



To What Extent Have Judicial and Non-Judicial Rulings Translated to the Success of Women's Land Tenure in Western Kenya

Davis Okeyo



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Women's land rights remain insecure even with the presence of legal protection, where women are entitled to property rights including inheritance and succession protection. Additionally, the lack of voice in the decision of ownership exposes their vulnerabilities, restricts their ability and power to claim their rights.

Often, when women are chased away from their land, it automatically increases their risk of being dispossessed of land and property, increasing their burden to prove their rights. Additionally, women are likely to face threats to violence when they embark on claiming their rights whether using formal or informal systems for redress. With limited resources at their disposal, their options are usually limited to using the informal Alternative Justice Systems, which most often hurts them because of their lack of power to push for their land rights.

The study went beyond the legally codified rights in order to understand the empirical complexities and intrinsic value of land. It explored the experiences of women determined to gain access, ownership, control, and security. This report, besides offering an analysis on the conflict between existent laws and cultural practices, explores women's convoluted and daunting journey using their knowledge of rights and the existing land laws, whether cultural or judicial to protect them and consider their legitimacy to protect their security of tenure.

The findings of this study demonstrate that despite the bouquet of land laws and other land reforms that have been put in place to make it easier for women to access land rights, both the formal and informal systems remain fraught with multiple extra-legal obstacles in the form of personal (family) security, social acceptance, economic empowerment, and land rights literacy, which hinders women's realization to women's lands rights. However, women's resilience, drive, and commitment to pursue justice and demand recognition underscores the need to overhaul and transform these arbitration structures and spaces so that it's not just about bringing women to the table but also about giving agency to their demands.

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We hope our findings will aid researchers, policy makers and implementers in the designing strategies to promote women land rights especially access, use, ownership and control over land and other natural resources.

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I. Background

History of Land and the Legacy it has Bequeathed to Women: Contestation Between Formal and Informal Justice Systems

Kenya recognizes both the formal (the Judiciary) and informal (Alternative Dispute Resolution - ADR) as a route to resolving land disputes in a manner that is expeditious, efficient, lawful, reasonable and procedurally fair as prescribed in articles 47 and 159 of the Constitution of Kenya (CoK). Mediation, which helps disputing parties resolve their disputes and restore their relationships¹ is one of the ways in which access to Justice is promoted accompanied by a Legal Aid Act 2016 promoting ADR. Indeed, the use of ADR mechanisms have often been proposed as some of the most viable means of managing the conflicts as their perceived advantages are believed to be capable of balancing the delicate conflicting land interests involved (Maigua & Kariuki, 2019). Alternative Justice Systems Framework Policy 2020 and the Court Annexe Mediation 2016, recognizes traditional, informal and other mechanism used to access justice, has thus set out mechanisms that should be used in managing these conflicts. Article 60 of the Constitution of Kenya (CoK) also encourages that communities settle land disputes through recognized local community initiatives in a manner that is consistent with the Constitution.

The introduction of systems of land tenure by the colonialists led to the progressive exclusion of land by the local community eventually giving security of ownership to the colonialists in 1934 resulting in the establishment of settlement schemes leading to massive eviction of communities. This led into a move from customary land ownership to individual land ownership as a means facilitating agricultural policies (promotion of cash crops production). In 1959, legislation was passed that abolished rights to land under customary law. With the increase of population and shrinking of land sizes, people started buying land outside their communities. This led to inter communal conflicts as well as changes in family structures and clan relations making solving of land disputes using traditional systems difficult.

Despite this progressive legal framework, Kenyan women's land rights continue to lag behind those of men. Customary law, which often discriminates against women and limits their land and property rights, governs at least 65% of land in Kenya and the patriarchal nature of Kenyan society often limits the rights of even those women not living on land governed by custom (FIDA Kenya, 2009). The number of women holding title deeds varies from region to region but the national average stands at 5%. The lack of awareness of property rights on the part of women also hampers their access to land and resources.

This clear pattern of discrimination based on statistics has been acknowledged by many actors on women's land rights who have raised a great concern that despite the existence of a robust legal framework in the form of the Constitution of Kenya and several statutes, the distribution of land has not adhered to gender equality and social justice. Allocation is done only to men and brothers who would vehemently oppose any allocation to women even if they are their sisters. This stereotype narrative is evident even where such land is part of a government programme under a resettlement program, the community elders would still not consider allocating land to women despite them being female headed households. These reports confirm the fact that women in Kenya have continued to be disenfranchised, disinherited or denied access and control of land.

¹ Constitution of Kenya (2010), art. 48.

Women and Land

Women lack power to control land as a result of socio-cultural practices that deny them equal access and rights. The socio-cultural practices impact women differently depending on their economic status whether they are married, single, separated from their spouses, widowed or in a polygamous set up. At play are the relationships at the family, community and society levels. In a patriarchal society as Kenya, the female male relationships determine the ease with which rights to access and enjoyment is attained.

It is important to understand that the marginal nature of women's land rights is a historical problem in Africa-(International Food Policy Research Institute (IFPRI) www.ifpri.org . Before colonial rule in Kenya, land ownership and access took diverse forms but were largely vested in lineages, clans and families, with male leaders exercising day-to-day control. Members of a particular lineage, kinship, or clan would seek rights to use land from those community or family leaders. Except in a few communities like the Kikuyu and Meru who have matriarch lineage with inheritance passed through the mother, most land were typically inherited by sons and women rarely had full rights to land as they were seen as secondary claimants whose entitlement was through male relatives. This notwithstanding, there remained overlapping individual and group rights with traditional systems for protections that ensured continued access to land for use even after separation, divorce, or widowhood for women. In the event that there was land contestation, women could appeal for redress through existing traditional arbitration structures.

To address this precarious position that women find themselves, the ownership of land by women through title deeds has been promoted as a solution to women security of tenure because it secures their legal rights. Unfortunately, during the documentation processes around land, it is men who have been predominantly recognized to have a right to ownership. The introduction of the Land Registration Act 2012 has attempted to address the skewed customary land holdings by protecting women's interests in customary land through prescription requiring approval of any land transaction by both parties in a marriage. Even this is not bullet proof as women continue to lose ownership.

Enforcing Justice in Gender and Tenure Security

Pursuing justice also comes with threats and intimidation against women. Where women have been persistent in their pursuit for land rights, physical, psychological, and emotional tactics are used to deter them from moving along with their demands for land enjoyment. Some have had their property destroyed, their rights to access land to farm/cultivate denied or curtailed. Even though the formal courts can resolve land disputes, community members prefer to have their land issues dealt with using alternative dispute resolution systems. Most Alternative Justice Systems and Alternative Dispute Resolution (ADR) mechanisms, will have traditional elders, community leaders, local government appointed chiefs, members of the community and peace committee, most of whom are overwhelmingly men.

Resolutions made at both the formal and informal structures in support of women rights, leave women with the responsibility of enforcing these rights. It does not take into consideration women's position in the patriarchal structures; neither does it acknowledge the conflict that may have arisen as a result of pursuing her rights, which may have been taken away by her extended family. Rulings do not make the right accessible, neither does it necessarily translate into the enjoyment of these rights because enforcement is not just about giving a ruling in one's favour, or an acknowledgement of a right, it also must extend and include enforcing the decisions.

Background to the Study Area in Western Kenya: Customary Practice

Property and inheritance were important to women across all the cultures as it is an economic, cultural, as well as a social identity. The Luo customary laws recognized the right to inherit, manage, and dispose of property under a communal system that viewed ownership and management of land as a communal exercise for the benefit of all present and the future. Land was not owned by one person but the whole community; that's why the issue of land inheritance by women did not exist. Fathers could apportion land to their married daughter who had come back because of a broken marriage to till so that she could take care of herself and children but still this was held in trust for the family. In the event that the husband in a polygamous family passed on, the first wife inherited not only his property but also whatever role and powers that he had over the rest of the family. The advent of titling disrupted the traditional and cultural practices that protected access rights to women and children.

Among the Luo, Kuria, and Luhya communities, in the event that a wife was unable to bear children, she would identify a young woman or sister and give to her to husband as his wife. Amongst the Luos and the Luhyas, the wife would be married to the husband while among the Kurias she would be considered married to the wife (*nyumba mboke*). In all these situations, the wife was still eligible to inherit land. The widespread practice of fathers leaving their property and assets to their sons is premised on the same principle of holding in trust the property for the equal benefit of the community and that community included women, girls and boys. Community structures held cultural power and were highly respected within the communities and all their actions were guided by cultural norms that protected women, children, and the vulnerable. Their decisions carried power and were regarded as final.

What is becoming evident, is that the legal framework that is undoubtedly considered as pro women, is working alongside an entrenched male dominated and patriarchal land management system that continues to present barriers thereby affecting women's ability and potential to not only own and access but also control because it sets the bar for evidence so high especially where proof is need to show direct interest. Meanwhile cultural structures have not moved to align their decisions with the existing framework on inheritance and succession

II. Legal Framework for Women's Rights to Land

The Kenyan Constitution recognizes three broad categories of land – public, private, and community. The Kenyan legislation, policies, and regulations on land has gone under comprehensive reforms in line with the Constitution of Kenya 2010, creating laws as the Land Act 2012, Land Registration Act 2012, National Land Commission 2012, and Community Land Act 2016 all aimed at addressing the issue of discrimination and marginalization on land issues.

Private land consists of registered land under freehold tenure and land held under leasehold tenure and private landowners have absolute proprietorship and the rights of exclusion except in cases of compulsory acquisition by the Government, as outlined in sections 107-120 of the Land Act, 2012. The right to acquire and own property is guaranteed to all Kenyans. Women's rights to land are legally equal to those of men under Art. 27(1), which provides that, "every person is equal before the law and has the right to equal protection and equal benefit of the law," but in reality there is a significant gap between men's and women's rights to land.

Community land consists of land legally registered to a group, transferred to a community through a legal process, or declared community land by an act of Parliament, as well as lands traditionally occupied by

hunter-gatherer communities, lands held, managed, or used by specific communities as “forests, grazing areas, or shrines,” and land held in trust by a county government for a specific community. The Bill of Rights stipulates that there will be equal treatment of all persons under the law and that the right to equal treatment for women and men in the, “political, economic, cultural and social spheres.” It also prohibits discrimination by the state or a person, both direct and indirect, based on a variety of factors, including race, sex, pregnancy, marital status and disability. The Government also has a mandate to implement legislation and affirmative action programs to redress disadvantages to individuals and groups as a result of past discrimination.

Any treaty or convention ratified by Kenya shall form part of the laws of Kenya. This is important because the Government of Kenya has ratified a number of international conventions and treaties with non-discrimination provisions, including women’s rights conventions that support women’s equal rights to land, such as: the Universal Declaration on Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979); and the African Charter on Human and People’s Rights (1981).

The Constitution recognizes customary law but invalidates it to the extent that it conflicts with the provisions of the Constitution, providing Kenyan women with legal protection against discriminatory customary practices. Article 159 promotes the use of alternative forms of dispute resolution, including traditional mechanisms, but traditional dispute resolution mechanisms are prohibited from acting in a way that “(a) contravenes the Bill of Rights; (b) is repugnant to justice and morality, or results in outcomes that are repugnant to justice or morality; or (c) is inconsistent with this Constitution or any written law.” The elimination of gender discrimination in customs and practices is an explicit guiding principle in the area of land use and management. Gender equity is also a guiding principle of the National Land Policy.

Kenya’s National Land Policy 2009 which was developed through a multi-year consultative process provides a vision to “guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity.” The policy recognizes customary rights to land and attempts to improve efficiency in land use and management by streamlining land administration, management, and dispute resolution. It also addresses issues that require special intervention, including resolving historical injustices around land and improving gender equity in land use, management, and ownership. It specifically cites the need to protect women’s right to inherit land, protect the land rights of widows and divorcees, and establish a matrimonial property framework that provides equal rights to land for men and women during marriage and upon dissolution of the marriage and distinguishes between married and unmarried women’s inheritance rights, directing the Government to secure the inheritance rights of unmarried daughters.

The Land Act No 6 of 2012, on the other hand, seeks to give effect to Article 68 of the Constitution. It focuses on revising, consolidating, and rationalizing land laws and eliminating culturally biased practices that hinder women’s participation in the control of land. The Act defines the three categories of land in Kenya (public, private, community), and establishes the framework for managing and administering public and private land. It includes protections for the rights of landholders when their land is compulsorily acquired by the government and dedicates a chapter to settlement programs. Some of the provisions of the Act include the identification of beneficiaries that must be carried out by a sub-county selection committee which must include a women’s representative elected by a local women’s organization, definition of ‘marriage’ as inclusive of civil, customary, and religious marriages and ‘matrimonial home’ as “any property that is owned or leased by one or both spouses and occupied by the spouses as their family home” requiring spousal consent for the execution of any charge on a matrimonial home.

