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“Kyapa Mungalo” and the Land Question in Buganda: Problematizing Neoliberal Reforms on Customary Tenure.

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ABSTRACT

The people of Buganda, the central region of Uganda, face a double system of formalization i.e. state-led through the Uganda Land Board (ULB) and another by Buganda Kingdom through Buganda Land Board (BLB). Since 2012, Buganda has been conducting a campaign dubbed “Kyapa Mungalo”¹ which means “Title-in-hand” to encourage tenants on customary land to get lease titles offered by the kingdom. Much as the campaign started earlier, the process of registration was launched in 2017 and people started registering their land with BLB. Despite Buganda providing a rare case of land titling, there has been no substantial discussion and critique of titling done by the customary authority since recent research has focused on state-centered titling. This paper will argue that any substantial discussion of neoliberal land reform needs to take seriously the institutions and structures that enforce the reforms. I also argue that the design and implementation of neoliberal land reforms especially titling has limited if any potential to promote development, gender equality and improve the status of gendered households. By not questioning the institutions especially the customary institution of Buganda and Mengo, we risk a wrong impression and interpretation of the reforms and the intentions for which they are established. Through preliminary critique of Kyapa Mungalo, the paper doesn’t only question the agency of Buganda kingdom in neoliberal reforms of customary tenure but also the structure within which it operates, and so its relationship with the state.

¹ “Kyapa Mungalo” is a Luganda slogan translated as “Title-in- Hand” and it is a campaign by the Buganda kingdom to register land of bibanja/lease holders on kabaka’s mailo land through the “customary system” of formalisation.

Keywords: Neoliberal Land Reform, Land Titling, Customary Tenure, Buganda Kingdom, Kyapa Mungalo Program.

Introduction

The Kingdom of Buganda, from which contemporary Uganda derives its name, is one of the oldest not only in Uganda but also in East Africa. It has a history that stretches back for centuries (see Hanson 2003). In its current status, and as far as this paper considers, Buganda covers almost all of Uganda's Central Region, including capital Kampala and accounts to over 20% of the country's population². The people are originally called Baganda with the King known as *Kabaka* as the head, assisted by the prime minister known as *Katikiro* and other power structures like chiefs. The kingdom, through its administrative arm, *Mengo*³, launched a project and campaign dubbed 'kyapa mungalo' to ensure that people who live, stay and use mailo land [also called king/kabak's land] get lease titles. It is believed by Buganda that getting this title will guarantee security of tenure, ease access to credit by farmers and help stimulate 'development'. The kyapa mungalo project was officially launched in April 2017 but the process started years earlier. Two months after the launch, king/kabaka Mutebi II ordered BLB to sensitize the public about the presumed benefits of the "recently introduced compulsory land registration and acquisition of leases by tenants on kingdom land commonly known as Kyapa mungalo" when addressing his subjects in "Singo county" [an administrative division of Buganda] (Daily Monitor, June 18, 2017). "We need to put more effort in sensitising our people on why we came up with that new land registration arrangement so that they make the right decision" (ibid.).

By October of 2018, it is said that over 1000 people on "Kabaka's land had already received their land titles through BLB ever since Kyapa Mungalo campaign was launched by the prime minister Charles Peter Mayiga". (Zirimala, October 12, 2018). The central questions the paper asks are, is neoliberal reform of customary land tenure a necessary and sufficient condition for promoting tenure security, socio-economic transformation and women's land rights? Differently, can land titling promote development, gender equality and improve the status of gendered households? Second, how can kyapa mungalo help us understand postcolonial land tenure institutions that structure and shape the relations and contestations over land? This paper argues that we need to think about Buganda kingdom as an institution if we are to understand the logic, implications, promises and intentions of kyapa mungalo. We need to interrogate its agency within both the neoliberal capitalist and the state structures where it operates. Adams argues that "consideration of the prospects for land reform, including tenure reform, should not be divorced from an

² <https://www.aa.com.tr/en/world/buganda-ugandas-1-000-year-old-kingdom/99978>

³ Mengo as an administrative arm of Buganda kingsom was established during colonial period. Mengo handles all the administrative and technical work of Buganda kingdom including handling land matters on behalf of both the kingdom and the king.

analysis of the political processes at work and the opportunities for mobilising the support of stakeholders...” (Adams 2000: 4). For Adams, any successful land reform [that can contribute to rural peoples’ livelihood] has to be part of “a broader political, social and economic change” and not merely narrow interventions that seek to “repossess land alienated by European settlers in the short term” (5). Scholars like Mamdani have already taught us how the legacy of colonialism has continued shaping the operation of such institutions ([1996] 2017). The paper also argues that the design and implementation of neoliberal land reforms especially titling has limited if any potential to promote development, gender equality and improve the status of gendered households. The paper begins by highlighting the theoretical discussions that shape discourses on neoliberal land reform. Thereafter, the paper will engage with kyapa mungalo by highlight its assumptions and promises, its implications on the people and on relation between Buganda Kingdom and the central government and finally on the gender question (women’s land rights). The question of gender comes handy in the propositions of neoliberal land reform with promises mostly to improving and guaranteeing women’s land rights with a title which this paper will engage with.

Neoliberal reform of customary tenure: Theoretical framing

Scholarship on the land question today is engrossed with debates on neoliberal reform of customary tenure. One side of this debate contends that contemporary development challenges and land tenure insecurity should be located in the informal (customary) land tenure systems and the solution can only be found in formalization/titling of such land. Led by scholars like de Soto and Deininger, this strand of scholarship states that there is urgent need to formalize land through ensuring reforms in form of titles/registration if countries especially third world countries are to “develop” (de Soto 2000; Deininger 2003; Feder and Nishio 1999; Feder et al. 1988 etc.). To the contrary, another group of scholars question such narratives by arguing that they will instead promote interests of capital and the state, widen inequality and increase dispossession. To this group of scholars, the neoliberal assumptions treat land merely as an economic question ignoring other embedded issues which are both social and political (Weiner and Glaskin 2007; Manji 2006; Bernstein 2002; Musembi 2007; Yngstrom 2002; Jackson 2003; Ossome 2014; Claassens and Mnisi 2009; Patnaik et al. 2011; Moyo et al. 2019; Moyo 2013; tc)

Development economists and neoliberal theorists have argued that the land policies that have been promoted in “third world” countries are based on customary systems of land ownership which cannot guarantee tenure security, development and agricultural productivity (de Soto 2000; World Bank 2003; Deininger 2003). To this school of thought, keeping poor people outside legal systems is keeping them outside the market thus poverty. The solution lies in formalizing assets held by the poor by legalizing

property rights and transforming assets into capital to ease access to credit as this can enable them to profitably engage in the free market where wealth is created (ibid.).

