



## OVER TWO DECADES OF EXISTENCE OF THE LANDS TRIBUNAL IN ZAMBIA: Review of Progress and Challenges

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### ABSTRACT

#### Context and Background:

The specialised land court in Zambia is known as the Lands Tribunal, and it was created in 1996 through the 1995 Lands Act. The Tribunal was established with the objective of achieving speedy, low cost, flexible and efficient means of settling conflicts over land. In spite of its existence for 27 years, little has been done on the progress and challenges of the Lands Tribunal in resolving conflicts over land in the country.

#### Goal and Objectives:

This paper aims at establishing the progress made by the Lands Tribunal in resolving conflicts over land and investigating the challenges faced by the Lands Tribunal in resolving conflicts over land.

#### Methodology:

The study incorporated the use of both primary and secondary data collected between January and October 2023. Secondary data were obtained through documents which include peer-reviewed journal articles, theses, books, media, Zambian land laws, and technical reports. Secondary data was supplemented by primary data obtained from three purposively selected institutions: Lands Tribunal, Law Association of Zambia, and Zambia Land Alliance (Kitwe office). The data collection method used with the key informants was in-depth face-to-face interviews. Office management at each institution chose the key informant based on their expertise and experience on the subject.

#### Results:

In order to strengthen the Tribunal's operations, the Lands Tribunal Act of 2010 was enacted, enhancing the Tribunal's operations by granting it more authority and responsibilities (that is, expanding jurisdiction). Research findings showed that between 2014 and 2023, the Lands Tribunal handled 3318 cases. According to research findings, if the Tribunal was operating efficiently and effectively, it could have handled more than 3,318 cases between 2014 and 2022 considering the numerous problems facing the general courts which adversely affect the general public to resolve their land conflicts. However, the Tribunal could not handle more cases because of various challenges which include inadequate funding, inadequate staff, poor conditions of service for members of the Tribunal, inadequate transport, delay in the delivery of judgments, low public awareness of the Lands Tribunal, centralised operations of the Lands Tribunal, and forum shopping.

#### Keywords:

*Land conflicts, lands tribunal, specialised land court*

## **1. INTRODUCTION**

Conflicts over land in Africa have been increasing, thereby causing multiple social, economic and political disruptions in the process (Economic Commission for Africa, 2022). This is because land is highly desired by individuals, communities, traditional authorities, firms, national governments and local/international investors. Some of the causes of land conflicts include rapid urbanisation, increasing population, socio-economic transformation, and changes in land values (Kalabamu, 2021). Until a few years ago, general courts (that is, courts handling all types of cases – civil and criminal) was the preferred way of resolving conflicts over land (Mushinge, 2017a). However, general courts have been criticised as costly, time-consuming, and inequitable and unjust to the poor, vulnerable and minority groups (Kalabamu, 2021). To decrease pressure on the general courts as well as improve access and justice for all, some countries have introduced specialised land courts (SLCs). SLCs have variety of names such as Land Courts and Land Tribunals, but they have the same objective, that is, to deal explicitly and exclusively with conflicts relating to land (Wehrmann, 2008). Their (SLCs) main goal is to make sure that land related conflicts are settled quickly and in a cost effective manner (Muyunda, 2012). SLCs are superior because they have flexible rules of procedure, characterised by transparency, cost effectiveness, efficiency, and expertise (Pring and Pring, 2009).

The specialised land court in Zambia is known as the Lands Tribunal, and it was created in 1996 through the 1995 Lands Act. The Tribunal was established with the objective of achieving speedy, low cost, flexible and efficient means of settling conflicts over land. In spite of its existence for 27 years, little has been done on the progress and challenges of the Lands Tribunal in resolving conflicts over land in the country. It is from this background that this paper reviews the progress made and challenges faced by the Lands Tribunal in the 27 years of its existence. In so doing, the paper answers two questions: what has been the Lands Tribunal progress in resolving conflicts over land? and what are the challenges faced by the Lands Tribunal in resolving conflicts over land and how can these challenges be addressed?

