

**Access to Justice Regarding Property Rights for Widows: A Case of Three Wards in
Nairobi City County, Kenya**

Catherine Muteithia

(Reg. No. 16/00665)

**A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master
of Arts in Social Transformation, with a Specialization in Sustainable Development**

**Tangaza University College
Catholic University of Eastern Africa**

**Nairobi
August 2019**

STUDENT DECLARATION

I, the undersigned, declare that this thesis is a product of my own work and is not the result of anything done in collaboration. It has not been previously presented to any other institution. All sources have been appropriately cited and duly acknowledged in full.

I agree that this thesis may be available for reference and photocopying at the discretion of the University.

Signature of the learner:

Name of the learner: Catherine W. Muteithia

Date.....

We declare that this thesis proposal is an original piece of work, and fulfills all requirements.

Signature.....

Name of Supervisor 1: Dr. Aloys O. Ojore

Date.....

Signature.....

Name of Supervisor 2: Mr. Radioslaw R. Malinowski

Date.....

DEDICATION

I dedicate this research to the widows in Kenya who suffer in silence as they seek to access justice. In a special way, I dedicate it to the widows residing in Kasarani, Kibera and Kayole wards of Nairobi City County, Kenya.

ACKNOWLEDGEMENTS

I thank the Triune God for His guidance and courage to undertake this academic journey, and for all the blessings received in the process. My earnest appreciation goes to my family for their unceasing guidance and encouragement throughout this academic journey. My gratitude goes to my supervisors, Dr. Aloys Ojore and Mr. Radoslaw Malinowski for their time, continuous guidance and support towards the completion of this thesis.

I am indeed grateful to the management of the Community Based Organization, who allowed me to carry out this research with the widows they assist. Special thanks goes to the widows in Kasarani, Kibera and Kayole who welcomed me, and took their time to understand what my research is about and are ready and willing to participate in this study. I acknowledge Grace, Florence, Moses, Joseph and James, who took their time to introduce me to their group members in the three wards.

TABLE OF CONTENTS

STUDENT DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS	v
LIST OF TABLES	viii
LIST OF FIGURES	ix
ACRONYMS	x
ABSTRACT	xi
OPERATIONAL DEFINITION OF KEY TERMS	xii
CHAPTER ONE: INTRODUCTION	1
1.1 Introduction	1
1.2 Insertion.....	1
1.3 Background to the Study	2
1.4 Problem Statement	5
1.5 Purpose of the Study	5
1.6 Research Objectives	5
1.7 Research Questions	6
1.8 Significance of the Study	6
1.9 Scope and Delimits of the Study	7
1.10 Limitations of the Study	8
CHAPTER TWO: LITERATURE REVIEW	10
2.1 Introduction	10
2.2 Concept of justice.....	10
2.2.1 Definition of justice.....	10
2.2.2 Access to justice	12
2.2.3 Common barriers to access of justice.....	13
2.3 Related Literature.....	14
2.3.1 Global laws, treaties and protocols on human rights.....	15
2.3.2 African laws addressing property rights.....	16
2.3.3 Existing Kenyan laws and policies addressing property and inheritance	17
2.3.4 Culture: customary laws and property inheritance	20

2.4 Knowledge Gap.....	23
2.5 Theoretical Framework	24
2.5.1 Legitimacy theory.....	24
2.5.2 Human needs theory	26
2.6 Conceptual Framework	27
CHAPTER THREE: RESEARCH METHOD	29
3.1 Introduction	29
3.2 Research Design.....	29
3.3 Location of the Study	29
3.4 Target Population	30
3.5 Sampling Frame	30
3.6 Sampling Technique and Sample Size	30
3.7 Research Instruments	31
3.7.1 Interview guide.....	32
3.7.2 Questionnaires	32
3.7.3 Focus group discussions.....	33
3.8 Reliability and Validity of Research Instruments	34
3.9 Data Collection Procedures	34
3.10 Data Analysis Procedures	35
3.11 Ethical Considerations.....	35
CHAPTER FOUR: DATA ANALYSIS AND INTERPRETATION.....	37
4.1 Introduction	37
4.2 Description of Research Participants	37
4.3 Response Rate	38
4.4 Respondent Demographic Information	38
4.4.1 Ethnicity of respondents	38
4.4.2 Age Distribution.....	39
4.4.3 Level of Education of respondents	40
4.4.4 Number of years married and number of years widowed.....	40
4.4.5 Employment status.....	41
4.5 Objective 1: Specific legal systems in Kenya that can be used to safeguard or enhance the property rights of widows.....	42
4.5.1 Property ownership, access and registration	42
4.6 Objective 2: Cultural factors associated with social exclusion of widows	46

4.6.1 Psychological impediments	50
4.6.2 Social impediments	51
4.6.3 Physical and financial impediments	52
4.7 Objective 3: Levels of awareness on avenues of seeking legal redress	52
4.8 Objective 4: Barriers to accessing justice among widows	57
4.9 Objective 5: Suggest ways of assisting the affected widows to protect their property and inheritance rights.	58
CHAPTER FIVE: THEOLOGICAL REFLECTION	59
5.1 Introduction	59
5.2 Theological Reflection, Scripture and Social Teachings of the Catholic Church	59
5.3 Social Transformation Approaches	62
CHAPTER SIX: SUMMARY, CONCLUSION AND RECOMMENDATIONS	66
6.1 Introduction	66
6.2 Summary of Findings	66
6.3 Conclusion.....	69
6.4 Recommendations	69
6.4.1 Policy implementation recommendations	69
6.4.2 General recommendations	71
6.4.3 Recommendations for further research	74
REFERENCES.....	75
APPENDICES	82
Appendix 1: Consent form	82
Appendix 2: Questionnaire.....	83
Appendix 3: Interview guide.....	86
Appendix 4: Focus group discussion guide.....	87
Appendix 5: Krejcie and Morgan sample size determination table	88
Appendix 6: Originality report.....	89
Appendix 7: Tangaza University College authorization letter.....	90
Appendix 8: NACOSTI Authorization letter	91
Appendix 9: NACOSTI Research License.....	92

LIST OF TABLES

Table 1: Study sample size	31
Table 2: Years of marriage and widowhood.....	41
Table 3: Correlation of property ownership, property registration and property access	45
Table 4: Cross tabulation of ethnicity and property access	48
Table 5: Correlation of education and legal awareness level	54

LIST OF FIGURES

Figure 1: Conceptual Framework	27
Figure 2: Distribution of respondents (widows) by ethnic group	39
Figure 3: Distribution of respondents (widows) by age.....	39
Figure 4: Education level of respondents.....	40
Figure 5: Employment status of respondents.....	41
Figure 6: Property ownership of respondents	42
Figure 7: Property ownership and access by participants	44
Figure 8: Property registration by respondents	44
Figure 9: Respondents need of legal services	53

ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CBO	Community Based Organization
CCC	Catechism of the Catholic Church
COMESA	Common Market for Eastern and Southern Africa
IDLO	International Development Law Organization
FIDA-Kenya	Federation of Women Lawyers, Kenya
NGO	Non- Governmental Organization
UN	United Nations
UNDP	United Nations Development Programme
UN Women	United Nations Women

ABSTRACT

The problem investigated by this study was access to justice regarding property rights for widows in Kasarani, Kibera and Kayole wards in Nairobi City County. The injustice suffered by widows in Kenya casts doubts on the equality envisioned in the Constitution of Kenya (2010) and its contribution to sustainable development of the society. This study employed the descriptive research design and made use of the mixed method design as both qualitative and quantitative data was required to provide more comprehensive as well as substantive data. The researcher used questionnaires, interviews and focus group discussions to gather both qualitative and quantitative data. Content analysis was used to analyze qualitative data through identification of themes concerning challenges affecting widows as they access justice, cultural factors that facilitate the social exclusion of widows, and assess knowledge of existing laws and institutions that may assist the widows. The main objective of this research was to find out the specific areas and strategies that the widows could use to contribute towards property rights and social inclusion for social transformation. The study identified the barriers that stop widows from accessing justice and explored the levels of awareness and avenues of seeking legal redress among widows. The researcher further proposed that if there are interventions by significant others - government, NGOs and CBOs, the family, religious institutions- the problem of inaccessible justice would greatly reduce if not eliminated altogether.

OPERATIONAL DEFINITION OF KEY TERMS

Access to justice: This refers to the ability of people-especially the vulnerable such as widows - to seek legal redress through either the formal or informal justice systems.

Customary laws: Consist of the (mostly) unwritten norms and practices of different communities dating back to the pre-colonial era, but may have undergone transformation due to colonialism. They are dynamic and flexible as they develop and take on different variations as they respond to changing circumstances. In Kenya, these laws only apply to civil matters and are not applicable in criminal cases.

Discrimination: This is action that denies social inclusion and participation as well as human rights to specific groups or categories of people due to prejudice

Justice: This is fairness in the manner in which people are treated, equality and objectivity for all members of a society.

Legal aid: This is free or highly subsidized services to resource-poor and vulnerable persons provided as a means to strengthen their access to justice, legal information and education, legal advice, assistance and representation. It also includes alternative dispute resolution mechanisms.

Legal empowerment: This is the ability for individuals to comprehend and make use of the law for themselves. It allows even the most vulnerable and marginalized meet basic needs, achieve justice, hold authorities accountable, protect their wellbeing and take part in economic activities without discrimination and in an inclusive manner.

Levirate union: Sometimes referred to as widow inheritance, levirate marriage or custom, takes place when a married man dies before his wife, and her brother-in-law cohabits with her as a substitute for her dead husband.

Matrimonial property: According to Section 6 of the Matrimonial Property Act, 2014, is classified as the matrimonial home(s), household goods and effects in the matrimonial home(s), or any other immovable or movable property jointly owned and acquired during the subsistence of the marriage. This definition will be used as prescribed by the law.

Social exclusion: This is a form of discrimination where specific individuals are systematically blocked from or denied full access to various rights, opportunities and

resources normally available to all members of the society. These include access to information, medical provision, adequate housing, inheritance and security.

Widow: A married woman whose husband has died and who has not married again.

Widowhood rites: These describe the rites (usually cultural rituals) performed on or by a woman after her husband's death. They are beliefs and expectations guiding the actions and behaviour of the widow; actions by others towards the widow and the rituals performed by or on behalf of the widow from the time of the death of her husband.

CHAPTER ONE: INTRODUCTION

1.1 Introduction

The injustice suffered by widows in Kenya casts doubts on the equality envisioned in the Constitution of Kenya (2010) and its contribution to sustainable development of the society. This chapter presents a background to the study, the researchers' insertion and experience with widows in Kasarani, Kibera and Kayole wards in Nairobi City County. It then presents the problem statement, purpose of the study, its objectives, research questions and significance of the study which investigated access to justice regarding property rights for widows. Lastly, this chapter presents the scope, delimits and limitations of the study.

1.2 Insertion

From the studies we have seen so far, it is clear that the rights of women are an important field of study that draws interest and concern in all spheres of our society, especially development and equality. Without equal treatment of women and violation of their rights – especially the vulnerable, such as widows- there is little development in the social, economic and cultural fields. The reason seems to be that, these areas of development depend on fairness and equal treatment of persons to thrive.

The researcher interacted with widows in Kasarani, Kibera and Kayole and heard about how their in-laws mistreated them. This triggered the researcher to investigate their predicament and made her think about the challenges widows face when accessing justice. The researcher paid a visit to a community based organization (CBO) called Muungano wa Wajane (Union of Widows) in Nairobi. It was established in 2012 with the mission of helping widows live fulfilled lives by empowering them socially, economically and spiritually. This is done through the establishment of productive, reliable networks and support structures. The vision of the CBO is to have a country and indeed a world where widows are empowered and attain their right to protection, development and equal participation. The researcher chose to engage with these widows in Kasarani, Kibera and Kayole wards because they have been victims of gender-based violence, sexual abuse, social exclusion and family disputes that resulted in their eviction from their property as well as other holdings. They also had their rights violated, experienced emotional and psychological torture as well as discrimination and stigma.

1.3 Background to the Study

According to the United Nations (UN) Women (2017), there are about 258 million widows worldwide, with over 115 million of them experiencing and enduring extreme poverty, isolation, violence, homelessness, ill health and discrimination in both law and custom. In parts of Asia, the Middle East and Africa, widows suffer discrimination, sexual assault as well as seizure of their children and property. Their absence in statistics, unnoticed by researchers, neglect by national and local authorities and mostly overlooked by civil society organizations, in my view, causes the situation of widows to be intense and, in effect, invisible. The researcher observed that, the abuse of widows and their children constitutes one of the most serious violations of human rights and an obstacle to development. This is because social exclusion and the denial of basic human rights – especially for the vulnerable in the society - is the beginning of injustice (Human Rights Watch, 2012; Panda, 2014; Krishnan, 2015).

Bereavement is a social fact in any culture, but the reactions and practices relating to this vary from culture to culture. The researcher notes that in some countries, religions and ethnic groups around the world, a woman is left destitute after the death of her husband; while in others, equal inheritance rights are protected by law but the cultural and religious customs tend to override the rights of the widows. Many a widow have little or no right to inheritance or land ownership under customary or religious laws (UN, 2001). Owen (1996) explains that in many countries, the lack of accurate demographic data and research that concerns widows is what contributes significantly to the evident persistence of misconceptions about their prevalence and conditions of widowhood. She also indicates that in some cases, the elders in the community claim that the widow was not married according to the custom, because the man had only paid part or none of the stipulated bride wealth (dowry). This therefore implies that at the demise of her husband, her access to the resources, land and home needed for her economic survival are put at risk because she is not part of the husband's larger family.

According to the UN Women (2016), without these inheritance rights, including a lack of rights to property in their families of orientation, (that is birth families), widows find themselves financially insecure and totally dependent on the charity of their husbands' relatives. The United Nations (2001), argue that widows are subjected to patriarchal customary and religious laws and come face-to-face with discrimination in inheritance rights. Many of these widows suffer abuse and exploitation at the hands of family members, often in the context of property disputes. Few cases proceed successfully through the justice system

with the perpetrators going unpunished, while others remain undeterred and undetected (United Nations, 2001). Once widowed, women in many countries are often confronted with a denial of inheritance and land rights, degrading and sometimes life - threatening mourning and burial rights and rituals as well as other forms of abuse towards them (United Nations Women, 2017). The paradox is that the people who should ideally be taking care of these vulnerable women and children abuse and cast them out of their home altogether and the consequences of such behaviour is devastating on widows.

A study done in India by Gorney (2017) for National Geographic revealed that relatives of the widow take her to the ashrams (temples) or street corners of Vrindavan, about 100 miles south of Delhi and leave her there. Even those relatives who do not drive her away from the family home make her life miserable, for the misfortune of having outlived her husband. She is physically alive but socially dead (Gorney, 2017). According to Brewer (2011), a widow in Afghanistan runs the risk of losing her children if she declines to marry within the same family. The Afghan Civil Code provides that for children who have attained certain ages – nine for girls and seven for boys– custody is linked to the father and should he die, his family takes over their custody, leaving their mother voiceless in deciding what happens to them. A study conducted in Nepal in 2003 by Women for Human Rights found that most of the vulnerable widows were traumatized and denied the most basic needs, health, education and experienced psychological anguish. The widows are deprived of social, economic and property rights; victimized both sexually and emotionally within the family and in the community (Thapa, 2016). Thapa (2007) also noted that in as much as the constitution in the Nepalese Kingdom guarantees equality of all its citizens, there are more discriminatory laws that conflict with the rights provided for under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). In Africa, the narrative is not very different.

Idialu (2012) noted that in Nigeria, the widow is ordinarily accused of killing her husband. As a result, she must be confined in the room together with her late husband's body, where she is to sit on the floor for as long as her husband remains unburied. After burial, she has no free movement for between thirty and one hundred and twenty days depending on which state in Nigeria the family lives in. During this isolation period, the widow is confined to a tiny hut made of palm leaves, where she is exposed to the elements of weather and suffers extreme loneliness (Ewelukwa, 2002). The widows among the Ashanti of Ghana observe widowhood rites and wife inheritance lest the community accuse her of not giving her husband a befitting

burial; then, without consideration of her condition or circumstances, all her husband's property is taken from her (Brewer, 2011).

Brewer (2011) observed that in Lesotho, widows cannot leave their houses or be out at night during their one and a half year mourning period. Custom in Swaziland edicts that a widow must be dressed in black, mourn her husband for at least six months during which she is not to leave her home and cannot work to support her children. As such, widows cannot vie for electoral posts if their husbands have not been dead for two years as the electoral law forbids them to do so. They are also not allowed to visit the royal family for fear of sending them bad tidings. The most humiliating thing is that they are not allowed to cross paths with a cow until the compulsory two-year mourning period has elapsed (Brewer, 2011).

In East Africa, the treatment of widows does not differ much from the rest of Africa. In Uganda, for instance, Gorney (2017) revealed that it is still widely assumed that it is only men who should own and inherit land, that a woman's social status and acceptability terminates at the onset of widowhood and that the decision makers of what happens to her next are the husband's family and clan. They decide who will take the property, the children and who will have intercourse with her. Sometimes she is chased from her home by land-grabbers brandishing crude weapons, and she has nowhere to go because in most instances her birth family cannot take her back either because they cannot afford to or because she is no longer considered one of them.

In many parts of Kenya, in-laws take away the belongings of the woman while in other cases reported in the local media (Kahongeh, 2017), the widows are chased away from their homes even before the mourning period is over. Others must undergo cleansing ceremonies, which involve having intercourse with men called '*jatiek kwer*' or '*jokowiny*' (a professional cleanser among the Luo community) in order for the cleansing to be complete (Oriare, 2012). Oriare (2012) also noted that the cleansing of widows through sexual intercourse with a community-selected stranger is also practiced in Zambia and Rwanda.

The similarities found in all the aforementioned cases in the different parts of the world are that the in-laws distanced themselves from the widows and their children after their husbands died. This is similar to what the researcher observes happens in parts of Kenya where the in-laws drive the widow away from the homestead, and even if she is allowed to stay is mistreated and her matrimonial property taken from her. They are then subjected to social exclusion as well as some dehumanizing cleansing rituals that diminished their dignity. What

the couple acquired together as well as what the husband had inherited from his parents was taken away by the in-laws and the widows and their children are left to fend for themselves. This study sought to investigate the difficulties that widows living in Kasarani, Kibera and Kayole wards faced when accessing justice with regard to their property rights.

1.4 Problem Statement

Statistics by the Department of Gender Affairs under Kenya's Ministry of Gender and Youth Affairs (2018) indicated that about 45% of Kenya's eight million widows were said to have been violated, abused or abandoned by their in-laws either immediately after or shortly after the demise of their husbands. These widows have little legal or customary protection, which leads to extreme poverty, isolation, homelessness and ill health.

There are laws and policies such as the Constitution of Kenya (2010)-Articles 27, 40, 60; the Laws of Succession Act (2012)-Sections 35, 40 and 45; and the Matrimonial Property Act (2013)-Sections 6, 14, that govern and safeguard the rights of widows. The expectation is that the rights of all persons are upheld regardless of their status. However, the reality is that there is lack of implementation of these laws and policies at the grassroots level. Consequently, there is hampered access to justice for widows who continue to suffer despite these laws being in place. This study therefore, addressed the problem and exposed how the rights of widows in Kasarani, Kibera and Kayole wards in Nairobi City County have been violated despite there being international and local laws that should protect them and the challenges they face when accessing justice.

1.5 Purpose of the Study

The purpose of this study was to investigate the challenges that widows face when accessing justice concerning their property rights and the legal mechanisms that can ensure their access to property. The study set out to propose ways of ensuring that widows' right to inheritance is respected. It focused on the widows living in Kasarani, Kibera and Kayole wards in Nairobi City County.

1.6 Research Objectives

The general objective of this study was to investigate the challenges that widows in Kasarani, Kibera and Kayole wards in Nairobi City County face regarding their access to property rights. The specific objectives of this study were to:

1. Examine the specific legal systems in Kenya that can be used to safeguard or enhance the property rights of widows.
2. Identify the cultural factors associated with social exclusion of widows in Kasarani, Kibera and Kayole wards in Nairobi City County.
3. Explore the levels of awareness on avenues of seeking legal redress among widows in Kasarani, Kibera and Kayole wards in Nairobi City County.
4. Determine barriers to accessing justice among widows in Kasarani, Kibera and Kayole wards in Nairobi City County.
5. Suggest ways of assisting the affected widows in Kasarani, Kibera and Kayole wards in Nairobi City County to protect their property and inheritance rights.

1.7 Research Questions

The study, based on the specific research objectives, attempted to answer the following questions:

1. What are the specific legal systems and articles in the law in Kenya that can be used to safeguard or enhance the property rights of widows?
2. What cultural factors facilitate the social exclusion of widows in Kasarani, Kibera and Kayole wards in Nairobi City County?
3. What are the levels of awareness on avenues of seeking legal redress among widows in Kasarani, Kibera and Kayole wards in Nairobi City County?
4. What are the barriers stopping widows in Kasarani, Kibera and Kayole wards in Nairobi City County from accessing justice?
5. How can the affected widows attain some legal assistance so that they can protect their property and inheritance rights?

1.8 Significance of the Study

The study contributed to the minimal existing literature on widows in Nairobi City County, with special emphasis on those living in Kasarani, Kibera and Kayole wards. The study highlighted the challenges widows face when accessing justice as well as provided information that can be made use of by community based organizations, social workers and

the legal fraternity when advocating for the rights of widows. The researcher identified factors that contribute to the social exclusion of widows and raised awareness about the rights of these widows. This information may assist community-based organizations, social workers and the legal fraternity to address the challenges that widows face and assist them access justice.

The widows participating in this study were informed about which channels to use to communicate their challenges and possibly, learn how they can be overcome. The researcher opined that, for any improvement in the lives of the resource-poor to be lasting and sustainable, it must include strengthening their powers to participate in the processes of development. Strengthening their capacity to communicate will enable them to be in a better position to contribute to the economy and development strategies. The study findings may positively serve as a basis for enlightening widows and those who violate their property rights on the importance of widows owning property as well as inform policy change.

Government executives and policy makers may be enlightened on developing relevant strategies and frameworks that help widows champion for their property rights, to know the laws, be aware of when their rights are being violated and learn where and how to seek redress.

Community Based and Non-Governmental Organizations may be in a better position to assist the aggrieved widows seek justice as the findings of this research shed light on the challenges that widows face from the onset of widowhood.

Human rights activists within the society may be triggered to become avenues to actively speak out and pressure for change due to the negative impact that social exclusion of widows has. This can be done through advocacy initiatives that will promote social inclusion and equity of the vulnerable widows and thereby bring about social transformation within the society.

