

## **Investigating Female Children's Rights to Family Property and Its Implication on Children's Justice in Kisii County, Kenya**

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### **Abstract**

This study sought to establish respondents' perceptions on female children's rights to access, control, inherit and own property and their implications on children's justice in Kisii County-Kenya. The constitution of Kenya (2010) equally provides for male and female children's rights to property inheritance which automatically culminates in legitimate ownership. This is in tandem with international and regional instruments and treaties that require male and female children to be treated equally in all spheres of life. However, in practice this has been a mirage as cultural and customary beliefs and practices override existing legal provisions that equally cushion male and female children. This realization informed this study whose objectives were to identify respondents' perceptions on female children's rights to access, control, inherit and own family properties and proffer strategies that could be adopted to mitigate the vulnerability of female children's rights to property inheritance and ownership. Cross-sectional descriptive survey was used in the study with a population and target population of 1,152,282 and 292,837 people respectively. A sample of 408 respondents and 30 key informants were selected using purposive and stratified random sampling procedures. Semi-structured interview schedules and in-depth interview guides were used to collect data. Generated data was quantitatively and qualitatively analyzed and the findings were that both male and female children were allowed considerable access to family property. However, as far as control, inheritance and ownership of property were concerned, male children were favoured over females. Secondly, as power and authority associated with property rights and status increased, the rights of female children to exercise and benefit from these powers and authority have diminished. The study recommends awareness creation of constitutional and other legal frameworks that promote female children's property rights, their effective implementation and severe penalties for those who violate these provisions aimed at promoting children's justice.

**Key words:** rights, access, female children, vulnerability

## Introduction and Background

In most patriarchal societies, and more especially in the developing countries, property ownership and inheritance has been and is still the domain reserved for men as observed by (Doss, Kovarik, Peterman, Quisumbing & Bold, 2013; FAO, 2013). This leaves women and children out as far as control, inheritance and ownership of key resources are concerned. Traditionally, male dominance on property ownership and inheritance did not pose serious challenges since extended families and other social support systems provided social safety nets that cushioned widows and children in the absence of male household heads, whose primary responsibility was to take care of the members of the household. These systems defined patterns of property access, control, inheritance and ownership. Collective property management was exercised and this ensured that the interests of each family member, young and old, male and female, were taken care of. However, it was categorical that property control inheritance and ownership remained in the hands of men as inheritance ran through the male gender: from father to son (Doss et al., 2013; ICRW, 2004; Kamari-Mbote, 2006).

This notwithstanding, Lastarria-Cornhiel (2005) observed that wives, daughters and minor sons indirectly benefited and depended on family properties owned by men for their livelihoods. Though minor sons outgrew this dependency when they became of age and were granted property inheritance and ownership rights, female children did not. It was therefore the responsibility of men to take care of the needs of female children and women within their households (Doss et al., 2013). Similarly, male household heads allowed unmarried daughters or sisters user rights to family properties for the sustenance

of their livelihoods (Kameri-Mbote, 2006). For married women, this obligation was transferred to husbands. In this way, communities were able to take care of all their members regardless of age or gender.

With time, these social safety nets that ensured protection of all members of society have relatively weakened and this has brought about changes on how properties are managed (Kameri-Mbote, 2007). Male household heads still dominate property control, ownership and inheritance, but they are legally under no obligation to ensure that members of their households; especially, females who are over 18 years, married or unmarried are taken care of. Family systems now concentrate on taking care of members of the nuclear families who are minors. Even so, inheritance and ownership of property is still skewed to the males who are often bequeathed property by male household heads (O'Connor, 2014).

While in some communities, culture dictates that male heirs are given a share of ancestral land as inheritance, female children are not given any consideration (KHRC, 2006). Unmarried female adults must find a way of fending for themselves and their children if they have any. In the same manner, orphaned male and female minors, often lose their right to family property as their relatives who are property administrators or trustees end up either distributing the said properties amongst themselves or sell the properties for personal monetary gains leading to violation of children's rights to inherit property from their biological parents, as documented by Brown (2005).

