

Unlocking the Dilemmas: Women's Land Rights in Tanzania

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Abstract

In this article, a brief overview of how women's land rights are protected in Tanzania is provided. The overview of the legal framework presented in this article focuses on four main areas of law: property law, inheritance law, matrimonial law, and human rights law. The rationale for presenting these areas of law is to underscore the context under which women's land rights are protected in Tanzania. On one side, the existing literature promotes the establishment of legal regime that protects women's land rights. The assumption of this position is that once there are laws for the protection of women's land rights, women will be able to enjoy and realise their land rights. On the other side of the equation is that there is a general trend of condemning some of African traditions and culture which are responsible for thwarting women's land rights in Africa and Tanzania in particular. Some African traditions and culture are deeply rooted in African societies. As such, African traditionalists continue to adhere to African tradition and culture. The requirement to comply with both statutory rules and African traditions and culture creates situations of dilemmas. Despite having a legal framework which protects women's land rights in Tanzania, the existence of dilemmas within the legal system itself and in the African traditions pose challenges which affect negatively women's land rights in Tanzania. The existence of dilemmas makes the enjoyment and realisation of women's land rights in Tanzania to be difficult and challenging. Despite the legal reform in Tanzania, which took place in 1990s and early 2000s, women in Tanzania are still struggling to enjoy and realise their land rights. Thus, the purpose of this article is to identify the specific dilemmas, which undermine the protection of women's land rights in Tanzania. Furthermore, this article examines Tanzania laws which are designed to protect women's land rights. We argue that the existence of dilemmas in law, African traditions, and customs affect negatively the enjoyment and realisation of women's land rights in Tanzania. We conclude that the existence of a legal framework for the protection of women's land rights is not an end in itself; rather efforts should be made to eradicate or reduce the dilemmas, which compromise the enjoyment and realisation of women's land rights in Tanzania.

1. Introduction

Women's land rights are recognized in international human rights law, regional and in domestic normative standards. For the past two decades, many African countries have been taking steps to reform their legal systems to respond to international and domestic criticisms in relation to the protection of women's land rights. Tanzania is praised for its suitable legal framework for protection of women's land rights¹. A review of literature indicates that Tanzania sheds a good example of a country, which is committed to promoting and protecting women's land rights. Despite of having good laws, women in Tanzania are still facing dilemmas which affect their land rights. The proponents of legal reforms place much hope in the law and ignore other aspects of life which affect women's land rights in Tanzania. They assume that once there are appropriate laws to protect and promote women's land rights, women will be able to enjoy and realise their land rights. The failure of women to enjoy and realise their land rights is not unique to Tanzania.

¹ See e.g., Fred Nelson & *et al.*, "Land Grabbing and Political Transformation in Tanzania" Paper presented at the International Conference on Global Land Grabbing II October 17-19, 2012 2. See also, Jennifer Duncan Women Land Rights Guide for Tanzania, Landesa Rural Development Institute (July 15 2018, 2:30 p.m.)
<file:///D:/Users/Leonard/Desktop/women%201.pdf>

Existing literature indicate that there is an outcry that women's land rights in Africa are not well protected because of archaic laws and African traditions and customs which in large measure, favour patrilineal interests more than women's land rights². Furthermore, existing new laws do not benefit women³. In Tanzania, 80% of the population follows a patrilineal system while 20% of the population adhere to a matrilineal system⁴.

One of the underlying concerns, which necessitated legal reform in Tanzania in the 1990s was the protection of vulnerable groups including women. The other concerns were to regulate the growing land market, foster investment, boost economic development, recognize customs and establish villages as decentralized centres for land management and administration⁵.

Despite the legal reforms, which took place in 1990s in Tanzania, concerns are still looming that women are having difficulties securing and enjoying their land rights⁶. For instance, Tanzania's inheritance laws are blamed for not being consistent in protecting women's land rights⁷. Some scholars maintain that equality laws are difficult to enforce at local levels⁸, especially where African customs are still dominant. Equality laws may not be enforced at local levels due to a range of reasons including their complexity and relevance to daily lives of local people⁹. Others maintain that land laws in Tanzania reflect various biases against certain groups of women such as single and divorced women who find it difficult to register their land rights. Furthermore, women's land titles are inferior in comparison to men's land titles¹⁰. A review of literature reveals that scholars outline various obstacles, which undermine women's land rights. These obstacles include discrimination¹¹, gender inequality¹²; African traditions¹³; and a general lack of political will to enforce women's land rights¹⁴.

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- ² Jane B. Knowles, "Women's Access to Land in Africa", 1 *Third World Legal Stud.* 4 (1991) See also, Rachel Rebouche, "Labor, Land, and Women's Rights in Africa: Challenges for the New Protocol on the Rights of Women", 19 *Harv. Hum. Rts.J.* 235, 246 (2006) in which Rebouche points out how inheritance rules based on patrilineal system in Kenya deny women property rights. See also, Ben Cousins, "Women's Land Rights and Social Change in Rural South Africa: The Case of Masinga, KwaZulu, Natal", *Acta Juridica* 73, 82 (2013), Cousins argues that the payment of bridewealth to the bride's family has the effect of transferring the wife's property rights to the patrilineal system of her husband.
- ³ Alice Armstrong & *et al.*, "Uncovering Reality: Excavating Women's Rights in African Family Law", 7 *Int'l J.L. & Fam.* 314, 364 (1993). See also, L. Amede Obiora, "Remapping the Domain of Property in Africa", 12 *U.Fla. J.L. & Pub. Pol'y*, 57, 66 (2000) in which Obiora sees customary law as the common culprit which treats property rights for men and women differently.
- ⁴ M. Siraj Sait, "Women's Property rights in Muslim Matrilineal Communities", 9 *J. Islamic St. Prac. Int'l L.* 1, 21 (2013). See also, Birgit Englert, "From a Gender perspective: Notions of land tenure security in the Uluguru mountains, Tanzania" 19 *Austrian Journal of Development Studies*, 75, 78 (2003)
- ⁵ Rachel Knight & *et al.*, (eds) *Statutory recognition of customary land rights in Africa An investigation into best practices for lawmaking and implementation* (2010) 153.
- ⁶ Cf Perpetua W. Karanja, "Women's Land Ownership Rights in Kenya" 10 *Third World Legal Stud.* 109, 109 (1991). See also, Mark J. Calaguas & *et al.*, "Legal Pluralism and Women's Rights: A Study in Postcolonial Tanzania", 16 *Colum. J. Gender & L.* 471, 499 (2007). See also, Jean Burke & Balthazar Ngonyani, "A Social Work Vision for Tanzania", 47 *Int'l Soc. Work*, 39, 46 (2004).
- ⁷ Geoffrey E Roughton "Comprehensive Land Reform as a Vehicle for Change: An Analysis of the Operation and Implication of the Tanzania Land Acts of 1999 and 2004", 45 *Colum. J. Transnat'l L.* 551, 555 (2007). See also, Tamar Ezer, *Inheritance law in Tanzania: The Impoverishment of Widows and Daughters*, 7 *Geo. J. Gender & L.* 599, 601 (2006).
- ⁸ Roughton, *supra*, 585.
- ⁹ John Mukum Mbaku, "Citizenship Laws and Political and Economic Participation in Africa", 43 *N.C.J. Int'l L.* 110, 148 (2018). See also, Christine Forester, "Transplanting Gender Equality Laws: Evaluating the Monitoring and Enforcement Mechanisms of Vietnam's Law on Gender Equality", *Lawasia J.* 61, 64 (2013).
- ¹⁰ Eric Boos "Plans, Promises and Problems with Privatization in Tanzania" SSRN (August 1, 2018, 1:35 p.m.), <https://ssrn.com/abstract=460760>
- ¹¹ M Adams & *et al.*, "Legal Dualism and Land Policy in Eastern & Southern Africa UNDP-International Law and Coalition Workshop: Land Rights for African Development From Knowledge to Action" Paper Conference held on October 31-November 3, 2005. See also, Elizabeth A. Oji, "Fighting Discrimination in Africa Through CEDAW: Hard Fights-Easy Fights", 16 *New Eng. J. Int'l & Comp. L.* 89, 89 (2010).
- ¹² Englert, *supra*, 78. See also, Medhanit A. Abebe, "Climate Change, Gender Inequality and Migration in East Africa", 4 *Wash. J. Envtl. L. & Pol'y* 104, 114 (2014).
- ¹³ Adams, *supra*, 5. See also Karanja, *supra*, 112 See also Manisuli Ssenyonjo "Culture and the Human Rights of Women in Africa: Between Light and Shadow" 51 *J. Afr. L.* 39, 41 (2007).
- ¹⁴ Marsha A Freeman "Measuring Equality: A Comparative Perspective on Women's Legal Capacity and

