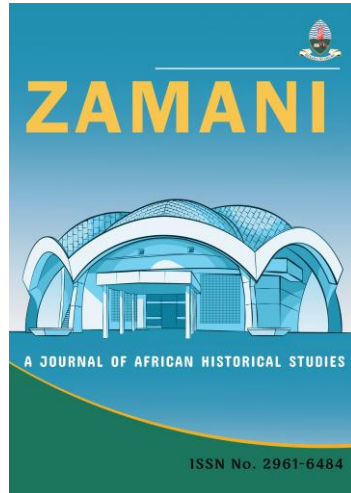


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Author: Juma Marmo

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Legal Provisions and Administration of Land Disputes in Kiteto District, ca. 1970s – 2000s: The Missing Linkage

JUMA MARMO

Abstract

There have been a series of legal interventions on land use in the post-colonial Tanzania to create a good land administration and management in order to end land use conflicts. Scholarship on the legal aspect of land use indicates that legal interventions did not provide lasting solutions to land use conflicts because of their structural and systemic arrangements. In addition, existing scholarship has little focus on the linkage between law enforcement machinery, the peoples' level of understanding on land laws, and the occurrence of land use conflicts. This paper discusses the violation of laws by peasants, pastoralists, and government officials at different levels and its connection to the outbreak of land use conflicts between peasants and pastoralists in the Kiteto district. Using archival and oral sources, I argue that land use conflicts between peasants and pastoralists in Kiteto are the outcome of violation of land laws by the major stakeholders at different levels, inaccessibility to the legal services, poor understanding of the land laws and lack of coordination among the respective legal organs. This paper contributes to the historiography of legal interventions in conflict resolution by bringing forward the position of major stakeholders in implementing land laws.

Keywords: land laws, land administration, conflicts, peasants, pastoralists, Kiteto.

About the author:

JUMA MARMO is a lecturer in history at the University of Dar es Salaam, Tanzania. He holds a PhD in history from University of Dar es Salaam. Correspondence email: jumamarmo@gmail.com | ORCID ID: 0000-0002-8456-7260

Introduction

There has been a massive wave of reforms on land laws in Africa since the end of the Cold War. The reforms aim invariably at securing the rights of users (both local users and external investors) to reduce land conflicts and improve land governance due to the neo-liberal development policies.¹ Tanzania is one of those African countries where several legal

¹ Shinichi Takeuchi ed., *African Land Reform Under Economic Liberalisation: States, Chiefs, and Rural Communities* (Singapore: Springer, 2022).

interventions on land have been undertaken to address the recurring land conflicts and to facilitate high land productivity for both individual livelihood and national development. Legal interventions were used as a means of facilitating new land reforms. In the early 1970s, Tanzania introduced some legal interventions on land issues as a means of centralizing land administration and land allocation. However, a new wave of land reforms was officiated in 1983 with the opening up of private land ownership after more than two decades of African Socialism. The reform came about as a response to an increase in the number of conflicts over land in the late 1980s caused by private land ownership.² The legal land reforms in Tanzania aimed at striking a balance between the new legal framework for a land market and the protection of the rights of vulnerable groups.³ Some of these laws include the *Ujamaa Registration Village Act* of 1975, which gave village governments the responsibility of allocating and controlling land in their areas. This was followed by *the Regulation of Land Tenure (Established Villages) Act* of 1992, which abolished customary land rights and the authority of the ordinary court of law over land matters. Recently the Tanzania government passed the 1999 *Village Land Act*, which vested the power of land allocation to the village general assembly—that earlier had been replaced by the village government.

Based on Ugandan experience, Jean-Claude Ashukem argues that Article 237(4) of the Constitution and Section 5(1) of the *Uganda Land Act* of 1998 do not adequately protect customary land tenure. Insufficient legal protection has led to local communities being frequently dispossessed of their customary land rights during land grabbing due to the lack of ownership certificate.⁴ Additionally, Thomas Lavers, in his study on the ‘Land Rights of Ethnic Minorities under Federalism,’ contends that Ethiopian land laws have been ambiguous and have not consistently

² Rasmus Hundsbaek Pedersen, “Tanzania’s New Wave Land Reform: A Matter of Institutionalisation”, Working Paper, Danish Institute for International Studies (DIIS), (2014), 5. <https://www.diis.dk/en/activity/tanzanias-new-wave-land-reform-a-matter-of-institutionalisation> Accessed on November 1, 2024.

³ Pedersen, “Tanzania’s New Wave Land Reform,” 6.

⁴ Jean-Claude N Ashukem, “Land Grabbing and Customary Land Rights in Uganda,” *International Journal on Minority and Group Rights* 27, no. 1 (2020): 121-147.

defended the land rights of non-indigenous minorities.⁵ Furthermore, Ambreena Manji argued that the new Kenyan land laws of 2012 are neither redistributive nor transformational. The new law has maintained past practices such as the promotion of land markets, individualization of land tenure, lack of engagement by legislators, and little participation by citizens.⁶ On his side, Sam Moyo using experience from Zimbabwe argues that the African state has neither promoted equitable access to land through redistributive reforms nor progressive land tenure reforms. This is because existing legal frameworks and institutions for managing land reform tend to protect the interests of those with disproportionately larger land rights, including property rights derived from colonial expropriation, rather than expanding the productive capacities of the poor.⁷

Scholars such as JK van Donge, Suzana Sylvester, and Rasmus Hundsbæk Pedersen see land conflicts in Tanzania as a product of legal deficiencies and top-down management in the legal service.⁸ Donge argues that, under customary land laws, land conflicts were resolved by more authoritative binding decisions, which lacked legal justice.⁹ As a result, people channelled their cases through the government's legal system. Sylvester adds to this by arguing that the problem of legal systems in Tanzania was based on centralization whereby the law empowered the President to own land for the Government rather than decentralizing it to the lower organs of people's representation like the village assemblies and district councils.¹⁰ Anne Fitzgerald also adds that the new land policy and land laws retained a radical title to land with the President on behalf of the people. The village land administration has little support from the District

⁵ Thomas Lavers, "Responding to Land-Based Conflict in Ethiopia: The Land Rights of Ethnic Minorities under Federalism," *African Affairs* 117, no. 468 (2008): 462-484.

