

# LEGAL BARRIERS TO WOMEN'S ECONOMIC PROGRESS

BY: JUSTICE MARY KASANGO  
COMESA COURT OF JUSTICE

- ▶ Let me begin by quoting from a journalistic article published on Kenya's Capital FM platform on 14<sup>th</sup> March 2019 as follows:

*“.....achieving a gender-equal world requires social innovations that work for both women and men, leaving no one behind”*


# Convention on Elimination of All Forms of Discrimination Against Women(CEDAW)

- ▶ when I began to consider this topic I realized that there are, in existence, legal provisions which can assist women to make progress in the economic sphere. This is not to say there cannot be improvements in those provisions. One such provision is Article 11 CEDAW which states as follows with respects to the obligations of state parties to eliminate gender discrimination against women in economic spheres:
- ▶ ***“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment...”***

# Kenya Constitution

- ▶ Another legal provision that comes to mind is Article 27 of the Kenyan Constitution which has attempted to create a level playing field. That Article is entitled EQUALITY AND FREEDOM FROM DISCRIMINATION. In particular Article 27 (3) provides:
  - ▶ ***Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres.***

- ▶ While legislative solutions form an important precondition to achieving gender-equality, the translation of law into real-life results has been a challenge in the gender debate world over.

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- ▶ In order to show this dichotomy, I will give us real examples I encountered in my practice of law. I am Kenyan and you will, therefore, find my examples to be parochial but it is my hope that you will be able to relate them to your particular local circumstances. In my examples, you will find most of the times the barriers that women face, in their economic progress as in other fields, are sometimes not legal but are cultural, but their effects are very devastating. The other clarification I wish to make is that the examples I will give you are found in some communities in this country, but the fact that such a cultural beliefs exist should concern us.

- ▶ There are instances when, in some communities, a husband dies either from illness or accident, the wife is blamed for his death. This can lead to her being ostracized from her community and her worldly possessions are taken away from her.
- ▶ As I said earlier I wish to share with you real experiences I have encountered.

# FIRST EXPERIENCE

- ▶ Some years back an acquaintance, and a professional lady, lost her husband. He was shot in a botched car-jacking. She was blamed for his death by her in-laws on the allegations that she was having an extra marital affair and that the husband had been killed by the supposed lover. She was poisoned with a syringe, while in a public place by people she did not know. By the time she recovered from the poisoning she went home only to find it ransacked. All her possessions were taken. She got to know through the family grapevine that her in-laws were planning to have her killed.




- ▶ That acquaintance of mine left the country for fear for her life and that of her children and to date has never returned back. Obviously wherever she went she had to start her professional life all over again. Her economic status was no doubt adversely affected. The fact she suffered in the hands of her in-laws was not because the civil and criminal law did not protect her, no, there are sufficient legal provisions that could have protected her but faced with cultural beliefs and faced with law enforcers who are slow to act, she felt helpless and the only option she had was to flee the country.

# SECOND EXPERIENCE

- ▶ I have had the opportunity to serve my country as a judge in the rural areas. It is while serving there that I realized problems women folk encounter.
- ▶ In one such case the land where the woman in question lived with her deceased husband, was ancestral land without title. Family member had simply divided the land amongst themselves without obtaining title.
- ▶ When the lady's husband passed away the brothers of her deceased husband harassed her and when that did not work they physically attacked her and her children to the point where she would spend nights in the bush to avoid being killed.

- ▶ The lady came to court and I issued her with injunctive orders to stop her brothers entering her land. I ordered the local police station to enforce the order.
- ▶ I often remember that case, and wonder what happened to the lady, because by the time I was transferred out of that court that matter was not again brought before me.
- ▶ That example of the difficulty the woman suffered after the death of her husband will in some cases apply even in situation where the woman is a co-owner of the land in question or she is actually the sole owner.

