

## EVALUATING THE EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN MANAGING LAND CONFLICTS IN NAKURU COUNTY, KENYA

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### ABSTRACT

*Land conflicts in the County of Nakuru in Kenya have been an old problem, or rather a cluster of issues accumulating historically, almost as an unhealthy brew. This paper examined the effectiveness of the Alternative Dispute Resolution (ADR) process in solving land conflicts in Nakuru County in Kenya. It also illustrated how ADR has contributed to adopting quick, collaborative and culturally appropriate solutions for cases, such as the Olkaria IV geothermal project and the Participatory Forest Management. Challenges to such successes include political interference, marginalisation of groups not included, and the inability to integrate with a formal legal system. The study used a qualitative design through intensive interviews and focus group discussions (FGD) to solicit opinions of primary stakeholders, including landowners, local authorities, government officials, and displaced people. The research concluded that it is necessary to enhance coordination between the traditional and formal legal systems, increase the capacity of the local ADR, and decrease economic and social obstacles to sustainable and equal dispute resolution. The study highlighted the need to incorporate formal ADR with traditional conflict resolution to be more accessible, cost-effective, and culturally relevant. Also, the report showed that awareness campaigns, community workshops, and changes in legislation contribute to ADR adoption. The results indicated that ADR can significantly ease the pressure on the official court structure, as an alternative to a more practical and faster method of settling land disputes to build social harmony in Nakuru County.*

**Keywords:** Alternative Dispute Resolution (ADR), Land Conflicts, Nakuru County, Community Involvement, Conflict Resolution, Land Tenure, Mediation, Arbitration, Governance, Kenya

## INTRODUCTION

Land disputes are a significant global challenge, particularly in areas that value land as a critical economic resource. Main issues revolve around, access, right to use, and entitlement across individuals, communities, and national authorities. In modern times, urbanization and land ownership issues within the land market have increased, increasing the devastating impacts of land disputes globally. Particularly in managing land disputes, Alternative Dispute Resolution (ADR) mechanisms have become crucial, where mediation, arbitration, and negotiations constitute some of the mechanisms (Mohammed, Kwame & Remi, 2022). ADR is preferable to formal state courts, which have complex, lengthy proceedings that create a delayed justice delivery process. The world is moving towards ADR after learning of its effectiveness, cost-effectiveness, and possibilities to settle disputes without official court sessions.

Globally, most countries struggle to resolve land conflicts related to land ownership, distribution, and use. According to World Bank Report on Land Disputes (2022) the rapid urbanization, fast population growth, and climate change have further fueled land disputes in most areas, which continue to burden the resources available to them. Additionally, conflicts are traditionally based on long-term historical injustice, such as land alienation under colonialism or redistribution questions after them, that left their mark on societies worldwide. Land conflicts have become even more complex, influencing many countries to seek alternatives to conventional litigation. ADR has gained recognition as an effective solution to land disputes because it releases the pressure off the formal courts, facilitates faster dispute resolutions, and makes disputes easier to solve collaboratively. Mayer (2020) assert that countries like the United States, India, and South Africa have institutionalized ADR in land dispute management, especially where people have limited access to courts, including in rural areas.

Pillay (2016) argue that ADR mechanisms present the interaction between disputants with a platform to embrace dialogue, the search for settlements, and establish mutually acceptable solutions at a non-adversarial platform, like in litigation courts. The efficiency of the ADR in the level of land dispute resolutions is becoming widely recognized around the globe, especially when formal mechanisms are not accessible or saturated (Thompson & Carbone, 2017). ADR mechanisms, however, have a different application across cultures, the law, and the institutions. Community-based mediation is one of the indigenous ways of resolution, which is deeply rooted in practice in some areas of the world (Wojkowski, 2019). In others, formalization of ADR has increasingly come in the form of legal structures and institutions (Thomas, 2018). Despite the widely used ADR mechanism across the globe, the effectiveness of such a mechanism in addressing the cases of land disputes is usually determined by numerous factors such as the political context, the political history, and the resources available to facilitate such mechanisms.

