

# Understanding the ‘rules of the game’

## Land Tenure Arrangements and Delivery Systems in Mathare Valley, Nairobi



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**Photos**

All photographs are by the authors.

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## Executive summary

In a memo dated 9<sup>th</sup> April 1969 from the Town Clerk to the City Engineer of the then City Council of Nairobi (Ref: T.C/224), it was recommended that immediate steps be taken to investigate land ownership in the whole of Mathare valley. The recommendation followed what the clerk termed as the haphazard development of the settlement and the need to ensure that a housing scheme is developed for Mathare for the benefit of existing inhabitants. He noted that most of the land in the valley was under private ownership and that this contributed to the shortfalls in housing and provision of basic services. The Clerk proceeded to recommend compulsory acquisition of land in the valley by the Council and for mechanisms to be established to assess the true value of land for the purpose of compensation. Many years following these and other recommendations, the dire state of the inhabitants still subsist with the unresolved questions of land tenure being the key driver of these challenges. Of particular concern has been the need for a comprehensive understanding of the subsisting interests in land in Mathare and the processes through which these interests are acquired and transferred.

This report documents the initial findings from an ongoing study which seeks to provide an in-depth understanding of land delivery processes in Mathare informal settlements. The imperatives for this study are informed by the view that systematically documenting rights and claims to land, and how these play out in specific contexts, can lead to a better understanding of land markets and the possible interventions that are required to ensure as wide access to land as possible. Capturing and documenting the various interests in land can also contribute to effective spatial planning. The study engages with existing land archives in Mathare to document the spectrum of claims and rights to land within the settlements while also examining the norms that guide land transactions. It aims at providing a solid foundation for understanding of how marginalised urban communities perceive their rights and claims to land. It is anticipated that the findings that are made from this study will contribute, even in modest ways, towards understanding how land markets in informal settlements function to deliver land for marginalised groups.

This work should then be treated as an initial scoping of land tenure arrangements and delivery systems in Mathare. What this means is that the findings outlined herein should not be considered as definitive but as an invitation for more attention to the vibrant land delivery systems and innovation by inhabitants of the city to respond to their everyday lived realities. Findings from this study can be summarized as follows.

- When it comes to the **acquisition of interests in land** in Mathare, a number of mechanisms may be used, whether exclusively or in combination with each other. The binary between formal and informal transactions in Mathare is often fuzzy as informal norms will often impress on formal processes and vice versa. Examining these channels in their particular and composite forms can aid in our understanding of how land is made available in marginalised urban contexts.
- There exist **vibrant informal channels** for land acquisition in the settlements with this being attributed to the social legitimacy which accompanies them and their responsiveness to the needs of the inhabitants. The elevated place that informal channels occupy puts them at loggerheads with formally sanctioned channels which are accessible to a limited number of individuals.
- **Contestations over ownership** and use of land remains a common feature in Mathare. This can partly be attributed to the presence of a diverse range of actors who play significant roles in the land delivery processes. Acute competition for land in the settlements also results from the high demands for housing both within the settlements

and in the surrounding areas. Lack of title documents and fraudulent allocation of documents also create conditions for these competing claims.

- **Intergenerational conflicts** are prevalent in the settlements particularly with regard to land that has been purchased from land buying companies. Elderly landowners have been pushed to selling their land to avoid the risk of forceful occupation by youth groups. Loss of documents to prove ownership has also left the elderly landowners vulnerable to expropriation.
- Land disputes often oscillate between **informal and formal adjudication channels**. Informal channels appear to be most preferred by the residents as they are considered to be more accessible and attuned to the local contexts. Formal channels like courts are on the other hand largely used by individuals whose rights/claims to land are more clearly defined. They resort to these platforms to lodge a stake, resist expropriation, or legitimate their ownership.
- **Local administrative agents** like chiefs and village elders play prominent dispute resolution roles in the settlements. Their participation is a reflection of the powers at play during the allocation and whenever disputes related to land arise.
- There is room for an **assessment of land tenure characteristics at the village level**. This can be undertaken through a systematic mapping and documentation of formally registered and informal interests for the whole of Mathare. It is an important precursor for any exercise which aims at exploring the legal and administrative mechanisms for recognizing and securing the range of interests in land in Mathare.

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## 1. Introduction

Securing land rights is critical for the realisation of development outcomes in the city. This important role can be seen where proper structures are established to facilitate democratic administration and management of land. Effective management of land can facilitate efficient urbanisation. It can provide incentives for urban inhabitants to invest in the spaces that they occupy especially when there is a perceived sense of security of tenure among the inhabitants. Land management and administration systems must then be reconfigured to ensure that they are responsive to the needs of urban inhabitants.<sup>1</sup> A land management system that has as its objective securing tenure rights for all is essential for reducing poverty and creating sustainable development because they underpin economic development, ecological sustainability, and social inclusion.<sup>2</sup> Various mechanisms can be employed to enable realisation of tenure security especially in contexts of rapid urbanisation in which ownership is disputed and where overlapping interests subsist. The success of this exercise is predicated on investigating and mapping out all existing property rights or claims before any exercise of registration of interests in land or other forms of interventions are undertaken.<sup>3</sup>

Lack of transparency around land information has precluded meaningful participation by marginalised urban communities in spatial governance processes. Opacity in land management creates room for fraudulent and illegal transactions and is a key driver of land conflicts especially in disadvantaged urban spaces. Marginalised urban populations are familiar with perennial forced evictions and incessant threats of evictions which are often instigated by persons who claim to have formal title to the land that these marginalised groups occupy. In Kenya, evictions are widespread and are usually the result of conflicts over land rights, especially where accurate information on land ownership is missing.<sup>4</sup> The fact that land information in Kenya has for a long time been held in paper form and managed manually has left room for manipulation of the records for unlawful acquisitions and to disenfranchise certain groups. Additionally, Mulaku observes that the bureaucratic red tapes within land administration institutions hampers the flow of land information to users which in effect prevents proper utilization of land resources.<sup>5</sup> It is then clear that there is need for better information on land ownership and on how various interests in land accrue as this can act to strengthen claims by marginalised communities.

Systematically documenting existing rights and claims to land can lead to a better understanding of land markets, land rights, claims and the systems implicated in delivering these rights or claims. This means that a deliberate engagement with existing archives, both formal and informal, must be undertaken to understand the interplay of rights and claims within urban contexts. This is particularly useful in the context of informal settlements where local norms and practice continue to define claims, rights, obligations and actors involved in the delivery of land. It is then important to understand the local norms or what Royston refers to as local ‘rules of the game’ which can facilitate our understanding of the existing tenure

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<sup>1</sup> Locke, A. and Henley, G. *Urbanisation, Land and Property Rights: The Need to Refocus Attention* (Overseas Development Institute, 2016)3.

<sup>2</sup> Wehrmann, B. et al. ‘Secure Land Tenure Rights for All: A Key Condition for Sustainable Development’, (2019) GIZ, 3.

<sup>3</sup> Payne, G. ‘Urban Land Tenure and Property Rights in Developing Countries: A Review of Literature’, (1996) ODI, 31.

<sup>4</sup> Otiso, K.M. ‘Forced Evictions in Kenyan Cities’ (2002) 23(3) Singapore Journal of Tropical Geography, 252-267.

<sup>5</sup> Mulaku, G.C. ‘Land Information Management in Kenya: An Integrated Approach’, available at <http://wgbis.ces.iisc.ernet.in/energy/HC270799/LM/SUSLUP/Thema5/612/612.pdf>

arrangements and land delivery mechanisms.<sup>6</sup> Understanding these local norms is contingent on accessing the relevant information from archives and interlocutors who understand the local contexts and their underlying dynamics.

## **2. Reading the city through informal registers**

Marginalised urban communities are challenging the evident asymmetries in land information by constructing and maintaining their own registers. They also employ social norms to assign indices of credibility to claims within their spaces. These groups bear witness to, and in some cases systematically document, claims or rights that accrue over land, and acts within their contexts which may strengthen these claims and rights. The informal knowledge registers which they maintain compete with and also build on formal archives of land information whenever these groups want to advance their causes. In some cases, these registers and claims may act to unsettle formal property norms.<sup>7</sup> These communities draw from their informal registers to advance their property rights and to challenge the constant threats of evictions. Building these registers has been prompted by the need to access land by marginalised urban groups and an acknowledgment of the evident shortcomings of formal land administration systems. For some individuals, formal systems lack legitimacy as a result of their perceived failure to understand and respond to the social rules governing how marginalised urban groups access land.<sup>8</sup> Informal land registers can therefore provide useful insights on how marginalised urban groups understand their land rights. They are also critical reference points from where land adjudication processes can draw when attending to the messy realities of land ownership and access in the city.

Understanding land tenure also calls for an engagement not just with the question of who owns and uses land but also the processes that are implicated in defining the rights to use the land and how these rights are guaranteed.<sup>9</sup> Social actors embedded in these processes are useful interlocutors who can provide the much-needed clarity on how land rights are understood. Marginalised urban communities are therefore important sites of knowledge on local land rights and claims and must be taken seriously. Scholars and policy makers must deliberately engage with both formal and informal land archives from which they can generate critical evidence on land tenure arrangements that can be used to advance spatial planning objectives. It is from this exercise that they can understand existing land tenure arrangements and any competing interests in a given context, which is important whenever we intervene in informal settlements.

Pieterse highlights the usefulness of informal registers for individuals engaged in reading the city. He states that these registers “compel one to take a more provisional approach before one pronounces on either what is going on, or what must be done to improve the quality of life and freedom in the city.”<sup>10</sup> It is on this basis that this scoping study is undertaken in Mathare to document local understandings of land, claims and rights to it and contestations over it with the objective of understanding the complex dynamics of land tenure in Mathare. The study

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<sup>6</sup> Royston, L. et al. ‘Informal settlement upgrading: incrementally upgrading tenure under customary administration’, (2015) The Housing Development Agency, 37.

<sup>7</sup> Goodfellow, T. & Owen, O. ‘Thick claims and thin rights: Taxation and the construction of analogue property rights in Lagos’, (2020) 49(3) *Economy and Society*, 407.

<sup>8</sup> Rakodi, C. ‘Land for Housing in African Cities: Are Informal Delivery Systems Institutionally Robust and Pro-poor?’ (2007) 3(1) *Global Urban Development* 1.

<sup>9</sup> van den Broeck, P., et al. ‘The hybrid of land taking and land making.’ In van den Broeck et al. (eds) *Communities, land and social institutions: Land taking and land making in an urbanizing world* (Edward Elgar, 2020) 4.

<sup>10</sup> Pieterse, E. *City Futures: Confronting the Crisis of urban Development* (2008, UCT Press) 3.

sought to understand and document the range of land delivery channels in Mathare. It is analytically alive to the repertoire of archives that hold knowledge on land issues in the settlements. It employs these in mapping out the spectrum of claims and rights within the settlements. It also examines the norms that are implicated in land transactions with particular focus on how informal land transactions are performed. This provides a solid foundation for understanding the interplay of rights and claims in Mathare. It also facilitates our understandings of how marginalised communities in the settlements perceive their rights and claims to land. It is anticipated that the knowledge generated here will aid the inhabitants of Mathare to develop advocacy strategies and facilitate their engagement with relevant stakeholders with the goal of developing pragmatic mechanisms for realising land tenure security in the settlements.

## **2.1 Research methodology**

This study sought to understand the existing land tenure arrangements in Mathare. The selection of Mathare as a study context was informed by the anticipation of its declaration as a Special planning Area (SPA). To begin with, this study undertook an extensive literature review to understand the state of land tenure in Mathare and to explore the gaps in literature that would be filled by an empirical study. An analysis of cases (both decided and ongoing) was also undertaken to facilitate an understanding of the nature of land disputes in Mathare, and to map out the parties involved in these disputes. This process entailed undertaking case searches from the Kenya Law (<http://kenyalaw.org/kl/>) database. During fieldwork, participants were asked to share any documentation relating to cases filed over the land in Mathare, and any other land-related documentation which they have which were subsequently reviewed. The analysis herein also relied on survey plans and cadastral maps which were acquired from the Department of Surveys.

There was then a compelling case for an empirically grounded study to tease out the real position on the nature of claims and subsisting rights in the settlements. This study employed several methods to achieve this. Semi-structured interviews were conducted in Mathare drawing respondents from all the thirteen villages in Mathare. The scope of these interviews was wide, but the general objective was to understand the existing land tenure arrangements in the settlements, the institutions that are implicated in land administration and to understand the drivers of tenure insecurity in the settlements. A diverse range of participants were interviewed during our walks in Mathare. These interviews facilitated our understanding of the manner in which land and housing is generally owned in Mathare, the nature of land transactions in the settlements and the existing governance institutions in the settlements. From this exercise, a total of fourteen (14) interlocutors were interviewed.

Two sets of focus group discussions (FGDs) were also conducted. These brought on board twenty-three (23) respondents. Some of the respondents in this group were tenants while others were structure owners. There was also representation from local administrative institutions. The diverse nature of these two groups enabled a vibrant discussion to emerge which facilitated our understanding of the true nature of things. It also enabled the underlying tensions between the various actors to play out. Our primary focus in these discussions was to understand the modalities that are employed during transactions and the role of the various actors during the transactions. We also sought to understand how tenure security, or perceptions of it, is created especially in villages where land ownership is most contested. This entailed asking our interlocutors to describe how individuals navigate the web of informal and formal transaction channels, how they make their claims public and the documentation that they keep supporting their claims.

Thirteen (13) interviews were conducted with a diverse group of key informants. Two of these interviews were with individuals that have acquired land from some of the land buying companies in Mathare. The second set of respondents were company directors and shareholders in one of the land buying companies. Conversations with these respondents facilitated our understanding of the history of the company and how it acquired the land which it has now subdivided. They also elaborated on the nature of shareholding in the company and on the documentation that one is issued with following their acquisition of shares from the company. The company directors also outlined the processes which individuals follow to acquire land from the company. Discussions with the directors also shed light on the nature of claims that have been brought against the company over ownership of land and those that have been instituted by the company against perceived trespassers.

Survey plans and cadastral maps were scanned, georeferenced and digitized. We relied on the 2016 Nairobi cadastre to guide our land tenure analysis. This enabled us to obtain the folio registry numbers (FR numbers) and land reference numbers (LR numbers). Some of the parcels from the 2016 cadastre did not however have FR and LR numbers. Additionally, we reviewed the Mathare Zonal Plan that was developed by Muungano Support Trust and other partners. The Plan facilitated our understanding of the tenure typology for most of the parcels in the settlements. We have additionally generated a database which identifies each parcel of land in the settlements using their unique LR numbers, the parcel acreage, and tenure typology which accompanies this report. Development of this database is an important first step that will ultimately facilitate identification of the proprietors of each of the 1297 parcels of land in Mathare.

### **3. Land contestations as foundation to attendant marginality in Nairobi**

In Nairobi, urban planning and provision of affordable housing remains a challenge. The pervasive question of land tenure always presents a challenge whenever interventions are sought to deal with the challenges in informal settlements. Insecure land tenure which is an outcome of inequitable land distribution in the country is exacerbated by the existing land holding frameworks that are skewed in favour of registered title holders failing to take account of the actual usage of land. Land reform initiatives in Kenya continue to eschew radical reforms and this hinders initiatives to unlock land that can be securely accessed and used by marginalised urban groups. Whenever reforms are proposed, they are often steered to meet the interests of politicians and their patronage networks.<sup>11</sup> Such dispossessory tendencies result in land being concentrated in the hands of the few who possess the tools for resource capture. Land, and particularly public land, in Nairobi remains largely inaccessible to the urban marginalised as it has been pilfered by the elites who continue to hold it in unsustainable and unproductive ways.<sup>12</sup>

Within the marginalised urban neighbourhoods, we are confronted with what Harvey described as “accumulation by dispossession”<sup>13</sup> which is characterised by the elites amassing at the expense of marginalised groups who are pushed into sordid conditions of living where they have to compete for inadequate or non-existing basic services. Without access to land,

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<sup>11</sup> Rodriguez-Torres, D., ‘Public Authorities and Urban Upgrading Policies in Eastlands’, in Charton-bigot, H. and Rodriguez-Torres, D. (eds) *Nairobi Today: The paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 89.

