

2022-06-01

# Hybrid Land Administration and Street-Level Bureaucracy in Peri-Urban Settlements: A study of Waitiki Farm, Kenya

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Muthama, D.M. (2022). Hybrid Land Administration and Street-Level Bureaucracy in Peri-Urban Settlements: A Study of Waitiki Farm, Kenya (Doctoral thesis, University of Calgary, Calgary, Canada). Retrieved from <https://prism.ucalgary.ca>.

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UNIVERSITY OF CALGARY

Hybrid Land Administration and Street-Level Bureaucracy in Peri-Urban Settlements: A Study  
of Waitiki Farm, Kenya

by

Dennis Mbugua Muthama

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES  
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE  
DEGREE OF DOCTOR OF PHILOSOPHY

GRADUATE PROGRAM IN GEOMATICS ENGINEERING

CALGARY, ALBERTA

JUNE, 2022

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## ABSTRACT

The thesis develops hybrid governance and street level bureaucracy theories, as a set of hypotheses, to explain land administration effectiveness in Waitiki, an *in situ* regularised peri-urban informal settlement in Mombasa, Kenya. Peri-urban informal settlements in Sub-Saharan Africa are dynamic and complex situations under which conventional land administration systems are likely to be dysfunctional. To improve the effectiveness of land administration systems in peri-urban settlements, the study argues that it is necessary to explore how street level land administration officials provide services and how the multiple land governance systems relate. In addition, the study draws upon Lipsky's Street Level bureaucracy theory and Hybrid Governance theory to develop hypotheses to explain street level land administration officials (SLAOs) service delivery and hybrid governance arrangements inter-relationship. Using these hypotheses and drawing on the aforementioned theories, two theories as sets of hypotheses suited to the Waitiki case were developed.

To investigate the research problem a case study strategy of inquiry was adopted. A single case, Waitiki Farm, was used in the study. Waitiki Farm was chosen because it is an informal settlement that was upgraded *in situ* and hybrid land governance continues to prevail. Both official and unofficial organisations and leadership structures play a role in land tenure administration. In addition, SLAOs are active in Waitiki Farm. Data was collected from multiple sources. The primary data comprised a total of 105 semi-structured interviews involving 148 people. I used 42 key-person interviews and 57 door-to-door interviews with residents. Secondary data included historical documents, national and county government documents, the courts' law reports and documents, NGO documents, land administration and demographic documentary, and online data from different government agencies. The fieldwork was undertaken between May and November 2017. To build theory, an interpretive approach was used i.e., interpreting data as the research progresses and building on prior theories as one does not start from a clean slate.

Hybrid governance and Street Level bureaucracy theories were developed from the Waitiki data analysis. The hybrid governance theory that emerged explained that the *de facto* hybrid governance arrangement continues to be dominant and influential in *in situ* regularised peri-urban settlements because SLAOs and residents use them for different land tenure administration functions.

Residents choose *de facto* hybrid governance arrangements based on their perceptions of accessibility, ease of use, and high social trust associated with *de facto* hybrid governance. Additionally, SLAOs select the *de facto* hybrid governance arrangement due to the arrangement's social legitimacy and local context awareness. The street level bureaucracy theory that emerged holds that SLAOs develop strategies to manage the organizational, political, social, and cultural situations they deal with. These strategies are shaped by the existing land administration laws. In addition, SLAOs evaluate if their flexibility will harm their clients' interests or their jobs.

The thesis contributes to understanding land administration systems' effectiveness in peri-urban settlements such as Waitiki by developing substantive level SLAOs and hybrid governance theories. The insight from this study provides strategies for improving land administration in Kenya. Therefore, the study findings provide a basis upon which further policy actions aimed at improving settlement level land tenure administration service provision can be done.

## ACKNOWLEDGEMENTS

This thesis would not be possible without my Supervisor Prof. Michael Barry whose kind support, unwavering patience, constructive criticism, advice, and academic paper writing guidance was invaluable during the study. More so during the uncertain pandemic period. I would also like to thank my Supervisory committee Prof. Jennifer Whittal and Dr. Brian Ballantyne who have been instrumental in the successful development of the study. I am particularly indebted to Dr. Ballantyne for his critical reviews, encouragement, and engaging football analysis, which provided an alternative avenue of debate and engagement. In addition, my thanks go to Prof. Whittal for her incisive reviews and kind words of encouragement.

I would also like to thank the Chair in Land Tenure and Cadastral Systems, the Department of Geomatics Engineering, and the Faculty of Graduate Studies of the University of Calgary for their financial support during my studies.

My gratitude also goes to my research group colleagues for their support and encouragement: Kent, Matt, Alaa, Rita, and Dylan. Additionally, my special thanks to June, Courtney, and Monica for their support. I am also indebted to Erin Tompkins and Lidia Mah for their proof-reading assistance. I also extend my thanks to the staff from Writing Support Services for their editorial guidance.

I am thankful to the residents of Waitiki, local leaders, Civil Society Organisations (CSOs), Community Based Organisation (CBOs), and my research assistant. I am grateful for their time, willingness to share their life histories, and views on land matters in Waitiki and the larger Coastal region. Many thanks to my research assistant for his help with the data collection and fieldwork.

Finally, I am deeply indebted to my family – my late mom, siblings, Daniel, and extended family. My chosen family Irene and mum Juliah, thank you for your prayers, encouragement, and support. On a light note, now I can answer mum Juliah's question: *what is happening in Canada?* To Dr. Winnie thank you for your support and encouragement over the years. To my ADD family, thank you for your prayers and support. I would also like to say thank you to the University of Nairobi for everything.

## **DEDICATION**

*This thesis is dedicated to my late Mother, ELIZABETH WANDAHI. Your daily prayers have been answered.*

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## GLOSSARY OF TERMS

**Amani Self Help Group** – a self-help group comprising the original Waitiki tenants based in Waitiki.

**Baraza** – is a Swahili term that refers to official public meetings called by local level administrators to educate and/or inform local residents (or community members) about local development issues (Rigon 2014; Kioko 2017).

**Bureaucratic corruption** – as used in this study it refers to “all kinds of informal payments to obtain or speed up service, to get a service that has already been paid for, to avoid inspections of a property, or to pay for illegal services (e.g. registration of fraudulent titles or the undervaluation of property to save taxes)” (Zakout et al. 2006 p.5)

**Chama** – is a Swahili term that refers to a small-scale saving scheme that is mainly common among women in Kenya

**Chief** – In Kenya and as used in this study, a Chief refers to a local administrator who is a National Government appointee in charge of a location (an administrative jurisdiction in Kenya). Chiefs are locally powerful actors who perform various functions. In some cases, they implement some of their decisions with the help of the Administrative Police (APs) stationed within their offices. The system of governance upon which Chiefs are based is a continuation of the old centralised system of governance known as provincial administration. Assistant Chiefs below them are in charge of a sub-location (the administrative jurisdiction below a Location) (Rigon 2014, 2016; Kioko 2017).

**Coast Land Sector Non-State Actors CLNSA** – in this study, it refers to the Kenyan coast region umbrella organisation for various land-related Civil Society Organisations (CSOs)

**Compulsory Acquisition/Expropriation** - means the power of the State to deprive or acquire any title or other interest in land for a public purpose subject to prompt payment of compensation (RoK 2012a)

**Conventional land administration systems** – as used in this study it refers to land administration systems in SSA that have evolved from colonial British systems.

**CSOs and CBOs** – As used in this study, CSOs refer to national level civil society organisations while CBOs refer to community level governance structures.

*de facto* – as it appears on the ground (Barry 1999 based on Dale 1976)

*de jure* – the situation as it is according to the law (Barry 1999 based on Dale 1976)

**Effectiveness** – where used in this study, effectiveness means “doing the right things.” (Drucker, 1986 p.36)

**Efficiency** – where used in this study, efficiency means “doing things right.” (Drucker 1986 p.36)

**Eurocentrism** – where used in this study, eurocentrism refers to systems based on European experiences not SSA social, economic, and political developments. The systems were designed to attract European settlers and investments during the colonial period. And though these systems may have since been reformed their enduring socio-economic effects persist. In some of the chapters the terms Eurocentrism, European, and Western are used interchangeably.

**Eviction** - means the act of depriving or removing a person from the possession of land or property which they hold lawfully or unlawfully either executed upon a successful lawsuit or otherwise (RoK 2012b)

*Gazette* - means Kenya Gazette and County Gazette (RoK 2012b)

**Governance** – As used in this study, governance refers to an organization’s ability to undertake its core mandate within a given circumstance and set of conditions.

**Haki Yetu Organisation** - is a Human Rights Organisation based in Mombasa, Kenya. It advocates for the rights of marginalized communities living in informal settlements.

**Hybrid land governance system** – In this study, a hybrid land governance system occurs where both official land administration and unofficial land administration systems compete and/or cooperate simultaneously to control and administer land.

**Hybrid Land Tenure Administration** – In this study, hybrid land tenure administration refers to “the administration of land tenure by a combination of” official and unofficial organisations (Barry 2020 p.1). Official organisations in this study refer to the state-based actors such as the ministry

in charge of land administration and county government. Unofficial organisations refer to the non-state actors such as NGOs, CBOs, customary authorities, and local political parties, among others.

**Hypothesis** – As used in this study, “a hypothesis is a logical supposition, a reasonable guess, an educated conjecture which is either supported or not supported by an analysis of the research evidence. It is a proposition expressed in a form suitable for testing (Grover and Glazier 1986). For example, “*Under conditions C1, C2, ..., Cn, if X occurs then Y will occur with probability P.*” (Reynolds 1971:74)”. (Barry 2015 p. viii)

**Informal settlement** – In Kenya, it officially refers to “occupation of land without formal recognition and that does not comply with physical and land use planning requirements” (RoK 2009 p. 63). In some cases, the term slum is used to refer to informal settlements in research, such as Gulyani and Talukdar (2008). In this study, the terms slum and informal settlements are taken to refer to the same set of settlement conditions and thus are used interchangeably. Informal settlements may occur in urban centres or peri-urban areas (Kalabamu 2000 p.316).

**Internally Displaced Persons/Households** – As used in this study, it means “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border”. (AU 2009 p.3)

**Interpretivism** - As used in this study, interpretivism means interpreting data as the research progresses and building on prior theories as one does not start from a clean slate.

**Intestate Succession** – as used in this study, refers to inheritance that “occurs when a person dies without making a will or the will is invalidated.” In Kenya, “the intestacy rules provide for distributions to people who have a direct blood link with the deceased apart from spouses. In the absence of blood relatives, the deceased’s estate passes on to the state.” (FDHC n.d p.9)

**Irregularly** – As used in this study, it refers to land allocation processes that do not conform to official standards, procedures, or law.

**Jara** – as used in this study *jara* refers to local youths’ charges levied on Waitiki land buyers as they developed their improvements on the land before the land titling exercise

**Land Administration** – An operations management function to administer and implement land policy strategies. This incorporates the administration, or partial administration, of elements such as land tenure systems, natural resources, environmental planning, utilities and transportation infrastructure (Barry 1999 p. xvii). In this study, land “administration is considered a sub-system of the governance system.” (Barry 2020 p.1)

**Land interest** - As used in this study, “land interests include land rights as well as claims that are negotiable. Interest may be viewed on a continuum with a right at one extreme and a mere hope of obtaining a right at the other, and a mix of the two in between.” (Barry 2015 p. viii)

**Land Responsibility** – As used in this study, it refers to “a legal responsibility [that] is codified in law or clearly understood in common law or custom. It binds a person or the holder of a real right to perform a particular duty or refrain from performing a particular action.” (Barry 2015 p. viii)

**Land Restriction** – As used in this study, it refers to “a general restriction, such as a town planning regulation, that prevents the holder of rights in land from exercising certain actions. It may be registered on a title or deed as a title restriction or an encumbrance.” (Barry 2015 p. viii)

**Land Right** – As used in this study, it refers to “an entitlement supported by law, long-standing custom or general convention.” (Barry 2015 p. ix)

**Land title** – as used in this study it refers to the official documentary evidence that recognises a person’s right to property (RoK 2012a).

**Landowner** – the term landowner, as used in this study, refers to a person, group or organisation that possesses “at least a part of the bundle rights” relating to the land in question (Barry 1999 p. xvii). The land rights are exclusive, not absolute. It is on this basis and their long-term leasehold that Mr. Waitiki and the land titling beneficiaries are considered landowners. Landowner as used in the Waitiki narrative history and description, refers to an owner of a long-term lease.

**Leasehold** – As used in this study, it refers to “the property right created by a lease, which is contract by landlord (the lessor) giving exclusive possession to a tenant (the lessee) for an agreed amount of money for an agreed period of time” (Williamson *et al* 2010 p.454).

**Likoni Community Development (LCD)** – as used in this study, refers to a local CBO whose main objective is socio-economic development through local resource mobilisation and management.

**Likoni Community Development Programme (LICODEP)** – as used in this study, refers to a Likoni based CBO constituted by various local organisations.

**Local Politicians** – As used in this study, local politicians refer to the county level politicians such as the Governor and Member of Parliament (MP), and settlement-level politicians such as the Member of County Assembly (MCA)

**Local youth** – as used in this study it refers to groups refer to youth within loosely formed local groups that are involved in different land-related activities within Waitiki

**Marriage** - means a recognised civil, customary or religious marriage (RoK 2012a)

**Matatu** – is a Swahili term that refers to public transport buses or vans that are creatively decorated and popular with the local youth (Kimari 2017 p. 203)

**Matrimonial home** - means any interest in land that is owned or leased by one or both spouses and occupied by the spouses as their family home (RoK 2012b)

**Matrimonial property** - means any interest in land or lease that is acquired by a spouse or spouses during the subsistence of a marriage (RoK 2012b)

**Nyumba Kumi** – is a Swahili phrase that, when translated to English, means ‘10 households.’ It “is a strategy of anchoring Community Policing at the household level or any other generic cluster. These households can be in a residential court, in an estate, a block of houses, a manyatta, a street, community of interest, a gated community, a village or a *bulaa*.” (NPS 2017 p.3)

**Pamoja Trust** – a Kenyan NGO that works with the urban poor.

**Peri-Urban** - Refers to “areas lying at the interface between designated urban boundaries and contiguous rural areas” (RoK 2009 p. 64). This study examines peri-urban areas where there are informal settlements that may include those in the process of evolving or have evolved into formal settlements and urbanising customary territory. In this study, the term peri-urban settlements are

used to refer to both. In addition, peri-urban SSA settlements, peri-urban SSA, peri-urban areas in SSA and peri-urban SSA contexts are used interchangeably.

**Poor** – As used in this study, it refers to the proportion of the population that cannot afford the basic basket of goods as determined by KNBS or “households and individuals whose monthly adult equivalent total consumption expenditure per person is less than Kshs. 3,252 (\$40.5 Cdn) in peri-urban areas” (KNBS 2018 p. 30).

**Poverty rate** – as used in this study, it refers to the proportion of Mombasa population living below the national poverty line as determined by KNBS (KNBS 2019).

**Proposition** - In theory building, a logical statement of a concept that can be restated as a hypothesis for testing (Grover and Glazier, 1986:232). Propositions often take the form: “*If conditions C1, C2,..Cn, then X is likely*” (Barry 2015 p. viii)

**Rahani** – as used in this study, it refers to an informal lease arrangement that is practiced at the Coast. The lease has no time limits (Yahya and Swazuri 2008 p.14).

**Settlement Fund Trustee (SFT)** – As used in this study, SFT refers to the statutory resettlement fund managed by the Ministry of Lands and Physical Planning, primarily meant for agricultural development and purchasing land to resettle squatters and internally displaced persons (IDPs).

**Settlement-level governance committee** – in this study, it refers to a hybrid governance arrangement comprised of local administrators (Chief, Assistant Chief) and local elders.

**Spouse** - means either a husband or a wife married under any recognized law in Kenya (RoK 2012b)

**Squatter** – as used in the study, it refers to “a person who occupies land that legally belongs to another person or institution without the owner’s consent” (RoK 2009 p. 64). These squatters hold, use, and transfer the land illegally.

**Squatter Settlement** – refers to a settlement established through illegal invasion and occupation of vacant private or public land (RoK 2009). As understood in this study, a squatter settlement is a type of informal settlement. In Kenya, a squatter settlement is different from an irregular

settlement because the latter refers to construction without statutory approval, the settler may be the owner or have permission to occupy the land parcel.

**Street Level Bureaucrats** – as used in this study, it refers to officials who “interact with citizens in the course of the job and have discretion in exercising authority” (Lipsky 2010 p. xvii)

**Street Level Land Administration Officials (SLAOs)** – SLAOs as understood in this study include technical staff and low and middle level land administration bureaucrats who have operational and managerial responsibilities and may interact with the public. They are also consumers of policy decisions made by top-level officials.

**Sub-County Administrator** – as used in this study, the sub-county administrator is the county government’s local representative at the sub-county level of administration.

**Sub-Saharan Africa:** “Sub-Saharan Africa (SSA) refers to an area encompassing the countries in Africa that are fully, or partially, located south of the Sahara. The remaining African countries are generally referred to as belonging in North Africa” (Xu *et al.* 2019 p. 815)

**Substantive-level theory** – as used in this study, it refers to a theory developed from in-depth analysis of context-specific localised data e.g. case study data.

**Testate Succession** – in this study, it “refers to the distribution of the estate of a deceased in accordance with his or her will” (FDHC n.d p.9)

**Testing** – as used in this study, it refers to subjecting the study hypotheses to the Waitiki data.

**Theory** - As used in this study, it refers to a set of hypotheses that hold under certain conditions.

**Wakf** – as used in this study, it means land or property that has been endowed to charity or religious institution in accordance with the Muslim law in Kenya (Yahya 2008).

**Wicked Problems** - as understood in this study, a wicked problem context refers to a problem situation consisting of the following characteristics: conflicting opinions and agendas over what constitutes the problem, differing opinions on the various causes or unknown causes, differences in opinion on ways to address the situation, and multiple foreseen and unforeseen outcomes (Rittel & Webber 1973).

## ACRONYMS

% - Percentage

& - And

ADR – Alternative Dispute Resolution

AfDB – African Development Bank

AU – African Union

CBD – Central Business District

CBOs – Community Based Organisations

Cdn \$ - Canadian Dollars, Canadian Currency

CEO – Chief Executive Officer

CFREB - Conjoint Faculties Research Ethics Board (CFREB) of the University of Calgary

CLMBs – County Land Management Boards

CLNSA - Coast Land Sector Non-State Actor

CSOs – Civil Society Organisations

e.g. – For example

EMCA – Environment Management and Coordination Act

*et al.* – and others

ETLR – Evolutionary Theory of Land Rights

FDHC – Family Division of the High Court

FGD – Focus Group Discussion

FGD# - Focus group discussion number

GPS – Global Positioning System

i.e. – that is

Int.# - Interview number

ISK – Institution of Surveyors of Kenya

KLR – Kenya Law Report

KNBS – Kenya National Bureau of Statistics

KPLC - Kenya Power and Lighting Company

Kshs. - Kenya Shillings, Kenyan currency

LAS – Land Administration System

LASO – Land Adjudication and Settlement Officer

LCD - Likoni Community for Development

LICODEP - Likoni Community Development Programme

LIMS – Land Information Management Systems

LTO – Land Titles Ordinance

M<sup>2</sup> – Meters squared

MCGDLPH - Mombasa county government’s Department of Land, Planning and Housing

*Misc.* – Miscellaneous

MP – Member of Parliament

MS – Mainland South

MSA – Mombasa

NACOSTI – National Commission for Science, Technology and Innovation

NGO – Non-governmental Organisation

NLC – National Land Commission

NPS – National Police Service

OCS - Officer in Charge of a Police Station

Pers. comm. – personal communication

RCTs – Random Controlled Trials

RIM - Registry Index Maps

RIMs - Registry Index Maps

RoK – Republic of Kenya

SCOK – Supreme Court of Kenya

SFT – Settlement Fund Trustees

SFT - Settlement Funds Trustee

SLAOs – Street Level Land Administration Officials

SLB - Street Level Bureaucracy

SLB theory – *refers to* Lipsky’s Street Level Bureaucracy Theory

SLBs – Street Level Bureaucrats

SMSs – Short Message Services

ss. – sub-section

SSA – Sub-Saharan Africa

STDm – Social Tenure Domain Model

TTS – Talking Titler System

# CHAPTER ONE: INTRODUCTION

## 1.0 Introduction: Peri-Urban Land Administration in SSA

This study develops peri-urban land administration theory within the context of the Waitiki Farm settlement in Mombasa, Kenya. It grounds the theory in the relationship among hybrid land governance systems, as well as practices and experiences of street-level land administration officials (*hereinafter* SLAOs) using the case study method of inquiry. The focus of the case study is the nature of relationships among hybrid land governance systems and the experiences of SLAOs. As an operational definition, SLAOs include technical staff and low-and middle-level land administration bureaucrats who have operational and managerial responsibilities and may interact with the public. They are also consumers of policy decisions made by top-level officials.

Effective peri-urban land administration is key to achieving the urban development objectives of urban managers in Sub-Saharan Africa<sup>1</sup> (*hereinafter* SSA) and improving the living conditions of these areas' residents (Payne *et al.* 2014; Durand-Lasserve *et al.* 2015; AfDB 2016). An effective official land administration system (*hereinafter* LAS) provides security of tenure, facilitates land transfers and a land market, supports access to affordable land for housing and land use control, and provides reliable land information for other administrative purposes such as land taxation (Williamson *et al.* 2010).

However, the stable enabling conditions that are critical to such an effective system seldom exist in peri-urban SSA settlements (Fekade 2000). Many official LAS are dysfunctional in peri-urban SSA, because peri-urban SSA contexts are characterised by corruption, patronage, lack of funding, lack of political will, lack of capacity, high population growth and rapid urbanisation. In addition, SSA urban and peri-urban populations are growing. It is estimated that by 2037, half of the population in Africa will live in urban areas (AfDB 2016). Peri-urban growth in SSA is also often characterised by conflict, competition and social change. Both dynamism and change are evident in informal settlements, uncontrolled developments, and limited or non-existent urban services are observed (Payne *et al.* 2014; Durand-Lasserve *et al.* 2015; AfDB 2016).

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<sup>1</sup> Generally, geographically refers to African countries that lie fully, or partially, South of the Sahara Desert (Xu *et al.* 2019 p. 815).

Under these dynamic and transformative conditions, conventional official land administration systems are often ineffective (Fekade 2000). One explanation is that these systems tend to be inherited from colonial systems, are designed for stable situations, have a Eurocentric bias, and they do not account for the complexity inherent in rapidly changing situations (Olima 1997; Olima & Obala 1999). In addition, customary systems prevail despite the imposed official systems (Yahya & Swazuri 2007). These interrelated factors are both a cause and an effect of the system's ineffectiveness. As observed in Barry and Danso's (2014) study, resulting in insecure tenure, fraudulent land transactions, and concentration of land in the hands of elites, criminal elements, and speculators are characteristic of and a cause of dysfunctional land administration systems.

If the official LAS is dysfunctional or absent, then unofficial LAS's emerge or persist. These unofficial LAS's are also, in some cases, referred to as neo-institutions or informal systems (Durand-Lasserve & Royston 2002; Rakodi 2006). In this study, the term unofficial LAS is preferred because it avoids the dualistic disadvantage of informal-formal categories and covers the wide array of systems that do not fit within the usual informal terminology. The literature referenced in this study and the fieldwork will show that in peri-urban SSA the nature of hybrid land governance systems relationships is poorly understood despite it being key in determining the effectiveness of official land administration services delivery. To address the knowledge gap, the study develops a hybrid governance theory (*refer to section 8.3*) to conceptualise the relations between different official and unofficial land administration systems within Waitiki Farm.

Street level bureaucrats are arguably important in the effective delivery of land administration services in SSA (De Vries & Zevenbergen 2011). However, very few empirical studies have explored how SLAOs deliver services within the existing laws, rules, procedures, resources, socio-organisation norms, the local political environment and the external environment in peri-urban SSA. As a result, little research exists that addresses street level land administration in peri-urban SSA. In addition, it is more likely that many of the factors that may be critical to the success of a land administration system envisaged by Williamson et al (2010) in SSA will not be present in many SSA peri-urban situations. From the above it can be deduced that in these situations it is likely that the SLAOs will be required to create and maintain some of these conditions as best as they can while at the same time handling far-reaching challenges such as those related to local politics and uncertainty that follow conflict in such areas. Thus, their land administration services

delivery strategies and their impact on the official LAS effectiveness is no simple functional matter. To improve the effectiveness of SLAOs in peri-urban SSA and address the knowledge gap, I adapt a street level bureaucracy theory to examine street level bureaucrats in Waitiki Farm (*see chapters 2 and 7*).

Following this introductory section to land administration in peri-urban SSA and research, Kenya's land governance context is discussed briefly. This is followed by a brief introduction to existing research on peri-urban land administration in Kenya and Waitiki Farm History. Following these are the research purpose, objectives, questions, methodology, scope, limitations and contribution to knowledge.

## **1.1 Kenyan Context**

Before colonial rule, land in Kenya was communally owned and governed according to local customs, norms and rules. The advent of colonialism in 1895 in Kenya disrupted this system and introduced property ideologies and models of ownership that emphasised private landholding. This approach was alien to many Kenyan communities who did not have experience of treating land as a commodity (Kanyinga 2000; Cooper 1980). Western-based property law and land ownership were introduced by the colonial administration to encourage colonial settlement and spur economic development (Okoth-Ogendo 1991). However, these led to land dispossession and other social injustices that are yet to be fully addressed (RoK 2009). The neglect of these historical land injustices is usually cited as one of the key causal factors of land-based violence. This frequently intensifies during election periods (Obala 2011). Of particular relevance to this research are the 1997 Likoni land clashes in Mombasa that preceded the 1997 general elections, during which indigenous residents evicted non-indigenous residents and landowners (RoK 1999).

To address land conflict and landlessness in various parts of Kenya, the national government, through the agency responsible for land administration, undertakes land resettlement programmes (RoK 2016). This programme is meant to benefit landless households, settle internally displaced persons, and ease the land squatting phenomenon. Despite the programme's focus on addressing landlessness, land invasion and land conflict persists (RoK 2009). Land squatters, especially in Mombasa, continue to settle on both public and private land for several reasons, key among them

are articulated as unresolved historical land injustices and ancestral land claims (Yahya & Swazuri 2007).

This has made land administration in these situations a wicked problem in land governance that existing official LAS are unable to address in their current form. Generally, a wicked problem context refers to a problem situation consisting of the following characteristics: conflicting opinions and agendas over what constitutes the problem, differing opinions on the various causes or unknown causes, differences in opinion on ways to address the situation, and multiple foreseen and unforeseen outcomes (Rittel & Webber 1973).

The existing official land administration organisational framework is meant to address some of the post-colonial land administration problems such as multiple overlapping land laws, political interference, bureaucratic inefficiency, malpractice, and corruption. The organisational framework was established after the Constitution was ratified in 2010. This organisational framework and accompanying legislative reform have improved the overall land governance in Kenya by, for example, clearly establishing the land administration responsibilities of each agency (RoK 2010). However, their implementation has been fraught with political and organisational conflict, which has further complicated official land administration. For example, there was a conflict between the Ministry of Lands and the National Land Commission's (NLC) over key land administration functions that were transferred to the NLC (Boone *et al.* 2019).

Aside from the primary research questions, what emerged in this study is that the organisational conflict affects programmes such as land resettlement which require the cooperation of all land governance agencies. It also means private land squatting cases such as the one at Waitiki Farm, the subject of this research, take a longer time to resolve because of the fragmented authority associated with various interests. Furthermore, in addition to serving development objectives, resettlement programmes also serve political objectives as both national and local political leaders use them in their campaigns. The resulting political contestation determines the nature of such programmes and who benefits from them (Rigon 2016).

In summary, though official LAS have been utilised in Kenya to address the landlessness problem, local conflict arising out of both public and private land squatting problems persist. There is limited

research on the efficacy of this approach in providing secure land tenure and resolving land-based conflict in peri-urban Kenya. The next section briefly discusses the existing research on peri-urban land administration in Kenya. Kenya comprises the area shown in figure 1.1 below.



**Figure 1.1 Map of Kenya depicting its international boundaries and key urban centres**

## 1.2 Existing Research on Peri-Urban Land Administration in Kenya

There have been a number of studies on the official land administration system's effectiveness in Kenya. In summary, these studies characterise the system as: inefficient, centralised, corrupt, manual-based with poor record keeping, prone to abuse of power, and an enabler of irregular land allocation (Olima 1997; Olima & Obala 1999; Rakodi 2000; Mwangi 2008; Obala 2011). Most of these studies are done from a functional perspective, i.e., a rational state perspective that emphasises a set of procedures and fails to account for the complexity of the underlying situation, and have as their goal the improvement of official land administration functions in various urban areas in Kenya, e.g., Nairobi, Eldoret, Kisumu and Mombasa, and informal settlements within them. The studies find that the official LAS is dysfunctional in urban and peri-urban settlements because of a number of factors, especially the complex nature of urban and peri-urban land relations (Olima & Obala 1999; Olima 1997), rapid urbanisation leading to increased land demand (Olima 1997), embedded local interests, the system's colonial heritage and manipulation by political elites (Olima 1997). The ineffectiveness of the official LAS has led to an unplanned transformation of agricultural land to urban land uses (Thuo 2013), reduced access to land for housing development and clouding of the land titles register (Olima 1997; Olima & Obala 1999).

Peri-urban settlements in urban Kenya are also characterised by land-based conflict and violence. Because of the likelihood of violence and conflict, land administration officials tend to avoid these settlements as the "conditions are too complex to handle" (Weru *et al.* 2015 p.241). In these settlements, Weru *et al.* (2015 p.238) observe that there is a link between violence and property ownership. Violence and eviction strategies, such as arson, are used to both claim and protect ownership. For example, dwelling owners who use eviction through arson to regain possession of their land parcels will also hire local gangs to guard the reconstruction of the dwelling and then let it to new tenants. In addition, it is not uncommon for the police to collude with the local elites - they may stand guard as evictions take place - and in some cases, participate in these evictions. Under these situations, residents may use informal security mechanisms such as opposing local gangs to protect their property (Weru *et al.* 2014). Obala and Mattingly (2014) examine urban land conflict in Nairobi informal settlements and argue that corruption and ethnicity are key urban land-based violence determinants. For example, in the four informal settlements that they studied, they found that corruption worsened ethnic relations leading to intimidation, and in some cases,

physical violence (p.2750). To improve the effectiveness of official LAS in these situations both Weru *et al.* (2014) and Obala and Mattingly (2014) call for multiple strategies based on a sound understanding of the complex informal settlement situation. These strategies include action-based research, engaging the residents through existing local networks and working with the residents to develop administrative tools that work for them.

In Mombasa, Rakodi *et al.* (2000) used the case of Mombasa Municipal Council to examine the complex urban governance relations within Mombasa City. They contend that the inadequate urban service provision within the city is a result of the political struggles within the city and at the national level. They also note that the city was not able to meet most of its urban service provisions, including land administration services, because of existing complex land tenure systems, a bureaucratic top-down management style, dominance of ethnic politics in organisational culture and bureaucrats' working conditions. Constrained working conditions included lack of capacity and financing, among others. In addition, Rakodi *et al.* found that local political and administrative leaders are not accountable to the public. Rather, they are beholden to the tribal and ethnic groups "controlling land, business and capital in the city" (Rakodi *et al.* 2000, p.169).

Yahya and Swazuri (2007) studied the prevalence of customary leaseholds in Mombasa and argued that this has been brought about by the incomplete integration of the customary and private landholding approaches. They argue that when designing official LAS interventions, the indigenous land tenure types should be considered. These include Rahani, renting of or ownership of trees, Wakf endowments, among others (*see Chapter 2 for more details*). Though the authors consider the implications of their study on official LAS in Mombasa, their emphasis is on describing the historical development of land tenure types and not how to improve the effectiveness of official LAS.

Nzioki *et al.* (2013) examine the valuation of unregistered land parcels in Mombasa. They contend that peri-urban Mombasa is a problematic land tenure context because of Mombasa's history, socio-cultural characteristics, and political challenges. According to valuation professionals interviewed by Nzioki *et al.* (2013) in Mombasa, the valuation of unregistered lands is a common professional practice. However, this practice is not provided for under the law or regulations of

the valuation profession in Kenya. This hybrid practice has the tacit recognition of land administration officials and other important organisations for example, financial institutions, albeit under conditions such as limits on credit and the need for additional collateral (Nzioki *et al.* 2013).

Pamoja Trust (2014) enumerates informal settlements in Mombasa for Mombasa County Government planning purposes. They note that the complicated nature of the land ownership system hampers effective official land administration in these areas. The study provided baseline data for land administration officials dealing with peri-urban areas such as Waitiki Farm as it provided both social and spatial data on the informal settlements. However, such information would need to be verified and standardised for official land administration purposes in these areas (Pamoja Trust 2014).

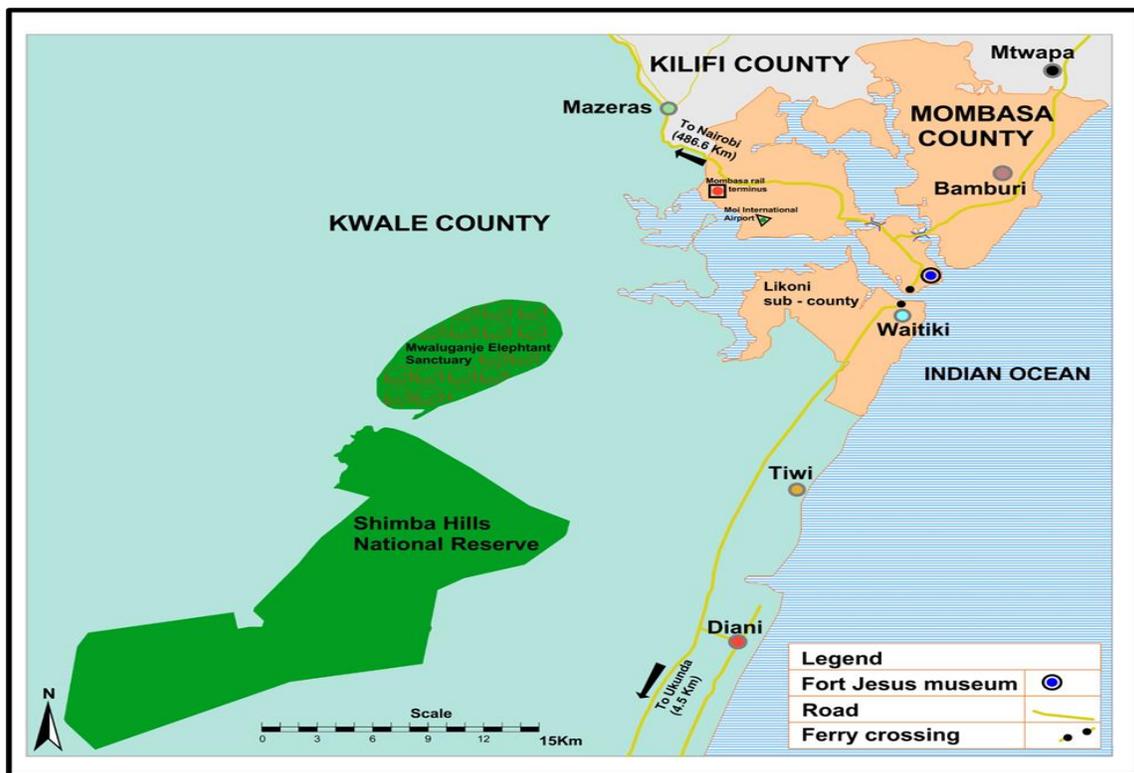
In summary, the literature identifies a complex set of local factors that influence the effectiveness of official LAS in peri-urban settlements and informal settlements. The factors range from the macro to the micro scales and include, social, political, legal, institutional, and cultural factors. The peri-urban SSA land administration literature is reviewed in greater detail in Chapter 2. It is important to note that there is no comprehensive peri-urban SSA land administration theory, existing schools of thought that address official land administration are partial and only address particular aspects of the system at a time. Much of the existing land administration theory that posits that a LAS that fits the rational state ideal that exists to an extent in many western countries can be achieved through a series of functional steps (Williamson *et al.* 2010). Thus, there is a gap in research that explains or predicts official and unofficial land administration effectiveness under hybrid governance arrangements (*see Chapter 2*).

The following sub-section briefly introduces the Waitiki case study.

### **1.2.1 Waitiki Farm History**

The history of Waitiki Farm is discussed in detail in Chapter 4. In brief, Waitiki Farm comprises four underlying legal land parcels that were jointly owned by Mr. Evanson Jidraph Kamau Waitiki (the plaintiff) and his late wife, Bertha Wanjiru Kamau. The original land parcels totalled 940 acres but at the time of eviction it had been reduced to 784.5 acres due to compulsory acquisitions (expropriations) by the government and the plaintiff donating some of the land to the Catholic

Church (RoK 2016). The original grants were registered on 1<sup>st</sup> March 1963. Mr. Waitiki and his wife purchased the farm in 1975 from Guldawood Likoni Dairy Farm Ltd (RoK 2016). Between 1975 and 1997 the Waitikis owned the land without incident except for occasional trespass by local residents (Int# 1002, 1003, 1023). In 1997, during the Likoni land violence (RoK 1999), Mr. Waitiki and his family were evicted by the local indigenous residents – mainly from the Digo tribe, who claimed the land on an ancestral basis. When they invaded the land, they claimed Mr. Waitiki was not one of them because he belonged to the Kikuyu, a non-native ethnic group. After evicting the Waitiki family, the land invaders subdivided and sold the land off-register to various purchasers. A survey by the national government in 2016 found that over 90% of the residents on Waitiki Farm had purchased their lands from the land invasion leaders and other early land purchasers (RoK 2016). These off-register land transactions facilitated unregulated developments on the farm. The population grew to a population of 7,000 households by 2016. Figure 1.2 below shows Waitiki Farm settlement location within Mombasa County.



**Figure 1.2 Waitiki Farm within Mombasa County and the larger Coast region**

Between 1997 and 2016, Mr. Waitiki made several attempts to protect his land rights through the legal system. These included lodging court cases against the land invader group and issuing caveats against land transactions in national newspapers. Though the court ruled in his (Mr. Waitiki) favour in *Evanson Jidraph Kamau Waitiki & Another v. The Attorney General and Others [2000] KLR, Mombasa High Court Misc. Application No. 40/2000*, he was unable to regain possession of his land leading to a protracted land conflict where he, as the registered owner, could not use the land as the owner. The settlement residents, as noted above, many of whom had purchased their land, lived under constant fear of eviction, and official LAS could not provide services because the settlement had been declared illegal (RoK 2016).

To resolve the Waitiki Farm land conflict, President Uhuru Kenyatta issued a presidential directive. The directive instructed the responsible agencies to: negotiate with the registered landowner to facilitate the government's acquisition of the land; register the land to provide security of tenure to the settlers, and develop a mechanism through which to recover the land acquisition cost (RoK 2016). The State, through the Ministry in charge of land administration, purchased the land from Mr. Waitiki and his wife and undertook a land titling project between August 2015 and January 2016. The project beneficiaries were given registered ownership encumbered with a legal charge of Kshs. 182,000 (approximately 2,275 Cdn \$). The titles were charged because the State wanted to recover the amount of money it had paid to acquire the land from Mr. Waitiki and his wife (RoK 2016; Int# 1015). The land titling project resolved the long-standing land conflict between the former private landowner and the residents who invaded the farm in 1997 or purchased land off-register since that date.

### **1.3 Research Problem**

In Kenya, land titling remains the preferred official land administration strategy for resolving the land squatting problem, especially in conflict prone peri-urban situations. However, official land administration in these situations remains dysfunctional, as evidenced by ongoing rampant land disputes, an increase in squatting, uncontrolled developments, and fraud in the form of multiple sales of the same piece of land (Obala 2011). The prevalence of these factors could also be linked to the constrained working conditions of SLAOs and the coercive nature of relationships among the hybrid land governance actors. Without exploring how SLAOs provide services and how the

multiple land governance systems relate, it is difficult to improve the effectiveness of official LAS in post-conflict peri-urban SSA areas. Evidence to date shows that problems experienced in many peri-urban SSA settlements are similar but more pronounced in post-conflict peri-urban areas in SSA, such as at Waitiki Farm.

## **1.4 Research Purpose and Objectives**

The primary goal of this study was:

1. To develop hybrid governance and street level bureaucracy theories to explain land administration system effectiveness in Waitiki Farm peri-urban settlement.

The theory has been developed from the perspective of a land administration analyst interested in improving a post-conflict situation.

To meet the main objective the following specific objectives were addressed and hypotheses developed.

***Objective 1:*** To structure the investigation, and similar investigations, develop an analytical framework for organising data and structure the flow of analysis.

***Objective 2:*** To develop a hybrid governance theory for in situ regularised informal settlements based on the Waitiki case.

***Objective 3:*** To develop a street level bureaucracy theory for in situ regularised informal settlements based on the Waitiki case.

***Objective 4:*** To synthesise the two theories and develop a theory that may be used to explain the effectiveness of official land administration systems in Waitiki Farm peri-urban situation.

To develop the study's hybrid governance and street level bureaucracy theories, tentative hypotheses that are relevant to the Waitiki study were posited (*refer to section 2.8.2.3*) and tested. These hypotheses were developed to guide the study's analysis of the Waitiki case and develop the theories.

## 1.5 Research Questions

To address objective 1 the following questions were examined:

1. What existing theories related to land administration describe and explain peri-urban land tenure administration systems in SSA? Specifically, are there existing hybrid governance and street level bureaucracy theories that may serve this purpose or can be adapted to serve this purpose?
2. How adequately do these theories explain land administration in peri-urban SSA?
3. How can the plausible explanations for official land administration effectiveness in peri-urban SSA be represented?

To address objective 2, hybrid governance, the following questions were examined:

4. Who are the key land governance actors in Waitiki?
5. Who are the powerful, and who are the vulnerable actors?
6. Who *de jure* and *de facto* administers land in Waitiki Farm?
7. How is land tenure administration undertaken, and more specifically, what land tenure administration services do the different actors provide?
8. What strategies are available to the powerful and the vulnerable to secure their land tenure and to secure land transactions, and why do they adopt particular strategies?
9. How do the different land tenure administration systems interrelate, and what are the noticeable land tenure administration outcomes of these interrelations? What are the available participatory development institutional platforms?
10. How did the land tenure regularization process impact the different institutions and their related land tenure administration activities?

To address objective 3, Street Level Bureaucracy, the following questions were examined:

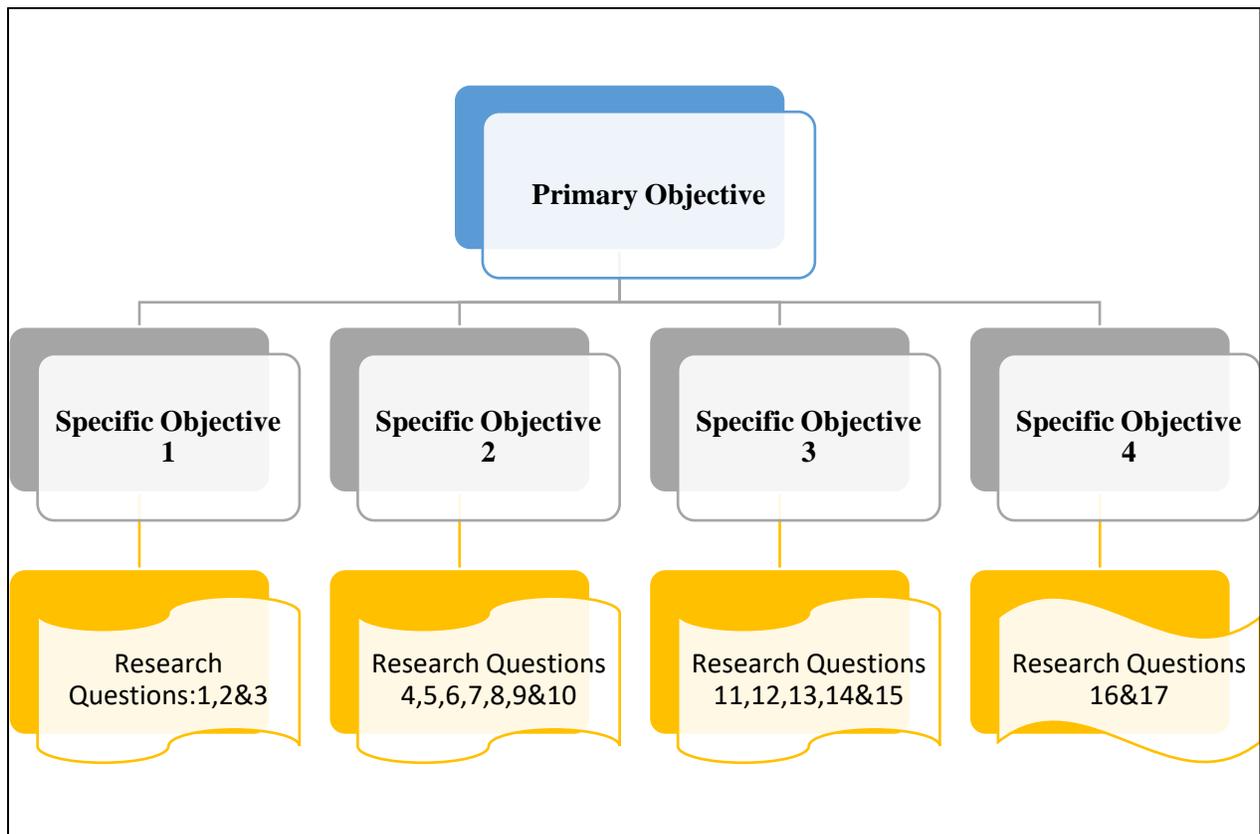
11. What land administration functions do SLAOs perform in peri-urban SSA/Waitiki Farm?
12. Under what conditions do SLAOs deliver land administration services in peri-urban SSA/Waitiki Farm, and how do they strategise to effectively deliver land administration services?
13. In what ways do local politics influence SLAOs' work, what are the noticeable outcomes, and how do they deal with these influences?

14. How do SLAOs experience land corruption in their work, what are the noticeable outcomes and what accountability mechanisms are available to them?
15. What were the SLAOs experience with the land titling programme undertaken in Waitiki Farm?

**Objective 4:** To address objective 4, synthesis of hybrid governance and street level bureaucracy, the following questions were examined:

16. What hybrid governance theory and street level bureaucracy theory explain land administration in Waitiki Farm? Can existing theories be developed to do this?
17. How do the two developed substantive level theories contribute to understanding official land administration effectiveness in peri-urban SSA

Figure 1.3 illustrates the research objectives and questions detailed in sections 1.4 and 1.5.



**Figure 1.3: Research Objectives and Questions**

## 1.6 Research Methodology

The research methodology is discussed in detail in Chapter 3. In brief it involved the following. Addressing the four specific objectives and their respective research questions contributes to achieving the primary research objective by providing the following outcomes:

- a. Development of preliminary hypotheses to guide the study's analysis of the Waitiki case and develop the theories.
- b. Identification of the social, economic, political and cultural factors that affect official land administration systems' effectiveness in peri-urban SSA.
- c. Evaluation of the relationship between land governance actors.
- d. Identification of conditions under which SLAOs can be effective in post-conflict peri-urban SSA.
- e. The revelation of the causal factors, conditions and reasons accounting for an official land administration system effectiveness in peri-urban SSA.

The study includes a review of the literature on land administration, public administration, hybrid governance, street level bureaucracy, and peri-urban land administration in SSA. The literature review provides the premise for adopting the peri-urban land administration effectiveness framework as well as the appropriate methodology to investigate the research problem. To investigate the research problem, a single case study strategy of inquiry is adopted while a qualitative interpretive approach is used to build theory.

To develop a rich Waitiki Farm case history (*further detailed in Chapter 4*), the following questions are examined:

- a) What was the history of land related conflict in Waitiki?
- b) What were the causes of conflict between Mr. Waitiki and the indigenous residents?
- c) What were the social, political, cultural and economic outcomes of the land conflict?
- d) How did the current residents access and hold land in Waitiki Farm?

Primary data for the study was collected over seven months in 2017. The fieldwork was undertaken in peri-urban Likoni, Mombasa Kenya. The research site, Waitiki Farm settlement, was purposively chosen for an in-depth examination of hybrid land administration and street level bureaucracy in peri-urban settlements. This is because it exhibits characteristics of a rapidly

growing and changing peri-urban SSA context. The settlement was also considered a localised system because the residents were part of the same land titling process where each beneficiary received a land lease with the same amount charged. The settlement's geographical outer limit boundaries delineate the case study area.

The decision to use the Waitiki Farm peri-urban settlement was further supported by the findings in the field. The residents in the settlement share the same street level land administration officials, land administration institutions, local level administration offices, and sources of information. In addition, powerful groups and individuals who had grabbed the land still operated within the settlement.

The study used semi-structured and open-ended interviews with the land titling beneficiaries (original land grabbers and people who bought from them), tenants, local leaders, national and county government officials, national land commission representative, civil society actors, a journalist, a private practising lawyer, local politicians and leaders, and financial institution representatives as shown in Table 1.1. The interviews provided data about Waitiki Farm land resettlement and titling processes, Waitiki Farm's land conflict and development history, land administration processes and strategies used by SLAOs to provide land administration services and relationships between the various land governance actors on the settlement. In addition, six focus groups were conducted. Five focus groups involved Waitiki land titling committee members, and one involved original Waitiki farm tenants. The five discussions with Waitiki Farm land titling committee members explored their experience in the land titling project, the different villages settlement histories and their local leadership experiences. The discussion with original Waitiki Farm tenants land provided additional Waitiki Farm history and documentary evidence of their settlement on the Farm before eviction.

Personal histories and documentary data, e.g. land lease information, were also collected from the land titling project beneficiaries and other key informants. This included the history of the land invasion, settlement, transactions, and disputes.

National and county government reports and court documents were obtained from the respective institutions. The reports and documents assisted in establishing Waitiki Farm's history, past land transaction practices on the farm, Mr. Waitiki's efforts to repossess his land, the national

government's response to the court order and relationships among the various local institutions. This information provided a better understanding of the land's social, cultural, and political history and the institutional environment relating to the Waitiki land. National newspaper articles provided additional historical data. The various sources of historical data were useful in constructing the chronological history of Waitiki Farm settlement and verifying the personal life histories.

Qualitative data analysis includes interpretive data analysis described below. Coding and ongoing comparison were used to analyse land administration in Waitiki Farm. This was followed by data categorisation, for example, on SLAOs strategies. The categories are further developed into themes and relationships between the themes established to explain land administration in Waitiki Farm and identify conditions that support this. The study results are analysed using the peri-urban land administration hypotheses developed in Chapter 2. Table 1.1 illustrates the research participants.

**Table 1.1: Research participants**

| <b>Category</b>                           | <b>Number of interviews</b> |
|---|-----------------------------|
| Focus group interviews                    | 6 (49 participants)         |
| Original Project beneficiaries            | 55                          |
| Tenants                                   | 2                           |
| National Government Officials             | 10                          |
| County Government Officials               | 7                           |
| NLC County Coordinator                    | 1                           |
| Civil Society Actors                      | 11                          |
| Local Leaders                             | 4                           |
| Local Politicians                         | 3                           |
| Journalist                                | 1                           |
| Local CBOs representatives                | 2                           |
| Lawyer                                    | 1                           |
| Bank Officials                            | 2                           |
| <b>Total interviews</b>                   | <b>105</b>                  |
| <b>Total number of people interviewed</b> | <b>148</b>                  |
| <b>Total number of residents</b>          | <b>57</b>                   |
| <b>Total number of key informants</b>     | <b>42</b>                   |

## **1.7 Assumptions, Scope, and Limitations of Research Design**

This research limits its scope to examining land tenure administration. It does not explore other administration functions such as taxation. The key concern was to gain an in-depth understanding of the official land tenure administration in Waitiki Farm, a peri-urban settlement in Mombasa, Kenya. In addressing this goal, the study's key concepts were limited to official land administration systems, street level bureaucracy, hybrid governance, and peri-urban land administration.

The first limitation of this research is the issue of subjectivity due to the dominance of the qualitative research methodology in the study and the researcher's bias as a land economist. Selection of the case study area and research participants was made purposively, i.e., the study site was chosen because it is an in-situ upgraded informal settlement in which hybrid governance prevails and SLAOs are active. Likewise, data analysis also relies on the researcher's ability to interpret the results. In doing this, it is impossible to rule out the influence of cultural upbringing as a Kenyan and professional biases from my background as a land economist and land administration and management professional on issues such as eviction and land squatting. To ensure objectivity, the study's reliability and validity were improved using a variety of strategies, including a broad range of interviews and data sources. Reliability is improved by keeping a record of all steps and processes undertaken in the study. This included field notes. The importance of this was to ensure consistency of findings. To improve on validity, the study applied critical reflexivity. This process included noting down my emotions and thoughts during the research process so as to assess my emotional condition and its possible effect on my interpretation (Creswell 2013).

Other biases related to the study's reliability and validity that arose in the course of the study and were handled using different sources of data included verification bias, sample bias and outsider bias. Verification bias refers to the researcher's tendency to confirm preconceived notions. Sample bias refers to obtaining similar responses from interviewees, which may not necessarily be the truth, and the use of different classes of respondents was used to minimise this bias. Furthermore, outsider bias which in this study refers to the reluctance of respondents to share information since they viewed me as an ethnic outsider, that is, not one of them, and the use of local key persons mitigated this.

Another possible limitation of this single case study is its generalisation. However, a single case study may be suitable for theory development if richly described (Flyvbjerg 2011). A rich history description of the Waitiki Farm case is developed in this study. This in-depth understanding was relevant for the development of the study's substantive level hybrid governance and street level bureaucracy theories. In addition, the research was limited by a dependency on official access to the different national and county government officials and documents.

Land and its administration is a sensitive, politically charged and emotive issue in Kenya. The study was undertaken against a background of a divisive general election. It was anticipated that these political developments would have some impact on the study, given the study area's politically violent history. However, I was able to mitigate this risk by seeking a study permit (see appendix F), research authorisation from the national government representatives at the local level (see appendices C, D, E, F, and H), and using local actors for my study area entry.

The research does not examine land administration in other peri-urban settlements such as other settlement schemes in Likoni sub-county, thus, it is limited to a peri-urban settlement where the government undertook a land titling project to resolve a protracted land conflict and gave registered and charged land leases to the residents. However, despite some of the findings being corroborated by data collected from different sources, some information, especially on land invasion and land transactions during the conflict period, was difficult to verify.

Most of the participants were fluent in the two national languages, English and Swahili, that the researcher understands and speaks fluently. For those respondents who spoke only the local indigenous dialects with which the researcher was not familiar, attempts were made to mitigate against misinterpretation. This was achieved through hiring a research assistant who understood the local dialects.

Fieldwork was further constrained by the University's research project ethical guidelines. Where participant anonymity was specified, some of the arising matters could not be directly investigated. Security concerns prevented inquiries into the criminal activities of some of the local youth groups in relation to fraudulent land sales and extortion practices to fund drug and substance abuse.

Finally, qualitative case research requires extensive field work, especially for a study aiming at understanding land administration processes within a post-conflict society. Though a total of 148

respondents were interviewed, it must be noted this was within a county of approximately 1.2 million residents. Thus, it cannot be claimed that interviews were enough to be generalised to the whole Mombasa County or peri-urban SSA. Though the theory generated is context-specific because of the settlement's history and social change, the data gathered was juxtaposed against the reviewed literature. The theories developed in this study can be further tested in other situations, if appropriate assumptions and conditions are stated. In addition, using a post-conflict peri-urban site further increased the replication chances of the theories in other similar post-conflict settings.

## **1.8 Organisation of Thesis**

The thesis is organised as follows.

**Chapter One** – This chapter provides background to the research study, briefly introduces the Waitiki Farm case. In addition, the chapter states the research problem, research objectives, research questions, research methodology, assumptions, scopes and limitations of the research design.

**Chapter Two** – This chapter reviews research concerning land administration in peri-urban SSA. It also examines theories used to analyse hybrid governance and street level land administration. The chapter develops the study's preliminary hypotheses in section 2.8.2.3. The preliminary hypotheses are based on the reviewed literature and an interview with Barry pers. comm (2020).

**Chapter Three** – This chapter presents the study's research methodology and strategy. The chapter covers the philosophical worldview and single case study strategy justification. It then describes the research participants and data collection methods used. This is followed by a discussion of the data analysis processes. The chapter concludes with a discussion of the study's validity, reliability procedures, and ethical considerations.

Chapters 4, 5 and 6 build the Waitiki Farm rich history description.

**Chapter Four** – This chapter provides a detailed historical description of Waitiki Farm and situates it within the larger Kenyan and Mombasa County context. More specifically, it describes Mr. Waitiki's land acquisition, eviction, invasion, and sale by land invaders.

**Chapter Five** – This chapter describes the official land titling project undertaken to resolve the protracted Waitiki Farm land conflict and regularise the land occupiers land rights.

**Chapter Six** – This chapter discusses and analyses the Waitiki Farm residents’ interviews to further develop a detailed contextual description of Waitiki Farm settlement. The chapter contributes to the achievement of the study’s theory development objectives by analysing the residents’ interviews data using the street level bureaucracy and hybrid governance hypotheses developed in Chapter 2 section 2.8.2.3.

Chapters 7, 8 and 9 present the study’s empirical findings, synthesises the findings and develop theory from the analysis.

**Chapter Seven** – Presents the results and analysis of street level bureaucracy in Waitiki Farm. The chapter develops the study’s street level bureaucracy theory using the street level bureaucracy theory hypotheses developed in Chapter 2, section 2.8.2.3, and emergent hypotheses.

**Chapter Eight** presents the results and analysis of hybrid land governance in Waitiki Farm. The chapter develops the study’s hybrid governance theory using the hybrid governance hypotheses developed in Chapter 2, section 2.8.2.3, and emergent hypotheses.

**Chapter Nine** highlights the empirical findings and discusses the study’s contribution. In addition, the chapter also presents conclusion and recommendations for future research.

# CHAPTER TWO: LITERATURE REVIEW: PERI-URBAN LAND ADMINISTRATION IN SSA

## 2.1 Introduction

This chapter examines literature on conventional approaches to land administration in peri-urban settlements, hybrid governance, Lipsky's (1980, 2010) street-level bureaucracy theory, and a social change model developed for informal settlements. This chapter specifically addresses objective one of this study i.e. *To structure the investigation, and similar investigations, develop an analytical framework for organising data and structure the flow of analysis.* To achieve this specific objective, this chapter addresses the following research questions:

1. What existing theories related to land administration describe and explain peri-urban land tenure administration systems in SSA? Specifically, are there existing hybrid governance and street level bureaucracy theories that may serve this purpose or can be adapted to serve this purpose?
2. How adequately do these theories explain land administration in peri-urban SSA?
3. How can the plausible explanations for official land administration effectiveness in peri-urban SSA be represented?

The review draws on diverse disciplinary and theoretical perspectives on land administration systems in peri-urban areas in SSA. Different schools of theory and practice were sought to compare theoretical perspectives on and the actual practice of land administration in peri-urban areas in SSA. The disciplines reviewed included land administration, urban planning, urban geography, remote sensing, geographic information systems, and public administration. However, a bias exists in land administration literature and theory in that a majority of it is western-based i.e. conventional systems that have evolved from British colonial systems. This review positions the study in relation to existing literature and shows that gaps exist in relation to the following:

1. The application of the hybrid governance theory to peri-urban land administration in SSA
2. An analysis of Lipsky's street-level bureaucracy theory as applied to peri-urban land administration in SSA. In addition, the chapter develops the study's preliminary hypotheses in section 2.8.2.3 based on interviews with Barry (pers. comm. 2020) research

experience of studying informal settlements and state-subsidised housing projects in South Africa, and peri-urban settlements in Ghana and Nigeria.

The chapter begins with a description of the peri-urban SSA, in particular areas characterised by informal settlements. This is followed by a discussion of Fourie's social change model, the hybrid governance, conventional land administration, and street-level bureaucracy theories as they relate to peri-urban settlements.

## **2.2 Definition of Terms**

The following definition of terms has been adapted for use in this study.

**Informal settlement** – In Kenya, it officially refers to “occupation of land without formal recognition [...] that does not comply with physical and land use planning requirements” (RoK 2009 p. 63). The term slum may be used to refer to informal settlements in research (Gulyani and Talukdar 2008). In this study, the terms slum and informal settlements are taken to refer to the same set of settlement conditions and thus are used interchangeably. Informal settlements may occur in urban or peri-urban areas (Kalabamu 2000 p.316).

**Squatter** – In Kenya, it officially refers to “a person who occupies land that legally belongs to another person or institution without the owner's consent” (RoK 2009 p. 64).

**Squatter settlement** – Refers to a settlement established through illegal invasion and occupation of vacant private or public land (RoK 2009). As understood in this study, a squatter settlement is a type of informal settlement.

**Peri-urban** - Refers to “areas lying at the interface between designated urban boundaries and contiguous rural areas” (RoK 2009 p. 64). This study examines peri-urban areas where there are informal settlements that may include those in the process of evolving or have evolved into formal settlements and customary urbanising territory. In this study, the term peri-urban settlements refer to both. In addition, peri-urban SSA settlements, peri-urban SSA, peri-urban areas in SSA and peri-urban SSA contexts are used interchangeably.

## 2.3 Informal Settlement

This section describes peri-urban settlements in SSA and Kenya. It answers the questions: what are the characteristics of peri-urban settlements in SSA, and what characteristics are specific to Kenyan informal settlements? Informal settlements in SSA are discussed first, followed by a description of tenure dynamics in Kenyan informal settlements, and then a description of informal settlements in Mombasa.

Peri-urban areas in SSA cities are expanding due to rapid urbanization. By 2050, it is projected that more than half of SSA's population will reside in urban areas (Steel *et al.* 2017 p.134; AfDB 2016 p.146). Much of this new urban development is taking place on the periphery of existing urban centres. It is generally characterised by urbanising customary territory, informal settlements, increased pressure on existing urban services, weak urban governance institutions, and predatory elites, among others (Steel *et al.*, 2017). Peri-urban settlement residents are more likely to be rural-to-urban migrants, poor, and low-income earning casual labourers (Kombe 2005; Yahya and Swazuri 2007; Nzioki *et al.* 2013; Lines and Makau 2018). Specific issues, which a number of analysts identify in SSA peri-urban settlements, are detailed below.

In general, peri-urban settlements have high population densities (Syagga 2011 p.3-4). Residents move into these settlements for several reasons. These reasons include inexpensive accommodation, access to affordable land (Kombe 2005 p.128), and socio-cultural factors such as ethnic and familial ties (Kombe 2005 p.130). They also move to these settlements because they are fleeing conflict in their settlements of origin (Obala and Mattingly 2014).

Officially, housing development in informal settlements is haphazard as it does not follow any officially approved planning layout (Kombe 2005 p.130). As a result, provision of infrastructure and related facilities is difficult (Syagga 2011 p.103-104); this leads to inadequate, minimal or non-existent physical infrastructure and services (Syagga 2011 p.103-104; Gulyani and Talukdar 2008; Mitullah 2003 p.8; Kombe 2005). For example, Gulyani and Talukdar (2008 p.1933) found that only 22% of Nairobi informal settlement households had electricity connected to their homes.

Poor quality housing structures tend to contravene existing building codes, standards, or regulations (Lines and Makau 2008 p.410; Gulyani and Talukdar 2008 p. 1920; Rigon 2016; Klopp

and Paller 2019 p.3). Because of poor housing conditions and lack of essential services such as sanitation and fresh water, informal settlements have high incidences of disease and high mortality rates (Mitullah 2003; Syagga 2011; Klopp and Paller 2019).

Land tenure in these peri-urban settlements takes many forms such as statutory, public, religious, customary, private or informal arrangements (Ikejiofor 2006b; Gulyani and Talukdar 2008; Adam 2014a; Agheyisi 2019a). As a result, different land tenure forms that draw from social, legal, cultural, or customary orders may co-exist within a given settlement (Kombe 2005; Kihato and Royston 2013; Agheyisi 2019a). This leads to land tenure practices that are difficult to encapsulate within a given conceptual category (Adam 2014a p.1973). Furthermore, these land rights are continually under pressure from urbanisation processes (Adam 2014d; Klopp and Paller 2019 p.3). In some cases, this results in “weakening the tenure security sometimes enjoyed under informal arrangements” (Rigon 2016 p.2763).

### **2.3.1 Informal Settlements in Kenya**

Although the Kenyan informal settlements illustrate the general conditions noted in peri-urban SSA settlements (as seen in section 2.3) the following key characteristics are also noteworthy.

The settlement population is largely made up of tenants (Syagga 2011 p.103-104; Rakodi 2000 p.168). For example, Gulyani and Talukdar (2008 p.1933) found that, “92% of Nairobi’s slum residents do not own their homes.” In Kenyan informal settlements, the landlords are referred to as ‘structure-owners’ (see Gulyani and Talukdar 2008; Weru *et al.* 2015; Rigon 2014, 2016, 2017) who in most cases tend to be “middle-class entrepreneurs” (Lines and Makau 2018 p. 410). The term ‘structure-owners’ was deemed necessary to “clarify that structure-owners do not own the land” (Rigon 2016 p.2766).

Another key characteristic of informal settlements in Kenya is high crime rates (Rasmussen 2012; Obala and Mattingly 2014) and in some cases extra-judicial killings (ejkls) (Stapele 2016; Klopp and Paller 2019). In this study, ejkls refers to “killings threatened or committed either with explicit or implicit official sanction, or within a context of impunity, which bring into question the state’s upholding of its obligations to respect and to protect the right to life” (Probert 2014 p.5). Due to the ineffectiveness of the police in dealing with insecurity, various local gangs, for example the

Mungiki and Taliban emerge to provide property protection and other security services at a cost (i.e., “protection” fees) (Rasmussen 2012 p.421). In some informal settlements these gangs tend to be tribal based (Stapele 2016). These gangs are known to operate in ways that may be considered officially illegal including extorting informal taxes from public service transport providers (*popularly known as matatus in Kenya*) (Rasmussen 2012). Members of these gangs (and young men who may not be gang members) who live in informal settlements “face high levels of extra-judicial killings” (Klopp and Paller 2019 p.4). In her study of ejkls in Mathare<sup>2</sup>, an informal settlement in Nairobi, Stapele (2016) notes that the police use the negative perception of the local youths as “a threat to public safety”, and justification for their killings. Klopp and Paller argue that such perception and violence only serve to highlight the “array of structural violence, human rights abuses, stigmas, and service failures involving people targeted or neglected precisely because they live in slums” (Klopp and Paller 2019 p.4). How ejkls affect land tenure security and administration in informal settlements is an understudied area in Kenya that is outside this study’s scope.

Local governance in Kenyan informal settlements is undertaken through a quasi-official mechanism that consists of both informal settlement-level official and unofficial actors (Rakodi *et al.* 2000; Rigon 2014). The official local administrators (i.e. area Chief or Assistant Chief) in these settlements are assisted by local elders and other community representatives (Rakodi *et al.* 2000; Obala 2011; Rigon 2014, 2017). The committee members are selected by area Chiefs and Assistant Chiefs to assist the official administrators in their local administration of the settlements (Rakodi *et al.* 2000; Rigon 2014). For example, they assist with land boundary disputes or disputes between landlords and tenants (Yahya and Swazuri 2007 p.21; Rigon 2014). Further, settlement-level committees may be established on a development need basis. Such committees are temporary and are disbanded at the conclusion of each development project (Rakodi *et al.* 2000). Members of such committees are local elders who “are respected...[and]...have considerable influence... relatively well informed and used to being at the forefront of any development activity.” (Rakodi *et al.* 2000 p.168). These members facilitate access to the settlement. For example, Pamoja Trust (2014 p.11) note that in their enumeration of informal settlements in Mombasa county, they mobilised local communities through area Chiefs and village elders. In some cases, these local

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<sup>2</sup> For more information on ejkls in Mathare see for example: <https://www.matharesocialjustice.org/who-is-next/>

leaders may be elected. For example, Karanja (2010 p.210) notes that in Nyawita, Kisumu the “elected council of elders settles disputes and petty offences.” A key weakness of these local committees is that marginalised groups such as women and local youths are more likely to not be represented (Rakodi *et al.* 2000).

In Kenyan informal settlements, the area Chief, Assistant Chief, and local leaders are also involved in unofficial land transactions such as the illegal sale of land (Weru *et al.* 2015 p.50) and tacit approval and witnessing of informal land transactions (Obala 2011). In some cases, these leaders are also the land sellers (Nzioki *et al.* 2013 p.29). As Yahya and Swazuri (2007 p.27) and Rakodi *et al.* (2000 p.168) note, there are cases where these local leaders act in ways that encourage or even support squatters on private and public land.

Since 2013 a neighbourhood level governance structure called ‘nyumba-kumi’, which translates to ‘10 households’, was initiated for community policing purposes and other local level governance challenges. For each 10 households a representative, who works closely with the local leadership structure such as the village elder, is chosen (NPS 2017). From the literature it is not clear how this additional layer of local governance has impacted peri-urban informal settlements level land tenure administration.

### **2.3.2 Informal Settlements in Mombasa**

Mombasa and other Kenyan coastal region counties’ land issues are viewed as unique because of the region’s long colonial history and the influence of religion on land tenure arrangements (Rakodi *et al.* 2000; Swazuri and Yahya 2007; Nzioki *et al.* 2013). As a result, Mombasa informal settlements have a complex web of land interests (Pamoja Trust 2014) “that are very different from those in upcountry Kenya” (Nzioki *et al.* 2013 p.34). For example, Rakodi *et al.* (2000 p.168) identified five land tenure arrangements that included various squatting, customary, private, and public land tenure arrangements. Building on this, in their study of five informal settlements in Mombasa, Yahya and Swazuri (2007 p.29) identified “a variety of customary landholding and renting systems” that are common in the “squatter and unplanned settlements.” These systems work in parallel to the official land administration system (Yahya and Swazuri 20007 p.29). In Rakodi *et al.* 2000, Yahya and Swazuri 2007, and Nzioki *et al.* (2013), Rahani was identified as the most common land tenure form. According to Yahya and Swazuri, Rahani refers to a land

rental arrangement where “[an] owner (whether legal or assumed squatter) apportions the whole or part of his land to another person (the tenant) either for farming or for commercial or residential development. There are virtually no time limits (‘length of the lease’) given but the tenant pays a nominal monthly rent to the landlord for as long as the arrangement exists.” (Yahya and Swazuri 2007 p.14). In general, the main housing that is put up on these parcels is the traditional Swahili housing type that is unique to the Coast region (Yahya and Swazuri 2007).

A vast majority of land parcels in Mombasa are surveyed and registered. As a result, private land ownership is the dominant land tenure category (Rakodi *et al.* 2000). However, as Rakodi *et al.* (2000 p.168), Nzioki *et al.* (2013 p.29) and Yahya and Swazuri (2007) indicate, subsequent land transactions such as subdivision for inheritance are not registered, resulting in off-register transactions. Drawing on the literature, two off-register transaction implications are noteworthy: One, many of the county’s population lives in “informal settlements with varying degrees of official recognition and approval” (Rakodi 2000 p.168). Two, absentee landownership leads to the prevalence of a housing and land rental system where the house and land “are owned separately” (Nzioki *et al.* 2013 p.31). The residents that live in these informal settlements are usually referred to as squatters. In some cases, public land squatting may be regularised (Rakodi 2000 p.168). However, Yahya and Swazuri (2007) note that coast region squatters especially in peri-urban and rural areas, do not fit neatly within the common squatters’ definitions because of unresolved historical land injustices. The authors state that these squatters were “somehow...created as such on their own lands or lands which for centuries they had occupied and which they believed belonged to them” (Yahya and Swazuri 2007 p.12). As it relates to land tenure administration, though the different properties are valued by valuers that work in Mombasa, these properties are not accepted as collateral by Banks. However, “[micro] finance institutions fully recognise and accept them as solid collateral for short term loans” (Nzioki *et al.* 2013 p.32).

In general, section 2.3 (including subsections 2.3.1 and 2.3.2) describes common peri-urban settlement characteristics in SSA and more specifically, in Kenya and Mombasa. The description shows that peri-urban settlements in Kenya and Mombasa are different because of the settlement’s landownership structure, the prevalence of ejkls, involvement of local-level administrators and governance structures in land tenure administration, Mombasa’s colonial history and unresolved injustices, and the complex web of land tenure arrangements. Administering land under the above

peri-urban settlement conditions is a major challenge. One of the ways through which these challenges can be analysed is through a social change theory developed for informal settlements. The next section discusses the main themes of social change theory relevant to land administration in a peri-urban settlement.

## **2.4 Informal Settlements and Social Change**

This section reviews the application of a social change model in the analysis of land administration in peri-urban SSA settlements. The discussion in this section informs the hybrid governance theory discussed in Section 2.5. The social change model draws on Comaroff (1982) and Fourie's (1993) work. It also utilizes the University of Calgary Land Tenure and Cadastral Systems Research Group publications by authors such as Barry (2006) and Barry and Danso (2014) on land administration in peri-urban areas in South Africa and Ghana. As discussed in this section, the social change model theory is comprised of the following: a) the dialectical approach, b) ongoing processes of solidarity and schism, and c) transactional or entrepreneurial behaviour. Below is a discussion and synthesis of these themes.

Comaroff (1982 p. 146), Fourie (1993) and Barry (2006) indicate that within a given community, there are two dialectic systems that are in continual tension. These systems are dialectic of articulation (inter-dependence) and internal dialectic (internal competition). The dialectic of articulation refers to processes of interaction between a local system (e.g., an informal settlement community) and its external environment (e.g., the local government). The internal dialectic (internal competition) refers to the interaction between the sub-systems within a given local system, such as interest groups within the informal settlement community (Barry 2006). Local sub-groups are usually united when facing an external actor or interest group (Comaroff 1982; Barry and Mayson 2000). However, after achieving this goal, sub-groups within a given settlement are often in conflict as they compete to achieve their own goals and interests (e.g., access to power and control of resources) (Barry and Fourie 2002). In informal settlements, the conflict between different local interest groups develops because of informal settlement dynamics and conditions. This includes urbanisation factors, or conflict between 'structure-owners' and tenants in Kenyan informal settlements (Rigon 2016). This suggests that conflict and competition tensions will occur at various informal settlement-levels.

As competition and conflict intensify at the various informal settlement levels, coalitions are formed and dissolved through the ongoing processes of solidarity and schism. The coalitions wax and wane as interests and the local context change (Barry and Mason 2000; Barry 2006; Barry and Danso 2014). For example, Rigon (2016 p.2774) demonstrates that in a Kenyan informal settlement, ‘structure-owners’ formed a coalition of interest to opposing collective land titling. This titling would have recognised all residents’ user rights, meaning “that the majority of tenants [would] also have become landowners” (Rigon, 2016 p.2774). However, the structure owners preferred a land rights regularisation project that recognised their land rights and excluded the tenants as beneficiaries.