⁶ Ambreena Manji, "The Politics of Land Reform in Kenya 2012," *African Studies Review* 57, no. 1 (2014): 115-130.

⁷ Sam Moyo, "Land in the Political Economy of African Development: Alternative Strategies for Reform" *Africa Development* 32, no. 4 (2007): 1-34.

⁸ JK van Donge, "A Legal Insecurity and Land Conflicts in Mgeta-Uluguru Mountain in Tanzania," *Africa Journals of the International Affairs Institute* 63, no.2 (1993): 202-205.

⁹ Donge, "A Legal Insecurity and Land Conflicts in Mgeta-Uluguru Mountain in Tanzania," 203.

¹⁰ Suzana Sylvester, "Land Tenure Reforms and Investment in Tanzania" (MA Dissertation, University of Dar es Salaam, 2013), 23.

Councils to manage those responsibilities in resolving land use conflicts. Alden Willy points out that the President may take over the management of lands from the Village Assembly in the national interest. At the same time, the Village Assembly only has the power to approve or reject the removal of land from its domain by the State.¹¹ Furthermore, Willy argues that the Tanzanian legal system is overly bureaucratic and it lacks sufficient resources to administer the land problems.¹²

Issa Shivji, evaluating the 1975 *Village Land Registration Act*, argues that the *Act* delimited the territorial jurisdiction of villages. This is because the Village Assembly was left with very little power while the Village Council was subject to the overarching powers of district councils, district commissioners, and directions from the Minister.¹³ Juan José del Valle Coello views the 1999 *Village Land Act* in Tanzania as weak because it had an awkward combination of decentralized decision-making with highly centralized, and arguably undemocratic or inefficient elements. For instance, Village Councils can approve or reject transfers of village land of sizes up to 250 hectares. However, any transfer greater than that is handled by the Minister for Lands robbing the village a say on the matter.¹⁴ The legal reforms in 1999 were an attempt to commoditize land in a free-market system and make it accessible to foreign investment following the economic liberalisation. After these reforms, commercial agriculture has been a pretext of grabbing land from communities and allocating it to big companies. Most of the land used for animal pasture is seen as idle or bare land, hence suitable for investment.

The foregoing literature has not examined three issues: firstly, it has not addressed the position of law enforcement machinery such as the village land committees, local courts, land tribunals and their contribution to land use conflicts. Secondly, the literature has not taken into account the

¹¹ Anne Fitzgerald, "Wearing an Amulet: Land Titling and Tenure Security in Tanzania" (PhD Dissertation, Maynooth University, 2017), 90.

¹² Fitzgerald, "Wearing an Amulet," 92-94.

¹³ Issa G Shivji, "Land Tenure Problems and Reforms in Tanzania," Sahara and Sahel Observatory Sub-Regional Workshop for East Africa on Land Tenure Issues in Natural Resource Management, Addis Ababa, Ethiopia, March 11-15, 1996, 6.

¹⁴ Juan José del Valle Coello, "Decentralization from Above, Dispossession by Recognition: Contradictions in Tanzania's New Wave Land Reforms," *Indiana University Journal of Undergraduate Research* 1, no.3 (2017): 54-61.

peoples' level of understanding of land laws and their contribution to land use conflicts. Thirdly, the literature has not addressed how the land use conflicts between peasants and pastoralists relate to legal interventions. These are the issues which this paper attempts to discuss. Additionally, this paper attempts to stand out by explaining land use conflicts in Tanzania, and Africa at large, by deviating from legal deficiency syndrome. Instead, it focuses on violation of land use and procedures by the major land actors.

Finally, for analytical purposes, the paper adopts Peter Hocht's conflict theory, which argues that conflicts arise when available resources are concentrated in the hands of a few. The theory focuses on understanding how conflicts start, differ, and impact on societies. However, internal conflicts and pressure led society to develop norms for managing conflicts. These norms include laws and policies used to handle tensions in a way that preserves the integrity of relationships.¹⁵ Additionally, formal authorities and conflict resolution systems should be established. These authorities and systems should identify the causes of conflicts, prevent conflicts, and manage peace-making processes. If laws and policies dealing with land conflicts suffer from poor implementation and bad governance, conflicts over resources will occur. This theory is relevant for examining land conflicts in Kiteto due to the coexistence of peasants and pastoralists, each with differing land interests that make conflicts inevitable. To address these conflicts, the government has devised various mechanisms, including laws, policies, and conflict resolution institutions. However, poor understanding of the laws and violations by the land actors have exacerbated the conflicts.

Context and Methods

Kiteto District is one of northern Tanzania's five districts that form the Manyara Region. The district's administrative headquarters are in the Kibaya Township, 210 km from Babati, where the regional headquarters of

¹⁵ Peter Hocht and Pierre-Yves Le Meura, "Property Relations by Other Means: Conflict over Dryland Resources in Benin and Mali," *European Journal of Development Research* 5, no. 22, (2010): 643–659.

Manyara is located.¹⁶ Before the colonial occupation, Maasai pastoralists dominated the Kiteto district. During the colonial and post-colonial periods, the district peasant population increased because of different factors. Peasants were attracted by the availability of arable land suitable for agriculture and the government campaign to open agriculture in Maasai land. The paper builds its account from a research work that included a review of archival sources and fieldwork interviews conducted in Kiteto district. Archival research was useful in understanding the legal interventions on land issues, their implementations, and their efficacies. The archival sources were collected from Kiteto villages, wards offices, courts, district departments, the National Archives of Tanzania in Dar es Salaam, and the Records Centres of Arusha and Dodoma. Interviews were conducted to gain people's understanding of land laws and procedures of land allocation, management, and administration. These research methods are useful in exploring the historicity of land use conflicts, which cannot be properly understood without corroboration of the evidence gathered from archives, and interviews. The evidence from these sources indicates that the violations of land laws and procedures as well as poor understanding of the land laws among the stakeholders caused the endless land use conflicts in Kiteto district.

