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DISPUTE SETTLEMENT AMONG THE GIRIAMA OF KENYA

Marguerite Bradley Johnston

A DISSERTATION

in

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PREFACE

I conducted research among the Giriama of the Coast Province of Kenya for twelve months, in 1972 and 1973. My ultimate objective was to study how disputes were settled. To be more specific: when an offense is committed among the Giriama, how is the resulting quarrel resolved? To answer this question, not only must actual disputes be collected and analyzed, but any institutions that have any role at all to play in the process of dispute settlement must be identified and studied in depth.

In the field, there were two major practical problems: (1) How does one find disputes in order to analyze them? (2) How does one identify institutions that deal with disputes in some way, and observe them in action?

The first obstacle I met in trying to begin to answer these questions came from the nature of Giriama settlement patterns. The Giriama, who live from ten to forty miles west of the Indian Ocean, reside in very small villages. Many villages, reflecting patrilineal descent and patrilocal residence, are composed merely of a father and his sons, together

with their wives and immature children, the whole seldom exceeding ten adults. It was thus immediately evident to me that the usual village study would not be appropriate, given my objectives. Limiting myself to a single village would severely limit access to a variety of disputes, and the sometimes great distance among villages would not ease the situation. My general strategy, therefore, was to identify institutions that dealt with disputes, and, subsequently, to gain access to disputants and their villages. My first problem was to find an institution that dealt with disputes, met regularly, and was easily accessible to me.

It was not difficult to locate an institution which fit this description. I had read about the elders' councils in the published literature (e.g., Champion 1918), and the Location Chief was able to direct me to the sites of their meetings. I began my research by visiting these elders' councils, or kambi, which met regularly and existed for the sole purpose of hearing and attempting to settle disputes. Once I was regularly attending the councils, I could record disputes on my tape recorder with a multi-directional microphone, take photographs, and

interview the disputants afterwards to fill in the details of the dispute. These interviews frequently led me to the village of the disputants, where I was able to collect such facts as the exact relationship between disputants, how the dispute arose, and its previous history. I found that one could not rely on the testimony during the elders' council meeting for such information.

By these means, I was introduced to a fair number of villages, and I was able to begin to interview people not only on the subject of disputes, but on Giriama culture and society in general. The interviews on disputes were invaluable for my specific purposes, for I elicited case histories of disputes that had already occurred, as well as information on ongoing disputes that I witnessed. The case histories were important in several respects: they provided skeletal outlines of many kinds of disputes from their inception to their settlement -- an often drawn-out process that I could not follow at the beginning of my fieldwork. The complete outline of a case, which had in actuality taken several months to run its course, gave me an idea of the problems that I would encounter in budgeting my time and keeping up

with the latest developments -- sometimes elusive -- of a dispute. The case histories also provided me with a list of institutions which disputants used in the course of seeking a resolution to their disputes. A prior knowledge of these institutions served to alert me to the potential stages that an ongoing dispute, which I would be studying, might follow.

Once these institutions became known to me, the problem became one of finding them and observing their activities. Elders' councils presented no problem in this respect, because of their open, regularly scheduled meetings. In contrast, the diviners who secretly reveal offenders (wagonga wa mburuga); the diviners who publicly accuse (wagonga wa kuvoyera); the ordeals; and the sacred tree (mizimu) where disputants go to pray for the death of an offender -- these are all widely scattered throughout Giriama country, and are visited on the spur of the moment by disputants. A disputant, for instance, may decide to consult a spirit medium at any time of the day, and such meetings are strictly private, occurring in the house of the medium. Another problem confronted me: the accusation ceremony of the mgonga wa kuvoyera, which had always been mobile and secluded in the bush,

had become increasingly inaccessible because the mgonga began to be accused of defamation of character in the District Magistrate's Court. It was only after I had been in the field for four months that people trusted me enough to tell me of their plans to consult a diviner when they suspected sorcery activities in their village, or to tell me that they planned to take a trial by ordeal, eighty miles away, at a certain time. On such occasions, I had to depend on invitations to accompany the disputants; this ensured that I would witness the activity and be there at the correct time. The ordeals in particular are very secluded in the bush, and it is necessary to traverse miles of bush without even footpaths for guidance.

After I had met the specialists who were in charge of the more esoteric, secret institutions, and had visited them several times as a discreetly passive observer with merely a notepad and pen, I was eventually able to make tape recordings and compile a photographic record. I also had interviews with these specialists. These interviews were essential in providing what was conceived as the ideal functions of the institution concerned; this I was then able to compare with its more complex functions that unfolded as I followed

the cases to their conclusions.

* * *

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PART ONE: INTRODUCTION

CHAPTER ONE: THE STUDY OF DISPUTE SETTLEMENT

The Problem

In recounting their history, the Giriama¹ often mention the origin of their laws (mila, pl. mila). According to Giriama oral traditions, a body of law was formulated by a small group of elders representing the survivors of six Giriama clans who had fled the ravages of the warlike Galla. The Giriama retreated to a small village called Kaya Fungo, near the present-day town of Kaloleni in the Coast Province of Kenya. Within Kaya Fungo, the clan elders gathered to formulate the rules that would regulate the life of the assembled clans. A uniform agricultural calendar was instituted, along with laws defining individuals' rights and duties, and procedures for seeking justice from the elders. Today, the Giriama live in widely dispersed villages, but the elders' councils (kambi, pl. kambi) when they make their legal decisions still refer to the original laws enacted by the elders of Kaya Fungo.

The importance of law to the Giriama is reflected not only in references to the corpus juris instituted at Kaya Fungo, but more implicitly in the outcomes of their disputes: cases are decided largely on their

1. In the language of the Giriama, the Giriama people are referred to as the Agiriama (sing. Mgiriama).

merits, and unacceptable social behavior is unambiguously exposed. This sharp delineation of right and wrong, guilty and innocent, in the Giriama judicial process appears to be surprising, if the analyses and conclusions of major ethnographies of African law are examined. In general, it has been said that African judicial institutions -- where they are identified as such at all -- are "informal"; legal authorities do not cite substantive norms as a basis for their decisions; "truth" is sacrificed to an overriding aim to reconcile disputants for the good of the community. The individuality of a disputant's claim tends to be sacrificed by social consensus (Bohannan 1957; Gluckman 1955) or by political pressure (Gulliver 1963). These assertions are only tentatively qualified, and the qualifications are undocumented. Gluckman (1963:194), for example, merely states that "Even then the court should not achieve a reconciliation without blaming those who have done wrong . . . wrongdoers are upbraided . . ." There are similar qualifications made by Bohannan (1965:39) and Gulliver (1963:124).

In light of these brief comments about some of the major African legal ethnographies, the emphasis that the Giriama place on ascribing wrongdoing in their

legal decisions seems exceptional. The Giriama data will show, for instance, that efforts to reconcile disputants are not incompatible with clear ascriptions of guilt; and that judicial institutions differ widely in form, as well as in their abilities or inclinations to reconcile disputants.

It was possible to reach these conclusions largely because this study uses the case method in a different way from previous ethnographies. By examining, where possible, verbatim transcripts of disputes, it became clear that cases have two separate phases: 1) the presentation, to a legal authority, by the disputants, of arguments and evidence supporting their respective claims; 2) the announcement of a decision by the legal authority. By making this distinction, it is possible to see that efforts to reconcile disputants are made, if at all, mainly during the initial presentation of claims by disputants. While conciliatory remarks may be made to temper the final decision and alleviate ill will, the decision remains intact. Indeed, efforts to reconcile disputants are dispensable, and depend on many variables such as the nature of the legal authority hearing the case, the type of dispute, and the nature and quality of the relationship between disputants.

Thus, largely through a more detailed analysis of cases, this study on the Giriama describes the way in which an African judicial system exposes unacceptable social behavior by ascribing guilt and innocence, while employing mechanisms, where feasible, to preserve social relationships.

"Legal Authorities" and the Problem of Definition

When a dispute occurs in Giriama society, there is often a prescribed procedure to follow in seeking a remedy. This accepted procedure may vary according to the type of case, and may involve several types of "legal authorities". Following Pospisil (1971:44), a legal authority is "an individual or group of individuals, who can either persuade the litigants to comply or who possess power over enforcement agents or the group membership in general to compel them to execute the verdict, judgement, or informal decision even over the protests and resistance of either or both parties to the dispute."

This functional definition of a legal authority allows great latitude in identifying those members of society who perform legal functions such as dispute settlement. The temptation to identify as "legal" or "judicial" only those institutions that resemble Western legal institutions is avoided. Thus, among

the Giriama, institutions such as oracles are readily identifiable as legal authorities. In addition, Pospisil's definition separates the giving of a legal decision from its enforcement. In this way, the legal authority may be recognized as "legal", even though it is relieved of the responsibility of personally enforcing the decision. The distinction between giving a legal decision and personally enforcing it is an important one, particularly for a segmentary society such as the Giriama, where individuals or groups who decide cases may lack the authority or the apparatus to enforce decisions themselves. In Giriama society, as will be seen below, legal decisions are often enforced by fear of supernatural reprisal which exerts a powerful psychological force, by self-help on the part of disputants, or by group action in ostracizing an offender, denying him the support of community or kin group. These measures are sanctions that effectively implement decisions made by legal authorities, and work to strengthen the impact of such decisions, rather than undermining the standing of legal authorities.

Characteristics of "African" Dispute Settlement

Anthropologists who have emphasized dispute settlement in their studies of law have generally tried to focus on some particular dimension of the

institutions dealing with disputes. One explanation ascribes great importance to a society's political organization; this theoretically permits variations in the way disputes are settled, depending on the type of political organization a society has. Another kind of explanation has its roots in a functional outlook that views all institutions within society as primarily serving the need for social integration and harmony. The functional explanation is more restrictive, for dispute settlement must always have characteristics that lead to peaceable resolutions promoting social harmony.

A recent study of African law (Fallers 1969) attributes the forms of judicial decision-making to the degree of political differentiation within society. In his discussion of courts among the Basoga of Uganda, Fallers ascribes the narrow range of disputes that may be adjudicated to the autonomy of those in positions of legal authority. Soga courts are more concerned with punishing wrongdoers than in dispensing justice; they are even less concerned with reconciliation (Fallers 1969:328). Fallers repeatedly describes these characteristics of Soga courts as "legalistic", and points out similarities between Soga courts and Anglo-American courts. He

attributes this legalism to the political organization of the Basoga: Soga courts, in pre-colonial times, were part of a state structure comprising a ruler and a hierarchy of chiefs with great authority, who were also judges. With the support of the Colonial administration, Soga judges increased their authority; as a result, present-day Soga courts are "purely judicial bodies", relatively free from political influence (Fallers 1969:329).

Anthropologists like Fallers, who assert that the type of political organization largely determines the nature of dispute settlement, have implicitly or explicitly been following the "state"- "stateless" political classification of societies. A major theme in legal anthropology is that in the absence of a central government, the society necessarily lacks courts and judges. Bohannan (1965:39-40) in an article under the significant subheading Law in Stateless Societies, says that the prime example of a stateless or "bicentric" power system is a lineage system based on segmental opposition. He states that a court - which he defines as a "body of men representative of the political power" (1965:40) - cannot have any place in a bicentric system unless there is some way of organizing the many judges representing the many segments of society. Bohannan

(1965:40) further concludes that in stateless societies, moots, oracles and self-help displace "organized, neat systems of law." In his legal study of the Tiv of Nigeria, Bohannan (1957) indeed contended that in stateless societies there can be no decisions based on overt rules, but only compromises. In describing Tiv dispute settlement (1957:65), he concluded that judgement among the Tiv "consists largely of what the majority thinks is right or desirable"; Tiv judges feel that the settlement of a dispute by any standards other than the concurrence of litigants, and eventually of the community, is to settle it by force.

In his study of the Arusha of Tanzania, Gulliver (1963) describes a society which, like the Tiv, is "stateless", and his conclusion is similar to Bohannan's. Among the Arusha, legal norms are portrayed as being "buried" under the competing forces of disputing parties; it is the relative political strengths of the opposing parties and the support that they muster that determine who will prevail. On the basis of his analysis, Gulliver classifies systems of dispute settlement into two polar types, "political" and "judicial". He defines the judicial process as one involving a judge "who is vested with both the authority and responsibility to make a judgement, in accordance with

established norms, which is enforceable . . ."
(Gulliver 1963:297). By this definition, he places
Arusha dispute settlement in his "political" category.

In contrast to the Tiv and the Arusha, the Lozi of
Zambia, described by Gluckman (1955), are part of a
state structure. There are courts and judges, but
reconciliation is the ultimate aim of court procedure.
Gluckman (1955:21) states that "The court tends to be
conciliatory; it strives to effect a compromise accept-
able to, and accepted by, all the parties. This is the
main task of the judges . . ." Gluckman, however,
looks not to the form of Lozi political organization,
but to the need for social harmony to explain the
prevalence of compromise. Gluckman notes that most Lozi
relationships are permanent and multiplex, that is, based
on many interests that must continue into the future.
For this reason, it is in the interest of social harmony
that relationships of a permanent nature -- particularly
kinship and village relationships -- be preserved. Lozi
judges, thus, do not confine themselves to narrow legal
issues, but consider the total history of relations
between disputants in effecting a settlement. Thus,
Gluckman takes a view that is close to a functionalist
one, with specific refinements: "There is no special
quality about African law and law-courts as such which

leads to a stress on reconciliation - 'the restoration of social equilibrium' is the sort of phrase used to describe an almost mystical process. Reconciliation of the parties becomes one of the main aims of the judges when the parties are in a relationship which is valuable to preserve" (Gluckman 1955:77-78).

Reevaluating "African" Dispute Settlement

With the recent exception of Fallers (1969), anthropologists who have discussed African dispute settlement assert that disputes are not decided so much on their merits, on the basis of who is right and who is wrong, but rather on overriding social or political considerations. This dominant view has become associated with a curious "pan-African" method of dispute settlement. Thus, Elias (1956) in characterizing African customary law, states that "African law strives consciously to reconcile disputants" (Elias 1956:268); he elaborates by saying that the "general atmosphere of the African judicial process is one of peaceful debate of issues dividing the litigants in the sure belief that an acceptable solution will be found out of the elders' fund of wisdom" (Elias 1956:271).

This conception of African dispute settlement as being primarily conciliatory has been challenged in

several ways. Aubert (1967) points out that only certain types of cases are in fact amenable to compromise. Coons (1964:780) challenges Gluckman's contention that Lozi judges strive to effect compromise by stating that Gluckman's illustrative cases are situations in which multiple issues are at stake, and hence can be subject to a compromise. Indivisible claims, such as for full restoration of a chattel or land, are absent in Gluckman's analysis.

Van Velsen (1969) also questions whether reconciliation is really a universal feature of African dispute settlement. Thus, by examining the judgements handed down by Tiv judges (described by Bohannan: 1957), Van Velsen concludes that attempts at reconciliation pertain only to sanctions, and occur only after one of the parties has been firmly convinced that he is wrong (Van Velsen 1969:143-146).

There is another area in which the analysts of African dispute settlement can be criticized. Although Bohannan (1957) and Gulliver (1963) examine several types of institutions that settle disputes, and Fallers (1969) and Gluckman (1955) concentrate on one kind of institution which they call a "court", they all conclude that there is a single, pervasive "type" of dispute settlement possessing a restricted bundle of characteristics present in a society. This idea that a single method of dispute

settlement -- or that several types of institutions dealing with disputes can perform the same functions and exhibit the same characteristics -- has been questioned by several anthropologists. Pospisil (1958:272; 1967:3) points out that every functioning subgroup of a society, such as the family or lineage, regulates the relations of its members by its own legal system. He further states (1967:13) that certain legal authorities are restricted to dealing with only particular types of disputes, and mete out only specified sanctions. Thus, among the Kapauku Papuans of New Guinea, offenses such as breaches of etiquette are punishable only at the family level; similarly, slapping as a punishment is also confined to the family and household.

Other anthropologists have also suggested that, within one society, there may be different legal institutions having distinct functions and characteristics. Nader, for instance, emphasizes that there may be several different "styles" of dispute settlement within one society (Nader 1969:70). In a study of the Nyoro of Uganda, Beattie (1957) describes how councils of neighbors, in contrast to the court, settle disputes in an amicable, informal way, and serve to restore values of neighborliness when they were ruptured by a dispute; sending a disputant to a court would imply the community's

rejection of him. In two companion articles, Gibbs (1962;1963) contrasts, among the Kpelle of Liberia, the moot with the court, showing them to be functionally complementary. Because of the contrasting manner in which disputes are handled, for instance, the moot resolves marital disputes, while courts grant divorces.

Recently, others have emphasized that in order to understand the functioning of courts in a society, institutions other than the court must be studied. Thus, Nader (1965:24) states: "If we are dealing with a society with courts we need to investigate the dispute case in the context of the range of social institutions which adults use in the resolution or prevention of trouble situations, that is, we should sample out-of-court cases as well as court cases." Similarly, Moore (1970:333) says that ". . . one must go beyond the settlement of ordinary law cases in courts to get a complete picture . . . It is only in terms of that kind of broad overview that the highly specialized role of courts can be understood."

These references suggest that societies may have several coexisting institutions having differing functions and characteristics in relation to dispute settlement. Although it has been suggested that a society's political organization (Gulliver 1963;

Bohannan 1957; Fallers 1969) or social structure (Gluckman 1955) produce a dominant type of dispute settlement, we shall demonstrate that, among the Giriama, there is no pervasive bundle of characteristics that can be designated "Giriama dispute settlement", determined by either the segmentary form of Giriama political organization, or by the society's predominantly permanent, multiplex social relationships. Rather, Giriama dispute settlement varies according to the differing styles of settlement adopted by each type of legal authority.

Since the variables present in each dispute are potentially almost infinite; emphasis will be given to the regularities exhibited by each type of legal authority. The style of each legal authority will be determined - and illustrated - by analyzing the presentation of the disputant's claims, the announcement of the legal decision; and the enforcement of the decision. It will be seen that while legal authorities differ in the general way they handle disputes, the Giriama legal system, in its variety, provides the opportunity for resolving most troubled situations.

In addition, the presence of "either/or" decisions, and the ascription of wrongdoing, do not preclude the amicable settlement of disputes.

