

Conflict Management Strategies Employed in Dealing with Cooperative Land Conflicts in Kiambu County Kenya

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Abstract:- Conflicts over land have been a major issue in many societies not only in Kiambu county but in other parts of Kenya as well as the rest of the world. The study was underpinned by the Conflict management theory. This study adopted a descriptive research design. The study was conducted in Kiambu County which has 12 sub-counties in which the study was conducted. The study found that the key strategies used in the management of conflict included courts, mediation, negotiation, arbitration and community mobilization. The study concluded that there were efforts in terms of strategies being put in place to manage cooperative land conflicts and these efforts were mainly fronted by the land buyers and tenants. The study recommended that the government, through the ministry of lands, should carry out mass sensitization on lands and land transactions.

Keywords:- Conflicts, Cooperatives, Conflict Management.

I. INTRODUCTION

Conflict tends to favor the powerful and wealthy, as these groups generally have better access to the information and resources needed to sustain and resolve land-related conflict. Given that conflicts over access to land are frequently linked closely to issues of identity such as ethnicity, they can easily escalate into larger clashes with damaging and far-reaching political, social and economic consequences (FAO, 2009). Where there are many land conflicts, social stability within society is affected as land conflicts undermine trust and increase fear and suspicion. Other consequences of land conflicts include unorganized, unstructured land development and the subsequent additional costs for infrastructure provision. The costs of these have to be borne by the entire society.

It is against this backdrop that this study aimed at investigating the management strategies affecting cooperative land conflicts with key focus being looking at cooperative land conflicts, the specific management strategies as well as the challenges facing management of cooperative land conflicts. Conflict management strategies are nonviolent processes that promote dialogue and negotiation with the aim of solving a disagreement and rebuilding trust and ultimately,

preventing the occurrence of conflicts in the future. The research sought to assess the state of cooperative land conflict management and resolution processes with a view of informing policy formulation and implementation in support of the best and most convenient conflict management strategies.

II. THE ORETICAL FRAMEWORK

The study was underpinned by the Conflict management theory. The theory is a classical psychology theory that views violence as in-eradicable consequence of differences of values and interests within and between communities (Hamad, 2005). It regards solving such conflicts as unrealistic, and argues that conflicts can only be managed and contained. A compromise may occasionally be reached. The assumption here is that conflicts are irresolvable and that handling them is limited to containing and ending them (Hamad, 2005). Hamad (2005) argues that conflict management primarily focuses on armed aspects of conflict striving to end them and limiting their spread and thus containing it. Conflict resolution goes a notch higher, as it expects the parties to face jointly an incompatibility and find a way to live with it or dissolve it. Conflict management, is therefore looked at as a less advanced method in comparison to others in dealing with conflict.

On the contrary, other theorists believe it is possible to eliminate conflicts which could be followed by later stages. Hamad (2005) distinguishes between settlement of conflict and resolution of conflict. He defines a conflict as settlement if the outcome entails a loss for one side and gain for the other, or a compromise in which all or some of the parties are losers to some degree. On the other hand conflict is resolved if the outcome fully meets the needs and interests of all the parties concerned. This situation occurs where the parties agree to exploit and share a resource in such a way as to completely satisfy everyone's values and interests if the outcome fully meets the needs and interests of all parties concerned.

Critics of the conflict management theory argue that the aspects of containment and suspension of violence are an exaggeration of the realism view. The theory assumes that conflicts are irresolvable or very difficult to resolve, or rarely

solved. It is also pessimistic in its attempt to argue that only containment and suspension of violence are possible and realistic. It is also unrealistic in the sense that containing or suspending conflict does not actually deal with the root cause of the problem and hence the underlying causes in the long run may erupt into fresh conflict in due course. According to Hamad (2005) conflict cannot be contained for long and this calls for other strategies to deal with the problem.