Violation of Legal Procedures and Land Use Conflicts in Kiteto, 1970-1990

In 1975, the government enacted the *Ujamaa Village Registration Act* to implement its rural development agenda. The *Act* empowered the village governments to control and allocate land in their areas. Through this *Act*, village governments were vested with powers of both mediation and appellate. On behalf of the village government, the Village Land and Environmental Committee was responsible for allocating land and resolving conflicts through mediation rather than a judicial approach. With regards to the Kiteto district, the *Act* was violated by the Village Land and Environmental Committee as in many cases the committees ruled out in

¹⁶Juma Marmo, "The History of Conflicts over Land Use between Pastoralists and Peasants in Kiteto District, Northern Tanzania: 1945-2016, (PhD Thesis, University of Dar es Salaam, 2021), 39-40.

favour of those who managed to bribe the members.¹⁷ In some areas, the committees were condemned for their underperformance and corruption contrary to the law.¹⁸

Furthermore, the village chairperson and village Executive officers violated procedures of conflict resolution resulting in losing rights to some people who could not afford to bribe. Peasants continued to grab the former pastoralists' grazing land and opened their farms. Evidence reveals that the peasants from Kondoa, Arusha, and Meru grabbed land in Chamburi and Isusunya villages without any legal actions being taken by the village governments.¹⁹ In Mbigiri, Olboloti, Chumburi, and Isusunya villages, peasants and pastoralists confronted the central government when the village government illegally allocated the grazing land to the peasants in the process of implementing the *Ujamaa* program.²⁰ There were reactions and counter-reactions between the pastoralists and the village governments as the latter defended their decisions, arguing that the *Ujamaa* program and *Operation Vijiji* were national programs for building a self-sufficient economy. The government campaign of settling the rural population in the planned villages was an important idea as far as rural development is concerned. Nevertheless, during the implementation of the program, the village government leaders violated the procedures of land allocation. Parallel to that, the program did not take into account that the peasant and pastoral groups could not co-exist without a clear demarcation between grazing land and agricultural land.

In 1985, the conflict occurred between the villagers of Kibaya and Partimbo. In this conflict, Kibaya villagers had two complaints: firstly, they were not involved in the establishment of the boundaries that separated Partimbo from Kibaya. According to them, the boundaries separating the two villages favoured the Partimbo village and the ethnically Maasai community. Secondly, they had their farms in Partimbo before it became an independent village. But, after the official establishment of Partimbo

¹⁷KDC, Malalamiko Mbalimbali ya Ardhi, 1981; Interview with Yohana ole Bakari, Retired Partimbo Village Chairperson, Partimbo Village, 20 October, 2018.

¹⁸Interview with Tipula Manyanga and Jafari Shaban, Nharti Village, 10 September, 2017.

¹⁹KDC, Kijiji cha Ujamaa Chamburi/Isusunya: Maombi ya Kupimiwa Eneo la Kijiji, 14th, June, 1973. See URT: Ofisi ya Waziri Mkuu na Makamu wa Pili wa Rais, Maendeleo ya Mkoa wa Arusha, Migogoro ya Mipaka, 1975.

²⁰URT, Uanzishwaji wa Vijiji vya Ujamaa Mkoani Arusha, 1974.

village, the peasants were stopped from carrying out agriculture in Partimbo. They started to question the establishment of Partimbo village, claiming that the division of Kibaya village into two villages jeopardized their land rights and water sources. About 114 peasants of Kibaya lost 1,154 acres of land.²¹ After being evicted from their farms in Partimbo, the peasants were ordered by the Kiteto District Commissioner to apply for new farms but they were told that their applications might be approved or rejected. In the same year, conflicts occurred between two peasants and the villagers of Partimbo. The two peasants had removed the boundaries and invaded the pastoralists' grazing land in Partimbo village. Although the case was reported to the District Commissioner's Office, the peasants continued to expand their farms in Partimbo village. They claimed that they had farms in Partimbo before Kibaya was divided into two villages. Since they had ignored the order, they were arrested and given seven days to stop all activities in the areas in question. Because the areas had been declared grazing areas, Musa and Marijani—the farmers in question—surrendered their farms to the Partimbo village government.²² This implies that there were governmental and individualistic violations of legal procedures in the demarcation of the boundaries. The village and ward leaders who were given the task of administering the laws and guidelines of land management and allocations violated the laws. In addition, the village governments responsible for compensating the peasants who lost their farms during the creation of the village boundaries, failed to perform their duties. This fanned the hostility which, with time, transformed into land use conflicts between the peasants and pastoralists.

In 1992, the *Presidential Commission of Inquiry into Land Matters* realized several shortcomings in land laws and police.²³ These shortcomings were conflicting land laws and the lack of a clear land policy. This influenced the government to enact and amend some land laws and

²¹Juma Marmo. "The History of Conflicts over Land Use between Pastoralists and Peasants in Kiteto District, Northern Tanzania: 1945-2016," (PhD Thesis, University of Dar es Salaam, 2021), 175-177.

²²KDC, File, Ardhi: The Land Case between Husein Musa and Said Marijani and the Villagers of Partimbo, 1975.

²³The United Republic of Tanzania, hereafter URT, *Presidential Commission of Inquiry into Land Matters*, Monduli and Kiteto in Arusha Region, Vol. 1, 6-10.

draw up a land policy.²⁴ Consequently, in 1992 the government passed the *Regulation of Land Tenure (Established Villages) Act*, which abolished customary land rights, thereby abolishing the authority of the ordinary court of law to make rulings over land matters and ending the proceedings pending in normal courts of law.²⁵ In addition, the law banned the enforcement of any court decisions or decrees in all land matters because land matters would be resolved by the land tribunals. However, the High Court ruled that the *Regulation of Land Tenure (Established Villages) Act* of 1992 was an unconstitutional legislation.²⁶ After the abolition of normal court in dealing with land issues, many people file their cases in the court of law as criminal cases. But, for the Kiteto District, the Village Land and Environmental Committees were the only organs that were dealing with land issues at the grass-roots level.²⁷ These committees had no judicial power, knowledge, and experience in resolving land conflicts, and funds with which to hear land cases. It is from this vacuum that many people in the Kiteto district file their cases in the court of law as criminal cases. Yohana ole Bakari notes that “in Kiteto District, peasants used the opportunity to violate the laws and procedures of land allocation by grabbing the pastoralists’ land and many land cases were filled in the courts of law as environmental destruction-related cases where its fine was only 5,000/= shillings, which the peasants paid and continued with land grabbing.”²⁸ This light punishment was used as an opportunity by the peasants from the neighbouring districts such as Kongwa, Kondoa, and Gairo to migrate to Kiteto District and occupy land illegally.²⁹

In 1996, Kiteto District made a by-law called Environmental Degradation By-law No. 6 of 1996.³⁰ The by-law was intended to address the growing environmental degradation caused by deforestation in the process of establishing maize farms by immigrants from other districts. According to this by-law, any person who was involved in illegal bush

²⁴URT, *Presidential Commission of Inquiry into Land Matters*, Vol, 11.

