup>

Alternative dispute resolution is a method of resolving disputes that doesn't involve going to court. These strategies encourage group decision-making and place the power of negotiation in the hands of the disputing parties. One of the more popular alternative dispute resolution strategies is the use of third-party facilitation. The method is voluntary and aims to find win-win solutions. There have been numerous definitions of what ADR really is offered, but they have all been found to be inadequate or relative depending on the person presenting the case and their perception, point of view, and personal experiences. on the subject matter. Some of the expressions of opinions on ADR are considered below for ease or understanding and better exposition on the concept.

According to Dr. Orojo,<sup>90</sup>

*“The term Alternative Dispute Resolution is used generally to describe the method and a procedure used in resolving*

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<sup>89</sup> Ibid

<sup>90</sup> “Arbitration as means of dispute resolution” (a paper presented at a seminar) by Hon. (Dr.) Olakunle Orojo CON, OFR, FciArb Lagos pg. 1.

*disputes either as alternatives to traditional dispute resolution mechanism of the court or in some cases supplementary to such mechanism”.*

Justice Dyson in **HALSEY V MILTON KEYNES GENERAL NHS TRUST**<sup>91</sup>

while quoting from the glossary of the Civil Procedure Rules defines ADR as:

*“A collective description of methods of resolving dispute otherwise than the normal trial process”*

In the “Training Manual on A.D.R. and Restorative Justice,”<sup>92</sup> ADR is described as:

*“.....the set of mechanism society utilizes the resolve dispute without resort to costly adversarial litigation”.*

In yet another breath,<sup>93</sup> A.D.R. was explained to include:

*“Dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation. It is a collective term for the ways that parties can settle disputes (with or without) the help of a third party”.*

A common theme that emerges from the foregoing is that, even though there is no universally accepted definition of ADR, it seeks to offer an alternative platform for dispute resolution to the traditional adjudicatory method provided by the court system. This is to be achieved by deviating from the latter's strict rules, principles, processes, and procedures rather than abolishing or jettisoning them.

**Orojo and Agomo,**<sup>94</sup> opines that the term The term "Alternative Dispute Resolution" (abbreviated as "ADR") is typically used to refer to the techniques and processes

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<sup>91</sup> (2004) E.W. CA 576

<sup>92</sup> “Training Manual on ADR and Restorative Justice” by United Nations Office on Drugs and Crime and Nigeria Judicial Institute, October 2007.

<sup>93</sup> En.m.wikipedia.org/wiki/alternative – dispute resolution visited on the 27<sup>th</sup> July, 2014

<sup>94</sup> Orojo, J. O., and Ajomo, M. A., *Law and Practice of Arbitration and Conciliation in Nigeria*, Lagos, Mbeyi & Associates (Nigeria) Limited, 1999, page 4. See also Akeredolu, E. A, *Mediation: What it is and How it Works*, Ibadan, Carenter Associates, 2011, page 5.

used to settle disputes, either as alternatives to the conventional court-based dispute resolution mechanisms or, in some circumstances, as a complement to them.

Alternative The term "Dispute Resolution" (ADR) is used to refer to a number of different approaches to resolving legal disputes. Both the business community and regular people are aware of how difficult it is for many people to file lawsuits and obtain swift justice. Due to the courts' overflowing dockets, it may take a year or longer for the parties' cases to be heard and decided.

ADR Mechanisms have been created in response to this issue of delayed justice. The use of alternative dispute resolution techniques is becoming more widely accepted in the legal and business fields on both a national and international scale. Its various techniques can assist the parties in quickly and cheaply resolving their differences on their own terms.

“Alternative Dispute Resolution” or “ADR” refers to dispute resolution processes other than traditional litigation and trial in a court of law or adjudication by governmental administrative agency.<sup>95</sup> Alternative Dispute Resolution includes processes employed to resolve disputes by decision (e.g., arbitration), analysis and recommendation, (e.g., fact-finding or neutral evaluation), or facilitation of

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<sup>95</sup><https://www.cdrc.net/dispute-resolution-principles>(Accessed on 5 September 2022)

communication and understanding among disputing parties to help them achieve their own resolution of their dispute (e.g., mediation).<sup>96</sup>

ADR is usually used as an acronym for alternative dispute resolution, which is defined as any process or procedure other than adjudication by a presiding judge in court – litigation, in which a neutral third party participates to assist in the resolution of issues in controversy<sup>97</sup> as highlighted before; ADR refers to any means of settling disputes outside of the courtroom.

The acronym ADR means Alternative Dispute Resolution, a group of flexible approaches to resolving disputes more quickly and at a lower cost than going through the tedious road of adversarial proceedings. It is a term which has become associated with a variety of specific dispute resolution options such as Negotiation, Mediation, Conciliation, Case Evaluation and a lot of other hybrid mechanisms.<sup>98</sup> Alternative Dispute Resolution as the name implies, are forms of disputes settlement mechanisms which have evolved as a result of business exigencies and the shortcomings of litigation coupled with the demands of modern commercial and socio-political agitations such as need for preservation of relationships at the end of dispute settlement, confidentiality, informality, avoidance of technicalities, the desire for

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<sup>96</sup> Ibid

<sup>97</sup> American Arbitration Association, dispute resolution section <http://www.adr.org>. visited on 23 July 2022

<sup>98</sup>Dada, T.O. General Principle of Law, 3<sup>rd</sup> Ed., Lagos, Manure-Joe Production Ent., 2013, Page 528. See also Borokini, A.A., “Is ADR the Death of Litigation” Vol. 4, No. 2, Fountain Quarterly Law Journal, 2006, page 43-55, at page 43. “ADR is to supplement the available resources for justice by providing enhanced, more timely, cost effective and use-friendly access to justice ... the courts of this country should not be places where the resolution of disputes begins. They should be the place where disputes end-after all means of resolving disputes have been considered.”

expeditious disputes settlement, party autonomy, the need to minimize cost, unwillingness of a disputant to submit himself to the rules and laws of a forum other than his. These mechanisms includes but are not limited to the following; mediation, negotiation, mini trial, early neutral evaluation, mini judge, arbitration and conciliation.<sup>99</sup>

The term Alternative Dispute Resolution (ADR) serves as a catch-all for procedures other than judicial adjudication in which parties to a dispute are helped to come to a mutually acceptable resolution.<sup>100</sup> In a civil law context, ADR represents any number of techniques and processes utilized by parties in dispute that allow for agreements and settlement outside of the litigation process.<sup>101</sup> ADR looks at needs, interests and solutions, and can promote healing, it is voluntary, timely, confidential, and based on mutual agreement, unlike the conventional courts, it is designed to yield solutions that are adapted to the particular circumstances of individual cases, as it is about solving problems rather than imposing solutions through litigation.<sup>102</sup> (Atilola and Dugeri) ADR is touted as more efficient and effective than the courts in providing justice.<sup>103</sup>

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<sup>99</sup> Mbam, C., "Resolution of Political Parties Disputes through Arbitration and Alternative Disputes Resolution (ADR)" *Journal of Arbitration*, Vol. 11, NO. 1 April, 2016, P 228. States that "Lex arbitri is a body of rules which sets a standard external to the arbitration agreement, and the wishes of the parties, for the conduct of arbitration"

<sup>100</sup>Using mediation to resolve customary land disputes paper, presented by n.p Mtshali nelisiwe.mtshali@cmac.org.sz

<sup>101</sup> *ibid*

<sup>102</sup> *ibid*

<sup>103</sup> *ibid*

In other words, Alternative Dispute Resolution (ADR) is the procedure for settling disputes without litigation. The procedures involved include arbitration, mediation, or negotiation. ADR is of two historic types. First, a method for resolving dispute outside of the official judicial mechanisms, second, informal methods attached to or pendant to official judicial mechanisms.<sup>104</sup> There are in addition free-standing and independent methods, such as mediation programs and ombuds offices within organizations. The methods are similar, whether or not they are pendant, and generally use similar tool or skill sets, which are basically sub-sets of the skills of negotiation.<sup>105</sup>

Since the parties typically combine the use of these various ADRs, it is inappropriate to compare and contrast all ADR techniques if they are all distinct from one another. For instance, the parties may agree in their contracts that they will first try to resolve a dispute amicably (through conciliation or mediation), and only if that fails, will they turn to a judicial method of resolution, such as arbitration or turning to the state justice system. ADRs therefore have a complementary character and are involved at various levels. ADR typically includes, mediation, conciliation, arbitration, and negotiation, which described hereunder as follow;

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<sup>104</sup> *ibid*

<sup>105</sup> Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community", published 30 June 2013, London, UK: IB Tauris & Co.

### 2.3.1 Mediation

James Melamed has a very interesting description of what mediation entails. He points out that: ‘Mediation may be thought of as “assisted negotiation.” Negotiation may be thought of as “communications for agreement.” Hence, mediation is “assisted communications for agreement.”<sup>106</sup> Simply defined, Mediation is a process in which a [neutral] third-party assists in resolving a dispute between two or more other parties. It is a non-adversarial approach to conflict resolution. The role of the mediator is to facilitate communication between the parties, assist them in focusing on the real issues of the dispute, and generate options that meet the interests or needs of all relevant parties in an effort to resolve the conflict.<sup>107</sup>

Mediation is the process by which someone tries to end a disagreement by helping the two sides to talk about and agree on a solution<sup>108</sup>. In other words, mediation is a dynamic, structured, interactive process where a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques.<sup>109</sup>

mediation is, a task-oriented, time-limited, alternative dispute resolution process (an alternative to litigation) wherein the parties, with the assistance of a neutral person or persons, isolate disputed issues in order to consider options and alternatives and to

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<sup>106</sup> Ibid 78

<sup>107</sup> Ibid

<sup>108</sup> Trenczek, T & Loode, S.: Embedding Mediation and Dispute Resolution into Statutory Civil Law: The Example of Germany; in: Ian Macduff (ed.): Essays on Mediation – Dealing with Disputes in the 21st Century; Alphen and den Rijn 2016, chapter 12 (pp. 177 – 192)

<sup>109</sup> Trenczek, T., Berning, D., Lenz, C. (2013) (in German) Mediation und Konflikt management: Handbuch, Baden-Baden, Nomos Publishing House, p. 23.

reach consensual settlement.<sup>110</sup> Mediation is intended to be a self-empowering process; Maxwell (1999) defines four elements of the process.<sup>111</sup>

- i. Participation in a facilitated process of communication;
- ii. An attempt to frame interests in mutual terms;
- iii. An appeal to fairness;
- iv. Placing power in the hands of the parties themselves.

The most popular form of ADR is mediation. Mediation is a process of dispute resolution focuses on effective communication and negotiation skills. The mediator role is to help the parties in communicating and negotiating more effectively, thereby enhancing their ability to reach a decision<sup>112</sup>. It is not the mediator's role to adjudicate the issues in dispute and indeed the mediator has no right to do so. Mediation is not a process to force compromise, although compromise is an element of the process. Each party's limitations are respected and a party is only expected to make a change in its approach to the problem if it becomes convinced that it is reasonable to do so<sup>113</sup>. Today mediation is the most fast growing form of ADR. It is being used in almost every conceivable type of dispute resolution and comes in different forms. The process has also been effectively adapted for multiple party dispute resolution with tremendous success. On average the success rates of

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<sup>110</sup> Swenson, Leland. (1992) the effects of attorney gender, prior mediation and litigation on conciliation court mediation outcomes and parent attitudes. *Family and Conciliation Courts Review*, 30, 1, 64-80

<sup>111</sup> Maxwell, Jennifer. (1999) Mandatory mediation of custody in the face of domestic violence: Suggestions for courts and mediators. *Family and Conciliation Courts Review*. Vol. 37(3). 335-355

<sup>112</sup> Alternative Dispute Resolution (ADR)-An introduction/<http://www.duhaime.org/LegalResources/CivilLitigation/LawArticle.aspx/3-7-2012>

<sup>113</sup> Alternative Dispute Resolution (ADR)-An introduction/<http://www.duhaime.org/LegalResources/CivilLitigation/LawArticle.aspx/3-7-2012>

mediation processes range from 80% to 85%. In an attempt to capitalize on the success rates, legislation is slowly being amended to include provisions for mediation of disputes.

Mediation is termed as "the interaction between two or more parties who may be disputants, negotiators, or interacting parties whose relationship could be improved by the mediator's intervention. Under various circumstances (determinants of mediation), the parties/disputants decide to seek the assistance of a third party, and this party decides whether to mediate. As the mediation gets underway, the third party selects from a number of available approaches and is influenced by various factors, such as environment, mediator's training, disputant's characteristics, and nature of their conflict. Once applied, these approaches yield outcomes for the disputants, the mediator, and third parties (other than the mediator).<sup>114</sup> The Mediator thus comes into the dispute as a neutral third party whose presence leads to guidance in the flow of negotiation and eventually a satisfaction from the disputants in resolving the conflict. "A mediator is not a government agent; he is not a cohesive agent. He is not going to force the two to agree. He is just there to guide them and to make sure that they reach a good conclusion."<sup>115</sup>

A mediator over a land dispute needs to ascertain the nature of the conflict as to whether it allows for round table talks or not. The intensity of a dispute may mean

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<sup>114</sup> Wall, et al., 2001:370 in R. Ramirez: A conceptual map of land conflict management: Organizing the parts of two puzzles (March 2002) in [http://www.fao.org/sd/2002/IN0301a3\\_en.htm](http://www.fao.org/sd/2002/IN0301a3_en.htm), visited February 26, 2007.

<sup>115</sup> Parliament of Uganda, Parliamentary Debates (Hansard), 3rd Session, 1998, pp. 4299-4300, in J.T. Mugambwa: Source Book of Uganda 's Land Law, Fountain Publishers (2006), at p.111

that the parties are not even ready to hear each other out. This inevitably leads to litigation for court direction in resolving the impasse. In the same vein, a dispute involving a number of complex issues as opposed to a few general issues, may render mediation difficult. A land dispute mediator is not only a person well versed in the field, but should be able to draw from experience and precedents in order to assist in arriving at a solution. The complexity and variance of issues in any given dispute may therefore make this a pointless venture.<sup>116</sup>

The parties must also display desire to reach settlement as well as a commitment towards mediation. Instances such as failure to agree as to who will be mediator, venue of meetings with the mediator as well as dates for such meetings, can frustrate the whole process and render it a time wasting venture. Whereas on the contrary, if the parties display tendencies of being positive minded in all proposals brought forward through the mediator, agreement can be reached at an early stage.<sup>117</sup> As has been argued above, mediation should only be exercised if a successive outcome is envisaged. The mechanisms employed in mediation as well as an appreciation of the parties concerned, in terms of balancing their power and interests, are very important considerations for success, not to mention the expertise and neutrality of the mediator. There is a need to integrate theory and practice in the building of a more effective mediation alternative to land dispute resolution. Hardly any mediation cases are recorded and analyzed neither can one easily relate to any precedent situation

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<sup>116</sup> J. Kigula: Land disputes in Uganda: An overview of the types of land disputes and the dispute settlement form Research Paper3, prepared for the Makerere Institute of Social Research and the Land Tenure Centre, University of Wisconsin, March 1993; in J. Mugambwa, see f.n.3, p. 2 above, on p. 110

<sup>117</sup> Ibid

simply on the basis that each case is unique in its own way. Close articulation of the facts pertaining to each case as well as analyzing the outcome of every conceived option out of a dispute, are some of the challenging tasks up ahead for a skilful mediator of a land dispute.

Mediation creates a dialogue and environment for listening, for diffusing of tension, and understanding of perspectives. It can bring together antagonists and create conditions for negotiation and agreement.<sup>118</sup> The main elements of mediation are that it is:<sup>119</sup>

**Voluntary.** Parties to the dispute must agree to try mediation, although there may be strongly encouraged to do so in some circumstances (e.g. court annexed mediation).

**Non-binding.** Because mediation is voluntary, the process and the outcome do not bind the parties to a settlement. A party is free to walk out of mediation at any time. A mediator has no authority to make a binding determination, so if the parties cannot agree, there will be no settlement and the case will proceed to another form of dispute resolution. However, if settlement is reached, the agreed terms will form part of an enforceable contract.

**Private.** Mediation is non-prejudicial, meaning that anything said or revealed in the process cannot be used later in another forum. The facts revealed are confidential to

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<sup>118</sup> United Nations Human Settlements Programme (UN-Habitat), 2013. Guide to Land Mediation: Based on the Experience in the Eastern Democratic Republic of the Congo

<sup>119</sup> Lismore City Council, 1995. Guidelines and Practices for Mediation of Development Applications Policy

the parties and to the mediator and cannot be revealed to others at any time. The terms of a settlement may remain confidential or not, as agreed by the parties.

**Neutral mediator.** The role of the mediator is key to the success of any mediation, and it is essential that the mediator is acceptable to and trusted by both parties. Therefore, the mediator must be a truly neutral person having no association with either of the parties nor any interest in the outcome.

**Negotiated settlement.** Mediation aims to achieve a “win-win” outcome. It is only successful if both parties are happy with the outcome and abide by the agreement.

Both in principles and practice, there are several different models to Mediation process in land dispute resolution, but the three listed below are the most common and relevant to this discussion,<sup>120</sup>:-

#### **The Co-Mediation Model**

In certain instances, Mediation may be facilitated by more than one Mediator. This is because: ‘Mediation is not an easy process, and co Mediation has many advantages which are very beneficial, but only if the Mediators are compatible and know how to work together. In this regard, the Mediators can divide the tasks (one can listen and the other can take notes); can strategize and brainstorm together; if one gets “stuck,” the other can proceed; and can compare their perception of what was really said by the parties, and so on.

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<sup>120</sup> Mashamba C.J (2013) ALTERNATIVE DISPUTE RESOLUTION (ADR) in Tanzania: Law and Practice. Mkuki na Nyota Publishers...Page 68

### **The single Mediator Model**

If it happens that the Mediators do not know one another, or are not compatible, the process may work better with a single Mediator. In fact, this issue has made single Mediation to be a very common model, which 'is used for economic reasons, and because Mediators enjoy working alone and being in control of the process. Experienced Mediators who work alone are doing excellent work.

### **The Panel of Mediators Model**

The model of a panel of Mediators is used in very complex cases that involve multi-party Mediation, and in cases of environmental Mediation. In this regard, Mediation is facilitated by a panel of Mediators with relevant skills and experience.

The practice of Mediation in land dispute resolution has grown and encompass all areas of life, Mediation as a practice cut across the life of the Zanzibari, since 2014, where by many people in Urban West Region of Zanzibar practice Mediation in land dispute resolution, where as many people look like to enjoy Mediation method in resolving their Land dispute instead of Court process.

Mediation has been practiced for a long time in Islands of Zanzibar in land dispute resolution under the encouragement of civilization of the Zanzibar. Some traditional practices are similar to approaches that Zanzibari define as Mediation where the parties make their own decisions, where the third party (e.g. a Chief or Elder) makes

the decision after listening to others for a considerable length of time<sup>121</sup>. Traditional or customary practices of mediation in land dispute resolution can also be grounded in religious principles e.g. Islamic religion, which influence the way that conflict is viewed and handled<sup>122</sup>.

Mediation sessions and meetings in land dispute resolution are private. Only the concerned parties or their counselor power of attorney holders can attend. Other persons may attend only with the consent of the parties and with the permission of the mediator.<sup>123</sup>

In practicing Mediation duration the land dispute resolution in Zanzibar, two approaches are used which are; The evaluative approach and The transformative approach as noted in the case of **Haji Ali Silima and Other v. Khamis Mkame**,<sup>124</sup> where the Tribunal stated that, in hearing the dispute through Mediation the tribunal must select one of the two approaches which are the evaluative approach or the transformative approach. The evaluative approach and the transformative approach, described by Mashamba (2013)<sup>125</sup> as following;

a.) Evaluative Mediation is a process where the Mediator ‘s the one who provides guidance as to the appropriate grounds for settlement, on the basis of the law or

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<sup>121</sup> Is-haka A.Khamis (2015) Causes of Land disputes in Zanzibar and applicability of land legislations, unpublished Master dissertation, Zanzibar University.