The study may also prompt other scholars and researchers to deeper exploration and awareness creation about the effects of social exclusion and other challenges that widows face upon eviction from their property.

1.9 Scope and Delimits of the Study

This study was carried out between March and June 2019 in Kasarani, Kibera and Kayole wards of Nairobi City County. These areas were selected because the researcher had

identified that there was a large number of widows in the three wards in Nairobi City County, and Muungano wa Wajane (Union of Widows) has three or four groups of widows each having between 30 and 35 members of different ages they assist in the study locations. There was also the likelihood of the researcher reaching out to other widows who were not part of those assisted by the CBO, but who were known to members. The decision to carrying out the study in Nairobi was because it is a cosmopolitan city, having people from different ethnic communities as well as diverse nationalities. The researcher would therefore be able to get a variety of responses especially on the issue of cultural factors leading to social exclusion of the widows. The researcher anticipated to determine the challenges facing access to justice for widows in the three selected wards in Nairobi City County, specifically their property rights. This would lead to an understanding of the gap between existing legislation, its implementation (or lack thereof), violation and the practice of handling rights of widows in Kenya.

1.10 Limitations of the Study

The researcher anticipated a number of limitations while undertaking this study. First was the challenge of identifying the widows in the three study locations of Kasarani, Kibera and Kayole. This was overcome by liaising with field officers of Muungano wa Wajane (Union of Widows) who coordinate several groups of widows in the study locations. Second was access to the widows, transport and meeting venue. The researcher overcame this by getting information from the field officers on their bi-monthly meeting dates and venues. The researcher and her assistants then joined the widows during their regular meetings at their usual venues. The transport cost to the meeting venues for the researcher and her assistants was catered for by the researcher. After participating in the study, some of the widows gladly introduced the researcher and her assistants to other widows who live in the study location to participate in the study.

Third, some widows were unwilling to engage in self-disclosure about the obstacles they faced to a complete stranger. This was overcome by the fact that the researcher and her two research assistants were women and therefore potential widows. It was therefore easier to create a good rapport with them, and let them know that the researcher had their best interests at heart. The researcher impressed upon them that their cooperation would go a long way in assisting them and others like them to access justice with regards to their property rights. Fourth, as the research was conducted in English, there was a language barrier because some

of the widows could not understand English. This challenge was addressed by relying on research assistants who were fluent in both English and Kiswahili languages.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter begins by defining the concept of justice, its definition, access to justice and common barriers to justice. It then explores writings relating to global and African literature on the challenges widows face when accessing justice with regard to their property and inheritance rights and its implications on their participation in the development agenda, on land rights challenges among widows, culture and customary laws on property inheritance in Kenya, and mentions the main gaps to be filled. The review anchored on the Legitimacy and Human Needs theories which were selected for their relevance in the study and was guided by a conceptual framework and the study objectives.

2.2 Concept of justice

There is growing evidence that effective justice systems and the application of the rule of law contribute to sustainable development and inclusive growth (Open Society Foundation, 2016). This section brought out the working definition of justice for this study, components and types of justice, access to justice and the common barriers that are associated with accessing justice.

2.2.1 Definition of justice

Hurlbert and Mulvale (2011) brought to the fore one of the earliest known written definitions of justice by Aristotle who stated that:

Justice is virtue in action, consisting of righteousness or complete virtue in relation to ones neighbors. Justice means that every member of a community should fulfill his moral obligation towards the fellow members of his community (Aristotle in *Nicomachean Ethics*).

Pieper (1966) brought out Plato's definition of justice as a fundamental virtue, the notion that each one is to be given what is due to them, consisting of correctness of thought...having moral rather than legal content...the bond that holds society together (Plato in *Republic*). Pieper (1966) added that what is unjust or injustice therefore, is taking away or withholding what rightfully belongs to another, not by misfortune or nature, but by man. From the definitions of justice by Aristotle and Plato, justice can therefore be described as a habit where each willingly and constantly renders to the other their dues. Aristotle and Plato agreed that justice meant goodness and willingness to obey the laws of the land. Meyer and Sanklecha (2016) argued that the principle function of justice is to assign basic rights and

duties, as well as determine the proper distribution of the benefits and burdens of societal collaboration. This was also the conviction of the researcher because if the act of justice is to give each their dues, then it means that justice must be heralded by rights. If the rights of any individual are being infringed upon, then justice is not being served, it is being denied. The rights of widows to their human and property rights are infringed upon when they are evicted from their matrimonial property by their in-laws, when they are physically and mentally abused after the death of their husbands, when they are isolation and social exclusion due to their widowhood, and are accused of killing their husbands.

Hurlbert and Mulvale (2011) added three components to Aristotle's description of justice. First was fairness, which is treating people equally. This included procedural fairness which ensured that everyone receives a fair hearing and due processes in courts, local tribunals and other formal decision-making bodies. Second was equality, which demanded impartial access to adequate income, housing, food security and other basic necessities for a modest, dignified life. The third was moral righteousness, entailing ideals of individual virtue and ethical conduct which makes the society a better place for all (Hulbert & Mulvale, 2011). The researcher agrees with Hulbert and Mulvale (2011) that these three components are essential for a just society. If these three components were practiced within the society, then widows would be treated equally, have equal access to basic necessities for a dignified life and be included in the activities and developments of society and not suffer as they sought to access justice.

Pieper (1966) noted that justice rules in the community in three relations which correspond to the three basic forms of justice. The first was commutative or mutually exchanged justice which orders the relation of individuals to one another, and entails the principle of fairness in the sense of equality. The second was ministering or distributive justice which guides the relations between society and the individual, and concerns itself with fairness in sharing. The third was legal or general justice which orders the relations of the individuals toward the society. This meant that if justice runs counter to the natural laws of fairness and sharing, then individuals become egocentric, widows in the study areas of Kasarani, Kibera and Kayole are confronted with a denial of inheritance, property and land rights, which makes them vulnerable to and victims of other forms of abuse towards them. For a society to be able to promote equality and fairness for all its members, ensuring the realization of access to justice for widows is vital.

2.2.2 Access to justice

Access to justice was defined by the United Nations Development Programme as a process that conforms to human rights standards, by which people are able to claim and obtain justice remedies through both formal and informal institutions of justice (UNDP, 2015). Integral to the achievement of the UN Sustainable Development Goals and inclusive growth is access to justice especially for the poor and marginalized who live outside the protection of the law (Open Society Foundations, 2016). Women, especially widows, are also affected by legal exclusion in addition to facing different forms of discrimination and violence. If their legal challenges can be addressed, then, the researcher opines that the protection of their basic human rights will be enhanced.

The Open Society Institute (2008) indicated that access to justice refers to the ability of people –especially the disadvantaged groups–to seek legal remedy through both the formal and informal justice systems that are consistent with principles of human rights. It is closely related to human development and there has been found a link between poverty and unsecured access to justice (Meyer & Sanklecha, 2016). Kariuki and Kariuki (2015) described access to justice as a situation where people in need of help find accessible, affordable, effective and comprehensive solutions available from the justice system. These systems should be able to dispense justice promptly, fairly and without discrimination, fear or favour.

The researcher agrees with Kariuki and Kariuki (2015), that where access to justice is absent, the poor and marginalized are deprived of opportunities to have their voices heard in the development and decision-making processes. Empowering women and promoting the rule of law in their communities and enhancing their legal knowledge and legal awareness provides tools that promote justice within those communities. If women are empowered to claim their rights, they are better equipped to bring about change in the community (IDLO, 2017). If their rights denied, they are unable to exercise their rights, counteract discrimination and demand accountability from decision-makers. In my interaction with widows in Kasarani, Kibera and Kayole, it emerged that those barriers to access justice still persist. My study suggests how access to justice could be enhanced.

2.2.3 Common barriers to access of justice

Barriers to justice tend to reinforce poverty and exclusion (UNDP, 2008). A prerequisite to protecting disadvantaged sections of the population and help get rid of poverty is upholding a robust rule of law. Improving access to justice is therefore a key means of promoting social inclusion. This study identifies six common barriers, some of which inter-relate and overlap, on widows' path to justice.

First, there are operational obstacles which are related to efficiency and effectiveness of the administration of justice. In order for widows to lay solid claim to their rightful property, they need to get the support of the local leadership or administration such as the area chief, the District Officer (DO) and community elders. In some of the cases, the local administration frustrate the efforts of the widows to access justice, one by forging her death certificate so that her father-in-law could lay claim to her deceased husband's insurance benefits, another by not taking any interest or willingness to take action against her in-laws for the injustice being done to her despite being well aware of her plight (Kahongeh, 2017). In other cases, those who are against the widows and can afford it give the local leadership and administration some small payment in order to guarantee a 'favourable' outcome of the case before them.

Second, quality of legal assistance being pegged on the payment of lawyers' fees, coupled by the complexity and high cost of legal processes and services, with very few to no legal professionals offering free services to the resource-poor and marginalized (Abregu, 2001). Resource-poor and vulnerable persons such as widows are unlikely to initiate a legal process and carry it through because without a good lawyer, the likelihood of succeeding in a lawsuit against in-laws or otherwise are reduced drastically (Gargarellal, 2002). ILDO (2017) argued that the formal administrative processes are often inaccessible to the low-income earning widows who have limited access and capacity to engage with legal institutions and less funds for administrative fees. Third, public defense is usually oriented to criminal cases; consequently, inefficiency occurs in tackling other issues (Abregu, 2001).

Fourth, information failure in that there is difficulty in accessing legal information, especially that which is in a simple, easy to understand language as most of what is available contains legal, technical jargon which is not easily comprehensible by the widows. Gargarellal (2002) indicated that the overall problem of lack of simple information brings with it other subsidiary ones, which include not realizing what rights one has, where to go or what to do in

order to seek legal redress and demand one's rights. This barrier also includes the communication barrier of language spoken, read and understood by those with the legal issue (US Institute of Peace, 2016). Fifth, some people neither recognize their problems as legal ones, nor identify potential legal remedies for them.

Sixth, unequal access to justice, coupled with lack of knowledge of the channels through which to seek redress for legal issues diminishes confidence in and promotes lack of trust in and fear of the justice system. Gargarellal (2002) pointed out that because some public officers abuse their authority by unjustly prosecuting the resource-poor and take that opportunity to humiliate them during the trial, the resource-poor may conclude that it is not worth presenting their case to the tribunal and thus would rather suffer injustice in silence.

These barriers lead to serious consequences such as social exclusion which contributes to the cycle of poverty. Logan (2017) argued that women are most often times excluded from participating fully in as well as being the beneficiaries of different aspects of the law, development work and justice. This comes despite there being an increased recognition in the importance of women's inclusion in development work and justice delivery. The researcher maintains that the oppression of widows has a negative effect on peace and security as well as may significantly contribute to the cycle of poverty. This may in turn cause some form of insecurity and thereby challenge sustainable peace and development. This study identified the root causes of the barriers to access to justice for widows in the study locations- Kasarani, Kibera and Kayole wards of Nairobi City County as well as proposed ways of overcoming and addressing those barriers. Customary laws also play a role in creating conflict between implementation of the law and preservation of widow's property rights. The researcher also reviewed the existing literature that is relevant to the study.

2.3 Related Literature

The International Women's Tribune Centre (1998) indicated that there was a massive gap between the theoretical legal protections against discrimination and other forms of violence against women and women's daily realities. This situation persists, and it is for this reason that women have for decades been organizing, mobilizing and demanding that leaders pay attention to the daily realities of women to ensure that local and international laws are interpreted correctly and enforced (International Women's Tribune Centre, 1998). The researcher agreed with Clinton (1995) and Logan (2017) that the rights of women are an integral, undisputable and inseparable part of the universal human rights and that women's

rights are human rights. Logan (2017), maintained that the Agenda 2020 for Sustainable Development, specifically Goal 5 on gender equality and women's empowerment and Goal 16 on peace, justice and rule of law – focus on the importance of access to justice for women to achieve those goals. Ensuring the realization of access to justice for women – single, married, divorced or widowed - is not without its challenges. Ewelukwa (2002), indicated that the study of widows exposed their position as both victims and guardians of culture, as well as how actions and decisions made on the global arena -global laws, treaties and protocols that govern and guide the rights of women- have an impact on the lives of rural women especially in the Third World.

Studies carried out in Kenya on widows by Mwangi (2005), Ogweni (2010), Mburugu, Nyaga, Chepchieng and Ngari (2015) and Ojore (2017) concluded that widowhood affected the self-esteem of both men and women; that widowed persons in deprived environments faced financial, psychological and social problems, and that widowhood had its effects on the mental status of the individual. Some of these studies also concluded that widows in Kajiado County were being counted as shareholders of the property that their husband owned and that widows should be involved in Church ministries. These studies also indicated that a significant majority of the widows wanted the levirate custom abolished as they felt it was retrogressive and a violation of widows' rights that needed to be discontinued. None of the studies cited has focused primarily on the challenges that the widows face when accessing justice with regard to their property rights. This study exposes how the rights of widows in Kasarani, Kibera and Kayole have constantly been violated despite there being international and local laws that should protect them and the challenges they face when accessing justice. There are also global laws, treaties and protocols that should govern and guide the rights of women.

2.3.1 Global laws, treaties and protocols on human rights

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948 after the Second World War and represents the first global expression of rights to which all human beings are entitled. Those specific to this paper include Articles 7, 17 and 25, which refer to the right to equality before and equal protection of the law, right to own property and the right to decent, adequate housing (United Nations, 1948).

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) adopted in 1979 is sometimes referred to as the International Bill of Rights for Women. This

is because it offers the most comprehensive coverage of women's rights both in the public and private spheres. By bringing together all conventions and treaties protecting and promoting the rights of women, it is the most important and legally binding international document concerning the human rights of women. Articles 14 and 16 oblige member states to ensure equal treatment of men and women in land and agrarian reforms. The bill insists that land rights under marriage and inheritance laws should be based on equality. The articles also state that land tenure reforms must ensure women's property rights during marriage, at divorce and in the event of her husband's death (United Nations Women, 2000). CEDAW defines discrimination against women as any distinction, exclusion or restriction made based on gender. Ndemo (2006) argued that this discrimination tends to impair and nullify the recognition, exercise and enjoyment of basic human rights and fundamental freedoms by women in the social, cultural, administrative, political or economic field irrespective of their marital status. Despite the existence of the Universal Declaration of Human Rights and CEDAW, which declare the rights of all people, and are legally binding documents, discrimination and infringement of human rights especially toward the vulnerable persons such as widows still occurs. This study goes beyond these international instruments to suggest how we can better the conditions of widows in Africa, especially in Kenya. There are also African laws pertaining to women's rights.

2.3.2 African laws addressing property rights

The relevance of these articles in this research was that they are legal, ratified protocols and laws that Kenya signed, and is therefore bound to implement them. Articles 20 and 21 of the 1981 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa are the only ones specifically targeting the rights of widows. They state that:

State parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following: a) that widows are not subjected to inhumane, humiliating and degrading treatment. b) That a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children. c) That a widow shall have the right to remarry, and in that event, to marry a person of her choice' and that 'a widow shall have the right to an equitable share in the inheritance and property of her husband. A widow shall have the right to continue to live in the matrimonial house. In the case of remarriage, she shall retain this right if

the house belongs to her or she has inherited it. Women and men shall have the right to inherit, in equitable shares, their parents' property (Maputo Charter, 1981).

Under the Banjul Protocol of the African Charter on Human and Peoples' Rights (ACHPR) of 1981, Articles 2, 3 and 18 refer to the equality of all persons under the law, that every individual is entitled to equal protection of the law. It also advocates that member states should eliminate all forms of discrimination against women and ensure the protection of the rights of the woman and the child in accordance with international declarations and conventions. This ACHPR prohibits the discrimination against women even on the issue of property and land rights by recognizing the equality of all, men and women alike under the law (Organization of African Unity, 2003).

The main objective of the Common Market for Eastern and Southern Africa (COMESA) Gender Policy - specifically Articles 154 and 155 - is to eliminate gender inequality and ensure the economic empowerment of women, as well as promote the equal access to and control of resources and opportunities. The East Africa Community Treaty –Article 6 (d) recognizes gender equality as one of its fundamental principles governing the community. Working hand-in-hand with the African Charter on Human and Peoples' Rights (ACHPR), it recognizes the promotion and protection of human rights, thereby prohibiting gender discrimination in land and property rights and issues. These laws amplify the need for the promotion and protection of human rights in Africa, which promote equality of men and women in all spheres of society, whether married, single or widowed. These include property rights of widows. These laws do not specifically address the predicament or challenges that widows face when accessing justice regarding property rights despite the enactment of these international laws that Kenya ratified. This study magnifies these challenges and provides potential solutions to those challenges, including the necessity to promote and protect all human rights. Equal attention to women's rights is entrenched in the Kenyan laws.

2.3.3 Existing Kenyan laws and policies addressing property and inheritance

Women's rights have for a long time been violated in the cultural, social, economic and political spheres, and one of those is their property rights. The violation of these rights can be linked to negative cultural practices, predisposed attitudes as well as discriminative laws, policies and legislation (Sweetman, 2006). According to the Federation of Women Lawyers, Kenya (FIDA), Kenya made positive steps in developing a Constitution that reflects international standards of gender equality and enacting laws that give effect to the provisions

of the constitution. However, due to the deeply entrenched patriarchal society and attitudes, it is still difficult to attain the equality envisioned in the Constitution of Kenya 2010 (Federation of Women Lawyers, Kenya, 2013).

The researcher observed that the state has the responsibility of protecting the rights of all its citizens indiscriminately but has not fully protected the rights of women to own and inherit property. Nevertheless, there have been several attempts –though not entirely successful– aimed at protecting women’s rights to own land and other matrimonial property (Phillips, 2000). In Kenya, there are some enacted laws that embed the principles of gender equality in access to land and property. These are the Laws of Succession Act (2012) and the Matrimonial Property Act (2013). However, conflict still arises in the implementation and violation of the laws, which create avenues through which property rights of widows are disrupted. This study looked at the causes of the property rights violations and suggested reforms in the legal sector on inheritance and land ownership rights, and the Matrimonial Property Act implemented fairly and without discrimination.

The Laws of Succession Act 2012

Section 35 of the Law of Succession Act states that:

...subject to the provisions of section 40, where an intestate has left one surviving spouse and child or children, a surviving spouse shall be entitled to the personal and household effects of the deceased absolutely and a life interest in the whole residue of the net estate provided that if the surviving spouse is a widow, that interest shall determine upon her re- marriage to any person (Law of Succession Act, 2012).

This is to say that, for the purposes of this study, the widow is entitled by law to the property of her deceased husband, to be maintained and to use part of the deceased’s land for their own needs during their lifetime, but this right is forfeited upon her remarriage. Essentially, the Law of Succession provides the mechanism through which property is transferred from its deceased owner to the people he/she left behind. It seeks to ensure that all rightful dependant/beneficiaries inherit the deceased property and also provides for the procedures to be followed (Laws of Kenya, 2012).

The law describes beneficiaries of land and property in the event that a person dies. One of the beneficiaries is the spouse or spouses of the deceased. It also gives provision for women to inherit their matrimonial property. The Law of Succession Act (2012) basically seeks to

give both men and women equal rights in matters of succession yet at the same time excludes specific gazetted districts in which customary law remains supreme such as West Pokot, Turkana, Marsabit, Samburu, Isiolo, Mandera, Wajir, Garissa, Tana River, Lamu, Kajiado and Narok. This law governs both succession of the matrimonial property with a will (testate) or without a will (intestate).

There is also the issue of intermeddling, which is addressed in Section 45(1) of the Succession Act, which provides that no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person. The offence is punishable by a fine, imprisonment or both. This section of the Succession Act, 2012 clearly states that interfering with the property of a deceased person by either taking possession of or disposing it is a punishable offence, therefore those who unlawfully possess the matrimonial property of widows are breaking the law and should be punished. Unfortunately, too often the perpetrators of this injustice toward the widows and her children go unpunished, because the widows have little or no knowledge of how to go about defending their rights or seek justice. Death dissolves a marriage and thus widows are entitled to keep the matrimonial property. The Succession Act, Cap 120, Section 66 provides for the order of priority for which the property of the deceased is to be inherited. It states that without prejudice to that discretion the subsequent order of preference should be followed:

- (a) the surviving spouse or spouses, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) other beneficiaries entitled on intestacy such as the deceased's parents, step-parents, grandparents, grandchildren, step- children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half- sisters, as were being maintained by the deceased immediately prior to his death.

This means that a man's wife or wives and children should essentially be the first direct beneficiaries of whatever property he had prior to his demise. The law provides for the distribution of property to the surviving spouse and this does not exclude widows. Further, Section 35 (2) gives the surviving spouse the power to bequeath the surviving child or children any part of the property. This study makes these laws known and available to widows in the study areas of Kasarani, Kibera and Kayole ward of Nairobi City County.

The Matrimonial Property Act 2013

Widows, by virtue of marriage, have the right to inherit their matrimonial property as defined in the Matrimonial Property Act which in Section 6, is classified as the matrimonial home(s), household goods and effects in the matrimonial home(s), or any other immovable or movable property jointly owned and acquired during the subsistence of the marriage (Matrimonial Property Act, 2013).

Whether through customary or civil marriage, she has a right to that property and it should not be taken away from her (Laws of Kenya, 2013). This right is also anchored in Article 40 of the Constitution of Kenya, which states in part that every person has the right, either individually or in association with others, to acquire and own property of any description and in any part of Kenya (Constitution of Kenya, 2010). In addition, Article 60 of the same Constitution ensures equitable access to land and security of land rights (Laws of Kenya, 2010). Section 14 of the Matrimonial Property Act also provides that:

...where matrimonial property is acquired during the marriage – in the name of one spouse, there is a rebuttable presumption that the property is held in trust for the other spouse; and where the property is jointly owned, that their beneficial interests in the matrimonial property is equal. (Laws of Kenya, 2013).

The implication here is that widows have a right to inherit their matrimonial property, and there are Acts and laws that govern and guide these rights. The violation of these rights of widows is a great injustice to them as it interferes with their day-to-day activities and thus their overall development. This meant that due to discrimination, these widows in Kasarani, Kibera and Kayole became vulnerable, experienced and endured extreme poverty, isolation, violence, homelessness, ill health and financial insecurity. They were not in a position to seek justice, and this study assessed the levels of awareness on avenues of seeking legal redress among widows in order to determine how best they can be aided to seek justice. There also exist different understandings of the concept and types of justice and injustice as well as common challenges to access to justice.

