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## Narrative and Property in Kibagare

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The challenges associated with the allocation of ownership of property related to shelter in post-conflict environments is a constant and pressing concern. This article is based on research undertaken in Kibagare, a small village within Nairobi, which was born out of the struggle for independence and the conflicts and population displacements with which independence was associated. The nature of the disputes, some violent, over property ownership was investigated particularly as it affected household claims to their shelters and the land on which they lie. Who owns what and whose claim is paramount are open question in Kibagare: there are a number of different narratives people deploy to support and also explain and justify their claims. To understand land as property in Kibagare is not only to understand the play of narratives but also more critically to see how these narratives appeal to different conceptions of property, competing ideas about what underlies the right to a claim and what provides authority for that claim. Understanding this provides critical insights into why land ownership in Kibagare is typified both by stability and volatility. It will reveal how the challenges associated with the administration of land are not simply or necessarily the result of a post-conflict situation alone. It is the result of the understandings that underlie the various land claims and stakeholder narratives that provide the ballast that give the claims weight.

**Keywords:** property; post-conflict; ownership; narratives; Kibagare

### Introduction

The challenges associated with the allocation of ownership of property related to shelter in post-conflict environments are a constant and pressing concern (Hasic, 2004; Skotte, 2004). Yet, these challenges may be rooted as much in the complex character of property as a result of the conflict itself. The history of property is a chronicle of contending claims and narratives about its meaning and its material reality whether as a result or a cause of conflict. These claims and narratives are a small part of a larger discourse that has gone on for centuries. As McPherson argues, ‘the meaning of property is not constant; what it is, how people see it, what it means has changed through time. It changes with the purposes that a society or its dominant classes expect property to serve’ (MacPherson, 1978, p. 1). The philosophical and intellectual debates about property have varied not only between cultures and societies but also within them. In Western

Date	1980–1984	1985–1989	1990–1994	1995–1999	2000–2005	2006–present
Renters	0	0	2	3	9	16
Owners	3	0	1	3	10	7

**Table 1: Date first occupied residence<sup>a</sup>.**

<sup>a</sup>The Women who had come to Kibagare in 1959 were not part of our random sample of respondents.

society alone, notions of property have included property as a right of one's labor as espoused by John Locke and reframed as a natural right by Jean Jacques Rousseau to the understanding of rights to property being entirely a function of law according to Jeremy Bentham to property as a social relationship according to Karl Marx. These debates though have not been limited to philosophers and social theorists but find parallels in the assertions that are made in the quotidian discourses, claims and understandings that revolve around everyday understandings of property.

Kibagare, a village<sup>1</sup> in Nairobi, Kenya, in its own small way exemplifies this complexity and the varied narratives that frame the discussions and conflicts about property. Fifteen minutes by automobile from Nairobi center, it is located in the middle of Loresho, an older and affluent estate area, and has a population of between 5000 and 15,000 persons depending on who is providing the estimate; the government says 5000, the residents 15,000.

We were attracted to Kibagare as part of the research project entitled *Property, Possession and Conflict in Re/Building Settlement* for a number of reasons.<sup>2</sup> It grew out of the shifting economy and urban sociology of Nairobi that was the result of the transformation of Kenya from an English colony with its many and different estates to a more urban society: an urban society that made little formal plans or room for the rapid flows of people into the city. More crucially, Kibagare was born out of the struggle for independence and the conflicts and population displacements with which independence was associated.

### ***Kibagare***

Kibagare today is a dynamic and relatively stable, if poor, community having been in existence, various evictions notwithstanding, for close to 50 years; indeed, there are settlers who have lived in Kibagare since 1959. Overall though in both the sample and other informal interviews, it is clear that most people in Kibagare have lived there for about 5–10 years (Table 1). The same holds true for those who have opened

<sup>1</sup>It is what typically would be termed a slum or informal community, but we will use the term village as the locals do. For the residents, it is a village with its own organization, its own governance and a communal narrative about the land on which it sits.

<sup>2</sup>The authors would like to take this opportunity to thank the Norwegian Research Council for underwriting the research for this article.

Date	1991–1995	1996–2000	2001–2005	2005–present
Owners	1	2	10	22
Renters		1	4	11

**Table 2: Date started business.**

Husbands		Wives	
Casual labor	5	Housewives	7
Trade	3 (carpenter, cobbler and mason)	Casual labor	2 (washing clothes)
Security guard	1	Trade	1 (tailor)
Tradeswomen	2 (charcoal dealer, etc.)	Tradesman	3 (grocer, charcoal seller; water vendor; landlady)

**Table 3: Occupations owners.**

various small businesses in the village, most of which started after 2000. This was true of our sample and also was confirmed in conversations with the Elders (Table 2).

Residents comprise a broad range of incomes and occupations, which range from about KSh 200 per day to as much as KSh 1200<sup>3</sup> a day. While about 30 per cent of the male residents interviewed make their living doing casual labors, others have more permanent jobs which often require varying degrees of skill or education. Some are small merchants, others are craft workers. In one case, an individual interviewed before the questionnaire was put in place held the job as an Assistant Manager of a prestigious hotel in central Nairobi. According to the Elders the average income of residents would be about KS 100–200 per day (Tables 3 and 4). However, visiting the village and walking its streets and paths gives the distinct impression that a high percentage of the population is effectively unemployed or underemployed. One sees many idle people sitting, walking around and talking, with little else to do.

Just as in other informal settlements the densities in Kibagare are high. Homes are cheek by jowl and often have upwards of six or more people in one room. Owners of their own property tend to have a lower number of people in each structure but the densities for these structures are also high. Some have as few as 2 per room while others, for example, a widow who cares for her grandchildren, have as many as 10. On average, each room in a structure runs about 15–20 square meters with monthly rents running from KSh 500 to KSh 1000 per room which is relatively inexpensive by Nairobi standards. In effect, residents are mostly poor and live in dense conditions with little ability to expand or change their circumstances by easily moving elsewhere in Nairobi or relocating within Kibagare. A small minority are able either to expand the size of their structures or shift their location

<sup>3</sup>One US Dollar equaled about KSH 77 at the time of the interviews.