## **2. LAND CONFLICTS AND SPECIALISED LAND COURT**

Land conflicts refer to heightened social disputes involving at least two parties in situations where land is a subject of competition (Economic Commission for Africa, 2022). Conflict arises when two or more parties believe their interests are incompatible (United Nations, 2012). Most countries in sub-Saharan Africa experience land conflicts because of factors such as increasing population, rapid urbanisation, changes in land values, and socio-economic transformations (Kalabamu, 2021). Land conflicts have various consequences ranging from disturbed inter-personal relationships to the total destruction of one's livelihood (Wehrmann, 2017). Many land conflicts affect people's human rights as defined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, such as the rights to own property alone as well as in association with others, the right to freedom to choose one's residence, the right to adequate housing, and the right to adequate food (Wehrmann, 2017).

Therefore, whenever, there are conflicts on land, they should be adequately resolved so as to safeguard people's human rights. This can only be done through an effective and efficient land conflict resolution mechanism such a specialised land court. In the recent years there is a growing

trend toward the establishment of specialised land courts through legal reforms and rapid adoption in African countries and countries in other continents (Unah and Williams, 2018). Generally, specialised courts are tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed (Zimmer, 2009). Thus, specialised land courts are courts which handles land conflicts only. The growth of judicial specialisation is among other things a reaction to inadequate juridical response to citizens demands for land justice as exemplified by rampant delays in case processing in general courts due to inter alia limited resources, caseload burdens and antiquated/rigid procedural rules (Unah and Williams, 2018).

Gramckow and Walsh (2013) argue that specialised (land) courts have the following advantages:

- The establishment of specialised courts with exclusive jurisdiction over particular areas of the law enhances uniformity of decisions in those areas, thereby contributing to greater predictability and confidence in the courts and possibly reduced appeal rates.
- There is greater efficiency. Specialised judges and staff who are well versed in the cases lead to streamlined operations and more efficient processing. And by diverting a class of cases to specialised courts, the burden of growing caseloads in the general courts is reduced, also positively impacting on their operations.
- A judiciary of specialists leads to higher-quality decisions, especially in complex areas of the law. Their greater expertise and experience lead to better decisions, better outcomes for the litigants, and greater user satisfaction.

### **3. RESEARCH METHODOLOGY**

The research incorporated the use of both primary and secondary data collected between January and October 2023. Secondary data were obtained through documents which include peer-reviewed journal articles, theses, books, media, Zambian land laws, and technical reports. Secondary data was supplemented by primary data obtained from three purposively selected institutions: Lands Tribunal, Law Association of Zambia, and Zambia Land Alliance (Kitwe office). The data collection method used with the key informants was in-depth face-to-face interviews. Office management at each institution chose the key informant based on their expertise and experience on the subject.

### **4. FINDINGS OF THE RESEARCH**

#### **4.1 Progress of the Lands Tribunal**

The establishment of the Lands Tribunal in Zambia was necessitated by the various challenges faced by the general courts for example Subordinate and High Courts. The challenges included high cost of legal services, inadequate legal aid, extensive case backlog, unreasonable delays in the disposal of court cases, and the constant need for legal representation during hearings (Banda, 2019; Mushinge, 2017b). In this regard, an effective and efficient court (for example, Lands Tribunal) was critical to the protection of property rights which is necessary condition for sustainable economic and social development. The Tribunal was thus established with the aim of achieving speedy, low cost, flexible and efficient means of settling land conflicts. However, the Tribunal functions were adversely affected by jurisdictional restrictions imposed by the 1995

Lands Act and various decisions of the Supreme Court (Muyunda, 2012), between 2006 and 2009. Jurisdictional restrictions imposed by the 1995 Lands Act were that the Tribunal could not hear issues of land inter alia under customary law, Lands and Deeds Registry Act, and Housing (Statutory and Improvement Area) Act while an example of decisions of the Supreme Court involved the case of Diocese of Monze versus Mazabuka District Council, where in 2002, the Supreme Court ruled that the Tribunal had no jurisdiction to hear any matter in which the land in issue had certificates of title (Muyunda, 2012). The foregoing extremely reduced the number of cases the Lands Tribunal could deal with to an extent of making it almost defunct (Chilufya, 2008).

