

# OPPORTUNITIES OF TRADITIONAL POWER STRUCTURES IN RESOLVING PROPERTY INHERITANCE CONFLICTS IN MERU COUNTY

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## **Abstract**

*Conflicts over inheritance of property in Africa continue to be resolved by both the conventional judicial systems and the traditional power structures. These traditional structures are the customary decision making organs in the society whose authority originates from the ancestors and is believed to be divine. Their decisions therefore, cannot be questioned or changed. The study therefore, sought to analyze opportunities of traditional power structures in resolving property inheritance conflicts in Meru County, Kenya. This study used a descriptive survey research design to analyze opportunities of traditional power structures in resolving property inheritance conflicts in Meru County, Kenya. Both qualitative and quantitative data was collected. The target population comprised Njuri Ncheke elders who participated in resolving inheritance related conflicts and Njuri Ncheke leaders who were the key informants. To select participants for this study, purposive sampling was used. The sample size comprised all the 54 Njuri Ncheke committee members who included the chairperson, the secretary, and the treasurer from all the 18 Njuri Ncheke Centres in Tigania East. It also included 180 elders of Njuri Ncheke who were involved in resolving inheritance conflict cases in Tigania East and 42 heads of households whose inheritance conflict cases were resolved by Njuri Ncheke. Data collection was done through in-depth and key informant interviews, Focus Group Discussions (FGDs), and direct observation. Data was coded and analyzed according to themes emanating from the narratives. The study revealed that Njuri Ncheke as a traditional institution that offers inheritance conflict resolution has inherent opportunities that for alternative conflict resolution in Tigania East. The key finding was that Njuri Ncheke is not a corrupt but a fair institution in regard to resolution of conflict on property inheritance. The study recommended that Njuri Ncheke elders be used in the fight against corruption at local, national, and international level.*

**Key terms:** Property inheritance, Power structure, Tradition, Meru Community

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## INTRODUCTION

Property inheritance, though governed by tradition and custom, are in modern times influenced by international treaties and conventions such as International Covenant on

Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Convention on the Elimination of all forms of discrimination against Women. The provision in these treaties, play a crucial moderating role with regard to equal rights and access to property (Ceci, 2000).

However, scholars like Richardson (2004), Lastarria-Cornhiel (2000) argue that some states that are members of the UN and are signatories to these treaties allow duality of systems that deal with property inheritance. This means that the constitutions of some member countries have legal provisions that forbid discrimination based on sex and in many of them women and men are guaranteed equal rights and protection under the law. At the same time, these same countries allow traditional power structures to continue their operations on oversight and conflict resolution over property inheritance (Lastarria-Cornhiel, 2000). The presence of duality of systems that deal with inheritance conflict resolution in Meru County opens the question that this study seeks to address which is, “what are the opportunities of traditional power structures in resolving property inheritance conflicts in Meru County, Kenya?”

## LITERATURE REVIEW

Traditional power structures, in their bid to offer conflict resolution on property inheritance, offer numerous inherent opportunities that can be used in contemporary conflict resolution on property inheritance. According to Myers and Shinn (2010), the fact that traditional justice systems are informal, cost-effective, and expeditious offers an opportunity for them to be used profitably by the African communities. These scholars argue that, parties often sit together and resolve their dispute within a sitting or two. They also contend that, normal justice processes involve complex and technical procedures that consume a lot of time and resources. This makes the poor clients unable to access the justice systems since they cannot afford. They further claim that those living in poor rural areas and informal settlements in urban areas get the informal judicial system to fill the void. Rautenbach (2010), in support of this argument, gives an example of South Africa where traditional leaders have been given authority to try both civil and criminal matters, yet most disputes are resolved unofficially (Rautenbach, 2010).

Inclusion of a spiritual component in their dispute resolution is another opportunity found in the traditional justice system. According to Kariuki (2010), traditional healers, diviners, and seers take part in the process to seek the truth at the core of the dispute. Kariuki claims that, the spiritual nature of dispute resolution is because Africans are still beholden to their ancestors, the dead and they seek to make peace with them. Karuiki further argues that in contrast, the Western-style justice systems are secular and do not include rituals. He adds that, the Western justice system criminalizes certain acts such as witchcraft and sorcery (Kariuki 2010).

The other opportunity in traditional African Justice System is its focus on social harmony. According to Myers and Shinn (2010), it focuses on the restoration of social harmony and social bonds between disputants unlike the formal mechanisms which are destructive and leave wounds unhealed while causing new ones. Myers and Shinn (2010) contend that the Western Justice System is in principle very different from the African justice System. They

further claim that Western system is individualistic, retributive and emphasizes a winner-loser paradigm in resolution of disputes (Myers and Shinn, 2010).