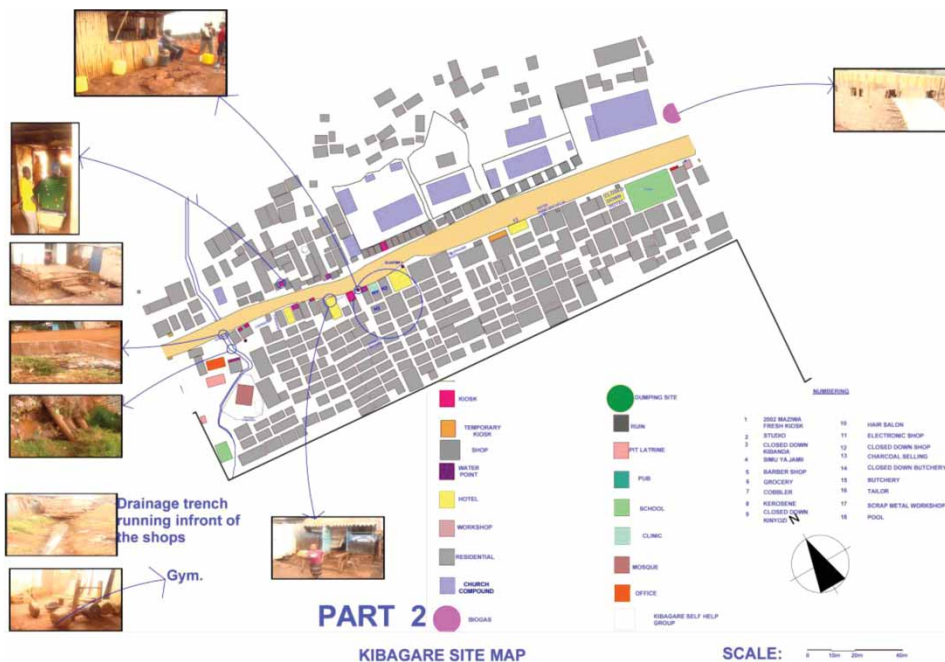
Husbands		Wives	
Casual labor	7	Casual labor	3 (mostly washing clothes)
Watchmen	5	Housewife	13
Trades	6 (carpenter; mechanic; bus driver; bus conductor; waiter; bartender)	Tradeswomen	8 (clothes sellers; small hotel; food vendors; fishmonger; Mandaazi sales, etc.)
Tradesmen	4 (charcoal dealer; trade in Masai artifacts; mobile phone dealer; sells clothes)	One described herself as unemployed	

**Table 4: Occupations renters.**

within Kibagare. The variety of house types provides some sense of the range of incomes and lifestyles of the residents (Figure 1). Some are one-room shacks, while others have multiple rooms, even courtyards and internal latrines (Figure 2).

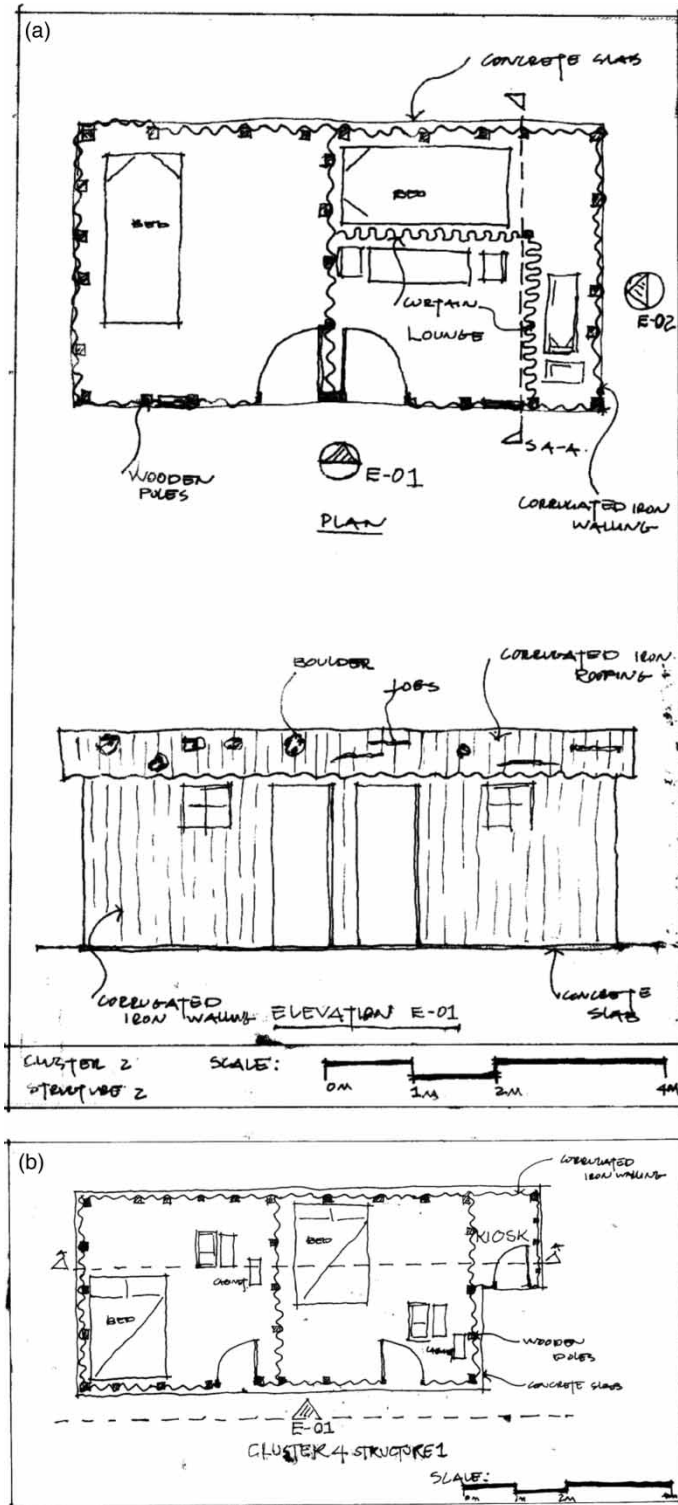
Finally, it is of note that there are a number of different ethnic groups living together in Kibagare. Overall there were 17 ethnic or tribal groups represented in our sample. The most populous residential group is the Kikuyu who comprised 35 per cent of the sample. They are followed by the Luhya who were 26 per cent of the total. No other group made up more than 7 per cent of the total. Shopkeepers had a more

