

PROJECT TITLE  
**EFFECT OF LAND TENURE REFORM ON  
WOMEN'S ACCESS TO AND CONTROL OF  
LAND FOR FOOD PRODUCTION:**

**A CASE STUDY IN MUMBUNI LOCATION  
MACHAKOS DISTRICT - KENYA**

**IDRC REPORT - 1993**

by:

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Research Associate  
Public Law Institute  
P.O. Box 25011  
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## **RECOMMENDATIONS**

The objectives of any agrarian reform is to promote equity, create employment, raise productivity and increase incomes of the poor. These objectives ought to apply to women as well as men. Land tenure reform should favour not only the masses of rural populations but women in particular who represent well over half the agricultural labour force with an increasing number becoming de-jure and de-facto household heads, who continue to use land as their primary source of existence. It is therefore critically important to act upon women's rights regarding land not only for advancement towards the liberation of women but in order to generate many benefits that these changes will bring about, not the least of which is increased potential of women in food production, which will benefit the whole country irrespective of gender. The problem therefore lies with the whole society and not only women. The following recommendations for action are directed at different levels.

### **The Government**

If the government is genuinely concerned about the impact of development on women, then it should have the political will and commitment to translate the following into effective action:

- Create a policy environment which effectively empowers women through legal means and provides security of expectations for women of all ages, statuses and which will support their rights in land as the primary resource for food production.
- To enhance effort to involve women as owners and managers of resources and not simply as participants in development projects.
- To pay more attention and to act upon the differential impact of agricultural policy on men and women even where policies are framed in gender neutral terms. Lack of inclusion of women as beneficiaries of land tenure reform can no longer be justified on the basis of respect for tradition as the whole system



changes land use and introduces market oriented production relations that definitely alter traditions.

- To immediately stop treating the household as a collective unit represented by one individual. The gender, nature of socio-economic unit, decision-making and distribution of resources within the household must be reflected in policy in order to address different needs of women. The National land development policies should fall into two categories - policies designed to increase economic growth and efficiency and policies designed to increase equity.
- To advance policies that make available to women, regardless of marital status, capital (in the form of loans not requiring land as collateral) for the purchase of land.
- To appoint gender balanced land board committees from the grassroots to the national levels to ensure that women's concerns are taken care of in the whole process. In addition, the government should create an institutional channel through which women can voice their complaints and concerns. This department should be placed at the office of the President not only to ensure that women's voices reach the right ears, but that the obstacles they may come across are overcome.
- To immediately appoint a sub-committee (composed of women and men) within the Land Reform Commission to advise the government on how to incorporate women's equal rights in land.

#### **The Land Reform Commission**

The Land Reform Commission should ensure that it recommends to the government the following:

- That it is important for women to have rights to property and to own land in their own names.

- **In areas of customary bilateral inheritance, joint husband-wife ownership or life long tenancy is the most natural framework of land reform and will promote equity and efficiency.**
- **To put into practice laws that guarantee daughters' rights to inherit land.**
- **Legislation to ensure that widows who currently have no legal protection, receive the right to inherit their husbands' property.**
- **To achieve equality in the reform, women should be legally assured of access to a livelihood from land in the event of widowhood or divorce as are men.**
- **Women need legal powers to have access to credit, new crop technologies and to prevent the alienation of income from household consumption needs, or wrongful sale of land.**
- **Another option for land tenure reform is to give women reserve powers: one, that no lease or sale of land is legally valid without the wife's signature, and the other that in the event of divorce or widowhood, the wife obtains lifelong usufruct rights over part of the land.**
- **To appoint a gender-sensitive sub-committee of Land Reform Commission composed of equal numbers of women and men who will have specific duties of focusing on women's concerns on land reform. This is to ensure that the Land Reform Commission provides a gender balance recommendation for the formulation of land policy in Kenya which takes everybody into consideration.**

### **To women**

**Women should not simply assume that actions will be taken on their behalf by others. They must rise and take up action.**

- **At individual level, women should begin to ensure that their daughters like their sons inherit land.**
- **National women's organizations should monitor, and if necessary, intervene on behalf of other women in the formulation of land tenure policy, which will take into consideration the suggested recommendations to the Land Reform Commission. Women's NGOs should make it a priority to have a vertical link at the grassroots level and to mobilise them to participate at all levels in order to contribute to the success of land tenure reform. It is worth bearing in mind that the mobilisation should be done at different levels: through farm service cooperatives, adjudication groups, producer cooperatives and land reform committees. Women's organizations must create space to be with the men to design and implement the reform to ensure feasibility of women's economic contribution and benefits. The problem remains finding the basis for mobilising women. Are the existing women's organizations appropriate for women's concern in agrarian reform? Can an existing women's organization speak on behalf of all women?**
- **At the grassroots level, women should organize their own agricultural cooperatives or self help groups to raise capital to buy their own lands.**
- **Women must be informed of their rights and be brought into the whole process of implementation by NGOs providing civic education.**

## CHAPTER ONE

### INTRODUCTION

The aim of this research project is to highlight issues involved in Land Tenure Reform and the effects this has or will have on women as food producers. Land tenure refers to conditions under which an individual or group holds the land, have access to it and the right that governs such conditions. The Tenure Reform Legislation provides for registration of land title in the name of the "head of the family". Registration in the names of individuals, mainly men, both increases control over distribution of land, and the dependency of women who now have no legal rights of access to land.

Land is the base of Kenya's economy to which agriculture contributes the largest share. Land, whether it is inherited, allotted purchased or seized is the most basic resource of agricultural production. Yet an increasing number of Kenyans find themselves without sufficient land to feed their families or worse, without land at all. Kenya covers an area of 582, 649 sq. km. of which 571.416 sq. km is dry land and 11,230 sq. km. is open waters. (Development Plan 1984-1988 p.70). While access to land is declining, the population is growing. In 1969, Kenya's population stood at 11 million and almost doubled at 21 million in 1989 at a growth rate of 3.8 per cent. The current growth rate is indicated to stand at 3.34 per cent with an estimated population of 24 million, out of whom 21.6 million will be in the rural areas. (Development Plan 1989-1993, p.204). Given this trend there is a growing concern over the future capabilities of agricultural producers to meet the need for increased food production.

The Kenya Government land policy aims at achieving optimum land utilization by intensifying agriculture and adopting correct management practices to conserve the soil in order to sustain the population particularly in the rural areas. (Sessional Paper No. 1 of 1986 p.89).

In Kenya, women are the major food producers. Their relation to land is therefore a critical factor in their ability to produce food for themselves and their families. The Government policy on nutrition and food security has worked out a strategy to increase and

diversify food production at the household level. (Development Plan 1989- 1993 P.22) The Kenya Development Plan (1983 - 1993) recognizes that women have traditionally contributed most labour required for the cultivation of food crops on family holdings.

The social position of women in current phase of Kenya's development recognizes that:

Women have always occupied a central role in African economies being the main agricultural producers and suppliers of welfare services at the household and community levels. The women's position in traditional society was clearly defined and largely determined her rightful social status. However, colonialism subjugation and its attendant Victorian attitudes towards women both as workers and as partners in life eroded women's economic and social status. Kenya has been working towards the restoration of women to their active role, not only in the development of the economy but also in the ownership and control of wealth arising from economic production (Development Plan 1989-1993 p. 27).

The general objective of agrarian reform includes promoting equity, creating employment, raising productivity and increasing incomes of the poor. It is assumed in this study that these objectives ought to apply to women as well as men.

Equity remains a central concept to development planning particularly in terms of opportunities. It is within this framework that the Kenyan woman sees herself as an equal partner in the management of household affairs. If women are to enjoy equity with men in life-long access to land regardless of their marital status, their land rights must be secure. For the purposes of this study, the most important opportunities that will be examined pertain to access/control of land as the most important resource in agricultural production. It is imperative that the availability of equal opportunities in access and control of land be protected by law.

## **THE PROBLEM**

To achieve the already mentioned policies, the Kenya Government has pursued programmes to transform customary land tenure to statutory freehold tenure through land adjudication, consolidation and registration. According to 1984-1988 Development Plan, since independence, about 1.5 million titles have been issued, over 6 million parcels of land adjudicated and 5.5 million hectares surveyed for adjudication and registration. The purpose is to confirm in modern law, ownership of land by individuals to whom credit and other agricultural services might be directed. Privatisation is widely held by planners to be an important precondition for the modernization of agriculture because it strengthens private profit incentives, facilitates the use of credit on the basis of land collateral which leads to greater production efficiency and therefore to greater increases in household incomes. (Ingrid Palmer, 1985, Women's role and Gender Differences in Development: The impact of Agrarian Reform on Women, Population Council p. 2). The problem is that the titled land is being transferred almost exclusively to male individuals leaving no provision on how women will realize the above stated perspectives of privatization once the land is registered in an individual male name.

As land is the basis of rural existence in Kenya, it seems appropriate to enquire how land tenure reform is affecting women's relationship to land and the implications for women's agricultural work.

## **PROJECT OBJECTIVES**

Vis-a-vis land tenure reform, the main objective of this study is to investigate and highlight changing patterns of access to land, control and land use by women for food production. The specific objectives are:

- To investigate whether individualization of land titles has enhanced the acquisition of land by women.
- To assess women's rights to land within the individualized tenure system.

- To examine the effects of commercialization of agriculture and industrialization of tenure on household decision-making, land use, division of labour and types of crops produced.

## **JUSTIFICATION FOR THE PROJECT RESEARCH**

There are a number of practical reasons for doing this research.

Africa's food crisis has done much to increase world awareness of agriculture and food production. This in turn has led to greater attention being directed towards women's crucial role in food production and a consideration on how to support women farmers to promote food security at the household level. What have not been sufficiently dealt with are the constraints women face in their productive work to correct the food crisis and to turn the hope of African recovery into reality. This researcher feels that in order to address effectively the African food crisis there is an urgent need to recognize gender roles in agricultural production. If women are the key resource in food farming, then their productivity will depend not only in improving the resources that determine production but also how much access and control they have to these resources. Since women play crucial but often neglected roles as food producers, this research aims at creating a better understanding of factors determining women's access and control rights to changing tenure systems and how this affects women's roles and status in agricultural households.

Since the Kenya Development Plan (1989-1993) recognized the central role of women's productivity and aims at the restoration of this role from effects of colonial attitudes, this study will contribute to this restoration by presenting descriptive data and insights into women's constraints in access and control of land for food production thereby giving an accurate understanding of situations women face in their food farming.

This study is not only important, but it is also appropriate, as it is being conducted at a time when the government has recognized the high degree of sensitivity and complexities on land issues and has even appointed a high level commission to review land tenure laws and practices in the country to recommend legislation that will bring the law into conformity with Kenya's needs. (Development Plan 1989-1993 p. 130). The research results and recommendations will be presented to this commission.

In summary, the purpose of this study is to examine a historical and current gender relations to land - relations that are crucial to formulating policies through which Kenyan women's capabilities as food producers can be advanced.

## **LITERATURE REVIEW**

In this section literature was reviewed to examine concepts and methodological assumptions and concerns which have been raised on land tenure studies. It is on the basis of this review that a theoretical framework of the study was formulated.

Land Tenure, in the words of Okoth-Ogendo is often a term used to designate a variety of people - "land relationships which ranges from tenancy, acquisition, use, control and disposition of rights over land". [Okoth-Ogendo 1979 (a)].

According to Bohannan (Okoth-Ogendo 1982/83/84 (b) p. 502) there is no single topic that has exercised many students and people of affairs concerned with Africa as that of land, yet despite this "No single topic concerning Africa has produced so large poor literature and many people have remained ignorant of African land practices not because of lack of 'facts' but because of lack of knowledge of how to interpret the 'facts'".

Bohannan accepts the fact that many investigators have been meticulously careful in pointing out that one must not use European concepts in describing the African situation, but nevertheless these investigators according to him have rarely gone as far as to ask, what is meant by the term 'land', 'tenure' and 'rights'. Three factors he has recommended in studying land tenure cross-culturally are: concept of land; correlating man with physical environment and a social system with a spatial dimension.

Other scholars like Allot (1961) have suggested that a definition of absolute owner is the starting point in the light of traditional and introduced laws in Africa with a view of seeing whether it is in principle possible to isolate one category of interest in holders in land.

However this view of Allot has been opposed by Simpson (1961) who says that the word ownership has no God given meaning and that since it is an ordinary English



expression, it will be easy to recognize it where it exists, although he recognizes the fact that one might meet with difficulties in 'rights' which according to him have simply not developed into ownership or have fallen short of ownership.

Bentsi-Enchil (1965) draws our attention to the fact that since land systems should not and do not vary from community to community, this consideration places obvious limits on the value of broad generalization about systems of land tenure in general. However he is aware of certain uniformities of types in relations involved which make it possible to apply common scheme of analysis to different systems. His suggested approach to the comparative study of land tenure systems can be conveniently embraced in the questions: "Who holds what interest in what land?" (p.19). According to Bentsi-Enchil interest holders in land are three in number. That the first interest in land held begins with an area of jural relations and also the limits of tenurial system. Secondly, the group as holders or owners of land, he points out to the fact that it is the group ownership that most forcibly strikes the foreign observer but likens it to the Anglo-American common law where the allodial title is registered as being vested in the state, the African one is vested in the community as a whole or the chief as a trustee for all people. His point of interest concerning an apportioned land owned by a group is that "a single and undivided control" is usually exercised over it. That the village and the community represent a type of customary association that presents itself as a company or cooperative. Third interest holders are the individuals which Bentsi-Enchil observes when he writes:

The group title is umbrella beneath which are the particular district and exclusive interest of sub-groups and individuals in portions of such land occupied or granted them as the fee simple estate of English law (p.21).

That the individual ownership was land which was first cleared of virgin forest which becomes allodial property of a person or persons clearing it as a cordial principle. That this first occupier is held to acquire the maximum type interest short of allodial title and that, that interest usually endures as long as the heirs to succeed the original occupier, unless he effectively abandons the land.

Okoth-Ogendo (1981c) the renowned authority on land tenure systems in Africa has criticized Western scholars, whom he says have proceeded on the assumption that irrespective of obvious differences in context and function, the African property system cannot be analyzed within the Western property jurisprudence. According to him, the Western scholars have thought about land under customary law in Anglo-American jurisprudence which centres around the evolution of the concept of ownership during the feudal period when land belonged to the crown and the tillers of land were tenants.

Expounding on this, Okoth-Ogendo says that the ideas of ownership in colonial context was an important tool for colonial process which conveniently resolved that African rights in land were in the nature of usufruct only and that whatever was not under cultivation or occupied was vacant land which the sovereign colonial power was free to grant to the settlers.

On the other hand, Okoth-Ogendo explains that ownership was introduced too, in order to sell the capitalist theory of law and land development in terms of decision-making and land use. He further recommends that:

A proper enquiry into the concept of property in any society must start with a clear view of how that society handles the basic question of rights, their generation, allocation and vindication (Okoth-Ogendo, 1989)

From this perspective Okoth-Ogendo (1981c) cautions that the power of control should not be confused with the ownership of the physical solus because "control in the African property systems is to guarantee the access rights of the individual and collective over land resources and to ensure that these rights are equitably distributed through time among all members of the society". He further explains that access rights related to land use activities carried a varying degree of control exercised at different levels of political organization. That this control authority was either invested on the grandfather, lineage or clan but the exercise of this power did not involve exclusive appropriation or distribution "upon whim and will".

In this sense, Okoth-Ogendo concludes that to describe tenure systems as communal chiefly or usufructuary "obviously distorts the very complex relations which rules the property law described and the manner in which they function".

Gutto (1975a) explains that the term 'ownership' in its present connotation should not be used, but instead allodial rights. According to him, this is more legitimate in that the individual head of the family had the right of occupation and transmission only to members of the family as the customs dictated. In this sense, Gutto warns that, this type of control should not be confused with feudalistic system since the head of the family had no authority to dispossess the occupier of his rights, neither was the occupier liable to pay rentals in terms of labour or otherwise. Okoth-Ogendo firmly believes:

tenure regimes cannot be adequately explained by directing inquiries into whether or not African social system, knew or recognized the institution of ownership and whether if they did that, ownership, was 'absolute' or corporate and who in society the individual, the chief, the family, the clan, the lineage or the "tribe" was the repository of that ownership (Okoth-Ogendo 1989).

It is apparent from the reviewed literature that the term "ownership" is fraught with great confusion largely because popular concepts of the term influence perception. That is, an "owner of land" is a person who enjoys a demarcated piece of land registered in his name, with the right to get, transfer and will away the land. Several leading suggestions are given by Okoth-Ogendo which we intend to adapt for this study. His pertinent observation is that there should be a clear distinction between the issue of access to land and that of control over them. Secondly, he states:

"in order to fully understand the social processes through which power over land rests, one needs to construct a formula that would direct attention to a more complex series of questions.

Questions that go beyond man-land issues which the doctrine of ownership implies, to encourage man-man relations which creates and determine power in land-based societies (1981d)".

Explaining further, he says that access questions should be in the nature and variety of power over land and the purpose and conditions under which that power works. This type of data according to him will indicate that access to such power is an incident of membership in some unit of production; that they are specific to resource management or production function and that they are tied and maintained through active participation in the process of production and reproduction at particular level of social organization.

On the other hand control questions as seen by Okoth-Ogendo should ask in whom does the authority to allocate rest, how is that authority controlled, for what reason is that authority vested in particular persons and not others and what are the mechanisms through which allocative authorities redistribute power in space and time between generations.

From these reviews, one emphasis is clear, that in African context property (in this case land) was not so much right of persons over things as responsibilities and obligations in respect to the things. Within this system the individual members were allocated defined rights and obligations in respect of control, 'ownership' and the exploitation of the resource and continued attachment of the family and to the natural resources that sustained it.

Given this background, evidence (Okoth 1981c, Gutto 1975a, Pala 1983a) suggests that the indigenous property systems did not discriminate against women until the received property law was enacted.

According to Gutto (1975), women had virtual control and monopoly of crop production which led to them having rights to land they controlled for maintenance of their households.

It is apparent that women's status in their agricultural productive tasks was secure until the legislative programmes were designed to replace the traditional with the modern institution being argued that this would generate progress and social economic development (Okoth-Ogendo 1981c).

This study takes the standpoint that land is only significant in so far as it lends itself to human use and presents certain opportunities for human utilization. Viewed in this way, this study will focus on the implication of land tenure reform on food production. Thus the purpose of the study ceases to be a surveying exercise but becomes a sociological problem of the tenure of production units. We therefore intend to demonstrate a fresh approach to the study of rights to land as a resource of primary products, by looking at the use and disposition of land, within the individualised tenure system, by looking at the nature and rights of those who possess the land with regard to other members of the family, and by investigating to determine not only the nature of the rights but also the effects all this has/will have on levels of decision-making.

## **THEORETICAL FRAMEWORK**

The severity of Africa's increasing food crisis and the failure of existing policies and actions to arrest the continuing deterioration of production and consumption has led to greater recognition of women's crucial role in food production and food security at the household level.

Women in Kenya are a major resource in agriculture (Women of Kenya, Republic of Kenya 1985, p.8) and food production as evidenced by their numerical proportions, their share of labour in agriculture and food production and the division of labour by sex in this sector.

Despite women's crucial role in agriculture and food production, their potential has not often been well understood or appreciated. In practice women have not benefitted from adequate policy support. The agrarian land tenure policies have restricted women's access to land and other factors of agricultural production such as technology, credit subsidy, and

inputs. Women have not had equal access to support services and incentive systems for expanding agriculture and food production for example in extension and training services and information (International Centre for Public Enterprise in Developing Countries, 1986 p.10).

In 'indigenous' societies, women's role in agriculture and food production was recognized by customary rights of access to land and support from family labour. Structural changes under colonialism and in post-colonial phases have eroded many of these rights, but the responsibility of feeding the family still rests primarily with the women in many rural communities in Africa.

Despite international recognition of rural women's rights to own land (World Conference on Agrarian and Rural Development, Rome 1979) attempts to incorporate this principle in land tenure have been marginalized.

In Kenya adjudication and registration of land has been conducted on the basis that the power of control was equivalent to ownership as understood in Western laws, which has led to the transfer of land almost exclusively to male individuals. This has been done at the expense of providing for use rights "which is the area most women cultivators stand to be most adversely affected by the new scheme" (Pala 1975c). As a result women's access rights have been transformed from "guaranteed access to those of simple labourers" (Okoth-Ogendo 1981c).

The individualization of land which enables any person to acquire land has not created equality as has been argued by some scholars, as the legal institutions per se cannot create equality especially when the basic problems are rooted in the social political system (Okoth-Ogendo (1981). In fact, it has expanded economic opportunities for those with titles to get credit and loans, which women, because they have no titles, cannot fully utilize.

On the other hand, commercialization of agriculture has led to different patterns of household decision-making and that different decisions on land may be emerging. The family economy has to be divided into both monetary and subsistence which has transformed the role of women in the indigenous economy and increased their labour burden (Okoth-Ogendo

1981). Lack of decision power in land use is pushing women to marginalized land and thus further decreasing their productivity in food.

Yet customary law continue to determine the way in which a household head divides the land (Land Tenure Centre 1986 p.60). To inherit land, each male member of the family can only be supplied with a plot of arable land by subdividing the land into smaller and smaller plots (Ault and Rutman, 1979). Women are rightly represented as both among the landless and whose accessibility is so small as to be uneconomical and therefore must be content with land wherever they find it. The norm is to have access to small scattered pieces of land borrowed, rented or gifts from other people (ILO 1986 p.122).

The individualization of tenure has created potential landlessness (Wanjala 1989). It is estimated that two million people are absolutely landless, consisting of about 400,000 families and increasing at the rate of not less than 1.5% annually (Okoth-Ogendo, 1981c p.337). As there is ready cash, and the newly entitled individuals can sell land, which was once or ostensibly still is family land (Shipton 1987), there is a trend that poor people will raise money from the sales of land either to pay school fees or for plain subsistence (Okoth-Ogendo 1976e). Evidence in the current land reform suggest that access to land for women as a group is being systematically eroded to a degree where they will be added to the growing hordes of the and landless poor, with obvious detrimental consequences to the agricultural industry (ILO, 1986 p.123). Pala, (1978b, 1980) speculates that the women most threatened will be families with little or no off-farm income, which will necessitate them to sell land and also daughters and widows "often defined by land officers as those who do not need much land."

This study did not lose sight of the women and men who have contributed to these changes. We focused on the "gender relations of production" a terminology which encompasses both social and economic relations of production and which is characterised by differential assignment of labour tasks, control over decision-making and differential access to control over the allocation of resources.

We took the view that economic relations of production (e.g. division of labour, allocation of resources) are shaped by social relations of production and reproduction and this is the only way we can explain what is happening to women's role in agricultural production and how their reproductive role is perceived by the society which shapes their productive potential.

In analyzing changing gender relations of production the term "sex gender system" is a conceptual tool applicable across time and space, (Gayle Rubin 1975) which is manifested in kinship systems, applies to relations of production at all levels (household to state) and accounts for role of socialization in determining the way women's and men's control aspects of production and allocation of resources are defined in society.

According to Jaggar (1983:127), gender structuring is a process by which society structures relations between females and males (e.g. productive and procreative). It is not biologically determined but socially imposed and culturally legitimized to define women and men in a particular way, and assign to them roles which give to men advantage over women regardless of class. The useful indications of these are assignment of labour tasks, allocation of resources and control over decision-making. These relations of productions translates into relations of power which begins at the household level but spreads right up to national levels. Thus implied in the "relations of production" are relations of power and the gender structuring provides legitimate process through which productive relations between the sexes are empowered. A key indicator of power is control - the extent to which a group or individual exercises authority socially recognized and legitimated to make decisions concerning others (Schlegel, A Sexual Stratification: A-cross-cultural view, 1977 p.8). The gender relations often imply power relationship which are socially constructed and are constantly changing given historical trends and cultural attitudes..

From these concepts the following questions are significant: Who controls access to land at household and at national levels? What are the factors influencing such decisions at both levels? Who are the beneficiaries of these decisions? Do such decisions increase or hinder food production? Do they take into consideration women's dual role of producer and procreator? (Davison J, (ed) 1986, Agriculture, Women and Land: African Experience, p.3)



## **HYPOTHESIS:**

The following hypotheses were developed to guide this study.

1. Land Tenure Reform does not significantly enhance acquisition of land by women.
2. Land Tenure Reform has eroded the position of women and out of it the men have emerged stronger and the women weaker.
3. Commercialization of agriculture and individualization of tenure has led to different patterns of household decision-making, thereby affecting land use, division of labour and types of crops produced. It also undermines women's capacity to control the products of their labour.

## **RESEARCH DESIGN AND METHODOLOGY**

A combination of survey and case study approach has been used. A major survey was carried out to assess the position of women regarding land for food production. The survey was used as a criteria for identifying special cases for in-depth interviews which was collected in the form of life stories of the respondents.

## **DATA COLLECTION AND TECHNIQUES**

### **PRIMARY DATA**

Both structured and open-ended questionnaires were designed to assess the following:

1. Whether land reform enhances women's acquisition of land? Which women 'own' land? How did they acquire the land they own? What factors hinder women from acquiring land. Has the individualization of land enhanced new rights for particular women who did not have such right under the 'traditional' system? Which groups of women are benefitting more?
2. Women's Rights to the land? An answer to this question was divided into several interrelated enquiries. Who is the 'owner'? who has the right to allocate land? for cultivation or use? What are the distinctions between types of land allocated? Who

uses (has physical possession of) the land? What are the rights of the person(s) using the land?/or what security of tenure has the person in actual possession of the land has?

3. The effects of commercialization of agriculture on food production. Key questions about which information was needed are: availability of land for food. Who decides on which crops to grow? how is the decision made in terms of soil fertility and distance for cash and food crops, what are the changes in land tenure and effects on the customary division of labour as a result of the introduction of cash crops. How is the produce of the land distributed? (Beneficiaries from land outputs).

In-depth case studies were carried out on women who are landless, on how they came to be in that position, and whose land they were currently using. Women who own land were also interviewed to find out how they acquired the and an overall assessment of their land management as compared to other women who do not own land.

## **STUDY AREA**

Mumbuni Location in Machakos has been selected to focus our study and to assess the effects of land tenure system on women's access to land for food production. This choice of study location has been based primarily on the fact that despite the semi-arid conditions of the area, the majority of the male population have migrated to the nearby Nairobi city while women have been left behind as cultivators and their livelihood depends on land. For this reason, they grow a wide range of crops such as maize, millet, beans, sorghum, potatoes, cassava, arrow roots, pigeon peas, cow-peas, beans, green-grammes, vegetables and fruits. These are largely used for home consumption and are sometimes sold in the local markets to buy sugar, soap, matches, cooking oil and other household needs.

Secondly, Mumbuni is potentially arable land traditionally given over to subsistence farming but increasingly (in the higher areas) used for cash crop (coffee) growing. The pressure is not altogether unwelcome by the subsistence farmers many of whom wish to increase their cash income by growing cash crops. The problem is how to maintain food

production for home consumption while also allowing greater income from cash crop income. This has led to agricultural intensification in the area. The place thus provides a perfect sample we need for this type of study.

Lastly, this is also an area where adjudication and registration is on-going while at the same time, customary land tenure is still in practice.

## **SAMPLING**

### **(a) Sample size:**

The survey component included a sample of 150 households, about 10 per cent of the sampling frame. This includes an estimated 1,500 households spanning the expanse of Mumbuni Location. Mumbuni Location has recently been carved from Iveti South Location. According to the Kenya Population census, the population of Iveti South rose from 8822 persons in 1969 to 9905 persons in 1979. This gives an annual growth rate of 1.164 per cent. It is assumed that the period 1979-89 this same rate persisted and that it also maintained the household numbers. Although the two assumptions are highly implausible in the absence of updated population figures and the total lack of information on household numbers in 1969, it has become impossible to directly calculate the increase of households. In the event, following the figure of 1,200 households in 1979 and assumed growth rate of 1.164 per year, total number of households in mid 1989 approximates to 1,500.

### **(b) Sampling procedure:**

The distribution of the sample was determined by two factors. First, population size of each sub-location was taken into account. Second, the sub locations with better prospects of reliable information (in adjudication and registration records) took a larger proportion of the sample. Actual inclusion of the households was further determined by random sampling within each sub-location.

## **DATA ANALYSIS**

Both qualitative and quantitative techniques were employed. Analysis by the computer was done particularly of the major survey. We have presented the findings in simple frequency tables and graphics. We also have presented profiles of in-depth case studies.

## **CHAPTER TWO**

### **LAND TENURE REFORM IN KENYA: A HISTORICAL BACKGROUND**

#### **INTRODUCTIONS**

Land tenure policies in Africa as a whole have tended to move away from the pre-colonial tenure structure to individualized tenure. The purpose is to confirm in modern law ownership of land by individuals to whom credit and other agricultural services might be directed. Proponents of individualized tenure argue that the reform should lead to a greater production efficiency and therefore to greater increases in household income. It is from this background that we intend to look at the extent to which women share in the attainment of these objectives.

Gender relations in land in Kenya have been modified by a major intrusion of colonialism, which was accompanied by capitalist relations of production and reproduction. Such conditions of change should be seen within a historical perspective. This chapter therefore looks at the historical changes that have taken place from the pre-colonial, colonial to the present time and consequently at how women have related to land, given the dynamic changes over time.

#### **PRE-COLONIAL TENURE STRUCTURE AND WOMEN'S RIGHTS IN LAND**

Many scholars writing on pre-colonial land tenure systems in Africa have often found it difficult to identify or generalize on a system that prevailed during this time. This has been mainly due to lack of authentic literature on the subject, faulty anthropological and historical accounts of western researchers and mostly because of the diversity and complexities of traditional societies (Kibwana 1990:231).

Nonetheless, one thing is obvious, that in Africa land assumed many forms that order relationships between people - both living and dead. According to Davison:

It structured relations between groups within society and between people and the supernatural world. As soil, it is used

as material resource in symbolic rituals to express a society's attitude towards sex and gender relations. Land is both sacred and profane. Pre-colonial, pre-capitalist societies recognized this duality. (Davison, 1987 p. 5)

For example, among the Gikuyu of Central Kenya, the earth symbolized, a woman, blood, and a man and this was ritualized in a ceremony preparatory to marriage (e.g. Guthinjiro) where an elder linked a woman's family with a man's by mixing soil brought from a man's home with blood from a goat belonging to the man's family (Davison 1987 p. 16)

Among the Bukusu of Western Kenya, boys are smeared with mud during the time of initiation to ensure their future fertility as adult males.

From pre-colonial land tenure studies, a generalization has emerged referring and describing African land tenure as 'communal', although there has not been an agreement on how it was politically administered, whether by individual, family, clan or ethnic group (Okoth-Ogendo 1976:150).

Nonetheless, at the community level, land was and still is defined in terms of relations between kin, family members and neighbours. In many communities land was held by a village or lineage male head of age who had a good knowledge of lineage history and land use patterns and was considered a trustee and not an owner of the group's land. (Pala 1978). It was his responsibility, in consultation with lineage elders, to allocate land to heads of families depending upon need and availability.

One thing is clear though, that each person in a community had rights of access to the land depending on specific needs of the person at the time. Okoth Ogendo writes that:

Access to land has been specific to a function for example, cultivation or grazing. Thus in any given community, a number of persons could each hold a right or a bundle of rights

expressing a specific range of functions... a village could claim grazing rights over a parcel, subject to the hunting rights of another, the transit rights of a third and cultivation rights of the fourth (Okoth-Ogendo 1976:154).

Okoth-Ogendo further explains that although cultivation rights were generally allocated and controlled at extended family level, the grazing rights were controlled by a much wider segment of society. According to him to control land was to guarantee rights to allocate to other members of the community. Those who controlled land did not 'own' land to the exclusion of everybody else (Wanjala 1990). Kibwana (1990:233) says that the proper grasp of the above principles of land holding reveals therefore that it is conceptually wrong to identify 'chiefs' or 'leaders' in pre-colonial Kenya who 'owned' land or were trustees on behalf of members of an ethnic group.

The lineage head was responsible for allocating land to families and was accorded great respect and obedience but those under him had a strong sense of their own rights and obligations. The obligations included a fair distribution of land and settling disputes that might arise from land. In this way, the lineage head obtained a position of power in the administration of the land.

Land was allocated to an individual male. Upon his death, the land rights were transferred to his sons, and consequently the degree to which females inherited land depended upon the gender structure which was imposed through patrilineal kinship ideology.

During a life time, the person allocated land, could loan, lease, pledge, pawn a piece of land for temporary use, but in no sense were these viewed as a transfer of permanent rights, that is land was not alienated permanently without the consent of the trustee group be it lineage clan or community (Okere 1983 p. 40).

To what extent can we claim that women had greater rights on land in the pre-colonial tenure structure? There are two schools of thought which emerge from this question. One claims that pre-colonial land tenure system benefitted women (Pala 1978, Okoth-Ogendo

1981, Verhelst 1970) while the other argues that land controlled by men through first-use rights disadvantaged women (Freidl, 1975 p. 54). Freidl argues that because men have always cleared land in Africa they have been able to gain land at the expense of women. Karen Sacks (1979) on the other hand argues that shifts in mode of production from gathering-hunting, and simple horticulture to more complex agriculture led to women's loss of power regarding the assignment of labour tasks and allocation of goods where control was increasingly invested in male-dominated kin groups. Boserup (1970) asserts that plentiful available land coupled with low population density resulted in agricultural labour that benefited both sexes; men felled trees and cleared land, while women cultivated it.

In the pre-colonial period, the women had virtual control and monopoly of crop production given the complementary division of labour between women and men. This led to the rights of women having land they controlled for the maintenance of their households.

The security of rights to land was thus guaranteed and protected by the very principle under which the initial rights were acquired, based on the principle of kinship, residence or allegiance. Land formed the foci of social relations, and as long as these relations which gave rights to land were maintained, the question of insecurity of land seldom became a live issue (Verhelst 1969/70). For example Pala (1983a) in her study of the Joluo of Kenya writes that the system, provided a daughter 'usufruct' rights (although she was not allocated land) of land belonging to her father's lineage, while a wife had 'usufruct' rights to her husband's patrilineage. She further points out that such rights conferred (by wives) often lasted for a life-time. Achola Pala's study states that women as individuals or groups did not have the legal rights to allocate or dispose of land but neither did the individual men.

Land was transmitted through the permanent members of the family (as women got married outside the family) to guarantee access to and therefore it was patrilineal succession (Okoth-Ogendo 1981). Although men were considered heads of their families, when they died the land portion that fell directly under his headship remained intact as family property (Gutto 1975). Gutto further points out that the widows held property as trustees for their

sons, while the leviratic unions helped the widowed woman to maintain the husbands property as property rights was contingent on residence and status. In case of death/divorce of the mother, the sons still attained the mother's parcel (Pala 1983a).

Pala's approach (Pala 1978) clarifies the two concepts of land owner, one referring to the one who had rights to allocate land to members of the family and the other to the one who invests into a piece of land for productive purposes. In the first category were the heads of families who were the men and in the second category were women. It is within this second concept of ownership that women exercised their rights in access and control matters related to land use.

Okoth-Ogendo (1981) draws our attention to the fact that although indigenous property laws excluded women from 'owning' or 'inheriting' "this cannot be a symbol of an inferior status or in any way a form of chauvinism developed by one sex for the suppression of the other" as rights over immovable property were trans-generational and although women were treated as permanent members so the societies in which they were married, the patri-local societies had to control the process of allocations and transmission of its primary means of survival.

In analysis, men traditionally gained access to land largely as lineage members and women gained access as wives. Historically, therefore, control over land through inheritance ascribe to patrilineal ideology and organization. Characteristically men controlled women's access to land and allocated their labour. For example, the more wives a man had, the more land he accumulated and controlled (Guyer 1984). The more land a man controlled the more wives and children he needed to help cultivate it (Davison 1987 p. 18). This joint productive-procreative value of women is symbolised by the exchange of bride wealth to compensate her family for loss of labour and to assure the future paternity of her children. In turn, her male children inherit the land she cultivates.

It is important to note that although landholding historically was inclusive, nevertheless, the amount and quality of land acquired or inherited depended upon an individual's status and position in a family, lineage or community. For example, there was



disparity between land held by a chief and that held by the ordinary member of the community. Likewise, the wives of the chief had access to more land than the wives of ordinary members of the community. Again the first wife by virtue of her position in the family, always had greater access to land than her co-wives. According to Davison, women as a social category cannot be viewed as a single category even in the pre-colonial period (Davison 1987 p. 19). Their social status thus impinged upon their access to and their role in agricultural production.

Male access to land was also based upon social factors like status in the community and size of the family whereas women's access to land was and still often depended upon their relationship to men and their marital status.

What is significant however, is that the individual members of the family were allocated definite rights and obligations with respect to control, ownership and use of the resource.

Thus the customary land tenure ensured women's rights to use land for agricultural production until colonial capitalism and the capitalist notion of land ownership replaced the "traditional" with the "modern" which has had adverse effects on women's production.

## **THE COLONIAL PERIOD**

The origins of the tenure reform can be traced right back to the Berlin Conference in 1895, when Kenya was declared a British Protectorate. From then on, a series of Ordinances followed which eventually alienated large tracts of land from the indigenous people (Wanjala 1989).

First was the East African Land Order Council in 1901 which vested crown lands the protectorate in the Commissioner and Council-General to be in trust of Her Majesty. This ordinance gave the Commissioner the power to make grants or leases of crown-land in any terms he thought reasonable but subject to instruction of the Secretary of State.

The 1902 Ordinance opened the way for European Settlement in Kenya, making large areas of land to be alienated for settlers under the principle of ownership of interest.

1908, saw the Crown Land Ordinance which conferred power upon the commissioner to make grants of 99-year leases to the settlers.

The Crown Land Ordinance in 1915 further provided for the creating and empowered the Governor to reserve any Crown Land which in his own opinion is required for the use or support of the colony (East Africa Royal Commission 1953-1983 Report). This Ordinance thus marked the complete disinheritance of the independent Kenya from their land by colonial authorities. As long as the colonial government based its activities on the Ordinances their actions, they believed was legal. The future policies as concerning land by the colonial government owe their origin to this period (Wanjala 1989). Henceforth, there was to be a systematic and planned imposition of English property law, and agrarian changes in the colony (Sorenson 1968)

The settlers, feeling that they were supporting the colonial governments' economy as main actors in agriculture, began putting further pressure advocating for a system of property law with regard to transfers, mortgages and leases, the content of which was English (Wanjala 1989). These demands were implemented by the Transfer of Property Act of India under the Crown Land Ordinance and the Registration of Titles Ordinance.

As if this was not enough, the settlers further asked for more, of which Okoth-Ogendo writes:

In order to insure security not in the 'legal' but in a jurisdictional sense, the settlers demanded that all land considered or likely to be 'suitable' for European settlement should be set aside for their exclusive occupation and use, actual or prospective. They therefore demanded that Africans

be grouped into definite reserves far removed from the European centres or any land likely to be opened up for European settlement (Okoth-ogendo 1976, p. 133)

The 1915 Ordinance provided for the creation of reserves and empowered the Governor to:

Reserve any .... Crown Land which in his own opinion is required for the use and support of the colony (Journal of African Administration 1956 para 19).

All these developments had far reaching consequences of the indigenous peoples. The alienation of land was followed by the establishment of the African reserves the same year.

Nonetheless, these reserves came into existence without clear plans of how they were to develop except to provide for cheap and dependable labour for the settlers plantation agriculture.

Although the effects of land alienation were felt more by communities such as Maasai, Kalenjin and Kikuyus who were removed from their ancestral lands, the effects of this alienation later began to spill over to adjacent areas and this created a lot of repercussions on African land use.

First problems arose from the disruptions created by moving both agricultural and pastoral communities who had to struggle to adopt themselves to new ecological conditions. The consequences were: severe famines and livestock disease, plagues particularly among pastoral people. Second, the fixed ethnic boundaries established in the creation of reserves, restricted shifting agriculture and also led to widespread landlessness. As a result, Okoth-Ogendo writes that:

... there was rapid deterioration due to land fragmentation, overstocking and soil exhaustion and erosion, low crop yields

and diminishing livestock herds, low income and discontent among the Africans (Okoth-Ogendo 1979:150).

Third, land disputes also developed and clans and families sought to retain rights of access to ancestral lands.

Confronted by these problems, the colonial government seemed set to respond to "improve" the African reserves at least to avert any major political upheaval, (Mwaniki 1982:10).

One would be tempted to assume that it was out of genuine concern that the colonial government embarked on the improvement of the deterioration of the African reserve. However, Okoth-Ogendo points out that:

The settler economy alone was not capable at this time of satisfying the colony's demand. As such, it was necessary for the African sector to assist by producing enough. In order to achieve this, it was imperative that the administration should assume wide powers in regulating and directing economic activity in the settler and African areas (Okoth-Ogendo 1976:160).

Administratively, the colonial government realized during the Mau Mau revolt that individualization could be used to create a solid middle class population attached to the land which has too much to lose by reviving Mau Mau in another form (Sorrensen 1967:160). This meant that:

... Individualization of tenure was aimed at defeating Kenyan nationalisation in that a landed class of conservative people was to be created through replacement of customary land tenure

with a tenure that permitted a few people to own land. Such a class of people would in turn act as a buffer between the settler and the landless (Kibwana 1970:237).

Agronomically, the colonial government was advised that the greatest problem in African reserve was embedded in their land relations which they termed 'communal'. The only answer therefore to these problems was to reform the African tenure system, that is in access and use of land. Arguments put forward were that, the structure of access rights encouraged sub-division of holding leading to small units of sub-economic size. As a result, they argued, proper husbandry was impossible (Swynnerton Plan 1954:13).

These arguments were to lead to a land tenure reform programme relentlessly pursued by the colonial government throughout the colonial period. The solution to the problem lay in the eyes of the colonial authorities in the individualization of land tenure.

## **THE LAND TENURE REFORM**

The Swynnerton Plan completed in 1953 and published in 1954 provided a definitive statement on land tenure policy. This aimed at intensifying African agriculture on the basis of land tenure reform and production for the urban and export market. According to Swynnerton, the architect of the Plan, after whom it was named argued that:

Sound agricultural development is dependent upon a system of land tenure which will make available to the African farmer a unit of land and a system of farming whose production could support his family at a level, taking into account prerequisites derived from the farm, comparable with other occupations. He must be provided with such security of tenure through an indivisible title as will encourage him to invest his labour and

profits into the development of his farm and as will enable him to offer his security against such financial credits as he may wish to secure from such sources as may be open to him (Swynnerton, 1954:9)

According to the colonial government, customary tenure created a barrier to social and economic advancement of the people. This opinion was later to be declared by East African Royal Commission that:

Policy concerning the tenure and disposition of land should aim at individualization of land ownership and a degree of mobility in the transfer and disposition of land which without ignoring existing property rights, will enable access to land for its economic use (East Africa Royal Commission 1953-5 Report. Chapter 23:1).

Likewise, the Arusha Conference held in February 1956 recommended that:

Governments would be well advised to encourage the emergence of individual tenure in areas where conditions are ripe for it. (Report of the Conference on African Land Tenure 1956 para 19).

The colonial government announced on June 1956 that:

It is the policy of the government to encourage the emergence of the individual land tenure among Africans where conditions are ripe for it and in due course, to institute a system of registration of negotiable titles (Republic of Kenya 1965-66:6).



In the following years, the policy of individualization through a process of land rights and subsequent registration of absolute titles was pursued vigorously. As observed by the Mission on Land consolidation and Registration in Kenya (1905-1966:6) individualization of tenure marked the final passing of the concept so eloquently expressed in the often quoted saying of the Nigerian chief:

Land belongs to a vast family of which many are dead, few are living and countless members are still unborn.

The Registered Land Act of 1963 further enhanced the individualization of tenure among the indigenous communities. Thus, the introduction of free enterprise system began with the European Settlers owning the land, while Africans provided labour. According to Kibwana:

The colonial government therefore consciously excluded the participation of the indigenous people in the free enterprise system in an equal footing with Europeans. Even when eventually privatization of land was allowed among Africans, such privatization was on marginal land and not a large proportion of Kenya either since Africans had earlier been massively dispossessed (Kibwana 1990:238).

There is no question that colonial capitalism dramatically transformed the gender relations to land. The solutions imposed by the colonial system aimed at intensifying agriculture and introducing cash crop with emphasis upon male controlled agriculture was a primary determinant of women's loss of status and power in agriculture.

It is necessary to understand here that given labour division, women were the backbone of rural farming. They were responsible for growing subsistence crops for feeding the whole family. The men helped with clearing land for cultivation. Thus women's role in agriculture and food production was recognized by customary rights of access to land, forests and support from family labour. But with the advent of colonialism, women's position began



to be exploited. The colonial system set to serve its government barred women from effectively participating in it because of lack of training and education. While the men migrated to urban areas and cash crop farms in search of money to pay for tax, the women were left to do double the amount of work in order to feed their families. The majority of Kenyan women estimated at 80% have remained cultivators for their existence (Women of Kenya 1985:36). The structural changes under colonialism and later post-colonial phases have eroded many rights women enjoyed in their traditional settings, leaving them with unsupported and unrecognized bulk of agricultural work in the rural areas.

The advent of colonial capitalism drastically altered former patterns of land use and occupancy in many areas. Access to agricultural land which had been in abundance was restricted. The consolidated lands were now owned by the men who most of the time were forced to grow cash crops for export at the expense of food crops for the family.

In the same process, the women's productive procreative labour began to be devalued by capitalist production relations. Less emphasis was placed upon food production and women's labour in this sector was uncompensated, while men's labour in agriculture assumed exchange value. The technological innovations that would help women in their productive/reproductive roles remained static while men gained from agricultural technology comparatively. The customary rights of women continued to be eroded by the new reforms that promised to generate progress.

The end result of colonial capitalism has been the re-structuring of gender roles of production. The introduction of cash crops for export has brought about greater gender segregation in labour tasks with men increasingly becoming agricultural managers or wage labourers (Davison 1987:15). The study shows that in essence, the men rather than women have benefitted from reforms and re-structuring of customary practices of land tenure.

## **POST-COLONIAL PERIOD**

In 1963, the Land Tenure Reform continued in independent Kenya, as a matter of policy. The Kenyan Development Plan (1970-74) pointed out that:

It has been government policy that land tenure system in African areas of Kenya should be changed, so that the farmers can be provided with title deeds to their land where necessary so that scattered fragments of land can be consolidated into one holding (Development Plan 1970/74:120).

## **LEGISLATION ON LAND TENURE REFORM IN KENYA**

The full process of tenure reform involve three distinct stages:

**Adjudication:** This is the means by which a final ascertainment is made of existing rights in land, by recognizing and confirming rights which are actually in being without creating or altering the rights.

The process is contained in the Land Adjudication Act (284) where:

The Adjudication Officer is appointed by the Minister. The Officer then declares the adjudication area (i.e. area in which adjudication is actually done). The officer then goes ahead to give notice of the intentions to adjudicate and fixes a period, which must not be less than six months, during which all persons claiming rights in land within the area must present their claims. The Adjudication Officer appoints for each adjudication section a committee of not less than ten persons resident within the adjudication section. This is done in

consultation with the District Commissioner of the area. An Executive Officer is also appointed by the Adjudication Officer, for each committee to keep its record and to inform the Recording Officer of its decisions.

The Provincial Commissioner of the Province in which the adjudication area lies upon the request of Adjudication Officer appoints an arbitration board consisting of not less than six and not more than twenty five persons resident within the district of adjudication.

