

PRE-COLONIAL LUO LAND TENURE SYSTEMS AND AGRICULTURAL PRACTICES IN AWENDO SUB COUNTY, KENYA

Miganda Mark Omondi Odera

Master of Arts-History Student of Rongo University

Daniel Rotich Kandagor

Kisii University

Michael Ntabo

Rongo University, Kenya

Abstract

This paper examined the pre-colonial Luo land tenure systems and agricultural practices in Awendo Sub County, Kenya. The objective was to account for the pre-colonial land tenure systems of the Luo and agricultural practices in Awendo Sub County. The study adopted a descriptive research design. Snowball sampling was used based on Coleman, J.S the definitions. The literature review pursued the empirical literature review. This work utilized the Modernization theory and used sample questions for interviews, archival sources and observational methods for data collection. Data were analyzed, summarized and presented in continuous prose. The findings revealed that the Luo are strongly attached to land, as land appears to mean more than is generally assumed. Land has different meanings and is not just a resource that is required for agricultural production. Further, the findings have shown that women do not normally inherit cultivation rights but acquire them mainly through marriage. Women's rights are only ancillary, depending on allocations from their husbands. Their position regarding land can also be seen from the angle of matrilineal relationships in a patrilineal society. Women are the ones who work the land most of the time and obtain rights in their post-marital homesteads by devolution from their mothers-in-law.

INTRODUCTION

During the pre-colonial era, resource management in the interior of Kenya depended very much on whether a group was agrarian or pastoral. The agrarian societies depended very much on tilling the land for crop production while the pastoralist's communities kept and herded livestock for livelihood. As this was the case in the interior, the Kenya coastline was witnessing the seeds of colonialism with the coming of the Portuguese in the 1500s. This means, therefore, that the impact on land use as well as the management of natural resources is not a recent phenomenon in Kenya and indeed in the whole of Africa. Prior to and after independence, radical changes have been deliberately initiated in tenure arrangements. These have mainly been justified on the basis of the expected improvements in productivity, land use planning and decision making which they would generate¹.

However, it is important to note that the term land tenure is derived from the Latin word *tenere* which means "to hold." Tenure defines the social relations between people in respect of the object of the tenure, in this case, land. Tenure also defines the methods by which individuals or groups acquire hold transfer or transmit property rights about the land².

In respect to Awendo Sub-County, interests in land broadly fall into two groups. Rights and that are held through traditional African systems (customary land tenure), and rights that derive from the English system introduced and maintained through laws enacted by colonial and then the national parliament. The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through national law, in various Act of parliament such as the following: Government Land Act (cap 280), Registered Land Act (cap 300), Registration of Titles Act (cap 281), Trust Land Act (cap 288) of the Laws of Kenya.

Land tenure is an important part of social, political and economic structures. It is multi-dimensional, bringing into play social, technical, economic, institutional, legal and political aspects that are often ignored but must be taken into account. Land tenure relationships may be well-defined and enforceable in a formal court of law or through customary structures in a

¹ Ogolla B D and Mugabe J. *Land Tenure Systems, In Land We Trust*

² *Ibid*

community. Alternatively, they may be relatively poorly defined with ambiguities open to exploitation.

EMPIRICAL LITERATURE REVIEW

This paper attempts to search for the pre-colonial land tenure in relation to the changing communal land ownership among the Luo community in Kenya. According to Achola,³ in the pre-colonial period, unmarried women who had been allocated land by her father were not chased off the land by her brothers, while her land could be inherited by her male children through her. This was not an acknowledgment of the women's right to the land but on the fact that the male children were taken to be useful members of the clan and could be incorporated to enhance the strength of social status. Even with the insecurity, the economic structure based on subsistence and consumption and the social organization of the families ensured that women enjoyed strong economic and social security within their families. There was no shortage of land, and a lineage that grew in size could acquire additional land by clearing new bush. It was, therefore, possible for every woman, married or unmarried to get access to land enough for her. Rodney⁴ outlines that before 15th century, African societies placed greater importance on matrilineal and others on patrilineal ties. The land was a major means of production in Africa that was owned by groups such as family or clan. There was teamwork in helping each other for example, sharing farming activities. For instance, in matrilineal society such as Bemba of Zambia, many young men who had married daughters of the same household often formed work teams to help each other. However, colonial governments seized African lands, they satisfied their own citizens who wanted mining concessions or farming land and created conditions where landless Africans had to work not just to pay taxes but also to survive when they were subjected to unproductive African reserves. Second, the researcher is not satisfied with whether the holding of title deeds by the peasants would increase or reduce agricultural production, in connection with the traditional way of owning land. He needs clarity on what to do for example owning land

