

Check for
Updates

Land Registration and Women Displacement in Neoliberal Uganda.

Ashiraf Mugalula

*Correspondence: Ashiraf Mugalula

***Detailed author information and related declarations are provided in the final section of this article.*

Article Publication Details

This article is published in the **International Journal of Multidisciplinary Research and Bulletin**, ISSN 3108-1428 (Online) Volume 3 Issue 2 (Mar – Apr) 2024.

ABSTRACT

At the heart of the ongoing debate of postcolonialism even in Uganda on the land question is the management of land tenure. The debate in Uganda has two sides. One proponents of world bank in Uganda argues that the customary tenant has to be emancipated from the colonial order which prevented the tenant from participating in the market of land, which prevented the tenant from selling land, from accessing credit from banks and enhancing commodification of property rights. The opposition led by many feminist and structuralist scholars have come out to challenge this kind of thinking by arguing that formalisation has instead promoted insecurity of tenure, accentuated land grabs, fuelled land conflicts and marginalised certain sections of the community especially women since private property is not interested in the rights of the marginalized groups [including ‘women’], but interested in dispossessing the such rights. Most importantly, feminist scholars such as Osome has argued that “arguments that favour formalization of customary land rights expose motives that are less in the interest of women’s tenure security and more inclined toward supporting commercial interests in land”.¹ have argued that formalism has [if any] partially addressed questions of women’s land tenure rights. Women’s land rights constitute numerous contestations on land relations. Using a feminist political economy analytical and methodological lens, I seek to engage the two perspectives to analyze the ways in which the design and implementation of private property rights affect development, gender equality and status of gendered households. In engaging these debates, I also seek to deconstruct the development narrative and problematize the notion of private property rights so as to inter alia demonstrate how in practice, the formalisation and commercialization of property including rights is actually in the favour of capitalist

¹ Lyn Osome (2014), “Can the Law Secure Women's Rights to Land in Africa? Revisiting Tensions between Culture and Land Commercialization,”

thus demonstrating that it actually cannot promote social transformation and economic wellbeing of the marginalised sections. In illustrating how the questions of class, gender, race/ethnicity complicate land tenure rights and implications of gendered land relations on marginalised persons [including ‘women’]. The paper seeks to argue that the design and implementation of private property rights has limited if any potential to promote development, gender equality and improve the status of gendered households as women’s land rights constitute numerous contestations on land relations where land is vested in a single individual. I situate this debate within the larger historical and political context to better understand the formalisation and commercialization of property rights raised by proponents like the World Bank.

Keywords: Land tenure, Formalisation of property rights, Women’s land rights, Feminist political economy, Gender equality.

Introduction

This paper discusses the relationship between registration of property and development, gender inequality and the status of gendered households. It provides a theoretical and conceptual critique of the neoliberal project of land registration and its premises by deploying a feminist political economy analytical lens. The paper argues that the design and implementation of private property rights has limited if any potential to promote development, gender equality and improve the status of gendered households as women’s land rights constitute numerous contestations on land relations where land is vested in a single individual.

This is because, literature shows that registration seeks to satisfy the interests of capital especially international and cooperate capital. The paper equally argues that there is need to pay close attention to the intra-household inequality, gender asset gap and the market-state-household relations in order to understand the implications of formalisation given the contestations on the land relations and property rights themselves. My paper responds to the following questions: Are there ways in which private property rights can promote development, gender equality and improve the status of gendered households? Can we consider the formalisation to be able to promote social and economic transformation especially in a period of rapid accumulation of wealth? What is the relationship between formalisation and customary tenure when it comes to negotiating land relations? Can we think of securing the rights of the marginalised in places where land is vested in a single individual? Can we consider the security of property rights to be able to promote social transformation, especially in a period of rapid accumulation of wealth? Who is included and/or excluded in the title? What justifies the inclusion and/or exclusion of land title categories? Is there a defined category that ought to be excluded from the titling process? Will this free land titling of customary land represent the ‘true’ interests of marginalized groups like women? Is legal formalism a universal substitute for securing women’s land rights? I situate this debate within the

larger historical and political context to better understand the formalisation and commercialization of property rights raised by proponents like the world bank in Uganda and Busoga in particular where both the state and customary authority are in favour of land registration as a magic ballet to poverty and gender equality.

The Key Debates in Property Formalisation. Understanding and placing the question in context

The land question is a complex issue related to poverty, lack of social justice and equity. Its complexity is historical and was largely impacted by the colonial times. This complexity has been carried through to the neoliberal era and therefore today, we deal with both a historical and contemporary land question. It involves contradictions in land rights, the question of race, class, gender, ethnicity, and religion that lay claims on land.

Since the 1980s, the formulation and implementation of land tenure reforms in Africa has fallen into a familiar trap, conflating two seemingly similar but quite distinct processes. The first is the actual historical process of transformation towards a modern, capitalist, industrial economy—development as social change. The second is the series of state policies and practices that are intended to promote economic growth and reduce poverty—“intentional development”.²

The above quote reiterates the broader goal of the property rights regime and registration [Land registration] and offer me a starting point. There has been a long-held debate on the significance of registration of property rights [particularly land] on the development of third world countries and how these have affected different sections of the community inversely. The orthodox neoclassical narratives have focused on the relevance of formalising to ensure that the most community’s poor can have access to markets but most importantly also credit and without which, they are prone to remaining in their deplorable situation mired with poverty and powerlessness. Such a school of thought is championed by the chief architect of the 20th and 21st century formalisation Hernando De Soto especially in his book *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Such narratives have been embraced by majority of the world’s international organisation [including the world bank] that “claim” to address the problems of the world especially third world poverty through emphasising legal formalism and land reform processes which have become the basis for accessing not only aid but also international markets and credit. Recent researcher who would problematize such have also tended to fall for this narrative. For instance, Bomugisha (2008) has reechoed that “security of access to land and the

² Ingrid Yngstrom (2002). Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate over Land Policy and Changing Tenure Systems’p.21

associated property rights are fundamental instruments for successful development, both economically and socially leading to asset accumulation or development”³.

This line of thinking has however faced numerous criticisms from heterodox scholars of specifically political economy who have charged it with neglect of social and historical realities of society, the possibility of exacerbating inequality and the need to promote capitalist interests. Such scholars include Lyn Ossome, Ambreena Manji, Celestian Musembi, Mahmood Mamdani and many others. These take up this question from different perspectives i.e., some political and historical, others heterodox political economy and feminist political economy. The most important point raised in all these schools of thought is that formalism has never served to eradicate poverty and reduce inequality in the third world, rather, it seeks to entrench the very problem that it purports to solve. My paper build on this debate and take up from this line of thinking using a feminist political economy critical analysis to engage how the property rights design and implementation impacts development, gender equality and gendered households especially in the developing world.

There has been an argument that the process of development [to be a little bit specific, capitalist development] has and is being undergirded by a discourse and practice that privileges law,⁴ but observed more critically this centrality of law as a basis of land reforms is a very recent development. Manji rightly puts it that legalism as a land reform gained credence with colonialism and so its history can only be traced from the colonial period where law served the development of capitalism.⁵ In the period prior to the colonial encounter, land reforms took numerous forms and had different purposes they served. If you read Mafeje Achie⁶ for instance, the 19th century Ganda kings enforced reforms on land to centralize power, particularly by replacing clan heads (Bataka) with centrally appointed chiefs (Batongole). But they did not do this in order to *commodify* land and human beings as the case was with the colonial land reforms of 1900. The ideas that linked private property rights to increased productivity which had collapsed in the 1990s after failing to offer efficient results as promised resurrected with the works of De Soto⁷ with numerous assumption which became a basis of critique for many heterodox political economists. This takes me to the next section on the under lying premises and constraints of property registration.