<sup>122</sup> Qur-an-Surat Shuraa

<sup>123</sup> Is-haka A.Khamis (2015) Causes of Land disputes in Zanzibar and applicability of land legislations, unpublished Master dissertation, Zanzibar University

<sup>124</sup> Civil case No. 74 of 2018 Zanzibar Land Tribunal (Unreported)

<sup>125</sup> Mashamba C.J (2013) ALTERNATIVE DISPUTE RESOLUTION (ADR) in Tanzania: Law and Practice. Mkuki na Nyota Publishers..Page 69.

her/his experience and knowledge in a specific field of expertise. Evaluative Mediators are usually legal practitioners, often with an expertise in a particular area of law relevant to the conflict. They will provide the parties with an evaluation of the strengths and weaknesses of their case with respect to their legal positions. In practice, the evaluative Mediator influences and directs some and sometimes all of the outcomes of the Mediation.

In achieving this end, the Mediator, may study relevant documents in order to understand the nature of the dispute, its substantive issues, and professional aspect, and suggest areas of agreement, solutions, and even compromise, urging the parties to accept a particular settlement.

b) The transformative approach in Mediation is a process in which the Mediator's role is to help and assist the parties to reach an agreement. This divided in two aspects: empowerment of the parties, and recognition. To them, through empowerment the parties to the Mediation process believe in themselves and their value(s). They believe that they have the ability and capability to identify and define their issues, and it is their responsibility to find a mutually acceptable solution to their problem. Through recognition, the parties have the ability to understand the other party's point of view, and why they proposed the solution that they did (without necessarily agreeing to it). A transformative Mediation has an educational value for the parties. By gaining the ability to reflect on the process, the parties may be able to use the same techniques in order to avoid future disagreements and

disputes. The parties learn to use the opportunity of a conflict or dispute as an event from which both parties may benefit. The potential effects of this approach are valuable in the long run, both for the parties and for society because; this approach provides and enhances moral growth and the ability to handle disputes in a cooperative way in the future.

The Mediator may help the parties to identify and analyze their interests, and gain greater clarity about their goals, resources, options, and preferences. This will help them to reach effective decisions, and develop a better and more efficient outcome.

In this respect, the Mediator assumes that the parties are best placed to know what is right for them and have the ability and good sense to reach the most suitable outcome regarding their situation.’ in this context, the Mediator would not be judgmental as to the parties’ claims or positions, or choice of outcomes. The Mediator would encourage the parties, and facilitate the process through which they will come up with creative proposals and options, as an outcome of their understanding of the situation. Transformative Mediation empowers the parties by developing a sense of their own ability to deal with the issues and problems of the dispute.

In resolving land dispute through mediation, the mediator shall not be bound by the provisions of the Evidence Act No.9 of the 2016 or Civil Procedure Decree Cap 8, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of

the dispute. As explained in the case of: **Eshe Muhsin v. Josephine mapunda**,<sup>126</sup> That; the uses of the law of evidence during dispute resolution through Mediation is voluntary, the mediator is not obliged to apply the evidence law, provided that the parties to the dispute have found a solution to their dispute...

The practices of mediation in land dispute resolution vary among other dimension as well. For example, some mediators encourage the participation of lawyers, while others aim to minimize their participation to keep the spotlight on the parties themselves. Some mediators focus the process primarily on the strengths and weaknesses of each party's legal positions; others, primarily on the underlying interests and needs of the parties, trying to avoid discussion of the legal merits. Some mediators evaluate the legal merits of each party's positions, and willingly express a view of the probable outcome in court. Other mediators avoid evaluation, and instead see their role as facilitation, trying to help the parties generate creative options that serve underlying interests. A mediated resolution may on the one hand simply reflect the net expected value of what is likely to happen in court or, on the other, can be shaped to meet the needs and interests of the parties by making trades that are unrelated to the legal disputes. So long as the resulting resolution is mutually acceptable to the parties, there is no need that it involve the application of formal legal norms or mimic the outcome which a court might impose.

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<sup>126</sup> Civil case No. 33 of 2015 Zanzibar Land Tribunal (Unreported)

There is typically no process of review. If parties are able to resolve their dispute by reaching a mediated agreement, that agreement is subsequently enforceable as a contract,<sup>127</sup>

In land dispute resolution, Mediation can be used at any stage of a dispute. Thus, it can be chosen as the first step towards seeking a resolution of the dispute after any negotiations conducted by the parties alone have failed. Mediation can also be used at any time during litigation or arbitration where the parties wish to interrupt the litigation or arbitration to explore the possibility of settlement. In that mediation no mediator shall be held liable for anything bonafide done or omitted to be done by him during the mediation proceedings. Where an agreement is reached between the parties in regard to all the issues in the dispute or some of the issues, the same shall be reduced into writing and signed by the parties or their power of attorney holders. If any counsel has represented the parties, they shall attest the signatures of their respective clients. The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending<sup>128</sup>.

A mediated agreement must satisfy the parties; it must deal with all issues in dispute; it must be workable and practical; and it must minimize the possibility of future conflict. When parties agree only on some issues and disagree on others, the

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<sup>127</sup> Charlton, R and Dewdney, *The Mediator's Handbook; Skills and strategies for practitioners*.2004, p 126

<sup>128</sup> <http://en.wikipedia.org/wiki/mediation> and [legal\\_implication\\_of\\_Mediated\\_agreements](#) (Accessed 14 October 2021)

mediator should draw up a Consent Settlement Order only in respect of matters agreed upon. It will then be signed as the fully-agreed Consent Settlement Order. The mediator will refer the issues disagreed for trial in terms of Rule 1 of Order XXVII of the Civil Procedure Decree Cap 8.

If mediation fails, the matter will be assigned to another judge or magistrate as the case may be for trial. As noted in the case of: **Charles Mussa Msoffe v NBC Holding Corporation**<sup>129</sup>, the mediator in the High Court (Munuo, J.) marked mediation as failed on submission made by the defendant's counsel to the following effect,

*I have instructions from my client not to participate in the mediation exercise because it would be against their principles. All my attempts to explain the advantages of settling the case through the mediation process were in vain.*

The mediating judge, thus, returned the case 'to the trial judge for further proceedings as per the scheduling order.' After the matter is returned, the judge or magistrate, as the case may be, will convene a Final Pre-trial Settlement and Scheduling Conference, whereby parties are given a last chance to resolve the dispute by an amicable settlement. If this fails, the court will then make another Scheduling Order at that Conference for future events and steps, including the date(s) of trial. This will be guided by the Speed Track to which the case was allocated at the First Pre-trial Settlement and Scheduling Conference.<sup>130</sup> At this Conference the court

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<sup>129</sup> High Court of Tanzania at Arusha, Civil Case No. 36 of 1995 (Unreported)

<sup>130</sup> Order VIII Rule 3(2)(3); and Order VIII Rule 3(1)(2) of the CPC

may also frame issues<sup>131</sup> in consultation with the parties or their advocates,<sup>132</sup> the researcher tried to use this case (Labour case for the purpose of showing that not only in land dispute but also in labour issues ADR used. Land dispute resolution through Mediation is first and foremost a non-binding procedure. This means that, even though parties have agreed to submit a dispute to mediation, they are not obliged to continue with the mediation process after the first meeting. In this sense, the parties remain always in control of mediation.

The continuation of the process depends on their continuing acceptance of it. Practice of this method increasing day to day in Zanzibar, due to the fact that, It provides the parties with a vehicle to resolve their differences without going to court, and also Mediation is particularly valuable when disputes involve parties that may need to remain on good terms, including family members, co-workers, business partners, landlords and tenants, neighbors, and others.<sup>133</sup>

In ending this part, the researcher described that, Mediation in resolving land dispute is a multi-stage process designed to get results. It is less formal than a trial or arbitration, but there are distinct stages to the Mediation process that account for the system's high rate of success.<sup>134</sup> Those stages are as follows:-

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<sup>131</sup> per Order XIV of the CPC

<sup>132</sup> Mashamba C.J (2013) ALTERNATIVE DISPUTE RESOLUTION (ADR) in Tanzania: Law and Practice. Mkuki na Nyota Publishers..Page 115

<sup>133</sup> Is-haka A. Khamis. (2015) Causes of Land disputes in Zanzibar and applicability of land legislations, unpublished Master dissertation, Zanzibar University.

<sup>134</sup> Is-haka A. Khamis. (2015) Causes of Land disputes in Zanzibar and applicability of land legislations, unpublished Master dissertation, Zanzibar University.

**Stage 1** Mediator's opening statement. After the disputants are seated at a table, the Mediator introduces everyone, explains the goals and rules of the Mediation, and encourages each side to work cooperatively toward a settlement.

**Stage 2** Disputants' opening statements. Each party is invited to describe the dispute and its consequences, financial and otherwise. The Mediator might entertain general ideas about resolution, as well. While one person is speaking, the other is not allowed to interrupt.

**Stage 3** Joint discussion. The Mediator might encourage the parties to respond directly to the opening statements, depending on the participants' receptivity, in an attempt to further define the issues.

**Stage 4** Private caucuses. The private caucus is a chance for each party to meet privately with the Mediator. Each side will be placed in a separate room. The Mediator will go between the two rooms to discuss the strengths and weaknesses of each position and to exchange offers.

The Mediator continues the exchange as needed during the time allowed. These private meetings comprise the guts of Mediation.

**Stage 5** Joint negotiation. After caucuses, the Mediator might bring the parties back together to negotiate directly, but this is unusual. The Mediator usually doesn't bring

the parties back together until a settlement is reached or the time allotted for the Mediation ends.

**Stage 6** Closure. If the parties reach an agreement, the Mediator will likely put its main provisions in writing and ask each side to sign the written summary of the agreement. If the parties didn't reach an agreement, the Mediator will help the parties determine whether it would be fruitful to meet again later or continue negotiations by phone. Also, those stages of Mediation described in the case of: **Fatma Murshid Zahor v. Zainab Abdalla Khamis**,<sup>135</sup> that: in any resolution of disputes through mediation, the mediator must involve stages that will enable the mediator to persuade the disputed parties to reach a settlement.

In principle, parties who enter into mediation 'do not forfeit any legal rights or remedies. If the mediation process does not result in settlement, each side can continue to enforce their rights through appropriate court or tribunal procedures.<sup>136</sup> But, if a settlement has been reached through mediation, legal rights and obligations are affected in differing degrees. In some situations, the parties may only wish to have a memorandum or a moral force agreement put in place; these are often found in community mediations, in other instances, a more comprehensive deed of agreement is drafted and this deed serves to bring a legally binding situation.<sup>137</sup>

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<sup>135</sup> Civil case No. 38 of 2019 Zanzibar Land Tribunal (Unreported)

<sup>136</sup> Charlton, R. and Dewdney, *The Mediator's Handbook: Skills and Strategies for Practitioners*. 2004, p. 126

<sup>137</sup> Charlton, R. and Dewdney, *The Mediator's Handbook: Skills and Strategies for Practitioners*. 2004, p. 126

Charlton and Dewdney,<sup>138</sup> point out that, universally, a mediated agreement may be registered with the court to make it legally binding and it is advisable to have a lawyer prepare the form or, at the very least, to obtain independent legal advice about the proposed terms of the agreement.

### **2.3.2 Conciliation**

Conciliation is not directly mentioned under order VIII A Rule 3 of the CPC but is envisaged under the phrase such other procedures not involving a trial. ‘Conciliation’ is a process in which a third party assists the parties to resolve their dispute by agreement.<sup>139</sup> The person assisting the parties is called Conciliator.<sup>140</sup> The Conciliator is appointed by the consent of both the parties to the dispute. A Civil Court may also refer both the parties to the dispute to a Conciliator; a Conciliator may do so by expressing an opinion to the parties about the merits of the dispute to help the parties to reach a settlement. Conciliation is a compromise settlement between the parties with the assistance of a Conciliator, the Conciliator does not take any decision on the dispute before him, no evidence is recorded by the Conciliator nor is any arguments heard.<sup>141</sup> Both the parties may discuss their respective points of view and with the help of the Conciliator resolve their differences, the proceedings before the Conciliator are confidential and do not have any bearing on the proceedings before the Court or before the Arbitrator regarding the dispute. Conciliation is a voluntary and non binding process in comparison to Arbitration and

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<sup>138</sup> Ibid

<sup>139</sup> [https://en.wikipedia.org/wiki/Alternative\\_dispute\\_resolution](https://en.wikipedia.org/wiki/Alternative_dispute_resolution). visited on 5 August 2022

<sup>140</sup> [https://en.wikipedia.org/wiki/Alternative\\_dispute\\_resolution](https://en.wikipedia.org/wiki/Alternative_dispute_resolution). visited on 5 August 2022

<sup>141</sup> Ibid

Litigation in courts, any party may terminate the conciliation proceedings at any time without assigning any reason.<sup>142</sup>

The term conciliation is difficult to define and has eluded numerous authors. For instance, many authors tend to treat conciliation as being synonymous with mediation, but that attempt is wrong.<sup>143</sup> Newman<sup>144</sup> discusses conciliation and notes that the conciliator is usually more interventionist than the mediator but still endeavours to bring disputing parties together and to assist them to form proposals on key issues. The author further notes that “given the looseness of the ADR terminology the terms ‘mediator’ and ‘conciliator’ are often used interchangeably.

Article 1 of the **Regulations on the Procedure of International Conciliation** adopted by the Institute of International Law in 1961, provides that conciliation is:

*“a method for the settlement of international disputes according to which a commission is set up by the parties to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being acceptable by them or of affording the parties with a view to its settlement, such and as they may have requested.”*

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<sup>142</sup> *ibid*

<sup>143</sup> The impact of pre trial protocols and Alternative Dispute Resolution (ADR) mechanisms in the expeditious disposal of civil suits – the case study of Dar es Salaam Region, LL.M Dissertation submitted at UDSM, 2009.

<sup>144</sup> Paul Newman (1999) “Alternative Dispute Resolution,” CLT professional publishing, Ltd p 9

As such Merrills,<sup>145</sup> writes that the “search of terms susceptible of acceptance” is a crucial role of a conciliator. He is more active than a mediator and engages in an enquiry but not formal as an arbitrator and his terms/suggestions are not binding to the parties. At the same time, his role is wider than that of an inquiry, as inquiry may or may not be part of conciliation.

Conciliation is useful in resolving social political disputes and is hailed for its confidential utility. However, of recent it has fallen out of favour in practice. But that has not prevented its supporters to argue that the fact that conciliation is retained in numerous contracts, conventions and laws, still shows how important this medium of dispute settlement is, regardless of the fact that it has recently fallen into disuse.<sup>146</sup>

United Nations Commission on International Trade Law (UNCITRAL) has prepared and circulated “Conciliation Rules”. These Conciliation Rules were adopted by the UNCITRAL at its thirteenth session after consideration of the observations of Governments and interested organizations. The General Assembly of the United Nations has also adopted them through a Resolution 35/52 on 4 December, 1980. The U.N. has recommended, The application of the Conciliation Rules of the United Nations Commission on International Trade Law in situations where a dispute arises in the context of international commercial relations and the parties seek an amicable resolution of that dispute through conciliation. There are 20 articles in the UNCITRAL Conciliation Rules. For the resolution of disagreements between the parties, numerous other international organizations and institutions have published

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<sup>145</sup> Merrills, J.B (1998) International Dispute Settlement, 3rd Edn, Cambridge University press, pg 96

<sup>146</sup> Ibid

conciliation rules. The "ICC Rules of Optional Conciliation" have been published by the International Chamber of Commerce. "Settlement is a desirable solution for business disputes of an international character," according to the Preamble to these Rules. Therefore, in order to promote the peaceful resolution of such disputes, the International Chamber of Commerce has established these Rules of Optional Conciliation.

*“Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules as at present in force.”<sup>147</sup>*

Conciliation is an ADR process whereby the parties to a dispute use a conciliator. This agent meets with the parties both separately and together in an attempt to resolve their differences. In other words, the term ‘Conciliation’ refers to another form of ADR mechanism, used to resolve disputes between private parties<sup>148</sup>. It is a process where the conciliator or panelist meets with the parties in a dispute and seeks resolution of the dispute by mutual agreement.<sup>149</sup> Thus, it is a voluntary process where the parties concerned are free to agree in attempt to resolve their dispute by amicably among/between themselves.<sup>150</sup> The flexible nature of this process lets the parties determine the length, format, and content of the conciliation proceedings.

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<sup>147</sup> UNCITRAL Arbitration Rules (as revised in 2010)

<sup>148</sup> Simokat C (n 13 above) at 3 Also see Cotton J. The Dispute Resolution Review 2016: 595

<sup>149</sup> Pretorius P. Dispute Resolution 1993:

<sup>150</sup> Bosch et al The Conciliation and Arbitration Handbook 2004: 8-9

This is very similar to mediation, where a third-party mediator assists the parties in resolving their conflict. A more active part of the process is played by the conciliator. The parties are not legally required to abide by conciliation.<sup>151</sup>

Conciliation differs from mediation in that in conciliation, often the parties are in need of restoring or repairing a relationship, either personal or business. A conciliator assists each of the parties to independently develop a list of all of their objectives, the outcomes which they desire to obtain from the conciliation. The conciliator then has each of the parties separately prioritize their own list from most to least important. He or She then goes back and forth between the parties and encourages them to give on the objectives one at a time, starting with the least important and working toward the most important for each party in turn. The parties rarely place the same priorities on all objectives, and usually have some objectives that are not listed by the other party. Thus the conciliator can quickly build a string of successes and help the parties create an atmosphere of trust which the conciliator can continue to develop. Most successful conciliators are highly skilled negotiators. Some conciliators operate under the auspices of any one of several non-governmental entities, and for governmental agencies.

### **2.3.3 Arbitration**

For a very long time, arbitration has been used to settle disputes all over the world.

Arbitration is regarded as one of the procedures falling under the purview of

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<sup>151</sup><http://www.justice.govt.nz/publications/global-publications/a/alternative-dispute-resolution-general-civil-cases/4-advantages-and-disadvantages-of-adr>

alternative dispute resolution (ADR) mechanisms in many countries.<sup>152</sup> It effectively replaces the established judicial process for resolving civil disputes, making this statement true. International arbitration has recently increased as a result of the ongoing growth of global trade and investment. The main source of arbitration cases is the language found in investment treaties and foreign investment contracts. Globally significant disputes involving the application of human rights, sustainable development, and the fight against corruption are increasingly being resolved through international arbitration.<sup>153</sup>

ADR like arbitration allows for conflict resolution outside of the legal system. One or more individuals (the "arbitrators," "arbiters," or "arbitral tribunal") are deciding the case, and they produce the "arbitration award." The latter award is enforceable in court and is enforceable against both parties.<sup>154</sup> ADR like arbitration allows for conflict resolution outside of the legal system. One or more individuals (the "arbitrators," "arbiters," or "arbitral tribunal") are deciding the case, and they produce the "arbitration award." The latter award is enforceable in court and is enforceable against both parties and investigates the demands and counters demands of both parties and decides on a final settlement in a form of an arbitration award. The award is then imposed on the parties after hearing the evidence. This is legally binding on both parties.<sup>155</sup>

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<sup>152</sup> Mashamba C.J (2013) ALTERNATIVE DISPUTE RESOLUTION (ADR) in Tanzania: Law and Practice. Mkuki na Nyota Publishers..Page 73

<sup>153</sup> Ibid

<sup>154</sup> Berner, Robert (2009-07-19). "Big Arbitration Firm Pulls Out of Credit Card Business". Business Week. Retrieved 3 March 2018.

<sup>155</sup> MWENDA, K.K. Principles of Arbitration. Brown Walker Press, Parkland, Fl. 2003.pg 6

Arbitration is a private dispute resolution mechanism established for the settlement of disputes by a neutral third party (the Arbitrator) or panel of neutrals referred to as the Arbitral Tribunal.<sup>156</sup> Arbitration is a procedure for settlement of disputes under which the parties agree to be bound by the decision of an arbitrator whose decision is in general final and legally binding on both parties.<sup>157</sup> Arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in judicial manner, by a person or persons other than a court of competent jurisdiction.<sup>158</sup> Arbitration, which maybe institutional or ad-hoc is usually the referral of a dispute between at least two parties to a person or group of persons, chosen by them to consider the dispute between them in an adjudicatory manner.<sup>159</sup> Although adjudication is a part of the arbitration process, it differs from litigation in that the parties choose the arbitrator and the arbitration's procedures. For instance, if the dispute is simple and doesn't involve any factual issues, the parties may agree to forego a formal hearing. This type of arbitration is known as a documents-only arbitration, but the parties may prefer a full hearing in other situations.<sup>160</sup> Therefore,

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<sup>156</sup>The Court of Appeal in the customary arbitration case of *Rapheal Agu v. Christian Ozurumba kwibe*[1991] 3 NWLR (Pt. 180) 385 at 417 gave the following definition to arbitration “Arbitration is a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties.”