³ Achola O P, *Women's Access to Land and their Role in Agriculture and Decision Making on the Farm: Experiences of the Joluo of Kenya*.

⁴ Rodney W. *How Europe Underdeveloped Africa*

or proper utilization of land. The proponents who have looked at the private right to land ownership brought by colonialists have neglected the procedural manner of the proper utilization of the available land other than stressing on the tracts of land one should own. They have not told us whether knowledge and skills in agricultural production are the important things to focus on or not including boosting the unproductive land, irrigating land, other than carrying the titles. Furthermore, there are also no measures put in place by the government to control the maximum size of the land a citizen should own and the ratio of cash crops to food crops grown in an area. For example, those who purchase land should use it appropriately for agrarian change.

Byamukama⁵, explanation, registration of land in men's name is the origin of landless because of the sale of family land by men. This was a problem of colonial administration that has also maneuvered its way to the independent government. The colonial government passed various land control acts, such as ordinance of 1959, to allow them access land and have full control of it. In post-colonial Kenya, there are land control boards that require the applicant spouse and adult children to appear before the board to indicate their awareness of the proposed transaction, which tried to control the sale of lands by men. The prevalence of fraudulent land deals has threatened government's effort and family's security over their land which is also used to secure loans. The gap of knowledge here is that Byamukama has not proved on whether those who purchased such land utilize them properly by availing food or waste them by making colonial land tenure to be disruptive to agricultural activities. This is in the sense that the colonialists used land for higher agricultural production. For example, in Awendo sub-county, he will enlighten people on whether the residents depend partially on global food or local ones focusing on food crop prices. One can sell land when there are needs and the person who buys it may utilize it properly for increased food production or underutilize it for increased food shortages.

In the Angelique Haugerud⁶, discussions, she searched for the economic and social importance of land tenure and agrarian change in Kenya, while in this study, the researcher coins the background within the reduced agricultural production in relation to food insecurity. She examined the relationship of formal and informal land tenure systems to processes of agrarian

⁵ Byamukama, James Kwebiha, *The socio-economic impact of land tenure reform in the former African areas of Kenya, 1950-1987*

⁶ Haugerud, *Opcit*

change, used entrepreneurial theory. According to her formal privatization of land may have little effect on process of agrarian change, even in the economy, where land is productive and scarce, and where its distribution is relatively unequal⁷.

Third, the continued land following in relation to the high population rate has not been brought to discussion. The researcher will give a clear picture of whether people should only concentrate on the reduction of the household size by the use of family planning gadgets or the reduction of the number of fallows in the region. This is not only a problem for Awendo Sub County, but is also a national problem that needs the counties and the rest traditional countries around the globe to solve for the increased agricultural production. Shifting cultivation has had a bad name among many scholars. It has been portrayed as a backward and wasteful method of farming⁸.

Others have pointed that shifting cultivation does not belong to an early rung on the evolutionary ladder of agricultural development, but constitutes an integrated farming system suited to tropical ecology⁹. Therefore, shifting cultivation is an agrarian system involving farming on a piece of land continuously, until it is exhausted, after which the farmer moves to more fertile grounds, the land is left fallow until it regains its fertility, is when a crop can be grown in it. Most people refer to it as land fallowing system, the term that they now prefer than shifting cultivation.

