

# WOMEN AND LAND: Who owns it?

Joyce Kajuju, 51, was born in Meru County. She is the fifth born in a polygamous family of eight siblings. Her father married two wives, Kajuju's mother being the first wife with four daughters, while the second wife gave birth to three sons and one daughter. Growing up, Kajuju never knew that being girls only from their mother's side was at their disadvantage with regards to land inheritance.

When her father decided to divide their land, Kajuju's mother was never considered. This is because she was not blessed with sons, who would thereafter inherit her land when she dies.

"When my father divided the land in early 2007, his second family took everything from my mother, including all her farm produce such as the banana and fruit trees she had planted. They went ahead and warned her not to use anything from that land. She was just left with her house," Kajuju - a mother of three; two sons and a daughter - narrated to The Elephant.

"When we asked my father why they had taken everything away from my mother, he said that we had no right to ask him about that land and anything related to that land. He told us that he had sons who would inherit his land."

Kajuju's father adamantly refused to allocate his first wife any land.

Her father's response prompted Kajuju and her three sisters to act by taking the matter to the land tribunal in the same year.

The tribunal ordered Kajuju's father to allocate a small portion of land to their mother, as she was one of his wives. On their return home from the tribunal, her father and her stepbrothers refused to honour the ruling. Kajuju decided to pursue the matter and file a case in court, determined to see her mother get justice. Even then, her father and her step-siblings refused to obey the court order which ruled that Kajuju's mother had to have a share of the family land.

Kajuju pursued the matter to the high court which ordered her father to allocate at least half an acre out of the family's five and a half acres of land to Kajuju's mother. Kajuju's father and her stepbrothers defied the High Court order forcing Kajuju to file an appeal. The appeal was successful and in 2015, Kajuju's father

and her step-brothers reluctantly agreed to give up the half acre.

It was a bitter-sweet victory for Kajuju and her sisters as their mother had died in 2009, four years after their father had refused to recognise their right to a share of the family land. For eight years, Kajuju and her sisters were in and out of court, fighting hard, to ensure that they and their mother - even though late - got justice.

But even after Kajuju and her sisters got the half-acre, they had to contend with the harassment and intimidation from their step-brothers and other relatives who were angry that 'mere girls' had been allocated land!

When Kajuju's father died in September 2017, their step-brothers refused to bury him on his land claiming that it was too small to accommodate his grave. To avoid unnecessary fights, Kajuju and her sisters opted to bury their father in the half-acre piece of land that had been allocated to them. They sub-divided the rest of the land among the four of them and are now using it for subsistence farming.

Despite successfully suing to get a share of the family land, Kajuju and her sisters face numerous obstacles. They are treated like pariahs in their own home by their family and the local community, who cannot understand why they took their father to court yet they were married.

"What are they coming back to look for from their father?" a question Kajuju and her sisters dealt with throughout the eight years they were in and out of court.

Three years later, Kajuju and her sisters still live with the consequences of their action. Local water officials who are laying out pipes to connect farms in the area to water have refused to extend the same services to Kajuju and her sisters, even though the main water pipe passes right on the boundary of their small farm. "They tell us that we didn't do the right thing by pursuing justice for our mother. It is like they are punishing us for doing that. We are treated like outcasts. Our stepmother does not even talk to us!" Kajuju adds.

But Kajuju and her sisters are a lucky lot as they were able to challenge these traditions without the violence and other forms of aggression meted out against other women who have dared to fight for their rights to inherit land as daughters or spouses.

She and her sisters also had the financial resources to file and pursue the court case to its logical conclusion. They spent in excess of Sh100,000 in legal fees not including the time spent. The high legal costs also present a major hindrance to women fighting for land and property rights.

At the time Kajuju and her sisters were fighting for justice for their mother, the 2010 constitution had not been promulgated. Kajuju and her sisters were made to jump through numerous hoops, endure untold delays and overcome intimidation and harassment from their step-siblings before they succeeded in getting a share of their father's land. A seminar organised by the Kenya Land Alliance on [Women Land & Property Rights](#) attended by Kajuju, enabled her to learn more about the laws governing land ownership.