- ▶ What that case highlights, just like the example I gave of the professional friend, is that the law which can safe guard the woman may be available but its implementation and enforcement may be wanting. Lack of use of the law is also due to the fact that, by and large, women lack resources to pursue cases through the formal justice system and sometimes they find themselves victims of fraud and exploitation.

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- ▶ No wonder it was stated in the United Nations Development Programme's report in 1995:
    - ▶ *In no society are women secure or treated as equal to men. Personal insecurity shadows them from cradle to grave... from childhood through adulthood; they are abused because of their gender.*

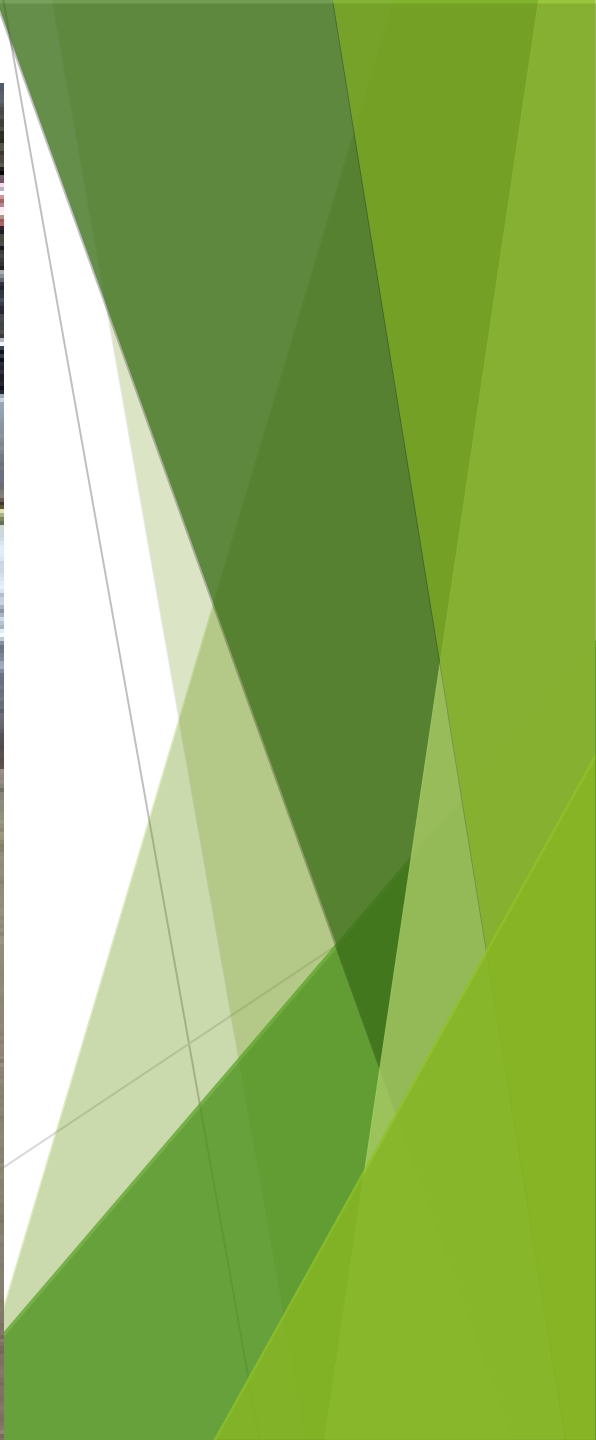
- ▶ That is the reality, unfortunately, and this is despite in Kenya, for example, in the last census of 1999 women were found to be 52% of the population.

# OTHER CULTURAL PRACTICES

- ▶ Wife inheritance - widow is inherited by brothers of deceased husband. That means that she becomes his wife.
- ▶ The brother who inherits her takes over the land the widow could have inherited from her deceased husband.
- ▶ A large percentage of women, as many as 80% to 90%, are the food producer yet large percentage of them have no control over the food they produce.
- ▶ Young girls are forced to marry denying them opportunity to obtain education.









**THANK YOU FOR LISTENING**