In order to strengthen the Tribunal's operations, the Lands Tribunal Act of 2010 was enacted, enhancing the Tribunal's operations by granting it more authority and responsibilities (that is, expanding jurisdiction). According to section 4 (1) of the Act, the Tribunal has the power to handle various land-related conflicts. These include hearing and making decisions on conflicts related to land governed by the Lands Act, Urban and Regional Planning Act (this Act was the product of repealing of the Housing -Statutory and Improvement Area – Act), or any other law (GRZ, 2010). Additionally, the Tribunal can address conflicts concerning land under customary tenure and handle compensation matters related to the Lands Act, Lands Acquisition Act, or any other law. Moreover, it can adjudicate on issues affecting the land rights and obligations of individuals or the Government under the Lands Act, and it has the authority to rectify entries in the Lands Register or cancel certificates of title that were issued erroneously, obtained fraudulently, or require cancellation for other valid reasons (GRZ, 2010).

Research findings showed that between 2014 and 2023, the Lands Tribunal handled 3318 cases. Table 1 is illustrative. According to research findings, if the Tribunal was operating efficiently and effectively, it could have handled more than 3,318 cases between 2014 and 2022 considering the numerous problems facing the general courts which adversely affect the general public to resolve their land conflicts. About 95% of the cases at the Ministry of Justice (general courts) are land related matters (News Diggers, 23 October 2023). However, the Tribunal could not handle more cases because of various challenges which are explained under 4.2.

Table 1. Land Conflict Resolution by the Lands Tribunal between 2014 and 2022

Year	Number of land conflicts handled
2014	123
2015	266
2016	323
2017	348
2018	377
2019	425
2020	461
2021	482
2022	513
<b>Total</b>	<b>3,318</b>

Source: Lands Tribunal Secretariat, 2023

## **4.2 Challenges facing the Lands Tribunal**

Research findings revealed that there are various challenges facing the Lands Tribunal which in turn adversely affects the resolution of conflicts over land. These challenges are explained as follows.

### **4.2.1 Inadequate Funding**

Research findings revealed that the expanded jurisdiction of the Lands Tribunal meant that there were increased sittings of members to hear cases that the Tribunal previously had no jurisdiction over. This in turn required an increase in the institution's budget allocation by the Government to enable it meet its operational requirements and fully operate as a circuit court in order to provide land conflict resolution services throughout the country. However, funding to the Tribunal has been insufficient for its effective and efficient operations (GRZ, 2021). Table 2 is illustrative. According to the Bank of Zambia (9 November 2023), US\$1 is equivalent to ZMW22.70. This implies that for the years 2018, 2019, 2020 and 2022; and 2021 the Tribunal's funding per year was a meagre US\$132,158.59 and US\$ 88,105.72 respectively.

Table 2: Funding to the Lands Tribunal

<b>Year</b>	<b>Amount Received (ZMW)</b>	<b>Amount Required (ZMW)</b>
2018	3,000,000	>3,000,000
2019	3,000,000	>3,000,000
2020	3,000,000	>3,000,000
2021	2,000,000	>2,000,000
2022	3,000,000	>3,000,000

Source: Lands Tribunal Secretariat, 2023

It is regrettable that the Lands Tribunal is frequently underfunded despite playing a crucial role in resolving land conflicts (Zambia Land Alliance, 2005). Because of this, the institution is unable to fulfil its duties in a way that pleases the vast majority of the populace (Zambia Land Alliance, 2005). The insufficient funding indicates a lack of government's dedication to ensure the Tribunal operates efficiently and effectively.

