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Dangerous Liaisons

Navigating Women's Land Rights and Disputes

Dolphine Isinta

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PART I

Study Background

1

Introduction: Gendered Land Relations

Land is widely acknowledged as the main building block of social, economic, and political relationships in sub-Saharan African (SSA) countries, where agriculture is the backbone of the economy (Toulmin, 2009; Cotula & Mathieu, 2008; Quan *et al.*, 2004). With agriculture as a dominant sector contributing to these countries' GDP (Davis *et al.*, 2017), the economic value of land as a factor of production and key to food security is often emphasised. However, viewing land only as an economic resource neglects its broader values and meanings.

Discussing the multiple possibilities of valuing land, Leonardie and Browne (2018) point out that, besides subsistence, land retains social, spiritual, and cultural meanings within the broader customary system. This is partly because social relationships in most communities in SSA are ingrained in land, where membership to a given clan or household determines access¹ to land (Djurfeldt, 2020; Moyo, 2016; Verma, 2007). In these communities, members of a lineage commonly share land passed down generations through inheritance. Studies on land relations indicate that land evokes emotional and spiritual attachments cemented by the notion that land links living family members to their ancestors and future generations, making it an inalienable resource (Leonardie & Browne, 2018; Rakotsoane, 2005). Rakotsoane emphasises that the disturbance of this relationship is met with serious opposition, such as has been evident in the struggle for independence. From their study, Leonardie and Browne point out that land struggles have underlying competitions for “power and the legitimacy of competing claims to authority” (2018: 2). Therefore, researchers must comprehend land struggles broadly, transcending the economic value to recognise the unquantifiable social and cultural values.

The social value of land is a central characteristic of customary land tenure, where access to land is embedded in kinship relations organised around gender identities. Whitehead and Tsikata point out that, within SSA, men and

¹ Ribot & Peluso (2003: 1) define access as the “the ability to derive benefits from things”, like land.

women have distinct land claims because “the genders have very differentiated positions within the kinship systems that are the primary organising order for land access” (2003:77). Some authors have described customary norms as instruments of oppression and discrimination used to systematically marginalise women’s land claims (Bonye, 2021; Sone, 2019; Kalabamu, 2006). A good example is where customary norms restrict inheritance rights² to the male kin while requiring women to access land through relationships with men. This practice positions men as ‘owners’ of land, who define women’s secondary claims depending on the relationships, either as daughters or sisters before marriage, as wives after marriage or as mothers when widowed (Zuka, 2019; Tripp, 2004). This practice predisposes women to land struggles when the legitimacy of their land claims is challenged. This is especially common when the relationships through which the women access land are severed through divorce, separation, or the death of the husband. Besides, as land sizes diminish down generations and the economic value increases, women’s land claims are either weakened or extinguished by those wielding power (Leonardie & Browne, 2018; Whitehead and Tsikata, 2003:78)

Similarly, the introduction of private land ownership in most SSA countries during the colonial period to replace customary land governance has largely failed to secure women’s land rights. The colonial governments argued that formalising customary land claims would improve tenure security through titling as an incentive for ‘landowners’ to invest in the land, which would be a pathway to improving productivity and enable land transfers through the market (Place & Migot-Adholla, 1998; Atwood, 1990). However, some authors have shown that titling failed to improve land productivity (Place & Migot-Adholla, 1998). Instead, land registration under male household heads diminished women’s customary land claims by weakening the customary structures that safeguarded such claims (Harrington & Chopra, 2010; Lastarria-Cornhiel, 1997; Davison, 1988; Coldham, 1978).

Today, customary land governance structures continue to exist in most SSA countries alongside the statutory tenure systems, creating a complex dualistic land governance system (Klopp & Lumumba, 2017). Harrington and Chopra (2010) point out that this form of land governance works against women,

2 I am using the term land rights here and at other occasions in the text not only in the narrower sense of individual property rights or formal land titles, but in the broader understanding of women’s entitlement to have land at their disposal, and their *de facto* access to land and its products.

especially in male-dominated communities where men wield power, allowing them to alternate between the two systems to challenge women's land claims.

1.1 Why care about women's land rights?

Studies have shown that securing women's land rights is key to their economic and socio-political empowerment and a significant pathway to sustainable livelihoods (Doss & Meinzen-Dick, 2020; Djurfeldt, 2020; Roy, 2015; Doss *et al.*, 2014; Pallas, 2011). Economically, women tend to increase investment in farms (including farm input, use of extension services and technology, and other long-term investments) when their land rights are secure (Meinzen-Dick *et al.*, 2019). As a result, they have higher incomes (Peterman, 2011; Katz and Chamorro, 2002) and higher personal savings (Doss, 2006). An increase in women's income is significant for their households because they invest higher percentages of their income in household welfare (Doss *et al.*, 2014; Verma, 2001; Rao & Rana, 1997). This reduces household poverty (Meinzen-Dick *et al.*, 2019; Doss, 2006), improving nutrition (Nyantakyi-Frimpong, 2017; Alemu, 2015; Allendorf, 2007; Doss, 2006), access to education (Deininger *et al.*, 2010; Doss, 2006; Katz & Chamorro, 2002) and access to healthcare (Mishra & Sam, 2016; Quisumbing & Maluccio, 2003).

Secondly, other studies indicate that securing women's land rights improves their social bargaining power. As such, women holding secure claims on land tend to make autonomous decisions and participate more in household and community decision-making processes than those without these rights (Slavchevska *et al.*, 2020; Doss, 2006; Katz and Chamorro, 2002). Slavchevska and colleagues explain that while women without land are often excluded from household land management and income decision-making processes, the opinions of women with formal land ownership rights are sought, voiced and heard. These findings complement subsequent studies showing that women with formal land rights are more likely to attain higher education, have better healthcare, and are less vulnerable to domestic violence (Kagaba, 2015; Grabe *et al.*, 2015). Therefore, securing women's entitlements to land is bound to empower women economically, socially, and politically. These rights are key in improving household welfare sustainably through improved access to education, nutrition, and healthcare, especially in communities where land is the main source of livelihood. In addition, the United Nations Development Programme (UNDP) reiterates that securing women's access

to, and ownership of, land is a key indicator of sustainable development under Sustainable Development Goal (SDG) 5 (indicator 5. a.2).³

1.2 Efforts to improve women's land rights

Campaigns for strengthening women's land rights are common in SSA countries. For instance, in October 2016, women and various civil society organisations from over twenty SSA countries convened in Tanzania to protest gendered land relations. The participants agreed on a charter of demands⁴ that they launched on top of Mt. Kilimanjaro⁵ before presenting it to the African Union (AU), calling governments to action. The demands consisted of proposals for statutory legislation, including the prohibition of gender-discriminative customary practices and the inclusion of women in land governance. The charter also emphasised the critical role of customary instrumentalities in strengthening women's land rights by aligning customary practices to statutory legislation and empowering local leaders as custodians of culture to champion women's land rights.

There are divergent debates on the best approach to improving and strengthening women's land rights. While non-gender specialists advocate for reforms starting with customary structures, most gender specialists advocate for statutory legislation (Whitehead and Tsikata, 2003). The customary proponents insist that since customary norms are flexible, they can be adapted to recognise women's land claims and then protected using statutory legislation. In their study on "policy discourses of women's land rights in sub-Saharan Africa," Whitehead and Tsikata point out that proponents of the customary approach oppose the statutory legal approach because it contributes to legal pluralism, further weakening women's land claims. Therefore, proponents of this approach argue that the customary approach is better placed to prevent the coexistence of conflicting sets of laws. Besides, they insist that customary systems are accessible to women, cost-effective and time-efficient.

3 Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.

4 Women to Kilimanjaro (2016). Charter of Demands: Actualizing Women's Land Rights in Africa. <https://www.actionaidusa.org/wp-content/uploads/2016/10/Kilimanjaro-Charter-of-Demands.pdf>.

5 Climbing Mt. Kilimanjaro symbolizes the great deal of effort needed in addressing women's land rights in SSA.

On the other hand, the proponents of the statutory legislation approach oppose starting with customary laws because they (customary laws) are already discriminative against women. Rather, they insist that guaranteeing women gender-equal land rights is a fundamental human right provided in international instruments such as the Universal Declaration of Human Rights (UDHR), the Beijing Platform for Action (1995) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). These instruments emphasise the elimination of all legal and structural barriers to gender-equal access to resources like land. The proponents of the statutory legislation approach argue that even though statutory laws are sometimes ambivalent and often influenced by social practices, they are better placed to secure women's land claims. They (the proponents of the statutory legal approach) further recommend the inclusion of women in administration and governance positions to implement the statutory reforms. They argue that the female administrators will ensure the adoption of the statutory legislation in practice (Whitehead and Tsikata, 2003).

Both the customary and legal approaches pose several challenges that limit their effectiveness in improving and securing women's land rights. For instance, although the customary systems were effective in the pre-colonial period when land was abundant and populations scarce, they might not be as effective in the current land scarcity and male-dominated environment. Moreover, some authors have shown that colonial governments subjected customary systems to Western perceptions of property, altering the original practices (Tsikata, 2016; Ossome, 2014; Karanja, 1991). This fluid, flexible, negotiable, and contestable nature of the customary norms limits their reliability in strengthening women's land rights because the norms are vulnerable to exploitation by those wielding power (Barry & Danso, 2014). Additionally, customary norms are context-specific and commonly vary from one community to another, limiting their broader generalisations within statutory legal frameworks.

On the other hand, statutory legislation is unreliable for securing land rights in Africa (Tsikata, 2016) because customary land claims remain deeply embedded in inalienable kinship relations. Thus, instead of replacing customary practices, the two sets of laws often coexist. The subsequent legal pluralistic environment allows those wielding power to cherry-pick laws that favour them (Harrington & Chopra, 2010). Whitehead and Tsikata (2003) add that the statutory provisions often discriminate against women by posing such challenges as inaccessibility due to distance to formal institutions like land offices and courts. Moreover, decisions made by formal

institutions commonly overlook the local power structure arenas that women must adhere to in society to practice the legal provisions. Whitehead and Tsikata also point out that statutory structures are sometimes influenced by customary laws and remain gender-biased. For example, even though formal land institutions encourage land registration as a tool to secure women's land claims, land is commonly registered under men, even in cases where women have acquired the land independently.

The efficiency of statutory reforms in practice depends on how local communities perceive the reforms because land rights are embedded in social and gender relations. Therefore, changes in women's land rights are interpreted as altering the communities' underlying power relations. As Leonardie and Browne (2018) have noted, land claims are linked to power, legitimacy and authority within customary communities and a social transformation altering the power structures is characterised by contestation because it extends beyond the struggle over land to include the transformation of underlying power relations. Perhaps this explains why statutory legislation providing gender equality in access to, use of, control over, and ownership of land remains theoretical while deeply entrenched patriarchal norms persist in practice, marginalising women. Whitehead and Tsikata conclude that regardless of the statutory efforts, "law reform has to rely on male-dominated institutions to be passed and implemented" (2003: 93). Hence, such far-reaching changes can only be adopted and practised if they are somehow accepted within the social customary power structures.

Most SSA governments have resorted to statutory reforms to improve and strengthen women's land rights. The goal is to replace the 'discriminative' customary practices (limiting land ownership to men) with 'modern' private land ownership structures (promoting gender equality) (Adoko & Levine, 2008: 101; Englert & Daley, 2008: 6). However, the legislations have often failed to be effective in practice because customary norms are deeply entrenched in communities' lifestyles (Jochnick, 2018).⁶ For instance, Djurfeldt (2020) points out that the Rwandan post-genocide government introduced statutory reforms, described as state-of-the-art in the African context,⁷ prohibiting all forms of gender discrimination in access to and

6 Jochnick, C. (2018). Closing the gap between policy and practice on women's land rights. World Bank Blogs. blogs.worldbank.org/developmenttalk/closing-gap-between-policy-and-practice-women-s-land-rights. Accessed 25.05.2020.

7 Referencing Ali, D.A., Deininger, K., Goldstein, M. (2014). Environmental and gender impacts of land tenure regularization in Africa: Pilot evidence from Rwanda. *J. Dev. Econ.* 110, 262–275.

ownership of land. However, these reforms are limited in practice because they apply to formally registered monogamous marriages, leaving out women and children in customary polygynous unions that are common under customary arrangements. Studies from other countries, like Uganda, show that instead of replacing the discriminative customary norms, the two sets of law coexist, creating loopholes exploited to further deteriorate women's land rights. Adoko and Levine (2008) demonstrate that although Uganda's statutory land reforms were established to safeguard women's customary land rights, titling weakened those rights that were initially safeguarded by customary laws (2008: 103-4).

1.3 The Kenyan context

Statutory land reforms were initiated in Kenya during the colonial period through the Swynnerton Plan of 1954, which guided the registration of households' land under male household heads (Nyagwencha, 2016). The reforms intended to introduce a uniform national land governance system that the colonial government argued would secure customary claims and, in return, improve agricultural productivity (Coldham, 1978). However, this created a dualistic land governance system (Klopp & Lumumba, 2017) that Kenya's post-colonial government formally embraced in its first independent Constitution. Section 82(4) of that Constitution provided for communities to use customary law in land governance. However, these customary norms were characterised by gender discrimination, excluding women from accessing and owning land independently. These inequalities were addressed by the adoption of principles of gender equality under the 2010 Constitution.

The 2010 Constitution provided security for women's land claims through provisions promoting gender-equal access to and control over land (Constitution of Kenya, 2010: 60[f]) and limiting the application of customary laws in defining women's land rights (Constitution of Kenya, 2010: 2[4]). Thus, it replaced the prejudices that limited women's access to land through relationships with men. Theoretically, the 2010 Constitution only accommodated customary laws that were not repugnant to justice and morality, nullifying any practices that contradicted the constitutional provisions. In a nutshell, Kenya's Constitution formally eliminated all forms of discrimination against women in access, use, ownership, and land governance (see chapter three).

Despite the reforms, women's access to and control over land remains limited (FAO, 2017). Less than a tenth of formal landowners in Kenya are women (FIDA, 2017; Young, 2012). Moreover, women are frequently involved in land disputes; they are threatened, evicted from their land, attacked, and sometimes murdered to this day. Some authors have explained that the existing disparities and disputes result from customary norms posing structural and social barriers that limit women's access to land only through their relationships with men (Harari, 2019; Shaffer, 2019). Other authors insist that regardless of the land governance systems in place, underlying patriarchal power dynamics enable those in power, particularly men in the customary context, to abuse land governance systems, drawing from either set of rules to challenge women's land rights (Harrington & Chopra, 2010; Mackenzie, 2003). Husbands alter marriages by expelling, divorcing, separating from their wives or marrying more wives. In-laws evict widows, while fathers and brothers deny their daughters and sisters land inheritance rights. Moreover, since customary law positions men as judges in arising land disputes, they retain the authority to maintain the status quo by frustrating efforts to strengthen women's land claims (Harrington & Chopra, 2010).

The legislative approach to securing women's land rights is a significant step towards eliminating gender discrimination in Kenya's access to, use of, and ownership of land. However, the realities on the ground are changing very slowly. Most studies on women and land over the last years have focussed on large-scale gender disparities in land ownership and the inconsistencies between the statutory and customary laws. Limited research has focused on whether and how these statutory reforms have secured women's land rights in practice. This study focuses on women's experiences in land disputes to find out how the statutory reforms interact with local power structures to influence women's land struggle experiences, the typical trajectories of such struggles, and the reliability of the current formal and alternative dispute resolution avenues. The empirical work grounding this study was conducted among the *Abagusii* of western Kenya between June and September 2018.

1.4 An introduction to Kisii County, Kenya

Kisii is one of the 47 County governments formed in response to Article 6(1) of the 2010 Constitution. Devolved governance distributed some ethnic communities into separate Counties bearing numerous socio-political, economic, and geographical similarities. The *Abagusii* ethnic community was split into Kisii and Nyamira Counties (northeast). Other Counties bordering

Kisii include Narok to the south, Homabay and Migori to the west, Kisumu to the north and Bomet to the southeast.

Kisii County is located about 30 miles east of Lake Victoria, lying just below the equator at around 1° south and between 34° and 35° east. The county is subdivided into eleven administrative units and nine political units.

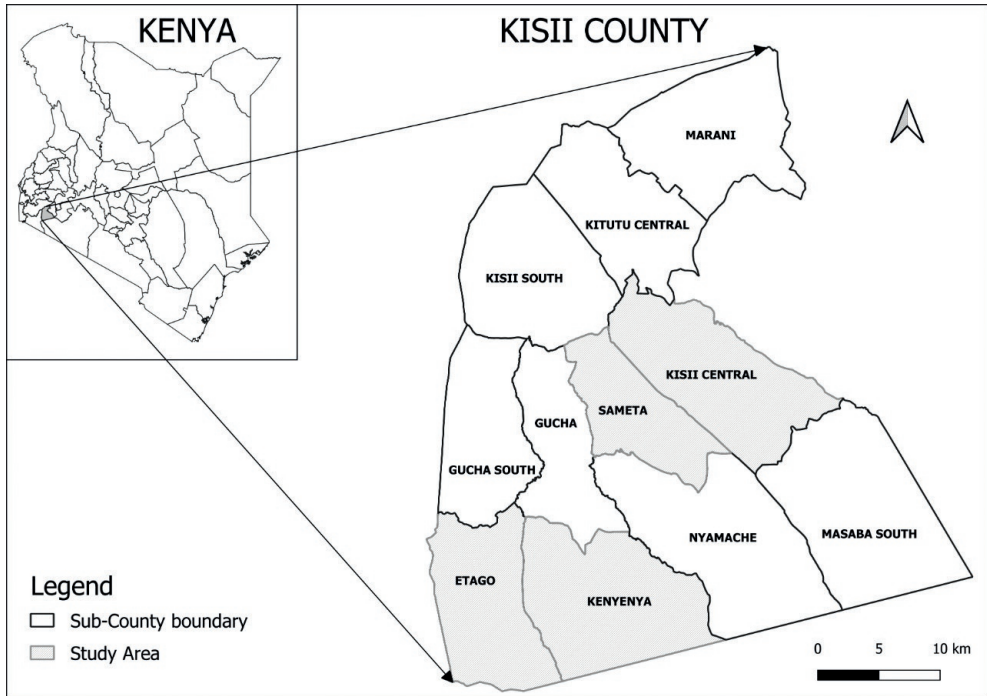


Figure 1
Map of Kisii County

Kisii County has a hilly landscape lying between 1500 and 2150m above sea level, covering approximately 1317km² with about 988km² of arable land. With more than three-quarters of its land under cultivation, Kisii County is one of Kenya's most intensely cultivated agricultural zones. The county is characterised by very fertile soil that is well-drained and conducive for farming. It has highland tropical weather with abundant rainfall that is well distributed throughout the year. The average annual rainfall is approximately 1500mm with two rainy seasons. The long rains occur between March and June, while the short rains occur between October and December (KNBS,

2015). The temperatures range between 15 and 30°C with an annual average of 26°C. Although forests covered most of the land in Kisii County in the 19th century, these forests have been cleared for settlement and farming activities.

Kisii County is predominantly rural, with high levels of unemployment, particularly among the youth. Most of the county's population depends on small-scale agriculture as the main economic activity. The main cash crops include "banana, maize beans, tea, sugarcane, coffee and horticultural crops" (KNBS, 2015: xiv). Tea and coffee are the main household income-generating cash crops. While most households plant and sell tea, others earn daily wages from plucking tea for others. Livestock farming of cattle, goats, sheep, and poultry is also common (Mesman *et al.*, 2021). Other economic activities in the county include fish farming, which is relatively new, with over three thousand fishponds. The county is also famous for soapstone carving in Tabaka, near Kisii town.

The 2019 Kenya National Bureau of Statistics report shows that Kisii County has a population of approximately 1.26 million, with women forming slightly more than half of the population. The county is densely populated, with approximately 875 people per km². A dense population intersects with the community's dependency on land and patrilineal land inheritance norms, resulting in the over-subdivision of land to unproductive sizes (Golaz & Médard, 2016; Mocha, 2014). Kisii County statistics show that about half of the county population lives below the poverty line, with households' land sizes ranging between 0.2 and 2.1ha (KNBS, 2015).

The county's road network is critical in connecting farmers to the market. About 170km of the county's roads are made of bitumen, while approximately 960km are either murram or earth (KNBS, 2015). Combined with the hilly terrain, most parts of the county are inaccessible by road during the rainy season. As a result, motorbike transport has enhanced accessibility within the county. However, studies show that motorbikes have become a menace responsible for most traffic accidents and high levels of air and noise pollution (Sibwoga *et al.*, 2015).

The *Abagusii* are believed to have come from the Nile valley through Uganda into western Kenya; the conducive farming conditions attracted the community to its current location (Kiriama, 1986). The *Abagusii* believe they are descendants of one forefather, Mogusii, whose eight sons formed lineages that broke into several clans and sub-clans, comprising households (Raikes, 2014). *Ekegusii* is the primary language of interaction in the community. Since

the *Abagusii* is a farming community, land is the most valuable resource in the county.

Compared to other communities in Kenya, the *Abagusii* are still closely attached to their customary norms with clearly defined gender roles (cf. Silberschmidt, 1992). While men's roles tend towards production and economy, women's roles revolve around domestic chores, contributing to household subsistence such as crop cultivation, gathering firewood, fetching water and childcare (Osoro & Areba, 2013). Raikes (2014) explains that according to the *Abagusii* customary norms before a newly married woman cultivates her husband's land independently, she lives and cultivates with her mother-in-law until she bears a child. Rakes explains that the birth of male children in the community is celebrated because boys are predetermined heirs of land and a form of security for their mothers' land rights. In contrast, female children are less celebrated and mainly associated with wealth acquired from the husbands' kin upon marriage. Polygyny and bearing many children are common among the *Abagusii* because, culturally, large families were associated with wealth back when land was abundant in the community. A man's wives and children were also prestigious for him as they were considered 'territories' and a source of labour (Silberschmidt, 1992). On the other hand, men with smaller households were presumed to be poor.

Although Christianity is common among the *Abagusii*, superstitions persist in the community, where misfortunes such as disease, barrenness, crop failure, poor performance in school, accidents, and death, among others, are often attributed to witchcraft (cf. LeVine, 1962). LeVine adds that jealousy is a common source of animosity between co-wives and step-siblings, often manifested through witchcraft accusations and land disputes. In the recent past, several women have been lynched among the *Abagusii* following witchcraft accusations. The Kenya Human Rights Commission (KHRC) reports that about six people in the County face violence each month following witchcraft accusations (KHRC, 2021). The report highlights that although witchcraft is used as a pretext for such violence, especially meted against women, pending land disputes are often the motivation (see chapter seven).

This study focuses on the *Abagusii* community to understand how land disputes involving women are formed, shaped, and maintained. The *Abagusii* present several interesting traits that make the community appropriate for land and gender studies. They are a farming community, and their land is one of Kenya's most productive agricultural zones (Isinta & Flitner, 2018).

However, the community exhibits dense population patterns and high population growth rates (Boone, 2014; cf. Levine & Lloyd, 1966). Besides, the community is profoundly attached to its customary patriarchal norms that inform most communal, clan and household decisions (Silberschmidt, 1992). Like most patriarchal communities, land among the *Abagusii* is inherited down the male lineage, limiting women to *de facto*, secondary rights through their male relatives. These factors intersect to restrict women's access to, and ownership of land independent of men, as provided in the Constitution.

So far, there have been limited studies on gender and land issues in the *Abagusii* community. More specifically, no recent studies show how the 2010 constitutional reforms might have influenced women's land struggle experiences. With a keen focus on women involved in land disputes, this study is inspired by the Feminist Political Ecology (FPE) theory, considering how historical factors intertwine with the statutory land reforms and the customary norms to shape land disputes involving women.

1.5 Overview and structure

This study is concerned with women's land struggles in a patriarchal community. The thesis contains eight chapters covering different aspects of the topic. In chapter one, I have introduced the study, giving a background to women's land rights. I discussed the importance of and the approaches (customary and statutory legal) to improving and securing women's land rights. I also explained the central theme of the study and introduced the reader to the area of study, covering the geographical, economic, socio-political, and historical characteristics of Kisii County. This gives the reader more background information that enables the contextualisation of the study.

In the subsequent chapter, I will justify the theoretical approach and the methods I used in the study. In the first part of chapter two, I defend why using the Feminist Political Ecology (FPE) perspective explains local women's land struggles within broader political and economic structures. Here, I explain that gender is a critical factor intersecting with other axes of power to determine land rights. Under FPE, I identify and discuss relevant socio-political and economic factors shaping women's land struggle experiences. In the second part of the chapter, I point out why I used a qualitative approach in my empirical research on women's land struggles. I will detail how I sampled the study area and participants, the methods I used in data collection and how I processed and analysed the data. This chapter also demonstrates that

studying women's land struggles in small communities like Kisii County holds broader lessons for understanding gendered resource relations.

Chapters three and four discuss the broader policy context defining women's land rights. These chapters are significant in broadening the understanding of the empirical results. Chapter three's historical overview helps the reader understand the dynamics of land laws in Kenya over different periods. Starting from the pre-colonial period, when land tenure was communal, I explain that land rights are customarily embedded in gender relations. However, colonisation altered the pre-colonial structures, replacing communal land ownership with private land ownership patterns. Colonial reforms introduced cash crop farming to replace subsistence farming, increasing the economic value of land while suppressing social and spiritual values. The reforms enabled land market transfers. However, instead of replacing the customary land governance, both systems coexisted, creating a complex dualistic land governance system prone to exploitation. I conclude that historical factors such as colonisation negatively impacted women's land rights, contributing to the struggles experienced today.

Chapter four discusses the different methods through which one can access land, *i.e.* marriage, inheritance, and the market. Subsequently, I demonstrate that gender is a key factor influencing access to and control over land, regardless of the method of access. Chapter four lays the ground for the results section, giving the reader background information essential for understanding the dynamics of gendered land disputes.

In chapters five, six and seven, I present the key results of the study. Chapter five builds on chapter four, showing that the vulnerability of women to land disputes is closely related to the methods through which they acquire the land. The chapter concludes that regardless of how women acquire their land rights, they are prone to land disputes. Generally, the chapter shows that women's land struggles are rooted in the customary attachment of women's land rights to relationships with men. In the patriarchal arrangement, the men typically wield power to determine, sustain or terminate the relationships through which women access land. This chapter highlights that besides men, limited categories of women wield power to exploit the existing structures to propagate land disputes against other women.

In chapter six, I discuss the various forms of violence employed in land disputes involving women. In this chapter, I argue that men use their positions of dominance within the customary systems, or their physical dominance, to

frustrate women, especially widows, subtly forcing them to flee and give up their land rights. I group and discuss the violence under the subtopics of verbal threats, social exclusion, and physical violence.

In chapter seven, I discuss land dispute resolution avenues that women pursue. From the experiences gathered, I discuss the effectiveness of customary, alternative, and formal Dispute Resolution (ADR) avenues. This chapter concludes that the land dispute resolution avenues are critical in securing women's land claims. However, the avenues are marred with various shortcomings that make them unreliable in addressing gendered land disputes. The shortcomings embolden aggressors to persist in using the various forms of violence identified in chapter six against women. Thus, the inefficiency of these land dispute resolution avenues increases women's vulnerability, contributing to their land struggle experiences.

Finally, chapter eight gives a summary of the key findings and the conclusions drawn from the study. In this chapter, I also assess the prospects of securing women's land rights. Bringing together the different sections of the thesis, I discuss women's land struggles (discussed in chapters four, five, six and seven) in the context of the theory (chapter two) and the historical overview (chapter three). In this chapter, I argue that securing women's land claims requires a transdisciplinary approach, engaging different stakeholders to ensure reforms are stable, socially acceptable, enforceable, sustainable, and legally protected. Besides, I emphasise that even though customary laws are gender discriminative, we cannot wish them away or simply replace them with statutory legislation. Neither of the two systems should be seen as an alternative. Instead, they should be thought through and developed alongside each other, leading to a transformation of the customary rules and regulations as the foundation for improving and securing women's land rights. Finally, I recommend potential areas for future research.

2

Researching Gendered Land Disputes

In chapter one, I argued that land rights are deeply embedded in culture and social relationships that define gender relations. I have also discussed how the statutory laws supporting gender-equal access to and control over land often remain subject to local power structures, excluding women. Therefore, it is imperative to understand that strengthening women's land rights transcends statutory legislation and must be understood in the context of local socio-political and economic structures.

This chapter presents the theoretical framework of this study and the methods used in empirical data collection and analysis. The first section introduces Feminist Political Ecology (FPE) theory to conceptualise women's land struggles, emphasising that gender and other power dynamics between men and women are integral factors in shaping land relations and maintaining women's land struggles.

2.1 Theoretical approach: Feminist Political Ecology

Feminist Political Ecology was developed as a subfield of political ecology in the 1990s. Political ecology emerged in the late 1970s to show that socio-political structures and relationships of power influence access to and exclusion from natural resources, elucidating unequal and differentiated resource relations in society (Robbins, 2003; Watts, 2012). Political ecologists insist that the existing poverty patterns, social injustices, and the politics of resource distribution and degradation relate to the political systems that commodify resources and create rules defining human-resource relations based on such factors as class and ethnicity (Watts, 2012). Linking feminist theories to political ecology, Rocheleau and colleagues (1996) coined the concept of Feminist Political Ecology in their book *Feminist Political Ecology: Global issues and local experiences*. They pointed out that gender is one of the variables intersecting with race, class, caste, ethnicity, and other axes of power to influence access to and control over resources that shape ecological processes. Thus, gendered resource experiences must be understood as a product of economic structures, influencing resource access and controlling

politics. Elmhirst identified “gendered environmental knowledge, gendered environmental rights and responsibilities, and gendered environmental politics and grass-roots activism” (2011: 129) as the main themes of Feminist Political Ecology (FPE from here on).

FPE has grown rapidly over the years, expanding to diverse topics. More recent studies and contributions have applied FPE in studies on water (Sultana, 2011; Truelove, 2011; Cole, 2017; Harris *et al.*, 2017), land (Elmhirst *et al.*, 2017; Lamb *et al.*, 2017; Vaz-Jones, 2018), agriculture (Hovorka, 2006; Jarosz, 2011; Kerr, 2014), nutrition (Nyantakyi-Frimpong, 2017), or a combination of water, land, and agrarian struggles (Leder *et al.*, 2019). These studies connect theory and everyday resource struggles, deepening the conceptualisation of gender and resource politics.

FPE scholars have shown that gender is a relational concept beyond bodies; it involves the interaction of men and women as developed around social norms and practices that regulate the differentiated hierarchical interaction of men and women with productive resources (Lamb *et al.*, 2017; Nyantakyi-Frimpong, 2017; Elmhirst *et al.*, 2017; Nightingale, 2011). As shown in Chapter 1, men in patriarchal societies commonly control productive resources such as land and hold ‘ownership’ rights. In contrast, women hold fewer rights (mainly access, withdrawal and management) that are often secondary and dependent on relationships with men. Thus, gendered resource relations are not merely a bounded geographical phenomenon but a product of gendered socio-political power relations stemming from expanding geographies of production and trade (Elmhirst *et al.*, 2017; Sultana, 2011). It is worth noting that gender relations are social constructs that are neither universal, linear, nor static (Sultana, 2011). Therefore, as Rocheleau and colleagues (1996) pointed out, researchers must reduce the scale of analysis in gendered resource relations from a global, communal, or even household level to a more intimate individual level.

Rather than giving a comprehensive overview of the development and the diverse applications of FPE, in this section, I draw on its key insights relevant to conceptualising women’s land struggle experiences in patriarchal communities. In the following part, I discuss how the exclusion of women from formal spaces, intersectionality, and women reproducing gender oppression shape and maintain gendered land struggles.

2.1.1 Exclusion of women from formal spaces

Gender relations within households are formulated around resource interests, determining “gender division of labour and access to natural resources” (Carney, 2004: 316). These gender relations are embedded in social norms and practices that position men as household heads, breadwinners, and representatives, hence resource ‘owners’, while women are customarily caregivers who use productive resources such as land to provide subsistence (Cole, 2017; Elmhirst *et al.*, 2017; Lamb *et al.*, 2017; Leder *et al.* 2017; Sundberg, 2016). This arrangement favours men to retain formal ownership of resource rights while limiting women to secondary *de facto* rights in ‘men’s resources’ (Elmhirst *et al.*, 2017). With women’s roles revolving around informal spaces, they are excluded or tend to shy away from formal spaces, where resource decisions are made (Hanson & Buechler, 2015). This tendency creates a conventional notion that women are ignorant and should be exempted from public participation (Harris *et al.*, 2017; Elmhirst *et al.*, 2017). However, studies have shown that women’s customary roles are a systematic process that excludes them from resource governance.

In analysing how gender roles have limited women’s participation in formal spaces in Delhi, India, Truelove (2011) explains that formal education attainment and participation in formal employment are secondary to women’s customary roles, such as fetching water. Thus, girls habitually miss school to circumnavigate existing bottlenecks in accessing water for their households. Consequently, there are significant disparities between the number of girls and boys attaining formal education in Delhi. Without formal education, these girls’ future chances of participating in formal employment are limited. Moreover, even when girls do acquire formal education, formal employment remains secondary to their domestic responsibilities. The women who succeed in getting formal employment often use their positions to access water from the workplace or their employers’ homes. This predisposes women to manipulative violations such as unfair remuneration from employers and exclusion from decision-making spaces.

In a study comparing gender roles in contesting an eviction in Cambodia, Lamb and colleagues (2017) highlight the uneven gender relations and exploitation of culture to advance men’s resource interests. In this case study, the women were positioned at the forefront to protest state eviction because of their perceived emotional strength and low propensity to violence compared to the men. Therefore, the women organised themselves and protested, assuming leadership positions and serving as contact points for researchers

and the media. However, the roles were reversed after the government allocated land for the community to resettle, with only one woman elected, among seven men, to participate in resettlement negotiations. In their first sitting, the committee members voted out the woman, forming an all-men committee. They justified their action by stating: “It is not good for women who have limited knowledge and cannot follow the other representatives” to assume decision-making positions (Lamb *et al.*, 2017: 1229).

Interestingly, Lamb and colleagues report that the committee excluded women-headed households from land allocations, claiming that they had not participated in the protests. This case highlights the dichotomy reinforced in most cultures, limiting women’s participation in major decision-making around land and authority. Levien (2017) explains this perception by comparing gender and land dispossession experiences from different countries. Levien notes that, generally, women lack “decision-making power in the planning of projects or in negotiating the details of resettlement and rehabilitation” (2017: 1127). This arrangement allows men to use their positions to formulate rules and regulations in their favour while marginalising women, who often lack representation. Hence, by excluding women from decision-making spaces, men limit women’s land rights, undermining existing entitlements that favour women.

Moreover, one of the arenas of FPE is gendered domains of knowledge, where “patriarchal gender norms inform basic conceptions of who counts as a knowledge producer, what counts as knowledge, and how knowledge is produced” (Sundberg, 2016: 2). Sundberg explains that even though women are less likely to attain formal scientific knowledge than men, they retain privileged knowledge that they acquire from years of experience with natural resources. Such knowledge is essential for sustainable resource management. For example, a study in India shows that women from villages in the Deccan plateau led a global movement towards sustainable agricultural practices, based on knowledge gained from their farming practices (Babugura, 2017). In this, the women resorted to traditional indigenous farming practices instead of the expensive genetically modified seeds that were characterised by devastating crop failure. Babugura points out that these women “teach each other the ritual of seed banking and sharing, they use a diversity of cropping methods, and they work to create safety nets for the villages” (2017: 362).

However, within the knowledge domains, women’s knowledge accrued from practice is ‘informal’ and often undervalued by decision-makers, who prefer conventional ‘formal’ scientific practices (Rochealeau *et al.*, 1996: 8). Hence,

Sundberg explains that FPE scholars question the objectivity of science that ought to eliminate researchers' biases in accommodating knowledge regardless of the characteristics of the source. The marginalisation of women's indigenous knowledge contributes to the exclusion of women from decision-making processes around resources.

Elmhirst and colleagues (2017) emphasise this notion by drawing from a study conducted in Indonesia. Their study found that women were excluded from negotiations where a commercial company sought to introduce palm oil plants in the community. Even though such a transition would affect women's ability to provide household subsistence, only men participated in the land-use change negotiations. Elmhirst and colleagues point out that women were probably excluded from the decision-making process because culture presumes the oil palm as a 'man's crop' because of its economic value. The authors point out that the women were likely to oppose the land-use change, raising food security and ecological sustainability concerns. Therefore, the men used their positions of authority to exclude the women from the process.

FPE emphasises that gender is a key factor influencing access to and control over resources such as land. I explored how culture is positioned as a tool for maintaining discriminative gender norms. By relating existing socio-political and economic structures to gender, this section has demonstrated that the exclusion of women from formal spaces is strategically employed to formulate and sustain gender-discriminative rules and regulations, limiting women's resource rights. These social norms include the distribution of gender roles that position men as landowners and women as land users, limiting women's participation in land governance and decision-making processes.

2.1.2 Intersectionality

Although several commonalities cut across women (or men), we cannot aggregate either of them into a single category. Edward Carr and Mary Thompson insist that gender should not be viewed as "a stand-alone marker of social difference, but rather as a social category that gains meaning through its time- and place-specific interplay with other social markers of difference. [This is because] all women (or men) will not experience a place, event, or process in the same manner because their roles, responsibilities, and expectations are shaped by more than their gender" (2014: 187). Gender intersects with other factors to form differentiated identities among women (or men), which are significant in FPE. Crenshaw (1989) proposed

intersectionality to demonstrate that gender intersects with race to produce different employment experiences among women in the United States of America.

Differentiated gender identities in FPE stem from race, class, caste, age, ethnicity, and marital status, among other variables. Intersectionality emphasises that although women are a marginalised group, differentiated identities produce multiple forms of inequality or ‘categories of oppression’ (cf. Lugones, 2014; Anderson & McCormack, 2010). These multiple forms of inequality resulting from differentiated identities are termed intersectionality. The multidimensionality of women’s experiences renders a single-axis male-female binary identity framework ineffective in capturing the ‘categories of oppression’ when analysing gendered resource relations.

Intersectionality in FPE seeks to understand how differentiated gender identities interact with power systems to produce ‘categories of oppression’. From an analysis of the intersectionality of the gender-water-tourism nexus in Labuan Bago, Indonesia, Cole (2017) shows differentiated experiences based on economic status that produce varying ‘categories of oppression’ among women. Cole points out that while “all water work”⁸ is regarded as women’s work, the women’s experiences accessing water vary. Women from affluent households can afford water storage tanks and buy water in large quantities at a reduced price. In contrast, women from poorer households struggle daily to collect water in small quantities, which is more expensive. Thus, while women have to deal with water struggles, their experiences are heterogeneous and disproportional, shaped by their economic status.

Similarly, Truelove (2011) highlights another example of how gender intersects with social class in Delhi, India, to shape access to water. According to Truelove, women’s water struggles in the formal settlements, where the government provides piped water at lower rates, sharply contrast those of women residing in the informal settlements due to the spatial delineation of class. Since the government does not supply piped water to informal settlements, the women purchase water at a higher cost and experience several barriers when accessing water.

⁸ All domestic responsibilities related to collecting water, washing, cooking, dishwashing, etc.

In a land-related study in South Africa, Vaz-Jones (2018) shows that class, race and marital status intersect with gender to produce differentiated land struggle experiences among women in Ithemba. In this study, Vaz-Jones argues that Africans and women-headed households are excluded from holding land because of their identities. Therefore, even though discrimination is based on gender, race and marital status contribute to differentiated experiences among women. Vaz-Jones explains that the women's economic status influences their resistance to state evictions. Women who depend entirely on land for subsistence without off-farm income sources are more active in resisting the state's eviction attempts. Moreover, although a few women are involved in negotiations and decision-making processes, these are predominantly educated women with stable off-farm incomes. Vaz-Jones points out that these women neither comprehend nor represent the everyday land struggles of the single African women in Ithemba, who depend entirely on land for their livelihood.

Class and education level often intersect with gender to produce differentiated land struggle experiences among women. For most poor and uneducated widows in rural areas, land is the only source of livelihood. These women depend on available security structures for land dispute resolution and often lack proper court representation. In contrast, affluent and educated women often hold influential positions with stable off-farm incomes, and land is not critical for their subsistence. These women can afford proper representation that usually works in their favour. Thus, whereas widowed or divorced women from poorer households are often evicted from their husbands' land or murdered while anticipating a resolution, educated women in influential positions have better chances of retaining their land if disputes arise.

For instance, in Kenya on February 17, 2018, a *Standard* newspaper article reported that as soon as a woman assumed the high-ranking position of a national cabinet secretary for land, she deployed police officers to guard a disputed parcel of land on her behalf while awaiting a court ruling.⁹ Her position and class enabled her to hire security personnel to guard the land and high-ranking lawyers to represent her in court. In sharp contrast, on March 24, 2017, the *Standard* newspaper reported that a forty-four-year-old widow was murdered in rural Kisii while anticipating a land dispute resolution.¹⁰

9 Jelimo, R. (2018). New CS embroiled in land dispute. The Standard Newspaper, Kenya www.standardmedia.co.ke/article/2001270027/cs-farida-karoney-embroiled-in-land-dispute

10 Abuga, E. (2017). Seven houses burnt in Kisii over murder of a 40 year old woman. The Standard Newspaper, Kenya www.standardmedia.co.ke/kenya/article/2001233899/seven-houses-burnt-in-kisii-over-murder-of-a-40-year-old-woman.

The above cases highlight that although land struggle experiences cut across class, women have differentiated experiences of land struggle.

Marital status also intersects with gender, producing differentiated land struggle experiences among women. Studies show that widows, as well as divorced and unmarried women, are more vulnerable to land disputes than women whose husbands are alive (Tsikata, 2016; Van Leeuwen, 2010; Crook, 2004). As such, women from male-headed households hold more secure land rights than those from female-headed households. From their study in Cambodia, Lamb and colleagues (2017) reported that after the government allocated the community land for resettlement, the all-male committee decided the distribution of this land would exclude female-headed households. Perhaps the absence of a man to 'own' the land in these households explains the exclusion.

Against this background, I consider it critical to evaluate the differentiated gender identities that produce differentiated land struggle experiences among women. Therefore, I was keen to identify variables intersecting with gender to produce 'categories of oppression' among women. Moreover, as Agarwal (1994) explains, differentiated identities often become potential barriers to collective contestation of forms of gendered land struggles. I use an intersectional approach to find out whether and how differentiated identities among women might limit the contestation of oppressive gender land relations.

Post-colonial intersectionality

Land relations exist in a historical continuum where current land relations have evolved from previous frameworks (Myers & Freudenberger, 2013). In a study comparing women's legal rights to land with a keen focus on marital property regimes, Schloss (2018) shows that countries worldwide have a historical correspondence with their colonial masters. In this, countries colonised by similar colonial powers bear land legislation and governance patterns similar to those of the colonial governments. Therefore, some discriminatory colonial land relations persist in colonised countries.

In his book *Kenya: Promised Land*, Sayer (1998) links colonial capitalist interests to Kenya's current land struggles. He points out that during an uprising, the colonial government developed a land registration framework similar to Britain's to award 'loyalists' with land. The aim was to create a

social class (middle class) comprising landowners that would presumably support the status quo, promoting the colonial government's stability. This framework led to land registration exclusively under the male household heads, who presumably held land on behalf of the households. This arrangement left women automatically under the 'landless class'. Kenya's independent government preserved the colonial land governance system that formally recognised men as landowners. This pattern has persisted to date as a common social norm. Several reforms to promote gender equality regarding access to, control over, and ownership of land have failed to subvert this norm. Hence, women form less than a tenth of formal landowners in Kenya (FIDA, 2017; Young, 2012).

Post-colonial intersectionality in FPE analyses the position and representation of women in power structures established by or influenced by colonial regimes and the effects of colonialism on gender resource relations:

Post-colonial intersectionality acknowledges the way patriarchy and racialised processes are consistently bound in a post-colonial genealogy that embeds race and gender ideologies within nation-building and international development processes. This concept reflects the way people are always marked by difference whether or not they fit nicely in colonial racial categorisations, as cultural difference is also racialised (Mollett & Faria, 2013: 120).

Tsikata (2016) points out that colonial capital systems shaped the current gendered systems of access and control over land in most of sub-Saharan Africa. For instance, Tsikata notes that while men were initially waged labourers in farms owned by the colonists, women remained unpaid labourers on their husbands' land. Men received the economic returns from cash crops nurtured by women because they were the formal landowners. Women continue to form the majority of farm labourers today, while most of the land is registered under men.

However, these gendered land relations were and are not heterogeneous for all women. Factors such as race, ethnicity, class, and marital status shaped women's land relations during the colonial period and persisted in producing differentiated identities and land struggle experiences. Tsikata points out that marital status and age intersected with gender to produce differentiated experiences among women during the colonial period, when "widows and divorced women had difficulty retaining their interests in land, although seniority worked in their favour" (2016: 8). These inequalities

stemming from colonial land reforms persist in the post-colonial patriarchal structures, weakening the land rights held by women independent of men. These women are subjected to several layers of effort to retain their land rights because patriarchal norms intersecting with colonial reforms formally excluded women from land ownership rights. In a study titled “Messing with gender in FPE,” Mollett & Faria point out that colonial reforms such as land titling, commercial agriculture, hierarchy and capitalist economy continue to determine household power distribution dynamics and resource distribution.

Intersectionality debates in FPE tend to concentrate on spatial and hierarchical factors intersecting with gender to produce differentiated experiences among women. There are limited debates on how colonial injustices have shaped women’s land struggles. This study uses a historical lens to direct attention to the impact of colonial land policy reforms in shaping differentiated land struggle experiences among women. By examining women’s land struggle experiences under patriarchy, this study demonstrates the multiple dimensions of colonial power relations manifested in the current patriarchal structures shaping gendered resource relations.

2.1.3 Women reproducing discriminative norms

Gender inequalities are either contested or reproduced because socio-political subjectivities survive through reproduction (Nightingale, 2011). Since gender norms are fluid, flexible, negotiable, and contestable, they remain vulnerable to exploitation by those wielding power to sustain positions of dominance through customary norms (Barry & Danso, 2014). With women holding secondary *de facto* land rights through men, gender ideologies in customary norms often position them to accept and sometimes reproduce gender discriminative practices to sustain or validate the legitimacy of their land rights.

In a study conducted in northern Ghana, Nyantakyi-Frimpong (2017) shows that in polygamous marriages, co-wives compete for rights to their husband’s land, reproducing gender-discriminative patriarchal norms. The women take advantage of their age, marital position, and sexual activity to outdo each other in domestic politics to ‘earn’ themselves favourable positions that benefit them during material distribution, including land rights among co-wives. Thus, women in polygynous marriages refrain from protesting these forms of gender oppression out of fear of losing resource rights. However, by

participating, the co-wives reproduce and encourage gender discriminative norms.

