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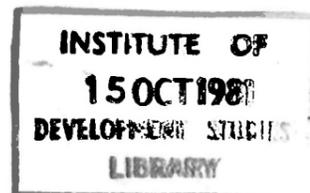
SOME CONSEQUENCES OF LAND ADJUDICATION
IN MBERE DIVISION, EMBU

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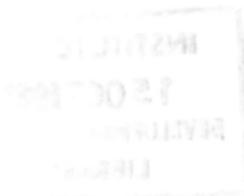
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IDS/WP 320

SOME CONSEQUENCES OF LAND ADJUDICATION
IN MBERE DIVISION, EMBU

By

David Brokensha and E.H.N. Njeru



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ABSTRACT

Land adjudication has been completed in 5 of the 21 sub-locations here considered, and is proceeding in the others. In this transitional phase, most local Mbeere stress negative consequences - the decline of family and clan; lack of co-operation; increase in hostility, conflict and alleged violent death. These claims are examined. Rights to land, and to the plants of Mbeere, have also radically changed, with far reaching consequences. Widespread land sales introduce a further aspect of disorganisation. Many people perceive the land division as inequitable and disrupting. Future prospects are considered briefly.

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SOME CONSEQUENCES OF LAND ADJUDICATION IN MBERE, DIVISION, EMBUINTRODUCTION AND REVIEW OF LITERATURE

By "Mbere Division" we refer to that part of Mbere that formed the area for The Special Rural Development Programme, (SRDP) covering just over 1600sq. kilometers and with a probable population today of 75,000. There have been several previous studies of land reform in Mbere, which we summarise briefly, then go on to examine recent events and perceived consequences.

Brokensha and Glazier, 1973, (which is a much expanded version of Brokensha, 1972) presents an overview of Mbere social organization, land tenure and rights to land and land sales; the process of land reform (which was then in its early stages is described and some predictions made.

Okoth - Ogendo, 1975, contains brief but useful references to Mbere SRDP and Land Reform, pointing out the conflict between SRDP and TRP (the Tenure Reform Programme), and considering in-migration (a common feature of SRDP areas which, by definition are high service areas) and the "lesser rights" of women.

Njeru 1976, is a dissertation based on questionnaires and interviews administered in Mavuria Location, a medium zone, ecologically. This study is especially concerned with the local people's perceptions of change attendant on land reform. As this study is as yet unpublished, we have drawn much material from it for this paper.

Finally, Glazier, 1976, presents a detailed study of Nguthi sub-location (one of the few high-potential areas of Mbere) showing how land has become "a focal point of strife" and examining related changes in lineage solidarity; there is an exceptionally high rate of litigation in Nguthi, undoubtedly because of the high value of the land.

The authors base this paper on field research conducted in Mbere Division. Brokensha has spent a total of 2½ years from 1970/77 in Mbere, and gratefully acknowledges support from the Rockefeller Foundation (1970/71) and the National Science Foundation (grants GS-42842, 1974, and BNS76 - 10704, 1976/77) Njeru, who comes from Mavuria Location in Mbere, conducted most of his research in 1975/76.

Land Reform, 1977

Land is obviously a sensitive topic, on which it is seldom possible to get information as detailed and precise as we would wish. Sensitively is seen on the part of officials reluctant to disclose information regarded as confidential, and also by both buyers and sellers, many of whom have taken part in shady transactions. In addition, some buyers come from outside Mbere Division, and they prefer to keep a low profile and to avoid publicity.

There is a high rate of litigation, at all four levels - The local "unity" or adjudication committee; the Embu Arbitration Board; the Area Land Adjudication Officer, and the Minister of Lands. Litigation has been completed, and titles have begun to be issued, in five of Mbere's 21 sub-locations, representing about one-fifth of the area and of the population. These sub-locations are Kiamuringa (completed in 1974) Gachoka and Riandu (1975) and Siakago and Kathera (1976).

The division of clan land into individual holdings depended on many factors - The initial extent of clan holdings, the success of the clan in upholding claims to disputed territory, the numbers of eligible clan members, the procedures adopted for division, the contributions a person made to "casing" (the expenses of litigation) and his position in a network of personal relationships.