<sup>12</sup> Obala, L. ‘The Relationship between Urban Land Conflicts and Inequity: The Case of Nairobi’, PhD Thesis (University of Witwatersrand, 2011) 244.

<sup>13</sup> Harvey, D. *The New Imperialism* (Oxford University Press, 2003)

citizenship for marginalised urban groups is denied. This is often accompanied by inability to access basic services such as water and sanitation services. Consequently, struggles or access to land by the excluded urban majority is effectively a struggle for a broader and more inclusive urban citizenship given their immense contributions to the city. It is a struggle for spatial justice which is effectuated by the restoration of the land base from where the excluded urban groups can access other rights and enjoy the bequests of urban citizenship.

It is notable that about 10% of the city's informal settlements are located on uncontested public land, 40% on utility and riparian reserves while 50% sit on private land that was historically public land.<sup>14</sup> UNHABITAT estimates that over 60% of Nairobi residents live in informal settlements which occupy only 5% of the total area of the city.<sup>15</sup> The land situation is also complicated by the power struggles that become manifest when examining the nature of structure ownership in the informal settlements. Absentee landlords are said to account for 95% of structure ownership within informal settlements with rent paying tenants accounting for 92% of all the inhabitants.<sup>16</sup> Informal arrangements have been devised by inhabitants of informal settlements to access land for purposes of settlements and other activities. Within these informal settlements, there also exist informal arrangements that facilitate access to basic services that have not been provided by the relevant government agencies.<sup>17</sup> These arrangements however result in a 'poverty penalty' that is incurred by the inhabitants since they have to access these basic services at higher prices compared to other inhabitants of the city.<sup>18</sup> Rapid urbanization in the city coupled with exclusionary land holding and spatial planning practices thus means that the full potential of productive and an inclusive Nairobi is still far from being realized.

#### **4. The Context: Mathare informal settlements**

The geographical extension of 'Mathare', sometimes referred to as 'Mathare Valley' vary.<sup>19</sup> Reference to Mathare herein will therefore be in relation to the thirteen villages of Gitathuru, Kiamutisya, Kosovo, Kwa Kariuki, Mabatini, Mashimoni, Mathare 3A, Mathare 3B, Mathare 3C, Mathare 4A, Mathare 4B, Mathare No. 10, and Village 2. These settlements collectively constitute the second largest informal settlement in Kenya after Kibera. Mathare is located approximately three kilometers from Nairobi's central business district and the entire settlement consists of approximately 73 hectares.<sup>20</sup> Most of the land in Mathare is occupied by single-room rental units inhabited by tenants renting from landlords who are either present in the settlements or absent and living elsewhere. The 2019 Kenya Population and Housing Census indicated that Mathare sub-county had a population 206,564. The Census further

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<sup>14</sup> Antony Lamba, 'Land Tenure Management Systems in Informal Settlements: A Case Study in Nairobi' (Master of Science in Geo-Information Management, Institute for Geo-Information Science and Earth Observation (ITC) 2005) <[http://www.itc.nl/library/Papers\\_2005/msc/gim/lamba.pdf](http://www.itc.nl/library/Papers_2005/msc/gim/lamba.pdf)> accessed 17 November 2014.

<sup>15</sup> UN-HABITAT, '*Nairobi-Urban Centre Profile*,' (UN-HABITAT, 2006).

<sup>16</sup> See Gulyani *et al.*, 'Inside Informality: Poverty, Jobs, Housing and Services in Nairobi's Informal Settlements', (2006) Report No. 36347- KF, The World Bank.

<sup>17</sup> Jane Weru, Waikwa Wanyoike and Adrian Di Giovanni, 'Confronting Complexity Using Action-Research to Build Voice, Accountability, and Justice in Nairobi's Mukuru Informal Settlements', (2015) 6 *The World Bank Legal Review* 233.

<sup>18</sup> Mutinda, M., and Otieno, S. 'Unlocking Financing for Slum Redevelopment: The Case of Mukuru', (2016) Harvard Africa Policy Journal

<sup>19</sup> Andvig, J. and Barasa, T. 'A Political Economy of Slum Spaces: Mathare Valley', (2014) NUPI Working Paper 838, 17.

<sup>20</sup> Muungano Support Trust, 'Mathare Valley- Nairobi, Kenya 2009 Collaborative Slum Planning and Upgrading', available at [http://healthycities.berkeley.edu/uploads/1/2/6/1/12619988/matharevalley\\_report\\_ucb\\_2\\_25\\_2012\\_final.pdf](http://healthycities.berkeley.edu/uploads/1/2/6/1/12619988/matharevalley_report_ucb_2_25_2012_final.pdf) 6.

indicated that Mathare sub-county had a population density of 68,940 per square kilometer with this being the highest in Nairobi and in Kenya.<sup>21</sup>

Mathare has a lengthy history of settlement with evidence suggesting its occupation from as early as the 1920s following the displacement of the inhabitants of Pangani.<sup>22</sup> This history is punctuated with forceful displacements, neglect and an enduring association of the settlements with danger and violence.<sup>23</sup> Chege estimates that in the 1920s, unauthorized African settlements on land leased from Asian landlords began to feature.<sup>24</sup> Land in this area was mostly used for quarrying of rocks used in various parts of the emerging town. A survey carried out in 1970 by David Etherton established that 42% of the inhabitants of Mathare squatter housing had lived in Nairobi for more than 20 years.<sup>25</sup> The urban labor market that emerged as a result of settler colonialism in Kenya and the rural displacements that followed from this can explain the attractiveness of places like Mathare to the African population.<sup>26</sup> What followed was a rapid increase in population in the 1940s and 1950s which would soon attract the attention of the colonial government with the growing agitation for independence.<sup>27</sup>

The African urban population lived in squalor conditions which also heightened resort to informal provision of basic services which the colonial government was unwilling to provide. Mathare was considered to be a hub for Mau Mau freedom fighters who had been rendered landless from settler occupation of land in the Kenyan highlands. The settlement was razed to the ground in 1954 by the colonial government which sought to subdue resistance by the Mau Mau freedom fighters.<sup>28</sup> The declaration of a State of Emergency by the colonial administration in 1952 saw the bulldozing of the settlements with many of its inhabitants being placed in detention camps.<sup>29</sup> With the official end of the State of Emergency by 1961, many of Mathare's former inhabitants began returning to Nairobi where they found that the living conditions had remained the same, if not worsened. This triggered self-help mechanisms through which the inhabitants sought to improve their living conditions.

Some of the villages in Mathare are located on land that was previously used as quarries and privately owned.<sup>30</sup> The recurrence of incidences of forced evictions compelled the inhabitants to explore mechanisms to protect themselves from the evictions. This saw the emergence of cooperative organisations that they would use to buy land and establish housing units.<sup>31</sup> The banding together of the inhabitants was also necessitated by the high land prices which made land inaccessible for many. The cooperatives, which soon after morphed into companies, began

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<sup>21</sup> Kenya National Bureau of Statistics, *Kenya Population and Housing Census Vol. II: Distribution of Population by Administrative Units* (KNBS, 2019)20.

<sup>22</sup> University of Nairobi, *Mathare Valley: A case-study of uncontrolled settlement in Nairobi* (1971, University of Nairobi). See also Hay, A. and Harris, R. 'Shauri ya Sera Kali': The colonial regime of urban housing in Kenya to 1939', (2007) 34(3) Urban History.

<sup>23</sup> Hake, A. and Ross M.H. 'Local Problems and Policies: A Case Study', (1969) 12(3) International Social Work, 50.

<sup>24</sup> Chege, M. 'A Tale of Two Slums: Electoral Politics in Mathare and Dagoretti', (1981) Review of African Political Economy, 77.

<sup>25</sup> Etherton, D. *Mathare Valley: A Case Study of Uncontrolled Settlement in Nairobi* (University of Nairobi, 1971) 63.

<sup>26</sup> Chege, M. 'A Tale of Two Slums: Electoral Politics in Mathare and Dagoretti', 76.

<sup>27</sup> Pfingst, A. and Kimari, W. 'Carcerality and the legacies of settler colonial punishment in Nairobi', (2021) 23(5) Punishment & Society, 704.

<sup>28</sup> Chege, 'A tale of two slums: Electoral politics in Mathare and Dagoretti', 77.

<sup>29</sup> Hake, A. and Ross M.H. 'Local Problems and Policies: A Case Study', 49.

<sup>30</sup> University of Nairobi, *Mathare Valley: A case-study of uncontrolled settlement in Nairobi*, 16.

<sup>31</sup> Ibid, 46.

to buy land in Mathare with some establishing housing units on the plots which they had purchased.<sup>32</sup>

**Box 1: *A brief history of Mathare as narrated by a resident***

From as early as 1920, four Indians owned land in Mathare. One of them owned land in Kiamutisya, two owned land in Village 2 and one owned land in Mathare 3B. Africans who worked in the Indian quarries as foremen also lived on the land. Because of the clamor for independence, President Jomo

Kenyatta did not throw out anyone from the motherland. Whoever wanted to stay or leave could do so on their own accord. The Indians in these settlements chose to stay. However, the government offered to step in to ensure that everyone had a place to stay. They did this by enabling the people to report to the government any settler unwilling to split plots for the citizenry. Upon this, the government would come into the land, dividing it into plots; one for the owner to live in and the rest to be sold to willing buyers. The plots were sold at Kenya Shillings (KES.) 1,000. At this time,



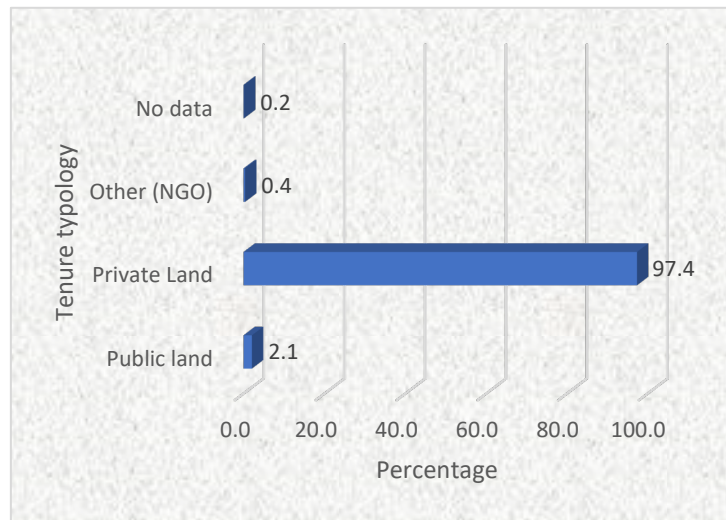
the daily wages were at KES. 1-2. People were finally able to buy the land during the Moi era. There was a shift around 1965, when the then mayor (Margaret Kenyatta) was advised to split Nairobi into three and to extend help to city residents who were in need. They began by settling 1500 people, giving them plots, building sewerages and house structures. There was a requirement for a payment of KES. 20 to facilitate access to the relevant forms. The chief would show each individual where to settle. Under this scheme, individuals were required to part with KES. 6500 which was loaned by the government and payments spread for 30 years. The incentive for repayment was that those who faithfully and ultimately finished repaying the loan by the set time would become structure owners. A similar scheme was rolled out in Umoja, Dandora, Huruma, and Kayole but it stalled in Mathare due to corruption. In Mathare, the scheme was stalled by the fact that the then Provincial Commissioner began selling titles. The subdivision and sale from these corrupt arrangements did not reflect in the City Council or the Ministry of Lands records. In fact, one, Andrew Gumba Kimani sold himself vast property which has since been repossessed and is now occupied by the GSU. In 1983, the three villages, Kiamutisya, 3B and Village 2 were born. Of the three, Kiamutisya and Village 2 are privately owned, and their titles are available. Around 1999, ballots were sold to the current residents of Kosovo at KES. 20. This remains the only evidence of the residents' tenure on the land. Upon the ballots being issued, land surveyors came and did the demarcations which exist today.

<sup>32</sup> Ibid, 47.

#### 4.1 Land tenure arrangements in Mathare

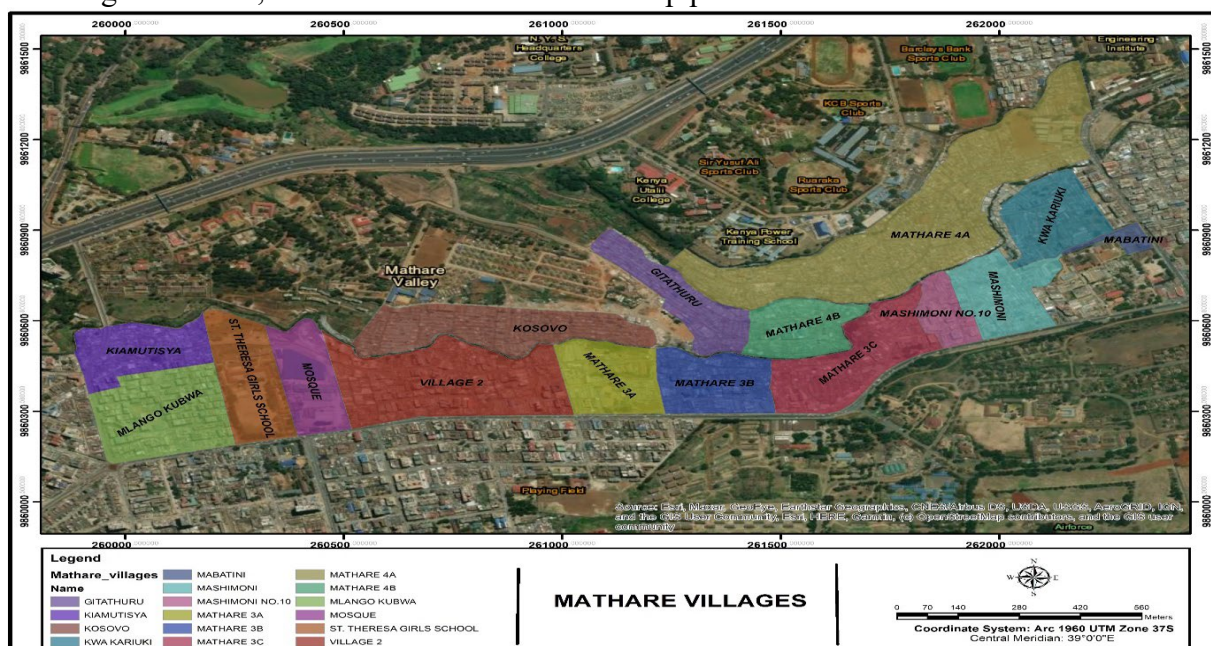
In Mathare, a large percentage of land is privately owned (97.9%) by individuals, cooperatives and non-governmental organisations (NGOs). Only 2% of the land is public. Most of this is located in Kosovo, Gitathuru, Mathare 4B, Mashimoni and Mabatini. Public land is also found in Mlango Kubwa and Mathare 3A.

The Nairobi City County Government (NCCG), the Kenya Airforce and the National Police Service are some of the public entities that own land in Mathare. This section outlines the land tenure arrangements both at the settlement level and for each village in Mathare. The analysis here builds on previous studies by Muungano Support Trust, Slum Dwellers international-Kenya (SDI-K), University of California, Berkeley, and the University of Nairobi. We have also documented changes in the spatial outlook and land tenure patterns since the development of the Mathare Zonal Plan in 2012.