The Use of the Case Method

A large part of the data from which our conclusions are drawn has been made immediately accessible to the reader. Actual transcripts of cases are included in the text. These transcripts have been edited to avoid repetition as much as possible, but they are still lengthy; the Giriama are an eloquent and loquacious people. The study of actual cases, called the "case method", has been advocated by lawyers and anthropologists as a way of studying dispute settlement as well as extracting legal rules. A pioneering use of the case method was made in Llewellyn and Hoebel's (1941) classic study of Cheyenne law ways; it has been suggested by Twining (1968; 1973) that the detailed study of actual disputes, with the purpose of examining in detail the processes of settling disputes, is the main gift of The Cheyenne Way to anthropology. As Twining points out, however, "not all those who have subsequently claimed to use 'the case method' have used cases in the same way" (1973:565).

Our use and analysis of lengthy transcripts of Giriama cases makes the selection of cases an important issue. Of necessity, only a few case transcripts are included in the text, and these were chosen with great care. In part, they were chosen for

their representativeness, in terms of both the frequency of absolute occurrence of the "type" of dispute in the society and the frequency with which the type of dispute appeared before the particular legal authority being discussed. This knowledge of what cases are representative depends upon a background provided by a number of cases -- fifty-six -- collected in detail, and by others that were recounted by informants as case histories or anecdotes. At the same time, the cases used in the text were also selected for their non-representativeness in another sense -- in their being especially complete, or in their being more interesting in content than others that could have been used to illustrate the same point. One case in particular, the case of Kahindi wa Thoya (Chapter Nine), was actually selected because it was completely atypical: it presented a direct challenge to the heretofore accepted, customary procedure of accusing sorcerers. In general, the selection of a case such as Kahindi conforms to Llewellyn and Hoebel's (1941:29) notion of a "trouble case" as "a case of doubt . . . in which discipline has failed . . . in which an unruly personality is breaking through into new paths of action or leadership . . . or that in which an ancient institution is being tried against emergent forces . . .". In the

case of Kahindi, the collective institution of diviners and their function of accusing sorcerers were reaffirmed in the face of the challenge to custom brought by Kahindi.

Most important, the case transcripts report verbatim dialogues among disputants and the comments and discussions of the legal authorities. These data reveal the stuff of which decisions are made. The arguments each disputant sets forth, the way in which he presents his case, as well as statements by authorities attempting to settle the dispute -- these are all given in the text and lay bare to the reader the anatomy of decision-making. Such material exposes the existence of conflicting norms, as each opposing disputant necessarily justifies his side of the case. The legal authorities, whose ideal function is the settlement of disputes, must then choose between conflicting norms in their attempt to settle the case, for ambiguity in a decision will only perpetuate the position of each side. There was only one legal authority -- the kambi elders' council -- where I had access to the private discussions of the elders before they announced their decision. The transcripts of these discussions reveal "the wide choices made by (judges) among applicable norms", as well as the rationale for various decisions, which

some anthropologists consider imperative to an understanding of dispute settlement (Moore 1970:323). The case method, as used here, also exposes the "wrangling" which Nader (1965:24) states is invaluable to knowledge of how a case is actually settled. Finally, Gluckman has said that ". . . for tribal courts we lack detailed records of cases, including the examination of evidence and judicial decisions. No one has published sufficiently detailed records of processes of argumentation toward decisions" (Gluckman 1968:291). In our study, we have tried to remedy this lack to the extent that we could do so without making it into an archive of Giriama court cases.

CHAPTER TWO: THE GIRIAMA¹

Any successful study of disputes depends on an understanding of the culture and society in which disputes occur. Conversely, a study of disputes can contribute greatly to the understanding of society. In the course of a dispute, the unacceptable (at least to one party) behavior which caused the dispute is often discussed exhaustively by disputants themselves and by anyone trying to settle the dispute. These discussions, in a great variety of disputes, of how the disputants should have behaved, or how they should behave in future, are a rich source for the anthropologist of what is considered to be acceptable behavior. The form and content of disputes, furthermore, relate to many aspects of a culture. Thus, clues to the subtler dynamics of the social organization are often found in an analysis of all the personnel who are involved in a dispute and its settlement.

The Giriama are a Bantu-speaking society, numbering about sixty thousand. Today, the Giriama inhabit, in the Coast Province just north of Mombasa, a strip of

1. See Champion (1967) for an edited manuscript describing Giriama culture, written in 1918. For a recent study of Giriama entrepreneurs, see Parkin (1973).

some thirty by seventy miles, that approaches the Indian Ocean to within an average of ten miles. Recently, the Giriama have extended their settlement northeast, to the Galana-Sabaki River, near the coastal town of Malindi. Formerly, the Giriama lived much further inland, but a search for more fertile soil provided an incentive for the movement towards the coast. The Giriama are concentrated in the administrative District of Kilifi, where this field research was done.

The Giriama are essentially agriculturalists. Maize is the staple crop in most areas; where there are large natural depressions that fill with water during the rainy season from March-June, rice is the major crop. Other crops include cassava, sorghum, eleusine and tomatoes. Bananas and coconuts are also grown and often sold as cash crops in the markets.

The Giriama live in small hamlets (muji, pl. miji) composed of close agnates that are grouped closely together into villages. Hamlets are composed of as many patrilineally related males (and unmarried females) as the hamlet can accommodate spatially and tolerate socially and economically. Through growth and consequent fission, the composition of a hamlet may vary, but patrilineality and patrilocal residence

determine the nucleus. Such a hamlet is composed most commonly of a father with his wives, living together with his adult sons, with their wives and children. The oldest male resident of the patrilineally related hamlets, either the father or the oldest of a set of brothers, wields considerable authority over the entire group of hamlets. The oldest male, called the Village Head (mtumia wa muji, literally, "elder of the village") is responsible for the general welfare of the village hamlets and plays a prominent role in the settlement of disputes.

Although the Giriama today are scattered in these agnatic villages, their oral history speaks of a time when the Giriama were organized into six corporate, localized patrilineal clans (mbari, pl. mbari) named Mukiza, Mwabaya, Mwandundi, Mwangare, Milulu and Mwakombe, each founded by a man. According to legends, when the Giriama first lived in the fortified and secluded village called Kaya Fungo, containing the six original clans, each clan lived separately, and owned and cultivated its own land within the Kaya. Gradually, through the passing of the generations, the six clans subdivided into other clans of the same structural rank. This fission is attributed, in the myths, to disputes over clan property between sons of the same

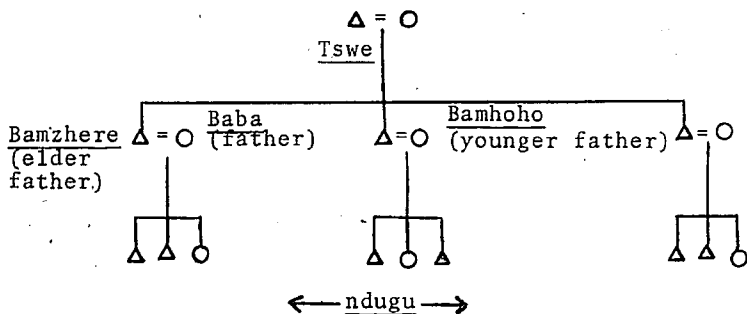
father but different mothers in the polygynous clan-villages within the encompassing village of Kaya Fungo. The name of each clan today contains the name of its founder; however, descent cannot be traced back to this ancestor by any living person.

In Kaya Fungo, each original clan is said to have possessed a limited list of male and female personal names which were shared with no other clan; these names continue to be passed on today. There are two sets of names in each clan, which are passed to alternating generations. Thus, a father names his first-born son after his own father, and successive sons after his father's brothers, in the exact order of their births. In this way, each generation not only duplicates in names the preceding alternate generation, but nominal continuity with the generations of the founding ancestors is perpetuated. In addition, the appearance of new generations is recognized by changing the names of the males of the alternate senior generation. Thus, a new grandfather is addressed by reference to the name of his first grandchild, male or female. For example, if a man's first-born grandchild is a female named Kadzo, he will be addressed as "Tsokadzo". Through this system of personal clan names, clan identity remains strong, although the clan does not participate as a

unit in communal activities, and is neither a residential nor a corporate group.

Today, a Giriama clan is divided into two kinds of sub-groups. The more inclusive group is called the lukolo; significantly, the word lukolo is often used synonymously in Giriama speech with the word for clan (mbari). Indeed, the lukolo is an ad hoc group, consisting of as many members of the clan as it is possible to assemble at a given time for a specific purpose, such as a funeral. The mryango, on the other hand, is a localized kin group, frequently a residential unit, three generations in depth.

The mryango



The group of ndugu, descendants of the common grandfather (tswe), may inherit each others' wives and social positions.

Clan identity is reflected in the strict adherence to clan exogamy. Residence after marriage is

patrilocal. The choice of a mate is left to the individual, but the formal arrangements, including the payment of bridewealth (hunda) are handled by the families of the groom and bride. The parents of the groom visit the girl's parents on several occasions in order to agree on the amount of bridewealth to be paid and to fix the date of payment. On the last visit, the bridewealth, in the form of cattle, goats or money, is paid in the presence of witnesses unrelated to either family. A payment of a specified amount of coconut liquor, called "liquor of a mature, fertile woman" (uchi wa magomani) has already been made before the major part of the bridewealth is transferred. The payment of coconut liquor by the groom's parents to their prospective affines is the legal sign that any children of the marriage belong to the clan of the husband. If this payment is not made, any children of the marriage belong to the wife's family, and may be claimed by them in the event of divorce or the wife's death.

Marriage among the Giriamas is frequently polygynous. There is often a considerable disparity in age between the senior or first wife (mke muzhere), and subsequent wives (ache ahoho, sing. muhe muhoho) in a polygynous household. This disparity arises because a man usually

acquires additional wives with the bridewealth he collects on the nubile daughters of his first wife. These late, secondary marriages are frequently instigated by the senior wife, who is aging and requires domestic help around the house and in the fields. To emphasize her eagerness to have a co-wife, the senior wife may herself go and bring back the new bride after the bridewealth has been paid. Such a younger co-wife is referred to as the mke kazi, or "wife who works", by the senior wife and the husband. Within a group of co-wives, each new wife is called the mke kazi of the wife acquired previously, even though, because of the relative prosperity of a husband in his later years, several wives may have been acquired almost simultaneously and may be near-contemporaries in age. The senior wife wields considerable authority over the junior wives, not only because of her greater age and experience, but also because the new wives have been largely acquired with the bridewealth received for her married daughters.

Polygyny and patrilocal residence promote disputes between husband and wife -- disputes that often arise not so much within the marital relationship itself as from the influence of tensions in other relationships, such as those of a wife with her co-wives or with her

husband's mother.

In the past, brothers (i.e., males who are called "brothers" in the kinship terminology who are actually sons of a set of brothers) usually contributed the cattle or goats to the bridewealth of a brother who needed a wife. The rationale for the practice is a form of the levirate: the wife of a deceased man may be inherited by one of these brothers. This is further expressed by the terms which a woman uses in relation to her husband's brothers -- she calls them "younger husband" (mulumangu muhoho, pl. alumangu ahoho) or "older husband" (mulumangu muzhere, pl. alumangu azhere), depending on their age relative to that of her husband.

There is great respect for age and the experience and wisdom associated with it by the Giriama; this respect is at the base of both Giriama religion and political authority. Ancestors (koma, pl. koma) remain symbolically in the presence of their descendants in the guise of carved, anthropomorphic memorial markers also called koma or vigonga (sing. kigonga), which are placed in the hamlet center in a row, each male marker to the right of his "wife". A kigonga is the memorial marker symbolizing a male who was a member of one of the most prestigious of Giriama secret societies for men, called the Chama chà Gohu. Adult males who were not members of this society, and females, have the

shorter, plainèr markers simply called by the generic name koma. Both koma and vigonga may be erected over actual graves, but more often the koma have no relation to burial sites. This is because hamlets move frequently, as well as fragment, and the dead are not disinterred. Also, since a typical hamlet contains only the descendants of a single male ancestor, one or two generations back, the ancestor to be commemorated by a koma is, in fact, buried in another hamlet. Deceased female clan members are not represented by memorial markers nor are they venerated in any sense. Females appear only as wives, but their names are generally not remembered by informants, while the names of the males are given without hesitation. Because of the precise, orderly duplication of personal names in each alternating generation, however, informants show confusion over the identity of the precise person to whom a name refers, unless he died very recently. The collective ancestors of a clan, telescoped by the system of name-repetition, are feared and respected; frequent offerings of food and coconut liquor are placed before the memorial markers, often with requests for advice and help in times of trouble. Neglect of the memorial markers is believed to result in the vengeance of the ancestors, who have the power to visit sickness and misfortune on the living.

In addition to the ancestors, the Giriama also revere one God, called Mulungu, who lives in the sky. The Giriama feel more isolated from this Sky God than they do from the ancestors; they speak of the Mulungu with respect and awe, but profess ignorance as to his exact nature. Mulungu, along with the ancestors, is invoked in prayers for prosperity and well-being, but usually the Sky God is approached through his spirit-messengers, the pepo (sing. pepo). But even these spirits can be approached by ordinary men only through specialists called wagonga (sing. mgonga). There are many kinds of wagonga, but only those wagonga who are also spirit mediums can communicate with the pepo. The spirit mediums are possessed by the pepo, who can then make their demands or pronouncements known to ordinary human beings. These spirit-medium wagonga play an important role in the judicial process, by providing evidence of wrongdoing, purportedly received directly from the spirits.

Antithetical to the largely beneficent forces of the Sky God and the ancestors is the malevolent practice of sorcery (utsai). Giriama sorcerers (atsai, sing. mutsai) use medicines (mihaso, sing. muhaso) which they instruct (kukotera) to have some ill-effect on human beings, crops, or livestock. When the sorcerer instructs his medicine (as he must do to give it force),

he must specify the victim and the medicine's intended effect. In order to be effective, sorcery medicine must come into direct contact with the victim. Thus, a sorcerer usually works at night, enabling him to secrete the medicine in places that his victim frequents -- paths, gardens, dwellings, or water holes. Women are believed to be the most dangerous and effective sorcerers, and wives are vital to their husband's success in sorcery. When a male sorcerer is abroad doing his work, a wife must stay in the house grasping the hearthstones. If she does not, it is believed that he will be apprehended.

Medicines used by sorcerers are believed to cause serious sickness and death, but they can also be used to harass or to alter a victim's state of mind. Thus, jealous wives often use sorcery medicine on their husband to control his affections or to promote ill-feeling by him towards a co-wife. Sorcerers are believed to move with such great stealth that they are able to shave people's heads and perform sexual acts. No matter what acts a sorcerer performs, however, an accusation of sorcery is most serious, and a conviction means social death if the offender does not comply with demands made of him.

Various types of wagonga are prominent in the struggle against sorcery. Some wagonga such as the

wagonga-of-the-calabash (wagonga wa mburuga) and the wagonga-who-pray (wagonga wa kuvoyera) expose sorcery acts and accuse sorcerers. Another type of mgonga, the mgonga wa kuhundula or "mgonga-of-cleansing", specializes in curing sorcery-inflicted illnesses and in counteracting the effects of sorcery medicine by performing cleansing rituals. Feelings towards these wagonga -- particularly the wagonga-of-cleansing -- are ambivalent, for their expertise in medicines qualifies them as expert sorcerers themselves. Sorcery is so widely practiced and so greatly feared that most Giriama routinely conceal anti-sorcery medicines (fungo, sing. fungo) in their villages.

Authority among the Giriama is based on age and its acquired wisdom. The most obvious authorities in Giriama society today are the councils of elders, addressed as "atumia" (sing. mtumia), collectively referred to as kambi (sing. kambi). In the past, these councils had the power to make and enforce their legal decisions, and the settlement of disputes was an important, regular duty of the kambi. Today, their effectiveness in dispute settlement largely depends on the willingness of the disputants to end their quarrel and on their ability to enforce a judgement themselves.

The kambi are in actuality a part of the Giriama

age-grade system, which today is rapidly waning in importance. Every ten or fifteen years, the elders of the village Kaya Fungo (which continued to be an important administrative center for all of the Giriama long after the resident clans had dispersed) would send out a sacred drum, called a mwanzamkulu, to be beaten within earshot of every Giriama village. The drum would circulate outside the Kaya for a year, summoning all males above the age of about thirteen (who were not already members of an age-grade -- rika, pl. marika) to come to Kaya Fungo to be initiated. Each group of initiates was given the name of the prevailing age-grade. When Arthur Champion wrote about the Giriama in 1918, the name of the age-grade at that time was Kavuta; since then, there have been four more age-grades, the present one being Kaumba.

Each age-grade is divided internally into three sections, named "first", "middle" and "last", corresponding to the relative ages of the initiates. It is the eldest group who are the kambi elders, entrusted with the tasks of major decision making. It is said that when the Giriama were concentrated within the village Kaya Fungo, the council of kambi made decisions affecting the entire society. When the Giriama dispersed, striking out into lands outside of the Kaya, this

system of kambi authority, like the clan system, was fragmented, and took on a purely local quality.

The system of secret societies, like that of the age-grades, is also based on the relative ages of the initiates. Though membership in the secret societies is voluntary, the members of the more important societies are usually elders who wield considerable political authority over the Giriama people as a whole. There are six secret societies (vyama, sing. chama) which recruit only males as members. These societies are named, in order of their importance, and the relative ages of the members, Chama cha Kazanza (joined during childhood), Chama cha Mwanzamkulu (joined at puberty), Chama cha Habasi, Chama cha Kinyendze (both joined during adulthood), Chama cha Vaya, and Chama cha Gohu (highly prestigious societies joined when one is about 50). All of the secret societies possess information about medicines, as well as special ceremonial dances that only full members (bōra, sing. bora) are entitled to know and witness.

Medicines possessed by the secret societies are sometimes identified with oracles (viraho, sing. kiraho) that expose and punish wrongdoers². In fact, some oracles

2. Not all oracles are owned by secret societies. For instance, the "Oracle-Which-Finds-Out" is owned by private individuals, and the "Oracle-of-the-Hot Iron" is owned by blacksmiths.

are named after the secret society that possesses them; for instance, the Oracle of the Habasi is named after the Secret Society of the Habasi (Chama cha Habasi). The possession of oracles by secret societies makes them prominent participants in the judicial process, although some types of poison oracles possessed by the secret societies were outlawed by the Colonial government because of their fatal effect.