The culture of violating property rights of defenseless widows and orphaned children is on the increase (Brown, 2005). Property loss leads to feelings of a myriad of

psycho-social effects such as lack of love, attention, affection and isolation, factors deemed basic for healthy development of children (Berger, 2011). Consequently, this increases the risks of vulnerable children. It is worth noting that though both male and female children are affected by property disfranchisement, the effects are worse for female children who are culturally not considered in property inheritance and ownership in most patriarchal societies (Lastarria-Cornhiel, 2005).

Children's property rights disfranchisement is worsened by the devastating effects of HIV/AIDS pandemic (KHRC, 2006). As documented in a study by Kessy, Kweka, Makaramba, and Kiria (2008), children who are partially or totally orphaned by losing one or both parents become more vulnerable as they do not have anyone to protect their fundamental rights to a home, property and education among other things. Rose (2007) argued that in some cases guardians of orphaned children violate orphaned children's inheritance and ownership rights of their deceased parents' properties. This is worsened because extended family support systems that used to cushion vulnerable children no longer undertake this as a serious role. As a result of this, orphaned children become more vulnerable (UNICEF, 2010).

Existing legal international, regional and national legal frameworks guarantee legal protection for vulnerable children as provided by international and regional instruments on human rights such as; the Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), and the African (Banjul) Charter on Human Rights (1989) prohibit child discrimination based on socio-cultural beliefs and practices. The African Charter on the Rights and Welfare of the Child

(1989) provided for the best interests of the child with regard to non-discrimination on all grounds, freedom from harmful cultural practices, deprivation of parental care and education; protection from child labour, torture, sexual abuse and other forms of ill-treatment (The African Union Commission, 1989).

Similarly, the Constitution of Kenya (2010) in Section 53(2) stated that the best interest of children is of paramount importance and upholds parental care and protection of children. Section 53(1) (d) gave emphasis to the right of every child to protection from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour. Likewise, Section 5 of the Children's Act (2001) also affirmed that no child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection. To further protect children, the Succession Act (1981) stated that, when a person dies without making a will, the surviving spouse is entitled to a life interest of the estate while the ultimate heirs are children (section 35(5)). Where an intestate person has left a surviving child or children but no spouse, the estate devolves upon the surviving child, if one, or is equally divided among surviving children.

Despite these statutory provisions, customary laws and statutory laws impede property rights of children because they often contain contradictory provisions (Kameri-Mbote, 2006). Although statutory provisions are expected to override customary laws in case of contradictions, in practice the opposite is true as statutory laws are poorly implemented or ignored all together (Kameri-Mbote, 2006; Rose, 2007). This poses

serious challenges in ensuring legal protection of vulnerable children's rights to; a home, food, clothing, properties, health care, education and other psycho-social needs such as affection, love, care and support (Rose, 2007). This situation is fuelled by gender discriminatory practices against female children who are not culturally considered for property inheritance by virtue of their sex in most patriarchal societies, existence of statutory legal provisions notwithstanding (Aziza, 2011).

It is critical to point out that culture, as observed by Giddens and Sutton (2013), influences people's way of life and practices in society. It determines people's values, work, interaction patterns, marriage customs, family life and the way people treat their children. Culture determines what is valuable and not valuable in society. Culture is regarded as a "design for living" or "tool kit" of norms, knowledge and practices acquired through learning and the socialization processes. It is very instrumental in how people perceive and practice children property inheritance and ownership. Therefore, culture forms the basis on which most societies prescribe family properties inheritance patterns by male heirs while female children are literally locked out (FAO, 2009). This trend perpetuates gender disparity with regard to property rights (Giddens & Sutton, 2013).

Due to modernization, globalization, digitalization and awareness of human rights, especially children's rights, cultural norms and values on property inheritance and ownership are fast changing, forcing society to confront deeply held cultural beliefs and practices about children's property ownership and inheritance rights (Rose, 2007). In view of this background, it was imperative for this study to investigate the vulnerability

of female children's property inheritance and ownership rights and its implication for children's justice. The ultimate purpose of this paper was to investigate the prevailing perceptions on female children's rights to family property with regard to access, control, inheritance and ownership in Kisii County. The objectives of this study were to: identify respondents' perceptions on female children's rights to access family properties in Kisii County; assess respondents' perceptions on female children's rights to control family properties in Kisii County; appraise respondents' perceptions on female children's rights to own family property in Kisii County and determine respondents' perceptions on female children's rights to inherit family properties in Kisii County.