In this article, a range of dilemmas, which affect women's land rights in Tanzania negatively are presented. Furthermore, the nature of the legal framework, which protects women's land rights in Tanzania, is reviewed. Subsequently, the dilemmas, which confront women when they attempt to enjoy or realise their land rights in Tanzania, are examined. In essence, the existence of dilemmas that adversely affect women's land rights is the focus of the article. Consequently, concerted efforts should be made to address these dilemmas to facilitate effective enjoyment and realisation of women's land rights in Tanzania

2. Methodology and Scope

In this article, various dilemmas, which affect the realisation and enjoyment of women's land rights in Tanzania, are outlined. The purpose of this article is to examine statutory regime for the protection of women's land rights in Tanzania. Second, the challenges, which compromise the realisation and enjoyment of women's land rights in Tanzania, are examined. The source of information employed in this article is based on pure desk and library research. The following materials were sourced from primary and secondary sources: Tanzania's legislation, policies, jurisprudence, relevant case law, reports, African practices, customs, and traditions. Qualitative analysis is utilised as an analytical tool for this article. The article is divided into four sections. In the first section, the study is introduced and in the second, Tanzania's legal regime, which is designed to protect women's land rights, is explained. In the third section, various dilemmas, which compromise the ability of women to enjoy their land rights in Tanzania are analysed. The final section contains a general conclusion.

3. Statutory Frameworks for Protecting Women's Land Rights in Tanzania

3.1 Property Laws

The *National Land Policy of 1995* contains various provisions which protect women's land rights. It covers a range of issues including equitable distribution and access of land by all citizens¹⁵. The policy, further recognises the problems associated with women's land rights¹⁶ and explains a policy framework for strengthening women's land rights¹⁷. The *Village Land Act* provides that every adult woman has a right to acquire or own land, and/or use land¹⁸. According to the preceding provision, every woman who is an adult has a right to own and use land independently. Women citizens are entitled to an allocation of land and can have access to land just like any other Tanzanian citizen. This law promotes equal rights in terms of land ownership between women and men.

Furthermore, the law creates a rebuttable presumption for joint tenancy for spouses in a situation where one spouse obtains a right of occupancy for co-occupation where such lands are presumed to be owned jointly. In addition, the registrar of lands is required to register such spouses as joint occupiers¹⁹. The advantages of this rebuttable presumption are threefold: it puts the onus of proof on a spouse who claims otherwise. Second, the law automatically protects women's land rights. Unlike in the past, women were required to produce evidence to confirm their land interests. Based on this rebuttable presumption, there is no requirement for women to provide evidence to vindicate their land rights unless the presumption is challenged by competing claims. Third, the rebuttable presumption shields women's land rights against inappropriate land dispositions. The law creates a duty on the assignee or transferee to make inquiries if the transferor or the assignor has consent from the other spouse before the disposition of land can take place²⁰. This law protects women's land rights, which could be undermined by a failure of an assignee or transferee due to their wilful blindness.

Constitutional Rights in Five Commonwealth Countries", 5 Berkeley Women's L. J. 110, 111 (1989) See also Kwong -Leung Tang & Jacqueline Tak-York, "Guaranteeing Women's Rights: The UN Women's Convention", 43 Int'l Soc. Work 7, 8 (2000). See also, L. Amede Obiora & Chrystal Whalen, "What Is Right with Africa: The Promise of the Protocol on Women's Rights in Africa", 2 Transnat'l Hum. Rts. Rev. 153, 156 (2016).

¹⁵ See United Republic of Tanzania, *National Land Policy* of 1995.

¹⁶ *Id.*, at 4.2.5.

¹⁷ *Id.*, at 4.2.6.

¹⁸ The Village Land Act, Act No.5, Cap 114, § 3(2) (1999)..This section is discussed in detail in Wendy Williams & Mary Hartnett, "Women's Access to and Control Over Land in Uganda: A Tool for Economic Empowerment" A Paper Presentation at Leadership and Advocacy for Women in Africa Program (IAWA) October 22-23, 2001 held at Cornell University.

¹⁹ The Land Act, Act No. 4, Cap 113 § 161(1), (1999).

²⁰ The Land Act, Act No. 4, Cap 113, §161(3)(b), (1999).

The Village Land Act protects women against discriminatory customs and traditions, which restrict women's lawful access, occupation, and ownership of land²¹. The drafters of this provision were aware of the fact that some African culture and customs are discriminatory in nature especially on matters relating to land rights in which women are not permitted to own or use or occupy land or their land rights are subsumed into their spouses or male sons²². Therefore, the drafters of section 20(2) intended to address the problems associated with African customs and traditions, which could be used to undermine women land rights in Tanzania.

Women's land rights over lease are protected under the *Land Act* in which the law requires the court to have regard for women before the existing lease is terminated by the terms of a court order or before granting any relief concerning the termination of a lease²³. Furthermore, the law empowers a borrower's dependant whose land is likely to be permanently deprived. The dependant is permitted to challenge the terms of the lease by arguing that its terms were disadvantageous to him or her²⁴. In the light of these provisions, women can use the provision regarding lease termination to protect their land rights. In addition, women can apply provision relating to a borrower's dependent to challenge any potential land transfer to protect their land rights.

The law also allows joint occupation or occupancy in common in which women are permitted to have joint land interests through joint occupancy or occupancy in common²⁵. By the terms of this law, women in Tanzania can register their land interests as joint owners or as owners in common.

The law creates co-ownership interests in land where the land is registered in one spouse's name and the other spouse expands resource or labour towards the acquisition, maintenance, and upkeep of that land. The law deems that the spouse who contributes to the acquisition or upkeep or maintenance of such property is deemed to have acquired ownership interest against that land²⁶. This law envisages the significance of the doctrine of contribution toward joint property whereby one spouse makes tangible or intangible contribution towards the acquisition, maintenance, and upkeep of land but the land is registered in one spouse's name only. According to this law, women's land rights are protected regardless whether their names are not in the registrar's record

A village council has powers to disallow an assignment of land, which operates to defeat a woman's land rights secured under customary right of occupancy or land rights held under derivative rights or land rights obtained through succession in land titles²⁷. In situations where one spouse arranges to dispose of land through a shed land transfer, the village council is empowered by law to disallow such disposition of land. This law is appropriate in a situation where women are not permitted to own land because of their culture and improper assignment of land transfers could be done through shed transfers to defeat women's land interest. The drafters of this law intended to curb such cultural practices, which could hinder women from enjoying their land rights.

When the village council is determining an application for customary right of occupancy from a woman, such an application must be treated or be given equal weight equivalent to an application from a man²⁸. This is another provision which is intended to promote equality in land rights. In addition, the law precludes a village council to apply adverse discriminatory practices or attitudes towards women who apply for land rights under customary right of occupancy²⁹. This law is designed to curb discriminatory cultural practices which could discriminate women from being entitled to secure land rights under customary law. The law which regulates assignment of customary right of occupancy by a villager is designed in such a way that it protects woman's land rights. Assignment of customary right of occupancy cannot be done to a person or group of persons who are not resident in a village.

