TRADITIONAL GOVERNANCE JUSTICE SYSTEM IN RESOLVING DISPUTES WITHIN THE AMERU PEOPLE OF KENYA

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ABSTRACT

Purpose of the study: The study aims at investigating the contributions of councils of elders to the resilience of traditional justice system in Kenya and in particular, the *Njuri Ncheke* of Meru in governing Meru community. The guiding research questions were: What role does traditional justice system play in reconciliation and promotion sustainable peace in Meru community? What is the influence of Njuri Ncheke council of elders in governing the contemporary society in Meru community? What is the role of Njuri Ncheke in governing matters of land disputes in Meru community? What is the relationship of traditional justice system with modern justice system in Meru community? What is the role of Informal Justice Systems in strengthening access to justice through traditional justice system in Meru community?

Problem statement: In spite of this apparent resilience of *Njuri Ncheke* in Meru Community, there has not been any systematic investigation to unearth the phenomenon. The contributions of councils of elders to the resilience of traditional justice system in Kenya and in particular, the *Njuri Ncheke* of Meru in governing Meru community is key in this study.

Study Methodology: The research was conducted in Meru and Tharaka Nithi Counties and through purposeful sampling had one case study of the Njuri Ncheke council of elders. Data was collected using guided interviews and semi structured questions. The data was collected through a focus group discussion, documents and audio-visual materials. The interest of the researcher was guided by the need to collect in depth data essential to qualitative research. The study examines the literature review to understand the relationship between the traditional justice system and modern justice system in the Meru community. The theoretical framework is anchored on the traditional justice theory and conflict resolution mechanisms and institutions in resolving conflict in governing the Meru community today.

Results of the study: Findings indicated that *Njuri Ncheke* was viewed as an effective and fair traditional justice system and institution in resolving inheritance related conflict because there was room for appealing to a higher court in case any party was not satisfied with the judgment.

Keywords: *Traditional justice system, resolving disputes, governing, Ameru people*

1.0 INTRODUCTION

Ameru have had an indigenous institution called Njuri Ncheke council of elders. (Kangoi, 1974) argues that Njuri Ncheke council formed an effective government that kept law and order and settled disputes among the community. After independence, the government took over the role of maintaining law and order and settling disputes through the court system. The greater Meru region has since been sub-divided into two counties Meru county and Tharaka Nithi county. All the counties are sub divided into sub counties and then into districts. All the Districts have an administrative office led by District Commissioner who chairs the District Security Council. Each district has a functional judicial system. However, communities have experienced unending conflicts spanning a decade despite existence of institutions that ought to have solved the conflicts. It is therefore clear that conflicts are unique with deep rooted causes that require careful analysis and resolution. Before the advent of colonialism communities living in Africa and Kenya in particular had their own conflict resolution mechanisms. Whenever a conflict arose, negotiations could be done. In other instances the elders such as the council of elders or the elderly men could act as third parties in the resolution of the conflict. Moreover, disputants could be reconciled by the elders and close family relations and advised on the need to co-exist harmoniously. As such traditional conflict resolution mechanisms were geared towards fostering peaceful co-existence among the Africans. Muigua and Kariuki (2012) argue that traditional conflict resolution mechanisms have been very effective in resolving conflicts especially natural resource-based conflicts among the pastoralist communities in Kenya. Such conflicts are intractable with complex cultural dimensions and the formal mechanisms of conflict management may not address the underlying causes of the conflict. Traditional justice mechanisms are flexible, cost-effective, and expeditious, foster relationships, are non-coercive and result in mutually satisfying outcomes. They are thus most appropriate in enhancing access to justice closer to the people and help reduce backlog of cases in courts.

Pkalya et al. (2004) argue that customary indigenous governance mechanisms can provide a solid framework for building a community's conflict resolution mechanisms, enhancing local people's potential and rediscovering elders' wisdom, knowledge and other resources. Pkalya et al. (2004) cite the case of pastoralists' conflicts over the control, use and access of pasture, grazing land and water resources have been contained largely by the existence of a strong traditional natural resource governing mechanisms such as the elders.

Traditional conflict resolution structures are closely bound with sociopolitical and economic realities of the lifestyles of the African communities. These conflict resolution structures are rooted in the culture and history of African people, and are in one way or another unique to each community. Owasanoye (2001) argues that resolution of disputes was a major function under the indigenous system of governance. The importance of the role of culture in conflict resolution and governance has become increasingly more prominent. In particular, one growing school of thought argues that indigenous cultural practices and traditional structures of leadership have a vital role to play in the building of sustainable peace in Africa. This is the traditional form of government by selected elders called *Njuri Ncheke*. Its culture and tradition has not drowned in modernity and popular lifestyles and there has been a sense of balance between the modern and the traditional propagated by the council of elders. *Njuri Ncheke* is an undying religious and social institution whose influence has increased in the context of a dynamic society.

Despite the clear evidence of resilience of the council in Meru community, no academic study has focused this compounding phenomenon hence the need for the study. The questions guiding the study are: 1 What is the relationship of traditional justice system with modern justice system in Meru community? 2 What is the role of Njuri Ncheke in governing matters of land disputes in Meru community? 3 What is the role of Informal Justice Systems in strengthening access to Justice through traditional justice system in Meru community? 4 What is the role of Njuri Ncheke in governing matters of land disputes in Meru community?

2.0 BACKGROUND OF THE STUDY

Council of elders *is* a common institution in almost all communities in Kenya. Their role differed from community to community ranging from cultural, economic, socio-political organization to conflict management in the community. Kameri-Mbote (2012) argues that the first point of call when any dispute arises in a community and since most Kenyans lives are closely linked to environmental resources; it is not surprising that most of the issues the elders deal with are those that touch on the environment. It is acknowledged that traditional justice systems play a major role in resolving many other conflicts including environmental conflicts. Research has however not been able to document the effectiveness of these mechanisms in resolving environmental conflicts in governing Meru community.