### Statement of the Research problem

Land conflicts in Nakuru County have persisted despite numerous interventions, creating an urgent need for sustainable alternative dispute resolution (ADR) mechanisms. Alternative Dispute Resolution (ADR) mechanisms such as mediation, arbitration, and community-based reconciliation are increasingly promoted as viable options for managing land disputes (Mubangizi, 2017). However, there is limited empirical evidence on the specific conditions under which these mechanisms are most effective in the local context. Existing research has largely emphasized formal judicial systems, with insufficient attention to how socio-political, economic, governance, and resource-related factors influence the success or failure of ADR in Nakuru (Odhiambo, 2020; Nyamu-Musembi, 2021). This knowledge gap constrains the ability to develop contextually relevant and sustainable approaches to land conflict management. Therefore, this study seeks to evaluate the conditions under which ADR mechanisms most effectively manage land conflicts in Nakuru County.

## Research Objective

The following research objective guided the study:

- To evaluate the conditions under which ADR mechanisms most effectively manage land conflicts in Nakuru County.

## LITERATURE REVIEW

Land remains one of the most contested and sensitive resources in Kenya, serving as both a source of livelihood and a symbol of identity and power. In Nakuru County, land disputes have historically been at the center of ethnic tensions, forced displacement, and violent conflicts, particularly during politically charged periods such as the 2007–2008 post-election violence. The persistence of these disputes has underscored the inadequacies of conventional litigation processes, which are often lengthy, costly, and adversarial. Consequently, Alternative Dispute Resolution (ADR) mechanisms have emerged as vital approaches for managing land-related conflicts more efficiently and in ways that foster social cohesion. Globally, ADR has been recognized for its potential to resolve disputes outside of courtrooms, relying on negotiation, mediation, arbitration, and community-based dialogue to achieve outcomes that are faster, less formal, and more sustainable. In the Kenyan context, ADR has gained prominence following the enactment of the Constitution of Kenya (2010), which explicitly encourages its use in promoting justice and reconciliation. Traditional approaches such as council of elders' negotiations have historically played a crucial role in land dispute settlement, complementing modern mediation and arbitration processes. However, the effectiveness of ADR in addressing land conflicts in Nakuru County depends on multiple factors, including the legitimacy of mediators, community participation, cultural acceptance, political interference, and the enforceability of outcomes.

Scholars have debated the capacity of ADR to address the structural roots of land conflicts in Kenya, particularly those embedded in colonial legacies, ethnic politics, and economic marginalisation. While some studies highlight ADR's success in reducing litigation burdens and promoting restorative justice, others question its ability to address deep-seated historical injustices and entrenched inequalities. These contrasting perspectives underscore the need to critically examine ADR's role within specific local contexts such as Nakuru County, where land remains a highly politicised and contested resource. This literature review therefore explores the theoretical underpinnings, empirical studies, and contextual evidence on the application of ADR in managing land conflicts. It seeks to assess not only the strengths and limitations of ADR mechanisms but also the conditions under which they can be most effective in promoting peace, justice, and social stability in Nakuru County.

### Alternative Dispute Resolution in Resolving Land Conflicts in Nakuru County: A Critical Evaluation

Land conflicts in Nakuru County stem from a complex interplay of historical injustices, demographic pressures, and socio-economic disparities (Kanyinga, 2017; Sorrenson, 2016). Rapid urbanization and agricultural expansion have intensified competition for land, making disputes a pervasive feature across both rural and urban settings. Within this contentious landscape, Alternative Dispute Resolution (ADR) mechanisms have gained prominence as a viable approach to conflict management. Touted as a flexible, cost-effective, and expedient alternative to the overburdened formal judiciary, ADR offers the potential to de-escalate tensions and deliver culturally attuned solutions. This chapter assesses the viability of ADR in Nakuru by examining its practical applications through case studies and evaluating the roles of key stakeholders. While ADR demonstrates significant promise in fostering sustainable peace, its efficacy is frequently compromised by political interference, resource constraints, and deeply embedded power imbalances (Odhiambo, 2020; Nyamu-Musembi, 2021).