²¹ The Village Land Act, Act No.5, Cap 114, § 20(2), (1999).

²² Tamar Ezer, "Forging a Path for Women's Rights in Customary Law", 27 *Hastings Women's L.J.* 65, 80 (2016).

²³ The Land Act, Act No.4, Cap 113, §108(1) (h) (iii) (1999).

²⁴ The Land Act, Act No. 4, Cap 113, §113(3), (1999).

²⁵ The Land Act (n 17 above) § 159(1), (1999). See also, Amrita Kapur, "Catch 22: The Role of Development Institutions in Promoting Gender Equality in Land Law-Lessons Learned in Post-Conflict Pluralist Africa", 17 *Buff. Hum. Rts. L. Rev.* 75, 112 (2011).

²⁶ The Land Act, Act No. 4, Cap 113, §161 (2), (1999).

²⁷ The Village Land Act, Act No. 5, Cap 114, §30(4)(b), (1999).

²⁸ *Id.*, § 23(2) (c)(i).

²⁹ *Id.*, § 23(2)(c)(ii).

That means villagers cannot collude with non-villagers to defeat or thwart women's land rights. In addition, even if the assignment is done between villagers, still the law requires that such an assignment to be approved by the village and such proposed assignment must comply with criteria provided under s. 30(2) of *the Village Land Act*. Furthermore, any proposed assignment, which is designed to defeat woman's land rights, is completely disallowed³⁰.

When a villager who occupies village land under customary right of occupancy decides to surrender such land interests to the village for the purpose of defeating a woman's right to occupy or own such land or places some impediments to defeat or prevent a woman's land rights, such impediments shall have no legal effect whatsoever³¹. If the village council decides to re-grant the surrendered lands and the person who surrendered the lands was married, the law requires the village council, before it publishes the availability of such land, to give priority to the wife of the person who surrendered the village land³². The law protects woman's land rights by requiring that the borrower and the spouse sign a document, which creates mortgage against a matrimonial home, otherwise such mortgage shall be invalid³³.

Women's land rights are further protected in a situation where a spouse creates a charge against family land. The government enacted a law, which creates obligations for both a borrower and a lender; and such obligations apply during a mortgage application process. The law requires the borrower to disclose his or her marital status and the lender is required to take reasonable steps to verify the borrower's marital status³⁴. The lender's obligation for verifying a marital status of a borrower is discharged when the lender takes reasonable steps to verify the marital status of the borrower by providing an affidavit or a document, which is witnessed, confirming that he or she has verified the marital status of the borrower³⁵. There is a serious consequence for a borrower who provides false information to a lender. Specifically, the law criminalises the conduct of a borrower who provides false information to the lender regarding his or her marital status or existence of interests of third parties. The penalty for such an offence is half of the value of the loan or imprisonment for a term not less than one year³⁶. The severity of the penalty for providing false information puts pressure on potential borrowers to tell the truth regarding their marital status. On the other side of the argument, one can argue that the severity of penalty is designed to protect the interests of lenders by assessing carefully potential claimants to their secured security for the loan granted to a borrower.

Another level of protection for women's land rights is for married women. They can protect their land rights in their matrimonial home by registering a caveat against a potential *bona fide* purchaser or lender³⁷. The advantage of registering a caveat against potential *bona fide* purchaser or potential lender is that the caveator must approve the proposed land transfer otherwise there will be land disposition without discharging the registered caveat. It is at this juncture, a married woman can protect her land rights by negotiating the terms for discharging her caveat registered against potential *bona fide* purchaser or lender. The disadvantage of registering a caveat is that it offers protection only at the point of disposition of land, otherwise, a husband can decide not to dispose of the land and a married woman cannot realise or enjoy her land rights until such time when her husband decides to dispose of the matrimonial property. However, this disadvantage does not suggest registering a caveat is waste of time. Another related criticism regarding registering a caveat against potential lender or bona fide purchaser is the fact that the law is limited to married women only and leaves unmarried women vulnerable for losing their land rights because the law is applicable to married women only.

The law gives women an opportunity to participate in land administration and dispute the resolution process. The law, which regulates land dispute resolutions, predetermines the minimum number of women sitting in the dispute resolution council. The law requires that "...the quorum of a meeting of the village land council shall be four persons, of which at least one shall be a woman"³⁸.

³⁰ *Id.*, § 30(4)(b) See also, Knight, *supra*, 266.

³¹ The Village Land Act, Act No.5, Cap 114, § 35(2), (1999).

³² *Id.*, § 36(2) (a) (i).

³³ The Land Act, Act No. 4, Cap 113, § 112(3) (a), (1999).

³⁴ The Mortgage Financing (special provisions) Act No. 17, § 8(2), (2008).

³⁵ *Id.*, § 8(3).

³⁶ *Id.*, § 8(4).

³⁷ The Land Registration Act (Ordinance No 36 of 1953), Cap 334, §78(1), (2002).

³⁸ The Village Land Act, Act No. 5, Cap 114, §60(9). (1999). See also, Knight, *supra*, 252.

A minimum of 25% of the village land council is composed of women. Furthermore, the law provides for a “fair balance” of men and women in the appointment of the *National Land Advisory Council*³⁹. Pursuant to the terms of this provision, women have an opportunity to participate in the *National Land Advisory Council*, which deals with decisions that affect land interests including women’s land rights.

In addition, the government made a deliberate move to increase women’s participation in decision-making institutions at local and national levels. The move was accompanied by the amendment of the *Local Government (District Authorities)* and *Local Government (Urban Authorities) Acts* of 1982. The amendments were made in 2000 which established affirmative action to mandate the participation of women at local government decision-making bodies. Just like in the *Village Land Act*, the law regulating the establishment and management of villages, districts and townships requires women to constitute one-third of the members of each District Council and one-fourth of the members of each Township Authority and Village Council⁴⁰. Women’s rights advocates hoped that this quota for women on the Village Council would help to alter land allocation practices of the Village Councils, which have frequently allocated land to male household heads. Village assemblies are comprised of all villagers aged at least 18, including both men and women, but are in practice often male dominated

3.2 Inheritance Laws

Tanzania has three main body of rules which regulate matters pertaining to inheritance of property: statutory law, Islamic law and customary law. There are not many concerns related to statutory rules, which regulate inheritance matters. Statutory rules strive to promote equality in inheritance issues whereas Islamic and customary rules are blamed for embracing discriminatory and inequalities in the name of religion or African customs. Tanzanian law provides that customary law to which the person belongs regulates inheritance land rights. The problem with this law is that it has the potential to affect women’s land rights negatively because in African societies, their entitlement to inheritance is based on gender and ethnicity⁴¹.

Tanzania was brought into international scrutiny before the Committee on the Convention on the Elimination of Discrimination against Women Committee in which two Tanzanian widows brought a complaint before the CEDAW Committee alleging that Tanzania upholds discriminatory customary laws, which deny women equal access to property and inheritance rights. The Committee ruled that “...by condoning such legal restraints on inheritance and property rights...the State ...has denied the authors’ equality in respect of inheritance and failed to provide them with any means of economic security or any form of adequate redress”⁴².

Although international bodies condemned the discriminatory laws contained in inheritance customary laws, the practice of disinheriting widows by applying customary law of inheritance continues in Tanzania. For instance, in *Scholastica Benedict v. Martin Benedict*, the Court affirmed customary rules, which denied the widow her inheritance rights. The Court noted,

“The widow has no share of the inheritance if the deceased left relatives of his own clan; her share is to be cared for by her children just as she cared for them”⁴³.