This research therefore attempts to fill some gap and documents on the effectiveness of traditional justice systems in resolving community conflicts in governing Meru community. The research focuses on various traditional justice systems that deal with environmental conflicts and further assesses the level of usage of these mechanisms and finally explores whether this mechanisms actually assist in access to justice or if the obstruct the access to justice in environmental conflicts and community governance.

In the Traditional system of justice, traditional power structures, in their bid to offer conflict resolution on property inheritance, offer numerous inherent opportunities that can be used in contemporary conflict resolution on property inheritance. Myers and Shinn (2010), argue that, the fact that traditional justice systems are informal, cost-effective, and expeditious offers an opportunity for them to be used profitably by the African communities. These scholars argue that, parties often sit together and resolve their dispute within a sitting or two. They also contend that, normal justice processes involve complex and technical procedures that consume a lot of time and resources. This makes the poor clients unable to access the justice systems since they cannot afford. They further claim that those living in poor rural areas and informal settlements in urban areas get the informal judicial system to fill the void. Rautenbach (2010), in support of this argument, gives an example of South Africa where traditional leaders have been given authority to try both civil and criminal matters, yet most disputes are resolved unofficially.

The other opportunity in traditional African Justice System is its focus on social harmony. According to Myers and Shinn (2010), it focuses on the restoration of social harmony and social bonds between disputants unlike the formal mechanisms which are destructive and leave wounds unhealed while causing new ones. Myers and Shinn (2010) contend that the Western Justice System is in principle very different from the African justice System. They further claim that Western system is individualistic, retributive and emphasizes a winner loser paradigm in resolution of disputes (Myers & Shinn, 2010). As regards Traditional Justice Theory, before the advent of colonialism the communities living in Africa had their own conflict resolution mechanisms. Those mechanisms were geared towards fostering peaceful co-existence among the Africans. Existence of traditional conflict resolution mechanisms such as negotiation, reconciliation, mediation and others is evidence that these concepts are not new in Africa. Conflict resolution among the traditional African people was anchored on the ability of the

people to negotiate. However with the arrival of colonialists came the common law that brought with it the court system which, being adversarial greatly eroded the traditional conflict resolution mechanisms. The court system is the main conflict resolution mechanism in Kenya today. There are however many barriers to accessing justice through the court system including, among others high fees, complex rules of procedure, geographical location of courts that does not reflect the demographic dynamics, cultural, economic and socio-political orientation of the society, lack of financial independence and selective application of laws. For Constitutionalisation of Traditional Justice System, the Constitution has an unprecedented inclusion of Article 44 (1) which provides that 'Every person has the right to use the language and to participate in the cultural life, of the person's choice' and Article 159 (2) (c) provides that 'alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute mechanisms shall be promoted. These articles begin to form the Constitutional framework for Community Justice Systems which are culturally based and act as an incentive to negotiate cultural justice notions with those who do not belong to that particular cultural heritage (The Constitution of Kenya, 2010).

A look at how the Traditional Justice Systems work complies access with justice has been defined as the people's ability to effectively arbitrate disputes through both formal and informal mechanisms. In rural areas, customs and tradition still regulate day to day life and as such most people living in rural areas only access justice through informal justice systems. In most African countries, the formal (state) justice systems function alongside the Traditional and informal justice systems. Formal justice system is tied to the legal traditions and values inherited from the colonial past, the English common law system in East Africa and parts of central Africa. Traditional systems are tied to the traditions and values passed down from generation to generation as customary law regulating life in the village communities. Informal systems are non-state justice systems like the Alternative Dispute Resolution fora established by the non-governmental organizations or faith based groups.

Orji, and Olali, (2010) observes that traditional institutions refer to the indigenous political arrangements whereby leaders with proven track records are appointed and installed in line with the provisions of their native laws and customs The essence of the institutions is to preserve the customs and traditions of the people and to manage conflicts arising among or between members

of the community by the instrumentality of laws and customs of the people. As for the Council of Elders and Local Elders, in almost all communities, the institution of Elders exists. Kameri-Mbote (2012) argues that ordinarily the first point of call when any dispute arises in a community and since most Kenyans' lives are closely linked to environmental resources and community governance. It is not surprising that most of the issues the elders deal with touch on the environment. Points out that operations of elders' courts are ad hoc and typically involve only older men excluding women and youth. The procedures may lead to trampling upon people's human rights yet people accept these and can explain and rationalize it.

The Meru community has since the 17th Century been governed by elected and hierarchical councils of elders from the clan level right up to the supreme *Njuri Ncheke* Council. The council has its seat at *Nchiru* and is the only traditional judicial system recognized by the Kenyan state. The *Njuri Nceke* is composed of male subjects who are elders by virtue of their age and have gone through formal initiation into this council of elders. The *Njuri Nhceke* adjudicates cases where there is harm occasioned against a victim who then seeks justice against the offender. The ultimate aim in settling cases in the Meru community is promoting reconciliation. In minor cases, parties are required to discuss the case and reconcile on reaching a settlement. However, if they disagree, the *Njuri Nceke* is approached to adjudicate the matter. The practice is that once a date is set for hearing the matter, then all the members of *Njuri Ncheke* are duly informed and called upon to attend. In effect, the *Njuri Ncheke* is akin to a pool of judicial officers who are routinely called upon to adjudicate over matters. Sarah Kinyanjui (2015) argues that the significance of the *Njuri Ncheke* in the administration of justice lay in the challenge posed to the elders during initiation to promote cohesion within the community. The outcome of all cases adjudicated upon by *Njuri Ncheke* is always geared towards promoting unity in the community governance.

3.0 RESEARCH METHODOLOGY

In this research the first stage involved conducting a documentary analysis by defining key words related to traditional justice system in governing Meru community. The research paid attention to traditional justice system. The study details the traditional conflict resolution mechanisms and institutions among various traditional African communities and their relevance in Kenya today. The study argues that these conflict resolution structures and institutions are rooted in the culture and history of African people, and are in one way or another unique to each

community. The overriding legitimacy and resilience of traditional conflict resolution structures amongst these communities justifies an inquiry on how they can be adapted to resolve environmental conflicts under modern law and governance.

