LAND GOVERNANCE IN A MULTILINEAR DESCENT SOCIAL SYSTEM OF THE TONGA OF NKHATA BAY, MALAWI

PhD (DEVELOPMENT STUDIES) THESIS

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PhD (DEVELOPMENT STUDIES) THESIS

By

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DECLARATION

This thesis is my own work and it has not been submitted to any other institution for similar purposes. Acknowledgements have been duly made where other people's work has been used. I bear the responsibility for the contents of this paper.

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CERTIFICATE OF APPROVAL

The undersigned certify that this thesis represents the student's own work and efforts and has been submitted with our approval

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ABSTRACT

This study aims at understanding land governance in a multilinear descent social system as is the case among the Tonga of Nkhata Bay, Malawi. In particular, it aims at understanding how the Tonga cultural practice of 'mwana ndi mwanangwa' (which simply means entitlement and freedom an individual acquires upon birth) influences land governance and its associated rights and obligations. The concept suggests that children can access land for both residential and land use without any restrictions in four (or more) locations where their parents originate from. That is from father's paternal and maternal sides as well as from mother's paternal and maternal sides. Principally it is about entitlement and choices an individual has which is the basis for multiplicity of claims in multiple locations. The study utilizes the concept of 'wanangwa' (which means freedom or entitlement) to understand how land rights operate and how contestations are managed. The study adopted a qualitative method approach with an aim to understand people's lived experiences. Participants to the study were first selected purposively based on their knowledge of the Tonga cultural tradition. For purposes of following up on key issues, snowballing technique was used. Data was analsed using content analysis. The study found out that children, regardless of sex, can access land in multiple locations. Once land has been allocated, entitlement is guaranteed allowing an individual to enjoy full rights without any known restrictions. These rights are guaranteed through parenthood (upapi) and their children become part of the inheritance plan. The study further found out that much as the concept provides the liberty of choices, on its own it does not offer complete security. It contains inherent contestations but at the same time it provides mechanisms of dealing with them. The study concludes that the various land conflicts recorded were mostly a result of changes in land use patterns which generated new opportunities. Interest changed. It was no longer about entitlement but envisaged individual benefits. This unique Tonga cultural practice addresses one of the main challenges facing Malawi in relation to gender and land access and management as it demonstrates a complete departure from the known matrilineal and patrilineal systems of descent whose inheritance follows a gender line.

Key words: mwana ndi mwanangwa, wanangwa, entitlement and rights

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LOCAL WORDS USED

Atazipempha	:	They come to negotiate
Azichi awu/mbumba zawu	:	Sisters
Bozwa	:	Virgin land
Chijula mlomu	:	Payment made to start marriage discussion
Fuku	:	Tribe
Kuchikazi	:	Matriline
Kuchirumi	:	Patriline
Lusuwa/mapopa	:	Land once habited then abandoned
Mahami	:	An old village abandoned due to infertility
Mkwawu	:	Fishing net
Masala	:	New home
Ngati	:	His or hers
M'phwakaya	:	Nephew
Mtupa	:	Land confiscated as compensation
Thenga	:	Go between
Ubali	:	Relationship or kinship
Upapi	:	Parenthood
Vikweta/chikweta	:	Garden mainly for subsistence
Wachita kupasika	:	He or she is given/offered (land)
Walivi chikhazi	:	Temporal stay
Wanangwa	:	Entitlement/Freedom
Weneku viharu	:	Those that are matrilineally linked

CHAPTER 1

INTRODUCTION AND BACKGROUND

In many African countries land remains a key source of food, wealth, employment, social status, export earnings and social identity especially among the rural dwellers whose primary concern is subsistence production (Cooper, 2010; Moyo, 2000; Kishindo, 2010; Peters, 2002; Chirwa, 2008; Anseew & Alden, 2010; Platteau, 1996). It is also the center of their politics and social struggles (Cross, 2002). Access to and control over its natural resources coupled with the nature of rights an individual has are therefore crucial in determining the nature of investment one can make (be it for short or long term) over and above constructing their day to day livelihood strategies (Kishindo, 2010; Takane, 2007; Moyo, 2000; Anseew & Alden, 2010; Kanyongolo 2008; Peters, 2002).

The persistent inequalities in access to land, the varying nature of rights accorded to each landholder and the prevalence of the various forms of tenure insecurity due to continued conflicts over land use pose a great threat to the majority of the population that largely depend on it for their day to day livelihood activities (Kanyongolo, 2008; Peters, 2002). The nature and form in which these conflicts manifest themselves vary from society to society and even among members of the same social descent system. They are oftentimes location or geographic specific and are greatly influenced by the practices and customs that are specific to a particular ethnic grouping or tribe.

The various challenges faced by land holders are mostly a product of either disagreements over who has more rights than the other or a product of changes in land value which creates new opportunities that breeds rival claims.

This study is about land governance in a multilinear descent social system of the Tonga of Nkhata Bay, Malawi. It focuses on the various forms of inheritance patterns, their associated rights and obligations and the nature of conflicts and competing claims, where applicable. It utilizes the concept of *'wanangwa'* which is basically about entitlement in order to understand how land rights operate and how contestations are managed. This study is located within the general debates on land held under customary arrangements in Sub Sahara Africa.

Land governance concerns the rules, processes and structures through which decisions are made about access to land and its uses, the manner in which the decisions are implemented and enforced and the way that competing claims are managed and enforced (Palmer, et.al., 2009; UN-Habitat, 2020). The concept of land governance covers the legal and policy frameworks for land as well as traditional practices governing land transactions, inheritance practices and dispute resolutions both at society and individual level. So basically, it is about power and the political economy of land (UN-Habitat, 2020).

1.1 Understanding of customary land during the colonial and postcolonial Africa

The current understanding of customary tenure system, which is by far the largest in terms of land use area is a joint creation of European explorers, hunters, missionaries and later colonial officials on one side and the African elites (chiefs and some educated Africans) on the other (Chimhowu & Woodhouse, 2006; Place & Osaki, 2001). The system was employed by the colonial government in a crude and simplistic way to

describe African customary land tenure systems as ‘group-based’ direct opposite of individual property ownership as is the case in Europe (Wily, 2011). The British administrators saw the rights to land (and other benefits) for Africans as deriving from political authority rather than inhering in persons of various sorts (Peters, 2013). In this regard they viewed chiefs as ‘trustees’ for the community along with limited rights of administration and allocation.

Under the colonial rule, the multiple types of authority and acts of claims over land and its products were glossed over as communal tenure which became incorporated into the developing body of customary law (Peters, 2008). Customary tenure was, in this case, shaped by the colonial officials, often serving the state and mediated by tribal chiefs or African elites who were keen to gain status from the colonial administration (Peters, 2008; Chimhou & Woodhouse, 2006). In their wisdom, land rights had to be discussed in terms of land and type of crops grown or cultivated in a particular area (Cousins, 2009).

What has been be noted so far is that the models of existing customary law of land tenure were, to a large extent, instruments of colonial land policies that were produced in the circumstances of initial dispossession and confinement and served both the colonial government as a justification for these and African communities as an apparent defense against further land loss (Peters, 2013). The identification of customary tenure with African authority, in this case, implies a pre-colonial status in which the local elites benefited in relation to the statutory tenure introduced by the European colonial administration (Chimhou & Woodhouse, 2006).

There are four key issues that influenced colonial policy and which continue to inform contemporary narratives on customary tenure systems today as described by Chimhou and Woodhouse (2006) and Place and Osaka, (2001) as follows; land rights are vested

in current tribal or lineage leadership by virtue of lineage ancestors' claims on land through first clearance and settlement or conquests, land acquisition is mostly through inheritance, individuals claim usufruct rights to land through membership of lineages, with such rights normally being inherited by sons, daughter or nephews depending on the prescribed descent system, land is inalienable from the lineages, reverting back to the lineage leaders in the absence of individuals who wished to exercise inheritance rights. The inalienability and re-allocation processes within customary tenure system protect the access to land for poorer members of lineages in a flexible and efficient way, without need of land registry or cadastral surveys. The individual rights to land are limited to use only in most cases. Any violation of the set rules would attract the wrath of clan or family members.

What can be seen from this model of customary tenure is that it places the 'tribe' as a form of social cohesion with its own values, rules and mores which every member is expected to adhere to. This kind of set up convinced some colonial officials that land does not belong to an individual, rather it is communally held and cannot be transformed into private ownership and as such posed a challenge to any meaningful investment, a development which was later proved wrong (Platteau, 1999)

This model, however, has been criticized by a number of scholars as it is seen to be portraying the 'African' social organization as a static 'entity'. It ignored the natural processes of change and diversity happening within the social unit that provides dynamism in land rights regimes to suit the ever-changing environment (Chimhou & Woodhouse, 2006).

While the label ‘customary’ may suggest homogeneity, its meaning may differ from place to place. The interpretation of what constitutes ‘custom’ in a particular setting may differ strongly and be contested if applied in another setting (Leeweni, 2014). Despite such differences, what can be noted is that they are both governed by principles relevant to the pre-industrial economies that relied heavily on kinship as the primary organizing factor and have survived the test of time (Migot-Adholla & Bruce, 1993). The rules governing access and use of land were predicated primarily on one’s membership and status in the social group that was mandated to control a particular territory. Individual families enjoyed fairly clearly defined spatial and temporal rights (in some aspects) of use over different parcels of cultivated land which they transmitted to succeeding generations in accordance with the prevailing customary rules of succession (Krantz, 2015; Migot-Adhola & Bruce, 1993). In this regard, therefore, policy makers and development practitioners need to take a middle line position, seeing potential in complementarity in both statutory and customary tenure systems in order to avoid stiff resistance in the event that one side gains more prominence over the other.

1.2 Customary land inheritance systems and practices

Land in most parts of Africa is controlled under the customary system which is governed by well-intentioned social and cultural rules meant to grant equal access to families sharing common interest to land (Yaro, 2010). In Malawi, just as is the case with most parts of Africa, the majority of the rural population derive their livelihoods from the land allocated based on the descent systems that determine who has either primary or secondary rights to land, be it male or female.

In most parts of Malawi, just as is the case with most parts of Africa, the primary access to land is mostly through inheritance and marriage. A few others acquire land through allocations from traditional leaders or clan heads, land leasing, government resettlement programs, land purchases and in worse case scenarios through what is now commonly known as 'land grab' (USAID, 2010; Place & Osaka, 2001). Rights accorded to each land holder are governed by rules determined by the society. What is critical to note is that the systems themselves are not rigid. They provide room for negotiations depending on the amount of spaces and land availability.

In most parts of Southern Africa societies[1], Malawi inclusive, most scholars paid much scholarly attention to inheritance systems which are organised along a binary division between matrilineal or patrilineal principles where lineage leaders provide social safety nets to its members (Yaro, 2010; Cooper, 2010; Kutsoati & Morck, 2012; Place & Osaka, 2001). The principles, norms and practices these two systems follow have been identified by anthropologists as 'kinship systems' or more specifically as systems of kinship and social descent (Holden, et.al., 2006). Kinship is the bedrock of African social relationships and seen to be linked to ties of locality (Chazan, et.al., 1988). It defines a person's identity, set of values, norms, responsibilities and lifestyles (ibid). Descent, on the other hand, refers to the social rules that identify individuals with a 'selected' category of their kin for specific purposes (Holden et.al., 2006).

[1] A bigger part of the north Africa is predominantly patrilineal apart from a few cases. The major reason could be Arab and western influence who visited the earlier than a bigger part of Southern Africa.

The differences between matrilineal and patrilineal kinship systems have implications far beyond mere descent to include structure of familial obligations, the inheritance of property which includes land and its associated rights, residential locality patterns and the social interaction between members of the family (Gottlied & Robinson, 2016). People whose ethnic customs are matrilineal define their lineages through female bloodlines which is referred to as the matriline (Kutsoati & Morck, 2012; Place & Osaka, 2001). At the minimum matrilineal kinship descent system determines the lineage to which an individual belongs which has a far-reaching implication on the social, cultural, economic and political practices (Gottlieb & Robinson, 2016). In addition to that the matriline determines inheritance system to be followed and defines the matrilocal residence though with some variations within the system (Peters, 2004). Women are regarded as 'builders' of the lineage and ultimately the village (Chigbu, 2017). In other words, women in this set up represent genealogical continuity (see Chigbu, 2019). They are regarded as primary rights holders and these rights are intergenerationally transmitted from mother to daughter regardless of the circumstances surrounding their birth (Kishindo 2010; Peters, 2010). Men, on the other hand, enjoy secondary rights for the entire duration they remain in marriage and remain committed to upholding the age-old tradition that has survived the test of time (Berge et.al., 2013; Kishindo, 2010; Peters, 2010). These rights are likely to be revoked mostly upon the death of the wife or divorce and he might be rendered 'landless' in the process. In the event of such occurrences a man may be loaned land by his sisters and may continue using the land so long as he remains unmarried and maintains good social relations with his sisters since he is regarded as the 'borrower' and not the 'owner' (Peters, 2010).

On the other hand, patrilineal social systems define their blood kinship through their paternal bloodlines (Kutsoati & Morck, 2012; Place & Osaka, 2001). Inheritance passes through the father to the son. In this regard the father or husband has the primary rights while the woman or wife has the secondary or user rights and she retains those rights so long as she remains in marriage and has children with the husband. Unlike in the matrilineal set up, upon death of the husband she might be allowed to use the land so long as the bride price was paid and she is using the land specifically to raise her children.

While the current focus has been on matrilineal and patrilineal system of descent where inheritance patterns follow a particular gender line, the Tonga scenario is different. Based on the concept of *'mwana ndi mwanangwa'* a unique Tonga cultural identity, a child, regardless of one's sex, is at liberty to decide where to settle either permanently or may decide to relocate at a later stage based on circumstances.

The origin of this unique Tonga cultural concept is not very clear as various informants gave varying narratives. But what was common in their narratives is that its origin lies in one not being bonded. '*Mwanangwa'* is a free born person while as *'wanangwa'* denotes status of not being bonded and capable of exercising rights and freedoms. The opposite is *'muwanda'* which means bonded, hence deprived of exercising any rights.

However, despite such variations in their narratives, what is clear is that the concept is well known among the Tonga and it is a true reflection of the cultural identity they cherish.

At its basic interpretation, the concept of *'mwana ndi mwanangwa'* simply means children are free to live at either their mother's or father's place without any hindrance. Thus *'mwana ndi mwanangwa'* is about entitlement not simply to residence but principally to land governance as well. From the land governance perspective, the concept suggests that an individual is entitled to access land from four locations where the parents came from. Thus, from father's paternal and maternal side and mother's maternal and paternal side. It is about choices an individual has. This is the kind of freedom one acquires upon birth. *'Wanangwa'* literary means freedom and it offers social security, though not complete on its own. There are certain contradictions and limitations within its applications. It can only be strengthened by investing more in social networks and the kinship status which provides a framework within which one can manipulate.

This unique cultural practice among the Tonga addresses one of the main challenges Malawi faces in relation to gender and access to land and management. In each village set up there are people with multiple identities connected to one another in multiple ways, in the process creating an extreme fluid Tonga identity which has not been given much scholarly attention.

Customary land tenure systems can therefore be seen as a product of their society. They are a product of traditions that symbolize continuity, cultural identity and orderly existence (Chanock, 1985) of a particular society. In this case therefore custom (where the word customary originated from) defines rules and rights accorded to each landholder and are accorded on the basis of group membership as is the case with the

matrilineal and patrilineal descent social system or on an individual as is the case with the Tonga.

1.3 Problem Statement

Most studies of customary land tenure systems in Malawi have tended to focus on the binary division of social groups into patrilineal and matrilineal systems and how the associated residence arrangement have influenced the nature and form of investment one could make on a particular parcel of land allocated to him or her based on the nature of their descent system. In their discussions it was noted that the transfer of land rights, which is mostly through inheritance follows a particular gender line either through matrilineal or patrilineal rules depending on the type and nature of kinship organization (Takane, 2007; Place & Osaka, 2001). The rules developed to govern such land parcels are specific to the members of that particular society who share common cultural values and societal norms. The matrilineal kinship organization which is followed by approximately 81 percent of the ethnic grouping predominantly found in the central and southern parts of Malawi organizes its inheritance patterns through the female line (Place & Osaka, 2001; USAID, 2010). Children born out of such descent system call their mother's home their home. Principally, they belong to their mother's matrilineage and land is passed through the female lines. On the hand the patrilineal kinship organization which is followed by approximately 17 percent of Malawi's ethnic grouping and predominantly found in northern parts of Malawi and some parts of the Lower Shire organizes its inheritance through their father's line. The products of such a marriage belong to the father's patriline and they call their father's village their home and land is passed through the male line (GLD, 2016; Takane, 2007). These two systems, though classified as such, were not rigid within their ranks and files. Some

elements of flexibility and at times deviations from the normal practice in administering the land within these two systems of descent were noted. These became the basis of contestations which have implications on the nature of mostly agricultural investment one could make. The means of dealing with conflicts that emerged following such deviations varied from society to society.

What has been noted so far is that the existing studies of customary land tenure systems based their conclusions on the studies conducted among the ethnic grouping or in some cases, regional grouping with a large following and ended up providing a generalised view of the situation. Customary land dynamics in some relatively small but complex tribal groups like that of the Tonga of Nkhata Bay who follow a unique culture guided by the concept of 'mwana ndi mwanangwa' have not received scholarly attention. At its basic interpretation *'wanangwa'* simply means entitlement or freedom one acquires upon birth. *'Mwana ndi mwanangwa'* therefore means that a child is free to live either in father's or mother's original home without any hindrance. Through this arrangement, Tonga claim two sets of kinship ties, patrilineal and matrilineal, and in the process creating an ambivalent system of descent unique to their culture. The nature of rights to land accorded to each land holder coupled with their obligations can only be understood by the actors themselves who defend their rights using the concept of 'wanangwa'. Through this unique arrangement, Pachai (1973) described the Tonga as a grouping of people who believed in individualism, egalitarianism or equality. Within the confines of socially embedded network of relations, every Tonga considers himself to be an 'independent' being with the capacity to raise himself to the highest position in his society by hard work and accomplishments (Pachai, 1973). This arrangement,

however, has the potential to generate tension between sons and nephews especially when it comes to competing over same parcels of land.

It is such a complex nature of land inheritance patterns through the hybridized or ambilineal system of descent which needs an in-depth analysis to understand how it influences the nature of investment one can make.

1.4 General objective

The study aims to understand customary land tenure system in a non-lineal social system among the Tonga of Nkhata Bay and how it influences the development of land-based livelihoods.

1.5 Specific objectives

Specifically, the study aims to:

- Examine land acquisition and the inheritance patterns
- Analyze the rights and obligations of different land holders.
- Examine the nature of land conflicts and their implications for land based livelihoods.

1.6 Justification of the Study

The available studies on customary land tenure systems in Malawi have tended to focus much on the binary division into the matrilineal and patrilineal systems and how they have defined the rules and rights that determine the nature of tenure security accorded to each land holder, which in turn have the implications on the nature of land-based investment one can make. Within these social systems, it has been observed, the rules applied were not rigid. Rather, they were and remain flexible, negotiable and

contestable. Lineage leaders become brokers in times of conflict and contestations. Again, either of the system has weaknesses as well as strengths which have received adequate attention.

The hybridized or ambilineal system of descent based the principle of ‘mwana ndi mwanangwa’ as practiced by the Tonga of Nkhata Bay has not received much scholarly attention. The system has both an inbuilt potential to create land conflicts especially among nephews and sons and at the same time it provides mechanisms to deal with them.

The nature of rights accorded to each landholder does not have any standard formula. They solely rely on kinship frameworks coupled with overlapping social networks of relationships that explain the apparent paradox of the tribal integration among the Tonga. Key to note is that Tonga integration is through a complex network of intersecting and cross-cultural relationships. Such a scenario makes this study unique.

1.7 Thesis outline

This thesis is divided into six chapters. Chapter one is the introductory chapter which sets the pace of the study. It highlights the genesis and key debates of customary land tenure systems and their varying inheritance patterns based on their descent system. It then introduces a new concept of *‘mwana ndi mwanangwa’* a unique Tonga cultural concept which has not received much scholarly attention. Chapter two presents a review of the related literature highlighting various landmark studies on customary land tenure systems across most parts of the African continent that informed the study. The focus is on the inheritance patterns guided by their descent social systems, the nature of rights

accorded to each land holder and its associated conflicts or potential conflicts. This is followed by a discussion of the theoretical framework that informed the study. The study adopted Rational Choice Institutionalism, which is an amalgamation of Rational Choice Theory and Old Historical Institutionalism. Chapter three focuses on customary land tenure systems in Malawi and the various attempts made to formalise it. It argues that land inheritance is determined by the prevailing descent social systems of either matrilineal or patrilineal which follow a particular gender line. The concluding part of the chapter introduces the multilinear descent social system followed by the Tonga of Nkhata Bay, Malawi which allows an individual to access land in multiple locations. Chapter four outlines the methodology and the methods used in collecting and interpreting data. Chapter five presents the results from the fieldwork and their discussions. It focuses on multiplicity of claims in multiple locations, the associated rights each land holder enjoys and the nature of conflicts and competing claims and the mechanisms that deals with them. Chapter six is the concluding chapter highlighting key arguments and the policy implications.

CHAPTER 2

REVIEW OF THE RELATED LITERATURE

2.1 Introduction

This chapter presents a review of some landmark studies on land governance carried out across the continent of Africa. The focus was on the on-going debates on customary land tenure systems, the associated inheritance patterns that mostly follow a particular gender line, their associated rights and obligations that influenced the nature of investment an individual can make and the possible conflicts and competing claims based on circumstances. In their conclusions, however, scholars like Englert and Daley (2008), Krantz (2015), Peters (2004) and Berry (1993) observed that customary land tenure systems are not static, rather they are flexible and dynamic and are subject to change based on circumstances. They are inherently unique to the locality in which they operate and as such there are likely to be a lot of variations in the particularities of these systems depending on the kinship type and inheritance rules among others (Krantz, 2015).

In almost all African countries, land is still predominantly held under different forms of informal/ indigenous or customary tenure which exists alongside the formal systems of common and statute law which were imported by Africa's former colonial regimes (Englert and Daley, 2008; Krantz, 2015).

The chapter is divided into three parts. The first part reviews literature on land tenure systems of both formal and informal and their associated security/insecurity debates. The second part reviews the literature on property rights with particular focus on land rights accorded to land holders (either as individuals or groups) and their associated limitations where necessary. The third part reviews literature on the various forms of customary land tenure systems, the inheritance patterns as guided by the agreed local rules and the nature of conflicts that might come out mostly as a result of the nonadherence to the set rules and how such conflicts were resolved. The chapter concludes by presenting an argument that there is need to go beyond limiting the analysis based on matrilineal and patrilineal system of descent and consider those tribes or ethnic grouping that are neither matrilineal nor patrilineal.

2.2 Land tenure systems in context

Studies done by Place (2009) Berry (1983, 2000) and Krantz (2015) on customary Land tenure systems in most parts of Africa concluded that the topic remains complex mostly due to the diverse nature of different cultural systems which are mostly content and context specific to a particular ethnic grouping. They also noted that African land tenure systems are diverse both in fundamental and more subtle ways due to the vast number of ethnic groups with their differences in inheritance patterns that follow a particular gender line (Place, 2009; Berry, 1993; Krantz, 2015). Also, important to not is their general observation that customary land tenure systems are not static. Rather, they are flexible and dynamic and are better described as local or indigenous practices that are subject to change based on circumstances (Berry, 1983; Englert & Daley, 2008).

However, such conclusions were made based on the scholarly work that focused much on the known matrilineal and patrilineal descent social systems. No meaningful attention was paid to such descent systems that are neither purely matrilineal nor purely patrilineal as is the case of the Tonga of Nkhata Bay. The nature of inheritance patterns developed are unique to them. For purposes of this study the definition provided by Chipeta (1971) on land tenure makes more sense as it focuses on the way in which land is held or owned and the rights and obligations arising from such ownership as determined by the nature of descent system. It is perceived that land tenure is an institutional arrangement of rules, principles, procedures and practices whereby a society or community defines control over, access to, management of, exploitation of and use of means of existence and production (Dekker, 2005).

Land tenure can either be secure or insecure. Tenure can be deemed to be secure if the landholders enjoy 'maximum' rights which include transfer rights and are protected against the force of eviction (Chigbu, et.al., 2019; Krantz, 2015; Decker, 2005). This is mostly through formal or written laws. On the other hand, tenure can be deemed to be insecure when rights holders risk of losing property rights to land and associated income at some point in future (Chigbu, 2019; Mutangadura, 2007). In other words, insecurity become eminent when there are minimal chances of continuity over the use of the land which may affect the nature of investment one can make.

2.2.1Tenure security

The term land tenure security is often used in the land tenure literature mostly with regard to economic development either at household or individual level (Chileshe, 2015; Englert, 2008; Besley, 1995). The focus is on the gains the land holder acquires upon 'use' of the land allocated through whatever means. With this in mind, a number

of scholars such Demsetz (1967) Place (2009), Besley (1995) and Toulmin (2008) have used the term to refer to ‘certainty, duration and full rights’ when in use. They argued that if one enjoys all the three factors listed above, his or her security of tenure is guaranteed and can make any meaningful land-based investment of his or her choice. In this regard, therefore, tenure security (also referred to as land tenure security) can be deemed to exist when an individual perceives that he or she has rights to a piece of land on a continuous basis, free from imposition or interference from, mainly outside sources as well as ability to reap and be in charge of the benefits of their labour and capital invested in that particular land, either in use or upon transfer to another holder (Place, et.al., 1994; Place, 2009). Based on this definition by Place et.al (1994) tenure security has three components classified as breadth, duration and assurance, collapsed into legal and economic dimension. The legal dimension part of it defines the composition (breadth) and the duration of rights in the form of a bundle and implies that a person holds with complete assurance the rights embodied in his or her tenure even if that tenure is short and confers meagre rights since it places much emphasis on complete possession with the assurance to forbid others from exercising the land rights in question. The economic dimension, on the other hand, defines the value and certainty of economic benefits derived from de facto tenure arrangement (Place, et.al., 1994).

What can be noted from such conclusions above is the leaning towards a formalized land tenure system. It was envisaged that formalized land rights would help facilitate the following: ease of access to credit that can help one boost agricultural investment and raise productivity, facilitation of smooth transfer of land from less efficient to more efficient uses by increasing the certainty of contracts and lowering enforcement costs and finally reduction in land dispute incidences through clearer definitions and enforcement of rights (Place, et.al., 1994).

It was further argued that it was only through increased tenure security (in this case through formalised tenure system) that the operator will capture the investment returns to the 'maximum' and at the same time minimise incidences of land disputes.

However, based on conclusions from the studies conducted by scholars such as Platteau (1999), Krantz (2015) and Place et.al. (1994) working on land tenure systems in Africa show that there is apparently no direct connection between formalised land tenure system and agricultural development or any improved productivity in relation to land. Krantz (2015) noted that membership and good standing within the group coupled with good social networks can guarantee one the security he or she needs and can enable him or her to make any meaningful investment of their choice.

The argument as presented by Krantz (2015) resonates well with the Tonga scenario. By evoking the concept of *'wanangwa'* which is basically about entitlement, coupled with investment in social networks, an individual, regardless of sex, exercises full rights which enables him or her to make any meaningful investment of their choice without any hindrance. Their children can inherit the land with much ease. Titling of the land, in this case, may not necessarily offer any meaningful security that would be greater than the one they are currently enjoying.

2.2.2 Tenure insecurity

On the other hand, tenure insecurity, again from an economic perspective, is characterized by inadequate number of absolute rights, inadequate duration in one or more rights, lack of assurance in exerting rights and finally but not least, high costs of enforcing rights (Place et. al., 1994).

In land held under customary arrangements, tenure insecurity stems from different sources and affect different people in diverse ways. This is mostly due to changes in land value, conflicts over land parcel emanating from overlapping claims and interests over the same land parcel especially when some changes in social descent systems have been noted, weak negotiating skills and in some cases petty jealousy (Toulmin, 2006).

In this regard therefore, it can be argued that security of tenure can only be guaranteed if the landholder is assured of a particular land for a specified period, be it long or short (Bruce, 1993). All things held constant, the greater the number of rights associated with a parcel of land the greater the economic value (Place, et.al., 1994).

While it can be appreciated that the possession of key rights determines the economic value of the land in question, it does not imply that these 'key' rights can be derived through formalisation of land only. Investment in social networks within kin group can also guarantee usage of land for as long as the social relations remain intact (Nobel, 2016). Further to that there is also evidence of negotiation for more rights based on circumstances (Berry, 1993). This may even include transfer rights based on circumstances.

It is assumed that anyone who possesses the right to use, right to transfer and the right exclude others from use is believed to have a greater economic value than those with one or two less (Place, et.al., 1994). However, with customary land tenure systems, the majority of the land holder enjoy the right to use and transfer to the children in line with the prevailing rules within the existing descent social system. Though the majority do not enjoy the right to sell or transfer land to an 'outsider', usage over the land is not

limited so long as one remains in the area and adherence to the set rules is observed. In this regard, therefore, one can note that security of tenure can only be guaranteed if the land holder is assured of continued use of a particular land parcel allocated to him or her, be it for short- or long-term basis (Bruce, 1993a). To a great extent these conclusions agree with the Tonga scenario when it comes to security over land once allocated. The only difference lies on period specification as presented by Bruce (1993a). Among the Tonga, once land is allocated it remains his or hers' in perpetuity. There is no specification when it comes to period. If anything, 'it is for life'. The nature of kinship ties and the maintenance of wide networks of kinship ties and the capacity to manipulate the system are essential in a society like that of the Tonga to guarantee an individual 'full' rights to land which may include transfer rights through selling or gifting (van Velsen, 1964). Besides kinship ties, there is also friendship which brings in quasi-kinship bonds which help cement the ties even further.