2.3.4 Culture: customary laws and property inheritance

Majority of the people in African countries are subject to customary laws and thereby conduct themselves and their activities in accordance to those laws, which play a vital role in cultural norm preservation (UN, 2001). Ndulo (2011) argued that because customary laws were developed in an era which was dominated by patriarchal societies, some of its norms are

in conflict with the human rights laws that pledge equality between men and women. These include-but are not limited to- marriage, inheritance and traditional authority. Traditional justice systems greatly pursue restorative justice rather than retributive justice. Their main aim is reconciliation by restoring the relationships between aggrieved parties and peace-building (Kariuki & Kariuki, 2015).

Ogolla (2014) indicated that the practice of levirate unions is widespread in all parts of Africa. The English word levirate comes from the Latin 'levir', meaning husband's brother. Levirate unions, sometimes referred to as widow inheritance, levirate marriage or custom, takes place when a married man dies before his wife. According to Kirwen (1979), a levirate union is a cohabitation of a widow with her brother-in-law where he relates to her as a substitute for her dead husband. This substitute, according to Ojore (2017), can be his surviving brother, a cousin or a distant relative of the deceased man, who will take the widow and raise children for the dead brother in a levirate union. Levirate unions were practiced even in Bible times among the Jews. The purpose of the union as described in Deuteronomy 25:5-10 was to prevent the loss of the family property if the widow married someone outside the clan. The levirate marriage would ensure that the inheritance was issued to the firstborn of the deceased (New Catholic Encyclopedia, 2003).

The researcher observed that the institution of the levirate, which was originally intended for the protection of the widow and her children, has been abused and has resulted in wives and their children being dispossessed by male relatives on the death of a husband. Examples of communities in which they are practiced are the Kamba, Luo, Maragoli and Nandi of Kenya, Alur and Ankole of Uganda, the Dinka and Nuer of South Sudan, the Supyire tribe from Mali, the Igbo and Yoruba of Nigeria, the Akan of Ghana, Mambila of Cameroon and many communities in Zambia (Ogolla, 2014). This brought in the argument by Human Rights Watch (2003) that property rights of widows are closely related to wife inheritance and cleansing rituals, given that many women cannot stay in their homes or on their land unless they are inherited or cleansed. Wambui Kanyi, a women's rights advocate, explains that '...Women have to be inherited to keep any property after their husbands die. They have access to property because of their husband and lose that right when the husband dies.' (Human Rights Watch, 2003). Widows who had gone through those practices told Human Rights Watch that they had mixed feelings about them, because cleansing and inheritance

were not voluntary, but so that they could keep their property and be allowed to stay in their communities, they give in.

Customary law is of importance for Kenyan women because not only does it define their identity and rights within society, but also guides their family relationships and access to resources, which puts women at a disadvantage under the customary laws (Kamau, 2014). The effect of customary law in Kenya is that it shall be applicable but not to an extent in which it infringes the Constitution. Article 2(4) of the Kenyan Constitution (2010) provides that any law, including customary law that is inconsistent with this constitution is void to the extent of the inconsistency, and any act or omission in contravention of this constitution is invalid (Constitution of Kenya, 2010). Article 27 also guarantees equality and freedom from discrimination. Women's rights particularly in relation to inheritance have been safeguarded under Article 27(3), which provides that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres (Constitution of Kenya, 2010).

According to Kamau (2014), the continued application of customary law in succession and marriage creates conflict with constitutional provisions. For example, Article 6 of the Kenyan Law of Succession Act guarantees the right of women and men to inherit equally goes against the practice of customary law, which decrees that women should not inherit immovable property, especially land. However, the researcher agreed with Kamau (2014) that because customary law is flexible and dynamic, its fluctuating norms and their application may provide opportunities that can be used to make customary law beneficial to women.

The researcher also agrees with Kamau (2014) that in the traditional society, women and children occupied an inferior position especially when it came to property issues. This position was also supported by Ewelukwa (2002), who observed that African Customary Law does not normally recognize widows' rights to inherit her husband's property as more often, she is viewed as part of the immovable property to be inherited by the estates heir. Nonetheless, there were mechanisms in place to protect widows' interests. For example, after the death of the husband, the deceased's property would be entrusted to one of his male relatives who was obliged to look after the welfare of the deceased's wife and children. However, sometimes she and her children were exploited.

In Kenya, succession of property is patrilineal under customary law, which means that the men own the land and pass it to the eldest son, and the women own the movable property such as utensils and farm tools. This position, unfortunately, propagates the exclusion of women from inheriting land and other property. This sentiment is especially true for widows who are evicted from their matrimonial property when their husbands die, which leaves them vulnerable and subject to different forms of discrimination and violence.

Logan (2017) argued that what prevents women from demanding for and realizing their rights is the distance from justice structures. This is not to say that the justice structures are not only physically far from women, but their unresponsiveness and sometimes very slow response may be the main factor that deters widows from seeking justice. Kamau (2014) indicated that in Kenya, the Magistrates courts have the authority to hear and determine customary law cases, but this jurisdiction is restricted to certain matters related to customary law. The Magistrate's Courts Act -Section 2 part 5 and 6 restricts those matters to:

‘matters affecting status, and in particular the status of women, widows and children, including guardianship, custody, adoption and legitimacy; and intestate succession and administration of intestate estates, so far as not governed by any written law’ (Laws of Kenya, 2013).

This means that the courts are able and mandated to hear cases regarding widows' access to justice, but there is little or no knowledge on the part of the widows on how to access the justice systems in Kenya. Empowering widows with the capacity to understand and ability to claim their rights (legal empowerment) will, in my view, create a culture of justice, improve their access to justice and the quality of justice received or delivered. Logan (2017) pointed out that through legal empowerment, widows are not only equipped to claim their rights, but also demand accountability and bring sustainable change within their communities.

2.4 Knowledge Gap

Considering all the above literature pertaining to the common barriers to access to justice, the challenges women face in society and violation of rights of women, very little has been carried out on widows in Nairobi. This study therefore responds to the knowledge gap regarding challenges of access to justice regarding property rights for widows in Kasarani, Kibera and Kayole wards of Nairobi City County, Kenya. The researcher now presents a clear framework for the study.

2.5 Theoretical Framework

Widows have for too long been silenced about the injustices that come with traditional patriarchy such as social exclusion, widow abuse and their lack of access to property whether matrimonial or not. Clinton (1995) indicated that women would never realize their full dignity until their human rights were respected and protected. Clinton also pointed out that women's empowerment could not be fully achieved unless governments acknowledged their responsibility to protect and promote human rights regardless of gender, status, religion or age. The current study made use of the Legitimacy and Human Needs theories which were relevant in understanding, appreciating and recommending ways of empowering women and raising their awareness on their rights which are being violated.

2.5.1 Legitimacy theory

The concept of legitimacy was the central focus of Max Weber's original work of 1947, which emphasizes the perceived obligation to obey (Tyler, 1990). According to Tyler (1990), further works on the legitimacy theory by distinguished political scientists identified three potential objects of legitimacy. The first, authorities, involve support for those in power, second is the legitimacy of regime which involves support for the offices and institutions that guide conduct and the third is the community itself.

The Legitimacy theory was initially derived from the concept of organizational legitimacy, defined by Dowling and Pfeffer (1975) as a condition or status which exists when an entity's value system is congruent with the value system of the larger social system of which the entity is a part. Burlea-Schiopoiu and Popa (2013) added that the theory guides the mechanisms which support both the development as well as implementation of social and environmental constructs within the society. They indicate that when there is a disparity-whether potential or actual- between the two value systems, there is a threat to the legitimacy of the entity. Further, the Law Society of New Zealand (2015) added that the outcome of fairness between the rich and the resource-poor has a direct correlation with the impact on social cohesion disparity in that society.

Legal issues and disputes are usually either resolved through consultation with lawyers and the justice system or informal mechanisms otherwise known as alternative dispute resolution mechanisms. Due to their interest in securing compliance, Tyler (1990) indicated that lawmakers establish and maintain conditions leading the public to adhere to prescribed laws and policies. Correa (2016), in trying to determine what makes a law, concluded that it must

conform to a moral code, concept of justice and right reason. The researcher agreed with this view because without conforming to a moral code and a sense of values, which direct people within the society in right reason, then that society tends to deteriorate and injustices, especially to the resource-poor and vulnerable persons such as widows occurs. When the members of the society ignore the normative ethical principles that should guide their lives and actions, people become selfish and do not share resources for the common good. This leads to inequality and exclusion of vulnerable members within the society.

The key to effectiveness of the laws, according to Tyler (1990), was the ability of the legal authorities to make laws and decisions that the public will follow and comply with, and that increasing the severity of punishment for committing a certain crime is effective in reducing the frequency of its commitment. Tyler (1990) added that if compliance of the law was viewed as appropriate by the public due to their attitudes about their behavior, then they would voluntarily be obliged to follow the law irrespective of the risk of punishment for non-compliance. Dowling and Pfeffer (1975) and Burlea-Schiopoiu and Popa (2013) agreed that this meant that people continually seek to operate within the norms of the societies in which they live. The theory relied on the notion that there is an unwritten social contract between individuals and the society or community in which they exist. This social contract represents the expectations that the society has about the economic, social and political benefits of individuals within it (Dowling & Pfeffer, 1975). There is, within the Legitimacy theory, a 'legitimacy gap', which was brought out by Lindblom (1994). He indicated that this gap was the difference between the expectations of the relevant publics related to how the society should behave and how it actually behaves, brought about when there is a threat to the legitimacy of the entity due to disparities between the two value systems (Lindblom, 1994).

This Legitimacy theory was relevant for this study on the challenges that widows face with regard to their property rights. In Kenya, there are laws and policies such as the Constitution of Kenya (2010), the Laws of Succession Act (2012), and the Matrimonial Property Act (2013) that govern and safeguard the rights of widows. There are also the customary laws of the various communities found in Kenya, most of which violate the rights of widows, leading to poverty, isolation, homelessness and isolation. Statistics given by the Department of Gender Affairs under Kenya's Ministry of Gender and Youth Affairs (2018) indicated that about 45% of Kenya's eight million widows are said to have been violated, abused or abandoned by their in-laws either immediately after or shortly after the demise of their husbands. In the context of this study, the legitimacy gap lay in the conflict between the

implementation and violation of the laws and policies. The stark difference is between what is on paper- how the society should ideally behave- and what is essentially happening on the ground- how the society actually behaves in reality. This study sought to examine the specific legal systems in Kenya that can be used to safeguard/enhance the property rights of widows and gauge to what extent they are implemented as well as explore the levels of awareness on avenues of seeking legal redress among widows in Kasarani, Kibera and Kayole wards in Nairobi City County. Another theory that this study was anchored on was the Human Needs Theory.

2.5.2 Human needs theory

The Human Needs theory, developed by Maslow (1970), engaged in extensive studies of human motivation. It was developed to account for the origin of human motivation and fulfillment of needs. Maslow asserted that needs are arranged in order of priority starting with basic, life-sustaining needs –food, water, shelter and clothing – to be satisfied first in order for the individual to satisfy the safety, social, esteem and self-actualization needs (Maslow, 1970). Additionally, Maslow (1970) argued that it is only when the needs at the lower end of the hierarchy are met that humans look to meet their personal fulfillment needs in the upper levels of the hierarchy.

With the present study in mind, widows sometimes struggle to satisfy their basic needs, which brings challenges in fulfilling their other needs, especially the social and self-actualization needs. Deficiency of these needs leads to frustration and other forms of non-development, both in the lives of the widows and their dependents as well as in the society. Ayinkamiye (2015) maintained that it is only when these widows have had their basic needs met that they can participate in self-advancement and sustainable development activities. This observation makes this theory relevant to this study.

The selection of the Legitimacy and Human Needs Theories to guide the study was done because they complement Maslow's theory. The two theories complement each other in that the first identified that when there is a disparity between the expectations of the relevant publics related to how the society should behave and how it actually behaves in relation to protection of the rights of widows, there is a threat to the legitimacy of the entity. The second theory comes in as a response to address the different challenges facing widows as a result of the deprivation of their human needs. The researcher now presents the conceptual framework for the study.

2.6 Conceptual Framework

According to Kombo and Tromp (2006), a conceptual framework is a research tool intended to assist the researcher to develop awareness of and create an understanding of the situation under scrutiny and to communicate it. It also provides links between the literature, research objectives and questions. The current study was guided by a conceptual framework made of three independent variables, which are: existing laws on property inheritance, cultural factors and awareness on avenues of seeking legal redress which will illuminate the dependent variable - access to justice. Figure 1 shows the conceptual framework displaying the relationship between the independent, dependent and intervening variables.

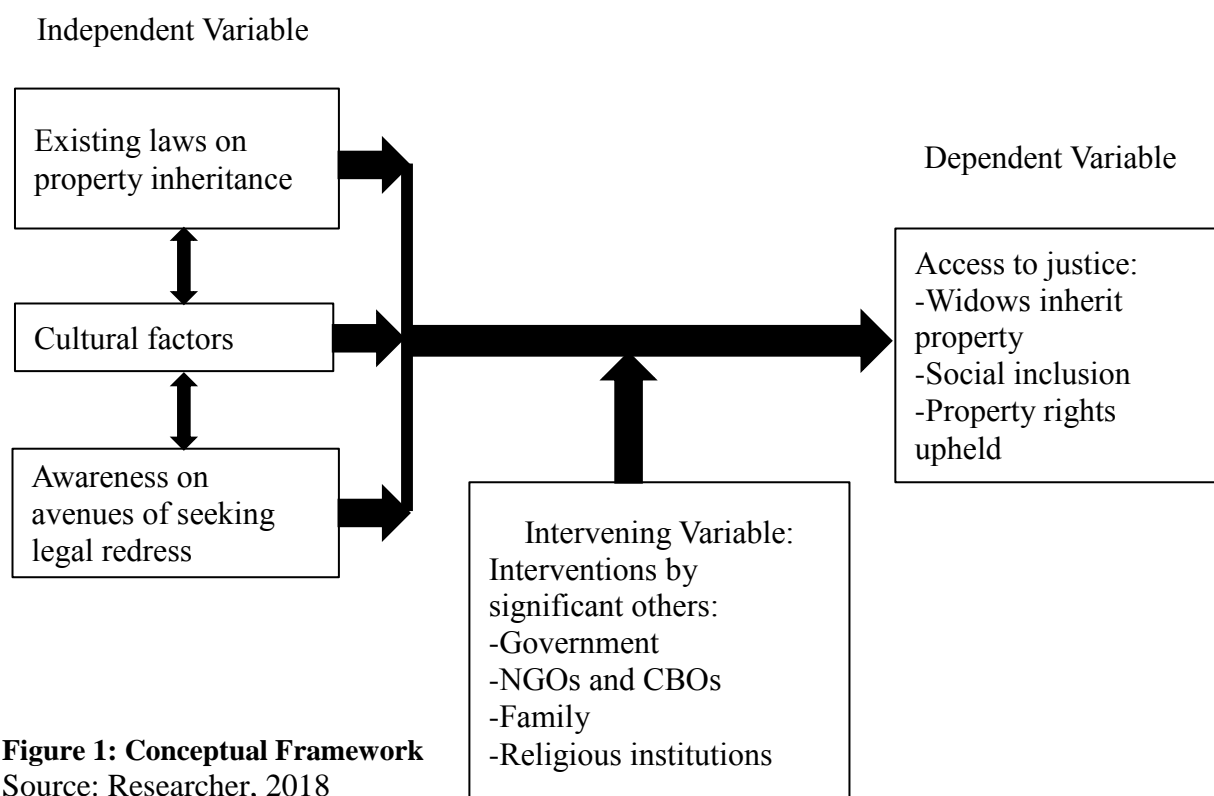


Figure 1: Conceptual Framework
Source: Researcher, 2018

From the conceptual framework, the researcher held that the underlying factors that motivated acts of injustice towards widows would be dealt with through the interventions by significant others who include the government and its agencies, NGOs and CBOs, families and the religious institutions. In this illustrative figure, the researcher showed that conditions that constituted sources of injustice by individuals or groups included but were not limited to deeply entrenched negative cultural practices that deny widows right to their matrimonial properties, lack of awareness of rights violations and awareness of laws on property inheritance, poor, or lack of proper implementation of laws on property inheritance, impunity and endemic corruption among local administration and elders in the community who turned

a blind eye to the plight of the widows. As seen from the figure, where these ills were experienced widows became vulnerable to injustice towards them. The researcher further proposed that if there were interventions by significant others - government, NGOs and CBOs, the family, religious institutions – hereby called the intervening variable, the problem of inaccessible justice would greatly reduce if not eliminated.

CHAPTER THREE: RESEARCH METHOD

3.1 Introduction

The chapter presents the research design, target population, sample size and sampling techniques, data collection instruments and analysis procedures of the study. It also features the reliability and validity of study as well as taking into account the ethical considerations of the study.

3.2 Research Design

Slesinger and Stephenson (1930) and Creswell (2009) defined research method as a search for knowledge through the objective and systematic methods involving different inquiry strategies, analysis and interpretation geared towards finding a solution to a problem. Kombo and Tromp (2006) described the research design as the structure of the research project or that which holds all the components of the research together, and generate answers to research questions and problems, while Selvam (2017) described it as the overall framework guiding the study. This study made use of the descriptive research design and employed the mixed method of data collection and analysis to assess the challenges that widows in Kasarani, Kibera and Kayole wards of Nairobi City County face when accessing justice, especially with regard to their property rights. The descriptive research design is relevant for this study as it is a description of the state of affairs as it exists (Kombo & Tromp 2006).

Further, Kerlinger (1973) and Kothari (2004) explained that the descriptive research design was not restricted to fact-finding as it not only described the state of affairs as they exist, but also often resulted in the formation of important knowledge principles as well as discovery of solutions to significant problems. This is to say that solutions to significant problems can be found or discovered through descriptive research. This study on the challenges facing widows in Nairobi in their quest for justice regarding property rights employed the descriptive research design and made use of the mixed method design as both qualitative and quantitative data was required to provide more comprehensive as well as substantive data. This data was collected using questionnaires, semi-structured interviews and focus group discussions.

3.3 Location of the Study

The study was carried out within Kasarani, Kibera and Kayole wards in Nairobi City County. The three areas were selected because they are cosmopolitan, have well established and functional institutions and social amenities. People here are multi-ethnic, live in highly

populated low to middle income residential areas comprising of both formal and informal settlements which present their own challenges.

3.4 Target Population

Mugenda and Mugenda (2003) defined population as entire groups of individuals, events or objects that have common observable characteristics. The target population is a group of elements, individuals or events conforming to specific criteria, which the researcher intends to generalize the findings of the research (McMillan & Schumacher, 2008). This study targeted widows of varying ages living in Nairobi City County. The statistics given by the Kenya National Bureau of Statistics (2014), in their sub-section on marital status by county and district gave general statistics of those widowed, and living in Nairobi as 36,881, which combines both the widows and widowers. Despite extensive research to determine the exact number of widows in Nairobi, the figure given is what was recurrent. The CBO that the researcher was working with has an estimated 300 widows in Kasarani, Kibera and Kayole. This meant that the study population was therefore 300 widows.

3.5 Sampling Frame

This research focused on widows residing in Kasarani, Kibera and Kayole wards of Nairobi City County, who were 300 and were associates of Muungano wa Wajane (Union of Widows). From these widows, a sample of 140 individuals, 46 in Kasarani and 47 each in Kibera and Kayole wards were targeted to participate in the study according to the scope of the study.

3.6 Sampling Technique and Sample Size

Sample size is the part of the population from which information about the whole is obtained (Kothari, 2004). The researcher made use of the formula by Krejcie and Morgan, 1970 which is stated as:

$$s = \frac{X^2 NP(1-P)}{d^2 (N-1) + X^2 P (1-P)}$$

where, s is the required sample size; X^2 is the table value of chi-square for 1 degree of freedom at the desired confidence level (3.841); N is the population size; P is the proportion of the population that is assumed to have the problem under study, assumed to be .50 since this would provide the maximum sample size; and d is the degree of accuracy expressed as a proportion, or significance level (.05).

When this formula was applied to the 300 widows in the CBO, the result was 170, which therefore became the sample size of the study. The selection of the 170 widows as the primary respondents was carried out using the non-probability, purposive sampling methods. 140 respondents were selected to respond to questionnaires, of which all the questionnaires were returned. To supplement the information gathered using the questionnaires, there were 30 other purposively selected widows, 10 in each ward, who were scheduled to participate in focus group discussions, of which 24 turned up for the discussions. Purposive sampling method was also applied to select 15 key informants comprising of five Group leaders/ CBO officials, five from the legal fraternity and five religious leaders from different denominations. These 15 key informants were secondary respondents and participated in the study by responding to semi-structured interview guides. Table 1 shows the profile of the respondents and the method of data collection.

Table 1: Study sample size

Respondents profile	Data collection method	Data collection tool	Total
Widows	Questionnaire survey	Questionnaire	140
Widows	Focus Group Discussion	Focus Group Discussion guide	30
Total			170

Source: Researcher, 2018

3.7 Research Instruments

Orodho (2003) suggested that the best method of data collection using the descriptive research design was conducting interviews and administering questionnaires to samples of individuals. These tools can be used to collect information on the attitudes, opinions, behaviors and habits of people on social issues, such as the challenges of accessing justice for widows and the cultural practices or factors that promote their social exclusion in Nairobi City County (Orodho & Kombo, 2002). This study made use of the interview guide, questionnaires and focus group discussion guide.

3.7.1 Interview guide

These are questions asked orally where the interviewer records the conversation either in writing or by using a voice recorder and later transcribed the data, picking out the key points. The researcher engaged in semi-structured interviews, which Kombo and Tromp (2006) indicated were based on the use of an interview guide- a written list of questions that needed to be addressed during the interview. The advantage on using semi-structured interview was that they were flexible and attracted more in-depth information than unstructured interviews due to the use of open-ended questions that elicited discussion and elaboration. Selvam (2017) argued that the semi-structured interviews allow the researcher to gain a detailed picture of the topic being investigated. It also allows the interviewer to probe further on ideas that come up in the conversation.

The interview guide was structured in four sections, where Section A would gather the respondents' demographic information and Section B looked at widows' rights and challenges accessing justice. Section C was on knowledge of existing laws and policies addressing rights of widows and Section D addressed recommendations. The study would interview 15 key informants, that is, five group leaders/CBO officials, five from the legal fraternity and five religious leaders.