**Figure 1: Central Kibagare**



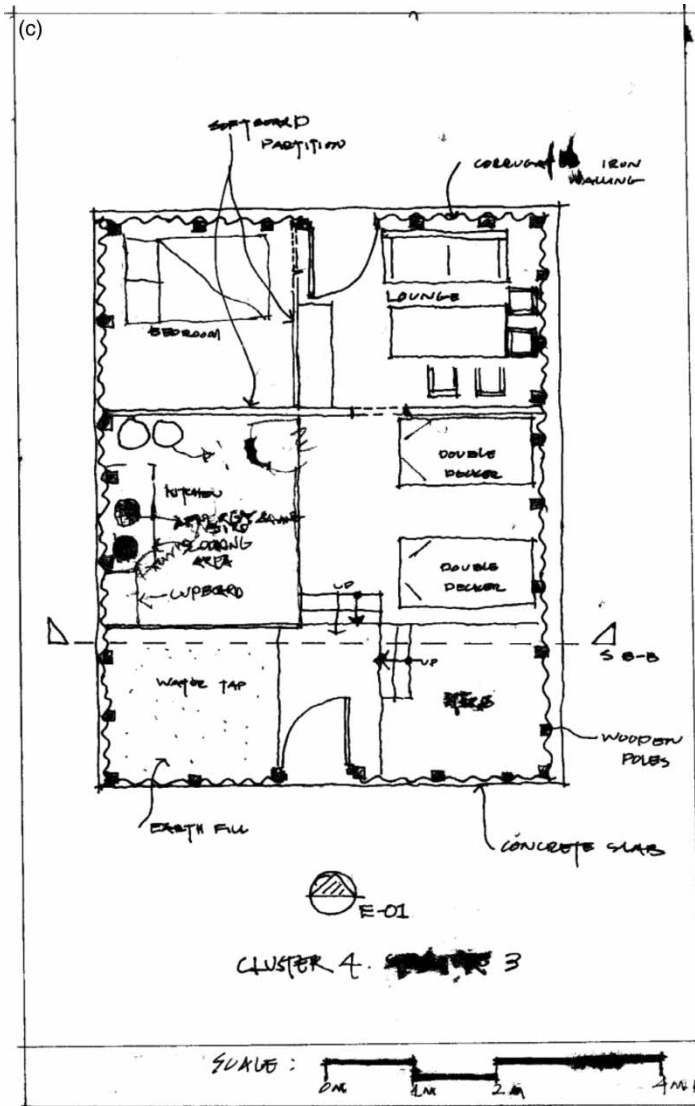
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Figure 2: Drawings of houses: (a) two-room dwelling, (b) two-room dwelling with Kiosk and (c) four-room dwelling



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Figure 2: Continued.



skewed distribution: Kikuyu made up over 50 per cent of the shopkeepers with no other group being more than 13 per cent. From our questionnaires, it appears that the conventional understanding that the Kikuyu dominate as they do elsewhere in the popular settlements of Nairobi is accurate.

During the period we were doing our study, national elections were held. These led to violent conflicts, evictions and the burning of both commercial and residential structures elsewhere in Nairobi. These according to newspaper accounts were the result of class anger couched in ethnic terms and framed around property and settlement claims. No such conflict or violence occurred in Kibagare. Indeed, when we visited just 2

weeks after the violence elsewhere, residents were quick to point out that there was no violence in Kibagare even if unasked. ‘We get along’ was a common refrain as we walked through the village. The villagers seemed aware that given their precarious claims to the land, violent conflict would have resulted in their expulsion.

This does not mean that there are or have been no conflicts in Kibagare. Its history as we shall see is a story of evictions, resettlement, law cases and conflicts over who owns what. As several respondents suggested, conflict is always under the surface given the different claims to the land – it has at various times reared its ugly head through burnings, attempts to get rid of settlers, buildings by those settlers seen as grabbers, interventions by the Nairobi School on land in Kibagare that they see as theirs that villagers do not and various government efforts to change the landscape. Those who live outside Kibagare are more prone to emphasize the conflicts. Those within it see internal stability but threats from the outside; villagers believe that they have the right to Kibagare and that there are no competing claims within the community but that conflict is the result of outside force.

### **The story about ownership**

Who owns what and whose claim is paramount are open questions in Kibagare: there are a number of different narratives that come into play. To understand land as property in Kibagare is not only to understand the play of narratives but also more critically to see how these narratives appeal to different conceptions of property, competing ideas about what underlies the right to a claim and what provides authority for that claim. Understanding this provides critical insights into why land ownership in Kibagare is typified both by stability and volatility. It will reveal how the challenges associated with the administration of land are not simply the result of a post-conflict situation alone. It is the result of the understandings that underlie the various land claims and stakeholder narratives that provide the ballast that give the claims weight.

### ***Property in the Kenyan context***

Kibagare’s history can be divided into three critical phases: the pre-colonial, the colonial and the post-colonial periods. In the pre-colonial period, the land presently occupied by the Kibagare village formed part of the grazing fields of the Masai people. In this period, land was communally owned and each member had user rights but no de jure ownership rights. In general, ‘land in pre-colonial Kenya was owned and held under a complex system of customary tenure in which rights of access to and use of land were regulated by intricate rules, usages and practices’ (Republic of Kenya, 2004, p. 1).

The pre-colonial land practices drastically changed in the colonial period. ‘The British conquest, the declaration of a protectorate and later a colony fundamentally altered the African land relations in Kenya’ (Republic of Kenya, 2004, p. 3). The promulgation of the Crown Lands Ordinance of 1902 and later the Crown Lands



Ordinance of 1915 conferred enormous powers to the colonial government to deal with what had been declared Crown Land. With regard to Kibagare, from 1899 to about 1952, the land formed part of the railway reserve.

According to Mr Robert Masese, Principal of the Nairobi School, the railway reserve land at Kibagare reverted to the Director of Education for use by the Prince of Wales School (now Nairobi School) in 1952. He corroborated this by providing a letter from the Commissioner of Lands to the Managing Director, Kenya Railways, dated 24 April 2004. This was the period when emergency had been declared and when Swynnerton planned and divided Africans along class lines: the landed yeomanry on the one hand and the landless would-be laborer/proletariat on the other (Ogot and Ochieng, 1995, p. 43). The East African Royal Commission of 1953–1955 and the Swynnerton Plan of 1954 argued that the reform of African land tenure was a prerequisite to agricultural development. ‘Consolidation, enclosure and registration of title, it was argued would make credit obtainable for improvements and enable progressive farmers to acquire more land’ (Ogot and Ochieng, 1995, p. 43). Thus, the Land Registration (special areas) Ordinance of 1959 and the Registered Land Act of 1963 were enacted to achieve individualization of tenure among African people.

The land laws and the ‘deracialization’ of the White Highlands in 1959 enabled the colonial government, under Governor Malcolm MacDonald and the post-colonial state under Jomo Kenyatta, to affect a near-revolution in land redistribution and in Kenya’s agricultural transformation in the period after 1960. After independence in 1963, the KANU government tackled the land issue and landlessness by a massive resettlement of African farmers on the previously European-owned farms. However, over half of the settler lands were transferred to Africans almost intact by sale to wealthy Africans organized in partnerships or limited-liability companies such as Ndefo and Ngwataniro Mutukanio among others. As a result of these dynamics, a new land policy based on class, rather than race, was established in Kenya (Ogot and Ochieng, 1995, p. 43).