²⁵Ngugi Josephat Maina, “Colonial Legacy and land Conflicts in Kenya: The Case study of Rift Valley Province” (MA Dissertation, University of Nairobi, 2001), 30-31.

²⁶Maina, “Colonial Legacy and land Conflicts in Kenya,” 33.

²⁷KDC, File, Ardhi, Migogoro ya Ardhi, 1998.

²⁸Interview with Yohana Ole Bakari, Namelock Village, August 25, 2017.

²⁹Interview with Michael Lepunyati, Namelock Ward, October 17, 2017.

³⁰KDC, File, Mazingira na Tozo Mbalimbali, 1997.

clearance would be fined 5,000 shillings or imprisoned for six months. The punishment was very light as wealthier peasants could pay the fine immediately and continue grabbing more land. Therefore, the Environmental Degradation By-law No. 6 of 1996 only dealt with environmental degradation. It did not limit or ban peasants from the neighbouring districts from entering Kiteto and grabbing land, nor did it limit their illegal settlement in grazing areas, which was a major cause of land conflicts between peasants and pastoralists in the district. According to the procedures, peasants from the neighbouring districts would have to apply for land in the Kiteto district. The application may be approved or disapproved. The Kiteto district village leaders failed to control immigrants from the neighbouring districts who were involved in land grabbing. This triggered the conflicts between peasants and pastoralists.

From 1996, Kiteto district continued to witness the illegitimate allocation of land by the village governments.³¹ The case of Pehutu Semeli (a pastoralist from Olbolot village) and Rashid Seya (a peasant from Kiperesa village) over 60 acres of land illustrates this. Semeli claimed before the Kiteto primary court that his land in Olbolot village had been encroached on by Seya on 30th August 1998.³² The ruling by the primary court was made in favour of Semeli, who was granted the right to own the land. This decision was rejected by Seya, who appealed it and claimed that the land in question had been allocated to him by the village government of Kiperesa in 1992. After making a thorough analysis of the evidence, which had been presented before the court, and after assessing the proceedings at the primary court, the Kiteto District Court realized that Semeli had not provided clear evidence. The missing evidence included the year in which the said land had been allocated to him and the evidence from the District Land Surveyor and Cartographer, which would have shown whether the land in question belonged to him. Furthermore, he did not have any legal document showing he owned the land.³³ Despite these shortfalls, the Kiteto Primary Court granted the land to Semeli. A similar

³¹Interview with Mohamed Mwamba, Kibaya Village, on January 10, 2018.

³²JMT, Katika Mahakama ya Wilaya ya Kiteto-Kibaya: Shauri la Madai Rufaa Na. 31 ya 1999 Kutoka Shauri la Awali la Madai Na 41 ya 1999 la Mahakama ya Mwanzo-Kibaya Mjini, Kati ya Rashid Seya Muomba Rufaa na Pehutu Semeli Mjibu Rufaa, 1.

³³JMT, Katika Mahakama ya Wilaya ya Kiteto-Kibaya, Shauri la Madai Rufaa.

conflict occurred in the Namelock ward between Ngobuku Ole Sinyai (a pastoralist) and Omari Ramadhan (a peasant). The former claimed that the village government of Namelock in 1995 had allocated about 500 acres of land to him.³⁴ Although he had submitted before the court documents such as the village government's minutes, and the District Land Committee minutes which showed that the committee had approved the allocation of the land to him, the court concluded that Ngobuku was not the lawful owner of the land because he had not developed the land for over three years. Thus, Ramadhani was granted the land. This implies that both the court and the village government leaders wrongly conceived the concept of land use. In their views, the right to own land was determined by an individual's ability to cultivate it. Contrary to this, such land was counted as an open land. It was from this perception that the pastoralists were victimized and peasants grabbed their grazing lands.

In the period between 1997 and 1999, Kiteto District was affected by land cases caused by double allocation of land. The village leaders violated the laws and procedures by allocating the land to more than one person in their interest. The 1997 land case between Mario Ole Maina, a pastoralist, and Simon Chumbe, a peasant of Ndotoi village, was an exciting case study of how the two parties were granted land rights by the village government and the hamlet chairperson, contrary to the land law.³⁵ Simon Chumbe was allocated land by the Village Land Committee, while Ole Maina was allocated the same land by a hamlet chairperson.³⁶ Both authorities violated the land allocation laws and procedures because it was the same piece of land that was allocated to two different people. The piece of evidence submitted to the Kiteto District Court also showed a similar case in which the Kimana and Mbigiri village leaders had been involved in a double allocation of land. This happened when about 1,000 hectares of land, which had been allocated to Kipareni Ole Alambaiyo by Mbigiri village in 1990, were allocated by Kimana village to 79 peasants.

³⁴JMT, Katika Mahakama ya Mwanzo Kibaya, Wilaya ya Kiteto, Shauri la Daawa Na. 27 ya 1996, Kati ya Omari Ramadhani, (Mdaiwa) and Karen Ole Bakari, (Mdai),1.

³⁵KDC, File, Baraza la Ardhi Kata ya Laiseri, Yah: Mgogoro wa Ardhi kati ya Ndg. Mario Ole Maina (Mlalamikaji) na Simon Chumbe, (Mlalamikiwa), Kitongoji cha Ndotoi, Kijiji cha Laiseri, on February 6, 1996.

³⁶JMT, Katika Mahakama ya Wilaya ya Kiteto-Kibaya, Shauri la Madai Rufaa Na. 31 ya 1999, 2.