III. METHODOLOGY

This study adopted a descriptive research design. The study was conducted in Kiambu County which has 12 sub-counties in which the study was conducted. The study population included Kiambu county, non-residents who have in the past purchased or leased land from land cooperatives or sold land to cooperatives, County Executive Committee Member in charge of Lands, Physical Planning and Housing, department of Lands, Physical Planning and Housing, magistrate/judge in charge of land cases and the sub-county administrators. Specifically, the study sought information from magistrate/judges since they are in many ways involved directly in cooperative land conflict management where they are based or operate. The study further sought responses from the County Executive Committee Member and the Department of Lands, Physical Planning and Housing since they are directly involved in handling land matters in the whole County

and information from them will be of importance in understanding management strategies affecting cooperative land conflicts. Sub-county administrators provided information with regard to administration, conflict management and resolution, security, law and order as well informal conflict management strategies employed in dealing with cooperative land conflicts. Officials from land cooperatives that operate within Kiambu County provided vital information regarding cooperative land conflicts, the strategies employed in handling these conflicts as well as the various challenges that these strategies face. The study employed both probability and non-probability sampling techniques. The study had a sample population of 384. Data was collected using questionnaires, key informant interviews and Focus Group Discussions. Quantitative data analysis was done using SPSS version 20 and was then presented in form graphs, charts and tables. Qualitative was analysed thematically and presented inform of narrative reports and verbatim quotations.

A. Presence of Efforts in Terms of Strategies Being put in place to manage cooperative land conflicts

The study first sought to find out whether there had been any efforts made to manage cooperative land conflicts in the area. The results are presented in Table 4.1 below.

Yes 200						No 65
	Land buyers/tenants	Land cooperatives	Local administration	National government	The community	Others
	84	13	13	13	17	58

Table 1:- Efforts being put in place to manage cooperative land conflicts (Source: Researcher, 2018)

It was established that there were efforts in terms of strategies being put in place to manage cooperative land conflicts. This was according to 200 respondents, with 65 noting that there were none. Of those who noted that there were efforts, 84 cited buyers and tenants as the key players in the implementation of these strategies. 13 mentioned land cooperatives, 13 mentioned local administrations, 13 mentioned the national government while 58 mentioned council of elders, courts, and land related tribunals and nyumbakumi initiatives.

Participants in the focus group discussion were in agreement as they mentioned land buyers and tenants as the key players in implementing strategies meant to manage cooperative land conflicts. Other institutions mentioned included the national land commission, courts, local administration made of chiefs, village elders and sub-county head and community policing groups. Sub-county administrators noted that they had played major roles in implementing strategies for managing land conflicts.

We as administrators at the county level have played a key role in managing these conflicts because of our roles in maintaining law and order as well as administration. We have implemented strategies in partnerships with land cooperatives and ministry of land officials to ensure that no conflicts occur, while those that occur, we ensure that we address them.

It is therefore clear that efforts were being put in place to manage conflicts and the key players in this process were the land buyers and tenants, local administration, land officials and legal justice systems of the courts.

B. Type of strategies

It was necessary for the study to find out what kind of strategies had worked best in managing cooperative land conflicts. The study also sought to establish the rating of the success of each of the strategies mentioned. Informal strategies are processes and means initiated by a community when the community prefers handling a conflict within the community without seeking legal or formal input. Formal strategies are extensive rights-based land conflict mediation

processes that are supported by legal basis and in most cases, a standard, written down procedure. The results are presented in

Formal strategies	140	Very successful	15
		Successful	101
		Neutral	24
		Unsuccessful	0
		Very unsuccessful	0
Informal strategies	58	Very successful	11
		Successful	36
		Neutral	11
		Unsuccessful	0
		Very unsuccessful	0

Table 2:- Types of strategies that have worked best and rating of their efficiency (Source: Researcher, 2018)

The study established that formal strategies had worked better than the informal strategies. Formal strategies were cited by 140 respondents while informal strategies were cited by 58 respondents. Of those who cited formal strategies, 15 noted that these strategies had been very successful, 101 noted that they had been successful while 24 gave a neutral opinion. Of those who mentioned informal strategies, 11 noted that they were very successful, 36 noted that they were successful while 11 expressed neutral opinion.

On their part, participants in the focus group discussion also noted that formal strategies had delivered better results than the informal strategies, noting that most formal strategies had been very successful as informal strategies were in most cases ignored by some parties, unlike formal strategies such as the use of courts. Similar sentiments were shared by sub-county administrators, one who noted that;

Formal strategies such as the use of courts, tribunals or mediation by government officials have been more successful than any other means since most people fear and respect the government, unlike those informal means where some people lack respect and ignore procedures since there is nowhere they can be taken to.