Informed by the findings of this study, suitable and contextualized recommendations are proffered for adoption to promote female children's rights to property access, control, inheritance and ownership as a way of ensuring sustainable children's justice as far as property is concerned. Since no similar study has been done in Kisii and indeed in Kenya as a country, the study will fill this scholarly gap and contribute to global data in this field. It is hoped that knowledge generated will enhance socio-economic-legal protection of vulnerable and at risk children in society as a way of enhancing their justice.

## **Methodology**

Cross-sectional descriptive survey design was used in this study. The population of the study was 1,152,282 inhabitants of Kisii County and the target population was 292,837 people who hailed from two sampled divisions - Keumbu and Township in the County (Kisii County, 2013). Stratified random sampling technique was utilized to select

a sample size of 408 respondents from the two divisions while purposive sampling was used to select 30 key informants and participants of four focus group discussions; two from each division representing males and females respectively.

Both quantitative and qualitative techniques were utilized to collect and analyze data. Semi-structured interview schedules were used to conduct face to face interviews with the 408 respondents while in-depth interview guides facilitated interviews with 30 key informants. The researcher facilitated four focus group discussions comprising of eight to twelve participants from the two sampled divisions but not included in the main sample to solicit more information. Desk review was also done to collect secondary data. Quantitative data was processed and analyzed using Statistical Package for Social Sciences (SPSS) version 20. The study utilized descriptive statistics and qualitative analysis to facilitate interpretation of data. Study findings were presented in tables, frequencies, percentages, narrative descriptions and quotes.

### Findings and Discussions of the Study

The findings will be presented in cognizance of the objectives that guided the study. They are presented and discussed in details under the subsequent sub-headings.

#### Respondents' perceptions on children's access to family property

Objective one of this study sought to identify respondents' perceptions on female children's access to family properties and the findings are presented in Table 1.

Table 1: *Children's Access Rights to Family Property*

Gender	A lot	Some	None	Total
Male	196 (49.6)	153 (38.7)	46 (11.6)	395 (88.4%)



Female	102 (27)	126 (33.3)	150 (39.7)	378 (60.3%)
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From Table 1, it is evident that almost half 196(49.6%) of the respondents allowed their male children a lot of access to family properties and assets, while 153(38.7%) allowed male children some access and the remaining 46(11.6%) did not allow male children access to family property. In total, 349(88.4%) respondents allowed their male children access to family property. Only 46(11.6%) of the respondents reported that they did not allow male children access to family properties and assets.

On the other hand, 102(27%) of the respondents reported that they would allow female children a lot of access to family property, 126(33.3%) revealed that they could allow them some access, while 150(39.7%) reported that they could not allow female children any access to family properties and assets. Overall, 228(60.3%) respondents reported that they could allow female children access to family properties and assets while 150(39.7%) could not.

Comparatively, there were more (88.4%) respondents who were inclined to allowing male children access to family properties and assets compared to (60.3%) those who reported that they would allow female children access to family properties and assets. This finding was reinforced by the remarks of a senior government official and KII who stated that;

*Though male children are preferred over female ones in this community, there is no structured gender discrimination as far as access to family property by children is concerned. Both male and female children are allowed access, as long as they remain obedient and respectful to parents.*

Even though the respondents were inclined to allow male children more access to family property as compared to female children, the difference between male and female children's access to property was not threatening as depicted by (88.4%) and (60.3%) for males and females respectively. This finding exposes mild gender disparity with regard to children's access to family properties and assets. However, since the gap was not very wide, it was not as worrying as when it came to property control, inheritance and ownership. This finding corroborates the findings of previous studies (FAO, 2009; Kessy, 2008; Silberschmidt, 1999) that depicted deep-seated cultural beliefs and practices that favoured male children over females with regard to family property rights. This perception and its subsequent practices contradict existing legal provisions enshrined in Section 53(1) of the Kenyan Constitution (2010) which stipulated equal treatment for male and female children in the family.

