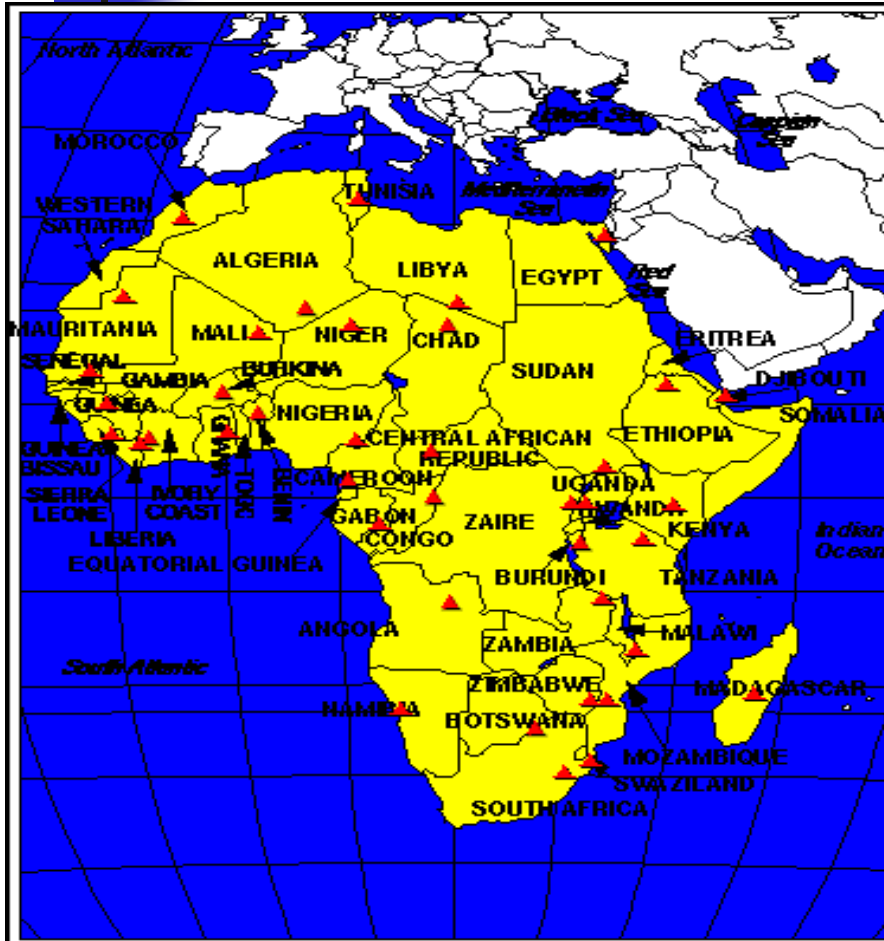
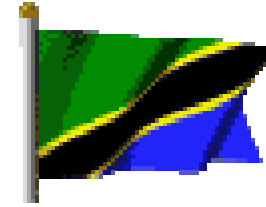


TANZANIA - LOCATION





THE INTERNATIONAL ASSOCIATION OF WOMEN JUDGES BIENNIAL CONFERENCE

VENUE: PANAMA CITY, PANAMA DATE: 25TH TO 27TH MARCH, 2008

THEME: ACCESS TO JUSTICE

TOPIC: MEDIATION

SUB-TOPIC: MEDIATION UNDER CUSTOMARY LAW IN
TANZANIA

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MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

- **BACKGROUND:**

Definition: The Oxford Advanced Learner's Dictionary defines 'mediation' as an informal process of finding a solution to a disagreement between persons or groups of people. [Page 233]



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- **I would add to this definition that mediation is informal in that it is a flexible method of resolving disputes without being bound by rules of evidence, procedure or legal technicalities relating to pleadings, and, or drawn orders et cetera.**



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

- **Although the Civil Procedure Act, 1966, Cap 33 R.E. 2002 provides for mediation under Order VIII A to C, in terms of pre-trial settlements and Scheduling Conferences, speed track of cases, final pretrial settlement and scheduling conferences, the word mediation is not defined under the said Act**



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

Mediation is provided for under the Ward Tribunal Act, 1988 as amended, Cap 206 R.E. 2002. The Ward Tribunal is a customary law, quasi-judicial body for mediating small claims, land disputes and minor offences at the Ward level. A ward comprises of several villages in a locality of a District Council or urban authority under the local government system.



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However, like under the Civil Procedure Act, Cap 33 R.E. 2002, mediation is also not defined under the Ward Tribunal Act, Cap 206.