<sup>157</sup>Idornigie, P. O., and Adewopo, A., “Arbitrating Intellectual Property Disputes: Issues and Perspectives” Vol. 7, No. 1, *The Gravitas Review of Business and Property Law Journal*, (2016) pp. 1-19 at P. 1 posits thus “in modern commercial environment, arbitration is no longer a new system of dispute resolution. Arbitration understandably provides a special procedure by agreement, where parties agree to submit their dispute to a neutral arbitral tribunal for a binding decision.

<sup>158</sup>Halsbury’s laws of England, 4<sup>th</sup> ed., Vol. 2, page 256, Para. 501. See also Dada, T.O. *General Principles of Law*, 2<sup>nd</sup> ed. (Lagos, T.O. Dada & Co., 1998) P. 342

<sup>159</sup>Onigbinde, A., and Adesiyon, F., *The Practice of Arbitration and Allied Alternative Dispute Resolution Mechanisms in Nigeria* being a paper presented at the Christian Lawyers Fellowship of Nigeria, (CLASFON) (DIRECTORATE OF TRIAL AND ADVOCACY) on the 23<sup>rd</sup> day of May, 2015 at Reiz Continental Hotel, Abuja.

<sup>160</sup>Arbitration Law in Bangladesh/[http://www.vakilno1.com/saarclaw/Bangladesh/arbitration-law/arbitration-law\\_in\\_bangladesh.htm](http://www.vakilno1.com/saarclaw/Bangladesh/arbitration-law/arbitration-law_in_bangladesh.htm) (visited on 15 April 2022)

the parties create their own adjudicatory forum which is tailor made to the particular needs of the parties and the nature of the dispute.

The Civil Procedure Code also regulates arbitration under the rules established by section 80 of the code, which are incorporated in the second schedule and allow for both arbitrations by court order and arbitration without court involvement. According to Mkumbukwa,<sup>161</sup> there are six forms of arbitration in Tanzania. It is only the sixth form of arbitration which is governed by the Arbitration Act. This form includes international and local arbitrations. This would also cover arbitration carried out under the National Construction Council Rules in respect of construction disputes discussed in the preceding chapter.

Parties often seek to resolve disputes through arbitration because of a number of perceived potential advantages over judicial proceedings. Companies often require arbitration with their customers, but prefer the advantages of courts in disputes with competitors.

In contrast to litigation, where one cannot "choose the judge", arbitration allows the parties to choose their own tribunal.<sup>162</sup> This is especially useful when the subject matter of the dispute is highly technical: arbitrators with an appropriate degree of expertise (for example, quantity surveying expertise, in the case of a construction

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<sup>161</sup> Resolving land disputes through alternative dispute resolution (ADR). An overview of Tanzania's legal framework

<sup>162</sup> Cologne, Prof. Dr. Klaus Peter Berger, LL.M., University of. "Principle XIII.5.1-Confidentiality - Trans-Lex.org". [www.trans-lex.org](http://www.trans-lex.org).

dispute, or expertise in commercial property law, in the case of a real estate dispute can be chosen. Arbitral proceedings and an arbitral award are generally non-public, and can be made confidential.<sup>163</sup> While in judicial proceedings the official language of the nation of the competent court will always be used, in arbitration proceedings the language of arbitration may be chosen. There are very few options for challenging an arbitral award in the majority of legal systems, which can occasionally be advantageous because it shortens the dispute's duration and any associated liability.<sup>164</sup> An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been in bad faith and constitutes an intentional breach of duty.<sup>165</sup>

Arbitrability by their nature, the subject matter of some disputes is not capable of arbitration.<sup>166</sup> Two categories of legal processes, in general, cannot be arbitrated: Procedures that inevitably result in a decision that the disputing parties are unable to agree upon: Some court processes result in decisions that affect the entire public, public authorities acting in their official capacities, third parties, or actions taken in the public interest. For instance, until the 1980s, antitrust issues arbitrable in the Zanzibar matters relating to crimes, status and family law are generally not considered to be arbitrable, as the power of the parties to enter into an agreement

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<sup>163</sup> Ibid

<sup>164</sup> Ibid

<sup>165</sup> Arbitral dispute resolution legal framework in Tanzania | Simmons & Simmons

<sup>166</sup> Larkden Pty Limited v Lloyd Energy Systems Pty Limited [2011] NSWSC 268 (1 April 2011), Supreme Court (NSW, Australia)

upon these matters is at least restricted.<sup>167</sup> However, arbitration can be used to settle the majority of other disputes involving private rights between two parties. Parts of the claims in some disputes may be arbitrable, while other parts may not. A determination of whether a patent has been violated, for instance, could be made by an arbitration tribunal in a dispute over patent infringement, but the validity of a patent could not: A panel of arbitrators would not have the authority to direct the relevant body to correct any patent registration based on its findings because patents are subject to a system of public registration.<sup>168</sup>

Some legal orders exclude or restrict the possibility of arbitration for reasons of the protection of weaker members of the public, e.g. consumers. *Examples:* German law excludes disputes over the rental of living space from any form of arbitration, while arbitration agreements with consumers are only considered valid if they are signed by either party, and if the signed document does not bear any other content than the arbitration agreement.<sup>169</sup> There are two different forms of arbitration:<sup>170</sup> private and judicial arbitration. Private arbitration is the most common form of ADR. Sometimes referred to as contractual arbitration, private arbitration is the product of an agreement to arbitrate drafted by the parties who enter a relationship anticipating that disputes will arise, but who mutually desire to keep any such disputes out of the courts.<sup>171</sup> Private arbitration agreements typically identify the person who will serve

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<sup>167</sup> Ibid

<sup>168</sup> Larkden Pty Limited v Lloyd Energy Systems Pty Limited [2011] NSWSC 268 (1 April 2011), Supreme Court (NSW, Australia)

<sup>169</sup> Arbitration - Wikipedia July 22, 2022

<sup>170</sup> <https://www.findlaw.com/adr/arbitration/arbitration-overview.html>. visted on 5 August 2022

<sup>171</sup> Ibid

as arbitrator. The arbitrator need not be a judge or government official. Instead, the arbitrator can be a private person whom the parties feel will have sufficient knowledge, experience, and equanimity to resolve a dispute in a reasonable manner. In some states, legislation prescribes the qualifications one must satisfy to be eligible for appointment as an arbitrator.<sup>172</sup>

A private arbitrator's power is derived completely from the arbitration agreement, which may also limit the issues the arbitrator has authority to resolve.<sup>173</sup> Many states have laws that support private arbitration agreements by allowing judicial enforcement of arbitration agreements and arbitrator awards. However, statutes governing private arbitration frequently specify requirements that must be met before an arbitration agreement will be enforceable by a court and binding on both parties. A court will typically deem the arbitrator's decision to be binding and enforceable if those conditions are met. The losing party may only challenge the ruling if the arbitrator acted with fraud, misrepresentation, arbitrariness, or caprice..<sup>174</sup> Private arbitration is the primary method of settling labor disputes between unions and employers.<sup>175</sup> For instance, in their formal negotiations, known as collective bargaining agreements, unions and employers almost invariably include an arbitration clause. By doing this, they consent to having future employee complaints about pay, hours, working conditions, and job security arbitrated. Additionally,

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<sup>172</sup> Ibid

<sup>173</sup> <https://www.findlaw.com/adr/arbitration/arbitration-overview.html>. visted on 5 August 2022

<sup>174</sup> Ibid

<sup>175</sup> Ibid

arbitration is frequently designated as the sole means of negotiating and resolving disputes that might develop between parties to real estate and insurance contracts.

Judicial arbitration, sometimes called court-annexed arbitration, is a non-binding form of arbitration, which means that any party dissatisfied with the arbitrator's decision may choose to go to trial rather than accept the decision.<sup>176</sup> The majority of jurisdictions, though, set a deadline within which the parties to a judicial arbitration must decide whether to accept the arbitrator's ruling or proceed to trial. The arbitrator's decision is final, binding, and equally enforceable as a private arbitrator's decision if this window of time passes without either party rejecting it. Usually, a law, a court order, or another regulation will require judicial arbitration. Many of these statutes were created to regulate claims that were too small to be heard in small claims court but too large to be heard in civil court..<sup>177</sup>

Khan (2001) claims that arbitration is a confidential, voluntary process in which disputing parties consent to presenting their complaints to a neutral third party for resolving. On the other hand, Avtar Singh (2006) defined arbitration as the submission of a dispute by two or more parties to the decision of a neutral third party, known as the "arbitrator," who will resolve the dispute in a judicial manner. A dispute or difference between at least two parties may be referred to arbitration, which is the judicial process of having both sides of the issue heard by a person or persons other than a court with appropriate jurisdiction. The issue at hand must be one of a civil nature. Criminal cases cannot be submitted to arbitration.

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<sup>176</sup> Ibid

<sup>177</sup> *ibid*

The true nature and function of an arbitration clause was well-explained by Lord Macmillan in **Heyman v Darwins Ltd.**<sup>178</sup> as follows,

*I venture to think that not enough attention has been directed to the true nature and function of an arbitration clause in a contract. It is quite distinct from other clauses. The other clauses set out the obligations which the parties undertake towards each other but the arbitration clause does not impose on one of the parties an obligation in favour of the other. It embodies the agreement of both parties that if any dispute arises with regard to the obligation which the one party has undertaken to the other, such dispute shall be settled by a tribunal of their own constitution. And there is this very material difference, that whereas in an ordinary contract the obligation of the parties to each other cannot in general be specifically enforced and breach of them results only in damages, the arbitration clause can be specifically enforced by the machinery of the Arbitration Acts. The appropriate remedy for breach of the agreement to arbitrate is not damages, but is enforcement.*

Arbitration has been used to resolve disputes all over the world for a long time as one of the basic methods of alternative dispute settlements to traditional judicial process of settlement of civil disputes. Recently, international arbitration has increased due to the ongoing proliferation in global investment and trade.

### **2.3.4 Negotiation**

Negotiation is one of the three common forms of ADR in modern times. The other common forms are mediation and arbitration. Goldberg, Sander, and Rogers<sup>179</sup> define negotiation as ‘communication for the purpose of persuasion.’ Negotiation is a process in which parties to a dispute discuss possible outcomes directly with each other. Parties exchange proposals and demands, make arguments, and continue the

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<sup>178</sup> (1942) AC 356 at p. 375

<sup>179</sup> J. Clement Mashamba, (2013) alternative dispute resolution (ADR) in Tanzania, law and practice, Mkuki na Nyota Publishers Ltd Dar es Salaam Tanzania.pg 65

discussion until a solution is reached, or an impasse declared. It ‘involves the parties themselves or with their advisers in which the Parties negotiate and try to settle their dispute without the involvement of a third party.’<sup>180</sup>

Negotiation is a process whereby parties attempt to personally reach a settlement without the use of an independent third party<sup>181</sup>. Negotiation is the most economical ADR mechanism used<sup>182</sup>. It is expedient, unstructured, and a voluntary process available to parties that often preserve their working relationship<sup>183</sup>. Experts in the field establish that the success of the negotiations rests entirely with the parties involved in the dispute, and the third party facilitates the negotiations. Sometimes negotiation is not successful in resolving disputes<sup>184</sup>. This is often caused by the parties’ lacking objectivity during negotiations or parties being emotionally involved or a power

Imbalance between/among the parties involved in the negotiation process, or a lack of knowledge, just to mention some, among other factors of the like<sup>185</sup>.

Negotiation is the pre-eminent mode of dispute resolution and has the advantage of the parties negotiating between or among them to resolve the dispute or work out a

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<sup>180</sup> Ibid

<sup>181</sup> Ramsden (2010). *The Law of Arbitration, South African and International Arbitration*, Juta Cape Town. P: 2

<sup>182</sup> Cotton J. *The Dispute Resolution Review* 2016: 59

<sup>183</sup> Bosch et al *the Conciliation and Arbitration Handbook* 2004: 8-9. 8-

<sup>184</sup> Ramsden (2010). *The Law of Arbitration, South African and International Arbitration*, Juta Cape Town. P: 37

<sup>185</sup> Gazal-Ayal O and Perry R *Imbalances of Power in ADR: The Impact of Representation and Dispute Resolution Method on Case Outcomes* 2014: 3.

compromise.<sup>186</sup> It is the quickest way of resolving disputes, be they commercial or private. Sometimes disputes end after the parties negotiate a settlement. Where a settlement cannot be reached by negotiation, other methods of dispute resolution, including litigation are resorted to.<sup>187</sup> However, the practice has been that while the matter is pending in court parties pray for time to try an out of court settlement by negotiating among them and if successful file a deed of settlement in court.<sup>188</sup> The role of the court is to record what the parties agreed upon.<sup>189</sup> On how negotiation is practiced we have the guidance of the Court of Appeal of Tanzania in the case of **Karatta Ernest D. O and Others vs. Attorney General**,<sup>190</sup> , in which the court emphasized that it was an agreement between the parties alone and the role of the court as far as negotiation is concerned was discussed. In that case the appellants were employees of the then East African Community which died in June 1977. The East African Community which had three countries, namely Kenya, Uganda and Tanzania, operated joint activities which included a common air carrier, a harbours corporation, railways, cargo handling services, posts and telecommunications and others. With the collapse of the community each individual country established its own entity to take over the functions which were being operated under the community. The collapse of the community also brought to an end the employment between the community and its staff.' Most of the staffs were employed in the newly

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<sup>186</sup> Ramsden (2010). The Law of Arbitration, South African and International Arbitration, Juta Cape Town. P: 38

<sup>187</sup> Ramsden (2010) The Law of Arbitration, South African and International Arbitration, Juta Cape Town. P: 39

<sup>188</sup> Ibid

<sup>189</sup> Ibid

<sup>190</sup> Civil Appeal No.73 of 2014 Court of Appeal at Dar es Salaam

established institutions. The problem which occurred was that the employees of the defunct East African Community were not paid their pensions and other benefits they earned as East African Community employees promptly. It took them years to be paid. The East African Community Mediation Agreement Act [CAP 232 R.E.2002] was enacted in 1984. Its purpose was to give effect to what the three countries had agreed on about the division of assets and liabilities of the former East African Community. Article 10.05 of the first schedule provided that each state shall:(a) Pay its nationals, employed by the Corporations or GFS and retired from active service by the division date the pensions and other benefits due to them on account of such employment. (b) Make provision for the pension rights and entitlements to other benefits accrued as of the division date in favour of its nationals in active service with such Corporations and the GFs at that date. The government took initiatives to honor the agreement and started making payments to the ex-employees of the Community. The ex employees were not satisfied with the payments. They felt they were being underpaid. It was then the appellants as plaintiffs filed Civil Case No. 95 of 2003 in the High Court of Tanzania at Dar es Salaam. On 21st September 2005 the case was marked settled as the parties had filed a deed of settlement showing the conditions upon which they had agreed to settle the matter. Somehow the parties found themselves discontented to what they had agreed upon on the deed of settlement then they went back to court. The Court of Appeal stated that:

“We have gone through the record of appeal and the submissions by the learned advocates and the learned Principal State Attorney representing the parties in this

appeal. It is not disputed by the parties that the suit that was filed by the appellants (Civil Case NO.95 of 2003) was settled by the parties themselves. What they did was to inform the Court on how they agreed to settle the matter. That was done by filing the Deed of Settlement in court. The Deed of Settlement was filed in Court on 21st September, 2005, before Oriyo, J. as she then was. The applicants made an attempt to file an application in the High Court after a period of one and half years after the Deed of Settlement where they asked the Court to give directions as to the true interpretation, meaning, and effect of the order that was given on 21/9/2005, to determine whether or not the respondent has fully complied with the judgment. The learned judge did observe correctly in our view that:

*'The above judgment is not conventional type of judgment based on facts and evidence received by the court. It is not a reasoned judgment but merely a judgment recorded by the court. The basis of the judgment is the deed of Settlement. The basis of the Settlement is privy to the parties and unknown to this court. It was the applicants and the respondent and their representatives who negotiated and agreed on the terms/ drafts and signed the Settlement Deed.*

*When ready, they filed the Deed of Settlement in Court. It is only the applicants and the respondents who know the basis and the spirit of the terms and conditions contained in the Deed of Settlement. It is only parties who know how much each gained, took and give out in the process of the negotiation.*

The observation that was made by the learned judge when the appellants went back to the High Court to question the Deed of Settlement sufficiently explained the role of the court in as far as the Deed of Settlement is concerned. It was an agreement between the parties alone. How they arrived to the terms of settlement is a matter known to them alone. It was not a case in which evidence was given. What the Court

was requested to do was to record what the parties had agreed upon. It is therefore wrong for the appellants to come to the Court to fault the learned judge for refusing to issue a certificate. If they needed one, they should have asked for it when they recorded the terms of settlement and before the respondent started making payment.”The appeal was found to be lacking in merit and it was accordingly dismissed.

There are no strict procedures to be followed during negotiation. ‘Every negotiation is different, but the basic elements do not change’ write Roger Fisher and William Ury.<sup>191</sup> Negotiation varies from parties to parties and from conflict to conflict. When a conflict occurs, one party to the conflict might try to reach out to the other party to try to resolve the conflict without the intervention of a third party. Roger Fisher and William Ury,<sup>192</sup> suggest two levels of negotiation; negotiation focusing on the procedure of the negotiation, and negotiation focusing on the substance of the conflict.

#### **2.4 Approaches in Resolving Land Disputes through ADR**

There are three approaches in the practice of negotiation in modern ADR: interest-based, rights-based, and power-based. Each of the approaches has a different orientation and focus and can result in different outcomes.<sup>193</sup> In the following sections the researcher discusses these approaches one after another.

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<sup>191</sup> Fisher, Rogers & William Ury. 1991, *Getting to Yes*, negotiating an agreement without giving in

<sup>192</sup> Ibid

<sup>193</sup> Ibid 68

### **2.4.1 Interest-based Approach**

By using this strategy, the discussion's emphasis is shifted from positions to interests. A discussion based on interests, as Shamir notes, "opens up a range of possibilities and creative options, whereas positions very often cannot be reconciled and may therefore lead to a dead end, because there are many interests underlying any position."<sup>194</sup> To reach an agreement that will satisfy the parties' needs and interests, the discussion of interests between the parties must be open and honest. We frequently find that negotiations are "rights-based" or "power-based," despite the fact that interest-based negotiations "have the potential to lead to the best outcomes," because the parties may not adopt them..<sup>195</sup>

### **2.4.2 Rights-based Approach**

The rights-based approach comes to play when negotiations between parties fail whereby the parties may then attempt to resort to what they consider to be their rights. Notably, this means 'appealing to the court (local, national, or international) and will result in a legal process in which the law is the dominant feature.'<sup>196</sup>

### **2.4.3 Power-based Approach**

This approach is used when parties use threats or even physical violence as a means of persuasion (such as the Americans' stance during the Cuban missile crisis). 'Rights-based and power-based approaches are sometimes used when parties cannot

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<sup>194</sup> Ibid pg 69

<sup>195</sup> Ibid

<sup>196</sup> Ibid pg 69

or are not willing to resolve their disputes through interest-based negotiation,' it should be noted.<sup>197</sup>

These principles are described in the section below.