³ Bomuhangi Allan (2008). Gender, Land Acquisition and Property Rights in Kapchorwa and Luwero. Districts. Published Master's Thesis, Makerere University, p.52

⁴ Manji Ambreena (2006). *The Politics of Land Reform in Africa: From Communal tenure to Free Markets*. New York and London: Zed Publisher.

⁵ Manji 2006, *The Politics of Land Reform in Africa*.

⁶ Mafeje, Achie (1973). Agrarian revolution and the land question in Busoga (No. 32).

⁷ Musembi N. Celestine (2007). De Soto and Land Relations in Rural Africa: Breathing life into Dead Theories about Property Rights, *Third World Quarterly*, 28(8): 1457-78

Registration of Private Property: Premises and Constraints

To understand the implications of private property right's recommendations, we need to understand the assumptions that underlie their design and formulation. As earlier mentioned, the chief architect of this in the recent past and present is Hernando De Soto and we shall read these assumptions through Manji, Ossome and many other writers who try to critique De soto and the entire private property rights regime. Manji tries to engage the revived interest in the role law can play in bringing about development *especially in the third world economies* [emphasis added].⁸ She offers to examine the tendency in Africa since the 1980s where legal land registration replaced customary processes through a particular focus on the recurrent debate on land law reform and the implications of western type legal changes for land tenure relations. The neoliberal assumption is that the poor have remained poor in the third world because of their possession of unregistered land. Manji summarises the propositions raised by De Soto the celebrated architect of formalisation of property and so property rights. His propositions Manji shows were welcomed by the world bank and other international institutions since he tried to outline the causes of poverty in the third world as being those of poor people holding property outside the legal system and outside the market.⁹ When I critically look at this proposition it's like the legalism proponents are trying to create a divide between the market, state and the household by giving priority and relevance to the market and the state and diminishing the household when it comes to issues to do with land management and utilisation. This is problematic as we see later from the literature because the relationship between the three entities i.e., the state, the market and the household is meant to be and is actually dialectical and so privileging the two means devalorising the household when it comes to issues of land management and usage.

To this school of thought Manji shows, formalisation of land can allow the poor to easily access credit since registered land is considered to be "bankable property". To the neoliberals, keeping poor people outside legal systems is keeping them outside the market. They attribute poverty to lack of formalised property rights.¹⁰ The solution for them lies in formalising assets held by the poor informally by legalising 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.¹¹ Manji writes:

The solution advocated by de Soto reserves a central role for the law. His programme advocates legal solutions which entail bringing what are described as the assets of the poor into the legal system. This

⁸ Manji, 2006, p. 1

⁹ Manji, 2006, p.2

¹⁰ Manji, 2006, p.2, p. 7-8.

¹¹ See Manji, 2006; Musembi, 2007, p. 1458-8.

would entail submitting to the process of ‘representation’, to the process, that is, of registration and titling. When land, for example, is ‘represented in a property document’,⁹ it is enabled to lead ‘a parallel life alongside [its] material existence. [It] can be used as collateral for loans.’ This is the cause of wealth in ‘the West’ where there is ‘an implicit legal infrastructure hidden deep within their property systems – of which ownership is but the tip of the iceberg. The rest of the iceberg is an intricate man-made process that can transform assets and labour into capital.’¹²

Musembi also has shown that the justification for land formalisation differ from the “ambitious land tenure reforms in sub-Saharan Africa”. The neoliberal solution of formalisation attracted attention from across the developing world as many governments embraced the recommendations. For example, “voicing his support for de Soto, Ghana’s President Kufuor hailed the transformation of land into ‘bankable property’ which would give holders of land titles access to credit...[and] ‘this could prove the vital part of the missing link that might help generate the prosperity that we all yearn for’”.¹³ Faced with the problem of addressing land conflicts alongside the agenda of international financial institutions and donors, national governments are forced to liberalise land tenure.¹⁴ These governments are said to approve new land laws to which they have limited/no control in exchange for development support. For Musembi, “the introduction of formal land title has been seen as key to solving problems of land degradation, improving agriculture and providing farmers with security of tenure, which would create incentives for further investment in the land”. De Soto’s concern is how we bring poor people into the market through the law—which attempt I will argue is a capitalist logic since law is central to the realisation of capital. Outside the law property [specifically land] ceases being capital. This is how capitalism tends to colonise anything considered capital but outside its domain of the law and the market.

These neoliberal assumptions have been criticised on a number of grounds. Manji debunks the assumptions by arguing that the neoliberal propositions on land reform is problematic for it has the potential to produce negative results by changing the way people do relate to and perceive of not only land but also other land owners if legal centralism is embraced.¹⁵ 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.¹⁶ She asks, “what constitutes law” given that neoliberals consider informal arrangements as passive,

¹² Manji, 2006, p.3

¹³ Ibid., p.4

¹⁴ Manji, 2006, p.22

¹⁵ Manji, 2006, p. 20.

¹⁶ Ibid., p. 19

defective, and extra-legal?¹⁷ To Manji, the suggested rule of law being promoted is an attempt to create a “universal” yet 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.¹⁸ I find this critique to be very interesting for it shows how the west assumes a ‘one size fits all’ solution worth reproducing elsewhere. For me such an attempt assumes the conditions to be homogenous across countries ignoring the unique experiences, unique contexts and unique values across societies.¹⁹ Property formalisation has occasionally been presented as progress and advancement whose design I will argue is western-centric and offered as linear development. This argument is reflected in Yngstrom who argues that such has been considered as an evolutionary model of development which is very problematic. For Yngstrom, such thinking works to exclude “gender as an analytical category”.²⁰ This as a result renders women’s claims to land and the forms of tenure insecurity that women face invisible.²¹ 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 formalisation 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 project²², generating more inequalities and marginalisation²³ and gendering of distribution. 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 property²⁴. 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 land registration. Male authority in allocation and control over land is increased which foster exclusion of children and women²⁵. 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.²⁶ After receiving the land titles in their own names, women later put that land under male control—i.e., their sons.²⁷ Jackson has written that:

¹⁷ Ibid., p. 19-20

¹⁸ Ibid., p. 11

¹⁹ Ibid.

²⁰ Ingrid Yngstrom (2002). Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate over Land Policy and Changing Tenure Systems’, p.21

²¹ Yngstrom, 2002, Women, Wives and Land Rights in Africa, p.22

²² Musembi, 2007, p.1460

²³ Musembi, 2007, p.1470

²⁴ Ibid.