The Land Registration Act 2012 (LRA) was enacted to revise, consolidate, and rationalize the registration of titles to land and to give effect to the principles and objects of devolved government in land registration, and other related purposes. All land registered or deemed to be registered under the LRA must comply with the provisions of the Act. Accordingly, traditions and customs that could be detrimental to women's property rights cannot be applied when dealing with land governed by the LRA. It includes strong protections for the land rights of spouses by allowing for joint tenancy and including a presumption of joint tenancy for any land obtained for co-ownership and use by both spouses, granting spouses a legal interest in land held in one spouse's name where the other has contributed to it through his or her labour, and requiring spousal consent for the disposition of any land or dwelling.

The other laws that seek to protect women's land rights in Kenya include the Marriage Act 2014, which consolidates the various laws relating to marriage and divorce and for connected purposes, the Matrimonial Property Act 2013, which provides for the rights and responsibilities of spouses in relation to matrimonial property and for connected purposes, i.e. ownership of property within a marriage as well as at the dissolution of a marriage. It explicitly states that married women have the same property rights as married men. This echoes the Constitution provision which states that parties to a marriage are entitled to equal rights at the point of marriage, during the marriage and at dissolution of marriage. Under the Matrimonial Property Act 2013, matrimonial property is to be divided between the spouses upon divorce or the dissolution of the marriages, but "ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition." The term contribution has been clarified to mean both monetary and non-monetary contributions, including domestic work, childcare, and companionship, making it significantly more inclusive of the types of contributions typically made by women to the household.

Law of Succession Act, cap. 160, is another legal framework that governs inheritance for all Kenyans, with the exception of Muslims. The Kenya Law of Succession prescribes the rules which determine what ought to happen to a person's estate after his or her death. It is also referred to as the law of inheritance i.e. transmission of property rights from the dead to the living. The rules of succession identify the beneficiaries entitled to succeed to the deceased's estate and the extent of the benefits they are to receive. The Kenya Law of Succession determines the different rights and duties that persons (for example, beneficiaries and creditors) may have in a deceased's estate

On dispute resolution, the constitution provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair² and mediation is recognized under Article 48 of the Constitution of Kenya (2010) as one of the ways through which access to justice is promoted as it helps disputing parties resolve their disputes and restore their relationships. Article 68(c)(iii) of the Constitution of Kenya provides that "parliament shall enact legislation which shall regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage." Article 68(c)(vi) provides that parliament shall enact legislation "to protect the dependents of deceased persons holding interests in any land, including the interests of spouses in actual occupation of land" and "to provide for any other matter necessary to give effect to the provisions" of the constitution. These provisions seek to put right injustices women have historically faced in relation to matrimonial property.

Section 28 of the Matrimonial Causes Act provides that after the pronouncement of a divorce, the court will make orders regarding the application of the settled property for the benefit of the parties and the children. This power shall be exercised even if there are no children meaning that they shall be exercised

² Constitution of Kenya (2010), art. 47.

for the benefit of either spouse. Section 29 provides that the court may give protection orders to protect a married woman's interest in her property acquired before the marriage or after a desertion. A husband or his creditors can under this section be estopped from laying claim over property acquired by his wife before their marriage or acquired during his desertion. The Marriage Act 2014 seeks to consolidate the various laws relating to marriage and divorce and for connected purposes. It gives life to Article 45(3) of the constitutional which provides for equality in at the time of the marriage, during the marriage and after the marriage. It provides guidelines on how matrimonial property is to be owned and controlled by spouses. It mainly aims at protecting the land and property rights of women in marriage, whether monogamous or polygamous by defining the parameters of matrimonial property and creating provisions for women to control how this property is used. It also defines matrimonial property and acknowledges non-financial contribution of women to the land and property acquisition.

III. Methodology Overview

This evaluation was conducted between February 2020 to July 2020 and included case studies for formal and informal rulings on women land rights; desk-based document review, key informant interviews and focus group discussions in Kisumu, Migori, and Bungoma Counties in Western Kenya as well as phone interviews with women.

The specific research objectives:

1. To assess the effects of power of community's patriarchy, traditional systems, and community Justice Systems on National Legislations
2. To examine the land legal, policy and institutional reforms that are aligned to the Constitutional provisions in securing land rights for all especially the poor and marginalized women
3. To demonstrate an understanding of the social and legal context within which women's land and property rights are governed.
4. To describe the challenges that hinder the enjoyment of women's property and land rights.

Case Study

This research used case studies methodology and employed triangulation of qualitative and quantitative methods to gather data in a bid to establish the extent to which formal rulings and non-formal rulings translated to secure women land rights so as to achieve the study objectives in Kisumu, Migori, and Bungoma Counties in western Kenya. A total of 39 case studies were undertaken which afforded a good sample size of those interviewed under this study. 30 case studies were primary sources of information got and 20 are used in the analysis and report writing, while 9 case studies were secondary cases got from the Kenya Law reforms databases. The case study approach was chosen because it is appropriate in eliciting in-depth, multi-faceted understanding of a complex issue in its real-life context. The case study design is used extensively in a wide variety of disciplines. The case study methodology employed was to help *explain*, *describe*, or *explore* to what extent has informal court rulings and non-formal rulings translated to secure women land



Figure 1: Beneficiary of the study

tenure in western Kenya. The methodology enabled us to explore the women experiences and also to understand the causal links and pathways resulting from the formal rulings, non-formal rulings and how they translated to secure women land rights.

Desk Review

A document map, linking key documents to the main areas of review for the evaluation was drafted and information obtained from documents was mapped against the areas of review/ evaluation questions and key data extracted to inform analysis. Mandatory literature for review included the project call for proposal, Constitution of Kenya, Land Act 2012, and all related laws. Various research publications and reports on Women's Land Rights were also reviewed to gather the secondary data that responded to survey objectives and questions.

Key Informant Interviews

In total, 12 key respondents (8 males/4 females) were interviewed in Kisumu, Migori, and Bungoma Counties. Respondents included policy makers; officials of Ministry of Lands, and Judiciary at decentralized levels; Council of Elders, officials of Civil Society Organizations, women, and youths among other respondents

Focus Group Discussions

A series of Six (6) Focused Group Discussions (FGDs) were carried out in the study areas in Kisumu, Migori, and Bungoma Counties to gather information to complement the desk review and key informant interviews. In total, over 64 people drawn from provincial administrations, representatives from CSOs, women, men, and youth. At least two researchers were present during the FGDs and ensured all the participants were given equal chances to respond to the questions

Sampling Method

Respondents were identified through multi-stage sampling. Whereas convenience and purposive sampling techniques were used to select the respondents of participatory discussions and key informants, a snowballing technique employing a combination of 'top down' and 'bottom up' snowballing strategies was used to select the women for the 30 surveys.

Key Concepts and Analytical Frameworks Used in the Findings and Analysis

The research was guided by three orienting questions:

1. What does a successful implementation of a land outcome look like in the different place specific for women who pursue their rights for their holistic benefit in both an urban and rural context?
2. How can women rights be realized in the different rural and urban context and is there a causal effect between enjoyment of land rights and gender and culture?
3. Which initiatives exists in these different contexts for women in the enjoyment of the land reform regime and what effect do they have?

Through the analytical framework, the research has been able to gain a clear understanding on the impact of land reforms and impact on livelihoods through a process of identification of beneficiaries. In so doing it will build on the overarching and interacting principle of security of tenure, access to justice, marriage and family, and institutional implementation which anchor the demands for land reform.

If we are concerned with how women's land rights (or the lack thereof) affect women and their families, then it is important to consider their experiences, which requires going beyond legally codified rights, to

understand the empirical complexities of rights because women pursue their land rights to address their rights and needs, which include the right to food, shelter, dignity, security. This agency to access and participate in enjoyment of their rights through the action of using land laws protecting their interest is just.

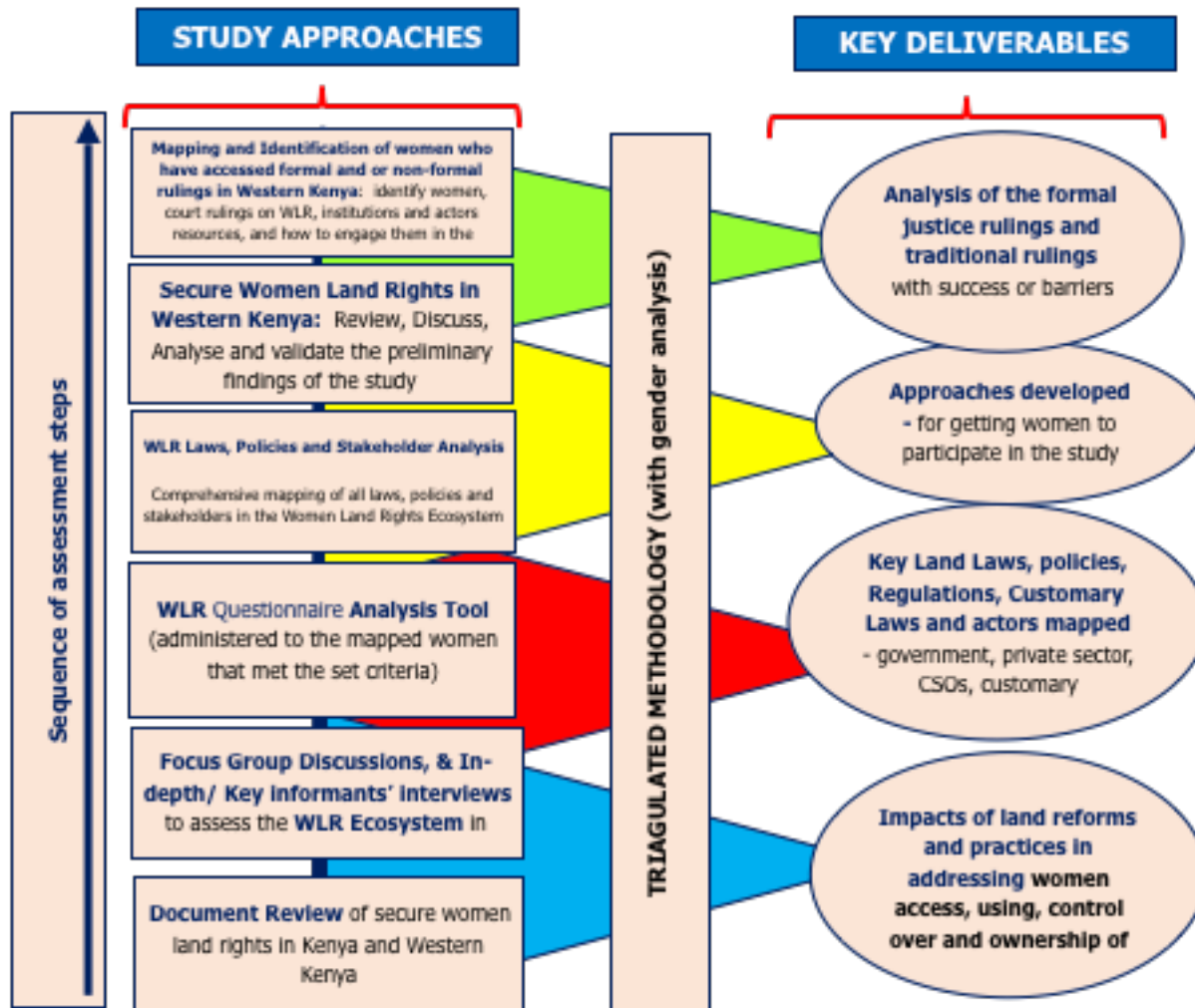
For any land parcel, different individuals may have different rights, encompassing social, economic and legal dimensions. Thus, it is useful to disaggregate these rights and consider their multiple dimensions, related to security of tenure – including ownership, access, control and usability. Understanding women's land rights tenure security involves knowing the rights women hold, as well as the extent to which those rights are secure. In the social science literature, this is often conceptualized as a bundle of rights. It suggests that there are multiple rights and they can all be held by one individual or group or the rights be distributed among different individuals or groups. It encourages us to consider which individuals or groups hold which specific rights, what and where they derive their power, rights or control over another's enjoyment of their bundle or rights.

This research aims to draw on existing practice and contribute to new knowledge production by placing justice as a major outcome in all the land interactions for women. It has looked at justice through the context of enjoyment of basic and needs rights. In our efforts to understand the extent to which the land court rulings translate to women land tenure (women lands rights), we shall focus on the extent to which various outcomes and rulings have impacted on women in land access, use, control and ownership of land and the importance of security property rights encompassing predictability, assurance and legitimacy.