**(a) Interests–Needs**

As said in Chapter One, quite often dispute do arise or revolve around interests opposing or competing of parties. In fact, interests ‘are needs (food, shelter, security, and so on), desires, hopes, fears, concerns, and aspirations. We desire and demand positions. The motivations for the position are the interests.<sup>198</sup> According to this perspective, parties who are negotiating on the basis of interests must first distinguish between positions and interests, then move from positions to interests, then list all the interests in order of priority, and finally consider positions as just one of many potential solutions to the issue at hand.<sup>199</sup>

**(b) Alternatives**

Alternatives are actions one can take outside of negotiations, either by themselves or possibly with a third party, but without the other party with whom one is negotiating. The Best Alternative to a Negotiated Agreement (BATNA) is the alternative that leads to the best result during the negotiation process. Notably

*The BATNA is the “best alternative to a negotiated agreement.” If any of your alternatives without negotiation is better than the deal on the negotiating table, you will obviously go to the best alternative. If however the deal on the table is better than any of your alternatives, it will be your BATNA. It is important to make sure that the alternatives are indeed realistic,*

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<sup>197</sup> Ibid

<sup>198</sup> J. Clement Mashamba, (2013) alternative dispute resolution (ADR) in Tanzania, law and practice, Mkuki na Nyota Publishers Ltd Dar es Salaam Tanzania. Pg 53

<sup>199</sup> Ibid

*and try to improve your BATNA, because the BATNA influences the way in which you conduct the negotiations.*<sup>200</sup>

Having a BATNA provides us with the ability to negotiate effectively, and provide the answers to the following;

What are our alternatives if this negotiation reaches a dead end?

Do we have an alternative at all if the negotiations fail? And;

Which agreement do we consider (the one which is at least as good as our BATNA)<sup>201</sup>

### **(c) Options**

Options are a range of outcomes that the parties agree to consider during the negotiations, which can enlarge the pie and create value with little or no extra cost to the parties. In developing the options, the following criteria can be used,

- Use brain-storming among the parties to generate a list of options;
- Look to the interests in order to generate a broad range of options to choose from;
- and Include options that will answer both parties' needs and interests.

### **(d) Standards and Criteria**

In the negotiation process, objective standards and criteria can be used 'to enable both parties to perceive the process as fair and legitimate.'<sup>202</sup> Objective standards and criteria include,

Market value of an asset or a resource;

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<sup>200</sup> Ibid Pg 53

<sup>201</sup> Ibid Pg 54

<sup>202</sup> Ibid

The law regarding the matter being discussed;

Precedents;

Opinion of an expert; and

Priority of human water consumption over other users (in water issues, for instance).

**(e) Communication**

In the negotiation process, communication refers to all the means by which the parties communicate with each another, including spoken words, level and tone of speech, body language, and any other means that parties use to signal to one another.<sup>203</sup> Communication is important in the negotiation process because part of the message is not just the words, but also in the manner in which it is delivered. To consider these aspects one must: be attentive to all signals of communication; and speak clearly and exercise “active listening.”<sup>204</sup>

**(f) Relationship**

Relationships in negotiations refer to the inter-group dynamics and interpersonal dynamics that exist between all of the parties involved. To properly take into account these factors, one must first keep people and substance separate, which means staying focused on the issues at hand and refraining from getting personal; second, one must take into account that different cultures place different values on interpersonal relationships, which are necessary for holding negotiations..<sup>205</sup>

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<sup>203</sup> Ibid

<sup>204</sup> Karl Markies et.al (2000). *The Alternative Dispute Resolution, Practice Guide, Commercial Dispute Resolution*, Butterworth's London 2<sup>nd</sup> Edition

<sup>205</sup> Ibid

**(g) Agreement and Commitment**

An agreement must be clear, operational, realistic, specific, and understood by all parties during the negotiation process. Who will do what, how, when, and where should be made clear. The parties should formally commit to their understanding in the agreement. The following inquiries should be made before signing a contract;

Does the agreement account for potential future issues in order to prevent shocks and disappointments that might make someone want to break it?

Are we authorized to sign this contract?

Is the other party authorized to sign this contract?

Do you prefer a provisional agreement that is subject to final approval?

Do we want a provisional agreement that addresses only some of the issues and reserves resolution of the rest for a later, final agreement?<sup>206</sup>

The goal of interest-based negotiation is to come to an agreement that will satisfy all or nearly all of the parties' interests as well as the interests of the other parties in a manner that will be acceptable to them. Because the interests of the other parties are inextricably linked to one another and the agreement must satisfy both needs, one must make sure that their interests are satisfied "to a degree that will satisfy their interests." In this situation, parties who are not present at the negotiations but who will be impacted by them or have an impact on their outcome are taken into consideration.<sup>207</sup>

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<sup>206</sup> J. Clement Mashamba, (2013) alternative dispute resolution (ADR) in Tanzania, law and practice, Mkuki na Nyota Publishers Ltd Dar es Salaam Tanzania. Pg 55

<sup>207</sup> Ibid

## **2.5 Principles of ADR**

Principles which apply to ADR with specific reference to resolution for the land disputes are herein under;

**Voluntary**, ADR is a voluntary option for the parties. This means the parties must agree to submit their dispute to the ADR Program. However, may require parties to attend facilitated workshops, settlement conferences, or meet with a neutral to explore the feasibility of an ADR.

**Timeliness**, ADR should shorten, not prolong, proceedings. But even if a negotiated settlement takes longer, the result may be more beneficial to all.

**Good faith**, those who engage in ADR should do so in an attempt to reach agreement-not to delay or secure tactical advantage.

**Confidentiality**, most ADR processes requires confidentiality so that the parties' fundamental interests can be candidly explored. All of these principles applying in the Department of the land like Land Tribunal when they resolve land disputes through ADR, even in the ordinary Court whenever tried to entertain dispute via ADR must consider this principle for the purpose of resolve disputes amicable.

## **2.6 The Limitations of ADR on land dispute resolution**

Although ADR programs can be useful in many development initiatives, they are ineffective and possibly even counterproductive in achieving some objectives related to initiatives to promote the rule of law. ADR is particularly ineffective for:

Defining, improving, establishing, and promoting a legal framework Remediating systemic injustice, discrimination, or human rights issues. Disputes involving parties with wildly disparate levels of power or authority should be settled.

Resolve cases that require public sanction. ·Resolve disputes involving disputants or interested parties who refuse to participate, or cannot participate, in the ADR process.<sup>208</sup>

Programs for alternative dispute resolution (ADR) do not advance the consistent application of the law, establish precedent, clarify legal norms, or create broad community or national standards. As was already mentioned, ADR programs serve as equity tools rather than legal tools. They seek to settle individual disputes on an individual basis, and they may settle comparable disputes in different ways if the circumstances indicate that those resolutions are fair or reasonable in light of local standards.<sup>209</sup>

Furthermore, Results from ADR are typically kept confidential. ADR programs can work well to settle relatively minor, routine, and local disputes where equity is a large measure of justice and for which local and cultural norms may be more appropriate than national legal standards as long as some other judicial mechanism exists to define, codify, and protect reasonable standards of justice. Family disputes,

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<sup>208</sup> Cappelletti, Mauro. May 1993. "Alternative Dispute Resolution Processes within the Framework of the World-Wide Access to Justice Movement," *The Modern Law Review*, vol. 56

<sup>209</sup> Ibid

neighbor disputes, and small claims litigation are a few examples of these kinds of disagreements.

ADR may not be able to resolve power disparities or fundamental disagreements over norms among disputants in cases where no clear legal or normative standard has been established. On the other hand, in circumstances where there isn't a set legal procedure for resolving disputes, ADR might be the best possible substitute for force. For instance, a number of ADR procedures used both before and during the transition in South Africa seem to have prevented violence to some extent and helped lay the groundwork for peaceful political change.

Systematic injustice, discrimination, or human rights violations cannot be corrected by ADR programs. As was already mentioned, ADR systems frequently mirror societal norms. These standards might include prejudice against specific populations and groups. When this is the case, ADR systems may make it more difficult to change the discriminatory norms and set up new guidelines for individual or group rights. For instance, the lok adalats in India, prior to the system being taken over by the government judiciary, were generally credited with efficiently and inexpensively resolving a large number of cases in the middle of the 1980s.<sup>210</sup> Women, however, did not like the system, especially for family disputes, because resolution of disputes was based on local norms, which were often discriminatory towards women, rather

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<sup>210</sup> Ibid

than on more recently defined legal rights. The same was true for members of lower castes. (See Whitson, 1992.)<sup>211</sup>

ADR programs do not work well in the context of extreme power imbalance between parties. These power imbalances are often the result of discriminatory norms in society, and may be reflected in ADR program results. Even when the imbalance is not a reflection of discriminatory social norms, most ADR systems do not include legal or procedural protections for weaker parties. A more powerful or wealthy party may press the weaker into accepting an unfair result, so that the settlement may appear consensual, but in fact result from coercion. For the same reason, ADR programs may not work well when one party is the government.<sup>212</sup> When the program design has been able to enhance the power or status of the weaker party, ADR has been effective in conditions of discrimination or power imbalance. In Bangladesh, for example, women who have submitted cases of spousal abuse to mediation have found that the village mediation system, which includes women mediators, provides better results than the court system which is even more biased against women in these cases.<sup>213</sup> (See Bangladesh Case Study.) In general, however, ADR programs cannot substitute for stronger formal protections of group and class rights.

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<sup>211</sup>Alternative dispute resolution practitioners' guide. Center for Democracy and Governance Bureau for Global Programs, Field Support, and Research U.S. Agency for International Development Washington, D.C. 20523-3100

<sup>212</sup>Cappelletti, Mauro. May 1993. "Alternative Dispute Resolution Processes within the Framework of the World-Wide Access to Justice Movement," *The Modern Law Review*, vol. 56

<sup>213</sup> Ibid

ADR agreements have no impact on society in terms of deterrence, punishment, or education. Because the results of ADR programs are confidential, they should not be used in situations where some sort of public sanction or punishment is required. This is particularly true when violent and persistent offenders are present, as is frequently the case in domestic violence situations. The interests of society and the individual may be better served by a court-ordered punishment like imprisonment. But it's crucial to remember that there are some circumstances in which victim-offender conciliation or mediation may be useful to address problems that can't be resolved through the criminal justice system.<sup>214</sup>

Other judicial reform initiatives might be thwarted by ADR. Support for ADR has sparked worries that it might take money away from crucial judicial reforms, take management and political attention away from court reform initiatives, or treat the symptoms rather than the underlying causes of problems. These concerns are valid, but they won't materialize frequently if ADR programs aren't designed to replace legal reform. Initiatives in ADR are typically much less expensive to start and maintain than initiatives in comprehensive judicial reform. For instance, the USAID mission in Ukraine believes that, in comparison to other rule of law initiatives, the mediation program is very affordable. And, The Mediation Boards in Sri Lanka settle disputes for a fraction of the price the government would pay through the regular court system. Generally speaking, ADR programs lower costs for the state, and consequently for donors, at least to the same extent that they lower costs for

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<sup>214</sup> Ibid

disputants. In conclusion, as long as both development officers and government officials keep in mind the limitations of ADR programs, problems that can only be addressed through formal justice processes do not necessarily receive less attention from ADR programs.

## **2.7 Conclusion**

This chapter has put things into perspective as it sheds light to reading and understanding the following chapters by rightly providing a snapshot of the meanings of the various concepts or terms used in land law relating to ADR and associated provisions in the main Law of the Land. The immediate next chapter now presents the legal framework for ADR in Zanzibar.

## **CHAPTER THREE**

### **LEGAL FRAME WORK FOR THE RESOLUTION OF LAND DISPUTES IN ZANZIBAR**

#### **3.0 Introduction**

This chapter looks at Zanzibar's legal system for alternative dispute resolution to determine how well it works to resolve land disputes. It also looks at Zanzibar's various ADR practices to determine how they apply to settling land disputes.

#### **3.1 Legal Framework**

As already lamented above, the use of ADR in the settlement of disputes in Zanzibar has been in existence right from time immemorial. Unlike litigation, ADR is not an imported mechanism into the African legal system, and so not regulated by any particular statute rather the process is more of voluntary, private and parties-driven. It is contractual in nature of which the relationship between the parties is governed by the express and implied terms of the contract. For example, in a Pakistan case of *Dalima Dairy Industries Ltd. v. National Bank of Pakistan*,<sup>215</sup> it was held that the proper law of an arbitration agreement includes in particular the interpretation and validity of the agreement.

Today, there are many statutory and institutional frameworks through which ADR has been upheld as a legitimate means of dispute settlement in Tanzania. In fact, ADR was introduced in Tanzania in 1994 through Government Notice No.422 which

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<sup>215</sup> In The High Court of Justice Queen's Bench Division Commercial Court Case No. 16 of 2014

amended the first schedule to the Civil Procedure Code Act (1966). It is now an inherent component of the country's legal system.

Formal, informal and Alternative justice systems exist, and people seek any of these to resolve their land conflicts. Each system has its own way of managing conflict. However, choice of the appropriate process depends on the particular circumstances. These justice systems have their own strengths and weaknesses in resolving land conflicts. Formal justices such as the courts of law are noted to be inefficient and unable to satisfy the needs of the populace in urban as well as the peri-areas particularly in developing countries.<sup>216</sup>

On the other hand, informal systems like the customary have their own flows. The modern ADR system serves as an alternative to these two systems and does not take the place of formal courts or the traditional system. These justice systems could be improved and developed to support and complement each other to create an effective justice system, as further lamented by experts in the field. This premise motivates the author of the current chapter to present an analysis of how ADR is incorporated into the legal framework for resolving land disputes.

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<sup>216</sup> Sackey, G. Investigating justice systems in land conflict resolution: A case study of Kinondoni Municipality, Tanzania. (Master Thesis). Netherlands: University of Twente. 2010, P. 5

## **3.2 Law governing ADR in Zanzibar**

In Zanzibar a number of legislations have been enacted by house of Representative since its independence in 12<sup>th</sup> January 1964. This Research will cover only laws governing Alternative disputes resolution in Zanzibar, as described hereunder;

### **3.2.1 The Zanzibar Constitution**

The constitution of Zanzibar established 1984, as amended from time to time is the supreme law of the country just like in any other country. It embodies ADR by virtue of Article 12 insist equality before the law, inter alia, a need to encourage right to be heard in disputes resolution. It spells out in 12-(6)(a). This is among the theory of ADR by giving equally chance or opportunity for the disputant's parties.

### **3.2.2 The Civil Procedure Decree**

This Decree<sup>217</sup> established since 1<sup>st</sup> January, 1917, it applies to proceeding in the High Court and, subject to the provisions of any other law for the time being in force, to proceedings in all Court subordinate to the High Court. This decree used in alternative disputes resolution, under Section 66 of the Civil Procedure Decree, Cap 8, Order XXVII, and Order XLII, which states that after the pleadings are finished, attempts must be made to resolve the case through negotiation, mediation, arbitration, or other processes not involving a trial, serves as the legal basis for ADR in Zanzibar. However, under the aegis of the Civil Procedure Decree, courts only actively use arbitration in real-world situations.

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<sup>217</sup> Cap 8

Tanzania Main land is not behind, the legal foundation for ADR is governed by the Civil Procedure Code, Cap 33 R.E.2002 particularly Order VIIIA, VIIIB and VIIC, except for land and labour matters that have a separate set of laws governing them at lower levels. Rule 3 of Order VIIIA provides for use of procedure for Alternative Dispute Resolution. It is to the effect that after pleadings are complete attempts have to be made to resolve the case through negotiation, mediation, arbitration or such other procedures not involving a trial. However, in real world situation, it is only mediation which is actively practiced by courts under the auspices of the Civil Procedure Code as amended by Government Notice No. 422 of 1994<sup>218</sup>

Under Order VIIIA of the CPC Rule 3 (1), three methods of ADR are mentioned, namely, negotiation, mediation and arbitration. However, there is a room for use of other methods not specifically mentioned through the phrase such other procedures not involving a trial provided for under the same rule. The most commonly used ADR mechanisms in Tanzania are the following:

### **Negotiation**

In this method only the parties to the disputes are involved in the process of negotiation. There is no scope for a third-party intervention. This method is quite sound, for it relies only on bipartite dialogue. It can result in a stable and mature relationship between the two parties if both are well organized and both recognized and accept each other's strength.

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<sup>218</sup> Civil Procedure Code as amended by Government Notice No. 422 of 1994

Alternative to litigation, the characteristics of negotiation are best understood in a straightforward, literal exchange in which information flows in both directions and is finally understood to result in a decision. The absence of a third party decision maker is one of negotiation's fundamental characteristics. This indicates the existence of two parties who have some significant differences but who share a crucial goal. The goal of negotiation is to try and resolve the differences.<sup>219</sup>

If a settlement cannot be reached through negotiation, other dispute resolution techniques, such as litigation, are used. However, the custom has been for the parties to attempt an out-of-court settlement by negotiating among themselves and, if successful, file a deed of settlement in court while the matter is still pending in court.

### **Mediation**

Due to its inclusion in the civil procedure and practice as court-annexed mediation with judges and magistrates acting as Mediators, mediation is the most popular ADR method used in Zanzibar Courts. Settlement of land disputes also applies mediation.

<sup>220</sup> And in employment matter, under the Employment Act<sup>221</sup> whereby all labour disputes must first be resolved through mediation by the labor officer, and if mediation is unsuccessful, a binding decision must be made by the arbitrator.<sup>222</sup> In

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<sup>219</sup> Hannat Bakar Hamad, (2018). termination of employment contracts in tourism sector in Zanzibar: a socio-legal study: case study Zanzibar, The Institute of Social Work, Zanzibar university (Unpublished)

<sup>220</sup> Discussion with Omar Haji Kheir, on 11 April 2022, who is a mediator of the Land Tribunal of Zanzibar

<sup>221</sup> Act No. 11 of 2005

<sup>222</sup> See section 41 of the Labour Relation (Mediation and Arbitration) Regulations of 2011, the Regulation of Zanzibar

that regard, the Labour Court consistently upholds the requirement that all labor disputes be referred to the DHU first for compulsive mediation.<sup>223</sup>

Additionally, mediation is used in the Commercial Court, a division of the High Court, where the court orders the parties to mediate their dispute. Upon issuing this order, the court shall name a mediator who will set a date for the mediation process to begin, unless the parties jointly file a declaration stating that mediation is not beneficial. According to these guidelines, the mediator must take all reasonable steps to assist parties in resolving their dispute. may hold joint or separate meetings with the parties, request an expert opinion, and pay for any associated costs. The guidelines for such a mediator must be objectivity, fairness, and natural justice. Confidentiality is also required is guaranteed by section 24.<sup>224</sup> These rules are exhaustive on how mediation has to be carried out and they provide the consequence of non-appearance for mediation.

### **Arbitration**

Among the many Alternative Dispute Resolution (ADR) mechanisms, arbitration has grown in popularity over time. It now enjoys judicial and statutory recognition in Zanzibar and has a status that makes it independent and distinctive as a dispute resolution method. This popularity of arbitration is attributable to its benefits, which include its secrecy, binding and self-enforcing results, informality of the process,

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<sup>223</sup> Ibid Section 25

<sup>224</sup> Of the Zanzibar Commercial Court(High Court Division) Act No.9 of 2013

relative affordability, and, most importantly, the freedom of each party to choose how the arbitration will be conducted, or the doctrine of party autonomy.

Arbitration is appealing because the parties have this freedom. But the question is: Do the parties have the authority to arbitrate every dispute simply because they are free to agree on the rules and process of arbitration? The answer to this question is what is referred to as arbitrability, which states that certain disputes cannot be submitted to arbitration when doing so would jeopardize the public's safety, health, stability, or security.

When we talk about arbitration, we mainly concentrate on two broad categories. These are institutional arbitration and ad hoc arbitration. Ad-hoc arbitration is carried out impartially and in accordance with the guidelines outlined by the parties and their legal counsel. Ad-hoc arbitration is marketed as the less expensive option because no administrative fees are paid for the referral, which on the surface appears to be less expensive and more flexible. Contrarian claims, however, raise the possibility that the parties may incur unforeseen costs in addition to the administrative fee as a result of the lack of facilitative processes.<sup>225</sup>

The important thing to stress in this situation is that arbitration's consensual nature results from its reliance on the parties' intended intentions as expressed in their agreement. Therefore, the only document that can reveal the types of disputes that

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<sup>225</sup>Mr. Justice Robert V. Makaramba (2009) "Commercial Disputes Resolution in Tanzania: Challenges and Prospects" in the Tanzania Lawyer, Vol. 3 No. 2 (2009).

the parties intended to refer to arbitration is the agreement itself. The process the arbitral tribunal will use to resolve their dispute is up to the parties to decide. While conciliation or arbitration is taking place, it should be encouraged that the parties to the dispute refrain from striking and locking out. The arbitration is then conducted by the parties in accordance with the procedural rules specified by the contractual arbitration clause, or, more frequently, by the rules that have been mutually agreed upon after the dispute has arisen.