The various methods of conflict resolution used by the elders in the traditional African societies that ensures harmony include mediation. According to Olaoba (2005), mediation is an old method of conflict management surrounded by secrecy, which involves non-coercive intervention of the mediators(s), called third party to either reduce or go beyond or bring conflict to peaceful settlement. Olaoba (2005), described mediation as a method of conflict resolution that had been so critical to traditional society. The mediators usually endeavored that peace and harmony reigned supreme in the society at whatever level of mediation (Olaoba 2005).

In mediation, according to Bright-Brock (2001), mediators are sought from within the communities of the parties involved Bright-Brock further says that, elders are respected as trustworthy mediators all over Africa, because of their accumulated experiences and wisdom. Bright-Brock further claims that their roles depend on traditions, circumstances and personalities, accordingly. The scholar further contends that, these roles includes, pressurizing, making recommendations giving assessments, conveying suggestions on behalf of the parties, emphasizing relevant norms and rules, envisaging the situation if agreement is not reached, or repeating of the agreement already attained (Bright-Brock, 2001).

Negotiation is the other method of conflict resolution used by the elders in the traditional African societies that ensures harmony. Negotiation, according to Williams (2000) is to harmonize the interests of the parties. Williams claims that, even when the conflict involves a member against his or her society, there is an emphasis on recuperation and reinsertion of errant member back into its place in society. He argues that, recovery of a dissident member be seen as the restoration of the harmony and integrity of the society (Williams 2000). In this regard, traditional power structures are viewed as offering valuable opportunities in resolving inheritance conflicts in the contemporary societies.

### **Methodology**

This study used a descriptive survey research design to gain insight into the opportunities inherent in the traditional power structures in resolving conflict on property inheritance in Meru County, Kenya. This study was carried out in Meru County, located in the former Eastern province of Kenya or the current Mt Kenya East region and it targeted *Tigania* East Sub-County which was sampled purposively. The Sub-County was chosen because it has more activities of *Njuri Ncheke* compared to the other sub-counties of Meru evidenced by the fact that it hosts the *Njuri Ncheke* headquarters. Additionally, there are many land disputes resulting from incomplete land adjudication process, which has seen many residents of *Tigania* East Sub-County without title deeds. *Njuri Ncheke* (the council of Elders in Meru County) deals with these inheritance cases.

The samples size included 54 *Njuri Ncheke* committee members from all the 18 *Njuri Ncheke* Centres in *Tigania* East. These were the 54 executive officials in the 18 Centres who comprised the chairperson, the secretary and the treasurer of each of the *Njuri Ncheke* centres in *Tigania* East; 180 *Njuri Ncheke* elders, who sat in the court proceedings during the hearing

of inheritance conflict cases in *Tigania* East Sub-County, but were not in the leadership of the *Njuri Ncheke* and 42 representatives of households, whose inheritance conflict cases had been determined in the last three years since 2012-2015. All the respondents were sampled purposively.

Data was collected using in-depth interviews and key informant interviews. This targeted 54 *Njuri Ncheke* Centre leaders who included the chairperson, secretary and the treasurer; 18 focus group discussions (FGDs) of 10 members each was used to collect data from the 18 *Njuri Ncheke* Centers of *Tigania* East. Direct observation was also used where the researcher attended *Njuri Ncheke* court proceedings and observed cases in progress without interrupting and not participating. An observation schedule was developed regarding the *Njuri-Ncheke* court proceedings. The observation was for the entire case from the onset to making of judgment. The researcher recorded everything experienced about the setting and the interactions among the people taking part in the case presented.

Data gathered from the study through the FGDs, direct observations, in-depth interviews, and key informants were transcribed. Field notes and information entered into the researcher's journal was also typed in an organized way. Data was organized using research questions and then coding was done. The findings were analyzed according to themes and described as reflected in the information gathered from the field. Results were presented using narrative discussions after which conclusions and recommendations were drawn.

### **RESPONSE RATE**

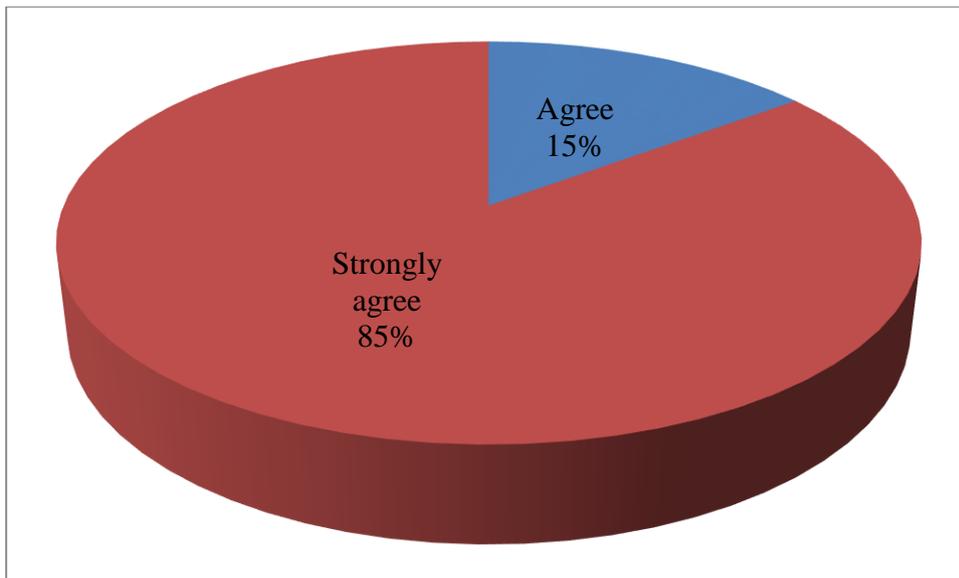
In this study, a total of 54 questionnaires were administered to the key informants all 54 (100%) of who responded. Another 42 questionnaires administered to the affected households were all 42 (100%) successfully filled. In addition, all 18 (100%) focus groups discussion were effectively carried out.