The research uncovers how the land court rulings have improved (or decreased) women land ownership, access, management, exclusion-the right to keep others off the property or they may be vested in different people, and Alienation-the right to transfer the property rights to others, through sale, bequest, or gift. In addition, we shall borrow from the International Food Policy Research Institute, 2013; Johnson et al., 2016, and assess the court rulings effects on women land ownership and checks whether women are independently having all these rights, including sale or other forms of disposal, backed by formal legal institutions, including how women accrue benefits from land even without having full land ownership rights.

Lastly, we shall examine how the land court rulings impact not just on the women but the indirect beneficiaries who co-own or co-share the land and whether these have any impact on how these rights are held, enjoyed and enforced. The idea is to define three dimensions of tenure security which include:

- (1) robustness where rights are known by the holder, accepted by the community
- (2) enforceable by law, completeness when more rights are held by one individual or group
- (3) Joint-ness where rights are held individually or jointly.



Figures: Triangulated methodology used in the study

IV. Findings

Most of the women interviewed during the research lived in the rural communities where customary land allocations still rule and women's access to land was primarily through their husbands, fathers, or some other male relatives. The research findings reveal that women are not just consumers of justice systems but are also actors in both the judicial and judicial rulings. Many women in this study context experience different challenges in their pursuit of land ownership rights. The study shows how land rights based on customary law can be allocated differently, according to gender, social values, social and marital status. The patriarchal nature surrounding land impacts a guarantee of justice because these customary norms may be used to dispossess women of their rights, even as they have the capacity to defend women's land claims; leaving room for uncertainty in the interpretation and application of the same law

The findings have been categorized into thematic groups that show commonalities across the case studies depicting women land access and ownership, with specific examples from case studies for each category

to help determine the extent to which judicial or non-judicial rulings have impacted women's land tenure security

V. Robustness of Formalization as a Dimension of Security of Tenure

A right is only as robust as the institution(s) that stand behind it. In practice, land tenure security, more so as exercised within non-judicial systems is as robust as the duty-bearer's own norms and beliefs, awareness of the legal framework about women's property and application of the framework and willingness to uphold/support women's tenure.

This robustness of rights relates to the extent to which they are enforceable when under threat, and that forums to protect rights are accessible and have power to enforce for the benefit of the holder of the rights. The assumption that cultural rights are more robust is in doubt in the case of Jane Mboke, who shows the enormous challenge women face when demanding her land be subdivided was asked by her husband, *"whether she came with any piece of land when she was getting married."*

Family remains the primary battleground for realization of women land rights. Because robustness depends on the source of the rights and the nature of challenges to those rights, the grip of culture on matters land is so strong and have hindered women from accessing their land rights whether through a judicial and non-judicial means. At community level the ADR process, basing their foundation on customary law may be allocate Land rights differently, according to gender, social values, social and marital status. is an audacious journey to recognize the women land rights. Alice Aoko, Mary Kolwako, and Emelda Kwamboka are daughters being denied the right to own land belonging to their parents. Their being women was used to dispossess them of their land. However, they were able to reclaim their rights through both judicial and non-judicial process, when they pursued redress. This leaves room for uncertainty in the interpretation and application of the law.

VI. The Paradox of Documentation and the Power of Land Title Deeds

Focusing on title or documentation alone as proof for land tenure security, without addressing persistent barriers faced by women, not only misses the mark, but could also end up being counterproductive. Any policy or intervention to secure women's land rights must also address women's reality on the ground, including their lack of access to resources and information, unequal status in land and family laws, discriminatory customary norms, and limited ability to claim or enforce rights and seek justice due to lack of data to back up claimed land.

Land titles, where available, can be useful in ensuring protection of rights in judicial rulings. But, according to the study, they do not necessarily guarantee women the power to access, use, and control the land, but documentation has value to women when they seek judicial rulings to entrench their legitimacy. Women land rights are more secure when they have both the cultural and legal legitimacy. The study showed how women may legally own property and yet remain unable to exercise any control or enjoy rights associated with such ownership.

Teresa Akeyo, had a title in her name, somehow her property was transferred to a new owner, when she sought help from the local structures, she was unable to get any assistance and was advised by the police to go to court having confirmed that her documentation was genuine. Teresa believes that the whole

justice system is rigged against the poor when those who are supposed to be the defenders and protectors of the vulnerable in the society as the chief and the village elders in this case join hands with their oppressors to rob them. Whatever documentation she had was disregarded and ignored.

A land title deed is a document that proves ownership and legal right over a piece of land. It is the most fundamental document required during a land transaction and its details are usually changed from the vendor to the purchaser after a land transaction has taken place to show the transfer of ownership. They also form the foundation of one's legitimate claim that guarantees the ownership but like the study found out it does not necessarily translate to ownership.

Lillian gave all her documents, including land title deed, which was already in the husband's name, for her portion of the plot to her brother in law for custody upon the death of her husband. Once they were done with the burial, she approached the brother in law for the documents, but he declined to give them back and demanded that she leaves. Her in laws took her to court in a process that was to drag on from 2007 – 2011. Lillian, with the help of her family and friends, had to self-represent herself in court because she could not afford a lawyer. The court also ruled that she be given back the title deed, which has not been done up-to-date. She consoled herself that at least the court had pronounced itself and that she can enjoy her stay undisturbed. She has also not gone back to court to seek enforcement orders, but believes that she will be confronted with more resistance from the family in the absence of her mother-in-law

Her case is similar to one filed in Kakamega, In the matter of the estate of Festo Akwera Kuseba alias Akwela Kusebe (deceased), Kakamega Succession No. 991 of 2014, in cahoots with the Area chief, a mother-in-law presented herself as a sole survivor and acquired rights to manage the estate of the deceased son, while the legitimate wife was left out. The wife moved to court and successfully sought revocation of the grant made to her mother-in-law. She stated that the grant was obtained in a defective process as the consents of the other survivors and beneficiaries of the deceased, herself included, were not obtained and that her mother-in-law did not include her as a beneficiary.

Giving its judgement, the court held that a case for revocation of the grant had been successfully proved. It faulted Rispah, in collusion with the area chief for not disclosing the children of the deceased and the children of any of them who had died. The court nullified the grant initially issued to Rispah and cancelled her titled.

VII. Enforcement of Both Formal and Informal Rulings as a Protection for Women's Rights

Informal structures apply cultural laws of inheritance for their rulings, whereas the courts apply the numerous land laws available to them for their decisions. In instances where informal structures have been unable to restore women's land right, women have approached the formal process to claim their rights and legitimize their appeal. Rulings like the one given below have created precedence that can be used to support women's cases:

In the Kisumu succession case no. 750 of 2015, in the matter of the estate of Pius Were Ogada (deceased), Evaline Atieno Were versus Dominic Nyamema, Judgement delivered on: December 14, 2014, Ms. Evaline Were and her daughter, Linet, successfully objected to the mode of distribution proposed by Dominic Gor on the ground that the latter had no legal right to share in the deceased's estate. It was stated that Dominic

was a cousin to the deceased and had inherited Everline as his wife. Dominic had proposed that he be allocated two out of the three parcels of land, yet the deceased had four children. In its holding, the court found Dominic's claim over the deceased's estate was unmerited and dismissed it. It then confirmed the grant directing that Everline Atieno Were shall have a life interest in the whole of the deceased's land parcels and that the land parcels shall devolve in equal shares to the deceased's children. The court stated that the wife and children, who are in order of priority under the Law of Succession Act were the rightful persons to inherit the deceased's estate.

However, it is not enough for women to win a case before a judicial court, as the challenge remains how they will enforce the rulings and enjoy these rights. Even though Courts are considered as the superior units and legitimacy for justice, a number of women who sought redress through the judicial process and received favorable rulings, found themselves left alone to secure these rights and enforcing these rulings has been a major challenge.

Take Alice Aoko, who was given ownership of the ancestral land by her father-in-law. When he passed on, someone from the community took possession of the land and put up a structure. The father to the aggressor confessed that his son had no right to build on someone else's land and asked the chief to take administrative actions to rectify the situation. She had to prove she is the bona fide owner and even though she still does not have full custody of all her land, the acceptance that she is the rightful owner is her success and it is what has been able to give them the freedom to continue to pursue full ownership.

The resistance by family members is mostly informed by cultural beliefs and practices that have traditionally been against women leadership in different fronts including the socio economic. This opposition is mostly from close family members who still do not believe that women can enjoy the rights to do as they wish with their family property. This has hindered their access to, control, and use of their properties for economic engagement.

Emelda Kwamboka was also given land by her father after the family had agreed with the decision. In 2019, the wives for the brothers ganged up to demand that the piece of land that she had been allocated be revoked and be shared between the brothers. One of the community leaders stated that the law that requires that daughters also benefit from their father's property has not reached the community! Could he also subconsciously believe this and therefore not be in a position to act decisively. She still is not in possession of her land.

There is stigma associated with a daughter-in-law standing in the dock against her father-in-law in the formal courts making non-judicial or traditional structures preferable to women. Further, most women are not familiar with the laws and non-judicial or traditional structures are local, cheaper, and have a history of community knowledge makes them attractive spaces for pursuing justice. The process during mediation is usually influenced so much by cultural practices and beliefs that sometimes places women as not deserving of land as challenge that most widows face. Rulings made through the informal justice systems are regularly disregarded even in situation where women own land even through inheritance, they are not readily recognized, neither is there any form of accountability when there is a lack of enforcement of mediation resolutions.

Caroline Odek was recognized as the wife at every session with the different ADR structures in accordance with the Law of Succession Act and it was made clear to her in-laws that they had no power to divorce the deceased's wife and also informed that they could not write any letter to the exclude her from benefiting from her husband's estate. She could not enforce any of the rulings.

While instances where women are aware of laws to secure their rights, most women in the study spoke about the lack of and challenge of enforcement blaming the strong cultural beliefs that dictates that land belongs to men and women have no say at all.

A case in point is Naliaka Nyongesa who had the backing of the village elder who chaired the meetings and ruled during the ADR sitting where all the sides were given equal chance to participate, that she be granted full access and control over her late husband land parcel, she has been denied access whatsoever, by her brothers in law to her land for cultivation and to date been unable to access key documents relating to her deceased husband, namely, the national identification card and the death certificate to facilitate access and enjoyment to her husband's estate and initiate the succession process to transfer property to her name. After several attempts using non-judicial process, due to lack of enforcement of rulings and adhering to agreed resolutions, she has begun the legal redress through the courts systems against her brother in law

The case studies have revealed the struggle against patriarchal beliefs that women face in their quest for land ownership and others have shown that justice is not guaranteed just because the court has ruled in her favour.

Mary Kolwako's mother divided her land equally between her daughter and son. When Mary started the process of transferring the land in her name is when the trouble began. Taking advantage of the absence of males in home, her neighbours have tried repeatedly, to disinherit them and fraudulently obtained an allotment letter, claiming to be the rightful owner. Mary is convinced the absence of any men in their family has meant that this fight has been carried out on their own and even explains why enforcing the court order has been difficult.

Catherine Chelegat's case exposes how lack of enforcement creates a powerlessness. She was sent away in 2007. *Her efforts to get assistance from the provincial administration in her area proved futile when the local chief insisted that hers were internal family issues which should be sorted out at the family level. She then went to the District Officer who summoned her brother in laws twice, but they still refused to allow her back on her land. Driven away by the election violence in 2008, she only returned in 2010 to start her case again with the new chief but discovered that he was sympathetic to her brother in law. Seeing that avenue closed, she escalated her complaint to the District Commissioner, who summoned another chief to listen to her case and called a meeting bringing together her in laws and 8 community leaders. She was told to wait until January of 2011 to return to her land. In January, she went back to the chief, who chased her away telling her not to disturb him. A new District Officer was posted to her locality and she had to start the process again, but was transferred before the matter could be completed handing it over to his replacement, who got another chief to intervene but the chief refused to call a mediation meeting. In January 2020, a new chief, who was now handling the matter, demanded for documents from Catherine's in laws showing next of kin. They were given 2 days and were unable to produce the documents. Although this was a positive turn for Catherine and there was hope that she will get justice, COVID-19 pandemic happened, and everything has come to a standstill and she lives in constant fear of attack from her in laws.*

VIII. Unpredictability of Informal Justice Rulings and Non-Standardization of the ADR Processes

Well organized structures enhance access to justice and higher chances of favourable non-judicial rulings. Most of these structures lack accountability and operate as though existing land laws are in conflict with culture and therefore ignored. They are dominated traditional men and creates lack of confidence on a process that is considered fair to render favourable rulings for women land rights. The very nature of informal judicial structures presents its own challenges. The ability of women to broker justice and power, both from the judicial rulings and informal rulings hugely depends on women's empowerment, access to information and support from local women rights actors. However, the complexity of women cultural and social status means protecting her property rights remains in jeopardy like *Emelda Kwamboka, having been given land by her father only to have this disputed by her brothers claiming she had been married elsewhere and was not deserving of any land allocation.*

In 2019, Ms. Kimutai was elected to serve as a Land Committee Member to hear land cases in the committee. She took advantage and registered her case too. The committee members whom she serves with refused to hear to her and kept on disappearing when the time to hear her case; and came to the realizations that they had been compromised. She then appealed her case and reached out to higher ranking with government officers; county commissioner who agreed to send the Sub county administrator for a fact-finding mission, but he also never gave Ms. Kimutai a chance to her side of the story. Finally, in 2019, despite the fact that she had lost her allotment land documents during the fire incident in 2007, she filed her case in Bungoma Court and has been faithfully attending to all hearings in person.

