

Neither group ranch nor individual parcel: Bumbling bureaucrats, sluggish courts and protracted conflict in the transition to private property

Esther Mwangi
Sustainability Science Program
Harvard University

Paper presented at the Workshop on the Workshop 4
3rd-6th June, 2009
Bloomington, Indiana University

Abstract

This paper affords a window into a longstanding during which Maasai herders struggle to subdivide their collectively-held group ranches into individually owned and titled parcels over a period of 20 years. Scholars have indicated that most conflicts are resolved because more powerful individuals have resources and can either bear the costs of extended conflict or can credibly threaten retaliation. The conditions under which conflicts persist i.e. where weaker parties thwart the efforts of more powerful parties at ending conflict, are less studied. This study suggest that if weaker parties succeed in pushing through their case in a legitimate and widely recognized arbitration forum, such as a court of law, their claims will be strengthened, increasing the possibility of a favorable outcome in the next round, even if their more powerful opponents initiate an appeal. Repeated wins by weaker parties serve to increase their power. Failure of land administrators to implement court decisions also contributed to sustaining the conflict.

Introduction

On 23rd September, 1989 members of Ilpartimaru Group ranch in Kajiado District of Southwestern Kenya voted by over 60% majority to subdivide their group land, and to subsequently allocate parcels to registered individual members.

A group ranch is land that has been demarcated and legally allocated to a group such as a tribe, a clan, section, family, or other group of persons (Kenya Republic, 1968). It comprises a body of members to whom legal title has been jointly awarded, and a management committee that is elected by the body of members. The management committee coordinates and implements projects on the group ranch. Group ranches were introduced in 1968 by the Kenya Government through an Act of Parliament—the Group (Land Representative) Act cap 238. A total of 52-56 were created in Kajiado District and many more in other semi-arid areas of the country. The Registrar of Group Ranches is mandated with oversight in the administration of group ranches in Kenya; the District Land Adjudication and Settlement Officer is of a lower rank and has a similar mandate with the Registrar, though at a lower level of governance—the district. Both are Land Administrators. The Land Control Board monitors and vets land transactions within the district. It is a panel of experts, administrators and women and men drawn from local communities, and is chaired by the District Commissioner, who is the head of government administration in the district. In group ranch affairs the Land Control Board is mandated with ensuring that all disputes are settled, all members allocated parcels and public utility areas set aside before titles are transferred to individual owners.

It is unclear why Ilpartimaru group ranch members specifically supported this subdivision, however the District Land Adjudication Officer (DLASO) is recorded as having told group ranch members that the government wished for them to subdivide so that all group members could get title deeds¹. Following the majority's decision to subdivide, the group ranch management committee, under the leadership of the group ranch chairman undertook the actions necessary to move the group ranch subdivision agenda forward. For example, the group ranch officials applied to the Registrar of Group Ranches for the subdivision of their group ranch and received the registrar's consent on 17th October 1989. The DLASO confirmed no outstanding debt or disputes from the group ranch and advised the Land Control Board to issue a consent note for the subdivision of the Ilpartimaru group ranch.²

¹ Minutes of group ranch meeting, 23rd sept 1989, Ilpartimaru group ranch meetings file

² Letter of 28th January, 1991 from DLASO to Land Control Board, Ilpartimaru group ranch meetings file

It is now close to two decades since the Ilpartimaru group ranch began subdivision. The process is still fluid, troubled by conflict between two factions over unequal parcel sizes and characterized by costly and prolonged court cases. Ilpartimaru group ranch is by no means unique. Distributional conflict over land is a common occurrence during group ranch subdivision. About nine group ranches (out of a total 52) that supported subdivision have still not yet arrived at resolution, most of them for two or more decades. Because access to land and resources is key to the ability of rural poor to generate livelihoods, persistent conflict creates uncertainty that undermines livelihoods and depress incentives to invest in sustainable land management practices (see Mwangi and Markelova, 2009 for a review of effects of tenure insecurity in developing countries). Moreover, such conflicts create animosities, potentially jeopardizing relationships and ties, which are increasingly important safety nets as climate changes. For pastoralists in particular, the transition to individual property has been associated with increasing poverty and negative environmental outcomes; it is also seen as a defensive strategy against the unsanctioned loss of individual claims. Indeed, areas that had privatized are slowly reconsolidating to bigger units, and which serve to help cope with environmental risk (Lesorogol, 2009; Mwangi, 2007, 2003).

Dispute resolution has been largely neglected in the property rights literature (Henrysson and Joireman, 2009). At the same time, most studies on conflict in Africa have been limited to large-scale violent conflict, yet small-scale land conflicts with relatives, neighbors, landlords, or local governments can have significant impacts on livelihoods and land management (Deininger and Castagnini, 2005; Yamano and Deininger, 2005). The analysis of conflict resolution processes, even in cases of non-violent conflict, can provide valuable lessons to inform the increasing incidence of land-related conflicts, especially in Africa where the conditions of access and control over agricultural resources are undergoing or have undergone change (Berry, 1989). Population pressures, commercialized agriculture and private ownership of land are closely connected processes that are sharpening individual and group claims on land, resulting in frequent and bitter conflicts (Shipton, 1989).

This paper does three things. First, it illustrates the roles, interactions and incentives of relevant actors in attempts at resolving conflict over the distribution of land during the process of group ranch subdivision. The purpose is to identify barriers to dispute resolution, which contribute to the conflicts persistence. Second, the paper adds on to prior explanations that demonstrate that conflict over institutional change is ended where more powerful actors coerce less powerful actors to accept a less desired distribution. It demonstrates that under certain conditions, so-called 'weaker' parties can marshal sufficient resources to launch a credible opposition to 'stronger' parties to block the process of change, which is one reason why conflict persists. Third, the paper considers possible methods for resolving conflicts over subdivision.

The first section of the paper provides a brief literature review that provides a sense of the conditions under which property rights conflicts occur and persist. The second section illustrates the interactions among group members, their leaders, land administrators, district administration, politicians, and the courts during the process of subdivision. It identifies the changing sources of conflict and the strategic behaviors of rival parties in the conflict and the outcomes of their efforts. The third section is a discussion section, which is followed by the conclusion.

Property rights to land and conflict: A brief background

This section explores the reasons why property rights conflicts happen and why they may resist resolution. Its purpose is to provide a theoretical background to the empirical sections that follow.

Conflict is increasingly recognized as a fundamental feature of processes that attempt to assign or modify property rights over resources. Disputes and conflicts about land occur at all levels: between neighbors; across gender and generations within families; between pastoralists and farmers; between states and indigenous peoples; and between international companies and local populations about rights to exploit valued resources (Lund et al, 2005). In some cases such disputes have escalated to civil wars.

Privatization and titling/registration programs in particular have been noted to create new land conflicts largely because it ignored existing social systems in place for resolving such disputes or because it favors the rights of newcomers against natives or because such processes resulted in a skewed resource allocation (Hutchison, 2008; Oyerinde, 2009; Mwangi, 2007).

Distributional issues (i.e “who gets what”), which are in turn shaped by the formula used to allocate rights, are often the source of conflict and struggle between interested groups and individuals as they determine the share of wealth and power among relevant actors in society (Okoth-Ogendo, 1989).

Disadvantaged parties will oppose the new arrangement, while the elite, in privatization processes in particular, will use their access to state administration to manipulate the adjudication/registration process (Platteau, 1996). Rent-seeking by public officials is costly. Not only does it heighten distrust among conflicting parties thus undermining the negotiation of long-lasting solutions to land conflicts, but also creates opportunity costs in time and finances that conflicting parties use to initiate and follow up court cases (Baye, 2008).

Libecap (1989) proposes several factors that influence the intensity of distributional conflict. These include: the skewness or concentration of the current and proposed share distribution; the number and

heterogeneity of bargaining parties; the size of the aggregate expected gains from institutional change; and the extent of informational asymmetries about the value of individual claims. Struggles over distribution occur in the political arena, and may involve different processes of negotiation between affected actors, the lobbying of politicians, litigation and the possible bribing of government officials (Eggertsson, 1990). Local and national politicians often pay close attention to the needs of individuals or groups that can deliver votes. The nature and extent of negotiations are however constrained by prior actions and institutions (Libecap, 1989). For example, existing government policy, through demarcation and survey policies will affect when property is assigned; through enforcement practices will affect whether rights are secure; and through the police and the courts, will determine whether conflicts are adjudicated (Alston et al, 1995).

