

**CHANGE AND CONTINUITY IN LAND TENURE SYSTEM AND GENDER  
RELATIONS IN NYERI COUNTY, KENYA (1895-2013)**

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THE AWARD OF A MASTER OF ARTS DEGREE IN HISTORY OF  
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## DECLARATION

This thesis is my original work and has not been presented for examination in any other university.

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## **DEDICATION**

To my husband Samson, my daughter Ann Lynette, my son Victor and my parents  
Simon and Beatrice.

## GLOSSARY OF NON-ENGLISH WORDS

Athuri	Men
Gakii	Nyeri
Githaka (PL. ithaka)	Estates
Githaka ni ngwatira	Land is a loan
Ikumbi (PL. makumbi)	Granary
Ithika	Handing over ceremony
Kabete	Kiambu
Kiama (PL. ciama)	Council of elders
Kiama kia atumia	Women Council
Kigutu	Thatching grass
Kuhoya	To beg or ask
Kuna	Breaking up virgin land
Mbari	Sub-clan
Mbari ya Mumbi	Descendants
Metumi	Murang'a
Mihiriga	Clans
Mucii (PL. micii)	Family group
Mugunda wa muiritu	Unmarried girl's land
Mugai	Distributor
Muramati	Custodian
Mutego	Trapping
Muthamaki	Ruler
Muthoni	In-law relationship

Muthuri wa mburi imwe	Elder of one goat
Mwana wa Mumbi	Child of Mumbi
Mwene Mugunda	Owner of the land
Ngai	God
Nyumba	Wife's dwelling hut
Riika (PL. mariika)	Age-set
Thanju	Strips of land
Thingira	Man's hut
Muciarwo	Adopted person
Muguri (PL. aguri)	Buyer
Muhoi (PL. ahoi)	Borrowers

## ABSTRACT

In many human societies, rights to ownership of land, control and use determine the bargaining power of women in the society and the household, as well as determining their economic condition. Control of land and its efficient use are determined by the availability of land resources and existing social and institutional structures. This study examines changes in land tenure systems and gender relations in Mukurweini, Nyeri County, between 1895 and 2013. Land alienation among the Kikuyu, the subsequent consolidation of land and the individual registration greatly impacted the land tenure systems among men and women. The women were greatly affected due to the existing patriarchal system that undermined/dictated the right of women to land ownership. Being a historical study, this thesis highlights how the patriarchal land control of land in pre-colonial Kikuyu land determined the immensity of land access and use by the women and investigates land policies initiated by the colonial government in respect to ownership, access and control of land by Kikuyu women. It interrogates land policies in Kenya between 1963 and 2013 and their impact on Mukurweini women's access to and ownership of land. The study further examines the ramifications struggle for and institutionalization of the new constitutional order in Kenya between 1992 and 2013. The study is based on the assumption that the pre-colonial patriarchal land tenure system heavily determined the limited land access, use and control by the women of Mukurweini and that, the colonial land policies introduced in Kenya only served to perpetuate the existing patriarchal control of land among the Kikuyu. These policies were continued under the Kenyatta regime which remained basically patriarchal in regard to access, control and ownership of land by women. The third premise argues that the Moi regime initiated significant changes in respect to women and land matters, which in turn became a springboard for the thorough reforms realized in the new constitutional order in Kenya. Gender analysis was used as a tool of analysis to explain the land tenure system and gender relations in Mukurweini. The study adopted the historical design as well as the descriptive research design. The instruments of data collection included questionnaires, interviews, and materials from secondary sources and government records which include archival documents from the Kenya National Archives. It is argued that the establishment of colonial rule engendered new socio- economic trends that culminated in the partial abandonment of the Kikuyu pre-colonial land tenure system. This thesis concludes that the socio- economic relations between females and males in terms of access to and control over land as a resource has changed over time and decision making has also been influenced by the metamorphosis within the period of study.

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## **DEFINITION OF TERMS**

Control Rights- Rights to decision-making concerning land use, crops to plant for financial gain from their sales.

Freehold-This is a western idea that entails the comprehensive right to use, control, manage and dispose the land at will.

Land Adjudication- A process involving the final and authoritative determination of land ownership by law, incorporating quantification, narration and recording.

Land Reformed- In the context of the study, land reformed involved change introduced by the British colonial government in tenure, use, access and in particular has involved transition from communal to individual ownership parcels of land.

Land Rights- In the context of the study, these are rights administered over land, its use, access, control and ownership.

Land Tenure – In the context of the study, these are terms and conditions for acquisition of rights to land and resources connected to land, their use and retention, disposal or transmission.

Land Use- This involves the allocation of land for different uses, for example, cultivation, grazing areas and home building.

Leasehold- This is the legal right to live on and use a piece of land for a period agreed on for instance, most land in the urban areas is under this form of use and involves payment of rates to the government.

Usufruct Right- In the context of the study, this is the right given to women for temporary rights to use land belonging to their male relatives or husband for their use.

## ABBREVIATIONS AND ACRONYMS

ACHPR	-	African Commission on Human and Peoples' Rights
CEDAW	-	Centre for Elimination of All forms of Discrimination against Women
CMS	-	Church Missionary Society
FAO	-	Food and Agricultural Organization
FGD	-	Focus Group Discussion
FIDA	-	Federation of Women Lawyers
GOK	-	Government of Kenya
ILO	-	International Labor Organization
IPPG	-	Inter-Parties Parliamentary Group
IWHRC	-	International Women's Human Rights Clinic
KADU	-	Kenya African Democratic Union
KAU	-	Kenya African Union
KCA	-	Kikuyu Central Association
KNA	-	Kenya National Archives
KNHR	-	Kenya National Human Rights
MYWO	-	Maendeleo ya Wanawake Organization
NARC	-	National Rainbow Coalition
NGO	-	Non-Governmental Organization
NLC	-	National Land Commission
NLP	-	National Land Policy
O.I	-	Oral interview
RLA	-	Registered Land Act

- RNLO - Resident Native Labour Ordinance
- USAID - United States Agency for International Development
- WB - World Bank

## CHAPTER ONE: INTRODUCTION

### 1.1 Background to the Study

The background of the study is women and land ownership. The issue of women and land is both a global and historical issue. Kenya's story is not unique in this matter as these are the struggles that women go through globally. Controversy surrounding various roles of both men and women in ownership of land is both global as well as historical. For long stretches of human history, most civilizations considered the male gender to be the head of the home and the major decision-maker in property ownership matters. Women have been marginalized, and their feelings, wants, and behaviours have been regarded as secondary or unimportant in property decisions. This was the conclusion of a World Bank series of research conducted in 1994 to investigate the relationship between customary tenure systems, security of tenure, and agricultural productivity (Bruce & Migot-Adholla, 1994). A structural model of land rights presumed to exist within families unifies each of the investigations. Multiple rights exist in a hierarchical relationship on the same parcel of land (Bruce, 1994: 252), with the right of the male household head superior to other rights exercised by household members (Place, 1994: 37). Women heads of households were not recognised as a viable authoritative social category.

The premise that the right of the male family head is superior to the rights of other members has led to the portrayal of women's rights as secondary to, and dependent on, those of males (Toulmin, 2000; Hilhorst, 2000; Platteau, 1996; Lastarria-Cornhiel, 1997; World Bank, 1989). This stereotype is especially prominent in the case of wives. According to Platteau (1996:40), in most traditional tenure systems, women do not inherit land but are usually granted usufruct rights as wives in their

husbands' clans. This helps to explain why farmers' wives have struggled with registration and individual titling. Because registration only acknowledges unique person rights in specific parcels of land, the only rights recognised in this process are those of the primary landholders, who are usually men. As a result, women face disadvantages in the registration and titling processes (Platteau, 1996; Golan, 1994; World Bank, 1989:103).

Women in Africa have always been at the forefront of economic output, encompassing agricultural, pastoral, and corporate sectors. Where agricultural and animal production are the mainstay of most economies, women account for most of the labour. Indeed, women are more directly involved in small-scale crafts and localized industries, trading, and general business. As late as the 1960s national production statistics overlooked or concealed this (Boserup, 1970).

A major issue that needs to be addressed in agricultural production is the land tenure structure and how it affects the specific contribution of the two genders. The inequities and obstacles that women experience in the context of land tenure systems must be identified, dissembled, and analyzed.

According to Susana Lastarria-Cornhiel (1997:1325), the changing nature of customary tenure systems in Africa is not linear and has diverse effects on men and women. However, she concludes that as individual market-based tenure systems become more prevalent, women's limited land rights may be overlooked and subsequently lost because private ownership transfers "the few rights, such as cultivation rights to some men who are able to claim all rights to land" (Lastarria-

Cornhiel, 1997: 1329). This advantage for "male heads of home" is predicated on the idea that primary male landholding rights outweigh secondary rights for women.

Debates about what constituted custom were significant in Mackenzie's (1990) historical study of land in Kenya's Central Province and were profoundly shaped by colonial attempts to codify "customary law" in the 1920s. Male rights to assign land pre-empted the earlier prominence and legal relevance of women's usufruct rights during the codification process (Mackenzie, 1998:171). This technique obscured a rising class fight over land in a setting of severe land scarcity and rapid commoditization of land. Land registration, which began in the 1950s, did not eliminate women's traditional claims to land as wives, nor did it give rise to these gender conflicts over land. Rather, it exacerbated pre-existing insecurities (Mackenzie, 1990, 1993, 1998). As a result, rather than being a universal African situation, women's uneasiness over land tenure as a result of titling must be explained by the specific conditions in Kenya's Central Province during the titling process.

In Mukurweini Sub-County land is a valued resource where women are the main users and producers of agricultural products. The proof of land ownership in Kenya is a title deed. The Land Registration Act provided for land to be registered in the name of the household heads who were in many cases male. This often denied the women the legal rights to access, use, control and own land. Studies have been done in Mukurweini Sub-County but very little information is found on the change and continuity in the land tenure system and gender relations, a gap that has been filled by the current study which is historical and addresses a wide segment of time (1895-2013). This study is historical and addresses the change and continuity in the Land Tenure system and gender relations in Nyeri county, Kenya (1895-2013).

## **1.2 Statement of the Problem**

The question of gender and land ownership, control, and access is both a historical and global question. Many world societies have had this issue where the male gender has had control that the female rights over land are not realized. In the case of Kenya this phenomenon can be traced from pre-colonial through colonial to post-colonial period. The work is a historical narrative which gives a whole sweep of one and a half centuries of land matters. The study is on the Kikuyu women of Mukurweini sub-County, Nyeri County. It seeks to trace the place of women in land matters at different times.

- i. How did these women relate with the male gender over matters of land ownership, access, control and use in the period before colonialism?
- ii. How did the colonial system influence these pre-colonial arrangements over land matters?
- iii. How did the Kikuyu women respond to the circumstances relating to land over the different periods of their history?

These questions are at the core of the study and are addressed by applying the Gender Analysis Framework. There is a continuity of the struggle of women to land access, use, control and ownership and changes are seen in land policies enacted to change this scenario. By taking gender as a category of analysis, it is possible to properly locate Africa's land history and its impact on gender relations. This study is cast in the mold of seeking to provide a historical examination of gendered land rights and uses. It takes the case of the Mukurweini Sub-county in Nyeri County of Central Kenya. The study focuses on the transformation that has occurred within the study area from the period before colonialism, colonial period and into the period after the regimes of Jomo Kenyatta, Moi and Kibaki up to 2013. We see a continuity where the

male gender has control over land and women have usufruct rights and at the same time, we see policies enacted to assist the women in access, control, use and ownership of land.

### **1.3 Objectives of the Study**

The following are the objectives of this study:

- i. To characterize gendered pre-colonial land ownership and use among the Kikuyu up to 1895.
- ii. To interrogate the influence of colonization on gendered land tenure systems among the Kikuyu of Mukurweini between 1895 and 1963.
- iii. To examine continuity and change in gendered land ownership, access, and use in Mukurweini in the post-independence era.
- iv. To highlight the gains and challenges by women of Mukurweini following the struggle for and Kenya's adoption of a new constitution the period after 2010.

### **1.4 Research Questions**

This study was relied by the following research questions:

- i. How did the pre-colonial land tenure system among the Kikuyu determine the access, control and ownership of land by women?
- ii. In what ways did colonial land policies influence change and continuity in land access, use, and ownership among the women of Mukurweini?
- iii. In what ways did the Kenyatta regime differ from the Moi regime in regard to policies towards women land ownership, access and use in Mukurweini in the post-independence era
- iv. To what extent can the Constitution of Kenya 2010 be viewed as being significant as a promoter and protector of women's land rights in Mukurweini in particular and in Kenya in general?

## **1.5 Research Premises**

This study relied on the following research premises:

- i. The pre-colonial patriarchal land tenure system strongly determined the limited land access, control and ownership by the women of Mukurweini.
- ii. The land policies introduced in Kenya during the colonial period only served to perpetuate the existing patriarchal control of land among the Kikuyu.
- iii. The immediate independent government of Kenyatta did little to significantly empower women in matters of land ownership and use, though his successor introduced token reforms that were built upon later in favour of women of Mukurweini and Kenya in general.
- iv. The promulgation of the new constitutional order in Kenya enshrined significant changes that favoured women in their access to land, control and ownership.

## **1.6 Justification and Significance of the Study**

A number of studies on land have been done by notable legal experts namely: Nyamu (1999) and Okoth-Ogendo (1975), Lee Smith (1997) has done a socio-economic study on land tenure and rights of women. In Nyeri County, some of the work done on land is by Kareri (1985) who has done a thesis “Nyeri Farming Systems viewed from Physical and Socioeconomic Aspects”, Nyambura (2014) Thesis titled “The Relationship Between Land Reform And Gender-Based Violence, A Case Study Of Tetu Sub-County In Nyeri County” while Kamotho (2013) has done a thesis “Securing Women’s Land Rights; A Study Of Individualization And Decentralized Land Administration In Nyeri County”. It is notable that there is very little of historical study that has been done on land. It is for this reason that this study has been done to fill this gap. This study is essentially a historical study traversing of land

tenure and uses across three eras; pre-colonial, colonial and post-colonial. Apart from being historical, the study is approached from the perspective of gender relations in land tenure, access and use. This fills a clear gap in the paucity of such studies, globally and Kenya in particular.

The choice of Nyeri County, and in particular Mukurweini, is unique. The county was among the very first areas in Kenya where land ownership was changed from communal to individual in the 1950s alongside Kiambu and Fort Hall (present Murang'a). Furthermore, Nyeri County was one of the areas in the Republic where individual land titling began and was completed before independence. This was a major transitional trend whose history needed to be followed.

The period 1895-2013 is slightly over a century, introducing three different political eras namely pre-colonial, colonial and post-colonial. The length of time is sufficient to observe changes as transformed trends on land matters. The study area is the Mukurweini sub-county. This was a comprehensive territorial unit to carry out the study without being too narrow or too wide.

A study on gendered land tenure systems is important in two ways. To begin with, in an academic area where such studies are largely descriptive, analyzing changes in the gendered land tenure system from a historical perspective enriches literature in this neglected field. Secondly, a clear understanding of how changes in land tenure systems have impacted both men and women in Africa generally, and in Mukurweini in particular, would help policy makers design policies that would cushion each gender in terms of ownership, use and access to land. In a region where media is awash with cases of land conflicts and deaths, formulating policies friendly to all

genders must be encouraged. Carrying out this research and documenting how the changes have affected both genders contributes to that direction. The study used a gender perspective as it is significant in analyzing land tenure. Despite the significant shift that has occurred on the continent, neither the land history of Africa nor the relationships between genders have been well studied since gender has not been included as a category of study. Generally, this study is thus an important contribution to the body of knowledge on land tenure, access, and use. Matters to do with land have remained explosive in many parts of Kenya, and the findings of this study can be referenced by the government, especially the Lands Ministry.

### **1.7 Scope and Limitation of the Study.**

Three issues are addressed in the scope of this study: the time perspective, the territorial expanse, and the depth of the work involved. The study was confined to the geographical limits of Mukurweini sub-county. It looks into how gender relations and the land tenure system have changed in the Mukurweini sub-county. The reason for selecting 1895 is that it was the year when Kenya obtained the authority to enact policies and laws as a British Protectorate. Some of these policies served as the impetus for some Kenyan groups' disinheritance.

Although the study's oldest starting point of 1895 was specified, it was open-ended. On the other hand, since all of the schedules of the Kenya Constitution 2010 were yet to be completed, it was envisaged that they would be complete by 2013, hence the decision to complete this study's investigation and analysis in 2013. Among the informants were those who did not want their spouses to know that they had participated in the study. The researcher assured them of confidentiality by using pseudonymization of data to minimize any risk of linking them to their data, managing

data access and keeping the data secure. This was one of the limitations of this study. Inadequacy of finances was also a limitation, as the study involved moving around Mukurweini. To solve this problem, the researcher sought financial support from friends and well-wishers.

### **1.8. Literature Review**

This section reviews significant literature on gender and land tenure systems, and changes therein from a global, regional, national and local level. The literature is thematically organized to help identify gaps in knowledge that the authors left out while analyzing gendered land tenure systems. The literature review gave insights that helped conceptualize the study and where applicable citations have been done. The gap identified was that the struggles of the women of Mukurweini with their male counterparts over land matters needed a historical treatment in order to trace changes and continuities over one and a half centuries.

According to Payne (2004), land tenure systems are the formal, informal or pre-existing agreements under which people or groups have access to land for economic or social purposes. The regulations that set down how both individuals and groups are to exercise their obligations and rights, regarding the use, land management as a fundamental asset make up the precise form of tenure. There are various rules that make up land tenure systems. They may exist as a result of customs and traditions or because of statute law's legal requirements. Land tenure typology is built on these rules. This paper is relevant for the current study because it clarifies what land tenure systems involve, thus enabling the researcher to establish how they relate to gender relations in Mukurweini.

According to Norris (2003), the colonial legal systems that brought about individual land ownership without introducing gender equality to societies, leading to different gender roles, heavily influenced the majority of the modern land tenure regimes in developing countries. Also, constitutional provisions reduced the importance of secondary land rights, which were the primary source of land security for women who mainly relied on relationships to their tribes to access land, and on the communal nature of traditional tenure. Due to the traditional segregation of roles between men and women, the promotion of economic growth placed a high value on land, making it more challenging for women to assert their entitlement to land alongside males. The current study has focused on how gender roles influenced land tenure system's discrimination against women, an aspect that Norris' work did not address.

According to Lee-Smith (1997), land tenure systems were shared. There was sharing of land among the communities with consent and guidance from the local patriarch, clan leaders, and/or monarchs. Different people could own different combinations of rights on the same piece of property, and there were also collective rights on specific parcels of land called common property rights. These various land rights could be passed down from generation to generation. Clan leaders decided who cultivated a certain plot of land, but decisions were frequently reached after conversations within the clan and family, which were governed by conventions that took into consideration the requirements of different members of the community. A variety of factors, including gender, age and place in the clan and the family, influenced these debates. However, this study doesn't focus on women in land ownership.

Toulmin (2000) notes that women in Africa typically only had secondary rights or interests in land, and these were frequently of unclear length, prone to change, and

depended on preserving good ties with the clan, family or individual through whom women acquired their access to property. The right to use land and reap its benefits, also known as a usufruct right, illustrates a secondary interest of this type. As daughters, sisters, wives, or mothers, women secondarily used the land. These auxiliary rights were applicable to communal land, family fields, or in some situations, a piece of land that women could claim as their own and from which the family would benefit from the output. However, Toulmin's study did not shed more light on the role of law in protecting women against patriarchal land control, which this current study delved deep into.

Despite the fact that men in Uganda controlled the land, Sylvia (1999) theorizes that women, particularly married ones with their sons, controlled their houses. A wife and her unmarried children made up the majority of pre-colonial agricultural social groups known as satellite homes. Sons who were grown up would construct their own homes. Each wife in a polygamous marriage had her own dwelling on the homestead, which was cultivated under her management. Women were noted in certain houses. Daughters were expected to marry and have their husbands construct a new home for them because women did not inherit houses or land. Therefore, male relatives were primarily provided access to property and houses. Gender relationships were typically more complimentary than hierarchical. Despite the fact that men predominated in positions of political, economic and social authority, women were permitted to participate in decision-making either directly or indirectly. This body of literature only focuses on family or traditional rules that regulated land ownership, it does not refer to Kenya's constitution in terms of the relationship between gender and land

ownership. Nevertheless, the rules that controlled land ownership in Mukurweini, including traditional and constitutional laws, have been covered in this current study.

According to Obbo (1984), there are several instances of women in precolonial patrilineal civilizations who attempted to access land in other ways. When they were widowed, divorced, or had had enough of marriage, some Baganda women either got land from male relations or swore allegiance to another chief who gave them land to cultivate in exchange for making beer and entertaining his wives. It was common practice among the Luo for affluence and landed women to marry other women in order to pass on their names and fortune, as well as their cattle. In Kenya, there have been and still are woman-to-woman marriages among the Kikuyu, Kipsigis and Nandi peoples. An affluent woman without children could wed another woman, who was then free to have intercourse with any man she chose in order to conceive children for her husband who in this case was the woman who had married her. The wife was to bear children to ensure patrilineal property inheritance and to bury the husband. This work is relevant to the present study as there were a few cases of woman-woman marriages in Mukurweini Sub-County and thus provides a background to the Kenyan process of owning land in which the aspect of gender is assessed. This woman-woman marriage acted as a way of protecting land.

Lee-Smith (1997) observes that although the common inheritance system among the pastoral culture in Kenya at the time of his study was patrilineal, a few of the ethnic communities followed matrilineal systems of inheritance. Through a woman's descendant group, land and other inheritance claims would be passed on. Although there were many variations in how these matrilineal systems operated, historically speaking, women in matrilineal communities had better access to land than those in

patrilineal civilization. Despite this observation, matrilineal inheritance was not experienced in Mukurweini but rather we see the patrilineal model deeply rooted and which forms the core of our study.

According to Tamale (1999), the security of a woman's marital relationship—or her connection to her husband's family—became the main link for women to land and housing in Uganda, where men have economic authority over land and housing. The colonial emphasis on education had a significant impact on how women were positioned relative to men. Whereas boys and men had a disproportionate share of educational chances, women's education in missions was mostly centred on being good wives and housewives. A political system based on educational qualifications and the lack of educational possibilities both contributed significantly to the perpetuation of gender inequality. As a result, during that time, women had few roles in the selection of political priorities and decision-making procedures. Tamale's work dwells on the socio-economic condition of gender in Uganda, while the current study looked at the origin and the historical background of the land tenure system in relation to gender, in Mukurweini.

Kareri (1985) in his thesis on Nyeri Farming Systems looks at the detailed analysis of the physical and socio-economic aspects in relation to the small holder farming system in Nyeri District. (Present Nyeri county) The study is on climate, soils and land surface configuration focusing on some salient features and how they relate to land use. The farming systems, which include labour and inputs like fertilizer, chemical sprays and farmers training through extension services, are examined in relation to the production of food supply. The concern of food supply is because of the rising population that requires a continuous supply of food. This work does not touch on

matters of land tenure systems and gender relations in Nyeri County and is therefore not relevant to the current study.

Kamotho (2013) in his thesis observes that Kenya avails one of the most recognized documented processes of formalization of the land tenure systems by way of registration of title deeds to individuals. The realization of these rights depends on the land tenure system which is pegged on a given cultural context. It is on record that the formalization of land rights lead to the women being denied their land rights and which is seen to persist in areas where registration and titling first began. In his study, he looks at the linkage between individualized land tenure, culture and the security of the land rights of the women of Nyeri County. His conclusion is that the security of women's land rights is well guaranteed if there is a participatory process of land management which follows the principles of good governance and which can be handled by the National Land Commission. This work is relevant to the current study as it fills the gender gap in that it looks at securing women land rights through registration and issuance of title deeds to the women of Nyeri County of which Mukurweini Sub-County is located. The study however is not a historical study.

