



Women and Property Inheritance: A theological Challenge posed by Cultural Matrix in Kenya

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Abstract

Women in Africa experience discrimination in property inheritance particularly concerning land inheritance. Property inheritance is fundamentally linked to peoples' worldviews. This paper argues that property inheritance, particularly land inheritance is linked to the peoples' culture. Culture dictates the allocation of resources in Africa. The paper sheds light on a theological perspective based on women and land inheritance as supported by biblical scriptures (Proverbs 31:10-31) which guides that women are supposed to be innovative and creative. This paper relied on both interviews schedules and documentary analysis of the available literature to espouse the argument that despite Kenya's constitution 2010 specifying that there shall be no gender discrimination in the allocation of land, the people's worldviews on property inheritance has not changed.

Keywords: Women, Property, inheritance, gender, economic stability

Introduction

Background of the study

Women in Kenya are underrepresented in decision-making positions. They also have less access to education, land, and employment (USAID, 2019). Within Kenya, land ownership and land rights security are important factors determining the stability and socioeconomic status of women. Unfortunately, asset stripping and property rights violations against women are common practices (Dworkin et al., 2017). Historically, in Kenya, the courts would receive cases over a land dispute and view them through the lenses of traditions and the litigants' customary law. These cases often favoured the male, as customary law only gives women land under special circumstances: if women are divorced or unmarried. However, under the new 2010 constitution, a child is a child regardless of their marital status and are entitled to the parent's property. This paper sought to review the available literature to establish the impact of the new 2010 constitution on property inheritance, particularly concerning land inheritance.

Statement of the Problem

Kenya has made great strides in the land access policy. The 2010 constitution gave women the equal right to ancestral land inheritance and the matrimonial property act of 2013 reinstated joint ownership of both the husband and the wife. However, women are still fighting for these rights. In 2018, Kenya Land Alliance (KLA) dis-

aggregated and analyzed 1,000,099 out of the about 3,200,000 title deeds issued by the Government of Kenya from 2013 to 2017. In this audit, the group found out that only 103,043 titles representing 10.3 per cent were issued to women while 865,095 titles representing 86.5 per cent went to men (KLA, 2018). In terms of hectares, out of 10,129,704 ha of land-titled; women got 163,253 ha representing a paltry 1.62 per cent, while men got 9,903,304 ha representing 97.76 per cent. So, where is the gap? This paper, through structured interview guides schedules and documentary analysis, sought to establish the theological perspective based on biblical foundation concerning, what the bible says about women and land inland inheritance? The factors that account for the disproportionate allocation of land between men and women in Kenya despite Kenya's 2010 constitution giving women equal rights to ancestral land inheritance with men.

Purpose of the study

The purpose of this study is to establish the impact of the Kenyan 2010 constitution regarding gender discrimination in property inheritance as well as establish the theological perspective based on a biblical foundation, concerning women and land inheritance.

Research question

What is the theological perspective concerning gender discrimination in property inheritance?

Literature review

The foundations for international human rights are the 1945 Charter of the United Nations and the Universal Declaration of Human Rights in 1948 (UN, 2019). Since then, human rights have expanded through numerous declarations and treaties. These international agreements focus on vulnerable groups such as persons with disabilities, children, and of course women. The United Nations (UN) defines human rights as rights inherent to all human beings regardless of race, sex, nationality, ethnicity, language, religion, or any other status. According to the International Declaration of Human Rights (UDHR), these rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and many more (UN, 2019). The UDHR, along with the International Covenant on Economic, Social, and Cultural Rights, which was created in 1976, promote the right to social protection, an adequate standard of living and the highest attainable standards of physical and mental wellbeing (UN, 2019). These declarations have been translated into more than 500 languages and have inspired and guided the constitutions of many countries. Kenya ratified the UDHR in 1990, 20 years before writing the new constitution granting women access to ancestral land. According to the UN Human Rights Office of the High Commissioner, "land is not merely a commodity, but an essential element for the realization of many human rights." It is recognized that land is closely tied to a person's economic, social, and cultural rights. Conflict over land includes human rights issues such as poverty reduction and development, community peacebuilding, rural to urban migration, and food insecurity (UN, 2019). Land insecurity can impact anyone, however, it more often than not impacts women. Women's access to, use of, and control of land are essential to ensuring women's right to equality and an adequate standard of living (UN Women, 2013). Throughout the world gender inequality is closely linked to women's poverty and exclusion. Men are often assumed to be the heads of households, and so they are the default owners of the land. This patriarchal trend excludes women from the management of productive resources. In recent years there has been increased global recognition of a positive correlation between women's rights to land and improved household welfare, "as well as enhances the enjoyment of a broad range of rights for women" (UN Women, 2013). With increased rights and agency comes empowerment. The UN group on women has noted land as a "crucial factor in reducing women's vulnerability to violence and HIV" (UN Women, 2013).