The study therefore deduced that formal strategies had been more fruitful than the informal strategies as mentioned by respondents across board. This was supported by the fact that with formal strategies, people expressed fear and respect for institutions involved such as courts and tribunals, unlike in informal strategies, where people blatantly ignored and overlook processes and procedures.

C. Strategies used in managing cooperative land conflicts

The study sought to find out the most commonly used strategy in managing cooperative land conflicts. The results of this enquiry are presented in Figure 1 below.

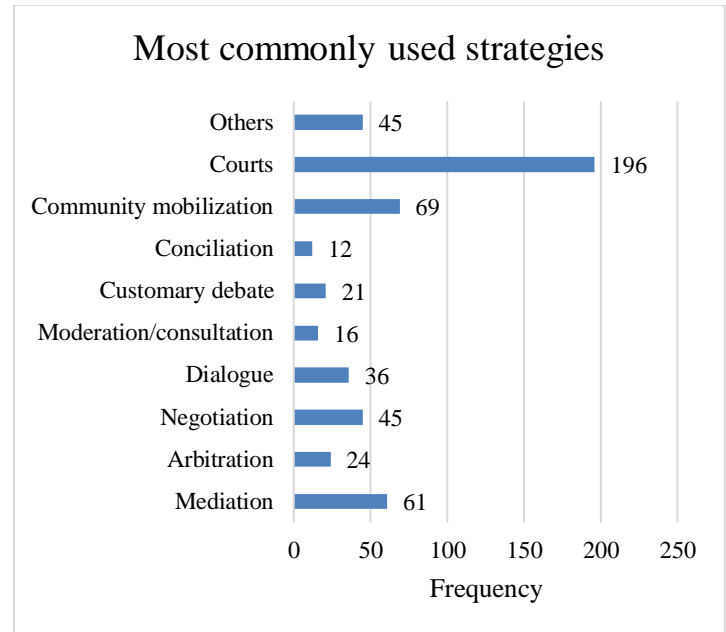


Fig 1:- Most commonly used strategies (Source: Researcher, 2018)

It was found out that courts were the most commonly used strategy in managing cooperative land conflicts. This was noted in 196 respondents. This observation is coherent with the earlier findings of this study that there is high preference for formal strategies such as courts in managing cooperative land conflicts. A total of 69 respondents mentioned community mobilization, 61 mentioned mediation, 45 mentioned negotiations, 36 mentioned dialogue, 21 mentioned customary debate, 24 mentioned arbitration while 12 mentioned conciliation. 45 respondents mentioned other strategies such as the use of police protection and intimidation to scare away intruders and those causing conflicts.

These sentiments were shared in equal measure by officials from land cooperatives, one who noted that;

The best method has been the use of courts. Court systems have been independent and partial and they have been used in the past to end conflicts by delivering justice. We have also had causes of mediation and negotiations, where officials from our organization have been part of these negotiations to end conflicts.

Consequently, members of the lands, planning and housing department at the county noted that court systems were the best sought after strategies as they were impartial and the only means to solve these conflicts.

Courts have worked best in the past. However, we have had tribunals and commissions taking part in negotiations and mediation. Local administrators like chiefs and elders have also engaged in community mobilization, held talks with aggrieved parties and managed these conflicts.

Therefore, it was clear that courts played a key role in managing conflicts. It is evident that respondents, land cooperatives and officials at the county expressed confidence in the courts in managing conflicts. However, this did not rule out the use of other strategies such as mediation, negotiation and community mobilization in managing cooperative land conflicts.

Among those who shared their experiences on how recent conflicts were managed, one of the respondents noted that;

Local authorities were involved; insights were made on paper to establish the rightful owner and with the help of records from the ministry of lands and the records from the cooperative. I was declared the rightful owner.

Others noted that the matter was settled in court after many years of engaging lawyers and land surveyors to establish the correct boundaries and prove ownership. Despite this taking long, the respondent noted that he was finally allowed to occupy his land. Similarly, one other respondent noted that a complaint was lodged at the cooperative regarding an intruder. The cooperative swiftly moved in and issued a title deed to the rightful owner to avert the conflict escalating.