The most important secret society from the viewpoint of authority is the society of the Vaya (sing. vaya), (Chama cha Vaya). The Vaya correspond roughly in age with those males who are kambi elders, and in fact the Vaya speak of recruiting those friends and acquaintances of theirs who are members of their age-set. In former times, the kambi and the Vaya were the backbone of Giriama political organization³. In the past, the Vaya had the authority to settle disputes, but perhaps their most formidable possession for the settlement of disputes was their knowledge of the medicine used to administer the Kiraho cha Fisi, the poison "Oracle of the Hyena". This highly respected and feared oracle and its associated ordeal was administered exclusively

3. Since Colonial times, the Giriama have been administered by non-traditional chiefs and sub-chiefs (the latter are now called assistant chiefs). Each chief is responsible for the administration of a Location, a territory based on convenience, not on kinship or any other traditional consideration.

by the Vaya, to determine the guilt or innocence of the accused, particularly suspected sorcerers. This oracle is believed to have caused rapid, painful death if the accused were guilty (the oracle is named after the hyena because of the howling cries of the fatally stricken offender).

Besides functioning as an oracle, the Kiraho cha Fisi was also used for oaths: proven sorcerers swore never to practice sorcery again, as they drank the secret medicine of fisi. If they did later revert to sorcery, it was believed that the oath they had taken would kill them instantly. Today, the Kiraho cha Fisi is illegal, outlawed because of its fatal effect, and the authority of the Vaya has similarly declined. The Kiraho cha Fisi has been replaced by the "Oracle of the Pawpaw" (Kiraho cha Papayu), whose effect is not fatal, and which is owned by a man who is not even a member of the Vaya, although a few Vaya participate in the giving of this ordeal at Kaya Fungo.

This section was meant to give the reader a brief introduction to the Giriama. Many of the subjects that have been touched on will be elaborated in the context of the discussion of dispute settlement.

CHAPTER THREE: AN INTRODUCTION TO GIRIAMA DISPUTES AND THEIR SETTLEMENT

Our study examines dispute settlement from two converging approaches: (A) A detailed description will be given of the institutions (see below) which I found to be concerned with disputes in Giriama society. Interviews with disputants and specialists, as well as recorded and transcribed disputes, provide the material for this description of the personnel, activities, and functions of each institution in relation to the judicial process. (B) The dynamics of dispute settlement will be presented by using the case method. Here, some questions will be dealt with that the static description of institutions alone cannot answer. For instance, what precise steps do disputants follow, from the beginning of a dispute to its settlement? I found that after the occurrence of any type of dispute, there is a recognized, proper procedure for the disputants to follow. Many cases illustrate, for example, the predictable, orderly course of disputes about sorcery through a particular succession of specialized institutions.

The case method also shows that, although an appropriate judicial institution may be indicated by objective factors such as the relationship between

disputants, "appropriateness" may be continually redefined by the needs of particular disputants or the circumstances of the case. Not only the limited variety of types of disputes, but the infinite variety of participating personalities, with their widely ranging degrees of bitterness, determination and verbal skill, can affect disputants' strategies and the functioning of judicial institutions in their handling of day-to-day cases. Thus, in some cases, the Village Head may be the final adjudicator. In others, bitterness between close agnates and resultant distrust of one's relatives may require a "change of venue" from the Village Head to a more neutral elders' council. Individual reactions, such as the rage of the accused, may require that a legal decision be made by an oracle rather than by men.

My analysis, then, will implicitly separate the description of each institution (which exhibits regularities in spite of the variety of cases and personalities it deals with) from the description of actual cases. The aim is to show the reader the culturally prescribed choices occurring in the course of action that follows an accusation, the range of institutions to which disputes are brought, and the flexibility of the system as it responds to individuals who are its principal actors.

The institutions that will be dealt with in the following pages may now be briefly presented in a procedural context:

Gathering Evidence

Wagonga (sing. mgonga) wa mburuga, or wagonga-of-the-calabash, are diviners who supply evidence -- among their other divining activities -- to potential accusers. A potential accuser seeks the services of these diviners when witnesses or strong circumstantial evidence are lacking. Preliminary consultations with wagonga-of-the-calabash are mandatory only before an accusation of sorcery. Information received from these diviners, however, strengthens the accuser's case in any type of dispute, and is given the weight of evidence if the dispute is adjudicated.

Going Forward with the Evidence

Unless the alleged offense is sorcery, the accuser may personally accuse the alleged offender. If the accused denies guilt, the accuser may seek redress illegitimately through self-help (such as assault) without obtaining a judgement against the accused, or he may present the case to an appropriate legal authority for adjudication.

After making his allegations known to the accused,

an accuser makes his formal accusation before a legal authority whose decision can potentially settle the dispute. An accuser's choice among legal authorities may be limited by varied factors such as his relationship to the accused, the nature of the accusation, or even to his state of mind. An accuser's options may include: *

1) Mtumia wa muji, the Village Head. If an accuser has a close patrilineal relationship with the accused, particularly if the disputants are residents of the same village, or if the dispute affects the welfare of the village, the preferred legal authority is the Village Head, the eldest male of the local kin group (mryango). The Village Head autocratically arrives at a decision that is consistent with the interests of the kin group in minimizing dissension. The possibility of being deserted by one's kin or expelled from the residential unit makes the contending parties accept the Village Head's decisions.

2) Kambi, the elders' council. If an accuser has an affinal relationship with the accused, a distant kinship relation, or no kinship relationship at all, the neutral elders' council is a legal authority potentially acceptable to both parties: After listening to the testimony, the elders deliberate and debate in

private, but their decision is presented as being unanimous. The strength of their decision rests on community respect for the elders, and the party favored by the decision has the legal right to enforce the judgement himself.

3) Oracles. These are supernatural adjudicators that indicate their decisions through the disputants' reactions to medicines administered in trials by ordeal. If the accused is poisoned by ingesting medicine (Oracle-of-the-Pawpaw, Oracle-Which-Finds-Out) or burned by a hot iron passed over a hand that has been dipped in medicine (Oracle-of-the-Hot Iron), he is judged guilty. An accuser similarly affected is judged to have made a false accusation.

An accuser may demand that the accused participate with him in a poison or burning ordeal immediately after an accusation has been made either in private, or publicly before one of the legal authorities. If the case has been adjudicated, the dissatisfied party, acting alone, may seek the decision of an oracle. If one disputant goes to an oracle alone, he will be unaffected by the ordeal if he is innocent; the absent opposing party will also be unaffected, but his guilt will be understood.

The decision of an oracle may also be necessary

if secular adjudicators are unable to ascertain guilt or innocence on the basis of available evidence, or, as in the case of sorcery, if they lack jurisdiction over the matter.

4) Mizimu, where the spirits of the sacred tree dwell. Having met denial and defiance from the accused, an accuser may go alone to the sacred tree to present his case. The spirits are believed to announce their decision by inflicting death on the accused (or a relative) if he is guilty, or on the accuser (or a relative) if he made a false accusation. An accuser may resort to mizimu at any time during a dispute when he is vengeful, or feels that he cannot deal with the accused in any other way.

A disputant always goes to mizimu alone. Unlike the oracles, however, the mizimu spirits kill the guilty party or a relative regardless of his presence or absence at mizimu.

Responses of the Accused

After he has been informed of the allegations made against him by the accuser, the accused is under considerable pressure to participate in the judicial system. If he does not, he is fair game to any retribution his accuser metes out in violence or innuendo, which may affect the accused's physical

well-being, property, or position in the community.

Faced with an accusation, the accused may capitulate at once, ending the dispute. If the accused does not admit guilt and if the accuser initiates further proceedings, it is in the interests of the accused to defend himself. Both parties then participate in a dialogue presenting testimony before an adjudicator. If, however, the accuser resorts to self-help without giving the accused the opportunity to defend himself if he wishes to do so, the accused may present the case to mizimu. The mizimu spirits are particularly useful under these circumstances, for they render a decision based on testimony from one party only (although, of course, the spirits may "decide" in favor of the opponent). Thus, if the accuser shuns the judicial process, the spirits provide a remedy for the accused.

In addition to the mizimu, the oracles also offer the accused a chance to defend himself if the accuser does not attempt to prove his allegations before a legal authority. Like the mizimu, the oracles may be approached by the accused alone, but may render a decision in favor of either party.

The "Appellate" System

The initial selection by disputants of an adjudicator limits the legal steps that can be taken following a judgement. Thus, if a secular adjudicator, such as a Village Head or an elders' council, has given a judgement that is rejected by either party, the case can be appealed by the dissatisfied party who may go alone to a supernatural adjudicator, such as an oracle or mizimu. If, however, an oracle has delivered a judgement as a court of the first instance, the case can be appealed -- again by the dissatisfied party acting alone -- only to mizimu. If a wily disputant brings a case that has been decided by the oracles to a council of elders, the council will either refuse to hear the case, or will simply reiterate the oracle's decision, citing the oracle as the final authority.

The Special Case of Sorcery

The procedure to be followed in sorcery cases is more restricted than it is in other types of cases, possibly because of the seriousness of the accusation, and the difficulties inherent in proving a sorcery offense. Before an accusation of sorcery can be made, at least three wagonga-of-the-calabash must be consulted to provide evidence that sorcery is indeed being practiced. Public accusations of sorcery can be made

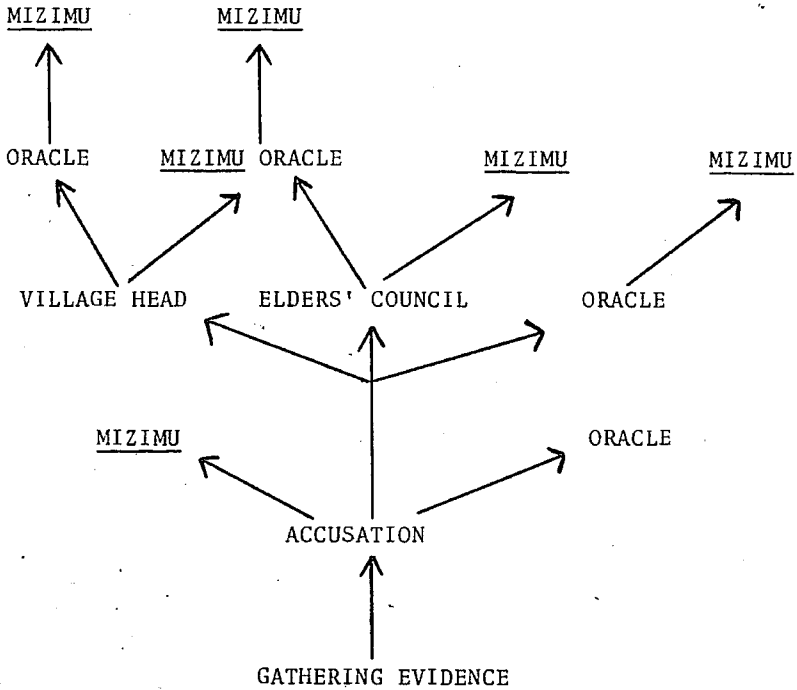
only by wagonga-who-pray (wagonga wa kuvoyera), diviners of a higher grade than wagonga-of-the-calabash. Wagonga-who-pray specialize in accusing sorcerers. After the accusation, the accused may admit guilt, reimburse the victim's family the costs incurred in gathering evidence and accusing, and pay compensation for any sickness or death caused by his sorcery. To relieve the stigma of being a sorcerer, the offender may also swear an oath never to practice sorcery again or be killed by supernatural forces.

If an accused sorcerer denies guilt, his innocence can be decided only by an oracle. Although an accused sorcerer may attempt to discredit the accusation by counter-claiming procedural irregularities before an elders' council, such strategies are unsuccessful: the validity of a sorcery accusation and hence the guilt or innocence of the accused, remains firmly within the sole jurisdiction of the oracles.

* * *

Thus, a detailed analysis of the judicial institutions and processes will be an essential part of the discussion. The case studies will show the appropriate course of action that disputants must follow after a dispute has started, as well as the

POSSIBLE STEPS IN THE GIRIAMA JUDICIAL PROCESS



range of alternatives possible in each situation. To cite a concrete, if undocumented (at this point) example: it is possible for a sorcery dispute to be quite prolonged or quite brief, for there are several possible courses of action the disputants may follow. At one extreme, it is possible for the case to be brought successively before all of the institutions we have listed before the case is settled, for with the exception of the mandatory steps that must be followed in sorcery cases, the options and restrictions placed on the disputants are similar to those of other cases. At the other extreme, the accused sorcerer may end the dispute speedily by admitting his guilt after the initial public accusation and by paying compensation to the injured party. This latitude inherent in the system of Giriama dispute settlement will be a recurrent theme in the following pages.

* * *

This study does not deal with Magistrates' Courts in detail, although a decision of a Magistrate's Court (Johanna Charo v. Sharifu Muganga) is discussed below in Chapter Nine. The Magistrates' Courts are part of the judicial branch of the Kenya government and replaced the Native African Courts when the Magistrates' Courts'

Act was enacted in 1967. These courts decide cases that pertain to statutory law, particularly criminal law, and may also adjudicate claims that pertain to the unwritten customary law. Giriama disputants may file civil cases in the local Magistrate's Court; as with magistrates anywhere in Kenya, the magistrate hearing these cases is expected to decide them in accordance with customary law, so long as the decisions do not conflict with the statutory law or public policy.

PART TWO: GATHERING EVIDENCE AND ACCUSING

CHAPTER FOUR: THE WAGONGA, SPIRIT MEDIUMS^f

Different Types of Wagonga

The term mgonga (pl. wagonga) may apply to many people in Giriama society, and the particular activities performed by wagonga are extremely varied. The general, unqualified term mgonga, however, is restricted to individuals who diagnose and treat illnesses believed to have exclusively "natural" causes. The usual English translation of mgonga is "doctor" or "medicine man", and in Giriama usage "mgonga" is indeed used to refer to European medical doctors. On the other hand, there are several specialized types of wagonga, indicated by modifying words or phrases. For example, an mgonga wa kuvoyera is the "mgonga-who-prays"; an mgonga wa kititi is the "mgonga-of-the-calabash". In these instances, the modifiers refer to either a principal identifying activity of the mgonga or to an equally diagnostic piece of his equipment.

The single attribute that all wagonga share is a connection, however variable, with illnesses and medicines: wagonga may cure illness, cause an illness to occur, and, in some instances, must even become ill themselves in order to be recognized as wagonga. On

these occasions, an mgonga treats the illness of himself or others through his knowledge of medicines.

Several types of wagonga play prominent roles in the process of dispute settlement, and wagonga are consulted for specific purposes during various phases of certain kinds of disputes, from their inception to their resolution. In this study, I shall discuss the wagonga who reveal that an offense has in fact occurred, and the wagonga who bring both the offense and the offender to the attention of society. These are:

a) wagonga wa mburuga (also called wagonga wa kititi) -- the wagonga-of-the-calabash -- noted for using a calabash during their ceremony; b) the wagonga wa kuvoyera -- the wagonga-who-pray to God and the spirits; c) the wagonga wa kuzuza -- the wagonga who find-lost objects; and d) the wagonga wa mizimu -- the wagonga of the sacred tree. These wagonga belong to a larger, more encompassing group called the wagonga wa kitswa, literally, the "wagonga-of-the-head".

Wagonga Chosen by God: Wagonga-of-the-Head

What distinguishes these wagonga wa kitswa from other wagonga is that they become wagonga involuntarily by being chosen by God (Mulungu) who sends his spirit-messengers (pepo) to enter the chosen person. The

future mgonga becomes physically sick and behaves erratically because of this invasion by the pepo; he can become well only by becoming a practicing mgonga. The pepo can actually possess them by entering their heads and giving them information which is then relayed to the living. For this reason, the wagonga-of-the-head as a group can, for our purposes, be referred to as mediums, standing between the spirit world and the world of the living.

Some wagonga-of-the-head are ranked by prestige, and an individual can 'progress' from one type to another, higher-ranked one. This progression means that the mgonga has become more specialized by adding to his skill; but he retains the expertise of the lower rank, though he is known by the title of his new position. The most frequent combinations found are the mgonga wa mburuga (-of-the-calabash) and the mgonga wa kuvoyera (who-pray), the two being possessors, in different degrees, of the same skill. One becomes an mgonga-of-the-calabash first, and most of those who do remain that for the rest of their lives. The few who are later selected by the pepo to become wagonga-who-pray have a history of having practiced the first skill for at least ten years. The wagonga-of-the-calabash are the most numerous of the wagonga of any

type, and commonly include females. In contrast, there are only five acknowledged wagonga-who-pray in the Kilifi District, where most of the Giriama live, and informants could recall only one female mgonga wa kuvoyera.

Becoming an Mgonga

It is essential to become an mgonga-of-the-calabash before attaining the higher rank of mgonga-who-prays or mgonga-who-finds-lost objects. Becoming an mgonga-of-the-calabash -- the lowest rank of the wagonga-of-the-head -- represents a radical change from being an ordinary member of society. Recruitment is suitably mysterious while also exhibiting a recognizable pattern. The experience of being entered and possessed by the pepo spirits has been described by several wagonga-of-the-calabash. Thus, a female mgonga-of-the-calabash:

It happens that a person just gets sick, and cannot be cured by any medicines. An (already certified) mgonga wa mburuga comes, sees the signs, and may recognize that the sick person is being 'called' by the pepo. When the pepo call you, you become sick, and hysterical, and start shouting . . . you may be led out at night by someone you do not know, and you may not be able to see. But even if it is pitch black outside, you will never stumble or be bitten by a snake; the pepo are leading you.