There are no clear operating guidelines, their outcomes are different from one structure to another, there is a non-standardization of the ADR process, most do not use or acknowledge the existing legal framework and have no accountability mechanisms. What has emerged out of this study is that unless community structures have leaders that are strong and principled as in *Carol Odek's case, who was unaware of her rights, left her home after denied opportunities to generate income from it, numerous threats, abuses and assaults. Learning that she had rights, using an ADR mechanism with members of the Luo Council of Elders, began to have family dialogue sessions reaching amicable settlement allowing her to return. The family is now talking about subdividing land so everyone can get their respective title deed.*

When intervention is impartial, the outcomes will usually lead to a fair ruling on behalf of women seeking justice. Like *Carol Odek, Matina Gibai, who was married by a woman, when some of her in-laws tried to disinherit her, went to court. She withdrew the case on the strengthen that right to land would be handled through the ADR process. The hearing of the case was done 1 week after the withdrawal of the case from the court of law and the woman was accompanied by her brother, father and mother and the family where she is married including all the in-laws during the meeting. The area chief and the police who was investigating the case, all appended their signatures to the agreed outcome. The support she got from the leaders and community, made the process happen efficiently and quickly.*

Knowledge, attitudes and practices remain a stumbling block for the realization of women land rights. In all the case studies, cultural beliefs play a significant role in determining women's rights. There is a real disdain with which women who have lost their husbands are treated. Support from community structures are important for women who are left on their own and a lacklustre attitude from duty bearers by not standing with the vulnerable even in cases that are pretty straight forward and demanding accountability only reinforces this culture and attitude towards and against women with land concerns.

Jackline Akinyi approached the area chief explaining her predicament and requested that he invites her co-wives and in-laws for mediation, but the meeting degenerated into a feud and was unable to find any

solution. She found herself isolated and outnumbered without any support from any member of the family. She reached out to elders near her home, who approached the family and when subsequent mediation meetings resolve the issue, the elders threatened to go to court. Seeing that she had allies in a community organization and backing from the community elders, the family sent emissaries for her to return. It has been 8 years since she moved back and Jackline is processing a title deed to her piece of land.

IX. Women's Resilience to Claim Their Rights: Fighting Culture in Pursuit of Recognition

Women still require an additional layer of effort to exercise those rights; they need money, social support and legal awareness to follow up on the rulings. In principle women can claim ownership by virtue of a ruling but still fail to enjoy the bundle of rights associated with land ownership due to negative social norms, fear, grievous social relations among others.

The study revealed how most women showed determination to pursue different avenues; non-judicial or judicial or both and even in extreme cases whether they lost their lands. *Sarah Naliaka is the first wife in polygamous marriage and had jointly bought 1-acre piece of land with her late husband in 1990 in Sacho area, Mt. Elgon, Bungoma County. Trouble started for her after the demise of her husband when a brother to the person who had sold them the property alleged that their sibling had made a mistake in disposing of that property. When the man started demanding some non-specified amount of money for non-specified reasons from them, Naliaka approached her family and clan, and the community convened a community land dispute resolution team to hear and determine the case. To try and frustrate Naliaka and her co-wives, the aggressor in this case transferred the court case to Kakamega (70 km away) in Kakamega County to deter them from attending the courts due to the high costs of transport involved (approximate Ksh.2,000/US\$20/AUS\$33) but she requested and was granted by the court during the mentioning of her case, that the case be transferred back to the nearest court, which she won. The seller continued to bully them even in the court demanding extra payments which were not substantiated. She adequately represented herself and won her case, got her wishes from the court, and felt strongly empowered through the process.*

Access to legal information and support for women is critical for judicial forums and non-judicial forums. *Rhoda Owino says Women should strive beyond access only to ownership of land in order to enjoy security. The best form of secure land tenure is having full control to do with what you want with the land. Women are exposed to so many pressures when pursuing redress with persuasion for the peace or sake of the family. Rhoda came home one day to find her home had been demolished. Her trouble began after she refused to be inherited and practice the Luo cultural practice that she did not accept. She never gave up and a joint mediation organized after she reached out to the village elders and chief and they managed to settle the differences. She had another house built for her on a different piece of land that the family apportioned her, away from her original plot.*

When culture is used to disinherit women, reaching out for help and the community is against you, one feels completely abandoned. Having married in a different ethnic community Ignoring the law about the *matrimonial property Act in the division of property*, *Lillian Onyango was told "You are not one of us and so your rights don't apply" when the family started to openly discriminate against her while subdividing the land between her and her co-wife. However, in April 2020, her father in law wanted to sell a part of the bigger land and welcomed the family members to take advantage of the process of surveying of the*

land to obtain their own titles to their respective property. Lillian managed to get her land boundaries put in place and thereafter was able to raise enough money to process her title deed and secure her tenure.

Meanwhile, Catherine Chelegat at 51 years was banished from her home and land. She said, “Just because I refused to be inherited it’s like I was never a wife and that these children, who they have known as their brother’s children now do not mean anything.” She was sent away from her land in 2007 and she has been unable to get back to her land. She believed the structures displayed instances of discrimination.

Violence was noted as part of intimidation directed to women to dissuade the women to either cede their women land or stop pursuing their land rights. Despite the threats and intimidation, most women continued their pursuit for justice. All the women in the study received threats. *Lillian Onyango was threatened with assault if she did not relinquish the land given to her. Naliaka received threats even as she was in court seeking justice. Mary Tamnai continues to receive threats because she is still pursuing her land. In 2020, she tried to reach out to the family committee chair pleading for support to return, but he is reluctant because of fear and intimidation. Rhoda Owino brother-in-law broke into her house and almost killed her. Caroline Odek was assaulted by her brother in law. Lillian Odeyo was assaulted frequently because she refused to vacate her house. Mary Kolwako was regularly threatened when she went to court to settle her case. Alice Aoko’s husband and son were arrested to intimidate her.*

The role of CSOs and grassroot human rights defenders in promoting women’s land rights has emerged playing a key role for women. Rhoda, Jane Mboke, Martina Gibai, Jacqueline, Lillian and Caroline Odek, got the courage to proceed with claiming their rights through linkages with organizations and their personnel on the ground supporting in organizing mediation meetings Civil societies working on creating long lasting positive impacts of women.

| Name | Chief and Provincial Administration Office | Police | Elders | Friends/NSA FBOS | Community Land Committee/ Family | Court |
|------------------|--|--------|--------|------------------|----------------------------------|------------------------|
| Violet Naliaka | 3 | 1 | 1 | | | 1 |
| Violet Kimutai | 2 | 1 | 1 | | | 1 |
| Sarah Naliaka | | | 1 | | 1 | 1 (3 different courts) |
| Mary Tamnai | 1 | 1 | 1 | | 2 | |
| Jane Mboke | | | | 1 | 1 (husband) | |
| Teresa Akeyo | 1 | 1 | 1 | | | 1 |
| Martina Gibai | 1 | 1 | | 1 | 2 | 1 |
| Alice Aoko Ngong | 1 | 1 | | | 1 | |
| Emelda Kwamboka | 3 | | | | | |
| Mary Kolwako | | | | 1 | | 1 |
| Lillian Odeyo | 1 | | | 1 | | 1 (She was taken to |

| | | | | | | court by her in-laws |
|--------------------|---|---|---|---|---|-----------------------|
| Carol Odek | | | 1 | 1 | 1 | |
| Caroline Oduol | 4 | | | | | 1 (filed against her) |
| Rhoda Owino | | | 2 | | 1 | |
| Jackline Akinyi | 1 | | 1 | 1 | | |
| Lillian Onyango | | 1 | | | | |
| Monica Ang'ela | 1 | | | | | 1 (filed against her) |
| Irene Muvachi | 1 | 1 | 1 | | | |
| Catherine Chelegat | 6 | | | | | |

Figure 3: Number of times women reported to different structures to protect their land rights

X. Conclusion

1. Law affirms women's dispossession of land but does not provide immediate remedy necessary for ownership. It is neither sufficient to make pronouncement that women have rights to inherit land, own land and bequeath that land since the research shows that such pronouncements do not necessarily translated in ownership status. There is need to recognize the power of the extra-legal norms and interest of the different participants especially the power residing in the elders, larger family and the males within homes. Reforming the laws without reforming the institutions that impact women land rights, will result in continued threat to women's land rights.
2. Almost all the women in the study are widows whose security of tenure was challenged upon the death of their husbands. While property registration laws are usually gender neutral, in reality, women are still discriminated against in property registration due to gender-biased social and cultural norms and practices. Without the inclusion of women's names and rights on the land registration document, women's property rights remain insecure. it was evident that as a customary practice, men are registered as owners or titleholders even though the marital regime provides for joint ownership of all property acquired post-marriage. This practice provides entry for the husband's kinsmen to claim ownership of the land should the man die in disregard of the law and the woman's claim. 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, her ethnicity and her health status. A process for encouraging spouses to write wills will assist in reducing the sufferings that women go through when widowed.
3. It emerged that a number of different laws regulate women's right to land and that ensuring equal rights could begin with analysing how existing land legislation, marital (including divorce) law and inheritance laws interact in terms of women's right to land and how statutory law can promote women's rights irrespective of their marital status. It also emerged that the role that patriarchy plays is not confined to the villages alone but is also present in decision makers and institutions.

These biases find their way in the decision-making processes and it is visible in the questions asked and the request though subtly for women to acquiesce more than the men who are their antagonists in these land cases. From the discussions with the women there lies much ambiguity around the understanding of 'ownership'; whether it is just about having your name on the title or being in control to what you wish with the land or both. There is a need for land tenure frameworks to explicitly address gender inclusive if women are to benefit from land administration, management and land ownerships.

4. There is need for a set of guidelines especially during the Alternative Dispute Resolution (ADR) process that protects women and her children's interests, so as not to be disadvantaged also emerged strongly. An interesting aspect that also emerged is that even though many laws have been set up to address prejudices and discrimination against women and their right to access and control land but, at the community level, these same laws are considered to be ignorant of the cultural practices that strongly promotes the idea that all ancestral land belong to a community and that most families follows a path that is predominantly male and women seems not to form a strong part of this network.
5. When dispute arises, enforcement requires that the disputing parties are familiar with the law and it also assumes that the parties have equal right to institutions and actors such as legal representative, legal aid, etc. as well as the ability to make a claim. However, this is not the reality on the ground and women are greatly disadvantaged due to their ignorance and lack of means to secure legal representative when it comes to land disputes. A good level of enforcement is further jeopardized by weaknesses in the institutional capacity of the judicial system to implement laws or handle all incoming cases, corruption, biased courts and legal officers who adhere to discriminating norms and conflict situations in which the legal system and law enforcement tend to be run, or even neglected, by the army or rebel groups. As long as denying women access and control of land is viewed as a simple family dispute and not criminal, we shall continue to see the responses that are not taken seriously on acted upon with haste
6. From secondary data it is clear that the practice of land formalization is either uncommon or a matter of last concern, the findings affirm that the process is both costly, fatiguing and elite for many women. The social tension that arises after judicial victories and the consideration that women still have to rely on documentation supply and cooperation with the very family relations, they are in contest with easily defeats the progression from victorious adjudications to formalization of land in their names. For instance, it is foolhardy to expect easy access of identification cards or death certificates to facilitate succession where the land in question was ancestral land. In the likelihood that this happens, who meets the cost of formalization when many stands to benefit beyond the woman?
7. Awareness and knowledge on the importance of land and the constructional guarantees of protection and securing women land rights were more likely to seek formal justice systems to secure their land rights. In addition, women with strong land rights have an in-built investment to pursue their rights and are more resilient to adverse shocks from their immediate family, communities and households. A central theme from the women informants projected an awakening of women rights to land triggered by deprivation and that this conversation around land rights only commence at their marital homes when the husband is dead, when there is threat to ownership or boundary dispute, or when her status is invalidated. There are very little conversations around land or inheritance rights for girls and women going on in their original

homes. This imposes a disadvantage on the part of girls and women with respect to land rights consciousness.