3.7.2 Questionnaires

Questionnaires consist of sets of questions which individual respondents are required to answer on their own in the spaces provided (Kothari, 2004). Selvam (2017) opined that questionnaires collect data that is not observable such as ideas, opinions and intentions of the research subjects. Kombo and Tromp (2006) added that the questionnaire should be simple enough to understand and avoid misinterpretation. The questionnaire in this study was answered anonymously; therefore, the respondents were assured that the information given would not be linked to any particular individual, and would only be used for the purpose of the research. The researcher together with her assistants administered the questionnaire, consisting of both open and closed ended questions to 140 widows to collect both qualitative and quantitative data.

The questionnaire had five sections on demographic information, widows' property ownership and matrimonial property inheritance, challenges affecting widows after the death of their husbands, legal awareness and access to information as well as recommendations for

improvements by county government, the legal fraternity and community based and/or non-governmental organizations.

3.7.3 Focus group discussions

The third data collection method used in this study was the Focus Group Discussion guide to collect first hand qualitative data from widows. Creswell (2012) explained that focus group discussions involved bringing at least eight people from similar backgrounds or experiences together to discuss a specific topic of interest. These discussions encompassed a few unstructured, open-ended questions intended to elicit views and opinions from the participants. Using the focus group discussion guide, the researcher engaged and encouraged the widows to talk freely about their experiences after becoming widows and challenges faced when accessing justice. The discussions were recorded using an audio recorder, and the key points and themes recorded in the researcher's notebook. After listening to the recordings and gathering the relevant information for the study, the audio recordings were deleted. With regard to this study, the focus group discussion guide was administered to a total of 30 widows randomly selected from the groups in the three study wards of Kasarani, Kibera and Kayole. The discussions were scheduled to have 10 participants each and take place in a favorable environment in each ward, however, two participants in each ward did not show up for the discussions, bringing the total participants of the discussions to 24, eight in each ward of Kasarani, Kibera and Kayole. As Creswell (2013) indicated, this would allow the respondents to thoughtfully answer questions, react to and build up on responses of others to produce information or ideas that they may not have otherwise spoken of.

The discussion guide helped to gather information on widows' property ownership and matrimonial property inheritance, assessed challenges affecting widows after the death of their husbands, addressed legal awareness and access to information and looked into recommendations for improvements by county government, the legal fraternity and community based and/or non-governmental organizations. Based on the responses of the widows, follow-up open-ended questions were posed to help unearth a wealth of detailed information and deep insight about the area of study (Krueger, 2002). As Gaiser (2008) noted, discussions between participants provide the researchers with an opportunity to listen to and gather information on issues that may not emerge from a one-on-one interaction with the researcher or the questionnaire alone.

3.8 Reliability and Validity of Research Instruments

Selvam (2017) stated that the reliability of the instrument is the confidence that when the instrument is administered to a similar population under the same circumstances, it would consistently produce the same results. Validity, as Selvam (2017) added, is the confidence that what is shown by the findings corresponded to the reality. To ensure that the research instruments produced results consistent with the research questions, they were tested with a population similar to the target population but who were not respondents in the final study. This enabled the researcher to adjust the questionnaire where necessary or add questions so as to get the maximum required information.

3.9 Data Collection Procedures

The researcher collected both qualitative and quantitative data. This was done by use of questionnaires, interview guides and focus group discussions to facilitate collection of the two types of data. The questionnaire consisted of both open-ended and close-ended questions which were in such a way that the specific objectives and the research questions were well answered. Questionnaires were distributed to the 140 widows during the meetings on various dates between April and May 2019 in the three study locations. The researcher used the non-probability, purposive sampling methods to get the 140 participants for the questionnaire survey carried out in Kasarani, Kibera and Kayole wards of Nairobi City County.

The researcher made use of focus group discussion guide to access qualitative data from purposively sampled respondents of the target population in which three groups of eight persons each participated. Participants were purposively sampled to give feedback to the structured and unstructured focus group discussion questions and whose data enriched the theological reflection. Qualitative data was also collected using an interview guide that contained semi-structured questions from 15 key informants selected using stratified purposeful sampling. These were five each and were drawn from the legal fraternity, religious leaders and CBO officials. Those from the legal fraternity were men and women who are practicing advocates of the High Court of Kenya, three of whom specialized in family law. The five religious leaders were drawn from the Roman Catholic, Anglican Church of Kenya (ACK), Presbyterian Church of East Africa (PCEA), Nairobi Pentecostal Church (NPC) and the Muslim Community. These different approaches were useful in ensuring trustworthiness of the data collected through triangulation.

3.10 Data Analysis Procedures

Since the data collected in the study was both quantitative and qualitative, the quantitative data was coded, entered and analyzed by means of both inferential and descriptive statistics using the Statistical Package for Social Science (SPSS) version 21, which is recognized for its ability to handle large amounts of data efficiently. Content analysis was used to analyze qualitative data through identification of themes concerning challenges affecting widows as they access justice, cultural factors that facilitate the social exclusion of widows, and assess knowledge of existing laws and institutions that may assist the widows. The results were interpreted, conclusions drawn and recommendations made.

3.11 Ethical Considerations

The very first ethical consideration was to obtain from Tangaza University College –Institute of Social Ministry in Mission (ISMM), authorization to carry out this study. The letter the researcher obtained from the University aided in application for a research permit from the National Commission for Science, Technology and Innovation (NACOSTI).

Secondly, the researcher had already made contact with the widows in selected areas – Kasarani, Kibera and Kayole - with the aim of introducing herself and creating a rapport with them as well as inform them of the research which was being conducted and requested them to be candid in their responses. This prior contact ensured trust and openness.

Thirdly, the study ensured that the respondents gave their consent to proceed with the research by signing the consent forms attached to the questionnaire and interview guide. The researcher explained the objectives of the study to the respondents. She also informed the participants that their participation in the study is completely voluntary, confidential and that they were free to withdraw at any time. The questionnaires were numbered to ensure respondents remained anonymous and were not traceable.

Fourth, the respondents were immediately given opportunity to review their responses and to make any necessary adjustments at the end of the session. The participants were allowed to check their responses to confirm their reliability and validity.

Fifth, the researcher requested the participants in the focus group discussions to allow her to record the sessions using an audio recorder, and the key points and themes recorded in the researcher's notebook. She explained to the participants that the information gathered will only be used for academic purposes and that after listening to the recordings and gathering

the relevant information for the study, the audio recordings would be deleted after a period of three months.

Sixth, in the event that a widow was emotionally or psychologically disturbed during the session, the researcher and/or her research assistants were available to determine whether she needed professional counseling which would be provided at the researcher's cost. However, this was hardly anticipated because the questions in the research instruments were well framed.

Lastly, to avoid plagiarism, the researcher acknowledged and cited authors and other contributions made from the different sources of literature reviewed.

CHAPTER FOUR: DATA ANALYSIS AND INTERPRETATION

4.1 Introduction

This chapter presents the findings of the study. It describes the demographic characteristics of the respondents as well as tackles issues of property ownership and inheritance. It also presents the challenges affecting widows after the death of their husbands as well as legal awareness and access to information. The raw data presented and analyzed through descriptive and thematic analysis which is geared towards helping to answer the study questions using means, frequencies, percentages and correlation coefficient to establish the relationship between the variables.

4.2 Description of Research Participants

Questionnaires were distributed to the 140 widows during the meetings on various dates between April and May 2019 in the three study locations. The researcher and her assistants asked the questions and filled in the questionnaires for the few who did not know how to read and write. The researcher used the non-probability, purposive sampling methods to get the 140 participants for the questionnaire survey carried out in Kasarani, Kibera and Kayole wards of Nairobi City County.

The researcher organized three focus groups comprising of ten widows from each of the selected wards. Participants were purposively sampled to give feedback to the structured and unstructured focus group discussion questions. The qualitative data resulting from the focus group discussions was analyzed using thematic analysis and enriched the theological reflection.

There were also 15 key informants selected using stratified purposeful sampling method who took part in semi-structured interviews. These were five each and were drawn from the legal fraternity, religious leaders and CBO officials. Those from the legal fraternity were men and women who are practicing advocates of the High Court of Kenya, three of whom specialized in family law. The five religious leaders were drawn from the Roman Catholic, Anglican Church of Kenya (ACK), Presbyterian Church of East Africa (PCEA), Nairobi Pentecostal Church (NPC) and the Muslim Community.

4.3 Response Rate

The intended target population for the study was 140 widows to respond to the questionnaires, 15 key informants -religious leaders, CBO officials and legal fraternity- to respond to semi-structured interviews and 30 widows in groups of ten to participate in the focus group discussions. During the data collection, 140 widows responded to the questionnaires, 15 participated in the semi-structured interviews, while 24 in groups of 8 in each study location participated in focus group discussions. All the 140 respondents returned the questionnaires, and all the targeted key informants took part in the survey, accounting for 100%. Of the 30 targeted for the focus group discussions, 24 –representing 80% participated by contributing to the qualitative data and theological reflection and lent credibility to the findings. Six respondents representing 20% however, did not turn up for the focus group discussions.

The return rate of the respondents was 164 of the targeted 170 respondents which accounted for 96.4%. A return rate of 70% and above, according to Mugenda and Mugenda (2003) is very good and adequate for analysis therefore a response rate of 164 respondents for the study was above the basic requirement. Only six respondents representing 3.6% of the target participants did not turn up for the focus group discussion sessions.

4.4 Respondent Demographic Information

The researcher here presents the demographic variables of the respondents in terms of ethnic group, age, education level, number of years married as well as those widowed and employment status. This was done in order to show the relationship between those demographics and access to justice regarding property rights.

4.4.1 Ethnicity of respondents

The study sought to identify the ethnic groups that the respondents belonged to in order to establish whether the challenges affecting widows with regard to property rights cut across different ethnic groups. The findings are summarized in Figure 2.

It was established that of the 140 widows who filled the questionnaires, the majority, 45 (32%) were from the Kikuyu ethnic group, followed closely by the Kamba at 21 representing 15%. There was a group of 15 widows representing 11% of the respondents who indicated that they would rather not identify their ethnic backgrounds.

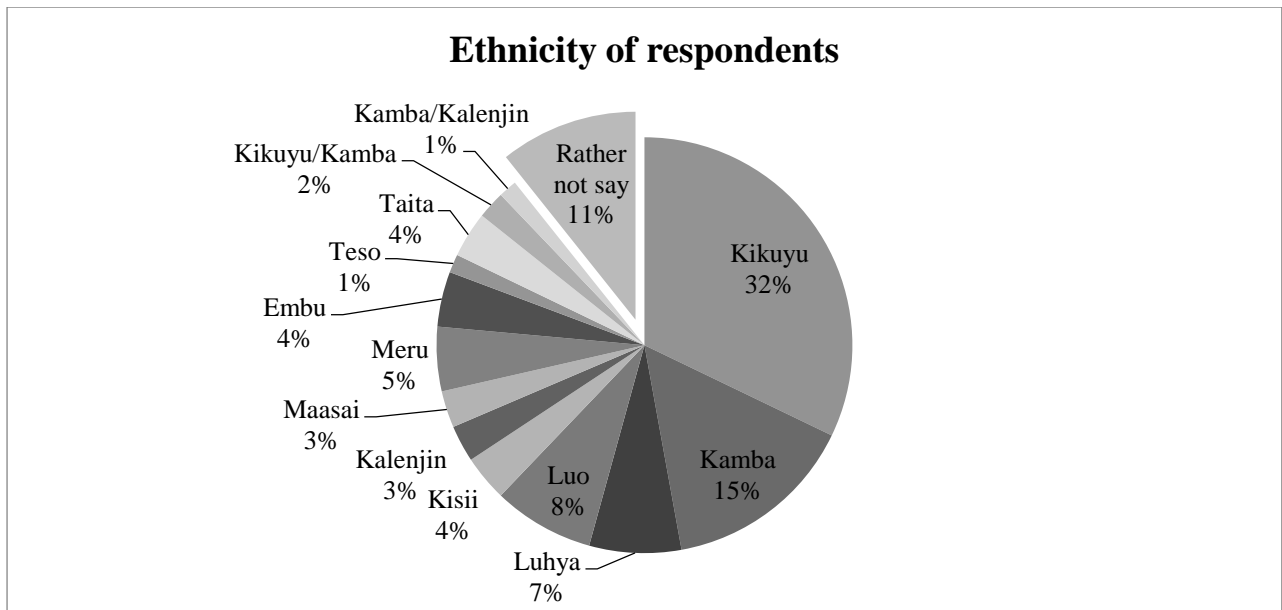


Figure 2: Distribution of respondents (widows) by ethnic group

4.4.2 Age Distribution

Majority of the respondents were aged between 30 and 49 years representing 31% of the respondents, followed by those between 50 and 59 years who were 40 representing 29%. The minority were those under 30 years who were two respondents representing 1% of the target population. Statistics by World Bank (2010) indicated that those aged between 40 and 59 were the most productive and in the child-bearing age, as were the majority of the primary respondents of the study. This age bracket also makes up a bulk of the workforce of the country. The findings are summarized in Figure 3.

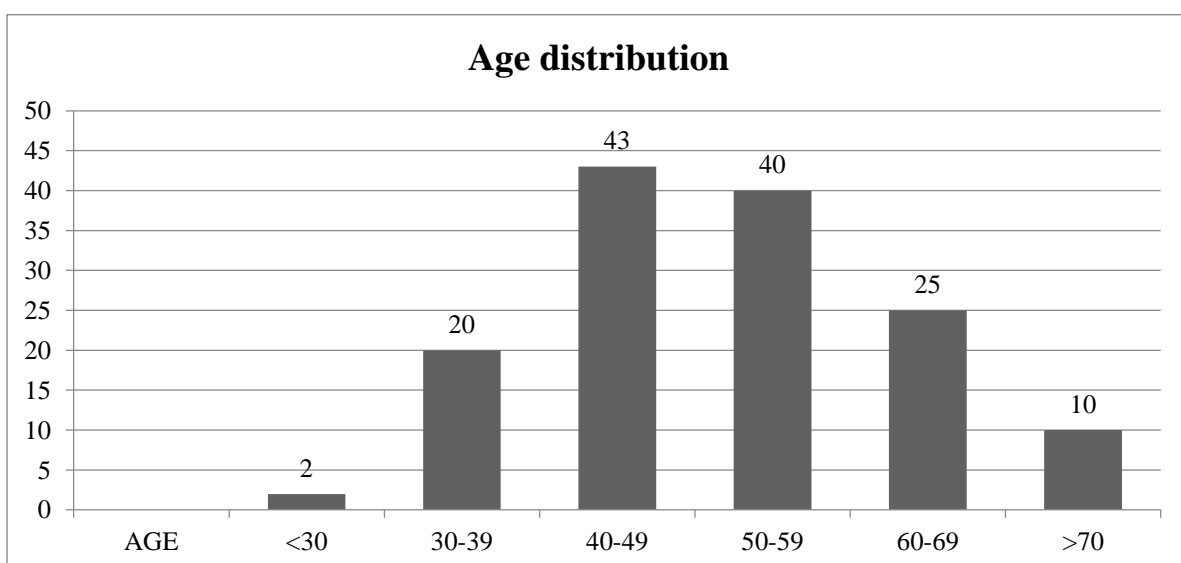


Figure 3: Distribution of respondents (widows) by age

The consideration of the age of the respondents was vital to the study as it helped the researcher capture varied views and perceptions by different age sets on matters of access to justice regarding property rights. This factor had an impact on showing that widowhood is not selective –even those under 30 years are widows- and how individuals in the different age sets in the study location are affected by inability to access justice regarding property rights.

4.4.3 Level of Education of respondents

As shown in Figure 4, the respondents varied in academic qualifications. 117 (84%) of the respondents who participated had gone through formal education and completed one stage or another. 23 of the respondents representing 16% had not gone to school, but the researcher noted that those were mostly the widows who were aged above 60 years. 24 (17%) had completed primary school and 32 (23%) had completed secondary school. 61 had pursued higher education with 21 (15%) having completed college, 24 (17%) having completed polytechnic and 16 (12%) having completed university. The academic abilities of the respondents revealed their ability to meaningfully understand matters of access to justice as well as levels of awareness on both existing Kenyan laws and policies addressing property and inheritance as well as avenues of seeking legal redress.

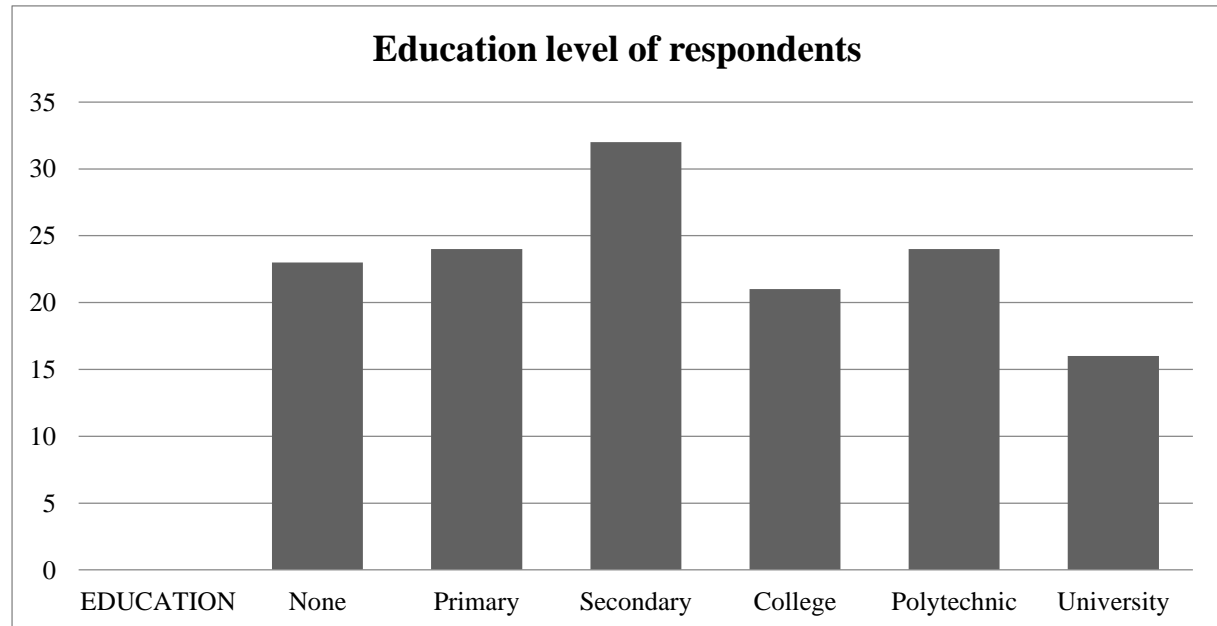


Figure 4: Education level of respondents

4.4.4 Number of years married and number of years widowed

Majority (47) of the respondents were married for between 11 and 20 years representing 33.6% of the respondents, followed by those who had been married between 21 and 30 years

who were 36 representing 25.7%. The minority were those who had been married for over 40 years who were 15 respondents and represented 10.7% of the target population. The years of widowhood varied from one year to more than 26 years, with majority of the women- 33 (24%) having been widowed between 2014 and 2018. The findings are summarized in Table 2.

Table 2: Years of marriage and widowhood

Married Years				Widowed Years			
		Frequency	Per cent			Frequency	Per cent
Valid	1-10	16	11.4	Valid	1-5	33	23.6
	11-20	47	33.6		6-10	32	22.9
	21-30	36	25.7		11-15	32	22.9
	31-40	26	18.6		16-20	24	17.1
	Above 40	15	10.7		21-25	12	8.6
				Above 26		7	5.0
Total		140	100.0	Total		140	100.0

4.4.5 Employment status

The study sought to find out what was the prevailing economic status of the widows so as to establish whether finances could be a barrier towards seeking legal services and accessing justice regarding property rights. Majority of the respondents 90 (64%) were not formally employed while 50 respondents representing 36% of the respondents were formally employed. Those who were not formally employed engaged in self-employment activities such as small- and medium-scale farming, different businesses such as selling second-hand clothes, M-Pesa operators, shopkeepers and widows groups coordinators. The findings are summarized in Figure. 5

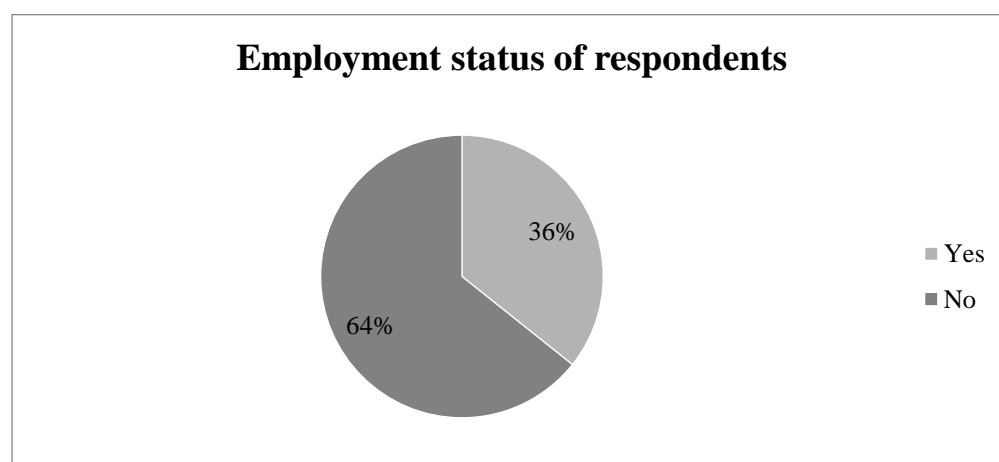


Figure 5: Employment status of respondents

4.5 Objective 1: Specific legal systems in Kenya that can be used to safeguard or enhance the property rights of widows

A widow, whether she was married through customary, religious or Attorney General's office, has the right both to own property and to consent to the sale of land bought jointly with her husband. In addition to the articles mentioned in chapter two (subsection 2.3.3) of this study, there are other sections of the written laws and policies of Kenya which address property and inheritance. Under the Constitution of Kenya, 2010, Article 45 (3) provides that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage (Laws of Kenya, 2010) which on paper, govern and safeguard the rights of widows, and recognize women's rights to own and inherit property. In practice however, these laws are not adequately implemented and many widows are chased away from their properties and access to justice is hard to obtain. This is because most of the widows who participated in the study cannot afford court fees to mount legal fights to keep their property and therefore access to justice is inhibited.

4.5.1 Property ownership, access and registration

The respondents who indicated both through the questionnaires and focus group discussions that they and their husbands owned some form of property, from pieces of land ranging from a quarter acre to two acres, vehicles, bed-seater and one-bedroom rental houses were 128 representing 91%. The other 12 (9%) did not consider themselves to own property as they and their husbands resided on inherited land whose title deed they did not possess. The findings are summarized in Figure 6.