It would appear that on the whole, in the early years of independence; public land was administered and allocated in the public interest and in accordance with the legal provisions. However, with the passage of time, these substantive and procedural safeguards have been blatantly disregarded in the allocation exercise. Land no longer has been allocated for development purposes but as political reward and for speculation purposes; this is the scenario in which Kibagare village finds itself. It is a scenario in which the village residents claim user and ownership rights; yet, other parties have been given titles to the same land.

Indeed, land has been a focal point in Kenya’s history and has been the main cause of many conflicts over its colonial and post-colonial history.<sup>4</sup> It was a linchpin around which the struggle for independence was waged. In this regard, the declaration of an emergency period during the Mau Mau struggle between 1952 and 1959 saw the

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<sup>4</sup>One need only think about the post-election violence in the Central Rift and Nairobi among other places in 2008 which to a large extent were based on conflicting land claims.

displacement of many native peoples from Central Kenya directly and indirectly as the result of the violence associated with the independence movement. This violence also led many European settlers to emigrate from Kenya. This displacement and migration led some of the displaced people to settle on the fringes of the city of Nairobi and the many coffee farms surrounding the city, where they provided cheap labor: Loresho itself had many coffee farms from which a number of residents of Kibagare came.

Over the years, the practice of land allocation has witnessed considerable illegal and irregular allocations. These intensified in the late 1980s and throughout the 1990s. This is the period during which the village of Kibagare experienced massive conflicts based on claims to the usage and ownership of land and which is central to the claim Kibagare's residents make about their right to the land on which Kibagare sits.

Today, Kenya's legal land system is complex. There are over 20 statutes and laws that govern land use and ownership. Most of these were enacted in the colonial period and have changed little in the period since independence. At its core is an act of the old constitution that guaranteed rights of land to individuals and limited the rights of government to acquire this land. Power over land management rests with the government in a hierarchical manner. Beginning with the President of the Republic of Kenya, the power to allocate and appropriate land is vested in a number of institutions which are limited in terms of geographical and administrative reach. These are the Ministries of Local Government, Ministry for Land and Settlement and Commissioner of Lands. Below the central government, there are a series of Councils.

The nation is divided into provinces. Provinces are divided into districts, which in turn have divisions, locations and sub-locations which are headed by various officers, chiefs and assistant chiefs. At the sub-location level, decisions are ideally based on a collaboration of assistant chiefs and local Elders. Beneath the province are the various local levels like municipalities, towns and counties. These control local governance in collaboration with the larger ministries. Each of these levels has its own administrative machinery.

If the system of land administration is incredibly complex at one level, at another it is very simple – ultimate power resides with the President. Let us quote at some length from a talk given by Gregory Myers to the Wilson Center in the USA. He argued that

The recent crisis in Kenya is an example of how land tenure can cause instability and conflict. . . Although some date from the colonial period, most of the land grievances in Kenya emerged from the post-colonial government's efforts to establish three different land ownership systems: private, government, and customary. The government used this tripartite system to annex large areas of land under customary tenure – typically without informing or consulting local residents – by creating resettlement areas or selling the land to private commercial interests. (Myers, 2008)

Customary land-tenure systems have been unable to keep pace with the economic and political changes of the past several decades, and some 'have completely broken down and are unable to resolve disputes, exclude other groups and individuals from

overexploitation of their resources, or resist illegal takings of their land by government and private individuals' (Myers, 2008). In addition,

courts and administrative agencies, such as the land offices, the land registries, the county councils. . . responsible for resolving disputes, resolving contested land claims, and verifying rights are highly dysfunctional. Simply put, the courts do not work when it comes to land disputes, and people do not trust the administrative bodies responsible for securing or verifying the legitimacy of their rights. (Myers, 2008)

Customary and official institutions' failure to resolve land disputes has encouraged people to use violent means to protect their land rights.

In 2004, the Ndugu Commission, which was established to investigate illegal and irregular land grants, found thousands of instances of illegal concessions, most of which had been doled out to the political elite – including past Presidents Daniel arap Moi, Jomo Kenyatta, current President Mwai Kibaki, and Prime Minister – Raila Odinga – and recommended the creation of a judicial body to seize or buy back illegally and irregularly granted land concessions. As with previous reports to the government on illegally and irregularly granted land, the commissions' recommendations were largely ignored by the government.

In other words, there is no one system of land ownership and administration. It is a collection of different laws, rules, administrative bodies and customary procedures both national and local. This is made even more problematic and byzantine when one adds the many and different narratives that people bring to the contestation over land use and ownership.

This complexity has either encouraged or made possible, depending on your point of view, the many different practices, claims and narratives that are both juridical and quotidian that frame the social realities that make Kibagare what it is.

### **Juridical claims in practice<sup>5</sup>**

There are a number of individuals who have argued over the years that they are the only valid claimants to the land that makes up Kibagare.<sup>6</sup> These individuals claim the land because they argue they are listed on a Part Development Plan (PDP) prepared by the Department of Physical Planning of 1977 and approved by the Commissioner of Lands in 1979. In it 28 individuals are listed as having been allotted subdivided land in Kibagare. This provides the essential bulwarking to claims and narratives of those who consider themselves the legal owners of Kibagare. Some of the 28 title claim holders of Kibagare land have gone ahead and secured bank loans using these titles. This action provides the basis for a narrative that confirms their ownership by the fact that they have benefitted financially from this land.

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<sup>5</sup>Put together with the help of the Pamoja Trust.

<sup>6</sup>Unfortunately during our research we were unable to find and interview these individuals.

On the other side, there are those who claim that an appeal to the Town Planning Committee of the city council of Nairobi on 20 June 2002 resulted in a recommendation that Kibagare informal settlement be formalized. The Ministry of Local Government, therefore, directed the council to liaise with the Director of Physical Planning in actualizing this recommendation. There is, it is alleged, a letter from the Physical Planning Department dated 19 June 2003 to the Ministry of Local Government agreeing to initiate consultations on the formalization of Kibagare. For the present residents, this provides legitimacy in practice to their claims to Kibagare.

Since that time there have been a number of different letters that have provided evidence that favors one or another narrative in a support of one or another claim. The Kibagare's present residents (who call themselves settlers) reference letters that range from that of Hon. Betty Tett (Assistant Minister) dated 20 August 2003 to the Director of Physical Planning requesting for the preparation of a PDP for Kibagare for the purposes of settling the squatters to a letter dated 27 January 2004 from Kenya Railways, stopping one Mr Josephat W. Njoroge from illegally constructing a house on the Kenya Railway reserve. On the other hand, a letter from the Ministry of Lands and Settlements dated 27 April 2004 to Kenya Railways stating that the land in Kibagare was reverted to the Director of Education for use of Prince of Wales School (Nairobi School) in August 1952 and a letter dated 24 August 2004 from Kenya Railways to Kibagare self-help group stating that the Railway Reserve Land was reverted to the Director of Education for use by Nairobi School is cited by the Principal of the Nairobi School and others that clearly illustrates that the settler claims are bogus.