Inequality of land distribution

All respondents felt strongly that adjudication of land resulted in a high inequality in the distribution of land. As can be seen in this table, twenty-five people (54.3%) said that the beneficiaries of the process were the rich, leaders and other influentials; the rich were able to buy more land if they had not done it before. In addition to the land they had bought they still got more after adjudication.

Here are figures for Gachoka sub-location:

Size of plot	NUMBER	% TOTAL	HA (APPROX)	% TOTAL
Below 1 ha	53	7%	30	1%
1 - 1.9 ha	64	8%	100	2%
2-2.9 ha	128	15%	320	5%
3 - 3.9 ha	120	14%	420	7%
4 - 4.9 ha	75	9%	340	3%

Size of plot	NUMBER	% TOTAL	HA (APPROX)	% TOTAL
	5 - 7.9 ha	183	22%	1160
8 ha and over	208	25%	3360	58%
Total	831		5730	

These figures should be treated cautiously, because

- (1) There is no indication of quality of land, which varies greatly in all sub-locations.

The major beneficiaries of The Land Adjudication Process

Response	Number of Respondents
1. Rich, leaders, and influentials	25
2. Rich, leaders, influentials and few clan members with big land	11
3. Clever in handling cases	3
4. Rich, leaders, influentials and clever in handling cases	4
5. Few clan members with big land	1
6. Few clan members with big land and clever in handling cases	1
7. Combination of all the first 3	1
Total	45

(Njeru 1976 : 113)

But people who sell land "without good reason", or who sell all their land, are looked down on. In one survey, they were described by 46 respondents as:

Greedy, with no future regard for family	(16)
careless and foolish	(21)
Enemies of the people	(9)
	(46)

(Njeru 1976 : 123)

We add that both of us found that most people were dissatisfied with the amount of land they obtained. On one survey of 46 respondents, 32 thought that their land was deficient in quantity and/or quality, considering their contributions to the clan's efforts, in terms of money or labour; 12 were satisfied - they would have liked more land but felt that the committee had done its best; 2 were still waiting for final results.

(Njeru 1976 : 149)

(It is perhaps inevitable that the majority of any peasant or small cultivator community should express dissatisfaction on such an issue)

- (ii) No account is taken of a person having multiple plots. A survey in April 1977, of representative villages in different areas, showed the following figures for ownership of plots or "gardens":

3 people had no gardens

16	1
20	2
21	3
8	4
6	5
1	6
1	7
1	10

(B, 4/76)²

Land reform in Mbere has not entailed consolidation of scattered plots.

- (iii) No account is taken of subsequent sales, either internally within the clan or to outsiders. Some local leaders have urged the government to ban all sales of land to outsiders. But to do this would run counter to declared national aims that the land should be used most effectively, regardless of who the owner is

2. B refers to survey conducted by Brokensha, at various dates, 1976/77, and N refers to Njeru's enquiries 1975/76.

Why do people sell land?

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GOOD REASONS FOR SELLING LAND

Response	No. of Respondents
1. School fees	42
2. Famine and food	12
3. Bride wealth arrangements	33
4. Cost of disputes, debts and fines	4
5. To buy better land	5
6. To buy cattle	5
7. Business or plot development	14
8. Homestead development	2
Total	117

(Njeru, 1976 : 125)

How much land is sold? Again, precise figures are difficult to ascertain, but in Mavuria 75 land sales were reported to the chief, from 1971 - 75, 56 being to local people and 19 to outsiders; significantly, 60% of all sales (and 68% of sales to outsiders) occurred in Mbita sub-location, the most favoured area in all Mavuria. Undoubtedly, many other sales took place, and were not reported.

CONSEQUENCES OF LAND REFORM

In this section, we emphasise, first, Mberere people's perceptions of change. We divide the responses into several overlapping categories -

- (a) Immediate results of land adjudication;
- (b) "Things Fall Apart" theme
- (c) Effects on traditional land rights.
- (d) some overall advantages;
- (e) some overall disadvantages;
- (f) effects on women's rights
- (g) other.