### ADR Effectiveness and Success Rate Based on Case Studies

The effectiveness of ADR is evaluated based on several criteria: procedural fairness, timeliness, capacity to

prevent conflict escalation, and contribution to long-term communal stability and satisfaction. Successful ADR processes in Nakuru are those perceived as impartial and that yield agreements respected and upheld by all parties, thereby restoring social cohesion. The Olkaria IV Geothermal Power Project represents a benchmark for successful ADR application. Facing significant land-related disputes, the Kenya Electricity Generating Company (KenGen) engaged local pastoralist and agricultural communities through a mediated negotiation process (KenGen, 2024). This approach prioritized inclusive decision-making, resulting in a comprehensive compensation agreement and environmental safeguards that addressed core community concerns. The establishment of follow-up mechanisms was critical in building trust and creating a replicable model for balancing developmental objectives with community rights. Similarly, the PELIS (Participatory Forest Management and Extension of Land Use Systems) Initiative undertaken by the Kenya Forest Service (KFS) utilized mediation to reconcile tensions between forest conservation goals and agricultural activities. Through an inclusive ADR process, stakeholders agreed to cease maize cultivation in ecologically sensitive zones, with KFS committing to alternative livelihood support. This case underscores ADR's potential to harmonize environmental protection with community subsistence needs.

In contrast, the case of *Kitili v Malusi & two Others* (2023) exposed critical vulnerabilities in ADR systems, particularly when traditional mechanisms operate without adequate judicial oversight. The uncritical adoption of a clan's resolution by a magistrate led to an appeal based on allegations of bias and procedural illegality. This case illustrates the dangers of unregulated ADR, including potential violations of constitutional rights, mediator partiality, a lack of trained practitioners, and poor integration with the formal legal system all of which can erode public trust and judicial integrity.

### **The Role of Stakeholders in ADR Mechanisms**

The efficacy of ADR is largely contingent on the actors involved and their ability to operate impartially. The National Land Commission (NLC), mandated to manage land disputes, provides essential legal legitimacy and can formalize ADR agreements (Government of Kenya, 2010). However, its effectiveness is hampered by insufficient resources for grassroots monitoring, bureaucratic inefficiencies, and a disconnect between formal legal frameworks and informal, culturally entrenched community practices that sometimes contravene national policy (Mubangizi, 2020). Local community leaders, including chiefs, assistant chiefs, and Nyumba Kumi elders, serve as frontline ADR practitioners. Their deep cultural knowledge and community trust make them effective mediators for localized disputes. Nevertheless, they often lack formal legal training, are vulnerable to political pressure and bias, and their rulings may lack legal enforceability, especially in cases involving influential parties (Fisher, 2020).

Non-Governmental and Faith-Based Organizations contribute significantly by providing mediator training, legal aid to vulnerable groups, advocacy for equitable policies, and dialogue facilitation. Their perceived neutrality is a considerable asset. However, their impact is limited by unstable funding, an inability to enforce agreements, and occasional resistance from communities skeptical of external intervention (Kenya Human Rights Commission [KHRC], 2013). The position of women in ADR processes remains particularly tenuous. Despite being primary land users, women are consistently marginalized due to patriarchal norms, economic dependence, and customary laws favoring male inheritance (Nyamu-Musembi, 2021). This exclusion results in resolutions that overlook their needs and rights, thereby undermining both the fairness and sustainability of ADR outcomes.

A principal impediment to effective ADR is the pervasive conflict of interest among powerful stakeholders. Political and economic elites frequently manipulate processes to advance their own agendas, thereby reinforcing existing power imbalances (Kanyinga, 2017). This problem is exacerbated by intense resource competition, where land scarcity transforms disputes into zero-sum games and ADR becomes a tool for control rather than reconciliation (Sengupta, 2020). The uncoordinated involvement of multiple actors government agencies, NGOs, and community elders often leads to contradictory approaches and operational

confusion. Furthermore, bias and partiality among community elders and facilitators, who may favor their own ethnic, familial, or political affiliations, severely compromise the neutrality requisite for a fair process (Bohm, 2020). Participation in ADR is influenced by trust in the process's fairness, prior experiences with ADR, and the perceived credibility of mediators. willingness to engage is significantly diminished by economic barriers such as transport costs, mediator fees, and documentation expenses that place ADR out of reach for impoverished parties. Cultural and social barriers, including patriarchal structures that inhibit the participation of women and youth, further limit inclusivity (Fisher, 2020). Moreover, marginalized groups often perceive the process as inherently biased against them, leading either to outright rejection of ADR or recourse to litigation or violence.