According to Nyambura (2014) in her thesis on relationship between land reforms and gender-based violence in Tetu Sub-County, Nyeri County, women account for more than half the population in Kenya but face a myriad of problems in accessing and controlling of land resources. Women are disadvantaged in matters education, health and land rights. This study revolves around the challenges that women face on matters land, land acquisition and land control. There are women who had been marginalized in matters of land inheritance and ownership of land due to customary practices. It was clear that women had no equitable access to land leading to conflicts whenever

they tried to inherit land from their matrimonial family. Most of the women did not have any protection to land rights for lack of a title deed to their land. It was very clear that customary laws brought conflict and that the women did not appear in the will for land inheritance. This has not been addressed to date. This work is relevant to the study in that it revolves around the challenges faced by women in land access, use, control and ownership. Although, it is not a historical study, it addresses land access and control by the women of Tetu Sub-County, Nyeri County. While the work is on a small region, it provides localized empirical data to be used in the current work.

The study by Mwangi (2013) examines the factors hindering realization of women land rights a case of the Luhya community in Kakamega county despite the existing constitutional provisions giving men and women equal rights to own and inherit land. In her work, she examines the position of women regarding marriage and inheritance, the level of awareness of the women concerning land rights, the prevailing cultures and the socio-economic impact on women land rights. The historical background on this study is presented where the ownership of property patterns in Africa focuses on the pre-colonial and post-independence periods. This study points out a gender gap in land holding rights because the access and control of land by women is affected by economic, social, legal and institutional factors. The current study aims to fill the gender gap in matters of gendered land tenure system. The study covers the women land rights in the pre-colonial era and the colonial periods which brings out a historical dimension thus being relevant to the current study which covers land tenure system and gender relations in Mukurweini Sub-County, Nyeri County over the same period of time.

Ochieng (2014) in her study on opportunities and challenges for women in the new statutory land tenure system in Kisumu County, Western Kenya focused on the available opportunities for women's access, control, use and ownership of land. The women are aware of the opportunities available but unfortunately, they are not realized due to challenges like; use of cultural land tenure system, traditions and customs that are patriarchal and discriminate against women, absence of structures that adequately facilitate the implementation of the available opportunities, lack of an environment conducive for the realization of the opportunities available and the prevailing parallel system regulating land tenure, one being statutory and the other being customary. The study brings out the fact that the Constitution 2010 has tried to bridge the gap between the statutory and existing customary land tenure systems, noting that this will take some time but it is achievable. This work is relevant to the present study as it addresses the issue of women access, control, use and ownership of land and fills the gender gap which is the core of the current study with the only gap being historical as the study is not confined to a historical period. The current study fills the historical gap as it addresses the pre-colonial, colonial and post colonial periods with regards to gendered land tenure systems.

### **1.9 Theoretical Framework**

Gender Analysis Framework was employed in this study to describe the land tenure structure and gender relations in Mukurweini (1895–2013). A solid understanding of the disparities between the lives of men and women can be built on the basis of gender analysis. This eliminates the chance that analysis will be founded on false presumptions and prejudices because gender power dynamics are typically skewed in favour of men in most African civilizations. Men's and women's jobs are assigned

various values. The goal of gender analysis is to show that it makes sense to allocate resources equally to men and women, whether for economic or other reasons.

According to Overholt et. al (1985), Gender Analysis Framework is also referred to as the Harvard Analytical Framework or the Gender Roles Framework. It was promulgated in 1985 being one of the first frameworks intended for gender analysis by researchers from Harvard Institute for International Development (USA) working together with the Women in Development Office of USAID. The purpose of the Gender Analysis Framework was to show that there was an economic need for allocation of resources to both men and women. It indicates whether both men and women have access to resources, who is in control of the resources, who controls the benefits of the resources and who makes the decisions about its use. The study is on land tenure system and gender relations and this makes the Gender Analysis the ideal tool to use since it looks at resource allocation for both gender and their access, control, use and ownership of these resources which includes land.

More than only biological differences between men and women are included in the notion of gender. The World Bank (2001) defines gender as the socially imposed roles, socially ingrained habits and expectations that are attached to females and males. According to Agarwal (1994), socially constructed phenomena change over time and space.

Crenshaw (2013) states that the Intersectionality Theory is an analytical tool used for the purpose of equality and monitoring of human rights with the aim of bringing out various aspects of discrimination, abuse, harm and disadvantages experienced by persons whenever multiple categories of social identity interact with each other. The

theory looks at the various ways in which race, class and gender are interdependent and in the various ways through which race and gender interacted affecting the employment conditions of the black women in the United States. This needed to be interpreted, analysed and understood through the two concepts of race and gender discrimination. The experiences of these black women were shaped by a merger of race and gender-based prejudices which resulted into discrimination. The theory focused on the discrimination of black women in the United States and does not incorporate the male gender. This was therefore not an appropriate analytical tool to use for the current study as it does not deal with gender issues which is a main focus of the study.

The socially constructed positions are typically uneven in terms of authority, decision making, influence over events, freedom of action and resource ownership, according to Ellis (2000:139). Power, inequality and subjugation are all aspects of gender. In order to guarantee more equality for women in all of its social manifestations, measures should be enforced in order to change them.

Gender Analysis Framework was first applied in the 1990s once academicians understood how crucial it was to employ gender as a key analytical tool. The challenges of women have already been researched from numerous feminism perspectives. Evans (2024) brings out the feminist theory which is about social inequalities and injustices that come from gender bias and patriarchy. The feminist theory began with the work of Mary Wollstonecraft (1759-1797) and grew significantly in the 1970's and 1980's with the growth in scholarly attention that was given to the role of gender shaping human experiences. It is often associated with human rights. However, the feminism viewpoints researches focused on women

alone, excluding males, despite the fact that males were required to comprehend the underprivileged status accorded to the women in the community, making the theory inappropriate for the current study. Therefore, gender analysis proved to be an ultimate pertinent viewpoint for looking at how women are disadvantaged. To understand gender relations, gender analysis or gendered analysis integrates a variety of context-specific elements. Since gender is a social construction, the system that sets gender roles and obligations, access, resource control, and making decision is viewed as gender's main focus rather than focusing on specific women and men.

According to the gender analysis framework theory, men and women develop various roles and behaviours depending on their gender. Women are not viewed as a monolithic group or as having fixed gender characteristics in gender analysis. The individual land tenure system in Mukurweini eliminated both young men's and women's rights to inherit land. The gender analysis theory clarifies how the independent government carried out the colonial policy on land access, control and ownership, and how this affected gender relations. Thus, in this examination of Mukurweini's land tenure system and relations of gender, gender analysis is the ideal analytical instrument (Musalia, 2010).

According to Kameiri-Mbote (2005), patriarchy remains the framework from where gendered power connections are enacted and have come to dominate interactions with other types of social structures. Insofar as maternal types of social processes still exist, patriarchal power relations still serve as the foundation for and significantly impact how men and women interact in such communities. In most civilizations, male power is acknowledged to be ingrained in and anchored in the preservation of patriarchal institutions and social connections. These institutions are supported by a doctrine that

views the male adult as the supreme decisionmaker, regulator of all material resources, and manager of the reproductive and the productive powers of women together with the children.

The division of access rights is fundamentally influenced by the socially constructed roles that men and women play. Control, on the other hand, comprises the ability to grant and revoke access rights to members of society. In patriarchal societies, the older male community members hold the position. On the premise that the trustee held the rights for everyone in the family, male family members control land in the majority. Women are allowed access to and usufruct land rights, and to some point, this limits how autonomous they may be in sociopolitical and economic spheres.

At both the individual and structural levels, gender analysis framework is crucial in understanding the challenges women in Mukurweini Sub-County have had to confront while trying to acquire land. On the other hand, the patriarchal ideology emphasizes how women were hierarchically subordinated throughout institutional and social systems. Patriarchy remains important in understanding how the state, together with legal systems perpetuated the subjugation of women in matters of land ownership.

## **1.10 Research Methodology**

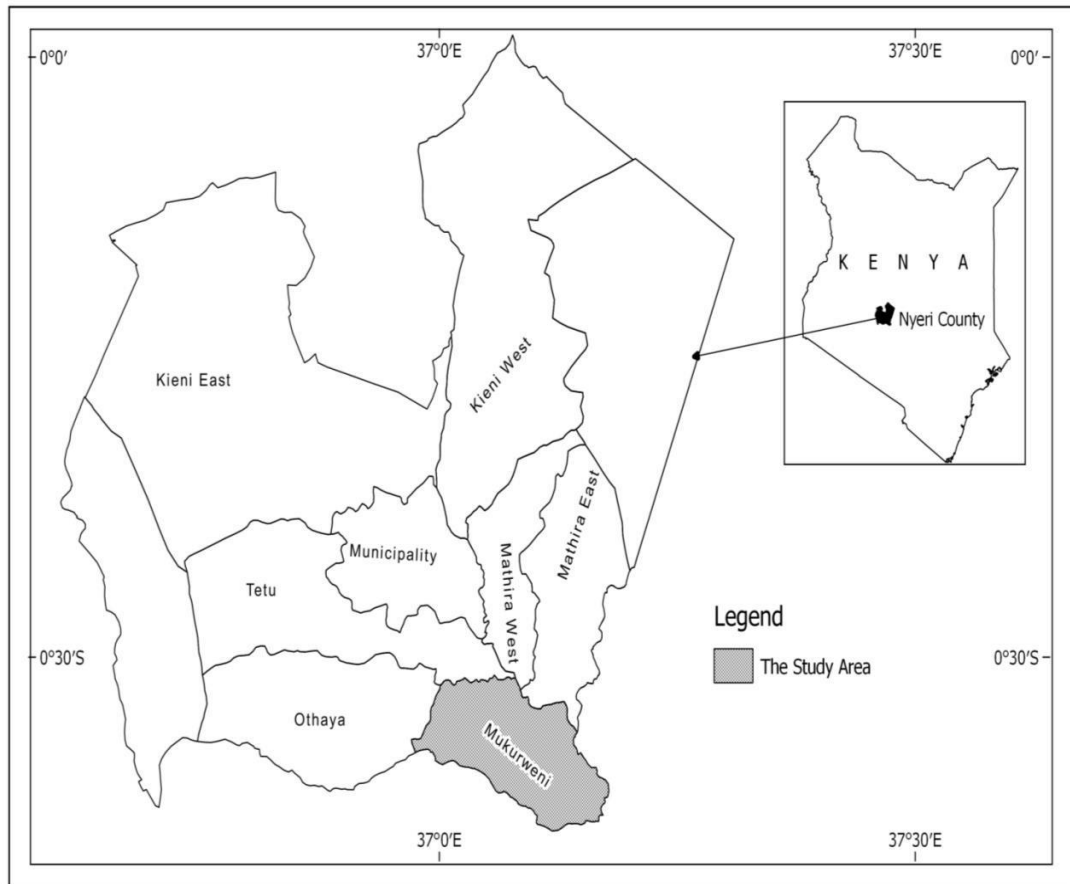
### **1.10.1 Research Design**

Both the Descriptive Research Design and the historical research design were used in this study. Descriptive Research Design used as the historian's work is to narrate events of the past and describe the trends. Historical Research Design used because we are looking at trends over large segments of time and how they change over time.

### **1.10.2 Research Location**

The research location is Mukurweini Sub-County which is found in Nyeri County. Administratively, Mukurweini Sub-County has seven locations and borders Kirinyaga to the south east, Mathira and Tetu to the north, Othaya to the west, and Kiharu and Mathioya to the south. It is situated at an elevation of about 1,669 metres above sea level and covers an area of 179.1 square kilometres. The economic activities in the Mukurweini Sub-County include farming, livestock keeping and harvesting of clay soil. According to the 2019 Kenya National Bureau of Statistics records, Mukurweini Sub-County has a population of 89,137 people.

Figure 1.1: Shaded area showing the location of the area of study in Nyeri Country.



**Figure 1.1: Location of the area of study in Nyeri County**

Source: Department of Geography- Kenyatta University.

### **1.10.3 Target Population**

#### **1.10.3.1 Sample Size and Sampling Procedure**

The researcher employed purposive and snowball reference to come up with a sample of 51 knowledgeable informants. These were drawn from government officials, village elders, ordinary men and women and professionals working in various fields. The criterion for selecting these informants was based not only on their knowledge of the location but most importantly, their interaction with the various periods and gendered land issues thereof. Significantly, a small cohort of very knowledgeable people who had experienced the colonial era were sought to shed light on the impact

of colonialism on gendered land tenure relations. In addition, two elderly men who had worked with the colonial administrators in Nyeri and who transferred their services to the government of the newly independent state provided very important information for this research. Under all circumstances, the researcher ensured that both men and women were selected for the sample population.

#### **1.10.3.2 Research Instruments**

This study majorly relied on question guideline and in-depth interview schedules. Through the help of two research assistants, the researcher organized for physical sessions with informants, based on their availability and location. Focused group discussion questions were also used to gather information from identified individuals in group discussions.

#### **1.10.4 Methods of Data Collection**

Oral interviews constituted a key primary source of data and were carried out for both men and women informants. They provided in-depth data which was not possible to get using a questionnaire. Focus group discussions were also used, and they proved to be very interactive and informative as the informants were able to remind and even correct one another, making the data highly reliable.

Oral interviews consisted of in-depth interviewing sessions for the women and men in order to have an understanding of their constraints in matters of land. Focus Group Discussions were also used with a few informants, in order for them to have a better interactive approach to the questions.

To gather more in-depth data, Key Informants' interviews were carried out consisting five elderly persons, two men and three women. Indeed, one of the women informants

was kind enough to give her life story, which became a very important source of data for this research.

In this study, primary data was also obtained from archives located in the Nairobi, Nyeri, and Mukurweini government offices of the District Officer and District Commissioner. Archival sources at Kenya National Archives, Nyeri Mau Mau Memorial Library, and the Ministry of Lands based at Mukurweini sub-county were in particular very instrumental in helping the researcher gather information on the pre-colonial and colonial periods.

Secondary data was sought from published books, articles, local newspapers, journals, periodicals, unpublished theses and dissertations, reliable internet sources, seminar papers, publications from women organizations and government sectors. The sources of the secondary data were the Post-Modern Library, Kenyatta University; Margaret Thatcher Library, Moi University; the Catholic University of East Africa Library; JKM Library, Nairobi University; and Mt. Kenya University Library. These were used to search for data on the background of land tenure issues from previous studies before embarking on the field work for the current study.

#### **1.10.5 Data Analysis**

This study applied a qualitative research approach. This is because the nature of the data collected was basically descriptive and not statistical. Information from journals, books, and official publications, as well as unpublished studies, reports, and dissertations, improved primary data analysis. These secondary sources were very helpful in comparing, interpreting and correlating the primary data. After data collection, the researcher scrutinized it and identified information relevant to the

research questions and objectives, translating what was in vernacular from some of the respondents. To sum it up, there was data corroboration, coding and thematic analysis in relation to the outlined chapters for the final compilation of this thesis.

The researcher thereafter organized and sorted the primary and secondary data, subjecting secondary data to analysis of document and literary criticism to establish its correctness and authenticity.

#### **1.10.6 Data Management and Ethical Considerations**

The respondents were informed of the goal of the study and given assurances that the details they provided would be kept private. The informants were also informed of their right to withdraw or not participate. The research was carried out with approval from Kenyatta University (Appendix 3, page 153). Following the guidelines of Kenyatta University's code of ethics, the researcher was granted permission to conduct the research in Mukurweini by the National Council of Science and Technology (Appendix 4, page 155). Additionally, the researcher notified the Nyeri South County Commissioner and the County Director of Education in Nyeri before proceeding with field work (Appendix 3, page 154).

While acknowledging the published and unpublished works, the researcher committed to protecting their confidentiality. The right to remain anonymous was upheld. All interested parties were given access to the research findings with the necessary privacy protections.

## **CHAPTER TWO: A GENDERED PERSPECTIVE OF LAND ACCESS, CONTROL, AND USE AMONG THE KIKUYU ON THE EVE OF COLONIAL RULE UPTO 1895**

### **2.1 Overview**

This chapter discusses the pre-colonial land tenure system among the Kikuyu in the late nineteenth century, just before the British colonization of Kenya at the start of the twentieth century. It examines the Kikuyu's probable origin and settlement in their present counties before colonialism. It also discusses the pre-colonial patriarchal socio-political structure of the Kikuyu while emphasizing the place of women in this. The chapter particularly examines the land ownership and use systems among the Kikuyu on the eve of colonial rule. Gender analysis is applied in explaining these features.

### **2.2 Traditions of Origin and Migrations of the Kikuyu**

The origins and the movements of Kenyan communities into their present areas of settlement continue to elicit debate among scholars. Muriuki (1974:34) observes that the region that the Kikuyu people now call home was once covered in a massive, prehistoric forest and that the Gumba and Athi hunters and berry gatherers were a sparsely populated group within that forest. These were the autochthonous population of the present Mt Kenya region. The area attracted the Kikuyu because of the adequate rainfall, cool temperatures, and fertile soil, unlike the region skirting it towards the Eastern border.

Muriuki (1974:49) asserts that the Kikuyu, Chuka, Embu, Mbeere, Gichugu and the Ndia left Igembe and Tigania within Meru by the 15th century. Communities had

already grown together in the Ithanga and Mbeere regions when the Kikuyu relocated to settle in the wellknown *Mukurwe wa Nyagathanga* in the current Murang'a County, from where the Kikuyu went on to distinguish themselves as unique people. Due to the area's favourable climate, the Kikuyu practised agriculture as a way of life.

Sorrenson (1967:5) indicates that little is known about how and when the Kikuyu occupied their present territory. According to a popular legend, the Kikuyu descended from a man known as *Gikuyu* and his wife, by name, *Mumbi*, who God (*Ngai or Mugai*) created. The two had nine daughters but no sons. However, on the advice of *Ngai*, they performed a sacrificial ceremony near their homestead. This site was known as *Mukurwe wa Nyagathanga*, in the current Murang'a County and formerly known as Fort Hall District. As a result, nine young men appeared, and they married the nine daughters, and all lived together in a matriarchal homestead, referred to as *Mbari ya Mumbi* (clan of Mumbi). The nine clans still feature in Kikuyu social organization today. They were the offspring of these unions, although at some later stage, the matriarchy was overthrown, and a patrilineal society was introduced.

Sorrenson (1967:7) observes that the early accounts of Kikuyu settlers in Nyeri speak of the *Aathi* as a separate race of hunters, usually of a dwarf-like character who lived in caves and who sold land or cultivation rights to the Kikuyu. However, when Kikuyu elders from this district gave evidence before the 1929 Committee on Kikuyu Land Tenure, they claimed that the so-called *Aathi* were merely Kikuyu pioneers who hunted for their livelihood or that the land was completely unoccupied and that the Kikuyu pioneers had obtained their titles by first clearing. What can be concluded from this is that the Kikuyu pioneers obtained their original *Ithaka* (estates) via first clearance and occupation processes, or by purchasing from these autochthonous

holders. Like other Bantu people in Kenya, the Kikuyu held on to the belief that the dead existed in the soil in spirit form hence, it was necessary to placate the ancestors of existing inhabitants. By doing so, the Kikuyu would legitimize their occupation with the spirits of the Dorobo ancestors through an adoption ceremony of the Dorobo, which helped to safeguard future Kikuyu land rights.

After adoption, they assumed the role of a *muciarwo*, a person who was adopted by a wealthy man and given a wife and land for use. The children of the *muciarwo* were in the lineage of the adopter through which they inherited land and the Kikuyu title was further protected.

During the research, it was revealed that among the Kikuyu, it was the man's responsibility to provide land for his family, including the women, while the women provided agricultural labor to produce foodstuff for their families (Wambugu, O.I.:2016).

### **2.3 The Socio-Political Organization of the Kikuyu in the Pre-colonial period**

The duties, privileges, as well as responsibilities inside each household including the larger Kikuyu society were determined by gender, age, and seniority. Muriuki (1974:110) asserts that as the nineteenth century came to a close, the Kikuyu society basically evolved into a patriarchal, uncentralized and highly egalitarian community. The family served as the foundation of its social structure, and the entrance of males into corporate groupings of contemporaries was a requirement for any political interaction or organisation. Every person was responsible for maintaining the social and political institutions as they existed in the Kikuyu society. It was the duty and

responsibility of each individual to safeguard that part of the society in which they were involved at any given time.

Musalia (2010:38) notes that patriarchy was strictly followed by the Kikuyu, in spite of a customary assertion to the contrary. Therefore, men led the institutions of society, politics and the economy. The Kikuyu were dispersed people. The man's cottage, known as a "*thingira*", the woman's hut, known as a "*nyumba*," and one or more grain storage facility (*ikumbi*-singular, *makumbi*-plural) made up each household, or "*mucii*". Children who shared a father in a polygamous family identified themselves by that name and considered their family to be that father's. In some polygamous families, according to Kariuki (O.I.:2016), some of the children referred to themselves by the name of their mother.

Sorrenson (1967:5) asserts that the *mbari* was the most important social grouping in the Kikuyu society. The *mbari* was a lineage grouping of all Kikuyu who traced their descent through the male line from a known ancestor. An *mbari* was founded by a Kikuyu who acquired by one means or another an estate (*githaka*) or stretch of land, often extending over a complete ridge. On his death, the lineage was given his name. According to Muriuki (1974:115-116), for every household, *nyumba* served as a communal and authoritarian entity, under the authority of the father, to ensure a smooth operation of *mbari* affairs. In both monogamous and extended families, his responsibilities fell to the elder wife's eldest son in the event of absence or death. FGD Kiahungu (10/12/2016) emphasized the importance of the *nyumba* under the authority of the father who had the final word in matters of the household. The women gave experiences of how they treated the household heads who in this case were their husbands. They gave a Kikuyu proverb that states that the eldest son and the father

are one and the same meaning that they accepted that their eldest son had authority and took charge in the absence of their husbands.

According to Musalia (2010:38), women's status in the Kikuyu community was substantially different from men's. Men would mature into fully autonomous adults, unlike women, who would continue to depend on male relatives as daughters or wives. Age and position, however, gave the women folk a little amount of authority. In a polygamous household, the first wife had power over the other wives, particularly through her influence over the husband.

According to Murithi (O.I.:2016), if a husband was considering getting married to a second wife, he would first talk to his devoted first wife. In other cases, the husband's first wife urged him to take another wife and would choose a woman for him. The main justification offered for choosing co-wives was to assist in meeting the demand for agricultural work. Regardless of her honoured status, the eldest wife had the responsibility of being devoted to her male family head.

Wambugu (O.I.: 2016) informed the researcher that most Kikuyu marriages were customary and it was expected that dowry would be paid as agreed upon for the women to fully belong to the families they were married to. Once the dowry was paid and marriage negotiations concluded, the women had access and control of the land belonging to her husband and in many cases would decide the food crops to grow.

According to Muriuki (1974:113–114), each *mbari* believed itself to be a direct descendant of the mythological ancestors of the Kikuyu people, *Gikuyu* and his wife, *Mumbi*. Each *mbari* traced its lineage to one of the nine Kikuyu clans. A Kikuyu person believed they were a part of the larger *ciana cia* or *mbari ya Mumbi* community

(the children or descendants of *Mumbi*). However, only when it was essential to promote cooperation and harmony within the Kikuyu community was the myth of *Mbari ya Mumbi* significant. Any one clan did not hold political dominance. The *ituika*, a noticeable and distinctive handing-over ceremony, marked the beginning of the *riika's* tenure in office, which was responsible for managing the affairs of the tribe at all times. A generation would pass the baton of authority to the next to carry out the political, judicial, and religious duties every thirty to forty years.