The immediate results of land adjudication

In a 1976 survey, responses could be placed in three broad groups:

<u>conflict</u> - people are being killed ..	-	12
hatred and quarrels	-	31
people no longer friendly	-	30

<u>conflict</u>	-	people are scattered	-	22
				<hr/> 95
<u>sales</u>	-	land is being sold		19
		many are landless		14
				<hr/> 33
<u>conservation</u>		Trees are being planted and soil is looked after		22
				<hr/> 22
				<hr/> 150

(B, 1976: n = 100, but there were multiple replies)

What were the reasons for all the disputes? Here is a partial answer
(Njeru 1976 : 132)

Using deceptive means to obtain land	33
Father deceased (no sons quarrel)	14
Boundary extended beyond proper limits	11
Selfishness (favouring one's family)	9
Others (size of contribution to clan; struggle over leadership; selling land not yours; selling some land twice.....)	17
	<hr/> 84

Then there is the question of what means are used by parties in a
land dispute to defeat each other, with these responses (Njeru 1976:135)

Bribery (offering money or land)	37
Witchcraft	25
Poison	22
Physical violence	19
Collaborating with members of other clans; giving false witness	14
Threats	9
Oath (now officially not allowed, it is	

sometimes taken secretly)	9
Using lawyers,	4
Other	- 2
	<hr/>
	141

"Death has fallen on many individuals because of land adjudication" wrote one school-boy informant from Kerie (B:1976) and his view would be shared by most Mbeere people. We have both been told countless stories of mysterious sudden deaths of prominent people in land disputes. In the absence of autopsies, we cannot verify that there has been poisoning, but we can confirm that visiting patterns have changed radically over the last few years. People will go to extra-ordinary lengths to avoid taking food or drink at another's home. (Or, for example if tea is offered, it is considered prudent to accept only if one saw the host pouring the tea from the pot, and, watched him drink his tea first)

Also, drinking patterns have been profoundly disrupted, as many are fearful of drinking with potential enemies who might poison their Karuba (beer)

It seems to us that there has also been a marked increase in drinking at markets, but

- (a) We have only subjective evidence and
- (b) we cannot link this directly to land conflicts.

(B) "Things Fall Apart" theme.

We use this Heading as it was quoted several times by high school students (B: 1976) all of whom were familiar with Chinua Achebe's novel, and who related it to what they saw as the rapid disintegration of their own society. This is perceived at different levels. First there is the rise of an aggressive individualism, exemplified by the few Mbwa kali signs which one sees on (often fenced) individual farms. This is quite foreign to traditional Mbeere - or any other African - values, and is found reprehensible by most, who regard such a land - owner as "proud, mean, conceited and an enemy of the people." (Njeru 1976 : 110) Sometimes people retaliate, as they did at Mavuria, where newcomers closed all the foot - paths that crossed the land they had bought, causing inconvenience to the school - children going to school. The parents then told the newcomers that they could not pass through other peoples land on the way to the well, effectively blocking off their only source of water: The foot - paths were soon re-opened (Njeru 1976 : 175-6)

Then there is a drastic re-ordering of the social organisation. The ituura or "Village" (perhaps "homestead" is a better term) has virtually ceased to have any meaning as people build houses on their own plots, and the old clustering of houses has disappeared. (They were never compact villages in Mbeere, but often homesteads would be grouped within calling distance of each other).

The clans, after a brief period of such power as clan - leaders had never exercised previously, have also lost much of their meaning. After dividing the land, what functions does a clan have?

Although clans have declined, "clanism" has significantly increased. By "clanism" (The English term is used) Mbeere mean that all social situations are judged according to the allegiance of parties to one of the two moieties, or groups of Mbeere clans, Irumbi (Ndamata) and Thagana (Mururi).

Voting, friendship, marriage alliance, favours, even participation in a harambee activity, - as well as land disputes - are often influenced by this division. But this is a complex matter, of which land is only a part.