### **Findings and Discussion**

The researcher sought to analyze opportunities of traditional power structures in resolving property inheritance conflicts in Meru County, Kenya. Key informants, affected households and focus Group Discussions were asked to rate the opportunities available in traditional power structures in resolving inheritance related conflicts in Meru County. Some of the opportunities discussed include, efficiency and fairness of judgment delivered by *Njuri Ncheke*, proximity of the centres to the residents, affordability of the services by the council, use of native language in the proceedings, council members' knowledge of the local property dynamics, council members knowledge of reliability of the witnesses, residents' trust on the competency of the council. Others opportunities discussed are openness and transparency in the proceedings, government recognition of the council decisions, perceived fairness of the council judgments, experience of the council in resolving conflicts, and council operations consistence with cultural structure. The responses of the respondents were as discussed.

#### **Proximity of the Center to the Residents**

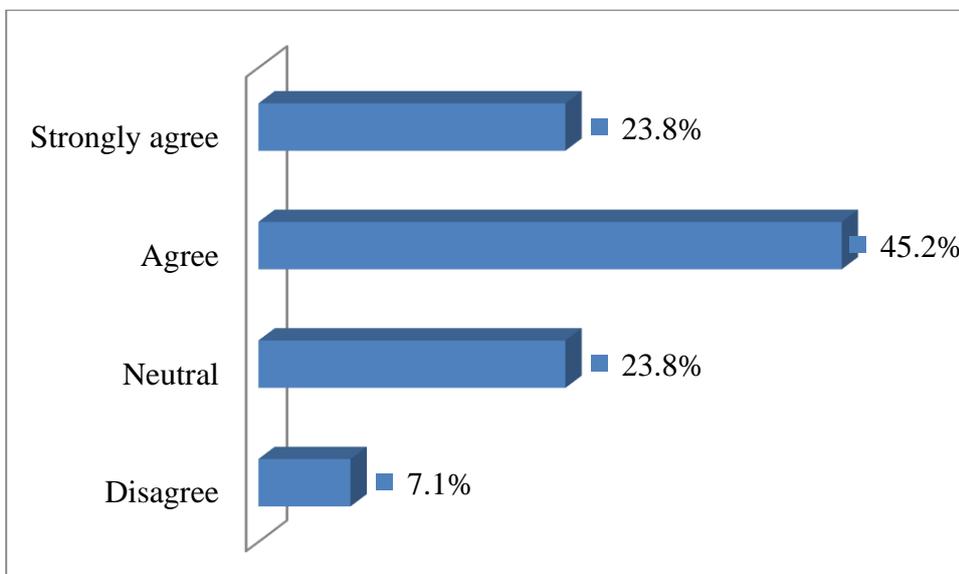
It was established that 85%(46) key informants strongly concurred that proximity of the center to the residents was strength to *Njuri Ncheke* in determining cases on property related disputes while the rest 15%(8.1) agreed. This result indicates that in the opinion of the key informants, proximity of the center to the residents had a positive impact on the operations on the council in administering justice on property related disputes since all the respondents believed so. This is illustrated in Figure 1.



Source: Field data (2017)

Figure 1: Proximity of the centre to the residents

This finding among the affected households is in line with the view of the Key informants because majority of the respondents 45.2 % (19) in this category concurred that proximity of center to the residents was strength, 23.8% (10) strongly agreed with the statement same as neutral. On the contrary, 7.1% (3) believed that proximity of the center to the residents was not strength. This result infers that proximity of the center to the residents worked in favor of the justice delivery system by *Njuri Ncheke* council as more than two thirds of the respondents reported so. This is illustrated in Figure 2.