Transactional behaviour, or entrepreneurial behaviour, relates to land and land tenure rules and agreements that underpin land allocation, transactions, and dispute resolution. The rules are shaped by contests and negotiations within a given local community (Barry and Mayson 2000; Barry 2006). Typically, land tenure rules are fluid and manipulated by local leaders seeking to profit from rising land values in peri-urban settlements (Barry and Danso 2014). At times, this form of entrepreneurial behaviour is aimed at benefitting both the leaders and the community. However, as Ubink and Quan (2008 p.211) observe, because of lax checks and balances, local leaders, and elites—such as customary chiefs—are likely to maximize their benefit and power to the detriment of the vulnerable poor. In addition to entrenching the power of the local elites, these entrepreneurial practices may lead to the emergence of other powerful local sub-groups (e.g., landlords), and vulnerable sub-groups such as tenants and strangers (Rigon 2014). In many cases, these evolved rules contradict official rules. For example, informal land sales and transactions may occur even though official policy prohibits them.

#### **2.4.1 Synthesis**

Based on the literature, a consensus exists that within a given peri-urban settlement in SSA, the three discussed components of the social change model will be evident. The social change model and land administration literature conceptualize land relations within peri-urban SSA settlements as an ongoing process. This involves unity and division between different groups in the processes of coalition formation and dissolution. However, these relations are inherently conflictual. Within these changing situations, power does not reside within one group and is distributed at different

levels. Further, as power manifests in different competing levels, it increases the vulnerability of marginalized groups such as women, youth, and migrants. Under these conditions, land relations in peri-urban settlements are complex, continually changing, and power-based; thus, conventional official land administration systems are likely to be dysfunctional. As it relates to this study, the social change model theory provides a useful theoretical lens to understand the conflict inherent in the complex interactions of various interest groups within heterogeneous informal settlements. This analysis informs the hybrid governance discussion in Section 2.5 below.

## **2.5 Informal Settlements and Hybrid Governance**

Section 2.5 reviews the literature on hybrid governance as it relates to land administration in peri-urban settlements in SSA. It draws on publications covering fields such as public administration, conflict, and resource management. Concerning land administration in peri-urban settlements, the review illustrates that effective land administration depends on the interaction between the official land administration system and unofficial systems. The section also describes how this interaction impacts the complex web of local socio-political interests and other enabling hybrid governance conditions. The discussion in this section provided the premise for the study's achievement of objective 2 (i.e., the development of a hybrid governance theory for in situ regularized informal settlements).

### **2.5.1 Governance and Hybrid Governance**

In public administration, the concept of governance is used to examine how various public institutional structures and processes are designed to deliver services, make decisions, improve existing service delivery, resolve disputes, and relate with other actors within a given context (Börzel & Risse 2010; Palmer et al. 2009; Longo 2008; Lund 2006). The various approaches to governance can be generally grouped into either *normative* or *descriptive* (Georgiadou & Reckien 2018). The normative approach holds that an ideal governance system should exemplify several good governance principles and characteristics (Georgiadou & Reckien 2018; Grindle 2017). Two main criticisms of the normative approach are that it is overly apolitical and abstract, and it overlooks how local systems emerge, evolve, improve, or decline (Grindle 2017). This approach is popular because of its simplistic governance principles' framework. Although it is an important descriptor of governance characteristics, it is inadequate for this study's research objectives. The

descriptive approach, on the other hand, emphasizes the practice aspect of governance. It holds that governance is an organization's ability to undertake its core mandate within a given circumstance and set of conditions. This shifts governance analysis from an emphasis on ideals to what actually works on the ground and the conditions that support or impede the effectiveness of the governance systems (Georgiadou & Reckien 2018; Grindle 2017; Börzel & Risse 2010; Lund 2006).

In the author's view, while an examination of conditions under which governance is undertaken is important, it is also crucial to examine the interactions between official and unofficial governance systems in peri-urban SSA settlements where conditions are continually changing. Drawing on the social change model introduced above, the reason why this matters is that these complex interactions also influence the existing set of conditions. Thus, this study's use of hybrid governance theory.

Hybrid governance is a theory that addresses the interaction of multiple official and unofficial institutions in different research areas, such as local governance, resource management, conflict, and development (Buscher 2012). In some cases, hybrid governance is discussed under related concepts; these include twilight institutions (Lund 2006), governance without government (Börzel & Risse 2010), and negotiated statehood (Renders & Terlinden, 2010), or real governance (De Herdt & Olivier de Sardan 2015). Though hybrid governance addresses "the interactions between state (i.e., official) and non-state (i.e., unofficial)" (Reyntjens 2016 p. 346), it is different from institutional pluralism or institutional multiplicity in that hybridity is an emergent property or characteristic of the interactions of various institutions (Goodfellow & Lindermann 2013; Meagher *et al.* 2014; Colona & Jaffe 2016; Akaateba *et al.* 2018). These hybrid forms emerge where the official systems are absent, too costly, or ineffective in specific areas (Buscher 2012). In addition, they also emerge where official systems are co-opted into the unofficial systems by powerful elites or where societal trust is low (Barry 2011; Buscher, 2012). While it is not a given that hybrid governance systems will emerge under the identified conditions, many analysts agree that hybrid governance systems will be effective when the relationship between the official and unofficial systems, is not discordant but rather is accommodative (Siriba & Dalyot 2017; Goodfellow and Lindermann 2013; Leduka 2006; Rakodi 2006). In addition, it is important to note that the

emergent hybrid governance systems reflect and serve both official and unofficial interests (Leduka 2006).

In this study, hybrid land tenure administration refers to situations where tenure is administered by both official and unofficial organizations (Barry 2020 p.1). In this study, official organizations refer to state-based actors such as the ministry in charge of land administration and the local government. Unofficial organizations refer to non-state actors such as NGOs, CBOs, customary authorities, and local political parties, among others.

However, there are several criticisms of the hybrid governance theory, including the following:

- Its emphasis on the actions of local-level governance actors, while not considering the actions of multinational NGOs and corporations;
- The likely loss of the theory's analytical power if all governance is considered hybrid;
- Its unintended reinforcement of informal and formal dualism through its focus on state and non-state interactions, interests, logics, and authority;
- Its normalization of extremely coercive groups, such as gangs;
- Its over-emphasis on practical governance at the expense of good governance principles that may lead to an erosion of ethical considerations and the further engagement of unofficial actors, which further undermines the official actors and reduces their legitimacy (Colona & Jaffe 2016; Buscher 2012; Leduka 2006).

Despite these criticisms, the hybrid governance theory is useful in understanding hybrid land tenure administration in peri-urban SSA settlements because it may provide a nuanced understanding of the conditions under which unofficial and official systems interact, a balanced view of all actors (excluding international ones), and the co-productive nature of local land administration (Buscher 2012; Colona & Jaffe 2016; Akaateba *et al.* 2018).

### **2.5.2 Hybrid Governance Systems Effectiveness Factors**

The following sub-sections present the factors identified in the review of hybrid governance in different study areas. The review reveals that several factors may influence the effectiveness of hybrid governance systems. These factors are: legitimacy of authority, local participation,

affordability and accessibility of land transactions, social change and stability, local politics, and SLAOs in local governance.

### ***2.5.2.1 Legitimacy of Authority***

Both official and unofficial land administration systems provide different public services in peri-urban SSA. These systems derive their legitimacy from different sources. Legitimacy, as understood in this section refers to the recognition and acceptance of the authority of either official or unofficial land administration systems by residents within a given context. Official systems derive their legitimacy from official laws, bureaucratic rules, procedures, policy, guidelines, and effective provision of public services i.e. legal legitimacy (Lund 2006; Barry 2011; Barry & Roux 2018; Stacey & Lund 2016; Nunbogu *et al.* 2018; Stacey 2018 and Akaateba *et al.* 2018). Unofficial systems, on the other hand, derive their legitimacy from tradition, customs, popular recognition, cultural norms and practices, identity, locality, ideas, values and trust i.e. social legitimacy (Lund 2006; Barry 2011; Stacey & Lund 2016; Barry & Roux 2018; Nunbogu *et al.* 2018 and Akaateba *et al.* 2018). In addition to these sources, local-level power relations and low-cost innovative public service delivery solutions also provide legitimacy for different land administration actors and their actions (Meagher *et al.* 2014; Stacey 2018; Barry & Roux 2018). In practice, the source of legitimacy for land administration systems practices may not be as distinct as the official-unofficial dichotomy suggests. It is more likely that these sources will be fluid, contested and continually renegotiated (Lund 2006). It is also important to note that both official and unofficial land administration systems may also lose their legitimacy because of how they undertake their work. Examples are, if they become too coercive, change in the local power dynamics and/or complex relations underpin their legitimacy claims (Stacey & Lund 2016 p.606; Reyntjens 2016). In addition, forum shopping by residents to resolve disputes, corrupt practices by local elites, and conflict between elites may also erode legitimacy (Rigon 2016; Lund 2006).

Analysing the above, to be effective in peri-urban SSA settlements the emergent hybrid land administration system will require both legal and social legitimacy. This legitimacy will not be static, although it may appear to be enshrined in law, custom, and tradition as it evolves in response to changing local power dynamics of social or legal legitimacy. Thus, the need to continually monitor the prevailing peri-urban SSA conditions.

### ***2.5.2.2 Local Participation***

In general, the participatory development school of thought argues that local community participation in decision making leads to effective local governance. The inclusion and participation of local community members empowers them, creates a sense of local ownership, and legitimises the decisions made (Rigon 2014; Mitra *et al.* 2017; Nunbogu *et al.* 2017). The underlying assumption is that the participation of local community members will result in effective problem solving because they understand the local context's needs. However, as Rigon (2014), Meredith & MacDonald (2017) and Meagher *et al.* (2014) show, in unequal, corrupt and conflict prone societies (for example, informal settlements or peri-urban SSA settlements), the involvement of local residents is likely to be shaped by individual livelihood concerns, socio-economic capability, property relations, and their perception of the state. Consequently, elite control and capture of benefits are more likely to occur as opposed to an equal social transformation premised on local participation (Rigon 2016). The reason for this outcome is because representation in the local governance platforms is more likely to be skewed in favour of local elites who can afford to participate and, as a result are able to manipulate the rules of participation in their favour (Rigon 2014, 2016). For example, in Kibera an informal settlement in Nairobi Kenya, landlords and structure owners manipulated the local governance platforms developed to implement the land regularisation project. This led to unequal outcomes and further entrenched their local power at the expense of marginalised groups such as women, tenants, youth, and others (Rigon 2014, Watson 2003). The above illustrates, to be effective in peri-urban SSA settlements in the context of weak official and unofficial systems capacities, emergent hybrid land administration systems should have, in addition to being inclusive and representative, mechanisms to monitor local elite demands and manipulation of representation rules.

### ***2.5.2.3 Affordability and Accessibility of Land Transactions***

The conventional economics theory holds that official land administration systems facilitate land transactions and regulate the emergent relationships between parties to a transaction (Kihato *et al.* 2013). This underpinning of the land market by the official system reduces land transaction costs by providing clear transaction procedures to follow and a governance framework that transaction participants can rely upon for enforcement (Kihato *et al.* 2013; Stacey 2018). The outcome of this interdependence is security of tenure. Further supporting this outcome is the level of trust in the

system and its perception of usefulness by its users within a given local context (Barry & Roux 2018). Thus, the claim that land governance mechanisms (land markets included) aimed at ensuring land tenure security are successful, if the users trust the mechanism, its officials, and procedures enough to motivate them to register subsequent transactions.

In peri-urban SSA, land transactions such as land allocation, sales and transfer from one transaction party to another are largely influenced by the existing complex nature of land relations (Noorloos & Kloosterboer 2018), social, political, cultural, legal and economic processes and structures (Kihato *et al.* 2013; Barry & Roux 2018; Stacey 2018). Under these conditions, land transaction participants in these areas are more likely to use unofficial governance systems as a strategy to secure their land interests because they are affordable, accessible and visible, and trusted by their social networks. The resulting land transactions are also more likely to be off register, informal and legally insecure (Rigon, 2016; Barry and Roux 2018). The off-register nature of these transactions further clouds the official systems and reduces their effectiveness.

Based on the above discussion, where both official and unofficial land administration systems co-exist in peri-urban SSA, the emergent hybrid land administration systems undertaking and undergirding land transactions in peri-urban SSA are embedded within the existing fluid and continually changing contextual conditions. The resulting land transactions are uncertain because of the ongoing competition, contestation, negotiation, and cooperation between the various official and unofficial land administration systems. In addition, the increased land market activity in these contexts does not necessarily transfer land to the most efficient users and uses.

#### ***2.5.2.4 Local Politics***

Official and unofficial land administration systems interact within contexts that are largely shaped by unequal power relations (Barry & Roux 2018; Rigon 2016; Barry 2011; Lund 2006; Olowu, 2003). Similarly, in peri-urban SSA, emergent hybrid land administration systems operate within a context largely defined by the prevalent local power relations (Barry & Roux 2018). Similar to the entrepreneurial behaviour discussion in section 2.4, these power relations manifest in competition over land and other local resources, and the power to define local rules applied to land administration (*refer to the discussion on entrepreneurial behaviour in section 2.4*). For example, who has the right to own land, and what are the land rights and obligations of the different classes

of landowners (Stacey 2018; Barry & Danso 2014). Further complicating hybrid land administration is the politicised nature of land access (Mitra *et al.* 2017) and the dominant neo-patrimonial governance system characterised by the big man syndrome, clientelism, nepotism, elite collusion and other corrupt practices that privilege local elites (Colona & Jaffe 2016). In addition, the powerful local actors also have veto power i.e. leverage, because “they could threaten the withdrawal of community support, which [is] regarded as” a critical success factor for the success of hybrid land administration systems in peri-urban SSA (Rigon, 2016. p.2770). As indicated, local politics shape and are shaped by the emergent hybrid land administration systems. It is therefore important to identify which power relations the emergence of the hybrid system entrenches and which it weakens. This is because social change manifests in local politics, as described above.

#### ***2.5.2.5 Social Change and Stability***

This factor is covered in more detail in section 2.4. As it relates to hybrid land administration, this section notes that hybrid land administration arrangements emerge within existing social conditions and continually shift over time, leading to either social stability or instability. According to Lund (2006) and Akaateba *et al.* (2018) stable systems emerge from stable social relations reproduced over time. In peri-urban settlements, see section 2.4, various land administration actors will form a coalition to achieve a common goal. However, these coalitions will disintegrate over time if there is no longer a shared mutual goal. The resulting institutional change may be rapid or slow (Lund 2006). In addition, if this institutional change is not well managed, it may lead to conflict (Barry 2011, Barry & Danso 2014; Barry & Roux 2018). In peri-urban SSA, rapid urbanisation further complicates this transformation.

In sum, the emergence of hybrid land administration systems may support social stability or lead to further social instability. Consequently, how the social change resulting from hybrid land administration systems is managed is likely to determine the effectiveness of hybrid land administration systems in peri-urban SSA settlements. Therefore, the hybrid land administration system trajectory is not linear because, in some cases, it may lead to stability and in other cases it may lead to instability.

Stability is likely to be the outcome if the hybrid land administration arrangements are strong and cooperative, and the actors within them form coalitions of mutual interests. As change occurs and the need for new local rules arises, conflict and competition in local politics are to be expected as new coalitions are formed to compete for access to power and resources such as land.

#### ***2.5.2.6 SLAOs in Local Governance***

This factor concerns itself with SLAOs and their interactions with the various land administration systems operating within a given peri-urban context. The factor is covered in more detail in section 2.7. However, for the purposes of this section, it is important to recognise that as land administration actors within peri-urban SSA, SLAOs practices may lead to the emergence of hybrid land administration practices, and they may also entrench hybrid land administration systems. This is, for example, captured by Abubakari *et al.* (2018 p.551), who acknowledge that as it relates to SLAOs, hybrid governance is evident in how SLAOs adapt to the integration of formal and informal land administration systems, their interaction with unofficial actors and the influence of unofficial external actors (Abubakari *et al.* 2018 p.551). In peri-urban SSA, in addition to recognising the role that SLAOs play within the emergent hybrid land administration systems governance arrangements, it is also important to understand how they exercise their discretion i.e. how they ensure they are flexible enough to balance the various actor's interests and also handle anticipated and unanticipated changes that arise from their work and relationships.

#### ***2.5.2.7 Hybrid Governance Synthesis***

There are several insights from the literature on hybrid governance that are important for understanding how land administration actors relate within peri-urban SSA contexts. Firstly, the literature shows that hybrid land administration systems emerge in peri-urban SSA characterised by: various official and unofficial land administration systems, different levels of conflict, and local elites who range from powerful local groups to the Big Man syndrome, ongoing socio-economic changes, and local political struggles. Secondly, the emergent hybrid land administration systems are unstable, flexible, and motivated by conflicting local power groups' interests and agendas. In addition, most of the reviewed cases show that these systems entrench the power of local elites and further marginalise vulnerable groups such as the poor, widows, and youth. Thirdly, the effectiveness of hybrid land administration systems is dependent on the nature of

interactions among the various official and unofficial land administration systems. These relationships may be expressed in a continuum ranging from compatible to incompatible. In addition to the nature of the relationship between official and unofficial land administration systems, this review argues that the following factors are also key to understanding the effectiveness of hybrid land administration systems in peri-urban SSA: the legitimacy of authority, local participation, local politics, land transaction trust, social change, and stability and SLAOs. Thus, the general conclusion in this section is that under unpredictable, fluid and unstable peri-urban SSA settlement conditions (*refer to section 2.3*), a hybrid land administration system that is participatory, inclusive, legitimate and accessible is likely to be effective if its transactions are trusted by the local residents, has the support of local elites, and is locally recognised by SLAOs. This system will continue to be effective if its land administration practices foster further social cohesion towards stability.

### **2.5.3 Hybrid Land Tenure Administration in Informal Settlements**

In peri-urban SSA informal settlements, land tenure administration is undertaken by various actors leading to context-specific forms of a hybrid land tenure administration system. A review of land tenure administration actors in peri-urban settlements reveals the following official and unofficial organisations. Official organisations identified include the State, federal and local governments, or public agencies such as the ministry responsible for land administration (Rigon 2016, 2017; Kombe 2000; Lamba 2005; Ikejiofor 2006; Nkurunziza 2007; Obala and Mattingly 2014).

Unofficial organisations include: local political party leaders (Kombe 1994 p.40; Ng'ombe *et al.* 2014 p.1998); known local elders (Kombe 1994 p.39), local leaders (Kombe 2000); tenants (Rigon 2016, 2017); Community-Based Organisations (CBOs) (Lamba 2005; Magigi and Majani 2006), Non-Governmental Organisations (NGOs) (Rigon 2017); Residents Committee (Rigon 2016), Residents (Lamba 2005); structure-owners (Rigon 2014, 2016, 2017; Lamba 2005); local youth groups (Agheyisi 2019a,b); customary authorities/heads (Agheyisi 2019a); traditional authorities (Ikejiofor 2006); traditional rulers or chiefs (Ng'ombe *et al.* 2014 p. 1992, 1993); village elders (Magutu 1994); informal land brokers (Ikejiofor 2006, Nkurunziza 2008, Adam 2014b); private land owners (Kombe 2000, Lamba 2005); grassroots organisations (Kombe 2000 p.180); self-help groups, squatters (Obala and Mattingly 2014); Civil Society Organisations (CSOs) (Lamba 2005);

land professionals (Lamba 2005, Nkurunziza 2008 p.117); International Financial Organisations (Magutu 1994), International Organisations (Lamba 2005); local council chairpersons (Nkurunziza 2008 p.111); Community elders (Nkurunziza 2008 p.111); knowledgeable residents (Nkurunziza 2008 p.111); neighbourhood leaders, committees and organisations (Kombe and Kreibich 2000 p.235); strangers (Ikejiofor 2006); and land speculators (Nkurunziza 2007). All these terminologies point to the fact that in different peri-urban SSA settlements diverse terms will be used to refer to what in this study is seen as largely official and unofficial land tenure administration actors with varying authorities, responsibilities, and local power.

For the purposes of this study, the different land tenure administration actors are largely grouped into official and unofficial land tenure administration actors. As discussed in section 2.5.1, the unofficial actors fill the vacuum left by conventional official land administration systems and provide various land administration services such as land allocation, land sales witnessing, and dispute resolution (Kombe 2005). In other cases, these unofficial actors persist despite attempts to formalise land administration in peri-urban settlements (Yahya and Swazuri 2007, Ng'ombe *et al.* 2014). As expanded on in section 2.6 below, in some contexts, their land administration roles are tacitly recognised by the official systems while in other contexts, these roles are not recognised (Siriba and Dalyot 2017).

As discussed in sub-sections 2.3.1 and 2.3.2, in Kenyan informal settlements, Mombasa included, hybrid land tenure administration is undertaken by both official and unofficial organisations. The recognisable official local representatives in Kenyan informal settlements are the local administrator, namely the area Chief and the Assistant Chief. These official representatives administer these areas with the assistance of the locally recognised settlement-level committee. Though these officials are not mandated to deal with land transactions, informal settlement residents prefer going to them because they are locally powerful and better understand the local context of land matters (Rakodi *et al.* 2000; Obala 2011; Rigon 2014, 2017). This creates a situation where the most influential local level land administration actors are a quasi-official settlement-level organisation made of both the administrators and local elders. Though this system derives its legitimacy from the residents, it is not accountable to either the residents or the official land administration system. Collectively, the coexistence of the informal settlement-level organisation, official organisations and other unofficial actors complicates and blurs land

administration at the informal settlement-level. This results in ineffective conventional land tenure administration service delivery characterised by the challenges highlighted in section 2.6 below.

## **2.6 Informal Settlements and Conventional Land Administration**

The preceding sections have discussed informal settlement characteristics, social change and hybrid governance in informal settlements. The following discussion highlights the common conventional land tenure administration challenges in peri-urban SSA settlements.

### **2.6.1 Land transactions take place outside the official land administration system and are likely to be contested**

Land transactions in peri-urban SSA settlements are more likely to occur outside the official land administration system (Kombe and Kreibich 2000; Nkurunziza 2007; Yahya and Swazuri 2007; Adam 2014b). This is due to a number of factors, key among them, rigid and complex official land transfer procedures that are “sluggish, lengthy, cumbersome” and thus “unattractive to land seekers” (Kombe 2000 p.181). In addition, Kombe (1994, 2005) and Nkurunziza (2007) note that the inefficiencies of the official land transfer procedures make these land transactions more difficult and unaffordable, respectively. Further, in some cases, the official inefficiencies create opportunities for corruption (Kombe 1994 p.29; Ikejiofor 2006a). As a result, residents in peri-urban settlements are more likely to access land through unofficial land delivery systems that may include customary authorities, especially where the customary systems are still dominant (Ikejiofor 2006a; Barry and Danso 2014; Agheyisi 2019a p.5) or informal land delivery systems (Rakodi *et al.* 2000; Kombe 2005; Lamba 2005; Nkurunziza 2007). The different systems will confer different land rights with varying levels of tenure security, and thus, it is not uncommon to find those that access land through the customary or informal systems attempt to regularise their interests because of the perception that it offers a much stronger form of ownership (Nkurunziza 2006; Ikejiofor 2006; Kihato and Royston 2013; Agheyisi 2019a).

The need for a stronger land ownership form in peri-urban settlements is necessary due to the risk of multiple land sales by competing groups undertaking land transactions and conferring different land rights (Ikejiofor 2006b). In settlements where there is a conflict between the customary system and an alternative land delivery system, it is likely that some of the community members may

contest land allocations to non-indigenes (Ikejiofor 2006). For example, Ng’ombe *et al.* found that in peri-urban settlements in Zambia where traditional leaders had the mandate to allocate land, they did so “indiscriminately” without consulting the residents as they were required by the Zambian statutory law. This, as they note, had led to “common wrangles” between the “traditional ruler and his subjects” (Ng’ombe *et al.* 2014 p.1997). In other cases, such contestation may develop into conflict, pitting those who buy such land parcels and those who oppose such land sales leading to property destruction in some cases (Ikejiofor 2006; Agheyisi 2019a). For example, Ikejiofor (2006 p.155) notes that in situations where contested multiple land sales occurred “in spite of payments being made, the paperwork and witnesses, sales may be contested by other members of the indigenous community sometimes *akpu obi* (hotheads) who oppose the alienations of land, destroy beacons, damage incomplete buildings and make it more impossible for purchasers to develop their plots.”

### **2.6.2 Land rights records and information in peri-urban SSA are generally not available**

Land rights transfer records and information in peri-urban settlements are generally not available in an organised format or form (Kombe 1994; Adam 2014 p.24; Klopp and Paller 2019; Agheyisi 2019a). In these contexts, the available land records used as evidence of land transfers are in formats that may not be officially recognised, for example, local sales agreements written on sheets of paper (Kombe 1994; Nkurunziza 2007 p.520; Nzioki *et al.* 2013; Adam 2014b). Furthermore, the available local land information systems are not regularly updated to show the number of land parcels, land transactions and allocations that have occurred, to whom and for what purposes (Kombe and Kreibich 2000; Nkurunziza 2007; Agheyisi 2019a) and thus are more likely to be inaccurate and outdated (Lamba 2005) and not a useful source of land tenure information for buyers and sellers (Kombe 1994).

To obtain reliable information on land such as the availability of the land parcels in question and the prevailing land prices, many residents in these settlements are more likely to use informal channels and social networks such as family members, friends, neighbours, relatives, and land brokers (Kombe 1994; Ikejiofor 2006; Nkurunziza 2007 p.515; Adam 2014b p.94). Undergirding this transaction system is trust between or among the land transaction parties (Adam 2014b and

Ikejiofor 2006). According to Klopp and Paller (2019 p.12) lack of official records and information may lead to official invisibility that manifests in “blank spaces” on official maps. For example, in a public meeting discussion regarding the land ownership in an informal settlement in Nairobi, Rigon (2016 p.2769) notes that the official maps used by the professional surveyor for illustration purposes “the title owned by the church indicated an area of land larger than the current site of the church” on the settlement. Such inaccuracies may facilitate convenient official land records manipulation that may lead to land grabbing or corruption and eviction of the residents.

### **2.6.3 Most land parcels in peri-urban settlements boundaries have not been officially demarcated or surveyed and where it is done it is more likely to be incomplete or make use of general boundaries**

In peri-urban settlements, land parcel boundaries determination, definition and demarcation is done by both official and unofficial systems professionals. This may include private land surveying professionals (Magigi and Majani 2006; Nkurunziza 2008 p.116; Agheyisi 2019a), “informal land subdividers” (Kombe 2000 p.175), state officials (Fekade 2000 p.133) or land invaders with the help of an unqualified surveyor (Obala and Mattingly 2014 p.2740).

In peri-urban settlements, where the traditional or indigenous system is dominant, demarcation is done using traditional markers such as “plantings” (Nkurunziza (2008 p.116). For example, in Enugu, Nigeria, Ikejiofor (2006 p.453) notes that land allocation to an indigene is demarcated by a “traditionally recognised plant.” In peri-urban settlements where the state officials or private survey professionals are used, survey beacons are identified as one of the key boundary markers (Nkurunziza 2008 p.116). Where informal land sub-dividers dominate, boundary marking may be done “using the existing physical features or footpaths,” such boundaries are largely seen as temporary (Kombe 2000 p.177). Land parcel boundaries under the informal systems are not fixed and may change due to official systems actions or “unauthorised actions of local landholders themselves” (Adam 2014a p.1973). It is important to note that in some cases, land parcel boundaries in peri-urban settlements may not be marked on the ground (Adam 2014) especially where land transactions are not allowed (Lamba 2005 p.83). In such cases, the “definition and delimitation of boundaries of boundaries between parcels” is not clear (Adam 2014 p.25).

Peri-urban residents that use the services of state officials or private land surveying professionals do so because in the long-term, they intend to obtain an official title and, in their jurisdictions, professionally done and signed survey plans are necessary for official land registration e.g., in Uganda (Nkurunziza 2008), Kenya (Lamba 2005). However, even in situations where professional land surveyors are used, the full survey process is seldom completed. In the view of these peri-urban residents, demarcation with beacons on the ground may be good enough to secure the residents' interests and “nobody would ever know that they had not obtained” a title (Nkurunziza 2008 p.116). According to Nkurunziza (2008 p.116), the residents noted that the cost and trouble of processing a land title were not worth it. Magigi and Majani (2006 p.1072) make similar observations when they note that residents may not complete the official land survey process due to prohibitive costs.

Boundary descriptions in local land sale agreements imitate official descriptions and are based on local knowledge of the area as they refer to local and popular boundary markers and identifiers (Nkurunziza 2008 p.118). Similarly, the informal land survey plots layout developed by the different land boundaries determination authorities tends to resemble official layouts (Nkurunziza 2007). Where these layouts are “fairly accurate” a vibrant local land market may emerge as the case of Mukuru Kwa Njenga informal settlement in Nairobi shows (Lamba 2005 p.83).

Conflict over land parcel boundaries is a key contribution to conflict in peri-urban settlements discussed in section 2.6.4 below. To minimise the occurrence of boundary disputes when formalising boundaries, residents emphasise the need to maintain and conform to boundaries negotiated and determined during the original land transactions (Magigi and Majani 2006 p.1071).

#### **2.6.4 Land-related disputes in peri-urban SSA settlements involve various actors and maybe resolved through local dispute resolution mechanisms**

In this discussion, a land-related dispute is understood to refer to competing or “conflicting claims to rights in land by two or more parties focused on a particular piece of land, which can be addressed within the existing” dispute resolution mechanisms (Bruce 2013 p.1). When land-related disputes intensify in peri-urban settlements, they may develop into land conflicts (Barry et al. 2007) or violence (Kombe 2010) that the existing dispute resolution mechanisms are unable to

adjudicate, “leading to wider social unrest” and related urban violence (Kombe 2010; Lombard and Rakodi 2016 p.2688).

In peri-urban settlements, land related disputes may arise among as well as between the following actors: the state (including local government and other sub-national entities), residents, local groups, local leaders, and civil society organisations (Kombe 1994; Lamba 2005; Adam 2014c; Lombard and Rakodi 2016 p. 2690; Dadashpoor and Ahani 2019). The land related disputes arise because of a number of reasons, which may include: increased demand for peri-urban land (Kombe 2000 p.177), disputes over land transactions (Adam 2014b), fraudulent sale of land parcels (Kombe 1994), “boundary disputes between land sellers and buyers” (Agheyisi 2019 p.14), inter-communal conflict over community land boundary zone land rights (Agheyisi 2019b), and tension between different land tenure systems, for example, between “customary and statutory law” (Briggs and Mwamfupe 1999 p.280) or between “communal and private interests” (Kombe 2000 p.177) among others.

Local governance structures are used to resolve the identified land related disputes in peri-urban settlements. In the literature, these structures are identified using different terminologies, for example, “traditional social institutions” (Adam 2014b p.96), “informal institutions” (Nkurunziza 2008 p.119), “local leaders such as sub-ward leaders” (Kombe and Kreibich 2000 p.238), “land disputes committees” (Kombe 2000 p.177) and “customary authorities” such as the *Oba* or “Community Development Associations (CDAs)” (Agheyisi 2019a p.5&6). These local mechanisms are preferred because they better understand the nature of local land-related disputes (Kombe 2000, 2005; Adam 2014; Wolf *et al.* 2018), and are able to impose social sanctions on local residents (Nkurunziza 2008; Adam 2014b). Moreover, these disputes are likely to involve unofficial land tenure and documentation that may not be recognised in courts because of their informal nature (Kombe 1994, 2000; Adam 2014c) or because the land ownership documents are fake (Kombe 1994 p.34). If the mechanisms are unable to resolve these land-related disputes, they are referred to higher relevant administrative offices within their jurisdictions --for example, Ward leaders in the case of Dar es Salaam (Kombe 2000) --or courts where this is possible.

### **2.6.5 In peri-urban SSA settlements, land administration practices and processes are shaped by complex and contested local power relations**

In peri-urban SSA settlements, local land administration practices and processes are shaped by “different and often conflicting interests of the actors” (Lombard and Rakodi 2016 p.2694). In some instances, local elites such as landlords manipulate these processes to advance their land-owning interests at the expense of vulnerable actors such as tenants (Rigon 2014, 2017; Klopp and Paller 2019). In addition, in their role as local gatekeepers, local elites may filter necessary information regarding land ownership to their benefit (Rigon 2017). These local land administration practices by local elites create and perpetuate an unequal socio-cultural structure of local power relations where access to land is dependent on one’s economic capability and power of social relations (Kombe 1994 p.41; Kombe 2000 p.170), such as affiliation to an indigenous community (Ikejiofor 2006) or political party (Kombe 2010; Paller 2019). For example, Paller’s (2019 p.49) study of slums or informal settlements within Accra shows that residents and businessmen in Accra rely on local political entrepreneurs “to access affordable housing, secure land tenure, protect themselves from the rule of law, and gain access to state resources.”

### **2.6.6 Land parcels in peri-urban settlements are generally not connected to the main urban services providers, and where they are, it is likely to be partial and/or self-initiated/funded**

An official land tenure administration system should support efficient urban land management to enable orderly urban growth and “efficient provision of services” (Fekade 2000 p.129) based on approved official land use plans (Kombe 2000, 2010; Wolf *et al.* 2018). However, in peri-urban settlements, land parcels are more likely to lack access to basic urban and infrastructural services such as water, sanitation, main roads, drainage, sewerage, street lighting, stormwater drainage system, garbage collection points and removal, and electricity (Lamba 2005 p.67; Magigi and Majani 2006; Gulyani and Bassett 2007; Gulyani and Talukdar 2008 p.1920; Adam 2014b p.94; Klopp and Paller 2019; Agheyisi 2019a). Where these services are available, they are likely to be inadequate (Adam 2014). These settlements are developed prior to the construction of proper infrastructure and services (Kombe 1994, 2005 p.117). Other notable reasons for the inadequate or lack of services in peri-urban settlements may include limited to no improvement on colonial urban design systems and structures (Kironde 2000 p.156; Otiso 2005; Klopp and Paller 2019 p.8)

which are not designed for SSA urban centres and peri-urban SSA settlements in their current form. For example, Rasmussen (2012 p.418) notes that despite Nairobi expanding “to almost ten times the size of the colonial city”, most of the new areas lacked “any kind of infrastructural planning”. Additionally, in South Africa, the systems may be based on “racially segregated spatial planning policies” (Barry 2019 p.60). Both the national and local governments may lack funding to extend these services (Fekade 2000, Kombe 2005). The lack of local government funds to finance such service provision is compounded by allottees who do not develop their serviced lands, thus denying the local government of revenue through increased property taxation (Kalabamu 2000 p.317).

As a result, in these peri-urban settlements, “private or collective initiatives,” e.g. self-funding to provide or install water systems, are used to fill the conventional systems supply vacuum (Kombe 1994 p.35). In some cases, rudimentary services provision is undertaken by local organisations (Fekade 2000 p.133; Kironde 2000 p.154; Kombe 2005 p.129), while in other cases, private-public partnership or Corporate Social Responsibility (CSR) may lead to the provision of infrastructural services where it was absent (Ng’ombe and Keivani 2013 p.42). In addition, due to the lack of basic infrastructure (e.g. streetlights), security against burglary in these peri-urban settlements may be poor (Kombe 1994), impacting the upholding of peace and order by local governments (Kombe 1994, 2010; Nkurunziza 2007 p.513). The lack of basic urban infrastructure and services contributes to predominant poor living conditions (Lamba 2005; Obala and Mattingly 2014) in peri-urban settlements. In some cases, service provision in peri-urban settlements may be worse than in rural areas (Wolf *et al.* 2008 p.16).

While it may be preferable to have serviced land, the lack of these basic services does not deter land acquisition by residents (Nkurunziza 2007 p. 517, 2008 p.115). This is because these residents are more interested in owning land rather than obtaining such services (Nkurunziza 2007 p.517). Thus, the view that residents in the peri-urban settlements “[worry] about services came after a piece of land where they can put up shelter” Nkurunziza (2008 p.115). Despite these views, availability and quality of services influence the land prices in the informal land market in peri-urban settlements (Kombe 2000, 2005p.117; Ikejiofor 2006; Nkurunziza 2007 p.517, 2008 p.115). It is also notable that land values vary depending on location. For example, land closest to infrastructural trunks are more valuable than land that is further away (Kombe 2005 p.131). The

emergent land use patterns in peri-urban settlements are “a manifestation and function of the socio-economic opportunities which these areas can offer to the urban poor” (Kombe 2005 p.128).

### **2.6.7 Summary**

In summary, there is a consensus in the conventional land administration in informal settlements literature that in peri-urban SSA settlements:

- Land transactions take place outside the official land administration system and are likely to be contested
- Land rights records and information in peri-urban SSA are generally not available
- Most land parcels in peri-urban settlements boundaries have not been officially demarcated or surveyed and where it is done it is more likely to be incomplete or make use of general boundaries
- Land-related disputes in peri-urban SSA settlements involve various actors and maybe resolved through local dispute resolution mechanisms
- Land administration practices and processes are shaped by complex and contested local power relations
- Land parcels in peri-urban settlements are generally not connected to the main urban services providers and where they are it is likely to be partial and/or self-initiated/funded

Based on the above, it may be said that conventional land administration systems are not effective in informal settlements characterised by dynamic social change and hybrid land tenure administration systems. It is under the above conditions that SLAOs, discussed in section 2.7 below, try to improve land administration in informal settlements.

### **2.7 Informal Settlements and Street Level Bureaucracy**

This section reviews the literature on street-level bureaucracy theory as it relates to land administration in peri-urban SSA settlements. The discussion in this section provides the premise for the study’s achievement of objective 3 i.e., development of a street level bureaucracy theory for in situ regularised informal settlements.

## **2.7.1 Mainstream and Street-Level Bureaucracy Approach to Public Administration**

There are two opposing schools of theory relating to policy and land administration. One is mainstream public administration and the other emphasises the importance of street-level bureaucracy (*hereinafter* SLB). Mainstream adherents advocate rigid approaches to public administration, strict adherence to rules and regulations, and top-down policy implementation. The literature shows that official land administration systems based on the mainstream public administration theories are ill-suited to peri-urban settlements in SSA. In contrast, I note that SLAOs need a significant amount of discretion in the interpretation of official policy and the performance of their duties while undertaking work in peri-urban SSA settlements. Thus, my argument for an adaptation of Lipsky's SLB theory to peri-urban SSA settlements (*this is discussed under Lipsky's SLB theory section below*).

The conventional approach to policy implementation adopts a technocratic approach to problem-solving. In this view, street-level bureaucrats are seen as implementers not policymakers (Lipsky 2010). Further, the conventional approach posits that "the more opportunities that exist for street-level officials to veto or shape a policy as it progresses towards implementation, the less likely it is to be implemented successfully" (Arnold 2015 p.316). The argument is those elaborate and clear procedures undergirded by law will control bureaucratic discretion, reduce uncertainty, and enhance predictability (Smart 2018; Manji 2001). Thus, this school of thought calls for the reduction of discretion and emphasis on adherence to rules and procedures. In addition, this top-down approach to policy analysis characterises policy as being initiated and directed by the top-level strategic organisation leadership not street-level bureaucrats.

The next subsections introduce two opposing logics of public administration. The contrast serves as the premise upon which Lipsky's SLB theory is adapted in this study. The goal of this adaptation is to improve my analysis of SLAOs in peri-urban SSA settlements.

### ***2.7.1.1 Organisations as Machines approach***

Official land administration systems as a public administration domain tend to be based on the conventional view of public sector organisations (De Vries & Zevenbergen 2011). Conventional

approaches view public bureaucracies as hierarchical task-based systems whose core goal is to deliver public services (Denhardt & Denhardt 2000). One way of describing this is the machine view of an organisation, where the organisation is highly structured and can be viewed as operating like a machine. The bureaucrat's role is to provide services strictly within the existing law, rules, and procedures (Morgan 2006). Officials have little or no leeway in interpreting and applying existing legal procedures and rules. Those that attempt to be innovative to meet local needs are discouraged because it may be seen as a pursuit of their own private goals (Hupe & Hill 2007; Tummers & Bekkers 2014). While the conventional approach to public administration may be effective in stable unchanging situations, in peri-urban SSA areas, situations where organisational goals and objectives are contested, interests and worldviews are diverse, and competing power relations and conflict are the norm, conventional approaches are likely to be ineffective. Thus, a SLB theory approach in these situations may be more appropriate because of the concept's appreciation of the complex "web of multi-dimensional relationships" in which street-level bureaucrats operate (Hupe & Hill 2007 p.285). Understanding these relationships is important because in peri-urban SSA situations, they are interwoven with local and wider competition for power, resources and corrupt practices by officials and local elites.

#### ***2.7.2.2 Lipsky's SLB Theory: A challenge to the organisation as machine approach***

In contrast to the organisation as a machine approach, Lipsky's SLB theory argues that "the decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures effectively become the public policies they carry out" (Lipsky 2010 p. xiii). It challenges several mainstream conventional approaches to public administration bureaucracy. These include the emphasis of structure over bureaucrats' agency and working conditions and the conventional policy process analysis paradigm, which emphasises deference to hierarchy and authority (Lipsky 2010; Brodtkin 2012). The theory notes that the classical view of public administration as a static and deterministic structure neglects the constrained conditions under which street-level bureaucrats operate and how they cope with these constraints (Brodtkin 2012). Thus, this school of thought argues that the lack or inadequacy of the necessary resources within a public administration bureaucracy limits the street-level bureaucrats' ability to be effective in service delivery (Lipsky 2010). Under these conditions and other internal and external environmental factors street-level bureaucrats develop discretionary policy actions

(Arnold 2015). However, it should be noted that street-level bureaucrats within the same organisational environment and level may experience different levels of discretion because of their technical expertise, personality, relationship with their seniors and the organisation's policy implementation framework (Abubakari *et al.* 2018). Thus, under the conventional, machine type view of land administration, we should expect land administration projects to be similar in their outcomes and the way tasks are done. On the contrary, if officials are able to apply high levels of discretion, then two apparently similar projects may have very different outcomes and tasks may be done in different ways.

Lipsky's theory is drawn from evidence related to various jobs e.g., policing and social work. There is a gap in documented evidence of street level bureaucracy theory as it applies to land administration (*for a detailed discussion of this see section 2.8*).

Of relevance to this literature review discussion is street-level bureaucracy theory's concept of discretion which helps in understanding the SLAOs actual room to manoeuvre, the theory's perspective on policy implementation that emphasises examining how the SLAOs negotiate project implementation and the significance of local politics in the work of street-level bureaucrats by understanding how SLAOs balance different political demands, interests and values.

### ***2.7.2.3 Land Administration and SLB's Discretion and Discretionary Space***

As it relates to land administration and how discretion and discretionary space influence land administration innovation, De Vries & Zevenbergen (2011) argue that discretion and discretionary space is important in understanding the effectiveness of SLAOs who deal with individual land transactions and the effectiveness of top-level bureaucrats who prepare and implement innovative land administration systems (De Vries & Zevenbergen 2011). To understand whether land administration innovations will be successful at the local level, SLAOs should consider the discretionary space beyond and within the organisation (De Vries & Zevenbergen 2011). In addition, they should expect these innovations to disrupt the internal and external organisational environment. This is because the resulting uncertainties from these innovations create room for discretionary actions or practical norms (Olivier de Sardan 2014) that the SLAOs may effectively use or manipulate for their benefit (Abubakari *et al.* 2018). Though unofficial, practical norms are accepted, routinised and institutionalised within the official systems (Olivier de Sardan 2014). In

synthesis, to improve the effectiveness of official land administration systems the studies suggest assessment of the dynamic internal and external environments, more specifically the socio-political, socio-organisational and historical contingencies, within which land administration reforms are undertaken. In addition, I submit it is important to analyse the risks inherent in these reforms, such as creating room for corruption.

#### ***2.7.2.4 Land Administration and Role of SLBs in Policy Implementation***

As an example, Manji (2001) highlights how different levels of conflict can impede street-level bureaucrats land reform project implementation. She identifies five key critical success factors that are instrumental for the successful implementation of land reform programmes in Africa by street-level bureaucrats, which include: the political will to carry out land policy changes; manageable local community level conflict; and the street-level bureaucrats' discretion are factors influencing land reform projects implementation that need more attention (Manji 2001). Analysing the above, in exercising their official discretion, SLAOs are *de facto* interpreters of land policy. However, to be effective in situations like post-conflict peri-urban SSA, they have to manage local conflict and strategically engage with local elites who are part of the existing local power network that allocates resources, including power and maintain a focus on the overarching policy goals as opposed to adhering to rules and procedures.

### **2.7.3 Street-Level Land Administration in Informal Settlements**

The preceding sections have introduced the street-level bureaucracy theory and contrasted to the conventional public administration approach. The next section highlights how street-level land administration officials work in informal settlements.

#### ***2.7.3.1 Street-Level Land Tenure Administration in Informal Settlements***

Local land administration officials working in peri-urban settlements are unable to provide services because official regulations prohibit this provision (Fekade 2000; Kombe 2005; Nkurunziza 2007) and in some cases, access to the settlements may not be possible (Obala and Mattingly 2014). Drawing on the literature, state and local government officials do not provide services in peri-urban settlements because of a number of reasons which include the following: “officials see the settlements as transient” (Gulyani and Talukdar 2008 p.1920); the developments in these settlements do not meet official building codes and standards (Amis 1996; Fekade 2000);

they are labelled informal by officials (Magutu 1994); and the view that provision of urban services will provide official recognition and *de facto* security of tenure to peri-urban settlement residents (Gulyani and Bassett 2007 p.507). In addition to these, is the belief by some officials that “infrastructure services bring about growth and thus the belief that their absence can restrain growth” of the settlements (Kombe 2005 p.217). Further, the government does not provide services because in their view the state will not be able to recover the cost of such services provision and maintenance (Magutu 1994 p.215; Rakodi *et al.* 2000 p. 166).

Further complicating peri-urban settlements’ service provision is that day-to-day administration by walking may be constrained because the local bureaucrats or administrators may not be able to access these areas (Obala and Mattingly 2014). Given that entry into some of these contexts may be contested and, where forced in some cases may turn violent (Kombe 2010), the local land administration officials collaborate with local leaders in their work “to prevent the local elites from sabotaging the programme” (Rigon 2017 p.595). This informal collaboration may lead to collusion between the local leaders and local land administrators to the benefit of the residents, though at an additional transaction cost (Obala and Mattingly 2014). For example, Nkurunziza (2008 p.119) notes that in Kampala, Uganda, informal settlements: “public employees operating in the informal sphere (during land demarcations and transactions), [sell] their services informally to those who can afford them.” They do this in ways that according to him may go beyond their official mandates such as “personal benefits in the form of bribes” among others (Nkurunziza 2008 p.119). However, collusion between local leaders and state officials may not always be to the benefit of the residents. For example, in Dar es Salaam, Kombe (1994 p.34) found empirical evidence of “conspiracy between landowners or dealers (agents) and officials in the Ministry of Lands, Housing, and Urban Development (MLHUD) and Dar es Salaam City Council (DCC) who issued bogus offers or transfers and reallocate or resell a plot to two or more individuals.” Obala and Mattingly (2014) made similar observations in informal settlements in Nairobi, Kenya.

### ***2.7.3.2 Analysis***

Conventional land administration public bureaucracies are not designed for the complexity inherent in peri-urban SSA, as described in section 2.3, because their machine premised design is too rigid for these situations. In order to effectively deliver land administration services,

bureaucrats working in public bureaucracies under these situations have to be cognisant of their organisation's rules and procedures, and how their strategies to overcome this rigidity will affect the complex relationships in which they operate. As a result, the expectation that official land administration procedures implementation by SLAOs in these situations should be similar in their outcomes does not hold.

In the author's analysis, Lipsky's Street-Level Bureaucracy approach provides a theoretical framework that incorporates the bureaucrats working conditions and their discretionary policy actions to overcome the strained conditions. In peri-urban SSA settlements where it is more likely that SLAOs will be *de facto* interpreters of official land policy, a SLB approach can be drawn upon to improve knowledge and understanding of SLAOs strategies in peri-urban SSA and how they are selected. Thus, the argument in this section that under peri-urban SSA, described in section 2.3, an official LAS that is flexible enough to allow for SLAOs strategies to overcome their conditions and robust enough to withstand intense local political influences may be more suitable. Furthermore, in peri-urban SSA settlements, unofficial delivery of land services, the limits of the top-down implementation process and existing local institutions should be considered when exploring how SLAOs in peri-urban SSA settlements react to conditions on the ground.

## **2.8 Theory Development**

This section reviews Lipsky's street level bureaucracy theory, hybrid governance theory, and Barry (pers. comm. 2020) to develop two sets of *a-priori* hypotheses and explanations. The two sets of hypotheses were developed to explain land administration system effectiveness in peri-urban SSA informal settlements.

### **2.8.1 Street-Level Bureaucracy Theory**

Lipsky's street-level bureaucracy theory is a general theory that is applicable across disciplines as it is based on occupations/jobs that are different and, in some cases, unrelated (Lipsky 2010). For example, Lipsky's empirical data is based on observation of the professions, such as social work, education, and policing. The theory argues that it is possible to compare the different occupations because street-level bureaucrats in these occupations work under similar work structures and conditions thus their similar behaviours in certain situations (Lipsky 2010). However, Winter

(2002) criticises the theory on this premise and argues that while it is good in identifying street-level bureaucrats' coping behaviour within different settings, it is weak in explaining this behaviour. To improve on this, he suggests the application of systematic tests to the theory through the formulation of hypotheses that can be tested within a given context of interest (Winter 2002). Building on this critique, this section states Lipsky's street-level bureaucracy theory as a set of conditions and hypotheses as per the general articulation of theory by Lipsky (Lipsky 1980, 2010). Drawing on the above, Lipsky's theory can be stated formally as a set of hypotheses with their accompanying conditions under which they might apply. The following are the conditions under which Lipsky's was formulated:

- C1: Lipsky's work is based on empirical work conducted in the United States, where in general there is stable and clean governance and respect for the rule of law.
- C2: In general, the administration policy, law and accompanying regulations are well established.
- C3: In general, administrative and professional work is guided by detailed regulations and specifications. Deviance from these regulations and specifications and the procedures relating to them is discouraged.
- C4: Administrators' resources are often inadequate relative to the various tasks they are expected to fulfil. This constrains their work because, for example, they are unable to access all the relevant information required for their decision making.
- C5: Public agencies are the primary providers of public service and the population has little or no other option to turn to for public services provision such as policing. This means the population must accept these public agencies and their service provision.
- C6: Lipsky's theory is not supported universally across all disciplines in the public service. Lipsky formulated his theory based on observation of the following disciplines and professions: social work, education, and policing.

- C7: Officials working in public agencies have a high commitment to public service and act in good faith in service delivery, i.e., they are not acting for personal gain, such as seeking bribes or consolidating power.

Given the above conditions, Lipsky's theory can be stated as follows.

Under conditions C<sub>1</sub>, C<sub>2</sub>, C<sub>3</sub>, C<sub>4</sub>, C<sub>5</sub>, C<sub>6</sub>, C<sub>7</sub> above the following hypotheses apply

*H1: Street-level bureaucrats will develop flexible routines and practices that will enable them to provide services quickly and efficiently that are permitted within the framework of existing procedures and official mandates.*

For example, a patrol policeman will develop his or her own simple rules to determine which offences can be solved during the patrol and which must be booked in at the station. This determination, among other influences, may be based on what the policeman perceives to be either a serious offence or not, and his or her beliefs about the level of flexibility in making this assessment that managers and leaders will allow at that time. If they deem an offence not to be too serious, they may issue a warning to the concerned citizen and continue with their patrol. Such a determination reduces the cases they have to file and follow up on, enabling them to deal with serious offences files effectively.

*H2: Street level bureaucrats who are presented with a matter or issue that their routines and practices cannot simplify or handle, will refer it to another office or simply not attend to it.*

For example, if a client approaches a frontline welfare worker to complain about prior service provision, the frontline welfare worker will quickly assess how engaging the complaint is likely to be. For example, will it require searching for additional information and follow up. The frontline welfare worker will then decide whether to act on it or not. If the frontline welfare worker finds the complaint to be too complex to handle or requires, more time than they are willing or able to spend on it, they will likely refer it to another office, or simply not attend to it. These strategies may help the frontline worker to deal with such complaint cases quickly and thus improve their overall work efficiency. For the client, it is likely to reinforce the view that they are not likely to be assisted with their complaint dampening their expectations of fair treatment of the complaint.

*H3: Street level bureaucrats who experience increased demand for their service, will ration their service delivery to deal with the work pressure.*

For example, to control their clients and their demands, social welfare workers may ask their clients to first read and fill out certain procedural forms before they can attend to them. This requirement allows the social welfare worker to control the service demand interaction and may discourage clients who, for example, are not willing to go through such a process. As a result, this is likely to limit the clients they serve and at the same time enable them to deal with the high client demands.

*H4: Street level bureaucrats who experience conflicting job or role expectations, will align with the dominant role expectation in order to keep their job.*

For example, a patrol police officer will in addition to responding to their perception of their police role, also have to deal with demands from fellow police officers who have their own view of their work, his or her superiors who may be more interested in efficient case handling and the general public interested in the fair enforcement of the law. Because the patrol officer cannot realistically accommodate all the demands at a go, he/she is likely to perform their work in accordance with what they determine to be the dominant expectation within the office, in this case, their superiors' expectations. This may result in the patrol officer emphasising what their superiors expect of them at the expense of what their colleagues or the public expect of them.

*H5: Since street level bureaucrats control their routines and practices local politicians cannot directly influence their day-to-day use of these routines and practices.*

For example, through education legislation and policy formulation, local politicians determine the resources that are available to the teachers to achieve local education policy objectives. At a local school with a growing student population, the local politicians' decisions will influence a teacher's working conditions. Politicians' decisions will, for example, determine the number of teachers that can be employed. If the local politicians decide to reduce the budget available for hiring additional teachers, the existing teaching staff will have to come up with routines and practices to handle the high number of students. Local politicians cannot, or at least should not, control how these teachers will use these routines.

## **Analysis**

The general hypotheses generated above (i.e., H1 to H5) are distinctive to street level bureaucrats. This means they can apply to street-level bureaucrats in different occupations. However, the examples used to elaborate and explain the hypotheses are specific to the occupations used and the context in which Lipsky collected his data.

### ***2.8.1.1 Lipsky's Theory and Land Administration***

Given the general nature of Lipsky's street level bureaucracy theory it can also be adapted and extended to employees in land administration organisations that administer land tenure in SSA. However, to provide the required incisiveness for examining land tenure administration in informal settlements an interview with an experienced land administrator who has worked in land administration organisations and conducted research related to them in SSA, specifically South Africa, was undertaken i.e., Barry (pers. comm).

Land administration officials (i.e., SLAOs) do not perfectly fit Lipsky's description of street level bureaucrats as officials that have flexibility to make decisions and interpret the law. This is because SLAOs work that includes land-related information collection and documents inspection is undertaken under strict procedures and regulations. In this strict workflow structure, their work is highly controlled and essentially provides information to the unit managers within their departments to comment or make decisions. It is because of this that the study applies the term SLAOs which includes technical staff, and low and middle-level land administration officials with operational and managerial responsibilities and may interact with the public.

### **2.8.2 Land Administration under Stable Conditions in South Africa**

Land administration officials work in different organisations at various levels of governance, i.e., national, provincial, and municipal. The different organisations have different land administration purposes and goals. In addition, each organisation has its own set of conditions that influence how officials might behave. In general, land administration officials' behaviour is shaped by the purpose of the organisation, the culture within the organisation, and the leadership style. Assuming corruption is absent and intra- and inter-organisational power struggles are insignificant, different

senior and middle-level managers will allow different levels of flexibility, provided the behaviour aligns with the purpose, mission, goals, and objectives of the organisation (Barry pers. comm).

### ***2.8.2.1 Land Registration***

In South Africa, the land registration organisation can be described as a rigid machine type organisation whose purpose is to ensure that documents that give rise to land rights meet the strict procedural requirements prescribed by the law, regulations, and the organisation's procedures. In this organisation, decisions on what to overlook regarding errors is undertaken by the supervising middle-level or senior managers. How these managers handle such decisions is likely to be informed by the following factors, whether such errors oversight will harm clients<sup>3</sup> land rights and the public interest, the required technical quality, and input from the other officials, among others. Further, this decision making is likely to inform the clerical staff's adherence to technical requirements. The checks and balances on land transaction registration should ensure someone does not sell what they do not own or grab land rights from someone else in the process (Barry pers. comm).

In some SSA countries, the land registration organisation is not free from corruption as various forms of corrupt practices that range from bribery to land grabbing may be evident. Bribery may manifest in the form of fees to expedite the land transaction process or delay/stop an ongoing transaction by either misplacing or hiding files (Barry pers. comm). The land registration process may also be used by powerful external agents e.g. local politicians and officials, to grab land. For example, Barry (2019) notes that in Edendale, South Africa, a councillor, probably in collusion with officials, sold ghost titles using personal identity numbers of dead people or those that lived in remote rural areas and would not have been aware of such a fraudulent scheme. The councillor would have had to collude with a group of people in the Deeds Office for this to succeed.

Under the above conditions, hypotheses H1, H2, and H3 may apply.

*H1: In the context of land registration, SLAOs will allow a document with a minor error to proceed to the next workflow stage, given that the error does not impact on the stakeholders' legal rights or harm the public interest providing senior management allow this.*

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<sup>3</sup> The registered landowner(s) plus stakeholders such as family.

*H2: In the context of land registration, SLAOs' flexibility that leads to prevalent quality problems within the organisation or unintended consequences that harm the client's legal land rights, will be curtailed by the regulatory framework and the supervising management insisting in adherence to official procedure.*

*H3: In the context of land registration, officials who engage in corrupt behaviour individually or in collusion with external agents such as local politicians, will do so in a way that their behaviour is not easily observable (Barry pers. comm).*

### **Explanatory note**

In general, in South Africa, the rule of law guiding land registration is well established. Consequently, detailed land registration procedures and regulations govern the inspection, examination, approval, and storage of documents that give rise to land rights. Deviance from these procedures is dependent on the organisations' leadership style and whether such flexibility will harm clients/stakeholders' interests land rights or public interests. The registration process is rigid to ensure that officials do not give greater power over land than they legally possess. However, this process is not devoid of risks, such as corrupt practices, which may involve officials and external agents (e.g., local politicians) with the goal of grabbing land or manipulating transaction process (Barry pers. Comm. 2020).

#### ***2.8.2.2 General Property Administration***

As an example, at the municipal level in the City of Cape Town the general property administration division's purpose was to manage development applications, such as applications to buy or lease city land. Since these applications did not give rise to irreversible property rights officials within this organisation have a wider level of flexibility to deal with various situations that do not fit existing regulations (Barry pers. comm). Similar to the land registration organisation this flexibility is dependent on the Department's head and his/her leadership style, i.e., how strictly do they adhere to procedure and the purpose of the department. In making their decisions officials in this department considering the input from different departments, within the application's chain of approval, and representation from the property owners. In this organisation, SLAOs such as field

surveyors did not make decisions though they were the officials that inspected the property and gathered the information for decision making purposes (Barry pers. comm.).

Within suburbs where there is a weak adherence to property development regulations the presence of SLAOs, e.g., building inspectors, on the ground may play a role in establishing respect for the rule of law and regulations guiding city development (Barry pers. comm). For example, in Mbekweni, Barry and Whittal (2016 p.207) found that because the residents continually interacted with the municipality where the local housing office was easily accessible” residents appeared to have a higher level of “awareness of official land administration practices”. Further, there was also visible street level administration in the form of building inspections.

Under the above conditions, hypotheses H4, H5 below may apply.

*H4: In the context of development applications approval by municipality, SLAOs will use their discretion that is informed by their evaluation of the issue at hand, comments from the organisations’ officials, and input by client, to handle the case within the existing official procedures and mandates. Official procedures may allow some flexibility in how a particular case is decided.*

*H5: In the context of development applications approval by municipality, where SLAOs are accessible and active on the ground residents will adhere to development control regulations providing.*

### **Explanatory note**

Generally, the general property administration officials have a wider level of flexibility when compared to the land registration organisation officials. This is because these officials are dealing with applications that do not create irreversible interests. Similar to the land registration organisation officials’ behaviour is influenced by development application regulations and procedures guiding property administration within the City and the department’s leadership style. Unique to this organisation is the role that SLAOs on the ground play in encouraging residents’ adherence to official regulations.

### **Analysis**

Analysing the above, officials that work within the two organisations have limited flexibility as it concerns land administration processes. This is because these officials do not interpret the law rather, they seek to adhere to its requirements in a way that safeguards clients land rights and maintains the integrity of the official systems' land records. These officials' behaviour is influenced by the law and regulations guiding their work processes, the organisations' leadership style and culture, and in the case of the general property administration office, the presence of SLAOs on the ground. The officials' flexibility space within the two organisations is different and seemingly determined by the consequences of the applications lodged with them. For example, the general property administration office whose procedural consequences are reversible the flexibility space is wider.

The conditions that officials face in stable and relative stable suburbs in South Africa are unlikely to exist in peri-urban SSA informal settlements. To develop the study's substantive level theories under informal settlement conditions the section below specifies the informal settlement condition and hypotheses that may apply.

### ***2.8.2.3 Land administration in informal settlement upgrades in South Africa***

Based on the discussion in section 2.7, Barry (2006), Barry (2019), Barry and Kingwill (2020), and Barry (pers. comm. 2020) research experience of studying informal settlements in South Africa, the following are informal settlement conditions that officials are likely to work with.

C1: Informal settlements are considered illegal or "semi-legal" by the state and therefore, officials do not officially deal with them. Further, officials in different organisations, e.g., land registration and general property administration offices, are reluctant to adopt innovative strategies that have not been approved by the senior management because of the fear of being the face of the problem (Barry and Kingwill 2020). The consequences of the face of the problem may include the loss of a job. To maintain a semblance of social and political order officials may tacitly recognise existing *de facto* hybrid governance structures which officials do not have control of. The goal of this strategy is to deal with the situation when the political nature of the situation has stabilised (Barry and Kingwill 2020).

C2: In general, there are various organisations, that draw their legitimacy from various sources, competing for power and resources such as land. To advance their interests, these organisations

will form coalitions. However, these coalitions will be dissolved over time if there is no longer a shared common interest (Barry 2006).

C3: In informal settlements, hybrid governance arrangements undertake both land tenure administration and general administration roles. These governance arrangements are likely to be unstable and continually evolving (Barry and Kingwill 2020).

C4: In informal settlements, the ongoing local competition between the various informal settlement governance actors may entrench local elites' power and further marginalise vulnerable groups. This marginalisation may be further exacerbated by local elites in different competing factions who manipulate local rules to their advantage (Barry 2006, Barry and Kingwill 2020).

Under conditions C<sub>1</sub>, C<sub>2</sub>, C<sub>3</sub>, C<sub>4</sub>, the following street level land administration hypotheses apply in informal settlement upgrade projects

*H6: In informal settlements, SLAOs will recognise and engage hybrid governance arrangements where their official engagement with the informal settlement is likely to lead to violence outbreak or is prohibited by the law.*

For example, a land administration official working on a project aimed at regularising land interests in an informal settlement will first map out the influential unofficial governance structures, such as local CBOs, prior to implementing the project. After identifying these unofficial governance structures, the official will engage them with the goal of getting their support for the project's implementation. The officials seek the cooperation of these unofficial governance structures because their non-involvement or recognition may lead to project failure through disruptions, such as the threat of violence or court litigations (Rigon 2016).

*H7: In informal settlements where competing local governance arrangements are unable to agree on the appropriate land tenure administration regularisation or upgrading approach to be used SLAOs will be reluctant to innovate to avoid being labelled the face of failure by the competing coalitions, local leaders and politicians.*

For example, an official interested in having a more effective land allocation programme will be reluctant to innovate and come up with strategies that can be used to undertake the project incrementally and engage the hybrid governance arrangements within informal settlements. This reluctance is informed by the view that should the project fail or have unsatisfactory outcomes, such as being perceived unjust or unequal, by local leaders then protests against the project may emerge leading to demands of a new programme or significant changes in the old programme may emerge. Since these changes may not be possible to effect due to factors, such as lack of funding, the officials that adopted and implemented the innovative strategies are likely to be blamed for the unsatisfactory outcome becoming the “face of failure”. Further, local leaders and politicians are likely to use the officials’ failure to disrupt the programme and advance their interests. As a result, officials are “wary of personal risks” of adopting innovative strategies solutions in the future and may adopt a do-nothing strategy (Barry and Kingwill 2020 p.13).

*H8: In informal settlements where SLAOs are not accessible, continually active and visible at the street level their land tenure administration roles will be done by unofficial, community-based structures.*

For example, due to a lack of capacity at the local government level and the fact that the law may prohibit officials from providing services to residents in informal settlements officials are likely to be absent at the informal settlement-level. The absence of officials creates a vacuum. As a result, unofficial structures, such as street committees or CBOs, will be formed by the informal settlement residents to provide various services including those that they are not receiving from state officials. Some of the services these unofficial governance structures may provide include overseeing off-register land transactions, keeping an accurate record of these land transactions, and resolving land-related disputes.

*H9: In regularised informal settlements, where SLAOs are active on the ground and they educate residents on the risks of off-register land transactions or residents are aware of people losing land in an off-register transaction, the residents are likely to follow the official regulations and procedures in their subsequent land transactions.*

For example, officials interested in improving land tenure administration at the informal settlement will educate residents about the risks of off-register transaction using local examples of problematic land transactions (Barry 2020). The officials will use these local examples because residents may be familiar with them and thus, are likely to understand them. Due to the use of these local examples and the resident's familiarity with them, residents who initially acquired their land parcels through the off-register land transaction and had not officially registered these transactions will register their transactions. Residents will register these transactions to avoid losing their land parcels. In addition, these residents are also likely to use official procedures in future land transactions.

*H10: In informal settlement upgrading projects, where SLAOs and local leaders or organisations have negotiated and come up with an agreement on rules to guide the various settlement upgrading activities the local leaders may not strictly enforce these rules unless collective strategies by settlement-level agents and perhaps external agents (e.g., SLAOs or NGOs) are implemented to maintain these rules (Barry and Kingwill 2020).*

For example, in an informal settlement where officials and local CBOs have agreed on a no-new shacks rule and local leaders' enforcement of this rule, the leaders will be reluctant or unable to strictly enforce it. This is because such enforcement may involve crude property destruction against both early settlers who may wish to put up unauthorised shacks and new settlers looking for an opportunity to put up new shacks. Such destruction will create local resentment and lead to the leaders losing legitimacy. The resulting resentment and tension may lead to settlement-level instability and conflict making local governance by these leaders difficult, impossible or dangerous. Due to this likelihood, the local leaders will be reluctant to strictly enforce the rule. Consequently, the *de facto* hybrid governance arrangement comprising the officials, local CBOs and leaders will be ineffective. In this scenario, the local leaders may prefer an alternative strategy where an external agent enforces the no-new shacks rule. This is because they would maintain their legitimacy and local trust by balancing the demands of the earlier settlers and new settlers looking for opportunities to settle within the informal settlement (Barry 1999, Barry and Kingwill 2020).

*H11: In informal settlement upgrading projects, a project design that allows SLAOs to directly communicate with the residents and monitor the local leaders' implementation of rules agreed on various project activities will enable SLAOs to effectively handle local project disruptions and achieve project implementation objectives (Barry 2006).* For example, in an informal settlement upgrading project, officials design an information system to communicate with the residents. Through this system the officials will inform, communicate, and educate the residents on the project's progress through its various stages. Further, through this system officials may monitor enforcement of project agreements between the residents and officials. Due to this inclusive information dissemination approach and the participation of residents, the officials are able to effectively handle disruptions that may be caused by residents who, for instance, may not be satisfied with the project outcomes or progress. By handling such disruptions before they grow into bigger project problems officials facilitate successful project delivery (Barry 2006).

### **2.8.3 Hybrid Governance**

As noted in section 2.5 there is no hybrid governance theory that explains hybrid land tenure administration in peri-urban settlements. To develop the study's substantive level hybrid governance under informal settlement conditions C<sub>1</sub>, C<sub>2</sub>, C<sub>3</sub>, C<sub>4</sub>, stated in sub-section 2.8.2.3, the following hybrid governance administration hypotheses are articulated

*H12: In informal settlements, de facto hybrid governance arrangements that maintain their local power may continue to have dominant and legitimate land tenure administration roles after land interests have been officially documented*

For example, in an informal settlement land regularisation project where the state actively involves the unofficial governance structures in the project, the unofficial governance structures local influence will remain the same or increase. This is because after the project is completed, officials are likely to continue working with these unofficial governance structures while residents are likely to seek these unofficial structures for advice or assistance on land-related issues due to their involvement in the project. As a result, the *de facto* hybrid governance arrangement comprising of the unofficial governance structures will maintain their local power and continue to be a dominant and legitimate land governance actor (Rigon 2014).

*H13: In informal settlements, registration of inheritance after official documentation by residents will indicate whether settlement residents will use official systems or de facto hybrid governance arrangements for subsequent land transactions*

For example, in a regularised informal settlement where unofficial structures still prevail, inheritance is likely to be done according to the residents' socio-cultural norms which are different from the official procedures. Residents may opt for this transaction process because they do not intend to sell their family land (Barry and Whittal 2016) and thus, sees no need to incur the official costs of officially registering the inheritance transaction. However, it is likely that this land ownership transfer will be communicated to the local leaders for their knowledge purposes. If this land inheritance transaction approach is prevalent within the settlement, then it is more likely that residents within this settlement will use the unofficial governance structures for subsequent land transactions.

*H14: In informal settlements, residents will opt for simple, cheap and quick off-register land transaction channels that they are familiar with as opposed to the official procedure that is likely to be lengthy and costly*

For example, in an informal settlement where both official and unofficial land transaction channels or options co-exist, residents will opt for the channel that they understand, trust, and is quick. This is more likely to be the off-register land transaction channel because the alternative, i.e., official procedure, is likely to be lengthy and costly. The residents may be interested in a quick process because they may not have the resources (finance and time) to undertake the various official land transaction procedures. In addition, they may be selling the land because they need cash due to an emergency, e.g., health, that cannot wait out the official procedures (Kalabamu 2000 p.317).

*H15: In informal settlement upgrading projects, participatory project administration that involves de facto hybrid governance arrangements and residents will not be disrupted by local politicians during implementation*

For example, prior to undertaking an informal settlement upgrading project, land administration officials undertaking the project may find it necessary to identify the influential unofficial governance structures. Officials identify these unofficial governance structures to involve them in the project. This inclusion may involve assigning the unofficial governance structures project roles, such as residents' identification. The inclusion provides these unofficial governance structures with official recognition and local legitimacy. Furthermore, the unofficial governance structures inclusion facilitates official project administrator's settlement access and residents buy-in. Due to the local legitimacy, residents' support, and the powerful unofficial governance structures' participation local politicians may find it difficult to disrupt the project during implementation (Rigon 2014).

## **2.9 Conclusion: Chapter Summary and Way Forward**

This chapter contributes to achieving the study's main research objective by addressing specific objective one and research questions<sup>4</sup> 1, 2, and 3 (*refer to section 1.4 in Chapter 1*).

The discussion in the preceding sections suggests there are two schools of thought regarding land tenure administration in peri-urban settlements, the rational model and hybrid governance. The rational model emphasises the standardisation and formalisation of land administration structures and processes in peri-urban settlements. It is a way of operationalising the rational state. It is characterised by strict adherence to the rule of law and procedures and controlled bureaucratic discretion. The school argues that the conventional technocratic approach to land tenure administration in peri-urban settlements will reduce uncertainty and enhance predictability, which in turn will lead to increased security of tenure, overall improving living conditions for the residents and achievement of the desired land administration objectives in peri-urban SSA. However, as the literature review in the preceding sections has shown, the rational model ideal is rarely achieved in peri-urban SSA settlements.

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1. <sup>4</sup>What existing theories related to land administration describe and explain peri-urban land tenure administration systems in SSA? Specifically, hybrid governance and street level bureaucracy theories.
  2. How adequately do these theories explain land administration in peri-urban SSA?
  3. How can the plausible explanations for official land administration effectiveness in peri-urban SSA be represented?

The hybrid governance school advocates working with existing official and unofficial land tenure administration actors with varying authorities, responsibilities and local power as they exist within a given peri-urban SSA settlement. According to this school, unofficial actors emerge because official land tenure administration actors are ineffective in peri-urban settlements due to their slow and complex bureaucratic procedures, inaccessibility to the land users, and rigid designs that are not able to capture the complex land relations on the ground. Further, complicating governance are peri-urban SSA contextual characteristics such as rapid change, socio-cultural norms that do not change to fit the rational model, and corrupt practices by local elites and local politics. The ineffectiveness of official land administration systems in peri-urban settlements leads to context-specific forms of hybrid land tenure administration systems that are dependent on the levels and nature of local power and influence. Hybrid land tenure administration is also dependent on whether the unofficial and official actors may work in harmony and/or in opposition. Of relevance to this study is that hybrid governance in peri-urban settlements is inescapable and actors work with what is available. How the different actors do this as it relates to land tenure administration in peri-urban settlements is not widely documented especially as it relates to: the nature of hybrid land administration in peri-urban SSA, and how SLAOs operate in peri-urban SSA settlements characterised by local politics and ongoing social change. Thus, a literature gap exists.

In conclusion, this chapter contributed to the achievement of the main research objective in the following ways. First, the review described, analysed, and classified peri-urban SSA settlement contexts. This set the ground for answering research question 1, in answering this question it noted that conventional official land administration systems are dysfunctional in peri-urban SSA settlements. In addition, it showed theories that explained how land administration is undertaken in peri-urban SSA are inadequate. Further, the chapter showed a literature gap in relation to the application of street-level bureaucracy theory and hybrid governance. In addition, the chapter develops the study's preliminary hypotheses in section 2.8.2.3 based on the literature and Barry (pers. comm. 2020) research experience of studying informal settlements in South Africa.

## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1 Introduction**

This chapter argues that a case study using an interpretive approach, which used unstructured and semi-structured qualitative interviews as the primary data source, is the most appropriate research methodology. It is important to note that the research design was refined as the research progressed.

The chapter first outlines the philosophical worldview underlying the study's research strategy. It then discusses case study research, design, and criteria for case selection. Following this, the research participants, recruitment strategy, and data collection is described. This is followed by a detailed explanation of the study's data analysis process. In conclusion, the chapter describes the study's validity, reliability procedures, and ethical considerations.

### **3.2 Social Constructivism and Interpretivism Worldview**

This section explains why social constructivism and interpretivism were chosen as the study's worldview. It starts by briefly highlighting the positivist approach and why it was not considered to be appropriate for this study. The section concludes with a brief discussion of the social constructivist-interpretivist worldview and why it was deemed appropriate.

#### **3.2.1 Positivism**

Positivism is a worldview that seeks to understand social phenomena through a natural science approach. It sees phenomena as being governed by fundamental laws and concedes primacy to the given world as known through experimental evidence (Checkland 1999 p.316). The approach emphasizes objective observation, a procedural methodology, quantitative data, and statistics and mathematical formulae, and controlled social experiments, such as Random Controlled Trials (RCTs). Thus, the claim it is "reductionistic, logical, empirical, cause and effect-oriented, and deterministic based on a priori-theories" (Creswell 2013 p.24). Proponents of this approach argue that the incorporation of these elements makes the study of social phenomena more scientific.

Positivism limits knowledge development "to explaining events that can be empirically observed. Events are expected to display regularities or patterns that can be explained as being particular

instances of laws i.e. given certain conditions whenever event X occurs, then event Y will occur.” (Mingers 2008 p.81). This emphasises “systematic observation of event regularities in the form of general scientific laws and prediction of particular outcomes” (p.81) or simulation of outcomes. Scientific knowledge under this approach follows a positivist methodology that allows for generalization from the specific.