8. From the research findings, it's deducible that majority women in land conflict whether through a judicial or non-judicial process require social, psychological or economical capital to wade through threats, stigma, discrimination, costs and longer time spans that characterize land disputes. From the findings a number of non-governmental organisations and paralegals continue to provide the needed support for women, holding their hands, being present and even linking them with the courts, police, prosecutors and other like-minded actors.
9. The case studies show clearly that it's not enough to just be recognized as a rightful beneficiary. Post win, women are alive to the reality that this can happen again should she not be around and therefore the need to ensure her children never have to go through this again. Lessons learnt that guaranteeing security requires a formalizations process and so the battle moves to the next stage of having her name on title deed, with a genuine confidence that the law will work for her children.
10. We need to make the issue about women and land a community issue right across the country, from top to down. The research has exposed how it remains an individual matter, even though women will get help to go to court, the community structures, to follow up, it remains "her problem." This is not to dismiss the some of the support groups or network of allies, but at the community level, at the family level, she remains alone, ostracized and lonely. The absence of family support works against women, as she is clearly labelled as the other and makes the pursuit for justice a fight between one members of the family against the other. One with patriarchal support systems working in their benefit and the women as a disrupter.

XI. Recommendations

1. The judicial rulings should follow processes and clearly state the next steps in enforcement of rulings.
2. Appreciating that informal structures remain a favourable space for women seeking redress, then a process for enforcing the resolutions must be put in place and in the event that these rulings are not enforced. then an accountability mechanism must follow for accountability. There is need to establish or strengthen police and provincial administrations and the ADR structures as points of redress, promotion, protecting and fulfilling women land rights. This will give weight and more weight and legitimacy to these structures.

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ANNEX 1

Case Studies

Pursuit of Ownership, Access and Control: Violet Naliaka Nyongesa. Having been married for more than 20 years, her ordeal began after her husband passed away and she was chased her away from her land by her brother in law who claimed that women have no right to inherit land in their community. Having sought help in 2016 from the community structure that included the village elders and the sub chief, she was granted access to her husband's land and her brother in accepted the ADR outcome and offered public apology to her for the disgraced caused to her. He however immediately reneged on this agreement and continued to cultivate the widow's land going to the extent of even leasing part of her land for his own personal commercial gain.

"The ADR ruled that Ms. Nyongesa be granted full access and control over the late husband land parcel, during the ADR sitting where all the sides were given equal chance to participate and had the backing of the village elder who chaired the meetings. She was even allowed to call in her witnesses which also included her children."

She reported the issue to the area police in 2018 to intervene so that she could return to her matrimonial land. An ad hoc Alternative Dispute Resolution committee chaired by the Officer Commanding Police Station (OCS) was constituted in 2018 and was attended by the immediate family. After establishing the facts of the case, the elder brother in law was ordered to allow Violet unrestricted access and ownership of the said land. Despite committing to abide by these resolutions, she has been denied access whatsoever, by her brothers in law to her land for cultivation and to date she has been unable to access key documents relating to her deceased husband, namely, the national identification card and the death certificate to facilitate access and enjoyment to her husband's estate and initiate the succession process to transfer property to her name. This is a case of lack of enforcement of decisions favouring

women in their pursuit of land ownership rights.

She is pursuing justice through alternative justice system and judicial process having received support and backing from the Family Alternative Dispute Resolution (ADR) chairperson in her community. Her father in-law has also supported her to get the official land search documents which are crucial for the case. She is also received support from women land rights activists and the provincial administration in her community who have written to court in her support. This support shows a paradigm shift among different stakeholders on issues of women and land ownership.

The Use of Violence as a Deterrent from Pursuing Land Rights: Violet Kimutai. Violet who hails from the Soi community is a beneficiary of land that was allocated to the landless in Cheptais, Mt. Elgon area in Bungoma County by the government. She is among her community members who were settled in this particular piece of land and issued with all the documentation including a title deed. Her troubles with the

land started in 2004 when she wanted to farm the land to fend for her family only to find that her neighbour, a prominent community member due to his position in the government and hails from the neighbouring community known as Dorobo had tilled part of the land and left her only a little portion for her to farm.

She sought intervention from the village elders and then from the police after seeing that the village elders in her community were not willing to assist her. Although she received commitments from the police that her grievance would be sorted out, but no action was taken. After seeing that nothing was forthcoming from the police, she escalated the issue and sought the intervention of the Sub County Commissioner and her former Member of Parliament who made inquiries about the issue and promised that they will intervene to ensure that she got back her property. This promise, however, did not materialize and she kept on waiting until 2007 when the post-election violence happened in the Country in 2007 and her area was highly affected and she lost all the documentation she had of the property.

"In 2019, Ms. Kimutai was elected to serve as a Land Committee Member to hear land cases in the committee. She took advantage and registered her case too. The committee members whom she serves with refused to hear to her, and kept on disappearing when the time to hear her case; and came to the realizations that they had been compromised. She then appealed her case and reached out to higher ranking with government officers; county commissioner who agreed to send the Sub county administrator for a fact-finding mission but he also never gave Ms. Kimutai a chance to her side of the story"

The lady tried to pursue this issue again after the post-election violence of 2007/08 but gave up and instead focused on her children education due to the same frustrations that she had experienced earlier. She started rebuilding her home in 2008, following an arson attack on 7th July, 2005, when the neighbour who had forcefully taken her land reappeared with a surveyor and a powerful local administrator, and ignored the earlier beacons and hived off her piece of land.

"Finally, in 2019, despite the fact that she had lost her allotment land documents during the fire incident in 2007, she filed her case in Bungoma Court and has been faithfully attending to all hearings in person"

Violet hails from a community that is belittled by her detractors. She believes this may have contributed to the negative treatment, lacklustre and lip service engagement of elders and other officials in her case. Coupled with the negative perception and treatment of women her case may have been lost even before she it started. Still she did not give up and she later went again to the Sub County Commissioner's office to follow up once more on her case and it emerged that the aggressor in this case had used a lot of resources and connections to frustrate her efforts in gaining control of this property. These frustrations went further to the point of even the team that was set up to look into this issue due to her insistence, did not even afford and her children the opportunity to share their part of the story during the hearing that was organized. The irony in this case is that even though this aggressor has other property next to this widow's, he has chosen to put up structures on this lady's property so that in a way ensure that the illegal takeover is permanent. This is a case of use of resources and violence to rob women from such communities of their land ownership rights.

Trusting in Natural Justice in Pursuit of Land Ownership Rights: Sarah Naliaka. Ms. Sarah Naliaka is the first wife in polygamous marriage and had jointly bought 1-acre piece of land with her late husband in 1990 in Sacho area, Mt. Elgon, Bungoma County. They lived on the piece of land for 15 years peacefully when the husband was still alive.

Trouble started for her after the demise of her husband when a brother to the person who had sold them the property alleged that their sibling had made a mistake in disposing of that property. When the man started demanding some non-specified amount of money for non-specified reasons from them, Ms. Naliaka approached her family and clan and the community convened a community land dispute resolution team to hear and determine the case. This person insisted that his brother had made a mistake and he must be paid. All the witness for Ms. Naliaka testified that they had duly paid the agreed land sales payments, and she was entitled to their land. The community land dispute committee ruled that she be allowed to use her land without any interference from this person.

Ma claiming that the she was "tough headed"

She however continued receiving threats and intimidation, a clear case of lack of enforcement of these rulings. She later learnt that this person together with one of his siblings was also scheming to sell their land.

"To try and frustrate Naliaka and her co-wives, the aggressor in this case transferred the court case to Kakamega which (70 km) away in Kakamega County to deter them from attending the courts due to the high costs of transport involved (approximate Ksh.2,000/US\$20/AUS\$33) but she requested and was granted by the court during the mentioning of her case, that the case be transferred back to the nearest court which, she won. the seller tried continued to bully them even in the court demanding extra payments which were not substantiated"

They sought the powers of protection from the area administrative offices, where he was summoned but he refused to attend them. These prompted the wives to go to the court for determination of their case.

"She adequately represented herself and won her case, got her wishes from the court and felt strongly empowered through the process"

Ms. Naliaka sought the court interventions and filed the case in Kimilili High Court in Bungoma County, when she realized that the seller, her elder brother and the local provincial administrators had ganged up to grab her land. To bolster her case, she encouraged other three buyers who had been sold land by the same person back in 1990 using the same process to support her in her court case as witnesses. The courts requested for the original title deed and ordered for the subdivision of the land in the name of the widows. Three (3) different courts listened to her case, over a period of two years and the 3rd year, they successfully got the rulings. The court upheld that the sale process was conclusive and ordered the immediate subdivision of the land and eventual issuing of the title deeds. She is happy that the enforcement was also done and is able enjoy all the rights associated with these properties, together with her co-wives.

Being Ostracized and Stigmatized for Reclaiming Husband's Property: Mary Tamnai. The woman in this case was forced to move from her 1.5 acres of land after violence over land broke out in Mt. Elgon region in Bungoma County which was perpetrated by the local militia group. Her household which was fairly wealthy and had accumulated large herds of cattle, goats and crops attracted the militia who tried to recruit Mary's husband to join them but he refused. He, thereafter, received several threats, was abducted and summarily executed and his body disposed of in the mountain. The militia then moved in and grabbed the family resources forcing them to move out in 1998 while also threatening Mary in order to silence her. After the conflict ended, she came back to reclaim the land and found that her father in law had taken over the land and distributed it to his sons, since Mary had refused to be inherited by the brother in-laws. The brother in-laws had sold part of the parcel and also leased out some sections for other people to farm.

With two children about to transit into secondary school, she desperately needed her land to farm and even lease so she could get some income to pay school fee. She approached the area administration who called for a meeting and the father in law pledged that he will give her a share of her deceased husband land. He later reneged on this promise and to silence her for forever, the father in-law engaged members of the outlaw militia group to kill her. When she learnt of these plans, she hid in the maize plantations overnight and then made an escape and sneaked to report to the nearest police station and she was allocated security personnel to protect her in her current new home away from the family. This case study shows the depth of machinations that women sometimes go through even from the hands of close relatives and their only crime is their fight for family land ownership.

“Mary continues to receive threats. Because she is still pursuing her land. This year, she tried to reach out to the family committee chair pleading for support to return, but he is reluctant because of fear and intimidation. Access Land in post conflict situation requires a different approach”

Resilience in Adversity in Pursuit of Land Ownership: Jane Mboke. Jane is in a polygamous marriage with 3 other women and bore 8 children, 3 girls and 5 boys. With a huge family to take care of, she was assigned a piece of land by her husband where she cultivated several crops. However, during harvest period, the husband would cart away about 50% of the produce, which he then sells and keeps all the proceeds. Refusing to accept this form of economic injustice, Jane decided to ask for a sub division of the land so she could have her own share with access and control over the yields. Her husband flatly refused and rebuked her.

She continued under these circumstances until she learned about a local Women Network started by an international organization, ActionAid, and approached them for assistance. Together with the women network, they approached the village elder with the request that Jane be given a piece of the land as a part of her share which piece of land so that she can take care of her family. She chose this path because she felt the alternative justice system is comprised of local with people who would easily understand the situation when it is explained to them and they can listen to the case and adjudicate the traditional land. She added that the community process enables mitigation and helps in preventing the adversarial nature of formal court processes.

During the meetings, she had support from some of the members of the women’s network as observers and the elders reprimanded the husband for refusing to give his wife her share of the land. Even after this intervention, Jane’s husband still refused to give her a share of the land until the pressure from the elders forced him to divide the land equally among the 4 wives and there is an ongoing process to help them get title deeds. This is a case of an effective community dispute resolution due to the intervention of support networks. It also shows the fruits of enforcement of decisions that favour women in their pursuit of land rights.

Account of Forsaking by In-laws Due to Land Inheritance: Martina Gibai’s Story. Martina Gibai from the Kuria community in Migori County is a member of a local women group called *Ujamaa Support Group*. She was married for 15 years under the customary practice known locally as *“nyumba ya mboke”* a practice where a wife who is unable to have children, marry women who then become their co-wives so as to bear for them children in a desperate move to ensure her posterity.

It was after her husband died in 2003, that her in-laws decided to disinherit her of the land that she had been given by her father-in-law who recognized such a marriage. Although she had two allies in the family, they were still young and therefore had little influence on the issue. To discourage from tilling the land, the threats from the brothers in law included threats of physical abuse. They finally chased her from

the land in 2005 claiming she was not a wife in the home. This happened 2 years after her husband had passed away and only 2 of her in-laws were supporting her. Desperate to get back her land and tired of all the threats, she reported the case to the nearest police station in 2008 and then the matter was before the court of law. The family and clan intervened for the matter to be withdrawn from the court of law so that it arbitrated using the local alternative dispute resolution structures after realizing that many in the community including her maternal parents, a community action group as well as the local provincial administrations were siding with the woman.