While an examination of the competition among actors to secure resources is important for understanding how property rights evolve, it is incomplete. Processes by which actors seek to resolve the conflict/competition are critical because they influence whether or not property rights will be secure (Firmin-Sellers, 1995). Firmin-sellers (1995) points out that effective enforcement requires rulers to build and sustain institutions that provide state officials with the capacity to arbitrate disputes over ownership and to sanction those who violate property rights. Such sanctions must be sufficiently strong to make property rights violations an unrewarding crime (Bromley, 1991; Ostrom, 1990). Ignoring the state's role can result in missed opportunities, especially with regards to strengthening the rights of women and poorer individuals in customary regimes (Woodhouse, 2003). Yet the conditions that motivate such a ruler to act to enforce property rights need to be mapped out.

While Firmin-Sellers emphasizes the importance of state actors in resolving conflict over the allocation of property rights, she also recognizes that actors in society are not passive and will actively seek to end conflict, especially when the outcome is favorable to them. Powerful actors with a relative bargaining advantage may constrain others to comply with new institutional rules (Knight, 1992). Weaker actors with less resources and who face higher costs in case of extended or a breakdown in bargaining, are less likely to challenge a powerful actor's commitment. Moreover, threats of retaliation from a stronger person, may serve to increase pressure on the weaker party to adopt a less-preferred alternative. However, it is possible that weaker parties can have marginal influence, in which case conflict is not resolved and instead recurs. Thus it is generally recognized that conflicts over who gets what are typical during a reassignment of property rights. It is also recognized that more powerful actors are able to influence outcomes to their advantage by manipulating their relationships with key actors such as land administrators or the courts, and that less powerful actors can be pressured by more powerful opponents into accepting an unfavorable

allocation. In some cases, however, less powerful actors with admittedly less resources to commit in contesting an unfavorable distribution or with less influence over land administrators and/or the courts can refuse to accept an allocation outcome that disadvantages them, and by so doing sustain the contestation over property rights. The study presented in this paper attempts to understand the conditions under which less powerful actors, who do not accept the proposed distribution of rights during a reassignment of property, can successfully thwart more powerful actors to sustain a distributional conflict.

Method

In 2001, indepth interviews with 30 individuals knowledgeable on the subdivision process and who belonged to both sides of the conflict were conducted. This included two government officials and one local politician all of whom are members of the group ranch. The questions asked related to the factors the precipitated conflict; reasons why conflict has persisted for so long; how each of the sides attempted to resolve the conflict; and what their thoughts were on the best ways to resolve it. In 2007, indepth interviews were conducted with key informants who included the group ranch's chairman, secretary and treasurer and ordinary committee members for both factions. These interviews also included several individuals who had received titles and others without. It included widows, married women and politicians and government administrators. A total of 25 individuals were interviewed. The purpose of this second set of interviews was to update the status of the conflict. In 2008, key officials were interviewed to find out their thoughts on what must be done, while in 2009 a survey was conducted among 100 individuals to find out their strategies for land management under such a situation of conflict. Correspondence between key actors, opinions of court proceedings and minutes of meetings found in the group ranch's Meetings, Disputes and Membership were used to supplement the interviews.

Understanding the conflict

The genesis: Misappropriation of group ranch funds and unequal subdivision

After obtaining clearance from the Land Control Board, the group ranch committee went ahead to organize the survey and demarcation of the group ranch. They hired a private, licensed surveyor. The terms of the contract³, signed by group ranch chair and secretary on behalf of the group ranch, indicated that Ipartimaru be surveyed and subdivided into 372 agricultural plots of approximately 1.5 acres each in the areas flanking the Eseki river, and another 432 *equal* portions each of approximately 110 acres be carved out of the rest of the group ranch. The contract also specified that 10% of the total amount be

³ Letter dated 8th March, 1991, Ipartimaru meetings file.

paid to the surveyor before commencement of survey ; 50% of total when half of the 110 acre plots were subdivided and the balance of 40% when all plots were subdivided and beacons in place. Each group ranch member agreed to pay 3500ksh for the survey work and the group ranch would pay the surveyor. Mutation forms, which indicate the number of parcels resulting from the subdivision and the numbers and IDs of the new parcels created out of the subdivision, would be prepared by the surveyor and submitted to the District Surveyor after completion of the survey.

Survey work began in March 1991 and by 1993 about 365 parcels had been surveyed, although 70 of these fell into a neighboring group ranch, Lorngosua. Group ranch members agreed that the 70 parcels be recovered by reducing the size of remaining parcels. Members also agreed to contribute an extra 1300KSh to cover this unanticipated cost. However, no further survey work was conducted as the additional KSh 417100 raised allegedly did not reach the surveyor, nor was it deposited in the group ranch bank account. While 90% of the survey work was completed by early 1993, only 50% of the survey work had been paid for⁴. The surveyor threatened to stop surveying unless he were paid. The group ranch chair on 28th February, 1994, organized a special general members meeting (that was attended by 60% of the registered members) where he urged members to complete their payments so that debt outstanding to surveyors could be paid. This meeting was attended also by government administrators such as the DLASO, District Survey Officer, Chief Bissel Location, Assistant Chief Bartimaru sub-location and other group ranch committee members. Group ranch members agreed that those who failed to pay up subdivision fees would neither be shown their parcels on the ground nor have their titles processed.

But the rest of the committee members were suspicious when the survey work was stopped and the group ranch chair asked for more funds. They conducted their own internal investigations and found that the chairman, vice chairman and treasurer had misappropriated group ranch funds intended for paying the surveyor. Together with misappropriation of funds, the chair was accused of having sold land to non-members, and of subdividing land unequally contrary to general agreement. Some members were allocated parcels as large as 200ha (including the chairman and his friend, both of whom had 800 ha), while some individuals were allocated parcels as small as 7ha. It was also alleged that prior infrastructural developments constructed by individuals were not into account when parcels were allocated. Because of these allegations, the committee split into two factions; one faction comprised the chairman, vice chairman and treasurer (i.e. those accused of stealing group ranch funds) and the other faction comprised of the remaining seven officials. Despite this rift the faction of seven committee officials were interested in resolving the problem in-house. As one of them said: “We called them aside and told them that instead

⁴ Letter dated 21st February, 1993, Ilpartimaru meetings file.

of revealing these scandals to the public, let them step aside and we secretly elect another chairman, vice and treasurer without the community knowing why we have elected them. But the chair and his team were adamant.”⁵ The committee tried to meet to resolve the problem but the chair would not attend these meetings, which forced the faction of seven to seek the DLASOs intervention⁶. Other concerned group ranch members had also communicated to the DLASO their fears that subdivision had stalled due to mismanagement of their money⁷.

In order to resolve the problem, and after verifying the status of the survey work with the surveyor,⁸ the DLASO summoned all committee members and the assistant chief of Ipartimaru location to her office for a meeting on 23rd February, 1996. By this time the surveyor’s work had stalled for close to three years. In this meeting the treasurer revealed that despite his holding the office of treasurer the chair did not allow him to handle money for fear of misuse; the chair handled all financial transactions himself. The treasurer also indicated that some money remained unaccounted for by the chair, and that any meetings committee members convened to discuss this (or other issues pertaining to subdivision), the chair would not attend. Treasurer indicated that the chair and secretary had squandered 417000ksh, and an additional 98750ksh remained unaccounted for. Only 40 members had not paid initial survey fees of 3500ksh; some members had paid the additional 1300ksh but had not been receipted. The treasurer also claimed that the chair allocated group land to non-members, whom he named them.

The chair for his part responded that trouble began when some members were accidentally not allocated land and he decided to reduce committee members’ parcels in order to accommodate those that were missing land. He reiterated that no non-members had been issued land and that the survey was finalized, map had been drawn, save for a few beacons that remain to be pegged. However, the rest of the committee members reached a decision that the chair, secretary and treasurer be removed from office. The assistant chief suggested that this issue be presented at a general meeting so that group ranch members can collectively decide what action to take.

⁵ ILPART/2001/19

⁶ Letter of 27th nov 95 from committee to DLASO, Ipartimaru disputes file. See actual content of letter in Annex I.

