

Effectiveness of Adjudication Mechanisms by the Government of Kenya in Resolving Land Disputes in Tharaka North Sub –County Between 1963 and 2020

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ABSTRACT

This paper investigated the effectiveness of adjudication mechanisms by the government of Kenya in resolving land disputes in Tharaka North sub –County between 1963 and 2020. It maintained that land was and is still an emotive issue in the Tharaka North Sub County that has seen perennial disputes and enormous destruction of property and loss of people. Prior to the advent of colonialism in 1885 land was possessed under the customary law in Tharaka. Clan leadership played a crucial role in the control and management of land in Tharaka. The study was purposively conducted in Tharaka North Sub County. Underdevelopment theory of Raul Prebisch theories was used to guide the study and a descriptive research design was applied. A sample size of 50 in-depth interviews was conducted to get oral information, which was corroborated with archival and secondary data. Qualitative Data was analyzed using historical narrative and thematic approach, and then it was subjected to the context and content analysis to ensure reliability and validity of data. Quantitative data was analyzed by use of Statistical Package for Social Science versions 11.0. The study found out that land ownership drastically changed on arrival of British colonialist who introduced land ordinances. On attainment of independence land adjudication began where most parcels of land were possessed by the noble class. Therefore, the study recommended that the judiciary fast track the pending and backlog of land cases in courts to address land disputes once and for all in Tharaka. This will be instrumental in contributing to global goal 9 on decent work and economic growth by proper use of land for economic growth.

Keywords: land adjudication, land disputes land ownership, precolonial, independence.

INTRODUCTION

Globally, land has always been a scarce yet vital resource, and throughout history it has been at the center of conflicts and contestations. In Europe, for instance, the Agrarian Revolution reshaped land ownership patterns through reforms marked by redistribution and privatization (Hardin, 1994). Across Africa, the entry of British colonial powers in the late nineteenth century significantly disrupted traditional systems of landholding. Forged treaties between European powers and African rulers facilitated the alienation of vast communal lands. Subsequent colonial laws annexed large tracts of African land, transferring them to settler communities for plantation farming (Migot-Adhola, 2012).

Colonial interventions also imposed arbitrary territorial boundaries. These boundaries often disregarded the cultural and ethnic composition of African societies, grouping together or separating communities in ways that generated lasting disputes. For example, in Nigeria, ethnic identities were oversimplified on the basis of language, while administrative boundaries were drawn to enforce artificial homogeneity (Laremont, 2002). In Ethiopia, land reforms of 1975 nationalized rural land, abolished private ownership, and placed commercial farms under state supervision. While these reforms dismantled feudal structures, they also entrenched land-related conflicts that persist to this day (Ayot, 1990). These reforms had great impact to the people of Tharaka North.

In pre-colonial Kenya, numerous studies show that land tenure was founded on communal access, where all members of society were entitled to use land equally by virtue of belonging to the community (Mwangi, 2009; Onduro, 2010). Land could not be sold or monopolized, as it was considered a divine gift meant for collective benefit (Githinji, 2021). However, colonial interventions replaced communal tenure with individualized ownership, a shift solidified by the Swynnerton Plan of the 1950s. This transition created new crises in land relations, as legal frameworks entrenched individual tenure after independence in 1963.

It is within this historical context that the present study investigates the effectiveness of government adjudication mechanisms in resolving land disputes in Tharaka North Sub-County between 1963 and 2020.

Statement of the Problem

Since independence in 1963, the Government of Kenya has implemented various adjudication mechanisms to resolve land disputes in Tharaka North Sub-County. However, these mechanisms have faced persistent challenges, including delays, corruption, weak enforcement, and limited community trust. As a result, land conflicts remain widespread, disrupting social cohesion, economic development, and local governance. Despite decades of government intervention, the effectiveness of these adjudication processes in addressing the root causes of disputes and ensuring lasting solutions remains uncertain.

Specific Objective

To analyze the effectiveness of adjudication mechanisms by the government of Kenya in resolving land disputes in Tharaka North sub –County between 1963 and 2020.

REVIEW OF RELATED LITERATURE

La Croix et al. (1972) defines land tenure as the set of rights and obligations governing ownership, use, transfer, and succession of land. He identifies six main types of tenure: owner cultivation on small private plots, squatting on both private and public lands, large estates, feudal tenures with bound and unbound labor, communal ownership, and smallholder leasing to private landowners.

Across Africa, governments have invested in improving land administration to establish competitive land markets and reduce disputes. A key step has been the establishment of cadastral and registration systems to clarify ownership. Alongside these legal mechanisms, preventive approaches such as conflict resolution, land management, and even psychosocial interventions have been emphasized. Boliari's (2013) study on Bulgaria highlights how land fragmentation hinders agricultural growth and socio-economic development, a problem with clear parallels to African contexts where subdivision and disputes are widespread.