### **Legal and Policy Frameworks**

Kenya's legal framework strongly supports the use of Alternative Dispute Resolution (ADR) for land conflicts. The Constitution of Kenya (2010), under Article 159(2), explicitly recognizes ADR as an alternative to judicial proceedings, promoting mediation, arbitration, and reconciliation for faster and more accessible justice. This is reinforced by the National Land Policy (2009), which advocates for amicable, equitable resolution of land disputes, particularly those involving boundaries, ownership, and inheritance. A key strength of ADR in Nakuru County is its alignment with diverse land tenure systems, including statutory, customary, and community-based frameworks. Customary practices, often led by elders and respected community figures, play a vital role in resolving disputes in culturally appropriate ways. The National Land Policy encourages integrating these traditional mechanisms into formal ADR processes, enhancing their local legitimacy and effectiveness. However, the integration of traditional systems requires careful oversight to mitigate inherent risks, such as gender bias, where women particularly in rural areas are often excluded from land inheritance rights. Effective ADR thus depends on gender-sensitive training for practitioners and inclusive participatory models. Collaboration between ADR experts, local administration, and community leaders is essential for contextual understanding, accountability in land documentation, and the enforcement of agreements.

Nakuru County's approach to land conflict resolution is supported by a multi-level legal and policy architecture designed to institutionalize Alternative Dispute Resolution (ADR). The national framework is established by the Constitution of Kenya (2010), which under Article 159(2) promotes alternative forms of dispute resolution, and the National Land Policy (2009), which explicitly advocates for ADR to enhance accessibility and equity in resolving land disputes. The National ADR Policy (2020) builds on this by standardizing mediator training, procedures, and inter-sectoral collaboration to harmonize ADR practices across the country. Crucially, the National Land Commission Act (2012) empowers the National Land Commission (NLC) to arbitrate disputes and advise on national land policy, providing a formal oversight mechanism for ADR processes. At the county level, the Nakuru County Alternative Justice Systems (AJS) County Action Plan (CAP) operationalizes these national directives by promoting grassroots ADR implementation. The CAP prioritizes the use of mediation, arbitration, and conciliation, leveraging the cultural authority of local elders and community leaders to resolve disputes in a manner that reduces the burden on formal courts. This community-based focus is further reinforced by the Nakuru County Land Management Bill (2021), which seeks to formalize ADR systems by mandating collaboration between traditional authorities, local government, and landowners to resolve conflicts culturally and effectively.

Sector-specific legislation also contributes to this framework. The Forest Conservation and Management Act (FCMA) 2016 promotes ADR as a first resort for resolving conflicts related to forest land use and ownership, encouraging mediation before litigation to preserve resources and community relations. The effectiveness of ADR in Nakuru hinges on the alignment and cooperation between these layered policies. The national policies provide standardized guidelines and authority, while county-level adaptations ensure cultural relevance and local accessibility. However, a significant implementation gap persists. The potential for a cohesive and

effective ADR system is established in law, but its realization depends on overcoming challenges related to political will, resource allocation, and the practical integration of traditional and formal legal systems.

Despite a supportive policy environment, several obstacles impede the effective implementation of ADR mechanisms. Political interference remains a significant challenge, as land disputes are frequently exploited by local elites to consolidate power, undermining the neutrality and fairness of ADR processes. Poor land administration and outdated record-keeping further complicate ADR efforts. Inaccurate or missing land registries force mediators to rely on oral testimony or obsolete documents, weakening the legitimacy of outcomes and prolonging resolutions. Additionally, while the constitutional mandate for ADR is clear, subsidiary legislation such as the Land Act (2012) and the Land Registration Act (2012) lacks specific guidelines for ADR implementation. This regulatory gap leads to inconsistent practices and an absence of standardized oversight, reducing the coherence and reliability of ADR mechanisms across Nakuru County.