#### **Perceptions on Children's Control Over Family Property**

In line with objective two of this study, respondents' perceptions with regard to their children's control over family properties and assets on the basis of gender were investigated. The findings are as shown in Table 2.

*Table 2: Children's Control Rights over Family Property*

Gender	A lot	Some	None	Total
Male	103 (26.1)	175 (44.7)	115 (29.2)	393 (70.8%)
Female	14 (3.7)	94 (24.9)	269 (71.4)	377 (28.6%)

As illustrated in Table 2, the findings of this study show that 103(26.1%) of the respondents stated that they would allow male children a lot of control over family properties and assets, 175(44.7%) revealed that they would allow them some control while the remaining 115(29.2%) reported that they would not allow male children any control over family properties and resources. This finding shows that a majority (70.8%) of the respondents would allow male children to control family resources with differing degrees.

On the other hand, and as far as female children were concerned, out of 377(92.4%) of the respondents who responded to this question, only a minority 14(3.7%) would allow female children a lot of control over family properties and assets while 94(24.9%) would allow them some control. The remaining majority 269(71.4%) would not allow female children any control over family properties and assets. These findings show significant gender disparity with regard to male and female children control over family properties and assets. A majority (70.8%) of the respondents reported that they

could allow male children control over property while only (28.6%) revealed that they would allow female children control over family properties. This finding exposes serious gender gap (42.2%) that cannot be wished away or ignored. This finding was emphasized by the views of a key informant and civic leader in Keumbu division who revealed that:

*Most parents in this community allow male children some control over family land to plant trees, napier grass, and other small scale activities like keeping rabbits and poultry but this is not common with girls who are seen as passive and less concerned with issues of control over any form of property.*

Ensuing from these findings, it is evident that there was glaring discrimination against female children's control over family properties and assets. Though this practice is culturally endorsed in most patriarchal societies as reported by (Brown, 2005; FAO, 2009; Kessy, 2008; Silberschmidt, 1999), it is contrary to statutory, especially constitutional provisions that require male and female children to be treated equally with regard to property inheritance and ownership (The Kenyan Constitution, 2010). Likewise, this practice goes against the principles of justice for all children as stimulated in most international, regional and national statutory frameworks (Howard, 2014; The Republic of Kenya 2010; UNICEF, 2014). Consequently, these perceptions and resultant practices increase the vulnerability of female children and amplify their risks of social injustice and marginalization in society. Disfranchisement of female children with regard to property rights has serious implications on ensuring justice for these children.

#### Perceptions on Children's Ownership of Property

Similarly, this study investigated the respondents' perceptions with regard to children's rights to property ownership in the family. The household heads interviewed

were asked to indicate their propensity to transfer ownership and register family properties and assets in their children's names.

The findings show that only a minority 18(4.5%) of the respondents had a strong disposition towards transferring family property ownership to male children. Another 34(8.6%) indicated that they would transfer some of their family properties to male children. On the contrary, a majority at 345(86.9%) categorically revealed their unwillingness to do so. Similar sentiments were reported for female children as only 6(1.5%) strongly supported transferring of family property to female children. Another 12(3.0%) would transfer some family properties to female children and the remaining majority 379(95.5%) strongly disagreed.

Furthermore, 52(13.1%) and 18(4.5%) of the respondents demonstrated inclinations to transfer ownership of family property to male and female children respectively. The majority at 345(86.9%) and 379(95.5%) categorically expressed reservations with regard to transferring ownership of family property to male and female children respectively. This implies that the interviewed household heads did not perceive transfer of ownership of family properties and assets to either male or female children appropriate. Similar sentiments were echoed by a male key informant and opinion leader in the township division who argued that:

*Whatever properties I have are mine. I have worked hard to get them. Let my children work hard in school so that they can also develop their own capacity to buy properties of their own. Giving them property on a silver platter will make them lazy and irresponsible.*

Similar views were reported by a senior public administrator who revealed that:

*Instead of transferring property to my children, I can write a will on who should get what in case I am not there. Transferring property to them when they are still young will make them less ambitious, contended with what I have given them and stop working hard in school.*