According to an elderly informant, Ndiritu (O.I.:2016), among the Kikuyu, power was vested in the age set (*riika*) and not an individual. An age set was formed after the boys and girls underwent initiation rites of circumcision and clitoridectomy, being the gateway to manhood or womanhood. According to this informant, the age set was in charge of political responsibilities of the land, like working for the military. After serving as junior elders efficiently, junior elders would be promoted to the senior status of eldership.

Sorrenson (1967:13) corroborates by stating that age-set was of fundamental importance in the Kikuyu society as it provided a regular means by which the Kikuyu were promoted to positions of authority, corresponding roughly with their increase in biological age. The most important stages were the initiation of youths into warrior status, signified by the circumcision ceremony, and the promotion of warriors to elder status. Circumcision marked the change from childhood to adult status. A circumcised youth became a junior warrior and in due course, a senior warrior but he would not become a junior elder until he married. Promotion from one age set to another carried with it membership of the various *kiama*. The warriors formed warrior bands rather than councils, although there was often an inner council of the most senior warriors,

which directed operations. Similarly, the junior elders had little authority, and their main function was to perform various services for the more senior elders.

Githaiga (O.I.:2016) shared similar views. According to him, a senior warrior could not acquire the status of a junior elder until he married and was known as a *muthuri wa mburi imwe* (an elder of one goat). This meant that his approval by the council of elders had been accepted by virtue of his conduct, which satisfied the council of elders.

Musalia (2010:41) states that there were complementary roles in the political structure among the Kikuyu. Girls would not qualify for entry to the council of elders despite undergoing clitoridectomy and women were not consulted on political matters. In the Kikuyu region, the authority of the judiciary was also placed on patriarchal councils whose members were men.

According to Gachinjiri (O.I.: 2016), members of the *kiama kia kamatimu* played the role of providing security during council meetings. In some instances, they could oversee the clearing and preparing of the venue for the council meeting, which women would do in some instances. Junior men held senior positions over the women even in cases where the women were their seniors in age. Permission was granted to women to form an assembly or council of their own but were locked out of the male-dominated governing council. The women's council dealt with all issues relating to childbirth, religious issues, and girl circumcision. It also addressed social, academic, and legal issues pertaining to women's rights. Women councils were prohibited from interfering in issues of security like war, invasion to expand their territory, or matters touching on judiciary, which were dealt with by the men's council (*kiama kia athuri*).

Affairs to do with resources, more so land, were not handled by the women. The women found contentment in the fact that they were allowed to access the land.

#### **2.4 The Kikuyu Economic Activities in the Pre-colonial Era: The Central Place of Land**

Like everywhere in the pre-colonial era in Africa, Kenyan communities had a well laid down legal system anchored on their traditions and practices. Their leaders, who included Clan leaders, Elders and Kings in a few cases, carried out both civic and spiritual responsibilities and were responsible for upholding community norms. The community governed the clan elders' authority. Clan elder's responsibilities included maintaining peace, arbitrating conflicts (relating to marriage, divorce, women's marital status, children's rights, inheritance, and the selection of customary heirs and property), and carrying out religious rites. Sorrenson (1967:4) observes that as was typical of the Bantu, the Kikuyu practiced a system of mixed farming combining the herding of cattle, sheep and goats with intensive crop agriculture. Traditional Kikuyu crops included sorghum, various types of millet, beans, pigeon peas, sweet potatoes, bananas, arrowroots, sugar cane and yams. As Muriuki (1974:76) affirms, under customary law, there were no sales of land in perpetuity. Indeed, as the Kikuyu put it, "*githaka ni ngwatira*" land is a loan. Close attention was thus paid to the boundaries separating the territory of one *mbari* from another.

Wambugu (O.I.: 2016) confirmed that rivers, valleys or ravines marked several boundaries of land. In other instances where this was not possible, people could plant specific trees or heap stones together. However, there were no permanent boundaries put between strips of land. People respected the boundaries as they were. Closely related *mbari* did not also put permanent boundaries.

Muriuki(1974:76) goes on to explain that the rights of the various families were not left to chance and that these rights were protected by the system of inheritance, with the practice being that a pioneer would divide his land among all of his wives, if he had more than one, to make sure that each one received a portion. According to Nyota (O.I.: 2016), sons had an equal right to all the land that their mothers farmed, and upon marriage, they were given land parts for their spouses from the land their mothers farmed. Every time they needed to, the sons were given permission to clear their father's uncultivated land. The uncultivated land occasionally served as a grazing area or was jointly owned by the sons as family woods.

In the past, there was no female lineal inheritance. After marriage, girls could still be permitted to continue working on some of their mother's property, but only with their father's or brother's permission. The *mbari* possessed complete control of the land, which was strengthened by this edict. The *mbari* owners, who had the exclusive authority to revoke these privileges at any time, were in control of the *ahoi* or those granted rights of cultivation, such as friends and *athoni* who were unable to inherit such land outright. The most valuable resource in this economy was land, whose tenancy was convoluted. Almost all of the economic activity had to do with land use. This is the main subject of this study. According to Muriuki (1974:33), the Kikuyu produced food in excess of what they needed to enable them to trade with their neighbors. Trade, therefore, was an important activity both internally and externally. The Maasai and Dorobo engaged in external trade with the Kikuyu. Livestock was also kept and slaughtered during various ceremonies as sacrifices, and was also paid as dowry. Animal skins provided bedding as well as clothing. The Kikuyu, therefore, had a mixed economy. They had some families pursue pastoralism/agriculture while

other families engaged in ironwork, tannery, bee keeping, and barter trade, especially with their neighbors.

Kanogo (1987:64-65) highlights the fact that the acquisition of land in Kikuyu land before colonialism operated through what was known as the *githaka* system. Under this system, each clan established ownership over a specified portion of land, with each member entitled to land within the *githaka*. Among the Kikuyu, land ownership was initially set up through cultivation of virgin land known as *kuna*. Those who occupied the land first established an *mbari* comprising an extended family or families, ultimately forming one clan. Whoever founded such a group enjoyed a jurisdiction over this *githaka*, parceled it out to his wife/wives plus his married sons. His senior wife's first son succeeded his position as *muramati*, the trustee of the property, upon his death. Other *ithaka* developed because of subsequent subdivisions, and their limits and acquisition methods were well recognized. In the event of disagreements, members could buy land or clear virgin territory, create a new clan, and elect a new *muramati*.

While retaining allegiance to the previous *muramati*, new clan lands would also be established. Muriuki (1974) observed that a poor man would frequently become close friends with a rich man's daughter and, after being married, would keep farming the land that had been given to the girl when she was younger. Land was also purchased from the *Aathi*, who lived there before the Kikuyu, or from the other Kikuyu, at a later time.

Nyagaceke (O.I.: 2016) a female informant stated that she came from a rich family but got married to a poor man and her father gave them some land to cultivate as a

way of supporting them. However, her husband got a job in Mukurweini Catholic Mission and was able to buy land for himself thus returning the land he had been given by his father in law.

Musalia (2010:42-43) observes that one of the significant means of livelihood in the Kikuyu community was land. Since they were farmers, land was a crucial source of income for them.

It was both a source of wealth and wealth itself. Any person who was a land owner was known as a *mwene*, or owner, and was held in high regard. Every Kikuyu man desired to own land due to its significance. However, land was dispersed throughout the ridge so that the farmers could benefit from different types of soil topography and avert any natural disasters. Different land tenure systems had been formed by the late nineteenth century in a number of Kikuyu districts, thus land served as a vital source of subsistence. Availability of land had an impact on the production relationships among community members, including those between women and men.

The Kikuyu Land Tenure Committee Report (1929: 8-9) gives the principles of land tenure as found to exist in the Kikuyu Province. The group came up with a number of concepts, one of which was that the original usage of a bush land area served as the Kikuyu people's unit of land tenure, usually through the first hunt, or perhaps through the first clearing and a long history or custom of use that continues to this day. This unit was called a *githaka* (plural *ithaka*) meaning bush. The persons with right of use of any *githaka* were narrowed down from the point where any member of the clan used any vacant land of the clan to a point where a *mbari* was recognized as having a limited number of *ithaka* and the members of the various sections confined themselves

to three or four of them. The control was on the person occupying the *githaka* known as the *muramati* (administrator) who normally was the eldest son of the eldest *mbari* resident there. The Principle upon which the *ithaka* were distributed among the individuals of the *mbari* was that of individual cultivation rights and joint ownership of virgin land. That is to say that whereas any individual member could cultivate the land, which his parents had cultivated before him, he could not go and start breaking virgin land on the undistributed parts of the *githaka* without the consent of the rest of the *mbari*.

According to the Kikuyu Land Tenure Committee Report (1929: 22), a second principle stated that land could also be acquired through *kugura* or redeemable purchase, where a man could offer his cultivation rights to anyone who was not a member of his own *mbari*. This was done if no one in his own *mbari* was willing or able to advance to him the cattle or other items he needed in return for cultivation rights over his portion of the *mbari*, and to become a *muguri*. The *mbari* elders had to give consent for all transactions. A *muguri* had full rights of cultivation and building and also rights to take on *ahoi*.

Land could also be acquired through the principles of *kuhoya* or to ask, pray or beg to make one a *muhoi*. This was where a man came to another and asked for permission to cultivate on his land and obtained it purely on the basis of friendship. The man who wished for cultivation rights took beer to the man from whom he wished to ask for such rights. The latter if agreeable, consulted the other elders of his *mbari* or the *muramati* and if they consented, he showed the *muhoi* where he would cultivate. The right to admit *ahoi* was reserved for people who actually owned land and for *aguri*. No *muhoi* could bring other *ahoi* onto the plot over which he only had cultivation

rights. The children of the land owner continued in the same relationship but were made aware of the relationship by the owner so that if they wished to evict the *muhoi* they could do so.

Kariuki (O.I.: 2016) confirmed to the researcher that there existed the *ahoi* in Mukurweini sub county. This was mainly based on friendship, where a man who had a large piece of land could allow a friend to cultivate his land for a period. He explained that at times the *muhoi* would be allowed to put up a temporary house for his family. However, this arrangement was made public so there would be no issues when the land owner requested to have his land back.

Another principle by the Kikuyu Land Tenure Committee report (1929: 24-25) was that land acquisition in the Kikuyu community was attributed to the rights of cultivation given to the *athoni* or in-laws. When a man married a girl, she could, by courtesy, continue cultivating for a season or two on that part of her mother's garden for which she was responsible before her marriage, and the crops harvested were for use by herself and her husband. However, this did not mean that the husband had any cultivation rights in the garden. On the other hand, if he found it difficult obtaining cultivation rights elsewhere, a man could be given an area to cultivate by his father-in-law for a season or two, but he would certainly not be allowed to stay on for long, nor was the practice a common one.

The last principle identified by the Kikuyu Land Tenure Committee report (1929: 26) was that one could acquire land as a *muciarwo*, meaning by right of birth. The *muciarwo* was never of the same main clan, he was often of another tribe, and for some reason, had no rights to any part of any *githaka* and had neither property nor

friends. He was usually both young and poor. He came to some rich man, asked to be adopted as his son, and was taken into his clan.

If the rich man was disposed to consent, he would first get permission from the clan and *mbari* elders, and there was a definite adoption ceremony. The man became a member of the main clan, taking the clan's name and becoming a member of the *mbari* to which the adopting family belonged. He was now treated in most things as a son of the family and was given a place to cultivate and even had a wife brought for him. If he seriously offended the *mbari* and clan, he could be evicted and would relinquish everything he obtained from the *mbari*, including his wife, children, and gardens.

Wanjala (2000:26) notes that "communal tenure", in which land belonged to the community as a whole rather than a specific person, was the most prevalent type of tenure in pre-colonial Kenya. Depending on his or her current needs, each community member had the right to access land. The political power in a particular community ensured the right of access. This authority did not "possess" any territory, rather, it controlled it politically. Political control was required to ensure the rights of access could be exercised within a functional framework and to maintain an equilibrium amongst community requirements as a whole versus the land's supply.

According to a Focus Group Discussion (FGD) Kaharo (5/11/2016), it was clear that initially there was no private ownership of land in Mukurweini, like in other parts of Central Kenya. All land was owned by the Kikuyu as a tribe. Household land was exclusively owned by the family, with the responsibility of land trustee being vested on the male head. There was communal ownership of land and no male or female enjoyed comprehensive land ownership rights.

However, not all of the ethnic groupings present in Kenya had a land tenure system similar to Kikuyu's. Different communities had different normative structures, levels of control (in terms of form and rigour) and communalism. It should be noted that each traditional community's land tenure system was significantly influenced by the social formations of the people and their philosophical beliefs. Erica (2014:17) notes that before colonization, Kenya's patrilineal land tenure system, which was based on, and made possible by customary law, was the main mechanism for determining both male and female land tenure.

According to Pala (1977:2), the pre-colonial land tenure system granted an unmarried woman usufructuary rights to land that was patrilineally vested in her father. She possessed the usufructuary rights to the land that belonged to her husband's patrilineage when she married in full and moved in with her husband's family. As a result, in patrilineal land tenure systems like the one in use in pre-colonial Kenya, a woman's claim to the property was based more on access rights than ownership rights. Women, individually or collectively, lacked any legal authority for distribution or land disposal, according to Pala (1977:2-3). However, as lineage members, wives and daughters, women were entitled to land rights for agricultural utilization with a requirement to provide for the needs of their offspring and spouses.

The inference is that in pre-colonial Kenya, obtaining land rights required belonging to a land-controlling social unit, which was established through birth, marriage, ceremonial adoption, or incorporation. Once people attained these rights, they remained inheritable within a family. Kanyinga (2000:158) quotes Pala (1977) in support of her claim that women could have had significant influence over decisions about how to use land under the pre-colonial system of land tenure. Although certain

women may have had significant influence over how the land was administered and distributed under this system, each woman's level of influence was primarily influenced by her membership in a patriarchal culture. In addition, although women were given some degree of power over the property, they did not actually own the land themselves because that privilege was only given to men. This was confirmed by Wambui (O. I.: 2016), who said that she did not own the land she was cultivating.

The FGD Ngamwa (5/11/2016) confirmed that the family head who was always a man made decisions concerning the resources of the family. The family head shared out his land to his wife/wives for their use and to cater for the family's needs. If the land owner died, the women would not own the land but instead the first son became the trustee of the land as a representative of the whole family. In some special circumstances where the deceased land owner had given land to his wife then this decision was respected by the *mbari* members as a respect to his wish.

Given the above discussions, women had no right to make decisions concerning the sharing out or acquisition of land. This was a prerogative of the male gender. Women were assured of accessing land only through their association with their male relatives. The sons would acquire land through their mothers, and held same rights as their mothers to the land their mothers cultivated. Therefore, the custodian of the son's land was the mother. Once the son got married, he got some land for his wife from his mother thus the mother lost control of this land and passed it on to her daughter-in-law.

Wamahiga (O.I.: 2016) confirmed that this exclusion of women in making important decisions about acquiring or giving out land was still prevalent in the society, noting

that a number of the women only accessed land through the male guardians. She emphasized that in most cases, women were not invited to most meetings dealing with the issue of land at the family or clan level.

## **2.5 Land Administration among the Kikuyu on the Eve of Colonial Rule**

According to Muriuki (1974:75), one of the fundamental tenets of Kikuyu land administration was that all land belonged to the *mbari* collectively. Any portion of it could be used by a member of the *mbari* as long as no one else had previously claimed it, and more importantly, as long as the head of the *mbari* and the *muramati* were informed. The Kikuyu Land Tenure Committee Report (1929:20) explains that it would seem certain from the evidence available that the boundaries of the *ithaka* were not fully marked in the days when they were simply hunting areas. Nevertheless, they were sufficiently well established to allow for proper marking out when the occasion arose. A hunter simply had his game pits and his traps set over his beat and possibly occasionally blazed a tree as a boundary. Natural features such as prominent trees, streams were also utilized as boundaries. The recognized method of marking out the boundaries of *ithaka* was the same, whether done on the settlement of a dispute or not. The essential points were that the marking out would be done in the presence of witnesses and of the representatives of the land owners on either side of the boundary and that the boundary would be marked by the planting of certain trees, shrubs or flowers. *Matoka* lilies, thus, would not be planted at all except as boundary marks. Within a *githaka*, boundaries between individual members of a *mbari* were not marked off unless there was a dispute and only by rows of matching grass (*kigutu*) and plants other than those used for main *githaka* boundaries.

According to Barlow (1955:61), among the Kikuyu, big *githaka* estates' outside bounds were delineated by natural features like rivers or ravines, planted trees, or African lilies thought to reproduce indefinitely once they were planted. Large stones were often buried beneath heaps of other stones, and in some cases, boundary markers were made out of piles of what were believed to be indestructible human hair. The estates of individuals who belonged to the same *mbari* or those who were closely related did not have any such set borders. The boundaries were present but not well delineated. They would not be shown, for instance, in case of dispute, without the sacrifice of a sheep.

## **2.6 Position of Women in respect to Land Access and Use on the eve of Colonial Rule**

In his thesis, Brownhill (2006:72) notes that Kikuyu women possessed extensive entitlements to land by around 1870, just before European occupation. Before colonialism, a woman's precolonial rights depended on her being a Kikuyu by birth, adoption, marriage or another relationship. Some Kikuyu women chose to live with their parents, remain single and have children with approved sexual partners. In this subsistence land relationship, a woman had to bring her spouse onto her own farm on her parents' land. This relationship is referred to as *mwendia ruhiu* by Mackenzie (1998: XIII: 32–34), which means marriage to a man without his own home.

In such cases, women-maintained rights over any children they mothered. The children of these marriages inherited land from their mother's parents. Also, sometimes fathers gave daughters a wedding gift of a piece of land instead of the more customary gift of goats. Land was as well given to women as gifts and entitlements

from natal and affinal kin. Kikuyu women could also be given land as *tha* or blessings from both kin and strangers.

A woman was entitled to marry a man from another *mbari* or even from another ethnic group altogether. Normally, she would relocate to her father-in-law's property, and her mother-in-law would assign her land. Daughters could also marry *ahoi* tenants on their parent's land and thereby stay in their natal home with their husbands (Kershaw, 1997).

According to Mackenzie (1990), widows were normally absorbed into their dead husband's clan (*mbari*). Some young widows could be married to their dead husband's brothers. The widows past child-bearing age were more likely to continue living in their deceased husband's homes. Sometimes the widows who were past childbearing age would also become female husbands. To do so, they would marry a younger woman who would live in the homestead of the female husband. The wife was allowed to take sexual partners, and her children were incorporated into the female husband's household and the dead husband's *mbari*.

According to Muriuki (1974:85), during times of famine, girls and women from food-deficient areas were adopted into families in food-surplus areas. Adoptees often had the same access to family land as had any other daughter. While the pre-colonial land rights of Kikuyu women were dependent upon their relations with men, in practice, few if any, women amongst the Kikuyu could have been considered landless before colonization. Kikuyu indigenous land relations secured for all access to land and other life goods.

Lewis (2007:48) confirms in her thesis that in the creation of legends of the Kikuyu people, the women played a significant role. In the Kikuyu creation stories, God gave the highlands to the Kikuyu ancestral parents. The Kikuyu were the descendants of the nine daughters of these ancestral parents. She quotes Jomo Kenyatta as saying that a revolution occurred as a result of changes in women's roles in society. He claimed that in a matrilineal society where women had dominated Kenya for generations, the women had forgotten their duties and only remembered the privileges of power. When the men rebelled against their control, polyandry was replaced by polygamy. Kenyatta reminded his audience that this was purely from a male perspective. The opinion of the women on this revolution was not documented. This demonstrates how crucial women have always been to Kikuyu history. As noted by Lewis, the use of all land, food and ceremonies was governed by the pre-colonial social system, which was based on the kinship unit known as *mbari*. Young people were divided into age groups.

Harrington (2008:73) explains that due to the diversity of customs, it is challenging to speak about customs in Kenya as an all-encompassing set of practices. However, there are some commonalities. Customary land rights for women during the pre-colonial era were frequently referred to as unfair and discriminatory. Typically, patrilineal tenure meant that the husband or his family owned the property. Men gained authority over land distribution as the head of the family, but only within the confines of the nuclear family. Since the land belonged to the husband's family, wives were typically not included in important decisions. Wives and daughters were seen as outsiders and transients, respectively. It was believed that neither wives nor daughters had a long-lasting interest in the patrilineal land assets of the family. According to

customary law, women were permitted land access and use only if they were related to men, who possessed the ownership rights (a husband or father).

Despite being the primary food providers in rural areas, with customary systems, women did not have secure rights to land ownership. Until their male children were old enough to inherit it themselves, widows frequently kept land in trust. Through their husbands, women had access to land and as a result, if a woman tried to hold onto the land after her husband passed away, she would be evicted. This was more likely if a man died without children or with just girl children. He often had his estate handled as though he had never been married.

Wangari (O.I.:2016) shed more light by stating that in some instances, the women did not even make decisions as to what crops were to be grown on the farm, yet they formed a large agricultural labour force and were liable to ensure a constant food supply for the household. According to Wangari, women sometimes could not even make decisions concerning the acreage of land to farm or leave. The husbands decided upon this.

As a matter of patriarchal cultural heritage, men among farming communities like the Kikuyu controlled access to the women's basic property, which was land. The women's usufruct rights depended on their relationship with the males, whether it was as wives, fathers, brothers or other male relatives. As it depended on the kindness of these male patrons, access could be denied. The primary means of subsistence was agriculture and reliance on other land-based natural resources, thus women's lack of land ownership, control or access had serious repercussions.

According to Kameri-Mbote (2005: 6), women in Africa did not possess or inherit land under customary law, regardless of their marital status. Women were not seen as strategic grants of land rights, which were the foundation of a community's survival, because they were thought to be temporary members of the polity. In addition, there was the idea that since women contributed to the community's wealth, they could not be the recipients of the land rights grant. Men held authority over household land because mostly male community leaders had given land to male family heads, who then passed it down to male heirs. The majority of women accessed land through their male relatives. Notably, a husband had a duty to provide his wife with arable land to farm, but he got to choose which plot and how long she would use it.

Women could only obtain land through a system of vicarious ownership, which involved men in the roles of spouses, fathers, uncles, brothers and occasionally sons. Therefore, customary laws had the result of excluding women from the clan or communal body, and those laws that had the result of prohibiting women from land ownership. Widowed women were not entitled to inherit land under customary law, but historically they were permitted to live on the marital property and residence until their deaths or remarriages.

Women had secondary rights or interests in land in pre-colonial East Africa, which they had to exercise through their father, brother, spouse or son. However, access to land and shelter was typically supplied because the land was not exclusively held by any one person but rather shared by communities with a strong feeling of solidarity and tradition. The concept that everyone had access to land was prevalent among the Kikuyu, but this neglected the many ways each gender acquired land. There is a false perception that men and women had equal right of access to land. Modern society

now accepts traditional land ownership structures that exclude women from access to riches. Due to the historical image of women as inferior to men, such systems restrict women's control over and access to land.

## **2.7 Summary**

The Kikuyu pioneers are believed to have obtained their original land, *ithaka*, through the process of occupation and clearing of bushes, while others are said to have “bought” the land from the autochthonous holders who were referred to as the Dorobo. Being agricultural people, the Kikuyu were deeply attached to their land, which they regarded as an economic asset. Land was owned by the *mbari* whose members traced their descent to a known male ancestor called a *muramati*. The *muramati* was solely responsible for reallocating land.