Although the evidence presented before the Kiteto primary court such as photocopies of the minutes of the village council, the document for processing the title deed, and the communication by the defendant complaining about those who were accused of being invaders, Alambaiyo lost the case. However, after lodging his appeal before the Kiteto District Court, it was ruled that the allocation of the land by the Kimana Village Land Allocation Committee to the plaintiff in 1990 was lawful. The plaintiff (Alambaiyo) would have land rights until such time when the same land allocation committee would revoke them. The Kimana village authority had no power to revoke and take the piece of land, which had been allocated to the plaintiff. The court's ruling affected 79 peasants of Kimana village who were considered intruders and who were ordered by the court to vacate the land soon after the harvest season. Therefore, peasants became the victims of the unlawful double allocation committed by the village authorities. The critical issue here is that the village government leaders were entrusted with powers to administer the land allocation based on the legal procedures at the village level. However, they violated the procedures because of personal gain which can be considered as corruption. Leaders' personal interests victimized the villagers and created endless conflicts.

The 1999 Village Land Act and Escalation of the Land Use Conflicts

The inefficiency of village governments, the challenges facing the courts in resolving conflicts over land use, and the persistence of conflicts in Tanzania before 1999, made the government enact a new land law called the *Village Land Act, 1999*. The *Act* provided the basis for managing and administering land in the villages and for settling disputes at different levels, namely at the village, ward, district, zonal, and national levels.³⁷ This *Act* gave the power to the people at the grassroots so that they could have a voice in land administration, rights of allocation, and selling. The *Village Land Act* vested the power of land allocation in the village general assembly, which replaced the village government. According to the *Act*, the village assemblies were given the power to allocate land that did not

³⁷Abdon Rwegasira, *Land as a Human Rights, A History of Land Laws and Practice in Tanzania* (Dar es Salaam, Mkuki na Nyota, 2012), 91.

exceed 50 acres.³⁸ An application for land that exceeded 20 acres but did not exceed 50 acres had to be submitted by the village assembly to the District Land Allocation Committee for decision.³⁹ The application was supposed to be accompanied by the recommendation of the village assembly. The land application, which exceeded 50 acres, was submitted to the Land Commission and was supposed to be accompanied by the recommendation of the village assembly. In addition, the law focused on land tenure security and people's participation in land administration and dispute settlement.⁴⁰ Secondly, the civil court on land matters was replaced by land tribunals which were established at different levels. Although the law had been enacted, land conflicts continued to increase in number due to poor understanding and violation of the law by stakeholders.

In Kiteto District, villagers, hamlet leaders, village government leaders, and ward leaders, violated the *1999 Land Act*. In some areas, when the land application process was completed, land allocation was done by hamlet leaders, contrary to the *Act*. Hamlet's chairpersons had no idea about the actual boundaries separating grazing land and agricultural land. The land allocation done by hamlet leaders caused conflicts between peasants and pastoralists as well as among family members. Mwanahamisi Masawe had this to say: "Hamlet chairpersons allocated land in their interests. They did not have enough knowledge of the exact measurement of acres of land and boundary marks. This led to the allocation to people land which had been reserved for animal grazing or other public purposes".⁴¹ Masawe's argument is also reflected in the case of the pastoralist, Ali Lengasa, and the peasant, Mariam Mohamed, of 2012. They disputed over a piece of land, which had been allocated to them by the hamlet chairperson. They had no idea about the actual boundaries and the size of such a land. They claimed that, during the allocation of the land, there were no boundary marks shown by the hamlet chairperson. They were just allocated the land, which both of them cleared.⁴² In some areas,

³⁸URT, *The Land Act of 1999* number 5, Sect.32 (1-10) and Sect.75-76 of Land Rule 2002.

³⁹URT, *The Land Act of 1999* number 5.

⁴⁰Rwegasira, *Land as a Human Rights*, 91-92.

⁴¹Interview with Mwanahamisi Masawe, Partimbo Village, September 18, 2017.

⁴²URT, Kiteto Primary Court, the Case between Ali Lengasa and Mariam Mohamed, 2012.

peasants grabbed land, contrary to the land law. Some of the land, that had been grabbed, was former grazing land, something that caused disputes between peasants and pastoralists. The table below shows the land which was grabbed between 2002 and 2014.

No.	Peasant's Area of Destination	Area Invaded	Size of a Farm (in Acres)
1	Emarti Village	Olmotio	170
2	Emarti Village	Olmotio	80
3	Emarti Village	Olmotio	90
4	Emarti Village	Olmotio	55
5	Emarti Village	Olmotio	55
6	Panda Mbili	Mnyangweni	130
7	Panda Mbili	Mnyangweni	160
8	Mnyangweni	Mnyangweni	60
9	Mnyangwen	Mnyangweni	61
10	Chiloya	Mnyangweni	70
11	Mnyangwen	Mnyangweni	60
12	Emarti-Kati	Mnyangweni	170
13	Emarti-Kati	Mnyangweni	300
14	Mnyangweni	Mnyangweni	58
15	Mnyangweni	Mnyangweni	70
16	Emarti-Kati	Zahanati	100
17	Emarti-Kati	Zahanati	120
18	Mwanza	Mbigiri	160
19	Emarti-Kati	Mbigiri	60
20	Kongwa	Mbigiri	2000
21	Emarti-Kati	Emarti-Kati	80
22	Kongwa	Mnyangeni	80
23	Zahanati	Olmotio	53
24	Magungu	Kilahi	80

Figure 1: The Post 1999 Land Act Land Grabbing (between 2002 and 2014).

Source: KDC: *File Ardhi, Wavamizi wa Ardhi Kiteto, 2002*

Figure 1 above shows the extent to which the land-grabbing process peaked between 2002 and 2014. This was partly attributed to the inefficient village government leaders who were entrusted with the power

to protect and enforce the laws guiding land allocation. In connection with this, the land greed among the peasants stimulated them to commit illegal land occupation in many parts of the district.