In his *The Mystery of Capital*, de Soto contends that formalization of property especially through offering land titles is a necessary condition for promoting the agenda of development (2000). de Soto asks, if people “in countries making the transition to capitalism are not pitiful beggars, not helplessly trapped in obsolete ways, and are not the uncritical prisoners of dysfunctional cultures, what is it that prevents capitalism from delivering to them the same wealth it has delivered to the West? Why does capitalism thrive only in the West, as if enclosed in a bell jar? (2000: 5). To him, the problem is that “resources” owned by the poor are held in “defective form”. He illustrates this by arguing that “houses built on land whose ownership rights are not adequately recorded, unincorporated businesses with unidentified liability, industries located where financiers and investors cannot see them” (ibid.: 6). So, because such assets as land have no adequate documentation, they can hardly be turned into capital, “cannot be traded outside of narrow local circles where people know and trust each other, cannot be used as collateral for a loan and cannot be used as a share against an investment” (ibid.). The assets of the poor across the four continents—despite being huge in quantity—are “dead capital” (2000: 7, 12). In order to solve the problem of the mystery of capital that hoodwinks the poor, we should represent assets with titles, from which capital can be drawn (7-8). This position is reiterated by Deininger (2003) who argues that “secure property rights will increase the incentives of households and individuals to invest, and often will also provide them with better credit access, something that will not only help them make such investments, but will also provide an insurance substitute in the event of shocks.” (xix). To Deininger, “secure and well-defined land rights are key for households’ asset ownership, productive development, and factor market functioning...and Where effective demand for credit exists, giving formal title to land can help producers gain access to credit and improve the functioning of financial markets” (2003: xxvi) Thus formalization is a magic bullet to all development challenges of countries that aspire to register development and improve women’s livelihoods through having ownership rights and access to credit.

In *Land Policies and Farm Productivity in Thailand*, Feder et al. 1988 offered a more detailed analysis of what they considered to be the economic benefit of land registration in their study of Thailand. Using an econometric analysis, they studied two groups of farmers i.e. those having titles and those without legal titles in forest reserve boundaries. They established a clear link between land titling and access to credit by farmers, those with titles as collateral would be offered significant credit than those without legal titles (3, 44-45). To them, “the economic performance of Thai squatters is significantly below that of farmers with legal ownership” (1988: 122) and Thailand has registered huge economic benefits of land registration just like Philippines, Brazil and Peru have seen increased value in land not to mention of the

higher investments in Thailand, Ghana, Jamaica etc. (Feder and Nishio 1999: 40). Thus, “credit transactions in our study areas (in Thailand) confirms that the supply of institutional credit is significantly affected by the provision of land as collateral... Squatters are thus at a disadvantage since they cannot legally provide land as collateral” (Feder et al. 1988: 123). Thus, titling allows prospects of tenure security, access to financial credit and increased investment.

The propositions made by advocates of neoliberal reform have been a subject of critique in the land question scholarship on a number of fronts. The scholars in this group have come to challenge the first one by arguing that their assumptions and solution instead promote interests of capital and the state, widen inequality and increase dispossession. First Manji, Claassens and Mnisi and Weiner and Glaskin have challenged the legalistic language the neoliberal reform proponents use to justify their claim. Manji argues that legal centralism has the potential to produce negative results by changing the way people do relate to and perceive of not only land but also relations to land (Manji 2006: 20). People historically are believed to hold land for different purposes. Manji has made this clear by stating that legal formalism as a land reform tends to take for granted the critical issues of difficulty in distributional choices which are entailed in any discussion regarding land most especially when it comes to puzzling question of determining who gets what (ibid.: 19). She asks, “what constitutes law” given that neoliberals consider informal arrangements as passive, defective, and extra-legal? (19-20). To Manji, the suggested rule of law being promoted is an attempt to create a “universal” yet presumably authentic “template,” which will impede development [social, economic and political] since it ignores the workings of informal agreements and existing social controls. Such a template cannot be transplanted elsewhere (ibid.: 11). The cling to land law reform as “a conduit through which the above can be achieved ignores a lot of pertinent social and political debates” (Nakayi, 2018: 267). The above critique resonates with that of Claassens and Mnisi (2009) who state that the legal strategies that are put in place to ensure women’s rights are realized ought to take seriously the changes that take place, by engaging with the real-life problems that women face as wives. To them, we need to look into the changes that happen outside the formal legal systems, which space is a field for women to negotiate rights and custom. For Weiner and Glaskin, legalism serves nothing but a purpose to integrate, define and manage the relations of people to the state (2007: 2). Therefore, law becomes a tool deployed and employed by the bourgeoisie to “entrench private property” with the aid of state institutions (Nakayi 2018). Thus, the neoliberal preoccupation with law that tends to offer appropriate yet conducive legal framework may result into unintended, unconducive and inappropriate results that draws attention away from engaging questions of land (re)distribution and land based social inequalities in access to, ownership and use of land (Manji 2006). The neoliberal focus on

the form and not content of tenure, in what they call land law reform. Such focus ignores social relations and divorces land relations from power relations embedded in reforms.

The second level of critique looks at neoliberal land reform as a central component of land grabbing. Bernstein in his *Land Reform: Taking a Longer View* (2002) states that neoliberal claims of the need for security of tenure as a way to attract/encourage investment thus bolstering both production and productivity in agriculture and titling as a lever for fostering an efficient land market [easing transaction process] are objectives formulated with the intent to protect the boundaries and property “rights of large-scale capitalist farms. In the end, such reforms, he argues, may “stimulate an impulse to reform away such social and political messiness around claims to land and the negative effects attributed to it in favour of clearly demarcated and registered private property rights as a condition for investment and efficient land use in farming (2002: 450-1). Moyo Sam (2013) while studying Zimbabwe’s land reform argues that privatisation of land would increase landlessness and exploitation of other natural resources like water, woodlands, wildlife and labour. And now that landlessness becomes continued and perverse, “privatizing property rights could enable new landholders to evict agricultural workers and prevent many land bidders from gaining access to the remaining Large-Scale Farms. This sequence of events would only reinforce the persistent super-exploitation of labour, which is the key motor of class formation” (2013: 68-9). Thus, thinking about such reforms in the context of labour and class relations would show that they influence the land politics since “new capitalist farmers and the agro-industrial estates retain their advantage in the control of land and bidding for labour and lead the accumulation processes by virtue of their better access to other means of production (credit and technology) and influence over the policy-making process itself” (69). Important to note from Moyo is that where reforms in land work in Zimbabwe, private property rights and the market (in agricultural land) were quenched substantially in favour of the state. In Zimbabwe, private property regime based on free market was abandoned in favour of state-owned forms of tenure which of course is the basis for its partial success.

Therefore, where land reforms have succeeded, the state has been so central in dealing with attempts at private property. (48-49). Patnaik et al. (2011) thus informs us that the land question now is not only a fight over rights to land for people and groups but also a fight over global imperialism and if any advances are to be made regarding the land question then this fight is not only necessary but also urgent (51-52). Important to note is that neoliberal analyses of de Soto and company emphasise the benefit of access to credit but do not talk about the loss of land that comes as a result of debt. Patnaik et al argue that “there is no outcry against usury or land loss against debt” where peasants get alienated because of debt (51-52). This shows that the current reforms are more dangerous than imagined. Thus, the ongoing land and agrarian crisis is due to neoliberal reforms on land (51). Moyo et al (2019) explain how converting

customary land into leasehold would bring about insecure land access by majority local people. In Zambia for instance, traditional leaders “stop allocating land to local people in anticipation of big money from investor” and in the end the investors evict people from the land thus grabbing (218). They cite an example of Chief Munkonchi who approved 26000 ha to leasehold and over 2000 households were evicted in 2003. The people are displaced, they hardly find “alternative land mainly because all the land in the area has been allocated, or earmarked for investors” (218). They argue that the neoliberal reforms other than seeking an integration of small-scale farmers to be able to beneficially participate, they instead “sought commodity marketing and land tenure reform which led to the deeper integration into the world food system and prepared ground for the current land grabbing” (10).