⁷ Letter of 27th sept 1995 from 4 group ranch members accusing the committee of misusing funds for survey resulting in the survey which begun in 1989 being stopped in November, 1993. They alleged that 395 members paid 1567188sh of which only 1150088 was paid to surveyor leaving a balance of 417000sh. They requested DLASO to investigate. Ipartimaru Disputes file.

⁸ Letter of 15th February 1996 from surveyor to DLASO indicating that subdivision stopped due to lack of funds. At an earlier informal meeting of DLASO, District Surveyor, Chair, Secretary, Treasure and private surveyor in 1994 it was resolved that the GR avails at least 200000sh to enable work to resume. No money ever been paid since that meeting. Exercise was about 95% complete; few plots remained to be surveyed; and map will be drawn before relevant documens can be submitted to DLASO and District Surveyor for processing As of the date of this letter, total amount that had been paid by Ipartimaru group ranch was 1097638sh, leaving a balance of 9903621sh.

A series of special general group ranch meetings were called to resolve the problem. But each time a meeting was scheduled by the DLASO, the embattled group ranch chairman did not attend or insisted that they be postponed. A total of five meetings were called off because the chairman opposed them. Because the DLASO was unable to compel the chair to attend a general meeting (at which he expected to be stripped of his chairmanship), the faction of seven sought intervention higher up the Land Administration hierarchy. The Director of Land Adjudication and Settlement agreed that a members general meeting was critical to resolving the problem and he consulted with the Kajiado District Commissioner (DC), who agreed to chair the meeting. The Director informed the faction of seven that two Members of Parliament for Kajiado District had been to see him to demand that such general meetings be suspended⁹. A section of Group ranch members were also apprehensive about attending meetings as they feared disruption and violence by youths and requested that the District Administration provide security for the general meeting¹⁰.

In the meantime the faction of seven convened a committee meeting on 30th may 1996 that was attended by Registrar of Group Ranches (the Registrar), DLASO and the District Officer for Namanga Division¹¹. The chair, vice chair and treasurer, all implicated in the misappropriation of funds and who were absent, were voted out of the committee by their colleagues. A new committee chairman and two others were elected to replace the suspended officials. This meeting resolved to ensure equity in subdivision, to ensure that non-members illegally allocated land were removed, and to call a meeting as soon as the Registrar of Group Ranches authorized them so that they report to the group members and conduct elections to replace the suspended committee members. The Group (Land Representatives) Act Cap 287, provides that if two or more members are suspended from the committee, a general meeting must be called to elect temporary officers to replace them. The new officials were confirmed and certified on 26th July, 1996 by the Registrar of Group Ranches. The embattled chair refused to recognize this new committee and eventually took the matter to court.

The new officials, through their lawyers, advised the old chair and his faction, including the District Commissioner and the Land Control Board that the suspension was legally binding and that any

⁹ Letter from Director to DLASO dated, 23rd may 1996, Ilpartimaru group ranch meetings.

¹⁰ Undated letter to DLASO received on 4th june 1996, signed by 100 group ranch members

¹¹ Minutes of 30th May, 1996. Ilpartimaru disputes file. See also Annex I for content of letter.

transactions involving the old chair and suspended officials would be void and any pending transactions scheduled by the Land Control Board concerning Ipartimaru must be stopped¹².

An Annual General Meeting was finally successfully convened on 2nd August 1996. It was chaired by the DC and attended by Land Administration officials (DLASO, Deputy DLASO), District and Local Administration (eg DO, Chiefs and Assistant Chief) as well as politicians including the Member of Parliament and area Councilor; ; ; ; ;. There was consensus on key problems facing the group ranch, which included: misappropriation of group funds by group ranch officials and hence survey stopped, sale of land by chair to non-members even before completion of subdivision, removal of beacons and the existence of members who had paid the requisite fees but had not been allocated land. The DC promised to investigate and to provide feedback within 30 days. The Member of Parliament (MP) said that all group members must be given equal land parcels. Surprisingly, the agenda of this meeting did not include conducting new elections to replace the old chair and his two officials as required by the Act.

Group ranch members through a lawyer demanded that DLASO schedule another meeting on 31st August, 1996 with the sole agenda of confirming the new officials. The suspended group ranch chair demanded that the scheduled meeting be called off until after DC completed his investigations. Even though the new committee opposed this suggestion, the 31st August meeting was called off by the DLASO ostensibly to allow the DC to complete his audit of group ranch accounts. This did not go unchallenged. The new chair accused the Director of Land Adjudication of acting in excess of his powers by postponing the meeting and by having the DC conduct investigations since the legal mandate for group ranch oversight lay with the Registrar¹³. He threatened to sue the Director. Faced with the threat of a lawsuit, the Director of Land Adjudication, backed down and withdrew his involvement.¹⁴ The DLASO then went ahead to suspend subdivision activities. This decision was met with resistance by the new chair who claimed that the law was clear on leadership since a certificate of incorporation of group representatives was issued by the Registrar of Group Ranches authenticating his bona fide capacity¹⁵. The new chair advised the DLASO that instead of suspending activities, she should call a special general meeting, since all prior scheduled meetings had not materialised. The new committee indicated they would continue with their work of subdivision, peacefully and as scheduled.

¹² Letter of 9th August, 1996 from lawyer of new chair to Registrar of group ranches. Ipartimaru disputes file.

¹³ Letter of 28th August 1996 from new chair's lawyer to Director of Land Adjudication, Ipartimaru disputes file

¹⁴ Letter of 28th August 1996 from Director of Land Adjudication to new chair's lawyer, Ipartimaru disputes file

¹⁵ Letter 15th October, 1997, Ipartimaru meetings files.

The suspended chair on his part sought to challenge in Court the incorporation (i.e. recognition by law) of the new chair and his committee as legitimate group representatives. His suit was dismissed by the High Court on 22nd November 1996, and another certificate confirming the names of new group ranch officials was issued by the Director of Land Adjudication and Settlement dated 11th December 1996, and who further advised the newly incorporated group officials to call for an Annual General Meeting in February 1997 for members to confirm/approve their election. The Director also ordered the former chair to surrender the register of members, group ranch title and map, receipt books, bank documents, and rubber stamp to the new officials¹⁶. The suspended chair however notified the Director that he had acted *ultra vires* by registering the new representatives¹⁷. He indicated that the 2nd schedule of the Land (Group Representatives) Act Cap 287 of the Laws of Kenya required that group representatives hold office until replaced by a resolution of the group in a general meeting. No such meeting had been held. The suspended chair further indicated that the Director had no jurisdiction in matters relating to the group ranch since the group ranch had wound up. The advocates demanded a response from the Director in 14 days failure of which legal action would be taken against him.

But even as the old chair refused to hand over documents and kept putting off meetings he went ahead to apply to the Land Control Board (Application No., D461317 of 7th January, 1997) for consent to subdivide and to alienate group ranch. The new chair and his team stressed that the old chair had no legal mandate to transact business on behalf of the group ranch and his application for consent should be disregarded. Because the suspended chair and his group refused to hand over group documents making it extremely difficult for the new committee to proceed with group ranch work, the Director of Land Adjudication and Settlement advised the Kajiado District Land Registrar to treat the old group ranch title as lost, to cancel it and to issue a fresh, duplicate title that would enable the new committee transact¹⁸.

Meanwhile the new chair went ahead with his objective of reorganizing survey work. He called for a committee meeting, which was attended as well by all 7 members of the Land Control Board. The new chair mobilized members to contribute more money for re-survey after the survey that stalled in 1993.

Despite the failure of past scheduled meetings DLASO announced 25th February 1998 as the new date for the Annual General Meeting. The old suspended chair once again got the DLASO to push back the meeting on account that the country had just come out of an election in December 1997 and people were still “hang overed” while the local government administration and political elections were yet to be held

¹⁶ Letter dated 16th dec 1996, Ilpartimaru meetings files

¹⁷ Letter of 11th January 1997 Ilpartimaru meetings files

¹⁸ letters of 26th august and 9th sept 1997, Ilpartimaru meetings files

at the end of February 1998. DLASO set a new date for 17th April, 1998. The agenda of the meeting was to elect group ranch officials. The suspended chair opposed the scheduled AGM¹⁹, reiterating that land subdivision was over, members already settled on their land and warned that a general meeting would only cause cause fighting, corruption and politics. The only solution he said was to complete the remaining 10% of work and to allow members to receive their title deeds.

