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## **Feminist Legal Perspectives on Women's Land Rights under Legal Pluralism in Kenya: Evidence from Kajiado South Sub-County**

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### **Abstract**

*Despite extensive constitutional, legislative, and policy reforms aimed at advancing gender equality in land ownership and governance, women in Kenya continue to experience systemic barriers in accessing, controlling, and inheriting land. This article examines the effectiveness of Kenya's legal and policy framework in protecting women's land rights and interrogates the persistent gap between formal legal guarantees and women's lived realities. Drawing on African Feminist Theory, Intersectionality Theory, and Feminist Legal Analysis, the study explores how legal protections are implemented and experienced within a pastoralist context. The article is based on qualitative empirical research conducted in Kajiado South Sub-County, Kenya. Data was collected through focus group discussions, narratology interviews, key informant interviews, and a review of judicial decisions relating to women's land rights. The findings reveal that although Kenya has one of the most progressive constitutional and statutory frameworks on women's land rights in Africa, implementation remains constrained by patriarchal customary norms, institutional*

*weaknesses, corruption, limited legal literacy, and exclusionary governance structures. Women continue to face discrimination in inheritance, land registration, participation in land governance institutions, and access to justice. While courts have increasingly issued progressive decisions affirming women's rights to matrimonial and inherited property, judicial intervention often occurs after dispossession has already taken place.*

*The study argues that the persistence of gender inequality in land ownership is not primarily a consequence of legal deficiencies but rather the result of failures in implementation and enforcement within a legally pluralistic environment where customary norms frequently supersede statutory guarantees. Substantive land justice for women, therefore, requires not only legal reform but also institutional transformation, strengthened accountability mechanisms, gender-responsive land governance, and sustained efforts to challenge patriarchal social norms. The findings contribute to feminist legal scholarship by demonstrating how formal equality can coexist with substantive exclusion and by highlighting the importance of examining the interaction between law, culture, and power in the realisation of women's land rights.*

**Key words:** *African Feminism, Feminist Legal Analysis, Gender Equality, Land Governance, Legal Pluralism, Property Rights, Women's Land Rights.*

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### **1.0 Introduction**

Land remains one of the most important economic, social, and political resources in Kenya. Beyond its economic value as a factor of production, land is intricately linked to identity, citizenship, belonging,

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inheritance, social status, and power. For many households, particularly in rural and pastoralist communities, access to land determines livelihood opportunities, food security, housing, and intergenerational wealth transfer (FAO, 2011). Consequently, exclusion from land ownership and control has profound implications for economic empowerment and social justice.

Although women constitute slightly more than half of Kenya's population and contribute significantly to agricultural production and household food security, their access to and control over land remains disproportionately limited (Tsikata, 2009). Existing statistics demonstrate persistent gender disparities in land ownership despite decades of legal and policy reform. Women comprise approximately 80 per cent of the agricultural labour force in Kenya, yet only a small proportion hold registered land titles, either individually, or jointly with men. The disparity is particularly evident in rural and pastoralist communities where customary tenure systems continue to influence patterns of land ownership and inheritance.

The adoption of the Constitution of Kenya 2010 marked a significant milestone in advancing women's property and land rights. The Constitution guarantees equality and freedom from discrimination, protects the right to property, and establishes principles of equitable access to land. Subsequent legislation, including the Land Act, Land Registration Act, Community Land Act, Matrimonial Property Act, and National Land Commission Act, sought to operationalise constitutional guarantees and strengthen women's rights in relation to ownership, inheritance, administration, and control of land.

Despite these legal advances, substantial gaps persist between legal protections and practical realities. Numerous studies have demonstrated that women continue to experience discrimination in inheritance, registration of land, participation in land governance structures, and access to justice. Widows, divorced women, unmarried women, women in customary marriages, and women residing in pastoralist communities remain particularly vulnerable to dispossession and exclusion. The persistence of these inequalities raises critical questions regarding the effectiveness of Kenya's legal framework and the extent to which progressive laws have translated into meaningful changes in women's lives.

This article examines the effectiveness of Kenya's legal and policy framework in safeguarding women's land rights through an empirical study conducted in Kajiado South Sub-County. Moving beyond a descriptive analysis of legal provisions, the study evaluates how law operates in practice within a context characterised by legal pluralism, customary land tenure systems, and entrenched patriarchal norms. Particular attention is paid to the interaction between statutory law, customary practices, governance institutions, and women's lived experiences of land ownership and control. The article is guided by four key questions:

- i. How effective are Kenya's legal and policy frameworks in protecting women's land rights?
- ii. What structural, institutional, and socio-cultural barriers hinder the implementation of these legal protections?
- iii. How do women experience and navigate existing land governance systems?
- iv. What reforms are necessary to bridge the gap between formal legal guarantees and substantive land justice?

The article argues that while Kenya has developed a robust legal architecture for protecting women's land rights, the realization of those rights remains constrained by weak implementation mechanisms, patriarchal customary practices, institutional inefficiencies, corruption, and limited access to justice. Consequently, formal legal equality has not translated into substantive equality in land ownership and control. The study contributes to feminist legal scholarship by demonstrating how legal rights may exist on paper while remaining inaccessible in practice, thereby revealing the limitations of legal reform in the absence of broader institutional and socio-cultural transformation.