One may deduce that laws in Tanzania are still a work in progress.

3.3 Matrimonial Property

In Tanzania, the *Law of Marriage Act* is the principal legislation, which regulates the division of matrimonial property. The law provides for equality between a husband and a wife in matters pertaining to property rights. Specifically, the law declares that

³⁹ The Land Act, Act No. 4, Cap 113, §17(2), (1999).

⁴⁰ Duncan, *supra*. Citing Marjolein Benschop, “Rights and Reality: Are Women’s Equal Rights to Land, Housing and Property Implemented in East Africa? (2002) § 105.

⁴¹ Tamar Ezer “Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters” 7 *Geo. J. Gender & L.* 599, 607 (2006).

⁴² Communication on the Elimination of Discrimination Against Women, E.S. and S.C. v. Tanz., U.N. Doc. Tanzania, CEDAW/C/60/D/48/2013, at para. 7.9 (2015).

⁴³ See *Scholastica Benedict v. Martin Benedict*, Court of Appeal of Tanzania at Mwanza Civil Appeal No. 26 of 1988 [1993] TLR 1 the Court of Appeal applied this rule and refused the widow’s claims to inherit and reside in her husband’s house on the basis that she should be supported by her children in the house they had inherited.

*“A married woman shall have the same right as has a man to acquire, hold and dispose of property, whether movable or immovable, and the same right to contract, the same right to sue and the same liability to be sued in contract or in tort or otherwise...”*⁴⁴.

According to this provision, the law overrides any potential land claims, which may arise from customary or religious rules. In addition, the law creates four rebuttable presumptions, which protect women’s land rights. The first presumption provides that if during the subsistence of the marriage relationship, one spouse acquires property in the name of that spouse; the assumption is that such property belongs absolutely to that spouse⁴⁵. The second presumption provides that where spouses registered land in joint names, it be presumed that the spouses have equal beneficial interests towards the land registered under both names⁴⁶. The third presumption provides that if during the subsistence of a marriage relationship, either spouse gives a gift of property to the other spouse the assumption is that such a gift of property belongs to the donee⁴⁷. The fourth presumption provides that when a woman and a man cohabit for a period at least two years or more which leads to a marriage-like relationship, such relationship shall be presumed to be a valid marriage for the sole purpose of granting such reliefs as the court deems fit⁴⁸.

The court has discretionary powers to order the division of matrimonial property which were acquired during the subsistence of the marriage relationship, or the court has power to order the sale of matrimonial property and the division of the sale proceeds thereof⁴⁹. The law requires the court to deliberate on five considerations when determining the division of matrimonial property⁵⁰. However, some of the considerations may adversely affect women’s land rights arising from the division of matrimonial property. First, the law requires a consideration of customs to which the parties belong. This requirement puts women’s land rights in Tanzania under the ambit of African traditions and customs, some of which deny women the right to equal division of matrimonial property⁵¹ or deny women the right to receive share from the matrimonial property division⁵². Second, the law requires a consideration of each party’s contribution towards the acquisition of matrimonial property. Some women may not have made a tangible contribution, but their contributions may be in kind or services. Before the enactment of the Bill of Rights in Tanzania, the Court of Appeal of Tanzania decided that a wife’s housework in the home was a contribution to the couple’s joint efforts⁵³. This was the first time the highest court in Tanzania considered the non-monetary contributions to constitute joint efforts for the acquisition and maintenance of matrimonial property which entitles the wife to have a share in the matrimonial property based on rendering services through performing household chores. This decision was a landmark decision, which introduced a liberal interpretation towards the term “contribution” as it relates to the division of matrimonial property. In the absence of such interpretation, stay-at-home spouses who work tirelessly to care for the family while performing house chores would not be able to offer tangible contribution towards the acquisition or maintenance of their matrimonial property. The decision in *Bi Hava Mohamed v. Ally Sefu*⁵⁴. Contribution toward joint property, recognition of housework made it easier for women who remain at home and perform house chores to present them as their contribution towards the acquisition or maintenance of the matrimonial property acquired during the subsistence of their marriage relationship.

⁴⁴ The Law of Marriage Act, Act No. 5, Cap 29, §56, (1971).

⁴⁵ *Id.*, § 60(a).

⁴⁶ *Id.*, § 60(b).

⁴⁷ *Id.*, § 61.

⁴⁸ The Law of Marriage Act, Act No. 5, Cap. 29, § 160, (1971).

⁴⁹ *Id.*, § 114(1).

⁵⁰ *Id.*, § 114(2). The five (5) considerations are as follows: customs of which the parties belong, degree of contribution of each party towards the acquisition of matrimonial property, debt acquired for joint benefits, needs of the children (if any), and substantial increase in value for property which was brought into the marriage.

⁵¹ Bart Rwezaura & Ulrike Wanitzek, “The Constitutionalisation of Family Law in Tanzania”, *Int’l Surv. Fam. L.* 445, 450 (2006). In this publication it is contended that of recent the judiciary especially some judges apply Bill of Rights and International human rights standards to curb some of African traditions and customs which deny women equal division of matrimonial property upon the dissolution of their marriage relationship.

⁵² Habiba A. Ibrahim, “Effects of Customary Laws in Widows’ Inheritance Rights to Matrimonial Properties at Ruanda Ward in Mbeya City, Tanzania”, M.A. Dissertation, The Open University of Tanzania, (2017) § 19.

⁵³ See *Hava Mohamed v Ally Sefu (Court of Appeal of Tanzania at Dar Es Salaam, Civ. App No 9 of 1983)*, in liberally interpreting the property provisions of the Law of Marriage Act).

⁵⁴ *Id.*,

Another level of protection for women's land rights is built in the requirement of a consent for the disposition of jointly acquired matrimonial property. This requirement was confirmed in the decision of *Leons Challamila v. Mayalla Edward Masunga*⁵⁵, the Court confirmed that no spouse can dispose of the matrimonial property jointly acquired during the marriage without the consent of the other spouse. It is important to underscore that the law governing the requirement for consent from the other spouse does not go far enough to provide for procedures which could be used to validate a consent given by the other spouse for a proposed disposition of matrimonial property is free from vitiating considerations such as undue influence, manipulation, and duress. The relevance of provisions for checking voluntariness of consent from the other spouse is critical in an abusive relationship. This relevance becomes even more serious where a woman is on the receiving end of the abuse. Failure of the law to mandate the validation of voluntariness of a consent from the other spouse defeats the rationale for seeking consent from the other spouse because failing to check for voluntariness of the consent opens up a door for abusive spouses to obtain a consent from the other spouse to facilitate the proposed disposition of matrimonial property. In situation where consent is given as a result of vitiating factors such a consent should be used for the disposition of the matrimonial property because it is not true consent of the person who grants the consent for disposition of the matrimonial property.

In addition, the law protects women's land rights by preventing eviction of the deserted spouse from their matrimonial home. In addition, the law does not allow third parties to evict a deserted spouse⁵⁶. This prohibition bears some similarities of dower rights, which preclude a spouse from being evicted from their matrimonial home. This prohibition adds another level of protection for women's land rights in Tanzania

3.4 Human Rights Principles

The inclusion of the Bill of Rights in the Tanzanian constitution was done during the 1984 amendments. The amendments contain provisions that are relevant to the protection of women's land rights. The Constitution provides that the government shall offer equal opportunities for all citizens including men and women⁵⁷. In addition; it prohibits the enactment of any law, which is discriminatory. Further, the law prohibits any enactment whose effect has the potential of being discriminatory⁵⁸. One of the weaknesses of provisions which prohibit discrimination as designed in such a way that they offer general prohibition without specifying that gender discrimination is prohibited under the law⁵⁹. Although the word "discrimination" is defines as satisfying one's needs, rights or any other requirements of different people based on sex⁶⁰. It guarantees equality of all human beings and respect of each person's dignity⁶¹. Article 24 of the Constitution of Tanzania explicitly provides that every person have a right to own property. Deprivation of the same must be in accordance with the law and any appropriation of property must be accompanied by fair and adequate compensation⁶². Commentators argue that the *proviso* added to article 24 of the Constitution undermines women's land rights especially when it subjects property rights protection to other laws which permit deprivation of women land rights based on other laws that allow land appropriation or women's land rights are subjected to customary laws which are known for denying women's land rights.