It is also important to stress a deeper understanding of the social and local institutional arrangements prevailing at either societal or community level because they determine the nature of utilization, nature of ownership rights and the various modes of interaction over either allocated (through hereditary means) or acquired (through purchase, loan or rent) land parcel. What should be noted, however, is that land tenure systems take the form of either 'contractual' agreement or customary arrangement and procedures governing the rights, obligations and liberties of individuals and groups in the use and control of land resources (Okoth-Ogendo, 1989). This study therefore recognizes the social and economic dimension of land tenure and its dynamism. Thus, land tenure is conceptualized as the process in which access to land, its control and management is an aspect of wider social interaction, social networking and economic changes over time.

Chileshe (2015) observed that they are subject to change in society and can be restructured or reformed to suit the prevailing circumstances.

Understanding the various customary land tenure systems, the type of tenure security enjoyed by the various land holders alongside the governing rules and the rights accorded to each land holder is key in understanding the nature of investment one may carry out in a particular society or community.

Establishing land tenure security and strong property rights is critical to overcoming challenges in developing nations whose citizenry rely on land-based agricultural investment. Properly defined security of tenure is fundamental for improving livelihoods while insecure or inadequate tenure rights can lead to conflicts especially when land users compete over rights on resource control (Pritchard et.al., 2013). Clear and secure tenure rights promote development, encourage possible long-term investment and have the capacity to eradicate food insecurity as it provides the users the confidence they need to enable them invest meaningfully. A study conducted by Lund et.al. (2006) concluded that where land access for all its members is secure, and its membership feels their investment is protected and the various forms of conflict are managed locally and peacefully, long-term investment becomes easy to be carried out. He further argued that rights become certain if they are not contested without reason. In the event of any contestation, then the local authorities should be able to contain it and provide a lasting solution.

Land tenure security is therefore an element of property rights that empowers one to remain on one's land and make use of and realize profits from that land in ways that an

individual or groups value so long they do not harm others (Boudreaux & Sacks, 2009). It gives certainty to the land acquirer the rights to land that will be recognized by others and be protected in cases of specific challenges or threats (Boto & La Perccerella, 2012). It is also a precondition for sustaining the livelihoods of the majority in human settlement (Krantz, 2015). Tenure insecurity, on the other hand, could be seen to be a combination of the following four components namely: inadequate number of absolute rights, inadequate duration in one or more rights, lack of assurance in exerting rights and/or high costs of enforcing rights (Place, et.al., 1994; Place, 2009). People with insecure tenure face the risk that their rights to land are being threatened, and in the worst-case scenario, lose the land outright.

In this context therefore it can be argued that security of tenure cannot be measured directly since it is, to a large extent, what people perceive it to be at that material time (Boto & La Perccerella, 2012). Without adequate security of tenure, many households are likely to face challenges in carrying out various forms of livelihoods activities.

Again, equally important to note is that land tenure security depends on many factors that include land tenure system, land characteristics, household characteristics, past and present land policies, cultural norms and historical context (Zhou. et.al., 2018).

The next section reviews scholarly works on property rights with focus on the rights within customary land tenure arrangements. The first part looks at rights and rules.

2.3 Rights and rules debate

Schlager and Ostrom (1992) observed that 'rights and 'rules' are often used interchangeably. In trying to clear the confusion they defined rights as a 'set' of authorized actions that exclude others from use, mostly without prior consent while 'rules' were defined as 'prescriptions' that require, forbid or permit specific actions to create authorization. They noted that for every right an individual hold, rules exist that authorize, require or permit particular actions in administering that property. Rights are a product of rules and these rules specify both rights and duties the right holder has or possesses (Schlager & Ostrom, 1992). To possess a right then implies that someone must take responsibility to observe that right and more importantly adhere to the rules governing that right, be it formal or informal depending on the existing circumstances.

In relation to land, the right to property therefore entails that a person has a claim, power or immunity over a parcel of land and has the capacity to exclude others from using it (Silungwe, 2015). Such rights are oftentimes invoked or proclaimed when there is evidence of infringement from an 'intruder'. The security of such land rights, in the long run, becomes the effect of multiple factors including deep-rooted social practices, social networks, customs as well as population density which has an effect on access to land (Onoma, 2010). This is mostly felt in places where land is gradually becoming scarce coupled with the increase in market value.

In this regard, therefore, it is important to note that institutions that govern property rights in land are best understood as a bundle composed of four distinct but related components. The first one is made up of rules that indicate the proper ways of

transacting and these could either be formal laws or informal norms, the second one is a set of institutions that collect, maintain and makes available to the public information on interests in and the geographical attributes of land parcels, the third one comprises institutions that adjudicate land disputes and these include normal courts, special land tribunals, council of elders who also act as human archives on land matters and the various administrative bodies that are tasked with adjudication and the fourth and final category is that of institutions that enforce the decisions of administrative and adjudicatory bodies concerning land rights (Onoma, 2010).

It should be borne in mind that these institutions, though elaborate as they may sound, may not on their own provide lasting solutions to land disputes, rather they only provide for fast and in some cases peaceful resolutions though not without conflicts and contestations. A study conducted by Onoma (2010) concluded that their effectiveness varies from society to society.

These four components (as listed above) are closely related to each other and should be seen as instruments for ensuring the security of rights and not primarily as structures for ensuring social justice. They provide different parties with competing claims on land opportunities for what may be termed as ‘forum shopping’ where they have an option to seek out the authority or institution that is most likely to be in support of their claims (Leeuweni, 2014; Onoma, 2010). This scenario provides institutional multiplicity which argue that ‘state’ and ‘customary’ authorities do not operate in isolation but they co-exist (Leeuweni, 2014). Such a setting provides avenues for establishing, consolidating or renegotiating their authority by gaining legitimacy and generating local people’s confidence and trust.

In a setting of institutional multiplicity and ambiguity, dealing with land issues – such as land distribution, administration, and resolution of disputes – provides diverse actors (state and non-state, formal and informal) avenues for establishing, consolidating or renegotiating their authority. They help in gaining legitimacy alongside generating local people's confidence and trust especially in situations where an individual is entitled to multiple claims in multiple locations as is the case among the Tonga of Nkhata Bay.

2.4 Property rights in perspective

A study conducted by Feder and Fenny (1991) concluded that property rights can best be understood if placed in the context of overall institutional structure of the society, its historical content and the economic path. Property rights are an important class of an institutional arrangement backed by 'social convention' that define or delimit the range of privilege granted to individuals on assets such as parcels of land or water (Alcian & Demsetz, 1973; Libecap, 1989).

A number of scholars such as Libecap, (1989), Mia and Suzuki, (2018) and Aggarwal and Elbow, (2006) came up with varying definitions of property rights in relation to land. Their views provided a generalized approach to the understanding of property rights. Their major conclusion was that property rights are relational constructs that are contingent upon social institutions for their meaning and operations that share common values and it is the society itself that will dictate the scope and limits of that institution (Mia & Suzuki, 2018; Libecap, 1989; Alcian & Demesetz, 1973). Of particular interest to note is that these property rights can create incentives or disincentives which may have an impact on sustainable management and governance of natural resources such as land (Aggarwal & Elbow, 2006). Libecap (1989) looked at property rights as social

institutions that define or delimit the range of privileges granted to individuals to specific assets, such as parcels of land or water. They define the way in which people (individuals or collectively) hold their rights and responsibilities to land and natural resources, besides acting as a critical incentive for sustainable management of land and potential for subsistence livelihoods and income generation as well as rural empowerment (Aggarwal & Elbow, 2006).

They are also largely regarded as instruments or authority of a particular society and derive their significance from the fact that they help a man form expectation which he can reasonably hold in his dealings with others and these expectations are found in laws, customs and mores of a society (Demsetz, 1967).

What is coming out from such discussions is that they clearly define who has the rights and access to land and the associated natural resources, who has the responsibility of managing them and whose rights to exclude others from use are felt (Barnes, 2009).
It should be pointed out that these individuals who are property rights holders are a construction of various competing interests in a given society and as such we cannot ignore the mutual dependency, power or coercion which have implications on the nature of property rights they have (Silungwe, 2015).

Property rights convey the right to benefit or harm oneself or others and, in the process, specify who must pay whom to modify the actions taken by the persons leading to a close relationship between property rights and externalities (Demsetz, 1967). It is important to understand that the desire to put in place property rights was triggered by the increasing scarcity of the resources in question, in this case, increased land value

coupled with its scarcity. A study conducted by Sjaastad and Bromely (1997) concluded that there is need to understand the rights to land an individual enjoys, duration of use and the mechanism put in place to protect his or her interest. In other words, an individual should become the center of analysis and identity.

These property rights are usually defined either through the society's laws or state regulations or at times they derive their rights from custom and social tradition prevailing within their community to which specific assets may be put (Mia & Suzuki, 2018; Carroll, 2004). A clearly defined property right states the extent of the use or any alteration as regards to the use of the resource in question that is permitted and it specifies the control rights or the rights of residue control (Carroll, 2004).These rights can be classified as a bundle of rights that can be summarized in the following strands: right to use which is the most observable type of property rights mostly defined by the owners, right to manage mostly seen to be stronger than use rights and they rest between use and full ownership, which may at times include transfer rights, right to transfer (assign or reassign) which may include definitive and absolute powers to transfer all the rights included in the bundle and right to own which simply indicates priority claims to the property rights bundle made by either an individual, a private entity or a state (Aggarwal & Elbow, 2006). The concept of ownership may vary depending on the socio-cultural and political context of the time and space.

From the discussion above it can be noted that there are basically two forms of rights. There are those that are mostly referred to as socially recognised rights and those that are referred to as absolute rights. The socially recognised rights are those which are always circumscribed and are specific to a particular society or are applicable to those that share common social descent system. Absolute rights, on the other hand, are those

that dominate the decision process that governs the actual use which may include transfer rights through sale or gifting depending on circumstances (Alchian & Demsetz, 1973). However, there is a thin line between the two (socially recognised and absolute rights). Individuals from either camp were seen selling land to non-indigenous people.

The rights to land are therefore not just a source of economic production but rather should also be seen as a basis of the various types of social relationships and a product of cultural values besides being a source of prestige and power. The resulting social networks built within a specific social and cultural group are a very important asset in ensuring sustainability of livelihoods of rural households (FAO, 2002).

What is important to note is the need to understand which nature or type of property rights exist in a particular society that make them unique and do not exist in another or other societies which most scholars did not segregate. There is also the need to identify the gatekeepers or brokers who could stand out to protect or defend the rights of their subjects in the event that the agreed rules have been violated.

Property rights therefore emerged as a result of interaction between economic and political forces making the various social groups adopt them especially when they discover that the benefits from doing so exceed the costs, in the process making societies gain as they provide conducive environment for various forms of investments individuals can make (Deininger, 2003).

Societies will only resolve their issues if their social systems are guided by the defined rules and customs which will rely mostly on human experience, legal arbitration and at times religious authority (Alchian & Demsetz, 1973). While capitalists rely heavily on markets and private property rights, each society, on the other hand, may rely on the

combination of such devices and the only difference is the emphasis placed on a particular method in resolving the social problems associated with resource scarcity.

From the discussions above it can be noted that the general definitions of property rights have placed much emphasis on the society as a unit. The society, in this regard, becomes the unit of analysis which mostly follows a particular gender line. Individuals are treated mostly as a homogenous entity responding to the societal rules in unison. No meaningful attention was paid where an individual becomes the unit of analysis as is the case with certain minority ethnic grouping as that of the Tonga. Being an immense network society, an individual, who upon evoking the concept of *'wanangwa'*, becomes the center of identity, analysis and crisis. The nature of property rights an individual enjoys are based on the strength of his or her kinship ties, the capacity to manipulate the system and the capacity to defend their rights as an individual.

2.4.1 Property rights and society

A society's ability to define and establish their institutions (rules) that can enforce property rights to land as well as other assets is a critical precondition for social and economic development (Deininger, 2003). It is important, therefore, to understand the origins and evolution of property rights in order to appreciate how property rights and their evolution over time have affected household's behavior and how in turn can influence government policy. For an effective increase in property rights both legal and local institutions should be tackled in tandem or should be allowed to evolve jointly taking into consideration the broader social and economic environment within which land rights are embedded. In this regard, therefore, the practical implementation of the measures aimed at increasing the security of tenure has to start with an in-depth analysis of the current situation which is often content, context and location specific.

Deiniger (2002) argued that, historically, one of the reasons property rights evolved was to respond to increased payoffs from investment in more intensive use of land due to population growth or the rise in land markets coupled with technological advances. This necessitated the development of the right institutions to safeguard the rights that might invariably lead to greater investment opportunities.

The debates on the origins of property rights vary. Some scholars link it to the ideas generated by classical thinkers while some link it to the growing desire for human to safeguard their territories against intruders (Berry, 1993). Use of local symbols like planted fruit trees, ruins or remains of the dilapidated structures, grave sites among others were common as evidence of original occupancy or ownership. Though contestable, others have used such symbols to lay claim on the land based on the ancestral basis. Apart from the symbols, societies developed rules that protected their interests and those of the generation to come.

Out of a number of classical thinkers who contributed to the emergence of property rights are three main ones whose thinking is relevant to the study. Their main concern was protection of people's lives and property (Laskar, 2013). Their work revolved around the concept of Social Contract where the main argument was that in the beginning men lived in a state of nature where there were no laws to govern them hence living in a state of anarchy (Rosseau, 1762; Laskar, 2013). Two agreements were entered into. The first one was *pactum unionis* where people in a society undertook to respect each other and live in peace and harmony and the second one was *pactum subjectionis* where people living in unity pledged to obey authority and surrendered the whole or part of their freedom to an authority (Laskar, 2013).

The first one is Hobbes (1651) who was well-known for his book *Leviathan*. His main argument was that the state was key when it came to the enforcement of property rights and protection of human lives. He rooted his analysis of property rights within the notion of peace and security as the basis of survival without which security to both their life and property will be in jeopardy.

He noted that by establishment of a common power base, subjects would feel secure and invest in their own industry and enjoy the fruits of their labour invested in the land. He therefore concluded that private property is the creation of the state and it is the duty of the state to offer necessary security to those that have invested their labour in the land parcel they hold (Mia & Suzuki, 2018).

The second one was Locke who was known for his labour 'theory'. He raised two main arguments. The first one was that ownership is not created by contract but derived instead from a natural right (Laskar, 2012). He argued that the origins of property rights can be traced to one's undeniable ownership over their physical body. The second argument was that through investing labour to natural resources, people acquire allocative rights over resources and the acquirer may exert full care and toil more when he expects to reap the full benefits (Mia & Suzuki, 2018). In this regard, therefore, the amount of labour invested coupled with uninterrupted use of the natural resource is likely to accord the land holder full rights that can lead to long term investment. He then concluded that no collective agreement is necessary for the creation of private property.

The last one of the three was Rousseau whose main line of thinking was that there must be a guarantee that property rights will lead to the benefits of one's labour (Rosseau, 1762). He argued that property is a right that cannot exist before contract. In his wisdom

he felt that there must be a collaboration between the government, property and the law. In order to protect the interests of the right holder, there is need to bring in the umpire who can secure the liberty and property as a legitimized enforcement authority and this is seen to be the genesis of society and law (Mia & Suzuki, 2018; Laskar, 2013).

Despite their notable differences what can be concluded from their presentation is that they were all concerned with how to drive out anarchy when it comes to the management of natural resources at local level and how one can maximise the benefits out of it. However, their main differences hinged on whether natural law was better than civil law when it comes to protecting the rights of individuals. Hobbes and Rousseau argued that property right cannot exist before contract (Steven, 2019; Mia & Suzuki, 2018; Laskar, 2013) while Locke argued that legitimate ownership is not created by contract but rather derives from a natural right, the right an individual acquires upon birth. This resonates well with the Tonga cultural concept which focuses on freedoms and entitlement an individual acquires upon birth. The issue of 'contract' doe not exist in a formal way among the Tonga. Their kind of 'contract' is embedded in the concept of '*wanangwa'* which is the basis of multiplicity of claims in multiple locations.

Based on the common practice on the ground when it comes to the management of the land held under customary land tenure arrangements, those who first occupied the land and have made meaningful investment on it coupled with an uninterrupted use of the land have primary rights and can define the rules governing such land to protect the interests of their members within their society who are connected in one way or the other (Colson, 1989). This resonates well with the views of Locke who argued that the rights over any land parcel can be strengthened through human hands that have the

capacity of transforming it into a valuable resource. In this case, therefore, any individual or groups of individuals, who has or have added value to the land should be rewarded for their efforts.

On the other hand, the views put forward by Rousseau that suggests the use of civil law to protect the rights of individuals over the land parcel have been challenged by a number of scholars who argue that the law on its own cannot protect the interests of customary land holders. In their views, they argue that the law should respond to the existing social rules for it to be accepted. A study by Okoth-Ogendo (1989) concluded that a proper inquiry into the concept of property in any society must start with a clear view of how that society handles the basic question of rights. Each society is guided by its own local rules. Anything to the contrary will either be challenged or will be met with stiff resistance (Sumner, 1906).

What is critical to note is that property rights are relational constructs that are contingent upon social institutions for their meaning and operation. They are responsive to the needs of the society itself and will dictate the scope and limits of that institution (Mia & Suzuki, 2018; Barness, 2009).

Ideally, there are two basic and interrelated issues involved with the property rights analysis and these include right to allocate and right to enforce which require either voluntary cooperation from non-owners of a property or a central enforcement authority (Mia & Suzuki, 2018).

The need for property rights became even more imperative as human societies began to live a more settled life. Most societies stopped living as gathering and hunting societies

in preference for more agrarian life style. They became farmers, a development that led to the need for more settled life hence the need for proper security that will safeguard and protect their interests.

It can be noted, therefore, that property rights emerged as a result of the interaction between social, economic and political forces. From an economist view point, property rights can reduce open access to and provide individuals with investment incentives while as from the social view point it is envisaged that when the benefits of adopting property rights exceed the cost, the society will gain (Deininger, 2003; Sjaastad & Bromley, 1997) though this can be seen to be an overstatement. The reality on the ground is that it varies from society to society. Also, important to note is that acquired power may establish certain types of property rights that may aim at excluding others thereby making the imposition of property rights not necessarily be associated with economic benefits alone but may also be extremely influential from a social perspective.

Arguing from an economist point of view, Demsetz (1967) argued that that property rights were developed mostly to internalise externalities especially when the gains of internalization become larger than the cost of internalisation whose interpretation requires private ownership and more highly developed state ownership system. In this case therefore when the gains of internalisation become larger than the cost due to increase in the value of land and/or a reduction in measurement or enforcement costs, economic efficiency justifies the replacement of communal by private ownership rights (Platteau, 2000).

However, this was mainly due to the emergence of new private or state-owned property that was seen to be in response to the changes in technology and relative prices. Such views paid minimal attention to the rights held under customary land arrangement. What is important to note is that structure of property rights in land held under customary arrangements is specific to a particular society at a time. It defines what is actually owned and how these rights came into being and how they have evolved over time (Alchian & Demestz, 1973; Berry, 1993). Any unified system that does take not into account the diverse customary land tenure system will likely be met by stiff resistance. In most cases what are owned are socially recognized rights of action which could be subject to manipulation and can be contested especially where there are noticeable changes in land value.

2.4.2 Property rights regimes

Technically there are four main forms of ownership. The first one, which is common in southern Africa, is communal or common ownership where rights can be exercised by all members of the community or association. The group with a common identity decides who may use the property, who is excluded and why and determines how the property should be used. The group develops a governance regime that stipulates the management and use of the resources (Libecap, 1989). Among other things the group designs rules about when to exploit the resource, how much to exploit the resource, how much to exploit at a particular point in time, what methods or exploitation techniques to use. The expectation is that the governance regime would ensure sustainable exploitation of the resources in question like land. In most cases the state is denied to interfere with any person's exercise of the communally owned rights.

The second one is private ownership where rights are held by a natural or legal owner. In this regard the community recognizes the right of the owner to exclude nonowners from accessing the resource. Also, the private owner retains the right to appropriate the stream of rents from the use of and investment in the resource over and above the right to sell or otherwise transfer the resource as well as rights to others (Libecap, 1989; Demsetz, 1967). This means that the owner of private rights acts as a broker between present and future uses of the resources or assets. The owner bears the costs of poor stewardship but enjoys the benefits of good stewardship. This means that rights create incentives for the owners to use their assets effectively and efficiently because they are assured of non-interference.

The third one is open access where the rights to the property are not vested in any particular identifiable group. The fourth and last one is state or public property ownership where the bundle of rights are concentrated and managed by government. The state may exclude anyone from the use of a right as long as the state follows accepted political procedures for determining who may not use state owned property (Aggarwal & Elbow, 2006; Libecap, 1989; Demsetz, 1967). The differences between these property regimes lie in the scope of primary decision-maker who are predominantly lineage leaders.

There is often a confusion especially between common property and open access regimes. Open access normally refers to where no one has a legal right like open fishing grounds while as common property is where members of a clearly demarked or defined group have the legal right to exclude others from using it (Ostrom & Hess, 2007).

Common property rights are by far the most common especially in southern Africa. They include the bundle of communally owned rights which include the right to use a scarce resource but fails to include the right of the 'absentee owner' to exclude others from using it (Alchian & Demestz, 1973). These rights, which are grossly characterized as non-formal system, meaning that neither the state nor the individual citizens can exclude others from using them except by prior or continuing use of the resource (Alchian & Demsetz, 1973; Aggarwal & Elbow, 2006; Demsetz, 1967).

Ostrom and Hesse (2007) classified property rights that are relevant for communal pool resource in the following ways: access where an individual has the right to defend the physical area and enjoy non-subtractive benefits, withdrawal: where an individual has the right to obtain resource units or products of a resource system, management: where an individual has the right to regulate internal use patterns and transform the resource by making improvements, exclusion: where an individual has the right to determine who will have access rights and withdrawal rights and how these rights might be transferred and finally alienation: where an individual has the right to sell or lease management and exclusion rights.

The last one is more preferred by the economists as it is linked to private property ownership where rules define the property right holder, which is the basis of land reform.

All in all, what should be pointed out is that property rights facilitate conflict resolutions since they specify who owns what, the boundaries of the ownership and the rights that they have over their assets. They have the capacity to segregate the type of rights one has which may determine the type of investments one can make. Property rights also determines who benefits from good stewardship of the resources as well as who bears

the cost for bad stewardship of the assets. Any form of conflict that may develop in the event of infringing on one's rights might be dealt with using the appropriate tools ranging from formal to informal arrangements. In this case any form of conflicts pertaining to property rights would only be resolved through careful understanding of the rights the holder has over their assets. Where people have put their assets to socially productive functions, property rights determine who reaps the benefits from assets because they clearly designate who is in control.

From the ongoing discussion above, it can be noted that property rights over customary land parcels vary from society to society. Each society determines the rules of administering their land parcels. These are guided by the prevailing customs and mores that define a particular society. In view of this therefore there is need to treat each case differently. What may work in one sector of the society may not work the same in the another.

2.5 Property rights and agricultural investment

Scholars such as Place (2008), Besley (1995) and Place and Osaka (2001) have demonstrated that there is a link between the nature of land tenure and its associated property rights and the nature of agricultural investment one can make on the allocated land both for livelihoods purposes and any other land related long-term investment. However, the link between the two has been met with mixed responses, positive effects in some and reverse causality in others (Place, 2009). Some argue that local or informal rules do not provide security hence a threat to meaningful agricultural investment. Instead, they opt for formal tenure system, which in their view, is a surest way of security. Others, on the other hand, argue to the contrary arguing that societies have inherent capacities to deal with issues at societal level. A study conducted by Cleaver

(2001) in Usangani in Tanzania concluded that an understanding of socially embedded social systems is key to understand the nature of property rights of a community which have a bearing on the nature of investment an individual can make alongside management of the available natural resources. This suggests that the content and context specific approaches are an important aspect in conditioning the nature and effects of land tenure system for development.

Evidence from some notable studies suggest that strong land rights are likely to increase the likelihood of making long term investment on the land allocated (Place, 2009; Besley, 1995).

Study conducted by Besley (1995) in the two regions of Wassa to the north and Anloga to the south in Ghana and Abdulai, Goetz and Owusu (2008) have demonstrated that there is a direct link between land rights and nature or type of investment one can make. In his study of the two regions of Wassa and Anloga, Besley (1995) noted that in Wassa local land owners enhanced their tenure security through planting of trees as part of long-term investment while those in Anloga enhanced their rights through constant work on the land which led to the improved land value. They both argued that though land rights under customary arrangements are difficult to codify with precision, constant improvement on the land coupled with past long investments like tree planting or any other perennial crops is likely to enhance their tenure security (Bruce, 1988; Besley, 1995).

In this regard therefore it can be argued that land rights under customary arrangements have the capacity to evolve systematically through time and become more secure than imagined. Though the current user may not have transfer rights, his or her continued

use of the land will accord him o her full rights so long they remain on the land and maintain good social networks with the rest of kin members.

It should be pointed out that effective property rights to land are the most powerful resources available to people to enable them increase and extend their collection of assets beyond land and labour which are key to their sustainable livelihood activities. The rights to land accorded to each household are a vital element when it comes to the rural households to balance their capabilities and assets and determine their resulting strategies to cope with their daily production with the view of enhancing their food security (FAO, 2002).

Recent works on livelihood analysis by social scientists focused much on the understanding of what the poor have rather than what they lack and examine the nature of the tangible and intangible assets of the poor (Chileshe, 2015; Ellis, 2000). Various authors have noted that the majority of the rural poor rely on land for their day-to-day livelihood activities. Secured land tenure, therefore, becomes a critical component of their life. It provides them with the capability to build a satisfactory living (Ellis & Freeman, 2005). Security of tenure, in this regard, is defined by cultural norms of that particular society. People's assets, activities and mediating processes provide the means for them to meet their basic needs and to support their wellbeing (Chileshe, 2015). Institutions and social relations together determine the living standards gained by an individual or household members. It can therefore be seen that there is a link between livelihoods and cultural practices on land governance that protect the interests of individuals and have survived the test of time. Social relations within these cultural practices determine the way in which structures or individuals operate and interact to promote their interests. They comprise agencies that constrain or facilitate the exercise

of capabilities and choices made by either individuals or households and they furnish everyday frameworks, rules and relations for human interaction. It is within their capacity to survive in the face of short and long term.

It is also envisaged that rights to land are not just a source of economic production but are also a basis of social relationships, kinship networks and cultural values that hold members of the community who share common values together. The resulting social networks that are constructed within a specific social and cultural group are a very important asset in ensuring sustainability of livelihoods of the rural households (FAO, 2002).

In this case, therefore, for any meaningful development intervention aimed at improving rural people's livelihoods should take into account the varying land tenure systems, their shortfalls and their strengths. In other words, 'build from what they have'.

2.5 Customary Land tenure systems in sub-Sahara Africa

In most parts of southern Africa customary land tenure system remains the predominant model of landholding among the rural dwellers whose access to land is based on social identity (Berry, 1983; Krantz, 2015; Lentz, 2010). An estimated 90% of the land is held under customary/communal tenure arrangements which are determined by the indigenous tenure systems that have evolved over time under local influences (Chimhowu & Woodhouse, 2011). The land holding systems under customary land tenure arrangements are a product of culture whose rules about land ownership are endogenous to a particular tribe mostly identified by use of common language (Berge, et.al., 2013) and, at times, common historical background. These systems determine who the right holders to land are and determine the inheritance patterns they are able to

defend. These systems are often flexible, dynamic, and negotiable and evolve to suit the prevailing social and economic environment (Berry, 2002). Within their flexibility they create contested zones which make no condition to be permanent (Berry, 1993).

A study conducted by Place (2009) concluded that rights over land held under customary arrangement are not vested in an individual but rather in a group sharing common cultural values to which an individual belong. However, there is a unifying contradiction to this which lies in the fact that at the level of ideology Africans generally stress the supremacy of the group over its individual members and yet these individuals possess pieces of land for as long as they identify themselves with the group (Nobel, 2016). In other words, at the level of fact an individual owns land while at the level of ideology group owns land where lineage leaders or community leaders may be classified as co-owners. However, such conclusions did not pay particular attention to those tribes where an individual becomes the entry point as is the case of the Tonga. There is no co-ownership. Entitlement is guaranteed upon offer. An individual exercises unconditional full rights over the land allocated.

Despite the varying colonial history, what is clear is that this model of customary land tenure system generated a spatial manifestation of the 'tribe' as a form of social cohesion. It developed its own values, rules and aspirations which they held dear to their lives. In some countries, particularly in the settler colonies of southern Africa, Africans were resettled in areas classified either as 'reserves' or 'communal lands. Those found in such conditions have their own accounts on land governance which varied based on circumstances (Chimhowu & Woodhouse, 2011). Tribal or in other instances, lineage leadership are seen to be holders of land rights and determine the inheritance patterns.

2.5.1 Inheritance patterns

Quite a good number of scholars such as Kishindo (2010), Berge et.al. (2014), Peters (2004), Chigbu (2019), Berry (1983, 2009) came up with a number of landmark studies on customary land inheritance system arguing that the inheritance system was predominantly determined by sex. They drew their conclusions based on an analysis of mostly the two main descent social systems namely patrilineal and matrilineal. Based on their findings, some of their major conclusions were that in patrilineal societies the general belief is that males represent genealogical continuity while women introduce departures in the genealogical system (Chigbu, 2019; Chigbu, et.al., 2019). This was based on the fact that women will join their husbands upon marriage and live virilocally (Chigbu, 2019). In this regard, therefore, men have primary rights while women have secondary rights. In the matrilineal descent social system, on the other hand, the opposite is true. Men introduce departures while women represent genealogical continuity (Chigbu, 2019; Peters, 2007). Again, in this regard women are seen to possess primary rights while men have secondary rights. Such conclusions had a bearing on the nature of tenure security enjoyed by landholders which also has a bearing on the nature of investment one can make.