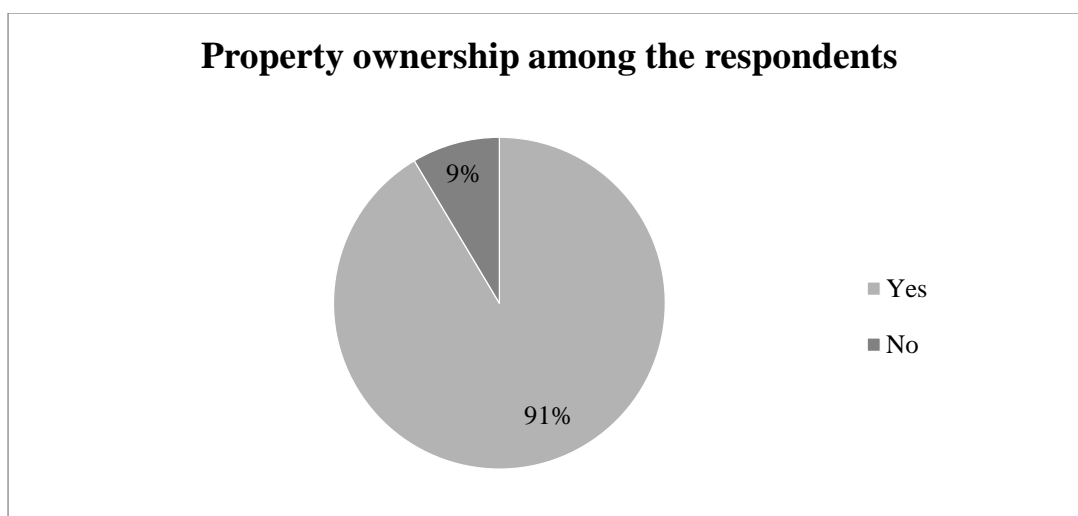


Figure 6: Property ownership of respondents

Of the 128 respondents who indicated that they and their husbands owned some form of property, only 38 (30%) pointed out that they had unrestrained access to the said property. The reasons they gave for the unlimited access to the property included that their husbands transferred the properties into their names during their illness before their demise. Others indicated that the properties were registered in their names (she and her husband) so no-one else could claim ownership. Other reasons given were that they refused to be chased by her in-laws who had turned against them and their children following the demise of their husbands due to difference in ethnic communities.

Of the respondents who had property, 90 (70%) indicated that they had no access to their property due to various reasons. Nine (10%) said that the parcels of land they were occupying were their husband's inherited share from either their father or grandfather, whose title deed was communal. This therefore meant that they could not lay claim to it when confronted by their brothers-in-law. Another 36 (40%) of the respondents pointed out that the brothers-in-law and some of their husbands uncles openly threatened their lives, with some hiring thugs with crude weapons like machetes and axes to chase them from the land they owned and/or kill them. Ten (11%) saw the early signs of conflict over matrimonial property and sought the help of the authorities at local tribunals but found that the in-laws had already interfered with the officials at those offices, thus frustrating them further. These women opted to leave their homes with their children rather than fight for what was theirs and lose their lives in the process. Three (4%) said they were abused and evicted from their piece of land by the aged mothers-in-law barely a month after their husbands burial because they '...had borne no sons to inherit the land.' There were some other three widows (4%) who left their properties (land) after death threats from the in-laws but left with the title deeds and other ownership documentation so they cannot sell the land without her consent. They also indicated that they held on to the hope that one day they would return to the property in order to give it to their children. The findings are summarized in Figure 7.

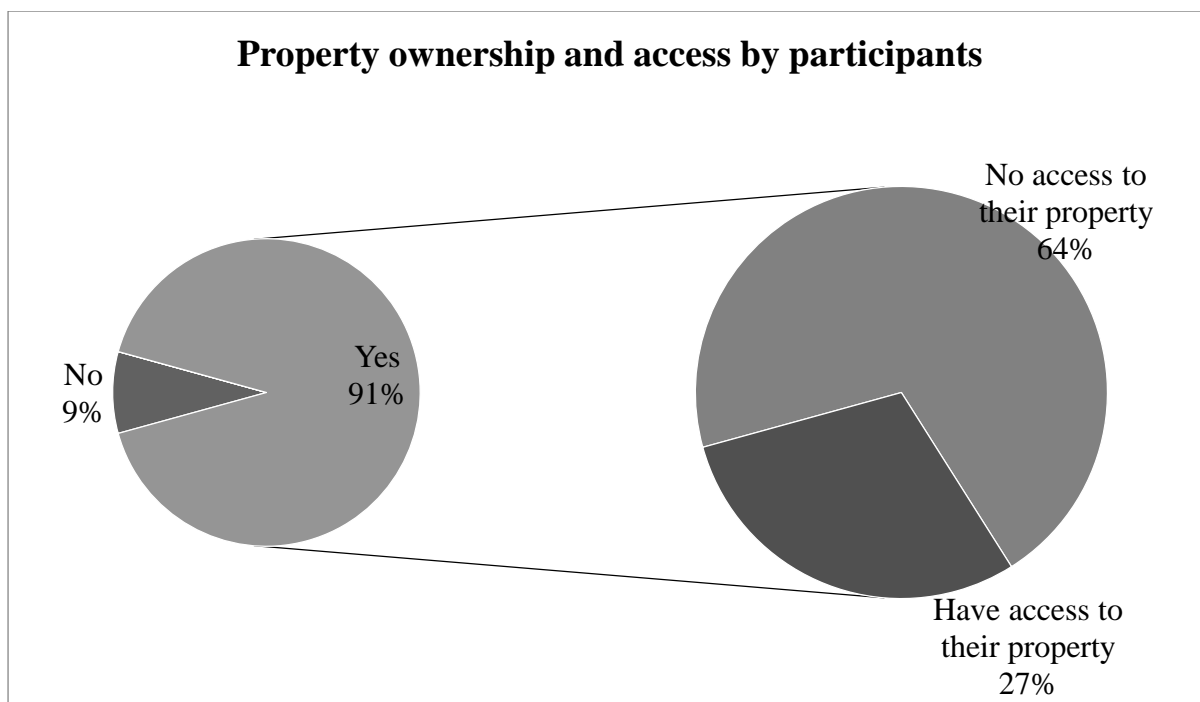


Figure 7: Property ownership and access by participants

Upon further inquiry about property ownership and registration, the respondents gave varied answers as to in whose name the property was registered. This may have been a contributing factor towards the inability to access the said properties of the widows living in Kasarani, Kibera and Kayole wards of Nairobi City County. The findings are summarized in Figure 8.

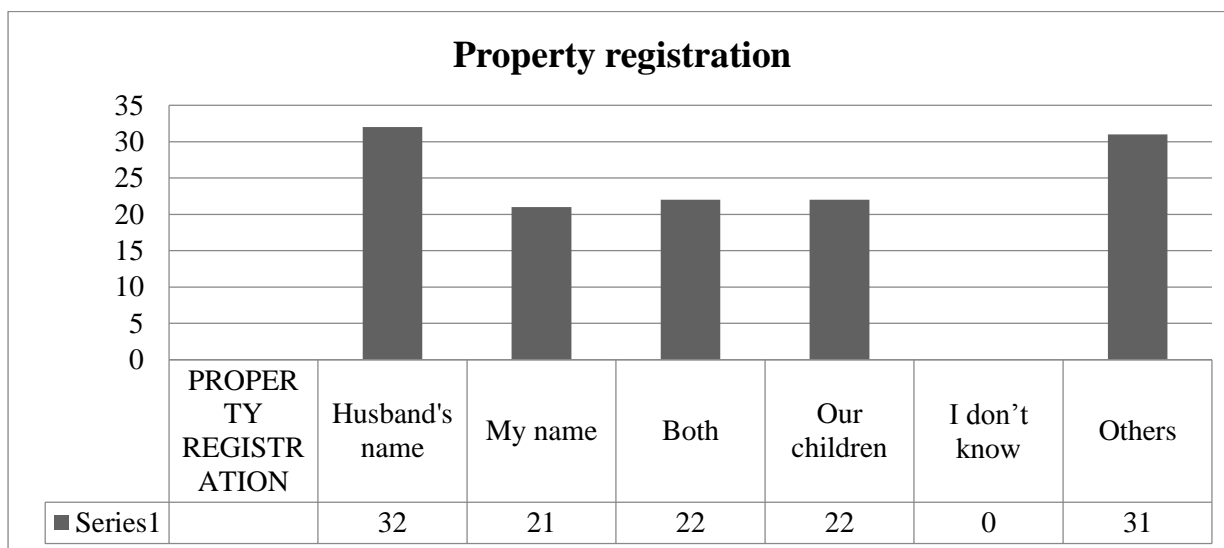


Figure 8: Property registration by respondents

Of the respondents who owned property, 32 of them representing 25% mentioned that the properties were registered in their husbands name, while 22, each representing 17% of the respondents pointed out that the properties were in their names, these of their children or both

hers and her husbands. There were another 31 (24%) who said that the properties- especially land- was registered in either the father- or mother-in-law's name or the husband's grandfather's name.

With this statistics on property ownership, registration of property and access to the said property from the widows in Kasarani, Kibera and Kayole wards of Nairobi City County, the researcher sought to find out if the three variables had any correlation. The data was subjected to the Spearman's correlation coefficient test (r_s), where the closer r is to ± 1 the stronger the relationship. As shown in Table 3, the significance level is .00, .027 and .292 respectively which means that there is a relationship between property ownership, property registration and access to the said property.

Table 3: Correlation of property ownership, property registration and property access

Correlations			Property Ownership	Property Registration	Property Access
Spearman's rho	Property Ownership	Correlation	1.000		
		Coefficient			
		Sig. (2-tailed)	.		
		N	140		
	Property Registration	Correlation	.493**	1.000	
		Coefficient			
		Sig. (2-tailed)	.000	.	
		N	140	140	
	Property Access	Correlation	.187*	.090	1.000
		Coefficient			
		Sig. (2-tailed)	.027	.292	.
		N	140	140	140

**. Correlation is significant at the 0.01 level (2-tailed).

*. Correlation is significant at the 0.05 level (2-tailed).

The correlation coefficient of .493** for property registration and a correlation significance level of 0.01 indicates that there is a moderately strong positive relationship between property ownership and property registration. The significance was .00 which is less than $\alpha 0.5$ meaning that property ownership has a significant relationship with property registration. Similarly, the correlation coefficient of .187* for property access and a correlation significance level of 0.05 indicates that there is a weak positive relationship between property ownership and access to the property. The significance was .027 which is less than $\alpha 0.5$

meaning that property ownership has a significant relationship with access to property. Likewise, the correlation coefficient of .090 for property registration indicates that there is a strong positive relationship between property registration and access to property. The significance was .292 which is less than $r0.5$ meaning that property registration has a significant relationship with access to property.

This therefore implies that the likelihood of the widow to access her matrimonial property increases if the property was registered in her name, that of their children or was jointly registered under her name and that of her late husband. This is not always the case, as the researcher found out that 12% (15) of the widows whose properties were registered in their husbands' name, names of their children or both hers and her husband's names did not have access to the properties due to interference by their in-laws soon after the demise of their husbands. The study revealed that there were cultural factors that were associated with the social exclusion of widows.

4.6 Objective 2: Cultural factors associated with social exclusion of widows

Another factor that the respondents pointed out as a hindrance to their access to matrimonial property was customary law which consists of the (mostly) unwritten norms and practices of different communities dating back to the pre-colonial era. The widows indicated that customary law in most of the communities in Kenya does not advocate for widows to inherit property either from her husband or from her father, though it allows her to stay on the property. In some communities and ethnic groups, customary law allows widows to stay on their husband's or matrimonial property for as long as she does not remarry. If she decides to remarry, that law dictates that she leave the property –and sometimes her children, who are considered to belong to their father- and go alone with her new husband. She is also not permitted to bring in another man to the first husband's property, or to her first matrimonial home. In other cases, the death of the man either broke or strengthened the ties with the in-laws. The widows indicated that on one hand, if those ties were initially strong and she had been accepted into the family, then there were little to no issues on property inheritance. On the other hand, if she had never been accepted by her husband's family, their ties with her were broken upon his demise and inheritance scuffles commenced during the mourning period or immediately after his burial.

During the focus group discussions, some of the widows from the Kikuyu ethnic group pointed out that traditionally under Kikuyu customary law, the brothers of the deceased took

the deceased's property and 'took care' of his family. The problem that arises after the widows comply –even reluctantly- to be 'taken care of' is that they end up being left destitute in a couple of years because the property gets squandered away. This custom is still deeply rooted in some parts of Kikuyuland. Widows from other ethnic groups that practice wife inheritance such as the Luo and Luhya said that the cultural practice of wife inheritance effectively inhibits the widow from inheriting her husband's property as the same is now taken over by the new 'husband'. Grace*, a widow from Siaya now living in Kibera, had to leave her marital home when her husband died because she refused to be inherited by her late spouse's elder brother, whom the family knew had HIV/AIDS. She was afraid of contracting HIV/AIDS from him and said that the practice of widow inheritance has many retrogressive aspects such as the spread of the disease. The practice of wife inheritance is believed to be a way of ensuring the widow and her children are taken care of financially after her husband's demise. Customary law in this case takes over and the property is devolved to other family members such as sons of the deceased.

Some cultures do not allow their women to inherit or stay on the property especially if she did not bear at least one son, as was with Jane†. When Jane's husband died in 2015, she and her three daughters in primary school were chased away from her marital home in Kajiado. She was left to her own devices and had to struggle to rent a mud and tin house in Kayole, an area far away from the rest of the community. She says her mother-in-law influenced her other sons to chase her away for not giving her a grandson. For Sylvia* however, it did not matter that she has three sons. Her husband was badly injured during the August 7th 1998 bombing of the US Embassy in Nairobi, Kenya. He lived with his damaged spine for about 10 years during which his siblings disowned him. They wanted nothing to do with a man who was an invalid, could not take care of himself and had to depend on others for support even for the most basic of tasks. When he died, the very siblings who had disowned him did not even attend his burial. However, not long after his burial, they came in and chased the mourning family away from their home, leaving them out on the streets with nothing but the clothes on their backs. She now lives in Kasarani.

The researcher then sought to establish from which ethnic groups the widows who had and those who did not have access to their matrimonial property came from. This was done to examine how rampant the inaccessibility of matrimonial property is by ethnic group of the

* Names changed for identity protection

† Names changed for identity protection

respondents in the study areas of Kasarani, Kibera and Kayole wards of Nairobi City County. The findings are shown in Table 4.

Table 4: Cross tabulation of ethnicity and property access

		Property Access		Total	
		Yes	No		
Ethnicity	Kikuyu	Count	12	32	44
		% within Ethnicity	27.3%	72.7%	100.0%
		% within Property Access	31.6%	31.4%	31.4%
		% of Total	8.6%	22.9%	31.4%
	Kamba	Count	5	16	21
		% within Ethnicity	23.8%	76.2%	100.0%
		% within Property Access	13.2%	15.7%	15.0%
		% of Total	3.6%	11.4%	15.0%
	Luhya	Count	5	6	11
		% within Ethnicity	45.5%	54.5%	100.0%
		% within Property Access	13.2%	5.9%	7.9%
		% of Total	3.6%	4.3%	7.9%
	Luo	Count	7	4	11
		% within Ethnicity	63.6%	36.4%	100.0%
		% within Property Access	18.4%	3.9%	7.9%
		% of Total	5.0%	2.9%	7.9%
	Kisii	Count	0	5	5
		% within Ethnicity	0.0%	100.0%	100.0%
		% within Property Access	0.0%	4.9%	3.6%
		% of Total	0.0%	3.6%	3.6%
	Kalenjin	Count	1	3	4
		% within Ethnicity	25.0%	75.0%	100.0%
		% within Property Access	2.6%	2.9%	2.9%
		% of Total	0.7%	2.1%	2.9%
	Maasai	Count	1	3	4
		% within Ethnicity	25.0%	75.0%	100.0%
		% within Property Access	2.6%	2.9%	2.9%
		% of Total	0.7%	2.1%	2.9%
	Meru	Count	1	6	7
		% within Ethnicity	14.3%	85.7%	100.0%
		% within Property Access	2.6%	5.9%	5.0%
		% of Total	0.7%	4.3%	5.0%
	Embu	Count	2	4	6
		% within Ethnicity	33.3%	66.7%	100.0%
		% within Property Access	5.3%	3.9%	4.3%
		% of Total	1.4%	2.9%	4.3%

Teso	Count	0	2	2
	% within Ethnicity	0.0%	100.0%	100.0%
	% within Property Access	0.0%	2.0%	1.4%
	% of Total	0.0%	1.4%	1.4%
Taita	Count	0	5	5
	% within Ethnicity	0.0%	100.0%	100.0%
	% within Property Access	0.0%	4.9%	3.6%
	% of Total	0.0%	3.6%	3.6%
Kikuyu/Kamba	Count	1	2	3
	% within Ethnicity	33.3%	66.7%	100.0%
	% within Property Access	2.6%	2.0%	2.1%
	% of Total	0.7%	1.4%	2.1%
Kamba/Kalenjin	Count	0	2	2
	% within Ethnicity	0.0%	100.0%	100.0%
	% within Property Access	0.0%	2.0%	1.4%
	% of Total	0.0%	1.4%	1.4%
Rather not say	Count	3	12	15
	% within Ethnicity	20.0%	80.0%	100.0%
	% within Property Access	7.9%	11.8%	10.7%
	% of Total	2.1%	8.6%	10.7%
Total	Count	38	102	140
	% within Ethnicity	27.1%	72.9%	100.0%
	% within Property Access	100.0%	100.0%	100.0%
	% of Total	27.1%	72.9%	100.0%

The inaccessibility of matrimonial property by ethnic group of the respondents in the study areas of Kasarani, Kibera and Kayole wards of Nairobi City County was highest among those from the Kikuyu ethnic group at 31.4%., followed by the Kamba at 15.7% and the Luhya and Meru at 5.9%. The ethnic groups whose widows least accessed their matrimonial property were those from the Teso, Kikuyu/Kamba and Kamba/Kalenjin at 2%. The researcher suggests that the customary laws, harmful cultural and social practices that propagate women inferiority and stereotypical gender roles should be addressed, not only of the ethnic groups represented by the participants of this study, but of all the ethnic communities in Kenya. Community leaders, starting at the grass-root level should be encouraged to transform those discriminatory customary laws, especially those that relate to inheritance and property. This should be done so as to promote equality of widows and also to support women participation in the decision making process at the community level. For effective behavior change, policy and decision makers at all government levels should

provide necessary information for consciousness-raising as well as awareness-raising through better, more effective communication.

From the data collected, the researcher was able to cluster the impediments affecting women after their husband's demise under four themes: psychological, social, physical and financial.

4.6.1 Psychological impediments

The first is loneliness following the demise of their spouse, with whom they had shared a part of their lives ranging from two to 40 years as indicated by the respondents. The widows indicated that in the first few months of widowhood, their days were largely pre-occupied by memories of their deceased spouses, during which time they did not want to interact with others. When the in-laws begin mistreating them, neglect and isolation set in because the widows are devalued and disrespected as well as perceived as a stranger in the homestead after the demise of their husbands. This happened despite the fact that some of the respondents had been married in those homestead for more than 30 years.

Depression then takes root in the widows which at times drives them toward suicidal thoughts and tendencies. This, they said was because they were mistreated and abused so much -both verbally and physically- that they felt that life was not worth living. Without counseling and support from religious communities and other widows, they indicated, the situation could have become disastrous-especially for their children. 125 (76%) of the respondents indicated that they had at one point had suicidal thoughts but while strategizing how to execute the suicide, visited a place of worship, where they got some help in terms of counseling and were linked to a support group. Because emotional healing of women tends to be slower than that of men, counseling therapy for widows is important so as to help them recover from their grief, be able to re-establish themselves and move on. During the Focus Group Discussions, the respondents indicated that women, by their nature tended to experience loneliness for longer periods of time, but it gradually reduced as they engaged in some form of activity to try and make ends meet.

The onset of widowhood also left the widows with low self-esteem as they felt less worthy. This was a sign that they found it difficult to construct their self-value. Blackburn et al, (1987) concluded that a drop in self-esteem was not necessarily part of the typical grieving process, and may certainly not therefore be experienced by widows worldwide. These psychological challenges affected their social life.

4.6.2 Social impediments

Due to change of status from married to widowed, the widows endure fear, discrimination and stigma from the society. There have also been misgivings due to inter-marriage of individuals from different cultures and lack of understanding of the death, burial and widowhood practices of the other culture, for example refusal to be cleansed or inherited by her brother-in-law.

There is strong social pressure to accept property-grabbing by in-laws, and ostracizing the widows, which some of the respondents explained springs from the different interpretations of customary law. Non-respect of the last will and testament of the deceased also caused challenges for the widows. Of the 70% who did not have access to their matrimonial property, 40 of them representing 44% of the respondents indicated that they would not be in their current situation or reside where they do now -Kasarani, Kibera and Kayole wards- if their in-laws had respected the last will and testament of the deceased. They indicated that this shift in residential areas had an effect on their social life in that they left friends behind and had to begin establishing themselves in the new areas where they knew no-one, and felt alone. They confessed that in as much as the will was not written or drafted by a lawyer, it was written by their husbands before they died and that his wishes should be respected. They decried their in-laws for disregarding and disrespecting the will of the deceased.

Those widows who asserted that they had been branded as ‘a husband snatcher’ were 32 representing 20% of the respondents. Married women –even those who were their friends- disowned and dissociated with the widows due to fear that they would seduce their husbands and become their co-wives. This identity change and change in social status led the widows to adjust their circle of friends and out of circumstance kept the companionship of those sailing in similar boats –fellow widows. Their social life changed from couple-oriented to associations with other single people and the widowed no longer have the day-in, day-out companionship of the other spouse that had become a basic part of their lives. There were three widows whose children, in addition to being physically and verbally abused were disowned by deceased husband’s family due to difference in ethnic community. They were told that they were not recognized and did not belong in the family.

During the Focus Group Discussions, the respondents indicated that they had difficulties balancing personal demands and their social needs. They pointed out that the increased family responsibilities had denied them a chance to socialize as they did prior to the demise

of their husbands. 105 (64%) respondents indicated that they received no social support from the immediate family, which was a challenge in itself. This in turn had physical and financial impact on the widows.