The alternative to litigation is arbitration, which gives a third party whether it be a single arbitrator, a panel of arbitrators, or an arbitration court the authority to resolve a dispute without the intervention of a court of law. The decision serves a similar purpose to adjudication if it involves resolving the rights and obligations of the parties in a legal dispute.<sup>226</sup> A dispute that is assigned to one of the major arbitration institutions is referred to as an institutional arbitration. If the parties disagree with the arbitrator's decision and believe that there were procedural irregularities, such as the fact that the decision was irrational or out of proportion, led to the decision that is binding, the parties may petition the Industrial Court for review.

The parties may petition the Industrial Court for review if they disagree with the arbitrator's decision and think that procedural irregularities such as the fact that the decision was irrational or out of proportion led to the binding decision. For instance, The parties to the arbitration agreement may agree on the name of an arbitrator or

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<sup>226</sup> Ibid

arbitrators to be appointed by a third party or appointment body designated therein, in accordance with Section 5 of the Decree. In accordance with Section 15 of the Arbitration Decree, the award may be filed in the High Court and made enforceable as a judgment of the court. The Civil Procedure Decree also governs arbitration under the rules established under section 110 of the Decree, which are incorporated in the second schedule and allow for both arbitrations with and without court intervention.

Parties to the case during the stage of pre-trial conference may request the court to allow them to pursue arbitration as a form of ADR<sup>227</sup>. The parties did not intend for arbitration to be used in this rule when they signed the agreement. After they are in court, they may decide to move to arbitration. This is quite a change as there usually needs to be an arbitration provision or agreement. Every person with an interest in the award must submit a written request to any court with jurisdiction over the award's subject matter in order for the award to be filed there and the court to continue with rendering a judgment in accordance with the award. The decree is issued immediately after the verdict is announced, and there is no right to challenge it unless it exceeds or conflicts with the award. Once the arbitrators or umpire have made their award, they shall sign it, and shall give notice to the parties of the making and signing thereof, and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award.<sup>228</sup>

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<sup>227</sup> Rule 1 of Third schedule of the Civil Procedure Decree Cap 8

<sup>228</sup> Section 10 of the Arbitration Decree Cap 25

In Tanzania mainland, the Arbitration Act, Cap.15 R.E. 2002 is the principal legislation regulating arbitration in Tanzania. It regulates both domestic arbitral proceedings and enforcement of foreign arbitral awards. Reference to arbitration pursuant to section 4 of the Arbitration Act is read together with the First Schedule, unless there is any agreement to the contrary, a submission to the arbitration is deemed to be irrevocable except by leave of the court. According to Section 5 of the Act, parties to the arbitration agreement are allowed to agree on the name of an arbitrator(s) to be appointed by a third person or appointment body designated therein. The award is enforceable as decree of the court by filing the same in the High Court by virtue of section 12 of the Arbitration Act, Cap.15 R.E. 2002 and the Arbitration Rules, GN.427 of 1957<sup>229</sup>.

Arbitration is also governed by the Civil Procedure Code under the rules made under section 80 to the code, which are incorporated in the second schedule that provides for both arbitrations by the order of the Court and that without intervention of the court. As Mkumbukwa<sup>230</sup> notes, there are six forms of arbitration in Tanzania. It is only the sixth form of arbitration, which is governed by the Arbitration Act. This form includes international and local arbitrations. This would also cover arbitration carried out under the National Construction Council Rules.

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<sup>229</sup> Section 5 of the Arbitration Act, Cap.15 R.E.2002

<sup>230</sup> Hannat Bakar Hamad,(2018). Termination of employment contracts in tourism sector in Zanzibar: a socio-legal study: case study Zanzibar, The Institute of Social Work, Zanzibar University (Unpublished)

## **Conciliation**

A conciliator is a neutral third person who meets with the parties to a dispute individually in order to foster goodwill among them. It is non-adversarial and aims to pinpoint the problems and find the best solution. A conciliator is a mediator who helps the parties come to an understanding by listening to them and making recommendations. Conciliation is typically used as soon as a problem begins, mostly to stop it from getting worse. (ICJ Report, 2011)<sup>231</sup> In a culture where the formal court system seeks to punish wrongdoers and declare victors in disputes, conciliation seeks to reunite parties and foster harmonious relationships where there is no winner. Pankhurst emphasizes the need of forgiveness in reconciliation procedures and defines reconciliation as the restoration of amicable connections. (Pankhurst, 1999).<sup>232</sup> Justice and forgiveness require a transparent acknowledgement of the transgression, (Kirkby, C., 2006)<sup>233</sup> as, for example, evidenced in the work of the Truth and Reconciliation Commission in South Africa.<sup>234</sup>

Conciliation is not directly mentioned under order XXVII of the CPD, but is envisaged under the phrase such other procedures not involving a trial. Article 1 of the Regulations on the Procedure of International Conciliation adopted by the Institute of International Law in 1961, provides that conciliation is:

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<sup>231</sup> Adapted from the ICJ report on the interface between formal and informal justice systems in Kenya (2011)

<sup>232</sup> Pankhurst, D. (1999). Issues of justice and reconciliation in complex political emergencies: conceptualizing reconciliation, justice and peace. *Third World Quarterly*, 20 (1), pp.240-241.

<sup>233</sup> Kirkby, C. (2006). Rwanda's Gacaca Courts: A Preliminary Critique. *Journal of African Law*, 50 (2), pp.95-96.

<sup>234</sup> See generally the Commission's website for more information, available at accessed 10th April, 2014.

*“a method for the settlement of international disputes according to which a commission is set up by the parties to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being acceptable by them or of affording the parties with a view to its settlement, such and as*

In Zanzibar, conciliation is commonly used in land disputes. Under the Land Tribunal Act<sup>235</sup>, the Act describing that;

*the parties shall have access to reconciliation at any stage of a case and if possible they shall, in collaboration with the Chairman, deputy chairman or magistrate shorten the trial and deliberations in order to reduce the duration of the process.*<sup>236</sup> The parties may reach an agreement with the Chairman, deputy chairman or magistrate to abbreviate and concentrate deliberations with a view to reducing the duration of the process.

To give some examples, some of the cases reconciled include that of Usi Makame Vs Ali Mchawi, conciliation case no. 8 of 2018 in which Usi Makame lodged his complaint to the Land Tribunal, the chairman of the Tribunal give opportunity to the parties, final the respondent he had to pay money as compensation to the complainant.

### **3.2.3 The Land Tribunal Act**

This Act<sup>237</sup> has effectively removed the jurisdiction of other Courts to decide the land related cases after establishing a special court for land related disputes. This is believed to be the best way out in order to speed up the hearing and giving decision in case related to land issues. The Land Tribunal Act No. 7 of 1994 essentially

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<sup>235</sup> Act No.7 of 1994 as amended by Act No.1 of 2008

<sup>236</sup> Ibid section 14

<sup>237</sup> Act No.7 of 1994 as amended by Act No.1 of 2008

establishes the fundamental rules for resolving land disputes. When parties have competing claims to land, the Land Tribunal has primary jurisdiction over any proceedings that are started.<sup>238</sup>

*The Land Tribunal Act<sup>239</sup> contains some provisions that make ADR more convenient for resolving disputes. For example, section 14 of the Act states that "the parties shall have access to reconciliation at any stage of a case and, if possible, they shall work with the Chairman, deputy Chairman, or magistrate to shorten the trial and deliberations in order to shorten the process." The parties may agree to shorten and concentrate discussions with the Chairman, Deputy Chairman, or Magistrate in order to shorten the process" duration.*

The Chairman of the Tribunal may confer the parties before any trial takes place whenever it appears that such a conference might simplify the issues or shorten the hearing or lead voluntary exchange of information which might promote a settlement of the dispute.<sup>240</sup> Example in the case of; Bi. Aishe Mohamed Ali v. Josephine Maziku,<sup>241</sup> the Tribunal held that Tribunal may use ADR in reaching the final decision for any land disputes brought before the Tribunal.

The jurisdiction of the Land Tribunal Act covers disputes concerning; action involving claims to a right to occupancy and/or possession in respect of any land; demarcation of Land which is connected to activities related to the subdivision of parcels and any matter for which demarcation or surveying must be carried out; the registration of Land; the review of any transfer or lease which has been reviewed by

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<sup>238</sup> Section 13 of Act No.7 of 1994 as amended by Act No.1 of 2008

<sup>239</sup> Act No.7 of 1994 as amended by Act No.1 of 2008

<sup>240</sup> Section 28 *ibid*

<sup>241</sup> Civil case No.78 of 2019 Zanzibar land tribunal (unreported)

the Land Transfer Board; the use, development and capacity of land; partition of holdings in which potential multiple ownership is involved; Land valuation and issues involving compensation for land; removal from possession or eviction from land; expropriation of land by the Government; agricultural or agro-industrial contracts or lease agreements; transfer of property in contravention of the applicable law; exchanges, illegal subdivisions and other irregularities involving improper division or partition of land; succession to land; possession of both urban and agricultural land; use and development of land for purpose of conservation, development and the use of natural resources; actions brought by the Director of Lands in order to recover land from a person in possession of any land; the recovery of publicly held land; and all other matters relating to land.

Land tribunal Act play important role as law governing on land disputes resolution, this law allows chairmen, dispute chairman or Magistrates of the Land tribunal to ensure transparent in decision making and clear recoding keeping for making decision on specific matter relating to land.

According to this Act, if it is deemed necessary, the Chairman may issue an order to speed up the process unilaterally during the course of the proceedings. Experts from government or non-government organizations, as well as from any other source deemed appropriate by the parties to the action and the panel members, may be called to testify when technical evidence is required.<sup>242</sup>

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<sup>242</sup> Section 19 *ibid*

### 3.2.4 The Land Tenure Act

The Land Tenure Act<sup>243</sup> essentially provides for the basic law in relation to land,. It provides for the management of land in Zanzibar. It deals with Public land and Public land is defined under section 3 of the Land Tenure Act to mean All natural land within the islands of Zanzibar occupied or unoccupied is hereby declared to be public land and shall be deemed to have been so declared from a March 1964.

The Land Tenure Act<sup>244</sup> contains provisions that facilitate resolution of disputes through ADR under the provisions of section 6 in which Cases of doubt or dispute concerning the boundaries of any public lands or the extent of the easements established under the above provisions or provisions of the Registered Land Act or any other applicable law, shall be decided by the recourse to the procedures available under the Land Adjudication Act<sup>245</sup>, this Act encourage ADR and if the dispute is not resolved by the Land Tribunal<sup>246</sup> by procedure of that Tribunal.

In Tanzania Mainland the Land Act No. 4 of 1999 essentially provides for the basic law in relation to land, other than the village land. It provides for the management of land and settlement of dispute and related matters. This features clearly in the long title of the law. It deals with general land and general land is defined under section 2 of the Land Act to mean all public land, which is not reserved land or village land

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<sup>243</sup> No.12 of 1992(The law of Zanzibar)

<sup>244</sup> Ibid

<sup>245</sup> Act No.8 of 1990(The law of Zanzibar)

<sup>246</sup> Act No.7 of 1994(The Law of Zanzibar)

and includes unoccupied or unused village land. However, the law somehow confusingly, includes village large land which is unoccupied or unused.

The Land Act,<sup>247</sup> contains provisions that facilitate resolution of disputes through ADR under the provisions of section 18 on inquiries. For instance, as of recent in July 2016 the Minister for Lands Hon. William Lukuvi appointed an inquiry under section 18 of the Land Act<sup>248</sup>, and section 7 (2) of the Village Land Act<sup>249</sup>. This was after the mediator had failed to mediate the parties upon one party refusing to continue with mediation.

### **3.2.5 The Arbitration Decree**

This Decree<sup>250</sup> established 14<sup>th</sup> July, 1928, this apply to a submission or an arbitration to which the Government of the Protectorate is a party by that time, The Arbitration Decree addressed a number of issues, including the need for arbitration proceedings and the incorporation of international arbitration. The Arbitration Decree is applicable as the governing law in all matters and mandates the arbitration process. When arbitrators or umpires make their awards, they must sign them and notify the parties of their making and signing as well as the amount of fees and charges due to the arbitrators or umpires in connection with the arbitration and award. This decree uses and applies all procedures that are typically used by courts.

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<sup>247</sup> CAP 113 R.E 2002

<sup>248</sup> Section 18 of the Land Act, Cap 113 R.E.2002

<sup>249</sup> Section 7 (2) of the Village Land Act, Cap.114 R.E. 2002. Also note that the Minister also appointed by appointing Justice Jacobo Mwambegele from Commercial Division of the High Court to adjudicate on boundaries dispute involving Mabwegele and Kambaya Villages and neighbouring Villages of Mfuru, Mbigiri, Dumila, Mambwege and Matongolo in Kilosa District, Morogoro Region

<sup>250</sup> Cap 25

an award on being filed shall be given its serial number in the civil list, and all subsequent proceeding in connection therewith shall be similarly numbered, also the arbitrators or umpire shall file the award within seven days of a request being duly made under section 10 (1) of the Decree.<sup>251</sup>

According to this Decree, the arbitrators or umpire acting under a submission shall, unless a different intention is expressed therein, have power to administer oaths to the parties and witnesses appearing, to state an award as to the whole or part hereof in the form of a special case for the opinion of the Court, on any question of law involved; and to correct in an award any clerical mistake or error arising from any accidental slip or omission<sup>252</sup>. However, the arbitration Decree Cap 25 does not apply to proceeding and awards under the Trades Dispute.

This Decree also established arbitration rule cited as the Proceedings in Arbitration Rules,<sup>253</sup> this Rules comes to describe about filling of award, Serial number in the civil list, Time for falling award, Special case, Notice, Objections to award, Hearing of objections, Affidavits of improper conduct, Cost on stay of proceedings, enforcement of decree, application for security, application for appointment of arbitrator or umpire and its fees.

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<sup>251</sup> See section 3-4 of the Arbitration Rule of the Arbitration Decree cap 25

<sup>252</sup> See section 9 of the Arbitration Decree cap 25

<sup>253</sup> Section 19 of the Arbitration Decree Cap 25

### **3.3 Conclusion**

This chapter establishes that the most commonly used ADR mechanisms in Tanzania particularly Zanzibar are mediation/conciliation, arbitration and negotiation. The legal and institutional frameworks for ADR in Zanzibar are firmly in place. It is thus, not far-fetched to predict a successful future for ADR in which it will enjoy the support of the major stakeholders and play a vital role in justice delivery in Zanzibar.

**CHAPTER FOUR**  
**APPLICATION OF ADR PRINCIPLES IN RESOLUTION OF LAND**  
**DISPUTES IN ZANZIBAR**

**4.0 Introduction**

ADR programmes are instruments for the application of equity rather than the rule of law. Each case is decided by a third party or negotiated between the disputants themselves, based on principles and terms which seem equitable in the particular case rather than on uniformly applied legal standards. ADR systems cannot be expected to establish legal precedent or implement changes in legal and social norms. They tend to achieve efficient settlements at the expense of consistent and uniform justice. The present chapter addresses examination of the law and practice on land dispute resolution in Zanzibar.

**4.1 Law on resolution of land disputes**

Prominent learned persons argue that Land disputes can be resolved through formal and informal methods. It can be through legal disputes settlement machineries or ADR. In Zanzibar, there is land settlement machinery based on which specialized courts have been established to settle disputes at the National and Regional levels. These courts are legally recognized and have established procedures. Practically there are other informal justice systems, but they are not recognized by the setup of the machinery. The Land Tribunal Act of 1994 Act No. 7 establishes the various courts for the settlement of land disputes. The Act provides for the composition, functions and the procedures through which disputes could be settled. As expressly

worded, every dispute or complaint should be instituted in any of the courts having jurisdiction to determine land disputes in a given area. The various Acts are described in detail as follows:

#### **4.1.1 The Land Tribunal Act**

The Land Tribunal established under the Act<sup>254</sup> for the purposes of dealing with Land disputes in Zanzibar, the Land Dispute apply ADR in all time while hearing the land disputes, the Land Tribunal may consist of Chairman, deputy chairman or magistrate and two Assessors during the hearing of the dispute over which the Tribunal has jurisdiction as set out in section 13 of this Act,<sup>255</sup> The Chairman always considered as a member of the judiciary as an ordinary employee of the Judiciary Department and receive the payment and benefits equal to a Regional Court Magistrate.

In performing its functions, The Land Tribunal has primary jurisdiction over proceedings instituted where parties have conflicting claims to land, including; action involving claims to a right to occupancy and/or possession in respect of any land; demarcation of Land which is connected to activities related to the subdivision of parcels and any matter for which demarcation or surveying must be carried out; the registration of Land; the use, development and capacity of land; partition of holdings in which potential multiple ownership is involved; Land valuation and issues involving compensation for land; removal from possession or eviction from land; expropriation of land by the Government; transfer of property in contravention of the

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<sup>254</sup> Act no.7 of 1994

<sup>255</sup> Ibid

applicable law; exchanges, illegal subdivisions and other irregularities involving improper division or partition of land; possession of both urban and agricultural land; use and development of land for purpose of conservation, development and the use of natural resources; actions brought by the Director of Lands in order to recover land from a person in possession of any land; the recovery of publicly held land; and all other matters relating to land<sup>256</sup>. The land tribunal in proceedings of civil nature relating to land has powers to Order the recovery of possessing of land; order the specific performance of any contract; make order in the nature of an injunction both mandatory and prohibitive; award any amount claimed; order the payment of any cost and expenses incurred by a successful party or his witness; and make any other, which the justice of the case may require.

Most of the time land tribunal applies reconciliation and mediation in land dispute resolution, as described in the Act that; the parties shall have access to conciliation at any stage of a case and if possible they shall, in collaboration with the Chairman, deputy chairmen or Magistrate shorten the trial and deliberations in order to reduce the duration of the process.<sup>257</sup> The parties may reach an agreement with the Chairman, deputy chairmen or Magistrate to abbreviate and concentrate deliberations with a view to reducing the duration of the process.

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<sup>256</sup> Section 13 of the Land Tribunal Act No.7 of 1994

<sup>257</sup> Section 14 *ibid*

Also, in the case of *Haji Mwadini Silima V. Makame Khamis Makame*<sup>258</sup>, the Tribunal held that the decision of the parties to use ADR (Reconciliation) in reaching conclusion of the deferent is enough to be registered and used a decision of the Tribunal. While the Land Tribunal applies ADR may be arbitration form of ADR, a person who is aggrieved by an order or decision of the land tribunal may appeal to the High Court within ninety (90) days after the date of the decision or order against which the decision is brought, as stimulated in the case of *Bakar Mussa V. Zahra Hassan*<sup>259</sup> held that decision made by the Land Tribunal is not final and conclusive, either party may appeal to the high Court if doesn't satisfied.

#### **4.1.2 The Regional Magistrate's Court Act**

Section 18, 19, 20, and 21 of the Magistrate's Court Act <sup>260</sup>describes the establishment, composition, proceedings, jurisdiction and powers of the Regional Magistrate's Court (RMC). Subject to Article 100 of the Zanzibar Constitution<sup>261</sup> which allows the House of representative of Zanzibar to establish any other Court without prejudice that Constitution. One of the powers of this court is to hear and determine land dispute against the Government, where a proceeding is to be instituted by or against the Government, the competent court to try such a suit will be the High Court or Regional Magistrate's Court.<sup>262</sup>

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<sup>258</sup> Civil case no. 7 of 2017(Unreported) the Land Tribunal for Zanzibar

<sup>259</sup> Civil case no. 11 of 2014(Unreported) the Land Tribunal for Zanzibar

<sup>260</sup> Act No.6 of the 1985 (Law of Zanzibar)

<sup>261</sup> Of 1984 as amended from time to time

<sup>262</sup> Section 23(2) of the Government Proceeding Act No.3 of 2010 (The law of Zanzibar)

Regional Magistrate Court applies ADR in hearing land disputes between the government and ordinary citizens, for instance in the case of *Mwachum Abdulkareem v. Attorney General*<sup>263</sup> the Court reached conclusion by held that the claimants must site together with the Land Commission for negotiation, in that case the Claimant agreed to end his claim through negotiation and the Court registered that negotiation as decision of the Court.