However, the majority of these studies offered a generalized view of how the two main descent systems operated and continue to operate. Minimal attention was paid to some developments within the system that may necessitate some modifications or at times complete deviation from the normal procedures or practices. These could be due to changes in the social structures or economic transformation especially where there is evidence of a shift from mere subsistence production to production for the market (Holy, 1986) or where land access is heavily individualized in the sense that it is held by nuclear family (Englert, 2008). Such development may influence redefining

'departure' or influence deviation from the normal practice. In the worst-case scenario, such developments are likely to be a recipe for future contestations. For instance, studies conducted among some selected societies that practice matrilineal descent system demonstrated that the matrilineal descent social system is more liable to change than the patrilineal descent system (Holy, 1986; Phiri, 1983). An anthropological study conducted by Holy (1986) among the Toka[2] of Zambia noted that where wealth creation is introduced and controlled by an individual family and children are part of that wealth creation, the inheritance pattern tends to pass to them instead of to those outside the productive cycle as would be the case under normal matrilineal descent system. This was common especially where there was a shift from mere farming for subsistence consumption to production for the market coupled with the advent of competition for scarce resources which militates against the wide rules of matriliny. The majority of the fathers tended to protect the interest of their biological children as opposed to advancing or promoting the interests of the nephews who are traditionally believed to be main beneficiaries of their uncle's property and wealth.

A similar anthropological study conducted by Colson (1960) among the Tonga of Northern Rhodesia (now Zambia) revealed that although they were predominantly matrilineal, the right to receive or inherit land was not determined by sex. Rather, it was determined by the source of the field. The rights in land were chiefly defined in respect to arable land and as the first occupant or cultivator he or she retained all rights which formed part of his or her estate and could transfer the rights to his or her heirs without any contestations. According to Corson (1960, 1986) the basic principle was the right of an individual cultivator over land brought under cultivation. For those that occupied

[2] This is the Lozi mispronunciation of the word Tonga

the land that was not originally theirs (meaning they were not first occupants), their rights were subject to other rights vested in small lineages (Colson, 1960).

Both men and women were equally eligible to inherit land from their lineages as their residential rules were not fixed (Colson, 1960). This was easily followed as lineages were usually small and tended to be localized in a particular neighbourhood making it 'flexible' for an individual, mostly men, to live in one neighbourhood and have fields in another (Colson, 1960). They enjoyed same rights over usage of land allocated since the basic principle underlying the land tenure system was the right accorded to an individual cultivator over any land which he or she had brought into cultivation (Colson, 1960). The advantage then was that lineages were usually small and tended to be localized in a particular neighborhood. Women who owned land enjoyed similar rights to those of their male counterparts that included transferring of land to their direct children or any member of the lineage group regardless of their sex (Colson, 1960; 1986). The study also revealed that with the development of cash crop production coupled with the increasing scarcity of fertile land there was a tendency for the matrilineal groups to breakdown into a group of small uterine siblings and their immediate descendants through females for purposes of inheritance (Colson, 1960).

For the Toka of Zambia the study conducted by Holy (1986) and Colson (1960) concluded that although they practiced matrilineal principles, the reality on the ground was that each division or category of inheritance was the outcome of the often-conflicting interests of a particular people whose decision results from multiplicity of varying consideration. Under normal circumstances, a child is entitled to inheritance in his or her mother's village but is free to settle anywhere within the 'neighbourhood'.

There are quite a number of factors that may determine or influence one's choice of settlement. The most common ones are the desire for immediate and long-term interests and goals which will determine the nature of investment one can make, the need to live in area where they are able to secure for themselves the cooperation of others when they need it and the desire to stay in an area where they are guaranteed a say in the important village affairs and where security is guaranteed against forced eviction (Holy, 1986).

What can be noted from the discussion above is that for the Toka people what determines one's choice of residence is the desire to exercise moral authority and to live in an area where there is potential for the desirable economic growth and social security.

Evidence from a study conducted by Englert (2008) among the residence of Ulunguru mountains found in Tanzania show that much as the influence of matrilineal system of descent is still present, young couples are increasingly making their decisions about their future based on their personal preferences rather than in accordance with the prevailing traditional practice of matrilocality. Choice of residence is mostly dependent on socio-economic considerations and any decision on land use is highly individualized and lie with a person who either inherited or bought it. They can decide on the type of crops to grow and what part of land to sell (Englert, 2008).

Based on these studies cited above it can be concluded that both matrilineal and patrilineal descent systems are not fixed and no condition within the systems can be seen to be permanent. It can change based on circumstances. With the exception of the residents of Ulunguru mountains in Tanzania, the studies have demonstrated that

lineage land cannot be transferred or sold to an outsider anyhow. Doing so will attract the wrath from lineage leaders and the wider community. These studies have also demonstrated that rights towards land varied from society to society with a degree of similarity in one way or the other. However, despite these differences, some similarities in their operations have been observed as follows. Any person allocated land under customary arrangements enjoys exclusive use rights especially where he or she is deemed to be the first occupant. With the exception of the Tonga of Zambia, he or she cannot transfer land to non-kin members. Any land allocated or held at the pleasure of others could be dispossessed anytime and would not re-allocate it without permission from lineage owners. Land allocated to a spouse or affine is largely dependent upon the continuation of marriage. (Colson, 1960; Chigbu, 2019).

These variations in tenure system have an impact on the nature of investment one can make. Where one feels has more rights and feels more secure, he or she is likely to invest more. More importantly what can be noted from the studies conducted by Chileshe (2015) and Peters (2004) is that individuals or households are socially differentiated along various dimensions which include but not limited to, political authority, accumulated wealth, class, seniority in terms of birth and ethnicity.

2.6 Understanding land question in Africa: Conflicts and Competing claims

Of late land is increasingly becoming a source of conflicts in most parts of sub-Sahara Africa especially where inheritance patterns are still being determined by either matrilineal or patrilineal descent social systems. In most cases the causes of such conflicts are similar ranging from population pressure, shrinking land availability for subsistence farming, increase or changes in land value, environmental degradation and

in some cases slow rate of economic growth (Berry, 2002). Disagreements over land may take many forms ranging from quiet mutterings, stifled anger, overt quarrels, repeated fights, forced eviction and in the worst-case scenario, witchcraft accusations (Peters, 2002).

A number of studies conducted by scholars such as Peters (2013), Lentz (2010) and Ubink and Amanor (2008) on conflicts over land in Africa have predominantly focused on conflicts between members of the same descent groups or lineages, between generations and gender, between state and nonstate actors especially as land value increases and in some instances between first comers and new comers as was the case in Northern Ghana. This resonates well with the thinking of Berry (2002) who argued that competition over land took a myriad social fault lines that saw kinsmen rising against fellow kinsmen, local elites rising against ordinary citizens and in some cases husbands against their own wives. In this regard, therefore, it can be argued that contestation over land is contestation over multiple forms of power which is articulated in many forms of exclusion and inclusion including those of gender, generation, kinship and at times the changes in social status of individuals (Musembi, 2015).

The continued rise in competitive struggles and conflicts over land therefore raises a lot of questions on the effectiveness of open, negotiable and adaptive customary systems of land holding and land use and instead reveal the processes of exclusion, deepening social divisions and social differentiation between and among kin-based ethnic and regional groups (Peters, 2004, 2002;Larsen & Mvula, 2009). In most cases this might be a product of unequal land ownership among the members of the same descent system which may end up creating imbalanced social systems which may not respond well to

the needs of many (Toulmin, 2007). However, despite such assertions from some scholars, evidence on the ground has shown that societies with proper functioning social structures in place are able to minimize such conflicts to the benefit of its members.

Customary land tenure system is therefore complex and fluid and subject to change to suit the prevailing situation and can be manipulated anytime based on circumstances. It involves interplay of forces between different social groups, generating a shifting set of negotiating positions (Toulmin, 2007). There is, therefore, need to ask more precise questions about the type of political and social relations in which land is situated particularly with reference to relations of inequality and changing social statuses. Though it has been noted that customary land tenure arrangements provide room for negotiation, it should be noted that not all can negotiate on equal terms (Berry, 1983, 2002; Peters, 2004). Some have more negotiating power and more defining and contesting powers than others and again not everything is negotiable (Ubink & Amanor, 2008; Berry, 1983). The rich and the most powerful can make powerful investment in social networks to either protect or maintain their tenure security (Peters, 2004, Berry, 1983, 2000).

So far what has been observed is that the social origin and relationship between the land giver and land taker or receiver will greatly influence the terms negotiated (Toulmin, 2007). On the other hand, the maintenance of good relations between the two parties is critical to the security of the agreement as opposed to relying on longevity and stability of the institutional arrangement (Berry, 1993; Toulmin, 2007).

What has been noted so far is that circumstances that lead to conflicts over land under customary arrangements are content and context specific and do not conform to any form of logic (Anseeuw & Alden, 2010). By their nature they are always responding to the ever-changing circumstances which makes them fluid in the process creating 'contested zones' which become 'sources' of conflict due to their nature (Berry, 1993). They can be subject to manipulation anytime hence difficult to be dealt with using a unitary law. Based on the presentation above it should be noted that any method aimed at securing land and property rights must be tailor made to a particular local context (Toulmin, 2008).

2.6.1 Conceptualising competition and conflict over land

In most cases the words 'competition' and 'conflict' are used interchangeably. While competition may produce conflict not all instances of conflict reflect competition (Deutsch, 1968). Conflicts exist where two 'incompatible' activities occur which may originate in one person (*intra*personal), in one group (*intra*group) and in one nation (*intra*national) (UN-Habitat, 2012; Deutsch, 1968). Conflicts may also reflect incompatible actions of two or more persons (interpersonal) and groups or nations (intergroup or international) (Deutsch, 1968). In the context of land governance and ownership, a conflict over land may occur when individuals or groups of individuals claim different rights over the same parcel of land. This could either be based on history of occupancy or in some instances continued use of the land and the nature of investment made. The consequences may vary.

A conflict is not in itself a negative phenomenon but it may become problematic when societal mechanisms and institutions for managing and resolving conflict breakdown, giving way to violence (UN-Habitat, 2012). Those societies with weak institutions and

fragile political systems and divisive social relations can be drawn into cycles of conflicts and violence which may have a bearing on people's livelihoods.

Conflicts over land can be categorised as follows: inter-lineage (mostly based on differences over inherited rights between descendants of the same clan), inter-village (especially over boundary disputes), intrafamily (especially where a member of the family makes some decisions on land way outside the agreed terms) and intergenerational (especially where elders and the new generation differ on land use for the future) (Bottazzi, et. al. 2015). The consequences of such development could be damaging, especially to those who solely depend on land for livelihoods, if proper intervention procedures are not put in place. The use of local structures could be critical to mediate such conflicts as the root causes are mostly embedded in the prevailing cultural set up. A study conducted by Cleaver (2001) in Usangani in Tanzania concluded that in a community with multiple identities of the bricoluers, frequency of cross-cultural borrowing and multipurpose institutions and use of local structures can bring together people of diverse interest in the management of natural resource. Very rarely would state structures be involved meaningfully.

There could be several reasons leading to this ranging from extensive market development, population growth, competition over land utilization, competing rights among kin, patterns of population mobility and in worst case scenarios, wars (Cotula et.al., 2004, p.14; Toulmin, 2008; Lund et.al., 2006, p.1). These conflicts are mostly a product of competing claims over inheritance, especially between sons and nephews as is the case among the Tonga of Northern Malawi. This is mostly to do with who has

absolute[3] rights and who has not. In some cases, boundary disputes involving individuals and even neighbouring villages were also noted as was the case in Northern Ghana where conflicts between the Sisala (who claimed to be the first comers) and the Dagara (who are believed to be the late immigrants) (Lentz, 2010). In the worst-case scenario conflicts were also noted between non-indigenous and the locals over non-adherence to the agreed local rules. Some members of the non-indigenous community who were allocated land on agreed terms were seen to be violating such agreed terms either by using the long stay advantage or through the manipulation of the social system by engaging members of the wider community (Toulmin, 2007). They ended up creating informal arrangements also referred to as 'institutional innovations' which ended up affecting different land use, occupation and distribution and in the process affecting land tenure and the local governance structure (Bottazzi, et.al., 2015).

This means that the rights for many rural dwellers are increasingly becoming insecure and unclear, hitting hard on the vulnerable groups of the poor women, physically challenged and the indigenous people with weak social status (Lund et.al., 2006). In this case therefore, the absence of any systematic analysis of what triggers the conflicts and competing claims and the integration of these insights potentially contribute to the perpetuation of the conditions which have the potential of fueling these conflicts.

Competition over land and other related land resources are also common in most parts of Sub Sahara Africa where land ownership and inheritance follow a particular descent system which is subject to contestations based on circumstances (Sone, 2012). Ownership of land, through this arrangement, becomes the primary source of conflict

[3] In this case this is to do with who has transfer rights and rights or entitlement to exclude others from use.

especially among members of the same family sharing common descent system who claim different rights over the same parcel of land. They may use tools such as seniority identity, construction of kinship identity, social networks or at times change of status based on either wealth accumulation of political power gained. Where it occurs, power, wealth and survival are measured by the degree of ownership either based on seniority or control of resources one has (Sone, 2012; Berry, 2000).

2.6.2 Conflicts and land contestations in context

Studies on land tenure system on the African continent, especially south of the Sahara, have shown diverse systems of land ownership with different degrees of tenure security since they are a product of different historical, cultural and political factors happening at different times (Kasimbazi, 2017). A number of such studies have revealed that relations around land held under customary arrangement are not straight forward. This is evidenced by the proliferating tensions and struggles between and among families of the same descent. A study conducted by Peters (2002) in Southern Region of Malawi which predominantly practices matrilineal social descent system revealed conflict and division among women of the same family over land under customary land. What was noted was that there was a deepening social differentiation among women from the same family descent (Peters, 2007). The conclusion from Peters (2007) study was that women are not a homogeneous entity despite being members of the same descent system. They are differentiated in a number of ways ranging seniority of birth among the sisters sharing the same mother or even seniority of birth among their mothers who happen to be direct blood sisters residing in the same village.

What has come out from most of the studies across the African continent of late is that there was and still is indeed widespread contestations over land between regional and

ethnic groups, within and between descent groups or lineages and between generation and genders mostly as land value increases (Peters, 2004, 2013; Lentz, 2015). In their arguments they demonstrated that such conflicts were a catalyst for the intensification of deepening social differentiation among land users both at family and society level. Their main argument was that relations around land held under customary arrangements are not just merely embedded but that they are embedded in unequal social relationship which may have a bearing on the nature of investment one can make (Peters, 2004).

However, such conclusions ended up treating all ethnic groups sharing same descent system as a homogeneous entity which was not the case. The different ethnic groups though sharing common descent system had varying historical backgrounds which enabled some to adjust to suit the recurring circumstances. No scholarly attention was paid to understand how such changes could contribute to future land conflicts.

Some landmark studies conducted in West Africa and in some parts of Malawi show that land acquisition has diverse contested historical narratives which are content and context specific. Studies conducted in Ghana and Ivory Coast by Ubink and Amanor (2008), Lentz (2015) and Berry (2008) revealed that land acquisition in most parts of the virgin forests was based on diverse arrangements between the migrants and the local citizens which later created tension between them. In the decentralized communities of West-central and South-western parts of Ivory Coast predominantly headed by clan heads, migrants obtained land from village elders or family heads whose authority did not extend beyond their immediate circle of kin or local community leaders (Berry 2008). Migrants were free to plant both permanent and annual crops, sell the resulting produce and pass their farms to their descendants. In exchange, migrant farmers were expected to show their appreciation with annual gifts of farm produce, contributions to

marriage and funeral services in the host families (Berry, 2008). At times and often in worst case scenarios they were expected to provide loans to host families or occasional labour to the host family's land. Initially such arrangements worked well as land was still in abundant supply (Lentz, 2010). But later when land value increased coupled with shrinking land size, conflicts over same land parcel surfaced. The disputes between them were rooted in the disagreements over the precise content of land rights and duties transferred to them (Peters, 2013). Approach to resolve such conflicts varied from family to family and society to society.

In Ghana, the situation was different. Conflicts over land were noted mostly between first comers and late commers. A study conducted by Lentz (2015) in upper west region of northern Ghana revealed conflicts between the Sisala (first settlers) and the Dagara (late immigrants) on who has full property rights which include the right to allocate land to a third party. The Sisala, as the first settlers claimed to retain the ultimate control over land even though they might have granted extensive cultivation rights to later immigrants, in this case the Dagara. The Dagara, on the other hand, agree that they are indeed late comers but argue that their ancestors bought an 'earth shrine' and all its secrets which enabled them to acquire allodial rights and claim that any obligation towards the original owners which might have existed ceased (Lentz, 2010). What can be noted from their claims is that both the first comers and the late comers could use multilayered nature of property rights to support their claims to an allodial title and chiefly office (Lentz, 2010). These could largely be due to the reinterpretation and transposition of different layers of spiritual, economic, social and political meaning of land (Lentz, 2010). For instance, the Sisala argued that an earthly shrine can never be bought and land is inalienable, the Dagara, on the other hand argued the other way around. An earthly shrine can be bought and land is alienable (Lentz, 2010).

Further studies in the same region revealed different modes of land acquisition and cultivation rights acquired by migrants which also created tension with time. In the 1940s and 1950s a number of immigrants obtained cultivation rights either directly or indirectly from the local chiefs (Berry, 2008). In some instances, an immigrant could conduct negotiations with the head of a local family rather than directly with local chiefs, although they demanded just 'being informed' in recognition of their authority as custodians of the land (Berry, 2008). In most cases, initial payments were followed by paying part of the produce, either in cash or kind, to the owner of the land (Berry, 2008). Their continued stay on the land was at the mercy of the chiefs who used their political power to allow them renegotiate agreements if need be. The chiefs could either raise rents or reclaim the land by reducing the duration of 'contracts or curtailing tenants' usage or even enforce land transfers (Berry, 2008). In this case, it can be noted that security of tenure was dependent on the proper social relationships between the chiefs and the migrant farmers. That type of relationship dictated the nature of investments one could carry out.

In both cases (of Ghana and Ivory Coast) the basis of claims over land were based on either historical narrative which defined their migration patterns or in some cases their linkage to their ancestors. What can also be noted in both cases is that migrants' acquisition of land and their increasingly important role in cocoa production exposed the differences between the 'locals' and the 'strangers'. There developed a complex construction of social identities that converged into a pattern of increasing inequalities and exclusion as virgin land was exhausted (Berry, 2008).

In summary, this section has looked into key debates on property rights regimes, various institutions that govern land rights, land tenure issues including the definition of land tenure and tenure security and the kind of conflicts and competition over land parcels belonging to the society that follow same descent system. One of the major conclusions from their studies is that African tenure systems are diverse in nature and this diversity is mostly due to the vast number of different ethnic groups with their differences in their inheritance patterns based on their descent system (Englert, 2008; Berry, 1983; Chigbu, 2018). Customary land tenure systems are therefore unique to a particular locality or society in which they operate (Krantz, 2015). They are guided by kinship ties, the constructed inheritance rules and the varying political and social organization of the society in question (Krantz, 2015).

However, despite the general belief that customary land tenure systems are flexible and negotiable, it has been noted that not all negotiate on equal terms. Some have more negotiating powers than others (Berry, 1983; Peters, 2004). The reasons could range from seniority in the clan, wealth accumulation to change in class status. This, in most cases, becomes recipe for conflicts and contestations as it redefines new winners and new losers.

So far what can be noted is that customary land tenure systems are evolving all the time and have proven themselves remarkably adaptable to the changing circumstances and environment (Kanji, et.al., 2005) in the process dismissing the notion that they are weak and lack focus. The literature has also shown that most studies focused their attention much on the binary division into matrilineal and patrilineal social systems that guided land inheritance patterns. Not much attention has been placed on the hybridized or

ambilineal social descent system as is the case among the Tonga of Nkhata Bay where an individual becomes the center of identity. Guided by the social concept of *'wanangwa'* an individual is entitled to decide where to settle based on circumstances. Basically, the concept is about choices. It gives an individual liberty to decide where to settle based on circumstances.

Where the two systems co-reside creating ambilineal descent social system, the dynamics of land rights which determines the nature of investment one can make needs to be treated differently. The nature and form of social embeddedness are unique to them as they take on board multiple social identities. The decision of where to settle on its own is not without contestations. However, the manner to deal with any form of the contestation is only well known to the actors themselves.

The next section presents the theoretical framework and scope that informed the study.

2.7 Theoretical Framework: Institutions, Rational Choice Theory and Rational choice Institutionalism

This section presents theoretical arguments and some scholarly work on Institutions, Rational Choice Theory and Rational Choice Institutionalism. It sets the theoretical scope and framework which informed the study.

The section is divided into two parts. The first one looks at the concept and definition of institutions. It looks at how different scholars from different academic disciplines have defined institutions in line with their field of study. The second part looks at Rational Choice Theory and Rational Choice Institutionalism. It reviews key

assumption and institutional basis that guides one to make a choice. The basic premise of this theory is that aggregate social behaviour results from the behaviour of individual actors, each of whom is making their individual decisions based on information available (Wittek, 2013).

2.7.1 Institutions

The definition of the term institutions varies according to the discipline of study. Initially it was dominant in the field of politics and later in Economics, Sociology and Anthropology. In political science it is used to mean everything from a formal structure like parliament to a very amorphous entity like social class while others define institutions as a collection of norms, rules, understandings and perhaps most importantly routines that guide individual towards making choices (Peters, 1999; Dekker, 2005). In other words, they are a collection of norms and routines that define appropriate actions when it comes to the relationship between roles and situations. In the field of economics institutions are defined as humanly devised constraints that structure political, economic and social interaction and they consist of both informal (sanctions, taboos, custom) and formal rules (constitutions, laws and property rights) (North, 1991:97). These institutions were devised by human beings to create order and reduce uncertainty in the process (North, 1991).

However, despite the numerous definitions, institutions broadly refer to values and rules that are largely normative rather than cognitive in the way in which they impact institutional members as well as routines that are developed to implement and enforce those values (Peters, 1999). They are a kind of structure that matter most in the social realm and are meant to reduce uncertainty by establishing a stable structure to human interaction (Hodgson, 2006). In this regard therefore it can be noted that institutions in

social life involves recognition that much of the human interest and activity is structured in terms of overt or implicit rules that may guide one to make choices (Peters, 1999; Hudgson, 2006). They empower and constrain actors differently and make them more or less capable of acting according to prescriptive rules of appropriateness (Richard, 2001). They provide a platform where rules should not serve the interest of certain individuals but that of the society as a whole in order for them to remain durable for a long time. In other words, institutions are simply an equilibrium way of doing things where every member of the society is required to adhere to the rules. Once the rules are not in equilibrium then the institution becomes fragile and that become a recipe for conflicts and contestations (Richard, 2001).

In most cases institutions tend to have a 'logic of appropriateness' that influences behaviour more than a 'logic of consequality' that also might shape individual actions (Peters, 1999). In this regard, therefore, effective institutions will influence the behaviour of its members to make choices within the parameters established by the dominant institutional values (Schirmer, 2017; Peters, 1999).

Institutions matter for two main reasons. The first one is that they create spaces and areas of freedom in which individuals can act with the same expectation that their actions will be seen as legitimate and the benefits they generate will be protected. The second one is that they provide a framework permitting the corporation and collective action that enhances people's control and power over the future (Schirmer, 2017).

Institutions, therefore, play a crucial role in determining choices one can make, both now and for future use and those individuals are expected to choose institutions that work better for them. Institutions can therefore be seen as structures that matter most in social realm (Peters, 1999). They are relatively enduring collection of rules and

organised practices embedded in structures of meaning, identity and belonging (March & Olsen, 2006). They provide structures that create capabilities for acting decisively (March & Olsen, 2006). Besides that, they also give prominence to the fact that human life interaction and activity are structured in terms of overt or implicit rules.

2.7.2 Rational Choice Institutionalism

Rational Choice Institutionalism has of late preoccupied the mind of many scholars across the various disciplines within the social science genre. Initially the field of Economics and Political Science dominated the theory but of late other fields like Sociology and Anthropology are equally using it to explain certain characteristics that help understand human behavior better which affect choices or decisions they make (Peters, 1999; Green, 2002; Coleman & Fararo, 1992).

Rational Choice Institutionalism is believed to be an amalgamation of two schools: Old Historical Institutionalism and Rational Choice Theory (Peters, 1999). Old Institutionalism was normative and macro-focused while the Rational Choice theory is more 'atomistic', egoistic and micro-focused (Peters, 1999). By merging the two Rational Choice Intuitionalism looks to discover how rules and institutional arrangements govern the actions of the individual and how individual actors seek to change the rules (Peters, 1999).

2.7.2.1 Rational Choice Theory

Rational Choice Theory also known as Choice Theory is a framework for understanding and offer formally modelling social and economic behaviour of individuals (Scott, 2000; Ogu, 2013). In his study, Ogu (2013), concluded that individualism, optimality, self-regarding interest and rationality are some of the salient assumptions of the Rational Choice Theory (RCT) which is also known as the choice theory.

Individualism, according to him, is the overarching assumption from which the other assumptions derive. Rational Choice Theories hold that the elementary unit of social life is the individual human action. To explain social institutions and social change is to show how they arise as the result of the action and interaction of individuals (Scot 2000). It is individuals who ultimately take actions. Individuals as actors in the society and everywhere, behave and act always as rational beings, self-calculating, self-interested and self-maximizing. These individual social actions are the ultimate source of larger social outcomes (Ogu 2013). Hoffman (1961, p. 385) leaves one in no doubt of the centrality of individualism to the choice theory when he asserted that, "If you look long enough for the secret of society you will find it in plain sight: the secret of society is that it was made by men, and there is nothing in society but what men put there". This connects well to the conclusions made by Helmke and Levitsky (2004) that the power structure of the society devise rules that can even shape formal institutional outcomes. According to Helmke and Levitsky (2004) informal institutions covers a wide range ranging from personal networks, clientelism, clans, traditional culture among others. In this regard therefore informal rules should not be treated as a residual category but rather as equally important in shaping the behaviour of individuals.

However, Rational Choice Theorists do not claim that the theory describes the choice process but rather that it predicts the outcome and pattern of choices (Ogu, 2013; Scott, 2000). The assumption is that individual choice preferences are self-interested normally driven perceived economic prospects and social security. At individual level, Rational Choice Theory stipulates that the agent chooses the action or outcome they prefer among all available alternatives.

As noted above the combination of Old Historical institutionalism and Rational Choice Theory contributed to the development of Rational Choice Institutionalism. Scholars in this field argue that behaviours are a function of rules and incentives that guide an individual or individuals to make choices which they think will work to their advantage (see Peters, 1999). It enables them to weigh the benefits before making any decision. The individuals' preferences, in this regard, are shaped by their involvement with institutions prevalent in their societies and have survived the test of time (Peters, 1999;Green, 2002).

Some notable elements of Rational Choice Institutionalism include individual preferences which denotes positive or negative evaluations individuals attach to the possible outcomes of their actions; beliefs which refer to perceived cause-effect relations; including the perceived likelihood with which an individual's action will result in different possible outcomes and; finally, constraints which define the limits to set feasible actions (Witteck, 2013).

There are basically three assumptions to this as noted by Witteck (2013) as follows: first individuals have selfish preferences and are central actors when it comes to making choices, second individuals maximise their own utility and finally third individuals act independently.

These assumptions suggests that an individual is expected to maneuver to maximise personal utilities though his or her options are inherently constrained in the picture rather than just a set of rules (Peters, 1999) as his or her entitlements might be seen to be in conflict with those of others. The basic argument of the rational choice approaches is that utility maximization can and will remain the primary motivation of individuals (see Peters, 1999). However, what is important is how individuals and institutions

interact to create preferences. 'Perfect' institutions will help to shape individual preferences.

This theory resonates well with the concept of '*mwana ndi mwanangwa'* which is basically about choices. *Wanangwa* which literary means entitlement and/or freedom comes with choices and institutions create such a scenario where those choices are made. These institutions have the capacity to extend the choices beyond culture. So practically *'wanangwa'* depends on one's ability to claim it or may choose to sit on it based on circumstances. If you claim it you gain and can defend it using social networks and strength of kinship ties. You sit on it you lose.

The debates coming from institutions and their roles in shaping social life and the rational choice institutionalism which is mostly about choices an individual can make informs the study. Institutions are about rules, formal or informal, and the choices an individual make are a product of such clearly defined rules or in other circles, guidelines put in place by the society primarily to safeguard the interests of its members. These rules are content and context specific to a particular ethnic or regional grouping depending on circumstances. The rules are not rigid. They can either change or be modified based on circumstances. They are simply equilibrium ways of doing things and no single player is allowed to play according to his or her own rules (March & Olsen, 2006).

However, within some broader ethnic or regional grouping, there are some relatively small tribes which develop their own rules which influences the choices they make in the long run. These rules, in some instances, entail complete departure from the original set rules or in some a modification or merging of the two systems (in this case

matrilineal and patrilineal descent system) and create a completely different system as is the case with the Tonga of Nkhata Bay. They are neither fully matrilineal nor fully patrilineal. Their social descent system is ambilineal. As a system it has its own inherent challenges at the same time it also inherent mechanisms to contain them.

