



UNIVERSITY OF NAIROBI

COLLEGE OF ARCHITECTURE AND ENGINEERING

School of the Built Environment

Department of Real Estate and Construction Management

TITLE:

**“AN INVESTIGATION INTO THE EFFECTS OF ‘INFORMAL’
INDIVIDUALISATION OF UNREGISTERED COMMUNITY LAND
ON COMMUNITY LAND RIGHTS.”**

CASE STUDY: IKUTHA DISTRICT IN KITUI COUNTY.

BY

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**A research project submitted to the University of Nairobi as a partial
fulfilment for the award of Bachelor of Real Estate Degree.**

APRIL, 2014

DECLARATION

I, **Elizabeth Mbete Makau**, hereby declare that this research project is my original work and has not been presented to any other university for the award of a degree.

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Signature

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Date

This research project has been submitted for examination with my approval as the **University Supervisor**.

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Date

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I dedicate this research project to my late father, Mr. Jackson Makau Nthuka, whom death deprived the opportunity to see me scale this heights.

R.I.P FATHER.

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LIST OF ABBREVIATIONS

RECM	Department of Real Estate and Construction Management
UN	United Nations
MoL	Ministry of Lands
RoK	Republic of Kenya
KHRC	Kenya Human Rights Commission
NLP	National Land Policy
NLC	National Land Commission
AusAID	The Australian Government's overseas Aid Program
CLTs	Community Land Trusts
USA	United States of America

ABSTRACT

Land is a very important asset to every living thing ranging from the small insects, plants, wild and domestic animals to human beings. Human beings being the most knowledgeable of all the living things have the ability to regulate the manner in which the land is utilized. This is through coming up with legal and institutional frameworks to guide the use of land and its resources among the different land uses. Community land rights, which inform our research objectives, need to be well defined and regulated to ensure a smooth and fair utilisation of community land by the eligible members.

The main objective of the research was to investigate why ‘informal’ individualisation of unregistered community land occurs and the effects it has on the communal land rights of the residents. The data sought was generally qualitative in nature and questionnaires were used as the main method of primary data collection. Secondary data was collected through review of the relevant literature. The study population consisted of both female and male genders and the calculated sample size was 72. The data collected from the field study was statistically analyzed and the results clearly presented in table and graphs.

The main finding of the research was that the elite and the powerful especially the male members in the society perpetrated the ‘informal’ individualization of community land. The main reasons being the need to increase the sense of individual ownership through creating a platform where the benefits resulting from any investment on community land will accrue to the investor and not the entire community. It was also noted that many residents, especially women who are categorised among the vulnerable, suffered landlessness, food insecurity among other problems at the household level due to deprivation of their land rights owing to the ‘informal’ individualisation.

As a way of curbing the problems of the ‘informal’ individualisation, the research recommended the formation of local land boards that would deal with all community land issues while ensuring that everyone is granted equal rights to community land irrespective of their gender, social class or any other base. It is also important that the land officials strive to establish the exact people entitled to community land while adjudicating any community land. This will help ensure that land ownership falls in the hands of the eligible owners as the process of adjudication has kicked off in the district. A lot of sensitization on the effects of the discriminative cultural norms on development (both at local and national level) especially those inhibiting women from inheriting any land is also a major recommendation of the research.

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF THE STUDY

Land is the physical face of the earth and everything of a permanent nature over or under it including minerals, water, oils, and gases (AusAID, 2000). It is a factor of production that is capable of being traded in a market like any other commodity. Generally, land and its resources are very important for sustaining peoples' livelihoods. Just like our first Kenyan President Mzee Jomo Kenyatta noted, land is the Kenyans' greatest asset, an heritage we received from our forefathers and in which lies our salvation and survival , (Harbeson ,1971).

Land was one of the major reasons for the clamour of independence from the colonial governments in many African nations Kenya included. This was mostly because most of Kenyan communities were then agrarian based and heavily relied on land for their livelihoods. Most communities had therefore cultivated some special relationships and wild obsessions with the lands and territories they occupied. This special connection to land was greatly evident through inheritance, burial rites, and other cultural activities (Wachira, 2008). In Kenya, land inheritance is mostly patriarchal and with each generation, the pieces become smaller due to subdivisions among the sons, (Dave & Cherry McKay, 2008).

Today, the wild obsession of land ownership is still evident as land is usually the first thing to wish to buy if one is poor and the first thing still to buy more of if one is rich. This desire to own land is greatly attributed to cultural believes by many authors. For example, Lastarria-Cornhiel and Frais (2009) in Quansah (2010) notes, land represents an important cultural resource, a productive factor and capital asset, and those who control rights to land have a certain amount of power over those who do not, especially in rural agrarian economies. As a result, people still struggle to own land by whatever means available to them.

Notwithstanding, with the ever-increasing population coupled with the fixed size of land, land ownership issues are critical as a lot of them end up in litigation where still many cases of land remain unresolved in courts. In fact, most cases on illegal land ownership including grabbing of public land in Kenya remain unresolved even after Kenya became independent.

Being a very emotive matter, land ownership is thus subjected to many regulations that direct its use and transaction as well as the form of ownership.

However, the land policies and laws in Kenya have been noted to have so many inadequacies as they pay little regard towards ensuring equity, sustainability, and preservation of culture in the utilization of land but strive for economic productivity, (KHRC, 2011). This is because most of the regulations are usually enacted to protect the private ownership of land while sidelining or giving little attention to any other ownership such as the communal system which many people especially the rural poor enjoy.

Before 1900, land in Kenya was generally a community asset in most kingdoms and every member of the society had equal rights of use and access. The male members in the society were the automatic inheritors of the community land and the female members were supposed to access land through their husbands, sons, brothers and fathers, (Pinckney and Kimuyu, 1994). The coming of the colonialists marked the beginning of the individual land ownership backed with the issuance of the indefeasible titles supported by legal frameworks. In Kenya specifically, this was encouraged to promote agricultural productivity for the European settlers though it so greatly affected the locals even today as far as matters of land ownership are concerned.

Under the current dispensation, land in Kenya falls under three categories; Private Land, Public Land and Community Land, (GoK, 2010). Although land registration in Kenya started during the colonial periods, the highest percentage of Kenyan land is under Communal Tenure System. This includes any land that has not been adjudicated and registered and comprises approximately 65 percent of total land mass in Kenya, (Syagga and Mwenda, 2010). Most arid and semi arid areas fall under this class and the communities in the regions are usually free to exercise occupancy and use rights but have no ownership rights nor are these rights to use and occupy registered.

With the current high rate of modernisation, population growth continued weakening of community cohesion and the lack of strong legal means of recognizing the communal land rights, these tenure regimes on unregistered rural land have evolved towards 'informal' individualization. Customary land rights are no longer prominently evident in most communities, as people seem to favour the individual land ownership, which is more protected by legal statutes as opposed to the communal system that is considered insecure. This has been

at the expense of the poor, the weak in the society, women, and the disadvantaged who are continuously being dispossessed off the land and resources that they are customarily entitled to. While land individualization through the formal mechanism is highly regarded and encouraged, this research will focus on the ‘informal’ individualisation of unregistered community land and the effects it has on the communal land rights within a rural setting.

1.1 PROBLEM STATEMENT

In most rural areas, especially those in the arid and semi-arid regions, communal land tenure is dominant. Constitutionally, any unregistered community land is currently held in trust by County governments and administered by the NLC on behalf of the resident communities. However, under the old legal dispensation, the so-called Trust Land was vested on the County Councils within whose area of jurisdiction it was situated. The provisions in the defunct Trust Land Act Cap 288 of the Laws of Kenya required the Commissioner of lands to administer the Trust land as an agent of the County Council (GoK, 2001).

Over years, the Commissioners of Lands abdicated their Trust Land administrative mandates and hence their authority over the trust lands was not felt especially at the local level. For this reason, many communities living in unregistered Trust lands (presently unregistered community land) have presumed ‘indefeasible’ rights of ownership over such land and have devised their own ways of managing such land based on the community universal norms, values and beliefs. The community members therefore, appointed stewards (usually community elders) to ensure fairness in the management, use and allocation of the community land. The responsibility to protect the interests of each member of the community was fully vested on the appointees.

Although the stewards had powers to allocate plots to individual families or clans for their subsistence use, all land was considered communal and the relation existing between an individual and the community in question determined his/her rights to access, occupy, and use the community land. This ensured that no eligible member of the community was excluded from the use of community land and no outsider was allowed to access, occupy, or use that land without the direct consent of the stewards.

Having been entrusted with the administration of the community land, the stewards in connivance with the elite class in the society, they have corrupted and abused their trusteeship roles to the exclusion of the entire community who are entitled to occupy and use the land on equitable basis. This has been through the ‘informal’ individualisation of community land, which is usually effected through the powers vested unto the stewards as far as community land is concerned. As Mbote (2005) notes, individual ownership of any land, whether in a formal or informal manner, usually dissolves the communal nature of ownership. The direct result of this being that, the vulnerable groups in the community whose land rights have the least priority (e.g. widows, unmarried girls, the physically challenged and children born out of wedlock) are likely to have their land rights grabbed by those with the first priority or/and the stewards leading to landlessness, poverty, and further economic exclusion.

The researcher has based this study in Ikutha District (a rural semi arid area in Kitui County) because apart from a few parts of the district where adjudication is ongoing, the largest portion of land in the region is unregistered and classified under Communal Tenure System and the ‘informal’ individualization upon such un-adjudicated land is greatly evident.

This research has therefore been fuelled by the researcher’s desire to establish why such ‘informal’ individualisation of community land occurs and how it has affected the community residents more so the vulnerable groups (widows, unmarried girls, physically challenged and children born out of wedlock). The researcher also aims to outline suggestions of formalising the individualisation while ensuring that the rights of every community member are safeguarded.

1.2 RESEARCH QUESTIONS

1. Why does the ‘informal’ individualisation of community land occur and who are the perpetrators?
2. What powers do the proprietors acquire after the ‘informal’ individualization?
3. What is the residents’ view on the ‘informal’ individualization of community land?
4. What effects does the ‘informal’ individualization of community land have on the vulnerable groups in the society e.g. widows, unmarried girls and children born out of wedlock?

1.3 RESEARCH OBJECTIVES

The overall objective of the study was to investigate why ‘informal’ individualisation of unregistered community land occurs and the effects it has on the communal land rights of the residents.

The specific objectives were therefore;

1. To establish why ‘informal’ individualization of community land has occurred and identify the key perpetrators.
2. To establish what powers the perpetrators acquire as well as the effects the process has on the communal land rights of the vulnerable groups in the community.
3. To recommend possible ways through which the individualization can be formalised while safeguarding the interests of every community member.

1.4 RESEARCH HYPOTHESIS

This research has adopted the following null (H₀) and alternative (H_a) hypotheses;

H₀: ‘informal’ individualization of unregistered rural community land has led to landlessness and social poverty among the vulnerable members of the society.

H_a: Informal individualization of unregistered rural community land has not led to landlessness and social poverty among the vulnerable members of the society.

1.5 STUDY AREA AND SCOPE

The scope of this study was limited to investigating the ‘informal’ individualisation of unregistered community land and the effects it has on the local residents land rights. The researcher concentrated on unregistered rural land under Communal Tenure System hence, any other rural land under a different tenure category does not form a part of this research work.

Special regard has given to Ikutha sub-county (Ikutha district) in Kitui County because the ‘informal’ individualisation of community land is widely evident and is locally respected by the residents in the district. Furthermore, the limitation of time does not allow the researcher to cover the ‘informal’ individualisation of the entire unregistered rural land within Kenya and thus the need to choose a case study.

1.6 JUSTIFICATION OF THE STUDY

Over time, so much individualisation of community land, both formal and informal, has occurred throughout Kenya. This has had great negative impacts on the land rights of the vulnerable groups living in areas delineated as community land according to the constitution of Kenya 2010. This study is therefore important because it will aim to shed more light on why the ‘informal’ individualisation of unregistered community land occurs and identify the specific effects that it has on the land rights of the less fortunate groups in the society. The researcher will also suggest ways of formalising the current ‘informal’ individualisation while ensuring that the rights of everyone especially the vulnerable groups in community are protected.

If policies to formalise these rights are enacted and enforced at the local level, many economic benefits including an increase in investment on rural land would be envisaged. This is because lawful recognition of land rights has often been said to increase the holders’ security of tenure, (Swynnerton, 1954). It is also believed to bring about favourable conditions for development of a formal land market that enables land rights ownership to shift to more efficient producers, (Dickerman *at el*, 1989).

Secure tenure for the rural people will encourage investment in technology and consequently increase productivity, which may reduce poverty and increase employment at the local level. The risk of rendering some members of the community landless would also reduce since their rights will be put into consideration while formalising the whole process. This would be a great step towards ensuring that the country achieves the goals set in the Vision 2030 as well as in the National Land Policy which requires every right on land to be legally recognized.

Furthermore, a lot of research on registered land in urban areas and other high potential lands has been done in the past focusing on the security of tenure and effects of individual registration of land on the economy and productivity. These researches include investigation into rural land rights for women, better land access for the rural poor, gender issues in land tenure under customary law, among others. This clearly shows that there is a gap of knowledge that exists regarding the evolving of the unregistered community land rights into ‘informally’ individualised rights and its likely effects on the residents’ communal land rights.

To cover this existing gap, this research work has been inspired by the increasing regard of the ‘informally’ individualised community land rights by the society and the researcher’s desire to find out the reasons and effects of such individualisation on the land rights of the community residents. If the individualisation of unregistered community land is disregarded altogether, then the effects that come with it will also be totally disregarded and this may greatly affect the community owning the land as well as the general national economic stability.

1.7 ORGANISATION OF THE STUDY

This study comprises of five chapters. These are:

1.7.1 Chapter One: This is the introduction chapter of the research work and comprises the background of the study, problem statement, research questions, research objectives, research hypothesis, study area and scope and justification of the study.

1.7.2 Chapter Two: This is a review of relevant written literature on the history of land tenure, land rights allocation systems in Kenya, communal land rights, and legal framework addressing communal land rights among other relevant areas.

1.7.3 Chapter Three: This chapter contains the research methodology and a description of the study area, sampling techniques and sample population size, data collection instruments and procedures.

1.7.4 Chapter Four: This chapter comprises data analysis and discussion of the research findings and testing of the research hypothesis.