Hoagland (2005) observes that the adversarial court system is expensive, disruptive and protracted. By its very nature, it tends to drive parties apart. He adds that these philosophically similar methodologies, which include various types of arbitration and mediation, have surged in popularity in recent years because companies and courts became extremely frustrated over the expense, time, and emotional toll involved in resolving disputes through the usual legal avenues. Cohen (2009) states that Alternative Dispute Resolution (ADR) is a wide variety of dispute resolution mechanisms that are short of or alternative to full scale court processes. It includes mediation, settlement of disputes, arbitration and other ways that are voluntary and not compulsory. Mauro (1993) contends that dispute resolution outside litigation is not new and that societies the world over have long used non-judicial, indigenous methods to resolve disputes. (USAID, 1998) shows that most countries of the world have adopted ADR mechanisms and achieved tremendous success in reducing backlog of court disputes and increasing access to justice for the poor.

Fiss (1984) contends that ADR in the United States was launched in the 1970s beginning as a social movement to resolve community wide civil disputes through mediation and as a legal movement to address increased delay and expense in litigation from overcrowded court system. ADR has since grown from experimentation to institutionalization with the support of the American Bar Association, academics, courts, the United States Congress, and the state governments. Fiss (1984) states that many developed and developing countries have gained tremendous success in reducing backlog by

adopting ADR. Disposal of suits/litigation through ADR is bound to enhance the quality of social justice and thereby contribute to the promotion of harmony and peace in society, both of which are pre-conditions for meaningful development in social, cultural economic and other spheres per Fissian school of thought which argues that mediation, conciliation/reconciliation, arbitration and other forms of ADR are important vehicles for promoting social harmony.

In Rwanda offences against property committed during and briefly after the genocide in Rwanda are dealt with at traditional courts, so called GACACA courts, at the local level. It would, however, have taken over 200 years to deliver this justice had Rwanda relied on the conventional court system (Clark, 2012). So, in response, Rwanda decided to implement a reconstituted form of the GACACA court system, which has evolved from traditional, cultural communal law enforcement procedures. In addition, the Government categorized the genocide related crimes into four categories (Clark, 2012). Category 1 included the 'planners, organizers, instigators, supervisors and leaders' of the genocide, and only cases falling under this category are tried in the conventional courts.

Categories 2-4, where involvement was slightly less serious, are tried in GACACA courts. Category 4 exclusively encompasses persons who committed offences against property – including land. These land-related cases are dealt with at the lowest of four levels (cellule level) where GACACA courts have jurisdiction (cellule, secteur, commune, and prefecture) (Mensa, 2008). The current Rwandan GACACA court system, as established in March 2001, involves both plaintiffs and witnesses in an interactive court proceeding against alleged criminals who took part in the genocide. The Government of Rwanda believes that involving the entire population in the trials can contribute significantly to reconciliation (Baka, 2013). The process revives traditional forms of dispensing justice based on Rwandese culture, and it demonstrates the ability of local communities to solve their own problems. However, as the first judgment of a GACACA court only took place on March 11, 2005, hardly any information is available so far on how the system is working (Clark, 2012).

According to USAID (1998) ineffective means for dealing with conflicts leads to wasted resources, social instability, reduced investment, chronic underdevelopment, and loss of life when conflicts escalate. Our adversarial legal system encourages two diametrically opposite and polarized positions. Costs in terms of money and time are invariably out of proportion to the subject matter or judgment in dispute.

In the recent years, there have been increased efforts towards reliance on informal conflict management mechanisms due, in part, to lack of faith in the judiciary and the sheer expense of court procedures (Juma*et.al.*, 2018). The use of informal methods has increased especially on conflicts

relating to land. The government has recognized the value of these traditional processes and has provided logistical and administrative support to enable them to respond to conflict situations in the conflict prone areas (GOK, 2009).

In the Rwandese system the Abunzi are mediators who have been key in the process of conflict resolution. They are elected initially for a period of two years and must be residents of the same Cell as the people whose conflicts they seek to resolve. They are required to be people of integrity and should be widely acknowledged for their mediating skills (ROR, 2014).

Kamoet (2011) argues that There is no doubt that Mediation and Arbitration in Zambia have been warmly embraced by the Bench, the Bar and, indeed members of the public in general, he further argues that the use of Mediation and Arbitration has to some extent contributed over the years, to the reduction or decongestion of backlog of cases seized by trial courts. A good number of cases filed in the High Court and the Industrial Relations Court have been and continue to be referred to Mediation and Arbitration.