Fourth, left out is the impact of the sugarcane growing in the Awendo sub-county. The researcher wants to create awareness on whether the Awendo sub-county is only ecologically suitable for sugarcane growing or for other crops. Shino¹⁰ says that sugarcane was not so popular as a cash crop at Kanyamwa. Oyugi¹¹, said that sugarcane farming had positive impact on the people of the Narok county, because, about 18% of the total population involved in its

⁷ Angelique, *Opcit*

⁸ Boserup, Ester, *The Conditions of Agricultural Growth*

⁹ Ruthenberg, Hans *Farming Systems in the Tropics*. Third ed. Oxford : Clarendon Press, 1980

¹⁰ Shino W., *Death and Rituals among The Luo in South Nyanza: In African Study Monographs*,

¹¹ Oyugi B., *Socio-Economic Impacts of Sugarcane Farming on Livelihood and Biophysical Environment in TransMara Sub County*

production, while the remaining population are busy producing other crops and rear breeds of animals which avail food for the citizens in the area, a practice neglected in Awendo Sub County.

Finally, there is no clarification on the impact of the utilization of traditional crops and local breeds of animals in Kenya, making him use Awendo Sub County to come up with a clear and general information on that. The research will extensively find out the impact of production or negligence of the famine reserved crops, which some refer to as poor man's crops and local breeds of animals as compared to the new colonialist's activities on agricultural production. This is a rich area with the information because, many scholars have majorly investigated the new techniques in agriculture established by colonialists, that boosted agricultural production, which included, the introduction of new storage facilities such as modern granaries, refrigerators: new farm inputs such as fertilizers: hybridization of crops or modern crops, for example maize: exotic breeds of cattle, which are the exotic dairy cow, *sahiwal* and zero-grazing for clean milk production among others: program implementation: new machines which are, ox plough, tractors: labor: market opportunities which improved agricultural production.

Onchagwa¹², investigated the extent to which farm inputs, program implementation, storage of farm produce, group dynamics influence food security. It was grounded on the theory of social protection, which believes that systems of social protection enable societies to advance the well being of their citizens for a decent life.

Kandagor¹³, asserts that the colonial administration and activities improved on Tugen agriculture, and also came up with many transformations, for example, the Europeans introduced new crops such as wheat, maize, beans, sweet potatoes and foreign animals such as Sahiwal, Jersey that provided enough food. These include milk, meat, and blood among others, that ensured food security. The beef barons of the tribe were the southern Tugen. They exported skin, ivory, livestock, goat, sheep, cattle such as donkey by Suk, Pokot, Ilchamus or Njemp and Tugen or Kamasia, while the imports included salts, cloths in Indians and Arabs shops.

¹² Onchagwa T.E, *Influence of Agricultural Input Subsidies Program on Food Security in Rongo district*

¹³ Kandagor.,P.29-43

Mango¹⁴, the argument was concentrated on the increasing population, reduction in the field sizes, decline in soil fertility during 1970s, hybridization of maize for high maize production, technical change in relation to soil fertility. For example, when population increased among the Luo of Siaya, hand hoeing became increasingly the major land preparation method, with fewer cattle and less land available. The Luo could no longer increase their agricultural output by adopting ox plough, to cultivate large field. He focused primarily on how farmers internalized and induced technology packages in zero-grazing dairy farming, where high yielding exotic dairy cows are confined and fed within their stalls which originated from Netherlands during 1980s, and further led to the production of clean milk. The zero-grazing has special place for milking the cows and advocates the use of clean utensils and cleaning udder to avoid mastitis.

The peasants in Siaya were growing crops that were associated with poverty, or poor man's crops also known as famine reserve crops that were so heavy and they included cassava, sorghum, millet, and sweet potatoes hence can grow with little rain. The research and extension services were focused on the spread of hybrid maize as a food and cash crop. This later made Luos to grow traditional crops on a very small scale in the vegetable gardens in their compounds, due to existence of small plots. In Siaya, most of the peasants neglected the new breeds of animals and crops, for example, hybrid maize and majority focused on drought resistance crops, neglected new techniques such as zero-grazing in dairy which could avail food according to his research. He did not clearly tell us why he referred to famine reserve crops as poor man's crops. This is because, the Archives of 1940, 1941, 1942, ¹⁵ even the colonialists who were seen as superior, shifted emphasis from cash crop production to food crop production, for example, maize, finger millet, sorghum, cattle in Nyanza as the exports. This was to meet World War II requirement. Nyakwaka¹⁶, investigated the influence of colonial agriculture, labour, and taxation on the Rongo agricultural economy, market opportunities created by colonialists, new crops, improved seeds and techniques of productions such as, mechanization in ploughs that improved agricultural production in the region.