In another study conducted in Nepal, Nightingale (2011) explains that social norms define women as ritually contaminated during menstruation and after childbirth. Thus, the women are forced to spatially isolate themselves, often sleeping in animal stables for a week or more as part of the cleansing process before moving back home. Nightingale explains that several women are typically valued for their ability to fulfil prescribed roles, which often include oppressive social norms and that some women proudly participate because “their strength, as well as suffering, are intimately bound up in their identity as a woman” (2011: 157). Thus, while some women obstinately negotiate to expand gender boundaries, others are keen to advance gender-oppressive practices.

Similar trends are evident among the *Abagusii* of western Kenya. In the community, women are considered strangers when married into a clan until they bear children, at which point their social status and land rights security improve (LeVine, 1982: 65). The majority of the women, especially the older ones, praise this ranking system that reproduces injustices against younger women. Younger women rise through the ranks and eventually join the criticising category once they get grandchildren, and the process continues. LeVine explains that this custom reproduces and maintains this discriminative norm.

Referring to the analogy that Nightingale (2011) puts across, gender-discriminative norms around land are either contested or reproduced. This implies that women either contest or reproduce gender-oppressive land relations. Ignoring the role women play in reproducing other women’s land struggles would overlook a critical aspect of gendered land struggles. Therefore, while exploring women’s role in contesting or reproducing gender discriminative norms around land, I have also sought to understand how patriarchal social norms embedded in culture hinder women from contesting discriminative land relations.

This study demonstrates how exclusion from formal spaces, intersectionality, and women reproducing gender oppression contribute to forming and maintaining discriminative land relations. These factors are ingrained in culture, shaping social norms that determine access to and control over land.

In my analysis, I will highlight how these aspects of FPE are manifested in empirical research.

2.2 Researching land disputes involving women

Seeking to understand the underlying processes resulting in land disputes involving women, this study intentionally employs a qualitative approach to capture diverse experiences. Furthermore, a qualitative study can capture critical aspects of interpersonal relationships that help understand structures existing in society (Tracy, 2013: 6). As Hesse-Biber points out, “qualitative researchers are motivated to understand the world of the research subject through the latter’s own eyes, opening a range of possible subjects of inquiry” (2003: 2). This helps in uncovering existing trends in thought, by understanding the underlying motivations, subjective opinions, and emotions towards the topic of study from the participant’s perspective (Flick, 2018: 2). Specifically, in gender studies, a qualitative approach enables a deeper understanding of the women’s “hidden realities [so that] new experiences and new perspectives emerge that challenge the ‘truths’ of official accounts and cast doubt upon established theories” (Anderson *et al.*, 2004: 1).

Although Rocheleau and colleagues (1996) advocate for mixed methods (triangulation) in feminist studies, Sundberg inclines towards “methodological creativity”, pointing out that “women’s spaces of work are often nested in those controlled by men” (2016: 5). Furthermore, Sundberg points out that feminist researchers tend towards qualitative methods “from the bottom up by privileging the experiences, spaces, and categories of marginalised people” (ibid.: 5). Several scholars have applied qualitative methods in conceptualising women’s land struggles (see, for example, Anying & Gausset, 2017; Doss *et al.*, 2015; Owoo & Boakye-Yiadom, 2015; Verma, 2014; Allendorf, 2007; Gray & Kevane, 1999; Lastarria-Cornhiel, 1997). Dancer & Tsikata propose extended periods of qualitative studies to allow a deep understanding of “gender ideologies, power relations, social dynamics and livelihood patterns” (2015: 21). Dancer & Tsikata also encourage researchers to analyse historical factors as crucial currents in shaping gendered land struggles.

The empirical data used in this study draws from a three-month-long period of fieldwork conducted in 2018. The fieldwork consisted of fourteen in-depth interviews and three focus group discussions with women involved in land disputes, ten key informant interviews with different experts in the land sector, document analysis, and observation. This section will describe

the empirical study process in detail, outlining the sampling process and methods used in collecting and analysing the data. In the last part of this chapter, I will highlight the ethical issues arising from the empirical study.

2.2.1 Selection of study area and participants

Kisii County was purposefully selected as the study area because of its prevalent characteristics. Besides being a highly productive agricultural zone, the county is densely populated with high population growth rates, which has led to increasing demand for land (KNBS, 2015; Boone, 2014). Consequently, most of the county's population depends on land for their subsistence and highly values land as a source of livelihood. Customarily, the security of women's land rights in the community is linked to having sons. Therefore, women strive to have many sons to strengthen their land rights, contributing to high population growth rates and an increasing demand for land (Henrysson & Joireman, 2009; Masese, 2006). As a result, land sizes held have declined to unproductive dimensions because the "customary inheritance system requires that each son receives an equal share of the land" (Henrysson & Joireman, 2009: 43). Thus, instead of improving women's land rights, having more sons increases the pressure on land and the number of dispute incidents. Moreover, the *Abagusii* are closely attached to their customary patriarchal norms, and Silberschmidt describes the community as "anchored in an extremely 'traditional' and inflexible system" (1992: 244). These factors intersect with the prevailing patriarchal norms to threaten women's secondary *de facto* land rights.

Key informants in Kisii County explained that the demand for land is higher within Kisii town and its peripheries compared to distant rural areas. Subsequently, land sales are common in these urban centres where land is more expensive. In contrast, land sales are rare in the countryside areas where communal ownership is prevalent. Likewise, land disputes within Kisii town and its outskirts are more rampant and involve more diverse disputants than those in remote areas that commonly involve family members. To capture these variations, I purposefully sampled areas in the outskirts of Kisii town, such as Itumbe and Kiogoro (from Kisii Central and Sameta sub-counties) and more remote areas, such as Kenyeny, Eberege and Nyakoiba (from Kenyeny and Etogo sub-counties).

To ensure a rich representation in the sample population, I deliberately narrowed participants to women involved in land disputes. Chiefs and

their assistants were significant links to women involved in past or ongoing disputes because these administrators are responsible for dispute resolution within their areas of jurisdiction. To reduce the possibility of a biased selection of 'best cases' by the chiefs, I employed snowballing, asking the women interviewed whether they knew other women involved in land disputes. This approach ensured the inclusion of different age groups, social classes, marital status, and education levels. Snowballing helped ensure the capture of diverse dispute characteristics, the resolution avenues that were pursued, and the experiences that were accrued. To enrich the sample further, the study involved the Federation of Women Lawyers (FIDA) because of its significant role in the arbitration of disputes involving women, civil education, and legal representation for women in court. FIDA also served as a link to their clients from Kisii County that were involved in land disputes.

The core of this study builds on fourteen in-depth interviews with women from diverse age groups, social classes, education levels, and marital statuses involved in past or ongoing land disputes (see Table 1 below). Focus group discussions and key informant interviews with chiefs and assistant chiefs from the county, non-governmental organisations (NGOs)¹¹ workers inclined towards women's land rights, the *Abagusii* cultural and development council chairman, the county land registrar, and the county land executive. Document analysis and observation were also employed to complement the study findings.

11 There is no single NGO in Kisii County that is involved in women's land rights. The NGOs involved in the study were from Kisumu and Nairobi. Only FIDA, which is located in Kisumu County (approximately 70km from Kisii), is involved in addressing land disputes involving women.

Table 2.1

Participants' background information

Name	Age	Marital status	Education level	No. of children (sons)	Source of income	Land Size (Acres)	Other involved in the dispute
Grace	63	Widow	None	5(3)	Business (scrap metal)	-	Sponse and inlaws
Caro	38	Widow	Secondary	3(3)	Business (vegetable)	1.5	In-law
Miriam	51	Divorced	Tertiary	1(0)	Farming	2.5	Nephews
Ruth	100	Widow	None	8(3)	Family	3.5	Stephsons and son
Marie	33	Married	Primary	4(1)	Waged Labour	0.5	Husbamd
Lisa	29	Married	Primary	7(3)	Farming	-	Husband
Alice	57	Widow	Secondary	4(2)	Rent and Farming	0.5	Land Officers
Christine	40	Widow (co-wife)	Secondary	2(1)	Tomato business	2	Bro, in-law and stepson
Karen	50	Widow (co-wife)	Secondary	7(3)	Farming	1	Seller's son
Susan	71	Widow (co-wife)	None	7(5)	Wage Labour	0.25	Co-wife
Jane	45	Widow (co-wife)	Secondary	3(1)	Business	-	Co-wife
Rose	57	Widow (co-wife)	Primary	1(1)	Pension and farming	2	Co-wife
Edna	50	Widow	Primary	1(1)	Farming	1	In-laws
Naomi	40	Married	Secondary	5(3)	Daily wage labour	1	In-laws

The diverse characteristics of the sample size are intended to capture differentiated identities and experiences among women to identify variables that shape the women's land struggle experiences.

2.2.2 Data collection

As Ritchie *et al.* point out, qualitative studies collect data using interviews to understand the trends that shape ideologies in the participants' world (2013: 111). This fact is reflected in the study where interaction with women involved in land disputes enabled an in-depth understanding of underlying factors in land disputes within a patriarchal system. The in-depth interviews and focus group discussions (FGDs) were conducted in the local language, *Ekegusii*, while the key informant interviews were mainly in English. Although the in-depth interviews and FGDs entirely followed the participants' path, I identified some themes of interest in advance to guide the discussion. These themes included the meaning of land to the participant, the background of the land dispute, implications of the dispute, avenues pursued in dispute resolution, perceived causes of disputes involving women, and the participants' perception of campaigns promoting gender equality in access to and control over land.

To focus my concentration on listening during the interviews, I used an audio-recording device to capture the participants' exact words. This enabled revisiting of the recording for proper transcription and translation. I asked for the participants' approval before recording, assuring them of confidentiality, and clarified that the recordings were purely for scientific purposes. The voice-recorded interviews were later transcribed and translated. These audio recordings helped to ensure that the intended message was captured in the translated transcript. Field notes also came in handy in capturing non-verbal communication, such as facial expressions and interruptions during the interview, to complement the audio recordings.

In-depth interviews

In-depth interviews can be beneficial to both parties involved. While the researcher gets a glimpse into the respondent's life, the respondents share their experiences and opinions with someone willing to listen with keen interest. This offers participants who might otherwise be marginalised an opportunity to voice their opinions on the study topic. Since individuals are the foremost experts on their own experiences (Darlington & Scott, 2002: 48), in-depth interviews were best fitted to capture the variations in these experiences, eliciting a rich picture of the participants' perceptions of women's land struggle experiences. Several women in the study area have

been involved in land disputes. However, experiences and interpretations of land disputes vary, sometimes depending on the women's social identities.

The study participants included women involved in ongoing or past land disputes. The interviewer asked broad, open-ended questions to initiate the interview, allowing the participants to narrate their experiences. The respondents frequently compared their experiences to those of other women they knew who had similar struggles, which in turn affected and shaped their perceptions. The participants talked without interruption and later responded to follow-up questions to clarify the issues mentioned and elaborate on critical topics.

Focus Group Discussions

Focus Group Discussions (FGDs) bring groups with similar interests together to debate common themes. Krueger & Casey point out that focus group interviews offer “a more natural environment than that of an individual interview because participants are influencing and influenced by others - just as they are in real life” (2000: 11). As such, FGDs stimulate conversations that elicit reactions that potentially reveal a wide variety of information on various subjects in a short time. They encourage debates, disclosing points that participants skip during in-depth interviews.

I conducted three FGDs consisting of two to three women involved in land disputes previously or ongoing during the fieldwork. The first FGD was at Eberege and consisted of two women, while the second and third FGDs were both held at Itumbe with three women participating. Some of the women previously interviewed joined the FGD, while some did not participate in the in-depth interviews. Like in the in-depth interviews, I posed broad, open-ended questions relating to the themes identified and allowed the FGD participants to discuss and debate. My role was mainly to listen and encourage all members to participate in the discussion and to limit some participants' dominance or steering from the topic.

Key informant interviews

Interviewing people who have experience in a topic of study can provide critical information for the researcher to understand underlying factors in the topic of study. Interviewing the local journalists and the land registrar

helped me to understand key factors such as the distribution of land disputes in the county, which facilitated the sampling process. Interviewing the chiefs expanded my understanding of the local socio-political factors that influence the occurrence and resolution of land disputes. Moreover, the chiefs not only served as liaisons to the women involved in land disputes but in some cases, the women were more receptive when we met through the chief because of their positions.

Interviewing land and gender experts from NGOs broadened my understanding of the practicability of the interventions aimed at securing women's land rights. In addition to discussing the approaches they adopted in addressing women's land struggles, interacting with these experts expanded my conceptualisation of how socio-political and economic systems shape women's land struggles.

Document analysis

Applying plural methods and data sources (referred to as triangulation) supplements and increases the reliability of qualitative data (Cox *et al.*, 2008: 98). Analysing documents to complement the data from the participants supported the clarity of the findings. I conducted document analysis before, during and after the field study. This involved collecting media articles on land disputes. During the field study, I searched media companies' archives for newspaper articles covering land-related issues in Kenya. I particularly looked for articles covering controversial issues such as historical land injustices, land disputes, corruption, and land governance. However, although the articles gave a broad understanding of the land struggles in Kenyan communities, they provided a general picture of the disputes without specific details.

Additionally, I collected statistics from the Kisii County Environment and Land Court that showed the reported, resolved and pending disputes. This data complemented the experiences of women who depend on the court to resolve their land disputes and the efficiency of courts in resolving land disputes involving women. I gathered some county population statistics from the county statistics officer, which proved essential for understanding the county's population dynamics.

Observation

Finally, I used observation to understand how the process of land dispute resolution works. I attended a dispute resolution session at the Kenyena assistant chief's office, where a woman had reported her husband for assault. The man used physical violence to contest his wife's control over land sale payments. I also accompanied a woman who was seeking the Assistant Deputy County Commissioner's intervention in a land dispute. She had previously given up after the chief demanded a bribe that she could not afford. Attending these sessions enabled me to understand how culture influences women's participation in land dispute resolution processes. Through observing the process, I also got a first-hand experience of how language can be a barrier for women advancing to other levels to protest unfair decisions passed against them. Besides, I understood how some local administrators' engagement in corrupt dealings intensifies women's land struggle experiences.

2.2.3 Data processing and analysis

I started data processing by transcribing the audio interviews in the original *Ekegusii* language. This enabled me to examine the data closely and adequately translate them into English in preparation for analysis. Except for the key informant interviews conducted in English, I used an expert to transcribe and translate the in-depth interviews. After translation, I went through each transcript to ensure all details from the audio interviews were captured. Unfortunately, some of the intended meanings were lost in the translation process because some words and phrases lack a precise translation. For instance, in *Ekegusii*, *ogoita* can either mean 'to murder someone' or 'beat someone up', depending on the context. *Ogoseri* is loosely translated as chasing away, which would mean divorce or separation in marriage. Since only men can chase their wives away, *ogoseri* could also mean that a man either violently evicted his wife or asked her to leave without violence. *Okorengereri* means to think of something or someone. However, the word can also mean making a decision or plan. For example, if someone says '*nkarengereri tinkoirana nchi gosaba boremo seito*', this would be translated as 'I thought I would not go back to my natal home to request land.' However, the statement can also mean, 'I decided not to go back to my natal home to ask for land,' or 'I planned not to go back to my home to ask for land.' In this sense, some of the participants' intended points were lost in the translation process, but the original transcripts and audio recordings enabled revisiting

the conversation to ensure that the translation closely captured the intended meaning.

I separated each transcribed interview into an independent Word document to simplify analysis and then assigned a pseudonym to each transcript to ensure the participants' anonymity. Using MAXQDA, I conducted a qualitative content analysis "by assigning successive parts of the material to the categories of a coding frame" (Schreier, 2014: 170) to systematically organise and manage the data. First, I used open coding to split all interview transcripts into various segments ranging from a single line, to paragraphs or even whole texts, and assigned a code to each. The codes applied revolve around the participant's background information, details and impacts of the dispute, and the participant's perception of campaigns and reforms promoting gender equality in access to and control over resources. The participants' coded background information includes age, marital status, level of formal education attained, and number and sex of children. The coded details of the land dispute include the process through which disputed land rights were acquired, the dispute cause, the other disputants and players in the dispute, the resolution avenues that were attempted, the experiences that were gained, and the impacts of the dispute.

Then I grouped the various segments according to the emerging themes into subthemes and various subthemes under primary themes. These themes include the disputes relating to land acquired through marriage, inheritance, or land markets. Second, the different forms of violence against women involved in land disputes are discussed under verbal threats, social exclusion, and physical violence. Finally, I discuss land dispute resolution avenues under the subthemes of formal and alternative Dispute Resolution avenues. Unique subthemes were also identified to avoid loss of information. I established relationships between the various codes that I used to present and discuss the results in chapters five, six and seven.

2.2.4 Ethical issues

This study ensured ethical considerations, observing rules and regulations in conducting empirical studies. The government of Kenya requires researchers to seek authorisation from the National Commission for Science, Technology, and Innovation (NACOSTI) and the county government of their research area before conducting research in Kenya. Consequently, I acquired a permit from NACOSTI (reference number NACOSTI/P/18/95558/2295) and Kisii

County (reference number CDE/KSI/RESECH/86) before embarking on the fieldwork.¹²

Before recording the interviews, I informed each participant and asked for consent to safeguard their confidentiality and safety. I informed the participants about how I would use the findings and that I would ensure their anonymity. Considering the emotive and violent nature of land disputes in Kisii County and Kenya in general, I avoided visiting participants' homes whenever this posed any form of danger to them. Instead, I conducted most interviews in participants' houses without pending threats, in public areas, or in spaces around the chiefs' offices. Security concerns were an issue for both the participants and for me, as a researcher 'questioning' the aggressors' actions. Some respondents expressed fear, explaining that speaking out would attract violent reactions from aggressors. Other participants explained that they had been previously assaulted violently by the aggressors and threatened with murder whenever they sought intervention. Therefore, I took participants' safety seriously and guaranteed them confidentiality and anonymity during the empirical study period and afterwards when handling their information and data.

2.3 Conclusion

In the first section of this chapter, I have used FPE to discuss how gendered resource struggles are formed and maintained in society. I have shown that gender is a key factor influencing the distribution of resource rights within households. The customary laws defining resource distribution tend to favour men's resource interests while subjugating women. Therefore, men exploit the flexibility of customary rules and regulations to position themselves as owners of resources such as land while sidelining women as users of these resources. Furthermore, gender roles embedded in culture exclude women from formal spaces where socio-political and economic decisions define access to and ownership of resources. Thus, men retain an upper hand through positions of power and influence to maintain the status quo.

The existing diversity of such factors as age, class, education, and marital status among women intersects with gender to produce differentiated identities and experiences. These differentiated identities tend to influence women's participation in protesting or sustaining gendered resource struggles.

¹² See appendix 6 (6.1 & 6.2).

Moreover, since gendered roles and resource rights are embedded in culture, some women advance these discriminative norms while questioning those seeking to expand gender boundaries.

In the second section, I have described and explained the methods I used in the empirical study. I have justified why I employed a qualitative approach, using in-depth interviews, FGDs, key informant interviews, observation, and document analysis for data collection. In the final part of the chapter, I have explained the processes I employed in data handling and analysis using MAXQDA software to develop the themes that form the basis of chapters five, six, and seven.

3

Historical Review of Women's Land Rights

Kenya's current land governance corresponds to pre-colonial and colonial systems. During the colonial period, the colonial government tried to eliminate customary land tenure, replacing it with a formal private land ownership system. However, the reforms failed to replace the deeply entrenched customary practices. Instead, they resulted in a complex land governance system where customary and formal structures coexisted. This complexity persists, with the two systems often conflicting, negatively impacting women's land rights (see Chapter One). This chapter discusses historical land reforms in Kenya and how these reforms have shaped women's land struggles. The chapter discusses Kenya's land reforms from the pre-colonial through colonial and post-colonial periods, with a keen focus on the *Abagusii* of western Kenya.

3.1 Pre-colonial period

Before colonisation, Kenya did not have a centralised political system. Land governance structures varied among the indigenous communities in response to "topography, climatic conditions, and the socio-political organisations and cultural values of the various ethnic groups" (Kanyinga, 2000: 30). These factors influenced a community's main economic activities at the time, determining whether they engaged in agriculture or pastoralism because the country was not industrialised. Since land was abundant with scarce population patterns, both the agrarian and pastoral communities accessed large tracts of land whenever needed (Wamicha & Mwanje, 2000). These communities held land communally with rare incidents of disputes.

3.1.1 Communal land ownership in the pre-colonial period

Unlike individual ownership, which is a Western concept, land in Kenya was communally owned by social entities and administered "by an individual, family, clan or ethnic group" (Okoth-Ogendo, 1976: 150). Individuals accessed land based on their membership of social entities such as clans, ethnic groups

or communities that controlled land (Migot-Adholla *et al.*, 1993). Migot-Adholla and colleagues explain that membership in these social entities was acquired through “birth, marriage, ritual adoption, or incorporation” (ibid.: 122). Land rights were equitably distributed among the members of a social entity, depending on their individual needs, ensuring inclusivity (Kibwana, 1990). The members retained usufruct land rights that they would transfer within their lineages.

The abundance of land allowed individuals to migrate from densely populated areas and clear unoccupied land for settlement, starting a new social entity (Kanyinga, 2000). Kanyinga explains that the ‘pioneer occupant’ would hold control rights that “were analogous with an individual title” (2000: 32) until after his death when his social entity members assumed communal ownership. Kanyinga adds that land users held the land in trust for future generations because land was believed to belong to the ancestors. As such, landholders retained all rights apart from the right to transfer land permanently outside the social entity.

Okoth-Ogendo (1981) explains that land rights were customarily transmitted down the male lineage because men were permanent members of the lineage. As heirs of land and household heads, the male patriarchs allocated land rights to the other members of their households. Pala (1983) emphasises that land inheritance rights were reserved for men while women were expected to get married and move to their husband’s lineages, where they acquired land rights as wives. Okoth-Ogendo points out that the women retained usufruct land rights through relationships with men, as daughters before marriage and as wives in their husbands’ lineages. Pala adds that women’s land rights in agrarian communities were to ensure households’ subsistence. Although women were excluded from inheritance and ‘ownership’ rights, the customary laws were not gender-oppressive. The laws defined women’s land rights acquired through marriage as ‘guaranteed and permanent’ (Okoth-Ogendo, 1981). Age, number of sons, and position in marriage influenced individual women’s positions and identities in the patriarchal systems. These factors, in turn, influenced individual women’s land rights.

3.1.2 Gender and land among the *Abagusii*

Raikes (2014) explains that the Abagusii believe that they descended from one forefather, Mogusii, who had seven sons: Mogusero, Mogetutu, Mogirango, Mobasi, Momachoge, Monyaribari and Monchari. The sons

formed different clans that broke into sub-clans in the community. Each clan, *eamate*, comprised of lineages, *amaiga*, or singular *riiga*. Each *riiga* consisted of different households, *ebisaku*, or *egasaku* in singular. Raikes points out that *egasaku* was the basic unit of consumption, “headed by a patriarch or a group of brothers, who allocated land to women for them to produce food for their husbands and children” (2014: 98). It was common for *ebisaku* to pool together and combine efforts in communal labour, *risaga*, where they would jointly work on a member’s farm in exchange for locally brewed beer, *amarwa*. Moreover, each *risaga* had large tracks of land set aside as communal grazing sites and sources of resources such as thatching grass and water (Masese, 2006). Young men from each *risaga* jointly herded livestock and defended the group against external raids.

Before colonisation, the *Abagusii* held large families in high esteem, associating them with power, influence, and wealth for men (Silberschmidt, 1992). Consequently, Silberschmidt explains that men try to grow their power and have large families by marrying several wives and having numerous children. Raikes adds that while daughters were valued as a source of wealth in the form of cattle that fathers acquired upon their daughters’ marriages, sons were more valued because they sustained their fathers’ lineages, herded, and defended their homesteads.

Gender roles were highly defined in the community. Women’s roles included cultivation and domestic work, while men’s roles revolved around herding and hunting, building houses, and securing compounds (Raikes, 2014; Jones, 2011). Women’s farm cultivation roles were presumed less prestigious than herding because land was just a source of subsistence, while cattle symbolised wealth (Levine & Lloyd, 1966). Cattle enabled men to acquire more wives, expanding their territories. Thus, men valued large herds of cattle more than land. To increase their wealth, men tried to ensure they had large herds of cattle through “breeding, purchase, raiding, and defence against raids” (Raikes, 2014: 79). Land was commonly left at women’s disposal as a means of subsistence (LeVine & Lloyd, 1966), and custom prohibited men from interfering with their wives’ land management, farm produce and household subsistence decisions (Nyancham-Okemwa, 2000).

As stated earlier, the *Abagusii* believed that the land they held belonged to their ancestors, *Mogusii* and his sons. Thus, the occupants retained custodial rights that were transmitted down generations through the male lineage (Masese, 2006). In this way, for the present occupants, land was a link to past and future generations. Since land was a burial place, the *Abagusii* believed

that “the spirits of the ancestors lie in a specific land” (Ntabo, 2006: 246). Being a patriarchal community, the *Abagusii* had a patrilineal structure where descent was traced down the male lineage (Nyancham-Okemwa, 2000). They vested power in male elders. As such, before colonisation, fathers and grandfathers held the highest forms of authority (Mayer, 1965: 367). In these positions, the patriarchs established each family’s land boundaries. The rights to “control over land among the *Gusii* ended at the family level and never proceeded to specific individuals in a family” (Masese, 2006: 256). Masese adds that the patriarch was the household head and custodian of family land, and absolute land ownership was impossible.

In polygynous marriages, men subdivided land among their wives, keeping a tract, *emonga*, for themselves (Masese, 2006). Masese explains that the youngest wife would cultivate *emonga* for the patriarch’s subsistence. Fathers subdivided land among their sons and provided cattle for the first sons to acquire their first wives. Masese explains that each son typically held a long strip of land running from a high ridge to the bottom of a valley. If the population density increased in an area, individuals would acquire more land through clearance (LeVine & Lloyd, 1966; Silberschmidt, 1992). The *Abagusii* offered limited land rights to people from other ethnic communities because they believed that allocating land to foreigners would render the community landless in the long term (Parsons, 2011).

Describing gender and land relations in the pre-colonial *Abagusii* community, Raikes describes that newly married women were considered subordinate strangers in their husbands’ clans, where they had to await acceptance since they came from distant clans (2014: 80). A wife’s land rights improved after the birth of her children. Hence, newly married women would cultivate with their mothers-in-law until they bore children, after which they were granted autonomy. According to Raikes, having sons strengthened women’s land rights because mothers would then hold land in trust for their sons. Older women who were either barren or never bore sons could assume a male role and ‘marry’ a younger woman as a surrogate wife on behalf of an imaginary son (Orvis, 1985).¹³ The ‘female husband’ would then choose a man to father the children of the surrogate, but the children were counted as biological grandchildren of the ‘female husband’ (Masese, 2006). In this arrangement, ‘the wife’ enjoyed similar land rights as the wives who bore sons to their husbands. This custom ensured that even after a husband’s death, a woman

13 These customary ‘woman-to-woman marriages’ are further discussed in chapter 5, under section 5.1.2.

without sons would retain her autonomy and land rights acquired through marriage. Otherwise, Raikes explains that widows without sons would get married to their brothers-in-law¹⁴ or settle outside the homestead, exposed to poverty and insecurity.

Discussing women's positions in the pre-colonial structures, Nyancham-Okemwa points out that women retained a level of influence in resource governance. After inheriting land, men in polygynous marriages subdivided land among their wives, who retained relatively autonomous land rights (Orvis, 1985). Masese explains that the first wives were customarily entitled to a larger portion of land than the subsequent wives in polygamous marriages. Nyancham-Okemwa points out that although sons inherited land from their fathers, mothers held the land in trust. Masese summarises women's positions in the communities' customary land inheritance structure as having the formula "from father but through the mother" (2006: 257).

Nyancham-Okemwa adds that women's social status would increase with the birth of more sons and their sons' maturity. Older women past childbearing age whose sons had married enjoyed a higher status and were considered equal to the male elders. These women were involved in decision-making, whereby "male and female elders' spheres of influence in decision-making and control over resources were regarded as being simultaneously hierarchical and egalitarian" (2000: 7). Thus, Nyancham-Okemwa explains that the male elders respected the female elders' spheres of influence. Moreover, women's roles as household subsistence providers were recognized and respected because they were potential household heads in case their husbands died.

3.2 Colonial period

The colonisation of Kenya followed the Berlin Conference in the late nineteenth century that declared Kenya a British Protectorate. This arrangement conferred Kenya's political jurisdiction as an administrative district under the British Crown. Land rights were not part of this declaration. However, the Jurisdiction Act bestowed all unoccupied land to the Crown as 'Crown's land,' which was then vested under the Commissioner, who managed it as he deemed best (Coldham, 1979). Coldham explains that the Commissioner identified Kenya as appropriate for British settlers, leading

¹⁴ The customary wife inheritance arrangement is also discussed in chapter 5, under section 5.1.2.

to intensified colonial settlement after 1901. Gaston (1979) points out that Kenya's abundant and scantily populated land with conducive weather was what attracted the British colonial settlers.

The colonial government introduced socio-political and economic policies that drastically altered Kenyan communities' land relations to protect colonial interests (Morgan, 1963). Discussing how colonisation impacted Kenya's land governance, Kanyinga (2009) identifies three stages from the literature. First, the acquisition and alienation of land; second, the imposition of British property laws; and finally, the privatisation of land ownership.

In the first stage, the acquisition and alienation of customary land, Kanyinga explains that the colonists took advantage of the flexible customary pre-colonial land governance structures to adopt Kenya as a colonial state. The British Commissioner in Kenya retained the authority to lease land as he desired, alter any customary laws at will, detain, deport, and even restrict movement among Kenyans (Letete, 2017). This systematic uprooting of indigenous customary land rights was effected particularly through the imposition of a restriction pass known as *Kipande*, which was used to control Kenyans' movements. This approach effectively prevented people from moving away from their restricted land or returning to land taken up by the colonial settlers (Parsons, 2011). The development of a railway system connecting parts of Kenya and Uganda served as an incentive to attract more British settlers. Moreover, Kanyinga writes that the colonial settlers assumed socio-political control over Kenya, enabling them to appropriate 'unoccupied land'¹⁵ in the most productive areas to colonial settlers, giving them a sense of economic security. These lands were mainly known as the white settler areas or 'white highlands' (RoK, 2004).

In the second stage, Kanyinga describes how the colonists developed a legal framework to legitimise their land acquisition in Kenya. These laws include the British Lands Crown Ordinance passed in 1902, allocating all unoccupied land in Kenya to 'the Crown'.¹⁶ It is noteworthy here that the colonialists

15 Domínguez & Luoma (2020) explain that although unoccupied land refers to uninhabited areas, the lifestyles of most pastoralist and agrarian communities in Kenya involved leaving occupied land to rest. Pastoralist communities travelled for months in search of pasture and later returned, while farming communities commonly left part of their land fallow for up to seven years in shifting cultivation to improve fertility. However, the colonists classified such land as 'unoccupied' land even though it was occupied.

16 'The Crown' was a term commonly used in the United Kingdom to refer to the British Monarchy. Crown land refers to public or state land.

regarded most of the lands in Kenya as ‘unoccupied.’ This prepared the stage for converting all land in Kenya to state land in 1915, as discussed hereafter. The Ordinance allowed colonial settlers to acquire up to 1,000 hectares of land by lease for up to 99 years. This Ordinance was revised in 1915, extending the land lease period to 999 years (Hughes, 2005: 220). The 1915 Ordinance further declared that all land in Kenya belonged to ‘the Crown,’ which retained the power to allocate it at will. This provision stripped Kenyan communities of their customary land, making them tenants of ‘the Crown.’ The 1915 Ordinance formed the basis upon which the colonial government evicted Kenyan communities from their land at will.

In 1926, the colonial government approved the Native Areas Ordinance Act. This law facilitated the segregation of Kenyan communities into ethnically exclusive ‘native Reserves’ while the colonial settlers assumed the most productive lands referred to as the ‘white highlands’¹⁷ (Morgan, 1963). In 1941, the colonial government forcefully evicted Kenyan communities from their land, driving them into the ‘native reserves.’ These reserves were less productive, comprising less than a quarter of Kenya’s arable land (RoK, 2013; RoK, 2004; Parsons, 2011). This transition ended Kenya’s land abundance, forcing communities to adjust their customary practices that required large tracts of land. For instance, reduced land sizes restricted the shifting cultivation practised previously, which allowed farmers to leave their land fallow for up to seven years to enhance soil fertility (Harbeson, 1971). Such limitations resulted in soil exhaustion, reduced farm productivity, and an increased demand for land. Accordingly, land disputes within social entities became a norm (Okoth-Ogendo, 1979: 150). Moreover, as the demand for land increased, livestock farming became restricted, and later, the colonial government abolished cattle villages where men grazed their herds. These alterations, alongside congestion in the ‘native reserves,’ ignited grievances that threatened the colonial government’s stability (Gaston, 1979).

Kanyinga explains that the British government enacted laws that earned them cheap labour on their farms. They introduced a cash economy that obliged Kenyan men to work on the colonists’ farms to afford the mandatory tax and to purchase consumer goods (Wangari *et al.*, 2005; Sayer, 1998: 19). These factors forced men to migrate to either construct the railway system or

17 The ‘white highlands’ were exclusively reserved for the colonists and comprised of the most fertile land. In contrast, Kenyan communities were forced into the less productive areas referred to as ‘native reserves.’ Initially, the colonists justified the segregation claiming that the ‘white highlands’ were reserved for the colonial settlers because the weather there was ‘climatically fit’ for the European settlers (cf. Morgan, 1963: 141).

work on colonial settler's farms for low wages, where they stayed for years as squatters (Silberschmidt, 1992). The colonial government used local leaders such as chiefs to reinforce colonial policies, such as forcing young men to construct the railway, for which these leaders earned tax benefits (Raikes, 2014; Mayer, 1965).

As the demand for land increased in the 'native reserves', some members from overpopulated reserves illegally migrated to less populous reserves (Parsons, 2011). Complaints and tension over the increasing demand for land intensified within the 'native reserves', forcing the colonial government to form commissions to address the land scarcity within the 'native reserves'. These commissions included the East African Commission of 1924, the Commission on Closer Union in East Africa in 1929, and the Kenya Land Inquiry Commission in 1934 (Bunche, 1939). Although the Kenya Land Inquiry Commission recommended restricting colonial settlers from encroaching on the 'native reserves', we can safely conclude that the commissions failed to offer solutions to growing land pressure in the 'native reserves'. The subsequent complaints and tension within the reserves threatened the stability of the colonial government, forcing them to move to the third stage, where they initiated a radical land tenure reform program, referred to as the Swynnerton Plan.

3.2.1 The Swynnerton Plan: Private land ownership

As a result of the colonial policies and practices on land, there were many issues in Kenya regarding land use and ownership that had never been dealt with before. Growing pressure on land and unaddressed complaints prompted 'oathing'¹⁸ in some communities within the 'native reserves', further threatening the colonial government's stability (Thurston, 1984). By means of oathing, individual Kenyans made a strong commitment to fight against colonial land injustices. The colonial government tried to appease the Kenyan communities by introducing measures to indicate their commitment to reforms implying 'equity'. J.M. Swynnerton, the colonial Deputy Director of Agriculture, prepared a report titled "A plan to intensify the development of African agriculture in Kenya". The report informed an agricultural policy commonly referred to as the Swynnerton Plan. The Plan intended to improve agricultural productivity and land tenure security within the 'native reserves'.

¹⁸ Kenyans regrouped and took an oath to fight against the colonial settlers and reclaim their customary land (see Hudson, 2010).

It stated that improving farming methods, extending cash crop farming to the Kenyans, large-scale farming, improving farm produce markets and land tenure security would improve agricultural production and income for the Kenyan farmers (Thurston, 1984). Extending these farming policies to the Kenyan communities implicitly justified the colonial injustices.

The Swynnerton Plan aimed to replace customary land tenure with private ownership similar to that of Great Britain, under the justification that customary land tenure was wasteful and inefficient (Sayer, 1998: 40). The Swynnerton Plan further advocated for consolidating fragmented land holdings and extension of land registration to the Kenyan communities to enable landholders to access credit to improve agricultural productivity. The Plan also extended cash crop farming to the 'native reserves' without restrictions to replace indigenous farming practices (Wangari *et al.*, 2005; Sayer, 1998). Further, the Swynnerton Plan proposed that land registration under individuals would improve tenure security and encourage Kenyans to invest in their farms, improving farm productivity.

However, Sayer (1998) describes that this process created a 'landowners' and a 'landless' class. He further observes that it forced the landless to seek employment in the middle class 'landowners' farms for subsistence, initiating social classes within Kenyan communities (1998: 40). Some authors argue that the extension of land registration to the 'native reserves' was intended to cause division and pacify the 'new landowners' to support the colonial governance (cf. Sayer, 1998; Gaston, 1979). Kibwana points out that by creating a 'landowners' class, the colonial government intended to create a middle-class group that would "act as a butter between the settler and the landless" (1990: 237). On the other hand, Kanyinga argues that the colonial government anticipated that private land ownership "would make people busy in their holdings, preventing them from organizing against the state" (2009: 92). The landless class comprised mainly of women and the rebelling lot who had regrouped in forests for oath-taking.

Therefore, rather than improving land tenure security in Kenya, the Swynnerton Plan intensified land tenure inequalities. Ironically, even though alleviating the then-perceived gender inequality was one of the Swynnerton Plan's goals, women formed most of the landless population as land was registered under male household heads (Ossome, 2014; Owoo & Boakye-Yiadom, 2015). Wangari and colleagues (1996) argue that the land registration under household heads, as proposed by the Swynnerton Plan, initiated the current gender disparities in land ownership in Kenya. Land

no longer belonged to households but to the male household heads whose names appeared on the title deed.

3.2.2 Gender and colonial policy reforms among the *Abagusii*

Colonisation introduced formal justice institutions, schools, and medical facilities that altered the *Abagusii*'s socio-political, economic, and ecological structures (Parsons, 2011; LeVine & Lloyd, 1966). Politically, the increased demand for land in the 'native reserves' aroused animosity among ethnic communities. The *Abagusii* became hostile toward settlers moving from other 'native reserves' (Parsons, 2011; Hakansson, 1988).

Moreover, increased population density and cash crop farming ignited ecological challenges within the *Abagusii* 'native reserve'. Discussing the *Abagusii* community issues during the colonial era, Ndege (2006) describes how private land ownership led to excessive and uncontrolled land exploitation for short-term gain, ignoring the long-term social and ecological impacts. Consequently, unsustainable farming methods replaced the sensitive farming methods deliberately adopted to avoid land degradation before colonisation. Ndege notes that "people started to claim individual ownership and cultivate lands that were ecologically fragile and not suitable for crop production such as steep slopes and swampy lands close to the streams and rivers" (2006: 240). This increased soil erosion and reduced soil fertility as indigenous farming methods such as shifting cultivation were no longer possible.

The colonial socio-political and economic alterations impacted women's social lives negatively. As husbands relocated to work on the colonial settlers' farms for a minimal wage, wives became *de facto* household heads, taking up men's customary roles in addition to their household subsistence roles (LeVine, 1982). Although women continued cultivating, the men received the income because, formally, the land belonged to men (Nyagwencha, 2016; Nyancham-Okemwa, 2000; Hakansson, 1988). Cash crop farming, coupled with congestion in the 'native reserves', led to increased land value. These factors interlinked with private land ownership, leading to land sales initiated by older men, who sometimes sold their absent sons' land without involving the women who depended on the land (Silberschmidt, 1999).

The colonial reforms threatened women's *de facto* land rights, forcing them to turn to the market for subsistence. Moreover, as men acquired 'wealth' independently from wages, they started marrying without involving their

fathers, giving money instead of cattle to the bride's family (Hakansson, 1988). This, coupled with the community's scarcity of men, increased elopement¹⁹ incidents (Raikes, 2014; Silberschmidt, 1999). Hakansson explains that since *Abagusii* customary norms do not recognise elopement as marriage, this weakened women's land rights.

3.3 Post-colonial period

Kenya's struggle for independence was founded on colonial land injustices (Harbeson, 1971). Congestion in the 'native reserves' complicated Kenyan communities' dependency on land for subsistence. At the same time, the colonists' accumulation of the most productive land for agricultural production sparked sharp socio-political and economic inequalities. Militant revolts from Kenyan communities became a norm, culminating in the Mau Mau struggle for independence (Gaston, 1979). The colonial government gave in and negotiated for the independent government to inherit the constitution, which preserved colonial inequalities (RoK, 2013; 2004).²⁰ Moreover, the colonial government awarded the 'white highlands' to some members of the political elite for their loyalty, while others purchased land from the colonists, exacerbating the land distribution inequalities (Veit, 2019; Hornsby, 2012; RoK, 2013).²¹

3.3.1 Addressing colonial land inequalities

Kenya's first independent government consisted mainly of members of the political elite who benefitted from the colonial land injustices (Hornsby, 2012). Thus, the government was not keen on abrogating these injustices (Gaston, 1979; Ndungu, 2006). Instead, they made superficial amendments, replacing colonial terms while retaining the privileges of the political elite. Letete & Sarr point out that the colonial ordinances became Acts, 'the Crown' was replaced by the president, and 'Crown's Land' became Government Land (2017: 184). The Constitution authorised the independent government to allocate land at will to whoever desired it (RoK, 2013). This provision enabled the political

19 Marriage without involving the couple's kin, and without transfer of wealth, commonly cattle, to the woman's kin. See Hakansson, 1988.

20 For example, the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Ndung'u Commission) (2004).

21 See the Commission of Inquiry into Post Election Violence (CIPEV) (Waki Commission) (2008).

elite to grab public land, increasing land ownership inequalities and social class disparities in Kenya (Rutten, 1997). Kanyinga (2000) points out that Kenya's socio-political and economic elite often acknowledged the need to address these inequalities. Still, they failed to implement recommendations proposed by commissions of inquiry into the historical injustices.²² Thus, these land injustices persist in practice, contributing to ethnic border conflicts and local land disputes in Kenya. For instance, the infamous 2007-2008 post-election violence allegedly resulted from land grievances dating back to colonial land injustices (Veit, 2019; RoK, 2013).²³

Besides maintaining the colonial land injustices, Kenya's independent government maintained customary tenure arrangements. Constitutional and land governance reforms have failed to emancipate women's land rights in practice as both customary and formal land governance systems coexist. Thus, men maintain control over land regardless of the land governance system in place. On the other hand, women's land rights remain primarily dependent on their relationships with men. In the following section, I will discuss Kenya's current legal provisions on women's land rights under international and statutory laws.

International laws

Kenya's Constitution recognises international laws as part of Kenya's legal framework (The Constitution of Kenya, 2010: 2[5]). This provision provides a basis for the recognition of such international conventions as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Universal Declaration of Human Rights (UDHR) and the Beijing Platform for Action (1995), as being part of the laws of Kenya. These instruments emphasise gender equality as a fundamental human right. Based on these constitutional provisions, such conventions require states to "accord to men and women the same rights with regard to the law" (CEDAW, 1979: 15[4]).²⁴ Kenya has tried to comply with this requirement, eliminating all forms of

22 For example, the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Ndung'u Commission) (2004).

23 See the Commission of Inquiry into Post Election Violence (CIPEV) (Waki Commission) (2008).

24 Cedaw, U. (1979). Convention on the elimination of all forms of discrimination against women. Retrieved April, 20, 2006. www.ohchr.org/documents/professionalinterest/cedaw.pdf. Accessed on 21.06.2020.

gender discrimination through the Constitution. As such, Kenya guarantees women equal rights to access and control land as men.

Statutory laws: *The constitution*

Under Article 2(4), the Constitution is the supreme law in Kenya. Kenya's post-colonial Constitution favoured the political elite, restricting any possibilities for equality. The first amendment in 1969 mainly focused on changing Kenya's governance system from the federal *Majimbo* to a central government system. Among other forms of discrimination, the 1969 Constitution allowed individual communities' customary laws to determine property sharing under Section 82(4). This clause has remained controversial because most communities' customary norms are gender-discriminative, marginalising women's property interests.

Kenya promulgated a new Constitution in 2010 that eliminates all forms of discrimination. The 2010 Constitution highlights "equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised" as core values and principles of governance (Constitution of Kenya, 2010: 10[2]). In a nutshell, the 2010 Constitution advances women's access to, control over, and ownership of resources like land. It provides that "every person has the right, either individually or in association with others, to acquire and own property" (ibid.: 40 [1]). The Constitution only recognises customary laws consistent with its provisions, not repugnant to justice and morality. Specific to land, the 2010 Constitution outlaws gender discriminative laws, customs and practices relating to land and property in land (ibid.: 60 [1]). Thus, in contrast to customary laws, the Constitution affirms daughters' inheritance rights.

Kenya's legislative arm has enacted several Acts from the Constitution that shape women's land rights. These include the Land Registration Act (2012), which intends to revise, consolidate, and rationalise land registration under the devolved government. In the context of land, the Act enables spouses to co-own land through joint land registration. Section 93(2) of the Act provides that, even when land is registered under one spouse, the other spouse's contribution through labour, developing and improving the land qualifies them as co-owners. Besides, the Act requires spousal consent before land transactions.

The provision is especially beneficial for women because they commonly hold secondary, *de facto* land rights through their husbands, sons, fathers,

male brothers or in-laws. By enabling the formal inclusion of women as co-owners of land, joint land registration contributes to securing women's land rights. Furthermore, in the case of land disputes, divorce or death of a husband, the Act qualifies women as co-owners through contribution, even when they lack formal documentation to prove their rights. Since land is commonly registered exclusively under men, they retain the right to transact the land independently. However, the Act requiring spousal consent enables women's involvement in decisions before land transactions. However, the Land Registration Act must be read in relation to the Matrimonial Property Act.

This subsection will discuss Kenya's statutory provisions specific to women's land rights. Specifically, I will concentrate on the Law of Succession Act and the Matrimonial Property Act.

The Law of Succession Act

The Law of Succession Act came into force in 1981. Its purpose was to guide the distribution of a deceased person's property among living dependants. Although the Act mainly guides inheritance in the absence of a will, it also informs court decisions to revise a will that fails to give all dependants reasonable support regardless of gender. The Act provides that women inherit their deceased husband's land by recognising the spouse as a beneficiary. In contrast to most customary laws that limit inheritance rights to men, the Law of Succession Act indiscriminately grants equal inheritance rights to both male and female beneficiaries (Law of Succession Act, 2012: 35-40).