The concept of *'mwana ndi mwanangwa'* among the Tonga is about choices one can make as he or she grows up. *'Wanangwa'*, on the other hand, is about 'entitlement' one acquires upon birth. Principally, the concept of *'wanangwa'* as practiced among the Tonga widens the span of choices and, in some instances, it goes beyond culture. It can also be dictated by the market forces which can be a recipe for conflicts in some areas in future. It comes with choices an individual is entitled to and is up to that individual to take it or leave it. Once it is applied an individual is destined to make some gains. Once he or she decides to sit on it then he or she loses out. In this regard, therefore, an individual among the Tonga becomes the center of identity. Institutions, in this regard, create a scenario where choices are made. They shape the actor's choices by providing reliable source of information where proper decisions can be made.

2.8 Summary

This chapter has reviewed literature on various debates on customary land tenure, property rights and the nature of conflicts that are mostly a product of disagreements over the nature of land rights one enjoys based on descent social system. While acknowledging that customary land tenure remains the predominant model of land holding in most parts of rural Africa today, scholars concluded that customary land tenure systems have remained diverse and at times more complicated than imagined. However, their conclusions were based on generalised view on their understanding of

customary land tenure arrangement where a society or ethnic group became the center of analysis. No meaningful attention was paid on those ethnic grouping where an individual becomes the point of identity and analysis. The nature of access to land and its associated rights accorded to each land holder are unique, hence the need to avoid generalisations.

The study was informed by Institutions and Rational Choice Institutionalism. Institutions as rules provided spaces where individuals make choices. This is in line with the concept of *'mwana ndi wanangwa'* which is about choices an individual can make.

The next chapter now focuses on customary land tenure system specific for Malawi and how it has evolved over time.

CHAPTER 3

CUSTOMARY LAND TENURE SYSTEMS AND INHERITANCE PATTERNS IN MALAWI

3.1 Introduction

This chapter focuses on some key studies on customary land tenure system in Malawi and how they have influenced agricultural investment over time. Malawi has for a long time been regarded as a country that thrives on agriculture both for commercial (through estate agriculture) and subsistence (through smallholder farming arrangements (Chirwa & Dorward, 2013; Frank & Osaka, 2001). The commercial farming systems are mostly dominated by the tobacco industry which has long been seen as the main forex earner while the majority of smallholder farmers simply farm for subsistence purposes with a few going commercial. The majority of such subsistence farmers use land under customary arrangement guided by the prevailing local rules. Various attempts have been made to formalise customary land but the local authorities have relentlessly opposed to the idea.

3.2 Customary land tenure system and agricultural development in Malawi

Both the colonial and the postcolonial states believed that customary land tenure is not conducive to agricultural development because it does not provide adequate security to the landholders to make long term investments on the land.

The conventional logic was that communal tenure implies an absence of individual rights where the land user faces insecurity of tenure, which in turn constitutes a disincentive to the investments needed for increasing productivity and efficiency on which agricultural development and general social progress is based (Peters, 2008). Customary land tenure systems, in this regard, were said to lack ownership and therefore could not be used as collateral for development loans. They believed that any meaningful tenure security can only be attained through formal document recognized by the courts. This approach necessitated the construction of customary tenure system as it is known today and the statutory system that defined the legal owner of the land, creating what is termed duo mode approach to land tenure (Chimhou & Woodhouse, 2006).

Based on the Eurocentric view that improvements in agriculture could not be achieved under the communal ownership of land which was deemed insecure (Kishindo, 2011), the Malawi Parliament passed three legal frameworks in 1967 as follows:

1. The Customary Land Development Act which ascertained rights and interests in customary land and for its recognition.
2. The Registered Land Act which established the law and procedures for registering and titling
3. The Local Lands Board Act which provided for the creation of Local Boards in areas where the Customary Land Act has been applied (Kanyongolo, 2008).

These pieces of legislation working together were deemed to be the basis of the envisioned smallholder agricultural revolution which focused much on maize and groundnuts production which would eventually ‘replace’ tobacco (Green, 2010).

These reforms were partly based on the attitudes set by the early colonial administrators and missionaries' attitudes that set individual and private ownership of land as superior to 'communal' or collective forms of land tenure holding which was deeply entrenched in the long-standing cultural pre-condition which was seen to be a setback to any meaningful agricultural investment (Peters, 2008).

Right from the onset the Registered Land Act of 1967 created a normative framework for land ownership where family heads registered customary land in their names, faced stiff resistance as it was seen to be in conflict with the matrilineal system in the area it was piloted (see Berge et.al., 2014; Kishindo, 2011). These reforms were faulted for failing to understand the dynamics of indigenous land tenure systems and its inherent notions of ownership and seeking to avoid the issue of equity and social justice within the social structures. Again, there was no direct link between land legislation or formalization of land and agricultural development. The Government's effort to privatise customary land through the creation of agricultural leases and *Ndunda* system did not bring about agricultural productivity as anticipated (GoM, 1999).

3.3 Land reforms in the post one party era

Following 'pressure' from the donors on the need to improve tenure security the Government of Malawi appointed a Presidential Commission on Land Policy reform in 1996 whose recommendations were adopted in 2002. The major aim of this land policy reform was to ensure equitable access and distribution of land to all regardless of gender. This was to be done through land registration, a development that could see a shift from the basic customary land tenure arrangement where land was owned collectively by a defined ethnic grouping to the creation of customary estates that would now define the customary legal owner. The thinking was that the customary land tenure

system which is currently governed by the uncodified rules and regulation guided by the age-old tradition of binary division between matrilineal and patrilineal systems are seen to be discriminatory in nature and hence a threat to long term investment.

Following this development and in line with the trends that took center stage in most parts of Africa from the 1990s where there was now growing interest in land reform (Amanor & Ubink, 2008), the Government of Malawi adopted the Malawi National Land Policy in 2002 which was aimed at providing institutional, financial and operational framework for the implementation of the new land policy. In the context of the Government of Malawi the basis of this land reform was basically a response to the changing economic, political and prevailing social circumstances which are basically not in line with the current land system which is believed to be a product of the colonial history, settlement patterns, policies of the one-party system and the recent demographic trends.[4]

The product of such trends was the passing of the Customary Land Bill in 2016 by Parliament which was later gazetted in March, 2018. In the wisdom of the framers of the bill the argument was that the uncodified customary land tenure arrangements which were negotiable, fluid and contested posed a potential risk to investors both in short and long term. There was, therefore, the need to shift from customary land tenure system to individual or groups of individuals issued with certificates through the creation of customary estates.

Unlike the 1967 Customary Land Development Act which focused on family heads to register the land in their names, the Customary Estates Land Act of 2016, gazetted in March 2018 has two main components. The first one is that it allows an individual,

[4] Further details can be found in GoM (2002) 'Malawi National Land Policy and GoM (2004) 'Malawi Land Reform Programme Implementation Strategy, 2003-2007.

male or female, to register the land in their name and the second one is that it allows the registration of persons as joint tenants or tenants in common. The advantage of this is that when one person dies, the survivor automatically takes over the property without applying for letter of administration since the person representative will be required to pay estate duty (GoM, 2016).

However, the significance of land titling has been challenged by both academics and later the World Bank who argued that there is no direct correlation between titles to the land and long-term investment since investment was conditional to the functioning of the markets and the availability of credit insurance markets (Amanor & Ubink, 2008). Rather community based social networks are key to determining the level of investment one can make on the land based on the thinking that customary systems are dynamic and changing and are oftentimes evolving towards individual property rights systems in response to the economic changes. Berry (2000) noted that customary systems are not fixed and have the capacity to allow various social actors who use their local social networks to redefine and renegotiate the customary relations. Though ambiguous in nature, the fact that they have survived long historical periods is testimony enough to justify the effective nature and significance of social networks which has bound the communities together for a long time.

Further to that, the Customary Estate Act of 2016 did not consider the complex nature of customary land tenure systems guided by either matrilineal or patrilineal or ambilineal (as is the case with the Tonga) rules and norms common in rural areas which are themselves not rigid or fixed but favour negotiability. They are fluid and can be contestable based on circumstances. The lineage-based landholding systems in Malawi largely appears to be strong where at the core of the landholding system lie cultural

precepts that link a particular lineage legitimately to the land they occupy (Berge et.al., 2014). The strength of such cultural ideas is linked to the size of the population or grouping that subscribe to the set values that have stood the test of time.

Titling of the land therefore would represent a fundamental change in the social organization of the community where a group of new winners and new losers will emerge. This is likely to pose a threat to the existing cordial relation enjoyed before.

Any land reform, therefore, that aims at replacing customary traditions where very different cultures co-reside will always remain problematic (Berge et.al., 2014). Customary land tenure relations in Malawi, as is the case in most parts of Africa, are governed by local customs most of which are content, context and location specific. The unitary application of the land law reform therefore is the basis of contestation as it is seen to be in conflict with the existing traditions based on its 'mechanical' application. This is in line with the argument of William Graham Sumner (1907) who argued that if the laws do not have the support of or are not in agreement with mores of a particular culture, they will not be effective. The affected people will always contest and push the law to the limit.

In this regard, therefore, the nature and form of various inheritance patterns are defined by the owners of the land themselves based on the agreed social norms which fall under either matrilineal or patrilineal systems or where the two systems co-reside as is the case with the Tonga of Nkhata Bay district. The type of inheritance rights developed are unique to them as such the uniform application of the law could be seen to perpetuate, rather than to bring sanity, to issues of conflicts and contestations among its members who share common values and norms.

The current resistance by the traditional and some lineage leaders against the operationalization of the new law is testimony enough towards the unpopularity of the new legislation which is seen to be militating against the traditional norms and values they hold dear to their lives. Up until recently, traditional leaders have been responsible for the allocation or at times certifying allocation of land parcels to families under their charge. In some instances, some even allocated land to nonindigenous members, a development that raised eyebrows to some. Removing such privileges from them sparked sporadic resistance against its implementation (Regalia, 2019).

For it to be effective there is need for enormous technical capacity building to inform the rural masses, a development that might not be easy considering the diverse rules governing land administration under customary arrangement.

This then calls for the thinking that land registration should not be viewed as an end in itself but rather as a means to an end. The law should first and foremost take into consideration the existing social structures that hold members of the society together. Again, particular attention has to be paid on the intended outcomes related to the envisaged increases in agricultural investment and productivity and outcomes for equity and the distribution of wealth (Kanji et.al., 2005).

It is therefore critical to understand the various forms of land acquisitions, the agreed inheritance patterns and the mechanisms adopted in managing the various forms of conflicts and contestations that might emanate from such arrangements. Again, it is important to note that emotional ties between lineage and land have remained strong hence difficult to legislate and expect people to adhere to it fully.

Local institutions which are strongly rooted in the social, political and cultural landscape cannot be easily 'transplanted' from one setting to another. In their own setting they are increasingly being recognized as being key to development, providing rules, norms and governance systems for economy and society at work (Kanji, et.al., 2005).

3.4 Customary land and inheritance patterns in Malawi

Customary land tenure systems in Malawi typically have long been sustained by a very strong tradition of indigenous chieftaincy and in some instances, lineage leaders who may not themselves be classified as village heads but may have a strong influence on their subjects (Holden, et.al., 2006; Kishindo, 2010; Chanock, 1985). They have also remained a complex mixture of community rules of conduct, leadership codes and management principles relating to access and control of land in a given social context (Holden et.al., 2006; Krantz, 2015; Englert, 2008).

Based on the dominant studies conducted by Garcia, 2014) and Berge et.al (2013) in Malawi, it was concluded that tribes in Malawi typically follow either matrilineal or patrilineal descent systems which also define inheritance lines.

The table below depicts the distribution of social descent system and marital residence status.

Table 2: Distribution of descent and settlement systems in the villages of Malawi

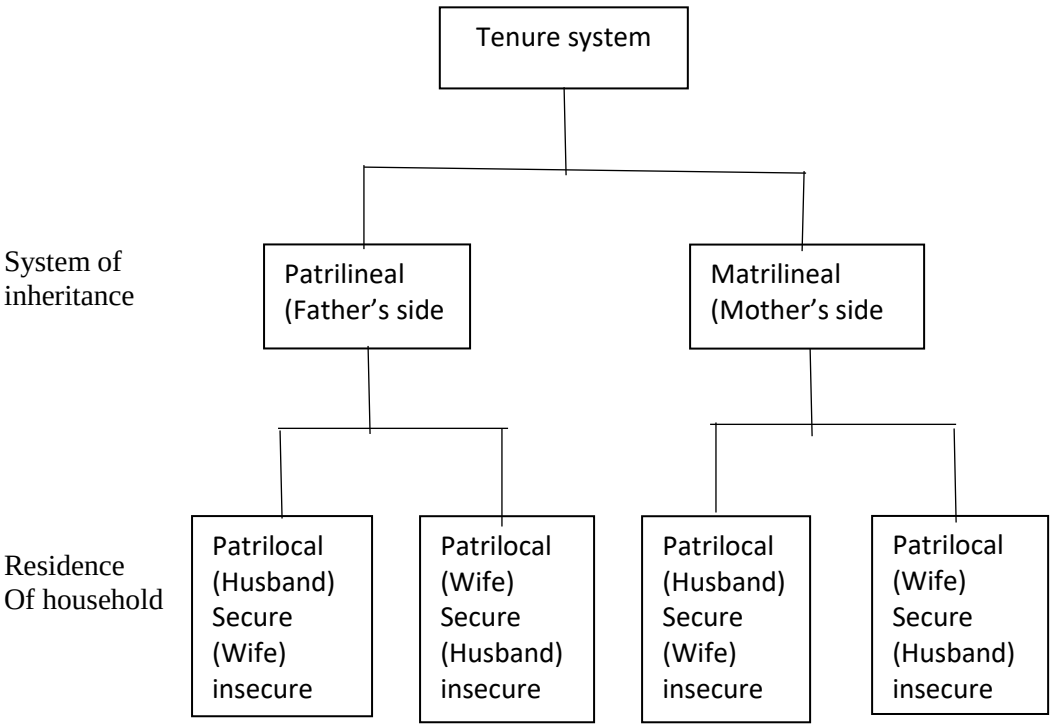
Region	District	Lineage system with more that 50% of the villages	Ethnic group
Northern	Chitipa	Patrilineal	Lambya
	Karonga	Patrilineal	Ngonde
	Rumphi	Patrilineal	Tumbuka
	Likoma	Patrilineal	Nyanja
	Mzimba	Patrilineal	Tumbuka
	Mzuzu City	Patrilineal	Tumbuka
Central	Kasungu	Matrilineal/virilocal	Chewa
	Ntchisi	Matrilineal/virilocal	Chewa
	Dowa	Matrilineal/virilocal	Chewa
	Nkhotakota	Matrilineal/virilocal	Chewa
	Salima	Matrilineal	Chewa
	Ntcheu	Matrilineal	Ngoni
	Lilongwe Rural	Matrilineal/virilocal	Chewa
	Lilongwe City	Matrilineal/virilocal	Chewa
	Mchinji	Matrilineal/virilocal	Chewa
Southern	Balaka	Matrilineal	Yao
	Mangochi	Matrilineal	Yao
	Machinga	Matrilineal	Yao
	Zomba Rural	Matrilineal	Yao
	Zomba City	Matrilineal	Nyanja
	Chiradzulu	Matrilineal	Yao
	Blantyre Rural	Matrilineal	Predominantly Yao
	Blantyre City	Matrilineal	Mixed
	Thyolo	Matrilineal	Lomwe
	Phalombe	Matrilineal	Lomwe
	Mulanje	Matrilineal	Lomwe
	Mwanza	Matrilineal	Ngoni
	Chikwawa	Patrilineal	Sena
	Nsanje	Patrilineal	Sena

Source: Berge, et.al., 2014

From the table above it can be noted that matrilineal descent system dominates in districts where the Chewa, Lomwe, Ngoni (apart from Mzimba Ngoni) and Yao while the patrilineal social descent system dominates in the whole of the northern region and in Chikwawa and Nsanje in the southern region. Districts of Chiradzulu and Blantyre

do not have a dominant ethnic tribe. They are a mix. There is no proper explanation for that suffice to say that Blantyre is a commercial hub while Chiradzulu provide the bulk of informal labour force due to its proximity.

The general argument is that almost the whole of the central region and a bigger part of the southern region follow the matrilineal system while almost the whole of the northern region and parts of the Lower Shire follow the patrilineal system. Apart from defining rules of inheritance which are not rigid, the two descent systems also define marital residence and their associated tenure security. The diagram below illustrates that:



Source: ***(Source: Lunduka et.al. (2009***

Through these two main descent systems, it has been noted that parental investment in human social capital has played an important role in transmitting cultures, customs and mores that have held their societies together over time. Parents and lineage leaders become principal agents and that kinship is built around a unilineal descent group in

which kin membership is transmitted from generation to the other through ancestors of one gender (Ferrara & Mulazzo, 2012). For instance, those that follow patrilineal system inheritance pass through the male line and children are considered part of their father's kin group. Those that follow matrilineal system inheritance pass through female line and children are known to be part of their mother's kin group (Ngwira, 2002; Ferrara & Mulazzo, 2012). The relationship between a son and the father in matrilineal society is weak, the responsibilities assigned to the father are mostly taken over by the mother's brother. At the minimum matrilineal kinship determines the lineage to which an individual belong and such a practice has far reaching implications for social, cultural and political practices (Gottlieb & Robinson, 2016).

What is important to note from the discussion is that though patrilineal and matrilineal system of inheritance involve important differences not only in terms of social organization but also for the intergenerational transmission of property. A general principle to both is that rights to inheritance are usually gender-linked: males to males and females to females (Ferrara & Mulazzo, 2012). They determine the rules governing the nature of social affiliations that affect land use and control and these social affiliations take three forms namely:

- Groups (bonded units where members are aware of common membership)
- Networks (unbonded series of links between persons)
- Categories (unbonded set of people with a common interest or characteristic (see Shipton and Mitzi, 1992)

These two systems have survived the test of time and they determine the nature and form of property rights and inheritance patterns which influences the nature of

agricultural investment a landholder can make. The power to interpret and reinterpret historical events is of immense importance.

A good number of studies conducted on customary land tenure system in Malawi have so far paid much scholarly attention on the inheritance patterns and their associated conflicts within the binary division into matrilineal and patrilineal descent systems. Studies conducted by Berge et.al (2013) and Peters (2013) concluded that land inheritance, which is by far the most common form of land acquisition in most parts of Malawi (just as is the case with most parts of Africa), follow either matrilineal or patrilineal patterns as a means of organizing social systems within a community or tribe. Access to land is based on group membership with common norms and rules. Further to that evidence from the studies conducted by Takane (2007) and Holy (1983) have so far demonstrated that the application of the two systems has not been mechanical in nature. As opposed to the 'complete' erosion of the system noted in some studies cited in the previous chapter, in Malawi evidence of sporadic deviation from the normal practice has been noted in selected areas based on varying circumstances.

The inheritance rules, though presented as such, are not 'mechanical' in application. Evidence from some selected societies or tribes have demonstrated some changes, in others flexibility in the application of the prescribed descent systems. The reasons varied. A study conducted by Phiri (1983) among the Chewa of Central Region of Malawi demonstrated that uxorilocality had several implications for both wife and husband. For a wife it generated conflict between being loyal to her own kinsmen on one hand and being loyal to her husband on the other while for the husband it meant isolation from the base of his authority in his own matrilineal village. Such developments have repercussions on the nature of investments one can make on the

allocated land parcel. A man's economic strategy is based on his knowledge that it will not be frustrated anytime soon. This compelled some to opt for a neolocal scenario where they could live privately and maintain a small house at the matrimonial home (Englert, 2009).

Further studies on the two systems, especially here in Malawi, have also shown that the application of the rules in some districts or areas were not fixed. Rather, they were flexible based on circumstances. In some instances, evidence of deviation from the normal rules was noted. For instance, Takane (2007) noted that although the majority of land transactions followed customary land tenure system and inheritance rules, in a good number of cases land transaction deviated from the normal basic rules. For instance, in Kachamba village under T/A Mawere in Mchinji district, where matrilineal rules of inheritance are practiced, cases where both sons and daughters received land from their biological fathers were common (Takane, 2007). Similar studies conducted in Horo which followed patrilineal rules of inheritance revealed the existence of both rigid and flexible applications of rules of inheritance where land acquisition was through both gifting and inheritance (Takane, 2007, p. 17).

A study conducted in some parts of Rumphi also demonstrated notable deviations from the normal rules of inheritance that basically followed the patrilineal patterns. With the expansion of Nyika National Park, a lot of villagers relocated some to distant places while some settled close by. Two of the villages that settled on the outskirts of the National Part were Mwahangula and Matupi. As first occupants in the relocated areas, two main issues developed. The first one was the emergence of female heads who managed the affairs of the village and the second one was that they devised their own

system of land allocation and inheritance patterns (Munthali, forthcoming). These female heads were either divorced or widowed and favoured allocation of land to daughters when need arises which was against the principles of patrilineal system. Two main basic arguments can be raised to defend such a move. The first one is that Tumbuka people were originally matrilineal and as such one could conclude that it was within their frame of mind to be considerate towards their daughters. The second one was that being the first occupants and again mostly being headed by female heads it can be assumed that it was obvious to protect the interests of their daughters.

However, it should be noted that these deviations from the normal practice have the potential to cause conflicts in future and are likely to have a negative impact on the nature of investment if proper measures are not put in place.

From the discussions above, it can be noted that the nature of land transactions in Malawi is complex and such complexity implies that carelessly simplified views of land tenure systems and inheritance rules based on a matrilineal/patrilineal dichotomy alone may be insufficient (Matchaya, 2009). An understanding of different social structures could be vital with an aim of understanding the diverse and complex nature of customary land tenure system. For instance, a study conducted in Lilongwe Rural demonstrates that residency in the villages was classified as follows. The first one was *'apao apao'* meaning absolute indigenous where both parents are from the same village. The children born out of this union have a strong tenure security than the rest. In this case, the 'apao' are like the owners of the village. Their rights (which constitutes the full bundle of rights) include the right to use, transfer and exclude others from use. The second one was '*apao obwera'* meaning indigenous where their mother is from the

village but their father is not from the village. In this regard, it can be seen that the indigenous are fathered by a nonindigenous father. They can still inherit land using the matrilineal system of descent but tenure security is 'weaker' than in the first category. The third category is that of *'obwera apao'* also referred to as weakly indigenous where the mothers are not from the village but their fathers are. These cannot inherit land legitimately. This arrangement is locally referred to as *'chitengwa'*. There could be several reasons as to why one might be found in this situation, the commonest being when the man has been identified to inherit chieftaincy in his natal home, he relocates together with his wife to assume the new role. Though minor, the other reason could be following a request from the man to his marital in-laws to allow him to take his wife to his natal home in order to take care of either the ailing or aging parents. According to the matrilineal tradition the children born out of this arrangement (indigenous father and nonindigenous mother) cannot inherit land legitimately. If they do, they can be challenged by those from the matriline. The last category is *'obwera obwera'* meaning nonindigenous whose both parents are not from the village and may not enjoy much security of any land holding (Matchaya, 2009). This category includes those households that do not belong to the village lineage and are not supposed to inherit land from the owners who are in this case legitimate owner.

These classifications as presented by Matchaya (2009) are not just definitions of marital migrants. They are concepts loaded with values. They define power, vulnerability, who has influence and who has not, who has rights and who has not. They also define the nature of security related to the kind of rights one has in terms of their breadth and duration and the degree of assurance which may influence the nature of investment one can make. More importantly, they carry certain emotive values attached to them. At the

same time, they are contestable and they get contested over time through intermarriages, length of stay in a particular locality coupled with labour invested in the land due to uninterrupted use of the land in question. For instance, for how long does one remain 'obwera'? When and where does it stop? It is only the actors themselves (who are predominantly lineage leaders or to a certain extent, migrants themselves) that can draw the limit. They can be subjected to certain bargaining processes that take place which are often times constructed and contestable. For them to protect their interests and rights, they can use such tools like length of stay, kinship identity, constructed social networks and the nature of labor invested on the land in use. The need therefore to treat each category contextually to avoid generalisations is critical.

What can be concluded from the discussions above is that in most parts of the country means of accessing land are generally flexible and negotiable. They are created based on use and are embedded in complex social, economic and political relations (see Berry, 1989). The users of such a natural resource are socially differentiated along various dimensions that include amount of wealth accumulated, political authority acquired over time, class, gender and at times ethnicity (Berry, 1989,2000).

3.5 Understanding 'custom' and 'customary'

Every society conceives its tradition as a fundamental tool to understand itself since they symbolize continuity, cultural identity and orderly existence (Chanock, 1985). Within them they have elaborate rules that define what they are supposed to do or not to do (Gluckman, 1955). The images of these traditions often times compete against each other and have the capacity to change to suit the prevailing circumstances but at

the same time maintaining the core values embedded in their long-standing customs or traditions.

For purposes of this work 'customs' shall be defined as beliefs, values or practices common to a particular place or class or a tribe/ethnic grouping. These customs comprise of uncodified rules created at different times and are subject to manipulation based on the available amount of spaces within the society which may generate tension and conflicts among people of common descent. The concerned people may use tools such as good social networks, construction of kinship or tribal identities coupled with long and uninterrupted stay in the area to justify their claim. The whole system is transitory in nature and may not freeze at any point in time. Rather, it may only transform to accommodate the changing environment at the same maintaining its core values. However, in a bid to protect the interest of the wider social group the lineage leaders may use the same customs to restrain other people from destroying the wider social order constructed over a period of time (Gluckman, 1955). In other words, as lineage leaders they are duty bound to protect or safeguard the rights and interests of the subjects under their charge.

In the event of any contestations over land which may be a product of challenges in inheritance patterns or contesting the rights one may have over a parcel of land, the chiefs or lineage leaders may act as brokers and play a mediation role within the kinship system which is the basis of the social organization usually built around a unilineal descent group in which kin membership is transmitted from one generation to the next through ancestors of one gender (Ferrara & Milazzo, 2012).

Customary, on the other hand, can be defined as doing according to custom. Customary allegiances often times unite people as they create room for developing kinship ties among people of common descent who share a measure of what may be called 'compulsory institutions' like kinship where people stress their identity and exclusiveness (Cohen, 1969;Gluckman, 1959). Customary land tenure system can therefore be seen as that land administered according to the customs of a particular ethnic grouping or tribe. An ethnic group in this case is seen as a grouping of people whose attributes include compulsory institutions, ease of communication and the involvement of corporate political interests (Cohen, 1969). Their level of interaction and communication is high among its members. This is slightly different from ethnic category which refers to members, predominantly those that might have migrated away from their natal homes but retain a great deal of their culture (Cohen, 1969). Such variations within the ethnic bracket are also a source of conflict and contestations as others may claim more rights than the rest. In this case the significant role of lineage leaders as 'gatekeepers' in defense of the old age tradition is seen to be critical as they have the capacity to identify the individuals who may have legitimate claim over the land in question.

Customary land tenure systems are therefore seen as institutions (rules) invented by human beings in a society to regulate behavior and define how property rights to land are to be allocated to its members within the society or community in question (FAO, 2002) and in the process protecting their rights including of those of the future generation. They regulate the right to use, control and transfer alongside the associated responsibilities and restraints whenever need arises and wherever possible. These constitute what is termed as the 'bundle of rights' as discussed in the subsequent

paragraphs below. This is done for the common good of the members of the society as it enables them to clarify and segregate the nature and forms of rights an individual or a group has.

These rules are content and context specific and can vary geographically and over time (Kasimbazi, 2017). They have both spatial and temporal dimensions that can be impacted differently by notions of gender, ethnicity, class and at times, political affiliation of the time. They are often flexible, fluid, contestable and negotiable and are often transitory in nature. Their kind of fluidity encourages people to renegotiate their identities and social relations which may create conflict zones since not all have a capacity to negotiate in the same way (Berry, 1993). The most common mode of transmission is mainly through inheritance (through the mother if it is in the matrilineal society or through the father if it is in the patrilineal society). However, it should be noted that in some instances deviations from the normal 'route' can happen based on circumstances which can be a source of conflict among the members of the clan or society.

Although usually individuals and households get access to land through intergenerational succession and inheritance, it should be noted that most land holders enjoy user rights only and they are strictly limited to the members of the clan only. Very rarely can community land be sold or allocated to a non-lineage member. Doing so in most cases may lead to conflicts.

Customary land tenure systems are complex with overlapping rights and are embedded into systems of hierarchy where economic, cultural and at times religious aspects are

interlocked (de Nobel, 2016; Cotula, 2007). They are mostly managed either by local leaders or clan/lineage leaders often through social or family arrangements (Elbow, 2014). They are likely to provide high levels of security as they are believed to be the primary source of legitimacy and have the capacity to evolve over time. They also constitute a web of intersecting interests and these may include: overriding interests when sovereign power has the capacity to allocate or reallocate land through expropriation, overlapping interests when several parties are allocated different rights to the same land and complementary interest when different parties share the same interests in the same parcel of land like common grazing land (FAO, 2002). This implies that multiple rights can be held by several different persons or groups and this may have an implication on the nature and form of investment one may plan to make.

Land tenure system should therefore be seen to be an important part of social, political and economic structures whose multi-dimensional approach brings into play social, technical, economic, institutional, legal and political aspects that are often ignored though at times taken into consideration (Boto & La Peccerella, 2012; FAO, 2002). It is always historically situated and patterns of change and continuity emerge from the interactions and contestations of heterogenous interests which are both enabled and constrained by unequal economic structures, the operation of the market and the changing cultural discourses and practices (Cousins, 2009).

In this regard, therefore, a society's ability to define and within a broad system of the rule of law, establish institutions that can enforce property rights to land as well as to other assets is a critical precondition for social and economic development (Deininger, 2003).