Contrary to the views of many, a key informant and faith-based leader revealed inclination to transfer family properties and assets to children and justified this position by arguing that:

*Transferring ownership of family properties and assets by registering them in the name(s) of children cushions them against common socio-cultural property violations experienced by most orphaned children. Formal property ownership rights by children will protect them from selfish guardians/trustees who are likely grab orphaned children's properties and assets for selfish gains in the absence of their parents. This practice, common in our community, makes orphaned children destitute while hard earned properties of their parents goes to undeserving relatives.*

Another female key informant and leader of a women's group in Keumbu division stated that;

*I am considering registering some of my acquired properties under the names of my two children. In case I die and my husband marries another wife, my properties will be in the hands of my children and my husband will not use these properties on his newly found wife and children.*

Similar views were shared by a middle aged male key informant and civic leader in the Township division who argued that:

*It is important not to carry all your eggs in the same basket. In case of anything, one is likely to lose everything. For this reason, I have registered some of my plots under the names of my three boys, since I am a father of only boys. I won't want my children to be empty handed in case I die. Each one of them should have at least something they got from their father. However, I have not told them that I have properties registered in their names else they become lazy and stop working hard in school.*

Generally, from these findings, it is evident that not many respondents were ready to transfer and register their properties in the names of their children. They argued that

such a move could distract children from taking their studies seriously. Besides, the respondents argued that since they were giving children education, they expected them to work hard, get well paying jobs, invest and acquire property of their own at a later time. Hence, it can be deduced from all these findings that transfer of property ownership to children was not fully embraced by the interviewed household heads. This indicates that despite existing legal and statutory provisions available to guide parents on matters of children's property ownership and inheritance, most people are still controlled by socio-cultural practices. They are confronted with legal pluralism contradictions that provide them with a window to make choices between culture and law as documented by Brown, (2005); and Silberschmidt, (1999) hindering effective implementation of legal provisions meant to protect and promote children's rights. This finding corroborates with the findings by Gebeye (2013) which states that existence of contradictions between customary laws and constitutional provisions in relation to women's rights to property dilute the sovereignty of constitutions and jeopardize efforts intended to enhance gender-balanced rights to property inheritance and ownership.

#### **Perceptions on Children's Rights to Property Inheritance**

Objective four of this study sought to determine the respondents' perceptions on children's rights to property inheritance. The findings pointed out that 373(93.7%) of the household heads interviewed would grant male children family property inheritance. On the other hand, only 60(15.1%) household heads interviewed indicated readiness to grant family property inheritance to female children. It is worth noting that 338(84.9%) of the respondents categorically reported that they would not grant inheritance to female

children as compared to only 25(6.3%) who stated that they would not bequeath their property to their male children. This exposes a glaring gender gap in property inheritance by male and female children. This finding was confirmed by the sentiments of a key informant and public opinion leader and in Keumbu division who remarked that:

*In this community, property inheritance runs through members of the male gender; that is from father to son. Female children are not considered for inheritance. This is the way things have always being and they have so far worked well for us. Including female children in property inheritance will bring confusion, chaos and family disintegration. In this community, this move is not welcome.*

This voice represents respondents who were against family property inheritance by female children. They were mainly influenced by socio-cultural beliefs that govern day to day practices in this community. Such beliefs and practices have contributed to widening the gender gap in perceptions held by members of this society with regard to female children's rights to property inheritance. Though provided for in the Constitution of Kenya (2010) and other international and regional instruments that give a lot of emphasis to children's equal treatment gender notwithstanding, in practice, this is still a mirage in this community under investigation and indeed other communities with similar beliefs and practices (FAO, 2009; Gebeye, 2009; Silberschmidt, 1999). These communities demonstrate lack of enthusiasm in embracing female property inheritance rights. People are torn between contradictory cultural and customary beliefs and practices and legal provisions (Gebeye, 2013). More often than not, entrenched cultural beliefs and practices override legal provisions (Kameri-Mbote, 2006). This results in serious implications on justice for female children with regard to their fundamental rights to property.