These juridical claims and narratives have as yet to be finalized in fact or on the ground. More critically for us, however, is that they are only a small part of the narratives that frame the discourse and conflict about landholding in Kibagare. Equally as critical in the day-to-day disputes about landholding and ownership are the everyday narratives that are posed by the various claimants to this land.

### **The narratives**

The popular narratives that frame the discourse about property and ownership in Kibagare are shaped by two broad sets of ownership practices associated with different socio-economic sectors within the broader society. One is founded on juridical claims and elements; e.g. national laws, titles and other features that are commonly called 'formal'. The other originates in the practices of the popular sector; e.g. squatting, local claims to entitlement, self-build and other practices often associated with what is usually called the informal.<sup>7</sup>

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<sup>7</sup>As with the discussion earlier about informal, we prefer the concept of popular because it is more informative and also neutral. Informal assumes a kind of negative of the formal and thus suggests something problematic about the practices with which it is associated.

***The juridical narrative***

Even in legal discourses, proponents of one or another position will often try to create a compelling narrative with which to persuade people about the rightness of their position. Stories are then not only a mode used in everyday discourses about one or another claim; but they also are often at the heart of legal debate and maneuvering. While one might understandably think that this is a relatively straightforward narrative, what one finds is quite the opposite. Juridical narratives even at the most abstract and formal level in Kenya are at best complex and at worst ambiguous. Equally as critical is that the practical implications and consequences of this juridical system in turn reshape the nature of the narrative itself. The nature of the court system, for example, makes many the juridical narratives contingent on institutional and social processes that encumber the law and reshape how it might be applied. The different roles that people have in the community, e.g. are they local residents, are they arbiters of property distribution; is their responsibility primarily to the larger municipality or to the local community; and do they represent government or the different stakeholders in the community and their relation to the property and its various uses in question also shape and reshape the juridical narrative. What follows are just some of the critical variations on the juridical narrative. What is obvious to one actor may be totally opaque to another; what is true for one is fantasy to another. Even those who accept the juridical narrative in principle disagree on its subtleties and its implications.

**Assistant chief**

For the assistant chief (AC), the issue of who has claim to Kibagare is based on formal law and contracts but also open to mediation. As an example, he spoke of a meeting he had just had before we came to his office in which the Elders from Kibagare met with him and an NGO Shangilia Mtoto Wa Africa. The NGO deals with homeless children and holds the title, so the AC asserted, to 6 acres of land in Kibagare Village. A German donor gave the NGO money to pay all the statutory payments still due on their land claim so they can build a school for the homeless. But, he went on to say, there are 72 structures on the land so the meeting was held to mediate a solution. The NGO does not want to remove people on the land but some need to be removed to make way for the school. Hopefully, those removed would find space elsewhere in the village.

What the AC's story reveals is central to the challenges that those concerned with Kibagare face. On the one hand, not dissimilar as we shall see from other cases, there is a group that claims to hold legal title to a portion of the village. On the other hand, the AC understands that the people living on the land see it as theirs and are part of a relatively stable community that believes strongly in its rights to the land on which they live, a stability that the AC would prefer to remain in place.

This contradiction or contestation frames the origin of the village according to the AC. The moving of the railway line is what made the village possible. It also set out for

those in the village an important social distinction between people who live in the village who are seen as settlers and those who from outside Kibagare claim to be the legitimate owners of the land through government title who the villagers see as illegitimate grabbers. This distinction is not only semantic but also for many in the village demarcates a critical metaphorical and ontological boundary between those who actually live in and use Kibagare and who consider themselves the authentic owners of the land and those whose claims are based on abstract formal and legal claims with little social legitimacy. It frames for the villages the boundary between what we might think of as social space on the one side and a more abstract sense of space on the other. And, as we shall see it will frame two critical narratives and sets of claims that by their very nature eventually will conflict.

This conflict is what the AC in his telling of the story of land claims in Kibagare is trying to avoid. Settlers, according to the AC, invaded government land that had in some instances already been promised or allocated to people other than the Kibagare settlers: the land along the river had been allocated to private individuals while the Government land next to the Nairobi School had been apportioned to that school. There is, however, the reality of settlers who claim to have lived on the land for over 40 years. To the settlers, those on the outside who claim land do so illegitimately and that is why they are labeled grabbers. Thus, for the AC the formal ownership even of the Nairobi School – which the AC recognizes as legal title – still needs to be negotiated with the residents. *De facto* and *de jure* claims from his perspective always need to be mediated if conflict is to be avoided.

The AC has created a narrative that recognizes that there are a number of different non-judicial claims and narratives, although he privileges the legal. As a result, he makes a case for finding some arrangement in which all parties can find some satisfaction. It is a narrative that given the nature of the AC's position situates the issue of ownership and rights to land somewhere between the abstract and the social by finding a way to get all parties to accept some mediated middle. It is an attempt to avoid the violence that Kibagare has seen in its past.

It is in effect a formal narrative that recognizes the *de jure* and also a narrative that is sympathetic to the *de facto*. This leads to a practice that tries to emphasize mediation which in effect creates a narrative that allows for multiple claims and that in effect undercuts his privileging of the formally judicial narrative. As a narrative, the latter is supreme; as a lived reality it must take note of the facts on the ground. Ownership in this narrative is at once clear and also contested.

### **District officer**

The district officer (DO) like the AC recognizes that a number of individuals have legal title and claim to Kibagare even though they do not live there. Like the AC, the DO also recognizes the potential for serious conflict. For the DO, the privileged narrative for ownership lies with at least 28 people with legal claim to the land – each has a deed

– as well as the Nairobi School which was allocated the land through the Education Ministry from land returned to the government by the Railway. There is no question that the legal title is paramount and needs to be protected. Because the DO, like the AC, wants to avoid potential violence she is in no rush to move the process forward. Because of this, she argues that without a government order the eviction process cannot go forward. She cannot side with private interests until the court orders her to do so. This of course delays any need for action no matter how legal a claim is because of the courts. However, she cannot side with the villagers either even though they claim to have been on their land for many years, a claim that also has not been recognized by the courts.

Again as with the AC, there is a strong sense on the part of the DO that the community should remain stable and live in peace. This explains the DO's narrative that emphasizes the contradictions and the potential for conflict. It underlies a strategy which favors inaction even though in principle the *de jure* claims of the grabbers trumps the *de facto* claims of the settlers. In practice, it is best to do nothing and in effect recognize the contention of the *de facto* even if that claim is at best tenuous. It is narrative that like that of the AC recognizes the legal and *de jure* but at the same time uses legalisms; e.g. the demand for a court order which might take years to effectively forestall challenging everyday practices and the facts on the ground.

