



Customary laws and the right of widows of Nyamwezi tribe inheriting land in Tanzania

Najma Ally Kassim¹, Sikujua O Hamdan², Muhyiddin Ahmad Khamis²

Masters Student, Faculty of Law, Zanzibar University, Tonguu, Zanzibar, Tanzania

Lecturer, Faculty of Law, Zanzibar University, Tonguu, Zanzibar, Tanzania

Abstract

The study focused on customary laws and the right of widows of Nyamwezi tribe inheriting land in Tanzania. The objectives were: to evaluate the effectiveness customary laws governing land inheritance by Nyamwezi widows and to analyze challenges faced by Nyamwezi widows on application of customary law on land inheritance. The study used the Doctrinal Legal research design. The population was 172 and sample size of 120 calculated using Yamane (1967) formula was used. The sample size was selected using random sampling from the population. The study used both primary and secondary data. The data was collected using questionnaire and documentary methods. The data was analyzed qualitatively and results displayed on tables for easy reporting. The study concluded that, customary laws were not effective on safeguarding widows land inheritance rights and were challenges facing Nyamwezi widows on application of customary law on land inheritance with the highest challenges being, Land titles solely held by men and Corruption in inheritance disputes due arbitrated by local leaders. The study recommended that conflict between customary laws and state legislation should be dealt with by legislating on a unifying widows land inheritance law, establish law enforcement mechanisms which are not biased and cannot be easily corrupted by the local leaders, Ensure women can hold title deeds and advocate for registrations of all customary marriages.

Keywords: customary laws, widow, land inheritance

Introduction

In seventeenth century, upon the death of the husband, clan member of Nyamwezi tribe was supposed to support the widow. Clan tradition obliged the successor whether a first son or brother in law to protect the widow and children among the Nyamwezi tribe of Tanzania. The society behaving to inherit widow is to deprive the rights of the widow to be the successor of her husband's property (Ndulo, 201) ^[9]. During the pre-capitalist social era, women were protected from the exploitative, oppressive and discriminatory, however, in operation, deprive of inheritance was already evident even in Tanzania as mentioned in the custom (Mbote, 2002) ^[6]. The legal consequence of colonial rule common to African countries was the introduction of changes in the institutions and norms governing the local people.

Colonialists brought changes and the application of norms that were alien to African societies. Most importantly, the colonial legal legacy weakened indigenous authority and radically altered the normative content of legal areas of local communities and cemented gender inequalities. Under the African customs, relations such as inheritance had been the concern of kinship groups and clan subject to negotiations and compromise. However, under codified law, they were transformed and their fluidity and flexibility was lost as they now become matter to be heard by native courts, hence new customs were invented to create new norms.

Most significantly, the English common law was received in Tanganyika by virtue of Article 17 of the Tanganyika Order in Council in 1920. This marked an important watershed in the legal system of Tanganyika. Article 24 of Order stipulated the native law was to be applicable only if it was not repugnant to justice and morality. These sections were related by Section 9(2) of the Judicature and application of law act which also enjoined court to be;

“To justice and morality or inconsistent with any written law and shall decide all such cases according to substantial Guided by African customary law in civil cases in which one or more of the parties is subject to it or affected by it in so far as it is applicable and is not repugnant justice”

Accordingly, in order to regularize the area of inheritance, the colonialists imparted the gender neutral law; however, this Act was mainly for Europeans while other customary and Islamic laws were applicable to indigenous and Muslim communities respectively (Kasanga, 2010) ^[3]. In Tanzania mainland, there are several Legislations applicable to the administration of deceased estate. Probate and administration of Estate Act Chapter 352 and another piece of legislation is the Local Customary Law (Declaration) Order, 1963. These are a set of codified customary rules which are applicable to matrilineal societies. In Nyamwezi tribe the customary laws are widely used therefore, this study focused on the application of customary laws on inheritance and specifically land.