The hearing of the case was done 1 week after the withdrawal of the case from the court of law and the woman was accompanied by her brother, father and mother and the family where she is married including all the in-laws during the meeting. The area chief and the police who was investigating the case, all appended their signatures to the agreed outcome. The meeting also attracted many other villagers who came to stand in solidarity with the woman. The ADR ruled in favour of Martina and the enforcement was immediate. Martina is able to access the land and have even fenced it. This is a demonstration that for women to secure their land rights, support from the community structures is crucial.

A case of Blatant Impunity to Rob one of Her Rights: Teresa Akeyo Odhiambo. Teresa Akeyo who hails from Migori in western Kenya was able to transfer the family land to her name through the assistance of the Chief after her husband died. Trouble started when the brother in law started making overtures to this property with the intention of subdividing it, claiming that they too had a stake in their late brother's property. In 2017 she heard rumours that part of the property had been sold to one of their relatives and only confirmed this when surveyors arrived on her land and started assessing it. Her efforts to get the issue sorted by the village elders bore no fruit as the chief vetoed this saying that the matter was already being handled at the court level therefore, they could not engage. This case is in court awaiting determination and was put off due to the COVID 19 situation.

Meanwhile she and her sons are being harassed by the in laws who have gotten them arrested and locked up on trumped up charges of abusing the chief and assault when she inquired about this invasion of her family property using a fraudulently obtained title deed. Upon explaining her side of the story, the head of the police station in her neighbourhood after going through her documents, acknowledge that her documents were the original and encouraged her to seek alternative dispute resolution mechanisms to sort this issue out rather than going the formal way which can be influenced or manipulated by those who have resources. This case shows how people close to widows collude with others including the local administration to rob them of their family inheritance and these women are many a times at loss unless someone steps up to defend them.

Teresa believes that the whole justice system is rigged against the poor when those who are supposed to be the defenders and protectors of the vulnerable in the society as the chief and the village elders in this case join hands with their oppressors to rob them

Buying Land in Your Name Doesn't Translate to Ownership: Jane Boke Mwita. Jane Boke from the Kuria community of Migori County bought a piece of land where she also eventually put up a family home after her husband had sold the family land that they had lived on. Getting a title deed to this property proved hard due to the many hands that the said property had passed through and the fact that succession had not been done on the land. In a community where women are not supposed to own land, this cultural belief has hindered her from registering the land she bought and she has to contend with being told that the only condition to make this possible is if she consents to the property being put in her husband's name. She knows that this would be unacceptable as she thinks about the security of her children. This conflict has hindered her from even selling a piece of the land due to lack of title deed.

Meanwhile she has no confidence in the Alternative dispute resolution structures even though they are the best options for those with land issues. In her case, some of the members of the ADR committee come from the bigger family clan and therefore will ultimately support the side of her husband. She is confident that if things don't improve, she will go to court where she believes she will get a fair hearing. She says that she will explore engaging with the women group who sold her the piece of land so that she can unlock this issue. This case study shows the struggle that women in patriarchal societies face in their quest for land ownership.

Jane believes that ADR for land related cases continues to face impediments for women seeking justice due to traditional beliefs, conduct of male leaders in these communities and considers their outcomes compromised even before the cases begin.

A Good Gesture Tarnished by Greed and Impunity: Alice Aoko

Ngong. Alice Aoko from Migori County is in possession of a land title deed which her father in law bequeathed her publicly when he summoned both his son and Alice and declared that he leaves the title deed of all his land of around 6.02 acres to Alice her daughter in law. He then handed over the deed and his identification document (ID) to the daughter in law for upkeep. His ID was to facilitate her in getting her own identification card, which is a basic requirement for transferring ownership from her father in law to herself. Her husband was fully supportive of the father in law's directive.

Alice cannot understand why despite public knowledge that the aggressor has invaded her land, despite the meetings where even the parties in conflict have been brought together to resolve the matter and affirm that the Land belongs to Alice and her Husband, the law cannot apply by removing him from her land by the state seems impossible. She wonders why even where it is so obvious, enforcement seem to be weak.

Her trouble began after her father in law passed on in 2018 when someone from within their community decided to put up a house in part of their land. Upon being questioned, the person dismissed them and they sought the assistance of the chief who called a meeting of the villagers including the father of this aggressor.

The father to the aggressor confessed that his son had no right to build on someone else's land and asked the chief to take administrative actions to rectify the situation. The chief asked Alice to go to the police who interviewed her and asked her to show proof that the land belongs to her before any action could be taken. After producing the necessary evidence, she was advised to carry out a land search to determine the status of ownership of the same land. It was only after confirming that the land belonged to her and her family that a warrant of arrest was issued against the aggressor, who upon learning about his imminent arrest, escaped to Nairobi.

After a couple of months, back in 2019, aggressor came with 3 policemen and arrested Alice's husband, claiming that he had threatened the aggressor's life over the land issue. Upon engaging with police and producing documents to the piece of land, the police realized that couple were the bona-fide owners of the land and released the husband. Alice believes hers is a success story even though she still does not have full custody of all her land, but the acceptance that she is the rightful owner is her success and it is what has been able to give them the freedom to continue to pursue full ownership.

Conflict of being a Daughter with Land Rights: Emelda Kwamboka. Emelda hails from the Kisii community who lives in Migori County and was married and had two children before her marriage failed and she moved out. After struggling to survive, she decided to go back to her father and explained her predicament, requesting to be given some land to cultivate and support herself and her children.

One of the community leaders stated that the law that requires that daughters also benefit from their father's property has not reached the community! Could he also subconsciously believe this and therefore not be in a position to act decisively

The father called his sons narrated to them the situation and his intentions and they agreed to the proposal and the Emelda was able to use the piece of land she was given to grow maize and also planted some trees for harvesting without any problem. In 2019, the wives for the brothers ganged up to demand that the piece of land that she had been allocated be revoked and be shared by the brothers but the father refused and said that he had given the piece of land in good faith to the daughter and there is no need to revoke it. The brothers became adamant demanding that she should cease using the piece of land.

Emelda reported the matter to the chief who asked that the father be brought to share his side of the story which he did. However, the chief did not record this in writing so that it can be admissible as evidence. She escalated the matter to the Sub County Commissioner's office at Maberera and narrated the story in January 2020 and the brothers and father were summoned to appear before

the Sub County Commissioner (SCC) to sort out the issue and the SCC encouraged them to solve the issue amicably as family and asked the lady to go and quantify the piece of land so that if the brothers have the money they can buy the land from her or the land could be sold to another person so that she can use the money to purchase another place to settle. The brothers agreed before but the people she brought to do this were chased away by the brothers. She reported the issue to the SCC again who advised her to escalate the issue to another level where she can be assisted. The lady and her sons have been isolated by the brothers due to this issue and her sons are being threatened and told that they don't belong in that family.

The Perils of Women's Land Ownership: Mary Opusa Kolwako. Mary's mother-in-law had bought some large piece of land in a settlement scheme in Bungoma County which she used entirely for farming. When she was about to die, she directed that the land be divided between Mary and her brother. However, at some point when she was still alive, Mary's mother in law neighbours had requested her to allow them to put up a place of worship for the community in one corner of her property which she agreed but thereafter the neighbours built a nursery school on the land, without her consent. This trend continued and the neighbours would extend this encroachment by putting up more classrooms. When the mother in law passed on and Mary started the process of transferring the property into her name, the neighbours requested for time to look for some money and compensate them for the land that they had been using. Over time the sons within the home passed away and only the widows were left.

Mary is convinced that the absence of any men in their family has meant that this fight has been carried out on their own and even explains why enforcing the court order has been difficult.

Taking advantage of the absence of males in home, her neighbours have tried repeatedly, to disinherit them and fraudulently obtained an allotment letter, claiming to be the rightful owner and continued to put up more structures.

Eventually with the help of some well-wishers, Mary proceeded to court which has ruled in their favour and the neighbours are in contempt of court because they have not abided by the court ruling, which ruled that they move out of the property. Instead they have been threatening Mary and her sisters in law and have gone to the extent of using children from the school to demonstrate against them claiming that they want to put an end to their schooling.

Branded an Enemy by the Family: Lillian Awino Odeyo. Lillian's hails from Kisumu County and her husband passed on in 2004 leaving her with one son. During the preparations for his burial, she gave all

documents including land title deed which was already in the husband's name for her portion of the plot to her brother in law for custody. Once they were done with the burial, she approached the brother in law for the documents but he declined to give them back, also the mother in law demanded that she leaves.

She says the process was unfair to her since she would be served on the eve of the court appearances and this interfered a lot with her preparation as a well as giving notice to her support network for moral support

Foreseeing difficult times ahead, Lilian first pursued the late husband's work benefits preferring to handle one issue at a time. Once she processed the death certificate, her mother in law asked for the same for the purposes of claiming an insurance benefit which the husband had made in the mum's favour. She obliged but when she went for it after some time the mother in law refused to hand it over to her. It is at this point that she sought the help of the area assistant chief who successfully intervened for her, after learning of the frequent physical attacks from the late husband's family who demanded that she vacates her house she

was living in for them to rent it out. In addition, her in laws also mocked her for having only one child and encouraged her to go get married elsewhere.

Eventually her in laws took her to court in a process that was to drag on from 2007 – 2011. The family engaged an advocate, but Lillian couldn't afford one and had to self-represent and with the help of her friends and her family, she was assisted to prepare the necessary court documents. Although the process was unfair, the court ruled in her favour; granting her the authority to own the estate. The court also ruled that she given back the title deed which has not been done up-to-date. Every time she asks for the title deed, the mother in law keeps threatening that she would kill herself. This has made Lillian go slow on the issue, left with the consolation that at least the court had pronounced itself and that she can enjoy her stay undisturbed. She has also not gone back to court to seek enforcement orders.

She believes that in the absence of the mother in law, she is likely to be confronted with bigger resistance from the family and looks forward to going back to court to seek enforcement orders. The case is a picture of flagrant attempt to disinherit a widow because her husband has died and also shows that justice is not guaranteed just because the court has ruled in her favour.

The Fate of Unsealed Customary Marriage: Caroline Odek. Caroline Odek got remarried in 2000 after leaving her previous marriage where she had one son. She had 2 more children in a new marriage, and they lived together until 2008 when he passed on. 6 months after his death, the family denounced her and started mistreating her son from the previous marriage, claiming he did not belong to the family. At one point while standing up for her son, she got entangled in a scuffle with one of her brothers in law's wives. On hearing this, her brother in law physically assaulted her, while also barring from farming rice in her portion of land that had been allocated to her late husband by their late grandfather. When she demanded access, she was reminded that since her dowry had not been paid, there was nothing that bound her to that home. With all the abuse and mistreatment and daily threats to leave, she eventually left with all her children, despite being told to leave the two children behind. Caroline went and put up with an aunt in Kisumu city who assisted her to start a small business of hawking groundnuts.

It was while doing her business that she came across a group of women creating awareness on women land rights and widows' resettlement program, where she shared her experience and was referred to a field officer who initiated family dialogue sessions using a ADR mechanism with members of the Luo Council of Elders who made a personal visit to Caroline's matrimonial home.

The meeting progressed well and they managed to reach an amicable settlement allowing her to return. Since she found her house already collapsed, KELIN purchased new building materials and engaged the family members to build her a new house. Caroline engaged a distant grandfather who came and successfully mediated on her behalf to enable her access to the rice fields. Throughout the process, her brothers in law have resisted her efforts to access the field. As a family they are now talking about sub dividing the family land to enable each family member to get their respective title deed. Caroline Odek's experience is a case of the challenges that women in the Luo community undergo when their husbands pass on before formalizing the marriage by paying dowry. It also shows the importance of awareness raising meetings to help inform women on land rights

We don't know you; you were never married by our brother. We only know the two children because they are our brother's property

When the Patriarch Turns Against You: Caroline Oduol. Caroline was married to Washington Oduol as the second wife in 2005 and officially formalised the marriage in 2017 in the presence of their respective family members. Her husband's first wife passed on leaving three children and Caroline raised them all including her two own children.

Her husband fell seriously ill and Caroline's father in law encouraged her to take a bank loan of substantial amount to give to him so that he can help them put up a family house. Unfortunately, her husband's death occurred before the house was to be built and her father in law being a leader in the local church, informed her that according to his Christian faith, it would not be proper to build her a house and that they wait for at least a year before any structure can be put up.