In Sub-Saharan Africa, land contestation, evictions, and unequal distribution of resources have deep historical roots. Colonial conquests, expropriations, and exploitations created inequalities that continue to shape political and socio-economic realities. These unresolved historical injustices fuel recurring land disputes across the region. In Kenya, independence brought optimism, but elites colluded with colonial interests to retain or repossess land (Kimaiyo, 2004).

The post-independence government-initiated land reforms, notably Jomo Kenyatta's "willing buyer, willing seller" program funded by Britain, intended to resettle Africans displaced into reserves. However, subsequent constitutional amendments in 1968 allowed provincial and district boundaries to be altered by presidential decree, which escalated disputes.

Kenya's land challenges persist today, rooted in colonial legacies and exacerbated by weak post-independence land regimes. The 2007–2008 post-election violence demonstrated how unresolved land grievances remain a flashpoint for broader political instability. Many Kenyans feel dispossessed of ancestral and communal lands, fostering resentment and conflict. Although institutions, laws, and policies have been established to manage disputes, recurring conflicts question the effectiveness of government adjudication processes.

THEORETICAL FRAMEWORK

The study is founded on Johan Galtung Theory. The Theory conceptualizes violence as more than physical harm; it includes direct, structural, and cultural dimensions. Direct violence is visible and immediate, but it often stems from hidden structures that perpetuate inequality. Structural violence is embedded in institutions, laws, and power arrangements that deny fair access to resources or opportunities. Cultural violence consists of beliefs, stereotypes, and attitudes that normalize or justify inequality and exploitation. These three dimensions reinforce one another, making conflict and injustice persistent and difficult to resolve. This framework is useful in analyzing how land disputes in Tharaka are not only about physical confrontations but also about deeper structural and cultural injustices.

Research Design

The study adopted a descriptive research design to explore effectiveness of adjudication mechanism by government of Kenya in resolving land dispute. This approach was suitable because it allowed for a detailed understanding of disputes as they exist in reality. Descriptive research, as noted by Kombo and Tromp (2006), reveals issues in their natural state, while Kerlinger (1969) emphasizes that such studies not only uncover facts but also contribute to the development of principles and practical solutions. This design therefore guided the investigation in establishing the facts about land conflicts and their resolution mechanisms in Tharaka.

RESULTS AND DISCUSSIONS

EFFECTIVENESS OF ADJUDICATION MECHANISMS BY THE GOVERNMENT OF KENYA IN RESOLVING LAND DISPUTES IN THARAKA NORTH SUB –COUNTY BETWEEN 1963 AND 2020.

History of Land Disputes in Tharaka

This chapter evaluated the effectiveness of adjudication mechanisms in resolving land disputes in Tharaka North Sub-County between 1963 and 2020. Drawing from archival records, government reports and primary data collected through interviews and focus group discussions with community elders, land officers, local administrators and affected residents, the chapter presents an in-depth analysis of the dynamics of land disputes and the impact of adjudication processes on land tenure security and social stability in the region

The advent of British colonial rule in the late 19th century introduced drastic changes to land ownership and governance. The Crown claimed vast tracts of fertile land, often displacing indigenous communities and creating the “White Highlands,” which were reserved for European settlers. Colonial land policies, such as the Crown Lands Ordinance of 1902 and subsequent land acts, marginalized local communities and imposed statutory legal systems that undermined customary land rights. These policies generated new forms of land conflicts, including boundary disputes, claims of ancestral land dispossession, and conflicts between local populations and settlers (Okoth-Ogendo, 2000; Njonjo, 2015).

Land remains one of the most vital and contested resources in Kenya, serving as a foundation for livelihood, identity and socio-economic development. The question of land ownership and access has historically been contentious, especially in rural regions like Tharaka North Sub-County, where customary land tenure systems coexisted with formal legal frameworks introduced during the colonial and post-colonial periods. Since independence in 1963, the Kenyan government has implemented various adjudication mechanisms to address long-standing land disputes, resolve tenure ambiguities, and promote equitable land access. These efforts include the enactment of the Land Adjudication Act (Cap 284), the Land Act (2012), and constitutional reforms under the 2010 Constitution.

Mutiria, a oral informant from Maragwa revealed that;

“Most prevalent land disputes in Tharaka North included boundary disagreements, inheritance-related conflicts, illegal land sales, encroachment on communal grazing lands and disputes involving state projects and public land allocation.”

To add on the matter, Kaguna a oral informant from Kathagachini pointed out that

“Land adjudication itself often generated disputes, especially when the process was perceived to favour certain individuals or clans over others. These findings are supported by adjudication committee reports archived at the Tharaka Nithi County Land Offices and corroborated by personal testimonies from local elders(Kaguna, O.I: 23/4/2025)

Land and under independence constitution

At independence in 1963, Kenya inherited a highly fragmented and contested land system. The independence constitution sought to address historical injustices created by colonial land policies, particularly the alienation of fertile lands to European settlers and the marginalization of indigenous communities. The Constitution of 1963 recognized both statutory and customary land rights, providing a framework for land adjudication and the protection of property rights (Kameri-Mbote, 2003; Odote, 2016).