Statement of the Problem

The question of land rights in Tanzania has always been controversial (Mwaikasu, 2018). Tanzania has an obligation based on international and regional commitments to guarantee widows rights in all aspects of life. However, the applications of inheritance law seem to deprive widows from land rights in the case of their husband's death (Tanzania Women Lawyers Association, 2013) ^[10]. In Nyamwezi tribe customary laws are widely used and it is not clear how the laws are in a position to safeguard widow rights on land inheritance. This has caused a lot of suffering of widows among the Nyamwezi tribe several scenarios have shown women deprived of land ownership by close male relatives. Therefore, the study was designed to

investigate customary laws and the right of windows of Nyamwezi tribe inheriting land in Tanzania.

Objectives

1. To evaluate the effectiveness customary laws governing land inheritance by Nyamwezi widows in Tanzania.
2. To analyze challenges faced by Nyamwezi widows on application of customary law on land inheritance in Tanzania.

Literature Review

1. Theoretical Review

There are various laws which explain about the right of inheritance in Mwanza but researcher explained the right through customary law, The term customary law is defined under Section 53 as 'any rule or body of rules hereby rights and duties are acquired or imposed, established by any usage in any Tanganyika African community and accepted by such community as having the force of law'. Customary law is the rule or body of rule originated in the community as a usage and then become binding law in the respective community. The customary law has long history in term of application in the justice of Mwanza. It started before the coming of colonial, during colonial and post-colonial era. Before the coming of colonial in Tanzania, customary law was applied by all local communities such as Yao, Luguru, Hehe. It is observed while Nyamwezi customary law was applied in land Islamic law was applied in Coastal areas such as Mombasa, Lamu, Kilwa, Unguja and Pemba etc. During the colonial era, still customary law was applied in Tanganyika as authorized by the Judicature and Application of Laws Ordinance of 1921.

The concept of inheritance has been described by Coke as the entity of having person in to possession of dead person's property 'According to Bouvier's Law Dictionary the word inheritance means inter alia, perpetuity in lands to a man and his heirs and the right to succeed to the estate of a person who dies intestate. Thus, the term inheritance includes not only lands and tenements which have been acquired by the deceased, but every fee simple or fee tail which a person has acquired by purchase and may be said to be inheritance as the purchaser's heirs may inherit. It may be testacy or intestacy. The statute governed customary law relating to inheritance is the Customary Law (Declaration) Order. According to the Customary Law (Declaration) Order, after mourning period, inheritance will be distributed to the administrator who is usually the eldest brother under the direction of the clan council in case of unavailability of any male relative of the deceased then the deceased sister will administer the estate. Where the deceased leaves children, they will inherit the entire property exclusively. Inheritance is classified into three degrees; the deceased eldest son by his most senior inherits in the first degree rule 19, a status that assures him a bigger share than any other heir. All other sons inherit in the second degree. Those in the second degree will each get larger shares than the daughters. According to rule 25, all daughters inherit in the third degree; this means that if a child widow will be classified in the third degree.

Also under rule 30 it is established the mode of distribution of property in the second and the third degree according to the children's ages and gender. Under this regime, males always receive more than the female, and age only comes into play to determine who receives more property if there is

multiple males or multiple females heirs. In other words, gender always proceeds age with male inheriting more than females, regardless of age. In this regard, she may receive very little property if any at all. On the inheritance of family or clan land, the rights of women as daughters or widows are limited. There is a prevalent discrimination against women and girls, both in law and in the practice of families and societies. According to Rule 20, daughters shall inherit clan land to use for their entire lifetime only. They have no disposal right. This rule was authoritatively confirmed in Kagabo Vs Dandila case of 2020, where the court stated that while other male clan members survive, the most that women can receive from the deceased's portion as clan land is in usufruct. The holder of usufruct cannot dispose of the land by transfer or through inheritance, at the maximum are interest in the land is limited to occupational use.