The second stage was to review key documents on use of this research therefore attempts to fill some gap and documents the effectiveness of traditional justice systems in resolving environmental conflicts and governance in Meru community. The research focuses on various traditional justice systems that deal with environmental conflicts and community governance and further assesses the level of usage of these mechanisms and finally explores whether this mechanisms actually assist in access to justice or if the obstruct the access to justice in environmental conflicts. However, the historical background to this study took a global approach to how different studies, international conferences and modern justice systems have used justice to mean many things. This study discusses why it is necessary to use traditional justice system as a core concept in lifting those marginalized to positions of power, authority and control in justice system.

This study used both primary and secondary data sources. Primary data was collected by the use of questionnaires from the *Ameru* Elders (*Njuri Ncheke*). Data was collected using guided interviews and semi structured questions. The interest of the researcher was guided by the need to collect indepth data essential to qualitative research. Tangaza university library, Hekima College Library Nairobi and St. Joseph's seminary library in Langata were used and helpful in the study.

In the secondary data the research used the Tangaza University OPAC bibliographical search engines for the most important collections and databases. Mendeley reference manager and JSTOR provided the main online bibliographical documentation work. The online search engines connected with United Nations, UNDP, US Congress Library, Sage Publications, Taylor & Francis Online Journals, SAGE Journals, Taylor & Francis, SpringerLink, Wiley Online Library, Directory of Open Access Journals (DOAJ), Emerald Journals (Emerald Group Publishing), Oxford Journals (Oxford University Press), Academic Law Reviews (LexisNexis), PMC (PubMed Central), Cambridge Journals (Cambridge University Press), Ingenta Connect, IEEE Conference Publications, SciELO Brazil (Scientific Electronic Library Online), NDLTD Union Catalog and Springer Link Open Access. A systematic search was also carried out using other

reference materials came from the *Documents from journals.* (History of Meru on Blog). *The* Google Scholar and Google Books guided in accessing current empirical data.

After making an extensive review of these materials, there was a careful selection of those documents that deal specifically with traditional justice system in general and why scholars are coming out to challenge what is presented on the challenges of traditional justice system. This was done by analyzing, the papers, documents dealing with traditional justice systems**,** and also careful analysis of the *Njuri Ncheke,* role of Informal Justice Systems in Strengthening access to justice, indigenous social control institutions, indigenous institution (Njuri Ncheke) council of elders in conflict resolution, indigenous institution the "Njuri Ncheke" of Meru and land matters, relationship of the traditional methods of justice and modern court processes. This study used an in-depth approach to gain insight into the opportunities inherent in the traditional power structures in resolving conflict on property inheritance in Meru County, Kenya.

The Ameru form part of the Eastern Bantus. They are made up of the Igembe, Tigania, Imenti, Mwimbi, Muthambi, Tharaka and Chuka sub-ethnicities. They occupy the North Eastern slopes of Mt. Kenya. Their land is drained by eastward flowing streams which form rivers of various sizes (Nyagah 1998). The Tigania and Tharaka of greater Meru region migrated together and have long historical ties. They occupy today's Tigania East, Tigania West and Tharaka Districts. They have coexisted peacefully through their indigenous institutions, government of council of elders called Njuri Ncheke. The Njuri Ncheke handled day to day matters of the communities and specifically paid attention to settlement of disputes arising from border disputes, criminal cases and all matters of justice (Rimita, 1988). With the introduction of colonial system of government, the greater Meru region like other parts of the country has been administered through the central government. However, the last ten years people have witnessed bloody conflicts between the Meru communities especially in the area occupied Tigania and Tharaka.

This study was carried out in Meru and Tharaka Nithi Counties, which are located in the former Eastern province of Kenya or the current Mt Kenya East region and it targeted *Tigania* Sub-County which was sampled purposively. The researcher used key informants, affected households and focus Group Discussions in Tigania Sub-County which was chosen because it has more activities of *Njuri Ncheke* compared to the other sub-counties of Meru evidenced by the fact that it hosts the *Njuri Ncheke* headquarters. Additionally, there are many land disputes

resulting from incomplete land adjudication process, which has seen many residents of *Tigania* Sub-County without title deeds. *Njuri Ncheke* the council of Elders in Meru County deals with these inheritance cases.

4.0 FINDINGS FROM LITERATURE REVIEW

4.1 Existence and nature of traditional justice systems in community governance in governance Meru community.

What is the existence and nature of traditional justice systems in community governance? In the cases studies done, traditional justice system stand out as common frameworks for tradition knowledge protection. Traditional justice system are part of the customary governance or legal systems of traditional knowledge holders and, in this study, they are conceptualized in a broad and encompassing context, as the laws, customs, traditions, and institutions or structures such as council of elders like Njuri Ncheke existing among communities. In all the case studies, Traditional justice system are comprised of respected people as the custodians of knowledge, culture, traditions and community values. Kamwaria et al, (2015) argue that the wealth of knowledge that traditional justice system institutions such as the *Njuri Ncheke* hold, enables them to play a crucial role in the devolved government and community governance, especially in regard to conflict resolution, environmental conservation, education and development, among other roles. The continued use of traditional justice system in the settlement of disputes, natural resource governance, assigning rights to resources, determining political leadership and maintenance of law and order evidences their resilience and popular support among communities, thus making them appropriate regulatory frameworks.