3.6 Land conflicts in Malawi context

In Malawi, studies on conflicts over land administered under customary land tenure arrangements have revealed increasing social differentiation even among people sharing common descent system. The general principle is that the two descent systems of matrilineal and patrilineal, which have received adequate scholarly attention, are not as straight forward as imagined. In their simplistic views inheritance patterns under matrilineal descent system follows the female line while those in the patrilineal descent system follows the male line (Berge et.al., 2014). However, what has been noted within these systems so far is evidence of exclusion and social differentiation among landholders of the same descent system which generates various forms of social conflicts among the family members. The various forms of social conflict noted so far are a product of 'stricter' definition of legitimate claims and rights to land. Who has more rights than the other and on what basis? Arguably, this could either be based on the basis of either seniority in terms of birth or family line or accumulation of wealth over time which may lead to change of status of certain individuals (Peters, 2004). Such developments ended up fueling divisions within the significant social units of family and lineage among others.

A study conducted by Peters (2002) in most parts of southern Malawi demonstrated that processes of social differentiation and exclusion among family members sharing common descent system was common. This is evidenced through the multiple quarrels registered among sisters sharing either common parents or sharing common grandparents. This 'hidden' dynamic is constantly taking place within the families and in some cases, it goes beyond sisters to include the second generation of matrilineal

segment (Peters, 2002;Peters, 2013). In worst-case scenarios, some have even been forced to migrate to a neutral venue where they could start new life altogether.

These studies have so far demonstrated that customary land systems are indeed fluid and can be contested over time hence the need to avoid generalization and treating them as a homogenous entity. Their fluidity encourages people to renegotiate their identities and social relations to either confirm existing arrangements or to change them (Berry, 1993) in the process creating new winners and new losers. However, with the use of local institutions the society is able to mediate in the event of any such contestations.

The studies so far have focused much on the matrilineal and patrilineal descent systems where inheritance pattern follow a particular gender line. Either practice has its own strengthens and weaknesses which have been dealt with in much detail. Their major findings demonstrated that the various forms of land contestations were based on either deviation from the normal practice or intrafamily conflicts based on differences over land rights. Missing from their discussion is the debate on rights and obligations and possible conflicts over land where there is flexibility when it comes to choice of residence as is the case of the Tonga of Nkhata Bay who have a unique cultural concept based on the principle of *'mwana ndi mwanangwa'*. At its basic interpretation the concept suggests that children can access land from any of the four locations where his or her parents came from on equal footing. Details of the four locations have been presented under results (figure 4.1). This makes the Tonga society to be an extreme 'network' society where individuals are connected to each other in so many ways. The individual becomes the source of identity and crisis at the same time depending on circumstances. The strengths and challenges associated with such a unique arrangement

have not been studied in depth. This then calls for a thorough analysis of customary land tenure systems which have grossly remained ambiguous.

3.4 Conclusion

This chapter has showed how land is accessed, used and contested by individuals and households. Access to land under customary land system is largely guided by descent social systems prevailing within a particular society or community sharing common tradition. It could be matrilineal, patrilineal or ambilineal as is the case with the Tonga. It has been noted that both systems are not as straight forward as imagined. The systems have both their inherent strengths and weaknesses. Missing in the discussions is the detailed analysis of land inheritances in a nonlinear descent system as practiced by the Tonga. With this, what can be concluded is that no single study can adequately address the wealth and complexity of these issues across the cultural divide.

Much as there has been a shift to glorify titling of the land, in much of Africa where titling has been implemented most resource users still gain access to resources through local structures as the process is seen to be less cumbersome. While these local systems remain extremely diverse, they generally involve unwritten arrangements, providing access to land on the basis of kinship and status, and relying on 'customary' authorities to manage land rights (Kanji, et.al., 2005).

In this regard, therefore, land registration is not an end in itself but rather as a means to an end towards improving livelihoods and promoting sustainable rural development (Kanji, et.al., 2005). Some scholars have argued that codification will lead to loss of flexibility which is one of the strengths of customary land tenure systems.

The next chapter looks at the methodology used to collect data for the study.

CHAPTER 4

RESEARCH METHODOLOGY AND METHODS

4.1 Introduction

This chapter focuses on the nature of research design and methods adopted in order to come up with the data that informed the study. The study took an interpretive approach in order to understand people's lived experiences which helped to explain the unique Tonga culture.

The research design and methodology followed a sequence of three stages. The first stage comprised defining the research problem and development of the objectives aimed at addressing the research problem. The second stage had two tasks that ran concurrently. The first one was developing a research tool, in this case an interview guide. The second part was identification of research participants in selected research areas. This was done through consultations with members of Tonga Heritage locally known as *'Mdauku wa aTonga'*. This is a newly formed Tonga grouping aimed at promoting Tonga culture and its membership covers people from across the district. The final stage comprised of the actual field research, data processing, analysis and preliminary interpretation of empirical results and report compilation.

4.2 Methodology

This is an ethnographic study which focuses on studying situations as they occur in their natural setting to gain an in-depth understanding of the lived experiences from the actors themselves (Higginibottom et al., 2013). These lived experiences are often drawn from socially shared values which are predominantly unwritten and unquantifiable. They are often created or constructed by the members of the community that share common values and are enforced outside the formally sanctioned channels. It includes an understanding of the overt or explicit dimensions of culture that are known and cognitively salient to members of that particular culture or subculture but nevertheless shared (Higginibottom quoted from Fetterman, 2010).

In order to achieve an in-depth understanding of land governance among the Tonga of Nkhata Bay following this system, the study adopted the interpretive paradigm of qualitative research which aims at understanding and interpreting the behaviours of the actors themselves (Akaateba, 2018). Unlike the positivists who focus on finding the laws that will lead to prediction and generalisation, the interpretivists have a common aim of digging deep and understanding the actual lived experiences from the point of view of those who live it and how they plan to safeguard it amidst evidence of cultural erosion.

Interpretivists oftentimes look for meanings and motives behind people's actions that have stood the test of time. This includes different forms of behavior and the way they interact with each other in the society, the way they manage their local conflicts and the way they uphold the ideas about their socially constructed cultural principles over time. These meanings vary and are multiple in nature, leading the researcher to look for more

complex views that lead to the construction of social reality rather than narrowing the meanings into a few categories or ideas.

The interpretive approach, in this regard, focuses on the fact that the social world is constructed by human beings and that the constructed social practices are not fixed but are transitory in nature (Olssen, 2004). The lineage leaders and in some cases chiefs or clan heads act as human 'archives' or gatekeepers whose main interest is to protect the age-old tradition for the benefit of the future generation. This view holds that human social life is based less on objective, factual reality than real ideas, beliefs and perceptions people hold about reality (Neuman, 1997).

The Interpretive approach, therefore, trusts and favours qualitative data arguing that it has the capacity to capture the fluid processes of social life (Neuman & Robinson, 2009). This approach goes hand in hand with the critical approach which emphasizes a multilayered nature of social reality that goes beyond the visible social reality. The proponents of this approach believe that research is not value free hence needs to be put into action. The experiences of people are essentially context bound hence the need to be understood in depth through a case study approach (Phothongsunan, 2010).

4.3 Research approaches and research methods

The study adopted a case study approach. A case study is an inquiry that focuses on describing, predicting, and/or controlling the individual, group of individuals, industry, culture or nationality (Woodside, 2010; Gerring, 2007). It may be understood as the intensive study of a single case where the purpose of that study is at least in part to shed more light on a larger class of cases (Gerring, 2007). A case may be created out of any phenomenon so long as it has identifiable boundaries and more importantly comprises the primary object of an inference (see Gerring, 2007; Woodside, 2010). It comprises the type of phenomenon that attempts to explain certain features of a particular tribe or ethnic group like their behavior, cultural norms and beliefs. It may provide single or multiple observations.

In this regard therefore it can be noted that a case approach provides an intensive, holistic description and analysis of a single, bounded unit situated in a specific context to provide insight into real-life situations as it focuses on answering the questions 'how', 'why' and 'who' (Akaateba, 2018; Ponelis, 2015; Cresswell, 2015). To achieve the intended purpose, it uses multiple sources of information like observations, oral interviews, audio-visual materials and documents and reports (Cresswell, 2015). Case studies produce holistic understandings of rich, contextual and generally unstructured non-numeric data by engaging research participants in their natural setting (Cresswell, 2015).

This approach helped to carry out an in-depth understanding of the concept of *'mwana ndi mwanangwa'* a unique cultural principle followed by the Tonga of Nkhata Bay.

4.4 Choice of Study site

Nkhata Bay is one of the districts located to the northern part of Malawi. It has two major tribes namely the Tonga who are the majority accounting for 64% of the total population and Tumbuka accounting for 33%[5]. The remaining 3% is distributed among the rest of the other tribes (Chewas, Lomwes and Yaos among others) found within the district who came either as migrants or those that came through settlement schemes established under the one party led government of the Malawi Congress Party and never relocated back to their original homes after the closure.[6] Some came to the district join wage employment in the two main estates of Vizara Rubber Estate and Kawalazi Tea Estate.

4.5 Data collection methods: Key informant interviews and Document analysis

4.5.1 Key informant interviews

This was divided into two parts which ran concurrently. The first part involved exploratory interviews aimed at identifying key informants. These were purposively sampled through the Tonga cultural grouping of *mdauku wa aTonga* launched in 2017 but its preparations started in 2016. For a close follow up on key issues, snowballing was used. These sampling methods (purposive and snowballing) were preferred because the respondents were deemed to be people with specialized knowledge or critical information about Tonga cultural practices. They could not, therefore be randomly selected.

Through this process two groups emerged. The 'mdauku' group who are believed to be the custodian of the Tonga culture and the 'revisionists', a grouping whose aim is to

[5] Nkhata Bay District profile, 2013
[6] Nkhata Bay Profile, 2013

'correct' the wrongs[7] made. The tools used included interview guide and a voice recorder.

Participants were interviewed use of interview guide and a voice recorder. This took place period between June, 2017 and December 2017. The next set of interviews were conducted between February 2018 and June, 2018. study first took the exploratory approach aimed at identifying key actors who are knowledgeable of the Tonga cultural features that make them unique. The focus was to understand the genesis of the Tonga philosophy of *'mwana ndi mwanangwa',* how it affects land governance which has a bearing on land-based investment and an analysis of their strengths and weaknesses.

The first to be interviewed were the first four chiefs who, historically, are believed to be the descendants of the earliest Tonga land (Nkhata Bay). These are Nyaluwanga, Timbiri, Kabunduli and Mankhambira (see Figure 5.1 Map of Nkhata). Historically Nyaluwanga was the first to arrive. The actual place from where the Nyaluwangas originated from remains unclear. Records from the National Archives simply indicate that they crossed over the lake through Usisya and settled in what is now known as Chikwina. These plus other chiefs are members of the Chiefs Council, a re-invention of Atonga Tribal Council (ATC) which was formed during the colonial time whose mandate, among other things, was to preserve the Tonga culture. The purpose was to understand the concept of *'mwana ndi mwanangwa'* as practiced among the Tonga, its origins and how it influences choice of residence and land governance issues. Over and above that, the other aim was to explore its weaknesses and strengths and how it had evolved over time.

[7] The wrongs being referred to here are the glorification of nephews wherever matters of inheritance were concerned. In case of land whether the nephew equally enjoys transfer rights. When it comes chieftainship whether a nephew is a rightful heir.

The next set of participants comprised of selected Group Village Heads, Village Heads and lineage leaders. In Tonga culture village heads can also be clan heads or lineage leaders. Culturally, these are seen as gatekeepers. The majority of them are knowledgeable about the Tonga genealogies locally known as *'mkoka'*. The purpose was to acquire in-depth understanding of the rights and obligations of the land holders and how they defend those rights in the event of rival claims.

4.5.2 Document review

This involved a systematic review of unpublished official reports from Department of Lands in Nkhata Bay and the documentation unit at Center for Social Research (CSR). At the Lands office the file labelled 'Garden Disputes' provided an insight to the officially recorded land disputes which either chief or lineage leaders failed to resolve. There could be a number of reasons based on circumstances. At CSR reports on customary land studies mainly conducted in the southern region were consulted.

The study also benefitted from archival sources from the National Archives in Zomba and Mzuzu. The colonial government made it mandatory for the Provincial Commissioners to record tribal histories in the districts under their charge. District Year Book of 1901 contained Tonga tribal histories detailing chieftaincy and land acquisition systems though with some controversies. Some details reflected what is on the ground.

4.5.2.1 Published sources

The study also benefitted from a series of publications found in Chancellor College Library, Mzuzu University and through internet searches. The aim was to understand how other scholars had handled similar issues in terms of theory and methodology. The first step was to develop an understanding of various forms of customary land inheritance patterns within the matrilineal and patrilineal descent systems. This was

followed by an understanding of how rights accorded to each land holder affected the livelihood activities of those who depend on land. The second part was to understand the various form of land conflicts, how they affected people's livelihoods and the mechanisms that existed to resolve them.

4.5.2.2 Data management and analysis

During the interviews data was collected using an audio recorder which was later transcribed manually. The process of transcription posed its own challenges as it was difficult to find the English equivalent of some local words which were frequently being used. For instance, the classification of words like *'wendi mtufu*' literary meaning 'he or she has rights', *'mtufu umana'* or 'mtufu weneku' literary meaning limited and unlimited rights respectively. It became difficult to classify them in terms of user rights, transfer rights and management rights.

The process of analyzing qualitative data normally moves from description to interpretation through some sort of an identical process (Grbich, 2013). The first step was data familiarization or content analysis with a view to identifying patterns which were later coded. The patterns that were coded included participants narratives, behavior patterns of landholders towards each other, cultural values, strategies employed to justify the claim and beliefs people hold in relation to the rights over land.

The second step was thematic analysis which involves identifying, analyzing and reporting the coded patterns within the data and organising them into rich detail (Braum & Clarke, 2006; Grbich, 2013). Thematic analysis, therefore, focused on the human experience with emphasis on participant's perceptions, feelings and lived experiences (Braum & Clarke, 2006). It aims at generating an analysis from the bottom up and its

shaped from the researcher's standpoint and disciplinary knowledge (Braun & Clarke, 2006). Using their lived experiences, the following themes were generated: land inheritance processes, acquired land rights and rules and conflicts and contestations and the means of resolving them. This was later linked to the larger research literature developed by other scholars in the related field.

4.6 Conclusion

For a meaningful understanding of the Tonga cultural concept of *'Mwana ndi mwanangwa'* the study adopted the interpretive approach. This provides an opportunity to get an in-depth understanding of people's lived experiences. It gives an opportunity to capture the voices from the actors themselves and make meaning out of it. The next chapter presents the results and their discussions of the study.

CHAPTER 5

RESULTS AND DISCUSSIONS

5.1 Introduction

This chapter presents a combination of both the results and discussion of the study following the fieldwork. The main aim of the study was to understand land governance in a multilinear descent social system of the Tonga of Nkhata Bay in Malawi. Specifically, the study aimed at examining land acquisition and inheritance patterns, an analysis of the rights and obligations of different land holders and finally an examination of the nature of conflicts and the rival claims and their influence on land-based investment.

The multilinear social system of descent as practiced among the Tonga is a product of the cultural concept of *'mwana ndi mwanangwa'* which gives a child liberty to access land in multiple locations as part of his or her entitlement. However, the cultural concept does not provide absolute freedom. While it is agreed that the concept provides individuals with freedoms and choices, it also contains inherent contestations and at the same time it provides mechanisms to contain or deal with them.

Selected case studies have been included explaining varying reasons that can compel an individual to choose where to settle, the rights and obligations they enjoy and their limitations where applicable and the recorded contestations.

A number of respondents provided varying views on the concept saying that much as the cultural concept gives a child liberty to choose where to settle, it does not give him or her full inheritance rights. Two narratives with opposing views emerged. One account said an individual has more inheritance rights at his or her biological father's home than at the maternal uncle's home. In local terms they said *'mwana wendi viharu kwa a wiski'* literally meaning a child has absolute inheritance rights at his or her biological father's village. They further said that *'m'phwakaya walivi chikhazi kwa asibweni waki'* literally meaning a nephew cannot claim permanent residence at the maternal uncle's place. He can easily go back to his biological father's place based on circumstances. The other account places emphasis on the fact that a nephew is *'mpapi'* (parent or clan head) as such has more inheritance rights at his maternal village than the biological sons. It is such contradictions that are now a source of the various forms of contestations between sons and nephews across most parts of Nkhata Bay where such a cultural practice is common.

However, despite such variations in their responses, the presence of nephews living side by side with their cousins is heavily felt in almost every village. A selected number of case studies have been included to provide concrete evidence of freedoms one enjoys when it comes to the application of such a cultural concept and some challenges faced when there are disagreements on the extent of rights enjoyed.

5.2 Land acquisition and inheritance patterns

An individual can access land through both matriline and patriline. Principally, the cultural concept of *'mwana ndi mwanangwa'* suggests that an individual can access land in any of the four locations as presented in the diagram below:

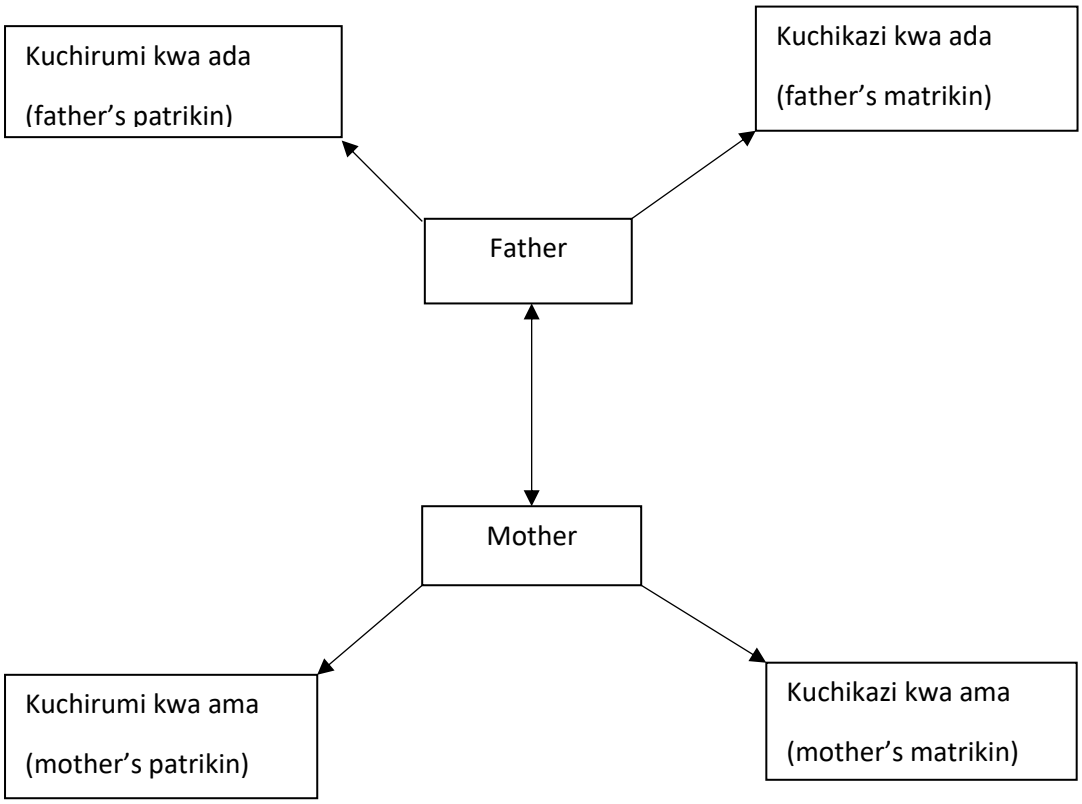


Figure 4. 1: Potential settlement areas

The figure above illustrates the possible destinations where one can settle and potentially acquire land for both residential as well as for investment purposes. In a normal situation, a Tonga distinguishes between two primary categories of *'kuchikazi'* (on mother's side) and *'kuchirumi'* (on father's side).[8] Ideally, what it means is that most Tonga people have two sets of kinship ties namely patrilateral and matrilateral

[8] A detailed description of this was provided by T/A Mankhambira who collaborated with the detailed study done by van Velsen in 1964.

where one can claim residence and subsequently acquire land for investment. Further evidence has shown that it can even go beyond that. A Tonga child can claim residence in four (or even more depending on circumstances) villages and acquire land with varying rights. From the biological father's side, a child can claim residence from *'kuchirumi kwa ada'* (father's patrikin) where the mother lives virilocally and *'kuchikazi kwa ada'* (father's matrikin). From the biological mother's side, a child can claim residence from *'kuchikazi kwa ama'* (mother's matrikin) and *'kuchirumi kwa ama'* (mother's patrikin). Much as matrilineal kinship ties are on the whole greater than patrilineal kinship ties especially when it comes to chieftainship inheritance, both sets of ties exercise a great degree of flexibility when it comes to one's choice of residence and the subsequent land acquisition, details of which have been discussed in the subsequent sections below.

The illustration above provides the basis of multiplicity of claims in multiple locations. The existence of such multiple claims also provides individuals with freedoms and choices which sometimes may also be manipulated to one's advantage and consequently be a recipe for future contestations based on circumstances such as changes in land value as discussed in the sections below.

5.2.1 Individual mobility and land acquisition

There are a number of reasons that may influence an individual to make a choice of where to settle. The majority of the respondents said social security and economic potential were among the main drivers that influenced choice of where to settle. The most common ones include: need for more land to carry out meaningful land-based investment (as illustrated in Case A below), need to be closer to schools where children can easily go and learn (as illustrated in Case B below) and at times it can be by

invitation from maternal uncle's village. This could either be to inherit chieftainship[9] as presented in Case C below or at times to beef up the number of male children at the maternal uncle's village. In some instances, some made a choice based on personal interest.

Principally, what was noted is that when deciding on where to settle, individuals aim at first securing for themselves lasting access to land for them, their children and, where possible, for their future generation. They aim at moving to location where they hope to fulfil their immediate and long-term investment goals for themselves, their children and their entire generation to come. Locally they said *'mwana walondo ko wakachijanga umampha'* literary meaning a child will always choose to settle where he or she feels safe and secure. It could be at the biological father's side or maternal uncle's side. Once a decision is made, the first task one does is to invest in good social networks with those already on the ground. The peaceful co-existence with his or her cousins alongside other relations will determine the length of stay in the village which has a bearing on the nature of land-based investment he or she intends to make. The two cases below illustrates evidence of relocation due to land pressure:

Case A Relocation due to land pressure.

A man called Mr. Phiri (not real name) narrated that he relocated from his father's place, Kavuzi, to his maternal uncle's place, Mpamba in 1964 following land pressure when the Commonwealth Development Corporations (CDC) opened a tea estate which later became to be known as Kawalazi Tea Estate. This was initially part of the Colonial

[9] Chieftaincy inheritance among the Tonga is one of the most complicated one. Others argue that a nephew is the rightful heir while in some circles they argue that a direct son inherits chieftaincy from the biological father. Based on the recent court interpretations on Kabunduli and Mankhambira chieftaincy one can conclude that it is content and context specific. In the Kabunduli case the court ruled that the son inherits from his father while in Mankhambira case the court ruled that a nephew inherits from his uncle.

Development Project. The opening and later expansion of the estate meant relocating people with very minimal compensation. The affected villagers were forced to relocate, some to hilly areas not suitable for subsistence farming. It was made worse in Kavuzi and Kajilirwi areas, near Mzenga, following the expansion of Kawalazi Tea Estate, then under Malawi Young Pioneers.[10] Farming land was greatly reduced. A number of families were forced to start looking for land elsewhere. One such family that was heavily affected was that of Mr Phiri. They had four sons and two daughters. One of their sons simply decided to relocate to his maternal uncle's place following land pressure in the newly allocated area which was hilly and mountainous, not conducive for subsistence farming. His uncle gladly and easily welcomed him as '*m'phwanga'* literally meaning nephew. He was allocated land (which belonged to his maternal uncle) where he built his house. He was also allocated good farming land where he is growing all sorts of crops, including banana which is one of the major cash crops in the area (see appendix 2). The land allocated to him initially belonged to his uncle. The same land which his cousins (biological sons to his uncle) were also eligible to inherit. With time, he allocated part of the land to his children who had come of age to start their own independent life.

To him (Mr Phiri) this is his maternal home but for the children this is seen to be their paternal home as this is where they were born and raised. As part of Tonga tradition, members of the family are encouraged to know their family genealogical stories locally referred to as '*mkoka'*.

With time, members of the village who were predominantly his kinsmen easily welcomed him and entrusted him with the responsibility of carrying out the functions

[10] Initially this was meant to be a group of the youth with varying skills ranging from farming, carpentry and raising animals. It later became a paramilitary wing of the then ruling Malawi Congress Party.

of Group Village Headman Nthulinga though in an acting capacity following the succession wrangles they were currently going through at the time of interview. Despite being entrusted with such powers of a village head, he was not allowed to allocate land to anyone be it a new comer or any clan member. He could only be allowed to preside over land disputes as a 'neutral' person should there be need.

Though he freely relocated to his uncle's place following land pressure in his paternal home he still maintains links with his relatives he left behind. He frequently used to visit them when he was still energetic. Now due to his failing health as a result of old age he stopped visiting them. His children, who came with him in their early infancy stages, have weak ties with their father's paternal side. To them, this is there 'paternal home'.

Case B: Relocation following land pressure and need to be closer to schools

A man relocated voluntarily to his maternal uncle's home following land pressure at his father's village coupled with absence of nearby schools for his children's education. His mother lived virilocally following the payment of the bride price. When the family was growing in number, there was need for more land to subsist on. It made matters worse when he got married and started raising his own children. He talked to both his father and mother on the idea of relocating to his maternal uncle's home. One of the issues he cited was the need for more land to subsist on and to be close to primary school for his children to access basic education with ease. An agreement was arrived at and upon discussing with the maternal uncle the man relocated and settled at his maternal uncle's home where he still was at the time of the interview. He was allocated land for his use and to support his family. For the children, especially those that arrived

there in their infancy or those that were born there regarded this as their home since it was the place they knew.

The two cases cited above demonstrates that under customary land tenure a Tonga may access land in different locations using both matrilineal and patrilineal affiliations. This is the kind of freedom of choice an individual enjoys following the application of the cultural concept of *'wanangwa'* (entitlement).

Though the two cases may look similar, there is a slight difference. In case A an individual informed his parents and some brothers and sisters of his intention to settle at maternal uncle's village while in case B an individual sought permission from both his father and mother of his intention to move.

Normally, the nephew has two sources of land in his maternal home. The first one is that land that was originally allocated to his mother when she came of age. This, according to the majority of the respondents, was seen to be a straightforward case. The second source is land he inherits from his maternal uncle. The latter is common when the nephew is invited to perform certain functions at the maternal uncle's side. Common among the reasons is invitation to inherit headship position as illustrated in Case C below.[11] For those invited to take over village headship position, the local key words used are *'atazipempha kuti tikabayi'* literally meaning 'he will not come back alive'.[12] Once an agreement is arrived at and he finally relocates, the first thing they do is to offer him land to subsist on. In most cases the land allocated is that land that falls under

[11] Chieftainship or village headship succession is not straight forward as is the case in some tribes like the Ngoni. Members of the clan could meet to appoint the successor. It could be a direct son or a nephew. The guiding principle in most cases was 'nkhalu' literally meaning 'conduct'.
[12] In those days (even now in some selected areas) it is believed that anyone who ascends to the position of village head can die anytime. It is believed a village head is mostly the target from those who feel they were sidelined for the post.

the custody of the maternal uncle and is unclaimed at the time of offer. Below is a recorded case:

Case C: Request to inherit chieftaincy

The current Village Headman Thuli is Mr Banda (not real name). His paternal home is Mpamba, almost mid-way between Mzuzu and Nkhata Bay. A delegation came from Mdyaka (his maternal uncle's village to ask the Timbiri family if they could allow their son, (Mr Banda) to go to Mdyaka to inherit the chieftainship of Thuli which belonged to his grand uncle. Mr Banda himself is part of the Timbiri family. Upon reaching an agreement from both parties, he relocated together with his family to Mdyaka where he is currently reigning as GVH Thuli. He was allocated land originally used by the maternal uncle. To him, it is his maternal home but for his children the village has become their paternal home. This is seed for potential future conflicts.

Group Village Headman Thuli still maintains his links with his paternal home and participates in almost every key function just like anyone else connected to the clan. Besides being allocated land with full rights[13], he was also entrusted to allocate virgin land to those who may needed it, including non-kin migrants though in consultation with members of the family. This shows that much as he was entrusted to manage the land on behalf of the original family members, he was still obliged to consult wider family members before making a final decision of allocating land to any individual including non-kin members.

[13] Full rights in this case means he is able to allocate land to other users of the same clan. Strangely though he even said he allocated land to other individuals other than members from the same lineage.

A similar case was recorded by van Velsen (1964) in Mzenga where a son, Yaphet, was called from his paternal home, Chipaika, to inherit chieftaincy in Mzenga following the death of his uncle. There was nobody in Mzenga who could succeed him. When the delegation arrived in Chipaika village to ask for the son to inherit chieftaincy that belonged to his uncle, the father simply agreed and immediately the son relocated to Mzenga, together with his family where he was installed as village headman. Despite relocating, Yaphet still maintained links with his paternal home though with a different status. In the event that the father might have refused without proper reasons, the delegation could have asked the question 'is he not 'mwanangwa'? (meaning 'is he not free born?').

Normally when one relocates, he or she leaves behind his brothers and sisters with whom he maintains social or kinship ties. The maintenance of such ties become helpful in future for quite a number of reasons. One of them is to be easily welcomed back in the event of circumstances that may force or require an individual to relocate back to the paternal home village. It could be himself or herself, their children or even their grandchildren. Again, maintenance of such links helps to widen the base for potential location or relocation for the future generation.