Rule 5 totally excludes the right of widows and daughters to act as administrators of estates. Administrators tend to squander the entire estate and leave female heirs empty handed. Again, widows are extremely vulnerable under rule 27 is to the effect that, the widow has no share of the inheritance if the deceased left a relative of his clan, her share is to be cared for by her children just as she has cared for them. They have no inheritance right of their own children or other heirs. Disinheritance is always connected with the fear that property could be transferred to another family. This law, ties widows rights to those of the children or other deceased's relative's heirs. This problem is illustrated in the case of Scolastica Benedict Vs Martina Benedict (TLR) 1980, held that; under the rules (local customary laws of inheritance) she ought to be supported by the children in the house they had inherited. The case illustrates the rule is discriminatory to widows.

Methodology

The study was conducted in Mwanza region of Tanzania because that where the Nyamwezi tribe live thus the flexible to access respondents who gave the data on inheriting land under customary laws. The study used Doctrinal Legal Research design. This design also known as "black letter" methodology is centered on the letter of the law rather than the law in action. The design used the qualitative approach in order to be able to analysis of the legal doctrine and how they have been developed and applied. The study population was 172 windows. The sample size was 120 calculated using Yamane formulae of 1967 (Kothari, 2010). The sampling technique used to select the sample size was random sampling; this enabled the researcher to give equal chances of all the windows to participate in the study. The study used both primary and secondary data. The data was collected using questionnaire and documentary methods. The documentary collected data on the customary law and review of records of civil cases according to gender and inheritance and matrimonial matters. Data was analyzed qualitatively. The results were displayed on tables for easy reporting.

Findings

1. Demographic characteristics of respondent

The characteristics analyzed were; gender, age marital status and their general understanding of customary law in legal right of widow inheriting land under customary law in Nyamwezi tribe.

Sex

Gender is a matter of concern in this study because men and women have different ideologies on matters related to understanding of customary laws in widows inheriting land under customary law. Out of the 120 respondents who participated in the study 39.2% were males and 60.8% were females. The findings imply that women are more however either gender was represented.

Age

The researcher sought to establish the age distribution of respondents so that it can be ascertained whether all ages were represented. The findings of this study were that, 12.5% of respondents were in the age of 18-25, 22.5% were in the age of 26-35, 31.7% were in the age of 36-45 and 33.2% were in the age of 46 years and above.

Marital Status

Marital status was also analyzed since different marital status might have different views on the customary laws and land inheritance by widows in the Nyamwezi tribe. The findings were: 20% were single men and women, 55% were married women and men, 16.6% were widows and 8.3% were divorced people. This suggests that all marital status were represented.

Education Level

The aspect was thought to be important as it would tell the quality of the response from the participants. 65% of respondents had primary level of education, 16.7% had secondary level of education, 8.4% had higher learning education, which in this case was refereed as Degree, Master’s and Doctorate; 10% had other educational qualifications such as Certificates and Diplomas. This revealed that, the majority of the participants had some education to respond to the questions correctly.

2. Effectiveness of Customary Laws governing land inheritance by Nyamwezi widows.

In this objective the researcher wanted to find out the effectiveness of the customary laws on right of widow inheriting land.

2.1 Adequacy of customary laws on widows land inheritance rights.

Table 1: Adequacy of customary laws on widows land inheritance rights

Variable	Frequency	Percentage (%)
High	20	16.7
Medium	40	33.3
Low	60	50
Total	120	100

Source: Researcher (2022).

The results in Table 1.1 indicates that 20 respondents representing 16.7% observed high, 40 respondents representing 33.3% observed medium while 60 respondents representing 50% observed low. This implied that the majority of the respondents observed that the customary laws were not adequate on safeguarding widows land inheritance rights. The results were similar to findings of Asiimwe, and Crankshaw, (2011) [1].

2.3 Level of efficiency of customary laws on widows land inheritance rights.

Table 2: Level of efficiency of customary laws on widows land inheritance rights.

Variable	Frequency	Percentage (%)
High	20	16.7
Medium	35	29.2
Low	65	54.1
Total	120	100

Source: Researcher (2022).