The article proceeds in six parts. Following this introduction, the next section outlines the theoretical and conceptual framework. The third section examines the legal and policy framework governing women's land rights in Kenya. The fourth section discusses the methodology employed in the study. The fifth section presents and analyses the findings. The sixth section discusses the broader implications of the findings for feminist legal scholarship and land governance reform before concluding with recommendations.

## **2.0 Theoretical and Conceptual Framework**

The persistence of gender inequalities in land ownership despite extensive legal reforms raises critical questions about the relationship between law, power, and social change. Although Kenya has adopted progressive constitutional, legislative, and policy measures aimed at guaranteeing equality in access to land and property, women continue to encounter significant barriers in the ownership, control, inheritance, and participation in land governance. Understanding this apparent contradiction requires analytical frameworks that move beyond formal legal provisions and interrogate how power relations shape the implementation and effectiveness of law.

This study is informed by African Feminist Theory, Intersectionality Theory, Feminist Legal Analysis, and the concept of Legal Pluralism. Together, these frameworks provide a multidimensional lens for examining women's land rights by highlighting the interaction between gender, culture, law, institutions, and power. The combined framework enables an assessment not only of what the law provides but also of how legal rights are experienced, negotiated, resisted, or denied in practice.

### **2.1 African Feminist Theory**

African Feminist Theory provides a critical framework for examining the gendered distribution of power, resources, and opportunities within African societies. Unlike some Western feminist approaches that have been critiqued for universalising women's experiences, African feminism recognises the historical, cultural, economic, and political contexts that shape the realities of African women (Mama, 2011; Tamale, 2020). African feminist scholars argue that gender inequality cannot be understood outside broader contexts such as colonial legacies, customary institutions, kinship systems, religion, and community structures that continue to influence social relations across the continent.

Central to African feminist thought is the recognition that women's oppression often manifests through everyday social practices that normalize male authority over productive resources, including land (Kabira & Nzioki, 1997). In many African communities, customary systems allocate land through patriarchal lineage structures that privilege men as owners, decision-makers, and inheritors of property while positioning women primarily as users of land through their relationships with fathers, husbands, or sons (Tamale, 2020). As a result, women's access to land is often conditional, insecure, and vulnerable to disruption through divorce, widowhood, separation, or family disputes.

Within the Kenyan context, African feminist scholars have consistently demonstrated that legal reforms alone are insufficient to dismantle entrenched patriarchal structures because gender inequality is embedded within social norms, cultural expectations, and institutional practices (Kabira, 2016; Kameri-Mbote, 2005). The persistence of discriminatory inheritance practices, exclusion from community land governance institutions, and unequal participation in decision-making processes reflects the continued influence of patriarchal systems despite constitutional commitments to equality.

African Feminist Theory is therefore particularly useful in this study because it facilitates an examination of how patriarchal customary practices interact with formal legal frameworks to shape women's experiences of land ownership and governance. The theory also provides a basis for analysing women's agency and resistance by recognising women not merely as victims of discrimination but as active participants who negotiate, challenge, and transform existing power structures.

### **2.2 Intersectionality Theory**

Intersectionality Theory, developed by Crenshaw (1989) explains how multiple systems of oppression interact to shape the experiences of marginalised groups. The theory argues that inequalities cannot be understood through a single category such as gender because individuals simultaneously occupy multiple social positions that influence their opportunities, vulnerabilities, and access to resources.

Applied to land governance, intersectionality highlights the fact that women do not experience land-related challenges uniformly. Factors such as age, education, marital status, socio-economic position, ethnicity, geographical location, and family structure significantly influence women's ability to access and control land. For example, the experiences of an educated woman with independent income may differ considerably from those of a widow, a divorced woman, an unmarried woman, or a woman living in a remote pastoralist community.

The findings from Kajiado South demonstrate the relevance of this perspective. While some women reported being able to purchase land independently due to education and economic empowerment, many others remained dependent on male relatives for access to land and participation in governance processes. Widows, divorced women, and women without male children appeared particularly vulnerable to exclusion from inheritance and ownership structures. Such experiences illustrate how gender intersects with other social identities to produce varying levels of disadvantage.

Intersectionality therefore enables a more nuanced understanding of women's land rights by moving beyond generalized accounts of discrimination and highlighting the differentiated ways in which legal protections are experienced. It further assists in identifying groups of women who may require targeted legal and policy interventions.

### **2.3 Feminist Legal Analysis**

Feminist Legal Analysis provides the primary analytical framework for this study. Feminist legal scholars argue that law is neither neutral nor objective but is often shaped by historical power relations that privilege male interests and perspectives (Fineman, 2008; MacKinnon, 1989). As a result, legal systems may reproduce gender inequalities even where laws appear formally neutral.

Traditional legal approaches frequently measure equality through the existence of legal rights and protections. Feminist legal scholars challenge this assumption by distinguishing between formal equality and substantive equality. Formal equality focuses on equal treatment of individuals before the law, whereas substantive equality examines whether individuals are able to enjoy rights and opportunities in practice (Fredman, 2016). This distinction is particularly relevant in the context of women's land rights where constitutional and statutory guarantees of equality coexist with persistent patterns of exclusion and discrimination.