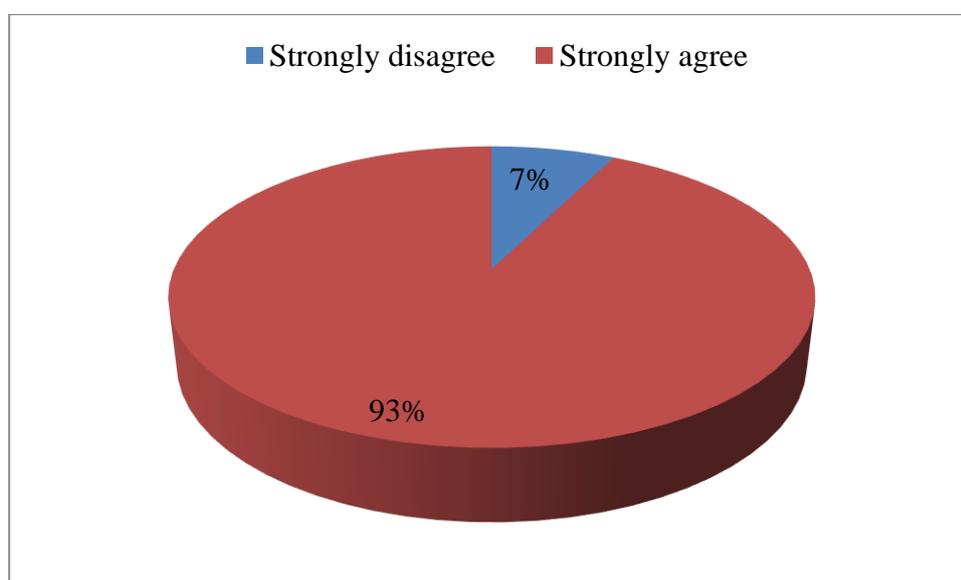
Source: Field data (2017)

Figure 2: proximity of the centre to the residents

All participants in the FGDs 100% (18), who cited courts close proximity of the court to the community that it serves, confirmed this view. This is result could be because the court is based at the grassroots where residents do not have to travel long distances in order to be served. This result is similar to the reason why traditional justice system is sought after in Ethiopia. On this Enyew (2014) says that the traditional natural resource conflict resolutions are more influential, more accessible, and stronger than those of the formal, imposed, and command-and-control regulatory system in many regions of Ethiopia. Enyew (2014) further notes that traditional dispute mechanisms in Ethiopia are more vibrant in rural areas. He contends that the formal legal system is not able to penetrate because of a lack of resources, infrastructure and legal personnel as well as a lack of legitimacy because the modern law is seen as alien, imposed, and ignorant of the cultural realities on the ground (Enyew, 2014)

### Affordability of the Services by the Council

On affordability of the services offered by the council, 93% (50) of the key informants firmly concurred that affordability of the services by the council was strength to *Njuri Ncheke* in determining cases on property related disputes while the rest 7% (4) strongly disagreed. This result indicates that in the opinion of the key informants, affordability of the services by the council greatly aided the operations on the council in determining cases on property related disputes since only less than a tenth of the respondents gave a divergent opinion. This is illustrated in Figure 3.

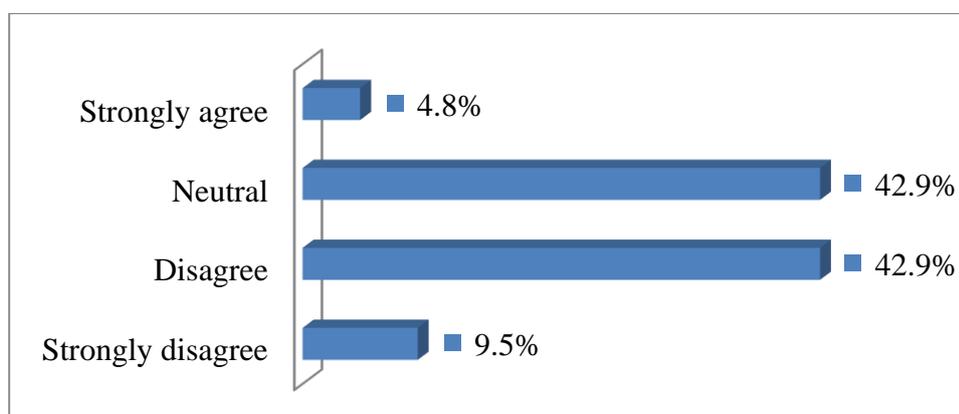


Source: Field data (2017)

Figure 3: Affordability of the services by the council

All the respondents also hold this finding from the affected households who cited delivery of justice to the poor as strength of the *Njuri Ncheke*. All the FGDs (18) said that even those who could not afford to pay for their cases because they were poor had a chance to be heard.