Given the huge backlog of cases pending before the courts nationwide, the provisions of section 10(4) of the Lands Tribunal Act pertaining to the Tribunals sitting as a circuit court was crucial. In essence, the offices of the Tribunal are only located in Lusaka district and the only way litigants outside Lusaka can be assisted is having circuit courts in the other 115 districts. Otherwise, litigants have to always travel to Lusaka to access the Tribunal. Nonetheless, the Tribunal's inadequate funding made it challenging for it to use circuiting to decide on land conflicts in locations outside of Lusaka. Table 3 below shows the total number of circuit courts that have been conducted by the Lands Tribunal between 2014 and 2022.

*Table 3: Number of Circuit courts conducted by the Lands Tribunal between 2014 and 2022*

<b>Year</b>	<b>Number of Circuit Courts Conducted</b>
2014	0
2015	2
2016	10
2017	1
2018	0
2019	1
2020	0
2021	0
2022	0
<b>Total</b>	<b>14</b>

Source: Lands Tribunal Secretariat, 2023

Table 3 shows that between 2014 and 2023, , the Tribunal had held a total of fourteen (14) circuit courts with the highest being the ten (10) held in 2016 and followed by two (2) in 2015. Further, only one (1) circuit was held in 2017 and 2019 respectively while no circuit courts were held in 2014, 2018, 2020, 2021 and 2022. This has adversely affected access to justice by the population especially the poor and vulnerable in society living outside Lusaka district.

#### **4.2.2 Inadequate Staff**

The organisational structure at the Lands Tribunal was very lean (GRZ, 2021). Only the Registrar undertakes the day to day administration of the institution. Other employees included a driver, secretary, registry clerk, police officer, office orderly and a general worker who supported the office of the Registrar and were primarily seconded from the Ministry of Home Affairs and Ministry of Lands and Natural Resources as well as interpreters and court reporters from the Judiciary (GRZ, 2021).

#### **4.2.3 Poor Conditions of Service for Members of the Tribunal**

The Lands Tribunal consist of the following members: Chairperson, Deputy Chairperson, a representative of the Attorney-General, a representative of the Law Association of Zambia, a representative of the House of Chiefs, a Registered Planner, a Registered Land Surveyor, a Registered Valuation Surveyor, and not more than three persons from the public and private sectors. Research findings from the Lands Tribunal secretariat revealed that the foregoing members were paid sitting allowances rather than salaries, and they work on part-time basis. According to GRZ (2021), the chairperson and deputy chairperson received ZMW1, 200 (US\$52.86) while other members received ZMW 1,000 (US\$44.05) per sitting. These amounts were considered inadequate considering the work that the members had to undertake, especially when preparing judgments (GRZ, 2021).

#### **4.2.4 Inadequate Transport**

Research findings showed that the Lands Tribunal did not sufficient vehicles for its operations. Although the number of vehicles available and required was not provided, the respondent from the Lands Tribunal confirmed that the institution needed sufficient vehicles in order to function

effectively and efficiently. The Tribunal's operations had been negatively impacted by a lack of vehicles, which made it more difficult to deliver justice, particularly in areas outside Lusaka District.

#### **4.2.5 Delay in the Delivery of Judgments**

According to section 12 of the Lands Tribunal Act, the Tribunal shall deliver judgment on any matter within sixty (60) days after the conclusion of the hearing of the case (GRZ, 2010). However, in practice many judgments had been delayed way beyond the stipulated sixty days. Delays in the delivery of judgments was acknowledged by the respondent from the Lands Tribunal Secretariat, who stated that:

Judgments are not being delivered within 60 days after the land case's hearing is over due to the fact that most of the members of the Lands Tribunal are not permanently employed and are committed to other jobs as well. Other reasons are huge backlog of cases, limited human resource and inadequate funding (Interview with Lands Tribunal Employee, May, 2023).

The slow pace at which conflicts over land were heard and determined by the Lands Tribunal was worrisome (GRZ, 2021). In some instances, cases had taken over there years to be disposed of (GRZ, 2021). As a result, many litigants had given up on their cases (GRZ, 2021).