He further argues that says that Many African citizens have lost faith in the ability of their nations' courts to provide timely or just closure to their grievances. In Nigeria for instance , since the creation of the pioneering Lagos Multidoor Courthouse and its ADR Center in 2002, disputing parties now have the option of choosing among court-connected alternative methods to resolve their disputes, including the Lagos State Ministry of Justice's restructuring and capacity.

Juma(2010) argues despite the fact that there are benefits that are derived from the formal judicial process, it is important to note that the alternative dispute resolution mechanisms are key in the processes of conflict resolution globally. ADR are key in the resolution of land conflicts as they give the both sides of the conflict a chance to put their arguments into perspectives.

According to Muigua (2014) the right of access to justice enshrined in chapter 4 of the bill of rights in the Kenyan Constitution can be actualized through ADR. Recognition of ADR and traditional dispute resolution mechanisms is thus predicated on these cardinal principles enshrined in Article 159 (2)(c) to ensure that everyone has access to justice (whether in courts or in other informal fora) and conflicts are to be resolved expeditiously and without undue regard to procedural hurdles that bedevil the court system (GOK, 2010).

At the end of the year 2014 there were 7 Supreme court judges, 26 court of appeal judges, 70 high court judges, 15 land and environment court judges and 12 employment and labor relations court. There were 457 magistrates (GOK, 2015). Further, the court of appeal has established circuits in Nakuru, Eldoret, Busia, Kisii, Bungoma, Meru and Mombasa (GOK, 2015). However, the number of magistrates and judges

is still low compared to the general population and the disputes taken through the court for adjudication (GOK, 2015).

The challenges listed above led to accumulation of pending cases and rising case backlog in courts. A case audit conducted across the courts between December 2013 and January 2014 revealed an increasing case load in the Judiciary. As at 30th June 2013, the number of pending cases in all courts stood at 426,508, out of which 332,430 were civil and 94,078 were criminal. Magistrates Courts had the largest number of pending cases at 276,577, followed by the High Court (145,596), the Court of Appeal (4,329), and Supreme Court (6). This implies that, on average, and without admitting new cases, the Judiciary required three years to clear all the case in the courts. In this regard, the High Court required 13 years, Magistrates Courts required two and a half years and Kadhis' Courts required two years to clear the pending cases. This implies a need for innovative measures for expediting disposition of cases (ROK, 2014).

In the new sustaining judicial transformation framework, Court annexed mediation was launched in the Family and Commercial Divisions of the High Court of Kenya (ROK, 2017). The Mediation Accreditation Committee (MAC) was established under section 59A of the Civil Procedure Act (Chapter 21, Laws of Kenya) and consequently appointment of Committee members was made by the Hon Chief Justice through Gazette Notice No 1088 in the official Kenya Gazette (ROK, 2017). Chaired by the Chairman of the Rules Committee, Hon Justice Alnashir Visram (JA), MAC is charged with the mandate to inter alia maintain a register of qualified mediators. The register also forms a pool from which mediators are nominated and appointed to take part in the ongoing Court-Annexed Mediation Pilot Project (ROK, 2017). The mediators are selected from interested applicants who meet Accreditation Standards set by the Committee. The process of accreditation is open and ongoing. Qualified and interested mediators are encouraged to apply (ROK, 2017). Different conflict management strategies yield different results and this is based on their advantages and suitability to all the parties in the conflict. This research established that formal strategies had worked better than informal strategies with courts bearing more success than any other strategy.

IV. CONCLUSION

The study concluded that there were efforts in terms of strategies being put in place to manage cooperative land conflicts and these efforts were mainly fronted by the land buyers and tenants. It was concluded that formal strategies were working best since they were noted to be successful. Among these formal strategies was the use of courts which was the most commonly used strategy.

RECOMMENDATION

The study recommended that the government, through the ministry of lands, should carry out mass sensitization on lands and land transactions. This can be done through audio, visual and print media, road shows and campaigns as well as workshops and seminars. The study recommends that these campaigns be administered to the local level too. This would go a long way in educating and sensitizing the public on the different land legislation, land transaction processes as well as conflict management in case conflicts emanate.

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