The Annual General Meeting of 17th april, 1998 took place and the suspended chair, his vice chair and treasurer were voted out by members and a new chair and his committee members voted in as group ranch officials. This AGM was presided over by the Registrar of group ranches, and attended by the DLASO, DO Namanga, and Assistant Chief. A total of 300 group ranch members i.e. more than the 60% quorum required to reach a binding decision, were present. The former embattled chairman did not attend this meeting. The following resolutions were reached at this AGM: that the ousted chair hand over group ranch documents to the new chair immediately; that the 3 new executive officials (i.e. chair, treasurer and secretary) were confirmed; and that the deceased be replaced by their approved heirs.

It took all of 2 years (i.e. 1996-1998) to organize a meeting at which members would have the opportunity to choose their committee members/leaders. Prior to that, it took 3 years between 1993 when the subdivision stopped to 1996 when chair and his accomplices were suspended by the committee. The delay in both cases is attributable to the embattled chairman who either refused to turn up for meetings or petitioned land administration to keep pushing back meeting dates. Even prior to that it took two years between 1993 to 1995 when official help was sought to help resolve the conflict. In addition it took 2 years to start the on ground subdivision from the time the group ranch members voted to subdivide in 1989, and a further two years of survey and demarcation before the exercise was stopped. In sum, the process of subdivision had taken close to 9 years. The mismanagement of group funds, the unequal allocation of parcels, including allocation to non-members while some genuine members were left without were the issues that triggered conflict. The conflict manifested in a struggle to change the leadership of the group ranch because the leadership controlled the process of land allocation to claimants. Even though the committee had suspended the executives that had misappropriated funds, the law required that this decision be confirmed by a majority of group ranch members at a special general meeting convened for that purpose. Then ensued a two-year struggle by the embattled chair to keep such a meeting from taking place. In the end, the meeting was convened and the chair and his two accomplices voted out and new chair and committee elected to replace them. The former chair, who critically did not

¹⁹ letter dated 8th april, 1998, Ilpartimaru meetings file

attend this meeting, still would not recognize the new committee and went to court to contest this decision. The court ruled against him.

Several puzzles emerge out of these events. Why would the Land Administration be so ineffective in resolving what appears to be such a straight forward problem? Why would they keep putting off meetings at the behest of the former chair, when these meetings were crucial to resolving the problem? Why would not the authority of the District Commissioner compel the former chairman to attend meetings and to hand over group ranch documents? It is also unclear whether the DC's investigations into the misappropriation of funds was ever conducted as no record of it could be traced. This phase of the conflict played itself out around government administrators—the Land Administration and the District Administration.

Battling in the Courts of Law

Pushing the ousted chair to hand over group ranch documentation

The two conflicting factions, each with their set of supporters instituted court proceedings and counter cases, mainly at the High Court of Kenya in Nairobi. Each claimed leadership of the group ranch at first and then at a later point one faction sought to transfer titles to individual owners (the ousted chairman's faction) and the other (the newly elected chair) sought to prevent the transfer of titles, to reverse the subdivision and to equalize parcels.

With the old chair legally voted out of office, the new committee was poised to re-start the process of re-survey and re-demarcation of the group ranch to ensure that parcels were equalized. The toppled chair refused to hand over documentation to the incoming committee. These documents include the group ranch register of members, title deed, maps, bank statements and check books, bonds, and securities. Both the land administration and overall government administration failed to get the deposed chair to hand over, despite the District Officer threatening him with police action²⁰.

The first court case, filed by the newly elected committee and chair, was intended to compel the ousted chair to release the group ranch documentation. The case was filed at the Kajiado District Court and the charge was refusal to hand over office by the ousted/former chair. The ousted chair in turn alleged that the AGM that elected the new office bearers was not legal as he was absent during the meeting. The District

²⁰ Letters of 19th May 1998 and 4th June, 1998

Magistrate (Mr. Mbogo) dismissed the case citing that the courts had no jurisdiction over the handing over of group ranch documents. This ruling was appealed by the new chair in High Court at Nairobi on same charge—refusal to handover the office. High Court judge Githinji struck off the case in favor of the old chair, claiming that the new chair was not the correct person to sue the office because he was a *bona fide* member of the committee. The new chair appealed this decision, unsuccessfully. The bench judges of the Court of Appeal (Akiwumi, Shah and Aluoch) dismissed the case on a simple technicality: that the dates presented by lawyers in the certificate of incorporation did not bear the same date as the AGM that elected the new members.

Blocking the transfer of titles to individual owners

In order to block the deposed chair from transacting, the new chair placed a restriction (dated 25th May, 1999) on the Ilpartimaru group ranch title deed, which ideally should have prevented the ousted chair from proceeding with the subdivision. In a counter to this, the old, deposed chair falsely claimed to have been appointed by the High Court as the group ranch chair and that he was the legitimate representative. He demanded that the restriction be removed. The Kajiado District Land Registrar, who was responsible for the registration and titling at the district level advised the Chief Land Registrar to authorize the removal of the caution citing that the ousted chair had presented a High Court ruling that indicated he was the genuine chairman²¹. The Chief Land Registrar authorized the removal of restriction²². The removal of the caution was conducted without consulting the newly elected chair, which contravened the Registered Land Act section 138 (1).

Because the caution was allegedly removed after a High Court order, the DLASO did not object to the transfer of titles but demanded first that the committee (i.e. the deposed chair) first furnish her with the area list as an indication of all beneficiaries so she could cross check with her register of members²³. This is a procedural requirement. It is curious that the DLASO in early 2000 would indicate in a conversation with the DC that the group ranch had successfully undergone subdivision into individual holdings and that the area list and map of the subdivision had been forwarded to the District Surveyor for further processing (18th jan 2000). Several months later, the DLASO wrote to the Chief Land Registrar (23rd march, 2000) advising him that the legal certificate of incorporation was the one issued on 22nd feb 1989, naming the old, ousted chair and his committee as the legal representatives and committee of the group ranch. She requested the Chief Land Registrar to assist them with processing of titles. The DLASO also

²¹ Letter dated 15th june 1999, Ilpartimaru meetings files

²² Letter dated 14th june, 1999, Ilpartimaru meetings files

²³ Letter dated 16th June, 1999, Ilpartimaru meetings files

confirmed that Ipartimaru group ranch had no loans or pending debts with any financial institution and thus no restrictions that hindered the processing, registration and issuance of titles. Clearly, the Land Administration had for some undisclosed reason, despite a court ruling and in spite of members electing new officials, preferred to support the old chair.

It seems that the ousted chair also had a good following among group ranch members, as all along he held regular meetings with his supporters, some of which were attended by local administrators. At one meeting (5th May 1999) for example, attended by 203 members, they elect 3 new officials to increase the number of the ousted committee to 6, creating a parallel committee, which they envisioned would represent them in signing of the title deeds. Another meeting held in 18th July, 1999 was attended by 117 members and two assistant chiefs. Here they discussed payments for title deeds and members gave the ousted chair authority to give out 'shares' (i.e. land) according to payment. They agreed that if a member didn't pay, he/she would miss their shares! At this meeting the ousted chair informed members that he had successfully obtained a transfer consent from the Land Control Board. At another meeting on 6th November 1999, which was attended by 275 members and local administrators (chiefs), all agreed to keeping peace once the ousted chair begun giving out title; they also agreed that the assistant chiefs present at the meeting would take stern action against anyone who might incite others to boycott the exercise. The old ousted chair held yet another meeting on 18th December 1999—his committee and 2 asst chiefs were present. All members agreed that 292000ksh, after removing 80000ksh for surveyor payment, be transferred from DCs treasury to the group ranch's Kenya Commercial Bank account to enable the processing of titles to proceed smoothly. The chair assured group ranch members that he was working hard for them, and that they would get their titles issued to them in the coming year of 2000.

These meetings are significant. They demonstrate that the chair, despite having been ousted, still commanded a following, one that seemed to be on the increase and that was willing to pay additional money and trust him with it even though he had been accused of misappropriating their money. It is also curious that he would shift monies to a regular commercial bank (where he was signatory) out of the DCs treasury, where it had been for safekeeping. It is worth remembering that when subdivision stalled, part of the group ranch had not been subdivided and there had been dissatisfaction with those parcels that had been demarcated. It should also be noted that the surveyor did not go back to the ground to complete the remaining part. The general point is that after nine years of waiting members in support of the ousted chair were endorsing the alleged irregularities that had been in contention when the subdivision stalled and when they voted out the former chair and elected a new committee.