### **Scale of Land Conflict and Land Use Context**

Nakuru County exhibits several distinct types of land conflicts, each with unique drivers and manifestations. Agro-pastoral conflicts represent a significant category, primarily pitting pastoralist communities (e.g., Maasai) against agriculturalists (e.g., Kikuyu). These conflicts arise from competing land uses grazing versus crop cultivation and frequently escalate into violent confrontations, crop destruction, and livestock losses, particularly in areas like Gilgil and the Molo-Naivasha corridor (Kenya Land Alliance, 2020). The absence of coordinated grazing agreements and clear boundaries exacerbates these tensions. Conversely, agricultural land conflicts predominantly involve disputes over ownership, fraudulent title deeds, and historical injustices related to colonial and post-colonial land allocations. In regions like Mariashoni and Mau Narok, unclear ownership and overlapping claims fuel social tension and sometimes violence. These conflicts are often intensified by slow judicial processes, which fail to provide timely resolutions (Mwaura et al., 2021).

Land grabbing and forced evictions constitute another critical category, exemplified by cases like the Sururu Settlement Scheme, where government excisions and subsequent evictions disrupted communities and livelihoods. Such actions highlight the vulnerability of marginalized groups and the complicity of state and judicial actors in illegal land acquisitions (Odhiambo, 2020). Public institutions, including schools like Muslim Primary and Moi Primary, have also been targets, with developers exploiting legal loopholes and corrupt practices to encroach on land. Finally, a clear dichotomy exists between urban and rural land conflicts. Urban disputes, driven by rapid industrialization and migration, often involve illegal constructions, boundary conflicts, and land grabbing by powerful developers. In rural areas, conflicts frequently revolve around inheritance, historical injustices, and competition between landowners and landless populations. While urban conflicts often engage formal legal systems, rural disputes tend to rely on customary systems and local ADR mechanisms, though both are susceptible to political interference and corruption.

Land use in Nakuru is shaped by rapid urbanization, population growth, and economic pressures. The conversion of agricultural and pastoral land to residential and commercial uses has heightened competition and triggered conflicts. This shift is exacerbated by weak land governance, corruption, and inefficient registration systems, which allow powerful actors to manipulate ownership and land use for private gain. The case of the Sururu Settlement Scheme illustrates how government policies and urban expansion can disrupt traditional land uses and ignite prolonged conflicts. The effectiveness of Alternative Dispute Resolution (ADR) is heavily influenced by these land use dynamics. While ADR offers a culturally resonant and accessible alternative to litigation, its utility is limited in cases involving powerful interests, political corruption, and unclear ownership. For ADR to be effective, it must address underlying issues such as historical injustices, gender and social inequalities, and the exclusion of marginalized groups. Inclusive processes that incorporate traditional leaders, local authorities, and community representatives are essential for equitable and sustainable conflict resolution.

### **Economic Affordability of ADR Mechanisms**

Alternative Dispute Resolution (ADR) is frequently promoted as a cost-effective alternative to formal litigation, particularly for land conflicts in Nakuru County. Case studies, such as Environment & Land Case 111 B of 2017 and the Olkaria IV geothermal project, demonstrate ADR's potential to resolve disputes more efficiently and collaboratively. In the former case, after six years of protracted court proceedings, the parties opted for mediation, leveraging the constitutional provision for alternative justice (Government of Kenya, 2010, Art. 159(2)). Similarly, the Olkaria IV project utilized ADR to address conflicts between Kenya Electricity Generating Company (KenGen) and local communities over land use and compensation, resulting in a mutually acceptable solution. These cases underscore ADR's advantages: reduced time investment, lower direct costs compared to court fees and legal representation, and a collaborative approach that preserves community relationships. However, challenges persist. In the Olkaria case, inadequate involvement of project-affected persons and information asymmetries hindered the process. Additionally, disputes over cost-sharing, as seen in Environment & Land Case 111 B of 2017, reveal that while ADR may reduce expenses, it does not eliminate financial burdens entirely. These examples illustrate that ADR, though generally more affordable than litigation, is not without economic complications.