Respondents who indicated willingness to grant inheritance to male children justified their views by arguing that it is cultural for male children to inherit family property. Male children are perceived as legitimate family heirs entitled to family inheritance. Further, these household heads argued that male children in turn offer social security to parents at their old age. On the other hand, those respondents who reported that they would not offer inheritance to female children argued that female children are in their families of birth only until they transition into another family through marriage.

As a result, they do not qualify for inheritance from their parents. However, it is assumed that established socio-cultural structures in patriarchal societies accommodate them and ensure that their needs are taken care of (Kimani, 2012; Silberschmidt, 1999). As minors, female children's property user rights are controlled by their fathers or brothers; when married, women's property user rights are controlled by their husbands or adult sons in case of widowhood (Kimani, 2012; Oduyoye 1999; Silberschmidt, 1999). These perceptions fit well into culturally constructed moulds of what is ideal and acceptable behaviour in society, as reported by ICRW (2004) and Oduyoye (1999). These perceptions are given further emphasis by Cruea (2005) who recorded that women are perceived as emotional and physically frail, as a result they need protection from male family members throughout their lives. This implies that women have no justifiable reasons that necessitate independent property inheritance because they are consistently under the protection of their male relatives who are culturally rightful heirs of family estates.

A serious challenge to this reasoning comes when for some reason the parents of female children die while they are still minors and they have no one to take care of them. Such children are tossed from one relative to the next, are faced with diverse types of abuse, drop out of school and are often left to fend for themselves (Brown, 2005; KHRC, 2006). This adds to their vulnerability as they indulge in risky and socially unacceptable lifestyles such as child labour, child prostitution, alcohol, drug and substance abuse among others. The effects of such behaviour are manifested later in the lives of these children when they attain womanhood. These observations inform the position taken by a minority (15.1%) of household heads and a number of key informants in this study, who would grant female property inheritance as a way of cushioning them from diverse negative implications alluded to in the preceding discussions.

#### **Conclusion and Recommendations**

In conclusion, this study established that as power to control and authority associated with property rights increased, the rights of female children to exercise and benefit from these powers and authority diminished. Since Kenya is a signatory to a number of international and regional treaties, has constitutional provisions and other legislations that promote equal rights of male and female children, in practice, one would expect that both male and female children had reasonable access to family properties and assets. However, this study found there were glaring gender disparities in the perceptions held by the respondents in areas of property control, inheritance and ownership where male children were preferred over females. Therefore, there is need to promote equitable

treatment of male and female children not only in matters pertaining to property rights but all other spheres of life to enhance children's justice.

The essence of this study was not just to facilitate female children to inherit and own property like their male counterparts, but to empower and position them in an equitable platform where they can favorably participate in improving their own as well as societies' livelihoods while facilitating them to cope with emerging challenges of modern life devoid of protective safety nets that traditionally cushioned vulnerable groups in society. Contravening female children's property rights has far reaching implications that could incapacitate them as children and later as adults to become independent actors in the general processes of development. It further slows down the realization of the Sustainable Development Goals (SDGs) deemed critical for any meaningful growth of communities and the world in general.

Consequently, the following recommendations emerged from this study. First, there is need for the government, NGOs, CBOs, church or para-church organizations to strategically position themselves to create awareness and sensitization about legal provisions of children's property rights in Kenya and beyond with specific focus to female children. Secondly, the government through its legal enforcement machineries should ensure strict and effective enforcement of laws that support children's property rights and apply severe penalties to those who violate these rights. Thirdly, law formulators and enforcers, professionals, practitioners and children's rights activists who champion gender equality in property rights should utilize contextualized socio-cultural-economic mitigation strategies to counter society based factors that stand as key

impediments to the realization of female children's property rights. They can also develop plans for NGOs and Churches to address the cultural mindset in the light of contemporary realities and the appropriate need for "gender-sensitive property ownership and inheritance paradigmas. Finally, all stakeholders who care for children's protection and welfare should consistently champion female children's rights to property as a way of achieving equitable gender inclusiveness to access, control, ownership and inheritance.

The suggested strategies will ultimately encourage development and entrenchment anticipated gender-sensitive property ownership and inheritance paradigms that could facilitate promotion of female children's rights to property in communities where control, ownership and inheritance of property is a reserve of the male gender, this is the ultimate objective of this study.

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