Feminist legal analysis therefore asks critical questions regarding the effectiveness of law. Rather than simply examining whether legal protections exist, it interrogates whether those protections are accessible, enforceable, and capable of transforming existing power relations. It also examines how institutions responsible for implementing legal protections may reproduce inequalities through discriminatory practices, procedural barriers, or unequal distribution of power.

This study employs feminist legal analysis to evaluate whether Kenya's legal framework has succeeded in advancing substantive equality in relation to women's land rights. The framework is particularly useful in analysing the gap between constitutional promises and women's lived realities, thereby exposing the limitations of legal reform in the absence of effective implementation and institutional accountability.

### **2.4 Legal Pluralism and Women's Land Rights**

Legal pluralism refers to the coexistence of multiple normative systems within a single social and political space (Merry, 1988). In many African countries, including Kenya, formal statutory law operates alongside customary law, religious norms, administrative practices, and community governance structures.

Land governance provides one of the clearest illustrations of legal pluralism. Although statutory law recognises women's rights to own, inherit, and control land, customary systems frequently regulate access to land at the community and household levels. In many communities, decisions relating to inheritance, succession, land allocation, and dispute resolution continue to be influenced by customary norms that prioritise male ownership and authority.

The coexistence of these legal systems often creates tensions and contradictions. Women may possess legal rights under constitutional and statutory frameworks but face significant challenges in exercising those rights when customary practices operate differently. As a result, legal protections that appear robust on paper may be weakened in practice by social norms, local governance structures, and informal institutions.

Legal pluralism is particularly relevant to this study because the experiences of women in Kajiado South reveal the continued influence of customary land governance systems despite extensive legal reforms. The framework helps explain why progressive legal provisions have not automatically translated into substantive land justice and why implementation remains uneven across different social contexts.

### 3.0 Conceptual Framework

The study conceptualizes women's land rights as the product of interactions between legal frameworks, customary institutions, governance structures, and socio-cultural norms. While constitutional and statutory reforms establish formal legal protections, the realization of those protections is mediated by customary practices, institutional capacity, access to justice, legal literacy, and broader gender power relations.

The effectiveness of women's land rights protections is therefore assessed through four interconnected dimensions:

**Legal Recognition** – the extent to which laws formally protect women's land rights;

- i. **Institutional Implementation** – the capacity of institutions to enforce and operationalise legal protections;
- ii. **Socio-Cultural Context** – the influence of customary norms and gender relations on access to land; and
- iii. **Women's Agency** – the ability of women to assert, negotiate, and defend their rights within existing governance systems.

This framework guides the analysis presented in subsequent sections and provides the basis for evaluating the effectiveness of Kenya's legal and policy framework in advancing substantive land justice for women.

### 3.1 Legal and Policy Framework Governing Women's Land Rights in Kenya

The advancement of women's land rights in Kenya has been shaped by constitutional reforms, statutory interventions, judicial developments, and international human rights obligations. Over the last two decades, Kenya has adopted one of the most progressive legal frameworks on gender equality and land governance in Africa. The promulgation of the Constitution of Kenya 2010 marked a significant shift from previous legal regimes by expressly recognising equality, non-discrimination, and equitable access to land as foundational principles of governance.

Despite these legal developments, significant disparities persist in women's ownership, control, and inheritance of land. While legal protections have expanded considerably, implementation remains uneven, particularly in rural and pastoralist communities where customary tenure systems continue to influence access to and control over land. Understanding this contradiction requires an examination not only of the legal framework itself but also of its capacity to address structural inequalities that shape women's experiences of land governance.

This section examines the constitutional, statutory, and international legal framework governing women's land rights in Kenya and evaluates the extent to which these instruments provide effective protection against gender-based exclusion from land ownership and governance.

### 3.2 Constitutional Protection of Women's Land Rights

The Constitution of Kenya 2010 fundamentally transformed the legal landscape governing women's rights by embedding gender equality and non-discrimination within the country's constitutional order. Several constitutional provisions directly and indirectly protect women's rights to access, own, inherit, and control land.

Article 27 guarantees equality before the law and prohibits discrimination on the basis of sex, marital status, culture, ethnic origin, or social status (Constitution of Kenya, 2010). The provision establishes a constitutional obligation on state institutions to promote substantive equality and eliminate discriminatory practices that disadvantage women. Importantly, Article 27(6) requires the State to take legislative and other measures, including affirmative action programmes, to redress historical inequalities experienced by marginalised groups, including women.

**Article 40** protects the right to property and guarantees every person the right to acquire and own property individually or in association with others. Unlike previous legal regimes that often-reinforced male ownership through customary interpretations of property relations, Article 40 adopts a gender-neutral approach to property ownership and extends equal protection to women and men.

**Article 60** articulates land governance principles, including equitable access to land, elimination of gender discrimination in law, customs, and practices related to land and property, and encouragement of communities to resolve land disputes through recognised mechanisms consistent with constitutional values

(Constitution of Kenya, 2010). Article 60 is particularly significant because it explicitly acknowledges the existence of discriminatory customary practices and requires their elimination.

Further protection is provided under Article 68(c)(iii), which mandates Parliament to enact legislation recognizing and protecting matrimonial property during and after marriage. This provision laid the foundation for the enactment of the Matrimonial Property Act (2013), which sought to strengthen women's proprietary rights within marriage.