Writing in the context of Uganda, Land and Equity Movement of Uganda (LEMU) considers that the challenge with the land question and customary tenure is not on whether customary titling would promote development or not but with the fact that the customary institutions are weak to ensure that the promises of titling work. LEMU argues that the customary system seems to be overridden by the state system when it comes to issues of protection of rights over land in Apac. The customary system has rules which were “never written down, but they were part of the social obligations of living within the clan, and they were enforced by clan elders” (Adoko 2005:8). Their powers have been lost to the local council leaders and institutions, yet these very local councils have no mandate to enforce decisions and arbitrate on land disputes. This means that the system that used to protect the interest and rights of women and children in the customary system has been weakened yet this is the time when it is most needed (LEMU 2010). In Apac for instance, people have much trust in LC system and it’s becoming more of a darling than the ‘customary system’ for they believe state law supersedes the “customary law”...as people disobey the customary institution and sale their land (ibid.).

Second, Ugandan critics have disagreed with proposition that customary tenure is the source of insecurity and so formalization of customary land has the potential to deal with the threat (Adoko and Levine 2005; Kafureeka 1992). This is because, it is argued, land sales have nothing to do with insecurity of farmers or fear of loss of customary land (Adoko and Levine 2005:29ff). Adoko and Levine of LEMU show in their research in Apac that actually by not having Certificates of Customary Ownership (CCOs) or land titles, people and “communities do not feel a sense of insecurity”. They add that, “land titles or certificates are therefore unlikely to have much impact on investment in land or its use.” (Adoko and Levine 2005:33). There is “deep suspicion, with a deep-seated belief in trickery on the part of government to rob them of their land” regarding land customary land registration (Ibid.). Similarly, LEMU research shows that people may be forced to sell their land because of the economic hardships and poverty than tenure insecurity. Kafureeka (1992) wonders whose security is in question when we talk about security of tenure.

Security for one group is actually insecurity for another. Faced with such a dilemma, “policy decision on security of tenure will in the final analysis be influenced not by the nationalistic desire for development, or humanistic sentiments to elevate the plight of the majority, but by the balance of class forces within the state, and the potential political threat, which each social force within or outside the state poses to the government” (Ibid.:4ff). This raises questions which were not explored by the neoliberal reformists in Uganda i.e. the question of class in fronting security claim. This scholarship call to question the arguments made by the critiques of customary tenure by arguing that holding land as freehold private land may instead may increase ‘insecurity’ of tenure and reduced ‘productivity’ (Adoko 2005; LEMU 2005; Lwanga Lunyiigo 2007; Kafureeka 1992).

Feminist scholars have challenged the dominant neoliberal orthodoxies through incorporating gender analysis and through conceptualizing peasant household of domestic arena into analytical framework. Such scholars as Musembi, Ossome, Yngstrom, Jackson among others are key in questioning the idea that women can beneficially participate in, or gain, as a result of formalization of their land rights (Manji 2006; Ossome 2014; Yngstrom; Musembi 2007). Yngstrom for example argues that the neoliberal thinking works to exclude “gender as an analytical category” (Yngstrom 2002: 21). This as a result renders women’s claims to land and the forms of tenure insecurity that women face invisible (ibid.: 22). Taken critically, her argument is very profound when one considers the impact of individual and joint titling as a way of trying to improve the position of women. Musembi makes this clearer in her research in Kenya when she writes that privileging formalization of title as the means to secure tenure brackets the possibility of formal titles creating more insecurities through casting doubt on the ‘pro-poor’ credentials of the property rights project, generating more inequalities and marginalisation and gendering of distribution (2007: 1460, 1470). She states that in cases where titling is made in the name of household head, women’s claims over land is weakened and daughters may have no rights to their father’s property (ibid.). In this case, registration increases men’s visibility and women’s invisibility of rights to use and ownership of land which increases gendered effects of registration. Male authority in allocation and control over land is increased which foster exclusion of children and women (ibid.: 1471). It is such weakening of women’s claims to land that resulted into demand for separate titles for women in Bodhgaya especially when men became drunkards and violent. Women reacted by seeking individual registrations in their names. After receiving the land titles in their own names, women later put that land under male control—i.e. their sons (Jackson 2003: 461, 166).

We need to understand this whole issue of inequality, exploitation and [dis]empowerment as being rooted in the power relations at play in spaces where rights are negotiated. The unequal power relations say of age, class and gender have grave consequences for the ways in which land rights are negotiated,

renegotiated and land is distributed. To merely impose formalization on top of this inequality is not in the best interests of the poor and less privileged nor does it improve their position. Surprisingly, this critical and analytical approach is not taken into consideration by the neoliberal project. Its narrow focus makes its agenda seek to take production from the household to the market through promoting formalization of land ownership and turning land into a commodity thus replacing communal/“customary” ownership into private ownership—yet taken seriously, the household, market and the state are entities that work hand in hand and so interact with each other in numerous ways. In-fact Musembi (2007) argues that where communal registration is allowed, it creates way for future private ownership. This private interest is not just private but also commercial whose benefit ends up in the pockets capitalists. Besides all that, Mamdani has argued that women’s claims to land are much stronger than epitomized. For this reason, we cannot think of linking social embeddedness with “weaker” claims because it is not logical to start our analysis from a view point that socially embedded relations weaken women’s claims (2015). Other than analysing women as subjects of marginalisation or oppression, we need to start from analysing the structural issues that bring about exploitation, which then subjects the different historically marginalised groups to continued exploitation and marginalisation.

In trying to underscore whether women’s rights to land in Africa can be secured in the context of contemporary land commercialization, Ossome argues “that liberal formulations of the law are limited by a set of assumptions regarding women’s position in the political economy” (2014: 155). For Ossome, neoliberal assumptions like the claim that “women’s indigenous land claims are secondary or amount simply to a use right contrasted with a control right” are institutionalized, politicised and hidden in framing of women’s land rights (ibid.: 158). The lesson she offers us is that if we take a structural analysis of the social relations on land, then neoliberal assumptions do not hold. E.g. land policies of 1960s and 70s, attempts at reforming customary tenure ended up securing individual private rights and easing land transfers which in turn exacerbated tenure insecurity, displacement, land conflict and unequal access based on gender race, ethnicity etc. (159). Therefore, we cannot think of formalization and tiling as a silver bullet to security of tenure, socio-economic transformation, poverty reduction and gender inequality challenges especially in developing countries. What then has to be done? Weiner and Gaskin suggest that we should go beyond the idea of vying to protect customary tenure regimes [or destroying it] to placing it in a broader historical development of capitalism and colonialism. This can be through understanding the “mechanics of translation process in which non-western cultural and social forms are incorporated and regulated by western legal and statutory bodies”. In doing such, we get to know that the customary is perhaps and rightly so a product of the expansion of capitalism/capital formation and the expansion of the state (2007: 2). Thus, beyond protecting the interests of women, we should analyse reforms broadly by

placing them in wider contestation by asking new questions like “the type of economic and political relations in which land is situated particularly with reference to relations in inequality—race, ethnicity, gender and age (Moyo et al. 2019: 194).