Fragments of land are then measured and the area of each fragment is recorded under the name of its owner, his ownership being determined by the committee. If the committee fails to agree or is unable to reach a decision, it refers the case to the arbitration board which is required to decide the matter and inform the committee of its decision. What is known as the record of existing rights is compiled from the decisions of the committee or arbitration board. This record is open for inspection for sixty days during which objection may be lodged with the Executive Officer of the committee concerned. An objection is re-considered by an arbitration board and heard by the Adjudication Officer who makes final decision on the case.

After the expiry of sixty days, and when all objections have been resolved, the record of existing rights is declared to be final and it cannot thereafter be altered. The committee now proceeds with consolidation.

Consolidation: The word consolidation in the context of land reform is usually associated with fragmentation which arises from different parcels of land in small pieces or fragments.

Consolidation was a measure which was designed to remedy two distinct conditions: the division of rural property into undersized units unfit for rational exploitation and the

excessive dispersion of parcels forming parts of one farm. According to the Mission on Land Consolidation and Registration (1965-1966:40):

Consolidation was meant to be a cure for sub-economic or uneconomic parcellation and to: aggregate several fragments owned by an individual and then re-distribute so that the holding of each person instead of being dispersed, falls together as one parcel of better size and shape.

The process is contained in the Laws of Kenya: The Land Consolidation Act, Chapter 283 which is as follows:

After adjudication, the same appointed committee now proceeds with consolidation. The Survey of Kenya will have determined the total area comprised within the perimeter of the adjudication section. This is compared with the total area of the measured fragments and any other kind in the section. The area under each owner's name is then adjusted by multiplying it by "reconciling factor" which is obtained by dividing the total area of the adjudication section determined by the Survey of Kenya by the total area of the measured fragments.

The committee then decides how much land within the section is required for schools, villages, roads, hospital and other infrastructure in the community. The acreage for public purposes is divided by the total acreage of the section determined by the Survey of Kenya and each owner's entitlement is multiplied by the resulting fraction. This deduction is known as the 'percentage cut'.

The committee then allocates land to each land owner in a single piece equivalent in area to the sum total of all his previous fragmented pieces after adjustment by reconciliation factor and after deduction of percentage cut. The consolidated holdings are demarcated on the ground in the presence of members of the committee and adjoining landowners.

After this, the adjudication register is prepared containing details of each landowners holding by reference to demarcation plan. The register is open for inspection for a further objection of sixty days.

The objections are made to the Adjudication Officer who considers the matter with the committee, and may either dismiss the objection or rectify it accordingly. His decision is final. After the period of objection has elapsed and all objections dealt with, the adjudication register becomes final.

We should note at this stage that, the process of consolidation has really never worked effectively outside Central Province and parts of Eastern (Embu, Meru). In the past it has had very notable failures particularly in Nyanza province.

Registration of Titles: From the adjudication register, the Registrar prepares the registers under Laws of Kenya, the Registered land Act Chapter 300. The effect of this is to convert the 'landowners' of the Land Adjudication Act into the "proprietors" of the Registered Land Act.

It must be mentioned here that the whole process from adjudication, consolidation and registration is manned by men and male group. The women's participation in this process has been almost non-existence. The adjudicators, the consolidators and land committees and boards members are almost always men. It is argued that "by custom women did not take part in land disputes and therefore it was reasonable that they do not take part now. (Pala Okeyo; 1980:39)

The full effect of land registration may not be obvious and known for some time to come, but one thing is clear, that the transition from indigenous land tenure systems to the Western property concept of 'ownership' is not an easy one. (See Annex 1). According to Shipton:

The Adjudication and registration processes themselves require converting multiple, situational and overlapping rights to

individual, absolute and exclusive rights. The process can never be free of disagreement, deceit, and difficult compromise and it can sometimes tear families apart (Shipton 1987:48).

People are learning to live with private property, but the land tenure reform has been hard for farmers, and by no means fully successful for the government (Kenya Development Plan 1989-1993:171).

Shipton further explains that while land tenure reduces disputes about boundaries, it tends to lead indirectly to new disputes about the ownership of whole plots; it introduces new possibilities of misunderstandings between local communities and national government as farmers are suddenly expected to comply with unrealistic rules about recording of transactions while the emergent land market is largely unregistered (Shipton 1987:50).

Nevertheless, the land reform programme is still proceeding with its own momentum, mythology and a substructure of powerful political incentives. Although some land still remains under customary tenure, the process of adjudication is under-way to convert such land to individual tenure. The courts on the other hand have not conclusively decided that adjudication and registration of land initially held under customary tenure deletes customary land claims altogether. Irrespective of all this going on regarding registration of land in the name of individual male heads of household, evidence has shown that the family by and large continue to enjoy rights of access to the land which existed under customary law (Kibwana 1990:240).

Land and land tenure constitutes a central place in human life and despite the fact that over-emphasis by the Kenya Government policies is on industrialization strategies, land remains the major means of production in the country's main economic activity.

Alongside the tenure reforms, other dynamic social changes have taken place. According to Kibwana with perennially rising population, access to land for subsistence purposes for the majority population is no longer guaranteed. According to him since land does not expand, the 'exclusionary' land tenure systems, cannot cater for any expansion in

the community population on a continuing and re-adjustment basis through re-arrangement and re-allocation. In effect the individualization of tenure has led to the 'genesis of landlessness in scenario where employment opportunities in the public or private sectors are not visibly expanding' and neither have the multiple interests of those who use the land have been taken into account (Kibwana 1990:230). Legally:

It is impossible to translate group rights under customary land tenure to an exact equivalent under individual tenure so that during the conversion process property rights under customary land law will necessarily be extinguished (Kibwana 1990:239).

Kibwana further explains that the dilemma facing the Kenya Courts is that they have two interpretations regarding the effects of registration of land which has been converted from customary land tenure to individual tenure. While on one hand the interpretation holds that all customary land claims are extinguished, the second interpretation holds that such claims are merely transformed into another species of rights and that the registered holder under individual tenure hold the land in trust for those who need access to it under customary law can still enjoy their rights with standing their non-registration. Whether or not Kenya turns back on its policy, which is unlikely, it will have to find alternative arrangements of how to deal with those that have been left out in the land tenure reform - the women who are the majority of the country's citizens.

The question of land tenure reform which would favour not only the masses of rural population but women in particular, since women represent well over half the agricultural labour force in Kenya with an increasing number becoming de-jure and de-facto household heads, indeed strikes at the very core of rural society, land being the primary resource of their existence. Private property in land has far-reaching consequences for women's relationship to land and their work in agriculture. It is critically important to examine women's rights as regards the land tenure reform and the implications this has on women as food producers.

## CHAPTER THREE

### ANALYTICAL BASIS FOR INTERPRETING LAND TENURE REFORM AND ITS IMPACT ON WOMEN

In this chapter, we have tried to raise some of the major issues regarding the impact of land tenure reform on women. The data presented here is mainly drawn from a field survey conducted in Mumbuni Location, Machakos District. The survey was conducted during the Long Rainy Season in September to October 1989, when most of the agricultural work is done in the area. This survey is an analysis of 10% of the sample of households in the area. The results of the survey have been presented in simple frequency tables and graphics. The qualitative data which we will look at in the second last chapter will be used to augment the quantitative data. The presentation given in this chapter is therefore an effort to get at the basic information concerning women's rights in land.

This study has provided an opportunity to ask questions about and view women's real life situations as regards land given tenure reform and how this in turn relates to agricultural production.

It was necessary first to determine whether adjudication and registration has taken place in the area. Table 1 and figure 1 shows that 93.3 per cent of the sampled number already have their lands adjudicated.

**Table 1:     Adjudicated Land**

	Percentage
Land adjudicated	93.3
Land not adjudicated	4.0
Not stated	2.7



**Fig. 1: Adjudicated**

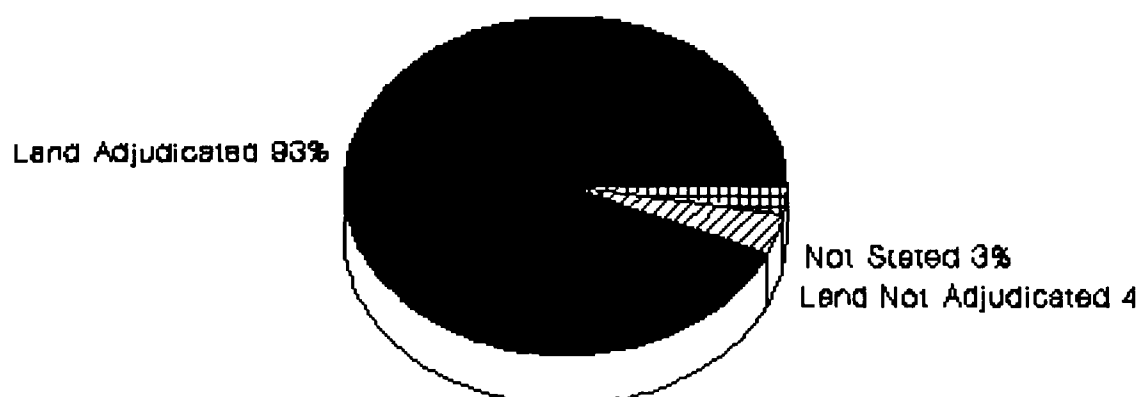
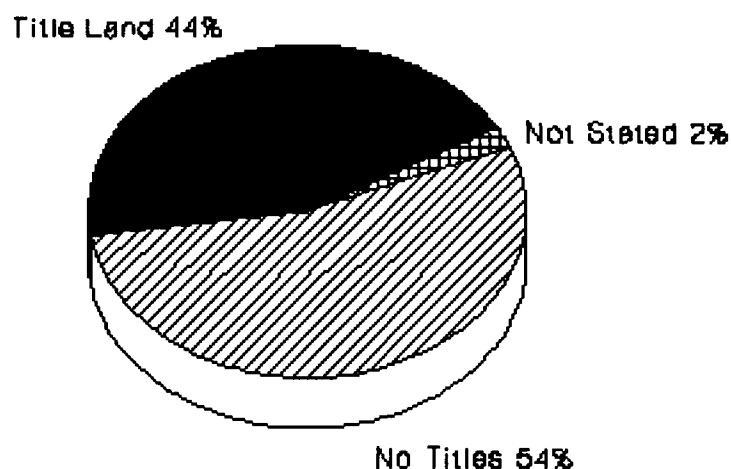


Table 2 and Figure 2 indicate that in Mumbuni some parcels of land have been adjudicated, registered and provided with title deeds (44 per cent), while some have not been provided with titles (54 per cent) although they are already adjudicated, and given numbers. The status of adjudicated and titled land was further confirmed by looking at the land adjudication and registration records at the District Land Office.

**Table 2: Registered Lands (Titled)**

	Percentage
Title Land	44.0
No titles	54.0
Not stated	2.1

**Fig. 2: Registered Lands (Titled)**



After establishing the fact that adjudication and registration of lands are already in process in Mumbuni, we proceeded with the following questions:

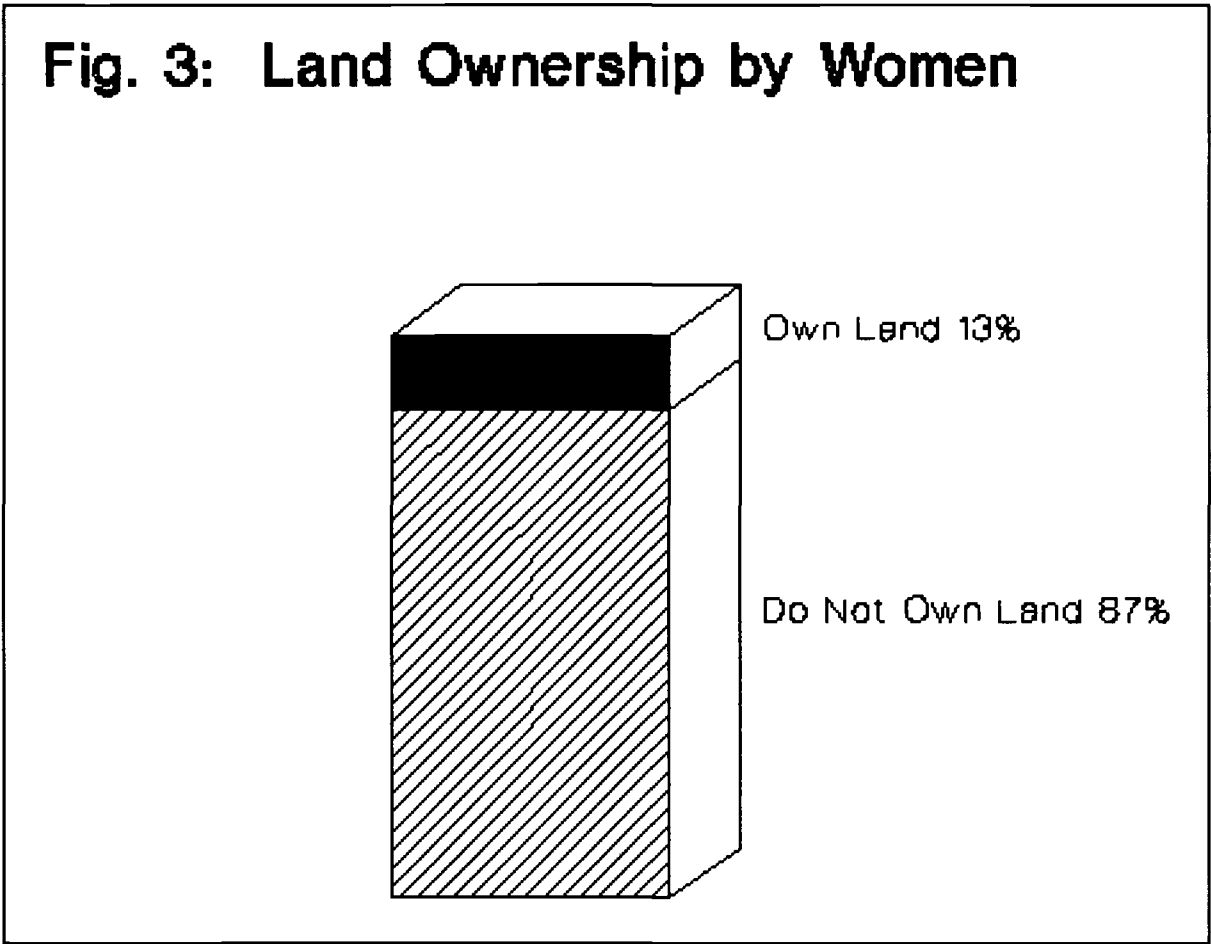
### **DOES LAND REFORM ENHANCE WOMEN'S ACQUISITION OF LAND?**

The first concern in this study was to find out whether Land Tenure Reform has enhanced women's acquisition of land. As already mentioned the interest in this question came about from the fact that one of the justification of individualization of land tenure is that it enables any person to acquire land thereby creating equality between the sexes. It was therefore important to determine straight away which women owned the land they farmed. The answer to this question could only be obtained through further investigation, particularly in cases where registration of land titles have not been carried out. A number of women when asked whether they owned land, agreed they did, while further investigation revealed that a number of women referred to their usufruct rights and not legal ownership rights. Because of the

ambiguity of the term 'Ownership' in both customary and statutory laws, the question was restructured to ask whether the women farmers had land registered in their names. Table 3 and figure 3 indicates that out of the study sampled of 150 women farmers, only 13.3% of the women owned land registered in their names, while the rest, 86.7%, farmed the land they did not own.

**Table 3:**      **Land Ownership by Women**

Own Land	Do Not Own Land
13.3%	86.7%



A community level questionnaire was designed to find out the general feeling of the community by asking a cross section of the people (elders, youth, government officials, both women and men) whether women are acquiring land more as compared to the past. Eighty-three per cent of those interviewed felt not many women acquire land in their own names in the area. There was a general consensus that women who claim that they own land were mostly widows. Few women buy land in their own names even if they have the money to do so. Those who claim to own land (mostly widows) do so in trust of their sons. Once the sons become adults they take over the land. Further investigations from the women who claimed they owned land revealed that 75% of them were widows and were custodians to their husbands land 15% had bought the land, five per cent had been given as a permanent gift, while the other five per cent had bought parcels and inherited other parcels. This is shown in Table 4 and Figure 4. Nonetheless, the study reveals that widows continue to cultivate their husbands land without legally transferring the land title into their own names.

**Table 4:      Percentage Distribution of Land by Type of Land Ownership**

Custodians	Bought	Permanent	Inherited Bought
75%	15%	5%	5%

The result of land ownership indicates that despite registration of family land in individual male heads' names, women by and large do not own the land they farm but still have access rights to land which existed under customary law. The results in table 4, however indicate that only 15% had bought land in their own names. It has been argued by some scholars that individualization of land has created equality between women and men as it enables both sexes to acquire land by other means (e.g. buying) and not by inheritance, which hindered women from owning land. In fact, the results in table 4 go a long way to prove that this is largely not true. Despite land tenure laws in post independence period that allow women regardless of marital status to own land, very few women in fact do. The legal institutions

per-se cannot create equality as long as the socio-cultural attitudes that do not allow that equality still persist.

This led us to ask next: What facts hinder women from acquiring land? Reasons given for not acquiring land can be seen in Table 5 and Figure 5.

**Table 5:**      **Factors Hindering Women from owning Land**

	Percentage
1. No money to buy	63%
2. Have access to family land	20%
3. Women do not need to own land	13%
4. Reason not stated	3%

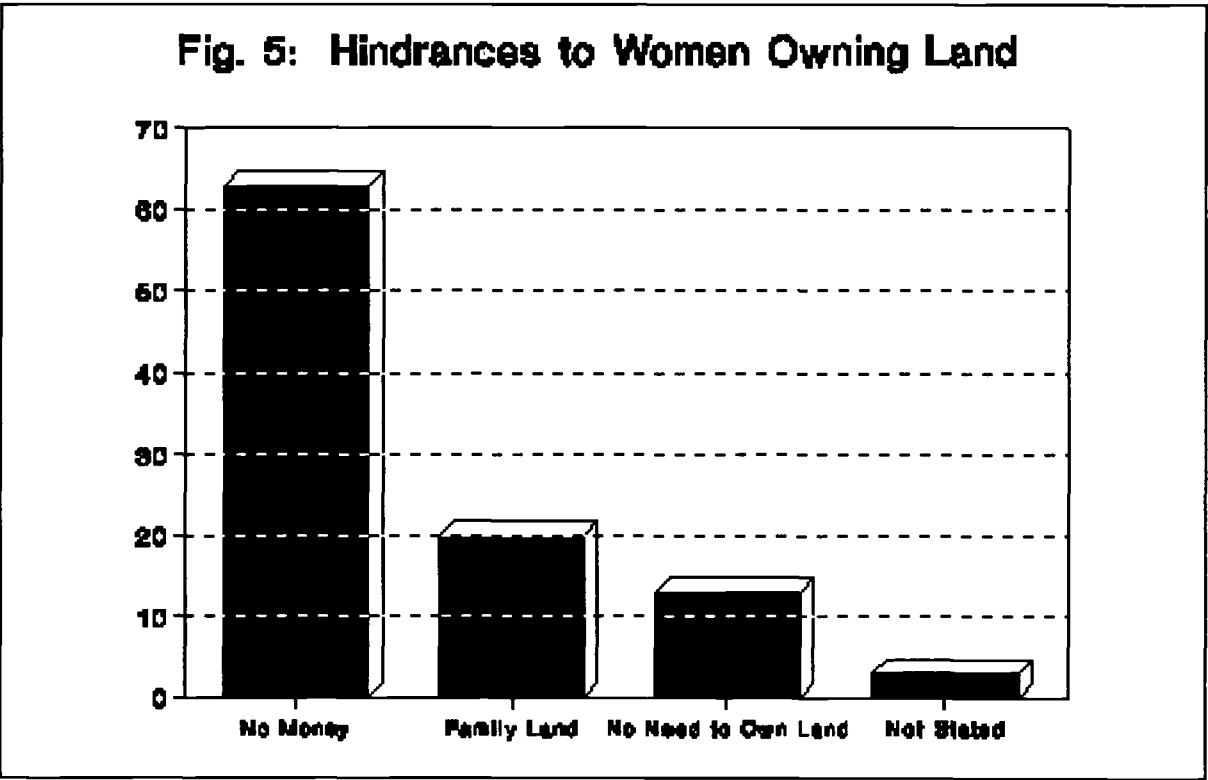


Table 5 further indicates that 20% of women interviewed in Mumbuni still enjoy access rights to family land for agricultural production. Because of this, a considerable number (13%) saw no reason in owning land. This is perhaps an indication that the implications of individualized tenure have not been fully understood by the majority of women since they still perform their agricultural activities within the customary tenure system which safeguarded them.

As a matter of interest, we went further to find out whether women would acquire land in their own names if they had money to buy it. Out of 150 respondents, 76.01% said they would, 12.7% said they would not while the rest were noncommittal. Further probing of those who did not wish to buy land even if they had money, revealed that 32% had enough land for their food farming, while 68% felt that they could not buy land in their own names because their husbands would not allow it.

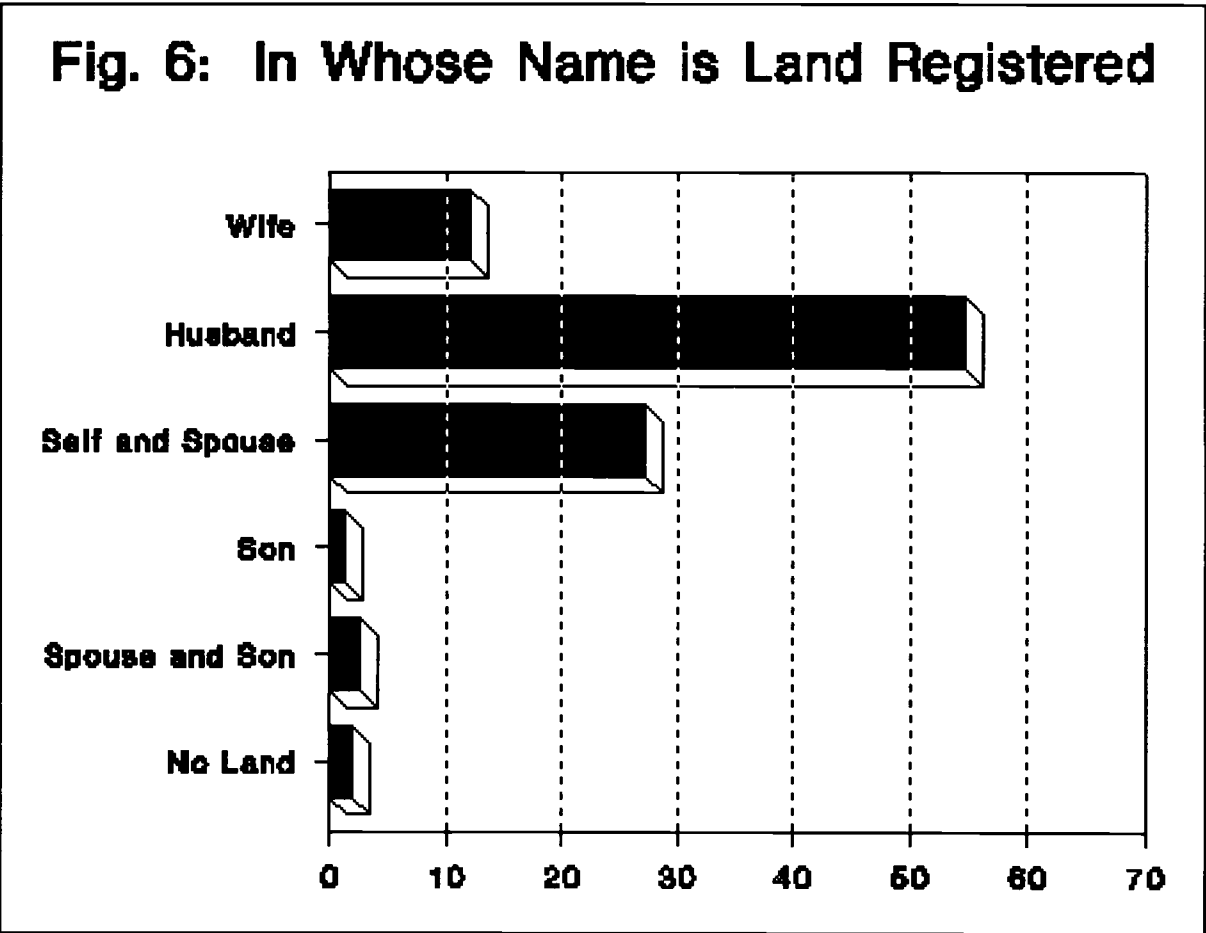
Given acquisition of land through buying, we felt that individualization of land has created new rights for particular women (e.g. daughters and single mothers) who did not have such rights under the customary system. Nonetheless, these new rights will tend to give privileges to those women with access to education, good jobs and good salaries, and political contacts at the expense of those who are poorer, have no access to education and skills for employment. The latter form the majority of women who continue to depend on land for their livelihood.

**WOMEN’S RIGHTS TO LAND**

The next concern of the study was to determine who the owner of the land is or in whose name the land registered. Table 6 indicates that land in Mumbuni is being registered in husband’s (55%) and sons (27%) names. It further indicates that most land is being transferred to male heads of household or male heirs, while daughters are almost entirely excluded. It is important to note in Table 6 that out of 150 households surveyed, not any single family land was registered in the name of a daughter. Only 12% of the women had land registered in their names which means that women generally farm land they do not legally own.

Table 6      In Whose Name is Land Registered?

	Percentage
Wife (Self)	12.0
Husband (spouse)	54.7
Son	27.3
Self and Spouse	1.3
Spouse and Son	2.6
No land	2.0



Apart from the question of who owns the land, it was also important to find out who has the right to allocate land for cultivation or other use. It was also important to determine how the person using the land came to possess it or who allocated land to the user. Table 7 and Figure 7 show that women come to possess the land they use through their relatives-in-law. Husbands and fathers-in-law have the highest allocative rights to family land used by women. Several decision-making groups are involved in women's possession of land. They include the clan as a national owner, the lineages, the nuclear family and the eldest male who allocates to the individual for use. This allotment to wives or to children has been termed as allotment to the usufruct alone creating no title in formal law. Thus, land tenure reform does not only confirm to men's de facto power of arranging land use and appropriation over income from cash crops, but also constitutes the de jure end of customary protective measures for women land users, which allow men to sell their land without the consent of their wives.



Table 7: Who Allocates Land to the Family

Allocator	Percentage
Mother-in-Law	5.5
Father-in-Law	18.0
Husband	55.4
Mother and Fathers-in-law	0.7
Grandfathers-in-law	2.3
Mother-in-law and Husband	4.0
Mother/Father-in-laws and Husband	12.7
Other in-laws	1.3

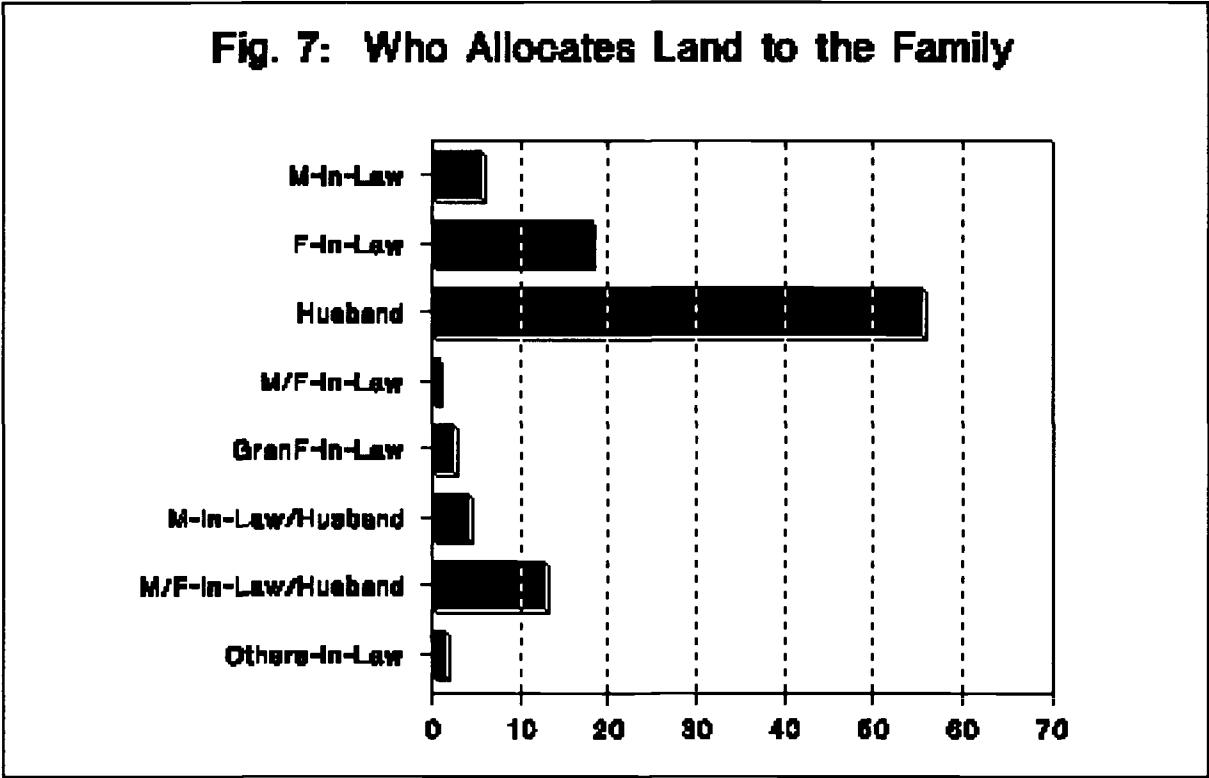


Table 7 further implies that women do not inherit land in their place of birth, i.e from their parents or brothers, but are expected to possess land where they are married. This excludes daughters from inheriting or owning land for use unless they buy it. The respondents who

were married had thus been allocated land by their in-laws. This shows that women's access to land is largely dependent upon their relationship to men and on their marital status. While women as wives have access to some land, unmarried women who are prohibited from inheriting property have no access to any land.

These investigations also reveal that women farmed land that has been inherited. For a son to inherit land from his father, the land has to be sub-divided for each son and his family. This sub-division of land already adjudicated and registered is most of the time never recorded with the land registry. Most of the times sons and their wives continue to live and use the land which is not legally registered as theirs. Registration by itself is therefore not a conclusive indication of what is actually taking place on the land.

## **THE IMPLICATIONS OF THE FINDINGS**

The Kenyan legislation has provided for registration of titles to the land in the name of the 'head of the family' with the usual practice of bestowing title deeds or life long tenancies on male heads of households. The registration of land titles in the name of individuals, mainly men, has both increased control over distribution of land and the dependency of women who have no legal access to land. Indeed, land reform has not promoted women's legal ownership and inheritance rights while at the same time it has undermined women's traditional use rights under customary land tenure system by registering land in the name of a husband or son.

The study's analysis shows that very few women have benefitted from individualised tenure and registration of titles. The very few who maybe benefitting are financially better off women with urban links. In effect, the legislative changes on land tenure may have the effect of directing the benefits to those who least need them; the elite (Noronha and Latham World Bank No.561). Cohen in his study on Ethiopia's land reform concluded:

It is elite groups that are usually most aware of proposed legislative amendments and their potential impact. They are in a position to use their

influence to manipulate the law or to delay its implementation (Cohen 1973:15).

The majority of rural women have neither legal access to land nor money to acquire it since they have almost no income. However, since food production and feeding the family remains the responsibility of women, it is necessary that they have land on which to grow food. Because of this, men are obliged to allocate their wives certain plots to use although the rights to these plots are not definitive. Thus married women are dependent upon the good will of their husbands and the availability of the land to grow food. Men allocate the furthest, least fertile and scattered plots to women, keeping the best for themselves to grow cash crops.

Even though the majority of women have access rights to land for their food farming it is important to make a distinction between access and control of land. While control is power and implies the ability to dispose of land, access implies only the right to use or consume with the permission of those who hold the right to dispose of it (Mason 1984:22). Women's indirect access to land does not give them the official status of "holders". For this reason, planners overlook women's rights and only make decisions with the recognized holders - the men. The crux of the matter is that land tenure reform has deprived women of the power to control land they use, thereby marginalising them in agricultural productivity, while empowering men to have control over the resource and women's labour. The access rights women have are insufficient to generate control over land so that they can benefit from it as a collateral to improve their food farming. In the words of Okoth-Ogendo:

Adjudication and registration processes were conducted on the basis that the power of control in indigenous property laws was equivalent to ownership in the male members of society without at the same time imposing obligations towards women on account of their membership in the society in which they marry (Okoth-Ogendo 1981:33).

In this way, one would say that the land tenure reform has not promoted women's legal ownership and inheritance rights. Indeed it has even undermined the women's

traditional use right under customary land tenure by registering the name of the husband or son on family land. Pala points out that in contrast to past practices, the on-going land adjudication process over-emphasizes the structural points of allocation and inheritance of land at the expense of use rights, which is the area in which women cultivators stand to be most adversely affected by the new scheme (Pala, 1978:11).

Following Pala's concern, the central issue in this study is that land is being transferred almost exclusively to male individuals leaving no provision on how women's access rights are to be defined. Indeed, there appears to be no rationale why the new land reform should not provide women, who are the recognized users and therefore the major productive element, with a legal protection of their user rights, if not partial ownership of land that they have been using. Registering of land titles in individual names would mean that:

...the individual invariably males who have attained the age of 18 years at the time of registration would be given a land title which gives him a theoretical and practical legal right to dispose of the land by sale or any other means without necessary recourse to the elders of the patrilineal who would ordinarily have the power to veto in matters of alienation of land by individuals (Pala 1983).

What this means is that land reform has only served one section of the society, and it has been dominated by male individualized ownership. The owner of the land, the male head has been given the opportunity to operate as a private entrepreneur, with a free primary labour force (his family) and the ultimate authority over disposal of produce and income (Food and Agriculture Organization 1985:58). Together with kinship arbitration in case of conflict, the scarcity of land in general, the periodical demands for cash, are all likely to increasingly limit women's access to land through outright disposal of such land and of the produce from such land by the individual owners. This new temptation which removes the very security the tenure programme was originally set up to strengthen has created landlessness for members of the family whose interest are not registered.

Registration has indeed effected a hardening of men's land rights into absolute ownership, to the exclusion of women and their daughters. Under the new system, women are theoretically protected by the land control boards against unreasonable sales and other disposal of land by male relatives, but no one has yet demonstrated how effective this protection will be (Shipton 19:14).

On the other hand, women's lack of knowledge of the law prevents them from demanding their rights, particularly where cultural factors have reinforced male managerial and financial control over female property.

Private property in land has far reaching consequences for women's relationship to land. We shall now turn to the implications of land tenure reform on women and food production.

## **CHAPTER FOUR**

### **THE IMPACT OF LAND TENURE REFORM ON WOMEN AND FOOD PRODUCTION**

Whether land is inherited, bought or allotted, it remains the most basic resource of food production. And yet an increasing number of women find themselves without sufficient land to feed their families if not completely landless. At this time when total food production cannot adequately feed the growing population, there is an urgent need to look into the future of those who produce food in order to meet the needs of increased demand. In Kenya, women are currently the major food producers, and therefore their relationship to land is a critical factor in their ability to produce food. It is also critically important to analyze the impact of land tenure reform on food production.

Most important was to determine: what are the rights of the women using land? First, the capacity in which a person uses the land is extremely important as it influences the duration of land use and eligibility for credit. Access to land is determined by membership to the clan. But once this has been obtained, then the duration of land use relates to the capacity of the person. We have found that women use land for food production in their capacity as wives. The study found out that although women do not own the land they farm, they are the ones who use it. Out of 150 respondents, 50% were found to cultivate and provide labour for both food and cash crops in the absence of their husbands.

On duration of land use, questions were asked on whether the land being used can be re-allocated for other use by the actual owner of land - the husband. Out of 150 respondents, 17.3% had actually experienced their lands being re-allocated while 82% had not experienced such re-allocation. In the traditional tenure system, once land was allocated to a wife, this remained so for life and could not be re-allocated. From the study results, there is an indication that re-allocation of family land is already taking place. Reasons for re-allocation were given as: sale of land, for cash crop production, exchange as gifts to return favours received by owner of land, giving to co-wife and leasing for money. Women's food production is directly affected by the amount of land they are allotted, for the purpose.

What in effect was important in the study was to determine the security of tenure for the land user. First, it was found that although women are the ones who use the land in Mumbuni through allocation, they have no similar rights to allocate land. Determining rights of allocation in this study was important as it influences both the types of land and the types of crops grown. If a woman has no rights to allocate the land she farms, then her agricultural production priorities are subordinated to those with such rights, depending on what the person with the right wants to use the land for. It is important to note here that gender relations indeed attest not only to access to land, but also to the conditions under which women are able to use land. This relationships have direct impact on agricultural production.

On security of tenure, we wanted to know whether the women have the power and authority to lease, mortgage, transfer or sell. From table 8 and figure 8 we can ascertain that generally women have no rights to the land they use. 84.7%, 73.3% and 78.7% respectively had no power to lease, mortgage or sell.

Table 8:        **Women’s Rights to Lease, Mortgage and Sell Land**

	Total Number (150)	Percentage (100%)
Authority to Lease	14	9.3
No authority to lease	127	84.7
Authority to mortgage	33	22.0
No authority to mortgage	110	73.3
Authority to sell	32	21.3
No authority to sell	118	78.7

The argument for introducing individualised titles was that this would ensure rapid development as individuals could then raise loans for agricultural development against the

security of their titles (Ingham 1950:11, Kenya Sessional Paper 10 of 1905 10-11: Kenya Development Plan 1974-8 Vol. II:216). However, the links between land tenure and institutional credit in Kenya proves that losing rights to land goes along way with losing access to loans women might have as the state owned Agricultural Finance Corporation and the country's three major commercial banks (Standard, Barclays, Commercial) all require collateral which they normally take in the form of land title for agricultural credit (Shipton 1987:42). Since it is men who hold titles, it is they who can get loans, although women can still use their husbands titles but this is not a common practice.

The common practice is that husbands use the newly acquired private land titles to seek loans. And when they get loans, they need to develop the land more, usually by devoting more land to cash crops in order to earn enough to pay back the loan. In the process, women may lose part of the land they had for food crops without gaining access to money from cash crops. More land in Mumbuni has been converted to cash crop production and land scarcity in the area has become a reality. If this is true for most of arable Kenya, then women's obligation to produce food for their families is at risk.

On the other hand, when husbands, fathers or brothers mortgage their land for credit, then the rights of the related women (wives, daughters and sisters) who use the same land are at risk. Shipton writing on the same issue observed:

Husbands are using their newly private titles to seek loans over which they will have full personal control. Particularly vulnerable therefore, are the few whose husbands or fathers are able to mortgage their land for credit for these women may have little say in how the loan resources are used, and they may be quite powerless to stop expropriation in the event of default (shipton 1987:42).

Shipton further confirms:

Any future farm credit that depends on land mortgages is likely to remain firmly in the hand of men. And any land-secured credit in the hands of men will threaten the land rights of related women.



In the light of these considerations, it is clear that registered titles for purposes of securing credit have and will continue to exclude the bulk of women farmers. By losing rights to land, women have lost access to loans they might have had if they had land to offer as collateral for credit. Although it can still be argued that women can use their husband's titles to get credit, this has not been a common practice.

It was also important to investigate why women do not mortgage the land they farm for credit. Generally it can be seen in Table 8 that women have no authority or power to mortgage land they farm, but Table 9 gives other reasons that hinder women from mortgaging land for credit.

Table 9:      Reasons For No Access to Credit

Reasons for not mortgaging for Credit	Total Number (150)	Percentage (100%)
No money to Repay	100	67
Own no Land	34	24
Land too small	16	11

**Fig. 9: Reasons for No Access to Credit**

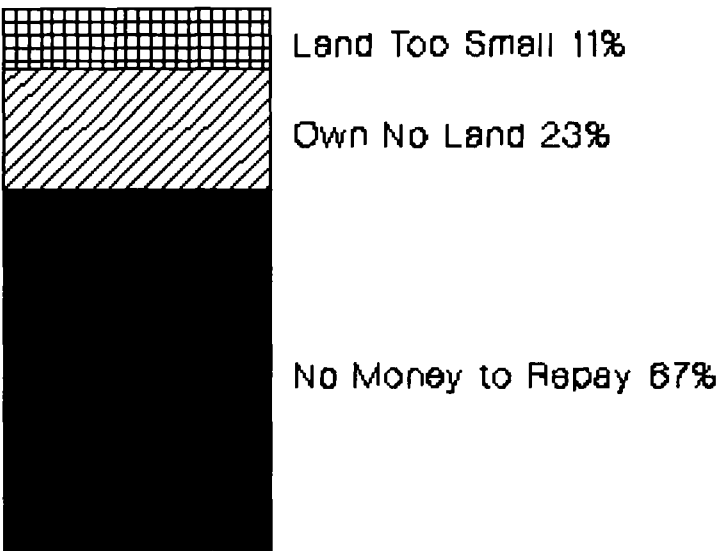


Table 9 further shows that even though women have no power to mortgage land they use what they produce but still cannot loans if credit were to be given to them. Most of the farm lands allotted to women were too tiny to be of any economic value or for use as security to get credit. It is also interesting to note from Table 9, that a number of women are becoming

aware of their limited rights to use the land other than tilling it. Of the women who said they could not take credit, 24% women actually had access to their husbands' land.

Another justification of registration of titles was that it would lead to increased production by providing security of tenure makes it worth a farmer's while to undertake permanent improvement. In turn security of tenure leads to the farmer's investment by using own capital (Republic of Kenya 1965-1966:87). In the case of a woman farmer who has no titled land of her own but depends on her husbands's farm to grow food, lack of security denies her the freedom to make management decisions concerning the farm. While insecurity to tenure is an objective fact, it also affects a woman's investment decision (Blaikei and Bookfield 1987:27). Since the 'owner' of the land, usually the husband, has the ultimate legal authority over land use, its use as collateral for credit and disposal of produce and use of income the practical effect of all these on the wife, is that she will not make long term investment in the holding unless she is secure in her expectation of reaping the benefits of her investment.

If we are to understand the seriousness of women's marginalization in terms of access to land, it is important to understand the domestic economy which relies so heavily on women's labour and their contribution to household subsistence.

Land tenure reform has not only affected women's cash income, but has also increased women's labour burdens particularly when they have to work on the plots controlled by their husbands, usually cash crops, at the expense of their own food crops and other income generating activities. Okoth-Ogendo observes:

"Land tenure reform did not only split the family economy into subsistence and monetary sub-sector but it completely transformed the role of women in that economy. For they lost effective control of the family economy, while at the same time continued to supply labour necessary for both sub-sectors. The effect was a general increase in economic burdens of women...overall therefore, whatever was left to indigenous institutions became from

perspective of women not only discriminatory in effect but exploitative as well (Okoth-Ogendo 1982:52)".

The introduction of cash crop farming has thus had an impact on the traditional system of land use and land controls. The effect of this which has split the family economy into subsistence and monetary sub-sectors has completely transformed the role of women in the economy. The result is that women's economic status has moved from one of relative self sufficiency to one of relative dependency (Darison 1987:165). While the women have lost control of the family economy, they are the ones still providing the labour for the sustenance of that economy for both subsistence and commercial agriculture, thereby increasing economic burdens of women in rural areas (Okoth-Ogendo 1975:136).

Despite that fact that women are involved in tilling the land and growing crops, individualization of tenure has empowered the men in terms of decisions of land management. This means that the women are deprived of the power to decide on land use. For example cash crops, usually grown by men, are taking more arable land as the expense of food crops. As a result, women have found themselves with tiny scattered pieces of poor land for their food farming without the necessary resources to increase their productivity.

Further investigation shows that land sales are already taking place in the area. 36.7% of the respondents had already had their lands sold within the last two years (1989 - 1990). Decisions to sell the land were found to be made solely by the spouses (husbands) or sons whose names had been registered on the land.

## **BENEFICIARIES FROM LAND OUTPUT**

In the light of the foregoing, it was important to examine who were the beneficiaries of the land output. Questions were asked to find out who cultivates which crops, the division of labour, and how decisions are made on food and cash that comes from it.

The type of distinction found in the area was mainly between subsistence and cash crop. Coffee, the long-term cash crop in the area, has given rise to longer tenurial rights

in land. Since there is need for land for cultivation of food crops, increased land pressures have raised the value of land.

To determine the nature and extent of the division of labour for both food and cash crops, the respondents were asked to indicate who had performed specified tasks for both crops. Tables 10, 11 and 12 and figure 10 and 11 and 12 give a picture of the division of labour among household members for both food and cash crops. Table 10 shows that in all cases recorded, women were found to do more than half of food production work: land preparation (64%), planting (73%), weeding (75%), harvesting (64%), transporting (52%), processing and handling food for storage (64%).

**Table 10.      Farm Labour Activities on Food Crops During Long Rainy Season 1989**

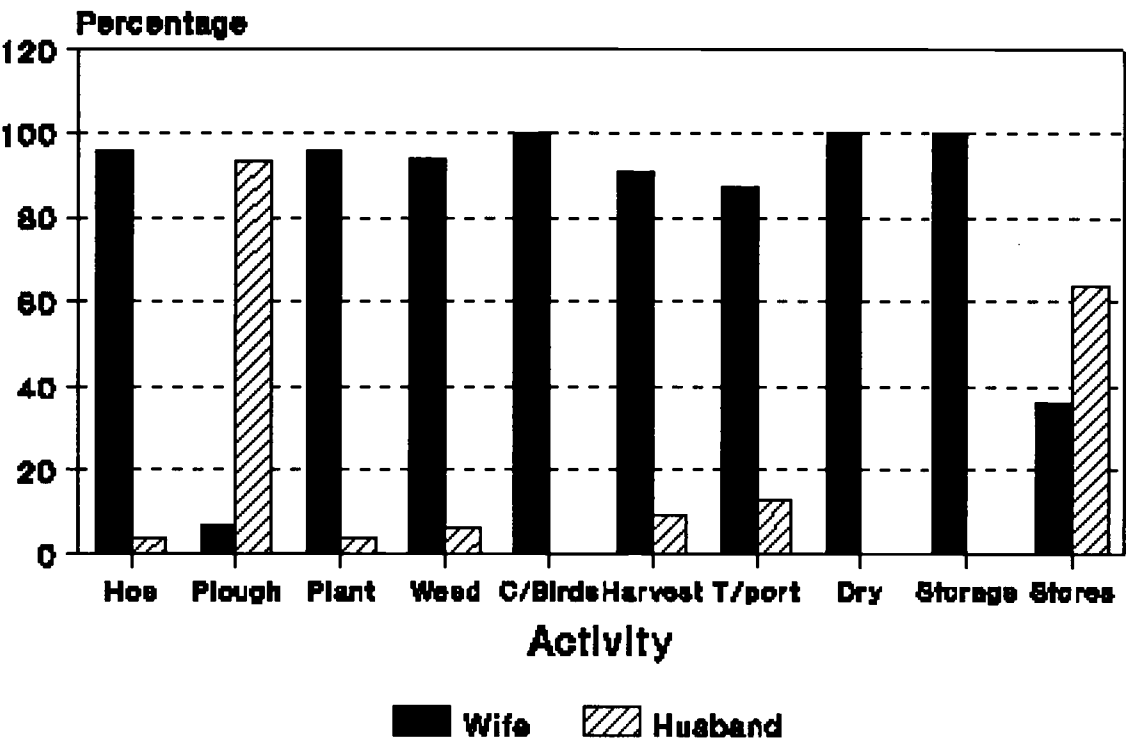
Farm Activities	Wife	Husband	Permanent Labour	Temporary Labour	Whole Family	Female Children	Male Children	Total %	Total No.
Hoeing	64 %	30 %	7 %	12 %	3 %	7 %	4 %	100 %	150
Ploughing	2 %	43 %	2 %	4 %			1 %		
Planting	73 %	3 %	3 %	5 %	4 %	10 %	2 %		
Weeding	75 %	4 %	1 %	5 %		10 %	3 %		
Chasing Birds	2 %			6 %		3 %	10 %		
Harvesting	64 %	7 %	5 %	9 %	6 %	7 %	3 %		
Transporting	53 %	8 %	11 %	11 %	3 %	11 %	3 %		
Drying Processing	56 %		2 %	8 %	4 %	21 %	6 %		
Handling for Storage	64 %		3 %	10 %	3 %	13 %	5 %		
Building Stores	22 %	24 %	24 %	30 %			5 %		

**Table 11      Percentage Distribution of Husband and Wife's Labour Activities on Food Production**

Activities	Wife	Husband	Total No.
Hoeing	96	4	100
Ploughing	7	93	69
Planting	96	4	115
Weeding	94	6	120
Chasing Birds	100	0	4
Harvesting	91	9	106
Transporting	87	13	91
Drying	100	0	85
Handling for Storage	100	0	97
Building Stores	36	64	94

The percentage distribution of labour activities between wife and husband shown on Table 11 and Figure 11 further clarifies that women as wives contribute over 80% of their labour to food production activities compared to their husbands except in ploughing and building of food stores.