The definition in the Oxford Advanced Learner's Dictionary, therefore, suffices in that mediation is essentially an informal method of parties talking, suggesting, offering terms in order to resolve their disagreement or dispute peacefully.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

It is only when mediation fails that the right to appeal against a Ward Tribunal decision or order would accrue.

i. THE CONSTITUTION:

The Constitution of the United Republic of Tanzania, 1977, Cap 2 R.E. 2002, provides for mediation.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

Hence Article 107A

(1)

(a) to (c).....

**(d) Kukuza na kuendeleza usuluhishi
baina ya wanaohusika katika
migogoro.**

**Meaning: (d) to promote and enhance
mediation and reconciliation
between litigants.**



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

II. THE LAW OF MARRIAGE ACT, 1971 Cap 29 R.E. 2002

All the functions of Marriage Reconciliation Boards in terms of Government Notice No. 108 of 1971 under the Law of Marriage Act, 1971 have been vested in the Ward Tribunal Act, Cap 206.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

In this regard, spouses intending to seek divorce in civil or customary law marriages, have to seek the intervention of the Ward Tribunal and it is only when the estranged spouses fail to reconcile, would the Ward Tribunal issue a certificate to the complainant to enable her to file a divorce cause in court. [The Ward Tribunal Act, Cap 206, Schedule, Part III item 2]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

Suffice it to say here, that Christians and Moslems have Marriage Boards within their institutions but non-practising believers often prefer the Ward Tribunals for purposes of obtaining certificates authorizing them to sue for divorce.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

III. CUSTOMARY LAW:

Reconciliation, mediation and negotiation have been age long methods of resolving disputes under customary law in matters of border disputes, cattle trespass, cattle rustling, dowry, adultery cases, custody and affiliation matters.

As of now, the Ward Tribunal Act, 1988, Cap 206 R.E. 2002 provides for the establishment of ward tribunals in the respective wards.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

Generally speaking, wards comprise of several villages in a local government area i.e. the District Council or its equivalent urban authority be it a town council, municipality or city.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

(A) JURISDICTION:

1. The primary function of each Ward Tribunal is to secure peace and harmony in the area for which it is established by mediating and endeavoring to obtain just and amicable settlement of disputes.

[Section 8(1) Cap 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

2. A Ward Tribunal has power to guide and assist the parties to reach a settlement by mediation until they reach an amicable settlement.

[Section 8(2) Cap 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

3. A Ward Tribunal can exercise jurisdiction in all disputes, orders or directives passed by the appropriate local authority of the Ward.

[Section 8(3) Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

4. As reflected in the Schedule to the Ward Tribunal Act, the tribunal has criminal and civil jurisdiction.

[Section 9(1) Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

- 5. Under the provisions of Section 167(2) of the Land Act, 1999, Cap 113 R.E. 2002.**

A Ward Tribunal shall have jurisdiction in the area of a district council and shall be a complete court for mediating on land disputes in the particular ward.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

If mediation fails, the complainant has a right of appeal to the District Land and Housing Tribunal.

[Section 167(3), Cap. 206]

A similar provision exists in Section 61 of the Village Land Act, Cap 114.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

6. The Ward Tribunal has jurisdiction in land disputes. [Section 23 Cap 206 R.E. 2002.

(B) COMPOSITION OF WARD TRIBUNALS

1. A Ward Tribunal comprises of not less than four and not more than 8 members elected by the Ward Committee of the respective Ward.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

2. On recommendation by the Ward Committee, the District or urban authority in the area, will appoint a chairman of the tribunal from among the elected members.
3. The Secretary of the Tribunal must be literate i.e. able to read and write.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

2. On recommendation by the Ward Committee, the District or urban authority in the area, will appoint a chairman of the tribunal from among the elected members.
3. The Secretary of the Tribunal must be literate i.e. able to read and write.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

- (d) A legally qualified person or any other person employed in the Judiciary;**
- (e) A person below the age of 18 years;**
- (f) A mental patient;**
- (g) A person with previous conviction involving an offence of moral turpitude; or**



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

- (h) A none citizen of the United Republic of Tanzania.

Ward Tribunal members are elected for 3 years subject to re-election.