1.7.5 Chapter Five: This chapter discusses Conclusions and recommendations based on research findings in chapter four. It also includes the identification of potential areas of further research.

At the end of the fifth chapter, we have references and appendices.

CHAPTER TWO

LITERATURE REVIEW

2.0 INTRODUCTION

This chapter presents the relevant literature reviewed on the construct of land, concept of community land, land tenure systems in Kenya before, during, and after colonial period. Land rights allocation channels, legal frameworks touching on community land, global overview of communal land tenure and the present day state of community land in Kenya with urbanisation and modernisation have also been discussed in this chapter. However, a lot of emphasis has been laid on Community land administration and benefits of communal ownership of landed property.

2.1 THE CONSTRUCT OF LAND

There are many perceptions of land depending on who is giving the definition. For example, lawyers view land as a volume of legally definable space extending from the centre of the earth to the infinity of the sky and to which rights and interests are attached. Economists view land as a factor of production and a commodity that can be traded and subjected to taxation; while physical geographers view it as relating to landscape.

However, different authors have offered varying definitions of land; for example AusAID (2000) states that, “Land is the surface of the earth, the materials beneath, the air above and all things fixed to the soil”. MacNel, (1975) gave the following definition, “Land is the air we breathe, the water we drink and use for recreation, the land we cultivate, the cities we flock to in growing numbers and the wilderness we seek to enjoy today and preserve for the future generation”. For the purpose of this research work, land has been defined as an important natural resource that anchors the livelihoods of many people throughout the world and on which individuals or communities have rights of ownership, occupancy and use, (UN, 1996).

2.1.1 Common Categories of Land in Kenya

Like the Kenyan constitution 2010, this study categorise land into three broad categories, that is, private land, public land and community land. This section will give a brief introduction of the three categories of land mentioned since they will be discussed in depth later in the study.

Private land: this is provided for under article 40 of the constitution of Kenya. The article empowers everyone to own land of any description and in any part of Kenya either individually or in association with others. In addition, part 5 of the Land Act no. 6 of 2012 recognizes private land and has outlined provisions that protect the rights and interests attached to any land delineated as private. Article 64 of the constitution proceeds to define private land as land held by any person under leasehold tenure, registered land held by any person under any freehold tenure and any other land declared private under an Act of Parliament.

Public land: this category of land is provided for under article 62 of the constitution of Kenya 2010 and its administration and management procedures outlined in part 3 of the Land Act no. 6 of 2012. The National Land Commission established under article 67 of the constitution of Kenya, is mandated to manage all public land on behalf of the National and County Governments.

Community land: this category of land is provided for under article 63 of the constitution of Kenya and includes any land held by communities identified based on ethnicity, culture or similar interests. Community land is held in trust by County Governments on behalf of the communities for which it is held and its use is restricted to the terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

2.1.2 General Characteristics of Land

Land has some unique characteristics that set it apart from other assets such as automobiles. These include;

- a) Fixity in supply: unlike any other good, the supply of land is literally fixed and there can never be a point of equilibrium between supply and demand. However, some people have argued that the supply of land for a specific use can actually be increased or decreased through man's actions. Building skyscrapers, reclamation of wastelands and change of use are examples of ways of increasing the supply of land for a particular use, (Balchin *et al*, 1995).
- b) Heterogeneity: land is said to be heterogeneous to different users depending on the location and the use. Some areas are more productive than others are.

- c) Subject to legal frameworks: A number of statutes that are legally enforceable guide the use and exchange of land and punitive measures are provided for in cases of non-compliance.
- d) Immobile asset: land as an asset is immobile and thus it cannot be moved from one location to another. Therefore, low supply in an area cannot be curbed by a high supply in a different location.
- e) Market commodity: land is considered a market commodity that is capable of been traded in the market like any other good. The land rights can therefore be exchanged from one person to another and the registration details amended to reflect the new owner.
- f) Value appreciation: the value of any land is known to appreciate at any given time contrary to what is expected in cases of other tradable goods whose value decreases due to normal wear and tear.

2.1.3 Rights and Interests on Land

The ownership of the physical attributes of land usually confers some interests, benefits and rights which are known to emerge from the interaction between economic and political forces within any jurisdiction. The Constitution of Kenya 2010 and The Land Act No. 6 of 2012 outline five types of interests and rights to land. These are;

- a) **Freehold interest:** this is the unlimited right to dispose off land in perpetuity subject to the rights of others and the regulatory powers of the state. This is the greatest interest on land and is provided for under article 64(a) of the constitution of Kenya and section 5(1a) of The Land Act No. 6 of 2012.
- b) **Leasehold interest:** this is an interest on land whereby the holder accepts to use and /or occupy the land of another at a periodic charge, which is referred to rent, payable at predetermined intervals and for a specified period of time after which the property reverses to the freeholder. This interest is backed by article 64(b) of the Constitution of Kenya and section 5(1b) of The Land Act No. 6 of 2012.
- c) **Partial rights:** these are rights and interests that do not amount to ownership. They include right of way, way leaves and other forms of easements. Partial rights may be created through mutual agreements between parties, because of a court order or statutorily by an Act of Parliament. They are provided for under section 5(1c) of the Land Act No. 6 of 2012.

- d) **Public land rights:** these are any rights acquired on any public land as stated in the constitution of Kenya and any other relevant legislation. It is provided for under article 62(1) of the constitution of Kenya 2010.
- e) **Customary/ communal land rights:** these are land rights occurring to a group of people who are related in any way be it culturally, ethnicity, or any other common interest. These interests are generally derived from the existing customary laws and are specific to each community due to the variations in beliefs. Customary/Communal rights are clearly outlined in article 63(1) of the constitution of Kenya 2010.

2.2 LAND RIGHTS DELIVERY SYSTEMS IN KENYA

Land rights delivery system is the process that affords and transfers clear and secure title to a proprietor. The process entails mobilization of institutional mechanisms and the concerned personnel to ascertain land rights, register the ascertained rights, demarcate the property, prepare a cadastre, and regulate the property market. Section 3.3.3.3 of the National Land Policy of Kenya and section 7 of the Land Act No. 6 of 2012 outlines the following main forms of land rights delivery system; public land allocation, land adjudication process, compulsory acquisition, settlement programs, transmission, prescription, and transfers.

2.2.1 Public Land Allocation

Public land allocation is most applicable in jurisdictions where the state retains the radical title to land. Provisions in an act of parliament usually guide the process of allocating public land to any individual or to any organ of state. In Kenya, public land allocation was based on the provisions of the defunct Government Land Act. With the government's need to harmonise and consolidate all the land laws, Government land Act was repealed and the allocation of public land is currently guided by provisions in The Land Act No. 6 of 2012. Under the Land Act, allocation of public land is the mandate of the National Land Commission that acts on behalf of the national or county government and is supposed to carry out this process subject to the outlined regulations in the Act. Public land cannot be allocated unless it has been planned, surveyed, serviced and guidelines for its development prepared appropriately.

According to the Act, public land in Kenya maybe allocated by way of;

- i. Public auction to the highest bidder at the prevailing market value subject to a reserved price.

- ii. Application restricted to a targeted group of persons or groups in order to improve their disadvantaged position in the society.
- iii. Public notice of tenders where the interested parties tender and allocation is made to the highest bidder of the land.
- iv. Public drawing of lots where the winner is allocated the land.
- v. Public request for proposals where members of the public propose a use for a public land to the National Land Commission.
- vi. Public exchanges of equal value where the National Land Commission exchanges public land with a different one with the same value.

Generally, public land allocation as a land rights delivery system has been faced with so many challenges such as corruption due to centralised decision-making among others. This has necessitated the formulation of legal and administrative reforms as well as modernising the economy to reduce the over-reliance on land.

2.2.2 Land Adjudication Process

The National Land Policy defines land adjudication as the process of ascertaining and recording rights and interests to land claimed by individuals and other entities. Once adjudicated, the rightful owners are granted titles, which convey indefeasible ownership of the land so registered. In Kenya, land adjudication is observed as a very slow process due to weak and contradicting regulatory and institutional frameworks. In fact, the slow social and economic development in most rural areas in Kenya has often been attributed to the delayed adjudication.

Adjudication is further known to extinguish land rights not amounting to ownership and are concurrently existing in the parcel of land so adjudicated. This is because land registration in individual names weakens social institutions and mechanisms that commonly provide economic security to all members of community and clan or family due to the absolute rights conferred through the thereafter.

2.2.3 Compulsory Acquisition for Public Use

Compulsory acquisition refers to the inherent power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt and just payment of compensation (NLP, 2009). Under the Kenya's former legal dispensation, the Commissioner of Lands on behalf of the State exercised the power of compulsory acquisition. However, this power is currently exercisable by the National Land Commission as provided for under the Land

Act No. 6 of 2012. There is however, a special type of compulsory acquisition known as ‘setting apart’ and is concerned with extinguishing rights in community land. The compensation given in the case of a compulsory acquisition should represent the market value of the property as well as cover the disturbance allowance and any injurious effects on the person.

2.2.4 Settlement Programs

This land rights delivery system is established under section 134 of the Land Act No. 6 of 2012. It is aimed at providing land for shelter and livelihood to squatters and people displaced by natural calamities, development projects, conservation programs, and internal conflicts. In Kenya, the NLC established under the constitution manages settlement programs and identifies the most appropriate land for resettlement of displaced people. The program is supported by a Land Settlement Fund established under section 135 of the Land Act No. 6 of 2012. The identification of the eligible recipients is assigned to the sub-county selection committee. Rights acquired under settlement program are not transferable unless by way of inheritance.

2.2.5 Transmissions/Inheritance

This has been the main channel for land rights acquisition especially for the male members in many societies both in the pre-modern and modern times. Generally, the method is discriminative especially in the traditional societies since land has been patrilineal since time immemorial. There have been reforms championed by different gender discrimination fighters all over Africa including Kenya. These reforms have come through affirmative actions, legal and regulatory reforms eliminating any gender discrimination as well as economic empowerment to encourage alternative means of livelihoods. According to section 62 of The Land Registration Act No. 3 of 2012, the land rights acquired through transmission are absolute and unchallengeable in any court of law unless acquired illegally.

2.2.6 Prescription

This is a land rights delivery system where non-possessory interests and rights are acquired in any land through the law and continuous use of the land. The most forms of prescription are easements, way leaves, and right of way. Prescription creates a relationship between the servient land and dominant land where the servient land is not supposed to suffer any unreasonable loss due to the burden imposed thereof.

2.2.7 Self-Allocation

This system of land rights delivery entails some form of invasion and self allocation of idle land. This can occur in idle government land or unoccupied private land and it often leads to the eruption of informal settlements with the resulting rights been unrecognizable. The method is commonly experienced in states with weak legal regulations on land.

2.3 THE CONCEPT OF COMMUNITY LAND

The Kenyan constitution 2010 defines community land as any land lawfully registered in the name of group representatives under the provisions of any law or any other unregistered land lawfully held, managed, or used by any community as a common property. Registered community lands solely belong to the group under whose name the land is registered and the members have exclusive rights to such land. It is more of a private land only that the ownership is vested unto a number of individuals who in most cases share a common goal as far as the land is concerned. In such a setting, the group appoints some representatives who manage the land on behalf of the members. An example of this is the group ranches established in Kenya after independence among the pastoralist communities where groups of people had their land registered jointly and a ranch committee appointed to represent the collective interests of the community and manage the ranges appropriately.

On the other hand, unregistered community land is vested on the county government within whose jurisdiction it is situated and managed by the National Land Commission on behalf of the resident communities. As discussed earlier under rural land, unregistered community land is rather common in rural areas and it offers equal rights to land for all irrespective of gender, age, social class among other bases of discrimination. Communal ownership of land has been an African way of life since time immemorial.

2.3.1 Rights on Community Land

Generally, rights on community land include beneficial occupancy, usage in a variety of forms allowed by the community and renting/selling of the land from the traditional leadership operating in a particular community. Land rights derived from and recognised by customary laws, practiced and specifically used by the community are regarded permissible and universal to all members of the community in question (Johnson, 2009).

Although legislations on land and natural resources are purely non-discriminative, they are scarcely implemented in rural areas where communal ownership of land is dominant. As a result, customary laws are applied in these areas, which are generally inhabited by the indigenous people, and thus the land rights of the vulnerable groups are negatively affected by the entrenched cultural attitudes and perceptions (Cotula et al, 2006). In many traditional kingdoms, the cultural beliefs and practices are more favourable to the male gender as opposed to the female gender and other vulnerable groups; thus men were accorded far greater power over the community land.

As Jones (2012) notes, many women enjoy land rights courtesy of their male relatives who could be the husbands, fathers, sons or any other male relative. This suggests that in a communal setting, land belonged to the male generation who acquired it mostly through inheritance from the fore fathers while the female generation and children enjoyed secondary rights.

2.3.4 Pros and Cons of Communal Tenure System

There is a lot of debate on the importance of communal tenure systems as compared to individual tenure system. Therefore, proponents and opponents of communal tenure system have highlighted many pros and cons associated with this form of tenure. First, communal ownership of land is said to enable economies of scale in production and service provision. This is because many people live together in an organised manner and services such as water and electricity can easily be provided unlike when people are scattered all over an area. There is also the issue of complementarities in society as some members of the community may possess some special knowledge in different field hence complimenting those specialised in other areas; for example, some could be specialised in livestock keeping, gardening, and hunting (Edwards, 1998).

The issue of productive use of time is also an advantage in communal ownership as people are able to spend time in self-help communal groups that are of common importance. There is also increased productivity due to division of labour which in turn encourages trade development among communities in a region. Cohesion in society is also enhanced through communal tenure system as the spirit of togetherness for a common goal is highly regarded.

There have been disadvantages pointed against communal form of tenure especially with an aim to promote individual land ownership. First, communal land tenure system provides disincentives to hard work because the benefits do not accrue solely to the person who

worked for them. Second, communal tenure system is governed by customary laws which are different from community to community and could be hard in cases of communities with different tribal composition, (Plessis, 2011).

Third, communal tenure system promotes discrimination as the customary law mostly recognizes only the male members of the community as the sole inheritors of the community land. This system is based on the assumption that assets allocated to the typical male-headed households will be equitably distributed and beneficial to all household members (Razavi 2005 in Fonjong *et al* 2010). Evidently, this has led to discrimination in terms of access and use of communal land and resources because some people especially the women exercise only use rights and are not considered even when they have families they are heading as it is common in today's world (Jones, 2012).