Kajuju (left) with her sisters Ann Peter (middle) and Jane Muriithi (right).

Even though Kenya has a progressive legal framework, women's land rights continue to lag behind those of men. Customary law, such as the one applied by Kajuju's father and practised by the Ameru community, often discriminates against women and limits their land and property rights. The patriarchal nature of Kenyan society often limits the rights of even those women not living on land governed by customary law.

In Kenya, as in many other developing countries, land is a critical asset, especially for the urban and rural poor. Land rights—whether customary or formal—act as a form of economic access to key markets. Rights to land also confer women rights to other local natural resources, such as trees, pasture, and water. An improvement in women's independent property rights accords women greater control over agricultural income, gain higher shares of business and labor market earnings, and more frequently receive credit.

Land ownership is extremely critical for women who became the de facto heads of households due to divorce, death, abandonment or out of choice. In both urban and rural settings, independent real property rights under these circumstances can mean the difference between having to depend on the husband's family for support and forming a viable, self-reliant, women-headed household. Women's land rights within marriage may afford them greater claims on the disposition of

assets upon divorce or death of their husband.

In the absence of formal social security, elderly rural populations rely heavily on intergenerational transfers for their livelihoods. Children are more likely to contribute to their parents' well-being if the latter retain control over a key productive resource such as land. But this is not always the case. For example, the [motive behind the rash of murders of elderly men and women in Kilifi and Kisii](#) is more to dispossess them of the land than claims of witchcraft. Cases where male relatives have sued their mothers and sisters to bar them from inheriting family land and other property have become increasingly common.

While legislation in Kenya is generally positive toward women's land rights, the judiciary exerts only a weak presence beyond major urban areas. The state lacks or is unwilling to commit resources to advocating, promoting, enforcing, and protecting women's rights to land and property. State institutions such as the National Land Commission are inadequately resourced or committed to enforcing equal rights for women as well as other laws, such as land use laws, local customary norms and practices predominate. There has been resistance from program implementers which results in token observance of women's legal land rights. The implementation of the titling program resulted in the great majority of the land being titled to men. "We have so many instruments that talk so good about issues on women land rights, but the implementation is what is lacking. There's still a lot to be done," says Naomi Lanol.

In some parts of the country where land ownership rights are often vested in a community or lineage or clan, women have little access to the land. Community ownership of land is where control is vested in a group and not an individual and is managed according to community rules. Households are allocated land through a customary system on a long-term basis to produce food, build a home, or raise animals. The right to these parcels of land are generally inheritable. However, even in such communities e.g. the Masai, the Samburu, and other pastoralists communities from the North Eastern region in Kenya, married women are not full and active participants in customary institutions. Their rights to land are generally derived from a male relative or husband. As such, they can only access land through their relationship with a male relative, such as a father, husband, brother, or even brother-in-law. Even though some customary tenure systems provide women with some basic security in situations when they are not living with a husband, this same system also favors men when control over land is

determined.

Because the men in the community usually control land allocation, they are able to claim individual rights when land scarcity converts the land into an asset and when family land becomes private property. In Kenya, for example, the subdivision of Maasai group ranches caused widows to receive less-than-average parcel allocations, even though the women were represented in the statutory committee. Women may not only lose the use rights to their husband's land but will also most likely be unable to claim temporary use rights to birth family land because their brothers will claim individual and private rights to the land they inherit from their fathers.

The most common inheritance practice in Kenya is patrilineal (where land is handed down from mother to son and if the man does not have any sons, his brother, nephew or another male relative of his lineage can inherit.) Under this practice daughters do not inherit land from their fathers, even though they are of the same lineage. The cultural norm is that daughters leave their birth community and family when they marry to live in their husband's community. Because wives are under the responsibility of their husband and family, it is believed that if they inherited land, their husband's family and lineage would obtain control over it.

Matrilineal land inheritance is where property can only pass along the female line, most commonly going to the sister's sons of the decedent; but also, in some societies, from the mother to her daughters.