Upon the death of a man, his resources are shared equally among his children and spouse or spouses. In monogamous marriages, the wife is entitled to the deceased husband's resources for a lifetime. In polygynous marriages, property rights are shared equally among the wives of the deceased. This law ensures that whether a woman is married formally or customarily, she and her children are beneficiaries of the deceased husband's resources.

Although the Act commenced in 1981, it remained inactive until 1998, when the Public Law Institute of Kenya, financed by the United Nations, conducted a public awareness programme promoting the adoption of the Act in practice (Isinta & Flitner, 2018). Before the new Constitution in 2010, courts ruled inconsistently about property rights distribution because the then Constitution recognised customary norms limiting land inheritance to

male offspring. However, with Kenya's 2010 Constitution eliminating gender discrimination in access to and control over resources, particularly Article 45, which provides for equality of parties to a marriage, the courts commonly refer to the Law of Succession Act to approve daughters' petitions to inherit land in their natal homes. In one such case, a court ruled in favour of six married daughters wanting to inherit part of their deceased father's seventeen hectares land alongside their two brothers. The ruling attracted reproach from the local elders, who argued that it went against custom for daughters to inherit land in their natal homes when married.²⁵ They insisted that once a girl is married, she accesses land through her husband. These elders equated married women inheriting land in their natal homes to inviting curses upon the woman's children.

However, although the Act provides gender equality, it determines the surviving spouse's property rights according to gender. When the surviving spouse is the wife, her interest in the deceased husband's resources is for a lifetime if she remains unmarried. Of course, this section is discriminatory against women because when the surviving spouse is a husband, remarriage does not affect his interests in the deceased wife's resources.

The Matrimonial Property Act

The Matrimonial Property Act provides that spouses hold equal land rights during and upon dissolution of marriage. The Act provides that matrimonial property, jointly acquired and owned during the marriage, must be shared equally if the couple dissolves the marriage. Although the Act protects women's *de facto* land rights, Section Seven of the Act limits the distribution of matrimonial property to each spouse's contribution to its acquisition. For instance, if matrimonial land is registered under a husband, the wife must prove her contribution to its acquisition before getting a share upon divorce. Therefore, even though the Land Registration Act qualifies a woman as a co-owner based on her contribution to developing and improving the land, the Matrimonial Property Act requires proof of such contribution. To achieve this, the wife must maintain adequate documentation of her direct contribution through labour and financing and indirect contribution through support and caregiving responsibilities. Such documentation is impossible to attain unless the wife intentionally plans and

25 Succession cause no. 297 (2015): Joshua Kiprono Cheruiyot vs Rachel Cherotich Korir. High court of Kenya at Kericho. kenyalaw.org/caselaw/cases/view/139469. Accessed 25.02.2021.

prepares for divorce from the onset. Besides, most women, especially in rural areas, lack awareness of such requirements.

In 2016, the Federation of Women Lawyers (FIDA) went to court to outlaw section seven of the Matrimonial Property Act, arguing that it contradicts section 45(3) of the Constitution, which grants spouses “equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage” (Constitution of Kenya, 2010, Article 45[3]). FIDA argued that “it is difficult to prove the non-monetary contribution women make” to acquiring matrimonial property. However, FIDA lost the case, where the judge stated that, in his view, the petitioners’ interpretation would encourage people to enter and walk out of marriage for wealth.²⁶ The judge further pointed out that section 7 of the Matrimonial Property Act applies to both parties in the marriage, and the aim is to protect both women and men.

The Matrimonial Property Act fails to address the impact of gendered roles confining most women to household subsistence responsibilities such as food provision, childcare, and water collection, among other unremunerated responsibilities (see Chapter 2). In contrast, men’s roles incline towards the market economy, offering them employment opportunities that allow them to purchase land. Consequently, men are more likely to purchase land with their wives’ direct and indirect contributions than women are during the marriage.

Other statutory legislation directly affecting women’s land rights includes the National Land Commission Act, which guides the establishment of a National Land Commission (NLC) to govern land in Kenya on behalf of both the national and county governments. Among its provisions, the NLC Act provides equitable access to, and ownership of, land regardless of gender and promotes gender equality in land dispute resolution. Although Kenya’s legislature is yet to enact the specific legislation for the two-thirds majority bill, the Land Commission Act requires that neither gender exceeds two-thirds of elective or appointed land administration staff. This provision enables the inclusion of women in land governance to ensure proper representation of women’s interests.

²⁶ Petition 164B (2016). Federation of Women Lawyers Kenya (FIDA) vs. Attorney General & another [2018]. High court of Kenya at Nairobi. kenyalaw.org/caselaw/cases/view/152142/. Accessed 26.02.2021.

3.3.2 Gender and post-colonial land tenure among the *Abagusii*

The *Abagusii* largely remained a 'conservative and inflexible community' in the post-colonial period, with communal land ownership systems characterised by patrilineal land inheritance (Silberschmidt, 1992). Ndege (2006) explains that although the *Abagusii* adopted a dualistic land governance system after land registration in 1954, the formal private land ownership patterns have failed to merge with customary communal land rights. Patriarchal gender resource relations have remained prevalent in the community where all resources, including what women acquire independently, belong to men. A woman can only hold rights in trust for her male relatives (Gray & Kevane, 1999). Custom dictates that upon marriage, a woman should leave everything she has acquired to her brothers, and in the event of a divorce, she has to leave everything to her husband.

Statutory reforms have failed to socially engineer private land tenure. Instead, patriarchal male dominance empowers men to exploit the provisions, marginalising women's land interests. For instance, Hakansson (1988) reports that land sales became common in the community between the 1960s and 1980s, whereby men were selling land without their wives' consent and before their sons' maturity. These dynamics prompted the government to initiate land boards in 1982, through which local leaders regulated land transactions. However, the efficiency of these boards remains questionable in the context of private land tenure. Moreover, these boards have been tainted with accusations of corrupt dealings, questioning their effectiveness in protecting women's *de facto* land rights.

Besides, although increased population density and declining land sizes force men to relocate to the cities, outmigration remains relatively low as the people retain customary affiliations to land (Silberschmidt, 1992). Declining land sizes elicited land disputes involving vulnerable groups such as women holding land independent of men. Silberschmidt affirms that by 1992, about a third of the *Abagusii* households were female-headed. According to Henrysson and Joireman (2009), although women have remained responsible for the subsistence of their households, they depend on their relationships with men to access land.

Prevalence of customary tenure patterns contributes to land titles remaining outdated; still under the original owners' names, they contribute to women's vulnerability to land disputes (Henrysson & Joireman, 2009; Hakansson, 1988). Henrysson and Joireman found out that the most common disputes

involving women among the *Abagusii* include boundary adjustment and expropriation, commonly occurring in female-headed households. Local male elders still commonly address land disputes, and their decisions are primarily based on customary laws, limiting women to secondary land rights in 'men's land'.

3.4 Conclusion

This chapter reviewed the historical dynamics of women's land rights in Kenya from the pre-colonial to the post-colonial period. The chapter points out that land was abundant in the pre-colonial period, and hence, land disputes were rare. Socially, land was a symbol of identity and a source of subsistence before colonisation. Women's land rights were defined and protected by customary laws. Women managed land for household subsistence, while men sought to accumulate wealth and power through cattle herding. Although women accessed land through relationships with men, well-established social structures safeguarded their rights.

However, colonial policies and laws changed the situation extensively, introducing reforms that altered the customary arrangement and the meaning and value attached to land. The British colonists replaced customary land governance structures with formal ones. Formal land registration and the introduction of cash crop farming increased the economic value of land. Cash crop farming and unsustainable farming methods replaced indigenous crops, and farming methods focused on sustainability. Although women continued cultivating the land, the cash crops became 'men's crops' because of their market value. Land registration under men as the household heads eroded women's land rights held under customary laws while granting men exclusive ownership and the possibility of selling the land. The colonial reforms also diminished women's land rights by enabling and indirectly encouraging elopement.

Upon independence, Kenya inherited a dualistic land governance system with formal and customary structures in place. Kenya has adopted numerous statutory laws to improve women's land rights, but these reforms have failed to infiltrate the deeply entrenched customary norms. The coexistence of statutory and customary laws and legal pluralism allows social groups to invoke either set of laws to support their land claims. In the patriarchal setup of most Kenyan communities, legal pluralism threatens women's land rights because the culture favours men to hold positions of influence and decision-

making. When involved in land disputes, the Constitution encourages women to seek redress through customary mechanisms that are presumed more efficient. However, even though the Constitution requires the customary dispute resolution mechanisms to remain gender-neutral, they commonly draw from the customary norms that exclude women from settling land disputes. Such inconsistencies force women to depend on the judicial courts to retain their rights to gender equality in access to and control over land.

PART II

Understanding Gendered Land Disputes

4

Gendered Access to Land

As discussed in Chapter Two, land ownership entails holding the whole bundle of rights, including access, withdrawal, management, exclusion, and alienation rights (Rao, 2018; Doss *et al.*, 2014). However, the concept clearly contrasts most African customary landholding systems, where members of a social entity own land communally and share it down generations through inheritance. In this context, individuals retain access and use rights during their lifetime. However, the communities believe that land belongs to the ancestors, held in trust by the living for future generations. Therefore, ancestral land transfers are limited to bequests within a lineage and are not effectuated by sale. In examining the principle of communal land ownership in Zimbabwe, Tafira (2015) points out that African land laws debunk the idea of ownership. Instead, land is a natural endowment that can neither be bought nor sold. Customary land tenure entails the rights of access and use in contrast to Western systems, which emphasise the economic value of land. Ancestral land in most SSA countries is associated with socio-political, spiritual, and even philosophical attachments (Cooper, 2012). In this respect, Tafira points out that “for Africans, land is everything. Therefore, depriving one of land means robbing them of their personhood, being and identity - in other words, their full humanity” (2015: 24).

Access to and control over land and related resources in most SSA communities is shaped around patriarchy. Only the male members of a lineage hold land inheritance rights because, customarily, men are permanent members of a lineage. On the other hand, daughters are considered transients and are expected to relocate to their husbands' lineages upon marriage (Harrington, 2010). Harrington explains that customarily, through marriage, women can access and use the land their husbands inherit. This process of accessing land rights limits women to secondary, usufruct rights to their father's land before marriage and their husband's land after marriage. However, these relationships are temporary. Accordingly, since marriage relationships are socially constructed and often temporary, women's land rights accessed through marriage remain unpredictable and vulnerable to disputes.

Despite progressive policy reforms to ensure gender equity with respect to land, progress towards actualisation is still slow and impractical in SSA (Davis *et al.*, 2004). For instance, recent land policy reforms have been streamlined

in Kenya to secure women's access to and control over land by eliminating gender-discriminative laws. Thus, Kenya's legal framework provides equal rights for daughters to jointly inherit land alongside their brothers and for wives to own their husbands' ancestral land. Moreover, land markets offer gender-equal opportunities to acquire land. Despite these legal reforms, access to and control over land remains gendered in practice. This chapter discusses land acquisition through marriage, inheritance, and land markets. Specifically, the chapter focuses on how these land acquisition avenues are gendered, regardless of legal reforms.

4.1 Acquisition of land rights through marriage

To comprehend marriage as an avenue through which women acquire land rights, we must first understand marriage. The definition of marriage is widely contested in the history of anthropology. *Notes and Queries on Anthropology* defines marriage as "a union between a man and a woman. In this construct, the children born to the woman are recognised as legitimate offspring of both partners" (Royal Anthropological Institute, 1951: 111). However, some authors have criticised this definition, pointing out the heterogeneity in marriage among various communities. For example, while some communities recognise same-sex marriages or polygynous marriages, others restrict marriage to a union between one man and one woman. Moreover, Gough (1959) points out that children born in a marriage are not always accepted as legitimate offspring of the man. Therefore, authors should not insist on these aspects when defining marriage. A more universal definition considers "marriage as a publicly recognised union established between one man and one or more women, or between two women, or between a woman and one or more men, according to the defining rules of a given society or social stratum" (Ogbu, 1978: 243).

Furthermore, communities have diverse customary requirements that must be fulfilled to validate a marriage. Although these requirements are not universal, most patriarchal communities require the groom to transfer some wealth to the bride's kin. This wealth is critical in establishing a woman's identity and securing her rights in the husband's land. Some authors consider this wealth as a form of compensation for the bride and hence the wealth transferred signifies transferring ownership of the bride from her father to her husband (Lon & Widyawati, 2018). They explain that the amount of wealth transferred depends on the value attached to the bride. Using the example of Manggarai, Eastern Indonesia, Lon & Widyawati state that wealth for

brides from high social status families, beautiful brides and highly educated women is ordinarily higher (2018: 273). Other authors argue that the wealth transferred is meant to fill the void left in the bride's family (Pritchard, 1931; Driberg *et al.*, 1930). In this, the authors point out that the wealth becomes a rotating fund that the bride's brothers reuse to acquire their wives who substitute their sister, maintaining equilibrium (Hakansson, 1994). Still, others argue that wealth transferred to the bride's kin is compensation for the bride's reproductive and productive abilities (Goody, 1973: 17).

Using anthropological literature, Ogbu (1978) summarises the functions of this wealth as follows:

(1) to secure legal rights for the husband over his wife [...]; (2) to secure for the man rights over the domestic and sexual services of his wife [...]; (3) to secure for the man rights over the offspring of his wife [...]; (4) to ensure the permanence of the arrangement under which the man will enjoy the above services [...]; and (5) to compensate the woman's male kin for the loss of her labor [...] (Ogbu, 1978: 242).

Generally, authors agree that the wealth transferred from the groom to the bride's kin symbolises a form of compensation and transfer of the 'ownership' of the bride. Hence, this wealth is commonly referred to as bride-price. However, the term bride-price tends to emphasise the economic role of the wealth while overlooking its social functions (Dalton, 1966: 732). Moreover, the term bride-price tends to contribute to the general belief that "wives are bought and sold in Africa in much the same manner as commodities are bought and sold in European markets" (Pritchard, 1931: 36). These debates have informed the general agreement that the term bride-wealth is more befitting for this wealth. Accordingly, Ogbu concludes that the primary function of bride-wealth is to legitimise a marriage.

In Kenya, marriage is critical in the organisation of society and the transfer of property rights, with most women acquiring ancestral land rights through marriage (Njoh *et al.*, 2017; Mwagiru, 1998; Karanja, 1991). According to Kenya's marriage Act of 2014, "marriage is the voluntary union of a man and a woman whether in a monogamous or polygamous union and registered following this Act". Moreover, since Kenya's Constitution consents to customary arrangements that are not repugnant to justice and morality, the definition of marriage remains open to accommodate communities'

customary arrangements. Thus, marriages within Kenyan communities are established upon the fulfilment of customary requirements.

Writing about the customary marriage requirement and women's statuses and role among the *Abagusii*, Hakansson (1994) affirms that the settlement of bride-wealth, *chiombe*,²⁷ validates a marriage. Hakansson explains that women's land rights are intertwined within marriage and kinship ties established through bride-wealth settlements, and accordingly, it is "only through marriage that women obtain secure access to land as well as proper social identity" (1994: 522). Therefore, the bride-wealth settlement secures a woman's land rights, which she holds in trust for her sons. According to Hakansson, once a man settles bride-wealth, he earns exclusive rights over the woman and custody of all children borne to the woman irrespective of their paternity. In contrast, when a man fails to settle bride-wealth, there is no social or legal foundation to the marriage, and the man lacks legitimacy over the woman's children even if he is the biological father (Okinyi & Nyankanga, 2014). This matters in the community because having children, whether biological or not, enhances a man's social status. In other words, male children are considered a means of continuity and heirs of the father's land, while girls are celebrated as a source of wealth in the form of bride-wealth or *chiombe* (Levine & Lloyd, 1966: 111).

Hakansson's study highlights that marriage and bride-wealth settlement are crucial in transforming a woman's social identity and securing land rights. At the social level, the transfer of bride-wealth marks the woman's passage from 'the daughter of' to 'the wife of' identity, referring to the man through whom she accesses land. Thus, when a woman gets married among the *Abagusii*, it is said that '*ochire kobwata egeticha*'²⁸ *kiaye*', which translates to 'she has gone to secure land for herself'. According to Wahab and colleagues (2012), people and culture are inseparable in sub-Saharan Africa and make up society. Nevertheless, over the years, some of the cultural practices and customs in most African communities have been eroded due to colonialism,

27 Regardless of the modification of the composition of bride-wealth from livestock to a mainly monetary form, its reference with the original term *chiombe* (cattle) persists while bride-wealth settlement is still referred to as ogoakana *chiombe* (paying cows).

28 Although *egeticha* in this context generally refers to land, directly translated the term specifically refers to a small garden in the backyard. From the *Abagusii* customary perspective, upon marriage, a woman acquires the rights to her husband's land and is customarily obligated to utilise the land to realise her role of providing subsistence (especially food) for her household. Commonly, subsistence crops such as indigenous vegetables, millet or maize and bananas are grown in this garden. Therefore, the statement *ochire kobwata egeticha kiaye* captures the link between marriage, the role of women and land in the *Abagusii* culture.

westernisation, socio-political and economic factors. Silberschmidt describes the *Abagusii* as “being different from other societies in Kenya by being anchored in an extremely ‘traditional’ and inflexible system; in other words, norms and values set severe limits to the kinds of behaviour which were acceptable” (Silberschmidt, 1992: 244). Accordingly, regardless of socio-political and economic transitions, some fundamental tenets of *Abagusii* customs endure, remaining highly regarded in the society. For instance, LeVine (2013) argues that bride-wealth is significant in legitimising a marriage and securing women’s land rights among the *Abagusii*. Thus, women’s land rights acquired through marriage remain vulnerable when the husband has not settled bride-wealth.

In a study conducted among the *Abagusii* community, Hakansson (1988) reports a growing number of landless women. He explains that these findings result from high incidents of elopement²⁹ between the 1950s and 1980s. The girls eloped “to avoid being forced into marriages with wealthy men” (1988: 179). LeVine explains that men persuaded young girls to elope with them in such unions because they could not afford the high bride-wealth demanded before marriage (2013: 81). Elopement (or informal marriage) deprives women of social and legal protection for their land rights because a man is only bound to his wife after bride-wealth settlement. Therefore, such men can divorce their wives at will without any sanctions. Hakansson further describes that sometimes men exploit this gap and intentionally withhold bride-wealth to have the possibility of divorcing their wives at will. When interviewed, such men claim that they first want to know the woman’s character before deciding whether to marry or send her away. Hakansson explains that such ‘marriages’ contribute to a surging number of landless women among the *Abagusii*.

However, it is worth noting that women’s land rights acquired through marriage remain vulnerable to land disputes even after their husbands have settled bride-wealth. Such alterations as divorce, death of the husband, and polygyny interfere with the stability of women’s land rights. For instance, although divorce is rare among the *Abagusii*, when it occurs, the wife’s kin recompensates the bride-wealth settled, reversing the process. Therefore, the woman loses the land rights she has acquired through marriage, while her husband loses custody over the woman’s children, even if he is the biological father (Hakansson, 1994). However, customary law allows men

29 Elopement refers to an illegitimate union between a man and an unmarried woman cohabitating without bride-wealth settlement (LeVine, 2013: 81).

to retain paternal rights through a formula that determines the proportion of bride-wealth compensated depending on the marriage duration and the number of children born (Mayer, 1950). In contrast, women lose land rights upon divorce. Okinyi & Nyankanga (2014) explain that the marriage and divorce laws among the *Abagusii* have persisted through the nineteenth and twentieth centuries.

In an article published in Human Rights Watch on June 25, 2020, Abalaka explains that men hold all the power in marriage in patriarchal communities and deny their wives land rights upon divorce. From an interview with a woman whose husband forced her out of the marriage, Abalaka highlights that *Abagusii* norms deny women resource ownership rights. The woman told him, “women cannot own anything in their name”. Accordingly, land is registered under men while the remaining household members retain *de facto* land rights. Such cultural norms deny divorced women’s land rights acquired through marriage. Furthermore, Abalaka states that formal and alternative dispute resolution avenues often become barriers for divorced women seeking to recover land rights lost upon divorce.³⁰ Furthermore, with a man wielding all the power in the marriage and with the land registered under his name, a husband can sell ancestral land regardless of his wife’s opinion.

Similarly, polygyny also impacts women’s land rights acquired through marriage. In instances where the husband decides to marry more wives, the land rights previously held by one woman are shared among more women. Co-wife rivalry in polygynous marriages contributes to women’s land struggles. Women in polygynous marriages contend with competitive pressure in addition to the gendered land struggles. As Nyagwencha (2016) explains, land disputes between co-wives are prevalent after the husband’s death.

Customarily, land belongs to men, who also hold all the power in patriarchal communities. This custom leaves women’s land rights held independent of men vulnerable to contestations. For instance, brothers-in-law often contest widows’ land rights acquired through marriage. Such occurrences are commonly reported in mainstream media and through dispute resolution avenues. Henrysson, & Joireman (2009) state that among the *Abagusii*, it is

30 Abalaka, O. (2020). “Once you get out, you lose everything: Women and Matrimonial Property Rights in Kenya”. Human Rights Watch. www.hrw.org/report/2020/06/25/once-you-get-out-you-lose-everything/women-and-matrimonial-property-rights-kenya. Accessed 09.10.2020.

common for in-laws to disinherit a widow by evicting her. The authors point out that a widow's vulnerability in the community is commonly influenced by "the gender and age of her children, the payment of bride price, her character, and her HIV-status" (2006: 44). In a newspaper article explaining the land struggles of a widow, Kimuge and Chepng'eno (2020) narrated Nelly's experience when her in-laws resorted to violence to disinherit her. They denied her access to the land, and when she insisted and cultivated the land against their will, they used a poisonous spray to destroy her crops.³¹

Thus, women's access to land rights through marriage is marred with several challenges that leave them insecure. Kenya has adopted various legislations to secure these land rights. These include the Law of Succession Act that came into operation in 1981 and the Matrimonial Property Act of 2013 (see Chapter Three). The Law of Succession Act guides the sharing of a deceased's property among the dependants in the absence of a will. Although the act was informed by colonial ideologies that contradict most Kenyan communities' customary norms, it is significant in recognising widows as heirs of their husbands' land. However, in some cases the Act denies women benefits they would have customarily held. For example, sections 35 and 36 of the Law of Succession Act provide widows with lifetime access rights to their husbands' land. However, the Act provides that when a widow remarries, she loses these land rights (The Law of Succession Act, 2012: 18). In contrast, customary laws offer institutions like wife inheritance for widows and 'woman-to-woman marriages' for women without sons to protect a widow's identity within her husband's lineage, securing her sons' land inheritance rights.

According to Section 6 of the Matrimonial Property Act, matrimonial property includes the matrimonial home, household goods, and resources acquired jointly during the marriage but excludes customary resources held in trust customarily (Matrimonial Property Act, 2013: 6). To ensure equality, the Act provides for equal rights to matrimonial property during the marriage and an equal sharing of the property rights in case of marriage dissolution. However, since men hold ancestral land in trust for future generations, land is excluded from matrimonial property. The Act remains controversial in Kenya as most NGOs advocate for its revision to reflect gender equality.³² Therefore,

31 Kimuge and Chepng'eno (2020). "Uasin Gishu widows hopeful after training on law of succession". Daily Nation Kenya. nation.africa/kenya/gender/uasin-gishu-widows-hopeful-after-training-on-law-of-succession-247492. Accessed 09.10.2020.

32 Discussed in detail under the "Acquisition of land through the market" section of this chapter.

whether based on customary or statutory laws, women's land rights acquired through marriage are insecure and dependent on men's whims.

4.2 Acquisition of land rights through inheritance

Customarily, most Kenyan communities exclude daughters from inheriting land. This custom was formalised under the Swynnerton Plan of 1954, which initiated formal land registration under male household heads, formalising women's access to land through men. As noted in Chapter Three, subsequent land reforms have sought to ensure equal access to and control over land. Kenya's legal framework provides gender-equal access to and ownership of land, entitling daughters to inherit land alongside their brothers.

The Law of Succession Act of 1981 initiated this process by providing equal distribution of land among dependants of the deceased regardless of gender in cases where someone dies without a will. This provision of the Law of Succession Act has informed several court rulings in Kenya, recognising daughters as heirs in their natal homes. However, since the Act was primarily intended to serve colonial interests in multiracial and multi-ethnic postcolonial Kenya, it is characterised by several shortcomings. For example, some of the Act's provisions contradict the customary norms of most Kenyan communities. Thus, court rulings informed by the Act ignite controversial debates. An example is a judge's ruling in a land dispute where sons from a polygynous marriage sought to exclude their sisters from inheriting their father's land. The judge ruled in favour of the daughters, pointing out that the law does not discriminate based on gender. Based on the Law of Succession Act ruling, the judge decided that the land should first be equally divided between the two houses (first and second wife). After that, "each child is entitled to an equal share of their house's share of the estate" (Succession Cause 1238, 2012:4).³³

The Constitution of Kenya promulgated in 2010 echoes the gender equality provided by the Law of Succession Act. The Constitution eliminates all forms of gender discrimination in access to and control over land, ensuring that legally, daughters can inherit land alongside their brothers. Under section 60 of the Constitution, the principles of holding land include "(a) equitable

³³ Succession Cause 1238 (2012). "In the Matter of the Estate of Francis Mwangi Mbaria (Deceased)". High Court of Kenya at Nyeri. kenyalaw.org/caselaw/cases/view/148789. Accessed 08.10.2020.

access to land; [...] (f) elimination of gender discrimination in law, customs and practices related to land and property in land”. Some judges refer to the Constitution to rule favour daughters seeking to inherit land in their natal homes. An example was published in Issue 8/2011 of the Newsletter Archive on the Kenya Law website on January 25, 2011. In this case, a married woman protested her brother’s decision to deny her part of their deceased father’s land. The judge ruled in favour of the woman, noting that:

[according to] the law as it is now, it matters not, whether a daughter of the deceased is married or not when it comes to consideration of whether she is entitled to inherit her parent’s estate. Article 60 (f) of the Constitution of Kenya 2010 provides for elimination of gender discrimination in respect of land. Marital status of a daughter is not a basis to deny her the right to inherit her father’s estate (Lupao, 2011 [quoting Lady Justice Kasango]).³⁴

Although such rulings favour women, they are difficult to carry out because they contradict the customary norms. For instance, in another case published on the Kenya law website, a judge ruled in favour of six married sisters who sought to inherit part of their deceased father’s land. However, their brothers and the local elders protested the ruling, insisting that it contradicted the community’s culture. They claimed that implementing such a ruling would attract curses from their ancestors.³⁵ These local elders insist that once a woman is married, she belongs to her husband and has no basis for claiming land from her parents (Ndunda, 2019).³⁶ These controversial debates raise questions on whether and how statutory and customary laws should interact and coexist in communities to secure women’s inheritance land rights. In the cases highlighted, the community elders insist that the Constitution should not supersede the customary norms. They maintain that it is only under peculiar circumstances that daughters can be offered access rights in their natal homes for a limited period. These include unmarried or divorced daughters.

34 Lupao, W. C. (2011). “Judicial opinion; Under current Constitution married daughters have a right to inherit parents’ estate: Samson Kiogora Rukunga v Zipporah Gaiti Rukunga”. High Court of Kenya at Meru. www.kenyalaw.org/kl/index.php?id=3892. Accessed 21.01.2021.

35 Succession cause no.297 (2015). “Joshua Kiprono Cheruiyot v Rachel Cherotich Korir”. High Court of Kenya at Kericho. kenyalaw.org/caselaw/cases/view/139469. Accessed 08.10.2020.

36 Ndunda, J. (2019). “Culture shock hits Kenyans on women inheriting father’s land”. The Star Newspaper. www.the-star.co.ke/news/big-read/2019-02-11-culture-shock-hits-kenyans-on-women-inheriting-fathers-land/. Accessed 08.10.2020.

Compared to customary norms, the statutory provisions for daughters to inherit land alongside their brothers are generally assumed to be 'good laws,' while customary laws are seen as retrogressive and repugnant to justice and morality, hence as 'bad laws' (Ossome, 2014). However, even though these legal provisions are significant in recognising women as heirs of land in their natal homes, local elders who make decisions in practice are inclined towards customary norms, frustrating their adoption. Therefore, women can only access these rights through law courts, and their application and enjoyment remain subject to local power structures. Even when a woman succeeds in getting a court ruling allowing her to inherit land, she must contend with customary norms and local power structures to acquire and retain the land rights. Without the consent of local elders, fathers, brothers, and other male relatives, the implementation of these legal provisions remains a tussle in practice. Moreover, depending on the judicial courts to defend these women's land inheritance rights is expensive, time-consuming, and complicated, and therefore out of reach for most women in rural Kenya.

Moreover, since the law does not compel fathers, who are often the formal landowners, to recognise daughters as heirs of land, these laws are only applicable when a father dies intestate.³⁷ In a study conducted in Kenya, Po & Hickey (2018) reported that fathers commonly deny their daughters land, insisting that land is scarce and daughters ought to use their husbands' land and allow their brothers to retain land in their natal homes. Po & Hickey further point out that men commonly argue that when daughters inherit land, they are likely to sell it to strangers after settling in their husbands' ancestral homes. Therefore, women are customarily denied their land inheritance rights provided in the constitution. Without explicit provisions on structures through which daughters inherit land in their natal homes, such statutory provisions have remained secondary to customary laws denying daughters land inheritance rights.

4.3 Acquisition of land rights through the market

Private land ownership enabled land market transactions through the temporary transfer of rights through lease or permanent transfer of ownership through sale (Deininger & Feder, 2001: 289). The transition of land tenure patterns from communal to private ownership during the colonial period enabled land market transfers. However, land market transfers remain

³⁷ Without a will.

complicated because most ancestral land is still considered communal land bequeathed through inheritance within a lineage.

There are divergent schools of thought on the role of land markets in improving women's access to land. Some authors argue that land markets enable the transformation of unequal land ownership through redistribution into a more equitable pattern (Deininger & Feder, 2001). This process offers marginalised groups access to land they would otherwise never have through marriage or inheritance (Baland *et al.*, 2007; Yamano *et al.*, 2010). This argument is especially valid for women whose customary land acquisition methods depend on their relationships with men (Englert & Daley, 2008; Gary & Kevane, 1999). Discussing the role of land markets in improving women's access to land, Tripp (2004) notes that "purchasing land has, in effect, become a way of circumventing the traditional authorities" (2004: 2). Thus, land markets tend to offer a gender-equal access platform that is relatively advantageous to women.

In contrast, others maintain that land markets do not favour women's access to land. These authors insist that customary patriarchal power structures remain deeply entrenched in land markets, hindering women from effectively participating. For instance, Agarwal (2003) states that the land market is a gendered space that excludes women and can further perpetuate or deepen inequality. Women's customary roles confine them to the homestead, while men commonly congregate in the marketplaces to access information on the transaction process and opportunities to purchase land. As a result, men are at a vantage point to access information vital for participation in the land markets compared to women, whose roles confine them to their homes.

Moreover, women's customary roles are mainly inclined towards unremunerated nurturing responsibilities, while men's roles tend towards the market economy. As a result, it is difficult for women to accumulate the capital necessary for participation in the land markets (Lastarria-Cornhiel, 2009). However, this is neither to allude to the fact that women are universally underprivileged nor that men are universally favoured. Instead, it shows that local socio-political and economic power structures generally hinder women's participation in land markets.

One of the aims of land registration in Kenya under the 1954 Swynnerton Plan was to concentrate land in the most productive farmers' hands through market transactions. This process transformed land value, making it more of an economic commodity than a communally owned social asset symbolising

identity (see Chapter 3). Formal land registration under the household heads weakened women's land rights, making them secondary to the men who formally 'owned land' (Mackenzie, 1990). Thus, Mckenzie explains that the land markets enabled men to transact land without sanctions from *de facto* holders like women. Combined with the customary assumption that only men own land, the markets have exposed both wives and widows to insecure land rights. For example, in an article published in Reuters on September 5, 2019, Njagi describes an experience where a widow was evicted from her matrimonial land after her nephew sold the widow's land without her knowledge.³⁸ Although the woman had a title under her husband's name, her nephew transferred the land, leaving her with a fake title deed. Later, the land buyer evicted the widow from the parcel of land she inherited from her husband. This widow's experience demonstrates that women's land rights are vulnerable to sales without their knowledge.

On the flip side, most ancestral land holdings are commonly informal. This enables brothers-in-law to sell widows' land without their knowledge. In contrast, informal land holdings limit women's access to or disposal of land rights through the market. To highlight this, the Kisii County land executive explains that most fathers verbally subdivide land among their sons. According to the County Executive, the complex and expensive land succession process³⁹ interlinks with general civic ignorance of formal land governance, contributing to widespread informal ancestral landholdings. The informal landholdings impede land transfers by sale in the rural areas, limiting women's acquisition of land rights independent of men.

Furthermore, customary patriarchal norms remain deeply embedded in communities such that land, even when acquired through the market, is still commonly registered under men. Thus, most women lack proof of land ownership because they register the land they acquired independently or jointly under their husbands, fathers, brothers and other male relatives. This is reflected in Ida's experience, as published in the Inter Press Service news agency.⁴⁰ Ida took loans and bought land jointly with her husband. However,

38 Njagi, K. (2019). "Tricked by family members, widows in rural Kenya left landless". Reuters. www.reuters.com/article/us-kenya-land-women-idUSKCN1VQ04F. Accessed on 21.11.2020.

39 According to the County land executive, land succession costs approximately 20,000Ksh. (approx. 200 USD).

40 Gathiga, M. (2020). "For love or land – The debate about Kenyan women's rights to matrimonial property. Inter Press Service news agency (IPS). www.ipsnews.net/2020/06/for-love-or-land-the-debate-about-kenyan-womens-rights-to-matrimonial-property/. Accessed 28.09.2020.

because her husband was handling the purchase, the land and the payment receipts were all under his name. Later, when they divorced, Ida lacked proof that she and her husband jointly owned the land (Gathiga, 2020).

Even though the Constitution provides equality in sharing matrimonial property in case of divorce, the Matrimonial Property Act demands proof of contribution towards the acquisition of the resource:

Ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved (Matrimonial Property Act, section 7).

Although such a contribution can be both monetary and non-monetary, it means that a woman must invest in collecting evidence along the way in case of divorce. Otherwise, without proof, women such as Ida lose the land they contributed to purchase.

This clause in the Act has ignited controversial debates in Kenya. Seeking its revision, the Federation of Women Lawyers (FIDA) petitioned the Act in 2018, arguing that it is gender-discriminative and contrary to the spirit of gender equality in the Constitution. However, the court dismissed the petition, arguing that “The interpretation preferred by the petitioner is an open invitation [...] for a party to get into a marriage and walk out of it in the event of divorce with more than they deserve” (Fayo, 2018).⁴¹ Moreover, since women cannot prove their contribution through domestic work, farming and childcare, they often lose the land they contributed to purchase upon divorce.

The Land Registration Act offers spouses the possibility of registering land jointly. However, deeply entrenched customary norms combined with ignorance continue to exclude women from formal land ownership. Otherwise, lack of ownership documents limits even widows seeking to sell their matrimonial land and relocate because the land is commonly registered under their husbands’ or father-in-laws’ names. In contrast, men take advantage of land markets to dispose of matrimonial land independent of their wives, leaving women without a livelihood source.

⁴¹ Fayo, G. (2018). High Court rejects equal sharing of matrimonial property. *Business Daily*. www.businessdailyafrica.com/bd/news/high-court-rejects-equal-sharing-of-matrimonial-property-2202280. Accessed 28.09.2020.

4.4 Conclusion

This chapter has reviewed land acquisition methods, showing that access to land is gendered. I have discussed how women's access to land through marriage, inheritance, and the market are gendered, limiting women's land rights. Customarily, women access ancestral land mainly through marrying men who inherit the land from their fathers. However, this land is often considered 'husband's land,' and although it is customarily meant to be co-owned by husbands and their wives, women's rights remain weak, secondary to their husbands' rights and dependent on the husbands' whims. Furthermore, tying women's land rights to marriage and bride-wealth overlooks unmarried women.

Land reforms aiming to ensure gender equality in access to and control over land allow women to inherit land alongside their brothers and participate in markets independently. However, these reforms have failed to infiltrate the deeply entrenched social norms informed by local patriarchal power structures that limit women to access land through men. Instead of emancipating women, the reforms have conformed to customary socio-political norms, further marginalising women's interests. Therefore, regardless of the constitutional provisions, women rarely inherit land in their natal homes. In the rare cases where they do, the local power structures fail to recognise and secure such entitlements, leaving them vulnerable to disputes. Thus, women's land inheritance rights are characterised by contestation from their male kin, who commonly seek to dispossess the women of their land. The male kin argue that only men are entitled to inherit and 'own' land in their natal homes.

Even though land markets tend to offer the most promising avenue for women regarding gender-equal access to land, gender roles limit their participation in land markets. Moreover, customary land inheritance complicates land transfers by sale. Therefore, land markets cannot make up for women's exclusion from inheritance. Instead of improving women's access to land, land markets contribute to women's land struggles by opening an avenue for husbands and in-laws to sell land without the women's consent. There must be gender-equal opportunities for equal acquisition of land through the market. This calls for a social transformation of norms around gender roles and economic redistribution across genders.

5

Gendered Land Disputes

Bruce & Holt define land disputes as “competing or conflicting claims to rights to land by two or more parties, individuals or groups” (2011: 14). They differentiate disputes from conflicts, noting that although the two concepts thematically overlap, they vary in spatial contexts, the actors involved, and resolution mechanisms. Conflicts involve competing claims over large tracks of land by groups of people, and often, the existing laws do not sufficiently address conflicts. In contrast, land disputes occur at a smaller scale, involving competing claims over individuals’ specific parcels of land. Unlike land conflicts, the existing laws can address land disputes. According to Bruce (2011), disputes can escalate when the existing resolution mechanisms fail to resolve them, which can result in violence or war.

This study discusses land disputes involving women in Kisii County. This chapter builds on chapter four, which has highlighted the processes and channels by which women acquire land rights. Chapter five examines women’s experiences in land disputes with a keen focus on the patriarchal power systems and structures that shape women’s land acquisition, leaving them vulnerable to land disputes. I have divided the chapter into three sections according to the land acquisition methods discussed in chapter four. These are disputes relating to land acquisition through marriage, inheritance, and the market. Further, I have divided each section into subsections, capturing different experiences. To contextualise the experiences analysed in each subsection, I have added information boxes to give the reader some background information about each of the land dispute experiences discussed.

5.1 Disputes relating to land rights acquired through marriage

Like most patriarchal communities in sub-Saharan Africa, women among the *Abagusii* relocate to their husbands’ ancestral homes to acquire land rights through marriage. These rights depend on the legitimacy of the marriage, which is established once a husband transfers bride-wealth to the bride’s kin (LeVine, 2013; Hakansson, 1988). However, land rights acquired through marriage are prone to disputes, especially when the marriage relationship is severed. For instance, in the case of divorce, wives lose their land rights.

Widows, *ababoraka* (or *omoboraka*⁴² in singular), are particularly vulnerable to disputes over land rights acquired through marriage. This stems from the customary role of brothers-in-law in protecting widows land rights, where the brothers-in-law sometimes exploit their positions to dispossess *ababoraka* of the land.

In polygynous marriages, land disputes commonly involve the co-wife's households. In light of this, I examine different women's experiences to illustrate how contenders exploit existing loopholes in customary institutions to contest women's land rights.

5.1.1 Invalidation of marriage: The centrality of bride-wealth

Bride-wealth settlement is significant in securing a woman's land rights because it legitimises a marriage. Therefore, a marriage union without bride-wealth settlement is presumed illegitimate and described as cohabitation or elopement. Women in such unions lack stable claims in their husband's land. However, the study findings demonstrate that women's land rights acquired through marriage are still vulnerable to disputes even after bride-wealth settlement. Using the experience of one of the respondents, Grace,⁴³ I will discuss the critical role of bride-wealth in securing a woman's land rights through marriage. In addition, I will also present the experiences of Lisa and Christine to demonstrate that bride-wealth settlement does not guarantee women's land rights. Moreover, I will also examine Rose's and Jane's experiences to demonstrate that women's land rights acquired through marriage are sometimes not only threatened by men but also orchestrated by the rivalry between co-wives in a polygamous setting.

42 To directly translate the word *Omoboraka* it needs to be broken up into three words; *omo* which means 'one who is', *bora* which means 'without', and *ka* which means 'home'. Thus, a widow in *Ekegusii* is considered someone without a home. In contrast, a widower is referred to as *omoikora*. Literally the verb *ogoikora* means to remove ash from the fireplace to light a fire. Therefore, without a wife, the reference *omoikora* means a man does not have someone to cook for him.

43 In this section, the focus will be on Grace's bride-wealth status. Under 5.1.2, I will discuss Grace's experience in detail under the 'woman-to-woman marriages'.

Box 1 Background information - Grace

Grace

Grace is a friendly woman with a dry and sad smile. I have met her through her area chief,⁴⁴ who has been instrumental in addressing the land dispute between Grace and her in-laws. She is a mother of five adult children, three boys and two girls. In her first marriage, Grace's husband never settled bride-wealth. Therefore, when he sold off his land in small bits, Grace had no choice but to leave with her children in search of a source of livelihood. She relocated to Kericho,⁴⁵ where she plucked tea for a daily wage. However, Grace was displaced during the 2007 post-election violence and moved back to her natal home for a few months before relocating to a shopping centre because she had no access to land. She started a scrap metal business at the shopping centre, planning to save money until she would have enough to buy land and build a home.

However, before long, she received a marriage proposal from a woman whose mother had died without bearing sons. She wanted Grace to move into her deceased mother's home to 'wife' an imaginary brother in a 'woman-to-woman customary marriage'⁴⁶ arrangement. Grace agreed to the proposal but insisted that the woman had to settle her bride-wealth before she relocated. After fulfilling all customary requirements, Grace relocated and settled as a daughter-in-law of the deceased woman. According to *Abagusii* customary norms, Grace was entitled to her mother-in-law's land, which she would hold in trust for her sons. However, her sister-in-law continued utilising the land, denying Grace any land to cultivate. When Grace requested to be apportioned land, a dispute erupted where her sister-in-law attempted to evict her. Since then, Grace's sisters-in-law, father-in-law and his second wife jointly have been devising ways of provoking her to leave, including death threats.

44 A chief is a local administrator representing the executive arm of government. At the lowest level of the executive structure we have assistant chiefs then the chief. According to the chief's Act 2012, the assistant chief and chief's duty is "to maintain order" in their areas of jurisdiction.

45 Kericho is a neighbouring town located approximately 70km. from Kisii. It is mainly occupied by the Kalenjin ethnic community. Kericho is famous for tea farming and attracts many people from Kisii who work on the tea farms.

46 Defined under 5.1.2 (I).

Grace sought the local administrator's, and later the extended family's, intervention in the dispute. Both avenues resolved that she is entitled to her deceased mother-in-law's land. However, since Grace's father-in-law is the titleholder, he denies her claims, maintaining that it is his land. After the extended family insisted that Grace's sisters-in-law were not entitled to land in their natal home, the women insisted that the constitution provides for them to inherit land. However, the elders declined, insisting that they were to acquire land rights in their husband's ancestral homes, leaving the land in their natal home to Grace.

Grace speculates that although her father-in-law would want her to stay, his second wife is rooting for her eviction to increase the size of land her sons will inherit. Throughout the interview, Grace repeatedly says, "we are suffering; please help us".

Grace's experience demonstrates the centrality of bride-wealth in securing a woman's land rights. In the first marriage, her husband's failure to settle bride-wealth meant that their marriage was illegitimate. According to Shadle (2003), no matter how long a couple would live together or how many children they had, their union remained illicit until the man settled bride-wealth. A marriage only existed after bride-wealth settlement.

Therefore, although Grace stayed for over ten years and had five children, her claims in her husband's land remained weak because he never settled bride-wealth. As Shadle explains, such a marriage could be terminated at any time:

Without bride-wealth, any relationship between a man and woman was illicit: no one recognised it as anything but temporary, liable to be broken at any time, with neither party holding any rights over the other (Shadle, 2000: 7).

Similarly, in presenting the centrality of bride-wealth in securing land rights among the *Abagusii*, Hakansson states that:

As long as bride-wealth is not paid, a woman has no rights in her partner's land and can be expelled at any time without any recourse to adjudication or support from relatives (Hakansson, 2019: 170).

Grace's exit from her first marriage was borne by the fact that her marriage, land rights, and sons' land inheritance rights could only be guaranteed by the

exchange of bride-wealth, which her husband had not fulfilled. She said that her husband sold their land in bits, forcing her to relocate with her children in search of livelihood. Since her marriage was illegitimate, Grace had no basis for opposing her husband's decision:

I could not do anything about it; he had not paid my bride-wealth. Therefore, I was not rooted as a wife [...]. Since he had not paid bride-wealth to my parents, there was no proof that we were married, and I could not go back to claim land after he died, not even for the sons he had fathered (Grace, PI-1: 15).

Grace statement indicates that bride-wealth settlement affects both the woman and her sons' land rights. Sons' land inheritance claims are rooted in the legitimacy of their mother's marriage. Hakansson (1988: 43) clarifies that among the *Abagusii*, a woman's children belong to the man who settles her bride-wealth. Hakansson reiterates Mayer (1950), who states that it is bride-wealth and not paternity that determines fatherhood.

From a study conducted among the *Abagusii*, Henrysson & Joireman (2009) conclude that, among other things, having mature male children contributes to the security of a woman's land rights. However, Grace's experience demonstrates that these factors are secondary to bride-wealth settlement, which 'roots a woman as a wife'. One participant captured this during a focus group discussion, pointing out the significance of bride-wealth in securing a woman's land rights, especially after the husband dies:

If a man has settled his wife's bride-wealth, she will not be easily evicted when her husband dies like women whose husbands have not settled bride-wealth. Bride-wealth binds a woman to a man; without bride-wealth, even if a woman has children with a man, the children will not tie her to that man. However, bride-wealth will secure a woman's survival in her husband's clan (Edna, FGD-02: 18).

The statement "she will not be easily evicted when her husband dies" indicates that widows are more likely to retain their land rights if their husbands settled bride-wealth. However, bride-wealth settlement does not always guarantee women secure land rights. With regard to her second marriage, Grace is particular about bride-wealth as a precondition to accepting the marriage proposal:

I accepted the proposal but insisted that I was an old woman and would not get married before the settlement of bride-wealth (Grace, PI-1: 14).

Her previous experience prompted Grace to insist on bride-wealth as it was the means through which she could secure her land rights and her son's future inheritance. However, despite the bride-wealth settlement, Grace's request for a parcel of land for cultivation was met with resentment and opposition to the extent that her in-laws demanded her departure:

I asked her to give me a portion of the land to cultivate and supplement the business, but she refused, saying she had a child, and she cultivated the land to afford the son's school fees (Grace, PI-1: 19).