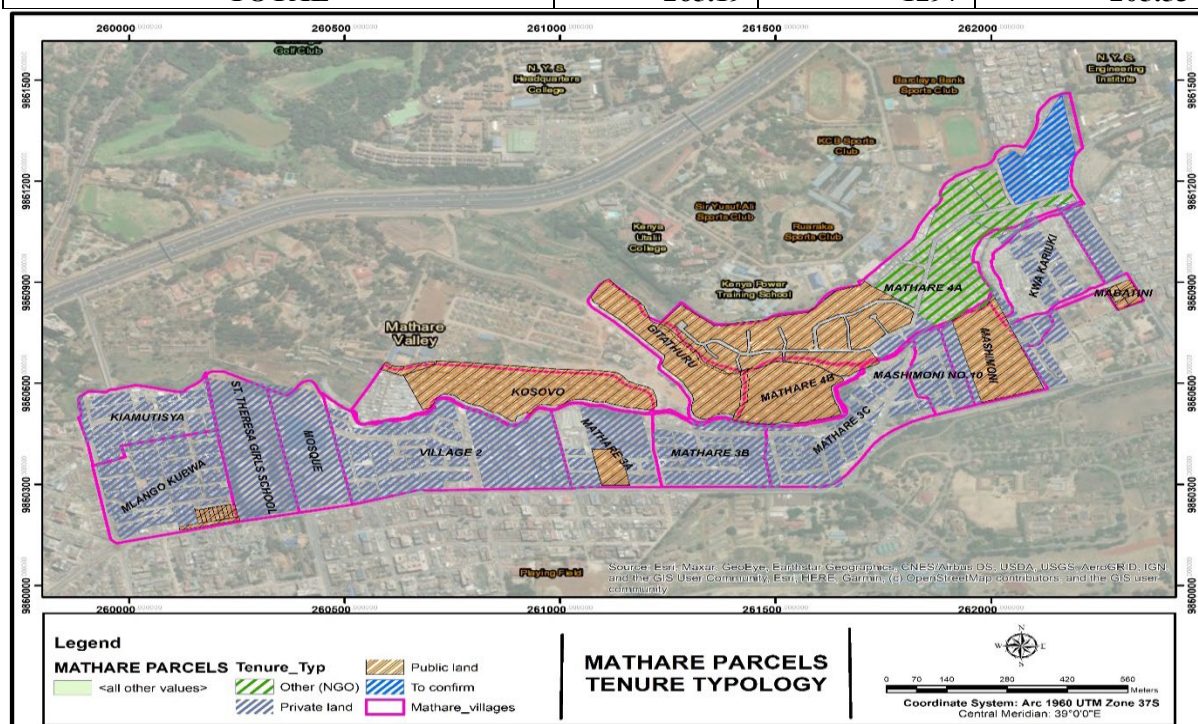
| Typology     | No. of parcels | Size in acres |
|--------------|----------------|---------------|
| Public land  | 27             | 68.96         |
| Private Land | 1263           | 111.08        |
| Other (NGO)  | 5              | 18.05         |
| No data      | 2              | 7.43          |
| <b>Total</b> | <b>1297</b>    | <b>205.53</b> |

In the figures below, we illustrate the land ownership patterns in Mathare.



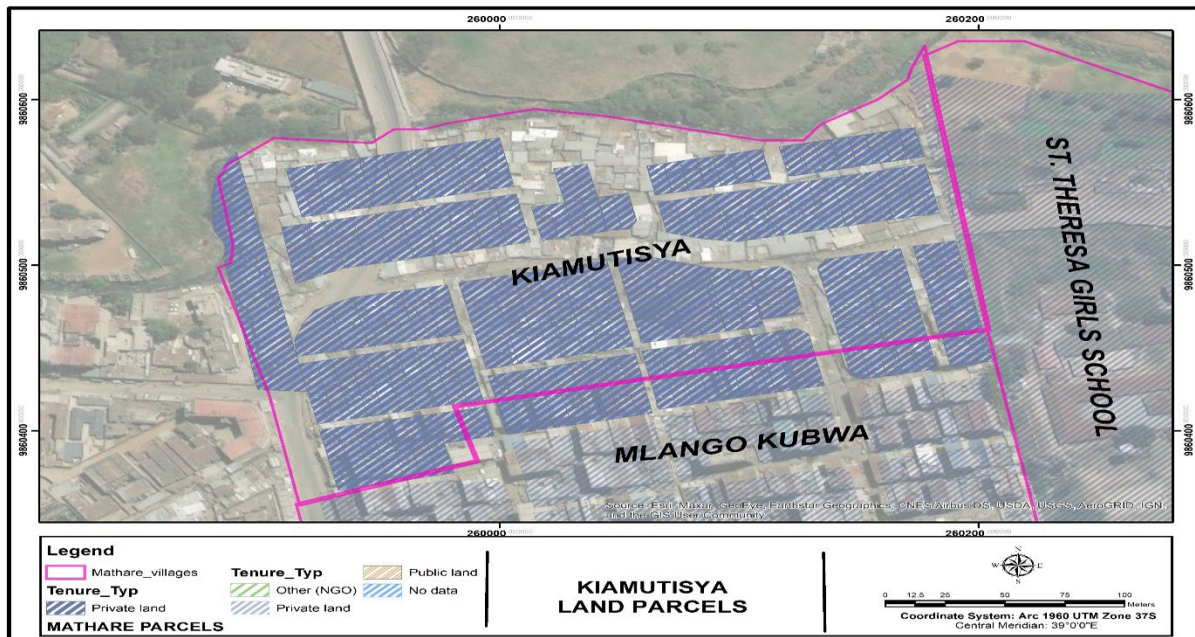
The size of the villages and the number of parcels per village are as shown in the table below.

| s/no.        | Name                                     | Area in Acres | No. of parcels | Size of parcels |
|--------------|--|---------------|----------------|-----------------|
| 1            | MATHARE 3B                               | 12.62         | 120            | 9.451           |
| 2            | MATHARE 3C                               | 18.58         | 166            | 9.151           |
| 3            | MATHARE 3A                               | 12.62         | 53             | 8.548           |
| 4            | MABATINI                                 | 1.88          | 7              | 1.107           |
| 5            | MATHARE 4A                               | 53.83         | 11             | 46.249          |
| 6            | MATHARE 4B                               | 10.47         | 1              | 9.215           |
| 7            | GITATHURU                                | 11.72         | 1              | 10.16           |
| 8            | SPACE BETWEEN MATHARE 4A AND KWA KARIUKI | 5.61          |                |                 |
| 9            | KWA KARIUKI                              | 12.45         | 120            | 8.285           |
| 10           | KOSOVO                                   | 19.56         | 2              | 15.783          |
| 11           | MASHIMONI NO.10                          | 5.55          | 39             | 5.703           |
| 12           | VILLAGE 2                                | 29.65         | 223            | 22.556          |
| 13           | KIAMUTISYA                               | 12.62         | 207            | 9.498           |
| 14           | MLANGO KUBWA                             | 20.05         | 300            | 12.573          |
| 15           | ST. THERESA GIRLS SCHOOL                 | 14.57         | 1              | 13.97           |
| 16           | MOSQUE                                   | 11.17         | 1              | 10.751          |
| 17           | MASHIMONI                                | 12.24         | 45             | 12.528          |
| <b>TOTAL</b> |  | <b>265.19</b> | <b>1297</b>    | <b>205.53</b>   |



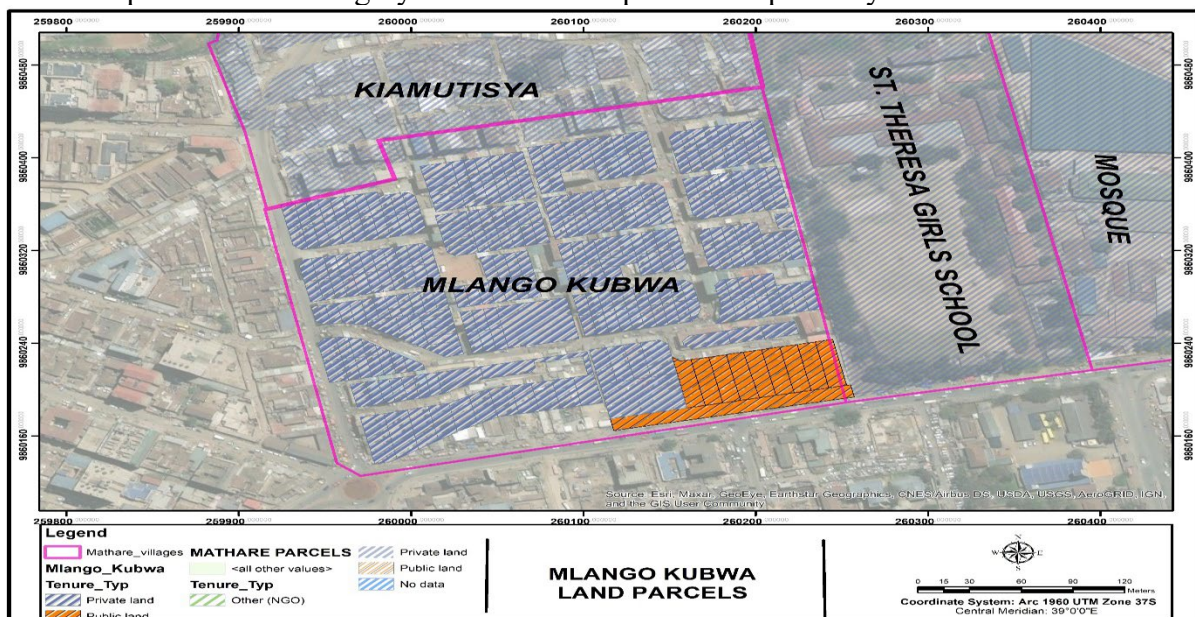
### Kiamutisya village

The village is located in Mlango Kubwa ward. It borders Pangani Estate to the West, Mlango Kubwa village to the south, St Theresa Girl's School to the east and Ruaraka to the North. Kiamutisya village is approximately 13.8 acres big with a perimeter of approximately 1km. There are 202 parcels of land in this village. The land was initially owned by the city council but is currently privately owned with land contestation between two cooperatives, Mucookaniriria society and Mathare united traders. The largest parcel of land in the village is approximately 0.609 acres while the smallest is approximately 0.029 acres. These parcels are arranged as shown below.



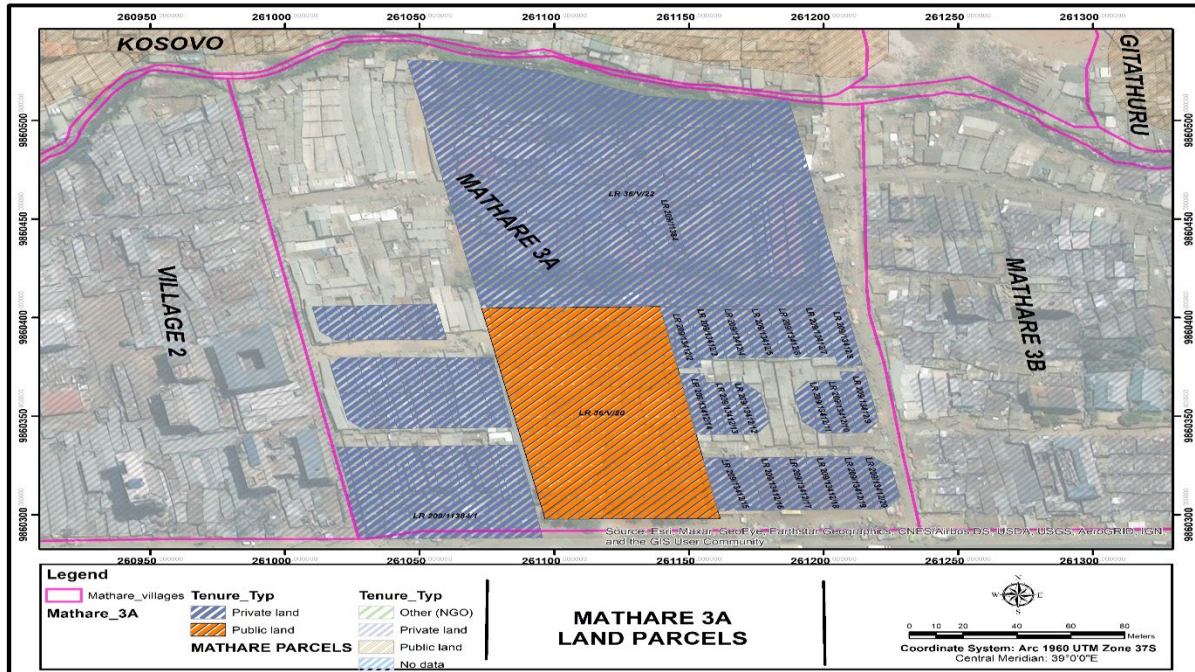
### Mlango Kubwa village

The village is bordered by Kiamutisya to the North, Pangani to the West, St Theresa Girl's School to the South. Mlango Kubwa village is 17.9 acres and has a perimeter of approximately 1.1 Kilometers. There are 297 parcels of land in the village. We identified 9 parcels that fall under the public tenure category. The rest of the parcels are privately owned.



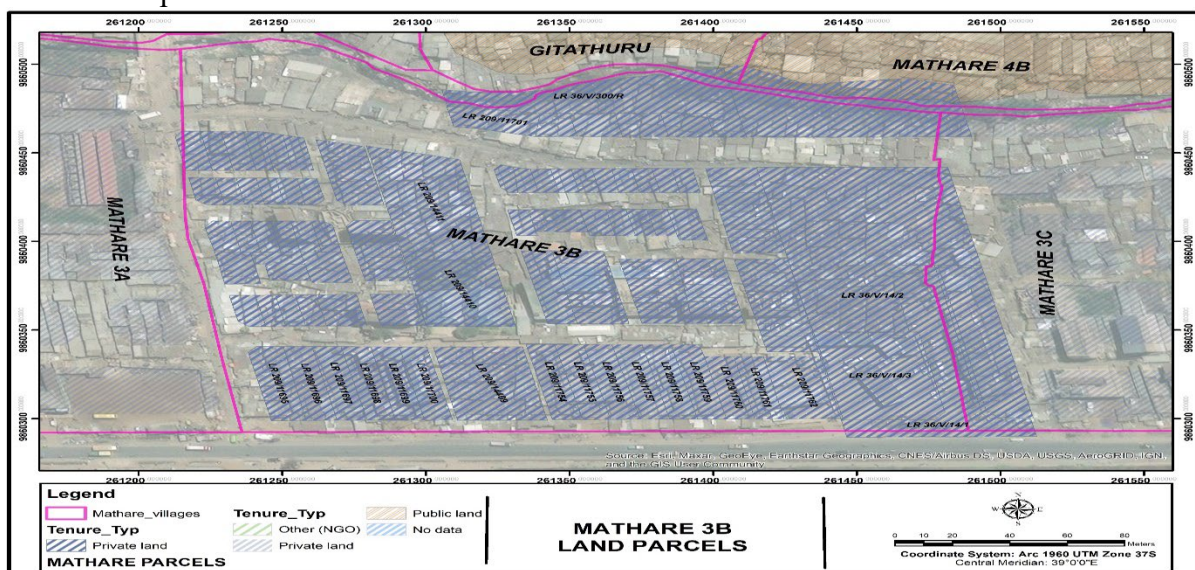
### Mathare 3A

The village (also known as Bondeni) is located in Mabatini ward. It borders Kamukunji to the south, Village 2 to the west, Mathare 3A to the east, and Kosovo to the north. The Village is 12.6 acres and has a perimeter of approximately 900 meters. There are 53 parcels of land in the village with the smallest parcel being 0.030 acres, the largest parcel size being 3.837 acres. On average, parcels in the village measure approximately 0.161 acres. The land was bought by a cooperative society known as Bondeni Property and was subdivided among its 1000 members.