The ownership of land among the *mbari* was boosted by religious beliefs and, more importantly, ancestor worship. The Kikuyu, therefore, had a deep connection to the ancestral land. *Non-mbari* members would acquire land through tenancy relationships. This took the form of *muguri*, who leased land in exchange for stock as collateral, and *muhoi*, who obtained temporary cultivation rights based on friendship and was required to pay an annual tribute of beer and first fruits. A landless son-in-law would also be in a *muthoni* relationship where his father-in-law accorded him the right to use his land. A widow's children would also be allowed to occupy land belonging to her *mbari* in a tenancy referred to as a *mwenda ruhiu* (the man who sells his sword). A stranger adopted by a wealthy man and given land was a *muciarwa*.

*Non-mbari* members were permitted to occupy land in any of the above relationships but would gain no title to it. It is imperative to acknowledge the fact that women did not own land among the Kikuyu on the eve of colonialism. On the death of the

*muramati*, who had authority over the *githaka*, the authority of the land was passed to a single heir who was the first-born son. This was in total disregard of the mother, even if she was still alive.

The report or findings given by the Kikuyu Land Tenure Committee (1929:16) highlight the exclusion of women in land rights by stating that a man and his sons often acquired several hunting areas, which were gradually taken up as areas for cultivation and grazing. This was meant for the man's own male children and their descendants through the male line, the male children of his brothers or stepbrothers through the male line.

According to the study there was continuity in that, women could only access land through their relationships with men who were either husbands, fathers, uncles, brothers or sometimes sons. Thus, customary laws among the Kikuyu on the eve of colonialism excluded females from land ownership.

**CHAPTER THREE: COLONIAL LAND POLICIES AND THE GENDER  
QUESTION AMONG THE KIKUYU OF MUKURWEINI SUB COUNTY;  
1895-1963**

**3.1 Overview**

This chapter focuses on the systemic changes on land tenure among the Kikuyu and how it impacted the rights to land access and use for the women of Mukurweini on the onset of colonialism. As Leys (1971) notes that socio-economic stratification in the Kikuyu society was institutionalized through land reforms. The roles of various pre-capitalist organizations such as *mbari*, which guaranteed certain rights on land use for women, were written off in the wake of capitalist type of land tenure.

As noted in this chapter, colonial land reforms also created a gender imbalance in land ownership among the Kikuyu. The individualization of land in Central Kenya did not result in an increase in the amount of land available. Instead, it focused on improving production technologies on the already skewed system of land distribution, in favor of the men. Consolidation of land forced many people to leave their homes and communities, which made landlessness worse because those who had previously been protected by customary tenure had those rights eliminated through land registration. Only male family heads were listed as landowners, violating women's and children's rights and putting them in danger of losing their homes should the landowner decide to sell the land.

Gender relations regarding land in Kenya today are a function of what happened during colonial rule. What is prevalent is essentially Western land ownership-and-use patterns that are couched in capitalist relations of production that were introduced

with colonialism. This chapter consequently examines a number of land policies by the colonial government and how they impacted on women rights to ownership of land. Gender analysis is applied, demonstrating change and possible continuity during the period.

### **3.2 Colonial Land Policies, 1895-1954**

According to Karanja (1991), the East Africa (Acquisition of lands) Order-in-Council, which was passed in 1898, (KNA/VQ/5/34) was the first law expropriating property for European settlement and signalled the start of European interest in land in Kenya. It examined every piece of land inland from the protectorate's coast. In an effort to seize property occupied by Africans and provide appropriate laws to control occupation, the Order in Council was issued. It was technically difficult to provide the settlers with land before securing its title, even though under the law of the British Protectorate all the land titles belonged to the Protectorate.

The procedure for acquiring the title of the crown was straightforward. The colonial authorities ignored the land usage system of the Africans, which was entrenched on pastoralism and shift cultivation, and the fact that in the existing African property tenure there was no concept of ownership of land by an individual. Since after use, all the big plots of land were left fallow and would be planted once they were fertile once more, the colonial authority claimed ownership of all empty property and proclaimed shifting agriculture and pastoralist related territory to a wasteland. It then sold or leased this land to European immigrants. The British believed that Africans only had the right to occupy. These rights were restricted to all the lands being actively used (KNA/DC/NYI/1/2).

In Kenya, the chain of history regarding the formation of tenurial systems was abruptly broken as these systems were compelled to meet the needs of the colonising authority, according to Wanjala's (2000) observation. Three major events—the alienation of land, the implementation of English property law, and the modification of traditional land law and tenure—define the colonial era. A shortage of land was developed very soon after European colonisation as a result of the migration of the European settlers into Kenya, which continued until 1900. The result was the alienation of certain Kikuyu land for white settlement.

The Crown Lands Ordinance, which was passed in 1902, Mwangi (1974:248) gave the Commissioner authority to distribute, sell, lease or dispose of any expropriated land as he saw fit. Additionally, it permitted the settlers to be given leases that lasted for 99 years, effectively sealing the fate of African land rights. In 1909, it was highly advised that "Native Reserve" boundaries be established, although little was actually done outside of Maasai territory. The territory was set aside for the aboriginal tribes by the king.

The reserve undermined the advantages of traditional land access arrangements because in the reserves, individual families, instead of clans or families, emerged as a significant means of land acquisition (Kanyinga 2000). Additionally, in the reserves, boundaries that were created prevented people from acquiring land rights elsewhere because they limited migration to frontier areas. This led to increased pressure on the capacity that the land would carry, which the customary African land tenure handled in case of a boom in population or non-availability of land (KNA/VQ/29/7).

Wangari (O.I.:2016) noted that the colonial government's establishment of the Native Reserves had a negative impact on customary land tenure. It interfered with the pattern of access to land because in the native reserves land was distributed according to individual families rather than clans as in the customary land tenure. This new land distribution affected both genders in terms of land access, use and control.

The most oppressive law was the 1915 Land Ordinance Mwangi (1974:326). It strengthened the governor's authority and raised the length of the land lease from 99 to 999 years. Now, the governor could lease any crown land or otherwise transfer it on behalf of his majesty for any reason and under any conditions, as he saw fit. Additionally, this decree created the Native Reserves and granted the governor the authority to diminish the reserve areas as he saw fit Okoth-Ogendo (1991). The limit of the white highlands was defined by this decree, which also greatly increased Africans' uncertainty regarding the ownership of land in their reserves. The boundary for the white highlands was not established until 1939 because the colonial government accepted the settler argument that land found suitable for permanent European settlement should be added to the white highlands whenever it became available (KNA/PC/JUB/1/9/8).

The Africans did not only lose occupancy rights but also became estates-at-will, who the crown moved from their lands at their pleasure. Land shortage sparked off a re-examination of the traditional land tenure by the land-owning Kikuyu, and these, afraid of the demands of the *ahoi* as much as they feared white infiltration looked for ways to consolidate their hold on the land by demanding titles for individual ownership. The *ahoi* traditional rights to cultivation and occupancy received a callous

blow, and the displaced *ahoi* trickling only partly alleviated the deteriorating situation into the farms owned by white settlers to become squatters.

The Maxwell committee released yet another research on Kikuyu land tenure in 1929. The panel looked at Kikuyu land tenure systems in order to provide suggestions about the regulations that had to be put in place to control tribes', clans', families' or individuals' rights to occupation in each or any area, while giving proper consideration to native lands and customs. In interviews with Kikuyu chiefs and elders in the communities of Karatina, Murang'a, Kiambu, Embu, Chuka and Meru, they underlined the elements of land tenure that favoured male dominance over the land. As a result, they started a dominating discourse in Kikuyu culture that was unrepresentative of women and landless people, and acknowledged much less flexibility, complexity and manoeuvrability in dispute settlement (Brownhill, 2006). With the introduction of the money economy in Africa through the establishment of colonial capitalism and labor markets, the earlier land usage patterns and occupation in colonial Kenya were completely altered. The result was that money started to be used as a substitute resource, which caused men to migrate to work on European farms while leaving the women behind to cultivate the limited land and care for their children. Family structures and women's economic status and authority were damaged as a result, which disrupted the social order. According to Lewis (2007), the Kenya Property Commission was established to look into claims made by Africans that European immigrants had stolen their land and that the latter concluded and institutionalized the land alienation of the highlands. In Kenya, European settlers and Kikuyu met with representatives from London in 1932. The Kikuyu chiefs, led by chief Koinange, provided justifications for the government to provide the Kikuyu with

additional land, particularly in the highland regions. They asked to have a total of 60,000 acres of land returned and provided tangible proof and witness testimony.

The recommendations made by the commission did not satisfy the Kikuyu. The commission supported settler rights to the land in dispute. With this, the panel identified the turning point in the momentum of African politics under legal pressure. As far as the Europeans were concerned, the actual land title question had been resolved. Europeans recognised that Africans required arable land but thought better farming methods were the answer. This signaled the beginning of a new period of African unrest. The colonial government conducted a number of land inquiries during the first half of the 20th century, but the "Carter Commission" as it came to be known, was the most thorough and significant. Its purpose was to address Kikuyu protests over the land loss and to establish legally sound justifications for European alienation of indigenous people's lands.

Since they lacked the rights to ownership or transfer, women's land rights were precarious and constrained throughout this time. Indeed, whatever little security and control they had over the land was taken away by the onset of European colonisation and colonialism. This was accomplished by the legislation that was passed, which disregarded their prior rights. The women lost security over land as a result of the breakdown of the African social systems, brought about by the European settlement. With the implementation of land reforms, a new system of land tenure emerged, one in which women's usufructuary rights were completely excluded. Additionally, it excluded women from the new land reform agenda, which distanced them from having ownership, control, and access to land, leading to grinding poverty (KNA/DC/NY/1/3). Kenya Land Commission evidence (1934) gives a part of the

presentation by the Kikuyu leaders to the Carter Land Commission, in the following words:

“Because we were few in number, we did not, at the time, object as we were thinking that all would be well and trusting in the government, while we found that the Europeans who came on to our *githaka* (clan land) as we thought simply as *ahoi*, that is, people who came as temporary occupiers had turned themselves into the landowners and the real owners into the tenants.”

According to Wambui (O.I.: 2016), land redistribution and land alienation adversely affected the women because their access to land and its control were affected greatly. The women became economically dependent on men. This intensified the domestic patriarchy that colonial social institutions had brought about. Colonial land alienation interfered with economic independence by compromising women’s economic productivity. As colonialism was entrenched in Africa, female agricultural production for the household was affected since their role in production of food was obscured by the higher profitable male-governed cash crop cultivation.

Wairimu (O.I.:2016) stated that sometimes the prevailing relationship between the women and the husbands’ families influenced the level at which they were given access and control of the land. Cordial relationships would ensure a sizeable piece of land and freedom to decide on the crops to grow, though the land would still be still registered to the males in the household.

In the 1930s, as the amount of arable land held by settlers rose, Kikuyu women in the native reserves discovered that they had less fertile ground and tiny pieces of land in which to cultivate food crops. Additionally, due to increased population density

within African reserves, there was exhaustion of soil, from usage. After depletion of the soil, erosion took place (KNA/PC/CEN/2/3/8). According to the Kenya Native Order-in-Council of 1939, the eroded regions were to be divided into native lands, interim native reserves, and native leasehold areas (Wanjala 2000). It is said that African customary law would apply to these places and that the Native Lands Trust Board had been established to safeguard native interests.

The 1939 statute was meant to be the last word. The land was to be shared among the people in each area in accordance with the tenurial practises of the group to whom it had been assigned. While the Africans were allowed to carry on in their customary ways, the Europeans were free to use their system of freeholds and leaseholds. Up until and after the country's declaration of independence in 1963, these arrangements remained mostly unchanged. Sorrenson (1967:135) observes that it was in Nyeri that the first active steps were taken to register titles. In the Kenya Colony, in 1942, the Nyeri Local Native Council passed the Land Registration Rules, designed as a step towards a comprehensive system of registration. The rules were not in fact approved, although the system set out in them was operated administratively on a voluntary basis. Instead of registering titles as such, rules were used merely to register transfers of land and only forty or so such transactions were registered each year. Nevertheless, the registration was accepted by the Native Tribunal as providing conclusive evidence of title. If this was no more than a cautious beginning, at least it showed that officials at Nyeri and the Kikuyu authorities were willing to grapple with the problems of tenure, particularly the growing litigation over land.

The colonial authority was convinced that poor farming techniques based on traditional land tenure patterns, which discouraged investment in land improvement

due to the unpredictability of customary land tenure, caused economic difficulties that were experienced by the African people. To make African farming more innovative and fruitful, it was believed that the solution rested in altering the character of traditional tenurial techniques. It was suggested that land reform would eliminate incentives to invest in land, resolving the fragmentation and unpredictability of tenure issues that worked against modern farming methods. In addition, the reforms were considered as a way to settle African land issues. Since titles would become negotiable and mortgageable, they would promote long-term investment, make credit more accessible, and boost individual enterprise. The political status quo was also seen to be protected and enforced through land reform. The Mau Mau nationalist group had established its base in Kikuyu territory and was extending to other parts of the country, posing a political threat. By urging the return of areas that had been wrongfully taken, it had also questioned the foundations of colonialism (KNA/VQ/5/34). Therefore, land consolidation and registration were viewed as a resource that could be exploited to both reward and penalize agitators.

The Forfeiture of Lands Ordinance, 1953, had been passed by the colonial authority (KNA/VP/2/22). Majority of the Mau Mau adherents and their sympathizers were made to give up their pieces of land as a result of its invocation as retribution for their claimed terrorist activity (KNA/VP/2/22). Kenya experienced significant reforms as a result of the Swynnerton plan (1954). The individualization of titles was the predominant goal of the land reform process. The procedure's first step would be adjudication, during which it would be determined who owned the scattered pieces of land. Following the consolidation of a person's various portions into a single parcel, the title to that parcel would then be registered in registers as proof of ownership, and

entrepreneurial African farmers would use these titles as collateral for credit to increase enterprise and farming. Women's land rights were impacted by land reform since they were not represented on the adjudication committees and did not attend their gatherings. The process of adjudication was founded on patriarchy as well as the traditional customs of inheritance and ownership of land, which forbade the women folk from inheriting or owning property. By prioritising individual land ownership held by male heads of households without protecting any rights for women, it ignored the high socioeconomic standing and powerful roles that women had in traditional African civilizations. Thus, very few women were registered as landowners, undermining women's usufructuary rights under customary tenure (KNA/LND.2/17/N).

Wambui (O.I.: 2016) observed that the land reforms focused on men more as the primary actors while neglecting the women, whose rights were either ignored or subdued under male interest.

In Mukurweini sub county, these land reforms gave more weight to the men's role, which was the link between the woman and the land, and excluded the women in land ownership despite being the prime food producers.

Among the Kikuyu was the destruction of institutions like the *Ahoi* and *Athami*, which ensured that everybody had access to land. Therefore, the colonial administration's efforts to establish a class of landless people through the individualization of titles had an impact on the rights of men to ownership of land and the access of land by the women. The women in the community were compelled to rely on meager financial resources for their survival because they lacked access to established social groups.

The women of Mukurweini had the freedom to cultivate the land, according to Maina (O.I.: 2016), but the registration was done in the names of the men. Thus, given that the registration of land was only in the names of the men, the women were denied the opportunity to get any credit or borrow loans from the financial institutions due to their lack of collateral. This meant that the women still had to rely on the men to give them an economic boost to invest in food production.

According to Wanjala (2000:16–19), the East African Royal Commission proposed that government policy in the East Africa shift to supporting personalised freehold tenure in 1955. Kenya was the first nation to act in this manner. Through the enclosure of communal lands or the consolidation of dispersed holdings, the Swynnerton Plan of 1954 established the framework for giving certain African farmers access to economic-size farming holdings. It was intended to give the farmers security of tenure by individuating the title and establishing private property rights on "tribal" land. This claim is made in Fiona Mackenzie's historical investigation of land in Kenya's Central Province (Yngstorm, 2002). Colonial attempts to codify "customary law" in the 1920s had a significant influence on 1950s debates about what exactly constitutes "custom." In the codification process, male land allocation rights took precedence over women's usufruct rights, which had previously been visible and had legal meaning.

Mackenzie (1998) showed that men were able to exploit "custom" in order to exert greater control over land to the detriment of women by drawing on these historical precedents of custom. This approach hid what was actually a rising class fight over land, which was occurring in an environment of severe land scarcity and rapid commoditization of land. Land registration, which began in the 1950s, did not result in these gendered conflicts over land or annihilate women's traditional claims to it as

wives. Instead, it made preexisting anxieties worse. Women's tenure insecurity as a result of titling is thus shown to be explained by the specific circumstances in Central province at the time that titling took place, not by the general state of affairs in Africa. Ngugi (O.I.: 2016) emphasized that customary land tenure ensured everyone had access to land. He noted with sympathy that women's land rights were affected once the colonial government kicked off on title registration. He explained that in these land boards, women were not represented nor were they allowed to participate in meetings. He emphasized that this affected even women whose fathers had given them land because they were unmarried, since they were not able to have parcels of land registered in their names. This ended the traditional rights that women enjoyed in the customary land tenure.

Wanjala (2000) asserts that regulations for the designation, adjudication and consolidation of native land regions were adopted and put into practice as early as 1957. The registered landowner was then given the freehold title. If it was noted in the register, the native law and custom-based right of occupation were seen as having been transformed into a "tenancy from year to year". It was otherwise put out if it wasn't recorded in the register. Even if an initial registration had been obtained fraudulently, it could not be contested. Prior to disposing of any land, all parties concerned had to secure the approval of the Land Control Board of the district in which the property was located. Wanjala further emphasizes that in reality, after 1959, land registration effectively took away all existing rights and interests under customary law. Swynnerton's plan provides the current study with the background on how the colonial masters practised law regarding the land tenure system. However, this current study goes further into the current laws in Kenya in relation to land tenure

and gender. It introduces a capitalist system of private land ownership that acknowledged the colonial land tenure system, which granted some Kenyans the legal right to own land while denying native Kenyans that right. Women were not permitted to obtain land under the said plan in relation to the customary female land tenure unless in extremely exceptional circumstances, such as the death of a husband. Being a widow, the woman had the land registered in their name to act as a steward of the land on behalf of their sons to ensure the continuity of patrilineage. Colonialism, according to Vengi (2016; 91), significantly altered precolonial economy. There was forced agricultural production of raw resources by Africans that the Europeans needed, such as peanuts, cocoa, cotton and coffee, under colonial control. Women's economic activities and social opportunities were significantly impacted by this process of colonial rule constraining traditional economies.

It is clear that colonial capitalism changed how men and women related to land. The colonial regime took steps to achieve agricultural boost by, introducing growing of cash crops, but focusing on agriculture that was male controlled, which significantly harmed Kikuyu women's standing and authority in land and agriculture. The Kikuyu women played a major role in subsistence farming and produced crops for their families' food which was honoured by the customary land tenure system of the right of access to land. These patterns of land usage underwent a significant change with the entrance of colonisation. All consolidated properties were mostly owned by the men, and access to agricultural land was restricted. Women suffered due to the reconfiguration of gender roles brought about by colonial capitalism. Gender segregation in the workplace resulted from the introduction of cash crops, with males taking on managerial roles in agriculture while women performed manual labour.

FGD Gikondi (29/11/2016) confirmed that women lost power and status in matters of land and agriculture, with cash crop growing being introduced by the colonial government. Women were involved in subsistence farming to feed their families, which was interrupted by the introduction of cash crop farming which required huge tracts of land. The men gladly accepted cash crop farming which led to reduction of the land under subsistence farming thus affecting the production. The women had no choice but to provide manual labor in the cash crop growing lands as a means of earning a livelihood.

### **3.3 Kaffir Farming and its Effects on the Kikuyu Women in respect to Land Access, Control and Ownership, 1930-1954**

According to Kanogo (1987:15–16), the term "Kaffir farming" referred to a system in which a European landowner would allow the Africans access to graze their animals and practice agriculture in exchange for cash payments or in kind. It usually involved milk, manure, some livestock or agricultural crops. The small, poor European settlers in Kenya were blamed for the growth of kaffir farming since they were unable to engage in productive agriculture on their fields because of their lack of resources.

In a patriarchal society, male authority is deeply lodged and ingrained in the preservation of patriarchy in institutions and many social interactions. Patriarchy is linked to the beliefs that say that only adult males have the power to make decisions, are in charge of managing resources, and determine how much time women and children spend working, and how much time is spent raising children.

Huntington (1975) argued that the pre-colonial African woman was oppressed. Capitalist development in the African societies further entrenched the oppression of women due to the migration of the male gender. The women's role in society and

gender apportionment of labour were drastically altered by colonialism. In an effort to procure inexpensive labour for the settler phenomenon brought on by colonial property laws and policies, the crown enacted taxes. Through a variety of methods, including the pass *kipande* system, conscription and recruiting, native Africans were also made to supply cheap labour to the white settler farms. With time, resentment grew over British attempts to steal indigenous African territory. Colonial officials saw the individualization of land tenure, which granted exclusive rights over land parcels to the middle-class African population whose class was linked to the soil, as the problem's solution. These middle-class populations had too much to lose by supporting the Mau Mau style revolt.

Kanogo (1987) notes that many European *kaffir* farmers were absentee landlords. The Africans who utilized their land grew and marketed their produce both within and outside the Kenyan white highlands. A number of settlers were thus dependent on African producers occupying their fields. Kaffir farming featured a tenancy relationship of a landlord and tenant between the African squatter and the white settler.

Ochieng (1992) observes that colonial socio-economic policies enhanced male chauvinism in the family and the society. The colonialists aimed at creating a cheap labour force and the men were encouraged to leave their homes in search for wage labor while the women remained in the reserves to produce food to feed the family and support low wages earned by their laboring men. He further postulates that, this male chauvinism was accelerated during colonial land reform in that titles were given to men only and when a man was missing even through death, women were to get a male trustee. Administrative posts including chieftaincy were the reserve of men who

made biased communal and national decisions, some of which were on land rights that alienated women from owning land.

### **3.4 The Swynnerton Land Reform Plan for Kenya and the Disenfranchisement of Women in Mukurweini, 1954-1963**

A famous plan from 1954 called the Swynnerton Plan served as the blueprint for and the compass for the Kenya colony's land reform project. A landed African middle class was to be developed as part of the strategy, and members of this class would actively engage in intense and extensive agriculture. It aimed to unify dispersed parcels of land held by an individual under the traditional land rights, in order to revolutionize African agriculture. According to Lewis (2007:39), the Swynnerton plan signalled the start of significant land use changes during the brief tenure of the colonial authority. Its goal was to approve the transition to tenured ownership with title holdings, from community land holdings, with known titles of ownership based on familial relationships. The goal of the tenure reform was to turn land into a marketable commodity. The Swynnerton plan, which sought to make individual land owning practises the cornerstone of agricultural development in Kenya, was influenced by the European conception of individual land holding. African deed holders were given permission to grow cash crops, which were previously forbidden, as part of agrarian reforms. The majority of the proposal involved significant modifications to land usage. The thinking behind all this policy was that Africans had to change their ways if they were to survive in the rapidly changing environment.