Grace's request for land ignited a dramatic land dispute where Grace's other sisters-in-law jointly tried to evict her from their mother's land. However, Grace refused to leave, insisting that her bride-wealth had been settled:

Now this woman told me to leave and go back to where I came from. I told her that I would not leave. [...] She had settled my bride-wealth. I told her that I would only leave if she refunded me for the time I had wasted. [...] without the refund, I would not leave because she had paid my bride-wealth (Grace, PI-1: 22).

Grace insistence on staying was emboldened because her current marriage is legitimate, which was ratified by the exchange of the bride-wealth. This is in sharp contrast to her first marriage, where she voluntarily left because she was 'not rooted as a wife'. By her insistence to stay put, Grace demonstrates that once a woman is 'rooted as a wife', she has a basis for arguing for her land rights.

Grace further explains that her father-in-law and his second wife initially defended her, insisting that her sisters-in-law had 'married' and expelled several women.⁴⁷ Although it is unclear why they expelled these women or whether they had settled their bride-wealth, in Grace's case, bride-wealth

⁴⁷ Dissolution of a legitimate marriage is an uncommon occurrence among the *Abagusii*. The process is complex. Hakansson (1994) notes that the decision involves both the wife's and the husband's kin. He further points out that the spouse seeking the divorce must convince the elders that the reasons for divorce are irrefutable. Moreover, the elders prefer to resolve the disputes rather than dissolving the marriage and sending the woman back to her parents (Shadle, 2003).

settlement was her leverage to claiming social and economic support and the basis for her land rights:

They told me that they would kill me if I did not leave, but I reminded them that I would be buried on the same land if they killed me because they settled my bride-wealth. I will be buried here. [...] I told them that I am not scared of death and reminded them that I had been paid for. The bride-wealth they gave my kin is proof that I cannot be expelled (Grace, PI-1: 36).

By insisting that if they killed her, she would be buried on the land, Grace accentuated that unless the marriage was invalidated and her bride-wealth recompensed, she was still permanently bound to her husband's lineage. Her death would guarantee her burial on the parcel of land and guarantee her sons' land inheritance rights.

Grace's experience suggests that even though bride-wealth is critical in securing a woman's land rights, simply paying the bride-wealth does not guarantee the fulfilment of these rights. Under certain circumstances, women remain vulnerable to land disputes even after bride-wealth settlement. Thus, bride-wealth exchange may not necessarily secure land rights. Instead, the security of a woman's land rights depends on the willingness of her husband's kin to recognise these rights. Nevertheless, bride-wealth affords women such as Grace 'a voice' as it legitimises their marriages and land rights, providing the ground for them and their sons to articulate and claim their land rights.

Husbands chasing wives away

Customarily, divorce is a rare occurrence that can only occur among the *Abagusii* under any of the following three scenarios: desertion by the wife, expulsion by the husband, or removal of the wife by her father (Mayer, 1950). In the article "Gusii bride-wealth law and custom", Mayer states that:

Divorce proper is a legalised process to detach the wife and children from the husband's *egesaku* [lineage]. Its essential feature is the return of bride-wealth (Mayer 1950: 50).

The return of bride-wealth and detachment of the children is a solemn occasion accompanied by a ritual. This ritual distinguishes divorce from the

mere separation of spouses. Separation is marked by husbands sending their wives away temporarily following disagreements:

The crucial difference between a separation and a divorce proper is, of course, that separation as such does not affect the rightful allegiance either of the woman herself or of any children borne by her at any time (ibid.).

In contrast to divorce, separation is temporary. In some cases, husbands initiate the separation, commonly referred to as *ogoseri omokungu*, which translates to ‘chasing the wife away’. Customarily, if the husband had settled bride-wealth, he had to bring his wife back at some point because he could not stay away indefinitely from his legitimate children. The security for the man lay in the fact that once he had exchanged the bride-wealth, both the woman and her children were legitimately his no matter how long they stayed away. Lisa’s experience below illustrates how husbands exploit their patriarchal positions to deprive women of their land rights in marriage.

Box 2 Background information - Lisa

Lisa

At 29, Lisa is a mother to seven children, four boys and three girls. She seems uneasy and scanty throughout the interview. I met Lisa through her area chief, who explained that Lisa’s husband had violently chased her away following a land dispute.

Lisa and her husband initially sold a part of their land to settle their daughter’s school fees. However, when her husband travelled to the city to deposit the money, he returned after three days without having deposited the fees. Lisa says that she still has no idea what happened to the money. Due to accumulating fee arrears, the daughter dropped out of secondary school a year before her final exams. She was pregnant at the time of the interview.

Later, Lisa’s husband wanted to sell more land and resell the land he previously sold. He wanted Lisa to pretend that it was still their land. When Lisa refused to play along, this elicited a disagreement. The husband argued that it was his land, and he could do whatever he wanted with it. He beat and ‘chased Lisa away’, pointing out that she had not come to his home with any land. She relocated to her natal home for a year before her husband came to find her to move back to his ancestral home.

When she returned, Lisa had no land to cultivate since her husband had sold most of the land and leased out the remaining parcel. Cautious to avoid another disagreement, she approached the woman renting her land and requested her not to renew the lease after its expiration. However, the woman ignored her request and renewed the lease for another season.

Since Lisa could not afford to buy food for her family the following season, she cultivated the land even though it was under lease. The woman accused Lisa of trespassing, and she was arrested and detained overnight at the police station. Later, the woman accepted a refund and left Lisa to cultivate her land.

Although men inherit land in their lineages, customary laws ensure that daughters acquire land rights through marriage. Thus, daughters have equal access to land as sons through their husbands. However, with land as an economic asset, the customary patriarchal arrangement leaves women's land rights dependent on their husband's willingness to recognise these rights.

Lisa's experience demonstrates that women's land rights often depend on their husbands' whims, limiting the women's autonomy. Furthermore, this arrangement forces women such as Lisa to comply with their husbands' expectations and choices or risk losing their land rights. Their positions allow men such as Lisa's husband to intentionally use physical force to 'chase wives away' when they oppose their decisions to sell, resell, or lease out their land:

My husband beat me and chased me away. I was forced to leave and go back to my natal home with our children. As he assaulted me, he repeatedly told me that I had no right to tell him what to do or not do with his land because when he married me, I did not come to his home with any land (Lisa, PI-06: 15).

In his argument, Lisa's husband insists that the land exclusively belongs to him because he inherited it; this makes Lisa's land rights weak. Therefore, he insinuates that he holds the authority to make land-related decisions independently.

Mayer (1950) explains that physical violence is part of *Abagusii* marriages and is not counted as a sufficient reason for divorce. Therefore, Lisa's husband maintained his grip on Lisa and her children even after beating and expelling

her. Simultaneously, her absence allowed him to transact the land as he wished, regardless of her concerns:

However, he was using the issue as an excuse to send me away and have ample time to do whatever he wanted with his land [...] When I came back, I found out that he had sold even more land and leased out the remaining part (Lisa, PI-06: 16; 18).

Lisa's experience echoes the dependency of women on their husbands to retain their land rights acquired through marriage. More than a third of the study participants explained that at some point, their husbands either expelled or physically assaulted them following disagreements over land.

Even when women refuse to heed when expelled from their marital homes, their land rights remain insecure. For instance, Grace's (see background information box 1 in this section) first husband sold 'his land' even though it was their source of livelihood. In her second marriage, Grace's suitor is determined to 'chase her away' by denying her land rights. Although Grace is still married, her father-in-law insists that the land belongs to him, and he is not obliged to grant her access even after the intervention of the extended family. Thus, even though, according to custom, Grace is legitimately married, the formal landowner, her father-in-law, retains the power to deny her access to land, and she has to deal with murder threats unless she leaves.

In other cases, husbands take advantage of their positions in the customary patriarchal system to use physical violence to prove their authority as 'the landowners.' Such was Marie's experience after she and her husband sold a part of their land to settle their child's college fees. The extended family insisted that because her husband was addicted to alcohol, Marie should manage the money from the land sale. However, this angered her husband, and he resorted to physical violence and murder threats, aiming to indirectly force Marie to surrender control over the money from the land sale:

He started beating me, trying to knock out more of my teeth. He had previously knocked two teeth out in another attack. [...] My husband's issue is that I am handling the money, and he cannot access it. I usually give him a small portion for his upkeep, but he wants all of it. He said that the land belonged to him and that he should control the money from the sale. That is why he is trying to get me out of the way, constantly threatening to kill me. [...] He is frustrated because I control the money, and he cannot have all of it (Marie, PI-05: 24; 28; 33).

Marie's experience echoes Lisa's experience, where husbands use physical violence to demand control over land sale decisions indirectly. In both experiences, the men insisted that 'the land belongs to them'. Since women depend on their husbands to access land, physical violence and expulsion from the marriage become powerful tools for husbands to control their wives' decisions.

Women commonly settle back into their natal homes after expulsion from the marriage and wait for their husbands to seek reconciliation. However, husbands who never settled bride-wealth are not obliged to reconcile with the wife, and some will opt for a divorce, giving up the woman and her children (Mayer 1950). Such was Margaret's experience (see background information box 6 under section 5.1.2.2) when her husband expelled her after marrying a second wife. Margaret tried to inherit part of her husband's land when he died, but custom barred her and her daughter because her husband never settled bride-wealth, and she did not have a son to inherit her husband's land. As a result, Margaret is now trying to inherit a portion of land from her mother. Similarly, Miriam's parents-in-law (see background information box 7 under section 5.2.1) ended her marriage to their son, claiming that he was no longer interested in her. Miriam had no basis for arguing because her husband never legitimised their marriage through bride-wealth settlement. These experiences demonstrate the vulnerability of women's land rights in informal marriages. Hakansson explains that "[with] frequent elopement and postponement of bride-wealth transfers, women's access to land [...] has become insecure" (1986: 182). Ultimately, women's land rights remain insecure because the land belongs to their husbands. Mayer explains that:

Briefly, the male head of the homestead was cast as its decision-maker and controller of its wealth (land, cattle, and money, if any) and also labour. It was for him to allot the women their plots to cultivate and to tell the boys when and where to pasture the cattle (Mayer, 1957: 247).

In short, Mayer's statement highlights the construct of the *Abagusii* family, which is a patriarchal gerontocracy constructed and sustained in the home. This arrangement positions the husband as the sole proprietor because he is the male family head. Therefore, regardless of the bride-wealth status, women's land rights remain insecure because the customary patriarchal system empowers husbands to make land-related decisions independently. In this case, even though bride-wealth settlement legitimises marriage, it does not necessarily guarantee a woman's secure land rights. Mayer explains that so long as the husband is alive, the overriding decision-making rights

remain solely with him, and the wife's land ownership rights remain weak. Paradoxically, a wife's land rights are enhanced and secured upon the husband's death:

When the death of the husband snaps the personal bond and emphasises the autonomy of the house, the wife correspondingly finds her status enhanced; she now becomes representative and trustee for her house. These rights were established once the husband died (Mayer 1950: 63).

Mayer's findings imply that widows should hold land rights similar to those their husbands held before death. However, this is often not the case in practice. In the following section, I discuss widows' struggles.

Brothers-in-law against widows

A woman whose bride-wealth has been settled is defined according to duties and restrictions rather than rights. In contrast, after a husband's death, the woman acquires exclusive rights formerly enjoyed by the husband:

After the husband's death, the property (and in recent times the land) of each house is finally secured to it, and there is nobody with a right of forcing a transfer. The widow's control over the property of her house becomes at once more extensive and better defined. It approximates, in fact, to the rights formerly enjoyed by the husband (ibid.: 70).

Thus, so long as the widow is still alive, her land rights are customarily secure. The decision to subdivide land among her heirs lies squarely on her. Her land rights become 'more extensive and defined.' Although her brothers-in-law act as guardians to her land, they can only use what she has lent them. However, brothers-in-law often exploit their customary positions to decide on the widow's land rights without her consent. For example, the in-laws can leave a widow out when titling the land or sell her *de facto* land rights without her consent.

Generally, brothers-in-law resort to witch-hunting techniques to dispossess the widows. One woman summarised this during an FGD, noting that:

They [brothers-in-law] look for whichever reasons they can find to dispossess and evict a widow so that they can take her land. It is usually worse when the husband dies before settling bride-wealth (Caro, FGD-02: 15).

Thus, even though bride-wealth settlement is significant in securing widows' land rights, brothers-in-law have a critical role in safeguarding or threatening these land rights. Even in cases where a widow's land is formally registered under her husband's name, brothers-in-law maintain authority within the local power structures to approve or deny the widow's land rights. While in-laws have no right to dispossess widows, when denying widows their land rights, they invent justifications or frame the widows for committing crimes of dishonesty or witchcraft to justify their actions (Boone, 2014). Childless widows have the weakest land rights and are the most vulnerable to eviction (Djurfeldt, 2020). Aliber and colleagues (2004) add that young widows are more vulnerable to dispossession than older ones who have established relationships with the in-laws.

Christine's experience below reiterates that land systems in patriarchal communities are governed by patrilineal kinship systems, making access, control and inheritance of land a male domain (Djurfeldt, 2020). In these positions, male kin wield power to potentially deny widows their land rights

Box 3: Background information - Christine

Christine

Christine is forty years old and a mother to two adult children. Her son and daughter are 23 and 20 years old, respectively. Christine engages in the tomato business at a shopping centre where she lived with her husband while he worked in a nearby factory. Unfortunately, her husband was forced into early retirement and moved back to his ancestral home, where he farmed to provide for his family. This forced him to withhold the subdivision of his ancestral land between his two houses; his first wife was deceased. Therefore, Christine never built a house in her husband's home because he asked her to wait for better financial times when he would subdivide the land between Christine's household and her co-wife's.

However, Christine's husband fell ill and died before subdividing his land between his two households. Christine's brother-in-law took advantage of the circumstances and started claiming that Christine was not legitimately married to her husband. He alleged that Christine and her husband had divorced, making her a stranger to the home. He took advantage of his position to sideline Christine from participating in the funeral rites as the widow of the deceased. Later, he convinced Christine's stepchildren to join him in evicting Christine.

He specifically colluded with Christine's stepson to prevent her from building a house or settling on her husband's ancestral land. Christine has since then become a frequent guest at the local administrators' offices, where she is seeking a resolution. For the time being, she continues living in a rented apartment at the shopping centre.

Although Christine was legitimately married and is entitled to a portion of her deceased husband's land, her brother-in-law uses his power to deny her access. The brother-in-law exploits his role as the elder male figure in the family to undermine Christine's position as the widow of the deceased and trustee of her husband's land. Immediately after Christine's husband's death, her brother-in-law started using his position to limit Christine's participation in the funeral ceremony as the deceased's widow. Among the *Abagusii*, funerals are solemn occasions for dramatic public statements where women and men perform different but complementary roles (Ayuka, 2018; LeVine, 1982). In the article "Gusii funerals: Meanings of life and death in an African community", LeVine explains the importance of funerals in positioning one in the family:

As soon as a person is defined as dying, his or her positional identity (as a man or woman of a particular stage of social maturity, identified with a particular house in a particular homestead and in certain kin relationships) becomes the salient focus of attention (LeVine, 1982: 62).

Within this context, when a Gusii man dies, the corpse is hosted in the wife's house and buried on the right side of their house, signifying the importance of the wife (Ayuka, 2018). However, Christine's brother-in-law attempted to deny her the right to host her husband's body overnight before burial to discredit her position as the deceased's wife publicly and strip her of any customary entitlements she would hold as the widow.

Discussing the spatial ideals of Gusii death and burial, LeVine emphasises the importance of a married woman having a house within the homestead. Each house within a homestead is identified with a married woman who cooks, sleeps, and raises her children, and it constitutes a visible claim to her husband's land (1982: 29). Therefore, LeVine continues:

Each man must have a house built for him and each woman a house in which she has cooked as his wife; no other available house in the homestead

can serve as a substitute point of reference for their graves. The individual identity of the adult is at stake here (ibid.: 33).

Therefore, when a widow does not have a house at her husband's ancestral home, custom requires her brother-in-law to mobilise clan members to construct a temporary house for conducting funeral rites. However, Christine's brother-in-law used this as a loophole to allege that Christine was not legitimately married to her deceased husband, challenging her identity as a widow of the deceased:

He asked, 'shall we build her a house and pay for her? We reclaimed her bride-wealth; she should go and live wherever she wants because she is no longer married to my brother' (Christine, PI-8: 43).

By arguing that Christine and her husband had divorced and her bride-wealth reimbursed, Christine's brother-in-law laid the ground for denying her the land rights. According to Christine:

My brother-in-law, my husband's immediate follower, campaigned that I should not be allowed into the home. He went around telling people that I am unknown to the family and that my husband and I divorced, and my kin reimbursed my bride-wealth. He said that I am not the widow to my deceased husband (Christine, PI-8: 42).

According to Mayer (1950), *Abagusii* bride-wealth and inheritance law are bound up together. Thus, by making claims that she was divorced and her bride-wealth reimbursed, Christine's brother-in-law was merely trying to invalidate her marriage and deny her the rightful authority as trustee for her late husband's land and her son as heir to the land. Such claims from brothers-in-law are customarily powerful and pose a threat to women's land rights.

In contrast, female in-laws, including mothers-in-law, have little influence in land-related decisions. Therefore, even when these women's arguments are valid and instrumental, they remain secondary to men's allegations within the customary patriarchal structure. This is highlighted by statements by Christine's mother-in-law and sisters-in-law:

She [Christine's mother-in-law] pointed out that I am legitimately married to my husband, and in case he [her brother-in-law] had any evidence that my husband and I divorced, and my kin refunded the bride-wealth, he should

share it. She asked him to identify who had accompanied him on the mission to reclaim my bride-wealth and which chief or assistant chief witnessed the dissolution. [...] My sisters-in-law said there was no way he would evict me from my husband's land. They asked, 'where will she go at her age, where will she take the children?' (Christine, PI-8: 50; 51).

Even though the arguments raised by Christine's mother-in-law and sisters-in-law would disqualify her brother-in-law's claims, these women have limited influence on ancestral land matters. Feyertag and colleagues (2021) make a similar observation in their study on gender imbalances in securing women land rights. In their study, which covers 33 countries, they argue that:

Even where women have (legal or customary) ownership rights to land and property, they may be prevented from exercising or protecting those rights, causing tenure insecurity (Feyertag, 2021: 3).

Accordingly, Feyertag and colleagues describe that married women are more vulnerable when faced with the prospect of spousal death and divorce. Within this context, Christine's brother-in-law exploited the weakness in the patriarchal system to present fictitious claims, denying Christine access to her husband's land.

Christine's experience further demonstrates that even though widows are entitled to inherit their husbands' land, they often need extra layers of effort for their positions to be 'legitimised'. Sometimes, such efforts demand decisive steps. For instance, after realising that her brother-in-law was succeeding in barring her from participating in the funeral as the living widow of the deceased, Christine decided to seek a court order allowing her to block her husband's burial:

I decided to stop the burial by blocking the release of the body from the mortuary. After I left, the people threatened him to conduct the burial ceremony on his own if I blocked the body. While seeking the order, my mother-in-law called, informing me that the house was already underway and there was no need to block the burial (Christine, PI-8: 45).

Cases of one party halting the burial of a deceased relative are common among the *Abagusii*.⁴⁸ This commonly occurs when there is a pending land dispute (see also paragraph 5.3.2 below). Mainstream media articles have

⁴⁸ See examples under Appendix 3.1.

recounted several incidents where people have halted a burial for years over pending land disputes in Kisii (cf. Abuga, 2018; Mbula, 2018).⁴⁹

The decisive act of blocking her husband's burial forced Christine's brother-in-law to back off, allowing people to build the house. However, this indicates the authority brothers-in-law have in their patriarchal positions that potentially allows them to strip widows of their identity as wives of the deceased.

Even though the temporary house was constructed, Christine required more layers of effort to defend her identity. Christine's brother-in-law attempted to convince Christine's stepchildren to claim the hosting rights of their father's body in their house. Christine explained that it was only after her mother-in-law threatened to strip naked and curse her grandchildren that they let the body into Christine's house. Later, the connection between Christine's participation in the funeral rites as the living widow of the deceased and accessing her husband's land became apparent during the dispute resolution process:

The chief asked some questions regarding culture to establish whether I qualified as a wife culturally. He asked whether my husband had transferred bride-wealth to my kin, whether I had buried my co-wife, and whether I buried my husband (Christine, PI-8: 62).

By hosting her husband's body before the burial, Christine reaffirmed her identity as the one [wife] who buried her husband. Fulfilling this customary role served as evidence that she was legitimately married.

From a study conducted among the *Abagusii*, Henrysson and Joireman (2009) explain that in-laws invent diverse justifications to deny widows' land rights:

A widow's vulnerability to these pressures is determined by an interplay of several factors, including the gender and age of her children, the payment of bride price, her character, and her HIV status. [...] Perceptions of a woman's character determine her vulnerability to land expropriation. A woman can be

49 Abuga, E. (2018). Bodies lie in morgues as families tussle for land. The Standard Newspaper. www.standardmedia.co.ke/nyanza/article/2001295683/bodies-lie-in-morgues-as-families-tussle-for-land. Accessed 26.10.2020.

Mbula, R. (2018). Land feuds leave a trail of death and suffering in Kisii. The Daily Nation Newspaper. www.nation.africa/kenya/counties/kisii/-land-feuds-leave-trail-of-death-and-suffering-in-kisii-56854. Accessed 26.10.2020.

accused of having a 'bad character' for practising witchcraft, being sexually promiscuous, drinking too much, or being rude or stubborn, particularly toward her in-laws (Henrysson and Joireman, 2009: 44).

Christine's experience demonstrates that even though women may have customary land rights through marriage, they still require several layers of effort to retain these rights. The same customary structures that afford women land rights through marriage are exploited within the patriarchal system to prevent them from exercising those rights. The exclusion of women from critical ceremonies that cement their position, such as bride-wealth exchange and funerals, are often exploited to undermine their identity as wives. Given that there is no documented evidence to validate these women's positions in case of their husband's death, brothers-in-law, who are fundamental in interpreting widows' land rights, exploit the weaknesses of these institutions to challenge women's rights.

External pressure from the community or pursuing dispute resolution avenues, as in the case of Christine, may act as deterrents to slow down the perpetrator's goals. However, there is a need to have reliable mechanisms devoid of the interpretation of a single entity that recognises both customary and legal rights.

Co-wife rivalry and land

Polygyny among the *Abagusii* "is viewed as the ideal form of marriage" (LeVine & Lloyd, 1966: 21). Silberschmidt describes polygyny in the community as "a cardinal feature of the household" (1999: 34). Perhaps these observations explain why more than one-third of the study participants came from polygynous marriages; polygyny remains a prevalent household feature among the *Abagusii*.

The study findings indicate that land disputes in polygynous marriages are common and complex. Such disputes commonly occur between co-wives, especially after widowhood. Some authors argue that land disputes in polygynous marriages commonly result from land scarcity (Shreffler & Doodoo, 2009; Kigula, 1993). They argue that the land sizes diminish because men with two or more wives must subdivide their land among the wives and then each wife's land among her sons. In polygynous marriages, each wife

gains exclusive land rights in relation to her co-wives, which she holds in trust for her sons (Hakansson, 2019: 167).

Discussing land disputes among the *Abagusii* at the family level, Boone states that:

Within marriages, polygamous marriages, and extended families, even where sharing and solidarity are present, there can be acute conflicts over land access and use, land transactions (selling off parts of parcels), inheritance, control over cash revenues from tea farms, and the search for other ways to get money (2004: 195).

Such was Susan's experience with her co-wife. Susan's husband inherited two acres of land that he shared equally between his two wives. However, with one acre each, the ancestral land was insufficient for Susan's five sons and her co-wife's four sons. Thus, the two households disputed over a small piece of land their husband purchased, but he died before subdividing it. The desire to dispossess each other has resulted in a lengthy land dispute characterised by animosity between the two households. In this case, there is a correlation between polygyny and land scarcity as causes of land disputes.

However, Rose's and Jane's experiences below demonstrate that land disputes between co-wives are complex and often rooted in underlying power struggles.

Box 4 Background information – Rose

Rose

Rose seems like a very ambitious woman. As a child, she was forced to drop out of primary school to care for her ailing parents. Her husband abducted and married her about fifty years ago when she was just seventeen years old. After having their first child, a son, Rose's husband married a second wife, a teacher. The polygynous arrangement complicated Rose's marriage, leading to frequent disagreements with her husband. Later, Rose left the marriage and settled in Kisii town, where she worked as a book evangelist for several years.

About ten years after their separation, Rose's husband was looking for reconciliation. He visited her parents and gave them some money, then started the process of moving Rose and her son back to his ancestral home. After assembling building materials to construct a house for Rose, her husband died in a road accident before relocating them. Rose insists that it was not a natural accident; she believes that her co-wife used witchcraft to kill him. She argues that her co-wife was determined to prevent Rose from moving back as a wife.

After the burial, Rose's co-wife claimed that she never knew Rose. Instead, she insisted that Rose was an imposter and not her co-wife. This ignited a lengthy dispute with Rose, insisting that she was legitimately married to the deceased and was entitled to a portion of his land, and her co-wife maintained that Rose was a stranger. Rose tried different dispute resolution avenues, starting with the extended family and the local administrators, who agreed that both women were widows of the deceased and were entitled to a share of his land. However, Rose's co-wife challenged the decision in court, where the case has remained pending for almost thirty years. Rose lives in Kitale,⁵⁰ where she leases land to cultivate for her subsistence, awaiting a resolution.

Box 5 Background information – Jane

Jane

Jane is 46 years old and a mother of three children. After secondary school, she lived with her brother in the city, where she got married as a second wife. Her husband provided for Jane and all her children financially, even though the first daughter was not his biological child. Since Jane and her husband lived in the city most of their lives, she hardly met her in-laws. At some point, Jane's husband stopped supporting her and stopped visiting her and the children. She tried to reach out to him for support without success. She believes that her co-wife used witchcraft to confuse him.

⁵⁰ Kitale is an agricultural town in the Northern part of the rift valley, approximately 120 miles from Kisii.

Later, Jane's husband decided to make peace and support Jane and her children. However, before completing the reconciliation process, he collapsed and died while out shopping. Jane insists that her co-wife killed him using witchcraft to prevent him from reuniting with her. Since then, her co-wife has denied Jane any entitlements to land as a wife of the deceased, insisting that Jane is an imposter. This has led to a dramatic land dispute where the in-laws accuse Jane of stressing her husband to death through several court processes.

The experiences of Rose and Jane exhibit several similarities. Besides being in polygynous marriages, both women had disagreements with their husbands and separated from them at some point. The husbands were reconciling with these women when the men 'mysteriously' died. Both Rose and Jane claim that their co-wives used witchcraft to kill their husbands to hinder their co-wives from returning. These circumstances threatened Rose's and Jane's land rights because their identities as widows of the deceased men were unclear.

LeVine explains that witchcraft accusations resulting from jealousy are common among co-wives:

The Gusii have a special term, *engareka*, which means 'hatred between co-wives', and witchcraft accusations are expected among the wives of one [...] From observation of this situation, it appeared that a substantial proportion of Gusii witchcraft accusations might be attributable to the jealousy of co-wives (LeVine, 1962: 39).

This jealousy and subsequent witchcraft accusations are played out, especially after the husband's death. LeVine (1982) writes that the *Abagusii* funerals provide an opportunity for interpreting death in terms of opposition and vengeance. Therefore, co-wives commonly accuse each other of witchcraft at their husbands' funerals. LeVine notes that the funerals offer an opportunity for public display that can give rise to blame and division and have severe ramifications for the living that are accused (1982: 56). Rose and Jane may have used the witchcraft accusations against their co-wives to amass loyalty to facilitate their acceptance and recognition as co-wives and, in turn, be assured of their land rights.

Rose maintains that the land dispute involving her and her co-wife was rooted in underlying power struggles, where her co-wife was determined to retain the 'first wife' or 'only wife' title:

She swore that she would not accept to be referred to as the second wife [...]. Do women want to be referred to as the second wife, especially when they are formally employed? These women prefer being referred to as the first wife and be in control [...]. The land is sufficient for both of us. Each of us was supposed to get one acre, and we have one son each. Her interest is not the land (Rose, PI-12: 36; 97).

According to Rose, the dispute had nothing to do with the land size. Her co-wife was determined to retain the first wife position because first wives have a higher social status than the subsequent wives. Explaining marriage customs among the *Abagusii*, Kyewalyanga describes that first wives are generally respected in polygynous marriages, and the subsequent wives are subject to their dominion (1977: 18). Moreover, Mayer states that the first wife's status is particularly significant in cementing the position of their sons borne as the eldest co-heir:

If the husband of the co-wives dies, the eldest co-heir takes his place in supervising the division. In practice, the eldest co-heir takes possession of the whole inheritance himself and then hands out the agreed portion to the younger brothers (Mayer, 1950: 67).

Interestingly, during the allotment of the inheritance among the *Abagusii*, the first wife's sons receive more land because of their mother's status as the first wife (ibid.: 66). LeVine & Lloyd (1966: 25) emphasise that the first wife's dominion is especially recognised when the age gap between her and the co-wives is wide. However, bitter rivalry, hatred, and jealousy remain prevalent in the marriage when the co-wives are in the same age set.

Rose explained that her co-wife was younger, more educated, and formally employed. Therefore, she preferred to be the first or only wife because it would give her respect, power, and control. Rose's argument echoes LeVine & Lloyd (1966) who state that the first wife status empowers women to oppose having co-wives among the *Abagusii*:

Many a first wife is highly opposed to her husband taking another wife [...]. Women realise that monogamy gives them much greater power in the

family, and some of them are determined to retain that power (LeVine & Lloyd, 1966: 23).

Therefore, although Rose's co-wife was not the first wife, she assumed the 'only wife status' in Rose's absence. Taking advantage of Rose's long-term absence, Rose's co-wife used her presumed 'first wife position' to oppose Rose's return into the marriage and, by so doing, would become the sole trustee of the land.

The land dispute between Rose and her co-wife demonstrates the heterogeneity of women's land struggles, even at the family level. Different factors come into play besides bride-wealth to produce differentiated experiences among women in polygynous marriages. For instance, Rose and her co-wife have noticeable social class differences. While Rose's co-wife has college-level formal education, Rose dropped out of primary school. Furthermore, Rose's co-wife is formally employed with a stable income, while Rose worked in an informal position until she retired.

In her position, Rose's co-wife is probably better informed of Kenya's statutory provisions and the bureaucratic structure of land dispute resolution processes. In contrast, women such as Rose need support to navigate the formal structures. Their exposure to the formal structures allows women such as Rose's co-wife to use their economic means to exploit the formal and less formal dispute resolution processes in their favour. Djurfeldt (2020) articulates this argument in a review conducted in Kenya, Uganda, and Rwanda, noting that the high cost of bringing the cases to a formal land tribunal and the lack of awareness of such mechanisms may lead to a favourable outcome in land disputes for some parties (2020: 7).

Accordingly, Rose's co-wife uses these factors to her advantage to exclude Rose. When the less formal land dispute resolution avenues favour Rose's informal claims, her co-wife pursues the more expensive and lengthy court process. Her economic status affords her a lawyer and other costs incurred in the process, unlike Rose, who can hardly afford a lawyer. With limited access to legal advice, Rose does not stand a chance against her co-wife. Adoko and Levine (2008) express similar sentiments when sharing experiences on how women's land rights are lost in Northern Uganda, noting that "limited access to legal advice among women affects their ability to exercise their rights" (2008: 121).

Pursuing the court process delays dispute resolution, allowing Rose's co-wife to continue utilising the land while denying Rose access. Exploiting the dispute resolution process allows women such as Rose's co-wife to complainants in cycles, alternating between formal and less formal dispute resolution avenues:

He [the DO] signed and approved that the land should be equally subdivided between us. [...] If anything, this case has gone through all the required processes. It has gone through both the local administrators and the courts. Just when the surveyor is about to subdivide the land, she appeals the ruling, and the tussle restarts again. That is why it has taken so long (Rose, PI-12: 48).

Rose's co-wife stretched the time it took to resolve the dispute by appealing rulings passed in Rose's favour. Through the appeals, she denies Rose her land rights, at the same time engaging her in a financially draining court process:

My advocate had charged me 30,000Ksh. I have been paying him the money, and now a small fee is remaining, but he said he could not go on with the case until I clear his fee. I still owe him about 18,000Ksh. [...] I pleaded with him to follow up and conclude, then I would even lease out the land and pay him the remaining amount, but he insists that I must pay before we continue (Rose, PI-12: 27).

These experiences demonstrate the intersectionality discussed in FPE, where factors such as marital status, social class, age, and education intersect to produce differentiated land struggle experiences among women. Other factors producing differentiated experiences between the co-wives, as demonstrated by the experiences above, include the stability of the marriage, the relationship with the husband's family, the wife's position in the polygynous marriage and the bride-wealth status. Co-wives whose marriages are unstable are more likely to lose their land than those in stable marriages. For example, Rose and her husband disagreed, prompting her to relocate from her marital home. Likewise, Jane and her husband had several court battles after separation, implying an unstable marriage. These women's co-wives used the marital instability to challenge their identity, disputing their land rights.

Co-wives with established relationships with their in-laws have more favourable positions than those whose relationships with their in-laws are characterised by animosity or are unstable. Rose and Jane spent most of their married years away from their husbands' ancestral homes and had little

contact with their in-laws. Jane hardly met any of her in-laws, and the court battles with her husband further strained the relationship with her in-laws, who accused her of stressing their brother to death:

We went back to court, where she argued that I am a stranger hindering the succession process of her late husband's property. [...] My brother-in-law and sisters-in-law are her witnesses, claiming that I am a stranger and not their brother's wife (Jane, PI-11: 67).

Likewise, some of Rose's husband's kin pointed out that she was a stranger:

Sometimes, they [some clan members] would shout at me, saying, 'who wants that woman who is not known here?' [...]. Some people would comment that I was forcing my way into the family [...]. They claimed that I was a stranger pretending to be a co-wife (Rose, PI-12: 20; 38).

Without support from their husbands' kin, these women are likely to lose their identity as wives of their deceased husbands. It becomes worse when husbands die before subdividing land between the co-wives and when the co-wife whose land rights are challenged does not have a house in her husband's ancestral home.

As discussed earlier in the chapter, bride-wealth settlement is fundamental in legitimising a marriage. Therefore, when a woman's bride-wealth status is unclear in polygynous marriages, her co-wife uses it as a basis for challenging her land rights. For example, Rose explains that while living with her in-laws, awaiting the dispute resolution, her co-wife instigated people against her:

Sometimes, even when passing by, some people shouted, saying, 'some people are here illegally; they have not been paid for' (Rose, PI-12: 25).

With the statement, "some people are here illegally; they have not been paid for", Rose means that the people referred to her bride-wealth status. She says that her husband visited her parents and gave them some money when he sought reconciliation. However, she points out that both her parents and her husband have died, and she cannot prove that he settled her bride-wealth. Similarly, Jane's lengthy absence from her husband's ancestral home provided an opportunity to doubt her bride-wealth status when the chief tried to settle the dispute with her co-wife:

One woman stood up and said that she did not know me and that she had never seen me at home. She claimed that if I had been married to my husband, he should have settled my bride-wealth. The issue of bride-wealth became controversial, and they decided that I am not married to my late husband since he had not paid any bride-wealth to my kin (Jane, PI-11: 61).

Jane insists that her in-laws and co-wife are aware of her marriage. However, because her husband had not settled her bride-wealth, they refuted her marriage even though she holds formal marriage documents. Jane asserts that her in-laws have teamed up with her co-wife to exclude her from sharing her husband's resources.

Therefore, even though land scarcity contributes to land disputes involving co-wives, the disputes often manifest jealousy and underlying power struggles. These struggles manifest themselves through witchcraft accusations and attempts to exclude a co-wife through alliances with the husband's kin. However, land disputes involving women in polygynous marriages cannot be generalised. The experiences vary depending on intersecting axes of power that produce differentiated identities and experiences among women. This is not to imply that land disputes and co-wife rivalry are obvious in polygynous marriages. Some co-wives coexist peaceably after their husband's death without any disputes. For example, Karen (see background information box 9) insists that she and her co-wives support each other and have never experienced any rivalry or land struggles. Karen's husband provided sufficient land for each of his three wives and clearly defined each wife's land boundaries. Thus, the husband sealed these obvious loopholes before his death, limiting the possibility of land disputes arising between Karen and her co-wives.

5.1.2 The ambivalence of customary institutions within marriage

Different customary structures have been established within marriage to secure women's land rights. The most common practice is widow inheritance, in which the brothers-in-law or close male relatives marry young widows to protect them from potential eviction. Widow inheritance reinforces the security of young widows' land rights if they have no sons of their own or if their sons are still too young (Okebiro, 2016). Another notable cultural practice, which is less common and not well documented in the literature, is termed 'woman-to-woman marriage'. In practice, 'woman-to-woman marriages' protect the land rights of women who are either barren or without

biological sons to inherit their husbands' land. These structures enable the women to either reproduce or 'acquire' male offspring who become heirs to their land. However, aggressors exploit these arrangements to defraud and deprive women of the same land rights they are meant to reinforce. In this section, I will use the experiences of Ruth and Grace to discuss the ambivalence of these customary institutions.

'Woman-to-woman marriages'

'Woman-to-woman marriages' are common in many African societies but are still imperfectly understood and given very little attention (Wairimū Ngarūiya & O'Brien, 2000). Krige, a key contributor to the woman-to-woman marriage literature, defines this union as "an institution by which a woman can give bride-wealth for, and marry, a woman over whom and whose offspring she has complete control, delegating to a male genitor the duties of procreation" (1974: 11). By this definition, the primacy of this union is brought to the forefront, as explained by an *Abagusii* elder:

A 'woman-to-woman marriage' occurs when a woman without sons marries a woman with sons or who will bear children with another man for her 'female husband'. The sons are considered biological offspring of the 'female husband' hence heirs of her land. The children born in this marriage are entitled to inherit land from their 'female father'. [...] The 'woman-to-woman marriages' follow all the rites of an ordinary traditional marriage, but the 'female husband' marries on behalf of a fictional son for the sole purpose of sustaining her lineage. There are no sexual relations between the 'couple' (Chairman *Abagusii* Cultural and Development Council, KI-3: 23).

Hakansson explains that this arrangement "involves a legal fiction whereby a married woman obtains a wife for a non-existent son" (1994: 530). Therefore, instead of a 'woman-to-woman marriage', Hakansson refers to it as a daughter-in-law marriage.

Among the *Abagusii*, a 'woman-to-woman marriage' allows a sonless widow to become the head of a 'complete' house and expel the stigma attached to her because of failing to bear an heir (Cadigan, 1998). In this arrangement, the sonless woman, or 'female husband', pays bride-wealth for a girl or 'daughter-in-law'. Cadigan explains that the women refer to themselves "as 'mother-in-law' and 'daughter-in-law', and their children are considered the 'female husband's' grandchildren" (ibid.: 94). 'Woman-to-woman marriages'

can occur when the 'female husband' is still married or widowed. Besides, in cases where the woman dies before bearing sons, her kin can 'marry' on her behalf.

'Woman-to-woman marriages' are beneficial to both parties. The barren or sonless women become 'fathers' to their heirs, increasing their social profile and access to land. Moreover, the 'daughter-in-law' acquires land rights through marriage for herself and her sons and an identity in her 'female husband's' lineage. This makes land and identity the central themes of 'woman-to-woman marriages'. The arrangement also grants land rights to unmarried women's sons, who would otherwise have no access to land or lineage affiliation (ibid.: 91).

Exploitation of 'woman-to-woman marriages'

In this subsection, I discuss Grace's experience (see background information box 1 under section 5.1.1) to highlight the ambivalence of 'woman-to-woman marriages' in orchestrating land disputes involving women. Through her story, we see that Grace lost her land rights in her first marriage because her husband never settled her bride-wealth. Later, a deceased woman's daughter approached Grace, proposing to marry her on behalf of her deceased mother.

Although Grace desired to buy land and build a home for herself, she would need over twenty years of her meagre savings from her scrap metal business to afford the land. Therefore, the marriage proposal offered her an opportunity to acquire affiliation to a lineage and land rights for herself and her two adult sons, who would be grafted into her 'female husband's' lineage, qualifying them to inherit land.

According to Cadigan, all the ceremonial aspects of marriage need to be observed in order to legitimise the 'woman-to-woman marriage', including bride-wealth settlement (ibid.: 89). Thus, based on her previous marriage experience, this time, Grace insisted that her bride-wealth must be settled before she could accept the marriage proposal as indicated in the following statement:

I accepted the proposal but insisted that I [...] would not get married before the settlement of bride-wealth (Grace, PI-1: 14).

Upon fulfilling the customary rite of bride-wealth exchange, Grace relocated and settled as a daughter-in-law to the deceased woman. However, one

year into the marriage, Grace requested a parcel of land to cultivate, which generated a dispute with her new in-laws. According to the *Abagusii* customary norms, Grace was entitled to her mother-in-law's land, which she would hold in trust for her sons, while her sister-in-law was expected to relocate to her husband's lineage. Nevertheless, when Grace requested for her land rights, her sister-in-law resorted to chasing her away:

Now this woman told me to leave and go back to where I came from. I told her that I would not leave (Grace, PI-1: 22).

Instead of giving Grace her land rights, her sister-in-law preferred to chase Grace away. Their actions indicated that the marriage was not intended to maintain a lineage. Instead, it was a ploy for her sister-in-law to secure land rights in her natal home. Since Grace's presence in the homestead fulfilled the customary requirement, her sister-in-law used Grace to avert the male kin from taking over the land. Grace states that from the onset, her sister-in-law had indicated that Grace's presence would prevent their "stepmother from grabbing their mother's land" (Grace, PI-1: 17).

Grace continues to point out that, when she was newly married, her father-in-law and his second wife complained that "the girls had been 'marrying' and chasing away several women" (Grace, PI-1: 37). Perhaps Grace's experience explains why her sisters-in-law married and chased several women away. Grace's experience indicates that her sisters-in-law probably 'married' women to retain their claims. The arrangement was not intended to fulfil the customary purpose of 'woman-to-woman marriages'.

Insufficient legal protection

As mentioned earlier (see Chapter 4), Kenya's constitution defines marriage as a union between a male and a female adult. Although the constitution recognises cultural arrangements consistent with the constitution, statutory recognition of 'woman-to-woman marriages' is uncertain (Kareithi & Viljoen, 2019). Therefore, land rights acquired through 'woman-to-woman marriages' remain vulnerable to disputes, and their recognition depends on magistrates' interpretation. For instance, a recent court ruling allowed a woman to evict her co-wife in a 'woman-to-woman marriage', citing that the woman [the appellant] failed to demonstrate that she was married in this arrangement

under *Abagusii* customary law.⁵¹ The court ruling further highlights that in order for a custom [in this case, woman-to-woman marriage] to be binding and “acquire the binding force of law, a party relying on the same must lead evidence in that regard” (Civil Appeal 106, 2011:13).

Therefore, since women in ‘woman-to-woman marriages,’ like Grace, lack statutory provisions protecting their land entitlements, they depend on alternative dispute resolution avenues, such as the extended family and the chiefs, that are flexible and prone to exploitation. Accordingly, ‘woman-to-woman marriages’ as an avenue for securing women’s land rights remain ambivalent and prone to exploitation.

In a ‘woman-to-woman marriage,’ the women involved hold different positions in the local power structure. Cadigan explains that the ‘female husband’ certainly has the most to gain from the marriage, wielding power to determine her ‘daughter-in-law’s’ land rights (Cadigan, 1998). Interestingly, Grace’s experience demonstrates that sisters-in-law retain more authority than women married into the lineage.

The case of widow inheritance

Widow inheritance is a fairly common practice for young widows⁵² among the *Abagusii*. Upon the husband’s death, the widow has the option of ‘divorcing the dead husband,’ in which case the bride-wealth will be reimbursed to her kin, or she can choose to stay and be remarried by a close male kin of the husband:

the widow is obliged to take an *omosoi nyomba*, ‘warmer of the house,’ that is, a ‘husband’ who will continue to exploit her childbearing potentialities for the benefit of his dead forerunner (Mayer, 1950: 61).

Customarily, widow inheritance requires the new husband to act solely in the interests of the (dead) legitimate husband, but his status does not change. The woman is not his wife, the woman’s children are not his children, and the widow’s property rights are not under his control (ibid.: 62). Accordingly, the new husband does not pay her bride-wealth, and she and her sons are not

51 Civil Appeal 106 (2011). Agnes Kwamboka Ombuna v Birisira Kerubo Ombuna. In The Court of Appeal, Kisumu kenyalaw.org/caselaw/cases/view/101519/ Accessed 12.06.2020

52 A young widow whose children have not matured, or one without sons is *omotakanwa*. The syllable ‘ta’ negates the reference *kanwa* which means to reject. Thus, *omotakanwa* translates to one who cannot be rejected.

entitled to his land. Therefore, even when she has sons with the new husband, they inherit land from the man who paid their mother's bride-wealth (LeVine, 2013: 72). The new husband's primary role is to have children with the widow for her dead husband, and support the woman in raising her children. Ruth's experience below demonstrates that wife inheritance does not always secure widows' land rights.

Box 6 Background information – Ruth

Ruth

Ruth is one hundred years old and depends on her daughter Zipporah for everything. Zipporah moved back in with her mother after her divorce, and they live in a poorly maintained, old, and shattered semi-permanent house within a shopping centre. Ruth's second daughter, Margaret, is seventy-two years old and divorced. Margaret visits Ruth and Zipporah twice a week to encourage them as she seeks resolutions to land disputes involving their elderly mother.

When Ruth's husband died, she inherited a large parcel of land at the shopping centre. She was 'inherited' by a man she assumed was her brother-in-law. After about one year, Ruth's real brothers-in-law invaded her home, forcefully taking her away to her ancestral home, where one of them inherited her. That is when she found out that her first 'house warmer' was in fact, her husband's closest friend. While away, Ruth's first 'house warmer' had grabbed her land. When she returned, she managed to recover a small portion, where she currently lives with Zipporah. The first 'house warmer' formally subdivided the land among his sons, making it difficult for Ruth to prove her rights.

Since land can only be registered under men, Ruth registered the recovered land under her eldest son. When she tried to reverse the registration, her son refused, insisting that Ruth would want to bequeath it to her daughters. Another dispute arose when the son refused to share ancestral land with his brothers. However, the extended family intervened, and the land was shared without considering Ruth.

These circumstances have led to complex disputes that Ruth's daughter, Margaret, is seeking resolutions for. She explains that her mother's wish is to be buried next to her husband when she dies. However, she also hints that she and her Zipporah desire to inherit the land. With her mother being one hundred years old, time is important for Margaret. This setup has resulted in a complex set of land disputes involving Ruth.