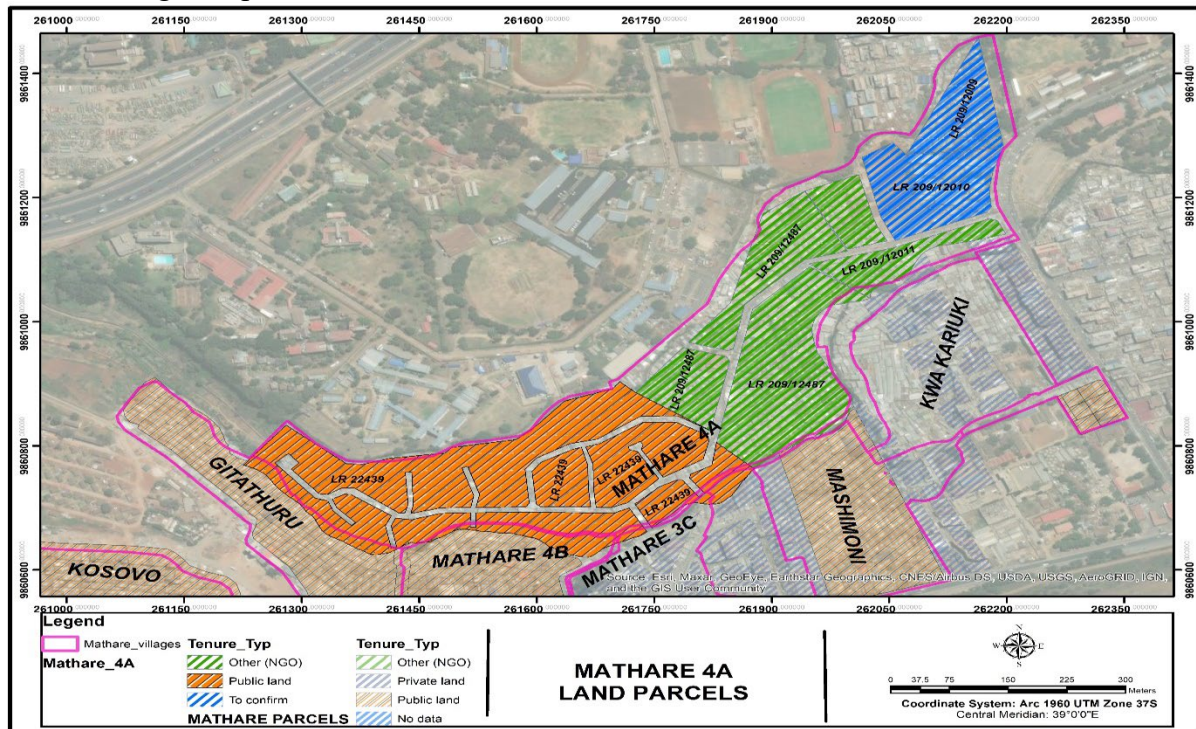
### Mathare 3B

The village is located in Mabatini ward and borders Mathare 3A to the west, Mathare 3C to the east, Kamukunji to the south, and Mathare 4B to the North. The village is approximately 12.6 acres and has a perimeter of approximately 1km. It has 120 parcels of land, the smallest measuring 0.022 acres while the largest measures 1.548 acres. The average size of land in the village is 0.079 acres. Land in the village is privately owned with the main owner being Bondeni Properties Limited.



## Mathare 4A

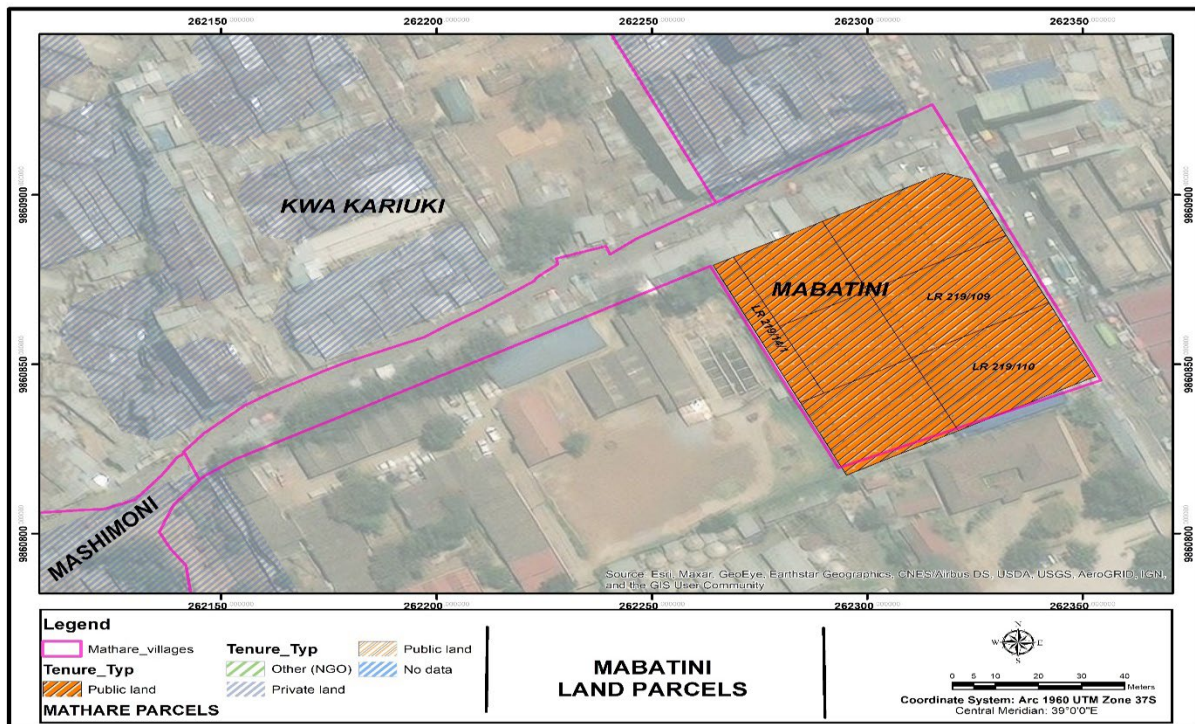
Mathare 4A is the largest of the thirteen villages in Mathare valley. The village covers an area of 53.8 acres and has a perimeter of approximately 3 kms. It is located in Utalii ward and is bordered by Mathare 4B, Mashimoni 10, and Mashimoni to the South. The village consists of 11 parcels of land which are privately owned by Amani Housing Trust, an NGO affiliated to St. Benedict Catholic Church. The largest parcel of land in the village measures 14.336 acres while the smallest is 1.402 acres. The average size of land in the village is 4.202 acres. Controversies surround the ownership of the land which has seen it being the subject of numerous legal disputes.



## Mabatini village

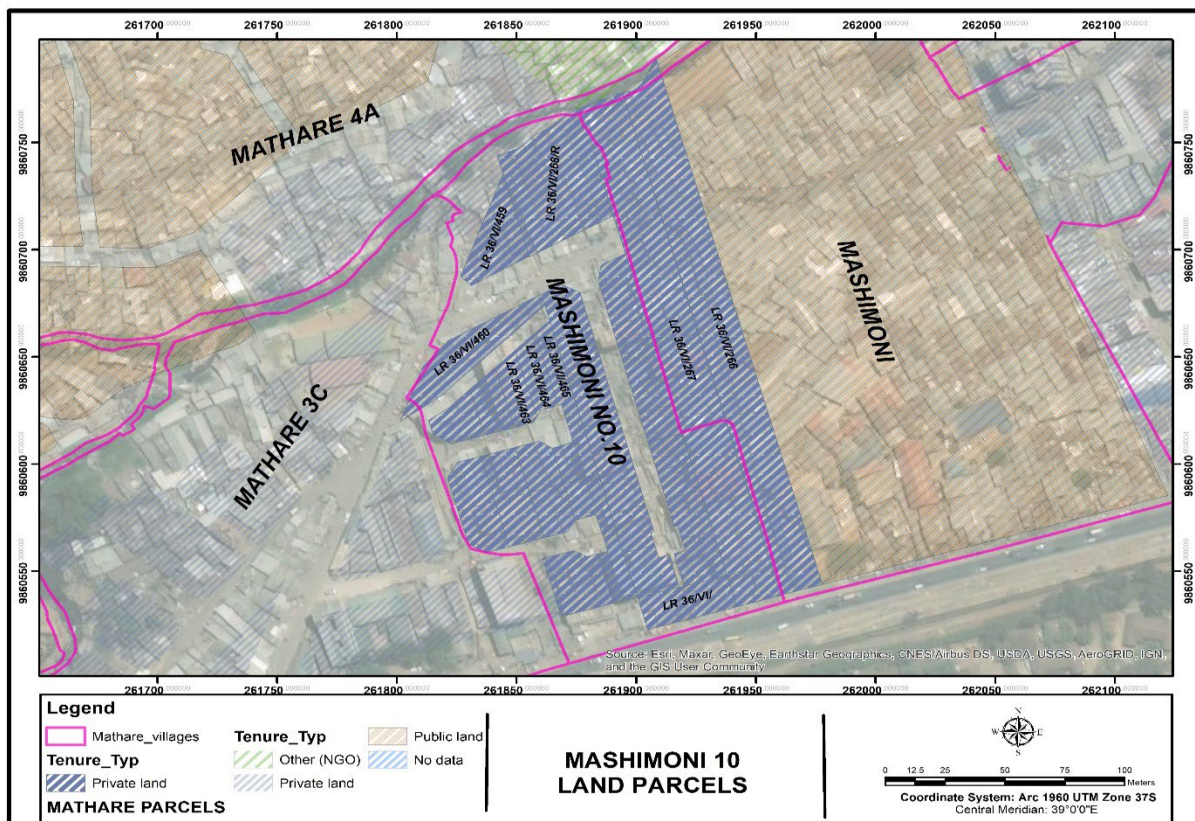
Located in Mabatini ward, the village is bordered by Huruma to the east, Kwa Kariuki to the north, Moi airbase to the south, and Mashimoni to the west. The village measures 1.9 acres and has a perimeter of 573.8 meters. There are 7 parcels of land in the village with the smallest measuring 0.064 acres and the largest being 0.213 acres. The average parcel of land in the village measures 0.158 acres. The land in which the village occupies is publicly owned by the NCCG. Some residents of Mabatini have letters of allocation for the land which they claim were issued to them by the defunct Nairobi City Council. In 2011, a section of land in the village was fenced off by a developer who claimed to have been allocated the land by the City Council.<sup>33</sup>

<sup>33</sup> Muungano Support Trust, 'Mathare Valley'.



### Mashimoni No.10

The village, locally known as Mathare No.10, is located in Mabatini ward. It is bordered by Mathare 3C to the west, Mashimoni to the east, Moi Airbase to the south, and Mathare 4A to the north. The village is 5.5 acres and has a perimeter of approximately 0.5 km. There are 39 parcels of land in the village, and these are privately owned. The smallest parcel is 0.051 acres while the largest is 1.612 acres. The average size of land parcels in the village is approximately 0.146 acres.



This village sits on land measuring 12.2 acres and has a perimeter of 1,117.4 meters. It is bordered by Mashimoni to the west, Mathare 4A to the north, Kwa Kariuki to the east and Moi Airbase to the South. Land in the village is publicly owned by the Kenya Air Force. There are 124 parcels of land in the village with the minimum parcel size being 0.030 acres and the maximum being 8.874 acres. The average parcel size is 0.278 acres. Structure owners in the village hold allocation ballot papers and certificates which they use as proof of proprietorship.

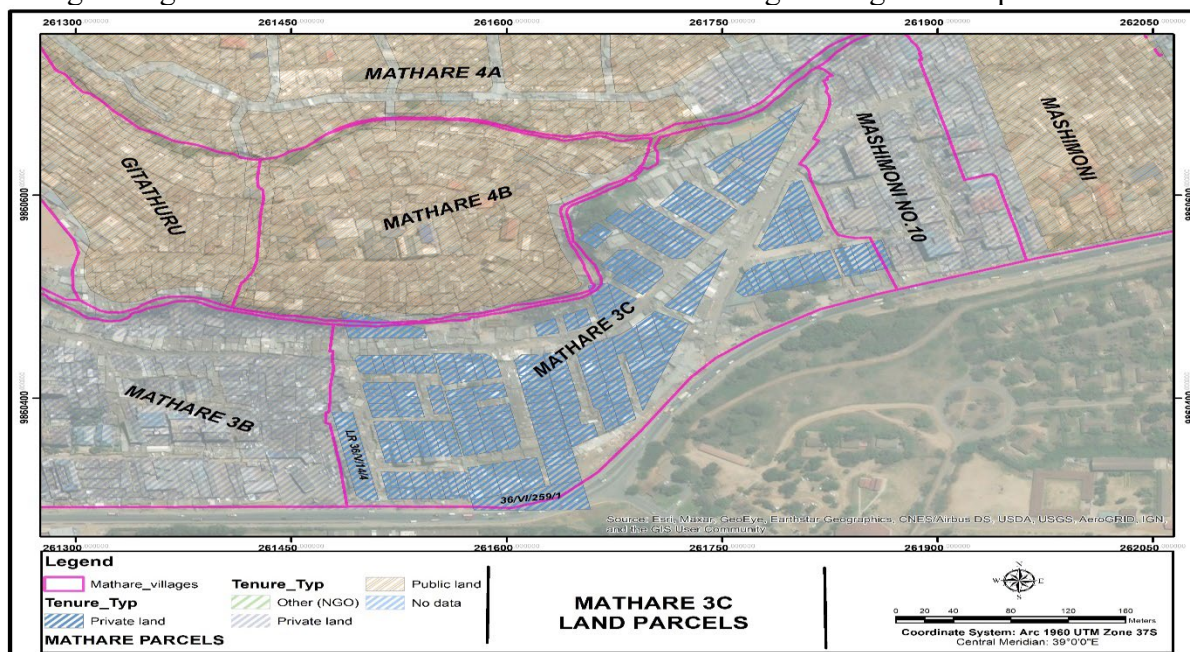


Land in the village is said to be privately owned. the village measures 29.5 acres and has a perimeter of 1,709.7 meters. It is bordered by Kosovo to the north, Kamukunji to the south, and Mathare 3A to the east. There are 220 parcels of land in the village. The smallest parcel measures 0.022 acres while the largest measures 3.376 acres. The average parcel size is 0.096 acres.