According to Vengi (2016:89), the colonial authority sought to start the agricultural revolution by altering the colony's system of land tenure. A number of meetings were organised to accomplish this. In 1956, the Arusha conference was held where the topic

of African tenure, was addressed. The Arusha conference opposed the African traditional land tenure system by pointing out that it was impracticable to plant perennial crops and use better farming techniques on communally owned land. The most relevant type of tenure was identified as being individual tenure. The symposium pushed the idea that a personalised tenure system would adequately incentivize people to invest their time and money in raising productivity and implementing soil conservation measures (KNA/LND/32/1/1226). In order to confirm individual property ownership, the conference promoted individual land tenure and title document issuance. According to KNA/LND/32/1/IV, the issuance of title deeds offered individual farmers protection from foreign aggression. In regions where the conditions were favourable, individual land tenure was to be promoted by the governments according to a 1956 Arusha Conference recommendation. In response to this meeting, the colonial government of Kenya, in June 1956, declared the objective of the government to support African individual tenure and establish a registration system of titles that were negotiable (transferable) (KNA/1/IV/1226b). The 1956 Arusha conference's recommendation was modified by the Native Land Registration Ordinance 1959, which started the land registration procedure (KNA/1/IV/1226). The individualization policy as a process for the title registration was fervently enforced in 1957. The individualization of tenure had an impact on the practices of communal land ownership.

Even if an initial registration had been obtained fraudulently, it could not be contested. Prior to disposing of any land, all parties concerned had to secure the approval of the Land Control Board for the district in which the property was located. After 1959, the process of registering land completely nullified all prevailing rights and interests

under customary law. The Swynnerton Plan established a capitalist system of private land ownership that reorganised the colonial tenure structures and gave certain native Kenyans the ability to legally own land. Previously, native Kenyans were denied the opportunity to possess private property.

According to Mwangi (2009), the Kikuyu region in Central Kenya underwent land tenure reform. This involved a number of processes, including: land adjudication, which involved determining the existing customary land rights; consolidation, which involved combining various fragmented land holdings into consolidated plots; registration, which involved recording titles over consolidated plots; and finally, the issuance of a title deed.

According to Sorrenson (1967:201), consolidation and registration were intended to overcome the ambiguity customary tenure, which had already been significantly altered by fifty years of European contact, and to produce a system of recognised titles that were insured by the government. This was intended to lay the groundwork for an agricultural revolution. The consolidation of shattered pieces of land was anticipated to speed up the development of farming practices and make it easier to produce crops. The issuance of titles was anticipated to offer protection from legal action and to help raise credit. According to Sorenson, land registration and consolidation along with the subsequent agricultural revolution were anticipated to produce a stable middle class centred on the Kikuyu supporters who were seen by many officials as the "natural" Kikuyu leaders of the future. It was believed that a class like this would be too engrossed in farming to be duped by Kikuyu politicians into engaging in more subversion.

According to Karuti Kanyinga (2000), interests of groups in land and attitude to the issue of land produced social-political differences that permeated the political party formation processes in Kenya. There were various parties, and each group was affiliated to a certain political party because of its unique interests in the land issue. On the one hand, there was the Luo-Kikuyu Alliance Party, the Kenya African National Union (KANU) on the other which, was the umbrella group bringing together the Kalenjin, Maasai, Turkana, Samburu (KAMATUSA), and the Luhya Party, the Kenya African Democratic Union (KADU). The New Kenya Party (NKP) for settlers was also added, along with a number of other parties representing smaller groups' interests in land and their attitude towards the land issue. The land reforms initiated in the 1950's did not just affect the land tenure system among the Kikuyu of Central Kenya (Swynnerton, 1954). It had an even greater impact on the female gender with respect to land ownership, access and use. As indicated in this study's section 3.2, page 51 land division and individualization in Kenya started in Nyeri Province (present Nyeri County). With the registering of titles, this pioneering experience among the Kikuyu of Nyeri had an impact on the women of Nyeri, including those of Mukurweini sub-county. The bottom line was that the women of Mukurweini suffered heavily as land control and privatization moved further and further from the hands of women as it was registered in the name of the household heads who were the men.

According to Cotula (2007), the post-independence government of Kenya adopted land tenure reform, registering customary rights and converting them into freehold (Swynnerton Plan of 1954; Registered Land Act of 1963; Land Adjudication Act of 1968). The reform was implemented at a time when women's traditional land rights

were eroding and customary law was moving toward more individualization. In such circumstances, the introduction of the programme on registration of land, effected within a period when gender issues were not a top priority for development, sped up the process of individualization and further restricted women's property rights. First, women's unrecorded secondary rights to land were frequently subordinated to the requirements of male household members. In some places, women's relatively independent administrative control over the scattered family plots they farmed was limited by the land tenure reform's consideration of fragmented landholdings.

In terms of female land tenure, women were not permitted under the plan to access land tenure unless in extremely exceptional situations like the death of a husband (Wanjala, 2000). According to Wangari (1998), Kenya's agricultural development policies in both the colonial and post-colonial periods have been obstructing the rights of women in land ownership since the Swynnerton Plan was implemented in 1954. Western gender expectations that prevented women from accessing the majority of economic resources were included into Kenya's land reform programmes. Poor males who formerly had land use rights within the customary law were also denied land as a result of land reforms. Landless men, as earlier noted, were occasionally adopted by clans, ensuring their access to clan territory. The systems involving taxation, forced labour and landlessness among the Africans were meant to be a source of labour to the colonial government.

Kameri-Mbote (2005:6) explains how broadly accepted social and cultural ideals prohibited women from exercising their land rights. Women generally found it difficult to use the minimal land rights they did have because they lacked status and power in the community. Women's claims to land under modern bilateral inheritance

rules were vigorously fought or outwitted by male relatives, despite the fact that these laws gave women land rights. In preference to their male siblings, women were frequently urged to renounce their claims to land. Women who failed to comply were subjected to legal proceedings, threats, harassment, beatings and, in the worst cases, murder by male relatives. It is worth noting that in Kenya, laws technically allowed women ownership of land, yet almost all registered land was in the male elder's names, while the community and boards set up to settle disputes were almost completely male.

Ochieng' (2014) thesis "Opportunities and Challenges for Women in the New Statutory Land Tenure Systems in Kisumu County", highlights how formal law in Africa, specifically in Kenya, introduced land titles at the end of 1959, resulting in the division of land into small parcels that were individually owned. Land titles were registered in the name of men on the assumption that this was common with the household practice, thereby leading to further marginalizing of women from land. Unlike the case in the past where land was owned virtually on the basis of use, the introduction of titles meant that one owned land by inheritance, lease, or purchase, all of which were not accessible to women. Thus, formal law worked to further isolate women from the land. This law vested a lot of power in men since administrative posts, including chieftaincy, that it created were only occupied by men. In this way men were the ones who made decisions at both the communal and national levels, increasing the alienation of women from decision-making bodies and further diminishing their already minimal land rights.

### **3.5 Women of Mukurweini in the Mau Mau Land Recovery War and the Twist of the Resettlement Paradox, 1960- 1963**

The effects of the Swynnerton Plan had an impact on women in other areas of the country. The Swynnerton Plan was criticised by Nasimiyu (1985) for failing to recognise the existing importance of native land practises enshrined in the concepts of duty and control, in her study on the Bukusu of western Kenya. These customary values ensured women acquired land and had authority over particular crops, allowing the community to grow enough food crops to feed her people. She noted strongly that the Bukusu women's capacity to produce food had been significantly harmed by changes in land ownership.

Production of subsistence and cash crops was dependent on land access and women found themselves with several challenges in carrying out their role as food producers. The economic dependence of women thus was due to their having no control over the land. Without land management, women were left in a dependent situation with no security and degraded to being labourers.

Her observations on the Bukusu accurately reflect what happened in Central Kenya in general and in Mukurweini in particular. The registration of land aided in the absolute legalization of men's land rights at the expense of women and children (Davidson, 1988). Despite spending more than fifty years in Kenya, the British continued to uphold the Victorian ideal that a woman should be dependent on a man. As a result, they encouraged individual property registration and gave preference to male household heads. As it were, conflicts between couples were brought on by land registration. When studying agriculture in Murang'a, Mackenzie (1998) made connections to the situation in Mukurweini. She notes a struggle for land rights

between men and women, with class and gender serving as important axes in the conflict. Although in pre-colonial Kenya women had fewer opportunities to possess land due to their gender, there were also men who received little portions of land or no land at all based on their social level. Consolidation and registration of land made the European philosophy of the exclusive right to land legal in Kenya, while giving the majority of males who headed households' dominance. The new policy marginalised the usufruct rights of the Kikuyu women which had earlier on been protected by the community's land tenure system. Also, due to the new system's usage of land as a form of collateral for the acquisition of agricultural loans, women suffered disadvantages. Very few women had individual titles to their land, thus majority were unable to obtain financing for agricultural upgrades. Notwithstanding, there were cases where women obtained land for themselves. However, these were widows who had lost their spouses during the emergency time, a fact well-known by the local authorities (Wachira O.I.:2016).

In Mukurweini, Nyeri County, the Swynnerton Plan had resulted in the creation of land classes and landless individuals, since it had a significant impact on land tenure systems and gender relations. According to Kanogo (1987) due to the landlessness that emerged during the colonial rule, Kikuyu squatters played a significant part in the first events that culminated in the commencement of the Mau Mau war in the 1950s. Squatters were made easy political targets because they were pushed up against the wall. The majority of them took vows in Nakuru, Kenya's Kikuyu diaspora, and Central Kenya. The oath demanded a commitment to fight the colonial government. On settler farms and estates, acts of sabotage, including maiming settler stock and intimidation and killing squatters opposed to anti-settler and antigovernment

activities, were on the increase before the state of emergency was declared. The key demand was the return of their stolen lands as a solution to the rising population and diminishing landholdings (KNA/KAI/11/79).

Muthoni (1985) claims that starting in the 1950s, women took part in every aspect of the anti-colonial struggle. They joined the covert Mau Mau group, which was founded in 1948. The new female recruits took a solemn oath to uphold a vow that had historically been made by men. Over time, the women gained the ability to swear in both male and female recruits. By taking and administering oaths, female Mau Mau supporters were thereby overcoming a significant gender barrier (KNA/MSS/129/27). Gender obstacles in fighting and leadership roles were removed during the course of the war. Rebecca Njeri Kari and Wambui Waiyaki were two well-known female leaders in the Mau Mau's women's wing. These leaders established a network of female spies who collected information on British sites and operations. There were women who also rose to leadership positions at the district and village levels. Women were arrested and detained alongside men during the colonial soldiers' crackdown. The Kikuyu women thought during the conflict that once the British left Kenya, land-related issues would be restructured. When the new morning arrived, they believed they would have something to gain. This did not happen.

The widows of the Mau Mau fighters did not get any land as the land consolidation and adjudication was done after their husbands had already died. The land belonging to their late husbands benefited the loyalists. Patriarchy would not allow the widows to have the land registered in their names. Ngendo (O.I. :2016) informed the researcher that some of the young widows remarried and had access and control of

land granted in their new marriages while those who did not remarry relied on the goodwill of their in-laws to grant them land for use.

Wanjala (2000:21) claims that with the start of the 1960s, Kenya's political climate took on new dimensions. The colonial government and the settler community responded to this about land-related issues: the Land Order-in-Council of 1960 was enacted in 1960, as Kenyan independence talks were still ongoing and pressure from the settler community was growing. It allowed Africans to purchase land in the Highlands through the conversion of (local) leaseholds and freeholds and on the "willing buyer, willing seller" basis.

In respect to male-female rights over land, Erica (2014:20) asserts that the idea of female land tenure rights during the colonial period may have been hampered by the natural lack of land for male farmers in many places in colonial Kenya. This is due to the fact that male farmers would not have prioritized enabling women to compete for access to land that was already in great demand if they themselves were unable to acquire access to fertile land. The issue of land tenure was not taken into consideration with lower-income Kenyans in mind until the One Million Acre Settlement Scheme was implemented throughout the colony in 1962.

The colonial administration came up with a programme to settle 35,000 families of small holders on land that was more than 1 million acres. The administrators of the province who wielded a lot of authority supervised this exercise. They influenced on who was to receive what land, and the amount to pay. Women of Nyeri in general and Mukurweini in particular were negatively affected by this land redistribution exercise. The new plan for land redistribution caused the Mukurweini women to lose access to

and authority over the land, just like it did elsewhere in Kenya. As women's dependence on men for financial support increased, domestic patriarchy grew stronger and was supported by colonial social structures. The redistribution of land during colonial times significantly diminished the economic freedom enjoyed by women and jeopardized their ability to produce wealth. As colonialism in Africa came to an end, women's contributions in agriculture in the household lost relevance as men's dominance over cash crops eclipsed their crucial role in food production.

### **3.6 Summary**

The chapter has focused on the question of land in colonial Mukurweini Sub-County in Nyeri, with attention being paid to the place of women. It has summarized the early process of the colonization of Kenya from 1895 to 1963. During this period, the chapter demonstrates the origins and development of British colonial settlement in Kenya. This process involved alienation of “native” land and the creation of the settlers’ areas known as the White Highlands. The confusion that ensued in regard to land ownership, access and use is highlighted. Special focus is given to the disenfranchisement of women in the process.

This chapter has also examined the changes that accompanied the Swynnerton Plan in colonial Kenya in the decade before independence. The chapter has highlighted the changes brought about by the new Plan in land ownership, access and use, paying particular attention to its further disenfranchisement of the women of Mukurweini.

The chapter concludes by highlighting the role that the women of Mukurweini played in the Mau Mau struggle of the 1950s. It notes their aspirations and their disappointments, as the new land tenure arrangements, just before independence, favoured the male wealthy collaborators of the colonial system at the expense of the

landless displaced freedom fighters. As noted, the sacrifice of women in a male war did not yield any positive outcome in a land redistribution programme that followed. They were further marginalized as land became a commodity owned by economically well-off males.

From the study, we see a change in the land tenure system with the registration in the name of the household who was the man. Women are further alienated from the land use, control, access and ownership. What remained is that men still owned land as the predominant gender.

**CHAPTER FOUR: LAND POLICY IN POST-INDEPENDENCE KENYA  
AND THE IMPACT ON WOMEN’S LAND ACCESS AND OWNERSHIP  
IN MUKURWEINI; 1963-2002**

**4.1 Overview**

In this chapter there is an examination of Kenya's independent government's approach to the complex subject of land and how the policies it implemented affected or helped the women to access, use and own land. The chapter lays emphasis on the women of Mukurweini, Nyeri County.

In Nyeri County, land consolidation preceded registration. The women were marginalized by the land adjudication process considering that the land adjudication committee members in Nyeri County were all men. According to Kikuyu tradition, which is patriarchal, matters dealing with land were exclusively the preserve of the male. Women were therefore denied the chance to discuss land matters or even own any of the land (KNA/VQ 15/34).

**4.2 Land Policy in the Immediate Post-independence (Kenyatta) era and its impact on Mukurweini Women Land Rights**

Jomo Kenyatta led Kenya to independence in 1963. In 1964, Kenya attained Republic status. One of his immediate challenges was the state acquisition of land to settle the displaced and landless in the country. The people, especially in Central Kenya wanted the land for which they had fought during the Mau Mau war. The government was also faced with the need to strategize economic development as the expected outcome of independence. Agriculture played a major role leading to the overall growth of the family and the country, given the fact that there was a weak industrial base to stir

economic activity. Also, the Africans were still closely tied to the land. The government had to decide whether to keep the land policies and legislation that had been passed down from the colonial authority or to completely renounce the colonial legacy (Wanjala, 2000: 31).

According to Kanyinga (2000:51), within the period of the change to independence, there were bitter political disputes both between African nationalists and the colonial state as well as among the various African political organisations, concerning the land question. Multiple land-related interests, represented in the form of ethnic interests, were at the heart of these disputes. The argument focused on the constitutional and economic arrangements, including the decision whether Kenya should work towards either a federal or unitary system of administration after gaining political independence and whether political processes or markets to determine how essential resources were distributed. Central to these issues of main importance were the debates to determine the manner in which independent Kenya was to apportion the lands formerly held by the colonial settlers.

Odinga and Kaggia, according to Kanyinga (2000:53), urged for "nyakua," or the seizure of land, during the Lancaster House negotiations, telling the settlers that the land they were holding was not their property. Tom Mboya and Kenyatta's liberal faction of KANU favoured a careful approach to the land issue out of concern bearing in mind that going off from the gains of the reforms would endanger profitable progress and foreign investment. Due to Kenyatta's aim to defend Kikuyu gains outside of the Kikuyu heartland and the necessity for a nationally based political power that would support their economic and political interests generally, they preferred a unitary and centralised government. Ronald Ngala and Daniel Arap Moi,

the leaders of KADU, pushed for a constitutional clause that would ensure equitable compensation for expropriated land for their ethnic groups. They also emphasised that respect for landownership should extend to both people and ethnic groupings. This suggestion by KADU received the approval of the settlers' New Kenya Party. Attitude towards land and interests in land issues by the groups, according to Kanyinga (2000), led to sociopolitical differences that spilled over into Kenya's political party formation procedures. There were various parties, and each group was associated with a certain political party because of its unique interests in the land issue.

According to Kanyinga (2000), the British administration ensured the rights and interests of the settlers who chose to stay in Kenya were protected after Kenya gained independence. The provisions of the independence constitution gave the administration limited options. Without fast and complete compensation for the settlers, land could not simply be taken over and distributed to the landless people. This marked the beginning of colonial rules and regulations being not only kept in place but also firmly established. The Swynnerton Plan was established as the basis for land allocation and use, and this was particularly true of land policy.

According to Boone (2003), Kenya's nationalist politics gradually gave way to a politics of consolidation, power-centering and state-building in the 1960s. As a result, new institutions were erected, old ones were revamped and colonial institutions were rebuilt. With a coordinated national policy centred on land privatization and consolidation, customary law nonetheless had an impact on female land tenure and overall land tenure. To fully implement the Swynnerton land reform framework, Kenyatta's government enacted several acts of parliament. These fast tracked the process in the 1960's and the 1970's. These were: The Registered Land Act (1963),

The Adjudication Act (1968) and the Consolidation Act (1968). These hastened the transition to land privatization in the country. This thesis notes that the whole process took gender dimensions, leaving the female gender as losers.

The Mukurweini women's power was diminished by the colonial land adjudication process. The then government neglected to educate these women on the steps involved and the legal ramifications of property ownership. The land adjudication process served to uphold the usufruct rights of these Mukurweini women and the family head's trusteeship over the family's land. In the Kikuyu tradition, there did not exist individual ownership of land. Therefore, the women in their ignorance allowed their husbands to register land in their names leading to women exclusion from legal ownership of land.

#### **4.2.1 Land Consolidation and Adjudication**

According to Kariuki (2009:153), land consolidation is the term used to describe the ambitious program of land reform in the 1950's and 1960's which involved measuring and totalling of the areas of an individual's scattered fragments. A five percent deduction was effected for land for villages, schools, dispensaries and other public utilities. The rest was offered to the owner in one-piece. If he accepted, surveyors demarcated his new farm and he was issued with a freehold title.

The Colonial government had undertaken most of these land reforms in tribal areas of the colony first initiated in the Kikuyu districts. In Nyeri County, land consolidation came before registration, and was started in the 1950's during the state of emergency. The process of consolidation was further defined in the Land Consolidation Act

(1968) which was essentially pegged on the endorsement of the Swynnerton Plan of 1954.

Kariuki (2009) explains that the Kenya government embarked on this plan during the State of Emergency, in the 1950's, partly because it felt they had sufficiently strong administrative control of the Kikuyu districts at that time to put this difficult project through speedily and successfully; and partly because they hoped that the opportunity it would give for better farming would supply a release for Kikuyu energies and encourage the development of a stable local middle-class. Further, it would provide the basis for producing the wealth that would be necessary to finance any future development of social services such as health and education (KNA/VP/9/30).

At first, many of the Kikuyu leaders opposed the scheme fearing that such a wholesale reorganization of their lands could pay scant regard to the religious restrictions inherited from their ancestors as part of their land. The *ahoi* tenants were deeply worried at the loss of their rights, given in the issue of freehold titles to their landlords. There was also a feeling among some Kikuyu that with about 80,000 members of the tribe absent in detention, this was not the right time to accept such a scheme. According to Kiragu (O.I.:2016), an elder in Mukurweini, land consolidation was opposed by a number of people because it drastically interfered with the customary land tenure system. Land consolidation involved bringing together fragments of land and consolidating them as one, and there after registering the title. This meant that people who were farming on a land that did not belong to them lived in suspense because they could not tell if the particular piece was probably assigned to a new owner in the consolidation process or not. This dislocated the lives of the *ahoi*.

Wangari (O.I.:2016) was categorical that some people felt that land consolidation was not appropriate at that time since a number of people were in detention for being members of the Mau Mau movement. This particular informant was personally affected in that her husband was a Mau Mau detainee and therefore missed out on the land registration since land was not registered to women. It is worth noting that those people who had moved to the Rift valley as workers and squatters also missed out on this process of land registration.

Adjudication and land consolidation went hand in hand. The process of adjudication was the final, authoritative assessment of a person's entitlement to land. The adjudication procedure identified the rights that currently existed, who had them and any restrictions or limitations that applied to them. The 1968 Land Adjudication Act, Cap. 284, of Kenyan law contained details of this procedure. A land adjudication committee determined who the owner of each parcel of the property was after measuring it and recording the area under the owner's name. In some few instances the poor people were swindled during the consolidation process especially where there were double claims of the same piece of land. As the adjudication process was done, the land disputes among clan members and between clans were resolved by the elders. The elders asked for payment from the concerned parties, a process that favoured the wealthy and influential complainant who got a favourable judgement to the disadvantage of the poor complainant (Haugerud,1989).

Land adjudication and consolidation were implemented, as stated by the International Women's Human Rights Clinic (IWRC, 2009), to govern the operating customary land rights as well as to transform land into registered single freehold parcels. The bodies which assessed these land rights did not acknowledge women's claims, since

African traditional law dictated that men had the right to control land together with any other property, but not women. At the same time, men continued to exercise rights of allocation within the customs and practices while the Acts compliantly obligated in barring the majority of women from obtaining titles to property.

#### **4.2.2 Registration of Titles**

Registration of deeds, according to Wanjala (2000; 109), comprised the upkeep of an open roll where all legal records that affected interest on land were stored. A deed just served as a record of a single transaction and did not in and of itself demonstrate title. On the other hand, registration of title was the upkeep of a reliable record, held in a government department, detailing rights for specific land units held at the moment by a specific individual or organization. The Registered Land Act (1963) Cap 300 was created to establish the registration of land titles and the regulation of transactions involving registered land. It was passed in a bid to regulate land that was traditionally governed by customary law in order to promote individualization of tenure in keeping with the Swynnerton Plan's agro-economic justifications. Due to the all-male composition of the land adjudication committee in Nyeri, the process of land adjudication excluded women. The Kikuyu culture held that only men should handle affairs pertaining to the land. As a result, women were unable to participate in land discussions and were not allowed to possess any land (KNA/VQ/5/34). Wangui (O.I.:2016) noted that land adjudication marginalized the women of Mukurweini. The women were neither informed of the importance of the exercise nor were they allowed to participate in it. They let their male household leaders deal with the process not knowing that titles were registered in the male relatives' names, marking the onset of the exclusion of women from legal ownership of land.

The Mukurweini women were neglected during the land adjudication procedure in Nyeri County. This is because the government failed to inform these women of the procedure's requirements and any associated legal ramifications regarding land ownership. The adjudication process was seen by the women of Mukurweini as establishing the women's usufruct rights over the family land and having the family head as the trustee of the property. Since the Kikuyu culture did not allow individual land ownership, women allowed their husbands to register land in their names out of ignorance, which prevented them from having any legal claim to the land. Property adjudication and consolidation were explicitly enacted, as per the International Women's Human Rights Clinic (IWRC, 2009), to identify the contemporary traditional land rights and convert them into freehold registered single pieces of land. The groups that decided on matters of land rights failed to acknowledge women's entitlement since traditional law dictated that land and property were under men's control. The IWRC further claims that because women only had rights to utilise land, but males continued to have those of allocation under customary law, passed Acts were obligated to prevent most women from getting titles to land. Sorrenson (1967:135) observes the crucial fact that it was in Nyeri, Central Kenya that the first active steps, during the colonial period, were taken to register titles.