Kyapa Mungalo

People in Buganda⁴ are facing a double system of formalisation i.e. with the state and the BLB. It is argued that the kyapa mungalo was officially launched on April 18, 2017 (Daily Monitor, June 18, 2017). The customary system in Buganda has bought into the narrative of formalisation that obtaining a “kyapa mungalo” allows you to have access to credit—which brings you into the market. This kyapa mungalo is held by people on mailo⁵ land [kabaka’s land]. For one to access the kyapa mungalo title, they have to submit written applications. The application fee is (USD 180) 650,000 shillings dropping from (USD 264) 950,000 after the launch. The applicant also pays an additional registration and application fee of (USD 7) 250,000 shillings (Daily Monitor May 26, 2017). BLB sends inspectors to verify the “authenticity” of land ownership through reviewing ownership agreements. The inspection report is sent to the parish chief after which it is sent to higher levels for further verification i.e. subcounty and county levels (Daily Monitor, May 26, 2017). At county level, “the applicants are vetted by a committee that sits every month.” (ibid.). The committee among other members consist of the BLB Branch Manager at county level in that county and the kingdom’s local government officials. If the committee approves the application, it now gets sent to the “Central Lease Committee of Buganda Land Board” which finalizes the verification process. “The value of the empty plot is then computed...basing on the benchmarks set by the Chief Government Valuer, and once the value of the land is determined the applicant is then required to pay what is called a premium. The premium is 10 per cent of the value of the land. If a plot is valued at

⁴ The people of Buganda are called Baganda but they stretch now to involve non-Bganda from other tribes i.e. residents, refugees, business people, migrants etc

⁵ Uganda has four tenure systems, most of which developed during colonial rule. These include, freehold, leasehold, mailo tenure and customary tenure. Mailo (tenure) “is used in Uganda to describe a land tenure system that came into effect when the Buganda Kingdom signed the 1900 agreement...The basic unit of the mailo system is a square mile, hence the derivation of mailo, which is also equivalent to 640 acres. The Mailo system is predominantly in Buganda region and in some parts of Mbale, Bunyoro and Toro. Two categories of mailo were introduced; official Mailo and private Mailo whereby official Mailo refers to land owned by the Kabaka, Katikkiro, and chiefs. Private Mailo referred to land owned by private individuals. The official Mailo was supposed to benefit specific offices such as Kabaka's office, Katikkiro...Chiefs and therefore, not supposed to be sold but can be leased. The Kabaka was given 350 square miles, which is currently administered by the Buganda Land Board. Private Mailo went to individuals, including the Kabaka as a person, royals, individual chiefs and some notables. There were 1,000 people who were given 8,000sq miles. There was the 9,000 sq miles, which comprising lakes, rivers and hills, which was left untouched and vested in the Crown of England hence the name; Crown Land. At Uganda's independence in 1962, the colonial government instituted a statutory body called Buganda Land Board, where this land was vested. When the then president Milton Obote abolished kingdoms in Uganda, the Uganda Land Commission was created and it is where this land was administered. As a result of the 1900 Buganda Agreement, a new phenomenon of occupants came into being since some land on which they lived, was registered in the names of land owners.” (see James Galabuzi Mukasa, Land ownership started way back before the 1900 agreement, but without registrable interest which would enable surveying and acquiring of titles, New Vision Online 2021, <https://www.newvision.co.ug/news/1472261/history-importance-mailo-land-buganda>).

(USD 13,888.89) Shillings 50m, for instance, the applicant will be required to pay (USD 1388.89) Shs 5 million (10 per cent of 50m) for the 49-year lease” (ibid.). A person is required to pay a continuous 1% of the value of the land or 10% of the premium. On the expiry of 49 years of the lease, the one occupying the lease, according to the agreement, has automatic right to renew it by paying a new premium based on the freshly estimated value of the land” (ibid.). Given that Uganda is operating a capitalist system especially in regards to land relations, what does such a project mean?

A “win-win Project”: Assumptions and limits of Kyapa Mungalo

The BLB Website contains an outline of the benefits of titling through kyapa mungalo. The website shows that titling land through kyapa mungalo (1) Facilitates clients with security of tenure; 2) enables land act as collateral security therefore ease of access to finance; 3) adds value to your land; and 4) a leasehold certificate of title prevents potential encroachment.⁶ For instance, BLB argues that registering land under this scheme would help “increase the value of land occupied by these ‘bibanja’/lease holders so that they may not easily be lured into selling to the regime capitalists” (Uganda Review, September 12, 2017). The katikiro [prime ministr of Buganda kingdom] Charlse Peter Mayiga when addressing people on June 17, 2017 argued that the programme “will help solve land disputes in the kingdom and also help tenants on Kingdom land legitimize their tenancy and be able to access financial credits.” (Daily Monitor, June 18, 2017). However, he pointed to the fact that the this programme was not mandatory and those who wish not to register their land because they see no importance of “owning lease titles were free to continue paying nominal ground rent (Busuulu).” The project aimed at dealing with land grabbers especially those in the state institutions that the then Buganda kingdom minister of finance [Robert Waggwa Nsibirwa] while speaking at Bulange gardens referred to as “vultures”. Nsibirwa argued that, “Ugandans...should sideline naysayers and embrace their culture of regularizing their tenancy if they want to survive vultures” in Uganda’s volatile land sector” (Kimbowa August 31, 2017). For Nsibirwa, “It is self-defeating to hear someone condemn an activity that safeguards people’s tenancy in a country full of land wrangles and grabbing.” (ibid.). Thus, the premise is on tenure security alongside other benefits—security from grabs spearheaded by some bigwigs in state institutions.

Reflecting neoliberal assumptions, Kyapa Mungalo was premised on the assumption that it would easily allow the tenants with such registered land to easily access financial credit/loans.

The financing conversation starts at the point of obtaining a title through the Buganda Land Board’s Land Access Financing initiative Kyapa Mungalo, (title-in-hand) scheme. Bank approval means one will have

⁶ Buganda Land Board (BLB) WebSite <https://www.bugandalandboard.or.ug/titling>

the money to acquire the lease hold title and can still get more funds as equity release or fund completion once the title has been delivered to the bank. This solution is available to both salaried and self-employed (business) customers. We grant repayment periods of up to 24 months at the best interest rates in the market and the entire loan process to disbursement lasts not longer than 48 hours. The journey to acquiring a house in Uganda starts with owning land. At Stanbic, we can now finance a customer from the point of acquiring land to later constructing a house. The benefit of this is that instead of keeping the purchased land in speculation that it will appreciate in value before resale, we now offer a solution that enables the client to release equity and get cash out against the estate they already own. These funds can help one start construction and the bank would in turn finance the completion. Other than the construction or development of the same land, the cash can alternatively be used for diversification of one's business or recapitalization (Jackson, August 28, 2018).