There are also those that relocated following request from the maternal uncle's side to either take care of either the ailing grandparents or at times to beef up the number of male children. In most cases, paternal uncles will always fight for custody of their sister's children. In most cases young boys are preferred. This is done by incorporating nephews and nieces into the clan. The purpose for that is not clearly known. Some said it was one way of encouraging cross-cousin marriage which was one way of keeping or

maintaining inheritance within the family. Others said it was part of the tradition which was referred to as *'kuwezga mbumba'* meaning safeguarding (or protecting) the interest of their sisters though at times young girls could also be part. The period of stay was not clearly defined. With time, some may decide to relocate back to their paternal home while some may choose to remain and settle permanently. Those that choose to remain may do so for a reason or two. Some argued that they chose to remain behind mostly to protect the investment made. In one area a nephew had acquired large tracks of land where he is growing bananas and has constructed fish ponds where he is carrying out fish farming activities. He made his children part of the investment.

In one of the villages a man, who came as a teenager to the maternal uncle's village upon request chose to remain there. He was invited to take care of his ailing grandparents. He relocated alone, living behind his brothers and sisters. He grew up there (at maternal uncle's village) alongside his cousins where with time, he established good social networks with them. He got married within the area and started raising children who grew together with his cousins' children. The land that was allocated to him was the same land he used to farm with his grandparents. With time he acquired more tracks of land which he subdivided and allocated to his children.

Those that relocated back to their paternal home argued that they decided to reclaim their father's land. One informant said that he had been raising three of his sister's children, two boys and a girl. Throughout their stay they had minimal links with their father's side. They never got any assistance from them. After some years, the eldest son decided, on his own, to relocate back to his father's home and reclaimed his father's

land which was, by that time, in the hands of their cousins. The young brother and their only sister remained at the maternal uncle's place.

However, reclaiming back the land was not as straight forward as one would think of. The normal practice is that once one relocates, his or her land is normally allocated to those left behind.

Though rare, in some instances some individuals acquired land from both their biological father's place and their maternal uncle's place at the same time. Reasons varied. A good number said it was meant to protect the interests of their future generation as it is seen as a mechanism of enhancing or strengthening the bases for multiple claims and multiple choices. Some could simply acquire residential land at maternal uncle's place but maintain farming land at their biological father's village. This was found common along the lakeshore area where farming land was mostly in short supply. One informant said:

> *kunu ndija nkhwa asibweni kweni minda ndilima kwa ada kunena'*
> (literary meaning I reside at my maternal uncle's
> place but maintain my garden at my father's place in the upland'.

Finally, there are those that relocated based on personal choice. The push-pull factors varied. For others, it was in respect to the assistance rendered to them as they were growing up. Below is the case of choice of residence based on personal preferences.

Case D: Relocation due to personal choice

In a village in Kande, a man Mr Phiri (not real name) decided to settle at his maternal uncle's place after retiring from work. His father's home is Mazembe and his mother's home is Mbamba. Both villages are closely located. His father's maternal home is Chifira under GVH Chiweyu. Upon his birth in Zambia, where his father was working, the message of his birth was sent to the father's maternal home where it was welcomed with jubilations saying 'the heir to GVH Chiweyu is born' and was given the name Chinyaka which is linked to the Chiweyu clan. As he was growing up his father decided to send him back to Nyasaland then (now Malawi) for him to commence education. His uncle from his maternal side paid for his school fees up to end of his secondary education. He started working soon after completing his secondary education in Blantyre. After working for a short while he secured a scholarship to study at a university in Ghana. He was recalled after his second year in college following allegations that he was involved in politics.

He came back and later worked for a tobacco company in Limbe where he finally retired. Upon retirement he decided to go back home, Nkhata Bay and settled at his maternal uncle's village together with his young brother where they are up now. Some of his brothers are still at Mazembe. They still maintain strong links even with those at Chifira (his father's maternal home).

At Mbamba he is referred to as 'ada' literary meaning 'father' but culturally meaning clan head (mweneku fuku).

Unlike the other cases cited above, his decision to settle at his maternal uncle's village was not influenced by anything but personal choice. During the time of interview, he was boasting of 'owning' an incomplete house built on the land that was allocated to him. Next to his house were his cousins' houses and he boasted of living in harmony with them.

All in all, what can be seen coming out is that an individual becomes the center of identity. The decision on where to settle rests on him or her. Again, the same individual can also become the center of crisis. One becomes the center of crisis when the four or more blood lines start competing over them. This may even extend to their grandchildren, claiming rights over their custody as illustrated in the diagram below:

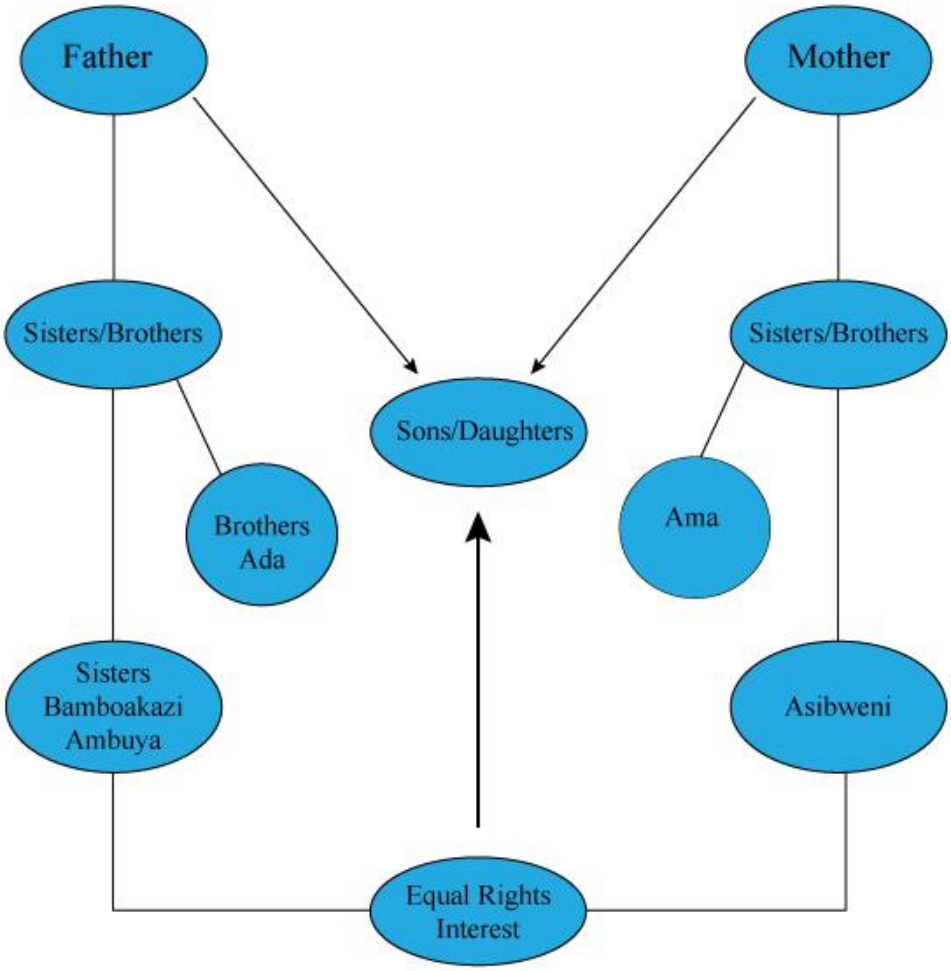


Figure 4. 2: Perceived rights over the child

The diagram above is an illustration of parenthood locally referred to as *'upapi'*. They have similar influence on the wellbeing of the child. In Tonga a brother to the biological father is also called your father while the sister is referred to as *'ambuya'* as opposed to referring to them as uncle or auntie. This extends even to cousins to one's father. Similarly, from the maternal side sisters to one's mother are called '*ama*' while the brother is referred to as '*asibweni'* which may mean maternal uncle. They are all referred to as '*apapi'* or '*upapi'* (they constitute parenthood) and as such they have equal influence in one way or the other on the wellbeing of the child. This creates a

scenario where the Tonga are seen to be an 'extreme' network society connected to each other in multiple ways.

In this regard, therefore, it can be noted that the overall social and political cohesion among the Tonga is achieved through a wide range of relationships between individuals and small kin groups rather than through a structured ranking and coordination of clearly defined and permanent local or kinship units. Within such an arrangement, it was noted that landholding, kinship ties and even residence terminology is oftentimes flexible and negotiable. They provide a wide base where choices are made. This led to what van Velsen (1964) described as the creation of the 'escape classes' which facilitates and justify the evasion of the formal rules of behavior.

Also, important to note is that among the Tonga a girl child can equally be allocated land from her biological parents almost on equal footing with her brother and the rest who share the common concept of *'wanangwa'*. In most cases for the girl child, it is the land that was specifically allocated to her mother for subsistence farming that she inherits. This piece of land is referred to as '*viwera/chiwera'*.[14] This is land mostly designated for subsistence farming. The size of the land allocated depends on the size of the land the family or clan has. The eldest daughter normally gets a bigger share.

What can be noted from the selected cases presented so far is evidence of flexibility when it comes to a person's choice of residence and the subsequent allocation of land for both for subsistence and commercial use. Normally, the land allocated is virgin land.

[14] In some parts this piece of land is referred to as Chikweta (singular) or Vikweta (plural). It refers to land specifically for subsistence farming.

In some instances, maternal uncles deliberately set aside for specifically for nephews and direct biological sons. This was seen as one way of avoiding rival claims in future.

Further to that, they also provide evidence of both flexibility and the fluid application of land tenure systems and the prescribed rules of inheritance. The kind of tenure security one enjoys is a product of several factors ranging from the nature of kinship networks, nature of locality, life history coupled with length of stay in the area to, at times, the nature of investment one makes. This concurs with a study conducted by van Velsen (1964) which concluded that an individual Tonga becomes a center of kinship networks which overlap with those of other Tongas from both the matriline and patriline. These intersecting kinship bonds are critical in understanding the Tonga tribal integration which is seen through a complex network of intersecting and cross-cutting relationship best known to the actors themselves.

In this regard, therefore, the concept of *'mwana ndi mwanangwa'* becomes key when it comes to the construction of Tonga identity and Tonga culture. Power and authority are often acquired through skillful manipulation of personal relationships on a lateral level as opposed to the vertical, pyramidal power structures (van Velsen, 1964) as is the case in most tribes in Malawi. Due to its complexity in nature, the concept is open to multiple avenues which have the capacity to breed multiple contestations.

Whatever the reason or reasons could hold, what is clear is that almost in every Tonga village there are people with multiple identities connected to each other in multiple ways. There are those who trace their lineage through matrilines and those that trace their lineage through patrilines. There also those that trace their lineage through

common grandparents. These regards themselves as ‘pure’ Tonga breed. These distinguish themselves from those born out of cross-cultural marriages but linked to the members of the clan either out of matriline or patriline descent social system. The end product of such a mix is the creation of a grouping of people with ‘multiple identities’ which led to the creation of ‘multiple institutions’ which blends the existing social and cultural arrangements thereby creating a unique cultural system (Cleaver, 2001). It is this kind of mix that makes the Tonga identity to be fluid, complex and oftentimes contestable. This conforms to the notion that Tonga as a tribe is an ‘extreme’ network society. The nature of kinship relationship and the type of family relationship is wider and more complex than imagined and beats any form of logic. It can only be understood by the actors themselves. The contents of the constructed tradition are the basis of contestations hence the need to unpack them as narratives will always be contesting with each other.

Through this arrangement it can be noted that central in the Tonga culture is the diffusion of power and authority across a wide range of groups. Power and authority are not concentrated in particular localities or groups, rather they are spread across a wide range of social and political groupings. A person’s status is not determined exclusively or even primarily through permanent membership of a corporate group (van Velsen, 1964). Such a scenario has given prominence to the rise of ‘pressure groups’, pressing upon one another rather than upon structural authority (van Velsen, 1964).

From the ongoing discussion above, it has been noted that a person’s ability to exercise claims to land is primarily linked to the concept of *‘wanangwa’* which is basically about

entitlement and it carries with it the various forms of freedom one acquires upon birth. This is contrary to what earlier studies on customary land inheritance patterns concluded that inheritance follow a particular gender line and remains closely linked to membership in a particular clan or lineage group (Berry, 1993). However, it should be noted that not all that are entitled to land enjoy equal rights to land on equal terms. Some claim to have more rights than the other based on change in social status, nature of kinship identity among others. For example, those born out of cross-cousin marriage claim to have more rights than those linked through one line, matrilineal or patrilineal.

In this case therefore the complex nature of the actual land transaction under customary land tenure system demands the need to go beyond the matrilineal/patrilineal dichotomy to even accommodate the ambilineal system of descent which is practiced by the Tonga. The classical thinking that land in matrilineal systems pass through the female line and that in patrilineal system it passes through the male line should not be seen as the end in itself. Rather elements of flexibility to accommodate the ever-changing environment should be taken on board although in some instances they could be recipe for conflicts and contestations as discussed in the next section.

The next section discusses the nature of rights and obligations accorded to each land holder.

5.3 Rights and Obligations

Rights over land accorded to each land holder vary depending on one's nature of social status in the society. Rights to land among the Tonga are locally classified as '*mtufu*'. Much as it is difficult to find its equivalent in English, the locals have their own ways of distinguishing the rights of each land holder. For instance, others would say *'mtufu umana'* (literary meaning limited rights especially when describing the rights accorded to a nephew which are predominantly referred to as user rights in some circles). He cannot transfer land to anyone else either selling or gifting other than his own biological children. On the other hand, '*mtufu weneku* (literary meaning primary rights or unlimited rights). Apart from his children inheriting part of his land, he can also transfer part of the land through either selling or gifting to members outside his clan. In other circles the former can mean those rights limited to use only and cannot transfer any part of the land by way of either selling or gifting while the latter can mean rights beyond use to include transfer through selling or gifting to any person other than members of his or her clan.

However, what was found out was that such classifications are themselves not static. Rather, they are always changing to suit new dynamics as a result of changes in land value and changes in one's social as well as economic status which may enable such an individual acquire certain powers that can influence certain decision in relation to land matters among others. In most cases such changes are the basis of the various forms of contestations as discussed in the subsequent sections below.

Despite such variations, it has been noted that there is not much difference between the two. Once land has been allocated, the landholder enjoys exclusive rights. Entitlement

is guaranteed. Limitations at the time of offer are not clear or simply put 'no limitations on rights to land were noted'. Once allocated, the land can be put to any use of their choice, be it farming or construction. One key informant said:

> *'once land has been allocated to a child (be it a son/daughter or a nephew/niece) it remains his or her's in perpetuity so long as they remain in the village and are adhering to the agreed social rules. They are free to make any form of investment of their choice and can transfer it to their immediate heirs.*'

There are no restrictions when it comes to the type of crops one intends to grow be it for basic subsistence or even cash crop production. This is so because in most cases it is an unclaimed or virgin land that is allocated. Any one deemed as the first occupier of any unclaimed or virgin land assumes nominal rights over its usage and can design inheritance patterns within the prescribed societal rules. He can carry out any meaningful investment of his choice. His biological children become part of the investment and have the potential to inherit in future. One informant from Mpamba, a predominantly a banana growing area said:

> *'I decided to settle at my maternal uncle's place where I was allocated land and I grow a variety of crops, both for subsistence and cash crops. Most common crops grown include cassava, bananas and sugarcane.'*

Another informant from Chikwina said:

> *'Apart from growing a variety of crops on the land allocated, I also have fish ponds and fruit gardens'*

Land classified as '*masala*'[15] can be allocated to any member of the clan but on temporal basis. Original owners have the right to claim it back in future.

Ideally, the practice is that any uncultivated or unclaimed land can be used by anyone so long as you are a member of the clan. Both a male and girl child sharing common parents have equal inheritance status.

5.3.1 Sons-nephew debate

A number of respondents differed on the nature of rights accorded to both sons and nephews are entitled to, creating two groups with divergent views, '*a mdauku'* and the revisionists.[16] The *'mdauku'* group comprise those who claim to protect or defenders of 'real' Tonga culture while the 'revisionists' comprise those who aim at correcting the 'wrongs' our forefathers made. The revisionists argued that a son has more inheritance rights from his biological father's side other than at his maternal uncle's side. This was based on the assertion that Tonga marriage is complete with the payment of 'lobola' (bride price). Children born out of such marriage arrangements are regarded as 'owners' of inheritance rights (*weneku viharu*) as they argued that *'mwana waja ndi viharu kwa wiski*' literally meaning a child has full inheritance rights at his biological father's side. Once allocated, the land remains his and for his children in perpetuity. Can carry out any investment of his or her choice be it for long or short term. He can even transfer it through either gifting or selling to individuals of his choice.

Further to that they argued that while a nephew can be allocated land for both residential and where he can carry out any meaningful investment of his choice, his stay remains

[15] Masala is an old farm which was abandoned but can be reclaimed by the owners in future depending on circumstances.

[16] I used the word 'revisionists' for lack of proper word to describe them. During data collection they were totally opposed the role of nephews when it came to any form of inheritance ranging from chieftaincy to inheriting property such as land.

'temporal'. Locally they said *'m'phwakaya walivi chikhazi kwa asibweni waki'*.[17] He will always be referred to as *'mwana wa mukosanu*' literary meaning a child of the son-in-law. He can relocate back to his father's village anytime depending on circumstances such as irreconcilable differences with his cousins over land rights and at times chieftainship wrangles. Within the land allocated he only enjoys use rights. He cannot sell or transfer it to anyone other than his own biological children. His period of stay will depend on his conduct among his cousins locally referred to as *'kajalidu'* or *'nkharu'*.[18] However, with time he can strengthen his rights by investing more in wider kin social networks.

The other group *(a mdauku)* which is in support of the rights of the nephew, argued that a nephew has more inheritance rights than a biological son, especially those that reside in their maternal uncle's village. They argued that a nephew is regarded as *'mpapi'* or *'ada'* at his maternal uncle's home. As a clan head, he is entrusted to take care of the village and preside over matters relating to uncle's property in the event of his (uncle's) death. Locally they said '*mwana wabalika mchinthikazi ndiyu mweneku vihara'*, literally meaning a child born through the matriline is in charge of inheritance rights. As such he assumes unlimited rights over all property that belongs to his maternal uncle, including land. He can carry out any form of investment of his choice and can devise the inheritance patterns in line with the prevailing traditional social rules. Traditionally, his role as a clan is head to take care of the village and preside over land related conflicts among others. In other circles they even said, the nephew can even inherit the widow

[17] Those that advocated for this said that nephew's stay at his maternal uncle's village will always be temporal. He can relocate to his biological father anytime and claim his inheritance rights. However, these words were mostly used when the biological sons felt threatened especially when the nephews became favourites for chieftaincy succession.

[18] The application of these two terms was very subjective and, in most cases, contested.

(late uncle's wife). This was seen as a move to maintain inheritance within. A number of clan heads collaborated by saying: 'as '*mpapi'* (literary meaning parent) a nephew has unlimited rights over property inherited from his uncle, including land.

All in all, what is seen as a practice on the ground is that rights to land are vested in individuals, be it a nephew or a biological son, and their heirs in perpetuity. As individuals, their rights over land allocated are at par. They can make any form of investment of their choice. The basic argument is that *'wachita kupasika or wapasika'* (he is given) as part of his entitlement based on *'wanangwa'*. Their children become part of the investment and have the potential of inheriting it from them. The only challenge comes in when issue of transfer rights arises. This brings into fore rival claims between sons and nephews on who has transfer rights and who has not. This has nothing to do with culture but opportunities. Details of such rival claims have been discussed in the section under conflicts and competing claims.

Principally, in every Tonga village there are people connected to each other in multiple ways with varying rights over land. There are those connected through the patriline and those connected through matriline, creating a hybridized or ambilineal system of descent. There are also those whose connection is based on sharing common grandparents. These are children mainly born out of cross-cousin marriages.[19] Such connections provide differentiations when it comes to security of tenure alongside rights and obligations. Those born out of cross-cousin marriage are more secure and enjoy more rights as they are regarded as 'a pure' breed than the rest. They can negotiate for more land with much ease when it comes to the need for more land for investment.

[19] Among the Tonga cross-cousin marriage is the most preferred form of marriage. One of the reasons was to avoid complications when it comes to inheritance.

In local terms they are referred to as *'a ndopa zambula kusazga'* who might be classified as absolute indigenous. Those connected through the matriline may have weak negotiating capacity but have the capacity to strengthen it through investment in social networks.

However, what should be noted is that the types of rights one enjoys do not solely rely on the concept on *'wanangwa'* only. They are strengthened by the nature of kinship links one has outside his or her direct household. Van Velsen (1964) concluded that kinship status becomes key because it provides framework within which one can manipulate economic and political factors to some specific end. Such arrangements provide alternatives for the present economic, political or residential arrangements if need be. Similar views were noted by van Velsen (1964) who argued that maintenance of wide networks of kinship ties are critical in a Tonga society as it is known to be an extreme network society. Also, important to note is that manipulation of kinship ties is what defines Tonga identity.

5.3.2 Classification of land and their associated rights

Among the Tonga of Nkhata Bay land is classified as follows:

Mtupa: this is land acquired mostly as a punishment following the death of their relative. Normally only lineage leaders know the background to it and keep the history of such and will only exercise caution when transmitting the story to the new generation. This land cannot be contested. Once confiscated it remains permanently theirs. Ideally, this land cannot be sold nor be allocated to anyone outside the affected clan members. It was regarded as a taboo.

Mahami: this is an old village which was abandoned due to a number of reasons. However, in most cases it was due to loss of fertility of the soil, the demand for a bigger land for more subsistence farming to cater for the growing population, or at times in search of better areas where they can easily access social services. In worst case scenarios land could be abandoned following witchcraft accusations. Though abandoned lineage leaders still recognised it as their land which can be claimed back in the future. Normally they identify it using old symbols like old fruit trees, ruined toilets, grave sites and old houses.

Masala: this is an old farm land which was abandoned mostly due to loss of fertility. This can be claimed back by lineage members in the event some face challenges in the newly settled areas.

Masasa: normally refers to a new home. This could be totally a new land all together or at times land reclaimed after being abandoned (mahami) by the past generations for reasons not known to the new generation.

Bozwa: this is mostly referred to as virgin land. There is no vivid sign of any earlier settlement. No clan can claim ownership of this land and its open for new settlements.

Lusuwa or mapopa: this is mostly forest land which at times might have been habited and later abandoned. Key features of this land are overgrown natural trees with some fruit trees planted on it.

From the evidence gathered so far, it has been observed that rights and obligations over land allocated during the initial stages are not as straightforward as imagined. The general assumption is that when an individual has been allocated land classified as *'bozwa'* which is virgin land, an individual enjoys full rights which may include, in

theory, transfer rights. Rival claims were very rare. This also applies to land classified as *'mtupa'* which is land confiscated mostly as a punishment following the loss of their loved ones. Owners of that land can exercise full rights including transfer. But rights over land classified as *'masala'* or '*mahami'*, can be limited. The known original owners still have a say on the land. However, long stay coupled with uninterrupted use of the land may change the dynamics. Land value might have improved which may make the present occupants defend their interests. Ideally based on the concept of *'wanangwa'*, a person has the exclusive rights land allocated to him or her with no limitations when it comes to investments.

In principle, what is seen is a blend between matrilineal and patrilineal systems leading to the construction of the hybridised or ambilineal system of descent. Both males and females enjoy equal rights over land allocated. A girl child normally inherits land that was originally allocated to her mother. This was put in place to protect their daughters after returning from their matrimonial homes. All her children who might follow her will use that land with unlimited rights. A similar development was noted among the Tonga of Zimbabwe where both a girl child and a boy child enjoyed equal rights over land allocated (Colson, 1963). Despite being matrilineal, they had no fixed residence (Colson, 1960). Their lineages were small and tended to be scattered within the neighbourhood, making it easy to link up with one another.

When a nephew is allocated land that was originally allocated to his mother, he can exercise full rights, which may include transfer rights. This is different from the land he inherits from the maternal uncle which may draw interest from other individuals, in this case most likely biological children.

Within the fluid tribal identity arrangement, two groups emerged that defined the nature of rights. The first one can be categorized as absolute indigenous and the second one can be categorised as 'weakly' indigenous (USAID, 2010).

While the USAID (2010) classification of 'absolute' and 'weak' indigenous defines the nature of rights one enjoys which include the right to use, transfer and exclude others from use, among the Tonga the situation is slightly different. At its onset everyone assumes 'equal' rights to land allocated. The nature of blood relationship determines the extent of rights one is entitled to. Changes may come depending on circumstances like notable changes in land value with the rising market potential.

In this regard, therefore, the classification of 'primary' and 'secondary' rights does not apply in a similar manner as is the case in the binary division into the matrilineal and patrilineal system of descent. What is critical among the Tonga is the capacity to defend one's entitlement as prescribed through the concept of *'wanangwa'*. To defend their rights, they may use tools such as kinship identity where an individual could claim multiple links within the village and the construction of ethnicity based on traditional narratives to suit their interests. This is further strengthened by their continued use of the land and uninterrupted stay in the area, coupled with the adherence to the social stability of the local institutional arrangements. As noted earlier, these rights are not static hence subject to negotiation and re-negotiation based on the ever-changing social and economic circumstances (see Toulmin, 2007).

5.3.3 Practice on the ground: Multiple identities, Multiple rights

Despite these differences, what is known is that the Tonga village comprises people of multiple identities connected to one another in multiple ways making their identity very

fluid and subject to manipulation depending on circumstances. Due to the fluidity nature of this Tonga identity, privileging one single aspect of people's identity for institutional purposes is problematic as it ill reflects complex social and political dynamics of the society and is likely to aggravate social divisions which may breed inter-ethnic conflicts (Cleaver, 2001).

Intra-family debates over rights to land among the Tonga gave birth to two main issues: an individual as the center of analysis and a center of intersecting network of kinship bonds which are critical to their identity (van Velsen, 1964) and the strength of blood lines when it comes to defending one's entitlements which have a bearing on the nature of investments one can make. In this regard it can be argued that rights over land and its usage are not corporately controlled, rather they are vested in individuals and their heirs (van Velsen, 1964).

Furthermore, it was noted that the application of the concept is not 'concrete' nor fixed. It is flexible and fluid and subject to manipulation. One can claim it or may decide to 'sit' on it depending on circumstances. One informant said 'you claim it you gain; you sit on it you lose'. Once one claims it the same concept can be used as part of social security. Contestations and conflicts over same land parcels may only come in probably due to some notable changes in social status of an individual or at times seniority based on strength of blood lines. Those born out of cross cousin marriage claim to have a stronger status than those born out of 'mixed' cross cultural marriages who might be referred to as *'ndopa zakusazga*'.

Also, important to note is that where control over land is vested in descent groups, kinship becomes the basis for claiming rights to land and the differences in status within

kinship groups serve to create differential land rights among its members (Berry, 1993). There is therefore need to go beyond putting emphasis on productive identities to incorporate dynamic social roles and social identities which are key to a particular tribal identity. Currently, institutional theory is deficient when it comes to investing in meaningful social identities (Cleaver, 2000).

5.4 Conflicts and competing claims

A number of land conflicts were recorded mostly in areas along the lakeshore and in some areas close to the plantation estates of Kawalazi Tea Estate and Vizara Rubber Plantation. Some cases were also recorded in Mpamba and Chikwina. These areas are known for various economic activities that attract a lot of investors both in long term and short-term drive.

What has been noted so far is that most of the recorded conflicts over land use were predominantly a product of disagreement mostly between those connected through the patriline (biological sons) and those connected through the matriline (nephews and nieces) on who has more rights than the other, who has more authority over land use than the other. These rights mostly include transfer either through selling or gifting mostly to nonindigenous members.

Initially, based on the prevailing tradition of the time, both sons and nephews enjoyed user rights only and on equal footing and it was applicable within the land allocated to them. They were not allowed to sell or transfer any part of the land to anyone especially to a non-family member (aka outsiders). Land could only be transferred to their direct biological children born, and being raised in the same village. Where a non-family member was allocated land, though very rarely, consent was first sought from lineage

leaders and upon their approval then a go ahead would be given.[20] Their argument was that land belonged to members of the clan and as such only members of the clan were eligible to inherit it.

However, with time, the reality on the ground has changed. Transfer of land mostly through selling even to non-family members was and still remains common. The reasons for that varied. But what came out strongly was changes in land use patterns and values which created new opportunities. The interest now shifted. It was no longer about entitlement but rather 'what is my benefit', a development that is seen to raise the issue of 'private' ownership and how it excluded others from use. This gave rise to rampart rival claims mostly between sons and nephews.

Reactions from the lineage leaders towards such developments varied and, in the process, creating divisions among them. Those connected through a patriline and those who share common grandparents[21] claim to have more rights than those connected through the matriline alone. Selling part of their land was not met with harsh reactions from close lineage leaders as they were regarded as '*weneku a muzi'* (owners of the village) as determined by their surnames. In instances where a nephew (connected through a matriline) was seen selling land the action was labelled as *'mphuvya'* literally meaning extreme bad conduct. By implication what this means is that the rights a nephew enjoys over land allocated are limited to 'use' only. He cannot transfer the land to anyone. Doing so can create tension which may lead to eviction in the worst-case scenario. Only his direct children are eligible to inherit the same piece of land so long

[20] In some areas the practice is still being practiced while in some areas it is not.
[21] Those born out of cross-cousin marriages.

they remain in the village. If they decide to relocate the land reverts back to the owners, in this case those linked through the patriline.