However ADR applied in the Regional Court but in case any person will sue the Government, he must observe the described procedure where no suit shall be instituted against the Government or against a public officer in respect of any act purported to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivery to or lift at the office of the Chief Secretary to the Government and Attorney General, starting the cause of action, name, description and place of residence of the plaintiff and the relief he claims and the plaint which contain statements that such notice has been so delivered or lift. Example in the case of *Nawfal Haroub v. Attorney General*<sup>264</sup>, the Judge held that though the plaintiff applied to the Court to make mediation but procedures of suing the Government must be fulfilled accordingly.

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<sup>263</sup> Civil case no. 11 of 2014(Unreported) Urban West Regional Court

<sup>264</sup> Civil Case No. 23 of 2021(Unreported) High Court of Zanzibar

### **4.1.3 The High Court Act**

Section 41 of the Land tribunal Act <sup>265</sup> empowers the High Court to determine all appeal of land disputes from the land tribunal where by any party who is aggrieved by the decision of the Land Tribunals have the right to appeal to the High Court and such appeal shall be heard by a judge of the High Court. The High Court's mandate also extends to all disputes relating to land under any written law in respect of which jurisdiction is not limited to any particular court or Tribunal. A person, who is aggrieved by the decision or order of the land tribunal may within ninety (90) days after the date of decision or order appeal to the High Court. Extension of the time for filing an appeal, after the period of ninety days has expired may be granted by the Court for good and sufficient cause.

The parties to the dispute may appear in person or by an advocate or other representatives in accordance to the Civil Procedure Decree. The High court may call for and inspect the record of proceedings of the land tribunal through the Registrar of the High Court and examine the records or registers for the purposes as to the correctness, legality and propriety of any decision or order of the land tribunal. Where the Registrar of the court in any case after making the inspection and examination and is of the opinion that the decision or order is of illegal or improper or procedure irregular may forward the record back to the High Court to consider whether or not to exercise its powers of revision.

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<sup>265</sup> Act No.7 of 1994 as amended by the Act No.1 of 2008

The High court for Zanzibar have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law in force in Zanzibar, in its discretion and at the instance of any interested person, power to inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination; and such jurisdiction and powers as may be conferred on it by this Act or any other law.<sup>266</sup>

Court dealing with land disputes may apply ADR as described in the case of Mohamed Ussi V. Seif Mohammed<sup>267</sup> where by the Court held that; even high Court Alternative dispute resolution can be used in land matter; by which such ADR form may be used as conclusion of the matter before the Court, how eve aggrieved person by the decision of the High Court may with the leave of the High Court and where the appeal originates from the land tribunal require seeking a certificate from the High court, to appeal to the Court of Appeal.

#### **4.1.4 Appellate Jurisdiction Act.**

This Act<sup>268</sup> provides for appeals to the Court of Appeal of the United Republic of Tanzania. Court of Appeal means the Court of Appeal of the United Republic of Tanzania established under article 117 of the Constitution of the United Republic of Tanzania.<sup>269</sup> The Court of Appeal has jurisdiction to hear and determine appeals from

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<sup>266</sup> Section 3 of the High Court Act No.2 of 1985(the Law of Zanzibar)

<sup>267</sup> Civil Case no. 15 of 2015(Unreported) High Court Pemba

<sup>268</sup> CAP. 141 R.E. 2019

<sup>269</sup> Of 1977 as amended from time to time

the High Court and from subordinate courts with extended jurisdiction.<sup>270</sup> For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by law, the Court of Appeal may, in addition to any other power, authority and jurisdiction conferred by this law, have the power of revision and the power, authority and jurisdiction vested in the court from which the appeal is brought.<sup>271</sup> Also the Court of Appeal have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court.

The Court of Appeal of Tanzania has recently issued a judgement as to the parties' rights and option to contractually agree on a specific forum for the adjudication of any dispute; parties may apply any form of ADR. The decision confirms that the parties to a contract are allowed to decide on a forum and choice of law for determining their contractual disputes as describe in the case of Sunshine Furniture Co. Ltd (Appellant) v. Maersk (China) Shipping Co. Ltd.<sup>272</sup>

#### **4.1.5 Other Justice Systems**

Other systems play important roles in dispute resolution. The Non-Governmental Organizations (NGOs) are seen to mediate disputes between persons in conflict and

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<sup>270</sup> Section 4(1) of the Appellate Jurisdiction Act Chapter 141

<sup>271</sup> Ibid Section 4(2)

<sup>272</sup> Civil Appeal No. 98 of 2016

provide legal advice and training through specific programmed on issues relating to land within communities in both urban and rural areas. One key NGO is the Zanzibar Legal Service Centre (ZLSC) which provides advice to the vulnerable and marginalized groups of people including the poor, homeless and landless people and communities. Example in the Land dispute between Abdulkareem Mohammed Family v. Abuu lukman Family that dispute of the land received at ZLSC 2022, after hearing all parties the Director of the ZCSCR(Mrs. Mwanaharusi Mpatani) advised the parties to end their difference through mutual consultation rather than Court process. The parties agreed with the advice of the Director which resulted becoming to an end of their dispute.

There are other NGOs that also offer legal services and assist in the same manner. These, amongst a few, are Tanzania women lawyers Association (TAWLA) Zanzibar Branch, Tanzania media women Association (TAMWA) Zanzibar Branch, Zanzibar Female Lawyer Association (ZAFELA). Madawati ya Jinsia, they also encourage people by advertising through print and electronic media to make people aware of their rights.

University based law clinics and institutes for instance, the Centre for Applied Legal studies at the University of the Witwatersrand also assist or represent communities in land issues and advice in the development of the land policy. Other persons such as state officials, Streets leaders and land experts from the Zanzibar Land Commission in one way or the other resolve land conflict.

## 4.2 Practice on resolution of land disputes

In Zanzibar before introduction of ADR, the only methods, which were applicable, were the traditional methods and court proceedings. However, the two methods were not enough as far as solving the dispute amicably is concerned. The history of ADR has been a little bit different from other ways in Zanzibar. Historically Zanzibar was known as a centre for commercial activities for many centuries. This encouraged people from different nations such as Arabs of Oman, British, Indians, Persian and Portuguese to have interest in Zanzibar. Their commercial interest also developed into political interest. This made Zanzibar becomes under the two colonies for the same time the Omanis and the British during the 18th Century<sup>273</sup>. Like other residents of East Africa, the people of Zanzibar lived in a communal society with traditional dispute settlement based on reconciliation under the council of elder<sup>274</sup>.

However, after the British occupation, the British established dispute settlement through the court process and extended many laws, which were applicable in India to be applicable in Zanzibar through the successive Orders in Council made under the Foreign Jurisdiction Act<sup>275</sup>. For instance, the Civil Procedure Code of India of 1882 was extended to Zanzibar in 1884 through the Order in Council as the Civil Procedure Decree. This law remains an important law in the administration of civil

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<sup>273</sup> Greenwood, A (2016), *the Colonial Medical Service and the Struggle for Control of the Zanzibar Maternity Association, 1918–47*, In Greenwood, A *Colonialism; Medicine; Colonial Service; Empire; Missionaries; Government*, Manchester: Manchester University Press.

<sup>274</sup> Stockreiter, E.E. (2010), "British Kadhis" and "Muslim Judges": Modernization, Inconsistencies and Accommodation in Zanzibar's Colonial Judiciary," *Journal of Eastern African Studies*, Vol. 4, No. 3

<sup>275</sup> Greenwood, A (2016), *the Colonial Medical Service and the Struggle for Control of the Zanzibar Maternity Association, 1918–47*, In Greenwood, A *Colonialism; Medicine; Colonial Service; Empire; Missionaries; Government*, Manchester: Manchester University Press.

proceedings in Zanzibar. However, the law has not contained much about alternative dispute resolution, which has been promoted and advocated in the current time.

ADR is a total non-coercive method and only intends to preserve the good relationship that the parties had before the dispute. Dispute resolution settlement through this mechanism/system does not require the cause of the dispute that arose but possibility of resolving it without further coercive and undesirable measure. A settlement process, seeks to mollify the opposition without discovering or rectifying the underlying causes of the dispute<sup>276</sup>. Traditional local leaders including male and female elders played a pivotal role in conflict management. Due to the wide powers, knowledge, wisdom and the respect they were accorded in the society they could resolve family conflicts and conflicts related to natural resources. Even though, now the Revolutionary Government of Zanzibar, has taken measures in attempt to come up with solutions to land problems by enacting different laws concerning with land issues, those laws are; the Land Tenure Act<sup>277</sup>, the Registered Land Act<sup>278</sup>, the Land Tribunal Act<sup>279</sup>, the Land Adjudication Act<sup>280</sup>, the Land Survey Act<sup>281</sup>, and the Land Transfer Act<sup>282</sup>. These legislations evolved a new system for adjudication on land disputes, the aim being is to adopt a procedure which is fast and not tied to legal technicalities mean while not being strictly bound by the rules of practice or

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<sup>276</sup> Claire Baylis and Robyn Carroll, "Power Issues in Mediation, ADR Bulletin, Vol 7, no. 8 {2005} art 1 p 135

<sup>277</sup> No.12 of 1992 (The Law of Zanzibar)

<sup>278</sup> No.10 of 1990, (The Law of Zanzibar)

<sup>279</sup> No.7 of 1994, (The Law of Zanzibar)

<sup>280</sup> No.8 of 1990, (The Law of Zanzibar)

<sup>281</sup> No.9 of 1990(The Law of Zanzibar)

<sup>282</sup> No.8 of 1994 (The Law of Zanzibar)

procedure with the quest for delivering substantial justice. No wonder these legislations incorporate some forms of ADR. Example in the Case of Juma Ngwali V. Saleh Ibrahim,<sup>283</sup> and Mtakwa Abdalla V.s Khamis,<sup>284</sup> both of these cases, ADR used to resolve the land disputes, where the first case Mediation used to settle the dispute while the rest one arbitration applied.

#### **4.3 Impacts of ADR practice on land dispute resolution in Zanzibar**

ADR practice in the settlement of Land Conflict in Zanzibar Islands has effectiveness; means positive and negative impact as whole. The necessity of ADR is unlimited in the settlement of land conflict in the rural areas of Zanzibar Island. Not only land conflict but also in the settlement of commercial dispute and family dispute, ADR is an important method of settlement. It always focuses in the future and not past, it emphasizes on reestablishment of the relationship rather than exposure of the cause, it maintains good relationship and cooperation rather than determine the liability. The most effective of ADR mechanism is it could create legal awareness among mass people and able to reduce hostility. It is very simple and flexible process which avoids complexity of formal court system. It opens new avenue to apply the principle of equity rather than the strict principle of rule of law. It creates opportunity of direct dialogue between the conflicting parties with potentially higher levels of confidentiality as public records are not typically kept. It always tries to maintain win-win situation and also ensures access to justice especially for the backward

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<sup>283</sup> Civil case No.79 of 2019 Zanzibar land tribunal (unreported)

<sup>284</sup> Civil case No.33 of 2017 Zanzibar land tribunal (unreported)

groups of the rural areas who do not have adequate means to go to the court. Moreover, it protects the conflicting parties from the curse of delay and saves money and energy and also reduces work volume of the court officials. Also ADR has legal and administrative challenge in land dispute resolution mainly in the rural areas of Zanzibar Island as enunciated below:

### **Rule of Law**

Ensure the rule of law is the first challenge of ADR in the land dispute litigation in Zanzibar. ADR mechanisms are instruments of equity rather than instruments of law. In most of the cases rule of law is absent. As it emphasis on the settlement of dispute, may resolve similar dispute in different ways and due process of law is not followed in ADR.

### **Imbalance of Power between the Parties**

The imbalances of power between the conflicting parties are the result of discriminatory norms in society, where there is imbalance of power between the parties; it is one of the major challenges of ADR to work well. Even if the imbalance is not a reflection of discriminatory social norms, ADR system cannot ensure legal and procedural protection to the weaker parties. Parties having money and muscle power may press the weaker to accept an unfair result. So, though it appears the settlement is consensual but it is under coercion.

### **Preclusion of Systemic Injustice or Discrimination**

ADR mechanism oft reflects the common norms of society. These norms sometimes may cause injustice or discrimination to specific section or group of the society.

ADR system cannot prevent these systemic injustices or discrimination rather hinder standards of group or individuals' rights.

### **Role of Legal Professionals**

One of the major causes of delaying of suit is the dilatory tactics played by the lawyers. To resolve land dispute through formal or informal ADR the role of the pleaders of the concern parties is important but currently in Zanzibar the role of legal professionals to resolve a dispute outside of the court is not adequate. Generally do not cooperate in the ADR mechanism as they feel ADR will eat into their share of the pie. The lawyer community thinks that if the dispute is resolved their earning will be stopped and they always against ADR mechanism.

### **Experienced and Dutiful Mediator**

Land right completely depends upon the document. For the ADR of land dispute the mediator must have proper knowledge and expertise regarding land related documents. In rural areas there is a shortage of expert and experienced mediators. As there is no arrangement of training for mediators to develop their knowledge and skill lack of experienced mediator is one of the major challenges of ADR in the way of settlement of law conflict.

### **No specific procedure to follow**

If the court itself mediates, court shall determine the procedure to follow and if the mediation process is conducted by the legal aid officer or pleader or mediators from the panel they are at liberty to determine the procedure. But there is no explicit guideline or provision or procedure to complete the mediation process. Also Lack of accountability of lawyer: Most of the cases lawyers are against ADR because if the

dispute is settled their income level will be reduced. In many cases, lawyers misguide or discourage their clients regarding ADR but there is no provision to ensure accountability of the lawyer in case of failure of ADR unwillingness of the lawyers.

Also, the land conflicts have never passed without causing negative consequences to the land users, the community and properties. In case of Zanzibar there many effects pertaining to land conflicts both in rural and urban areas as follows:

Loss of people's lives particularly women and children, many people have lost their lives during the conflict. The pastoralists and the crop producers conflict is the leading in causing death. This manifested several times in West 'A' District of Zanzibar. Decline and/or cut off of food production which lead to famine in respective areas. During the land conflict many people are escaping their areas of production due to fear and insecurity. This makes them stop engaging in agricultural production and livestock keeping which leads to the decline of food production and eventually hunger. This has been happening in North Zanzibar where such conflicts recur frequently. Wastage of time and money during the time of conflict resolution, most of the land conflicts takes longer time in resolution. Therefore, a lot of resources are wasted which could have been used for development activities and leaving the majority people in extreme poverty.

#### **4.4 Conclusion**

It is unquestionable that ADR practiced on land disputes resolution in Zanzibar while the main ADR methods used comprise arbitration, reconciliation, and mediation. In

commercial land disputes, arbitration is a common choice particularly in contracts facilitating inward foreign direct investment or other commercial activity in Zanzibar. Virtually, all agreements between foreign investors and state authorities or local companies contain an arbitration clause. In addition, arbitration clauses are regularly inserted in domestic commercial agreements, as a growing number of parties to commercial agreements are beginning to recognize the advantages of arbitration over litigation in domestic courts.

However, domestic arbitration under the Arbitration Decree Cap 25 is often conducted inefficiently and there is a possibility of delaying tactics by resistant parties. Under the High Court (Commercial Division) Procedure Rules, where the Commercial Court directs the parties to submit to mediation, the court must appoint a mediator who, in turn, must set the date for the first mediation session within seven days of appointment.<sup>285</sup>

In practice, most mediators have some form of accreditation following the assessed professional training by a domestic or international dispute resolution institution before taking up a case. Although mediators may also possess other professional backgrounds or expertise, private and voluntary mediations in Zanzibar are in general conducted by retired judges or senior lawyers.

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<sup>285</sup> Section 18 of the Zanzibar Commercial Court (High Court Division) Act No.3 of 2014

## **CHAPTER FIVE**

### **DATA PRESENTATION, DATA ANALYSIS AND DATA DISCUSSION OF FINDINGS**

#### **5.0 Introduction**

In view of the fact that land disputes have invariably increased in different geographical areas of Zanzibar particularly in the Western Districts of Zanzibar such as Mwera, Kisauni, Fuoni and Mwanakwereke, also that the known disputes of the similar kind have been reported from Southern Districts of Zanzibar which are known as tourist zones and include places such as Jambiani, Michamvi, Bwejuu and Paje. One may be prompted to ask in spite the fact that a number of land laws have been enacted why is it that the land related conflicts continue to increase? The instant question would attract the attention of both the laymen and lawyers hence attract a researcher to investigate the problem and examine all possible aspects related with it.

The nature of the study impelled the researcher to understand the problem by devising a methodology proportionate to its nature. Since scanning and evaluating the legislation enactments and case law on the subject alone could not help to unravel the issue behind, therefore apart from doctrinal study and analysis of the problem effort was made to visit the field and conduct the empirical study and look at the grass root level for the reason behind the land related conflicts. It certainly involved very tough and hard decisions like examining the stake holders who included the common people and the people in authority and those who in the course of disputes get involved in the whole show. Consequently, a hard choice was made regarding to

the choice of area to study, selection of the respondents and the sampling techniques. In order to overcome these problems, it was decided to conduct the empirical study in Urban West Region of Zanzibar Island such as Fuoni, Mwera, Kisauni and Mwanyanya from where maximum land related disputes are reported because the areas are of great commercial value; apart from that, areas are flocked by the people as a result sale and purchase of the land has become common feature that affect most of the agricultural and fertile land.

This clearly shows either there is some weakness in the laws itself or there are loopholes in the legislations dealing with land and land related issues. In order to obtain representative sample, simple random sampling was used by the researcher. This method of sampling enabled the researcher to give the respondents an equal chance of being selected, therefore minimizing bias in the research. It was also noted that the researcher employed purposive sampling techniques in order to get the required information with respect to the objectives of the study.

In order to understand the causes of land disputes in Zanzibar and the applicability of land legislation it has been found rational to test the hypothesis of this work whether it can be proved or disapproved in accordance with the answers of those questions put in interview schedule. In relation to this, the first thing which is important in this research questionnaire was measuring the people's opinion in general whether or not they understand the purpose of land administration in Zanzibar. The rationale of this question in relation to the hypothesis of this work is a step ahead to understand and

gather the opinion of the people of Zanzibar regarding the causes of land disputes in Zanzibar Island and its economic impact. The second question put in this research interview and questionnaire was to test the response of the people whether they have any knowledge of ADR on land disputes resolution in Zanzibar, the rationale of this question in relation to the hypothesis is to test the effectiveness, strength and weakness of the ADR on land dispute resolution in Zanzibar as my case study. The third question put forward is whether the responses are satisfy with land legislations enacts in Zanzibar. The purpose of this question is to assess the response whether they concur with the provisions of the land legislations in Zanzibar.

### **5.1 Data Presentation**

In this party researcher intend to examine how societies of Zanzibar Island practice ADR in Land Disputes Resolution, the parameter which were examined in the study were age, sex, marital status and education, these parameters were chosen so as to determine whether they have comprehension of the consequence of the ADR on land disputes resolution together with land legislation in Zanzibar.

The sample therefore consisted of the representatives from the local community affected by land disputes; and the lawyers (Advocates and Legal Officers from the Land tribunal) who gradually get involved with the process of land dispute resolution and administration of justice. For the same reason, the general characteristics of the respondents are summarized and described hereunder; About 14.7 % of the respondent's age range between 20 – 25, about 27.3% of the respondent's age range

between 26 – 30, about 27.3% of the respondent's age range between 31 – 35, about 20.7% of the respondent's age range between 36 – 40 and about 10.0% of the respondent's age range between 41 and above. General the data revealed that, all categories of the age of the respondents were participated in the study.<sup>286</sup> Even though the age between 26 – 30 and 31 – 35 were many compared to others.<sup>287</sup>

Sex of the respondents, this section provides general characteristics of the respondents in term of their sex. The purpose is to examine the gender issue whether they understand the ADR on land dispute resolution. This was done in order to assess that, there was equal distribution of sex. In this study area, more than half of the respondents 54.0% were males and about 46.0% were females<sup>288</sup>. This mean that, males are the ones who are much affected with land disputes in Zanzibar Island and who are more conversant with this study rather than the females. Marital status of the respondents shows that, many of the respondents in the study area were in different marital status, like about 54.0% of the respondents were married (matrimony), 20.7% of 86 the respondents were single, 11.3% of the respondents were widow, and 14.0% of the respondents were divorced. This shows that, the different status in the study area was interested to participate in the effectiveness of ADR on land dispute resolution in Zanzibar Island.