Matrilineal land inheritance is rare and even in communities where social continuity is expressed through concepts of matrilineal kinship or matrilineal clans, there are gendered relations in land ownership. Before conversion to Islam, colonialism and the emergence of the independent state the rules of inheritance in practice were negotiable and flexible in Digo society. [Children inherited from male and female maternal relations as well as their matrilineal clans, but not usually from their father.](#)

Muslim inheritance norms are bilateral, recognizing daughters' rights to family property (albeit a fraction of the share their brothers inherit). Where the customary tenure system is strongly patrilineal, however, Muslim norms may be ignored and strictly patrilineal inheritance practised.

Among some Muslim communities like the Somali, for example, only sons can

inherit from their birth family while daughters are at most, given temporary use of their father's land in the event they leave their husband due to widowhood, divorce, or separation. Single daughters with children also have temporary use rights.

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### **Inheritance practices**

Inheritance practices are patrilineal, matrilineal, or bilateral. In patrilineal inheritance, land is generally handed down from father to son; if a man does not have any sons, his brother, nephew, or another man relative of his lineage often inherit his property. Daughters do not inherit land from their fathers, even though they are of the same lineage. The cultural norm is that daughters leave their birth community and family when they marry to live in their husband's community.

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Such cultural beliefs have been cited as major hindrances to the enjoyment of women's land and property rights in Kenya according to a [Women's Lands Rights report](#) by the Federation of Women Lawyers (FIDA).

Male inheritance of land is predicated on the notion that sons remain within their families while daughters get married and leave. These patriarchal traditions and sexist attitudes where men perceive women to be "untrustworthy, and incapable of handling property" has infused Kenya society to the point where, under the pretext of offering women 'protection' the women are stripped of their rights to land and property.

In many instances, women are not allowed to inherit their husband's land and risk disinheritance on the death of their husbands. Others have no option but to accept being re-married by their deceased husband's brother or close relative in order to remain on the marital land.

Marriage practices including where the couple lives after marriage and asset transfers (dowry) also determine how family land is allocated and who has rights to family land. In most patrilineal societies, where the couple and their children live in the husband's family, family land is handed down from father to son. Therefore, women who marry into the community do not have rights to their husband's family land or community land. Separated and divorced women leave their husband's house with no claim to any of his property. A widow, particularly if she has children, is generally permitted to stay on and work on her dead husband's land until her sons can assume its management.

In an [article](#) published in 2015, lawyer Pravin Bowry cited several anomalies that exist in the Marriage Act, the Matrimonial Properties Act and the succession Acts which he said were discriminatory. Among the anomalies he cited were the rights of women in come-we-stay relationships to inherit their partners land and property in the event of death. These anomalies have been at the root of numerous raging court battles which invariably such deaths.

The laws of intestacy (where one dies without making a will ) and the entitlements provided under the laws of succession are applicable in all areas except West

Pokot, Turkana, Marsabit, Samburu, Isiolo, Mandera ,Wajir, Garissa, Tana River, Lamu, Kajiado and Narok. It is not clear why this distinction is made as it is in contradiction to [Article 27 \(1\)](#) of the Constitution, which provides for equal protection and benefit of the law.

As inherited family land becomes scarce, and communities are no longer able to allocate land to new households, couples are more apt to purchase land. In those customary societies in which women and men both own land, joint ownership of marital property is more likely to be practiced. For example, in some communities in Kenya, where sons and daughters inherit family land, it is customary to regard land acquired during marriage as belonging to both husband and wife. If one spouse dies, half of the property remains with the surviving spouse while the other half is inherited by their children.

Without data, it is difficult to confirm just how much land Kenyan women own. This lack of adequate data has led to numerous generalised claims about women and land ownership such as “less than 2 percent of the world’s land is owned by women” or “women own approximately 15 percent of agricultural landholdings in Africa. Such claims while shocking, fail to provide governments and advocacy groups with information that would help in policy formulation and programme implementation that would reduce the inequalities faced by women in accessing and owning land.

The Ministry of Lands is considering putting in a request for this kind of data to be collected during the census scheduled to be held next year.

“We shall use whichever means at our disposal to try and get this data. When we register titles, we do not ask for gender. This is something we hope to change because such data is important for informing policy and decision making. How can we intervene to encourage more women land ownership if we do not have this basic information?” says Lands Cabinet Secretary, Farida Karoney.