Despite such differences a number of cases were recorded where nephews were seen selling land to non-indigenous people. One of the major arguments they presented was that they also had the right to decide on what to do with their land and it was within their right and entitlement. One informant who was also accused of selling land defended his action by saying '*malu ngangu ndikuchita kupasika, ndikulonda munthu cha*' (literally meaning 'this land is mine, I was formally allocated. I never grabbed it from anyone). Such arguments and counter arguments over land rights were the basis of rival claims mostly between sons and nephews as discussed in the cases below.

The conflicts can be classified into two, intrafamily and interfamily. Both local and at times government institutions were called upon to intervene if the situation went out of hand. Below are some of the selected examples of conflicts over land among those connected through the matriline (cousins) and those connected through the patriline (sons).

5.4.1 Intrafamily conflicts

A number of cases were recorded where nephews were seen selling land to non-kin members of the family, a development that attracted mixed reactions from some lineage members. Those involved argued that it was within their rights to make a decision on the land allocated.

In one of the villages the following case was noted. A man whose name was Banda (not real name) came to the village of his maternal uncle. As a nephew and as per the Tonga tradition based on the cultural concept of *'mwana ndi mwanangwa'* he was allocated land at his maternal uncle's home village which was meant for his subsistence farming and was allowed to carry out any other investment of his choice with much ease. This was part of the tradition which was referred to as *'kuwezga mbumba'* literally meaning 'bringing back sisters'. Part of the land allocated to him was a rice family garden which was in use for years. Seeing that he was allocated plenty of land, he decided to sell part of the land allocated to him by his maternal uncle to a family of Phiri (not real name) without seeking approval or consent from his uncle or his cousins. This did not please both his uncle and his cousins. Tension started brewing but no immediate action was taken. The buyer started using the land from 1971 to 1991. Some of his children were born and raised there and did not know the history behind that land. Soon after the death of their cousin who sold the land, the biological sons (sons of the uncle that allocated land to the nephew) started claiming their land back. This did not please members of the family of Phiri who had been cultivating the land for quite some time and had transformed the land through massive investment, both short term and long-term. The matter was reported to the village head who concluded that it was wrong for the nephew to have sold the land in the first place without seeking consent from the uncle. He ordered that the land should revert back to the uncle who can allocate it back to his biological sons.

Upon not being satisfied with the decision, the family of Phiri decided to appeal against the ruling to the District Commissioner for intervention. The office of the District

Commissioner upheld the decision made by the lineage leaders and ordered that if still not satisfied they may proceed to the formal court of law.[22]

Another case was recorded at Mkondezi where a man originally from Mzimba came into the area looking for land initially meant to erect a shop. The land was allocated to him through mutual agreement with the clan head who inherited chieftaincy from his maternal uncle. Knowing his limitations, he first consulted members of his clan before allocating the land. Consent was granted as the area had plenty of virgin land. Later on, he requested for more land for farming to support members of his family who had joined him. It was granted again based on mutual understanding following the good conduct displayed so far though, this time around, with no formal consultation with members of the wider family. With time the man requested for more land as more members of his family followed him from their original home, Mzimba. At times he simply encroached into 'idle' land to extend his farming land. This did not go down well with some members of the wider family who saw their land being occupied by a 'foreigner'.

A complaint was launched but due to long stay in the area coupled with the constructed good social networks a conclusion was arrived at that the land currently under his use should be left to him with all the rights but no further extension should be made without prior consent from the wider members of the community. An appeal was made to the District Commissioner who referred back the matter to the local leaders.[23]

[22] This was contained in a letter Ref No: NB/20/11/Vol.11/3 where the District Commissioner directed the complainant to the court of law.
[23] A full documentation was recorded in the file Ref No. NB/20/11/01, Garden Disputes

Despite such conclusion, tensions are still very high between the two families. The non-kin developer has taken advantage of the existing loosely organized social networks to advance his interests.

In Chintheche, an incident was recorded involving an old lady whose land reserved for her biological children who were away during the time of interview was sold by her grandnephew who relocated to his maternal uncle's place together with his father to take care of the old lady who was 82 years old at the time of interview. When his father died, he was the eldest male member in the absence of the biological children. The nephew, in collaboration with the village head who himself inherited the title as *'mphwakaya'* (nephew) sold the land kept for his cousins who were away to a non-kin developer without seeking consent from his maternal uncle's side. The buyer quickly engaged the District Lands Office for paper work to convert it from customary to private. Tension grew between the buyer and the owners of the land who were predominantly members of the maternal clan arguing that the nephew had no right to sell the land and advised him to reclaim the money or report the matter to the police. This did not go down well with most of the family members who felt that the nephew had committed a grave mistake. Plans to force him out proved difficult as the boy came into the village with his father while very young and his father died sometime back.

A similar incident was recorded in Mpamba where nephews took advantage of the absence of influential biological sons and sold part of their land to non-kin developers who came to settle in the area. A good number of these nephews were actually born and raised there. Some were born out of cross-cousin marriages who claimed strong ties to the lineage group. This did not please their cousins and started the process of reclaiming the land back which was not easy. In defense of their action nephews simply said 'they

were equally owners of the land' and can make any decision they want on the land acquired.

In Chikale another incident was recorded where a nephew sold land belonging to a family to a non-kin developer. Records from the District Commissioner's office show that a nephew went into business arrangement with a non-kin developer arguing that the land in question belonged to him as it was allocated to him by his maternal uncle. This did not go down well with his cousins who felt duped.

However, among the cousins two camps emerged. One in support of the transaction arguing that it created potential for wage economy as some will be employed to work for him. The other group opposed the development arguing that it led to potential 'land grab' and may render them landless.

Using good social networks with some locals the investor still had an upper hand. Though tension is still on especially between cousins, some local leaders supported his initiative of developing the area regardless of the fact that doing so meant losing the land for ever.

In Chikwina another case that involved a nephew and a migrant who came from Chitipa and settled in Chikwina, part of Nkhata Bay north and northwest was noted. Land was allocated to Mr Mteyu, (not real name) based on the tradition that he was a nephew and was entitled to both residence and land inheritance in his maternal uncle's place. Unlike in the other case cited above, he was given conditions. He was not allowed to sell any part of the land to anyone nor go beyond the allocated boundaries without their consent. Again, should he need more land permission to extend should be sought from the maternal uncle or any of his 'influential' cousin.

However, adherence to these conditions was not very strict as land was still in abundance that time. Taking advantage of the situation, he allocated land that was lying idle to a migrant who came from Chitipa (hereinafter Mr Beza, not real name) and was looking for land where he could grow coffee and some fruits. He allocated him land that was initially allocated to him by his maternal uncle where he was supposed to raise his family. It is believed that he saw some investment potential in the person and thought he could benefit from him. Initially the land looked very unattractive as it was hilly and bushy. With time, Mr Beza made a lot of investment on the land turning it into one of the most developed land in the area. He erected good houses and grew both subsistence (maize and cassava) and cash crops (coffee and some fruits). With such massive investment, coupled with the constructed good social networks with some local chiefs, he ended up inviting some of his family members from Chitipa to join him. To strengthen his tenure security, he would offer part of his harvest to the clan heads or lineage leaders to buy their support. This was done in the hope he would just encroach into any idle land without prior consent from members of the village. Unfortunately, this did not go down well with the local inhabitants who saw land for the future generation gradually slipping into the hands of non-indigenous people. An official complaint was made against their cousin who allocated land to a non-kin developer and was failing to contain him. This generated tension as sons blamed their cousin for allocating their land to non-kin member in the first place and worse still, allowing him to gain more land to accommodate members of his family who had joined him without checking on him. One chief said:

> *tension grew high, threats of burning down houses were all over. Some even threatened to use magic to evict them from the land.*

Family members intervened upon sensing danger. The conclusion was that part of the land allocated to the non-kin developer should revert back to the village clan, in this case those connected through the patriline, and not the nephew. Though that was the case, the area up until now has been infiltrated by non-kin developers who are now growing a lot of coffee. Some are even managing fish ponds.

In Usisya, two ladies appeared before the local court competing for the same parcel of land. Based on the records sourced at the office of the District Commissioner's office, Tamala Msuku was contesting against the judgement that favoured Selina Phalani over the land that was sold to her. Based on the history of the land, it belonged to Selina who inherited the land from her biological father. While she was away some of her relatives connived with some clan heads and sold part of her land to Tamala Msuku, a migrant from Chitipa who followed a relative who had decided to settle in Usisya. This was done without her (Selina's) knowledge.

Selina, who inherited the land from her father, contested the decision of selling her land without her consent. The matter was referred to the council of elders who ruled in favour of the buyer much to the dismay of the complainant. The matter was referred to the office of the District Commissioner where it was noted that the council of local elders erred in making a determination. A stop order was granted and demanded the following details: evidence of sale agreement, history of the land and details of the relationship between the council member and the buyer. [24]

[24] Ref No. SCM/AD/01 Selina Phallani vs William Harawa.

Another issue noted was that of some chiefs being involved in sale of public land. A record at the office of the District Commissioner dated 1st September, 2002 showed that Mr. Nyoni (not real name) bought public land from Mr. Ngwira (not real name) in full view of the Traditional Authority. Another incident was recorded in the area of Senior Chief Fukamapiri where public land meant for a rural hospital expansion was sold mostly to some non-kin developers. This angered the locals who burnt the office of the chief. Though police intervened later on, a great deal of damage had already been done.

What has been noted so far is that the majority who were involved in selling land or allocating land to non-kin members were mostly nephews living in their maternal uncle's village. Their actions were not limited to the land that was rightfully allocated to them. In some cases, as noted above, they even went beyond and tampered with the land they felt was lying idle or any virgin land belonging to the clan. This could be land kept for future use. No clear motive for such actions was known. However, they defended their decision arguing that it was within their entitlement as per the Tonga tradition which defined them as *'apapi'*. In some cases, they connived with some local chiefs who themselves were also nephews who inherited chieftaincy using the Tonga tradition which favours flexibility when it comes to the appointment of traditional leaders though now it is being contested.[25] Such cases did not amuse especially those connected through the patriline. One informant argued that these nephews can sell the land and relocate back to their biological fathers. This was the basis of deepening social conflicts between sons and nephews as it was seen as abuse of their rights. However, not all fell in that category.

[25] There is now intense debate on who is eligible to inherit chieftaincy; direct sons or nephews. Those who claim to be followers of Tonga tradition argue that a nephew is a rightful heir while those of the contrary view (who I may refer to them as 'the revisionists' argue that a son is the rightful heir.

These developments suggest that *'wanangwa'* does not provide absolute rights especially where an individual is not allowed to exercise full rights that include transfer rights through either selling or gifting. However, those involved developed mechanisms to justify their actions.

In a related development, cases of nephews being evicted from the village of their maternal uncle were also noted in some areas. Some of the reasons included witchcraft accusation, petty jealousy following massive investments one made both in infrastructure and farming and in some instances, education status gained. The nature of investments made were seen by some as a social threat.

In one of the villages close to Mzenga a recording was made of a nephew Kondowe (not real name) who came to settle in his maternal uncle's village where he felt there were better economic incentives did not realise his goals. As per the tradition he was allocated virgin land where he constructed his house and was also allocated land where he cultivated crops of his choice. He brought with him two children and fathered three more while there. With time he made massive investments in agriculture including running small shops within the village. Besides that, he also educated his children very well who ended up securing better jobs in towns within the country and some beyond the border to Tanzania. He became a village 'role' model, a development that generated jealousy among his cousins towards him.

Unfortunately, two of his children died in suspicious circumstances. For whatever reasons they suspected him to have played a role in their deaths. Without going to the bottom of the matter, he was accused of bewitching his own children and ended up

being evicted from the village, losing all the investment he made on the land allocated. The accusations were generally baseless but what was noted was that the nephew's prosperity attracted mere hatred.

What was coming out clearly is that whenever there was demand for more land, nephews became victims. Their land, in most cases, was the target. They (those connected through the patriline) could easily, at times, frame cases against them aimed at implicating them which may lead to their eviction from the village and in the process lose their land. This demonstrates that the concept of *'wanangwa'*, though popular among the Tonga, could not guarantee full protection. It has some limitations, though at the same it provides mechanisms to deal with them.

Despite such challenges and threats, nephews were not passive victims. They devised their own means to protect their rights. They could use their 'status' either based on seniority in terms of birth, strength of kinship ties or claim their rights by evoking the concept of *'wanangwa'* arguing *'nde mwanangwa nani'* meaning am equally entitled to be part of this village. This arrangement makes the Tonga society to be an immense network society, bringing on board people of multiple identities connected to each other in multiple ways. Being an immense network society, nephews benefited from the 'multipurpose institutions' that were developed to foster corporation among different claimants of their time.

Based on the cases cited above it can be noted that the tenure security enjoyed by the nephews gets threatened based on reasons. The first one, which is very common, is when there are noted changes in land value. Those connected through the matrilines

would want to assume that they are the 'real owners' of the land. The second one was whenever there is pressure for more land, mostly land allocated to nephews became the target. Much as the nephews may claim their rights based on culture, the biological sons can resort to use of derogatory words with an aim of claiming their land. In worst case scenario, they may resort to physical confrontation to evict from the land.

In a related development, tension grew between sisters and their brothers over land that was initially repossessed by the Government for a Pulp Wood Project. Families were compensated following the loss of the land and relocated. When the project failed to take place, the affected families reclaimed the land while others sold the reclaimed land to developers. The majority who were selling land were nephews who followed their mothers. This did not go down well with their cousins who felt threatened seeing the land that belonged to their fathers being sold by their cousins.

Though the case became tricky, it became obvious that there was growing tension between sons and nephews following competing claims over same parcels of land. Some cases were resolved amicably using local structures while others were resolved using external assistance from either the police or District Commissioner's office in collaboration with Department of Lands.

In the area of Traditional Authority Malenga Mzoma a similar case was reported of a nephew who sold land allocated to him by his maternal uncle. He sold the land to a distant relative[26] who had wanted the land to construct a lodge for business without seeking consent from his cousins resident in the same village. The chief endorsed the sale and the buyer immediately engaged the Survey Department in Nkhata Bay to

[26] Though others referred to him as non-kin developer.

process paper work. The land in question, though looked idle for some time, belonged to a particular family for years and it was being kept for their children who were away at the time the transaction took place. With the use of local structures (including lineage leaders), it was concluded that the chief erred by not following the right procedures. The developer was told to stop and surrender back the land to the original owner. At the time of the interview the case was still being pursued at the District Commissioner's office for possible mediation.

In recent times there is growing evidence of some people, especially the non-indigenous, of buying land either directly from local clan heads or through chiefs. This is a very recent phenomenon where people have realised the market value of land especially along the lakeshore area where there is pressure for land to construct lodges and beach resorts. At times this is done in consultations with the rest of the members. One clan head said:

> *'When a developer came in the area to ask for land to construct a lodge, I called my sisters, sons and nephews and informed them about the request the developer made. The family unanimously agreed to sell part of the 'idle' land to him. The only request we made to him was to ensure that he conforms to our tradition and participate in key traditional activities.'*

In this regard, what can be noted from such developments is that the freedoms or entitlements one acquires upon birth as per the Tonga culture may at times run counter to those of others in the same village who also might claim their *'wanangwa'* in the same locality and in a similar fashion. Such developments have often been seen to be a recipe for intrafamily conflict which may have far reaching consequences when it comes to the nature of investment one could make.

From the cases cited above, it can be noted that there is growing evidence of conflict mainly between those connected through the matrilines and those connected through the patrilines mostly over land related issues. This was mostly to do with transfer rights. Though, as noted earlier, that there were no clear guidelines on the nature or form of limitations of rights an individual had on the land allocated and it was incumbent upon an individual to defend one's actions and protect their interest. Again, what was noted was that nephews were in different categories based on generations. Some are linked through their parents while others are linked through their direct maternal uncle.

However, whatever the links one has, challenges based on differentiated land rights have the potential of converting kins into strangers (see Peters, 2007).

Other than selling land or transferring land through 'gifting', in some instances nephews were seen extending beyond their allocated boundaries without prior approval. This was mostly in response to the need for more land as the family grew. Normally, they targeted land that was lying idle. Records from the office of the District Commissioner refer to them as 'Garden Disputes'. This was common in Mpamba and Chikwina. These areas are known for various agricultural activities, both for subsistence and commercial. Reasons varied as discussed below.

Boundary disputes[27]

Evidence of certain individuals going beyond the prescribed boundaries of the allocated land was common. Reasons for this varied. However, what came out strongly was the need for more land especially where there was potential for more economic activities

[27] Records at District Commissioners Office refer to them as Garden Disputes.

and need for more land to accommodate the growing number of family members. The perpetrators of such actions often took advantage of the strength of their kinship ties to defend their cause.

Apart from that, the other challenge was nature of boundaries which were not fixed. In most cases, they used watersheds (locally known as '(*chinkhwawu*) and anthill (locally known as '*chiduli'*). These could change course anytime.

In Mpamba under Traditional Authority Timbiri cases were registered where nephews went beyond their allocated boundaries to encroach into the land belonging to the cousins who were away, either working in the cities within the country or those who might have migrated outside for further green pastures. This was mostly in response to land pressure which was sparked by the increasing number of family members. These could be their (nephews) biological children, born and raised there, who have come of age and are in need of more land for their livelihoods or their close relations who might have come to join them for various reasons.

In the area under Traditional Authority Zilakomwa, a story of two ladies, *'nyaBanda'* and '*nyaMwasi'* (not real names) engaged in garden boundary disputes was recorded in the area under Traditional Authority Zilakomwa, southern part of Nkhata Bay. Both were allocated land by their biological fathers who were direct brothers. Traditionally, these are locally known as sisters but based on western classifications, they are referred to as cousins. One lady '*nyaBanda'* was based in the village while the other one 'nyaMwasi' was staying in town together with her family. Seeing that the land was almost staying idle the lady 'nyaMwasi' who remained in the village slowly started encroaching into her neighbour's (cousin's) garden. Initially no official complaint was

made as people saw nothing wrong as she was seen cultivating the land belonging to her cousin.

After some time, the other lady 'nyaBanda' returned home and found out that part of her allocated garden was being cultivated by her cousin. When she tried to claim her land back the cousin refused to surrender it arguing that she had made a lot of investment on it. The matter was brought before the council of elders (mostly comprising of lineage leaders) who ruled in favour of the latter based on the fact that there was proof that she was indeed allocated land by her biological father and that she only entrusted her cousin to guard against any form of encroachment. To her surprise the former continued to use the land disregarding the judgment from the elders. Seeing no action from the elders she decided to report the matter to the District Commissioner who referred the matter back to the Director of Administration to make a follow up.[28]

The following facts were established:

- Issue was not about boundary dispute as presented by nyaMwasi but garden dispute
- NyaMwasi did not specify the time she started cultivating the garden, instead she focused on the time the quarrels begun
- NyaBanda made it clear that she started cultivating the land from 1960 after being allocated the land by her biological father. This means she was the first to start using the land.

[28] This is contained in a letter dated 20th December, 2011 Dyna Phiri VS Donania Nkhoma in the file Ref. No.: NB/20/11/VO.11/3

- NyaMwasi took advantage of the long absence of her cousin and decided to encroach into the garden

The conclusion of the matter favoured NyaMwasi based on the fact that she was the first to start using the land. NyaBanda was told to discontinue using the land after harvesting what she had already planted.

What can be noted from this is that both were indeed entitled to land from their parents. Their rights were confined to the land allocated. Should one demand extra land then certain procedures were supposed to be followed.

Another dispute was recorded in Mzenga area between two Group Village Heads, Chindebvu and Chamaoya who belonged to the same clan and were cousins. The two shared a very fertile land in between which for whatever reason remained idle for quite some time. Mr Gwamba (not real name) who came in the area as a nephew was allocated that land by GVH Chamaoya who was his maternal uncle. After some years[29] part of the land was given to his cousin Mr Manda (not real name) and his wife who were linked to GVH Chindebvu. This generated tension but immediate volatile reaction was not noted. Soon after the death of Mr Manda, the family of Mr Gwamba went and reoccupied the land, started grazing their animals and destroyed all the crops she grew with her late husband. The case was brought to the attention of lineage leaders who both backed their subjects based on different narratives. Upon seeing the complication, it was referred to the court of T/A Kabunduli who opted for subdividing the area under contestation. Upon not being satisfied the case was further referred to the District Commissioner who referred the case back to the lineage leaders.

[29] Based on records from the District Commissioner it indicated 10 years, Ref No. NB/20/11/01

The final decision from the lineage leaders was that the decision of sub-dividing the land stands and anyone who was dissatisfied can relocate to his paternal home.

Conflicts over land under 'mtupa'

Ideally, what is known is that land confiscated under 'mtupa' arrangement is non-negotiable. Though rare, instances of contestations over such land have been noted. In most cases it happened when the victims felt that the circumstances that led to the death of their relative were exaggerated hence did not warrant such punishment. In most cases it is prime land that is heavily contested. Below is a recorded case example of conflict over land that was confiscated under mtupa:

Two villages under Group Village Head 'A' and 'B' were engaged into land dispute over land believed to have been acquired as 'mtupa' in Chintheche. Group Village Head 'A' had no idea on how they acquired that land as it happened years back. With the use of oral traditions Group Village Head 'B' discovered the truth about the land and decided to send his boys to grab their land from GVH 'A'. With the use of panga knives, the young boys caused havoc. The office of the District Commissioner was requested to intervene through a letter dated 1st December, 2014.[30] The case looked tricky as the District Commissioner had no knowledge of *'mtupa'* arrangement. It was referred back to lineage leaders to resolve the conflict.

The lineage leaders resolved that once land was acquired under 'mtupa' arrangement it cannot revert back to the owner. This was settled once and for all.

Based on the evidence presented so far, it can be argued that despite the fact that land is a fundamental issue for economic development, food security and poverty reduction

[30] Refer file no. Ref No. NB/11/1

in addition to the contribution of the country's share of the gross domestic product (GDP) and employment for the majority of rural dwellers in most parts of sub-Saharan Africa, it has also proved to be a major source of conflict with a potential of turning kin into strangers in most parts of rural African societies that follow customary land systems (Cotula et.al., 2004; Chirwa, 2004; Yaro, 2010; Kishindo, 2006). The general thinking is that the nature of rival claims over same parcel of land under customary land tenure arrangements have a bearing on the nature of investment one can make, be it long or short term. However, though ambiguous in nature, there is no evidence that customary land systems are wasteful and provides no incentive for agricultural investment (see Berry, 1993). Evidence has shown that so long as one adheres to the prevailing social rules, user rights and at times transfer rights are guaranteed and they remain in force for as long as one remains part of the society. The contestation comes in when one goes beyond the prescribed rights and assumes other additional rights. One such example could be transferring of land either through selling or gifting without wide consultation among family members. This is currently the major issue especially in lakeshore areas and other equally productive land

What has so far been noted from the study is that among the Tonga disagreements that led to conflict over land were basically to do with transfer rights and in some cases, going beyond the allocated boundary. Both sons and nephews argued that they had the same authority over the allocated. However, the system had its own mechanisms to deal with such conflicts. The concerned members at times could defend their actions by justifying their existence in the village. They may use tools like the construction of kinship identity, length of stay and the nature of investment made. Unlike the matrilineal and patrilineal descent system which has a known inheritance pattern within

their binary divisions which follows a particular gender, the Tonga ambilineal descent system is different. Through this cultural arrangement, the individual becomes the center of identity and analysis.

5.4.2 Property rights and local institutions.

From the evidence presented so far, it is clear that locally defined property rights and local institutions are key to development as they are embedded in everyday relations, networks of reciprocity coupled with the negotiations of the cultural norms (Cleaver, 2001). These forms of interaction are strongly reflected in a great deal of flexibility common in traditional land tenure systems (Platteau, 2000). They provide rules, norms, mores and governance systems for the economy and society to work as they are strongly rooted in the social, political and cultural landscape rooted in one locality and cannot be easily transplanted from one setting to the other (Kanji, et.al., 2005). The governance and accountability of local institutions involved in land administration has remained critical when it comes to bringing sanity among the competing claimants.

In this regard, therefore, among the Tonga kinship status is critical as it provides power or position alongside providing the framework within which one can manipulate economic and political factors to his or her advantage. Based on the concept of *'wanangwa'* the Tonga society comprise of people with multiple identities connected to each other in multiple ways. Such an arrangement provides avenues for cross-cultural borrowing which cannot be dealt with using a single institution. What can work is the use of multi-purpose institutions which Cleaver (2001) referred to as 'Institutional Bricolage'. This is basically a process that draws on the existing social and cultural arrangements to shape institutions in response to the changing situations which result in a mix of 'traditional' and 'modern', 'formal' and 'informal'. This blends well with

Tonga system which revolves around overlapping kinship networks with the system which is different from the matrilineal and patrilineal system of descent.

5.5Conclusion

From the discussions in this chapter, it has been noted that land governance among the Tonga is influenced by a unique cultural concept of '*mwana ndi mwanangwa'* which is the basis of multiplicity of claims in multiple locations. Rights to land are allocated to an individual with no clearly labelled limitations. The assumption is that rights to land went beyond use to include transfer. Their children became part of the inheritance. Conflicts over same parcel of land was noted when there were changes in land value that generated new interests and new opportunities. This, as discussed, was seen as a move towards individual ownership that aimed at excluding others. Those affected relied on well established kinship networks to defend their rights and actions.

CHAPTER 6

CONCLUSION AND POLICY IMPLICATIONS

The study was set to understand land governance in a multilinear descent social system among the Tonga of Nkhata Bay in Malawi. The study was guided by three main objectives: an examination of the various patterns of land acquisitions and the inheritance patterns; an analysis of the rights and obligations different landholders enjoy and an examination of the various forms of conflicts and competing claims over the same land parcels.

The study has demonstrated that *'mwana ndi mwanangwa'* as a cultural concept, provides liberty to an individual to access land in multiple locations. It is about choices and entitlement not simply to residence but to land governance as well. In other words, it provides freedoms to an individual, regardless of sex, to make a choice of where to stay, be it at mother's side or father's side without any hindrance. This is the basis for multiplicity of claims in multiple locations. The reasons varied. However, common among them were mostly the envisaged economic benefits and strength of social security. Local words used were simply *'mwana walondo ko wakachijanga umampha* (literally meaning a child will opt to settle where he or she feel secure). Based on this concept, it has been noted that the Tonga system of descent is neither purely matrilineal nor purely patrilineal. Rather, it is a blend of the two creating what is known as ambilineal system of descent. Almost in every village there are individuals connected to each other in multiple ways making the Tonga identity extremely fluid.

The study has also demonstrated that the rights to land are vested in an individual, be it to a nephew/niece or a biological son/daughter. At the time of offer they are at par. Once land has been allocated entitlement is guaranteed and the landholder holds it in perpetuity. Their children become part of the inheritance. There are no any known limitations when it comes to use and even transfer rights. Key argument is '*achita kupasika'* meaning they are given as part of their entitlement. The uninterrupted use of the land coupled with good social networks further strengths their tenure security. A similar observation was made by van Velsen (1964) where he noted that once land has been allocated the person has exclusive rights over land use for either building or cultivating crops of his or her choice.

Conflicts over land mostly developed as a result of changes in land value which created new opportunities. It was no longer about entitlement but rather 'what is my benefit'. This is seen as a development leading towards 'private' ownership and how it excluded others from use. Much as the concept of '*wanangwa'* is not an absolute term, it provides guidelines on how land rights operate and how contestations are managed.

The study also noted that the differences between the promotors of *'mdauku'* (dubbed as defenders of real Tonga) and the revisionists did not affect much the land governance issue and its associated rights. It was mostly to do with transfer rights. Much as the revisionists argued that only biological sons residing in their father's village are entitled to transfer land by way of selling, evidence on the ground has demonstrated that both sons and nephews transferred land mostly through selling for varying reasons and both

justified their actions, arguing it was within their right to do so. They could use tools such as strength of kinship identity and the constructed social networks developed over time.

6.1 Property rights and multiple identities

From the evidence presented so far, it is clear that locally defined property rights and the local institutions are key to development as they are embedded in every day relations, networks of reciprocity coupled with the negotiations of the cultural norms (Cleaver, 2001). These forms of interaction are strongly reflected in a great deal of flexibility common in traditional land tenure systems (Platteau, 2000). They provide rules, norms, mores and governance systems for the economy and society to work as they are strongly rooted in social, political and cultural landscape rooted in the locality and cannot easily be transplanted from one setting to the other (Kanji, et.al., 2005). The governance and accountability of local institutions involved in land administration has remained critical when it comes to bringing sanity among the competing claimants.

In this regard therefore among the Tonga kinship status is critical as it provides power or position alongside providing the framework within which one can manipulate economic and political factors to his or her advantage. The Tonga social system is therefore basically that of overlapping networks among kin members which makes it unique (van Velsen, 1964).

Tonga tribe is therefore more of a cultural or social structure than a political unit (van Velsen, 1964). Power and authority are not concentrated in a particular locality or localities or in a particular structurally defined positions or groups but rather its spread

throughout the population in a great variety of groups where a person's status is not determined exclusively or primarily through permanent membership of a corporate group.[31]

With this kind of arrangement, the study concluded that the Tonga society comprise of people with multiple identities connected to each other in multiple ways thereby creating a 'fluid' Tonga identity with no proper definition of rights over land allocated. There could be several reasons that may determine one's choice of residence but what is key is the economic and social benefit one anticipates when making such a decision. They rely heavily on family genealogies locally referred to as *'mkoka'* to justify their connection within the clan set up, making the Tonga tribe to be more of a cultural than a political unit (van Velsen, 1964).