Collectively, these constitutional provisions establish a strong normative framework for gender equality in land ownership and governance. However, as subsequent sections demonstrate, constitutional guarantees have not automatically translated into substantive equality due to challenges associated with implementation, enforcement, and interaction with customary tenure systems.

## **4.0 Statutory Framework Governing Women's Land Rights**

### **4.1 The Land Act (2012)**

The Land Act, 2012 operationalises constitutional principles relating to land management and administration. It recognises the need to eliminate gender discrimination in land ownership and promotes equitable access to land resources. It further requires public authorities exercising powers under the Act to be guided by constitutional principles of equality and non-discrimination.

The Act is significant because it attempts to integrate gender equality into land administration processes. However, scholars have observed that while the Act provides important procedural safeguards, its effectiveness remains dependent on institutional capacity and enforcement mechanisms (Kameri-Mbote, 2013). Consequently, women often continue to experience exclusion despite the existence of legal protections.

### **4.2 The Land Registration Act (2012)**

The Land Registration Act establishes the legal framework for registration of interests in land and provides important safeguards for women's property rights. Section 93 is particularly significant because it recognises spousal rights over matrimonial property and seeks to prevent the unilateral disposition of matrimonial land without the consent of both spouses.

The Act represents an important departure from historical practices that treated men as the exclusive legal owners of family land. By recognizing spousal interests, the legislation acknowledges women's contributions to property acquisition and seeks to protect them against dispossession.

Nevertheless, practical challenges remain. Studies have demonstrated that many women continue to be excluded from land registration processes due to limited awareness, lack of documentation, financial constraints, and socio-cultural barriers that discourage joint registration of property (KIPPRA, 2024). Consequently, legal recognition of spousal interests does not always translate into secure ownership rights.

### **4.3 The Matrimonial Property Act (2013)**

The Matrimonial Property Act was enacted to give effect to Article 68(c)(iii) of the Constitution and to provide legal protection for matrimonial property rights. The Act defines matrimonial property broadly to include the matrimonial home, household goods, and any other property jointly owned or acquired during marriage.

One of the most significant contributions of the Act is its recognition of both monetary and non-monetary contributions toward the acquisition and improvement of property. Non-monetary contributions include domestic work, childcare, companionship, farm work, and management of family businesses. This recognition is particularly important for women whose contributions have historically been undervalued or ignored in property disputes.

Despite these advances, implementation of the Act has generated considerable debate. Courts have sometimes adopted restrictive interpretations regarding proof of contribution, thereby placing evidentiary burdens on women seeking to establish proprietary interests in matrimonial property (Manji, 2020). As a result, access to justice remains a significant challenge for many women.

#### **4.4 The Law of Succession Act**

Inheritance remains one of the most contested dimensions of women's land rights in Kenya. The Law of Succession Act was enacted to regulate the administration and distribution of deceased persons' estates and to promote equitable inheritance practices.

The Act generally provides for equal inheritance rights regardless of gender. However, tensions continue to arise between statutory succession law and customary inheritance systems that prioritise male descendants. In many communities, daughters are excluded from inheritance on the assumption that they will acquire land through marriage, while widows often face challenges from male relatives seeking control over family property.

These tensions illustrate the limits of legal reform within contexts characterized by strong customary norms. While statutory law protects women's inheritance rights, implementation remains highly dependent on family dynamics, community attitudes, and access to dispute resolution mechanisms.

#### **4.5 The Community Land Act (2016)**

The Community Land Act is particularly important in pastoralist regions such as Kajiado, where significant portions of land are held under community tenure arrangements. The Act was enacted to provide for the recognition, protection, and registration of community land rights pursuant to Article 63 of the Constitution.

From a gender perspective, the Act contains progressive provisions intended to safeguard women's participation in community land governance. It requires non-discrimination in community membership and seeks to promote inclusion of women in decision-making structures.

However, concerns have been raised regarding the implementation of these provisions. Research has shown that women's participation in community land governance structures is frequently symbolic rather than substantive, with decision-making authority remaining concentrated among male leaders (Kariuki & Manji, 2021). Consequently, legal requirements relating to representation do not necessarily guarantee meaningful participation or influence.

The experiences documented in Kajiado South illustrate these challenges and raise important questions regarding the effectiveness of community land governance frameworks in promoting gender equality.

#### **4.6 International and Regional Human Rights Framework**

Kenya's commitment to women's land rights is further reinforced by international and regional human rights instruments that recognise gender equality and prohibit discrimination in access to productive resources.

The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) obligates State Parties to eliminate discrimination against women in all areas of social, economic, and political life, including access to property and inheritance rights (United Nations, 1979). Article 16 specifically obligates States to ensure equal rights in relation to ownership, acquisition, management, administration, enjoyment, and disposition of property.

At the regional level, the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)* provides robust protections for women's property and inheritance rights. Article 21 requires States to ensure that women and men enjoy equal rights to inherit property and that widows are protected against dispossession following the death of their spouses (African Union, 2003).

The *Sustainable Development Goals (SDGs)*, particularly Goals 1, 5, and 10, further emphasise the importance of secure land rights for achieving gender equality, poverty reduction, and inclusive development (United Nations, 2015).

These international and regional commitments strengthen Kenya's obligations to protect women's land rights and provide important normative benchmarks for evaluating the effectiveness of domestic legal frameworks.