²⁵ Ibid., p.1471

²⁶ Jackson, Cecile (2003). Gender Analysis of Land: Beyond Land Rights for Women, p.461

²⁷ Jackson, 2003, p.146

The analysis of gendered land relations in particular social contexts requires consideration of the diverse subject positions of women, the relations they involve (e.g., with fathers, brothers, husbands) and the implications of these in relation to land. The situation of daughters in relation to parental land is very different to that of wives to marital land. A girl in a patrilineal society is positioned in her kinship group very differently to a boy, both in terms of the inheritance of property but also of the descent ideology. A gender analysis of land is interested in both of these factors, for both women and men. In the Indian context, boys may be held to be the rightful inheritors of land, those who remain in place and continue the line, whilst girls marry out and reproduce other lines, but are entitled to dowry in order to set them up in favourable households. Dowry is not of course proper pre-mortem inheritance, since it is controlled not by the daughter herself but by her husband/husband's family, but the cultural logic is clear – land for boys and dowry for girls are the appropriate ways to establish one's offspring.²⁸

We need to understand this whole issue of inequality, exploitation and 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 registration 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 formalisation of land ownership and turning land into a commodity thus replacing communal and 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 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 of the capitalists. Ossome has argued that “arguments that favour formalization of customary land rights expose motives that are less in the interest of women's tenure security and more inclined toward supporting commercial interests in land”.²⁹ Besides all that, Mamdani has argued that women's claims to land are much stronger than epitomised. 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 claims³⁰. Other

²⁸ Jackson, 2003, p.466

²⁹ Lyn Ossome (2014), “Can the Law Secure Women's Rights to Land in Africa? Revisiting Tensions between Culture and Land Commercialization,”

³⁰ Mamdani Mahmood (2009), The Contemporary Uganda Discourse on Customary Tenure: Some historical and Theoretical considerations, in M. Mamdani (ed), The Land Question: Socialism, Capitalism and the Market, Makerere University: MISR Book Series No. 5.

than analysing women as subjects of marginalisation or oppression, we need to start from analysing the structural issues that bring about exploitation.

Another important literature to draw on is raised by Ossome in her research on law and women's rights in Africa. In trying to underscore whether women's rights to land in Africa can be secured in the context of contemporary land commercialization, Ossome offers a critique to the debate on formalisation by arguing "that liberal formulations of the law are limited by a set of assumptions regarding women's position in the political economy".³¹ 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 rights³². The lesson she offers us is that if we take a feminist stand point alongside a structural analysis of the social relations on land, then such assumptions do not hold. Similarly, Ossome shows that land policies promoted in Africa during the 1960s and 1970s were based on the premise that customary systems did not provide the necessary security to ensure agricultural investment and productive use of land.³³ Because the security risk was thought to be the absence of clearly defined and enforceable property rights, policy focused on promoting individual private property rights. Ossome cites evidence that shows that the main aim of the policy was not to secure individual rights to land and easing transferability³⁴. Instead, titling increased insecurity, displaced land users, increased conflicts and unequal access to land based on gender, race, ethnicity etc.³⁵ Therefore, we cannot think of formalisation and tiling as a silver bullet to development and gender inequality challenges especially in developing countries.

Exploring Private Rights and the Dynamics of Gendered Households.

In order to understand how the private property rights [its design and implementation] affects gendered households, one needs to understand the gender relations. This is because, the relations of production and reproduction are gendered and, in a way, affect and are affected by the gender relations. Jackson Cecil has argued that land relations are social relations and any engagement with land relations calls for a broader focus on the social relations and so social change.³⁶ Manji argues that "the global land agenda of the World Bank is parasitic upon, and threatens to worsen, unequal rural gender relations".³⁷ She profoundly states that when formalisation of land tenure is embraced, there is a very high likelihood that women's

³¹ Lyn Ossome (2014), "Can the Law Secure Women's Rights to Land in Africa? p.155

³² Ossome (2014), "Can the Law, p.158

³³ Ossome, 2014, p.158

³⁴ Ibid., p.158

³⁵ Ibid., p.159

³⁶ Jackson, Cecile (2003). Gender Analysis of Land: Beyond Land Rights for Women, p.462

³⁷ Manji, 2006, p.117

position and that of gender relations will deteriorate. This is because, many of the women will be dispossessed at an extremely high degree due to the promotion of credit markets.³⁸

Manji looks at how the world bank tries to characterise female labour when drafting its property rights presuppositions. She shows that the world bank was at the fore front of trying to devalorise and feminise women's labour³⁹. Women's agricultural labour was added onto the reproductive labour that neoliberal economics considered unproductive and so valueless. Read in the sense of feminist political economy, this is domestication of labour and since women's work has been relegated to the private sphere, the same happens even in agricultural work done by women. Manji writes:

The idea of non-contractibility takes the private sphere of the household to be characterized by affective ties of community, which give rise to solidarity between individuals. In contrast, feminist theorists have revealed that the private sphere is often based on quasi-feudal domination and on coercion rather than freedom. Central to the World Bank's idea of agricultural productivity is the assumption that women's household (and therefore agricultural) labour is freely available as an extension of their reproductive labour (under a figurative 'sexual contract'). The assumption appears to be that women will demand less in terms of wages and conditions than waged labour.⁴⁰

To interpret the above lines in the quote, I deploy Mies Maria. It seems like the world Bank's formalisation project fronts the narrative that the concept of labour is a preserve for only male productive work under capitalism with women's work only being identified with and so much of reproduction.⁴¹ The postulation that Manji reproduces here from De Soto⁴² shows that the world Bank considered women's agricultural work to contribute to agricultural productivity but on the assumption that it is less paid, and would be offering an extension to "their" [women's] reproductive work. It equally seems that the world bank naturalises roles with women having roles which are attributed to them by nature. It also appears like the position of women earning less wages and actually demanding less is some position they are born with—natural. But what Mies actually shows is that such thinking tries to consider women as ahistorical yet the origins of social division of labour are historical, hierarchical and with an exploitative relationship but not just division of tasks between sexes, yet its these origins that determine the division of labour⁴³. By saying women's agriculture, it points to a divide or compartmentalisation even in agriculture meaning there is also men's agriculture and so since women's agriculture is considered to be less paid, then men's

³⁸ Ibid., p.122

³⁹ See Manji, 2006, p.125

⁴⁰ Ibid.

⁴¹ See Mies Maria (2014). Patriarchy and Accumulation on a World Scale: Women in the international Division of Labour, London: Zed Books.

⁴² Manji, 2006, p.125

⁴³ Mies, 2014, Patriarchy and Accumulation.

agriculture is considered valuable and worth much pay. A clear case can be cited from Ghana [former Gold Coast] where cash crops despite having been considered to be neutral in terms of gender in the actual sense were male crops produced for the market as women had to produce crops for subsistence in the domestic during the colonial period.⁴⁴ I will argue, just like many other feminists have argued, that women demanding for less wages is not natural, not by birth nor is it by accident. It is the structure, the system and the conditions created by the world capitalism and patriarchy that result into this situation. Structural liberalism especially of the 20th and 21st century has created this problem where work is feminised. But this feminisation does not only affect women. In the end, it also affects men who do work which is feminised and considered now worth doing by women. In fact, what Manji forgot to point out is that the world bank has narrowed down reproductive work to only giving birth when it considers it to be a female kind of work which has to be substantiated by agriculture. As a matter of fact, there is reproductive work which is done by men in numerous places both in the household and the market i.e., nursing, caring, cooking and many others. This is the sense in which Peterson tries to inform us that gender can be actually structured by class and so the relations that affect it. In fact, Peterson shows that in instances where there is no woman to perform work which is devalued, men who are down the strata and so less earning do perform such work.⁴⁵ Feminisation however, shouldn't be seen as only rendering work less paying, it is true that work can also become high paying in the process since feminised work may not be so forever. Take an instance where women were cultivating a crop then it gains value and starts earning highly. Jackson has argued that feminisation of agriculture calls for proper analysis of what “working on the land involves” alongside the diverse social relations of female labour so engaged.⁴⁶ I can say that Manji needed to analyse those assumptions in ways which affect gendered households. What happens to different women's agricultural labour especially single women, divorced, widowed or women household heads generally? Such assumptions of liberal capitalism propagated by world bank seem to suggest that those women even if they produce for the market will face the problem of low pay or can easily be dispossessed in instances where they own land since their agricultural work is considered less relevant and less productive—which in the end affects their production and reproduction capacities. This means that the premise on which formalisation was based can just increase problems especially in gendered households. Jackson has put this into context very clearly and precisely:

⁴⁴ Terence Ranger, (1983). “The Invention of Tradition in Colonial Africa.” In *The Invention of Tradition*, edited by Eric Hobsbawm and Terence Ranger. Cambridge: Cambridge University Press

⁴⁵ Peterson Spike (2005), ‘How (the Meaning of) Gender Matters in Political Economy’, *New Political Economy*, 1(4): 499-521

⁴⁶ Jackson (2003), *Gender Analysis of Land* p.456

Land is worked by women under different social relations – as labourers, as own-account household labour and as farm managers, to name just a few. The feminization of agricultural wage labour is not the same as the feminization of farm management; the census data used refer to the former and the case being made for women's land ownership refers to the latter. The former may be taking place in India, but different data would be needed to establish the extent and the suggested increase in the latter. In landed households, the pattern of gendered agrarian transition may involve withdrawal from field-based agricultural labour, which may mean that such women become 'farm managers' or it may not. In either case, the 'land to the tiller' justification would not hold for women who manage farms by managing hired labour. A class analysis is essential in understanding what these processes of change mean for differently placed groups of women.⁴⁷

The above quote makes a lot of sense when it comes to understanding the formalisation project but for me the most important point made is the question of class. When analysing land and gender relations, we ought to know that the processes are relational and dialectical where gender affects class and class affects gender alongside other social relations like age. The formalisation project ignored such relations. This is why Joan Acker has noted that even those who have attempted to theorise the class question have failed to consider the ways in which gender and race are constructed into capitalism. Other than thinking of gender, class and race as separate systems of exploitation and oppression, Acker invites us to think of class as being constitutive of gender and race⁴⁸. But beyond the categories evoked by Acker, there is need for expansion especially if dealing with a different context say Africa where there is less of race but more of tribal arrangements. We can borrow the method of analysis but take the conceptual tool and fit it to our contexts given the divergences. It is in this framework that Claassens and Mnisi have evoked that the private property rights regime's recommendations which aimed at promoting women's individual ownership focused largely on middle class women with little attention paid to those whose survival is "embedded within a web of reciprocal family and community relationships, for whom the protection and preservation of the land rights vesting in the family or group may be a priority".⁴⁹ For them, enhancing women's land rights calls for making engagements with the changes taking place a priority. This can be through dismantling formalist assumptions regarding women's rights by preceding strategies which 'wifelize' problems.⁵⁰ We cannot think of ensuring the promotion of development, gender equality and broadly socio-economic transformation when we only put our focus on land reforms which banks on

⁴⁷ Jackson, 2003, p.456

⁴⁸ Joan Acker (2006), *Class Questions, Feminist Answers*. New York: Rowman & Littlefield., p.54

⁴⁹ Claassens, Aninka and Sindiso Mnisi. (2009). *Rural Women Redefining Land Rights in the Context of Living Customary Law.* South African Journal of Human Rights 25(3): p.492

⁵⁰ Claassens and Mnisi, 2009, *Rural Women Redefining Land Rights*, p.493

“individualist ontologies” whose preoccupation is on tenure security and land distribution. This is because the participation of women in the domestic “economies is as a result of contextually and historically determined patriarchy that works with neoliberal capitalism”⁵¹. This is the very reason why Naidu and Ossome invite us to read questions to do with land [which is property in agrarian relations of production] in relation to social reproduction questions. They jointly argue that agrarian questions are both gendered and differentiated by social relations of production and labour power. We cannot think of social and economic transformation without thinking about social reproduction but social reproduction is only thinkable when we prioritise the relations of people “especially rural women” to land since land serves as a primary means of reproducing rural households⁵² but their reproduction tends to rely mostly on women’s labour.⁵³ Care work alongside other non-capitalist production facilitates the reproduction of the working class and in the end supporting capitalist reproduction, so separating social reproduction and capital accumulation leads to social fragmentation .⁵⁴ The only way of ensuring transformation of societies and people, socially and economically while addressing question of poverty and inequality is through addressing the question of reproductive labour [what Naidu and Ossome call the agrarian question of gendered labour] otherwise the problems may end up being reproduced and replicated in what is claimed to be land reforms.

The market however—or even the state—have tended to see such social reproduction not as relevant in the process of production because they claim it is done in the household/family—which is the basis of wanting to put the most resourceful factor of social reproduction and production [land] to the market and remove it from household informal relations. Yet it is clear that the three entities, the market, state and household, are in a dialectical relationship as stated earlier. The household is not independent of the other two since they are affected by both the state and the market. The household constitutes a main institution of both production and reproduction but the neoliberal project has treated the question of family—part of the household—very lightly. The World Bank considers the household as its unit of analysis with a conflation of the interests of individual members but this amounts to “neglects of a vast body of established literature that has problematized the household and shown how the interests of its members cannot be assumed to be identical”.⁵⁵ Here allow me summon the work of Heidi Hartman (1987) who argues that the family, rather than being an active agent with unified interests, should be analysed as a locus of struggle. She explores the material aspects of gender relations within family units focusing on the nature of work people do in the family and their control over their labour’s products. Other than seeing

⁵¹ Naidu Sirisha and Ossome Lyn (2016), Social Reproduction and the Agrarian Question of Women’s Labour in India., p.70.

⁵² Naidu and Ossome, 2016, Social Reproduction and the Agrarian Question, p.63.

⁵³ Ibid., p.52

⁵⁴ Naidu and Ossome, 2016, p.54

⁵⁵ Manji, 2006, p.126.

family as a unit, we ought to understand it as a location where production and redistribution take place.⁵⁶ In a Marxist-feminist view organization and production of family work is shaped by both patriarchy and capitalism.⁵⁷ Rather than being harmonious, family interests differ especially between men and women. She warns the risk of complicating the patriarchal and capitalist relations of production in which households are entangled if we take family as simply a unit.⁵⁸ What Hartman warned against is what instead the world bank, that sought to promote development, deployed as a unit of analysis [especially when they considered the interests of family members to be identical] yet the changes in people's household behaviours can simply be understood as responses to conflicts within and outside the household especially that people can be seen as historical agents acting both independently as individuals and dependently as family members. This double system sees tensions and conflicts increase in families and social change gaining ground.⁵⁹ In other-words, when using the family as a focus of your analysis, there is need to pay close attention to the differences within i.e., difference between men and women, privileges between family members and also the differences in the interests otherwise you risk leaving out some experiences in developing a project that can promote 'development' and gender equality.