The Constitution of Tanzania precludes any citizen to have rights, status, or special position based on lineage, tradition, or descent⁶³. Despite of this provision, traditionally there are social classes in Tanzanian societies in which social groups have different preferential treatment. For instance, social groups such as children and adults have no equal rights because of their traditions and cultural setting. In addition, Tanzania has ratified various international human rights instruments and declarations, which are relevant to the protection of women's land rights⁶⁴.

⁵⁵ See *Leons Challamila v. Mayalla Edward Masunga*, High Court of Tanzania at Dar Es Salaam, Civil Appeal No. 150 of 1999 (unreported).

⁵⁶ The Law of Marriage Act, Act No. 5, Cap 29, § 59(3), (1971).

⁵⁷ The Constitution of the United Republic of Tanzania, (1977) as amended from time to time, art. 9(g).

⁵⁸ Tanzania *Constitution*, art 13(2).

⁵⁹ B.A. Rwezaura, "Tanzania: Family Law and the New Bill of Rights" 29 J. Fam. L. 453, 453 (1990).

⁶⁰ *Id.*, art 13(5).

⁶¹ *Id.*, art 12.

⁶² *Id.*, art 24.

⁶³ *Id.*, art 29(3).

⁶⁴ Tanzania signed *Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant*

The jurisprudence of the Tanzania's judiciary is instructive in applying human rights principles to defend women's land rights. In *Ephraim v. Pastory*⁶⁵, the High Court of Tanzania applied human rights principles to declare customary rules to be discriminatory and inconsistent with the human rights principles because customary rules were preventing daughters of disposing inherited property. Similarly, in *Elizabeth Stephen and Salome Charles v. the Attorney General*⁶⁶, the High Court of Tanzania struck out various discriminatory provisions contained in Local Customary Law Declaration Order, because the provisions in this Order discriminated against widows. This is one of the few cases where the judiciary takes an activist approach to address the problem of inheritance laws which disinherit women from inheriting matrimonial property after the passing away of their husbands. As it stands now, a widow with no children has the right to one-half of the property she acquired during the course of her marriage, minus any debts of the deceased⁶⁷, however, this statutory rule is rarely enforced because customary law is more powerful than statutory rules⁶⁸.

4. Facing the Dilemmas

4.1 Bride Price

It is noteworthy that women are part of communities and women expect to follow the customs and traditions to which they belong. One of the most venerated cultural practices is the payment of a bride price to the bride's family as a prerequisite for marriage ceremony. The majority of married women in Tanzania secure their land rights through their spouses. Most traditional customs in Tanzania do not allow women to own land or have some form of land ownership⁶⁹. However, women are permitted to enjoy user rights or derivative rights⁷⁰. One of the barriers, which undermine the ability of women to enjoy their land rights in Tanzania is the payment of bride price to the groom's family⁷¹. The usual perception associated with payment of bride price is that a woman is being bought from the bride's family and will move into the groom's family⁷². The custom of paying the bride price predetermines property entitlements⁷³. Under this custom arrangement, a married woman can have access and use of her husband's family or clan lands, but she is not entitled to her husband's family lands. The practice of paying the bride price to the bride's family has been practised in Africa for generations⁷⁴. Cultural practices such as the bride price militate against women's land rights and more powerful than statutory provisions, which protect women's land rights⁷⁵.

on *Economic, Social and Cultural Rights, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Universal Declaration on Human Rights, International Covenant on Civil and Political Rights, The Beijing Declaration, Beijing Platform for Action, the African Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* to mention a few

⁶⁵ See *Ephraim v. Pastory* (2001) AHRLR 236 2 (reprinted in 1990) LRC (Const.) 757).

⁶⁶ *Elizabeth Stephen and Salome Charles v. the Attorney General*, High Court of Tanzania at Dar Es Salaam Misc. Civil Cause No. 82 of 2005 (Unreported).

⁶⁷ Local Customary Law (Declaration) (No. 4) Order, GN 436/1963, Rule 77(1).

⁶⁸ Duncan, *supra*.

⁶⁹ One of considerations which led to the land reforms in Tanzania in 1990s was to invalid any customary rules which preventing women to have the right to own property. This position is discussed in detail in Helen Dancer, "An Equal Right to Inherit? Women's land Rights, Customary Law and Constitutional Reform in Tanzania", 26 *Social & Legal Studies*, 291, 295 (2017). See also, Calaguas, *supra* § 506.

⁷⁰ Jane B. Knowles, "Women's Access to Land in Africa" *Third World Legal Stud* 1, 4 (1991).

⁷¹ Kaniye S.A. Ebeku "A New Dawn for African Women-Prospects of Africa's Protocol on Women's Rights" 16 *Sri Lanka J. Int'l L.* 83, 133 (2004).

⁷² Jamil Ddamulira Mujuzi, "Bride Wealth (Price) and Women's Marriage-Related Rights in Uganda: A Historical Constitutional Perspective and Current Developments", 24 *Int'l J. L. Pol'y & Fam.* 414, 421 (2010) in which Mujuzi uncovers the ills of bride price payment and one of the perceptions in this publication is that the payment of bride price is equated to purchasing the bride.

⁷³ *Id.*, § 420. Although this practice is mentioned in a neighbouring country such as Uganda, Tanzania has similar cultural practices and perceptions regarding the payment of bride price.

⁷⁴ The payment of bride price is one of the salient features of African traditional marriages. Philips discusses this aspect of African traditional marriages in details in Arthur Philips, "Marriage and Divorce Laws in East Africa", 3 *J. Afr. L.* 93, 95 (1959).

⁷⁵ Renee Giovarelli, "Customary Law, Household Distribution of Wealth, and Women's Rights to Land and Property", 4 *Seattle J. Soc. Just.* 801, 806 (2006)

Women are faced with two choices, namely, either to embrace cultural practices such as the bride price payment, which has the consequence of affecting their land rights negatively or to enforce women land rights, which are protected under statutory provisions. For instance, in Uganda paying the bride price to the bride's family dictates the distribution of family property⁷⁶. Furthermore, the married woman becomes the 'property' of her husband⁷⁷. The law in Tanzania eliminates the payment of the bride price as a prerequisite for performing a marriage ceremony⁷⁸, even though the practice is common among many tribes in Tanzania and the price continues to increase⁷⁹. The payment of the bride price is a customary institution that a payer mostly uses as a means for male domination and exploitation of women⁸⁰.

According to many customary traditions in Tanzania, family land remains in the male bloodline and married women are not considered to be part of the male bloodline. The payment of the bride price to the woman's family indicates that the woman is bought into her husband's family, but she is not part of her husband's family bloodline. Therefore, the family land or clan land cannot be allocated to the woman because she does not share her husband's bloodline. In addition, many customary rules are linked to the bloodline of male children only⁸¹. In addition, women have no prospect of being allocated lands from their own biological families because once they get married, they are expected to settle with their husbands and accordingly, enjoy user land rights. Inserting legal provisions in a statute book stating that men and women have equal rights over the husband's family land and women can own land independently of their husbands goes against core cultural practices, which may have serious ramifications. When the law nullifies one of the most venerated cultural practices, there is little expectation that such a provision will be honoured. Attempts to enact laws, which undermine cultural practices, are an underestimation of the power of these practices. It is a woman and her that once she is in the process of getting married, the payment of the bride price will be respected. It is expected that once the bride price is paid, the married woman will not enjoy entitlement from her husband's family land. Family lands remain within the bloodline of the male lineage⁸². The decision to accept or not to accept payment of the bride price affects her ability to enjoy her land rights. Some ethnic groups exclude a woman who gets married without the payment of the bride price from receiving any property because her marriage did not bring any benefit to her own family⁸³. Therefore, the practice of the bride price places a woman in a dilemma because when her family receives the bride price, she knows that her husband has bought her. After the payment of the bride price, she knows that customarily she belongs to her husband and she is not entitled to her husband's family lands. If she objects to the payment of bride price, her family will not be happy because it goes against their customs and traditions.⁸⁴

⁷⁶ Mujuzi, *supra* § 420.