If any member of the community had an issue that required to be heard by the *Njuri* and asked the council to listen to their case, even without the (*gikiri kiaNjuri*), or porridge for the *Njuri Ncheke* their cases were listened to for free. At times the court moved to the area of conflict. That made it convenient for the parties because they did not need to incur any cost in terms of transport. The flexibility of the court in terms of location also made it easier for the court to gather firsthand information from the parties and the community. There was a discrepancy in this finding because from the research findings, it was established that 42.9% (18) of the respondents in the affected households disagreed that affordability of the services by the council was a strength same as neutral, 9.5% (4) strongly disagreed with the statement while 4.8% (2) strongly agreed. This indicates that, in the opinion of the affected households, the services offered by *Njuri Ncheke* council were not affordable as only less than a twentieth of the respondents held a divergent opinion. This is illustrated in Figure 4.



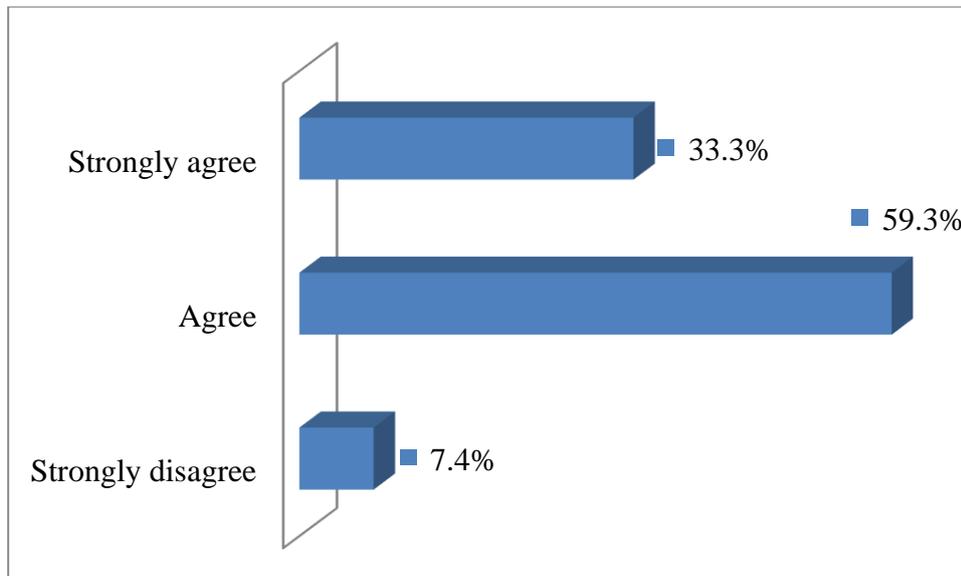
Source: Field data (2017)

Figure 4: Affordability of the service by the council

This finding agrees with the situation in Rwanda where reliance on local mediation is said to reduce the costs associated with the formal justice system (Mutisi, 2012).

### **Use of Native Language in the Proceeding**

The study established that 59.3 % ( 32) concurred that use of native language in the proceedings was strength to the council, 33.3% (18) strongly agreed while 7.4% (4) strongly differed. This is illustrated in Figure 5.

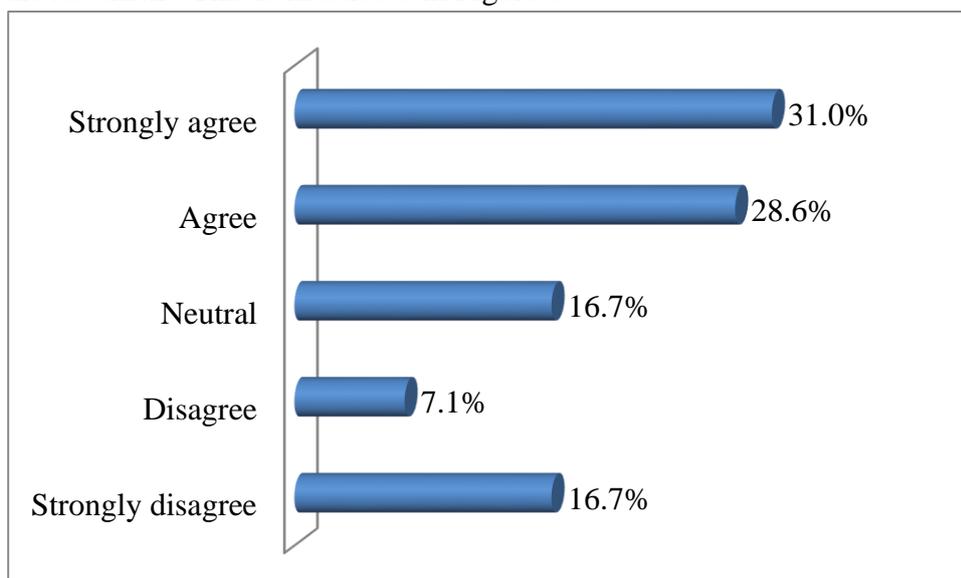


Source: Field data (2017)

Figure 5: Use of native language in the proceedings

This result implies that that in the opinion of the key informants, use of native language in the proceedings was strength to *Njuri Ncheke* council in regard to resolving property related disputes as less than a tenth of the key informants held a divergent opinion.