Other than eradicating poverty and promote development, the formalisation of land through legal reform potentially can intensify the situation. Yngstrom while drawing on her research on tenure reform in Tanzania has argued that the available evidence suggests that land titling [and for this case formalisation] had not improved the efficiency of production systems in Africa and that titling is now considered as not only superfluous but also detrimental in the African context.⁶⁰ The possibility of exacerbating the problems it sought to address is basically because its proposal has a very high likelihood of affecting women enormously and so the bank's failure to acknowledge this possibility but also address it in their drafting and implementation. This has led Manji to conclude that the world bank covertly conspires in the "oppression"—and if I can add exploitation of women.⁶¹ Put differently and precisely, Manji predicts worsening gender relations and the deteriorating status of women, resulting from the promotion of formalization of land tenure and of formal rural credit markets. Let's assume instances where titling is made in the name of the household head, women's claims over land are said to weaken with daughters having little if any rights to their father's property⁶². This is because, the man is considered by the structure and so the system to be the head of the family. In this case, registration increases men's visibility

⁵⁶ Hartmann Heidi (1987), *The Family as the Locus of Gender, Class and Political Struggle: The Example of Housework*, p.111

⁵⁷ Hartmann, 1987, *The Family as the Locus of Gender, Class and Political Struggle*, p.111

⁵⁸ *Ibid.*, p.116-7

⁵⁹ *Ibid.*, p.129

⁶⁰ Ingrid Yngstrom (2002). *Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate Over Land Policy and Changing Tenure Systems*, p.22

⁶¹ Manji, 2006, p.126.

⁶² *Ibid.*

and women's invisibility of rights to use and ownership of land which increases gendered effects of registration. If the results are the ones considered development, then I argue that, that becomes gendered development which only serves to promote gender inequality and exploitation. Male authority in allocation and control over land is increased which foster exclusion of children and women⁶³. Therefore, other than focus on reforming systems of distribution, the formalisation project leveraged on the existing patriarchal system and focused on land administration.⁶⁴ Citing the work of Jacques and Daphine (1996), Bomuhangi (2008) has stated that: ...in most of (patrilineal) Africa, the usufruct right to land prevails and customary land use practices often determine acquisition and access to land in terms of use rights or ownership. Women are essentially temporary custodians of land passing from father to male heir, even though they may be de facto heads of household. As unpaid labourers on their husbands' land, while also cultivating separate plots in their own right, African women usually lose the rights to land following the death of their spouse. Widows and divorced women have virtually no tenure or inheritance rights with which to ensure food security for themselves or their children (it is only through their male children, or male relatives from their husband's lineage that women have land tenure rights).⁶⁵

From the foregoing, we can see that some inequality has persisted to exist in a period when rights are ensured through the registration period especially when registration of even customary land is promoted. Survival is based on the way people relate and use land but the method of inheritance discriminates against certain sections of the population. But the challenge I find with Bomugisha's analysis is that he took customary for granted. I say this because, he insists that customary land use practices "often determine acquisition and access in terms of use and ownership rights. It seems to me like he is trying to say there is just one customary throughout history. But as we may be aware, the customary has been modernised and transformed to meet the requirements of capitalism especially in the colonised spaces.⁶⁶ Further still, the precolonial customary guaranteed use rights for women meaning food security wouldn't be a big problem for them and their families even without the husbands.

Traditional Norms in Modern Context: Reexamining Historical and Conceptual Discourse in the Context of Land Registration.

There has been a long-held debate over customary law private property rights and social and economic transformation. Customary law has been argued to have been "invented" by the colonialists in order to

⁶³ Ibid., p.1471

⁶⁴ Ibid., p.1474

⁶⁵ Bomuhangi Allan (2008). Gender, Land Acquisition and Property Rights in Kapchorwa and Luwero. Districts. Published Master's Thesis, Makerere University, p.45

⁶⁶ The work of Mamdani will illustrate this later in the next section of paper.

govern the colonised persons using the modified pre-existing systems of rule. Mamdani, Martin Chanock and Terence Ranger have come up and emphasised this argument. For instance, Terence Ranger argues that the colonial state invented African tradition for the Africans with a view that they were upholding it.⁶⁷ For Mamdani, the customary as a notion, is a colonial construct which aims at subordinating the precolonial society to the colonial state and even if recognised by law, it is just brought closer to state control and/or extinction.⁶⁸ For Mamdani, the customary in the precolonial was neither part of state law nor state authority but part of society. It was never attached to political power but used for society regulation. Mamdani argues that “*what came to be known as customary law in the colonial period was not part of the institutions of political power during the precolonial period; it was part of a self-regulating society*”.⁶⁹ Martin Chanock who inspired the above two arguments argued that customary law was a product which was crafted by the colonial institutions and not a set of rules deriving from the precolonial period.⁷⁰ This is said to have resulted from the need for administration and control of the natives and the blend between “the summary and technical legalism of British forms of justice, a remote and despotic legal style, a fiery view of sin and, above all, the vision of a strict and moral golden age”.⁷¹ These laws were not only aimed at ensuring administration and distribution of political privileges but also for the allocation of resources within the context of “rapid social change and instability engendered by exploitative colonial policies”.⁷² The colonially invented customary law did not leave certain aspects of community regulation, property management, resource allocation the same as they used to be in the precolonial. For instance, customary law was exploited by African men to “enshrine women’s subservience in issues such as marriage and land tenure.”⁷³ The conceptualisation of marriage reduced women to a single status during colonialism codified by customary law. Ossome writes interestingly that “wives were expected to perform domestic duties, which encompassed the entire realm of subsistence agriculture, without the assistance of their husbands”.⁷⁴ Attempts have been made successfully to bring the customary into the modern law through ensuring that all property under customary ownership is

⁶⁷ See Terence Ranger, Terence. 1983. “The Invention of Tradition in Colonial Africa.” In *The Invention of Tradition*, edited by Eric Hobsbawm and Terence Ranger. Cambridge: Cambridge University Press

⁶⁸ Mamdani Mahmood (2015), *The Contemporary Ugandan Discourse on Customary Tenure: Some Historical and Theoretical Considerations*, in Mahmood Mamdani (ed), *The Land Question: Socialism, Capitalism and the Market*, Makerere University: MISR Book Series No. 5., p.165-6

⁶⁹ Mamdani, 2015, *The Contemporary Discourse on Customary Tenure*, p.158.

⁷⁰ Martin Chanock (1985), *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*. Cambridge and London: Cambridge University Press, p.145

⁷¹ Martin Chanock (1985), *Law, Custom, and Social Order*, p.136.

⁷² Terence Ranger (1983), “The Invention of Tradition in Colonial Africa, cited by Ossome Lyn (2014), “Can the Law Secure Women’s Rights to Land in Africa? Revisiting Tensions between Culture and Land Commercialization

⁷³ Ossome Lyn (2014), “Can the Law Secure Women’s Rights to Land in Africa? Revisiting Tensions between Culture and Land Commercialization, p.157

⁷⁴ Ibid.

registered under customary titles.⁷⁵ But this in the end has ended up subordinating the customary to the modern with customary being understood in a bilateral way i.e. state and society. Mamdani argues that we should move beyond this to a trilateral i.e., state, society and market⁷⁶. This is because state and market relations have led to changes in social relations i.e., bride price which was being paid in cattle was monetised. The market and society/community should remain embedded in the social. Similarly, Mnisi and Claassens argue that creating dichotomies of modern and traditional, custom and right obscures the ways in which contestations in claiming resources⁷⁷ including the cross-cutting realities of the lived experiences of people in communal areas are articulated. How then do we understand this in relation to land formalization, development and gender equality and gendered household statuses?