The findings in Table 2.2 shows that, 65 respondents equal to 54.1% observed low efficiency, 35 respondents equal to 29.2% observed medium efficiency while 20 respondents equal to 16.7% observed high efficiency. The results indicate that majority of the respondent observed low level of efficiency which means that the customary laws had low efficiency on safeguarding widows land inheritance rights. The results were similar to the findings of Ayodele, (2016).

3. Challenges faced by Nyamwezi widows on application of customary law on land inheritance.

The researcher investigated the challenges that were faced by Nyamwezi widows on application of customary law on land inheritance. The Table 1.3 displays the findings.

Table 3: Challenges

Challenge	High	%	Medium	%	Low	%
Conflict (opposing principles) between customary and state legislation.	70	58.3	40	33.3	10	8.4
Corruption in inheritance disputes as arbitrated by local leaders.	90	75	25	20.8	5	4.2
Land titles solely held by men	120	100	0	0	0	0
Unregistered and often customary marriages	40	33.3	50	41.7	30	25

Source: Researcher (2022)

The results in Table 1.3 indicate that the highest challenge was Land titles solely held by men where 120 respondents equal to 100% observed the challenge was high. This was followed by Corruption in inheritance disputes as arbitrated by local leaders where 90 (75%) observed high, 25 (20.8%) observed medium and 5 (4.2%) observed low. Conflicting (opposing principles) between customary and state legislation was ranked third challenge where 70 (58.3%) observed high, 40 (33.3%) observed medium and 10 (8.4%) observed low. The fourth ranked challenge was Unregistered and often customary marriages where 40 (33.3%) observed high, 50 (41.7%) observed medium and 30(25%) observed low. The results concurred with the results of Morrow (2004).

Conclusion

The study concluded that the Level of efficiency of customary laws on widows land inheritance rights was low. Therefore the customary laws were not effective on safeguarding widows land inheritance rights. Also the study concluded that there were challenges facing Nyamwezi widows on application of customary law on land inheritance. These challenges following order of ranking

were: Land titles solely held by men, Corruption in inheritance disputes as arbitrated by local leaders, Conflict (opposing principles) between customary and state legislation and Unregistered and often customary marriages.

Recommendations

The study recommended the following:

1. Review their laws in a holistic manner to ensure that all legislation adequately protects widows rights to land even if customary were used. The conflict between customary laws and state legislation should be dealt with by legislating on a unifying widows land inheritance law.
2. Establish law enforcement mechanisms which are not biased and cannot be easily corrupted by the local leaders who arbitrate in land inheritance.
3. Ensure that women can equally enjoy, like men, be able to hold title deeds.
4. Advocate for registrations of all customary marriages to help widows to have legal backing incase of husband's death.

References

1. Asimwe FA, Crankshaw O. The impact of customary laws on inheritance: A case study of widows in Urban Uganda. *Journal of Law and Conflict Resolution*,2011:3(1):7-13.
2. Ayodele JO. Widows and Inheritance Hijacking Practices in IlaraMokin, Ondo State, Nigeria. Lagos State University, Nigeria. *African Journal of Criminology and Justice Studies*,2016:9(1):11-27.
3. Kasanga M, *Inheritance Law Still Deny Women Rights*. The Guardian Newspaper. Dar es Salaam, Tanzania, 2010.
4. Kothari CR. *Research Methodology. Methods and Techniques*, New York, 2010.
5. Wiley & Sons Ltd.
6. Mbote PK. *Gender Dimension of law, report of colonialism and inheritance in East Africa*. Chantelaine Geneva, Switzerland, 2002.
7. Morrow RA. *Women's inheritance Rights in Africa. The need to integrate cultural understanding and legal reform*. American University Washington collage of law, 2004.
8. Mwaikasu RJA. *Report of the commission on the Law of Succession and Inheritance*. Dar es Salaam, Tanzania, 2018.
9. Ndulo M. *African Customary law and Women's right*. New York: Oxford University Press, 2011.
10. Tanzania women lawyers association. *Position Paper on Gender*. Dar es Salaam, Tanzania, 2013.