One important question to ask is, how should we think about this kind of narrative? Isn't this a new form of accumulation? Isn't the risk of following this kind of narrative and provisions one way of shifting previously customary land into a new regime of private property? I will argue that the kyapa mungalo titling project just like the neoliberal state enforced titling projects is creating new capitalist frontiers i.e. capitalism is working to create new sites of accumulation by trying to draw people into the market [call them elaborate traps] to be able to exploit them but not to promote the alleged 'development', agricultural productivity and access to credit. Those engaging this question do not question the powers at play in extending this neoliberal agenda. At the global level we have international financial institutions of IMF and World Bank but at the local level we have the local financial institutions like Banks including centenary bank and Stanbic bank. This is done under the supervisorship of the state. The influence of the financial institutions in the titling project cannot be taken for granted. These are capitalist institutions whose interests are profit maximisation. It is unlikely that they were interested in serving the population. Even the loans they purported they wanted to give those who registered land through kyapa mungalo is not different from the promises made by registration through the state. We can see that the state and the market are at play here while the household is left out in the analysis. Mamdani has written that we need to interrogate the consequences of the market on both the state and the customary since none is immune to it (Mamdani 2015). The market has had a strong influence on the Buganda customary authority establishing the kyapa mungalo campaign (Rwakafuuzi 2017, June 7, 2017).

Kyapa mungalo has been criticised by people with numerous backgrounds including politicians, academics, legislators, legal professionals etc. For instance, Makindye municipality member of parliament Sempala Kigozi while addressing beneficiaries at BLB offices in Ndejje Lufuuka Wakiso district argued that those tenants on kabaka's land should not be blinded by getting kyapa mungalo titles

for it was a move to divert their attention and ‘grab their land’ (ibid.). One controversial lawyer and subject of the kingdom Male Mabirizi Kiwanuka went an extra mile to sue the king over his directive on issuance of land titles on land which he claimed belonged to the kingdom (Nafula, May 4, 2017). Recently, Ssenfuka came up to raise a class question when it comes to questions of security. Ssenfuka was cited saying that “some families have lived on Kabaka’s land for more than a hundred years and the pieces they occupy hold their ancestral burial grounds, their memories and history. Imagine what would happen if after conversion to lease hold, the kingdom fails to renew the lease after 49 years. Will this family ever trust or pay allegiance to Mengo?” (Daily Monitor, June 21, 2018). Ssenfuka says that the biggest population of people in Buganda are poor and such a population requires a “guaranteed for infinity” by the kingdom (ibid.) To him, offering leases is not just “morally wrong but also a betrayal to the population” if the kabaka pretends to be holding land on behalf of its people. Ssenfuka argues that “although Buganda needs revenue, it should not raise it at the detriment of its subjects’ security of tenure” (ibid.). This put to question the idea that kyapa mungalo will guarantee security to the tenants especially the poor section for community in the long run when they cannot afford to renew their lease holding. It is only Ssenfuka who tries to engage the issue of “less privileged among the less privileged”⁷ of bibanja owners. But his also ends at just questioning class. He doesn’t deal with issues of say gender and age. Musembi has argued that in most cases people who seek land titles are those who find it easy to benefit from the titling programme especially the richer farmers while the poor ones [less productive] can hardly benefit and the incentive to go for titles becomes less warranting (Musembi, 2007:1467).

The State and Buganda Kingdom in the context of land reform

The controversy between the state and Buganda escalated lately due to kyapa mungalo project. The President of Uganda while addressing people in Luwero district on Heroes day on June 9, 2017 was quoted by daily monitor ordering that “no sitting tenant should be forced to register their bibanja to get land titles if they don’t want to”. Earlier on, the minister of Lands was quoted openly opposing the programme. According to the Uganda Review:

The regime vehemently opposed the idea and embarked on an underground campaign of undermining and misinformation. In May 2017 during the inauguration of the Land Probe Commission, the Lands Minister Amongi questioned the mass land titling by Buganda kingdom. She asked the commission to focus on the Buganda land board mass titling campaign. the regime’s skepticism was uncalled for because a resolution

⁷ I use the notion less privileged of the less privileged because even the less privileged have differences. You can find that among the less privileged, there are also class and gender factors which affect them differently creating smaller marginalisation or reproducing marginalisation.

to offer lease to all interested tenants on the kingdom land had been passed in 1994 and about 20,000 leases had already been issued out (September 12, 2017).

Now, the discussion has moved beyond just titling to broadly questioning the whole mailo tenure system. Recently, the president of Uganda made an attack on Buganda's Mailo system on his heroes day celebration speech by arguing that mailo is a "very bad" system of tenure and categorized it to be "evil" (Ajuna, June 09, 2021). To him, "it is really very bad and not fair but some people support it. How do you allow these things to happen?" (ibid.). To him, those who own the land should have full ownership rights just like many other places in Uganda where no one can easily evict you. The tenure system has categorically instigated land grabs as people are illegally displaced. He cited an example of Ssenabulya who was evicted from his land despite having given them the same land as a forest during the national resistance army war in Luwero as bush for hiding. Museveni noted that:

"I was surprised to hear that veteran Livingston Ssenabulya who gave us a forest during the [1986] liberation war had been chased from his land. The person who was chasing them, Namwandu Mulyante, was our person" (ibid.).

In support of the president's contentions on mailo, a minister of state for lands Mayanja averred that Mailo owners "deploy lawyers, court brokers, valuers, police, army, private security firms, kanyama, local defence units, bribe local councils" to ensure that bibanja holders lose their land. These he argues have tried their best to "hold both the government (executive) and the bibanja holders hostage. They quote the constitutional sanctity of property, they play around with lawful and bona fide tenancy and in these contexts, the bibanja holders almost invariably lose." (Mayanja July 23, 2021). Mayanja adds that, "Mailo landlords are selling off land like any other commodity without any social or ideological considerations whatsoever. They sell their mailo to buy vehicles, build houses or to raise air tickets to join the armies that sweep Japan, Europe, Canada and USA (kyeyo)." (ibid.). There is no guarantee that when land is sold to new mailo owners, bibanja holders will retain their tenancy rights and not sold off, even when they know, they are not sure of where next to go or whether they will be compensated. Based on that, he suggests a land reform. Mayanja says:

Land reform is accordingly imperative otherwise hell will break loose and no one may be able to pick up the pieces... Security of tenure cuts across religious, tribal or political differences. It is in this scheme of things, that the call of President Museveni for a comprehensive reform of the mailo tenancy and indeed in any other tenancy, necessary to give security of tenure in perpetuity for all citizens, is a noble call and must be supported by all Ugandans." (ibid.)

Earlier, Minister Betty Amongi who was minister for lands had warned that mailo is a way in which people unfairly acquire land and it is a logic introduced by the colonial state in 1900 (Daily Monitor, June 21, 2018). Daily monitor shows that places like “Bbira on Mityana Road (Busiro County), all land there belonged to the Nkima Clan while villages such as Katende on Masaka Road (Mawokota) was managed by the Olugave Clan. Lwadda in Mutugga currently in Wakiso District belonged to Mpologoma Clan.” but with the 1900 agreement, these came to be owned by individuals thanks to the colonial introduction of mailo tenure which made such land private with people have powers to sell and/or lease whenever they wished (ibid.). As things stand, these kinds of lands are now managed by BLB on which it offers leases.

Buganda kingdom has come up to dismiss such claims made by the state against mailo tenure and kyapa mungalo. As opposed to the claims by the state, Buganda kingdom faulted government for promoting land grabbing and opposing the titling project that seeks to protect the people from the land grabbers. For example, the minister for special assignments in Buganda kingdom David Mpanga argued while on a TV show that, “the problem is that government is fronting a development paradigm where investors have to get land for free. There is no country which has developed by giving investors free land”⁸. Mpanga states that mailo tenure is not the problem because “there isn’t a system of Mailo in Amuru District (northern Uganda), we have seen land disputes in Amuru, there isn’t a mailo tenure in the Elgon mountain area but there are land wrangles there.” (Atukunda and Mujuni, July 26 2021). Citing the Bamugemereire commission report of 2018, Mpanga has argued that some big wigs in the state were identified as being behind some of the land grabs.