⁷⁷ Giovarelli, *supra* § 819. See also Knight, *supra* § 31.

⁷⁸ The Law of Marriage Act, Act No. 5, Cap 29, § 41(a), (1971).

⁷⁹ Calaguas, *supra*, § 497.

⁸⁰ Muna Ndulo, "African Customary Law, Customs, and Women's Rights", 18 Ind. J. Global Legal Stud. 87, 93 (2011).

⁸¹ In Tanzania, customary rules of inheritance relative to patrilineal systems tend to disproportionately favour the male bloodline of heirs. According to the terms of these customary laws women whether married or unmarried have fewer rights to family property as compared to male heirs. In patrilineal systems, it is understood that a person belongs to her or his father's blood lineage. That means, lines of inheritance of property follow the same path to ensure that family property remains in the family. Insider and outsider women are feared of transferring family property away from family through marriage or remarriage. Placing inheritance rights of property on male heirs is to ensure that no family property is removed from family territory. For further details see Amanda, Ellis & *et al.*, "Gender and Economic Growth in Tanzania: Creating Opportunities for Women". World Bank (August 15, 2018 and 2:35 p.m.). <https://openknowledge.worldbank.org/handle/10986/6829>

⁸² Knight, *supra* § 254.

⁸³ Alain de Janvry and Elisabeth Sadoulet, *Access to Land and Land Policy Reform* (Helsinki: UNU/WIDER, 2001) § 4.

⁸⁴ D.D. Nsereko, "The Nature and Functions of Marriage Gifts in Customary African Marriages", 23 Am. J. Comp. L. 682, 696 (1975). Nsereko argues that the payment of bride price to the bride's family serves several purposes and one of them is the stabilization of marriage relationship because the husband's failure to pay bride price it makes easier for a woman to desert her husband with less legal consequences. Second, payment of bride price to the bride's family serves as a compensation for the loss of her services. Thus, payment of bride price is a *quid pro quo* transaction for the services which is being transferred to the husband's family.

4.2 Religious Teachings

The right to freedom of religion is a human rights principle, which is supposed to be recognized, respected and enforced. Both African traditional and modern religious teachings perpetuate male superiority and emphasize that women should be submissive to men⁸⁵. It has been reported that some men use this as a justification to undermine equality rights and perpetuate male domination. Women as part of the cultural society expect to follow the tenets of African traditional religions and customs. They are supposed to enjoy their land rights as provided under statutory provisions. On a few occasions, the application and interpretation of customary and religious teachings have taken precedence over statutory provisions and international law⁸⁶.

One of the deliberate efforts made by Tanzania for the protection of women's land rights is to require mandatory women participation in the decision-making process on matters which affect their land rights. For instance, the law mandates that the composition of village councils must include women⁸⁷. Despite of this requirement, some religious teachings forbid women to hold certain religious offices and/or serve in sacred places⁸⁸. It is possible that religious restrictions on women holding certain offices may contribute in discouraging women from participating in the decision-making process due to religious restrictions. In addition, some African traditions do not permit women to approach sacred places. These types of religious prohibitions promote male superiority and female inferiority. Strict adherence to these religious tenets discourages women from participating in traditional meetings, which affect their land rights. Since the law in Tanzania requires the participation of women in decision-making processes on matters regarding land rights, however, it is reported that the participation of women in these decisions has been on a low level⁸⁹. To underscore the importance of religious prohibitions, Doppelt maintained that religious prohibitions should be exempted from the law of general application⁹⁰.

The issue of cultural and religious teachings undermining women's land rights is not unique to Tanzania. In Indonesia, cultural and religious values are the main reason for women's reluctance to participate in public life. The problem of cultural and religious values that affect women's ability to participate in public life is common in many countries. International law opposes cultural and religious practices, which undermine women's land rights⁹¹.

Strict adherence to religious marriages such as Islamic marriages is an example of a religious doctrine, which affects women's ability to enjoy their land rights. In Islam, the right to divorce belongs to men⁹². When a husband wants to divorce his wife, he is required to make four declarations to his wife stating, "I divorce you". This is a valid divorce in Islam and once the divorce has been pronounced, the wife is not allowed to share any property rights acquired during the subsistence of their marriage. It is immaterial whether the wife contributed towards the acquisition or maintenance of the family property⁹³. To deal with the issue of religious practices, which affect women's land rights, it was proposed that the best approach to this problem was to impose a legislation, which abolishes all customary or religious practices that have a negative impact on women's land rights. Although this approach was advanced, at the same time it was admitted that enacting legislation may not be effective enough to solve this problem especially as the law was attempting to abolish a popular religious practice⁹⁴. Consequently, women are confronted with the dilemma to either follow religious teachings or lose their property rights or ignore religious teachings and enjoy land rights as provided in statutory provisions.

⁸⁵ Linda Woodhead, "Gender-Differences in Religious Practice and Significance" § 10 unpublished manuscripts.

⁸⁶ Centre on Housing Rights and Evictions Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A survey of law and practice in Sub-Saharan Africa (2004) 24

⁸⁷ The Village Land Act, Act No. 5, Cap 114, § 60(2) (1999).

⁸⁸ Roman Catholic church does not allow women to serve as priests. Orthodox Judaism does not permit men and women to sit in the same place of worship. Women are segregated from men during the worship service.

⁸⁹ Knight, *supra* § 199.

⁹⁰ Gerald Doppelt, "Illiberal Cultures and Group Rights: A Critique of Multiculturalism in Kymlicka, Taylor, and Nussbaum", 12 J. Contemp. Legal Issues, 661, 689 (2002).

⁹¹ Bruce P Frohnen "Multicultural Rights? Natural Law and the Reconciliation of Universal Norms with Particular Cultures", 52 Cath. U.L. Rev. 39, 40 (2002).

⁹² Jehad G. Issa, "Divorce in Islam, 2 Woodrow Wilson J. L. 34, 37 91979).

⁹³ Ebeku, *supra* § 88

⁹⁴ Alice Armstrong & *et al*, "Uncovering Reality: Excavating Women's Rights in African Family Law" 7 Int'l J. L. & Fam. 314, 322 (1993).

4.3 Economic interests

Tanzania's statutory protections focus on promoting land formalisation engrained with economic liberation. It has been argued that statutory protection weakens women's rights more than protection afforded under customary law. One may ask whether the focus should be on state law, which encourages liberal economy and its eventual benefits, which promote economic interests or whether the focus should be on encouraging customary land tenure, which is mostly based on collective land rights, which tend to offer better protection of women's land rights.