Despite its relative advantages, significant economic barriers limit ADR's accessibility for marginalized groups in Nakuru County. Direct costs, such as fees for trained mediators, legal documentation, and notarization, can be prohibitive for low-income parties. In complex land disputes, the need for expert consultations (e.g., surveyors, valuers) further escalates expenses. Indirect costs also pose substantial challenges. Transportation to mediation venues, particularly for rural participants, and opportunity costs from time spent in prolonged negotiations disproportionately affect small-scale farmers, daily wage laborers, and petty traders whose livelihoods depend on continuous work. Moreover, psychological costs are often overlooked. The emotional toll of protracted negotiations, particularly when power imbalances exist, can lead to stress and disengagement, especially for parties without legal representation. These cumulative costs direct, indirect, and psychological create a risk of economic exclusion, where only wealthier or well-connected parties can sustain participation in ADR processes. Consequently, rather than democratizing justice, ADR may inadvertently perpetuate existing inequalities in land conflict resolution, particularly for women, pastoralists, and economically vulnerable communities.

### **Capabilities of ADR Professionals**

The effectiveness of Alternative Dispute Resolution (ADR) in Nakuru County hinges significantly on the capabilities of its practitioners. ADR professionals including mediators, arbitrators, and negotiators play a critical role in resolving land disputes, which often involve complex legal, social, and cultural dimensions. Many practitioners possess formal education in law or social sciences, supplemented by specialized training programs such as those offered by the Mediation Training Institute (MTI) or the Chartered Institute of Arbitrators (CIArb) (Kenya School of Law, 2020). These programs equip professionals with essential skills in mediation, arbitration, and negotiation, ensuring they can navigate the intricacies of land conflicts. Beyond formal qualifications, practical experience is indispensable. ADR professionals in Nakuru often engage with community-based dispute resolution processes, collaborating with local elders and leaders to bridge modern legal frameworks with traditional practices. This combination of theoretical knowledge and hands-on experience enables practitioners to address emotionally charged and technically complex issues, such as unclear land titles, inheritance disputes, and historical grievances. Mediation is the most commonly employed approach, emphasizing dialogue and mutual agreement, while arbitration is utilized for more intractable cases, providing legally binding resolutions.

Despite the recognized expertise of many ADR professionals, significant challenges persist. A lack of standardized training programs results in uneven quality and consistency among practitioners, particularly in rural areas where access to advanced training is limited. This variability can lead to inconsistent application of

techniques and reduce the overall efficacy of ADR processes. Additionally, the integration of cultural sensitivity into training remains inadequate, despite its critical importance in a diverse county like Nakuru. However, opportunities for improvement abound. Enhancing training programs to include culturally nuanced approaches and expanding access to remote areas could significantly elevate professional standards. Incorporating modules on gender sensitivity, power dynamics, and community-specific traditions would better prepare practitioners to address the needs of marginalized groups, such as women and pastoralists. By fostering collaboration between formally trained ADR professionals and traditional leaders, Nakuru County can develop a more holistic and effective conflict resolution framework that respects both legal norms and local customs.

### **Metrics for Evaluating ADR Mechanisms Effectiveness**

The effectiveness of Alternative Dispute Resolution (ADR) mechanisms in Nakuru County can be evaluated through several key performance indicators (KPIs). Time efficiency is a critical metric, measuring the average duration from dispute initiation to resolution. ADR is designed to be faster than formal litigation, and tracking this metric helps quantify its efficiency gains. Cost-effectiveness is another vital indicator, comparing expenses related to ADR (mediator fees, documentation, logistics) with those of traditional court proceedings. This is particularly important for ensuring accessibility for low-income parties (CIFAR, 2024). Party satisfaction, assessed through surveys and interviews, gauges perceptions of fairness, transparency, and outcomes. High satisfaction rates indicate that ADR meets community expectations, while low rates signal areas for improvement. Compliance rates measure the extent to which agreements are adhered to post-resolution. High compliance suggests durable solutions, while low compliance may reflect unaddressed underlying issues or unenforceable terms. Dispute recurrence tracks whether resolved conflicts re-emerge, indicating the long-term sustainability of ADR outcomes. Low recurrence rates demonstrate the mechanism's effectiveness in addressing root causes (Kenya Law, 2022).