I was in my 20's when I became mgonga wa mburuga. The pepo came to me in a dream at night, and led me out to see many kinds of trees that are used in treating different kinds of diseases . . . no human being teaches you these things, the pepo themselves teach you. I remember being taken for seven days into a very big cave, far from my village. Everyone thought that I was dead. During the week, I ate food that I had never eaten before; I sat on a chair that was the coils of a big, deadly python. For the first three days I sat in one part of the cave with a female pepo who also sat on a python while she instructed me in the language of the pepo. The other four days I was in another part of the cave with a male pepo, who sat on the back of a huge lion. I know that I was in a trance, because once in a while I came to my senses, and saw where I was. But the strange thing is, I was never frightened. I regarded myself as one of them.

Another mgonga-of-the-calabash, a male who later became an mgonga-who-prays, recalls the manner in which he became mgonga wa mburuga:

I suffered from a toothache; I even went to the hospital, but it was not possible to cure me. I went to a doctor who tried to remove my tooth -- he took pincers and tried several times, until I finally fainted. When my parents had done all that they could do to make me well, they went to consult wagonga wa mburuga. They were told that I was sick because the koma (ancestral spirits) of my father's father (tswe) was bothering me; he had been mgonga wa mburuga and mgonga wa kuvoyera in his lifetime. His

spirit was trying to tell me to be mgonga too, by making me sick. When my father was told this, he burned incense, and told the ancestral spirits that they should stop making me sick, because I would become mgonga wa mburuga as well as mgonga wa kuvoyera. Then I started speaking a language that I had never spoken before; I could not understand myself . . . I left my parents' village at night -- I don't know what powers were leading me. I was able to cross rivers that were impassable. Finally I arrived at a village where there were three wagonga; I started talking to one in the language of the wagonga, but he could not understand me, although he too spoke an mgonga language. My language was more sophisticated than his. Finally the third mgonga understood me -- and he gave me some milk and my toothache stopped. I stayed with this mgonga, who later became my fundi (instructor) in the work of the wagonga for three days. Then I decided to come home. I came to a swollen river that I could not cross. That night pepo came to me and spoke a strange language, and by a miracle I was able to cross the river and return to my village.

After the river subsided, my instructor came to my village; he held ngoma (ceremony of drums) for me, and presented me with an mkoba (pouch with the equipment, including medicines, of an mgonga in it). On the day that my first ngoma was played, I was able to tell everyone there what problems he had, what they owned, or what they had hidden. Then they knew that I was mgonga. I was mgonga wa mburuga for many years before I became an mgonga wa kuvoyera. The pepo elevate you to the bigger job.

A third male mgonga-of-the-calabash, who also later became an mgonga-who-prays as well as an mgonga wa

kuzuza (mgonga-who-finds-lost objects) within the mgonga-of-the-head category, describes the familiar signs, when he was first chosen to be mgonga:

I was in school. I started having headaches, and I lost my appetite. I felt as if I was mad, out of my mind. When people spoke to me I felt that the noise was deafening. I didn't want to be near anyone. You would not believe the kind of food that I ate -- I ate the food that chickens and ducks eat. When I was given food that is decent to eat, I vomited. This took place for a month and a half. Then an mgonga named Mashapanga came and examined me. He said, 'You people have been disturbing this boy. He has been selected by the pepo to be mgonga.' And then Mashapanga started teaching me the arts of being mgonga.

From these accounts, a pattern emerges in the recruitment of the wagonga-of-the-calabash. Whatever the physiological causes of the symptoms, the possession of the mgonga's body by the pepo is the cultural explanation. The spirit possession first results in physical illness, which initially may not be recognized as the prelude to becoming an mgonga, but may be mistaken for an "ordinary" illness¹. The sick person

1. The Giriama recognize many types of pepo: there are pepo who are the pepo of the wagonga, as well as other pepo who enter the bodies of the ordinary Giriama, and cause illness that does not result in the afflicted person's becoming mgonga. See Noble (1961) for a discussion of Giriama spirit possession.

cannot begin his instruction as an mgonga until another, already qualified mgonga perceives that he has been chosen by the pepo to be mgonga. In this, the wagonga-of-the-head are both the spokesmen for the spirits and the intermediaries between the spirit world and the living Giriama community. The established wagonga "certify" a new mgonga both because of their knowledge of the craft and of their established relationship with the spirit world; and they legitimize the new mgonga before the Giriama community, whose acceptance is also essential before a new mgonga can practice.

The Ancestors, God, and the Spirits: Their Relationship to Wagonga-of-the-Head

As mediums, the different ranks of the wagonga-of-the-head all communicate, directly or indirectly, with God, Mulungu, the spirits of the dead ancestors (koma, sing. koma), and the spirit-messengers of God, pepo. Of these, God is the most powerful supernatural being, believed to live somewhere "above"; in fact, the locative form of the Giriama word for God, Mulunguni, means literally "in the sky", and it is from the sky that God's power is felt to emanate. Other than this feeling of a power above, there is no elaboration of the nature of Mulungu: "Mulungu is somewhere above us, but to say

that Mulungu is a person or an animal -- that we do not know. We merely believe that Mulungu has a power greater than that of any human being . . .".

The pepo, spirits who are visible only to wagonga-of-the-head, are described as servants or messengers of God; when an mgonga-of-the-calabash is possessed by the pepo and speaks, he acts as a medium by repeating information received directly from the pepo and indirectly from God.

The koma, the ancestral spirits, are regarded as being somewhat equal in status to the pepo in the spirit world, but the human origin of the koma makes their relationship to living human beings quite different from that of the pepo. As an informant stated: "Koma are the spirits of the dead ancestors; they are greater than the pepo. But the koma have a closer relationship with us, because the koma were once human beings themselves. They have more sympathy with us than the pepo do." The personal relationship that the living human beings have with the koma is in sharp contrast to that with God and his pepo: "I have more confidence in koma than I do in Mulungu, because I know who the koma are. I knew my grandfather. I knew my mother. When these people died, they became koma."

When I have a problem, I bless the shrine I have built at my village for the koma, and my problems are removed." Because of the human origin of the koma, any Giriama (man or woman) feels that he can communicate with the koma, his ancestors; whereas it is only the mediums, the wagonga-of-the-head, who can communicate with God or the pepo. Unlike their living relatives, however, not only can the koma fully communicate with the pepo, with whom they share the supernatural world, but they can actively influence the pepo on behalf of their relatives. The koma, for instance, play a decisive role both in the selection of an mgonga-of-the-head and in his future ability as an mgonga.

Communication between human beings and the koma is necessarily restricted and is of a sufficiently mysterious nature to require laborious interpretation. The living maintain constant contact with their koma by setting up wooden markers (also called koma) commemorating each dead relative in the patriline and his wife; and, as propitiation, coconut liquor and food are given to the koma-regularly and in times of trouble. The koma in turn initiate contact with their descendants by inflicting illness upon them. Such an illness is not necessarily vengeful, but indicates that the koma wants

some task performed. Since the occurrence of mysterious illness can signify many things, the situation requires careful analysis and interpretation, usually by wagonga-of-the-calabash. If the wagonga determine that the illness has been caused by the koma, it remains to find out, and to do, what the koma wishes to be done.

Frequently, the koma of a deceased mgonga indicates his choice of successor by inflicting illness. However, the sickness itself, which heralds the emergence of a new mgonga, may be caused by either the koma of the former mgonga or by his pepo, of which there may be many. The koma and the pepo of a dead mgonga both remain closely identified with each other and the wishes of one cannot be easily distinguished from those of the other; what matters is that the sickness points to the successor of the deceased mgonga. In one case, quoted above, the koma of the present mgonga's tswe (his father's father), who had been an mgonga, was judged to be making him sick as a sign of his selection. Another mgonga, however, stated that it was actually the pepo who had made him sick: "This being an mgonga is a gift; I am a slave of the pepo. The pepo like me -- they decided that I would be the best mgonga in my clan. They mistreated me by making me sick, and that was the signal that they wanted me to be mgonga."

They wanted me to serve them." There is thus some uncertainty as to who it is who makes the future mgonga sick, the koma or the pepo.

The later roles played by the koma and pepo, when the mgonga begins to practice, are similarly blurred, because the koma and pepo are believed to cooperate closely in overseeing the work of their chosen successor. Both koma and pepo have an obvious interest in the new mgonga. The koma was a close relative, usually within two generations of the living mgonga, who might have known his successor while alive. The same pepo who served the koma during his lifetime are now the masters of the new mgonga. Besides this bond, the pepo and koma also share a common kind of existence. As one mgonga explained it: "When a human being is alive, he is a man; when he dies, he becomes koma -- he is a different type of human being. Since he is a spirit, he is working in the world of the pepo. He can laugh with the pepo, talk with them, and induce them to help his relative who is an mgonga . . . that is how koma help me, by convincing the pepo to give me more information . . ."

After the sickness has alerted a person that he may have to become mgonga, the physical symptoms disappear

if he begins to practice being an mgonga. In future, acute physical symptoms will recur only if he does not practice. These future illnesses have the same purpose as the initial one did: an indication that he must be an mgonga. As an mgonga said: "If I stop playing my ngoma (drum ceremony) for a year, I will become very sick and die. I must keep myself alive by playing ngoma" (i.e., by practicing the art of, in his case, an mgonga-who-prays).

Unlike the physical sickness, the behavior caused by the pepo's possession of the new mgonga periodically recurs throughout the mgonga's life, not only when he is performing his ceremony, but at other, random times in his life, for the pepo always maintain control over him. An mgonga states that "there are times when the pepo just come to me, and I begin talking to them; even if I am talking to other people. I suddenly become separated from them. I feel as if I am acting differently -- people think that I am mad, because I start acting very strangely. People do not understand the language that I am speaking, and suddenly I begin shivering, as if I am very cold . . . when the pepo come to me, they look like ordinary human beings, they are not strange at all. We can walk together

and talk together."

The Succession of Wagonga-of-the-Head

When an mgonga-of-the-head dies, his mkoba, the grass pouch containing his medicines and a repository of his powers, is inherited by the male relative who also inherits his wives and other social positions. This heir is a real or classificatory patrilineal brother (ndugu), descended from a common father's father. This initial heir of the mkoba, however, is considered to be merely its custodian; he does not become an mgonga. Some two months after the mgonga's death, drums are beaten for two nights, calling the wagonga to gather. The mkoba is then passed to an mgonga related to the deceased mgonga, who may use the medicines in it; but he does not inherit the pepo of the former mgonga. The time will come when the pepo will choose a descendant of the mgonga to inherit both their mkoba and position.

The individual the pepo choose to inherit the dead mgonga's status is usually in the first or second or even younger descending generation from the dead mgonga. There is a tendency for wagonga to be chosen from alternating generations. This tendency is often

expressed by the succession of wagonga within a group of major importance in Giriama social organization: the mryango, the residential group some three generations in depth, which includes the descendants of a common grandfather (tswe). It is said that when choosing a successor for an mgonga, the pepo show preference for a grandchild, male or female, because of the close relationship between alternate generations.

An mgonga's succession, then, is frequently within the mryango. This expectation was expressed by one mgonga-who-prays who said that he had inherited his pepo from his father's father and thought it likely that one of his grandsons would someday inherit his position from him. Unilineality, however, does not regulate the inheritance of an mgonga's position. If there is no mgonga within a certain clan, its members can still acquire the pepo from an ancestor of a female who has married into the clan. Informants can cite many examples of this occurrence. The clan named Mukiza, for instance, now has a very famous mgonga-who-prays who purportedly inherited the pepo of his mother's father; this particular mgonga, named Kiponde Kibao, is the only mgonga of his rank in the clan. In general, ascertaining rules in the pattern

of succession of one mgonga by another is rather different from examining, say, the inheritance of land, for the link between the mgonga and his predecessor is hidden, ambiguous, and, ultimately, can be revealed only by a qualified mgonga.

The Public Initiation of a New Mgonga

Once a new mgonga has been selected by the pepo and has received training from them, his skill must be tested by established wagonga in a public initiation ceremony. This is the time to display his acquired knowledge and receive the certification of the wagonga and the general public. The types of tests given to the wagonga-of-the-head vary according to their specialization. An mgonga-of-the-calabash, for example, uses different equipment and reveals information of a different kind from that of an mgonga-who-prays. But the essential form of the test given to these wagonga is the same: the new mgonga must reveal a piece of information that cannot have been known to him without the help of his pepo, but which is known to one or more of his human examiners, so that they are able to judge his accuracy. Thus, at his initiation, an mgonga-of-the-calabash reveals to the assembled people their problems, covering all possible related

topics. The more specialized mgonga-who-prays conjures up the image of a sorcerer in a pot of water and the veracity of his vision is checked by established wagonga-who-pray. An mgonga-who-finds-lost objects must hunt for and find hidden objects, the task that will be his speciality as a practicing mgonga. All these tasks cannot be performed without the necessary information being supplied by the pepo.

The initiation ceremonies of the wagonga-of-the-head serve many purposes, only one of which is a test of the new mgonga. For the problems that the new mgonga reveals to the public are in a sense fabricated. Giriama seek the services of various wagonga-of-the-head when they are in need, and their consultations are spontaneous. The revelations produced by the mgonga at his initiations are generally trivial and are of no genuine concern to anyone. The new mgonga-who-prays may indeed identify a sorcerer, but it is not a sorcerer who has been actively threatening the community; he merely exists. An mgonga-who-finds-lost objects may indeed find a lost object, but this object has been concealed purposefully and it is not really lost, so that there is no thief to apprehend. Thus, the activities of the mgonga at his or her initiation

are in a sense caricatures of his work; but as with any caricature, some important points are made. For the wagonga are seen as ignorant of the truths that they are called upon to expose until their pepo guide them; and there are members of the participating audience, either the other wagonga of the non-specialist spectators, who are privy to the hidden information, and who are there to test if the pepo are indeed guiding the initiate. These elements remain when the mgonga begins to practice privately. The accuracy of an mgonga's revelation can be evaluated either by consulting with other wagonga for comparable information or by checking that part of the revelation which the client knows from his own experience.

Most importantly, the initiation ceremony publicizes the emergence of a new mgonga in society and announces the beginning of his practice. It does this through a public display which reiterates the validity of the esoteric work of the wagonga. The initiation ceremony attracts all kinds of wagonga-of-the-head and their presence graphically illustrates their internal ranking according to prestige. The lowest-ranking wagonga, those of-the-calabash, usually

arrive first, and may dance to the incessant drumming or sit in a circle around the initiate. As more wagonga-of-the-calabash arrive, no special notice is given them, except for the usual greetings. There is a discernible change upon the arrival of an mgonga of a higher grade, such as an mgonga-who-prays or an mgonga-who-finds-lost objects: The lowlier wagonga-of-the-calabash rise formally from their seats, and the ranking mgonga greets each mgonga in turn, shaking their hands. A prestigious mgonga is given a seat vacated by a lower-ranking one.

The initiation ceremony may last three days and nights, and music is an integral part of the initiation. The sound of the drums is especially vital in summoning the pepo to the gathering of wagonga. The dancing of the wagonga has different meanings during the ceremony. The wagonga-of-the-calabash are dancing purely for enjoyment, for dancing plays no part in their work; it is their calabash that summons pepo to them, and they receive information seated quietly. But the wagonga-who-pray and who-find-lost objects summon pepo by earsplitting drumming: they dance when they are possessed by the pepo and when the pepo are giving them information. Accordingly, at the celebration of the initiation of a new mgonga, the

wagonga-of-the-calabash dance freely, smiling and laughing. The wagonga-who-pray and who-find-lost objects sit quietly, waiting for the drums to summon their pepo to them. At one such ceremony, I watched an mgonga-who-prays sit calmly, almost somnolently, until his shoulders began to move back and forth almost imperceptibly; the movement increased until his entire body was quivering, and he rose unsteadily to dance. The festive wagonga-of-the-calabash respectfully stopped their dancing, leaving the clearing to the possessed mgonga, who danced on in a trancelike state. When he returned, exhausted, to his seat, his body was still alive with the quiver of possession.

CHAPTER FIVE: DISPUTES AND DIVINATION

Introduction

In this chapter, we shall briefly examine the role of the wagonga, specifically those diviners called the wagonga-of-the-calabash, in the genesis of a dispute. The types of misfortunes that prompt a Giriama to seek the advice of a diviner will be described, as well as the diviner's explanations for these misfortunes. In a society such as the Giriama, where many misfortunes that Westerners might call "natural" are regarded as being caused by human beings, the very process of living, with its inevitable misfortunes, is an inexhaustible source of blame and disputes. Thus, almost every misfortune among the Giriama implies a potential offense by someone (which, as we shall see, may include oneself), and it implies a search for the one responsible -- in brief, the gathering of evidence. Since the connection between the offender and the misfortune is seldom clear, and sometimes, as in sorcery, inaccessible by its very nature, recourse is had to the wagonga as diviners.

Divination is a mode of inquiry. It may be a purely revelatory process, or it may combine, as it does among the Giriama, revelations with the interrogation of clients. Giriama diviners deal with

misfortunes whose causes are hidden and unknown; the client is ignorant of the identity of the offender, and perhaps even of the precise nature of the offense. There are two main events that prompt a client to consult an mgonga-of-the-calabash, potentially leading to the beginning of a dispute: the disappearance of property such as livestock, crops, liquor, clothing or money; and the occurrence of sickness.

Problems Brought to Diviners: Disappearance of Property

If theft has not been witnessed, the disappearance of property may bring a client to an mgonga-of-the-calabash. Usually the nature of the missing property and the manner in which it disappeared indicate whether or not a diviner is necessary. For example, when a herd of cattle or goats disappears abruptly, an mgonga-of-the-calabash is consulted without delay, for such a disappearance may indicate the work of a sorcerer. Thus, when one man's cattle vanished, an mgonga-of-the-calabash told him that the loss was the work of a jealous neighbor, a suspected sorcerer. The owner of the cattle then went to another type of diviner, the mgonga-who-prays, who publicly exposed the identity of the sorcerer and led the assembled crowd into the bush where the cattle were hidden.

In other instances, when it is obvious that theft rather than sorcery is involved, a diviner is consulted -- if at all -- only after extensive independent investigations have been made. In one case, a man hid some money under the thatch of his dwelling and told only his senior wife of the hiding place. Soon after, some money was missing. The man immediately accused his senior wife, but she denied taking the money. Circumstantial evidence was strong, but in the face of his wife's denial, the man let it be known around the village that he planned to consult a diviner. The mere threat was enough to elicit a confession from the wife. In other instances, when there are no strong clues indicating a suspect, the services of a diviner are soon sought. For instance, when a man's clothing disappeared from his house, he went almost immediately to a diviner, who revealed a neighbor as the thief.