¹⁴Mango N. A. R, *Husbanding the Land :Agricultural Development and Socio –technical Change in Luoland*,

¹⁶ Nyakwaka D.A, “Agricultural Change in Rongo division, Migori district 1850-1963”. A Master of Arts thesis

THEORETICAL FRAMEWORK

This paper uses the modernization theory to explain the process of modernization within societies. This is a model of a progressive transition from a pre-modern or traditional to modern society by Max Weber. This was developed by Talcott Parsons between 1902 and 1979 who in 1930s, translated it into English and provided his own interpretation. The theory looks at the internal factors of a country while assuming that with assistance, traditional countries can be brought to development in the same manner more developed countries have been. It attempts to identify the social variables that contribute to social progress and development of societies and tries to explain the process of social evolution. It both stresses the process of change and the responses to that change in relation to the adaptation of new technologies. It further explains that traditional societies will develop as they adopt more modern practices. For example, modern states are wealthier and more powerful; hence their citizens enjoy higher standards of living. According to the theory, traditional practices usually become less important as modernization takes hold. As Kendall¹⁷, links modernization to the process of urbanization and industrialization and the spread of education. Weber examines the role of rationality and irrationality in the transition from traditional to modern society. Modernization has been accused of being Eurocentric, as it began in Europe, with industrial Revolution, the French Revolution, the Revolution of 1848 and unmodern societies are seen as inferior¹⁸.

METHODOLOGY

This work used a descriptive research design to account for the Luo traditional land tenure systems and agricultural practices in Awendo Sub County in the pre-colonial period. This research design was useful as it helped in the collection of data in order to come up with well summarized, interpreted and clarified in-depth analysis of the subject. Awendo Sub County is located in Migori County which is in the southwest Kenya and borders Homabay to the North, Kisii to the North East, Narok to the East and South East, Tanzania to the South and Southwest and Lake Victoria to the West. The Kenya National Bureau Statistics indicated Awendo's total

¹⁷ Kendall, D, *Sociology in Our Times*

¹⁸ Macioni., *Op.Cit*

population to be 108,913¹⁹. The study area constituted the following Electoral Wards: North East Sakwa, South Sakwa, West Sakwa, and Central Sakwa. The bulk of the inhabitants were mainly the Luos who were the *Jodala* (owners) of the territory-Aweno Sub County. However, other inhabitants within the Sub County included the Abakuria, Abagusii, Abaluhya, Somalis and some few Indians who were referred to as *Jodak* (tenants)²⁰. The main economic activities of Awendo Su County were agriculture, manufacturing, and small scale gold mining.

The population of the area under study was 108,913. This population was predominantly Luo with a few ethnic groups such as the Abagusii. The researcher ensured that the respondents of 65 years and above were targeted for interviews. A pilot study was organized before the actual research to determine the number of respondents above the age of 65 years in all the Electorate Wards after which the 10% formula according to Mugenda and Mugenda was used as the minimum²¹.

Due to the limitation of time and resources the researcher sought to interview a total of 31 informants. According to Mugenda and Mugenda²² a sample size was a list of potential members of the target population to be included in the sample. It was a list of elements from which a sample was drawn. In this study the sample size meant 10% of all respondents who have attained the age of 65 years and above from all the Electoral Wards of Awendo Sub-County.

Sampling was the process of selecting a representative of a total population in order to produce a miniature (small) cross-section; it was a small proportion of the targeted population selected for analysis²³. The sampling procedure referred to the techniques that were used to draw a representative sample size. The required sample size was influenced by: the size of the population the sample sought to represent; the number of variables in the data gathering instrument; the requirement for statistical analysis; and the degree of confidence required from the results. Due to the nature of this study, therefore, the researcher utilized snowball sampling.