Njeru material (1976 : 129 - 138) analyses the emergent social conflict. As glazier showed for Nguthi (1976 : 49) "land reform has thus become a focal point of strife. Social conflict can be divided into four main categories:

Family quarrels	22
Interpersonal	27
Inter-clan confrontation	7
Various rivalries	21
	<hr/>
	77

Family quarrels include, particularly, disputes between brothers, and secondly between father and son; it was the families that, after the clans, had control over the land. "The members of the families in many cases and for the first time in the kinship history of the Mbeere, saw themselves in confrontation with each other at such high levels. Each tried to fend for himself while faced with the alternative of either getting land, or the disappointing consequence of no land at all." (Njeru 1976 : 131)

As an example of extreme hostility, we quote from an interview

with an old man who was asked about his brother's role as clan leader, in dividing the land "The first thing I will say" - and he paused significantly - "is that my brother has changed from being a man to being an animal". And he alleged that his brother had illegally sold over 100 pieces of valuable clan land. His bitterness was great.

Some concluding remarks on the "Things Fall Apart" theme include the supposed reduction in size of homesteads. While it is too early to make dogmatic assertions, a recent survey (B, 1977) did show great local variation. The richer areas in the northwestern part of Mbere Division where land adjudication is either complete or in final stages, tended to have smaller family units, of 77 micii (homesteads) surveyed, the average was 3.3 adults (1.3 male, 2 female) and 5.4 children). In the poorer, drier areas, it was not uncommon to see a mucii with twenty members. Of the total 77 micii, 3 consisted of one generation only (just a man and his wife), 55 were two-generation and 19 were Three-generation; of the latter 7 included the heads (usually widowed) mother, and 12 included the head's ~~son's~~ wife and child (ren).

We can probably expect to see even fewer three-generation micii in future.

"Reduced co-operation" among neighbours is a common alleged result of land division. Land, of course, is not the only cause: we know that economic development leads to disappearance of traditional forms of co-operation (See, e.g. Brokensha and Erasmus, 1969 : 98 - 99) When a sample (n = 46) of people was asked to specify the consequences of land disputes in Mavuria, 44 said "reduced or no co-operation" (Njeru, 1976 = 139).

In the 1977 millet harvesting and threshing season, traditional wira (festive co-operative labour) groups were still to be seen in some areas, but they have certainly declined in recent years. An increasing number of farmers say they do not wish to bother with wira arrangements, they prefer to engage paid labourers.

We do recognise that many of our informants - usually unconsciously glorify the Mbeere past when they start on "Things Fall Apart"; of course, there have always been quarrels and conflict in Mbeere society. Nevertheless, land adjudication has certainly intensified the conflict, and focused it more sharply on this one issue.

Here, finally, to illustrate the perceived degree of conflict, are some comments by high school respondents (B,1976).

"Hostility and hatred have been created. Clan has risen against clan. Families which were formerly well tied together, in the sense of blood and relationship, have broken their ties. The peace which existed is now finished. Envy has increased.

"The sharing of ceremonial drinks, which used to be very common for Mbeere people is now out of the question for fear of poisoning or fights due to inward hatred and envy.

"Brothers - even of the same mother - cannot cope together because of tensions from Adjudication. The existence of Friendship between one man and another is no longer applicable.

"Killing through poisoning is now very common. The clan leaders who case for the land have too much fear for their lives.

"Formerly, all members of a clan were regarded as clan -mates, but now some are rejected. Some people came, when small babies, with their mothers and joined the clan; now they are denied any land!