2.4 GLOBAL OVERVIEW OF COMMUNAL TENURE SYSTEM

Any property is considered communal if a group of people have exclusive rights over the same and every member of the said group has equal rights to the property in question. Andersen,2011; pg 3 defines Communal tenure as referring to 'a situation where a group holds secure and exclusive collective rights to own, manage and/or use land and natural resources, referred to as common pool resources, including agricultural lands, grazing lands, forests, trees, fisheries, wetlands or irrigation waters'.

Globally, communal land ownership has been practised widely despite the economic arguments that have been highlighted against it. Many authors have written articles for and against communal land tenure in comparison to the individual tenure systems. Each author has worked to set out their own opinions on the issue of land based on their own knowledge and understanding. The literature reviewed shows that communal tenure system operated under customary laws and was not recognized by most states until recently; this can be attributed to the governments' favour of individual land ownership as opposed to communal ownership. The following discussion on community land in different continents is aimed at shedding more light on the issue of community land globally.

2.4.1 Asia

Communal relationships were evident in the Asian continent in the early years of 1950s'. In China, a successful form of communal ownership of property was evident in 1952 after the central government instituted a land reform that distributed equal pieces of land in the rural areas to the rural peasants. Some peasants developed some form of communal system where they worked together for the better of all. This was a very successful move as productivity was greatly enhanced and social development in the society was evident. However, this system lasted for only 24 years and was brought to a standstill in 1982 (LU Kejian, 2007). After 1982, the land was fragmented into smaller plots that were leased out to households for a minimum of 30 years.

In Israel, the Hebrews organised themselves into Kibbutz which advocated for a collective way of life among its members. The main aim of kibbutzim was to create a society that cared more about a group rather than individual interests. Some of the features of kibbutz include; equal sharing and distribution of community income, communal land ownership, communal dining halls and communal production (Abramitzky, 2003).

Kibbutzim were successful for a couple of years as a direct result of excellent management of the community affairs. As Abramitzky notes, people were encouraged to work together in kibbutz because of three major reasons;

- ✓ High ability members of the kibbutz had the incentive to exit the equal sharing arrangements to earn a wage premium.
- ✓ The low ability members had the incentive to enter equal sharing arrangement so as to benefit from subsidies by the more-able individuals.
- ✓ In a context of equal sharing arrangements, issues of shirking and free-riding are likely to be common.

In some parts of India, communal system of land ownership has been constitutionally recognised and protected for the benefit of the local people. For example, communities in Cambodia have been issued with collective titles on land where according to Andersen, (2011) the move was effected through the government's endorsement of the local constitutional statutes and bylaws formulated by the indigenous people. The bylaws are

mostly concerned with issues of land management and allocation and are not supposed to favour any of the community members while making yet another member worse off.

In Philippines, communal tenure of land is also recognised and respected. This was evident since the late 1990s when the government started formulating legislations to protect land owned communally. Collective titles referred to as Certificates of Ancestral Domain Title that were issued to the indigenous people as a proof of ownership (Andersen, 2011). This is a very good world example to show that security of tenure can be achieved even for communal lands, which in most cases belong to poor people who are generally depended on one another for livelihood.

2.4.2 Europe

In the European continent and particularly England, communal land ownership was widely evident until the 1060's. Before then, land was not individualised but was rather owned by free peasant proprietors and each family cultivated its own smallholding and undertook communal activities within their own villages. In the community land, all the villagers had rights to access and use resources in the land, granted not by statute but by their specific customs, (Wyler, 2007). An attempt to replace communal land ownership with individualised ownership in England during the early years was faced with many challenges as the locals, particularly the poor, suffered a lot of injustice and often demonstrated against closure of common ownership of land and its resources (Bilsborough, 1995).

Today, there are established a number of community trusts in England that own and manage communal assets such as land on behalf of the community. The establishment of Community Land Trusts in England was inspired by the establishment of the same in the USA, which had proved that community-led development could be achieved through the Trusts. Most of the CLTs in England were established from the year 2000 and today there are over 150 CLTs operating in England (History of Community Land Trusts, 2011).

2.4.3 Africa

In Africa, communal tenure system was the dominant form of tenure as seen in many nations. However, with the coming of the colonialists, communal land ownership was replaced with individual ownership as the Europeans sought to protect their interests in the colonies.

In Tanzania, President Julius Nyerere introduced Ujamaa Villages in the newly independent Tanzania with an aim of ensuring social cohesion for development in the rural areas. The villagers were expected to work together on communal basis for the good of all. All the produce from the communal fields would be shared equally and food security was guaranteed. Parasitism among community members was checked through introduction of social sanctions against idleness (Edwards, 1998). However, this did not last for long as it was faced with many challenges that eventually led to its collapse in the 1990s.

In Cameroon, rural residents hold unregistered land as a common property and every member has right to access and use the forest resources. Like in many rural areas, the land is administered based on customary laws of the rural communities. However, the Cameroonian law does not really recognise this collective land ownership and the residents are vulnerable to landlessness resulting from the government's landlordism over all land in the territory (Wily, 2011). The laws on land do not provide for the registration of communal land ownership despite the process been a time consuming, complex and an expensive venture for the rural poor. This reduces the locals to squatters in their own land. Currently, land reforms are underway to help recognise communal land rights over unregistered lands in the rural Cameroon.

In Uganda, communal land ownership was not recognised until 1995 after the promulgation of the Uganda's current constitution. Before then, citizens in communal land were considered tenants at will on government land and hence stood greater chances of being evicted at any given time. The constitution promulgated in 1995 was the salvation of the poor citizens as it provided a legal recognition of community lands whether registered or unregistered thus enhancing the security of tenure for all.

2.5 EVOLUTION OF LAND TENURE SYSTEMS IN KENYA

Land tenure refers to the way land is held or owned while land tenure system refers to sets of formal and informal rules and institutions which determine access to and control over land and natural resources,(UN-Habitat, 2008). The Kenyan tenure system has undergone a period of transition from one tenure system to another especially with the coming of the colonialists. There is therefore a need to analyse the pre-colonial, colonial, post-colonial and post 2010 land tenure systems so as to ensure a more understanding of the evolvement of tenure system in Kenya.

2.5.1 Pre and Colonial Tenure Systems

Before the coming of the European colonialists, land in Kenya was owned communally and governed by customary laws. There was no individual ownership of land but every member of a community was free to use the land in a manner that was acceptable to the rest of the community, (Njuguna & Baya, 2007). The community leaders highly regarded the welfare of all the community members by ensuring that no one was made worse off in some sense by the manner in which such land was utilised.

With the coming of the Europeans in the late 1890's and subsequent years, land ownership took a different dimension as they set laws on land that were favourable to them but intimidated the local people. It is noted that during the colonial period the British laws imposed on Kenya were based on the foundation of land rights that were alien to the Kenyan people. These laws emphasised individual land ownership rather than the rational communal use of land and its resources practised over the Kenya's pre-colonial period.

The massive land alienation evident in the colonial period can therefore be attributed to the European view of the local people's system of land ownership as being insecure in all aspects. This is why a lot of history disregards the presence of the natives in the areas previously occupied by the settlers. A lot of history portrays the settlers as the first people to discover these lands and other topographical features such as Mount Kenya.

Following the ideology that natural resources such as land, air and water are initially not owned by anyone and are simply up for grabs, such that whoever first discovers or first claims a natural resource owns that resource, (Syagga, 2004), the settlers were able to alienate Kenyan land and exclude the locals from accessing it. It is during this time that the colonial government introduced laws aimed at formalizing land tenure and ownership in Kenya. All land was

declared Crown land and various land tenure systems such as freehold and leasehold were introduced for the benefit of the colonialists, (Kanyamgareng, 2005).

The main reason for developing and promoting individual land holding during the colonial era was to give a security assurance to the settlers regarding to land rights ownership. This was necessary for the colonial government because the settlers had come from areas where a system of individual land holding was fully developed. The fact that they were venturing into new territories stirred the desire to transplant the landholding system they were used so as to give an assurance of security. Consequently, this disposed the locals land and the freedom they initially had over their land. They were hence forced to live as squatters and work in the settlers' farms for survival.

2.5.2 Post-Colonial Tenure Systems

At independence, Kenyans' negotiations with the colonial government set up a platform whereby the settlers had an option of remaining in Kenya or selling 'their' land to the locals. The communities who had been dispossessed their land therefore still remained landless as the land in question either remained in the hands of the settlers or was acquired by other communities through purchase. This was followed by the adoption of the various colonial statutes on land by the Kenyan government with an aim of protecting land rights.

An attempt by the first Kenyan Government to solve the problem of landlessness was faced by so many challenges as the resettlement program adopted by Mzee Jomo Kenyatta was greatly politicised and only the elite class in society benefitted at the expense of the majority. Even in the case where some squatters were resettled, they were allocated land outside their original territories owing to some settlers' option to remain in Kenya. This shows that Kenyan independence did not change anything as far as land ownership is concerned since most people lost their ancestral land (Lumumba, 2004).

The constitution adopted at independence provided for three forms of land ownership, private, public and trust land. Trust land comprised the former Native land and was at independence vested upon the county councils, which held the land for the benefit of the residents. This included land reserved for the use of the government and the land within forest reserves outside Trust land areas. Public land consisted of all land that was formerly Crown land and was handed over to the first government of Kenya at independence. Private land included all land that was registered in the name of any person or a corporate body as the

sole owner of such land. This land was formally transferred to the Kenyans through a market system where those interested were offered an opportunity to purchase such land from the settlers. The settlers who opted to remain in Kenya were granted a 99years lease on the land they occupied.

2.5.3 Post-2010 Tenure Systems

In 2010, Kenya promulgated yet another constitution with a view of solving the many shortcomings experienced from the previous version of the constitution, which had greatly borrowed from the European law. The constitution also aimed at providing easier ways of addressing the land question in Kenya, which is believed to be one of the major causes of the post-election violence experienced in the aftermath of the 2007national elections.

Chapter five of the current constitution provides for three categories of land. These are Private land, public land, and community land where each is guided by different legislations aimed at ensuring organised use and management of the same while avoiding conflicts resulting from the various users. Public land consists of any land on which public offices are built and any land occupied by a state corporation except where the corporation is a tenant. Public land is held by the county government and administered by the National Land Commission in trust for county residents. Registered community land is held by any legally registered community group while unregistered community land is held by the county government and managed by the National Land Commission on behalf of community residing in such land. Private land is held by the registered proprietor under any freehold tenure, leasehold tenure or in any other way recognized through an act of parliament.

Currently, it is estimated that about 70% of the Kenyan land is held under customary (communal) systems of ownership and use, while only 10% is categorized as Government Land/Reserves, with about 20% being private land under statute,(Njunguna & Baya,2007).

In addition, different articles in the new constitution have provided for the enactment of legal statutes to guide the ownership rights on all types of land with an aim to ensure increased security of tenure among the Kenyans. Some of the legislations that are a direct result of the Kenyan Constitution 2010 are; The Land Act, Land Registration Act, The National Land Commission Act and the Community land bill 2013 among others. These laws have been discussed in depth in the preceding topic on the legal frameworks touching on land.

Table 2.1: A Summary of the Current Land Tenure Systems in Kenya

Land tenure	Description	Title holder	Rights holder	Estimated Percentage
Private land	Freehold or leasehold interest	The registered proprietor or entity	The registered owners	20%
Public land	State land, municipal land and land allocated to public bodies.	The NLC on behalf of the public	The allocated public body.	10%
Community land	Freehold or leasehold communal interests	The registered community or the county government for un-adjudicated communal land	The resident community or the registered group.	70%

Source: Literature, 2014

2.6 COMMUNAL LAND OWNERSHIP IN KENYA

This section will discuss the historical background of community land and its evolution over years, communal land rights in rural Kenya as well as acquisition of communal rights by different community members as well as non-members.

2.6.1 History of Communal Land Ownership in Kenya

Communal land tenure was the dominant form of land ownership practised within communities in most African countries way back before the coming of Europeans as colonialists. It was more evident among people who shared common beliefs especially the pastoral communities who used common lands to graze their livestock in groups. In fact, there was a time when communal ownership of assets particularly land was not an exception, but rather the rule of the time, (Wyler, 2007). This was because as an ancestral gift, there was some kind of trust created by the present members of the communities to protect and pass on the land to the next generation (West African Land Commission 1912: 183 in Fonjong *et al*, 2010).

As Peters (2007) notes, communal land tenure system signifies absence of individual land rights and domination of group rights to land. Communal land is viewed as a common pool resource in that it is difficult to devise rules that can help exclude others and that the use of the land by one person does subtract from the total amount of land available to others for their use (Plessis, 2011). Communal land ownership was therefore a sure way to guarantee continued social cohesion among community members through provision of equal access rights to land for all especially during the pre-colonial periods.

2.6.2 Kenya's Urbanisation, Modernisation and Communal Land ownership

In today's Kenya, land in some areas is still owned communally and it is an advantage to the communities in these areas that the constitution of Kenya 2010 was formulated with substantial acknowledgement of the presence of community land in the territory. Although most of high potential areas have been brought under individual tenure system, there are still those parts of the country where adjudication is underway or has not taken place hence continued ownership of land communally. In Kenya communal land could refer to land registered in the name of a certain group where the members have common interests and includes all unregistered land held by the county governments in trust of the residents.

The African communities view modernity as duplicating what the western communities are doing. In the land sector, this modernisation is evident through adoption of European like laws to protect rights and interest on land. In fact, the dissolution of communal system in Kenya started with the Swynnerton formula whose main aim was the privatization of land through the displacement of indigenous property systems, relations, and modes of production and their replacement with a new legal order modelled after the English land laws (Okoth-Ogendo, 1989). Even with attainment of independence, Kenya adopted the idea of land individualisation owing to the advantages stated and still goes on to date.

With increased modernity and urbanisation, the social cohesion within communities has disintegrated and the original communal structure that favoured communal land rights have evolved. Both colonial and post-colonial land administration systems in Kenya have undermined traditional resource management institutions, thereby creating uncertainty in communal land access, exploitation and control of land-based resources (NLP, 2009). Generally, urbanisation and modernisation has resulted to increased individualisation of titles as this is considered an important tool for promoting development at both local and national

level. Demand for urbanisation land usually de-emphasised communal land ownership in favour of private ownership (Fonjong *et al*, 2010).