6.3 Policy implications

It should be noted that most people are emotionally attached to their land which represents an important source of identity and its value is embedded in the social structure and their history making it difficult to be abstracted from its social, ritual and the political meanings associated with it (Platteau, 1996). Original occupants of the land will always be keen to retain their land using strong structures like kinship ties and ethnicity. In this regard, therefore, any new unified law that may disregard this arrangement is likely to fuel more multiple imperfections and will generate multiple resistance as the actors will push the law to the limit in defense of their social identity.

[31] Both van Velsen and local lineage leaders agreed that among the Tonga the capacity to construct a wide social network through the construction of tribal lineage history locally referred to as 'mkoka'.

Based on the evidence so far, it has been noted that the concept of *'mwana ndi mwanangwa'* provides a unique dimension in the discussion of customary land debates. The cultural concept as noted allows an individual (both male and female) to access land in multiple locations where they are accorded full user rights. At an individual level, this can be seen to be a move towards 'private' ownership though with contested transfer rights. This has a bearing on the current Malawi policy debates related to the implementation of the land reforms that have since been institutionalized by the land related laws approved in 2016 and gazetted in 2018.

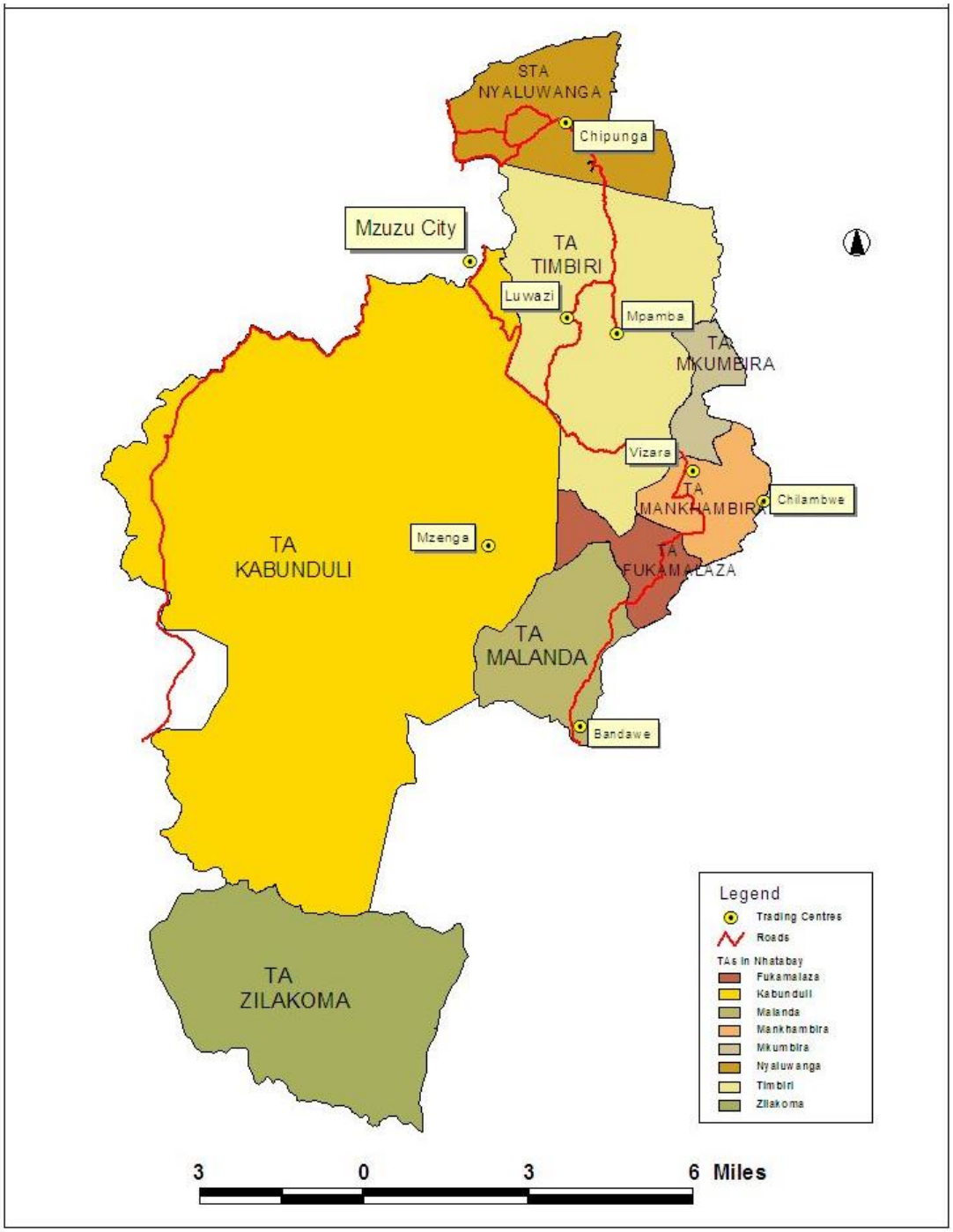


Figure 5. 1: Map of Nkhata Bay District showing Traditional Authorities

Table 5. 1: Distribution of decent and settlement in Malawi

District	**Lineage system with more than 50% of villages**	**Matrilineal (uxorilical + neolocal)**	**Matrilineal virilocal**	**Patrilineal (virilocal and neolocal)**	**Do not know**	**Total villages**	**Ethnic group with more than 50% of villages**
Chitipa	Patrilineal		0.6 %	98.3%	1.1 %	174	Lambya
Karonga	Patrilineal			98.6 %	1,4 %	147	Ngonde
Rumphi	Patrilineal		0.5 %	99.0 %	0.5 %	197	Tumbuka
Nktata Bay	Patrilineal	1.4 %		96.5 %	2.1 %	144	Tonga
Likoma	Patrilineal			100 %		13	Nyanja
Mzimba	Patrilineal	0.3 %	9.2 %	90.4 %		292	Tumbuka
Mzuzu City	Patrilineal		9.5 %	61.9 %	28.6 %	21	Tumbuka
Kasungu	Matrilineal/ Virilocal	10.9%	55.0 %	33.8%	0.3%	340	Chewa
Ntchisi	Matrilineal/ Virilocal	11.3%	63.2%	24.3%	1.3%	249	Chewa
Dowa	Matrilineal/ Virilocal	9.4%	61.3%	28.6%	0.8%	266	Chewa
Nkhota kota		16.4%	43.2%	39.7%	0.7%	146	Chewa
Salima	Matrilineal	57.1%	36.3%	6.6%		212	Chewa
Dedza	Matrilineal	92.7%	6.8%		0.5%	220	Chewa
Ntcheu	Matrilineal	84.2%	15.8%			133	Ngoni

District	Lineage system with more than 50% of villages	Matrilineal (uxorilical + neolocal)	Matrilineal virilocal	Patrilineal (virilocal and neolocal)	Do not know	Total villages	Ethnic group with more than 50% of villages
Lilongwe Rural	Matrilineal/ Virilocal	41.3%	51.6%	6.9%	0.2%	525	Chewa
Lilongwe city		30.0%	40.0%	7.5%	22.5%	40	Chewa
Mchinji	Matrilineal/ Virilocal	19.9%	58.8%	19.9%	1.3%	226	Chewa
Balaka	Matrilineal	83.5%	15.7%	0.8%	N/A	127	Yao
Mangochi	Matrilineal	83.0%	15.7%	1.3%	N/A	159	Yao
Machinga	Matrilineal	96.8%	2.8%	0.5		218	Yao
Zomba rural	Matrilineal	94.7%	3.3%	1.0%	1.0%		302
Zomba City	Matrilineal	71.2%	1.7%	11.9%	15.3%	59	Nyanja
Chiradzulu	Matrilineal	99.5%	0.5%			211	
Blantyre rural	Matrilineal	83.7%	13.7%	0.7%	2.0%	153	
Blantyre city		41.7%	22.2%	11.1%	25.0%	36	
Thyolo	Matrilineal	96%	2.0%		2.0%	101	Lomwe
Mulanje	Matrilineal	100%				121	Lomwe
Phalombe	Matrilineal	81.7%	18.3%			82	Lomwe
Mwanza	Matrilineal	98%	2.0%			102	Ngoni
Chikwawa	Patrilineal	21.8%	2.7%	71.8%	3.6%	110	Sena

District	Lineage system with more than 50% of villages	Matrilineal (uxorilical + neolocal)	Matrilineal virilocal	Patrilineal (virilocal and neolocal)	Do not know	Total villages	Ethnic group with more than 50% of villages
Nsanje	Patrilineal	3.6%	1.5%	94.9%		137	Sena
All missing		45.1%	23.7%	29.9%	1.2%	5253216 5469	

Source, NSO (2007) National Census of Agriculture and Livestock, Module 8

Table 5. 2: Traditional Chiefs in Nkhata Bay

5. NKHATA-BAY	**Senior Chief**	**Traditional Authority**	**Sub Traditional Authority**
Section 1			
Sub Section 1A	M'bwana		Kondowe
Sub Section 1B			Nyaluwanga
Section 2		Boghoyo	
Section 3		Mankhambira	
Sub Section 3A			Fukamalaza
Section 4		Kabunduli	
Section 5		Timbiri	
Section 6	Fukamapiri	Fukamapiri	
Section 7		Malengamzoma	
		Mkumbira	
		Zilakoma	
		Malanda	

Source: Ministry of Local Government and Rural Development as in 2013[32]

[32] Important to note is that at the time the report was being composed some changes were noted. One key development is Mkumbira was elevated to Senior Chief alongside Fukamapiri. However, Mkumbira passed on and so far, no replacement has been made.

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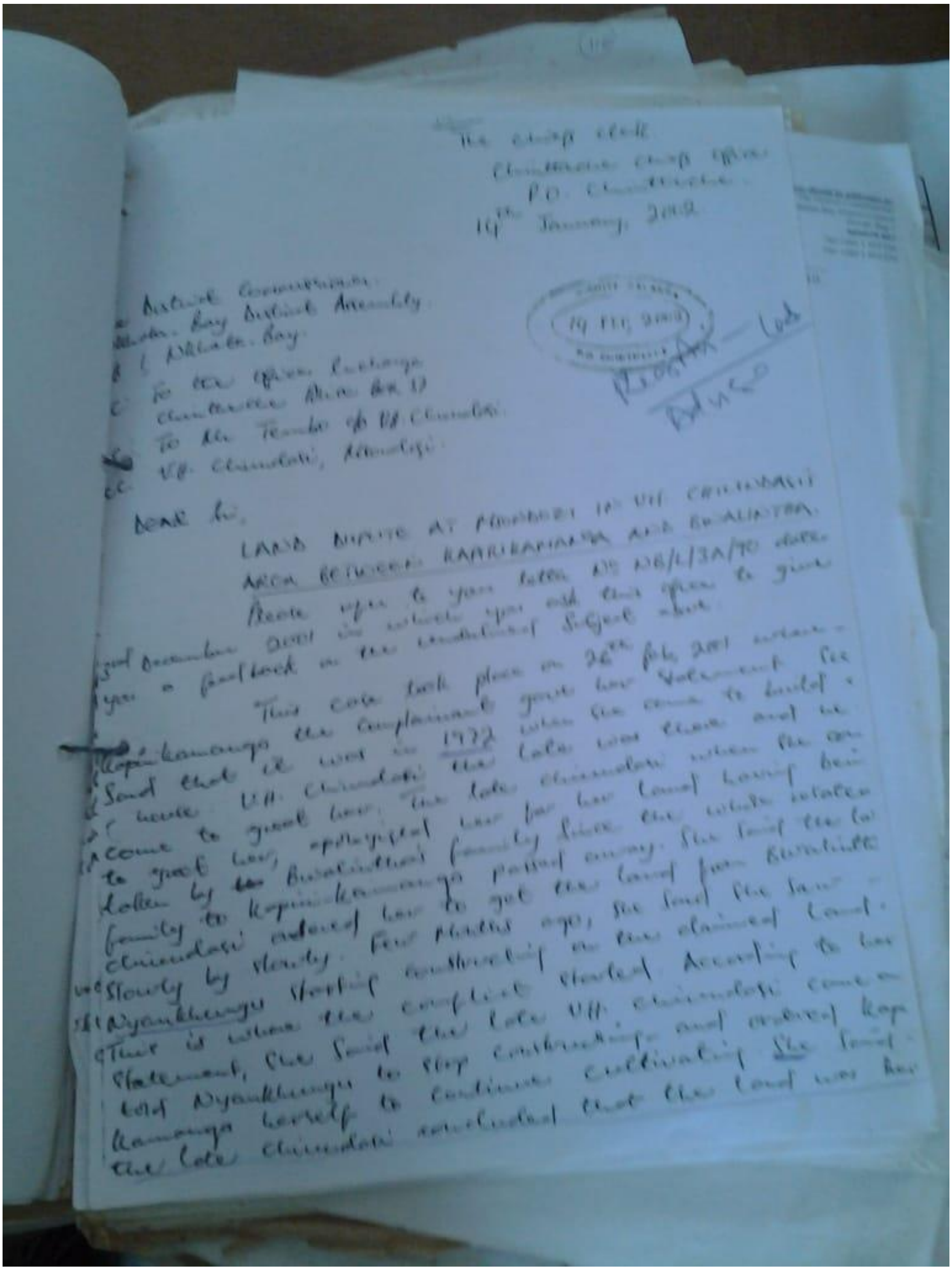
APPENDICES

Appendix I: Banana farm owned by a nephew

Appendix II: Complaint on land

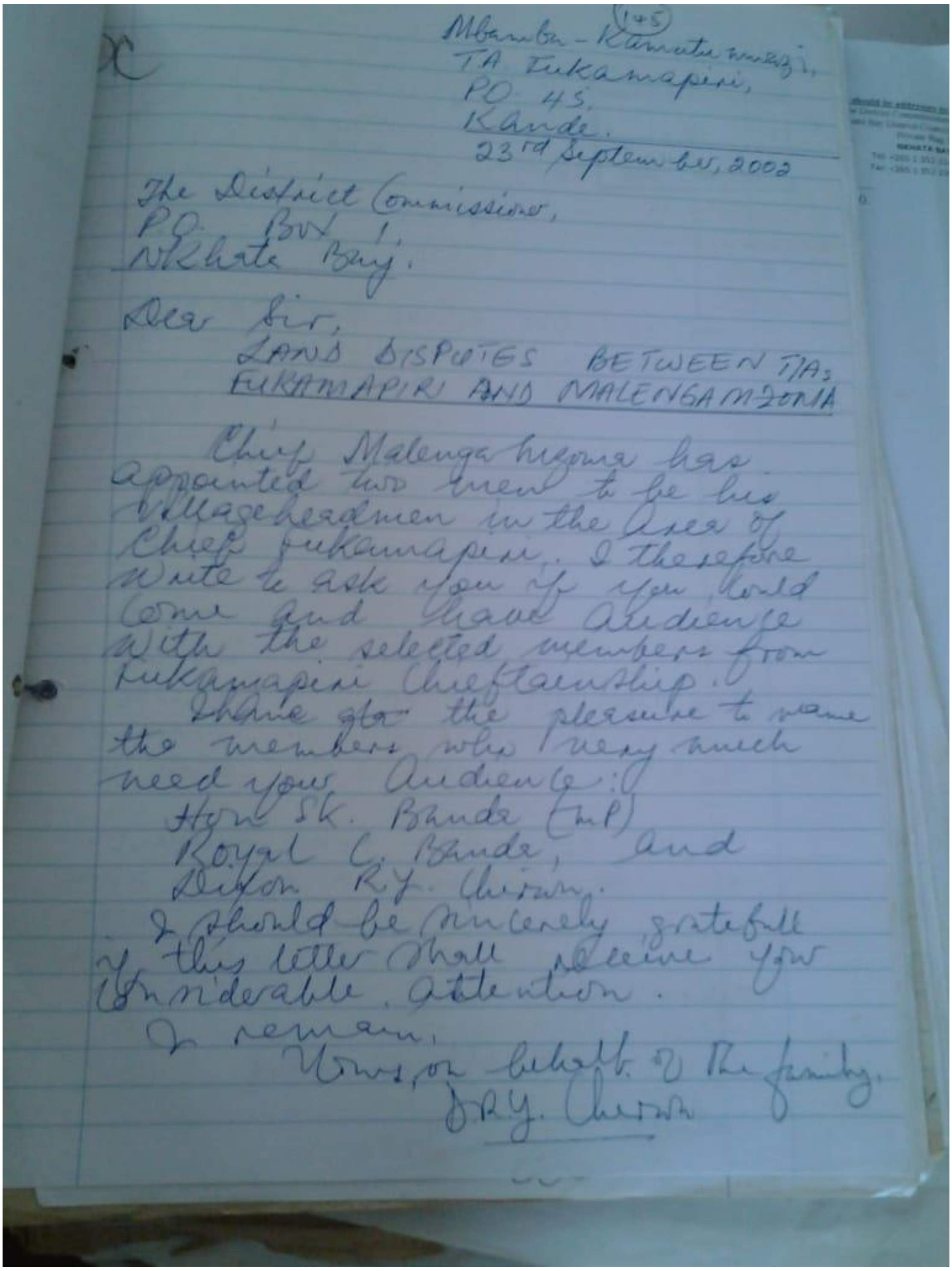

The Chief Clerk
[illegible] Chief Office
P.O. [illegible]
[illegible] January, 2002

Dear Sir,

LAND DISPUTE AT [illegible] IN VH [illegible]
AREA BETWEEN [illegible]

[illegible] 26th Feb, 2001 [illegible] the complainant [illegible] statement [illegible] in 1972 [illegible] the late [illegible] land [illegible] family [illegible] passed away [illegible] land [illegible] few months ago [illegible] claimed land [illegible] slowly by slowly [illegible] conflict started. According to her statement, [illegible] Nyankhungu [illegible] continue cultivating. She [illegible] herself [illegible] concluded that the land was her [illegible] the late [illegible]

Appendix III: Boundary disputes between two villages.



(145)

Mbamba - Kamutumwazi,
TA Fukamapiri,
P.O. 45,
Kande.
23rd September, 2002

The District Commissioner,
P.O. Box 1,
Nkhata Bay.

Dear Sir,

LAND DISPUTES BETWEEN T/As FUKAMAPIRI AND MALENGAMZOMA

Chief Malengamzoma has appointed two men to be his villageheadmen in the area of Chief Fukamapiri. I therefore write to ask you if you could come and have audience with the selected members from Fukamapiri Chieftainship.

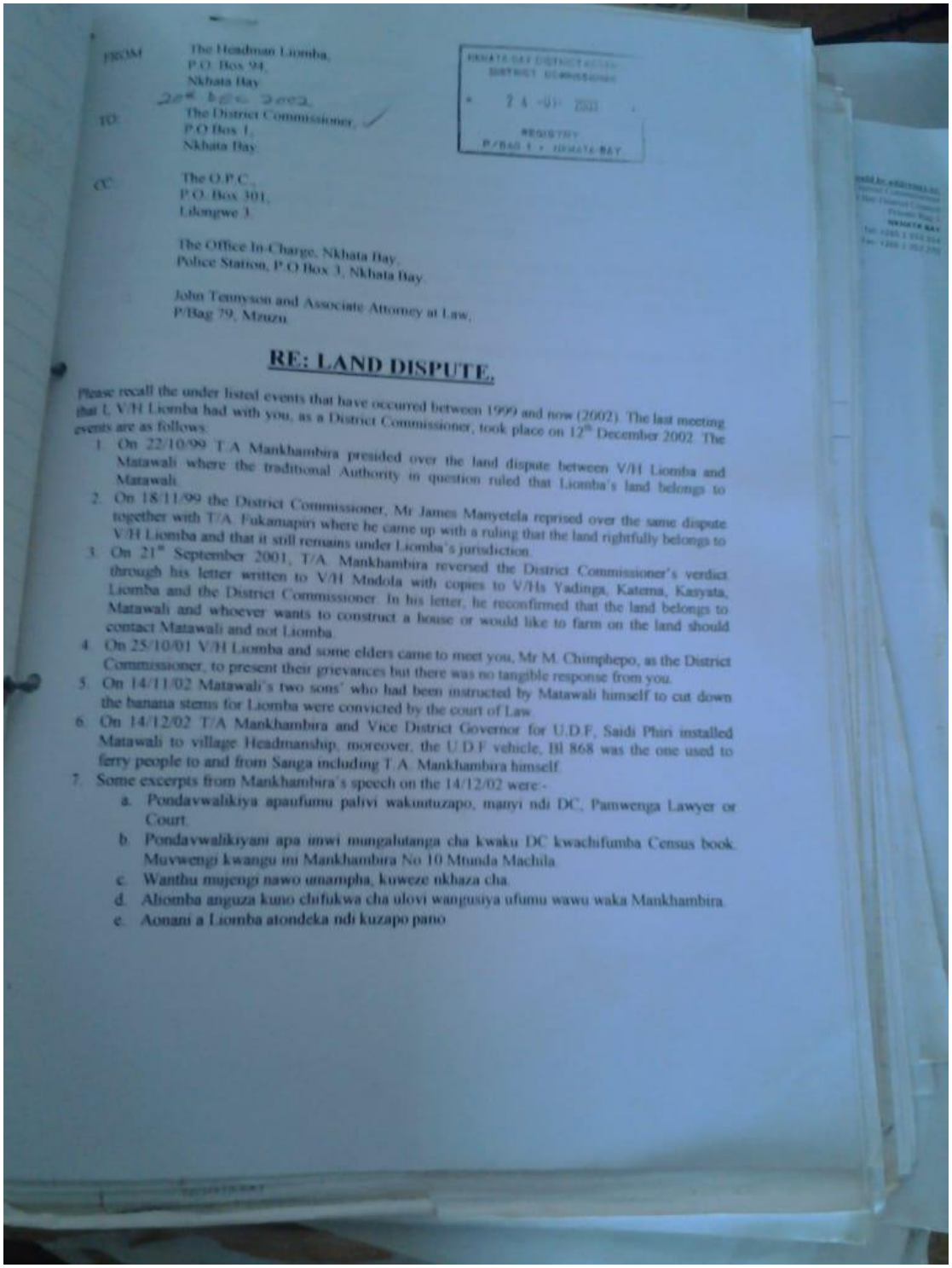
I have got the pleasure to name the members who very much need your audience:

Hon SK. Banda (MP)
Royal C. Banda, and
Dixon R.Y. Chirwa.

I should be sincerely gratefull if this letter shall receive your considerable attention.

I remain,
Yours, on behalf of the family.
D.R.Y. Chirwa

Appendix IV:Land dispute presided over by the District Commissioner.



FROM: The Headman Liomba,
P.O. Box 94,
Nkhata Bay

20th Dec 2002.

TO: The District Commissioner,
P.O Box 1,
Nkhata Bay

CC: The O.P.C.,
P.O. Box 301,
Lilongwe 3.

The Office In-Charge, Nkhata Bay,
Police Station, P.O Box 3, Nkhata Bay

John Tennyson and Associate Attorney at Law,
P/Bag 79, Mzuzu

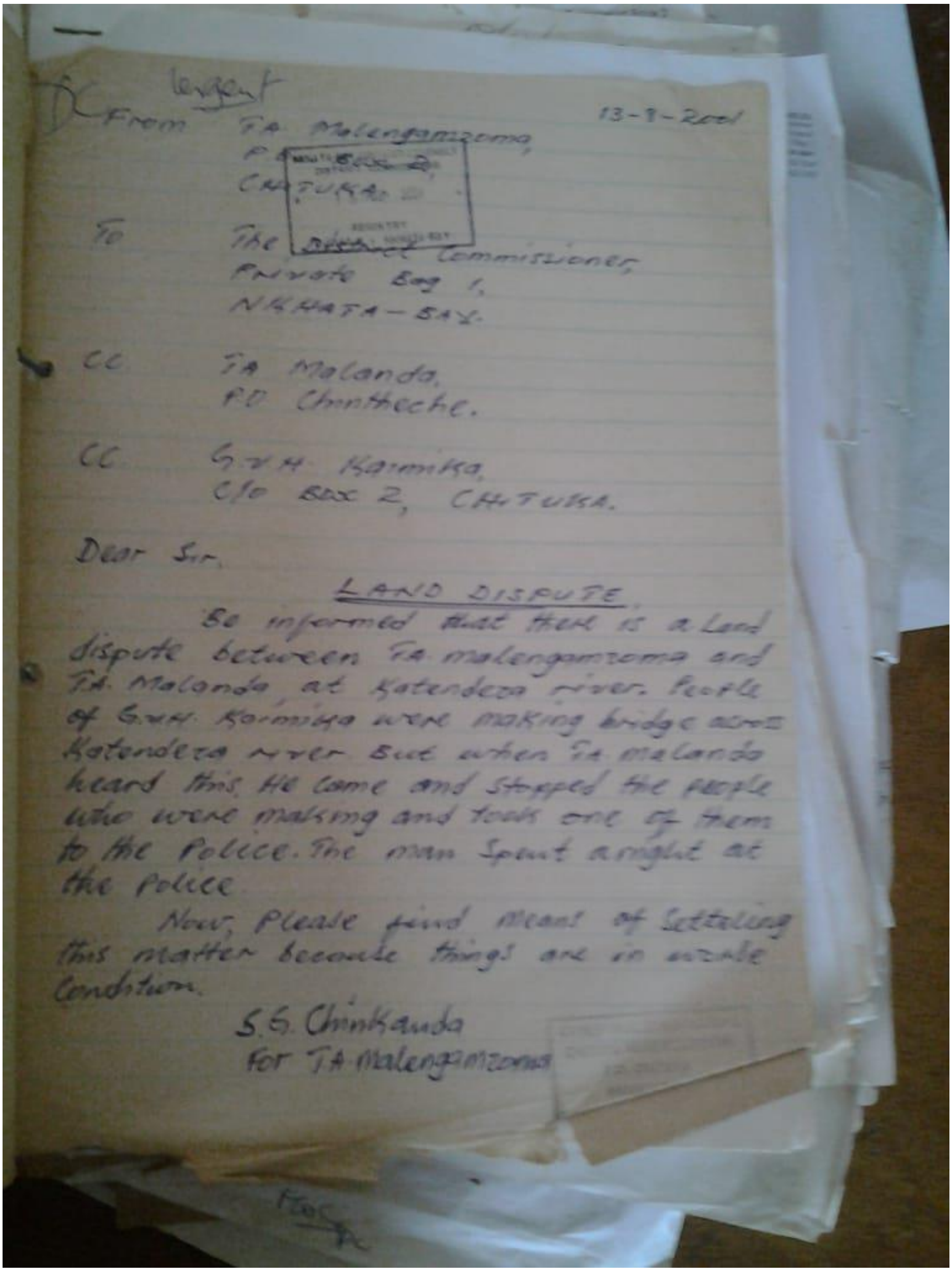
NKHATA BAY DISTRICT ASSEMBLY
DISTRICT COMMISSIONER
24 -01- 2003
REGISTRY
P/BAG 1 • NKHATA BAY

RE: LAND DISPUTE.

Please recall the under listed events that have occurred between 1999 and now (2002). The last meeting that I, V/H Liomba had with you, as a District Commissioner, took place on 12th December 2002. The events are as follows:

1. On 22/10/99 T/A Mankhambira presided over the land dispute between V/H Liomba and Matawali where the traditional Authority in question ruled that Liomba's land belongs to Matawali.
2. On 18/11/99 the District Commissioner, Mr James Manyetela reprised over the same dispute together with T/A Fukamapiri where he came up with a ruling that the land rightfully belongs to V/H Liomba and that it still remains under Liomba's jurisdiction.
3. On 21st September 2001, T/A Mankhambira reversed the District Commissioner's verdict through his letter written to V/H Mndola with copies to V/Hs Yadinga, Katema, Kanyata, Liomba and the District Commissioner. In his letter, he reconfirmed that the land belongs to Matawali and whoever wants to construct a house or would like to farm on the land should contact Matawali and not Liomba.
4. On 25/10/01 V/H Liomba and some elders came to meet you, Mr M. Chimphepo, as the District Commissioner, to present their grievances but there was no tangible response from you.
5. On 14/11/02 Matawali's two sons' who had been instructed by Matawali himself to cut down the banana stems for Liomba were convicted by the court of Law.
6. On 14/12/02 T/A Mankhambira and Vice District Governor for U.D.F, Saidi Phiri installed Matawali to village Headmanship, moreover, the U.D.F vehicle, Bl 868 was the one used to ferry people to and from Sanga including T/A Mankhambira himself.
7. Some excerpts from Mankhambira's speech on the 14/12/02 were:-
   a. Pondavwalikiya apaufumu palivi wakuntuzapo, manyi ndi DC, Pamwenga Lawyer or Court.
   b. Pondavwalikiyani apa imwi mungalutanga cha kwaku DC kwachifumba Census book. Muvwengi kwangu imi Mankhambira No 10 Mtunda Machila.
   c. Wanthu mujengi nawo umampha, kuweze nkhaza cha.
   d. Alomba anguza kuno chifukwa cha ulovi wangusiya ufumu wawu waka Mankhambira.
   e. Aonani a Liomba atondeka ndi kuzapo pano.

Appendix V: Land dispute between two chiefs



Urgent

From T.A. Malengamzoma,
P.O. Box 2,
CHITUKA.

13-9-2001

To The District Commissioner,
Private Bag 1,
NKHATA-BAY.

CC. T.A. Malanda,
P.O. Chintheche.

CC. G.V.H. Karmitsa,
C/o Box 2, CHITUKA.

Dear Sir,

LAND DISPUTE.

Be informed that there is a Land dispute between T.A. malengamzoma and T.A. Malanda at Katendeza river. People of G.V.H. Karmitsa were making bridge across Katendeza river But when T.A. malanda heard this, He came and stopped the people who were making and took one of them to the Police. The man Spent a night at the Police.

Now, Please find means of Settaling this matter because things are in unstable Condition.

S.G. Chinkanda
For T.A. Malengamzoma