(c) Land rights

This is an area which has been drastically altered. Before land adjudication took place, everybody was relatively free to make any reasonable and not damaging use of anybody's land, and of the plants thereon; He could, for, example dig sand for selling, becon charcoal, cut constmition timber; he (or she) could "beg" permission to plant nops. Of the trees, most were regarded as communal property, only a few being clan or individual property. Among the individual category, mu - kau, *Melia volkensii*, was the most favoured because of its great utility as timber, Now all that has changed, and in some parts of Mbere Division it would be true to say that every single plant has an owner, who jealously preserves his rights. In a recent survey (B, 1976) the following restrictions on land rights were noted people may no longer:

graze livestock	on another's land	27
collect timber	"	17
burn charcoal	"	17
collect firewood	"	16
cross		10

collect wild fruits	on another's land	50
place bee - hives	"	4

There is still much variation within Mbere Division, but everywhere restrictions are increasing. In some parts a man may collect what he needs (sand, stones, timber, firewood) from another's land provided that he asks permission and it is not for resale. In other areas land owners discourage any intrusion on their plots.

Fruits may usually be gathered, but not the fruits of mu - thithi, Tamarindus Indica or mu - thwana, Berchemia discolor, which are sold at markets. The exact rights that are allowed depend on many factors: stage in land adjudication, relative economic development, relationship between parties; Everywhere, the rich are said to be firmer in exercising their rights, and many people have been charged with trespass after failing to heed a warning. Even in the remote areas near the Tana River, we have heard of actions that seem to have been motivated more from spite than their desire to protect property. Trees containing bee - hives have been cut down wantonly; owners of large herds have been forbidden to use what for years was weru, a wilderness, for grazing as some person now has title.

(d) Advantages of land adjudication were seen (B,1976) as follows:

Land improvement - soil improved		35
	trees planted	10
"Freedom"	- person can sell	33
	person can do what he likes	31
	person can build permanent house	19
	person can obtain credit	10
"Privacy"	- no trespassing	18
	no cattle grazing	2

(These responses came from a group of secondary - school students, which accounts for the stress on land improvement. A more general sample stressed as an advantage, that there would be "no further disputes" (Njeru, 1976 : 153))

People generally thought that it would be easy to get credit after titles had been issued, most saying they would apply for loans for agricultural development. But many will probably not be eligible for loans, because of the nature of their holdings, or their lack of capital or experience in modern farming methods.

(e) The disadvantages of land adjudication can be placed in three categories:-

- | | | |
|-------|---|----|
| (i) | People have received unsuitable land, small pieces or no land | 42 |
| (ii) | Animals cannot graze freely | 25 |
| (iii) | Miscellaneous- stealing increased, people moved by force; break-up of family and clan
• "there are now two classes of people". | |

(Njeru reports that his sample saw "loss of lives, hatred and disputes, landlessness and disappearance of traditional land - use rights" as the main disadvantages)

(f) The position of women

Okoth - Ogendo (1975 : 14 - 13) feared that "adjudication - effectively weakened the proprietary position of women in the rural economy by concentrating ownership rights exclusively in the hands of men". But this has not been our impression in Mbere, nor is it the view of our respondents (Njeru 1976 - 156 - 160).

People, asked to comment on women's position in several aspects, replied as follows:

Women can buy or inherit land	33
Women are independent of men	8
Women have been skilful in land disputes	6
Women's role in decision - making has increased	7
Decentralization of family authority has favoured women	10
	<hr/>
	64

Other indicators confirm what these respondents perceive. Many people comment (some with regret, the women with relief) that wife - beating has much declined: few "modern" wives would tolerate it. More women are trading, either at markets or in canteens and shops. It seems that in many families it is the wife who has effective control of the family and the land; this may be because her husband is away, working or looking for work (Mbere has a high rate of out migration); Or in some cases, when the husband is a confirmed D.D.O. ("Daily Drinking Officer") or is just irresponsible, the wife has taken charge.

Women have effectively participated in land disputes, to the amazement of some of the more conservative men. Also, the traditional division of labour by sex is fast altering. Although some tasks - notably grinding of millet remain exclusively in the female domain, we have seen men do the following tasks that used to be strictly women's work - collect firewood, collect water, look after baby, clean compound - even to a very few men who collect thatching grass and wash baby!

The scramble for land has increased the power of women, many of whom were forced to act in new ways to protect the interests of their children and themselves.

(g) Other.

Here, we make brief mention of some minor implications. First, the SiDP contained proposals for Group Ranches that were based mainly on external ideas of what traditional co-Operation should be, rather than on social realities, and these plans have virtually been abandoned with one small exception.