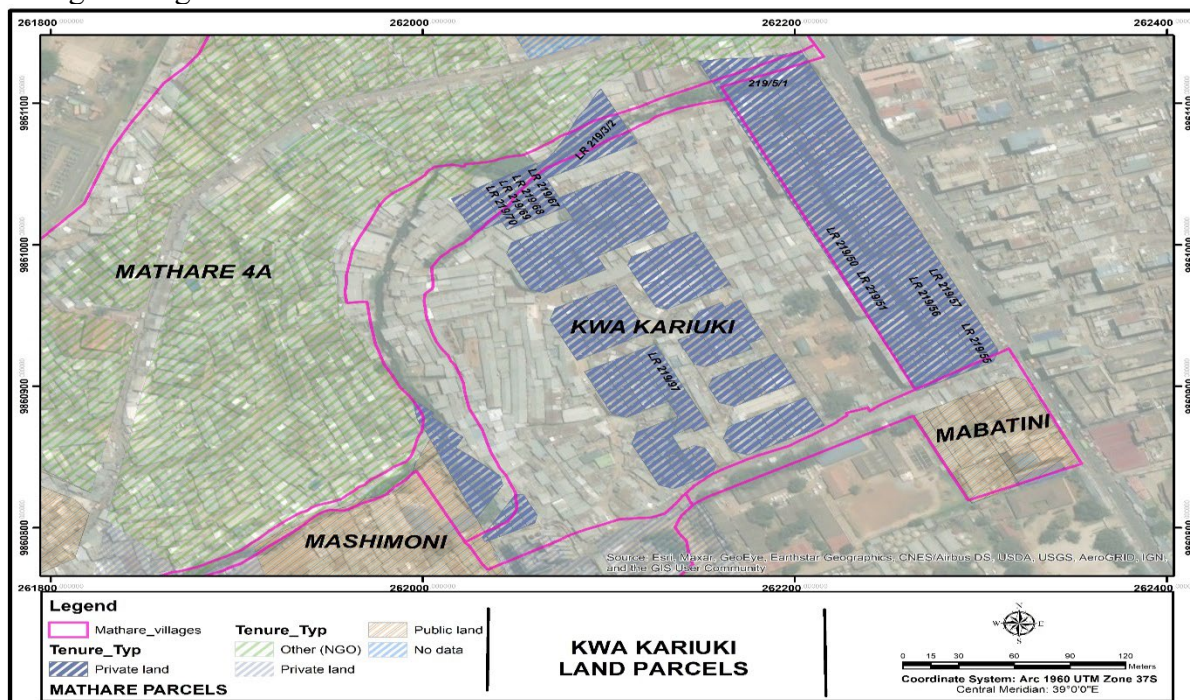
### Mathare 3C

The village measures 18.6 acres and has a perimeter of 1,445.4 meters. It is bordered by Mathare 4A and Mathare 4B to the north, Mashimoni 10 to the east, Moi Airbase to the south, and Mathare 3B to the west. Land in the village is privately owned and registered under the Mathare Traders Limited. We were unable to access documents showing proof of ownership by Mathare Traders Limited. There are 159 parcels of land in the village with the minimum acreage being 0.029 while the maximum is 0.392. The average acreage for the parcels is 0.052.



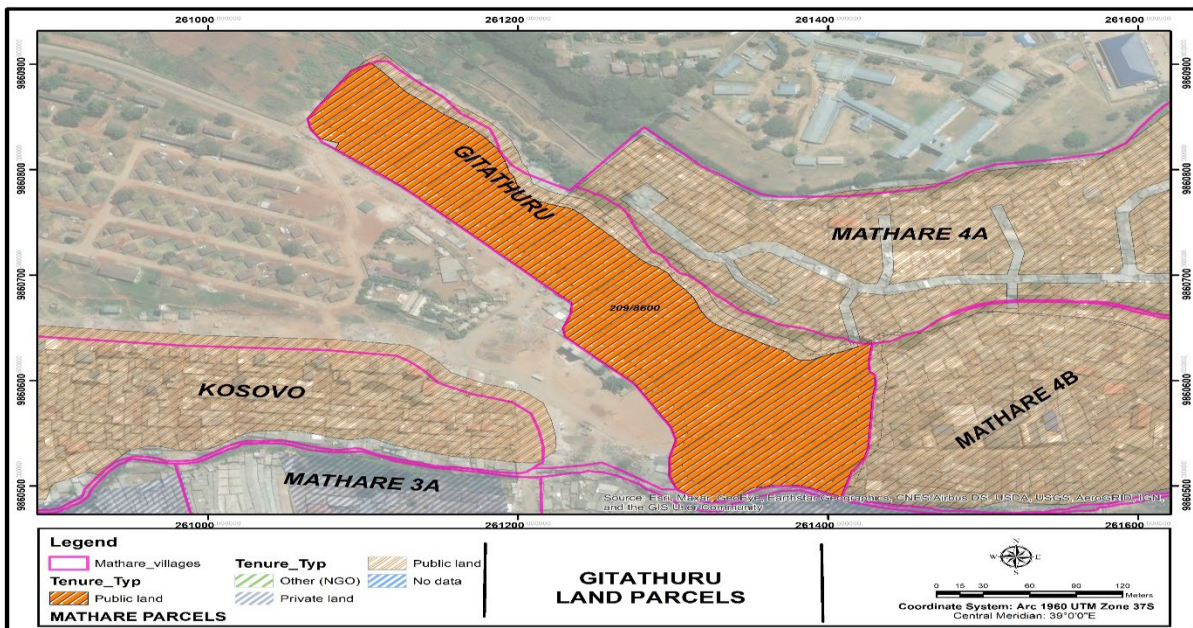
### Kwa Kariuki

The village measures 12.4 acres and has a perimeter of 948.7 meters. It is bordered by Mathare 4A and Mashimoni to west, Mabatini to the south and Huruma to the east. The village has 98 parcels of land with the minimum acreage being 0.311 and the maximum being 1.278. The average acreage is 0.080.



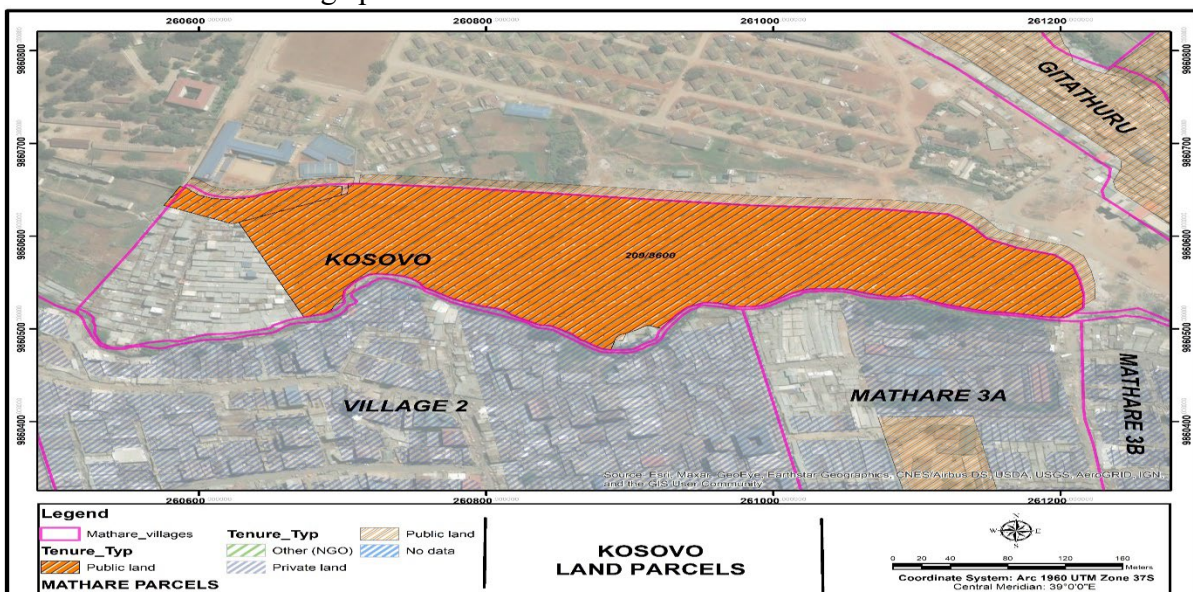
## Gitathuru

Gitathuru village sits on public land owned by the National Police Service. Structure owners in the village claim to privately own the land and hold ballot papers which they claim is proof of their ownership. The village measures 11.7 acres and has a perimeter of 1,233.3 meters. It is bordered by Mathare police station to the west, Mathare 3B to the south, Mathare 4B to the east, and Mathare 4A to the north. There are 4 parcels of land in the village. The minimum parcel size is 0.011 acres while the maximum is 10.149 acres. The average parcel size in the village is 3.002 acres.



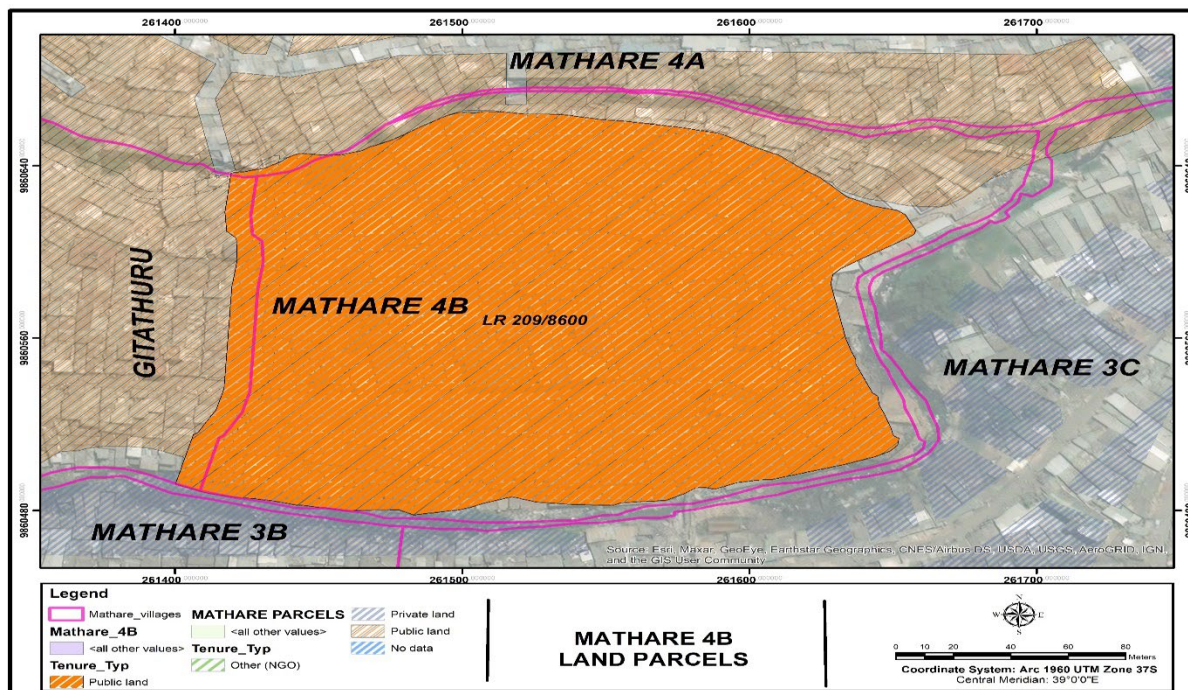
## Kosovo

The village measures 19.5 acres and has a perimeter of 1,665.9 meters. It is bordered by Village 2 and Mathare 3A to the south, Mathare police station to the north, and Mathare hospital to the west. The land on which the village sits is public. There have been efforts to formalize the occupants' ownership of land in the settlement which has seen the issuance of ballot letters. There are 4 parcels of land in the village. The largest measures 15.151 acres while the smallest is 0.0017 acres. the average parcel size is 3.946 acres.



## Mathare 4B

The village is approximately 10.5 acres and has a perimeter of 881.3 meters. It is bordered by Mathare 4A and Mashimoni to the west, Mabatini to the south, and Huruma to the east. The land on which the village sits is public land. There are three parcels of land in the village with the minimum acreage being 0.008 acres while the maximum is 8.689 acres. The average parcel size is 3.443 acres.



## 4.2 Land tenure influence on access to basic services in Mathare

Like with many informal settlements, access to basic services in Mathare is to a great extent shaped by the land tenure conditions within the various settlements. Tenure insecurity prevents the inhabitants from accessing the much-needed basic services or makes access to them prohibitively expensive. The contested tenure relationships in Mathare makes it easier for institutions that are tasked with service delivery to abdicate on their responsibilities. Access to reliable water remains a challenge in the settlements. The UN-Habitat indicates that majority of water points in Mathare do not function throughout the week which results in long queues for the remaining water points that work.<sup>34</sup> The unpredictability in access to water also leaves the inhabitants vulnerable to price distortions which may mean that they will often access these services at prices that are higher than what the inhabitants of other part of the city pay.

Infrastructure provision is also wanting within the settlements. A study by SDI, University of Nairobi and University of California, Berkeley indicates that 88% of the inhabitants do not consider the internal roads adequate for safe or efficient travel.<sup>35</sup> The fact that there are few motorable roads in the settlements presents a challenge whenever there are emergencies in the settlements. Limited drainage facilities result in flooding and pollution of nearby rivers. Lack of infrastructure is also seen when it comes to provision of basic services. For instance, only 11% of the inhabitants of the settlements can access water through municipal water connections.<sup>36</sup> This leaves the majority of the inhabitants underserved which means that they

<sup>34</sup> UN-Habitat, *Informal settlements' vulnerability mapping in Kenya: Facilities and partners' mapping in Nairobi and Kisumu settlements* (2020, UN-Habitat) 12.

<sup>35</sup> Muungano Support Trust, 'Mathare Valley', 22.

<sup>36</sup> Ibid, 26.

have to access water via stand points that do not efficiently serve the population. The high demands for water within the settlements coupled with the low provision means that individuals will often resort to illegal connections to the existing systems which compromises these systems and exposes them to the risk of contamination.<sup>37</sup>

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<sup>37</sup> Ibid.

**Table 1:** An overview on land ownership in some villages

| <b>Village</b>   | <b>Gitathuru</b>   | <b>Kwa Kariuki</b>   | <b>Mathare 3A</b>  | <b>Mathare 3B</b>   | <b>Village 2</b>  |
|--|--|--|--|---|---|
| <i>How land, premises and other properties are generally owned.</i>                    | <ul style="list-style-type: none"> <li>- The land is owned by National Police Service.</li> <li>- Inhabitants have been allowed to stay on the land and have ballots justifying their stay.</li> </ul> | <ul style="list-style-type: none"> <li>- Land owned by Kariuki. He has since died but his descendant continue to manage the property</li> </ul>              | <ul style="list-style-type: none"> <li>- The land is partly public and partly privately owned</li> <li>- Three owners identified: Bondeni property; Macharia; Mama Tony</li> </ul> | <ul style="list-style-type: none"> <li>- Land is privately owned</li> </ul>   | <ul style="list-style-type: none"> <li>- Land is privately owned</li> <li>- Land is divided into three with three co-operatives owning the parcels. 1. Kiamuingi 2. Mathare Quick Service 3. Kwirera</li> </ul> |
| <i>Manner in which licensing or permission for use of land/premises is carried out</i> | <ul style="list-style-type: none"> <li>- Ballots are distributed upon the payment of a fee.</li> <li>- Ballots provide some form of secure tenure for the inhabitants</li> </ul>                       | <ul style="list-style-type: none"> <li>- None to the residents other than those related to Kariuki who have documentation protecting their tenure</li> </ul> | <ul style="list-style-type: none"> <li>- Individuals purchased the land from Bondeni</li> </ul>  | <ul style="list-style-type: none"> <li>- Most of the inhabitants in 3B do not have titles or documentation to justify their stay</li> </ul> | <ul style="list-style-type: none"> <li>- Most structure owners and residents do not have documentation to prove ownership</li> </ul>  |
| <i>Transfer of land/premises</i>   | <ul style="list-style-type: none"> <li>- Ownership cannot be transferred</li> <li>- Ballots may be updated to reflect the resident/structure owner</li> </ul>  | <ul style="list-style-type: none"> <li>- Structures can be transferred among family members</li> </ul>   | <ul style="list-style-type: none"> <li>- Ownership can be transferred to willing buyer</li> </ul>  | <ul style="list-style-type: none"> <li>- From willing seller- willing buyer</li> </ul>  | <ul style="list-style-type: none"> <li>- From willing seller- willing buyer</li> </ul>  |
| <i>Options for addressing</i>  |  | <ul style="list-style-type: none"> <li>- None have been explored as squatters have</li> </ul>  |  | <ul style="list-style-type: none"> <li>- Some inhabitants exploring</li> </ul>  | <ul style="list-style-type: none"> <li>- Locals exploring adverse possession</li> </ul>   |

|  |                 |   |                 |                              |  |
|--|-----------------|---|-----------------|------------------------------|--|
| <i>land tenure insecurity</i>              |                 | enjoyed peaceful occupation of the land |                 | option of adverse possession |  |
| <i>Nature of evictions and demolitions</i> | - None recorded | - None recorded                         | - None recorded | - None recorded              | - Eviction common with police being employed to enforce them |

