# THE UNIVERSITY OF DODOMA.

## COLLEGE OF HUMANITIES AND SOCIAL SCIENCES.

SCHOOL OF SOCIAL SCIENCES.

## DEPARTIMENT OF LAWS.

**COURSE:** Constitution and Legal System II

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**COURSE INSTRUCTOR:** MR. MGAYA

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**Question**. Primary court have both criminal and civil jurisdiction within the area of their establishment. With authorities, discuss matters that are within the jurisdiction of primary court and procedures of the court**.**

**Jurisdiction** is defined as a power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Or it is an authority constitutionally conferred upon a court or judge to pronounce the sentence of the law or to award the remedies provided by law upon a state of facts proved or admitted, or it can be said to be a power or control granted to a legal body to administer justice within the area of responsibility, to hear and determine different dispute arose within the area of responsibility. For example District court has authority within District area.

A primary court is the lowest court in the court system. It is established under Section 3 of the Magistrate Court Act[1] which states that;

Subsection(1)

*" There hereby established in every district primary court of the district in which shall ,subject to the provision of any law for the time being in force, exercise jurisdiction within the respective districts in which they are established"*

Subsection(2)

*"The designation of a primary court shall be the primary court of the district in which it is established…….* And this can be termed as ***territorial jurisdiction***

[1] CAP11 [RE:2002]

The courts in Tanzania involves the primary Courts, District courts/Resident Magistrate Courts, High Court and Court of Appeal. These courts have different powers to hear and determine different matters on the area of responsibility. Courts jurisdiction is restricted in three main ways: geographical location of the court, subject matter and value of the subject matter. Through these there are many categories of jurisdiction which are original jurisdiction, Appellate jurisdiction, concurrent jurisdiction, pecuniary jurisdiction, extended jurisdiction, review jurisdiction and revisionary jurisdiction (supervisory power)

## JURISDICTION OF THE PRIMARY COURT IN CIVIL MATTERS

Generally the Primary court has ***Original jurisdiction*** on civil matters. Under civil matters, the primary court has jurisdiction to all civil matters where a law applicable is customary law or Islamic law as provided under Section 18(1) (a) (i) of the Magistrate's court Act[2] . Also in the case of ***JACKOB MWANGOKA V GURD AMON***[3] the court among other things stated that "*the Primary courts have jurisdiction in all proceedings of civil nature where the law applicable is customary law" Therefore in this case customary tort is justifiable to be held in the primary court*".

Furthermore the Act provides the ***pecuniary jurisdiction*** of this court. In here the pecuniary jurisdiction is related to money which address whether a court of law can try cases and suits of the monetary value or amount of the cases or suits in question. The pecuniary jurisdiction of the primary court is that it covers debts due to the republic of suits not exceed five million and on civil debt arising out of contract, if the value of the subject matter of the

[2] Ibid.
[3] 1987 TLR 165

suit does not exceed three million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value except land matters that deal with the ownership of such piece of land (title). This means a primary court has no jurisdiction to hear and determine land matters on ownership of the title.

For instance in the case of ***ASHA MOHAMED V ZAINAB MOHAMED***[4] the court stated that *"A Primary court has no jurisdiction to entertain proceedings relating to immovable property on a piece of land held on a government lease or right of occupancy"*
However there is rumors that the pecuniary jurisdiction of primary court is amended but there is no any piece of Act that prove the same. Therefore the same section mentioned above is still prevailing.
Primary courts also has jurisdiction in all ***matrimonial proceedings*** relating civil and Christian marriages and all proceedings in respect of which jurisdiction is conferred on a primary court by any other law, as provided under Section 18(1)(b) and (d) of the Magistrates Courts Act[5]

Lastly is that after the primary court hear and determine the disputes on its limit power and any of the party is aggrieved with such a decision, the law provides for him a right to appeal to the District court. This right is explained when a magistrate is completed to pronounce sentence. It is provided under Section 20 of the Magistrates' Courts Act[6].

**However on proceedings**, a primary court magistrate has to seat with not less than two assessors and their absence is fatal and it can invalidate the whole proceeding and decision. So a primary court magistrate has to adhere to Section 7 of the Magistrates' court Act.
Also there are many cases decided by the superior courts on the importance of the assessors in a primary court where one of them is the case of

[4] [1983] TLR 59
[5] CAP 11 [RE:2002]
[6] Ibid.

***MARIAM ALLY PONDA V KERRY KISSINGER HASSAN***[7] where in this case among other things, the court held that "*assessors in the primary courts have equivalent and complementary powers to those of the magistrates*".

Therefore from the above mentioned case, the assessors are very important in the primary court proceedings whether in civil matters or in criminal matters. From here let's see another case of ***LEXANDA KILLIAN V LINUS KINUNDA***[8]***.*** whereby in this case the court held that "As a matter of practice it is irregular to change assessors during trial " So it is prohibited even to change assessors during trial but it can be allowed if no failure of justice has been occasioned.
Conclusively is that apart from the jurisdiction of primary court, the primary court is governed with the Magistrates' Courts Act.

**JURISDICTION OF THE PRIMARY COURT IN CRIMINAL MATTERS.**

Primary court have also ***Original jurisdiction*** on criminal matters Primary courts have no general criminal jurisdiction except for what is covered by the first Schedule as per S.18 (1) of MCA[9]. Under S.18 (3) MCA the minister may increase the list of offences triable by the primary court where he deems fit, and among the list may be the criminal offences. The primary court is governed with the Primary Courts Criminal Procedure Code and Rules of Evidence in the matters related to criminal cases.

In conclusion the Primary court has a power to issue summons to any person to attend before the court for the purpose of giving evidence, power to issue warrant for the arrest of any person, to issue commission for the examination of witness and to take evidence on commission, also a power to order injunction as per section 19 (3) of the Magistrate Court Act.

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[7] [1983] TLR 223
[8] [1988] TLR 71
[9] CAP 11 [RE:2002

## REFERENCE

**BOOKS**

FOUNDATION PAPER 2, THE LEGAL FRAMEWORK BY BPP PUBLISHER

MAGISTRATE MANUAL

**STATUTES.**

MAGISTRATE COURT ACT (Cap 11 R.E 2002)

**CASE LAWS**

TANZANIA LAW REPORT& HIGH COURT DIGEST