4.6.3 Physical and financial impediments

The greatest challenge, as indicated by the respondents is when the deceased's husband family members -especially his brothers and their mother- come and forcefully take over his property as theirs, leaving the widows with nothing or next to nothing.

Physical and verbal abuse by some of the in-laws to the extent of death threats and near abduction so that the widow could (involuntarily) release her matrimonial property to other people. This was reported by 34 (21%) of the widows, who reluctantly left their matrimonial homes even after reporting the threats to the police and the other local administration.

The CBO officials indicated that some of the widows are forced to quickly dispose her matrimonial property so as to get away from small-minded in-laws who mistreat them to go and start life afresh elsewhere. In some cases, the widow is almost killed for disposing the property as she is viewed as a non-owner.

Unexpected change in terms of loss of the principal breadwinner was indicated by 112 (68%) respondents. The widows pointed out that the family was deprived of his income and therefore there was a change in the manner in which the day-to-day activities of the household were done. The study explored the levels of awareness on avenues of seeking legal redress among widows in Kasarani, Kibera and Kayole wards in Nairobi City County

4.7 Objective 3: Levels of awareness on avenues of seeking legal redress

The study sought to explore the levels of awareness on avenues of seeking legal redress among widows in Kasarani, Kibera and Kayole wards in Nairobi City County, if those policies on inheritance and property rights of widows were fairly implemented and which institutions were adequately empowered to address property rights of widows. The study found that there was a combination of the extremely low level of awareness on avenues of seeking legal redress among the widows, coupled with limited access to information both on the laws and rights of individuals and affordability of court fees to mount legal fights to keep their property which inhibited access to justice.

When asked whether they needed legal services, 128 (91%) respondents said that they were in need of the services, with 92 (72%) of them indicating that they would seek legal redress if they had enough money to pay the lawyer as shown in Figure 9. The other 36 (28%) indicated that in as much as they would like to take their offenders to court or local tribunal for injustices openly done to them, they would rather keep away from the courts for the sake of their sanity.

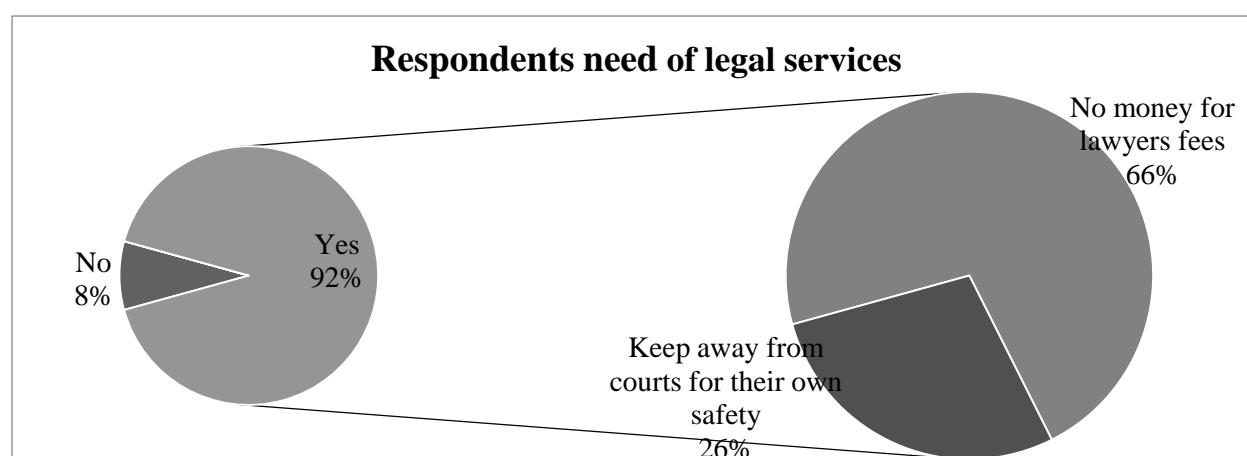


Figure 9: Respondents need of legal services

Asked how accessible the legal services were to them, 122 (87%) of the respondents indicated that it was very difficult to access legal services. Three (2%) indicated that it was difficult while 15 (11%) were neutral on the issue. The main reason for the difficulty in accessing legal services was due to financial constraints. Other reasons were that the widows are not aware of the procedure for attaining justice –who to approach and where to go. Other widows live in fear of their in-laws from whom they receive constant death threats or are threatened with crude weapons when they report their in-laws to the chief in their local area. At the local tribunal, there is less relief for the widows as 88 (69%) of those who had filed cases about property disputes lost the cases because the officers were bribed. One widow explained, “...the chief’s hands were well oiled by my brother-in law, so I lost the house and the *shamba* my husband had left us”^{*}.

Reforms in the legal sector on inheritance and land ownership rights need to be done, and the Matrimonial Property Act implemented fairly and without discrimination. The study also found that there needs to be capacity building for the community and faith based, as well as non-governmental and state agencies in areas of enforcement of the rule of law for the promotion of peaceful, inclusive societies for sustainable development and justice that is

^{*} Kasarani, April 2019

accessible to all. A legal literacy program complete with information, education and communication (IEC) materials that the widows can take home as well as information sessions with the legal fraternity-especially women advocates, where the widows get to learn about their rights and obligations, how and where to get help will go a long way in contributing to access to justice for the widows in the study locations.

Due to the earlier practices among them wife inheritance, 115 (70%) of the widows who took part in the study struggle to get their property after demise of their husbands. According to the advocates of the High Court of Kenya engaged in this study, this is because widows are not aware that they can be registered as owners as well as provided by the Matrimonial property Act 2013. They pointed out that prior to 2013, land or property would legally belong to the husband and he would be able to sell part or all of it without the consent of the wife.

Of the widows who took part in the study both through filling the questionnaires and the focus group discussions, 148 (90%) were not aware of any of the existing laws or policies on property ownership rights and inheritance rights for widows. The other 16 (10%) indicated that they knew that the Constitution of Kenya (2010) advocated for equal rights for everyone regardless of economic or social status, but the implementation of that is wanting.

Given the above, the researcher sought to find out if the level of education of the respondents had any correlation with the low levels of awareness of existing laws or policies on property ownership rights and inheritance rights among the widows. The data was subjected to the Spearman's correlation coefficient test (r_s), where the closer r is to ± 1 the stronger the relationship. As shown in Table 5, the significance is .05 which means that there is a weak relationship between education level and level of legal awareness.

Table 5: Correlation of education and legal awareness level

		Correlations	
		Education	Legal Awareness
Spearman's rho	Correlation Coefficient	1.000	
	Education		
	Sig. (2-tailed)	.	
	N	140	
	Correlation Coefficient	-.208*	1.000
	Legal Awareness		
	Sig. (2-tailed)	.014	.
	N	140	140

*. Correlation is significant at the 0.05 level (2-tailed).

The correlation coefficient of $-.208^*$ and a correlation significance level of 0.05 indicates that there is a weak inverse relationship between education and legal awareness. This therefore implies that more education means less legal awareness or that the less education, the more legally aware the widow is. The aforementioned is the most probable in the current study because the Kenyan education system, even for basic education does not teach or encourage legal awareness and knowledge of human rights and the implications of their violation. This then presents an opportunity for those in curriculum development in Kenya, the Kenya Institute of Curriculum Development, to include rights issues in the curriculum, so that both the teachers and the learners can be aware of their rights and fundamental freedoms and how to go about reporting rights violations. There is also an opportunity for awareness creation through paralegal training for women on their rights and legal awareness in both the rural and urban areas through legal clinics or legal aid. The Judiciary can come up with legal aid schemes which should essentially ensure legal representation for all especially the resource-poor and marginalized persons. The Judiciary can also set-up Community Justice Centers in every county where widows can access understandable legal information, legal representation and non-legal support. These centers will also be accessible to other vulnerable and marginalized groups. The Judiciary should also establish family courts where family-related cases are heard and determined especially for the protection of women's rights. A network of paralegals can be set up to work with widows, to reassure and educate them on their property rights and direct them to where they can get help.

In response to the question on which organizations the widows knew or had heard of that work towards ensuring the rights of women (widows included), the respondents indicated that they had heard of several organizations. These include Kituo cha Sheria which is accessible for those who do not have the capability to pay advocates fees, the Federation of Women Lawyers, Kenya (FIDA) which is passionate about women and the law. Under their Access to Justice Program, FIDA focuses on delivering justice for the resource-poor and marginalized. The respondents also spoke of Muungano wa Wajane (Union of Widows), a community-based organization whose mission is to help widows live fulfilled lives by empowering them socially, economically and spiritually through establishment of productive, reliable networks and support structures. Through the organization, widows are empowered and attain their right to protection, development and equal participation.

The widows in Kibera also indicated that they knew about Hand-In-Hand East Africa (whose representatives had visited them two days before the researcher carried out the research in that ward) which might help them. The researcher probed further about Hand-In-Hand East Africa and found that its ultimate objective is to contribute to poverty reduction and economic gender disparity in Kenya, through break-down of barriers and unlocking the entrepreneurial potential of program participants. Information on their website indicates that their approach is through outreach programs, partnerships, collaboration and networking (Hand-In-Hand East Africa, 2019). From what the researcher gathered from the widows in Kibera, Hand-In-Hand East Africa had come to uplift them financially through table banking, from where they could be able to access small loans with which to engage in some income generating activity.

Other than Muungano wa Wajane (Union of Widows), the CBO officials indicated that the Unclaimed Financial Assets Authority (UFAA) worked towards ensuring the rights of women. Upon further inquiry about UFAA, the researcher found that its primary mandate is to receive unclaimed financial assets from the holders, safeguard and reunite them with their rightful owners (UFAA, 2018). This organization is not specific to the upholding of the rights of women but deals primarily with linking registered unclaimed assets to their rightful owners. The officials also spoke of the Civil Society Organization (CSO) Network operating in Western Kenya whose focus is on democratization, governance and human rights; organizational development and support; gender equity and alliance building. This is done first through networking, skills development and advocacy, then through community mobilization, sensitization and empowerment (CSO Network, 2019).

The advocates pointed out that the Kenyan Courts are empowered to address such issues of property rights of widows as they are essentially the first point of contact in the process of administration of a deceased person's property. The magistrates are in a position to set down the specific guidelines to administrators of a deceased person's property to adequately provide for the surviving widow of the deceased. The advocates also pointed out that the Kenya Land Alliance holds civic education forums at both national and regional level on Women Land Rights.

The religious leaders, in response to the same question brought to the fore the Kenya Christian Lawyers Fellowship which brings together Christian Lawyers to ensure that Christian principals are upheld in the administration of law and justice. The Fellowship's

ambition is to increase access to justice through legal aid centers which advise and represent the most marginalized, as well as provide community legal education through legal awareness clinics (Kenya Christian Lawyers Fellowship, 2016). The Kadhi's courts that are in place to deal with cases where Muslim women have been chased from their matrimonial homes. The imam whom the researcher interacted with indicated that the cases he has dealt with of Muslim widows being evicted from their homes largely arose from cultural differences of the families and not faith issues. He indicated that in one case, the widow went to the Kadhi's court because her in-laws sought to have her inherited and she was against that idea, yet they wanted to force her into it. The study also revealed barriers to accessing justice among widows.

4.8 Objective 4: Barriers to accessing justice among widows

The data collected by the researcher and her assistants identified four main barriers among widows in Kasarani, Kibera and Kayole wards of Nairobi City County. First, there are some retrogressive cultural practices that grant both widows and women secondary rights to property and land ownership as male figures or relatives are considered as the owners which is against the Laws of Succession in Kenya. Second, there is limited access to information both on the laws and rights of individuals and also how to go about seeking legal redress and alternative dispute resolution mechanisms. The respondents felt that neither the national or county governments nor their agencies were keenly involved in aiding them cope with widowhood challenges.

Third, was laxity and corruption by the local administration and elders in the community who turned a blind eye to the plight of the widows when they went to them to report the injustices done to them. Failure by the relevant authorities such as the community elders, local administration and police to act when widows report to them that they are being or have been defrauded of what is rightfully theirs becomes a stumbling block to the rights of widows. 13 (8%) respondents said they had reported cases, but because 'their (the local administration) hands had been well oiled' by the defrauders, they could not receive justice. Fourth was the exclusion where the society labels the widows and gives them coldshoulders, thereby leaving them with no-one to turn to for help. Based on the findings of the study, the researcher suggests ways of assisting the affected widows to protect their property and inheritance rights.

4.9 Objective 5: Suggest ways of assisting the affected widows to protect their property and inheritance rights.

From the study findings, the researcher suggests that the Ministry of Public Service, Youth and Gender team up with the Federation of Women Lawyers, Kenya (FIDA) and develop a legal literacy program complete with information, education and communication (IEC) materials that the widows can take home for further understanding. During these sessions, the widows will get to learn about their rights and obligations through information sessions with the legal fraternity-especially women advocates. Together with the Ministry of Information, Communication and Technology (ICT) this information can also be disseminated through the local television and radio stations, in both the national languages and the various vernacular languages in Kenya.

The Judiciary can also set-up Community Justice Centers in every county where widows can access understandable legal information, legal representation and non-legal support. These centers will also be accessible to other vulnerable and marginalized groups. The Judiciary should also establish family courts where family-related cases are heard and determined especially for the protection of women's rights. A network of paralegals can be set up to work with widows, to reassure and educate them on their property rights and direct them to where they can get help.

CHAPTER FIVE: THEOLOGICAL REFLECTION

5.1 Introduction

This chapter presents a discussion on the teachings of the Church and sacred writings with respect to access to justice regarding property rights for widows. It reflects on how sacred writings invite us to respond to widows' needs to access justice and serve as an inspiration or guide when dealing with issues of widows' rights. It presents a theological reflection entrenched in the faith traditions which include rituals, values, beliefs and sacred writings.

5.2 Theological Reflection, Scripture and Social Teachings of the Catholic Church

A theological reflection, according to Parise and Pierli (2013), is a method of shedding the light of faith on the experiences of the people in order to help them discern, make decisions and respond to their situations and experiences. The researcher was careful to respect the different faith traditions and beliefs of the respondents. Being a Roman Catholic, the researcher relied heavily on the Social Teachings of the Catholic Church for the faith tradition, readings and reflections from the African Bible and the Catechism of the Catholic Church. The Social Teachings of the Catholic Church is a profound treasure of wisdom about creating a just, equitable society in addition to living lives of holiness in the midst of the challenges posed by modern society (Catholic Relief Services, 2017). These teachings are inspired by the Old Testament prophets' instructions on the preferential option for the poor, workers' rights, justice and peace, and respond to both the cultural and societal conditions based on the Word of God (Catechism of the Catholic Church, 2000).

Primarily, the Scriptures present women as equal to men by their very nature. God, in creation made man and woman in His image and likeness and blessed them as written in the creation story as follows:

God created man in his image; in the divine image he created him; male and female he created them. God blessed them, saying to them: "Be fertile and multiply; fill the earth and subdue it. Have dominion over the fish of the sea, the birds of the air and all the living things that move on the earth." (Genesis 1:27-28, the African Bible).

From this, it is clear that men and women are equal in God's eyes and therefore have equal rights. During the focus group discussions held in the three study wards- Kasarani, Kibera and Kayole on various dates in April 2019, the widows openly shared and expressed feelings of pain, rejection and discrimination from family, friends and the community. First was

loneliness following the demise of their spouse, with whom they had shared a significant part of their lives, with their days were largely pre-occupied by memories of their deceased spouses and minimal interact with others. Then when the in-laws begin mistreating them, neglect and isolation set in because the widows felt devalued and disrespected as well as perceived as a stranger in the homestead after the demise of their husbands. One widow from Kibera said she was a firm believer in God and His word and declared that God is her refuge. She went ahead to open her Bible which she said she never leaves behind and read a passage from Psalms to encourage her fellow widows to possess God as their refuge. She read:

If the LORD were not my help, I would have long been silent in the grave. When I say, “My foot is slipping,” your love, LORD, holds me up. When cares increase within me, your comfort gives me joy....The LORD is my secure height, my God, the rock where I find refuge, (Psalm 94:17-19, 22, the African Bible).

Others present concurred with her and added that when all others fail due to our flaws as human beings, choosing not to stand with them in their times of trouble and grief, and instead despising and rejecting them, God would never reject them because it was not in His nature. Another widow quoted a verse she said had been her most comforting memory verse in times of trouble when she felt overwhelmed by distress. She read, ‘For the LORD comforts his people and shows mercy to his afflicted.’ (Isaiah 49:13b, the African Bible).

The researcher encouraged the participants that God had not forgotten or rejected them despite the challenges they experience continually both as individuals and collectively as widows. For God comforts the sorrowful as we read in Isaiah:

But Zion said, “The LORD has forgotten me.” Can a mother forget her infant, be without tenderness for the child of her womb? Even should she forget, I will never forget you. See, upon the palms of my hands I have written your name (Isaiah 49:14-16a, the African Bible).

The researcher further reiterated the words of Pope Francis during the conference for consecrated widows, that despite widowhood being a difficult experience, their experiences can be used to help the young and resource-poor live a life of simplicity and humility. He invites widows to keep their gaze fixed on Jesus Christ and nurture a bond that unites them to Him through which they will be able to draw the courage and perseverance to overcome trials

that they experience every so often. Through encountering Jesus, they are reborn in the hope and joy of the Gospel (Pope Francis, 2018).

During Focus Group Discussion in Kayole, two of the widows indicated that they were treated as undignified individuals once they became widows and that this mistreatment often times made them cry. Another one shared her experience in the hands of her ‘saved’ mother-in-law -herself a widow- and questioned where her salvation was from. This, she explained, was because she could not understand how such a ‘saved’ individual can mistreat, oppress, physically and verbally abuse one who is essentially supposed to be like a daughter to her. She sighed and reassured herself that God sees their tears and hears their cries as it says in Exodus and Zechariah: ‘You shall not wrong any widow or orphan. If ever you wrong them and they cry out to me, I will surely hear their cry’ (Exodus 22:21-22, the African Bible) and ‘Do not oppress the widow or the orphan, the alien or the poor; do not plot evil against one another in your heart’ (Zechariah 7:10, the African Bible).

Even in Islam, it is *haram* (not lawful) for anyone, let alone in-laws to mistreat a widow, because the common belief is that Allah (God) will hear the cries of the widow and avenge by punishing the offender. From the researcher’s discussion with religious leaders on various dates in early May 2019 on what their thoughts on widows and the teaching of the Church regarding this group of women, there seemed to emerge similar views. Both the minister from the Presbyterian Church of East Africa (PCEA) and the vicar from the Anglican Church of Kenya (ACK) interviewed seemed to agree that according to their teachings, a widow is a dignified person just like everybody else. The only difference between her and other married women is that her husband went to be with the Lord. All widows should be respected and allowed to perform duties in the church and in the society because she is qualified. The pastor from the Nairobi Pentecostal Church (NPC) interviewed added that widows require equal treatment just like any other woman, that she should not be undermined or labeled unworthy because of her status. He also thought that widows should be allowed to access resources fairly.

The Roman Catholic priest interviewed referred the researcher to the Catechism of the Catholic Church (CCC), through which the Mother Church teaches her members to advocate for social justice. This means providing the conditions that allow associations and individuals attain or obtain their rights according to their nature and vocation. This is linked to the

common good and exercise of authority (CCC, 1928). He also linked this teaching to the words of prophet Isaiah when he spoke against social injustice. It reads:

Woe to those who enact unjust statutes and who write oppressive decrees, depriving the needy of judgement and robbing my people's poor of their rights, making widows their plunder, and orphans their prey! (Isaiah 10:1-2, the African Bible).

This means that social justice should be advocated for not only in the Roman Catholic Church, but also in other Christian denominations that subscribe to the Bible as the word of God. If the plight of the widows and orphans is neglected, then religion has failed, because even Scripture gives instructions on what religion should be. James, in his letter says that religion that is pure and undefiled before God the Father is to care for the widows and orphans in their affliction (James 1:27, the African Bible). The church therefore should advocate for the equal rights of both men and women. In mediation, the Church as an institution or entity may be called upon to arbitrate a situation of contention. In such a situation, the Church encourages fairness of every other person because by her nature, the Church should be able to reflect the justice of God and the equality that He confirms when Scripture dictates that God has no favorites. If God the Creator does not discriminate, the researcher wondered why the created should discriminate against one another due to status.

5.3 Social Transformation Approaches

Social transformation deals with improvement of the lives of community members-especially the excluded, resource-poor and vulnerable through conversion of mindsets, beliefs, attitudes and systems and must take place within human communities (Parise & Pierli, 2013). It means seeking positive change in human life in all spheres -social, material, intellectual, spiritual-by rediscovering our true vocation as productive stewards who care for our world and its people-especially the vulnerable. Social transformation goes hand in hand with sustainable development, which entails meeting the needs of the present without compromising the ability for future generations to meet their needs. In particular, the essential needs of the world's poor and vulnerable should be given priority (Blewitt, 2008).

There should be development of sustainable development strategies that tackle the social dimension through which the systems in place must achieve specific deliverables. These include but are not limited to impartiality when delivering justice, adequate provision of

social services including health and education, gender equity, respect for minority, political accountability and participation.

These strategies can be focused on the common good as entrenched in the Catechism of the Catholic Church which contains three elements: respect for and promotion of fundamental rights of the person; prosperity and development of spiritual and temporal goods of the society; peace and security of the group and its members (CCC, 1925). These strategies should advocates for the respect for the human person. This is because human rights flow from their dignity and come before society and must therefore be respected (CCC, 1930).

Sustainable development is also commended as being able to ensure the well-being of the individual through integration of social and economic development in addition to environmental conservation and protection (Kariuki & Kariuki, 2015). It encourages the principle that everyone should look upon their neighbor without exception as ‘another self’, bearing in mind that each should live a dignified life (CCC, 1931).

The study found that these laws Constitution of Kenya (2010) Articles 27, 40, 60, Laws of Succession Act (2012) Section 35, 40 and 45, and the Matrimonial Property Act (2013) Section 6, 14, which are supposed to govern and safeguard the rights of widows, and recognize women’s rights to own and inherit property are not adequately implemented and many widows are chased away from their land and access to justice is hard to obtain. This can be mitigated by enforcing legal frameworks in such a transparent manner that all parties concerned are held responsible and must ensure just, fair and equitable laws, without discrimination. The legal frameworks will also guarantee that these institutions are accessible and responsive to the needs and rights of all individuals.