We know from the Bamugemereire report, at least from the inquiry stage, that there are certain names that kept coming up; they have been using or misusing state power and state security many times, acquiring their wealth, which they put into land corruptly; those are the people causing insecurity to many people.... If the Kabaka of Buganda as big Mailo land owner in this part of the country was evicting people, that would be huge displacement of populations but on the contrary, the kingdom has been saying; ‘let’s sit down and talk about this so we find a win-win solution and one of the examples is Kyapa Mungalo (ibid.).

To Mpanga, kyapa mungalo is a solution that has been devised by BLB to address the huge question of land grabbing in Buganda that would ensure that there is a ‘win-win’ situation that guarantees tenure security. Therefore, “lease holding is a recognised land tenure system in the Constitution and under the land registration of titles Act, its registerable; we could and should encourage people to move away from the informal system of pure settlement, which is unrecorded and insecure, and get into win-win

⁸ Mpanga David. Mailo Land Reform, is it Necessary? Discussing Uganda’s Land Tenure Syetm”, NTV Uganda, NTV on the Spot, Thursday July 22, 2021, 9:45 pm

arrangements that enable people to have registered and renewable tenure. There is protection in lease hold; there is possibility and capacity to give people the ability to buy.” (ibid.). This same line of thought has been echoed by the kingdom’s prime minister [here after referred to as katikiro] Charlse Peter Mayiga who argued that mailo tenure is not only in Buganda but also in other places like Ankole, Toro, Mbale etc. He wondered why the focus is on Buganda (Kirabo July 26, 2021). For Mayiga “land is very central to the cultural heritage of the people of Buganda and whoever wants to dismantle the mailo land system, it is as if they want to deal a blow to a given amount of the Baganda’s cultural heritage. “Land is very central, that is reason the clan head is called omutaka, it is in reference to land. That is why the Kabaka is called Sabataka, the head of clan heads. So, there is a relationship between land and the way of life of a Muganda,” Mayiga said (ibid). Mayiga like many other thinkers in Mengo think that present Buganda culture is identical to precolonial ‘culture’ and mailo is part of that culture. But that culture changed long time. The culture⁹ of Buganda faced alterations by the colonial state. They introduced mailo and did a death blow to a system that would bring together people without anyone owning land individually. The katikiro seems to equate the omutaka/clan head of the precolonial to the omutaka of the today. Today, omutaka or clan head has no power over land, the king owns land as a private estate not on behalf of its people¹⁰ together with some chiefs (see Mamdani 1976, 2017; Mafeje 1973; Nsabagasani 1997).

The central government and Buganda are playing a blame game. None want to own to the fact that titling either state-led or Mengo-led is responsible for some of the land grabs, conflicts and inequalities which are taking place (Interview Feb 17, 2022). Instead each of them is using another as a scapegoat to justify their own projects i.e. the state to oppose mengo titling and promote state-centered titling and mengo to support and justify its own kyapa mungalo. I will argue that both are responsible for the problems caused by land titling. The relationship between the two is very problematic for the ordinary citizens. All titling should be located within logic of capitalist “primitive accumulation”, neoliberalism and colonial legacies. In justifying their claims, they have deployed languages such as development, which languages are used to promote land grabbing both during the colonial period and today.

Both Buganda kingdom and state formalisations are obsessed with the idea of the “market”. Like the state, Buganda kingdom suggests that titling land will allow tenants have access to an efficient land market (Interview February 17, 2022). One of the assumptions of neoliberal land formalisation is establishment of “effective markets” (de Soto 2000). Feder and Nishio (1999), Soto and Deininger (2003)

⁹ I am not appealing to a culturalist explanation but to emphasise the point that colonialism altered norms and practices and introduced new traditions. This is not a support of cultural talk.

¹⁰ With the signing of the Buganda agreement, over 1000 chiefs were given freehold mailo allotments but the number is argued to have increased to around 3700 by 1909. This number further increased to 10,000 by 1926 (Mukwaya, 1953:31; Mamdani, 1976:40ff.).

think that there should be a well-functioning market in developing countries with potential to extend financial support, and the poor should be integrated into this market through legal mechanisms of formalisation as a counter measure to poverty. I will argue that such assumptions are very problematic because it gives a universal linear understanding of the concept and institution of market(s) across time and space. Neoliberal theorisation resultantly thinks of the market as merely a space where transactions in land (economic) takes place and not as historical and political institutions. Besides, they use a singular “the market” and not “markets” which points to a single universal and homogenous market for all. Such a tendency brackets the historical and systemic construction of ‘the market’. This offers an understanding of not only markets as depoliticized but also the discourse of development in which it is located (Ferguson 1994). This market has to be less/un-regulated. Moyo and Yeros show that unrestrained land markets are likely to cause a lot of havoc for the people especially the poor and “the establishment of a de facto land market in china and Vietnam” has led to a reintroduction of ‘inequalities and the formation of a landless peasants or a class of rural proletarians’ (2005: 227, 217). Moyo and Yeros further make a point that we should think beyond institutions like the state and the market if we are to think about land and agrarian reforms. This is because, “a dynamic political process that takes place through power struggle, while changes in the balance of power in society creates profound effects on the outcomes of the reform” (2005: 257). The neoliberal reform narratives, the authors show tends to ignore and take for granted the fact that policy outcomes are “located within arrangements that are invariably re-examined, revised and even overturned...hence the need to examine the interaction between the state and society within existing socio-political and economic contexts if we are to offer a more inclusive land reform explanation” (257ff). Not questioning “the market” can be attributed to not questioning development discourse which is central to the whole project of titling. The technicist nature of neoliberal narrative coupled with its focus on legality ends up depoliticizing the land question, and treating land merely as a commodity to be transacted in the market for inclusive development. The effect is that it disregards socio-political and cultural relations/nature of land. The paper further argued that understanding what kyapa mungalo means for the common person means engaging with the institutions that are enforcing it and the relations between menko/Buganda and the state.

In thinking that the land question is still one of lack of title that would give full ownership of land to the people, Mayiga suggests problems that need to be thought about other than dealing with mailo. “One of them is land registries all over the country, someone who has got money can easily get a certificate of title over your own land, two is the police land unit which is ineffective, three the courts of law, am a lawyer and I know lawyers who have chased land cases for over ten years, four – population explosion, five – land has lost nutrients, six – corruption and seven- politically interference,” (Kirabo, July 26, 2021). This

contest between the state and mengo is one of doing away with mailo or leaving it—same discussion which has been going on with NGOs in Uganda on whether they should do away with the customary as a tenure of just improve it. Here is what we should learn from it to see the weakness of both.