In the Meru and Mijikenda case studies, it is commonplace for those vying for political positions to seek the endorsement of the *njuri ncheke* and *kaya* elders, respectively. Similarly, continued reliance on traditional justice system in developing community bio-cultural protocols, in granting free prior informed consent (FPIC) (in the Ogiek case study), and in the inventorying of traditional knowledge and traditional justice systems especially (in the Meru case study), attests to their resilience and legitimacy in society. Moreover, in all case studies, government agencies are relying on traditional justice system to govern access, use and management of resources. Likewise, CSO actors recognize the existence and role of traditional justice system in their work of documenting traditional knowledge, reviving traditional knowledge holder's ecosystems and

traditional justice system systems, developing bio-cultural protocols and in seeking justice. Traditional justice system is recognized as a form of government, with legislative, executive and adjudicative arms. For instance, the *njuri ncheke* elders were described as the 'overseers of execution or implementation of community rules. They (*njuri ncheke*) 'made and executed community laws, listened to and settled disputes, and passed on indigenous knowledge and rites across the generations.

4.2 Role of Informal Justice Systems in Strengthening Access to Justice through traditional justice system in Meru community

What is the role of Informal Justice Systems in Strengthening Access to Justice through traditional justice system? Access to justice is a fundamental right for it's the only means that an aggrieved person is able to seek redress and attain justice for their needs. However the formal justice systems are sometimes in accessible, the rules of procedure too technical to be comprehended by the common people and cases take too long to be determined ultimately causing an injustice for justice delayed is justice denied. Traditional and informal justice systems become the alternative particularly in the rural areas and among disadvantaged urban communities. Traditional justice system approaches are accessible, culturally appropriate and tailored to the most common types of conflict in local communities, including inter-personal security; protection of land, property and livestock; and family and community disputes. Therefore they play a key role in strengthening access to justice in any state.

The Meru community have since the 17th Century been governed by elected and hierarchical councils of elders from the clan level right up to the supreme *Njuri Ncheke* Council. The council has its seat at *Nchiru* and is the only traditional judicial system recognized by the Kenyan state. The *Njuri Nceke* is composed of male subjects who are elders by virtue of their age and have gone through formal initiation into this council of elders. The *Njuri Nceke* adjudicates cases where there is harm occasioned against a victim who then seeks justice against the offender. The ultimate aim in settling cases in the Meru community is promoting reconciliation. In minor cases, parties are required to discuss the case and reconcile on reaching a settlement. However, if they disagree, the *Njuri Nceke* is approached to adjudicate the matter. The practice is that once a date is set for hearing the matter, then all the members of *Njuri Ncheke* are duly informed and called upon to attend. In effect, the *Njuri Ncheke* is akin to a pool of judicial officers who are routinely

called upon to adjudicate over matters. The significance of the *Njuri Ncheke* in the administration of justice lay in the challenge posed to the elders during initiation to promote cohesion within the Meru community. Kinyanjui (2010) argues that the outcome of all cases adjudicated upon by *Njuri Ncheke* is always geared towards promoting unity in the community.

On the day set for hearing the matter the *Njuri Ncheke* and the litigants congregated at a designated location. The victim sets out the facts of his claim and the accused person is given an opportunity to present his side of the story. The aim of the "hearing" is to determine whether an accused person did commit a wrong. A wrong is found to have been committed where the victim suffered harm, regardless of whether the accused had a guilty intent. Payment of compensation to the victim is normally the outcome of the hearing. Victim compensation principle underscores the centrality of restorative justice in the community. Through compensation, justice is seen to be done to the victim. As much as possible, the practice of compensation seeks to restore the victim. Kinyanjui (2010) argues that the compensation as acknowledgement of the wrongdoing done to the victim is restorative in and of itself; a sense of belonging is reaffirmed for the victim whose welfare is taken into consideration. At the same time, the offender is given an opportunity to make good his wrong by compensating the victim. This gave him or her opportunity to be restored back into the community. Restoration of community relations was important to offenders bearing in mind that they were part of a community that idealized community ties.

4.3 Indigenous institution (Njuri Ncheke) council of elders in conflict resolution in Meru community.

What is the concept of land among the Ameru people and their indigenous methods used by Njuri Ncheke council of elders in resolving conflict? In order to have a clear understanding on how Ameru resolved intra-ethnic land conflict, this part of the study will evaluate the concept of land among the Ameru people and their indigenous methods used by Njuri Ncheke council of elders in resolving conflict. This will assist in answering the question whether there is a need to synchronize the indigenous approaches with those of the church for a purpose of proper mitigation of intra-ethnic land conflict. The land of ancestry is a deep concept of identity that informs the politics of land in Meru. The Ameru people view land as a precious. According to Geschiere (2009), the idea of autochthony is an expression of the local born from the soil, which represents the most authentic form of belonging. The Ameru people and their attachment to land

define their concept of identity, ownership and territorial rights. This leads to conflict whenever their land is interfered with. Intra- ethnic land conflict calls for intervention and mitigation. According to Kangoi (1974), Ameru people of Meru Community had an indigenous institution called Njuri Ncheke council of elders.

Rimita (1988) argues that Njuri Ncheke handled day to day matters of the communities and specifically paid attention to settlement of land conflicts arising from border disputes, criminal cases and all matters of justice .The Njuri is the only traditional judicial system which is recognized by the Kenyan government. This council of elders deals with cultural issues like land and properties within the community. It is therefore considered legitimate and influential especially on issues of political decision making amongst the Meru people (History of Meru on Blog). The Njuri is also a custodian of commodity and this raises conflicting interest as they fight to possess it. They tend to protect land as they claim ownership and belonging. Meru traditional law and order which deals with land and property issues. The Njuri Ncheke council formed an effective government that kept law and order and settled disputes among the community. The mechanisms used to resolve disputes under traditional justice forum include negotiation, mediation, reconciliation, settlement, consensus approach and restoration. These mechanisms focus on restoring peace and maintaining social bonds. Since traditional or primitive societies have complex relationships, the social bonds and social capital help dispute resolution institutions with the help of council of elders.