Because of the backing they received from administrators, the ousted officials released an area list i.e.a record of registered members and the amount of land allocated to them. Contrary to what had been agreed upon during the AGM, parcel sizes were not equal. The newly elected chair for example found that he was allocated 7 ha, which applied to many of his supporters, while the new chair, his committee and their relatives and friends had between 180-200 ha. These allegations of unequal subdivision are corroborated by a series of letters by different group ranch members at different times to the Chair of the Land Control Board²⁴, the DLASO²⁵, the group ranch chair²⁶, and to the District Land Registrar²⁷ and to the Director Lands and Settlement²⁸ by those claiming not to have been allocated land at all. In a letter directed at the District Commissioner, one individual cited that only 7 ha were allocated to him, while some members were allotted huge parcels eg 196, 192, 143, 181, 107 etc. and some members were given 7, 6.5, 7, 7 ha. The individual questions how the Land Control Board under leadership of DC could have given consent to this²⁹.

The newly elected committee expressed surprise at how the Land Control Board meeting of 11th May 1999 reached an assessment that such an unequal allocation of land was appropriate and subsequently gave permission for group ranch title to be split into individual titles. The new committee urged government officials to intervene as a matter of urgency to avert possible chaos and bloodshed³⁰. Their warnings were ignored. Table 1 provides a summary of bureaucratic interventions.

Contesting unequal land parcels

The new chair and his faction encouraged three of their supporters who had all been allocated the smallest sizes of land to file a new charge, that land was allocated unequally, on behalf of the rest of the group ranch members. High Court judge Sheikh Amin on 26th June, 2000, ruled in their favor. He nullified the previous subdivision by the ousted chair and ordered a fresh subdivision aimed at equalizing land parcels. Specifically he ruled that the three members who complained of smaller parcels must be allocated parcel sizes equal in size to others; that the subdivision be rectified and/or repeated so that all members get *equal*

²⁴ Letter from 3 group ranch members dated 28th feb 1993, Ilpartimaru disputes file

²⁵ Letter from DLASO to group ranch chair dated 25th jan 1994, indicating complaints received, Ilpartimaru disputes file

²⁶ Letter from chair to one complainant dated 3rd Feb 1994, accusing the individual of cheating since he owned an individual ranch and was not part of membership.

²⁷ Letter dated 28th july, 1999 from male individual to Land Registrar, Kajiado district, imploring him to not give out titles because he and his father had not been shown their parcel yet they had paid the required fees

²⁸ 28th july 1999; List of 25 names including 1 female, submitted to Director Land Adjudication and Settlement, who claim not to have not been given parcels though they were registered members with registration numbers

²⁹ Letter of 12th august 1999, Ilpartimaru group ranch files

³⁰ Letter of 12th august, 1999, meetings file.

sizes, and that all documentation including maps, area lists and forms that were presented by the old executives to the District Surveyor as representing a completed subdivision were nullified³¹.

With a renewed mandate to conduct the survey and equal subdivision afresh the new chair and his team started mobilizing members and to gather funds for employing a new surveyor. For example on 24th February 2001, in the presence of private surveyor, local councilor, the committee and over 60% members in attendance. All members present endorsed that survey and subdivision be repeated so that group members get equal shares in group land as ordered by the High Court. Members agreed that land allotment be on the basis of first paid, first allocated. They also agreed that each member pays 15000ksh for parceling, including boundaries, public roads and government fees for the District Surveyor. Members authorized officials to enter into a contract with surveyor.

Despite the Sheikh Amin ruling, the ousted group ranch chairman and his team filed yet another case at the High Court in Nairobi seeking court assistance in the signing of transfer of titles. In this case the old chair enlisted five of his supporters to place a charge against him and the group ranch committee accusing them of refusing to issue out titles yet the subdivision was completed. When asked by the judge where the rest of the committee was since only two other committee members were present during the hearing, the old chair alleged that the rest of the committee had migrated to Tanzania in search of pastures and were thus unavailable. The judge (Kassanga Mulwa) ruled on 14th March, 2001 that if subdivision was complete, and there was no disputation, then the committee should distribute titles to claimants. He however ordered that the ousted chair and his faction provide public notice of the impending transfer of titles through a gazette notice as well as through the media and that a three-month wait period be observed before titles were distributed. Because the rest of the committee was absent and allegedly in Tanzania, the judge ordered that the High Court Registrar called Butt sign the emerging titles on their behalf. Justice Mulwa's ruling was reached without knowledge of Judge Sheikh Amin's earlier decree that had ordered a fresh subdivision of the group ranch.

The old ousted chair did not follow Justice Mulwa's orders and instead rushed to release the titles from the District Registrar's office in Kajiado. A total of 27 titles were released before the new committee found out and stopped the process. They appealed to the same judge, charging that the judge's orders were not followed. Moreover, they indicated that a prior Court Decree by Justice Sheikh Amin, which ordered that all land be subdivided equally had not been brought to Justice Kassanga Mulwa's notice. On

³¹HCC No. 561 of 2000

19th June, 2001, the judge revoked his earlier order that titles be issued³². He cancelled all titles on the basis that they were obtained fraudulently because public notice was not provided and that findings of a prior court case (i.e. the Sheikh Amin ruling) that was active and unfavorable to the old chair's position were not disclosed to him. The judge further gave the new chair a mandate to resubdivide the land equally. It is also alleged that in the institution of this case, the old chair and his team engaged in deception. He got a team of his supporters to sue himself, the former treasurer and former secretary for not releasing title deeds to group ranch members, despite the group ranch having been subdivided and completed. The group officials interviewed also alleged that because the first surveyor did not complete the subdivision, the old chair and his accomplices "cut the group ranch on the table using a ruler," i.e they demarcated the remaining 10% of the group ranch in a private surveyor's office in Nairobi.

Having received a mandate from the court, the new group ranch chair and his committee went back to resubdivide the group ranch equally amongst the group ranch members. Group members committed to the payment of surveyors fees at 15000KSh per member. This survey was disrupted on several occasions by the former chair. First the ousted group ranch chair and his team accused the new team to the Kajiado Police Chief that they had engaged an unlicensed surveyor who had no consent to subdivide the group ranch. Then, when the new chair produced the High Court order that permitted them to start the subdivision afresh, the ousted chair produced a letter from High Court showing that there was a case pertaining to this issue. The DC ruled that the surveyor should stop work until the case is over, but the new chair and his group refused claiming that its only the High Court that had powers to stop the surveyor. But this served to stall the process as the Police Chief referred the mater to the District Comissioner of Kajiado District. However, the surveyor had completed demarcating 100 parcels before the interruptions began. Despite having court backing, the new chair received no support from the Land Administration nor from the District Administration. He instead was pressured to pull out the surveyor.

But then the ousted chair and his team went back to the High Court and claimed that a rival group was subdividing the group ranch illegally, which they demanded be stopped and nullified and further that the prior issuance of titles by the District Registrar be resumed. This case was allegedly filed secretly without the mention of prior cases. When the new chair's group got wind of it, they approached the presiding Justice Philip Waki and provided the missing information. The judge ordered for prior files to be brought to him. He however granted the old chair's appeal, ordered the surveyor to stop the demarcation and fixed a hearing date for 6th November 2001, which was rescheduled to 18th November 2001.

³² HCC No. 233 of 2001

Aluta continua....

These court games between the two factions continue today. Annex 3 provides a summary of all court cases and shows that the following outcomes have been found between 2001 and today:

- Old chair appealed against the ruling of Justice Shaikh Amin of 26th June 2000 which had decreed that land be subdivided equally. Justice Ransley dismissed this appeal on 10th March, 2004, in favor of the new chair. Took 4 years to reach this ruling.
- Old chair appealed against the ruling of Justice Kassanga Mulwa of 19th June, 2001, which had revoked his earlier order of 13th March 2001 that titles be transferred to members. Three court of appeal Justices Bosire, O’Kubasu and Aluoch dismiss the appeal on 6th June 2008. Took 7 years to reach this ruling.
- Supporters of the old chair sue the old chair to transfer titles. Ruled in favor of the old chair i.e. to start transferring titles, on 18th May, 2006 by an unspecified judge.
- The above case was reversed on 18th August, 2006 by Justice Emukule
- An appeal against Justice Emukule’s ruling was dismissed by Justice Rawal on 20th September, 2007 i.e. no titles to be issued by the old chair.