The approach was deemed inappropriate for this study, because:

- 1) Land relations in peri-urban SSA are partly premised on the local belief system that may not be scientifically observable, measured, or supported. This is because these relations draw from the context’s cultural, social, religious, and spiritual relations.
- 2) The separation of the researcher from the research phenomena is unrealistic, as the qualitative nature of the research meant that I could not be an independent observer of phenomena. My observations were influenced by knowledge, lived experience within the study site, and my professional biases and prior experiences as a land economist.
- 3) Most of the data collected for this study’s purpose was qualitative, not quantitative.

### **3.2.2 Social Constructivism and Interpretivism**

Social constructivism is a worldview under which phenomena are socially constructed (Creswell 2013). Closely related to this is interpretivism, which approaches the problem situation from the perspective that what we perceive as the social world is socially created, approved, and constrained “by the preexisting social and cultural structures created by their predecessors” (Ritzer 2007 p.430). As understood in this study, interpretivism means interpreting data as the research progresses and building on prior theories as one does not start from a clean slate. Thus, both are subjective and embedded with an individual’s perceptions, biases, values, and knowledge.

The social constructivist approaches emphasize an in-depth understanding of social complexity rather than reducing it to categories or equations. The argument underpinning these approaches is that social facts are not independent of the social context. To derive knowledge from this social context, researchers immerse themselves in the existing local social relations. This makes the research process an intersubjective process that involves the researcher unlike the positivist approach that emphasises objective observations of research context and the researcher’s independence from the research context (Creswell 2013 p.25).

The qualitative interpretive approach was deemed appropriate for this study's purposes because it facilitated an in-depth investigation of the complex Waitiki Farm land ownership conflict history. Furthermore, it enabled an in-depth exploration of local contextual factors such as social, political, cultural, legal, technical, and economic phenomena. It allowed for an examination of conditions that influence the interaction of official and unofficial land administration systems and SLAOs working conditions in Waitiki Farm. Further, it supported incorporation of multiple perceptions of land.

### **3.3 Case Study Method**

This section describes the case study method used in the study. The section starts by explaining why the single-case study design was chosen. This is followed by a brief description of how the design was applied in this study. The section concludes with a description of the general criteria used in choosing Waitiki Farm.

#### **3.3.1 Justification of Single Case Study Design**

There are various definitions of case study as a research strategy of inquiry (Creswell 2013; Gerring, 2004; Yin, 1989 p.23; Cagdas & Stubkjaer 2009 p.873; Flyvbjerg 2006). Common in these various definitions is one or more of the following characteristics: specific context; reason for undertaking the study; an in-depth understanding of the case; a detailed analysis approach; a rich description of the case; identification of, and organisation of themes; and an emergent theoretical model (Creswell 2013 p.98-99). For example, "a case study is an empirical inquiry that investigates a contemporary phenomenon within its real life context when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used" (Cagdas & Stubkjaer, 2009 p.873; Yin, 1989 p.23). For the purpose of this study, the case study research is defined as a method used to richly describe a bounded and distinct (peri-urban settlement) unit of study within its existing social context and reality based on various sources of information.

The Waitiki Farm case was used to build a theory that explains and predicts land administration system effectiveness in peri-urban SSA contexts. This is because a case study approach is well suited to asking the how and why questions that are critical in the development of explanatory and predictive theories (Gregory 2006; Barry & Roux 2013). In addition, the approach facilitated the

development of a rich Waitiki Farm case history from various sources of data. Relevant questions examined in the Waitiki Farm case study (*discussed in more detail in Chapter 4*) included:

- e) What was the history of land related conflict in Waitiki?
- f) What were the causes of conflict between Mr. Waitiki and the indigenous residents?
- g) What were the social, political, cultural and economic outcomes of the land conflict?
- h) How did the current landholders access and hold land in Waitiki Farm?
- i) How did the conflict affect official land administration systems effectiveness on the settlement?

### **3.3.2 Case Study Design**

The case study design is based on a single case of a peri-urban settlement. The context includes the two political administrative units, i.e. the ward, within which the settlement is located, as well as the larger sub-county which serves the settlement. The broader context is the county and national government.

The various land administration systems and SLAOs were defined as the study's units of analysis in Waitiki Farm. The following units of analysis were defined to facilitate the study's investigation of official land administration in peri-urban SSA. These were official land administration systems, unofficial land administration systems, and SLAOs.

### **3.3.3 Case Selection**

Waitiki Farm was chosen because it was an informal settlement that was upgraded in situ and hybrid land governance prevails. Both official and unofficial organisations and leadership structures play a role in land tenure administration. In addition, SLAOs are active in Waitiki Farm.

A study site outside Mombasa Central Business District (CBD) and northland Mombasa was used because, to the best of my knowledge; (1) no land administration study has been undertaken in Waitiki Farm, (2) no land tenure administration studies have been done in Likoni sub-county, and (3) few land tenure administration studies in Kenyan peri-urban areas have been done outside Nairobi (such as Musyoka 2006, Yahya and Swazuri 2007, and Nzioki *et al.* 2013), which, as the country's economic and political capital, tends to be the focus of urban land analysis.

### 3.4 Data Collection

This section describes the research participants, their recruitment, and the data collection strategy.

Data was collected from multiple sources. The primary data comprised a total of 105 semi-structured interviews involving 148 people. I used 42 key-person interviews and 57 door-to-door interviews with residents. Secondary data included historical documents, national and county government documents, law reports and documents from court processes, NGO documents, land administration and demographic documentary and online data from different government agencies. The fieldwork was undertaken between May and November 2017.

#### 3.4.1 Research Participants

The research participants spoke a local dialect, Swahili and/or English. The local dialects of the participants included Kamba, Taita, Kikuyu, Luhya, Digo, Duruma, Luo, Arabic, and Komoro. The researcher is fluent in Kikuyu, Swahili, and English. The research assistant interpreted the local dialects where necessary.

Research participants are shown in **Table 3.1** below. The six focus group interviews involved 49 local leaders who are members of the local village leadership committees. The 57 residents included 55 land beneficiaries and two tenants in Waitiki Farm. The 42 key informant interviews included:

- nine national government land administration officials and one local administrator,
- one national land commission county coordinator,
- seven county government officials in the county's land and physical planning department,
- eleven civil society organisation representatives,
- two Waitiki farm based community based organisations representatives,
- three local politicians; one local journalist,
- four local leaders in Waitiki Farm one lawyer, and
- two financial institution representatives.

**Table 3.1: Research Participants**

|  | <b>Category</b>                                   | <b>Number of interviews</b> |
|--|---|-----------------------------|
| <b>Focus Groups Description</b>                      |   |                             |
|  | Focus group interviews                            | 6 (49 participants)         |
| <b>Residents Interviews Description</b>              |   |                             |
| <b>1) Waitiki Farm Residents</b>                     | Original Project beneficiaries                    | 55 (total 57)               |
|  | Tenants   | 2                           |
|  | <b>Total number of residents' interviews</b>      | <b>57</b>                   |
| <b>Key Informant Description</b>                     |   |                             |
| <b>2) Street Level Land Administration Officials</b> | National Government Officials                     | 10 (total 18 participants)  |
|  | County Government Officials                       | 7                           |
|  | NLC County Coordinator                            | 1                           |
| <b>3) Local and Village leaders</b>                  | Local Leaders                                     | 4 (total 7 participants)    |
|  | Local Politicians                                 | 3                           |
| <b>4) Community development actors</b>               | Civil Society Actors                              | 11 (total 13 participants)  |
|  | Local CBOs representatives                        | 2                           |
| <b>5) Other actors</b>                               | Lawyer  | 1 (total 4 participants)    |
|  | Journalist  | 1                           |
|  | Bank Officials                                    | 2                           |
|  | <b>Total number of key informants' interviews</b> | <b>42</b>                   |
| <b>Total interviews and participants</b>             |   |                             |
|  | <b>Total interviews</b>                           | <b>105</b>                  |
|  | <b>Total number participants</b>                  | <b>148</b>                  |

### **3.4.2 Recruitment**

#### ***3.4.2.1 Research Authorisation: Access and Approval***

I initially assumed that I may have problems accessing my study site (Waitiki Farm) because of my ethnicity (i.e., Kikuyu), and the fact that the study was undertaken against a background of a divisive general election. It was anticipated that these political developments would have some impact on the study given the study area's politically motivated land-related violence history (RoK 1999). However, I was able to mitigate this risk by seeking research authorisation and approval from the two levels of government. In addition, I used local actors to facilitate entry into my study area and negotiated access through them (*see section 3.4.2.2 below*).

This phase involved ethics committee approvals from Conjoint Faculties Research Ethics Board (CFREB) of the University of Calgary (REB16-2485), a national research permit approval from the Kenya National Commission for Science, Technology, and Innovation (NACOSTI) permit no. NACOSTI/P/17/74933/16424, and research approval from the various National and County government agencies. The National government's Ministry of Lands and Physical Planning and the NLC's Research Directorate approved my research on the premise of the national research permit too (*refer to appendix c and e*).

Mombasa county government approved the research through the County Secretary's office. However, the approval was limited to the Department of Lands, Physical Planning and Housing officials only (*refer to appendix d*). In addition to this I also sought and got the County Assembly's approval to access their library resources. This approval was received from the Clerk of the Assembly office. Additionally, I also got approval from Mombasa High Court Registrar to access the courts registry and study relevant court cases (*refer to appendix f*).

#### ***3.4.2.2 Recruitment of Research Participants***

After obtaining all the relevant research approvals, the research participants were recruited in the following ways.

The Waitiki farm residents were recruited through door-to-door surveys that depended on introductions and referrals by the village elders and the research assistants' local networks. National and County government's street level land administration officials (SLAOs) were identified through the researcher's existing land administration professional network within the

Institution of Surveyors of Kenya (ISK). Subsequent interviews were through referrals and introductions by these officials.

Local and village leaders were identified through referrals by SLAOs, the research assistant's network and attendance of local events forums such as village meetings on the implementation of the Social Tenure Domain Model (STDM) where in Chelanga settlement in Bombolulu, Mombasa.

Community development actors such as local CBOs representatives were identified through referrals or interviews with other community development actors. In addition, these interviews with different CSO actors were facilitated by land professionals within the Institution of Surveyors of Kenya (ISK). After receiving initial introductions, I interviewed several of these CSO contacts.

The other actors (i.e., journalists, lawyer, and bank officials) were selected based on their experience with the Waitiki Farm settlement case. Bank officials were selected based on experience with the Waitiki case and Likoni sub-county work experience. The journalist had written most of the newspaper articles on the Waitiki case.

#### ***3.4.2.3 Semi-Structured Interviews***

Various methods were utilised in gathering the data. Semi-structured and open-ended questions were used to elicit information from the research participants (*see table 3.1*). Interviews with both Waitiki Farm residents and key-informants provided data on:

- a) conditions under which Mr. Waitiki was evicted and his land invaded by the indigenous residents,
- b) how the land was administered on the Farm after Mr. Waitiki was evicted and the broader Likoni area,
- c) why it was not possible for Mr. Waitiki to regain possession of his land despite getting a favourable court decision,
- d) the various land governance actors and their roles and how their work influences land administration in the area, and
- e) the conditions that influence street level land administration officials provision of land administration services in Waitiki Farm.

The door-to-door open-ended interviews with Waitiki Farm residents explored:

- their life histories;
- livelihood strategies;
- how participants came to acquire their land;
- positive experiences or otherwise since they acquired their land;
- problems that occur in their community;
- to whom or to what institution they would refer to in case they need land administration help;
- what they would do if they were approached to sell their land;
- what they would do if someone challenged their land ownership and threatened to evict them,
- their views on the requirement to repay the Settlement Funds Trustee charge; and
- their knowledge of the occurrence of land sales, inheritance, and evictions to examine the resident's knowledge of local land transactions.

Demographic and personal data such as whether a participant is an ethnic indigene or not provided context for participants' land administration experiences and facilitated understanding the socio-economic conditions in the case study area. Interviews with residents who self-identified as original land grabbers further explored their individual experiences with the 1997 land invasion, settlement, subsequent transactions, and land-related disputes.

SLAOs were interviewed about their land administration services provision experience in Mombasa county and Waitiki Farm in particular. Specific information was obtained about the Waitiki Farm land titling project, their land administration functions and roles, challenges encountered in administering tenure in the case area and official procedures in general. In addition, I observed and made notes of SLAOs responses to sensitive land issues such as corruption during the interviews.

Interviews with local leaders explored the area's history, land acquisition procedures, land securing strategies and local coordination activities with political leaders. The leaders also provided information on the involvement of local youths in practices that had an impact on the landowners' perceptions of their land tenure security (or insecurity). The discussion with the leaders varied depending on their current or past leadership roles.

The Bank representatives were interviewed about land transaction requirements by their respective institutions. Of interest was to determine the land transactions they engaged in with the Waitiki Farm residents before the titling project and whether the manner of land transactions had changed after the land titling project. The interview with Mr. Waitiki's lawyer provided information on Mr. Waitiki's view of the land invasion, his various legal struggles and on the negotiations with the government for the land titling project.

Interviews with community development actors provided information on their experiences with land tenure issues in the case area, their professional roles, as well as their coordination and experiences with the Waitiki land titling project. In addition, the interviews also sought to understand the actors' relationships with both levels of government.

Personal histories and, documentary data, land lease information, were also collected from the land titling project beneficiaries and other key informants. The interviews were conducted until data saturation for a particular theme was reached. This meant that no more data collection was necessary because no new information was emerging in relation to that theme (Creswell 2013; Fusch & Ness 2015).

#### ***3.4.2.4 Waitiki Farm Residents Demographic Characteristics***

##### *3.4.2.4.1 Landownership Status of Respondents*

I conducted a total of 57 door-to-door household interviews. Fifty-five of the respondents were Waitiki farm beneficiaries, and two were not. The two were tenants, namely Interviews #1102 and #1103. Thirty-nine respondents had picked their land ownership documents (i.e., certificate of leases) from the Ministry of Lands and Physical Planning Offices within the County. Of this, 29 produced their documents for me to inspect and capture some of the land ownership details, while 10 were not able to show it to me. Fifteen respondents were yet to get their land ownership documents. When inquired as to why they had not yet picked their documents, participant #1115 noted that she was not present during the land titling exercise because she was working out of the country, and as a result, her friend had been registered on her behalf (Int# 1115). Two participants, #1116 and #1121, owned more than one parcel of land and had picked only some of the leases, but others were still outstanding. Participant #1117 noted that she had followed up but had not received useful information from the SLAOs explaining the reasons for the delay. It was because of this

that she became suspicious of the SLAOs and the process. In the case of participant #1105, the father's name is on the list, not hers, although she is the current occupier. Further complicating matters is that the land was purchased by her father and sister, who have since died (Int# 1105).

#### *3.4.2.4.2 Gender*

Thirty-one of the 57 household interviewees were with women while the rest were with men. The gender distribution is probably because most of interviews were done during weekdays when the men were at work. The distribution is however sufficient and, in my opinion, does not create a gender bias. However, it is important to note that of the 10 respondents who did not produce the land lease documents despite having them, six were women and four men. During the interviews there were cases where the women would say that the land lease was under lock and key – only the husband could authorise its viewing. Further, there were those, such as participant #1108, who said if their land interests were threatened, they “would leave it to [their] husband to decide because he has put up a house on it” and participant #1118, who said that she would leave it to her husband to decide inheritance shares because the lease is registered in his name. These examples could be indicative of power relations within the household.

#### *3.4.2.4.3 Age Groups*

The main landowner age groups were 26-35 (25%), 36-45 (35%), 46-55 (16%) and 56-65 (9%). A majority of those who identified as land grabbers were residents within these age groups who claimed first hand or second-hand knowledge of their life history related to the acquisition of said land (*refer to Chapter 6 section 6.2*).

#### *3.4.2.4.4 Marital Status*

The majority (82%) of the respondents were married, while 11% and 2% were widowed and single, respectively. This data is relevant because the Matrimonial Property law in Kenya requires that both spouses be involved in any land transaction on matrimonial property. Adherence to this law is evident in some of the leases where both spouses were registered as landowners e.g. Int #1107. This system is, however, complicated by polygamous marriages. For example, participant #1133, who had bought a land parcel in the settlement, did not want her husband to know because she was a second wife. While her position may contradict the Kenyan law of succession, which provides that in polygamous marriages, the husband ought to inherit the wife's property, of relevance to this

study is that polygamy may lead to off-register transactions due to lack of knowledge or lack of acceptance of this legal provision.

The average no. of children per nuclear family household was 4, giving an average household size of 6 with two adults present based on survey data. The household size is an important consideration for land policy makers as it may indicate the likelihood of land subdivision into unproductive sizes or off-register transactions if such households opt not to register succession or subdivision. Instead, households may elect to appoint one household member as a custodian.

#### *3.4.2.4.5 Religion*

Forty-six of the 57 respondents identified as Muslim, representing 81%, with the rest (i.e., 11 respondents) identifying as Christians. This is consistent with the majority population i.e. the Digo, religion adherence. The Digo are a majority in this area and are mainly followers of Islam. The interviews showed that religious beliefs and norms still influence land relations. This was evident in the following two examples. Firstly, participant #1111 purchased 12 rooms “..[....]..and donated three rooms to the local mosque after building on land size equivalent to four rooms” (Int #1111). Secondly, participant #1147, “donated one parcel to the community as Wakf endowment for building a madrassa to assist the community” (Int #1147). In addition, there was also an example of local residents who, because of their religious beliefs, provided urban services such as water, without charge. This is aptly captured by participant #1148 who noted the following: “I get salty water for daily usage from my neighbour, [*that is, village elder, Mwantumu Ali Omar*], who does not charge me as she wants her payment in the form of blessing from God.....” (Int# 1148).

#### *3.4.2.4.6 Education Level*

Thirty-nine of the 57 respondents had basic education i.e. up to Secondary School. Twenty-one had primary education, 18 had secondary school level education and 9%, representing five respondents, indicated they had not been to school. Only six respondents, representing 11%, had post-secondary education. This is consistent with other data sources on the level of education and literacy rates (KNBS 2015). The results indicate a high literacy level for the residents. However, compared to other regions in Kenya the community had a lower rate of post-secondary education. It is on this premise that some of the key informants argued that the low level of development in the community was a result of the low level of education. In addition, participant #1156, see

comment below, identified low levels of education as one of the causes of rampant misinformation regarding the land titling project discussed in Chapter 5 and a poor understanding of land administration in general.

Misinformation “is a big challenge because without the information you can be easily manipulated as it happened with the fake title narrative, I think this is rampant here because of the low levels of education. Hopefully with time it will be overcome, but I think it is a big challenge.” (Int #1156)

#### *3.4.2.4.7 Ethnicity*

In terms of indigeneity i.e., nativity to Likoni, 32 respondents, representing 57% of the respondents, belonged to the Mijikenda ethnic groups considered native to Likoni, these respondents consisted of: 24 Digo, six Duruma, and two Giriama members. Coastal region indigenes who do not belong to the Mijikenda ethnic group consisted of the following: seven Swahili, four Taita, two Arab, and one Komoro, and made up 25% of the respondents. The rest of the respondents identified themselves as: Kikuyu (four), Kamba (one), Luo (two), and Luhya (two), these non-indigenous ethnic groups are popularly referred to as ‘*watu wa bara*’ (i.e., upcountry locals) from the interior of Kenya.

The highlighted multi-ethnic composition reflects the heterogeneous nature of the settlement’s residents. While part of this cosmopolitan nature may be explained by local migration push and pull factors (*see section 6.2.1*) it is also important to note that during the initial stages of establishing the settlement, the then land invaders strategically sold the land parcels to different ethnic groups as stated below:

“We were of the opinion, that if we did this on our own we would not have won the fight for the land, so we thought it wise to invite other communities to come and live with us on the farm. That’s why when the government came to evict us it found it impossible as we had built a cosmopolitan society on the Farm. Land sales was therefore our strategy because ‘*umoja ni nguvu*’ – unity is strength. On the farm we have different communities, different professionals such as army servicemen, lawyers, among others. If you also recall the police officer who was to oversee the eviction said he could only undertake it if all the police in Kenya were brought there.” (Int #1149)

#### *3.4.2.4.8 Household Income Range*

Out of the 33 respondents, representing 57.89%, that provided their household monthly income information: two earned Kshs. 5,000 or less, 16 earned Kshs. 10,000 or less, five earned Kshs.

20,000 or less, and nine earned less than Kshs. 30,000. Only one respondent earned more than Kshs. 30,000 (*approximately US \$300*) per month.

#### *3.4.2.4.9 Livelihood and Employment*

Forty-seven respondents declared their employment status while 10 did not. Of those that indicated that they were currently employed, four had professional employment in the public (one) or private (three) sector, three were casual labourers or volunteers, and 22 were self-employed or had income from house extensions. 16 respondents were unemployed and two were retirees.

Of those that indicated that they supplemented their income, eight had put up extensions on their land for their own commercial and business purposes and to let out to tenants (Int# 1101, 1106, 1107, 1108, 1110, 1116, 1127, 1134, 1151, 1156). The rent charged ranged between Kshs. 1,000 (\$13 Cdn) and 2,000 (\$26 Cdn) per month. According to participant #1127, the extensions were built incrementally. However, it was not clear whether these developments had been approved by the Mombasa County Government. Based on my interactions and observations most were probably not approved. Further, the retirees depended on their pensions (Int# 1111) and the national government's social welfare programme for the elderly (Int# 1123). The above results suggest that the residents are engaged in various occupations for their livelihoods.

It also emerged that local leaders have a very important role in determining the local livelihoods of some of the residents because they, for example, determine who is put onto the list for the elderly's social welfare programme. In one example, participant # 1123 was removed from the list after it was shown she was not over 70 years of age. It was not clear how she had been placed on the list in the first place, but her inclusion and later exclusion indicate the power of the local elders to manipulate information to their benefit and to the benefit of those with whom they have good relations.

#### **Analysis: Waitiki Farm Level Demographic Characteristics**

Based on the above results the following settlement-level contextual characteristics were developed. Firstly, the settlement's ethnic profile is indicative of a heterogenous middle-aged ethnic community consisting of both indigenes and non-indigenous in-migrants. However, the Digo and other Mijikenda tribes can be expected to continue to be in the ethnic majority. Secondly, the settlement consists of nuclear families with households having an average size of 6 people.

Extended family members were also evident in some of the households. As a result of the household nature, it is likely that the parcels are viewed as family property. Thirdly, there is a plural religious system which directs how some residents use their land and perceive their landownership. Fourthly, the settlers have a high literacy level but a low-level of post-secondary education. Fifthly, the settlement is what may be described as a low-income peri-urban settlement with limited livelihood opportunities. Based on the resident interviews conducted, livelihoods are often supplemented by the construction of extensions that are most likely unauthorised. Lastly, there was evidence of local powerful elites playing an important role in the livelihoods of some of the vulnerable residents – in the example given above this affected an elderly resident's income.

#### ***3.4.2.5 Focus Groups, Observation and Visual Materials***

Six focus groups were conducted. Five groups involved Waitiki land titling village committee members and one involved original Waitiki farm tenants. The focus groups provided an opportunity to engage in more in-depth discussions regarding issues related to the land titling project and Waitiki Farm history.

#### **Focus Group Discussion**

The Five Focus Group Discussions (FGDs) were held with village committee members from the 13 villages that participated in the Waitiki Farm Land Titling Project. In each village three committee members, namely the Chair of the Committee and two other members were chosen and requested to participate. The recruitment of FGD participants was based on the following considerations.

1. Three committee members would be an adequate representation of the full committee whose membership ranged between six and seven except Shika Adabu whose committee had 14 members (*refer to table 5.4 in Chapter 5*).
2. A total of nine participants, consisting of three representatives from three villages, was adequate for an informative FGD session. This informed FGD grouping discussed below.
3. The participants were all resident elders who had adequate experience of dealing with various local governance issues within their localities and were therefore well acquainted with the local land administration issues.

The 13 villages were grouped into groups of three as follows except for FGD 5 which was undertaken on its own due to its large geographical size.

**FGD 1** – Maranza A, Maranza B, and Mwanazia

**FGD 2** – Tawheed, Shashamane, and Biafra

**FGD 3** – Mrima A, Mrima B, and Approved

**FGD 4** – Fridaus, Swabrina, and Tongenyama

**FGD 5** – Shika Adabu – undertaken on its own due to its large geographical size and committee membership.

The above FGDs grouping was informed by the following considerations:

1. accessibility- the villages ease of access,
2. geographical proximity of the villages – villages close to one another were grouped together for ease of focus group meeting organisation,
3. availability of meeting space to hold the FGD, and
4. availability of financial resources to facilitate the meeting and time considerations on which, participants would be available for the exercise.

The five FGDs started with introductions. During this introduction I explained *what I was doing, why I was doing it, the institution I was studying in, my expected output, and what I would do with the research results*. After my introduction the research assistant with the permission of the village chair of where we were meeting introduced the participants. After the initial introductions the interviewing process began. Evident during the FGDs was the gradual participation of FGD participants, and the varied participation depending on the topic, with some participants being more vocal on certain issues over others. The FGDs ended with a debriefing and question time. The question time offered the participants an opportunity to provide feedback on the FGD and the research. This enhanced the FGDs' reliability and credibility.

FGD 6 involved the original Waitiki farm tenants who have since formed a CBO called the '*Amani Self Help Group*'. This FGD discussion was conducted on two occasions because they were not comfortable discussing some of the historical land issues in the presence of my research assistant during my first visit with them. This was because my research assistant's family was involved in a dispute over the ownership over their current residence (*refer to section 4.5.3.3 in Chapter 4*). During the first FGD interview, we did not delve into the history that involved my research assistant's family members which occurred after Mr. Waitiki's exit. We discussed this history during my second visit to the group.

## **Observation and Photographs**

My fieldwork allowed me to observe the condition of local infrastructure such as the state of urban services provision (e.g., solid waste management) and existing infrastructure (e.g., access roads).

In addition to this, were my observations of SLAOs while waiting for my SLAO interviews to begin. I noted down my observations of the working spaces of the SLAOs, their interactions with customers and the SLAO's data storage systems. These observations improved my understanding of SLAOs' working conditions.

I was able, as a non-participant, to observe the locals' interactions during a community meeting to discuss the establishment of a local land administration information system that is STDM-based. I observed the local collaboration between official land administration systems, represented by county government officials, and unofficial land administration systems represented by the local leaders. This further informed my hybrid land administration systems interaction understanding.

During the fieldwork I took photographs of respondents, rent payment receipts such as original Waitiki Farm tenants' receipts, certificates of land leases, case law documents, and construction foundations used by local residents to identify boundaries.

### ***3.4.2.6 Documentary and Secondary Sources***

Data sources included University of Nairobi national newspaper archives going back to 1970, Mombasa High Court Registry archives, various local NGO documents, County government reports, Waitiki Farm land titling project report, various ministry reports and Kenya National Bureau of Statistics (KNBS) census data. County government land policy documents, county legislative assembly Hansard recordings and other county legislation documents were obtained from the county assembly library and website.

National and County government reports and courts documents were obtained from the respective institutions. The reports and documents assisted in establishing Waitiki Farm's history, past land transaction practices on the farm, Mr. Waitiki's efforts to repossess his land, the national government's response to the court orders and relationships among the various local land administration institutions. All these documents provided a better understanding of the social, cultural, and political history and institutional environment of land. National newspaper articles

provided additional historical data. The various sources of historical data were useful in constructing the chronological history of Waitiki Farm settlement and verifying the personal life histories.

### **3.5 Data Analysis and Theory Development**

This section describes how the data was processed, structured, and analysed.

#### **3.5.1 Data Processing**

Qualitative data processing methods were used. Data processing started during the fieldwork when field notes were written up to describe and understand my emotions, views, thoughts and ideas, and observations during the field study. These notes provided important contextual insight during the research period. In addition, I also transcribed, indexed and filed some of the interviews into the study's monograph during the fieldwork. Interviews not transcribed on location were completed in Calgary after the fieldwork. During this process the demographic data of all participants, and the household data and land ownership details of the residents were tabulated and summarised.

The Waitiki Farm historical narrative was written up based on information extracted from the case law reports, newspapers, national and county government documents, and other documents. To develop the history of Waitiki Farm settlement, this information was arranged chronologically. The history was supplemented by interviews with residents who participated in the 1997 land invasions. The post-1997 Waitiki Farm history was supplemented by interviews with settlers who acquired their land parcels from the 1997 land invaders or grabbers.

To describe Waitiki Farm history in the broader context of the county and nation, information was extracted from multiple sources which provided details on history, economics, demographics, environmental concerns, local political structures, land administration policies and laws, land administration data and relevant land disputes. The information relevant to Waitiki Farm was used to cross check the interviews while that specific to the broader context was used to develop a rich description of the case's external context.

### 3.5.2 Data Analysis

To analyse data and build theory, I used an interpretive approach; interpreting the data as the research progressed.

Waitiki Farm case study narratives describing land ownership history were written up. The Waitiki Farm context was analysed using the chronological historical narrative of land ownership within Waitiki Farm, governance change at the County and National level after the 2010 ratification of Kenya's constitution, land policy and administration changes, and oral histories. This improved my understanding of how the case's historical and contemporary factors have influenced its current contextual structures and characteristics. In addition, life histories were structured and written up to provide insightful and rich descriptions of the areas chronologically.

The land acquisition and development histories, and demographic data were analysed in the following way. The land sales processes, sale documentary evidence and actors were extracted and detailed chronologically. The land development issues such as payment of *jara*-a local informal fee, were noted. The demographic data from the household interviews provided the socio-economic characteristics of residents in the case area and an understanding of the residents' experiences with official land administration systems. Further, the Waitiki Farm residents were asked to explain what motivated their use (or not) of a land administration system's structures and processes.

The peri-urban contextual analysis involved an identification of the macro-level factors that influence the effectiveness of official land administration systems in Waitiki Farm. Macro level factors included an overview of the national and county economic characteristics, national and county government level land tenure systems, urbanisation trends in Mombasa, the various relevant land administration laws and policies, and the Waitiki Farm land titling project details.

Data analysis involved several cycles of coding, categorisation, extraction of themes, and conceptualisation. This was undertaken through a constant comparison technique. The analysis procedure involved continuous comparison of the data with the code. Data analysis started with an identification of the general categories, common emerging terms, themes, and phenomena i.e. descriptive analysis (Hay 2010). These were based on key thematic issues of interest premised on the research purpose, objectives, and research questions.

The first cycle process consisted of coding the relevant hybrid governance and street level bureaucrat categories. This continued until all the codes were refined. The transcripts and developed categories were analysed again iteratively, categories were analysed, and sub-categories developed. Through this process sub-categories, categories, and themes were revised and refined systematically to ensure consistency. The categories and constructs were compared across the different categories of participants (Creswell 2013). Relationships and their supporting conditions were established.

To generate hybrid governance and street level bureaucracy theories that explain land administration system effectiveness in Waitiki Farm, two sets of hypotheses were posited. The hypotheses were tested against the Waitiki data. Through this testing some of the hypotheses were reformulated and hypotheses that emerged from the data developed. The empirical support for the explanations was then classified as either persuasive or speculative (Barry and Roux 2013). Persuasive explanations constitute a reasonable explanation (i.e., more than 25% of responses considered) while speculative explanations means that there was minimal empirical support (i.e., less than 25% of responses considered), or the hypotheses were not tested as they had emerged from the data. On the latter, to be applicable in other contexts that are similar to Waitiki Farm further exploration may be warranted.

### **3.6 Validity and Reliability**

This section describes validity and reliability strategies used in the study.

#### **3.6.1 Validity**

The study's design incorporated various validity and reliability strategies. Validation strategies included: triangulation of different data sources of information; counterchecking my interpretation of information with research participants; identification and mentioning of contradictory evidence especially during the analysis process.

The study involved collecting data from multiple data sources. This enabled data corroboration through triangulation. Interviews were conducted with various research participants (*refer to table 3.1*). Newspaper articles, National Government projects, County Government reports, county assembly Hansard, law reports and court case evidence, land ownership documents and other

relevant documents were also collected. This linked both primary and secondary sources to develop a convergent line of inquiry.

Multiple data sources ensured the corroboration of information gained from the interviews. Open-ended interviews were employed so as not to limit data acquisition with pre-set questions. The interviews revealed insights not initially conceived during the initial research design. Data from the interviews was verified using other interview data and documentary evidence i.e., data corroboration and triangulation.

Case study historical narratives were written describing Waitiki Farm history and the life histories of research participants regarding land ownership on Waitiki Farm. The description of the Waitiki Farm background history was based on data from interviews with key informants, focus group discussants, and original land settlers. Part of this information was confirmed by using newspaper articles, case law documents, official government reports and NGO reports.

Due to Waitiki Farm's complex history, I was aware that there was a possibility of contradictory evidence. When uncertainty was identified, I marked it for further data querying and checking. This uncertainty was resolved by using the following strategies: requesting additional information, requesting and conducting follow up interviews, and counter-checking the raw audio data files to check on interpretation. When two contradictory explanations were offered on the same issue, care was made to note whether it was a different worldview issue or a land dispute case. The latter was a common cause of contradiction and occurred frequently.

Interviews with SLAOs provided an understanding of their working conditions. The information gathered was corroborated and validated through my participatory observations, interviews with residents, professionals, CSOs and an assessment of County and National Government reports. Anonymous conversations and data presentation, classified as personal conversations, validated some of the findings.

The work experiences and practices of unofficial hybrid land administration actors were validated by the experiences of the settlement's residents and interviews with the various land administration actors.

The research participants spoke three languages their mother tongue, English and or Swahili. The researcher is fluent in Kikuyu, Swahili, and English. The research assistant interpreted where participants who spoke local languages that the researcher was not fluent in. Where the research assistant interpreted and explained some of the research findings, the research participants would correct, agree, or offer more context for the interpretation.

Reflexivity was an important consideration because my outsider ethnic tag or professional position, and socio-cultural differences may distort findings. This process enabled my check for misinformation that stemmed from my personal and professional biases.

After the interviews descriptors like the history of the Waitiki case, SLAOs work conditions, and the various land administration system roles would be counter checked internally for consistency and externally with regard to context and research issue at hand.

### **3.6.2 Reliability**

To ensure reliability, the following activities were undertaken.

I checked the transcribed interviews to ensure there were no distortions. The Waitiki Farm History was chronologically detailed and used in follow up interviews to check for consistency of initial information offered. This check for accuracy of interview transcripts ensured accurate representation of the interview data and served as a check against “misinformation derived from distortions introduced by the researcher or informants” (Creswell 2013 p. 251). Reliability was also enhanced by my detailed fieldnotes (Creswell 2013).

Consistently checking and comparing the categories coded and developed into themes. This was repeated with each transcript and was done to ensure consistency in the meaning of the data codes, categories and themes.

### **3.7 Ethics**

Ethical considerations are important in a research project that involved human participants. Ethics approval for this research was provided by the Conjoint Faculties Research Ethics Board (CFREB) of the University of Calgary, Study Id no. REB16-2485. The ethical issues that were considered during this research included:

**Voluntary participation:** research participants that were invited to participate were advised that their participation was voluntary, and they had the right to withdraw from the research at any stage of the research process. Informed consent forms that described the research's ethical basis were used. Additionally, permission was sought to audiotape interview conversations and photograph participants, any relevant documents and artifacts.

**Privacy and Confidentiality:** Land issues in Kenya are highly emotive, sensitive, political and at times violent. This discouraged some respondents from participating. To enhance the confidence levels and encourage research participants to participate voluntarily, they were assured and guaranteed of their privacy, and the confidentiality of information. This was done through: seeking participants' express consent for public citation, using pseudonyms for participants who did not wish to be identified, securing anonymous data, and presenting and referencing the data using interview numbers. In addition, the information was securely stored and accessible to my supervisor and myself only. Published results will be generalised using interview numbers but not names.

**Fairness:** Where it was deemed that the research questions may arouse anger or bring about emotional harm to the participants' care was taken in the wording of the interview questions and my overall approach. As a non-resident ethnic outsider, I occupied a lower ethnic position and as a result power position. To deal with the possibility of non-acceptance, I observed local social norms, customs, and behaviour, during meetings, and when seeking information. For example, greetings used for an elder are different from those used with local youths. In addition, I also relied on my local contact person to negotiate my access to the study site and respondents.

### **3.8 Conclusion**

This chapter describes the research methodology used in the study. The methodology presented in this chapter was used to design the research method, collect and analyse the data collected in Waitiki Farm. The research design was refined as the research progressed.

This chapter used a qualitative case study research methodology to develop the study's theory which explains land administration system's effectiveness in peri-urban SSA. The method was chosen because it enabled an in-depth examination of Waitiki Farm's history and the use of various

sources of information. The described analysis process comprised of the analysis of the context, addressed SLAOs in Waitiki Farm, and the hybrid land administration systems. The result of the analysis is the development of theory for the case (refer to chapters 7&8). Further the chapter discussed the case study selection criteria, research participants and their recruitment, and the data collection procedures. In addition, the validity and reliability procedures were described. Finally, ethical considerations were identified and described.

The next chapter presents the Waitiki Farm case study.

# CHAPTER FOUR: MOMBASA GOVERNANCE STRUCTURE AND WAITIKI FARM HISTORY

## 4.1 Introduction

A description and analysis of Mombasa governance structure and Waitiki Farm's history informs the contextual understanding of SLAOs' behaviour and hybrid land governance in Waitiki Farm. This chapter develops a rich historical description of Waitiki Farm settlement and situates it within the larger Kenyan and Mombasa County contexts. The chapter first covers the larger colonial and post-colonial administration history as it relates to Waitiki Farm. It then outlines Mombasa County's socio-economic, demographic, environmental, and political factors that may influence the effectiveness of land administration systems. Then, the chapter describes Mr. and Mrs. Waitiki's acquisition of the farm and their relations with the locals. It then proceeds to discuss their eviction, the land invaders' land transactions, and Mr. Waitiki's legal fight for the land.

The chapter specifically addresses objectives 2 and 3, as articulated in section 1.4, in sections 4.4, 4.5, 4.6 and 4.7, namely: to develop a hybrid governance theory for in situ regularised informal settlements based on the Waitiki case and to develop a street level bureaucracy theory for in situ regularised informal settlements based on the Waitiki case, respectively. To develop the Waitiki Farm history in section 4.4 the following questions were examined:

- a. *What were the causes of conflict between Mr. Waitiki and the indigenous residents?*
- b. *How did the current landholders access and hold land in Waitiki Farm?*
- c. *What were the social, political, cultural and economic outcomes of the land conflict?*
- d. *How did the conflict affect official land administration systems effectiveness on the settlement?*

The discussion and analysis section describes the land tenure administration social change processes witnessed during the period of land ownership conflict.

## 4.2 Kenya Land Governance and Waitiki Farm History

This section situates Waitiki Farm within the larger colonial and post-colonial land administration context. This context includes Mombasa County shown in the figure 4.1 below.

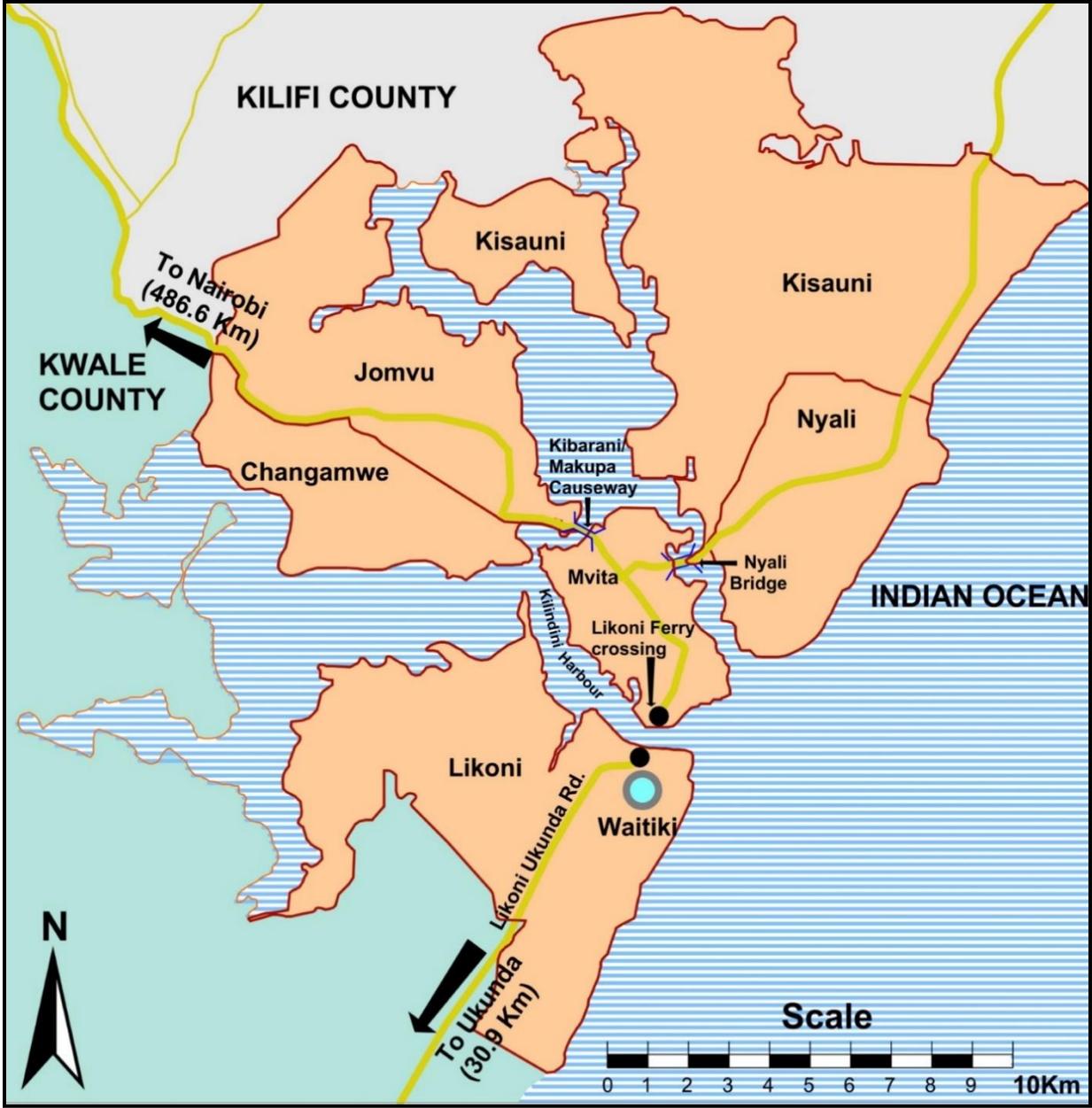


Figure 4.1: Mombasa County

**4.2.1 Colonial Period**

In 1895, the British declared the East African Protectorate, which included modern day Kenya. They wanted to gain control of the region for their imperial strategic and economic interests (Okoth-Ogendo 1991 p.9). The ten-mile coastal belt, including Likoni, was administered based on an agreement between the British and the Sultan of Zanzibar. Under this agreement, the colonial administration set up legal and administrative structures that dispossessed and marginalised the

indigenous Mijikenda community, which is comprised of nine sub-tribes - *the Digo, Rabai, Ribe, Chonyi, Giriama, Jibana, Kauma, Kambe and the Duruma*, of their land rights (Yahya and Swazuri 2007). The enactment of the Land Titles Ordinance (LTO) in 1908 extinguished communal land rights at the coast and made the indigenous settlers squatters on their ancestral land (Kanyinga 2000; Okoth-Ogendo 1991; Int# 1006, 1008). Indigenous residents were not aware of the changes in law and most of them could not communicate in English, the language in which the new laws were written. Consequently, they did not make claims to the ancestral lands leaving Asians, Arabs, and local elites to lay claim and obtain land titles (Int# 1006, 1008, 1021). The new laws and the view of land as an economic commodity were foreign to the local indigenous communities who viewed land as a communal resource and gift from God (Int# 1006, 1008, 1025, 1030). Furthermore, due to fears stemming from coastal bombardment during the World Wars (Int# 1030, 0003), those who had settled close to the beach were moved inland by the colonial administration, to Mtongwe Likoni, approximately five kilometres from the beach, leading to further loss of ancestral lands along the coastal strip.

Key informants submitted that this was a historical land injustice (Int# 1006, 1008). The colonial administrative structures persisted in the post-colonial era (Int# 1024) and the historical injustices experienced by indigenous residents were not addressed (Int# 1001, 1006, 1008, 1035).

#### **4.2.2 Post-colonial Land Governance**

After attaining independence from the British, in 1963, indigenous communities expected to regain their ancestral lands (Int#1008, 1030). However, the post-colonial administration continued with the former, colonial, land administration policy and legislative framework (Int# 1008, 1030). Okoth-Ogendo suggests the post-colonial national elites continued with the colonial framework because they “had substantial investments in the status quo” (Okoth-Ogendo 1991 p. 172). The inadequate response to colonial land injustices has been cited as one of the reasons why there are now numerous land-related conflicts along Kenya’s coast (Int# 1035). Other contributing factors include politicisation of land access (especially public land), bureaucratic corruption, and the numerous land laws (RoK 2009) that existed before the enactment of Land Registration Act and the Land Act in 2012 (RoK 2012a, 2012b). These issues necessitated the reorganization of Kenya’s

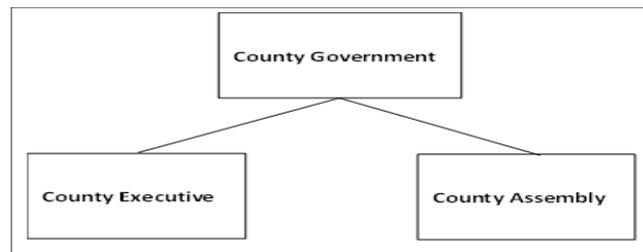
land governance framework, and a new land administration and policy framework was created through enactment of the constitution in 2010.

The constitution established two levels of government – National and County (RoK 2010). As it concerns land administration, the constitution distributes the power to three bodies namely, the National Government, County Government, and the National Land Commission (NLC). The NLC is a constitutional commission whose main mandate is public land management (RoK 2010). Land administration in Kenya is therefore shared between the two levels of government and the NLC. However, after the establishment of the NLC, the Ministry in charge of land administration and the NLC disputed the scope of their organisational roles and responsibilities in the management and administration of land. This organisational conflict was resolved through a Supreme Court advisory in 2014 (SCOK 2015). It is also likely that the conflict was rooted in the importance land continues to play politically. Though the new system was intended to address some of the problems of the previous system, it further complicated land administration because it fragmented land administration functions. It added a layer of complexity to cases like Waitiki Farm by bringing more parties to the conflict. One such land governance actor is the County government discussed in the next section as it relates to Mombasa County.

### **4.2.3 Mombasa County Government Legislative and Administrative Structure**

This section briefly introduces the county land governance’s legislative and administrative structure. The discussion is relevant because the legislative and administrative structures affect how land is governed at the county level.

The county government structure consists of both the county assembly and the county executive as shown in figure 4.2 below.



**Figure 4.2: County Government Structure**

#### ***4.2.3.1 The County Assembly***

The county assembly was established by article 176(1) of the constitution (RoK 2010). The county assembly is the legislative arm of the county government. The county assembly consists of the Speaker (as an ex-officio member), Members of County Assembly (MCAs) who include MCAs elected from assembly wards within the county jurisdiction and nominated MCAs who are selected by political parties to represent special interest groups for example persons with disability, or the youth as provided for by an Act of parliament. The Speaker is the head of the county assembly and the chair of the County Assembly Service Board. The current composition of Mombasa County Assembly is as follows: Speaker – 1, Elected MCAs 30, and Nominated MCAs 15 (RoK 2015). The mandates of the Assembly include legislative authority of county laws, general oversight of the county government and representation (RoK 2010).

Section 8 ss.1 of the County Government Act of 2012 specifies the following legislative roles for the county assembly. The county assembly shall;

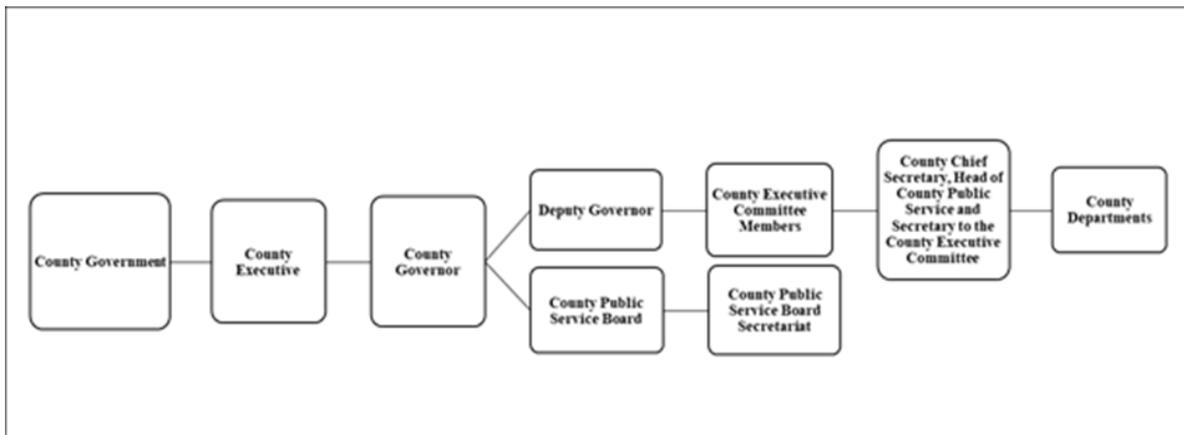
- (a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law;
- (b) perform the roles set out under Article 185 of the Constitution;
- (c) approve the budget and expenditure of the county government in accordance with Article 207 of the Constitution, and the legislation contemplated in Article 220(2) of the Constitution, guided by Articles 201 and 203 of the Constitution;
- (d) approve the borrowing by the county government in accordance with Article 212 of the Constitution;
- (e) approve county development planning; and
- (f) perform any other role as may be set out under the Constitution or legislation.

#### ***4.2.3.2 The County Executive***

This arm of county government consists of the Governor, the County Executive Committee (CEC), and the County Public Service. The Governor and the Deputy Governor are elected by registered voters within the county during the national general election. The Governor cannot serve for more than two terms of five years each (RoK 2010). The CEC members are appointed by the Governor

with the approval of the County Assembly. In addition to the CEC members, the Governor also appoints a County Secretary with the approval of the Assembly. The County Secretary doubles up as the head of the county public service and secretary to the County Executive Committee. The CEC members are in charge of their respective county departments. However, the day-to-day administration responsibility of these departments is delegated to respective Chief Officers appointed by the Governor on the recommendation of County Public Service Board with the approval of the County Assembly. Article 183 s. 1-3 of the Constitution identifies the following as the key functions of the county executive committees;

- (1) A county executive committee shall—
  - (a) implement county legislation;
  - (b) implement, within the county, national legislation to the extent that the legislation so requires;
  - (c) manage and coordinate the functions of the county administration and its departments; and
  - (d) perform any other functions conferred on it by this Constitution or national legislation.
- (2) A county executive committee may prepare proposed legislation for consideration by the county assembly.
- (3) The county executive committee shall provide the county assembly with full and regular reports on matters relating to the county.



**Figure 4.3: County Executive Structure**

To facilitate service provision at the local level, counties are further decentralised to sub-county, wards, village units or any other administrative jurisdiction deemed important and necessary by the county government or national government. For example, the Mombasa County Decentralised Structures Bill of 2017 decentralises its administrative structure to the village council level (RoK 2017).

In Mombasa County, county level land administration functions are undertaken by the County Department of Lands, Housing and Physical Planning. The department's official mandate is specified under the fourth schedule of the constitution and provided under various national and county land administration related legislation.

It is within the above colonial and post-colonial history, legislative and administrative structures that the Waitiki Farm settlement history in section 4.4 is discussed.

### **4.3 Mombasa County Background Information**

This section describes the demographic, socio-economic, and environmental context in Mombasa County that may influence land administration.

Mombasa City County is Kenya's second largest city and oldest urban centre. Its establishment has been traced as far back as the 12<sup>th</sup> Century (Yahya and Swazuri 2007; Rakodi et al. 2000). Portrayed in Figure 4.1, it lies between latitudes 3° 56' and 4° 10' south of the equator and between longitudes 39° 34' and 39° 36' east of the Greenwich Meridian. The county has an area of 229 kilometre<sup>2</sup> and inshore water mass covering 65 kilometre<sup>2</sup> (Pamoja Trust 2014). Offshore, Kenya has rights to the Exclusive Economic Zone (EEZ) extending 200 nautical miles into the Indian Ocean. Mombasa City County borders Kilifi county to the north, Kwale county to the southwest, and the Indian Ocean to the east. The County is home to Kenya's port – Kilindini Port (MCG<sup>5</sup> 2018).

Administratively the county is divided into six sub-counties: Mvita, Kisauni, Nyali, Changamwe, Jomvu and Likoni. Likoni sub-county, within which Waitiki Farm settlement is situated, has a land area of 40.5 km<sup>2</sup> (KNBS 2019). The sub-counties are further sub-divided into other administrative

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<sup>5</sup> As used in this chapter MCG stands for Mombasa County Government while RoK stands for Republic of Kenya

jurisdictions which include divisions, locations, and sub-locations. For example, Likoni sub-county is further sub-divided into 2 divisions, 4 locations and 6 sub-locations (MCG n.d). Politically, the county is divided into six constituencies: Changanwe, Jomvu, Kisauni, Nyali, Mvita and Likoni. These are further divided into 30 electoral wards. Likoni sub-county (coincident with the constituency of Likoni) has five electoral wards: Bofu, Likoni, Timbwani, Shika Adabu, and Mtongwe. Waitiki Farm settlement traverses Likoni, Timbwani and parts of Shika Adabu wards.

Mombasa is classified as entirely urban (RoK 2015). There are different land use zones: industrial; low-, medium-, and high-density residential areas; the Central Business District (CBD); sub-urban; peri-urban, and informal settlements. Waitiki Farm settlement is classified as a high-density low-income residential area (MCG n.d) and peri-urban settlement (Int# 1028). It is also considered a dormitory town for both permanent and temporary labourers who work in Mombasa City.

Some of the key contextual factors in Mombasa county that affect land administration in the larger county and, more specifically, within Waitiki Farm are discussed in subsections 4.3.1 to 4.3.7 below.

### **4.3.1 Population**

Mombasa county population as per the 2009 census was 939, 370 (MCG 2018) and 1,208,333 as per the 2019 census (KNBS 2019). This increase in the population over ten years (28.6%) led to the emergence of informal settlements in the various sub-counties, including Likoni – the case study site (Pamoja Trust 2014). According to the 2019 census, Likoni sub-county population is 250,358 (KNBS 2019). At the time of undertaking the field research in 2017 Waitiki Farm settlement population was estimated to be 112,141 (RoK, 2016). The trend in population growth is likely to continue to place increased demands on the official land administration system.

### **4.3.2 Economy and Unemployment**

Mombasa county has a diverse economy based on tourism, manufacturing, trade, and commerce (Rakodi *et al.* 2000). It is heavily reliant on tourism and the related hospitality industry services. In addition, the county's economy is also supported by several manufacturing enterprises for example, car assembly plants. These industries are mainly located within Kisauni, Mvita and

Changamwe sub-counties (MCG 2018). Because of employment opportunities and the need to reside close to these opportunities the three sub-counties have high population densities (KNBS 2019). Sixty percent (60%) of the labour force in Mombasa county works in the informal sector. Formal rates of unemployment in the county are high, particularly among the local youth who comprise 41% of the population (MCG 2018). The county's poverty rate<sup>6</sup> is estimated at 38% (MCG n.d). According to the MCG (2018) the main factors that may explain the high incidence of poverty are: landlessness; high and increasing cost of living; lack of access to financial institutions; low-income levels; high unemployment levels and low technical and entrepreneurial skills (MCG 2018). In addition, drug and substance abuse is an increasingly problematic issue, especially among the local youth.

In contrast, Likoni sub-county (within which Waitiki Farm is situated) does not have “any meaningful industry” with the exception of Base Titanium (MCG 2018 p.28). Thus, the area has a low standard of living and high unemployment. These factors are linked to high levels of crime, youth radicalism and support for secessionist groups, for example, Mombasa Republican Council (Goldsmith 2013; ICG 2016).

In Waitiki Farm settlement, both formal and informal economic activities are present. These activities can be classified as: retail and wholesale shops, salons, tailoring and barber shops; food kiosks and local money lending kiosks, for example, Mpesa Shops; quarrying for building materials; financial institutions; and private health and education institutions. Furthermore, due to the spontaneous nature of the settlement, there is no planned commercial zone or enforcement of land use planning and building standards (RoK 2016; #1038).

### **4.3.3 Transportation**

The main mode of transportation in Mombasa County is road transport. The county has a relatively well-developed road system. However, due to the rapid population growth without matching upgrading of road networks, there is increasing congestion (MCG 2018; MCG n.d). In addition to road transport modes, travel to and from Mombasa is available via air and rail. Air transport is available as the county is home to Mombasa International Airport. Further, rail transport to Nairobi

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<sup>6</sup> refers to the proportion of Mombasa population living below the national poverty line as determined by KNBS (KNBS 2019)

is available via the Mombasa – Nairobi Standard Gauge Railway (SGR) commissioned in 2017 (MCG 2018; MCG n.d).

Ferry services which date back to 1936, operate across the Kilindini channel/creek and provide access to Likoni sub-county and the south coast (The Standard 1989). In addition to linking Mombasa Island to Likoni, the ferry services are important for south coast tourism and the movement of labourers who live in Likoni. The ferry services are operated by Kenya Ferry Services (KFS). To minimise congestion at the main Likoni Ferry crossing point, KFS also operates Ferry services at Mtongwe. To further reduce congestion at the Ferry crossing point the national government has constructed the Dongo Kundu Bypass linking the south coast to the mainland (MCG 2018; MCG n.d). Participants #1035 and #1006 were of the view that the Bypass would harm the Likoni economy as it would reduce the traffic passing through the Likoni Ferry crossing point and Likoni in general. However, participant #1038 was of the view that the current Ferry services have hampered development in Likoni because of their inefficiency.

Waitiki Farm is served by a 12-metre wide tarmac road that starts from Likoni Ferry stage (see Figure 4.1). The road traverses the farm and joins Likoni-Ukunda road at Masjid Fatma Mosque (RoK 2016). The main modes of transport are motorcycles (popularly known as ‘*boda-boda*’), bicycles, rickshaws (popularly known as ‘*Tuk-Tuk*’) and handcarts. During the rainy season, transportation deteriorates because of lack of drainage infrastructure and as a result the non-tarmacked roads and pathways become inaccessible (Pamoja Trust 2014; RoK 2016). Water borne disease incidences are a possible manifestation of inadequate infrastructure.

#### **4.3.4 Water and Sanitation**

Water and sanitation services are provided by Mombasa Water and Sewage Company (MOWASCO). The county can only meet 65% of its water demand (MCG n.d and MCG 2018 p.29). For example, it is estimated that the conventional mains supply system demand is 182,000 metres<sup>3</sup>/day against a supply of 43,000 m<sup>3</sup>/day (MCG n.d p.13). To supplement this supply, residents depend on boreholes and wells operated by private investors, NGOs, and CBOs (MCG 2018). This water source is popular because of the county’s high water table. However, MCG (2018) cautions that boreholes and wells do not meet the requisite quality standards for domestic use as they have been found to “contain a high percentage of faecal contamination.” (MCG 2018

p.29). A probable cause of this contamination is the considerable number of pit latrines – the sewerage system only services approximately a quarter of the county (MCG 2018 p.18). The increased risk of waterborne diseases increases the challenge of an already strained health service delivery system. In addition, the use of pit latrines poses a threat of polluting underground water systems and aquifers. However, despite these challenges, in 2018 the MCG (2018 p.47) estimated that 73.9% of county households had access to safe water for domestic use.

Waitiki Farm settlement is not connected to the conventional mains water supply system (RoK 2016). The main sources of water for domestic purposes include shallow wells and boreholes. Sunk within household compounds at depths of between 60-75 feet to reach the water table. Furthermore, Waitiki Farm is not served by the official sewerage system. Household pit latrines are the predominant sewerage system manually flushed with buckets of water. In addition to these are the compound pit latrines (MCG 2018). In addition, there is no official solid waste disposal service or dedicated site. The Waitiki Farm settlers dump refuse on open fields and inactive quarries (RoK 2016). There is also no storm water drainage system leading to unhygienic stagnant surface water puddles within the settlement. Due to insufficient domestic water supply and sewerage, run-off and waste management systems, I contend that the health risks for the settlement's residents are increased. The form that waste collection services provision take in the settlement is discussed in more detail in Chapter 8.

#### **4.3.5 Electricity**

Electricity in the county is provided by Kenya Power and Lighting Company (KPLC). Through its energy department and the KPLC, the county government provides streetlights (MCG 2018). Waitiki Farm is traversed by a three-phase powerline that requires a 40-metre wayleave (RoK 2016). However, developments within the farm have not adhered to this development standard and have encroached on this space. It is important to note that the provision of electricity to the settlers by KPLC was one of the bases upon which the registered landowner, that is Mr. Waitiki, sued the KPLC for illegal trespass (*Evanson Jidraph Kamau Waitiki v Kenya Power & Lighting Company Ltd 2016*). It is on the basis of this initial official connection that further connection has been made. The official nature of this connection is different from other informal settlements in Kenyan urban centres where such connection is made illegally.

### **4.3.6 Environmental Management**

The county is home to a diverse marine ecosystem which the MCG (2018 p.24) notes is vulnerable to increasing county population, settlement patterns and pollution, given that “only 17% of the county is connected to the formal sanitation and sewerage system” (MCG 2018). In Waitiki Farm, a considerable land area is used for quarrying activities (RoK 2016). This complicates environmental management and poses environmental hazards because unused quarry pits are used as solid waste dumping sites and are also a potential security hazard for the residents.

### **4.3.7 Education and Health**

Literacy levels in the county are relatively low when compared with other counties in Kenya. The low literacy levels may be because of low net enrollment in Early Childhood Development, primary and secondary schools (MCG n.d. p.18). Inadequate school infrastructure compounds the educational disadvantage. Waitiki Farm settlement is served by both private and public education facilities – primary and secondary schools. In addition, within the area there is a rehabilitation centre for juveniles in the form of the Likoni Approved School (RoK 2016). The name “Approved village” within Waitiki Farm settlement derives its name from the school. As it relates to the health infrastructure, Waitiki Farm settlement is served by two public health facilities, the Mrima Health Centre and Likoni District Hospital. In addition, there are several privately-operated health facilities (RoK 2016).

Within and without the settlement, there are various social and community facilities that serve the residents. These include the Likoni Constituency Development Fund Social Hall, Municipal Hall and an open playground. In addition, there is a Likoni Fire Station that serves the whole sub-county. Due to the unplanned development of the settlement, access by the fire trucks may be hindered. Security-wise, the sub-county is served by two police stations and an administration police camp at Maji Safi area (RoK 2016).

### **4.3.8 Summary and Analysis**

The preceding sections provide an overview of the key socio-economic, demographic, environmental, administrative and political factors in Mombasa County. They show how the identified processes have impacted local development in Likoni – the area of the case study. It is considered highly likely that the effectiveness of official land administration systems in Waitiki

Farm are influenced in various ways by the identified range of contextual macro-factors presented in the preceding sections. This is because the situation is systemic, dynamic and continually evolving, thus, as changes at the county level occur, these changes impact Waitiki Farm. The next section discusses the Waitiki Farm history.

#### 4.4 Waitiki Farm settlement history

Waitiki Farm is a peri-urban settlement, of about 7,000 households, within Likoni sub-county in the southern part of Mombasa, Kenya (RoK 2016). It is located off the Likoni-Ukunda road and is bordered by Shelly Beach road to the south and Lunga Lunga road to the north. The settlement is approximately 4.7 km from Mombasa Island and within an area considered urban by the county government of Mombasa (RoK 2016). The settlement’s current form of development emerged after the 1997 Likoni land clashes. Landowner as used in the Waitiki narrative history and description that follows refers to an owner of a long-term lease. Waitiki Farm settlement comprises the area shown in figure 4.4.

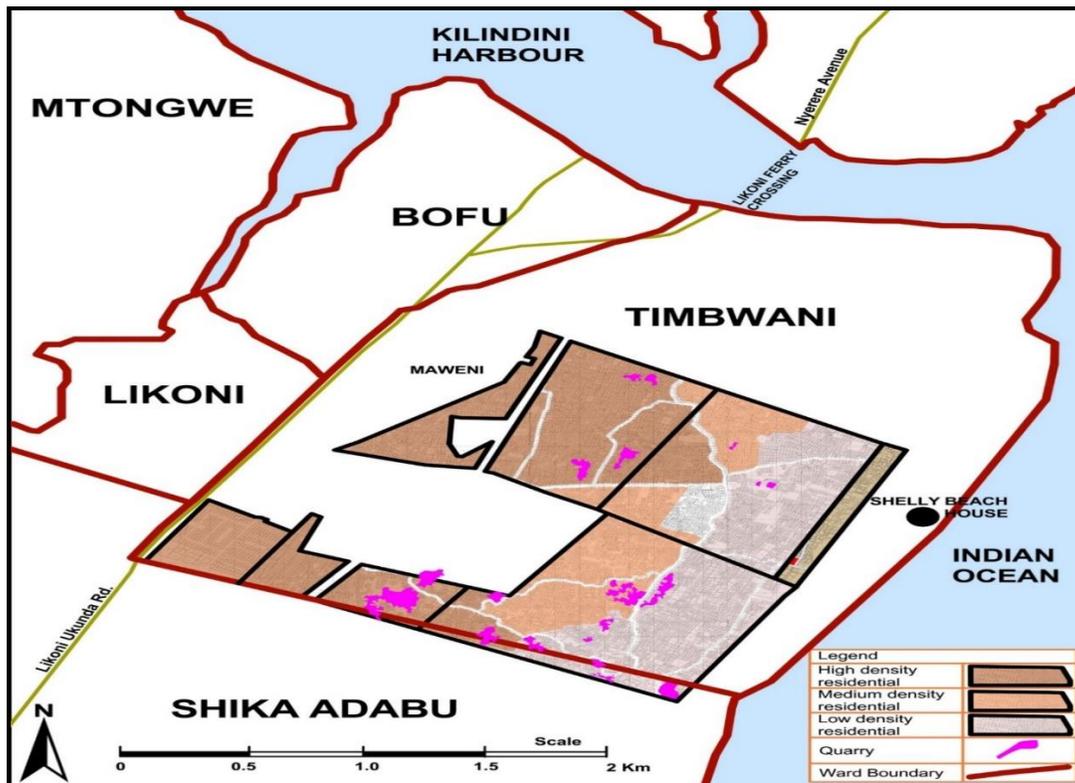


Figure 4.4: Waitiki Farm Settlement

## 4.4.1 History of Land-Related Conflicts

### 4.4.1.1 Land Ownership History

This sub-section describes the contested land ownership history. It answers the following questions: who were the previous owners of Waitiki Farm and what was their relationship with the locals, and how did Mr. Waitiki acquire his land?

Waitiki Farm comprised of four land parcels: LR Mombasa/Mainland South/Block 1/363, LR Mombasa/Mainland South/Block 1/1031, LR Mombasa/Mainland South/Block V/109, and LR Mombasa/Mombasa Mainland South/Block V/110. The grants of the original four land parcels were registered on March 1<sup>st</sup>, 1963. Three of the four parcels were registered in 1975 and had a leasehold interest of 949 years with effect from 1963. The fourth parcel, Mombasa Mainland South/ Block 1/1031, was registered in 1987 and had a leasehold interest for 97.831 years beginning in 1987. The lessor of all four parcels was the Government of Kenya. They were registered in the name of Mr. Evanson Jidraph Kamau Waitiki (*hereinafter* Mr. Waitiki) and his late wife, Bertha Wanjiru Kamau, as joint proprietors under the Registered Land Act cap 300. Mr. Waitiki and his wife purchased Waitiki Farm from Guldawood Likoni Dairy Farm Ltd. on 4<sup>th</sup> August 1975 (Int# 1006). The transaction was approved by the Mombasa Land Control Board on 4<sup>th</sup> August 1976. The transaction price was Kshs. 1,200,000<sup>7</sup>. The original four land parcels totalled 940.5 acres but at the time of eviction in 1997 the total acreage was reduced to 784.5 acres due to compulsory acquisitions by the government along with the land the plaintiff had given away to the Catholic Church (RoK 2016). The parcels were all held under long term leases. The Waitiki's farmed poultry and cattle and erected rental houses (*Evanson Jidraph Kamau Waitiki & Another v. The Attorney General and Others, 2000, Int# 0004*).

A group of local indigenous residents disputed the above legal ownership chain and alleged that Mr. Waitiki was not a legitimate owner because of his ethnicity and his rumoured relations to the then national leadership (Int# 0002, 0004, 0006, 1008, 1021, 1025, 1030). The premise for this allegation was Mr. Waitiki's ethnicity (i.e. Kikuyu), which was the same as that of the first President Mzee Jomo Kenyatta. Thus, they alleged that Mr. Waitiki got preferential treatment in

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<sup>7</sup> Approximately 143,249.37 USD\$ based on the 1976 US Treasury Reporting rates of Exchange as of September 30<sup>th</sup> 1976. Downloaded from: [https://www.gpo.gov/fdsys/pkg/GOVPUB-T63\\_100-309333a95082aed28833c4e3f3f8c5b3/pdf/GOVPUB-T63\\_100-309333a95082aed28833c4e3f3f8c5b3.pdf](https://www.gpo.gov/fdsys/pkg/GOVPUB-T63_100-309333a95082aed28833c4e3f3f8c5b3/pdf/GOVPUB-T63_100-309333a95082aed28833c4e3f3f8c5b3.pdf) accessed October 17 2018.

acquiring the land. However, in a local newspaper interview, Mr. Waitiki disputed this claim and said it was a mere local rumour used by those who wanted to invade his land (Mwajefa 2012). In addition, they also claimed that the local elders and community were not involved in the land transaction, and the previous landowner had been forced to sell the land (Int# 0002, 0003 ,0005, 1008, 1021, 1025, 1030). It is on the basis of these claims and local evidence such as local names of areas such as Magogoni Beach, traditional land ownership markers like coconut trees, traditional shrines and graves on the land that they argued Mr. Waitiki's acquisition was not legitimate (Int# 0002, 0003).

Thus, there was a conflict between legal rights and social legitimacy of the land ownership. To some extent the conflict can be associated with the impacts of colonial and post-colonial historical land injustices on local socio-political structure that underpin the local tenure systems. This conflict led to land-related disputes and was further complicated by the land occupation narrative detailed below.

#### **4.4.2 History of Land Occupation of Waitiki Farm**

This sub-section answers the question: what was the nature of the relationship between Mr. Waitiki and the local indigenous residents? It provides a brief account of the conflictual social relations between Mr. Waitiki and the indigenous settlers who claimed the land on an ancestral basis.

*“The name ‘Waitiki’ was a unifying factor...given he had lived with us in a bad manner.” (Int# 1025).*

According to a majority of the focus group discussions and key informant interviews, the previous landowners [Guldawood Likoni Dairy Farm Ltd.] had a cohesive relationship with the locals. They allowed the locals to graze their animals on the farm, collect and cut firewood, farm on the largely forested land, and use the access routes on the farm to get to the beach for fishing (Int# 0001, 0002, 0003, 0005, 0006, 1006, 1021, 1022, 1030). In addition, the previous owners also participated in the local traditions (Int# 1025).

In contrast, Mr. Waitiki had a hostile relationship with the indigenous residents (the local Digo residents) (Int# 1006, 1008, 1021, 1022, 1025, 1030, 0003). Unlike the previous landowners, Mr. Waitiki regularly apprehended and charged the residents with trespass at the local police station.

Mr. Waitiki did not tolerate collecting firewood, grazing animals, traversing the property to access the sea, farming and mining for coral stones (Int# 1006, 1008, 1021, 1022, 1025, 1030, 1039, 0001, 0002, 0003, 0004, 0005, 0006). However, local politicians would bail out those that had been arrested (Int# 0001, 0002, 0006). Further worsening the local relations was the fact that Mr. Waitiki fenced off the farm from Likoni Ferry to Shika Adabu and demolished the houses on his land that had been built close to the boundary fence. Prior to this, the farm was unrestricted-access forest land (Int# 1021, 1030).

Mr. Waitiki was hostile to the local men (both young and old) because of a physical assault involving his daughter (Int # 0004). In addition, he also wanted to prevent the indigenous residents from claiming the land based on adverse possession (Int# 1039).

The indigenous residents of Waitiki farm had no officially recognised channels for the articulation of their ancestral land claims, as the law privileged private property ownership. Thus their use of extra-legal measures and power through local political networks. As a result, Mr. Waitiki's relationship with the local community was complicated and conflictual. Though the trespassing disputes did not change Mr. Waitiki's holding of the land and possession, they added to the list of grievances the residents had against Mr. Waitiki. These grievances contributed to his eviction detailed in the next section.

#### **4.4.3 Land invasion by Waitiki Farm residents and the eviction of Mr. Waitiki**

This sub-section describes the land invasion by Waitiki Farm residents and the eviction of Mr. Waitiki and his family. It answers the question: why did the locals invade and evict Mr. Waitiki? In addition, it examines the reasons behind the land invasions, it highlights when Mr. Waitiki was evicted and the socio-cultural motivations for the eviction.

Mr. Waitiki was evicted during the 1997 land clashes in Likoni, popularly referred to as "*Kaya Bombo*" (Int# 1006, 1020, 1025, 1039, 0002, 0003). These politically motivated clashes were used to evict non-indigenous locals, including Mr. Waitiki, and destabilise the local support for the opposition parties prior to and during the 1997 General Elections (Int# 1008, 0004). However, there were claims that the invasions had begun as early as 1992 with the support of Mr. Waitiki's non-indigenous workers, as there were cases of land invasion and settlement by some of the local

elders (Int# 0001, 0003). When asked why they invaded Mr. Waitiki's land and evicted him, respondents claimed the following:

- Mr. Waitiki was a non-indigenous foreign landowner thus his ownership was perceived as a perpetuation of the unresolved historical land injustices (Int# 1008, 1022, 1030, 1039, 0002, 0001),
- Mr. Waitiki continued to charge them with trespassing while they had been unsuccessful in their legal challenges to his ownership (Int# 1025, 1030, 1039, 0002, 0001),
- The local indigenous Digo residents wanted to reclaim their ancestral land (Int# 1021, 1022, 1025, 1030, 1039) and believed Mr. Waitiki owned his homestead area only and not the other areas of Waitiki Farm (Int# 0002),
- The local youth were informed by the local politicians and elders that Mr. Waitiki's leasehold was over (Int# 1021, 1039, 0002, 0006) and the land had belonged to them, as part of the indigenous population, since time immemorial (Int# 0001, 0002, 0003, 0006),
- The local population was expanding. This created a shortage of land for new family dwellings (Int# 1021, 1030, 1039, 0001, 0003).

Upon gaining possession of the farm, Mr. Waitiki was declared *persona non grata* on the farm by the invaders, the majority of whom were local indigenous Digo (Int# 1020, 1036). As a result, he did not go back after the land clashes (Int# 0002, 0003), because he feared he would be killed. His friend, Mr Choma, who owned and operated a local business, had been killed during the 1997 clashes (Int# 0004). Mr. Waitiki sued the national government, its agencies, and the land invaders groups.