At national level, alternative views have been given on how to go about the customary and customary tenure¹¹ in the context of reform. One group calls for obliteration of the customary (as an institution and as a form of tenure) (ULA 2013; MSIR-Wisconsin 1989), another strand has suggested that we should reform the customary by making it part of the state so that the two can work together (Adoko and Levine 2005). Uganda Land Alliance has advocated for doing away with the customary “as both a practice and an authority” (ULA cited in Mamdani 2013:6). This is premised on the idea that the customary has been and still is very problematic. This position has been contravened by LEMU that argues that we need to “acknowledge and strengthen the customary in the statutory law” (Mamdani 2015; Adoko and Levine 2009). This can be done possible if we codify customary law (Adoko and Levine 2009:5). LEMU advocates for codification of the customary and making it look like a legal system of the modern judicial system (Adoko et al. 2011:7). LEMU seems to suggest that the customary authority have to appear and function like state-like institutions with laws which are codified and institutions similar to those of the state i.e. courts, police. To ask a question, is the customary authority they want to strengthen or do away with so independent of the state in a postcolonial moment? LEMU’s suggestion takes for granted the current state, forgetting that it carries with it a colonial legacy,

The two positions are challenged by Mamdani on two grounds: First, Mamdani argues that both these alternatives have their hope in the state since “both turn to state authorities and positive law for a solution, even if the solution each offers is different. Whereas each acknowledges changes forced by the market, neither draws its full consequences, either for the customary or for the statutory.” (2013:6ff). The society is put out of the equation in issues to do with land. Mamdani argues that both of them do not consider “society as a possible source of a political practice that can shape both the market and the state in ways that may hold each socially accountable” (ibid.:6). The over obsession with the state [by LEMU and ULA], I would argue, shows a failure to question the state itself and its institutions in the postcolonial moment. The state is looked at as a harbinger of ‘development’, a custodian of law and a regulator of society [including its relations with society]. The second critique offered by Mamdani illustrates my earlier questions on the customary. He states that both offered solutions take for granted the “traditional/customary” (Ibid.:24 ff). This disregard takes today’s customary to have precolonial antecedents, yet the “customary”, both as a set of authorities and as a set of substantive rules, was crafted

¹¹ The idea that mailo land is customary tenure is a contested one. some believe its private property others think that its customary land well as some believe it consists both private and communal.

in the colonial period as a bulwark to the development of the market. The colonial system sought to quarantine society and justified that quarantine in the language of the customary – as safeguarding ‘custom.’” (Ibid.:23). Other than the customary being part of society, it is a “political power innovation starting with colonial rule”. As a solution Mamdani argues, we need to think of changes in the customary “as a trilateral relationship – one between state, society and the market – and not just a bilateral state-society dynamic” (Ibid.:4). The society should be appreciated and allowed to regulate its relations with the state and the market.

To locate the current discussion on mailo tenure and kyapa mungalo within that broader national discussion, the state is advocating for doing away with mailo tenure—though this is still speculative—and Buganda wants it strengthened and the customary title promoted. The Buganda and State discussion on mailo tenure and kyapa mugalo tells us quite a number of things but among them is the fact that Mengo itself needs further interrogation [i.e. whom it serves, whether it gives accountability and to whom etc]. The above explanation speaks a lot to the nature of the institution that purports to be helping the people to have security of tenure by registering their land. The institution attempts to portray itself as identical “precolonial institution that served the interest of people” that upholds the cultures, norms and practices of precolonial Buganda when it comes to issues of land management. It’s an institution that replicates its colonial mode, after it was reformed to serve colonial purposes, its doing the same. This is not to say that contemporary institutions should look or be exactly like precolonial institutions but to say that they are acting as if they are actually precolonial when they were reformed during colonial rule. They have failed to accept the fact that they were reformed not for the very best. However, Buganda kingdom is not independent of the influence of the postcolonial state with its colonial legacy.

Writers like Hanson (2003); Mafeje (1973) Lwanga-Lunyiigo (2007) argue that land relations in precolonial Buganda were fluid and complex. These relations were historical and only became static with the emergency of colonial modernity that introduced freehold ownership of land in the late 19th century (ibid.). The colonial state built on the fact that the mid-19th century Ganda kings had started centralising power and so land. They had taken over the responsibility of redistribution of land which was initially under the docket of the Bataka/clan head. By the end of the 19th century, there emerged two categories of classes the bami and the bakopi (lords and ordinary people respectively). This resulted into two land relations i.e. Butongole and tenantry (the former for the political class and the latter for the basenze/governed) (Mafeje 1973; Mamdani 1976; Mamdani 2017). This in effect marked the start of the end of the communal land rights and land relations and brought in a new system of centralised land control and management. As Mafeje would put it, the king had “eaten up or owned” Buganda in its entirety (Mafeje 1973:4, 56). Mamdani argues that starting from 1928, chiefs lost their control over land

and power/positions. Similarly, their position as landlords before 1928 was changed to becoming an “intermediary state bureaucracy, a collaborating class that was dependent on and identified with the colonial state (1976:127).

The point is illustrated by Mayanja the minister of state for lands. Much as I don’t agree with many of his propositions, but he shades light on the nature of the institutions and kingship that Buganda and mengo are. Mayanja was quoted in an interview on NBS TV saying that,

...there is no such a thing as Mengo, as of now. This has been a lie that’s been told because Mengo as it was known as Mengo establishment which composed of Kabaka heading it doesn’t exist. That Kabaka was an executive Kabaka with the Katikkiro, who was also an executive Katikkiro. Then there was a Mulamuzi (judge), Omuwanika (treasurer) and Ssaza chiefs. This was Mengo as it existed in 1900 Agreement with the indirect rule structure with the Lukiiko (parliament) (Kiyonga, July 4, 2021).

The Mengo that we have as an administrative arm of Buganda kingdom is considered a colonial establishment and the Lukiiko that is the justice/legislative arm of the institution—of which many people in Buganda consider to be traditional—is actually not traditional at all. Mayanja notes that “the Lukiiko was established by the 1900 Buganda Agreement [in indirect rule]...to pass the laws they (colonialists) want and then they implement them.” (ibid.). These colonial-like institutions are in no way serving the interests of the people according to Mayanja but their own. Given this colonial nature of the institution, especially with its indirect rule logic, Mayanja notes that mengo of today as was in the colonial times is a “private company” and entrusting a ‘company’ with affairs of the kingdom that brings together numerous people with broad interests is a misguided endeavor. To Mayanja, (Kiyonga July 4, 2021). The king who is believed by the public to be entrusted with land on behalf his people became part of the “company” that is “grabbing people’s land”. He adds:

Now they know they aren’t there constitutionally, they have put in place a company [Buganda Land Board], which is now managing public land. You know they don’t say Buganda Land Board Ltd. They don’t want the public to hear the word limited because they think it’s the Buganda Land Board that existed under the 1962 Constitution, which is a lie to the public. So how are they mismanaging? Public land is now managed on different principles. If I have my private Mailo I can sell it at Shs1 billion. I can also sell it at Shs1. It’s my land, but it’s public land. It must be under government guidelines because it’s public. So public land you get a lease and you are given conditions (ibid.).

The way mengo manages land and land issues including kyapa mungalo is considered inappropriate and inconsiderate. Mayanja wonders why one would be denied a lease if at all land belongs to the people and

why they should be highly charged for renewing the lease. I will argue that recent debate on mailo tenure which is perhaps a result of failure to agree on the kyapa mungalo is a contest of power. A contest of who wields power [to mobilise public support] and policy. But in the end, what all this shows is that neither Buganda kingdom through mengo nor Government of Uganda is doing this for the interest of the common person, a poor person, a gendered person, for what both call “development” and tenure security. This is a “clash of power” and a promotion of capitalist interests.