**Fig. 11: Labour Activities on Food Production**





**Table 12      Farm Labour Activities on Cash Crop (Coffee) During Long Rainy Season**  
**1989**

Farm Activities	Wife	Husband	Permanent Labour	Temporary Labour	Female Children	Male Children
Manuring	50%	16%	10%	13%	7%	3%
Spraying	10%	43%	12%	23%		10%
Pruning	31%	24%	18%	18%	6%	3%
Picking	43%	10%	16%	27%	2%	1%
Transporting	45%	11%	11%	20%	7%	7%
Processing	48%	4%	11%	10%	15%	11%

Table 12 shows that like food production, women provide a high amount of labour in coffee production: manuring (50%), spraying (10%), pruning (31%), picking (43%), transporting 4%) and processing (48%).

It is also worth observing in Tables 10 and 12 that women’s labour is sometimes subsidized by both permanent and temporary labour, much more so in cash crop activities, but only for those who can afford to pay. Nevertheless, most household members are exempted from agricultural activities for reasons of health or in order to pursue other valued objectives such as schooling (in the case of children) and wage employment. Most of agricultural work therefore falls on women’s shoulders.

**Table 13      Percentage Distribution of Husband and Wife Labour Activities on Coffee Production**

Activities	Wife	Husband	Total No.
Manuring	75	25	100
Spraying	19	81	80
Pruning	57	43	83
Picking	81	19	80
Transporting	81	19	84
Processing	92	8	78

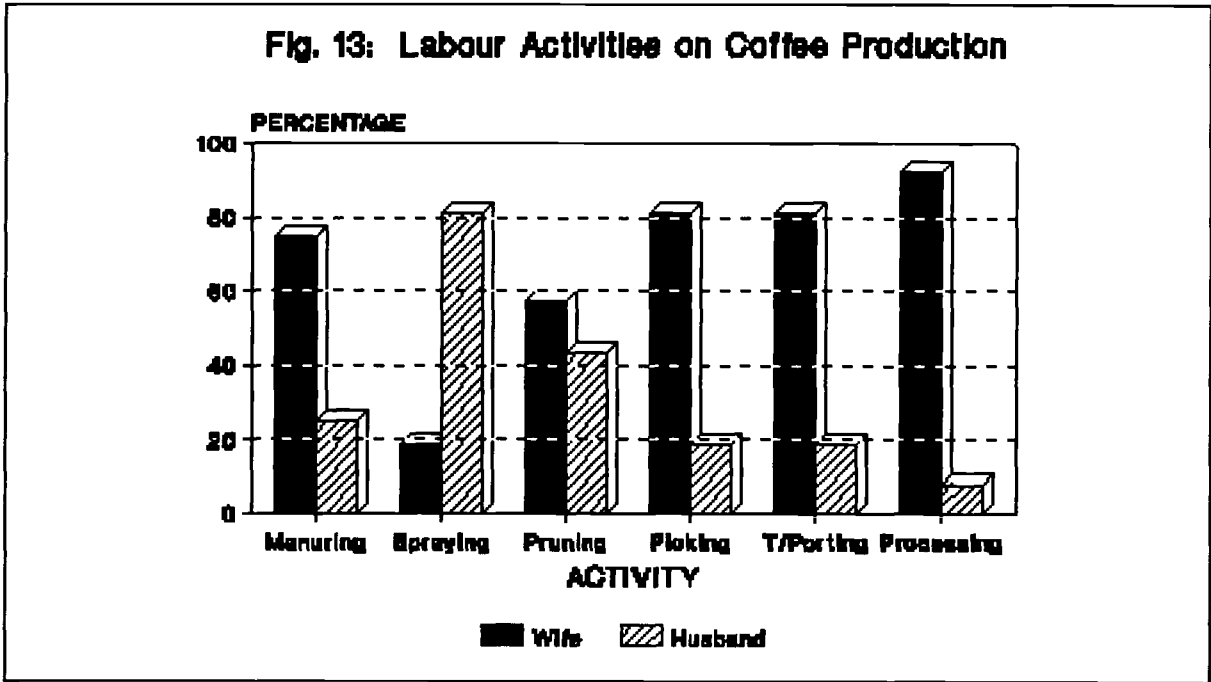


Table 13 and Figure 13 show percentage distribution of wife/husband labour activities in coffee production. Table 13, indicates that women contribute over 50% of their labour to

coffee production except in the activity of spraying where they contribute only 19%. The percentage distribution of their work is more concentrated in manuring (75%), picking (81%), transporting (81%) and processing (92%). The women's (wives') work compared to men (husband's) work in coffee production is clearly shown in Figure 13.

The information in Tables 11 - 13 shows that labour for both food and cash continues to be the responsibility of women.

It should be mentioned that cash crops, in this case coffee, plays an important role in the lives of the people of Mumbuni. Though the coffee farms are owned and controlled by men, most of women's labour time is spent on their husbands' field. It was observed during the survey that the value created by this labour is primarily directly appropriated and regulated by the husband for the majority of women. Women have to work first in the coffee farms before they can proceed to their food farms. This is a major constraint on women's food production. This unequal gender division of labour tasks and male dominance in resource control further jeopardizes the family food supply. Male dominance leads many men to a relative sense of superiority that precludes them from participating in many agricultural tasks while benefiting from the coffee payments and consumption of foods produced by women.

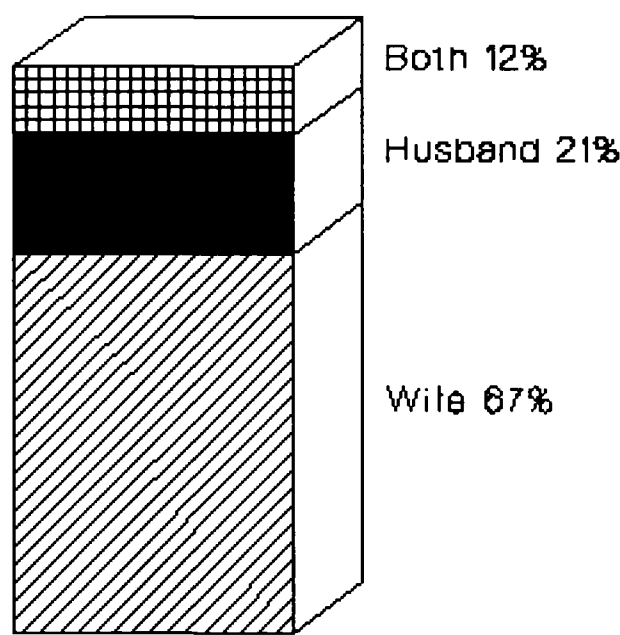
It is important to note that gender and labour issues are central to understanding the impact of commercialization of household production and dynamics and a gender sensitive development programme should equally address women's and men's rights in production and allocation of resources.

Since women provide the highest labour for both cash and food crops, our next concern was to find out whether women have direct benefits from their labour. Questions were asked on who makes decision on the use of food crops. Table 14 and Figure 14 indicate that women generally control and take responsibility regarding the use of food crops. Those who sell some of their food to earn cash income have full control of the money from such sales and can buy any other goods at will.

**Table 14      Decisions on Use of Food**

	Percentage
Husband	19
Wife	61
Both	11
Not stated	

**Fig. 14: Decisions on Use of Food**

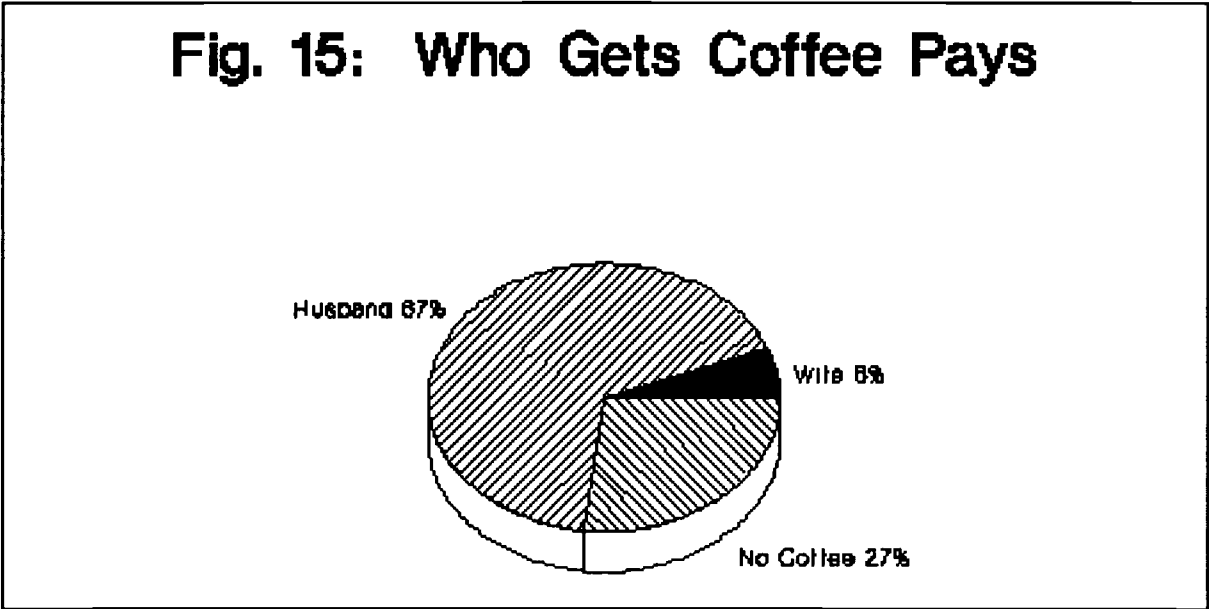


However, since food produced is generally consumed by household members, being primarily produced for subsistence, the average income from sale of food crops is minimal. It becomes important to examine who is paid for coffee, and who takes decisions on how the

money from cash crops is used. Table 15 and Figure 15 indicate that 66% of the men were getting direct payment from coffee while only 6% of women were getting paid despite the fact the women provide most of the labour in coffee production.

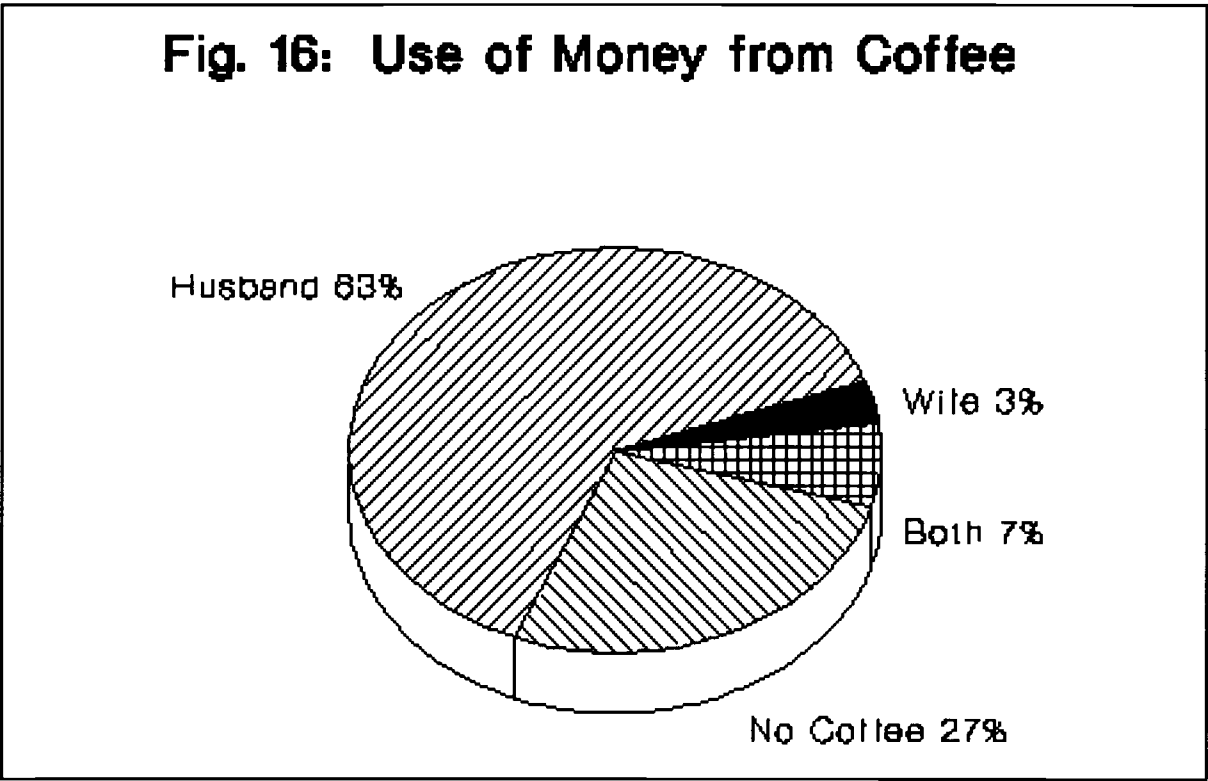
**Table 15:     Who Gets Pay for Coffee**

	Percentage
Wife	6%
Husband	66.7
Both	-
(No coffee)	26.6%



**Table 16:     Distribution on Decision Making on Use of Money from Coffee**

	Total No.	Percentage
Wife	5	3.3
Husband	95	63.3
Both	10	6.7
No coffee	40	26.7
Total	150	100



Further investigations revealed that very few women belong to cooperatives that handle coffee processing and marketing and distribute money accruing to their members. As indicated in Table 15, most men get paid for coffee money by the cooperatives which gives them direct control of the money. With coffee under direct control of men, women have no automatic access to the returns of their labour on this crop.

In summary, women's rights to land under the land tenure reform put them in a very disadvantaged position. They farm land that does not legally belong to them as land is generally registered in the names of spouses or sons. They have access to inherited land which is constantly fragmented for further inheritance, making pieces too small to be economically viable. They have no allocation rights to the land which in effect influences types of land they use and types of crop they produce. Worse still, this land allocated to women can be re-allocated for other use like exchange for money, sale or any other use leaving women with nothing to use for food farming. Given that they do not own the land they use, women have no rights to lease, mortgage, transfer or sell the land. Despite the fact that women provide higher labour for both cash and food crops, the overall beneficiaries from the land are the owners of the land, the men; because they can mortgage for credit, sale, exchange and lease - but most of all they have direct decision power and authority over the products of land.

## **THE IMPACT OF COMMERCIALIZATION OF AGRICULTURE ON FOOD AND LAND TENURE**

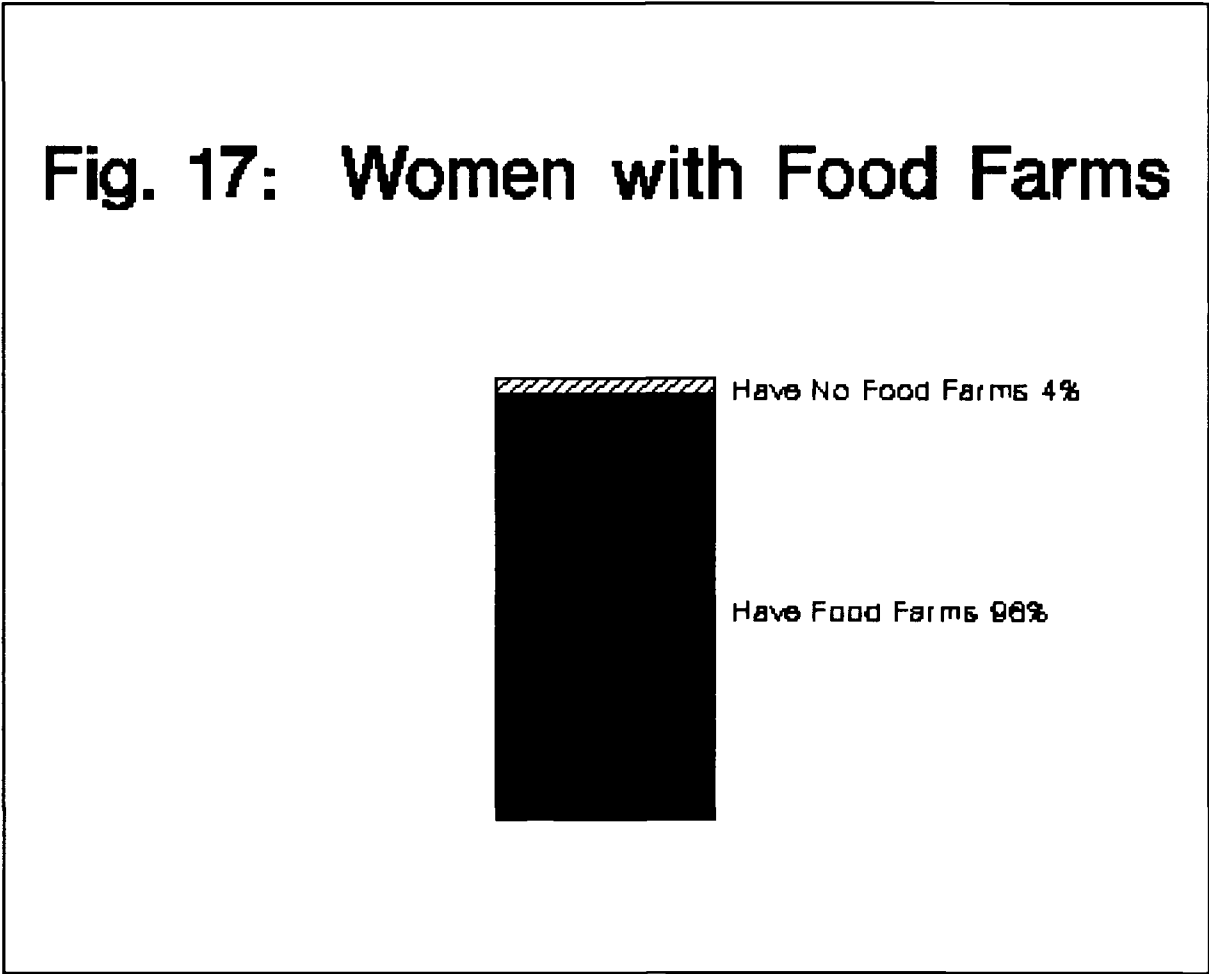
The introduction of coffee as a cash crop in the area has brought about numerous land tenure changes and division of labour. This has caused the division of family lands into two parts: for food and cash crops. In effect, this has led to changes in land use and control. On each farm which is allocated by the head of the family or inherited, land use organization is based on the supremacy of the man.

It was therefore important to determine straight away whether the respondent had a food farm. Table 17 shows that 96% of women interviewed had food farms while 4% did not have food farms. Some of the women were landless.

**Table 17:     Women With Food Farms**

HAVE FOOD FARMS	HAVE NO FOOD FARMS	Total No.
96%	45%	150

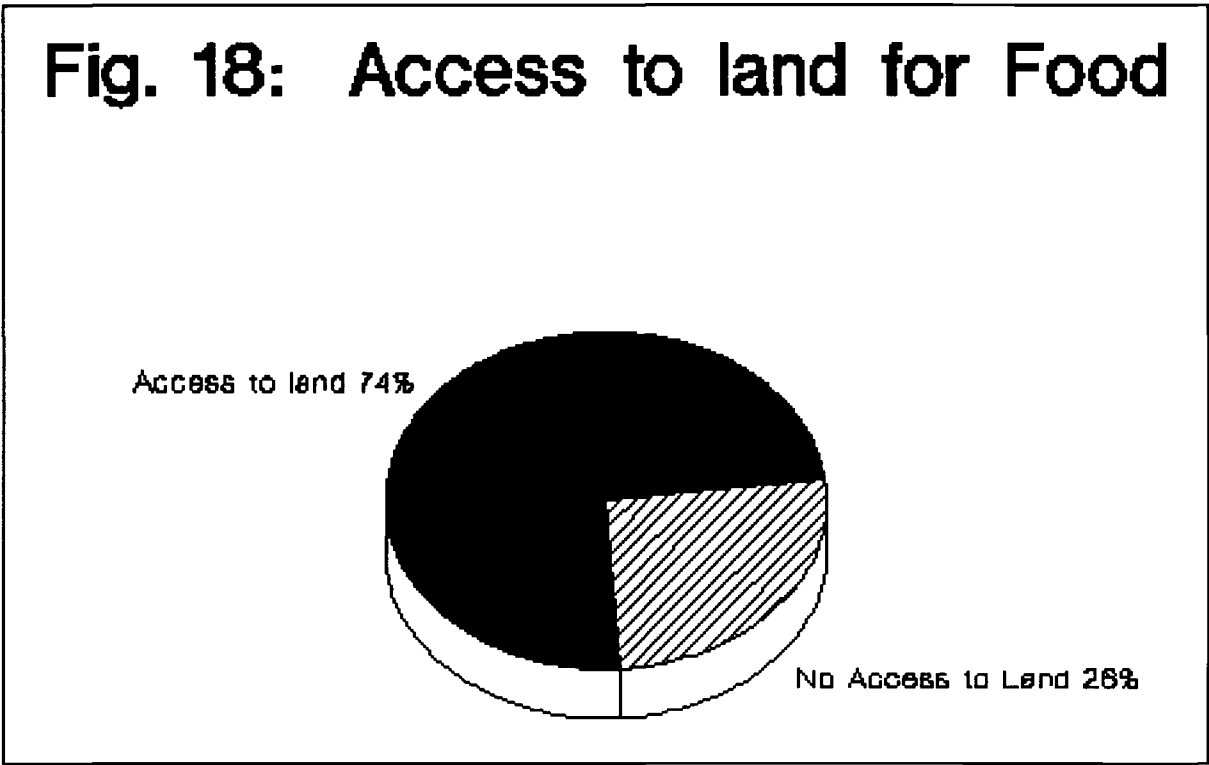
The next concern was to find out whether women had access to land for food farming. Table 18 indicates that out of all cases interviewed, 74% had access to land for producing food while 26% had no such access.





**Table 18:**     Access to Land for Food

HAVE ACCESS TO LAND FOR FOOD	NO ACCESS	TOTAL NO.
74 %	26%	150

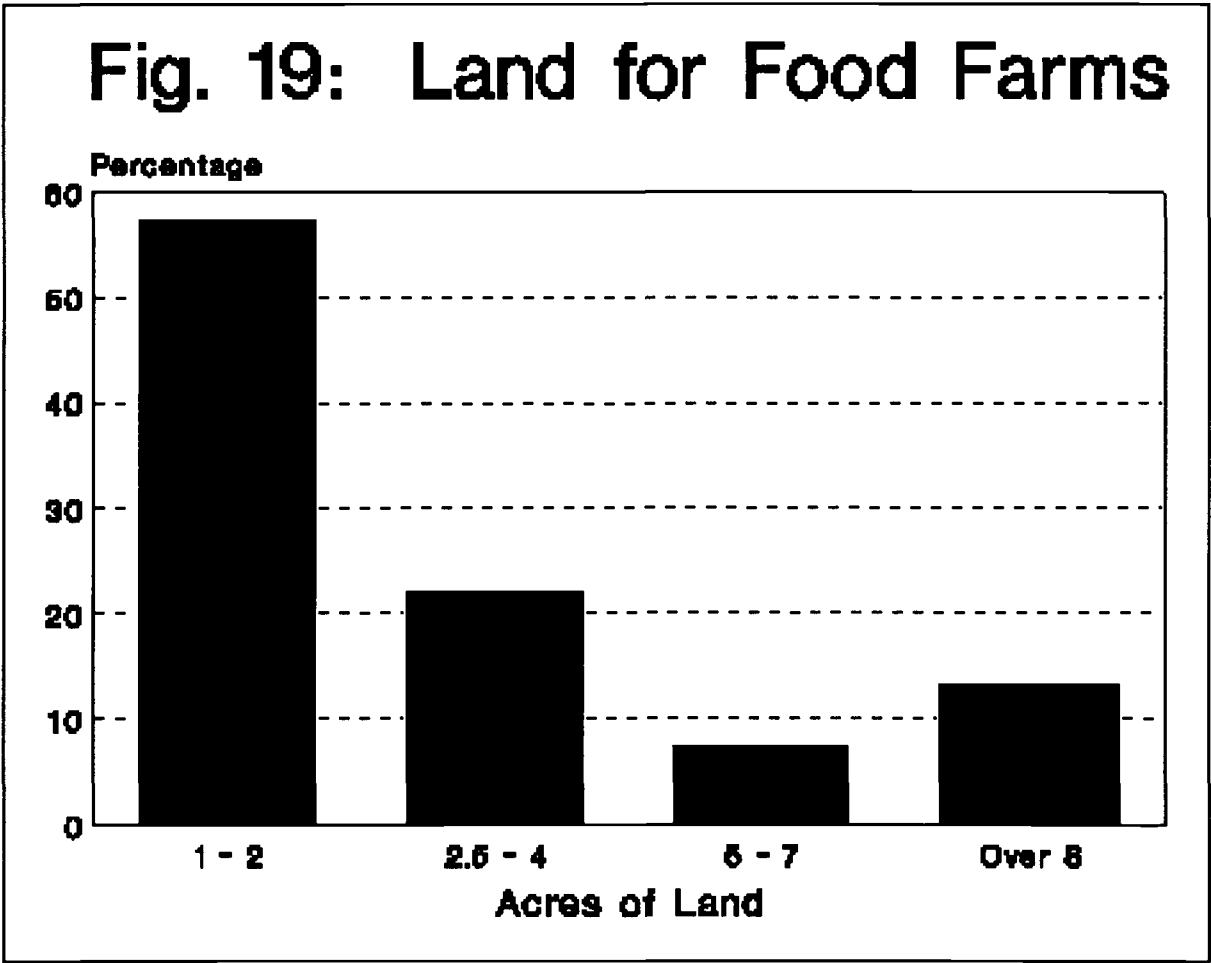


Most of the women who had no access to land for food, either said that all land had been used for growing coffee, or had been sold. A number of women whose land was sold sell their labour mainly to coffee farmers in order to earn money to buy food to maintain themselves.

It was also important to find out the average acres of land women have access to for their food farming. Table 19 and figure 19 indicate that 79% of women interviewed have less than four acres of land for food production with the majority (57.3%) having less than two acres.

**Table 19:     Acres of Land for Food Farms**

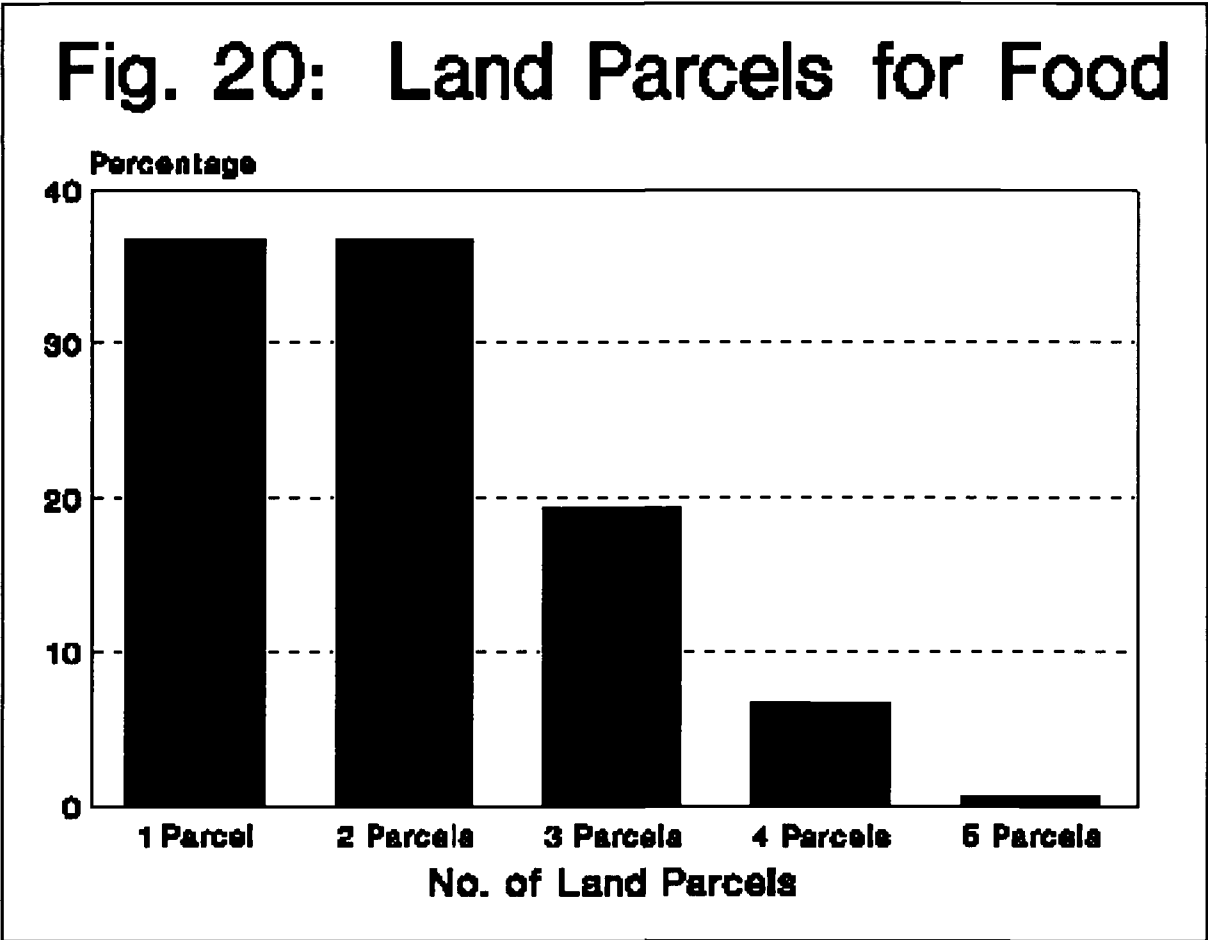
0-2 ACRES	2.5 - 4 ACRES	5-7 ACRES	OVER 8 ACRES	TOTAL NO.
57.3%	22%	7.3%	13.3%	100



Further investigations revealed that these acres for food farms were usually not in single parcel but were scattered all over the area. Table 20 and Figure 20 indicate that the majority of women interviewed (92.7%) had more than three parcels of land for food farming.

**Table 20:     PARCELS OF LAND FOR FOOD**

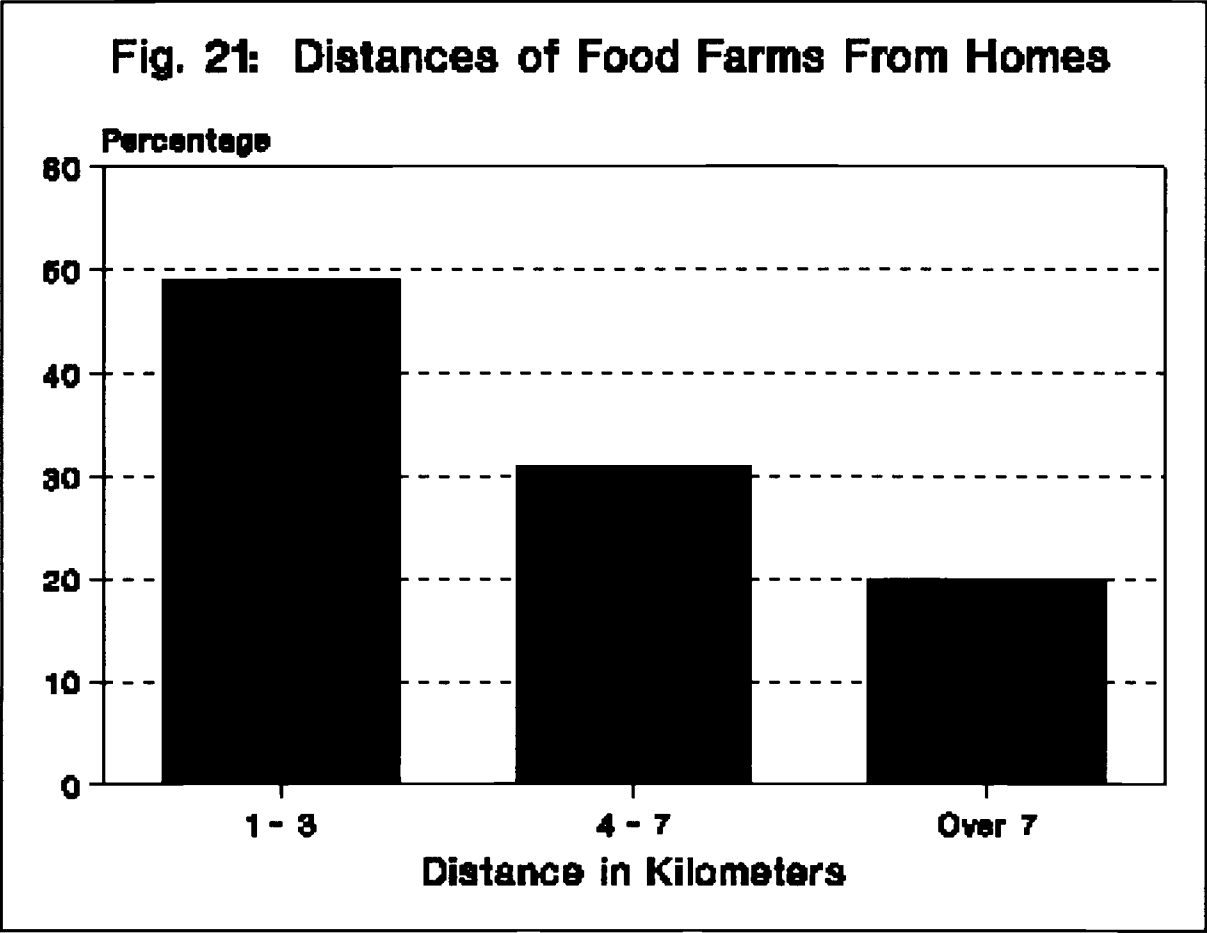
1 PARCEL	2 PARCELS	3 PARCELS	4 PARCELS	5 PARCELS
36.7%	36.7%	19.3%	6.7%	0.7%



The study further found out that women’s food farms are scattered and far away from their homes. As indicated in Table 21, 80% of the women interviewed have food farms ranging between one to seven kilometres km away from their homes, while 20% have food farms over seven kilometres away.

**Table 21:     DISTANCES OF FOOD FARMS FROM HOMES**

BETWEEN 1-3 KM	4.7 KM	OVER 7KM	TOTAL NO.
49 %	31 %	20 %	150



It was also important to find out whether the food farm were different from spouses’ farms, and who cultivates which crop. This examination was important as already mentioned, the introduction of cash crop changes tenurial systems.

Although a number of women did not regard their farms as separated from their husbands since they provide labour for both, there was an apparent distinction between women’s crops and men’s crops.

The crops women grow in Mumbuni can be divided into three main groups, namely, cereals (sorghum, millet and maize); tubers (arrow roots, cassava, sweet and English potatoes), and vegetables (cabbages, tomatoes, carrots, onions, cow-peas, pumpkins, pepper and beans). Men mainly grow coffee and occasionally maize and beans. Maize and beans, the staple food in the area, can easily be sold for cash. Coffee being one of the major cash crops in Kenya, brings in a substantial amount of income for those who farm it.

Apart from distinguishing crops grown by sex, it was further important to find out what types of land are allotted to women for food farming. While coffee farms tend to be near the homes and are easily accessible, women's food farms were not only scattered but were also far away from home. These pieces of land were allocated by heads of family, usually husbands. Soil fertility was another distinguishing factor. It was found that coffee farms are allotted the most fertile areas uphill, leaving women with marginalized land in the lowlands, originally used for grazing. It is important to note that commercialization of agriculture has marginalized food production thereby affecting women's use and control of land. On the other hand, cash crop farms have taken up fertile land leaving food to be produced in unfertile lands, further marginalizing women's status in agricultural production.

In summary, one can say that the commercialisation of agriculture has profound effect on production priorities of women in Mumbuni. More land is converted to cash crop production and scarcity has become a reality. Women's obligation to produce food for their families is at risk as Mumbuni women spend more time in the production of coffee than food crops.

In this new mode of production (i.e the commercialization of agriculture), women find themselves both subordinated to income and marginalized. Cash earned from coffee is controlled and distributed by men while food grown on marginal land remains the business of women. It is important to note that women are no longer actors in a purely household economy because they must have cash to maintain their consumption levels in the household. Nonetheless, they are unable to draw incomes from the food crops which directly fall under their control.

In addition, land tenure reform has biased all agricultural incentives-- credit, cooperative membership and extension services in favour of men. The new land owner has the ultimate legal authority over land use, and its general utilization, be it credit acquisition, exchange, lease or sale. Following this, services such as information, marketing and inputs are directed to the man. The male head of household has been empowered through title deeds to operate as a private entrepreneur, with free labour force (mainly the wife) and ultimate authority over disposal of produce and income. With access to land, credit, cooperative membership and extension of services biased in favour of men, it is difficult to see how women can improve their food farming.

Individualization of tenure has bestowed privileges and duties of ownership upon one sex of the society (the male) leaving the other sex (the female) in a vulnerable legal and impractical position. Individualization of land, which leads to concentration of landholding, results in factions in society, where richer farmers gain at the expense of poorer farmers, and where those with access to education and political power gain at the expense of those without and where men gain at the expense of women (Shipton 1987:49).

Unless this structural constraints in agrarian reform are removed, it is difficult to envisage an equitable growth and improvement of agricultural food production (Role of women in Developing Countries 1986:58). Such persistent subordinate position of women in society are negative towards goals of development which affects all members of society equally regardless of sex or creed.

## **CHAPTER FIVE**

### **CASE STUDIES**

The quantitative survey used in this study was conducted to interpret the land tenure reform and its impact on women and food production in Mumbuni. This survey helped to identify issues from women's perspectives of land relations in:

- Transformation in customary land tenure systems that affects women's usufruct rights.
- The experience of different categories of women (i.e. married, widowed, divorced, separated and single).
- Special strategies women use to access land.

The case studies approach conveys the dynamism of women's land relations, the actual experience of individual women and the actual structures affecting women under land tenure reform. Special attention has been given to landless and land-owning women. The case studies are numbered and given fictitious names, in order to protect each woman's identity.

### **CASES OF LANDLESS WOMEN**

The following questions guided in-depth interview of the landless women: Short life history (age, education income, marital status), number of children, occupation, husband's occupation, land history, whether she had land before, who gave her the land, what happened to the land, whether she has access to any land now (as lease, gift, etc.) and her feelings towards landlessness and food production.

## **CASE 1 - NZILANI**

Nzilani was born in Mun'gala sub-location, Mumbuni Location, Machakos District. She went to school up to Form II but had to discontinue with education because her parents had little money which could only educate her three brothers.

She dropped from school and later got pregnant and had a child. She got employment as a house maid to take care of her child. Nzilani got married in 1974 and had six more children, altogether seven. Nzilani now lives as a single parent since she divorced her husband in 1985.

When she divorced, the land which belonged to her former husband and which she was using for subsistence farming was immediately sold by the husband claiming that he needed to use the money to pay his brother's school fees. According to Nzilani, this was not so as the money was actually used by the man carelessly.

Nzilani was forced to go back to her place of birth and use her father's land. She found the land too small to share with her brothers and their wives. Her brothers have also not been willing to share land with her. They have consistently told her to go back to her husband.

Before Nzilani's father died, he had given her a portion of land (0.7 acres) to use for her subsistence. After his death, however, Nzilani's brothers grabbed the portion of land that had been given to her, claiming their wives needed more land to cultivate.

Nzilani had to look for an alternative. She leased a neighbour's land, which she was to use for only four seasons. The land which is  $\frac{1}{2}$  acre is being leased for KSh 150 a year. The proceeds of this half acre are not enough to feed Nzilani and her children, so she supplements her income by selling fruits and vegetables in the local market. However, farming remains her major occupation.



Nzilani feels bitter about her ex-husband who does not take any responsibility over their children's survival. Nzilani is very poor. She and her children live from "hand to mouth" and she can not afford to take her children to school.

## **CASE 2 - WAYUA**

Wayua was born in 1938 in the hilly areas of Kiandani Sub-location, Mumbuni Location, Machakos District. She was educated up to Standard four. She is a single parent with five children.

Wayua had access to her father's land on which her house is built. However, in 1969, the portion of land which she was using for subsistence was sold by her brothers who claimed women have no inheritance rights to their father's land. The brothers also accused her of not wanting to get married in order to bother them with her children. The portion of land Wayua was using was sold by her brothers without consulting her. She woke up one morning to go to her land, only to find she had no access to it any more as it had been sold.

Wayua is a subsistence farmer who grows food crops such as maize, beans peas and vegetables. After her ordeal with her brothers over land, Wayua found other alternatives for survival. First, she leased land from a neighbour. Then she began illegal farming on land belonging to the Machakos Municipality. Finally, her eldest son bought a small portion of land. However, all these pieces of land have one problem or another in terms of security.

### **The leased land**

Apart from the fact that the land is small (a quarter acre), the owner keeps threatening Wayua that he will withdraw the lease. The land has denied Wayua both security and "peace of mind" , to use her words. In addition, the lease is becoming too expensive. Originally valued at Ksh 50, the lease had been pegged at Ksh 269 at the time of this interview (1991). Wayua thinks the owner of the land is taking advantage of her situation by occasionally going to her house to ask for food or to borrow extra money on top of what the lease entitled him to. Wayua wonders whether at this rate it may not be cheaper to buy land.

### Municipality land

The biggest and most fertile piece of land on which Wayua grows food, and which measures half an acre, belongs to the Municipal Council of Machakos. But the land lacks security of tenure as the council can claim it back at anytime without notice. Wayua prays everyday over this land so that the council does not claim it for use. Her security over this land according to her "is based on God who has made the council not to claim this land for this long."

### The 'bought' land

According to Wayua, her eldest son paid money to one of their neighbours for land. Wayua was only able to use this land for one year (1990). The original owner of the land became problematic by saying that the money given to him was only for lease of the land for a period of time. Wayua has stopped using this land as the man has constantly been threatening her. She feels the man's behaviour is based on sexist feelings against a single woman household head.

At the time of this interview, Wayua was feeling hopeless over the land issue. She was wondering, how anyone could survive without land. According to her, "a woman and her children need land to live on and to grow their food". Wayua says "something must be done at least for the sake of children if they are to have any hope in life, because without land, they seem to be heading nowhere. For this reason, Wayua is determined never to quit the Municipal land whether the Municipal claims it back or not.

### **CASE 3 - NGII**

Ngii was born in 1934 in kiandani sub-location, Machakos district. She has two sons who are both handicapped. Ngii, who never went to school, is illiterate.

Ngii was once married, but she divorced when her husband married another wife and neglected her. The land she had access to for her farming and which belonged to her husband, was taken from her and allocated to his second wife before he divorced her. Another portion of land which belonged to the man, but which Ngii was using for food crops was sold by him in order to get money to build a house for the second wife. This is what led Ngii to quit her marriage because according to her, "if your husband cannot provide you with land, then what else is left?"

After divorce, Ngii continued with her subsistence farming on a portion of land (0.2 acres) which was given to her by a neighbour as a gift. This gift of land is used by Ngii on condition that she also offers her labour freely to the owner of the land. But Ngii has continued with this arrangement for long despite the fact that she does not like it. She has no choice. Ngii's landlessness makes her feel very poor and helpless.

#### **CASE 4 - NDUNU**

Ndunu was born in 1965 in Kiandani Sub-Location, Mumbuni Location, Machakos District. Ndunu went to school up to Standard 7 and due to lack of school fees, she had to discontinue her education. In the process, Ndunu got pregnant and had a child. She was then forced to get a job as a housemaid in order to maintain her child.

Ndunu got married, and at the time of this interview, she had four children. Her husband is working as a watchman and according to Josephine, the money her husband earns is too little to maintain the family. Ndunu is a full time farmer on a half-acre portion of land, which was given to her by her husband's uncle. To supplement her income, she has to sell some of what she produces from this farm although it is never in surplus. Whatever Ndunu gets from this piece of land is not enough for her family. For this reason, she is forced to sell her labour to the nearby farms where she gets paid in cash or food.

When Ndunu got married, she had access to land that belonged to her father-in-law who later sold all the land leaving Ndunu and her husband landless. He denied his son (Ndunu's husband) inheritance rights to the land, claiming it would be taken away by the Municipal Council even if his son inherited it. According to the father, it was better to dispose of the land immediately and buy land elsewhere. After selling the land, the father never bought an alternative piece of land, rendering his son (Ndunu's husband) landless. He did not inherit any land and neither has he bought any. The couple now live on an uncle's land.

But the uncle's land is merely a temporary gift to his nephew, Ndunu's husband, until the time that he wants to use it, especially when his children grow up, ready to inherit. Then Ndunu will not even have a temporary gift of land. She will be landless even in terms of access.

What does Ndunu intend to do?

Ndunu intends to rely on other means of livelihood when she loses access to the gift of land she is now farming on. She intends to settle down in the slums of Machakos Town, forget about farming and only sell her labour in exchange of cash. This is the only way for her to raise her children.

## **CASE 5 - KALONDU**

Kalonde is a married woman aged 65 years. She only managed three years in school when she was stopped from going to school in order to help her mother with household chores.

Kalonde got married in 1945 and has six grown up children. She is a subsistence farmer. Kalonde supplements her income by selling vegetables and fruits in the local market. When things get hard, she also sells her labour to neighbours for cash.

Kalonde originally farmed her husband's land, which is about 0.9 acres. According to her, her father-in-law had a big piece of land (about seven acres) which had to be subdivided among seven brothers.

In addition to the inherited land, there was a portion of land which Kalonde tilled for about 10 years. Her husband claimed the land was given to him by clan elders. However, at the time of this interview the land had been taken by the sons of a former chief who had documents (titles) showing that the land Kalonde is using belongs to them. Kalonde's husband had no documents to show the land belonged to him.

At the time of interview, Kalonde had began growing food crops on a half-acre piece of land belonging to the Municipal Council. However, she does not know how long she can do this as the Council may claim it for use at any time even when her crops are there.

To crown it all, the land Kalonde's husband claims to have inherited has no title deed and his brothers claim this land too has been sold. Kalonde suspects this could be true as her husband is a drunkard and could sell anything to buy alcohol. This means the only land Kalonde has access to is that on which her house stands on.