¹⁹ Kenya National Bureau of Statistics. P. 151-240, 2010:

²⁰ Oral Informant: Oluoch Pala, 15/10/15

²¹ Mugenda, O. M. & Mugenda, A. G, *Research Methods: Quantitative and Qualitative Approaches*

²² *Ibid*

²³ Kothari, C. R. *Research Methodology: Methods and Techniques*. New Delhi: New Age International (P) Ltd Publishers. (2004)

In this case, snowball meant a chain-referral sampling which basically a non-random (non-probability) was sampling method used when characteristics to be possessed by samples were rare and difficult to find²⁴. In this case, respondents aged 65 years and above were increasingly difficult to find. This sampling method concerned primary data sources recommending another probable primary data sources used in the research. In other words, the snowball sampling method was based on a recommendation from initial subjects to produce other subjects²⁵. Consequently, while applying this sampling method members of the sample group were engaged in a non-random way. Snowball sampling was the most suitable for a study such this because once a contact is established, other potential subjects are identified simultaneously²⁶. As a procedure, this study identified group of individuals who were known members of the population to create a “seed.” Using snowball, the sample size increased in the process of identifying new contacts until the researcher was satisfied that there are no more subjects to be addressed.

Research instruments were tools by which data was collected. The data was collected through the use of interviews, archives, and observation. Sample questions were used during interviews. Sample questions constituted a list of questions in a set form that was developed to address specific objectives, basically they were unstructured questions.. Part one of the sample questions addressed personal information of the respondent, while part two addressed information related to the objectives of the study. The sample questions were issued by the research while conducting the interviews.²⁷ Consequently, the researcher visited the Kenya National Archives and Documentation Service (KNADS) and other private archives to critically peruse annual reports related to land tenure and agricultural practices in Awendo between 1895 and 2010. In addition, the researcher used the observation method to corroborate data collected used archival sources and interviews.

²⁴ Coleman, J.S., *Snowball sampling—Problems and techniques of chain referral sampling: Human Organization*, v. 17, p. 28-36

²⁵ Faugier, J. and Sargeant, M., 1997, *Sampling hard to reach populations: Journal of Advanced Nursing*, v. 26, p. 790-797

²⁶ Atkinson, R., and Flint, J., 2001, *Accessing hidden and hard-to-reach populations—Snowball research strategies: University of Surrey Social Research Update*, v. 33. Accessed on January 2, 2007, at <http://sru.soc.surrey.ac.uk/SRU33.html>

²⁷ Mugenda, O. M & Mugenda, A.C. *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: Acts Press. (2003).

In analyzing data, the qualitative technique was used. Primary data was collected and transcribed. The cumulative data from the primary and secondary sources were synthesized and the resultant data categorized in accordance with objectives of the study. Theoretical probing was adhered to when analyzing both data in order to reach a logical descriptive analysis. Primary and secondary data were corroborated to authenticate the data. Data were then classified according to their content and the specific historical time frame within which each event and development occurred.

Research ethics were observed during the research such as confidentiality and privacy of the informants. A letter was obtained from graduate school to authorize the research. The researcher also obtained a research clearance permit. The researcher explained the purpose of the study to the informants. The rights of the respondents ensured that there were understanding and cooperation during the administration of the research instruments. Participation in the interview was voluntary. The participants were assured that the information would not be availed to anyone. The informants were not enticed with money or coerced to give information. Persuasion was done to get the cooperation of informants who were given appointments on time in order to have them schedule their time through the chiefs.

FINDINGS

Luo traditional land tenure systems and agricultural practices

According to the Luo ethnic group, the land was regarded as being the inalienable property of the clan, to be inherited according to lineage membership. However, with the passage of time, land issues were often surrounded by conflict and confusion. The conflicts arising from land between the colonial and post-colonial periods were partly caused by the ever-changing customary land tenure arrangements due to the introduction of private land ownership, more specifically during the Swynnerton Plan implementation which commenced in the 1950s. Indeed, and customarily, land belonging to a lineage and given in usufruct to a lineage member is now formally individual property. It is registered, and title deeds are issued according to modern state land laws.