Insufficient customary land rights security

When Ruth's husband died, she was still young and had only two little children. Customarily, one of her husband's kin would 'inherit her to wife'. Thus, believing that her husband's closest friend was her brother-in-law, Ruth consented to his proposal to 'inherit her'. He indicated that the 'marriage' arrangement would benefit Ruth because she "was still very young" and needed "to get more children", as phrased by Ruth's daughter below:

After my father's death, his closest friend and his wife approached my mum and proposed to inherit her to wife. They said that she was still very young and needed to have more children. By then, my mum had only two children. All along, my mother knew that this man was her brother-in-law, so she agreed to the proposal (Margaret [Ruth's daughter], PI-04: 8).

However, Ruth's vast land was a primary factor in this proposal. Almost a year into this arrangement, Ruth found out that her 'house warmer' was not her husband's biological brother. Her husband's brothers invaded her home and took her away. Before leaving for her husband's ancestral home, where one of her brothers-in-law 'inherited' her, Ruth insisted that she would return to her land at the shopping centre. When she returned after some years, Ruth's first 'house warmer' had grabbed her land:

When she returned, they [the house warmer and his wife] informed her that she had lost the land when she left. [...] She attempted to seek court intervention but lost the case. She was evicted from her land (Margaret [Ruth's daughter], PI-04: 11).

When Ruth's first 'house warmer' inherited her, his role in the customary marriage arrangement was to protect Ruth and her children and safeguard

her land rights. Mayer explains that custom prohibits the 'house warmer' from 'owning' the widow's land:

the husband, 'warmer' of a widow's house may enjoy her society, live on her grain and her cattle, and watch his offspring by her growing up in the joint home; but in the end, he will have to hand over everything to her dead husband's heir, and the very sons whom she bore by him can strip him of everything (Mayer, 1950: 62).

Culturally, the man was not entitled to any land as the bride-wealth transaction in the first marriage secured permanent land rights to Ruth's children. Mayer explains that this custom is critical in preventing the 'house warmer' from usurping land belonging to the widow and her sons, the deceased husband's heirs:

even if the deceased has left no sons, and the 'warmer of the house' happens to be the nearest heir (e.g., full brother), his begetting sons by the widow will amount to deliberately cutting himself out of the inheritance (ibid.).

When I talked to Ruth, she [already old and worn out] and her two daughters were still seeking a resolution to the complex and lengthy land dispute rooted in events that occurred over seventy years ago. The dispute resolution process has gone in cycles between the chief, land control board and judicial court for over fifteen years, without a resolution. Even though they remain optimistic about recovering their land, they have fears that Ruth might not live for that long:

She [Ruth] maintains that she wants to be buried next to her first husband. Initially, we thought this was just an issue that she would let go of over time, but it has been many years now. She is one hundred years old and maintains that she must get her land back (Margaret [Ruth's daughter], PI-04: 11).

To complicate the matter further, 'the house warmer' and his wife died after bequeathing the land to their biological sons, who have already subdivided it among themselves. Although the dispute is now in court, Ruth's daughters insist that corrupt dealing may hinder them from getting their mother's land back because the process tends to favour the rich:

They have money, and they use it in their favour. On the other hand, poor people, like us, are disregarded wherever we are while the rich have their way because people love money [...]. Since my father [Ruth's deceased

husband] died, we have lived in poverty, but her first ‘house warmer’s’ children are wealthy and educated, they are employed, and most of them live abroad (Margaret [Ruth’s daughter], PI-04: 53).

Here we see a classic example of how customary laws relating to inheritance were structured to secure women’s land rights. It would appear, as Mayer describes, that “widowhood often marked a woman’s entry into the enjoyment of more freedom and influence than she previously enjoyed” (Mayer, 1950: 63). The widow was at liberty to decide whether to remain a widow or choose ‘a house warmer’ to continue with the husband’s lineage. However, in Ruth’s case, her freedom to choose was subverted by her in-laws, who forcibly took her back to her husband’s ancestral home even though she wanted to remain at the shopping centre. In her absence, she lost her land rights that none of the ‘house warmers’ were entitled to assume.

Divergent interests in ancestral land

The flexibility and fluidity of customary norms in the wake of formal land governance opens loopholes often exploited to dispute women’s customary land rights. For example, although a woman’s children inherit land from the man who settled their mother’s bride-wealth, Ruth’s oldest son denied his brothers land, arguing that they ought to inherit land from their biological father:

He argued that they are not biological sons of his father, and he calls them *ebirentane*.⁵³ How can he side-line his brothers just because the mother was inherited and bore them with an uncle? Wife inheritance is customary. He calls them *ebirentane* to deny them their land inheritance rights (Margaret [Ruth’s daughter], PI-04: 61).

Mayer (1950) explains that the eldest son is a co-heir, and he takes his father’s position after his father’s death. However, this does not permit the son to dictate his mother’s land rights because she holds her deceased husband’s land in trust for her sons. However, Ruth’s oldest son took advantage of his position to deny his brothers customary land rights. The extended family

53 *Ebirentane*, singular *ekerentane*, refers to children born out of wedlock. The term is formed from the main verb *rentana* which means to bring along. *Eke* conjugating the verb refers to a thing. *Omo* would be the appropriate conjugation of the verb when referring to a person. The term *Ekerentane* is a derogatory term for a child born in wedlock and brought along by the mother. *Ekerentane* is translated as ‘a thing brought along’.

intervened to resolve the dispute, agreeing that all the sons must share the ancestral land equally according to custom.

When Ruth's sons shared the ancestral land among themselves, they denied her *emonga*.⁵⁴ Perhaps they assumed that the small parcel of land at the shopping centre that the 'house warmer' had not grabbed would be sufficient for her. However, even her rights on that land were disputed by her son under whom she had registered it:

She decided to register this land under her firstborn son who was fifteen years old then. She used his name to secure the land because land was only registered under men back then. She was not keen to follow up later and reverse the land back to her name after law reforms (Margaret [Ruth's daughter], PI-04: 57).

Ruth's son has refused to transfer the land back to his mother, insisting that she wants to bequeath the land to her daughters. Unlike in the ancestral land dispute, Ruth's extended family have not intervened in the dispute over land at the shopping centre. Perhaps this is because Ruth's husband acquired the land outside the lineage, starting another social entity (see chapter three).

Ruth's experience demonstrates how customary norms favour men as custodians of custom, allowing them to abuse the power they wield to their advantage. At the same time, it highlights the limited autonomy that women have in defending their rights in patriarchal communities such as the *Abagusii*. Hence, provisions in the customary system that are meant to safeguard women's entitlements to land, end up costing them their land rights. As such, although customary laws are gender-egalitarian, unscrupulous 'house warmers' exploit loopholes resulting from the coexistence of the customary and statutory laws to their advantage.

The land dispute between Ruth and her first 'house warmer' has escalated to another level, involving their children. At the same time, the dispute has transformed into a battle between customary and statutory provisions. While Ruth's claims on her deceased husband's land are customary, her first 'house warmer' transferred formal claims to his sons. Comparatively, Ruth's customary claims are weak, and when she sought the court to intervene, the ruling favoured the 'house warmer's' sons.

54 A piece of land apportioned to the parents for their livelihood after subdivision.

Similar factors influenced Grace's experience (under section 5.1.1), where the father-in-law denied Grace her customary claims, insisting that the land formally belonged to him. Women's experiences in 'woman-to-woman marriages' and widow inheritance highlight how the unregulated interplay of customary and formal land governance contributes to women's land struggles. Instead of safeguarding women's land rights, these arrangements extend into hostile land disputes involving women.

According to Kenya's supreme law, the Constitution, women do not need the customary 'woman-to-woman marriage' or wife inheritance to perpetuate their lineages. A judge ruling over a 'woman-to-woman marriage' noted that such practices are discriminatory to women:

[woman-to-woman marriage] is evidence of discriminatory practices in favour of male children who, in most traditional African societies, were the only ones entitled to inherit real estate. That changed with the coming into force of the Law of Succession Act – Cap 160, Laws of Kenya, which does not distinguish between sons and daughters of a deceased intestate.⁵⁵

However, these practices continue to thrive in rural areas, intensifying women's land struggles.

5.2 Disputes relating to land acquisition through inheritance

An article published in a platform for engaging citizens on March 8, 2018, recounts how a man denied his first wife cultivation land because she had no sons. The first wife's daughters attempted to intervene through the local land tribunal and later the formal court. Both institutions decided that the first wife was entitled to half of the husband's land. However, the man defied both rulings until the court warned him, and then he allocated half an acre from his five-and-a-half acres to his first wife. Although the process was expensive and lengthy, stretching to about eight years, the first wife acquired her land rights regardless of her children's sex. Her four daughters later inherited the land (Kendi, 2018).⁵⁶

55 Civil Appeal 106 (2011). Agnes Kwamboka Ombuna v Birisira Kerubo Ombuna. Court of Appeal, Kisumu. kenyalaw.org/caselaw/cases/view/101519/. Accessed 12.06.2020.

56 Kendi, D (2018). Women and land: Who owns it? The Elephant - Speaking truth to power. www.theelephant.info/specials/2018/03/08/women-and-land-who-owns-it/. Accessed 12.06.2020.

However, since customary laws limit land inheritance to sons, daughters inheriting land have to deal with hostile criticism in their natal clans. For instance, in this experience, Kendi explains that the four daughters “contend with the harassment and intimidation from their stepbrothers and other relatives who are angry that ‘mere girls’ had been allocated land”. Such hostility has become systematic to the degree that even the local service providers marginalise women defying custom. For instance, Kendi describes how the water officers denied the four women water services, insisting that the women erred in suing their father and inheriting land in their natal home.

Thus, patriarchal societies view women’s land inheritance rights with contempt. In these societies, men without sons bequeath their land rights to immediate male kin. Even though some men are open to bequeathing land to daughters, this topic attracts criticism and sometimes violent opposition from the extended family and community. In an article published in the Daily Nation newspaper on August 30, 2020, the author recounts the struggles of a man without sons who wanted to bequeath his twenty acres of land to his daughter. Since the man’s brothers and nephews were potential heirs, they attempted to hinder the process. They locked the man up for five years after an accident and prevented his daughter from visiting. The police commander in charge of the investigations explains that “judging by the conditions that the man was living in, it was obvious that the intention was to let him die”. The man’s daughter states that the men who detained her father were eyeing his land (Sayagie, 2020).⁵⁷

Kenya’s legal framework provides that daughters can inherit land alongside their brothers. The Constitution of Kenya provides that:

Land in Kenya shall be held, used, and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles [...] elimination of gender discrimination in law, customs and practices related to land and property in land (Constitution of Kenya, 2010: 60 [1]).

Article 27 of the Constitution criminalises all forms of discrimination against any person. Further, it provides equal rights to both “women and men, including the right to equal opportunities in political, economic, cultural and

⁵⁷ Sayagie, G. (2020). Land dispute leaves disabled Narok man locked up in house for 5 years. Daily Nation, Kenya. nation.africa/kenya/counties/narok/land-dispute-leaves-disabled-narok-man-locked-up-in-house-for-5-years-1928380. Accessed 12.06.2020

social spheres” (Article 27 [3]). Therefore, the article is crucial in enhancing equal inheritance rights. This Constitution seems to be antagonistic to patriarchal cultural practices.

Although mainstream media has highlighted some controversies relating to daughters attempting to inherit land, most experiences, especially in rural areas, are skipped by the public limelight. A local chief said that the existing structures within the customary setup hinder daughters’ inheritance rights. The chief noted that from his experience, fathers often refuse to recognise their daughters as heirs. They insist that daughters must get married and relocate to their husband’s lineages:

The law is very clear; women are entitled to inherit land from their parents, but it becomes difficult when the father is alive because he can refuse totally. You know the father has the title of the land. This is another challenge to the constitutional provision for gender-equal inheritance. (Chief Itumbe location, KI-6: 21).

Chief Mirera explains from his experience as a local administrator that since household land is commonly registered under fathers, they become bottlenecks to daughters’ inheritance rights. The title empowers the men to exclude daughters when bequeathing their land. According to the chief, since Kenya’s legal framework provides gender-equal access to ownership of land, it is easier to include daughters as heirs after their father’s death. However, the customary exclusion of daughters from land inheritance remains deeply entrenched in practice. A senior land officer insists that the law providing daughters inheritance rights is unsustainable:

We have a law that gives women the power to acquire land from their parents, but in practice, even I would never allow any of my sisters to inherit land. I will object because my son will need land. What will I give him? It is not just my sons; their sons will also need ancestral land. What will happen if each of my eight sisters is apportioned land here? It can’t be! (Senior land officer, Kisii County).

Besides the economic value of land, the social function of land as a symbol of identity confines daughters’ inheritance rights. Debates on daughters’ inheritance rights often revolve around the contradiction between customary and statutory laws. In this section, I will discuss land disputes relating to daughters inheriting land in their natal homes. In the first part of this section, I will focus on the struggle against daughters inheriting land in their natal

homes. The second part will focus on how some women exploit daughters' land inheritance rights to dispute widows' land rights.

5.2.1 Daughters inheriting land: A legal provision

Miriam's experience below demonstrates the struggles related to daughters inheriting land in their natal homes.

Box 7 Background information - Miriam

Miriam

At 51 years old, Miriam depends on her two-and-a-half-acre piece of land for her livelihood. She lives alone in an old, well-maintained, semi-permanent house near the shopping centre. She has one child, a daughter, in university.

When Miriam got married, her husband worked in the city and seldom visited his ancestral home where Miriam lived. While pregnant, Miriam moved to her natal home a few days before delivery to get support and easy access to a hospital. After giving birth, she received a letter from her parents-in-law instructing her not to return because, they claimed, her husband was no longer interested in her. Therefore, she decided to stay with her elderly, ailing parents.

Miriam continued caring for her mother after her father's death. During that period, her brother died, leaving behind a young widow and a daughter. The young widow decided to leave and remarry somewhere else, leaving her husband's land unoccupied. Since the land was still registered under Miriam's parents, her mother decided to transfer it to Miriam. About fifteen years later, Miriam's nephews (from a different brother, not the original landowner) confronted her in a group of about ten, insisting that Miriam should leave because 'the land belonged to them'. They broke some of her belongings in the compound, screaming, shouting, and wailing, claiming that women are not entitled to land in their natal homes.

Miriam contacted the chief, and he sent police officers to intervene and calm the situation. Once the police officers found out that it was a land dispute, they referred Miriam and her nephews to the chief for resolution. Referring to the Constitution, the chief concluded that Miriam had acquired the land legitimately from her parents, and the nephews held no claims in the land. Therefore, the chief warned them that bothering Miriam was a criminal offence that would attract a jail term. Since then, the young men refrained from bothering Miriam.

Throughout the interview, Miriam seemed very cautious. Before the interview, she asked several questions before agreeing to participate. She shared scanty details, insisting that she did not consider her experience a dispute. When I requested to see her land title deed, Miriam said she had secured it far away in a relative's house. Her cautiousness resulted from the potential insecurities surrounding her land rights.

Miriam's experience demonstrates that women's land rights are characterised by insecurity regardless of the land acquisition method, whether acquired through marriage or inheritance. Furthermore, it is not just the husband, brothers-in-law and co-wives who threaten women's land rights. In Miriam's case, it was first her parents-in-law who ended her marriage and later her nephews who disputed her land rights:

I received a letter from my parents-in-law informing me that I should not go back. They wrote that my husband no longer wanted me in his home (Miriam, PI-03: 52).

They [Miriam's nephews] were shouting that I should leave. They claimed that this land belongs to them. It was a combination of my nephews and my deceased brother's ex-wife's daughters, and others. [...] The young people claimed that I was here illegally, and they had come to reclaim their land (Miriam, PI-03: 69).

Although the limitations and insecurities associated with land rights acquired through marriage instigated advocacy for gender-equal access to land in Kenya, women rarely inherit land in their natal homes. When women return to their natal homes after divorce or separation, they rarely inherit land because of patrilineal inheritance. Thus, divorced, separated and unmarried women often seek other means to access livelihood (Hakansson, 1994).

Factors favouring daughters' land inheritance rights

Miriam's experience is unique. Besides being the only one of four daughters who inherited ancestral land, she is the only woman known to have 'successfully' inherited and retained land rights in her natal home. Her 'success' is typified by several intersecting factors. First, there was land available for inheritance:

After my brother died, his second wife decided to leave because she said she was still too young to be a widow for the rest of her life. She had a daughter with my brother before his death. When she left, my parents remained alone here. This situation forced me to stay and take care of them because, at their age, they needed somebody around. [...] I decided to commit my time and efforts to care for my parents. I could not desert them at that old age. I cared for them until recently, when my mother died. Now I am the one living here (Miriam, PI-03: 47).

After Miriam's brother died, his wife decided to get remarried. Thus, the land, which should have been passed on to her sister-in-law and her children, remained at Miriam's mother's disposal.

The second factor which favoured Miriam's inheritance rights was her reliance on the statutory land laws, which allow daughters to own land:

Before my mother died, she handed over this land to me. [...] We went together to the land's office, where she transferred the land to me. [...] She transferred the land to me as an appreciation for the care I had given them and because my marriage had not worked out (Miriam, PI-03: 66).

Third, the land was still formally registered under Miriam's father's name. Customarily, a father subdivides land among his sons immediately after the oldest son marries (Hakansson, 1988). However, since most ancestral land transfers from fathers to sons are informal, the land often remains in the original owner's name. In Miriam's case, the land was still registered under her deceased father's name. Thus, as the deceased's living spouse, Miriam's mother transferred the land to herself and then apportioned Miriam, her deceased brother's land.

Fourth, Miriam's mother could decide independently. While arguing that it is easier for a daughter to inherit land in her natal home when the father is deceased, the chief recounts an incident where a father denied his daughter

land. Although she was the only child, her father preferred to marry a second wife to have sons for heirs. In such cases, the father retains the final decision.

However, one can wonder why some men in patriarchal societies adamantly deny daughters inheritance rights. In the article “The four things you need to know about women’s land rights”, Markham argues that daughters’ land inheritance rights tend to threaten patriarchy:

Strengthening women’s land rights can also disrupt existing power balances. For example, some men may view stronger women’s land rights as a threat to their authority or masculinity, and they may react violently to this perceived loss of control (Markham, 2015: 4).

Dery & Diedong share similar arguments, noting that daughters’ inheritance rights are often considered an ‘encroachment of masculinity’:

Women owning land will appropriate men’s decision-making authority, reducing men’s influence in society. That is described as ‘an encroachment of their masculinities’ (Dery & Diedong, 2014: 43).

Holding land rights independent of men would increase women’s autonomy, disrupting patriarchal power structures and men’s authority. Thus, men take advantage of their position to oppose women’s land inheritance rights and maintain the status quo. As such, Dery & Diedong point out that customary patriarchal norms brand women insisting on daughters’ inheritance rights as bad or rebellious, in contrast to the good and submissive ideal women. Hence, male relatives often resort to violence to deny daughters their land inheritance rights (Dancer, 2015).

With this in mind, perhaps it was easier for Miriam to inherit land in a society where patriarchy thrives because her father was deceased. However, this is not to argue that Miriam inherited land because her father was deceased. Instead, it indicates that mothers are more likely to favour daughters’ inheritance rights than fathers, who are defending patriarchal power dynamics. Moreover, the husband’s death leaves the widow with more freedom and influence than when the husband is alive, which allows them to make independent decisions. However, as already discussed, these rights and freedom do not remain unchallenged by the male kin, who attempt to maintain the status quo. Furthermore, there are several intersecting factors that play out when discussing women’s land inheritance rights. While there may be commonalities, each case is unique and should be treated as such.

Challenges confronting women's inheritance rights

Although Miriam has inherited land and the statutory laws protect her rights, some of her male kin believe that she holds the land illegitimately because, according to custom, land belongs to men. Therefore, these men dispute Miriam's land rights:

Sometime last year, a group of about ten young people, most of them are my other brothers' sons, showed up here. They came into my compound and started breaking my belongings outside. They were wailing and shouting that I should leave. They claimed that this land belongs to them. [...] they argued that I am here illegally, and they want me to leave their land (Miriam, PI-03: 69).

By insisting that Miriam's land belongs to them, her nephews demonstrate the deep embeddedness of social norms limiting land inheritance to the male offspring. Their argument that Miriam was there illegally stems from the customary belief that women access land through their relationships with men. Besides, according to the *Abagusii* customs, when a man dies without heirs, his brothers or immediate kin take up his land (Henrysson and Joireman, 2009). Therefore, customarily, Miriam's brothers and their sons ought to have inherited the land. Accordingly, Miriam's nephews claim that her land belongs to them, given that they are the nearest male kin in line to receive the inheritance.

Although most customary land ownerships are informal, Miriam held a title confirming her ownership rights. Therefore, while her nephews claimed customary ownership, Miriam's rights were recognised by the Constitution, which has precedence over customary laws when resolving disputes. Alluding to the land registration documents, she exudes confidence that her land ownership is secure:

The good thing is that I have the land title deed proving that I own this land. [...] With the title deed, I am confident; it has all my details, including my identity number, birth certificate, everything to show that the land is mine. It also has all the required authorising stamps and seals from the lands' offices (Miriam, PI-03: 40).

However, since Miriam's nephews' customary rights exist within the social norms, her land title was not sufficient in securing her land rights. While formal avenues such as judicial courts exclusively base their decisions on

statutory laws, customary dispute resolution avenues use custom, while alternative dispute resolution mechanisms integrate the customary and statutory laws. In the case of Miriam, the chief integrated the Constitution and customary law:

The chief told them that they were acting against the laws of Kenya. He told them that I had inherited the land from my parents, and it was wrong for them to interfere. He asked them to show their land title deed as proof that the land belonged to them. [...] He pointed out that according to Kenya's laws, a woman has every right to inherit land from her parents, just like men (Miriam, PI-03: 31).

Having anticipated that the chief might use the statutory laws favouring Miriam, the nephews invited Miriam's two step-nieces⁵⁸ (step-daughters of the original owner). The two women claimed that, legally, they were the suitable heirs of their stepfather's land. Ironically, they argued that they were entitled to inherit their stepfather's land while at the same time maintaining that Miriam was not entitled to inherit land from her parents. This prompted the chief to turn to the customary laws to discredit the two women's claims on Miriam's land:

He asked them some questions regarding our culture like 'who received your bride-wealth when you got married?' They said it was given to their mother's kin. Then he asked them what qualified them to claim they belonged to my brother's lineage. [...] He also pointed out that even though their mother was initially married here, she was not buried here. He concluded that customarily and legally, they had no basis for claiming my land (Miriam, PI-03: 80).

This example illustrates how aggressors exploit the inconsistencies between the statutory and customary laws to erode women's land inheritance rights. In addition, Miriam's experience shows the critical role of chiefs and assistant chiefs in defending women's land rights at the local level. The flexibility to combine statutory and customary laws in resolving land disputes contributes to the effectiveness of these local administrators. In this situation, if the chief had limited his arguments to the statutory laws, then Miriam's step-nieces would have equally claimed a part of their deceased father's land. On the other hand, insisting on customary laws would have degenerated Miriam's

⁵⁸ Miriam's deceased brother had initially married a woman with two daughters from a previous marriage. However, they divorced and the woman relocated.

land rights. However, aggressors can exploit such flexibility to threaten women's land inheritance rights.

The chief warned Miriam's nephews against using the women by proposing to revoke the current demarcations and subdivide the entire land, considering both male and female lineage members. This proposal forced Miriam's nephews to back off lest their land sizes would diminish if the chief included other women from the lineage.

Women's land struggles go beyond the direct attacks. Sometimes, subtle behaviours are indirect threats to women's land rights. For instance, Miriam has to deal with indirect threats from other male kin:

Men usually gather near the road almost every evening, and here one of them told me that sometimes the men discuss my land [...] wondering 'how is it that a woman inherits land and lives in her natal home? What will happen afterwards? Will she then transfer the land to her daughter? Do women inherit land in their natal homes?' For me, this is inciting people in a particular direction. They are trying to find ways of dispossessing me. Such conversations deny me the freedom to do some things (Miriam, PI-03: 93, 94).

Miriam explains that such conversations are intended to incite people to challenge her land rights. Thus, the circumstances force her to be careful and avoid provocation. Accordingly, she insists that such arguments deny her "the freedom to do some things". Asked to clarify this statement, she says that she lacks the freedom to build a better house:

My house is very old and semi-permanent. My parents constructed it a long time ago when we were still in school. Sometimes I consider building a modern house, but I know it will excite jealousy. Do you think the people around here will be pleased that I, a woman living in her natal home, I am the one constructing a permanent house? (Miriam, PI-03: 95).

For Miriam, building a permanent house would signify permanency in her natal home. However, this would evoke jealousy from her male kin and attract aggressive contestation of her land rights. Therefore, she restrains herself by avoiding any action that could provoke.

Miriam insists that the men anticipate that she will either get married and relocate or eventually die and leave the land at their disposal. However,

the men wonder whether she will also defy the social norms and bequest the land to her daughter. Thus, although it seems like Miriam's land rights are acceptable, there are underlying interests and power struggles over her current and future land rights. Since the men are interested in regaining the land in future, having sons or daughters influences the security of a woman's inherited land rights. Miriam is certain that her struggles would have been worse if she had a son:

I know that this would have been worse if I had a son; they would have been more aggressive. [...] However, because I have a daughter, they believe that she will get married to another clan and leave the land behind at some point (Miriam, PI-03: 84).

Emphasising this point, Miriam insists that the derogatory term *ekerentane* (defined under 5.1.2.2) commonly refers to male children more than females to oppose the child's land claims. Since daughters are likely to marry and move to their husbands' homes, the male kin are less aggressive. However, since sons have customary inheritance rights, aggressors are more likely to challenge land rights held by women with sons. Asked whether she would bequeath the land to her daughter, Miriam is sceptical, noting that:

I am not keen on passing this land to her. I would not want her to be threatened as well. [...] I have not committed her to this land. [...] I can even sell the land and buy land for her somewhere else away from my family members, where there is peace (Miriam, PI-03: 85).

Miriam's scepticism about bequeathing her land to her daughter is understandable. As she explains, the prevailing contestation against her inheritance rights denies her freedom to do whatever she wants to do. Men contesting daughters' inheritance rights is not unique to Miriam's case. Margaret, Ruth's daughter (see background information box 6), says that the main reason her brother refused to reverse land ownership rights to their mother is to block her from bequeathing the land to her daughters:

The main reason behind the land dispute is that in 2012, my mother wrote a will where she stated that my sister, who is taking care of her, and I should inherit this land. But the land registration must be reversed to her name

before I can take charge. [...] The sons were not happy about this (Margaret [Ruth's daughter], PI-04: 72).

In contrast to Miriam, who holds formal documents proving that the land belongs to her, Ruth's land is registered under her son's name, limiting Ruth from bequeathing the land to her daughters.

Regardless of the existing barriers, Margaret insists that the statutory laws providing gender equality improve women's participation in land governance and land dispute resolution:

It is because of this law that I was inspired to follow up on the land. I feel like I am empowered to do this. Were it not for this law, I would not get any audience. [...] Everywhere I go, people always ask me, 'don't you have brothers to follow up on the matter?' They sarcastically ask because they know that the law empowers me. This law has empowered women. We can also claim land and get it (Margaret [Ruth's daughter], PI-04: 70).

Therefore, even though the law has not picked up in practice, Margaret believes that it has empowered women to claim land in their natal homes and seek resolution in land disputes. Like Miriam, who inherited land in her natal home, Margaret applauds the law promoting gender equality in access to and controlling land, describing it as 'a very good law'. Their only concern is that society has not socially assimilated the law.

5.2.2 Daughters' demanding inheritance rights

Typically, daughters' inheritance rights should improve and secure women's access to land. However, some women regret the statutory provision, describing gender equality as 'bad law'. The women state that they blindly followed their political affiliations to vote for the Constitution:

We did not vote well; we should not have voted for women to inherit land in their natal homes. Young women are stressing our community (Edna, FGD-02: 8).

In short, we made the wrong choice by accepting the new constitution. Politicians campaigned, telling us to vote 'yes', and we did that. Maybe it is because we are not educated (Caro, FGD-02: 11).

These women have diverse arguments against daughters' inheritance rights. Some insist that the law weakens the marriage institution by indirectly promoting women's autonomy. Accordingly, they argue that when women have independent land rights, they have little regard for marriage:

Some women will have children with any man without any intentions of settling down with that man because they are assured of getting a share of land in their natal homes (Edna, PI-13: 84).

For these women, weakening the marriage institution is bound to weaken access to land through marriage.

According to other women, the provisions create a loophole for married women to demand land in their natal homes, resulting in other forms of land disputes:

This law that the government passed, that girls can now inherit land alongside their brothers, is the cause of most land disputes. [...] When a woman is married, she should relocate from her natal home. Wherever she gets married, the man has inherited land for her to cultivate. Even us, we left land where we came from, but I cannot go back to ask for land (Grace, PI-01: 63).

Grace's argument stems from her experience in a 'woman-to-woman marriage' where her sister-in-law denied her land to cultivate.

Customarily, bride-wealth settlement symbolises a woman's detachment from her natal lineage and attachment to her husband's lineage (Hakansson, 1994). Thus, married women have limited influence in their natal homes. However, Hakansson explains that wives are often side-lined in their natal homes as strangers. Hence, although daughters ought to detach from their natal homes, gender equality provisions position daughters to threaten their deceased brothers' widows' land rights. This results in complex land disputes. For instance, Grace's extended family resolved that her sister-in-law must surrender her mother's land to Grace. However, the sister-in-law countered, insisting that legally, she is entitled to inherit land in her natal home:

She and her other two sisters started demanding part of her mother's land in line with the statutory laws allowing daughters to inherit land (Grace, PI-1: 40).

Hence Grace argues that the statutory provisions for gender equality 'degenerate' women's identity and social status. She further states that she would never accept to inherit land in her natal home:

Even if I were given land at my home, I would never accept it. How could I be referred to in my natal home? Whose wife would I be called in my natal home? (Grace, PI-1: 65).

In this quote, Grace emphasises that inheriting land in their natal homes deprives daughters of the social transformation associated with marriage. For her, marriage is key in improving women's social status through their husbands' identities. Among the *Abagusii*, before marriage, a girl is referred to as *omwana o*, meaning daughter of, followed by her father's name. After marriage, she acquires a wife status, which is ranked higher, transforming her identity to *moka*, meaning wife to, followed by her husband's name. In this case, Grace wonders whose wife she would be called if she inherits land and settles in her natal home.

Caro (see background information box 12) shares Grace's sentiments, asserting that even though inheritance rights are intended to vindicate women, they intersect with existing power structures to threaten widows' land rights. She explains that when sisters-in-law's marriages fail, they return to their natal home to dispossess widows:

If women were to inherit land, we would never have any land where we are married. Land disputes would have been worse. For example, my sisters-in-law arrogantly destroyed my things when my husband died, yet they are married somewhere else. What do you think they would have done if they had land here? It would have been terrible. The law allowing women to inherit land from their parents is wrong (Caro, PI-02: 68).

Caro relates that her sister-in-law, who moved back after marital issues, later sent her eight children to harvest from Caro's land without her consent. She confesses that she fears confronting her sister-in-law because her husband's entire family will turn against her since she is an outsider.

Asked about daughters' inheritance rights, Caro says that it is not an option for her:

I would never go back to my natal home to ask for land. That would mean disputing my brothers' wives land rights. I am contented with the land I have through my husband; my only desire is to utilise this land peacefully. Even if my land was smaller, I would work hard to improve its productivity instead of turning to my natal home (Caro, PI-02: 69).

Other arguments against daughters' land inheritance rights revolve around managing the distance between the marital and natal homes:

If a woman inherits land at her natal home but lives with her husband at his ancestral home, how will she utilise the land? She is likely to sell that land and misuse the money (Caro, PI-02: 69).

This argument is significant in patriarchal communities because women relocate to settle in their husbands' ancestral homes. It is also the most common argument against daughters' inheritance rights. Agnes, a gender specialist at the Federation for Women Lawyers (FIDA), describes how distance is a major drawback against daughters' inheritance rights. From her experience, most people believe that when daughters inherit land, they sell it, disturbing the social entity dynamics:

The arguments we commonly get from men opposing women inheriting land is that 'she will sell the parcel of land and then strangers will come and live in our midst'. Considering the cultural homestead set-up where a clan lives in the same locality, the thought of having someone not related to them in their midst is a threat (FIDA regional coordinator, KI-4: 13).

Other women oppose daughters' inheritance rights, saying that it is not practical with the high population density patterns among the *Abagusii*. The land sizes available in households are insufficient for both sons and daughters. Therefore, when daughters claim their land inheritance rights, brothers adopt violent methods to exclude them:

Nowadays, land has become scarce. The land available cannot be shared by both boys and girls (Caro, FGD-02, Itumbe: 4).

Men will not allow a sister who was once married to come back, claiming land. They will kill her. [...] two women were recently butchered by their

brothers. They had come to claim part of their parents' land. They were visited early in the morning, killed, and buried there (Edna, FGD-02: 6).

Christine gives another example of a violent experience where a brother torched a sister's house to evict her from land she inherited in her natal home:

The brothers were unhappy that the girl had inherited land that they said 'belonged to them'. The youngest brother burned the girl's house to push her away (Christine, PI-08: 88).

With arguments like the above, some women oppose daughters' land inheritance rights based on personal experiences. As married women contending with sisters-in-law, Grace, Caro, and Edna insist that the provision threatens widows' land rights acquired through marriage. Instead of provisions for daughters' land inheritance rights, in these women's view, securing women's land rights acquired through marriage is more critical. In sharp contrast, women such as Miriam and Margaret, who have benefitted from daughters' land inheritance rights, are convinced that it is a 'good law'.

Regardless of their position on women's land inheritance rights, both the women opposing and those supporting the provision are caught up in gendered land struggles. These women share a common desire to relocate from their current residence to areas where they could access secure land rights:

I wish I could sell the land and move away; even if I would have to get a loan to buy land, I could move to a place where I can find peace because where I am, there is absolutely no peace (Caro, PI-02: 7).

I would rather look at other possibilities, like selling off the land, and then plan to buy land elsewhere where I can live peacefully (Miriam, PI-03: 118).

The persistent direct and indirect threats against these women's land rights deny them the peace and freedom to do things they desire. Hence, they wish to sell their land and relocate. However, custom denies them the freedom to sell the land and relocate because ancestral land is 'communally owned'.

5.3 Disputes relating to land acquisition through the market

Having considered the several customary pathways through which women acquire land rights and the emergent disputes, this section focuses on the disputes that emerge from land acquisition through land markets. Contrary to the customary land rights that women acquire through men, land markets are considered a more liberal alternative for women to acquire land independent of men. Agarwal (2001 & 2003) notes that the strong male bias towards land ownership and transfers (through inheritance) and the associated inequalities have led to more liberalised land reforms responsible for the push towards land markets.

Therefore, as an alternative pathway, land markets are a means of improving equal access to land, particularly to those with limited land endowments within customary structures, such as women (Deininger *et al.*, 2017). Land markets provide a legal basis for women to acquire and maintain land rights while limiting disposition without their consent (Holden *et al.*, 2006). However, the question still emerges as to whether land markets can compensate for gender inequalities and whether they favour women. This section focuses on disputes relating to land acquisition through the market. I divide the section into fraudulent land transactions, husbands transferring land without wives' consent, and ancestral land sale complexities.

5.3.1 Fraudulent land transactions

UNECE (2011) defines land fraud as an attempt to manipulate details in the land registration through fraudulent activity for financial gain from criminally acquired property or interest in a property. Land fraud involves several actors but is orchestrated mainly by land administrators who are privy to land ownership details. These officers work with external fraudsters, who may include close family members. UNECE explains that fraudsters use extortion and bribery to either expedite the sale or transfer of land or falsify records to change ownership for multiple sales. According to Klopp (2000), fraudulent land transactions are common in Kenya, where land officials secretly transact public land, allotting it to private holders.

The Kisii County land registrar reiterates Klopp's observation, noting that fraud has become deeply entrenched in land transactions due to the increased demand for land as an economic asset:

Generally, people in Kenya believe that we become rich by amassing land. These people are easily defrauded in their haste to acquire land. This makes fraud a major cause of disputes in Kisii County (Land Registrar, KI-7: 9).

According to Holden and colleagues (2006), land scarcity is a crucial driver of land markets. As the demand for land increases, the relative scarcity and value of land also increase. Therefore, in a highly productive and populated area like Kisii County, where land is traditionally acquired through inheritance, subdivisions down generations have reduced individual land sizes, offsetting land scarcity. These factors have created an enabling environment for land markets to thrive. Unfortunately, the same factors also contribute to increased land market fraud. In this, the desperation to acquire land reduces commitment to proper background checks before transactions, exacerbating gender gaps in land acquisition.

Forms of land market fraud

Some fraudulent land market activities identified during the empirical study include government officers abusing their authority, sellers engaging in multiple sales of the same piece of land, trustees selling land without the owners' consent, and using counterfeit land documents to defraud buyers.

Government officers aiding fraud

Contrary to expectations, state officers such as land officers and local administrators often use their authority to aid or assist in fraudulent land transactions for personal gain. As the land registrar in Kisii County puts it:

In previous years, land officers worked with fraudsters to alter land records. As a result, one cannot be sure whether these are the correct records in the files (Land Registrar, KI-7: 10).

Although both men and women are exposed to these fraudulent land transactions, Alice's experience in background information box eight below demonstrates that women holding *de facto* land rights are more exposed and vulnerable.

Box 8: Background information - Alice

Alice

At 54 years old, Alice is a mother to four adult children. Her husband was a senior police officer before his death. Ten years ago, gangsters murdered him alongside their eldest son, who was in his final year of university. This experience devastated Alice, leading her into depression for months. Since her husband was a prominent person, his murder was highly publicised. While Alice was still grieving, a senior police officer informed her that her husband's land within Kisii town had been gazetted for sale. She visited the land offices and found unclear records. While the land was still registered under her husband's name in some records, others indicated that the land belonged to someone else. This prompted her to transfer the land to her name immediately. Although it took some time, Alice managed to salvage her husband's land from fraudulent land officers.

Alice's experience highlights a common problem in most land offices: some land officers privy to the land registration details collude with external agents to defraud women of their land rights. As soon as the land officers found out about Alice's husband's death, they, either independently or in collaboration with fraudsters, initiated the process of transferring his land ownership rights. Since Alice was grieving, she would hardly follow up on the status of her husband's land until after some years. She would not have known that her deceased husband's land was gazetted for sale.

From the way she received the information, it is evident that such transactions occur discreetly. It seems that only those with certain privileges and power to benefit from and control such transactions are privy to the information. In Alice's case, a senior police officer informed her that the land had been gazetted for sale. It is not clear how the senior police officer acquired the specific details of the land, which only the landowner would know. Alice managed to recover her husband's land before the transfer was effected because she had access to information. Her status as a senior police officer's wife may have contributed to her accessing the information in time. However, most women lack such privileges and would lose their land to such fraud.

Sometimes, powerful land officials collude with family members to defraud other family members, especially widows. This commonly transpires in ancestral landholdings where the titleholder dies before formal succession:

Even at times, in the past, immediately after a father dies, some people collude with land officials here to transfer land to the family member who sells it without the knowledge of the rest of the family, resulting in a dispute (Land Registrar, KI-7: 5).

Formally, land registered under a deceased person can only be transacted through the courts. When the widow of the deceased is alive, she becomes the proprietor of her deceased husband's land. Otherwise, the chiefs' mandate is to establish and list the beneficiaries of the deceased for the court process. The court uses the chief's list alongside the death certificate and a search from the lands' office showing that the deceased was the last owner to grant subdivision orders. However, the registrar explains that sometimes, chiefs overstep their mandate and collude with fraudsters⁵⁹ to subdivide the deceased's land without involving the court. According to the registrar, the fraudsters collude with some court officials, land officers, and lawyers to forge land transfer documents that allow them to sell the land without the rightful owners' consent. Since most people dispossessed in rural areas trust the local chief's authority and have no financial muscle to fight for their rights, they adapt and live with the losses, while some are evicted from their land.

Multiple sales

The land registrar further makes clear that since fraud in the land market is complex and constantly evolving, land transactions in Kisii County have become risky. Thus, sometimes even the seemingly genuine land transactions turn out to be fraudulent. For instance, the registrar recounts an ordeal where he was almost conned by a man posing as a land seller. The man claimed that he wanted to sell the land and use the money for his son's school fees. Everything seemed genuine when the registrar cross-checked the man's documents against land records. Being the custodian of all land records in the county and a trained lawyer, the registrar was content that the transaction was above board. However, after settling the down payment, he found out

59 Abuga, E. (2018). The Kisii land fraudsters who forge papers. The Standard Newspaper. www.standardmedia.co.ke/nyanza/article/2001287995/revealed-the-kisii-land-fraudsters-who-forge-papers. Accessed on 12.11.2020.

that the seller was no longer the owner of the land under the transaction. The registrar confesses that from his experience in different land registry offices, including cities with prime land, Kisii County has one of the most fraudulent land markets.

Fraudulent land markets are not unique to Kisii or Kenya but seems to be a common problem in sub-Saharan Africa, where customary land provides the largest market base (Mintah *et al.*, 2021). The fraudsters take advantage of the loopholes in the land administration systems and the ignorance of most local landowners to transfer land deceptively, without the owners' knowledge, or multiple times, and exploit the protracted court processes to their advantage. According to Platteau (2000), small-scale landowners are more vulnerable to losing their land rights to wealthier and better-informed actors when there are cost implications linked to land rights registration and transfer. Moreover, normative land reforms aimed at increasing transparency in land transactions have failed to secure land rights but instead have created incentives for unscrupulous actors to circumvent the system to defraud vulnerable landowners. This raises an important question about the rural landowners' awareness of the existing structures that aid in the sale and transfer of land and their implications in securing or denying women living in rural areas their land rights.

Trustees selling land without consent

Factors like education and position in the patriarchal system favour some people to become trustees of others' land rights. Unfortunately, sometimes the trustees abuse their positions, defrauding others:

Family disputes are also in the line of the educated people taking advantage of the ignorance of the elderly or uneducated. Since they are trusted and desire land, the educated can transfer land without the owner's consent. One case involved an older man selling a small part of the land to a private surveyor. The older man trusted the surveyor with all his details and documents, but the surveyor changed records at the lands registry to show that he had bought the entire land (Land registrar, KI-7: 11).

Such incidences occur at the administrative level, with those responsible for land administration defrauding landowners. By doing this, they use their positions and authority to gain access to the land details and make changes to the land ownership. Similarly, defrauding also occurs at the family level, where

brothers-in-law take advantage of their positions in the family to defraud widows of their land without their consent. Often the in-laws collude with the chiefs or land officials to transfer widows' land to themselves irregularly before selling it. Based on personal experience in dealing with such cases, the County land registrar notes that uneducated widows are most vulnerable to such losses:

Disputes involving married women usually occur when husbands sell land without their wives' knowledge. However, for widows, it is the brothers-in-law who sell the land. Legally, land should belong to the spouse of the deceased, but because most women in rural areas are uneducated and men tend to die earlier, brothers-in-law sell the deceased's land without informing the widow. Sometimes, even the sons sell their mother's land without her knowledge, igniting disputes (Land Registrar, KI-7: 26).

Since patriarchy gives male relatives positions of dominance and influence, they are often more educated and understand the land market dynamics better than women do. Once the land details are known to them, they ensure that all correspondence and information are channelled through them, thereby withholding important notices or proceedings from the rightful owners. Such practices highlight the importance of access to information in aiding or making one vulnerable to land market fraud. The time and money needed to follow the subsequent protracted court cases to challenge these fraudulent land transactions are unavailable to ordinary people. As a result, most widows who suffer such losses will instead seek alternative resolutions, which, in most cases, do not favour them.

Use of counterfeit documents

According to the registrar, land fraudsters have a parallel land 'administration' office where they produce counterfeit documents and defraud unsuspecting land buyers. The counterfeits are deceptively similar to the authentic documents, making it difficult even for the land registrar to distinguish between the two:

A month after I insisted that all succession must be processed through the courts, I received thirty-nine grants. They contained both the government and judiciary seal; everything checked out. However, knowing the court process, it did not make sense that thirty-nine grants had been processed in

one month. I contacted the court to confirm. Court records showed that only two grants out of the thirty-nine were authentic.⁶⁰ (Land registrar, KI-7: 4).

Mainstream media is awash with articles reporting fraudulent land dealings in Kisii County, echoing the registrar's concerns. On my first visit to the Kisii land registry, a newspaper caption on the noticeboard indicated that police officers had arrested two men belonging to a land fraud syndicate. These men possessed counterfeit title deeds with the seal, rubber stamp, and signature of the land registrar. Another article published in the online media outlet Reuters⁶¹ highlights that land fraudsters in Kenya use details from the original documents to forge new ones, give the fake ones back to the owners or buyers, and then sell the land secretly.

In another newspaper article published in the Standard Newspaper on October 27, 2019, the author documents several recent land fraud incidents. In these incidences, the fraudsters transacted non-existent land or existing land using counterfeit title deeds. In one example, a landowner living abroad returned to find out that his land in Kisii County was at the core of an ongoing dispute. In this case, the fraudsters had sold his land nine times to different unsuspecting buyers without the owner's knowledge. The author explains that most land fraud incidents remain unreported, and sometimes the fraudsters murder the litigants.⁶²

According to the county land registrar, aggressors often murder women owning land to acquire their land 'legally' using counterfeit documents:

Two women were murdered in two separate incidences. One was because a hotel developer near the airport wanted to expand. The second one, a school owner, wanted to expand the school. He needed the woman's land (Land Registrar, KI-7: 29).

Land market fraud has evolved to the extent that unsuspecting buyers still lose their money even after due diligence. For instance, one land buyer paid for a piece of land after following all required steps, including hiring

⁶⁰ See photo under appendix 5 (5.4).

⁶¹ Njagi, K. (2019). Tricked by family members, widows in rural Kenya left landless. Reuters. www.reuters.com/article/us-kenya-land-women-idUSKCN1VQ04F. Accessed on 14.07.2021.

⁶² Abuga, E. (2019). Alarm as investors lose cash to shrewd land buying Cartels. The Standard Newspaper. www.standardmedia.co.ke/nyanza/article/2001346973/alarm-as-investors-lose-cash-to-shrewd-land-buying-cartels. Accessed on 12.11.2020.

a lawyer to oversee the transaction process. The buyer was contented after thorough scrutiny and paid for the land. However, the buyer found out later that although all the land documents were authentic, the seller had used a counterfeit identity card to pose as the landowner.⁶³

A year after the interview with the land registrar, an article was published in the *Weekly Citizen* on June 6, 2019, recounting that the registrar was summoned to testify in a case where two suspects were accused of making fraudulent documents intended to dispossess orphaned children. The registrar testified, emphasising his commitment to cleaning up the system and eliminating fraud in land transactions (*Weekly Citizen*, 2019).⁶⁴ The registrar emphasised that digitalising the land records would reduce fraud in the land market.