In some areas, peasants and pastoralists violated the land law in the process of selling land. According to Stanslaus Emanuel, the Maasai men used to sell their land to the peasants without involving their families. The village leaders supported such illegal land selling. When the peasants started to cultivate such land, Maasai families emerged and claimed that the land belonged to them.⁴³ In conflicts of that nature, the village leaders were usually at the centre of the conflicts.⁴⁴ The village leaders knew that land selling should involve two parties: the family of the buyer and the family of the seller. The latter had to involve the whole family in the process of selling land. On the other hand, the process of selling and buying land had to involve witnesses and had to be approved by the village authority. Thus, both village leaders and individual (peasants or pastoralists) families in some parts of Kiteto District violated land-selling procedures.⁴⁵ In one of the many cases, contrary to the law, Partimbo village leaders approved the illegal land deals made by Rashid Ole Sanjaby, who in 2006 sold 22 acres of land to Abimael Lori at 330,000 shillings in support of the village leaders without involving his family.⁴⁶ To complete the land-buying process, Lori went to the family of Sanjaby and asked them to sign the document, which was partly signed by Sanjaby. But the Sanjabys' family refused to sign the document since their father wanted to sell the land without their consent. Lack of family consent made the whole sale illegal.⁴⁷

Finally, the family was requested to repay Lori's money. However, they did not repay the money because they did not have money. Another agreement was signed and required Lori to use the said piece of land for three years, from 2007 to 2009, to get back his money. At the end of the three years, however, Lori refused to return the land to the Sanjaby's

⁴³Interview with Stanslaus Emanuel, Ilera Village, February 2, 2018.

⁴⁴Interview with Yohana Ole Bakari, Namelock Village, September 28, 2017.

⁴⁵Interview with Bakari Msindo, September 23, 2017.

⁴⁶URT, District Land and Housing Tribunal at Simanjiro: Appellant No. 49 of 2004, Abimaeli Lori (Appellant), Mwanaidi Omari, Stuka Abdala, and Rajab Khatibu.

⁴⁷URT, District Land and Housing Tribunal at Simanjiro.

family and claimed that the land was his property. Sanjaby's family filed a case at the Partimbo Ward Tribunal and Lori won the case. Dissatisfied with the sentence, Sanjaby's family appealed the sentence to the District Land and Housing Tribunal. But the family did not provide clear evidence of land ownership before the tribunal. Once again, Lori won the appeal and was given the land. The implication here is that the village leaders in many areas of the Kiteto district were responsible for providing clear guidelines in the process of land selling and buying. Contrary to the law, they allowed illegal land deals tendered by peasants and pastoralists. On the other hand, poor understanding of the law among the Maasai men was taken as an opportunity by the peasants who buy land illegally.

In some villages, the practice of selling land without the consent of family members was driven by the Maasai people's greediness; they wanted quick money to increase the number of their herds of cattle. Some Maasai pastoralists obtained money through pretence contrary to the law.⁴⁸ For example, in the case of Kaleya Mburu (a Maasai) and Shedi Masomane (a peasant), Mburu had rented 10 acres of land at the cost of 300,000 shillings approved by the hamlet chairperson on 12th February 2012. Soon after Shedi began to cultivate his land, Mburu's brother who claimed that the farm belonged to their family stopped him. After investigations, it was found that the farm was a family property and not Mburu's personal property. Chedi demanded his money back. Mburu refused to repay the money.⁴⁹ He was arrested by militias and taken to the Kiteto Primary Court. Mburu was found guilty and sentenced to one year in prison and ordered to pay 300,000 shillings as a fine. A similar case was adjudged in Samantwa village in 2014 and it involved Kana Ramadhani, the plaintiff, and Mahimbo Selestine, the defendant. The plaintiff had paid 2,425,000 shillings to the defendant as rent for 100 acres of land.⁵⁰ When the cultivation season began, a group of *Morani* attacked and beat the plaintiff's servants, claiming that the farm was part of their grazing

⁴⁸URT, Kiteto Primary Court at Kibaya, Case of Obtaining Money through False Pretence C/S 302 of the Penal Code, (Accused) Kaleya Mburu Vs Shedi Masimane the (Plaintiff), (2011), 1.

⁴⁹URT, Kiteto Primary Court at Kibaya, Case of Obtaining Money through False Pretence.

⁵⁰URT, Samatwa Ward Land Tribunal: Kesi ya Madai kati ya Kana Ramadhani (Mdaiwai) na Mahimbo Selestine (Mdai), 2014.

reserve. The defendant was arrested. The case was first filed at the ward tribunal; later it was referred to the primary court at Kijungu. Having listened to the evidence presented by the councillor, the Village Executive Officer and the Village Chairperson as well as the court were convinced that the contested piece of land was the family's grazing reserve. The Court ruled the case in favour of the plaintiff. The defendant paid a fine amounting to 200,000 shillings, in addition to the full amount of rent, which he had received from the plaintiff.⁵¹ The Maasai community was driven by their traditional economic forces, which were based on cattle. Their interest was to increase the herds of cattle at any cost. It was from this pressure that they involved in illegal land deals with the peasants, which finally caused land conflicts.

Another violation of land law happened during land renting. Pastoralists rented their farms to peasants without following due process.⁵² Although *the 1999 Land Act* stipulated clear land renting procedures, in some villages in Kiteto District, peasants, and pastoralists did not follow such procedures. They rented land in illegal ways. Illegal land renting became common in 2012 in Kiteto District and this was the period when the Maasai, whose prestige was traditionally symbolized by large herds of cattle, had turned to land acquisition. In many areas, peasants and pastoralists concluded a 'two-bag contract'. This was a contract through which the peasants agreed to use the Maasai's land in exchange for two bags of maize per acre at the end of the season. Through this contract, the Maasai rented large acres of land to the peasants.⁵³ However, the problem was that in the event of crop failure because of bad weather, the peasants did not honour the contract after the harvest season. The Maasai never accepted any excuse from the peasants.⁵⁴ This generated open conflicts between them because most of the contracts were not documented.

Another local way which was used by peasants to obtain land, was a 'three-year agreement'. As attested from people's experiences from the

⁵¹URT, Kijungu Primary Court: Kesi ya Madai kati ya Kana Ramadhani (Mdaiwa) na Mahimbo Selestine (Mdai), 2014.

⁵²Interview with Alfonse Christopher, Sunya Ward, September 8, 2017.

⁵³Interview with Benjamini Joseph, Loltepes Village, September 17, 2017.