According to the national land policy, the process of individualization of tenure has affected customary tenure in two material respects:

- a) Undermining the traditional resource management institutions.
- b) Ignoring customary land rights not deemed to amount to ownership, such as family interests in land, the rights of “strangers” and communal rights to clan land.

It is therefore envisaged that with time the communal system of land ownership may become extinct if laws are not formulated and enforced to protect community land rights.

2.6.3 Communal Land Rights in Rural Kenya

Land rights originate from the tenure system existence in an area and the rights take different forms. There could be different interests in the same property vested in different holders; these interests are flexible and ever changing over time (Plessis, 2011). Therefore, rights to land are diverse and several rights can exist in the same property concurrently (Machogu, 2010). In a communal setting, every person in the community has equal rights of access and use of the community land. The rights of access to community land take the following forms;

1. Right to lease, sale, or transfer the land; in community land, these rights are held and are exercisable by the stewards of community land. The stewards or the person to whom the community land has been allocated decides on whom to sale, lease, or transfer the ownership of the land.
2. Control rights; these are the rights to make decisions on the land use and how the produce is to be shared. In a community setting, these rights are vested on the community elders (stewards) who act on behalf of the community members.
3. Right of access; the right of access in a community land is vest on every member of the community expect where allocation has been done to different families or clans where each is only allowed to access the land allocated to them.
4. User rights; these rights includes rights to use the land for activities such as grazing, growing crops and gathering minor forestry products. For community land, only people affiliated to that community have user rights and the uses are usually in line with the community norms.

2.6.4 Acquisition of Communal Land Rights

As far a communal land is concerned, there is no individual ownership and the elders may apportion land to a clan or family as found necessary. The use of each part of the allocated land should conform to the customs of the community in question. Generally, communal land rights are acquired through inheritance where clan/family land is passed to the heirs of the clan. However, women can also access communal land rights through marriage. The rights acquired through marriage are mainly use rights rather than permanent rights (Jones, 2012).

The rest of the community members are acquainted with well defined access and use rights over the land and its resources. The elders or any other group mandated to manage the use of community land have the authority to determine who is to access community land based on the qualifications they consider necessary. A community may have provisions to allow strangers to access or use their land in a manner acceptable to the community.

2.7 KENYA'S LEGAL FRAMEWORKS ON COMMUNITY LAND

Land matters are very critical all over the world due to the central role that land plays in the lives of different people. As population pressure over land increases and people seek to establish new settlement areas, a lot of land issues arise and therefore the need for laws specifically to guide the use of land. Majority of the laws aim at protecting the legal owners of any land from any acts by other people that may hinder the ability to enjoy such land rights. Since the colonial days, the land laws in Kenya greatly borrow critical aspects from the colonial government.

Over years, land ownership in Kenya was guided by different legislations that were scattered all over with each category of land having a law guiding its use and transaction. Recently, majority of all these legislations have been consolidated into, The Land Act No. 6 of 2012 and Land Registration Act No. 3 of 2012. This was done with an aim of avoiding contradictions in provisions on land ownership witnessed across the different legislations.

2.7.1 Land Registration Act No. 3 of 2012

This is an act of Parliament whose aims are to revise, consolidate, and rationalize the registration of titles to land to give effect to the principles and objects of devolved

government in land registration, and for connected purposes. The act provides for the registration of all interests on public, private and community land.

Article 8 of the act provides for the establishment of a Community Land Register which contains details of any community land and the members of the said community as well as the permissible land use in the area. The provisions in the act are applicable to unregistered community land held in trust by county governments on behalf of communities as provided for under Article 63(3) of the Constitution of Kenya.

Under this act, a certificate of title or certificate of lease to land is held as a conclusive evidence of proprietorship.

2.7.2 Land Act No. 6 of 2012

This is an Act of Parliament enacted in 2012 according to the requirements of Article 68 of the Constitution of Kenya 2010, to revise, consolidate, and rationalize land laws and to provide for the sustainable administration and management of land and land based resources. The act applies to all land declared private, public and community in the constitution of Kenya 2010.

Article 5 provide for recognition of land rights under different forms of land tenure systems that include; freehold, leasehold and any other such forms of partial interest that may be defined under this Act or any other law, including easements and customary land rights provided for under the Constitution of Kenya 2010.

Article 7 outlines methods through which title to land can be acquired. The methods outlined are allocation, land adjudication process, compulsory acquisition, prescription, settlement programs, transmissions, transfers, long term leases exceeding twenty-one years created out of private land and any other manner prescribed in an Act of Parliament.

Generally, the act provides clear guidelines on management and administration of all land in Kenya as well as procedures for conversion of land from one tenure system to another. If the act provisions are fully enforced then the whole process of land administration and management will be regularised and this will reduce land conflicts.

2.7.3 Community Land Bill 2013

This is a bill prepared in 2013 as per the requirements of Article 63 (5) of the Constitution concerning community land. Its main aim is to provide for the recognition, protection, management and administration of community land; to establish and define the powers of community land Boards and management committees and to provide for the powers of county governments in relation to unregistered community land.

Under this bill, community land refers to;

- (a) all land used as community settlement area, farming area, grazing area, rangelands, fish landing sites, common resource area including watering points, salt licks, wildlife habitats, wildlife corridors, livestock passage routes and cattle dips;
- (b) all land traditionally or historically used for communal purposes including sacred or religious sites, *kaya* forests; and
- (c) Land converted into community land under any law.

Section 5 of the bill allows communities to own community land under the following tenure systems; customary, freehold, leasehold and any other tenure system recognized by law. The use of community land is regulated by the constitution of Kenya and any other relevant law.

Section 6 allows for protection of community land rights Pursuant to Article 40 of the Constitution of Kenya 2010, where every person have the right, either individually or in association with others, to acquire and own property of whatever description anywhere in Kenya. Section 7 empowers any community with interest in any community land to seek registration of their rights as a body corporate and to put up a committee for purposes of management and administration of the community land.

Existing policies and laws on land have not provided equal protection to all categories of land rights (NLP, 2009). Therefore, if the community land bill is passed to become a law governing community land, then recognition and protection of community land rights will be streamlined for the benefit of those living in communal lands. This will also reduce the chances of illegal allocation and acquisition of community land by the elite class in the society that greatly contribute to landlessness and economic exclusion among the poor in rural community lands.

2.7.4 National Land Policy

One of the main aims of NLP is to secure rights over land and to provide sustainable growth, investment, and reduction of poverty in line with the Kenya Government over all development objectives. This can be achieved only with a secure tenure system for all categories of land provided for in the constitution of Kenya. The policy therefore requires the government to repeal all land laws to include provisions that will ensure tenure security.

To protect community land, NLP suggests establishment of a clear framework and procedure for recognition, protection, and registration of community rights to land and land based resources while taking into account multiple interests of all communal land users. The provisions of NLP have led to the enactment of the Community Land Bill, which has been discussed above.

2.7.5 The Constitution

Chapter four of the Kenyan constitution on the bills of rights recognizes the right of every person either individually or in association with others, to acquire and own property of any description and in any part of Kenya. In article 40(2), the constitution provides for the protection of all rights and interests to land that is owned lawfully either individually or communally. The parliament of Kenya cannot therefore enact a law that will deprive any person off property or that will limit the enjoyment of property rights on ground of discrimination on whatever basis.

Further, article 63(1) provides for the existence of community land which shall vest in and be held by communities identified based on ethnicity, culture or similar community of interest. Article 63(2) states that any unregistered community land shall be held in trust by County governments on behalf of the communities. The same constitution provides for protection of community land in part 4 of article 63 where it sets limitations to the disposal and use of community land. In case a community land has to be disposed, this must be guided by a legislation specifying the nature and extent of the rights of members of each community individually and collectively.

2.8 CONCLUSION

Security of tenure is a very weighty issue all over the world and many governments still struggle to ensure secure land rights within their jurisdictions. Most nations especially those with a history of colonization have experienced a dual system of land ownership consisting of the system of formal registration of land inherited from the colonizers and the communal system practised by the indigenous people. Although the governments have tried to streamline the ownership of land and its resources through formal individualisation, a lot of difficulty is faced especially in areas inhabited by the indigenous people where communal system of property ownership reigns. This is because the residents in such areas are more concerned with general community interests rather than the individual interests promoted by private ownership.

Kenya specifically has struggled to provide secure property rights over years since independence and until to-date, secure tenure is therefore not fully realised. A close study on the security of tenure in relation to community land is an excellent indicator of insecure land rights. This is because the legal frameworks on communal tenure are not sufficient to guarantee the anticipated security. Further, a careful scrutiny of the Kenya's land laws show that the government has laid more emphasis on private land ownership as opposed to communal tenure.

This leaves a gap as far as security of tenure for the indigenous people is concerned. Evidently, communal tenure system is not as secure as the private system of land ownership. As a result, individuals have adopted an informal way of 'privatising' community land with an aim of increasing the security of tenure. The informal system is mostly propagated by the highly ranked individuals in the community informally individualise community land to the detriment of the rest of community members.

CHAPTER THREE

CASE STUDY AND RESEARCH METHODOLOGY

3.0 INTRODUCTION

This chapter consists of two parts with the first part dealing with background information on the case study where the topography, climate, infrastructure, population, and other relevant information on the case study have been discussed. All these information is critical in enabling the researcher familiarise herself with important facts and features of interest within the case study. The second part of the chapter is the research methodology under which research design, data collection technique, sampling, and sample size are exhaustively discussed. Data collection instruments are also been discussed and the study sample size to be used calculated in this chapter.

3.1 IKUTHA DISTRICT

3.1.1 Background Information

Ikutha is an administrative district in the Southern area of Kitui County in Eastern province of Kenya. The district was initially part of the present day Mutomo district that was curved from the larger Kitui district in 2007. Mutomo was later subdivided in 2009 with Ikutha being one of the districts that emerged from the subdivision. The district borders the following districts Kibwezi to the South, Tana-River to the South-East, Mutito to the East, Mutomo to the north, Lower-Yatta to the North-west and Kathonzweni to the west.

3.1.1.1 Topographic Features

The topographical features in the district include the Tsavo East National park that covers an area of 6,302.7km² at the southeast part of the district. The Yatta plateau also covers a substantial area in the western part of the district. Other features include a number of hills such as Mutulu, Kakindu and Ngali. River Athi is the only permanent river and forms the border between the district and Makueni County. Other rivers and streams such as Tiva, Nguni and Ndandi are seasonal. There are also a number of man-made dams across the district such as Mathima, Nguni, Kwa-Musomba etc, to supplement the water supply.

3.1.1.2 Climate and Weather Information

Like other parts of Kitui County, Ikutha district experiences temperatures ranging from a minimum of 14 degrees to a maximum of 34 degrees in a typical year. The annual rainfall ranges between 500mm to 1050mm. The rainfall pattern, though unpredictable, is bimodal with short rains starting from March to May while long rains start from October to December. The district is generally hot and dry for the better part of the year.

3.1.1.3 Economic Activities

Most residents in the district are generally small-scale mixed crops and livestock farmers. Primary production is usually for subsistence with some produce been traded especially during bumper harvest seasons. A few people are in the formal employment mostly as teachers working within the district or elsewhere while the semi-skilled personnel have established small-scale businesses in the available trading centres. Despite the local authority's discouragement, some residents still practise the illegal business of charcoal burning and trade at very cheap prices.

3.1.1.4 Population, administrative and political units

The population of the district is 80,227 and is comprised of males 41,255 and females 38,972 all distributed across the seven locations in the district. This is projected to increase at an annual growth rate of 2.5 per cent according to the 2009 National Census. Together with Mutomo district, Ikutha form Kitui-South constituency and comprises three wards, which are Ikutha, Kanziko, and Athi. Under the provincial administration, the district has three divisions that are Ikutha, Kanziko, and Athi. The table below shows the different divisions, wards, population per division and locations within each division.

Table 3.1: Population per division, administrative and political units

DIVISION	WARD	POPULATION	LOCATIONS
Ikutha	Ikutha	26, 176	Ikutha and Kasaala
Kanziko	Kanziko	18,664	Kanziko and Simisi
Athi	Athi	35, 437	Athi, Kalivu & Maluma

Source: *Field survey, 2014*

3.1.1.5 Urban Centres

There are no major urban centres in Ikutha district but a number of small trading centres dominate the district. Therefore, majority of services available by default in major urban centres such as banking halls, shopping malls and entertainment arenas are missing in Ikutha district. The largest trading centre is Ikutha market and this is the only place in the district where bank agent services can be accessed although they are not overly reliable since the agents are more active during market days which is only once per week. In addition, there are other many and smaller shopping centres scattered all over whose main purpose is to retail the basic commodities to the residents. These include Kamutei, Kanziko, Simisi, Maluma, Mwangeni, Kalivu, Kanziko among others.

3.1.1.6 Infrastructure

Road Network: The two major roads in Ikutha district are the all weather Kibwezi-Kitui and Ikutha- Kwa-vonza murram roads. There are other smaller feeder roads inter-connecting the interior parts of the district.