Problems Brought to Diviners: Sickness (Ukongo)

The occurrence of sickness or death, with a few exceptions, brings the relatives of the afflicted person to an mgonga-of-the-calabash. The Giriama do recognize some "natural" and inevitable causes of death: old age, drowning, and snakebite. In one case, a man named Gunga wa Mwinga returned to his hamlet

after a long stay in Mombasa and requested, as was his right, that his father give him bridewealth so that he could marry. Gunga's father refused, although enough money from a recent cashew nut harvest was available. Gunga found out that his father had been influenced by another son named Musanzu. Gunga told Musanzu, "You have done this to me now; don't call me a bad man later on." Soon after Gunga's utterance, Musanzu's mother was bitten by a snake and died (in this polygynous household, the brothers Gunga and Musanzu were sons of different mothers). Musanzu told his father and another brother that he planned to consult an mgonga-of-the-calabash; they dissuaded him by saying that even if the mgonga affirmed his suspicions, Gunga could never be openly accused of sending the snake by sorcery. The probable reason for Musanzu's wish to consult a diviner was the coincidence of Gunga's threat and the snakebite, but the case shows that human agents are not commonly recognized or sought as the cause of snakebite.

While some causes of death and sickness are recognized as natural and unavoidable, most are not. When sickness occurs, an mgonga-of-the-calabash is consulted to determine what possible offense could

Divining the Cause of Sickness:

The Place of Wagona-of-the-Calabash in the Judicial Process

I. The occurrence of a covert offense: a behavioral rule is broken secretly or unwittingly →

II. The occurrence of sickness, often believed to be caused by one of the following offenses:

- a. sex offenses (kitio)
- b. offending the ancestors (koma)
- c. offenses punished by the spirits of the sacred tree (mizimu)
- d. trespassing, theft punished by oracles (viraho)
- e. sorcery (utsai)

→

III. Private revelation of offense and offender by mgonga-of-the-calabash →

IV. Accusation of alleged offender

V. DISPUTE BEGINS

have caused the misfortune. A detailed study of disease among the Giriama was not a part of this research, but it was apparent that the incidence of disease in the area is frequent and the mortality rate high. It is evident that the mere occurrence of sickness provokes clients to seek out a diviner to find the agent responsible. The causes of sickness that are advanced by the wagonga-of-the-calabash will now be discussed briefly.

Kitio: Sickness from Sexual Offenses

Diarrhea and vomiting, followed by death and a flaccid corpse, suggest kitio (pl. kitio), a term designating a variety of sexual offenses and the sickness that results. Kitio is a broad term, covering many related offenses that potentially disrupt ordered sexual and social relationships within a village. Some manifestations of kitio may be called "adultery within a village." This occurs when fathers, sons, or real and classificatory brothers have sexual relations with the same woman. The offense most commonly occurs among adults living in the same-group of hamlets, where patrilocality, polygyny, and the wide range in the ages of resident men combine to make adultery within the village a common offense.

Village adulterers go to great lengths to conceal their activities. A woman who has committed adultery with one of her husband's agnates faces more severe reprisal than she does after committing adultery with a non-kinsman; hence, she does not brag or gossip about her adventures with other women. Male offenders likewise fear and guard against discovery of adultery with a wife of an agnate, for they are anxious to avoid a rupture of relationships. Adultery in the village is thus difficult to prove directly.

Kitio offenses involving adultery are numerous; if they are discovered, the ritual cleansing of the hamlet where the offense occurred is carried out. More often, however, adultery within the village is only suspected from inadvertent signs from the offenders. One man was observed being inappropriately friendly to one of his father's young wives when his behavior should have been formal and restrained. Gossip circulated about the two, and when sickness broke out in the village, wagonga-of-the-calabash were consulted. When the wagonga indicated adultery in the village as the cause of the sickness, the suspected pair (the mgonga's description of the offenders could have fit several people) were accused by the Village Head. The

accused pair confessed, the hamlet was ritually cleansed, and the incident was soon forgotten.

Kitio offenses include not only actual adultery within the village but even the breaking of various rules designed to discourage sex acts with the spouses of agnates. Fathers, sons, and brothers are prohibited from entering each others' sleeping quarters or having any contact with the sleeping mats. Kitio offenses also include acts that disrupt the highly formal rules regulating sexual and social relationships within polygynous households. Generally, when anything new of importance is acquired (such as a cow), the owner must install the new acquisition by having ritual sexual intercourse (kuzhala) with his senior wife before having intercourse with his other wives or any other woman. His failure to follow this rule results in kitio. It is difficult to conceal a kitio offense that occurs between husband and wife. The facilities provided for wives differ according to the wealth of the husband, but lack of privacy in the dwellings and the sexual competition among co-wives make concealed sexual relations difficult. Observation, gossip, and bragging by the wives will thus quickly reveal an offense.

Dealing with kitio offenses is an important task

for the Village Head, for it is believed that the disease may strike any village resident and not merely the offenders. The proven offenders are ordered to summon, and pay for his services, a ritual specialist (an mgonga wa kitio) to cleanse the hamlet or face expulsion from the village.

A kitio offense committed in the relative privacy of a monogamous household is easier to conceal than in a polygynous one. The intricate rules of ritual sexual intercourse (kuzhala) extend to a young man's first marriage. After a man has built his own house in the hamlet and marries, he must not consummate the marriage until his father has had sexual intercourse with all of his wives. In one case, a man married and brought his wife to the hamlet. His father had five wives; the process of ritual intercourse had not been completed when a child of the village fell ill and quickly died. The father, aware that the situation had been a tempting one for his son, asked the newlyweds if they had consummated their marriage and met with a denial. Further inquiry around the village revealed nothing, whereupon the Village Head sent his senior wife to two wagonga-of-the-calabash. Both wagonga attributed the kitio to the actions of the

suspected couple. When the Village Head presented this evidence, he told the suspects that they should confess or go to an oracle to prove their innocence. They confessed.

It can be seen that among the many possible kitio offenses, only those that have been concealed or hidden need be exposed by the wagonga-of-the-calabash. Even in instances where the offense has been concealed, however, either compromising circumstances or inappropriate social behavior observed before the outbreak of sickness provide clues as to the cause of the misfortune. The wagonga-of-the-calabash, usually living within walking distance of the village, may be privy to gossip and lend credence to hearsay; and on the strength of an mgonga's "evidence", an accusation can be made. Judging from the remarks of informants, kitio offenses are common; village gossip is usually well-founded, and the outbreak of sickness can often find a ready explanation in confessions, once the mgonga-of-the-calabash has presented his "evidence."

Mizimu: Sickness as Punishment by Spirits

When someone believes that an offense has been committed against him, he may go to the sacred mizimu tree (mizimu will be discussed in greater detail in a

later chapter) to ask the spirits residing there to punish the offender. The punishment is sickness and quick death which may afflict the offender himself or anyone living in his village. Like sickness believed to be caused by the kitio sex offenses, the sickness inflicted by mizimu can potentially spread through an entire village. It is said to lead to quick death, but there are no definitive diagnostic symptoms.

When sickness and death occur suddenly and mysteriously, the relatives of the deceased inevitably consult an mgonga-of-the-calabash, who may say, "Someone has gone to mizimu" and then relate the circumstances that could have prompted the action. Accusations that were ignored, denied or forgotten, in the past, but well publicized, may be suggested by the mgonga; or he may mention an offense so common that the likelihood of its occurrence is strong. One common offense that diviners suggest is the non-payment of adultery compensation (malu). Men often suspect their wives of adultery, and may summarily demand the payment of adultery compensation without having strong evidence. In one case, a man sent a neutral party (mgiriama) to demand adultery compensation from a suspect, although the accuser's wife denied the offense. The accused

man refused to pay or even have the matter discussed. When he died over a year later, an mgonga-of-the-calabash told his relatives that mizimu had been visited because "the one who died did not pay malu." The dead man's brothers recalled the go-between's visit and they hastily paid the malu.

Another common offense that the mgonga-of-the-calabash may cite is the non-payment of kisalire, the remainder of a bridewealth debt. Despite repeated attempts by the creditor to collect, portions of bridewealth often remain unpaid for years, particularly when the debtor has several sons whose bridewealth he is paying. In one instance, an mgonga-of-the-calabash told a bridewealth debtor whose village was afflicted by sickness that a creditor had visited the mizimu tree. The debtor quickly found husbands for two of his immature daughters so that he could pay his debts with their bridewealth. This man was in a particularly difficult position, for he had several creditors, and they all now claimed that they had indeed visited the mizimu tree.

Kiraho: Sickness from Protective "Medicines"

Many Giriama protect their crops, granaries and personal possessions by erecting an object called a

kiraho¹ (pl. viraho) at a conspicuous place, on the perimeter of a garden or at the entrance to their houses. Viraho vary in appearance and may consist, for example, of a sea shell or the dried fruit of a baobab tree suspended from a stick. A kiraho affords protection by inflicting sickness or death on trespassers or thieves. The sickness is believed to affect only the offender himself and does not spread through his hamlet and village.

The physical effect that a protective kiraho has on trespassers and thieves varies according to the type of kiraho and ranges from minor skin irritations to instant death. The Kiraho cha Ngodowe, a sea shell suspended from a stick erected by women to protect their small household gardens, causes a skin lesion that is easily cured by wagonga who practice general medicine. The medicine of the Oracle of the Hyena (Kiraho cha Fisi) is thought to kill instantly, and is used today exclusively as a protective device, for its use in trials by ordeal has been outlawed. One man

1. The same word kiraho is used for these protective devices as is used for the oracles, and indeed the viraho mentioned here are a type of oracle. Sometimes the same medicine is used in the oracular trials by ordeal as is used in these anti-thief oracles, and the names, e.g., kiraho cha habasi or kiraho cha fisi, are the same.

had members of the secret society of the hyena (Chama cha Fisi) erect a Kiraho cha Fisi under a mango tree on his property. He said that when a young boy climbed the tree and then died on the path soon after, he dismantled the kiraho and said he would never erect another.

The most popular protective kiraho used today is the Kiraho cha Habasi, made of half of an inverted baobab fruit smeared with black and red medicine. This kiraho can be erected only by members of the secret society Chama cha Habasi who are hired by the property owner. One Giriama who uses the Kiraho cha Habasi said that he preferred it because "It does not kill instantly; it gives the sick person a chance to find out the cause of his sickness." However, the Kiraho cha Habasi, which is believed to cause bloody discharges from the eyes, ears and mouth, may cause eventual death if not treated.

A kiraho works mechanically. For example, when it protects a garden, it will "catch" anyone entering the garden. Even the owner of the garden may be "caught" by his own kiraho unless he utters the secret incantations that permit him to enter unharmed. In

one instance, an mgonga-of-the-calabash told a client that his sickness was caused by a Kiraho cha Habasi recently erected in a garden that the client habitually traversed. The man then went to an mgonga who practiced general medicine and was cured.

The link between a kiraho and a given sickness may be obscured because of the way a kiraho is used for protection. Most Giriama erect a kiraho in a conspicuous place to discourage theft and they speak disapprovingly of owners who conceal the kiraho in the vengeful hope of killing thieves. A man suspected one of his wives of stealing from a supply of coconut liquor that he planned to sell. He accused her openly and used abusive language, but she denied it. When he went away on a trip, he secretly installed a Kiraho cha Habasi in the thatch over the entrance to the storage room. When he returned, his wife was dead. His other wives told him that the wagonga-of-the-calabash said the woman had been "caught" by the Kiraho cha Habasi. Informants, who condemned the man, explained her death by saying that the woman either had been unaware of the presence of the kiraho, or, if she later suspected it, had been frightened to admit her guilt by seeking medical attention.

There is no need to consult an mgonga-of-the-calabash if the connection between a kiraho and an ensuing sickness seems obvious. A man's father fell ill while eating his dinner -- he started bleeding in many parts of his body. The son noticed that he had been eating coconut and knew instantly that his father had been caught by a kiraho erected in his own coconut grove.

Because pilfering is widespread, protective viraho are plausible explanations for sickness. Individuals who are aware that they had stolen often connect their theft with a subsequent sickness and they do not seek a diviner. Others, while they may have stolen in the recent past, may not make this connection because a kiraho was not visible, or they may doubt the effectiveness of the viraho. When an afflicted person accepts an mgonga's explanation of kiraho as the cause of his sickness, he quickly returns the stolen goods (or their value), for a cleansing ceremony (kuzizinya = to cleanse) performed by the owner of the kiraho is considered to be a prerequisite for recovery.

Sickness Sent by the Ancestors

An ancestor may be offended if a wooden marker (koma) is not erected in his memory in the hamlets of his descendants. There is an "offense" here because it is the duty of the descendants to erect these markers, and it is the right of the ancestors to have them. Ancestors can make their displeasure known in several ways -- by visiting various misfortunes upon their descendants, such as illness, crop failure, or general strife. In one instance cited by informants, in a village at Goshi, inhabited by the clan named Mwongoa, cattle and goats began disappearing into the bush and several people died suddenly. The men of the village consulted an mgonga-of-the-calabash, who told them that one of their ancestors, who had been a member of the secret society Chama cha Gohu, had been killed many years before and had been hurriedly buried where he died; he was thereafter forgotten and no commemorative marker was erected for him. The mgonga-of-the-calabash advised the village to hold a belated mourning ceremony and to put up the marker. Since the deceased had been a member of a secret society, other members of that society in his local clan segment had to fashion his marker from a tree and erect it. After

this ceremony was concluded, the missing goats and cattle were found and no further illness occurred. In this instance, although the offenders were ignorant of the fact that they had neglected their duty to a long-forgotten ancestor, the misfortunes were seen as legitimate punishment and reminder. The clients of the mgonga found themselves to be the offenders -- and they quickly settled their heretofore unsuspected "dispute" with the ancestor.

Illness from Sorcery

The causes of sickness within the village that have been discussed above -- such as kitio sex offenses, the sacred mizimu tree, the protective oracles against theft (viraho), and the ancestors (koma) -- all have their origin in offenses that have been committed by inhabitants of the village themselves. In contrast, sickness inflicted by sorcery may be caused not only by village residents but by non-kin who live elsewhere.

An mgonga-of-the-calabash is not consulted when acts of sorcery seem manifest and before any ill-effects of sorcery are felt. For example, an mgonga-of-the-calabash is not consulted if the planting of sorcery-medicine has been observed or the medicine discovered. One woman, who had been a suspected sorcerer for some time, was divorced by her husband

after he discovered suspicious-looking leaves and twigs under his sleeping mat. In another case, a man from outside, who had been quarrelling with a villager, was discovered at night within the confines of the village. The Village Head immediately buried a vingo, or charm, to protect the village against further attempts at sorcery. In these instances, an mgonga-of-the-calabash was not consulted, for signs indicating sorcery seemed obvious. More important, perhaps, no sickness had occurred, and there was no need to begin the long process of accusing a sorcerer that starts with consulting an mgonga-of-the-calabash.

In all cases where sorcery is suspected as the cause of an actual sickness, but cannot be proved, an mgonga-of-the-calabash must be consulted. This is a firm rule, for the victim of sorcery can never openly accuse a suspected sorcerer without first collecting "evidence" from a diviner. When a victim or his relatives consult an mgonga, they usually have clues of their own -- which they do not reveal to the mgonga -- pointing to the possibility of sorcery and even the identity of the sorcerer. The coincidence of a dispute with a neighbor or relative and the outbreak of sickness may suggest sorcery. One woman consulted an

mgonga-of-the-calabash who confirmed her suspicion that one of her co-wives was using sorcery against her. The woman's relations with her co-wife had been deteriorating for some time, because the two had been competing for the attentions of their husband. Now, suddenly, the client's husband seemed to ignore her. She suspected that her co-wife was using sorcery to make her seem unattractive. When the mgonga-of-the-calabash suggested that a co-wife was indeed the sorcerer, the client suddenly recalled seeing the co-wife in the vicinity of a known sorcerer who sold medicine. Earlier in this chapter, we discussed the case of Gunga whose father, influenced by his brother, had refused him bridewealth to obtain a wife. When a wife of the father later died of snakebite, the coincidence was suspicious, but, as we said, sorcery was not seriously considered. However, when Gunga's father became sick soon after; wagonga-of-the-calabash were consulted immediately and they pointed to Gunga as the sorcerer, and he was eventually publicly accused by an mgonga-who-prays.

Clients, then, consult wagonga-of-the-calabash when they actually experience sickness or other ~~misfortunes that can be~~ caused by sorcery. The

existence of long-standing quarrels that are possibly common knowledge in the area provide a suitable basis for the mgonga's suggestion of sorcery. Armed with his own suspicions, the client is well prepared to accept such an explanation.

Summary

We have seen some occurrences that prompt a Giriama to go to an mgonga-of-the-calabash: the disappearance of property and the outbreak of sickness. Case studies, interviews, and casual statements by informants indicate that, of the two, sickness accounts for most visits to wagonga-of-the-calabash². The situation reflects the extreme fear Giriama have of sickness, combined with the belief that most sickness is caused by the transgressions of human beings. The wagonga-of-the-calabash are sought to reveal the causative offense so that steps can then be taken to combat the illness.

Of the several explanations for sickness that may be suggested by a diviner, the wrath of the ancestors and the effects of the spirits (mizimu) of the sacred tree are the most infrequent. When ancestors are offended, they prefer, it is believed,

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2. This impression excludes the most common reason -- unrelated to disputes -- for seeing a diviner: advice on everyday matters.

to cause strife within the village or to "possess" a descendant; in addition, since ancestors are greatly feared and revered, Giriama do not intentionally offend them. The relative infrequency with which Giriama actually go to the mizimu tree corresponds to the infrequent mention by diviners of the spirits living there as a cause of sickness. Because of its purported fatal effect, resort to the mizimu tree is a potent threat, but it is approached with some trepidation, and is indeed thought of as a last resort. In contrast, the high incidence of village sex offenses (kitio), sorcery, and theft -- all of which are believed to cause sickness -- make these offenses frequent explanations suggested by diviners for sickness and misfortune.

