

**Creative Dispossession: Small-scale Land Grabbing in  
Maji moto**

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## Creative Dispossession

“Our greatest asset in Kenya is our land. This is the heritage we received from our forefathers. In land lies our salvation and survival.”

– Jomo Kenyatta, 1964

It is no secret that land struggles in East Africa have for a while occupied not only academic, but also public consciousness. A vast body of literature has attempted to address the multi-faceted ways in which land has come to be exchanged either in large swaths or smaller increments, from both external sources and at the domestic level (see Archambault et al. 2014; Berry, 2009; Galaty 2013; Klopp, 2000; Lesorogol, 2008; Mwangi 2007, 2008; Riamit, 1992, Rutten, 1992; Vidal, 2010 ). Given the significance of land tenure as a fundamental aspect of pastoralism in East Africa with economic and cultural implications, and moreover as a primary resource base, it is clear why continued scholarship is focused on the subject. If it is the case, then, that a positive relationship exists between land struggles and this attention, identifying the key factors enabling this dynamic allows for more robust understandings of land tenure realities.

There are a number of different ways in which land conflict is occurring. While some authors focus on the role that Multi-National Corporations (MNC's) and foreign states have in purchasing productive land for commercial agriculture (Boone et al, 2016; Galaty, 2013; Klopp, 2000; Republic of Kenya TJRC, 2013;), others

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emphasize the environmental motives put into practice by private investors (Galaty, 2013; Boone et al.; Veit, 2011). This particular paper will aim to describe a different form of land conflict, in which smaller scale dispossession occurs, as privatization of public land takes place. My analysis of this third form of land appropriation will be done through the case of the Maji moto group ranch.

Maji moto is a site that has a history of irregularities when it comes to privatization. On the 26<sup>th</sup> of May, 2016, a meeting was called on the part of group ranch members in order to adjudicate the official group ranch committee, which is given a mandate to ensure the best interests of members. This meeting would see hundreds of Maasai group members revoke the committee's claim to authority, the ranch bank account frozen, and the National Ministry of Land begin the formal committee dissolution process.

The current Maji moto group ranch struggle exists on a continuum, a specific event that is path dependent on innumerable past decisions that have co-contributed to structure what is happening today. In the following paper, I will explore specific factors that frame the current land struggle, understanding the Maji moto case study as an interplay of larger macro-level forces. This paper will use the events of that meeting as a point of entry into these larger thematic concerns that frame the Maji moto group ranch privatization process.

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### *Dispossession in Maji moto*

Subdivision was voted for in Maji moto during the annual general meeting of November 9<sup>th</sup>, 1995. Subdivision proper began four years later. As of the date of writing, the entire process has still not been completed. Riamit (2014) delineates how a number of committees have come and gone, many leaving their posts following issues of corruption and irregularities. The current case similarly echoes this trend of malpractice. In the months of late 2015 and early 2016, a number of accusations came to be raised at the current committee, describing evidence indicating the misallocation of over 100 title deeds. The National Land Commission (NLC) would come to the group ranch in late 2015, stating intent to disassemble the committee (Daily Nation, 2016). In January 2016, the members of the group ranch committee David Matunke Mayone, Treasurer Senet Riamit, Secretary James Ashire, former area councilor Solomon Patiat Moriaso, the area assistant chief Moses Taek and others, would be questioned about ownership details of plots they had allegedly misappropriated as mandated by NLC chairperson Muhammad Swazuri (Daily Nation). Over the following months, evidence would be slowly connected, linking the committee to the misallocation of property. A link would be established between those profiting from close relationships to the committee. Understanding these distributions of title deeds to allies and friends as corruption, a clear picture becomes evident. Committee members would take advantage of the marginalized members of local society, giving them title deeds attributed to public utilities such as Ngoswani clinic, the elementary school, Ntalala water point and Ngoswani trading centers, in exchange for valuable

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ranch land (Daily Nation). The ranch's top officials had additionally accumulated for themselves huge parcels of land at the expense of members. Overwhelmingly, it appeared that once again the group ranch committee had not acted in the best interests of the community to which they were mandated to lead, instead prioritizing personal gain. Understanding how this process has been borne out requires looking back into history.