### **Headmaster Nairobi School**

For the Headmaster of the Nairobi School, the issue is straightforward. His narrative appeals to the school's history and the written record that provides the school with its rights to the land which it claims. The school which was built in 1929 holds legal title given by the government to all the lands which it claims for its own. In 1952, the Special Commission on Lands, according to the Headmaster, gave the school lands outside its original site for its uses. Land that originally belonged to Kenya Rail but that was returned to the Government was deeded to the school through an official letter from the Director of Education whose department had been given the land by the Special Commission.

The problem for the Headmaster and the school is that since 1969 settlers have continually tried to occupy land deeded to the school. Settlers break down fences and make false claim to land that is not theirs. As a result, the school has had to actively chase the settlers off the land. Most recently, the school has had trees planted on land which is theirs but which they are not using at the moment to clearly demarcate what is theirs and to also make it difficult for settlers to use the land.

All the bravado notwithstanding, parts of the land claimed by the school has settlers already living on it. The Headmaster's narrative although strongly juridical makes no mention of this nor did he really explain why these people have not been evicted. The practical problem of how to actually claim land physically where there are people living on it, supposedly illegally, adds a practical and contested dimension to even so

staunchly a juridical narrative. In this case to keep the narrative pure, it makes no mention of the land that is not settled nor does it suggest what will be done about it.

### *Settler narratives*

#### **The Elder's history**

According to the Elders of the community Kabu George Chairman, Murage Heston Secretary and Shivachi Peter Treasurer, Kibagare has a history rooted in the changes wrought by independence and the attempts by others to rid the community of its residents. It is also a history of guarantees and promises by Presidents Kenyatta and Moi for the rights of the residents to settle in Kibagare. The origins of Kibagare settlement, the Elders maintain, can be traced to the late 1950s when the Uganda Railway line then running between Westlands and Kikuyu stations was re-routed to the southwest to run through Kibera and Dagoretti. The first settlers in Kibagare were displaced workers from the former colonial coffee estates of Loresho and Kabete. These estates had changed ownership over time and were increasingly subdivided to give way to residential developments.

Kibagare remained a small settlement until 1963 when Kenya gained political independence. It began to grow as a result of an influx of immigrant Africans from the rural areas in search of employment and affordable accommodation. The settlement continued to grow until 1968 when the first evictions were instigated by Government operatives and other interested groups. These evictions to some extent slowed the growth of Kibagare.

Relative calm prevailed throughout the 1970s, during which period many self-help women's groups were established. One such group was the 1977 Nyakinyua Women's group, who regularly entertained the then President Jomo Kenyatta. Several members of this group were selected and allocated plots for resettlement at Lake Kenyatta Settlement scheme, Mpeketoni, in the coast province. At this same time, Kenyatta decreed that since Kibagare was on government land, the settlers who remained could reside on this land unconditionally.

The 1980s was a dramatic period in Kibagare. In 1980, Sister Martin Wanjiru Gicu from the Assumption Sisters of Nairobi arrived on the scene. She set up a temporary mission, which undertook religious and community activities, including the provision of basic education for school age children, basic sanitation and clothing. From these humble beginnings, the mission has grown to include a church, dispensary, primary school and a secondary school.

In 1988, the City Council of Nairobi once again embarked on evictions in Kibagare, resulting in a major conflict that led to a series of fires. The aftermath of these fires was approximately 400 dwelling units destroyed and 5 people seriously injured. The settlement was quickly rebuilt. In 1989, goons hired by interested parties once again burnt down the settlement and again it was rebuilt.

On 20 November 1990, a major eviction was undertaken using city council bulldozers and lasted for 3 days. This left almost 30,000 people homeless, forcing the majority of



these people to shift to other settlements. Those who remained behind – many by hiding under the ruins and refusing to leave – re-built Kibagare one more time. In 1991, all the Kibagare settlers were screened, with a view of re-settling them in the Kayole area of Embakasi. Although re-settlement took place, only 143 people were allocated plots in Kayole after the Member of Parliament for Embakasi resisted the settlement of Kibagare people in his constituency. The MP's resistance eventually prevailed although the re-settlement had been sanctioned by the then Nairobi Provincial Commissioner. About 800 people remained in Kibagare, and as a result other new settlers began to arrive and the settlement grew once again. The City Council, in 1998, gave 14 days notice for the demolition of the St Martins Centre; however, this was not realized.

In the year 2000, the local MP tried to set in motion the regularization process of this settlement. This led to the visit by President Moi in June 2000; the President authorized the residents to continue living in Kibagare unconditionally. He also authorized St Martins to be expanded. The case for eviction was revived by one Mr Wachira, in 2004, who claimed to legally own the land on which Kibagare stands. The duty judge in the Wachira case visited the site/ground and ruled that Mr Wachira had no case against the Kibagare settlers and could therefore not get court orders to evict the settlers. In the years between 2004 and 2007, there have been attempts at resolving the Kibagare case without success. The settlement committee has shuttled between the Kenya railways, the Commissioner of lands, the Provincial Administration and the City Council to no avail. Currently, the Kituo Cha Sheria (an NGO addressing ownership rights) is assisting the Kibagare settlers in trying to resolve this complex scenario.

The story of Kibagare's history as told by the Elders is one of perseverance in the face of often official hostility and the attempts by what the Elder's see as land grabbing to evict the rightful settlers. It is also a story of a number of Phoenix-like resurrections. The perseverance and resurrections are, for the settlers, clear justification for their continued presence in Kibagare.

### ***St Martin's school***

In addition to the Elder's story directly, they often indirectly reference the story of St Martin's School, a Catholic school for locals and boarders. It is an institution in Kibagare which plays a pivotal role in the identity of the area. For the Elders, its story also confirms the rights of the villagers to Kibagare.

Its story as narrated by the present Mother Superior goes back to the late 1970s when the school was established as a Center by Sister Martin Wanjiru who built the first tin shelter donated by Asian businessmen in 1980. The Center was initially supported by visitors, mainly tourists, and in particular boy scouts from Europe. In 1983/1984, a Dutch family came and raised money for the construction of the Center. This was followed by support from a German family who gave food donations.

The Center was initially founded to feed poor children from Kibagare village; only later on did it become a school. The land on which the center was built was acquired

informally through the chief of Kitasuru Location. In the 1990s, there was further financial support from donors and at the same time some title deed holders asked the sisters to re-locate. It is at this time that the sisters decided to take the title holders to court on the basis of having occupied the land continuously for more than 12 years without anybody raising any objection to their use of the land. It is understood that the court judgment of 2006 was in favor of the sisters and that the title deed is being processed.