There was an agreement between the finding from the key informants and that of the affected households because majority of these respondents 31.0 % (13) strongly concurred that use of native language in the proceedings was strength to the council, 28.6% (12) agreed while 16.7% (7) were neutral. Conversely, 16.7% (7) strongly differed and 7.1% (3) disagreed with the statement. This is illustrated in Figure 6.



Source: Field data (2017)

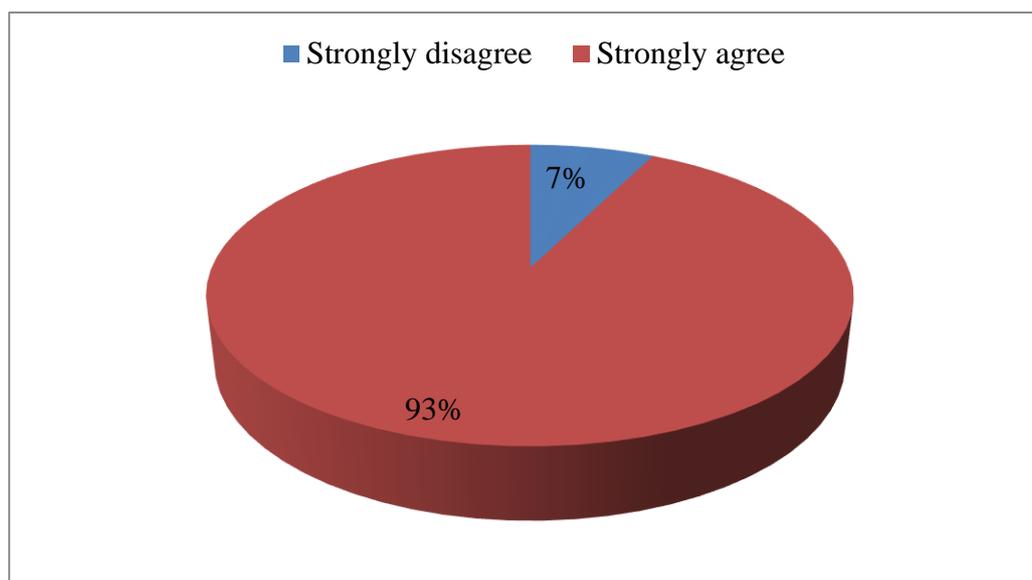
Figure 6: Use of native language in the proceedings

This result implies that, that in the opinion of the affected households, use of native language in the proceedings was strength to *Njuri Ncheke* council in regard to resolving property related disputes as less than a quarter of the respondents held a divergent opinion.

In agreement with this finding are Theresa and Buhari ( 2014) who contend that in Africa, disputants often take their cases to elders and neighborhood mediators who can be depended upon to resolve conflicts with dispatch in local language, using familiar standard of behavior (Theresa and Buhari , 2014).

### **Residents' trust on the competency of the council**

In regard to residents trust on the competency of the council,93%(50) of the key informants firmly concurred that residents' trust on the competency of the council was strength to *Njuri Ncheke* in determining cases on property related disputes while the rest 7% (4) strongly opposed. This is illustrated in Figure 11.