### *Historical roots of privatization*

Group ranches have been a fixture of the Kenyan landscape for a number of decades now. The ranches were crafted with the intention of providing tenure security, incentivizing a decrease in livestock production and holdings (Mwangi, 2007; Riamit, 2013; Lesorogol, 2008). This notion that livestock was driving environmental degradation and straining limited land's "carrying capacity" is a colonial era relic that spilled over into the post-colonial period (Mwangi, 2007). The historical record indicates that the transition towards more formal notions of land rights from communal ones was instigated by sources external to the Maasai. This section will illuminate the role of colonial power in framing pastoral use of land as inefficient, leading to teleological justifications for formalization of property rights.

A number of authors have considered the major land deals of the early 20<sup>th</sup> century to be the first major case of colonial interference into Maasai land use (Mwangi, 2007; Riamit, 2013; Lesorogol, 2008). The British colonial apparatus

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required funding, and turned toward the ‘re-distribution’ of land from indigenous Africans to white settlers, in order to accomplish higher economic yields (Leys, 1994; TJRC, 2013). In this way, Kenya began to develop an economy that would prioritize the exportation of primary commodities, whilst importing manufactures, leaving little room for self-sufficient pastoralists (Leys, 1994). The first step in this endeavor was the 1904 expulsion of Maasai from their locations in the Rift Valley upwards into Laikipia. Under the guise of an agreement signed by Paramount Chief Lenana, the British used divide and rule tactics to segregate the Maasai from their land (Leys, 1994; Mwangi, 2007; Rutten, 2002). In 1911, the Maasai were again forced out of what would come to be known as the “white highlands”, migrating southwards to their current, less fertile, locations in Narok and Kajiado counties. These early deals may be considered the first of waves of land alienation.

The Kenya Land Commission would follow, in 1932. This Commission would begin to view the communal land management system of the Maasai as a burden on land, thus explicitly implementing grazing schemes to encourage what they would describe as better land management (Mwangi, 2007; Riamit, 2013). The follow up to the Kenya Land Commission was the East African Royal Commission, or Dow Commission, in 1952 whose aim was to recommend modifications in tribal tenure necessary for the development of land. Here it becomes clear that the colonial authorities were subscribing to a reductionist view of pastoralism that inadequately understood the ecological nature of the region: “the Dow Commission viewed Maasai “conservatism,” exemplified by their communal ownership of resources and

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individual livestock ownership as well as their unreasonable clinging to custom as the cause of land degradation and decline.” (Mwangi, 2007, 74)

Following suit, the Swynnerton plan of 1955 was a key driver of reformation of traditional tenure systems as it outlined livestock marketing, controlled grazing, water supply, and tsetse and livestock disease eradication in order to better reap wealth from Maasai communities for the national good and better ‘maintain’ the natural environment (Lesorogol, 2008; Mwangi, 2007; Riamit, 2013). As clearly demonstrated, the logic that formalization would better serve the needs of a national economy, not to mention the welfare of pastoralist communities such as the Maasai, did not follow from astute understandings of pastoralist reality, instead this flowed from colonial misconceptions of pastoralist life. The Land Adjudication Act of June 1968 was the formal document that came to delineate the creation of group ranches, the initial phase of land organization post-independence. This act would streamline the approaches of the aforementioned critical junctures, namely, it entailed a shift in land tenure from commonly owned rangeland, to a modified version in which a corporate title was held collectively (Lesorogol, 2008; Mwangi, 2007).

As an institution in Kenya, the group ranch system has existed since the 1960’s. Ranches were in fact individually owned, in their original conception, often by wealthy or educated Maasai, and colonial officials came to worry that the privileged elite of Maasai society would grab land at the expense of the majority (Mwangi, 2007; Rutten, 2002). These original ranches would be emblematic of the

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fears that group ranch members would come to have: “Ordinary Maasai on their part were alarmed that the creation of individual ranches together with sales to non-Maasai might create a situation of landlessness, or result in remaining land being too small to be viable.” (Mwangi, 2007, 77) It is clear from this quote that the Maasai were a group of people with complex social and economic classes, and a division between those with significant capital and those without existed at this time. The Land Adjudication Act would eventually be receptive to these fears, intending to safeguard against landlessness and corruption from land sales while eventual subsidization of plots would fight the ‘wasteful’ nature of common ownership (Riamit, 2013). As Rutten (1992, 270) puts it: “This new approach to pastoral development was conceived as a first step into sedentary, more commercially oriented systems.”