4.4 Relationship of the Traditional methods of justice and Modern Court Processes

The question is what is the relationship of traditional justice system with modern justice system? Kariuki, (2013) argues that traditional dispute resolution mechanisms are all those mechanisms that local or rural communities or peoples have applied in managing disputes/conflicts since time immemorial and which have passed from one generation to the other. Traditional methods on community conflict resolution are still taking centre stage in some of the cultures in Kenya. Case study of *Njuri Ncheke* for the Ameru community in Kenya is going on and satisfactorily serving the people of that community. Fostering the use these traditional methods in cohort with modern court processes aids in keeping peace and harmony in our conflicting societies in Kenya. The study therefore sought to establish the relationship existing between traditional justice systems and modern courts systems. Both literature and the interviews indicated that there is a need for

reconciliation between the two types of institutions. This confirms the theory that given the socioeconomic problems associated with institutional fragmentation (parallel socioeconomic spaces), reconciliation of institutions seems essential for socioeconomic transformation in general and democratization in particular.

The research has identified several approaches to institutional reconciliation. At a grassroots level communities and individuals negotiate the parallel systems and choose different systems for different things to maximize benefits. (Kariuki, 2013) argues that at the state level, Ethiopia and Kenya have not undertaken a formal process of reconciliation, and fragmentation remains. In South Africa the process is still unfolding but it aims to involve traditional authorities in local governance. In Somaliland, with the traditional institution of the Guurti at the highest level of government, the approach is far-reaching, although it may have risks that this institution becomes more powerful than the democratically elected parliament.

Similarly, the Meru people have a shrine located at the heart of Meru territory where the Njuri Ncheke council of elders' usually sit and which is regarded as the hallmark of conservation and a symbol of culture and heritage. Notwithstanding the changes in time, the Njuri Ncheke continues to influence the community in political decision-making; promotion of peace, conflict resolution, reconciliation and environmental and heritage protection.

4.5 The Njuri Ncheke community-based mechanisms of social control in ways that were consistent with their traditional belief systems in Meru community.

How is traditional justice system consistent with traditional believe systems? Prior to the colonial-inspired systems of social control, the African societies had their own homegrown way of handling deviance and other anti-social behavior. In Kenya, many communities confronted waywardness through the authority of councils of elders that had powers to levy fines, demand community service, administer corporal punishment, or ostracize altogether. Finke, (2007) argues that the Meru tribe, for example, has a deeply rooted council of elders known as *Njuri Ncheke*, whose functions are "to make and execute tribal laws, to listen to and settle disputes, and to pass on tribal knowledge and rites across the generations in their role as the custodians of traditional culture". Brantley, (1978) argues that the Giriama tribe, developed a non-centralized leadership of a council of elders known as *Kambi,* whose oath and select membership were used to maintain order and determine guilt in difficult situations. Similarly, Orvis, (2006) argues that

the Luo community had the now-defunct Luo Union that "sought to forge and govern a broad-based cultural identity among a diverse *Dholuo*-speaking population" Many other large tribes such as the Kikuyu, the Kalenjin, the Maasai and the Kamba had varied community-based mechanisms of social control in ways that were consistent with their traditional belief systems.

During the group interviews, the informants who happened to be the council members themselves had the following views. They argued, that they are law custodian in Meru community they deal with settling land disputes and restore peace among Ameru people others agreed with same view and that they are trusted by the community because no one goes against the decree and the agreements kept in the traditional history of the people called Ameru. *Njuri Ncheke* is respected by the generations that comes and goes.

The Ameru people believe in 'Kiama'. The Njuri-Ncheke is a very honest organ. Their ways of handling land dispute is very transparent. They call parties involved and have people tell their story in front of them. The council also visits the area in question. They go to see the border under dispute. Apart from dealing with issues of land, the group handled day to day matters of the communities, including family issues such as marriages and criminal cases and all matters of justice with people involving individuals, clans or neighboring communities. For a long time, the Njuri men are considered being the only key and influential traditional judicial system in the region. Even the government entrusted them with matters of land. They have several ways and methods of dealing with disputes. Depending on cases, they use dialogue, negotiation, cursing, and oathing and instilling discipline to the offenders. Many cases from the court especially those involving un-adjudicated land disputes, family disputes, and boundary issues are referred to Njuri ncheke for settlement.

Agreeing with the above views those interviewed said that it is very true with what '*mutanobaa*' (my brother) said, they are ready all the time and very willing indeed when called to show and mark the land boundaries. May it be individuals, a clan or the entire Meru community because Njuri wants to see people stay in a peaceful atmosphere. Decisions made by Njuri Ncheke elders are final. This is because the judgments are absolutely right due to the way they employ community participatory mechanisms of solving disputes. Njuri Ncheke way of dealing with cases are so different because, methods such as; oathing, instilling discipline and even cursing if one is not accepting the truth can be seen anywhere else. The participatory nature of dialogue

and negotiation are ways of reconciling the parties involved in the conflict. Unlike today due to limited dialogue among many peace mission in the current generation within and between communities, is causing lots of tension in the community as the group is being affected by many issues.

4.6 Traditional justice system Njuri *Ncheke* of Meru in dealing with land disputes in Meru community

The question was what is the role of Njuri ncheke in governing matters of land? As noted above, the Ameru people of greater Meru region are believed in a mythical migration *Mbwa* where all the sub-ethnic tribe who migrated together has long historical ties. They occupy today's many parts of the current Meru County. The Ameru people have co- existed peacefully through their indigenous institutions, the government of council of elders called *Njuri Ncheke*. The indigenous institution called '*Njuri Ncheke council of elders', which is* a traditional governing body on matters of land. This council of elders consists only of knowledgeable men. The council has its headquarters at Nchiru market about 13 kilometers from Meru town. They have a membership of approximately five thousand who are spread across the region. Rimita (1988) the article argues that the indigenous institution plays the role in conflict resolution and maintenance of peace within and outside the community. Rimita, (1988) observes that Njuri Ncheke also handled day to day matters of the communities and specifically paid attention to the settlement of disputes arising from border disputes, criminal cases and all matters of justice. The Njuri is the only traditional judicial system which is recognized by the Kenyan government. This council of elders deals with cultural issues like land and properties within the county. It is therefore considered legitimate and influential especially on issues of political decision making amongst the Meru people. Rimita, 1988) states that Njuri Ncheke is also a custodian of Meru traditional law and order which deals with land and property issues