## 5. Accessing land in Mathare

When it comes to the acquisition of interests in land in Mathare, a number of mechanisms may be used, whether exclusively or in combination with each other. These can be categorized as either formal or informal. The distinction is often fuzzy as formal channels for land delivery may oftentimes be laced with processes that can be defined as informal. This can be attributed to the robust informal norms that oftentimes impress on formal actors and processes. The robustness of the informal delivery systems can be attributed to the social legitimacy which accompanies them and the fact that they are responsive to the needs of a majority of Mathare's inhabitants who may need to access land. It can also be attributed to the fact that for a majority of the inhabitants of Mathare, there exist limited formal pathways for accessing land hence the need to devise alternative channels. Informal systems may sometimes also engage with formal processes especially where actors perceive this to be an important step in strengthening or securing their claims. The implication of this is that for Mathare, like in other informal settlements in Nairobi, it is difficult to examine how land rights/claims are delivered under the conventional formal-informal binary. Strictly pursuing this binary may also act to obfuscate the realities in contexts like Mathare which can impede the adoption of context-conscious interventions. Hendriks thus proposes that we examine these as hybrid systems.<sup>38</sup>

For us to understand the processes implicated in land delivery in Mathare, it bears examining existing property transaction norms to identify the nature of transactions that are usually conducted and the outcomes of these transactions. Examining these transactions can perhaps shed light on why certain norms are considered to be socially legitimate compared to others. This is important particularly where we seek to accord wider recognition to incremental tenure solutions as social legitimacy remains an important factor whenever land tenure security interventions are proposed. These transaction norms are examined below. This proceeds by looking at how actors like land buying companies and cooperatives acquire and dispose of interests in land. We will thereafter examine other transactions that occur outside those carried out by land buying companies and cooperatives. This latter category of transactions are loosely grouped as informal. The mechanisms through which individuals acquire interests in land through these alternative channels are also explored.

### 5.1 Hybrid land delivery systems

#### 1. *Land buying companies*

Land buying companies and cooperatives feature prominently in any narrative addressing the history of Mathare. The activities of these companies reached their peak in the periods surrounding Kenya's independence, with their roles diminishing but not entirely disappearing in the years that followed. The central place of these entities must be examined in the context of the redistributive visions which drove the anti-colonial movements in Kenya. Conditionalities had been attached by the British colonial administration for Kenya to become a self-governing republic. Jomo Kenyatta, Kenya's first president acquiesced to the colonial government's demands for Africans to buy-back the land which the settlers had occupied.<sup>39</sup> Such acquisitions would be aided by loans extended to the Kenyan government by the British administration. Land buying companies and co-operatives then emerged to facilitate acquisitions in cases where individuals were unable to afford purchase of land. These

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<sup>38</sup> Hendriks, B. 'The social and economic impacts of peri-urban access to land and secure tenure for the poor: The case of Nairobi, Kenya', (2008) 30(1) International Development Planning Review.

<sup>39</sup> Harbeson, J.W. 'Land reforms and politics in Kenya, 1954-70', (1971) 9(2) The Journal of Modern African Studies, 244.

companies were also involved in housing provision and supply of basic amenities to the housing units which they constructed. One could then acquire land by buying shares in the companies or being a member of the cooperatives. Gatabaki-Kamau outlines the processes of land allocation and property rights acquisition between 1961-1993 as shown below.<sup>40</sup>

| Submarket                  | Main process of accessing land                | Nature of property rights for individual owners |                 |                                     |                                       |
|----------------------------|---|---|-----------------|-------------------------------------|---------------------------------------|
|                            |   | Freedom from repossession                       | Freedom to sell | Freedom to invest                   | Formal collateral value               |
| <b>State administered</b>  | Administrative allocation                     | No  | Yes             | Temporary investments only          | None                                  |
| <b>Land company</b>        | Buying shares in land companies               | Yes   | Yes             | Temporary and permanent investment  | None if subdivision is not registered |
| <b>Former rural shamba</b> | Inheritance. Buying in the formal land market | Yes   | Yes             | Temporary and permanent investments | Yes                                   |

Table 2: Process of land allocation and property rights in Nairobi's informal housing submarkets (Source: Gatabaki-Kamau)

Gatabaki-Kamau observes that Mathare was home to some of the earliest land purchasing companies which were actively involved in speculation. Companies that had initially been formed as cooperatives abandoned their objectives and embarked on speculative holding of land with the rising demands for tenement housing.<sup>41</sup> Gatabaki-Kamau notes that the squatters that had been displaced from the rural areas as a result of settler occupation organized themselves into land companies to buy land in Mathare.<sup>42</sup> In 1969, there were more than twenty companies owning land in Mathare.<sup>43</sup> Purchases by these companies brought most of the land in Mathare (approximately 75%) under private ownership.<sup>44</sup> Thus, according to Chege;

“Company investment in housing had far-reaching and progressive social consequences for the area. It extinguished the presence of Asian land-owners in the valley and forced the City Council to deal with the new class of African proprietors, not just ‘squatters’ as was previously the case.... Tenants flocked into Mathare company housing as was to be expected in a city so short of lower income housing. Mathare Valley population rose from 19,436 in 1969 to 53,026 in 1971 and to nearly 100,000 in 1979.”<sup>45</sup>

The companies and cooperatives in some cases also undertook subdivision and sale of the land which they had acquired. Some of these subdivisions were lawfully conducted while numerous

<sup>40</sup> Gatabaki-Kamau, R. *The politics of an expanding informal housing submarket in Nairobi, Kenya: The informal development of a middle-income settlement, 1961-1993* PhD thesis (The University of Birmingham, 1995).

<sup>41</sup> University of Nairobi, *Mathare Valley: A case-study of uncontrolled settlement in Nairobi*, 10.

<sup>42</sup> Gatabaki-Kamau, R. *The politics of an expanding informal housing submarket in Nairobi, Kenya: The informal development of a middle-income settlement*, 171.

<sup>43</sup> University of Nairobi, *Mathare Valley: A case-study of uncontrolled settlement in Nairobi*, 43.

<sup>44</sup> Chege, M. ‘A Tale of Two Slums: Electoral Politics in Mathare and Dagoretti’, 77.

<sup>45</sup> Ibid, 78.

failed to follow the laid down procedures.<sup>46</sup> In Mathare, most of the unlawful subdivisions can be attributed to the difficulties in obtaining legal subdivisions which were guided by stringent urban land-use regulations.<sup>47</sup> Politics and patronage have also made it easy for some of the informal subdivisions to occur.<sup>48</sup> It is for instance said that former President Daniel Moi rewarded military officers who facilitated the suppression of the attempted coup against his administration with land in Mathare in the 1980s.<sup>49</sup> Local administrators like village elders and chiefs are also said to have appropriated power that doesn't belong to them and have played prominent roles in facilitating unlawful subdivisions and allocation of land.<sup>50</sup> The unlawful subdivisions, as will be discussed herein, laid the foundation to numerous land conflicts that would subsequently emerge as a result of the multiple claims that different individuals and entities have on the land.

Cases of allocation of the same parcels of land to multiple individuals are rampant in the settlements. It is often difficult to adjudicate these disputes due to the fact that individuals will often lack relevant documentation to support their claims. Another set of conflicts that have been rampant in Mathare since its early days is that between landlords and non-company squatters with the latter group being often pushed out of the company-held lands into adjoining public lands.<sup>51</sup> Even within the companies, disputes are rampant among members who may have different visions on how the company affairs should be conducted. In the sections below, we outline some key findings on land buying companies and cooperatives from conversations that we had with interlocutors in Mathare.

### *Mathare Quick Service Limited*

#### Key findings

- Company registered on 6<sup>th</sup> November 1971 and assigned Company Number C.76/71.
- Company has an established history of selling land in Mathare.
- Primarily holds land in Mathare 3A. Some of the parcels identified to be registered in its name include LR. No. 36/V/360; 36/V/333; 36/V/338.

In 1971 Mathare Quick Service Limited acquired land in Mathare 3A from Esmail Adam. It is estimated that the land owned by the company measures 7 acres and is divided into 132 plots.<sup>52</sup> At the time of the acquisition, the land was surveyed, subdivided among the shareholders with space being left for schools and hospitals.<sup>53</sup> The company maintains a book which contains the names of all the members who have bought land from it. Presently, the company has 11 shareholders.<sup>54</sup> Once an individual acquires shares from the company, they are issued with a share certificate which they can use as proof of ownership of shares, and therefore land in the settlements. At the moment, the company retains the mother title for the whole parcel that it owns. Individual shareholders are yet to be issued with individual titles. They hold certificates which are issued by the company and indicate the nature of their holding within the settlements.

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<sup>46</sup> Majale, M.M. *Settlement Upgrading in Kenya: The Case for Environmental Planning and Management Strategies* PhD thesis (University of Newcastle upon Tyne, 1998) 113.

<sup>47</sup> Gatabaki-Kamau, R. *The politics of an expanding informal housing submarket in Nairobi, Kenya*, 173.

<sup>48</sup> Ibid, 159.

<sup>49</sup> Interview with an informant in Kosovo village.

<sup>50</sup> Interview with informants in Mathare on 2<sup>nd</sup> June 2022.

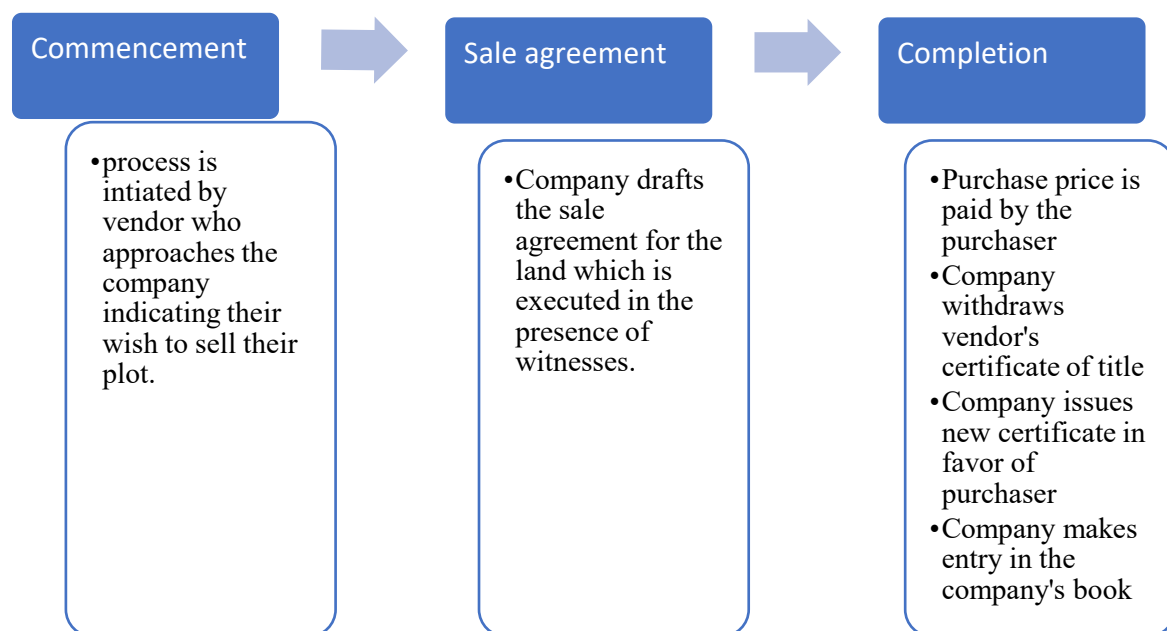
<sup>51</sup> Chege, M. 'A Tale of Two Slums: Electoral Politics in Mathare and Dagoretti', 79.

<sup>52</sup> Interview with Mathare Quick Service Limited Directors on June 16<sup>th</sup> 2022.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

The company keeps records of all the transactions relating to land that it owns. Transactions by the company shareholders must be approved and recorded by the company.<sup>55</sup> A shareholder seeking to undertake any transactions relating to the company land is required to visit the company offices from where the transactions are done, and records updated to reflect any change in proprietorship. The company is responsible for payment of land rates to the Nairobi City County. Any sum owed by the company to the County is usually divided among the plot owners. Individual plot owners are then issued with receipts indicating that they have contributed to the payment of land rates. Most plot owners keep the receipts issued to them as proof of ownership of the plots. Transactions for the acquisition of land held by the company follows the following steps.



Land owned/sold by Mathare Quick Service Limited has been the subject of competing interests which has inevitably resulted in litigation. Lack of title documents over the land by the shareholders creates conditions for the ensuing disputes which often pit the company members against other claimants in Mathare. Youth groups and vigilantes have been faulted for persistent land grabs from the company which fuels conflicts. Disputes have also arisen between the plot owners and government agencies like the Kenya Urban Roads Authority in the latter's attempt to build a road on land that the company claims to own.<sup>56</sup> Litigation has been instituted by the plot owners against inhabitants who are considered as trespassers. For instance, in *Sofia Wanjiru Kamau v Njoki Kamau & 3 others* ELC Suit No. 132 of 2013, the plaintiff being the registered owner of the parcel of land known as LR. No. 36/V/37 brought a claim against the defendants arguing that the defendants had in her absence entered onto her land without her permission, occupied it and unlawfully constructed semi-permanent structures on the land. The plaintiff stated that she had purchased the land from Mathare Quick Service Limited on 3<sup>rd</sup> October 1997 and that she was issued with a certificate of title. The plaintiff produced as evidence copies of certificate of title, instruments of transfer and receipts of land rates payments as evidence of her ownership of the suit property. The court ordered that the defendants vacate the plaintiff's land within ninety days failure to which the plaintiff was at liberty to apply for their forceful eviction.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

***Box 2: A resident's description of the acquisition process from Mathare Quick Service***

Mathare Quick Services Company Limited owns three separate pieces of land in Mathare Valley with separate LR numbers. The said LR numbers are 36/V/360, 36/V/333 and 36/V/338. The company has over the years sold the pieces of land that it owns to willing buyers. The larger pieces of land were divided into plots measuring 50 by 100 each. The company and a willing buyer usually enter into an agreement where a contract for the sale of the land is issued to the buyer as well as a Land Rate Number and a map of where the plot lies. There exists only one title deed which covers the entire piece of land that is held by the company. Since there are no individual title deeds, the buyers can hardly develop as a result of the threat of being evicted because they lack solid documents to prove that the land belongs to them, save for the sale agreement issued to them by the Company. The land also has provisions for public spaces which remain unoccupied. Once an individual has been issued with a plot by the Company, one is required to pay a sum of money amounting to KES. 100,000 to a designated bank account at intervals of 3 months. Additionally, one is required to pay City Council rates to the company and the Company makes a collective payment to the Council on behalf of all the persons that have acquired land from it. My father bought a piece of plot from the Company in 1998. Since 2004, there have been efforts by both the Company and the purchasers to get title deeds for the plots which they purchased but these efforts haven't borne any fruits.