CHAPTER SIX: DIVINING FOR EVIDENCE --
THE WAGONGA-OF-THE-CALABASH

In this chapter, we shall briefly discuss the activities of the wagonga-of-the-calabash as diviners, and then examine in some detail the wagonga's role in the process of gathering evidence. In order to lay bare the manner in which these diviners supply evidence that an offense has been committed, the transcript of a session between an mgonga and her clients will be given and examined.

Wagonga wa Mburuga¹

The most numerous wagonga wa kitswa (wagonga-of-the-head) are the wagonga wa mburuga, also referred to as the wagonga wa kititi. The kititi or mburuga is a calabash, which is the most visible piece of this mgonga's equipment. The mgonga-of-the-calabash may male or female, and charges one shilling (approximately U.S. 14 cents) as a fee for a session with a client. Clients consult these wagonga for disparate reasons, but most generally about a present problem or some

1. In the written records of the Magistrates' Courts, the wagonga wa mburuga are translated into English as "Fortunetellers", but this translation is misleading.

potentially worrisome event in the future. For example, informants have consulted an mgonga-of-the-calabash about the reason for a quarrel with a neighbor; the efficacy of taking a trip at a certain time; the cause of a friend or relative's sickness, and its cure; the outcome of a future event; a good way to budget one's salary. This rambling list shows the breadth of information an mgonga-of-the-calabash may be expected to possess; some of these topics obviously concern information which may be involved in disputes while others require knowledge needed for general advice.

The initiation ceremony of an mgonga-of-the-calabash reflects the characteristics of his work; its public character emphasizes his or her competence in the craft. At the initiation, the entrance of the initiate is dramatic and sudden: he or she emerges from the brush surrounding the village, carrying a container full of medicines and calabashes. The established wagonga present listen to the initiate describe each medicine -- procured from the leaves, roots and bark of various plants -- and the disease each cures. A knowledge of medicines is essential to an mgonga-of-the-calabash; if his pepo reveal that the client (or, the sick person the client represents) is

suffering from the diseases of sorcery, the mgonga must not only expose the sorcery as a cause of illness, but also prescribe medicines to counteract the effect of the medicines that the sorcerer used.

After the new mgonga has explained the medicines and their uses to the satisfaction of the other wagonga present, he then gives an exhibition of the work he will do most often: revealing people's problems. For this performance, the mgonga is given an mkoba -- the grass pouch containing medicines, and begins to pick out persons from the crowd, and tells them the problem that is foremost in their minds. The mgonga rattles his calabash to summon the pepo to provide him with information; he closes his eyes and begins to speak softly and rapidly in a monotone. As he pauses between snatches of information, his client has the opportunity to say whether the information being given is correct or not. The initiate is expected to satisfy all the spectators with his accuracy before he is pronounced an mgonga by the other wagonga present.

The type of mgonga-of-the-calabash most common among the Giriama today is a medium, receiving information from the spirits while shaking a calabash. There have been other kinds of wagonga-of-the-calabash,

however, recalled by informants and mentioned in the written record, whose methods and equipment appear to be more typically divinatory. Arthur Champion, in an account which appears to date from 1914 (Middleton 1967:vii), gives this account: ". . . after gazing into space for several minutes he took up his mburuga and rattling the contents, gave utterance to many grunts and groans as if in great pain. He proceeded to rattle out a few of the seeds into the palm of his hand; these he placed on the little mat before him. Five or six times the process was repeated. The order of the seeds was carefully examined, and then a rearrangement took place. The grunts and groans had now given place to words spoken in the manner of one possessed, and after a final rearrangement he began to inform me of my position in the family, and the news of my village . . ." Champion offers no further explanation of this procedure, but my inquiries revealed that it was the successive number of maize grains shaken out of the calabash which had significance: out of a total of forty grains in the mburuga or kititi, the number of grains that appear after each shaking has a special symbolic meaning. For example, after an initial shaking, if three grains of maize appear,

the general problem concerns a sick woman²; five grains indicate a sick man (the number five symbolizes hope of fertility); seven grains indicate that a trip will be undertaken. The grains are then replaced in the calabash for refinement of the information. Thus, after three grains have indicated a sick woman, a subsequent shaking out of two grains indicates barrenness as the specific ailment, and the mgonga will prescribe medicines for the cure. If a trip in the future was indicated by seven grains, five or three grains following them designates that a man or woman respectively will make the trip.

The wagonga-of-the-calabash do not use this system of divining by maize seeds today, but the symbolic numbers, particularly the word for "three" signifying woman, and the word for "five", signifying man, always appear in the speech of the wagonga in their ceremonies. A prominent mgonga-of-praying in fact disparaged the use of any physical apparatus in order to receive information. He said that any skilled mgonga receives his information directly from his pepo, and should not rely on the interpretation of seeds or the burning of

2. The number 3 symbolizes the three stones of a woman's hearth (figa, pl. mafiga) ritually installed in her home at marriage and removed at her death.

incense. To him, the use of such props merely indicated a lack of skill.

The pepo are said to relay information to the wagonga-of-the-calabash in a number of ways. Pepo may appear in a vision to the mgonga and give him information by speaking directly. In this vision, described by several wagonga, the pepo appear as well-dressed men and women and either tell the mgonga directly what problem the customer has or discuss the problem with each other. The wagonga say they feel as if they are talking to the pepo; they ask the pepo questions and receive answers. "The pepo are just people. I see people -- that is my vision. The pepo talk to me," said one mgonga. During all the sessions of wagonga-of-the-calabash observed by me, the wagonga did not appear to be possessed or in a trance; nor did they address anyone but the customers present. The pepo may also present the mgonga with a vision portraying the customer's problem. The mgonga can then simply narrate what he sees to the customer, as if he were describing a scene to a blind person. Or the pepo can make the problem of the customer be felt by the mgonga himself. "When I am playing mburuga for someone, sometimes even the pains of the sick person are inflicted

on me, and I can just describe them as I feel them . . . and if the person will die, even if he is not yet dead, I will see the corpse in front of me. And I will say, 'The sick person will never recover'."

The Mgonga-of-the-Calabash and His Relation to Disputes

What information the wagonga "obtain" from the pepo is no doubt supplemented by knowledge of local gossip, since clients (who walk to consult an mgonga) generally address themselves to the wagonga in the more or less immediate area. In addition to his general knowledge of events in the area that are available to anyone, an experienced mgonga-of-the-calabash receives a constant stream of clients who supply him with a rich source of private information about themselves and others. In time, this store of information contains facts about many people, some of whom may be future clients. A session with one client may provide information about the problems of others; wives who consult diviners about marital problems also reveal information about household and perhaps village discord. If another person connected with these events consults the same diviner -- and the chances of this are high -- he may be suitably impressed by the range of the diviner's

information. Although in serious cases, such as suspected sorcery, people try to consult several dispersed wagonga in order to compare their advice and diagnoses, even distant wagonga receive news and gossip of different areas from travellers and clients. Whatever the source of the wagonga's information, the Giriama use it to confirm suspicious, reveal the source of trouble, and peer into the future. It is not surprising that intelligence of this type also forms the foundation in which many further disputes are later built.

We shall now present an edited transcript of the recording of a session between an mgonga-of-the-calabash and her two clients. The analysis immediately following the text will point out the basic elements in the process of consulting the mgonga, as well as the potential of the information in starting a dispute. We shall then discuss the place of the information received from an mgonga in the process of beginning and settling a dispute.

It is quite difficult, tactically, to witness a spontaneous session between mgonga wa mburuga and a client, as opposed to sessions arranged between the client and the mgonga by the ethnographer. Even at

their best, such arranged sessions proved to have a stilted and artificial quality, since frequently the client had no actual, pressing need to consult an mgonga. The results usually produced a very general, if accurate, picture of the client's home life as well as minor problems, but the content of the session had little bearing on potential or ongoing disputes. It is the secret, impromptu sessions held by wagonga-of-the-calabash that contain the most valuable information, but these sessions are difficult to track down. The particular text which follows was selected because it was completely spontaneous and fully reveals the broad range of information an mgonga-of-the-calabash can give in one session. Also, the information brought out in the session not only exposed underlying quarrels of long standing between two neighbors, but could have contributed to the emergence of an overt dispute.

4 A Session with an Mgonga-of-the-Calabash

Two women on the path are encountered by me on their way to consult an mgonga-of-the-calabash. They say that they have been very concerned for many weeks about the illness of a female relative. One of them is the sick woman's sister; the other is the sister of the sick woman's husband. After telling me this, the

women continue on their way across a field of cassava towards the village of the mgonga (the distance between their village and that of the mgonga is about two miles). Upon reaching the village of the mgonga, they sit down and wait for the mgonga to appear. The month is April and the mgonga is in plain view, clearing a nearby field in preparation for the approaching rains and the planting season. She works steadily, gathering dried maize stalks together, but ignores us, not even proffering the customary greetings. After half an hour passes without any slackening in her work, one of her male relatives shouts to her that she has visitors. Without stopping her work or looking up, she replies that she can see that, and that furthermore she knows why we have come. The relative remarks that "Wagonga are strange people" and walks away. Finally, the mgonga leaves her work and climbs the hill to her house to wash her hands. She still appears to take no notice of us, and does not reply to greetings. She simply enters her house and sits on a mat on the floor.

Her clients follow her and sit in the half-darkness in front of the mgonga. The one shilling fee for the mgonga's services is placed at her feet. The mgonga absently sprinkles some snuff over the shilling and

begins rattling a small calabash, all the time muttering to herself and periodically whistling by a sharp intake of breath. Wagonga say that these sounds summon the pepo: "When you whistle and rattle, the pepo will come, they will know that there is work for them to do . . . they will come and tell you what you want to know . . ." This mgonga, during the entire session, regularly rattles her calabash to receive bits of information from the pepo. She relays the information to her customers and expects and receives from them confirmation or denial of the accuracy of the information. In doing so, like all wagonga-of-the-calabash, she acts out openly her role of medium between the pepo and her customers. As such, she absolves herself of any personal responsibility about the information -- its accuracy or any use her customers may later make of it.

The mgonga begins addressing her two clients in a very soft, high-pitched monotone. Their eyes never leave her face as they listen attentively to her drone:

Mgonga: I can see a worry in your village; the worry is about a person, a figa (hearthstone, i.e. woman)³. The figa is mature, not young. This figa is sick. You have come because an adult figa is sick. Is that true?

Women: What you have said is very true.

3. Throughout this session, the mgonga refers to a woman as a figa and to a man as a tsano (the number 5).

Mgonga: She has chills. Is that true?

Women: True.

Mgonga: Her whole body is aching; is that true?

Women: True.

Mgonga: She feels pain where her heart is. Is that true?

Women: Yes, she complains of pain there.

The mgonga now pauses, and rapidly begins shaking her calabash, softly whistling all the while. The calabash slows and stops. She speaks again.

Mgonga: She is worried all the time. Does she show signs of worry?

Women: Yes, she worries a lot.

Mgonga: The sick woman feels that her heart is being pulled downwards; does she feel that? Does she complain of this too?

Women: Yes, we hear her complain of that.

Mgonga: I am also informed that the sick person has stomach pains. Is this true?

Women: Yes, she has stomach pains.

Mgonga: She feels the early stages of pregnancy in her stomach. Is this true?

Women: No. There you are wrong, you have been misled. The woman is not pregnant.

Mgonga: All right, let me consult my pepo again.

The constant impression given is that of complete

dependence on the pepo for all the facts. When the clients do in fact deny that the sick woman is pregnant as the mgonga suggests, the mgonga places immediate blame for this inaccurate information on her pepo. Also, on the few occasions when the clients ask the mgonga direct questions, the mgonga does not reply immediately, but rattles her calabash to receive the answer from the pepo. The mgonga emphasizes this point by announcing that she must consult her pepo before giving an answer.

The mgonga shakes her calabash again and whistles; but this time she continues rattling while resuming her speech:

Mgonga: The sick woman has pains in her genitals. Does she complain of pain there?

Women: Yes, sometimes she tells us that she feels pain there.

Mgonga: I have also been told that the sickness has been going on for a long time; it is not recent. Is this true?

Women: That is true.

Mgonga: Another thing about her genitals -- a lot of fluid comes from there. Has she told you about this?

Women: Yes, she has told us about it.

Mgonga: Has she also told you that her legs are bothering her, that she feels like scratching them all the time?

Woman: Yes, and I have also seen her do it. She scratches her legs all the time.

Mgonga: Does she tell you of her backache? Does she tell you about the pains in her arms?

Women: Yes, she complains of all these things.

Mgonga begins rattling again, and, after a few minutes, speaks as she rattles.

Mgonga: Were you told that a bird flew right into the village? Were you told about it?

Woman: What type of bird?

Mgonga: Just a bird that flew into the village. Weren't you told that such a bird flew into the village one day?

Woman: Oh yes. Now I remember, one day a bird did fly into the village.

Mgonga: Now I am told that there is a tsano ("five", i.e. a man) connected with the sickness of this woman. Do you know about this?

Women: I think so.

(Mgonga renews her rattling)

Mgonga: I am told that the figa is sick, and that the person connected with the sickness is a man. This man lives close by, he is a neighbor of the sick woman. Do you know who I mean?

Women: I am not sure. Can't you be more definite about it? There are many people who live near us. How near do you mean, and who can that person be? Can you tell us what he has to do with the sickness?

Mgonga (as she begins rattling her calabash again): I shall get more information about this. (Pause as she rattles).
The person is making this woman sick. I think he is casting spells on her. And this

person is a man; he is also an mgonga. You call him to treat the sickness of this woman. I am surprised, because the relationship between the man and the sick woman is that of doctor and patient. I am further told that this man wanted to have sex with his patient, and this woman was reluctant. My pepo tell me that the man said, 'I threw my mouth at hers; why was I not loved?'

This man is a very close neighbor. I am told that he is tall and of medium height; he is not fat, and not thin. Do you know an mgonga near you who has this body?

Women: Yes, one of the wagonga is like that.

Mgonga: The man who is casting spells over this woman lives to the south of her village. Do you know of any mgonga of medium build who lives to the south of the village?

Women: Yes, we know such an mgonga.

Mgonga: (rattles her calabash, whistles, starts speaking again) We are also told that I am not the first mgonga wa mburuga that you have gone to. You have consulted two or three others, and they have told you about this same person who lives to the south of the village . . . is this true?

Woman: That is true. I have been to other wagonga wa mburuga, and they have told me the same thing.

Mgonga: (rattling and speaking) I am told by my pepo that there is another reason why the woman is being made sick. The man is jealous of the money that the woman gets from the coconut trees that are in her village. I am also told that many years ago there was a quarrel between the man and the sick woman. The cause of this quarrel was these same coconut trees. It happened that everyone in the area planted coconut

trees, but this sick woman's were the only ones that flourished.

I am now told that there are two wagonga who come to treat the sick woman; after these two come to treat her, she improves for two or three days, but then she gets sick again. Have you noticed this?

Women: Yes, we have noticed this.

Mgonga: What I am telling you is that the tall, medium-weight mgonga is acting against the other wagonga who treat the sick woman. In fact, the other two wagonga are excellent, and know their work, but do not know that this other mgonga is working against them. (After renewed rattling of the calabash . . .) The sorcerer lives on the southern side of your village; there is a very big mango tree in the middle of the village where he lives. Do you know who the sorcerer is, and his village? Is the picture clearer in your mind now?

Women: Yes. Now we have a good idea who the sorcerer is.

Mgonga: He does not stand straight, he walks bent over. He is mgonga like me -- mgonga wa mburuga. He also taps coconut liquor; am I correct?

Women: (now with great enthusiasm) Yes! We know the person, we know him!

Mgonga: . . . yes, he taps coconut trees . . . (resumes rattling calabash) I am also informed that the sick woman is not in her own village now. Is that true? Have you taken her to another village?

Women: Yes.

Mgonga: You did a very clever and wise thing. If you had not removed her from her village, by now you would have been shedding tears, because by now the sick woman would have

been dead. (Rattling resumes . . .)

I have just been informed that the sorcerer likes to smile a lot, and that one of his teeth is broken and rotten.

(Rattling begins again. Now the mgonga quotes the sick woman): 'My friend, did I do such a bad thing, by now allowing you to seduce me? I only befriended you because you were mgonga, so that when I got sick, I could come to you for vu (medicine made of leaves and water). Because I would not sleep with you, you feel that I did wrong.'

So this mgonga is also casting spells over this woman because he loves her very much, and has tried many times to seduce her. And the woman always refuses him . . .

There is a long period of rattling before the mgonga proceeds to diagnose the various illnesses caused by sorcery, and to prescribe medicines to diminish the illnesses as well as the power of sorcery. This section has been omitted here.

Woman: Where should the treatment be made? Where we have taken her, or is it safe to bring her back to her own village and treat her there?

Mgonga rattles to consult her pepo on this question; then she gives the reply.

Mgonga: You asked me whether the sick person should be treated at home. My pepo tell me that this is not good. I am told that if you treat the sick woman at her own village, she will not even chew the maize of this year. She won't live to see the first cob of the maize. But if you treat her where she is now, she will get better. Then wait until her health has improved, and take her to her own village.

There are two paths in that village: one leads in the direction where the sun rises, and the other leads to where the

sun sets. I am suspicious. Where these two paths join before you enter the village . . . something has been buried there. These two paths are very dangerous. Both lead to the gardens of the sick woman. So however she is treated now, whenever she steps in on these two paths, she will get sick again, because there is medicine which causes illness buried there. I suspect that the sorcerer has buried medicine on these two paths.

The mgonga now advises the women to employ another type of mgonga, an mgonga wa kuhundula (kuhundula = to cleanse)⁴ to rid the village of the power of sorcery medicine, before the sick woman is returned there. The mgonga then gives in detail which types of medicines the mgonga wa kuhundula should use to achieve his end. The mgonga now summarizes her findings:

I am told that the sick woman is under a spell because of jealousy, and because the sorcerer failed to seduce her; he wanted her because he was in love with her, but also because he thought he would become rich, because that woman is not poor, and her husband is very far away. So the man thought: 'If this woman allows me to be her lover, I would also share the money she gets from her coconut trees.'