#### **4.2.6 Low Public Awareness of the Lands Tribunal**

Although the Lands Tribunal has been around since 1995, there has not been much public awareness of its existence as an alternative and fast tract land conflict resolution mechanism (Interview with Zambia Land Alliance Employee, Kitwe Office, June, 2023). The Lands Tribunal is centrally located in Lusaka and the general populace were not aware about its existence and how to access its services (Interview with Zambia Land Alliance Employee, Kitwe Office, June, 2023). The respondent from the Lands Tribunal Secretariat acknowledged that there is low public awareness due to inadequate sensitisation programmes. Therefore, increased awareness was required if the Tribunal was to fulfil its mandate of providing Zambians with a forum for the speedy resolution of land conflicts at a minimal cost.

#### **4.2.7 Centralised Operations of the Lands Tribunal**

The National Decentralisation Policy was enacted in 2002 with the goal to devolve power, duties and responsibilities to district level (GRZ, 2002). Despite the policy being in existence for about twenty one (21) years, research revealed that the Tribunal remains highly centralised with its offices solely located in the Lusaka District. Therefore, in order to settle their land conflicts, all litigants from the remaining 115 districts in the country must travel to Lusaka or wait until circuit courts to be conducted in a subject area. However, circuit courts are rarely done as explained under 4.2.1. Overall, this has prevented many people living outside Lusaka to have their conflicts settled by the Tribunal. Without a doubt, this makes it more difficult for people to access the justice system, which is a vital tool for defending human rights.

#### **4.2.8 Forum Shopping**

The lack of e-document management system had led to many cases before the Lands Tribunal being found to be multiple actions, having been commenced in the High Court (GRZ, 2021). Therefore, by the time the Tribunal got to know of forum shopping and dismissed the matters as abuse of the

court process, the institution's time and resources would have been wasted (GRZ, 2021). The Tribunal still used a paper-based filing system for land conflicts data storage which implies searching manually for statistics and operational data (GRZ, 2021).

## **5. CONCLUSIONS AND RECOMMENDATIONS**

Whenever there are conflicts on land, they should be adequately resolved so as to safeguard people's human rights. This can only be done through an effective and efficient land conflict resolution mechanism such as the Lands Tribunal. Even though the Lands Tribunal Act of 2010 enhanced the Tribunal's operations by granting it more authority and responsibilities, the institution was unable to operate effectively and efficiently due to various challenges. The challenges included inadequate funding, Inadequate staff, poor conditions of service for members of the Tribunal, inadequate transport, delay in the delivery of judgments, low public awareness of the Lands Tribunal, centralised operations of the Lands Tribunal, and forum shopping. To this end, robust land governance interventions can drive real change on the ground.

The study recommends the following specific strategies to address the challenges facing the Lands Tribunal: increase budgetary allocation to the Lands Tribunal, employ sufficient staff, improve conditions of service for Tribunal members, provide adequate transport, ensure timely delivery of judgments, raising awareness of the existence of the Tribunal, decentralise the operations of the Tribunal through establishing offices at provincial level and later at district level, and ensure that the Tribunal has exclusive original jurisdiction over land conflicts in order to avoid forum shopping.

The foregoing would require significant political. These in turn could lead to the Tribunal achieving its intended objective of providing speedy, efficient and cost-effective resolution of conflicts over land throughout Zambia.

## **6. ACKNOWLEDGMENT**

The first author acknowledge the contributions made by the co-authors in working on this article.

## **7. FUNDING**

There was no funding received for this research and therefore the full cost for the study was covered by the Authors.

## **8. ROLE OF THE AUTHORS**

Secondary data collection as well as preparation of this article was undertaken by all the authors.

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## 10. ADDITIONAL READING

In order to better appreciate the findings of our paper, we recommend additional reading of the following:

Government of the Republic of Zambia (2021). Report of the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance for the Fifth Session of the Twelfth National Assembly. Lusaka: National Assembly of Zambia.

## 11. KEY TERMS AND DEFINITIONS

**Land Conflict:** Land conflicts refer to heightened social disputes involving at least two parties in situations where land is a subject of competition (Economic Commission for Africa, 2022).

**Specialised Land Court:** are tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed (Zimmer, 2009).