For Mamdani, where customary tenure continues to have influence, peasant women traverse two communities i.e., the natal and residential meaning where they are born and where they marry⁷⁸. Marriage is usually patrilocal and women have to move from their communities to those of husbands which complicates the basis for determining land rights. In such a circumstance, formalisation doesn't protect rights of women through offering tenure security for direct producers who till the land. This means, the goal can hardly be achieved. His concern was mostly on the ways in which women's rights to land can be determined between the natal and the residential and also on the question of rights for the widowed and divorced women. When the consent clause was drafted in Uganda, it did not cater for rights of all women⁷⁹. Mamdani's discussion tries to complicate the way questions of rights needed to be problematized. Other than naturalise and universalising certain categories of identities, we need to look at them in multifaceted ways. For his case, women are not a single category as they have attributes which define them differently and their rights can't easily be taken for granted by just mere looking at their attachment to their husbands. And I can add that these different categories can determine their social and economic status which can also be different and the different ways in which they negotiate access to resources. The liberal project fails to see how women under customary tenure negotiate greater access to land⁸⁰ as formalisation opens land for easy access by capital and turning it into a commodity just worth of exchange which may not guarantee benefits to women especially in rural areas. Therefore, for Ossome, customary law offers a more promising path toward recuperating women's rights to land in the context of commercialization since it "is able to provide relative security to community members at lower cost than

⁷⁵ See Mamdani, 2015, *The Contemporary Ugandan Discourse on Customary Tenure*.

⁷⁶ Mamdani, 2015, p.162

⁷⁷ Mnisi and Claassens, 2008, p. 491, p.494.

⁷⁸ Mamdani, 2015, p.174

⁷⁹ Mamdani, 2015, p.178

⁸⁰ Lyn Ossome (2014), "Can the Law Secure Women's Rights to Land in Africa?," p.160

state-run structures”⁸¹. We shouldn’t read the customary as offering a full security of tenure and protecting interests of underprivileged, but we should think of it as being much safer than formalisation. This is attributed to the fact that land deals today take place in a legal, political, and economic terrain that local communities⁸² and women are negotiating and re-interpreting within the customary domain, thus affirming the continued relevance of customary tenure regimes in securing women’s rights to land in Africa. A similar assertion is made by Yngstrom when she cites Platteau to argue that the customary system and rural communities still have a “dominant role to play in the new policy arena as the state is a key source of insecurity”.⁸³

Yngstrom shows that the customary system⁸⁴ ensured that women and men’s rights were visible legally. The rights of men to allocate were always subject to the rights of women to cultivate the land.⁸⁵ But today, under formalism and legalism [with legalism giving credence to only state legal systems], women’s rights have been conceptualised as being secondary. This poses a danger of imposition of false hierarchies on the customary systems in which rights are interdependent and making certain rights held by women visible. Rights should only be understood as a tool used to structure the relations of interdependence. Claassens and Mnisi state that “rights work in practice, not as boundaries to protect autonomy, but to structure relationships of interdependence in an unequal world...once we acknowledge the changing and contested quality of basic rights the problem of defending rights becomes inseparable from the problem of defining them”.⁸⁶ It follows that rights function not primarily to create boundaries around individuals but to structure relationships around them. As one plans to offer rights to one group or certain groups of people, they should be conscious that they might be taking away rights of others. This implies that if the attempt is aimed at dealing with rights of certain minorities, you may end up creating another group of minorities in the end furthering exploitation and marginalisation. In the end, the process may reproduce a certain kind of violence. Take an instance where registration of titles for family land is done in the name of the husband and wife [with a view that the wife is getting rights to the property], this ends up creating new forms of exclusion where other members of the family are left out with only the wife being recognised. This is well summarised by Claassens and Mnisi:

⁸¹ Ibid., p.168

⁸² Ibid., p.172

⁸³ Ingrid Yngstrom (2002). *Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate Over Land Policy and Changing Tenure Systems*, p.24

⁸⁴ Of course, we have to bear in mind that today’s customary is quite different from the precolonial customary. Customary system also should be treated differently from customary law, as the system of ownership existed without the customary law which was created by the colonial state.

⁸⁵ Yngstrom (2002). *Women, Wives and Land Rights in Africa*

⁸⁶ Claassens and Mnisi, 2009, p.495

The consequence of this section (4(2)) is that where a man is the holder of an old order right, he and his wife/wives become joint holders of the new order right. However, this section addresses the inequality only in so far as married women and men are concerned. It has the consequence of entrenching and deepening insecurity for all except married men and women. All others such as widowed mothers and unmarried sisters or brothers or the orphaned children of siblings are excluded: their existing rights fall away. This is particularly significant in the light of an analysis of the General Household survey of 2003 indicating that 41 per cent of rural women over 18 are neither the household head, nor married to, nor the partner of the household head⁸⁷.

Therefore, securing rights of certain sections is not viable if considered in an angle of feminist political economy for it does not take into account family-based nature of systems of land holding. This is the same way in which we should read the property rights project because it may benefit the wife but exclude other women, girls *but also men who are less privileged in the family [emphasis added]*. I believe it is in this vein that Ossome writes that titling and registration of land failed on its objective of promoting increased productivity and agricultural investment.⁸⁸ Ossome in the same line argues that, for instance, where thinking of land other than its relationship to the market. From a gendered/feminist political economy perspective, the extreme dispossession that the masses experience under neoliberal capitalism means that land becomes a primary basis for survival/social reproduction⁸⁹.

Considering Titles from the Perspective of Margins: Some Reflective Questions

It happens to be that people in Busoga are facing a repaid system of formalisation i.e., with the Busoga where the kingdom launched a joint land titling programme together with the Office of the National Chairman (ONC) of National Resistance Movement (NRM) to give free land titles for those families desperately needs especially⁹⁰. The Katukiro (*Prime Minister*) of *Busoga* Dr. Joseph Muvawala Nsekere urged the subjects to loudly embrace this free opportunity to ensure that they get the land titles so as to secure security to their land and also be able to access credit anywhere for social-economic transformation of their households from poverty.

The customary system in Busoga has bought into the narrative of formalisation that obtaining a title allows you to have access to credit—which brings you into the market. This purported title is held by people on ‘customary land’. This land used to belong to the community under the custodianship of the king before the colonial government. The colonial agreements like the 1900 agreement saw many people

⁸⁷ Claassens and Mnisi, 2009.

⁸⁸ Lyn Ossome (2014), “Can the Law Secure Women's Rights to Land in Africa?”, p.159.

⁸⁹ Lyn Ossome (2014), “Can the Law Secure Women's Rights to Land in Africa?”, p.153.

⁹⁰ Daily Monitor, January 12, 2022

being pushed off their land in massive dispossessions fuelled by the colonial state and the few local elites that benefited from such. Reading Mamdani (2017), it becomes evident that the state conducted an exercise to redistribute land and many people were left landless after being evicted and their land given to new landowners of a capitalist class.⁹¹

Like in elsewhere in Uganda, “colonial authorities took total control over land management, making major decisions as to how and who has access to what amount of land. This led to the colonial companies owning more land than African natives because these companies could afford and obtain land titles, unlike the natives”.⁹² It is from the colonial practice of centralising land management during the colonial period that the post-colonial land reforms borrow a leaf.⁹³ The redistribution of land by the colonial state has given the capitalists powers even in the postcolonial state where the state has assumed absolute powers to the extent of initiating titling projects on the “customary authority”. This is basically due to the influence of the market on the customary [and the state]. 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.⁹⁴ The market has had a strong influence on the Busoga customary authority establishing the joint land titling campaign together with the Office of the National Chairman (ONC) of National Resistance Movement (NRM) where registration is done on the customary land.⁹⁵

Dr. Joseph Muvawala Nsekere urged the subjects to hardly if not loudly to embrace this free opportunity to ensure that they get the land titles so as to secure security to their land and also be able to access credit anywhere for social-economic transformation of their households from poverty⁹⁶. By April of 2023, it is said that the Office of the National Chairman (ONC) of National Resistance Movement (NRM) has so far facilitated over 1500 households to acquire free land titles ever since Kyapa Mungalo campaign was launched by the Kingdom’s premier Dr. Joseph Muvawala Nsekere and NRM cadres”.⁹⁷

⁹¹ Mamdani, [1996] 2017, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Johannesburg and Kampala.