This has opened doors for the sale and the acquisition of land outside the realm of customary law, but if the 'owner' wishes to sell the land he still needs the consent of the council of village

elders. Thus, a situation has evolved whereby customary and private land tenure arrangements are welded into the way the Luo deal with land, understand land issues and resolve conflicts over land. Currently, land conflicts take place in areas where the two different systems of land tenure form the background for different positions and interpretations.

In the pre-colonial times, the Luo people were organized along with kinship relationships. *Dala* (homestead) which was a characteristic of the Luo organized unit, consisted of a site where the monogamous or polygamous domestic groups built their houses, in the surroundings of which they have their fields²⁸. However, the smallest social unit in the homestead was the ‘household’. A homestead was made up of at least two generations, that of the father and the mother(s), and that of their offspring. Occasionally, households of brothers of the homestead’s owner are also to be found there, as well as servants and ‘strangers’. Consequently, several homesteads make up a *gweng* and resemble what we now recognize as villages or settlements. Residence in a village is based upon kinship but also upon alliances developed out of strategic considerations²⁹. From the background of kinship relations, the Luo land tenure arrangements were understood and implemented during the pre-colonial times in the following ways: Land allocated to clansmen, land allocated to strangers, land allocated to slaves.

Land allocated to clansmen

Among the Luo, the basic right to own land stems from being a member of the ethnic group in a given territory for which lineage or clan members and their ancestors fought, and that is ‘once acquired by conquest’³⁰. This represents the strongest claim to land in Luo territory: every member of a clan has an inalienable right to cultivate a garden within the territory of his grandfathers. This right is normative because it is linked with lineage membership.

This is important socially because it provides a sense of security that springs from living among kinsfolk. It is economically important as well because a clan member is entitled to occupy such land on terms of correct usage without payment, except customary dues to land-controlling

²⁸ Southall, A.W., *Lineage formation among the Luo*. P.27

²⁹ *Ibid*, Cohen, D.W. & E.S. Atieno-Odhiambo, *Siaya: The historical anthropology of an African landscape*.p14

³⁰ Wilson, G., *Luo customary law and marriage law customs*.p 18

elders. The land that belongs to the clan is well defined by natural boundaries, and the natural landscape of ridges and valleys aids this demarcation³¹.

One clan usually occupied a ridge or part of a ridge. This now is the area in which a man from that clan may expect to obtain a right to cultivate and to raise stock. Formally, the land belonged to the head of the homestead. He in his turn allocates land to his wife or wives and keeps that part of the field closest to the gate for himself. Before they establish their own compounds, sons work on their mother's field(s). Below we will discuss how sons inherit the land³².

Land allocated to strangers

A person who comes to the area of a clan other than his own and asks for the land is called *jadak* (stranger). According to Luo tradition, it is difficult to refuse a stranger the land he requests to provide for his subsistence. It is this tradition that allows people to live among tribes or clans other than their own. Friendship and maternal connections, qualify one to ask for land from the landowners, and it is given on the basis of usufruct³³. In any case, such a transaction must be approved by the council of elders. The lands given to a stranger are usually within the territory of the clan. In return, the stranger must show solidarity and allegiance to the clan members. The stranger and his descendants have no right of inheritance; his children can only renew the usufruct right. The length of usufruct is indefinite, and this has led to many misunderstandings by the colonial and current government administration, and still complicates many land cases today.

The *jadak* tradition dates back to the time when a rich man counted his security and prestige by the number of followers he could attract to his holding. Elements of this still can be observed in the Luo virtue boasting custom. It is fair to say that the Luo encouraged *jadak* to settle among them and, until recently, a *jadak* was not normally turned out of the land 'given' to him, except in certain serious situations. According to some informants, the expression *chiem gi wadu* ('eat what you have with your neighbor') is strongly associated with the Luo concept of *jadak*. If, on the other hand, the clan in which a *jadak* was a squatter was at war with another clan, and he had shown bravery on the battlefield, his position was changed to that of landowner. After all, he had

³¹ Andersson, J.A. and M. Breusers (eds), *Kinship structures and enterprising actors: Anthropological essays on development*.