As identified in Maslow’s Human Needs theory, on which this study is anchored, social development means that the basic needs of the individuals are met through proper implementation and recognition of basic human rights including the right of access to justice, as well as promoting democracy through public participation in policy making. For the development process and development programmes to be successful and make an impact on the community requires participatory communication from the community and an in-depth understanding and analysis of their issues. According to White (1994), participatory communication in the development process cannot be 'planned' and 'executed' by communication researchers and policy experts sitting at their desks in government bureaus. Participation of the local community in formulation of policies and development programmes

is essential. It is integral to the logic of the public sphere and integral to the concept of communication with the public. Through the Ministry of Public Service, Youth and Gender, the national and county governments, together with social services and service providers who include religious leaders, social workers, non-governmental organizations and donors need to ascertain and comprehend the communal needs of widowed individuals due to the challenges of widowhood. This identification and understanding may help to boost the self-esteem of the widowed individuals as they singlehandedly raise their children.

Researchers and policy experts must strive to understand the socio-cultural circumstances of the community in which they intend to work with, and the only way of understanding this is through interaction with them (the local community). Interpersonal and group interactions with the members of the local community will enable the communication researchers and policy experts to get an in-depth understanding of their socio-cultural circumstances as well as their issues and needs. This will assist the researchers and policy makers to know how and where to come in and assist, as well as draft development programmes that address the specific need.

Hosea 6:4a says that ‘My people are destroyed for lack of knowledge (the African Bible). The study also found that there was a combination of the extremely low level of awareness on avenues of seeking legal redress among the widows, coupled with limited access to information both on the laws and rights of individuals and affordability of court fees to mount legal fights to keep their property which inhibited access to justice. To this end, the researcher puts forward that legal empowerment programs for the widows will equip them with knowledge of the laws and the remedies available to them. Educating widows by creation of public forums and encouraging public debate about the laws affecting them and the kind of changes they would like to see in the law as well as incorporating their needs in policy making process.

In addition, the Ministry of Public Service, Youth and Gender can team up with the Federation of Women Lawyers, Kenya (FIDA) and develop a legal literacy program complete with information, education and communication (IEC) materials that the widows can take home for further understanding. During these sessions, the widows will get to learn about their rights and obligations through information sessions with the legal fraternity- especially women advocates. Together with the Ministry of Information, Communication and

Technology (ICT) this information can also be disseminated through the local television and radio stations, in both the national languages and the various vernacular languages in Kenya.

Social transformation and sustainable development are consequently inherently connected to protection and promotion of human rights. There cannot be dialogue about any form of positive development shorn of addressing human rights and above all human development.

CHAPTER SIX: SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter presents a summary of the study findings, conclusions and recommendations based on the objectives of the study. The summary of findings gives a brief description of the major factors that were raised by the respondents with regard to access to justice regarding property rights for widows in Kasarani, Kibera and Kayole wards of Nairobi City County. The findings contributed to answering the research questions and making conclusions to the study, which was anchored on the Legitimacy and Human Needs theories which were relevant in understanding, appreciating and recommending ways of empowering women and raising their awareness on their rights which are being violated. The chapter concludes with the areas suggested for further research.

6.2 Summary of Findings

The problem this study investigated was access to justice regarding property rights for widows in Kasarani, Kibera and Kayole wards of Nairobi City County. Rights of women are an important field of study that draw interest and concern in all spheres of our society, especially in areas of development and equality. As long as there is unequal treatment of women and violation of their rights, especially the vulnerable such as widows, there will be little development in the social, economic and cultural fields. The reason is that these areas of development depend on fairness and equal treatment of persons to thrive. The injustice suffered by widows in Kenya casts doubts on the equality envisioned in the Constitution of Kenya (2010) and its contribution to sustainable development of the society. The study sought to determine the challenges that widows in Kasarani, Kibera and Kayole wards in Nairobi City County face regarding their access to property rights. The study was guided by the five study objectives which were: to examine the specific legal systems in Kenya that could be used to safeguard/enhance the property rights of widows, identify the cultural factors associated with social exclusion of widows, explore the levels of awareness on avenues of seeking legal redress among widows in the study location, determine barriers to accessing justice among widows and suggest ways of assisting the affected widows to protect their property and inheritance rights.

In this study, it was recognized that the study locations had exceptional challenges whose sources were mainly from the family of procreation itself, particularly when the family

members failed to provide protection for the grieving widow and instead turned against her and forcefully took her matrimonial property away.

The first study objective was to examine the specific legal systems in Kenya that can be used to safeguard/enhance the property rights of widows. The study found that there are laws such as the Constitution of Kenya (2010) Articles 27, 40, 60, Laws of Succession Act (2012) Section 35, 40 and 45, and the Matrimonial Property Act (2013) Section 6, 14, which on paper, govern and safeguard the rights of widows, and recognize women's rights to own and inherit property. In practice however, these laws are not adequately implemented and many widows are chased away from their land and access to justice is hard to obtain. This is because most of the widows who participated in the study cannot afford court fees to mount legal fights to keep their property and therefore access to justice is inhibited.

The second study objective was to identify the cultural factors associated with social exclusion of widows. The study found that despite provisions for the widows to be taken care of by her brother-in-law such as under the Kikuyu and Kamba Customary law, the brothers of the deceased took the deceased's property and 'took care' of his family. The problem that arises after the widows comply –even reluctantly- to be 'taken care of' is that they end up being left destitute in a couple of years because the property gets squandered away. This custom is still deeply rooted in some parts of Kikuyuland. Other cultural factors include wife inheritance such practiced among the Luo and Luhya which effectively inhibits the widow from inheriting her husband's property as the same is now taken over by the new 'husband'. Some of the cultures of the respondents do not allow their women to inherit or stay on the husbands' property especially if she did not bear at least one son.

The study revealed that customary law in most of the communities in Kenya does not advocate for widows to inherit property either from her husband or from her father, though it allows her to stay on the property. In some communities and ethnic groups, customary law allows widows to stay on their husband's or matrimonial property for as long as she does not remarry. If she decides to remarry, that law dictates that she leave the property –and sometimes the children, who are considered to belong to their father- and go alone with her new husband. She is not permitted to bring in another man to the first husband's property, or to her first matrimonial home. In other cases, the death of the man either broke or strengthened the ties with the in-laws. The widows indicated that on one hand, if those ties were initially strong and she had been accepted into the family, then there were little to no

issues on property inheritance. If on the other hand she had never been accepted by her husband's family, their ties with her were broken upon his demise and inheritance scuffles commenced.

The third study objective was to explore the levels of awareness on avenues of seeking legal redress among widows in Kasarani, Kibera and Kayole wards in Nairobi City County. The study found that there was a combination of the extremely low level of awareness on avenues of seeking legal redress among the widows, coupled with limited access to information both on the laws and rights of individuals and affordability of court fees to mount legal fights to keep their property which inhibited access to justice. Reforms in the legal sector on inheritance and land ownership rights need to be done, and the Matrimonial Property Act implemented fairly and without discrimination. The study also found that there needs to be capacity building for the community and faith based, as well as non-governmental and state agencies in areas of enforcement of the rule of law for the promotion of peaceful, inclusive societies for sustainable development and justice that is accessible to all. A legal literacy program complete with information, education and communication (IEC) materials that the widows can take home as well as information sessions with the legal fraternity-especially women advocates, where the widows get to learn about their rights and obligations, how and where to get help will go a long way in contributing to access to justice for the widows in the study locations.

From the fourth objective which was to determine barriers to accessing justice among widows, the data collected by the researcher and her assistants identified four main barriers among widows in Kasarani, Kibera and Kayole wards of Nairobi City County. First, there are some retrogressive cultural practices that grant both widows and women secondary rights to property and land ownership as male figures or relatives are considered as the owners which is against the Laws of Succession in Kenya. Second, there is limited access to information both on the laws and rights of individuals and also how to go about seeking legal redress and alternative dispute resolution mechanisms. The respondents felt that neither the national or county governments nor their agencies were keenly involved in aiding them cope with widowhood challenges. Third, was laxity and corruption by the local administration and elders in the community who turned a blind eye to the plight of the widows when they went to them to report the injustices done to them. Fourth was the exclusion where the society labels the widows and gives them coldshoulders, thereby leaving them with no-one to turn to for help.

The response to the fifth objective of the study, to suggestions ways of assisting the affected widows to protect their property and inheritance rights are given in detail in section 6.4 of this chapter.

The theological reflection helped both the researcher and the participants to shed the light of faith on the challenges that the widows faced in their daily lives. It enabled the widows reflect on the Word of God and recognize that they were not alone in their journey of widowhood and that God had not forgotten them. The concepts brought forth in the Church documents such as the Catechism and Social Teachings of the Catholic Church facilitated knowledge of what the ideal should be with regard to human rights and their advancement, social justice and the common good. It also was an eye-opener for the researcher and participants that advocacy for the rights of the neglected and marginalized in the community is backed by the Church and by Scripture, and that all should work together for an unbiased and equitable society for we are all equal before God.

6.3 Conclusion

Based on the above findings the study concluded that exclusion of widows and the denial of their matrimonial property rights as well as challenges of accessing justice are a reality and has an impact on the society and especially in the study areas –Kasarani, Kibera and Kayole wards of Nairobi City County. Nonetheless, the widows in these areas are ready and willing to have information sessions with these who can assist them and give them direction on how to go about reclaiming their matrimonial property. The CBO officials whom the researcher was in contact with were willing to be more proactive in their efforts to link widows needing legal services to FIDA so as to facilitate access to justice.

6.4 Recommendations

The following were the recommendations made so as to be addressed at the policy level, to promote social inclusion of widows and for further study.

6.4.1 Policy implementation recommendations

Based on the findings, the study made eight policy recommendations.

First, since its implementation, the Matrimonial Property Act (2013) has seen a reduction of pending cases in courts but it is yet to help the women who are not aware of the new laws. This can be rectified by creating legal awareness in both the rural and urban areas through legal clinics or legal aid. The Judiciary can come up with legal aid schemes which should

essentially ensure legal representation for all especially the resource-poor and marginalized persons. These legal aid schemes may involve various stakeholders such as non-governmental, community-based, faith-based and non-religious organizations, professional bodies like the Law Society of Kenya and Kenya Christian Lawyers Fellowship as well as academics.

Second, the Ministry of Public Service, Youth and Gender can team up with the Federation of Women Lawyers, Kenya (FIDA) and develop a legal literacy program complete with information, education and communication (IEC) materials that the widows can take home for further understanding. During these sessions, the widows will get to learn about their rights and obligations through information sessions with the legal fraternity-especially women advocates. Together with the Ministry of Information, Communication and Technology (ICT) this information can also be disseminated through the local television and radio stations, in both the national languages and the various vernacular languages in Kenya.

Third, the Judiciary can also set-up Community Justice Centers in every county where widows can access understandable legal information, legal representation and non-legal support. These centers will also be accessible to other vulnerable and marginalized groups. The Judiciary should also establish family courts where family-related cases are heard and determined especially for the protection of women's rights. A network of paralegals can be set up to work with widows, to reassure and educate them on their property rights and direct them to where they can get help.

Fourth, through the proper implementation of the Matrimonial Property Act (2013), the Law of Succession Act (2012) and the Constitution of Kenya (2010), widows can be granted not only property but everything the deceased stipulated in their last will and testament. If he left his wife out without good reason, the widow can challenge the will in court and still acquire property. If the husband died intestate (without a will), the Court has the mandate to distribute his property with the first priority being the surviving spouse(s) and children. Where a widow wishes to relinquish her role as administrator of her late husband's estate and give it to her children or his brothers or relatives, consent should be filed in court where presiding magistrates and judges thoroughly interrogate this position before they allow for it.

Fifth, civil society organizations in conjunction with the government should come up with strategies to facilitate affected widows to access opportunities to enable them empower themselves economically and get an equal chance to expend their energies meaningfully as

they provide for their dependents. Capacity-building for justice system workers -including the police service- to create gender-sensitive support systems for women should be done. This can include a special group of lawyers strictly dealing with widows issues in every county.

Sixth, the national and county governments should adopt and implement the Sustainable Development Goals of 2015 which called upon governments to ensure that no one is left behind including widows. The specific Sustainable Development Goal in line with this study is Goal 16 on peace, justice and strong institutions. Subsection 3 which is to promote the rule of law at the national and international levels and to ensure equal access to justice for all as there are intrinsic links between access to justice, poverty reduction and inclusive growth and development. The main aim of this goal is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (United Nations, 2015).

Seventh, stern action can be taken to end the cruel, dehumanizing, unacceptable and discriminatory practices, against widows and her children and laws can be strengthened through advocacy to ensure the punishment of perpetrators. The customary, religious and modern laws which in this day and age are still emphasizing discriminatory practices against women and children should be abolished.

Lastly, there should be reforms in the legal sector on inheritance and land ownership rights which can be enacted and enforced. The information that will guide the reforms should be from independent research undertaken to investigate the extent of violations against widows, both the young and old. There should be regional, national and international meetings convened regularly to ensure that the collective voices of widows are heard as well as include the rights of widows in all appropriate international instruments. The study also proposes general recommendations.

6.4.2 General recommendations

Based on the findings, the study proposes eight recommendations to promote social inclusion of widows, prompt their legal and socio-economic empowerment as well as champion for the rights of widows.

First, legal empowerment for the widows will equip them with knowledge of the laws and the remedies available to them. Educating widows by creation of public forums and encouraging public debate about the laws affecting them and the kind of changes they would like to see in

the law as well as incorporating their needs in policy making process. Widows should be informed on the benefits the government grants them through funds for instance the affirmative funds focusing on women such as the Women Enterprise Fund.

Second, there need to be an organized forum to inform both men and women of their property rights as they are already provided for by the law as awareness of the law and rights as established by the study is wanting. These discussions can be held in the villages, churches, schools and other public spaces, addressing the relationship between property rights violations and women's vulnerability. This will ensure that every individual knows their rights and becomes aware that violation of the rights of another individual is punishable by law as it attracts a hefty fine or even jail term. Local government leaders can be invited to help drive such initiatives to create public awareness and access to information.

Third, there is need for education on the importance of making a will as a preventive measure. There is a perception that when a man makes a will, he is about to die. This may not necessarily be the case, and the Laws of Succession Act, Section 5 states that every person who is of sound mind and not a minor may dispose of all or any of his free property by will and may thereby make any disposition by reference to any secular or religious law that he chooses. Making a will, whether oral or written has its advantages in that it goes a long way in protecting one's property and dependants at the time of demise. The justice system should be so strong that those who are mandated to execute the will must carry it out to the letter, failure to which they could face some sort of punishment.

Fourth, community-based organizations such as Muungano wa Wajane (Union of Widows) can raise awareness, promote better understanding of widowhood and highlight the gains to be derived by the integration of widows into every aspect of political, social, economic and cultural lives of their communities. Non-Governmental Organizations such as the Kenya Legal and Ethical Issues Network (KELIN) can be supported to spread its wings beyond Western Kenya where it currently operates to other parts of the country. This organization identifies women who have been disinherited as a result of cultural practices, and then seeks to have an out-of-court settlement through mediation between the aggrieved widow and her in-laws. The mediation is carried out in the native language, thereby accommodating all the parties. Community, faith, governmental and non-governmental organizations to promote women's understanding of fundamental and equal rights for widows denoting access to basic

services such as housing, employment, education, health care, social services and participation in social, cultural and political activities.

Fifth, a movement for and by widows and improved information network will be effective in bringing out the internal struggles widows are faced with, bring widows together for fellowship, healing information sharing and encouragement. This movement will advocate for the rights of widows.

Sixth, the church can advance socio-economic programs run by the women-led church groups such as Catholic Women Association, Woman's Guild, Mothers Union and Widows Fellowship to encourage ladies to pull together, save and access loans to provide for themselves and dependents. These will go a long way in helping the widows recollect their lives, stand on their feet and move on. Widows find solace in God when all others have turned their backs on them. Religious leaders should provide counseling sessions for widows as they should not be left to suffer grief alone because that is the onset of loneliness even when children are in the picture.

Seventh, the harmful cultural and social practices that propagate women inferiority and stereotypical gender roles should be addressed. Community leaders and councils of elders in the ethnic groups in Kenya, who are the custodians of culture should, starting at the grass-root level be encouraged to transform those discriminatory customary laws, especially those that relate to inheritance and property ownership. This should be done so as to promote equality of women and also to support women participation in the decision making process at the community level. For effective behavior change, policy- and decision-makers at all government levels should provide necessary information for consciousness-raising as well as awareness-raising through better, more effective communication.

Lastly, through the Ministry of Public Service, Youth and Gender, the national and county governments, together with social services and service providers who include religious leaders, social workers, non-governmental organizations and donors need to ascertain and comprehend the communal needs of widowed individuals due to the challenges of widowhood. This identification and understanding may help to boost the self-esteem of the widowed individuals as they singlehandedly raise their children.

The achievement of justice, social inclusion and equality of this vulnerable group of women and children –the widows and orphans- will contribute to the United Nations Global Goals

for Sustainable Development. The specific goal in line with this is Goal 5 on Gender Equality, whose first target is to end all forms of discrimination against all women and girls everywhere. Another of its targets is to undertake reforms to give women equal rights to economic resource as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws. The study proposes areas for further research.

6.4.3 Recommendations for further research

Given that the study was not conclusive, further studies could focus on the role of the community in social inclusion for sustainable development of widows living in Kasarani, Kibera and Kayole wards of Nairobi City County. Another area could be the impact of legal problems and inadequate access to justice for widows living in Kasarani, Kibera and Kayole wards of Nairobi City County.

REFERENCES

- Abregu, M. (2001). Barricades or Obstacles: The Challenges of Access to Justice. In R. V. Puymbroeck, *Comprehensive Legal and Judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century* (pp. 53-69). Washington D.C.: World Bank.
- Ayinkamiye, R. (2015). *The Strategies used by State and Non -State Actors in empowering the refugees in Kenya: a case study of Tushirikiane Afrika (TUSA)*. Nairobi: Tushirikiane Afrika.
- Blackburn, J. A., Greenberg, J. S. & Boss, P. G. (1987). Coping with normative stress from loss and change: A longitudinal study of rural widows. *Journal of Gerontological Social Work*, Vol. 11 No. 1-2, pp. 59-70.
- Blewitt, J. (2008). *Understanding Sustainable Development*. London: Earthscan
- Brewer, K. (2011). *The Challenges Faced By Widows*. Widows Rights International.
- Burlea-Schiopoiu, A. & Popa, I. (2013). Legitimacy Theory. In S. E. Idowu, *The Encyclopedia of Corporate Social Responsibility* (pp. 1579-1584). Berlin: Springer.
- Catholic Relief Services. (2017). *CST101: Themes from Catholic Social Teaching*. United States Conference of Catholic Bishops.
- Chukwu-Okoronkwo, S. O. (2015). Culture of Widowhood Practices in Africa: Deinstitutionalizing the Plights of Women and Communicating Development through Theatre. *American Journal of Social Science Research*, Vol. 1 No. 2, pp. 71-76.
- Civil Society Organization Network. (2019). *About CSO Network* Retrieved from <https://www.cso-network.org/>
- Clinton, H. R. (1995). *Remarks for the United Nations Fourth World Conference on Women*. Beijing
- Correa, D. R. (2016). Civil Dissent by Obedience and Disobedience: Exploiting the gaps between official rules and societal norms and expectations. *Washington University Jurisprudence Review*, Vol. 8 No. 2, pp. 218-233.
- Creswell, J. W. (2013). *Research design qualitative and quantitative approaches* (4th ed.). California: Sage Publishers.
- Creswell, J. W. (2009). *Research design: Qualitative, quantitative, and mixed methods approaches* (3rd ed.). University of Nebraska-Lincoln: Sage Publications.
- Dowling, J. & Pfeffer, J. (1975). Organizational legitimacy: Social values and organizational behavior. *Pacific Sociological Review*, Vol. 18 No. 1, pp. 122-136.

- Ewelukwa, U. U. (2002). Post-Colonialism, Gender, Customary Injustice: Widows in African Societies. *Human Rights Quarterly*, Vol. 24 No. 2, pp. 424-486.
- Federation of Women Lawyers, Kenya (FIDA). (2013). *Women's Land and Property Rights in Kenya: A Training Handbook*. Nairobi: Michi Media Ltd.
- Gaiser, T. J. (2008). Online focus groups. In Fielding, N., Lee, R. M. and Blank, G. (eds.). *The Sage handbook of Online Research Methods*. London: Sage Publications.
- Gargarellal, R. (2002). *Too far removed from the people. Access to Justice for the Poor: The Case of Latin America*. Argentina: Universidad Torcuato Di Tella
- Gorney, C. (2017, May 2). *For Widows, Life after Loss*. Retrieved from National Geographic: <https://www.nationalgeographic.com/magazine/2017/02/global-images-of-widows-india-bosnia-uganda-discrimination-exile/>
- Hand-In-Hand East Africa. (2019). *About Hand-In-Hand East Africa*. Retrieved from <https://www.handinhand-ea.org>
- Human Rights Watch. (2012). *Discrimination, Inequality and Poverty: A Human Rights Perspective*. New York: Human Rights Watch.
- Human Rights Watch. (2003). *Double Standards: Women's Property Rights Violations in Kenya*. New York: Human Rights Watch Vol. 15, No. 5(A).
- Hurlbert M. A. & Mulvale J. P. (2011). *Defining Justice*.
- Idialu E. E. (2012). The Inhumane Treatment of Widows in African Communities. *Current Journal of Social Sciences*, Vol. 4 No.1, pp. 6-11.
- International Women's Tribune Centre. (1998). *Rights of Women: A guide to the most important United Nations Treaties on Women's Human Rights*. New York: The International Women's Tribune Centre.
- International Development Law Organization. (2017). *Empowering rural women and local communities*. Retrieved from <https://www.idlo.int/news/highlights/improving-access-justice-empowering-rural-women>
- Kahongeh, J. (2017, November 6). *Where becoming a widow is the worst thing that can happen to you*. Retrieved from Daily Nation: <https://www.nation.co.ke/lifestyle/dn2/957860-4176078-1bv60c/index.html>
- Kamau, W. (2014). *Customary Law and Women's Rights in Kenya*. Nairobi: Equality Effect.
- Kariuki M. & Kariuki F. (2015). *Alternative Dispute Resolution, Access to Justice and Development in Kenya*. Nairobi: Strathmore University Press.