With the introduction of colonial system of government, the greater Meru region like other parts of the country has been administered through the central government. However, the region has witnessed land related conflict resulting to death and loose of property. Among the Ameru people, the land of ancestry is a deep concept of identity that informs the politics of land in Meru. The land is observed as a precious commodity where land is inherited in the male line and held by a corporate entity. Unless the land is sold, the ownership of land is inalienable from

clans. Under certain circumstances the ideology allows people to farm land belonging to their clan. Ideally, land is inherited in the male line, but the ideology allows a son to inherit land from his father. Each member of the community had a duty to protect the interests and property belonging to the community such that they will drive away strangers who came to their land. It is against this background that the understanding of the role and methods used by the traditional body *Njuri Ncheke* council of elders in dealing with land related conflict becomes of great significance to this study.

Njuri Ncheke of Meru being an indigenous institution in Meru region is considered a key traditional governing council in matters of resolving conflict. The respondents interviewed pointed out that *Njuri-Ncheke* is able institution involved in dealing with matters concerning land conflict, respondent expressed their views that majority of people have a lot of trust with the ways in which they handle disputes. Respondents also asserted that the member of indigenous institution respects the church. It came out clearly that *Njuri-Ncheke* council of elders' ways and mechanisms used in mitigation of land conflict are: oathing, dialogue and instilling discipline.

The study revealed that *Njuri Ncheke* plays a central role in resolving land conflict. The study established that the Meru council of elders is an able institution when it comes to conflict resolution and promotion of peace. *Njuri Ncheke's* effectiveness due to positive features because majority of people trust and believe in its structures and strategies employed to resolve land conflict. Also the study established that Njuri Ncheke respect the church. The study revealed that this indigenous institution the *Njuri-Ncheke* council of elders has key methods used in solving land conflict such as oathing, dialogue and instilling discipline. These are key mechanisms of land conflict that tend to attracting participatory of people or community involved in conflict. This was revealed during interviews where informant when responding on the role of indigenous institution (Njuri) on issues of land. The Meru community, even prior to the advent of the western colonial rule, had their own institution as well as practices and rituals that guaranteed social harmony between the communities. This was also echoed by another informant who added that *Njuri Ncheke* was and still is very able in dealing with land conflict. The study revealed that Meru council of elders had several ways of resolving land conflicts by using traditional institution as stated above. The study established that Njuri is seen as a key organ in

settling of various disputes in the community and reduced the amount of land conflict among people.

On matters of border disputes, the study revealed that traditional institution (Njuri-Ncheke) is able to deal with land matters and bounder problems because it   recognizes and takes the soil or land being an important aspect for any indigenous African person. Therefore, this makes it possible to treat it as sacred. For example the respondent lamented that he could not lose his property if "*Njuri Wazee*" (elders) were involved to solve the matter. The respondents agreed that the traditional ways of conflict resolution are the best and proper way of settling the land dispute. The study revealed that people fear oath and going to "*kithiri*". According to cultural beliefs, "*kithiri*" is the final option when making decision to establish the person or a group saying the truth among parties in conflict. Because it can result into death, and people fear to die or pass the curse to their children and generations, one is deemed to say the truth.

The study established that the role of *Njuri-Ncheke* in dealing with land issue is one of the peaceful processes in reconciliation because it helps in identifying the origin of the land conflict. The council of elders is key pillars when it comes to handling the issues of land disputes within the region. They are members who hail from the region and so they do understand every area in relation to borders and land ownership. For example the respondents pointed out during the interviews that land conflict among the Ameru people can only be solved into totality if the traditional council of elders intervenes showing the original borders for the various communities in the region. Giving the reason behind this was that the Njuri people are familiar with land issues in Meru and the neighboring communities. Therefore, successful conflict resolution and reconciliation is made possible by Njuri elders, since they are very accessible and they have ability of forming local barazas that would be used in mitigate any land dispute.

The study revealed that Council of elders is traditional law custodian of the Ameru people. The study established that, Elders themselves are able to discharge their duties successfully because they consider themselves as a trusted institution. For example based on the interviews one of the informants said they are trusted by the community because no one goes against the decree and the agreements kept in their traditional history the people called Ameru.   *Njuri Ncheke* is respected by the generations that come and that shall come. Rimita (1988), argues that *Njuri* Ncheke indigenous institution plays key role in conflict resolution and maintenance of peace

within and outside the community. Rimita (1988) states that Njuri Ncheke also handled day to day matters of the communities and specifically paid attention to settlement of disputes arising from border disputes, criminal cases and all matters of justice

The Njuri Ncheke handled day to day matters of the communities and specifically paid attention to settlement of disputes arising from border disputes, criminal cases and all matters of justice. This historical and cultural challenge goes back to when the colonial systems of government were introduced in Meru region. The role of indigenous institution is very evident from as supported by the above views. The *Njuri* has been kin in dealing with the matters of bridging the gap between the fighting individuals or clans was and can be resolved if indigenous institutions are put into place. For example the traditional mechanisms by *Njuri Ncheke* were established as key remedy. The study revealed that council of elders has been traditionally very influential decision makers who take decisions on behalf of the community. The policies passed are adhered to by everybody and violation will be based on penalties agreed. The *Njuri Ncheke* council of elders can assist in addressing the problems can contribute substantially to conflict prevention and management. The indigenous institution is recognized by the locals as a key organ.

4.7 The influence of Njuri Ncheke council of elders in governance of contemporary society in Meru community

What is the influence of Njuri Ncheke council of elders in governing the contemporary society?