Now go and remove the sick woman from even the village where she is now -- you may think that she is safe there, but I see that she is within calling distance of her own village. Take her to a village to the north of the one where she is now, and give her the treatment I have described.

The man who has used medicine against this woman was once 'caught' by an

4. An mgonga wa kuhundula is not a type of mgonga wa kitswa (of-the-head); unlike the wagonga wa kitswa, an mgonga wa kuhundula becomes an mgonga voluntarily, by purchasing the medicines and skill needed for his craft.

mgonga wa kuvoyera (of-the-praying). This is not the first time that he has used sorcery medicine. He is a famous sorcerer.

A Commentary on the Session

Aside from the particular content of the session, which will be put aside for the moment, there are several elements here that are characteristic of the methods used by both client and mgonga during a consultation. Wagonga-of-the-calabash may be approached by clients at any time, and their manner, upon being sought out, is casual to the point of being offhand. They simply leisurely drop whatever ordinary task they have been engaged in, enter their houses with the client, and begin rattling their calabash with no further ceremony or the donning of any regalia. As one mgonga stated: "You will know who are the right wagonga and who are the phony ones. There are those wagonga wa mburuga who just bought their craft and were taught. These wagonga burn incense and sacrifice. But the real wagonga wa mburuga don't do any of that. They just play mburuga, simply." The session of the mgonga-of-the-calabash is always private; it must take place indoors, so that only the client and the mgonga hear the information.

The position of the wagonga-of-the-calabash as mere vehicles for transmitting information from the pepo, as

well as the secrecy enveloping the sessions, are important protective elements for the mgonga. Should the information received at such a session be used later as a basis for accusing someone of an offense -- for instance, if an mgonga has descriptively identified a thief or a sorcerer during a session -- the mgonga always retains his anonymity. Although plaintiffs at the elders' councils or the Magistrates' Courts frequently cite information received from wagonga-of-the-calabash as the basis for accusing the defendant, the identity of the mgonga is never revealed, and they cannot be implicated in the dispute. This, as we shall see, is in contrast to the higher-grade spirit mediums, the wagonga-who-pray, who hold large, public ceremonies and accuse alleged offenders, especially sorcerers, in full view of the community. The wagonga-of-the-calabash do not accuse the alleged offender, but merely provide the information, privately and anonymously, which their clients may, if they wish, use on their own responsibility.

The secrecy involved in visiting an mgonga-of-the-calabash is also related to the tentativeness and insecurity of the clients when they decide to consult an mgonga-of-the-calabash, who is the first specialist

a person consults when in the grip of trouble or uncertainty. A person seeks from an mgonga-of-the-calabash such things as a glance into the future; the explanation of a sudden death or illness or other misfortune; or the identity of the agent of unseen acts such as theft or the planting of sorcery medicine. There are complicated questions to which the customer does not expect always to obtain immediate answers. Visiting an mgonga is but part of a search, and it is so recognized. Thus, people consult several far-flung wagonga, if possible, to compare their advice and opinions. The process is truly a "gathering" one, for the information garnered at one session is selectively brought to the session with the next mgonga but not revealed to him -- and so on to the next session, in what we might call a process of "cumulation of plausibilities."

In the session presented above, for instance, the two clients acknowledged to the mgonga that they had already seen "two or three" other wagonga, and that the revelation of all the wagonga were in agreement. But no matter how many wagonga have been consulted, every subsequent visit to another mgonga does not formally differ from the first, for the client reveals none of the information directly to the new mgonga. The customer

is regarded as merely confirming or denying only what the mgonga has already learned from his pepo. It is obvious from the transcript of the session that this definition of the situation does leave much room for skillful questioning, with the mgonga pursuing some lines of inquiry and abandoning others, all in the guise of a hidden dialogue with the pepo.

The mgonga relayed, from the pepo, two types of information: facts that were apparent to the clients and could be readily ascertained by any ordinary human being; and facts which only an mgonga can have access to. But, formally speaking, all the information is in the same category, for the mgonga is purportedly ignorant of all the facts of the case until the pepo reveal them. But the revelations clearly present the facts in a certain order. The mgonga first establishes credibility with her clients by dwelling on facts that they themselves can be sure of. This is accomplished by what might be called a "dialogue of elicitation of facts," by the mgonga's requests for affirmation or denial of the accuracy of specific facts and the customers' responses which are sure and decisive. The process ends with an agreement about the visible facts of the case.

Thereafter, the mgonga moves on to more uncertain ground: the invisible cause of the woman's illness. The mgonga's previous caution now gives way to what are more clearly assertions: her utterances become perceptibly longer and the customers' responses more vague and noncommittal. But occasionally, visible facts are introduced and checked, enhancing the plausibility of the explanation that is being gradually woven. Thus, after introducing the idea that the cause of illness is sorcery, the mgonga brings into the dialogue a bird that flew into the village of the sick woman; once one of the clients remembers such a bird, the mgonga moves on to identify the sorcerer. This is done at first cautiously but in concrete and visible terms, by describing where he lives, his general appearance, and his relationship with the sick woman. Once these visible facts have lent a plausibility to the story, less visible elements are again brought in: the mgonga reconstructs the past by defining the sorcerer's motives for making the woman sick -- jealousy, pique at being rebuffed by her, and cupidity. There, the clients press for more detail, and the mgonga obliges by giving increasingly particular, realistic details, including even direct quotations from the sorcerer and a description of his

teeth -- until the clients appear to be completely convinced of the sorcerer's identity.

Thus, the mgonga's conclusions, no matter how esoteric, are firmly rooted in mundane facts known to the clients: the person such as the mgonga describes as the sorcerer must exist in the client's experience. When the clients eagerly acknowledge the existence of a person fitting the mgonga's precise description, the mgonga, at this point, is in complete control of the session. The responses of the customers are no longer in the nature of evaluations of the mgonga's accuracy, but are requests for advice on treating the sick woman and protecting her from further sorcery-induced illness. The entire tone of the session has changed. The mgonga authoritatively provides a lengthy list of the exact sorcery-illnesses⁵ afflicting the woman and supplies the names of medicines to be used for the physical symptoms. The mgonga also deals with the prevention in future of a recurrence of the sorcerer's act of planting harmful medicine in the village of the sick woman. In doing so, the mgonga again reconstructs the past by describing where and how the medicines had

5. In the list of illnesses, each illness is preceded by the word for sorcery -- utsai -- to distinguish these ills from ordinary ailments. E.g., utsai wa minyo, or sorcery of the black ants, is sharp pain like that of an ant bite.

been concealed. Finally the mgonga lists the medicines, roots and leaves that another type of mgonga, the mgonga wa kuhundula (of-the-cleansing), should use to cleanse the village of the sorcery medicine and to prevent the sorcerer from planting new medicine there. Through these passages the mgonga proceeds uninterrupted by her customers; they would have nothing to say here. The mgonga concludes the session with further damning evidence about the sorcerer whom she has identified: he had used sorcery before; he is a well-known sorcerer -- he has been "caught" (accused) by an mgonga-who-prays before.

Wagonga-of-the-Calabash as Witnesses to Offenses

The customers hurry away from the mgonga's village, and appear to be well satisfied with the information they have received there, which will help and protect their relative from future harm. But they have also received convincing and damaging evidence against an individual in the absence of a neutral third party. This contrasts with the usual situations in which accusations are made, such as the accusation ceremonies of the mgonga-who-prays and the cases at the elders' councils, where the Giriama attach great importance to having people present who are uninvolved in the case at

hand. The secrecy of the wagonga-of-the-calabash sessions, by contrast, involves those who are closely related to the potential principals in the case and actually encourages the selection of those most concerned with the outcome of the case.

The session we have presented contains obvious material for a dispute: the clients have learned to their satisfaction that their relative's illness is not "natural"; they have also ascertained the cause as sorcery and have identified the sorcerer. Apparently, this was corroborated by several other wagonga. Thus, the clients had sufficient evidence to expose the sorcerer in public. Taking such a step, however, requires serious consideration. "Proven" sorcerers are even today ostracized, beaten, and expelled from the community. Although these traditional sanctions against sorcerers are now punishable under the statutory laws of Kenya, they are still commonly used. This, then, could have been the ultimate result of the information from the wagonga-of-the-calabash in this case. The wagonga themselves, however, after they supply their clients with information, are no longer directly involved in the matter. It is up to the customer to use the information as he sees fit.

In this particular respect, these wagonga provide the same kind of information that an eyewitness to an offense would, as they reconstruct the offense and descriptively identify the offender. This similarity with witnesses is confirmed by the necessity of consulting several wagonga-of-the-calabash for corroborative evidence before one feels one can begin making arrangements to accuse the alleged offender publicly.

We have seen that the overt function of the mgonga-of-the-calabash is to explain the cause of misfortune, usually a disease, and to suggest the countermeasures to be taken. In a society in which disease is widespread and its occurrence believed to be largely related to disharmonies in social relations, the mgonga's diagnoses impinge very directly on the softening or exacerbation of disputes. In this sense, the mgonga-of-the-calabash may be regarded as an institution that channels the feelings of fear and impotence in the face of recurrent and inscrutable misfortunes into the realm of social relations where blame can be allocated, retribution sought, and compensation obtained. While this function may be seen as "positive" on the cognitive level -- transposing the unpredictable and unknown dangers of the physical world into a more

controllable social universe -- the consequences for interpersonal relations are more ambiguous. When an mgonga-of-the-calabash reveals to his client that he is in fact not a victim but an offender suffering legitimate and deserved punishment, the result is to precipitate settlement of the dispute. In retrospect, the mgonga's role in these instances appears to be that of a resolver of a presumably longstanding (but perhaps imaginary) dispute. But when the mgonga "sees" misfortune as the result of an attack on his client, as in the sorcery case above, he assumes the role of a witness (by supernatural means) to an offense that was hitherto unrevealed. He provides the client with a "satisfactory" explanation, but one that calls for a counterattack. He thus generates a new conflict or exacerbates a longstanding one -- and his role stops at this point. The client is then faced with several options, ranging from doing nothing (or at least postponing a showdown) to proceeding to a formal accusation. If he does the latter, a full-fledged dispute begins to run its course in public, often with the intervention of other specialized wagonga.

CHAPTER SEVEN: ACTING ON THE EVIDENCE RECEIVED FROM
THE WAGONGA-OF-THE-CALABASH

Limiting the Accused's Options: Fear of Sickness

When a diviner informs a client that an offense has been committed, there may be several courses to follow, depending on the type of offense. Offenses against the ancestors, the kitio sex offenses, and offenses punished by the mizimu spirits share a common element: they are believed to result in sickness that affects not only the offender but anyone in his village. In these instances, the guilty -- who may be the client himself or another person -- may find his options limited, for fear of sickness makes the entire residential unit an interested participant in the outcome of the dispute. Thus, people not directly involved in an offense may be forced to participate for their own welfare.

Fears of becoming the innocent victims of sickness have been known to fragment not only families but entire villages. Thus, a suspected offender -- indicated by a diviner -- after he has been accused openly, is under considerable pressure from his relatives

to admit his wrong or prove his innocence. If he refuses to do either, he may be faced with a deserted village. Divorce, for example, may result from a wife's fear that she or her children will be afflicted by mizimu or kitio. In one instance of sickness in the village, a diviner had suggested mizimu as the cause, and a wife knew that her husband had wrongly accused and beaten a suspected adulterer. She left the village and could not be persuaded to return until her husband had compensated the suspect for the assault. In another case, a Village Head led a mass exodus from the village and established another in an untainted place after he became convinced that a kitio sex offense had been committed and the alleged offenders would not concede their guilt or try to prove their innocence (an oracle had been suggested).

Sickness believed to be the result of an offense may also be counteracted by rectifying the wrong, with or without the cooperation of the accused. Rather than deserting a village threatened by sickness, the residents may choose to deal with an alleged breach by themselves. On their own initiative, the residents of a village believed to be afflicted by kitio may summon an mgonga wa kitio (a doctor of kitio) to ritually

cleanse the village. Such cleansing is considered an adequate remedy for suspected kitio, although ill will may ultimately force the accused to leave the village if he does not prove his innocence.

Fear of sickness may also precipitate the settlement of disputes by relatives of the accused. One man, fearing that his brother had indeed committed adultery, and knowing that he had refused to pay the compensation, hastily paid the accuser on his brother's behalf -- not only because of his own fear of mizimu but also to prevent a possible breakup of the village by others fearing mizimu.

When diviners indicate an offense resulting in sickness that afflicts only the offender, the accused, at least in theory, can weigh the options more freely, without pressure or intervention from a fearful village. In reality, however, when a client is informed that his sickness is caused by a preventive kiraho medicine that has "caught" him for trespassing or stealing, he is under considerable pressure to recall a time when he did steal and then offer compensation, for conceding guilt is a prerequisite for a cure.

The Accuser's Options

When a client visits an mgonga-of-the-calabash who informs him of an offense and the identity of a possible offender, the client has an obvious option: he may make an accusation. In the case of theft, the client simply confront the alleged offender with his accusation, usually at the accused's village but sometimes at an elders' council. If an offense involves the well-being of a village (as with a kitio sex offense), the Village Head usually makes the formal accusation.¹ When the offense is sorcery, however, the victim of sorcery and his relatives have another option besides making a public accusation.

The Special Case of Sorcery: Private Retaliation

In the case that was discussed in Chapter Six, the two female clients of the mgonga-of-the-calabash had collected enough information from several diviners to take the next step of having the sorcerer publicly accused by an mgonga-who-prays, but they did not choose to take this step. Instead, following the instructions of

1. Accusations that take place at elders' councils and before the Village Head are discussed below in separate chapters.

the mgonga-of-the-calabash, they had the sick woman treated with medicines. The sick woman was returned to her village in the company of an mgonga wa kuhundula, who secretly cleansed the village of sorcery and planted additional medicine to kill the sorcerer, should he make any further attempts to plant medicine. The steps taken by the mgonga wa kuhundula were at once protective and retaliatory, as expressed in the words of the mgonga addressing and instructing the medicine as he ground it into the ground with his bare buttocks:

Mbare (medicine made from roots), I am instructing you to act on the person who comes into this village, who intends to cast spells on people here. You, mbare, here is how I want you to treat the sorcerer: the sorcerer's stomach should swell up; let him ooze blood from his nose; let him ooze blood from his anus; from his ears, from his eyes, and from his mouth. Let blood come from every orifice in his body. Medicine, follow my instructions! If anyone passes through this village with no evil intent, let him pass; let him go unharmed. But whoever has the intention to leave medicine, let him have the sickness that I have told you to give him . . . don't let that person escape! Attack him!

Such was the course the victim and her family chose to follow: a secret ceremony in the dark of night that would protect the village from the effects of future sorcery. The sorcerer identified by the mgonga became

the target for the retaliatory medicine but not for a public accusation of sorcery. The option that a person will choose cannot be simply predicted: it is partly and often largely a question of personal preference and circumstances. In any case, a public accusation in this case was seen to have the same hoped-for effect of deterring the sorcerer's activities. Because the sorcerer was a "famous sorcerer" and had been accused by an mgonga-who-prays before, it was decided that his own kind of medicine was the best way to deal with him.

The information given to the women by the mgonga-of-the-calabash in the above case, then, did not result in a dispute, for there was no public accusation of the presumed offender.

In the case of sorcery, then, the victim has two main alternatives: he may resort to privileged self-help, that is, anti-sorcery, including palliative and retaliatory medicines; or he may publicly accuse the sorcerer. The latter sets into motion a whole series of events in which a variety of choices will be present throughout -- as we shall presently see. The best outcome of a decision to accuse publicly is one which ultimately results in the sorcerer's payment of compensation for the illness or death he caused, or by

the sorcerer's voluntary curing of the victim, an action which an admitted sorcerer is most qualified to do.

CHAPTER EIGHT:

THE FORMAL ACCUSATION: THE WAGONGA WA KUYOYERA

"The mgonga wa kuvoyera must know all the arts of being an mgonga wa mburuga. In fact, he is the greatest mgonga wa mburuga of them all."

-- an mgonga wa kuvoyera

The title "mgonga wa kuvoyera" may be translated loosely as "the mgonga-who-prays" (kuvoyera = to pray), and during the ceremony of the mgonga wa kuvoyera there are indeed frequent invocations to the Supreme Being Mulungu, his pepo, as well as to the ancestor spirits, the koma; for all these supernatural beings are believed to help the mgonga to reveal the sources of problems besetting the living. But as the opening quotation indicates, an mgonga wa kuvoyera is, before anything else, an mgonga wa mburuga (of-the-calabash) as well, qualified to uncover the nature of any problem that the public may bring to him. In fact, he must retain his expertise as an mgonga-of-the-calabash even as he is elevated, both in prestige and specialization, to the rank of mgonga-who-prays. These coinciding roles are apparent in his initiation ceremony, as well as in the ceremonies he performs as a qualified mgonga wa kuvoyera.

As the initiation ceremony of an mgonga-who-prays, his rank is marked by his choice of equipment from those

proffered by the assembled wagonga: he refuses the kititi of the mgonga-of-the-calabash and instead calls for a large black pot of water to be set up. The drums (ngoma) are already beating, and he dances to them as the pepo possess him, as they must do in order to relay information to him. For when an mgonga-of-the-calabash attains the position of being an mgonga-who-prays, the pepo will serve him by possession only when their drums (ngoma za pepo, drums of the pepo) are being beaten.

Since the initiate is already an mgonga-of-the-calabash, qualified wagonga-who-pray prepare a test appropriate for the new specialization. First, they may repeat tests that an mgonga-of-the-calabash may be qualified to meet, but since the equipment of the mgonga-who-prays is different, he will be expected to pass the tests by using methods peculiar to his new rank. The examining wagonga may first take a bottle and hide it, and merely tell the initiate that they have a problem. The initiate will dance as he is possessed by the pepo and look periodically into the water of the basin for information from the pepo. The mgonga will then state that no one is sick, nothing is stolen, but that something is hidden. He will then say that the object has been buried; he will be asked where and to find it. If the mgonga is real, he will

uncover the buried bottle, after being told its location by the pepo. "That is some proof that you are mgonga-who-prays -- that you can uncover any secret or mystery." The initiate will continue behaving in a manner similar to that of an mgonga-of-the-calabash for a while, with the difference that he reveals to people their problems by first dancing and then looking into the basin for his information. But the ultimate test of an mgonga-who-prays is his ability to identify a sorcerer by being able to conjure up the image of the sorcerer on the surface of the water in the basin. During this test, a qualified mgonga stands nearby to see if the initiate can cause the face of a sorcerer to appear. This face may be that of a known sorcerer, or the face of someone who will be a sorcerer in the future. The wagonga say that if an ordinary person looks at the surface of the water, he will see nothing.