⁵⁴Interview with Hamisi Ramadhani, Ndaleta Village, August 2, 2018.

villages of Ndaleta, Olpopong, Ilera, Kimana, and Partimbo, where the Maasai pastoralists who owned bushland, locally known as *shamba pori*, used this approach.⁵⁵ Since the Maasai did not have enough labour power to clear the land, they entered into a three-year agreement with peasants. The latter were allowed to use such pieces of land for three years. In the first-year peasants cleared the land and in the last two years, they were allowed to use it freely. But, in the fourth year, the Maasai took back the land and used, sold, or hired it to the same or another peasant.⁵⁶ In this process, two problems occurred. Firstly, in some cases, the Maasai violated the oral agreements by taking back their farms after they had been cleared before the end of the three-year agreement. Secondly, since the agreements were not documented, the peasants violated them, claiming to be lawful owners of the land. Thus, the Maasai were defenceless before the law. Land conflicts took a new shape because the Maasai revenged either by grazing their livestock on farms or by fighting the peasants.⁵⁷ In these conflicts, the peasants retaliated by injuring and killing the Maasai's cattle. In Ngabolo village, for example, a peasant called Hamisi Ramadhani entered into a three-year agreement with a Maasai over 100 acres of land in 2012. However, after the end of the agreed period, Hamisi bought the land from the Maasai. After he had cultivated the farm for seven years consecutively, the same Maasai family filed a case at the primary court, claiming that the sale of the land had not followed due process. The case went on for five years and finally, after hearing evidence from both sides, the court ruled that Hamisi was an illegal owner of the land because he had bought it inappropriately.⁵⁸ The argument here is that both "two-year contract" and "three-year agreement" were not bad practices as far as the modes of production practiced by the two communities are concerned, but the problem is that they were verbally concluded. The agreement lacked legal protection from both parties and clear justification since it was not documented anywhere. Furthermore, families were not in the process as the *1999 Land Act* and procedures demanded.

⁵⁵Interview with Maulid Nuro, Ndaleta Village, August 2, 2018.

⁵⁶Interview with Isihaka Mkongolo, Ndaleta Village, August 2, 2018.

⁵⁷Interview with Vicent Maule, Ndaleta Village, August 2, 2018.

⁵⁸Interview with Hamisi Ramadhani, Ngabolo Village, February 9, 2018.

Apart from hamlet chairpersons, peasants, and pastoralists, village leaders also violated the land law by allocating land without the involvement of village assemblies as it was stipulated in the *1999 Village Land Act*. In many areas, villagers lost faith in their village governments concerning land matters as their leaders collected money from peasants without allocating them land.⁵⁹ Minutes were forged to legitimize illegal land transactions. In Kinua, for example, the village government collected 50,000 shillings from each peasant; it promised them that 10 acres of land would be allocated to each household in 2014.⁶⁰ During the allocation of the land, a serious conflict occurred. The Maasai warriors, *Morani*, attacked the Village Executive Officer (VEO) for introducing the agenda on land allocation at the meeting. The Maasai attacked the peasants who had been allocated land by the village government as they prepared their farms for the next cultivation season. For instance, Eliya Mdeme, a peasant of Kinua and his family were attacked and injured by some *Morani* at night in 2014.⁶¹

Furthermore, document forgery was also done in Sobuko hamlet in 2015, where land allocation was supported by forged documents that showed the signatures of the Maasai who allegedly had consented to the allocation of the land to the peasants.⁶² This was a false consent from the Maasai. The peasants were allocated the grazing land reserve. But they were later asked to leave the land by the Ward Executive officers (WEO), who had received an order from the Kiteto District Commissioner.⁶³ Before the execution of the order, the peasants complained to some members of the ruling party (Chama cha Mapinduzi) about their removal from the land, which they had allegedly legally acquired. At the meeting involving the party leaders and peasants, it was discovered that some of the peasants had documents showing that they were lawful owners of the land. The documents included receipts showing that the peasants had

⁵⁹KDC, File, Barua Mbalimbali ya Malalamiko ya Ardhi Kijiji cha Kinua, 2014.

⁶⁰KDC, File, Barua Mbalimbali.

⁶¹Interview with Eliya Mdeme, Kinua Village, September 21, 2017.

⁶²JMT, Ofisi ya Rais Tawala za Mikoa na Serikali za Mitaa: Barua ya DC Kiteto kwa Katibu wa CCM Wilaya, Yah: Ushauri wa Mkuu wa Wilaya Juu ya Maazimio ya Kikao cha Usuluhishi Baini ya Wananchi wa Kijiji cha Kinua na Viongozi wa Kata ya Namelock Kuwafukuza Wakulima Kinua, 2016.

⁶³JMT, Ofisi ya Rais Tawala za Mikoa na Serikali za Mitaa.

bought the land from the Maasai, the contract, which had been concluded by the peasants, and the pastoralists, which had been signed before the Kinua VEO and the village chairperson and which showed that the pastoralists had willingly sold their land to the peasants. But the DC's order did not consider such evidence. Rather, the peasants were forced to leave the land.

From the above cases relating to Kinua village and Sabuko hamlet, a number several issues emerged. The first issue was the violation of the land law and procedures by both the ward and village officials in decision-making, particularly in the whole process of selling and renting land. Secondly, the order of the DC of Kiteto District did not consider the rule of law. The order did not consider the means the peasants used to occupy the land and how long the peasants had owned the land. In addition, the order did not consider the position of the WEOs and VEOs in land selling and renting. The peasants were evicted from their land because of the illicit acts made by the village and ward leaders. Furthermore, the order did not consider the legal implications and the aftermath of their eviction from the land. Thirdly, there were no village land-use plans, that would be used to demarcate grazing land from agricultural land. Up to 2015, Kinua village had grazing land in Subuko, Murtangos, and Kinua, while the peasants were enclosed in small pieces of land. Fourthly, the people did not participate in decision-making contrary to the law, especially in the conflict resolution processes, something that contributed to the persistence of land conflicts in Kinua village. The argument here is that despite the legal reform and the enactment of the *Land Act* of 1999, which advocated collective decisions and openness in land allocation, land selling, and renting; leaders, land renters, and tenants continued to violate the law by selling land illegally. They also continued with double allocating land and allowing undocumented local deals between peasants and pastoralists. All these escalated more conflicts.