The fraudsters have a well-connected network, positioning correspondents in different government offices to sustain the fraud by frustrating any attempts to hinder their activities. For instance, about three months after the interview, the county land registrar was arrested alongside some of his staff over corruption allegations. In an interview published in a national newspaper on November 2, 2018, the registrar asserts that the arrest was ill-intended to sabotage the fight against land market fraud in the county:

This arrest was intended to embarrass me at the behest of the land grabbers. [...] I started by transferring all the officers who had worked in the area for more than 20 years and digitising land records to curb manipulation of land ownership documents [...] We are the people who have been fighting corruption. How can I be the one to engage in that vice when I have put my life on the line to protect public and private land in Kisii County? (The Star Team, 2018).⁶⁵

Although the registrar believes that digitalising land records will reduce manipulation, land fraud remains deeply entrenched in the land market, and women remain particularly vulnerable to these frauds.

63 Matarakei D. (2019). Kisii land fraudsters: Man conned Ksh. 1.5M. K24. www.youtube.com/watch?v=RtIA4KRvRw Accessed 12.11.2020 . Accessed on 12.11.2020.

64 *Weekly Citizen* (2019). Massive rot in Kisii land registry court. [weeklycitizen.co.ke/massive-rot-in-kisii-land-registry-court/](https://www.weeklycitizen.co.ke/massive-rot-in-kisii-land-registry-court/) Accessed on 12.11.2020. Accessed on 12.11.2020.

65 Star Team (2018). Hunter becomes prey in Kisii as war on land grabbers heats up. www.the-star.co.ke/news/big-read/2018-11-02-hunter-becomes-prey-in-kisii-as-war-on-land-grabbers-heats-up/. Accessed 12.11.2020.

Complex land market transaction processes

The institution of surveyors advises those buying land to involve registered real estate agents in the process. Otherwise, the institution outlines the procedures for transacting land through the market for prospective buyers.⁶⁶ Before buying land, the prospective buyer should start by getting a copy of the title deed for background checks at the county land registry, Commission of Inquiry reports and court registries. The official land registry search shows the current registration number, current owner and history of ownership, changes on the land like subdivision or transfers, the actual size and any pending disputes or claims and other fine details. Crosschecking with Commission of Inquiry reports helps the prospective buyer determine whether the land is blacklisted as illegally acquired. At the same time, the online court registries' search identifies any disputes that the county land registry search may fail to capture. In addition, the prospective buyer should get a survey map from the county survey office to confirm the location of the land. The prospective buyer will then visit the land for a general survey and determine any anomalies. The Institution of Surveyors guidebook advises prospective buyers to interact with neighbours, local elders and chiefs to find further details before buying the land.

In a series titled "Own land in Kenya",⁶⁷ Wangwe (2016), a land expert and CEO of Goshen Acquisitions LTD, explains that the process of acquiring land through the market is long and complex. After thorough background checks, the seller and the buyer must each engage lawyers in preparing a sale agreement specifying the terms of the sale and proofreading the agreement before the transaction. Wangwe reiterates that prospective buyers must put in extra efforts, such as gathering information from neighbours before buying land, to avoid being defrauded. These efforts would direct the buyer to essential information, such as previous or existing disputes that may not have been captured in the formal searches. Moreover, the land control board must approve the land transactions to ensure transparency (Land Control Act, 2012).

⁶⁶ Outlined on the Institution of Surveyors Kenya (ISK) website. isk.or.ke/landprocess/. Accessed on 06.07.2021.

⁶⁷ Wangwe S. (2016). How to do your due diligence when buying land (part 1) - own land in Kenya. CEO Goshen Acquisitions Limited. www.youtube.com/watch?v=wYg2bFqWkrk. Accessed 10.11.2020.

Therefore, when duly followed, the whole process of acquiring land through the market can take up a whole year. Due to the complexity and time-consuming nature of the process, some potential land buyers avoid these technicalities and revert to informal verbal agreements without legal backing. As such, they remain vulnerable to land fraud and continue to sustain illegal and fraudulent channels. Moreover, since gendered roles exclude most women from formal spaces, complexity in the land acquisition process through the market limits their participation, leaving them vulnerable to fraudulent transactions. For example, Rose (see background information box 4 under section 5.1.2.2) was defrauded when she tried to buy land after her co-wife denied her land rights in her husband's ancestral home:

I wanted to buy land, relocate, and have a home, but I was conned. I lost 20,000 shillings⁶⁸ just like that. A broker informed me of a very good land deal. However, after paying a down payment of 20,000 shillings, I never got to see the land. [...] I bought air instead of land (Rose, PI-12: 23).

Rose trusted a broker and settled the downpayment without seeing the land, hence, 'buying air'. Her experience demonstrates how gender roles limit women's access to information on conducting due diligence before buying land. Women in rural areas are particularly excluded from formal spaces because gender roles confine them to household subsistence responsibilities that limit their access to information. Even experts admit that the complexity of the land market transaction process is a major hindrance exposing women to fraud:

The land transaction process is complicated. It ends up that you cannot do these transactions without a lawyer. In rural areas, most land transactions are informal. Some people lose land because the title deed is still under the person who sold the land. Even if these things are explained to a layperson, it is still not possible to understand the land acts and terminologies like a green card, a search, a caution, a transfer bill, among others (FIDA regional co-ordinator, KI-4: 18).

The experiences above show that fraud is complex and deeply entrenched in land transactions. Thus, those engaging in land market transactions, particularly women, often lose their money to fraudsters and remain vulnerable to future disputes:

⁶⁸ Approximately €200.

The fraudsters dupe people and then steal their money. Women are worse affected because they are easily convinced and engage less with background checks (Land Registrar, KI-7: 28).

5.3.2 Husbands selling land without wives' consent

Although land markets offer an opportunity for women to access land outside patriarchal constraints, they threaten women's *de facto* land rights. With land commonly registered under men, some husbands sell ancestral land without their wives' consent:

My elder sister's husband inherited a large parcel of land. He started selling the land and using the money to buy alcohol. My sister approached him and asked him. [...] He asked her whether she came to his home to manage land or to be a wife (Miriam, PI-03: 101).

Miriam's story describes how her brother-in-law sold ancestral land regardless of his household's needs and without seeking his wife's consent. This experience is not unique to Miriam's sister. Grace's husband (see background information box 1 under section 5.1.1 above) also sold his ancestral land, forcing her to relocate with her five children in search of a source of livelihood.

In another experience, Lisa's husband (see background information box 2 under section 5.1.1 above) expelled her when she opposed his plans to sell his ancestral land, insisting that the land belonged to him. After expelling Lisa, he sold the land as he desired. These women had limited influence on their husbands' decisions to sell 'their' land. However, land control boards have the mandate to regulate land sales, ensuring that land sales are legitimate. The board requires written spousal consent before approving a land sale. Even in cases where a title identifies a husband as the landowner, the wife must give her consent before the land can be sold. Otherwise, land sales without spousal consent are irregular and risk reversal in case of a complaint:

Some people are just corrupt, but if all people were straightforward, it would be possible for a woman to reverse a land sale in court if she was not consulted before the sale. The problem is that most women have no idea where to seek help. We have laws that help women. Where should her children go when the husband sells the land? The law requires that a

woman must consent before a husband sells land. Without her consent, the transaction can be reversed (Alice, PI-07: 80).

When women seek the court's intervention, ancestral land sales without spousal consent can be reversed. For instance, when a woman sued her husband for selling land without her consent, the court reversed the sale, terming the land as matrimonial property.⁶⁹ However, women, especially in the rural areas, lack awareness of their options when their husbands sell land without their consent. Therefore, they give up and move in search of other sources of livelihood.

5.3.3 Ancestral land markets are complicated

As illustrated in Chapter 4, the *Abagusii* believe that ancestral land belongs to the ancestors, and the current 'owners' hold it in trust for future generations. Therefore, land transfers outside the lineage are prohibited:

The Gusii people believe that their land cannot be inherited or sold to any outsider because the spirits of those buried in that land will be displeased and will haunt the family and lineage forever. [...] An outsider buying land in the community implies also inheriting the ancestral spirits of the community. Therefore, the value of such community land cannot be quantified in monetary terms since it is impossible to attribute any specific price or value to all the spirits who lie buried in the land. (Ntabo, 2006: 246).

However, distress ancestral land sales have become common under private 'ownership' to address specific and urgent financial needs:

One quickly sells off the land to either pay children's school fees or hospital bills when in a fix. So, the person sells off a portion of their land at a throwaway price out of desperation (Karen, FGD-01: 21).

The ancestral land sales are complicated and often prone to future disputes because other members of a social entity, particularly future generations, retain informal rights in ancestral land. Karen's experience below demonstrates that ancestral land transactions through the market can generate complex disputes.

⁶⁹ Environment and Land Case 3 (2017). Wanjiru Muiruri Nduati vs Erastus Ndungu Thungu. Murang'a. kenyalaw.org/caselaw/cases/view/161093/. Accessed 17.06.2021.

Box 9 Background information - Karen

Karen

Karen is a 50-year-old widowed mother of seven children: four girls and three boys. I met her through her chief, who has been instrumental in resolving the dispute between Karen and the land seller's sons. She cultivates her two-acre piece of land for an income.

Karen's husband's ancestral land was insufficient for his three wives. Therefore, he bought four more acres and shared them between his second and third (Karen) wives. The seller indicated that he intended to buy land and settle in a different area after the sale. However, after approximately twenty years, the seller's sons confronted Karen and her husband, demanding 'their land' back. They insisted that the transaction had been irregular.

The subsequent land dispute took Karen and her husband in cycles between the courts, local administrators, and land tribunals. The seller's sons further complicated the dispute when they insisted on burying their father on Karen's land. Karen and her husband tried to block the burial on their land unsuccessfully through the court. They offered the seller's sons a part of their land, but the men insisted the land belonged to them.

Karen's husband died later, and the seller's sons forcefully took over Karen's land. For three months, Karen strained financially, socially, and psychologically without land rights. She asked the Assistant County Commissioner (ACC) to intervene, and in a *Baraza*,⁷⁰ the ACC invited both Karen and the seller's kin to prove their ownership claims. Karen presented the title while the seller's sons revolved their claims around the court's permission to bury their father on the land. The ACC and other local administrators unanimously agreed that the land belonged to Karen and warned the seller's sons to back off.

⁷⁰ *Baraza* is a common term in East African countries referring to a local public gathering organised by local administrators in an open area like a school field, the chief's camp or a member's field. The meeting offers the public space for exchanging information on national and international matters, to deliberate on issues affecting the community and address existing disputes. When a *Baraza* is organised to address a dispute, it is arranged like a public court where disputants argue their cases and the administrators invite witnesses to testify before passing a ruling.

Karen's experience reiterates the significance of ancestral land markets in addressing the growing demand for land in large families. At the same time, with the seller selling his ancestral land and relocating to another location, this experience demonstrates the potential role of land markets in reducing the social value of ancestral land as a symbol of identity. These factors are critical in improving women's access to land independent of men.

However, this experience demonstrates that ancestral land transactions are vulnerable to disputes from the intended heirs demanding their customary land rights:

My husband had bought the land in 1970 [...]. Around mid-2007, the seller's sons confronted us, claiming that my husband had grabbed their land. Their father was still alive, he tried to stop them, but they insisted that they wanted their land back (Karen, PI-09: 15).

Although both the seller and buyer consented to the land agreement based on a title held by the land sellers, the seller's sons retained future entitlements to ancestral land. Thus, they challenged the land sale transaction because they never consented. Such land disputes arise because fathers often sell land when their sons are still too young to oppose. When mature, the sons challenge the sale, demanding 'their land' back.

Land disputes also arise when a parent decides to sell her land, but as the children grow up, they start questioning why and how the land was sold. They even started claiming that the land transfer was irregular. This is mostly because the children realise that they need more land than what is available, maybe because they are many. These events culminate into complex land disputes (Karen, FGD-01: 22).

At times, the seller's sons reinterpret the terms of the sale agreement to fit their interests. In Karen's case, the seller's sons claimed that Karen and her husband grabbed their father's land:

In the report, the sons claimed that the land belonged to their family and that the father had requested my husband to oversee the land in his absence, but my husband took over the land and refused to give it back to them (Karen, PI-09: 74).

Underlying factors in ancestral land sale disputes revolve around the interplay of statutory and customary laws and the social value attached to

ancestral land. While statutory laws enable ancestral land transfers by sale, customary norms confine such land to lineage members. These factors play a critical role in addressing land disputes arising from ancestral land market transactions. In this subsection, I will discuss how contenders often exploit loopholes resulting from the coexistence of these two sets of laws to their advantage.

The interplay of statutory and customary laws

Land disputes involving the seller's sons and the buyer or the buyer's sons are complex and challenging to resolve because they germinate from the coexistence of customary and statutory laws. Therefore, such disputes often drag, alternating between the judicial courts, confined to the penal code, and alternative dispute resolution processes through local administrators, which blend customary laws into statutory laws. Resolutions passed in such disputes often depend on the avenues selected. For instance, in a land dispute where sons sought the court's intervention to reclaim the land that their father sold when they were young, the court decided that the sons lacked a legal background to contest their father's decision to sell the land because it legally belonged to him:⁷¹

The vendor [the father] retained exclusive rights over his properties while the plaintiffs' [sons'] rights to succeed or inherit their father's land could only mature upon the proprietor's death (Environment and Land case 68, 2018: 29).

The judge's ruling indicates that fathers are not obliged to bequeath ancestral land to their sons as title holders, and privately owned land is not subject to customary laws. By insisting that the sons' inheritance rights would only mature after their father's death, the judge implied that statutory laws do not recognise sons' future inheritance claims.

However, when seeking land dispute resolution through customary avenues such as the extended family or the local elders, who base their decisions on customary laws, sons can successfully reverse ancestral land sales. Moreover,

⁷¹ Environment and Land Case 68 2(018). Silvia Wanjiku Kimani & another vs Kimani Muiruri Machugu & two others. Environment and Land Court at Murang'a. kenyalaw.org/caselaw/cases/view/192549. Accessed 10.11.2020.

the existence of formal documents to prove land transfers is critical in land market transactions:

When we were growing up, a neighbour sold his land, leaving just a small portion for his family. When the children grew up, they turned to the buyer and demanded documents to prove the land sale and that their mother had consented; there were no documents. They refunded his money and took back their land. [...] I remember one man sold his land, but when the children grew up and found out that the transfer was informal, they demanded their land back. They evicted the man and asked him to take his storeyed building along. He had bought the land without any documents to prove ownership; he lost everything (Alice, PI-07: 48; 84).

As noted earlier (see chapter 4), most ancestral land transfers in rural areas are informal. Therefore, without proof of ownership, the seller's sons find a loophole to evict the buyers, claiming irregularities in the land transaction. The land title was significant in validating Karen's land ownership rights against the seller's sons' customary claims:

I had the title deed under my husband's name. When asked for a title deed to prove that the land belonged to them, [...] they presented court documents allowing them to bury their father here. The DO declined and told them that the court documents did not prove that the land belonged to them (Karen, PI-09: 44).

Thus, Karen reiterates the significance of backing land market transactions with formal ownership documents:

It is crucial that a land buyer sees and confirms that the land they are buying exists. They must also process and transfer all the necessary documents. Nowadays, people sell land, and after a while, they demand it back. [...]. Later, after settling the fees or hospital bill, the person starts thinking and realises that the land was worth much more. Then, the seller starts disputing the buyer (Karen, PI-09: 77).

However, documents indicating formal land ownership of ancestral land sales do not always guarantee secure ownership rights. Alice notes the fluidity of ancestral land markets, pointing out that children can reverse sales regardless of formal documents:

If a woman agrees with the husband, they can easily sell off all the land when the children are still young, but once they grow up, they can sue the parents and reverse the transaction, proving that the sale denies them a place to live. Every child has a right to inherit land from their parents. Even where there is a title, ancestral land sales can be reversed if the children report the matter (Alice, PI-08: 81).

Alice's argument is based on the County Land Control Boards (CLCBs) land sales regulation function. Section 8 of the Land Control Act dictates that all land sale transactions must go through the CLCB to ensure that the seller is not depriving their household of subsistence. Thus, when sale transactions overlook or give false information to the CLCB, the transactions can be nullified.

Since land market transfers allow 'outsiders' to live amidst members of a social entity in a customary setup, the statutory laws fail to protect the 'outsider'. As such, the seller's kin can resort to other approaches such as threats to frustrate the buyer:

I started receiving verbal threats from their extended family. They are my neighbours here. They warned me to leave, insisting that there was no way I was going to live on the land (Karen, PI-09: 39).

Therefore, even with formal ownership, such threats leave the buyer's land rights insecure.

The spiritual and social value of ancestral land

Culturally, ancestral land symbolises a link between the current holders to the ancestors and the future generations. Burying members of a lineage on ancestral land strengthens this link. The *Abagusii* revere the ancestors' spirits:

[The ancestors' spirits buried on the land] protect them from any possible harm, influence good harvest, good health, bearing healthy children, and so on. If disturbed, they can bring misfortunes [death, hunger, accidents, and childlessness]. All these beliefs are intended to protect community land and to discourage vulnerable members of the society, who may be willing to sell

it to outsiders, from doing so because ancestral spirits are not transferrable to strangers (Ntabo, 2006: 246; 247).

In this quote, Ntabo argues that the reverence for ancestral spirits is to 'prevent ancestral land sales'. Accordingly, the *Abagusii* believe that by burying their ancestors on the land, their land rights are accentuated through their spirits, which resist land injustices:

The *Abagusii* have a general reverence for ancestral spirits [...]. Thus, the perceived presence of the ancestral spirits in the land that had been bequeathed to their living progeny regulated against any unfair capture and/or occupation of land that belonged to a particular clan or lineage (Ndege, 2006: 230).

Perhaps it is against this background that the seller's sons in the land dispute involving Karen insisted on burying their father on 'their ancestral land' and the subsequent celebration when the court permitted them:

They were cheering and celebrating that they had won the case. We had no power; the courts were already closed for the weekend; we only looked on as they conducted the funeral service and buried their father on our land. They took the body and buried it on our land as we watched. They buried the body here (Karen, PI-09: 18).

Burying their father on the land indicated that the land still belonged to their lineage customarily regardless of the sale. In another interview, another participant used a similar line of thought to argue that her father's grave on the ancestral land was proof that the disputed land belonged to her mother:

This is the question that remained that even the chief kept asking: how is it possible that my mother's husband was buried on the land if it did not belong to him? The fact that he was buried on the land shows that the land initially belonged to him. The other man was alive when my father died; how come he permitted a stranger to be buried on his land? It proves that the land belonged to my father (Margaret [Ruth's daughter], PI-04: 43).

It could be the spiritual aspect of the connection between the living and the ancestors that prompted Karen's proposal to offer the seller's sons a portion of the land where they had buried their father:

I suggested to my husband that since the land is reasonably big, we can make a truce with the seller's sons. I proposed that we invite and offer them a portion of the land so that they leave us alone and we live in peace. I suggested that we include their father's grave and give them the portion surrounding it (Karen, PI-09: 22).

However, the seller's sons wanted to use their father's burial on the land as leverage to acquire the entire land. Furthermore, when Karen's husband died, he was buried in his ancestral home. Immediately after Karen's husband died, the seller's sons resorted to aggressive methods to evict Karen from the land. Perhaps the presence of their father's grave on the disputed land, unlike Karen's husband's grave, emboldened them to assume ownership of the land:

About a month after my husband's death, the men forcefully took over my land and leased it out. My children and I remained with the compound where we live only. [...] I did not do anything for three months (Karen, PI-09: 30).

It is worth noting that even though the dispute had lasted for over ten years, the seller's sons never used force to take over the land when Karen's husband was alive. They only assumed ownership of the land by force after his death.

As such, we can conclude that although ancestral land transfers are prone to disputes, widowed women like Karen are more vulnerable to forceful eviction because they are ill-equipped to resist the aggressors in such disputes.

5.4 Conclusion

This chapter has discussed land disputes involving women, relating the disputes to land acquisition methods. The experiences discussed demonstrate that whether women acquire land rights through marriage, inheritance, or the market, these rights remain vulnerable to disputes because of the existing complex gender power relations in patriarchal societies. In these societies, women access land through men. These men define and often exploit their positions of authority to challenge women's land rights.

Women's land rights acquired through marriage depend on the husbands' willingness to uphold these rights. Husbands sometimes ignore their wives' land rights, making decisions over land without involving them. Challenging decisions such as land sales result in violence, which often ends up with husbands expelling their wives. The men then transact the land without

their wives' consent, arguing that their wives never came into the marriage with land. Moreover, women's land rights acquired through marriage are intertwined with social norms that pre-condition their security. For example, bride-wealth settlement presumably strengthens a woman's land rights. However, sometimes, husbands intentionally withhold the wealth to retain the possibility of dissolving their marriages at will. Such tactics deprive women of a social or legal basis for reclaiming their land rights when the marriage is severed.

Brothers-in-law also threaten women's land acquired through marriage, especially when widowed. Taking advantage of their position, the in-laws adjust boundaries, hiving part of the widow's land, challenge the legitimacy of these women's marriages, sell the widows' land without their consent, or use physical violence to evict widows forcefully. I have shown that age is a critical factor in shaping widows' land struggle experiences. Older widows are more likely to retain land rights than younger widows because of the relationships and influence established over the years. Moreover, widows with older sons tend to have higher chances of retaining their land rights than those with younger children or those without sons. Although in most cases, in-laws evict women without sons, contenders are less aggressive with widows without sons because they expect the woman's daughters to marry away, leaving the land at their disposal (Henrysson & Joireman, 2009). Likewise, women with sons are more committed to defending their land rights and their sons' inheritance rights than those without sons (Onyambu, 2019). Perhaps this clarifies why women like Christine (see background information box 3) resort to devising aggressive methods such as blocking the husband's burial until her identity as the deceased's widow is affirmed. Explaining this move, Christine insists that "I am a woman who has been paid for, I have been bought, and I even have children" (Christine, PI-08: 77). In this statement, she refers to her son's entitlement to inherit her deceased husband's land.

In polygynous marriages, co-wives often engage in power struggles that culminate in land disputes. In these marriages, such factors as education, class, sex, age of children, the stability of the marriage, and the relationship with the in-laws produce differentiated experiences between co-wives. Furthermore, customary marriage institutions, such as 'woman-to-woman marriages' and widow inheritance meant to strengthen women's land rights, are often exploited to dispute these rights. Although bride-wealth is critical in legitimising a marriage, it does not guarantee a woman secure land rights. Instead, women's land rights acquired through marriage depend on the

existing family power relations and the male actors' willingness to uphold women's land rights.

Women's land rights acquired through inheritance are more vulnerable to disputes because custom limits land inheritance rights to male offspring. When women inherit land as provided by statutory laws, men use their patriarchal authority to challenge these rights directly or indirectly. Moreover, some women exploit the statutory provisions, returning to their natal homes to dispute widows' land rights. Therefore, women are divided on the gender-equal inheritance rights provisions.

Land markets potentially offer a viable opportunity for unmarried, separated, divorced, and evicted women. Since land acquired through the market is not linked to an ancestral lineage, disputes from the in-laws are limited. At the same time, women retain the right to transfer such land as they wish. However, gender roles also limit women's participation in the land market due to limited access to income-generating activities and to information on existing opportunities and the processes involved in buying land. That is not to argue that all women are locked out of land markets. Instead, the markets favour a few women but remain an ambitious plan for most women. For example, Naomi notes that, unlike her co-sisters-in-law who managed to escape land struggles when widowed, she cannot buy land:

This widow has also been facing land struggles like mine. [...] The three of us are struggling a lot. Fortunately for them, they have bought land in other places where they can farm and live. They do not depend so much on ancestral land (Naomi, PI-14: 39).

Patriarchal social norms influence land markets to the extent that, even when women manoeuvre through the obstacles, acquiring land through the market, they register the land under their male kin. These women often lose such land rights, especially when their relationships with these men are severed.

The experiences covered in this chapter indicate that the coexistence of customary and statutory laws contributes to women's land struggles. Those wielding power, especially men, exploit the unregulated coexistence of these laws to deny women land rights. For instance, while customary laws granted Grace (see background information 1, under section 5.1.1) land rights through her 'woman-to-woman marriage', her father-in-law inhibited her from practising these land rights because he owned the land formally. Likewise, the court denied Ruth (see background information box 6, under

section 5.1.2.2) customary land rights because the man who grabbed her land had acquired a title under his name. As formal title holders, fathers deny daughters land inheritance rights provided under statutory laws, arguing customary laws which confine inheritance rights to male offspring. Still, when daughters break through the customary barriers to inherit land in their natal homes, their male relatives challenge these rights, arguing that 'the land belongs to men'. The unregulated interplay of customary and statutory laws also predisposes women acquiring ancestral land through the market to disputes when the seller's sons demand their ancestral claims.

When women lose their land rights acquired through marriage, they contend with social stigmatisation and economic struggles. Whether their husbands chased them away or their in-laws evicted them, women are customarily blamed for failed marriages. Hence, a woman who is no longer married is often labelled *omotayayi*,⁷² a prostitute (Hakansson, 1994). These women often return to their natal homes, but they are unwelcome. They lack access to land in most cases because the brothers have already shared the land among themselves. Hakansson illustrates that without access to land, these women seek other sources of livelihood. Since acquiring land through the market is beyond their means, the women desperately elope with any man, hoping to acquire land rights and elevate their social status. However, such relationships are informal and often end within months.

In the long run, women from failed marriages often settle around market centres where they live in extreme poverty, aiming to engage in income-generating activities. These circumstances expose women to different forms of exploitation and health risks as some engage in business ventures while others delve into prostitution or illegal brewing. However, outside marriage, these women lack access to land and remain socially marginalised.

In summary, women's land rights depend on the whims of men who wield power within patriarchal societies. Although it is not exclusively men who dispute women's land rights, their positions enable them to challenge these rights. Land disputes involving women are diverse and occur regardless of a woman's marital status, age, education level, or social class. Husbands and brothers-in-law commonly dispute women's land rights acquired through

72 The word *Omotayayi* can be split into two parts, *omo* and *tayayi*. *Tayayi* comes from the stem noun *tayaya* which means to walk aimlessly. *Omo* meaning a person who, complimenting the verb *tayaya* to become *omotayayi*. Therefore, *omotayayi* refers to someone who keeps moving from one place to another without a reason. In this context of marriage, *omotayayi* refers to a woman who moves from one man to another, or rather a harlot.

marriage, male kin dispute women's inheritance rights, while social norms limit women's participation in land markets. Land disputes deprive women of a source of livelihood, exposing them to economic, social, physical, and psychological harm. However, as we have seen already, depending on social status, marital status, age, education level, sex and age of children, women's land dispute experiences differ.

6

Violence in Gendered Land Disputes

While discussing the value of ancestral land in African communities, Tafira (2015) uses the context of Zimbabwe to describe how land is embedded in every aspect of life. Tafira's argument could explain why land is such an emotive topic in most of Sub-Saharan Africa and remains the subject of most violent disputes. Although the subject of land disputes is not new, the intensity and frequency have increased over time as land scarcity is growing. Mainstream media report some instances of violence in land disputes occasionally. However, most violent land disputes go unreported because they occur within the family set-up over ancestral land (Kansanga *et al.*, 2018). Violence in land disputes ranges from social to physical hostilities.

As stated earlier (see Chapter 5), women, especially those holding land rights independent of men, are vulnerable to violent land disputes. Ultimately, violence is employed to dispossess women of their land. Compared to men, women are often ill-equipped to resist male aggressors and thus prefer to flee their land when confronted with violence. This section will focus on participants' experiences to discuss how verbal threats, social exclusion, and physical violence are employed in land disputes involving women.

6.1 Verbal threats

Aggressors in land disputes often use threats as an extra-legal tactic "whereby an opponent is promised unpleasant consequences if they act, or refrain from acting, in a certain way" (Eves, 2018: 80). Aggressors strategically use threats to force women to act in a certain way to avoid imminent pain. By threatening them with imminent physical harm, they coerce women into remaining silent about land injustices or into fleeing, thereby giving up their land:

I started getting threats from the extended family, who are my neighbours here. They said that I should leave and that there was no way I was going to live on the land (Karen, PI- 09: 39).

Karen bought land from a man whose sons returned to demand their ancestral land back. She lives amidst the land seller's relatives, who want her to give up her land rights. The statement 'there is no way you are going to live on the land' is an example of the explicit threats that aggressors use to indicate their

ultimate goal to dispossess Karen. Such a threat against a widow like Karen implies animosity, and instigates fear.

6.1.1 A means of silencing women

Some men use verbal threats to indicate impending physical harm, specifically murder, to scare a woman from questioning land injustices:

Whenever I question or inquire about my husband's land, he [brother-in-law] beats me. Sometimes he carries a machete and swears that he will kill me. Last month he wanted to slice me into pieces. He said that I do not deserve any land in that home (Naomi, PI-14: 19).

After grabbing Naomi's land, her brother-in-law has been using physical violence against Naomi and her husband whenever she attempts to reclaim the land rights (see background information 11, under section 6.3). According to Naomi, her brother-in-law's threat that "I will slice you into pieces" is not an empty threat.

Naomi's brother-in-law emphasises how he will kill her and reinforces his threat by walking around with a machete. The constant reminder forces Naomi to avoid seeking a resolution because that would provoke him. Nevertheless, her brother-in-law often finds reasons to renew his threats:

Recently, he took a machete and wanted to slice me into pieces. [...] I was working, transporting bricks to make some money so that I can buy food for my children. He went where my cow was tethered and claimed that the cow was close to his napier grass. The cow did not touch his grass. That day he almost cut me into pieces. Were it not for the people around; he would have killed me (Naomi, PI-14: 44).

Naomi believes that her brother-in-law intends to murder her. This example demonstrates how men take advantage of their influential positions within the patriarchal structure to grab women's land and then silence them using violent threats. This fear forces women such as Naomi to suffer in silence.

6.1.2 A means of forcing women to surrender

The use of murder threats against women in land disputes is common. In Grace's case (see background information box 1 in Chapter 5, under 5.1.1), her sisters-in-law demand that she would give up her land rights, or else they would murder her:

They [Grace's sisters-in-law] told me that they would kill me if I did not leave. I reminded them that I would be buried there if they kill me now after settling my bride-wealth. I was not going anywhere; I will be buried here. I told them that I had lived long enough, and I was ready to die if they wanted to kill me. [...] They kept saying they would take me to River Gucha and kill me there (Grace, PI-01: 36).

Grace's sisters-in-law insist that unless she gives up her land rights, they will murder her. They also emphasise the specific place where they would commit the murder.

Another example is that of Marie, whose husband threatens to murder her unless she allows him to control the money from a land sale:

He said that he would kill me at two in the morning [...]. He is trying to ensure that I get out of the way to handle the money from the land sale. That is why he is constantly threatening to kill me (Marie, PI-05: 24; 28).

Marie is convinced that her husband can murder her for the land sale money. As part of his threat, Marie's husband specifies the time he would kill her.

It is unclear why the aggressors insist on specific details of the murder they threaten to commit. Some specify the method, others the location, and others the exact time they will effectuate their threats. Considering that the aggressors aim to intimidate the women and force them to surrender their land, we can deduce that the details make the threat seem more real. Hence, women such as Naomi, Caro and Grace live in fear, knowing that these threats pose a real danger to them.

Since these women's land access options are limited, they continue living with the threats to retain access to land. Grace insists that the land rights and identity that she and her sons acquired through marriage are significant. However, women who have other means often give up their land rights, fleeing for their lives. Naomi relates that her brothers-in-law's wives moved

away, leaving their land at her brother-in-law's disposal. She notes that leaving was easier for them because they could buy land and relocate:

She [her co-sister-in-law] experienced land struggles similar to mine; I am not alone. But after her husband died, she decided to relocate. She was given some money from the bank where her husband worked and used it to buy land. She built a house, and now she lives there. It is because of these disputes and threats that she decided to relocate. [...] The other also decided to leave the land for this brother-in-law (Naomi, PI-14: 38; 39).

In contrast, women like Naomi, Grace and Marie persist under risky conditions to maintain access to the land because they cannot afford to buy land and relocate.

6.2 Social exclusion

Social exclusion is “a structural process of social isolation, of stripping away multiple dimensions of social involvement” (Silver, 2007: 2). Social exclusion is often used to explain the prevalent socio-economic classes resulting from ‘shutting out’ some groups of people (Walker & Walker, 1997: 8). Social exclusion marginalises some people, limiting their participation in economic, social and cultural life.

Aggressors in land disputes exploit their customary positions of authority to ‘shut out’ women, excluding them from socio-political and economic spaces. A study conducted in Mozambique shows that contenders in land disputes commonly accuse widows of practising witchcraft and even killing their husbands to obtain property rights (Bonate, 2003: 122). Bonate describes that these accusations aim at initiating social stigmatisation against widows. Similar observations have been made in northern Tanzania among the Sukuma tribe. In an article published in ‘Women’s Advancement Deeply’ on April 12, 2018, Mhoja writes that widows are evicted from their land or lose their children, while some are killed for the imagined crime of practising witchcraft and using it to kill their husbands.⁷³

73 Mhoja, M. (2018) Branded as witches, stripped of land: Tanzania’s widows need support. *Women’s Advancement Deeply*. The New Humanitarian. deeply.thenewhumanitarian.org/womensadvancement/community/2018/04/12/branded-as-witches-stripped-of-land-tanzanias-widows-need-support. Accessed 28.07.2020.

Among the *Abagusii*, superstition is widespread, and witchcraft, *oborogi*, is used as a reason for almost every misfortune (Masese, 2006: 317). Witches, *abarogi*, singular *omorogi*, are assumed to have supernatural powers that can harm others. According to Masese, occurrences such as death, physical and mental illness, barrenness and impotence, animal bites, poor performance in school, among other misfortunes, are believed to result from *oborogi*. Therefore, witchcraft allegations, especially against women, have severe consequences. Since gendered land disputes are commonly intra-familial (see chapter five above), social exclusion politics often play out within the family arena where brothers-in-law accuse widows of using *oborogi* to cause harm.

In October 2021, four women were lynched in Kisii County on suspicion of practising witchcraft, causing an uproar as the kin insisted that underlying land disputes triggered the lynching.⁷⁴ In response, the county governor formed a task force to interrogate the incident. One of the elders serving in the task force affirmed there were underlying issues that triggered the lynching, and the witchcraft accusations were used to justify the intended cause:

Witchcraft has been used more as a pretext for different reasons. The factual thing that we already know is that there is the issue of land (Obino Nyambane, Kisii Elder).

Following the incident, the Kenya Human Rights Commission said that violence against women following witchcraft accusations is common among the *Abagusii*, but land is often at the heart of the violence:

Statistics indicate that about six people face violence every month on suspicion of being witches in Gusiiland. [...] when widows are murdered, their husbands' kin grab their land (Kenya Human Rights Commission, 2021).

Edna's experience below shows how brothers-in-law use witchcraft accusations to 'shut out' widows, aiming to expropriate their land rights.

74 Oruta, B. (2021). Daughter of lynched Kisii woman says it was over land not witchcraft. *The Star Newspaper*. www.the-star.co.ke/news/2021-10-21-photos-daughter-of-lynched-kisii-woman-says-it-was-over-land-not-witchcraft/

Box 10 Background information - Edna

Edna

I met 50-year-old Edna through one of the participants. She is a widow and a mother to two adult children after her other five children died. Throughout the interview, Edna seems sorrowful, occasionally shedding tears and sometimes laughing sarcastically.

Edna believes that her brothers-in-law used witchcraft to kill her husband and children, aiming to grab her land. Her father-in-law was very kind to her and started processing documents to transfer her husband's land ownership rights to her. However, he died before completing the process. She believes that her brother-in-laws used witchcraft to kill him, hindering the process. She is also convinced that the brothers-in-law have used witchcraft to cause her grandson a mental illness, preventing him from inheriting her land.

However, Edna's brothers-in-law and their wives accuse her of practising witchcraft and killing her husband. These allegations have caused animosity between Edna and her in-laws. She explains that they take advantage of the circumstances to provoke and frustrate her. They regularly adjust her boundaries, grabbing part of her land, but accuse her of interfering with these boundaries. Sometimes, they let their livestock graze on her crops, but she is afraid of taking any steps against them. Whenever she hires farmworkers, her brothers-in-law threaten them to leave. Edna must go far away to get people who understand her struggles and, hence, are willing to put up with the threats.

Local administrators refuse to intervene in the family dispute because they are afraid of witchcraft. Moreover, Edna cannot afford the high fees that elders demand to define land boundaries. She lives a lonely life, afraid that her brothers-in-law will use witchcraft to kill her remaining children and grandchildren. Edna has adapted and lives with the animosity, knowing that the witchcraft accusations against her can cost her her life.

6.2.1 No one listens to a witch

When a widow is labelled a witch or *omorogi*, she is considered a threat to others, and she is bound to suffer social stigma, which forces her into seclusion:

After my husband's death, they turned against me and started claiming that I had used witchcraft to kill him. [...] Even though we are relatives and neighbours, we do not even say good morning to one another. [...] I have not known any peace since my husband died. I just sit at home and think. There is no one to talk to, and I find it difficult to interact with anyone. I do not even join public meetings anymore (Edna, PI-13: 32; 36; 45).

The witchcraft accusations levelled against widows deprive the women of a fair hearing in arising disputes. For instance, after Edna's in-laws accused her of practising witchcraft, she experienced social stigma that forced her to 'isolate.' Her in-laws took advantage of the circumstances to frustrate her. They grabbed part of her land by adjusting the boundaries and sometimes let their livestock graze on her crops. However, whenever she seeks intervention, prejudice against her resulting from witchcraft accusations hinders justice. The arbitrators blame her as 'the witch':

Whenever the elders sit with the family to resolve disputes, they [in-laws] often point fingers at me, saying that I am responsible for the dispute. They have united against me, claiming that I always interfere with the boundary, yet they are the ones who interfere with the boundary (Edna, PI-13: 66).

The brothers-in-law's positions of authority within the patriarchal structures prevent Edna from seeking a resolution because that would worsen her struggles. As the oldest patriarchs in the lineage, custom dictates that Edna's brothers-in-law should address disputes arising within the lineage. However, she knows that their intervention would elicit more ill-treatment. Therefore, she suffers in silence:

They are determined to frustrate me so that when I ask them why they let the animals graze on my crops, they can have a reason to beat me up. [...] No one will listen to my side of the story; they will just call me a witch. I am just there, with these challenges ever-pressing (Edna, PI-13: 61; 67).

Edna knows that her in-laws will call her a witch, blame her for the dispute, and take advantage of the circumstances to beat her up. Therefore, she adapts by isolating herself and suffering in silence.

Caro's in-laws (see background information box 12, under 6.3.1) also provoke her even though she has limited contact with them:

I have moved out of my husband's home to avoid disputes. I prefer living here [at the shopping centre] with my children because we can have some peace here. However, they harvest from my farm in my absence. [...] They do this to provoke me so that they can beat me up when I confront them (Caro, FGD-02: 72).

To avoid violence, Caro has adjusted her lifestyle by relocating to the shopping centre. However, the in-laws still invent ways to provoke her, and she also suffers in silence.

Sometimes, other women adjust by limiting their presence at home during the day:

To avoid issues, I started living like a bird, avoiding contact with those people. I wake up very early, leave home, come back very late, and sneak into my house and sleep. This has become my daily routine. With this hard lifestyle, people still find ways of disputing me (Grace, FGD-02: 71).

Their experiences indicate that in-laws invent ways of provoking them. The in-laws use witchcraft accusations to force the women into social seclusion and to limit the women's access to dispute resolution avenues. The women then try to avoid provoking the in-laws to prevent disputes. However, the in-laws take advantage of the existing prejudice to frustrate the widows. With pending witchcraft accusations, even the local administrators tend to shy away from addressing disputes involving these women:

This struggle has gone on for years, and I have reported it to the local administrators. One responded that there is a problem in our clan, and he can no longer handle the dispute. They say this is a complicated clan because of witchcraft (Edna, PI-13: 34).

Some local administrators join the aggressors, accusing widows of practising *oborogi*:

The chief repeatedly interjected with comments like ‘it seems like you are the one who killed this man’ (Jane, PI-11: 54).

On the contrary, some local administrators understand that in-laws invent the witchcraft allegations as a means of grabbing widows’ land:

When the chief asked him [her brother-in-law] why he was trying to evict me from my land, he responded that I am a witch. The chief warned him never to make such an allegation in his presence. He warned him against accusing me of practising witchcraft because he wanted to grab my land (Naomi, PI-14: 65).

Men’s positions in patriarchal communities favour them because they live in their genetic lineages, while the widows are ‘strangers’ who join their husbands’ lineages. Therefore, because of these biased power dynamics, Edna wonders how anyone can believe her brothers-in-law’s allegations that she adjusted their boundaries:

It leaves me wondering whether it even makes sense that a widow, who has no one to protect her, can interfere with the boundaries of men who are at home (Edna, PI-13: 66).

By arguing that her brothers-in-law are “men who are at home”, Edna indicates that men’s land claims are more secure than women’s. Another participant presented a similar thought, referring to women as foreigners in their matrimonial homes:

Women, especially widows, are mainly targeted because we are foreigners. We are not born in the clan (Naomi, PI-14: 83).

Thus, men resort to such forms of violence as witchcraft accusations as tools for forcing women into social seclusion, ultimately aiming to frustrate them into surrendering their land rights.

Edna’s argument that she “has no one to protect her” exemplifies the differentiated identities that produce differentiated experiences among women. As such, widows are more vulnerable to land disputes than women whose husbands are alive.

6.2.2 ‘Witches’ are an embarrassment

Ultimately, in-laws use witchcraft accusations against widows to dispossess them of their land. After forcing them out of social spaces, into seclusion, the in-laws exploit the existing structures to force the widows to flee. Witchcraft accusations result in social stigmatisation that impacts a widow’s interactions within her social entity:

It is so bad that, at times it is a struggle for me even to attend funerals in the neighbourhood. I sit and wonder in my heart what exactly I would be going to do at the funeral. I feel like an outsider, as if I do not belong to this community. I just sit alone at home, often contemplating the possibility of mending relationships with my in-laws. But that possibility does not exist. It leaves me thinking that maybe it is just better living to myself (Edna, PI-13: 27).

Since the other clan members perceive the widow as *omorogi*, they despise her, reinforcing the stigmatisation. This forces the widow to refrain from public participation:

I used to make contributions during public meetings, especially on issues of land, but nowadays, I keep my peace. Many people started despising me, claiming that I was a ‘know it all’ because I took the front line on land matters. Nowadays, whenever I am requested to contribute, I always turn down the offer and hold my peace. I never thought that anyone could be mistreated like this (Edna, PI-13: 45).

Witchcraft accusations attract contempt to a social entity, and the process can lead to murder. Custom requires the male members of the social entity to exonerate their lineage from witchcraft by eliminating *abarogi*, using violent methods like lynching to curb witchcraft (Masese, 2006: 327). Consequently, Masese explains that some widows prefer to flee for their lives, giving up their land.

Occasionally, international and national mainstream media publish incidents of widow lynching following witchcraft accusations among the *Abagusii*.⁷⁵

75 Njoroge, G. (2021). Inside Kisii witchhunt. *Citizen TV Kenya*. https://www.youtube.com/watch?v=_xF4nCJQb-o.

McKenzie, D. (2008). Deadly hunt for ‘witches’ haunts Kenya villagers. *CNN World*. edition. cnn.com/2008/WORLD/africa/06/12/kenya.witches/index.html

Odhiambo, J. (2009). Horror of Kenya’s ‘witch’ lynchings. BBC News. news.bbc.co.uk/2/hi/

However, most incidents go unreported. Studies have shown that these accusations are often manifestations of underlying intra-familial land disputes (Ogembo, 2006). On a similar note, a national television documentary investigating the lynching of some women accused of oborogi, uncovered underlying land disputes. In the documentary, a son related that he lives in fear after his mother was lynched because the witchcraft accusations that led to his mother's lynching followed a pending land dispute (Wafula, 2014).

Widows accused of practising witchcraft are forced to live in social exclusion, anticipating murder by lynching anytime. Given their positions in the political hierarchy of their husbands' lineages, these women have few options to defend themselves, and therefore, rather than trying to exonerate themselves from the accusations, some flee to safety, relinquishing their land. Either way, the witchcraft accusations are systematically used to dispossess the widows.

6.3 Physical violence

Physical violence is a common feature of gendered land disputes. Male relatives, sometimes together with female relatives, use violence to coerce women into giving up their land rights (Izumi, 2007). In chapter five (see section 5.1.1), I have explained that husbands often use violence to make independent land-related decisions. Brothers-in-law target their widowed sisters-in-law, aiming to coerce them into giving up their land rights. These assaulted women have limited choices in a patriarchal system and often suffer in silence to avoid more violence.

africa/8119201.stm

Adow, M. (2009). Kenyan elders killed in witch-hunt. AlJazeera. www.youtube.com/watch?v=Dhg7l7ZZPYE

Momanyi, B. (2008). Suspected witches lynched in Gucha. Capital News. www.capitalfm.co.ke/news/2008/07/suspected-witches-lynched-in-gucha/

Mbula, R. & Araka, J. (2017). Tears and fear for elderly victims of deadly witch-hunt. Daily Nation. nation.africa/counties/kisii/tears-and-fear-for-elderly-victims-of-deadly-witch-hunt/1183286-3809656-10g9c8s/index.html

Cheruiyot B. (2017). Two elderly women lynched in Nyamira over suspicion of being witches. K24 News. www.youtube.com/watch?v=v-Kdiq6zGOI

Githuku, K. (2016). 75 year old woman lynched by villagers in Kisii county on claims of being a witch. K24 News. www.youtube.com/watch?v=2ybu74f8EB4

Kobi, G. (2014). Land, poverty encouraging witchcraft in Kisii. Hivi Sasa. hivisasa.com/posts/land-poverty-encouraging-witchcraft-in-kisii. Accessed on 09.07.2020.

Using Naomi and Caro's experiences, I will discuss how physical violence is employed in gendered land disputes.

Box 11 Background information - Naomi

Naomi

I met Naomi through another participant. She is forty years old and a mother to five children, two girls and three boys. Naomi is the sole breadwinner of her household because her husband is addicted to a local brew, hardly leaving him sober. Naomi says that she lives like a widow because her husband is always drunk.