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<sup>286</sup> Advocates and Legal Officers from the Land tribunal interviewed on 07 March, 2022

<sup>287</sup> Ibid

<sup>288</sup> Magistrates, officers of the land departments, lawyers, Sheha and clients of the Land Tribunal interviewed on 06 march, 2022

Level of education of the respondents shows that, education is always regarded and valued as a means of liberation from ignorance. It is perceived as among the factors that influence an individual's perception before making decision. It also stimulates the desire to learn more and seek information regarding the effectiveness of ADR on land dispute resolution in Zanzibar Island. Results revealed that 26.7% of female and male respondents had attained diploma level of education followed by 15.3% who had attended secondary education, 15.3% had attended degree level, 10.7% attained primary level and 13.3% were none educated.<sup>289</sup>

Again the study intend to examine uunderstanding of the land disputes, the study shows that the respondents answers about the meaning of land disputes, where by about 44.0% of the respondents agreed that land disputes means infringement of personal right to land, about 16.7% of the respondents agreed that land disputes means disagreement of land margins, about 14.7% of the respondents agreed that land disputes means competition to own the land parcels, about 12.6% of the respondents agreed that land disputes means violation between society or individuals on land and about 12.0% of the respondents agreed that land disputes means conflict on land.<sup>290</sup> The majority of the respondents agreed that land disputes means infringement of personal right to land. Study revealed that high number of the respondents are in the position of understanding the exactly meaning of the land disputes since that definition cover all aspects regarding to land disputes.<sup>291</sup>

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<sup>289</sup> Respondent interviewed on 07 march, 2022

<sup>290</sup> Magistrates, officers of the land departments, lawyers, Sheha and clients of the Land Tribunal interviewed on 06 march, 2022

<sup>291</sup> Discussion with the Clients of the Land Tribunal on 11 April 2022 within urban West Region

About Land disputes in respondents' areas study shows that, the respondents were asked if there are land disputes in their areas where by about 63.3% of the respondents agreed that there are land disputes in their areas and about 36.7% of the respondents denied the existence of land disputes in their areas.<sup>292</sup> Result shows that majority of the respondents areas are faced by land disputes in Zanzibar Island. This reveals that most parts of Zanzibar Island are under disputes related to land and left behind the smallest portion of the Zanzibar land which is not affected by land disputes. However in analyses the data has shown that large part of West Urban Region of Zanzibar Island has been affected by land disputes.

On the causes of Land Disputes in Zanzibar Island study shows that, the causes of land disputes in Zanzibar Island, where by about 28.7% of the respondents agreed that poor enforcement of land laws is the source of land disputes in Zanzibar Island, about 18.0% of the respondents agreed that increase the value of land is the source of land disputes in Zanzibar Island, about 12.0% of the respondents admitted that over population is the source of land disputes in Zanzibar Island, about 12.0% of the respondents were in the opinions that delay of inheritance on land is the source of land disputes in Zanzibar Island, about 10.0% of the respondents agreed that poor overgrazing plans is the source of land disputes in Zanzibar Island, about 11.3% of the respondents agreed that desire to get money is the source of land disputes in Zanzibar Island and about 9.3% of the respondents agreed that migration of the

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<sup>292</sup> Clients from the Land tribunal interviewed on 08 March, 2022

people is the source of land disputes in Zanzibar Island. Majority of respondents agreed that poor enforcement of the land laws and increase the value of land are the sources of land disputes in Zanzibar Island.<sup>293</sup> The study revealed that majority of the respondents understands the main causes of land disputes in Zanzibar Island.<sup>294</sup>

About personal involvement of Respondents in land disputes the study shows that, the respondents were asked if they are personally involved in land disputes where by 59.3% of the respondents did not personally involve in land disputes and about 40.7% of the respondents personally involved in land disputes. Even though the percentage of those respondents who did not personally involve in land disputes in their areas seems to be high but does not mean there are few land disputes in their living areas.<sup>295</sup>

Concerning to the awareness of respondents with regard to economic effects of land disputes in Zanzibar Island the study shows that, the respondents were asked if there are any economic effects of land disputes in Zanzibar Island where by about 92.7% of the respondents agreed the existence of economic effects of land disputes in Zanzibar Island and about 7.3% of the respondents deny the existence of economic effects of land disputes in Zanzibar Island. Majority of the respondents agreed that there are economic and of land disputes in Zanzibar Island<sup>296</sup>.

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<sup>293</sup> Advocates and Legal Officers from the Land tribunal interviewed on 07 March, 2022

<sup>294</sup> Discussion with the Clients and assessors of the Land Tribunal on 13 April 2022 within Urban West Region Zanzibar

<sup>295</sup> Ibid

<sup>296</sup> Interview conducted to the staff of the Land Tribunal within urban West Region Zanzibar on 17 may 2022.

Again the study intend to examine on the economic impact of land disputes in Zanzibar Island research shows that, the economic impact of land disputes in Zanzibar where by 24.7% of the respondents agreed that increase burden to the government is an economic impact of the land disputes in Zanzibar Island, about 20.0 of the respondents agreed that decline of pastoralist activities is an economic impact of land disputes in Zanzibar Island, about 15.3 of the respondents agreed that decline of investment activities is an economic effect of land disputes in Zanzibar Island, about 13.3% of the respondents agreed that destruction of tourism sector is an economic impact of land disputes in Zanzibar Island, about 13.3% of the respondents agreed that destruction of agricultural sector is an economic impact of land disputes in Zanzibar Island, about 6.7% of the respondents agreed that unreliable lease is an economic impact of land disputes in Zanzibar Island and about 6.7% of the respondents agreed that poverty is the effect of land disputes in Zanzibar Island. Majority of the respondents agreed that burden to the government is the major economic effects of land disputes in Zanzibar Island. The study has shown that increase burden to the government in the major economic impact of land related disputes in Zanzibar Island since high number of the respondents agreed on it.<sup>297</sup>

On the awareness of the respondents related to land administration in Zanzibar research shows that, the respondents were asked whether they are aware with land administration in Zanzibar. About 64.0% of the respondents point out that they are aware with land administration in Zanzibar and about 36.0% of the respondents point

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<sup>297</sup> Discussion with the Clients and assessors of the Land Tribunal on 13 April 2022 within Urban West Region Zanzibar

out that they are not aware with land administration in Zanzibar.<sup>298</sup> The result revealed that large numbers of the respondents are aware with land administration in Zanzibar.

Also, the research intends to examine about issues of Institution(s) regulates land administration in Zanzibar but the study shows that; there are six institutions in Zanzibar which regulates land administration; these are customary authority, farmers group, grazing management group and formal institution set by government. About 66.0% of the respondents agreed that formal institution set by government is the one which regulates land administration in Zanzibar, 20.7% of the respondents agreed that customary authority regulates land administration in Zanzibar, 9.3% of the respondents agreed that farmers groups regulates land administration in Zanzibar and 4.0% of the respondents agreed that grazing management groups regulates land administration in Zanzibar.<sup>299</sup> Results revealed that majority of respondents understand that there is a formal institution set by government which regulates land administration in Zanzibar.<sup>300</sup>

On the Institutions where land dispute cases are reported research shows that, where respondents submit their claims if there is a land dispute cases, 58.0% of the respondents agreed that their claim on land dispute cases are reported to a formal institution set by government, about 24.6% of the respondents agreed that they report

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<sup>298</sup> Magistrates, officers of the land departments, lawyers, Sheha and clients of the Land Tribunal interviewed on 06 march, 2022

<sup>299</sup> Ibid

<sup>300</sup> Outcome of the meeting conducted with the Staff of the Zanzibar Land Commission on 13 may 2022

their land dispute cases to the village leader, 8.7% of the respondents agreed that they report their land dispute cases to the Ministry responsible for land and 8.7% of the respondents agreed to send their land dispute cases to the District Commission. This result revealed that high number of the respondents understand that there is a special institution set by government which is responsible to report land dispute cases in Zanzibar.<sup>301</sup>

About Composition of panels dealing with land dispute study shows that, the respondents were asked if they know composition of panels dealing with land disputes, findings show that about 63.3% of the respondents know the existence of composition of panels dealing with land disputes and about 36.7% of the respondents do not know about composition of panels dealing with land disputes. The study revealed that high number of the respondent know the existence of composition of panels dealing with land dispute in Zanzibar Island also this finding implied that land administrative institutions in Zanzibar Island play important roles to make people aware on existence of panels dealing with land disputes.<sup>302</sup>

About respondents involved in land disputes the research shows that, respondents were asked if they involve in land disputes, the research show that, about 63.3% of the respondents are not involve in land disputes and about 36.7% are involve in the land disputes. The study revealed that majority of the respondents is not involved in

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<sup>301</sup> Discussion with the Clients of the Land Tribunal on 13 April 2022 within Southern Region of Zanzibar.

the land disputes. This finding implied that even though there is a land disputes in Zanzibar Island but not every person is affected by it.<sup>303</sup>

On satisfaction of the respondents with regard to land legislative enacts, research shows that, the respondent's response shows, about 68.7% of the respondents had satisfied with regard to land legislative enacts in Zanzibar and about 31.3% of the respondents had denied to satisfy with land legislative enacts in Zanzibar. This result implied that many of the respondents believe that there is satisfaction with regard to land legislative enacts in Zanzibar. But on other hand, there are few people who do not satisfy with regard to land legislative enacts in Zanzibar.<sup>304</sup>

On ssatisfaction of the respondents with regard to implementation of land legislations in Zanzibar the finding shows that, about 44.7% of respondents satisfy with regard to implementation of land legislations in Zanzibar, and about 55.3% of the respondents are not satisfy with regard to implementation of land legislations in Zanzibar. In reality there is poor implementation of land legislations in Zanzibar where by majority of household are not satisfy with it.<sup>305</sup>

About applicability of Land Legislations in Zanzibar study shows that, the respondents were asked if the Zanzibar land legislations are applicable, whereby about 67.2% of the respondents were on the view that Zanzibar land legislations are

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<sup>302</sup> Ibid

<sup>303</sup> Questioners paper given to the clients of the Land Tribunal

<sup>304</sup> Discussion with the Clients of the Land Tribunal on 13 April 2022 within Southern Region of Zanzibar

<sup>305</sup> Ibid

capable of being applied, and about 32.8% of the respondents replied that Zanzibar land legislations are not capable of being applied. This result implied that majority of the respondents agree with the applicability of Zanzibar land legislations.<sup>306</sup>

On satisfaction of the respondents regarding with institutions that solve the land disputes in Zanzibar finding shows that about 64.7 of the respondents are not satisfaction of the respondents regarding with institutions that solve the land disputes in Zanzibar and about 35.3% of the respondents seemed to satisfaction of the respondents regarding with institutions that solve the land disputes in Zanzibar. This revealed that large numbers of the respondents are not satisfied regarding with institutions that solve the land disputes in Zanzibar and they have doubt on the commitment of land administration institutions operated in Zanzibar.<sup>307</sup>

About the understanding of the term Alternative Dispute Resolution research shows that, the respondents answers about the meaning of Alternative Dispute Resolution, where by about 44.0% of the respondents agreed that Alternative Dispute Resolution means resolution of the dispute out of the court, about 16.7% of the respondents agreed that Alternative Dispute Resolution means ordinary way of dispute resolution, about 14.7% of the respondents agreed that Alternative Dispute Resolution means customary way of dispute resolution, about 12.6% of the respondents agreed that Alternative Dispute Resolution means resolution of dispute by involving ideas of society or individuals on disputed matter and about 12.0% of the respondents agreed

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<sup>306</sup> Discussion with Magistrates of the Land Tribunal and Staff of the Land Tribunal conducted on 9 April-2022 at the Land Tribunal Mwanakwerekwe urban West Region of Unguja.

<sup>307</sup> Ibid

that Alternative Dispute Resolution means resolution of dispute by involve consent of third part. The majority of the respondents agreed that Alternative Dispute Resolution means resolution of the dispute out of the court.<sup>308</sup> Study revealed that high number of the respondents is in the position of understanding the exactly meaning of the Alternative Dispute Resolution since that definition cover all aspects regarding to Alternative Dispute Resolution.

Concerning to the use of ADR in respondent areas finding shows that the respondents were asked if there are uses of Alternative Dispute Resolution in land dispute resolution in their areas where by about 63.3% of the respondents agreed that there are uses of ADR in their areas and about 36.7% of the respondents denied the existence of ADR in their areas. Result shows that majority of the respondents areas are faced by land disputes in Zanzibar Island and they uses ADR in resolving land dispute This reveals that most parts of Zanzibar Island are under disputes related to land and left behind the smallest portion of the Zanzibar land which is not affected by land disputes.<sup>309</sup>

Again, the study intends to examine about effectiveness of resolving land dispute through ADR in Zanzibar Island where the respondent's response shows that, about 92.7% of the respondents had agreed that ADR has effectiveness in land dispute resolution in Zanzibar, that effectiveness includes;<sup>310</sup>

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<sup>308</sup> Discussion with the Clients of the Land Tribunal on 8 March 2022

<sup>309</sup> Questioners paper given to the clients of the Land Tribunal

<sup>310</sup> Magistrates, officers of the land departments, lawyers, Sheha and clients of the Land Tribunal interviewed on 06 march, 2022

**Speed:** The respondent's response shows that the biggest effectiveness of ADR over the current court systems is the fact that, court trials take a lot of time whereas the ADR process is swift. It takes less time to reach a final decision.

**Cost:** The cost side of ADR is the fact that it encourages parties to take up ADR on the first place. The court trials involve many lengthy procedures which are both time consuming and costly. This affects both the parties, but in litigation the expenses are kept down, attorney and expert evidence are costly. They wait in the court and the lengthy procedures drive the costs of justice very high. But ADR offers the benefit of getting the issue resolved quicker and cheaper than court trials that means money is spent less on both the sides.

**Flexibility:** The flexibility of ADR is a major reason for its acceptability, for it allows the parties to choose the kind of technique that will govern their meeting. They can choose any relevant industry standards, or any kind of law be it domestic or of a foreign country. Thus making it a standing point that can be easily worked out between the parties to put the problems nature and its result on the parties involved.

**Accessibility:** This alternative method to dispute resolution is more informal than court proceedings, without complicated rules of evidence and the adversarial nature, the adversarial process. This process can therefore be less intimidating and less stressful.

**Expertise Involved:** The parties involved in the dispute can have their dispute arbitrated or mediated by a person who is an expert in the relevant field. In an ordinary trial problem involving technical knowledge or procedures that many people cannot understand could make a trial go on for a long time. Also, the calling of expert evidence on the basis of providing the necessary information to the judge can cost a lot of money. Not to mention the time spent educating and explaining to the judge and the jury about the complex and detailed points of fact that are involved. But if the mediator or arbitrator has a background in the relevant field, it will take a less time and money and the parties can easily jump to the core of the subject that easily and swiftly put an end to their discord.

**Conciliation of the Parties:** ADR allows the conciliation of the parties to take place and help negate future dispute amongst the involved parties. A very good example is the family disputes. ADR allow both the parties to have an amicable settlement on an equal footing and retain family relationships.

**Non involvement of the Jury:** A jury is not involved in the ADR process. They have awarded claimants damages that are well above what they would have received thorough alternative dispute resolution. And they have also done the opposite. Basically avoiding juries means that both parties are more likely to get reasonable damages, if they are due.

**Customer satisfaction:** In ADR, both the parties involved leave with a high level of customer satisfaction. The reason being that the parties get involved to set up the terms on the grounds upon their dispute is to be settled. However, satisfaction may not be achieved in instances where arbitration takes years to reach a conclusion.

**Confidentiality of Results:** The results of an ADR meeting can be kept confidential, thus making it virtually impossible to cause any type of scandals or scoops on newspaper headlines. The parties can agree that information disclosed during negotiations cannot be used in later. However, this is not absolute since ADR is conducted in English as the language of court but some disputants are illiterate hence cannot express themselves.

In Zanzibar, ADR has developed as a way to facilitate access to justice for all. The structure of ADR in Zanzibar has enabled greater access to justice for the poor, the illiterate and in particular rural communities who often have difficulty navigating court proceedings, and may not trust the formal court system. It has the support of the government, multiple donors and NGOs and most importantly, the people's trust. Zanzibar's ADR system serves as a model for many African states who are still struggling with ADR in their legal systems.

About 7.3% of the respondents had denied the effectiveness of ADR on land dispute resolution in Zanzibar; they argued that ADR has no any effectiveness. Study revealed that high number of the respondents is in the position of understanding the effectiveness of ADR on land dispute resolution in Zanzibar. But on other hand,

there are few people who do not satisfy with the uses of ADR on land dispute resolution.<sup>311</sup>

Again the Researcher wanted to know about challenges facing ADR in resolving land dispute in Zanzibar, this section provides responses of the respondents on the challenges facing ADR in resolving land dispute in Zanzibar. The purpose is to examine the challenges facing ADR in resolving land dispute in Zanzibar. This was done in order to assess if there was factors facing ADR on land dispute resolution. the respondents were asked if there are any challenges facing ADR in resolving land dispute in Zanzibar, about 54.0% were agreed that absent of special center for ADR, 20.0% readiness of the Government on ADR uses and about 26.0% unaware of the people on ADR. Majority of the respondents agreed that there are challenges facing ADR in resolving land dispute in Zanzibar.<sup>312</sup> This means that apart from negative impacts of using ADR in Land disputes resolution but also ADR facing with challenges when used in Land Dispute resolution in Zanzibar.

Generally, in the finding and analysing the data, most of respondents tried according to their best understanding to assure that the researcher's questionnaires were answered in good faith by fulfilling in those questionnaires sensitively. Data collected were summarised and analysed by using qualitative and quantitative techniques. However, the error which existed was corrected by the researcher before starting to analyses them.

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<sup>311</sup> Discussion with the Clients of the Land Tribunal on 13, 17 and 23 April 2022, within Southern Region of Zanzibar and urban West Region of Zanzibar

<sup>312</sup> Ibid

## **5.2 Data Analysis**

Magenta and Mugenda,<sup>313</sup> confirm that the main purpose of content analysis is to study existing information in order to determine factors that explain a specific phenomenon. To this extent, therefore, the responses to the questions were interpreted and put into different specific and relevant categories. Being a descriptive research the data were analysed and tabulated using descriptive methods which illustrated the diverse findings of the study. The descriptive methods used involved; frequencies, percentages and presentations of tables.

## **5.3 Discussion of the findings**

In this area, the researcher described the findings based on the objectives of the study on the effectiveness of Alternative Dispute Resolution on Land Disputes Settlement in Zanzibar, which are; to analyze the positive effects of using ADR to land dispute resolution on Zanzibar Island, to identify the enforcement mechanism dealing with administration of justice in land matters in Zanzibar, to analyze the strengths of the legal framework for ADR in Zanzibar in promoting the use of ADR in land matters, , and to explore and highlights the obstructs of using alternative dispute resolution methods in land dispute settlement, and in Zanzibar Island in particular.

Field survey conducted involving the respondents identified under the methodology section above in light of research questions and objectives, all the respondents at all levels commonly shared the opinion that there is a general ignorance on the forms

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<sup>313</sup> Mugenda, O.M. and Mugenda, A.G. (1999) *Research Methods: Quantitative and Qualitative Approaches*. Acts Press, Nairobi.

and procedures of the ADR system among the public members and even among the offices/staff responsible to implement the system in Zanzibar Island. The majority of the respondents indicated a general lack of knowledge about where to go or where to start the process of dispute settlement, the respective parties finding themselves in court while seeking justice. It was revealed that apart from mediation, arbitration and negotiation forms of ADR, the other forms and the advantages of this system (ADR) are either partially known or not known at all. Surprisingly but alarmingly, testimonies from the respondents at court level and higher levels such as among the prominent lawyers who have been working on land dispute cases/matters indicate a general lack of knowledge on ADR even among the provincial administration officials.