In sum, the group ranch system represents the culmination of various phases of land tenure. These range from open-access agreements in the pre-colonial period, through the gradual land alienation schemes pressed from the top down by colonial powers, into the ranch system that originally saw privileged elite managing control. Eventually, the group ranch notion would take over and it must be noted that it is an artificial creation, and incentivizes a more commercial economic system, that allows for collective borrowing, reduced pastoral range, and developments such as water, dips, schools and shops. While it would be up to communities to decide whether or not the output of such a configuration would be beneficial, it is clear that their decision-making opportunities have been confined to a narrow range of opportunities. An example of this would be encroachment of non-Maasai, such as Kikuyu farmers

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and businessmen, into already limited districts, which created fear of land-loss and grabbing, framing group ranches as a best option. The following section will now discuss these historical forces as they have been articulated in the Maji moto context.

### *Arguments for and against privatization in Maji moto*

Maji moto itself is located in Narok South district, Osupuko division, in southern Kenya. The ranch lies along the road to the Masai Mara Game Reserve. It neighbours the *Oldoinyo Orasha* and *Ole Nkuluo* group ranches in the North, while bordering the *Siana*, *Naikarra* and *Naroosure* group ranches to the south. The area of the ranch totals approximately 120,000 acres, or nearly 500 square kilometres. Within this area, about 10'000 people live, spread throughout. Most of these individuals are Purko Maasai. When it comes to the specifics of the group ranch, there are 2,317 members, of whom each ought to be assigned 48 acres after subdivision. In Maji moto, subdivision is a process that is currently underway, and appears to be the most hotly debated issue being discussed in the group ranch today. It is the case that privatization has already been mandated by the members of the group ranch. This following section will firstly outline the institution of group ranches, before highlighting the debates leading up to subdivision.

Legal authority regarding group ranches is consolidated within two major statutes, the Land Adjudication Act, and the Land (Group Representatives) Act. A group ranch is composed of those that are legally defined as belonging members of a

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specific group. The Land Adjudication Act of 1968 defines such a group as: “a tribe, clan, section, family or other group of persons, whose land under recognized customary law belongs communally to the persons who are for the time being the members of the group, together with any person of whose land the group is determined to be the owner under the proviso to section 23(2)(a) of this Act.”

(Republic of Kenya, 1968) In this case of Maji moto, those customarily in control of the land would be the Purko Maasai. In order to have a system of decision-making, group ranches are led by an elected committee. As the locus of authority in group ranches, it is evident that committee members enjoy a consolidated power that is given to them on behalf of members. When it comes to official obligations, the Land (Group Representatives) Act would detail the governance and administration of the ranches. These two acts are the overarching policy directives that dictate how it is that group ranches are to be run, however, they give each group the ability to create its own rules as they relate to administrative procedures, registration of new members, and disbursements of funds for group projects (Mwangi, 2007). Both of these acts, that describe vital elements of group ranching, from administration and operation (Group Representatives), to creation and adjudication of rights (Land Adjudication Act) were newly created in 1968 to supplement the Land Consolidation and Registered Land acts, which held no provisions for group rights (Rutten, 1992).

Maji moto group ranch, however, is in the process of transition from group ranch to subdivided territory. As such, it would then be administered under the Registered Lands Act Cap 300. Debates around subdivision, as in all group ranches

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have a long historical record fraught with tension. The management committee of the group ranch, which ought to be composed by three to ten members of the community that stay in good standing (Republic of Kenya, 1965), is afforded control over the process of subdivision. Thus it is within the committee that much of the conflict and strife over privatization occurs. The demographic of the management committee are as follows: there is a chairman, vice-chairman, secretary, treasurer and three members at large (Group Representatives Act). The committee is responsible for development plans, as well as maintenance of record keeping and accounts, as well as creating and enforcing grazing quotas and grazing management. Further problematizing the process is the cultural element of elections. A new form of governing had been introduced into Maasai political life. As Mwangi (2007) puts it:

“In electing these leaders group members drew from local cultural norms that define attributes of good leadership. The committee was also elected to balance age-set and clan differentiation...this representation of diverse interests together with the leaders’ good reputation instilled confidence among members that their expectations in subdivision would be met.”