Naomi believes that her in-laws never expected her husband to marry; therefore, they were disappointed when he married. The brothers-in-law and their wives ganged up against her and chased her away. One brother-in-law sought her, and she returned to her husband after about two years. Since then, most of her brothers-in-law have relocated, leaving one behind.

The remaining brother-in-law grabbed Naomi's land, forcing her to depend on a daily wage for her family's subsistence. Whenever Naomi questions or seeks intervention, her brother-in-law reacts violently, beating Naomi's husband or both Naomi and her husband. He also threatens to kill her. To avoid the violence, Naomi refrains from seeking intervention. However, she spoke up in a recent Baraza, and the chief started following up.

Although her brother-in-law has been ignoring the summons, Naomi is determined to recover her land. She insists that she cannot afford to depend on a daily wage for subsistence because her children require school fees now. Her second son is in the final year of primary school and will require more money to attend secondary school. Therefore, she asserts that she will utilise all available opportunities to recover her land.

6.3.1 Women are not as strong as men

Physical strength is a key factor for the aggressors who employ physical violence in land disputes involving women. Since men are generally stronger physically than women, aggressors use physical violence in land disputes

against female household heads. Naomi presents an interesting case to demonstrate this. Since her husband is always drunk and too weak to support or defend her, she lives 'like a widow' even though he is alive:

My husband is not keen on such matters and is drunk most of the time. [...] He does not know anything; he does not even pay the children's school fees. I do everything and even provide food for him (Naomi, PI-14: 25).

Naomi's brother-in-law has taken advantage of the circumstances and has grabbed Naomi's husband's ancestral land, which he cultivates. He uses physical violence against Naomi and her physically weak husband whenever she makes any efforts to reclaim their land:

Whenever I question or inquire about my husband's land, he beats me [...] every time I take a step to seek a resolution, it ends up in a bad way. This man will beat up my husband as a warning to me because he does not want me to take any step to recover my land (Naomi, PI-14: 19; 42).

The violence strategically instils fear in Naomi, constraining her from pursuing any redress to restore her land rights. This approach has worked for about twenty years, during which Naomi's brother-in-law has continued to cultivate her land. However, Naomi notes that since her sons have matured and developed physical strength, her brother-in-law is more cautious:

At least this year, he has refrained a bit because my sons are around. Like today I would have come home to find my husband bleeding from his beating because I visited the assistant chief to restore our land [...]. It is because my sons are now mature⁷⁶ that he is cautious. He would have assaulted him immediately after he received the letter from the assistant chief (Naomi, PI-14: 42).

Drawing confidence from her sons' maturity, Naomi has started pursuing a resolution because they can now defend her. She initiated the dispute resolution process when she spoke up during a *Baraza*, a public gathering where several people from her locality had gathered for deliberations with the local administrators:

⁷⁶ Naomi's sons are now sixteen and fourteen years old respectively.

When I shared my grievance, people supported me and agreed that they know my troubles. The chief asked for my in-law, but he was absent. He sent for him, and when he came, he was very rude in his responses. The chief instructed the assistant chief to address the dispute and regularly brief him (Naomi, PI-14: 24).

Naomi's experience shows that physical strength is a key factor when it comes to physical violence in gendered land disputes. Accordingly, the sex and age of children influence whether the aggressors employ physical violence.

In contrast, Caro's story below demonstrates that physical violence is an effective tool for aggressors against women, especially widows whose sons are still too young to defend their mothers.

Box 12 Background information - Caro

Caro

I met Caro through another participant. Caro is 38 years old, a widow and mother to three boys. Caro farms for income. Before her husband's death, they relocated to the shopping centre where she still lives. She has a hostile relationship with her in-laws.

Caro's in-laws harvest her vegetables in her absence and respond with violence when she asks questions. For example, when she confronted her mother-in-law after harvesting from her land, her in-laws responded violently, beating Caro almost to death. When she sought the chief's intervention, he demanded a bribe that Caro could not afford. Later, the chief blamed Caro, claiming that she attacked her mother-in-law. Caro's in-laws claim that she is a witch and hang around with machetes whenever she is on her farm.

They repeatedly insulted Caro's firstborn son, insisting that he is not entitled to ancestral land in their lineage because he is not a biological son of her deceased husband. Frequent accusations against the boy forced him to flee. The in-laws then invited a boy they claimed was the biological son of Caro's husband, insisting that he was entitled to Caro's husband's ancestral land. However, local administrators intervened, sending the boy away.

Caro believes that her in-laws strategically use physical violence to evict her:

Their goal is to take my land, they do not admit it openly, but when you consider their actions, it is clear they are after my land (Caro, PI-02: 27).

Just like Naomi, Caro's in-laws are physically stronger than her. Although her first son is seventeen years old, his influence is limited because he is not a biological member of her husband's lineage. Customarily, through bride-wealth settlement, Caro's husband acquired paternity rights over Caro's children, regardless of their biological father. Therefore, Caro's sons are entitled to inherit their father's ancestral land. However, after her husband's death, Caro's brothers-in-law exploited the customary laws to their advantage. They constantly reminded her firstborn son that he is *ekerentane* and without land inheritance rights in their lineage. These claims positioned the son as an outsider with limited authority to defend his mother. When he confronted one of Caro's brothers-in-law, demanding to know why they assaulted her, Caro says that the in-laws rudely responded that they intended to kill her (Caro, PI-02: 45). Confronted with animosity in this environment, Caro's son opted to flee, leaving Caro with her younger sons. The eight- and six-year-old boys have limited ability to defend their mother. Therefore, Caro lives in fear, avoiding any confrontations with her in-laws even when provoked:

I have no peace whenever I visit the farm. I am scared. Usually, my mother-in-law is somewhere on the side, and my brother-in-law and his wife on the other side. They show up from different directions walking around with machetes. It is as if they are waiting to attack me. I suspect that given an opportunity, they will kill me (Caro, PI-02: 12).

Regardless of her cautiousness in avoiding provocation, Caro is convinced that in the long run, her in-laws will kill her and take her land away:

I have suffered because of this land, and at this point, I am not afraid of anything, look at my legs, see the scars from the beatings; I am not scared of death. It is like we are continually playing cat and mouse; I live in fear, knowing they can kill me, and I suspect that eventually, they will kill me. They will kill me in the end (Caro, PI-02: 42).

Naomi and Caro's experiences demonstrate that although women are generally vulnerable to land disputes, differentiated identities resulting from such factors as marital status and the children's sex and age produce differentiated experiences among women. Caro captured this during a focus

group discussion, stating that women from women-headed households are more vulnerable to physical violence:

You know women are not as strong as men. With one slap, a woman will take off. But before someone uses physical violence against another man, he will consider the fact that they will face each other and that the man is strong and can defend himself. Can a woman get into a physical fight with a man? (Caro, FGD 2: 38).

These experiences demonstrate why children's sex and age are critical factors in strengthening widows' land rights. Hence, widows' vulnerability to eviction reduces with their sons' maturity.

Consequently, women's commitment to recovering their land intensifies as their sons mature. Naomi knows that since her sons are joining secondary schools, they will need school fees. Her income from waged labour is no longer reliable to supply her household needs. Therefore, she is more determined to recover and cultivate her land for subsistence:

How do I get the fees and food without the land to cultivate? Can I pay school fees for both boys and afford food without land? [...] at least even if we only get our food from the land, then I can look for means of getting fees knowing that there is food (Naomi, PI-14: 69).

Naomi remains optimistic that she will recover and cultivate her land soon. On the contrary, Caro has little hope that her in-laws will let her cultivate her land peaceably. She lives in fear, believing that they might assault her to death before her sons are old enough to defend her:

I live in fear. I know they can kill me, and I suspect that eventually, they will kill me (Caro, FGD 2: 42).

6.3.2 'Poisonous' widows

It is worth noting that in these disputes, sometimes women join their husbands to assault widows physically. Both Naomi and Caro affirm that their brothers-in-law joined their husbands in assaulting the widows:

The brothers-in-law and their wives united; I could say the whole family came together against me and chased me away from my husband's house (Naomi, PI-14: 17).

My brothers-in-law and their wives, plus an uncle, attacked me (Caro, FGD 2: 11).

When asked why their brothers-in-law's wives participate in assaulting widows, the participants highlight various reasons.

For some, it is jealousy:

They are jealous because I am involved in commercial vegetable farming on a large scale, and they are just there, depending on their husbands (Caro, PI-02: 25).

Naomi shares a similar thought, arguing that

a hardworking woman is usually not welcome; only one without focus is accommodated easily. (Naomi, PI-14: 84).

Other women participate in the violence because they are afraid that their husbands may marry the widows:

Once widowed, a woman becomes like poison in her clan. No one wants to associate with her. Married women become suspicious and start imagining that the widow can have an affair with her husband. The brothers-in-law's wives imagine that their husbands will inherit the widow. [...] That is why women become malicious and join their husbands to frustrate the widow (Edna, PI-12: 57).

Regardless of their reasons, these women tend to forget that they would be in the same situation if their husbands died:

I often wonder how these women forget that they are also just like me, married into this home, and it is also not their ancestral home. I wonder how they forget that they are 'purchased' to this home just like me (Edna, PI-12: 33).

6.4 Conclusion

This chapter discusses different forms of violence that aggressors employ in gendered land disputes. The empirical study shows that verbal threats, social seclusion, and physical violence are the most common. Men often use violence and their positions of authority to coerce women into surrendering their land rights. In some cases, married women join their husbands in meting violence against other women. The commonly identified reasons for women's participation include jealousy and fear that their husbands will marry the widows.

The forms of violence can ultimately result in murder. Men use verbal threats to intimidate and scare women into subjugation within the patriarchal system. The threats often work, keeping the women from questioning the injustices, maintaining the status quo. Verbal threats may seem to be just empty threats, but media reports often cover cases of women murdered over land. For instance, an article appearing in a daily newspaper on December 14, 2020, reported an incident where a man strangled his mother to death over a pending land dispute in Kisii County. The mother had opposed her son's plan to sell part of his land. At some point, the mother fled from her home for weeks, fearing her son's threats. However, when she returned, the son murdered her (Obebo, 2020).⁷⁷ Several women have been murdered in Kisii County over pending land disputes.⁷⁸

Aggressors resort to witchcraft accusations to threaten the survival of women accused in their clans. The women accused of practising witchcraft are forced into social stigmatisation and subsequent seclusion following the accusations. These positions deprive these women of socio-political and economic opportunities, denying them a fair hearing when involved in disputes. Studies have revealed that witchcraft accusations are a manifestation of underlying land disputes. They are used to force the women accused to live in fear, avoiding any actions that provoke the aggressors, including speaking up when aggressors grab their land. Knowing that these accusations leave

⁷⁷ Obebo, M. (2020) Man who killed his mother lynched by mob. Star Newspaper. www.the-star.co.ke/counties/nyanza/2020-12-14-man-who-killed-his-mother-lynched-by-mob/. Accessed 15.12.2020.

⁷⁸ See examples under appendix 3.1.

the women vulnerable to murder by lynching, the witchcraft accusations are used to scare women to flee, leaving their land at their aggressors' disposal.

Physical assault is commonly employed alongside verbal threats to instil fear. Widows whose sons are still too young are more vulnerable to physical violence than those with mature sons. When confronted with these forms of violence, some women prefer to flee for their lives, giving up their land rights. Others stay, living in fear while suffering in silence. Ultimately, these women know that even if they persevere through the pending threats, their aggressors will potentially murder them for land. Factors such as class, marital status and age and sex of children among women produce differentiated experiences of violence in land disputes.

7

Land dispute resolution

Kenya derived its current political governance system from a hybrid of customary and formal structures established during the colonial period. The colonial government used a provincial government system with chiefs at the local level. Kenya inherited the provincial system upon independence, maintaining chiefs as the local level representatives. This system influences all aspects of Kenya's governance, including land governance, which is characterised by a complex, pluralistic structure, incorporating customary and statutory structures to date (see chapter three).

Since independence, land policy reforms have attempted to correct colonial land injustices through efforts to secure and redistribute communal and private land. Studies show that statutory reforms have failed to infiltrate the customary land governance structures in place (Narh *et al.*, 2016). This is especially true for the rural areas where customary land tenure remains predominant. Therefore, such provisions as gender equality in access to and ownership of land that contradict customary norms remain theoretical, while most Kenyan communities restrict land inheritance to men, expecting daughters to acquire land through marriage. The dualistic system affects land dispute resolution processes as well, with the formal and less formal avenues remaining intact.

The Ministry of Lands and Physical Planning oversees land countrywide through land registrars at the county level. The National Land Commission (NLC) works closely with the Ministry to provide its services in the counties through County Land Management Boards (CLMB). Other key stakeholders in Kenya's land administration include Non-Governmental Organisations, local administrators like chiefs and their assistants, and local elders. Most of these stakeholders also participate in land dispute resolution using Alternative Dispute Resolution (ADR) methods. On the other hand, judicial courts use statutory laws to address land disputes. Since the two systems coexist, individuals choose the dispute resolution avenue they pursue. ADR avenues capitalise on arbitration, mediation, and negotiation strategies to reach a compromise acceptable to the disputants (Ngetich, 2019).

This chapter will use the study participants' experiences to discuss the effectiveness of these land dispute resolution avenues and how they influence women's land struggle experiences. Discussing the typical land dispute

resolution process, I will start with the less formal ADR avenues and then discuss formal land dispute resolution through judicial courts in the second section.

7.1 Customary approaches: Extended family and elders

Customary or traditional avenues are based on traditional norms (otherwise referred to as customary laws) regulating people's daily lives in a community to resolve land disputes through the extended family or local elders. According to the *Abagusii* customary norms, the eldest male members of a lineage, commonly referred to as family patriarchs, resolve disputes arising in the homestead (Akama, 2006). These patriarchs include fathers or fathers-in-law and uncles. In cases where the elderly members are deceased, brothers or brothers-in-law assume these positions. Akama writes that if the extended family fails to resolve the dispute, the complainant proceeds to the clan elders, *abaturoti*, who are elderly male clan members. Both the extended family and *abaturoti* draw their judgement from wisdom accrued over the years of experience in practising and applying customary laws. *Abaturoti* can address disputes collectively or individually, *omoturoti*, through a cohort of informal courts held in public spaces.

Land dispute resolution through the extended family presents several advantages. I will highlight some of these advantages and, after that, their disadvantages as demonstrated in the participants' experiences.

In-depth understanding of dispute background

Women involved in ancestral land disputes often start the resolution process by consulting the extended family and *abaturoti* because these elders understand the background details of the dispute, and they have the authority to make decisions within the clan:

My brothers-in-law understand the background of this dispute. They have all the details from the beginning, and they know how the land is supposed to be subdivided. [...] The land is registered under my brother-in-law's name. He is now the one transferring it or dividing it between us. [...] they can ask her [Rose's co-wife] to give me even a small portion of land (Rose, PI-12: 84).

These elders' presence in the community positions them to use factual knowledge when addressing disputes. The County Executive for Lands in Kisii County emphasises that the local elders can be key in resolving boundary disputes between households because they know the initial demarcations.

Flexibility of customary norms

By recommending that her brothers-in-law ask her co-wife to spare a portion of land for her in the quote above, Rose demonstrates the flexibility of the customary dispute resolution avenue. This flexibility enables the elders to consider the disputants' welfare in the process, leading to a no-lose situation. The elders emphasise restorative justice in the process, seeking to enhance relationships and social harmony.

The flexibility of these avenues provides aspects of equality by ensuring that everyone, including the unmarried daughters, has access to land:

[The extended family] told them that if any of them failed to get a husband, she could come back, and the family would reconsider [apportioning her land] (Grace, PI-01: 40).

Overseeing implementation of decisions

Since elders are customarily empowered to ensure the smooth running of the community, they can potentially monitor the ongoing in their clans. The elders oversee the implementation of their decisions. Their presence creates a sense of accountability, reducing the vulnerability of marginalised groups such as women. These elders' presence enables them to understand underlying power dynamics, enabling them to intervene whenever necessary to ensure that their decisions are implemented:

The three elders came and opened the way [...]. This boy [Christine's stepson] approached them [construction workers], demanding that they should leave. [...] Immediately, I contacted the elder who called the chief to update him (Christine, PI-08: 64).

One time when the elder brought the invitation letter to my brother-in-law, he asked why I was dragging him into the matter, and the elder told him that

he was aware that he [Christine's brother-in-law] was behind the dispute and that he was just hiding behind my stepson (Christine, PI-08: 76).

Time-efficient

Since the extended family and *abatureti* address disputes within smaller geographical areas, the dispute resolution process is time-efficient. Grace captures this when sharing her experience with the extended family:

The extended family [her father-in-law and his brothers] convened a meeting and deliberated over the dispute for a whole day. In the end, [...] [they] decided that I should stay and manage the land previously held by my deceased mother-in-law (Grace, PI-01: 38).

Such land dispute resolution through the extended family eliminates backlogs and indefinite appointments. In Grace's case, the extended family addressed the dispute within a day, ruling in her favour.

Sometimes cost-efficient

The study participants reported that when the extended family and elders resolved disputes, the women either incurred minimum costs or no costs. Grace did not pay any money for the extended family to address the land dispute involving her and her in-laws. This is a significant finding because previous studies have shown that costs incurred during land dispute resolution are a barrier to women involved in land disputes in Kisii (Henrysson & Joireman, 2009). Thus, since most women in rural households lack reliable sources of income, land dispute resolution through the extended family and *abatureti* becomes potentially reliable.

However, the participants explained that local elders often charge for their time and services, limiting the effectiveness of their services:

Recently a friend of mine had a land dispute case, and several elders were sent to settle the matter with the family. When they arrived, they were about eight men. The representative told her to prepare their payment, knowing that each of them had left their duties and that at the end, she should pay each of them accordingly. She paid each two hundred shillings. After four sittings, no resolution seemed to be coming through (Naomi, FGD-3: 17).

At times I have no money to pay the elders. Sometimes they ask for too much, they asked me for five thousand shillings, and I wonder to myself and just let it go (Edna, PI-13: 53).

Other disadvantages limiting the efficiency of land dispute resolution through the extended family and *abatureti* include biased rulings, exploitation of customary and statutory laws, and lack of enforcement mechanisms. The section below discusses these in detail.

Biased rulings

The elders and the extended family draw their decisions from customary laws. Since the laws are verbally transmitted through generations and remain relatively flexible, they are vulnerable to biases. For instance, when the men resolving disputes have underlying interests in the disputed land, they use their positions of influence to exploit the customary laws, making biased decisions to advance personal interests overlooking women's welfare:

The family is not fair. They unite against a widow and come up with different allegations to make sure they evict her. [...]. Whenever the elders sit with the family to resolve the issue, they point their fingers at me. [...] They unite against me and claim that I am the one interfering with the boundary, yet they are the ones destroying my boundary. It leaves me wondering if it even makes sense that a widow, who has no one to protect her, can interfere with land boundaries of men who are at home (Edna, PI-13: 61).

Instead of using facts to address the dispute, these men resort to false accusations that threaten women's land rights. For example, Edna's in-laws claim that she used witchcraft to kill her husband. With witchcraft accusations against her, everyone blames Edna for any arising disputes without listening to the facts. This encourages her in-laws to provoke her persistently:

I have not known any peace since my husband died. I just sit at home and think because there is no one to talk to. I find it difficult to interact with anyone. I do not even join in public meetings anymore because I am despised. [...]. They let their animals graze on my plants to frustrate me so that they can beat me up when I ask. [...] My co-sisters-in-law often abuse me in an attempt to provoke me because they know that none of the family

members will listen to me because they say that I am a witch (Edna, PI-13: 45; 50; 33).

Sometimes the customary patriarchal power distribution dynamics are detrimental to women seeking resolutions through the extended family and *abatureti*.

Exploitation of the customary and statutory laws

Patriarchal customary norms favour men while subjugating women's interest in land. Relying on customary norms exclusively during dispute resolution processes overlooks gender-egalitarian provisions under statutory laws.

[The elders decided] that girls cannot inherit land in their natal home. Instead, they should relocate to their husbands' homes and access land through marriage. They were told that if any of them failed to get a husband, she could come back to the family, and they will reconsider the case. [...]. The uncles told me to be patient until August after the harvest, and then I should start farming on the land (Grace, PI-01: 40; 41).

Although inequality in access to and ownership of land was one of the main driving forces behind the promulgation of Kenya's new Constitution in 2010, the extended family and *abatureti* still oppose Grace's sisters-in-law's land inheritance claims.

The coexistence of the customary and statutory laws limits the implementation of the decision passed by the extended family and *abatureti*. For example, although customary laws favoured Grace's land interests at this point, exercising her land rights acquired through marriage depended on her father-in-law, who denied her customary land rights using his formal ownership rights:

He came raged with anger and asked, 'who told you to go on my farm? Do you have any share here? Why are you cultivating my land?' I told him that the family had told me to start farming in August, saying 'you were also there!' But he asked me to leave his farm, 'get out of my land, go and ask those men to marry you and share their land with you, not my land' I left (Grace, PI-01: 84).

Grace's father-in-law demonstrates that men exploit the unregulated coexistence of statutory and customary laws to intensify women's land

struggles. Eventually, the interplay of the two sets of law denied both Grace and her sisters-in-law land rights.

Lack of enforcement mechanisms

Although the extended family has been instrumental in approving Grace's customary land claims, the land formally belongs to her father-in-law. He retains the right to decide whether to apportion Grace her customary claims or not. Thus, although the extended family and *abatureti* are instrumental in addressing land disputes involving women, their decisions are not legally binding. Their effectiveness depends on the respondent's cooperation. Since they lack enforcement mechanisms such as the power to arrest or prosecute, decisions passed at this level often have little significance.

In the past, *Abagusii* esteemed the judgements of the extended family and *abatureti* highly, recognising them as part of the cultural system (Maxon, 1989: 22). They believed that defying these elders' decisions would attract curses, *emuma*, that would cause the ancestral spirits to cause misfortunes to the defiant party (Akama, 2006: 88). However, over time, the extended family and *abatureti* have been characterised by corrupt engagements, causing many to question their legitimacy (Henrysson & Joireman, 2009). The customary avenues may have lost their relevance because of these shortcomings, forcing complainants to resort to other avenues.

7.2 Alternative Dispute Resolution avenues

ADR avenues include less formal processes outside the judicial courts. Actors include government institutions and non-governmental organisations (NGOs). The government utilises ADR land dispute avenues through local administrators and land governance institutions like the National Land Commission (NLC) and the Ministry of Lands and Physical Planning. The Constitution recognises ADR dispute resolution avenues under section 60(1)(g), which encourages "communities to settle land disputes through recognised local community initiatives consistent with the Constitution" (Constitution of Kenya, 2010: 42).

The first postcolonial governance system offered a dispute resolution process, linking local communities to the central government. From the local level upwards, the structure was comprised of assistant chiefs, chiefs, divisional officers (DO), district commissioners (DC), and provincial commissioners

(PC). The assistant chiefs and the chiefs came from the local communities, while the rest were from other country regions. Later, after the promulgation of the 2010 Constitution, county governance replaced provincial governance. Accordingly, the Assistant Deputy County Commissioners (ACC) replaced Divisional Officers (DO), and Deputy County Commissioners (DCC) replaced District Commissioners (DC). The ACCs, DCCs, chiefs, and assistant chiefs maintained their roles as local government representatives.

In addition, government representatives such as county land registrars and County Land Management Boards (CLMBs) also address land disputes within counties. Other land dispute resolution avenues include NGOs such as FIDA, which use ADR methods. Although government institutions and NGOs use statutory laws in resolving disputes, they integrate customary norms consistent with the Constitution. Since the ADR avenues take the communities' customary norms into account, they are more widely accepted in rural areas. Kariuki and Kariuki (2015) note that since ADR avenues are economical, time-efficient and less punitive, most land disputes in Kenya are settled using ADR approaches. In this study, the empirical research shows that all the field study participants initially sought ADR avenues apart from one unique case.

This section will cover ADR land dispute resolution processes through the local administrators, land administration institutions, and NGOs. Typically, dispute resolution processes through the local administrators start with the assistant chief and chief. If unresolved, complainants can progress to the ACC and DCC.

7.2.1 Local administrators

If both the extended family and *abatureti* fail to resolve a land dispute, the complainant reports to the assistant chief, *omogambi omoke*,⁷⁹ or the chief, *omogambi*. Generally, assistant chiefs and chiefs are referred to as *abagambi*, singular *omogambi*, without differentiating their ranks. Accordingly, the disputant can surpass the extended family and *abatureti*, reporting directly to the assistant chief or chief. Land dispute resolution through the local

⁷⁹ The word *omogambi* used in reference to the chief can be translated as a diplomatic mediator, thus summing up the role of the local administrators as local leaders. *Omoke* means small in reference to people. Thus, *Omogambi omoke* directly translated means a smaller diplomatic mediator. In this case it refers to the assistant chief. The term *omogambi* is commonly used to refer to local government administrators, especially chiefs and assistant chiefs.

administrators begins at the office of the assistant chief. In case the disputants fail to reach an agreement, they report to the chief. In most rural areas, land disputants depend on *abagambi* as the highest possible level of land dispute resolution. However, if the complainant is not contented, they proceed to the ACC then the DCC.

Chiefs and assistant chiefs

Compared to the family and the elders, the chiefs and their assistants have a critical role in mediating land disputes involving women because they are the government's representatives at the local level.

Dispute resolution processes through these government officers have various advantages and disadvantages that I will discuss in this subsection.

Recognised authority

As government representatives, these administrators' authority is recognised in the local community and the national political governance system. Their decisions hold more authority than those of the extended family and *abatureti*. *Abagambi* (both the assistant chiefs and chiefs) hail from their areas of jurisdiction. They have a rich understanding of their communities' language and culture, prevailing challenges, and opportunities. This knowledge is critical when addressing land disputes. Their presence in the local communities also enables them to oversee the implementation of their decisions:

He [the chief] told them that they were acting against the laws of Kenya. The chief warned them that if they repeated, he would send the police to arrest them. Since then, they stopped. Now there is no other dispute over this land anymore (Miriam, PI-03: 31).

Upholding statutory gender-egalitarian provisions

Abagambi work closely with *abatureti* from different clans addressing disputes. While attending a land dispute resolution process, I noticed that at this level, *abagambi* and *abatureti* form informal courts where they hear the complainant, the defendant, and the witnesses. After that, *omogambi* and *abatureti* ask follow-up questions to understand the details of the dispute. In this case, after a lengthy discussion, the chief referred to clauses providing gender equality in access to and ownership of land from a copy of

the Constitution on his desk. He then cautioned a husband, the aggressor, against using violence to have his way in a land dispute. The chief warned the aggressor that repeating the offence would guarantee him an arrest.

Abagambi's rulings uphold gender equality, recognising women's statutory provisions that are often contrary to customary practices. When Miriam's nephews attempted to evict her from a parcel of land she had inherited in her natal home, the chief intervened and insisted that the Constitution recognises daughters' inheritance rights. The chief emphasised that by attempting to evict Miriam, her nephews were committing an offence that is punishable under the law. Since then, Miriam's nephews have backed off, allowing her to exercise her land rights:

The chief intervened and warned them that they had no right to interfere with my possessions. He told them that this was land that I had inherited from my parent, and they had no right to attempt to evict me. He told them that they were acting against the laws of Kenya, and if they repeated, he would send police officers to arrest them (Miriam, PI-03: 31).

At the same time, *abagambi* have a keen eye on the social environment. Accordingly, they blend customary norms into the statutory provisions:

The chief and assistant chiefs asked questions regarding culture to establish whether I was culturally qualified as a wife. They asked whether my husband had paid bride-wealth to my kin, whether I had buried my husband and whether I had buried my co-wife. They also asked whether I remembered the people who had escorted my husband to my home when he went to pay bride-wealth (Christine, PI-08: 62).

By borrowing from both the customary and statutory laws, the chiefs increase the acceptance of statutory laws promoting gender equality statutory provisions.

Oversee implementation of decisions

When Miriam's nephews threatened with a violent attack, the chief reached out to police officers who contained the situation. As such, *abagambi* potentially work closely with law enforcers to protect women from violence. Since they have offices within their areas of jurisdiction, *abagambi* are accessible and readily available to address arising disputes. This offers a level

of security to the marginalised groups, such as women inheriting land in their natal homes. As Miriam indicated in the quote above, the chief intervened and warned her nephews, pointing out that they had acted against the law and that repeating this offence would guarantee them an arrest. Miriam emphasises that “they stopped since then, and now there is no other dispute over this land anymore” (Miriam, PI-03: 31).

The chief’s presence within the local community reduces women’s vulnerability to land disputes. Through their positions, *abagambi* are critical in strengthening women’s land rights at the local level:

The local leaders [*abagambi*] can secure women’s land rights. By using the laws during land dispute resolution, people will understand that the law is good. If the law is not implemented, people will assume that they can violate women’s land rights and get away without any consequences (Miriam, PI-03: 113).

It is my desire that the chiefs change and that we can also get justice. We are suffering under their mercy. We are poor, do not have money to bribe them, and we depend on disputed land (Caro, PI-02: 79).

However, land dispute resolution through these officers is also marred with several disadvantages, limiting their effectiveness.

Absence from office

The Chiefs’ Act states that the chief’s primary responsibility is “to maintain order in the area in respect of which he is appointed” (Chiefs’ Act, 2012: C14-5). This broad description entrusts several duties to the chief. Most of these responsibilities involve outdoor activities, limiting the officers’ physical presence in their offices:

I went there [to the chief’s office] daily for two weeks, but the chief was not available then I decided to go to the DO’s office.⁸⁰ [...] The DO wrote to the chief demanding that the dispute must be resolved within seven days. The chief called me later and invited me to his office on January 16 [...]. I went there as agreed, but he was not in the office that day. I was informed that it

⁸⁰ The DO (District Officer) is referred to as the Assistant County Commissioner (ACC) under the 2010 constitutional reforms.

was his field day. I could not contain myself. I cried, wondering why I had to go through all this (Christine, PI-08: 56; 58).

While women like Christine understand that they have other options to turn to besides the chief when involved in land disputes, most women are not aware of other avenues. As such, in most cases, long queues are waiting outside the chief's offices. Therefore, when these officers are unreachable, such women lack necessary protection and suffer in silence, at times giving up their land rights:

I have suffered for over fifteen years! When they chased me away, my older son was two years old, and the younger one just one year old. The older one is in form one, and the second one will be sitting for his KCPE exams this year. However, I am still suffering. It is not that there is no land for farming, but this man has denied me land and pushed me aside, and I cannot farm. My children lack, yet their father's land, meant for their subsistence, is there (Naomi, PI-14: 48).

Naomi remained helpless for more than fifteen years as her brother-in-law cultivated her land. It wasn't until the area chief organised a public meeting, a *Baraza*, that she shared her grievances. In his clarification, the chief explained that disputants could seek the ACC or DCC's intervention besides him. These possibilities have given Naomi hope that she will get a favourable resolution through the different levels of the local administrators:

If the assistant chief and the chief do not resolve the dispute, I will report it to the DO and then the DC. I want to have my land before the planting season. I want to have a place to plant food for my family this time around (Naomi, PI-14: 29).

Lack of enforcement mechanisms

Abagambi's role in dispute resolution is limited to arbitration. They lack the powers to coerce disputants to cooperate. When contenders fail to cooperate, the chiefs cannot effectively resolve land disputes:

They said they had summoned my brother-in-law to come to the chief's office on the given date. I came together with my mother-in-law, but he did not show up. The chief suggested we give him another date, but he did not

come. The chief then gave us the third appointment, but it was the same (Christine, PI-08: 60).

The aggressors limit the dispute resolution process by ignoring the summoning as they continue denying women their land rights. After three unattended summons, the assistant chief refers the dispute to the chief with a report explaining that the aggressor has ignored three summons. In most cases, such contenders also ignore the chief's summons.

It was again no show on Wednesday. When I called, they said they had written to my brother-in-law that we should all meet at the office on the given date. [...]. He [the ACC] later invited us to his office, but my brother-in-law and stepson did not show up. They also ignored the second invitation. The DO [now ACC] contacted the chief to confirm that the letter inviting my brother-in-law had been delivered (Christine, PI-08: 60; 72).

Like Naomi, most women have a limited understanding of other dispute-resolution avenues. They continue waiting for the chief even when it seems unlikely he will resolve the issue.

Costs incurred and corrupt dealings

As government employees, *Abagambi* ought to dispense their services free of charge, making them cost-efficient for women. For example, Grace explains that "I did not have to pay any money to the chief" (Grace, PI-01: 67). However, some women report that *abagambi* required them to pay a small fee before getting services. For example, one *omogambi* conditioned a widow, Caro (see information box 12 under section 6.3.1), to pay three thousand Kenya Shillings⁸¹ before intervening in a violent land dispute. Since she could not afford the money, the chief dismissed Caro's case and later ruled in favour of the aggressors. Caro gave up and lived with bitterness and fear, knowing that her brothers-in-law could assault her at will. During the field study, I explained to her that she could seek other dispute resolution avenues and accompanied her to the ACC's office. Before the hearing, the ACC contacted the chief to come on short notice. The chief denied soliciting a bribe from Caro, insisting that he had addressed the dispute. He claimed that, according to his understanding, it was Caro who attacked her mother-in-law. From his position of influence, the chief turned against Caro, insisting that she was to blame because her husband's entire family blamed her. Although we failed to

81 Approximately 30USD.

get the desired intervention, Caro later explained that her in-laws backed off. She believes that the chief warned them against provoking her.

Some participants insist that chiefs favour influential people for kickbacks:

He [her brother-in-law] is a high school principal, and the wife is a teacher. They are both government employees, they have the means both socially and economically, and we are poor. We cannot win a case against them. [...] He [the brother-in-law] left with *abagambi* to his bar and bought them drinks. We decided to give up because the ruling was going to be biased. [...] We have suffered over land, the rich trample over the poor (Mary, FGD 3: 7; 14; 18).

Most women insist that rampant corruption among *abagambi* contributes to women's daily land struggles:

Abagambi often anticipate kickbacks. They behave as if they are entitled to bribes. When one gives nothing, then they will judge in favour of whoever has given money. (Naomi, PI-14: 59).

Some of these women do not attempt to find resolutions when involved in land disputes, suffering in silence because they cannot afford the chiefs' financial demands.

It is worth noting that since *abagambi* work in consultation with *abaturoti*, the charges for some of their services can be a hindrance for women:

The chief asked me to have money ready then he will send the elders to define the boundary. The elders said I should have five thousand shillings ready [...] I could not raise the money. They said that it would have to stay like that. I could not go back to report again because I could not afford their services. [...]. I had already paid two thousand shillings earlier, and nothing changed, and now five thousand? Will I spend all my money on the dispute without results? I am a widow. I have many expenses [...]. This is how I am suffering, all the time (Edna, PI-13: 54).

One chief also explained that working with *abaturoti* poses several challenges, including corrupt dealings:

Elders serving as witnesses are not independent. Sometimes they take bribes and make biased judgements that compromise a decision. You know these people do not receive a salary; it is voluntary work (Chief Nathan, Riokindo).

Compared to men, women are customarily confined to household subsistence chores that limit them from income-generating activities. Therefore, women are commonly unable to afford such costs when involved in land disputes. Hence, when the chiefs are corrupt, poor women are more likely to lose their land rights to male contenders or women from a higher social class.

Women involved in land disputes often pay the charges demanded by these administrators out of desperation for a breakthrough, which can be costly:

I paid both at the assistant chief's office and the chief's office money to resolve the dispute. I always regret this money. I could have bought a calf, and it would probably be grown by now. It looks like this case will not be resolved (Susan, KI-10: 52).

Perhaps this explains Henrysson and Joireman's (2009) findings from a study conducted among the *Abagusii*, showing that land dispute resolution through *abagambi* is expensive.

ACC and DCC's reliance on formal documents

A complainant can appeal the chief's verdict at the ACC. In some cases, the chief refers complainants to the ACC, especially when a disputant fails to respond when summoned for the hearing. If the ACC fails to find an acceptable resolution in the adjudication process, the disputants seek the DCC's intervention.

Reliance on formal documents

As mentioned at the beginning of this section (see 7.1 above), ACCs and DCCs hail from communities different from their areas of jurisdiction. Thus, they neither speak the local language nor have an in-depth understanding of the cultures in their administrative areas. They mainly depend on the Constitution, their logic and the chiefs' recommendations when adjudicating disputes. ACCs insist that the disputants must seek the *abagambi's* intervention.

ACCs and DCCs determine land disputes based on formal registration documents like land title deeds:

He asked whether I had the title deed to this land, and I told him that I had it. [...] He clarified to them that the land belongs to me now because the title deed was under my husband's name. [...]. He asked them to produce a title deed indicating that the land belonged to them, but they said we had made an informal agreement. He said he would not change the details of the title deed (Karen, PI-09: 33; 36).

Having a title deed favoured Karen in a land dispute that had stretched over twenty years. Relying on the title deed to determine land disputes in rural areas presents obstacles for women:

Almost three-quarters of landowners do not have updated title deeds. Most people are commonly shown their land and use it, but the land is still registered under their grandfathers, who died over thirty years ago (County Executive Commissioner Lands, KI-1: 33).

The coexistence of customary and formal land tenure systems often works against women. When land is not registered in a husband's name, a widow lacks proof that she owns the land if a dispute arises. Although customary norms protect the widow's land rights, her rights are not guaranteed, and it will be difficult to defend such rights without formal documents.

Corrupt dealings

Like other local administrators, corrupt dealings occur in some ACC and DCC's offices, which hinder their effectiveness in dispute resolution:

They [defendants] had come to realise later that the information they had shared at the chief's office was evidence that the land belonged to my mother and not to them. When they realised that the report was going to work against them, they started giving bribes in the commissioners' [ACC] offices. It is from this office that the chief's report disappeared. They somehow got someone from the inside to pluck it off the file. When I went to the commissioner's office, I realised the old one had been transferred, and the new one was not given the chief's report on the dispute from the meeting we had (Ruth, PI-04: 16).

Although Ruth's records existed at the ACC's office, someone had removed critical evidence in order to weaken the case. In her case, this transpired during a transition process when a new officer was assuming office.

Frequent transfers

ACCs and DCCs are frequently transferred, disrupting the dispute resolution process:

I realised it was not the same DO [now ACC] we had left before. So I explained my issue again from the beginning. [...] This time again, there was a new DO again. The previous one had been transferred. We had to start all over again because the new one was not familiar with the land dispute. I explained everything to him. [...] he asked me to be patient and to give him some time because he was still new in the office. [...]. The transfer of the DO affects the progress of the case (Christine, PI-08: 68; 71).

Although frequent transfers of ACCs and DCCs are fundamental to reducing corrupt engagements, it frustrates dispute resolution processes. After waiting for a month, Christine found a new ACC, and they had to start the process all over, including explaining the land dispute. Several women narrated how they returned to find a new ACC in office.

Unfortunately, as the transition process takes time, women continue to suffer the impacts of the land disputes at the mercy of the contenders.

Inaccessibility and lengthy processes

ACCs and DCCs cover larger areas of jurisdiction than chiefs. Consequently, women travel over long distances in pursuit of these officers' intervention. Besides addressing disputes, these officers have several other engagements, making land dispute resolution through them a lengthy process. Such experiences cost women both the time they spend waiting and transportation costs.

Language barrier

As noted earlier, ACCs and DCCs are from ethnic communities different from their areas of administration. They do not speak the local language of the women seeking their intervention in land disputes. While women like Karen can express themselves in Swahili, most of the older women in rural Kisii can only express themselves in their local languages. This poses a language barrier during the land dispute resolution process through the ACCs and DCCs. As a result, some may decide not to seek the ACC's and DCC's intervention, while some may find translators. However, details of land disputes involving women require a personal and precise flow of information.

Lack of enforcement mechanisms

The effectiveness of land dispute resolution through the ACCs depends on the disputants' willingness to cooperate. The ACCs and DCCs lack enforcement mechanisms to coerce disputants to cooperate. In such cases, chiefs and ACCs commonly turn to public gatherings, or *Barazas*, aiming to exert social pressure on the contender to refrain.

7.2.2 Land administration institutions

Government land administration institutions also offer ADR avenues under the Ministry of Lands and Physical Planning and the National Land Commission (NLC). The Ministry is the custodian of all land records and is responsible for the management of land policies, land transactions, land dispute adjudication, land registration and maintenance of land information systems. The Ministry implements its mandate locally through the county land registrars. As they are the custodians of all land records in the county, some women visit this office to seek clarification in land disputes. The Kisii County land registrar explained that "at least every homestead in Kisii County has a land dispute" (Land registrar, KI-7: 6). Due to the high frequency of land disputes, the land registrar urges that the disputants first seek a resolution through the chiefs before coming to the land registrar. This was illustrated in Ruth's experience when she approached the national Ministry of Lands offices in Nairobi:

I went to the lands' ministry headquarters and spoke with one of the officers. He wrote and forwarded letters to the local land registry, county surveyor,

county commissioner and gave me a copy. [...]. The officer referred the dispute to the chief for investigation. Then the chief invited both the two families to a meeting (Ruth, PI-04: 13).

County land registrars work closely with the Court in settling land disputes. The county land registrar insists that some disputes, especially disputes over the succession of a deceased person's land, must be resolved in Court.

The National Land Commission (NLC) was established under the 2012 National Land Commission Act. The functions of the commission include managing public land in the country, conducting land-related research, and advising the national government on land policy reforms and land registration. The commission is also charged "to initiate investigations, on its own initiative, or on a complaint, into present or historical land disputes, and recommend appropriate redress [and] encourage the application of traditional dispute resolution avenues in land conflicts" (The National Land Commission Act, 2012: 6). NLC works through County Land Management Boards (CLMBs) to implement its mandate locally. CLMBs' services are available at the sub-county level, where their primary role is to regulate land transactions by approving any land transfers before they occur. This contributes to securing women's land rights by preventing irregular land transfers, especially if a husband decides to sell land without the wife's consent.

Like other ARD avenues, CLMBs are characterised by several challenges that contribute to women's land struggles. CLMBs are particularly tainted with accusations of corrupt dealings. In 2016, the cabinet secretary for lands disbanded the boards, noting that they had become conduits of corrupt dealings. The women seeking land dispute resolutions through these boards had stated that instead of resolving land disputes, the CLMBs hindered the resolution because of corrupt dealings:

When I approached the board, they refused to schedule a date for my case. I don't know if it was corruption or for which reason. I had a referral letter and all the necessary reports, but I could not get a date. Time passed, but it was not possible to have my case included on the land board program. I do not know why, but the land board clerk refused to schedule my case for hearing. I suspect he was determined to prevent the dispute from reaching the board (Ruth, PI-04: 20).

CLMBs are comprised of local administrators and some members of the county, including the sub-county administrator. Biased decisions of CLMBs would arise either as a result of relationships with disputants or of disputants bribing board members. Secondly, CLMBs conduct hearings only once a month, which probably contributes to delays considering the county's high incidence of land disputes.

Furthermore, the NLC and the Ministry of Lands and Physical Planning are characterised by poor working relations that lock the two institutions in frequent disputes and 'finger-pointing' that reveals their rivalry instead of a complementing relationship. This limits the effectiveness of these institutions' services to the public.

7.2.3 Role of non-governmental organisations

Land-related non-governmental organisations (NGOs) are critical in land governance. They undertake research, recommend policy reforms to the government, and advocate for better land administration by checking the government's performance in implementing constitutional rights. The leading NGOs involved in Kenya's land governance include The Kenya Legal and Ethical Issues Network (KELIN), Kenya Land Alliance (KLA), the Federation of Women Lawyers (FIDA), Grassroots Kenya (GROOTS), the Land Development and Governance Institute (LDGI), and Namati. LDGI mainly engages in land administration at the national level, while Namati primarily focuses on community land, and both organisations have limited involvement in women's land rights at the local level. However, GROOTS, KELIN, KLA and FIDA engage directly or indirectly in the adjudication of land disputes involving women.

GROOTS has taken on the theme of 'women and property' as one of its programmes. More specifically, the NGO focuses on securing women's land rights acquired through marriage. In this, the NGO advocates for the implementation of laws promoting equality in access to and ownership of land conducts awareness campaigns for capacity building in local communities and advocates for women's representation in spaces of governance like the CLMBs. GROOTS works closely with the local administrators, especially chiefs, to ensure that land disputes involving women are addressed. A recent documentary produced by an investigative journalist in collaboration with GROOTS Kenya illustrates some of the success stories of the NGO in championing women's land rights (Chamwada, 2020).

Women's Land and Property Rights (WLPR) is one of KELIN's five thematic areas in Kenya. The organisation runs various projects to increase awareness of constitutional provisions among local leaders and rural populations, mainly in western Kenya. KELIN trains local elders and chiefs to recognise legal provisions when adjudicating land disputes involving women. KELIN considers elders as critical agents for change by disseminating information to increase awareness. The organisation seeks to change existing social norms on women's land rights through a six-week training exclusively for men, and a similar one for women. The training for men aims to increase community awareness and recognition of women's formal land rights locally, while the women's training focuses on educating women on the existing avenues to seek adjudication when confronted with a land dispute.

KLA's engagements revolve around land governance, strengthening community land rights, and women's land and property rights. Like other NGOs, KLA advocates for implementing women's land rights in practice as stipulated under the Constitution. Through research, KLA proposes strategic policy reforms to strengthen women's land rights and purge existing gender inequalities in access to and control over the land. KLA also conducts public education on women's land rights and dialogues with community elders to strengthen women's land rights within communities.

Besides training to sensitise chiefs and the public on women's constitutional provisions, FIDA Kenya offers legal aid to women involved in land disputes. In this, the organisation offers adjudication services in land disputes. When the accused ignores the summon, the organisation provides legal representation in Court for its clients. In her experience with FIDA, Jane explains that:

FIDA summoned him to come for a meeting, but he did not show up. He was invited again the second time, and he did not come. They advised that we take the next step to open a file and proceed to Court (Jane, PI-11: 34).

After her husband's death, Jane's co-wife started the process of excluding her from any property rights in her husband's ancestral home. Jane says, "FIDA gave me a lawyer who represented me in court free of charge" (Jane, PI-11: 66).

7.3 Formal land dispute resolution

In a court ruling, a judge decided to deny a widow a four-acre piece of land that she had acquired through the market. The judge reversed the land's ownership back to the original owner in June 2020. This ruling sparked debates in Kenya, where many people empathised with the woman, questioning the ruling. The ruling was based on section 17 of the Lands Act, which grants persons land ownership rights after twelve years of uninterrupted occupancy through adverse possession.⁸² The Court ruled that the widow had neglected the land for almost fifty years, during which the original owner continued occupying it.⁸³ Land experts in Kenya argue that the adverse possession law might ignite land invasions and escalate land disputes.