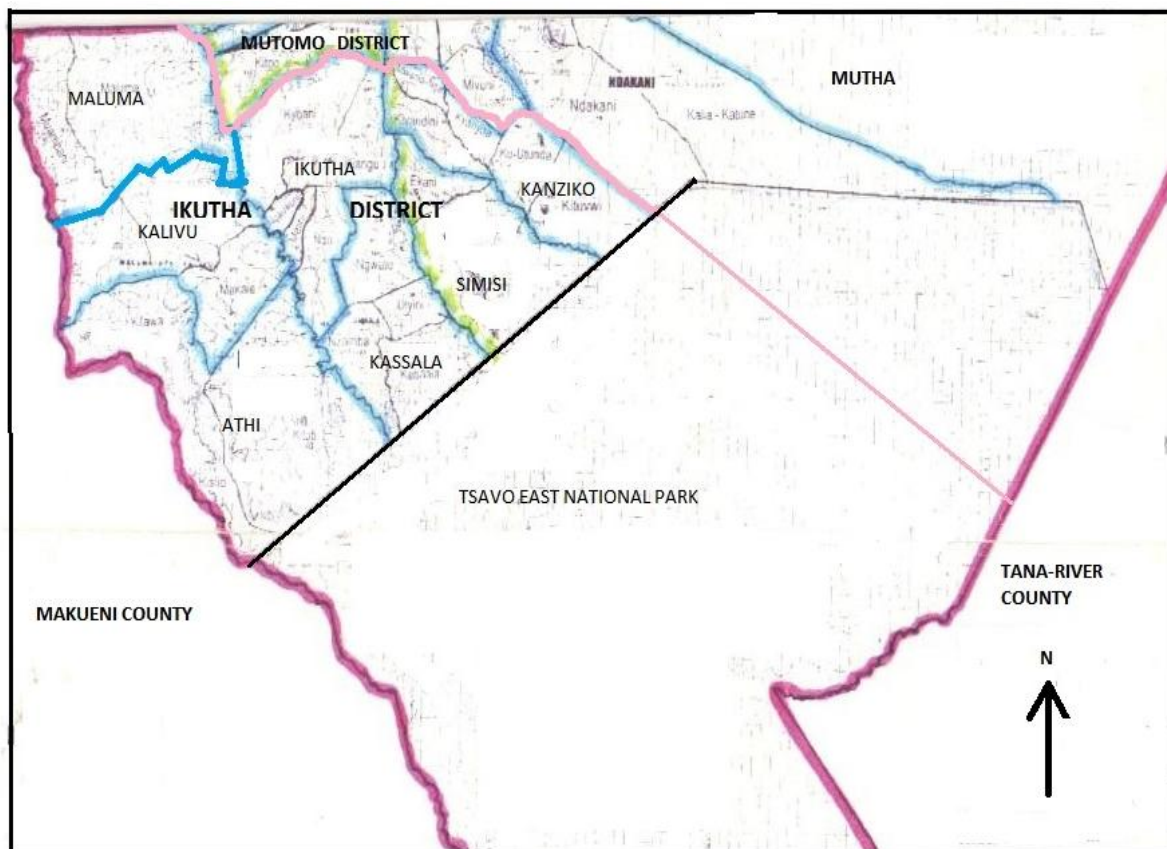
Electricity Network, Water, and Sanitation: The district has greatly benefitted from the rural electrification government plan, which has seen the towns, government offices, and public institutions along the two major roads supplied with electricity. Very few homes in the district have electricity connection, an issue that can be attributed to the high cost of connection and the continued use of alternative sources of lighting energy such as solar systems and petroleum fuels.

Generally, water in the district is obtained and consumed directly from the rivers with only a few community boreholes serving the areas that are far away from the rivers. Sanitation in the district is generally pit latrines that are available in almost all homesteads and institutions.

Educational and Religious Facilities: There are a number of secondary schools in the district some of which include; Ikutha girls', Ikutha boys', Kituti Mixed day and boarding, Monguni and Maluma secondary schools among others. There are many primary schools in the district some of which include; Maluma, Yongo, Ikutha, Kalivu, Ndivuni, Mbooni, Kyandula, Mbakoni, Kasaala etc. All the district residents are Christians with only a few (especially the old people) who are still embedded in their traditions and worship in shrines. Therefore, several churches as well as shrines are available in the district where the dominant ones are the Catholic Church and the African Inland Church (A.I.C).

Medical Services: There exist several dispensaries (both private and government) with at least two in each typical Location. The major government hospital is in Ikutha town while serious medical cases in the district are dealt with at Mutomo Mission Hospital, which is in the neighbouring Mutomo District.

Figure 1: A map showing the physical location of Ikutha District and the locations therein



Source: *Field Survey, 2014*

3.2 RESEARCH METHODOLOGY

Research methodology is a way to systematically solve the research problem. This part of the study work therefore identifies the research methodology used and analyzes the research design, sampling techniques, and data collection instruments. It also discusses the questionnaire and some of the information sought in the study area.

3.2.1 Research Design and Data Collection

Research design formulates what data is required, what methods of collection and analysis of this data are to be used, and how all these will help answer the research question. Generally, research design provides a framework for the collection and analysis of data (Bryman, 2004). The main aim of research design is to ensure that the relevant data is collected with minimal expenditure of effort, time, and money. Depending on the approach used to collect primary data, research design can be classified into two broad categories; observation and communication.

Observation entails a direct observation of the construct of interest, which is often some type of behaviour, (Marczyk *et al*, 2005). This requires careful monitoring of the behaviour of interest, mostly at some predetermined intervals, and quantifying the same. On the other hand, communication approach entails surveying people and recording their responses for analysis. The approach has been observed as the most reliable method of learning about peoples' opinions, attitudes, motivations, intentions, and expectations (Jones, 2012).

3.2.2 Study Population

Mugenda (1999) defines population as the entire group of individuals, events, or objects having common observable characteristics. The specific nature of population at hand is depended on the problem that the researcher aims to resolve. This study will target Ikutha district residents both men and women who are 25 years and above and own or are entitled to land rights either through the communal arrangement or through the 'informal' individualization. The study population will therefore be drawn from both genders in the district with the age of 25 years or more. This is mainly because the above people are mature enough to be aware of any land issues that may be positively or negatively affecting them more so the 'informal' individualization.

3.2.3 Sampling Techniques and Sample Size

Sampling is done to obtain a representative and statistically valid sample of the whole population. A sample is therefore that segment of the entire population that has been selected for investigation and accurately represents the relevant attribute of the entire population (Bryman, 2004). Sampling can be done through any of the following methods:

Random sampling: This method gives every unit of the population equal chances of been selected such that the selection of any sample unit is random and independent of the previous selection. This is the most unbiased sampling technique since there is no subjectivity (Frankfort and David, 1996).

Systematic sampling: In this method, samples are evenly distributed in a spatial context and are systematically selected at equal intervals. This method of sampling is more appropriate in cases where large populations are to be studied or when very large samples are required.

Stratified sampling: This method of sampling is used when the parent population or sampling frame is made up of sub-sets of known sizes. Stratification helps ensure that the selected samples are proportional and true representatives of the whole population.

Cluster sampling: This method involves first selecting large groupings (clusters) of the parent population and then selecting the sampling units from the clusters. The clusters can be selected through simple random or stratified sampling method discussed above.

This research work will use random sampling technique to sample the population because the area is quite extensive and given the limitations of time and resources it will not be possible to undertake a conclusive research if the entire population is to be studied. The district's locations are homogenous in almost all the aspects, and thus the results from a sample obtained from all the district locations can easily be inferred to the entire district.

According to Cramer and Hewitt (2004), sample size refers to the actual number of elements, cases or entities in a population that will be studied. As Arleck and Settle (1995) note, it is necessary to sample more than 10% of the population as long as the resulting sample is not less than 30 and not more than 1000 units to ensure the normal curve is not heavily skewed. Therefore, the sample population to be studied to obtain the required data should be of optimum size to yield the required reliability, efficiency, flexibility and representativeness, (Mugenda and Mugenda, 1999). A number of factors will therefore require to be put into

consideration while deciding on the best size of the sample population. These factors include the population size, research deadlines, and research budget constraints among others.

The data to be sought in this research work will include but not limited to:

- 1) The reasons for the ‘informal’ individualization of community land in the district.
- 2) Powers acquired after the ‘informal’ individualization of the community land.
- 3) The extent to which the culture determines who owns land.
- 4) The non-land owners’ perception on the adequacy of the land rights they enjoy.
- 5) The limitations of the ‘informal’ individualization of community land especially to the vulnerable members of the community.
- 6) The resident’s views on how the ‘informal’ individualization can be formalised.

With the large geographical area of Ikutha district, random sampling will be adopted and hence all the adult residents ageing 25 years and above in the seven locations will be given equal chances of selection as part of the sample size. The sample size will be calculated based on the 2009 population census results (highlighted earlier in this chapter) where the total population in the district was 80,227. The number of those above 25 years old (which is the research target population) was estimated to be approximately 50,250. This population was expected to increase at 2.5% per year and the researcher considered the annual increase as explained in the following paragraph.

Increasing 80,227 at the rate of 2.5% per year for four years gives a total population of 88,555 in the district. The research assumed that the population of the residents aged 25 years and above also increased at the same rate. Increasing the population of those aged 25 year and above (50,250 people) by 2.5% per year for four years gives 55,466 adults. The research therefore used a population of 55,466 to calculate the sample size. The formula below will be used in calculating the sample population;

$$n = \frac{Z^2 pq N}{e^2 (N-1) + Z^2 pq}$$

(Chava & Nachmias 1996)

Where;

N = Population size

n = Sample size

p = Sample population estimated to have characteristics being measured. Assume a 95% confidence level of the target population.

q = 1-p

e = Acceptable error (since the estimated error is 5% or 0.05 of the true value).

Z = the standard normal deviate at the required confidence level = 1.96

$$n = \frac{1.96^2 \times 0.95 \times (1-0.95) \times 55,466}{0.05^2 (55,466 - 1) + 1.96^2 \times 0.95 \times (1-0.95)} = 72 \text{ people}$$

The district has seven locations whose population is almost the same save for Ikutha location whose population is slightly higher. Ten questionnaires were thus spread across each of the other six locations while Ikutha location was allocated twelve questionnaires owing to the slightly higher number of the population as compared to the other locations. This is demonstrated in table 2 below.

Since this research work requires response from both genders, the questionnaires were equally distributed among the male and female members of the required age in all the locations.

Table 3.2: The questionnaire distribution within the seven locations.

LOCATION	NO. OF QUESTIONNAIRES
Maluma	10
Kalivu	10
Athi	10
Kanziko	10
Simisi	10
Kasaala	10
Ikutha	12
TOTAL	72

Source; Field Survey, 2014

3.2.4 Data Collection Instruments

Both primary and secondary data is required for this study work and each will be collected as discussed below.

3.2.4.1 Primary Data

Primary data refers to data collected directly from its source by use of questionnaires, personal observations among other approaches. The primary data in this research was collected through personal interviews with the district residents and administering of questionnaires to various residents in the district's seven locations. Questionnaires administration was however, the main method of primary data collection and entailed issuing the same to the sample population in each location. The number of questionnaires distributed in each location is as shown in table 2 above.

3.2.4.2 Secondary Data

Secondary data is any information relevant to the study topic that is obtained through extensive reading of the written literature in books, journals, and other sources. In this research work, the secondary data yielded from the extensive review of the various written literature in the library, online, local reports, academic journals, magazines, as well as the Ikutha district administrative offices in as far as community land is concerned.

3.2.5 The Questionnaire Description

Mugenda and Mugenda (2003) defines a questionnaire as a data collection tool designed by the researcher and whose main purpose is to communicate to the respondents what is intended and elicit desired responses in terms of empirical data from the respondents in order to achieve the research objectives. Such questionnaires can be structured as close-ended to give direct and specific information or as open-ended to allow for greater response from the respondents.

Under this research work, questionnaires prepared in line with the information been sought were distributed to the sample population in all the seven locations in Ikutha district. All the questions contained therein were simple, clear and precise enough to ensure easy understanding on the part of the respondents and thus to hasten the process of extracting the relevant information from the sample population. The questionnaires had two sections; section I sought information on the personal profile of the respondent while section II sought information on the

respondent's land rights and general comments on the issue of the 'informal' land individualization in the district.

3.2.6 Data Analysis and Presentation

The data to be collected will be qualitative in nature and will therefore be presented in narration as well as simple tables, graphs, photographs and maps so as to ensure easy comparability and drawing of conclusions on the research work. All these will be shown in the preceding chapters of this research work.

CHAPTER FOUR

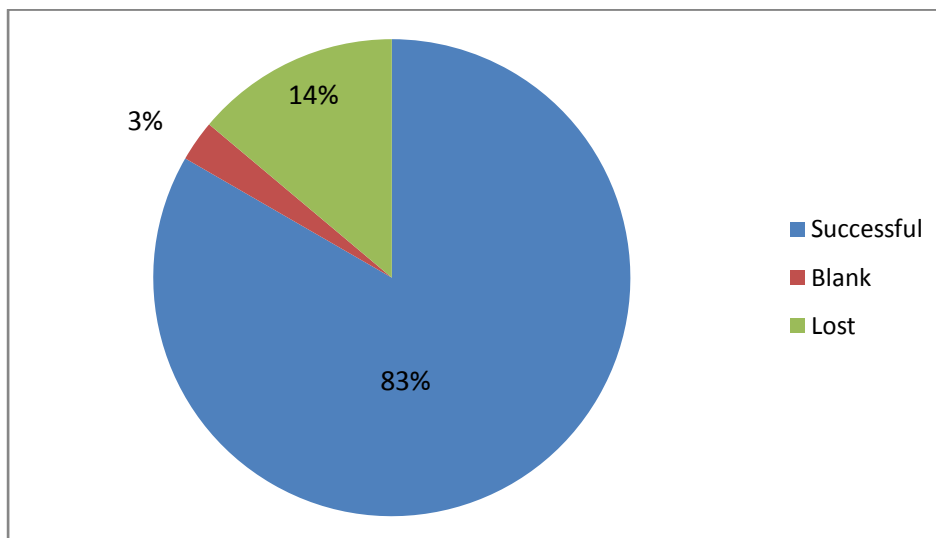
DATA PRESENTATION AND ANALYSIS

4.0 INTRODUCTION

Data analysis is the process of inspecting, cleaning, transforming, and modelling raw data with the goal of discovering useful information, suggesting conclusions, and supporting decision-making (Wikipedia, 2014). The main objective of this study as mentioned in earlier chapters is to investigate why ‘informal’ individualisation of unregistered community land occurs and the effects it has on the communal land rights of the residents. This chapter therefore focuses on the presentation and analysis of the collected data to draw conclusions on the research findings.

A total of 72 questionnaires were spread across the seven locations in Ikutha district. 60 Of these were successfully filled and collected while 10 questionnaires were not returned at all and 2 were returned while blank. The questionnaires successfully collected represents 83%; and as Mugenda and Mugenda (2003) notes, a 70% and above response is an excellent rate and so our response rate is fit to allow for data analysis and reporting of the findings. Data analysis and presentation was thus fully based on the 60 questionnaires that were successfully collected. The response rate was as shown in the chart below.

Chart 1: Rate of Response



Source: Field Survey, (2014)

4.1 RESPONDENTS' PROFILES AND LAND RIGHTS

All the respondents were required to state their gender, age, education level as well as the duration over which they have lived in Ikutha district. According to the literature reviewed, the above factors can contribute a lot towards the nature of land rights owned by each community member and the magnitude of such rights. The information provided under the personal profiles of the respondents has been clearly analysed with an aim of achieving the study objectives and drawing conclusions that are presented in the last chapter of this research work.