The reviewed literature established that globally ADR has been extremely successful in settling of disputes such as labour disputes, with variations between and within countries, subject to certain conditions including knowledge, cultures, traditions, norms and values as well as the inherent state governing policies and laws or regulations. While in many countries, the ADR system remain widely unknown and less practiced, in other countries, the success in its implementation has made the land institutions to form commissions to actualize the application of ADR on land dispute resolution in that particular country, a good example being the Republic of South Africa (RSA)

It is further documented that locally, there little research has so far been done to assess/evaluate how the ADR system has been functional and how its uptake should be improved. One of the possible reasons for its limited applicability and low research is the shortage of funding from the government of Tanzania. Its effective practice is possible if there is in place at all levels knowledgeable, skilled and motivated personnel to translate its principles into correctly both in theory and practice, but as experience may confirm, the training of staff on ADR issues is expensive and that is why it is seldom done.

As came out from the reports given by the respondents in the study Island, and most ADR service providers are private practitioners, from a range of professional backgrounds, but who may or may not be accredited by or linked to some of the large ADR organizations or professional groups. There is also no consistent and accessible quality assurance from the ADR practitioners.

In terms of enforcement mechanisms, the research findings also revealed that in Zanzibar as a whole, there are laid down land dispute settlement machineries which at all falls have legal backup. While the rationale for the establishment of such machineries is to the effect that anyone who claims an interest over land has to knock the doors of the judicial holy temples for the redress, the opportunity has not been used as anticipated and wished. The respondents of all types acknowledged that the laws applicable in Zanzibar with respect to land matters, particularly those vesting land dispute settlement machineries with force and validity have been examined and

reviewed but not to the extent that they can be easily interpreted and translated into practice by everyone who is given chance to use them. This is a legal construction and implementation gap, calling for more concerted measures or actions to improve the situation.

From the legal point of view, in real world situation, land dispute settlement machineries through ADR in the study area and Zanzibar at large seem to be either inaccessible or accessible to a highly limited degree. This is why the likelihood of persistence of chronic disputes and emerging ones to remain un-resolved through ADR between/among the individual members of the society is high.

When it comes to the issue of strengths, the reviewed documents have been found revealing that One would have expected that this period is long enough to warrant its popularity or familiarity in the public, as it already an inherent component of the country's legal system. Unfortunately, this is not the case. One of the reasons for the partial practice of this system in Zanzibar is that still the country is not a signatory to any treaties relating to the issue of ADR through mediation. The country's domestic mediation legal framework is not based on a treaty such as the UNCITRAL Model Law on International Commercial Conciliation (2002). Moreover, Zanzibar through Tanzania is not a member of the European Union (EU), this is why the Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters is not applicable.

However, it is important to take note that Zanzibar through Tanzania has been a party to treaties that provide for mediation or conciliation such as the Convention on the Settlement of Investment Dispute between States and Nationals of Other States of 1965 since 17 June 1992 and to the Multilateral Investment Guarantee Agency of 1985 since 19 June 1992.

#### **5.4 Conclusion**

To sum up on what respondents responded it is generally safe and just to say that majority of respondents were answered all questions asked which resulted completion of this study. Due to different cases collected, questionnaire issued and interview conducted by the researcher, it has been observed clearly that all the objectives of this research have been successfully met as through collection of such cases, questionnaire and interview; the research reveals that there is effectiveness of ADR on land dispute resolution in Zanzibar which increased day to day. Through the collection and selection of cases, the researcher observed that most parts of Zanzibar Island are under disputes related to land due to the various reasons which were explained above. Despite of that, collection of cases, questionnaire and interview a variety of suggestions and recommendations has been achieved accordingly.

**CHAPTER SIX**  
**SUMMARY OF FINDINGS, CONCLUSION AND**  
**RECOMMENDATIONS**

**6.0 Summary of Findings**

From the foregoing field survey conducted involving the respondents identified under the methodology section above in light of research questions and objectives, The research finding demonstrated that ADR methods such as mediation and arbitration offer significant advantages in resolving land disputes by reducing both the time and cost involved compared to traditional court processes. The streamlined, flexible, and collaborative nature of ADR leads to quicker and more cost-effective resolutions, making it an increasingly attractive option for disputants. However, most of the respondents at all levels provided the opinion that there is a general ignorance on the forms and procedures of the ADR system among the public members and even among the offices/staff responsible to implement the system in Zanzibar Island.

Disputants in land disputes have reported higher satisfaction levels with outcomes achieved through Alternative Dispute Resolution (ADR) methods such as mediation and arbitration. This heightened satisfaction is primarily due to the collaborative and less adversarial nature of the ADR process. Reasons behind which increased satisfaction. Active Participation in ADR, particularly in mediation, disputants are encouraged to actively participate in the process. This involvement allows parties to express their concerns, preferences, and suggestions directly, fostering a sense of

ownership over the outcome. When parties feel heard and understood, they are more likely to be satisfied with the resolution.

Mutual decision making, ADR processes emphasize mutual decision-making. Unlike court judgments, which are imposed by a judge, ADR solutions are developed collaboratively by the disputants. This collaboration ensures that the final agreement reflects the interests and needs of all parties involved, leading to greater satisfaction with the outcome.

Flexibility in Solutions, ADR allows for more flexible and creative solutions than traditional court processes. Mediators and arbitrators can help parties explore a wide range of options that might not be available in a court ruling. This flexibility enables solutions that are more tailored to the specific circumstances of the dispute, increasing the likelihood that the parties will be satisfied with the result.

In terms of enforcement mechanisms, the research findings also revealed that in Zanzibar as a whole, there are laid down land dispute settlement machineries which at all falls have legal backup. While the rationale for the establishment of such machineries is to the effect that anyone who claims an interest over land has to knock the doors of the judicial holy temples for the redress, the opportunity has not been used as anticipated and wished. The respondents of all types acknowledged that the laws applicable in Zanzibar with respect to land matters, particularly those vesting land dispute settlement machineries with force and validity have been examined and reviewed but not to the extent that they can be easily interpreted and translated into practice by everyone who is given chance to use them. This is a legal construction

and implementation gap, calling for more concerted measures or actions to improve the situation.

From the legal point of view, in real world situation, land dispute settlement machineries through ADR in the study area and Zanzibar at large seem to be either inaccessible or accessible to a highly limited degree. This is why the likelihood of persistence of chronic disputes and emerging ones to remain un-resolved through ADR between/among the individual members of the society is high.

Despite the many advantages of Alternative Dispute Resolution (ADR) methods, several challenges hinder their widespread adoption. These include a lack of awareness about ADR, inadequate training for ADR practitioners, and resistance from individuals accustomed to the traditional legal system. Many people are unaware of what ADR is and the benefits it offers compared to traditional court litigation. This lack of awareness extends to understanding the various forms of ADR, such as mediation, arbitration, and negotiation, and how they can be applied to resolve disputes effectively. There is often insufficient educational outreach to inform the public about ADR. While some legal systems and community organizations provide information on ADR, these efforts are not always widespread or effective. Consequently, many potential users remain unaware of ADR as a viable alternative to court proceedings. Also, Media coverage typically focuses on high-profile court cases rather than successful ADR processes. This skewed coverage

means that the public may be more familiar with the adversarial court system, further perpetuating a lack of awareness about the benefits and availability of ADR.

### **6.1 Conclusion**

This study evaluated the on the effectiveness of Alternative Dispute Resolution on Land Disputes Settlement in Zanzibar. The study concludes that ADR is an effective method for resolving land disputes in Zanzibar, offering a faster, more cost-effective, and satisfactory alternative to traditional court processes. To maximize the potential of ADR, it is essential to increase public awareness, provide adequate training for practitioners, and integrate ADR into the formal legal system. Addressing cultural barriers and implementing continuous monitoring will further enhance the efficacy of ADR, contributing to more harmonious and timely resolutions of land disputes in Zanzibar.

ADR processes are typically faster than court proceedings. Cases that might drag on for years in court can often be resolved in a matter of months or even weeks through ADR. This speed is particularly crucial in land disputes, where prolonged uncertainty can hinder development and cause ongoing community tensions. Also, ADR generally incurs lower costs than traditional litigation. Court fees, attorney fees, and the costs associated with prolonged legal battles can be prohibitively expensive for many parties involved in land disputes. ADR, by contrast, often involves fewer procedural formalities and lower costs.

Generally, this study has depicted that despite the specialized court system for land disputes settlement in Zanzibar, there is no distinct legal regime for use of ADR at all levels of land dispute settlement machinery and therefore there is an urgent need for taking more concerted measures for justice maintenance purposes on land matters.

## **6.2 Recommendation**

Based on the findings the following recommendation were made; the study recommends that the Government of Zanzibar should Provide comprehensive and ongoing training programs for mediators and arbitrators to enhance their skills and effectiveness. High-quality training ensures that ADR practitioners are well-equipped to manage a wide range of disputes, maintain the integrity of the process, and deliver satisfactory outcomes for all parties involved. Training should start with a thorough understanding of the principles, processes, and types of ADR, including mediation, arbitration, and negotiation. Practitioners need to grasp the theoretical foundations and practical applications of each method. This knowledge helps ensure that ADR processes comply with legal standards and that practitioners can navigate any legal issues that arise.

The study further recommended to review the legal framework for the resolution of land disputes in Zanzibar. The Laws that governing resolution of land disputes in Zanzibar should be reviewed to include detailed provisions concerning resolution of land disputes in Zanzibar as data collected from field in this study the ADR laws should conform with international instrument governing resolution of land disputes

to which Zanzibar is signatory. Concretely, they range from relaxing the rules on notice periods, reviewing the need for notification, reducing severance pay, or reinstatement and/or the possibility of pre-court dispute resolution procedures, as well as the reorganization or redress, in other words, access to courts.

Also, need for adoption of community ADR model, this model represents a combination of a high degree of regulation and/or government support with a decentralized approach. With this model, justice is more likely to be realized due to increased accessibility to the general public through community-based ADR organizations and other humanitarian organizations (e.g. those targeting protection of the rights of women), community-oriented government-sponsored legal centers, legal aid and the police. Working in these institutions are the ADR practitioner volunteers, individuals formally employed by the community ADR organizations as well as freelance mediators and arbitrators who are engaged on contract basis. The advantage of this model is that typically the disputants do not pay for the service, and where ADR services are not volunteered, the costs are carried by the government. This will significantly improve ADR uptake in land disputes settlement in Zanzibar at all.

Moreover, establishing a Central Information Access Point, there is a need to consider the creation of a central access point for information about assessment and referral to appropriate ADR services.

This includes having a well-promoted information and referral hotline. To achieve this, a statutory requirement for lawyers to provide information about ADR to their clients and for courts to provide information about ADR to all prospective applicants is necessary. The establishment of a national ADR information network to enable service providers to share useful practical information about dispute resolution techniques having regard to the needs of particular groups in our society is also crucial.

In addition, the study recommended that having a Special Department for Dispute Resolution, The Land Commission should establish an ADR Service Department charged for executing application of ADR mechanisms in settling land disputes at different levels. This department should be manned by a trained and qualified arbitrator, negotiator and adjudicator and so on in line with the requirements of the Chartered Institute of Arbitrators. The Department should have the capacity to monitor and evaluate the progress made in each dispute under resolution in order to ensure expeditious resolution. This will enable more people to have access to ADR services at low costs. However, as mentioned above, the public needs to have been highly informed and sensitized on the advantages of each form of the ADR for them to seize the opportunity as they wish.

Again, to establish monitoring and evaluation systems to continually assess the performance and impact of ADR on land dispute settlements. Effective monitoring and evaluation systems are crucial for assessing the performance and impact of

Alternative Dispute Resolution (ADR) mechanisms in land dispute settlements. These systems help identify strengths and weaknesses, ensure accountability, and facilitate continuous improvement. Establishing comprehensive monitoring and evaluation systems is essential for assessing and enhancing the performance and impact of ADR mechanisms in land dispute settlements. By defining clear objectives and indicators, implementing systematic data collection, using robust evaluation frameworks, and fostering continuous improvement, these systems can ensure that ADR processes deliver effective, efficient, and satisfactory outcomes for all parties involved.

Lastly, it is recommended that Ensuring reliability and enforceability of ADR mechanisms legalized. It is important and urgent also is the need for ensuring that local mechanisms are reliable and trustworthy by guaranteeing that there is no favoritism and corruption as regards to land allocation; strictly adhering to the laid down regulations governing land administration procedures such as land allocation and taking appropriate harsh action to corrupt individuals will come in handy in ensuring transparency as far as land matters are concerned. Co-ordination within and between the various land institutions should be encouraged or enhanced where weak. Easier enforceability of ADR agreements by the disputants should be encouraged. This can be done by making outcomes legally binding for example by putting into writing the outcomes of Mediations and better funding provision from the government, especially for the volunteers who offer ADR to rural communities.

### **6.3 Recommendation for Further Research**

The study focused on the effectiveness of Alternative Dispute Resolution on Land Disputes Settlement in Zanzibar. Therefore, further study should identify other aspects of ADR on the following aspects:

- (i) Studies seeking to understand and compare between ADR and Litigation as a means of settling land disputes.
- (ii) Studies looking at the Role of Politics and Historical Injustices in Land Disputes/Conflicts and how lessons learnt from this could inform policy and law or regulations review and enforcement agenda improvement
- (iii) Research on the perceived and actual added values or benefits if any or demerits of the ADR system in different socio-economic and district council governance systems.

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## APPENDICES I

### QUESTIONNAIRES FOR RESPONDENTS ON “THE EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION ON LAND DISPUTES SETTLEMENT IN ZANZIBAR

#### Household questionnaire

Dear Respondent, I hereby declare that data collected shall be used for academic purpose only. The main objective is to assess on the effectiveness of ADR on land disputes settlement in Zanzibar Island. You are kindly requested to help complete a survey on land disputes resolution via ADR. This survey is intended to be used for analyzing the effectiveness of ADR on land disputes resolution in Zanzibar Island. I'm interviewing a sample of households and yours is included, your input is considered very valuable to this survey. Please be free to answer the questions in this questionnaire and please provide responses as free as possible.

#### **PART ONE: GEOGRAPHICAL LOCATION**

Name of the respondent.....

Name of the Region....., Name of the district.....,

Name of the village/Town.....

#### **PART TWO: THE HOUSEHOLD DEMOGRAPHIC CHARACTERISTICS**

1. Age of the respondent 1 = 20 – 25 ( ) 2 = 26 – 30 ( ) 3 = 31 – 35 ( ) 4 = 36 – 40 5 = 41 and above ( )
2. Sex 1= Male { } 2= Female { }
3. Marital status 1=Single { } 2=Married { } 3=Divorced { } 4=Widowed { }
4. Residence status 1= Born here { }, 2= Migrant { }

5. How many years have you lived in this area? 1=born here { }, 2 = 1 – 5 years ( ) 3 = 6 = 10 years ( ) 4 = 10 and above years( )

6. Education level 1 = Degree { }, 2 = Diploma { }, 3 = Certificate { }, 4 = Secondary { }, 5 = Primary { }, 6 = None { }

**PART THREE: HOUSEHOLD CAUSES OF LAND DISPUTES IN ZANZIBAR ISLAND AND ITS IMPACT**

7. What do you understand by land disputes?.....?

(a) Is there any dispute related to land in your area? 1= Yes { }, 2=No { }

(b) If “Yes” what are the causes of land disputes in your area?

a)

.....

b)

.....

c)

.....

.

d).....

9. (a) Have you ever been personally involved in land disputes in your area?

1= Yes ( ) 2 = No ( ). (b) If “YES” against whom? 1=Pastoralists ( ),

2=Farmers ( ), 3=Leaders ( ), 4= others

(specify.....)

10. (a) In your opinion are there any economic effects of land disputes in Zanzibar?

1 = Yes ( ), 2 = No ( ).

b) If the answer is “Yes” mentions them

i .....

ii .....

iii .....

iv .....

v.....

**PART FOUR: HOUSEHOLD AND LAND ADMINISTRATION IN ZANZIBAR**

11. a) Do you agree that there is land administration in Zanzibar? 1=Yes { }, 2= No { }

b) If yes, provide reasons

.....  
.....  
.....  
.....

12. Do you know the institution (s) that regulates land administration in Zanzibar?

Yes = 1 { }, No = 2 { }

(b). If yes, which one of the following.

1) = Customary authority { }

2= Farmers group { },

3= Grazing management group { },

4= Formal institution set by government { },

5= other { }

(Specify).....

13. Whom do you report for land dispute cases?

1)= Village leader { }, 2= District commissioner { }, 3= Ministry responsible for land { }, 4= Formal institution set by government { }, 5= Other (specify).....

14. Is there a composition of panel to solve land disputes? 1= Yes ( ), 2= No ( ) 15.

Are you involved in land conflicts? 1=Yes { }, 2= No { }

**PART FIVE: HOUSEHOLD SATISFACTION ON LAND LEGISLATIONS ENACTS**

16. (a) Are there any satisfaction on land legislations enacts in Zanzibar 1 = Yes ( ), 2 = No ( )

(b) If the answer is “Yes” gives reasons.

1).....

2).....

.....3).....

4).....

c). If No, gives reasons

- 1).....
- 2).....
- 3).....
- 4).....

17. Are the provisions of the enacted Land legislations in Zanzibar are implemented by land Institutions? 1 = Yes ( ), 2 = No ( )

18(a).Do the land legislations in Zanzibar fulfill the needs of the people? 1 = Yes ( ), 2 = No ( ). (b). If Yes, give reasons

- 1).....
- 2).....
- 3).....
- 4).....

c). If No, give reasons

- 1).....
- 2).....
- 3).....
- 4).....

19. At what level does the implementation of land legislations is done? 1 = High ( ), 2 = middle ( ), 3 = low ( )

20. Do the land legislations in Zanzibar are applicable? 1 = Yes ( ), 2 = No ( )

21. Is there any mechanism prepared by Land Institutions in Zanzibar to improve the standard of land legislations? 1 = Yes ( ), 2 = No ( )

22. If the answer is “Yes” mentions them.

- a.....
- b.  
.....
- c.  
.....
- d.....

**PART SIX: HOUSEHOLD USES OF ADR ON LAND DISPUTE RESOLUTION AND ITS EFFECTIVENESS**

23, Do you know what ADR is?

- a. Yes ( )
- b. No ( )
- c. if yes

explain.....

24. Does ADR is used in resolving land dispute in Zanzibar?

- a. Yes ( )
- b. No ( )

25. To what the extent ADR is used in resolving land dispute in Zanzibar?

- a. low( ) b. moderate ( ) and c. Higher ( )

26. What are the challenges facing ADR in resolving land dispute in Zanzibar

- a. unaware of the people on ADR( )
- b. absent of special center for ADR ( ) and;
- c. readiness of the Government on ADR uses( )

27. What are the effectiveness of resolving land dispute through ADR in Zanzibar?

.....  
.....  
.....  
.....

*Thank you very much for your cooperation*

Thank you for completing this survey. If you have any comments or suggestions, which were not covered in the survey, for improving our work, please include them here:

.....  
.....  
.....  
.....  
.....

**“THANKS YOU FOR YOUR ESTEEM COOPERATION”**



**REVOLUTIONARY GOVERNMENT OF ZANZIBAR  
LAND TRIBUNAL**

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 Ref. No.: AB.64/70/02/30

LAND TRIBUNAL  
ZANZIBAR

Date: 19 May, 2022

TO: MACHANO PANDU MACHANO [Researcher]  
 STUDENT OF THE OPEN UNIVERSITY OF TANZANIA  
 ZANZIBAR BRANCH  
 P.O. Box 2599  
ZANZIBAR

**REF TO: PERMISSION TO CONDUCT RESEARCH ON THE EFFECTIVENESS OF ALTERNATIVE  
DISPUTE RESOLUTION (ADR) IN LAND DISPUTE SETTLEMENT IN ZANZIBAR**

Please refer to the Subject above.

I would like to inform you that we have received and approved your request to conduct research on the effectiveness of Alternative Dispute Resolution (ADR) in land dispute settlement here in Zanzibar. We have granted permission for you to collect the necessary data from the Land Tribunal in accordance with privacy and confidentiality terms and conditions.

We kindly request that all the data collected be used solely for research purposes, as you mentioned in your letter, and that these data are protected against any unauthorized use.

We anticipate that your research will contribute significantly to improving land dispute resolution in Zanzibar. Please contact our office for further coordination once you begin the data collection process.

We wish you every success in your research.

Yours sincerely,

.....  
**IS-HAKA A. KHAMIS (RM III)**  
**CHAIRMAN**  
**LAND TRIBUNAL**  
**ZANZIBAR**