³² *Ibid*

³³ *Ibid*

fought for the land and was prepared to sacrifice his life for it, just in the same way as the ancestor of the present member did. The distribution of land to the *jadak* was not meant as an economic enterprise in a direct way, but as a means to achieve a higher status. The land was being valued as a source of wealth and as a means of subsistence, which may raise a person into an honorific, higher position. Land distribution was a vehicle for prestige and a means of protection³⁴.

Land allocated to slaves

Misumba is the word used to describe a servant or a foundling brought up as a foster child, or a slave in the proper sense of the word³⁵. Under the first meaning of *misumba*, a child, or a fully grown man, is assigned by the homestead head to the house of a *migumba* as if he were her son. A woman is regarded as a *migumba* if she has not had a male child. A *misumba* is then expected to fill the social position of a male child in the house of the *migumba*, as if he were that woman's actual son. In any case, a *misumba* inherits his foster mother's gardens and livestock, but his position with regard to the inheritance of his foster father's field (*mondo*) is like that of an illegitimate child. If the foster mother gives her *misumba* cattle to marry a wife, then he is expected to become a member of the clan, and his children will also be members of this clan. If, however, he should one day decide to return to his original clan land, then not only does he lose the land, but his children and their mother do also. The children are regarded as the legal descendants of the social father, or as an informant put it: 'their mother's bride-wealth was clan wealth'³⁶.

Luo land inheritance in relation to customary law

The system of land allocation by the father, while he is still alive, is important to consider, since it resembles the system of land inheritance. The principle of the division of land between brothers or sons in a monogamous family is rather simple and straightforward. Land conflicts usually arise between *nyiego* groups. In the case of two or three sons of the same mother, the senior son takes the center portion of the land in the homestead up to and beyond the gate or to

³⁴ *Ibid*

³⁵ Ochola-Ayayo, A.B.C., "Traditional ideology and ethics among the southern Luo". (PhD Thesis). P 131

³⁶ *Ibid*

the Luo kinship and land inheritance, the other sons then have the remainder of the land to divide among themselves. If the land is divided among the elder sons after they are married, and they take to living on their lands, it often happens that the youngest son remains in the father's compound to care for him in his old age. His inheritance is the last property called *mondo* (father's garden) and the remaining gardens of his mother³⁷

In the event of a father's death, then whoever remarries his wife as *jater* is the legal guardian of his fields and his children. A *jater* may take the widow to his own village or may live in the village of the deceased. The widow will continue to cultivate her dead husband's land. The *jater* may also cultivate these lands on a usufruct basis but must vacate them if ordered to do so when the sons of the deceased have married and established their own homesteads. In most cases, a *jater* is a classificatory father to the children, and he will fulfill his obligations to the latter according to law, but, should a *jater* be a stranger, then it is the duty of the clan elders of the dead man's lineage to watch him closely and to allocate the sons of the deceased their land³⁸. The *jater*, whether relative or stranger, has no permanent right whatsoever to any of the dead man's property, nor have the leviratic children (children born of the *jater*), unless there is no male heir. Once the eldest son has built his homestead, it becomes his duty to set up homesteads for his junior brothers. He should divide the land equally; or else the junior brothers may seek redress from the council of elders.

The right of inheritance also depends on the presence of ancestral graves on the land³⁹. Furthermore, if the ancestors conquered the land, a descendant can lay extra-strong claims to it⁴⁰. The land is inherited only through patrilineal relationships. A sole survivor of the grandfathers would then inherit all the grandfathers' land. A brother only inherits land belonging to a full brother if the latter does not have a male descendant. The eldest of the group of brothers is the

³⁷ Ochola-Ayayo, A.B.C., "Traditional ideology and ethics among the southern Luo". (PhD Thesis). P 129 and Wilson, G., *Luo customary law and marriage law customs*.p 13

³⁸ Anderson. *opcit*

³⁹ Shipton, P., "Debts and trespasses; land, mortgages, and the ancestors in western Kenya". *African Journal*.p77