Kalonde sees her life full of misery without land. She wonders what her sons will inherit and where they will build their houses. According to her, the titled land which the husband inherited and which she hopes has not been sold by him is too little to subdivide among her five sons. The sub-division of this tiny land will only bring about hatred among her children. At present, the sons regard their father a failure because he has not secured his sons sufficient land to inherit.



## **CASE 6 - MBATHA**

Mbatha was born in Mumbuni Location, Machakos District. Her parents died when she was young and therefore she was brought up by an aunt. Mbatha only attended school for two years.

Mbatha got married in 1974 but later divorced. She has four children whose school fees is paid by her brothers. Nonetheless, the brothers have not allowed her access to any land which they inherited; neither will her children have access to her father's land. She gets her income from selling her labour to neighbours and relatives who pay her in cash or kind. She cultivates land or picks coffee.

When Mbatha was divorced, she used her father's land for a while. After some time her brothers shared land amongst themselves, leaving her nothing. When she complained, the brothers told her she had no rights to their father's land as "only sons could inherit".

When this happened, Mbatha tried to go back to her husband for the sole reason of getting access to his land in order to feed her children. Her ex-husband was not ready to receive her back. Mbatha pleaded with the aunt who brought her up to give her some of her land to subsist on. The aunt agreed and gave her half an acre of land as a temporary gift. But this did not last long as her aunt's husband became very upset with this arrangement, pointing out it is brothers who should help Mbatha. Later, the man repossessed the land, claiming he needed to use it for other purposes.

Mbatha now cultivates a 0.2-acre piece of land, which is a temporary gift from a friend. She has to depend on the goodwill of her friends in order to get access to any land for survival. The only land of her father available to her is the on which her house stands on. Since she is not on good terms with her brothers, they have not allowed her to use any land which they inherited from their father.

Mbatha only means of livelihood is through cultivation of land. She laments that soon, the land which is given to her as a temporary gift will be gone and she and her children will have no other means to survive.

## **CASE 7 - MUKONYO**

Mukonyo was born in 1952 in Mung'ala Sub-Location, Mumbuni Location, Machakos District. She is educated up to Standard 7 but was forced to drop out of school because of lack of school fees.

Mukonyo got married in 1970 to a Ugandan, who was forced to go back to his country leaving her with four children.

Mukonyo had access to the same piece of land as her mother. The one-acre piece of land is too small to feed them adequately. To make ends meet, Mukonyo sells fruits and vegetables, although her main occupation is farming.

Mukonyo's biggest problem is her brothers. They are not happy that she is divorced and therefore forced to live with her mother, but more so because she has to use the land which is meant for them - the sons. They tell her that she has no right to the land and blame her for not having brought her own land while her marriage lasted.

At the time of interview, one of her brothers had taken over the land Mukonyo was using and given it to his wife to cultivate. Mukonyo and her mother had to look for alternative land which they got as a temporary gift. The land is only half an acre, and according to Mukonyo, too swampy. She is forced to grow arrow roots and onions and leave out maize and beans which are the area's staples.

Mukonyo intends to use the leased land until the owner claims it back. She is finding life very hard because she has children but no land from which to feed them from.

## **CASE 8 - NDINDA**

Ndinda was born in 1963 in Mung'ala village, Mumbuni Location, Machakos District. Ndinda is educated up to Standard 7 but dropped out of school due to pregnancy.

Later Ndinda got married to the father of her child and was allocated land by her father-in-law for use to feed her family. At the time of interview, Ndinda had three children.

For a long time Ndinda grew food crops on the two-acre piece of land allocated to her by her father-in-law. At the time of the interview, Ndinda could not maintain her family of four children, parents-in-law and some of her unmarried brothers-in-law on the food she produces. Not only has food become very expensive, but her husband lost his job and sold all the land she previously cultivated. The land was sold in 1986 without any consultation with her, and the money used for her husband's entertainment. Ndinda now works on neighbours' farms to feed her children.

Ndinda's father-in-law has through sympathy allowed her to use a piece of land belonging to one of his unmarried sons. Ndinda has to continue producing food for the extended family even though she has no land of her own. Soon Ndinda will be landless when her brother-in-law gets married. Besides her brother-in-law's land, she is using temporarily, Ndinda has leased some land from a neighbour about two kilometres away from where she lives. However, she does not feel secure using this land as she has been unable to pay KSh 200 to the owner as per their agreement. The owner is bound to reclaim the land any time.

Ndinda also fears for the land belonging to her brother-in-law because they are not in good terms and he may repossess the land anytime. She feels that she has been neglected by the community in general, but she blames her husband for selling his inheritance without thinking of his wife's and their children's future.

## **CASE 9 - NZULA**

Nzula was born in 1945 in Mumbuni Location, Machakos District. Nzula is educated up to Standard seven.

Nzula got married in 1962 but later divorced and went to live with her mother. She has five grown up children.

Before Nzula divorced, she had access to land which was inherited by her former husband from his father. On this she produced food for the family. After divorce, Nzula lost access to this land, which was later sold off.

Nzula went back to her mother and continued farming on a piece of land allocated to her by her mother. This land of 0.4 acres is too small, and Nzula supplements her income by trading in grains at the local market.

At the time of interview, Nzula had lost access to this land as her brothers had taken it away from her and given it to their own wives to use.

Despite the fact the Nzula's children are grown up, four still depend on her for their livelihood because they are jobless. For this reason Nzula must continue producing food although she is absolutely landless.

When her brothers grabbed land from her, she decided to lease a small parcel of land (0.2 acres) for four years. There is no fixed amount for the lease. Nzula is supposed to give the owner some of the harvest or to provide labour on another of the landowner's farms. This indeed is a very expensive endeavour, as the land is not quite fertile. In addition to this, a friend and sympathiser to Nzula's situation has given her a 0.4-acre piece of land as a temporary gift to grow food crops.

Nzula is absolutely desperate and she sees no future even for her own six sons. These have no land who have no land of their own and nothing to inherit. But Nzula is determined to continue selling her labour and share her harvest, as long as she has a patch of land to produce her food on and continue feeding her family.

## **CASE 10 - KATUNGE**

Katunge was born in 1965 in the sloppy areas of Kiandani Sub-Location, Mumbuni Location, Machakos District. She received education up to Standard 7 and did not continue due to teenage pregnancy.

Katunge is married with a child. Her main occupation like her husband's is farming. When Katunge got married, she had been allocated land by her father-in-law, who later took back the land and sold it because he wanted the money to educate some of his sons. Neither her husband nor herself were consulted over the sale, which left husband and wife landless.

Katunge tills a 2.5-acre piece of land which was leased to her by one of her neighbours who is too old to farm. The sons of the landowner live in Nairobi and do not need to use the land. On this land, Katunge grows food crops some of which she sells in the local market.

Without land of her own, Katunge feels very disillusioned. She feels that she, her children and husband have no secure future. Without land, there is no food, she says. She will continue producing food on land that has been leased to her until the rightful owners come to claim it.

## **CASE 11 - MUTHEU**

Mutheu was born in 1952 in Utooni Village, Kiandani Sub-Location, Mumbuni Location, Machakos District. She received education up to Standard 7. Mutheu got married in 1973 but after two years, got a divorce. She is now a single parent of five children of school going age.

After divorce, Mutheu lost the land she had access to for food production, but which had been inherited by the former husband. Mutheu and her children live at her parent's home. For six years, Mutheu used a small one-acre piece of land, which until then, was used by her mother. The rest of the parents land had been sub-divided and inherited by Mutheu's married brothers. This piece of land which Mutheu used for sometime after her divorce was to be inherited by a younger brother when he got married. Indeed the younger brother got married two years ago at the time of this interview, and Mutheu lost all access to her father's land. In divorce Mutheu had lost access to her husband's land. At her own home (birthplace), she has no rights to inherit her father's land according to the Kamba customs.

Mutheu had to look for alternatives to continue feeding her family. She got 1½ acres of land leased to her by a neighbour, on which she grows food crops, and selling some of the produce to feed her children. The land has been leased to Mutheu for two years at KSh 500.

Mutheu remains very insecure, first because she is landless, and secondly because after the two years, the owner of the land may not necessarily renew the lease. What Mutheu does not like about the leased land is that the owner expects her to give him some of her harvest and sometimes to provide labour to his other farms during land preparation and weeding. This is quite an expensive commitment, which, in Mutheu's words, takes a lot of her energy, considering that she has already paid for the lease.

However, Mutheu still has a lot of hope, and according to her, if it gets worse and she cannot get access to any land at all, she will forget about farming altogether and simply sell her labour to nearby farms, although she would prefer working in town.



Still, Mutheu feels that if only she had land, she would not have any problems. She blames her former husband for dumping her and her children without giving them any support. Her greatest worry is for her male children, who, according to her, will one day get married but with no place to settle, since her mother and brother's cannot allow her sons to live in the land they have inherited.

## **CASE 12 - KAMENE**

Kamene was born in 1963 in Kusyomvomo village of Kiandani Sub-Location, Mumbani Location, Machakos District. Kamene received education up to Standard Seven.

Kamene got married in 1983 to an only son of the family who had inherited all the family land. Kamene therefore had access to about 10 acres of land for her use. Unfortunately in her fourth year of marriage, her husband suffered a severe mental illness, which made Kamene seek divorce as the man became consistently violent to her. With the divorce, Kamene lost accessibility and use of the land her husband had inherited, not because she was denied access to the land, but because she felt insecure using it.

Kamene has five children to feed. When she went back to her parents, she was temporarily allocated 1½ acres of land for use. But this land belongs to her mother and Kamene can only use it until her brothers need to use it.

Kamene has to supplement her income by selling vegetables and fruits, which she get from a friend on credit and pays for after selling. She hopes to save some money from this venture to buy land of her own in the near future. But at the time of the interview, Kamene had no savings since most of the money she made went to feeding her children.

In the meantime, Kamene had information that her former husband has sold most of the land he inherited. Kamene had been planning to approach the elders to enable her sons to inherit some of their father's (Kamene's former husband) land. Kamene now fears for herself and her children. According to her, without land, the future is bleak.

### **CASE 13 - MUENI**

Mueni was born in Kiandani Sub-Location, Mumbuni Location, Machakos District. She is 52 years old and married. Mueni did not go to school since her parents did not believe in educating a girl.

Mueni has seven children, and her main occupation is farming. It is out of the work she does on the farm that she is able to feed her children since her husband does not support the family financially.

Mueni had access to land which belonged to her parents in law but which was inherited by her husband. Unfortunately for her, most of this land which was inherited by her husband has been sold by him. Now what is left for them is the patch where her house is built.

Mueni's husband sold most of the land in 1982/83 without consulting with Mueni, claiming that he needed money to pay school fees for the children and also to construct a better house for the family. According to Mueni, he did none of this, and instead went away for two years and spent the money alone.

Mueni was forced to look for alternative means of survival for herself and her children. She has been given half an acre piece of land as a temporary gift by her sister. It is not clear how long she will use this land. Besides farming, Mueni sells her labour to neighbouring farmers who pay her in kind or cash. Since Mueni cannot finance her children's education, none of them go to school. In stead, they have joined their mother in selling farm labour. Mueni feels absolutely disillusioned about her landless status.

## **CASE 14 - KATINI**

Katini was born in 1952 in Kiandani Sub-Location, Mumbuni Location, Machakos District. She is educated up to Standard 3 and is married with six children.

Katini is a farmer and supports her family through her hard work. Her husband's income is too little to sustain them.

Katini was supposed to have access to the land her husband should have inherited from fathers. According to Katini, this was problematic since most of the land still belongs to her father-in-law, who grows coffee on the 2½-acre piece of land. Katini's parents-in-law expected her to labour freely on the coffee farm, although all earnings from the crop went to her father-in-law. Katini stopped working on the farm, which soured relations between her and her parents-in-law. She was refused access to the other one-acre piece of land originally allocated to her, and which, until then, served for food crops.

Katini had to find other alternatives, which equally proved problematic. She and her husband leased land from a neighbour and after using it for a season, the owner claimed it back. Katini leased another piece of land, but it was too unproductive, and after using it for one season, she abandoned it. She leased yet a third piece of land on conditions that she shares the harvest with the land owner, besides working on his other farms. She used this land only for one year because the terms were too costly.

At the time of the interview Katini had finally got a 2½-acre piece of land leased to her for three years with a possibility of renewal. Unfortunately, the land is subject a pending court dispute over ownership with another man. Continued use of the land by Katini will depend on whether or not the present owner wins the court case.

Katini does not see any alternatives particularly in the rural area because according to her, land is most important for the survival (food) and for the future of the children.

## **CASE 15 - KOKI**

Koki is 31 years old and is educated up to Form 4 level. Koki is separated from her husband and has two children.

Koki's main occupation is farming. When she got separated from her husband, she lost access to the land which was given to her by her father-in-law to cultivate. Back to her home, her brothers denied her use of any her parents' land, which, in fact, the brothers had inherited. With the help of elders, Koki was allocated an acre of land which was not being used by her brothers. Her brothers reacted by selling the piece of land, rendering Koki landless. She was forced to look for alternatives. She leased a 1½-acre piece of land from a friend which later she found was not productive. Koki leased another piece of land from an aunt, which she again used for one season, only and found that it was unproductive.

At the time of interview, Koki had lost hope in farming as a source of livelihood. According to her, "how can you farm when you are landless and when other people can only lease to you their unproductive land?" Although Koki continues to till the land leased from the aunt, she does not like the arrangement as her aunt expects her to work on her other farm in appreciation. She has also heard that soon the son of her aunt will build a house on the land she is currently cultivating. This has not come to her directly from her aunt, but she knows she cannot depend on this land any more.

Because of the insecurity caused by landlessness, Koki has decided to begin looking for alternative means of survival. She has began trading in the local market, buying and selling vegetables and fruits. She sees no future in farming.

## **CASE 16 - NGONYO**

Ngonyo lives in Mungala Sub-Location Mumbuni. She was born in 1954 and is educated up to Standard 7. She got married in 1983 but later divorced and has three children.

Ngonyo's main occupation is farming. She had access to her mother's land although there are problems regarding it. Since the land actually belongs to her brothers, they are putting pressure on their mother to restrain their sister from using it. The accuse Ngonyo of divorcing in order to come home and bother them.

Ngonyo's brothers had already been allocated the best portion of their parents' land which their wives used for farming. Ngonyo complained that the piece of land which she was using, was not even fertile but very swampy, forcing her to grow only those crops that do well in swampy land. At the time of interview Ngonyo's mother, until then the only living parent, had died hardly two months earlier when her brothers took away the land she was using and given it to their wives. Ngonyo was left landless.

Ngonyo had to find other alternatives. She was given half an acre piece of land by a friend as a temporary gift. Since this land is too small to live off with her children, Ngonyo sells her labour to nearby farms to supplement her income. Ngonyo feels disillusioned about her life and her children, whose future is bleak.

## **CASE 17 - KIATU**

Kiatu was born in 1943 in Manyatta village, Mumbuni Location. She attended school up to Standard 7 and because her parents did not believe in educating a girl, she was forced to discontinue her education.

Kiatu got married in 1973 and has four children. She is a full time farmer and sells part of her harvest to supplement her income. In 1988, she tried to get a job as a housemaid, but her husband opposed it, so she went back to farming.

When Kiatu got married, she was allocated two acres of land by her father-in-law for use and to be inherited by her husband. She used this land for about 10 years, and when her father-in-law died, her husband decided to sell the land. He had consulted with her, trying to convince her that the land was infertile, and they needed to sell it to get money to buy some fertile land elsewhere. He sold the land in 1982 to his Asian employer. When Kiatu's husband received the money from sale of land, he neither informed Kiatu nor bought alternative land. Up to now, to her, up to now she does not know what the money was used for.

After the sale of land, Kiatu had access to 1½ acres of land meant for one of her brothers-in-law. She used the land for about three years. Later her brother-in-law got married and needed the land for his wife. Kiatu was forced to look for other alternatives.

At the time of interview, Kiatu was illegally using land that belongs to the Municipal Council of Machakos. This land is not fertile and parts of it are planted with trees, but Kiatu has no choice. She has to continue producing food for her family even though she has no land.

In addition to Council land, Kiatu has a half acre portion of land leased to her by a neighbour, which she pays in kind by offering her labour and other services. Kiatu does not like this arrangement since there are too many conditions attached to it, but she has no choice. She has to continue fulfilling these conditions if she has to use the land.

Kiatu generally feels hopeless and poor. She thinks that probably and soon enough, they might be forced to migrate to the slums of Machakos town since the portion where their house is built belongs to her brother-in-law who has told them to leave. Her brothers-in-law no longer trust their brother since he sold his own land and might sell theirs too. But Kiatu blames her husband for being irresponsible. She sees no future for them and their children. She wonders what her two sons will inherit when they grow up.



## **CASE 18 - KALEKYE**

Kalekye was born in 1957 in Mung'ala Sub-Location, Mumbuni. She is educated up to Standard 5. Kalekye married in 1970 and has five children. Both herself and her husband are full time farmers.

When Kalekye got married, she had access to 2½ acres land which her husband had inherited from his father. Her husband later sold this land, claiming it was too close to the main road, and some day the government might appropriate it for development. He would sell it and buy alternative land elsewhere. In spite of discussions with her husband, Kalekye was opposed to the idea. Her husband eventually sold the land, anyway, but without her knowledge. She woke up one morning to find she had no land. Her husband had sold the land, bought one cow and 'boozed' the rest. The only land the family has is the patch where their house stands.

Kalekye had to find other alternatives. She and her husband got land on a three-year lease, for which her husband agreed to pay KSh 1000. After the three years, the husband had paid nothing and the owner of the land took it back with all the crops that Kalekye had grown and not harvested.

At the time of interview, Kalekye had access to two different portions of land, one leased from a friend and the other given to her as a temporary gift by a relative. Both pieces are very poor and unproductive. It is from these portions that Kalekye grows food to feed her family. Occasionally, she is forced to sell some of her harvest at the local market, although the food she grows is hardly enough to feed the family. She is sometimes forced to sell her labour to the neighbouring farms for cash in order to make ends meet. Her husband occasionally works at construction sites. Kalekye feels that without land, her future and that of her children is insecure.

## **CASE 19 - MWENDE**

Mwende was born in 1960 in Mungala Village, Mumbuni. She is educated to lower secondary level, but had to drop out of school because of lack of school fees, as the only money the parents had could only educate her brothers.

She soon got married but later separated from her husband. Mwende has five children, all of whom she lives with at her fathers home.

Mwende has been a part time farmer. When she left school, she was employed as a nursery school teacher. But her income was inadequate to meet her needs, and she had to supplement it with farming. Mwende got married and had access to the land her husband had inherited. Later, Mwende separated from her husband. She lost access to the land, a portion was then leased and the other sold off.

When Mwende went back to her parents, she had to use family land despite the fact that it was small and her brothers were not too willing to share it with her. The land apportioned to her by her father was later taken away by her brothers when the old man died. She now depends on the portion which her mother has been using. She has also leased half an acre of land from a friend for two years, about two kilometres away from her home.

Mwende has to continue fending for her five children without the support of her husband. She has to supplement her meagre income from teaching with food production to feed her children. Her mother is getting too old, and when she dies, she knows her brothers will throw her out to avoid conflict between her children and her nephews. Mwende has no hope of reuniting with her husband who does not care for them in any way. Without land, Mwende sees no future for herself and her children.

She knows she has to buy land, but she has not been able to save a cent since all the money she makes simply goes into feeding her children and her old mother.

## **CASE 20 - MWIKALI**

Mwikali was born in 1962 in Kiandani, Mumbuni. She received primary education up to Standard 7 and discontinued in order to help her mother with household chores.

Mwikali is married with four children. Her main occupation is farming. When Mwikali got married, she had access to the land that her husband inherited. However, in 1988, he lost his job and decided to sell his land. Mwikali was not consulted. The money was used by her husband without her knowledge.

Later, Mwikali's father-in-law allocated another piece of land for her use, but it was later sold off. The land which Mwikali was using at the time of interview was given to them as a temporary gift by her uncle out of sympathy. She does not know how long he will allow her to use the land. Nevertheless, this land is too small (hardly an acre) and Mwikali has to find other means of livelihood. She sells her labour to neighbouring farmers and uses the money she gets to buy vegetables and fruits, which she re-sells in the local market.

Mwikali does not know how long she has to depend on charity regarding land. Even though her uncle has given her land, she wonders what her children will depend on in the future. How can they continue surviving without their own land, she wonders. Mwikali knows that life is increasingly becoming tougher, and one day, she knows her children will go without food since she will have no land on which to produce food.

## **CASES OF WOMEN WHO OWN LAND**

The following questions were used to guide the case studies of women who own land: life history, marital status, number of children, occupation, husband's occupation the land history, how she acquired the land, is it registered in her own name, how the land is used, does she own the land in trust of her children, or sons, does she think women should own land, what advantages does she have as a landowner, any credit received on land, has she sold, leased out some of it, (at what price), does she think she has an advantage over those who have no land, (how?), would she like to own more land (why?).

## **CASE 21 - KIATU**

Kiatu was born in Misiani, Kangundo Location, Machakos District. She is 81 years old. Kiatu did not go to school since in those days, girls were never taken to school by their parents. They remained home to help with household chores.

Kiatu is a widow and has 10 grown up children. Her husband was a military policeman, who died in service during the Second World War.

Kiatu's main occupation is farming. She does this with the help of workers employed for her by her children.

Part of the land Kiatu farms was inherited by her husband. The other portion of her land was bought with shares from a cooperative society. When her husband died, and since her children were still young, all the land that was legally owned by the husband passed down to her. However, her mother-in-law wanted to grab some of this land from her, but with determination and through the help of village elders, she managed to secure the land her husband had left.

Although the six-acre piece of land is registered in Kiatu's name, she holds it in trust for her sons. When her sons grew up, Kiatu sub-divided the land among the eight of them, meaning that each son has less than one acre. Two sons have already registered their names on the land they have inherited. The rest of the land is still in Kiatu's name.

When asked why she did not allow her two daughters to inherit some of this land like their brothers, Kiatu says that since daughters get married, they should be given land or own land where they are married. According to her, only sons should inherit land that belongs to their fathers, because immediately they get married, their wives will need land to farm on and to feed their children. Kiatu strongly believes that a woman should have access to her husband's land. She knows the advantages of owning land, the greatest of which is the ability to lease some of the land for cash.

Kiatu also thinks that she has an advantage as a land owner over those who are landless because she produces food crops (e.g. maize, beans, peas, cassava, arrow-roots) and does not have to buy them like landless people.

But Kiatu does not wish to own any more land for she claims that she does not need any more. Since she is old, she cannot even use all the land she owns. She thinks, however, that her sons might need more land.

## **CASE 22 - KAMENE**

Kamene was born in Manyatta village of Kiandani Sub-location, Mumbuni Location in 1927. She went to school up to Standard 4.

Kamene is a widow with two children and six grandchildren. She is a subsistence farmer who supplements her income through selling vegetables and fruits in the local market.

Kamene has three acres of land in her name. This land came to her when her husband died. The land was not been inherited but bought by her husband before he died. When he husband bought the land, it was registered in both their names.

Kamene uses two acres of the land to grow coffee and half an acre for food crops. The remaining piece is leased to a sister who needs it to feed her children.

However, according to Kamene, she owns this land in trust of her only son, who will inherit the land despite the fact that she also has a daughter who is a single parent of six children, all living with her.

When asked what is to happen to her daughter and her children, Kamene says her daughter has no right to inherit the land. She quotes Kamba customs which only allow sons to inherit land and not daughters, unless there are no sons. Despite the fact that her daughter is not married, Kamene insists women should have access to land where they are married.

In spite of customary dictates, Kamene thinks women should own land since they are the ones most responsible as parents and they are the ones who provide for the children.

What advantages does she have as a land owner? Kamene says she gets food and cash from the land. She knows she can get credit using land as collateral, although she has not done so. Kamene has no intentions of selling the land since she intends to leave it to her son.

Kamene would like to have more land, which she could use to plant more food, or lease for cash. Because of this wish, Kamene has bought shares from a cooperative society, which, according to her, may one day buy land for the members.



### **CASE 23 - MBULUKU**

Mbuluku was born in Misakwani, Kiandini Sub-Location, Machakos District. She is a widow with six grown up children. She is also a farmer.

Mbuluku owns five acres of land, three of which came to her when her husband died. Mbuluku sold some of her cattle to buy one acre of land. She also bought shares from a cooperative society (i.e. Katelembu), which bought land for its members and sub-divided it at one acre per member.

Mbuluku grows coffee and food crops, besides keeping livestock on her land. She has also given out part of the land as temporary gifts to two of her daughters married nearby to landless husbands. Despite this, most of her land has already been sub-divided for her sons. Although her daughters are using the land, they have no right to inherit the land.

Mbuluku believes women should own land since they are the majority in farming and also because they have the responsibility to feed children. According to her, women know how to care for land more than men and they would not sell it, while most men sell land and spend the money carelessly. "Women also have a great attachment to their children and therefore they take good care of land in trust for their children as they grow up."

Mbuluku is aware that as a land owner she can get credit although she has never done so. Sometimes she leases the land for a period of time and gets cash payment. Mbuluku thinks that as a land owner, she has an advantage because she has the freedom to use the land in any way: she can lease it, give it as a gift and allocate it for different types of crops. Mbuluku has no intention of selling the land, and instead she has bought more land. According to her, land is never enough. She wants to own more land - even up to one hundred acres.

## **CASE 24 - NDINDA**

Ndinda was born in 1932 in Mathanga village, Kiandani Sub-Location, Mumbuni Location, Machakos District. She is a widow with 10 children, and a farmer by occupation.

Ndinda owns two acres of land, which was inherited by her husband, which is not enough for Ndinda's farming. She has leased 1½ acres from a neighbour. Ndinda also inherited two acres of land from her father, as a permanent gift when she got married. It is 20 km away from where she lives. She has no title deed to this land.

Ndinda uses most of the land she owns to grow coffee and rear cattle. She also grows some food crops in some portions and has also leased out a portion of the distant land.

According to Ndinda, she owns the land in trust for her sons, and she intends to subdivide the land immediately to her five sons. Although one of her daughters is separated from her husband and is also using some of this land to feed her children, Ndinda says she will allocate the land only to her sons. Despite the fact that Ndinda herself inherited land from her father, her daughters will only have access to the land she owns with permission from her sons. All the land she owns belongs to her sons.

In spite of cultural constraints, Ndinda thinks women should own land as they can care for it and make correct use of it. According to her, women are more active farmers than men, and they should own land in order to exercise their abilities freely.

As a land owner, she knows the advantages such as credit acquisition, despite the fact that she has never taken this advantage. The land provides her with food and cash and she is also able to use it freely. Ndinda intends to sell some of her land (particularly the one which she inherited from her father) in order to buy more cattle. She wants to buy more land where she lives so that her sons can inherit bigger pieces of land.

## **CASE 25 - SYOKAU**

Syokau was born in 1916 in Utooni village. She is a farmer who earns her living by producing food crops, selling some of the harvest and also as a traditional birth attendant.

Syokau has never been married, but she has a daughter who has five children. Syokau was the only child of her parents and therefore the only heir to her parents' land. When Syokau's parents died, all their 4½ acres of land passed down to her. Later Syokau bought two acres of land, and altogether, she now has 6½ acres.

Syokau uses her land for coffee and food crops. At the time of interview she was thinking of leasing out some of her land for cash income.

Syokau owns her land in trust for her daughter and her children. According to her, women should own land "for they are children like any other and all children should have the same rights." Syokau says that even married daughters should inherit family land so that they can choose whether or not to marry.

Syokau is aware of the advantages she has as a landowner: she gets credit from the cooperative society, allocates land for food and cash crops without consulting anybody and leases it to pay school fees. Her advantage as a landowner is that she gets food and money from the land. She intends to own more land because according to her, "land is an important wealth and it is through land that one can get rich"

## **RE-EXAMINING THE WOMEN'S PERSPECTIVES**

The following are conclusions arrived at by re-examining the case studies.

- These cases reflect on the fact that land which historically and by customs has been controlled by men through the patrilineage inheritance system, remains substantially in their control today. In practice, only men can/do own or hold land while women do not/cannot own land. Despite the initiation of new laws in the post-independent period that allow women to own land regardless of marital status, very few women in fact do own land.
- Women's access to land is often dependent upon their relationship to men and their marital status. The position of women in these cases regarding land appears totally dependent on the relationship with the spouse who owns the land. That is, the women acquire land either as wives or by virtue of kin links while men on the other hand are direct holders or heirs to land.
- In the absence of personal rights to land, the divorced, separated and widowed women face gross injustice. It is evident from the cases presented that most often the above mentioned category of women are forced out of their livelihood by the male relatives and are often forced to seek alternative means of supporting themselves and their children.
- Nearly all land in this study was registered in individual male elders' names, and when the elder died, little effort was made to legally transfer titles. Consequently widows, their daughters-in-law and sons continue to cultivate the deceased man's land without transfer of title. It is important to point out that once the man dies, the wife's access to land is threatened by her husband's male relatives and sons with inheritance rights. In this study, it was found that widows were actually powerless in protecting their usufruct rights in the face of adult male husbands' relatives, who may want to sell the land. Frequently, they find that the land they had access to while their husbands were still alive is suddenly taken from them when their husband dies.

- The cases also show that separated and divorced women return to their natal home where they become dependent on their fathers' or brother's lands. These categories of women were found to form production units with their children and mothers, if she was still alive. The mother provided security and ensured that the daughter had some land to cultivate. Once the mother died, daughters were often thrown out of the land by their brothers. Lands allotted to daughters in their natal homes for their livelihoods are never sufficient for their needs, and most of the time, they are forced to sell their labour off the farm.
- Legally, daughters as well as sons should inherit land. The cases show that in practice, fathers continue to transfer land to their sons. Occasionally, a father will give his daughter a plot of land to cultivate, though he is reluctant to do so because it means in future there will be less land for his sons. Girls do not inherit land, they are expected to marry away. In cases where a daughter remains unmarried, her situation regarding land becomes precarious. She must depend upon her father or brother to provide her with land for cultivation. Brothers are however reluctant to share their inherited land with their sisters and most often, daughters are forced to contribute their labour to their mothers' production unit if she is still alive.
- Polygamy was found to mean that land must be sub-divided between wives competing for available resources within the family. Frequently and evident from these cases, a woman wakes up one day to find that the land she has been cultivating for her livelihood and that of her children is already allocated to a co-wife by the husband.
- The precedence given to cash crops (i.e. coffee) means that small portions of the family land are allocated to food crops. The general conclusion for these cases shows that land tenure reform has not only confirmed de facto powers of arranging land use and appropriation over income from cash crops, but also constitute the de jure end of traditional protective measures for women's land use, and allow men to sell land without consent of their wives.

## CONCLUSIONS

This study alone is insufficient for drawing generalized conclusions on the situation of Kenyan rural women regarding land. Nonetheless, the study draws out certain common socio-cultural characteristics forming a framework from which general conclusions are arrived at regarding the effects of land tenure reform on women and their role in food production. These conclusions are linked to two factors: first, that the purpose of land tenure reform is to confirm to modern law ownership of individuals of whom credit and other agricultural services might be directed; second, that modernization of agriculture which strengthens private profit incentive and facilitates the use of credit as a basis of land collateral leading to greater production efficiency and greater increases in household income. These being the objectives of land tenure reform, we immediately raise the issue on what women have gained relative to men from the land tenure reform.

Conclusions from this study:

- Structural changes brought about by land tenure reform under colonialism and the post colonial phases have eroded the traditional laws that safeguarded women's rights in land use. Adjudication and registration of land titles have been conducted on the basis that the power of control was equivalent to 'ownership' as understood in Western laws, which has led to the transfer of land almost exclusively to male individuals. It is important to note that despite new tenure laws that allow women regardless of marital status to own land very few women were found to own land in this study. Nearly all land was registered in the individual male elder's name. It is also important to note that the land adjudicators, consolidators, committees and board members have been almost always all men. This means that the women have been totally left out of this process, thereby leaving out their concerns ill-defined and compromised.
- Women largely gain access to land as wives, and have little opportunity to acquire land otherwise. The issue of land tenure reform enabling any person to acquire land regardless of sex thus becomes largely redundant vis-a-vis the socio-cultural framework. Fathers continue to transfer land to sons because it is assumed that daughters will get married. If women are to continue having access to a livelihood

only through lifelong tenancy bestowed on the man as the land owner, then their position in the event of marital separation, divorce or widowhood is threatened and ill defined.

- The rights bestowed on the individual title owner have several elements: the ability to allocate, lease, mortgage, sell for cash or dispose of by will. How much land and of what quality allocated to women depend more on their husbands separate incentive, which means that women's agricultural priorities are subordinated to those with land ownership rights (the men), who alone have the right to allocate depending on what they want to use the land for. With confirmation of men's privatization rights to land, trends show men's increasing allocation of land to cash crops and squeeze on women's food land are likely to continue.
- A population of women is left in the rural area and they continue to manage land that belongs to their husbands, yet they cannot as a right raise credit to improve the land no matter what opportunities exist for doing so. Losing rights to land for women goes along with losing access to loans they might have since lending institutions require collateral, which they normally take in the form of land title particularly for agricultural credit. It is men who hold titles, and therefore it is men who can get loans. Although women can use their husbands' titles, the common practice is that husbands are already using the newly private land titles. Any future farm credit that depends on land mortgages is likely to remain firmly in the hands of men. And any land secured credit in the hands of men will threaten the land rights of related women.
- The newly title individuals (men) are already selling land, which was once or ostensibly still is, family land. As there is ready cash for purchase of land, there is a trend that poor people are already raising money sometimes simply for plain subsistence. The people most threatened are women and children with little or no off-farm income, who depend on land for their livelihood.

- The justification of registration of land title is to lead to increased production by security of tenure which makes it a farmer's while to undertake permanent improvement and investment of the farmer's own capital. But the woman farmer has no titled land of her own and has to depend on her husband's farm for her food farming. Lack of security denies her the freedom to make management decisions concerning the farm. It is this sense of insecurity of tenure which affects women's investment decisions, since the owner of the land has the ultimate legal authority over land use, utilization as collateral for credit and disposal of produce and income. The practical effect of all this on women farmers is that they cannot make long-term investment in the holding unless they are secure in their expectation of reaping the benefits of their investment.
  
- Land tenure reform has brought about numerous changes in land use, division of labour and men's control of both. The family economy has been split into two parts; food and cash crops subsistence and monetary which in effect completely transforms the role of women in agricultural economy. The whole land use organization at the farm level is based upon the supremacy of the man as the legal owner of the land. In this mode of production, the women have found themselves both subordinate to income and marginalized.
  
- Commercialization of agriculture brought about by land tenure reform has led to women's loss of control of the family economy, while at the same time they must continue to supply the labour necessary for both food and cash crops, thereby increasing their work burdens. Agricultural incentives and technologies are directed to cash crops, given their high economic status in the country, while food crops continue to remain under indigenous technology without incentives. Men continue to earn and control money from cash crops while the responsibility of feeding the family still rests primarily with women. The income maximizing position granted by land title deeds and cash crop production has resulted in improving only two things: cash crop fields and men. From women's perspective, this is not only discriminatory in effect but exploitative as well.



- Following this, services such as information, extension services, marketing and inputs are biased in favour of cash crops and the male farmers who are also heads of household and land title owners. Agricultural co-operatives, which provide farmers' services, are formed by those who own land and wives are not automatically granted membership. In most cases, women fail to meet the criteria for membership because of outright discrimination against them, burden of the double day, women's reticence or resistance by men.
- This study took as axiomatic that the objectives of land tenure reform should apply to women as well as men and that the gains are viewed as intended for women as much as for men. However after going through this study, we realise that women have not benefitted from the objectives of land tenure reform since they have not acquired the same rights which would enable them to become beneficiaries like men. Land tenure reform has carried the implicit assumption that the household is a primary unit of production, management and earnings, forgetting that there is always a sexual division of labour, sexual division of management of certain crops, plots as well as the rights of appropriation over produce. Gender relations will not only affect women's access to land, but the conditions under which women are able to use land.
- If land tenure reform only benefits the head of household (the men) and information and services are delivered only to the men, what impact does this have on women and food production?
- If men are the direct beneficiaries of land tenure reform and women have been placed in the nominal position of their husbands who are confirmed as the custodians of households resources, what will be the effect of this subordination on agricultural production granted that women largely provide labour in this sector?
- Given that intensive agriculture brought about by land tenure reform leads to greater competition for women's labour between agriculture and non-marketed sector economic gains, and maintaining the family what choices do women have?

Unless these differential gender relations change through the reforms, the levels of agricultural production will be inhabited by a dynamics which may force women to send resources outside the productive unit or alternatively by a dynamism which will not allow women to take full advantage of the resources they have. Indeed, it is a folly on the part of the government to believe that they can increase the productivity of agriculture by providing a natural incentive structure for men while depending on traditional constraints to mobilize a constantly increasing amount of the unremunerated female labour. "Although women are altruistic, they are not foolish and they will not devote their total energies to their own economic disenfranchisement (Cloud and Knowles P. 258).

- Lack of land tenure rights is only one aspect of women's subordination; change of tenure, granting women absolute ownership rights, will not effect great change in their status. This indeed would have considerable positive effect upon their lives.

It is also very important to consider ways in which women oppression and insecurity can be relieved not for humanitarian reasons alone, but because of the effects it has upon agricultural production. Changes in the law will indeed provide women with enormous potential for lessening their subordinate positions in agricultural production. This study has attempted to identify ways in which women can best be supported to carry out these changes. It is our belief that these changes are important not only for advancement towards the liberation of women, but in order to generate many benefits that the changes would bring about not the least of which is the increased potential of women in food production.

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**ANNEX**

# Land ownership: Tenure system denying women right of access

ZIPPORAH Mutanga Musembi lives in the Machakos District of Kenya where she worked with her husband on their 4.4 hectare farm for 6 years.

When he secretly decided to sell the farm and move away, she was left with nothing. The new "owners" of the land came and demolished her home, forcing the older children to leave the only house they knew. Musembi had to move in with her older married sister.

Musembi's example, according to IDRC project researcher Elizabeth Nzioki, is not exceptional. It is the story of many rural women around the world who are constrained in their ability to own and control land.

Nzioki began the project, called "Access to Land Ownership in Kenya," in 1987. Nzioki conducted research in the Mumuni area of the Machakos District of Kenya, where she interviewed rural women in the context of land tenure reform.

The project has focused specifically on how land tenure reform has affected women's

By REBECCA KATUMBA

relationship to land and its implication for agricultural work done by women.

Land tenure reform legislation was introduced in Kenya in 1954 and it was designed to transform customary land tenure to statutory free hold through land adjudication, consolidation and registration.

A key development in Kenyan land tenure reform was the issuing of title deeds in the name of the "head of the family".

"The problem with the legislation," Nzioki notes, "is that the titled land is being transferred almost exclusively to male individuals." There is no provision for how women's access rights are to be defined or for how the land is to be divided after a married couple has separated, she says.

This has led to an "individualisation of land" in which male individuals, through the title deed, now have full power and legal rights over family land. Nzioki says there are a number of implications for women.

The first is that because most land is inherited by the male head of the family and not bought, women rely on men for land. "In this country, women do not inherit land but are almost completely dependent on their husbands, brothers, or in-laws to give them land and to let them farm," Nzioki says.

A case in point is Theresa Wayua, a single mother of six. She was pregnant when she dropped out of secondary school and was sent away for having a shamed her family.

"After the death of my parents", she recalls, "one of my brothers gave me a patch of land where I could build a small house. I work on coffee farms as a casual labourer for only 200 Kenyan shillings (US\$10) a month." The brother is now urging her to move as he wants to use her land for another purpose. Wayua, like many other rural Kenyan women, is dependent on a male relation for access to land.

Many women, like Wayua, work on large farms, making little income. Nzioki concludes that, however good the land legislation is, these disenfranchised women will rarely benefit. "The few women who have benefited are the economically better off — those with urban connections. Generally, rich farmers have gained at the expense of poor farmers those with access to education and political power have gained at the expense of those who do not, and men have gained at the expense of women."

Instead of their traditional role as agricultural farmers and producers, women have been transformed into simple labourers on cash-crops farms. "The title deed is a legal instrument

which has empowered men to have control over not just land but another resource — women's labour," says Nzioki.

Most land that women do own is often of poor quality, further hindering women's productive capacity. "Lack of decision-making power on land use is pushing women to marginalised land and decreasing their traditionally high agricultural productivity," Nzioki says.

After her husband left her with a mentally retarded and a physically disabled child, Ngii Musyoki was forced to move to another area 4 kilometres away. Without income to buy or lease land she found a free, swampy piece of land and claimed it as her "shamba" (farm).

Although Musyoki has farmed this land for more than 20 years, she does not legally own it. She is what the municipality calls a "tenant at sufferance" and can be evicted from her farm at short notice. She is also not permitted to plant cash crops like coffee or bananas — imposing a serious constraint on her income.

The fact that Musyoki has little control of her own land is a reflection of the Government's lack of understanding of the agricultural contributions of women, Nzioki says. "This does not augur well for the Government's policy on nutrition and good security where the strategy is to increase and diversify food production at the household level so that rural families are properly fed," she says.

Musyoki has been sending emissaries to the district commissioner in Machakos for an appointment to discuss her "shamba". So far, the only Government official she has been able to talk to has assured her that she can work on her farm until 1993 without fear of eviction.

The fact that Musyoki cannot discuss her land claims with Government officials does not surprise Tom Kyule, a member of Nzioki's research team. He says that among the 150 women interviewed, none had received training for new farming techniques nor had they talked to extension officers. "One of the women told me that the extension worker wanted to talk with her husband, despite the fact that he lives in Nairobi and comes home only once every 2 months."

Despite the obstacles facing women, Nzioki remains positive that her research work has done much to create awareness among women. Interviews with rural women farmers leads Nzioki to speculate that Kenya may see resistance to certain land sales in the future.

She says that the research is policy oriented, with the results communicated to the law reform commission in a bid to raise the status of rural women. "These women contribute a lot to the economy of this country," Nzioki says with anger, "but they are rarely acknowledged".

## SOCIETY

# Men's tricks to grab land from women

FOR more than six years, Zipporah Musembi, of Mumbuni location, Machakos District, worked with her husband on their 4-acre land.

When her husband "disappeared" recently, Musembi attributed this to "typical" carelessness that makes some men forget their families.

While struggling to adjust to her new life without a husband, however, Musembi soon found herself face to face with "a new land owner" who demolished all structures on her land, forcing her and her children to seek refuge at her elder sister's place.

The facts were clear. Musembi's husband had secretly sold the family land and settled elsewhere.

Musembi's tale is just the tip of the iceberg, says a study commissioned by the International Development and Research Centre (IDRC).

"This is a story typical of many rural women around the world. They are constrained in their ability to own and control land," says the chief project researcher, Akinyi Nzioki.

Since 1987, Akinyi has headed a research team working on a project called "Access to Land and Tenure in Kenya" at Mumbuni, Machakos. She interviewed women there about land tenure issues to produce a document that could lead to some reforms.

The project focuses on how land laws affect women's relationships with land and the implications on their agricultural productivity.

Since 1954, the main component of Kenya's land tenure reform has been the transfer of customary land ownership to individual freehold through land adjudication and registration.

A key development in the land tenure reform was the issuing of title deeds. These, however, are in the

## Gender issues by

ROSEMARY OKELLO

name of the head of the family

"The problem with the legislation is that titled land is being transferred almost exclusively to male individuals," says Akinyi. "There is no provision for how women's access rights are to be defined or how the land is to be divided after a married couple has separated."

This, she explains, has led to the "individualisation of land" where men armed with "their" title deeds assume full power and legal rights over family land.

There are serious implications for women in this legislation. Because most land is inherited by the male head of the family, women are forced to rely on men for land.

"Women do not inherit land but their husbands' brothers or in-laws are almost completely dependent on to give them land and let them farm," says Akinyi.

Theresa Wayna, a single mother of six, who is a victim of this set-up says: "I was dispossessed from home for conceiving while in school. Upon the death of both parents, one of my brothers gave me a patch of land where I could build a small house. I worked on coffee farms as a casual for only Sh200 a month. But the relationship was short-lived, now my brother wants to utilise the portion I live and farm in. I must move."

Without land to call their own, many women have been forced to abandon their "traditional roles" as farmers and processors of food to

become suppliers of cheap labour on cash crop farms.

According to Akinyi, the title deed, however well intended, has been reduced to an instrument which empowers men to control, not just land, but women's labour as well.

Most of the land owned by women is often of poor quality, which further hinders women's productive capacity.

Lack of decision-making power on land use is pushing women to marginalised land and decreasing their traditionally high agricultural

productivity," Akinyi says. Ngũgĩ Musyoki, divorced (or giving birth to a mentally retarded and physically disabled child) was forced to move from Eldoret away from her home to swampy land. This happened over more than 20 years ago, yet Musyoki does not legally own the swampy land.

The pargon caused by the numerous policies to dispossess people's tenure and inheritance in "squatter" land, to day language. She may be evicted from her farm at a short notice.

"Efforts to get some assurance

of security of tenure from the district commissioner ended in a meeting with a low cadre civil servant, who said I could work on without fear of eviction until 1993," says Musyoki.

Her status does not allow her to plant permanent crops, like coffee or bananas, impeding a serious constraint on her income. "To fail to acknowledge such ownership of land is a reflection of the Government's lack of understanding of the agricultural contribution of women," says Akinyi.

This discounts Government pro-

nouncements on nutrition and food production at the household level so that rural families are properly fed.

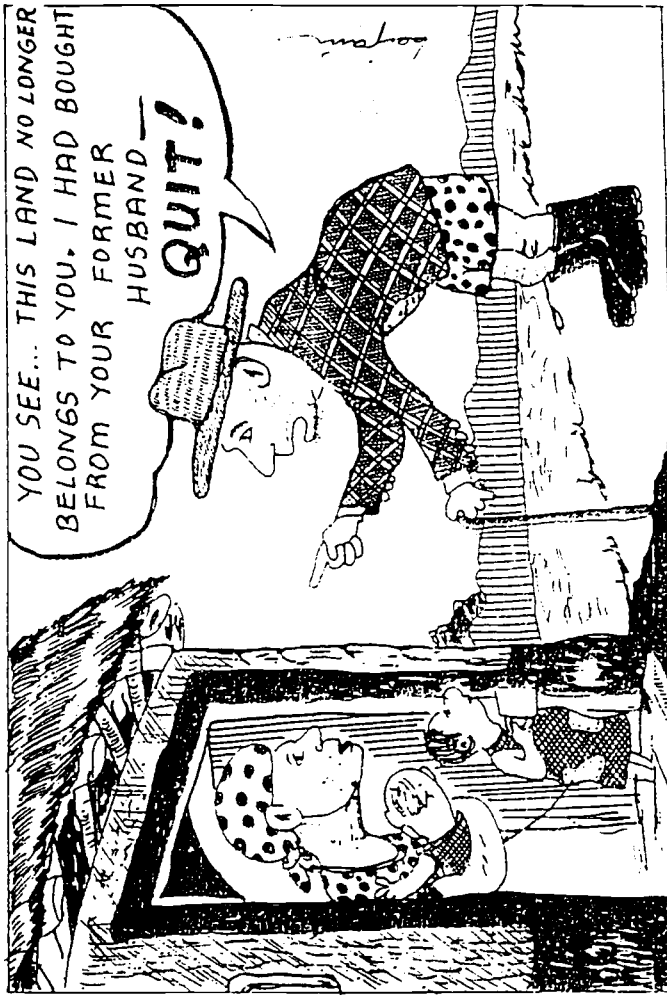
According to project researcher, Tome Kyule, none of the 150 women interviewed in Mumbuni area has received training on new farming techniques or talked to extension workers.