Following Independence in 1963, the government took some years to consider addressing the inequitable legal and administrative system, involving land rights allocation and revocation by the State, inherited from the colonial era (CKRC, 2002). Politics of land was in essence redistributive in this period. Land Redistribution occurred with colonial conquest: the colonization of Kenya premised on the redistribution of land from Africans to Europeans, the banning of Africans from possessing the most fertile and productive land, and the preventing Africans from growing industrial crops that might compete with colonial agriculture.

Mukemba a oral informant from Ntoroni had this to say concerning overseeing the land adjudication process in Tharaka North;

The Ministry of Lands and Physical Planning, through the Department of Land Adjudication and Settlement, remained the primary agency charged with overseeing the land adjudication process in Tharaka North. the Department is responsible for deploying adjudication teams, facilitating community sensitization, and coordinating surveying. The role of the National Land Commission (NLC), especially in handling disputes involving public and institutional land is paramount. Local adjudication committees, comprising village elders and community representatives, play an instrumental role in verifying claims and resolving minor disputes during the mapping phase. (Mukemba O.I: 23/4/2025),

KNLPP (2009) acknowledged recent improvements such as digital record systems but lamented that these reforms had yet to reach the grassroots fully, where paper-based records remain dominant. According to respondents, the land adjudication process in Tharaka North follows a lengthy and multi-step structure.

Willy (2018) explained that the procedure for land adjudications begins with the formation of adjudication sections, followed by community education forums, surveying and mapping of parcels, public verification, and documentation of claims. Where conflicts arise, disputes are referred to local land committees, tribunals, or courts and observed that depending on the complexity of the case, the process can take anywhere from two to ten years and further noted unresolved historical cases from the 1970s were still pending due to missing records or contested boundary maps.

LAND AND UNDER NEW CONSTITUTION

Land in Tharaka North under New Constitution 2010

The adoption of Kenya’s 2010 Constitution was a turning point in land governance, as it introduced reforms to tackle past injustices, ensure fair access, and strengthen dispute resolution systems. The Constitution treated land as a vital national resource and outlined clear principles for its sustainable and equitable use. It categorized land into public, community, and private ownership, setting the foundation for fairer management (GoK, 2010; Odote, 2016).

It also provided for the creation of a National Land Board accountable to Parliament and required new legislation to establish a National Land Policy grounded in fairness and justice (Cathrene, 2012)

According to Muarauko, a oral informant from Kathagachini some adjudication records were altered post-survey due to external influence, leading to disputes even after title issuance as stated below;

“Lack of capacity among local adjudication committees, coupled with low public awareness, and weakened community trust in formal land administration. The new land policy and the new constitution were the culmination of a decade of often fierce debate and civil society activism which led to the issue of massive transfer of community land to individual members. The subdivision of community land was likely to reduce the size of land for nomadic activities and transfer community resources to individual who may not be able to protect and sustainably use it productively. (Muarauko, O.I: 24/4/2025).

Alternative disputes resolution mechanisms in Tharaka North

In Kenya, Alternative Dispute Resolution (ADR) has gained recognition as a valuable supplement to the formal courts in handling land conflicts. ADR methods such as mediation, arbitration, negotiation, and customary practices are often preferred because they are faster, less costly, and more in tune with local cultures (Kariuki, 2019; Odote, 2016).

According to Mugao (O.I., 2025), the Tharaka people relied on the *Njuri Ncheke*, a council of elders that upheld justice and social order. Similar institutions existed in other communities, each with its own titles and membership criteria. Within Tharaka, *Njuri Ncheke* employed a variety of methods—including mediation, arbitration, negotiation, reconciliation, and at times adjudication—to resolve disputes.

Access to justice remains a fundamental right because it enables the protection and realization of all other rights. For this reason, it requires supportive laws and institutions (Muigua, 2015). The Constitution of Kenya underscores this by guaranteeing access to justice for every person. It also directs the State to adopt legal, policy, and administrative measures to strengthen justice systems. Importantly, the Constitution broadens the justice framework by recognizing and encouraging the use of both formal courts and informal dispute resolution systems (Article 59, CoK, 2010).

Muthuri an oral Informant had the following to note concerning the role of council of elders in justice restoration and resolving conflicts;

“Tharaka community had a council of elders NJuri Ncheke that oversees the affairs of the community, including ensuring that there are social order and justice in the community and settling land related conflicts. These were known by various names in different communities and their membership had specific characteristics /qualifications. (Muthuri O.I, 2025)

CONCLUSIONS

After independence land dispute resolution mechanisms, particularly those within the formal legal system, have faced challenges in achieving widespread effectiveness. While the Constitution of Kenya and subsequent legislation and reports have aimed to streamline dispute resolution and historical land injustices issues persist with implementation, resource allocation. ADR was not fully established and it was not performing to its optimal levels

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