Sustainable resolution of land conflicts in Nakuru County depends on robust compliance mechanisms for ADR agreements. Regular monitoring visits by ADR officials or mediators help verify implementation, address emerging challenges, and reinforce accountability. For example, in Njoro, post-mediation monitoring ensured adherence to agreed boundaries, reducing tensions between communities. Community-based monitoring leverages local leaders, such as chiefs and elders, to oversee compliance (Kenya Law, 2022). Their cultural authority and understanding of local contexts enhance trust and legitimacy, as seen in the Banita Settlement Scheme, where community involvement ensured lasting resolution of a 20-year ownership dispute. Feedback channels, including hotlines and community forums, provide avenues for parties to report difficulties anonymously, ensuring ongoing responsiveness. These mechanisms are especially valuable in rural areas where access to formal institutions is limited. However, challenges persist, as illustrated by the Oljorai Phase II Settlement Scheme, where non-compliance occurred due to weak enforcement mechanisms. This underscores the need for greater legal backing of ADR outcomes, integrating them with formal judicial systems to ensure enforceability.

### **Theoretical Review**

This study was framed on conflict resolution theory that provide a robust lens for analyzing the complexities of land disputes and the application of Alternative Dispute Resolution (ADR) in Nakuru County. Conflict Resolution Theory, particularly Interest-Based Relational Approaches (Fisher & Ury, 1981), holds that conflict happens when needs and interests encounter conflict, and that the best means to resolve the conflict happens when conflicts turn from a focus on positions to a needed focus on interest. This approach focuses on negotiation, mediation, and collaborative problem-solving as dispute-resolving methods. A conflict resolution theory is also pertinent to the study, as it suggests ways the ADR processes can be employed to solve land disputes by referring to the fundamental interests of conflicting parties. Land conflicts in Nakuru County are based on multifaceted interests, including land use, ownership, and resources. The Conflict Resolution Theory

enhances comprehension of how ADR may advance a discussion between the opposing sides, emphasizing the win-win strategies instead of the positions of conflict contractors. However, the theory presupposes that both sides are driven by their desire to find mutually beneficial solutions, yet, in the case of Nakuru, power disproportion and ethnic factors tend to prevent the parties from reaching and resolving the actual negotiation. The status quo period may be in the interests of the local elites and may compromise the neutrality and effectiveness of ADR proceedings. There is a lack of consideration of power in land conflicts so that stronger groups can commandeer ADR procedures.

## **METHODOLOGY**

This study employed a descriptive qualitative research design to examine the use of Alternative Dispute Resolution (ADR) mechanisms in land conflict management within Nakuru County, Kenya. Data was collected through 45 Key Informant Interviews (KIIs) and Focus Group Discussions (FGDs) with a purposively and snowball-sampled cohort of stakeholders, including government officials, community leaders, landowners, and farmers. This primary data, capturing firsthand experiences and community perceptions, was triangulated with secondary data from historical records, government reports, and academic journals to provide historical context and validate findings. The research adhered to strict ethical protocols, including informed consent and confidentiality, to ensure reliability and validity.

## **RESULTS AND FINDINGS**

The study found out that there is a strong normative endorsement of ADR mechanisms at both national and county levels, enshrined in the Constitution of Kenya (2010, Art. 159(2)) and the National Land Policy (2009). Stakeholders widely acknowledge the theoretical advantages of ADR, including its potential for expeditious resolution, cost-effectiveness relative to litigation, and capacity for preserving socio-community relationships (Kenya Land Alliance, 2020). However, a significant paradox emerges: while ADR is formally embraced, practical accessibility remains constrained for marginalized demographics. Financial impediments, including indirect costs related to transportation, expert consultations, and opportunity costs, effectively preclude equitable participation for low-income claimants (Mubangizi, 2020).

A predominant finding is that the efficacy of ADR processes is critically undermined by systemic political interference and elite capture. Empirical evidence from multiple case analyses suggests that local power structures frequently co-opt mediation and arbitration forums to serve partisan interests and consolidate existing asymmetries in land ownership (Kanyinga, 2017; Odhiambo, 2020). This manipulation manifests as biased facilitation, the intimidation of vulnerable parties, and outcomes that legitimize disputed land acquisitions, thereby perpetuating cycles of conflict and disenfranchisement. The analysis of structural marginalization of vulnerable stakeholders identified a systematic exclusion of key demographics, particularly women, from meaningful participation in ADR proceedings. Despite their role as primary agricultural land users, patriarchal norms and customary inheritance practices often preclude women from being recognized as legitimate parties to a dispute (Nyamu-Musembi, 2021). Consequently, resolutions frequently fail to incorporate their claims or address their specific tenure security needs, resulting in outcomes that reinforce gendered inequalities and are unsustainable in the long term.