In Kenya, the colonial land allocation set the stage for decades of controversy and disagreement over how land should be claimed, tenured, and used. Land rights tend to be held by men or kinship groups controlled by men; women only had access to land through a husband. Women were considered to belong to the family they marry into, and no longer had or have rights to their father's or birth family's land and wealth. During colonial rule, certain lands were annexed by colonial powers, but in rural areas, a lot of lands were left as "native reserve land" (Trust Land Act, 1939). Kenya was independent in 1963, about a decade after independence land adjudi-

cation began. Adjudication was used to formally register all land claims as a way to provide tenure security and resolve boundary disputes. There were a lot of expectations that came with the individualization of land, but the results were mixed. This process of land reform often led to favour the elite, as more powerful people took advantage of the system leaving marginalized groups alienated from the land. Land in Kenya has often been a male endeavour under customary law, women can have 'user' rights to land (rights to cultivate) but this is acquired from their husbands or fathers. These rights are precarious and can be taken away in the event of widowhood or divorce. Inheritance is restricted because succession is patrilineal.

But, in 2010 the Kenyan constitution was rewritten. The new constitution, along with many other things, held stronger legal protections for land rights and women. It specifies that; Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles:

1. Equitable access to land;
2. Security of land rights;
3. Elimination of gender discrimination in law, customs and practices related to land and property in land; and
4. Encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.

The constitution also promises protection to “dependants of deceased persons holding interests in any land, including the interests of spouses in actual occupation of land” (Kenyan Constitution, 2010). Article 48 also guarantees that the State shall “ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice”. Despite legal support, men are more likely to own a house, alone or jointly, than women (49 per cent versus 42 per cent). Men are also more likely to own land, alone or jointly than women (KNBS, 2014).

Under the new constitution, daughters cannot be disinherited from their familial land. However, it is still under the discretion of the landowner to distribute the land, while he/she is still alive. For example, a father can have 10 acres of land. While alive, he can allocate 9 acres to his son and 1 to his daughter. This is legal because the daughter is not technically disinherited. Once the father is dead, then the land has to be split equally between son and daughter. This loophole still leaves quite a bit of room for gender discrimination but as long as the woman is aware of her equal inheritance rights, she can fight for them.

Other pieces of legislation have been passed in Kenya to grant women more autonomy and rights when it comes to land. In 2013, the Matrimonial Property Act was passed. This act declares the equal status of spouses: "A married woman has the same rights as a married man to acquire, administer, hold, control, use and dispose of property whether movable or immovable" (Kenya Law Reports, 2014). The act also mandates that matrimonial property cannot be sold, leased, or mortgaged during a monogamous marriage without the consent of both spouses. Then, The Kenya Law Act of 2012 gives power the court power to re-open cases where the outcome was biased by gender discrimination, it is designed to “assist women to improve their economic and social position” (Kenya Law Reports, 2012). The act also creates a settlement program to help increase access to land to displaced persons, the committee that determines the beneficiaries of the program must contain “a woman’s representative nominated by a local women's organization”. These provisions protect women by giving them more rights when it comes to access and control over land.