#### **4.4.4 Litigation History**

This sub-section describes the legal and procedural measures Mr. Waitiki took to protect his land interests and regain the sole use of the land. It starts by briefly highlighting the court battle and then proceeds to highlight his efforts and challenges in enforcing the court order from the case ruling.

##### ***4.4.4.1 Waitiki Farm Litigation***

In February 2000, Mr. Waitiki filed two cases at Mombasa High Court – Mombasa High Court Miscellaneous, 18 of 2000 and Mombasa High Court Miscellaneous, 40 of 2000 – which were

later combined into one case. He wanted “to compel the police to evict the trespassers and offer him security on his property.” (Int# 1006, 1008, 1020, 1036, 1039). He included nine respondents in the case (*Evanson Jidraph Kamau Waitiki & Another v. The Attorney General and Others 2000*). To advance their interests, the residents (both indigenous and migrant land buyers) facilitated the travel of knowledgeable local land rights activists to Nairobi to follow up on the land case and lobby the relevant land administration offices (Int# 0005). In 2001, the court ruled in Mr. Waitiki’s favour and recognised him as the legal landowner of the land.

The Court directed the police:

“...to move into the affected farm, evict the trespassers, arrest the violent ones and investigate and prosecute those who have destroyed and damaged the houses, property and plants, and to offer security and bring the law to its repute and maintain law and order.” (*Evanson Jidraph Kamau Waitiki & Another v. The Attorney General and Others 2000, p.18*).

The High Court of Mombasa declared Mr. Waitiki the legal owner of Waitiki Farm as per the registered title documents. However, the locals believe Mr. Waitiki won the case because of his financial resources and land ownership documents (Int# 0001). However, he was not able to regain sole use of his land because the police were unwilling (or perhaps unable) to implement the court orders and evict the invaders.

#### ***4.4.4.2 Problematic Implementation of the Court Orders and Strategies Used***

Despite the High Court declaring Mr. Waitiki the legal landowner in 2001, his legal attempts to have the then Mombasa District Commissioner implement the court orders were unsuccessful (Int# 1002,1036). The key reason cited for the non-implementation of the orders was the large local population on the settlement (Int# 1002, 1006, 1008, 1020, 1025, 1032, 1036, 1039, 0005, 0006). Furthermore, the then head of security within Mombasa District was quoted as saying he would not go ahead and evict the local residents because of public and private investments, and the size of the settlement’s population. To implement the court order, he is noted for asking for additional security personnel, including the National Armed Forces, and called for a negotiated settlement of the land issue (Int# 1002, 1006, 1008, 1020, 1025, 1039). Due to head of security’s refusal to implement the court order, Mr. Waitiki filed a case against him. This was dismissed by the court as there was no proof of contempt, and the order had not been procedurally served upon the District

Commissioner as was required by the Judicature Act (RoK 2016). This effectively rendered the 2001 court order to be orders on paper only – unenforceable. It meant the land invaders’ land sales strategy (*explained in section 4.5.2.1*) to increase the population of the settlement had been successful (Int#0005, 1032). Despite this, the residents continued to live in fear of eviction (Mwajefa 2012). This and other peri-urban settlement establishment characteristics are detailed in the sections that follow.

## **4.5 Peri-Urban Settlement Establishment**

The settlement establishment history described in this section covers the land invaders and migrant settlers taking possession of the land, emergent local social organisations, and land sales within the settlement. The section concludes with a discussion of the emergent local land administration challenges.

### **4.5.1 Taking Possession of the Land**

#### ***4.5.1.1 Taking Possession: who and how did the locals take possession of the land?***

The local youth and elders invaded the land, vandalised the property that was on it including Mr. Waitiki’s house and his agri-business investments, slashed the vacant and forested areas, subdivided the land amongst themselves, settled on the land close to the road, and sold the remaining land parcels to different land buyers (*Evanson Jidraph Kamau Waitiki & Another v. The Attorney General and Others 2000*; Int# 1002, 1020, 1021, 1030, 0001, 0002, 0005, 0006, 1129). The locals vandalised Mr. Waitiki’s property to destroy any evidence of Mr. Waitiki’s land use rights. The elders oversaw land sales and construction within their jurisdiction, which were done without adherence to official land use planning standards (Int# 0004). The land sizes were based on the traditional Swahili room measurements (Int# 1110) and ranged from 0.004Ha to 0.689Ha (RoK 2016). The settlements resulted in haphazard development and reduced the forested area within the farm (Int# 0006, 0005). However, some of Mr. Waitiki’s tenants remained on the farm and protected the rental houses from demolition (Int# 0004). Later, these tenants had a conflict with one of the local elders (Int# 1030) who laid claim to the rental houses (*see section 4.4.3.3 below*). The conflict that emerged after the land invasion and eviction illustrates the dynamic nature of the formation and dissolution of coalitions typical of post-conflict peri-urban settlements as discussed in section 2.4.

#### ***4.5.1.2 Local Leadership and Social Organisation***

After settling on the land, the local elders and youth formed groups through which they defended their occupation and even sold their land interests (Int# 1002, 1020, 1025). The local Digo elders formed the Maweni Land Development Committee (MLDC), which had a Chair, Secretary, and a Treasurer (Int# 1030, 1032). The MLDC's key objective was to reclaim the land on behalf of the local Digo community (Int# 1030). MLDC was one of the respondents in the case in the year 2000. It followed up on the case (*see section 4.4.4.1 above*), mobilised for funds, held meetings with locals to inform them about happenings on the land (Int# 1025, 0003), and coordinated with their lawyers in the land struggle (Int# 0001).

Within the MLDC there were leadership conflicts between members who wanted to take leadership of the group. The main argument was that the then Chair was not an indigenous Digo and therefore did not belong. Interestingly, this was the same claim they had used against Mr. Waitiki (Int# 1025,1030). According to participant #1025 the intragroup conflicts occurred because there was “a perceived benefit on the horizon” – the anticipated financial benefit from land sales.

The umbrella Maweni Youth group consisted of, Kaya Youth Group, Mrima Youth Group and Maweni Self Help Group (MSHG). MSHG is still an active member of Likoni Community Development Programme (LICODEP), a popular local development NGO/CBO (Int# 1031). The chair of the youth group went on to be a leader of LICODEP (Int# 0003). After Mr. Waitiki filed his case at the Mombasa High Court, the local youth coordinated with the local Digo elders, who had formed MLDC, regarding the case and supported the local elders through mobilisation of funds from different sources. It is through the lobbying of these local leadership networks that the indigenous residents fought for their ancestral land (Int# 0003).

### **4.5.2 Land Sales**

#### ***4.5.2.1 Land Invaders Entrepreneurial Behaviour: Land Sales and Development fees***

The land sale process in Waitiki Farm followed patterns observed in other conflict cases on the Coast involving private land holders and squatters (Int# 1020, 1035). That is, the locals invade, claim the land on the grounds of ancestral land rights, form an *ad hoc* committee, open an office on the land, and start selling the land on to others they deem to be rightful beneficiaries (Int# 1002, 1020, 1025). In Waitiki Farm, the local youth opened an office from which they engaged in the

sale of quarry stones and firewood from the fruit trees they had felled on the farm (Int# 0001, 0002, 0003, 0004). Those that engaged in the quarry stones mining trade were among the first settlers in Shika Adabu village within Waitiki Farm (Int# 0006). The land sellers would approach interested buyers, take them to the area, show them the land, and introduce them to the landowner (who could be one of the land invaders or perhaps someone who had purchased from the land invaders), and negotiate the sales price. Back then, the land areas identified for sale were very cheap e.g. some sold for as low as Kshs. 5,000<sup>8</sup> (Int# 1002, 1006, 1008, 1009, 1020, 1021, 1022, 1025, 1030, 1039, 0001, 0002, 0006, 1135). After reaching an agreement on the sales price, the buyer and seller would sign a local sale agreement (Int# 1009, 1021, 1022, 1025, 1030, 1031, 1039). These were simple local sale agreements. For example, they would read as follows: *person ABC, ID no. 123 has sold land to person QWERTY, ID no. 456, of size XYZ and the witnesses are DCF* (Int# 1031). The written sale agreements were the most common form of evidence of these illegal land sales. They were signed by both the buyers and sellers and their witnesses and were facilitated by the local elders and local administrators for a fee (Int# 1008, 1021, 1030, 1039, 1130). However, the local administrators<sup>9</sup>, such as the administrative Chiefs and Assistant Chiefs, would not sign the sale agreements because of fear of prosecution for engaging in land administration which is not part of their official mandate (Int# 1008, 1039, 1136). A former local administration Chief disputed this narrative and claimed they only resolved issues that arose from illegal land sales (Int#1021). While the participation of administrative Chiefs and Assistant Chiefs in land sales was evident, it was not clear whether they signed land sales agreements.

In the early days of the settlement, the land sellers and buyers did not want to go to the local leadership, such as local elders, because it would cost them an additional land sale witnessing fee (Int# 1009, 1039). These land sales were mainly based on the trust between seller and buyer (Int# 0002). However, the non-indigenous residents whose land interests were tenuous would insist on this to secure their interests in the event that a dispute arose later (Int# 1030, 1031, 1039), and

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<sup>8</sup> Approximately 64.10 USD based on the then exchange rate of 1 USD = Kshs. 78. Downloaded from: <https://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/0301.pdf>, accessed on October 17, 2018. Further discussion of this cost in relation to local cost of living (income/salaries) is done in Chapter 3/6.

<sup>9</sup> The Division Officers and Chiefs are part of the official formal administration whereas the local elders are part of the largely unofficial informal local administration. Local administrators are appointees of the national government in charge of a location or sub-location administrative jurisdiction in Kenya.

because the youth that were selling the land were suspected of abusing drugs (Int# 0006). It was alleged they would engage in multiple land sales of the same land areas to sustain their lifestyles.

The land sales were undertaken by local youths individually or in groups of two or more who would sell to anyone who offered to purchase the land (Int# 1002, 1006, 1020, 1022, 1031, 1110). The elders were unable to control these groups because there were too many of them and they had not set rules or procedures to follow when selling land (Int# 1021, 1022, 1025, 1030). The allocation was therefore largely chaotic. Land buyers were also advised by the land sellers and local administration to build quickly after finalisation of the sale, because undeveloped land was at risk of being resold (Int# 1002, 1039). In addition to settling the indigenous locals who identified themselves as Mijikenda (people born in Likoni or its surroundings such as Mtongwe location) (Int# 1135), the locals also wanted to increase the settlement's population as a strategy to safeguard against eviction by the government (Int# 1006, 1020, 1022, 1025, 1039, 1141, 1149).

Despite Mr. Waitiki placing a caveat in the newspapers on September 30<sup>th</sup>, 2004, cautioning the general public against dealing with land on his farm, land transactions continued. Land purchasers included professionals in both the private and public sectors. These people knew about the lack of official status of these transactions (Int# 1002, 1006, 1020, 1025, 1030, 1039, *Evanson Jidraph Kamau Waitiki & Another v. The Attorney General and Others 2000*). When these professionals were asked why they had chosen Waitiki Farm despite the risk, they claimed that the land was affordable, building materials were locally available, they expected land values to rise (Int# 1020), and the area is close to Mombasa City Centre. However, the local indigenous elders and youth who sold the land disputed the '*land sales*' label on the basis that they didn't follow the legal procedures but their customary rites of welcoming guests and strangers at a small fee (called *bread money*) (Int# 1021, 1022, 1025, 1149). The result of these sales is that almost 70% benefitted non-indigenous purchasers and residents (Int# 1006, RoK 2016). It is because of these sales and the resulting increase in the non-indigenous population that some have claimed that the invasion was really an economic land grab. It had little to do with ancestral rights (Int# 1006, 1020, 1039). For example, participant #1039 remarked:

“They would sell the land for personal entertainment such as touring other parts of Kenya, dining in big hotels. at the end of the day they didn't invest and that's how they were unable to benefit from the land, some are still poor after having wasted the sales money.”

In addition to the above, there were local groups that used the fear of arbitrary eviction by the police, who could still legally implement Mr. Waitiki's court order, to defraud the locals by mobilising and collecting 'legal funds' (Int# 1025). For example, participant #1025 noted that these local groups would use the sighting of construction equipment crossing the Likoni channel to spread rumours that eviction by Mr. Waitiki was imminent.

### **4.5.3 Emergent local land administration**

#### ***4.5.3.1 Informal Local Development Fees***

After buying land, the purchaser who then wished to build on the land was expected to pay the locals a development fee, referred to as *jara*, for the foundation and the roofing parts of the construction process (Int# 1002). One narrative is that *jara* was based on the Digo traditional culture and the fact that they had fought for the land and been arrested doing so. An alternative narrative according to some key-informants is that *jara* was not based on Digo traditions. According to these informants, it was a livelihood strategy for the unemployed local youth in line with their other entrepreneurial activities. They gave as an example local youth groups that were selling land and demanding *jara* also offering security services to the settlers (Int# 1039). Though the origins of *jara* are contested, the residents would pay the *jara* fees due to fear of retribution.

After paying the *jara*, the locals would view the purchaser as one of their own, welcome them to what they called Digo land and they would not pay any more fees. However, if the purchaser did not pay the *jara*, the locals would stop the construction and continue to demand money from the purchaser or seller. It is because of this that most of the purchasers would opt to pay the *jara*. Those that did not would lose their investment – the land and any development on it (Int# 1002, 1020, 1039). The local administrators, i.e., Chief and Assistant Chief, would not assist in such cases because they considered the land to be grabbed. However, some of the officials had benefitted from facilitating the land sales through charging a fee. Local leaders and youth alliance on *jara* ended when there was no more land to sell (Int# 1039).

#### ***4.5.3.2 Fraudulent Multiple Land Sales***

Fraudulent land sales would mainly occur on land that was left temporarily unoccupied or bare. After purchasing an area of land, if the purchaser did not immediately put up a structure on it or left the structure incomplete the land would be resold (Int# 1002, 1025, 0002). I refer to these sales

as fraudulent because the same land might be sold multiple times. The multiple land sales cases were rampant because local youth sold the same parcel of land to different people through different groups (Int# 0004, 1025). Disputes over multiple sales of the same land were resolved by the local elders and official administrators (Int# 1002, 1021, 1025, 1030). However, the official local administrators would officially classify the cases as “special” because they understood that the parties to the conflict were all land invaders, as the court had determined (Int# 1021). To resolve the land disputes arising from the multiple land sales, local elders would compensate the defrauded land purchaser with cash equivalent to the land purchase price, or an equivalent area of land (Int# 1025). The goal was a win-win situation that could only be achieved through the local Alternative Dispute Resolution (ADR) mechanism overseen by the local leadership (Int# 0002). There is an inherent local elders bias in this approach as a defrauded person may not see this as win-win.

#### ***4.5.3.3 Intra-group Conflict: Local elder v. Waitiki Tenants***

After the land was invaded by various parties and Mr. Waitiki was evicted, an internal group conflict emerged between an indigenous local elder and Waitiki Farm tenants. This intra-group conflict involved one of the local elders and the original Waitiki Farm tenants who had lived in the tenant houses before Mr. Waitiki was evicted (Int# 0004, 1030). One of them, an original Waitiki farm worker, had lived there since the early 1980s (Int# 0004). The tenants continued to live on the farm despite being threatened by the local elders and land invaders during the conflict. They stayed on because they had police protection as well as the support of Mr. Waitiki, who they claimed had asked them not to leave or pay rent to the land grabbers. When an issue arose, they would call him and inform him. In addition, Mr. Waitiki wanted them to stay on the farm because the tenant houses had not been demolished like all the other properties (Int# 0004). The local Digo youth and elders wanted to evict the tenants because they saw them as non-Digos and the land as their ancestral land. However, the tenants suspected a financial motivation by the local elder (Int# 0004).

The local elder argued that the property belonged to him because he had protected the houses from being demolished, as Mr. Waitiki’s main house had been, and had invested in their repair (Int# 1030). The tenants were successful in their petition against the local elder because they had evidence of residence in the form of receipts for their rental payments over the preceding years

(Int# 0004). After the conflict, the local indigenous residents built structures anywhere they chose, arguing that they owned the land. The goal was to frustrate the tenants so that they would move out (Int# 0004). This unregulated construction is evident to date. The tenants continued to defend their interests by forming a self-help group (Amani Self-Help Group) and lobbying local leaders, including the sub-chief and local politicians (Int# 0004). The conflict between the local elders and the tenants is indicative of ongoing competition between previously cooperating factions after dealing with an external threat, in this case Mr. Waitiki.

## **4.6 Local politics**

### **4.6.1 Local Politics and Local Unofficial Land Administration**

The Waitiki Farm land contestation was a recurring issue in local politics. Before the land issue was settled, local politicians would use it to mobilise voters (Int# 0001, 0003, 0005, 0006). In their campaigning, local politicians used misinformation, marginalisation, and historical land injustices for their political promotion (Int# 1020, 1021, 1022, 1025, 1032, 1039). In Likoni, the biggest block of eligible voters resided on the farm (Int# 1006). Local politicians also supported the residents in their fight against Mr. Waitiki in different ways (Int# 1020, 1021, 1022, 1025, 1032, 1039). These included bailing out those that were arrested in the 1990s trespass cases (Int# 1022, 1039) and contributing to the legal fees for the court case (Int# 1039). While it may appear that the local residents and the local politicians had a common interest, in practice it was not so. The local politicians saw the issue as a way to mobilise voters in favour of their platform. However, residents were more interested in gaining legal access to the land (Int# 1030). The land issue was relevant to the local politicians during the election season only. However, for residents, it was their everyday lived experience.

### **4.6.2 Government's Alternative Solution to the Waitiki Land Problem**

To resolve the Waitiki Farm land conflict, the President issued a directive. The directive instructed the responsible agencies to: negotiate with the registered landowner to facilitate the government's acquisition of the land; register the land to provide security of tenure to the settlers and; develop a mechanism through which to recover the land acquisition cost (RoK 2016). The State, through the Ministry in charge of land administration purchased the land from Mr. Waitiki and his wife

after negotiations and undertook a land titling project between August 2015 and January 2016. To the best of my knowledge, the final negotiated land sale agreement that facilitated the land titling project described in chapter 5 was agreed on and signed in 2016 (Int# 1015, 1020, 1036, 0001). Participants #1020 and #1036 suggested the negotiations that included the then Member of Parliament to resolve the issue (Int# 0001, Rugene and Nyassy 2015), and the land titling project was accelerated by the national re-election interests of the then ruling party, Jubilee Administration. The party made the issue a political deliverable during the 2013 election campaign (Int# 1020, 1036).

The project beneficiaries were given long term leases registered ownership encumbered with a legal charge of Kshs. 182,000 (approximately 2,275 Cdn \$). The titles were charged because the State wanted to recover the amount of money it had paid to acquire the land from Mr. Waitiki and his wife (RoK 2016; Int#1015). The land titling project resolved the long-standing land conflict between the former private landowner and the residents who invaded the farm in 1997 or purchased land off-register since that date. Critics of the negotiated political settlement hold that the deal may have encouraged other land grabbers to invade private land using a claim of ancestral land (Int# 1035). However, to the best of my knowledge, there is no empirical evidence to support this.

#### **4.7 Discussion and Analysis**

The Waitiki case confirms the key aspects of the social change model theory, discussed in section 2.4. These aspects are: the dialectical approach, ongoing processes of solidarity and schism, and entrepreneurial behaviour. Other key land tenure administration characteristics are supported by several phenomena observed in Waitiki.

The dialectical approach's articulation of external threats and internal competition elements of the social change theoretical model presented in Section 2.4 is illustrated by several outcomes. The articulation of external threats was observed in the united opposition to Mr. Waitiki's ownership by the 'indigenous residents' and the financial contribution made by migrant land buyers to assist with the court case against Mr. Waitiki. In addition, the different youth groups that emerged to defend the land invaders' land interests were united in their land sale strategy to finance the opposition to Mr Waitiki's claim in the courts and to increase the settlement's population to reduce the threat of eviction by the government.

The internal competition element of the dialectical approach was observed in the conflict between the youth and the elders on land sales because the local elders wanted to control land allocation for their benefit while the youth wanted to continue with their land sales strategy. In addition, there was a leadership dispute within the main elders, MLDC, as some of the members accused the Chair of being a foreigner. This was probably because of the anticipated benefits the members expected after they evicted Mr. Waitiki. Interestingly, the foreigner label had been used against Mr. Waitiki. The internal competition was further evidence that the groups were formed to advance the elders' and youth's financial interests. One key outcome of the internal competition was the high incidence of fraudulent multiple land sales.

Solidarity and schism processes were evident in the changing Waitiki Farm coalitions. For instance, when the indigenous residents were contesting Mr. Waitiki's land ownership, they allied with his workers that lived on his farm. However, after they evicted Mr. Waitiki and his family, the indigenous residents turned on these workers and evicted some of them. Those that lived in the rental houses remained. After the invasion, the tenants who included some of Mr. Waitiki's farm workers, formed a self-help group and allied with Mr. Waitiki to defend their rental interests against one of the local elders who was claiming ownership of the rental houses.

Entrepreneurial behaviour was demonstrated by the local elders, youth, and local administrators - Chief and Assistant Chief. The local elders, youth, and local administrators were willing to manipulate rules on land allocation and development to profit from land sales. The local elders and youths partitioned the land and sold it to willing buyers, who they also charged development fees (*jara*), once they started developing the land. Though some of the indigenous residents claimed the development fees were based on the Digo tradition, a majority were of the view that this was a financial extortion by the local elites. The local administrators -Chief and Assistant Chief- facilitated land transactions within the settlement at a fee but were not willing to officially recognise these transactions. They did this because they understood the legal history of Waitiki Farm and knew the residents were land invaders.

Additional entrepreneurial behaviour was illustrated by fraudulent local groups. They took advantage of the locals' fear of arbitrary eviction by Mr. Waitiki by collecting funds on the premise that they would cover any legal fees that may result. The fraudulent land sales and the rapid population increase suggest the existence of an active informal land market. Further, it shows the

publication of the court eviction order created an environment of uncertainty that local groups took advantage of.

The Waitiki Farm case indicates titles are not effective against a coalition of local elites, politicians and residents who prevent the police from evicting trespassers. Mr. Waitiki's coercive relationship with the local residents was caused by his strict enforcement of his private land rights. In doing this he disrupted the norm established by the previous landowners who were lax in enforcing their private land rights. The evidence is instructive as to how strict enforcement of private land rights in a peri-urban context where landownership is contested and local politicians indirectly support the local residents may inadvertently lead to increased cases of encroachments, trespass cases, land invasion, and eviction. Thus, attempts to defend land rights lead to reduced tenure security and eventually unusable land rights. The pre-Waitiki and post-Waitiki land ownership historical evidence support this claim as it suggests tenure security, during the earlier and later periods, was the product of the relationship between the local community and the previous landowners. After the land invasion, tenure security in Waitiki Farm was premised on social cohesion between the migrant population and the land sellers (local elders and youth). Based on the above, in post-conflict settlements like Waitiki Farm, the *de facto* tenure confers more security than the *de jure* form of tenure because it is recognised and supported by the powerful local elites, local politicians, and residents. In addition, land transaction documentary evidence such as signed local sales agreements were important especially in land dispute cases. The case is also instructive on the importance of rental receipts in defending land interests as the Waitiki tenants' case shows.

Land transactions in Waitiki Farm were informal and took place outside the official land administration system. These transactions were primarily undertaken by the local youth and elders and in some cases witnessed by the official local administrators. The documentary evidence for these sales was local sales agreements. Given that there were no rules guiding land sales and allocation by the different land sellers, the resulting allocations were chaotic and, in some cases, fraudulent (overlapping). The disputes related to the multiple fraudulent land sales were resolved by the local elders and administrators. However, the effectiveness of local sales agreements in protecting tenure depended on their recognition and acceptance by the local elders and administrators. This documentary evidence, the contracts of sale, was officially considered illegal because the registered title was in Mr. Waitiki's name. Thus, there was a practical recognition of

hybrid governance relating to land transactions and dispute resolution practices. Though it is more likely that local administrators were involved because of financial interests I speculate that they were willing to witness land transactions unofficially and resolve land related disputes to maintain social order and presence in emerging local power structure.

Waitiki Farm land invasion and eviction was caused by a number of reasons. Key among them were: ethnic indigeneity, Mr Waitiki's coercive relationship with the indigenous residents, ancestral land claims, local politicians' interference and their misinformation campaigns, and a growing local youth population. This complex set of factors was intensified by the contestation of the 1997 General Elections and local political tensions. The evidence suggests that this situation was further exacerbated by local elders who misrepresented the settlement's history and manipulated the local youth into invading the farm. Based on this I speculate that under conditions of increasing population and diminishing land supply encroachments into neighbouring private land that are initially motivated by the need for more space to house the burgeoning local youth may be exacerbated by local political dynamics leading to land-related violence and conflict.

The land purchasers used various strategies to secure their land interests against local threats to their ownership. There were two key sources of risks to land purchasers. The first was local youth who would resell the land parcels if they remained vacant or the purchasers refused to pay a local development fee commonly referred to as *jara*. The second was Mr. Waitiki's restrictive caveat prohibiting transactions related to the land. The land purchasers perceived the first to be a bigger threat than the second. To overcome this threat, they would immediately build after purchase and also pay *jara*. In general, these land buyers were willing to engage in the illegal purchases because of Waitiki Farm's favourable location, affordability, and the availability of locally sourced cheap building materials. This behaviour would therefore seem to suggest that land buyers are willing to engage in unofficial land transactions in areas where land has been invaded if they perceive that it is impossible to be evicted without violent eviction and local threats are manageable.

Waitiki Farm was a space of contestation between different political interests and players because a majority of Likoni voters resided within or around Waitiki Farm. As a result, local politicians and residents organised around the contested ancestral land claim narrative. Local politicians supported the local indigenous residents' early struggles for the land by providing financial

assistance to pay their legal fees and bail out arrested residents. They also assisted the indigenous residents in their investigation of the legal status of the land. However, to advance their political interests, they manipulated the local history of the land and knowingly misrepresented the true chain of landholding to obtain the support of the local voters. They did this because local political leaders that didn't interpret the history of the land using the historical injustices and marginalisation narrative did not gain support of the settlement's residents. The national politicians would promise to resolve the Waitiki Farm conflict for mobilisation of votes. However, after the election, most would not address the land conflict. This suggests that to gain power local politicians shifted their rhetoric to match the narrative of the local residents' indigenous right to land without regard to its legal legitimacy, as they were more interested in political gain and not actually resolving the land ownership conflict. The involvement of national and local politicians shows how politicians can create unrealistic expectations and further complicate local land administration.

The unwillingness or inability of the security forces to implement the court order resulting from the 2001 Waitiki Farm case court is instructive of the limits of the duty to protect private property where land has been invaded, there is migration pressure and local politics are in continual flux and create unrealistic expectations. I speculate that the security officers were unwilling to act because enforcement of eviction orders could lead to political unrest and violence. The evidence suggests that, in addition to raising local tensions, the non-implementation of the court order created an environment of uncertainty which local entrepreneurs manipulated to their benefit.

## **4.8 Conclusion**

In general, the history of the Waitiki Farm illustrates the complex nature of a peri-urban settlement founded through land invasion and subsequent in-migration. In 1997, Waitiki Farm experienced localised land-related conflict that exacerbated the land ownership schism between Mr. Waitiki the registered landowner and the local indigenous residents who were mainly ethnic Digo. The land invasion and settlement that followed the 1997 land clashes led to the emergence of an unofficial local land administration system. In this system land holding information was held in formats not officially recognised and tenure security was dependent on *jara* payments. Further, there was practical recognition of a hybrid governance role in land transactions and dispute

resolution, and local politicians took advantage of the conflict to advance their interests. In addition, national politics external to the settlement also impacted its trajectory. These set of factors impacted the effectiveness of official land administration systems in Waitiki Farm. In synthesis, this finding supports the argument in chapter 2 (section 2.6) that peri-urban SSA settlements characteristics, such as those identified in Waitiki Farm, further complicate land tenure administration.

The chapter demonstrates that there is supporting empirical evidence of the social change model propositions as they relate to informal urban settlements. In Waitiki Farm, there was empirical evidence of the unified resistance to Mr. Waitiki's ownership and the threat of eviction, the changing local group coalitions, the internal competition for the control of land and leadership of local groups, and the entrepreneurial behaviour of the local elders and youth who informally transferred land rights. It would also appear that the control of land sales and development was very lucrative, thus the intense competition and conflict for land allocation powers between the different local actors. Further evidence of local rules, customs and norms, and manipulation to the benefit of local elites was the charging of local development fees and that local elders and youths sold off to migrant strangers with the tacit support of the local administrators. This was despite the fact that the initial land invasion was premised on an indigenous right to land. In synthesis, this finding supports the argument in chapter 2 (section 2.4) that the manifestation of social change in local politics in peri-urban SSA influences land tenure administration. Further, the Waitiki Farm case illustrates many aspects of the social change model and land tenure administration discussed in chapter 2 (*see section 2.4*).

In conclusion, the main contribution to knowledge from the manifestation of social change in Waitiki Farm is that there is a need for the official land administration systems to engage with these complex situations with a view to continuing to provide and improve land administration. Also, a contribution is further understanding of the socio-political dynamics of post-conflict peri-urban settlements and their effects on land tenure security and administration. How official land administration systems can continue to operate within such environments will depend on the context and the local development vision and policy. In Waitiki farm and cases with similar characteristics, innovative solutions such as the negotiated settlement (discussed in the next chapter) may be necessary to first establish and maintain social and political stability. However, it

may also be necessary to mitigate against the added risks of such settlement's downstream effects. The first effect is the official land administration being viewed as encouraging similar cases of land invasion. The second is the emergence of problematic hybrid land governance practices – chapter 8 on hybrid land governance in Waitiki Farm further explores this.

Through the development of a rich history of Waitiki Farm, the findings of this chapter inform the results and analysis in Chapters 6, 7, and 8 and provide additional context to the Waitiki Farm land titling project discussed in Chapter 5. This chapter also provides support for arguments explored in Chapter 2 that are integral to the study's overall objective. The next chapter discusses and analyses the Waitiki Farm land titling project that was undertaken in late 2015 and early 2016.

# CHAPTER FIVE: WAITIKI FARM LAND TITLING PROJECT

## 5.1 Introduction

This chapter describes the official land titling project undertaken to resolve the protracted Waitiki Farm land conflict and regularise the land occupiers' land interests. In this respect, it provides additional context to the Waitiki Farm history described in Chapter 4. More specifically, it identifies the official land administration processes undertaken, the official land administration actors involved, and the noticeable results of their interactions. This partly answers research questions 4 and 9, as expressed in Section 1.5 and restated below, and contributes to achieving research objective 2.

4. Who are the key land governance actors in Waitiki?
9. How do the different land tenure administration systems interrelate, and what are the noticeable land tenure administration outcomes of these interrelations? What are the available participatory development institutional platforms?

In addition, by identifying the land administration functions the SLAOs performed in the project, the strategies they used to deliver the project objectives and the SLAOs experience with the land titling programme, the chapter partly addresses research questions 11, 12, and 15 (listed below) and contributes to achieving research objective 3.

11. What land administration functions do SLAOs perform in peri-urban SSA/Waitiki Farm?
12. Under what conditions do SLAOs deliver land administration services in peri-urban SSA/Waitiki Farm and how do they strategise to effectively deliver land administration services?
15. What were the SLAOs experience with the land titling programme undertaken in Waitiki Farm?

The chapter begins with a brief overview of the official land administration systems at the national and county government levels. Following this is a description of the official land resettlement programme. This is followed by a detailed account of Waitiki Farm land titling project and SLAOs involved and a conclusion of the chapter.

## **5.2 Official Land Administration Organisations in Kenya post-2010**

This section briefly introduces the different official land administration institutions in Kenya. Waitiki Farm land titling was implemented by the official organisations responsible for land administration in Kenya, namely: the Ministry of Lands and Physical Planning, the county government's Department in charge of Planning and Development Control, and National Land Commission (NLC). The section briefly introduces these organisations. Of interest is the relationship between the Ministry of Lands and Physical Planning, and NLC which is reviewed at the end of this section.

The official land administration institutional framework in Kenya has changed since the promulgation of the Constitution in 2010. The Constitution established the right to land in the Bill of Rights and two levels of governance, namely, national and county governments. There are 47 county governments in Kenya. It is within this devolved governance framework that official land administration is undertaken in Kenya.

Articles 60-68 of the Constitution's Chapter 5 are the authoritative legal foundation upon which the official land administration system is undertaken. Article 60 outlines the general principles that should guide land administration in Kenya. Articles 61, 62, 63 and 64 identify and define the three categories of land in Kenya, i.e., public, private and community. In addition, Article 65 outlines the general framework of who qualifies to own land in Kenya and under what conditions. Article 66 vests land use regulation in the state and parliament. Following this is Article 67 which establishes the NLC and outlines its core functions. Furthermore, Article 68 vests in parliament legislative authority to enact, revise, consolidate and rationalise the land law regime in Kenya in line with the new constitutional framework. It is in undertaking this role that parliament enacted the Land Act no. 6 of 2012 (revised in 2016) and the Land Registration Act no 3 of 2012 to guide land administration in Kenya. Table 5.1 below is a basic representation of the official land administration systems and their respective mandates as captured in the Constitution.

As shown in Figure 5.1, the main official land administration organisations in Kenya are:

1. The Ministry of Lands and Physical Planning (the actual name of this agency constantly changes and thus for purposes of this study I will use the Ministry in charge of land administration)

2. The County government's Department in charge of Planning and Development Control
3. The National Land Commission (NLC)

However, other national and county government agencies may be involved in land administration processes on a need basis.

**Table 5.1: Official types of land and respective administrative institution (based on RoK 2010)**

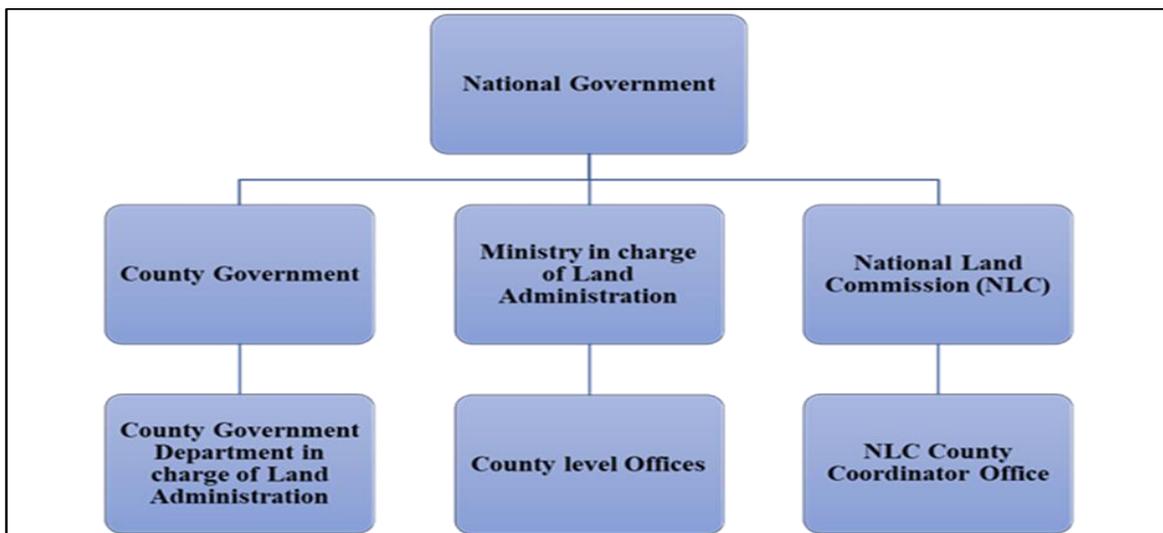
| Public Land   |   | Private land  | Community Land                |   |
|---|---|---|-------------------------------|---|
| National  | County                                    |   | Registered                    | Unregistered  |
| Both types of public land are administered by the NLC on behalf of the two levels of government   |   | Administered by both the county and national government. All approvals for development of private land must first be approved by the county government. | Administered by the Community | Vests in the county government.<br><i>(Since it vests in the county government it may be administered by the NLC on behalf of the county government).</i> |
| In conjunction with the national government ministry in charge of land administration <i>(currently referred to as Ministry of Lands and Physical Planning)</i> | In conjunction with the county government |   |                               |   |

The national government, through the Ministry responsible for land administration undertakes official land administration functions within the legislative framework established by the Constitution, Land Act of 2012, Land Registration Act of 2012, the National Land Policy of 2009, and any other legislation related to land, e.g., the Environment Management and Coordination Act (EMCA). The Ministry is currently constituted by several departments, namely: Physical Planning, Land Adjudication and Settlement, Survey, Land Administration, Land Registration, Land Valuation, and Administration and Support Services. Each department is decentralised to the county level.

The NLC was established by the 2010 Constitution as one of the constitutional commissions under Chapter 15 of the Constitution (RoK 2010). The NLC’s functions are provided for in the Constitution’s Chapter 5 Article 67. As it concerns land administration, the NLC is mainly vested with the public lands management function. As currently constituted, the commission includes the commissioners, a secretariat led by a Chief Executive Officer (CEO) and the following 12 directorates: Land Use Planning, Adjudication and Settlement, Land Survey, Audit and Risk Management, Corporate Affairs and Communication, Human Resource Management, Finance and Administration, Information and Communication Technology, Land Administration, Land Information Management System, Natural Resource, and Research. At the county level, the commission is represented by NLC county representatives.

The county governments undertake land administration related functions through their respective departments of land administration. The Constitution’s fourth schedule mandates the county government with planning, surveying and mapping, boundaries and fencing, and housing functions (RoK 2010). However, this jurisdiction extends to county lands and private lands. In addition, the county governments also administer land rates, urban land use planning, and zoning within their jurisdictions.

Figure 5.1 illustrates the discussed official land administration organisational framework.



**Figure 5.1: Official land administration organisations**

The above brief overview of Kenya's official land administration organisational framework is important because the analysis of official land administration effectiveness in Waitiki Farm will be done within the existing land administration organisational framework.

### **5.2.1 Synthesis and Analysis: *Relevance to research***

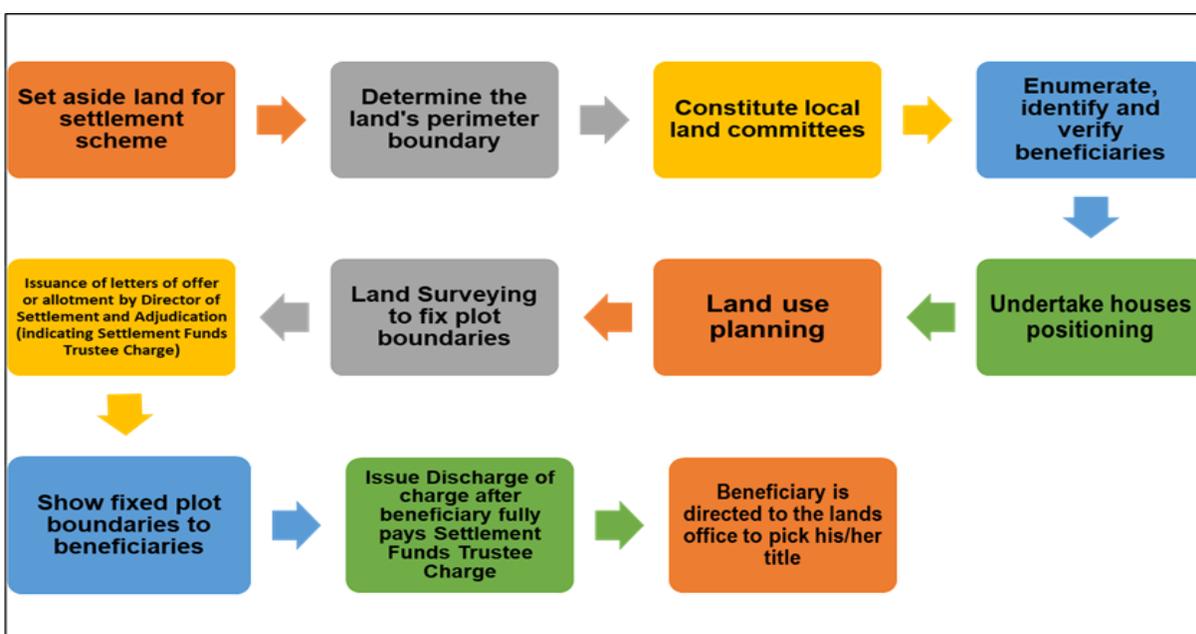
The establishment of NLC was informed by the need to depoliticise land access in Kenya and prevent the use of land as a political tool by the national government elites as had been identified in the various land reform commissions, for example, Njonjo Commission (RoK 2001), and Ndung'u Commission (RoK 2004). The assumption was that the establishment of an independent commission to administer and manage land would curtail political influence in the management of public land, prevent manipulation of land reform initiatives, such as resolution of historical land injustices and curtail the rampant corruption within the land sector in Kenya (Nation Daily Reporter 2015). However, after the establishment of the NLC, the Ministry and the NLC were in conflict over organisational roles and responsibilities to manage and administer land. This organisational conflict was resolved through a Supreme Court advisory in 2014 (SCOK 2015) and the Land Amendment Act of 2016 (RoK 2016). The outcome of this land law reform initiative was the usurping of some of the powers that had been given to the NLC and the disbandment of local land governance mechanisms (i.e., County Land Management Boards), that were meant to devolve NLC's land administration roles to the county level.

According to Boone *et al.* and Manji, the envisaged land reforms may have been hindered by political, ministry and county government elites because of their common interest in controlling the land allocation and access and the significant role land continues to play in Kenya's competitive politics (Boone *et al.* 2019, Manji 2014). However, it is also possible that the land law reforms failed because they threatened the "informal-networks" that "national-level" elites use to "access land and facilitate lucrative illegal urban developments" (Bassett 2019 p.17).

The following section gives a brief overview of the conventional official land resettlement process as provided for in the relevant Kenyan land administration legislation.

### 5.3 Official Settlement Scheme Programme

This section briefly details the official land resettlement programme undertaken by the national government through the Ministry in charge of land administration. The programme is undertaken to provide “access to land to squatters, persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement” (Land Amendment Act, Section 134, ss.2). The Land Amendment Act (section 134, ss.3) mandates the national government to administer the settlement programme in consultation with the NLC and county governments within whose jurisdiction the programme is to be implemented (RoK 2016a).



**Figure 5.2: The official land resettlement programme workflow (RoK 2016 & Fieldnotes 2017)**

All the steps in Figure 5.2 above are designed to offer a participatory, inclusive, and affordable land acquisition process for the target marginalised groups that have been identified. In addition, the law provides that the local Member of Parliament (MP) shall nominate four of the eight members of the sub-county selection committee appointed by the Cabinet Secretary to identify and verify beneficiaries. The committee comprises:

- (a) the deputy county commissioner;
- (b) the sub-county administrator;

- (c) a representative of the Commission;
- (d) a national government representative, who shall be the secretary;
- (e) a representative of persons with special needs;
- (f) a women representative;
- (g) a youth representative; and
- (h) a representative of elders

The members nominated by the MP are represented by (e), (f), (g), and (h). Further, the chairperson of this committee is appointed from these four nominated members.

Beneficiaries of this programme are prevented from selling their land or disposing of these lands using any mechanism except succession (Int# 1005, 1024). The restriction is meant to prevent the beneficiaries selling their land parcels after getting their land ownership documents i.e. certificate of title or lease, with the goal of moving to another settlement. In addition, the restriction is also aimed at curtailing land speculators, who speculate on land values, do not undertake development, and sell once land value increases. These speculators also prey on the poor by offering them prices slightly above the market value (Mwajefa 2015a, 2015c). Despite these restrictive clauses, evidence from the literature on South Africa shows that off-register transactions may yet occur (Barry and Roux 2018). Further, beneficiaries of settlement schemes are expected to pay back “a sum of money as may be determined from time to time by the body of trustees responsible for settlement matters” (Land Amendment Act Section 134 ss.8). This payment recovers the cost incurred by the government for registering the beneficiaries' land rights.

The above brief overview of the official settlement programme in Kenya is important because it forms a basis for the description and evaluation of the process undertaken in Waitiki Farm discussed below.

## **5.4 Waitiki Farm Land Titling Project**

### **5.4.1 Project Background**

The Waitiki Farm land titling project was undertaken between August 2015 and January 2016 to resolve the protracted land dispute between the registered landowner, Mr. Waitiki, and the land settlers. The land titling project activities “followed a Presidential directive requiring that persons

occupying the land commonly referred to as Waitiki Farm be issued with title deeds for the portions of land they occupy.” (RoK 2016, p.1). The national government, through the Ministry in charge of land administration, undertook the land titling project to resolve land dispute by purchasing land from the registered owner, Mr. Waitiki, and regularising settlers land rights under the “the Settlement Fund Trustee program” (RoK 2016, p.1). Some of the key land titling project objectives are stated below:

1. To provide an amicable solution to the disputes between the landowner and the occupiers of the land.
2. To provide security of tenure to the occupiers by issuing title deeds.
3. To improve the quality of life of the residents within the Waitiki land.

(RoK 2016, p.1-2).

In addition to the above, the Mombasa County Government expected the land titling project to avail land information data to facilitate the administration of the settlement and enhance revenue collection through land rate collection and development application fees (MCG internal communication, n.d.).

Upon agreeing on the land acquisition terms, the national government and Mr. Waitiki signed a sale agreement (Int# 1015). The agreement facilitated the land acquisition and administration processes. It also allowed for the planning, surveying and adjudication processes to be undertaken as other processes related to the acquisition were ongoing. The land acquisition committee consisted of:

1. Chief Valuer
2. Director Land Adjudication and Settlement
3. Director Physical Planning
4. Director Survey
5. Chief Land Registrar
6. Head of Supply Chain Management
7. National Treasury
8. Representative of the Ministry of Interior and Coordination of Government
9. Legal Department (Ministry of Lands and Physical Planning)

10. Representative from the Attorney General's Office to provide advise on the land acquisition. The AG must offer legal advice in every Government land acquisition process.

(Source: Int# 1015)

In addition to the above committee, the project's technical committee comprised of senior officials from: Ministry of Land, Housing and Urban Development (now referred to as Ministry of Land and Physical Planning), NLC, state department of interior and national coordination and Mombasa county government. To ensure local collaboration, the team also consulted the local political leadership, namely, the Likoni Member of Parliament and the two members of the county assembly representing Timbwani and Shika Adabu, within which the land falls (RoK 2016). Mombasa County Government pulled out of this collaboration after a political conflict with the National Government (MCG internal communication, n.d).

#### **5.4.2 Land Titling Project Land Administration Processes**

This section describes the various official land administration processes undertaken in Waitiki Farm to regularise the land settler's land rights.

##### ***5.4.2.1 Determination of the Land's Legal Status***

This project activity established the official registration status of the land parcels jointly owned by Mr. and Mrs. Waitiki and identified the court cases filed with regard to the land (RoK 2016). In addition to establishing the legal status of the land, the land registration assessment also informed the sale agreement negotiations between Mr. Waitiki's lawyers and the government's legal team (Int# 1015). This process was undertaken by land registrars from the Ministry's land registration department, officials from the Ministry's legal department and a representative from the Attorney General's department.

The farm originally comprised of the following four land parcels totalling 940.5 acres, namely,

1. LR Mombasa/Mainland South/Block 1/363, measuring 190 acres
2. LR Mombasa/Mainland South/Block 1/367, measuring 252.5 acres
3. LR Mombasa/Mainland South/Block V/109, measuring 274 acres
4. LR Mombasa/ Mainland South/Block V/110, measuring 224 acres

After a review of the official land records related to Waitiki Farm at the Mombasa land registry, it was established that the acreage had reduced from 940.5 acres to 784.5 acres, as detailed below.

1. LR Mombasa/Mainland South/Block 1/363 acreage did not change and thus remained 190 acres.
2. LR Mombasa/Mainland South/Block 1/367 acreage was reduced from 252.5 acres to 126.5 acres because of the compulsory acquisition of 120 acres by the national government (RoK 1978), subdivisions into Mombasa/Mainland South 1/569, and Mombasa/Mainland South 1/570. Parcel Mombasa/Mainland South 1/569 was further subdivided into new land parcels Mombasa/Mainland South 1/1030&1031. The latter was registered on 1<sup>st</sup> March 1987 for a period of 99 years.
3. LR Mombasa/Mainland South/Block V/109 acreage was reduced from 274 to 244 acres probably because of the compulsory acquisition of 30 acres by the Government (RoK 1978).
4. Mombasa/Mainland South/Block V/110 officially did not change. However, there were several off-register transactions because there were a number of unregistered subdivisions.

RoK (2016 p.4)

The RoK (2016) review also noted the following:

1. Both Block 363 and 109 were encumbered with charges.
2. The official land records on Block 110 did not reflect the various subdivisions that had been done on this specific land parcel.
3. The land was also subject to several court cases and court orders (*see Table 5.2*).

Table 5.2 below provides a summary of the court cases related to Waitiki Farm.

**Table 5.2: Waitiki Farm Court Cases Analysis (Source: RoK 2016 p. 19-20, with minor relevant author changes)**

| Case Number   | Parties & Interested parties   | Subject Matter   | The Prayers  | Orders   | Remarks  |
|---|--|--|--|--|--|
| Nairobi High Court Misc. Application No. 18/2000 & Mombasa high Court Misc. Application No. 40/2000<br><br>Notice of Motion dated: 14/02/2000, filed 14/02/2000 | <b>Applicants:</b> Evanson Jidraph Kamau (alias Evanson Waitiki) and Bertha Kamau<br><br><b>Respondents:</b> Ministry of lands and settlement, ministry of internal security, ministry of environment and natural resources, ministry of local government and municipal council of Mombasa and office of the attorney general<br><br><b>Interested parties:</b> Maweni Land Development Committee (MLDC) represented by Abdulla Khamisi Kondi and Bakari Suleiman Mwangula | The land parcels in question were the following:<br>Mombasa/Mainland South/Block 1/363,<br>Mombasa/Mainland South/Block 1/1031,<br>Mombasa/Mainland South/Block V/109,<br>Mombasa/Mombasa Mainland South/Block V/110 | The general orders sought were mandamus certiorari and prohibition i.e. to compel the government agencies to investigate, arrest, prohibit any dealing on the Waitiki farm and to evict the illegal occupants. | Orders issued on <b>8/11/2001</b> .<br><br>The court ordered as follows: “the order of mandamus and is hereby issued directed to the Commissioner of Police to evict the trespassers on the applicants land. the cost of the application be awarded to the applicant.” | The case was initially filed in Nairobi as Misc. application No. 18/2001 and subsequently transferred to Mombasa and a new number issued that is 40/2000. A bill of cost filed by the applicant’s advocate for Kshs. 50, 424, 174. 00 and taxed at Kshs. 50,000,000 as per the court ruling dated 2/12/2015. |

|  |  |   |  |   |                    |
|--|--|---|--|---|--------------------|
| Mombasa High Court Misc. Application No. 67/2000 | <b>Applicants:</b> Evanson Jidraph Kamau (alias Evanson Waitiki) and Bertha Kamau<br><b>Respondents:</b> Reuben Rotich (the District Commissioner Mombasa) | Contempt of court for failure to execute and enforce the eviction order.          | The respondent to be committed to civil jail for six months.       | Application dismissed by Hon. J. Khaminwa   | Marked as settled. |
| Mombasa Civil Appeal No. 315/2003                | <b>Applicant:</b> Office of the Attorney General<br><b>Respondents:</b> Evanson Jidraph Kamau (alias Evanson Waitiki) and Bertha Kamau                     | This was an Appeal against judgement issued in Misc. Application no. 40/2000 case | Setting aside the judgment issued in Misc. Application No. 40/2000 | Appeal struck out on the 27/01/2005 for failure to attach the judgment of the court judgment appealed against | Marked as settled. |
| Mombasa Civil suit no. 87/2012                   | <b>Applicant:</b> Evanson Jidraph Kamau (alias Evanson Waitiki) and Bertha Kamau<br><b>Respondents:</b> Kenya Power and Lighting Company (KPLC)            |   | Disconnection of power on Waitiki Land                             | Matter is currently under appeal.   |                    |

#### ***5.4.2.2 Land Adjudication***

The land adjudication process involved the enumeration of land settlers, verification of land settlers information and preparation of the beneficiaries list for purposes of registry index map preparation and land parcel registration. The identified, enumerated and verified land settlers were registered and issued with ownership documents (i.e., charged certificates of lease). This process was undertaken by the Land Adjudication and Settlement department and involved 27 Land Administration and Settlement Officers (LASOs) (RoK 2016). The LASOs were drawn from different counties in Kenya.

## Beneficiaries List Preparation Activities

### *a. Enumeration of structures and profiling of structure owners*

This activity was undertaken in August 2015 in all the 13 villages within the farm. The objective was to “establish the extent to which the land was occupied as well as establish the identities of the land occupiers” (RoK 2016, p. 25). It involved enumerating individuals who lay claim to land parcels within Waitiki Farm settlement. The premise for inclusion in this exercise was ownership of a complete or incomplete structure (*see figure 5.3 below*) within the 13 villages that make up Waitiki Farm settlement.



***Figure 5.3: Incomplete structure (Photo credit: D. Muthama)***

A structured questionnaire was used in this exercise to collect land and personal information. The questionnaire collected the following information: occupier details (name, national ID number), gender, age, marital status, mode of land acquisition and evidence i.e., transaction supporting documents, land use and status of development. In addition to capturing land information, each landowner’s photograph was attached. The land information was the first official recordation of Waitiki Farm settlers. Each structure was given a structure number, e.g., MZA 102, which means Maranza A house number 102 (RoK 2016). The initial enumeration exercise in the 13 villages identified a total of 11, 287 structures and owners, as shown in Table 5.3.

**Table 5.3: Enumerated structures in Waitiki Farm Villages**

| <b>No.</b>   | <b>Village</b> | <b>No. of Community Representatives</b> | <b>No. of plots/structures identified</b> |
|--------------|----------------|---|---|
| 1            | Shika Adabu    | 14                                      | 3,626                                     |
| 2            | Biafra         | 7                                       | 226                                       |
| 3            | Shashamane     | 7                                       | 616                                       |
| 4            | Approved       | 7                                       | 693                                       |
| 5            | Swabrina       | 7                                       | 1,073                                     |
| 6            | Firdaus        | 7                                       | 954                                       |
| 7            | Tonge Nyama    | 6                                       | 840                                       |
| 8            | Mwananzia      | 7                                       | 587                                       |
| 9            | Mrima          | 7                                       | 1,222                                     |
| 10           | Maranza 'A'    | 7                                       | 138                                       |
| 11           | Maranza 'B'    | 6                                       | 454                                       |
| 12           | Mwananguvuze   | 6                                       | 355                                       |
| 13           | Tawheed        | 7                                       | 503                                       |
| <b>Total</b> |                | <b>95</b>                               | <b>11,287</b>                             |

*b. Verification*

This activity ascertained the land information captured in the enumeration process. The objective was to ensure personal information captured during the enumeration exercise was accurate. During the verification process, the settlers identified themselves using their original national identification document. After confirming their details, they signed against their name (RoK 2016).

*c. Ground truthing and verification*

This activity was undertaken alongside the land surveying process. It also captured the land information again and related the information to survey numbers assigned to the land parcels during the surveying process. The activity involved 20 LASOs divided into 10 teams to work along with the 10 survey teams. In this exercise, a total of 10,856 land parcels were captured (RoK 2016). Some land parcel owners were not captured because the owners were absent. See Table 5.4 for this breakdown.

*d. Field data capture and entry*

Data capture for the identified and surveyed, 10,856 land parcels was done using the land survey data capture form shown in Figure 5.4 below.

| <i>S/NO.</i> | <i>NAME</i> | <i>ID NO.</i> | <i>GENDER</i> | <i>SURVEY NO.</i> | <i>VILLAGE<br/>PLOT NO.</i> | <i>SIZE<br/>(HA)</i> | <i>SHEET<br/>NO.</i> | <i>Remarks</i> |
|--------------|-------------|---------------|---------------|-------------------|-----------------------------|----------------------|----------------------|----------------|
| <i>1.</i>    |             |               |               |                   |                             |                      |                      |                |
| <i>2.</i>    |             |               |               |                   |                             |                      |                      |                |

**Figure 5.4: Land survey data capture form example**

*e. Data counterchecking and analysis*

This activity involved comparing the earlier enumeration list and the field data analysis undertaken with the survey teams. The goal was to ensure land information consistency, i.e., the names of the landowners were consistent. This exercise was done to ensure the beneficiaries had a valid national identity card, were Kenyan citizens, had been registered in both the original enumeration exercise and the survey and verification exercises, and their land ownership was not in dispute (RoK 2016 p. 26).

The settlers who met these criteria were included in the final beneficiaries list. This process reduced the number of beneficiaries from 10,856 to 7,018. The reduction was caused by land settlers who were absent during the survey and verification exercise. Though these absentee landowners were not present, their plots were surveyed and issued with a survey number. The absentee landowners were to be included in the later phases of the project. The 7,018 beneficiaries identified were forwarded for harmonisation with Registry Index Maps (RIMs) preparation and subsequent certificate of lease preparation (RoK 2016).

**Table 5.4: Breakdown of land parcels captured in this exercise** (Source: RoK 2016 p.27-28)

| <b>Serial no.</b> | <b>Category</b>   | <b>No. of parcels</b> | <b>Explanatory notes</b>  |
|-------------------|---|-----------------------|---|
| 1                 | Land parcels within government land acquired for expansion of Likoni Approved School  | 1,282                 | A policy decision by the Cabinet Secretary in consultation with the National Land Commission, the County Government and the local community is required before the land occupiers are registered. Currently, the land is fully settled and not available for the purpose it was acquired. |
| 2                 | Parcels within land previously subdivided and disposed of by Mr. Waitiki  | 1,262                 | These land parcels will be available in the next phase once the matter is settled.  |
| 3                 | Parcels falling within the powerline wayleave <sup>10</sup> .   | 337                   | These parcels are not available for titling   |
| 4                 | Parcels less than 0.005M <sup>2</sup>   | 115                   | These parcels were too small and therefore not included in RIM and Area list  |
| 5                 | Parcels omitted due to inadequate identification, owner absence and parcels with field queries that require ground verification | 2,853                 | Leases will be issued in the next phase upon ground verification and clearance  |
| 6                 | Parcels issued with Certificate of Leases in phase one  | 5,007                 | These have been printed and delivered for issuance to the beneficiaries.  |
| <b>Total</b>      |   | <b>10,856</b>         |   |

<sup>10</sup> Wayleave is a right of way usually secured along the electricity transmission line for example, 20 meters on either side of the electricity transmission line. Residents prohibited to put a construction on this corridor. In Waitiki Farm this legal requirement was not observed.

### ***5.4.2.3 Land Surveying***

The land surveying process was undertaken to determine and establish Waitiki Farm’s perimeter boundary. In addition, the surveyors determined the individual plot boundaries. The land survey data collected was used to prepare registry sheets for RIMs (RoK 2016). This process reduced the beneficiaries qualifying for the certificate of leases because “the spatial distribution of the land parcels on the RIM showed that some of the captured plots fell outside Waitiki Land and were therefore not eligible for titling” (RoK 2016 p.27). The Ministry’s Land Survey department undertook the process.

#### **Survey Methodology**

The survey process included the following activities.

##### *a. Reconnaissance Surveys, Control Survey and Densification of Controls*

Surveyors undertaking the project carried out a reconnaissance survey to familiarise themselves with the area. To facilitate the survey, the area was divided into 10 sectors. Each sector was assigned a survey team and leader. As noted above, this was undertaken in tandem with the second enumeration process. The surveyor in these teams picked up the boundary points using GNSS receivers, while the adjudication officer recorded the land claimants’ details (RoK 2016).

In surveying the boundary corners, the surveyors relied on boundary identification by the claimant and agreement on the boundary position by the community representative. A key outcome of this process was that the plot boundaries were disjointed because the local culture under which the land parcels were sold used house measurements and not land measurements (RoK 2016 p. 55). Under this local system, one bought a six-room house measuring *XYZ*, which were the dimensions of the house’s footprint, and not a land parcel measuring *ABC*. To facilitate planning and their survey, the land surveyors considered the spaces between houses as public spaces. The houses and their boundaries as captured constituted the prepared RIM maps. This process resulted in nine official standard sheets at a 1:1000 scale, officially named Likoni Settlement Scheme (Waitiki) (RoK 2016).

#### *b. Data Processing and Quality Control*

To process the Global Navigation Satellite System (GNSS) observations and the other attributes, the surveyors used Arc-GIS and Leica Geo-Office software (RoK 2016). The project surveyors established an on-site field station for data entry, cleaning, and processing.

#### *c. Survey Outcome*

In this process, a total of 10,856 land parcels were surveyed and mapped. The land parcels sizes ranged from 0.004Ha (40 m<sup>2</sup>) to 0.689Ha (6890 m<sup>2</sup>). The average size was 0.025Ha (RoK 2016). See Table 5.4 for the breakdown of land parcels inclusion and exclusion criteria.

The Mombasa county government criticised the land survey approach used in the Waitiki Farm resettlement on the premise that it was more appropriate for rural lands where land values are low and imprecise measurements are acceptable, not peri-urban land where land values are on the rise and thus minor survey miscalculations have a high value or cost. They also observed that in other settlements within their jurisdiction where such an approach had been used there were still boundary disputes that hindered their effective implementation of infrastructural projects (MCG internal communication, n.d; Mwajefa 2015c). In addition, they noted they were yet to be availed with the settlement's survey report and plans (MCG internal communication, n.d).

#### **5.4.2.4 Land Use Planning**

This land use planning process involved preparing an advisory land use plan to guide development within the settlement for a period of five years. After expiry of this period, it was to be reviewed by the county government planners. The Ministry's Physical Planning department undertook the process.

The advisory land use plan had the following purposes:

1. Orderly and progressive redevelopment of the land
  2. Provide a basis for surveying and provision of security of tenure
  3. Provide a basis for infrastructural development
  4. Provide a basis for urban development control
  5. To provide a basis for environmental conservation, restoration and improvement.
- (RoK 2016 p.34)

The assumption was that if development on the settlement was undertaken as per the advisory plan the settlement would be transformed from informal to formal and be more livable. This would result in local economic growth and improved living standards for the settlers (RoK 2016).

The advisory land use plan preparation involved the following activities.

*i. Reconnaissance Survey*

This involved field visits by planners to familiarise themselves with the settlement's land use planning issues. This activity identified "major planning challenges and opportunities," and also delineated the planning area (RoK 2016 p.34).

*ii. Enumeration and Profiling*

This activity identified the number of landowners or structure owners. Both complete and incomplete structures were included.

*iii. Mapping and Site Analysis*

This was done to spatially represent both natural e.g., quarries, and built environment features e.g., roads, housing, within the planning area. The baseline data for this activity included topographical maps and satellite images.

*iv. Situational and Needs analysis*

This analysis was done to gain an understanding of the existing settlement characteristics, enable needs projections and future development recommendations. The analysis identified the social, environmental, institutional and economic factors that may impact on the settlement's growth.

*v. Stakeholders Consultation*

Stakeholders' notification and awareness of the advisory land use plan was done or created through print media advertisement and public forum sensitisation sessions (popularly referred to as 'barazas') with the local community. During these forums, the project team presented their situational analysis findings to the community to seek their views and buy-in (RoK 2016).

The draft advisory land use plan was developed but was not officially gazetted. Thus, it cannot be used to guide and control development within the settlement. In addition, at the time of this study, the plan was yet to be officially shared with the Mombasa County Government, the institution responsible for local land use planning administration and enforcement (MCG internal communication, n.d).

#### 5.4.2.5 Land Valuation

This land valuation process determined the market value of the four land parcels that make up Waitiki Farm, that is, MSA/MS Block V/109, MSA/MS/Block V 110, MSA/MS Block 1/363 and MSA/MS Block 1/1031. This activity was undertaken by the Ministry’s Department of Land Valuation (RoK 2016). The determined market value informed the farm’s acquisition negotiations undertaken by the legal team (Int# 1023).

In undertaking this activity, valuers ignored the unregistered land subdivisions. In addition, the determined value did not factor the structures built by the settlers on the farm. Thus, they valued the land as bare with no developments on it (RoK 2016).

At the time of valuation, the land rates status was as follows;

**Table 5.5: Outstanding Waitiki Farm land rates (RoK 2016 p.23)**

| <b>Land Parcel no.</b> | <b>Outstanding Land Rates (Kshs)</b>      |
|------------------------|---|
| MSA/MS Block V/109     | 70,847,257                                |
| MSA/MS/Block V 110     | 120,332,428                               |
| MSA/MS Block 1/363     | 45,072,449                                |
| MSA/MS Block 1/1031    | Property rate statement was not available |

#### **Waitiki Farm Valuation Assumptions**

Due to its complex history, Waitiki Farm could not be valued under the premises of the conventional Market Value approach. To overcome this challenge the valuers made the following assumptions about land ownership and land use.

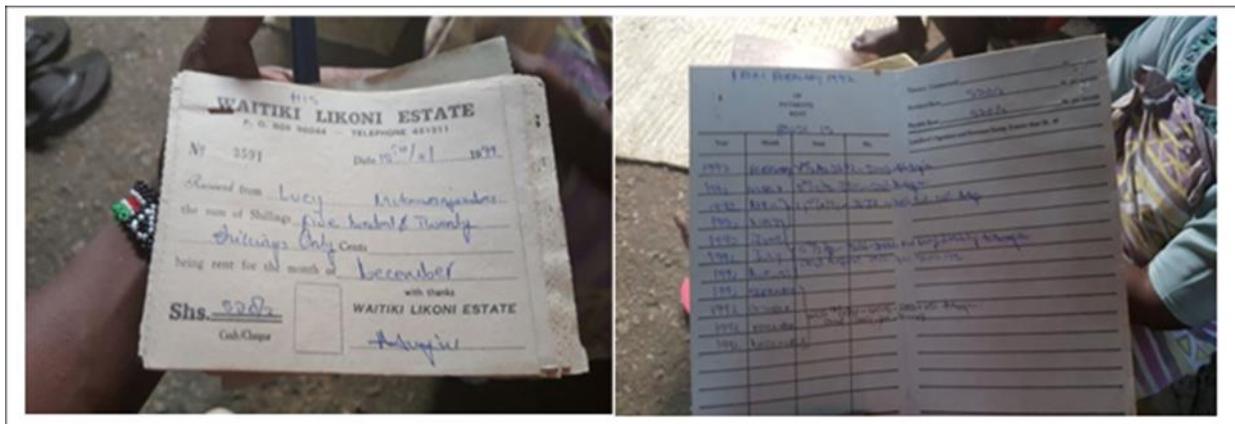
##### *a. Land ownership*

The land valuers assumed the land belonged to Mr. Waitiki. Thus, they ignored all the unregistered land subdivisions and sales not officially registered in the land registry (RoK 2016).

They also assumed “vacant possession upon purchase by the government” and ignored all land developments undertaken after Mr. Waitiki was evicted (RoK 2016 p.23).

##### *b. Land use*

The land parcels were valued on the premise that the land use was residential, “as noted in the County Government of Mombasa land records” and plans (RoK 2016 p.23). In addition, the valuers did not factor the original farm buildings that Mr. Waitiki had put up when he was still in possession of the farm. This was because they were in a dilapidated condition, had been extensively altered and were occupied by the squatters on the land (Int# 1023). In my field work I found that among the current occupiers of these farm buildings were some of the original Waitiki Farm workers who had with them the original Waitiki Farm receipts shown in figure 5.5 below.



**Figure 5.5: Original Waitiki Farm Receipts (Photo credit: D. Muthama)**

Given all the above assumptions, the farm’s market value was determined to be Kshs. 1,250,000,000 (16,251,498 \$Cdn).

#### **5.4.2.6 Land Dispute Resolution**

Dispute resolution was deemed necessary by the project implementers after the enumeration and identification of beneficiaries. The main objective of this activity was to encourage amicable resolution of the land ownership disputes that arose during the land adjudication process. The project’s Alternative Dispute Resolution (ADR) Committee held its hearings at the local administration offices i.e. Chief’s Office in Shika Adabu village. The committee heard and determined 302 disputes (RoK 2016).

##### *a. ADR committee membership and structure*

The ADR committee comprised seven members. Five members were drawn from various national government agencies, which included: Ministry of Land and Physical Planning, NLC, State

Department of Interior and National Coordination, and the other two members were drawn from community representatives. The area Chiefs were also co-opted into the project's ADR committee. Other community members were included on a need basis (RoK 2016).

*b. Nature of land dispute*

The main causes of disputes were lack of sale documentation, multiple claims to the same land, and fraudulent land sales (RoK 2016 p.7).

*c. Dispute resolution process*

The dispute resolution process involves parties to the dispute. In making a decision, the ADR committee reviewed the documentary evidence provided by the disputants, used ground evidence based on ground inspection and, where necessary, invited additional witnesses. In resolving the disputes, the ADR committee issued advisories to the disputing parties. Where they could not decide, they referred the dispute to other institutions for further action e.g., Kadhi court and the police (RoK 2016).

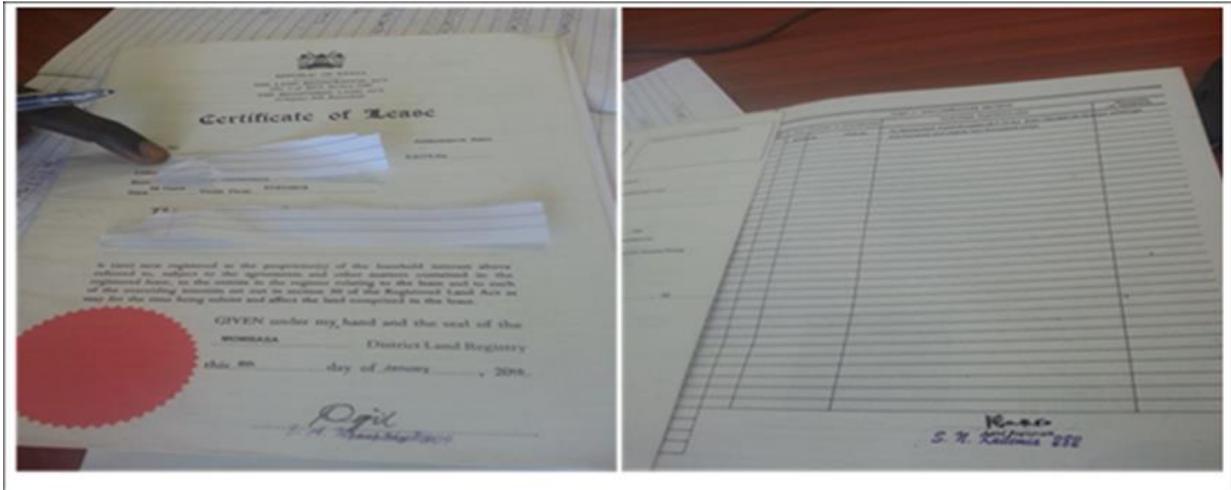
#### **5.4.2.7 Project Advocacy and Civic Education**

This process involved public awareness activities on the project in both print and electronic media. This process was undertaken by the Ministry's Communication directorate. The main objective of this public relations exercise was to influence the public perception of the project through positive media coverage (RoK 2016 p.58). Local and national newspapers, television and radio stations were included in this activity. In addition, project-related public awareness campaigns were uploaded on the Ministry in charge of land administration website. This process also included the following:

- Monitoring the newspaper articles on the project in the media and informing the heads of the relevant departments, the Permanent Secretary (PS) and the Cabinet Secretary (CS),
- Carrying out public meetings or notices to create awareness among stakeholders on both the print and electronic media,
- Creating infomercials, newspaper supplements and a media plan for the land titles /presentation, which was presided over by the President.

### 5.4.2.8 Land Registration

This process involved the registration of the approved list of beneficiaries as the legal landowners of their land parcels. The certificates of lease were registered in the names of the beneficiaries. The landowners were issued with encumbered land leases (*see figure 5.6*) that had the conditions specified in figure 5.7.



**Figure 5.6: Charged Waitiki Farm Leases (Photo credit: D. Muthama)**

During the project, it was not clear to the Mombasa county government whether the certificates of leases would be encumbered or not. In addition, the county government was not provided with the list of beneficiaries issued with leases. As noted by the county government, the lack of accurate and accessible land information would hinder its effective administration of the settlement e.g. development applications (MCG internal communication, n.d).

The lease conditions are listed in Figure 5.7 below.

1. No buildings shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than in conformity with the plans and specifications previously approved in writing by the County Government. The County Government shall not give its approval unless it is satisfied that the proposals are such as to develop the land adequately and satisfactorily.
2. The Lessee shall maintain in good and substantial repair and conditions all buildings at any time erected on the land.
3. The land and buildings shall always be used for Residential purposes.
4. The buildings shall not cover more than 75% of the area of the land or such lesser areas as may be prescribed by the County Government Development Control Regulations.
5. The land shall not be used for any purpose which the National or County government considers to be dangerous or offensive.
6. The Lessee shall not subdivide, charge or extend use of the land, without prior written consent and approval of the National Government or County Government.
7. The Lessee shall not sell, transfer, sublet, charge or part with possession of the land or any part thereof for any building thereon except with prior consent in writing of the County Government.
8. The Lessee shall from time to time pay to the County Government on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the County Government may assess.
9. The Lessee shall pay such rates, taxes, charges, duties, assessments or outgoings of whatever descriptions as may be imposed charged or assessed by the Commission on behalf of the County Government upon the land or buildings erected thereon, including any contribution or other sum paid by the Commission in lieu thereof.
10. The National government or respective County Government or such other person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to Water main service pipes and drains, telephone wire, fibre optic and electric mains of all descriptions whether overhead or underground and the Lessee shall not erect any buildings in such a way as to cover or interfere with any existing alignments of mains or services pipes or fibre optic or telephone wires and electric mains.
11. The County Government may revise the annual ground rent payable. Such rental shall be at a rate to be determined by the County Government of the unimproved value of land.

**Figure 5.7: Waitiki Farm Certificate of lease conditions (as stated in the issued leases)**

## **Settlement Fund Trustees (SFT) and the Charge**

The SFT board approved the land for purchase on 24<sup>th</sup> December 2015. The farm's purchase price was Kshs. 1,100,000,000 (14,300,484 \$Cdn). The purchase price was provided through a supplementary budget provision by the Cabinet Secretary National Treasury (Ngirachu 2016). It is important to note that the Board had earlier approved the farm's purchase in September 2013, but this was not implemented because of lack of funds. In my view, this suggests that the political will to undertake the project in 2013 was not available.

The Kshs. 1,100,000,000 (14,300,484 \$Cdn) and the cost of the land titling project i.e. cost of the various land administration processes, were to be recovered from the identified project beneficiaries. To achieve this the beneficiaries were to be issued with leaseholds charged to SFT (*see figure 5.6*). Leaseholds and not titles were issued because the land use was non-agricultural, and the settlement falls within an urban area i.e. Mombasa City County (RoK 2016).

As at 27<sup>th</sup> April 2017, 3,033 titles had been issued, and a balance of 1,974 was remaining for phase 1 of the project, whose total was 5,007 titles. During the first few weeks, the Mombasa based SLAOs in charge of the land lease issuing would issue around 100 certificates per day. However, over time this daily issuance rate dropped to one or two per week, and even zero at times. The reasons for the reduced interest in collection were not known. However, the SLAOs (i.e., the land titles issuance officer) in charge of this process postulated the following reasons: 1) because of the fake title narrative and 2) the lack of money to pay the SFT (Int# 1023).