The most current case is now being presided by High Court Justices in another district (not Nairobi) and a verdict is expected on 3rd June, 2009.

Political interference, age set politics and a stalled subdivision

Underlying the wrangles over who gets to allocate group land or the formula by which land gets distributed was a complicated competition for community leadership by rival age-sets as well as interference by influential politicians (local and national) who supported the rival factions. The old, ousted chair belonged to the *Iseuri* age-set, as did the new elected chair. The age-set is a central institution in Maasai social and political organization. It comprises initiates of the same period who have been formally integrated as a corporate group. Through membership in age sets, men participate in political affairs, cooperate in political action and individuals acquire political power and influence. Relations between members of the same age set are cordial, cooperative and informal based on their status as coevals. However, the expected relations of deference and respect between adjacent age sets are complicated by rivalry and competition. Junior age sets are often eager to assume the roles of their seniors; seniors are often reluctant to hand over power to their juniors. The age-set is a convenient mechanism for mobilizing because it carries with it strong cultural norms of brotherhood and loyalty.

Although both men belonged to the same age set *Iseuri*, interviewees suggest that the new chair and his committee were sponsored and supported by members of the *Ilkitoip* age-set, which is more junior but

adjacent to the *Iseuri* age-set. By 2001, most leaders in the group ranches were *Iseuri*. Today, most leadership in group ranches derive from the *Ilkitoip* and it is plausible that the *Ilkitoip*, eager to position themselves as leaders, took advantage of the old chair's misdeeds in a bid to start edging out the *Iseuri*. According to one interviewee, who belongs to the new chair's faction:

“We have a very notorious age group (*ilkitopi*) who don't want to be led by anybody. They just want to be leaders in all group affairs and to be led by people they could push around like sopen and four unwise *iseuri*, so *ilkitoip* are the ones fanning new chair to oust old chair. They are the financiers into new chair's court proceedings.”³³ Another one, who is in the old chair's faction summarized this age-set rivalry thus: “Half of group ranch is complaining against current chairman (i.e old chair) and want new officials elected to preside over issue of titles. Their main reason is that *Iseuri* cant lead, instead they want *Ilkitoip* should lead.*ilkitoip* who say that *iseuri*'s time is over and now it is their time for leadership to lead the group ranch. This started 6 years ago in 1995. This is the time when they (*ilkitoip*) went ahead and held new chair and proposed him to be chairman.”³⁴

Others however suggest that the rivalry between the age-sets began manifesting in response to the National elections of 1997³⁵. This difference started in 1997 when all *ilkitoip* supported ole Leken and *iseuri* supported Ole Sankori. This difference persists. During these election most *Ilkitoip* were supporting Ole Leken and councilor Mohu who are both from Matapato and are *Ilkiseyia*. Councillor Mohu is a group ranch member. The *Ilkitoip* also were interested in having the new MP come from Matapato. This group was also allied to another member of Parliament, Ole Muyaa, who was closely associated with a powerful cabinet Minister at that time, Ole Sunkuli. The *Iseuri* age set on the other hand were in support of Ole Sankori, who was *Iseuri*, and defending his parliamentary seat against Ole Leken (*ilkitoip* ageset), and who was a close ally of the then Vice President George Saitoti. The old chair was assigned as Ole Sankori's chief campaigner within the group ranch, while the new chair was the chief campaigner for Ole Leken. The *Ilkitoip* are thought to form the majority of the membership.

Politicians are interested in group ranch leadership because the group ranch leaders can mobilize votes for them, indeed influence over group ranch affairs is one way of gauging political strength and votes. Thus politicians have a vested interest in ensuring that their favored group achieved their objective and subsequently interfered in the subdivision process. So for example, when the pusted chair misappropriated funds it is alleged that he rushed to MP Sankori and told him that Leken/Mohu supporters had turned against him and had voted him out of the group ranch with the help of government

³³ ILPART/2001/21

³⁴ ILPART/2001/24

³⁵ ILPART/2001/18

officials³⁶. The ousted chair knew very well that MP Sankori had been beaten by Leken and Mohu supporters after emerging winner in the 1997 elections. It is alleged that the MP vowed to assist the old chair.

However, politicians are not of equal power. The MP Sankori was superior in influence given his closeness to the Vice President, who also hailed from Kajiado District. It is alleged that Sankori influenced the subdivision processes in different ways. For example, when the survey by the new chairman was in progress, the MP ordered the Administration Police to arrest the surveyor on the trumped up charge that there were ‘foreigners’ subdividing land, yet the surveyor was working legally as he had a court order from the High Court³⁷. The surveyor was thrown out but allowed back in when the High Court order was produced. Similarly, it is also alleged that the MP would pressurise the Land Administration and the District Commissioners office against holding the general meetings that would have seen the old chair voted out and the new chair and his team voted in. As mentioned earlier, close to 5 meetings were cancelled and/or postponed over a period of five years. The records, as cited show that the pushing back of the cases was requested by the old chair, yet it is unlikely that he on his own would have had sufficient influence over the relevant sectors of government administration to keep the group from holding the meeting. Indeed in the earlier account, the Director of Lands and Settlement indicated that a couple of MPs went to see him to encourage him not to hold any group ranch meetings.

In addition, the then Clerk to the High Court, allegedly a close ally of MP Sankori, is reported to have hidden and/or lost files³⁸. By doing this, relevant information did not reach the judges for them to make fully informed decisions (see the Kassanga Mulwa ruling). Hiding and/or losing files also contributed to prolonging cases, which often had to be mentioned afresh when the file could not be located. It is also alleged that the MP exerted influence on land administrators, including the Land Control Board and the Land Registry, so that titles were issued even before the subdivision of the entire group ranch was completed³⁹. The MP also protected the Land Registrar despite his having authorized the issuance of titles against the law⁴⁰.

When asked about the problems with subdivision, the old chair sees the hand of the Councillor, who he considers to have been the main stumbling block. According to him, the councillor, who is also a member

³⁶ ILPART/2001/1

³⁷ ILPART/2001/19

³⁸ ILPART/2001/14

³⁹ ILPART/2001/18

⁴⁰ ILPART/2001/20

of the group ranch mobilizes support from his age-set, who he uses to challenge the committee⁴¹. The councilor on the other hand insists that the old chair uses the MP to influence court proceedings and to pressurize administrators, especially the DC to act in favor of the old chair⁴². One interviewee observed that when the new chair filed the first court case in the Kajiado District Courts and it was dismissed, the magistrate admitted that the old chair's case was genuine but "there was a lot of pressure from the top."⁴³ This interviewee insisted that the MP was behind the ousted chair's maneuvers; he however notes that the councilor was not match for the MP who had access to the vice president. The new chair's supporters also thought that the difficulties in organizing a special general meeting, which would have seen the old chair deposed, and which were continually called off was because the MP would influence the DC⁴⁴. They eventually succeeded in holding the crucial meeting because they threatened to take the DC to court on charges of obstruction.

These allegations of political influence were confirmed by the old chair himself, when he revealed that the Minister for Lands was instrumental in their getting the court order (see Kassanga Mulwa's first ruling) that allowed for the release of the first 27 titles. According to him, the Land Control Board had refused to consent the transfer owing to the fact that the case was already in court. When he saw the minister, he advised them to go back to the court and get an order for transfer. But when the court allowed for the transfer, it could not be effected because other committee members, who are required to witness the transfers were not present because they belonged to the rival faction—note that the old chair lied and said that they had moved to Tanzania in search of pastures and were unavailable. The minister then suggested that the registrar of the high court stand in on behalf of the missing committee members.