"One of the women told me an extension worker wanted to talk to her husband, despite the fact that he lives in Nairobi and comes home only every two months. This is often because the extension workers have names of owners of the land parcels, usually the males in the family," says Kyule.

But the name on the title deed does not necessarily reflect the usual farm operator, the researcher observes. "While the law remains the biggest obstacle to proper utilisation of land, our research indicated that awareness of natural justice and fairness may soon give women a bigger say on land issues," says Akinyi. Serious and concerted resistance to sale of farmland without consultation with the wife and the children is one step in that direction.

"Our final findings will be communicated to the Law Reform Commission in a bid to split women's status. Rural women contribute a lot to the economy of this country, but rarely is this fact acknowledged," she says.

Her project's key thrust is to expose this kind of systematic discrimination against women both to the Government and to society as a whole. "My research hopes that this awareness will lead to greater confidence among men, women and later land reclamation in the future," says



# Painful tears for family land

## Husband took bank loan which he couldn't pay



A sad Mary Wairimu Wahome: Worried about her future and that of her children.

**Story and Pics**  
By **WAINAINAH KIGANYA**

**A**s she stares into the skies, it is obvious that her heart is writhing with pain as she remembers the auctioneer's hammer which announced the sale of the family land, the only 2½ piece they ever owned at Nyeri.

Joyce Wairimu Wahome, 48, and a mother of seven is in problems and has cause to worry. Her family can be evicted from the land any time now because they are there illegally, despite the fact that it is was once their family land.

"Where do we go to and we do not have any other plot?" she asks, tears dripping down her face. But there is no one to answer her.

She says: "The thought hurts me and I start wishing I could get an easier way out of it. But I'm too old to break my marriage and I have children who need to look after."

The issue has taken its toll on her and she is now thin and suffering from hypertension. And she always spends sleepless nights thinking about what to do next or where to take her children.

Wairimu's family land was recently auctioned by a local bank for Sh70,000 when her husband, Wahome Ndiang'ui, failed to repay a loan he had taken some time ago. But there is still some hope of retrieving the land - if she can raise the money immediately and pay the bank, thanks to the local administration who did this arrangement on her behalf.

Wahome first took a Sh20,000 loan in 1983 from the bank and opened a retail shop in Olakunja shopping centre, Nyeri. A year later, he was given a Sh50,000 overdraft and two more overdrafts of Sh10,000 each the following year.

He was able to repay a portion of that money but still owed the bank Sh40,000 plus the accruing interest.

The had no other source of in-

come except the shop and at some time, the business was doing well. Eventually, the business collapsed before the loan was fully repaid. That was 1987.

Wairimu says she is bitter cause she did not know that husband was taking loans whether he was having any problems repaying them. She came to know about the problem when the bank sent threatening letters.

She laments: "I came to learn from friends that my husband had taken a bank loan and I confirmed the reports later when I started seeing bank statements."

"It was only after it became public that the land had been auctioned by the bank, Wahome openly told her what had happened and tried to advise on how best to avert possible eviction."

Efforts to get a loan from local coffee growers to offset money they owed the bank were futile because the family owed Sh14,000. Wahome had borrowed the money to clear the bank loan.

"Ona kahuwa twage, gutiri mbeca tuonaga (We did not get even a single cent from the coffee we pick)," she laments.

"Though all along my husband had not told me what was happening, I felt obliged to save the land because of my children. I once asked myself, how can we lose the land and we come from a big clan?"

Initially, the new land owner proved difficult as he wanted the title deed to be written under his name. In fact, it took time for the local administration to convince him to agree to be refunded the money he had paid for the land and leave.

The plot has 400 coffee plants out of which 100 plants belong to Wairimu's mother-in-law, Anne Wangechi Ndiang'ui.

Says Wairimu: "It is even sadder because my mother-in-law also depends on the land and she would not believe the title deed was used as security for a bank loan. She says the land is sup-



Wairimu with her three children outside their Giakanja home which stands on a land that was auctioned recently.

posed to benefit her grandchildren."

Wairimu is worried about the fate of her three young children. Teresa Wangui, Grace Waihuri

and Patrick Kogi, who are still in school.

She says: "Kogi sat for his KCPE this year and I highly doubt whether he will continue

with his education, unless a miracle happens. There is no money to pay for his school fees."

She owes the schools the children attend a lot of money and the family is leading a life of misery and living from hand to mouth.

"At times, we go for several days without food," she says.

Often, the children accompany her to work in other people's homes and shambas to enable them to raise some little money for food.

"I fear for them but I am helpless and I leave it all to God," she says.

"Ndanoona mathina maingi no uyu wa mugunda niundituhire muno (I have encountered many problems but this particular one is intolerable)."

Of the Sh70,000 needed to clear the loan, only Sh3,000 has been raised by family members, says Alois Ndegwa, co-ordinator of the Wahome Ndiang'ui's family committee to assist it to recover the land auctioned by the bank.

A fundraising meeting was scheduled for Saturday, December 16, but following the presidential directive on the suspension of harambee meetings till February next year, the harambee has been postponed till March, 1990.

"I am requesting relatives, friends, well wishers and wanan-chi in the country to come forward and assist me to tackle this problem because, my children and my aging mother-in-law have nowhere to go," she pleads.

Donations can be sent to the Standard Chartered Bank, Nyeri Branch, Savings Account No 21183.



Humble as it may be, this is home sweet home to the eight orphans. Its loss would immediately render them vagrants.

lay, June 28, 1993.

NATIONAL NEWS

SD - June 28, 93

# Man killed in land dispute, son held

## Police Reports

POLICE in Naivasha are holding a man alleged to have killed his father following a land dispute last Friday.

Police said the deceased, Kamau Mbuthia, disagreed with his son over land in Kinungi West area, Naivasha, Nakuru District. After the quarrel, the suspect allegedly took an iron bar and hit his father on the head killing him instantly.

The incident which occurred at 5 p.m., was reported to Naivasha Police Station and the body was removed to Naivasha District Hospital mortuary for post-mortem examination.



## FEATURES

# Land buyer all set to evict poor orphans

FOR some eight family orphans in Mbooni, Makueni District, everyday that turns over means a repeat of living nightmares. Yes, misery and tribulations that fill a young one for losing his/her beloved dad and mum, and worse still, within unimaginable period of two years.

These youngsters aged between six and 19 years have not only lived with the sad experience of losing their parental warmth, love and sense of security, but actually lived with an ordeal of going without meals, among other requirements in some days. They are three girls, five boys.

The eight children who live in Kikima, Makueni, in two mud houses, lost their father

By GLADYS KEMUNTO

and mother in November, 1990 and February 1992, respectively. When we paid them a visit on a Saturday afternoon, the three young ones were playing heartily without much apparent thoughts of what the future holds for them.

But soon, these orphans will be thrown out in the cold from their four-acre plot of land if no higher authority intervenes to save them from yet another ordeal. The reason is that a land buyer to whom the mother had sold part of the plot is preparing to evict them any time from today.

The eldest, Ruth Serah Nzioki was busying herself with home chores when this writer, photographer and driver pulled up at the compound.

## Chores

She told us that she finished Fourth Form in 1991 and passed with a Grade C in the Kenya Certificate of Secondary Education (KCSE) "Since I received my results, I have not felt like going away to look for employment as I feel obliged to look after my brothers and sisters in the absence of our departed mum and dad," she says lightly.

As if gazing at something at distance, she continues, "you know while at school I had high dreams, that I would advance in the education ladder and later be in a better position. Because all those hopes now seem to be shattered by the unexpected. I

have to care for these younger ones as much as I can while still around".

She says that apart from organising shamba work on the piece of land for their daily food and the meagre income for clothes, health needs and school fees, her being at home ensures that the land is not taken away.

Sources however told *Kenya Times* that the land buyer had been determined to chase out the children from the land as he claims he had paid all the money for the whole plot and is thus obliged to occupy it.

Death Serah confirms that after her father's death from a liver infection, the mother had sold only a part of their shamba to make ends meet especially for the children's school fees.

Suddenly however, she says, her mother died of what she plainly described as stress, the tragedy that added to the shock

two years earlier. Serah had just finished her O' level education.

Asked how she manages the guardian role and eking out their domestic needs the polite and apparently thoughtful Serah says that her uncle who resides in Nairobi assists them (not so much materially) morally through advice and guidance.

Sara continues to say it is normally hard to get him in cases of emergency because of the distance. It is Muteti who reportedly introduced them to the church elders in Nzaini SDA.

panied this writer to the orphans home praised the children's participation in the church. "This has encouraged us to help in preparation for planting season through church communal self help groups. We buy fertiliser, seeds, plant, weed and harvest their crops which are mainly subsistence," said the elders.

On the elders behalf, their leader Jackson Matheka said the church had plans of organising a harambee for the orphans but it has failed to take effect. He blames the bureaucratic proce-

Matheka: "It is very difficult for us to have anything done because we are regarded as a church but we wish to approach the area chief to enable us succeed."

### Collapse

Looking around, the two mud houses in which the children live were visibly threatening to collapse with the main one already falling on its sides. The elder informed us that the foundation which they had started, failed to go on because of lack of funds.

About the piece of land, the

Timothy said he had informed the area assistant chief and was waiting for a reply. Timothy did not want to name the local farmer who is threatening to evict the children saying it would affect the proceedings of the assistant chief.

The local farmer claimed to have bought the whole two and a half hectares piece of land from the children's late mother. Only a half of the land is suitable for cultivation as the rest is barely rocky and forms a steep slope.

"Life has not been simple for me," says Sara tearfully. She relates how she begins her day with *shamba* work, then looks for vegetables for lunch and super, something she says is very difficult. In the afternoons, she walks for six kilometres to the church at Nzaini where she helps in the youth club affairs.

"I have been depending on the money from the person who had bought land but since he stopped paying and wanting to take everything, I have nowhere to turn to," said a disturbed Sara.

The second born Susan, 18 years old expects to sit for her KSCE exam this year at Mbooni Girls School. Unfortunately, Susan is always out of school since the beginning of the year.

### Fees

Similarly, third born Nzau Nzioki a Form Two student in a local day school was turned back home at the beginning of this term, three weeks ago because of fees problems. Mukonyo Nzioki is in Class Eight but also uncertain about the future of her education. The others are still in primary school.

Despite other hardships and lack of school fees, Sara said their serious problem is housing and land. "I am very worried that soon, we will have no land and no house to live in".

She states sadly that any assistance will be more than help. Nzaini church through the elders also request for any assistance to be sent through Nzaini SDA Church P.O. Box 64 Kikima — Makueni. It will be highly appreciated, they say.



Concerned elders at the orphans' homestead, grim-faced and helplessly unable to bail the youngsters out of their plight.



DOOMED? The orphans of Makuani who face a life of destitution if a creditor to their late parents goes ahead and takes over their home, evicting them in the process.  
Pictures by PATRICK GOREDDI

## NATIONAL NEWS

## Cruelty to wife

From Page 1

tycoons. She says her husband later took another woman with whom he lives with in Kitui.

Mrs Musembi was left to suffer as the new buyers later stormed into the compound and without warning torched her only home. All her property — household goods, food in store, clothes and utensils — went up in smoke as she watched helplessly with her children. When the *Kenya Times* visited the area, which is in the heart of Machakos District, Mrs Musembi was a frail old lady looking tired and worn out due to the hardships she had faced while all she could tell *Kenya Times* was to send a cry to President Moi to come to her rescue.

Mrs Musembi now lives with her married elderly sister who, fortunately, is only a few kilometres from her original home. She could not immediately summon her children as all had dispersed to distant places, each to seek different shelter from a different home. They no longer meet as before and instead each has to strive to survive.

Mrs Musembi told us that she married Mr Muange in 1953 and that the couple was blessed with their first child Mwendo Musembi, in 1955. The rest of the children arrived one after the other, almost on a yearly basis.

Her other children are Musyoki Musembi (1960), Muiu Musembi (1966), Mbatia Musembi (1964) and Anna Musembi (1969).

Mrs Musembi, who is illiterate, could not tell exactly when her other children were born. They are David Musembi, Peter Musembi and Mwongeli Musembi.

Narrating her story, Mrs Musembi, who also later took *Kenya Times* to her former piece of land, told us her husband had never consulted anyone when carrying out the sale.

"No one knew about the conspiracy and, by the time we came to hear of it, the whole land had been sold and my man had gone away," she said between sobs.

She asked how her man had carried out the transfer transactions since she still

retains their original title deed of their 4.4 hectare piece. She questions how those in the Land Registry Department in Machakos District headquarters followed the deal to sail through.

Mrs Musembi displayed title deed No. Wamunyu/Kyamutula/53 with the message that Mr Musembi Muange is the sole owner of the 4.4 hectares. It was issued by the Machakos District Land registry on May 8, 1984.

But she also had three other documents — which she recovered from her husband's box soon after he disappeared — indicating that he had now formally sold the piece of land to Messrs Francis Peter Masila ID No. 612259/69 of Box 60, Wamunyu, and Willy Limumba Masila of ID No. 7368694/70 of Box 61, Wamunyu.

The former obtained 1.04 hectares at Sh2,000 while the latter obtained 3.34 hectares at Sh5,000. The information is contained in documents she displayed.

According to those documents, the transaction was carried out on August 28, 1986, and the documents bear what purports to be the official signature of the Machakos Land Registrar.

Later we visited the local chief, Mr Jonathan Ngomo Ndunda, who operates a business at the Wamunyu market. While contending that he understood the case, the chief argued that Mr Musembi had sold his piece of land to purchase another in Kitui District.

"Mr Musembi sold the piece of land to his clan members and we treated it as an internal affair that didn't call for our intervention," he snapped.

He said that after getting a letter directing him to act on the matter by the local DC last year, he summoned the parties involved and took them to the DC's office for a case "and the wife and her entire eight children were defeated in the case."

"So we allowed Mr Musembi to settle happily in Kitui. His wife can join him if she so wishes." The chief said he couldn't tell exactly where Mr Musembi has migrated to and why.



Mrs Zipporah Mutanga Mutengi whose husband deserted her after selling the family shamba.

## This intolerable cruelty to wife

By ELIUD MIRING'UH

A SIXTY-ONE-YEAR-OLD mother of eight in Machakos District now has her life and those of her children in the balance after her husband secretly sold their 4.4 hectare land and deserted them. The woman and her children have now been evicted by the people who bought the land after burning down her only home. And following her husband's action, the woman, Mrs Zipporah Mutanga Musembi, and her eight children have now been compelled to leave the only home they knew, each seeking alternative methods of livelihood. Some of her

children have been taken in by neighbours, some have left for the city to seek manual jobs while others eat from relatives. According to Mrs Musembi, her husband, Mr Musembi Muange of Kyamatula sub-location, Wamunyu location, Mwala division, Machakos District, sold their 4.4 hectares to some

Page 2 — Col. 1



An ecstatic moment with the magic document – the title deed: It an expression which encapsulates the sheer joy, hope and satisfaction of having one's own piece of land (NATION file picture)

STD. 20/9/93.

# Mother in plea over land\*

A MOTHER of nine who was persuaded by her husband to put up her 10-acre land as loan security has appealed to the Government to intervene and stop the public auctioning of the land tomorrow.

Mrs Margaret Wangare Gachanja, speaking in Naivasha, said immediately her husband acquired the loan, in the form of dry cleaner machines from Small Enterprises Finance Company in 1989, he abandoned her and married a second wife.

He failed to repay the loan since the machines were installed later in the year.

On August 18, this year, Mrs Gachanja talked with the manager of the loaning company. They agreed that the company repossess the pressing and washing machines to recover the outstanding loan balances.

However, the company failed to comply with that agreement but instead instructed its lawyers to engage an auctioneer to sell the piece of land today.

The elderly mother claimed that in her talks with the manager, it was also agreed that if the sale

proceeds realised from the machines were not enough to clear the balance, she would offer part of the land to be sold to clear the debt.

The woman, who is staying alone with her children as squatters outside the farm, suggested to the company to sell the machines which are still in working order, adding that she had nowhere to go with her children.

On August 17, the Naivasha DO, Mr Abdullahi Wabera, wrote to the company asking it to reconsider its decision and instead repossess the dry cleaning machine and offer it for sale rather than sell the land.

"The intended auction would render the poor lady with nine children landless, and yet she is the one maintaining the family for she was abandoned by her husband some time ago," the DO added.

The matter started on July 29, when Alpha Auctioneers sent the woman a notice of the sale of her land asking her to pay an outstanding amount of Shs 457,000 if she wanted to stop the sale of the property.

# Family may lose its land

Ndeiya

**By KIMANI wa MWANGI**  
A family in Ndeiya, Kiambu District, is likely to lose its only piece of land which is to be auctioned this weekend, to recover Sh89,416.90, being the balance and interest of a loan borrowed from a bank by a relative.

The piece of land was originally eight acres but six were sold five years ago to recover part of the same loan.

A letter from M/S K. Mwaura and company advocates dated November 24 last year referring to a case between Waitimu Distribution and the National Bank of Kenya indicated that the relative was unable to repay the balance of a Sh 170,000 loans she had borrowed in the late 1970s on the strength of the title deed of the eight acres.

The family told the Nation the debtor was a niece of the head of the family and the deal was concluded without any other member

of the family being consulted. The debtor was said in the various correspondences to have promised to sell three shares with Luck Summer Company Limited.

The letter warned: "Please note that unless you make arrangements to pay a substantial amount within the next 14 days we shall instruct the auctioneers to sell the charged property in accordance with section 74 of Registered Land Act without further references to you".

Ndeiya/Makutano/Limuru/1009. The six acres fetched Sh210,000 which was not enough to repay the loan and the accrued interest.

The sale subjected the family to a great deal of inconveniences as the family did not get anything from the deal.

The debtor was said to have invested the entire loan in her personal businesses. Mrs Peninah Wanjiru Mburu, mother of 14 and a grandmother, whose husband secretly offered the land certificate to his niece to enable her obtain the bank loan, could not hold back her tears as she narrated the shocking story to the Nation.

She claimed she did not know the land had been mortgaged until 1984 when the six acres were sold by the auctioneers. She said her children had to abandon school as she could not afford to pay the fees.

DALEY NATION, WEDNESDAY, FEBRUARY 14, 1990

# Moi rescues another family's land

President Moi yesterday rescued a family in Nyeri District whose land had been sold after defaulting on a bank loan.

The family of Mr. Wahome Ndiangui and his wife Joyce Waitimu received the title deed for their 2.9 acre land that had been sold in 1988, from President Moi at Sagana State Lodge in Nyeri.

Speaking to teams of choirs and waranchi who came to entertain him at the lodge, President Moi unfolded another story of a family which, through ignorance of the loaning procedures, mortgaged its only land for a loan of Sh40,000 in 1977.

The President said Mr Ndiangui of Thigenge, Kaira village, took the loan from the

Kenya Commercial Bank and after failing to repay it, his indebtedness with interest grew to Sh16,000 in 10 years.

The land was eventually sold to a Kiambu businessman for Sh70,000 in 1988.

After learning of the predicament of the displaced family, President Moi through his own initiative, paid back the new owner and recovered Mr Ndiangui's land.

However, the land's registration had now been changed to his wife's name with the hope that she would take better care of it for the future benefit of their seven children.

After presenting the title deed to the family yesterday, President Moi emphasised the need

for aggressive public education on loaning and mortgaging rules. The President said many families had been left destitute through sheer ignorance of the rules governing mortgages.

He instructed the provincial administration and all leaders to teach the public about loaning regulations and to caution them against taking loans before weighing their abilities to repay them.

President Moi praised the schools, colleges and women group choirs which entertained him for their patriotism. He said their songs reflected a new awareness which the country needed as it progresses into the future.

President Moi said the young generation was the most patriotic group of citizens because of their good upbringing.

He stressed that Kenyans should work hard to preserve the peace among them which has ensured continuous progress in the country.

Among those present at the function was the Nyeri Kanu branch Chairman, who is also the Minister for Health, Mr Mwai Kibaki, the Minister for Home Affairs and National Heritage, Mr Davidson Kipkuri, a Minister in the Office of the President, Mr Jackson Ang'ane, and the Minister for Lands and Housing and Physical Planning, Mr Darius Mbea.

Others were Assistant Ministers Neumbu Njiruri, Vincent M'waisi, Abdi Ogle, and Mr James Muregi. Also present was the MP for Tetu, Mr Nahashon Kanyo, a PS in Office of the President, Mr Hezekiah Oyugi and the PC for Central Province Mr Victor Musoga.

Meanwhile, President Moi yesterday received at State House, Nairobi, Sh1.1 million as donations towards the Presidential Bursary Scheme.

The money was presented by a joint delegation from the Mount Kenya Shipping Line and the Kenya Ocean Shipping Line, who were led by the chairman of Kenya Tea Development Authority, Mr Elind Mathiu, who is a nominated MP.

The managing director of Mount Kenya Shipping Line, Mr Edwin Yinda, presented Sh500,000 while the managing director of Kenya Ocean Shipping Line, Mr L. N. Wathaka, presented Sh500,000.

Mr Mathiu gave a personal donation of Sh100,000 towards the scheme.

President Moi tours Meru District today.

The President will meet people and inspect development in the area. He will later address a public rally at Kimoru Stadium.

President Moi will arrive at the stadium shortly before 11 am, and will be met by MPs, Kanu officials and other local leaders. (KENA)



# Land ownership: National obsession among Kenyans

Land, writes Christopher Leo in his authoritative book, *Land and class in Kenya*, is to Kenyans what security is to the Israelis and what efficiency is to the (West) Germans.

That, in a nutshell, encapsulates the attitude of individual Kenyans towards land. Land, or the desire to own land wherever it may be and from whoever the willing seller is, is arguably a national obsession.

What does that mean? That long gone are the days when one would talk of communal or group-based land. Fast disappearing also are the days when people used to talk of group land(s). The communal attitude towards land is fast receding into the mists of history.

Why? Precisely because these are the days of individualisation of tenure. The personal title deed, that official document, that gives one the exclusive rights to a given parcel of land is what everyone is after.

What is tenure? This is the way in which an individual or groups hold land or have access to land. Individualisation of tenure, therefore, means the manner in which an individual, as opposed to a group, can have land and the rights to that land.

## Exclusive

This, of course, is in contrast to communal land tenure where land was the property of, say, the clan or the entire ethnic community and in which no one could claim to have exclusive rights.

When Naboth of the Old Testament told King Ahab that he could not possibly sell him his vineyard because the land did not belong to him; that it was a family land, he was in effect talking about communal land tenure.

When we read in history books that, among the Luo or the Kikuyu, for example, land belonged to the clan (*mbari*), this is in effect communal, group-based or customary land tenure. Land then belonged to the living, the yet to be born and the dead.

No single individual could lay claim to the land. Like Naboth of the Old Testament, no single individual, could, therefore, sell such communal land. Such was the case during the pre-colonial era. In a sense, then, one could argue that there was no such thing as landlessness.

Writing about land tenure in *Themes in Kenyan History* which is edited by Prof William Ochieng', Dr K. Kibwana talks of "inclusive," group-based or communal land tenure and "exclusive" or individual land tenure.

Says he: "By an inclusive land tenure we mean a tenure which guarantees that the available land caters for any expansion in the

community population on a continuing and re-adjusting basis through re-arrangement and re-allocation of access rights to the land."

An exclusionary land tenure, he writes, "seeks to accord to the individual primary control and primary access rights to the land in question thereby de-emphasising and often negating corporate sharing of access rights to the land in question."

In most of Kenya, then, it is the inclusive land tenure which held sway prior to the advent of colonialism when exclusionary land tenure came into being. Why the inclusive one rather than the exclusionary one?

Dr Okoth-Ogendo in an article, "African Land Tenure Reforms" says that communal land tenure was said to "subvert proper land use and rapid agricultural development."

He says that first, the structure of access to land use rights encouraged fragmentation, thus cutting down on returns to labour and time. He says that the tenurial system was conducive to incessant disputes, thus discouraging long-term capital investment.

The system forms an insecure basis for generating agricultural credit and its inheritance procedures encouraged sub-division of holdings, thus leading rapidly to units of sub-economic size. Dr Okoth-Ogendo says.

## Unreliable

The experts therefore concluded that proper husbandry under indigenous tenurial systems was unreliable and recommended the individualisation of tenure as a way of solving these problems pointed out by Dr Okoth-Ogendo.

The East African Royal Commission of 1953-1955, lent more weight to this argument saying that the individualisation of tenure had great advantages in that it would give individuals a sense of security in "possession and in enabling by purchase and sale of land an adjustment to be made by the community from the present



In this article, the third in a series, KWENDO OPANGA explores the origin of the mania of land ownership in Kenya, which he describes as a national obsession. On Thursday, we bring you the fourth part focusing on case studies of trouble spots



A farmer tills his land: Communal attitude towards land is fast receding into the mists of history.

unsatisfactory fragmented holdings to units of economic size."

The Swynnerton Plan of 1954 added its weight to the matter when it argued for land consoli-

dation. It argued that the registration of land would convert African-owned land into a marketable commodity, and title to such land could then be freely

## SERIES ON LAND

# Land: Asset that has made many Kenyans go crazy

If there is one commodity on which the interest of virtually all Kenyans converges – and with an extremely high level of intensity – it is land.

Land, the natural resource which most traditional communities took for granted for years, is now such a priceless commodity that families split up because of disagreements over it, family members slaughter each other because of it, neighbours contemplate murder to grab more, the rich seem never to get enough of it, etc.

It has come to represent the ultimate in value, the choice collateral demanded by banks and financial institutions, the prime measure of wealth. It is no longer a utility to be exploited to produce food for a family or clan. It is – to many people – the end all of living.

The question is: Why the sudden change? At independence, the story goes, people were literally being begged to move into resettlement schemes. Huge tracts of land were going for a pittance but there were few takers. Money was not the problem because the Government had a neat arrangement under which the land, initial cultivation costs and production inputs – seeds and fertiliser – and a cow or two were provided under a long-term lease, usually with a repayment period spanning up to 30 years.

To be sure, there were some takers. Particularly keen in this area were the Kikuyu who, basically because they – more than any other community in Kenya – were directly displaced by the colonialists from their traditional homes in Central Province. They were, therefore, eager to take whatever piece of land they could lay their hands on. But this notwithstanding, the level of interest was generally low among Kenyans. Why?

Written texts and cross-section of people interviewed – many who did not want their identities revealed – say that to many people, the security of living within communities in which one would trace his lineage and kinship within a radius of up to five kilometres was too good to leave. People did not want to move out of their ancestral lands. The pop-



What is it about land in Kenya that makes people go crazy? Is the commodity that priceless by its nature or is the attention people have lavished on it made it such an invaluable commodity? Whatever the reasons, one thing is certain land ownership is the most emotive issue in the country at the moment. In this first article in the series, TOM MSHINDI attempts to understand why land has become the red hot issue it is.

ulation increase had not started exerting as much pressure. In fact, in some places, it was not even a consideration.

The monetary value of land was low and the acquisitive instinct in many people had not emerged as factor in among elements which determine the behaviour patterns of people. Of course, there were other reasons, specific to time, place, community and individual.

But in the decade of the 70s, a realisation of the real value of land seems to have hit Kenyans with a gale force. The value of land suddenly shot up, and continued rising. People were buying it right left and centre. Again, what happened?

Obviously, the first decade of independence was vital in shaping and changing the orientation of people to land. The Government had initiated a very aggressive campaign to promote the value of land. *Turudi Mashambani* (let's go back to the land) was, arguably, one of (if not) the most famous statements of the late President Mzee Jomo Kenyatta.

This political exhortation was only one aspect of the scenario. A vigorous Africanisation policy introduced indigenous Kenyans into the world of finance, industry, large-scale agriculture, banking and its many demands, etc. Land emerged not only as a critical factor by itself, but as a handy asset in many instances.

Education made a significant contribution in the craze over land which became and continues to be the hallmark of socio-cultural in Kenya. With education came a broader perspective, an ability to analyse, predict and cast ahead.

Only a fool would not see that

if land had become valuable two decades ago, it would become invaluable another two or three decades hence. The rest is history.

Literally every Kenya now either has, or aspires to have land. Neither riches nor poverty seems to make a difference to this orientation. Those who have, want more. Those who do not have, long to have. Those who have reason to believe that they can grab from relatives, friends or institutions often do so. Many have suffered in the process, but many more are doing the same thing.

Interestingly, it is not easy in the Kenyan situation to define clearly what motivates people so strongly to want to own land. The elites seem to have a divided loyalty – both to the urban setting where they spend a better part of their lives, and to the rural areas where they were brought up and where they probably own a piece of land. Others who can barely afford one acre, still prefer to have that acre even if they will be unable to put it to any economic use.

Dr Kivutha Kibwana, the dean of the Faculty of Law, University of Nairobi, writing in *Themes in Kenyan History* (William Ochieng, Eds) argues that land is a critical subject in Kenya because of several reasons: it remains the main means of production and agriculture the main economic activity among the majority of the 23 million people; that with perennially rising populations, access to land by the majority of Kenya's populations is no longer guaranteed; that concomitantly, since it does not expand, its availability, on the whole, remains constant; the reform policies which have favoured individual and "exclusionary" land tenure systems to



changeable as security for development credit.

The die was cast and the 1966 to 1970 Development Plan argued that for a significant number of farmers, registration, and where appropriate consolidation, of their holdings stimulates increases in efficiency and output far out of proportion due to the cost of the process."

Has that, in fact, been the case? A coin has two sides and the stated advantages notwithstanding, individualisation of tenure has had its drawbacks. Not least, is the issue of the escalation of landlessness and the tensions that have accrued where the moneyed have moved into new areas and threaten to marginalise the indigenous people who are not as well endowed in monetary terms.

But, first and foremost, has the individualisation of tenure not also led to fragmentation? Indeed, it has. As the hunger for land has increased and as the entrenchment of commodity in value in land has increased, group or individual-based farmlands have been sub-divided.

Individuals who bought large tracts of land, too, have had them sub-divided, either to fetch more money on the market or to use the titles to acquire credit for various forms of development.

## Enabled

There is no doubting the fact that individualisation of tenure has enabled many people to develop their land using their title deeds as security, a phenomenon that would be impossible in the case of a communal tenurial system.

Officials in the Agricultural Development Corporation say that there are many individuals who have since independence benefitted from their loans by using their titles as security.

In Kilifi District, for example, where most of the land has not been demarcated, there is increasing concern among prospective farmers and businessmen that they cannot use their land to

acquire titles because of lack of security.

The point that is emerging is that if communal land tenure was found wanting, so also is individual land tenure to be found wanting. According to a university don who spoke on condition of anonymity, the problem is not that of the utilisation of land anymore; it is a question of the availability of land.

"As the rich gobble up whatever land is available, as peasants go out of their areas, which suffer from great land pressure, to the lands of pastoral communities in search of land, the issue becomes what security there is for the pastoralists who are being marginalised," he said.

## Formulation

The university don, suggests that the time has come for the policy formulation circles to come up with a comprehensive policy on the issue of land and land tenure.

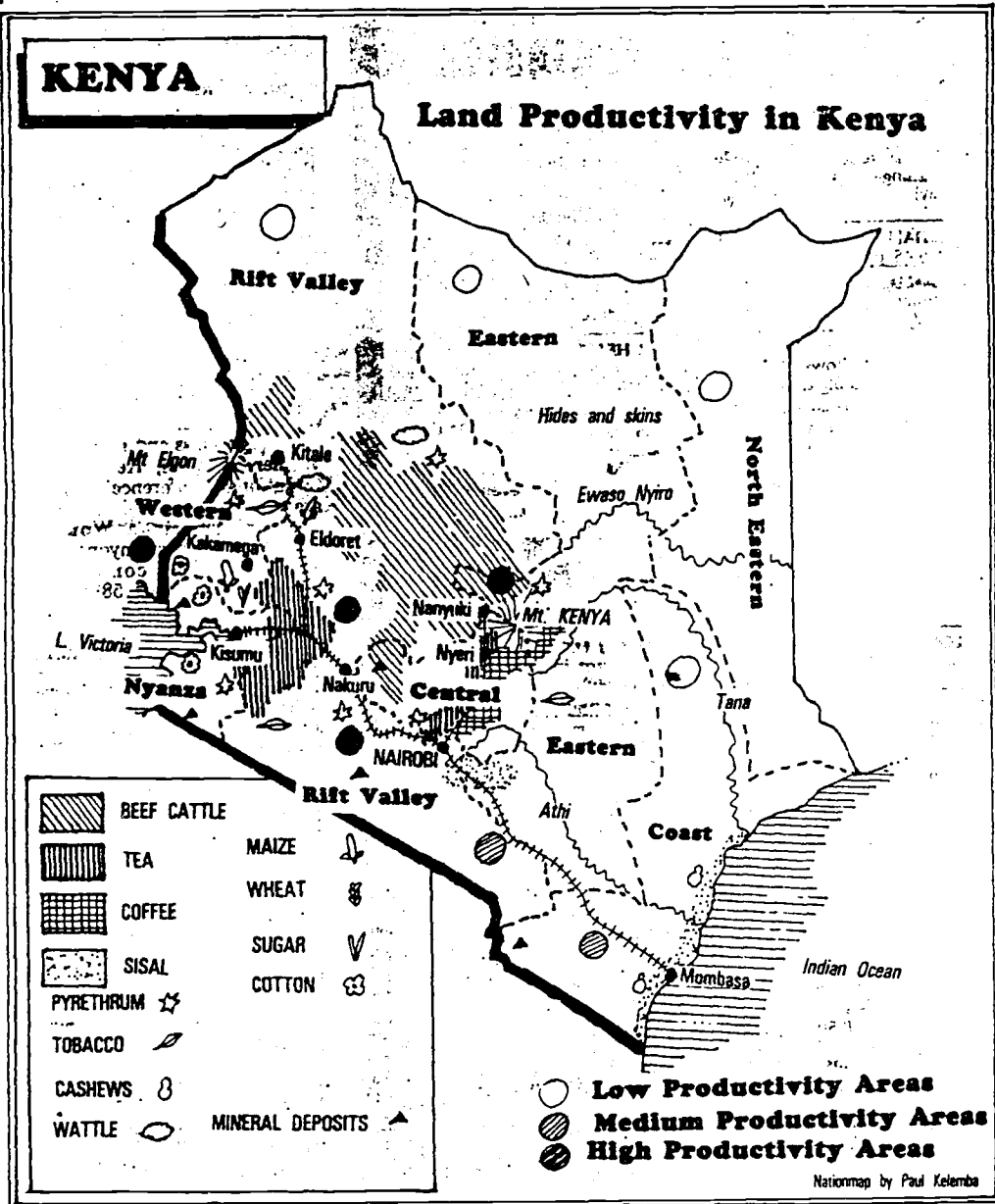
In Kajiado District and, especially around Ngong, for example, what started as large tracts in the hands of individuals have been sub-divided into as small as quarter acres which now would fetch one as much as Sh200,000. Fragmentation continues and so do many other questions relating to the individualisation of tenure.

Writing in the *Weekly Review* (March 1, 1991) at the height of what has been dubbed in the Press as the lie-low-like-an-envelope-controversy, author Dr Mukhisa Kituyi, posed a question that is extremely important, but which is increasingly swept under a carpet of silence by formulators of policy.

He wrote: "How fair is a policy that allows for a few individuals from *within* a given community to acquire for themselves disproportionately large parcels of erstwhile communal land to the exclusion of their neighbours who traditionally enjoyed equal rights of access?"

That is the one million dollar question which remains unanswered to this day.

2 cont



the traditional group-based and "inclusive" land tenure systems. What he means is that a combination of cultural beliefs, habits, population pressures and economic considerations have combined to make land a priceless asset to most Kenyans. And from the look of things, the situation will remain critical.

Dr Kibwana also argues that privation and individualisation of land ownership as a strategy to develop the free enterprise system has, unfortunately, led to the creation of a rare breed of people - the landless - even as formal employment opportunities in the public and private sectors are diminishing. Desperation becomes as issue here.

A final insight provided by Dr Kibwana is that "unlike other forms of property, ...a multiplicity of interests can concurrently co-exist in the same portion of land."

Several distinct scenarios have emerged out of the cornucopia of interests which come into play when land is being discussed. One is that its price has sky-rocketed, and it keeps rising. If it is about the single most expensive undeveloped product that anyone can buy. When it has been improved, it becomes even more so.

Land deals have become lucrative grounds for people who want to amass wealth, or merely steal, a valuable asset. Increasingly, it is emerging that many leaders have acquired massive tracts of land dishonestly. This, apart from creating a lop-sided land ownership pattern in the country, has brought in a character called the absentee landlord. You will be hearing more about him later in this series.

At another level, pressure for land has made enemies of people with close relations. Brothers have turned on brothers, fathers

have killed their sons, families have broken up. Land cases are about the most common litigations in law courts at the moment. And they are about the most difficult to solve. Clans have fought each other and even tribes have decided to sort out their land differences using weapons. Disputes in the latter category usually have to do with disagreements over border and boundary disputes.

There is no end in sight for the land saga, but the reality suggests strongly that something should be done to change the attitudes of the people and institutions towards land. But the issue needs to be placed in its proper perspective, and this series hopes to do precisely that.

On Thursday, we bring you the historical perspective on the land issue. Where did we begin and what turns did we take to arrive at this point.

The sight of desperate litigants, choking with passion and unequalled wrath, has always offered ample proof that land is a darling close to the heartbeat of most Kenyans.

And this is hardly surprising. Land has always had an all-embracing significance in the lives of most Kenyan communities as it is the basis of development.

The late Mzee Jomo Kenyatta in his book *Facing Mount Kenya*, observed: "Land is very important in the organisation of the Kikuyu because as agriculturists, the Kikuyu people depend entirely on the land. It supplies them with the material needs of life through which spiritual and mental contentment is achieved. Thus, the earth is the most sacred thing above all that dwell in or on it."

The primacy of land has thus given rise to numerous land conflicts, which have made arbitration of land disputes assume an enviable role in our legal jurisprudence. One of the earliest land arbitration cases arose out of the 1904 Maasai agreement between Laibon Lenana and the colonial settlers.

Under this agreement, the Maasai forsook some of their fertile land for a promise by the colonialists to grant them relative autonomy.

A further agreement in 1911 to move the Maasai from their land was contested in the colonial Supreme Court. The Maasai argued that the 1904 agreement, being a civil contract, was still subsisting and could therefore not be broken.

The settlers won the case by arguing that the court lacked arbitration jurisdiction since the agreement was a treaty not a contract.

In dismissing the Maasai claim, the court argued that since the Maasai were not a sovereign and autonomous entity, they could not enter a binding contract for the entire tribe.

This judgment helped illustrate the difficulty of getting such cases through the court process in the colonial period. This stemmed from the emasculation of traditional dispute settlement organs, achieved through the enactment of the 1902 Village Headmen Ordinance.

This ordinance empowered the Protectorate's Commission to nominate headmen to resolve land disputes.

In 1907, the colonial administration incorporated elders in land arbitration. However, the elders, being nominated by the colonial administration, were mere pawns on the administration's chessboard.

Though empowered to resolve

## LAND SERIES

# Complex nature of land laws in Kenya



Kenyan law regarding land matters has changed many times over the span of the colonial era and independence, owing to the difficulties of litigating land matters with a blend of British and customary law. Staff Writer GICHINGA NDIRANGU examines the evolution of today's land laws in this chapter of our on-going land series. On Monday we look at the issues surrounding absentee landlords.

land disputes in accordance with customary law, the elders' decisions were not binding.

Colonial administrators, though unfamiliar with customary law, could review the elders' decisions. Even though an aggrieved party could appeal against such a decision, further litigation was discouraged by the composition of the High Court - all white judges applying English concepts of justice.

With time, these tribunals became inundated with complaints of corruption and abuse of power by the elders, a move which disenchanted desperate litigants. Added to this was a craving for customary law to be accorded added status in land arbitration.

In this light, the 1929 committee on Kikuyu land tenure suggested that jurisdiction in resolving land disputes be removed from the Supreme Court and, instead, be vested in District Commissioners.

This was aimed at averting the conflict of applying English property law concepts to customary land claims. Hence, the Native Tribunals Ordinance was enacted in 1930, removing chiefs from membership in land tribunals.

However, the influence of the Governor over these tribunals undermined their effectiveness, since he could prescribe the practice and procedure to be followed. This proviso overlooked the fact that elders were well-vested with customary law for which they needed no advice from the Governor.

After World War II, there was a flood of land disputes arising from the ejection of many Africans from their land which was given to returning soldiers in reward for their contribution to what was called "the war effort".

To forestall growing disenchantment and political animosity, the Colonial Government reverted to traditional modes of dispute settlement. Elders, nominated by the colonial administration, were invested with the sole power to resolve disputes.

Upon the culmination of such arbitration, the land was formally registered. Such land could no longer be subject to further arbitration as stipulated by the 1959 Native Land Registration Ordinance. This proviso is still in our laws as Section 143 of the Registered Land Act (RLA).

Land registration was pivotal to the role of courts in resolving land disputes. The courts' jurisdiction was substantially undermined in 1962 when African magistrates nominated by the Chief Justice were appointed to adjudicate land matters.

However, litigants often went unrepresented since most lawyers were white and therefore were

## LAND SERIES

# The complex nature of laws on land in Kenya \*

FROM PAGE 17

bars further arbitration since such land was no longer held under customary law.

It is from this development that Section 143 of the Registered Land Act was promulgated. This section has been criticised as being an unnecessary fetter in land arbitration. Under it, land registered for the first time cannot be challenged, whether the registration was obtained through fraud, error or mistake.

Thus, the aggrieved party is denied the remedies of rectification and indemnity. This proviso is an example of a retrograde colonial legacy in our laws. Colonialists excluded land registered for the first time from the remedies of rectification and indemnity for political expediency. During the colonial period, land belonging to political detainees and freedom fighters was often given to collaborators as a reward.

To avoid the intricacies of re-adjudicating such land back to its legitimate owners, this proviso was promulgated.

It has obviously limited the courts' ability to issue an order of *mandamus* (which orders an authority to act in accordance with the law) to rectify first registration where fraud, error or mistake is evident.

The harshness of this proviso is amplified by the fact that it defeats customary law rights to land. Indeed, the case of *Obiero v. Opiyo and Others* held that customary law rights were extinguished upon registration of land. Such rights, it was declared, were not overriding interests as contained in Section 30 of the Registered Land Act.

Today, a major barrier in petitioning claims in land is the Limitations Act (Cap 22). In line with

the equitable maxim that "equity does not aid the indolent," the Act bars one from exercising his rights upon expiry of a given period.

After a period of 12 years has elapsed, there can be no action to recover land. This period begins running from the date on which the right of action accrued to the aggrieved party.

By implication, the law legalises an unlawful Act of the adverse possessor. In his book *Modern Law of Real Property*, Cheshire has explained the rationale of this rule thus: "It is no doubt an injustice that after this period has elapsed, the wrongdoer should be allowed to retain the land against the person whom he has dispossessed. But it could be an even greater injustice to the world at large if the latter were allowed after any interval of time, however long, to commence proceedings for recovery of possession".

Under this Act, a person acquiring land through adverse possession can apply to the court to be registered as the land's lawful owner. This is contained in Section 38 (1) of the Act which states: "Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in Section 37 of this Act, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land."

A further bar to land arbitration is operation of the common law doctrine of prescription. This enables one to acquire land by virtue of long and uninterrupted inhabitation.

Thus, the adverse party acquires legal title where the other

party has unreasonably delayed in asserting his rights.

The rationale of granting of such title is to protect a party who may have invested heavily in the land over a long period of time.

Equally, with the passage of time, impartial arbitration may be hard to come by through the loss of crucial documents, loss of memory or even death of witnesses.

Granted that elders' panels did not lay any time limit on land claims, these legal provisions have handicapped resolution of land disputes through elders' panels.

Clearly, there is a conflict between customary and statute law since the latter recognises prescription and limitation which the former does not.

It is instructive to note that until someone is in adverse possession, the land's owner does not lose his right to the land merely because he happens not to be in possession of it for 12 years.

The 12-year period will only commence upon knowledge by the owner that someone else in possession is holding adversely to him. Adverse possession denotes denial of one's rights by an open assertion of a hostile title with notice from the other party. Similarly, it may be inferred from notorious acts and circumstances whether express or implied.

Since a sizeable number of our population is not legally well appraised, there is a need to lay great stress on customary law in resolving land disputes. Where the Registered Land Act is silent on the rights of litigants in a land dispute, regard should be had to customary law which accords more with our local circumstances.

## LAW COLUMN

# One's right to land under custom and written law

Rights in land under customary law are extinguished upon registration under the Registered Land Act (Chapter 300 of the Laws of Kenya) and the customary right of a widow to occupy land of her deceased husband is not an overriding interest within the true meaning of Section 30(g) of that Act.

The Court of Appeal so held in the above application where the applicants sought a declaration that since they were in occupation of the land which was the subject of a charge in favour of the respondent, the charge was subject to their overriding interests in accordance with section (g) of the Registered Land Act.

Delivering its considered ruling, the Court of Appeal said: "In order to raise a loan from the Continental Credit Finance Company (hereinafter called the Company) the registered proprietors charged two pieces of land namely Tetu/Unjiru 808 and 809 to that Company. It appears from the evidence that the chargers remained in occupation of the charged lands with their families until their deaths. These include the two widows and it seems plain that they occupied those lands only in virtue of their rights as wives of the late registered proprietors.

A very substantial amount was owed to the Company by the deceased proprietors at the dates of their deaths. In August 1987, when the present claim was taken, their joint indebtedness to the Company stood at nearly three million shillings.

"As these loans remained unpaid, the Company acting by its Interim Liquidator, was minded to realise the security and its appears, he gave notice to the applicants requesting them to pay the debts and threatened to exercise the chargee's statutory power of sale of the charged premises in accordance with section 74 of the Registered Land Act if the applicants made default.

"In this case, no crucial facts are in dispute. So the applicants found themselves on the legal concept of overriding interests. Section 238 of the Act makes the rights conferred on the registered proprietor indefensible save and except overriding interests. It is on these rights that the applications took their stand -

Elizabeth Wambui Wanjohi and Others (appellants) versus Official Receiver and Interim Liquidator (Continental Credit Finance Limited) (respondent), Civil Application No. NA1 140 of 1988, before Mr Justice Gachuhi and Mr Justice Apaloo, Judges of Appeal and Mr Justice Kwach, Acting Judge of Appeal. Ruling was given on February 13, 1989.

in particular, the species defined in (g) of section 30 as:

"The right of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation save where inquiry is made of such person and the rights save not disclosed".

"In order to bring themselves under the purview of section 30(g) of the Registered Land Act, the applicants must show by what right they are in possession of the charged lands. It is there that their difficulties began. It is indeed on this issue that their case falls to the ground. The only right which the applicants assert, is the right they acquired by virtue of their respective marriages.

## Judicial

"These are said in argument to be customary rights. In so far as the applications based their right to defeat a registered charge on customary law, they are precluded by judicial authority from doing so. In *Esiroyo v Esiroyo* (1973) EA 388, Mr Justice Kneller (as he then was) held that rights in land under customary law are extinguished upon registration under the Registered Land Act. In *Kiana v Ndia Mathunga and Others* decided by this court on the January 26, 1981, both Law and Potter, J.J.A. specifically concurred in that view of the law.

"We respectfully agree and hold that the fact that applicants are widows of the chargees and may well have customary right to occupation of the land, such right is not an overriding interest within the true meaning and intent of section 30(g) of the Act. Accordingly, they cannot validly assert such right against a registered proprietor or his chargee. That holding puts the applicants completely out of court.

"It was said that suit lands were in origin family lands and

not the self-acquired properties of the chargees. It was urged that the chargees held that land on a family trust and such trust subsisted notwithstanding their registration as proprietors.