⁹² Lotsmart Fonjong (2017), *Interrogating Large-Scale Land Acquisition and its Implications for Women’s Land Rights in Cameroon, Ghana and Uganda*. Canada: International Development Research Centre, p. 33.

⁹³ Ibid.

⁹⁴ Mamdani, 2015, *The Contemporary Ugandan Discourse*

⁹⁵ Rwakafuuzi L. Kiiza, *Encourage Land Titling*. Daily Monitor News Paper, June 17, 2018. Retrieved from <https://www.monitor.co.ug/OpEd/Commentary/Encourage-bibanja-holders-to-go-for-Kyapa-mungalo/689364-3958636-nkjjxcz/index.html>

⁹⁶ Dr. Joseph Muvawala Nsekere. *Free Land Registration, is it Necessary? Discussing Uganda’s Land Tenure System & Development in Busoga Region*, BabaTV Uganda, Baba on the Spot, Thursday January 12, 2023, 9:45 pm.

⁹⁷ Daudi Zirimala (2018), *More Busoga attain their land titles in new ‘Free Land Tittle’ campaign*. NBS FM radio online March 12, 2023. Retrieved from <https://nbsradio.co.ug/busogaas-attain-land-titles-new-freeland-title-campaign/>

Just like the state formalisation which was premised on the assumptions set by World Bank and De Soto, even the Free Land Titling project was premised on the assumption that it would easily allow the poor and marginalized groups with such registered land to easily access credit/loans. Thus;

the financing conversation starts at the point of obtaining a title through the Ministry of Lands and Housing through the District Land Board as an access Financing initiative scheme. Bank approval means one will have the money to acquire the free land title and can still get credit at a low interest rate from any bank within Uganda. 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 24 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.⁹⁸

This registration and free land titling project endorsed by both the state and the Kingdom was criticised by people with numerous backgrounds including politicians, academics, legislators, legal professionals etc. For instance, Jinja city Woman opposition member of parliament Manjeri Kyebakutika while addressing beneficiaries at Busoga Square at the source of the Nile in Jinja district argued that those rural and semi urban peasants should not be blinded by getting free land titles for it was a move to divert their attention and grab their land in broad day light. She argued that state is grabbing land of the poor to allocate to the its investors silently through the kingdom partnerships⁹⁹

Taking an example of gender fragmentation in land formalization project in Busoga, Jennifer 47 years old; narrated at NBS Live At 9 that she was married and they were 2 wives. She had 7 children using 3 acres; her co-wife had 6 children. Upon registration of the three acres of land by his husband, without her consent and notice, he took the title to the bank for a loan worth 10million at an interest rate of 25%, when he failed to pay, she was displaced upon a court order, together with her 7 children, she went to Iganga to work as a maid. She spent all her earnings feeding the children. The husband even married

⁹⁸ Jackson Emanzi, *A 360-Degree Solution to Property Ownership in Uganda*. September 28, 2019. Retrieved from <https://www.busiweek.com/a-360-degree-solution-to-property-ownership/>

⁹⁹ Daudi Zirimala (2018), *More Busoga peasants attain their land titles in new 'Free Land Tittle' campaign*. NBS FM radio online March 12, 2023. Retrieved from <https://nbsradio.co.ug/busogaas-attain-land-titles-new-freeland title-campaign/>

another wife until the Federation of Uganda’s Female Lawyers lodged a civil suit in Mayuge Chief Magistrate’s court¹⁰⁰.

When the reporter inquired from the man, on the question of lack of gender representation in the title and loan acquisition processes, he indicated that land in Busoga is “men’s business.” Hence, women are considered not to have a say in the matter because they did not own land. The argument was that because “women only accessed land through men, their interests were taken care of by the men.”¹⁰¹ The argument that women have no role in land issues is problematic, since generally it is acknowledged that in most societies’ women are responsible for most social reproduction which is largely dependent on land.

The narratives above indicate that as in many parts of the world, the burden for the production and reproduction of the families falls on women. In the Busoga culture, a man subdivides his land among his wives because each is responsible for her children’s sustenance. She uses her portion of the land to feed, clothe and educate her children. Indeed, a polygamous man’s children will differ in their level of education and status based on how hardworking and entrepreneurial their mother is. What the narratives indicate is that this burden on women was heightened after the dispossession. Before her dispossession, her burden was limited to production of use value, and exchange was on surpluses. After her dispossession, there came the added burden of producing for her employees before she met the primary burden of producing for her family. This added burden was also not in her control, but their master’s control on her wages and effort. This implied that her capacity to maintain production beyond this double burden to accumulate in order to advance was limited. The double burden was worse because the returns to her labour were so low that education, their ability to own business to transcend this precious condition has been greatly undermined. This in turn limits her capacity and society they reproduce to move beyond the subjective conditions. The failure to re-produce beyond survival maintains her as dependent on the power of her masters and state for progress either on basis of improving wages or creating social services that enhance her capacity. This implies that projecting a patriarchal structure of land registration not only undermines this potential but also paradoxically complements the hegemonic structures of capital and state structure by maintaining women and society that reproduce in subservient conditions of low wages and survival mode.

I explicitly find numerous and divergent interests in the whole debate over giving free land titles through joint land titling programme by Busoga Kingdom and the Office of the National Chairman (ONC) of

¹⁰⁰ NBS Live At9, Busoga Women Deprived of Land Rights by husbands. March 16, 2022. Retrived from <https://nbs.ug/land-busoga-women-deprived-of-land-rights-husbands-luuke/>

¹⁰¹ Ibid

National Resistance Movement (NRM) in the postcolonial state. Titling is no longer supported by only the state but also with the traditional kingdoms. But some things are not clear in the narratives. None of the contenders whether state, Busoga and other critics digest the issue of the “less privileged among the less privileged”¹⁰² of the land title owners. So, for those who were accepting such registration in purportation of free titles, what are their genders, what was their class, what was their age, what is their ethnic group? How did these affect their choice to go for or support the free titling programme? If they were different from what they were, could their decisions have been different? Whose security is being dealt with when issued with title and whether the best means for those presented is titling? I ask this because 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—for the case of her research—while the poor ones [less productive] can hardly benefit and the incentive to go for titles becomes less warranting.¹⁰³ Musembi’s research has shown that:

empirical studies in sub-Saharan Africa have failed to establish the link between formal title and access to credit for smallholder farmers. A study of a sub-location of South Nyanza district in Western Kenya found that only 3% of the 896 titles had been used to secure loans, seven years after completion of the formalisation exercise in the sub-location. A similar study. in a sub-location of Embu district in Eastern Kenya found that only 15% of the titles had been mortgaged to secure loans, 25 years after the formalisation exercise¹⁰⁴

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”. 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 championed by the state and the kingdom. 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 free land titling project doesn’t go deep into analysing the critical issues of concern. 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 are interested in serving the population. Even the loans they purporte they want to give those who registered land is not different from

¹⁰² 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.