Conclusion

The post-colonial state of Tanzania undertook legal reforms as a means of bringing sustainable land use and resolving land use conflicts between the early 1970s and 2000s. The legal reforms provided guidelines on land governance, administration, and its utilization among the stakeholders.

Despite such deliberate measures by state, evidence collected from the Kiteto district show that land use conflicts continued to exist. They cost lives of people and led to destruction of property in many areas of the Kiteto district. Between 1970 and 1980, the *Ujamaa* implementation teams and the Village Land Committees violated the law in the guise of implementing the *Ujamaa* program. In many areas, conflicts emerged due to poor boundary demarcations, double allocations, corruption, and illegal occupation of the grazing lands. The new wave of legal reforms, which was championed by the Shivji Commission in 1992, resulted into the legislation of the *1999 Land Act*. From this *Act*, people expected that the land use conflicts, which persisted over the decades, would now come to an end. However, the people's expectations were not met in the Kiteto district as conflicts over land use between peasants and pastoralists continued to cost people's lives. Land use conflicts continued to change in their forms and magnitude. Many of these conflicts emerged due to the violations of land law by peasants, pastoralists, hamlets, villages, and district leaders. In some areas, poor understanding of the law and land greediness triggered more conflicts between peasants and pastoralists in the district. The evidence collected from this study challenge the point of view of legal efficiencies provided by many scholars as a cause of land use conflicts. They reveal that poor understanding and violation of land laws and procedures by stakeholders escalated the conflicts over land use. The state's legal interventions did not provide harmonious ways of land use between peasants and pastoralists as they did not take into account different conceptions of land use and development as well as the lack of proper land use plans.

References

Archival Sources

The National Archives of Tanzania (TNA), Dar es Salaam, Arusha and Dodoma, Tanzania.

Kiteto Primary Court, Kiteto, The Court of Tanzania.

Ward Land and Housing Tribunals, Kiteto, Tanzania.

Oral Sources

- Interview with Mwanahamisi Masawe, Partimbo, September 18, 2017.
- Interview with Tipula Manyanga, Nharti Village, September 10, 2017.
- Interview with Mohamed Mwamba, Kibaya Village, January 10, 2018.
- Interview with Yohana Ole Bakari, Namelock Village, October 14, 2017.
- Interview with Perseko Emanuel, Kimana Village, September 23, 2017.
- Interview with Stanislaus Emanuel, Ilera Village, February 2, 2018.
- Interview with Bakari Msindo, Kibaya Ward, September 23, 2017.
- Interview with Michael Lepunyati, Namelock Ward, October 17, 2017.
- Interview with Ibrahimu Msindo, Kibaya Village, October 23, 2017.
- Interview with Alfonse Christopher, Sunya Ward, September 12, 2017.
- Interview with Hamisi Ramadhani, Ndaleta Village, August 2, 2018.
- Interview with Maulid Nuro, Ndaleta Village, August 2, 2018.
- Interview with Hamisi Ramadhani, Ngabolo Village, February 9, 2018.
- Interview with Singo Ramadhani Ndoera, Kibaya Ward, September 23, 2017.
- Interview with Eliya Mdeme, Kinuua Village, September 21, 2017.
- Interview with a District Land Surveyor, Kibaya ward, September 17, 2017.
- Interview with the Chairperson of Kiteto District and Housing Tribunal, Kibaya, September 12, 2017.
- Interview with Benson Kinyunyu, September 12, 2017, Kiteto.
- Interview with Dongo Ward Agricultural Officer, Engusero Sidan Village, September 27, 2017.

Published and Unpublished Sources

- Ashukem, Jean-Claude N. "Land Grabbing and Customary Land Rights in Uganda." *International Journal on Minority and Group Rights* 27, no. 1. (2020): 121-141.
- Donge, JK van. "A Legal Insecurity and Land Conflicts in Mgeta-Uluguru Mountain in Tanzania." *Africa Journals of the International Affairs Institute* 63, no.2 (1993): 202-205.
- Fitzgerald, Anne. "Wearing an Amulet: Land Titling and Tenure (in) Security in Tanzania." PhD Dissertation, Maynooth University, 2017.
- Hochet, P and P Meura. "Property Relations by Other Means: Conflict over Dryland Resources in Benin and Mali." *European Journal of Development Research* 5, no. 22 (2010): 643-659.

- Lavers, Thomas. "Responding to Land-Based Conflict in Ethiopia: The Land Rights of Ethnic Minorities under Federalism" *African Affairs*, 117, no. 468, (2008): 462-484.
- Manji, Ambreena. "The Politics of Land Reform in Kenya." *African Studies Review* 57, no. 1 (2014): 115-130.
- Marmo, Juma. "The History of Conflicts over Land Use between Pastoralists and Peasants in Kiteto District, Northern Tanzania: 1945-2016." PhD Thesis, University of Dar es Salaam, 2021.
- Moyo, Sam. "Land in the Political Economy of African Development: Alternative Strategies for Reform." *Africa Development* 32, no. 4 (2007): 1-34.
- Ngemera, Sigsbert. "Land Dispute Settlement Machinery: Is Inaccessibility a Source of Village Land Disputes in Morogoro?" *International Journal of Scientific and Research Publications* 7, no. 3, (2017): 328-329.
- Pedersen, Rasmus Hundsbaek. "Tanzania's New Wave Land Reform: A Matter of Institutionalization." DIIS Working Paper (2014): 1-18. In <https://www.diis.dk/en/activity/tanzanias-new-wave-land-reform-a-matter-of-institutionalisation> Accessed on November 1, 2024.
- Rwegasira, Abdon. *Land as a Human Rights. A history of Land Law and Practice in Tanzania*. Dar es Salaam: Mkuki na Nyota, 2012.
- Shivji, Issa. "Land Tenure Problems and Reforms in Tanzania." Sahara and Sahel Observatory Sub-Regional Workshop for East Africa on Land Tenure Issues in Natural Resource Management, Addis Ababa, Ethiopia, March 11-15, 1996.
- Sylvester, Suzana. "Land Tenure Reforms and Investment in Tanzania." MA Dissertation, University of Dar es Salaam, 2013.
- Takeuchi, Shinichi ed. *African Land Reform Under Economic Liberalisation: States, Chiefs, and Rural Communities*. Singapore: Springer, 2022.