A similar ruling was passed granting a sister ownership rights in her natal home after an uninterrupted twelve-year stay. During that time, her brother had been away on business for over twelve years. When he returned and desired to settle on his land, his sister sued him, and the Court allowed her to retain the ancestral land.⁸⁴ Such formal court decisions contradict the customary land tenure norms. Unlike ADR avenues that recognise customary land tenure arrangements, formal court decisions are based on legal frameworks. Since customary and formal land tenure arrangements coexist in communities with customary arrangements retaining authority, land dispute resolutions are complex. They are often incompatible with the social norms adopted in practice.

7.3.1 Land Dispute Tribunals

Land Dispute Tribunals (LDTs) were established *inter alia* in response to the incompatibility of court decisions with everyday practice. Their role was to mediate land disputes using statutory laws while taking local communities' customary norms into account. LDTs' core objective is "to limit the jurisdiction of magistrates' courts in certain cases relating to land" (Land Disputes Tribunals Act, 1990: 1). The Act states that LDTs were intended to reduce the backlog of land disputes in the formal courts. The tribunals'

⁸² Adverse possession refers to a situation where a person is granted legal ownership of land after occupying it for over twelve years without protest from the title holder.

⁸³ Civil Appeal 84 (2019). Loise Nduta Itotia vs Aziza Said Hamisi. In Malindi kenyalaw.org/caselaw/cases/view/196155/. Accessed 01.06.2020.

⁸⁴ Environment and Land Case 03 (2019). Susan Nyambura Mwathi vs Duncan Kiria Kabete. Chuka ELC. kenyalaw.org/caselaw/cases/view/192556/. Accessed 01.06.2020.

decisions in land disputes were filed to guide the magistrate's ruling on land disputes (Land Disputes Tribunals Act, 1990: 4). The DC (now DCC) appointed local elders who sat on the tribunals.

Although the tribunals were potentially effective land dispute resolution avenues, they were marred by limitations similar to those characterising other ADR avenues. More specifically, the tribunals were associated with biased rulings and corrupt dealings (Kalande, 2008). Consequently, most disputants appealed the tribunals' rulings in court such that the two institutions seemed to operate parallel to each other instead of complementing each other (Kameri-Mbote, 2016). One participant affirmed that, earlier on, she ignored a LDT's summon because of corrupt dealings:

Some people sitting in the Tribunal were from the [seller's] family [...]. They bragged that the Tribunal was going to evict us. The man spoke like this before our session, and he was one of the members of the Tribunal. [...] He lives here in our neighbourhood. So we decided to ignore the summon. The Tribunal wrote a biased report favouring the seller's family, but the Court dismissed the report. They had evidence that the land tribunal was dishonest (Karen, PI-09: 73).

Karen and her husband eventually turned to the formal law courts to settle the dispute.

Over time, it became clear that the LDTs were ineffective in settling customary land disputes using ADR methods. The Environment and Land Courts (ELC) were established to replace LDR.

7.3.2 Environment and Land Courts (ELC)

The Environment and Land Court (ELC) was established under the Environment and Land Court Act enacted in 2011, based on Article 162 of the Constitution. ELCs are part of the national land reforms proposed to offer expertise in settling land disputes after formal courts and ADR institutions have failed to resolve them (Kameri-Mbote, 2016). Due to the acute nature of land disputes in Kenya, Kameri-Mbote describes that ELCs were expected to urgently reduce the backlog in land dispute cases and eliminate all forms of corrupt dealings during land dispute resolution. To this end, the judiciary intended to establish an ELC in each county in Kenya.

Constitutionally, ELC is an equivalent of the High Court, and like other formal courts, it determines disputes based on laws and regulations overlooking customary interests. ELC, as a land dispute resolution avenue, poses several challenges for women.

Inconsistency with customary land tenure and social norms

Since ELC rulings are based on statutory laws and regulations, formal documents are critical in deciding land disputes. Most of the land in rural areas is still customarily administered, challenging the role of ELC in adjudicating land disputes. The ELC Act recognises ADR dispute resolution avenues under Article 20 as an alternative:

Nothing in this Act may be construed as precluding the Court from adopting and implementing, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of alternative dispute resolution, including conciliation, mediation, and traditional dispute resolution mechanisms in accordance with Article 159(2)(c) of the Constitution. [2] Where alternative dispute resolution mechanism is a condition precedent to any proceedings before the Court, the Court shall halt proceedings until such condition is fulfilled (ELC Act, 2011: E11-10).

Since laws and regulations guide court decisions, they are often incompatible with social norms because they fail to address underlying issues. Even though a court ruling may favour a woman involved in a land dispute by addressing the immediate issue, it is often not accepted socially. The court ruling fails to address underlying factors such as customary norms that influence women's land rights. For example, a court may rule to uphold a daughter's claim to inherit land in her natal home. However, while practising this right, her brothers may adopt measures to frustrate her, or force her away from the land. This is especially the case in rural areas where customary laws are utilised in land administration:

When a woman settles back at her home, her children will be mistreated, kicked right and left. Think about it, if one's brothers can murder their sibling, how about her children? (Edna, FGD-2: 8).

Thus, court verdicts remain ineffective unless they are acceptable to the local level power structures. Such a ruling might excite animosity from the contenders and worsen the women's land struggles. Sometimes, women

refrain from seeking their land rights through the Court and instead choose to protect their social relationships.

Lengthy process

In a chat with a court clerk at the Kisii ELC, he said that the judges encourage disputants to seek a resolution through local administrators before seeking a court settlement. Even though this process recognises customary norms, it often results in endless cycles between the local administrators and the ELC, rendering it ineffective:

Whenever we went to the chief, he insisted that we go to Court. [...]. In Court, it was ruled that we should come back and try resolving the dispute at home first (Karen, PI-09: 16).

This movement between the two dispute resolution avenues often results in a lengthy process that seems never-ending, and hence discouraging, to the complainants:

Whenever I go back to my brothers-in-law and ask them to compel my co-wife to allow me to put up a house and have a place to reside so that I can also engage in an activity that will provide an income as we await the court clearance to subdivide the land, they respond that I should let the matter be settled in the Court [...]. I have been on dispute resolution since my husband died. It has been a tough case. It often seemed to be concluded, but then it is restarted again. I am now worn out, and I have taken a break (Rose, PI-12: 19; 48).

The lengthy process is frustrating for women who depend on the final ruling to access land. Those holding the land rights, such as Rose's co-wife, often exploit the unregulated interplay of the dispute resolution avenues. They challenge ADR decisions in Court and then appeal court rulings reinitiating the ADR process:

The DO looked through the document and saw that the Court had approved subdivision before my co-wife appealed. [...] He signed and approved that the land should be subdivided between the two of us. However, this woman rushed back to Court again. That's why it has taken long. [...] the subdivision was halted in 1996. Since then, the case has remained in Court. The last time the case was reviewed was in 2008 (Rose, PI-12: 17; 47).

The unregulated interplay of the ADR and formal dispute resolution avenues interlinks with the court case backlog, resulting in a lengthy dispute resolution process. Rose explains that since the subdivision in 1996, the case has remained in Court and was last mentioned in 2008.⁸⁵ The dispute between Rose and her co-wife has stretched over twenty-five years. During this period, she has not been able to exercise her land rights.

Part of the lengthy court resolution process results from inadequate personnel. On its website, the judiciary admits that it has a shortage of ELC judges in the country, pointing out that this is a significant challenge because more than three-quarters of civil litigation cases are land disputes.⁸⁶ Although disputes dating over five years are prioritised in Court, the records indicate that the number of pending disputes resolved in a year is approximately a quarter of the total backlog.⁸⁷

Expensive

Land dispute resolution through the Court is costly and unaffordable to most women in rural areas:

I have wasted a lot of money on the case. I have sold cows. [...] We sold all the trees. [...] All the money from my two daughters' bride-wealth [...]. All the money from the sugarcane I planted, I even rented the land out. At some point, I sold my tea to brokers to make quick money [...]. I can swear to you that I have spent a lot of money and money that I cannot count. [...] It should be over 400,000KSh so far. I look for money and just hand it over to the advocate to defend me. I keep paying, but the disputes seem unending. All these lawyers just care about the money (Karen, PI-09: 58).

Karen estimates that she has spent about four hundred thousand Kenya Shillings in the court process so far. She sold almost everything she had to pay the advocate. Bearing in mind that most women in rural areas depend on land for their livelihood, land dispute resolution through the Court becomes unaffordable to them, limiting this avenue's effectiveness:

⁸⁵ The interview with Rose was held in July of 2018.

⁸⁶ Kenya Judiciary (2018). Shortage of Land Court judges hurts service delivery. Kenya Judiciary website. www.judiciary.go.ke/shortage-of-land-court-judges-hurts-service-delivery/. Accessed 15.06.2020.

⁸⁷ See appendix 4.

By then, my advocate had charged me 30,000Ksh. I have been paying him the remaining money over time, and now a small fee is remaining, but he said he could not go on with the case until I clear his fee. I still owe him about 18,000Ksh. After I pay him that money, he will follow up that the case is brought up again in Court (Rose, PI-12: 27).

Without the lawyer's fee, the case stagnates until the client settles the fees. In Rose's case, the dispute stagnates because she cannot afford the fees, contrary to her co-wife, a government employee with a stable monthly income.

These circumstances force women such as Karen to sell possessions to afford the formal court process. These women often regret the costs incurred in the process, pointing out that the money would afford them a parcel of land. However, by the time they realise how much they spent, it is often too late:

It often seemed to be concluded, but then it is restarted again. [...] This process has consumed a lot of money. It would be enough by now to buy a hundred-by-hundred plot,⁸⁸ but I do not have the money or the land now. (Rose, PI-12: 48; 73).

Asked why she continues with the court process regardless of the high costs, Rose explains that it is important for her to have a portion of the ancestral land in her husband's ancestral home to show that she and her son are members of that lineage. She would have preferred to engage the local administrators in the land dispute resolution, but her co-wife took it to Court.

Corrupt dealings

In some cases, the effectiveness of the courts as a land dispute resolution avenue is limited by court officers' corrupt dealings:

A ruling was passed late in the day, just before the Court was closed. We were informed that the case had been referred to another court. [...] On the other hand, they proceeded and transported the body, jubilating and celebrating that they had won the case. They transported the body to our home. We had no power; the courts were already closed for the weekend. We only looked on as they conducted the funeral service and buried their father on our land.

88 Approximately 328 ft².

They took the body and buried it on our land as we looked on (Karen, PI-09: 18).

Karen had turned to the Court to stop the land seller's kin from burying their father's body on her land. Although they were informed that the case had been referred to a different court, the land seller's kin got approval to bury their father on Karen's land. This ruling was passed on a Friday evening just before the Court closed.

Such dealings reduce the reliability of courts in resolving land disputes:

Those who are financially capable have their way, and once money has exchanged hands, they even forget that it is the poor one who came to seek the Court's intervention. The poor remain without rights, and we are just taken in rounds until one wears down and gives up. [...]. My step-brothers bribe everyone to retain all the land by themselves (Ruth, PI-04: 32; 51).

Corruption especially hurts the poor, the majority of whom are women in rural areas without formal employment.

Corrupt dealings cut across social class and gender. In an article titled "Irony of Lands Court judge fighting to reclaim property from grabbers" in the Daily Nation newspaper of October 27, 2020. The author describes a judge's experience in the ELC embroiled in a court battle over prime land, complaining about fraud. The judge states that two individuals conspired with the land officers to alter his land ownership documents and tampered with court records:

The defendants had illegally tampered with court records, causing the disappearance of genuine records, which indicate he is the owner of the suit property. [...] 'It is probable that the Nakuru lands registry has similarly caused the disappearance and falsification of genuine records of the title held by the plaintiffs in order to perpetuate and cement the fraud herein (Openda, 2020).⁸⁹

Although the judge serves in a different ELC, it is ironic that he cannot get justice through the Court in his capacity. How about poor widows without

⁸⁹ Openda, J. (2020). Irony of Lands Court judge fighting to reclaim property from grabbers. Daily Nation Newspaper. nation.africa/kenya/news/lands-court-judge-fights-grabbers-2723792. Accessed 28.10.2020.

experience in legal matters? The judge's experience reveals the deep rot in Kenya's ELCs and how unreliable these courts are in addressing land disputes involving women.

Poor record-keeping system

The judge involved in the land dispute above explains that “the defendants had illegally tampered with court records, causing the disappearance of genuine records which indicate he is the owner of the suit property”. The inefficient record-keeping system allows corrupt persons to alter records. Some women are turned away from the Court because their files have ‘disappeared’.

The disappearance of files adversely affects the progress of a dispute, contributing to cases dragging in Court. In an article published in the Business Daily on February 17, 2020, the author reports an increasing trend of missing court records. As such, more than three hundred Kenyans had filed complaints about missing files in the financial year 2018/19, affecting the progress of their case:

[Disappearing files force the complainant to] make several visits to the Court and write letters to various agencies. Missing Court files not only cause inordinate delays but also lead to acquittals. The aggrieved parties could undergo financial constraints due to higher spending on legal costs (Kinuthia, 2020).⁹⁰

Since court case files are manually stored, they cannot be tracked when they disappear, and they are also exposed to wear and tear.⁹¹

7.4 Conclusion

This chapter has discussed land dispute resolution through ADR and formal dispute resolution avenues. ADR avenues are more affordable, accessible, and time-efficient than formal court processes. However, the study shows that each of the avenues presents diverse challenges for women. Although

90 Kinuthia K. (2020). Justice denied as number of missing files, exhibits jump 80pc. Business Daily.

www.businessdailyafrica.com/bd/data-hub/justice-denied-as-number-of-missing-files-exhibits-jump-80pc-2280648. Accessed 22.06.2021.

91 See appendix 5 (5.1).

ADR avenues focus on the disputants' social welfare and seek to restore relationships, they lack clearly defined laws to guide decisions. This flexibility creates loopholes for biased decisions, often influenced by corrupt dealings. Sometimes, the men challenging women's land rights are part of the ones resolving the dispute. These challenges render ADRs ineffective in protecting women's land rights.

Land dispute resolution is a gendered space. Customarily, land dispute resolution is presumed to be 'men's responsibility' because customary norms limit land ownership to men. Women engaging in land dispute resolution confront negative prejudices. Naomi experienced this when she asked for the assistant chief's intervention in a land dispute with her brother-in-law. Her husband's uncle, participating in the resolution process, criticised her involvement, discouraging Naomi:

He [her husband's uncle] commented that 'it should be a man pursuing a resolution for a land dispute and not the woman'. So I was discouraged (Naomi, PI-14: 59).

Ruth faces a similar challenge, noting that:

Everywhere I go, people always ask me, 'don't you have brothers to follow up on the matter?' They ask with a sense of sarcasm (Ruth, PI-04: 70).

These experiences are discouraging and likely to limit women's participation in land dispute resolution. Although women such as Ruth acknowledge that the Constitution empowers them through gender equality clauses, women who persist in these male-dominated spaces are often considered unruly, attracting negative labels like 'prostitute' and implying immoral behaviour. These challenges limit women from seeking redress when involved in land disputes and instead force them to give up their land claims out of fear of being labelled prostitutes. Such contentions tend to encourage contenders to dispute women's land rights held independent of men.

Formal courts are better positioned to make fair decisions when addressing land disputes because they draw their judgements from clearly defined laws and regulations. However, while relying on the statutory laws, courts fail to address the underlying causes of the dispute, leaving women vulnerable to animosity because of 'contradicting their communities' social norms'. The court process is also lengthy, expensive, and characterised by corrupt dealings. In some instances, women desperately resort to 'dramatic acts'

before getting attention in dispute resolution through the Court. In one such incident, highlighted by mainstream media, a woman involved in an ongoing land dispute wailed through three floors of the court after her case was adjourned again after sixteen years in court. This caught the attention of a different judge who intervened to address the dispute.⁹² In the same light, another woman walked away, leaving her five grandchildren in Court, protesting the adjournment of a land dispute that had lasted 34 years in Court. These women's experiences give a glimpse into many of the challenges that women contend with when seeking the Court's intervention in land disputes.

The inefficiency of the land dispute resolution process affects the security of women's land rights. Antagonists exploit the existing loopholes, denying women their legitimate land rights. They become emboldened to challenge women's land rights and contribute to the intensity of women's land struggles. One participant's statement summarises women's land struggles resulting from the ineffectiveness of the available dispute resolution avenues:

I have been on the road with my mother-in-law since the death of my husband. I have gone through a lot. [...] I keep making rounds, ever on my way to get a resolution for this dispute. I do not know what to expect; maybe he [her brother-in-law] can beat me or even murder me. I have no idea what to expect (Christine, PI-08: 80).

Most women sob in pain when recounting such experiences because the future of their land rights is clouded with uncertainty, and they know they could potentially be murdered for their land.

These women's experiences indicate that ADRAvenues present better opportunities to resolve land disputes involving women. If the challenges associated with ADR avenues are solved, they are more efficient because they address land disputes to ensure decisions reached are acceptable in practice, ensuring peaceful coexistence.

⁹² Chemta, G. (2019). 54-year-old woman causes a stir in court. Citizen TV Kenya. www.youtube.com/watch?v=AIKX-VM4V2c. Accessed 22.06.2021.

PART III

Summary and Conclusions

8

Summary and Conclusions

This thesis has used a qualitative approach to examine women's land struggles in a patriarchal community. Focusing on land disputes involving women, I have tried to determine the causes, characteristics, and resolution avenues involved. A historical overview of Kenya's land governance regimes contextualises women's land struggles, showing that formal land governance is subject to local power structures deeply embedded in patriarchal social norms, contributing to women's land struggles. Using the Feminist Political Ecology (FPE) perspective, this study has demonstrated that gender is a key factor in shaping access to, control over and ownership of land, regardless of the land governance system in place.

Throughout this study, I have shown that, among the *Abagusii* of western Kenya, land is a centrepiece around which gender relations are shaped. However, customary patriarchal norms limit women to access land through their relationships with men. Therefore, men inherit land in their lineages, while women acquire land rights through marriage. This arrangement empowers men to exploit whichever land governance system is in place (whether customary or statutory) to their advantage, leaving women vulnerable to land disputes. Moreover, women holding land independent of men are often prone to land disputes because this contradicts the social norms. Against this background, I have analysed the experiences of women involved in land disputes, focusing on how customary socio-political structures interact with formal systems to shape and maintain women's land struggles.

Empirical studies like this one are significant in revealing women's land struggle experiences within a social setup. Findings from empirical studies highlight loopholes that limit the adoption of reforms geared towards strengthening women's land rights. In this final chapter, I synthesise the study's main findings, highlighting the key factors influencing the security of women's land rights and the structural, legal, and social reforms essential for strengthening women's land rights. Further, I propose some of the areas that need further research in the field of gendered land struggles. This thesis

discusses how women's land struggles are formed, shaped, and maintained, as well as the effectiveness of land dispute resolution avenues.

8.1 Systematic exclusion of women

This study indicates that women's land struggles are a product of systematic processes of exclusion through patriarchal social norms governing gender-land relations. As Coetzee (2001) argues, culture is a tool for articulating power and control across gender. Accordingly, cultures shaped around patriarchy empower men to assume positions of authority in the local power structures, which they use to ensure sustenance of their dominance through rules and regulations shaping gender ideologies. These include restricting women to secondary *de facto* land rights acquired through men, as daughters, wives, or mothers. These positions empower men as fathers to deny their daughters land inheritance rights while husbands wield power to alter marriages through divorce, expelling their wives, or marrying more wives. The customary positions empower husbands and sons to potentially transfer land by sale or bequest land at will without involving the women. Moreover, the study shows that brothers-in-law often take advantage of their patriarchal positions to dispute and sometimes evict widows from their deceased husbands' land. Violence is a common practice in land disputes involving women.

The patriarchal system empowers men to make decisions, define laws and resolve land disputes. In these positions, men employ different forms of violence to force women into surrendering their land rights. These include verbal threats demanding the women remain silent about injustices or leave to avoid unpleasant consequences. In other cases, men, especially in-laws, force women into social seclusion following witchcraft accusations, which they use as an excuse to use physical violence and forcibly expel them from their land. Direct physical violence against women from family members is also common. The aggressors use these forms of violence to scare the women, indirectly forcing them to flee and give up their land rights. Moreover, dispute resolution avenues are dominated by patriarchy and hence undependable for most women. For instance, custom required women to seek the extended family's intervention when involved in a land dispute. However, those addressing the dispute are male members of the extended family, who favour patriarchal interests. Moreover, these men are sometimes interested in the disputed land.

The *Abagusii* patriarchal customary norms consider land dispute resolution a man's responsibility because land is assumed to belong to men. When a woman is involved in a land dispute, she is expected to seek resolution through the 'landowner'. Accordingly, when women try to find a land dispute solution independently, they contend with negative criticism through statements like "it should be a man pursuing a land dispute resolution and not the woman" (Naomi, PI-14: 59). Such criticism characterises women seeking resolution when involved in land disputes as rebellious and immoral. This attitude discourages women from attempting to find resolutions when involved in disputes, opting instead to persevere through violence meted out on them to retain their 'integrity'. Such ideologies implicate culture as a tool for articulating power and control across gender by forcing women to put up with oppression to 'maintain their integrity'.

However, it is worth noting that social norms are not static; they evolve and vary spatially. Moreover, even though social, political, and economic structures produce different land struggle experiences between men and women, women's experiences are not universal. Differentiated identities and experiences resulting from class, marital status, age, education level, and the age and sex of children, among other axes of power, are evident even within the same local setup. Therefore, this is not to argue that all men hold equal positions of privilege within patriarchal systems, and neither that all women share equal experiences of oppression. Instead, this demonstrates a general trend where men's positions of dominance favour them to formulate and influence existing laws and regulations to exert male dominance while subjugating women's land interests.

In the section below, I attempt to disaggregate the systematic exclusion of women in access to and ownership of land based on the study findings. I summarise this under three subheadings: the exploitation of customary land governance systems, marriage and identity intertwined in land inheritance, and unreliable dispute resolution avenues.

8.1.1 The exploitation of customary land governance

A historical overview of Kenya's land governance system shows that customary norms protected the social welfare of both women and men before colonisation. Although women accessed land through their relationships with men, customary laws defined and effectively safeguarded women's land rights. The colonial land reforms modified customary land laws to

serve colonial and patriarchal interests. These reforms initiated formal land ownership under male household heads, initiating the erosion of women's customary claims. Furthermore, colonial land reforms introduced cash crop farming combined with private land ownership, making land an economic resource. This initiated ancestral land sales in response to the appreciation of land's economic value, the introduction of a money economy and private land ownership. This transition further deteriorated women's customary land rights and instigated the unequal distribution of land between social classes, initiating social segregation in communities. Social classes were established, distorting the gender-egalitarian customary norms. Consequently, women lost their customary land rights and the safeguards that customary laws provided.

After independence, Kenya inherited the colonial laws with unequal land distribution patterns. Marginalised groups like women were limited to access land through relations with landowners. Since the Constitution favoured the political elite, giving them authority to acquire public land, they were not keen on land policy reforms. However, commissions of inquiry reported that the frequent ethnic conflicts and post-election violence stemmed from irregular and unequal land distribution. These reports intensified advocacy for land reforms, including gender mainstreaming in access to and ownership of land. Kenya's resorted to statutory land policy reforms to address the inequalities, adopting a new Constitution in 2010 that departed from colonial discrimination. The Constitution promotes gender equality, providing for women to hold land independent of men.

The current land governance system is complex and unclear, accommodating customary and statutory laws. Although statutory provisions seem noble and hold the potential to strengthen women's land rights, they fail in practice because they contradict existing patriarchal social norms. For instance, adopting daughters' land inheritance rights under the 1981 Law of Succession Act and the 2010 Constitution fails in practice because customary land inheritance is confined to male heirs in patriarchal communities. Therefore, the provision is clouded with suspicions, frustrating its implementation because men perceive such reforms as a threat to masculinity.

Kenya's land policy reform debates are commonly embedded in politics, and political alignments shape voting. Most people vote according to their political affiliations, overlooking critical details of the reform provisions. For instance, even though gender-equal land inheritance rights favour some women, most women regret voting for the Constitution because their sisters-

in-law often return to demand a portion of the widows' land. These women insist that daughters' land inheritance rights weaken the marriage institution, threatening their land rights and women's customary access to land through marriage. For these women, statutory reforms providing gender equality have deteriorated women's land rights instead of strengthening them. These participants explained that diminishing land sizes have complicated the distribution of ancestral land among sons and daughters through inheritance. Thus, instead of strengthening women's land rights, reforms providing gender-equal inheritance rights have increased women's land struggle experiences by enabling some categories of women to threaten other women's land rights.

Nevertheless, this is not to argue that customary laws would sufficiently and sustainably protect women's land rights. Instead, this study shows that before colonisation, customary laws were gender-egalitarian, seeking to ensure equal access to all members of a social entity. The distortion of these laws to serve patriarchal and colonial interests contributed to the gender-discriminative land relations existing today. The colonial reforms demonstrate that replacing customary laws with statutory laws is ineffective in strengthening women's land rights.

Instead of replacing the customary norms, the statutory laws become subject to local power structures and communities' social norms. The unregulated interplay of the two sets of laws further deteriorates women's land rights. Men who commonly hold titles on behalf of their households abuse their patriarchal positions to assume 'ownership rights'. These positions empower men to manipulate custom to their advantage, denying women both customary and formal land rights. Moreover, men's positions in the patriarchal community enable them to adopt different forms of violence to coerce women into giving up their land rights. However, women have differentiated experiences, limiting their participation in contesting existing forms of exclusion. While some women advocate for and embrace statutory provisions for gender-equal land inheritance, most women oppose these provisions, arguing that they are not practical. Therefore, securing women's land rights traverses legal reforms to demand enforceability by altering gender-related social norms. This process would entail modifying local power structures to alter gender relations and enable women to access and own land independently. It requires engaging the public and the local power structures in robust debates to determine practical solutions acceptable to all stakeholders.

8.1.2 Marriage and identity intertwined in land inheritance

Land bears both economic and social value. Therefore, women involved in land disputes risk losing both their source of livelihood and a symbol of their identity. As mentioned earlier, marriage transforms a woman's social status, elevating her from a daughter to a wife. This process shifts a woman's affiliation from her father's lineage to her husband's. Since marriage is integral in shaping a woman's access to resources like land, her affiliation to her husband's lineage is key in determining her land rights and her sons' inheritance. The affiliation and land rights acquired through marriage also offer women a burial place upon death, reaffirming them as members of their husbands' lineages. A woman's burial on a piece of land confirms her sons' entitlement to that land. Therefore, women's land struggles have their identity and their sons' inheritance rights at stake.

The cultural norm linking women's identity to marriage forced a woman like Christine (see background information box 3) to block a husband's burial until she is affirmed as the widow of the deceased. Similar sentiments are evident in Karen's experience (see background information box 9). She sought the court to block the land seller's sons from burying their father on the disputed land. However, the court ruled in favour of the land sellers' sons, allowing them to bury him on Karen's land. The seller's sons celebrated the ruling, claiming that burying their father on the disputed land was proof that the land belonged to them. This idea is further reflected in Grace's argument (see background information box 1), who insists on staying in her matrimonial home amidst murder threats. Grace argues that if her in-laws murder her, she will be buried on the disputed land because her bride-wealth was settled. This would confirm her affiliation with her husband's lineage and proving her sons' land inheritance rights. Thus, identity and sons' inheritance rights are more important to women like Grace than life.

As a culture with low female autonomy, the *Abagusii* social norms limit women's acquisition of land independent of men. For instance, women inheriting land in their natal homes contend with negative counter-reactions because the practice disregards customary norms. Although statutory laws allow women to inherit land in their natal homes, they often require additional layers of effort to practice their rights and protect themselves from male kin who claim to be the 'legitimate landowners'. Such women indirectly contest the status quo, pushing for the expansion of gender boundaries.

However, women contravening the patriarchal social norms are presumed to be ‘immoral and rebellious’. Since such negative connotations are embedded in culture, some women oppose women holding land independent of men, insisting on access to land through such relationships as marriage. Such women state that inheriting land in their natal homes diminishes women’s social status by depriving them of the ‘wife of’ identity. Moreover, some women argue against statutory laws providing daughters inheritance rights, pointing out that this weakens the marriage institution because it enables female autonomy. This attitude results in social divisions among women, which becomes a barrier to collective action against forms of gender oppression in access to and ownership of land.

8.1.3 Unreliable dispute resolution avenues

The women’s experiences from the empirical research show a common trend where land disputes remain unresolved for several years, exposing the women involved to verbal, social and physical violence from the aggressors. For instance, the experiences of Miriam (see background information box 7) and Karen (see background information box 9) stand out as success stories. Regardless of the pending indirect threats, these women triumphed against male aggressors and existing patriarchal hindrances to retain their land rights. Miriam inherited land in her natal home amidst opposition from her male kin, while Karen retained land acquired through the market amidst the land seller’s sons’ attempts to dispossess her. Miriam and Karen’s experiences present some striking similarities that could potentially inform ‘effective’ land dispute resolution.

First, both disputes were addressed through Alternative Dispute Resolution (ADR) processes. When Miriam’s nephews attempted to dispossess her, arguing that land customarily belongs to male kin, the chief intervened to resolve the dispute. Since both the customary and statutory laws recognise the chief’s authority as a local leader, chiefs are significant in their localities. In their unique positions, chiefs refer to both statutory and customary laws when resolving disputes. Chiefs reconcile inconsistencies between the statutory and customary law with the Constitution as their guide. Thus, the chief referred to statutory laws upholding Miriam’s inheritance rights in the dispute involving Miriam and her nephews. Within weeks, the chief resolved the dispute and Miriam’s nephews backed off. The chief’s continuous presence

in the community enabled a level of monitoring, forcing the aggressors to back off.

In contrast to Miriam's experience, the chief was corrupt and unreliable in Karen's case. Therefore, she turned to the Assistant Deputy County Commissioner (ADCC), who resolved the dispute using statutory laws. Unlike chiefs, ADCCs often come from other regions and are hence unfamiliar with the social norms of the disputants. Thus, they mainly base their rulings on statutory laws. However, they allow the disputants to argue their cases before ruling. In Karen's experience, the ADCC used a *Baraza* where the public and other local administrators were invited to witness the process and deliberate on the details of the dispute before ruling. The ADCC used the land title under Karen's husband's name to decide the case in Karen's favour. Although the process was formal, involving the public ensured that the decision reached was accepted by other members of the clan, enabling peaceful coexistence. Moreover, the ADCC's presence can wane off the aggressors, ensuring that women like Karen exercise their land rights.

Second, unlike most ancestral land claims, both Miriam and Karen had formal titles backing their land claims. Therefore, since the seller's sons' land claims were informal, formal land ownership documents favoured Miriam and Karen. Miriam insists that having the land title deed under her name proves that she formally owns the disputed land. Karen also exudes confidence in the formal documents, believing them to be key in backing land transfers. Before deciding the disputes, both the chief and the ADCC used formal ownership documents to rule in favour of Miriam and Karen.

Therefore, local administrators like chiefs and ADCCs are significant in addressing land disputes involving women expediently. Their positions recognise formal documents like the title deed while taking into account the local socio-political structures through meetings such as *Barazas*. Thus, they can enable the smooth coexistence of customary and formal land governance systems.

As opposed to the formal dispute resolution process, I have shown in Chapter 7 that ADRs are time-efficient, simple, and affordable. For instance, Karen spent over 400,000 KSh⁹³ seeking a court resolution that lasted longer than ten years without closure, regardless of Karen's documents proving that the land belonged to her. During that period, the disputants harassed her

93 Approximately 4000 USD.

and even used her land at some point, confining her to her compound. In contrast, the ADCCs resolved the dispute within two months, and this cost Karen approximately 2,000Ksh. Likewise, the chief resolved the land dispute involving Miriam within a month without Miriam incurring any costs in the process. Thus, ADR avenues are more reliable in resolving land disputes involving women.

However, this is not to argue that having formal land registration documents and ADR avenues guarantees effective land dispute resolution. Other women, including Karen, failed to get resolutions through ADR avenues, even with formal documents backing their claims. Karen explains that although formal documents are critical in determining ownership rights during land disputes, some local administrators are corrupt, making biased decisions regardless of the documents. Furthermore, the effectiveness of ADR mechanisms depends on the willingness of the disputants to cooperate through the process.

Land dispute resolution is key in addressing and discouraging aggressors from perpetuating land disputes. However, women's experiences in this study demonstrate that Kenya's land dispute resolution process is inefficient. Formal dispute resolution avenues are expensive, complex, lengthy, and characterised by corrupt dealings, and the rulings are often challenging to implement in practice. By referring to customary norms, ADR avenues are prone to manipulation. Moreover, since the arbitrators lack enforcement structures, their success depends on the disputants' willingness to cooperate.

The unregulated interplay between the formal and ADR dispute resolution avenues allows perpetrators to manoeuvre between the two processes, depriving women of their land rights. For instance, since the courts encourage ADR avenues in land dispute resolution, aggressors hop between the systems, denying women their land rights. For instance, Karen states that:

The dispute has been going in rounds. I remember when we went to the chief and the assistant chief, they said they were unable to resolve the dispute and referred us to court. [...]. In court, it was ruled that we should come back and try resolving the dispute at home [through local administrators] first. However, this did not work out, so we went to court. [...] We have been sent to the court and swayed back to the chief, and it has all costed money directly and indirectly. It was the DO who eventually settled the dispute (Karen, PI-09: 16; 17).

This process results in unending circular movements between the ADR and court processes, thus indirectly denying women opportunities to exercise their land rights. After spending money and time, the circumstances often force women involved in lengthy land disputes to adapt and survive with the violence the aggressors aim at them or 'stay on the road' persistently moving between ADR and formal land dispute resolution processes.

Therefore, women's land struggles extend beyond the laws shaping land governance to include methods of accessing land, social norms, power relations, and the effectiveness of land dispute resolution avenues.

8.2 Strengthening women's land rights

The connection of land to economic, social, and political values makes it a critical entry point to empowering women. Since gender norms are embedded in cultures, efforts to strengthen women's land rights must address gender relations to transform local patriarchal power structures, which define gender roles and land rights distribution within households. Accordingly, securing women's land rights cannot be limited to statutory legislation processes.

However, the study findings show that Kenya has mainly used a statutory legislation approach to address women's land struggles through gender-equal inheritance rights and joint titling. Besides legislative provisions, this approach aims to strengthen the judicial system as an avenue to protect these rights. However, this approach is ineffective in strengthening women's land rights. Joint titling fails to ensure women's involvement in household decision-making processes that determine land use, and it also complicates women's land claims in case of divorce or separation. Thus, instead of securing women's land rights, joint registration constrains them from escaping marital violence because these land rights are acquired through marriage. Joint registration also fails to offer avenues for unmarried women to acquire land rights.

The second statutory approach emphasises gender-equal inheritance rights. Women inheriting land in their natal homes ensures that women acquire land independent of men, potentially improving the stability of these rights. However, emphasising women's inheritance rights amidst Kenya's high population growth rates and subsequent declining land sizes is impractical. Some study participants contest this provision, insisting that even the distance between women's matrimonial homes (residence) and their natal homes complicates the provision. Furthermore, concerns about

the sustainability of the approach are inevitable. For example, would married women and their husbands jointly own the land that women inherit in their natal homes? Would the couple's daughters inherit the land in the future, retaining land rights in their mothers' homes and their fathers' homes and still acquiring land rights through their husbands? These questions are complex and practical and must be addressed to make gender-equal inheritance rights effective. Although the simple solution to these questions would be to limit land inheritance rights to unmarried women who then give up these land rights upon marriage, women's land rights acquired through marriage remain insecure. Therefore, without practical and sustainable solutions, the statutory legislation approach remains ineffective in strengthening women's land rights in practice.

According to the resource equity pamphlet "Starting with women", Hannay & Scalise insist that women's land rights are secure when they are:

legitimate [enshrined in the law]; [...] unaffected by changes in her social status; [...] granted for an extended period of time; [...] enforceable; and her ability to exercise them does not require an additional layer of approval that only applies to women (Hannay & Scalise, 2014: 21).

This argument complements the study findings, demonstrating that although statutory legislation is critical in securing women's land rights, it remains insufficient. Women often require additional layers of effort to exercise their legislative rights when they contradict social norms. For example, even though the statutory laws provide for women to inherit land in their natal homes, they only access these rights after the judicial courts' intervention. When the women inherit land in their natal homes, they contend with regular contestation from their male kin, who insist that the land belongs to men. These women depend on dispute resolution avenues to retain their land rights. Still, even when these avenues confirm the women's land rights, the women are predisposed to different forms of violence from male kin who form a threat to the land rights and the women themselves.

Therefore, securing women's land rights requires a transdisciplinary approach, engaging different entities, including the public (both men and women), government, local administrators, the legislature, judiciary, and NGOs, among other stakeholders. These entities must combine efforts and engage in debates and advocacy to ensure women's land rights issues get the central attention they deserve through public participation, formulation,

enactment and implementation of laws, civic education, and adequate checks to ensure offenders are sufficiently punished.

Therefore, replacing customary laws with statutory laws promoting gender equality is inefficient. For example, the study shows that sometimes men use customary law to contest women's inheritance rights and ancestral land sales even when the holders have formal titles to prove ownership. As Hannay and Scalise point out, although legislation is critical, its provisions must be accepted within local power structures for them to be effectively adopted in practice. Accordingly, instead of imposing reforms on communities through a top-down statutory approach, land reform processes must engage the community at the local level. This process requires a substantial investment of resources like time and money, but it would potentially produce long-lasting solutions. Engaging local focus group discussions on improving women's land rights within communities would benefit policymakers and community members. Such interaction enables policymakers to address the fears and concerns of both male and female community members.

Furthermore, involving communities in policy reforms enables critical thinking through the customary norms to determine whether they are efficient in ensuring everyone's social welfare. This approach enables communities to develop practical solutions that would work for them based on their experiences. Such engagements would address subtle forms of gender inequality ideologies, such as the distribution of gender roles and women's access to formal education, employment, and decision-making. Moreover, by engaging communities in land reform processes, policymakers increase the acceptance of such reforms, reducing suspicions based on patriarchal myths.

As of now, most women access land customarily through marriage. Therefore, securing the land rights acquired through marriage is crucial in strengthening women's land rights. Accordingly, the government must ensure that customary marriages are protected through legislation. The land governance institutions must encourage joint titling to formalise women's *de facto* land rights acquired through marriage. This recognition would potentially lower women's vulnerability to evictions when the marriage relationship is severed through either divorce or death. This process should be backed up with a more straightforward and reliable land registration and dispute resolution process to limit the exploitation of loopholes in the land governance system.

The role of chiefs and local elders as custodians of culture and in dispute resolution makes them a fundamental entry point to adopting land policy

reforms in communities. Training these leaders to apply the reforms in dispute resolution processes would encourage communities to integrate reforms providing gender equality in practice. Moreover, these local leaders are key in monitoring the implementation of their decisions at the local level.

Legal and economic opportunities are critical in improving women's land rights. Ensuring that women have access to income-generating activities would increase their access to land independent of men. To guarantee that women's issues are captured, the local and statutory institutions must be realigned to ensure a gender-representative land governance system. Ensuring the inclusion of women from different social classes, age groups, marital status, and education levels in local administration positions would potentially make them agents to vocalise women's land struggle experiences in public debates. These women could be critical representatives in decision-making processes to address existing barriers to securing women's land rights.

The study has demonstrated that the current land dispute resolution processes are unreliable in addressing land disputes involving women. The coexistence of different dispute resolution avenues without clear guidelines yields an unclear and complex dispute resolution system. The option of alternating between these different avenues enables aggressors to exploit the dispute resolution process in their favour. This has resulted in an inefficient land dispute resolution process in several incidents, taking women in unending cycles. Therefore, a clearer and more affordable land dispute resolution process limiting the circular movements is critical in securing women's land rights. An example could be creating mechanisms to limit the number of times a court refers a land dispute to ADR avenues.

Independent institutions like NGOs are key in supporting women through the different layers of justice. During the study period, I found out that no single NGO in Kisii County is working towards strengthening women's land rights. Women seeking an NGO's support must travel to the FIDA offices in Kisumu.⁹⁴ This is time-consuming and unaffordable to most women involved in land disputes. Moreover, most of the women are not aware of the kind of support they can expect from FIDA. Therefore, a local NGO promoting awareness and supporting women manoeuvring through the land dispute resolution process within Kisii County is fundamental in addressing women's land struggles.

94 Approximately 110Km and a two-and-a-half-hours' journey.

Decisive efforts to ensure formal documentation of land ownership rights is essential. As already mentioned, most ancestral landholdings in rural Kisii lack formal titles. Accordingly, land is often still registered under the fathers or grandfathers who held land during the initial registration process. This predisposes women's land rights acquired through marriage to disputes because they lack documents to prove claims in their 'husband's land' when involved in disputes. Some in-laws sell widows' land without their knowledge when formal documents are not updated. The study findings indicated that some people shy away from formalising land succession because of the complexity and high costs involved in the process. Improving accessibility to land registration services, simplifying the process involved and reducing the costs incurred would encourage land succession processes, strengthening women's land rights. These efforts, interlinked with joint registration, would ensure formal recognition of women's *de facto* land rights, reducing incidents of husbands selling ancestral land without their wives' consent. Formal land registration documents also allow widows to transfer land by sale easily and relocate at will when confronted with violence in their husbands' ancestral homes.

8.3 Rethinking FPE in land and gender studies

The theoretical reflections in this section focus on the contribution of FPE concepts (discussed in chapter two) in conceptualising women's land struggles and the contribution of this study to FPE. The study showed that gender is a critical factor in determining the distribution of land rights. While men commonly hold ownership rights, women are inclined towards secondary user rights in 'men's land.' Discussing the concept of property identified the different land rights regulating land relations. This analysis established a basis for the theoretical application of FPE as an analytical tool in conceptualising women's land struggle experiences.

Using FPE, I explored gender as a key factor influencing land relations and land struggle experiences. I focused on women's experiences in land disputes to find out how socio-political and economic structures defining access to and control over land contribute to women's land struggle experiences in Kisii County. The study found that established social norms limit women to access land through their relationships with men, predisposing them to disputes and violence. Further analysis using the intersectional approach of FPE demonstrates that while women are generally a marginalised category, their experiences are not universal. Class, marital status, education level, and

the age and sex of children, among other axes of power, stood out as key factors producing differentiated land struggle experiences among women in Kisii County.

Although widows are more vulnerable to land disputes than married women, widows with mature sons have more secure land rights than those without sons or with younger sons. Moreover, women whose bride-wealth status is unsettled or unclear are more likely to lose their land rights than those whose husbands have settled bride-wealth. The study demonstrated that social status also influences women's land struggle experiences, where educated women with a stable income are less vulnerable to land disputes than women without formal education and employment. The women with formal employment have more options when involved in land disputes, including exploiting loopholes in the dispute resolution system to their advantage. Moreover, women with a stable source of income can access land through the market when confronted by disputes. However, those without income endure different forms of violence to retain access to land.

The study shows that these differentiated identities and experiences among women often become barriers to collective action in contesting gender inequalities. The women benefitting from legal reforms promoting gender equality through provisions, such as equal inheritance rights for men and women, tend to advocate for adopting the reforms. In contrast, most of the women subjected to land disputes resulting from the coexistence of the customary and statutory land governance systems oppose such reforms.

The study integrated intersectionality from FPE and historical factors influencing women's land struggle experiences to generate insightful findings. The findings show that colonial and postcolonial reforms have significantly shaped gendered power relations and continue to produce differentiated experiences of land struggles among women. Therefore, by linking the historical factors and FPE, the study contributes to the development of postcolonial intersectionality.

8.4 Study limitations and recommendations for future research

This study intentionally limited its focus on women's experiences in land disputes in Kisii County, Kenya. However, to better understand gendered land struggles, future studies should consider involving women who have not experienced land disputes. It would be interesting to contrast the experiences

of women who have successfully inherited land in their natal homes and the women denied land in their natal homes to determine the contributing factors in each experience. Moreover, contrasting the experiences of widows holding secure land rights through marriage would highlight factors contributing to widows' land rights vulnerability. Such studies would inform or dispute arguments that overarching factors such as age, education, ethnicity, and social status influence the vulnerability of women to land disputes. Furthermore, including women holding secure land rights would demonstrate whether the land has empowered such women.

This study utilised a qualitative approach to understanding the women's perspectives on gendered land struggles based on their experiences in land disputes. This produced significant insights into gendered land relations among the *Abagusii*. However, to better understand the implications of these findings, future studies could include quantitative data to complement the qualitative findings. For example, the study emphasises that land is generally registered under men. Statistics showing specific details of size and type of land registered under women in contrast to land registered under men or jointly registered and relating these data to land dispute incidents would help to better understand gendered land relations. Moreover, statistics on land disputes involving women in contrast to men and the dispute resolution avenues pursued by each gender would augment the study findings.

Further research on men's and women's perceptions of gender-equal access to and ownership of land would explain existing barriers to adopting the statutory land reforms promoting gender equality. In this study, some participants' experiences and perceptions indicated that gender equality in access to and ownership of land is a threat to patriarchy. Therefore, some men use violence in opposing the statutory land reforms promoting gender equality. However, an in-depth study on how men perceive gender-equal access to and control over land would potentially complement the findings and inform future approaches to gendered land reform processes.

Literature has emphasised the inclusion of women in land governance as a fundamental avenue to improving women's land rights. Therefore, one avenue for future studies would be finding out whether and how women are involved in land governance. That would include investigating women's specific roles in land administration and land dispute resolution and whether their inclusion represents women from different social classes.

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Land holds immense economic, cultural, religious, and political significance for most sub-Saharan African countries. However, customary patriarchal norms restrict land ownership to the male lineage, while women typically access land through relationships with men. Women's land rights thus remain weak and vulnerable to disputes, particularly when these relationships are severed. Despite legal reforms aimed at enhancing women's land rights in Kenya, customary norms remain deeply entrenched.



This book examines the experiences of women entangled in land disputes. It illustrates women's vulnerability to land disputes and demonstrates how men exploit their positions of authority to manipulate existing institutions to deprive women of their land rights. These women contend with violence and social exclusion in unclear land dispute resolution structures. While formal courts are more likely to safeguard women's land rights, the process is often arduous, costly, and often tainted by corruption.

Dolphine Isinta, a native of Kisii County, Kenya, grew up witnessing injustices against women under the guise of customary law. These experiences motivated her to pursue a Bachelor of Arts and an MSC in sociology and geography from Egerton University. Her research interests lie in women's land rights. Although land is crucial for the livelihood of most households, women in her rural community have weak land rights. This book represents the culmination of her PhD studies at the Sustainability Research Center, Bremen University, under the guidance of Prof. Michael Flitner. Dolphine resides in Germany with her husband and three sons.