¹⁰³ Musembi, 2007, p.1467

¹⁰⁴ Ibid, p.1466

the promises made by registration through other actors like world bank and state. We can see that the state and the market are at play here while the household is left out in the analysis that lay claims on land.

Conclusion

I should start my conclusion with an argument that land question is a complex issue related to poverty, lack of social justice and equity. Its complexity is historical and was largely impacted by the colonial times. This complexity has been carried through to the neoliberal era and therefore today, we deal with both a historical and contemporary land question. It involves contradictions in land rights, the question of gender, race, class, land grabbing, dispossession, management and administration. The essay aimed at understanding neoliberal propositions and how they are historically rooted, making the quest for gender equality, development, social justice a delusion in the prevalence of current interests of today's primitive accumulators and continued logic of coloniality. The essay should not adequately qualify as a comprehensive conclusion on whether formalisation can promote development, gender equality and improve the status of gendered households. But based on the literature surveyed, it becomes clear that the design and implementation of the private property rights didn't put into consideration the lived experiences of people and how relations to property especially land are negotiated and renegotiated. Registration takes for granted the intra-household inequalities and the relation between the state, market and household broadly. As such, the premises raised by the formalisation project were not only fallacious but also 'fetishious'. In fact, they operate only to serve capitalist interests than interests of the masses. Any project aimed at improving the wellbeing of people, their status and promote equality needs to take seriously the fact that production and reproduction are gendered and both are affected by gender relations other than focusing just on production through market lenses. Either way, titling implies winners and losers in terms of whose land rights remain primary and get expanded or whose rights become secondary and get extinguished. I argue that the registration project needs to go back to the drawing board and reconsider its propositions so they can fit the lived realities of the populations if not deserves to be banished to academic hell.

Article History

Received: 10- Mar -2024

Accepted: 19- Mar -2024

Published: 25- Mar -2024

Revised: 15- Feb -2026

Article Publication Details (*rpt**)

This article is published in the [International Journal of Multidisciplinary Research and Bulletin](#), ISSN 3108-1428 (Online). In Volume 3 Issue 2 (Mar – Apr) 2024

The journal is published and managed by [IRPG](#).

Copyright © 2026, Authors retain copyright. Licensed under the Creative Commons Attribution 4.0 International License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. <https://creativecommons.org/licenses/by/4.0/> (CC BY 4.0 deed)

Acknowledgements

We sincerely thank the editors and the reviewers for their valuable suggestions on this paper.

Funding

The authors declare that no funding was received for this work.

Data availability

No datasets were generated or analyzed during the current study.

Declarations**Ethics approval and consent to participate**

The author(s) declare that it is not applicable.

Consent for publication

The author(s) declare that this is not applicable.

Competing interests

The author(s) declare that they have no competing interests.

Author details**Ashiraf Mugalula**

Research Fellow, Makerere University |Al-Mustafa Islamic College.

References

1. Bomuhangi Allan (2008). Gender, Land Acquisition and Property Rights in Kapchorwa and Luwero. Districts. Published Master's Thesis, Makerere University
2. Emanzi Jackson (2018), *A 360-Degree Solution to Property Ownership in Uganda*. August 28, 2018. Retrieved from <https://www.busiweek.com/a-360-degree-solution-to-property-ownership/>

3. Hartmann Heidi (1987), 'The Family as the Locus of Gender, Class and Political Struggle: The Example of Housework', in Sandra Harding (ed), *Feminism and Methodology: Social Science Issues*, Bloomington, IN: Indiana University Press,
4. Jackson, Cecile (2003), Gender Analysis of Land: Beyond Land Rights for Women', *Journal of Agrarian Change Vol. 3, No.4, October 2003, p.453-480*
5. Joan Acker (2006), *Class Questions, Feminist Answers*. New York: Rowman & Littlefield.
6. Lotsmart Fonjong (2017), *Interrogating Large-Scale Land Acquisition and its Implications for Women's Land Rights in Cameroon, Ghana and Uganda*. Canada: International Development Research Centre
7. Mafeje, Achie (1973). Agrarian revolution and the land question in Busoga (No. 31).
8. Mamdani Mahmood (2015), The Contemporary Ugandan Discourse on Customary Tenure: Some Historical and Theoretical Considerations, in Mahmood Mamdani (ed), *The Land Question: Socialism, Capitalism and the Market*, Makerere University: MISR Book Series No. 5.
9. Manji Ambreena (2006). *The Politics of Land Reform in Africa: From Communal tenure to Free Markets*. New York and London: Zed Publisher.
10. Martin Chanock (1985), *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*. Cambridge and London: Cambridge University Press
11. Mies Maria (2014). *Patriarchy and Accumulation on a World Scale: Women in the international Division of Labour*, London: Zed Books
12. Musembi N. Celestine (2007). De Soto and Land Relations in Rural Africa: Breathing life into Dead Theories about Property Rights, *Third World Quarterly, 28(8): 1457-78*
13. Naidu Sirisha and Osome Lyn (2016), Social Reproduction and the Agrarian Question of Women's Labour in India, *Agrarian South: Journal of Political Economy, 5(1): 50-76*
14. Osome Lyn (2014), "Can the Law Secure Women's Rights to Land in Africa? Revisiting Tensions between Culture and Land Commercialization," *Feminist Economics: A Special Issue: Land, Gender and Food Security, 20(1): p.155-177*.
15. Peterson Spike (2005), 'How (the Meaning of) Gender Matters in Political Economy', *New Political Economy, 1(4): 499-521*

16. Sindiso Mnisi & Aninka Claassens (2009) Rural women redefining land rights in the context of living customary law, *South African Journal on Human Rights*, 25:3, 491-516,
17. Terence Ranger, (1983). “The Invention of Tradition in Colonial Africa.” In *The Invention of Tradition*, edited by Eric Hobsbawm and Terence Ranger. Cambridge: Cambridge University Press
18. Yngstrom Ingrid (2002). *Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate over Land Policy and Changing Tenure* Oxford Development Studies, Vol. 30, No. 1, 2002.
19. Zirimala Daudi (2018), *More Bagosa attain their free land titles in new ‘Free Land Title’ campaign*. *NBS FM radio online* April 12, 2022. Retrieved from [https://nbsradio.co.ug/bagosaas-attain-freeland-titles-new-free-land title-campaign/](https://nbsradio.co.ug/bagosaas-attain-freeland-titles-new-free-land-title-campaign/) NBS Live At9, Busoga Women Deprived of Land Rights by husbands. March 16, 2022. Retrived from [https://nbs.ug/land-busoga-women-deprived of land-rights-husbands-luuke/](https://nbs.ug/land-busoga-women-deprived-of-land-rights-husbands-luuke/)

Publisher’s Note:

IRPG remains neutral with regard to jurisdictional claims in published maps and institutional affiliations. The statements, opinions, and data contained in all publications are solely those of the individual author(s) and contributor(s) and not of IRPG and/or the editor(s). IRPG disclaims responsibility for any injury to people or property resulting from any ideas, methods, instructions, or products referred to in the content.