4.1.1 Rate of Response

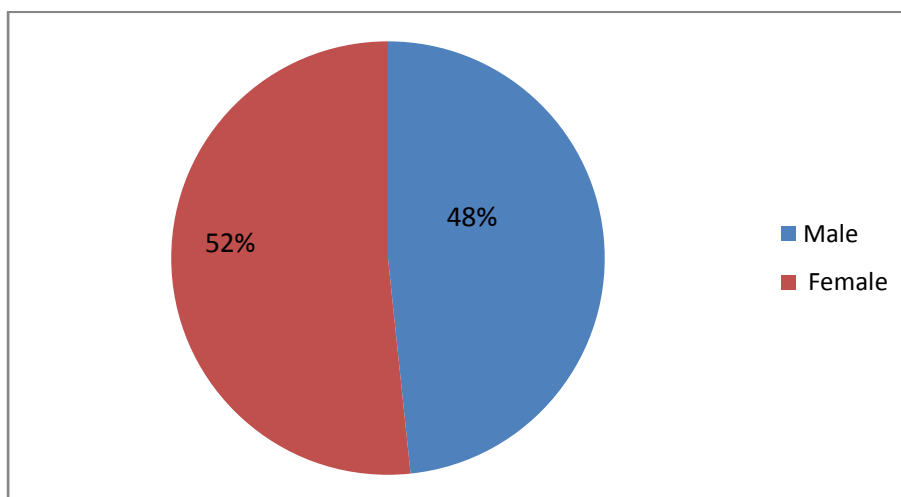
Both genders were interviewed and the response was as shown in the table below.

Table 4.1: Number of respondents from each gender

Gender	No. of respondents	Percentage (%)
Male	29	48
Female	31	52
TOTAL	60	100

Source: *Field Survey, (2014)*

Chart 2: Rate of Response per Gender



Source: *Field Survey, (2014)*

4.1.2 Gender

According to the literature reviewed, gender (especially at the local level) was a very important factor determining what land rights one has and what size of land (if any) they can own. The gender of the respondents in this research will therefore be cross-tabulated with land ownership, method of land acquisition as well as the size of land owned so as to establish whether gender has got any impact on land ownership, size owned as well as the method of acquisition of the land.

4.1.2.1 Gender and Land Ownership

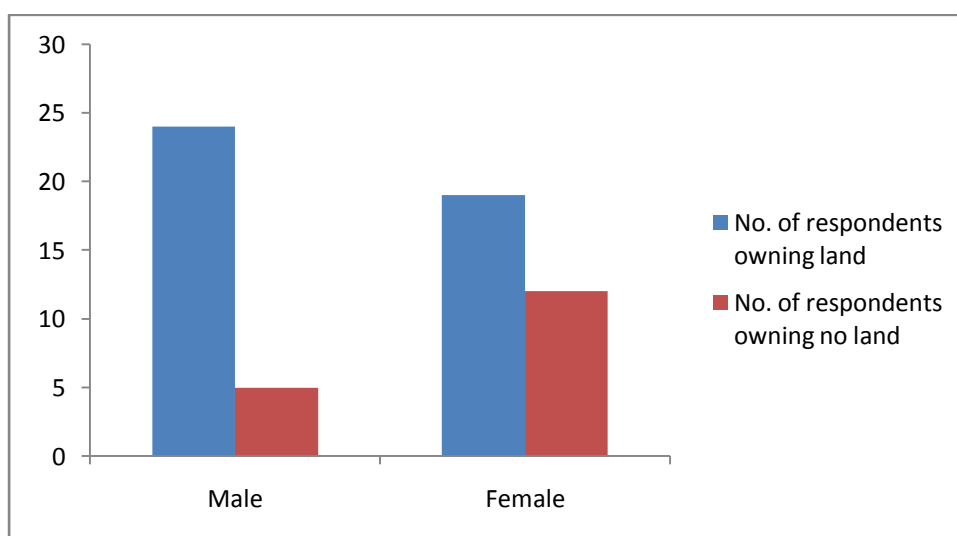
The research shows that only 43 out of the 60 respondents own land. This consisted of 24 male and 19 female respondents. The number of respondents who owned no land but had access to other land rights was 17 consisting of 12 women and 5 men. This is illustrated in the table below.

Table 4.2: Number of respondents and land ownership

Gender	Male	Female	Total
No. of respondents owning land	24	19	43
No. of respondents owning no land	5	12	17
Total	29	31	60

Source: *Field Study, (2014)*

Graph 1: Number of respondents and land ownership.



Source: *Field Study, (2014)*

As seen in the table and graph above, majority of the male respondents own land accounting for 40% of the total number of respondents as compared to women owning land who accounted for only 32% of the total population. The number of men who do not own any land was 5 while women were 12 which represents 8% and 20% of the total number of respondents respectively.

4.1.2.2 Gender and Land Size Owned

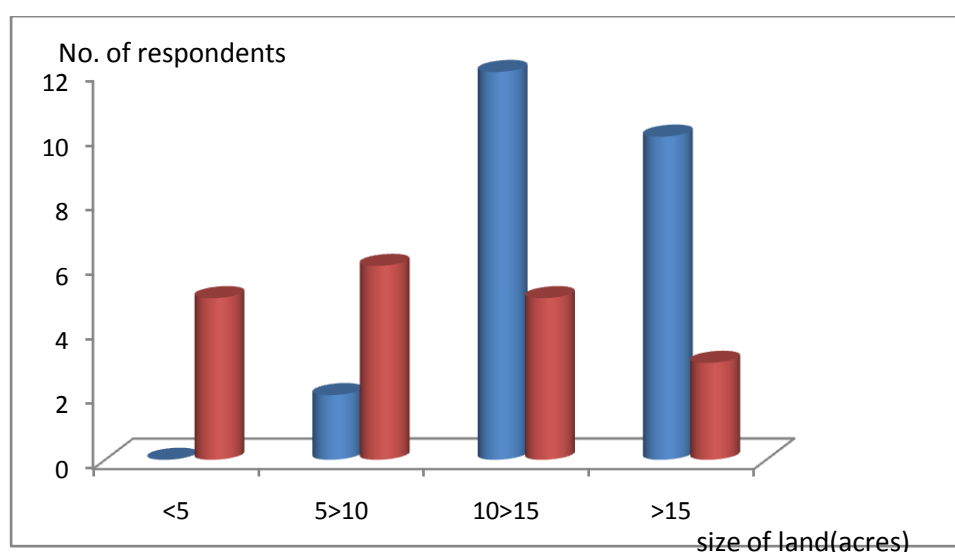
The total number of respondents owning land amounted to 43, where men were 24 and women were 19. The respondents owning land were requested to state the size of land they owned in acres. This section therefore dealt with cross-tabulation of gender and the size of land owned to establish whether gender plays any role in determining the size of land an individual owned.

Table 4.3: A cross-tabulation of gender and size of land owned

Land size (acres)	Male	Female	Total
<5	0	5	5
5>10	2	6	8
10>15	12	5	17
>15	10	3	13
TOTAL	24	19	43

Source: *Field Survey, (2014)*

Graph 2: Gender and Size of Land Owned



Source: *Field Survey, (2014)*

Out of the 43 respondents who own land, majority are the male respondents and as seen above, they own the largest tracts of land as compared to their female counterparts. There is no male respondent owning less than 5 acres of land but all male land owners have 10 acres and above. Majority of the women own between 5-10 acres and a considerable number of them own less than 5 acres. It is evident that as the size of land increases, the number of female owners decreases while the number of the male owners increases.

4.1.2.3 Gender and Method of Acquisition

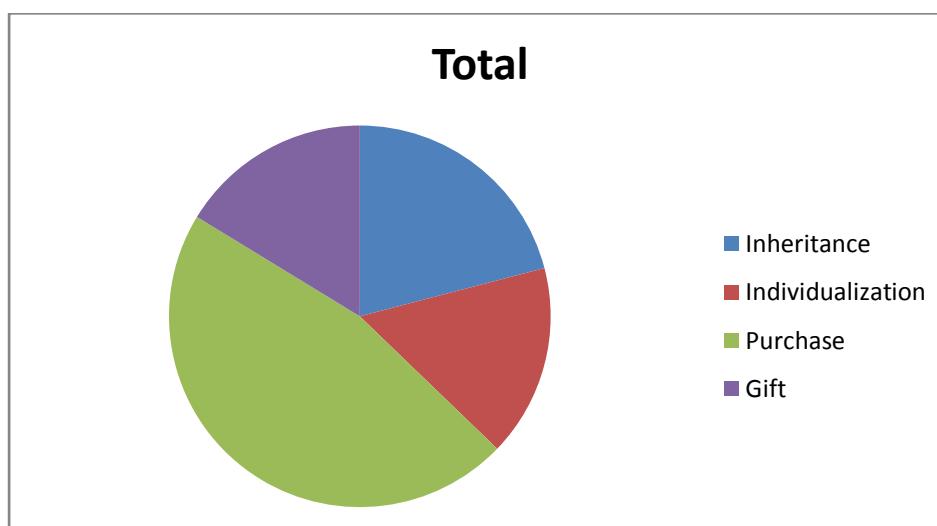
The respondents owning land were asked to indicate the method through which they have acquired their tracts of land. The results are represented in the table below.

Table 4.4: A Cross-Tabulation of Gender and Method of Land Acquisition

Method of acquisition	Male	Female	Total
Inheritance	9	0	9
Individualization	6	1	7
Purchase	7	13	20
Gift	2	5	7
Total	24	19	43

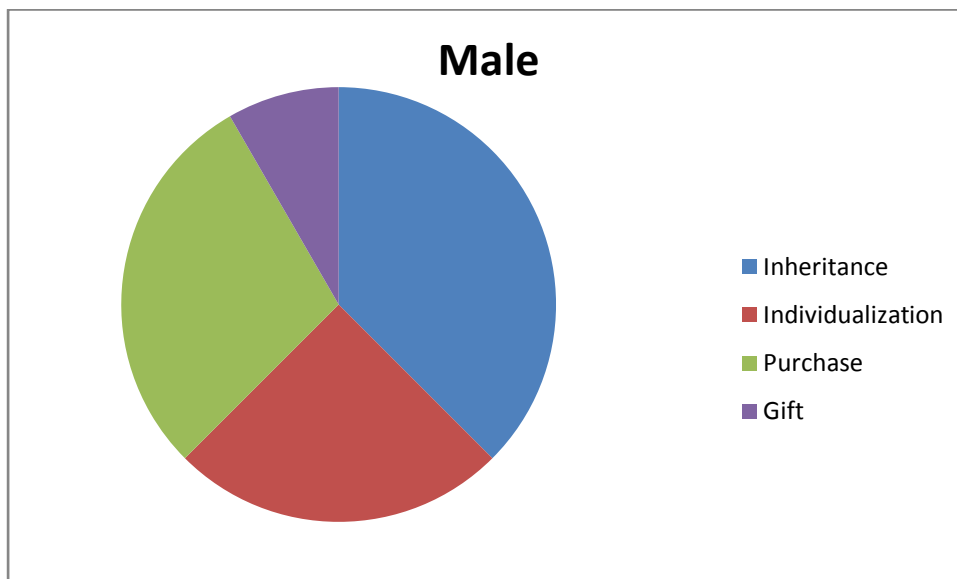
Source: *Field Survey, (2014)*

Chart 3: Total Number of Land Owners and method of Land Acquisition



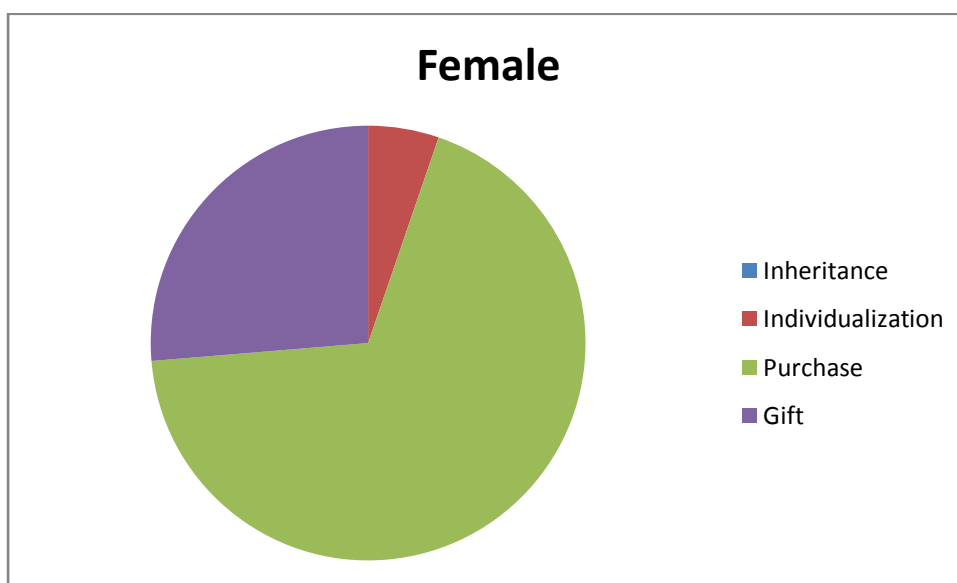
Source: *Field Survey, (2014)*

Chart 4: The Male Gender and Method of Land Acquisition



Source: Field Study, (2014)

Chart 5: The Female Gender and Method of Land Acquisition



Source: Field Survey, (2014)

Generally, majority of the total landowners have acquired their land parcels through purchase while the least number have acquired through the ‘informal’ individualization. However, close study of the method of acquisition per gender shows that a large number of the male landowners have acquired their land through ‘informal’ individualisation, inheritance and purchase. This could be attributed to ‘informal’ individualization done by their fathers or

grandfathers on community land, which is then passed onto the male generation in the family lineage.

Majority of the female landowners have acquired their land through purchase and gift. There is however no single women who has acquired their land through inheritance. This could be attributed to the discriminative Kamba traditions, which prohibit women the right to inherit any property but favours the male counterparts as far as inheritance is concerned.

Only one woman has acquired her land through the ‘informal’ individualization compared to six men who have acquired theirs in the same manner. This clearly indicates that ‘informal’ individualization is mostly practised by the male gender in the society. More women than men have acquired their land through gifts from various people and this seem to be the most used method of transferring family property to the female generation in the family.