## **5.5 Discussion and Analysis**

This chapter described the official land administration system institutions and departments that participated in the Waitiki Farm land titling project. Further, it highlighted the difficulties that arose within the different land administration processes undertaken to regularise the settlers' land interests. The Kenyan land resettlement process was briefly introduced with a specific focus on the SLAOs involved. To recap, these were land and settlements officers, valuers, planners, surveyors, and registrars.

The chapter shows that in Kenya the organisational structure of the land administration system spans local, county, and national government. It also includes the NLC. This organisational

restructuring occurred after the 2010 constitutional change. The goal of these changes was to depoliticise and decentralise land administration. However, this transformation was not realised as the problems in establishing and abolishing County Land Management Boards (CLMBs) show. In addition, the reorganisation of the land administration structure may have further complicated the land governance system in Kenya. An understanding of this hybrid land governance context partly addresses research question 4 and thus contributes to achieving objective 2 (*this is further detailed in chapter 8*).

Waitiki Farm land titling was an ambitious project that appears to have been primarily driven by short-term legal-economic quick wins rather than the need to resolve a complex land tenure administration problem. The short-term legal economic quick wins approach is evident in the project's short delivery time span. Implicit in this approach was that regularising the Waitiki Farm residents' land interests would resolve the protracted land conflict that dates to 1997. The assumption was that this would reduce conflict and result in socio-economic development. However, in my view, while it is possible that the process will in the long-term lead to the envisaged socio-economic developments, and it is understandable why the national government opted for the quick-wins approach, I submit that not balancing legal-economic quick wins and long-term goals such as resolving underlying historical land injustices may have added a new complexity layer to the context. This finding further supports the argument in chapter 2 that top-down land administration approaches may further complicate the peri-urban settlement context.

The Waitiki Farm land titling project negotiated implementation is indicative of different power levels and how a political directive manifests into a technical process. At the highest level were the negotiations that involved the President, local leadership and Mr. Waitiki. These negotiations led to the Presidential directive that instructed the Ministry in charge of land administration to regularise the settler's land rights. The Presidential directive cascaded downwards to the ministry level leading to the constitution of an inter-ministerial team under the leadership of the Ministry in charge of land administration. It is at this level that: the negotiations were finalised, the overall project was coordinated, and inter-governmental negotiations were done, for example, on the issues relating to outstanding land rates and the issuance of a rate clearance certificate by the County government. On the ground, the project was implemented by the various professional SLAOs with the assistance of local leaders. In my view, this was another level of negotiation at

which access to the site was negotiated with the county government and settlers. In addition, beneficiaries' inclusion in the project was also negotiated through the determination of the land's perimeter boundary by the surveyors. The Waitiki Farm perimeter boundary survey determined land parcels that were within Waitiki and those that were not. This, in turn, determined the land titling beneficiaries. At a much lower level was the negotiation between the SLAOs and individual land settlers. In sum, the devolution of the directive from the presidential level to the community level is a good example of how a political directive manifests into a technical process that various official land administration organisational levels must interpret and implement. Further, how the policy was experienced on the ground was shaped by power dynamics at the different levels. An understanding of how power relations manifest in SLAOs work partly addresses research question 13 and thus contributes to achieving objective 3.

Waitiki Farm land resettlement project design was essentially a top-down land titling approach. However, the implementation in Waitiki Farm necessitated a collaborative approach. As a result, all the official land administration actors were initially involved in the project. These were the national government, county government and the NLC. During these initial stages of the project, the organisations worked collaboratively. However, as the project progressed, organisational conflicts arose, leading to an adversarial inter-governmental relationship. As a result, the county government of Mombasa withdrew from the project despite it occurring within its jurisdiction. Despite this national and county government conflict, the project progressed to its conclusion. In the author's analysis, the conflict between the two levels of government was political and not technical. A possible consequence of this conflict is that the land titling was not aligned with the existing county level land use planning. This may influence Waitiki Farm's functionality within Mombasa city. The finding on how the interrelationship between the various land governance actors involved in the project impacted the land titling programme in Waitiki Farm partly addresses research question 9 and thus contributes to achieving objective 2.

There was evidence of off-register transactions by Mr. Waitiki as several of his land subdivisions were not officially registered. These transactions complicated the determination of the actual land size and legal status of land ownership. Further, the land ownership rights, responsibilities and restrictions issued to the Waitiki Farm beneficiaries may motivate off-register transactions in the long-term. The requirement that a beneficiary may transfer the land parcels with the consent of the

county government was meant to provide flexibility to restrictive land transaction clauses and ensure that beneficiaries register their transactions. However, I speculate this requirement may lead to, (a) off-register transactions because the county government may not be accessible to the beneficiaries at the street-level, and (b) a powerful county level land transactions permission structure that if not designed with adequate checks and balances may further impoverish the local vulnerable groups.

As it relates to the study's Street Level Bureaucracy and Hybrid Governance theories development (i.e., research objectives 2 and 3) this chapter contributes to the hypotheses generated in Chapter 2 section 2.8 and articulated in chapters 6, 7, and 8. The findings in this chapter support propositions of two theories described in Chapter 2. These are Lipsky's street level bureaucracy theory and the social change model theory. The findings in this chapter generally support Lipsky's' street level bureaucracy theory hypothesis generated and described in section 2.8 that states: *street-level bureaucrats will develop flexible routines and practices that will enable them to provide services quickly and efficiently that are permitted within the framework of existing procedures and official mandates*. The land valuer's implementation of the land valuation process indicates that the projects' land valuers developed valuation practices to overcome the challenges they faced and deliver the land valuation process objectives within the project timeline and official mandate. Due to the general nature of Lipsky's Street Level Bureaucracy theory, the study further generated hypotheses that are specific to land tenure administration in informal settlements (*refer to section Chapter 2 section 2.8.2.3*).

The land titling project findings described in this chapter demonstrate internal competition, one of the elements of the dialectical approach. The dialectical approach is one of the key aspects of the social change model theory described in section 2.4. The internal competition element of the dialectical approach was observed in the political conflict that emerged between the two levels of government during the land titling project implementation. The outcome of this political conflict was the withdrawal of the county government from the project.

## **5.6 Conclusion: Synthesis and the way forward**

The Waitiki Farm land titling project shows the difficulty official land administration processes designed for stable situations have in a complex peri-urban situation like Waitiki Farm. This is

because in these situations, there are numerous interacting contextual factors experiencing substantial change. In particular, the project shows that official land administration systems anchored in law, regulations, and administrative procedures are more likely to be ineffective when they face rapidly changing socio-economic conditions, restrictive top-down project implementation, disruptive local politics, and localised post-conflict situations. Thus, while the project's non-adherence to the legal-technical process was to be expected given Waitiki Farms' complex history, practical improvements and policy innovations emerged. For example, to enable valuation, the land was valued as unoccupied vacant land. However, it was not clear whether these policy innovations were adapted to improve implementation in other projects. In sum, the project showed the need for flexible enabling legislation to facilitate the necessary demanded land policy innovations and technical outputs.

In conclusion, the Waitiki Farm land titling project indicates that regularising land rights in peri-urban areas, like Waitiki Farm, to create social and political stability is unlikely to strictly adhere to all legal requirements. As the chapter shows, it is more likely that such projects will include on the ground policy innovations by SLAOs to cater to project challenges and risks (*this is further detailed in chapter 7, sections 7.2.2.1, 7.2.3.1, and 7.2.5*). In addition, various official land administration actors and local level actors will be involved creating a project-based hybrid land governance arrangement. In the Waitiki Farm project, the hybrid land administration arrangement comprised official SLAOs and local leaders. The SLAOs used this arrangement to respond to local level complexities. However, on project completion, this arrangement was not improved on (*this is further detailed in chapter 8 section 8.2.6*).

This chapter's findings inform the study's findings and analysis in Chapters 6, 7 and 8, and provide additional context to Waitiki Farm History in Chapter 4. The next chapter discusses and analyses the Waitiki Farm residents' land tenure administration data.

# CHAPTER SIX: WAITIKI FARM RESIDENTS FINDINGS AND ANALYSIS

## 6.1 Introduction

This chapter presents and analyses the 57 Waitiki Farm resident interviews. Analysing the interview data, specifically addresses objectives 2 and 3, namely: (2) to develop a hybrid governance theory and (3) to develop a street level bureaucracy theory, both for *in situ* regularised informal settlements based on the Waitiki case, respectively. The theory developed in this chapter is in the form of a set of hypotheses tested under the informal settlement conditions as they exist in Waitiki.

The chapter addresses objective 2 by partly addressing the following research questions:

4. Who are the key land governance actors in Waitiki?
5. Who are the powerful, and who are the vulnerable actors?
6. Who administers land in Waitiki Farm?
7. How is land tenure administration undertaken, and more specifically, what land tenure administration services do the different actors provide?
8. What strategies are available to the powerful and the vulnerable to secure their land tenure and to secure land transactions, and why do they adopt particular strategies?
9. How do the different land tenure administration systems interrelate, and what are the noticeable land tenure administration outcomes of these interrelations? What are the available participatory development institutional platforms?
10. How did the land tenure regularization process impact the different institutions and their related land tenure administration activities?

To address objective 3, the chapter partly addresses the following research question:

12. Under what conditions do SLAOs deliver land administration services in peri-urban SSA/Waitiki Farm, and what strategies do they employ to deliver land administration services?

Sections 6.2 to 6.11 report the results of the 57 Waitiki Farm resident interviews (refer to appendix A for additional and more detailed resident interview results). These interviews explored residents' acquisition, use and disposition of land strategies, as well as their life histories. In addition,

participant strategies to secure land ownership, if this was challenged, were examined. Further, the residents identified the organisations, individuals, and institutions they would approach in case they needed land tenure and/or administration help. Additionally, land sales, inheritance, and evictions were analysed to examine residents' knowledge of local land transactions and possible problems related to them. Following this, the street level bureaucracy and hybrid governance hypotheses developed in section 2.8.2.3 have been used to guide the study's theory development objectives and were tested against the interview data. Further hypotheses that emerged from the Waitiki Farm data were developed to inform the study's substantive level theory development, i.e., a theory that applies to the Waitiki case, which may or may not necessarily be generalisable across similar cases. Finally, section 6.14 presents the chapter's social change analysis, summary, and conclusion.

## **6.2 Migration Patterns and Land Acquisition**

This section explores the following research questions with the 57 participants: where did you live prior to moving to Waitiki Farm and why did you move to Waitiki Farm? How did you acquire your land? If you purchased, from whom did you buy? It is important to consider these questions because an understanding of the resident's life histories as it relates to in-migration and land acquisition should improve the contextual understanding of Waitiki Farm settlement establishment.

### **6.2.1 Migration Results**

When asked from where they had migrated, 42 (74%) of the 57 participants had migrated from settlements within Mombasa county (see Figure 1.2) – one from another settlement outside Mombasa County but within the Coast region, and six from settlements outside Mombasa county and Coast region. Eight declined to answer the question. This suggests that most of the participants had lived within Mombasa or the Coast region prior to settling in Waitiki Farm, Likoni, Mombasa. As a result, it is likely that they were familiar with local land struggles which had been articulated and organised around historical land injustices or ancestral land claims.

When asked why they had moved to Waitiki Farm, 39 (68%) of the 57 participants said it was because the land was available, and accessible, and land prices were affordable. Other reasons

given were the presence of family or friends (four participants) and affordable rent (two participants who were tenants). This suggests that the main driving factor for Waitiki farm residents to settle there was availability and affordability of land and low-rent housing.. Eleven respondents declined to respond to the direct question during the semi-structured interview and noted that they had no comment on the issue explored in this section<sup>11</sup>.

### ***6.2.1.1 Discussion and Analysis***

The life history data related to in-migration triangulate with the Waitiki Farm settlement establishment history described in section 4.5.2.1 and provide further evidence to support the claim that the in-migrants bought land on the settlement from the land invaders who had grabbed the land from Mr. Waitiki. This is relevant because it adds to the contextual description of Waitiki Farm presented in chapters 4 and 5.

### **6.2.2 Land Acquisition Mechanisms Investigation Results**

Forty-six (81%) of the 57 respondents had purchased their land, while nine (16%) invaded the land with an organised group. Two respondents did not answer the question.

Of those who purchased their land, the lowest quoted purchase price was Kshs. 15,000 (app. \$195.16 Cdn), while the highest was Kshs. 160,000 (app. \$2,081.70 Cdn). The land prices were based on location (proximity to the main tarmac road) and the date of purchase since land prices were increasing with time as demand for land grew.

Thirty-four residents (60%) purchased their land from local elders, while 11 (19%) bought their land parcels from local youths. Further, some purchased from family members (Int# 1104, 1108). Participant #1150 purchased his land parcel from friends who had grabbed the land during the initial invasion. Some bought their land parcels from landholders who were unable to develop their lands and sold as a result of financial distress, at times with improvements in place (Int# 1100, 1124). In addition, some of the settlers, such as participant #1101, were caretakers for family or other landholders who lived in a foreign country. Participant #1115 is a landholder who was abroad

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<sup>11</sup> As used in this chapter this means residents did not comment or answer the direct question asked during the semi-structured interviews while it is not clear why they chose not to answer I speculate they may have done so for a number of reasons which may include: one, they did not have anything to say about the issues being explored, two they did not trust the researcher to truly express their views, and three they were simply in a hurry and thus did not want to address every issue explored in the semi-structured interviews.

during the land titling exercise. Her caretaker friend was then registered as the owner. At the time of the fieldwork, she was in the process of acquiring ownership from her friend through formal transfer.

Parcels boundaries were defined using traditional Swahili houses room dimensions<sup>12</sup> (Int# 1103,1111). According to this tradition, the house foundations mark both land and house boundaries (Int# 1112). Figure 6.1 below shows examples of traditional Swahili houses in Waitiki. By claiming ownership of the land, a seller could claim the intervening land between houses as their own (Int# 1112). In addition, the sellers claimed that they had to be involved in subsequent land development, e.g., digging a waste pit (Int# 1113) (*see section 6.5 for further details*).



**Figure 6.1: Traditional Swahili houses in Waitiki (Photo credit D. Muthama)**

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<sup>12</sup> The Swahili generally refers to a community that originated from the intermarriage between Arabs and indigenous Bantu communities living along the Coast (Arts and Culture 2020). This community speaks Swahili which is also Kenya’s national language. As used in section 6.2.2 traditional Swahili house refers to dwellings that are unique to the Coast region and which are constructed with coral “limestone blocks for walls, either gci (galvanised corrugated iron) or “makuti” thatch (coconut palm leaves) for the roof.” (Yahya and Swazuri 2007 p.21). It is important to note that the design of individual Swahili houses may be different from one Coast region to the next. These houses accommodate single or multiple families (Yahya and Swazuri 2007).

### ***6.2.2.1 Discussion and Analysis***

The interviews suggest that the main actors involved in land transactions prior to titling were local elders and youths who had invaded the farm when it was owned by Mr Waitiki. Most of the current land settlers purchased their land parcels from these two groups. It is also notable that some of the respondents accessed land through their familial relations to the main land transaction actors or on the basis of personal relationships. Further, some of the purchasers bought the land that the sellers had repossessed from landholders who had not developed it. The evidence as to who determined land rights is also instructive. The power to allocate land rights and determine boundaries suggests the purchasers were vulnerable. The need to protect their land transactions and tenure and how this was done is discussed further in section 6.3 below. Furthermore, there was no evidence that the purchasers consulted official systems after obtaining the land, suggesting the active unofficial land market was the recognised dominant system of land rights allocation and exchange before titling (see section 4.5.2).

The findings in section 6.2.2 further support the Waitiki Farm establishment history described in section 4.5.2.1. It provides additional evidence to support two claims: 1) the majority of the current residents are land purchasers, not indigenous settlers, and 2) local elders and youths were the main land market agents. More specifically, it partly addresses research questions 4, 5 and 6 (see section 6.1 and section 1.5) as it indicates who the main land transaction actors were, who administered and controlled land use in Waitiki Farm and who were the powerful versus vulnerable actors prior to the land titling exercise.

## **6.3 Defending Land Transaction and Tenure Strategies**

This section discusses the strategies that residents intended to use to defend their land transactions and land tenure. Section 6.3.1 on land transaction securing strategies discusses the strategies the residents used to secure their land transactions after purchasing from local elders and youths prior to the land titling exercise described in Chapter 5. Section 6.3.2 discusses the land tenure securing strategies the residents identified if another person claimed their land or produced a title claiming ownership of their land.

### **6.3.1 Land Transactions Securing Strategies Investigation Results**

According to 23 (40%) of the 57 respondents, the primary land transactions evidence used to secure these transactions was a written sale agreement (i.e. a personal contract as opposed to a title which gives effect to real rights). The other 34 respondents did not answer this question. To better understand their land transaction securing strategies, respondents were asked who witnessed their land transactions. Forty-six participants who responded to this question noted witnesses to these transactions included: local village elders (48%), witnesses of each of the two transacting parties (44%), Chief or Assistant Chief (7%), and a lawyer (2%). Eleven respondents did not answer the land transactions witnessing question during the semi-structured interview and noted that they had no comment on the same. Generally, the transaction parties used mechanisms or witnesses they trust (Int# 1110). Of note is the participation by local administrative officials (Chiefs and Assistant Chiefs), and an Advocate (lawyer). During the purchase, the buyer paid local leaders a facilitation fee to complete the transaction (Int# 1140). For example, participant #1153 paid the purchase price and a facilitation fee of Kshs. 500 (\$6.51 Cdn) to the land sellers.

Prior to the land titling exercise (*discussed in section 5.4.2*), residents indicated that they would have used the following strategies to defend their land transactions.

- Put up foundation only (Int# 1117, 1120);
- Build on half and leave the rest as bare land or bare land with foundations (Int# 1131, 1143);
- Make regular visits to the land and use local youth groups to defend the bare land (Int# 1139);
- Sell part of the land to finance the development of the remainder and, in this way, ensure their land is not bare (Int# 1113);
- Quickly build a house on the land parcel (Int# 1117, 1119, 1144). Participant #1116 noted that: “you would be asked to build immediately to avoid your land being sold” by “greedy land sellers who would resell if they saw that you had not put up something on the land.” (Int# 1151).

#### ***6.3.1.1 Discussion and Analysis***

There was no evidence that the land transaction processes done prior to the land titling exercise interacted with the official systems, with the exception of local administrators (i.e., Chiefs and Assistant Chiefs) and the advocate who witnessed these transactions. During this period, written

sale agreements were used to secure land transactions. These agreements were witnessed by local actors that the buyers trusted, for example, local village elders, the buyers' and sellers' witnesses, local administrators, e.g., Chief and Assistant Chief, and lawyers. This land transaction securing strategy provided weak land tenure security for non-indigenous residents because of multiple land sales. Thus, these residents used additional strategies such as the erection of foundations on the land parcel. The findings in section 6.3.1 further support the Waitiki Farm establishment history described in section 4.5.2.1 by providing additional evidence to support the claim that local elders, youths, and administrators (Chiefs and Assistant Chiefs) witnessed land transactions.

### **6.3.2 Land Tenure Securing Strategies Investigation Results**

When asked how they would defend their land interest against another claimant, 17 (30%) of the 57 respondents said they would refuse to leave and therefore would fight for their land. This they would do by asserting their ownership, resisting eviction through force and physically fighting the claimant, and interrogating the claimant's interests. While some of the respondents, such as participant #1123, noted they were fearful of being evicted through such claims, others noted the likelihood of that happening was close to zero because of Waitiki Farm's history of land-related conflict (Int# 1135, 1137, 1150). Participants #1134 and #1141 hoped that the fact that they were willing to physically fight for their land interests would discourage such claims.

More than a fifth, 12 (21%) of the 57 respondents said they would use local mechanisms such as local elders, youths, or social networks to defend their interests. Nine (15%) respondents noted they would consult those who had sold the land to them, while eight (13%) would use official procedures and mechanisms such as visiting local land administration offices and following legal procedures. Those who opted for the official mechanisms added they were aware that it was possible for these mechanisms to be manipulated (Int# 1112). For example, participant #1143 noted that based on her land buying experience, wealthy land buyers are able to corrupt procedures. She gave the example of her land parcel, which she claimed was divided into two, sold, and registered without her knowledge by local administrators (i.e., Chief) (Int# 1143). Finally, six (11%) of the 57 respondents said they would use various forms of evidence, such as developments on the land, to defend their interests, while five respondents declined to answer the direct question

during the semi-structured interview and noted that they had no comment on the issue explored in this section.

*What would you do if this person produced a title deed that indicates the land is theirs?*

When asked what they would do if someone produced a title deed that indicates the land is theirs, twenty-two (38.24%) of the 57 respondents said they would use official mechanisms. They would use tactics that include: going to court, reporting to the local administration office, reporting to the Lands Administration Office, reporting to the county government, following the official legal procedure and going to a lawyer. This strategy is expressed in this quote: “I would take the legal means and report them to the appropriate offices” (Int# 1150).

The other key strategy was opting to resist and fight for their land. This option was noted by thirteen (24%) of the 57 respondents, ranging from those who were willing to go to any lengths to protect their land to those who, despite initial reservations, would accept compensation. An example of the latter is participant #1153, who stated: “How would that happen and yet I have lived here for long and have social links here. If that were to happen, they would have to think about how to compensate me.” In addition to this were those who were indifferent and unwilling to do anything. These respondents believed that such a claim would be an example of official corruption where local elites manipulate land administration systems in collaboration with officials. As participant #1100 noted: “I believe such acquisition of this land title by another person is an example of land administration systems manipulation by the powerful”. The respondents may have also been indifferent because of their prior experiences, as participant #1152 explained:

“...I know of a case of a person who had bought land and put up a house foundation. After he left, the foundation was demolished and the land was sold, constructed (upon) and occupied. He went around looking for his land, but he could not find it. When he did not find it, he left having lost his investment.” (Int# 1152)

In addition to these strategies, three respondents opted for local mechanisms such as local elders and youths, and two respondents opted for going back to those landowners who sold to them to report the new claimant. Seventeen respondents declined to answer this question.

### ***6.3.2.1 Discussion and Analysis***

In the two scenarios presented to them, the respondents referred to several forms of evidence that they would use as a strategy to defend or prove their ownership. However, respondents would choose from a number of strategies. In the first scenario, where their tenure is challenged but the claimant does not produce a title or an official legal instrument, the respondents said they would use the following strategies to protect their land interests (from the most preferred to the least preferred): *refuse to leave and fight; use local mechanisms such as local elders, youths; going back to the start; use official mechanisms; use various forms of local evidence*. In the second scenario, where their land ownership would be threatened or challenged through the production of a title, the respondents said they would use the following as strategies (from the most preferred to the least preferred): *use official mechanisms; refuse to leave and fight; use local mechanisms; go back to the start; use various forms of local evidence*. The main difference between the two scenarios was the preference for the use of official mechanisms.

Analysing the difference in the two scenarios, in the first scenario, the residents were willing to first deploy local mechanisms perhaps because, in their view, the threat to their land interest was unofficial and not an official legal land instrument such as a Certificate of Title. As a result, the first scenario threat, unlike the second, could be effectively countered by the first three strategies and their largely local tactics. However, when the level of threat increased to the production of a Certificate of Title, the majority of respondents preferred the use of official mechanisms. This suggests that they were aware of the threat posed to their interests by the production of an official instrument such as a title – this led to the use of official land administration procedures in defence.

The above discussion informs the study's second objective, which is to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case. More specifically, it partly addresses research question 8 (what strategies are available to the powerful and to the vulnerable to secure their land tenure and secure land transactions, and why do they adopt particular strategies?) as the strategies the residents would use include both official and unofficial components, and so there is recognition of the hybrid governance structures. In addition, section 6.3.1 further supports the findings discussed in section 4.5.2 on land sales and the land invaders' entrepreneurial behaviour.

## 6.4 Land-related Disputes

This section describes the major land-related disputes or conflicts witnessed by the respondents in Waitiki Farm<sup>13</sup>. An understanding of land-related disputes is important because it indicates the major causes of such disputes and the mechanisms available for resolving the disputes. The section contributes to achieving research objective 2 by providing additional context for understanding hybrid land governance in Waitiki Farm.

### 6.4.1 Land-related Disputes Investigation Results

When asked whether they had witnessed land-related disputes since the land titling project, 25 (44%) of the 57 respondents said they had not, and 21 (37%) respondents said they had. Eleven (19%) respondents declined to answer the direct question on whether they had witnessed land-related disputes during the semi-structured interview and noted that they had no comment on the same. The 21 respondents identified the following types of land disputes.

1. Multiple land sales fraud mentioned by 13 respondents
2. Boundary disputes mentioned by three respondents
3. Caretakers claiming land parcels that are owned by absentee landowners were mentioned by one respondent.

The other four respondents mentioned disputes that did not constitute land-related disputes (i.e., domestic disputes, noise nuisance, and bureaucratic corruption), and as a result, they were not included in the above count.

The most common type of land dispute was contested land ownership caused by multiple land sales frauds that had occurred prior to the land titling project. This type of fraud was common before the land titling project and was mainly caused by land sellers whom participant #1151 labelled “greedy”. These land sellers would, for example, resell undeveloped land. Thus, the

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<sup>13</sup> A land-related dispute is understood to refer to competing or “conflicting claims to rights in land by two or more parties focused on particular piece of land, which can be addressed within the existing” dispute resolution mechanisms (Bruce 2013 p.1). When land-related disputes intensify in peri-urban settlements, they may develop into land conflicts (Barry *et al.* 2007) or violence (Kombe 2010) that the existing dispute resolution mechanisms are unable to adjudicate, “leading to wider social unrest” and related urban violence (Kombe 2010; Lombard and Rakodi 2016 p.2688) (*further discussed in section 2.6.4*).

commonly cited strategy of putting up some form of building / visible construction immediately after buying land to prevent this (*refer to section 6.3.1 above*).

The multiple land sales disputes were mediated by local elders. To resolve this type of dispute, the local leaders would: “ask for; 1. repayment of the amount to the buyer, 2. if not possible, provision of another parcel of land, 3. if no resolution, go to the local administration (i.e., Chief or Assistant Chief)” (Int# 1117). This dispute resolution process is exemplified below:

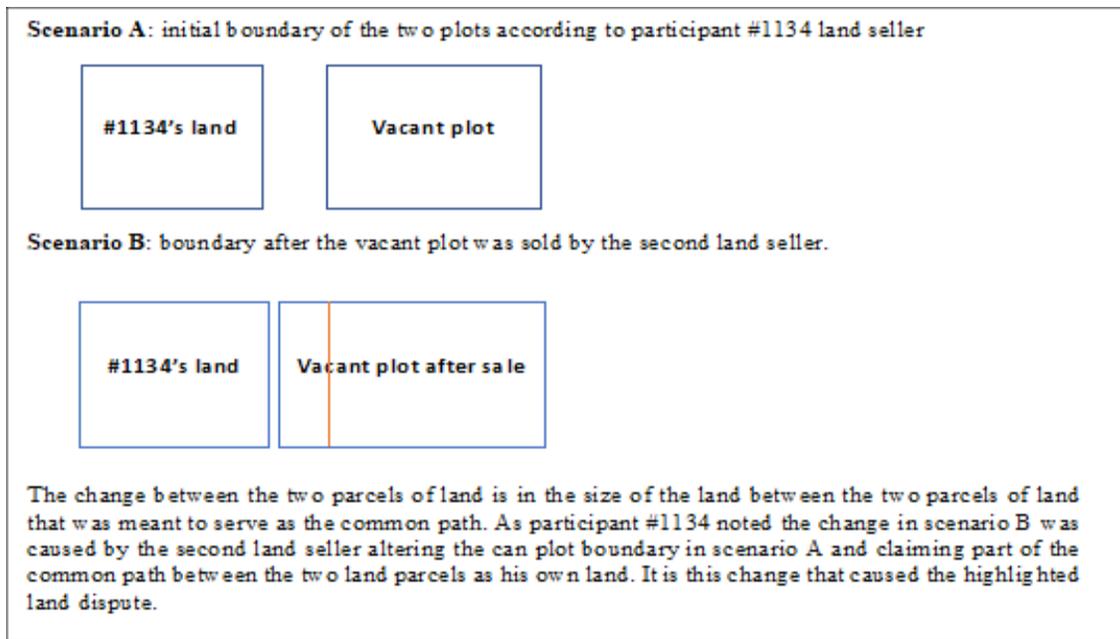
“For example, when we have double sale cases where a person **Y** bought the plot 5 years ago and built it up to foundation level, later on, a person **X** is sold the same plot by the local youth groups. When person **Y** complains, it comes to me. We first go to the sale agreement that used to be signed back then, and that used to state: I person **W** has bought land from person **R** and **M** for this amount, on this date **xx/x/xx**. That is the agreement we ask for and inspect the particulars, especially the date. If we are unable to resolve it, we take it to the Chief to resolve. Most [resolutions] conclude that one of them should be compensated, that is, money or another parcel of land.” (Int# 1140).

Multiple land sales disputes also occurred during the land titling process. The project’s dispute resolution committee (officials and local elders) was used to resolve these types of disputes (*refer to section 5.4.2.6*). However, at the time of the fieldwork, a number of disputes were yet to be resolved (Int# 1131). It is also important to note that cases of multiple land sales have reduced significantly since the land titling project (Int# 1139). This suggests that the official land titling reduced fraudulent land sales practices.

The other type of land dispute identified was boundary disputes. An example of this type of boundary dispute is captured below:

“Yes, especially on boundary disputes, for example: the person who sold me my plot and the person who sold my neighbour his plot are two different people, and you will find that during the sale my seller may have told me to leave some space in between the plots, for access roads, when the other seller comes to sell the land, you find that they don’t consult those on the ground and end up eating into the space left for access roads and other facilities. In my case, I am waiting for my neighbour to start building so that I can ask for a sitting with the elders, to mediate on this issue [because] they said they were to block the access road despite my protest against that.” (Int# 1134)

The above case may be expressed as shown in figure 6.2 on the next page.



**Figure 6.2: Boundary dispute scenario**

Lastly, on caretakers, participant #1118 added that there were cases of land-related disputes because of caretakers selling land parcels that belonged to absentee landowners.

#### ***6.4.1.1 Discussion and Analysis***

The interviews indicate that multiple land sales, boundary disputes, and caretakers claiming absentee landowners' land parcels are the prevailing types of land-related disputes in Waitiki. Further, it appears that the local elders were and are still important in the resolution of these disputes. Evident from the residents' interviews is that incidences of land disputes due to cases of multiple land sales have reduced but not completely stopped since the land titling project. While multiple land sales are to be expected in peri-urban settlements, as discussed in sections 2.6.1 and 2.6.4, it also indicates that despite formalising their land rights, landowners are still vulnerable to local opportunists willing to manipulate rules to their benefit (*for further details on fraudulent multiple land sales by local youths see section 4.5.3.2*).

Based on the above findings, land boundary disputes due to land sellers claiming open spaces meant for public use e.g., access roads, have occurred. I speculate that the occurrence of these types of disputes is likely to continue as opportunistic land sellers grab unclaimed open public spaces between houses and/or land parcels for their own financial gain. Conditions supporting this

hypothesis include the lack of on the ground beacons to define land parcels boundaries and the lack of an enforceable Waitiki land use or development plan (*for further details see section 5.4.2.3 and 5.4.2.4 respectively*). Given these two factors, and the lack of bare land to sell, it is likely that boundary disputes between land buyers due to land sellers' opportunistic behaviour will persist. These findings support the literature findings in section 2.6.4 which state that land-related disputes in peri-urban settlements occur due multiple land sales.

The above discussion informs the study's second objective which is to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case. More specifically it partly addresses research questions 5 as the findings suggest that prior to the land titling project, land purchasers were vulnerable to multiple land sales practices conducted by opportunistic land sellers.

## **6.5 Jara Payments**

This section discusses *jara* payments that the residents paid to local youths to use their land. *Jara* payments refer to local youths' charges levied on land buyers as they developed their improvements on the land before the land titling exercise. In this study, the payments were used as an indicator of the power of the local youths and the strength of a land buyer's tenure security. The discussion under this section provides additional contextual evidence to address research questions 5 (who are the powerful and who are the vulnerable actors?) and 6 (who administers land in Waitiki Farm?) and achieve research objective 2.

### **6.5.1 Jara Payments Investigation Results**

When asked whether they had paid *jara*, 29 (51%) of the 57 respondents said yes while 15 (26%) respondents said no. Thirteen (23%) respondents declined to answer the direct question whether they had paid during the semi-structured interview and noted that they had no comment on the same. Before their land rights were regularised the respondents would pay an unofficial local land fee that they referred to as *jara*. Local youths levied this unofficial local fee, which took the form of cash (Int# 1126) from those who bought land from them, specifically from land purchasers who were undertaking construction or house improvements on their parcels of land (Int# 1130). Residents who opposed the administration of these fees, for example, participant #1134, who

contested the local youth's legitimacy to administer the fee on the basis that they did not own the land, would be harassed regularly, have their construction stopped, and in some cases, demolished (Int# 1113, 1117, 1118, 1119, 1120). The *jara* payment experience of three participants is recounted below:

"I was charged, for example when I was putting up my roof, I was charged Kshs. 1,000. They would come as a group and tell me it was a must, and I would have to because everybody had done so. We also had to guard our lands regularly to ensure somebody else was not allocated the parcel of land or building on your foundation. I saw people who this happened to, [they] lost everything [including] the foundation [and were] not compensated." (Int# 1133)

"I was asked to pay during my first construction, and they would come around 20 local youths. Without paying them you would not be able to build. At that point I did not know the local elders. We would give them cash handouts." (Int# 1144)

"When I bought the land, there was a group of young men who came to ask for money when I started building. They would also ask for cash if you dug a pit on the plot and as you continued to build. If you said no, they would say they will stone your workers. I paid them only when building and digging my outside pit." (Int# 1152)

Some of the residents would opt to pay to stop the harassments as participants #1124 and #1143 noted below:

"I paid *jara* to stop the local youth's nuisance." (Int# 1124)

"I would pay and continue with my construction." (Int# 1143)

Local indigenous residents and those who participated in the original land grab were not charged (Int# 1118, 1119, 1120). The experiences of participants #1128, #1129 and #1131 serve as illustrative cases:

"I did not pay because I was part of the land grabbing group." (Int# 1128)

"I did not pay because those that were asking for that *jara* were people who I knew and who had asked me to move in." (Int# 1129)

"I did not pay *jara* because of my social links. When digging my pit latrine, I dug on my side of the plot I was therefore not charged." (Int# 1131)

When asked why *jara* was imposed, the respondents made the following claims:

- a) The local youths claimed the land on an ancestral land premise and the purchasers were merely secondary land rights owners (Int# 1142). Therefore, as the primary land rights

owners any additional improvements on the land needed to be approved and costed by them.

- b) The local youths were merely entrepreneurs seeking to benefit from the local level land administration system. This is aptly captured in the following quote: “We were mainly asking for this amount to enable us as the youth get something small to eat, it was a means for us to feed ourselves.” (Int# 1130)
- c) Another possible explanation for this behaviour was high unemployment among local youths. Participant #1136 opined that the practice may have arisen because “the local youths had no jobs” (Int# 1136)
- d) The local youths charged *jara* because they provided local security services as explained below:

“There were groups of youth who offered community services, such as security. One such group was called ‘Sungu-sungu’ and it emerged because of security deterioration in the area. The group disbanded but the young men continued to provide local security. When they started, we did not pay them, but it was later decreed that the group be paid, and we used to pay around Kshs. 200 per household. At the moment, we are not paying as the government said they are not a legal group. During the Sungu-sungu group’s tenure, [personal] security improved a lot.” (Int# 1101)

The evidence suggests that all these may be possible explanations for the administration of *jara*. Barry (pers. comm. 2020) made similar observations with the administration of digging fees in Ghana and he had heard anecdotes of this in Nigeria where they were referred to as the “Area Boys”.

The residents who were not charged the *jara* fee supported its administration and claimed it was socially legitimate. One of these residents’ explanation is captured below:

“this is a must and I see nothing wrong with it because it is our young men who are jobless who are doing this, and they need some upkeep. It is also not unique to the Coast because in Nairobi there are groups such as Mungiki [*an outlawed group in Kenya*] who ask for cash [*illegal taxation*] at matatu stages (*an area reserved for parking and picking matatus* (minibus taxi) *and buses*), that is what is also happening here. It is not wrong because if you are able e.g., by building, help the young men out as they will also serve as your security. The payment helps maintain the young men and prevent them from engaging in other [illegal] businesses [...] I am grateful for they fought for our parcels of land and protected it from being reclaimed by Mr. Waitiki.” (Int# 1149)

The above suggests that the *jara* practice was selective in that it was not applied equally. Though unequal it was deemed socially legitimate by those who did not have to pay.

One of the strategies adapted by non-indigenes to avoid paying *jara* and the frequent non-payment harassment was to get into a local leadership position. This, according to participant #1147, was the only way she and other non-indigenes would build their local power to protect themselves.

The administration<sup>14</sup> of *jara* has diminished since the formal land titling project was undertaken (Int# 1127, 1133, 1137, 1145, 1147, 1149, 1153). This is because the local youth groups are not as powerful as they were in the earlier stages of the settlement formation. In addition, the residents were educated by land titling project SLAOs, local administrators (such as Chief, Assistant Chief), and local leaders on the illegal nature of *jara* payments. In these education and awareness sessions, the residents (land titling project beneficiaries) were asked to stop paying *jara* (Int# 1145, 1146, 1147). The residents were, however, cognisant of the constant nuisance from the local youths that this decision will bring given that the local youths still demand *jara* payments from them. Residents who opted to continue paying *jara* after the land titling project, such as participants #1137, #1155 and #1156, did so because they feared what might happen.

#### ***6.5.1.1 Discussion and Analysis***

*Jara* was administered through coercion and intimidation of in-migrants who bought land parcels from the land invaders. The in-migrants had to pay *jara* because non-payment meant their land would be under threat from the local youths who would either demolish ongoing construction, stall projects, or reclaim and resell it to more agreeable buyers.

Paying *jara* therefore provided a weak form of tenure security which was reinforced by developments on the land. As a result, prior to the land titling project tenure security on Waitiki Farm settlement was premised on: paying *jara*, being in good standing with the local elders and youths, ethnic indigeneity, and one's leadership position in the community. This meant that indigenes, and those who were known to the local elders or youths or were related to them, had a stronger claim to land when compared to non-indigene settlers who were not related to the local youths and elders. Further, the non-indigenes who did not pay the local youths risked losing their land. Thus, in Waitiki Farm payment of *jara* provided support for tenure security to the non-

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<sup>14</sup> The term administration is used loosely and is in no way meant to confer official recognition to the *jara* practice.

indigenes. An additional strategy that in-migrants used was to build their local power by being appointed to leadership positions.

The above discussion informs the study's objective 2, which is to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case as it shows that jara payments and the actors who administered it were part of the hybrid governance arrangement in the past. More specifically it partly addresses research questions 5 and 6 as it indicates who administered and controlled land use in Waitiki Farm and who were the powerful versus vulnerable actors prior to the land titling exercise. In addition, these findings provide additional evidence to improve the study's understanding of *jara* payments as discussed in section 4.5.3.1.

## **6.6 Trust in the Official SLAOs**

This section discusses the residents' perception of SLAOs trustworthiness, which is indicative of whether they would approach SLAOs to resolve their land tenure administration related issues or another institution in the hybrid governance arrangements. An understanding of the residents' level of trust in SLAOs is important because it indicates one of the conditions under which SLAOs operate in Waitiki Farm. This contributes to achieving research objective 3 i.e., to develop a street level bureaucracy theory for *in situ* regularised informal settlements based on the Waitiki case.

### **6.6.1 Trust in the Official SLAOs Results**

When asked whether they trusted officials, i.e., SLAOs, 48 (84%) of the 57 respondents, said no, while eight (14%) respondents, said yes. One respondent did not answer the direct question during the semi-structured interview and noted that they had no comment on the trust in the official SLAOs issue explored in this section. Respondents who did not trust the SLAOs gave the following reasons.

- a) The residents claimed that SLAOs do not provide adequate and relevant information to them to aid in their decision making. For example, participant #1101 noted that despite visiting the Mombasa CBD based national government land administration offices several times, the SLAOs had not been helpful as to why her Certificate of Lease had yet to be issued.

- b) Ethnic [tribe] based bias in service delivery. One participant, #1106, noted that his experience has been such that service delivery is ethnic based. He noted: “if you go to the [SLAOs] they tell you are not from here, they serve you based on your tribe” (Int# 1106).
- c) Corruption and corrupt practices by SLAOs and local elites. Some of the residents noted that they do not trust the official systems, i.e., national and county government SLAOs, because in their view they are corrupt and manipulated by local elites. For example, participant #1107 noted: ". I ..... do not trust the administrators because they are easily manipulated by those that have money to the detriment of those without." Participant #1118 added that she believed that to be served by SLAOs one “.... must part with some cash and since we do not have any we have not done it, ....." (Int# 1118). Though I could not identify specific cases of bureaucratic corruption it was evident that ‘*the SLAOs are corrupt view*’ impacted how a significant proportion of residents perceived official land administration services delivery by local SLAOs.
- d) Misinformation and misunderstanding of land administration instruments. Some of the residents noted that they do not trust the official systems and SLAOs because of the rampant misinformation regarding the official Certificates of Lease at the local level. The remarks below aptly capture this;
  - "To be honest when I have been following up on my lease document, I have heard different narratives with some of the beneficiaries saying they are yet to get theirs, others saying they have gotten theirs, and others telling you they are fake. I honestly do not know which is fake or original because I am yet to receive mine..." (Int# 1101)
  - "The reason is because I still do not have a title, I have a Certificate of Lease which I have not fully paid up for and which is not equal to a title." (Int# 1104)

Eight participants, representing 14% of the respondents, trusted official SLAOs because of their experience of prior service delivery from them (Int# 1105, 1108), and they trusted the official documents issued by the two levels of government sufficiently (Int# 1102).

#### ***6.6.1.1 Discussion and Analysis***

In general, most of the respondents (84%) indicated they did not trust SLAOs. This mistrust was based on allegations of corruption, loss of faith in the SLAOs’ ability or willingness to provide relevant information, perceived ethnic bias in service delivery, and prevalence of misinformation regarding official documents. Those who indicated they trusted the SLAOs based their views on prior service delivery experience with SLAOs and their trust in the official documents.

The evidence in this section informs the study’s objective 3, more specifically it partly addresses research question 12 which examines the conditions under which SLAOs deliver land

administration services in Waitiki Farm. In addition, it informs objective 2, i.e., to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case, because in my view the low levels of trust in SLAOs may lead to off-register land transactions leading to the persistence of unofficial actors in land administration in Waitiki Farm. The latter, as noted in Chapter 2 and in the discussion above, indicates that a hybrid governance system continues to exist, in part because of a lack of trust in officials.

The residents' interviews indicate that there was a local political misinformation campaign against the credibility of the Certificate Lease issued by the National government. Given these claims are untrue, in my view, the local political leaders spread misinformation on the credibility of the Certificates of Lease to maintain their local political structure i.e., status quo.

## **6.7 Awareness of Local Institutions and Organisations**

This section discusses the respondents' awareness of local organisations within the settlement that they would or could approach if they needed help. It is an important indicator of whether the residents will draw on unofficial organisations to deal with their land-related issues. As a result, the section indicates the available land governance actors. This partly addresses research question 4, i.e. "who are the key land governance actors in Waitiki?", and contributes to achieving research objective 2, i.e., to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case.

### **6.7.1 Awareness of Local Institutions and Organisations Investigation Results**

When asked to name a local organisation that they would approach to deal with their land-related issues only seven (12%) of the 57 respondents, were able to do this while 50 (88%) respondents were not able to name one at all. Of the seven, four respondents mentioned local youth waste management groups, Likoni Community Development Programme (LICODEP<sup>15</sup>), Kituo Cha Sheria<sup>16</sup>, and Human Rights Organisations (*refer to Chapter 8 for further details on these organisations*). The other three respondents identified popular local land actors (land rights activists), local administrators (such as a Chief), and local elders.

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<sup>15</sup> LICODEP is a Likoni based CBO constituted by various local organisations.

<sup>16</sup> A Mombasa based NGO that provides legal aid. A loose translation of the name to English is 'A station of Law'.

The interviews indicate a low-level of awareness of local organisations. However, it is important to note that though the respondents did not know the specific local organisations they would approach, if need arose and/or their circumstances changed, they indicated that they were willing to identify and use local organisations. For example, participant #1107 noted: “I know there are human rights organizations that fight for our rights but at the moment I don’t know their names but if need be, I will look into them.”

#### ***6.7.1.1 Discussion and Analysis***

The above evidence shows that a majority of the residents were not aware of local institutions and organisations that they may approach to resolve their land issues. I speculate that this may be due to two reasons: one, the residents have not in the past required the services of the local organisations or interacted with them at any level. Two, most of the active local organisations that some of the residents were able to identify are located in Mombasa CBD, and since they have dealt with local elders on land matters in the past, they are not aware of these organisations. In addition, the evidence in this section informs the study’s objective 2 and more specifically partly addresses research question 4 which examines land governance actors in Waitiki Farm.

### **6.8 Land Inheritance**

This section discusses the residents’ views on who will inherit their land and the mechanisms through which these beliefs should be expressed. Succession is an important consideration because it may indicate the likelihood of unregistered land inheritance transactions. If unregistered secondary land transactions occur, then the land tenure administration system’s record of land rights and rights holders will be inaccurate and lead to a cloudy title, or specifically a cloudy Certificate of Lease.

#### **6.8.1 Results of the Heirs Investigation and Family title**

When asked who will inherit their land 23 (40%) of the 57 respondents, said their children. This was followed by 16 (28%) respondents, who said their spouse or partner and children while three (5%) said their extended family. Also noteworthy was that 10 (18%) respondents had not yet decided, and five respondents declined to answer the direct question during the semi-structured

interview and noted that they had no comment on who should inherit their land. Those who had not decided gave the following reasons:

- It is a cultural taboo to discuss death (Int# 1110).
- The discussion will cause conflict in the family (Int# 1116, 1121), especially for polygamous families such as relevant to participant #1128. Thus, the preference is to leave it to religious practices and guidelines (Int# 1116, 1132) or the extended family (Int# 1105).

It is also important to note that none of the respondents was an heir to the land that they occupied. Only participants #1100 and #1109 could identify heirs who had inherited property in their neighbourhood.

The interviews indicated that in the early stages of the settlement (after the land invasion), when land supply was adequate, the Digo male landowners followed the Digo matrilineal practice of giving land to their sister's sons. As participant #1108 noted "under Digo traditions a maternal uncle is expected to give his nephew land". This practice was also evident in the land purchase data as most respondents claimed to have bought their land parcels at a fair price from their maternal uncles. However, as the settlement's population has increased and as the above findings show, the residents including the Digo are making their children and spouses their primary heirs. This is not the conventional practice in a strictly matrilineal society (Ng'weno, 1997). This suggests that the Digo matrilineal inheritance norms are shifting to non-matrilineal practices because of the changing supply of land and the move to individualised land tenure. Further, it is important to note that the Digo inheritance system privileged the male children of the extended family (Int# 1025).

#### ***6.8.1.1 Discussion and Analysis***

The discussion reveals that the residents' land inheritance practices are premised on socio-cultural and religious norms, not official procedures and rules. *De facto* there exists a form of family title in many homes. In these homes where family title prevails as the dominant social norm, there is therefore a high likelihood that the heirs will not register their inherited land. This means that the official land administration system will not reflect the current land ownership upon inheritance because it will not capture such transfers, and as a result, it is likely to be ineffective. In conclusion, the evidence in this section supports the claim made in Chapter 2 that official land administration

systems are ill-fitted to capture land relations that exist in many peri-urban SSA settlements because residents are not likely to use the official systems to register certain land transactions.

## **6.8.2 Results of the Will Investigation**

When asked whether they have a will documenting their inheritance preference, 48 (84%) of the 57 respondents, said no, while five (9%) respondents said yes and four respondents declined to answer the direct question on having a will during the semi-structured interview and noted that they had no comment. When asked why they had not yet written a will, respondents claimed the following:

1. They had an oral will. They had informed their family about their wishes on how property should be shared (Int# 1102, 1113, 1114, 1122, 1123, 1126, 1127, 1130, 1131, 1138, 1140, 1148).
2. They wanted to avoid conflict and greed by family members (Int# 1110) especially in the cases of polygamous families (Int# 1128). This was also evident where the wife was the registered landowner and did not want the larger polygamous family children to benefit (Int# 1133).
3. They expect the family to follow Islamic religious practices on how to share the property (Int# 1112, 1135, 1132, 1137).
4. They are yet to get the official land ownership document, i.e., the Certificate of Lease (Int# 1120). This suggests that participant #1120 believes their landownership will be affirmed by the official document.

### ***6.8.2.1 Discussion and Analysis***

The data above shows that 12 respondents believe that they have an oral will based on their family discussions. However, it is important to note that, under Kenyan statutory law, for an oral will to be valid it must be made in the presence of two or more competent witnesses (a person of sound mind and judgement) and the testator must die within three months after expressing his/her wishes. Exceptions to this rule apply to active members of the disciplined forces (the military). In addition, the oral will should not contradict an existing written will, whether the latter was written before or after the oral will (*Family Division of the High Court, n.d.*). Thus, officially, the respondents' references to oral wills are most likely to be legally invalid, a situation that may lead to situations of intestate succession.

Four respondents expected their families to follow Islamic religious practices upon their death (Int# 1112, 1132, 1135, 1137). However, some of the religious practices are likely to be discriminatory against women and girls especially if their religion does not share the property equally between all children and the widow.

Those who opted not to express their wishes because of their family dynamics or lack of Certificate of Lease may inadvertently lock some family members in vulnerable positions. This is because the surviving family members are likely to attempt to enforce the local traditional system - which would probably (non-Digo) privilege the male family members and discriminate against the female family members - with which they are familiar. Due to its discriminatory traditional practices on succession (and/or marriage) the traditional system may be manipulated by local elders and male family members to disinherit female family members.

An analysis of the results suggests that succession in Waitiki Farm is more likely to be intestate and thus largely determined by socio-cultural and religious customs, norms, and practices. As a result, given that these practices are not codified in law they may be manipulated to disinherit girls, women, and widows, further worsening their socio-economic conditions. It is important to note that in Kenya, this is not unique to intestate succession. In addition, the second generation of landowners in Waitiki Farm are unlikely to register the land transfer by inheritance because this is not the predominant norm. This will lead to 'dead man titles' – land titles in the name of a deceased person. This may further complicate official land administration in Waitiki Farm because off-register transactions result in cloudy titles whose ownership is risky for the purchasers in the secondary land market.

The evidence and analysis in section 6.8 provides additional context for understanding hybrid governance in Waitiki Farm. Further, the evidence supports the claim made in Chapter 2 that official land administration systems are ill-suited to capture land tenure information generated from practices such as unregistered land inheritance transactions in such a peri-urban SSA settlement.

## **6.9 Land Sales Channels**

This section discusses the different land sales channels through which land is transferred in the Waitiki Farm settlement. A channel is defined as a strategic option that the residents use to effect their land sales (Barry & Augustinus 2016). The section contributes to achieving the study's research objective 2 by providing additional context for understanding hybrid land governance actors in Waitiki Farm.

### **6.9.1 Results of the Inquiry into Land Sales Channels**

The next four sub-sections discuss the identified land sales channels in Waitiki.

#### **a) The Channel of Official Legal Procedures**

Land transactions in this channel follow official procedures and are undertaken at the national Lands Ministry headquarters in Mombasa. Participants indicated they would use this channel because ownership details can be verified (Int# 1110, 1140). However, it was not clear whether these transfers are officially registered as the landownership lease prohibits transfer (*refer to section 5.4.2.8 figure 5.7 on lease conditions*).

#### **b) The Channel of Peer-to-Peer Oral Agreement**

These are the land transactions that involve the buyer and seller only without any third party being involved (Int# 1111). These transactions involve the word of mouth where the landowners will ask their neighbours to inform them if they come across a buyer (Int# 1111).

#### **c) The Channel of Consulting a Lawyer**

These land transactions are undertaken by the buyer and seller through a lawyer (Int# 1110, 1150). These transaction participants go to the lawyers because they trust them (Int# 1110) and have experience consulting lawyers for advice on the official procedures (Int# 1110, 1150). The transacting residents trust the lawyer to complete the remaining transaction processes, with their minimal day-to-day participation, which include preparation of the land transfer documents e.g., land sales agreement.

#### **d) The Channel of using Local Administration Officials (e.g., Chief) and the Local Elders**

Some land transactions are processed with the assistance of the local administration officials such as the Chief and the local elders (Int# 1126, 1110). The Chief and local elders serve as witnesses and sign the contract to transfer only after they have authenticated the land ownership details (Int# 1137). The local administration officials and Chief do this for a facilitation fee, for example, of Kshs. 2,000 (app. \$26 Cdn). In general (#1137, #1140, and #1147), the procedure of due diligence followed informally by local governance structures involves the following steps:

- a. Identification of land buyer and seller. Then, ensure the land parcel is legally available by checking whether the person who presents themselves as the owner is listed as the owner in the official enumeration number (Int# 1150)
- b. Enquiring on the consideration, i.e., the sale price of the property
- c. Finding out if the parties to the transaction have a sale consent agreement and whether it is signed or not
- d. After this step, the leaders may sign the agreement or may refuse to do so
- e. Make copies of the agreement for their own records in case of a future dispute
- f. Ensure that the sale is being undertaken under no undue influence (Int# 1147)
- g. According to participant #1147, the transfer to the buyer is completed at the official land administration offices, and this transfer is done “after we pay a small amount.” (Int# 1147). [Interviews with both national and county SLAOs disputed this claim as the SLAOs indicated that these transactions are not completed in their offices.]

According to the local leaders, off-register transactions that do not involve them (local elders and local administration officials) are very risky for the parties involved and those undertaking these transactions did so at the risk of being defrauded (Int# 1136).

### **6.9.2 Discussion and Analysis**

There are various channels through which land transactions occur. The different channels indicate varying levels of:

- trust in certain land transaction actors, e.g., lawyers,
- risks embedded within each land transactions channel, and
- knowledge about the official procedures required to transfer the Waitiki Farm settlement land parcels.

The different channels that provide different strategic options for parties to a transaction also demonstrate the important role that local administration and local elders continue to play in land

transactions despite the official land titling project. In addition, the channels show contradicting accounts on the occurrence of land transactions through the official procedure. Finally, evident in the data were the various ways through which the local land transaction process mimics the official procedures.

The interviews indicate off-register transactions may have already occurred and are likely to continue. In my view, it is likely that the off-register transactions will create cloudy titles which will further complicate official land administration in Waitiki Farm. Consequently, the official land information records on Waitiki Farm settlement will not accurately reflect occupation or ownership.

The evidence in this section on the different land delivery systems and the services the actors within them provide partly addresses research questions 4 and 7. In addition, the identification of off-register land purchases identifies a category of local governance actors who may be identified as vulnerable. These findings inform research objective 2 which is to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case by providing important additional context.

## **6.10 Evictions**

This section explains whether the residents were aware of other residents being evicted from their homes, and how and why they might have been evicted. Incidences of evictions are an important indicator of the strength of the residents' land tenure security.

### **6.10.1 Evictions Results**

Only four (7%) of the 57 respondents, were aware of people who had been evicted within their neighbourhood. The other 53 (93%) respondents were not aware of evictions. According to the four respondents, one group of evictees were tenants whom the residents had identified as thieves (Int# 1142, 1146, 1147). These evictions were done by the landlords with the support of, and at the request of, the local leaders. The other group of evictees were tenants who were disruptive and a nuisance to other tenants (Int# 1111, 1122). For example, participant #1111 noted: "I know of two who were evicted because they were playing loud music and their wives were in constant

disagreement with the locals here leading to disruption of the neighbourhood peace. They were asked by the landlord to look for another place to rent.” (Int# 1111).

However, all the respondents noted that evictions were common before titling because of double land sales and boundary disputes (Int# 1106, 1117). This form of eviction was mainly undertaken by the local youth, “especially where people had not completed paying for the land, they would evict you if you did not pay up.” (Int# 1113). According to participant #1117, the local youth would ask for payments to cater to their drugs habits too. To mitigate this form of eviction local leaders worked closely with the police and local administration (Int# 1118, 1121).

### **6.10.2 Discussion and Analysis**

Analysing the above, only a small number of evictions have occurred after titling, and all have involved tenants in a bid to prevent crime or disruption of social cohesion. This suggests that tenants are currently the group most vulnerable to eviction in Waitiki Farm. This finding partly addresses research question 5. In contrast, prior to the land titling project (*described in Chapter 5*) evictions of land buyers were common. Based on this I posit that evictions are no longer a major problem for land rights holders in the settlement because after the land titling, land allocation, control, and management in Waitiki Farm ceased to be a local youth affair, and thus the local youth have no legitimate reason nor the power to challenge the beneficiaries’ land interests. However, for tenants, the risk remains. It may therefore be necessary for tenants to be afforded some protection. The reduction of the local youth’s power as it relates to control and administration of land in Waitiki Farm, partly addresses research question 10, as it shows how the land titling project impacted this group. In conclusion, it is important to note that the issuance of Certificates of Lease has increased both perceived and real security of tenure as there is no evidence of unjust eviction since the leases were issued.

### **6.11 Land Ownership Rights, Restrictions and Responsibilities**

This section discusses the residents’ awareness of their Land Ownership Rights, Restrictions and Responsibilities (LRRR). More specifically the section examines the LRRR education and awareness public meetings the residents attended and what they learnt concerning their LRRRs. In addition, the section examines the residents’ reasons for not attending the LRRR education and

awareness public meetings. The section concludes with a discussion of who mobilised the residents to attend the education and awareness public meetings.

### **6.11.1 LRRR Education and Awareness**

This section examines residents' awareness of their LRRR. This is based on the residents' responses on whether they were informed and educated about their LRRRs prior to obtaining their Certificates of Lease. It is important to consider the residents' level of awareness and knowledge about their LRRRs because in addition to indicating whether they will use the official systems, it may also be useful in understanding the available participatory development institutional platform.

#### ***6.11.1.1 Attendance at Education and Awareness Meetings***

When asked whether they were educated on their LRRR, 40 participants, representing 70% of the respondents, said yes, while 14 participants, representing 25% of the respondents, said no, and three (5%) declined to answer the direct question during the semi-structured interview and noted that they had no comment. Further, 32 of the 57 respondents attended at least one education and awareness session while seven attended two sessions, one attended four sessions, two attended five sessions, eight did not attend, and seven respondents declined to answer the direct question during the semi-structured interview and noted that they had no comment. However, despite these impressive education and awareness results, it was noteworthy that 46 respondents did not attend education and awareness sessions after the titling process was completed. Only four respondents said they attended sessions held after the titling process while seven respondents declined to answer the direct question during the semi-structured interview and noted that they had no comment.

#### ***6.11.1.2 Level of Awareness of LRRR***

When asked what they had learned or remembered concerning their land rights, restrictions, and responsibilities, those who attended the different meetings gave the following responses:

According to participant #1100, the proposed Waitiki Farm settlement land use plan was introduced and discussed during one of the public meetings, at Mrima School grounds. During the public meeting, the project officials informed the residents about the need for the different land

uses, especially access roads within the settlement (Int# 1129). In this meeting, the project officials also promised compensation to residents who would be affected by land use changes, such as access road expansion projects. According to participant #1152, the residents were told that there would be demolitions to sort out the on-the-ground development issues:

“It is this planning issue that in my opinion is still outstanding because when I was buying the plot, I was shown the access road but now when you look at where the access road is supposed to be you notice that some buildings are obstructing the access road. We do not know how that will be resolved! And it is a big issue because in case of an emergency how will the emergency providers access us? We had agreed to the plan that was developed as they had explained this to us.” (Int# 1152)

During the public meeting to issue the leases, 19 residents remembered being told to pay the Settlement Funds Trustee (SFT) charge of Kshs. 182,000 (app. \$2,367 Cdn) (Int# 1101, 1104, 1108, 1114, 1126, 1128, 1229, 1135, 1138, 1140, 1143, 1144, 1145, 1146, 1147, 1148, 1151, 1153, 1154). This was despite some of them having been told in earlier meetings that they would not be charged for the leases (Int# 1109, 1138, 1122, 1125, 1136). A further four respondents remembered being told not to sell their land parcels (Int# 1121, 1124, 1131, 1137).

Seven respondents remembered being informed about what to expect during the titling process, including for example, how to identify the SLAOs who were undertaking the various project activities (Int# 1110, 1112, 1117, 1119, 1152, 1142, 1124). Interestingly, some of the participants such as participant #1125, noted that they thought the project would consist of only one aspect of the envisaged land titling project, that of land surveying. This belief may be a result of not understanding the project processes as presented and not attending meetings or attending only one meeting that dealt with the aspect that they identified.

Some of the respondents also remembered being told the land ownership documents were ready (Int# 1117) and being educated about the difference between a Certificate of Lease and Certificate of Title under the law. This education, according to participant #1109, was important because there was a lot of misinformation on the 99-year Certificate of Leases that were issued (Int# 1113). For example, participant #1146 claimed that they were told that “if the leasehold tenure came to an end [...] the land would be taken away.” This suggests that the residents were not aware of leasehold renewal and extension.

Participant #1141 noted that he learned nothing.

### ***6.11.1.3 Discussion and Analysis***

The education and awareness programme results suggest that the residents mainly recalled being informed about settlement-level issues such as:

- land use planning;
- the land titling project activities that were to be undertaken;
- land ownership specifics, such as the land leases they were to get and whether they were ready for picking; and
- the importance of not selling their land parcels.

Of interest in this section is the persuasive evidence from the residents' interviews showing that a majority of them recalled being told to pay the SFT charge of Kshs. 182,000 (app. \$2,367 Cdn). The evidence suggests that though a majority of the residents attended the Waitiki Farm education and awareness programme, the main issue that they could not recall was information regarding their land rights, restrictions, and responsibilities. Based on this finding I argue that the success of such a programme hinges on whether print and electronic media is undertaken. This is especially important when local politicians provide conflicting information on payment amounts and misinformation on the legitimacy of the payments. The finding in this section provides important context for achieving objective 3 which is to develop a street level bureaucracy theory for *in situ* regularised informal settlements based on the Waitiki case. This is because it indicates how local conditions may influence a land administration programme.

### **6.11.2 Residents who did not attend meetings.**

This sub-section identifies the reasons residents gave for not attending the LRRR education and awareness public meetings.

#### ***6.11.2.1 Reasons why residents did not attend meetings***

When asked why they did not attend the LRRR education and awareness public meetings those who did not attend the meetings gave the following responses:

- Participant #1156 did not attend because of their work schedule
- Participant #1105 did not attend because of self-employment commitments
- Participant #1118 did not attend but a family member did on their behalf

Further, those that did not attend, such as participant #1115, noted that they were assisted by local elders on how best to obtain a lease and pay the SFT charge. However, participant #1116 noted

that in their “opinion this was the biggest failure of the whole project because we do not have leaders who can direct the citizenry on the titling process.” (Int# 1116).

#### ***6.11.2.2 Discussion and Analysis***

Based on the results, the residents did not attend the LRRR education and awareness meetings because they had work commitments, or a family member attended on their behalf. In addition to addressing research question 9, by showing that public meetings are an important participatory development institutional platform, the evidence shows that livelihood concerns may hinder residents’ participation and further perpetuate the local elite’s interests to the detriment of the less powerful. Access to information is thus not fair - the poor may not have time to attend the meetings. This finding partly addresses research question 5.

#### **6.11.3 Resident Mobilisation**

This sub-section examines who mobilised the residents to attend the land titling project education and awareness sessions and how this was done.

##### ***6.11.3.1 Results of who mobilised the residents***

Forty-seven respondents identified the land titling project education and awareness programme as a national government initiative. However, they (47 participants) noted that the on-the-ground local mobilisation in support of the national government was led by local administrators as noted by participant #1156: “[national] government led initiative led by the Chiefs and local village elders. The information was relayed to us on what we need to do and what offices to visit.” To improve its chances of success, local leaders were informed prior to the project starting (#1112). Five respondents were not aware of who led the mobilisation of the residents while five respondents declined to answer the question.

##### ***6.11.3.2 Discussion and Analysis***

Analysing the above, the cooperation between state actors and local leaders improved delivery of the land titling project. The state mobilisation of resources to undertake the project was supported by the mobilisation of residents by local leaders. This partly addresses research question 9 as it shows the noticeable outcome of the interrelation between the state actors (official systems), local administrators such as Chiefs and Assistant Chiefs, local leaders and elders, and SLAOs. The

finding informs research objective 2 which is to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case.

## **6.12 Summary of Interview Results**

The interview results show that most of the residents purchased their land parcels from local elders and youth. It was also noted that due to their involvement in the initial land purchases local elders are important land dispute resolution actors. Further, the findings show that land tenure security threats from multiple land sales, evictions, and *jara* payments demanded by local youth, have reduced since the land titling project. In addition, the interviews identify the various strategies that the residents are willing to use to defend their land tenure and transactions. Related to the land securing strategies, and noteworthy on their own, were the findings that residents did not trust officials and were not aware of local organisations to approach in case of a land issue. Furthermore, land transactions in Waitiki take place through various land sales channels. Lastly, the chapter demonstrates most of the residents: do not recall their LRRR education and awareness, did not attend subsequent LRRR education and awareness meetings, and were mobilised by local administrators and elders. In general, the interviews of residents presented in sections 6.2 to 6.11 show that despite the official documentation of land rights in Waitiki (refer to Chapter 5) local elders, administrators (Chief), and youth continue to be important land tenure administration actors.

The next section will use the presented interview data to test and analyse the street level bureaucracy and hybrid governance hypotheses posited in section 2.8.2.3 to facilitate achievement of objectives 2 and 3 namely: (2) to develop a hybrid governance theory and (3) to develop a street level bureaucracy theory, both for *in situ* regularised informal settlements based on the Waitiki case, respectively. In addition, further hypotheses that emerged based on the interview data are presented and analysed.

## **6.13 Street Level Bureaucracy and Hybrid Governance Theory development**

This section presents the chapter's analysis of the street level bureaucracy and hybrid governance hypotheses. *A-priori* hypotheses were developed in section 2.8.2.3, based on published literature and Barry (pers. comm. 2020) to focus the analysis and ensure that the study's theory development objectives are achieved. The section starts with an analysis of the street level bureaucracy

hypotheses (section 6.13.1) followed by an analysis of hybrid governance hypotheses (section 6.13.2.).

### **6.13.1 Street Level Bureaucracy Hypotheses Analysis**

This section analyses the street level bureaucracy hypotheses posited in section 2.8.2.3 to facilitate achievement of objective 3 which is to develop a street level bureaucracy theory for *in situ* regularised informal settlements based on the Waitiki case. To recap, under the conditions set out in Section 2.8.2.3 hypotheses (H6 - H11) were posited to explain SLAOs behaviour under informal settlement conditions.

The following is a discussion of the street level bureaucracy hypotheses H6-H11 tested using the Waitiki residents' interview data. Hypotheses 6, 7 and 10 were not tested because there was no data to support or negate the three hypotheses.

*H8: In informal settlements where SLAOs are not accessible, continually active and visible at the street level their land tenure administration roles will be assumed by unofficial, community-based structures.*

The findings from the residents' interviews support hypothesis 8 in that there is evidence that unofficial, community-based structures comprised of local administrators, local elders and local youth groups undertake land tenure administration roles. The evidence suggests some of the residents use unofficial land transaction channels using unofficial structures to sell their land parcels (refer to section 6.9). In addition, when asked who they would go to if they have a land tenure administration problem, such as land boundaries disputes or eviction cases, residents noted they would go to the local elders (refer to section 6.10). Based on these findings there is persuasive evidence to support hypothesis 8.

*H9: In regularised informal settlements, where SLAOs are active on the ground and they educate residents on the risks of off-register land transactions or residents learn about these risks by becoming aware of people losing land in an off-register transaction, the residents are likely to follow the official regulations and procedures in their subsequent land transactions.*

Hypothesis 9 posits that residents in regularised informal settlements will follow official regulations and procedures in their subsequent land transactions if SLAOs are active on the ground since SLAOs are likely to educate these residents on the risks of off-register land transactions and/or if residents learn about these risks by becoming aware of people losing land in an off-register transaction. The evidence from the residents' interviews supports the first part of the hypothesis, but no evidence emerged to support the second. Regarding the first part, there was evidence from participant #1140 which indicated that the participant was advised by SLAOs on how the SFT charge mechanism operated. As a result, they understood that the land parcel could be used for collateral after paying the SFT charge (for further information on SFT see section A.6). This was important in countering local misinformation on SFT – (the legality of the leases and validity of the Kshs. 182,000) which as the study found was a key cause of off-register land transactions in Waitiki. In addition, there was also evidence from respondents who noted the SLAOs were unhelpful in their interactions with them and thus they were unlikely to follow official procedures in their transactions. There was no evidence indicating that residents avoided off-register transactions due to risks associated with this transaction approach. Due to the minimal and partial empirical support in Waitiki Farm, hypothesis 9 remains speculative.

***H11:** In informal settlement upgrading projects, a project design that allows SLAOs to directly communicate with the residents and monitor the local leaders' implementation of rules agreed on concerning various project activities will enable SLAOs to effectively handle local project disruptions and achieve project implementation objectives.*

The evidence suggests that the Waitiki land titling project SLAOs held public meetings to inform the residents about the various project initiatives. The local mobilisation for these meetings was led by the community level leaders. It was also through some of these leaders that some of the project issues were resolved (for further information see chapter 5). However, despite these public awareness measures the evidence suggests that the project SLAOs did not utilise a project design that allowed them to communicate directly with the Waitiki residents and monitor local leaders' implementation of rules agreed on concerning various activities of the land titling project. As a result, in Waitiki there is very little support for some of the key project outcomes. For example, the SFT mechanisms meant to recoup the amount used by the state to purchase the land (refer to sections 6.11.1.3). Consequently, a majority of the residents are opting to sell the land parcels off-

register and move into another settlement. The lack of a mechanism through which SLAOs would have explained the SFT mechanism to both residents and local leaders means that there is a possibility that new settlements will emerge and recreate the problem the Waitiki land titling project was meant to solve. Based on this, there is persuasive evidence to support hypothesis 11. It is however important to also note that the evidence suggests that once residents acquire land ownership documents, they are unlikely to attend future LRRR meetings, possibly in part due to livelihood concerns. In my view, strategies such as offering lunch, or a meeting allowance may incentivise them to attend. This however needs to be tested.

In Waitiki, hypotheses 8, 9, and 11 have been shown to be supported by the residents' data. Hypotheses 8 and 11 (restated below) were found to be persuasive as there was substantive empirical support for them.

***H8:** In informal settlements where SLAOs are not accessible, continually active and visible at the street level their land tenure administration roles will be assumed by unofficial, community-based structures.*

***H11:** In informal settlement upgrading projects, a project design that allows SLAOs to directly communicate with the residents and monitor the local leaders' implementation of rules agreed on concerning various project activities will enable SLAOs to effectively handle local project disruptions and achieve project implementation objectives.*

Hypothesis 9 (restated below) is still speculative because there was minimal and partial empirical data to support it.

***H9:** In regularised informal settlements, where SLAOs are active on the ground and they educate residents on the risks of off-register land transactions or residents learn about these risks by becoming aware of people losing land in an off-register transaction, the residents are likely to follow the official regulations and procedures in their subsequent land transactions.*

There was no evidence to support or negate hypotheses 6, 7, and 10. As a result, these hypotheses (restated below) remain speculative

***H6:** In informal settlements, SLAOs will recognise and engage hybrid governance arrangements where their official engagement with the informal settlement is likely to lead to violence outbreak or is prohibited by the law.*

**H7:** *In informal settlements where competing local governance arrangements are unable to agree on the appropriate land tenure administration regularisation or upgrading approach to be used SLAOs will be reluctant to innovate to avoid being labelled the face of failure by the competing coalitions, local leaders, and politicians.*

**H10:** *In informal settlements upgrading projects, where SLAOs and local leaders or organisations have negotiated and come up with an agreement on rules to guide the various settlement upgrading activities the local leaders may not strictly enforce these rules unless collective strategies by settlement-level agents and perhaps external agents (e.g., SLAOs or NGOs) are implemented to maintain these rules (Barry and Kingwill 2020).*

In summary, the tests of these hypotheses indicate that SLAOs' behaviour in Waitiki is influenced by their street level visibility, engagements, and ability to communicate with residents directly and hold the local leaders accountable. In their absence, the evidence is persuasive that unofficial structures undertake their land tenure administration roles. It would also appear that when SLAOs interact with residents and educate them on land administration procedures, residents understand official requirements and are likely to follow official procedures in their SFT related land transactions. Furthermore, there is evidence that due to the lack of an effective project communication system that allowed SLAOs to directly communicate with the Waitiki residents, there was a considerable amount of misinformation spread by local politicians on the project, which SLAOs were unable to handle effectively (see Appendix A.6 for further details).

#### **6.13.1.1 Emergent Street Level Bureaucracy Hypotheses**

In addition to the street level bureaucracy hypotheses tested in section 6.13.1 the following hypotheses, derived from the interviews with Waitiki residents emerged, which may be instructive to SLAOs on how to improve their effectiveness in *in situ* regularised informal settlements like Waitiki.

**H16:** *In informal settlements, residents are unlikely to use the official system where they do not trust officials to act in their best interests possibly because they perceive officials to be corrupt and/or biased towards a particular group, unless using the official system is unavoidable.*

As the discussion in section 6.6.1.1 shows some of the residents in Waitiki do not trust SLAOs because they perceive them to be corrupt and ethnically biased in their service delivery. As a result, and as shown in section 6.3.2, when faced with a land issue Waitiki residents are unlikely to use

the official system. Due to the minimal empirical support in residents' interview data (count of four interviews) support for this hypothesis remains speculative.

***H17:** In informal settlements upgrading projects, a project design that allows officials to schedule meetings outside of working hours may increase resident's participation in the upgrading project planning public meetings and enable officials to effectively achieve project implementation objectives.*

As explained in section 6.11.2.1 residents in Waitiki did not attend participatory development public meetings because of livelihood concerns such as self-employment concerns (Int# 1105) and work schedule (Int# 1156). Consequently, these residents' views were not captured and considered during the Waitiki land titling project decision-making stage. Given the minimal empirical support in the data (the account of two residents) this hypothesis remains speculative. Further, and in my view, strategies such as scheduling meetings outside working hours or a public meeting allowance to incentivise participation or compensate residents for their time may improve residents' attendance in ongoing informal settlements upgrading projects. However, these strategies should also consider the residents' safety in high crime areas.

In the Waitiki residents' data, emergent hypotheses 16 and 17 have been shown to be supported. The two hypotheses (restated below) were found to be speculative because there is minimal empirical data to support them.

***H16:** In informal settlements, residents are unlikely to use the official system where they do not trust officials to act in their best interests possibly because they perceive officials to be corrupt and/or biased towards a particular group, unless using the official system is unavoidable.*

***H17:** In informal settlements upgrading projects, a project design that allows officials to schedule meetings outside of working hours may increase resident's participation in the upgrading project planning public meetings and enable officials to effectively achieve project implementation objectives.*

In summary, the above hypothesis tests show that street level land administration effectiveness in *in situ* informal settlements is influenced by the resident's levels of trust in officials and the resident's participation in participatory development public meetings. The emergent hypotheses

(H16 and H17) comprise the study's substantive level theory developed to achieve objectives 2 and 3.