Discussion

Two different formulas for allocating rights to group ranch land are at the heart of this conflict. One formula, that has been expressly stated and subsequently backed by the law is that claimants are entitled to equal portions of land that is collectively held. The other, that is not expressly stated may have some elements of proportional distribution, in which people who have more livestock and with larger families and dependents are entitled to more than those with less. It should be qualified that this latter allocation formula may have been likely subverted resulting in an extremely skewed distribution, that was unacceptable to group ranch members and hence the conflict. The wrangles over the leadership of the group ranch were

⁴¹ ILPART/2001/15

⁴² ILPART/2001/28

⁴³ ILPART/2001/30

⁴⁴ ILPART/2001/29

indeed wrangles over who gets the authority to distribute the pie, using which formula. How much land each individual receives directly impacts the number of livestock that an individual can raise and support. In an economic system and cultural milieu that create strong incentives for livestock accumulation, it is unsurprising that there would be active contestation over who gets how much off of the collective land holding. These are issues that other group ranches that completed subdivision struggled with and either chose the path of equal parcels as in those group ranches that subdivided earlier (i.e in the late 1970s and early 1980s) or accepted unequal parcels as in those group ranches that subdivided from the late 1980s onwards (see Mwangi, 2007 on how these resolved their conflicts). What is however surprising for Ipartimaru group ranch is the *persistence* of the conflict for over two decades and its general intractability.

Unlike what was suggested by theorists i.e that egregious conflict can be ended by state officials, the account presented here suggests that state officials can be more of an obstruction to conflict resolution. The land administration for example presented a façade of active involvement in wanting to resolve the conflict. They called meetings, they summoned the warring parties and so on. However, they also postponed meetings and the Land Control Board endorsed an unequal subdivision, the Land Registrar issued out titles even with full knowledge of the disputation and hence prolonged and even *intensified* the conflict. Table 1 illustrates the Administration's actions, which consistently favored the ousted chair. More importantly, the Land and District Administration did not implement the rulings of the High Court. Table 2 shows that a majority of the court cases were won by the new chair, the advocate for equal subdivision. Though the court rulings are for the most part delayed, a consistent pattern can be discerned from the court's decisions; most have upheld that subdivision be conducted equally. Despite this guidance from the law, the land has been subdivided, including even on the table, in an unequal manner and titles have been given out. Today, it is alleged that the old, ousted chair has in his possession the entire set of titles for the group ranch and that he, not the Land Registrar, is the one distributing titles to claimants. This disregard for the law and its siding with one party to the conflict is an indictment of the Land Administration's capacity to successfully arbitrate land conflicts. It raises doubts, which have been repeatedly raised, of the extent to which such administrators can be honest brokers of their mandate.

But bureaucrats are the agents of the legislature. A member of parliament, who was also at the time a cabinet member, and who had close ties with the then Vice President was also an interested party. The allegations that the MP influenced the administrators is not without merit; for where does a group ranch chair derive the ability to postpone close to 5 meetings over a span of 2 years? Further, how else can a bureaucrat disregard unambiguous court decisions unless he/she were protected by a powerful party who

has sufficient influence to even have them transferred out of their positions? While the new chair and his group had the support of other politicians, these politicians had less clout. A councilor is a political representative at the lowest administrative level in Kenya. A member of parliament is a national figure and when he sits in the cabinet as an assistant minister, the avenues of influence are likely more and stronger, especially when the networks extend to the Vice President. The politician had reliable channels through which to monitor the actions of the bureaucrats by way of an individual directly involved and implicated by the decisions of the administrator (i.e, the old group ranch chair), and whom he needed to please in order to service and sustain the votes forthcoming from that group ranch. Note that while the number of registered group ranch members may have been 435, the pool of voters is much larger as registered members have wives, children and relatives.

The new chair and his supporters whose access to power and influence was constrained, confronted a (compromised) Land Administration that obstructed their efforts, hence the decision to seek resolution in the courts. Despite being at the lower end of a power continuum, he and his supporters have unexpectedly launched a spirited and prolonged contestation against the specter of skewed land distribution. However, they are slowly losing the battle despite being on the right side of the law, simply because the Land Administration can hardly be relied upon not to be arbitrary.

Theorists have suggested that disadvantaged parties will contest. That is true for this case. They have also suggested that elite actors will use their ties to government officials to manipulate adjudication processes and that this will make it even more difficult to negotiate solutions (Baye, 2008; Platteau, 1996). They are right. Other theorists have suggested that certain factors will increase the intensity of distributional conflict (Libecap, 1989). This case finds that two of these factors are relevant: one, the threat of wealth concentration in the proposed distribution and two, the extent of informational asymmetries among rival parties. National and local politicians have also paid great attention to this conflict (Libecap, 1998; Eggertsson, 1990) and a lack of enforcement by government institutions have undermined the adjudication process (Alston et al, 1995).

Importantly, this study demonstrates that conflicts will persist because so-called weaker parties can amass sufficient resources to sustain their challenge as Knight (1993) suggested. This study goes further to suggest that one of the conditions that may allow a weaker party to keep pursuing the conflict is whether or not they experienced victory when they used a legitimate and widely recognized arbitration forum to pursue their case. High Court of Kenya decisions, many of which have been found in favor of the weaker party, serve to strengthen the property rights of the winner, however conditionally, or even if the loser

has opportunity to appeal the court decision. Victory for the weaker party in this conflict have been more and repeated, sending a strong signal of where the morally desirable allocation may lie.

How can a definitive outcome be achieved for the Ipartimaru group ranch? Close to 20 years have gone by since the group ranch resolved to subdivide and distribute parts of it among registered shareholders. A significant portion of that time has been spent wrangling over who gets how much of the collective holding. What can be done to resolve this conflict definitively in order to end the uncertainty, financial, social costs, and opportunity costs that derive from it?

Many years of adversarial court proceedings and bureaucratic ineptitude have likely created deep hostilities between the conflicting parties that would ostensibly militate against the creation of a forum for negotiated resolution. But according to the new chair people are tired of court cases and this can be a good opportunity for seeking a different strategy to resolve the problem apart from litigation. In 2003 the District Commissioner (and the District Officer) created an arbitration committee for Mashuuru Division in Kajiado District. The subdivision of close to five group ranches in the division had stalled due to court cases. Nkama group ranch, which started subdivision in 1990, a year later than the current case of Ipartimaru group ranch, was one of the group ranches where conflict was proving intractable. The arbitration committee, which comprised reputable and respected leaders in the division convinced the conflicting parties to withdraw upto nine cases from the courts, to pursue an equal subdivision, in addition to resolving the problem of financing the costly process of acquiring title deeds from the district land registry. Surprisingly, in early 2009, the Nkama group ranch conflict found its way back into the court system.

A similar strategy can be offered Ipartimaru group ranch. Such arbitration systems sit well with Maasai cultural traditions, where negotiation and consensus have been critical features of decision making. While a District Land Tribunal, headed by the District Commissioner exists within the district for resolving land disputes, the law that underwrites it requires the Tribunal to arbitrate conflicts between individual land owners who already hold titles. The reliability of such arbitration exercises would be greatly enhanced if conflicting parties credibly committed to not litigating. This is possible if the agreements reached during such localized arbitration were binding.

Conclusion

Conflict and competition is a characteristic of human societies especially in the distribution and allocation of scarce resources. The challenge lies in ensuring that conflict is resolved in a just and timely manner, minimizing the costs to disputants (Lund et al, 2005). This paper has argued that conflict over subdivision (and other similar processes of property assignment) can defy resolution and that parties to the dispute, including their supporters, can engage in an unproductive cycle of litigation. Because the so-called weaker, less-influential party keeps winning in the court system, he continues to mobilize resources to keep the litigation alive, as each time he wins a court case it vindicates his allocation formula and he gains a little more power. The bureaucrats, being in favor of the more powerful party with political clout, consistently undermine the implementation of court decisions and indeed implement the reverse. Thus conflict recurs because a weaker party successively gains more power even as inept and compromised bureaucrats fail to implement their mandate in line with the law. The courts, in turn, face the criticism that they took too long to dispense justice and that they failed to synthesize general principles that drew on prior cases to guide similar cases in the future.