However, in 2018, Kenya Land Alliance (KLA) disaggregated and analyzed 1,000,099 out of the about 3,200,000 title deeds issued by the Government of Kenya from 2013 to 2017. In this audit, the group found out that only 103,043 titles representing 10.3 per cent were issued to women while 865,095 titles representing 86.5 per cent went to men (KLA, 2018). In terms of hectares, out of 10,129,704 ha of land-titled; women got 163,253 ha representing a paltry 1.62 per cent, while men got 9,903,304 ha representing 97.76 per cent. So, where is the gap?

Documentary analysis of the available literature review revealed that gender-biased deeply entrenched public attitude to women that favours customary over the state law is part and parcel of the peoples' culture. This ex-

plains why the impact of Kenya's 2010 constitution has not been largely felt across the country. But, what is it that further explains the persistence of customary property traditions and practices in the contemporary property discourse in Kenya?

Culture is the matrix through which people interpret reality, create artefacts, promote behaviour and organizes space (Kirwen (2008). Kirwen (2008) further opines that culture is divided into two main categories: material culture and non-material culture. Material culture consists of the community's artefacts while non-material culture consists of peoples' worldviews, i.e., the underlying cultural knowledge that enables the community to interpret reality and organize behaviour. Our interest in this paper is the 'non-material culture'. This is the underlying entrenched worldview that favours men to women as far as land inheritance is concerned.

Abakare (2009) further explains that the non-material aspects of culture, unlike the material aspects, 'are not visible or tangible, but they are manifested via the psychological states and behaviour of a people' (Abakare, 2009a: 6). This, according to him, also forms the basis of the reasons why a group of people act in a particular way. It exists as a body of ideas, belief systems, values and codes of ethics that influence how people relate to others. Nevertheless, it has to be emphasized that, the material aspect of culture and the non-material aspect both cannot be separated when one is referring to the culture of a people as they both go together. They are fundamental in the explanation of 'cultural pattern', that is, the general code of conduct, of a particular group of people. Because of this cultural pattern, it is possible to predict or anticipate the behaviour of members of a given culture (Okafor & Emeka, 1998a). For Oindo (2021), it implies that to change what people do, you have to first of all change what people think, that is, the underlying cultural knowledge. This dynamic of transformation is yet to take place in Kenya as far as land inheritance is concerned.

In Nigeria, Nwezi, (1989) did a study and found that a widow's ordeal starts immediately after the husband's death. The relatives demand documents about their husband's property including land investments and bank accounts. Under customary law, which governs most marriages in Nigeria, a wife has no right to the husband's property or income (Boparai, 1995). Uganda's 1995 Constitution enforces equality between men and women, including the acquisition and ownership of land (Constitution of Uganda, 1995). However, research from Women's Land Link Africa reveals that women remain excluded from land ownership due to customs and deeply ingrained cultural habits. Even when women save up enough money to purchase land, the land is signed in their husband's name, while women sign as the witness. Inheritance practices are a particular obstacle that reduces women empowerment, as well. The land is passed down through male lineage which reinforces women's exclusion from land ownership (Women's Land Link Africa, 2010).

In Tanzania, the asset "land" is the main source of livelihood maintenance especially in rural areas where agrarian life is dominant (Sanga, 2009). Yet this asset is not equally accessed and distributed. The control of land in rural areas in Tanzania follows the gender setting (Shivji, 1998). Women are the ones without full access and control of this resource (Benschop, 2002). The reason why women are not considered in the issue of ownership and control of land is said to be rooted in tradition and customs. The patriarchal structure in many societies excludes most of the women's rights on control and ownership of land in rural areas.

RESEARCH METHODOLOGY

This study drew on both interview schedules and documentary analysis of accessible material to conclude that, notwithstanding the Kenyan constitution of 2010, which states that there should be no gender discrimination in land allotment.

The study employed a cross-sectional research design. Structured/unstructured questionnaires, individual interviews, and focus group discussions were utilized to collect data for the study. The qualitative data was thematically examined utilizing direct quotes and narratives. The findings indicated that, notwithstanding the Kenyan constitution of 2010, which states that there should be no gender discrimination inland distribution, people's attitudes toward property inheritance have not altered. The instruments utilized were both primary and secondary

sources, with the primary sources being questionnaires, interviews, and observations, and the secondary sources gathering information from religious writings about women and property inheritance.