Kyapa Mungalo and women’s land rights

The production and business development manager of the land board Kiyaga Cissy N. wrote an article attempting to highlight the challenges that need to be addressed but also the achievements so far registered (Kiyaga October 16, 2019). According to Kiyaga, the only challenge associated with this titling programme is one of affordability i.e. limited if not lack of financial resources to afford the title coupled with the limited knowledge about the process of acquisition. These challenges according to her affect mostly women. Women dominate these initiatives pointing to the challenges women face when it comes to issues to do with land especially titled land. “Statistics from BLB’s database show that only 26% of the applicants to this initiative are women.” (ibid.). She adds that,

...more than 60% of the people who attend LAFI’s sensitization programs are women, an indication that more women actually use the land as a factor of production. But whereas women are majority users of land, women’s ownership of land is very limited, due to different factors. Some do not have the economic muscle to own, and for others, cultural history has dictated so (ibid.).

She joins a body orthodox feminist who attribute the question of women’s lack of rights to land to traditional or customary norms and practices. This body of feminists argue that women do not own land basically due to the fact that patriarchy is a major obstacle. Kiyaga in those ranks states that, “Women face significant obstacles to realizing their land and property rights due to traditional norms and practices. There is often unreliable land information, and as such, decisions are based on human testimonies and other non-documented means.”. She adds that,

The lack of funds to acquire and pay for the title processing and the lack of knowledge about land rights in both rural and urban areas – especially the land rights of the women who are often victims of land grabbing and insecure land tenure – is one of the key obstacles that need to be addressed (Kiyaga, 2019).

All this is happening because people do not have documentation which can prove their ownership of land.

Take Golomolo, Buganda, where people were facing illegal evictions from the land they have lived on for generations. The land wrangles and evictions even resulted in deaths. Many people were disturbed, especially women and children. This happened because many of them do not have official or even unofficial documentation securing the tenancy. Buganda Land Board being the landlord intervened to resolve the situation, but many declared outright that they did not know about the procedures whereas others confessed they could not afford the process (ibid.)

To deal with these obstacles women face assumed to be brought by lack of formalised land titles, Kiyaga like many Uganda land writers advocates for titling of customary land through kyapa mungalo to allow women have access and full rights. To her, this is a very promising venture given that some women who have undertaken titling have had their land have registered benefits. Kiyaga cites an example of Solome Namivule who purchased her land and was able to process a land title. Kiyaga states that Namivule has access to credit and through such she has set up a vocational school that teaches teenage girls life skills like baking, tailoring, etc and she has created a positive impact in community (Kiyaga 2019). Another example that she uses is Kyanzi Claire of a place called Maganjo B. Kyanzi developed a school through a loan from BLB Partner institution centenary Bank. She adds another success story of Sewungu Jane who owns a school and Teddy Winnie Kakai who owns a farm as her business. Much as Kiyaga tries to show how customary land titling through kyapa mungalo has been helpful in uplifting the status of women, she takes the class question for granted. Kiyaga needs to note that intersectionality is very important when engaging social question. Considering the question of gender alone to justify a titling project that affects multifaceted categories of people is being inconsiderate of other dimensions which interrelate with gender to cause marginalization, exploitation, alienation and dispossession. Kiyaga needed to ask the class of those women who could have access to these loans. What is the financial status of these women who have access? These are women with access to resources that can allow them even purchase land which is big enough to establish a school. What happens to those who cannot even afford two meals a day but stay on mailo land which their fathers mothers or relatives left for them?

Musembi states that “in spite of this law, the reality is that commercial banks will not give loans against the security of holdings of under 20 acres, ruling out a majority of small-scale farmers” (Musembi 2007:1466). We can see that a class analysis is missing here to determine which class could actually have access to such credit in this new titling system. If class questions, gender questions, among other are not resolved, the private property project cannot deliver any positive development results, even if results are there, the question of inequality will continue to persist in terms of gender and class. The analysis of this titling project didn't go deep into analyzing the critical issues of concern. This is not to say that I support the idea of titling if those conditions of analysis are fulfilled but to point to the weakness and to show that

the idea in itself is ill-conceived. Kafureeka had earlier in 1992 warned that, “insecurity exists to the extent that it is politically created using the laws of the day, or when laws are created to undermine illegal land rights. Insecurity and security of tenure cannot be a legal matter but a political affair” (Kafureeka 1992:3). So, limited rights that women have over land have been more to do with struggle than the law/legislation (Ibid.:29). Thus, questions regarding land and women’s rights are broader than having a title.

Conclusion

This paper has attempted a critique of neoliberal reform of customary tenure through engaging kyapa mungalo. It suggests that design and implementation didn’t put into consideration the lived experiences of people and how relations to property especially land are negotiated and renegotiated. Two important concerns have been grappled with i.e. the implications of formalisation and a problematization of the postcolonial land institutions that shape the relations and reforms on land. The intension of undertaking the former was to broaden the horizon of thinking about the latter with a premise that the neoliberal reform proponents including Buganda kingdom treat land as merely a commodity to be transacted in the market without any necessity for a political and historical reflection. The overall land question then becomes framed as a purely an economic question but this is problematic for two reasons: it assumes that we can have successful land reforms without consideration for a political reform of any sort; and two is that it assumes that the customary is a fixed institution which was inherited from the precolonial world and all it does is frustrate development initiatives and progress. Mamdani has argued that there has been limited if any attempt at thoroughly engaging the customary tenure (and power) (2015) and this is why debates focus on whether to extinguish the customary or integrate it in the state structure of formalisation. This disregard takes today’s customary to have precolonial antecedents, yet the “customary”, [set of authorities and substantive rules], was crafted in the colonial period as a bulwark to the development of the market. The colonial system sought to quarantine society and justified that quarantine in the language of the customary – as safeguarding ‘custom.’” (Ibid.: 23). Other than the customary being part of society, it is a “political power innovation starting with colonial rule. As a solution Mamdani argues, we need to think of changes in the customary “as a trilateral relationship – one between state, society and the market – and not just a bilateral state-society dynamic” (Ibid.: 4). The society should be appreciated and allowed to regulate its relations with the state and the market. Therefore, the colonially constructed customary tenure defined rights to land through an ‘ethnic’ undertone. The community in which customary tenure was to be practiced was an ethnic and tribal community. Thus, the state and the kingdom as political and historical institutions that structure and shape relations t land warranted a political reflection if reforms to land were to be thought about. And in the end, we get to understand that these institutions are operating in

a particular colonial structure, the confines of the nation-state, but this does not deny completely the agency of Buganda kingdom despite being in one way or the other influenced. After such reflections, the paper has shown how assumptions of development, gender equality, women's land rights and tenure security are unthinkable in the neoliberal frame of things. This is because, the reforms may just end up promoting primitive accumulation of capital by certain members of community, (global) investors and states. Thus the argument that the design and implementation of neoliberal land reforms especially titling has limited if any potential to promote development, gender equality and improve the status of gendered households. The assumptions raised are fallacious and they operate only to serve the interests of global capital, the state and Mengo than interests of the masses. And this can partly be attributed to the nature of the land institutions.

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