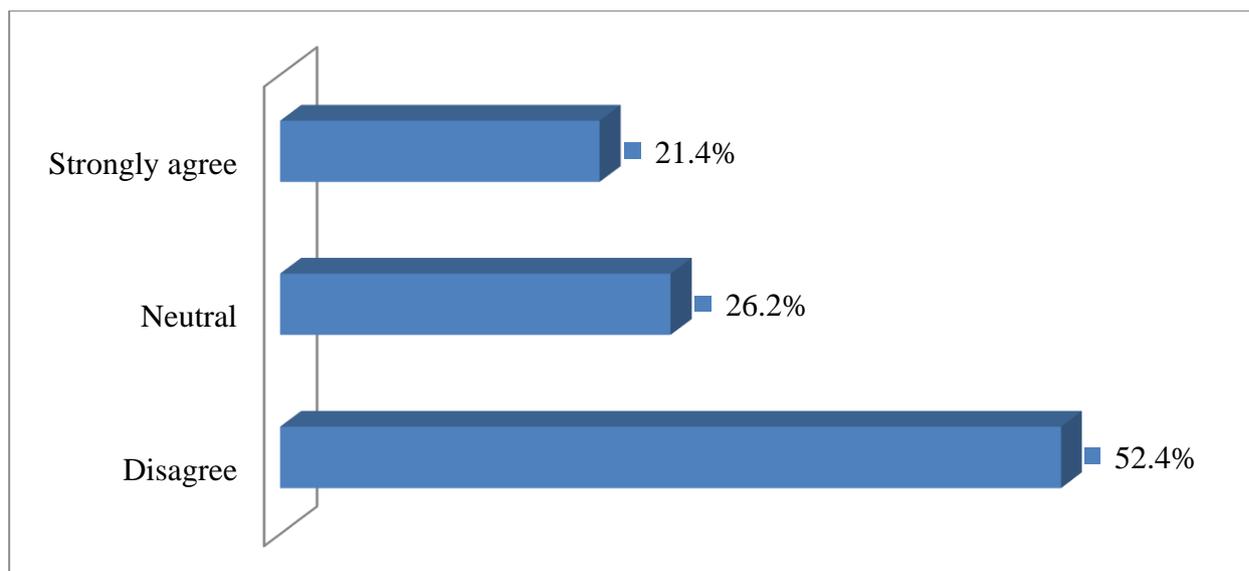


Source: Field data (2017)

Figure 11: Residents trust on the competency of the council

This result signifies that, in the opinion of the key informants, residents' trust on the competency of the council worked in favor of the institution in determining cases on property related disputes since only less than a tenth gave a differing opinion.

A discrepancy was noted in this finding in that 52.4% (22) objected that residents trust on the competency of the council was strength to *Njuri Ncheke*, 26.2% (11) were neutral while 21.4% (9) strongly agreed with the statement. This is illustrated in Figure 12.



Source; Field data (2017)

Figure 12: Residents trust on the competency of the council

This result signifies that in the opinion of the affected households residents' trust on the competency of the council was not strength to *Njuri Ncheke* as an institution of resolving property related conflicts as only a fifth of the respondents believed so.

This finding is in agreement with the views of Kariuki (2015) who says that resolution of conflict by elders is based on social/cultural values, norms, beliefs and processes that are understood and accepted by the community. Therefore, people are able to abide and comply by their decisions. Kariuki further argues that as a man grows old, his prestige increases according to the number of age-grades he has passed (Kariuki, 2015).

Kenyatta (1965) propounds a similar thought. He contends that the elder's seniority makes him almost indispensable in the general life of the people. For that reason, the presence or advice of elders is sought in all functions and matters including dispute resolution. Kenyatta further argues that, elders hold supreme authority and customs demand that they be given due respect and honours, not only when they are present, but also even when absent (Kenyatta, 1965).

Respect for elders, according to Bujo (1998), is cherished and firmly embedded in the morals, customs, taboos and traditions amongst Africans. According to Bujo the admonitions, commandments and prohibitions of ancestors and community elders are highly esteemed as they reflect experiences, which have made communal life possible up to the present (Bujo, 1998)

### ***Njuri Ncheke* opportunities in resolving Property Related Conflict as narrated by the key informants**

All the eleven opportunities item statements scored a mean of more than 4.0 implying the key informants perceived them as strengths. Item one - proximity of the center to the residents registered a mean of 4.85 (SD = .36), item two - perceived fairness of the council judgments enumerated a mean of 4.80 (SD = .41), item three - council operations are consistent with

cultural structure posted a mean of 4.74 (SD = .44) while item four – residents’ trust on the competency of the council enumerated a mean of 4.70 (SD = 1.06) same as item five - affordability of the services by the council. In addition, item six - experience of the council members in resolving conflicts registered a mean of 4.41 (SD = .5) same as item seven - government recognition of the council decisions and item eight - Council members knowledge of reliability of the witnesses. Further, item nine - openness and transparency in the proceedings, item ten - council members knowledge of the local property dynamics and item eleven - use of native language in the proceedings scored a mean of 4.11 (SD = 1.00). This is illustrated in Table 4.

**Table 4:**Key informants opinion on oportunities of *Njuri Njeke* Council in conflict resolution

<b>Opportunity Item</b>	<b>N</b>	<b>Mean</b>	<b>Std. Deviation</b>
Proximity of the center to the residents	54	4.85	0.36
Perceived fairness of the council judgments	54	4.80	0.41
Council operations are consistent with cultural structure	54	4.74	0.44
Residents trust on the competency of the council	54	4.70	1.06
Affordability of the services by the council	54	4.70	1.06
Experience of the council members in resolving conflicts	54	4.41	0.50
Government recognition of the council decisions	54	4.41	0.50
Council members knowledge of reliability of the witnesses	54	4.41	0.50
Openness and transparency in the proceedings	54	4.11	1.00
Council members knowledge of the local property dynamics	54	4.11	1.00
Use of native language in the proceedings	54	4.11	1.00

Source: Field data (2017)

On the other hand, out of the eleven strength item statements, eight scored a mean of between 3.5 and 4.49 implying the affected households perceived them as strengths, two items posted a mean of between 2.5 and 3.49 signifying the respondents were neutral, while one item registered a mean of between 1.5 and 2.49 indicating that the respondents did not view them as strengths.