DISCUSSION OF THE FINDINGS

The views gathered through qualitative academic study in examining theological perspectives on women and land inheritance. Reviewed that it is very clear from the bible as recorded in Proverbs 31:10-31 that women are supposed to be innovative and creative. In support of the above view, one of the MCK BISHOP pointed out that verse 16 of Proverbs 31, affirms that a woman considers a field and buys it. This means that women have an opportunity theological purchase and own lands. Hence inheritance is equally welcome. In support of the same, In numbers 27:1-7 affirms that the daughters of Zelophehad owned their Father's land. Moses accepted to change what was not practised before in favour of the daughter's of Zelophehad.

About the role of the church in reconciling the society based on women and land inheritance, it was noted that Church leaders have the opportunity to influence through teaching in seminars, conferences, in sermons that women are equally important and are supposed to be given land to inherit for personal development. That all children are born equal in the eyes of the maker. Secondly, the church needs to advocate for women to own land because divorce and separation disadvantage the women hence Justice is corrupted.

To account for the persistence of gender-biased land inheritance practices in Kenya, it is important to take into consideration the fact that culture is learned. One can understand how culture is learned by looking at the institutions that facilitate cultural transmission. For instance, in religious institutions, leaders teach their members how to behave and perform certain religious rituals. Parents, in their various homes, help educate their children on the acceptable social norms. What the children learn from their parents or teachers is what they usually practice in society. If they fail to practice what they have learned from parents or teachers, they are likely to be punished. So, this suggests that culture is a learned pattern of behaviour, ideas, beliefs, and artefacts, shared by a people and socially transmitted from one generation to another (Kirwen, 2008). After culture has been learned, it is transmissible. To opine that culture is transmissible is to say that culture does not end with a particular generation. Culture is usually handed down from one generation to the other so that a people's way of life may continue (Oindo, 2021; Kirwen, 2008). This, therefore, explains the persistence of women being disinherited of land rights in Kenya because the majority of the African ethnic communities have been socialized into a cultural system that allocates land to males as opposed to females.

A Kenyan succession case demonstrates the often complex interactions between customary and formal law concerning gender and inheritance. In the case of Rono vs. Rono (2005), the sons claimed a greater share of their deceased father's property than their sisters and their father's widow. They argued that according to Keiyo traditions, girls have no right to inheritance of their father's estate and that customary law supported their claim. This challenge featured again in 2008 in the Kenyan High Court in the Ntutu decision, where it was argued that Maasai customary law did not recognize a daughter's right to inherit from her father's estate. Although in both the succession cases, the courts ruled against gender discrimination, this article contents that only a fraction of the Kenyan women have access to court processes. The majority of the women in the rural and peri-urban areas are certainly dispossessed of any property inheritance rights.

Conclusion

Women in Kenya are underrepresented in decision-making positions. They also have less access to education, land, and employment (USAID, 2019). Within Kenya, land ownership and land rights security are important factors determining the stability and socioeconomic status of women. Unfortunately, asset stripping and property rights violations against women are common practices despite Kenya's constitution 2010 specifying that there shall be no gender discrimination in the allocation of resources, particularly land. This paper, through interview

schedules and documentary analysis, found out that the persistence of unequal distribution of land resources in Kenya is anchored in African culture and very well supported by biblical foundations that are still operative and function in the consciousness of many Kenyans.

Recommendations

Based on the research findings, the study has the following recommendations; the church should initiate a cultural discourse to adopt progressive ideals involving women and property inheritance, this cultural discourse should entail a discussion of the influence of diverse societal beliefs surrounding inheritance as well as how they harm community as a whole. The church should also seek to create awareness on the society concerning, theological basis of women and property inheritance, as well as the constitution specifications concerning the same, this will help in alleviating the inhibiting society norms and beliefs concerning women and property inheritance. Women's right to inherit property will be guaranteed only when the social awareness includes regard for women's right to property inheritance and when formal legal frameworks regard and conform to the constitutional specifications on the matter.

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