#### **4.7 Persistent Gaps Between Legal Protection and Implementation**

Despite the progressive legal framework discussed above, evidence from Kenya consistently demonstrates the persistence of a significant implementation gap. Legal reforms have expanded formal rights, yet many women continue to experience exclusion from ownership, inheritance, registration, and governance of land.

This gap reflects the interaction of several factors, including patriarchal customary norms, weak enforcement mechanisms, limited legal literacy, institutional inefficiencies, corruption, and barriers to accessing justice. The coexistence of statutory law and customary systems often results in situations where legal rights exist formally but remain inaccessible in practice.

Consequently, evaluating women's land rights requires moving beyond an examination of legal provisions to consider how law operates within specific social, cultural, and institutional contexts. The following sections therefore draw on empirical evidence from Kajiado South Sub-County to assess the extent to which Kenya's legal framework has succeeded in advancing substantive land justice for women.

### **5.0 Methodology**

#### **5.1 Research Design**

This study adopted a qualitative feminist research design to examine the effectiveness of Kenya's legal and policy framework in protecting women's land rights. Feminist qualitative methodologies are particularly suited to research that seeks to understand how law, power, and social structures shape women's lived experiences (Kabira & Nzioki, 1997; Oakley, 1981). Unlike conventional legal analyses that focus primarily on statutory provisions and judicial decisions, feminist methodologies emphasize the voices, experiences, and agency of women whose realities are often obscured within formal legal discourse.

The study combined doctrinal legal analysis with empirical qualitative inquiry. The doctrinal component involved the examination of constitutional provisions, legislation, policy documents, and judicial decisions relating to women's land rights in Kenya. The empirical component sought to explore how these legal protections are experienced, interpreted, and implemented in practice by women and other stakeholders involved in land governance. This mixed approach enabled the study to assess not only the existence of legal protections but also their effectiveness in addressing gender-based inequalities in land ownership and governance.

#### **5.2 Study Area**

The study was conducted in Kajiado South Sub-County, Kajiado County, Kenya. The area was selected purposively because it presents a particularly relevant context for examining the interaction between statutory law, customary land tenure systems, and women's land rights. Kajiado South is predominantly inhabited by the Maasai community, whose livelihoods are closely linked to land through pastoralism, livestock production, agriculture, and other land-based economic activities.

The region has experienced significant transformations in land tenure over recent decades, including subdivision of group ranches, privatization of land, expansion of land markets, and implementation of community land governance frameworks. These changes have generated important debates regarding ownership, inheritance, governance, and access to land, particularly for women. The area therefore provides a useful setting for examining the extent to which legal reforms have translated into substantive protection of women's land rights within a pastoralist context.

#### **5.3 Sampling and Participant Selection**

The study employed purposive sampling to identify participants with relevant knowledge and experience regarding women's land rights and governance. Purposive sampling is widely used in qualitative research because it enables the selection of information-rich participants capable of providing detailed insights into the phenomenon under investigation (Patton, 2015).

A total of thirty-three (33) participants were engaged in the study. Participants were selected from diverse stakeholder groups in order to capture multiple perspectives on land ownership, inheritance, governance, dispute resolution, and policy implementation. These included women from different socio-economic backgrounds, community leaders, representatives of land governance institutions, local administrators, legal practitioners, civil society actors, and individuals with experience in land-related disputes.

Special attention was given to ensuring representation of women whose experiences reflected different intersections of age, marital status, education level, and economic position. This approach was informed by the study's intersectional framework, which recognises that women's experiences of land rights are not uniform but are shaped by multiple social and economic factors.

#### **5.4 Data Collection Methods and Analysis**

Data were collected through four complementary methods: Focus Group Discussions (FGDs), Key Informant Interviews (KIIs), narratology interviews, and desk-based legal review.

Data analysis was undertaken using thematic analysis, a systematic qualitative method that involves identifying, organising, and interpreting recurring patterns within a dataset (Braun & Clarke, 2006). Interview transcripts, field notes, and documentary materials were reviewed repeatedly to identify key themes emerging from participants' experiences and perceptions.

The coding process was both deductive and inductive. Deductive codes were informed by the study's theoretical framework, including concepts such as gender equality, legal pluralism, access to justice, land governance, and women's agency. Inductive codes emerged directly from participants' narratives and reflected issues that arose during the research process. Through this process, several major themes were identified, including:

- i. women's understandings of land ownership;
- ii. inheritance and customary exclusion;
- iii. effectiveness of legal protections;
- iv. institutional barriers and access to justice;
- v. participation in land governance; and
- vi. women's agency and strategies of resistance.
- vii. These themes form the basis of the findings and analysis presented in subsequent sections.

#### **5.5 Ethical Considerations**

The study adhered to fundamental ethical principles governing social science research. Participation was voluntary, and informed consent was obtained from all participants prior to data collection. Participants were informed of the purpose of the study, the voluntary nature of their participation, and their right to withdraw at any stage of the research process. Confidentiality and anonymity were maintained throughout the study.