The school has grown over the years and currently has a population of 740 day-schooling primary-school pupils and a girls-only boarding school of 190 students. The school and village operate harmoniously with a majority of the pupils from the village getting sponsorship from the school for free education. It is in a way an important attractor to people who come to live in Kibagare and a core institution that helps to set out Kibagare's identity as a legitimate settlement.

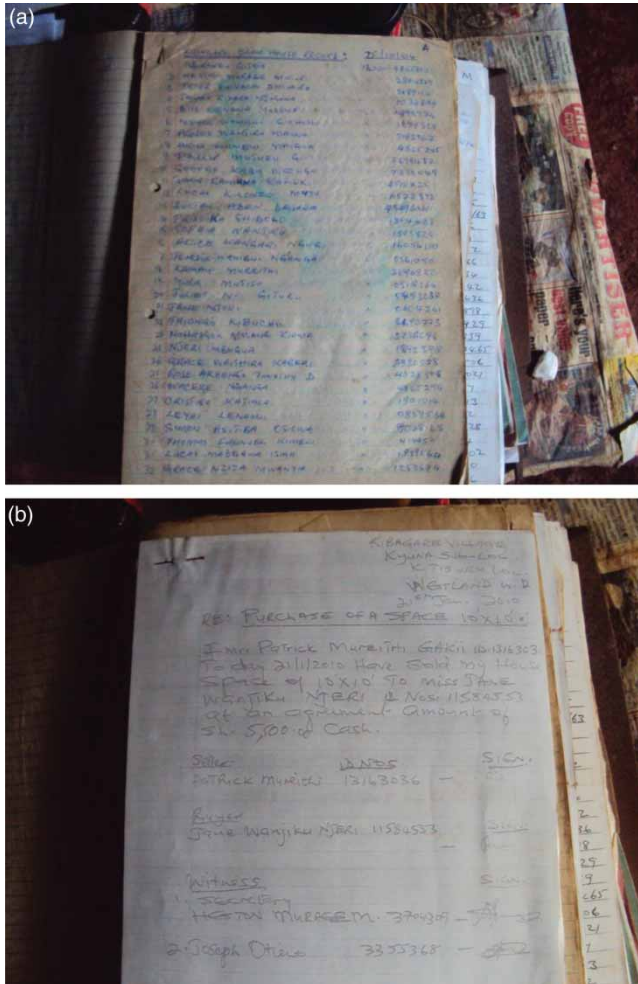
### **The Elders Register**

At the heart of the local residents' narrative is a book which is held by the Elders of Kibagare and which registers the ownership of both land and structures in the village for the period 2001 to the present. Attached to this book are copies of contracts that were entered into when a structure was sold. It records the price, the seller and the buyer. Also, a part of this Register is a record of youth who helped with building structures such as schools and churches. They also record various projects undertaken over time, for example, the biogas support toilet. This latter record is maintained as a kind of social memory which notes which younger residents were good citizens and deserving of land on which to build their own structure if needed in the future (Figure 3(a) and (b)).

The Register functions as evidence of the Elders' actions and documentation of who has claim to what in the village. It also provides for the Elders as well as the resident owners substantiation of their ownership claims. It is a form of titling and its existence is written evidence that substantiates the narrative central to Kibagare's residents' right to their structures and the land on which they sit. For the Elders, it is also proof that those who claim to hold titles from outside the village are imposters or grabbers with no legitimate right to the land on which the village sits. It is a form of local authorization of ownership – if not as yet legally sanctioned proof – because not only does it record and title, but the actions it catalogs were also according to the Elders' given approval by the local chief. Moreover, its records are substantiated by surveys put together by an NGO both in 2004 and 2008.

When first shown the book it was as part of an interview about the village claims. The Register's dried out and withered pages, yellowing and brittle, became part of performance in which the Secretary for the Elders laid out the case for the villagers claims which the Register verified. The Register is the physical manifestation of a narrative revealing the longstanding reality of the villagers' claims written in a quasi-official form. It serves both as witness and palladium, a protection from the illegitimate claims of 'outsiders'. The book not only serves as proof and palladium in itself, it is

Figure 3: (a) Record of residents and identity card numbers and (b) record of sale transaction



embedded within a number of other narratives which strengthen what the Register represents and which in turn the Register helps to legitimate. These various narratives were voiced by both the Elders and by residents whom we interviewed.

Whether the Elders have official title to land does not prevent them from acting as custodians of the land on which Kibagare sits. As noted earlier, they are the guardians of the Register. More crucially they have the ability, if not legal authority, to share and allocate land parcels to villagers and to certify an individual's right to buy land in Kibagare. These powers are granted by the community but are limited by a number of caveats. For the Elders to give someone the right to land they must be residents in good standing in the village and the size of plot given will vary with the size of the individual's household. No one, they stated, was allowed to own more than five structures based on a verbal vote of the villagers. More critically they argued that in effect

land is held communally with individuals having rights to a specific plot. The Elders felt this was critical because if outsiders could buy land Kibagare would be threatened as it sits in an ideal location for Nairobi. Developers would, if they could, buy up so much land that they could force others out if sales to outsiders were allowed.

### *Longevity/founding narrative*

As the Elders' history made clear, central to the claim of ownership and the right of the Elders to allocate land and provide it to residents is the story of Kibagare's long existence. When we first met with the Elders they were eager for us to meet with the older residents of Kibagare. They turned out to be 5 elderly women most of whom had lived in Kibagare for over 40 years. One woman told of coming to live in Kibagare in 1964, another came in 1965. The story they told of the founding exemplified two things: (1) the way Kibagare was originally settled and (2) the longevity of settlement as a kind of trope that gives weight to the steadfastness of Kibagare's residents' right to remain in place in spite of attempts, often violent, to evict them.

As the women related, settlers originally came to put down roots in the land which is now Kibagare as early as the late 1960s. Many of the original residents came to Kibagare as a result of changes in the countryside wrought by the violent conflicts set in motion by the Mau Mau movement. As one woman related, she came to Kibagare as a result of the Mau Mau wars which had led to the death of her children and because 'it was the nearest place to where she was working that she knew about'. When she first settled in Kibagare it was bush that had recently been abandoned by the Railroad. Most structures in Kibagare at that time were made of cartons and plastic although some were made of wattle and daub. Settling meant finding a spot in the bush, clearing it and constructing a house. After one of the evictions in the 1970s, she was given a structure by the Elders which she owns and where she lives with her grandchildren to this day. Another woman related how she first came to the Kibagare area but not the village during the Mau Mau emergency after her husband had been detained. Originally she lived close to the village in an area called Wangige. An MP brought her to Kibagare Village in 1973 and she built a structure of cartons and plastic. Originally she settled near St Martin's school but moved to another area higher up the hill after the government demolition in 1990.