Item one - council members’ knowledge of the local property dynamics recorded a mean of 4.10 (SD = 1.01), item two - openness and transparency in the proceedings enumerated a mean of 4.02 (SD = 1.00), item three - experience of the council members in resolving conflicts posted a mean of 4.00 (SD = 1.01) while item four - proximity of the center to the residents – registered a mean of 3.86 (SD = .87). Moreover, item five - Government recognition of the council decisions recorded a mean of 3.83 (SD = .88), item six - council operations are consistent with cultural structure enumerated a mean of 3.67 (SD = .82), item seven - perceived fairness of the council judgments scored a mean of 3.57 (SD = .83) and

item eight - use of native language in the proceedings registered a mean of 3.50 (SD = 1.44). This signifies that in the opinion of the affected household, the aforementioned eight items were strengths to *Njuri Ncheke* in respect to conflict resolution to property related cases.

On the other hand, item nine - residents trust on the competency of the council enumerated a mean of 2.90 (SD = 1.19) while item ten - council members knowledge of reliability of the witnesses scored a mean of 2.67 (SD = .95). This implies that for the two aforesaid items the affected households were not sure on whether they were strengths to *Njuri Ncheke* in respect to conflict resolution to property related cases.

Item eleven - affordability of the services by the council registered a mean of 2.48 (SD = .86) inferring that, in the opinion of the affected households, the services offered by the council in respect to conflict resolution to property related cases were not affordable. This is illustrated in Table 5.

Table 5: Affected households opinion on opportunities of *Njuri Ncheke* Council in conflict resolution

Strength Item	N	Mean	Std. Deviation
Council members knowledge of the local property dynamics	42	4.10	1.01
Openness and transparency in the proceedings	42	4.02	1.00
Experience of the council members in resolving conflicts	42	4.00	1.01
Proximity of the center to the residents	42	3.86	0.87
Government recognition of the council decisions	42	3.83	0.88
Council operations are consistent with cultural structure	42	3.67	0.82
Perceived fairness of the council judgments	42	3.57	0.83
Use of native language in the proceedings	42	3.50	1.44
Residents trust on the competency of the council	42	2.90	1.19
Council members knowledge of reliability of the witnesses	42	2.67	0.95
Affordability of the services by the council	42	2.48	0.86

Source: Field data (2017)

Of the eleven opportunity items presented to the key informants and the affected households, all the items except three were held as strength for *Njuri Ncheke* in dealing with property inheritance conflict. The three that had a discrepancy included affordability of the service rendered by *Njuri Ncheke*. The key informants felt that the service was affordable but the affected households felt that it was not affordable.

The other item with a discrepancy was council members having knowledge of reliability of the witnesses. The key informants felt that they had enough Knowledge and reliability of the witnesses whereas the affected households disagreed. The other item in discrepancy was that residents trust the competency of the council where the key informants concurred while those from the affected households objected. These strengths perceived by the residents tend to

confirms basis for acceptability of the process of *Njuri Ncheke* in dealing with property inheritance conflicts in *Tigania East*.

### **Conclusion**

Findings established that there are opportunities in *Njuri Ncheke* as a traditional institution involved in property inheritance conflict resolution. Findings indicated that *Njuri Ncheke* was viewed as an effective and fair institution in resolving inheritance related conflict because there was room for appealing to a higher court in case any party was not satisfied with the judgment. It also revealed that the time taken from the time the case was reported to the time it was determined was relatively short. It was also established that *Njuri Ncheke* is experienced in resolving conflicts in Meru County and this endears the council to the residents. The other opportunity that was established is proximity of the centres to the residents. This means that the residents do not have to incur a lot of cost in transportation to the institution in order to access their services. The study also found out that government recognition of the council decisions was another opportunity. The council operations consistence with cultural structure was another opportunity. This is because the community considers elders as wise and fair people and therefore it is easy for residents to honor the decisions made by the council regarding inheritance conflicts. It was also established that use of native language in the proceedings was an opportunity in using traditional power structures. The fact that the council used the residents native language made it easy for all involved in the conflict to participate unhindered by the medium of communication. The other opportunities noted by this study were that residents trust the competency of the council and that the council member's knowledge of reliability of the witnesses makes the institution more acceptable to the residents. Affordability of the service offered by the council was another opportunity. Respondents felt that the service of the *Njuri Ncheke* was relatively affordable to the residents as compared to the use of conventional judicial system where one has to hire a lawyer. The study concludes that, the positive perception of *Njuri Ncheke* by the residents of *Tigania East Sub-County*, offers an opportunity for the use of this traditional institution as an alternative affordable means to resolve inheritance conflicts in *Tigania East Sub-County*.

### **Recommendations**

The study recommends that *Njuri Ncheke* elders be used in the fight against corruption at local, national and even international level. The recommendation is that they can be used to share their experiences and ideals with the other institutions involved in the fight against corruption to enrich their Knowledge.

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