- Kenya Christian Lawyers Fellowship. (2016). *About Kenya Christian Lawyers Fellowship*. Retrieved from <https://www.kclf.or.ke/index.php/2016-10-14-19-31-50/2016-10-14-19-31-52>
- Kenya National Bureau of Statistics. (2014, May 14). *Marital Status by County and District*. Retrieved from <https://www.knbs.or.ke/marital-status-by-county-and-district/>
- Kenya National Bureau of Statistics. (2009, August). *Detailed Census Report Kenya Population and Housing Census*. Retrieved from <https://www.knbs.or.ke/category/detailed-census-report>
- Kerlinger, F. (1973). *Foundation of Behavioural Science*. New York: Holt, Rinehart and Winston.
- Kirwen, M. (1979). *African Widows: An Empirical Study of the Problems of Adapting Western Christian Teachings on Marriage to the Levirate Custom for the Care of Widows in four rural African Societies*. New York: Orbis Books.
- Kombo, D. K. & Tromp, D. L. A. (2006). *Proposal and Thesis Writing: An Introduction*. Nairobi: Paulines Publications Africa.
- Kothari, C. R. (2004). *Research Methodology: Methods and Techniques (2nd Ed.)*. New Delhi: New Age International Publishers.
- Krishnan, L. (2015). *Social Exclusion, Mental Health, Disadvantage and Injustice*. India: Sage Publications.
- Krueger, R. (2002). *Designing and conducting focus group interviews*. USA: University of Minnesota.
- Laws of Kenya. (2013). *Matrimonial Property Act*. Nairobi: National Council for Law Reporting. No. 49 of 2013.
- Laws of Kenya. (2013). *Magistrate's Courts Act*. Nairobi: National Council for Law Reporting. Section 2 part 5 and 6
- Laws of Kenya. (2012). *Law of Succession Act*. Nairobi: National Council for Law Reporting. Chapter 60.
- Laws of Kenya. (2010). *The Constitution of Kenya, 2010*. Nairobi: National Council for Law Reporting.
- Lindblom, C. K. (1994). The implications of organizational legitimacy for corporate social performance and disclosure. *Critical Perspectives on Accounting Conference. Working Paper*. New York.
- Logan, K. (2017). *Strengthening Women's Access to Justice: Making Rights a Reality for Women and Girls*. International Development Law Organization.

- Maslow, A. H. (1970). *Motivation and Personality (2nd Ed.)*. New York: Harper Knopf.
- Mburugu B., Nyaga V., Chepcheng M. & Ngari S. (2015). Self-Esteem as a social effect of widowhood in Meru County, Kenya: a comparative study of widows and widowers. *Journal of Education and Social Policy*, Vol.2 No. 5.
- McMillan, O. & Schumacher, S. (2008). *Research in Education: A conceptual Introduction (5th ed.)*. New York: Longman.
- Meyer, L. H. & Sanklecha P. (2016). Philosophy of Justice: Extending liberal justice in time and space. In C. & Sabbagh, *Handbook of Social Justice: Theory and Research*. (pp. 15-35). New York: Springer Science and Business Media.
- Mugenda, O. & Mugenda, A. G. (2003). *Research Methods: Qualitative and Quantitative Approaches*. Nairobi: Acts Press.
- Mwangi, E. (2005). The transformation of property rights in Kenya's Maasailand: Triggers and Motivations. *CAPRI Working Paper No. 35*, International Food Policy Research Institute.
- Ndemo, O. (2006). *Gender-related Legal Reform and Access to Economic Resources in Eastern Africa*. World Bank Discussion Paper No. 405.
- Ndulo, M. (2011). African Customary Law, Customs and Women's Rights. *Indiana Journal of Global Legal Studies*, Vol. 2 No. 1 Article 5.
- New Catholic Encyclopedia. (2003). *Levirate Marriage in the Bible*. Retrieved from New Catholic Encyclopedia: <https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/levirate-marriage-bible>
- Ogolla, M. (2014). Levirate Unions in both the Bible and African Cultures: Convergence and Divergence. *International Journal of Humanities and Social Science*. Vol. 4 No. 10(1). pp. 287-292.
- Ogwen, C. A. (2010). *Widows and Widowers experiences and their coping mechanisms in a deprived community: a case study in Kibera slum*. Nairobi: University of Nairobi, MA Thesis.
- Ojore, A. O. (2017). *A New Model Of Pastoral Care: Resources From Luo Widows In Kisumu Archdiocese*. Anglia Ruskin University, PhD Thesis.
- Open Society Foundation. (2016). *Understanding effective access to justice*. Paris: Organisation for Economic Co-operation and Development. Workshop Paper.
- Open Society Foundations. (2016). *Leveraging the Sustainable Development Goals for inclusive and growth: Delivering Access to Justice for all*. Paris: Organisation for Economic Co-operation and Development.

- Open Society Institute. (2008). *Women's Access to Justice: Problems and Challenges*. Afghanistan: Women and Children Legal Research Foundation.
- Organization of African Unity. (2003). *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*. Retrieved from Organization of African Unity: http://www.achpr.org/legal_instruments
- Oriare, N. (2012). The Luo Care for Widows (Lako) and Contemporary Challenges. *Thought and Practice: A Journal of the Philosophical Association of Kenya*. Vol. 4 No. 1, pp. 91-110.
- Orodho, A. J. (2003). *Essentials of Educational and Social Sciences Research Method*. Nairobi: Masola Publishers.
- Orodho, A. J. & Kombo, D. K. (2002). *Research Methods*. Nairobi: Kenyatta University Institute of Open Learning.
- Owen, M. (1996). *A world of widows*. New Jersey: Zed Books Ltd.
- PACS India. (2016). *What is Social Exclusion?*
- Panda, R. (2014). *Social Exclusion and Inequality-Opportunities in Agenda 2030: Sustainable Development Goals and their role in ending inequalities in India*. India: Position Paper on State of Socially Excluded Groups (SEGs) and Framework for Action.
- Parise, A. & Pierli, F. (2013). *Social Transformation through Social Ministry*.
- Paulines Publications Africa (2000). *Catechism of the Catholic Church*. Nairobi: Paulines Publications Africa.
- Paulines Publications Africa (1999). *The African Bible*. Nairobi: Paulines Publications Africa
- Percy-Smith, J. (2000). The Contours of Social Exclusion. In Percy-Smith, *Policy Responses to Social Exclusion*. Buckingham: Longman.
- Phillips, O. (2000). *Integrating Land into the Poverty Reduction Strategy Agenda Regional Overview: Eastern Africa*. Kampala: Country Case Studies report prepared for the Regional Workshop on Land Issues in Africa.
- Pieper, J. (1966). *The Four Cardinal Virtues*. Indiana: University of Notre Dame Press.
- Pope Francis. (2018). *Pope to consecrated widows: Live a life of simplicity, humility*. Retrieved from Vatican News: <http://www.vaticannews.va/en/pope/news/2018-09/pope-francis-concecrated-widows.html>
- Selvam, S. G. (2017). *Empirical Research: A Study Guide*. Nairobi: Paulines Publications Africa.

- Slesinger, D. & Stephenson M. (1930). *The Encyclopedia of Social Sciences*. New York: Macmillan Publishers. Vol. 9.
- Sweetman, C. (2006). *How Title Deeds Make Sex Safer: Women's Property Rights in an Era of HIV*. Great Britain: Oxfam.
- Thapa L. (2016). *Nepali Widows: Changing colours, changing mind-sets*. Open Democracy.
- Thapa, L. (2007). *Nepal's Widows*. Open Democracy.
- Tyler, T. R. (1990). *Why People Obey the Law*. London: Yale University Press.
- Unclaimed Financial Assets Authority. (2018). *About Unclaimed Financial Assets Authority*. Retrieved from <https://www.ufaa.go.ke>
- United Nations. (2015). *The Global Goals for Sustainable Development*. Retrieved from United Nations Publications: <https://www.globalgoals.org>
- United Nations. (2001). *Women 2000: Widowhood: invisible women secluded or excluded*. New York: United Nations Publications.
- United Nations. (1948). *The Universal Declaration of Human Rights*. Retrieved from United Nations Publications: http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf
- United Nations Development Programme. (2015). *Programming for Justice: Access for all. A Practitioner's guide to a Human Rights-Based Approach to Access to Justice*. Thailand: United Nations Development Programme
- United Nations Development Programme. (2008). *Making the law work for everyone*. Retrieved from United Nations Publications: Commission on Legal Empowerment of the Poor
- United Nations Women. (2017). *Invisible Women, Invisible Problems (on the occasion of International Widows Day, 23rd June 2017)*. Retrieved from United Nations Publications: <https://www.un.org/en/events/widowsday.html>
- United Nations Women. (2016). *International Widows Day*. Retrieved from United Nations Publications: <https://www.un.org/en/events/widowsday/background.html>
- United Nations Women. (2000). *The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*. Retrieved from United Nations Publications: <http://www.un.org/womenwatch/daw/cedaw/cedaw27/tun3-4.pdf>
- United States Institute of Peace. (2016). *Guiding principles of stabilization and reconstruction*. Retrieved from United States Institute of Peace Publications: <https://www.usip.org/giuding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice>

White, R. (1994). Participatory Development Communication as a Social-Cultural Process in
White, S. A., Nair, K.S. & Ascroft, J. (Eds.). (1994). *Participatory Communication:
Working for change and development*. India: Sage Publications Inc.

World Bank. (1999). *Voices of the Poor*. Washington D.C.: World Bank.

APPENDICES

Appendix 1: Consent form

Dear Respondent,

My name is Catherine Muteithia, and I am currently a student at Tangaza University College, a constituent College of the Catholic University of Eastern Africa. I am conducting a research on *Access to Justice Regarding Property Rights for Widows: A Case of Three Wards in Nairobi City County*. You are being invited to take part in this research. My humble request to you therefore, is to answer the questions as honestly, clearly and objectively as possible. The study seeks to gain insights on and assess the challenges that widows face when accessing justice regarding their property rights, and possibly find ways of addressing those challenges. All information gathered will be treated as confidential and used for academic purposes only. Your participation in this research is voluntary.

Informed consent

I, the undersigned, confirm that I have received enough information from the researcher about her project and the aim of filling in this questionnaire. I understand that my participation is voluntary and expect no payment. I have been assured that my identity and information stated herein will remain confidential. I am also aware that I have the right to withdraw from the study, at any time, without explaining my reasons to the researcher. Consequently, I give permission to the researcher to use the findings for academic purposes.

Signature of the participant: Date.....

Appendix 2: Questionnaire

Instructions:

Please tick [✓] the appropriate answer.

Section A: Demographic Information

1. Ethnic group (tribe) _____

2. Age in years: Please tick one

a) 20-29 years

☐

b) 30-39 years

☐

c) 40-49 years

☐

d) 50-59 years

☐

e) 60-69 years

☐

f) Above 70

☐

3. Education level: Please tick one

a) None

☐

b) Primary

☐

c) Secondary

☐

d) College

☐

e) Polytechnic

☐

f) University

☐

4. Number of years married _____

5. Number of children _____

6. When did you lose your husband? _____

7. Are you currently employed? Yes [] No []

If yes, what is your occupation? _____

Section B: Property ownership and inheritance

8. What type of property did your husband own?

9. In whose name is the property registered?

a) My husband's name

☐

b) My name

☐

c) Both my husband and I

☐

d) My children's name

☐

e) I don't know

☐

f) Any other (Specify)

☐

What was the reason for the above?

10. Do you have any access to your husband's property? Yes [] No []

Explain

Section C: Challenges widows face after death of husband

11. What type of problems did you encounter/experience after the death of your husband?

12. What challenges do you encounter after the death of your husband in relation to property ownership?

13. How does customary law affect inheritance rights of widows?

Explain.

Section D: Legal awareness and access to information

14. Are you aware of any organizations that work towards ensuring the rights of women (widows included)? Yes [] No [] If yes, which ones?

15. Are you aware of any Kenyan laws or policies that ensure the property rights of widows? Yes [] No [] If yes, which ones?

16. Do you need any legal services? Yes [] No []

Explain

—

17. How easy is it for you to get legal services pertaining to your matrimonial property?

a) Very difficult

☐

b) Fairly difficult

☐

c) Neutral

☐

d) Fairly easy

☐

e) Very easy

☐

Explain your reason for your answer above.

18. Have you ever gone to a local tribunal or to court over a property rights issue? Yes [] No []

If yes, what was the ruling? If No, why not?

19. Do you know anybody who went to court over a property rights issue? Yes [] No []

If yes, what was the ruling?

Section E: Recommendations

20. What do you think should be done to help widows get access to and own their matrimonial property(s)?

21. What should be done for widows in Nairobi City County?

22. What advice would you give a new widow?

Appendix 3: Interview guide

Section A: Demographic Information

1. Name (optional)_____
2. Gender: a. Male [] b. Female []
3. Age _____
4. Occupation: a. Advocate [] b. CBO/NGO official [] c. Religious leader []

If 4c, Please specify which religion:_____

Section B: Widows rights and challenges accessing justice

5. What challenges do widows face after the death of their husband with regard to property inheritance?
6. What cultural practices or factors lead to social exclusion of widows?
7. Do widows have the right to matrimonial property after the death of the husband?
a. Yes [] b. No [] Explain
8. Are there institutions that are adequately empowered to address property rights of widows? a. Yes [] b. No [] Which ones?
9. Are these institutions accessible to the widows for them to get the necessary aid to access services that will enable them access justice? a. Yes [] b. No [] Explain
10. For Religious leaders: what are religious institutions doing to promote social inclusion of widows and promote their rights?

Section C: Knowledge of existing laws and policies

11. Are you aware of any of the existing laws or policies on property ownership rights and inheritance rights for widows? a. Yes [] b. No [] If Yes, which ones?
12. In your opinion, are those policies on inheritance and property rights of widows satisfactorily and fairly implemented? a. Yes [] b. No [] Explain
13. Are there existing mechanisms of allocating land to widows? Explain

Section D: Recommendations

14. What do you think can be done in order to assist the widows to cope and meet their needs after loss of property?
15. How can the widows be empowered to enable them access justice with regard to their property rights?
16. What can be done to promote social inclusion of widows?

Appendix 4: Focus group discussion guide

Welcome

Introductions (Researcher, research assistants, participants)

Overview of the topic

Objective of the study

Confidentiality

Ground rules

1. What challenges do widows face after the death of their husbands with regard to property inheritance?
2. Are there practices in our different cultures that lead to social exclusion of widows?
3. Do widows have the right to matrimonial property after the death of their husbands?
a. Yes [] b. No [] Explain
4. Are there institutions that are adequately empowered to address property rights of widows? a. Yes [] b. No [] Which ones?
5. Are these institutions accessible to you for you to get the necessary assistance and services that will enable you access justice? a. Yes [] b. No [] Explain
6. Are you aware of any of the existing laws or policies on property ownership rights and inheritance rights for widows? a. Yes [] b. No [] If Yes, which ones?
7. In your opinion, are those policies on inheritance and property rights of widows fairly implemented? a. Yes [] b. No [] Explain
8. Are there existing mechanisms of allocating land to widows? Explain
9. What do you think can be done in order to assist you cope and meet your needs after loss of property?
10. How can you be empowered to enable you access justice with regard to your property rights?
11. What can be done to promote social inclusion of widows?

Appendix 5: Krejcie and Morgan sample size determination table

TABLE FOR DETERMINING SAMPLE SIZE FROM A GIVEN POPULATION

N	S	N	S	N	S	N	S	N	S
10	10	100	80	280	162	800	260	2800	338
15	14	110	86	290	165	850	265	3000	341
20	19	120	92	300	169	900	269	3500	246
25	24	130	97	320	175	950	274	4000	351
30	28	140	103	340	181	1000	278	4500	351
35	32	150	108	360	186	1100	285	5000	357
40	36	160	113	380	181	1200	291	6000	361
45	40	180	118	400	196	1300	297	7000	364
50	44	190	123	420	201	1400	302	8000	367
55	48	200	127	440	205	1500	306	9000	368
60	52	210	132	460	210	1600	310	10000	373
65	56	220	136	480	214	1700	313	15000	375
70	59	230	140	500	217	1800	317	20000	377
75	63	240	144	550	225	1900	320	30000	379
80	66	250	148	600	234	2000	322	40000	380
85	70	260	152	650	242	2200	327	50000	381
90	73	270	155	700	249	2400	331	75000	382
95	76	270	159	750	256	2600	335	100000	384

Note: "N" is population size
 "S" is sample size.

Krejcie, Robert V., Morgan, Daryle W., "Determining Sample Size for Research Activities", Educational and Psychological Measurement, 1970.

Appendix 6: Originality report

<https://Plagiarism-Detector.com>

1/21

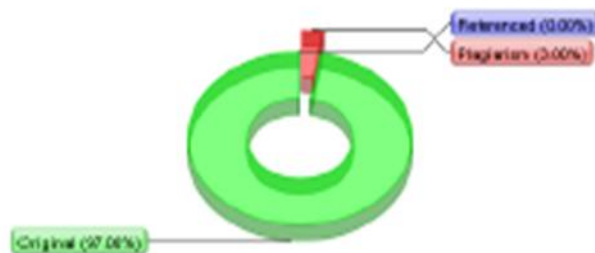
Plagiarism Detector v. 1092 - Originality Report:

Analyzed document: 9/30/2019 2:26:23 PM

"Catherine Muteithia Final Thesis September 2019.docx"

Licensed to: Patrick Roe

Relation chart:



Distribution graph:



Comparison Preset: Word-to-Word. Detected language: English

Top sources of plagiarism:

➡ % 1	wds: 155	https://artofcivility.com/view/2017/01/24/You_Will_Get_Nothing/
➡ % 1	wds: 152	https://www.state.gov/wp-content/uploads/2017/12/NAP-Legal-Aids-2017-2022.pdf
➡ % 0.5	wds: 95	https://www.researchgate.net/publication/265244120_How_tell_deads_make_sex_safer_Women

[Show other Sources:]

Processed resources details:

429 - Ok / 61 - Failed

[Show other Sources:]

Important notes:

Wikipedia:  [not detected]	Google Books:  GoogleBooks Detected!	Ghostwriting services:  [not detected]	Anti-cheating:  [not detected]
--	--	---	--

Excluded Urls:

Included Urls:

Detailed document analysis:

Appendix 7: Tangaza University College authorization letter



TANGAZA UNIVERSITY COLLEGE

The Catholic University of Eastern Africa

DIRECTORATE OF RESEARCH & POSTGRADUATE STUDIES

E-mail: dir.pgsr@tangaza.ac.ke

Website: www.tangaza.ac.ke

OUR Ref: DPGSR/ERC/03/2019

Date: 18th March 2019

Muteithia Catherine W.
Institute of Social Ministry in Mission
School of Arts and Social Sciences
Tangaza University College

Dear Muteithia,

RE: RESEARCH AUTHORISATION FOR MUTEITHIA CATHERINE W., REG. NO. 16/00665

Reference is made to your letter dated 8th March 2019 requesting for ethical review of your research tool to carry out a research on "*Access to justice regarding property rights for widows: A case of three wards in Nairobi County*". I am pleased to inform you that, the ethics review committee has authorized your request subject to implementing the suggested corrections by the review committee. The committee also advises that before you proceed to collect data, you get authorisation/ research permit from NACOSTI for the same.

This approval is valid for one year from 18th March 2019.

Please, ensure that after the data analysis and final write up, you submit a hard bound copy of the thesis to the Director of Research – Tangaza University College for records.

Yours sincerely,



DR. DANIEL M. KITONGA (PhD)
Director, Research & Postgraduate Studies
Tangaza University College

CC: Dr. Aloys O. Ojore – Programme Leader, MA Social Transformation, ISMM

Appendix 8: NACOSTI Authorization letter



NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

Telephone: +254-20-2213471,
2241349, 3310571, 2219420
Fax: +254-20-318245, 318249
Email: dg@nacosti.go.ke
Website: www.nacosti.go.ke
When replying please quote

NACOSTI, Upper Kabete
Off Waiyaki Way
P.O. Box 30623-00100
NAIROBI-KENYA

Ref No. **NACOSTI/P/19/31036/29002**

Date: **10th April, 2019**

Catherine Wanjiru Muteithia
Tangaza University College
P.O. Box 15055-0509
NAIROBI.

RE: RESEARCH AUTHORIZATION

Following your application for authority to carry out research on "*Access to justice regarding property rights for widows: A case of three Wards in Nairobi County, Kenya*" I am pleased to inform you that you have been authorized to undertake research in **Nairobi County** for the period ending **10th April, 2020**.

You are advised to report to **the County Commissioner and the County Director of Education, Nairobi County** before embarking on the research project.

Kindly note that, as an applicant who has been licensed under the Science, Technology and Innovation Act, 2013 to conduct research in Kenya, you shall deposit **a copy** of the final research report to the Commission within **one year** of completion. The soft copy of the same should be submitted through the Online Research Information System.

DR. STEPHEN K. KIBIRU, PhD.
FOR: DIRECTOR-GENERAL/CEO

Copy to:

The County Commissioner
Nairobi County.

The County Director of Education
Nairobi County.

Appendix 9: NACOSTI Research License

THIS IS TO CERTIFY THAT:
MS. CATHERINE WANJIRU MUTEITHIA
of TANGAZA UNIVERSITY COLLEGE,
72960-200 Nairobi, has been permitted
to conduct research in Nairobi County

on the topic: ACCESS TO JUSTICE
REGARDING PROPERTY RIGHTS FOR
WIDOWS: A CASE OF THREE WARDS IN
NAIROBI COUNTY, KENYA

for the period ending:
10th April, 2020

Permit No : NACOSTI/P/19/31036/29002
Date Of Issue : 10th April, 2019
Fee Received : Ksh 1000


Applicant's Signature




Director General
National Commission for Science,
Technology & Innovation

THE SCIENCE, TECHNOLOGY AND INNOVATION ACT, 2013

The Grant of Research Licenses is guided by the Science, Technology and Innovation (Research Licensing) Regulations, 2014.

CONDITIONS

1. The License is valid for the proposed research, location and specified period.
2. The License and any rights thereunder are non-transferable.
3. The Licensee shall inform the County Governor before commencement of the research.
4. Excavation, filming and collection of specimens are subject to further necessary clearance from relevant Government Agencies.
5. The License does not give authority to transfer research materials.
6. NACOSTI may monitor and evaluate the licensed research project.
7. The Licensee shall submit one hard copy and upload a soft copy of their final report within one year of completion of the research.
8. NACOSTI reserves the right to modify the conditions of the License including cancellation without prior notice.

National Commission for Science, Technology and innovation
P.O. Box 30623 - 00100, Nairobi, Kenya
TEL: 020 400 7000, 0713 788787, 0735 404245
Email: dg@nacosti.go.ke, registry@nacosti.go.ke
Website: www.nacosti.go.ke


REPUBLIC OF KENYA


NACOSTI
National Commission for Science,
Technology and Innovation

RESEARCH LICENSE
Serial No.A 23942
CONDITIONS: see back page