#### **5.6 Limitations of the Study**

As with all qualitative studies, the findings are context-specific and do not seek statistical generalization to all women in Kenya. Rather, the study aims to provide in-depth insights into the operation of legal and governance systems within a specific socio-cultural context. While Kajiado South offers important lessons regarding the interaction between law, custom, and gender, experiences may differ across regions and communities. Nevertheless, the findings provide valuable evidence regarding broader challenges affecting the implementation of women's land rights in Kenya and contribute to ongoing debates on gender equality, land governance, and legal reform.

The methodological approach adopted in this study enabled a comprehensive examination of both the formal legal framework governing women's land rights and the realities of its implementation in practice. By combining feminist qualitative inquiry with doctrinal legal analysis, the study provides a nuanced understanding of the relationship between law, institutions, customary norms, and women's experiences of land governance. This approach is particularly appropriate for assessing whether legal reforms have translated into substantive equality and effective protection of women's land rights.

#### **6.0 Discussion: From Formal Equality to Substantive Land Justice**

The findings presented in this study reveal a persistent contradiction at the heart of Kenya's land governance system. On the one hand, Kenya possesses one of the most progressive constitutional and statutory frameworks on women's land rights in Africa. The Constitution of Kenya (2010), the Land Registration Act (2012), the Matrimonial Property Act (2013), the Community Land Act (2016), and the Law of

Succession Act collectively establish extensive protections for women's rights to own, inherit, access, and control land. On the other hand, women in Kajiado South continue to experience systematic exclusion from land ownership, inheritance, governance, and dispute-resolution processes.

This contradiction demonstrates that the challenge confronting women's land rights in Kenya is no longer primarily one of legal recognition but rather one of implementation and enforcement. The findings support feminist legal scholarship that cautions against equating legal reform with social transformation. Formal legal equality may coexist with substantive inequality when institutional practices, cultural norms, and governance structures continue to reproduce historical patterns of exclusion.

The discussion interprets the findings through the lenses of African Feminism, Intersectionality Theory, Feminist Legal Analysis, and Legal Pluralism to explain why progressive legal reforms have not fully translated into gender-equitable outcomes.

### **6.1 Legal Pluralism and the Persistence of Patriarchal Land Relations**

One of the most significant findings emerging from this study is the continued influence of customary norms in shaping access to and control over land. Despite constitutional provisions requiring the elimination of discriminatory customs and practices, inheritance and ownership decisions within many households continue to be governed by patriarchal customary principles rather than statutory law. Women remain largely excluded from inheritance because land is perceived as belonging to male lineage structures, while daughters are expected to access land through marriage.

These findings reinforce legal pluralist arguments that statutory law rarely operates in isolation. Instead, individuals navigate multiple normative systems simultaneously, including constitutional law, customary law, administrative practices, religious norms, and local governance structures. In Kajiado South, customary institutions continue to exercise substantial authority over land allocation, inheritance, and dispute resolution despite the existence of formal legal protections.

The findings further support African feminist critiques of legal reform approaches that assume legal change automatically produces social change. While constitutional reforms have expanded women's rights on paper, customary systems continue to define legitimate ownership in ways that privilege men. Consequently, women frequently encounter a legal environment in which constitutional rights exist formally but are socially contested or practically inaccessible.

The evidence therefore suggests that legal reform alone is insufficient to dismantle gendered inequalities in land ownership. Sustainable transformation requires engagement with the social institutions through which customary norms are reproduced and enforced.

### **6.2 Representation without Power: The Limits of Gender Inclusion**

A second major finding concerns women's participation in community land governance structures. Although women increasingly occupy positions within community land committees, group ranch structures, and local governance institutions, participants consistently described such participation as symbolic rather than substantive. Women were frequently included to satisfy legal requirements while remaining excluded from actual decision-making processes.

This finding raises important questions regarding the implementation of the Community Land Act and constitutional commitments to gender equality. From a formal legal perspective, numerical representation may appear sufficient evidence of inclusion. However, feminist legal theory emphasizes that meaningful participation requires more than physical presence. It requires the ability to influence decisions, shape outcomes, and exercise authority within governance institutions.

The findings, therefore, expose a broader limitation within contemporary governance reforms. Gender quotas and representation requirements may improve women's visibility without fundamentally redistributing power. Consequently, institutional reforms that focus exclusively on representation risk reproducing rather than transforming existing hierarchies.

This phenomenon is particularly significant in pastoralist contexts where authority remains concentrated within male-dominated customary structures. The continued exclusion of women from councils of elders and other influential decision-making spaces demonstrates that gender inclusion remains incomplete despite legislative reforms.

### **6.3 Judicial Progress and the Limits of Litigation**

One of the most encouraging findings from the study concerns the evolving jurisprudence of Kenyan courts regarding women's land rights. Analysis of the eleven judicial decisions reviewed in this study demonstrates an emerging judicial willingness to recognise women's equitable, beneficial, and matrimonial interests in land.

In *Ankoi Ene Kuntai v. Kuntai Ole Polong & Another* (ELC No. 922 of 2017), the court recognised a woman's equitable interest in matrimonial property and affirmed that such property could not be disposed of without her consent. Similarly, in *Masiado v. Selel* (ELC No. 499 of 2017), the Environment and Land Court protected a widow's entitlement to her deceased husband's share of land and rejected attempts by male relatives to exclude her through registration processes.