⁴⁰ Ogot, B.A., *History of the southern Luo; migration and settlement*. P 222

temporary owner of the father's entire land and acts as arbitrator in disputes between the younger. A buffer zone is open land between family lands. Nowadays, buffer zones no longer exist. They have been allocated to certain homesteads. Further redress can be sought from the council of elders. The land belonging to a paternal uncle can only be inherited if he does not leave a son, or full or half-brothers. The principle of inheritance by the nearest agnatic kinsman operates throughout the clan, that is, if no heirs can be found from the father, grandfathers or great-grandfathers, then the nearest male relative to the deceased within his clan inherits. The sons, when they marry, share their mother's land. A mother usually gives her sons part of her garden at that time, but unmarried sons inherit those fields remaining at their mother's death. Fields that belong to daughters, (that is, the fourth wife) attached to the senior wife, who have no sons eventually go to the sons of the senior wife. The same applies to daughters (that is the fifth wife) attached to the second wife and daughters (the sixth wife) attached to the third wife, and similarly their sons will inherit the senior wife's fields if she has no son. The land given to the attached daughters by the first set of co-wives (first, second and third wives) is regarded as a permanent transfer. If both sets of co-wives have sons, the sons inherit the land in a way described below. If only attached daughters have sons, they inherit all the land belonging to the other co-wives as well.

In the event that a man dies without a male heir, then his land reverts to his father or nearest agnatic kinsman, except that portion allocated to his wife or wives provided they remain within the lineage of the deceased. In the case of a man dying without a son and his wife had been unable to provide a male child through another relationship, she may 'remarry' a girl, usually from her own clan, with the cattle of her dead husband or with her own cattle. She then calls a close agnatic kinsman of her deceased husband to cohabit with this girl to serve as genitor. Children of this union are regarded as the legal sons of the deceased husband, and they will inherit his remaining wealth: land, cattle, and other personal properties. This form of marriage is what anthropologists call 'ghost marriage'⁴¹.

Inheritance of land in a polygamous complex

⁴¹ Ocholla-Ayayo. *Opcit.*

In the case of a polygamous complex, the land is divided along the same lines, except that, within the village, the sons claim the area contiguous to the houses of their mothers. Each wife and her sons are regarded as a group with similar rights as a son of a sole wife: children of the senior wife are given that portion of the total area that would have been given to the senior son in a monogamous family. The sons of the second wife and the sons of the third wife lay claim to those portions that would have fallen to the second and third sons, respectively, in a monogamous situation.

There is, however, a further complicating factor and that concerns situations where there are more than three co-wives (perceived as attached daughters). These co-wives are attached to the first three sets. The sons of the senior wife inherit as a group with the sons of daughters attached to the senior wife; sons of daughters attached to the second wife and the sons of daughters attached to the third wife will also inherit as groups with the sons of the second and third wives respectively. The law of inheritance may become confusing if one does not understand kinship ideology and terminology used to describe the relationships of the persons involved.

CONCLUSION

This paper has shown that the Luo are strongly attached to the land, as land appears to mean more than is generally assumed. The land has different meanings and is not just a resource that is required for agricultural production. A whole complex and dynamic set of social relationships is built around land, tying people together and defining their position vis-à-vis each other. Over the years and to a large extent still, the key principle is that one can and could gain and maintain access to land by membership of a clan. Rights of Luo kinship and land inheritance, individuals are not thought sacrosanct; rather, they interlock with the rights of others and overlap with those of families and wider groups. A place on the landscape implies a place in a kin group, and vice versa. Patrilineity, virilocal residence and the subdivision of holdings devolving from one generation to the next remain the socially defined norms in Luo country. The multiple meaning of land and the intrinsic complexities of Luo land tenure arrangements are often misunderstood by intervening agencies that aim to contribute to improving the conditions of life in Luo land. This paper has also shown that women do not normally inherit cultivation rights but acquire

them mainly through marriage. Women's rights are only ancillary, depending on allocations from their husbands. Their position regarding land can also be seen from the angle of matrilineal relationships in a patrilineal society. Women are the ones who work the land most of the time and obtain rights in their post-marital homesteads by devolution from their mothers-in-law.

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