4.1.3 Age

The respondents were required to state their age in the questionnaire. This is because according to the literature reviewed, age was found to have an impact on land ownership. Normally, people start owning land (especially through purchase) at an older age when they have accumulated enough resources to afford one. Therefore, it is envisaged that the older respondents could be the majority landowners. To find out whether this is the case, the age of the respondents was cross-tabulated with land ownership. Age was also cross-tabulated with the size of land owned to find out whether the two are related in any way.

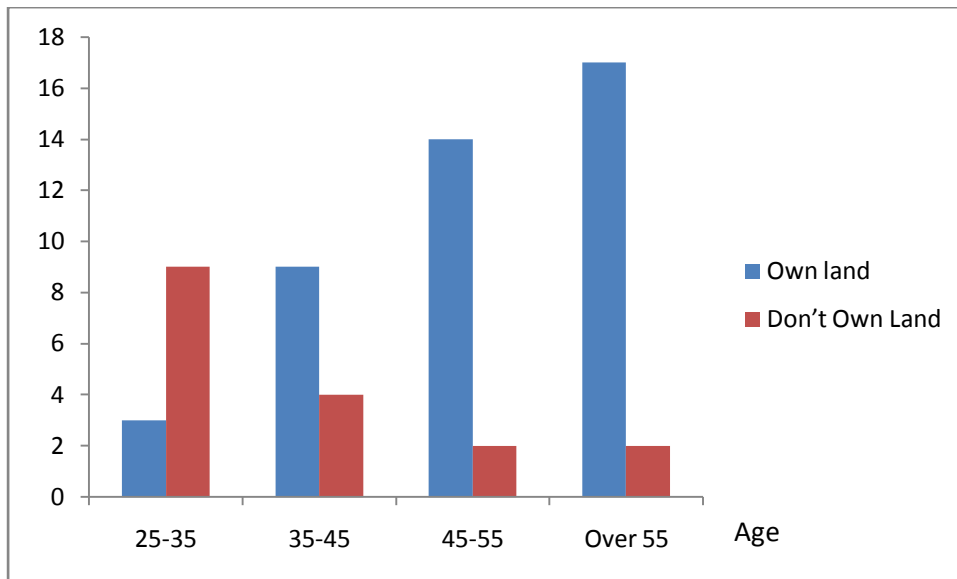
4.1.3.1 Age and Land Ownership

Table 4.5: A Cross-Tabulation of Age and Land Ownership

Age bracket(years)	Own land	Don't Own Land	Total
25-35	3	9	12
35-45	9	4	13
45-55	14	2	16
Over 55	17	2	19
Total	43	17	60

Source: Field Survey, (2014)

Graph 3: A Cross-tabulation of Age and Land Ownership



Source: *Field Study, (2014)*

The cross-tabulation of age and land ownership shows that the two factors are inversely related. This is because as the age bracket increases, the number of landowners increases while that of non-owners decreases considerably. Majority of the land owners are concentrated in the age bracket 'over 50' years while the non-owners are concentrated in the youngest age group which is '25-35' years. It is therefore clear that age has an effect on whether a person can own land or not.

4.1.3.2 Age and Size of Land Owned

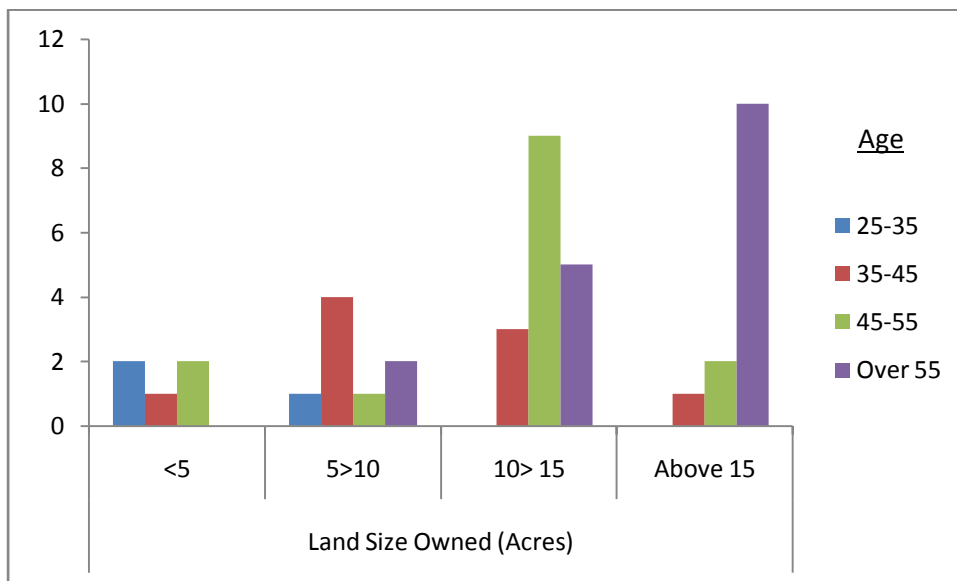
As stated earlier, the number of respondents owning land is 43 where the size of land they own range from <5 acres to over 15 acres. This age bracket was therefore cross-tabulated with the size of land owned to establish whether it does affect one's size of land. The results were as shown in the table 4.6 below.

Table 4.6: A Cross-Tabulation of the Age Bracket and Size of Land Owned.

Age Bracket (Years)	Land Size Owned (Acres)				Total
	<5	5>10	10> 15	Above 15	
25-35	2	1	0	0	3
35-45	1	4	3	1	9
45-55	2	1	9	2	14
Over 55	0	2	5	10	17
Total	5	8	17	13	43

Source: *Field Study, (2014)*

Graph 4: Age Bracket and Land Size Owned Cross-Tabulation



Source: *Field Survey, (2014)*

The total number of the respondents owning land is 43. A cross-tabulation of land size owned by each individual and their age indicated that the respondents aging over 55 years own larger tracts of land while the rest of the respondents land sizes do not seem to be affected by the age. Generally, the age of the respondents did not have a direct relationship with the size of land owned by an individual.

4.1.4 Education Level

All the respondents were asked to indicate their level of education in the questionnaires. This was then analysed to help determine whether the level of education has any effects on land ownership or the size of land that one owned.

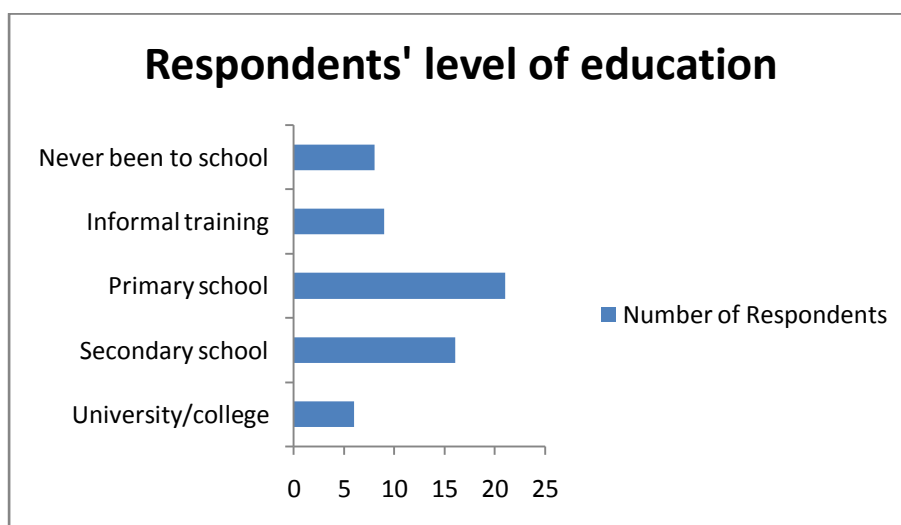
NB: All the 60 respondents indicated their level of education and the number of respondents owning land is 43. Their level of education will therefore be cross-tabulated with land ownership to establish whether it has any effect on land ownership and if it does, establish whether it also affects the size of land owned.

Table 4.7: Respondents' Level of Education

Level of Education	Number of Respondents	Percentage (%)
University/college	6	10
Secondary school	16	27
Primary school	21	35
Informal training	9	15
Never been to school	8	13
TOTAL	60	100

Source: *Field Survey, (2014)*

Graph 5: Respondents' Level of Education



Source: *Field Survey, (2014)*

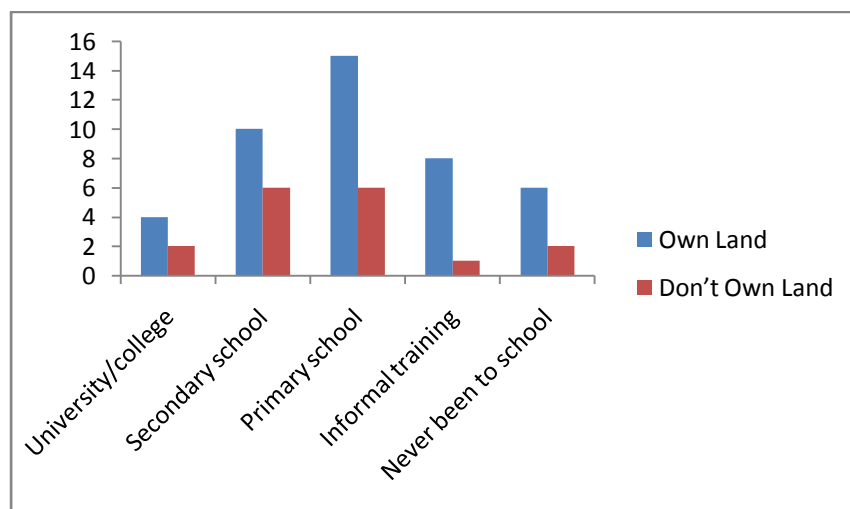
The table below indicates a cross-tabulation of respondents' level of education and land ownership.

Table 4.8: Cross-Tabulation of Respondents' Level of Education and Land Ownership.

Level of Education	Number of Respondents		Total
	Own Land	Don't Own Land	
University/college	4	2	6
Secondary school	10	6	16
Primary school	15	6	21
Informal training	8	1	9
Never been to school	6	2	8
TOTAL	43	17	60

Source: *Field Survey, (2014)*

Graph 6: Level of Education and Land Ownership



Source: *Field Survey, (2014)*

Generally, the level of education is a major factor determining land ownership and access to other resources; it does not seem to be a major factor for land ownership among the respondents. This is because 82% of the landless respondents have accessed formal education between primary and university/college levels and only 18% either have accessed informal training or have never been to school.

On the other hand, only 33% of those owning land have never been to school or have had informal training with 67% having either primary, secondary or university/college education. However, the most learned i.e. university and college consist of only 9% of the total number of landowners.

4.2 RESPONDENTS OPINIONS ON THEIR LAND RIGHTS

4.2.1 Adequacy of Land Size Owned

Been a semi-arid area, productivity in Ikutha district, especially agricultural, is widely depended on the size of land owned such that the larger the size that one owned, the higher the total agricultural yield and vice versa. The respondents' level of satisfaction regarding the size of land they owned was rated as shown in the table below.

Table 4.9: Adequacy of Land size owned

Land size (acres)	No. of respondents	Adequate	
		Yes	No
<5	5	0	5
5>10	8	2	6
10>15	17	7	10
>15	13	8	5
TOTAL	43	15	26

Source: Field Survey, (2014)

60% of the landowners expressed dissatisfaction on the size of land that they owned while only 40% of the landowners are fully satisfied with the size of land they own. The satisfied respondents were mostly men between the age bracket of 45years and above who owned over 15 acres of land. A large number of the dissatisfied respondents consisted of the youth and women and a few aged men. The reasons given to lack of satisfaction are as shown below.

Table 4.10: Reasons for Inadequate Land Sizes

Reason	No. of respondents	Percentage (%)
Lack of inheritance rights	3	12
Dispossession of land	10	38
Eviction from land	6	23
Poverty	5	19
Sold land	2	8
Total	26	100

Source: *Field Survey, (2014)*

- a) **Lack of inheritance rights:** this was cited as a major factor for lack of adequate sizes of land among the female landowners. This amounted to 12% of the dissatisfied landowners and could be attributed to the complicated and discriminative Kamba cultural practices which do not recognize women's' rights of inheritance. Women land rights are therefore given less priority compared to their male counterparts.
- b) **Dispossession of land:** as a reason for inadequate land size, land dispossession was ranked highest at 38% of the dissatisfied landowners. Most of those who suffered dispossession are the youth and women who have often been rendered landless or left with small parcels of land by their powerful and most respected male members of the society. The 'informal' individualization as well as lack of inheritance rights are the major factors for dispossession of land.
- c) **Eviction from land:** eviction from land was ranked second highest (23%) as a reason for inadequate land size owned by the residents. Many of the respondents who noted this as a reason for their small sizes of land attributed it to the 'informal' individualization where they were evicted from their land by the propellers of the 'informal' individualization and were therefore left with small parcels which are inadequate for their activities.
- d) **Poverty;** poverty as a reason for small land holding was ranked third at 19%. Just like eviction and dispossession, majority of the respondents who sited this as a reason for their dissatisfaction were the youth and women. They stated that they could not afford money to purchase more land for their use.

- e) **Sold land;** this was ranked last as a reason for inadequate land holdings where some respondents indicated to have sold their land for different reasons such as payment of school fees for their children while some women indicated that their husbands had intentionally sold the family land for their personal benefits.

4.2.2 Land Rights and Non-Land Owners

Out of the 60 respondents, 28% (17 respondents) indicated that they do not own any land but have access to other secondary rights to the land belonging to either a relative or a close friend or any other landowner who allowed them to exercise such rights on their land. The land rights had been structured as shown below to facilitate easy understanding of the respondents.