***Kamuingi Housing Company Limited***

**Key findings**

- Kamuingi is a land buying company that was incorporated in Kenya in January 1966 as a public company.
- One could acquire interests in land by purchasing shares through the company.
- Transactions for acquisition were guided by a sale agreement prepared and executed by the company.
- Share certificates were then issued in respect of the plots that one had purchased from the company. Share certificates are considered to be evidence of proprietorship.
- There have been numerous issues on the identification of genuine shareholders of the company which has resulted in numerous disputes and court cases.
- Issues have also emerged with regard to the identity of plots allocated to the various shareholders which competing claims over the same parcel of land oftentimes emerging. See *Nyokabi Karanja & others v Kamuingi Housing Company Limited* Civil Case 1508 of 1994.
- Cases against the company have also been instituted by dependents of deceased shareholders

There is a lengthy history of litigation for the control of the dealings of the company by individuals who claim to be shareholders or to have some beneficial interest in the company. One such case is by *Duncan Ndegwa Wauri and 16 others v Benard Kariuki Mwangi and 6 others* Civil suit 212 of 2011. In this case, the plaintiffs sought a temporary injunction to issue against the defendants restraining them from transacting, dealing and/or interfering with Land Reference No. 36/V/I and Land Reference No. 6824 pending the determination of the case. They also sought a permanent mandatory injunction barring the defendants from transacting, dealing and/or acting on behalf of Kamuingi Housing Company Limited and/or interfering with Land Reference No. 36/V/1 and Land Reference Number 6824. Additionally, they sought an order from the court to compel all members and/or shareholders of Kamuingi Housing Company Limited for an Annual General Meeting to elect the company's directors. However, the court found that the plaintiff did not adduce enough evidence to support their claims of

ownership of the land in contest and thus set aside the order restraining the defendants from selling the land.

*Kamuingi Housing Company Limited v Registrar of Companies & another; Wambui Kinuthia & 29 others (interested parties)* Civil Case No. 235 of 2013. This case concerned the identification of the true shareholders of the land buying company. The court ordered a process of vetting the bonafide shareholders of the company and ruled that any person unable to prove his link to the company through the clearance from the Registrar of Company and the Nairobi City Commission's publication in the *Kenya Times* on 17<sup>th</sup> October 1987 and 18<sup>th</sup> October 1987 was to be deemed a non-shareholder. The court further placed reliance on the register filed in 1982 with the Registrar of Company as the reference point for determining who the genuine shareholders are.

## 2. *Cooperative societies and self-help groups*

In Mathare, the promise of secure land tenure has often been pegged on individuals joining together in groups and cooperatives to collectively front their claims. Self-help groups have maintained a visible presence in the land markets in Mathare. Women groups who banded together to form dance troupes that entertain Kenya's first president were largely drawn from Mathare and were often rewarded with land parcels in the settlements.<sup>57</sup> One such group is Kanyunya Kairu which is said to own substantial amounts of land in Mathare.<sup>58</sup> Individuals have also joined together in saving groups as a way of collectively tackling the challenges in accessing land. Financial contributions by members of these saving groups have been used as leverage when engaging with the government towards improvement of conditions within their settlements. In Nairobi's informal settlements, residents have sometimes used their financial contributions to purchase land in areas where land tenure regularization is promised or adopted. Muungano wa Bondeni Savings Scheme is one such saving group that has acquired land in Mathare by way of purchase. Its acquisition of the land was enabled by the savings from its members. Upon its acquisition of the land, the Saving Scheme was issued with a certificate from the vendor who retains the mother title for the land.<sup>59</sup>

Cooperatives have also long existed in Mathare. By 1967, it was estimated that there was one organisation registered as a cooperative for the purpose of land buying in Mathare.<sup>60</sup> The promise of accessing state-issued documentation for land has played an instrumental role in uniting individuals under cooperatives. Individuals have in some cases applied for allocation of land from Nairobi City Council with their applications rejected on the basis that they can only be allocated land as a community and not as individuals. This has prompted association by the inhabitants in cooperatives from where they can jointly front their land claims. Pamoja Trust, a Kenyan NGO, has in the past promoted initiatives by the inhabitants to form cooperatives.

## 5.2 Informal land delivery systems

Alternative channels for land delivery have emerged in Mathare to enable individuals to access land. These channels have emerged due to the inaccessibility of the formal land delivery mechanisms. The difficulties experienced in establishing legitimate ownership of land in Mathare have also propelled these channels to occupy a center-stage in the allocation and

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<sup>57</sup> Nelson, N. 'Dependence and independence: Female household heads in Mathare valley, a squatter community in Nairobi, Kenya', PhD Thesis (School of Oriental and African Studies, 1978) 65.

<sup>58</sup> Interview with informants in Mathare on 2<sup>nd</sup> June 2022.

<sup>59</sup> Ibid.

<sup>60</sup> University of Nairobi, *Mathare Valley: A case-study of uncontrolled settlement in Nairobi*, 46.

dispute resolution processes. There is much to learn from these dynamic informal land delivery channels. To begin with, the informal mechanisms for land allocation must be viewed in the context of the numerous self-help schemes that individuals in urban informal settlements often deploy to access land and basic services. Legal exclusions and unequal citizenship in the city have resulted in certain groups being perennially disadvantaged in accessing land and housing. Excluded groups have then developed their own mechanisms based on their unique contexts to cater for their needs. In many cases, the systems which they develop replicate the elements that are present in the formal systems which have failed to deliver on these needs.<sup>61</sup> This perhaps represents an anticipation of beneficiaries of these systems that their claims will eventually progress into legally recognized and enforceable rights. The adoption of these alternative land delivery mechanisms could also be an indictment of the formal processes which may be deemed to be elitist and non-responsive to the needs of the inhabitants of Mathare.

Like in other informal settlements in Nairobi, the conditions in Mathare offer a favorable space for the emergence of alternative land delivery channels. Historical exclusions that typify the geography of Mathare have fomented the resolve by the inhabitants to adopt alternate channels through which they can access land for housing and other uses. Mathare was home to many Mau Mau freedom fighters who had been displaced from other parts of the country and had to settle in Nairobi where they were still unable to access land. The descendants of these freedom fighters were also unable to access land as most of it had been allocated to various companies and cooperatives. Being only three kilometers from Nairobi's central business district, Mathare remains an attractive place for new entrants in the city. This group will usually settle in Mathare as tenants with some transitioning to structure and land ownership at some point. The high demands for shelter in Mathare create a lucrative land market as most individuals are seduced by the high returns that can be derived from owning a structure. Other, mostly elderly, individuals may want to relinquish their hold of land in the settlements and relocate to other parts of the city or country. Officials from local administration have also been coopted into the informal land markets and play significant roles during these transactions. As will be seen shortly, a majority of the informal transactions are sanctioned by local officials who in many cases are government employees. The nature of the informal land transactions in Mathare is examined below.

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<sup>61</sup> McAuslan, P. 'Tenure and the law: the legality of illegality and the illegality of legality', in Payne, G. (ed) *Land, Rights and Innovation: Improving Tenure Security for the Urban Poor* (ITDG Publishing, 2002) 31.

When it comes to land/structure transactions in the informal land markets, the actors involved are; land/structure owners, purchasers, brokers/middlemen, village elder, chief, and witnesses. These actors have different obligations during and upon completion of the transactions. Their various roles and obligations are spelt out in Table 2 below. A sale agreement drafted by the seller will often be used to guide the transactions. In the case of the sale of a structure, the agreement will follow a simple template draft which spells out the location of the structure, the number of rooms in the structure, the name and details of the seller, the names and details of the witnesses, and those of the purchaser and their witnesses.

AN AGREEMENT FORM  
THE SALE OF HOUSE ALLOTTED No. (NHL) ROOMS

Within Mathare 4B on Date \_\_\_\_\_ at \_\_\_\_\_

The sale of \_\_\_\_\_ Rooms belonging to Mr./Mrs. \_\_\_\_\_

Telephone \_\_\_\_\_ ID NO. \_\_\_\_\_ to Name \_\_\_\_\_

Telephone ID NO. \_\_\_\_\_ And in the presence of their witnesses as illustrated below

WITNESSES TO THE SELLER

1. Name: \_\_\_\_\_ ID No. \_\_\_\_\_ Sign. \_\_\_\_\_

2. Name: \_\_\_\_\_ ID No. \_\_\_\_\_ Sign. \_\_\_\_\_

The \_\_\_\_\_ rooms according to this agreement the seller Mr. \_\_\_\_\_ has fully agreed to sell the buyer at a price of Kshs \_\_\_\_\_ (In words)

1. First payment \_\_\_\_\_

2. Second payment \_\_\_\_\_

3. Third payment \_\_\_\_\_

4. Fourth payment \_\_\_\_\_

TOTAL AMOUNT (KSHS) \_\_\_\_\_

5. From today the six rooms is no longer yours. It belongs to Mr. \_\_\_\_\_

6. The followings are the signatures of:-

SELLER

Name \_\_\_\_\_ ID No. \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_

BUYER

Name \_\_\_\_\_ ID No. \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_

The agreement also indicates whether the purchase price shall be made in a single transaction or in instalments. An example of a sale agreement is provided above. Ballots or certificates similar to the one shown below will usually be issued at the end of the transaction as proof of the change in proprietorship where a land transaction has been conducted. Lost ballots can be replaced at the chief's office. One is required to pay a fee to get a replacement.<sup>62</sup> All the landowners that we spoke to said that they keep the ballot

in a secure location since they understand its importance when it comes to proof of ownership. They were also confident that no one would evict them from their land or structures. This sense of security is also derived from the fact that the chief (a government appointee) and village elders are involved in the land transactions. Their involvement creates a sense of legitimacy which is often relied on by individuals involved in these transactions. When asked about the risk of expropriation, one of our interlocutors articulated their views as follows;

*“Serikali ni wakina chief na ndio walinipea hapo, hawawezi nitoa na wao ndio walinipa shamba” (the chief is the government, and he is the one that gave me the land, he cannot evict me and yet he is the one who allocated the land to me)<sup>63</sup>*

The chief, who plays an integral role in these transactions, usually keeps what is commonly referred to as “The Black Book”. It is in this book that entries of the various transactions

MATHARE SQUATTERS RESETTLEMENT SCHEME

Certificate

This is to certify that

Name \_\_\_\_\_

holder of ID. No. \_\_\_\_\_

is the registered owner of Plot No. \_\_\_\_\_ in \_\_\_\_\_

Mathare Squatters Resettlement Scheme Nairobi, Kenya

District Officer \_\_\_\_\_

CHIEF MATHARE LOCATION \_\_\_\_\_

COMMITTEE CHAIRMAN \_\_\_\_\_

are recorded. This book is kept and maintained by the chief who does not avail

<sup>62</sup> Interview with informants in Mathare on 2<sup>nd</sup> June 2022.

<sup>63</sup> Interview with an informant in Mathare on 2<sup>nd</sup> June 2022.

any copies to any other parties. The chief in this case wields immense power as will be seen further below. Any disputes regarding ownership will often be mediated through the chief's office. The authority wielded by the chief informs the perceptions that most inhabitants hold of these offices and of the transactions. From the conversations with the inhabitants, one gets the impression that the chief is revered with their authority being considered to be even more sovereign than that of the national government. A resident plainly stated that "...the chief is the government here, the president and his deputy cannot get to Mathare, so it is only the chief's authority that matters here."<sup>64</sup> This position reflects both the presence and absence of the state. It conveys an understanding among residents that their lives and livelihoods remain beyond the reach of the state. The chief is a state agent who reports externally to other government functionaries, but also form part of the community and its informal socio-political networks. The chief's involvement in these transactions is indicative of the fact that the state's shadow will always cast on these informal transactions.

The secrecy surrounding the Black Book also creates room for the chief to make money from the individuals who may sometimes be granted limited access to it. Since the Black Book is a critical element in these transactions, the obligation to verify that proper entries have been made usually rests with the purchaser during the transaction. The Black Book also has an important evidentiary role. Its entries act as *prima facie* evidence of land and structure ownership within these informal transaction contexts. In addition to the entries in the Black Book, individuals can also draw from the strong social relations which they have formed in the settlements to support their ownership claims. When questions on proprietorship arise, individuals will rely on testimonies from their relatives and neighbors to prove that the land or structures belong to them.

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<sup>64</sup> Interview with an informant in Mathare on 2<sup>nd</sup> June 2022.

**Table 3:** Actors and obligations in informal land transactions

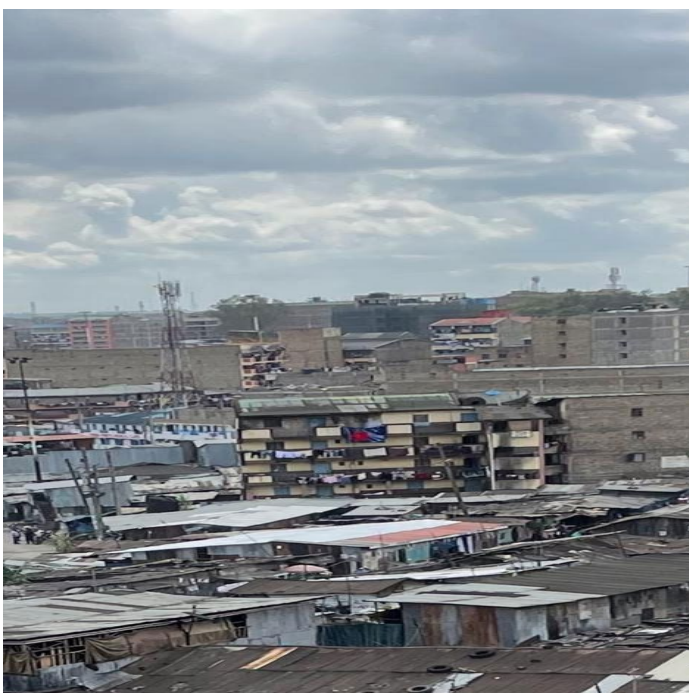
|    | Actor                 | Description  | Obligations  |
|----|-----------------------|--|--|
| 1. | Land/ structure owner | This includes persons that are either the first owners of the land/structure or who may have purchased the land/structures from previous owners.   | <ul style="list-style-type: none"> <li>- Procure a purchaser either from their own initiative or with the help of brokers/ middlemen</li> <li>- Draft a sale agreement to guide the transaction</li> <li>- Get individuals to witness the transaction</li> <li>- Arrange for a meeting at the chief's office for the transaction to be conducted</li> <li>- Receive payment of the purchase fee</li> <li>- Facilitate transfer of Ballot to the purchaser upon completion of the transaction</li> <li>- Pay broker and chief for the transfer</li> </ul> |
| 2. | Purchaser             | This could be a new entrant in Mathare or an existing tenant who may want to change their status from tenant to structure owner.   | <ul style="list-style-type: none"> <li>- Verify legitimacy of the seller and authenticity of the documents provided</li> <li>- Procure witnesses during the transaction</li> <li>- Pay purchase fee and any attendant fees required</li> <li>- Contact the utility providers to update them on the new ownership arrangements</li> </ul>   |
| 3. | Broker/ middlemen     | These are individuals within the settlements who scout for potential transactions in the settlements. In some cases, they will introduce a potential seller to a potential purchaser. They are often allocated a commission from the transactions. | <ul style="list-style-type: none"> <li>- Identify potential sellers and buyers</li> <li>- Sometimes help in the negotiation processes</li> </ul>   |
| 4. | Village elder         | They are individuals within the various villages who facilitate the administration of the various localities. They are in some cases incorporated in the official administration systems.  | <ul style="list-style-type: none"> <li>- Can play role of initial allocation of vacant land and subsequent subdivisions of land</li> <li>- Help with verification of the seller to establish that they are the legitimate owners</li> </ul>  |

|    |              |   |  |
|----|--------------|---|--|
|    |              |   | <ul style="list-style-type: none"> <li>- Sometimes act as witness to the transactions</li> <li>- Help with resolving any disputes that might arise from the transactions</li> <li>- Receive fees from individuals who may want to carry out renovations to their structures</li> <li>- Exercises general control over developments in the settlements</li> </ul> |
| 5. | Chief        | This is a government appointee assigned to an administrative unit in the settlements. In most cases, the chief will be drawn from among the members of the community. | <ul style="list-style-type: none"> <li>- Keep and maintain the Black Book where all transactions are recorded.</li> <li>- Verify the authenticity of the documents held by the purchaser</li> <li>- Issues a Ballot to the purchaser and updates the records</li> <li>- Receives between KES. 10,000-30,000 to facilitate transfer.</li> </ul>                   |
| 6. | Witnesses    | Seller and purchaser are usually required to bring individuals who will witness the transaction   | <ul style="list-style-type: none"> <li>- Witness the transactions</li> <li>- Help during dispute resolution</li> <li>- Receive payment for their roles as witnesses</li> </ul>   |
| 7. | Other actors | Includes utility supplies (both authorized and unauthorized), tenants   | <ul style="list-style-type: none"> <li>- Utility providers create new relationships with the new land/structure owners</li> <li>- Tenants to keep paying rent to the new structure owner</li> </ul>  |