"As we understand it, on a proper analysis of this case, the relationship of trustee-beneficiary between the applicants and their late husbands could only arise if the applicants were in truth the owners of the suit lands but allowed their titles to be registered in the names of their husbands - that is, the chargees.

"Were that the case, the applicants would have been forthcoming in their affidavits as to how they came to be the beneficial owners of the lands in dispute. Indeed, the applicants asserted no other right to the lands beyond those of wives in coverture in occupation of their spouses' lands. That fact in no way impresses the land with any trust or diminish or fetter the undoubted right of their husbands to alienate, charge or deal with the lands in any manner they chose.

"We cannot accept that the proviso to section 28 of the Registered Land Act assists the applicants in any way. The proviso merely says:

"... that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee".

"The applicants have not demonstrated that the chargees were their trustees in any sense. On the contrary, the available evidence shows plainly that the chargers as registered proprietors were entitled, to use the language of section 27 of the Registered Land Act, 'to the absolute ownership of the suit lands together with all rights and privileges'. And one such right is the right to alienate and charge the property.

"With great respect to learned counsel, the argument founded on the proviso to section 28 was an irrelevant digression.

"It is also to be noted that on their own showing, the applicants' husbands' fiduciary obligation towards them arose by oper-

ation of customary law in their sole right as spouses. The Registered Land Act itself did not omit to regulate the interest in land acquired by fiduciaries. But the regulatory provisions apply only when the fiduciary relationship arose from a written instrument. While the particulars of such trusts may not be entered in the register, proprietor's true capacity may be disclosed. He may be described as a trustee (see section 126(1) of the Registered Land Act).

"He then takes subject to any unregistered liabilities, rights and interests contained in the trust instrument. The Act then proceeds to give inviolable protection to registered dealings in the land in these ruling words'.... but for the purpose of any registered dealings, he (that is the registered proprietor) shall be deemed to be the absolute proprietor thereof and no person dealing with the land, a lease or charge so registered shall be deemed to have notice of the trust'.

## Provision

"The clear legal consequence of this provision is that a registered chargee as the respondents undoubtedly are, takes free from such trusts. That being the legal position as we see it, it would be incongruous to the statutory scheme and subversive of the true legislative intent if the non-descript customary trust contended for by the applicants were held to be binding on the registered chargees.

"With profound respect of counsel, the learned argument pressed on us about the legal quality of the applicants' customary trusts and its so-called binding effect on a registered chargee, was ill-conceived and was wholly beside the point.

"We felt satisfied that such customary rights to the occupancy of the suit lands as the applicants had were rights in *personam* and not rights in *rem* were extinguished upon their husbands' registration as proprietors. We were entirely convinced that they were not overriding interests within the meaning of section 30(g) of the Act.

"As that was the stated basis for the applications claim to the injunctive relief, we felt satisfied that the applicants failed to show any valid legal grounds for restraining the respondents from exercising their statutory rights."

# DAILY NATION

Nairobi, Tuesday, October 9, 1990

## Land matter that begs firm resolve

It is quite apparent that Kenya has yet to evolve a comprehensive land policy which caters for all the different, and often antagonistic, forces clamouring for attention in the volatile arena of local land politics. It is also quite obvious that the average Kenyan still nurtures a deep attachment to land, an attachment for which many are willing to kill and die.

Almost every day, the Press carries an item detailing a land dispute. If it is not an angry Kenyan instituting legal charges against another person, institution or authority over an illegitimate eviction, then it most likely will be a report of irate kin committing patricide, fratricide, uxoricide or whatever the case might be, because of disputes over land boundaries.

Sometimes it is a group of persons alleging delays in, or unfairness over, compensation the Government may have paid out for land appropriated to locate public utilities. We have all heard the many stories which tell of massive corruption in land surveying and allocation, even as various public figures routinely state there is no more "free" - meaning unoccupied - land in the country.

Those reports confirm that even the more enlightened and affluent among Kenyans still have an inordinate land acquisition appetite, fairly or unfairly.

Controversy over dubious deals, foot-dragging in land demarcation and allocation, and disagreements over questionable membership continue to paralyse the operations of many land-buying firms just months before their existence becomes void on the strength of a Presidential decree which ordered that all of them wind up by the end of this year.

In some instances, mercifully few, the politics of land ownership have pitted one clan against another. The latest incident in this unfortunate series was reported on Monday in the Maua Division of Meru District. A fierce clash is said to have resulted when over 1,000 members of two neighbouring clans - the Amwathi I and Amwathi II - engaged in combat.

The clash was a climax of below-the-surface antagonism which has existed for a long time between the two clans over their common boundary. Three people were shot when police moved in to quell the three-hour battle. The casualty picture could easily have been worse and there is no guarantee that the dormant hostility will not again boil over.

But it is exactly such a guarantee that local authorities must endeavour to develop in as much as this is possible. One area in which intervention would achieve immediate results is that of the land problem-resolving mechanism. Where land demarcation is the issue, a fair, firm and quick decision-making procedure should be employed. This will eliminate the possibility of heightened friction between the disputing parties, normally fed by tension during intermissions between arbitration periods.

To do this effectively, the machinery responsible for monitoring, verifying and arbitrating land disputes - specifically the district land boards and the survey and registrar departments - must be streamlined and motivated to perform their tasks diligently and honestly.

On its own initiative, the Government should also immediately survey and issue ownership deeds to plot-owners who have fulfilled all the necessary conditions. In the so-called ancestral lands - land traditionally inhabited by specific ethnic groups - the provincial administration must encourage people to expeditiously resolve land ownership and demarcation matters before disputes arise and lives are endangered.

We believe that only through such measures, and a decisive break with the misguided belief that land is the only asset worth having in this country, can the ever-fiery arena of politics be dampened. But the relevant machinery must be seen to be working honestly and efficiently, and the economy must be able to offer alternative livelihoods. This, ultimately, is the heart of the matter.

KENYA TIMES, WEDNESDAY, DECEMBER 11, 1991

# KENYA Times

The Voice of the People

## Ministry of Lands Loss to the rescue

all the officers in the Ministry of Lands and Housing throw a leaf from their Permanent Secretary Josiah Sang's book, a large number of land problems will be solved promptly to the relief of the many suffering Kenyans. There are land disputes in most parts of the country which can be squarely blamed on the shady deals by some ministry's employees.

Mr Sang has in the past few months demonstrated that he is determined to ensure that transparency and accountability prevail in the handling of land issues. The Permanent Secretary knows very well from the number of complaints he has received that corrupt deals are still going on in the ministry.

However, the PS is determined to try and curb these. This is why, when we recently published a letter from a reader in Meru about the shady deals at the Meru Lands Office, Mr Sang promptly acted on it. First, he wrote to us requesting our reader to pass on to him whatever other information he may have had. Secondly, we are convinced that he must have done something about the Meru act of shame.

The fact that Mr Sang promptly reacted to the letter from the Meru reader and promised to act on the problem, seems to have encouraged other people having grievances over land to seek his help through us or directly to him.

We are pleased with Mr Sang's open style because those of us who have dealt with top civil servants in the past know only too well that they are always "in a meeting" or "out of the office". And when you corner them, they, without batting an eyelid, hide behind the "no comment" remark.

What some of these civil servants forget is that they are in public offices and must provide the people with whatever information is sought. In some cases, we have had to just go ahead and publish the information we may have received only for these people to seek clarifications later.

Yesterday, we published another Sang reaction to yet another letter. He conceded that some unscrupulous officers in his ministry illegally sold land control forms, letter of consent form and also demanded kick-backs in order to sign discharge and settlement scheme forms.

He admitted that there is corruption in his ministry and, in the process, won the confidence of a shareholder from Uasin Gishu District who had complained that their farm had been sub-divided despite some members' claim that they were dissatisfied with the way the exercise was done.

Mr Sang's openness is something that will go a long way in restoring the people's confidence in the Lands Ministry, whose image has been dragged through the mud in numerous scandals.

The public should, however, realise that the craving for a piece of land has become such an obsession in this country that some people won't hesitate to corrupt land officers. These people charged with arbitrating in land disputes obviously get tempted when huge sums of money are dangled before them. The members of the public are, therefore, partly to blame for encouraging corruption.

As Mr Sang says, members of the public should inform him or we suppose any other senior officer, when they are asked to offer kick-backs. The giver and the taker are equally to blame, for if one refuses, such a transaction will not take place.

We hope other ministries and Government departments contribute to the clean up that has become very essential in this era of transparency and accountability.

# Few are clean in Lands Ministry

Daily Nation 14 October 1992

There is only one problem with the directive on the Lands Ministry issued by President Moi in Murang'a on Monday - the operations and activities of the offices which are expected to co-ordinate the exercise are themselves, in sore need of a thorough investigation.

When he gave the directive that the Central Provincial Commissioner investigate land problems allegedly caused by the former Makuyu Presidential Land Commission, he may well have known that he was touching on an issue of incredible national interest. Hence his decision that the overhaul be extended to the entire Ministry.

No one needs belabour the point that land is a priceless commodity in this country. Virtually every Kenyan yearns to own some land. Even the most sophisticated individuals who should know that one acre of land in a rural area is worthless as a unit to be exploited economically by an absentee landlord will still push and shove, wheel and deal to acquire that small portion.

The history of land acquisition, the colonial axis and the Government's efforts to resettle landless people in the immediate post-independence period created so many distortions that it has become a nightmare to effectively grasp the complexity of the land question in its entirety in this country.

Suffice it to say that it is a colossal problem. At one level, there is the problem created by the land-buying companies which, formed with extreme excitement as vehicles to deliver the landless from their slough of despond, quickly turned out to be brilliant devices of sharp and callous tricksters to make money.

The Government's answer to the hue and cry from conned wananchi has been to establish probe committees which, in a number of cases, have been unable to unravel the mess created by officials of the land-buying companies. In many ways, the Presidential directive that they wind up their operations presented some with an excuse to hurriedly close their books with little regard for outstanding issues.

At a different level is the monumental confusion which seems to exist in the provincial and district land offices, and which is greatly magnified at the Ardhi House headquarters. Recently, there was an exchange of letters in the Press between the Permanent Secretary in the Ministry and an irate farmer who was not amused with the way the Settlement Department was processing matters of land under the Settlement Fund Trustees.

The problem seems to be that there is too much bureaucracy in the system. The appalling levels of corruption in virtually all Government departments, and, particularly, in the Lands Ministry, has compounded the problem by introducing sloth, apathy and the possibility of criminal mischief in dealing with land transfer issues and issuing of title deeds.

Then there is the reality of political meddling in the land issue. Let's face it: Plenty of land in this country has been acquired either dubiously - simply by invoking the name of a powerful individual, or by appealing directly to people who have authority to allocate land. Earlier this year, the Narok land scandal brought to public notice the case of a one family which had acquired several parcels of land, all of them apparently legally! But the whole deal was a swindle cleverly abetted by Ministry officials.

Nearly every land deal which has been questioned - whether it was the allocation of public land in an urban centre, the adjudication and allocation of public former ADC farms, the acquisition of public car parks in the city or the grabbing of land set aside for public utilities - in virtually all such cases, the offices of the Commissioner of Lands, the Chief Land Registrar and the Chief Surveyor have been implicated.

Yet, these are the offices expected to effect an overhaul in the Ministry. Seems to us that this is where the overhaul should start. Such a move would fit in neatly with the President's warning on Moi Day that corruption and sticky fingers in the Civil Service would no longer be tolerated.

THE STANDARD, Wednes

## Clean up Mosiro land scandal

28.10.92  
THE President's directive to the Minister for Lands and Housing to overhaul the ministry is very much welcomed but not the ultimate solution. There has been a hue and cry over grabbing of land by corrupt officials and their next of kin in the ministry rendering the rightful land owners squatters.

A real case involving thousands of acres of land at the Mosiro group ranch in Kajiado North where the Minister for Lands and Housing's next of kin were among the beneficiaries amongst others. There is yet another case involving floodoria group ranch in Kekonyokie Location where again a number of officials from the ministry have been corruptly entered into the register of members and allocated land whereas the original land owners have been deprived of their rightful share.

This disgraceful action by the ministry officials in collaboration with some greedy land owners have deprived the Maasai in the area of their right. It's a pity that in certain instances the local administration have been a party to this open rape.

It is my humble submission that for justice and fair play to be done and seen to have been done, the following steps should be implemented:

- The Minister for Lands and Housing, who has allowed this shameful act, should take responsibility and resign, failure to which the President should sack him. The voters will then decide his fate in the forthcoming multi-party election.
- The government should revoke all the corruptly allocated land and return them



# Masongaleni: Claims annoy Ndetei



Mrs Ndetei: "Families evicted."

THE MP for Kibwezi, Mrs Agnes Ndetei, yesterday charged that some powerful individuals were moving around Machakos District claiming that despite the Government's nullification of the controversial Masongaleni Settlement Scheme, they would still get back their large tracts of land.

Mrs Ndetei wondered for how long the Government would continue allocating land to those who already had large tracks which were lying idle yet needy cases were ignored.

She was contributing to the vote of the Ministry of Lands and Housing.

She recalled that over 2,800 families at Kyulu Hills in her constituency were evicted last year from the land they had lived on for ages yet no fresh allocations were done.

"They are simply living without land and have no food. This is the rainy season but they cannot plant anything. The Government has not yet sent them any food, not even a bag of maize.

She charged that the Min-

istry of Lands and Housing was dragging its feet since no fresh allocations were being done. "For how long will the local people be kept waiting?" posed the MP.

Mr Kennedy Kiliku, (Changamwe) while contributing to the vote of the Ministry of Lands and Housing, asked the ministry to help finance the purchase of Changamwe National Housing Estate by tenants who had lived in those houses for a long time.

He said it was contrary to the Nyayo spirit of being

mindful of other people's welfare if politicians continued to own "hundreds and hundreds of acres of land while the poor people had none.

"Big people are to blame for land problems in the country," charged the MP

Meanwhile, Co-operative Development Minister, John Cheruiyot, yesterday promised to issue a ministerial statement tomorrow on unnamed Cabinet Minister in Machakos who allegedly sold a machine to the Machakos Co-operative Union.

# SHIELD THE IGNORANT ON LAND — NTIMAMA

THE Minister for Local Government, Mr William ole Ntimama, said ignorant people in some areas should be protected from callous people and be educated on the importance of land ownership.

He said it was dangerous for some people to seal off their pieces of land. He urged the Ministry of Lands and Housing to ensure that people were settled by elders and thanked the ministry for solving various land problems and getting the right people registered.

He was contributing to the motion on the vote of the Ministry of Lands and Housing which wants Parliament to approve a total of Sh277,742,000 for use in both recurrent and development expenditure during the current financial year.

But the Molo MP, Mr John Njenga Mungai, stood on a point of order saying land allocation in the country was



Mr Mbela: Asked for funds.

so disorganised and wondered why Mr Ntimama as a Minister had not consulted colleagues on land allocation to local authorities.

The Saboti MP, Mr Wafula Wabuge, said the Ministry should ensure that landless people were given the first priority in land allocation.

He said DDCs should select local settlers in their areas and not import people from as far as Mombasa. He



Mr Ntimama: "Settle people."

said prices of land should be controlled.

An Assistant Minister for Information and Broadcasting, Shariff Nassir, said settlement schemes should be surveyed and plots allocated to genuine landless people. He said the survey process must be speeded up so that people were issued with title deeds.

Mr Gavase. Miangi (Kilome) said it was important for every human being to get a piece of land and

urged the ministry to survey land and issue title deeds as a matter of urgency.

Mr Peter Okondo (Bunyala) said it was hard to survey all the pieces of the land in the country, but he said the ministry concerned should put up beacons at various locations for private land surveyors.

He said housing in the country was a challenge as there were many people living in slums where others were squatters.

Earlier Minister for Lands and Housing Mr Darius Mbela moved the vote for his ministry in which he is asking Parliament to approve a sum of Sh277,742,000 for use in both recurrent and development expenditure during the current financial year.

Moving the vote, Mr Mbela noted that the money he was seeking was very little considering the high demands placed on his ministry from the workload on land development in local authorities and housing estates.

He said with the introduction of the District Focus for

Rural Development, the housing demand in various district headquarters increased tremendously and this called for allocation of more funds to meet it.

Seconding the motion, the Minister for Co-operative Development, Mr John Cheruiyot, thanked President Moi for ensuring that land buying companies carried quick adjudication of land among shareholders so that each member received his portion of land for faster development.

Dr Joseph Miso (Eldoret South) censured the Ministry of Lands and Housing for the rampant corruption within it and said that the recent land scandals throughout the country had given the country a poor international image.

Contributing to the Ministry of Lands and Housing vote, Dr Miso said land scandals like Masongaleni in Machakos, Kajiado, Narok and other parts of the country presented a very poor image of the country and called for the arrest and prosecution of officers involved in such scandals.

## Put a stop to land-grabbing

Grabbing appears to have become an acceptable pattern of life in this country nowadays. Hardly a day passes without reading about prominent politicians and senior civil servants who are involved in one kind of land scandal or another.

Recently, Hon Jeremiah Nyagah cited an incident in Embu implicating senior officers.

Kenya is undergoing a very trying period. We must harness our resources and efforts and show the world, through actions, that we are a country worth its name.

The ever-increasing corruption and insatiable greed for wealth on

the part of most of our leaders will, if not checked, plunge this country into irreparable chaos. Of late, the Ministry of Lands has been accused of corruption and land-grabbing. Despite this, those in authority have decided to remain silent, thereby encouraging these activities to mushroom everywhere from Lake Victoria to the Indian Ocean.

For how long can we allow this to go on? Surely the Nyayo Government has the resources to combat these evils? The Ministry of Lands should be overhauled.

Muhanna F. Mliso,  
Kwale

## DOs grabbed land, claims Mwenje

TWO former District Officers in Embakasi division, Nairobi, have grabbed 30 acres of land and swindled the people of Shs 5,480, an Assistant Minister for Supplies and Marketing, Mr David Mwenje, claimed yesterday.

Mr Mwenje, who is the Member for the area, complained that no action had been

taken against the two former administrators and chances were that they will go scot free.

Mr Mwenje named the DOs as Mr Njeru, who is now working with the Ministry of Lands and another one, Mr Ben Ngige, who has since been transferred.

Mr Mwenje was contributing

to a motion of the Ministry of Co-operative Development moved by its Minister, Mr John Cheruiyot, seeking the release of Shs 233,539,900 for the Ministry's 1991/2 financial year.

Mr Mwenje urged the Ministry to consider appointing co-operators to commissions set up to investigate corruption in

co-operative societies so that the interests of wananchi could be represented.

He said he would table documentary evidence to support his claim this morning. Mr Mwenje was responding to a challenge from the MP for Dagoretti, Mr Chris Kamuyu, who claimed Mr Mwenje's allegations were hollow and needed documentary evidence.

## 'Paying' for land forms

ON October 1, 1991, I went to Ngong to sit before the Oloolaiser Land Control Board on behalf of my husband. I went with the person from whom we are buying two parcels of land, which meant that two application forms had been filled and had been left at the lands' office a week before the Board was to have a sitting.

Our turn came and we were called in. The man I was with was asked to produce a letter from the area Chief which he did (a contribution is also required by the chief, so I am told). He was asked if he was the one selling the land and he answered in the affirmative. They asked me who I was and I said I was representing my husband, but no proof of identity was requested. We were told, that we had to 'pay' Shs 1,000 each for a hrambeee, and if we did not have the money, or could not raise it then we have to come back on November 5, 1991, when the next Board will be held.

I could not believe it for I thought that forced hrambees were a thing of the past. As I had said earlier, there were two application forms and although I tried to explain that we were 'paying' the money, we were told that we would be called in again. Come second round and we were told that the fee was being reduced to Shs 500 each, which we should be grateful for. We had no choice but to pay. I still have two of the receipts that were issued. I would be most grateful therefore, if the authorities concerned would look into this matter and an explanation

STANDARD ON SUNDAY, October 20, 1991.

## Land panels 'should have party men'

Standard Correspondent

THE Kirinyaga Kanu branch on Sunday resolved that all land arbitration panels in the area include Kanu officials to ensure that justice was seen to be done. The resolution was reached at a Kanu rally at Kiamutugu chief's camp in Gichugu constituency.

Addressing the meeting, the branch secretary, Mr Kibugi Kathigi, said determination of land cases was presently left to District Officers alone.

## Division of land stopped

Standard Reporters

A CHIEF in Trans Nzoia district was yesterday restrained from surveying or subdividing a farm in the area so as to settle squatters until a suit already filed in court is heard and determined.

The order was issued by High Court judge sitting in Nairobi, Mr Justice Norbury Dugdale, when he heard an ex-parte application by two brothers, Mr Ramadhan Zubedi and Mr Hamisi Zubedi.

The plaintiffs, through their advocate, Mr Nicholas Raballa, had sued the chief for Kwanza location, Mr Wafula Bibi.

# Ndetei: Land for the poor grabbed

A CLIQUE of rich individuals have grabbed hundreds of acres of land in Machakos town, Athi River and are quickly spreading their tentacles into almost all towns in Machakos District, the MP for Kibwezi, **Mrs Agnes Ndetei**, told the House yesterday.

Mrs Ndetei alleged that while the squatter problem continued to worsen "too few people were being allocated too much land" with impunity marginalising and turning into destitutes "the most deserving Kenyans".

The MP criticised the Ministry of Lands and Housing over its silence on the Masongaleni land scandal adding that it seemed that the matter was put to rest only after the Minister, Mr Darius Mbela, assured the country that investigations were under way. Mrs Ndetei was contributing to the motion for ministry moved by Mr Mbela seeking release of Shs 27,774,000 for the ministry's

expenditure for the 1991/2 financial year. 30/10/91 SD

Over 2,800 families now face eviction from land they have occupied for years because it has been allocated to other people, he said. "Those people are Kenyans but are they expected to eat soil or stones? They are so hard hit that widows are waking up in the morning to find their land allocated to strange people before dawn," the MP told the House amid calls of "go on, go on."

"Those squatters are even smuggling their dead to bury them in some other places at night," She said adding: "Land has never been given to the deserving."

Mrs Ndetei said the ministry had seemingly abandoned the Masongaleni land problem and urged the Minister to state the Government's stand.

Mrs Ndetei said the fate of some 2,800 families, who for years had settled on land belonging to an institution at

Kasayani was uncertain and a source of anxiety. "Hunger is acute in this place and Chyulu Hills," she said.

The National Cereal and Produce Board has opened 89 depots throughout the country to store cereals bought from farmers. In a ministerial statement to the House, the Minister for Supplies and Marketing, **Mr Musalia Mudavadi**, said in addition to the main depot network, the NCPB operated a number of selected viable buying centres in the maize producing areas.

The Minister said the policy of operating temporary buying centres was to ensure that the boards services were brought closer to the farmers so they could not incur transport costs that would reduce their profit margins.

He said transport between the buying centres and the depots was handled by the board.

# Ndetei: Table probe report

## 4,000 squatting at Masongaleni

The Member for Kibwezi, Mrs Agnes Ndetei, yesterday asked what happened to the committee set up by the Minister for Lands and Housing to probe the Masongaleni land scandal.

Since the committee was formed, she said, no one knows what has been going on as the committee and the Government have not issued a statement. She said 4,000 families were still squatting waiting for the nullification of the illegal allocation of land to influential people.

She also asked how land in places like Athi River, Machakos, Emali and Sultan Hamud could belong to the same people. "The Ministry should see to it that there was a fair distribution of land," she said.

The MP for Changamwe, Mr Kennedy Kiliku complained that the people of Chaani and Mikindani site and service scheme had waited for their title deeds for a long time. He said the Minister should ensure that the process was speeded up, so that they could get their documents.

He complained that the National Housing Corporation houses in Changamwe had been neglected by the developers, who never carried out repair work. He

asked the Ministry to allow the tenants to purchase the houses so that they could take care of them.

He accused the rich as being the cause of land problems in the country, citing the Masongaleni issue as an example.

The Member for Bunyala, Mr Peter Okondo, decried housing problem in urban areas particularly for middle and lower income groups. He said the problem had resulted in mushrooming of slums.

He suggested that the problems could be minimised by the Ministry availing special areas in towns where private developers could get cheap land to put up cheap houses.

He said much time was wasted in travelling from homes to places of work due to inefficient transport system. He argued that the introduction of light trains in the urban areas would greatly improve the situation.

Mr William Ntimama, the Minister for Local Government and Physical Planning said that though elders were supposed to arbitrate in land cases, in the dis-

tricts, some people had "become clever" and had taken same cases to court to "confuse ignorant people".

He called on the Minister for Lands and Housing to withdraw such cases from the courts since once the elders had given a ruling, the case is solved for good.

He said that since development in the country had not been even, people who were still ignorant of the value of the land should be protected so that they did not sell all their land to others.

Many of those people would become landless after selling all their land for "a few thousand shillings", he said.

Mr David Mwenje, MP for Embakasi, also decried the fact that most of land and plot owners in Nairobi did not have title deeds and urged the Ministry to enhance the issuance of the deed.

The MP for Saboti, Mr Wafula Wabuge, clashed with two Assistant Ministers after he suggested that people from Nairobi should not get land in Trans Nzoia.

Mr Wabuge had complained that whenever land was available

in Trans Nzoia it was allocated to people from Nairobi instead of being given to the landless in that district.

An Assistant Minister for Supplies and Marketing, Mr David Mwenje asked what was wrong with people from Nairobi getting land.

Mr Wabuge said what he meant was that it was the staff at the Ministry headquarters in Nairobi who allocated land in Trans Nzoia.

But an Assistant Minister for Information and Broadcasting, Shariff Nassir, said "his friend" did not know what he was talking about as it was the District Development Committees which decided who was to be settled where.

"Mr Wabuge seats in those DDC meetings and should give his own suggestions," Mr Nassir added.

Mr Wabuge retorted that Mr Nassir was lucky if he had a say in Mombasa on who was to be settled where.

The MP had earlier complained about the high cost of

# Keen in land-grabbing claims

By Haroun Wandalo

HIGH-RANKING politicians and senior officials of the Ministry of Lands and Housing have allegedly grabbed large tracts of land, which they allocated themselves and friends, an Assistant Minister in the Office of the President. Mr John Keen, said yesterday.

Mr Keen said the illegally acquired parcels of land ranged between 1,000 acres to 3,000 acres per person.

Mr Keen further told press conference at his Harambee House office that he had names of the people involved in the racket, but declined to release them "for I do not want them to hang themselves."

"If I had to mention any

his remarks against a certain community in Narok.

Mr Keen said he thought the Press had misquoted Mr Ntimama and suggested that he had met with the Minister who had briefed him.

Mr Keen, who refused to give the Press copies of his documents, was hard-pressed to say why he chose to speak for the Minister.

To this he retorted: "The Maasai people deserve some respect and not to be belittled and treated with arrogance by some quarters."

Mr Keen, who is a nominated Member of Parliament also said that some lands officials were

issuing post-dated land title deeds.

"Through cheating, bribery and unprecedented manipulation of the law, post-dated title deeds have been issued", claimed Mr Keen.

Last week, the Ministry of Lands and Housing issued a circular in which it warned officers of the Ministry found engaging in such irregularities that he would be sacked instantly.

A senior official from the Ministry told *The Standard* that the circular had been issued after it was discovered that some officers were misusing their positions.

He said police were investi-

gating some related cases.

Mr Keen described as "shameless aggression" land-grabbing and exploitation of poor people who had no voice.

But Mr Keen also emphasised the need for the Maasai to live in harmony with other Kenyans in their midst.

He said that for many years, the Maasai had been living at peace with their neighbours and urged leaders to inculcate the same spirit into their constituents.

The politician also defended the Maasai over land, saying that their land could no longer be treated in the same "immoral way the former colonial gov-

ernment treated it in the pre- and post-independence era."

He said the colonial powers had ill-conceived beliefs about land in areas like Australia and New Zealand.

Mr Keen said he was ready to be challenged on how he acquired land. He said anybody interested could get the information from the commissioner of lands.

He said the land he owned, which included "250 acres given to him by the Land Adjudication committee in 1966", was acquired legally.

Meanwhile, the Narok Kanu branch has expressed confidence in the leadership of Mr Ntimama.

# Controversial

THE STANDARD, Friday, December 14, 1990. 3

## PARLIAMENT

# land Bill passed

THE House has passed the controversial Land Disputes Tribunals Bill that had earlier caused a stir, forcing its deferment.

The Bill, which was passed with several amendments, is an Act of Parliament to limit the jurisdiction of magistrates' courts in certain cases relating to land, and to establish land disputes tribunals and define their jurisdiction and powers.

Also passed together with the lands

By Francis Muroki, Amos Marenja and Stephanle Zimmermann

Bill is the Coast Development Authority, which provides for the establishment of an authority to plan and co-ordinate the implementation of development projects in Coast Province and the exclusive economic zone.

The two Bills now await presidential assent to become law.

The Attorney-General, Justice

Mathew Guy Mull, proposed several amendments at the committee stage to the Lands Disputes Tribunal Bill, which was first tabled two weeks ago.

When the Bill entered its second reading, several Members had called for its withdrawal or re-drafting, saying that if passed as it was, it would contradict or override other provisions of existing land legislations.

Justice Muli listened to the Members' contributions and effected sever-

al amendments to the Bill.

Clause two of the Bill, for example, was amended by deleting the definition of "land" to mean "agricultural land" as defined in Section Two of the Land Control Act, whether or not registered under the Registered Land Act, but does not include land situated within an adjudication section declared under the Land Adjudication Act or the Land Consolidated Act, or land which is the subject of determina-

tion by the Land Registration Court under the Land Titles Act.

Clause eight of the Bill had caused some argument when Members said a provincial commissioner was not well-placed to become the chairman of the Provincial Tribunals Appeals Committee.

Other amendments provide that the chairman of the tribunal would make the decision of the tribunals to be filled in the magistrate's court.

## \*Woman in plea to Moi over her land

By NATION Reporter

A 78-year-old ex-freedom fighter yesterday appealed to President Moi for help to recover two hectares of land she says a Meru tycoon sold without her consent.

The two-hectare land is situated in the Ngusishi settlement scheme in Timau Division of Meru District.

Sabera Ciokanamba said she was allocated the land by the Government soon after the country attained independence.

She said the businessman had sued her for trespassing on the plot.

She said she was involved in a serious accident before the land was registered and delegated the responsibility of processing the registration to her eldest daughter.

In her letter to the President, the dread-locked woman said, "The arrangement was that if I recovered (which was quite doubtful at the time) she surrenders the land and all its particulars back to me and if I don't recover she then shares it among her four brothers and two sisters."

She said the businessman influenced her daughter into selling the land.

The sale was processed in the absence of a member of her family, she said.

"This tycoon is now evicting us and there was already a trespass case pending in the High court, and we don't have anywhere else to live," she lamented.

She said she had approached the local administration for assistance but to no avail.

"If anything, I have ended up losing most of the documents pertaining to the issue," she added.

The woman, is the chairman of the Meru district branch of Matigari Ma Mau Mau Ngwataniro Society.

# DC warns \* against land firm violence

NANDI District leaders on Saturday held a crisis meeting to resolve the Mateitei land-buying company controversy in which two people were killed and scores of other injured last Wednesday following a skirmish between rival groups.

During the meeting held at Oeteitei trading centre, the leaders called on the local people to live in peace and deplored the cases of lawlessness and violence by members of the land-buying company.

The Nandi District Commissioner, Mr David Mativo, cautioned wananchi against engaging in violence. He said they should instead follow the right channels of resolving conflicts through the local provincial administration.

Mr Mativo said anyone found either inciting wananchi or involving himself in violent activities would be dealt with.

Problems at the farm started on Tuesday, last week, following a long standing dispute among members of the land-buying company. They alleged that over 300 fake members who had allegedly entered the farm illegally, be evicted from the area.

During the fracas, scores of houses of the alleged non-members were burnt.

Mr Mativo told those who had left the farm to go back now that there was adequate security in the area. He said he would soon convene a meeting to solve the land

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# DC warns land firm's members

From Page 1

problem.

The Nandi Kanu branch chairman, Mr Henry Kosgey, told leaders in Tinderet Division to report anyone engaging in violence to the authorities.

The meeting was also addressed by the Minister for Co-operative Development, Mr John Cheruiyot, and a nominated MP, Mr Ezekiel Barngetuny.

One woman was burned to death while a man was shot dead by police during the land ownership fight. The woman's charred remains were discovered by police in a burned down house in the farm located in Tinderet Division of Nandi District.

The local police boss, Superintendent John Otieno, said many families were left homeless in the violence.

The man who was shot by the police had reportedly defied an order to stop his group from shooting poisoned arrows at the security personnel.

The situation on the farm is said to have worsened on Wednesday evening when one group confronted the police and declared that they did not want the alleged fake members on the farm.

This weekend's violence is said to have been sparked by the burning of over 600 grass-thatched houses



Mr Mativo

by unknown arsonists. And when the police tried to assist the victims, they were pelted with stones and poisoned arrows shot at them.

One woman is reported to have been raped during the incident as she tried to escape from her burning house with her belongings. The number of arrests following the incident is also reported to have risen from six to 10.

On Monday, last week, a meeting called by the Nandi DO I, Mr Christopher Mwasi, to sort out the disputes on the farm degenerated into a shouting match.

# 3 schools ordered shut over land row

By Ken Kyomba

THREE schools were ordered closed and an unconfirmed number of people said to have died as the fierce clashes over the ownership of land in Tinderet Division in Nandi District entered its sixth day yesterday.

By Saturday evening, over 50,000 families living in the Tinderet Division had been evicted and their houses and property worth millions of shillings destroyed by fire.

The Nandi district leaders, led by their Kanu branch chairman, Mr Henry Kosgey, condemned the incident and called for an immediate stop to the fighting.

Mr Kosgey said that it was sad and a lack of direction for one community to sell land to other communities and later claim ownership of the same and set houses on fire.

"This is terribly uncivilised. The incident has brought

shame to Nandi District and must stop forthwith," Mr Kosgey said as he addressed a public rally at Mtetei chief's camp.

# Land row: Ministry criticised

By DAVID KANJA

SHAREHOLDERS of the controversy-ridden Kasambara Land Buying Company in Nakuru at the weekend criticised the Ministry of Lands and Housing for failing to solve a dispute of unfair allocation of plots.

Addressing the Press in Nairobi, where they later issued a signed statement, the shareholders accused the ministry of failing to tackle the long dispute and at the same time appealed to the President to intervene and

solve their problems.

They said they had been given false promises since 1982.

"We are fed up with these false promises and we request the President to set up an independent team comprising people who are not Nakuru residents to deal with the matter," they said.

They bitterly complained that a directive issued by the Office of the President that the farm be sub-divided anew was frustrated by a few unscrupulous individuals.

"People behind this matter

might be very strong and unless the President saves us the ministry seems to have failed.

The shareholders availed the letter from the President's Office to reporters. They claimed that the name Kasambara was changed to Karunga three years, after the issuing of title deeds to deceive the authorities that the farm had been sub-divided.

They also claimed that over Sh300,000, which remained after the farm was purchased from Lord Delamere was swindled by the directors and

assets sold. They availed a list of the assets which included a tractor. "This matter is going on since 1982 and when questions are raised, no one bothers to answer," they complained.

An 85-year-old woman early this year appealed to the Government to intervene to save her six-acre plot from being taken by a relative of one of the directors of the company.

In March this year, over 60 shareholders of the farm appealed to the Minister for Lands and Housing to intervene, and solve their problems.

## \*Wananchi cautioned on land issues

WANANCHI in Migori Division of South Nyanza District have been advised not to sell land without informing members of their families.

The advice was given on Saturday by the Minister for Water Development Mr John Okwanyo when he conducted a funds drive at Bondo Gironge Primary School in South Suna location in the division in aid of nine primary schools in South and West Suna locations in the division.

Mr Okwanyo said those who wished to sell their land must be cleared from the grassroots before going to the land board.

The Minister told them that they must get clearance from their locals chief and assistant chief before going to the land boards.

He also told them not to take loans using title deeds without informing members of the family.

He emphasised that all family members must be informed accordingly and in good time before title deeds could be used to secure loans.

He said corrupt people endangered the lives of their families when they defaulted in loan repayment and told people to be careful about land issues.

— KNA

## Court halts sale of land by ex-CID boss

By Boniface Kaona

A FORMER Director of Criminal Investigations Department, Mr Ignatius Iriga Nderi, and the Commissioner of Lands, have been restrained from selling or transferring a piece of land in Nairobi's Karen area until the final determination of a lawsuit.

A High Court Judge, Mr Justice John Mwera, further restrained Mr Nderi from interfering with the property until further orders of the court.

Mr Justice Mwera issued the orders on Friday after hearing an ex-parte application by a Nairobi advocate, Mr Kembi Gitura, representing another advocate, Mr Benson Mukuria, who has sued Mr Nderi alleging fraud in the land transaction.

Mr Gitura told the court it had come to the knowledge of his client that Mr Nderi intended to sell the property in

dispute to other parties at a much higher price and that was why Mr Nderi did not intend to sign the transfer of the property.

The lawyer said since the swearing of the affidavit, Mr Mukuria had discovered many important facts which were not within his knowledge.

Saying the Commissioner of Lands had not registered Mr Mukuria's caveat nor had he given reason for his refusal, Mr Gitura told the judge a legal firm, Muthoga Gaturu and Company, acting for several other purchasers wrote several letters to the Commissioner of Lands and to the Attorney-General concerning what they said was a fraud. The matter will be heard inter-parties tomorrow.

## Man killed in land row

A MAN stabbed his father to death over a land dispute on Monday in Runyenjes division of Embu District, police reported yesterday.

The assailant has been arrested and will appear in court next week charged with murder, police in Embu said.

The deceased allegedly refused to allocate a piece of land to his son who became annoyed, took a knife and stabbed him on the head four times, killing him instantly.

Meanwhile, an eight-man gang armed with knives attacked Mr Johnstone Kavatha on his way home and killed him.

### Police Reports

The incident, according to police, happened on Monday at Kitisa Village in Machakos town. Kavatha's body was later taken to Machakos Hospital mortuary for a post mortem examination.

An irate herdsboy stabbed his employer to death after quarrelling over lost sheep on Monday at Moiben Division of Uasin Gishu District.

The deceased, Lukwachi ole Wausi, was killed for demanding to know where the herdsboy had taken one of his sheep. Police have arrested the

suspect.

A Standard Four pupil at Mathare Primary School in Nairobi was burnt to death when his father's house at Huruma Phase Two, caught fire at night.

Police reported that 14-year-old Eliud Njuguna was asleep in the house on Wednesday night when he was burnt to death. The cause of fire was not immediately established.

In Lamu, an administration policeman was on Thursday evening seriously injured by an angry mob which set upon him after he allegedly threatened to stab a local businessman.

# Wameyo tables papers on 'irregular' land deals

The MP for Mumias, Dr Elon Wameyo, shocked Parliament when he said that land in North Wanga Location which has changed hands twice since 1973 and believed to belong to a dead man was in fact owned by Mr Peter Maloba who is alive.

Dr Wameyo tabled documents to prove his claim.

He said this after an answer given by an Assistant Minister for Lands and Housing, Mr Gedion Mutiso, who said that the land was transferred to Ms Judith Ayako Omwoma by certificate of succession in a magistrate's court on July 12, 1973. She was given the title deed on August 21, 1973.

According to Dr Wameyo, Mr Omwoma had since sold the land to a lawyer "who will make it impossible for Mr Maloba to retrieve his land."

The MP sought to know in whose name the land No. 174 of North Wanga/Khalaba was registered before 1972 and how Ms Omwoma acquired it.

The Assistant Minister had referred the matter to Mr Mutiso, who said it was transferred through succession.

In a supplementary question, Dr Wameyo wanted to know when Mr Maloba died and what



Mr Mutiso: "Forward the information"

was the relationship between him and the successor.

Mr Mutiso started explaining to the House the procedure of land succession, but the MP for Rarieda, Mr B. F. Jalango, sought to know whether the Assistant Minister could stick to the substance of the supplementary question.

It was then that Dr Wameyo brought to light the revelation that Mr Maloba was living in Uganda when the land changed hands in 1973. He said that Mr Maloba was surprised when he returned to find sugarcane planted on his land.

The MP said he brought the question to show how corrupt officials of the Ministry were involved in irregular land transactions.

Mr Mutiso protested at the accusation. He said that if the MP had evidence that the man was alive, he should forward the information and the court which made a ruling in 1973 would deal with the matter.

The Speaker, Prof Jonathan Ng'eno, said that Members who brought questions to the House should be fair to the front-bench and desist from hiding information which might be useful to the Minister in dealing with the question.

If Dr Wameyo knew the man was alive, he should have drawn the attention of the Minister so that he could have dealt with the question more effectively, Prof Ng'eno said.

An Assistant Minister for Energy, Mr Nyarangi Muturi, said that construction of power lines to supply Kamirithu Polytechnic

by the MP for Limuru, Mr Samwel Mwaura, who wanted to know when it would be completed.

## Dead or alive? Minister fails to convince House

CONFUSION reigned in Parliament yesterday when an Assistant Minister for Lands and Housing, Mr Gedion Mutiso failed to confirm to members whether a man involved in a protracted land deal was dead or alive.

Dr Elon Wameyo, (Mumias) had asked the ministry in whose name land parcel North Wanga/Khalaba LR No 174 was registered before 1972 and how Ms Judith Ayako Omwoma came to acquire the land.

Mr Mutiso replied that the parcel was registered under the name of Peter Maloba and was later acquired by Ms Omwoma through a certificate of succession issued by the Kakamega District Magistrate's Court on July 12, 1973.

Dr Wameyo rose to ask when Mr Maloba died but Mr Mutiso replied: "It is not possible to know when he



Mr Mutiso: 'Officials honest'

died."

Dr Wameyo then demanded to know how the certificate of succession came in if the ministry did not know when the man died.

Mr Mutiso replied that when a man dies, his next of kin made claims to his property through the normal procedure.

Dr Wameyo said he had brought the question to the House to show that the

Ministry of Lands and Housing was responsible for dubious land transactions. "There is a lot of corruption in the ministry", he charged.

The member claimed ministry officials issued fictitious land title deeds. But Mr Mutiso said the statement by Dr Wameyo was serious since officials in his ministry were honest.

The Speaker, Prof Jonathan Ng'eno saved the moment when he asked Dr Wameyo to prove whether the man was dead or alive adding that it was a dubious transaction then it was a criminal case.

Dr Wameyo then asked if it was proved that the man was alive what would the ministry do?

There was laughter in the house when the Minister for Public Works, Mr Timothy Mibei, himself a lawyer, assured the House that in law when a man absents himself for seven years, he is deemed to have died.



# Give me back my land, man appeals

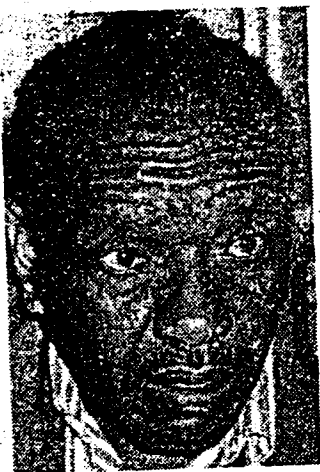
By Maina Muiruri

A MAN who was evicted from a disputed piece of land in 1980 has appealed to the government to help him get the ownership of the plot.

Mr Justus Irimu Ngari was evicted from the plot in Gakanga sub-location of Nyeri District through a court order in 1980 and ordered to pay the costs of the suit, which was decided in favour of one Wangechi Mureithi.

But in 1983, following his appeal, the case was referred to the Mweiga DO, who together with a council of elders decided that the plot should not be occupied by any of the cotes-tants.

Mr Ngari, who called on *The Standard* to expose his plight, said since the order by the DO was issued, he had lived with his wife and six children at Endarasha village in Mweiga where he had no land.



Mr Ngari . . . evicted

On June 20 last year, the Nyeri DC wrote to the Mweiga DO advising the committee of elders which heard the case to refer it back to court for further direction since the issue was still unresolved. But nothing had been done so far and I continue suffering as I wait for the decision," said Mr Ngari.

He appealed for the government's assistance, saying he had school-going children who depended on him and the piece of land was his only hope of sustaining them. He said the Nyeri DC had in 1983 ordered that the land be divided between the two contesting parties before the Mweiga DO and elders made the ruling.

THE STD.

20/2/91

NATIONAL NEWS

## Govt interdicts 2 land registration officers

THE Government has interdicted two land registration officers attached to Ardhi House in Nairobi, *The Standard* learned yesterday.

At the same time, the Ministry of Lands and Housing has issued a stern warning to officers who would in future be found dealing irregularly in matters of land title processing and issuance.

It was learnt that several other officers were questioned as a racket to smuggle from Ardhi House, 43 blank land title deeds aborted last Mon-

### Standard Reporter

day. Sources at the Ministry of Lands and Housing said they were investigating the matter.

The Permanent Secretary in the Ministry, Mr Josiah Sang, confirmed the interdictions in an interview with *The Standard*.

He said: "The Government views the matter with the seriousness it deserved." He warned that nobody found involved in the racket would be spared. "The Government is concerned about what some

dishonest officers do, which mars its name", he added.

He said the two officers had been suspended as police and Ministry officials investigated the matter. "This is a serious matter, and we shall deal firmly with those found to have been involved," he said.

Mr Sang' at the same time cautioned officers dealing with land issues to serve *wananchi* honestly.

"My officers have been told to be careful when dealing with land issues " he added.

Mr Sang' commended the police for apprehending the two officers and recovering the blank title forms and deeds.

Police apprehended the two after they were found in possession of the papers at a Nairobi street on Monday.

Police sources said they were investigating the matter and that the two would appear in court after they finished with their investigations.

Independent sources said one officer proceeded to Ardhi House on Monday and allegedly demanded title deeds

# \*HELP US NAB LAND OFFICE CHEAT

30

MY attention has been drawn to a story which appeared in the letters to the editor column in the Kenya Times issue of November 27, 1991. The letter was written by a concerned victim in Meru and was titled: "Beware of this fast-talking conman."

The letter complains about a tall brown and fast-talking man at the Meru Lands Office who received a bribe from the victim two weeks ago. The letter in effect talks of a syndicate of corrupt officers at the Lands

office, Meru, who con and receive bribes from wananchi when they go to the office for official matters.

The victim alleges that he paid some money to the officer who just pocketed it without even counting and later gave him a receipt for Sh100. The victim did not say how much money he paid and for what purpose.

I would like to appeal to the victim to write to me in confidence and give me all the necessary details and particulars

of the officer concerned so that I can be able to take further action. I would like to assure him that his identity will be protected and he will not be victimised at all. His efforts will indeed help us eradicate corruption in the Government offices.

I would like to assure all Kenyans that services offered in our offices are free and in case of any monies paid to the Government official receipt for the amount paid must be issued. In this regard, it is the right of every Kenyan to demand to be

issued with a receipt for the actual payment made.

My ministry is determined to serve Kenyans with transparency, accountability and patriotism. I appeal to wananchi to offer all the necessary co-operation by reporting such malpractices so as to help us eradicate such evils like corruption, cheating and fraud for better service to the country.

J.K. Sang,  
Permanent Secretary,  
Nairobi.

## Keep up the

## Land: PS reassures wananchi on services

THE Permanent Secretary for Lands and Housing, Mr J. K. Sang has assured Kenyans that services offered by the ministry are free and in case of any monies paid to the Government official receipt for the amount paid must be issued.

Mr Sang further noted that it was the right of every Kenyan to demand to be issued with a receipt for the actual payment made.

"My ministry is determined to serve Kenyans with transparency, accountability and patriotism," Mr Sang said and appealed to wananchi to offer all the necessary co-operation by reporting such malpractices so as to help his ministry in eradicating evils like corruption, cheating and fraud.