Table 4.11: Land Rights Enjoyed by the Non-Land Owners

Land rights	Frequency	
	Yes	No
a) Use the land	15	2
b) Occupy the land	5	12
c) Sell the land	0	17
d) Rent the land	6	11
e) Lease out the land	17	0

Source: Field Survey, (2014)

Table 4.12: Level at Which the Non-Land Owners Enjoyed the Above Rights

Land right	No. of respondents	Percentage (%)
Lease out the land	17	100
Use the land	15	88
Rent the land	6	35
Occupy the land	5	29
Sell the land	0	0

Source: Field Survey, (2014)

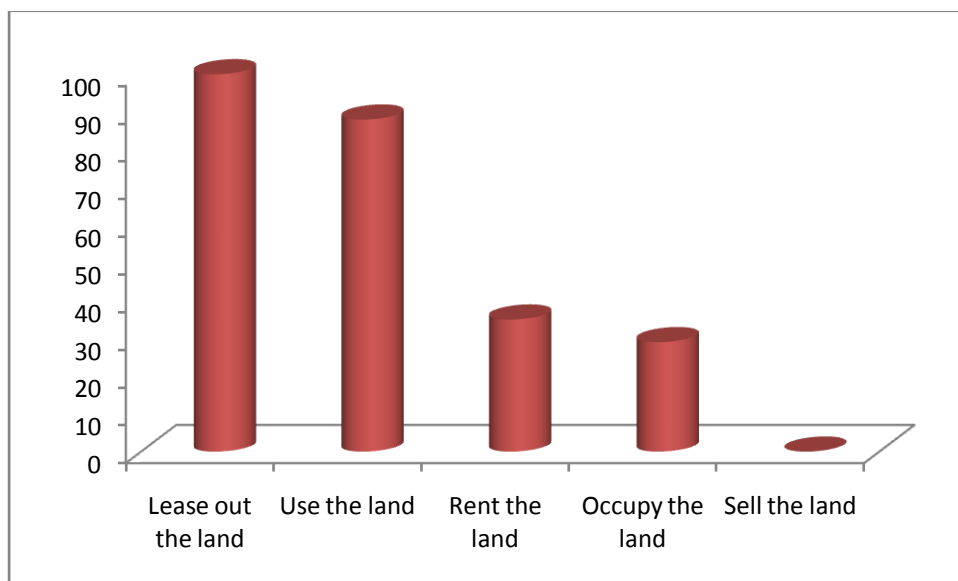
100% of the non-land owners indicated that they had the right to lease out land from landowners for their own use. This shows that the landowners had the power to rent their land to any interested parties at the rates agreeable between them.

88% indicated that they could use land belonging to others for their own benefits. This included married and unmarried women, children born out of wedlock and any other vulnerable groups of individuals who did not own any land for whatever reason.

Further 35% indicated that they had the right to rent out land though they did not have ownership rights. Majority of these were married women showing that they could make some decisions on behalf of their husbands regarding family land.

29% of the respondents indicated that they had rights to occupy land depending on the agreement with the landowner. However, this showed that majority of the land owners did not fully allow non-land owners to occupy their land, as 71% of the non-owners did not have rights to occupy the land they had access to. The graph below further illustrates this.

Graph 7: Level at Which Non-Land Owners Enjoy Secondary Land Rights



Source: *Field Survey, (2014)*

The non-owner had no right to sell any land whatsoever indicating that the landowners had the powers to prohibit any transactions on their land by the non-land owners.

4.2.2.1 Results of Lack of Land Ownership Rights

The respondents (17 non-land owners) were asked to rank the major problems resulting from lack of land ownership rights from 1-5, where 1 indicated the major problem with 5 indicating the least problem. The results were ranked as shown in the table below,

Table 4.13: Challenges Due to Landlessness

Challenge/problem	No. of respondents	Percentage(%) of the total respondents
Landlessness/Homelessness	14	82
Poverty	13	76
Inadequate food production	7	41
Low social status	5	29

Source: *Field Survey, (2014)*

Landlessness/homelessness was ranked as the main problem that the non-land owners experienced due to their lack of ownership rights. This was ranked at 82% of the 17 respondents who owned no land but had access to secondary land rights such as use and occupation. Poverty was ranked as the second major problem faced by the non-land owners. This was at 72% of the 17 respondents. Inadequate food production and low social status were ranked at third and fourth with 41% and 29% of the respondents respectively.

4.3 GENERAL OPINIONS ON THE ‘INFORMAL’ INDIVIDUALIZATION OF LAND RIGHTS

The opinions of the respondents concerning the ‘informal’ individualization were analysed and it was noted that, not all the residents fully respected and acknowledged the rights of the landowners especially those who had lost their land rights due to the process. The opinions were so varied depending on whether one had benefited or suffered from the process. Most of the people who suffered any loss as a direct result of the ‘informal’ individualization termed the process as a selfish action aimed at disintegrating community bonds. They further attributed problems such as poverty, landlessness among others to the ‘informal’ individualization, which denied them primary land rights.

However, the people who had benefitted from the process viewed the entire process as a good thing as they argued that owning land individually has increased the productivity per household and curbed the problem of food insecurity at the household level. Although they acknowledged the negative impacts to the vulnerable in the society, the individual landowners fully supported the idea of individualization and indicated their desire to have the land formally registered and individuals issued with title documents.

4.4 HYPOTHESIS TESTING

The hypotheses of the study are;

Ho= ‘informal’ individualization of unregistered rural community land has led to landlessness and social poverty.

Ha= ‘informal’ individualization of unregistered rural community land has not led to landlessness and social poverty.

From the study, 95% of the respondents indicated that the ‘informal’ individualization of unregistered community land has led to increased landlessness and social poverty among the residents of Ikutha district. Though most respondents indicated that they have benefited from such individualization, they indicated that it really had many effects to those who were given less priority in as far as land rights are concerned. Some of the major effects sited were landlessness and social poverty. This therefore confirms the study’s null hypothesis that ‘informal’ individualization leads to landlessness and social poverty. These findings thus lead to the acceptance of the null hypothesis and rejection of the alternative hypothesis.

4.5 LIMITATION OF THE STUDY

The main limitation of this study was time. This is because the study area is far away from Nairobi and the researcher carried out the research while still attending lectures to complete the requirements of the fourth year coursework. The case study area was also very extensive though sparsely populated and a lot of time was required to collect the data required in the study.

There was also the challenge of high illiteracy levels among the respondents such that majority of them could not comfortably fill the questionnaires on their own. This therefore called for direct administration of the questionnaires by the researcher for purposes of interpretation to the respondents hence a lot of time was required.

Suspicion by the residents was also experienced where some of the respondents, especially those who had acquired land through the 'informal' individualization, were reluctant in availing information about their land holding and channel of acquisition. There was also lack of conclusive information about the district and some of it, such as the district's map, was hard to find since there is no lands office in the district and most of the records could only be found in the records of the former Kitui district.

CHAPTER FIVE

RESEARCH FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This is the last chapter of the research work and represents conclusions and recommendations drawn from data analysis in chapter four (Data presentation and analysis). The overall objective of the research was to investigate why the ‘informal’ individualisation of unregistered community land occurs and the effects it has on the communal land rights of the residents (A case study of Ikutha district in Kitui County). This chapter therefore highlights the conclusions that inform the specific objectives of the study which are;

1. To establish why ‘informal’ individualization of community land has occurred and identify the key perpetrators.
2. To establish what powers the perpetrators acquire as well as the effects the process has on the communal land rights of the vulnerable groups in the community.
3. To recommend possible ways through which the individualization can be formalised while safeguarding the interests of every community member.

Areas of further study are also highlighted at the end of this chapter.

5.1 RESEARCH FINDINGS AND CONCLUSIONS

The major finding of the study was that, most men owned land through the ‘informal’ individualization as compared to women who are categorised among the vulnerable groups in the society. In addition, men owned the largest pieces of land as compared to women and majority of them had acquired this land through ‘informal’ individualization and inheritance. The fact that many men than women had acquired land through inheritance can be attributed to the traditional practices and beliefs among the local community (Kamba), which regard women and other vulnerable members of the community as having less prioritised land rights and hence they cannot inherit. Although the Kenyan constitution advocates for freedom to own property irrespective of gender and social standing, the cultural practises of many local communities limit this freedom in as far as the less fortunate members of the community are concerned.

From the data analysis, it is clear that the ‘informal’ individualization on community land earned the perpetrators powers on land that are close to those acquired through the formal adjudication process. They could rent ‘their’ land, sell it and generally exclude others from accessing or using it in any way. The non-land owners on the other hand were found to have limited rights to the land resources that were previously owned and enjoyed communally. As a result, many community members highlighted poverty, food insecurity homelessness, and ownership of uneconomical pieces of land at the household level as among the problems suffered by the non-land owners.

Generally, anything other than private property is seen as an inferior and immature type of property right. The research thus found out that the practice of the ‘informal’ individualization of community land was fuelled by the many shortcomings of owning land and resources communally. Some of the shortcoming included laziness among some member, less investment in agricultural production (because most community members were discouraged by the fact that they will share the benefits and not the costs) among others.

The perpetrators of the ‘informal’ individualization upon community land therefore aimed at ensuring that any benefit accruing on land as a result of incurring some cost does not have to be shared among the entire community as it was the norm traditionally. With the many benefits said to come with the individual ownership of land (e.g. ability to use land as collateral, increased security of land rights etc), the perpetrators therefore aimed at ensuring that once the formal adjudication process is done in the region, they will definitely be registered as the formal land owners. As a result, the poor and the powerless who could not exercise such individualization due to their position in the society suffered the problem of landlessness and social exclusion.

It was also noted that most of the landowners who had acquired their land through the process of ‘informal’ individualization were the aged. This indicated that the process had started long time ago and the present generation did not fully participate in the entire process though some people are enjoying the benefits especially through inheritance of their fore fathers’ land rights.

5.2 RECOMMENDATIONS

From the data analysis in the previous chapter, it is clearly evident that ‘informal’ individualisation of unregistered community land leads to landlessness and social poverty especially among the vulnerable in the society. In connection with these findings and the

research objectives, the research makes the following recommendations in as far as the research problem is concerned.

- a. Encourage the local residents to form local boards where dispute on exclusion of some community members from accessing community land can be resolved through processes such as mediation and negotiation among others. Such boards should arbitrate land disputes with a view of increasing equality by abolishing all forms of discrimination in land rights especially to women and the disadvantaged in the community.
- b. The land officials should ensure that they correctly establish the exact people entitled to community land rights during adjudication process. This is because the process has kicked off in the area and it is likely that the vulnerable are going to have their rights over land officially alienated after the formal adjudication process. Taking enough time to establish the exact people with rights and interests on any land will ensure that the rights are authoritatively ascertained and registered in the names of the rightful owners.
- c. The government should also establish clear legal and institutional frameworks on the allocation and management of community land. Such regulations should improve the tenure security in community land while ensuring that no member of community is made better or worse off.
- d. The government and non-governmental organizations in collaboration with other stakeholders should conduct awareness campaigns and educate people on how detrimental the outdated cultural practices, such as women discrimination on property inheritance, to development both at the household level and nationally.

5.3 AREAS OF FURTHER STUDY

The study suggests that further studies be done on the following;

- i. Effects of ‘informal’ individualization of community land on rural development.
- ii. The role of the government in ensuring equitable distribution of land and securing land rights in arid and semi-arid rural areas.

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APPENDIX 1

QUESTIONNAIRE TO IKUTHA DISTRICT RESIDENTS



UNIVERSITY OF NAIROBI

DEPARTMENT OF REAL ESTATE & CONSTRUCTION MANAGEMENT.

Questionnaire administered to the Ikutha District local residents

This questionnaire is administered by Makau Elizabeth, a student in the University of Nairobi, who is undertaking a research on 'The effects of the 'informal' individualization of unregistered community land in Ikutha district'. Please note that, the information availed herein will purely be used for academic purposes and will be treated as confidential.

(Please tick appropriately and elaborate where necessary).

Part (I): Personal details

Gender: Male Female

1. Age (years) 25-35

35- 45

45-55

Above 55

2. Are you Married

Single

Other (specify).....

3. Education level

- University/college level
- Secondary school level
- Primary school level
- Informal training
- Never been to school
- Other

(specify).....

4. How long have you lived in Ikutha district?
- (i) 20 years and below
 - (ii) 20 years and above

Part (II): Land Rights

5. Do you own any land? Yes
 No

For those who own land

6. How big is the piece of land you own in acres?
7. Do you consider this piece of land enough for your use? Yes No
 If no, tick the appropriate reasons;

Reason	
Lack of inheritance rights	
Dispossession	
Eviction	
Poverty	
Other (<i>specify</i>)	

- (a).....
- (b).....
- (c).....
- (d).....

8. How did you acquire the above piece of land?
- Inheritance
 - Individualization
 - Purchase
 - Gift
 - Other (specify).....

9. Do you feel that your current way of ownership fully secures your land rights as compared to the communal system of ownership?
- Yes
- Explain.....

No

Explain.....
.....
.....

10. Do you think your ownership of land individually has any effects on any member of this community? Yes No

For those who do not own any land

11. What land rights do you enjoy?

Land rights	Tick as appropriate
a) Use	
b) Occupancy	
c) Sell	
d) Rent	
e) Lease	
f) Other(specify)	

12. Kindly rank the following problems resulting from lack of full ownership of land? (where 1 is the major problem and 5 is the least problem)

Poverty	
Inadequate food production	
Homelessness	
Low social status	
Other(specify)	

General opinion.

In your opinion, what can be done to ensure equity in the access to land rights for all?.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

THANK YOU.

APPENDIX 2

INTRODUCTION LETTER FROM RECM DEPARTMENT



UNIVERSITY OF NAIROBI
DEPARTMENT OF REAL ESTATE AND CONSTRUCTION MANAGEMENT
P.O. Box 30197, 00100 Nairobi, KENYA, **Tel: No. +254-2-2724529**
E-mail: *dept-recm@uonbi.ac.ke*

Ref: B04/0830/2010

Date: 14th February, 2014

TO WHOM IT MAY CONCERN

Dear Sir/Madam,


RE: MAKAU ELIZABETH MBETE

This is to certify that the above named is a student in the Department of Real Estate and Construction Management, pursuing a degree in Bachelor of Real Estate.

He is carrying out a research entitled "**An Investigation into the Effects of 'Informal' Individualisation of Rural Community Land on Communal Land Rights**" in partial fulfillment of the requirements of the degree programme.

The purpose of this letter is to request you to allow her access any kind of material she may require to complete her research. The information will be used for research purposes only.

Please accord her the necessary assistance needed.


CHAIRMAN
DEPARTMENT OF REAL ESTATE
AND CONSTRUCTION MANAGEMENT
UNIVERSITY OF NAIROBI
Dr-Ing. Christopher Mbatha
Ag. Chairman & Senior Lecturer
Dept. of Real Estate and Construction Management