The council has three ranks: the lowest being *Njuri* (comprised of general elders); the second rank is the *Njuri Ncheke* (the ruling committee); while the third is the *Njuri mpingere* (the supreme authority). However, the current *Njuri Ncheke* appears to combine the roles of the second and the third ranks such that it serves as the ruling committee and the supreme authority at the same time. M'Imanyara (1992), argues that Njuri Ncheke was an institution whose responsibility was to make laws, issue orders as well as decrees affecting the entire Meru society. *Njuri Ncheke* also acted as the judiciary and also enforced rules and regulations aimed at conserving the environment. The council continues to operate in Meru community with a remarkable resurgence in its roles such as conflict resolution and maintenance of peace not only in Meru County but also with its neighbors. On this latter account, for example, the standard newspaper (27/4/2009) reported that *Njuri Ncheke* was trying to reach out to their colleagues

from other communities to unite president Kibaki and Prime Minister Raila Odinga. The two political rivals had been persuaded to form the grand coalition government after the 2007/08 ethnic clashes in Kenya. The *Njuri Ncheke* and luo council of elders were reported to be consulting to facilitate the national elders meeting to discuss the crisis in the grand coalition government.

With immense support from the government, the councils of elders have in the recent past been playing reconciliatory roles and arbitrating disputes. In an article in Daily nation 20 December 2013, *Njuri Ncheke* leaders from Meru, and Isiolo council of elders' leaders held a meeting at sportsman Arms hotel in Nanyuki which was meant to resolve a boundary row between Isiolo and Meru Counties. At the meeting, former interior cabinet secretary Joseph Ole Lenku who attended said the ministry would be spearheading all dialogues organized by the councils of elders to resolve disputes. Ole Lenku urged counties experiencing conflicts to embrace services of councils of elders as mechanisms of resolving their problems. He said that traditional councils are our traditional framework of resolving our conflicts. He also said that although we have the modern legal systems, we also need to embrace our councils of elders. He urged leaders from other regions that are currently facing conflicts and boundary disputes to borrow a leaf from Meru and Isiolo Counties.

Indigenous institution known as played a key role in reconciliation and promoting sustainable peace in Meru community.

What is role did traditional justice system play in reconciliation and peace promotion? The Meru community in Eastern Province, Kenya has an indigenous institution known as Njuri Ncheke. Njuri-Ncheke means 'the thinned out' or selected committee with a definite social role. It is a traditional governing council for the entire Meru Community which is made up of seven sub-groups: Igembe, Tigania, Imenti, Tharaka, Mwimbi, Muthambi and Chuka (Ishinda et al, 2008). Oral traditions and literature are collaborative in pointing out that Njuri Ncheke was initially formed when the Ameru arrived in their present land from Mbwaa, on the eastern coast of Kenya. According to Ishinda et al, (2008), the chief architect or founder–father of Njuri Ncheke, was Kaura-O-Bachau (Kaura son of Bachau). Before he died, Kaura-O-Bachau made a vow, a binding curse that the Njuri Ncheke shall never die or cease to exist in Meru. Generally in many traditional communities, breaking such a curse is considered a bad omen and it explains

why the Njuri Ncheke has continued to thrive so as to avoid curse from God or the wrath of the ancestors.

Rimita (1988) states that the name of Njuri Ncheke is derived from the ritual oath that was taken by all the members of the traditional council: however, only the elders (judges) of the court know this sacred and secret oath. The council has three ranks: the lowest being the Njuri comprised of general elders; the second rank is the Njuri Ncheke, a ruling committee; while the third is the supreme authority, the Njuri Mpingere. Members of the Njuri are selected elders who have passed through a series of special initiation rites and paid the established fees. For all practical purposes, the choice of an elder for Njuri membership depends entirely on the inviting members. The choice generally falls on elders who have distinguished themselves by their brilliance and their wealth. Similarly Kinyua (1970) argues that despite the fact that one could find a poor man in Njuri Ncheke, it was impossible to find a wealthy fool in it.

According to M'Imanyara (1992), Njuri Ncheke was the institution whose responsibility was to make laws, issue state orders as well as decrees affecting the entire Meru society. Njuri Ncheke acted as the judiciary and also enforced the rules and regulations aimed at conserving the environment. Njuri Ncheke continues to operate in the Meru community and plays various roles in conflict resolution and maintenance of peace not only within the Meru community but also with its neighbors. On this latter account, for example, the Standard newspaper (27/4/2009) reported that Njuri-Ncheke was reaching out to their colleagues from other communities to unite President Kibaki and Prime Minister Raila Odinga, the two political rivals who had been persuaded to form the Grand Coalition government after the 2007/08 ethnic crashes in Kenya. The Njuri-Ncheke and Luo Council of Elders were reported to be consulting to facilitate a national elders meeting to discuss the crisis in the Grand Coalition government. This indicates that indigenous institutions can play a key role in reconciliation and promoting sustainable.

4.8 Advocacy for incorporation of traditional justice system in governance of Meru community.

The reality is that there shall always be quite a number of conflict resolution systems. This would include the judicial, informal and traditional justice systems among others. One step for advocacy is to ensure an increased uptake in the use of traditional justice systems and two, there

is however need to establish a clear institutional linkage with the judiciary. This would allow for routine reviews that would end up preventing gross violations of the laws. This would be done in a similar fashion the superior courts of record done by routinely reviewing decisions and pronouncements of the lower or subordinate courts. The third advocacy step is that there is further need to enhance capacity of members of these bodies in order to further their understanding the spirit and the intent of the constitution and the Environment and Land Courts Act to enable then apply the principles envisaged under them.