### **6.13.2 Hybrid Governance Hypotheses Analysis**

This section analyses the hybrid governance hypotheses posited in section 2.8.2.3 to facilitate achievement of objective 2 which is to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case. The following is a discussion of the hybrid governance hypotheses H12-H15 tested using the Waitiki resident's data.

***H12:** In informal settlements, de facto hybrid governance arrangements that maintain their local power may continue to have dominant and legitimate land tenure administration roles after land interests have been officially documented.*

The findings from the Waitiki residents' interviews on land transactions (refer to section 6.9), land-related disputes (refer to section 6.4), land evictions (refer to section 6.10), and land inheritance (refer to section 6.8) support hypothesis 12. The evidence shows that, despite the official documentation of Waitiki residents' land interests, a *de facto* hybrid governance arrangement consisting of local administrators and local elders continues to have an influential and legitimate land tenure administration role. It is also noteworthy that this hybrid governance arrangement was among those identified by the residents as one of the local land-related organisations (refer to 6.7). Furthermore, the *de facto* hybrid governance arrangement was noted by respondents as one of the strategies they would use to secure their land interests and transactions (refer to section 6.3). In short, there is persuasive evidence to support hypothesis 12.

***H13:** In informal settlements, registration of inheritance by residents after official documentation will indicate whether settlement residents will use official systems or de facto hybrid governance arrangements for resulting land transactions.*

The Waitiki residents' data on land inheritance supports hypothesis 13. A majority of the respondents indicated that they did not have a documented will indicating who was going to inherit their land. These residents gave several reasons for not writing a will indicating their inheritance preferences, key among them being that they were reluctant to talk about death, had expressed their preference orally, and expected their families to follow socio-cultural and religious practices

on succession and the sharing of the land. This suggests that in Waitiki the successors are unlikely to officially register inheritance and are more likely to use the *de facto* hybrid governance arrangement (consisting of extended family members, local elders and local administrators) to effect their inheritance. Subsequent land transactions resulting from inheritance are also likely to be undertaken through the hybrid governance arrangements. There is therefore persuasive evidence to support hypothesis 13.

*H14: In informal settlements, residents will opt for simple, cheap, and quick off-register land transaction channels that they are familiar with as opposed to the official procedure that is likely to be lengthy and costly.*

The residents' interview data shows that there is support for hypothesis 14. Concerning inheritance, the data shows that residents prefer a channel that they understand well, i.e., their local socio-cultural and religious system, as opposed to the official channel (refer to section 6.11). With respect to land sales, the evidence shows that a majority of the respondents used the *de facto* hybrid governance arrangement consisting of local elders and local administrators because they trust it, at least more than official structures. Further, the residents were aware that off-register land transactions that do not involve the *de facto* hybrid governance arrangement are very risky for the parties involved (refer to section 6.9). On land-related disputes, the data shows that most residents first use local-level channels, i.e., local elders, because they are familiar with them, and their dispute resolution is perceived to be quicker and cheaper than the official system. In sum, there is persuasive evidence from the data on different land transactions to support hypothesis 14.

*H15: In informal settlement upgrading projects, where there is intense local political competition, a participatory project administration approach that involves de facto hybrid governance arrangements and the residents is unlikely to be disrupted by local politicians who, despite being involved, may wish to disrupt the process.*

There is evidence that the Waitiki land titling project was a participatory project that involved the *de facto* hybrid governance arrangement and the residents. In Waitiki, the *de facto* hybrid governance arrangement consisting of local elders and local administrators mobilised residents for the project. Through this mobilisation residents were informed about and involved in the project.

As a result, there was community buy-in to the project. However, despite the residents' mobilisation and involvement of hybrid governance arrangements, local politicians attempted to disrupt the implementation of the Waitiki Farm land titling project by spreading misinformation on the credibility of the SFT payments and asking the residents not to pay the SFT since they (the local politicians) would do it on their behalf (for further information on SFT see section A.6). This evidence negates hypothesis 15 and suggests that in an environment of intense local political competition participatory administration of land tenure projects will not prevent local politicians from disrupting the project. It is important to add that, while the attempted disruptions may have reduced local support for the project and reduced the interest in collecting Certificates of Lease (refer to Chapter 5 section 5.4.2.8), they did not completely stop the project implementation. I speculate that the local politicians were unsuccessful in stopping the implementation because the residents did not trust them on land issues. Thus, the residents were willing to first secure their land interests prior to querying the SFT mechanisms. It is also possible that the residents' participation in the disruption may have been hampered by a growing attitude of participatory development fatigue (refer to section Appendix A.3 for details).

In Waitiki, hypotheses 12, 13 and 14 have been shown to be supported. Hypotheses 12, 13 and 14 (restated below) were found to be persuasive as there was substantive empirical support for them.

***H12:** In informal settlements, de facto hybrid governance arrangements that maintain their local power may continue to have dominant and legitimate land tenure administration roles after land interests have been officially documented.*

***H13:** In informal settlements, registration of inheritance by residents after official documentation will indicate whether settlement residents will use official systems or de facto hybrid governance arrangements for resulting land transactions.*

***H14:** In informal settlements, residents will opt for simple, cheap, and quick off-register land transaction channels that they are familiar with as opposed to the official procedure that is likely to be lengthy and costly.*

Hypothesis 15 (restated below), on the other hand, was found not to be valid using the residents' interview data. While chapters 7 and 8 may reflect evidence that supports it, in the Waitiki residents' data hypothesis 15 was not supported. The hypothesis was not rejected as its lack of support may indicate the need for further testing with chapters 7 and 8 data (or in other informal settlements). As a result, in this chapter, it remains speculative.

***H15:** In informal settlement upgrading projects, where there is intense local political competition, a participatory project administration approach that involves de facto hybrid governance arrangements and the residents is unlikely to be disrupted by local politicians who, despite being involved, may wish to disrupt the process.*

In summary, the tests of the hybrid governance hypothesis indicate there is persuasive evidence that, despite the official documentation of Waitiki residents land interests during the land titling project, the *de facto* hybrid governance arrangements are still locally influential as evidenced by their continued dominant and legitimate land tenure administration roles within Waitiki. Further, the evidence suggests the residents do not intend to officially register their inheritance. Consequently, it is expected that the *de facto* hybrid governance arrangements will continue to play a part in inheritance and other subsequent land transactions. Furthermore, the evidence shows that residents will opt for off-register land transactions channels they are familiar with as opposed to the official channels. These land transaction channels involve the *de facto* hybrid governance arrangements. Despite the influential hybrid governance arrangements and residents being involved in the Waitiki land titling project, local politicians were able to disrupt it though not completely. This suggests these local politicians are very influential on-the-ground or the hypothesis may need to be more specified. The hypotheses are further tested in chapters 7 and 8 to develop the study's theories.

#### ***6.13.2.1 Emergent Hybrid Governance Hypotheses***

In addition to the hybrid governance hypotheses tested in section 6.13.2 above, the following hypotheses derived from the interviews with Waitiki residents may be instructive on why hybrid governance is likely to persist in *in situ* regularised informal settlements like Waitiki despite land rights formalisation.

***H18:** In informal settlements, where the rent seeking behaviour by unofficial structures prevails, some in-migrant residents will seek leadership positions to build their local power and protect themselves from the rent seeking behaviour and extortion.*

As shown in section 6.5, one of the strategies that non-indigenes in Waitiki used to stop paying *jara* was to seek local leadership positions. The goal of this strategy was to use the local power that comes with the position to protect themselves from extortionary practices of the local youth

administration of *jara*. Given the minimal empirical support in the data (the account of one non-indigene local leader) hypothesis 18 remains speculative.

***H19:*** *In informal settlements participatory land titling, that includes public education and awareness on the beneficiaries' land rights, responsibilities and restrictions by officials and unofficial structures, will lead to the reduction of the legitimacy of unofficial structures to administer land tenure and engage in rent seeking behaviour.*

As the discussion in section 6.5 shows, the participatory nature of the Waitiki land titling project (it included a public education and awareness by SLAOs and local governance structure on the land beneficiaries LRRR's) was important in reducing the legitimacy of local youth groups to administer *jara*. Further, due to the involvement of local elders and local administrators in the LRRR's education and awareness the view that administration of *jara* was locally illegitimate was entrenched in Waitiki. As a result, the administration of *jara* reduced significantly. And, where *jara* persists, residents pay the youth only to avoid the extortionary practices and nuisance, not because they have to as was the case prior to the land titling project. Therefore, there is persuasive evidence to support hypothesis 19.

In the Waitiki resident's data, emergent hypotheses 18 and 19 (restated below) have been shown to be supported. Hypotheses 19 was found to be persuasive as there is substantive empirical support for it. Hypothesis 18 on the other hand is still speculative because there was minimal empirical data to support it.

***H18:*** *In informal settlements, where the rent seeking behaviour by unofficial structures prevails, some in-migrant residents will seek leadership positions to build their local power and protect themselves from the rent seeking behaviour and extortion.*

***H19:*** *In informal settlements participatory land titling, that includes public education and awareness on the beneficiaries' land rights, responsibilities and restrictions by officials and unofficial structures, will lead to the reduction of the legitimacy of unofficial structures to administer land tenure and engage in rent seeking behaviour.*

In summary, the testing of these hypotheses show that hybrid governance may persist in *in situ* regularised informal settlements (such as Waitiki) despite land rights formalisation. The evidence suggests unofficial structures are still locally influential as seen in their continued roles in land transactions and some of the residents' views that a position in these structures is important for

protection against the rent seeking behaviour by some of the unofficial structures. However, despite the relevance of the unofficial structures in land administration, the evidence shows that in some cases it is necessary to reduce their local legitimacy and power. The emergent hypotheses (18 and 19) comprise the study's substantive-level theory developed to achieve objectives 2 and 3.

## **6.14 Summary and Conclusions**

Through the development of a rich history of Waitiki Farm and interviews, this chapter's findings inform the study's findings and analysis in Chapters 7 and 8. It also provides additional empirical support to the Waitiki Farm settlement history discussed in Chapter 4 and Waitiki Farm land titling project discussed in Chapter 5. Moreover, it supports arguments explored in Chapter 2 which are integral to the study's overall objective.

The evidence in this chapter supports the social change model theory elements presented in section 2.4. These are the dialectic approach, ongoing processes of solidarity and schism, and entrepreneurial behaviour. The dialectic approach's internal competition aspect is evident in the land-related disputes in Waitiki. Conflict was inherent in the relationship between the residents and the local youth who administered *jara* payments. In some cases, this conflict escalated and led to loss of property and even evictions. Further, the findings show that the residents' interactions with external systems, such as county government, are limited. As a result, the only example of external dialectic is the land titling project undertaken by the national government (*refer to chapter 5 for more details*). This dialectic influenced the internal dialectic in that it reduced the land-related disputes and *jara* administration incidences that would lead to land evictions.

Entrepreneurial behaviour one of the aspects of the social change model theory, was evident in the local elders and youth. The local youth and elders engaged in land sales to in-migrants who were looking for affordable land parcels to settle on. These transactions were secured with written sale agreements witnessed by local administrators and local elders. Further entrepreneurial behaviour was evident in the *jara* payments by the local youth. The evidence suggests that the selective *jara* administration was premised on a number of factors key among them being financial motivations and thus it could be manipulated by the youth and leaders.

The evidence in the chapter shows that the rules guiding land tenure administration within a peri-urban community are likely to change in response to activities in the internal and external dialectics. In Waitiki, the interview data shows *jara* payment administration and arbitrary evictions by local youth stopped after the land titling project. This, in turn, changed the hybrid governance arrangement and power structures as the local youth were not as powerful as they were prior to the project.

The findings in this chapter also support several of the hybrid governance theory propositions in chapter 2. Hybrid land governance persists despite formalisation projects, such as the land titling that was undertaken in Waitiki. In Waitiki, this is evident in land transactions, and disputes resolution. The findings suggest that the Waitiki hybrid land tenure administration takes the form of local elders and official local administrators, such as the Chief and the Assistant Chief. This hybrid land tenure administration arrangement undertakes land-related dispute resolution, and witnesses and offers advisory services on land transactions. In some cases, it may be involved in land inheritance where the beneficiary leaves it to the local elders to decide. Finally, the chapter also developed emergent street level bureaucracy and hybrid governance hypotheses that are instructive on the study's substantive level theory development in *in situ* regularised informal settlements.

In conclusion, this chapter contributed to the achievement of the study's research objectives in the following ways. First, it addressed research questions 4, 5, 6, 7, 8, 9 and 10 which are key to achieving objective 2. Second, it addressed research question 12 which is key to achieving objective 3. Third, through testing the street level bureaucracy and hybrid governance hypotheses, using the residents interview data, the chapter identified hypotheses that are validated, invalidated, and those that did not have sufficient data to either validate or invalidate the hypothesis. In addition, emergent hypotheses were developed to inform the study's substantive level theory development (i.e., theory that applies to the Waitiki case which may or may not necessarily be generalisable across similar cases). The hypotheses are further tested in chapters 7 and 8 to develop the study's theories.

# CHAPTER SEVEN: STREET-LEVEL LAND ADMINISTRATION IN WAITIKI FARM

## 7.1 Introduction

This chapter presents and analyses the research results on how street-level land administration officials (*hereinafter referred to as* SLAOs) operate in Waitiki Farm. This chapter specifically addresses objective 3: to develop a street-level bureaucracy theory for *in situ* regularised informal settlements based on the Waitiki case. The theory developed in this chapter is in the form of a set of hypotheses tested under the informal settlement conditions as they exist in Waitiki.

To achieve objective 3<sup>17</sup>, the following research questions were examined:

11. What land administration functions do SLAOs perform in peri-urban SSA/Waitiki Farm?
12. Under what conditions do SLAOs deliver land administration services in peri-urban SSA/Waitiki Farm, and what strategies do they employ to deliver land administration services?
13. In what ways do local politics influence SLAOs' work, what are the noticeable outcomes, and how do they deal with these influences?
14. How do SLAOs experience land corruption in their work, what are the noticeable outcomes and what accountability mechanisms are available to them?
15. What were the SLAOs' experience with the land titling programme undertaken in Waitiki Farm?

Interviews relevant to this section included 18 SLAOs, 10 of whom were employed by the national government Ministry of Land and Physical Planning and the remaining eight by the Mombasa County Government Department of Land, Planning and Housing (MCGDLPH). The SLAOs interviewed at the two levels of government included land and settlements officers, land administrators, valuers, surveyors, planners, and registrars. All the SLAOs, with the exception of two interviewees who were senior managers, undertook fieldwork related to their respective professions. The chapter is organized as follows: Section 7.2.1 presents the functions that SLAOs

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<sup>17</sup> To develop a street level bureaucracy theory for in situ regularised informal settlements based on the Waitiki case.

perform in Waitiki Farm. Section 7.2.2 presents the conditions under which SLAOs work in Waitiki Farm. In addition, strategies that SLAOs use to overcome challenging working conditions that are generally not encountered in a well-functioning, rational state are discussed and analysed. Section 7.2.3 presents how local politics manifests in SLAOs work and how SLAOs handle local political influences. Section 7.2.4 presents the influence of corruption in SLAOs' work. Section 7.2.5 presents the experience of the SLAOs with the land titling project undertaken in Waitiki Farm (see Chapter 5). Section 7.3 tests the street-level bureaucracy hypotheses developed in Chapter 2 section 2.8.2.3 to focus the analysis and ensure that the street-level bureaucracy theory development objective of the study is achieved. In addition, further hypotheses that emerged from the data were developed to inform the substantive-level theory<sup>18</sup> development. Finally, section 7.4 presents the summary and conclusion of the analysis of Lipsky's Street-level bureaucracy theory.

## **7.2 Results and Discussion**

This section is organized into five sub-sections. These sub-sections present the SLAOs responses on the functions they perform in Waitiki and the conditions under which they deliver their services. In addition, the section discusses how local politics and corruption influence SLAOs work. The section concludes with a discussion of the SLAOs experiences with the land titling programme.

### **7.2.1 Street Level Land Administration Officials' (SLAOs) Functions**

This sub-section discusses and analyses the main land administration functions as identified by the SLAOs. The section answers research question 11, i.e., what land administration functions do SLAOs perform in Waitiki Farm?

#### ***7.2.1.1 Identified SLAOs functions***

SLAOs perform multiple roles related to local land administration processes, transactions and disputes within their jurisdictions (Int# 1017). In providing land administration services, SLAOs undertake both administrative and field-based land administration functions. According to respondents, national and county government SLAOs' administrative functions include the following:

- Selling maps (Int# 1014, 1017).

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<sup>18</sup> See glossary of definitions

- Storing and maintaining historical land ownership documents at the county government offices (Int# 1017).
- Reviewing spatial plans and development applications (for example, collecting comments on “change of user, subdivision, and consolidation” applications) (Int# 1003, 1017, 1027, 1029).
- Undertaking searches to verify land information details (Int# 1017, 1029).
- Supervising and coordinating devolved land administration functions (Int# 1003, 1014, 1029, 1040). For example, interviewee #1040 noted that he refers the development control issues and queries to the Director of Planning at the county government level “for the client to get instructions on how their [building] plans will be submitted and approved via the online building approval system” (Int# 1040).

The following were identified as administrative functions specific to the county SLAOs.

- Selling building plans (Int# 1014).
- Administering land rates<sup>19</sup> (Int# 1014).
- Approving development applications (Int# 1029).

The field-based land tenure administration functions identified by participants at the two levels of government include the following.

- Settling land boundary disputes (Int# 1017, 1029, 1040).
- Providing technical support to Civil Society Organisations (CSOs) working on land administration projects (Int# 1019).
- Verifying land ownership information on the ground (Int# 1015, 1017).
- Supervising and coordinating with local elders/leaders on land tenure administration functions, such as dispute resolution (Int# 1015, 1017, 1019, 1029, 1040).

It is important to note that SLAOs only work on lands within their jurisdictions. For example, County Government SLAOs work on matters within their county government lands.

In undertaking the above functions, SLAOs noted that they work closely with other organisations, such as CSOs. This working relationship is usually based on a Memorandum of Understanding

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<sup>19</sup> According to participant #1014 land rates account for 85% of the county’s’ department of lands planning and housing revenue.

(MOU) between the respective level of government and a CSO<sup>20</sup>. The MOU specifies each party's role (Int# 1014). SLAOs are expected to provide technical support for the CSO land administration projects (Int# 1014), educate locals on land laws (Int# 1019), mobilize and liaise with the locals that are affected by the project (Int# 1029), and partner with the CSOs to facilitate the adoption of innovative land tenure administration tools, for example, the Social Tenure Domain Model (Int# 1014). Of importance to SLAOs is the data this cooperation generates. The data provides a verifiable baseline from which further official land administration related work can be undertaken (Int# 1019).

SLAOs also serve as expert witnesses in land-related court cases when litigation arises (Int# 1018). Example include participant #1018 who noted that he serves as an expert witness when called upon by the court. They do this by maintaining regular communication with the courts to ensure that they are up to date on the court summons that requires their presence or response (Int# 1003).

#### *7.2.1.2 Discussion and Analysis*

The above findings show that SLAOs perform multiple land administration roles, both in the office and in the field, according to their official mandate and within their jurisdiction. In undertaking these roles, they cooperate with unofficial organisations such as CSOs. This cooperation creates a hybrid arrangement that SLAOs use to achieve their official land administration functions. Further, the evidence suggests that such mutual collaboration recognizes the role CSOs play at the local land administration level, such as the provision of local land tenure information. The collaboration also provides an opportunity for SLAOs to educate and raise the residents' awareness about the official procedures and processes. As the evidence in chapter 6 shows, this mutual collaboration may motivate residents to follow official procedures and processes.

In my view, the mutual collaboration between SLAOs and CSOs improves land administration services delivery. Further, it is important to note that having an agreement does not mean that there are no disagreements, and thus, there is a need to focus on tensions within these arrangements as they arise. Where there is an unresolved tension between SLAOs and local level governance structure, for example between local leaders and Community Based Organisations (CBOs), the

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<sup>20</sup> As used in this study CSOs refers to national level civil society organisations while CBOs refer to community level governance structures.

relationship of collaboration may be characterized by tensions or conflict, impeding effective land tenure administration (*see Chapter 8 for further details*).

The SLAO interviews findings in this section suggest that the written rules under which SLAOs, CBOs and CSOs collaborate are flexible and not static. The rules are structured to serve each local governance structure's interests and allow the emergent hybrid arrangement to work and improve land administration service delivery. Further, in working closely with other actors, it may be argued that some of the SLAOs blend two contrasting organization cultures. One is the unofficial systems culture that is flexible and negotiable, as it is based on the various unofficial actors' norms, which can easily be changed. The second is the official systems culture which is rigid and based on the legislative framework and the organizations-as-machines culture, which is harder to change.

## **7.2.2 Working Conditions of Street Level Administration Officials (SLAOs)**

This sub-section examines the conditions under which SLAOs work. The section addresses research question 12, i.e., under what conditions do SLAOs deliver land administration services in Waitiki Farm and what strategies do they employ to effectively deliver land administration services?

### ***7.2.2.1 Administrative and Fieldwork Challenges of SLAOs***

When asked whether they had adequate resources to undertake the functions identified in section 7.2.1 all the SLAOs interviewees responded negatively<sup>21</sup>. Both national and county SLAOs noted the following key administrative and fieldwork challenges.

- Inadequate professional and administrative human resources (Int# 1003, 1014, 1017, 1023, 1027).
- Lack of vehicles to undertake fieldwork (Int# 1017, 1018, 1026, 1027, 1040).
- Much of the work is still done manually (Int# 1017, 1018, 1027).
- Lack of necessary office stationery, computers, and equipment such as scanners and photocopiers (Int# 1017, 1018).
- Lack of access to the internet to for example, communicate with colleagues in Nairobi (Int# 1017, 1018).
- Lack of budget to do their work properly for example, petty cash to facilitate fieldwork (#1017)

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<sup>21</sup> It is expected that wherever one goes all officials will say that they do not have enough money or staff or equipment.

- The non-reimbursement of out-of-pocket expenses (Int# 1017).
- Lack of technical equipment and machinery, such as surveying total stations, to undertake land administration work such as land parcels surveying (Int# 1017).
- Lack of a fully-fledged permanent office from which to undertake land administration related work and serve people. At the time of the research, the officer was housed in another agency's office and building (Int# 1040).
- Lack of adequate cooperation from the locals e.g., residents were not willing to participate in local development initiatives that need local residents input (Int# 1040).
- Silo organisational issues; Uncooperative SLAOs in other departments who take time to respond to act on their files and ignore requests to hasten decisions (Int# 1029).

The national government SLAOs further noted that their working conditions have worsened because of increasing demands on their work due to the rapid urbanization and population growth within Waitiki Farm settlement and Mombasa County in general. Though technology may make work easier and ease high workload pressure, participant #1023 noted that a majority of the SLAOs do not have a sufficient background in information technology, and some see it as a threat because “they thrive in the existing opaque system so that when people come to look for information, they can assist them for a fee; having the information on a website reduces their [corrupt] earning opportunities” (Int# 1023). In addition, SLAOs are usually not involved in the introduction and implementation of new technology or information system reforms. It was also not clear whether they were trained on these new systems. This leads to situations where resources, such as computers, go unused (Int# 1023); hence the view that it is a poor problem-solving strategy not to involve SLAOs when introducing information system solutions. While some of these observations are expected (for example, inadequate resources), the evidence also suggests that the inadequate resources condition create room for corrupt behaviour. For example, due to inadequate human resources some of the officials and administrative clerks, work together with external actors popularly known as brokers to hasten bureaucratic procedures for clients who are willing to pay an agreed expediting fee (*see section 7.2.4.1 for further details*).

At the county government level, SLAOs noted their working conditions were still in flux. This is because the county government organizational structures were relatively new and were still being established. According to participant #1017, compared to the previous clear municipality accountability structure and reporting system, the current county government's structure and reporting system was yet to be firmly established. As a result, work orders come from different

departments without going through the relevant workflow processes and workflows are constantly interfered with by local elites such as prominent businessmen and politicians. For example, participant #1029 noted: “when dealing with a person who wields a lot of influence, their [applications] are acted upon faster. The direction does not come from higher places. You just have to know, who is who, so as not to go against the grain, and you can just tell. [In some cases] we can tell by the names.” Due to the weak internal structures and systems and local elites’ interference, SLAOs find it difficult to plan or schedule their work in advance (Int# 1017).

#### ***7.2.2.2 SLAOs and Private Land Invasions***

When dealing with private land invasions that are common in the coastal region, the national government SLAOs in the land registration department protect the land records in the Mombasa-based office. They also advise the private landowners to write to the office to restrict further land transactions, as noted by participant #1024 below:

“It is important to write to us because we are a neutral arbiter unless there is a case of national notoriety where there is fear for interference from within. The registrar is warned and told to safeguard the records.”

As a result, they suspend all land transactions on the land under dispute (Int# 1019, 1028). Also, they advise the private landowners to protect their property from land invasions by boundary walling (Int# 1028). However, when dealing with the land invaders or squatters, SLAOs inform and advise them on their legal land ownership status and other means to claim the land, for example, through the courts (Int# 1024). Furthermore, SLAOs go to the field to verify some of the claims on which these invasions are based for example, ancestral land claims (Int# 1024).

At the county level, SLAOs (surveyors) gather facts and write a ground report that will inform the higher-level officials on the number of land invaders, type of structures and general development. Upon writing the ground report, they hand it over to the Chief Officer, who may resolve the matter (Int# 1017). However, in doing this, they face several on-the-ground challenges, key among them being a high possibility of violence that may involve local enforcers chasing them away. In such situations, alternative dispute resolution mechanisms such as elders-led mediation, local political support, and security administrators are necessary for both county and national government SLAOs to undertake their work (Int# 1019, 1026).

### *7.2.2.3 Discussion and Analysis*

An analysis of the above shows that according to their interviews, SLAOs lack adequate human (both professional and administrative), financial, technical and office space resources. In addition, their work is constrained by inadequate facilitation of fieldwork related to their land administration functions. SLAOs also suggested that the implementation of information systems reforms to reduce their workload was not participatory and as a result, did not consider their technical competencies (or lack thereof). Further, the data suggests the growing population of Waitiki Farm settlement and the top-down measures to improve their working conditions without including the SLAOs in decision-making, as well as lack of administrative resources such as computers and connectivity, may exacerbate the working conditions of the SLAOs.

The Waitiki interview data with officials is instructive on how SLAOs at the two levels of government deal with private land invasions. The SLAO interviews suggest that SLAOs deal with both private landowners and invaders. They advise landowners on how to better protect their land against invasion and steps to take to preserve land information and records where land has been invaded. The SLAOs also advise land invaders or squatters on the importance of following the official procedures to access land. In addition to these advisory services, SLAOs may also suspend land transactions involving any land under dispute. Further, and as noted by county level SLAOs, the support of local elders, local politicians, and security administrators might mitigate the risks associated with SLAOs going into communities where the possibility of violence is high. Drawing on the data, SLAOs believe taking pre-emptive administrative measures to safeguard land information and engaging the disputing parties will alleviate the immediate conditions. In the long run, this may help resolve land tenure problems because the official land records will remain current and accurate, and the SLAOs' engagement notes will reflect potential change in occupation or ownership. In addition, their cooperation with local leaders provides a baseline level of local stability that facilitates their field factfinding work.

The interviews with SLAOs show that land corruption activities may occur in two main ways. One, illegal payments to SLAOs and their external partners to expedite land transactions and two, local elites' interference with standard land transaction procedures. In addition, it is evident that corruption in changing land records is a likely risk that SLAOs are aware of hence their advice to

disputing land parties on the need to safeguard their land records. Though, no evidence of corruption emerged in SLAOs interviews, SLAOs awareness of the likelihood of corruption and the various ways it may occur suggests that corruption is a risk that SLAOs have learnt to work with (*see section 7.2.4.1 for further details on SLAOs and corruption*).

#### **7.2.2.4 SLAO Working Context Structuring**

To improve land administration services delivery, SLAOs structure their working conditions and processes in the following ways.

The SLAO interviews indicate that national government valuation SLAOs develop simple office-based instruments, such as templates on how to undertake stamp duty valuation and informational databases (Int# 1023). The national government land valuers have developed a local valuation database based on valuations undertaken by the SLAOs themselves and private practitioners (Int# 1023). To undertake land valuations, SLAOs (valuers) are expected to do visit the property and undertake both property inspection and site analysis. Following, this they are required to look for comparable properties that have been valued within the area to inform their property market value assessment and estimate. By developing a property valuation database, the national government valuers do not have to go out of their way to look for comparable property valuations as they can get this from their database. In addition, participant #1018 added that since the database includes land ownership information, in some cases, the database may provide a quick and simple initial check against fraudulent land claims by squatters.

The interviews with County government SLAOs shows that they cooperate with different local actors such as private practitioners and residents, to keep up with ongoing projects within their jurisdiction. The private practitioners, such as property developers, inform them on the progress of ongoing projects in situations where the SLAOs cannot visit due to possibilities that their presence on the ground may lead to local resistance and catalyse violence because their authority is not recognised by the residents (Int# 1017, 1026). In situations where such collaboration is lacking, SLAOs first officially request updates from the practitioners. If the practitioners do not respond to this request, they may take the necessary regulatory measures available to them for example, completely stopping ongoing construction (Int# 1026). In addition, they also cooperate informally with the residents who inform them about ongoing local land issues such as new

unapproved construction projects (Int# 1014). The collaboration with the local actors ensures that the SLAOs are aware of ongoing projects that may require to be inspected and regulated.

The national government SLAOs do not strictly adhere to the organizational procedures and requirements – this flexibility allows them to deliver their services. For example, due to the delay in discharging land ownership documents, the SLAOs may allow land transfers if landowners show receipts to prove that they are waiting for the deed of discharge from the Ministry Headquarters in Nairobi (Int# 1002). However, these title documents cannot be used for credit purposes because banks do not transact on charged leases where the discharge has not been registered. Further, the financial institutions sometimes call the SLAOs to confirm land ownership information and details (Int# 1002). Thus, in addition to their official duties they play an important unofficial land market role for the local financial institutions.

SLAOs self-finance when visiting fieldwork sites or share the cost with clients and digitize land records at their own expense (Int# 1027). A field-based example of this is after the government had stopped surveyors from showing plots in one of the settlement schemes for the purpose of taking up ownership, surveyors would make private arrangements to provide these services to beneficiaries at a fee (Int# 1002).

To further improve service delivery, SLAOs at the two levels of government may do one or more of the following: draft work plans and resource sharing schedules, for example, a vehicle use timetable showing each department's official vehicle use schedule (Int# 1026, 1029); contract out some of the land administration services through the procurement law (Int# 1014); work overtime, make use of ICT and defer complex issues to higher offices (Int# 1028) and; in some cases, suspend long-term full-month leave by taking short-term leave (Int# 1027). Additionally, SLAOs may also go beyond their official duties by informally advising local residents on specific land administration processes and procedures (Int#1003, 1018). Furthermore, there is an informal mutual exchange of information between SLAOs: "I give them what we have on the county side, and they give me what they [national SLAOs] have on their side." (Int# 1029).

#### ***7.2.2.5 Discussion and Analysis***

The research findings in section 7.2.2 show that, in Waitiki Farm, land administration functions are undertaken in a context characterized by inadequate resources, weak or no facilitation of

SLAOs fieldwork, and private land invasions. As a result, strategies related to improving service delivery under these working conditions remain a challenge in Waitiki Farm. Drawing on the above findings, strategies that address the constrained working conditions depend on the government level and are likely to range from office-based tools that help manage and reduce the workload to informal cooperation with private practitioners. In addition to the different strategies, there are coping strategies that deal with the urgent problem of individual cases, such as the tacit approval of land transactions that do not meet all the official requirements on the premise that these requirements will be met later, and the transaction will not harm any other land rights owner.

The theoretical premise which emerges from the SLAO interviews data is that, faced with limited resources as well as increasing work demands and private land invasions, SLAOs interviewed at the two levels of government seek to improve service delivery using the means that are available to them and by developing strategies that simplify their work demands, engage private practitioners, and facilitate inter-departmental resource sharing. In addition, the interviewed SLAOs exercise their discretion on individual land transactions and information sharing across government levels. These discretionary practices and strategies constitute the *de facto* land policy, i.e., policy as practiced, which often differs from the written policy.

### **7.2.3 Street Level Land Administration and Local Politics**

This sub-section discusses and analyses how SLAOs experience local political influences and how they deal with local politics while undertaking their work. The section answers research question 13, i.e., in what ways do local politics influence SLAOs' work, what are the noticeable outcomes, and how do they deal with these influences? The latter is addressed in section 7.2.3.3. Each of the sections concludes with an analysis of the data.

#### ***7.2.3.1 Effects of Local Politics on Street Level Land Administration***

Land issues that SLAOs at the two levels of government, national and county, handle in Waitiki Farm are closely interrelated with local politics (Int# 1002, 1023). All the SLAO interviewees had experienced direct or indirect political pressure while undertaking their work.

Direct political interference in the administrative procedures of land administration processes prevails during project implementation (Int# 1002, 1026). For example, local politicians and the

activists aligned to them identify outstanding project issues and had incited the residents against the SLAOs' proposals. For instance, Int# 1002 noted despite having invited the local Member of Parliament (MP) to meetings for a land resettlement project he was undertaking in his constituency, he did not participate. The MP attended the project meetings after it was publicly announced that the President would be commissioning the project. Despite not participating in earlier meetings the MP started questioning the already agreed upon issues (Int# 1002). Such interference, through the project committee and local radio, by local politicians such as the MP, complicates the land administration project implementation in these situations because it calls into question the already established agenda between the project implementation committee and the community. It also complicates the unsettled agenda. For example, participant #1002 noted further that upon joining the project implementation committee the MP demanded that the whole land allocation process be restarted. He wanted to discard the allocation procedure that had already been agreed on.

Other forms of direct political interference include the following. One, misinformation campaigns by local politicians on land tenure projects such as land resettlement. Local politicians undertake these campaigns to undermine ongoing community-level land tenure projects that in their view will not benefit them politically and/or are likely to benefit to their political opponents. One such case was the political misinformation regarding the Waitiki Farm leases and payments put out by local opposition party politicians (Int# 1002, 1014, 1026; *see sections 6.6.1 and 6.11.1.2 for further details on the misinformation in the Waitiki project*). Two, local politicians' incited squatters to invade private lands based on ancestral land rights claims. For example, participants #1018 and #1024 noted that due to the local politicians' egging them on, some of the beneficiaries of previous land resettlement projects sold off their lands, invaded private property under the guise of ancestral land claims, claim that they are landless, and request the national government to recognise their land claim. It is because of this that SLAOs have termed residents who claim to be squatters in Waitiki area and the larger coastal region as professional squatters. They are usually very sceptical of squatters' ancestral land claims (#1018, #1023, #1024).

Indirectly, according to officials local politicians try to influence and manipulate the official land administration processes and procedures by making phone calls or sending emissaries to the SLAOs to demand preferential land administration services. Local politicians do this because they are unwilling to follow the standard procedures (Int# 1010, 1023, 1024). Participants #1014,

#1023, and #1026 suggested local politicians are unwilling to follow or observe standard land administration procedures because of accountability checks within the procedures that may lead to public scrutiny (*see sections 7.2.2.1 and 7.2.3.3 for examples of political interference in standards implementation*). Due to local politicians' lack of observing the standard land administration procedures participant #1023 noted that when dealing with local politicians he insists on official written communication and instructions to carry out land valuation assignments. In his view such official communication is important to safeguard his job should the local politician be involved in land corruption related activities such as a land grab through land undervaluation. For example, participant #1023 noted that in one case a local politician requested him to undervalue a parcel of land that one of his supporters, a local businessman, was interested in acquiring but was not willing to pay the market value for the property (Int# 1023). However, it is important to note that despite their stated resistance to political interference, SLAOs may be overruled by their seniors, the strategic land policymakers who owe their positions to the politicians (Int# 1000, 1002). The interviewed SLAOs did not indicate what they would do if they were overruled.

### ***7.2.3.2 Discussion and Analysis***

In summary, the nature of political involvement in SLAOs' work ranges from direct interference with the SLAOs fieldwork to indirect manipulation of procedures and/or processes for the politicians, and/or their supporters, benefit. The evidence suggests that local politician pressure officials to work outside of the standards procedure in different land administration processes for example, land valuation. The officials overcome this pressure by requesting politicians to bring the necessary official documentation that is required for the land administration service sought. SLAOs insist on official documentation and technical standards because they know that the implications of not adhering to official standards and procedures will be dire to them in the long-term and in some cases may lead to them losing their jobs. Under these conditions, SLAOs must be aware of the land administration procedures and how their implementation of these procedures influences existing local power relations (*see section 7.2.3.4 for further details on SLAOs and local politics*).

### ***7.2.3.3 How do SLAOs handle local political demands on their work?***

SLAOs interviewed at the two levels of government deal with the local political pressures in Waitiki Farm in the following ways:

SLAOs hasten procedural work by combining some of the processes and implementing them simultaneously (*see sections 5.4 and 5.5 in Chapter 5 for further details*). For example, in the Waitiki Farm titling project, the SLAOs prepared both letters of offer and Certificates of Lease simultaneously as opposed to first issuing letters of offer and then certificates of lease after the beneficiaries had cleared the Settlement Fund Trustees charge because of the presidential directive's short timeline of project delivery (Int# 1002, 1024, 1029). Where the combination of the processes is not possible, SLAOs insist that the local politicians observe the organizational rules and procedures as they relate to the specific land transaction (Int# 1023, 1024). Where it is not possible to deliver the requested service, SLAOs meet privately with the local politicians to discuss the request and applicable professional standards and laws. This is especially so in cases where politicians make public pronouncements that are not practical. The reason SLAOs meet with local politicians privately is because the politicians do not like being corrected in public (Int# 1003, 1017).

The SLAOs use local media, for example, FM radio stations with public call-in sessions to increase public awareness and counter public misinformation regarding the land settlements' beneficiaries and their land interest (Int# 1002; *see sections 6.6.1 and 6.11.1.2 for further details on the misinformation*). Additionally, SLAOs manage local politics through public participation, especially where it is a legal requirement to do so. For example, SLAOs are legally required to advertise and seek residents' opinions on implementing local planning standards. By doing this, SLAOs get community buy in and reduce the influence of local politicians in land related project implementation interference (Int# 1023, 1028). Further, by increasing public awareness, SLAOs maintain good relations with community level leadership, allowing them to address concerns raised by local politicians without losing the residents' support for the land administration projects (Int# 1002). Participant #1002 added that if left unchecked local politicians' interference may lead to the erosion of the gained community support for land administration projects.

As it concerns contentious land administration projects such as resettlement of squatters or landless people in existing established communities, the SLAOs negotiate with local political leaders and leadership networks to get their support and buy-in from the community and avoid local conflicts (Int# 1015). However, according to the interviewees, support from local politicians is usually conditional because they are willing to support land administration projects if they think they will gain political advantage. As aptly reflected in the comments from one interviewee: “To them one largescale landowner versus many squatters is a political matter and problem,” not an administrative issue (Int# 1014). This suggests that officials believe that local politicians are more interested in how the squatters are likely to impact the local voting patterns rather than in resolving the land issue. It is because of these considerations that local politicians block resettlement of people to, and eviction from, their areas, as they view these settlers as new voters whose support is uncertain. To handle this form of political pressure, SLAOs offer incentives such as ensuring a certain percentage of the beneficiaries are locals (Int# 1019). All the above factors complicate and hamper land administration practices in peri-urban settlements. For example, participant #1014 noted that due to local politicians’ interference the county department in charge of land administration has been unable to evict residents who have settled on land that the department considers unfit for human settlement (Int# 1014).

#### ***7.2.3.4 Discussion and Analysis***

The study findings show that SLAOs in Waitiki farm work within a context of intense national and local political pressure. The political pressure ranges from direct to indirect interference. What emerges from the discussion, in sections 7.2.3 and 7.2.3.3, is that local politicians and SLAOs have conflicting objectives. According to officials, the two parties have conflicting temporal views: SLAOs have a long-term perspective while certain local politicians have a short-term perspective. Local politicians are most often only interested in achieving their immediate political objectives, for example, issuing titles to resettle squatters; they may be less interested in the complex procedures involved in preparing these titles. Thus, my observation that in Waitiki Farm, land tenure administration is likely to be shaped by negotiations between SLAOs, community leaders, and local political leaders (*this hybrid land administration context is further detailed in chapter 8*).

The negotiated settlement is more likely to be biased towards satisfying the fluid interests of local political elites because of the risk that a dissatisfied local political elite may sabotage the work of SLAOs on the ground by fomenting chaos. The evidence shows that the interviewed SLAOs accede to local political demands by focusing on the delivery of immediate goals and agreeing to have one-on-one meetings with them. However, there is also evidence of the interviewed SLAOs countering local political misinformation through local media. In addition, evident from the study is that when local elites and politicians' interests are threatened, they are more likely to manipulate existing land administration procedures, use local resistance, or even the threat of political violence to get their way. In summary, the findings are instructive on the various strategies that SLAO interviewees use to handle political interference in their work.

#### **7.2.4 Street Level Land Administration Officials and Corruption**

This sub-section discusses and analyses SLAOs' experience with corruption. The section answers research question 14, i.e., how do SLAOs experience land corruption in their work, what are the noticeable outcomes and what accountability mechanisms are available to them? The section concludes with an analysis of the data.

##### ***7.2.4.1 Street Level Land Administration Officials and Corruption***

All SLAOs indicated that they were aware of corruption in land administration and the various forms it takes. They noted that at the higher policy level corruption takes the form of inflated project values, for example, inflated land compensation values in public projects by Commissioners in the first National Land Commission (Int# 1002, 1003). At the SLAOs level and in land regularization projects like Waitiki Farm, participants #1002, #1003, and #1015 noted that the most common types of corruption were bribery, for example to hasten bureaucratic land transaction processes, and land capture (the setting aside of some of the land parcels by SLAOs to benefit themselves and their bosses).

All the SLAOs however opposed the perception of high prevalence of corruption captured in the annual reports by the Kenyan Chapter of Transparency International (TI) and the Ethics and Anti-Corruption Commission (EACC)<sup>22</sup>. For example, interviewee #1002 noted the following:

“I would say it is more of a narrative than the truth because if you go to the Settlement and you have been asked to pay Kshs. 6500 and you pay and show receipts, why would you pay [a bribe]? From my experience, what I have seen is that people believe in this corrupt narrative, to the extent that they don’t believe you can get free services without paying for it, so they try to pay and when you tell them no they appear shocked.” (Int# 1002).

#### ***7.2.4.2 Discussion and Analysis***

The interviews suggest that there is no lack of knowledge about corruption and corrupt practices among SLAOs. SLAOs’ knowledge about corruption, their clients’ corrupt behaviour and evidence of this behaviour's prevalence suggests that corruption is an ever-present risk the SLAO interviewees have learnt to work with. As a result, rather than attempt to be anti-corruption crusaders or undermine their colleagues with corruption claims, the interviewed SLAOs prefer to get the work done while avoiding unnecessary trouble from their superiors and colleagues who may be involved in corrupt practices. As earlier noted in section 7.2.2.3, it is important to reiterate that no evidence in the SLAOs interviews, or any other interviews in Waitiki, suggest that the SLAOs interviewed were involved in corruption.

### **7.2.5 Street Level Land Administration Officials and the implementation of the Waitiki Farm Land Titling Project**

This sub-section discusses and analyses SLAOs’ experience with the Waitiki Farm land titling project. The section answers research question 15, i.e., what were the SLAOs experience with the land titling programme undertaken in Waitiki Farm? The section concludes with an analysis of the data.

#### ***7.2.5.1 The roles of the SLAOs in the land titling project***

In the initial stages of the Waitiki Farm project implementation, the working relationship between the national government and county government SLAOs was collaborative (Int# 1014). County SLAOs handled local land issues and resolved emerging local disputes (Int# 1017). In undertaking

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<sup>22</sup> The two corruption reports rate the Ministry of Lands and Physical Planning as one of the most corrupt agency in Kenya. In addition, the reports note that land corruption is pervasive at all levels within the agency.

these roles, the county SLAOs reported to the project leader and the County Chief Officer in charge of land administration while the national government SLAOs reported to the project leader seconded from the Ministry headquarters. According to participants #1005 and #1014, the multiple accountability structures may have contributed to the worsening of relations between the two levels of government resulting in the County Government's eventually pulling out of the project. Common to both Mombasa-based national government SLAOs and County Government SLAOs was the perception that they were not fully involved in the project because the implementation framework was designed in Nairobi, the capital, without their input (Int# 1000). SLAO interviewees noted that it was because of this and other project implementation factors that the project had several shortcomings, i.e., implementation gaps, such as the lack of a settlement land use plan. While these observations are in line with the suggestions that devolution in Kenya would make official land administration at the local level more complex (Rigon, 2016) they also point to the importance of potential agency role of the SLAOs in overcoming these challenges.

In the Waitiki Farm land titling project, SLAOs applied their policy discretions and strategies in various ways under different circumstances because they worked for different official land administration institutions that had different priorities. However, they had a good collaborative working relationship amongst themselves and shared a common objective: land tenure security for Waitiki residents and conflict resolution. To be effective in their mandate, the SLAOs had to use discretion and adhere to strict timelines while at the same time navigate power relations within their offices and be accountable to their superiors and other institutions (Int# 1003, 1005, 1010, 1018, 1019, 1024, 1026). As a result, the project had several implementation gaps (Int# 1010), including that the residents misunderstood the property naming and numbering used in the project (Int# 1003) and the lack of physical boundary beacons. The lack of beaconing was suggested by some to complicate resolution of future land boundary disputes. Instead of physical beacons, roof corner coordinates of the house structure on the ground were picked and used (*refer to section 5.4.2.3*) and boundary terminals remained unmarked on the ground (Int# 1040). According to the SLAOs, the gaps occurred because:

- The land administrators who undertook the work had no experience with Mombasa peri-urban lands “you bring a person who has been surveying group ranches in Narok and the smallest farm he has had experience with is 60 acres, you bring him to do pickings for such a scheme as a surveyor it will be a shock” (Int# 1002). Though a surveyor is expected to

be competent in surveying both urban and rural lands, the Waitiki project suggests that the complex nature of Waitiki peri-urban boundaries was a challenge for the surveyors whose experience was limited to rural practice.

- The project was undertaken hurriedly. It had to be completed in 3 months. Ideally, the project needed six months at a minimum (Int# 1002, 1023, 1024).
- Mombasa officials felt the daily project allowances were disproportionate and unfair. Yet, they did the same amount of work “when I am getting Kshs. 1000 per day and doing the donkey work, whenever you see people from Nairobi coming there is the assumption they are coming for a holiday, as we said let’s leave it to them” (Int# 1002, 1017). Though the civil service policy dictates how, out of and in workstation, daily allowances are to be paid. The perception of unfairness in the administration of allowances by Mombasa based SLAOs affected project implementation.

These gaps were evident during and after the implementation process. The Mombasa-based national government SLAOs were expected to handle these gaps despite not being fully involved during the project implementation because they understood the local context and the beneficiaries were familiar with them (Int# 1000, 1002). After the issuance of titles, the SLAOs who were handling the emerging land administration concerns did it under a context of increased demands on their routine work practices. This worsened their already constrained working conditions because they were undertaking this work without the resources employed in the land titling project (Int# 1002, 1019). Moreover, when the project beneficiaries would travel to the land ministry headquarters in Nairobi, they would be referred to the SLAOs in Mombasa irrespective of whether they would be able to assist the client seeking their services (Int# 1002).

Contributing to the above complications are off-register land transactions by beneficiaries (Int# 1018). An off-register transaction is a land transaction that is not officially registered but accepted by the parties to the transaction and possibly neighbours (Barry and Whittal 2016). The SLAOs attributed the prevalence of these off-register land transactions to low education levels (Int# 1018) and fear of eviction (Int# 1015). To manage off-register land transactions, and prevent cloudy titles, the SLAOs interviewed noted it was important to include the local elders and leaders because they have a better understanding of the local context. Specifically, the local elders witness the local land sales and understand the handwritten documentary evidence, the local land measurements, and the sales conditions (Int# 1017, 1023, 1026).

### *7.2.5.2 Discussion and Analysis*

The responses of the SLAO documented in this section are instructive as to their experience with the land tenure regularisation project undertaken in Waitiki Farm (refer to Chapters 4 and 5).

The project implementation gaps between the stated project goals and the actual outcome (e.g., the lack of physical boundary beacons) suggest that the time limited top-down land titling programme design used in Waitiki Farm was too rigid for the rapidly changing situation and institutional relationships. The evidence suggests that in Waitiki Farm, the project consisted of many processes that had to be successfully completed, within a shorter period of time than usual, for the Certificates of Lease to be considered legally valid. As a result, the SLAOs working in the project experienced the pressures of completing the project tasks to meet the overall project expectations within the specified project deadlines, at the risk of overlooking specific requirements. I speculate that it was a risk that SLAOs were willing to take on without the fear of retribution by their seniors because they would be able correct some of the oversights later. This suggests that when working under political pressure to implement or complete various project-based land administration processes and tasks, SLAOs are willing to use or adapt discretionary practices that meet the minimum legal requirements necessary for land registration, while at the same time satisfy the political expectations. For example, consulting relevant local elders in the land transaction process. This is not an administrative requirement but SLAOs consult the local elders due to their superior knowledge of the local context specifically local land transaction processes.

The Waitiki Farm case is instructive on how a project design may reinforce existing power structures as the dominant actor assumes more project control and the need for local legitimacy and procedural support for land transactions from a local government diminishes. As the project progressed, the evidence suggests that disputes between the national and county government over who was in-charge arose. These disputes manifested in local politics as the two levels of government did not trust one another. The county government suspected the national government of manipulating the project goals to build their local political power, while the national government suspected the county government of trying to sabotage the project on the ground by fomenting local level chaos through misinformation about the project (*in addition to the discussion in section 7.2.5.1 also refer to the discussion in sections 7.2.3.3 and 7.2.3.4*).

Further complicating this state of affairs was the non-involvement of Mombasa-based SLAOs in the project design. While such institutional conflicts and lack of support from local SLAOs may halt such projects, the State's power in terms of financial resources, access to additional SLAOs from other areas, and project decision making after the county government had stopped collaborating, was evident (*refer to discussion in section 7.2.5.1*). Thus, the way the two levels of government collaboration was designed was skewed towards the national government and its SLAOs as the challenges identified merely reinforced the power of the national government. The interview results in this section suggest that conventional top-down land titling implementation frameworks are ill-suited to changing peri-urban settlements because they reinforce uneven power dynamics between levels of governance (in this study's case, between county and national government) where one level of governance has the authority to control project decisions and manipulate project resources to their political benefit.

The evidence shows that after the Waitiki Farm land titling project, resources available to SLAOs significantly decreased, and their workload increased. As a result, the SLAOs used various strategies to handle increased work demands better. These included referring beneficiaries to other offices and informally engaging local leaders involved in the project for land transaction updates, especially concerning beneficiaries who did not register transfers that followed their acquisition of land leases. The latter strategy points to the implicit recognition of hybrid governance as it relates to land transactions. Consequently, the assumption that land titling beneficiaries will follow official procedures after official documentation of land interests does not hold. The data suggest that as a land administration project transitions from a 'project basis' to the 'conventional state system', resources (for example, finance and human) dedicated to it to deal with the various challenges also decrease. During this transition, SLAOs use discretionary practices such as informal engagement with local leaders to deal with emerging land-related issues, for example, off-register land transactions.

### **7.3 Street Level Bureaucracy Theory Development**

This section presents the chapter's street-level bureaucracy hypotheses analysis. *A-priori* hypotheses were developed in section 2.8.2.3, based on published literature and interviews with my supervisor Barry (pers. comm. 2020) to focus the analysis, and ensure that the study's theory

development objectives are achieved. The section starts with an analysis of the *a-priori* stated street level bureaucracy hypotheses (section 7.3.1) followed by an analysis of the emergent street-level bureaucracy hypotheses (section 7.3.2).

### **7.3.1 Street-Level Bureaucracy Hypotheses Analysis**

This section analyses the street-level bureaucracy hypotheses posited in section 2.8.2.3 to facilitate the achievement of objective 3, which is to develop a street-level bureaucracy theory for *in situ* regularised informal settlements based on the Waitiki case. To recap, under the conditions set out in Section 2.8.2.3 hypotheses (H6 - H11) were posited to explain SLAOs behaviour under informal settlement conditions. The following is a discussion of the street-level bureaucracy hypotheses tested under the using the Waitiki SLAOs' interview data.

**H6:** *In informal settlements, SLAOs will recognise and engage hybrid governance arrangements where their official engagement with the informal settlement is likely to lead to violence outbreak or is prohibited by the law.*

There is evidence to support hypothesis 6, which posits that in situations where SLAOs engagement is likely to lead to violence or is prohibited by the law, SLAOs will engage hybrid governance arrangements. When dealing with volatile and conflict-prone situations in Waitiki, SLAOs noted that they engage hybrid governance arrangements, which may include local elders, local politicians, and local community level administrators (refer to section 7.2.2). Similarly, SLAOs noted that they may also work with private practitioners, such as property developers and/or residents as informants (refer to section 7.2.2.4). There is also evidence that in some cases, SLAOs negotiate with local political leaders and elders to avoid land-related conflict on-the-ground (refer to section 7.2.3.3). In summary, there is persuasive evidence to support hypothesis 6. The data shows that hypothesis 6 may be restated as follows.

**H6:** *In informal settlements, SLAOs will recognise and engage hybrid governance arrangements, private practitioners, and local politicians where their official engagement with the informal settlement is likely to lead to violence outbreak or is prohibited by the law.*

**H7:** *In informal settlements where actors in competing local governance arrangements are unable to agree on the appropriate land tenure administration regularisation, or upgrading approach to be used, SLAOs will be reluctant to innovate to avoid being labelled the face of failure by the competing coalitions, local leaders, and politicians.*

The data supports part of hypothesis 7. The evidence shows that due to the conflict between the national and county governments, and strict project timelines in Waitiki, SLAOs were reluctant to innovate to resolve what they identified as project implementation gaps (refer to section 7.2.5). It may also be the case that they did not innovate because they could handle these identified implementation gaps after completing the project. Due to this expectation and the limited empirical support, i.e., the lack of evidence of disagreement between local governance structures and lack of mentioning of a face of failure, hypothesis 7 remains speculative.

***H8:** In informal settlements where SLAOs are not accessible, not continually active and seldom visible at the street level, their land tenure administration roles will be assumed by unofficial, community-based structures.*

The findings from the SLAO interviews support hypothesis 8 as there is evidence that unofficial structures undertake land tenure administration functions in Waitiki because SLAOs are not continually visible and active on the ground. The data shows that due to SLAOs absence on-the-ground, local elders oversee local land transactions and land sales (refer to section 7.2.5). Furthermore, SLAOs work with local elders on land-related dispute resolution (refer to section 7.2.1). Thus, there is persuasive evidence to support hypothesis 8.

***H9:** In regularised informal settlements, where SLAOs are active on the ground and they educate residents on the risks of off-register land transactions, or residents learn about these risks by becoming aware of people losing land in an off-register transaction, the residents are likely to follow the official regulations and procedures in their subsequent land transactions.*

For hypothesis 9, there is evidence that SLAOs interact with residents and advise them on official land administration procedures and processes (refer to section 7.2.2.4). In addition, there is further evidence that off-register land transactions were occurring partly due to low levels of education, which implies that residents lack the know-how and awareness of official procedures and processes (refer to section 7.2.5). However, there was no evidence from the SLAOs that residents changed their land transaction behaviour, i.e., to undertake off-register land transactions or not, after interacting with the SLAOs. As a result, this hypothesis remains speculative.

**H10:** *In informal settlements upgrading projects, where SLAOs and local leaders or organisations have negotiated and come up with an agreement on rules to guide the various settlement upgrading activities, the local leaders may not strictly enforce these rules unless collective strategies by settlement-level agents and perhaps external agents (for example, SLAOs or NGOs) are implemented to maintain these rules (Barry and Kingwill 2020).*

The data from interviews with SLAOs partly supports hypothesis 10. The evidence suggests SLAOs and CSOs negotiate and develop a Memorandum of Understanding (MOU) or protocols to guide their partnership (refer to section 7.2.1). The MOU specifies what is expected from each actor. However, it was not evident from the data how strictly the CSOs undertake their mandate. Thus, it is not possible to either support or negate hypothesis 10, and as a result, it remains speculative.

**H11:** *In informal settlement upgrading projects, a project design that allows SLAOs to directly communicate with the residents, and monitor the local leaders' implementation of rules agreed on various project activities, will enable SLAOs to effectively handle local project disruptions and achieve project implementation objectives.*

The SLAO interviews support hypothesis 11. The evidence shows that in Waitiki, SLAOs may use either local media, for example, FM radio stations and/or public participation forums, to inform residents about ongoing land tenure administration projects (refer to section 7.2.3.3). In doing this, SLAOs work with local leaders (local elders, local administrators). In support of the hypothesis, the ability of SLAOs to directly communicate with residents means they can reduce the influence of local politicians. Consequently, they are able to effectively handle any disruptions motivated by local politics. In summary, there is persuasive evidence to support hypothesis 11. The data shows that hypothesis 11 may be rearticulated as follows.

**H11:** *In informal settlement upgrading projects, a project design that allows SLAOs to directly communicate with the residents, collaborate with local leaders, and monitor the local leaders' implementation of rules agreed on various project activities, will enable SLAOs to effectively handle local project disruptions motivated by local politics and achieve project implementation objectives.*

In summary, the SLAO interviews show support for hypotheses 6-11. Support for hypotheses 6, 8, and 11 (restated below) were found to be persuasive because there was substantial empirical data to support them.

**H6:** *In informal settlements, SLAOs will recognise and engage hybrid governance arrangements, private practitioners, and local politicians where their official engagement with the informal settlement is likely to lead to violence outbreak or is prohibited by the law.*

**H8:** *In informal settlements where SLAOs are not accessible, not continually active and seldom visible at the street level, their land tenure administration roles will be assumed by unofficial, community-based structures.*

**H11:** *In informal settlement upgrading projects, a project design that allows SLAOs to directly communicate with the residents, collaborate with local leaders, and monitor the local leaders' implementation of rules agreed on various project activities, will enable SLAOs to effectively handle local project disruptions motivated by local politics and achieve project implementation objectives.*

Hypotheses 7, 9 and 10 are still speculative because there was partial support or limited empirical data to support them. More specifically, hypotheses 7 and 10 were partly supported in that the data supported only one aspect of the hypotheses, while hypothesis 9 was deemed speculative at this stage because there was no data to support it.

**H7:** *In informal settlements where competing local governance arrangements are unable to agree on the appropriate land tenure administration regularisation, or upgrading approach to be used, SLAOs will be reluctant to innovate to avoid being labelled the face of failure by the competing coalitions, local leaders, and politicians.*

**H9:** *In regularised informal settlements, where SLAOs are active on the ground and they educate residents on the risks of off-register land transactions, or residents learn about these risks by becoming aware of people losing land in an off-register transaction, the residents are likely to follow the official regulations and procedures in their subsequent land transactions.*

**H10:** *In informal settlements upgrading projects, where SLAOs and local leaders or organisations have negotiated and come up with an agreement on rules to guide the various settlement upgrading activities, the local leaders may not strictly enforce these rules unless collective strategies by settlement-level agents and perhaps external agents (for example, SLAOs or NGOs) are implemented to maintain these rules (Barry and Kingwill 2020).*

In sum, against the backdrop of this working environment and informal settlement conditions, SLAOs recognise and engage hybrid governance arrangements that are active on-the-ground, especially where volatile situations are more likely to occur. In doing so, they are reluctant to innovate during land interest regularisation projects because they fear being the face of failure. Rather, they expect to handle project implementation gaps after project completion. Additionally, though SLAOs interact with Waitiki residents, they do not appear to influence a change in their behaviour of engaging in off-register land transactions. Similarly, it was not evident that SLAOs strictly monitor how hybrid governance arrangements implement the agreed-upon local governance rules. However, through their direct communication system with residents, SLAOs are able to handle local political disruptions.

Drawing on chapter 6, section 6.13.1.1, the following street-level bureaucracy hypotheses were also posited, but there was no data in the chapter to support or negate them. Thus, these hypotheses remain speculative, as indicated in section 6.13.1.1.

***H16:** In informal settlements, residents are unlikely to use the official system where they do not trust officials to act in their best interests possibly because they perceive officials to be corrupt and/or biased towards a particular group unless using the official system is unavoidable.*

***H17:** In informal settlements upgrading projects, a project design that allows officials to schedule meetings outside of working hours may increase resident's participation in the upgrading project planning public meetings and enable officials to effectively achieve project implementation objectives.*

### **7.3.2 Emergent Hypotheses on Street-Level Bureaucracy**

In addition to the street level bureaucracy hypotheses tested in section 7.3.1, the following hypotheses derived from the interviews with SLAOs in Waitiki emerged and may be instructive on how SLAOs operate in *in situ* regularised informal settlements like Waitiki.

***H20:** In informal settlements where land invasions persist, officials may take pre-emptive administrative measures that are informed by their engagement with the private landowner and land invaders, to safeguard the land records and handle the land invasion case within the existing official procedures and mandates.*

The discussion in section 7.2.2.2 shows that national government SLAOs working in Mombasa County deal with land invasions by engaging both the landowner and the land invaders. Officials deal with the two conflicting groups to safeguard the land ownership documents from being corruptly altered by officials working with the disputing claimants and verify the land invaders' claims (*for further details refer to discussion in section 7.2.2.3*). Through this engagement, which in some cases involves local elders, officials reduce the likelihood of land conflicts such as land invasion, by indicating to the would-be land invaders the legal procedures that they can use to acquire and own the land - it was not clear whether this persuaded the invaders to leave] and loss of land ownership documentation through corrupt manipulation of land ownership details and hiding of land records files (*refer to sections 7.2.2.2 and 7.2.2.3 for more details*). Due to the minimal empirical data support (a count of 5 interviewees), this hypothesis remains speculative.

***H21: In informal settlements where officials are faced with limited resources and increasing work demands, officials are likely to develop strategies that simplify their office-based work demands, engage unofficial actors, and facilitate inter-departmental resource sharing, to improve their land administration service delivery to their clients.***

The discussion in section 7.2.2.4 shows that, given their constraining work conditions relative to what they are expected to fulfil, SLAOs in Waitiki structure their work context and land administration processes in different ways. The strategies used by SLAOs range from office-based solutions for their workload to informal cooperation with unofficial actors (private practitioners). The SLAOs use the different strategies to improve service delivery to their different clients. For example, in Waitiki the registration and deregistration of SFT charges against the Waitiki beneficiaries' leases is guided by the official procedures and regulations on land resettlement (*for more details, refer to section 5.3*). However, deviance from these procedures is allowed such as tacitly allowing land transactions processes to proceed despite the land transaction actors not having all the necessary requirements on the assumption that no public interests or stakeholders' legal rights will be harmed since additional land transactions, such as the use of land as collateral, may only occur after the land transfers have been officially approved (*refer to sections 7.2.2.4 and 7.2.2.5*). Due to the substantive empirical data support (10 respondents), there is persuasive evidence to support hypothesis 21.

**H22:** *In informal settlements where local political leaders directly and/or indirectly interfere with official land administration procedures, officials will accede to some of the local political demands to ensure that the political leaders will not sabotage the official's work on the ground.*

As the discussion in section 7.2.3 shows local political elites directly and/or indirectly interfere with land tenure administration processes, procedures, and projects. To handle the interferences, SLAOs use the strategies articulated in section 7.2.3.3. The strategies range from acceding to local politicians' demands to negotiating with them for a way forward. For example, to resettle landless people officials negotiate with local political leaders whom they meet both privately and publicly. Further, they also accede to some of their demands e.g., reserving a specified portion of the land for the local residents. Due to the substantive empirical data support (13 respondents), there is persuasive evidence to support hypothesis 22.

**H23:** *In informal settlements, officials are likely to ignore corruption allegations against their colleagues and/or organisation where they perceive such claims and/or allegations to be based on the narrative that the officials and/or organisation are corrupt, rather than being based on hard evidence.*

As shown in the discussion in section 7.2.4, SLAOs in Waitiki contested the claim that their colleagues and the institution were corrupt. According to these SLAOs, the perception that corruption was prevalent in the institution was based on the narrative that they are corrupt which was not founded on evidence. Due to the minimal empirical evidence (4 interviewees) hypothesis, 23 remains speculative. In my view, officials decide to ignore corruption allegations against their colleagues because they are most likely to have to continue working with their accused colleagues – antagonising them with such charges may make their working relationship unmanageable. Further, there may also be personal risks to the officials since powerful colleagues may use their network to trump up charges and force the clean officials out.

**H24:** *In informal settlements upgrading projects, a project design that uses officials without the requisite informal settlement experience, and has a short implementation timeline, is likely to lead to certain project processes being overlooked and handled after the project.*

As the discussion in section 7.2.5 shows, SLAOs working on the Waitiki land titling project noted that the project implementation gaps (process oversight) occurred because the officials who undertook the project had no experience with informal settlements like Waitiki and the project had a shorter scheduling than usual. The Waitiki-based SLAOs intended to correct the project oversight after the project was completed. They intend to do this through serving the project beneficiaries who come to their offices to seek their services. Based on the preceding and strong empirical evidence (13 interviewees), there is persuasive evidence to support hypothesis 24. It is also important to note that the perceived unfairness in the remuneration of officials doing similar work may have also contributed to the project implementation gaps.

To summarise, the SLAO interviews support emergent hypotheses 20, 21, 22, 23 and 24. Hypotheses 21, 22, and 24 (restated below) were found to be persuasive as there is substantive empirical support for them.

***H21:** In informal settlements where officials are faced with limited resources and increasing work demands, officials are likely to develop strategies that simplify their office-based work demands, engage unofficial actors, and facilitate inter-departmental resource sharing, to improve their land administration service delivery to their clients.*

***H22:** In informal settlements where local political leaders directly and/or indirectly interfere with official land administration procedures, officials will accede to some of the local political demands to ensure that the political leaders will not sabotage the official's work on the ground.*

***H24:** In informal settlements upgrading projects, a project design that uses officials without the requisite informal settlement experience, and has a short implementation timeline, is likely to lead to certain project processes being overlooked and handled after the project.*

Hypotheses 20 and 23 (restated below), on the other hand, are still speculative because there was minimal empirical data to support them.

***H20:** In informal settlements where land invasions persist, officials will take pre-emptive administrative measures, that are informed by their engagement with the private landowner and land invaders, to safeguard the land records and handle the land invasion case within the existing official procedures and mandates.*

***H23:** In informal settlements, officials are likely to ignore corruption allegations against their colleagues and/or organisation where they perceive such claims and/or allegations*

*to be based on the narrative that the officials and/or organisation are corrupt, rather than being based on hard evidence.*

In addition, no further evidence emerged in the interviews with officials to support hypotheses 16 and 17 that emerged in the resident interviews in chapter 6.

***H16:*** *In informal settlements, residents are unlikely to use the official system where they do not trust officials to act in their best interests possibly because they perceive officials to be corrupt and/or biased towards a particular group unless using the official system is unavoidable.*

***H17:*** *In informal settlements upgrading projects, a project design that allows officials to schedule meetings outside of working hours may increase resident's participation in the upgrading project planning public meetings and enable officials to effectively achieve project implementation objectives.*

In summary, the emergent hypotheses show that SLAOs in *in situ* regularised informal settlements develop routines and strategies within the existing official procedures and structures to improve their service delivery, mitigate threat of land-related violence due to land invasion, and prevent local politicians from disrupting their work on the ground. Furthermore, to be effective in their service delivery, officials may overlook corruption allegations against their colleagues and allow project process oversights that they can correct after the project without harming any of the landholder's interest.

The evidence in the preceding sections indicates that SLAOs and land administration are prone to corruption. The corruption risk to land administration procedures manifest in two main ways. One, interference with land administration procedures by local political elites and two, corrupt activities by officials through for example taking bribes to hasten land administration procedures. It is important to reiterate that there was no evidence in the SLAOs interview data to show that those interviewed were involved in corruption. As a result, I could not measure the impact of the corruption activities.

Together hypotheses 6-11 developed from the literature and interview with Barry (pers. comm. 2020) and emergent hypotheses 16, 17, 20, 21, 22, 23, and 24 comprise the study's substantive street-level bureaucracy theory that explains how SLAOs operate in *in situ* regularised informal settlements like Waitiki.

## 7.4 Summary and Conclusion

This chapter's main contribution is the achievement of research objective 3, which was to develop a street-level bureaucracy theory for *in situ* regularised informal settlements based on the Waitiki case. To achieve this objective research questions 11-15 were answered and hypotheses 6-11 (articulated in chapter 2 section 2.8.2.3) tested. In addition, emergent hypotheses were developed and tested. In general, the findings in this chapter support Lipsky's street-level bureaucracy theory (1980, 2010) propositions related to street level bureaucrats' behaviour under constraining work structures and conditions. More specifically, the findings support the general proposition that street-level bureaucrats will evaluate their work conditions and develop coping strategies according to the work challenges faced (*refer to chapter 2, section 2.8.1*). However, the working conditions in *in situ* regularised settlements are not like those normally encountered in a functioning rational state, under which Lipsky's theory was developed. The study developed *a-priori* (*section 2.8.2.3*) and emergent hypotheses that are relevant to this study and tested them to develop the substantive level street-level bureaucracy theory to explain SLAOs behaviour in *in-situ* regularised settlement settlements.

In Waitiki Farm, it is evident that the SLAOs interviewed work under constrained conditions, and they have developed various office and fieldwork strategies to overcome them. However, unlike the context of Lipsky's SLB theory, Waitiki Farm is further complicated by hybrid land governance arrangements where non-government actors assume *de facto* land tenure administration roles, influential local politicians, risk of corruption, and increasing work demands due to the ongoing adoption of the land tenure regularisation project into the SLAOs day-to-day administration system.

Based on the foregoing, the SLAOs theory developed in this chapter argues that the strategies that SLAOs use to deal with their constraining working conditions, local political influence, and volatile situations in Waitiki are shaped by the well-established rule of law guiding land administration services provision by the national and county governments. Consequently, detailed procedures and regulations guide official land transaction processes, such as the charging and discharging of Waitiki beneficiaries' land leases. SLAOs deviance from these official procedures is dependent on whether such flexibility will harm the clients' interests or whether SLAOs process

innovations will harm their jobs. It is also dependent on the SLAOs' working relationship with the various unofficial actors. Additionally, though the land administration processes are rigid at the national and county government levels of governance, at the county level the accountability structures are not well-established. However, processes at the two levels of governance are not devoid of risks such as corrupt practices, which may involve SLAOs and local politicians interested in manipulating the land administration procedures. To manage this risk, the analysis shows SLAOs communicate directly with the residents using different platforms. While this direct interaction with residents is useful in dealing with local politics disruption, it does not seem to work when dealing with off-register land transactions. Another possible risk that SLAOs operate with is the likelihood that hybrid governance arrangements will neither strictly enforce agreed rules nor do what is expected of them.

In conclusion, this chapter contributed to achieving the study's research objective in the following ways. First, it addressed research questions 11, 12, 13, 14, and 15, which were key to achieving objective 3. Second, based on the SLAOs interview data, the chapter developed specific SLAOs' working conditions under which the street-level bureaucracy hypotheses were examined. Third, through testing the street level bureaucracy hypotheses, using the SLAOs interview data, the chapter identified hypotheses that are valid, not valid, and those that did not have data to support them. In addition, emergent hypotheses were developed to inform the substantive level street-level bureaucracy theory developed in this chapter, to explain how SLAOs operate in *in situ* informal settlements. Lastly, the chapter developed a substantive level street level bureaucracy theory to explain SLAOs behaviour in *in situ* regularised informal settlements like Waitiki. The theory developed in this chapter comprises the Waitiki the set of hypotheses (*a priori*, restated *a priori*, and emergent) examined using the SLAOs interview data.

# CHAPTER EIGHT: HYBRID LAND ADMINISTRATION IN WAITIKI FARM

## 8.1 Introduction

This chapter develops a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case. Specifically, it presents, discusses, and analyses the research results on how the official and unofficial land tenure administration actors operate in Waitiki Farm. The theory developed in this chapter is in the form of a set of hypotheses tested under the informal settlement conditions as they existed in Waitiki. The theory building in this chapter builds on hybrid governance development done in Chapter 6, section 6.13.2.

To achieve objective 2<sup>23</sup>, hybrid governance theory development, the following research questions are examined in this chapter:

1. Who are the key land governance actors in Waitiki? Builds on sections 6.2.2, 6.7 and 6.9.
2. Who are the powerful, and who are the vulnerable actors? Builds on sections 6.2.2, 6.4, 6.5, 6.10 and 6.11.2.
3. Who *de jure* and *de facto* administers land in Waitiki Farm? Builds on sections 6.2.2 and 6.5.
4. How is land tenure administration undertaken, and more specifically, what land tenure administration services do the different actors provide? Builds on section 6.9.
5. What strategies are available to the powerful and the vulnerable to secure their land tenure and to secure land transactions, and why do they adopt particular strategies? Builds on section 6.3.2.
6. How do the different land tenure administration systems interrelate and what are the noticeable land tenure administration outcomes of these interrelations? What are the available participatory development institutional platforms? Builds on sections 6.11.2 and 6.11.3.

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<sup>23</sup> To develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case

7. How did the land tenure regularization process impact the different institutions and their related land tenure administration activities? Builds on section 6.10.

Thus far, the study has developed substantive level street level bureaucracy and hybrid governance theories. The two theories are in the form of a set of hypotheses developed in section 2.8.2.3. The two sets of hypotheses were tested and further developed using Waitiki residents' interview data in chapter 6. Building on the findings in chapter 6, chapter 7 tested the street level bureaucracy hypotheses developed in section 2.8.2.3 and those that emerged in chapter 6 section 6.13.1.1, using the SLAOs data, to develop the street level bureaucracy theory articulated in chapter 7. To develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case, this chapter builds on the hypotheses tests in chapter 6, section 6.13.2.

The chapter is divided into two sections. The first section (8.2) reports the results of 33 key informant interviews and 5 focus group discussions (FGDs), herein focus groups #1, #2, #3, #5, and #6, involving 49 participants (*see section 3.4.2.5 for a description of the FGDs*). This section is divided into five subsections, specifically the following: official and unofficial land tenure administration in Waitiki, powerful and vulnerable land governance actors, land securing strategies, participatory development forums, and the Waitiki land titling project. Section 8.3 tests the hybrid governance hypotheses developed in Chapter 2, section 2.8.2.3 to focus the analysis and ensure that the study's hybrid governance theory development objective is achieved. In addition, emergent hypotheses were developed to inform the study's substantive level theory development. Finally, section 8.4 summarises and concludes the analysis and development of hybrid governance theory.

## **8.2 Results and Discussion**

This section is organised into five sub-sections. These sub-sections discuss official (*de jure*) and unofficial (*de facto*) land tenure administration in Waitiki and identifies each actor's roles. Following this, powerful and vulnerable land governance actors are discussed. In addition, the land governance actors' land securing strategies and participatory forums are identified and discussed. The section concludes with a discussion of the local leaders' experiences with the Waitiki land titling programme.

## **8.2.1 Official and Unofficial Land Tenure Administration in Waitiki**

This sub-section presents, discusses, and analyzes findings on *de jure* and *de facto* land tenure administration in Waitiki, and as a result, it is organised into sub-sections 8.2.1.1 and 8.2.1.2. In addition to identifying the *de jure* and *de facto* land tenure administration actors, the section also details their land administration roles in Waitiki. The sub-section answers research questions 4, 6, and 7. The sub-section builds on sections 6.2.2, 6.5, 6.7, and 6.9.