Although the integrity of ADR outcomes is contingent upon the proficiency and impartiality of its facilitators, the findings revealed a pronounced deficiency in standardized training and professional accreditation among local ADR practitioners, including community elders and appointed mediators (Kenya School of Law, 2020). This capacity gap results in inconsistent application of legal principles, procedural irregularities, and an inability to manage complex, multi-party negotiations effectively. The case of *Kitili v Malusi & 2 Others* (2023) exemplifies the legal vulnerabilities and loss of legitimacy that arise from poorly regulated traditional dispute resolution. A critical impediment to ADR's sustainability is the weak institutional linkage between informal resolutions and formal enforcement mechanisms. While agreements are often reached, the absence of

robust monitoring, evaluation, and compliance frameworks leads to high rates of non-adherence (Bohm, 2020). The data indicates that without structured follow-up and the possibility of formalizing agreements through the judiciary or the National Land Commission (NLC), settlements are frequently abandoned, leading to the recurrence of conflicts.

The study identified two key findings. First, ADR mechanisms in Nakuru County exist within a contested political economy of land. Their functionality is not merely a technical or procedural issue but is deeply embedded in, and often subverted by, prevailing power dynamics. Second, the potential of ADR to deliver on its promises of justice and stability is contingent upon addressing fundamental structural flaws. Technical improvements to the processes are insufficient without concomitant reforms that mitigate elite capture, enforce strict standards of neutrality, guarantee inclusive participation, and create seamless pathways for the enforcement of agreements. Therefore, the core challenge is not the absence of ADR frameworks, but the socio-political environment within which they are implemented.

## CONCLUSIONS

When assessing the level of success of Alternative Dispute Resolution (ADR) mechanisms in Nakuru County, some outstanding aspects have been identified, pointing out the shortcomings and the points of success. Perhaps the most prominent conclusion is that the consensus around ADR as a possible alternative to the court-based process seems to be increasing. Methods of ADR like mediation, arbitration, and conciliation have gained preference among the local people, mostly in regions where land disputes have plagued. The above methods are more open, economically feasible, and faster than the traditional judicial system. Embedding ADR to local governance models, particularly via community-based efforts, has enabled local leaders, including elders and chiefs, to play proactive roles in settling conflicts at the grassroots level. This has helped free up the burden previously experienced in formal courts, enabling a more responsive and timely resolution of conflicts. Nevertheless, the study also revealed some challenges that prevent the realisation of the best ADR mechanisms in Nakuru County. Although the mentioned areas returned positive results, the issue of political interference has appeared as a significant hindrance. In some cases, local elites have impacted the ADR processes in their interests. This has contributed to the marginalisation of vulnerable groups, especially women who have not managed to assert their rights over land using ADR. Also, a lack of awareness of ADR processes among the rural populations and a lack of resources for ADR infrastructure are among the reasons that have resulted in a patchy process of ADR mechanisms. In addition, the scattered state of land governance in Nakuru, coupled with the fragmented duties between different parties such as the National Land Commission (NLC) and the local bodies, has led to confusion, thereby inhibiting efficient conflict resolution. These results indicate that sweeping reforms and more allocations of resources are needed to empower the processes of ADR in Nakuru and make them more fairly applied. This study found that Alternative Dispute Resolution (ADR) mechanisms, particularly community-based mediation, are a culturally acceptable and effective alternative to the slow, costly, and often exclusionary formal court system for resolving land disputes in Nakuru County. ADR was shown to foster communication, preserve social bonds, and offer faster settlements. However, its effectiveness is significantly hampered by political interference, a lack of impartial and trained mediators, insufficient awareness among the populace, and the exclusion of marginalised groups, particularly women. The research identified that land conflicts in Nakuru are deeply rooted in colonial-era dispossession, ineffective post-independence reforms, ethnic tensions, and socio-economic pressures from population growth and urbanisation. To realise ADR's full potential, the study concludes that Nakuru requires substantive land reforms, increased public awareness campaigns, capacity building for local practitioners, and better integration between traditional ADR outcomes and the formal legal system to ensure enforceable and equitable resolutions.

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