The problem of African customary landholding is that land in Africa is more than just a means of production. It is intrinsically linked to other aspects of life such as socio-economic, cultural, and religious manifestations. It is paramount to stress that the African land tenure system is designed to nurture the inhabitants of that land, which relates to ancestral veneration and worship. The religious practices, which occur on the land, regulate people's relationships within the family or clan⁹⁵. Various African traditional religions do not consider a woman who is married into the family to be part of the husband's family. Although Tanzania does not allow customary law to undermine women's land rights, this seldom happens in reality. Olukayode argued that despite many legal instruments, which protect women's rights in Africa, there have been surmountable challenges, which hinder the implementation and enjoyment of women's rights in Africa. He added that deep-seated and ingrained cultural and religious practices have been among the main impediments of the enjoyment of women's rights in Africa⁹⁶. Some African cultural and religious practices are biased in favour of men. For instance, male dominance is promoted through religious teachings such as Islam, Christianity and African traditional religions in which men are accorded a higher status than women⁹⁷. One may argue that women's land rights stand between economic interests and non-economic interests such as social and cultural aspects. Women's enjoyment and realisation of their land rights are affected by economic, social, and cultural realities. Women are trapped in a balancing act on matters, which affect their economic, social and cultural interests. African women do not focus on economic interests only; rather they tend to focus on other values associated with the enjoyment of land rights. The non-monetary value of land is always ignored by many government officials they always focus on economic value of land. Kombe underscores this contention by stating that:

...landowners (including women-emphasis in mine) attach more than just monetary significance to their land, including invaluable social sentiments or assets, many of which are scarcely appreciated by the valuers...⁹⁸.

This scenario creates a dilemma among women because of the different choices they face in relation to realising their land rights.

4.4 Land Use

Women's land rights are gateways for women to enjoy their human rights. The corpus of human rights principles involves civil, political, cultural, social, and economic rights. Various African governments prioritize the enforcement of human rights principles, others focus on first generation rights such as civil and political rights and a third group concentrates on second generation rights, for example, economic, social and cultural rights.

The discourse, which emphasizes land as an economic asset is in sharp contrast to other perceptions, which view land more as an economic commodity than a natural life-sustaining resource⁹⁹. The development and increased demands for land resources is a worldwide need. Some of the African governments undertook land reforms to facilitate the availability of land in the land market. When the focus of land laws and policies is on facilitating the availability of lands in the market, women's land rights are likely to be sidelined to promote a country's economic development. Colonial governments introduced monetary and agricultural economy in Tanzania. Accordingly, land became a commodity to be owned privately. As a commodity, land was capable of being sold on the market. However, before the introduction of a monetary economy in Tanzania, African customary law did not allow traditional lands to be owned privately or land to be sold.

⁹⁵ Karanja, *supra*, § 112

⁹⁶ Benson Omoleye Olukayode "An Analysis of the Challenges of Implementing Women's Rights under International Instrument in Africa", 66 J. L. Pol'y & Globalization 1, 1 (2017).

⁹⁷ *Id.*, § 6.

⁹⁸ Willbard Kombe, 'Land Conflicts in Dar Es Salaam: Who Gains? Who Losses?' Working Paper no. 82: Cities and Fragile States, Ardhi University, October, 2010 § 4.

⁹⁹ United Nations, Office of the High Commissioner, Realizing Women's Rights to Land and other Productive Resources (New York: United Nations Publications, 2013) § 3.

According to the customary landholding system, private individuals were granted user rights over traditional lands¹⁰⁰. Currently, Tanzania is actively promoting land markets through formalisation, registration and titling. This exercise is designed to promote national macro-economy through the generation of capital inflows by encouraging foreign investments and through stipulation of local investors to engage in land-based investments¹⁰¹.

On the one hand, the international community plays a significant role in promoting women's land rights with the understanding that land is a source of women's empowerment and a gateway for the enjoyment and realisation of various human rights such as the right to equality, food, health, housing, water, work, and education. On the other hand, the prevailing debates on land focus on land as a commodity, which can be commoditised, and individualised. Therefore, access and land ownership are paramount because the free market economy demands that land be readily available on the market to be sold or used to generate wealth¹⁰².

Various laws treat land as a commodity, which can be used as a means of production. However, other laws view land as more than a commodity. If land is treated as a commodity, the law focuses on encouraging the market economy. Women in rural Tanzania tend to lose their land rights simply because of an increased demand for land markets. If laws focus on preserving other values besides economic values, the laws tend to protect land for such purposes. This dilemma ensures that women's land rights are likely to be compromised.

4.5 Equality

The strict interpretation of equality principles has created problems because access to land to some extent requires financial resources. Furthermore, some African traditional societies view women as subordinate to men. Statutory rules emphasise on the adherence to equality rights, in which, men and women have equal status and in which women must be accorded the same opportunities as men. Similarly, equality principles place men and women on an equal footing in relation to the acquisition of land. However, the majority of rural women have no equal purchasing power or enough resources to protect or acquire lands on their own¹⁰³. Most rural women in Tanzania are disadvantaged in terms of social-political and economic aspects. For instance, they do not participate fully in the governance of their local governments. The majority of African cultures treat women as subordinate to men¹⁰⁴. The lack of economic resources at women's disposal impedes their ability to acquire lands. Some countries address these impediments, which prevent women from acquiring or maintaining land rights by implementing affirmative action or positive action to enable women to enjoy the same opportunities as men¹⁰⁵. The reality is that the majority of women in Tanzania are disadvantaged politically, economically and socially. The law promotes the right to equality of women without creating affirmative action or positive action to ensure that women can compete with men equally with regard to the acquisition and protection of their land rights. Such a move is likely to fail because the majority of women in Tanzania do not have enough financial resources to secure their land rights. The dilemma created by equality is that it assumes that women and men have equal purchasing powers to secure land rights. It is not enough to state that women and men have equal rights to own, use, and hold lands because men have more financial resources to obtain land rights more easily than women do. The law may be a form of empty protection if women have no means to realise their lands rights. A declaration of equality rights without addressing the underlying impediments, which compromise women's ability to enjoy land rights, is an empty promise.

4.6 Legal Pluralism

The concept of legal pluralism refers to multiple legal rules, which are applicable in a certain jurisdiction. It is up to a nation to decide the nature of legal rules, which are enforceable within its jurisdiction. Legal pluralism presupposes the existence of multiple legal rules, which are recognised in a certain legal system¹⁰⁶.

¹⁰⁰ Adams, *supra*, § 8.

¹⁰¹ Nelson, *supra*, § 18.

¹⁰² Office of the High Commissioner, *supra*, § 3.

¹⁰³ Rosemary A. McCarney, "Household Food Security and the Role of Women in Africa", *Third World Legal Stud.* 157, 162 (1991).

¹⁰⁴ Calaguas, *supra* § 548.

¹⁰⁵ Frans Viljoen, "An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa", 16 *Wash. & Lee J. Civi Rts. & Soc. Just.* I, 18 (2009).

¹⁰⁶ A Griffiths "International Human Rights, Women, Gender and Culture: Perspectives from Africa", 8 *U. Botswana L. J.* 79, 81 (2008).