### ***8.2.1.1 De jure Land Tenure Administration in Waitiki***

In Waitiki, the national government ministry in charge of land administration and the Mombasa county government's Department of Land, Planning and Housing (MCGDLPH) undertake *de jure* land tenure administration. These two land governance actors are based in Mombasa City and comprise the Official Land Administration System (LAS) in Waitiki. Following is a brief description of the land administration roles carried out by these two actors in Waitiki.

The ministry's *de jure* administration roles in Waitiki include the following:

- a) Maintaining an official up-to-date record of the beneficiaries of Waitiki land titling project and their subsequent Settlement Funds Trustee (SFT) payments (*refer to 5.4.2.8 for more information on SFT*) (Int# 1019, 1024).
- b) Discharging certificate of leases after these beneficiaries have paid the full SFT charge amount and opening a land registration file with respect to the land parcel (Int# 1019, 1024).
- c) Handing over the certificate of leases to beneficiaries who have not yet received them (Int# 1018, 1019, 1024). This is important in Waitiki because, at the time of the field research, Kenya Power and Lighting Company (KPLC), the electricity provider, required anyone seeking connection to the national electric grid to provide a copy of their lease (Int# 1, 2).
- d) Providing official Waitiki settlement Registry Index Maps (RIM) at a fee (Int# 1018, 1019, 1024).
- e) Processing land succession cases referred to them by the Waitiki beneficiaries (Int# 1024).
- f) Verifying land ownership information for financial institutions undertaking official searches on the certificate of leases owned by the Waitiki beneficiaries (Int# 1037, 1038). Financial institutions undertake this due diligence to ascertain ownership and SFT charge

status and to confirm payment of land rent and rates before providing financing based on the lease (Int# 1037, 1038).

In addition to the above, the Ministry's land surveyors indicated they can undertake boundary surveys to convert the Waitiki beneficiaries' general land boundaries to fixed land boundaries as per the official standards (Int# 1018). Further, the land registrars indicated that if called upon they could adjudicate Waitiki land-related general boundary disputes (Int# 1024).

The county government level *de jure* land tenure administration roles include the following.

- a) Development application (e.g., building plans) assessment and approval based on the county spatial plan requirements and the Physical Planning Act Section 30-36 provisions. The assessment involves the different units within the MCGDLPH. The possible assessment decisions are, specifically, Approve, Approve with Conditions, Reject, or Defer (Int# 1028). Respondents noted that zoning standards regulate development because the Waitiki land use plan developed during the land titling project (*refer to Chapter 5 section 5.4.2.4*) was not officially ratified (Int# 1, 2, 3, 5, 6, 1028).
- b) Land transactions approval. The county government is considered an important official actor in the land transaction process, as the land rates clearance certificate it issues is a document required for official land transfers and development applications approval (Int# 1026).

#### *8.2.1.1.1 Discussion and Analysis*

In Waitiki, the two levels of government departments in charge of land administration undertake *de jure* land tenure administration. The law and official procedures govern the official actors' *de jure* administration of tenure, which mainly involves ensuring the official land administration records are accurate and meet the required technical standards. The official LAS gains legal legitimacy through rigorous document checking and the resulting land information integrity and accuracy. Based on this legal legitimacy, the official LAS is able to facilitate and support other land tenure administration processes, such as development control and land transactions within Waitiki.

### ***8.2.1.2 De facto Land Tenure Administration in Waitiki***

This sub-section describes the various unofficial land governance actors who were identified in Waitiki. The study findings show that the settlement-level committee, local CBOs, local youth, and local politicians mainly undertake *de facto* land tenure administration.

#### **a) Settlement-level Governance Committee**

The settlement-level governance committee is a hybrid governance arrangement that is comprised of local administrators (Chief, Assistant Chief) and local elders. Local administrators, such as Chiefs, are the national government's representatives at the location and sub-location levels of administrative jurisdiction. The national government's Ministry of Interior and Coordination of National Government appoints these administrators (Int# 1018), but local administrators do not have an official land administration mandate.

Waitiki Farm spans two administrative locations: Shika Adabu and Timbwani (*see Chapter 4 sections 4.3 and 4.4*). These two administrative locations are each governed by their respective chief. The chiefs are helped by assistant chiefs who oversee the sub-locations within each chief's administrative location (Int# 1041). Therefore, the assistant chief is accountable to the chief (Int# 1, 2, 3, 1009). In Waitiki, administration by various official governance structures, such as the national government's ministry in charge of land administration, occurs through these local administrators. In undertaking their general administrative duties, the local administrators work closely with the local elders<sup>24</sup>. Local elders are comprised of local community leaders drawn from the various villages that make up the Waitiki Farm settlement. These leaders are either elected by the residents during a public meeting or selected by the local administrators.

In Waitiki, each village is led by an elder or chairperson who oversees local governance with the assistance of the 10-households' representatives (popularly referred to as '*Nyumba-Kumi Ambassadors*'). In practice, these representatives report to the local village elder, who in turn reports to the assistant chief (Int# 1023). Local elders within this committee also occupy other leadership roles within other local governance structures, such as neighbourhood security committees within each village (Int# 6).

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<sup>24</sup> The terms local elders and local leaders are used interchangeably in this Chapter to refer to the same actors.

### **Settlement-level Governance Committee Roles**

The settlement-level governance committee undertakes the following land tenure administration roles in Waitiki:

- Resolves land-related disputes, including family land disputes (Int# 1, 2, 3, 5, 6, 1015, 1002). The disputants include those who approach the committee directly and those who are referred to the committee by the two levels of government SLAOs. The SLAOs refer such land-related disputes to the committee because the committee better understands the Waitiki context (Int# 1, 2, 1002, 1026, 1015, 1023). In addition, the committee has more insight into how land transactions in Waitiki are carried out (Int# 1017). If the committee is unable to resolve a land-related dispute, they forward the dispute to other offices, such as the police, or back to the SLAOs (Int# 3).
- Undertakes local land transactions processes such as brokering and witnessing land transactions (Int# 1017, 1011, 1008, 1012, 1013, 1016). These land transactions may involve unofficial land sale agreements (Int# 1000). According to participants #1, 2, 6, and 1016, residents request local elders to witness their land transactions because they trust them and they are locally accessible. Leaders who act as witnesses or as brokers are paid a facilitation fee by the land purchasers (Int# 2). Residents who do not want to pay the fee undertake these transactions without involving the committee, but verbally inform the local leaders about the change in landownership (Int# 2).
- Facilitates land succession processes involving residents within the committee's jurisdiction (Int# 2). For example, if a landowner dies, they ensure the land "transfers to the children without any formal processes" of registration (Int# 6). To do this, the committee inquires into the landowner's next of kin (Int# 6). In addition, participant #1015 noted that chiefs are important in land succession whereby the official succession process may in some cases not proceed without a letter from the chief verifying kinship details (Int# 1015).
- Oversees settlement-level development control (Int# 6). In Waitiki, this role involves the local elders walking about to warn residents to stop erecting developments that encroach on public facilities, such as access routes, when necessary (Int# 6). Suppose residents do not heed caution from local elders. In that case, the elders inform the village elder who then

speaks to the resident(s). If the village elder's advice is not heeded, the issue is brought forward to the chief for further action (Int# 6). The elders blamed the prevalence of the encroachment on public facilities in Waitiki on the lack of physical ground beacons marking access routes and paths and the lack implementation of the settlement's land use plan (Int# 2, 3, 5).

- Plays an important land information verification role for SLAOs undertaking land transactions involving Waitiki residents. For example, participant #1024 noted that land registrars may, in some cases, consult the area chief if they doubt the authenticity of residency documents presented to them for land registration processing (Int# 1024). The SLAOs consult the chief because the chiefs and the committee members are more likely to be aware of changes in resident numbers in their villages (Int# 1019).
- Educates residents and families on land rights based on what they learn from CSO seminars (Int# 2). For example, one of the participants in FGD#2 noted that they had educated residents about land rights and gender inequalities within that participant's jurisdiction after attending CSO's seminars on the same issue (Int# 2).

In addition to the above land tenure administration roles, the settlement-level governance committee members also undertake other general local governance functions:

- a) Nyumba-Kumi ambassadors are custodians of household-level information. They keep records of details such as: the owners of each house that constitute the 10-household jurisdictions; residents of these households; number of rental houses; and visitors to these households and their intended/actual length of stay with the household (Int# 1, 2, 1019). The ambassadors collect this information from the owners of the houses. If the owners are not available, the ambassadors collect this information from the caretakers (Int# 2). This information guides the committee's security function of preventing the harbouring of criminals (Int# 1, 2). It also informs the resolution of disputes over land and domestic issues and cases of child abandonment (Int# 2).
- b) The local governance committee investigates residents suspected of deviant behaviour (Int# 1). If the committee finds the suspects to be of undesirable character, they ask the suspects to leave (Int# 1). However, suppose these investigations reveal that the residents were involved in criminal offences, such as mugging. In that case, they refer the cases to the police

(Int# 2). The leaders complained that they participate in such cases at a personal risk because they do not have the resources to protect themselves against retributive attacks by the suspects who come back to threaten them upon release by the police (Int# 2). The committee also deals with deviant behaviour cases involving minors, i.e. local junior delinquents. The committee calls the local junior delinquents to appear before them and issues a warning to them to stop their wayward ways (Int# 2). They may also request the delinquents to be accompanied by their parents

- c) The committee members may, in some cases, self-organize and mobilise residents to maintain security; in this they work closely with security officials (Int# 1031). For example, participant #6 noted, “When an incidence happens, we always call the local police leadership, e.g., Officer in Charge of a Police Station (OCS), [...] to help us out by sending the police, which they do...”. The committee members call these leaders on their mobile phones (Int# 1). Further, they work with the police and other local leaders, e.g. local political leaders, in lobbying for the provision of urban services, such as streetlights, to improve local security conditions (Int# 1).
- d) In some cases, the local elders undertake national identity card application information verification to certify whether the applicant is a resident of their village. They do this on the request of the Chief to whom they write a ‘residence confirmation letter’ (Int# 2, 5). This role may involve verifying the applicant’s national identity card application details, e.g. whether the parents are Kenyan citizens (Int# 5). They noted, however, that this role is embedded with potential security risks because they do not have resources to ensure the accuracy of the personal details presented to them. As a result, it is likely that some of the applicants confirmed by local elders are not Kenyan citizens or, have fake information. As noted by participant #5: “I will be told to swear that an applicant for an ID is Kenyan, this is important[but] how will I know if he or she is not Kenyan? [If the] parent IDs were bought? ...” (Int# 5).
- e) The committee members also serve as local liaison officials for government agencies when undertaking local development projects (Int# 5). In such projects, the local leaders facilitate the government agencies’ access to Waitiki (*refer to section 8.2.5*).

#### *8.2.1.2.1 Discussion and Analysis*

In Waitiki, the settlement-level governance committee is a hierarchical local governance structure that undertakes *de facto* land tenure administration and other general local governance roles. As it relates to land tenure administration in Waitiki, the settlement-level governance committee is involved in dispute resolution, land transaction witnessing, inheritance, and development control. They are involved in these land tenure administration activities as *de facto* actors because of their dominance in local governance and the fact that they remain the main governance organisation that both residents and official actors rely on for different local governance needs. For example, local elders collect and transmit village and household-level (*nyumba-kumi*) land-related information that the committee and other local governance actors (e.g. SLAOs, police) use for their administrative decision making. They also importantly verify the information and any other information as requested by the other local governance actors. The settlement-level governance committee's cooperation with the official actors and the established information sharing relationship suggests a functioning hybrid governance arrangement that tacitly recognises the various roles the committee plays. This supports the claim in Chapter 2 that a functional hybrid governance arrangement will emerge where official and unofficial actors cooperate. In Waitiki this functionality is further supported by the settlement-level governance committees' social legitimacy in land tenure administration. This legitimacy is derived from the local elders' knowledge of the local context, high social trust, and visible and accessible offices.

The data also shows that the settlement-level governance committees' roles are not devoid of risks due to local social dynamics. The local elders' security and other information verification roles are embedded with both personal and professional risks. This is because they deal with security threats such as deviant behaviour by local youth without the security resources afforded to the police. Further, their information gathering and the verifying process is embedded with professional risks because their collection depends on their local knowledge and the residents' truthfulness, which is not assured. These findings support the claim in Chapter 2 that though hybrid governance arrangements are important local governance structures, role players face potential personal security risks as they lack the official power to enforce decisions. For this reason, one should be cautious against romanticising these structures.

## **b) Coast Land Sector Non-State Actors (CLNSA) and Local Community Based Organisations (CBOs)**

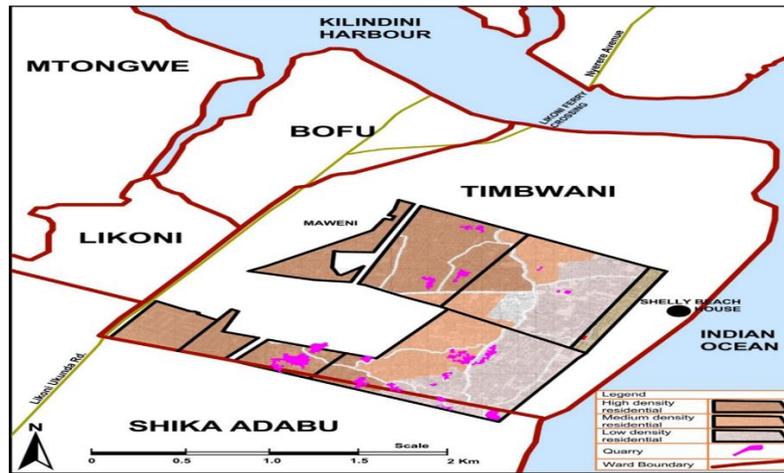
This sub-section describes CLNSA the Kenyan coast region umbrella organisation for various land-related Civil Society Organisations (CSOs) and the two key Waitiki CBOs, namely Likoni Community Development Programme (LICODEP) and Likoni Community for Development (LCD).

### **Coast Land Sector Non-State Actors (CLNSA)**

*“Civil Societies are fire fighters they never prevent fire they want when the fire is on they come and put on clothes and come and tell you come and put out the fire, bring relief, and they go back home and sleep” (Int# 1006)*

CLNSA is the Kenyan coast region umbrella organisation for various land-related Civil Society Organisations (CSOs) (Int# 1004, 1009). At the time of the field research, the following organisations were CLNSA members: Kituo Cha Sheria, Pamoja Trust, Kenya Land Alliance, Action Aid, Transparency International, Haki Yetu Organisation, Juhudi, Ujamaa Centre, Kwale Human Rights Organisation, Likoni Community Development Programme (LICODEP), and Mtongwe Initiative (Int# 1006, 1004, 1009, 1013). The CLNSA organisation structure is fluid, with no legally binding rules or mandates (Int# 1006). At the time of the interview the CLNSA secretariat was hosted by Haki Yetu Organisation, a Mombasa based NGO (Int# 1006). CLNSA is supposed to be apolitical; any member can call for a meeting through the secretariat (Int# 1006, 1007, 1013). In Waitiki, CLNSA works through Likoni Community Development Programme (LICODEP) a Waitiki based CBO. The next section describes two CBOs located in Waitiki (*see figure 8.1 below*) that are relevant to this study.

## Waitiki Community Based Organisations (CBOs)



*Figure 8.1: Waitiki Farm Settlement and Likoni*

Figure 8.1 above shows Waitiki Farm settlement location within Likoni sub-county.

### **Likoni Community Development Programme (LICODEP)**

LICODEP is a Likoni based CBO constituted by various local organisations. At the time of the interviews the organisation was active in local community policing and peace initiatives with the goal of improving community relations with security agencies, such as the police (Int# 1031). These programmes cover Likoni sub-county, and Kwale county. LICODEP also offers social facilities for community public meetings, provides a local community library, and facilitates computer and first aid training for residents (Int# 1031).

At the time of the interview, eight youth groups were active within the organisation (Int# 1031). These included: Bofu Maskan, Dimwini Youth Group, Mwatsalafu Youth Group, Mwatsalafu Community initiative, Wamukeni Youth Group, Maweni Self-Help Group, Maweni Girls Self-Help Group, and Amani Girls Self-Help Group (Int# 1031). The organisations hold an annual general meeting during which they elect a 7-member executive board. The executive board appoints the Executive Director who runs the organisation with the help of programme managers and finance and administration officers. In addition, there is the specific project staff undertaking different local community projects.

## **Likoni Community for Development (LCD)**

Based on the interviews this organisation was formed in 1999 to mobilise local youth for community development (Int# 1032). Initially, during the early years of the Waitiki Farm dispute, the group was an informal entity because “the youth were afraid [they] would be rounded up by the authorities if they could [be] identified” (Int# 1032). LCD was officially registered as a self-help group in 2004 and as a CBO in May 2017 (Int# 1032). The organisations’ secretariat is headed by a seven-member board. LCD’s main objective is socio-economic development through local resource mobilisation and management (#1032). For example, at the time of the research they were mobilising funds from donors to finance their waste management activities within Waitiki (Int# 1032).

### **a) CLNSA and Local CBOs land-related complaint handling**

Generally, after the local CBOs receive a land-related complaint from local residents they determine through their internal mechanisms whether they can handle it, or they have to refer it to their partners within the CLNSA network. For example, when residents approach the local CBOs on a legal matter, they refer them “to groups such as Kituo Cha Sheria because they are lawyers and have a better understanding of the [law]” (Int# 1031). If it is a matter they can handle, they proceed to visit the area to investigate it. During this field visit they mobilise and engage the local community leaders and agree on the way forward with the community. The way forward may include an agreement on how the community and the CBO will maintain their pressure on official actors. Based on the agreed way forward they may either visit the official land administration actors in Mombasa or file a case in court (Int# 1004, 1007, 1006, 1009, 1013, 1016, 1031, 1032).

CLNSA and local CBOs mainly deal with the following land tenure administration issues: land boundaries and family land disputes (Int# 1007), historical land injustices claims (Int# 1008), undocumented land claims such as, claims lacking official or unofficial ownership documents (Int# 1007), un-procedural or off-register land transactions, and cases of land sellers turning back to reclaim their land (Int# 1019).

### **Roles**

CLNSA and local CBOs undertake various land tenure administration related roles in Waitiki. What follows is a description of the CLNSA and local CBOs *de facto* land tenure administration

roles in Waitiki. In addition to their specific land tenure administration roles, the section also notes the other land-related services these actors provide in Waitiki.

Local CBOs undertake land rights advocacy on behalf of the residents (Int# 1001, 1011, 1012, 1013, 1016, 1018). Local CBOs do this by mobilising and organising Waitiki residents to protest for their land rights or by directly petitioning official structures such as the national government, national land commission, and the county government on behalf of the Waitiki residents (Int# 1007). For example, LCD petitioned the then Lands Minister to deal with a local land grab issue on behalf of their community. Through this they were able to secure and open the access road which was blocked by a land grabber (Int# 1032).

In their advisory role, CLNSA and local CBOs advise residents on how to undertake an official land transaction (Int# 1009). They advise residents to use this to safeguard their interests from land grabbing threats from local elites, such as local politicians (Int# 1004, 1007). In addition, if requested local CBOs, such as Haki Yetu Organisation, assist residents in doing official land searches (Int# 1016).

Local CBOs educate Waitiki residents on land laws, e.g., official land transaction procedures, through local platforms such as public meetings (Int# 1000, 1003, 1007, 1008, 1009, 1019, 1023) or local radio (Int# 1006). They also educate and train Waitiki residents on Alternative Dispute Resolution (ADR) mechanisms that can be used to resolve land-related disputes (Int# 1009, 1016). Further, they educate and train residents on how to audit county government budgets and project implementation to hold local political leaders accountable (Int# 1001, 1031).

CLNSA partners provide legal aid to represent residents in court cases where necessary (Int# 1007, 1008, 1016). In this case, residents pay a file opening and processing fee that may be as little as Kshs. 500 (app. \$6.50 Cdn) (Int# 1007). One of their main legal representation goals is to obtain court orders to protect the residents from being evicted and prevent any land transactions from being done on the land under dispute (Int# 1007). A key challenge for these organisations is that the cases take too long to be determined, impacting the continued participation of the residents who may not have the time and resources to follow up on the case (Int# 1016). In other cases, this role may involve providing legal representation to local land rights activists who are arrested when agitating for land rights on behalf of the residents (Int# 1004).

Local CBOs work with security agencies, such as the police, to improve security within Waitiki. They do this by organising meetings between the community and the police, giving the community the opportunity to express security concerns impacting on their land interests and house ownership (Int# 1012, 1016, 1031). This is also partly achieved through the local CBOs membership within existing community or neighbourhood structures, such as community policing committee (Int# 1032).

Local CBOs participate in and mobilise Waitiki residents to participate in local community projects. The CBOs participate in these projects to ensure the local community interests are addressed because, from their experience, “the issues the community bring up are rarely addressed and what we see being implemented are [local elites] interests” (Int# 1031). They also find it necessary to mobilise residents because in their view Waitiki residents are no longer willing to participate in local projects due to past experiences of unmet expectations as noted by participant #1031: “[residents are] tired of just giving views and nothing [happens].”

CLNSA and local CBOs facilitate policy and legislation formulation and development (Int# 1001, 1007, 1011, 1012, 1013, 1016). CLNSA and local CBOs do this by organising land-related training, awareness creation, and sensitisation workshops for SLAOs, local leaders, and politicians (Int# 1001, 1012, 1007, 1029, 1016, 1008, 1013). For example, CLNSA members, such as Pamoja Trust, were involved in the Mombasa County land policy formulation process as technical resource persons (Int# 1011). Further, CLNSA and local CBOs collaborate to lobby local politicians for specific land-related projects within the settlement (Int# 1011). For example, during the interview CLNSA members, such as Pamoja Trust, noted they were in the process of lobbying local politicians to support a socio-economic study of Waitiki Farm residents to inform the MCGDLPH’s determination of land rates and financial support for the residents that were yet to pay SFT (Int# 1008, 1011, 1013). It is important to note that the relationship between CLNSA or local CBOs and SLAOs is tenuous at times due to the former’s emphasis of human rights over procedural standards (Int# 1001, 1008, 1016, 1018). As noted below:

“If we implemented standards such as 9m estate roads then we would have to demolish around a third of the buildings, by law we can do that but because of political expediency we can’t pursue it. This is also made impossible by the NGOs who are interested in human rights of the local population and anytime you undertake such a project they will ask you where you are resettling these locals so it becomes expensive.” (Int# 1026)

CLNSA (and local CBOs) work closely with the county government and international development actors, such as UN-Habitat, to implement innovative land tenure administration tools, such as Social Tenure Domain Model (STDM). STDM is used to capture the details of land occupiers within a settlement for issuance of occupation certificates (Int# 1000, 1018, 1011). It is important to note that at the time of the study STDM had not been applied in Waitiki. The captured information is stored in a community land resource centre using a communal desktop computer (Int# 1011). The data the community collects should ensure they are able to track all land transactions within the settlement (Int# 1011). However, this documentation on land interests may not be acceptable to state actors because such data does not adhere to official procedure or standards although it can provide an important data baseline that can be built upon (Int# 1018, 1019).

The effectiveness of CLNSA and local CBOs in undertaking the aforementioned roles is influenced by a number of factors key among them being the following.

- i. CLNSA and local CBOs projects depend on donor funding which is both time-limited and interests-based. The donor funding is pegged to specific projects with measurable deliverables (Int# 1031, 1032). This affects CLNSA and local CBOs land-related programmes in the following ways: firstly, time-limited financing makes it difficult for the local CBOs to engage with local land issues which are likely to be complex, thus requiring more time to engage with, understand, and resolve (Int# 1031). Secondly, donor interests-based financing means that the funding prioritises what the donors identify as their key interests which may not address the community's most urgent needs (Int# 1031). The situation is further complicated because access to donor funding is very competitive between the different CSOs and local CBOs (Int# 1006).
- ii. CLNSA members and local CBOs operating in Waitiki require official registration to operate in Kenya. As a result, they are vulnerable to State profiling and intimidation (Int#1008). CLNSA was formed to protect local organisations against such intimidation by the State (Int# 1001). According to participant #1008 when they were starting Ujamaa [an NGO in the CLNSA founded in 2001] the State would arrest their members and interfere with their local meetings on the premise that they are an illegitimate NGO.

### c) Local Youth Groups

This section builds on section 4.5.1.2 that briefly introduced local youth groups in Waitiki. Further details of the local youth groups' land tenure administration roles are provided in sections 6.2.2, 6.5, and 6.10. Local youth groups refer to youth within loosely formed local groups that are involved in different land-related activities within Waitiki. What follows is a description of local youth groups' *de facto* land tenure administration roles. In addition to their specific land tenure administration roles, the section also notes the local youth groups' other land-related services in Waitiki.

#### Roles

In Waitiki, local youth groups act as both local land transaction brokers or middlemen and strongmen who evict people (Int# 1012). For example, local youth groups are used by local elites to evict residents on various grounds: “court order or [some] other justification” (Int# 1012). Participant #1012 noted local youth “are used where friendly security agencies are unavailable” (Int# 1012). Friendly security agencies include the police. They also engage in fraudulent land sales (*see section 6.5 and 8.2.2.1 (d) for more details*) (Int# 2).

In collaboration with local CBOs, local youth groups perform various urban service functions within Waitiki. In this partnership the local CBOs undertake urban services provision advocacy (Int# 1011, 1032) while the local youth undertake the actual services provision, such as waste picking within the settlement (Int# 1031, 6, 5). For example, Safisha Timbwani, a local youth group, is one of the groups that collect waste in Waitiki (Int# 1031). The groups work in areas where they are accepted and allowed to work (Int# 6). They do this through a private arrangement between the local youth group and households at a fee (Int# 1031). The fees range between Kshs. 20 (app. \$0.26 Cdn) per sack of waste collected (Int# 1, 6) and Kshs. 50 (app. \$0.65 Cdn) per week (Int# 6). The waste collection groups have emerged because the county government does not offer these services (Int# 1008, 1031, 1035, 6) and the private companies' garbage picking lorries cannot access the settlement due to the narrow access roads within the settlement (Int# 6). Also noteworthy is that in some villages the county government works closely with local youth groups who pick household refuse (Int# 6).

Though influential, local youth groups are vulnerable to various influences, such as manipulation by local politicians (Int# 1004, 1033). According to the interviewees, local youth groups are vulnerable due to their weak economic status (Int# 1012) and lack of local employment opportunities (Int# 1007, 1012, 1032). Participant #1012 noted that it is because of this vulnerability that the local youth believe the ‘*watu wa bara*’ (*non-indigenous residents, see section 3.4.2.4.7 for examples of these groups*) political rhetoric that local politicians use to blame non-indigenous residents for the youths’ lack of economic opportunities within the coast region (Int# 1012). As a result:

“The local youth ... take up arms based on their ancestral land rights claim. They claim that those they had invited as visitors went on to take advantage of their illiteracy of the procedures and processes and owned the land. They therefore feel justified when it comes to taking up arms to defend their birthright.” (Int# 1012)

At the time of the research, some of the local leaders were looking for a more sustainable form of financing for the local youths’ waste collection work (Int# 5). This pursuit was informed by the realisation that if local youth groups were not engaged in income earning activities, they were likely to turn to crime (Int# 5).

#### **d) Local Politicians**

Although they are important local leaders, local politicians<sup>25</sup> are not as active as the previously described actors in the day-to-day *de facto* administration of land tenure in Waitiki. They mainly get involved with land tenure administration when approached by a resident with a specific land-related issue (Int# 1033) or when working with local CBOs on a land-related project (Int# 1004, 1011, 1013). An example of the latter is when local politicians work with local CBOs to enumerate informal settlements such as Waitiki, detailing their condition, and land ownership status (Int# 1008, 1011). In some cases, local politicians provide important linkages for local CBOs, lobbying other local leaders on a land-related matter; they introduce these local CBOs to these local leaders and act as validators (Int# 1013).

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<sup>25</sup> In this case refers to the county level politicians such as the Governor and Member of Parliament (MP), and settlement-level politicians such as the Member of County Assembly (MCA)

#### 8.2.1.2.2 Discussion and Analysis

Based on the foregoing sections, the *de facto* land tenure administration functions of CLNSA and local CBOs range from land-related advocacy and community mobilisation to county-level land policy development facilitation. To undertake the range of land related functions CLNSA and local CBOs have formed an alliance through which each member is matched and mandated with the function they are best fitted to. The alliance also protects the CLNSA membership from State intimidation practices. In addition, these organisations work with other local actors such as local leaders, local politicians, and administrators to undertake their functions. This suggests that to be effective in their *de facto* land tenure administration roles, CLNSA and local CBOs work with both official and unofficial actors. Furthermore, they must align their interests with their donors' interests. This supports the claim in section 2.4 that in peri-urban settlements land tenure administration actors will form functional coalitions of interest to advance their interests or achieve their goals.

In Waitiki, the CLNSA and local CBOs continue to be engaged as *de facto* land tenure actors in activities to protect the residents land interests and as local organisations that the residents can approach in case of a land-related problem. As a result, CLNSA and local CBOs derive social legitimacy from this social recognition. In addition to this, they also derive legal legitimacy from their official registration as either self-help groups, CBOs, or NGO. The official and social recognition gives the organisations access to Waitiki. It is on the basis of both social and legal legitimacy that CLNSA and local CBOs continue to have legitimate land tenure administration roles in Waitiki.

Local youth groups *de facto* land tenure administration roles in Waitiki are limited to land transactions and land related urban services provision. The youth undertake the two roles to earn a livelihood due to their economic status. Based on the data, they are able to undertake these roles because the county government is not able to do it and they have the support of the local leaders and residents. This suggests that hybrid governance arrangements may be successful in Waitiki if there is a local need for the service and the local community supports this mechanism.

Local politicians' *de facto* land tenure administration roles are related to providing support either to residents or local CBOs. However, it is important to note that despite their minimal land tenure administration roles local politicians are locally influential as discussed in the next section.

## **8.2.2 Powerful and Vulnerable Land Governance Actors**

This sub-section presents findings on land governance actors identified as being powerful and/or vulnerable in Waitiki. The sub-section discusses why the actors are perceived to be influential or vulnerable as it relates to their land tenure administration work in Waitiki. The section answers research question 5, i.e., who are the powerful and who are the vulnerable actors? The section first presents the powerful land governance actors, it then presents the vulnerable land governance actors, and concludes with an analysis of the two subsections. The section builds on sections 6.2.2, 6.4, 6.5, 6.10 and 6.11.2 in chapter 6.

### ***8.2.2.1 Powerful Land Governance Actors***

#### **a) Settlement-level Governance Committee**

Based on the interviews, the settlement-level governance committee in Waitiki (*see section 8.2.1.2 (a) for a description of the committee*) is considered locally powerful as it relates to local land governance because of the following reasons.

The committee oversees general administration within the settlement. As a result, all local level governance matters, including the *de facto* land tenure administration roles discussed in section 8.2.1 within the settlement are handled by this committee (Int# 1, 2, 3, 5, 6, 1012, 1020, 1024, 1037). The local influence of the committee is aptly captured below by participant #1035:

“The absence of the city authorities or national government land administration leaves a gap, the gap is filled by other institutions, such as., chief or local elders [settlement-level committee], because they are the ones the public takes their complaints to, and [various disputes] to resolve. [This is because] they are familiar with the people and they live with the people. [As a result] if they call for meetings, or when they issue caveat [a local warning against transacting on a particular parcel of land, this is different from the official caveat in that it is not registered on the concerned title] people are unlikely to undermine [them] because they know the guy may walk to their house the next day or send police to them. There is therefore an unwritten rule that this is our legitimate leader, know he works for the national government [i.e., Chief] and we shall comply with what he says to us.” (Int# 1035)

The committee includes the area Assistant Chief and the Chief. Prior to the enactment of the new constitution in 2010 the assistant Chief and Chief were revered local representatives of the then very powerful provincial administration system (Int# 1012). It is important to note that though the

provincial administration system is still in place but under a different name its powers were largely reduced by the introduction of the two governance levels i.e., national and county (*refer to sections 4.2.2. and 4.2.3 for a brief overview of the two levels*). According to participant #1012, the residents “fear the Chief’s office, a powerful office that has been around for several years. They fear the Chief more than they fear the President as he is the person who wields power at the local level, and he knows them.” In addition to this is the fact that Administration Police Officers (popularly known as APs in Kenya) are usually located within what are referred to as the Chief’s camp (Int# 1008). The settlement-level governance committee therefore is perceived as locally powerful because of the history embedded within the office of the Chief.

Moreover, the settlement-level governance committee derives power from its gatekeeper role, its ability to facilitate the access of both national and county level SLAOs to undertake their routine land tenure administration fieldwork (Int#1008, 1023). For example, participant #1023, a Mombasa based SLAO, noted that when his work requires that he visit Waitiki - or other similar settlements within Mombasa - he must negotiate entry with the local settlement-level governance committee. According to participant #1023, this provides the necessary and relevant on the ground legitimacy and social trust, which is necessary for national and county officials or SLAOs like him to undertake their work.

The two levels of government and CSOs community development projects are introduced to the community through this committee. The two levels of government involve the committee to gain community buy-in and enable uninterrupted implementation of the project. For example, prior to undertaking the Waitiki land titling project, the project’s village leadership committees were formed from the existing community leadership structures, most of whom are members of the settlement land governance committee (Int# 1, 2, 3, 5, 6). Further, to work with the Waitiki community on various development projects communities, CLNSA and local CBOs must come to an agreement with local elders and administrators, e.g., Chiefs (*as described in section 8.2.1.2 (a) the latter two constitute the settlement land governance committee*) (Int# 1008, 1031, 1032).

#### **b) Local Politicians**

These land governance actors are considered powerful because of their ground level influence and the various roles that they play within the community. For example, local politicians may use their

on-the-ground influence to interfere with land tenure administration project implementation (Int# 1012), such as the implementation of development application standards (Int# 1000, 1003, 1026). In some cases, local politicians indirectly interfere with official procedures. For example, participant #1028 noted that despite a development application meeting all official requirements and being approved it may be rejected because of local political considerations. Participant #1002 observed that local politicians are problematic because they do not solve the problems they cause after achieving their political goals (Int# 1002).

Local politicians are powerful because they participate or are involved in various local negotiations involving land disputes (Int# 1007, 1015, 1011, *refer to section 7.2.3 for more details on local politicians' role in land tenure administration in Waitiki*). These negotiations may involve residents within the settlement (Int# 1028) or the community against an external threat (Int# 1015). Participant #1004 and #1011 cautioned against involving local politicians in such negotiations because they may make matters worse by seeking ways into which they can grab the land under dispute.

The local politicians are also considered locally powerful due to their county level legislative role as they can influence the budget of MCGDLPH and the formulation of county level land policies (Int# 1010, 1013, 1033). For example, participant #1006 noted that CLNSAs' work on the yet to be adopted Mombasa county land policy was facilitated by Members of County Assembly (*refer to section 4.2.3.1 for more details on MCAs*) (Int# 1010, 1011, 1013). Further, local politicians play an important lobbying role (Int# 1011, 1012, 1013, 1016). For example, at the time of the research, local leaders noted they were petitioning their local politicians to lobby the national government and the county government governor so as to reduce the SFT amount that each household was paying (Int# 1, 2).

### **c) Local CBOs**

Local CBOs include LICODEP and LCD. Local CBOs are influential because they act as the Waitiki link for the county level CSOs, such as the membership of CLNSA that do not have offices in Waitiki (Int# 1016). For example, participant #1008 noted that their organisation (i.e., Ujamaa Centre) worked with LICODEP, from their Waitiki based offices, in one of their land-related projects within the settlement (Int# 1008). The CLNSA members said they preferred working with

the local CBOs because they “1) [are located] there, 2) they know the area, 3) they understand the local language and culture, [and] 4) they understand the local problems better than we do” (#1001).

The local CBOs are also considered powerful because of their participatory development mobilisation capability and ability to disseminate information within Waitiki (Int# 1031, 1032). Consequently, they are a trusted point of local information reference for the residents (Int# 1031). In addition, they provide one of the common facilities, i.e., social halls, through which such mobilisation and information can be undertaken.

Local CBOs are also relevant and powerful because as participants #1031 and #1032 noted some of the local CBO members are also members of the settlement-level governance committee and other local governance structures, such as, the community policing committee (#1032).

#### **d) Local Youth Groups**

Local youth groups draw their power from their close association with local elites, such as local politicians or elders who also finance their activities within Waitiki (Int# 1004). Further, they also gain local influence due to various services that they provide in Waitiki (Int# 1008). They provide these services to fill the gap left by the county government and also earn a living (Int# 1008, 1032).

Local youth groups are also considered locally powerful because they act as land transactions brokers (Int# 1023) and evictions enforcers (Int# 1012) in some cases. Participant #1001 noted that if a CSO (or outsider) attempts to interfere with local land transactions that they deem unfair (e.g., continued payment of *jara*), they are warned and told to ‘stick to issues’ that brought them to Waitiki. In their case, they did as they were told as they did not want to be evicted from the settlement (Int# 1001). Similarly, those that construct in Waitiki have to part with a development fee, i.e., *jara*, because if they don’t the local youth groups “will organise with some of those working for you on the construction and steal from you.” (Int# 1012).

##### ***8.2.2.1.1 Discussion and Analysis***

Land tenure administration actors in Waitiki are considered powerful because of the various land tenure administration roles they perform. For example, the settlement-level governance committee undertakes the land tenure disputes resolution role. Through performance of these *de facto* roles these actors gain social legitimacy and trust from the residents which make them key local land

governance actors. It is on the basis of this social trust and legitimacy that actors, such as local CBOs, are able to mobilise residents to participate in local development projects.

Based on the findings the *de facto* actors are also considered locally powerful because they are the local linkage for external actors based outside of Waitiki. For example, the local CBOs are the local linkage for CLNSA members based in Mombasa. Such local access facilitation makes these *de facto* actors the local gatekeepers that external actors interested in working in Waitiki must consult.

Some actors are powerful because of who they are (e.g., local politicians) or due to their influential members. The settlement-level governance committee is considered locally powerful because of historical legacy the chiefs office (the office can be traced back to the colonial and post-colonial government mechanisms of social order and control). Local politicians are locally powerful because of their indirect or direct influence on the ground and support of other actors.

Evaluating the above, the different land governance actors were identified as being locally powerful because of the following: they decide who can access the settlement, they control what land tenure administration activities can be implemented in Waitiki, and they allocate land and enforce such land allocation decisions. These decisions are based on the organisations' interests and dependent on the existing power relations, e.g., local politicians and local youth groups. These power relations form the local power base upon which the hybrid governance arrangement functions. This suggests that power dynamics may change as these relations fluctuate. This supports the argument in chapter two (sections 2.4 and 2.5) that states that in peri-urban settlements local power relations are dynamic and continually changing as interests change.

#### ***8.2.2.2 Vulnerable Land Governance Actors***

Based on the interviews the following actors were identified to be the vulnerable land governance actors in Waitiki.

##### **a) Landowners**

Based on the interviews the following categories of Waitiki landowners are vulnerable.

Absentee landowners: these are the landowners who own land within the settlement but do not reside in Waitiki (Int# 1040). These landowners are vulnerable to land invasions by squatters (Int# 1020, 1023) or land grabbing by local elites or local youth groups (Int# 1012, 1013).

Landowners who were not issued with land leases during the Waitiki land titling project. These landowners are vulnerable because they do not understand why they were not issued with certificates of leases and due to this information gap they are vulnerable to manipulation by local elites (Int# 1, 2, 3, 5, 6). They also perceive that they are vulnerable to bureaucratic corruption by SLAOs who they fear may change their land ownership information (Int# 1, 2, 3, 5, 6, 1011). This is aptly captured by participant #6, “the documents may be manipulated without your knowledge especially if you are not around or you leave.” In addition to these are residents whose property was identified as being on social facilities or amenities land (Int# 1000, 1005). The latter group is also yet to get a way forward from the state. It is because of these that participants #5 and #6 stated that these residents were vulnerable to local elites and other elites capture practices.

Landowners engaging in off-register land transactions. These residents engage in these land transactions due to various reasons such as the inability to pay the SFT (Int# 1, 2). A second group of these residents are those who do not register land inheritance transactions after the registered landowner dies (Int# 1024). The reasons why residents do not register their land inheritance transactions [e.g., persistence of socio-cultural and religious customs, norms, and practices] are discussed in Chapter 6 section 6.8.

**Non-indigenous landowners:** these landowners are vulnerable to eviction because of their ethnicity as they are perceived, by indigenous landowners and residents, to be visitors to the settlement and not deserving of owning land in the region (Int# 1006, 1020). They are especially vulnerable during national events, such as general elections due to the existing ethnic tensions. An example of election motivated eviction is the 1997 ethnic clashes in Likoni that led to the eviction of Mr. Waitiki (*refer to chapter 4 for more details*).

Amongst landowners, women, the elderly, and minors were identified as vulnerable land actors. Minors and women are vulnerable to land grabs by family members or local elites in Waitiki (Int# 1024). Married women may also be vulnerable due to their spouses selling their land without their

consent (Int# 1004, refer to section 3.4.2.4.4 for requirement of the Matrimonial Property law in Kenya). Such land sales may occur during marriage or after separation. Elderly landowners are vulnerable to evictions by local youth who may accuse them of practicing witchcraft (Int# 1012). According to participant #1012, local youth or groups that undertake these evictions justify them as follows:

“I am a local youth, not employed, I want land and my father is not dead, I want to either sell or use it, and my father does not want to give it to me. So, I either kill him and get the land from him or allege he is a witch” (Int# 1012)

#### *8.2.2.2.1 Discussion and Analysis*

Based on the data, landowners in Waitiki are likely to be vulnerable if (i) they do not have landownership documents, (ii) they engage in off-register land transactions, (iii) they do not reside within the settlement, and (iv) they are non-indigenous landowners. In addition, landowners who are women, the elderly, as well as minors living in Waitiki, are vulnerable because of their relatively weak position in Waitiki society/community. Evaluating this in Waitiki, vulnerable groups may be identified in terms of landownership and/or settlement residency status, indigeneity, gender, and age.

### **8.2.3 Land Securing Strategies**

This sub-section discusses the various strategies that the different land governance actors in Waitiki use to secure the residents land tenure and/or land transactions. The section answers research question 8, i.e., what strategies are available to the powerful and the vulnerable to secure their land tenure and to secure land transactions, and why do they adopt particular strategies?. The section first presents the land tenure defending strategies. It then presents the land transactions securing strategies and concludes with an analysis of the two subsections. The section builds on section 6.3.2. To recap on sections 6.3 and 6.5, threats to land interests include arbitrary evictions, grabbing of shared open spaces, and *jara* payments.

#### *8.2.3.1 Defending Land Tenure*

The different organisations use the following strategies to defend Waitiki residents’ land interests.

- i. CLNSA and local CBOs such as LICODEP collaborate with other actors to prevent arbitrary land evictions by local elites. These include the local governance committee members, Chiefs or security officials who are interested in Waitiki land parcels because of their rising land

values (Int# 1004, 1007, 1013, 1016). They prevent arbitrary land evictions by land grabbers and property developers by petitioning local politicians and national government SLAOs on behalf of the residents (Int# 1032). Further, they mobilise and organise residents into self-help groups through which they can defend their land interests against local threats. An example of this self-help group is the Amani Self-help group. The Self help group defend the land interests of Waitiki Farm tenants who had lived in the tenant houses before Mr. Waitiki was evicted (*refer to Chapter 4 section 4.5.3.3*).

- ii. Official land administration actors, i.e., SLAOs, at the two levels of government work with settlement-level security officials to prevent land invasions (Int# 1040). Though there were no recent cases of land invasion within Waitiki Farm participant #1040 noted that they were in the process of evicting local youths that had invaded a land parcel bordering Waitiki settlement.

### ***8.2.3.2 Defending Land Transactions***

The official land tenure administration actors use the following strategies to secure Waitiki residents' land transactions.

- a) Official recognition of land transactions to protect the residents against claims of irregular<sup>26</sup> land transactions that may arise if for example a key land transaction is not done according to the relevant law leading to the loss of the resident's land parcel. This strategy involves the organisation's approval of land transactions and development control applications, that meet all the official requirements, e.g., proof of payment of stamp duty (Int# 1014, 1028). As it relates to succession, it involves administering endowed Wakf property as directed by the owner in his/her will (Int# 1006). For example, participant #1028 noted that they check every legal and official requirement such as that all documents (e.g. the land rates clearance certificate) have been included in the land transaction application. At the county level, official recognition of land transactions may include the resolution of land disputes by the MCGDLPH's internal committee comprised of the department's unit heads. According to participant #1014 this committee facilitates quick and timely decision making. Further, by resolving the different disputed land transactions the committee officially recognises and

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<sup>26</sup> Irregular land transactions refer to land transactions that do not follow the existing legal and administrative procedures.

legitimises them. Official recognition of land transactions by the two levels of government depends in part on local political will (Int# 1015), the support of local elders and administrators, e.g., the Chief, who as earlier noted in section 8.2.1.2 work with SLAOs to verify information presented to them for processing (Int# 1000, 1002, 1015, 1017, 1018, 1019, 1023, 1024), and their official role as custodians of official land tenure information and records (Int# 1018, 1024).

- b) Cooperating with other land governance actors to document the resident's occupation interests, verify authenticity of land tenure information, and protect residents from professional malpractice. Official land tenure administration actors such as MCGDLPH work with other land governance actors to defend the resident's land transactions. The following examples illustrate this strategy: one, they work with CLNSA, e.g., Pamoja Trust, and local CBOs to document local resident's occupation and issue certificates of occupation (Int# 1000, 1014, 1026, 1029). Two, they work with financial institutions that exercise due diligence on land ownership documents presented to them for financing (Int# 1005, 1037, 1038). Three, they work with lawyers appointed by residents to act on their behalf in land transactions (Int# 1024). Four, they work with professional bodies to censure professionals who engage in land transactions misconduct that may threaten resident's land transactions (Int# 1026). Participants did not provide an example of a professional who had been censured. Cooperation with these actors protects Waitiki residents' land transactions.
- c) Advising residents on how to appeal official decisions and undertake various land tenure administration land transactions. This involves advising residents how to appeal an official land transaction related action by the official actors. For example, participant #1018 noted that if a Waitiki resident is not satisfied with an SLAO's work, e.g., survey work, they advise them to appeal to the SLAOs supervising manager (Int# 1018). Further, they also advise residents on the official procedures to follow to register land inheritance to prevent a dead man's title occurring (Int# 1024).
- d) Participating in and organising local development participation forums for Waitiki residents prior to undertaking their official work in Waitiki. This forum provides space for the residents to negotiate implementation of official standards with the Waitiki residents (Int# 1015, 1026). Such negotiations also ensure that through their work no residents property is arbitrary demolished (Int# 1028).

## **CLNSA and Local CBOs Strategies**

When asked what strategies they use to defend Waitiki resident's land transactions, CLNSA and local CBOs (LICODEP and LCD) gave the following:

- a) CLNSA and local CBOs undertake publicity advocacy for the residents' land interests (Int# 1031). In doing this, they work with vocal local leaders e.g., local elders and opinion leaders (Int# 1001, 1006, 1013). Additionally, they publicize their local issues research through self-publication of their research and advocacy activities (Int# 1013, 1016). For example, Haki Yetu Organization publicizes its work "through the Sauti Ya Haki magazine publication, [that they] design, [self-publish] and sell for Kshs. 20 (\$0.26 Cdn)" (Int# 1016). The money they raise from these sales is used to support their advocacy programmes (Int# 1016).
- b) CLNSA and local CBOs (LICODEP and LCD) advise Waitiki residents in their negotiations with third parties such as state or county government, private companies, and private landowners (Int# 1007). Further, to protect residents against risks that arise from engaging in off-register land transactions CLNSA and local CBOs caution residents against such transactions (Int# 1007) and guide them on how to undertake official land transactions (Int# 1012, 1013).
- c) CLNSA and local CBOs establish a working relationship with security officials i.e., the police, who, for example, implement eviction orders or deal with local land disputes (Int# 1004, 1006). Through this established relationship CLNSA partners such as Haki Yetu Organisation can lobby the police to either delay their implementation of eviction orders, on contested land, as they seek court orders to stop such evictions or give them prior notice to minimise property loss as noted by participant #1016 below:

"On [land evictions] we are also working with the police ... where if [they] are given a court order [they] won't implement it unless the community has also been served. We engaged [them] and [they] got to understand the local politics .... [if] a court bailiff... delivers the orders, he will always ask [whether] the community [has] been served. When he receives it he will also call us, and tell us about [it and] tell us to inform the people" (Int# 1016).

In this relationship, local CBOs may also support the local police by offering to fuel<sup>27</sup> their vehicles if needed (Int# 1016). The goal of this strategy is to ensure residents on the contested land are not evicted by the police until the court case is decided.

- d) Provision of legal aid to residents - vulnerable and marginalised groups, e.g., minors, women, included - who may not have land transactions documents to defend their land interests and transactions (Int# 1004). In this situation, they emphasise occupation history over official documents and document it in a format acceptable to the court (Int# 1013, 1016) as explained below:

“Where the group or individual do not have documentation, we take it up based on assessment of the case. In such situations, we use adverse possession to lay a claim on the land in question, so [that] even if we do not have title to land, adverse possession can help. Courts are now more vigilant on land documentation, judges are now aware of the possibility of fake titles. The Adverse Possession claim helps you initiate the process and this may include taking photos on the ground of people there, the court may in some cases also do site visits – during this, you could also ask a surveyor to do a report (all of these form part of your evidence and back up your claim, it becomes part of your evidence). The court will also consider circumstantial evidence such as the nature of the trees on the ground, such as coconut trees, on land show that this person has been there for a long time, the existence of burial sites, all of these is not documentary and you could use it as defence for your case.” (Int# 1007).

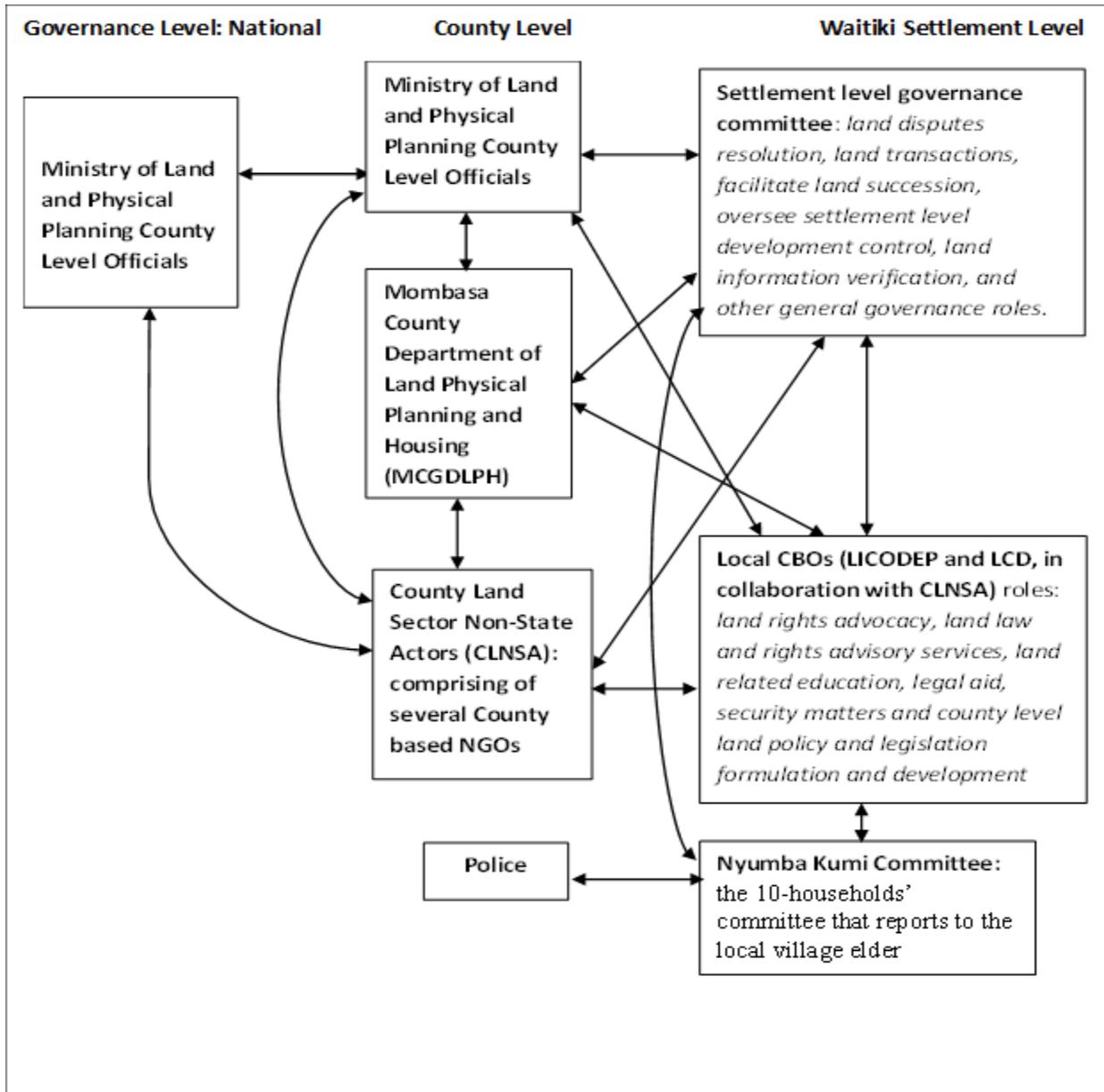
In certain cases, local elites (popularly referred to as ‘*private developers*’) may collude with local land administrators and transfer the land under contest without the knowledge of the CLNSA, local CBO or the residents. This may sabotage the ongoing litigation cases because the change of ownership means that the concerned residents and CLNSA are not suing the rightful landowners. In this case, the CLNSA/Local CBO find themselves “fighting the wrong landowner” i.e., due to the land ownership change, the respondent cited by CLNSA and residents in the case is different from the actual landowner (Int# 1016). Participant #1016 noted that these are some of the tricks that local elites use.

- e) Developing a local system through which the settlement community can keep track of local land transactions involving certificates of occupation issued by the local CBOs with the support of official actors (Int#1011). To achieve this the organisation and the community develop local rules on how land interests can be exchanged and how this information will be captured in the system (Int# 1011).

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<sup>27</sup> It is important to note that this is a common practice in Kenya where due to lack of resources in some cases Police will request citizen to fuel their vehicle when called upon to help.

- f) Working with SLAOs to counter corrupt practices (Int# 1001, 1008, 1016) and protect the resident's land interests (Int# 1013, 1016). To do this they, one, petition the SLAOs' Supervisors by writing to them and documenting how the said SLAOs have gone beyond their mandate on land tenure administration for example, processing land transactions that are under dispute. The goal of such petition is to censure these officials are censured. Two, they attend local meetings and confront the SLAOs on the land issue at hand (Int# 1016, 1008). For example, participant #1008 noted that Ujamaa (an NGO that is a member of CLNSA) publicly confronts SLAOs and other officials by asking questions regarding contentious land issues during public forums. This he suggested is aimed at ensuring transparency regarding the said land issue.
- g) Local CBOs mobilise and organise Waitiki residents through social media applications such as WhatsApp, to counter settlement evictions (Int# 1016). They combine this strategy with a text message pressure campaign in which they ask the mobilised residents to use the SMS platform and send SMSs to local leaders (Int# 1016). The text message that the residents send is drafted by the local CBOs. For example, on one local land issue, where one of the national road agencies intended to evict residents to make way for a road without compensating them, participant #1016 noted that "the county authorities, the Governor and County Secretary received around 300 SMSs on the issue" (Int# 1016).
- h) Local youth empowerment programmes – to counter the local youth's participation in activities such as land evictions or violence that threaten the resident's land interests and transactions, local CBOs undertake the following: i) educate the local youth about the local politicians misinformation (Int# 1012), ii) assist the local youth in their search for local economic opportunities, such as county government tenders (Int# 1012), and, iii) implement local programmes to counter local youth's radicalisation (Int# 1016). The goal of these programmes is to dissuade the youth from criminal activities or tenure threatening practices such as *jara* administration in some of the villages (Int# 1040, *for further details on jara refer to sections 4.5.3.1 and 6.5*).
- i) CLNSA and local CBOs (LICODEP and LCD) use already established local political relationships to defend residents land interests. For example, participant #1013, noted he used local political relationships established from previous works with local politicians to deal with other land matters and approach their local leaders.



**Figure 8.2: Hybrid land governance arrangements in Waitiki**

Figure 8.2 above is a representation of hybrid land governance arrangements in Waitiki as detailed in this Chapter. As the figure shows the different actors interact at different levels (national, county, and settlement) to undertake the roles discussed in the chapter. The double arrows are used in the figure to show that the relationships between the actors flow both ways.

### ***8.2.3.3 Discussion and Analysis***

The discussed official and CLNSA/local CBOs land securing strategies may be classified into proactive strategies (networking and coalition formation, advocacy and lobbying, and direct action), reactive strategies (litigation), and those that straddle both reactive and proactive classification (community mobilisation and organisation and offering advice).

Proactive strategies refer to the various actions that both official and unofficial land governance actors undertake to identify and prevent threats to the residents' land interests and transactions prior to these threats manifesting. In Waitiki, these are comprised of i) networking and coalition formation, ii) advocacy and lobbying and iii) direct action. Networking and coalition formation as a land securing strategy involves both official and unofficial actors cooperating to defend the Waitiki resident's land interest. This strategy manifests in two ways: one, official actors work with the unofficial actors, and two, the unofficial actors cooperate amongst themselves to defend the residents' land interests.

Advocacy and lobbying refer to the various ways through which the CLNSA and local CBOs publicise the residents' land interests and other local issues such as an imminent eviction of residents. To be effective in their advocacy CLNSA and local CBOs lobby local politicians. Lobbying in this case involves the CLNSA and local CBOs tactfully approaching local politicians they have an established working relationship with. This strategy which staves off potential threats to the resident's land interests and transactions is dependent on local politicians' support and willingness to their cause (dependent on maintaining the political relationship).

Direct action refers to the strategies where CLNSA and local CBOs get directly involved in activities aimed at improving local land tenure administration. For example, the development of a land interests documentation system. Further, the strategies may involve designing and implementing targeted local programmes such as youth empowerment programmes. This category of strategies aims at addressing the Waitiki contextual factors that they perceive as potential threats to the residents' land interests and transactions.

Reactive strategies refer to the various actions that both official and unofficial land governance actors undertake to respond to the various threats to the residents' land interests and transactions.

In Waitiki, the main reactive strategy is litigation which is primarily provided by CLNSA partners more specifically Kituo Cha Sheria to residents facing legal or administrative challenges to their interests or transactions. Based on the interview data, litigation is undertaken by the organisations that have the legal capacity and understand both national and county level land-related laws affecting residents land ownership within Waitiki. The litigation strategy includes both landowners with documents and those without. To be effective CLNSA actors that use this strategy also have to monitor official landownership information on the land under dispute to prevent manipulation by local elites and SLAOs.

In Waitiki, two strategies straddle both proactive and reactive categories. These strategies are, community mobilisation and organisation and offering advice. Community mobilisation and organisation as a land securing strategy involves the recruitment of Waitiki residents through public forums and awareness campaigns that educate the residents on their land rights. The goal of this strategy and associated tactics is to develop a common understanding and goal as it concerns defending the residents land interests. Offering advice is a strategy that is used by both official and unofficial actors to primarily advise residents on how to undertake official land transactions. In addition to this, local CBOs and CLNSA advise residents in their negotiations with third parties concerning land ownership/transaction.

In summary, in Waitiki, the identified land securing strategies suggest that the organisations will use a strategy depending on whether the threat has occurred or is imminent. The effectiveness of these strategies is dependent on several factors, such as the relationships among the different actors and local political will. Furthermore, to be effective, the hybrid governance arrangements must continually monitor settlement-level changes, particularly on land interests.

#### **8.2.4 Participatory Development Forum**

This section discusses the participatory development forum available in Waitiki. The section answers research question 9 (what are the available participatory development institutional platforms?). The discussion in this section builds on sections 6.11.2 and 6.11.3.

The main participatory development platform in Waitiki is the public meeting, i.e., *public baraza*. These meetings are usually organised by the local administrators in collaboration with the two

levels of government officials, international NGOs, local NGOs such as Haki Yetu Organisation, or CBOs (LICODEP and LCD). The residents are usually invited to these meetings through their immediate local leaders (e.g., *nyumba-kumi* ambassadors, village elders), and other locally available information channels such as posters on electricity poles, boundary walls, or community notice boards within the settlement or at the Chief's place in Waitiki Farm (Int# 1, 2, 3, 5, 6). The meetings take place in available social facilities, e.g., LICODEP Social Hall, or on public playgrounds. For instance, the Waitiki Certificates of Lease handover public meeting presided over by President Kenyatta was held at Shika Adabu public grounds.

The public meeting organisers seek the residents' views on upcoming local development project (Int# 1, 2, 3, 5, 6). Further, they are informed of the progress of ongoing projects. In some cases, the residents requested to select leaders who will be part of organisation structure overseeing the project. For example, the seven (13 in the case of Shika Adabu) village representatives in the Waitiki land titling project were elected during a public meeting that had been called for by the local leaders, i.e., Chief, Assistant Chief (Int# 1, 2, 3, 5, 6). Participants # 1, 2, 3, 5 and 6 noted that the residents' participation and buy-in is sought to minimise disruptions during project implementation thus ensuring effective local projects delivery. However, it is also possible that the local leaders and project implementers undertake public participation because it is a legal<sup>28</sup> (constitutional) requirement. Interviews with local CBOs showed there was local participatory development fatigue (Int# 1031, *see section 8.2.1.1*).

Also available to the local CBOs as a participatory development forum is the Court Users Committee (Int# 1001, 1008, 1016). This committee has representation from the judiciary, state agencies, and the CSOs, e.g., CLNSA (Int# 1001). On this platform the CLNSA and local CBOs membership presents procedural issues affecting their pursuit of justice within the judiciary. In some cases, the judiciary will educate the CLNSA and local CBOs on the legal procedures to follow on land related cases. (Int# 1001). For example, participant #1016 noted that it is during these committee meetings that matters such as missing land-related case files are tabled for assistance with locating the said files. In addition, the CLNSA membership may in some cases

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<sup>28</sup> See Article 10 of the Constitution on national values and principles of governance

request that some files be protected to safeguard against manipulation of official records by officials (Int# 1001, 1016, *for more details on the file safeguarding see section 7.2.2.2*).

#### ***8.2.4.1 Discussion and Analysis***

The findings in Waitiki suggest that residents are included in the governance of land-related projects. The inclusion and participation of Waitiki residents is meant to empower the residents, create a sense of project ownership and legitimise the decisions made in the selection of representatives from among the local leadership structure.

### **8.2.5 Waitiki Farm Land Titling Project**

This section discusses how the Waitiki land titling project has impacted land tenure administration in Waitiki. The section starts by discussing what the land actors identified as the benefits arising from the project. This is followed by the elders' explanation of why residents were still undertaking off-register transactions and in the local leader's (village elders) view/perception what were some of the key project challenges. The section concludes with brief description of how the project has impacted on the local leaders' (village elders) actual land tenure administration activities. The section answers research question 10. The discussion in this section builds on section 6.10.

#### ***8.2.5.4 Land Tenure Administration Functions (after titling project)***

When asked how their land tenure administration functions within the settlement have changed since the land titling project, the local elders identified the following project characteristics as having a significant influence on their current land tenure administration functions.

**Poor process of local committee disbandment:** According to the local leaders, the project committees (*see section 5.4.2.2*) were disbanded by the local administrators (i.e., DO and DC level) in a very dismissive manner (Int# 3). The nature of this disbandment was problematic because of two reasons. Firstly, they were disbanded without any attempt to co-opt them into other local governance structures (Int# 1). After the titling project was completed, local elders were banned by local administrators (i.e., DO and DC level) from dealing with land matters (Int# 1, 3). According to participant #1019 the local elders were banned because the administrators perceived the local elders as being the key facilitators of unregistered land transactions in Waitiki. As a result, they now mainly deal with local security concerns and ask residents who seek their help on land-

related matters to go to the DO and DC offices (Int# 1). Secondly, their project badges (a badge that was issued by the Ministry of lands and physical planning to all project committee members identifying them, their project role, and area of operation) were taken away after their final pay (Int# 1, 3, 5). The committee members' badges were their symbol of local authority (Int# 1). According to FGD#2 participant #2 the badge was important to the local committee elders because of the following:

“The symbolism of it and the respect that came with it. It helped in identification. It would help in case something happened because it stated we were working under the Lands Ministry and assisting and therefore we were authorised to handle such matters. The lack of it has not really helped because we may be questioned on what authority we are resolving some of the issues. We were just asked to return them, which was very dismissive. The *nyumba-kumi* initiative committee is still on, however the people that were involved in the two committees are the same. People come here because of their experience during the titling exercise. We are therefore informally still continuing to work using the education we learnt.” (#2)

**The lack of project debriefing and land information:** The local leaders decried the lack of a project debrief meeting after the project came to an end. As a result, the local leaders do not have local statistics on land ownership after the project (Int# 3). In addition, they are yet to get the Waitiki Farm project maps, information on how many titles were issued in their respective villages, the number of titles under dispute and how many are to be issued in Phase II and III (Int# 3). Thus, they find it challenging to deal with land ownership issues arising from the land titling project (Int# 6). To overcome the lack of information, they use their local information networks based on who they know and the residents that involve them in ongoing off-register land transactions (Int# 3). The local elders that participate in such land matters have had to purchase Registry Index Maps (RIMs) to make their work easier (Int# 5). These leaders justify their continued participation in land tenure administration activities on the fact that residents still approach them after a reference from the SLAOs (Int# 5). For example, and as noted in section 7.2.5.1, SLAOs still include local elders on land tenure administration issues such as off-register land transactions since they have a better understanding of the local context.

**Hurried project implementation:** The project was rushed because of political reasons, and as a result, it did not address the core historical land injustice issue at hand (Int# 3, 5, 6). The local leaders suggested the project may have created more problems on the ground (Int# 3). For example, they said because the project SLAOs did not have time to understand how the settlement was established and verify some of the claims on the ground (Int# 3) they may have registered land

parcels whose ownership was in dispute (Int# 6, *for further details on the prevalence land disputes during and after the titling project see section 6.4*) or grabbed by local elites (Int# 3). This was stated below:

“If you come with your legal law or background and tell us “legally you are supposed to build this way, and do X, Y, Z”, legally yes and maybe we are supposed to demolish, but is this what was followed by us the locals? Can you sanitize jungle law using the law, how? using the legal approach may have created more injustices.” (Int# 3)

#### *8.2.5.4.1 Discussion and Analysis*

Based on the above, the local elders’ participation in local land administration persists. The elders continue to undertake the land-related roles despite, according to the local elders, the disbandment of the project committee and subsequent threats by the Waitiki land titling project officials. The leader’s *de facto* engagement with local land tenure administration persists because the residents can access them, have experience of dealing with them, trust them, and perceive them as actors that understand the local context. This finding supports the claim in Chapter 2 that unofficial land tenure administration organisations are likely to persist in peri-urban settlements despite official documentation of land interests. It is, however, important to note that in Waitiki the unofficial structures have persisted with the tacit support of official structures (*see section 7.2.5.1 for further details*).

### **8.3 Hybrid Governance Theory Development**

This section presents the chapter’s hybrid governance hypotheses analysis. The hypotheses were developed in Chapter 2 section 2.8.2.3 to focus the analysis and ensure that the study’s theory development objectives are achieved. In addition, further hypotheses that emerged from the data analysis in Chapter 6 were developed to inform the study’s theory development. The discussion in this section builds on the discussion in section 6.13.2 in chapter 6. The hypothesis analysis is presented in section 8.3.1 below.

#### **8.3.1 Hybrid Governance Hypotheses Testing**

Based on the findings presented in this chapter, the following is a discussion of hybrid governance hypotheses, derived from the discussion in section 2.8.2.3, and tested using the data reflected in this chapter (**or** reflected in the chapters).

***H12: In informal settlements, de facto hybrid governance arrangements that maintain their local power may continue to have dominant and legitimate land tenure administration roles after land interests have been officially documented.***

There is evidence to support hypothesis 12. The data showed the local powerful *de facto* land tenure administration actors, such as the settlement-level governance committee, the CLNSA, and local CBOs continue to perform different land tenure administration related functions. They perform these functions despite the official registration of Waitiki residents' land interests during the land titling project (refer to chapter 5 for more details on the project). There is also evidence of the settlement-level governance committee resolving land-related disputes (*refer to section 8.2.1.2*). Additionally, local CBOs such as LICODEP provide various land-related advisory and advocacy services to the Waitiki residents (*refer to section 8.2.2*). There is, therefore, persuasive evidence to support this hypothesis. The likely explanation for the persuasive support is that local land tenure administration persists because the residents can easily access them, have experience of dealing with them, trust them, and perceive them as actors that understand the local context.

***H13: In informal settlements, registration of inheritance by residents after official documentation will indicate whether settlement residents will use official systems or de facto hybrid governance arrangements for resulting land transactions.***

The findings in this chapter (*see section 8.2.1.2*) support hypothesis 13 in that there is evidence that the settlement-level governance committee facilitates succession processes within Waitiki. Evident in the data is that those who use the committee to undertake succession do not follow up these *de facto* processes with *de jure* procedures. This suggests that these residents are satisfied with the committee systems and thus do not see the need to officially register their land inheritance. Hypothesis 13 therefore provides an indicator for the usage or non-usage of official systems. The likely explanation for the persuasive support of hypothesis 13 are hypotheses 12 and 14. The likely explanation for why residents do not follow up the *de facto* processes with *de jure* procedures is because, as noted in section 6.8.1, land inheritance practices in the settlement are still primarily premised on socio-cultural and religious practices. Further supporting this is the fact that residents view the *de facto* process involving the local structures as the less risky option when compared to the *de jure* processes (*see section 6.9.1 for more details*).

***H14:*** *In informal settlements, residents will opt for simple, cheap, and quick off-register land transaction channels that they are familiar with as opposed to the official procedure that is likely to be lengthy and costly.*

The evidence supports hypothesis 14. The interviews with the CLNSA members that participate in land-related litigations to defend residents' land interests suggest that lengthy and costly official court procedures may discourage residents participation in official land related-related dispute resolution via the courts (*refer to 8.2.1.2 (b)*). For example, participant #1016 noted that one of the key concerns by CLNSA members (such as Kituo Cha Sheria) that undertake litigation is that if cases take too long, residents may not have time and resources to follow up on the case. Due to the limited empirical data to directly support hypothesis 14, it remains speculative.

***H15:*** *In informal settlement upgrading projects, where there is intense local political competition, a participatory project administration approach that involves de facto hybrid governance arrangements and the residents is unlikely to be disrupted by local politicians who, despite being involved, may wish to disrupt the process.*

There is evidence that supports hypothesis 15. In Waitiki, the data showed that due to the involvement of the *de facto* hybrid governance arrangement (local elders and administrators), and residents through public meetings, the proposed local development projects gained the residents' buy-in or support. According to the respondents, this reduced the likelihood of project disruption during implementation (*refer to 8.2.1.2 (a)*). Further support for hypothesis 15 is the finding that the non-involvement of the residents and the *de facto* hybrid governance arrangement in determining the SFT charge amount has led to the prevalence of local political misinformation aimed at discouraging the residents from paying the SFT charge. The non-payment of the SFT charge by the residents may eventually lead to the failure of the Waitiki land titling project. Therefore, though there is evidence that local politicians have the local power to, directly and indirectly, influence or disrupt land tenure administration project implementation (*refer to section 8.2.2.1 (b)*) there is persuasive evidence to show that the involvement of residents and hybrid governance arrangements may constrain this influence. Therefore, hypothesis 15 has persuasive support.

In summary, in Waitiki hypotheses 12, 13, 14 and 15 have been shown to be supported. Hypotheses 12, 13 and 15 (restated below) were found to be persuasive as there was substantive empirical support for them.

***H12:** In informal settlements, de facto hybrid governance arrangements that maintain their local power may continue to have dominant and legitimate land tenure administration roles after land interests have been officially documented.*

***H13:** In informal settlements, registration of inheritance by residents after official documentation will indicate whether settlement residents will use official systems or de facto hybrid governance arrangements for resulting land transactions.*

***H15:** In informal settlement upgrading projects, where there is intense local political competition, a participatory project administration approach that involves de facto hybrid governance arrangements and the residents is unlikely to be disrupted by local politicians who, despite being involved, may wish to disrupt the process.*

Hypothesis 14 (restated below) on the other hand, is still speculative because there was limited empirical data to support it.

***H14:** In informal settlements, residents will opt for simple, cheap, and quick off-register land transaction channels that they are familiar with as opposed to the official procedure that is likely to be lengthy and costly.*

Drawing on chapter 6, section 6.13.2.1, the following hybrid governance hypotheses were also posited but there was no data in the chapter to support or negate them. Thus, these hypotheses remain speculative as indicated in section 6.13.2.1.

***H18:** In informal settlements, where the rent seeking behaviour by unofficial structures prevails, some in-migrant residents will seek leadership positions to build their local power and protect themselves from the rent seeking behaviour and extortion.*

***H19:** In informal settlements participatory land titling, that includes public education and awareness on the beneficiaries' land rights, responsibilities and restrictions by officials and unofficial structures, will lead to the reduction of the legitimacy of unofficial structures to administer land tenure and engage in rent seeking behaviour.*

### **8.3.2 Emergent Hybrid Governance Hypotheses**

***H25:** In informal settlements where local governance is dominated by a settlement committee, officials are likely to use the committee to access the settlement and/or undertake land-related functions on the ground.*

As shown in section 8.2.1.2 and 8.2.1.2.1, in Waitiki settlement local governance is dominated by the settlement-level governance committee that comprises of the local administration and elders. This committee undertakes various *de facto* land tenure administration functions in some cases with the knowledge and assistance of official actors. In addition, the committee plays an important intermediary role where it controls access to the settlement. In doing so, the settlement committee act as a gatekeeper regulating who accesses and works within the settlement. Furthermore, the committee has adopted a flexible and adaptable governance approach that allows it to undertake different roles and meet the needs of the various actors and residents. It is through this local adaptation and the balancing of the different demands made on it that the committee gains legitimacy. Due to the substantive empirical evidence hypothesis 25 is persuasive.

***H26:*** *In informal settlements where the relationship between CSOs and the State is adversarial due to the CSOs land-related activities, CSOs (and/or local CBOs) may form a fluid alliance to counter the State's threats against their work.*

The evidence in section 8.2.2.2 shows that CSOs and local CBOs in Waitiki and Mombasa formed the CLNSA alliance, with the support of donor funding, to collectively provide different services to residents and protect themselves against the State's intimidation and profiling (*refer to section 8.2.1.2*). According to these actors, it is much easier to confront the State as a group/collective as opposed to doing it individually. The collective also gives them a larger reach which enhances their convening power in their areas of expertise. Due to the substantive empirical evidence hypothesis 26 is persuasive and restated as follows.