He was present in my wedding, there are photo of him with us, he spoke at our wedding, attended my father's funeral and was introduced and spoke at the funeral. How can he, a Church leader lie, how will he handle cases like mine. All because of money, he now does not know me

However, Caroline's troubles commenced soon after the demise of her husband in late 2019. First it was noticing that her name was excluded from the funeral programme and in the written eulogy. Four days after the burial, the father in law and one brother in law visited her at her rented place where she stayed and explained to her that they had mounted a tent during the funeral to represent her house and wondered why she never camped in the tent. She responded that she never knew about the same since no one had informed her. From that time the in laws kept urging her to let the father in law be the administrator of her late husband's property on the pretext that he would be better placed to cater for the best interest of her husband's family. She refused to hand over the documents but found out that her father-in-law had somehow managed to get documents giving him access to her husband's insurance claim. She was able to stop this when those documents were cancelled.

The demands by her father in law to be made the administrator was incessant and then the rejection of her as a daughter in law and therefore not entitled to her husband dues. Caroline reported to the area assistant chief, then to the chief and later the deputy County Commissioner where in all instances both parties were summoned and rulings made in her favour and the matter about being a wife in the family was settled. At every session with the different ADR structures, Caroline was recognized as the wife and it was made clear to her in-laws that they had no power to divorce the deceased's wife and also informed that they could not write any letter to the exclude her from benefiting from her husband's dues of the wife.

Her disappointed was that the rulings could not be enforced and the process amounted to mere public relation exercises considering the time spent and the delay to hand her justice. In a turn of events, Caroline's father-in-law, brother in law and her stepchildren have sued claiming they have no idea who she is and should be excluded from being a beneficiary of her husband's estate. The case is ongoing. This is atypical case of family members including a father in law who is supposed to be a defender of the vulnerable in his family turning against one of their own so that they can control the estate of their son.

Buying Land in your Name Doesn't Translate to Ownership: Rhoda Nafula Owino. Rhoda lost her husband in 2002 leaving her with two daughters and a three months' pregnancy which would later give her two twin boys. In 2008, she got into trouble with her in laws for refusing to be involved in post-burial cleansing ritual including entering into a levirate marriage. Being from a different ethnicity from the husband's, she felt that the Luo culture was a bit harsh on her.

One day she came back from church only to find her house demolished. No one was ready to explain to her what had transpired. She returned to the church and explained her fate to the priest who facilitated the process of renting her a house. After some time, the church decided to build her a new house at the exact spot where her former house had stood. This brought her even much trouble with the family who viewed her as bad omen and demanded that she leave. On one occasion the brothers in law broke into her house and almost killed her. She felt that her life was now in danger and resorted to leaving home very early in the mornings and returning late into the evenings to avoid any altercations.

"Women should strive beyond access only to ownership of land in order to enjoy security. The best form of secure land tenure is having full control to do with what you want with the land"

It was at this point that she sought support from the village elders and later the assistant chief who to her surprise blamed her for not cooperating with her in laws as per the Luo customs. This left her deflated and took a toll on her since she was also on HIV care. She was later linked to the Council of Elders who took up her case. She was fortunate that the elders happened to know her family. A meeting was organized and the elders later went and met the family and heard from their side. After this a joint mediation was organized and they managed to settle the differences. She had another house built for her on a different piece of land that the family apportioned her, away from her original plot. She has become a champion for women and widow rights.

The Challenges of Seeking Access to Land Rights: Jackline Akinyi . Ms. Jackline Akinyi got married in 1997 under the traditional marriage as the third wife. They had 3 acres of land which all the wives used to cultivate rice on as a commercial crop and maize and beans for home consumption. After the demise of the husband, she requested to be allocated her piece of land to enable her build and move into her own homestead but her co-wives and brothers-in-law ganged up against her claiming that she brought the death of the husband having infected him with HIV. This strained their relations, with mistreatment directed at her forcing her to move out and rent a house in the nearby town centre where she stayed for 6 years, distancing herself from the family because of the infighting and the unresolved land division request.

She approached the area chief explaining her predicament and requested that he invites her co-wives and in-laws for mediation, but the meeting degenerated into a feud and was unable to find any solution. She found herself isolated and outnumbered without any support from any member of the family. Months later, she heard a women's land rights champion

"a woman does not have the right to guide and determine directions a family should take...!!"

being interviewed over the radio explaining how they intervene on behalf of women especially widows to access and own land. She called in during the programme and was advised to visit a group of trained elders near her home, who after consultations approached her estranged family. The meeting was a difficult one as the family was still hostile. Other subsequent mediation meetings did not bore fruit until the elders threatened to go to court so it could determine if Jackline had a right to her late husband's estate.

The threat of going to court and realization that there was a community organization and community elders backing the woman, the family retreated and sent emissaries to her to return and get a quarter acre piece of land to put up a home and also for farming. She returned home and faced little resistance and accessed her piece of land and with the support from the local church members, she was able to put up a semi-permanent on her land. It has been 8 years, since she moved back and Jackline is processing a title deed to her piece of land.

Marriage no Guarantee to Property if one is from a Different Community: Lillian Auma Onyango.

Lillian Auma, who is a Luo got married to a polygamous Kuria man in 2008 in a traditional wedding and lived together on 2.25 acre piece of land out of the 6 acres held by the father in law; shared equally with her co-wife. The Luos and Kurias are different tribes with different cultural practices. For example, Kuria community practices female genital mutilation (FGM), which is prohibited by the Kenyan laws. After the death of her husband in 2018, the family started to openly discriminate against her while subdividing the land: her co-wife and son who are from the Kuria community was given 2 acres and she was only allocated 0.25 acres. She reported the discrimination to the area chief who tried to intervene but failed.

*You are not
one of us, so
your rights
don't apply*

Her stepson has been intimidating Lillian and threatening to slash her demanding that she must relinquish the remainder of the land that she had been given. When the threats became too much, she reported the stepson to the police and he was arrested and kept in custody for 14 days. He has now been released and she lives in fear. Her neighbours and some community members have turned against her because of reporting her stepson to the police.

As luck would have it, in April 2020, her father in law wanted to sell a part of the bigger land and welcomed the family members to take advantage of the process of surveying of the land to obtain their own titles to their respective property. Lillian managed to get her land boundaries put in place and thereafter was able to raise enough money to process her title deed and secure her tenure. She is now a proud landowner, living peacefully on her land registered in her name. Her case shows the challenges women who are married to different communities face when it comes to issues of land ownership.

Denied her Land Rights because of Lack of a Child: Monica Achieng Ang'ela. Monica is 58 years old and was married three times and separated twice because of being barren. In fact, her father refused to accept any dowry from her third suitor until she had delivered a child. Since she never did, it means she was not fully married, and this was eventually used against her.

Being an industrious and hardworking woman, she bought cows, which her husband would take away, sell and take others to his other home, where he had another wife. Seeing that her marriage was not secure, she decided to protect herself and she invited her sister's son and daughter to live with her and she brought them up as her own. Where she lived, there were a group of women who were buying land and would reach out to fellow women to encourage them to buy and own land. She bought her land back

in 1978 and because of the experience with her husband where he would take away everything that she had bought, she put her name on the title and in 1980, she built her home.

The husband took away her title deed and Monica reported him to the Chief who summoned him for a meeting. Her husband said, Monica had abandoned her home and was a prostitute in the city. Monica had witnesses who confirmed that the land in dispute belonged to Monica. While mediation was taking place, Monica received summons to attend court in Homa Bay about 50 kms away. Her husband had sued her claiming she was not his wife but a partner while also claiming that the land was his. Monica received advice to carry out a land search, got a green card and used this as proof of ownership and three people who were present during the sale committed to support her.

Her husband's son from the first wife is now claiming the land as a beneficiary and is threatening to take the land as the first son of his father's home. Now she is being recognized as a wife.

The court process was convoluted and took 3 years being heard by two judges. She appeared in court every single month when it was placed for mention and when she went, she simply got a new date for the next month. She believed it was a plot to exhaust her because she had to travel a long distance to attend the court sessions. When the 2nd Judge took over the case, it took him four hearings to dismiss the case against her husband and confirmed Monica as the rightful owner of the land. Monica's brother was by her side and accompanied her for all the court cases.

Her husband's son from the first wife is now claiming the land as a beneficiary and is threatening to take the land as the first son of his father's home and Monica now she is being recognized as a wife. She has placed a caution on the land to stop anyone from interfering with it and wants to sub-divide the land and give the daughter and son that she has lived with so as to save them from having to go through the experience she has had.

As your Brother in Law, We Shall Look After You: Irene Muvachi. Irene was widowed in 1972 when her husband died in a road accident, leaving her behind with 8 children and a co-wife who was estranged. At this time, she had been living with him in a 4.5acre piece of land that they had bought away from their family ancestral land. As is the custom during death, the brothers in law take over the burial arrangement and it is during this time that the conversation about where she would stay came up and it was settled that she should move closer to the family. They offered to sell the land that Irene and her husband had been living on and to use the proceeds to buy her a piece of land closer to the family home.

Her brothers in law told her that now that her husband has passed on, they would be the one who will take care of her. Starting with disposing the land and moving you closer so we can take care of you.

Meanwhile she moved to her brother in laws land that had been identified as her temporary place. Her co-wife was also brought back after mediation and she got inherited by a younger brother in law, but abandoned him and got married elsewhere within the larger clan. Irene is aware when the land was sold and she kept waiting to be shown her new land and kept asking when that would happen. The response she got was they were still looking for a suitable place. Meanwhile her sons are all grown up, some married and she is now a grandmother, there have been death in the family and the remains of her loved have been interred on this temporary land despite murmurs.

At some point her eldest son wanted to put up his house and indeed began to do so, but the sons of her brother in law demolished it claiming that as their land as sons of the home. Irene then sat down with

her brother in law asking to be shown her land and another portion was identified. Much less than what they had expected considering that what they had previously was a 4 and 1/2 acre.

At the beginning of this year, her brother in law sent her a letter asking her to vacate the land because he had use for them. She went to the Elders asking for mediation and explaining her predicament. She was advised to wait a while as her brother in law was unwell. She also reported the matter to the District Criminal Investigation Officer, who sent her back to the local chief. Meanwhile her brother in-law refuses to engage and his sons are proving more threatening. The case here reveals the prevalent issue of vulnerability that women from different communities are exposed to when they lose their husbands and the tortuous journey that they have to engage to protect their family property and ensure that their children future is secured in terms of family inheritance.

Access to Land Conditional to Wife Inheritance: Catherine Chelegat. Catherine is a 51 years old woman who was widowed in 2007 and left with 4 daughters. At the time of her husband's death, Catherine's last daughter was months old. Three days after burial, she was informed that she would be inherited by her husband's younger brother after she had mourned her husband. She refused and so she was banished from the home and her land taken. Her efforts to get assistance from the provincial administration in her area proved futile when the local chief insisted that hers were internal family issues which should be sorted out at the family level. She then went to the District Officer who summoned her brother in laws twice, but they still refused to allow her back on her land.

The post-election violence of 2008 drove her away and she crossed the border to Uganda returning in 2010 to start her case again with the new chief but discovered that he was sympathetic to her brother in law. Seeing that avenue closed, she escalated her complaint to the District Commissioner, who summoned another chief to listen to her case and called a meeting bringing together her in laws and 8 community leaders. She was told to wait until January of 2011 to return to her land. In January, she went back to the chief, who chased her away telling her not to disturb him

Just because I refused to be inherited it's like I was never a wife and that these children, who they have known as their brother's children now do not mean anything. How is this right?

A new District Officer was posted to her locality and she had to start the process again, but was transferred before the matter could be completed handing it over to his replacement, who got another chief to intervene but the chief refused to call a mediation meeting. In January 2020, a new chief, who was now handling the matter, demanded for documents from Catherine's in laws showing next of kin. They were given 2 days and were unable to produce the documents. Although this was a positive turn for Catherine and there was hope that she will get justice, COVID-19 pandemic happened and everything has come to a standstill and she lives in constant fear of attack from her in laws.

Annex 2

Analysis of select judicial rulings related to women and land from this research focus counties

Case study 2: BUNGOMA ELC CASE NO 107 OF 2017

SOLOME NALIAKA WABWILE VERSUS ALFRED OKUMU MUSINAKA 2020 eKLR

Judgement delivered on: May 27, 2020

Salome Naliaka moved to court alleging that she was entitled to be registered as the proprietor of the suit land. Her claim was that she is the Administrator of the Estate of her late husband who before his death in 1996, had purchased the land parcel measuring 15 acres. She added that her family immediately settled on the suit land which however became the subject of a dispute between the deceased husband and the defendant's father at the Tongaren Land Disputes Tribunal which ruled in favour of the deceased. The tribunal's award was subsequently adopted as a Judgment of the Court in the Kimilili Magistrates Court and a vesting order signed by to the effect that the said land be transferred to the plaintiff. However, that vesting order was not effected, and instead, the defendant secretly and unlawfully obtained title to the suit land in his name hence necessitating the suit. The plaintiff asked the court to immediately nullify the defendant's title and register it in her name.