References

- Alston, L. J., G. D. Libecap, and R. Schneider. 1995. Property Rights and the Preconditions for Markets: The Case of the Amazon Frontier. *Journal of Institutional and Theoretical Economics* 151(1): 89–107.
- Baye, F.M.2008. Changing land tenure arrangements and access to primary assets under globalization: A case study of two Villages in Anglophone Cameroon. *African Development Bank, Journal Compilation*. 135-162.
- Berry, S. 1989. Social institutions and access to resources. *Africa: Journal of the International African Institute* 59 (1):.
- Bromley, D. W. 1991. Property rights as authority systems: the role of rules in resource management. *Journal of Business Administration*, 20(1–2), 453–470.
- Eggertsson, T. 1990. *Economic behavior and institutions*. New York: Cambridge University Press, Cambridge Surveys of Economic Literature.
- Firmin-Sellers, K. 1996. *The transformation of property rights in the Gold Coast: An empirical analysis applying rational choice theory*. New York: Cambridge University Press.
- Henrysson, E. and S.F.Joireman. 2009. On the Edge of the Law: Women’s Property Rights and Dispute Resolution in Kisii, Kenya. *Law & Society Review*, 43 (1): 39-60.
- Hutchison, J. 2008. Land titling and poverty reduction in Southeast Asia: Realizing markets or realizing rights? *Australian Journal of International Affairs* 62 (3): 332-344.
- Kenya Republic 1968. Group (Land) Representatives Act. Chapter 287 of the Laws of Kenya. Nairobi: Government Printer.
- Knight, J. 1992. *Institutions and social conflict*. New York: Cambridge University Press.
- Libecap, G. 1989. *Contracting for property rights*. New York: Cambridge University Press.
- Lund, C., R. Odgaard, and E. Sjaastad. Undated. Land rights and land conflicts in Africa: A review of issues and experiences. Danish Institute for International Studies.
- Mwangi, E., 2007. Subdividing the commons: distributional conflict in the transition from collective to individual property rights in Kenya’s Maasailand. *World Development* 35 (5), 815–834.
- Mwangi, E. 2003. Institutional change and politics: The transformation of property rights in Kenya’s Maasailand. Unpublished Ph.D. Dissertation. Indiana University.
- Mwangi, E., and H.Markelova, 2009. Collective action and property rights for poverty reduction: A review of methods and approaches. *Development Policy Review* 27 (3): 307-331
- Okoth-Ogendo, H.W.O., 1989. Some issues of theory in the study of African land tenure. *Africa: Journal of the International African Institute* 59 (1), 6–17.
- Ostrom, E. 1990. *Governing the commons: The evolution of institutions for collective action*. Cambridge: Cambridge University Press.
- Platteau, J-P. 1996. The evolutionary theory of land rights as applied to Sub-Saharan Africa: A critical assessment. *Development and Change* 27(1): 29–86.
- Shipton, P. (1989), *How Private Property Emerges in Africa: Directed and Undirected Land Tenure Reforms in Densely Settled Areas South of the Sahara*, Harvard University, HIID and Department of Anthropology, Boston.
- Woodhouse, P., 2003. African enclosures: a default mode of development. *World Development* 31 (10), 1705–1720.
- Yamano, T., and K.Deininger. 2005. Land Conflicts in Kenya: Causes, Impacts, and Resolutions.

TABLE 1

SUMMARY OF ACTIONS BY LAND AND DISTRICT ADMINISTRATIONS

| Actor | Action | Date | Outcome |
|--|--|---|--|
| DLASO Sub-Chief, Ipartimaru | Committee meeting to resolve problem | 23 rd February, 1996 | Committee resolve to suspend the chair & 2 others Call special general meeting and present to group membership |
| Registrar Group ranches District Officer Chiefs | Committee meeting | 30 th May, 1996 | The chair & 2 others voted out of committee by rest of committee members; New chair voted in. Call special general meeting and have elections for group chair |
| DLASO | General meeting | 5 separate dates | Suspended chair refuses and puts off—Meetings don't happen. |
| District Commissioner; DLASO; Chief & Sub-Chiefs; MP; Councillor | Annual General Meeting | 2 nd August 1996 | DC to investigate No elections conducted at meeting. |
| DLASO | Special General Meeting to conduct elections | 31 st August, 1996, 25 th February, 1998 | Put off by suspended chair. |

| | | | |
|---|---|---------------------------------|--|
| Suspended chair | Court case to challenge incorporation of new chair as legal group ranch chair | | Dismissed by High Court, 22 nd November 1996. New certification of incorporation issued to new chair. |
| Director Land Adjudication | Order for ousted chair to hand over group ranch documents | 16 th December, 1996 | Ousted chair refuses and claims Director acted ultra vires |
| Ousted chair | Applies to Land Control Board for consent to TRANSFER group ranch title and issue title deed to members | 7 th January, 1997 | Granted |
| Director Land Adjudication Registrar of GRes DLASO DO Sub-chief | Annual General Meeting | of 17 th April, 1998 | Ousted chair voted out! New chair and his team get elected. |

TABLE 2

SUMMARY OF COURT CASES

| | Issue/charge | Date of ruling | Ruling |
|---|---|--|---|
| Civil suit No. 1497 of 1999, HC at Nbi | Plaintiffs/applicants: new chair & 6 others & Ilpartimaru group ranch vs Defendants: ousted chair & 2 others | 28 th July 1999 | Justice Mitey (new chair wins) -temporary injunction to restrain defendant from alienating, transferring, subdividing or dealing with assets and properties of the group ranch -temporary injunction issued to restrain the plaintiff or holding themselves as members of the group ranch -application dated 27 th July, 1999 by the plaintiff/defendant/respondents for hearing on 28 th July 1999. |
| Civil suit No. 561 of 2000, HC at Nbi | 3 individuals who are supporters of new chair Vs Ilpartimaru group ranch Claim for: -injunction against subdivision -equal allocation for the plaintiffs and group ranch remains constituted until all titles registered -repeat subdiv so group members all get equal shares | 26 th June, 2000 | Justice Shaikh Amin (new chair wins) -that respondent/defendant (the group ranch) from subdividing or transferring any part of the group ranch -the plaintiffs get portion of GR equal to their contribution -that subdiv be repeated and/or rectified so that all get equal shares in GR. -each party bears its own cost |
| Civil suit No. 561 of 2000, HC at Nbi | -enjoining of 18 of new chair's group in a certain suit as defendants -orders of 26 th June 2000 be varied and set aside entirely | 10 th March, 2004 (4yrs) | Justice Ransley (new chair wins) -application is dismissed -applicants to pay costs to respondent/defendant |
| Civil case No. 233 of 2001 at HC Nbi | 5 plaintiffs/respondent vs Ilpartimaru group ranch officials both old and new -Review of 15 th March, 2001 Orders granted by the HC->in which ousted chair had won ruling to transfer titles and had issued 27. | 19 th June 2001 | Kassanga Mulwa (new chair wins) -applicants obtained order of 15 th March 2001 but did not follow the facts relevant to the application -did not follow the orders by failing to comply with the conditions of the orders granted by this court on 14 th June 2001 -plaintiffs/respondents shall bear costs -All acts done or executed pursuant to the orders shall be declared null and void |
| Civil appeal No. 292 of 2001, HC at Nbi | Appellants : 5 individuals who support ousted chair vs Respondents: ousted chair and 2 others -appeal from the ruling and order of HC at Nairobi (Kassanga Mulwa) dated 19 th June 2001 | 6 th June, 2008 (7yrs) | Justices Bosire, O'Kubasu and Aluoch --dismissed the appeal and with costs to the respondent/defendant/ appeal (i.e. ousted chair) |
| Civil suit no. 418 of 2006 | Plaintiffs: one supporter of the old chair supporting, suing on behalf of himself and other group ranch members | 18 th May, 2006 | Judge not clearly defined (old chair wins) -that defendants execute transfer of titles within the next 14 days |

| | | | |
|----------------------------|---|-------------------------------|--|
| | vs Respondents: old chair & 2 others as officials of the GR | | -high court deputy registrar to execute documents in lieu of defendants and transfers and issue title deeds to them -each party bears their own costs |
| Civil suit no. 418 of 2006 | Plaintiffs: one supporter of the old chair supporting, suing on behalf of himself and other group ranch members vs Respondents: old chair & 2 others as officials of the GR | 18 th August, 2006 | Justice Emukule (new chair wins) -that there be a stay of issuance of |
| Civil suit no. 418 of 2006 | some guy suing on his own and behalf of GR members=plaintiffs Vs Vs lemomo & 2 others as officials of the GR | 20 th sept, 2007 | Justice Rawal (new chair wins) -new chair and one other enjoined -costs be borne by applicants -that status quo be maintained |