In 1942, the Nyeri Local Native Council passed the Land Registration Rules designed as a step towards a comprehensive system of registration. The rules were not in fact approved, although the system set out in them was operated administratively on a voluntary basis. Instead of registering titles as such, the rules were used merely to register transfers of land, and only forty or so transactions were registered each year. Nevertheless, the registration was accepted by the Native Tribunal as providing

conclusive evidence of title. If this was no more than a cautious beginning, at least it showed that officials in Nyeri and the Kikuyu authorities were willing to grapple with the problems of tenure and particularly the growing litigation over land.

The Registered Land Act (1963), Cap 300, aimed to harmonise Kenya's many land registration systems, when the country gained independence. According to the Act, the privately owned land titles covered by the Land Act, the Land Title Act, and the Registered Title Act were to be changed and moved to the new registration. Second, through the procedures of adjudication, consolidation and registration, the Act established the Kenyan system of land tenure. Additionally, land owned by Kenyans in native reserves that had been through adjudication and consolidation processes was supposed to be registered. In essence, the Registered Land Act aimed to replace customary land tenure with individual and exclusive land rights. This brought about singularity arising from the programmes adopted in the reforms on land and destroyed the accepted varying rights to land.

According to Vengi (2016), few women acquired titles as a result of all the aforementioned laws and customs, which prevented them from possessing land. Land titles were always in men's names, and a woman could only access land through her relationships with men. Customarily, the rights of men gained legalized status and commercial worth with land titling. With the registration of a piece of land, the registered holder had unrestricted rights and could remove any occupant at any time. So, the registration process posed a threat to the security of tenure for the women in the land they owned or had access and control over. After the process of registration, which disregarded women's entitlement to use family land, the women of Mukurweini found themselves without security of tenure over land they owned or had access and

control over. In contrast to pre-colonial times, the Registered Land Act (Cap 300) did not acknowledge the rights of women to land access as registrable rights.

Njoroge (O.I.: 2016) affirmed how difficult it was to have the females of households register land under their names within the customary land tenure system. Njoroge noted that the women in Mukurweini customarily accessed land through their male kin and there was no likelihood of one failing to get land to use. The land registration was done in the male household name bearing in mind that he had absolute ownership of the land but allowed the women in his household to access and use the land.

According to Harrington (2008), it was almost a given that men would register the property because of their customary position as household heads with authority over land allotment. The rationale that favoured men to register was intimately tied to formal ownership and such allocative capabilities, and cultural notions of ownership also played a part. The fact that women were underrepresented in society and in family structures precluded any potential opposition to such registration. Men predominately registered lands and invested themselves as people with more rights than were permitted under traditional systems. Despite the neutrality of the Registered Land Act (1963) process, the outcomes, which were overwhelmingly male, merely reflected the traditions and expectations of the surrounding neighbourhoods and families.

Male-dominated land adjudication bodies that heard Registered Land Act adjudication cases further skewed this procedure against women. While this may not always be the case today, the truth is that men still held the bulk of formal titles in the early twenty-first century, suggesting that the effects endured. This is in part because of the Registered Land Act's requirement that a land claim had to be successfully

registered in order to become unimpeachable. As a result, the law considered the transfer of control over the land to men to be final. Men thus gained complete possession of the land, coupled with the rights, together with the benefits that went along with it, including the freedom to abuse the property, deny others access or use, and utilise it for whatever purpose. The Registered Land Act was blind to gender and the environment in which it was to operate because its sole goal was to promote tenure security. The Act reinforced traditionally gendered land roles by neglecting to acknowledge inequities and by giving men absolute ownership. The customary land rights for men became infinite legal rights after being formally registered by the Registered Land Act, whereas women's customary rights were eliminated. Traditional protections for women were severely undermined or destroyed. This was the situation for the women in Mukurweini.

According to Mackenzie (2003), formal law produced a brand-new battleground over the right to access land. She characterizes the scenario as complicated, in that men and women competed for rights to land by using any legal means necessary to serve their wants and/or interests. Because of previous societal injustices with disregard for traditional rights for women, the outcomes of these conflicts did not favour women. According to Njeri (O.I.: 2016), women rarely got titles of the land in their names because in almost all cases the land was registered in the men's names. In some instances, some women were evicted from the land by the men especially when a dispute arose. This meant that the land registration process did not acknowledge the women's rights to land access and the use of family land in Mukurweini.

Using phrases like "proprietor", Nyukuri (2006) argues that the women were not barred from holding potential titles by the Registered Land Act. Women's land rights,

however, have been impacted by the reform of land tenure. The reform stepped in at a time when women's traditional land rights were being eroded and customary law was moving toward more individualization. In regard to this, the execution of programmes to do with registration of land executed in the years following independence, when gender issues were not substantially considered in the plans for development, sped up the individualized process and additionally restricted the property rights of the women. Due to the male predominance of land adjudication committees and the typical registration of male house heads, women's unregistered secondary rights were undermined.

Nyukuri (2006), states that among the Kikuyu, very few women were landowners. She further contends that the Land Control Act of 1967 mandated that competent Land Control Boards, whose membership was determined by social and economic factors, had the power to approve all land transactions. The constitution also provided that the work of Land Control Boards was exempted from the rule against public bodies discriminating against anyone. Regarding the makeup of the Boards, no precise percentage of women is called for, but it was required that the majority of the board members must be land "owners or occupiers" of agricultural land in the region. Due to the low proportion of women who own or occupy land, very few women qualified to sit in the board. This clause blatantly discriminated against women in an indirect manner. In Kenya, in the beginning of the twenty-first century, women's land rights were still largely restricted. The interaction of statutory law and customary law determined how far-reaching certain rights are. Women used customary laws to contest registrations that only favoured men, while men used them to restrict the rights that women had gained under statutory succession law.

Hornsby (2013) offers an explanation for this predicament by arguing that after decolonization, rulers chose tactics that varied greatly across the continent of Africa and even within the same region. This, according to him, is the result of a long-standing confrontation between regional and centralized types of government. He contends that this was propelled by buyers who were willing to buy land in other people's ancestral territories. Even though it wasn't the only thing at issue in these newly independent countries, land was undoubtedly the most crucial. Land tenure was unstructured, unorganized and biased towards customary law in the years following independence, which influenced land tenure systems.

The Land (Group Representatives) Act Cap 284 was passed in 1968 and made collective land ownership legal. According to Hornsby (2013), the Act also affirmed the impact of customary law on land tenure and its function in society by allowing group ownership of a piece of land. Land tenure had its place in customary law. Female land tenure was nevertheless influenced by customary law and patriarchal attitudes ingrained in this statute (KNA/VP/9/28). This showed how women's identities were still primarily determined by their standing in relation to males.

Despite the 1968 Land Group Representatives Act explicitly allowing women to be members of the land committees or be group representatives, Kibugi (2011) claims that group ownership rights were rarely drawn out to the women. He emphasizes how women, aside from widows, were not even listed as members and blames this on orthodox and patriarchal norms. This exemplifies how patriarchal standards ingrained in customary law affected female land tenure by limiting the extent for women in terms of legal capacity of resisting these practices.

Additionally, it shows how identities of women were still primarily determined by how they related to the men. For instance, widows were the only ones listed as committee members, probably as a result of their spouses having passed away and could therefore not be members of the committee.

Wangui (0.1.: 2016) expressly stated that she had not heard of any woman from her area who had benefited from the 1968 Land Group Representatives Act. None of the women had been invited to serve on any committee or be a group representative. This illustrates the influence of patriarchy and customary land tenure system on the women in Mukurweini.

According to Pala (1977), the land registration and privatization process that started in the 1970s, replaced lineage-based group tenure with individual tenure. This implied that certain pieces of land belonged to specific people, almost always men. Such titles provided men with the theoretical and practical authority to sell the property without consulting the patrilineal elders, who had veto power in the past regarding the private alienation of land. According to Erica (2014:114), continuing the legacy of giving male land tenure to women in the process was essentially nonexistent.

#### **4.2.3 Summary on the Kenyatta Era**

From the onset of the independence period, the women in Mukurweini rights priority over female land tenure rights were subdued restricting the privatization process to nearly entirely men. The actual methods of land privatization were different from the traditional methods of land tenure, however, the underlying patriarchal attitudes that underpinned them remained the same. It is imperative to note that men served in all roles throughout the land reforms procedure, including the Land Boards, Committees,

and Lineage Elders, from adjudication to consolidation and then registration. Based on the justification that customarily women could not participate in land disputes, they were not allowed to take part in the land adjudication, consolidation or the land registration processes. In short, women were marginalized. During the Kenyatta regime, the Land Board Committee did not have any woman as a member. In the Kikuyu society, before the introduction of colonialism, the *mbari* allocated the married women land for cultivation and grazing. In contrast, only men received land titles under the Swynnerton Plan, which carried the Land Adjudication and Registration ideas. The importance of women's historic usufruct land rights was not anticipated. The registration and titling of land did not benefit Mukurweini women. The Kenyatta administration did very little to safeguard land rights of women. The researcher learned from several female informants that the fact that women did not have identity cards gave men an upper hand over them, bearing in mind that an identity card was a prerequisite for land registration.

#### **4.3 Land Rights Legislation and Women during the Moi Era, 1978-2002**

**Daniel Moi succeeded Kenyatta in August 1978 as the President of the Republic of Kenya.**

During the following two decades, there was unprecedented global advocacy of women's rights, including land-related rights. These efforts had a bearing on Kenya's government and influenced legal initiatives to correct the skewed rights over land in favour of men.

Kanyinga (2000) and Vengi (2016) appreciate the fact that it was during Moi's tenure as Chairperson of the Organization of Africa Union (OAU) that the OAU's Continental Organ established the African Charter on Human and Peoples' Rights

(ACHPR) in June 1981 and was tasked to provide a framework for the human rights for Africa while taking into consideration the unique situation of the continent. It was the ACHPR that acknowledged the rights of women by noting that everyone had the right to exercise the freedoms together with rights recognised and protected in this charter, free from any discrimination premised on race, ethnicity, skin colour, gender, political or religious beliefs. By extension, the charter forbid discrimination against women with regard to their rights to land and property.

Through the ACHPR, all OAU members were mandated to end any form of discrimination levelled against women, and guarantee the preservation of women's rights, as outlined in the international conventions and declarations. Kenya's Law of Succession (1981) was implemented during the rule of Moi. Numerous provisions of the Act recognised and endorsed the idea that men and women must have an equal right to inherit property. The Act viewed the rights of both female and male children to inherit their parents' property as being equal. In addition to being granted preference over their brothers, or other close male relatives who served as the main administrators of their spouses' assets, widows were permitted to inherit property. However, very little changed, and the law remained a dead letter. In the pre-colonial Kikuyu community, the head of the family was the man who made decisions concerning all resources belonging to the family. According to the CEDAW report (2006), the man gave land to his wife/wives. The land he gave them was to be used by the women to support their respective families. It was forbidden for a Kikuyu woman to hold land. The first son took custody of the family's assets after the landowner passed away (CEDAW, 2006).

The Law of Succession (1981) passed during the tenure of President Moi did not change much for the women of Mukurweini. According to Muthoni (O.I.:2016), land inheritance remained a privilege of the male gender only. Daughters were deprived of access to land through inheritance, based on patriarchy and customary land tenure. Matters of land taken to the courts or arbitrated by the elders often ended favouring the male gender because of patriarchy and customary land tenure. This Law of Succession Act by itself could not give women the right to land. This study has looked at some succession cases that belong to prominent persons in Kenya. The courts in Kenya have handled several succession disputes since time immemorial among which belong to prominent personalities. In *Re Estate of Gerishon Kamau Kirima (Deceased)* 2018 eKLR the court invalidated two wills due to the proof of testamentary capacity of the deceased. His daughter, Ann Kirima, presented a will which she claimed was written by her late father in London while undergoing treatment and at the same time, his widow Teresia Wairimu presented another will that was said to have been written in Kenya in 2006, but was later amended in 2008. Teresia Wairimu was Kirima's third wife and was feuding over the property with Kirima's children. This is an example of how volatile succession matters are regardless of the social status of the concerned parties.

In *Re Estate of John Michuki (Deceased)* 2012 eKLR, his daughter Yvonne Wanja sued her siblings Anne Mutahi and Fred Chege who had been given powers by the High Court to administer the multi-billion shilling estate. She accused her siblings of mismanaging the family wealth and channelling some of the money into their personal use. Yvonne Wanja turned to the court seeking to get what she claimed to be rightfully hers. This is an example of a case of one child feeling discriminated in matters of

inheritance of a parent's wealth despite the Succession Act and the Constitution (2010) addressing matters of equality and non-discrimination.

In yet another succession dispute is in *Re Estate of Mbiyu Koinange (Deceased)* 2018 eKLR first filed in 1981 after his death. This matter has been in court four decades later and a total of twenty-five judges have handled it. Cases of family aggression and several counter suits have been witnessed in this matter. This kind of protracted court case brings emotional, social, physical and financial fatigue. These succession cases cited above portrays the emotive nature of matters to do with inheritance of wealth and resources. The courts have the jurisprudence to deal with such matters within reasonable time in order to avoid prolonged conflict between family members.

According to Wanjala (2000), the government passed a statute in 1981 called the Magistrates' Jurisdiction Amendment Act. In order to address the issue of landlessness as it was exacerbated by the conflicts between registered proprietors and other unregistered claims, it granted new quasi-courts called "Panels of Elders" several rights, including jurisdiction. The government might have believed that the "Panels of Elders" in the rural areas were best qualified to settle conflicts amicably because they would be familiar with the nature and causes of each individual issue. The customary rights to property, which promoted the belief that only men had the right to own land and infrequently decided in favour of the women, were to serve as a guide for the elders, who were exclusively male. As a result, neither the issue of the type of land tenure present in Mukurweini nor elsewhere in Kenya was resolved by this act. According to Michuki (2015), neither the Land Control Board Act nor the Land Disputes Tribunal Act addressed the representation of women or their functional membership when they were first adopted. While the Land Control Act referred to

members of the Land Control Board as "persons" the Land Disputes Tribunal's Article 4(2b) on its makeup specified that the tribunal is made up of two or four elders chosen by the District Commissioner from a group of elders nominated under Section 5 instead. The Act's usage of the term "elders" did not improve the situation. In the African system, elders who make decisions are mostly older men. Hence, as used, the term militated against the participation of the female gender in the processes and actually presupposed the male-dominated customs and traditions.

During the Native Registration Ordinance, passed by the colonial government in 1915, is when identity cards first became available (Michuki 2015). The issuance's main goal was to oversee the improvement of hiring African males for colonial labour. All male adults who were 16 years of age or older had to register in accordance to the ordinance. The colonial government passed a new law, the Registration of Persons Ordinance in 1947, to make registration compulsory for males who were 16 years and above. To end racial prejudice, identification cards were issued, which helped to distinguish between Protectorate and Non-Protectorate people. The trend of discrimination based on gender in the issuance of identity cards continued deep into the independence period.

Nonetheless, an amendment to what is now the Registration of Persons Act (Cap. 107, Laws of Kenya) was enacted in 1980, under Moi's administration, to oversee the registration of women aged 16 years and above. The right to receive an identity card was extremely important to Kenyan women, despite the fact that they were not granted the right to own land by Moi's government. This represented a turning point in the fight for economic empowerment. A woman could now lawfully own land since she had a national identification card. For the first time, Kenyan women in general and

Mukurweini, specifically, were registered by the government as individuals and not dependent on their menfolk.

For the women of Mukurweini, the progress made by the Moi regime in enabling women to access key documents as bona fide citizens of Kenya signaled a major breakthrough. According to Karinga (O.I.:2016), the women, at last, had a clear road map to the legal acquisition of land rights and titles.

The National Policy on Gender and Development draft was introduced by the government in 1998 and later approved (GOK, 2003). The policy's major objective was to offer a framework for integrating gender-related international agreements into the realities of the domestic national setting. The policy included concrete recommendations for eliminating gender disparities.

The principles of this strategy were a significant advance for women's economic empowerment. The Kenya Women's Political Caucus was established that same year to advocate for women's issues. The main topics raised were violence against women, women inheritance rights, together with women's increased participation in decision-making (Benschog 2002). President Moi through a presidential declaration stated that girls were entitled to inherit all property which included land from their parents, just like the boy child, which became a major historical marker although no law was put in place at this time to enhance this declaration; it served as a serious inter-pretation of the needs of women. This was a great milestone in the land rights struggle for the women of Mukurweini in particular and the women of Kenya as a whole.

#### **4.4 Summary**

This chapter has looked at the land policies in Kenya under Presidents Jomo Kenyatta and Daniel Moi, and how they impacted on the women of Kenya and specifically the women of Mukurweini. There is continuity in that the Kenyatta administration maintained the colonial state's land policies that barred women from questions of access, management, and ownership. Land reform processes sought and upheld patriarchy since all the committee members were male. Land adjudication, consolidation and registration procedures were carried out in accordance with customary law, which favoured men's authority over assets. Women were prohibited from obtaining land titles by the various Acts. The Land Registration Act of 1963 gave individual ownership to what had essentially been continuous communal land. This Act undermined the idea of various rights by giving the registered owner full power. The right of women to possess land under joint ownership was not recognised by the Act.

There are changes witnessed during Moi's regime where Kenya's law of succession was enacted with foundations that recognized and embraced the fact that there was equal right to inherit property by both men and women. The female children thus had the right of inheritance of land from their parents. Widows too were allowed to inherit the property of their husbands. However, among the Kikuyu, being a patriarchal community, this law of succession did very little for the women of Mukurweini regarding access, control and ownership of land. A Kikuyu woman had no right to own land. This Law of Succession Act could not and did not, on its own, give women the right to land thus continuity of patriarchy in matters of inheritance. Another change that was brought by President Moi was that the women were issued with

national identity cards, which was a great step towards land registration for the women. It was also during his tenure that the process of revising the constitution began. It was expected to benefit the women of Mukurweini and the entire country in issues concerning access to land, control and ownership. The Kenyan women agenda during the constitutional review that was completed in 2010 was well articulated.

**CHAPTER FIVE: PROGRESS AND CHALLENGES IN WOMEN  
STRUGGLE FOR LAND CONTROL DURING THE KIBAKI REGIME,  
2002-2013**

**5.1 Overview**

This chapter discusses the gains made by Kenyan women, and by extension the women of Mukurweini following the struggle for and the realization of the new constitutional order in Kenya. The chapter explores areas in which the 2010 constitution of Kenya could benefit in future or has already benefited the women of Kenya as a whole and Mukurweini in specific in matters of land ownership, use and control. The interpretation of data presented in this study is based on a field survey conducted in Nyeri County's Mukurweini Sub-County. This chapter is an effort at identifying sections in the Constitution of Kenya 2010 and assessing the success of their implementation both immediate and projection into the future. This chapter gave readers the chance to inquire about women's land ownership, access and management. By examining the legislation, marriage laws and inheritance laws and how they have affected women, this chapter synthesizes the initiatives designed to increase access to and control over property by the women of Kenya. From the standpoint of women's activism, this chapter analyses and celebrates Kenya's experience, especially the advances realized in gender equality, advocacy and engagement by the women in the democratic process that produced the new constitution in 2010. The effort of women's and feminist engagements with the constitutional reform process against the wider political developments in Kenya in the early 1990s is fore grounded.

These efforts were directed at attempting to overturn the gender disparities that were apparently cemented in the customary law. Based on customary law as Kamau (1978)

asserts, women were not to inherit anything and more so land. Accordingly, property inheritance was patrilineal. It was characterized by patriarchal connections, which, when combined with modern law, such as the individualization of the title to land, have made women generally ineligible for inheritance, particularly when it comes to land, in general.

## **5.2 The Kibaki Regime, National Land Policy and Women Land Rights, 2002-2009**

Mwai Kibaki ascended to power in December 2002, to serve as Kenya's third president until April 2013. He made a variety of economic reform commitments, including one to the land sector. The Ndung'u Commission, a commission established in 2003 to investigate the widespread illicit and unauthorized purchase of public land, issued its final report in 2004. It notably examined the problem of land that had been given off illegally and offered suggestions on how to handle it. The commission identified land to be used to rehabilitate the landless persons after repossession. The core of Kenya's land issue still exists since these recommendations were not followed through on. Nevertheless, it was a basis upon which the question, especially concerning women came to be looked into. The commission's views were a heavy component of the constitution review process that ended with the new constitution in 2010.

Very few, if any, women had profited from erratic land allocations, which promoted political favouritism and were also blatantly oblivious to gender. Women were disadvantaged in terms of land ownership even in these unlawful property acquisitions.

One of the most significant results of the Kibaki government was the National Land Policy (2009), which emanated from recommendations made in the Ndung'u Report. Beginning in February 2004, the National Land Policy was developed. During a National Symposium held in April 2007, stakeholders approved a draft National Policy. The Draft National Land Policy was adopted at the seventh Cabinet meeting that took place on 25<sup>th</sup> June 2009. The Cabinet Minister in charge of lands was to produce a Sessional Paper for presentation to parliament, which was approved by parliament. This became recognised as Sessional Paper No. 3 of 2009 National Land Policy.

Stakeholders from the public, corporate, and civil society participated in the formulation of the National Land Policy through thematic group discussions, regional workshops and written contributions. The Presidential Commission on Illegal and Irregular Allocation of Public Land, the Presidential Commission on Kenya's Land Law System, and the Constitution of Kenya Review Commission all contributed input during the formulation process. Some of the comprehensive ideas from the National Land Policy—which addressed both present and future land challenges in Kenya—were incorporated into the new constitution of Kenya's section on land and the environment.

According to Kenya's 2009 National Land Policy, land is categorized into three: community land, private land and public land. This land policy aspires to facilitate the safeguarding of values that lead to economic productivity, justice, sustainability of the environment, and cultural preservation. This policy acknowledged difficulties that cut across multiple sectors and called for specific attention, like gender and equity principles. While there are no gender sensitive family laws, customs and culture

continue to favour the inheritance of family land by the male gender. In terms of property ownership and inheritance, there is a clash between constitutional rules and international practices that discriminate against women. Women's representation in institutions dealing with land is insufficient. Few women have land registered in their own names, and because they lack wealth, they have limited access to the real estate market. Additionally, the Kenyan Government has not converted any of the internationally enacted treaties on the rights of women that are pertinent to women's land rights into policies or laws. In order to give the women of Kenya the opportunity to own and inherit land and other resources, the difficulty revolves around the implementation and enforcement of the laws and policies necessary for doing so.

The policy asked the government to pass the required legislation to ensure that women's rights to land and related resources are effectively protected, abolish any currently in effect legislation, and outlaw any customs, practises, or rules that discriminate against women in land-related concerns. The government was encouraged to enforce current rules, provide a clear legislative framework to defend women's rights in matters of inheriting land and other resources derived from the land, and ultimately, to establish joint spousal support (NLP, 2009).

The government's National Land Policy supported women. It called for securing unmarried daughters' inheritance rights in accordance with local customs, launching campaigns to educate the public and encourage them to abandon customs and traditions obstructing the inheritance of family land by the women. It aimed at guaranteeing that women are fairly represented in all land related institutions. Since it addressed the majority of the challenges that women had encountered since the colonial era, when their secondary rights to property received no protection by any

legislation, the National Land Policy was essential for women to own land. In the prior situation, women were at the whim of patriarchal institutions that exercised complete contempt of their right to land ownership and governance. The policy was a big step forward for women and a forerunner of the concerns of women in the new constitution.