The defendant counter-claimed the case stating that he was the registered proprietor of the suit land following the succession process, yet the plaintiff had unlawfully invaded the same and built a house in total disregard of the defendant's proprietary rights. The defendant sought Judgment against the plaintiff for an eviction order and a permanent order of injunction restraining the plaintiff from entering, occupying trespassing and or in any manner interfering with the defendant's use occupation and access to the land.

The court observed that the plaintiff's suit was geared towards executing an earlier Decree and Vesting Order in her favour which was not legally possible for among other reasons being time barred. The court ruled in favour of the defendant and ordered that the plaintiff to vacate the land parcel within 6 months from the date Judgment or be evicted should she remain adamant.

This case points to the pitfalls encountered by elderly women seeking to assert their land rights. From the onset, the judge noted that the plaintiff had endured many hurdles in filing the case. For instance, she did not have an Advocate and had prepared a "home-made plaint." The court found that route she took by filing the case in an attempt to execute the decree obtained in the Subordinate Court was irregular as she should have filed the case in the subordinate court that issued the decree. The court also sympathised with the widow stating that she would have had a fairly better case had she pleaded the issues of adverse possession. There's need for legal assistance to be accorded such women in their attempt to secure their land rights.

Case study 4: MIGORI ENVIRONMENT AND LAND CASE 222 OF 2017

PAMELA AKINYI BWANA V DOMNICUS MAIL ADERA & 3 OTHERS [2020] EKLK

Judgement delivered on: SEP 17, 2020

The plaintiff's case was that she is a beneficial user of the suit property being her ancestral land which belonged to her late grandfather in law. She argued that the defendant has irregularly and illegally subdivided and registered the suit property without her knowledge and involvement which denied her the right to use and possess the suit land. She asked the court to issue an order revoking the subdivision

of the suit property and consequent registration of the resultant parcels of land and also grant a permanent injunction restraining the defendants from trespassing and or encroaching and dealing in any other manner with the land until the estate is properly distributed. The defendants denied this claim and sought dismissal of the suit with costs. They stated that the land was regularly and legally subdivided by all the beneficiaries of the estate of deceased and the same was shared as per the wishes of his entire family and beneficiaries.

Finding in favour of the plaintiff, the court stated that the plaintiff was entitled to the orders sought as she had proved her case to the required standard. It further held that the subdivisions and registration of the suit property by the defendants were fraudulent and illegal. This case yet affirmed the right of women to peaceful use and possession of ancestral land.

Case study 5: BUSIA ELC CASE NO. 111 OF 2015
BEATRICE ANYANGO WANGA. & ANOTHER VERSUS RISPA SHIUNDU ONG'ONG'A & 2 OTHERS
Judgement delivered on: July 30, 2019

This case entailed a family land dispute. The plaintiffs sued the defendants for fraudulently disinheriting their late husbands' estates of their ancestral parcel of land and subdividing it and appropriating it to themselves. In her defence, the 1st Defendant stated that she was the sole owner of the disputed parcel of land which she bought by her sole efforts using proceeds from selling Chang'a. She added that since she did not have an Identity Card, the land was registered in the name of her late husband and only transferred to her name upon her husband's death. She contended that the Plaintiffs were not her children but her co-wife's daughters-in-law, therefore they are not entitled to the property. Instead, the plaintiffs were married to the sons of her co-wife who had her own separate portion of land to which they were entitled. The 2nd and 3rd Defendants pleaded that they were innocent purchasers having bought their portions from the 1st defendant. Without notice of any defects in the titles. In its holding, the court dismissed the Plaintiffs' case noting that it had not proved to the standard required for proof of fraud.

In its judgement, the court noted glaring omissions in the plaintiff's case. For instance, the court observed failure to enjoin all parties who had benefited from the land through subdivision was fatal to the case as the court could not grant orders without hearing them. This again reiterates the concern that there is need for adequate legal assistance in land litigation by women. This would help avoid trivial mistakes fatal to the case

Case study 6: KISUMU SUCCESSION CAUSE NO. 750 of 2015
IN THE MATTER OF THE ESTATE OF PIUS WERE OGADA (DECEASED)
EVALINE ATIENO WERE VERSUS DOMNIC NYAMEMA
Judgement delivered on: December 14, 2014

This was a matter for confirmation of grant of the estate of Pius Were Ogada. Everline Atieno Were (widow) and Linet Achieng Were (daughter) objected to the mode of distribution proposed by Dominic Gor on the ground that the latter had no legal right to share in the deceased's estate. It was stated that Dominic was a cousin to the deceased and had inherited Everline as his wife. Dominic had proposed that he be allocated two out of the three parcels of land, yet the deceased had four children.

In its holding, the court found Dominic's claim over the deceased's estate was unmerited and dismissed it. It then confirmed the grant directing that Everline Atieno Were shall have a life interest in the whole of

the deceased's land parcels and that the land parcels shall devolve in equal shares to the deceased's children. The court stated that the wife and children, who are in order of priority under the Law of Succession Act were the rightful persons to inherit the deceased's estate.

The court reiterated that the cross-petitioner having inherited the deceased's wife did not in law entitle him to also inherit the deceased's estate. The court's pronouncement was a key milestone as it affirmed the land rights of widows who had fallen victim to the repugnant custom of wife inheritance particularly in some parts of Nyanza region.

**Case study 9: SUCCESSION CAUSE NO. 451 OF 2014
IN THE MATTER OF THE ESTATE OF NYACHO OJWANDO (DECEASED)
Date of judgement on: March 12, 2016**

Judith Akinyi protested the proposed distribution of the estate of her deceased father as proposed by her brother. She complained that she had been completely disinherited and sought for a share of deceased's estate. The brother had sought to distribute the property between himself, his three wives and their children. The brother based his case on Luo Customary Law on inheritance. He insisted that since his sister was married and had established her family elsewhere, the Luo Customary Law did not allow the Protestor to inherit from her father and that her inheritance was on her husband's side. This position was restated by four elderly witnesses who added that any attempt to disregard the custom would bring a curse on the family.

The court in its judgement adopted the firm stand that the time had come for the ghost of retrogressive customary practices that discriminate against women to be forever buried citing the Constitution of Kenya, 2010, particularly Article 27 that prohibits discrimination of persons on the basis of their sex, marital status or social status, among others. The court ordered that the disputed parcel of land known be equally apportioned between the two siblings and that the Land Registrar sub-divides the land known and issues two separate titles to each one of them.

**Case study 10: CIVIL CASE NO. 6 OF 2017
JAO VERSUS JMA
Judgement delivered on: October 25, 2018**

The plaintiff brought the case seeking the distribution of matrimonial property. She sought a determination of several questions in relation to parcels of land registered in the name of the defendant; whether the said parcels of land are the property of both herself and the respondent in equal shares. She further sought a declaration that the two parcels of land are jointly owned by herself and the respondent for the purposes of the Matrimonial Property Act, 2013 and that her intended eviction from the said parcels be declared null and void. The parties were married under the Luo customary law but the marriage had since been dissolved at the instance of the defendant. The plaintiff listed several properties, some which were jointly acquired but registered in the defendant's name. The defendant denied these assertions noting that he purchased two of the parcels before the marriage hence could not constitute matrimonial property. The court held that the application had partially succeeded. It proceeded to declare that two plots were joint matrimonial property of the plaintiff and the defendant and that the plaintiff was entitled to a share of the property at 30% in terms of ownership and any form of proceeds arising from the property.

The court's decision was premised on provisions of the Matrimonial Property Act noting that since the parties had not entered into any agreement to determine their property rights before the marriage, ownership of their matrimonial property would be governed by Section 7 of the Matrimonial Property act which provides that the property is to be distributed according to the contribution of either spouse, towards its acquisition which need not be monetary. The court noted that as a wife to the defendant, the plaintiff undertook domestic work and management of the matrimonial home, provided companionship to the defendant and managed the family business. She was a tailor by occupation and provided tailoring services to generate income for the family.

General comment: courts have been reluctant to award costs in land disputes where the parties are family members. As a result, each party bears their own costs. Given the complexity involved in litigating land matters, some people are reluctant to settle such disputes in the courts. On the positive side, where women are the defendants it means the she does not have to bear the costs of the other side in either event of loss or win. Especially where she is self-representing, she is relieved off the financial burden or responsibility.

Annex 3

Respondent Information Leaflet

1. Information about the project/ Purpose of the Project

This research project is geared towards determining the extent of which judicial and non-judicial rulings have translated into the success of women land tenure in Western Kenya. The purpose is to learn lessons and best practices that can be shared with others and may be replicated in other areas of our nation.

2. Why have I been chosen?

You have been chosen either because of your experience as someone who has gone through this experience or because of a recommendation by someone who thinks that your contribution has been positive in this arena of women and land rights.

3. What do I have to do?

All you have to do is to respond honestly to the research questions.

4. What are the risks associated with this project?

This is a low risk project considering the key research question which is to determine to what extent have judicial and non-judicial rulings translated into the success of women land tenure in Western Kenya and is meant only to elicit information that could be used to make our community a better place for all.

5. What are the withdrawal options?

You can choose to withdraw from the exercise at any time whenever you feel uncomfortable with the line of engagement without giving a reason.

6. Data protection and confidentiality

The data collected will be treated with utmost confidentiality and will be shared only with the relevant people concerned with the research. Your data will not be included in the report unless you expressly give the authority to do so.

7. What will happen with the results of the study?

The result of the study will be shared with people concerned with the research and other practitioners so that it can inform the decisions they make concerning the subject matter.

8. For further information /key contact details

1. Davis Okeyo, email address: davisochieng@gmail.com, Tel: + 072769959
2. Betty Okero, email address: bettyokero@gmail.com; Tel -0723277927

Refined Questionnaires

Questions for Women Respondents

1. Why did you choose this path over the other path in your pursuit of justice in this case?
2. What aspects led you not to choose the other option? Was there someone who influenced you and had you used this option before in your quest for justice?
3. Was turnaround time a consideration in your choice of this option?
4. What did you consider as a success in this issue for you?
5. To what extent have you enjoyed the rights that you sought for?
6. At what point did you start enjoying your rights post the ruling?

7. How easy is it to enjoy the success of the ruling?
8. How has the journey post the ruling been facilitative in the enjoyment of your rights?

FGD I: Mixed group, women and men and select members of a community groups

1. Sharing of experiences and observations of participants in terms judicial and non-judicial rulings on land
2. What is their experiences in land reforms (unpack) in Kenya? (Probe: Which land reforms are you aware of?)
3. What is the overall status of women in your community?
4. What is your view on women land ownership?
5. How are women who demands for their lands treated?
6. How do they view women who have used either judicial or non-judicial rulings to access their land?
7. Do you know woman who have gone either to court or traditional? After the ruling, how does it impact in the enjoyment of your rights?
8. What are the social and cultural barriers that deny women to land?
9. How have the rulings translated to enjoyment of women land rights? To what extent are you happy with the rulings? And success?
10. After the ruling, how does it impact in the enjoyment of your rights?
11. Polygamous/Sex of children: How does this impact in distribution of ancestral land?
12. Experiences on success where land is allocated in a disadvantaged position?

Key Informant Interviews (KIIs)

I. County and National Government officials (District Surveyors, Land officers and Land Board Members)

1. What are their experiences in land transactions, adjudications and women land registration in their names?
2. How mechanisms exist for enforcements of land rulings?
3. How are women land cases able to benefit from the rulings that favor them? How have the rulings translated to women successes to land ownership?
4. What sorts of constraints, problems and challenges that women face when they want to register land in their names?

5. What are the gaps experienced in making rulings on women land ownership?
6. How have the community Outreaches by land officials translated to women access to land including seeking judicial or traditional rulings?
7. Disputes (types of land and women land related) handled by land offices

II. Prosecution, Lawyers, rights advocates/activists

1. Legal provisions: are they enabling or/and constraining factors.
2. What are the weaknesses in existing land laws and related laws?
3. What are the challenges in translating the laws in practice (customary practices, lack of information, etc.).
4. What are your recommendations to make the existing law and legal practices more women friendly, in relation to the women's land and property rights?

III. Non-State Actors/Civil Societies (NGO, FBOs, CBOs, Social movement, paralegals, etc)

1. What kind of support do you provide to women seeking access to and control over land ownership?
2. What are the Sociocultural and legal/administrative barriers in accessing women's rights over land?
3. What are your recommendations to promote women enjoyment of court and or non-judicial land rulings?

- 1.