## 6. Navigating land disputes

Contestations over ownership and use of land remains a common feature in Mathare. To begin with, the initial allocations of land in Mathare are in some cases shrouded in mystery and controversy. This is a pattern that can be traced in the entire history of the settlements and even in the current moment. Presently, the contestations that we see are primarily driven by the high demand for land in the settlements and in the city generally. In Mathare, the high demands for housing have resulted in rapid densification in many villages with numerous multistorey structures being a common feature replacing the old tin structures.<sup>65</sup> It is worth noting that Mathare borders the sprawling Pangani and Eastleigh neighborhoods to the west and southwest respectively. Rapid growth in these two areas has seen the demand for housing far outstrip supply.<sup>66</sup> Mathare's location then makes it susceptible to the population pressures in the surrounding neighborhoods which will have a spillover effect on its villages. The observable shelter typologies in Mathare can also facilitate our understanding of the state of land disputes in the settlements. Mwau *et al* observe that tenements are common in villages with *de facto* tenure security while shacks and other non-permanent structures are more prevalent in areas where disputes over land are common.<sup>67</sup>

The land markets in Mathare are defined by numerous actors who are involved in the allocation processes and in defining the ways in which the land can be used. The involvement of these actors creates conditions for the emergence of overlapping claims. It also intensifies disputes over land and housing. The situation is further exacerbated by the limited transparency in ownership and by the difficulties in establishing the legitimate owners of the land. The historical nature of some of these claims, and the difficulties in proving them further complicates the situation. As noted in the discussions above, it is common for individuals to bring claims against the land buying



companies and cooperatives on the basis that they are legal heirs to the estates of deceased shareholders. Given the prolonged nature of these disputes, shareholders have in some cases died before their claims are resolved. This leaves their successors with heavy evidentiary burdens which they must discharge before any land allocations are made to them. In cases where genuine shareholders have died intestate, the lengthy probate trials will affect claims from their successors as courts are hesitant to entertain claims by individuals who are yet to be declared as the lawful administrators of the deceased's estate.

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<sup>65</sup> Mwau, B. et al, 'Urban transformation and the politics of shelter: understanding Nairobi's housing markets', (2020) iied Working Paper, 59.

<sup>66</sup> Asoka, W.N. et al., 'Effects of population growth on urban infrastructure and services: A case of Eastleigh neighborhood Nairobi, Kenya', (2013) 1(1) Journal of Anthropology & Archaeology, 41-56.

<sup>67</sup> Mwau, B. et al, 'Urban transformation and the politics of shelter: understanding Nairobi's housing markets', 59.

Additionally, some of the shareholders in these companies are advanced in age and may be unable to participate in the company activities like annual general meetings and verification of membership. This leaves them vulnerable to dispossession by other members or directors of the companies. Some of the elderly shareholders have since lost the documents which they may use to prove ownership, which leaves them vulnerable to expropriation.<sup>68</sup> Lack of documents also presents difficulties when establishing who the legitimate shareholders in the companies are. This creates room for overlapping claims especially in cases where ownership documents have been fraudulent allocated to other individuals without knowledge of the legitimate owners. It was noted during our interviews with some of the inhabitants that conflicts between elderly shareholders and some youth groups are very rampant in the settlements as the youth groups view the elderly landowners as easy targets for dispossession.<sup>69</sup> These intergenerational conflicts have pushed the elderly landowners to sell their land to avoid the risk of forceful occupation by youth groups. Conflicts across the settlements are then reproduced in this manner and with changes in power dynamics in the settlements.

Mathare featured prominently in the violence that followed the 2007 general elections. Even before the elections, there were already heightened tensions in the settlements over what some perceived to be the distorted distribution of land with conflicts between landlords and tenants being common.<sup>70</sup> Some tenants and gangs took advantage of the post-election violence to evict landlords who also resorted to hiring gangs to defend against the forceful takeover of their structures.<sup>71</sup> In Mathare 4A, it is reported that a gang of youth forcefully evicted a woman from her house which she had obtained through the Amani Housing Trust Mathare 4A Development Program.<sup>72</sup> The aftermath of the political violence and the peace settlement that followed in 2008 saw increased numbers of land claims by the individuals who had been evicted from the parcels of land whose ownership they claimed.<sup>73</sup>

### ***Box 3: Anatomy of a land dispute***

The land on which Mathare Mabatini Village is built is situated in the Mathare Valley off Juja Road, near the Mathare Chief's Camp. It borders Mathare Polytechnic and Mathare Special School. It has a total acreage of 1.9 acres. This land belongs to the City Council of Nairobi. The inhabitants received confirmation of this fact from the Commissioner of Lands in August 2010. They had written to the Commissioner to check the status of the land. In a letter dated the 24<sup>th</sup> of August 2010, the Commissioner of Lands confirmed that the land on which their homes are located has not been allocated to any party. The residents claim that they have been in occupation of this land since the early nineteen seventies. According to our interlocutor, there are 348 families residing in the village distributed as follows: 1) residential and business houses for approximately 1000 people 2) three churches 3) a school.

For most of the forty years in which they occupied the land, the residents lived in deplorable conditions, with no infrastructure or amenities such as roads, water, sewer, or toilets. On 14<sup>th</sup> December 2007, they wrote to the City Council of Nairobi requesting it to allocate them the land on which their village was built. In its letter dated 24<sup>th</sup> January 2008 the City Council of Nairobi informed them that there was a ban on allocation of government land. In a subsequent letter dated 26<sup>th</sup> May 2008, the City Council informed the residents that it would not allocate land to individuals, but that it would allocate the land to them communally as part of the government's slum upgrading

<sup>68</sup> Interview with a company shareholder on June 16<sup>th</sup>, 2022.

<sup>69</sup> Interview with informants in Mathare on 2<sup>nd</sup> June 2022.

<sup>70</sup> CIPEV, *Report of the Commission of Inquiry into Post Election Violence* (Government Printers, 2008) 198.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid, 197.

<sup>73</sup> Interview with informants in Mathare on 2<sup>nd</sup> June 2022.

process. It therefore advised them to join an ongoing slum upgrading process which the City Council was undertaking.

The residents of Mabatini followed this advice and undertook, together with Muungano and other civil society organizations, activities intended to improve their living conditions. They have, with the knowledge, consent, and participation of the City Council: constructed a public toilet for use by the residents; collaborated with the Nairobi Water and Sewerage Company, for provision of a water kiosk to supply water; and commenced surveying the land and preparing plans for the upgrading of the settlement. The residents worked closely, and communicated regularly, with the City Council of Nairobi with the clear objective of upgrading the land on which they live and having the land allocated to them on a communal basis. In a letter dated 22<sup>nd</sup> December 2008, the City Council commended the residents for participating in the slum upgrading process, encouraged them to continue, and reiterated that its ultimate aim was to provide them with secure tenure.

In late 2008, the residents began to hear rumours to the effect that different parcels of land on which their village was located had been allocated to various individuals. One of the parcels of land said to have been allocated was title no. L.R. 219/110. On inquiring in writing from the City Council whether the land had indeed been allocated, they were assured that this was not the case. The City Council expressly stated in its letter dated 9<sup>th</sup> September 2008 that ‘any purported allocation of the said land did not emanate from our office.’ An individual, Samuel Ojowa Achieng, claimed to have been allocated L.R. No. 219/110. This is the land on which the residents’ public toilet and water kiosk stand. He commenced construction on the land in 2010. Despite a court order issued on the residents’ application in High Court Case No. JRELC 72 of 2010, Ojowa continued construction on the land. He claimed to have been allocated the land by the City Council of Nairobi in 1996. The residents are convinced that the allocation of the Mathare Mabatini Village could not have taken place in 1996 because of the Council’s conduct in its communication with the residents.

In February 2009, the Director of City Planning published in the Kenya Gazette of 27<sup>th</sup> February 2009 a notice under the Physical Planning Act inviting objections to a Part Development Plan (PDP No. CP/FP/ZONE/71136/02/09) for proposed sites for Jua Kali sheds in Mathare. The Part Development Plan pertained to the Mathare Area and to the land on which Mathare Mabatini Village is situated. The Notice was issued on behalf of the Director of Physical Planning and directed that objections be sent to the Director of City Planning. The residents lodged their objection and expected that the Director of City Planning would take their objections into account or indicate its rejection of their objection, but it did not.

Indeed, in April 2010, the residents were shocked to discover that the City Council had approved plans by Samuel Ojowa Achieng to develop ‘warehouse Class Buildings Proposed Workshop’ on the land allegedly known as L.R.219/110. Had the land been allocated in 1996, there would have been no need for a PDP in 2009 since a publication of a PDP is the first step towards alienation of public land. On 9<sup>th</sup> of August 2021, the Environment and Land Court issued a ruling on the case directing the City Council of Nairobi to cancel the allocation to any individual of the land on which Mathare Mabatini Village stands or any part of it, and to allocate the land on which Mathare Mabatini Village stands to the residents of Mathare Mabatini Village on a communal basis.<sup>74</sup>

Samuel Ojowa Achieng has filed an application to the Court of Appeal, the court is yet to rule upon the application. The residents have filed their submissions and responses. Currently L.R.219/110 is occupied by three individuals who were allocated the land by Samuel Ojowa. The three individuals have built a structure on the land. Presently, the residents are engaging with the authorities to ensure that the land is allocated to the members of Mwangaza Mabatini Housing Cooperative as squatters. They are however living with uncertainties as the three individuals currently occupying the land continue to frustrate them. The residents also fear that they may not be able to afford a lawyer to help them prosecute the case.

*Source: Interview with a resident of Mabatini village*

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<sup>74</sup> *Republic v Attorney General & another Ex-parte Peter Njoroge Muiruri & 9 others* ELC Judicial Review 7 of 2018.

Disputes in Mathare often oscillate between informal and formal channels of adjudication. Informal channels appear to be most preferred by the residents as they are considered to be more accessible and familiar with the local contexts.<sup>75</sup> Local administration agents like chiefs and village elders play prominent dispute resolution roles in the settlements. As noted earlier, these individuals are perversely implicated in land transactions in the settlements. They are custodians of important records in the settlements that can aid in dispute adjudication processes. We have seen how the chief's role in maintaining the black book is important in facilitating the informal land transactions in the settlements. We have also noted that the village elders will in some cases act as witnesses to the land transactions between parties in the settlements. The dynamic roles that these actors play during land transactions places them at the centre of land and other related disputes. Additionally, the chief in their formal capacity is mandated with dispute resolution within their jurisdiction. Their exercise of this mandate acts to complement other formal dispute resolution systems like the courts. Land buying companies and cooperatives also have internal dispute resolution mechanisms which affected parties can utilize.<sup>76</sup> Youth groups and other informally organized groups can also act as witnesses whenever disputes arise.

In some cases, these disputes enter formal adjudicatory spaces like the courts. This is often the case where a claim is instituted against formal actors like government agencies that are mandated with road construction. We also see court cases being instituted in cases where the land in question is owned by a cooperative or a land buying company. In such cases, the company directors play crucial evidentiary roles as they are often called upon during trial to guide the court on the question of ownership.<sup>77</sup> Litigation based on acts of trespass are also common in the settlements particularly in cases where claimants have some forms of documentation to prove ownership. In *Mathare Quick Service Limited and 7 others v Kenya Urban Roads Authority*,<sup>78</sup> the plaintiffs filed an application seeking an order that the defendant be restrained from trespassing, or in any way interfering with or demolishing structures on LR No. 36/V/360, LR No. 36/V/333 and LR No. 36/V/338 until the matter was heard and determined. The court in determining the application acknowledged that ownership of the aforementioned plots was not in dispute. It further observed that the upgrading of the Mau Mau road would affect the plaintiffs' plots. In its decision, the court noted that despite the plaintiffs being the owners of the property, public interest overrides private rights warranting the construction of the road, even if this was detrimental to the plaintiffs. It then held that the plaintiffs were entitled to compensation for the sections of their plots that would be affected by this.

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<sup>75</sup> Interview with informants in Mathare on 2<sup>nd</sup> June 2022.

<sup>76</sup> Interview with Mathare Quick Service Limited Directors on June 16<sup>th</sup> 2022.

<sup>77</sup> See *Nyokabi Karanja and others v Kamuingi Housing Company Ltd* H.C. Civil case no. 1508 of 1994.

<sup>78</sup> ELC No. 743 of 2015. See also *Mathare United Traders and Famers Co Ltd v Wambui Maina & 22 others* ELC Case No. 614 of 1998.

## 7. Conclusion

Understanding existing claims and establishing accurate perceptions on tenure security can be achieved by gathering perspectives from the range of stakeholders that are involved in land transactions. The goal of this scoping study was to systematically document existing rights and claims to land, and transaction norms, in Mathare through a deliberate engagement with the existing knowledge archives in the settlements. In essence, it sought to understand the “rules of the game” when it comes to the allocation of land and the actors that are involved in these processes. It additionally engaged with questions on land disputes by examining how some of these disputes emerge and the existing dispute resolution mechanisms in the settlements. This work should be treated as an initial scoping of land tenure arrangements and delivery systems in Mathare. What this means is that the findings outlined herein should not be considered as definitive but as a documentation of the vibrant land markets in these settlements and innovation by inhabitants of the city who have been left out by the formal land delivery systems. Understanding these will be useful in our quest to develop pragmatic mechanisms for securing tenure and addressing the drivers of inequality within these marginalized contexts. The findings here also underscore the importance of liberating ourselves from the analytical restrictions inherent in pursuing the conventional formal-informal binary when examining transaction norms in informal settlements. There is then a compelling case for more grounded analyses which take as their primary reference point the voices and knowledge registers in spaces that are traditionally marginalized. Engaging with these and other knowledge registers will perhaps facilitate:

- An understanding of why the existing tenure models have failed to improve living conditions in Mathare;
- An understanding of the policy issues related to adopting a more expanded recognition of the range of interests in Mathare;
- An assessment of the legal and administrative mechanisms for recognizing and securing the diverse range of claims and rights to land in Mathare, while balancing the delicate socio-political implications;
- The development of an acquisition framework for the range of interests that are identified in Mathare
- Development of an appropriate valuation framework to facilitate the acquisition of the interests that are identified above
- Identification of the openings in the law that can be explored to develop more realistic standards that can be adopted by planning agencies;
- Identification of pathways that planning agencies can explore to accommodate the plurality of interests within these complex contexts;
- The development of more inclusive and locally driven land tenure solutions;