The arguments in favour of subdivision in the Maji moto context resemble the arguments that have been disseminated at large over time. As this paper has indicated, colonial, and then post-colonial governmental institutions have imposed formalization of tenure. While before, the notion of moving into group ranches was being called into question, in the current context, the question of subdivision *from* group ranches is now the formative issue to be understood. There is an irony in that

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some of the justificatory arguments in favour of minimizing pastoral range to group ranches are now being recreated in order to justify the further fragmentation of land into individual holdings. A number of scholarly works indicate that the major arguments in favour of subdivision from group ranching are as follows: Communal ownership of property generally flow from the premise that pastoralists maintain customary thinking that leads to overstocking of cattle, which in turn will lead to overgrazing and over time desertification (Galaty, 2012; Mwangi, 2007, Riमित, 2013). Going deeper, this thought has its roots in Garret Hardin's (1968) 'Tragedy of the Commons' which as Galaty (2012) describes it, assumes that pastoralism relies historically on open access systems, leading inevitably to destructive exhaustion. Further, proponents of subdivision argued that it would lead to economic development and a higher standard of living, as individuals could take out loans (most banks accept deeds as security) and build permanent infrastructure, or diversify their livelihoods with agriculture (Rutten, 1992). Moreover, a major fear driving subdivision is overpopulation. As increasing pressures are put on pastoral commons, and the threat of subdivision continues, individuals fear losing out, and hurry to insure what they may, inciting as Galaty calls it, a 'run' on the commons:

“Important studies of rangeland privatization demonstrate not that collectively held pastures lead to the ‘tragedy of the commons’ but that breaking trust when some individuals ‘enclose’ and ‘privatize’ collectively held land initiates the ‘tragedy of the enclosure’, as individuals inexorably seek their own piece of land, no matter how nonviable, if they fear a ‘run’ on the commons that might leave them with nothing” (Galaty, 1994)

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Lastly, subdivision could help create equity within Maasai communities, as wealthier pastoralists would have to shrink herds, and poorer individuals would be able to lease out their property for others to graze on or pass through. Arguments in favour of group ranching, therefore, generally posit that a sedentary, commercially oriented mode of land tenure would better control environmental degradation, increase herd productivity, and reduce insecurities regarding outsiders (Lesorogol, 2008; Mwangi, 2007; Riamit, 2013)

Those against subdivision of the group ranches maintained a number of critical arguments. In particular, many upheld the very justified claim that with further fragmentation of land, the risk of land alienation to non-Maasai would most likely occur. Additionally, a large fear was that elements of Maasai cultural identity would be lost with subdivision. This argument posits that as fencing inevitably crops up in order to police boundaries and protect from wildlife, the free movement of livestock would be dramatically altered, shifting the culture of pastoral community (Rutten, 2002). Cultural elements of Maasai society would also potentially be diluted due to the influx of non-Maasai, who could slowly, over time disrupt traditions and practices. Lastly, as once the fear was over-exploitation of the land, those against subdivision propose that individualized plots in fact may not be a more productive use of resources as it refers to output. In the semi-arid conditions of southern Kenya, it is certainly the case that pastoralism has been able to make optimal use of land that has been demonstrably more productive when utilized for agricultural purposes (Galaty, 2103). In summary, those against the subdivision of group ranches emphasize a fear

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of cultural identity from non-Maasai individuals penetrating into typically homogenous regions, a concern that individualization will have sub-optimal impacts for land use, and the loss of pastoral practice as we know it.

### *On the ground realities*

As of yet, this paper has outlined the general positions of Maasai in favour or against the subdivision of group ranches. As it relates to the specific case study of Maji moto, this section will describe the current sentiment of group ranch members, based on preliminary qualitative research undertaken in Maji moto during May through July of 2016. Varying demographic perspectives will be presented following an overview of where the group ranch sits in regard to subdivision today.

A major divide in opinion over subdivision in Maji moto is age. Young men in particular, cited the advantages of being able to move away from their fathers earlier, allowing them to build their herds, diversify livelihoods, and better pursue objectives such as building wealth or acquiring dowry to get married. One informant<sup>1</sup> would state that individuation of property would reduce interfamilial conflict, as brothers would be able to lead their own lives, instead of competing over scarce patrimonial resources from male heads of households. Some older men as well, would take a market-oriented approach in supporting privatization. A specific example of this would be a member of the group ranch, in fact a member of the corrupt committee.

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This man disclosed that he was in favour of what the entrepreneurial spirit could accomplish in such conditions, stating that if an individual were bright they would be able to profit off of the conditions.<sup>2</sup>

Older members of society were in general against subdivision. Often citing cultural reasons, elders did not believe that borders and fences would bode well for the type of nomadic pastoralism that they practiced during their lives. This opinion was not held unilaterally, however, as some expressed that technological innovations, such as schooling and medicine were benefits to the wellbeing of their society, and they would include the benefits of subdivision, namely those such as more permanent infrastructure as among this group of innovation.