### **5.3 Kibaki, the Constitution of Kenya 2010 and Women**

Kenya's 2010 Constitution incorporates significant advancements for the preservation of all Kenyans' human rights, including those related to gender equality and equity. Concerning women's human rights, several constitutional articles have a direct impact on customary law, and these provisions significantly address several important concerns relating to women's situation under customary law. The 2010 Constitution also provides a framework for resolving conflicts between customary law and statute law, in contrast to the old constitution. Prior to the 2010 Constitution, gender discrimination was prevalent in all areas concerning personal law, including land law. The 2010 amendment to the Constitution recognised women's struggles with land ownership and established the institutional and legal framework required to fully realise the rights of women to land and any other resource. Co-ownership, equal recognition of men and women, and spousal permission in property transactions are three other potential features in the Lands Registration Act of 2012 that, if put into practice, could increase women's land rights (FAO, 2008). By recognising the rights of women and ensuring fair land access for the landless, youth, women, displaced people, and any other vulnerable groups, the National Land Policy (2009) and the Kenyan constitution (2010) have accepted the African Union Framework and Principles on Land Policy. The Kenyan Constitution of 2010 guarantees significant

gains for women's human rights generally. Human dignity, equity, social justice, inclusivity, equality, and indiscrimination are only a few of the principles and national values of government defined in the constitution.

Second, the constitution expressly calls for nondiscrimination and gender equality. Although the Kenyan constitution of 2010 and other national laws safeguard the rights of women to land and property, the reality is that women continue to face disadvantages. The greatest barrier to ownership and inheritance of land and other property by women is the customary rules and practices. These traditional rules and customs have their origins in long-standing stereotypes and socialisation of women to the idea that they are not entitled to own or inherit land or any other type of property. In Kenya, customary laws often give women secondary land rights, specifically through their relationship to a male relative. Women are very infrequently permitted to inherit land on their own.

### **5.3.1 The Positive Legal Developments on Women and Property**

The goal of this study was to identify the benefits of the new constitution for Kenyan women. The Constitution of Kenya (2010) makes it very clear that both men and women in Kenya are equally authorized to own property. In principle it eliminates discrimination of gender in laws, practices and customs that relate to land and property as enshrined in Article 60(f) which specifies that all land in the Republic of Kenya. This is supported by Article 27, which guarantees that men, as well as women, have similar rights in regard to treatment, including the same opportunities in the political, cultural, and social arenas as well as the economy. The 2010 Constitution reflects significant gains for the women's human rights. It is evidently seen in both its overarching philosophy and its particular laws. To begin with, equality, equity,

inclusivity, human dignity, human rights, non-discrimination and safeguarding of the marginalised are among the national values and principles of government outlined in the constitution. Second, the 2010 constitution expressly calls for non-discrimination and gender equality. Yet the women of Kenya still have a long way to go before they can routinely own land, even if the constitution prohibits gender discrimination in relation to land and property and guarantees all the right to inheritance and unrestricted land access. The study revealed that most Kenyan women are still unaware of the laws protecting their right to property ownership as well as the customary norms that prevent them from being able to own, inherit, and dispose of property. This might be as a result of the deeply rooted cultural views that prevent many Kenyans from realising or caring that women can now have equal land rights. The majority of the women who were questioned in this study admitted that they did not have title deeds registered in their names or jointly with their spouses and had not made any efforts to change the situation. They linked this to Kikuyu traditions, according to which land was owned by the men while women obtained access to it through their relatives, such as their husbands or sons. This brought out the obvious but bitter reality that women did not possess legal documents of land in Mukurweini Sub County. However, a few of the women interviewed who were educated and economically well had bought land individually and owned title deeds.

Gaafar (2014) asserts that while customary law in the vast majority of communities restricts the types of land women can possess, neither the Kenyan Constitution nor legislation do the same. The constitution makes it clear that the guiding propositions of management of land touches on the abolition of discrimination of gender in laws, conventions, various practices relating to land and property in land. Long-term change

may result through continuing reforms, in the application and execution of the constitution's gender parity provisions, with the creation of progressive legislation on marriage, property and succession.

Women's traditional property rights in Kenya are quite restricted. According to Vengi (2016), the 2010 constitution supported the setting up of a National Land Commission to preserve the ideals of equal land access, the guarantee of rights to land, abolition of discrimination of gender in the customs, practices and laws relating to issues of land. This resulted in support together with recognition of the women of Kenya in areas of ownership of property, particularly with regard to land. The provisions of the constitution were implemented through the creation of the National Land Commission that dealt with land governance in Kenya. The National Land Commission Act (2011) was passed which clarified the duties of the National Land Commission which was to guarantee fair land access. This would involve the rights of women to land ownership as well as to occupy and work on it. Another duty of the National Land Commission would be to protect land rights. Invoking this criterion could protect the rights of women who, for instance, run the possibility of being evicted from their matrimonial houses in case of a divorce or death of a spouse. Given the crucial roles women play in the production of food and cash crops, these policies hold the potential for improvement of the lives of women of Mukurweini on a social level.

Otieno (2014) contends that the women of Kenya, have benefited from the 2010 promulgated Constitution. In this sense, access to land by the women is critical to their social standing, economic security, and sense of empowerment. Land serves as a fundamental source of income that generates employment, is the most important agricultural resource, and a vital factor in determining a farmer's access to various

useful goods plus services. Therefore, the new constitution establishes a fair system for distribution of land ownership and access among Kenyans. By ratifying treaties like CEDAW (1979) (Convention on the Elimination of all Forms of Discrimination against Women) and appointing a National Gender and Development policy, the government of Kenya has shown admirable commitment to achieve gender equality. Apparently, the lengthy Bill of Rights outlined in the constitution also includes a provision for gender equality. It requires the state to uphold social justice, which is crucial to the fights by women for gender equality and equity, and to recognise and defend human rights.

Broad principles on land are established in Kenya's 2010 constitution, which recognises that one of the main sources of livelihood and material prosperity is land and not just another piece of property. Additionally, it clearly states that the state must adopt the National Land Policy which upholds ideals of equal land access and its wealth, as well as the abolition of discrimination of gender in laws, traditions and customs pertaining to land and the property in land. As a result, it defends, supports, and acknowledges Kenyan women rights to own property. There is no doubt that the constitution supersedes all other laws, including customary law. This enables any disagreements between the constitution and customary law to be settled in the constitution's favour, which includes the bill of rights and principles of equality and non-discrimination.

CEDAW (1979) was founded on the assumption that patriarchy is a universal reality, and is solely focused on the advancement and defence of women's human rights. Because it combines all conventions and accords that safeguard and advance women's

rights, it has provision for the most thorough coverage of the rights of women in both the public and private spheres.

The CEDAW Report, published in 1979, draws attention to the disparities/gender bias in ownership of property amongst women and men, particularly in the context of agricultural reform initiatives where the majority of the labour force are women. In order to establish a gender-equitable land tenure system as required, women's participation in policy formulation and at the implementation level should be on an equal footing with males. According to Otieno (2014), Kenya complies with international human rights norms like the CEDAW, which, for instance, permits exceptional measures (affirmative action) to hasten the achievement of gender egalitarianism in practice. In an attempt to achieve the removal of biases, customs, and any other behaviours that are based on the assumption of the inferiority or superiority of either of the sexes, the international legislation mentioned above also aims to change social and cultural patterns that perpetuate discrimination. The aforementioned requirements have significantly improved Kenyans' entitlement to land rights, and to this degree, the constitution is a significant turning point for women's land rights.

Member states are required to ensure agrarian reforms and fairness in the treatment of both men and women at the workplace under CEDAW article 14. Laws governing inheritance and land rights must be founded on equality. According to Article 16, reforms in land tenure must protect the rights of women to the property during marriage, during a divorce, and in case of death of a husband (FIDA, 2013). The Kenyan constitution has these clauses, and if they are completely enforced, they will remove the discriminatory barriers that women experience when trying to acquire

land. In this way, the Kenyan constitution of 2010 offers gender equality for the Mukurweini and Kenyan women as a whole. The National Land Commission Act No. 5 of 2012, the Land Act No. 6 of 2012, and the Land Registration Act No. 3 of 2012 were all pieces of legislation that the government oversaw being adopted in 2012 with the goal of harmonising various land laws. These rules solidified the idea that everyone should have equal access to land. Article 68 of the 2010 Constitution and Chapter 5 covering land and the environment are given life by the laws. The Land Act grants statutory rights to the spouses and all other individuals who desire to complete land deals, which is a considerable benefit. This granted women the right to be involved in property transactions and consult with them (FIDA, 2016).

Mona (2012) brings out the question of spousal consent clearly by stating that when a spouse owns land or a home in his or her own name and decides to sell it, the buyer is required to find out whether the spouse has given permission for the property sale. The transfer done to the buyer is null and void in cases where consent was not obtained and the spouse who is nonconsenting challenges the sale. This is also true for the women of Mukurweini Sub- County and had protected a number of them from being disposed by their spouses thus saving family land. This FGD Gikondi (29/11/2016) discussed this matter exhaustively where members shared experiences on the issue of spousal consent. In these discussions there was an observation that a few husbands had tried disposing land without their spousal consent but the land Boards had refused to allow the transaction to proceed without the spouse appearing personally and confirming that they had given their consent.

### **5.3.2 The Inherent Challenges of The Interface Between a Conservative Customary Law and a Liberal Constitution**

Despite the fact that Kenya's present constitution forbids sex-based discrimination, several laws violate the constitution by allowing it in customary and personal laws. The customary rules frequently disregard the rights of women and allow men the power to rule over them. The Kenyan constitution upholds patriarchal and cultural biases that deny women the same opportunities and privileges as males.

Basil (2022) observes that the Kenya constitution (2010) and statutes have instilled equality of gender having knowledge of a corresponding land tenure regime, customary law, where inheritance of land is anchored on a patriarchal descent. In rural Kenya, most of the women residents have very limited access to justice and therefore traditional practices that discriminate against them operate by default. This scenario is not different among the women of Mukurweini Sub County.

During this study, a number of women interviewed (Wangari O.I (2016), Wambui O.I (2016), and Wangui O.I (2016) in regard to land ownership and control were asked if they owned the land they were using and majority responded that they were not owners of the land. The registration of the land had been done in their spouses' name. This was despite the 2010 constitution that does not prevent women from owning property. Many of the women interviewed stated that poverty was the hindrance to them benefiting from the land reforms, which they cannot take advantage of because privatization entails titling, whose costs they cannot afford. A few other women interviewed Njeri O.I. (2016) confirmed that they had not gone through legal succession of their land and their titles were still in the names of the original (1950's and 1960's) allottees due to the cumbersome succession issues.

Customary laws are acknowledged by the constitution as existing and being followed. The capacity of a woman to prove her married status is necessary for her to be able to assert her property rights under the 1882 Married Women's Property Act or Succession Laws. This is a difficult challenge for women living in rural communities like Mukurweini, especially those who were married through conventional weddings or marriage by cohabitation, which are the norm in many rural Kenyan marriages. Then again, a number of the women interviewed did not see the need of buying land for themselves and having it registered under their names since their access to the family land was unlimited. A few of them however claimed that they lacked the finances needed to purchase their own land.

The law of succession has in some instances not protected the widow as witnessed in the landmark case of Virginia Edith Wamboi Otieno v Joash Ochieng Ougo and another (1987). This was a dispute between the widow Virginia Edith Wamboi Otieno and the deceased younger brother Joash Ochieng Ongo and a clan member also a distant nephew of the deceased Omolo Siranga concerning who had the legal rights to bury the deceased and as to his place of burial. The courts were guided by African customary law and declared that the widow was to observe the Luo customs and passed judgement that the deceased body was to be handed over to Joash Ochieng Ongo, his brother for burial in his ancestral home in Nyalunga Sub-location, Central Alego, Siaya District. An argument was put forward in support of equal rights and opportunities for women as this was seen as a discrimination against the widow.

The court claimed to have confined itself to the evidence on record on customary law. The Succession Act cap 160 section 66 pointed out that the widow of the deceased is to be preferred as the personal representative for purposes of administration of the

deceased estate. However, this doesn't mean that the widow was exempted from carrying out the customs with regard to the burial of the deceased in partnership with the concerned persons under customary law. This was a case of gender discriminatory customary law over-riding the right to equality, a matter of discussion in this study.

In a case involving matrimonial property during the dissolution of a marriage we have the case of JOO v MBO (2023) which brings out the impact of article 45(3) of the Constitution on equality during the dissolution of a marriage and division of matrimonial property based on their contribution. The petition touched on the mode of distribution of property acquired during a marriage and the applicable law where a suit was filed before the promulgation of the constitution of Kenya, 2010 and under the repealed Married Women's Property Act of 1882. The court held that there was no retrospective application of the matrimonial Property Act and that the applicable law to claim filed before the commencement of the Act, 1882. The court further held that the stated equality under article 45(3) of the constitution meant that the courts were to ensure that at the dissolution of a marriage, each party to a marriage got a fair share of the matrimonial property based on their contribution.

The above ruling is discriminative to the women mostly who are not in formal employment and usually contribute non monetary contribution that cannot be quantified and are therefore not able to provide evidence of their contribution. This means that the woman may lose out on the sharing of matrimonial property which they have worked for simply because they cannot quantify it. This is an example of where there is one party disadvantaged because of the conditions attached to the fair share of matrimonial property after the dissolution of a marriage.

In the Court of Appeal case of Douglas Njuguna Muigai v John Bosco Maina and another (2014) eKLR, stated that section 35 (1) of the succession Act was discriminatory to the female gender and specifically, the widow of the deceased. This section 35(1)(b) of the Act provided that a widower can remarry without losing the enjoyment of a life interest whereas a widow's right to enjoy a life interest would immediately stand extinguished upon her remarriage. This inequality in the law is brought about by regressive customary laws that prevent women from enjoying the rights and freedoms guaranteed by the constitution.

In a FGD Kiahungu (10/12/2016), it was quite clear that the Law of Succession (1981) did not have much positive contribution towards women inheritance of land in Mukurweini. Members cited several land disputes that had been lodged in the courts of law and which had been ruled in favor of men. The issue of patriarchy and customary land tenure does not make it easy for daughters to inherit land.

Women make up the vast bulk of the workforce in agriculture, engaging in subsistence farming and cultivation of cash crops. Despite some women being heads of their households, most of them did not have title deeds in their names (FIDA, 2009). During this study, it came out clearly that rules on their own do not secure ownership of land by women.

According to Kariuki (O.I.:2016), the Kikuyu norms and traditions are paramount in topics relating to land inheritance, despite the provisions enacted in the 2010 Kenyan constitution that permit women to possess land. For him, being permitted by the constitution was a law on paper, but in practice, women are allowed access to land but are yet to have control over it or own it.

While Erica (2014) recognises that the 2010 Constitution safeguards women's legal ownership of property, the extent to which local communities uphold the law locally determines how effectively the 2010 Constitution is put into practise. Customary law has an impact on how local land tenure rights for women are implemented. In addition to protecting human dignity and equality and outlawing gender-based discrimination, the Kenyan constitution and many other contemporary African constitutions also acknowledge the legitimacy of the customary law. A number of African governments have constitutions that have not resolved the issue between the rules of customary law vis-a-vis those related to human rights.

The 2010 Kenyan Constitution, according to Erica (2014), contains measures that safeguard female land tenure while granting local communities the legal competence to regulate land tenure-related issues. As a result, customary law—which has primarily historically denied women the ability to land ownership—is given legal legitimacy and protection, while simultaneously protecting the females' rights to own land. As a result, there are now competing legal rules governing female land tenure. In spite of laws that safeguard female land tenure, patriarchal traditions have allowed males to maintain a significant amount of control over the degree to which females are granted access to land.

Karanja (1991) maintains that despite the land reforms implemented in the 1950s, women could only access land by virtue of being daughters or wives. If the title has not been transferred to the daughter, her tenancy under land reform still rests on the generosity of her father while alive or after death. The longevity of a wife initially rests on the generosity of her husband and then, occasionally, on the generosity of her sons. While contemporary legislations on land permit women inheritance of land from

husbands and fathers, unlike traditional land tenure laws, whether or not they inherit and enjoy individual land ownership rights rests primarily on their fathers' goodwill or generosity. It is crucial that customary inheritance customs, as well as refusal or failure to properly adhere to governmental and legal procedures meant to preserve women's land rights, continue to pose a threat to women's security of tenure. Rights to ownership of land by women are challenged and obstructed, at every point, while the rights to land and property control by men find protection and are strengthened through individual land tenure supported by the masculine unity in society.

While the Kenyan government's policies place an excessive emphasis on industrialization tactics, Vengi (2016) emphasizes that land still serves as the primary means of production for the majority of the nation's economic activities. Given that land is the fundamental unit of production, the issue of land tenure reform should benefit the rural residents including the women. Kenya's agricultural development is heavily dependent on the productivity of women farmers, who dominate the majority of smallholder agriculture. However, majority of the women employed in agriculture do not raise any legal claim to any of the land they work on, and as a result, they are unable to use technology or obtain loans. This study revealed that despite the fact that the majority of women in Mukurweini have land access rights, the fact is that they have no legal ownership of the land despite the changes enacted in the 2010 new constitution. The women's land rights are still being overlooked and land continues to be transferred exclusively to male individuals thus excluding the women.

This is the predicament that the women of Mukurweini face in respect of the 2010 constitution. The registration of all the matrimonial property is done by the family head who is the male according to the traditional patriarchal system. Therefore, the

majority of the women of Mukurweini have no title deeds, the only document that gives legal protection and facilitates credit facilities.

According to FGD Kaharo (5/11/2016), a great number of the women of Mukurweini were not in possession of title deeds to the land they were tilling and only a few of the women who were widowed had managed to acquire the title after the death of their spouses. This was done after a tiresome succession process.

In summary, it is apparent that in spite of the freedom to own property as guaranteed in the laws of the Land in Kenya, explanation for the inability of the women to obtain title to land needs to be sought internally in the present lawful system. In situations allowing women to have the legal right to own land, social attitudes have prevented them from exercising that right fully or from fully enjoying the benefits that come with it. As a result, a traditional prejudice that inclines women's land rights primarily in the customs and traditions has increasingly been evident in the interpretation and application of contemporary land legislation.

#### **5.4 Summary**

Based on the findings of this study, we see changes in land formalisation and registration that have taken place in Kenya. However, we see continuity where household heads mostly males are primarily responsible for undertaking the processes, leaving women with little access to and power over the land. Most land titling systems in African nations are frequently imposed from above by the regime and frequently fail to correspond with customary practices of land ownership. Even when land rights are expressed in the statute, it is common to find land disputes that are decided upon by customary tribunals that may not consider equal rights for both

men and women. Additionally, several of the land titling procedures in these African nations are overly centralised, difficult to use, expensive, and opaque. Due to this, the local people get very minimal support from the regime in ways of resolving land conflicts and in protecting the women's land rights adequately.

Based on this report, consideration must be given to both the statutory and the customary foundation for both women's and men's land rights when developing gender-sensitive land policies or legislation. Family, coupled with inheritance rules, which eventually decide the effectiveness of all land tenure reforms, are further areas of concern. This is especially true when a household structure disintegrates as a result of divorce, death, separation or abandonment. The Government must make sure that women have a sufficient voice in land management and policy procedures in an effort to address the issues with rural women's rights to land. This can only be achieved by providing forums through which more women can provide an authentic report on governance issues and land policy, building a sound foundation for reinforcing laws aimed at protecting women's rights.

Gender equality requires equal property rights for men and women, but this goal is still far from being achieved. Gender discrimination is still pervasive with regard to accessing land and securing rights to land, and it hinders women's human rights. According to the majority of survey participants in this study, since both sexes had equal access to land usage rights, both genders had use of lineage clan land. The difference, though, was in how much access they had. Considering that all the land belonged to the clan or lineage and that all members of the clan or lineage had access to it, everyone was given land anytime they asked for it, and everyone's needs were met. Some of the interviewees said that men and women in the community had equal

access to land. Men were traditionally seen as the guardians of family property, according to most of the interviewees, and that the patrilineal system of land acquisition preferred men over women. The study also revealed that access rights of men and women were less equal than was initially presumed, as women's rights were generally viewed as 'secondary' rights secured through their male relatives.

The women of Mukurweini, who frequently experience prejudice in legal, informal and traditional systems of land tenure, can attest to this. As an illustration, they typically obtain land through male relatives and only exercise minor rights that are susceptible to breakups in relationships, divorce or even shifts in the priorities of the male proprietors. When these women are not given the same tenure rights and their level of security is not similar to that of men, the whole society, including the children, suffers. Conflicts would decrease, the environment would improve, and their living situations would be better if these women had equal rights. The women of Mukurweini made some gains from the constitution of Kenya (2010) which states that gives men and women equal access to land. Unfortunately, many of the women interviewed were not in possession of title deeds and had not made any efforts towards acquiring them. They attributed this to the Kikuyu traditions where land belonged to the men and women only had secondary rights to land through their male relatives. They also cited a lack of funds to process the title deeds even where there was an opportunity to do so.

## **CHAPTER SIX: SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS**

### **6.1 Summary**

In this chapter, there is the summary of the main concerns raised and addressed in this thesis. Chapter One covers the entire background of this study, highlighting the well-stated statement of the study problem together with the research questions, objectives of the study and study premises. The justification and significance are also well articulated. There is a detailed literature review of various works related to the study, and an elaborate theoretical framework used to carry out the study. The research design and the methodology used in the study are highlighted, including the tools used for the collection of data and analysis.

Chapter Two provides an overview of a gendered perspective of land control and use amongst the Kikuyu on the eve of colonial rule (1895). There is a detailed discussion on the Kikuyu traditions of origin and migrations, their socio-political organization and their economic activities in the pre-colonial era, with special emphasis on the place of land. Administration of land and the women position in relation to land access and use on the eve of colonial rule are given special attention as the subject of study. Chapter Three covers the colonial land policies and the women of Mukurweini sub-county, (1895-1963). This is discussed under subtitles such as colonial land policies (1895-1954), *Kaffir* farming and taxation, and their effects on the Kikuyu women in respect to land access, control and ownership. There is a detailed discussion on the Swynnerton Land Reform Plan for Kenya and the disenfranchisement of Mukurweini women during the Mau Mau land recovery uprising and the twist of the resettlement

paradox (1960-1963). These areas of discussion bring out the gender issues in areas of land tenure during the colonial period.

Chapter Four deals with the land policy in post-independent Kenya and focuses on the women's land access and ownership in Mukurweini (1963- 2000). The issues addressed are land policy in the immediate post-independence era of Jomo Kenyatta, highlighting its influence on women of Mukurweini in regards to their rights to land in the process: land adjudication, consolidation and the registration of titles. Pro-women land rights legislation during the Moi era (1978-2002) is also exhaustively covered.

Chapter Five highlights the gains made by Mukurweini women following the struggle for the realization of the new constitutional order in Kenya (2002-2013). The Kibaki regime (2002-2013) has been covered, touching on the Ndung'u Report (2004), the Referendum of 2005 and implications for women of Kenya and Mukurweini, the National Land Policy (2009), and the 2010 constitution of Kenya, with a special focus on the women gains in the new constitution (2010) and in particular the women of Mukurweini. Also covered are the positive stipulations on women and property, concluding with a look at the inherent challenges of the interface between a conservative customary law and a liberal constitution.

Chapter Six gives a summarization of the thesis, highlighting the conclusions of the study and the recommendations to several stakeholders that are concerned with the study.