Tanzania is a party to international¹⁰⁷ and regional human rights treaties;¹⁰⁸ some of which govern women's land rights. On the national front, the legal system of Tanzania recognizes statutory laws, Islamic laws and customary laws. These laws regulate women's land rights. Women's land rights are governed by a range of laws, which have underlying obstacles that prevent the enjoyment of women's land rights in Tanzania. The choice of law determines the breadth of women's land rights in Tanzania. It is important to underscore the fact that each type of law has intrinsic impediments, which negatively affect women's land rights. For instance, when it comes to enforcing international human rights treaties, Tanzania follows a dualistic approach in relation to international human rights treaties. In other words, an international human rights instrument must be domesticated before it can be enforceable through domestic courts. Thus, the enforcement of women's land rights may be hindered if the claim for land rights is based on an international human rights treaty, which has not been domesticated in Tanzania. Alternatively, the law in Tanzania provides that customary law have equal status with statutory provisions. In practice, customary land tenures are more inferior to statutory land tenures. Therefore, the enforcement of women's land rights based on statutory land tenure may constitute a stronger claim than those women who enforce their land rights through customary land tenures. Legal pluralism also results in different forums for land dispute resolution. In Tanzania, a village council deals with land dispute, which involves village lands. When the village council fails to resolve the dispute, the matter is forwarded to a ward land tribunal; the governing law in these dispute resolution bodies is customary law. The problem with customary law when it comes to dealing with land dispute is that it focuses on mediation rather than litigation. Furthermore, customary law does not strictly comply with the principles of the natural of justice and it does not strictly follow the rules of evidence. Legal pluralism in Tanzania creates a further problem for women because urban women are most likely to apply statutory law in pursuit of their land rights whereas women in rural areas are most likely to apply customary law during the enforcement of their land rights¹⁰⁹. In addition, legal pluralism invites the use of different customary laws, which affect women's land rights differently. There is no single body of customary law for all rural women to apply. Rather there are approximately 126 ethnic tribes in Tanzania and each ethnic group has its own customary rules, which regulate their traditional lands. Knight confirmed that lands, which are regulated under customary law, are likely to constitute a weak claim because there are growing informal land markets under which lands are transacted without being legally regulated. Furthermore, legal pluralism leaves the rules undefined and consequently, land rights of vulnerable groups such as women are susceptible to the land grabbing phenomenon¹¹⁰.

4.7 Top-Down and Bottom-Up Dilemma

During the era of colonial administration and post-colonial administration, a centralised system of land administration was maintained. Significant powers involved in land administration and allocation remained mainly in the central government. Furthermore, the local government authorities had few powers in relation to their village lands¹¹¹. In addition to amassing powers of land administration in the central government, the central government had overriding powers,¹¹² which affected women's land rights at local levels. The local government and land users were supposed to receive directives from the central government in matters pertaining to land issues. The top-down approach removes the freedom of landholders to deal with the lands the way they wish. According to the top-down approach, the government makes decisions and issues directives regarding land use and allocation.

¹⁰⁷ See *Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Universal Declaration on Human Rights, International Covenant on Civil and Political Rights, The Beijing Declaration, Beijing Platform for Action*, to mention a few

¹⁰⁸ See *the African Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*

¹⁰⁹ Aparna Polavarapu "Reconciling Indigenous and Women's Rights to Land in Sub-Saharan Africa", 42 Ga. J. Int'l & Comp. L. 93,117 (2013).

¹¹⁰ Knight, *supra* § 6.

¹¹¹ See *Imperial Decree* was introduced in Tanzania on November 16, 1895 which declared all lands were crown lands and vested the crown lands into the German empire. Similarly, the British Administration introduced the *Land Ordinance of 1923* which declared which declared that all lands unoccupied or occupied were public lands and vested all public lands in a political entity subject to the disposition by the Governor and such public lands to be held for the use and common benefits of natives

¹¹² See the Land Acquisition Act, Act No. 47 (1967) which allows the President to acquire land for public interests and the post-colonial government inherited land laws from colonial government which amassed so much powers of extinguishment.

For instance, in the 1970s, the government launched villagization programs, which forced the majority of rural dwellers to resettle in villages and Ujamaa villages¹¹³. The villagization program affected the land rights of women because most of the rural population were relocated to new locations and they lost their traditional lands because they were uprooted from their traditional lands.

In theory, the law provides that customary land tenure has equal status with statutory land tenure¹¹⁴. In practice, statutory land tenure is always superior to customary land tenure. The top-down approach always gives priority to statutory land tenure. Thus, women's land rights held under statutory land tenure are more secure than women's land rights held under customary land tenure. Some of the commentators who have been involved in debates regarding the new land laws have suggested the removal of top-down land administration and suggested that the bottom-up approach should be encouraged to afford landholders the freedom to decide how to deal with their land as they so wish. It is important to note that there are two opposing groups relative to the issue of land administration and management. The first group maintains that the existing land laws do reflect a bottom-up approach because land management and administration is in the hands of village authorities. The second group argues that the current land laws maintain the *status quo* because the central government has so much power over village authorities¹¹⁵. However, the central government has residual and supervisory powers, which can override the local government's decisions regarding village lands¹¹⁶. Thus, the dichotomy of top-down and bottom-up land administration places women's land rights in a dilemma because the central government can potentially override land rights granted to rural women within their villages by transferring village lands into general or reserved lands¹¹⁷. Alternatively, the central government has the power of extinguishment¹¹⁸, which can affect women's land rights especially when the government is promoting land-based investments.

4.8 Archaic Traditions

The institution of marriage is a significant milestone for many Tanzanians. Traditionally, marriage affords a person a certain social status and respect. Women owning lands independently are viewed as a deviation from cultural tenets and incompatible with African cultures. As stated previously, the payment of the bride price to the bride's family is equated to purchasing a woman from her family. Dancer emphasised this point by looking at the Swahili language, which objectifies women. In Kiswahili language, the act of marrying is used in the active voice for men ["kuoa"], but the same act of marrying is used in the passive voice for women ["kuolewa"]¹¹⁹. Another cultural practice, which signifies the objectification of women, is the practice of a send-off party in which the family of the expected bride prepares a party to send off their daughter to the husband's family¹²⁰. During the send-off party, the bride-to-be receives several gifts from her family and friends. Everything is brought into marriage by a woman belongs to her husband and the woman is not supposed to own property independently.

Most potential grooms tend to look for a woman who is submissive and follows social norms. Potential grooms tend to stay away from women who own property. This is because property ownership empowers women and potential grooms fear women with strong economic power, and who own property as well. If this happens during the marriage, husbands tend to reduce the power of their wives by engaging in polygamous relationships or in extra-marital relationships or they father children out of wedlock and if the wife is working, they usually ask the wife to stay at home to care for the family¹²¹. Women are confronted with the dilemma that if they are still single and decide to amass property, they are likely to reduce the chance of being married because the majority of potential grooms tend to stay away from independent women who have economic power.

¹¹³ See Villages, and Ujamaa Villages (Registration, Designation and Administration) Act No. 21 (1975).

¹¹⁴ The Village Land Act, Act No. 5 §18(1)

¹¹⁵ DT sikata "Land Tenure Reforms and Women's Land Rights: Recent Debates in Tanzania" Paper Prepared for the UNRISD Project on Agrarian Change, Gender and Land Rights, September 2001 § 30.

¹¹⁶ See the Village Land Act, Act No. 5, § 4(1) in which the President has powers to transfer Village lands to general or reserved land.

¹¹⁷ *Id.*,

¹¹⁸ See The Land Acquisition Act, Act No.47 § 4.

¹¹⁹ See Helen Dancer, Women, Land & Justice in Tanzania (London: James Currey, 2015) § 39.

¹²⁰ *Id.*, § 39.

¹²¹ Adrien Katherine Wing & Tyler Murray Smith, "The New African Union and Women's Rights" 13 *Transnat'l L. & Contemp. Probs*, 33, 47 (2003).

If a married woman acquires property independently, she risks losing her marriage relationship. Thus, gaining power through property ownership places married women in a serious dilemma and ultimately affects their potential to own property¹²².

5. Conclusion

The focus of this article was set to examine laws which regulate women's land rights. The second task of this article was to examine some African traditions and customs, which pose dilemmas that contribute to undermine women's land rights in Tanzania. This publication concludes that Tanzania has legal protection for women's land rights. However, the protection provided under the laws of Tanzania is not free from flaws. The existence of flaws thwarts the enjoyment and realisation of women's land rights. The second conclusion of this article is that the existence of some African traditions and customs continue to create dilemmatic phenomena which hinder the realisation and enjoyment of women's land rights in Tanzania. The dilemmas obstruct the realisation and enjoyment of women's land rights in Tanzania.

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¹²² Centre on Housing Rights and Evictions, *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan Africa*, (Geneva: Centre on Housing Rights and Evictions, 2004) § 33.

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