The broader body of case law reviewed in the study demonstrates similar trends. In *Kimanya & 2 Others v. Lekishirini & 5 Others* (ELC No. 37 of 2020), widows successfully challenged the fraudulent registration of communal land. These decisions indicate increasing judicial recognition of women's interests in land and a growing willingness to interpret constitutional equality provisions in a gender-responsive manner.

However, the study also reveals important limitations. Other decisions demonstrate the continued influence of procedural formalism within land adjudication. Cases such as *Museto Women Group v. Ngugi & 4 Others* (ELC No. 436 of 2017) illustrate how women's claims may be undermined where courts prioritise documentary title over occupation, contribution, or customary usage. Similarly, procedural requirements relating to jurisdiction, evidence, and litigation costs continue to create significant barriers to justice.

Taken together, the case law suggests that Kenyan courts increasingly function as corrective institutions capable of advancing gender equality. However, judicial protection often occurs only after women have experienced dispossession, exclusion, or prolonged conflict. Litigation therefore remains a reactive rather than preventative mechanism for protecting women's land rights.

### **6.4 Institutional Barriers as Forms of Gendered Exclusion**

The findings further demonstrate that many barriers confronting women originate not from the absence of legal rights but from the institutions responsible for implementing those rights. Participants repeatedly identified corruption, lengthy court processes, bureaucratic complexity, lack of documentation, financial constraints, and discriminatory treatment by local administrators as major obstacles to justice.

From a feminist legal perspective, these barriers cannot be dismissed as merely administrative inefficiencies. Rather, they constitute forms of structural discrimination that disproportionately affect women. Requirements relating to documentation, literacy, legal representation, and financial resources appear formally neutral but often produce unequal outcomes because women historically possess fewer resources with which to navigate legal systems.

The findings therefore support broader feminist critiques of legal institutions as sites where gendered power relations are reproduced. The existence of constitutional rights becomes largely symbolic if women lack realistic opportunities to access and enforce those rights.

### **6.5 Women's Agency and the Reimagining of Land Justice**

Although the findings document substantial barriers, they also reveal important forms of women's agency. Women are not merely passive recipients of legal protections but active participants in shaping outcomes. Participants described using women's groups, paralegal networks, collective advocacy, legal awareness initiatives, and family negotiations to advance their claims. This finding is particularly significant because it challenges deficit-oriented narratives that portray women solely as victims of discrimination. Instead, women emerge as legal actors who strategically navigate multiple legal systems in pursuit of justice.

The findings further suggest that sustainable land reform requires moving beyond state-centred approaches to incorporate community-based mechanisms of empowerment. Legal literacy programmes, women's collectives, community paralegals, and gender-responsive governance structures may be as important as legislative reform in advancing substantive equality.

## **6.6 Toward Substantive Land Justice**

The central argument emerging from this study is that Kenya's legal framework has largely succeeded in establishing formal equality but has not yet achieved substantive land justice. Women's exclusion persists not because rights are absent but because the social, institutional, and governance environments within which those rights operate remain deeply gendered.

Substantive land justice requires more than constitutional guarantees or progressive statutes. It requires institutions capable of enforcing rights, governance systems that facilitate meaningful participation, dispute-resolution mechanisms that are accessible and gender-responsive, and broader social transformation capable of challenging patriarchal norms.

The findings, therefore, suggest that future reforms should focus less on creating new legal rights and more on strengthening implementation, accountability, legal literacy, and institutional responsiveness. Only through such an approach can the gap between legal recognition and lived reality be effectively addressed.

## **7.0 Conclusion**

This article set out to evaluate the effectiveness of Kenya's legal and policy framework in protecting women's land rights and to examine the extent to which legal reforms have translated into substantive equality in land ownership, inheritance, governance, and access to justice. Drawing on African Feminist Theory, Intersectionality Theory, Feminist Legal Analysis, and Legal Pluralism, the study combined doctrinal legal analysis with empirical evidence from Kajiado South Sub-County to assess the relationship between formal legal guarantees and women's lived realities.

The findings demonstrate that Kenya has developed a robust constitutional and statutory framework for the protection of women's land rights. The Constitution of Kenya (2010), the Land Act (2012), the Land Registration Act (2012), the Matrimonial Property Act (2013), the Community Land Act (2016), and the Law of Succession Act collectively provide extensive protections against discrimination in access to, ownership of, and control over land. Judicial decisions reviewed in the study further reveal an increasingly progressive jurisprudence that recognises women's interests in matrimonial property, inheritance, and land ownership.

Despite these legal advances, the study finds that significant inequalities persist. Women continue to experience exclusion from inheritance, limited influence in community land governance structures, barriers to accessing justice, and vulnerability to dispossession. The evidence suggests that these challenges arise not from the absence of legal protections but from persistent implementation gaps created by patriarchal customary norms, institutional weaknesses, limited legal literacy, corruption, bureaucratic barriers, and unequal power relations.

The study, therefore, argues that the primary challenge facing women's land rights in Kenya is no longer one of legal recognition but of legal realisation. While formal equality has largely been achieved within constitutional and statutory frameworks, substantive equality remains elusive. Women's rights continue to be mediated through social, cultural, and institutional structures that frequently undermine the transformative potential of legal reforms.

The findings also reveal the continuing relevance of legal pluralism in shaping land relations. Women often navigate multiple legal systems simultaneously, including statutory law, customary norms, administrative institutions, and community governance structures. Consequently, legal protections that appear robust on paper may be weakened in practice by competing normative systems that continue to privilege male authority over land.