## **6.2 Conclusions**

The findings of this study alone cannot bring out a generalized conclusion on matters regarding gender relations and land tenure system. This study draws out certain facts about land, which has remained the principal economic asset through which the majority of Kenya's population derive their livelihood. Though debatable, owning land is a main goal for all Kenyans. A Kenyan's genuine identity is derived from their land ownership, which is also regarded as the most significant source of social security.

The fact is that everyone among the Kikuyu had access to land but the truth is that there was a different process for each gender to acquire the land and that they did not have equal access to the land. The institution of inheritance serves as a reminder of the gender disparities that once existed in land access and property rights. Women basically acquired land courtesy of their position (e.g. wife) and did not have the ability to inherit. However, every woman, whether married or not, had access to enough land for her needs.

Women lost all of the protection and control they had previously experienced, with the onset of colonialism, the agrarian and tenurial changes that occurred with colonialism, and the succeeding independent government regimes. The women's future land rights were negatively impacted by the incapability of the women to enjoy individual rights to land ownership, except through their status as wives, or even benefit through land inheritance. According to this study, the diminishing of the women rights to land through the reforms initiated by successive governments in Kenya, came about from their dysfunction, stemming out from customary law on

inheritance, and the traditional sharing of labour that led to the women not being in a position to acquire their own land.

Titles were almost invariably granted to heads of families who were thought to be men in Mukurweini, when land adjudication, registration and titling were done. This made it possible for individual male landowners to legally mortgage, sell or rent their properties. As a result, the titling scheme improved men's security of ownership at the expense of women's rights. When registration and titling programmes kept components of customary law that discriminated against women by destroying the few secure rights that they had under community-based systems, it was sometimes extremely obvious that this caused the systems to degrade. A large number of respondents cited their frustrations when it came to accessing credit to improve on the land, since the credit facilities required collateral in the form of a title. This meant that any future credit depended on the men who were the registered owners of the land, and this threatened the land rights of the women working on these farms.

From this study, it is clear that women's customary land rights are more vulnerable, and even where customary tenure systems recognize women's land rights, women's names are rarely on the documents. This limits their participation in decision-making processes over land governance and therefore leaves a large number of women based in the rural areas, who continuously manage land belonging to their husbands, not in a position to raise credit to improve on the land. This inequity in matters regarding land is likely to result in a differentiated outcome for men and women. Gender inequality particularly in the rural areas is of particular concern since the women of Mukurweini continue to experience severe constraints to accessing land and other productive assets.

Despite the fact that Kenya has a new constitution that advocates for gender equality, it became clear during this study that the implementation and enforcement of gender equality laws and provisions in Kenya has been weak, with women remaining in a disadvantaged position and subjected to gender inequalities in a number of key spheres of life, for example accessing land and other productive assets. A critical underlying constraint preventing the effective implementation of existing gender laws and provisions is the persistence of patriarchal attitudes and practices in all spheres of life and the fact that the government has not taken sustained or systematic action to challenge these norms.

In Kenya and specifically in Mukurweini, customary land law remains very influential and predominates in the governance of land in rural areas, despite the fact that the constitution places community land under the formal administration of the County government. Implementation of the gender-equitable elements of the statutory legal framework governing land, which includes marriage and inheritance laws, has overall been weak, with the result that women have remained strongly disadvantaged in access to land compared to men. In Mukurweini, for example, the study findings indicate that women continue to have weaker access both to titled land and to customary land.

The study points to a wide range of barriers that have prevented more effective implementation of the gender-equitable elements of statutory laws on land, and which have reinforced gender discriminatory aspects of customary land law. These barriers include the legislative gap as regards governance of community land, whereby women's statutory land rights are not explicitly defined in relation to community land and where gender discriminatory aspects of customary land law are not directly

challenged. There is also the barrier on limited awareness of women's statutory land rights; the barrier to accessing the formal justice system where only a few women seek to resolve land disputes through the formal courts due to the high costs involved, considering that the state does not provide legal aid in civil cases concerning land. On the issue of seeking justice in courts, there arose an issue during their study, that while both men and women in rural areas tend to face disapproval from their communities if they take disputes to the formal courts, women, in particular, are likely to receive more negative and sometimes violent backlash from family or community members. Lastly, there is the barrier of strong reliance on local customary leaders/ institutions to resolve land-related disputes, who typically adjudicate land cases using customary law rather than statutory law, notwithstanding the fact that the traditional leadership positions are overwhelmingly held by men, which often leads to the reinforcement of gender discriminatory aspects of customary land law.

This study has shown that women's land rights in Kenya are typically less secure and protected than those of men. The issue is related to Kenya's basic cultural patriarchal society, which has glaring legal and regulatory loopholes. Women's access to secure land rights is crucial for growth because, according to statistics, they make up a larger proportion of agricultural farmers in the nation. As a result, any democratic society's ideals are incompatible with gender discrimination in land use. Chapter Two brings out the conclusion that women's precolonial entitlements to land were predicted on their membership in the Kikuyu community through birth, adoption and marriage.

While the pre-colonial land rights of Kikuyu women were predicated on their relations with men, in practice, few, if any, women amongst the Kikuyu were considered landless before colonization. Kikuyu indigenous land relations secured all access to

land. The Kikuyu made the presumption that everyone had access to land, but this did not account for the many ways that each gender acquired land. The false perception is that land access was equal for both sexes, women and men. Unfortunately, modern society now accepts traditional land ownership structures that excluded women from access to riches.

Women's access to land was determined by men as a matter of patriarchal cultural tradition. Thus, customary rules among the Kikuyu on the eve of colonialism had the effect of excluding females from land ownership.

Chapter Three brings to a conclusion the fact that whatever little security and authority the women had over the land was lost by the arrival of European settlers and colonialism thereof. This was accomplished by the adoption of legislation that disregarded their prior rights. The land reforms of the 1950s brought about a new type of land tenure, one in which women's usufructuary rights were not recognized.

Among the Kikuyu, there was the destruction of institutions like the *Ahoi* and *Athami* which ensured that everybody had access to land. Therefore, the colonial administration's purposeful efforts to establish a landless class through individualization of titles had a negative impact on both men's and women's rights to land access. The women of the landless men who suddenly found themselves without land were deeply impacted.

The customary right to land access recognised all the contributions by women to agriculture and food production. Such patterns of land usage underwent significant change with the introduction of colonialism. The combined lands were owned by men,

and access to agricultural land was restricted. Colonial capitalism led to the restructuring of gender roles to the detriment of women.

Property consolidation and registration in Kenya in the 1950s made the European notion of having an exclusive title to land legal, and gave male household heads a dominant position. The new policy marginalised the usufruct rights of the Kikuyu women, which had formerly been protected by the Kikuyu elaborate land tenure system. The women of Mukurweini joined the Mau Mau struggle of the 1950s due to their frustrations and disappointments with the new land tenure agreements just before independence. However, the sacrifices of women in a male war did not yield any positive outcome in a land distribution tract that followed. They were further marginalized as land became a commodity owned by economically well-off males.

In Chapter Four of the study, the conclusion is that, in the 1960s, Kenya's nationalist-era politics gave place to a politics of consolidation, power-centering and state-building. As a result, new institutions were erected, old ones were revamped, and colonial institutions were rebuilt. Nonetheless, even with a coordinated national policy centred on land privatisation and consolidation, customary law had an impact on female land tenure and overall land tenure.

The consolidation of land and subsequent land registration gave way to land titling. Women were frequently denied title deeds, which excluded them from governing land. The registration procedure put at risk the security of tenure of the women on owned land or land they had access to. In contrast to the pre-colonial era, the Registered Land Act (1963) did not recognize women land access since it denied them registrable interests on land.

The adoption of the process of registration of land by the government during the postindependence era, when gender was not fully taken into consideration while planning for development, sped up the process of individualization and further restricted women's property rights. Due to the male predominance in land adjudication committees and the typical registration of male house heads, women's unregistered secondary rights were undermined. Also, due to the fact that women were not given national identity cards, which were a requirement for land registration and gave men an advantage over women, the Kenyatta government failed to protect women's rights to land. During Moi's era, there was unprecedented global advocacy of women's rights, including land related rights. These efforts had a bearing on Kenya's government, and influenced legal initiatives to correct the skewed rights over land in favor of men. The Law of Succession (1981) which was enacted during Moi's era had provisions that recognized and embraced the idea that men and women should have equal right to inherit property. This law unfortunately remained a dead letter as little changed.

President Moi successfully introduced the issuance of national identity cards to women, which was a great step towards land registration for the women. It was also during his tenure that the process of revising the constitution began. This was expected to benefit the women of Kenya in terms of land access and ownership. The women's agenda during his era was loud and clear.

Chapter Five brings to a conclusion the main achievement for the women of Kenya and Mukurweini. The adoption of Kenya's new constitution on 27<sup>th</sup> August 2010 was a historic moment that marked the end of decades of the women of Kenya's struggle for constitutional recognition and protection of their individual rights and

fundamental freedoms. The constitution recognized gender equality, meaning that women could own and inherit land.

The women of Kenya made gains during the Kibaki regime in terms of land control and ownership. However, the challenges of patriarchy (through customary law) remain an issue in the full realization of land access and control of land by the women. The National Land Policy (2009) was formulated to address the prevailing and future land problems in Kenya. The policy acknowledged universal concerns including equity and gender values. While there are no gender-sensitive family laws, culture and customs continue to favour male inheritance of family land. Constitutional restrictions and gender-discriminatory international conventions collide when it comes to property ownership and inheritance. Even though Kenya's present constitution forbids discrimination based on sex, several laws violate it by allowing discrimination under personal and customary laws. Customary rules frequently disregard the rights of women and allow men the power to rule over them. The Kenyan constitution, which upholds patriarchal and cultural biases, denies women the same chances and privileges as men in terms of property ownership and governance. Despite laws that protect female landowners, patriarchal traditions have allowed males to maintain a significant amount of control over the degree to which females are granted access to property tenure. Despite the fact that Kenya's constitution guarantees everyone the right to own property, it is still necessary to address the legal frameworks that are currently in place, as well as the issues with how the relevant laws are being implemented and the social and cultural norms that still influence how people deal with land. The interpretation and application of current property-related regulations have become more and more influenced by a traditional bias that tends to

consider women's land ownership rights primarily in the context of traditional customs.

The Kenyan constitution expressly declares that customary law that conflicts with the constitution is unconstitutional; as a result, personal law that discriminates against women and conflicts with the constitution is unconstitutional. All other laws, including customary law, are subordinate to the constitution. This enables any disagreements between the constitution and customary law to be settled in the constitution's favour, including the bill of rights and the principles of equality and non-discrimination. Glaring from this study thus is the fact that although the 2010 constitution is clear that women and men should get equal share in the inheritance of land, in our patriarchal society the norm remains adherence to the traditional land tenure system which gave women user rights not ownership rights.

Therefore, the contribution of this study is that despite the new constitution allowing women to own land through inheritance, most of them still can't own land because it conflicts with the existing indigenous land tenure systems.

### **6.3 Recommendations**

The Parliament of Kenya to make tighter laws that focus on helping the women of Kenya in matters of gender equity.

To further operationalize the implementation of the 2010 Constitution in respect of women's rights, there is a need for greater advocacy from Non-Governmental Organizations like FIDA-Kenya (Federation of Women Lawyers).

There is need for women to be represented on Land Boards (including the National Land Commission) and at various levels of government in order to guarantee a degree of gender equity in resolutions that are reached.

Given the constant disputes in the 2010's and in the 2020's concerning property of prominent personalities in Central Kenya, for example, John Michuki, Njenga Karume, Mbiyu Koinange and Gerishon Kirima it is recommended that studies be undertaken to address this emerging trend.

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#### List of respondents

Key Informants				
Name	Approximate Age	Status	Date Interviewed	Location
Kariuki, Cornelius	95	Village elder/ Mau Mau adherent	6/11/2016	Karaba
Wambugu, Wachira	90	Village elder/ Mau Mau adherent	7/11/2016	Kibutio
Wangui, Mary	86	Women leader/ Mau Mau adherent	14/11/2016	Igana
Wangari, Carmella	76	Women leader	17/11/2016	Karundu
Wambui, Joyce	85	Village elder/ Mau Mau adherent	18/11/2016	Ngamwa

	Other Informants	Approximate Age	Status	Location	Date Interviewed
1	Githaiga, Peter	81	Retired Colonial Government officer	Karaba	5/11/2016
2	Muriithi, Enice	92	Village elder/ Mau Mau adherent	Thimu	20/11/2016
3	Gachinjiri, Samuel	82	Retired Teacher	Ngamwa	7/11/2016
4	Mwangi, Nyagaceke	88	Women Leader	Igana	14/11/2016
5	Wamahiga, Eunice	86	Village Elder	Karundu	17/11/2016
6	Wairimu, Irene	70	Retired church elder	Kiahungu	7/11/2016
7	Ndirangu, Nguyi	88	Village elder/ Mau Mau adherent	Ngamwa	17/11/2016
8	Kamau, Njoroge	70	Farmer	Kibutio	7/11/2016
9	Njeri, Salome	50	Teacher	Gikondi	5/11/2016
10	Karinga, Juliana	55	Woman Leader	Kibutio	8/11/2016
11	Wachira, Stanley	80	Retired Colonial Government officer	Rutune	2/11/2016
12	Mwathi, Muthoni	75	Farmer	Kariara	7/11/2016
13	Muriu, Ndiritu	80	Farmer	Mihuti	9/11/2016
14	Nyaguthii, Jane	50	Government Officer	Ngamwa	20/11/2016

## Focus Group Discussions

### FGD Kaharo 5/11/2016

	Informants	Approximate Age	Status	Location	Date Interviewed
1	Kagoiya, Ndiritu	94	Farmer	Kaharo	5/11/2016
2	Ndiritu, Gituro	65	Farmer	Kaharo	5/11/2016
3	Nyota, Mbuthia	92	Village elder/ Mau Mau adherent	Kaharo	5/11/2016
4	Thinji, Gitau	50	Medic	Kaharo	5/11/2016
5	Githaiga, Davis	65	Farmer	Kaharo	5/11/2016
6	Ng'endo, Hellena	86	Farmer/ Mau Mau adherent	Kaharo	5/11/2016
7	Macharia, Wambui	88	Farmer/ Mau Mau adherent	Kaharo	5/11/2016
8	Waitherero, Joyce	76	Village Elder	Kaharo	5/11/2016

### FGD Ngamwa 5/11/2016

	Informants	Approximate Age	Status	Location	Date Interviewed
1	Gichuki, Gicharu	68	Pastor	Ngamwa	5/11/2016
2	Kiragu, Charles	70	Farmer	Ngamwa	5/11/2016
3	Macharia, Kihumbe	65	Entrepreneur	Ngamwa	5/11/2016
4	Kigotho, Nyambura	92	Village elder	Ngamwa	5/11/2016
5	Nyandia, Mary	70	Farmer	Ngamwa	5/11/2016

6	Wachiuri, Wambui	88	Farmer	Ngamwa	5/11/2016
7	Kibere, Gitau	62	Farmer	Ngamwa	5/11/2016
8	Kiragu, Peter	56	Farmer	Ngamwa	5/11/2016

**FGD Gikondi , 29/11/2016**

	Informants	Approximate Age	Status	Location	Date Interviewed
1	Wauthi, Gerald	75	Farmer	Gikondi	29/11/2016
2	Wangigi, Daniel	78	Village Elder	Gikondi	29/11/2016
3	Karimi, Samuel	78	Village Elder	Gikondi	29/11/2016
4	Wambugu, Ann	82	Farmer/ Mau Mau adherent	Gikondi	29/11/2016
5	Njoki, Elizabeth	55	Farmer	Gikondi	29/11/2016
6	Ndegwa, Samuel	50	Government officer	Gikondi	29/11/2016
7	Muhia, Kimani	65	Farmer	Gikondi	29/11/2016
8	Wamai, Njoki	72	Farmer	Gikondi	29/11/2016

**FGD Kiahungu, 10/12/2016**

	Informants	Approximate Age	Status	Location	Date Interviewed
1	Nzioki, Benedict	58	Farmer	Kiahungu	10/12/2016
2	Waigwa, James	50	Farmer	Kiahungu	10/12/2016

3	Kamande, Wilson	56	Farmer	Kiahungu	10/12/2016
4	Manjoni, Phenic	64	Farmer	Kiahungu	10/12/2016
5	Waithiegeni, Jane	46	Teacher	Kiahungu	10/12/2016
6	Kinyua, Joseph	48	Medic	Kiahungu	10/12/2016
7	Maitha, Enos	57	Farmer	Kiahungu	10/12/2016
8	Mburu, James	65	Retired Medic	Kiahungu	10/12/2016

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A1: Questionnaire Guide

Age.....

Gender.....

Level of Education.....

Occupation.....

Sub location.....

1) During the pre-colonial period did women own land among the Kikuyu?

(Yes) (No)

If yes, did she have total control for access and use of the land?

How was women's access and control of land guaranteed?

During the pre-colonial period, who made the final decision on how land was to be used?

The clan

The household head

Both husband and wife

Wife

Husband

Do you own land? (yes) (no)

If yes, how did you acquire it?

Inherited

Bought

Gifted

Belonged to the late husband

Did colonialism have any impact on women ownership of land among the Kikuyu?

Explain how and why?

Do you have any land registered in your name?

Yes

No

Explain your answer.

Do you have a title deed for the land?

Yes

No

If no why?

Given an opportunity would you buy land and register it in your name?

Yes

No

Why?

What are the factors that hinder women from acquiring land?

According to you, who is the absolute owner of land?

Why?

Who is entitled to inherit family land?

Sons

Daughters

Both

Explain.

In your opinion are women entitled to transfer or sell land?

(yes) (no)

Explain

#### **INTERVIEW SCHEDULE FOR THE CHIEFS/ ASSISTANT CHIEFS**

Is the land in your location surveyed?

When did land consolidation and registration begin in this location/ sub-location?

How is land owned in this location/ sub location?

Are there land related cases brought to your office for arbitration?

How was the land owned / controlled among the Kikuyu during the pre-colonial period?

Who determined the access, control and ownership of land by the Kikuyu women in the pre-colonial period?

How did the emergence of colonialism influence the Kikuyu women in regards to ownership, access and use of land?

In your opinion did colonialism hinder or enhance women's rights to land?

Do you think the subsequent independent government regimes in Kenya have addressed issues related to ownership of land by women?

Kenyatta regime

Moi Regime

Kibaki regime

Did the passage of the new constitution enhance women's acquisition of land?

In your opinion is the new constitution in line with cultural practices as relate to land ownership among the Kikuyu of Mukurweini?

When dealing with land ownership disputes between a husband and wife, what informs your decision?

The constitution

The cultural practices of the Kikuyu

Both

Explain.

As an administrator what suggestions would you give to the relevant authorities in order to strengthen and empower women in Mukurweini?

## **FOCUS GROUP DISCUSSION GUIDE**

Where did the Kikuyu people migrate from?

How were the Kikuyu governed during the pre-colonial period?

What were the economic activities of the Kikuyu during the pre-colonial period?

How was land administered during the pre-colonial period?

In your own opinion, did the Kikuyu women have security of tenure in the pre-colonial period?

When did the Kikuyu of Mukurweini feel the impact of colonialism?

How did the colonial land policies impact on the women's right to land in Mukurweini?

Kenya gained independence with Kenyatta as her first President. How did he handle the question of land in Mukurweini?

Did the women participate in the land adjudication process?

In your opinion, to what extent did the Kenyatta regime enhance women's right to land?

What steps did President Moi take in order to secure women's right to land?

In your own opinion, to what extent did Kibaki enhance women's right to land?

## **INTERVIEW SCHEDULE**

Name .....(optional)

Age .....

Level of education.....

Gender .....

Marital status.....

Number of Children.....

Occupation.....

## LAND HISTORY

Did you own land?

Who gave you the land?

What happened to the land?

Do you have access to the land now?

How do you feel about landlessness?

## A2: Research Authorization



### THE PRESIDENCY

MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT

E-mail: [nyerikountycommissioner@yahoo.com](mailto:nyerikountycommissioner@yahoo.com)  
Telephone: 061 2030619/20  
Fax: 061 2032089  
When replying please quote

COUNTY COMMISSIONER  
NYERI COUNTY  
P.O. Box 33-10100  
NYERI

Ref. No. NYC/ADM 1/57/VOL.IV/135

12<sup>th</sup> August 2016

Grace Wangechi Mwangi  
Kenyatta University  
P.O. Box 43844-00100  
**NAIROBI**

#### **RE: RESEARCH AUTHORIZATION**

Reference is made to your letter dated 11<sup>th</sup> August 2016 on the above subject.

Approval is hereby granted to carry out research on "Land tenure systems and gender relations in Mukurweini in Nyeri County, 1895 -2013."

The period of research ends on 13<sup>th</sup> May 2017.

F. MWANGI  
For: COUNTY COMMISSIONER  
**NYERI COUNTY**

### A3: Research Authorization



KENYATTA UNIVERSITY  
GRADUATE SCHOOL

E-mail: [dean-graduate@ku.ac.ke](mailto:dean-graduate@ku.ac.ke)

Website: [www.ku.ac.ke](http://www.ku.ac.ke)

**OUR REF: C50/CE/24078/13**

P.O. Box 43844, 00100  
NAIROBI, KENYA  
Tel. 8710901 Ext. 57530

Date: 6<sup>th</sup> June, 2016

The Director General,  
National Commission for Science, Technology & Innovation  
P.O. BOX 30623  
**NAIROBI**

Dear Sir/Madam,

**RE: RESEARCH AUTHORIZATION FOR MS. GRACE MWANGI REG.NO. C50/CE/24078/13**

I write to introduce Ms. Mwangi who is a Postgraduate Student of this University. She is registered for M.A. Degree programme in the Department of History, Archaeology & Political Studies in the School of Humanities & Social Sciences.

Ms. Mwangi intends to conduct research for M.A. thesis entitled, "Land Tenure Systems and Gender Relations in Mukurweini Nyeri County, Kenya".

Any assistance given will be highly appreciated.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Lucy N. MBAABU'.

**MRS. LUCY N. MBAABU**  
**FOR: DEAN, GRADUATE SCHOOL**

RM/cao

## A4: Research Authorization



**NATIONAL COMMISSION FOR SCIENCE,  
TECHNOLOGY AND INNOVATION**

<p>Telephone +254-20-2211471, 2241549,3310573,2290420 Fax +254-20-318245, 118249 Email <a href="mailto:dg@nacosti.go.ke">dg@nacosti.go.ke</a> Website <a href="http://www.nacosti.go.ke">www.nacosti.go.ke</a> when replying please quote</p>	<p>9<sup>th</sup> Floor, Utalu House Uhuru Highway P.O. Box 30623-00100 NAIROBI-KENYA</p>
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Ref No: **NACOSTI/P/16/44131/11047** Date: **31<sup>st</sup> May, 2016**

Grace Wangechi Mwangi  
Kenyatta University  
P.O. Box 43844-00100  
**NAIROBI.**

**RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on "*Land tenure systems and gender relations in Mukurweini Nyeri County, Kenya 1895-2013,*" I am pleased to inform you that you have been authorized to undertake research in Nyeri County for the period ending **31<sup>st</sup> May, 2017.**

You are advised to report to **the County Commissioner and the County Director of Education, Nyeri County** before embarking on the research project.

On completion of the research, you are expected to submit **two hard copies and one soft copy in pdf** of the research report/thesis to our office.

  
**DR. STEPHEN K. KIBIRU, PhD.**  
**FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The County Commissioner  
Nyeri County.

The County Director of Education  
Nyeri County.