The PS was reacting to a story that appeared in the "Letters to editor" column in one of the newspapers on November 27 written by a concerned victim in Meru.

The letter was headlined: "Beware of this con man". The "victim" has allegedly to have given out Sh100 to an officer in the lands office as bribery.

Mr Sang has appealed to the victim to write to him in confidence and give all the necessary details and particulars of the officer concerned for further action.

Civil servants in Naivasha have been asked to show high integrity and honesty in the discharge of their duties to improve the Government image in the public.

This was said on Tuesday by the Naivasha District Officer I, Mr



Mr Sang: Report corrupt officials

Joseph Korir when he addressed departmental heads at his office. He said that it was high time civil servants showed transparent and accountability in their work.

Mr Korir also asked the departmental heads to be in the forefront in reporting all evil activities like corruption and bribery to the authorities for further investigations and possible action.

The DO also emphasised the importance of writing monthly reports, noting that they would highlight the activities of every department in the area.

— KNA

## Land: PS warns corrupt officials

By RICHARD arap KERROR

THE Permanent Secretary in the Ministry of Lands and Housing, Mr Josiah Sang' said yesterday that some unscrupulous officers in his Ministry were illegally selling the land control forms, letter of consent forms and demanding kickbacks in order to sign the discharge of charge and transfer of settlement scheme forms.

He said it was illegal to sell the forms and requested any member of the public being asked to pay *chai* for all those legal documents to inform him in confidence for an appropriate action against the officers.

"This is the only way to clean up corruption so that our actions are transparent and accountable," the PS said in a statement.

Mr Sang said if the public

informs his ministry of those corrupt land officers out in the field, "prompt disciplinary action will be taken against them for it is humanly impossible for the ministry headquarters to be everywhere to discover corruption".

The PS appealed to wananchi to continue helping in eradicating evil practices in society "until we rout out bad elements in our system".

The PS was reacting to a letter to the editor which appeared on the Kenya Times issue of last Saturday by a "shareholder" on the subject titled: "We have complaints about farm," in which the writer asked the PS to tell the public why Soy Kipsomba Farm in Uasin Gishu District has not been sub-divided to the satisfaction of some shareholders.

# Mungai: They should own land

**By NATION Correspondent**  
The Minister for the Environment and Natural Resources, Dr Njoroge Mungai, yesterday urged the international community to give special attention to Third World women.  
He said women in developing countries made up about 75 per cent of the global women population.  
In his address to the congress, Dr Mungai said: "Special attention should be paid to the needs, ideas, and contributions of the Third World women who must clearly have equal access to opportunities and equal reward."  
Dr Mungai said that the women produced most of the Third World's food and that food production went hand-in-hand with land ownership.  
Yet, while women produced over 75 per cent of the food, they owned only 18 per cent of the land, he said.  
If food production was to increase, the problem of women's land ownership must be addressed, the Minister said.  
"Third World governments must rapidly change land tenure systems to enable women to inherit and own land," Dr Mungai said.  
The Minister said that in most developing countries, credit was given on the basis of security provided by land.

Dr Mungai told the delegates to seriously think about the sustainable use of resources in their environment, which was threatened not only by natural disasters but by man-made catastrophes.  
He regretted that too often, women had been left out of the planning, management and implementation process in conservation programmes in both developed and developing countries.  
"It is only logical that people who are in contact with the natural resources on a daily basis and who are affected by their depletion should effectively be involved in the management of these resources," the Minister said.  
He said Kenya was getting ready for the United Nations Conference on Environment and Development (UNCED) - the largest summit on the environment this century - to be held in Rio de Janeiro, Brazil, next June.

# Moi instructs PCs on land sub-division

President Moi yesterday told Provincial Commissioners and District Commissioners to supervise the sub-division of group farms to ensure that shareholders got their rightful share.  
President Moi said that in various parts of the country, land buying companies had not subdivided their farms to shareholders hence bringing unnecessary friction.  
He said that land clashes had occurred in Kisii, Masailand and recently in Nandi and all had their origins in land ownership.  
He expressed concern at the way newspapers in the country had blown the issue of the clashes out of proportion saying that such irresponsible journalism could foment chaos.  
President Moi was speaking at the Kenya Police Training College Kiganjo during a passing out parade of police recruits.  
Stressing the need for peace in the country, President Moi urged wananchi to shun activities that might cause instability and loss of life and property.  
He told public servants to serve wananchi with devotion, accountability and to be transparent in their activities so that wananchi could know what was being done to assist them.  
President Moi said that as the country developed it would continue facing various economic problems but added that such problems could only be solved when there was peace and harmony.  
President Moi reminded police officers that it was their duty to ensure there was peace and stability in the country. He said police were the custodians of peace in a country and urged them to be devoted to duty at all times.

President Moi commended the police force in the country for their efficient enforcement of the laws of the land.  
President Moi thanked the recruits for choosing a career that put them into the service of the country and advised them to uphold their service motto "Utumishi Kwa Wote". The President advised the police to cultivate confidence in wananchi.  
President Moi called on the police force to stamp out any illegal activity in the country to ensure that wananchi lived in peace. He reminded them that they would only succeed in their duties if they were honest in everything that they did.  
President Moi said that it was unfortunate that some few people instead of promoting peace in the country were instead instigating wananchi to engage in unlawful activities. He said such people only wanted to see chaos in the country. The President assured wananchi that the Government would do everything possible to ensure there is peace in the country. He added that there was need for wananchi to go about their affairs in an orderly manner.  
President Moi said that it was unfortunate that some people did not appreciate the efforts of the Government in tackling some of the problems facing wananchi. He said he was surprised to hear some mothers criticising the Government expansion of universities in the country.  
The President said by expanding the universities, the Government wanted to avail more opportunities to the youth.  
On arrival at the Police College, President Moi was welcomed by the Commissioner of Police, Mr Philip Kilonzo and

the College Commandant, Mr Shadrack Kiruki.  
Also present were Cabinet Ministers Jackson Angaine, Mwai Kibaki, Nahashon Kanyi, Joseph Kamotho, Maalim Mohamed, Joseph Ngutu, Davidson Kuguru and William ole Ntimama.  
Others were the Head of Public Service and Secretary to the Cabinet, Professor Philip Mbiti, the Chief of General Staff, General Mahmoud Mohamed, a Permanent Secretary in the Office of President in charge of Provincial Administration, Mr Wilfred Kamallat and Mr Joseph Beth, a chancellor in German Embassy.  
Meanwhile, President, Moi will today officially open this year's Western Agricultural Show at the Kakamega Showground.  
President Moi is expected to arrive at the showground shortly before 11 am and will be met by the Minister for Agriculture, Mr Elijah Mwangale, and the national show chairman, Mr G. K. Owango.  
Later in Kakamega, President Moi said that a country without a culture is incomplete and therefore told Kenyans to discard the mistaken belief that African traditions were primitive.  
He said that generalisation had been preached by those who wanted to destroy the African personality.  
Speaking at State Lodge Kakamega after being entertained by choirs and traditional dancers, he said that the African traditions which are compatible with modernity ought to be upheld and strengthened.  
President Moi cited the Luhya Isikuti which he noted was very popular and had been embraced by several societies in Kenya (INA).

# Probe this Molo land allocation

WE thank President Moi for appointing you (Mr Abduba) as a new District Commissioner for Nakuru District. We too congratulate you for taking the challenging post.  
Some leaders have turned a blind eye to some of the land allocation injustices in the district. They know each and every corrupt land allocation in the district but they have done very little to rectify the situation.  
Mr Abduba, you being honest and fair, please come out and clean your district by starting with farms in Keringet Location in Molo Division.  
Some of the issues you could give immediate attention and rectify are as follows:  
• Find out who were really behind the irregular and unfair plot allocations on a farm in

Molo Division.  
• Find out the reason why some farm members' plots were transferred from one point to the other without express consent from the owners. The method used was dubious and impractical.  
In order to minimise complaints and dissatisfaction of the affected members, the original maps must be used. These maps are correct, accurate and genuine. After all members paid over Sh300,000 for these maps and sub-division of the farm in question.  
• Find out the reason why some members got more acreage while others got less than what they actually paid for originally.  
• Try to find out who took large sums of money collected

for survey. The Government is the job free of charge.  
• Find out why the Survey and Land Adjudication process did not agree to be used dishonestly by the corrupt officials to produce inaccurate maps to their evil designs.  
According to our investigation, the huge sums of money collected from members as survey fees were actually used to bribe those who were supposed to do an honest and fair allocation of farms to their rightful owners.  
Bwana DC, please come out and be a real saviour of the helpless, oppressed and poor farm members. To verify the above allegations, please interview any mwananchi in Molo and you will be told the truth.  
Kipruto Makerer,  
Olenguruone

## PARLIAMENT

### \*Leakey in land plea for residents

THE Member for Langata in Nairobi, Mr Philip Leakey, yesterday called on the Government to declare Kibera residents living on public land as legal owners of such land.

Mr Leakey, an Assistant Minister for Technical Training and Applied Technology said that elsewhere in the country people who had lived on public land for a long time were eventually declared owners of such land. He wondered why Kibera residents in a similar situation should not benefit also.

Contributing to the vote of the Ministry of Lands and Housing, Mr Leakey said more than 200,000 Kenyans lived in Kibera slums and suggested that they be declared owners of plots they had constructed their houses on instead of making them stay on temporary lease.

He said the Government does not have funds to develop most of the land it owns, especially in the city and suggested that some of it be let to individuals who would seek funds and develop.

Mr Leakey took issue with what he termed complicated land transactions when allocating land to laymen which he said were too costly for most people.

He said these transactions demanded the services of a lawyer and it was a burden to the common people. He suggested that the process be reviewed to make it easier.

He said the current process of land adjudication was good, but said there was need to install secure boundaries to avoid disputes between different families.

Mr Leakey appealed to the Ministry to increase the number of surveyors in the country to assist wananchi in land adjudication cases

### \*Houses burnt in clash over land

By NATION Correspondent  
About 300 families were left homeless when their houses were set ablaze during a clash over land in Tinderet Division, Nandi District.

Property worth millions of shillings was destroyed and a number of people injured in the clashes. No deaths were reported.

The land dispute is over the allocation of 900 acres owned by the giant Mititie land-buying company.

The land was formerly owned by a white settler who left the country in the early 1980s.

Witnesses said trouble started at the farm on Monday during a meeting attended by the Nandi District Officer I, Mr Christopher Mwathi, to resolve the land dispute.

They said the crowd turned

rowdy and the meeting ended prematurely.

During the meeting, some people demanded that one community, who are the majority at the farm, should be evicted to make room for others.

The *Nation* learnt that when the DO left, an illegal meeting was held at night under the chairmanship of a local politician (name withheld).

It resolved to burn homesteads in a bid to evict the settlers.

On Tuesday night, homesteads belonging to some communities in the farm were set aflame and those who attempted to move out were stoned.

The Nandi DC, Mr David Matibo, and top security officials were said to have visited the area as families inspected the damage to their grass-thatched houses.

# THE LAW

It is the law of this country that unless an agreement to sell agricultural land is consented to by the Land Control Board, the purchaser has no claim of title to the land after three months from the date of the agreement.

The Court of Appeal so restated the law in this appeal where the main question that arose to be considered was whether equity would apply in contrast to the express provisions of the law in a situation where the purchaser of land has failed to obtain Land Control Consent to a transaction dealing with agricultural land.

Delivering his considered judgment Mr Justice Platt said that once again the trumpet of equity, has called into question the operation of the Land Control Act (Cap. 302) by a party, who has sold land and having not helped the purchaser to get consent of that sale, has resold later on to another person, to which sale consent has been given, and the land transferred by registration to the new purchaser.

It is sought by a finding of fraud to set aside the registration, and to induce the authorities to assist the first purchaser.

The appellant has referred to the fundamental question in this case, where in ground 2 he alleged that the learned judge had erred in law in holding that East Bukusu/North Kanduy/44 be- longed to the respondent when there was no evidence to support that finding.

The learned judge had held that the respondent had bought the land and paid for it in 1976, and was correctly in occupation of it.

What the learned judge has omitted to mention, is that the contract of sale was not in writing as required by Section 3 of the Contract Act (Cap. 23) and although that might be originally cured by possession and payment of the price, it was not consented to by the Land Control Board, so

# When land buyer loses right to title deed

Gabriel Makokha Wanukota (appellant) *versus* Sylvester Nyongesa Donati (respondent) (Civil Appeal No. 6 of 1986) before Mr Justice Platt, Mr Justice Gachuhi and Mr Justice Apaloo, Judges of Appeal. Judgment was delivered on May 6, 1987.

that possession became unlawful and payment became refundable.

From the exhibits presented to the court, the registration of that land was opened on May 22, 1973. The sale in 1976 was sub- ject to the Land Control Act (Cap. 302) then in existence. By virtue of Section 6 of that Act the sale of agricultural land is void for all purposes, unless the Land Control Board for that area in which the land is situated, has given its consent to the sale.

The agreement to be a party to a controlled transaction becomes void for all purposes at the expiration of 3 months after the making of the agreement, if the application for consent has not been made within that time.



Mr Justice Platt.

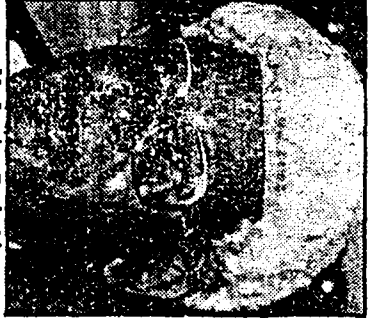
ceeding three months, or to both such fine and such imprisonment.

This offence would depend upon the reasonable presumption being drawn that the party remained in possession in furtherance of an avoided transaction. It follows therefore, that if the respondent relies upon his sale agreement which was avoided three months after it was made in breach of Section 22 of the Land Control Act and subject to a penalty.

As far as his agreement to purchase the land was concerned it was void for all purposes, whether of legal or equitable nature his only redress being that he could recover the money or valuable consideration paid in the course of the controlled transaction by virtue of Section 7 of the Land Control Act.

He would not be able to persuade the registrar to transfer the land to him after the agreement became void, because Section 20 of the Land Control Act provided that the registrar shall refuse to register an instrument effecting a controlled transaction, unless he has satisfied himself that any consent required by the Act had been given or that no consent was required.

There was one final hope for the respondent and that was if he could remain in adverse possession for 12 years he would be able to acquire a title by virtue of the Limitation of Actions Act (Cap. 22). If the sale in this case was void in 1976, the period would end in 1988, but the suit was brought in 1984 and therefore the period had not expired.



Mr Justice Gachuhi.

The situation then is that even though the Land Control Act was amended to provide a longer period within which to obtain consent in 1980, and established the power given to the High Court to extend the period, those provisions did not apply in 1976.

The result therefore is that the respondent did not purchase this land and he was not correctly in possession of it, his adverse possession had not been made into a right to the title of the land, and the title of Ismael Machio was not affected, so that the latter was fully entitled to re-sell the land to the appellant in 1982.

It must however, be observed that the Land Control Board gave consent to the sale of the land to the appellant, and that is the sale which was registered by the registrar. It follows that even if the registrar were to consider cancelling the registration of the appellant as owner of the land in question, the authorities could do nothing to help the respondent.



Mr Justice Apaloo.

because a valid consent to the sale of the appellant had been consented to by the Land Control Board.

Once the board has given its consent, it is functus officio and cannot unilaterally withdraw its consent. Of course, neither Ismael nor the appellant could ask the board to do so.

For these reasons I would set aside the judgment of the High Court and I would substitute therefore judgment for the plaintiff/appellant. Having no title to the land, I would order the respondent to vacate the land within six months of the date of the order being read in open court. I would grant the appellant the costs of this appeal and the costs of the suit in the High Court.

As Gachuhi and Apaloo, J.K. A. agree in the result, the appeal is allowed, judgment of the High Court is set aside and judgment for plaintiff/appellant substituted as prayed in the plaint except that as Gachuhi and Apaloo, J.J. A. feel that the respondent should have more time within which to vacate it is ordered that the respondent to vacate the premises in 12 calendar months' time from the date of this order being read to the parties in open court. The appellant will have the costs both here and below.

## \* Families cheated in land deals — DC

MERU District Commissioner Mr Peter Saisi has exposed illegal land transactions where some people were secretly using lawyers in order to evade Government requirements that the entire family be involved in all land dealings.

Mr Saisi singled out Giaki and Nyaki locations in North Imenti Division where families have been left landless after their only land is sold through dubious agreements which are later ratified by land control boards under court orders.

The DC said the purpose of involving wives and children in land deals by their husbands was to ensure that they were not left in the cold or blame anybody when such transactions are approved by the land boards.

He was addressing a public baraza attended by, among others, a Minister of State, Mr Jackson Angaine at Nari market after a tour of development projects in Kerua location on Monday.

On Kanu recruitment, Mr Saisi said only the 120,000 people had so far renewed their membership in the district this year.

Meanwhile, Mr Angaine has decried the slow Kanu recruitment tempo in Meru District.

Mr Angaine, who is also the branch Kanu chairman said that in the past the district had led in the party enrolment exercise and called on wananchi to register in large numbers to clinch the national party registration trophy.

KNA

## Woman, 85, pleads to Moi over land

Standard Reporter

AN 85-YEAR-OLD woman at the weekend appealed to President Daniel arap Moi to intervene and help her recover land she had been allocated before she was allegedly evicted from there by directors of the trouble-ridden Kasambara Land Buying Company in Nakuru District.

Mrs Mary Nduta Warui claimed she had been forced to accept land on rocky hills which she could not develop, despite being a member.

The elderly woman was speaking to reporters in her Kasambara hill plot on Saturday. She claimed that she had balloted for land and got block No. 77 during the exercise but she was shocked when she was replaced by people allegedly related to the company's directors.

"I was forcibly given, a rocky and hilly piece of land which I had not balloted for simply because I was a poor person and uneducated," she claimed.

Mrs Warui, who has subsequently deserted her hut maintained that she had refused to take her title deed allegedly

due to corruption among directors.

She said she was among the group which appealed to the Minister for Lands and Housing, Mr Darius Mbela, to intervene and help the company shareholders to get their rightful pieces of land.

Mrs Warui said they also made the same appeal to the Nakuru District Commissioner.

On February 10, this year, over 100 shareholders of the company urged the DC to nullify the issuing of title deeds, claiming there were irregularities in the allocation of land.

The members most of them elderly women and men charged that there were cases of double allocation of land and that some genuine shareholders had not been allocated land.

She alleged that she had been threatened by an administrative official that if she talked about the land problem any more, he would deal with her.

She appealed to the President to intervene and assist her get the land.

# PC: Family land row being investigated

Standard Reporter

EASTERN Provincial Commissioner, Anthony Oyier has ordered investigations into a case where auctioneers have threatened to sell land belonging to a family of 10 in Meru because an Assistant Minister has allegedly not paid Shs 1.1 million loaned to him against the family's title deed.

Speaking to *The Standard* on telephone from his Embu house, Mr Oyier expressed shock and disbelief that an Assistant Minister could try to swindle a poor family of its only land. "This is criminal," Mr Oyier said, referring to allegations by the family that the Assistant Minister had given the family the wrong address and chased them from his office when they tried to seek an

audience with him over the matter.

"I have instructed my officers to investigate this case and I am asking you to tell this family to come to my office for assistance. He said, however, that he had not received any formal complaint from the family, adding that he had instructed his officers to start investigating immediately he was alerted about the matter."

The family of 45-year-old Paul Mathenge Makinya is due to be kicked out of their 4.1 hectare piece of land in a week's time by auctioneers unless a loan of Shs 1,114,218.55 is paid to receivers of Pioneers

Building Society, Messrs Lilian B. Mahiri, according to a letter sent to the Assistant Minister on August 6, 1990.

Mr Makinya first entered into a deal with the Assistant Minister in 1984 and solely on trust allowed him to take the land's title deed as a collateral for Shs 500,000 loan, but which has since risen to Shs 1,185,838.25 because of interest. He claims that the politician has frustrated all his efforts to seek audience with him even after the valuation of the land had been done by Mamuka Valuers Limited in readiness for the auction.

But last week, the Assistant Minister (name withheld) told *The Standard* that he considered the matter as "purely private."

Land-buying companies have played a significant role in giving homes to many Kenyans since the repressive colonial land laws collapsed with the attainment of independence in 1963.

Before then, indigenous Kenyans — derisively called the natives by the colonialists — were confined to rural areas and were barred from owning land in the then prime so-called white-highlands.

The situation changed radically after *uhuru* with the limiting factor now becoming non-availability of hard cash. With money, indigenous Kenyans could now acquire land anywhere in the country, as long as there was a willing seller.

After years of colonial subjugation and the devastating Mau Mau war for independence, few Africans had the sort of money required to buy large-scale farms and ranches owned by the British settlers.

The Mau Mau were under the illusion that once an independent African government was in place it would summarily confiscate land held by the settlers and distribute it to the landless Africans *ex gratis*.

But as the reality — fortified by Mzee Jomo Kenyatta's famous refrain, "*Uhuru na Kazi*," — dawned on the Africans that there would be nothing for free, disillusionment quickly gave way to iron-clad determination to acquire land through the laid-down rules.

Fired by a desire to possess land one could call his own, but lacking the necessary funds to turn the dream into a reality, common sense dictated the formation of land-buying societies, where Kenyans pooled resources to buy the large-scale farms formerly owned by the whites.

What first emerged were democratic land-buying societies which were led by elected office bearers who, in turn, kept their members informed about all the land transactions, including, the amount they raised and how much the farm was being sold for.

What then had appeared impossible for Africans to acquire as individuals was easily secured by the co-operatives.

The post independence government embraced these societies with both arms because they had resolved an insurmountable problem without asking the Government to pay a penny.

Most of these societies were naturally formed in Central Province where thousands of natives had been uprooted from their homelands to pave the way for white settlements and commercial plots. The Mau Mau struggle for independence caused further deprivation to the natives as they were moved from rural areas and forced into protective villages.

Although land-buying societies were created with the noblest of aims, commercialism, greed and downright theft gradually crept into their operations, transforming them into tools for defrauding gullible Kenyans hungering for a plot of land.

Land-buying companies, which are run on commercial lines and have been used by some unscrupulous businessmen to enrich themselves at the expense of the shareholders, are a direct offshoot of land-buying societies.

The operations of some of these land-buying companies are through and through criminal

# Of devious companies and thirst for land

The history of land-buying companies in Kenya has been rather like a catalogue of scandals as directors of such companies have employed all sorts of crooked ways, taking advantage of the hunger for land, to con gullible Kenyans out of their money. Staff Writer MUTHUI MWAI chronicles this history in this instalment of our on-going series on land. On Thursday, we look at the law and land

and involve the selling of shares of non-existent farms to people who desperately need land on which to settle.

Other companies inflate the price of the farm being bought and pocket the difference. During the surveying of the land, they again inflate the fees and pocket the difference.

Shareholders are kept in the dark by the officials as to the true value and acreage of the farm and they sometimes end up paying double or three times the amount they should have paid for their land.

Politicians, too, have destabilised societies which may threaten their power-base by becoming too powerful or popular.

Perhaps a synopsis of the complaints that have been raised in the recent past by shareholders of some of these land-buying companies, either against their chairmen or the administration, could help explain some of the harrowing experiences Kenyans undergo while in search of settlement.

The Mbo-I-Kamiti land-buying company in Kiambu District is a well-known white-elephant and a land-buying company on its knees. If there is one company that has been wracked by intractable administrative and financial mismanagement is Mbo-I-Kamiti.

In August last year, more than 300 members of the debt-ridden company were evicted from their farm in Kiambu by armed administration policemen.

A number of the evicted shareholders who called at Nation House alleged that the Kiambu District Commissioner, Mr Samuel Oreta, who is the chairman of the company's board of directors, sent policemen armed with rifles and batons to evict the shareholders.

The shareholders also claimed that scores of women and chil-

dren were injured in the incident and property of undetermined valued damaged.

A number of women, tears streaming down their cheeks asked: "Where do they want us to go with our children? We have lived here for over 20 years as shareholders of the company."

The debt-ridden and controversial company, which owns a number of farms in Kiambu, Nivasha and Murang'a, owes the National Bank of Kenya more than Sh66.8 million.

Property on the estate has since 1988 been lost or misused and there is now only a sisal factory in operation.

The endless woes facing Mbo-I-Kamiti provoked the *Nation* to write an editorial on August 7, 1991.

The editorial said: "The Mbo-I-Kamiti land-buying company, it would appear, is incapable of shedding controversy and problems. Those who have been following its troubled history must be wondering what makes this 6,000-member company so crisis-prone."

"After all, once a land-buying company has acquired a farm, the law requires that sub-division among shareholders follows immediately, after which the firm is required to wind up. The basis of this requirement was that too many poor and ignorant Kenyans found themselves on the receiving end of beguiling schemers when the formation of land-buying companies was in the vogue."

In January 1989, the then Uasin District Commissioner, Mr Ishmael Chelang'a, was accused in court of harassing 50 members of the Eldoret Kaptich Farm Company and frustrating their efforts to buy the controversial land.

At about the same time, the Laikipia District Commissioner, Mr John Nandasaba, sacked the

Mutukania-Ngwataniro land-buying company's management committee, and the shareholders chose a new team to sort out the mess in the giant organisation.

Addressing over 3,000 members of the company at Donyo Loip centre in Ng'arua, Mr Nandasaba said the old committee had been in office for more than 17 years but had never thought of giving title deeds to the members.

In February 1989, the Rift Valley Provincial Commissioner, Mr Yusuf Haji, dissolved the management committee of the Kagumo-Munyaka Farmers Company in Nakuru, ending a 17-year dispute over alleged illegal shareholders.

He replaced the committee with a five-man team to be headed by the area District Officer, Mr Paul Yatich.

More than 400 shareholders bought the 1,500-acre farm at Subukia in Nakuru District in 1972, but have since then been wrangling over alleged "shadow shareholders" said to have been recruited by directors without the consent of the original members.

In a separate development, Mr Haji, thwarted an attempt by feuding directors to evict 431 shareholders from a company farm.

Former and incumbent directors of the Kiambu Nyakinyua Farmers Company at Longonot in Nakuru District had been feuding for more than a decade over the 431 "shadow shareholders" said to have been recruited without the consent of the original shareholders.





The innocent face of this girl is in sharp contrast to the grim faces of these women at a Nyakinyua Investment Company Ltd shareholders' meeting: Tales of illegal issue of title deeds.

The shareholders - all women - own a 14,700-acre farm near the dormant Longonot crater. The shareholders bought the farm in 1970 but have since been quarrelling amongst themselves over the alleged "invasion" of the property by "back-door" shareholders.

In February 1989, many members of the 1,264-strong Nyarigu Farmers' Company left the Nanyuki Municipal stadium in tears at the weekend.

They had gone there to ballot for plots but most of them got none and could not even trace their names on the members' role.

One member, Mr Kinga Gitonga, was kicked out of the stadium by police when he raised a complaint.

In March 1990, a racket was exposed in Muchongoi Division of Baringo District in which a land-buying company had registered members to buy non-existent land.

The racketeers, claiming to belong to the Matigari Farmers Company in Laikipia District, had demarcated parts of Government reserve land with beacons and given it phony numbers in a bid to lure would-be members.

The Baringo DC, Mr Cyrus Maina, who made an extensive tour of the area, ordered the police to arrest those behind the racket.

In July 1990, chaos erupted at a Nyakinyua Investment Company Ltd shareholders' meeting after a racket involving the illegal issue of title deeds was uncovered.

It was discovered that 601 title deeds were issued to non-existent shareholders. The shareholders lost their patience when they were informed that the plots had been allocated to rich people who were also shareholders.

The MP for Embakasi, Mr David Mwenje, was in October, last year, heckled while addressing members of the controversial Embakasi Ranching Company during their annual general meeting at Ruai, 25 kilometres from the city centre.

But the hecklers were surrounded by armed administration policemen and warned to stop booing the Assistant Minister.

In February, this year, a former chairman of Nyakinyua Investments Company, a private surveyor, his wife and a sister, a former director and another person were charged in a Kiambu court with forging title deeds.

Would the best policy be to wind up these land-buying companies which have caused such anguish to shareholders or should there be legislation to regulate their activities?

There is no doubt that these companies have satisfied a basic human need regardless of their shortcomings. As long as there are squatters in the country and as long as the Government has not taken the entire responsibility of providing people with shelter, it would be imprudent to legislate against these companies.

Perhaps, the best course would be to monitor the operations of these companies to ensure that they do not steal or exploit those in need of settlement.



LAND SERIES 5 *Akinwale*

# Matter of squatters against owners in the Coast Province

From Voi in Taita/Taveta to Fez in Lamu, from Garsen in Tana River to Ukunda in the Kwale District in Coast Province, the cry is one. The cry is: We have lived here since the days of our great grand parents cut teeth and we are not moving.

It is the cry of thousands of squatters resisting eviction from what they consider to be their land because they say they have lived on it for many years. It is a scenario for violence at times.

It is also the mix of issues that makes and unmakes politicians and, ultimately, the material for a protracted tug-of-war between the squatters and those who claim rightful ownership of the land.

While the issue of squatters is not peculiar to the Coast Province, it is there that squatter claims to land based on clan and tribal groupings are most regular and persistent. The area also exhibits the extremes of absentee landlordism, a cause and a catalyst of the squatter scheme.

The squatter problem in the Coast Province is also peculiar because, whereas in many other places in Kenya it is a rural problem, it is both a rural and urban problem at the Coast.

Commented a Coast provincial administrator: "Here both Government and private land has been invaded by squatters, some of them with very strange claims to it. How can a squatter seek protection against eviction claiming that he has lived all his 50 years on plot marked for a school right in the middle of Mombasa town?"

The problems of squatters in the Coast Province are perhaps more manifest than in many other areas in Kenya because land consolidation and adjudication are a recent activity. As that process starts and progresses, cries of "foul" are constantly being heard from those being evicted from where they thought they would live for ever.

For example, while that process was completed in most of Central Province back in the late 1950s, it was only started in Kilifi District in 1970. To date, only about 130,000 hectares involving about 12,000 parcels of land have been adjudicated.

In the process of starting land adjudication and consolidation, families are waking up to the fact that they have been living on borrowed time. They are claiming that they have such roots in the soil that they cannot be moved.



Mr Nassir: Case for locals

In this fifth article in our authoritative land series, Associate Editor **WAHOMU MUTAHI** profiles the squatter problem in the Coast where, earlier this year, cries of "invasion" highlighted the sensitivity Coast people have towards land and what they see as encroachment by up-country folks. On Thursday, Meru provides an example of problems typical in densely-populated ethnically exclusive districts.



Mr Mbela: Survey complete

The Mazrui land saga in Kilifi is illustrative of some of the complexities of land ownership in the Coast Province.

That influential family traces its roots to the years of the dhow trade between Arabs and the Kenyan coast, and over the years has produced a distinguished crop of administrators, traders and scholars.

The same family had a legal claim to land in Kilifi's Takaungu area until recently when Parliament repealed the Mazrui Trust Act. Before then, the family could utilise the land or let it lie idle. They chose the latter and the result was the occupation of the land by residents, among them the Giriama and Chonyi people. Before then, those communities were considered squatters by the Mazrui Family. Now, the former call the latter squatters.

The family traced its ownership of the land to certificates of ownership issued in 1914, and to legal sanctions given to them by a Parliamentary Act of 1931. Of the recent legal turn about, a Mazrui Family elder said: "Ours is private property. The action against us is illegal, dangerous and an unprecedented example has been set in Kenya."

None other than the Minister for Lands and Housing, Mr Darius Mbela, went on location in June this year to announce that

land adjudication and registration register was ready. He said that despite earlier legal claims by the Mazrui Family, the Mijikenda communities occupying the land were the true owners.

In those circumstances, members of the Mazrui Family could now claim to be the rightful owners of the land since some of them have lived there all along. But then, here is a peculiar case in the Coast of a family opposed to an ethnic group.

The potential for confrontation takes other dimensions elsewhere in the province, and sometimes it is fuelled by politicians. Earlier this year, when the talk of "outsiders" - meaning Kenyans who were not born at that particular place - invading the lands of the indigenous people by moving there to buy land was current became rampant, it was clear who the Mombasa's Karu chairman, Shariff Nassir, was referring to when he condemned such "invasions".

The party branch boss was reported to have claimed that two-thirds of land in the Coast Province was owned by "outsiders". He declared: "All the best land in Coast Province is owned by up-country people. I am appealing that the remaining land be reserved for the Coast People. They should not be uprooted further."



The apathy of homelessness: A young boy with his goat ponder a hopeless future. They were thrown out of "home" at Diani in the South Coast where they were squatting - File picture

A spokesman of the Mombasa-based Teachers Trust made an appeal during the same time for 80 per cent of the land in the Coast to be allocated exclusively to Coast residents.

The "foreigners" are mainly Kikuyu and Kamba people who have settled in the various settlement schemes in the Coast Province. There are seven such settlement schemes in Kwale, the most notable one in "foreign" content and exploitation of agricultural potential is the Shimba Hills one which attracted a significant Kamba population. Other settlement schemes are the Tezo/Rola, Gede and Magarini.

In Lamu District, the Lake Kenyatta Settlement Scheme funded by the Kenya and German governments at Sh112 million is predominantly occupied by Kikuyu people, particularly veterans of the Mau Mau war. It has 14,000 hectares divided into 3,600 plots of four hectares each, representing an agricultural dynamism that has become part of an area that has hitherto undeveloped.

This movement of new population represents a cross section of Kenya's major ethnic groups. For example, from 1969 to 1979, some 6,104 Kikuyus, 427 Luos, 363 Luhyas and 269 Taitas were recorded to have entered the Lake Kenyatta and Hindi/Magogoni settlement scheme. The trend in-

creased during the 1979-1984 period due to the expansion of the schemes.

"Outsiders" are also found in Bura, Hola and Garsen irrigation schemes in Tana River District, but their presence there is not as pronounced as in Kwale and Lamu.

The accusations of "invasions" and "land grabbing" offer much political capital but on the ground, often have little truth. In none of the settlement schemes were the local people uprooted to give room to strangers. If anything, the locals have been selling the land allocated to them to non-residents as in the case of the Tezo/Rola settlement scheme in Kwale.

Despite the cries of foul by squatters, the provincial administration is determined to chuck out those it deems to be occupying land illegally. The administrators maintain that individual legal rights must be respected despite communal protests.

"In order to accelerate development, some of the State and Trust Land should be acquired for planning and eventually prepared for orderly settlement of the most deserving cases," an official said.

He added: "A major need in the district is to resolve the land tenure system and resettle the squatters. Much land in the dis-

trict is owned by absentee landlords which leads to squandering since the land has been left idle. Some of this land has good potential for development. Squatters are not ready to develop the land since they can never be sure when they can be evicted."

In Kilifi, a land registration officer said that the Government had been frustrated by the mismanagement of plots. "More often than not, there have been plots thought to be either vacant or abandoned but on the ground, one will always find a landless person illegally squatting on the plot."

"At the same time, some land deals have been conducted through shady deals where the purchasers have bought the tree crop only, leaving a third party to make claims on the land with the subsequent result creating problems for farm utilisation."

Such poor utilisation of the land includes sticking to old traditional subsistence crop farming and widespread unplanned housing.

Such arguments militate against squatting but then it looks like it will take years, for example, to silence and satisfy 300 families occupying 1,000 acres at Mazeras who claim that it belonged to their grandfather and that they shall not be moved.

# Land: 2 killed in Trans Nzoia

Daily NATION 19/12/91

PROVINCIAL

By KENNEDY MASIBO  
and TOM MATOKE

Two people were killed and five others, two of them children, were seriously injured on Monday night during a clash over a land dispute in Kwanza Division, Trans Nzoia District.

Twenty-nine houses were burnt down during the clashes at the Sabaot and Mango farms where groups have been engaged in disputes over land.

The Kitale Officer Commanding Police Division (OCPD), Senior Superintendent Kiplagat arap Soi, confirmed the incident, saying that the situation was now calm and that security had been restored.

He added that several people were assisting the police in their investigations.

The District Commissioner, Mr Nicholas Mberia, visited the trouble-hit area and assured wananchi of the Government's protection.

The names of the dead were given as Mr Ronald Simiyu and Mr Alfred Nyongesa. Mr Simiyu's two children were wounded during the clash, fought out with bows and arrows.

The dispute is between members of the Sabaot and the Luhya communities.

The area councillor, Mr Fred Opindo, told the *Nation* yesterday that the attackers are believed to be hiding in caves on the

slopes of Mt Elgon.

He said that the area assistant chief had also been threatened by the same people and is "living in fear".

Councillor Opindo asked the Government to screen members of the Sabaot community, whom he called "trouble-makers and foreigners".

He said the land dispute should not be politicised.

Meanwhile, over 200 people were left homeless when 40 houses were burnt down in fresh land clashes in Nandi District.

The incident, in which property worth thousands of shillings was destroyed, occurred in Chepterwai Location, Mosop Division, after two different communities in the area each demanded that the other leave.

Following the clashes, the Nandi District Commissioner, Mr David Mativo, convened an urgent *baraza* to call for an immediate end to the violence.

Mr Mativo warned the two communities against taking the law into their hands and said that the Government would do everything possible to bring the culprits to book.

He added that every Kenyan had a right to live in peace anywhere as long as one acquired land legally.

The DC told the *Nation* last evening that security officers had been deployed to the area and a

number of people had been arrested and were helping the police with investigations.

In October this year, six people were killed and about 22,400 displaced following land clashes which started in Tindiret Division before spreading to the Kericho and Kisumu districts.

Later, about 300 people appeared in different courts charged with arson.

Yesterday, the DC denied that the Mosop incident was related to the earlier land clashes, saying that it was "purely a land controversy".

He did not elaborate the cause of Monday's clashes but promised to release more details later.

A man from Mosop, who sought anonymity, said trouble started after a member (name withheld) of the Forum for the Restoration of Democracy (FORD) visited Chepterwai on Wednesday evening and addressed a small group of people.

He said after the FORD member had left, one community stole a unknown number of cattle.

The other community retaliated by setting 40 houses on fire, he said.

By the time we went to press, a number of armed and riot policemen had camped in Chepterwai ready for any act of hooliganism.

## \*Pupil shot dead in land row

Kisii

By NATION Correspondent  
A Standard Eight pupil was shot dead yesterday and more than 50 houses burnt in a land dispute in Kisii District.

Ayora Mabiria was shot dead by a stray bullet as policemen from Nyangusu moved in to avert the clash between two warring clans in Nyamache Division, Bobasi constituency.

The clash involved Bosanza and Nyangande clans of Bosingi Sub-location.

Trouble started on Sunday afternoon when a group of people moved in to prevent one of their clansmen from being evicted by another man who had a court eviction order.

The group turned against those with the court eviction order and set on fire a number of houses, which were burning up to the time we went to press.

Angry villagers chased away the area's assistant chief, Mr Stephen Obonyo, burnt down his home and took away his cattle.

The *Nation* found Mr Obonyo, who is due for retirement on December 31, at Emenwa Market.

The assistant chief was accompanied by police officers from Kisii, led by their OCPD, who had gone to quell the trouble.

## New clashes over land

By Patrick Wakhisi

ARMED police were yesterday despatched to Kisaida Settlement Scheme near the Western and the Rift Valley provincial borders to restore order after arsonists set on fire about 100 houses in a tribal clash over land.

And the Western Deputy PC, Mr Martin Sika, assured wananchi in the area that peace had been restored following the incident which left several people displaced.

Mr Sika also told *The Standard* that some residents of

Kakamega District crossed into Rift Valley Province to assist their fellow Luhya ethnic group who had their houses burnt.

The administrator stated that he had despatched the Kakamega DC, Mr Andrew Mondo, and senior security personnel to monitor the situation. He, however, urged wananchi in the province not to cross into the Rift Valley to avoid further clashes.

KENYA TIMES, FRIDAY, DECEMBER 6, 1991

## SOLVE LAND PROBLEMS NOW

RECENT events have shown that land issues are very sensitive and could endanger peace. Timely action should be taken to avert future problems. Despite the fact that the Coast has been bedevilled by the squatter problem, people from outside the province have acquired

large tracts of land by dubious means and even foreigners are free to buy land. This is the position which obtains in Malindi. Manda and now spreading to Lamu and the archipelago. Just because land happens not to be adjudicated does not mean it

belongs to anybody. It is the heritage of the population of the area who in many cases has been displaced. The Coast is sitting on a time-bomb which must be defused now.

Seif Mohammed Seif.  
Mombasa.

James Mwaura and his brother (name withheld) were discussing an unknown domestic

Police reported that the six had gathered at a grandfather's home on Surungai farm to sort out an old land problem; but no sooner had they settled down to start discussions than a mob of relatives surrounded them and set upon them with clubs, stones and pangas. They fled in all

A fierce fire erupted in Pan-African and Biashara Banks buildings on Banda Street in Nairobi on Monday. It destroyed roofs of the two buildings, police said.

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the debt burden, low  
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concluded that with the  
completion of programme reviews  
and negotiations on  
debt adjustments and  
financing that many an African  
country had to undertake  
donor community in

in International Journal  
of Political Science  
and Economics, Vol. 1, No. 1

DAILY NATION, FRIDAY, AUGUST 18, 1989

# Land sale stopped by court

Mr. Macharia was notified of the intended sale of the land on July 25.

Small families  
ordered to 12  
reached  
household  
with about  
stock in  
3,600 goats  
The Somali  
Kenya illegal

...died over the  
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# Families protest removal

**By NATION Correspondent**

More than 5,000 people in Kikumbulyu Location in Kibwezi Division, Machakos District, have disputed their removal from a 2,000-acre piece of land by the University of Nairobi.

The university wants to build a dry land research station on the land where the families have been staying for the last 30 years.

The area Councillor, Coun John Mwangangi Kamuti, said the university's decision to move the station's headquarters from its current location at Kasayani to the adjacent land would force evacuation of the families to create space for the research station.

Coun Kamuti, who is also the local councillor, said some of the affected families had developed their farms and put up permanent buildings.

He urged the university officials to reverse their decision of moving the headquarters.

The councillor said that already thousands of people who were ordered to move out of Chyulu Hills in the division had not been allocated alternative land by the Government. It would be wrong to displace the 5,000 families, he said.

Coun Kamuti said people in the division were always being displaced because the Government had delayed land demarcation.

He accused employees of the university of uprooting cowpeas from the disputed land.

Coun Kamuti appealed to people whose crops had been destroyed by the university officials to be patient as area leaders were going to raise the issue with the authorities.

He appealed to the Government to speed up land demarcation in Kibwezi Location.

## Land firm wound up

The Thika Roadside Estate Land-buying Company Limited has been wound up.

The chairman, Mr W. G. Murathe, told shareholders who had not collected their title deeds to do so immediately.

During a winding up meeting held at the estate in Ruaraka, Nairobi, shareholders resolved that all the company assets should be auctioned and the money put to any use deemed fit for the benefit of the shareholders.

The chairman told the meeting that the board of directors had been working hard to ensure that shareholders did not suffer unnecessarily.

He said the directors had also worked hard in line with President Moi's directive that all land-buying companies be wound up with shareholders being given their title deeds.

He said 194 title deeds had been given out and the remaining 52 should be collected immediately.

Mr Murathe asked those who still had to pay money towards the winding up process to do so when collecting their deeds.

President Moi directed that all land-buying companies should be wound up and set December 1990 as the deadline for those that had not concluded subdivision of farms and issuing of title deeds. (KNA)

## Land sale legal, says ministry

By TIMES Reporter

The Ministry of Lands and Housing yesterday announced that it would soon recover a title deed now in the custody of a Machakos mother of eight who has claimed to have been swindled their family land which was sold by her husband leaving them unsheltered.

The Ministry stated yesterday that the sale of the controversy-ridden 4.4 hectare land was carried out legally only that the original title deed should have been recovered from the wife, and destroyed. That was exactly what the Ministry would now do.

The Ministry was directly reacting to a Kenya Times page one story on Wednesday this week in which it exclusively exposed the plight of a Machakos 61-year-old mother of eight who has claimed to have been swindled by her husband during the sale of the 4.4 hectare land and later abandoned only to be forcefully evicted by the new owners and her house burnt down.

Mrs. Zipporah Mutunga Musembi, of Kyamatula sub-location, Wamunyu location, of Mwala division in Machakos District has already appealed to President Moi to come to her rescue.

The elderly and illiterate mother told us between sobs that her man, Mr. Musembi Muange, sold their only piece of land without consulting any of the members of her family and they only came to know of it when the deal was already concluded and sealed.

According to the documents available to Kenya Times the buyers Mr. Willy Lumumba Masila bought 3.34 hectares for Sh5,000 while Peter Masila bought 1.04 hectares for Sh2,500.

Yesterday, according to a statement signed by the Permanent Secretary for Lands and Housing Mr. J. K. Sang, maintained that the transactions involved in the sale of the land parcel way back in 1986 was regular except that the original title deed for the land which is still being retained by the wife, Mrs. Zipporah Musembi should have been recalled and destroyed.

The statement said that the Ministry was now sending for the title deed which is in the custody of Mrs. Musembi, for destruction and cancellation.

Recalling the facts of the case, the PS noted that the parcel number Machakos/Wamunyu/Kyamatula/53 was registered in the name of Musembi Muange of identity card number 6122402/69 on October 5, 1973.

Mrs. Muange was later issued with a title deed of his 4.4 hectare land on May 8, 1984 Mr. Sang said.

The PS noted that Mr. Musembi Muange sold portions of the land to two people in 1984. Willy Lumumba Masila bought 3.34 hectares for Sh5,000 and Francis Peter Masila bought 1.04 hectares for Sh2,500.

KENYA TIMES, THURSDAY, OCTOBER 4, 1990

DAILY NATION, THURSDAY, OCTOBER 18, 1990

## Land row: Clan wants oath to be administered

By IMANENE IMATHIU

One of the warring clans involved in a violent clash 10 days ago in Mutuati Location, Ntongiri Division, in Meru District, yesterday called for the administration of the dreaded *Nthenge* (goat) Meru oath to settle the 47-year-old land dispute.

The oath involves the killing of a goat with the killer being stark naked, the *Nation* learnt.

Meanwhile, the Ntongiri DO, Mr. Mbogho wa Ciriba, yesterday denied that three people were shot when police opened fire at Kamao Ambalus Village, following a fracas involving the Antubalingi and the Antubarunga clans.

Three representatives of the Antubarunga clan, Mr. Kamakia, Arunga, Mr. Stephen Kathia and Mr. Murungi Amwiji, claimed that on March 11, last year, following demolition of their houses and destruction of their crops by the Antubalingi clan, the PC, Mr. Johnson Kibera, had authorised the two clans to undergo "the traditional goat killing oath to determine the rightful owners of the disputed piece of land".

Mr. Arunga produced a copy of *The Standard* of March 11, 1989, and referred to a story headlined *DO orders oathing in Meru land dispute*.

The clan representatives said that, while clans were ready to go

through the oath, a DO turned up and cancelled the ceremony.

Mr. Arunga said that the *Nthenge* oath is conducted by making representatives of rival parties to carry a *Nthenge* on their shoulders while stark naked. Another man walks behind and stabs it until it dies.

The man carrying the goat repeatedly says that the land belongs to a particular clan and should the claim not be true, "let me die like this goat".

The oath is believed to be effective and that, should a family take land that belongs to another, all their members die as a result of the oath.

On Tuesday, when the *Nation* visited Maua Hospital, Mr. Philip Kaberia, was handcuffed to his bed, Mr. Richard Kithia's leg was in cuff locked to the bed, Ms. Lois Mukami, who was not handcuffed, said she was under arrest.

Dr. John Lakuma confirmed that the three, who were recovering from bullet wounds, were under arrest.