***H26:*** *In informal settlements where the relationship between CSOs and the State is adversarial due to the CSOs land-related activities, CSOs (and/or local CBOs) may form a fluid alliance with the support of donor funding to counter the State's threats against their work.*

***H27:*** *In informal settlements where there is intense competition for land and resident face various threats to their landholding, unofficial structures will use a mix of land securing strategies depending on whether the threat has occurred or is imminent to defend.*

As shown in 8.2.3.3 CLNSA and local CBOs use a combination of proactive, reactive, and strategies between the two to protect the landholders' rights/interests. Proactive strategies include i) networking and coalition formation, ii) advocacy and lobbying and iii) direct action while reactive strategies include litigation. The strategies that straddle both reactive and proactive

include community mobilisation and organisation and offering advice. It is important to note that the effectiveness of these strategies is dependent on factors such as the relationships among the different actors and local political will. For example, CLNSA and local CBOs such as LICODEP, advocacy work is dependent on their working relationship with local politicians (see section 8.2.3.3). Due to the substantive empirical evidence, hypothesis 27 is persuasive.

***H28:** In informal settlements where there is intense competition for land and low trust in officials, a hybrid mechanism through which perceived bureaucratic maladministration cases can be handled is likely to provide a credible land-related dispute resolution mechanism that maintains social cohesion.*

As shown in section 8.2.4, in Waitiki the court users committee that comprises of representatives from the judiciary, state agencies, and the CSOs provides a platform through which land-related disputes issues are handled. Through this participatory mechanism procedural land matters are prevented from developing into contentious issues. Due to the limited empirical evidence hypothesis 28 is speculative.

Emergent hypotheses 25, 26, 27, and 28 have been shown to be supported. Hypotheses 25, 26, and 27 (restated below) were found to be persuasive as there is substantive empirical support for them.

***H25:** In informal settlements where local governance is dominated by settlement committee, officials are likely to use the committee to access the settlement and/or undertake land-related functions on the ground.*

***H26:** In informal settlements where the relationship between CSOs and the State is adversarial due to the CSOs land-related activities, CSOs (and/or local CBOs) may form a fluid alliance with the support of donor funding to counter the State's threats against their work.*

***H27:** In informal settlements where there is intense competition for land and resident face various threats to their landholding, unofficial structures will use a mix of land securing strategies depending on whether the threat has occurred or is imminent to defend.*

Hypothesis 28 (restated below) is still speculative because there was minimal empirical data to support it.

***H28:** In informal settlements where there is intense competition for land and low officials trust a hybrid mechanism through which perceived bureaucratic maladministration cases can be handled is likely to provide a credible land-related dispute resolution mechanism that maintains social cohesion.*

There was no evidence to support hypotheses 18 and 19 (restated below) that emerged in chapter 6.

**H18:** *In informal settlements, where the rent seeking behaviour by unofficial structures prevails, some in-migrant residents will seek leadership positions to build their local power and protect themselves from the rent seeking behaviour and extortion.*

**H19:** *In informal settlements participatory land titling, that includes public education and awareness on the beneficiaries' land rights, responsibilities and restrictions by officials and unofficial structures, will lead to the reduction of the legitimacy of unofficial structures to administer land tenure and engage in rent seeking behaviour.*

In *in situ* regularised informal settlements like Waitiki unofficial actors facilitate and work with/cooperate with officials in different land-related activities. In instances where the cooperation is not possible due to an adversarial relationship between the actors, unofficial actors may form an alliance to protect themselves against official threats from the State. To protect residents' land transactions, the hybrid governance arrangement adopts different strategies based on the level of threats. However, despite dealing with the various local threats it is noteworthy that through a hybrid governance arrangement involving CSOs, CBOs and official agencies, a credible land-related dispute resolution platform has emerged.

Together hypotheses 12-15 developed from the literature and interviews with Barry (pers. comm. 2020) and emergent hypotheses 18, 19, 25, 26, 27, and 28 comprise the study's substantive level hybrid governance theory that explains hybrid land tenure administration in *in situ* regularised informal settlements like Waitiki.

## **8.4 Summary and Conclusion**

This chapter's main contribution is the achievement of research objective 2, which was to develop a hybrid governance theory for *in-situ* regularised informal settlements based on the Waitiki case. To achieve this objective, research questions 4-10 were answered and hypotheses 12-15 (articulated in chapter 2, section 2.8.2.3) were tested. In general, the findings in this chapter build on findings in chapter 6 and support several of the propositions associated with/derived from the social change model and hybrid governance theories discussed in Chapter 2 sections 2.4 and 2.5. Firstly, this section highlights the social change model theory aspects namely the dialectical approach, the ongoing processes of solidarity and schism, and entrepreneurial behaviour. It then

summarises this chapter's key interest hybrid governance in Waitiki and concludes by articulating the emergent theory.

The dialectical approach's articulation of external threats, and internal competition elements of the social change theory model presented in section 2.4, are illustrated by the hybrid governance outcomes in Waitiki. The demonstration of external threats was observed in the formation of CLNSA to protect local organisations from state profiling and intimidation. In addition, the CLNSA partners (including local CBOs) are usually united in their defence of Waitiki residents' land interests and transactions. The internal competition element of the dialectical approach was observed in the conflict between the local youth groups and CLNSA/local CBOs, between CLNSA/local CBOs and local politicians, and between the official system and the settlement-level governance committee. The conflict between CLNSA/local CBOs and local youth groups related to the former's opposition to *jara* payments by residents. In this case, the CLNSA/local CBOs did not follow up on the issue because they wanted to work within the settlement, and the local youth groups were locally influential. The conflict between CLNSA/local CBOs and local politicians was evident in situations where the former is advising residents whose land interests were threatened by local politicians. The official system and settlement-level governance committee emerged after the land titling project was completed. The settlement-level governance committee members were warned against engaging in land tenure administration. However, based on the results, they are still involved as residents continue to engage them in their land transactions. Possible explanations why the committee continues to be involved in land tenure administration include residents trust them, residents are more familiar with them, and when compared to the officials based in Mombasa the committee has a better understanding of the settlement's continually evolving land tenure system.

Solidarity and schism processes were evident in the changing hybrid governance arrangements. For example, to effectively serve the Waitiki residents, CLNSA partners based in other areas of Mombasa work with LICODEP and LCD to defend the residents' land interests and transactions. Furthermore, after these coalitions achieve their objectives, they are dissolved as shown in the case of local administrators and local elders after the Waitiki Farm land titling project. In this case, the titling project coalition was dissolved and not integrated into the existing land governance structure.

Entrepreneurial behaviour was demonstrated by the settlement land governance committee, local youth groups and local politicians. The settlement land governance committee members are willing to overlook the required official land transaction procedure requirements and witness off-register land transactions. Local youth groups participate in land evictions at a cost and undertake fraudulent land sales of land parcels designated for access routes and social facilities. These transactions contravene the land use rules that were agreed upon during the public meeting that discussed the land use plan. Furthermore, local politicians are willing to manipulate official procedures or project implementation strategies to benefit their supporters and, in some cases, themselves.

The relevant unofficial actors in Waitiki comprised the settlement land governance committee, CLNSA, local CBOs, local youth groups, and local politicians. These actors undertake the *de facto* land tenure administration roles. These *de facto* roles range from witnessing and advising on land transactions to community mobilisation to protect the residents' land interests and transactions. Evident in the data is that the settlement-level governance committee, CLNSA, and local CBOs were the most active on-the-ground unofficial actors. As a result, linkage to these actors is critical to ensuring effective land tenure administration in Waitiki. For example, both national and county government SLAOs refer land-related disputes to the settlement-level governance committee because they better understand the settlement's land transactions. In addition, there is also evidence that various SLAOs consult the settlement-level governance committee to verify the information presented to them in the office (e.g., residency information). Furthermore, the evidence suggests that SLAOs engage the Waitiki settlement-level governance committee to gain access to the settlement (*refer to section 8.2.1.2 (a)*). This means that the committee facilitates the SLAOs entry into Waitiki to be able to work on-site (*refer to section 8.2.2.1 (a)*). Also evident in the findings was that the different actors that make up the Waitiki hybrid governance arrangement use different strategies to defend residents' land tenure and transactions. For effective implementation of these strategies, these actors involve residents through participatory public meetings held on public grounds within Waitiki.

In conclusion, the hybrid governance theory that emerges from this chapter argues that despite the official documentation of Waitiki residents' land interests, the *de facto* hybrid governance continues to be dominant and influential on the ground because the SLAOs and residents continue

to use them for different land tenure administration functions, such as dispute resolution and land inheritance. The residents use the *de facto* hybrid governance arrangement due to its perceived ease of use, accessibility, and high social trust, which they believe safeguards their land tenure security and transaction. Additionally, SLAOs use the *de facto* hybrid governance arrangement due to its local legitimacy and knowledge of the local context, which they believe ensures continued service delivery with minimal conflict or disruptions. Therefore, in Waitiki the *de facto* hybrid governance arrangement is functional because the residents and SLAOs use it.

## CHAPTER NINE: SUMMARY AND CONCLUSIONS

### 9.1 Introduction

An effective official Land Administration System (LAS) provides security of tenure, facilitates land transfers and a land market, supports access to affordable land for housing and land use control, and provides reliable land information for other administrative purposes such as land taxation (Williamson et al. 2010). However, the stable enabling conditions that are critical to such an effective official LAS seldom exist in peri-urban sub-Saharan Africa (SSA) settlements (Fekade 2000). Many official LAS are dysfunctional in peri-urban SSA, because a significant number of peri-urban SSA contexts are characterised by corruption, patronage, lack of funding, lack of political will, lack of capacity, high population growth, and rapid urbanisation. Studies that explain why LAS's are dysfunctional/ineffective in peri-urban SSA settlements identify a complex set of contextual factors that influence the effectiveness of official LAS in peri-urban settlements and informal settlements. The factors range from the macro to the micro scales and include social, political, legal, institutional, and cultural factors. Despite these results, there is limited understanding of land tenure administration in peri-urban settlements using street level bureaucracy and hybrid governance theories as to the primary analysis framework.

Although the role of hybrid governance arrangements in land tenure administration is recognised in literature (e.g., Barry 2020), existing research and theory using it as the “primary theme” to explain land tenure administration effectiveness is limited (Barry 2020). Furthermore, there is a gap in documented evidence of Lipsky's Street Level Bureaucracy theory as it applies to land administration. This study fills the gap by investigating how SLAOs provide land administration services and how hybrid governance arrangements inter-relate. The study argues that if the effectiveness of land tenure administration is to be improved in peri-urban settlements, then it is necessary to understand how SLAOs and hybrid governance arrangements work in these situations.

The objective of this study was to develop street level bureaucracy and hybrid governance theories to explain the effectiveness of land administration systems in Waitiki, a peri-urban informal settlement in Mombasa Kenya. Using the Waitiki case, the study examined and answered research

questions 1 to 15. As a result, the objectives restated below have been achieved (*refer to chapters 2, 6, 7, 8 for more details on how each objective was achieved*).

**Objective 1:** To structure the investigation, and similar investigations, develop an analytical framework for organising data, and structure the flow of analysis.

**Objective 2:** To develop a hybrid governance theory for in situ regularised informal settlements based on the Waitiki case.

**Objective 3:** To develop a street level bureaucracy theory for in situ regularised informal settlements based on the Waitiki case.

To recap, Objective 1 was addressed in Chapter 2, the literature review chapter of the study. The chapter reviewed land tenure administration literature. This showed the following: one, conventional official land administration systems are dysfunctional in peri-urban settlements; two, theories that explain how land administration is undertaken in peri-urban SSA are inadequate and, three, the existence of a literature gap as it relates to the application of street level bureaucracy and hybrid governance to explain land administration in *in situ* regularised informal settlements. Given these results, the study developed the two sets of preliminary hypotheses in section 2.8.2.3 based on the literature and research experience of Barry (pers. comm. 2020) who studied informal settlements and state-subsidised housing projects in South Africa, and peri-urban settlements in Ghana and Nigeria. The hypotheses were developed to structure the study's theory development in chapters 6, 7, and 8. Moreover, in using the two sets of hypotheses the study was able to provide the required incisiveness to explain how street level bureaucrats and hybrid governance arrangements operate in *in situ* regularised informal settlements such as Waitiki. Evidence of such nuanced explanatory theories was missing in the literature (*see chapter 2 for more details*).

The chapter proceeds as follows, first, it provides a summary of the research's findings. The findings are summarised using the main objectives of the study i.e., objectives 2 and 3, and their respective research questions. Following this, the chapter discusses the theoretical contribution and recommendations for future research. The chapter concludes with a study summary.

## **9.2 Summary of Findings and Emergent theories**

This section presents the summary of this study by discussing the key findings as they relate to the research objectives in section 1.4. As noted earlier, objective 1 was addressed in the literature review chapter of this study. As a result, this section addresses specific objectives 2, 3, and 4. The issues summarised under each objective were investigated using research questions specified under each specific objective (*refer to section 1.5*). At the end of subsections, 9.2.1 and 9.2.2 the substantive level theories developed in chapters 8 and 7 respectively are restated. The two subsections contribute to the achievement of objective 4 in the following ways: one, the two sections restate the theories developed in chapters 6, 7, and 8 namely, the hybrid governance theory (*restated in subsection 9.2.1.1*) and street level bureaucracy theory (*restated in subsection 9.2.2.1*). In addition, and as restated in the two sections, the study shows that hybrid governance and street level bureaucracy theories can be used to develop substantive level theories in the form of hypotheses to explain land tenure administration in *in situ* regularised peri-urban settlements. The second way in which objective 4 is achieved is that the development of the two substantive level theories contributes to an understanding of land tenure administration in *in situ* regularised peri-urban settlements in SSA. More specifically, it shows how SLAOs undertake their work in challenging contexts and how the different hybrid governance arrangements operate and inter-relate on land tenure administration matters.

### **9.2.1 Objective 2: To develop a hybrid governance theory for in situ regularised informal settlements based on the Waitiki case**

This sub-section details the study results as they relate to research questions 4 to 10. The research questions were examined to address the study's objective 2 i.e., to develop a hybrid governance theory for *in situ* regularised informal settlements based on the Waitiki case. The hybrid governance theory was developed in Chapter 8. However, it is important to note that the results summarised and analysed in this section cover four chapters, namely 4, 5, 6, and 8. The subsection concludes by briefly highlighting the developed hybrid governance theory. The following is a summary and analysis of each of the seven research questions i.e., 4, 5, 6, 7, 8, 9, and 10.

4. *Who are the key land governance actors in Waitiki?*

The study established that land governance actors in Waitiki can be grouped into two categories: official and unofficial land governance actors (*see section 8.2.1*). The identified key official land governance actors include the national government ministry<sup>29</sup> in charge of land administration, the Mombasa County government's Department of Land, Planning and Housing (MCGDLPH), and the NLC (*see sections 8.2.1 and 5.5*). The identified main unofficial land governance actors include the settlement-level governance committee (which comprises the local administrators and local elders); Coast Land Sector Non-State Actors (CLNSA), local Community Based Organisation (CBOs) (LICODEP and LCD), local youth groups, and local politicians (*see sections 8.2.1, 6.2.2, 6.7, and 6.9*).

##### *5. Who are the powerful and who are the vulnerable actors?*

Prior to the land titling exercise undertaken in Waitiki, local elders and youth who invaded the land were powerful actors as they administered and controlled land access and use in Waitiki (*see chapter 4 and section 6.2.2*). During this period non-indigenous land purchasers were vulnerable to the *jara* administration practices of the local youth (*see section 6.5*), fraudulent multiple land sales (*see section 6.2.2*) and the goodwill of the local elders in resolving the emerging land dispute cases (*see section 6.4*). As highlighted in section 6.5 local youth administered *jara*. Residents that did not pay *jara* risked losing their land. However, it is important to note that since the land titling project, the incidences of the local youth administering *jara* have reduced.

After the land titling, the study showed that unofficial land governance actors such as the settlement-level governance committee (local elders and local administrators), local politicians (MPs and MCAs), CLNSA, and local CBOs, are powerful. Their local power is based on and evident in a number of ways: the different roles they play, the different services they provide to residents, their local influence and their role in providing an important linkage with external actors. Furthermore, the study found that unofficial actors such as the settlement-level governance committee and local youth may decide who can access the settlement, determine what land tenure administration activities can be implemented, allocate land, and enforce land allocation decisions within Waitiki (*refer to section 8.2.2.1*).

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<sup>29</sup> Currently, referred to as Ministry of Lands and Physical Planning

The study also identified the vulnerable land governance actors. Women, widows, and girls were identified as likely vulnerable land actors in land inheritance/succession (*see section 6.8*). These actors were identified as potentially vulnerable due to the likely manipulation of inheritance customs or traditions by local elders and male family members who are usually powerful in succession cases (*see section 6.8*). In addition, landowners who tick one or more of the following were found to be vulnerable to land grabbing local elites: those who do not have land ownership documents, who bought their land parcels off-register, those who do not reside within the settlement, and those who are non-indigenes. Additionally, the study established that tenants are vulnerable to eviction (*see section 8.2.2.2*). In sum, these actors were identified to be vulnerable due to their weak position in the Waitiki community.

#### 6. *Who de jure and de facto administers land in Waitiki Farm?*

The study found that in Waitiki, *de jure* land tenure administration is undertaken by two official land governance actors. These are the national government ministry in charge of land administration and the Mombasa County government's Department of Land, Planning and Housing (MCGDLPH) (*refer to sections 6.2.2, 6.5, and 8.2.1.1*). These actors provide land administration services in line with the existing land law and official procedures.

*De facto* land tenure administration is undertaken by unofficial land governance actors, namely: the settlement-level governance committee (that comprises the local administrators and local elders), CLNSA, local CBOs (LICODEP and LCD), local youth groups, and local politicians (*see section 8.2.1.2*). It is important to also note that prior to the land titling exercise, local elders, and youth groups *de facto* administered land in Waitiki (*see section 6.2.2 and chapter 4*). During this period, the local elders resolved land disputes (*see section 6.4*), while the local youth administered *jara* (*see section 6.5*). The *de facto* finding suggests that the settlement land governance committee, CLNSA, local CBOs and local youth land tenure administration roles persist despite the land titling project. The data shows that local structures have persisted because: (1) they are more familiar with Waitiki history and socio-cultural norms as they relate to land tenure administration, e.g., on land succession, (2) they enjoy high social trust, and (3) are more locally accessible and visible (*refer to section 8.2.1.2.1*). It is also possible that local structures persist because residents do not

trust the official system because they perceive it to be corrupt, inefficient, and biased in its service delivery (*see section 6.6.1*).

*7. How is land tenure administration undertaken, and more specifically, what land tenure administration services do the different actors provide?*

Waitiki residents use different land transaction channels to access land. The official land transaction channel – comprising the national and county government agencies – provides various official land administration services. These services include ensuring that land transaction documents meet the required technical standards for approvals, such as development applications. In addition, SLAOs working at the two levels of government maintain up-to-date Waitiki related official land administration records such as the number of residents that have collected their Certificate of Lease. The two levels of government cooperate when undertaking some of these roles (*see section 8.2.1 and chapter 5*). For example, when processing development applications, county-level SLAOs will refer the applicant's land ownership documents to the national government SLAOs in the land registration department to check the land ownership information and details presented to them for development application processing and approval.

The unofficial land governance actors provide different land administration services. More specifically, as it relates to land tenure administration in Waitiki, the settlement-level governance committee is involved in dispute resolution, land transaction witnessing, inheritance, and development control. In addition, the CLNSA and local CBOs alliance, described in section 8.2.1.2.2, provides several services, which range from land related advocacy and community mobilisation to county level land policy development facilitation. In providing these services the CLNSA and local CBOs alliance work with both official and unofficial actors. Further, the study shows that land tenure administration roles of local youth groups are limited to land transactions and waste collection (*see section 8.2.1.2.2*). The reasons why these actors continue to provide these services, despite the titling project, are discussed in sections 6.6.1 and 8.2.1.2.1 and are summarised under research question six above.

*8. What strategies are available to the powerful and the vulnerable to secure their land tenure and to secure land transactions, and why do they adopt particular strategies?*

The study shows that both powerful and vulnerable landholders/actors use different strategies to mitigate against risks to their landholding or ownership (*see sections 6.3 and 8.2.3*). The land occupation history, described in sections 4.5, 6.2, 6.3, and 6.5, revealed that prior to the land titling project, residents used a mixture of strategies which included physical development e.g. erecting a foundation, employing local youths to guard the land parcel, documentary evidence e.g. land purchase agreements, and paying jara (*see sections 4.5.3.1, 6.5, 8.2.2.1, 8.2.3.2, and 8.2.3*).

The study identified several categories of vulnerable Waitiki landowners and residents. These included women, widows, tenants, and non-indigenous landowners. Though there was no evidence of the vulnerable being deprived of their land interests post-land titling. The study found that to protect their land interests, these actors would use local mechanisms such as local elders and administrators who make up the settlement land governance committee described in section 8.2.1.2 (a). It is important to note, however, that as it concerns land succession cases, the land interests of women, widows, and girls are still vulnerable to threats of manipulation of local rules on succession from the local elders. Further, when residents were presented with two landownership threat scenarios,<sup>30</sup> several land securing strategies were identified. Examples are the use of local structures such as settlement-level governance committee, the use of official mechanisms such as reports to the land administration office, use of different forms of local evidence, such as the testimony of the original land seller, to defend their land interests (*see section 6.3*). Noteworthy from the residents' interviews is that the residents' decisions on land securing strategy depended on the type of landownership threat they were facing. For example, when faced with a claimant who had a title, the residents were willing to use official mechanisms. However, when faced with a threat of a claimant with no title, residents opted for local mechanisms as a land securing strategy.

To defend the land transactions of the Waitiki residents, land tenure officials and unofficial actors used a variety of strategies. Official actors worked with residents, landowners, and security officials to prevent land invasions before they occurred. In addition, they also authenticate the resident's land transactions and ownership through official approval processes (*see section 8.2.1.1*). Further, and as noted in section 8.2.3.3, the unofficial actors, namely CLNSA and local

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<sup>30</sup> The threat scenarios presented were (1) what would the residents do to defend their land against another claimant, (2) what would the residents do to defend their land if the claimant produced a title.

CBOs, land securing strategies lie on a continuum that ranges from proactive to reactive strategies. These strategies are associated with the type of risk being faced by the residents. Proactive strategies such as advocacy and lobbying are used by the unofficial actors to prevent threats to the residents' land tenure and transactions from manifesting, while reactive strategies, such as litigation, are used to respond to threats that have occurred (*see section 8.2.3*). The unofficial actors' land securing strategies are influenced by factors such as the nature of relationships among different actors and local political will (*see section 8.2.3*). For example, to effectively advocate for the resident's interests, CLNSA and local CBOs work with local politicians.

*9. How do the different land tenure administration systems interrelate and what are the noticeable land tenure administration outcomes of these interrelations? What are the available participatory development institutional platforms?*

The study established that public meetings (i.e. *public barazas*), are the main participatory development platform in Waitiki (*see section 8.2.4, 6.11.2, 6.11.3*). The meetings are usually organised by the local leadership structure to seek Waitiki residents' views on ongoing or upcoming local development projects (*see section 8.2.4*). In other cases, these meetings are called to discuss emerging local governance challenges (*see section 6.11.1*). The study found that the participation of residents in these public meetings is dependent on their livelihood considerations or concerns (*see section 6.11.2*). Cooperation among organisers, local leaders, and residents is important to ensure effective community participation and mobilisation. For example, cooperation between official and unofficial actors led to improved delivery of the land titling project (*see section 6.11.3*). In contrast, the conflict between the national and county government during the Waitiki land titling project affected the alignment of the Waitiki Land Use Plan -the plan was not ratified- to the existing county level land use planning. This shows that conflict is likely to occur if two land governance actors have different interests.

*10. How did the land tenure regularization process impact the different institutions and their related land tenure administration activities?*

The study found that the Waitiki land titling project has not significantly changed the settlement-level governance committee land tenure administration roles. This is because the participation of

local elders in various land-related matters persists (*see sections 8.2.1.2.1 and 8.2.1.2.2*). They continue to participate in these activities despite warnings by Waitiki land titling project SLAOs and security officials to stop undertaking these roles (*see section 8.2.5.1*). The study found that local elders are still relevant because residents: can easily access them, have the experience of dealing with them, trust them, and perceive them as actors that understand the local context (*see sections 8.2.1.2.1 and 6.6.1*). However, it is important to note that the leaders did not state why the local elders continued to participate when the policy objective was to remove their land tenure administration participation. In addition, in Waitiki, the official land administration system (consisting of county and national government level agencies) remains dominant in *de jure* land tenure administration processes such as land registration and development applications (*see section 8.2.1.1*).

### ***9.2.1.1 Hybrid Governance Theory***

The study developed a hybrid governance theory comprising the *a-priori* stated hybrid governance hypotheses and hybrid governance hypotheses that emerged from the Waitiki data. The *a-priori* hypotheses i.e., hypotheses 12-15, were developed from the literature and interview with Barry (pers. comm. 2020) while emergent hypotheses i.e., hypotheses 18, 19, 25, 26, 27, and 28, were generated from the Waitiki data. The *a-priori* stated [and/or restated] hypotheses and the emergent hypotheses comprise the study's substantive level hybrid governance theory that explains hybrid land tenure administration in *in situ* regularised informal settlements like Waitiki. The hypotheses are restated below.

***H12: In informal settlements, de facto hybrid governance arrangements that maintain their local power may continue to have dominant and legitimate land tenure administration roles after land interests have been officially documented.***

***H13: In informal settlements, registration of inheritance by residents after official documentation will indicate whether settlement residents will use official systems or de facto hybrid governance arrangements for resulting land transactions.***

**H14:** *In informal settlements, residents will opt for simple, cheap, and quick off-register land transaction channels that they are familiar with as opposed to the official procedure that is likely to be lengthy and costly.*

**H15:** *In informal settlement upgrading projects, where there is intense local political competition, a participatory project administration approach that involves de facto hybrid governance arrangements and the residents is unlikely to be disrupted by local politicians who, despite being involved, may wish to disrupt the process.*

**H18:** *In informal settlements, where the rent seeking behaviour by unofficial structures prevails, some in-migrant residents will seek leadership positions to build their local power and protect themselves from the rent seeking behaviour and extortion.*

**H19:** *In informal settlements participatory land titling, that includes public education and awareness on the beneficiaries' land rights, responsibilities and restrictions by officials and unofficial structures, will lead to the reduction of the legitimacy of unofficial structures to administer land tenure and engage in rent seeking behaviour.*

**H25:** *In informal settlements where local governance is dominated by settlement committee, officials are likely to use the committee to access the settlement and/or undertake land-related functions on the ground.*

**H26:** *In informal settlements where the relationship between CSOs and the State is adversarial due to the CSOs land-related activities, CSOs (and/or local CBOs) may form a fluid alliance with the support of donor funding to counter the State's threats against their work.*

**H27:** *In informal settlements where there is intense competition for land and resident face various threats to their landholding, unofficial structures will use a mix of land securing strategies depending on whether the threat has occurred or is imminent to defend.*

**H28:** *In informal settlements where there is intense competition for land and low officials trust a hybrid mechanism through which perceived bureaucratic maladministration cases can be handled is likely to provide a credible land-related dispute resolution mechanism that maintains social cohesion.*

In summary, drawing on both chapters 6 and 8, empirical data hypotheses 12, 13, 14, 15, 18, 19, 25, 26, 27, and 28 were tested, restated, and classified as either persuasive or speculative. Hypotheses 12, 13, 15, 25, 26, 27, were classified as persuasive as there was substantive empirical support for them. It is important to note that hypothesis 26 was restated following empirical data testing. Hypotheses 14, 18, 19, and 28 were classified as speculative. There was minimal empirical data to support them (i.e., hypotheses 14 and 28) or no empirical data to support or falsify them (i.e., hypotheses 18 and 19). Since the speculative hypotheses were not falsified, they are deemed valid. They can further be tested in other *in situ* informal settlement conditions similar to Waitiki.

### **9.2.2. Objective 3: To develop a street level bureaucracy theory for in situ regularised informal settlements based on the Waitiki case**

This sub-section details the study results related to research questions 11 to 15. The research questions were examined to address the study's objective 2 i.e., to develop a street level bureaucracy theory for *in situ* regularised informal settlements based on the Waitiki case. The study's street level bureaucracy theory was developed in Chapter 7. However, it is important to note that the results summarised and analysed in this section cover 2 chapters namely 5 and 7. The following is a summary and analysis of each of the five research questions i.e., 11, 12, 13, 14, and 15.

#### *11. What land administration functions do SLAOs perform in peri-urban SSA/Waitiki Farm?*

The study showed that SLAOs working at both the national and county levels of government undertake different office and field-based land administration roles within their jurisdictions. The official roles are stipulated in the existing land policy and legislative framework governing land administration in Kenya (*see section 5.2*). In some instances, SLAOs functions are undertaken in collaboration with CSOs, local elders, local administrators, and other public agencies. The collaboration with CSOs may be unstructured or structured (for example through MOUs). The findings suggest SLAOs seek the support and cooperation of both CSOs and public agencies to shape local land administration service delivery. Also noteworthy is that SLAOs involve local elders and local administrators in roles such as land-related dispute resolution (*see section 7.2.1.1*).

12. *Under what conditions do SLAOs deliver land administration services in peri-urban SSA/Waitiki Farm and how do they strategise to deliver land administration services?*

As established in section 7.2.2 SLAOs working in Waitiki work in a context characterised by inadequate resources, weak or no facilitation of SLAOs fieldwork, and private land invasions. The findings in section 7.2.2.1 show that the SLAOs lack adequate human (both professional and administrative), financial, technical, and office space resources. Further, and also noteworthy, is that their fieldwork is not facilitated. The fieldwork is crucial in ascertaining some of the information presented to them in the office. In addition, and as discussed in section 7.2.2.2, SLAOs at the two levels handle private land invasions. To deal with private land invasion cases, SLAOs do the following: take pre-emptive administration measures to safeguard land information, engage both landowners and squatters, seek the support of local elders, and engage local security personnel to mitigate the risks associated with their work in areas where the possibility of violence is high. To manage these contextual characteristics and deliver services to their clients, SLAOs use different strategies (*see section 7.2.2.4*). The strategy employed by SLAOs is based on an evaluation of the challenge they are facing and the level of government they work for. The strategies range from office-based tools aimed at reducing and/or simplifying the workload to informal cooperation with private practitioners. The discretionary practices and strategies used to deal with the various work challenges constitute the *de facto* land policy (policy as practised) which may differ widely from the written policy.

13. *In what ways do local politics influence SLAOs' work, what are the noticeable outcomes, and how do they deal with these influences?*

The study established that in their day-to-day administration work, SLAOs deal with both direct interference, such as local political interference with ongoing land administration projects and indirect political interference, such as indirect manipulation of land administration processes and procedures for the local politician's benefit (*see section 7.2.3.1*). To deliver services and maintain local political support at the local level, SLAOs balance the interests of local politicians and the public. For example, SLAOs interviews show that when local politicians make demands which SLAOs think may be outside the standard procedures, they request the said politicians to present the necessary official documentation required for the land administration service sought. The data

suggested they may also do this to protect themselves from losing their jobs (*see section 7.2.3.2*). In addition, SLAOs utilise various strategies to handle both direct and indirect political interference. These strategies include hastening procedural work by combining some of the processes and implementing them simultaneously, use of local structures to increase public awareness and counter public land tenure administration misinformation, and negotiating with local political leaders and leadership networks to get the support of politicians and buy-in from the community. The various strategies are informed by the need to reduce schisms within the settlement-level community and mitigate the risks associated with local politicians' interference. Further, the findings show that in some cases, SLAOs discretionary practices may be manipulated to advance the fluid interests of local political elites (*see section 7.2.3.3*).

14. *How do SLAOs experience land corruption in their work, what are the noticeable outcomes and what accountability mechanisms are available to them?*

The study found that SLAOs in Waitiki work in an environment where corruption is an ever-present risk in their work (*see section 7.2.4.1*). The SLAOs interview data showed that corruption ranges from value inflation by top officials in relation in high-level projects to bribery aimed at hastening bureaucratic procedures. SLAOs' knowledge about corruption, their clients' corrupt behaviour and evidence of this behaviour's prevalence suggest that corruption is an ever-present risk the SLAO interviewees have learnt to work with. As a result, rather than attempt to be anti-corruption crusaders or undermine their colleagues with land tenure administration related corruption claims, the interviewed SLAOs prefer to get the work done while avoiding unnecessary trouble from their superiors and colleagues who may be involved in corrupt practices (*see section 7.2.4.1*). The prevalence of corruption in the official systems has led to residents having low trust in SLAOs at the two levels (national and county) as detailed in section 6.6.1.

15. *What were the SLAOs experience with the land titling programme undertaken in Waitiki Farm?*

The study found that SLAOs experiences within a land tenure regularisation project are different from their official administrative day-to-day work. This is because these projects are time-bound, may include various actors that may be in conflict, and the project resources are not available during the day-to-day work. Due to these project conditions, SLAOs noted that in the Waitiki land

titling project, they overlooked certain official requirements so as to meet project deadlines, witnessed a lack of collaboration from institutional actors that were in conflict, and utilised unofficial land governance actors to cope with reduced project resources (see section 7.2.5).

SLAOs experience with the Waitiki land titling project can be grouped into two – phases – during the project and after the project. During the project, SLAOs worked under pressure to implement and/or complete various project processes and tasks. To achieve the project deadlines within a shorter period than usual SLAOs used discretionary practices that meet the minimum legal requirements necessary for land registration. As a result, SLAOs noted that in the Waitiki land titling project, they overlooked certain official requirements so as to meet project deadlines, witnessed a lack of collaboration from institutional actors that were in conflict, and utilised of unofficial land governance actors to cope with reduced project resources (*see section 7.2.5*). After the project was completed, SLAOs experienced increased work demands under the context of decreased resources. To handle the increased work demands SLAOs used various strategies such as referring beneficiaries to other offices and informally engaging local leaders involved in the project for land transaction updates, especially concerning beneficiaries who did not register transfers that followed their acquisition of land leases (*see section 7.2.5.2*).

#### ***9.2.2.1 Street Level Bureaucracy Theory***

The study developed a street level bureaucracy theory comprising of the *a-priori* stated street level bureaucracy hypotheses and street level bureaucracy hypotheses that emerged from the Waitiki data. The *a-priori* hypotheses i.e., hypotheses 6-11, were developed from the literature and interview with Barry (pers. comm. 2020), while emergent hypotheses i.e., hypotheses 16, 17, 20, 21, 22, 23, and 24, were generated from the Waitiki data. The *a-priori* stated [and/or rearticulated] hypotheses and the emergent hypotheses comprise the study's substantive level street level bureaucracy theory.

***H6: In informal settlements, SLAOs will recognise and engage hybrid governance arrangements, private practitioners, and local politicians where their official engagement with the informal settlement is likely to lead to violence outbreak or is prohibited by the law.***

**H7:** *In informal settlements where actors in competing local governance arrangements are unable to agree on the appropriate land tenure administration regularisation, or upgrading approach to be used, SLAOs will be reluctant to innovate to avoid being labelled the face of failure by the competing coalitions, local leaders, and politicians.*

**H8:** *In informal settlements where SLAOs are not accessible, not continually active and seldom visible at the street level, their land tenure administration roles will be assumed by unofficial, community-based structures.*

**H9:** *In regularised informal settlements, where SLAOs are active on the ground and they educate residents on the risks of off-register land transactions, or residents learn about these risks by becoming aware of people losing land in an off-register transaction, the residents are likely to follow the official regulations and procedures in their subsequent land transactions.*

**H10:** *In informal settlements upgrading projects, where SLAOs and local leaders or organisations have negotiated and come up with an agreement on rules to guide the various settlement upgrading activities, the local leaders may not strictly enforce these rules unless collective strategies by settlement-level agents and perhaps external agents (for example, SLAOs or NGOs) are implemented to maintain these rules (Barry and Kingwill 2020).*

**H11:** *In informal settlement upgrading projects, a project design that allows SLAOs to directly communicate with the residents, collaborate with local leaders, and monitor the local leaders' implementation of rules agreed on various project activities, will enable SLAOs to effectively handle local project disruptions motivated by local politics and achieve project implementation objectives.*

**H16:** *In informal settlements, residents are unlikely to use the official system where they do not trust officials to act in their best interests possibly because they perceive officials to be corrupt and/or biased towards a particular group unless using the official system is unavoidable.*

**H17:** *In informal settlements upgrading projects, a project design that allows officials to schedule meetings outside of working hours may increase resident's participation in the upgrading project*

*planning public meetings and enable officials to effectively achieve project implementation objectives.*

**H20:** *In informal settlements where land invasions persist, officials will take pre-emptive administrative measures that are informed by their engagement with the private landowner and land invaders, to safeguard the land records and handle the land invasion case within the existing official procedures and mandates.*

**H21:** *In informal settlements where officials are faced with limited resources and increasing work demands, officials are likely to develop strategies that simplify their office-based work demands, engage unofficial actors, and facilitate inter-departmental resource sharing, to improve their land administration service delivery to their clients.*

**H22:** *In informal settlements where local political leaders directly and/or indirectly interfere with official land administration procedures, officials will accede to some of the local political demands to ensure that the political leaders will not sabotage the official's work on the ground.*

**H23:** *In informal settlements, officials are likely to ignore corruption allegations against their colleagues and/or organisation where they perceive such claims and/or allegations to be based on the narrative that the officials and/or organisation are corrupt, rather than being based on hard evidence.*

**H24:** *In informal settlements upgrading projects, a project design that uses officials without the requisite informal settlement experience, and has a short implementation timeline, is likely to lead to certain project processes being overlooked and handled after the project.*

In summary, drawing on chapter 7 empirical data hypotheses 6, 7,8,9,10,11,16,17,20,21,22,23, and 24, were tested, restated, and classified as either persuasive or speculative. Hypotheses 6, 8, 11, 21, 22, 24 were classified as persuasive as there was substantive empirical support for them. It is important to note that hypotheses 6 and 11 were restated following empirical data testing. Hypotheses 7, 9, 10, 16, 17, 20, 23 were classified as speculative as there was minimal empirical data to support them (i.e., hypotheses 7, 10, 20, and 23) or there was no empirical data to support or falsify them (i.e., hypotheses 9, 16, and 17). Since the speculative hypotheses were not falsified,

they are deemed valid and can further be tested in other *in situ* informal settlement conditions that are similar to Waitiki.

### **9.3 Theoretical Contributions/Contribution to Knowledge**

This section details the study's main theoretical contribution. The section is divided into two subsections. The first subsection summarises how the two theories were developed, while the second subsection summarises the theoretical contribution of the study.

#### **9.3.1 Theory Development Process**

The study has developed hybrid governance and street level bureaucracy theories to explain land administration effectiveness in Waitiki Farm peri-urban settlement. The two theories were developed and tested by using data from Waitiki. The following is a brief description of the theory development process.

The first stage of formulating the theories was the formulation of *a-priori* street level bureaucracy and hybrid governance hypotheses based on a review of literature and an interview with Barry (pers. comm. 2020). The hypotheses were formulated to explain land tenure administration in *in situ* regularised peri-urban settlements whose conditions are similar to Waitiki. To recap, Waitiki Farm is a peri-urban settlement founded through land invasion (*refer to Chapter 4 section 4.4, chapter 6 section 6.2*). The land rights of the residents of the settlement were regularised in the land titling project described in Chapter 5. As a result, Waitiki may be described as an *in situ* regularised peri-urban settlement characterised by rapidly changing socio-economic conditions, disruptive local politics, and a localised post-conflict situation. It is on the basis of this description and understanding of informal settlements that the street level bureaucrats and hybrid governance theories, in the form of sets of hypotheses, explaining land administration effectiveness in *in situ* regularised peri-urban settlements that the hypothesis in section 2.8.2.3 were formulated.

The second stage of theory development was testing the hybrid governance and street level bureaucracy hypotheses under the peri urban settlement conditions as they exist in Waitiki. Following this testing some of the *a-priori* hypotheses were reformulated and other emergent hypotheses were developed. Further, the support for hypotheses were classified as either persuasive or speculative. As applied in this study, empirical support was considered persuasive if

there was direct substantive support from the Waitiki data. The study interpreted this finding as suggesting the hypotheses reasonably explain SLAOs behaviour and hybrid governance arrangements in Waitiki. In this study, hypotheses were classified as speculative if there was minimal empirical support for them or if the hypotheses were not tested as they emerged from the data. Since the hypotheses were not falsified the hypotheses may be valid and thus require further empirical testing in other similar contexts.

The theory development is illustrated in figure 9.1.

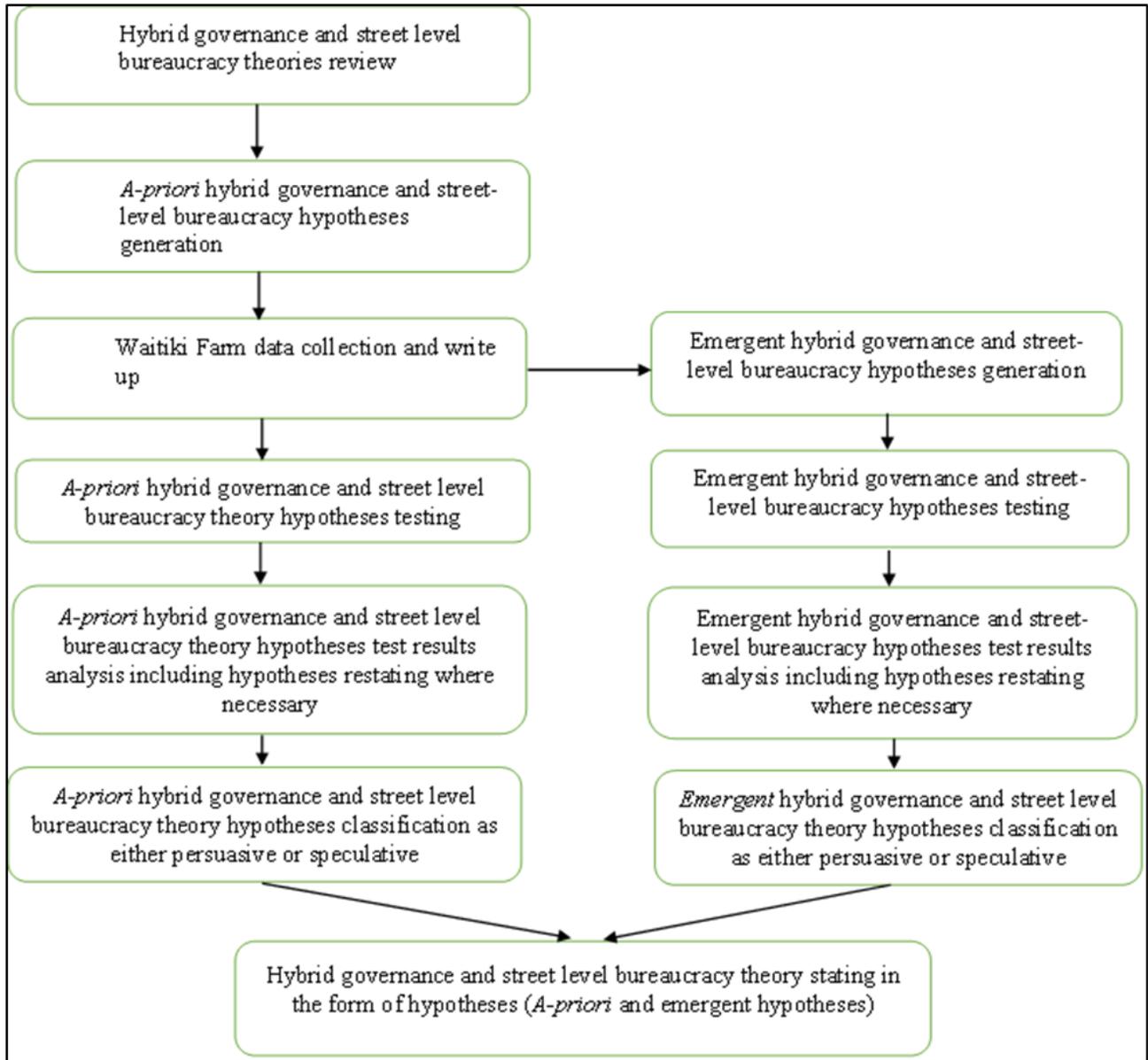
### **9.3.2 Theoretical Contribution**

This study investigated land tenure administration in *in situ* regularised peri-urban settlements in SSA. A case study strategy was used to investigate SLAOs behaviour and hybrid land governance arrangements in Waitiki, an *in situ* regularised peri-urban settlement in Mombasa. The study developed a-priori hypotheses generated from the Lipsky street level bureaucracy theory and hybrid governance literature review. This is the first time Lipskys' street level bureaucracy theory is being examined in a SSA *in situ* regularised informal settlement post-conflict context.

The study showed that hybrid governance and street level bureaucracy theories could be used to develop hybrid governance and street level bureaucracy theories that can explain land administration effectiveness in Waitiki Farm peri-urban settlement. The theories developed are in the form of a set of hypotheses tested under the peri-urban settlement conditions as they exist in Waitiki (*refer to sections 9.2.1.1 and 9.2.2.1*).

The hybrid governance theory developed argues that despite the official documentation of Waitiki residents' land interests, the *de facto* hybrid governance continues to be dominant and influential on the ground because the SLAOs and residents continue to use them for different land tenure administration functions, such as dispute resolution and land inheritance. The residents use the *de facto* hybrid governance arrangement due to its perceived ease of use, accessibility, and high social trust, which they believe safeguards their land tenure security and transactions. Additionally, SLAOs use the *de facto* hybrid governance arrangement due to its local legitimacy and knowledge of the local context, which they believe ensures continued service delivery with minimal conflict

or disruptions. Therefore, in Waitiki the *de facto* hybrid governance arrangement is functional because the residents and SLAOs use it.



**Figure 9.1 Theory development process**

The SLAOs theory developed in this chapter argues that the strategies that SLAOs use to deal with their constraining working conditions, local political influence, and volatile situations in Waitiki are shaped by the well-established rule of law guiding land administration services provision by the national and county governments. Consequently, detailed procedures and regulations guide

official land transaction processes, such as the charging and discharging Waitiki beneficiaries' land leases. SLAOs deviance from these official procedures is dependent on whether such flexibility will harm the clients' interests or whether the SLAOs process innovations will harm their jobs. It is also dependent on the SLAOs' working relationships with the various unofficial actors. Additionally, though the land administration processes are rigid at the national and county government levels of governance, the accountability structures are not well-established at the county level. However, processes at the two levels of governance are not devoid of risks such as corrupt practices, which may involve SLAOs and local politicians interested in manipulating the land administration procedures. To manage this risk, the analysis shows SLAOs communicate directly with the residents using different platforms. While this direct interaction with residents is useful in dealing with disruptions caused by local politics, it does not seem to work with off-register land transactions. Another possible risk that SLAOs operate with is the likelihood that hybrid governance arrangements will neither strictly enforce agreed rules nor do what is expected.

#### **9.4 Recommendations for Future Research**

The study was designed to develop substantive level theories that can explain street level bureaucrats behavior and hybrid governance arrangements operations within Waitiki. However, the two theories were not cross referenced and synthesised. A study should therefore be undertaken to synthesise the two theories and develop one theory.

The study encountered cases of local elders continuing to offer land administration services despite the warning by the Waitiki project SLAOs and security officials. Furthermore, the study showed that the regularisation of land rights does not mean that all subsequent land transactions will be undertaken officially. Future research on how the off-register land transactions will impact the Waitiki land ownership dynamics, more so given the leases issued to the residents specifically prohibit the residents from transferring their allocated land parcels, should be undertaken. In addition, a study should be undertaken to find out why the local elders continue to undertake land tenure administration functions.

Waitiki Farm is an *in situ* regularised peri-urban informal settlement where the *de facto* hybrid governance arrangement continues to be dominant in land administration. Future work is required to investigate whether the two theories developed in the study would hold in different informal

settlement settings for example where local based organisations are not involved in land tenure administration, there are no dominant indigenous groups, and the main land tenure administration actors are structure owners and tenants.

## **9.5 Concluding Remarks**

This research was based on a single case study of a regularised peri-urban settlement in Mombasa County. This was augmented by Waitiki residents' interviews, key informant interviews and focus group discussions with the settlement's local leaders. The first step in undertaking this research was to develop two sets of hypotheses to analyse the study area. The hypotheses were drawn from a review and synthesis of the street level bureaucracy theory, hybrid governance theory, and the social change model. The three provided a strong foundation for the research.

The main findings of this research are that in a regularised peri-urban settlement *de facto* hybrid governance arrangements are still dominant and influential land tenure administration actors because SLAOs recognise it and residents use these *de facto* structures. In addition, it was found that SLAOs develop strategies to deal with their constraining working conditions, local political influence, and volatile situations. The strategies it was found are based on the well-established rule of law guiding land administration services provision at the two governance levels.

In summary, the purpose of this study was to develop theories explaining how SLAOs and hybrid governance arrangements operate in regularised peri-urban settlements for a better understanding in designing an effective land administration solution. The theories developed were articulated in the form of a set of hypotheses. The study presented empirical evidence ranging from speculative to conclusive support for the set of hypotheses. The strategies that SLAOs and hybrid governance arrangements use to improve land administration services provision effectiveness. Given the foregoing, the study suggests that in regularised peri-urban settlements, land administration effectiveness can be improved through supporting SLAOs and hybrid governance strategies that work. The study argues that land tenure administration programs that are designed without an adequate understanding of the specific conditions under which SLAOs and hybrid governance arrangements operate or work in regularised peri-urban settlements are likely to fail. The hypotheses provide targeted strategies that can be presented to decision-makers for them to develop specific and targeted policy designs and actions.

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# APPENDICES

## Appendix A. Research Participants Interview Guides

**Interview No**

**Date:**

**Land title No.**

**Waitiki Farm Resident:**

**Location: Mombasa – Waitiki Farm**

|  |
|--|
| Time:<br>Place:<br>Interviewee:<br>Interviewer:<br>Translator:<br>Language:<br>Ethics Approval:<br>Audio record:<br>Participant gave permission to use his/her name:<br>Participant wishes to remain anonymous:<br>Participant wishes to remain anonymous, but with pseudonym:<br>Pseudonym:<br>Participant gives permission to be quoted and identified:<br>Photograph approval & understood: |
|--|

**Personal Information:**

Gender

Age

Name

Marital status (type of marriage?):

Children

Grandchildren

Education level:

Language/Ethnicity:

**Livelihood:** *What type of work do you do?*

**Life History:**

*Tell me how you came to acquire the land?*

*Are you an original squatter/ when did you arrive in Waitiki Farm?*

*Where were you born/ when did you come to Mombasa?*

*When were you put on the land allocation beneficiary list?*

*If your spouse has died, when did this happen?*

*If you are a purchaser, describe how you acquired the land and how much you paid?*

What are the positives that have occurred in your life since you acquired the land?

What are the problems that prevail in your community? And how have they been resolved?

What would you do if someone came and said this is not your land? (If they say they have a title deed ask to have a look at it)

What would you do if this person produced a title deed that indicates the land is theirs?

Have you witnessed any land based conflict since the land tenure regularisation process? What was the conflict about?

### **Services Provision**

Do you trust the Mombasa County officials? If no, why not?

Tell us about the local institutions/organizations in your locality?

Is there a local organisation you would go to if there is a problem with the ownership of the land?

What municipal services are available? If not, who provides urban services e.g. water, electricity, sanitation and security in your neighbourhood?

To whom do you pay land rates and other local fees?

### **Inheritance**

Who will inherit the land and how will this happen?/If an heir, describe how you have inherited the house.

Do you have a will?

If your children inherit the land, should they be able to sell? Are you aware of people who inherited their land in this neighbourhood? Please point them out

### **Land Sales**

Would you consider using the land as collateral for a loan?

Has anyone approached you to ask if you want to sell your land?

Would you ever consider selling the land? Would you sell if someone offered you current market value. If no, then why not?

Are you aware of people selling their land in this neighbourhood? Please point them out. How do they go about selling?

### **Land Evictions**

Are you aware of people being evicted from their land in this neighbourhood? Please point them out.

### **Land Ownership Responsibilities**

What is your opinion on the requirement that you should pay Kshs. 182, 000 to the Settlement Fund Trustee?

Have you received any information about ownership and the responsibilities of ownership? When was this undertaken, before land allocation or after?

How many times were these sessions held? And have they been held since then?

Was this a government led initiative or local based organisations led? Who led the local's mobilisation?

Is there anything you would like to ask me?

### **Politician/Local leader Interview Questions**

**Interview number:**

**Date:**

**Location:**

Date:

Time:

Place:

Interviewee:

Tel:

Interviewer:

Ethics Approval:

Audio record:

The following can be done if we send a copy of the document to be published and get written permission.  
Note on form to indicate this.

Participant gave permission to use organisation's name:

Participant wishes to remain anonymous:

Participant wishes to remain anonymous, but with pseudonym:

Pseudonym:

Participant gives permission to be quoted and identified:

Photograph approval & understood:

### **Questions**

#### **Life history**

*Briefly tell me about your life history?*

*What area is covered in your jurisdiction?*

*Tell me how you came to represent your locality?*

- 1) What are the organisations in this area? Which organisations deal with land ownership dispute, for example over boundaries?
- 2) How do local institutions and organisations function? How do they interact with the other organisations on the ground such as the civil society organisations?
- 3) Have there been cases where the local organisations have evicted residents? What were the were reasons for the evictions?
- 4) Has this happened because of political affiliation say CORD or Jubilee?
- 5) Were these organisations involved in the Waitiki Farm land tenure regularization programme land allocation processes? What has been the role of these organisations since then?
- 6) Were you involved in the Waitiki Farm Land tenure regularization programmes committees' establishment? If yes, what was your role in this process?
- 7) Was the beneficiaries list contested in your area? How many cases were there? What was the main reason for the contestations? Were you involved in these cases? What was your role in these cases? Are there cases that have gone to the Courts?
- 8) What are your future leadership plans for Waitiki Farm, Mombasa?
- 9) During the election periods there were accusations that people from outside Mombasa and the larger Coast province were being evicted and their land parcels grabbed, is this valid?
- 10) Are land administration officers working in Waitiki Far, Mombasa?
- 11) Do you know of:
- 12) Sales since the programme was completed?
- 13) Inheritance cases?
- 14) What public education programme was undertaken in Waitiki Far, Mombasa? Was it undertaken before the programme started or after? Were you involved in this programme? What was your role in this?
- 15) What is your opinion on the land sales restriction clause?
- 16) What is your opinion on the requirement that residents should pay Kshs. 182, 000 to the Settlement Fund Trustee?

## Land Professionals Interview Questions

**Interview number:**

**Date:**

**Location:**

Date:

Time:

Place:

Interviewee:

Tel:

Interviewer:

Ethics Approval:

Audio record:

The following can be done if we send a copy of the document to be published and get written permission.  
Note on form to indicate this.

Participant gave permission to use organisation's name:

Participant wishes to remain anonymous:

Participant wishes to remain anonymous, but with pseudonym:

Pseudonym:

Participant gives permission to be quoted and identified:

Photograph approval & understood:

### Questions

#### **Life history**

*Sex*

*Age:*

*Profession:*

*Education:*

*Briefly tell me about your professional history? When did you start practicing in Mombasa?*

*What area is covered in your practice?*

- 1) What are the local professional organisations in Mombasa in your area of expertise? Which organisations do you belong to? And Why?
- 2) How do these professional bodies deal with both land administration and local institutions in Mombasa? How do they interact?

- 3) Was your professional organisation involved in the Waitiki Farm land tenure regularization programme land allocation processes? If yes, please describe? What has been the role of your professional body since then?
- 4) Were you involved in the Waitiki Farm Land Tenure Regularisation programme? If not, do you know of professionals in your line of expertise that were involved?
- 5) If you were you involved in the Waitiki Farm Land tenure regularization programme were you a member of any of the committees involved? If yes, which one? And how were you chosen?
- 6) Are you aware of any conflicts relating to the Waitiki Farm beneficiaries list? How many cases are you aware of? Please describe? Are there cases that have gone to the Courts?
- 7) What was your working experience with land administration officers working in Waitiki Farm, Mombasa programme?
- 8) What are your opinions on the influence of political leadership on the Waitiki Farm, Mombasa land tenure regularization programme?
- 9) Do you know of:
  - a. Sales since the programme was completed?
  - b. Inheritance cases?
- 10) What public education programme was undertaken in Waitiki Farm, Mombasa? Was it undertaken before the programme started or after? Were you involved in this programme? What was your professional role in this?
- 11) What is your professional opinion on the land sales restriction clause?
- 12) What is your opinion on the requirement that residents should pay Kshs. 182, 000 to the Settlement Fund Trustee?
- 13) What is your opinion on the land regularization programme as a whole?
- 14) There are newspaper reports where land professionals /professional organisations have been involved in questionable land transactions or other questionable land practices? Have there been any consequences for those involved?
- 15) During the process land professionals in your line of work were accused of fraud/corruption *etc.* by the locals, is this valid?
- 16) What is the level of public trust in land professionals?

## Land Administration Official Interview Questions

**Interview number:**

**Date:**

**Location:**

Date:

Time:

Place:

Interviewee:

Tel:

Interviewer:

Ethics Approval:

Audio record:

The following can be done if we send a copy of the document to be published and get written permission.

Note on form to indicate this.

Participant gave permission to use organisation's name:

Participant wishes to remain anonymous:

Participant wishes to remain anonymous, but with pseudonym:

Pseudonym:

Participant gives permission to be quoted and identified:

Photograph approval & understood:

### Questions

**Education:**

**Sex:**

**Life history**

- *Briefly tell me about your work history? What area is covered in your jurisdiction?*
- *Tell me about your experience with the Waitiki Farm Land Tenure Regularization Programme?*

**Land Administration Office**

- 17) What are the departments or sub-departments in this land administration office? Which department deals with land tenure administration or ownership for example land surveying? Planning?
- 18) How do these departments function? How do they interact amongst themselves?
- 19) With respect to land tenure administration, how do these departments and the organisation as a whole interact with the other organisations on the ground such as the civil society organisations?

- 20) How are committees to facilitate different land administration programmes established within the organisation?
- 21) How would you describe the organization culture in the Department?
- 22) Are there noticeable differences between the national and county governments land administration approaches? Could this be attributed to the different political affiliation?
- 23) Describe the different land tenure administration organisations and how they interact in the Waitiki Land Tenure regularization Programmes?

### **Waitiki Farm Land Tenure Regularization Programme**

- 24) What are the major land tenure administration issues in Waitiki Farm? How are these being addressed?
- 25) Which Departments were involved in the Waitiki Farm land tenure regularization programme land allocation processes? What was the role of these departments?
- 26) How were the beneficiaries identified in the Waitiki Farm regularization Programme?
- 27) Was the land administration office involved in the design, development and implementation of this process? Who was responsible for which stage?
- 28) Is there another regularisation programme planned in Mombasa?
- 29) Which Committees were established in this process? What was the role of each?
- 30) How were land administrators involved in the whole process?
- 31) How did you liaise with the local organizations on the ground?
- 32) Were there contestations to the initial list of beneficiaries? How were these contestations solved?
- 33) Are land administration officers working in Waitiki Far, Mombasa? If yes, what is their current role?
- 34) In your opinion how did the local leaders influence the process?
- 35) Do you know of:
  - a. Sales since the programme was completed?
  - b. Inheritance cases?
- 36) What public education programme was undertaken in Waitiki Farm, Mombasa? Was it undertaken before the programme started or after? Were you involved in this programme? What was your role in this?
- 37) What is your opinion on the land sales restriction clause?

38) How did the Department settle on Kshs. 182, 000 as the amount the residents should pay?  
How did the politicisation of this payment affect implementation of the process? What options do the residents have to pay this amount?

39)

### **Journalist Interview**

**Interview No:**

**Date:**

**Place:**

Date:

Time:

Place:

Interviewee:

Tel:

Interviewer:

Ethics Approval:

Audio record:

The following can be done if we send a copy of the document to be published and get written permission.  
Note on form to indicate this.

Participant gave permission to use organisation's name:

Participant wishes to remain anonymous:

Participant wishes to remain anonymous, but with pseudonym:

Pseudonym:

Participant gives permission to be quoted and identified:

Photograph approval & understood:

### **Questions**

1. Years covering news in Mombasa County? Likoni Sub-county? Waitiki Farm?
2. Why Mombasa, Likoni, Waitiki Farm? Links to Mombasa?
3. Where is the Waitiki Farm, Likoni Mombasa Coordination Centre?
4. Describe the different powerful groups in Waitiki Farm? Likoni? Mombasa?
  - a. Is there a dominant local organization in Waitiki Farm? Likoni? Mombasa?
  - b. What are the other local organizations in Waitiki Farm? Likoni? Mombasa?
  - c. What was the role of MUHURI in the process?
5. How was the County Security administration involved in the Waitiki Farm process?
6. What are the common land tenure problems? Who are the key protagonists in these contestations?

7. Are you aware of land sales in the area since the land tenure regularisation programme?
8. Have you covered stories about land inheritance in the area?
9. Are there stories about fraud in the Waitiki Farm land tenure regularization programme?  
Who was involved?
10. How was the requirement that the beneficiaries should pay Kshs. 182, 000 to the Settlement Fund Trustee, politicised at the different level of government?
11. What court cases stories about Waitiki Farm have you covered?
12. Do you know of:
  - a. Land professionals active in the area?
  - b. National or County Administrative offices active in the area?
  - c. Community Organizations active in the area.
  - d. Have you met any of the land administrators on the ground?
13. Do you know of similar cases to Waitiki Farm here in Mombasa County?

### **Focus Group Interview Schedule**

**Interview No.**

**Date:**

**Participants:**

**Location:**

Time:  
 Place:  
 Facilitator:  
 Translator:  
 Language:  
 Ethics Approval:  
     Audio record:  
 Participants give permission to use their names:  
 Participants wish to remain anonymous:  
 Participants wish to remain anonymous, but with pseudonym:  
 Pseudonym:  
 Participants give permission to be quoted and identified:  
 Participants Photograph approval & understood:

**Area History**

*When did this community move into the Waitiki Farm?*

*How did they move into the farm?*

*Were all the original community members squatters?*

*How was the land tenure regularisation programme initiated?*

*What has changed in the community since the title issuance?*

### **Services Provision**

What are the available public services in the community?

Who provides these services?

Do you pay for any of these services?

To whom do you pay rates and licensing fees?

*If, local institutions provide some of these services*

Are the local institutions that you pay to locally based?

Do they have a local office? If yes please name it and give the location.

Who runs this office?

Do they provide other services other than the ones you pay for? If yes, which are these services?

Why do you pay for these services from these local institutions?

### **Inheritance**

How is land passed on from parents/current landowners to their heirs in your community?

Are there cases of contested inheritance?

What are some of the key reasons why people will contest inheritance?

What happens if there was no will?

What are the key dispute resolution mechanisms that people involved in such conflicts refer to?

### **Land Sales**

Are you aware of people selling their land in this neighbourhood since the land titles were issued?

Please point them out.

How do they go about selling?

What are some of the key reasons given for such sales?

Were these sales registered with the relevant authorities? Yes/No. If no, why do you think they were not registered?

Would you consider selling your land? Yes/No. Please explain?

Has anyone approached you to ask if you want to sell your land?

### **Land Evictions**

Are you aware of people being evicted from their land in this neighbourhood? Please point them out.

Why were these people evicted?

Have those who were evicted returned?

### **Land Ownership Responsibilities**



|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  |  |  |  |  |
|--|--|--|--|--|--|

**Researcher:** .....

**Date:** .....

**Signature:** .....

## **Appendix B: Research Consent**

**Name of Researcher, Faculty, Department, Telephone & Email:**

Dennis Mbugua Muthama, Department of Geomatics Engineering, tel: (403) 220-8038, email: dennis.muthama@ucalgary.ca

**Supervisor:**

Dr. Michael Barry, Professor, Department of Geomatics Engineering

**Title of Project:**

Land Tenure Administration Framework Design: A case study of peri-urban Mombasa, Kenya

This community organization consent form, a copy of which has been given to you, is only part of the process of informed consent. If you want more details about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.

The University of Calgary Conjoint Faculties Research Ethics Board has approved this research study.

**Purpose of the Study**

The purpose of this study is to examine land tenure administration systems for improving land tenure security in peri-urban Mombasa, Kenya. The fieldwork involves key-informant interviews with people who have knowledge of land tenure administration in Mombasa and Kenya. Participants are selected from, among others, residents, land administration officials and experts, community organizers, and land professionals.

**What Will I Be Asked To Do?**

You are being asked to participate in an open-ended interview about land tenure administration in Mombasa, recent land tenure regularisation programmes, urban development projects, and local institutions that deal with land tenure administration. It is expected that this interview will take up to 30 minutes. There may be follow-up if you wish to amend or add to your responses.

Your participation is voluntary. You may refuse to participate altogether, or may refuse to answer any number of questions, or may withdraw your participation at any time. If you withdraw, unless

you provide permission to keep the data, the data that you have provided up to that point will be erased.

We request that you allow the interview to be audiotaped. This is to ensure that any notes taken of the interview are accurate and properly represent your views. However, as per the table below, you are free to decline this request

The transcript of your interview will be shared with you for comment or clarification. To maintain the research timeline, your feedback must be received within 2 weeks from the date you receive the transcript.

### **What Type of Personal Information Will Be Collected?**

Your name will be recorded along with your answers. Your name is necessary if you choose to follow up with regards to your answers. However, your name will not be published without your consent.

Only the researcher and supervisor's research team will have access to the data. If you grant permission to be photographed, you will not be identified in the photograph and the photograph will not be linked to any information you provide unless you specifically indicate that you wish to be identified in the photograph. The photograph will indicate that you participated in this study.

There are several options for you to consider if you agree to take part in this research. You can choose all, some, or none of them. Please review each of these options and choose Yes or No with a check:

- |   |                               |                              |
|---|-------------------------------|------------------------------|
| I grant permission to be audio taped:                               | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |
| I grant permission to be photographed:                              | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |
| I grant permission to have my organization's name used:             | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |
| I wish to remain anonymous:   | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |
| I wish to remain anonymous, but you may refer to me by a pseudonym: | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |

The pseudonym I choose for myself is: [Click here to enter text.](#)

- |  |                               |                              |
|--|-------------------------------|------------------------------|
| You may quote me and use my name:                | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |
| I wish to see a copy of my interview transcript: | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |

### **Are there Risks or Benefits if I Participate?**

The research seeks your opinions on land tenure administration. It also seeks input on the development of a land tenure administration design framework. There is no intention to create risk to you as your name and affiliations will be kept confidential unless you state explicitly that you do not wish to remain anonymous.

### **What Happens to the Information I Provide?**

The interview data will be used to inform the research on land tenure administration in Mombasa, Kenya, what land administration services local institutions provide, and the viability of various

land tenure administration strategies for institutions as a way of improving land tenure security. All data will be aggregated and individual names will not be published, but are required to properly identify interview data should you choose to amend or add to your answers. However, if you choose to be identified in the selection box above, your data will be directly quoted with your name or pseudonym. Only the researcher and supervisor will be allowed to see any of the original interview data. It will be stored electronically and only accessible by the researcher and members of the supervisor's research team. This data will be retained for six years by the supervisor and then it will be erased permanently.

---

### ***Signatures***

Your signature on this form indicates that 1) you understand to your satisfaction the information provided to you about your participation in this research project, and 2) you agree to participate in the research project.

In no way does this waive your legal rights nor release the investigators, sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from this research project at any time. You should feel free to ask for clarification or new information throughout your participation.

Participant's Name: (please print) [Click here to enter text.](#) \_\_\_\_\_

Participant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Researcher's Name: (please print) [Click here to enter text.](#) \_\_\_\_\_

Researcher's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### **Questions/Concerns**

If you have any further questions or want clarification regarding this research and/or your participation, please contact:

Mr. Dennis Mbugua Muthama  
Department of Geomatics Engineering  
Tel: 403-220-8038, email: [dennis.muthama@ucalgary.ca](mailto:dennis.muthama@ucalgary.ca)  
and  
Dr. Michael Barry  
Department of Geomatics Engineering

Tel: 403-220-5826, email: [mbarry@ucalgary.ca](mailto:mbarry@ucalgary.ca)

If you have any concerns about the way you've been treated as a participant, please contact the Research Ethics Analyst, Research Services Office, University of Calgary at (403) 210-9863; email [cfreb@ucalgary.ca](mailto:cfreb@ucalgary.ca).  
or

Dr. Winnie Mwangi Nyika  
Department of Real Estate and Construction Management  
University of Nairobi  
Tel: 0722-743187, email: [wnyika@hotmail.com](mailto:wnyika@hotmail.com)

A copy of this consent form has been given to you to keep for your records and reference. The investigator has kept a copy of the consent form. Appendix C: Ministry of Lands and Physical Planning Research Letter

## APPENDIX C: Ministry of Lands and Physical Planning Research Letter



### MINISTRY OF LANDS AND PHYSICAL PLANNING

Telegrams "MINILANDS", Nairobi  
Telephone: Nairobi 2718050

When replying please quote:

ARDHI HOUSE  
1<sup>st</sup> NGONG AVENUE  
OFF NGONG ROAD  
P.O.BOX 30450

**Ref. No. MOLPP/ADM1/1/VOL.X (78)**

**12<sup>th</sup> June, 2017**

Dennis Mbugua Muthama  
Department of Geomatics Engineering  
Schulich School of Engineering University of Calgary  
2500 University Dr. NW  
Calgary, Alberta, Canada T2N 1N4  
Tel: (403) 220-4559

#### **RE: RESEARCH AUTHORIZATION APPLICATION**

---

Reference is made to your letter dated 29<sup>th</sup> May, 2017 on the above subject matter.

This is to inform you that consent to undertake research in this Ministry has been granted. You may therefore proceed with research as per your letter under reference.

  
**J. G. Waiganjo**  
**FOR: Cabinet Secretary**

# Appendix D: Mombasa County Secretary Research Authorization Letter



## OFFICE OF THE COUNTY SECRETARY COUNTY GOVERNMENT OF MOMBASA

Ref.No. CGM/ADM.3

Date: May 22, 2017

The Chief Officer  
Lands Planning & Housing  
**COUNTY GOVERNMENT OF MOMBASA**

**RE: RESEARCH AUTHORIZATION – DENNIS MBUGUA MUTHAMA**

The bearer of this letter Dennis Mbugua Muthama ID No.24868403 is a student at the University of Calgary, Alberta – Canada pursuing his PHD.

He is currently carrying out his PHD research on the topic "**Land Tenure Administration Framework Design: A Case Study of Peri-Urban in Mombasa County.**"

The County Government as a public organization do hereby grant authority Dennis Mbugua Muthama ID No.24868403 to carry out the research in Mombasa County.

By copy of this letter Dennis Mbugua Muthama ID No.24868403 should submit a copy of the report in both soft and hard copy to this office for record purposes.

Kindly assist him to gather the information required.

A B Haro Mrima  
for: **COUNTY SECRETARY**

Copy:-

- County Secretary
- Dennis Mbugua Muthama



Betting and Control Building, 2nd Floor. P. O. Box 90440 - 80100 G.P.O. Mombasa.  
telephone: +254 (0) 709 001 341 email: countysec@mombasa.go.ke  
www.mombasa.go.ke

762/1

*Handwritten notes:*  
- Mangala  
- Ndereki  
- Kimuyu  
- Please assist  
- bearer  
- [Signature]  
- 22/1

## Appendix E: National Land Commission Research Authorization Letter



### NATIONAL LAND COMMISSION

ARDHI HOUSE, 1ST NGONG AVENUE, OFF NGONG ROAD, P.O. BOX 44417 – 00100 NAIROBI, Tel: 020 2718050 Email: info@landcommission.go.ke Web: www.landcommission.go.ke

**DIRECTORATE OF RESEARCH,  
NATIONAL LAND COMMISSION,  
P.O. BOX 44417- 00100,  
Nairobi- Kenya**

**Dear County Coordinator:  
Mombasa County**

**RE: Letter of Authorization to Conduct Research at the National Land Commission**

This letter serves as authorization for fieldwork for Dennis Mbugua Muthama who is a PhD candidate at the University of Calgary to conduct research on *'Land tenure administration framework design: A case study of Peri-urban Mombasa- Kenya'*.

The Research Directorate acknowledges that it has reviewed the protocol presented by Dennis, the subsequent research permit from NACOSTI as well as the associated risks to the National Land Commission. The Directorate of Research accepts the research protocol and notes the associated risks to the National Land Commission and authorizes the research fieldwork to proceed.

The fieldwork will involve interviews and in this regard the NLC officers will exercise discretion on the nature and type of information to be shared and which will not jeopardize the land reform agenda of the National Land Commission.

If we have any concerns or require additional information, we will contact the researcher and/or the University of Calgary.

Sincerely,

.....  
**Dr. Fibian Lukalo  
Director Research**

.....  
12<sup>th</sup> June 2017  
.....  
**Date:**

## Appendix F: National Commission For Science, Technology and Innovation (NACOSTI) Research Authorization Letter



### NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

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

9<sup>th</sup> Floor, Utalii House  
Uhuru Highway  
P.O. Box 30623-00100  
NAIROBI-KENYA

Ref. No. **NACOSTI/P/17/74933/16424**

Date: **6<sup>th</sup> April, 2017**

Dennis Mbugua Muthama  
University of Calgary  
**CANADA.**

#### **RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on ***“Land tenure administration framework design: A case study of peri-urban Mombasa, Kenya,”*** I am pleased to inform you that you have been authorized to undertake research in **Mombasa County** for the period ending **6<sup>th</sup> April, 2018**.

You are advised to report to **the Chief Executive Officers of selected Government Agencies, the County Commissioner and the County Director of Education, Mombasa County** before embarking on the research project.

On completion of the research, you are expected to submit **two hard copies and one soft copy in pdf** of the research report/thesis to our office.

**GODFREY P. KALERWA MSc., MBA, MKIM  
FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The Chief Executive Officers  
Selected Government Agencies.

The County Commissioner  
Mombasa County.

The County Director of Education  
Mombasa County.

*National Commission for Science, Technology and Innovation is ISO9001:2008 Certified*

## Appendix G: Mombasa High Court Research Authorization Letter

To,  
THE REGISTRAR,  
MOMBASA HIGH COURT,  
MOMBASA

2/10/2017

Dear Madam,

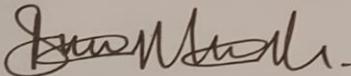
**REF: REQUEST FOR PhD RESEARCH AUTHORIZATION**

My name is Dennis Mbugua Muthama, PhD student in the Geomatics Engineering department at the University of Calgary. I am doing my doctorate on land tenure administration in peri-urban Mombasa, Kenya. The study has been approved by the University of Calgary Conjoint Faculties Research Ethics Board and the National Commission for Science, Technology and Innovation (NACOSTI). My permit no is. NACOSTI/P/17/74933/16424.

Following my earlier research authorization request you directed me to indicate the particular case I was interested in. The following are the case files I am interested in. ~~the following data:~~

1. MOMBASA HIGH COURT MISC APPLICATION NO. 40/2000
2. MOMBASA HIGH COURT MIISC APPLICATION NO. 67/2000
3. MOMBASA CIVIL SUIT NO 87/2012
4. MOMBASA CIVIL APPEAL NO. 315/2003

Your assistance is highly appreciated..



Thank you.  
Dennis Mbugua Muthama, M.I.S.K, MSc.  
**Geomatics Department**  
**Schulich School of Engineering**  
**Faculty of Graduate Studies, University of Calgary**



**Appendix H: Ministry of Interior and Coordination of National Government  
Research Authorization Letter**

