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Land, Law, Rumour and Research

Ambreena Manji¹

‘Every night as I gazed up at the window I said softly to myself the word paralysis. It had always sounded strangely in my ears, like the word gnomon in the Euclid and the word simony in the Catechism. But now it sounded to me like the name of some maleficent and sinful being. It filled me with fear, and yet I longed to be nearer to it and to look upon its deadly work.’ James Joyce ‘The Sisters’ *Dubliners*

In Kenya in my late teens, the Julie Ward case exercised a powerful fascination over many of us. We had just completed our studies of Joyce’s *Dubliners* for the exams, and in my own mind I likened our interest in the case to the morbid fascination the paralysis and death of the priest exercises over the young boy in the short story ‘The Sisters’. Each day we read the case transcripts in the newspaper, page after page of print over which you leaned for so long that your arms and elbows would be covered with ink. For months, when I should have been revising, I instead ate breakfast and then lunch with my plate on top of the *Daily Nation*. Later, exams over, I was clerk to a lawyer in town whilst the Julie Ward case was ongoing. I recall a hushed, scuttling Nairobi legal fraternity and an overwhelming sense of the Law Courts as a place of secrets and of fear. Perhaps this accounts for an enduring interest throughout my legal academic career with law’s dark places.

At once insightful and deeply humane, *A Death Retold* has been deservedly well received by those with interests in literary and cultural theory, politics and history. I want to argue here that it should also be read by students of the law. Central to the story of Julie Ward as explored by Grace Musila is the issue of how law, legal instruments and the legal process are used to obscure and to obfuscate. For me, Musila’s book raises profound questions about knowledge production, about how knowledge circulates in the state and about what this might tell us about law, legal practice and above all legal research.

To take just one illustration of this point: Musila’s lucid treatment of the alterations made to the state pathologist’s post-mortem report on Julie Ward. Musila’s discussion of ‘Fictions of the State’ (Musila: 22) stands out as a disturbing and evocative reminder of the instability of the written word and the official document in modern Kenya. Writing of his quest to find her killer, Julie Ward’s father recounts in his book *The Animals are Innocent* (1991) how, reading the post-mortem report, it was obvious that ‘crucial words had been erased and others substituted’. This substitution of words and the unreliability

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and porosity of official documents such as DNA reports and witness statements is of critical importance beyond the immediate context of a murder case of which Musila is writing. It will have resonance for any researcher on land in Kenya. The process of land registration that began in the late 1960s was always patchy, with most sales or transfers of land resulting from inheritance remaining unregistered. This 'growing divergence between the formal position and the actual transactions' (Hornsby 2012: 120) became the bedrock of uncertainty, disputes, grabbing and corruption in later years (Hornsby 2012). Added to this was the sale of larger white-owned farms at knock down prices by Presidential directive to create a complex patronage web in the early days of independence and long after (Hornsby 2012; Ndungu 2004). Loyalty rewarded with land. Over the years, this put land at the heart of the rumour in Kenyan life. And the fake title deed can be regarded as the rumour made flesh. Regardless of the veracity of claims about the circulation of fake land titles, these documents occupy a powerful but underexamined place in the politics of modern Kenya, and in our 'fictive imaginings' as a nation (Musila: 184) The alteration of land titles, tampering with documents, and illegal and irregular changes of ownership and use were at their height in the late 1980s (Ndungu 2004), the period about which Musila writes in *A Death Retold*. The line between the authentic and the fake was obscured as much in relation to land titles as it was to coroner's reports.

Similarly, Musila's discussion of the ways in which rumours 'appeared to question the empirical reach of modern science and law' (Musila: 114) and to point to 'the futility of legal truths' (Musila: 108) raises important questions beyond the immediate context of a murder investigation. As she writes:

'While...rumours and allegations may seem largely speculative and lacking in concrete evidence, they simultaneously display interesting relationships with the procedures of modern law and science.' (p 113)

For lawyers, the instability introduced by rumour and speculation is worthy of attention. In the context of my own work on the politics of land and justice in modern Kenya, the role of rumour seems well worth considering. In the domain of land, rumours create an unstable and porous archive. This is nowhere more evident than in everyday talk – the 'pavement radio' (Ellis 1989) – surrounding land grabbing in which the findings of Kenya's many Commissions of Inquiry relating to land are supplemented by what Luise White (2000) has termed 'social truths'.

Kenya now has what we might describe as an established 'land archive' made up of a series of inquiry reports relating to land conflicts - alongside the 'Ndung'u report' on Illegal and Irregular Allocation of Land in Kenya (2004) are the Report of the Commission of Inquiry into the Land Law Systems of Kenya (widely known as the Njonjo Commission); the Report of the Commission of Inquiry into the Post-election Violence Following the December 2007 General Election (the Waki Report) and the TJRC

report (2013) which document 'land as a key faultline' (Harbeson 2012) in Kenya. This documentary record is supplemented by the ubiquitous 'land rumours' that now form a part of everyday life. Muslia's treatment of the role of rumour in the history of governance in Kenya alerts us to the importance of these subaltern narratives. They can be regarded as the people's 'Operation Firimbi', the campaign in the 1980s and 1990s to draw attention to land grabbing, for example around the perimeters of Karura forest (Manji 2017).

But the lawyer will also be alert to the risks and drawbacks of rumours. One such drawback is that what I call 'land rumours' have always been organised around the who and what of grabbing – the valuable plots illegally taken by a leading politician, the middlemen involved and so on – so that the important technical detail of *how* land grabbing occurs has not received the attention it might have. Reading the Ndungu report for confirmation of the land rumour, Kenyans have largely turned to its annex for their reading of its 'juicy findings' (Southall 2005: 142). In doing so, they have failed to grapple with the body of the report which sets out the mechanisms by which land grabbing occurs. When the opportunity came to reform land laws in 2012, few were familiar with these mechanisms and the long running mischiefs of land grabbing to which the new legislation should be directed. This is one reason for the limited achievements of the new laws passed in the period. The Land Act, the Land Registration Act and the National Land Commission Act (all 2012) made some important changes but did not target as accurately as they might have the problems of centralised bureaucratic corruption (Manji 2014).

Grace Musila shows persuasively that if rumour was a response to the political paralysis of the late 1980s, it continues to play a role in the governance of present day Kenya. Then and now, the words of Old Cotter in Joyce's story *The Sisters* remain on our lips, about land and about more besides:

'I have my own theory about it," he said. "I think it was one of those ... peculiar cases But it's hard to say...."

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