On the same day, a DO's baraza, scheduled to be held at Kamao market to discuss insecurity in the area, failed because the DO did not turn up.

Contacted for comment, the DO, Mr. wa Ciriba, refused to confirm the arrest of the three or any one else. He stated that the security issue was in his Thursday meeting's agenda.



# Mbela urged to stop 'illegal' land allocation

THE Minister for Land, Housing and Physical Planning, Mr. Darius Mbela, has been urged to intervene and stop the mass allocation of Government plots in Kizingo Ward, Mombasa to private

developers.

The appeal was made yesterday by the Kizingo Ward Councillor, Mrs. Margaret Ogot, who claimed that

"untouchable" private developers were claiming that Government houses affected in the area had been condemned and that they would demolish them and build posh houses.

Mrs Ogot claimed that the "untouchable" developers appeared powerful and influential enough to carry out surveys and construction in the presence of many senior civil servants still living in Government houses in the area.

She said it was unfortunate that some of the houses said to have been condemned were still good but resident civil servants were living in fear of

By MUSSA JEFWAH

being evicted. She claimed that some senior civil servants residing in the area were much to their surprise finding surveyors and developers demolishing their houses as they returned from work.

She appealed to the minister to investigate the influential people behind these constructions. She further called for a probe of private developers in the area.

Councillor Ogot said she was making a humble appeal to the Minister for Lands to order the Commissioner of Lands to put an immediate stop to the wanton plot allocation in Kizingo area, and to revoke all house allocations already approved.

Meanwhile, the Jua Kali Association of Mombasa has been advised to resolve the problem facing them at the Kaa Chonjo area amicably instead of engaging in press

Wars with the authorities.

The advice came from the Mombasa Kanu branch secretary, Mr. Rodgers Musechu, who said that the Jua Kali people in Mombasa should instead be grateful to the Mombasa Municipal Council, the District Commissioner's office and the party branch for supporting them fully.

He said it was not proper for the Jua Kali artisans to start a war against the municipal council as they have not yet legally acquired the Kaa Chonjo area whose ownership they are claiming.

He said although the area had been earmarked for them, they had no documents to support their claims adding that they stop fighting the council.

He said Kanu Mombasa branch fully supported Jua Kali artisans in line with Government policy of promoting the sector, but said when some people sort to be too clever and do things that are against the party and the Government, then Kanu was bound to intervene.

DAILY NATION, TUESDAY, AUGUST 7, 1990

## Mungai on land use

By NATION Correspondent

Proper land management strategies are needed to sustain increased food production without depleting land resources, the Minister for the Environment and Natural Resources, Dr. Njoroge Mungai, said at the weekend.

Dr. Mungai said depletion of natural resources should be reduced through afforestation and the conservation of biological diversity.

The remarks were contained in a speech read on the Minister's behalf by an Assistant Minister in his Ministry, Mr. James Muregi, during the official opening of a seven-week regional training course on land use management and extension at a Nairobi hotel on Sunday night.

# Son kills father in row over family land

By WILLYS OTIENO

A man was hacked to death by his son after a quarrel between them over family land lease in Kericho District on Monday.

The police headquarters reported yesterday that the man quarrelled with his son about a piece of land he had leased out to another person.

The quarrel heated up and the son grabbed a panga and slashed him on the head, killing him instantly.

The body was taken to the Kericho District Hospital where police who were informed about the incident by other members of the family.

At Kapsol Village, in Nyamori Location of Kakamega District, Mr. Ernest Mumba was hit on the head while walking by a person he disagreed with over land ownership.

He died on the spot.

DAILY NATION, FRIDAY, SEPTEMBER 27, 1989

## NATIONAL NEWS

# Controversy erupts over school land

By WAMAHU MUYA

An attempt to grab school land reserved for Martin Luther Primary School in Hamzah Estate, Nairobi, failed when surveyors found demarcating the land were whisked away by administration officials on Wednesday.

However, unknown people have already been granted a portion of the land reserved for the school which has been given a new number, Nairobi/LR/209/1046, the school's chairman of the Parents and Teachers Association, Mr. Anthony Mathenge, said.

An attempt to establish who has been allocated the land failed because the files on the transaction could not be traced at the Nairobi land office, he said. The surveyor's vehicle, which belongs to the City Commission Planning Department, was still at the Makadara District Officer's office yesterday morning.

Narrating the incident, Mr. Mathenge said the surveyors had been sub-dividing the land which had been reserved for the school's development into plots from the beginning of this month. The *Nation* found recently erected beacons in the school compound.

The surveyors reportedly entered the school through the fence and started erecting the beacons. The matter was report-

ed to the local administration and they were picked up, Mr. Mathenge said.

However, the area D.O., Mr. Wachira Wangombe said, "Both the school and the land belong to the commission." He then referred the Press to the PC's office. However, the *Nation* learned that Mr. Wangombe was at a meeting with the city planning department officials on the issue.

Mr. Mathenge said this was the second attempt in one year to grab the school's land and allocate it to private developers. Last year, a financial institution fenced off part of the school land and started offering it for sale. But the PTA complained to the PC. Mr. Fred Waiganjo, the local MP, Mr. Fred Oundo, and the Committee on Urban Land Use, Planning and Development.

The committee was set by the President last year to ensure that there was enough land for public amenities particularly schools.

Mr. Mathenge said that although the planned sale of the land had aborted, he feared the current move to grab the land would interfere with the school's development.

The school was allocated about 20 acres of land in 1977 by the then City Council engineer.



# Three shot as clans fight over land

By NIXON KARIITHI

Police shot and seriously injured at least three people as fierce fighting raged between two clans in the Maua Division of Meru District yesterday afternoon.

An administration official confirmed last night that three people were injured and admitted to the Maua Methodist Hospital.

According to an eyewitness, the Rev Joseph Gichunge, the running battles between clansmen from the Amwathi I and Amwathi II sub-locations lasted nearly three hours before squads of policemen could restore calm.

The Rev Gichunge, who called the *Nation* by telephone, said that rowdy crowds of over 1,000 men from the two sub-locations were engaged in the clashes which started at about 1 pm and continued until 4 pm.

The Rev Gichunge is the Vicar in charge of the Church of the Province of Kenya's (CPK) Ntonyiri Church, which is in the heart of the trouble-torn area.

Trouble was reported to have initially started last Friday and resulted in minor clashes with no confirmed serious injuries.

The Rev Gichunge claimed that warring clans from the two sub-locations had been locked in a land boundary dispute for a long time. The dispute had also slowed down the process of land demarcation in the area.

The Amwathi area is about 65 kms from Meru Town on the Maua-Mutwate Road.

The Rev Gichunge said that two men, a woman and a small

boy were shot as the police tried to quell the fighting.

There were more than 1,000 men fighting. When things became serious, they (the police) started shooting at the crowds and wounded a woman and a schoolboy.

The two men and the woman, he said, had been admitted to the Maua Methodist Hospital.

However, a source at the hospital declined to comment on the matter and referred the *Nation* to the hospital's medical officer in charge, Dr Lakuma, who was not available for comment.

The Officer Commanding Station (OCS) at the Maua Police Station also refused to comment saying details regarding the clashes could only be furnished this morning by the Meru Officer Commanding Police Division office where he had filed a report.

According to the Rev Gichunge, the security squads were made up of administration policemen from the Kabaci Post and regular police from the Mutwate Station.

The Vicar blamed local administrators for being slow in resolving the protracted controversy saying that swift action by the area chief's office could have averted the bloody clashes.

He said church services in the troubled area were disrupted as fighting crowds started burning houses.

At a local Revival Church, he added, a fund-raising meeting was called off.

# Registration of land is nullified

By Boniface Kaona

THE REGISTRATION of a piece of land in the name of a businessman by the Kiambu Land Registrar was obtained by fraud, the High Court declared in Nairobi yesterday.

Mr Justice G. S. Pall observed that the businessman, Mr Michael Karanja Kaniaru, was lucky that he had not been charged in a court of law with knowingly deceiving and misleading the Land Registrar by failing to give true and honest information in respect of his interest in the piece of the land. The judge pointed out that any verdict or order obtained from a court by suppression of material facts, as in this case, was a fraud.

Mr Justice Pall was delivering judgment in a civil suit in which another businessman, Mr Raphael Njuguna Mwaura, had sued Mr Kaniaru and three

others, including Mr Gikonyo Kariuki, the Land Registrar and the Chief Land Registrar, for nullifying a sale agreement in respect of a 1.22-hectare piece of land.

He sought a declaration that a land certificate issued to him by the Land Registrar in July 1975 was still valid and that the land certificate issued by the same Land Registrar in favour of Mr Kaniaru in respect of the same piece of land in January 1987 was issued fraudulently, was null and void and should be cancelled.

Mr Justice Pall noted that the plaintiff had stated that he bought the land in dispute in 1974 from Mr Kariuki, who purportedly signed the transfer in his favour, and the Gatundu land control board granted consent for the transfer. He said after the land had been registered in the name of Mr Mwaura, he (Mwaura) came to know that Mr Kariuki had fraudulently agreed to sell the same land to Mr Kaniaru.

THE STANDARD, Monday, September 17, 1990.

## Land buying firm probe launched

By Waite Mwangi

CRIMINAL Investigation Department officials have launched a probe into the alleged embezzlement of millions of shillings belonging to the Ndathi Mugunda Land Buying Company, by a company director.

The investigation follows an outcry by members alleging misappropriation of funds and massive fraud among other irregularities perpetrated by the said director.

On Saturday, the Nyeri DC, Mr Joseph Mutemi, appointed a nine-man probe committee to sort out the company's financial mess which dates back to 1979. The DC gave the probe committee up to October 27 to complete their findings.

The probe team includes Provincial Administration officials and committee members of the company, besides the CID personnel. During a stormy Annual General Meeting held at one of the company's farms near Mweiga Town on Saturday irate members took their chairman, Mr Newton

Gitonga, to task, demanding that he explain all financial transactions he had undertaken on their behalf, some of which they alleged were highly irregular.

The 2,400 members sacked Mr Gitonga and replaced him with Mr Gabriel Waweru.

Members alleged that despite the company having bought various farms 15 years ago, some of the land had never been subdivided to date.

The members demanded that the besieged chairman deposit Shs 86,000 with the DC's office within a week for onward transmission to the Department of Settlement to facilitate the transfer of one of the farms to the company.

Mr Gitonga, who was present, denied all the allegations levelled against him and insisted that he was innocent.

Mr Mutemi assured members that all the allegations would be investigated and if confirmed the culprit would be prosecuted, adding that the Government would not condone people entrusted with public money to swindle members.

## False land deal: Trader is charged

By Alphonce Mung'atu

A BUSINESSMAN appeared in a Kibera court yesterday charged with obtaining more than Shs 625,856 by pretending that he had 650 acres of land to sell.

Kalunchu ole Kisau, denied the charge before Senior Resident Magistrate, Mr M.L. Kangatta.

The accused denied that between last March 30 and July 24 in Kajiado District of Rift Valley Province and with intent to defraud, he obtained Shs 625,856 from Mary Wairima Njoroge by falsely pretending that he was in a position to sell 650 acres of land to her. The magistrate fixed the hearing for October 18.

THE STANDARD, Thursday, August 16, 1990.

# The land board's consent is a must

Mbuthia Charagu (appellant) versus Kiare Kaguru (respondent) in Civil Appeal No. 87 of 1986 before Mr Justice Nyarangi, Mr Justice Gicheru and Mr Justice Kwach, judges of appeal. Judgment was delivered on January 17, 1990.

Unless there is consent from the relevant land control board, all transactions relating to agricultural land intended to be transferred to another party are void for all purposes.

The Court of Appeal so held in the above case in which Mr Kaguru sought an order compelling Mr Charagu to sign the transfer forms in respect of land parcel Kiambu/Kanunga/51 which he had sold to him.

Delivering judgment, Mr Justice Nyarangi said Mr Kaguru sought an order that Mr Charagu sign forms to transfer the land which he had purchased in 1964. The appellant had counter-claimed the two-and-a-half acres and succeeded, and Mr Kaguru had been ordered by the Kiambu Resident Magistrate's Court to transfer the land to Mr Charagu.

In the Court of Appeal ruling, Mr Justice Nyarangi said:

## Law

On November 4, 1980, the executive officer, Kiambu Resident Magistrate's Court, signed a transfer form on behalf of the respondent in respect of the two-and-a-half acres of land mentioned above. On the same date, an application for the consent of Kiambaa Land Control Board in regard to this transaction was made. This consent was given on December 2, 1980.

Meanwhile, the respondent had appealed to the superior court against the decision of the Kiambu Resident Magistrate's Court. The superior court allowed the respondent's appeal, set aside the decision of the Kiambu Resident Magistrate's Court, and ordered that the relevant land register as relates to the two-and-a-half acres of land aforementioned be rectified by deleting the appellant's name and substituting the respondent's name. The appellant was also to vacate the said portion of land. The appellant has appealed to this court against this decision.

From the available record of the proceedings, in the Kiambu Resident Magistrate's Court,



Mr Justice Nyarangi: Found no merit in appeal.

there is no indication that the transaction relating to the two-and-a-half acres of land counter-claimed by the appellant obtained the necessary consent of the Kiambaa Land Control Board.

Subsequent consent of the said land control board was after the Kiambu Resident Magistrate's Court had entered judgment for the appellant in respect of the land counter-claimed. That did not cure the illegality of the transaction aforesaid. Without the requisite consent of the relevant land control board, the said transaction was void for all purposes - see Section 6 (1) of the Land Control Act, Chapter 302 of the Laws of Kenya.

Because of this, if not for any other reason, the decision of the superior court to allow the respondent's appeal was correct and the orders made subsequent thereto cannot be faulted. We can find no merit in the appellant's appeal. The same is, therefore, dismissed.

As the respondent did not appear at the hearing of this appeal, although there were indications that he was aware of the hearing date, we make no order as to costs.

# Land firm's 1,582 title deeds ready

Standard Reporter

THE Ministry of Lands and Housing has prepared 1,582 title deeds for members of Nyakinyua Investment Company and handed them over to the Kiambu District Commissioner for onward transmission.

The other 238 title deeds are not ready because the relevant transfer documents have not been signed by the land owners.

This was said by the Minister, Mr Darius Mbela, when he addressed a Press conference in his office yesterday. Mr Mbela, flanked by his assistants, Mr G. Mutiso and Mr E. Bomett, was reacting to press reports that 601 plots belonging to Nyakinyua were illegally allocated and their title deeds irregularly issued.

It was also alleged that the Government had confiscated over 1,800 title deeds from a

lawyer who had purportedly acquired them on behalf of Gatundu Nyakinyua Company. --

Mr Mbela said out of a possible 1,820 title deeds, 1,582 were prepared for the shareholders of the company by the chief land registrar in accordance with the approved list of shareholders. Out of 1,582 title deeds, only 363 were collected by the owners with full knowledge and support of directors of the company.

The Minister noted that the rest of the 1,219 deeds were left in the hands of a private surveyor and a lawyer from whom they were collected by the current leaders of the company and handed over to the Kiambu DC.

Mr Mbela said 363 title deeds were properly issued to shareholders and the necessary entries were made in the land registers as required. The Government



Mr Mbela . . . addressed the Press

has already informed the public that the provincial administration is charged with the responsibility of sorting out problems related to land buying companies, he noted, and urged the Kiambu DC to sort out any problems surrounding Nyakinyua and forward his recommendations to the ministry for action.

Last Sunday, chaos erupted at a Nyakinyua shareholders' meeting when it was discovered that some members had not been issued with title deeds.

THE STANDARD, Friday, May 18, 1990.

## Chiefs cautioned over land disputes

By George Ouma

THE Siaya Land Registrar, Mr Joseph Adongo, yesterday warned Chiefs and Assistant Chiefs against arbitrary hearing of land cases and awarding registered land to some people.

He said only a court of law or the President could award a registered piece of land to someone, adding that it was null and void for chiefs to award such land after hearing a land case.

Mr Adongo, who was speaking to *The Standard* in his office, revealed that several incidents from Rarieda and Ugunja divisions have been reported to his office. This practice should cease immediately, he warned.

He explained that only the Land Registrar was legally allowed to hear cases on boundary disputes before taking them to court if one of the parties concerned was dissatisfied.

He added that the chiefs and their assistants could only investigate a case upon direction by the Lands Registrar.

Mr Adongo said only a court of law could hear a land claim and if need be, direct with the consent of the parties concerned, that the case be heard by a panel of leaders under the local DO.

Mr Adongo said many boundary disputes were in actual fact boundary disappearances, where some people changed boundaries using the preliminary index diagram.

# Africa's hopes lie in its land, people

Often racked by drought, pests and war, Africa still has the capacity to build a brighter future if it can make better use of its two most precious resources — its people and its land.

Despite a seemingly endless string of natural and man-made catastrophes and crippling geographic and climatic constraints, the continent has important, still-untapped potential for development.

And the need to turn that potentiality into reality is growing in urgency.

During the 1980s, Africa's overall annual agricultural production increased by 2 per cent, but its population grew by 3 per cent and at the current rate will double in 20 years.

Although African economies are predominantly agricultural, countries south of the Sahara are forced to import 20 per cent of their food, worsening an already lopsided balance of trade.

The discrepancy between production and population helps to explain why, according to estimates by the UN Food and Agriculture Organisation (FAO), the continent has the highest proportion of undernourished people in the developing world.

"The problem is simple: One out of every three Africans does not get enough to eat. That means that one out of every three Africans is denied the capacity to live a fruitful and productive life," FAO Director-General Edouard Saouma said.

"The solutions to this problem may be complicated, but they must and will be found."

Africa's burdens today include an overall external debt of \$135 billion, which is equal to Africa's Gross National Product (GNP), a receding share of the world market, and stringent structural adjustment programmes directly affecting the poor in more than 30 countries.

Civil strife has plunged at least 20 African countries into emergency situations. Wars have left millions dead or displaced and disrupted agricultural production while military spending has swallowed billions of dollars desperately needed for development.

At the same time, the already limited capacity of African land to produce the food its people need is diminishing.

Over the past 50 years, 650,000 square kilometres of once productive land in the extreme southern part of the Sahara has been transformed into desert. Another 50,000 to 70,000 square kilometres of land become unproductive every year.

Today, more than one-third of Africa is threatened by desertification. In half of the continent, the climate is too dry to support rainfed crops, and few farmers can afford the costs of irrigating and fertilising the land.

Where there is no water, there is desert. Where there is water there are water-borne diseases like schistosomiasis, malaria and, until recently, river blindness.

Last year, more than 10 million people in the Sahel and other parts of Africa were threatened by a severe drought. In some areas, the drought was so severe that it was feared it would lead to a famine.

The New World Screwworm, a pest until recently confined to the Americas, has appeared in Libya, threatening all warm-blooded animals, including man.

FAO, which led the 1987-89 successful battle against a plague of locusts in Africa, is launching a \$117-million programme to eradicate the parasite before it spreads further.

It is clear that if the continent is to provide for the 600 million people making up its population today while conserving resources to feed the generations to come, comprehensive and coherent action is called for.

"Food for the Future," the theme of this year's World Food Day, has a special relevance for Africa.

Africa has the potential to increase food production: Much of the continent has the necessary land, water and technologies. If this potential is realised, many countries of Africa will become self-sufficient in food and others more self-reliant and their economic situation more manageable.

Basic and immediate steps, in addition to continuing food aid whenever and wherever needed, would be to lighten the debt burden as some creditors have begun to do, to provide fair and stable prices for African raw materials, and to guarantee a supply of fertiliser and other much-needed agricultural inputs.

In the long run, Africa must find new and more effective ways to practice sustainable agricultural development in order to provide sufficient nourishment for its people.

Delegates of 43 African nations attending the 16th Annual FAO Regional Conference for Africa at Marrakech in June took a first step in this direction by endorsing a new International Scheme for the Conservation and Rehabilitation of African lands.

The scheme, drawn up by experts from FAO and African countries, provides a framework for individual countries to develop long-term programmes that stress rational land-use policies and soil protection.

The experts acknowledged that at present, droughts combine with falling productivity to threaten food shortages and famines over wide areas of Africa.

"Yet," they said, "land degradation can be prevented and even reversed. Soil conditions can be improved, and productivity restored. Africa's lands could be made to support many more people, and to guarantee a secure future for the rural population."

In contrast to earlier plans involving large-scale projects that ignored the thinking of the very farmers whose co-operation is vital for success, the new scheme encourages rural participation and rural initiatives to find socially and economically viable means of increasing production while reversing land degradation.

To fight malnutrition, especially among the hard-hit rural poor, the conference delegates backed FAO proposals to introduce nutritious crop varieties, encourage women's participation in agricultural activities and improve rural health and nutrition.

FAO also urged the use of genetic engineering research and transfer of technology to Africa to develop improved varieties of crops and to improve traditional crops as well as introducing new ones.

# DAILY NATION

Nairobi, Friday, November 8, 1991

## Wanted: Solution to land disputes

With the restoration of calm in the trouble spots in the Nandi, Kericho and Kisumu areas, peace-loving Kenyans hope that they have seen the end of what could easily have degenerated into a civil war. The recent clashes over land in Nandi, Kisumu and Kericho districts left two people dead, several thousand displaced and a great deal of property damaged.

It is our ardent hope – and that of many Kenyans – that the Government will get to the root of the matter and work out a formula that will ensure that the people in these areas know that they have to co-exist and, more important, that peace must prevail always.

Land is to Kenyans what security is to Israel and efficiency to the Germans. Land is an obsession; it is an increasingly emotional and explosive issue. Tempers flare and emotions bubble when it comes to disputes over land. Land is the be-all and end-all for many a Kenyan and it is imperative that matters pertaining to land are handled with utmost care and corresponding urgency.

No single Kenyan, or community, for that matter, should be allowed to take the law into their own hands and cause untold fear, strike terror in the hearts of many and generally pose danger to the security of this country. Kenyans, no matter their temperament and/or standing in society, must respect the law, which guarantees the protection of every single Kenyan and his property.

The chilling spectacle of mothers running helter-skelter with babies strapped to their backs and with assorted belongings in swaying hands and on bobbing heads; older children running and clutching chickens or other property; men and women arming themselves with sticks, stones, pangas and arrows to avenge themselves for their burning homesteads, is extremely dangerous for Kenya's security.

This is especially so when the protagonists in the conflict and their leaders see the dispute in ethnic terms, read political motives into it and then blame some leaders in the political establishment for the flare up.

What may have been a misunderstanding between individuals could then very easily be magnified into inter-ethnic conflict. Of course, pronouncements by politicians prior to the clashes might have had nothing to do with conflict, but inflammatory statements preceding such an imbroglio could very easily be seen as a catalyst.

Similarly, when the Press highlights these land clashes, this is done in good faith, with the singular intention of informing Kenyans and the authorities about what is happening. Therefore, the authorities should move to take action to halt the chaos – which is what they did – and then turn to the nitty-gritty which, in this case, is to settle the differences between the parties in the dispute.

Indeed, the recent clashes in the Nandi, Kericho and Kisumu districts should be the point of departure in dealing with land questions throughout the country with immediate effect. One need not look far for the impetus for this kind of action. What started as a clash on one farm in Tinderet Division, Nandi District, soon threatened to explode into a major conflagration that threatened to fan tribal animosity.

No threat to the security of this nation could be more grave. This is a message that we send to all Kenyans and, especially, those who live in areas where land clashes are a familiar phenomenon.

We also think that it is time for the authorities to amplify the campaign to inculcate a spirit of brotherliness and respect for the law. All too often, our leaders say one thing in public and proceed to do the exact opposite in private. All too often, our leaders preach peace in one breath and proceed to scream blue murder in the next.

How many leaders are involved in all sorts of dirty land deals which are themselves the very spark that could ignite a powder keg? They are legion.

The time for action is now.

# Bishop, pastors criticise Govt over land clashes

By MICHAEL NJUGUNA  
and JOE OMBUOR

A Catholic bishop and two pastors yesterday criticised the Government for failing to control the land clashes in parts of Nandi, Kisumu and Kericho districts.

The clashes left more than 10,000 people homeless and much property destroyed.

Bishop Raphael Ndingi Mwana'a Nzeki of the Catholic Diocese of Nakuru and Mr E.K. Murimi, the diocesan secretary of the Justice and Peace Commission, said in a statement that 39 pupils did not sit their national exams in those areas.

In Kisumu, an Anglican clergyman, the Rev Francis Mwai Abiero, said victims of the recent clashes were waiting to hear the voice of the Head of State to assure them of their safety before they returned home.

The statement from the Nakuru Catholic Diocese said pupils who sat the national examinations in the clashes-hit areas might perform poorly because of the harassment which prevailed at the time.

Bishop Ndingi and Mr Murimi urged the Government to make special arrangements for the 39 pupils who missed the exams.

The diocese said that in the Kamasian area of Kericho District, eight pupils at Tingatera, four at Lelu, two at Nyagacho and one at Kerenget schools, did not sit the examinations.

In Chilchila area, nine pupils at Kapkoros, four at Koru Project, three at Singoiwek, three at Kiptenden, two at Sirgoi, two at Kapleit and one at Kokwet schools also missed the examinations.

The statement said in part:

"We have witnessed hundreds of frightened people left without homes, food or shelter for their children."

"Despite the fact that a good number of pupils sat for the examinations, their performance in 30 primary schools and four secondary schools in the area may be very poor due to the fact that they were greatly harassed by the security personnel."

The statement said that on the day pupils were rehearsing for the Kenya Certificate of Primary Education examination, 14 candidates, suspected of being arsonists, were picked up by the police.

The statement said that in the diocese, which covers Nakuru, Kericho and Baringo districts, more than 1,000 houses were burnt, food stores with a year's supply destroyed, many animals

burnt, stolen or sold for next to nothing.

The statement said that although the Government had made an effort to restore calm and to return the displaced people to the ashes of what was their homesteads, four houses were burnt on November 15 and 16 at Boror (C) in Molo Division, Nakuru District.

The diocese blamed the bloody clashes on statements made by the Rift Valley Province Members of Parliament at a series of public rallies.

"These tragic happenings are orchestrated. They are a direct result of the irresponsible statements made in Kapsabet, Kapkatet, Kericho and Narok. We strongly believe that these in-

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Highway death toll may exceed 2,000 - Page 4

25 november Nation

## Man axed to death over land dispute

By TIMES Reporter and KNA

A MAN was last weekend hacked to death in Molo over land dispute, police headquarters reported yesterday.

Police said Benson Mureu had a dispute over land with his neighbour who chopped him with an axe.

They further said that during the dispute, the suspect armed with an axe hit the deceased on the head causing him serious injuries. The deceased was rushed to Molo hospital and died while undergoing treatment. The suspect was arrested and charged.

In Kapsabwe Village, a 60-year-old man was found lying dead by the roadside with an arrow on his back. Near the body were a bottle of *chang'aa* and three arrows. Police are holding two suspects.

In Malaba town, a man who attempted to break into the compound of Grace Wangori Ali in the company of others was electrocuted by the electric gates.

In the morning, the police called and a pair of pliers,

screwdriver and a spot light were found in the pockets of the dead man. The body was transferred to Busia hospital mortuary.

On Monday, in the Indian Ocean, near the Whispering Palms Hotel, a 30-year-old man was found dead. The body was removed to the Coast General Hospital for post-mortem.

In Kitmikayi sub-location, a 20-year-old man was found hanging dead. The body was removed to Nyanza General Hospital mortuary.

Meanwhile, a man died instantly when an over-speeding bus knocked him down along the Kisii-Migori road on Wednesday, a few kilometres from Uriri market.

According to an eyewitness who spoke to KNA, the deceased was walking along the road when the speeding bus heading for Migori veered off the road and hit him.

The bus driver drove to Migori Police Station and reported the accident. The body, which could not be identified immediately, was still lying on the scene of the accident by evening.

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# Six more killed in land clashes

By NATION Reporters  
and Correspondent

Six more people have died following clashes over land in Tinderet Division of Nandi District.

Three primary schools have been closed while police estimate that over 10,000 people were rendered homeless after their homes were set on fire by rampaging youth.

The clashes, which started at the Meteitei Land Buying Company farm in Songhor Location last week, have now spread to Koisagat Farm, Kitororo, Kimwani Agricultural Development Corporation (ADC) farm and Owiro Farmers Co-operative Society.

The Officer Commanding Nandi Police Division (OCPD), Senior Supt John Otieno said that 10 people had been arrested over the raids. He said he expected more to be arrested.

At Kopere trading centre on the Nandi-Kisumu border, the chairman of Owiro Farmers Company, Mr Mariko Muga, estimated that nearly 2,000 people



out of the 3,000 (including children) who inhabited the farm had been rendered homeless. His company owns the 1,600-hectare farm.

Many of those who had fled from the affected areas following the burning of their homes camped with their livestock at trading centres across the district boundary in Kisumu District.

They are camping in Mberere Farm, which belongs to former Cabinet Minister Odongo Omamo, at Kimwani Agricultural Development Corporation farm

## Land Series

The series that seeks to define the land issue problem, explain the pattern and elaborate on the trends of this explosive matter starts today. If you are Kenyan, you are aware that land is the most explosive issue in the country today - our lead story today attests to this. You want to know why this is the case, how it started and how it will end, if ever. Turn to page 20 for the first instalment of this powerful series.



# Six killed in land clashes 53

FROM PAGE 1

and at Ogen Primary School, at Kopere trading centre.

Among the people camped there were tired and hungry children, pregnant mothers and the aged who, eyewitnesses said, had been carried there on the backs of the stronger people.

Nation reporter saw several of the raiders armed with bows and arrows, patrolling the Owiro farm.

At one of the burning houses, an elderly man looked helplessly as his grain went up in smoke. Other property worth thousands of shillings was also burnt.

Owiro Primary School is one of the schools which have been closed.

One elderly man had his fingers chopped off.

Several houses were still burning by last night.

Mr Muga said the raids at his farm started on Friday night and continued most of Saturday and Sunday.

He said the attackers ordered those who they considered to be outsiders to leave their homes after which the huts or houses were set on fire.

He estimated the gang which attacked on the first night numbered between 300 and 400 people.

Mr Muga claimed that prior to the attack, the chief of Songhor location, Mr Henry Tuwai, had advised residents against sleeping in their houses because of the danger of a raid by morans.

Mr Muga claimed that on Saturday, police came and fired in the air but the morans continued looting and burning homes.

When the Nation team was touring the area, many of the displaced people could be seen struggling to board any vehicle that could take them to Chemilil, about 12 kilometres away, or to Kisumu, about 50 kilometres away.

An elderly woman, Mrs Sela Ongere Nyamita, said the raiders hit her on the mouth and knocked out two teeth.

Many of the victims complained that they had lost property including cattle, sheep, goats and bags of maize.

Mr Muga said his society had

among the members of his society, but the raiders were claiming that his members were "outsiders".

On Saturday, the Nandi District Commissioner, Mr David Mativo, the Minister for Co-operative Development, Mr John Cheruiyot, the Nandi Kanu branch chairman, Mr Henry Kosgey, and the Rift Valley Provincial Police Officer, accompanied by police officers in full riot gear went to the Meteitei chief's camp to address a joint rally in a bid to end the land dispute.

Mr Mativo ordered DOs, chiefs and their assistants to ensure that the evicted families were reinstated on their land and the property destroyed or taken away was paid for.

He also ordered the closed schools should be opened as soon as law and order was restored.

The DC warned wananchi not to be influenced by politicians' utterances.

At one point during the tour, the leaders saw over 200 grass-thatched huts being set ablaze by over 400 unruly youths.

The DC and his team spent over 30 minutes urging reconciliation between the clashing groups and told them that violence was not the best way to solve land disputes.

The police had used tear gas to disperse the riotous mobs.

A Nominated MP, Mr Ezekiel Barngetuny, blamed the land clashes on the members of the unregistered Forum for Restoration of Democracy (FORD) who he said were distributing money in the district to cause anarchy.

He said the FORD members were using unnamed local people to cause panic and chaos.

Mr Kosgey condemned the clashes in which homes were burnt down and property destroyed. He called for the immediate stop of hooliganism in the area.

He criticised the "uncivilised system" through which local people sold land to outsiders but refused to move away, creating tension and setting the stage for violence.

He made an impassioned plea to the different communities living in the area to seek reconciliation and live in harmony.

Mr Cheruiyot told the residents to reject members of the FORD who he claimed were behind the clashes. He said the Kenyans should forget about their tribal origins and live in the Nyayo spirit.

Of the six people who died this weekend, two at Kitororo, a few kilometres from Meteitei, three young children were burnt to death after the huts they were living in were set on fire at the Owiro farm, while a man was strangled by an angry crowd at Kopere trading centre at the border of Nandi and Kisumu districts.

Trouble at Meteitei started on Monday last week when the Nandi DO, Mr Christopher Mwambi, convened a meeting to settle the land dispute. The meeting was disrupted when the crowd started shouting and went into rampage.

Clashes ensued and two people were killed on Wednesday night.

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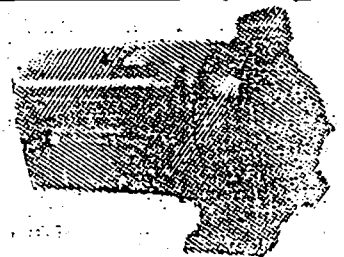
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DAILY

# NATION

The newspaper that serves the nation

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## Man shot dead in land clashes

By NATION Team

Police yesterday morning shot and killed one man and wounded two others in Muhoroni when they opened fire at a rampaging mob as the land clashes spread to new areas in Kericho District.

The man, identified as Mr Ogunyo Jaseme, was killed by a stray bullet when the mob tried to break into a shop. Another man was shot in the leg and a Mr

Bob Aweyo was shot in the back. Both men are at the Muhoroni Nyayo dispensary.

At the same time, the Rift Valley Provincial Commissioner, Mr Yusuf Haji, Nandi district leaders, a Government critic and a CPK clergyman issued statements on the clashes which entered their seventh day yesterday.

Mr Haji blamed the Nandi dis-

trict security committee for the clashes saying it had been lax in addressing the land ownership differences at Miteitei Farm, the origin of the clashes.

The PC told an urgently convened district commissioners' meeting at the provincial headquarters boardroom, that land ownership differences should be solved immediately.

"The clashes have assumed

dangerous proportions and should be brought to an end at all costs," he said.

He told the DCs that the Government would discipline officers who took their duties, particularly those dealing with security, lightly.

"You should be strict. You should not compromise with anyone over security," he said.

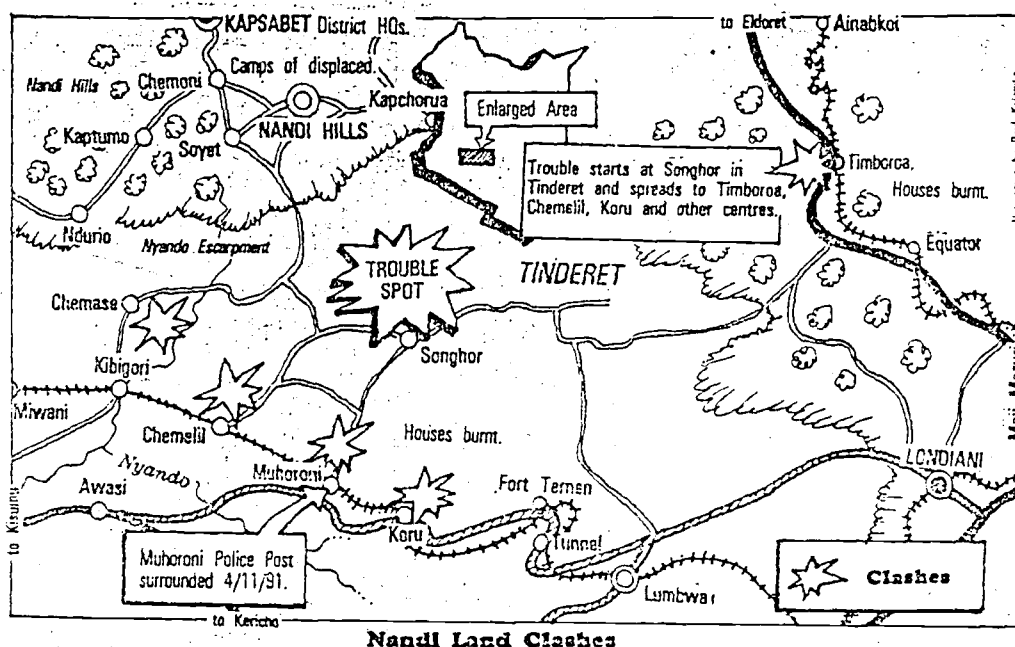
He denied that the clashes

were a direct result of the recent calls by sections of the leadership for a *majimbo* (federal) system of government.

"These are clashes that can occur anywhere due to misunderstanding. Some 62 families of the Kalenjin ethnic community are among some of the victims," Mr Haji said.

The Nandi District Commis-

PAGE 2 - Col. 3



# Man shot dead as land clashes pick up tempo

FROM PAGE 1

sioner, Mr David Mativo, said Mr Haji was expected to address a public rally today at Maraba DO's centre near Kopere trading centre, where thousands of the displaced people have camped since the clashes started.

As Mr Haji was addressing the DCs, three Nandi leaders took on two MPs who had accused them of incitement.

In a press statement, Mr Ezekiel Barg'etuny (Nominated MP), Mr Benjamin Kositany (Konoin) and Mr Henry Kosgey (Kanu branch chairman) said it was wrong for the Minister for Regional Development, Mr Onyango Midika, and an Assistant Minister for Environment and Natural Resources, Mr Oluoch K'Ombudo, to allege that leaders in Nandi District had incited the people to rise against members of any other community.

The two MPs on Monday accused some Nandi leaders of inciting the people and Mr K'Ombudo had said the FORD members had nothing to do with the problems.

The three Nandi leaders said

all leaders in the district had done everything possible to restore peace since the fighting broke.

However, they said it was surprising that it was members of the Luo community who set up road-blocks and stoned vehicles, despite a series of meetings held at Tinderet last Saturday which restored calm there.

They asked the two Luo leaders to appeal to the people of Chemelil area to maintain peace instead of inciting them. "This is purely a land issue that got out of control and (is) not political," they said.

The three Nandi leaders said the current land problems in the district started with the purchase of the farm by 310 shareholders of the Miteitei Farmers Company Ltd.

They said that when the buyers sought to settle on the farm, the original shareholders protested against additional members being co-opted into the company. This resulted in a dispute which has remained unsolved.

The leaders said clashes started when the members decided unilaterally to resolve the dispute

by burning houses. "The situation was aggravated when a Nandi was shot allegedly by a Luo policeman. This provoked the whole situation and caused it to spread to other areas," the statement added.

The Minister for Co-operative Development, Mr John Cheruiyot, defended the Nandi leaders and asked Mr K'Ombudo to state whether he supported the Government or the FORD.

They asked Mr Midika to prove that it was Nandi leaders who were fomenting the trouble. The statement was also signed by the Nandi County Council, Mr Samuel Chelule.

Another statement issued by a FORD founder, Mr Masinde Muliro, blamed the clashes on the recent pronouncements by parliamentarians and Kanu leaders in a series of meetings held in various parts of the country since last month.

Mr Muliro absolved members of the FORD from the violence.

He asked the Government to return the evicted families back and protect them against further attacks.

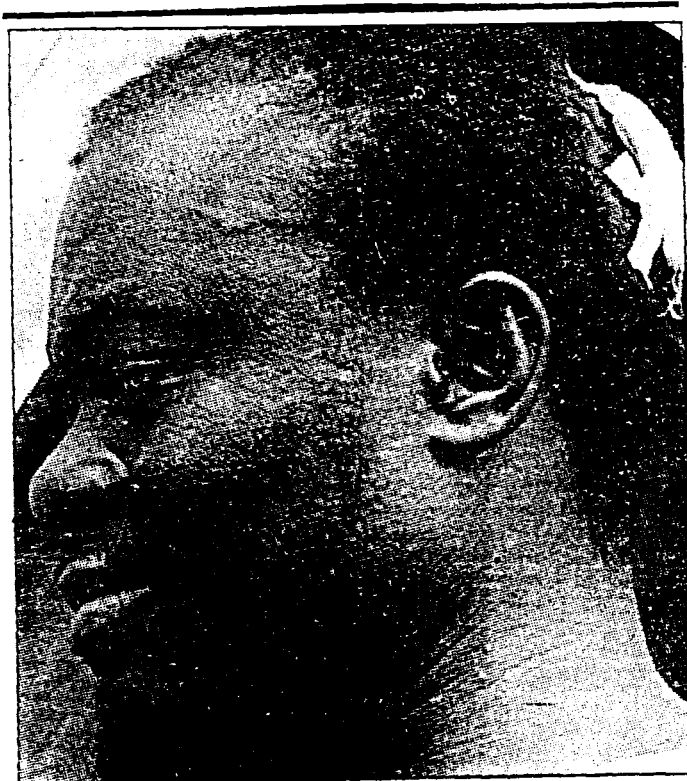
An assistant bishop at the

**SPECIAL REPORT**

# What's behind the Nandi land clashes?



Armed to the teeth and ready for combat ...some of the people involved in the clashes brace themselves for trouble during the height of the fighting.



It was no laughing matter, as this man who was clobbered on the head can readily testify



For the past two weeks all has not been well in Nandi, Kisumu and Kericho districts where land disputes have developed into violent flare-ups. Several people have been killed in the clashes that reek of ethnic animosities, while property worth millions of shillings has been lost to arsonists. *Sunday Nation's* EMMAN OMARI (left), who visited the trouble spots during the height of the fighting, takes a critical look at the problem and asks some vital questions.

The Rift Valley Provincial Commissioner, Mr Yusuf Haji, aptly described the land clashes in Nandi, Kisumu and Kericho districts as *kitu chafu sana* (a very dirty affair) which should never happen in Kenya today.

However, Mr Haji could not explain why the skirmishes went on for so long without the Government seeming to intervene in earnest.

At least five people have died in the clashes, while property worth millions of shillings has been lost following the burning of houses and the subsequent looting.

The clashes, involving different ethnic groups, started on the 1,934-hectare Miteitei Farm in the Tinderet Division of Nandi District in the evening of October 29 and spread to Kisumu and Kericho districts.

The 1,611-hectare Owiro Farm in Kisumu District, belonging to Owiro Farmers Co-operative Society, has been the centre of the battle which sent 3,800 people scampering with whatever property they could carry.

Also affected was the Koru area, which is settled by people who bought land from white settlers or the Government.

Also affected were Kunyak and Kotetni farms in Kipkelion Division, Kericho District.

In these farm the attackers burnt the houses, looted property and drove away cattle belonging to the victims.

According to the Nandi District Commissioner, Mr David Mativo, the clashes began when Mrs Mary Kamene raised the alarm after finding her two cows were missing from the lassoes.

When no one turned up to help her, a neighbour extended the alarm, after which people came and attacked her, setting the house on fire. This, according to the DC, sparked off the fighting.

This is the official version. However, three vital questions still remain unanswered: What are the underlying causes of the clashes? Is there a political cause or is it purely a question of bad blood between the people? Why did it take seven days for the Government to send security forces to quell the troubles?

In the first place, people interviewed in the troubled areas say land feuds have been simmering for some time between people of different ethnic groups. The inhabitants of Owiro, Miteitei, Kunyak, Kotetni and Koru area are drawn from different parts of the country. They include Luos, Luhya, Kisiis and Kikuyus.

The "settlers" bought the land either individually or through co-operative societies soon after independence, although some went there as early as the 1950s. The immigrants include some big names in Kenyan politics, such as the late Minister for Foreign Affairs and International Co-operation, Dr Robert Ouko, a former Cabinet Minister, Dr William Odongo Omamo, and top academics Thomas Odhiambo and Simeon Ominde.

A former assistant chief in Fort Ternan, Mr James Muturi, says he moved to Kilimori in 1948 from Central Province. All his children have been born and brought up there.

He says trouble started simmering

when the Government started the land consolidation exercise in the 1970s, and the indigenous people realised they did not have much of the land they thought they owned.

The local administration insists that the clashes are not tribal. However, everything on the ground indicates that ethnic sentiments are at the core of the flare up.

Mr Haji and the Nyanza Provincial Commissioner, Mr Julius Kobia, admitted that land problems have existed in the area for several years, but the Government has always dealt with any violence firmly and brought it under control.

There is also a political angle to the problem. The affected parties say recent statements by some leaders in the area may have fuelled the feuding.

It is on record that a leaders' meeting

the expulsion of multi-party advocates from the province. There have been similar meetings in Narok, Machakos and Mombasa.

Elsewhere, the Minister for Local Government, Mr William ole Ntimama, is on record as having called on the Maasai to arm themselves with *runigus* and fight.

The Nandi County Council chairman, Mr Samwel Cheluel, insisted during a rally at Maraba DO's centre in Tinderet Division that the clashes have nothing to do with the leaders' statements.

He dismissed it as a rumour being spread by matatu operators to cause panic. He argued that the Kalenjins and other ethnic groups have peacefully co-existed for several years, and that one ugly episode should not taint the good image of the area.

Mr Haji is also quick to point out that

in Kapsabet on September 8, convened by leaders from Rift Valley Province, called for the *majimbo* system where every community stays "where it belongs".

Leaders at the meeting included Co-operative Development Minister John Cheruiyot, the Minister for Public Works, Mr Timothy Mibei, a nominated MP, Mr Ezekiel Barngetuny, and the Nandi District Kanu branch chairman, Mr Henry Kosgey, all of who threatened to go *majimbo* if pressure for the introduction multi-party politics persisted.

The MP for Kerio Central, Mr Paul Chepk'k, promised to sponsor a Bill in Parliament that would carve out the regions.

Another meeting on September 21 at Kapkatet in Kericho by the same leaders widened the scope by calling for

the skirmishes have nothing to do with recent utterances by politicians in the area.

But one of the conditions of Mr Haji's return-home formula contained a clause keeping politicians and local DOs out of the dispute at the Miteitei Farm.

Given the firmness with which he wants the dispute among the 589 Miteitei shareholders solved, Mr Haji's statement seems to subtly infer that the problems emanate from politicians in the area, although he declines to say so in definite terms.

The politicians may not have directly contributed to the flare up, but their utterances acted as catalysts in an already strained relationship.

Then there is the question of the Government's week-long silence.

For the seven days, only a handful of policemen patrolled the affected areas, and some of them could only watch as the houses were razed. The displaced people argued that it was not possible for 10 policemen – or even several times that number – to deal with mobs of more than 5,000 people spread all over place.

It was not until last Wednesday – the eighth day in the conflict – that the Provincial Administration sent a combined force of the paramilitary General Service Unit (GSU), Administration and regular police to enforce the return-home formula. The security team will oversee the reconstruction of houses and stay there until peace returns.

Mr Haji denied that the Government dragged its feet in the matter and that the action taken on Wednesday attested to the seriousness with which the Government took the issue.

This is not the only time the administration has tended to drag its feet in the face of similar strife.

It will be recalled that a similar incident, although not as publicised as the Tinderet case, happened in 1989 in the Kipkelion Division of Kericho District.

Thousands of displaced people said to be squatters were thrown out of a farm. The elderly and hungry children camped along the Nakuru-Kericho Road in rather harsh conditions without any word from the administration for several weeks.

Whatever finally happened to these people is not known. They appear to have just drifted away with their meagre belongings to other parts of the country.

But while the 1989 incident affected squatters who had encroached on someone's land, the Nandi-Kisumu-Kericho case involved people with their title deeds.

The only area with a different problem is Miteitei where there is a 10-year dispute between shareholders and the directors.

What is certain is that the skirmishes have left wounds that will take time to heal. What is required is for the local leaders to go on a mission aimed at pacifying the residents, preaching peace and reconciliation.

Whether even this will provide a lasting solution remains to be seen.