[Sections 5 to 6 of Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

(D) PROCEEDINGS BEFORE THE WARD TRIBUNAL:

Under the provisions of Section 17 of the Ward Tribunal Act, Cap. 206

- A person may make an oral or written complainant to the Tribunal.
- If the complainant is oral, the Secretary or other officer who receives it, must reduce it into writing and have the complainant sign it.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

- The Secretary shall issue summons showing the time, date and place of hearing to the parties and require them to appear on the scheduled date . [Section 13(1) Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

(E) PROCEDURE:

The Procedure of the Ward Tribunal is flexible:

- The Tribunal is not bound by rules of evidence or procedure.

[Section 15(1) Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

- The Tribunal shall regulate its own procedure.
[Section 15(2) Cap. 206
- The Tribunal shall conduct hearings and examine documents produced by the parties.
[Section 15(3) Cap. 206
- The Tribunal shall pursue principles of justice which is to say; the Tribunal shall not give any decision or any complainant unless –



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

- i. it has to give an equal opportunity to each party to explain his part of the story and to call witnesses;
- ii. a member of the Tribunal who has a personal interest in a matter before the Tribunal, must disclose the same and not take part in the proceedings.
[Section 16 Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

The Tribunal must strive to reach a decision which will secure a peaceful and amicable resolution of the dispute, reconciliation of the parties and the furtherance of social and economic interests in the respective Village and Ward.

[Section 16 Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

(F) ORDERS BY THE WARD TRIBUNAL:

1. The faulty party to apologize to the other party or
2. the party at fault to be admonished at a Village Assembly meeting or a Ward meeting, or.
3. the party at fault may be ordered to pay a fine as per the schedule to the Act; or
4. a party at fault to repay what is due to his adversary; or.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

5. the party is default to do specified community work; or
6. the party at fault to pay compensation; or
7. the party in default to carry out sanctioned acceptable in the particular ward; or
8. to perform any customary act or acts which signify reconciliation.

[Section 17 Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

Customary acts signifying reconciliation could be slaughtering a cow for communal feasting, or avail the parties and the villagers with local brew; or allowing the adversary to retain the trial dispute property.



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

ENFORCEMENT OF WARD TRIBUNAL DECISIONS/ORDERS: [Sections 18 & 19 Cap. 206]

1. None compliance with the Tribunal's Order renders the party in default liable to a contempt offence. If convicted, the party would be liable to an offence, and if convicted, to a fine not exceeding sh.2,000/= or to 2 months imprisonment in default or to both a fine and imprisonment.
[Section 18 & 28 Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

2. Committal proceedings shall be endorsed by the Primary Court with jurisdiction over the area. The Primary Court Magistrate shall duly endorse the Order or revise it if it is ultra vires or refer it to the District Court for correction.

[Section 19(7) Cap. 206]



MEDIATION UNDER CUSTOMARY LAW IN TANZANIA

A dissatisfied party can appeal to the Primary Court within 60 days from the date of delivery of the Order complained of. There is no right of appeal for fines not exceeding sh. 500/= in criminal matters or sh. 800/= award in civil claims.

[Section 19970 Cap. 206]

EXAMPLES OF APPEALS FROM WARD TRIBUNALS TO PRIMARY COURTS, YEAR 2007

NO. OF APPEAL	PARTIES	NATURE OF DISPUTE	ORIGINATING WARD TRIBUNAL
1/2007	Ramadhani Mohamed versus Asha Mohamed	Claim of sh. 360,000/= unpaid debt.	Kimara Ward Tribunal
2/2007	Jamila Mohamed versus Asha Ismail	Land Dispute	Kimara Ward Tribunal
5/2007	Cakstutys Nema versus Justine Kiria	Claim of unpaid debt of sh. 220,000/=	Kimara Ward Tribunal
6/2007	Lazaro Gervas versus John Biherara	Claim of purchase price of 50 bags of maize valued at sh. 400,000/=	Kimara Ward Tribunal



EXAMPLES OF APPEALS FROM WARD TRIBUNALS TO PRIMARY COURTS, YEAR 2007

NO. OF APPEAL	PARTIES	NATURE OF DISPUTE	ORIGINATING WARD TRIBUNAL
7/2007	Mathias Kihamba versus Amina Saidi	Claim of unpaid debt of sh. 1,172,500/=	Kimara Ward Tribunal
3/2007	Elizeus Mpinzile versus Ally Chatto	Claim of unpaid debt of sh. 115,000/=	Mavurunza Ward Tribunal
4/2007	Damas Makoye versus Julia Gavile	Claim of unpaid debt of sh. 3,000,000/=	Mavurunza Ward Tribunal