Importantly, the study demonstrates that women are not merely passive recipients of legal protection but active agents who negotiate, resist, and challenge exclusionary practices through collective action, legal awareness initiatives, community networks, and engagement with formal institutions. These findings underscore the importance of viewing women not only as rights holders but also as central actors in the transformation of land governance systems.

The article contributes to feminist legal scholarship by demonstrating how formal legal equality can coexist with substantive exclusion. It further contributes to debates on land governance by showing that the effectiveness of legal reforms cannot be assessed solely through statutory analysis but must also be evaluated in relation to implementation, institutional practice, and lived experience. Ultimately, the study

concludes that achieving substantive land justice requires moving beyond legal reform towards broader institutional and socio-cultural transformation.

## **8.0 Recommendations**

The findings of this study demonstrate that while Kenya has established a progressive legal framework for women's land rights, significant gaps remain between formal guarantees and lived realities. Addressing these gaps requires a multidimensional approach that strengthens implementation, enhances institutional accountability, expands access to justice, and challenges the socio-cultural norms that continue to reproduce gendered exclusion. The following recommendations outline key interventions necessary to advance substantive land justice for women in Kenya.

### **8.1 Legislative and Policy Reforms**

Although Kenya's legal framework provides substantial protection for women's land rights, gaps remain in implementation and enforcement. The national government should strengthen mechanisms for monitoring compliance with constitutional and statutory obligations relating to gender equality in land governance. Regular gender audits should be undertaken to assess the extent to which land laws are being implemented in ways that advance women's ownership, participation, and access to justice.

The Ministry of Lands, Public Works, Housing and Urban Development, together with the National Land Commission, should develop and implement gender-responsive guidelines for land administration, registration, adjudication, and dispute resolution. These guidelines should establish clear accountability mechanisms for addressing gender-based discrimination within land governance institutions.

### **8.2 Strengthening Community Land Governance**

The findings reveal that women's participation in community land governance structures remains largely symbolic in many instances. There is therefore a need to move beyond numerical representation towards meaningful participation.

County governments and community land management committees should establish mechanisms to ensure that women actively participate in decision-making processes relating to land allocation, dispute resolution, land registration, and governance. Capacity-building programmes should be implemented to strengthen women's leadership skills and enhance their ability to engage effectively in governance structures.

Implementation of the Community Land Act should be accompanied by regular monitoring to ensure compliance with gender inclusion requirements and to prevent the marginalisation of women within community governance institutions.

### **8.3 Enhancing Access to Justice**

Access to justice remains one of the most significant barriers to the realization of women's land rights. The Judiciary, National Legal Aid Service, and county governments should expand legal aid services targeting women involved in land disputes, particularly in rural and pastoralist communities.

Alternative dispute resolution mechanisms should be strengthened and made more gender responsive. While community-based dispute resolution mechanisms remain important, safeguards should be established to ensure that they operate consistently with constitutional principles of equality and non-discrimination.

The Judiciary should continue promoting gender-sensitive adjudication of land disputes and ensure that judicial officers receive ongoing training on gender equality, women's land rights, and feminist approaches to property law.

### **8.4 Legal Literacy and Community Awareness**

The study demonstrates that limited awareness of legal rights continues to undermine women's ability to claim and defend land rights. Government agencies, civil society organizations, and development partners should invest in sustained legal literacy programmes aimed at increasing public awareness of constitutional and statutory protections relating to women's land rights.

Particular attention should be given to women in rural and pastoralist communities where access to legal information is often limited. Community-based paralegal programmes, women's rights champions,

and local awareness campaigns can play a critical role in improving access to information and strengthening rights consciousness.

### **8.5 Transforming Patriarchal Social Norms**

Legal reform alone cannot eliminate gender inequalities in land ownership and governance. Long-term transformation requires addressing the patriarchal norms and cultural practices that continue to shape perceptions of ownership, inheritance, and authority.

Government institutions, civil society organizations, religious leaders, customary leaders, and community-based organizations should collaborate in promoting gender-transformative approaches that challenge discriminatory norms while respecting cultural identity. Such initiatives should encourage inclusive understandings of inheritance, ownership, leadership, and participation in land governance.

### **9.0 Future Research**

This study focused on Kajiado South Sub-County and therefore provides context-specific insights into the interaction between law, custom, and women's land rights. Future research could undertake comparative analyses across different counties, tenure systems, and cultural contexts to explore how legal reforms are experienced in diverse settings.

Further research is also needed on the implementation of the Community Land Act, the gendered implications of land registration processes, and the effectiveness of judicial interventions in advancing substantive land justice. Comparative studies examining women's land rights across pastoralist and non-pastoralist communities may provide additional insights into the relationship between legal reform, governance, and social change.

The promise of Kenya's constitutional and statutory reforms lies not merely in the recognition of women's rights but in their realization. The findings of this study demonstrate that legal reform, while necessary, is insufficient on its own. Achieving substantive land justice requires institutions capable of enforcing rights, governance systems that facilitate meaningful participation, and social transformation that challenges the structures through which exclusion is reproduced. Only then can the constitutional vision of equality move from law on paper to justice in practice.

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