There were a number of narratives which related the same theme; coming to Nairobi as a result of conflict or violence elsewhere in Kenya and finding Kibagare which for a long period after the abandonment by the railroad had empty land on which people could build their houses. If in the 1960s settlement was relatively open and spontaneous, by the 1970s a more organized community with its own system of allocating land had arisen through the actions by the Elders but also politicians and the local chief. It was for the informants a village built as a result of popular action that was repeated a number of times because of a history of evictions and demolitions. Rebuilding in turn led to a more stable village each time.

Like others in the village whom we interviewed, these older women spoke about the many attempts at eviction. In 1968, the settlement was demolished by the City Council even though as early as 1964 it had begun to grow through both migration and births. Nonetheless, the residents returned and built Kibagare anew. In 1973, the City Council once again tried to remove the residents of Kibagare but as one older woman we interviewed on another occasion recalled, Jomo Kenyatta stopped the process saying the settlers should not be moved. Whether the story is accurate is less important than the spin it puts on property ownership. Each attempt at demolition or eviction leads to an almost Phoenix-like rebirth of the village as a popular settlement. And these attempts are a constant in the residents' stories about Kibagare; again and again according to the settlers in 1980, 1987–1988 and 1990 there were attempts to get the residents of Kibagare to disappear. The demolition in 1990 was a total destruction of the village. Nonetheless, many of the residents refused to leave and stayed on the land and eventually rebuilt.

The demolition of 1990 is a crucial centerpiece of narratives about Kibagare. It illustrates for the settlers the way more formal claims to Kibagare have succeeded only in demolishing the village's skeleton or structures but not the heart of the village; i.e. the people who have lived in Kibagare for many years. As an addendum to this narrative is the way older residents quietly and even proudly speak of attempts by supposed title holders or grabbers to build on Kibagare land. These attempts have been thwarted by the popular resistance each time, in one instance through the burning of a concrete house that the residents felt was a land-grab. To this day, the house that remains still sits on land in Kibagare and is used as a shelter by those who still do not have a structure in the village. It sits as visual testimony to the strength of the residents' claim to what they believe is their land and their right to be in Kibagare.

## **Conclusion**

Property in land and shelter is effectively in a state of dispute in Kibagare. If it is latent most of the time, at other times it still may manifest itself in open conflict even violence. At the heart of the dispute are the different narratives that the various claimants to Kibagare have.

From the villagers' perspective, the length of time they have occupied Kibagare and the extent to which they have overcome attempts to remove them provide a profound and important proof of their right to Kibagare. First, long-term occupation is for them evidence of a *de facto* right to the land. Second, implied in these stories is the belief that the destruction and the continual rebirth of the community not only tells us about the way different claims and narratives may give rise to conflict, it also implies that the villagers have through their continued presence in the light of so much travail not only a *de facto* claim but a moral right to the community.

The Register as a material demonstration and the founding narratives as noumenal evidence add additional strength for the Elders to their claim about their right to Kibagare. Their contention, which for many outside Kibagare is questionable, that

there is a lawsuit which they won also adds to their notion of ownership. When the Elders were pressed about their title to the land, they argued that they had allotment letters from 2008 from the Commissioner of Lands – never shown – but the village needed KShs 70.000 to pay for this title.

The Elders' notions of property differ from conventional market-driven understandings of property. Ownership in the village does not provide an individual with a broad residual right. Rather, it lies somewhere between a residual right and usufruct right. Those who own property in the village can use it to generate income from rents but it is really only theirs as part of a village. Its most salient benefit is unstated but real: if one owns one does not pay rent. Not having to pay between KSh 500 and 1000 a month in rent is a significant advantage for people whose earnings average around KSh 100–200 a day. Of course, ownership also gives one some sense of security although it is important to note that owners are aware that their ownership right could be repudiated if the government should decide to evict them. Therefore, for the owners as for the Elders without formal legal title their claim of ownership is contingent on the *de facto* practices that have allowed Kibagare to remain as it is.

There is a generally unstated but painfully felt understanding that despite all the claims of ownership the situation for Kibagare residents and the power of the Elders are at best ambiguous. It has survived violence, evictions and claims from supposedly titled owners, court fights and demolitions. These, however, remind people of the fragility of their standing. As a result, they use whatever narrative they have to continually bolster their claims to authentic ownership; some are at best grasping at straws. For example, many residents spoke of the infrastructure, water and electricity, supplied by the city as proof that their claims are legitimate. Why else, they ask, would the government provide such services. Of course, government authorities like the AC and the DO point out that supplying water and electricity is necessary when so many people live in one place; it does not however in any way imply recognition of the right of the residents to Kibagare. The narrative though remains and acts for many residents as an anodyne for their anxieties about their place in Kibagare. So too does the story of the visit of the then President Moi to Kibagare in 2000 together with the MP for Westlands. They claim that Moi said that Kibagare belonged to the poor who were living there and that no one should be allowed to snatch it from them. Finally for many in Kibagare the role of St Martin's in defining legitimacy, as mentioned above, flows through many of the residents' narratives about the settlement and provides an institutional mooring for claims about Kibagare as a socially meaningful place.

For the government officials and the Nairobi School Headmaster, and for those owners who still claim to have title to the land, the issue of ownership is simple. It is codified in law and in the documents that demonstrate legal rights. If those officials like the AC and DO temper their approach to the issue because of realities on the ground and fear of conflict, there is no doubt about the superiority of the legal narrative. Villagers' claims, they argue, are really just strongly held fantasies or dreams having little real basis in law. However, those on the outside looking in, no matter how

strong the belief in their legal narrative, are also painfully aware that their supposed de jure claims and stories of how they came to have their de jure rights are countered by what are obviously facts on the ground. They are also called into question by the narratives and understandings that the villagers bring to the dispute.

Thus, along with the physical fabric that is Kibagare there is a whole range of narratives that provide stories that support the de facto reality. Kibagare exists on practices and series of stories and narratives that provide a whole structure of ownership that support the claims of the villagers. However, at the same time Kibagare is framed by a series of de jure claims and legal history that provides an entirely different set of narratives and understandings. Which one will eventually triumph is still an open question although one must hope that the narratives and the practices that have made Kibagare what it is on the ground and that has provided shelter and well-being to so many is the story, no matter to what extent based on popular narratives, is the one that triumphs. Whichever triumphs, however, one sees in this small settlement that was born out of conflict the basis for continued conflict rooted in the many different ways people settle, claim and build a settlement. In the end what Kibagare reveals is the critical importance of property as a social understanding and narrative and the way these may form the basis for stability but just as likely form the ground for conflict. It is a case that for the research team reframed the issue of property and post-conflict. For the team, it revealed that the issue is how property is understood and framed by those who live on it, claim it and act on it and not whether it is framed before or after conflict.

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