EXAMPLES OF APPEALS FROM WARD TRIBUNALS TO PRIMARY COURTS, YEAR 2007

NO. OF APPEAL	PARTIES	NATURE OF CLAIM	ORIGINATING WARD TRIBUNAL
1/2007	Rashidi Iddi versus Mwanaidi Juma	15 pairs of shoes valued at sh. 250,000/=	Magomeni Ward Tribunal
2/2007	Arafa versus Mussa Saidi	Fridge and Video as division of matrimonial assets after dissolution of marriage	Magomeni Ward Tribunal
3/2007	Maganga Charles versus Mhina Ramadhani	Unpaid debt of sh. 100,000/=	Kinondoni Ward Tribunal

EXAMPLES OF APPEALS FROM WARD TRIBUNALS TO PRIMARY COURTS, YEAR 2007

NO. OF APPEAL	PARTIES	NATURE OF CLAIM	ORIGINATING WARD TRIBUNAL
4/2007	Athumani Juma versus Mhando John	Failure to pay a service charge for maintaining a water tank	Kinondoni Ward Tribunal
6/2007	Paulo Mubarak versus Hamisi George Kilondo	Claim of unpaid debt of sh. 200,000/=	Kinondoni Ward Tribunal
5/2007	Mohamed Ibrahim versus Mathias Peter	Claim of unpaid debt of sh. 75,000/=	Magomeni Ward Tribunal

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SCHEDULE OF CRIMINAL AND CIVIL MATTERS MEDIATABLE BY WARD TRIBUNALS

NO.	OFFENCES	MAXIMUM PENALTY
1.	Going armed in public c/s 84 of Penal Code, Cap 16.	Sh. 800/= fine or 2 years imprisonment in default
2.	Forcible detainer c/s 86 of Penal Code	Sh. 800/= fine or 2 years imprisonment in default
3.	Affray c/s 87 of Penal Code, Cap 16.	Sh. 500/= fine or 6 months imprisonment in default
4.	Challenging to fight a duel c/s 88 of Penal Code, Cap 16.	Sh. 800/= fine or 2 years imprisonment in default.
5.	Fouling water c/s 185(1) of Penal Code Cap 16.	Sh. 2,000/= fine or 2 years imprisonment in default.



SCHEDULE OF CIVIL JURISDICTION [CAP 206, SCHEDULE, PART III]

1. Minor disputes relating to dowry, adultery and all land disputes.
2. All the functions of Marriage Reconciliation Boards under Government Notice No. 108/1971 under the Law of Marriage Act, 1971 Cap 29 R.E. 2002.
3. Any matter the parties bring before the Ward Tribunal for reconciliation or which the Minister for Justice gazettes.



CONCLUSION:

Ward Tribunals mediate on small claims, petty offences, and reconcile parties to promote peaceful co-existence and understanding in the village and ward so that people can survive and work hard to attain a good standard of living and their set social, economic and political goals.

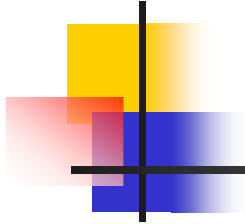


CONCLUSION(Contd)

As the Ward Tribunals gain experience, work efficaciously and adhere to principles of natural justice, people at the grass root level will enjoy mediation as a means of resolving disputes informally, cheaply, amicably and expeditiously vis a vis the expensive, rigid and technical court system.

SCHEDULE OF CRIMINAL AND CIVIL MATTERS MEDIATABLE BY WARD TRIBUNALS

NO.	OFFENCES	MAXIMUM PENALTY
6.	Common Assault c/s 240 of Penal Code Cap 16.	Sh. 1,000/= fine or 1 year imprisonment in default.
7.	Failing to take precautions against animals one possesses or keeps c/s 233(d) of Penal Code, Cap 16.	Sh. 300/= fine or 6 months imprisonment in default.
8.	Abduction of girls under 16 year's c/s 134 of Penal Code.	Sh. 1,000/= fine or 2 years imprisonment in default.
9.	Desertion of children c/s 166 of Penal Code, Cap 16.	Sh. 1,000/= fine or 2 years imprisonment in default
10.	Neglecting to provide food for children c/s 167 of Penal Code, Cap 16.	Sh. 400/= fine or 1 year imprisonment in default.
11.	Failure to enroll and send children to primary school c/s Compulsory Enrolment Attendance Order, 1977 Cap 353.	Sh. 100/= fine or 1 month imprisonment in default: 1 st Offender 2 nd Offender: sh. 500/= fine or imprisonment for 2 months subsequently: Imprisonment for 6 months.



END OF PRESENTATION THANK YOU