Women were distinct in that they did not have the concrete opinions that men frequently did. Often, women would state that subdivision was happening, and they would have to deal with its consequences be they positive or negative. Some women were preparing their respective households for the eventual moves to their new plots from current settlements.

The primary threat to community land tenure has thus become appropriation by influential individuals from within Maji moto. The privatization process has clearly been co-opted by some for profit. The question of how subdivision will impact the Maji moto group ranch and pastoral livelihoods remains distinct, as now those

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involved have a new puzzle to understand, namely, why is it that local community members have made the decision repeatedly to prioritize themselves over the group? What can be analyzed is the institutional context that was unable to prevent such actions from going forward.

The main governmental bodies that can address such a grievance remain the Ministry of Lands (MOL) and the newly instituted NLC. The NLC was created from the newly instituted 2010 constitution of Kenya, which aimed to devolve power from centralized power making in Nairobi, and target promotion and protection of identified marginalized groups in Kenya (2010 Constitution). The MOL maintains much power, and the NLC's relatively recent appearance has resulted in some confusion and friction over explicit functions (Daily Nation). In fact, the committee would attempt to stall the judicial process by obtaining a court order to halt the process, believing that the NLC was overstepping their role (Boone et. al) The fledgling nature of the NLC, and its emergence as a regulatory body that ensures compliance with legislation has made the Maji moto case a critical juncture to set precedence for how this form of land grabbing is to be handled. While the stakes are inevitably high for those who have lost land, governing bodies such as the NLC have the ability to institutionalize effective methods for dealing with future cases of such land grabbing. In the case of Maji moto, the NLC would eventually come to the site, hearing out grievances and beginning the process of revoking illegally claimed titles. Further, the MOL would send a representative to the May 26<sup>th</sup> group meeting, further ensuring that due process would sustain the movement to undue the damage done by the committee.

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While those from within the group ranch have committed land grabbing, there has been a large mobilization in defense of legal rights done by other members. It is important at this point to recognize the main body that has provided advocacy and support for those aggrieved by the actions of the committee. Indigenous Livelihoods Enhancement Partners (ILEPA) has been a community-based organization and NGO that has been a key player in promoting the passing of justice. Led by educated Maasai from Maji moto, ILEPA is located in nearby Narok. Representatives from ILEPA have used a number of tools to ensure that those in power at the highest levels have been on top of the issue of land grabbing in Maji moto. Through direct advocacy, ILEPA has pressured the land related governmental institutions to fulfill their mandates. ILEPA is a clear indication that the communities undergoing land related change are not passive victims of a neoliberal order, but instead are complex mixes of people that both subvert and uphold various systems of land tenure. During the meeting of May 26<sup>th</sup>, a new committee was voted upon. Members of ILEPA, themselves key players in capacity-building, and knowledge dissemination within the community were in fact voted into the new committee. As former leaders violated the trust place in them, those who revealed the injustices have now been held in high regard as promoting justice. James Twala, a member of ILEPA has now been elected as the new Maji moto group ranch chairman, along with Simon Tongoyo as the new treasurer. Their election appears to represent a shift towards good governance, however it is unclear whether they may be able to restore the justified land to the appropriate sources, nor whether they can reverse the trend of corruption.

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### *Conclusion*

The case of Maji moto indicates that over time the trend of land tenure in Maasailand has evolved from communal land ownership into a progressively more fragmented state. Proponents of this trend would expect higher indicators of development and equity. This is not the case, as in Maji moto those in power have entrenched their positions by further marginalizing those without capital. Conflict and tension has arisen, dividing opinion within group ranch members as to the best way to move forward. Authors have summarized how privatization schemes may in fact undermine the efficiency of the pastoral system: “North wisely observes that the formalization of property rights, often seen as a prerequisite for increasing economic efficiency, may not be beneficial to those who enjoyed the informal property rights that are subsequently eroded.” (Galaty, 476)

This paper has traced the current conflict occurring over land dispossession in Maji moto, Kenya. By assessing the historical lineage of land fragmentation, I have aimed to display how colonial continuities have shaped the current conflict. These continuities have shaped the debate over subdivision, and qualitative research has indicated the demographic split in opinion over the process in Maji moto. In order to reduce illegal dispossesion of land, organizations such as ILEPA that aim to represent the interests of a majority of group members are key players as they can lobby institutions that often need pressure in order to carry out high stakes interventions.

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