Second, although the County Council was empowered to reserve certain lands for communal purposes, it was reluctant to exercise, this right. One result of this omission has been to accelerate the disappearance of the iiri, or sacred groves, which is distressing to us, with our interest in vegetation (see Brokensha and Riley, 1977). These remaining sacred groves would have been easy to preserve, by declaring them communal areas, and this would have served several useful purposes. They would have remained as protected reserves or parks, a last refuge for some threatened species of trees, as a reminder to younger Mbeere of what their vegetational cover once was, and as an encouragement to plant more trees. The importance of this need is constantly stressed by leaders of Kenyan. H.E. The President has twice, this year, made this the major point in an important speech.

As a rare example of a sacred grove that has been preserved, we mention Ithuriri, in Nguthi sub-location, about three miles Southeast of Kanyuambora. About five acres in extent, and containing some fine specimens of mu-cegethiu, commiphora spp, mu - cavi, Albizia tanganyicensis mu - ura, Parinari Cura tellifolia, and many others, this was taken out of the land adjudication process by the wise decision of the three clans involved. This is an accessible and impressive grove.

CONCLUSION

As far as land rights - and other aspects of development - Mbere Division is in a highly transitional phase, so we cannot be too dogmatic at this stage.

There are already problems of landlessness and these will increase as the population increases. When asked what arrangements would be made for inheritance of land, the following replies were received (Njeru, 1976 - 128)

Response	No. of Respondents
1. Not decided	2
2. Subdivide	20
3. Either subdivide or leave to wife	1
4. Leave to eldest son as supervisor or to wife	1
5. No subdividing	5
6. Leave to eldest son as supervisor	3
7. Leave to son who respects the head most	9
8. Other (includes leaving to 2 of the eldest sons of the two wives or to nearest relatives for those without sons)	5
Total	46

As many plots are already scarcely of economic size, given the marginal quality of much Mbere land, the proposed sub-divisions will create more problems.

The crucial question will be whether land - owners do make effective use of their plots. We have seen that the land distribution was not equitable: the next question is: "was it efficient? Has it been in the national interest, increasing gross productivity? "These questions can only be answered in some years' time.

We hope that the present levels of hostility, lack of trust and conflict are, temporary in that they should abate when final decisions

on the land have been made. But there will be some lasting changes in Mbeere society. A relatively few individuals will benefit, and these will include many outsiders. Individualism, the nuclear family will increase, co-operation among neighbours will further decline, Those worst effected will be some of the marginal members of society. The new system to be more rigid, lacking the former flexibility that allowed them to find niches for themselves.

REFERENCES:

1. Brokensha, David. Mbeere Clans and Land Adjudication. Staff paper No.96, Institute for Development Studies, University of Nairobi, 1972.
2. Brokensha, David and C.J.Erasmus. African "Peasants" and Community Development in D. Brokensha and M. Pearsall (eds) The Anthropology of Development in Sub-Saharan Africa, FORNBERG, Society for Applied Anthropology, Lexington, Kentucky, 1969.
3. Brokensha, David and Glazier, Jack. "Land Reform among the Mbeere of Central Kenya". AFRICA XL III (3) 1973. pp. 182-206.
4. Brokensha, David and Bernard W. Riley. Vegetation Changes in Mbeere Division, Embu. Discussion paper No.320 Institute for Development Studies, University of Nairobi, 1977.
5. Glazier, Jack. "Land Law and the Transformation of Customary Tenure: The Mbeere Case". Journal of African Law, 20. (1) 1976, pp. 39-50
6. Njeru, E.H.N. Land Adjudications and its Implications for the Social Organization of the Mbeere. Unpublished, mimeographed; 185 pp. B.A.dissertation, Department of Sociology, University of Nairobi, 1976.
7. Okoth - Ogendo, H.W.O. The Adjudication Process and the Special Rural Development Programme". Discussion Paper No.227 Institute for Development Studies, University of Nairobi, 1975.