The forth step is opportunity should be established for proximity of the traditional justice system centers to the residents. This means that the residents do not have to incur a lot of cost in transportation to the institution in order to access their services. The fifth step is that the study found out that government recognition of the council decisions would be another opportunity and step forward. The council operations consistence with cultural structure was another opportunity. This is because the community considers elders as wise and fair people and therefore it is easy for residents to honor the decisions made by the council regarding inheritance conflicts. It was also established that use of native language in the proceedings would be sixth step in using traditional power structures. The fact that the council used the residents native language made it easy for all involved in the conflict to participate unhindered by the medium of communication. The other opportunities noted by this study were that residents trust the competency of the council and that the council member's knowledge of reliability of the witnesses makes the institution more acceptable to the residents. Affordability of the service offered by the council was another opportunity. Respondents felt that the service of the *Njuri Ncheke* was relatively affordable to the residents as compared to the use of conventional judicial system where one has to hire a lawyer. The study concludes that, the positive perception of *Njuri Ncheke* by the residents of *Meru to* offer an opportunity for the use of this traditional institution as an alternative affordable means to resolve inheritance conflicts in *Meru* community governance.

The majority of the respondents appreciated the fact that traditional justice system was not perfect. Among the weaknesses of the system pinpointed included; lack of enforcement mechanisms, male dominated to the exclusion of the women and youths and lack of proper structures that would ensure fair and transparent ways of electing the members. The respondents did note that the government has a role to play in regards to regulating the activities of the

traditional justice systems. The sixth step would be that Conflicts over land, water resources and grazing land were cited as the bulk of cases that should be dealt with by the traditional justice systems.

The seventh step is that the government should consider making it mandatory for people involved in environmental disputes to first explore the use of traditional justice systems as a court of first instance before proceeding to formal courts in case the conflict was not resolved. In doing this, the government will minimize instances where the conflicts would re-occur among the same parties as the traditional justice systems focuses on the root causes of the conflict. Eight step would be proper training and educating the elders on the need to be all inclusive in composing those bodies was also cited as another area that needed to be improved. By the very nature of the African societies, they are male dominated in most aspects. The ninth step is the inclusion of Women and the youth who form the majority of the members of the community into traditional justice system this is because they are excluded from these very important conflict resolution bodies as only male elders are engaged. The tenth step should be that conflict resolution mechanisms be used alongside each other both judicial and traditional mechanism.

5.0 DISCUSSION

The informal justice system refers to forms of disputes resolution that take place outside of formal court systems and that have a certain degree of stability, institutionalization and legitimacy within a designated constituency. It's noteworthy that there is no universal definition of informal justice system and the same has been referred to as either community, traditional, non-formal, informal, customary, indigenous or non-state justice systems. Traditional Justice Systems refer to all those people-based and local approaches that communities innovate and utilize in resolving localized disputes, to attain safety and access to justice by all. They are non-state justice systems which have existed since pre-colonial times at the local or community level which have not been set up by the State. It's a system of justice that usually follows customary law or an uncodified body of rules of behavior, enforced by sanctions, varying over time. Examples include traditional authorities (Mozambique), traditional Shalish (Bangladesh), traditional courts (Zambia, Ghana and Kenya), and traditional dispute resolution (Nepal). Despite the difference in typology the following types of systems are included in the definition of informal justice system.

Traditional judges are often not paid or are insufficiently paid and may rely on gifts and bribes for an income, influencing the outcome of the hearing. Nepotism is also a problem in traditional systems. Traditional judges may be chosen on the basis of who they know or are related to, not on their ability to make appropriate and fair decisions. Finally, traditional justice systems may also lack independence and decisions may be influenced by outside (political) concerns and pressures. Amongst the Ameru people of Kenya there is a council of elders called *Njuri Ncheke* which plays a key role in dispute resolution. It is reported that the phrase *Njuri Ncheke* connotes a 'selected council of adjudicators with a definite social role' and the members of the council are 'carefully selected and comprised mature, composed, respected and incorruptible elders of the community' because their work calls for greater wisdom, personal discipline, and knowledge of the traditions. The *Njuri Ncheke* council of elders receives complaints and summons parties who are free to submit to their jurisdiction or not. Once a party refuses to submit to the *Njuri Ncheke* council of elders the council is supposed to refer the complainant to a court of law. In cases where there is deadlock, the *Njuri Ncheke* has mechanisms for breaking the deadlock such as performance of *Kithiri* curse or *Nthenge* oath.

The researcher sought to analyze opportunities of traditional power structures in resolving property inheritance conflicts in Meru County, Kenya. Key informants, affected households and focus Group Discussions were asked to rate the opportunities available in traditional power structures in resolving inheritance related conflicts in Meru County. Some of the opportunities discussed include, efficiency and fairness of judgment delivered by *Njuri Ncheke*, proximity of the centers to the residents, affordability of the services by the council, use of native language in the proceedings, council members' knowledge of the local property dynamics, council members knowledge of reliability of the witnesses, residents' trust on the competency of the council. Others opportunities discussed are openness and transparency in the proceedings, government recognition of the council decisions, perceived fairness of the council judgments, experience of the council in resolving conflicts, and council operations consistence with cultural structure. The responses of the respondents were as discussed. The findings herein revealed that when faced with environmental conflicts, Kenyans have an option either to go to formal/judicial mechanisms or to resolve their conflicts by using the traditional justice systems. Many factors influenced the choice of the conflict resolution mechanism adopted. This is well discussed above. What came

out clearly is the fact that the conflict resolution mechanisms are used alongside each other both judicial and traditional mechanism.

6.0 CONCLUSION

Findings established that there are opportunities in *Njuri Ncheke* as a traditional institution involved in property inheritance conflict resolution in governing Meru community. Findings indicated that *Njuri Ncheke* was viewed as an effective and fair institution in resolving inheritance related conflict because there was room for appealing to a higher court in case any party was not satisfied with the judgment. It also revealed that the time taken from the time the case was reported to the time it was determined was relatively short. It was also established that *Njuri Ncheke* is experienced in resolving conflicts in Meru County and this endears the council to the residents. The findings herein revealed that when faced with environmental conflicts, Kenyans have an option either to go to formal/judicial mechanisms or to resolve their conflicts by using the traditional justice systems. Many factors influenced the choice of the conflict resolution mechanism adopted. This is well discussed above. What came out clearly is the fact that the conflict resolution mechanisms are used alongside each other both judicial and traditional mechanism.

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