The wagonga-who-pray are most prominent in the cycle of the settlement of sorcery disputes. Unlike the wagonga-of-the-calabash, they may accuse suspected sorcerers in public and thus bring these disputes to the attention of the community. Indeed, a formal accusation on behalf of the victim by the mgonga-who-prays is necessary before the victim, after visiting an

mgonga-of-the-calabash, can take any further steps. Thus, in cases with which the mgonga-who-prays is concerned, he enables a dispute formally to begin, for a dispute cannot begin without the overt existence of accuser and accused.

The wagonga-who-pray are primarily seen as the public accusers of sorcerers, and this reputation is based largely on the high incidence of sorcery offenses among the Giriama. Although wagonga-who-pray are purportedly also called to accuse other types of offenders, no non-mgonga informant could cite an instance where an offense other than sorcery was revealed; nor did I witness any. One mgonga-who-prays, however, asserted that:

I am called for anything that makes someone uneasy. I am not just called for sorcery. I was once called when someone's cattle were killed, and he wanted to know who did this. Or I can be called if your money has been lost, and you would like to know who the thief is, or if your house has been burned, and you want to know the arsonist. I can also be called if the koma (ancestral spirits) have brought trouble, because sometimes this can be mistaken for sorcery. Once a boy ran away and hid himself in the bush for six days without eating or drinking. Everyone thought that he was lost; they could not find him, so they called me to play ngoma (drum ceremony). I was told by the pepo that the dead Tswe (grandfather) of this boy had not had his koma (memorial marker) erected. When I found

this out, I just left. When they brought the koma and put it up, the boy recovered immediately. So you can see that I am not just called for sorcery.

The accusatory services of an mgonga-who-prays may be dispensed with entirely -- but only if an act of sorcery has been directly observed. In such cases, the intended victim may make the accusation himself and bypass both wagonga-of-the-calabash and the mgonga-who-prays. In one case which appeared before an elders' council, the accuser said he saw the accused placing muhaso (sorcery medicine) in his house; the accuser stated:

Today I am accusing this man of bringing muhaso into my own village. I want him to give me 25 shillings as a fine, because he wanted to cast a spell on me with the medicine. He had had sex with my wife, and as you know, atumia (elders), I have accused him several times for non-payment of malu (adultery compensation) before this very council . . . one day recently I saw him approaching my village, and you can understand why I wanted to fight him. He did not know that I was at home, but I hid until he came close to the house. Then I leaped up and holding a package of medicine. It was black medicine, and as you know the color of sorcery medicine is black . . .

When an mgonga-who-prays begins his practice, he receives requests to come and play ngoma¹. Wagonga-who-pray compete among themselves for business; the most successful wagonga are known to be the best singers and dancers as well as the most accurate in giving information. When interviewed, these wagonga tend to denigrate the skill of their fellow wagonga, while extolling their own. It is ultimately public opinion and individual skill that decide reputations. The wagonga compete for sound business reasons: the 100-shilling fee they receive for each ngoma is a considerable one.

Calling the Mgonga-who-Prays

There is some disagreement among wagonga about the correct procedure to be followed in requesting the services of an mgonga-who-prays. One always sends for the mgonga-who-prays to come to his client's village to play his ngoma. Like the mgonga-of-the-calabash

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1. In the following pages, this ceremony will often be referred to as an ngoma. In Giriama, as in many Bantu languages, the word ngoma means "drum" and "dance". Either meaning is appropriate here, for both drumming and dancing are integral parts of the ceremony, known in complete form as ngoma ya mgonga wa kuvoyera.

the mgonga-who-prays must be kept completely ignorant of the problem about which he is being consulted; any information he receives must appear to come from the pepo and from no other source. As we have seen, the probity of the sessions with the mgonga-of-the-calabash is achieved by the sudden and unheralded appearance of the client at the mgonga's village, followed by the mgonga's spontaneous performance in the absence of any extraneous conversation. In the case of an mgonga-who-prays, similar insurance is required that his information comes from an exclusively supernatural source. But this is threatened by the interval of time between the calling of the mgonga and his arrival to play his ngoma and by the possibility of contact between the mgonga and the different parties potentially interested in the outcome of the case. But it is in the interest of both the mgonga and his client -- if the client is sincere -- to maintain secrecy. The mgonga has at stake his reputation and a good source of income if his impropriety should be exposed. The client, although he may clearly know all the circumstances surrounding his problem from prior sessions with many wagonga-of-the-calabash, needs the support and corroboration of a higher-ranked medium who can

bring his problem a step further to solution by actually accusing the offender. In order for this accusation to be effective, there must be no opportunity for anyone to cast doubt on the validity of the ngoma.

For these reasons, there is a problem and some disagreement among wagonga as to who is an appropriate person to send to summon the mgonga-who-prays. Any information divulged to the mgonga would invalidate all of the mgonga's revelations, as well as cast doubt on the mgonga's personal integrity. Many wagonga agree that the best person to call the mgonga and lead him to his client's village is a very young child, "so young that he cannot know anything about the problem, so that if the mgonga should happen to ask him anything, the child will not be able to reply. In fact, the child sent to get the mgonga should not even be from the village where the problem is. Someone in the troubled village should go and find a friend in another village and say: 'Will you please send your son or daughter to go and call a certain mgonga? I need him.' " Other wagonga, however, prefer a completely different system which, they believe, better ensures the secrecy of the summoning of the mgonga: "The right person to send for

the mgonga is a person who is mature enough to know what to say and what not to say. I would prefer a very close relative, and an adult who lives in the troubled village. For the mgonga will not be tempted to try to get information from such a person whereas a child can be persuaded to say anything."

In spite of these security measures, both wagonga quoted above allude to the possibility of the mgonga attempting to extract advance information from the messenger as well as the client's temptation to leak this information. It is admitted that it would greatly improve an mgonga's accuracy to have received some information before playing his ngoma; and it may also be in the client's interest to influence the revelation at the ngoma in a particular direction. One mgonga-who-prays reported that a person came to fetch him and, in the course of doing so, told him not only that his wife was sick but that he suspected sorcery as the cause of the sickness. The mgonga claimed that he became very angry and refused to come and play his ngoma. "When a person does that, he has made the work of the pepo useless; what is left for them to do? The pepo are supposed to tell you what you (the mgonga) have come for; but if a client tells the mgonga what

he wants, the pepo may come, but still the mgonga will not feel that he has done his work properly. An mgonga does not like to come when he feels that half of his work has been done for him, and that all of his information has been divulged."

To add to the secrecy of the mgonga's pending ngoma, the mgonga, when he arrives, is not allowed to sleep in the village where the problem is. He must stay in a village far enough away to avoid suspicion, and the people there will send a message to the client that the mgonga has arrived to play ngoma. This is how an mgonga describes the ideal situation surrounding the arrival of the mgonga: " . . . the mgonga is kept completely ignorant of the reason why he has come. He has to find out everything himself. He doesn't know if he has been called because of sickness or death or lost property. He doesn't know where the troubled village is. He doesn't know who the people are. He will have to find out who they are from his pepo"

When the mgonga arrives at the scene of his ngoma, he will have prepared himself in several ways, and preparations have also been made for him. An assistant, who is not an mgonga, has been hired for 30 shillings to help the mgonga during the course of the ngoma.

Neither he nor the mgonga is allowed to have sex on the night preceding the ngoma; the mgonga himself must have abstained for three days prior to the ngoma, for pepo are purported not to like semen -- they will not come to the ngoma if the mgonga has broken this rule.

The harsh sound of a giraffe horn heralds the arrival of the mgonga at the site of the ngoma. Normally, a crowd of several hundred people awaits the beginning of the ngoma and more join the crowd as the sound of the drums attracts them. Male spectators stand apart from the women and children. The crowd forms a semicircle before a tree which serves both as a prop and a backdrop for a row of at least four differently toned drums. The drummers stand ready. Directly in front of the drums is a wooden stool for the mgonga and in front of the stool is the tangible trademark of the mgonga, the large black basin. It is required that this basin be filled with fresh water by a very young girl just before the beginning of the ngoma. Anyone older is not trusted not to put medicine harmful to the mgonga in the water.

The other objects for the mgonga's use are preventive measures against the power of sorcerers. Since the mgonga-who-prays most frequently reveals the activities of sorcerers, the mgonga must be prepared to

defend himself against them. Thus, beside the basin are some eggs and two young chickens, a black one and a white one, their feet tied together and staked into the ground. Close to the chickens are madafu, green coconuts with their husks and outer shell pared, ready for drinking the milk inside. If the mgonga finds that the problem for which he has been called has been caused by a sorcerer, the sorcerer may try to cause confusion by making the mgonga feel dizzy and faint. If this happens, the mgonga can drink the coconut milk and consume the eggs and the blood of the chickens to regain his strength. One mgonga said that this food was placed there as a protection: "They are my weapons. It is just like a person going to war who has a weapon -- he may not need to use it, but it is there."

Directly across the clearing, at the periphery of the crowd, is a tall, forked branch which sticks out of the ground. On it hang a pair of trousers, a head-dress with tall ostrich plumes attached to the head-band, and two armbands with lion's hair fringes. These are the regalia the mgonga dons if he receives information that there is a sorcerer to be caught; these clothes are supposed to have a stupifying effect on the sorcerer and prevent him from threatening the

approaching mgonga. Finally, near the basin are grass bags full of calabashes containing anti-sorcery medicine, in case of any offensive action by the threatened sorcerer.

All these defenses against sorcerers are very visible at every ngoma of an mgonga-who-prays. Even in explaining their functions, the wagonga invariably emphasize their predominant role as accusers of sorcerers and their need to protect themselves against the power of sorcery. As an mgonga-who-prays stated, "I was an mgonga-of-the-calabash for ten years before I became an mgonga-who-prays; my pepo are expert. They tell me who are sorcerers and who are not. They teach me all the medicines that protect me from the power of sorcery. I am taught the utsai (sorcery) of the atsai (sorcerers). An mgonga-who-prays like myself is a stronger sorcerer than the ordinary sorcerer, for I am taught by the pepo."

An mgonga-who-prays, then, while retaining all the expertise of an mgonga-of-the-calabash, bears more responsibility: he accuses in public and since he thus confronts the offenders, he requires more protection.

An Ngoma of an Mgonga-who-Prays

We shall now present an example of an ngoma, based on the transcript of a tape-recorded ceremony, and we

shall then comment on it in terms of the issues we have raised.

For this ngoma, the employers of the mgonga were not a single person, nor a single village, but rather a large group of related villages. A public collection had been taken up to hire the mgonga-who-prays, because many people had discerned the characteristic activities of a sorcerer in their midst: some said they woke in the morning feeling that they had been sexually assaulted while sleeping; others woke to find cuts on their bodies and their heads cleanshaven. Anxiety swept the area, wagonga-of-the-calabash were consulted, and neighbors pooled their resources to pay for an mgonga-who-prays.

* * *

The ceremony begins. The four drummers, beating their drums with hands and sticks, synchronize their rhythms and tones. The mgonga-who-prays, dressed in a shuka -- a colorful loincloth reaching to the ground -- rises from his stool and walks slowly around the crowd, peering into it. He leans on a crooked walking stick, making his movements jerky. He nods as he sniffs deeply at the crowd -- for a sorcerer smells like feces. It is important for the mgonga first to check the crowd for sorcerers, for a sorcerer has the power to disrupt

an ngoma by causing branches to fall from overhanging trees. The mgonga exaggerates the sniffing by thrusting his chin in and out and making his nose bob in the air.

Periodically the mgonga interrupts his sniffing, goes to his basin of water, looks into it in case the face of a sorcerer has appeared, and then returns to the part of the crowd he has just left. He resumes his sniffing. When he finally returns to the basin for a long time, he sits at the edge of his stool in order to peer conveniently into the basin.

Without turning around to the drummers behind him, he motions with one hand to silence them. A man drags a wooden tripod stool into the clearing, so that the mgonga and he sit facing one another. This man has a major part in the ngoma: he is the spokesman for the people who hired the mgonga. The size of the group hiring the mgonga necessitated that their spokesman be brought from farther afield than usual: an acquaintance of one of the prominent elders who had participated in taking up the collection was called upon. Usually, someone merely living outside the village of the mgonga's employer would have been an appropriate spokesman.

The role of the spokesman is important to the ngoma: he is the repository of all information known to

date concerning the offense as well as the identity of the suspected offender. The client can take no active part in the ngoma and must select an acquaintance to act as his spokesman. It is essential that the spokesman be informed of all aspects of the case, including any information obtained from the wagonga-of-the-calabash, so that he can reliably judge the mgonga's accuracy. It is essential that the spokesman have no personal interest in the case, in order to demonstrate that his own pronouncements to the mgonga are free from any prejudice.

Mgonga: Babangu! (my father!)

Spokesman: Mwanangu! (my son!)²

Mgonga: I am made to report to you by the pepo that there is something here which is disturbing the entire community. Is this true?

Spokesman: That is true.

Mgonga: But I would like you to be very careful; do not agree just for the sake of agreeing with me unless you really think that I am right. You may think that agreeing is good, but it will just cause more trouble. I can see that there is a person troubling all of you in this area. Although I think that this person lives nearby, remember that a thief can come from very far away, and still give what he stole to

2. These terms of address reflect the fact that the mgonga and the spokesman are of widely different ages. The spokesman is much older than the mgonga, who is in his thirties. The exchange of terms of address is characteristic in introducing formal dialogue in Giriama society.

a person who lives nearby. But I am informed by the pepo that the person causing this trouble does live nearby, and further that he is the same color as yourself. I am also told that he is not as thin as I, Sharifu, am; he is fatter. Is this true? Is this what you have been told by the wagonga wa mburuga?

Spokesman: All that you say is true.

The mgonga leans forward slightly to peer into the basin; his shoulders are shaking back and forth and his knees bounce as he is possessed by the pepo. He raises his head toward the spokesman as he continues to address him, but the mgonga's eyes remain fixed on the water in the basin.

Mgonga: I am seeing a person now in the water. He is a sorcerer. And this is not the first time for him to be mentioned in connection with sorcery. In fact, he goes around at night when people are asleep and makes cuts on their bodies. Now, do you know if koma can make cuts on people's bodies?

Spokesman: No, koma cannot do that.

Mgonga: Yet this person does that kind of thing at night. I am further told that this person is not far from this place. As I said before, he lives near here.

Spokesman: That is true.

At this point the mgonga begins to sing a song while looking into the basin; he gets up slowly and walks around the crowd, singing. The drums accompany

him after a few phrases; the mgonga pauses after every phrase to allow the women in the crowd to echo his song antiphonally. The tempo of the song increases. As the mgonga sings, he places one hand on his hip and peers into the crowd, nodding, smiling to himself, searching out the face of the sorcerer that he has seen in the basin. He returns quickly to the basin, consults the surface of the water and stalks the crowd again, still singing. He abruptly returns to his seat, his shoulders quivering, to stare, fixedly into the basin. The music has stopped, the song is over.

There is a long pause until the mgonga motions for his assistant to bring over his ostrich-plumed headdress and the lion's hair-fringed armpieces. The mgonga unwinds his shuka, steps into trousers and then sits down while the assistant secures his headdress and fastens on the armpieces. The mgonga smears some black-powder medicine under both his eyes, for, as he later explained, "If I am looking for a sorcerer in the basin, the sight of him and his power may cause blood to spurt from my eyes. The medicine protects my eyes." A man from the crowd leads the women in song while the change is taking place, and the mgonga waits for the singing to finish before continuing his dialogue with the spokesman. He thoughtfully shakes some

medicine out of a calabash and puts it on his tongue:
"This muhaso (medicine) I eat makes me better understand where the sorcerer is."

Mgonga: I am told that the mut sai (sorcerer) lives to the north of where we are now. Do you know this to be true?

Spokesman: Yes.

Mgonga: I am now told by the koma that the sorcerer we seek is not young; he is much older than I am. And also, he did not come here recently, he has lived here for a long time. Is this true?

Spokesman: Yes, that is true.

Mgonga: This sorcerer claims to be a Muslim. (Crowd laughs). Is he a Muslim? That is what I am told here. He wears the white cap of a Muslim . . .
Now I see two sorcerers. One visits the village of the other. They sit together and plan. I see that one of the sorcerers went on a three-day journey recently. Did you know that he went on a journey?

Spokesman: I am not sure of that. I am not aware of that.

Mgonga: But that is what the koma are telling me. Now I will try to find out where he went, and whom he met. I have now described the sorcerer to you, and the fact that he went on a three-day journey recently.

In the course of this dialogue, the mgonga's entire body is alive with the shaking and quivering of possession. Now the mgonga circles the crowd in silence, sniffing; goes back to the basin to dip his hand in

the water; returns to the crowd and clasps peoples' hands with his own. For besides smelling like feces, sorcerers have hands that feel cold and unnaturally strong to an mgonga aided by the medicine in the basin's water. During this handclasping, he returns occasionally to peer into the basin, smiling to himself. Finally he shakes the hands of several men and plunges deeply into the crowd which parts before him, leaving an open space in his wake. The mgonga returns to the center of the clearing, takes a look around, and rapidly selects four men to come into the clearing. They sit there, waiting, while the mgonga begins a new song and dances. They are the suspected sorcerers. The mgonga sings, "My fundi (teacher) is my kidonga (calabash containing medicine); . . . I pray to Mulungu." The song ended, the mgonga dances, spinning round and round, in a brief state of possession. He then returns to the basin and whistles softly -- his speech to the pepo -- as he peers into the basin. He returns for yet another inspection of the crowd, and adds another suspect to the lineup, before briefly addressing the spokesman.

Mgonga: The koma have told me that the sorcerer is wearing a green shuka. There are five people here with green shukas, but only one of them is the sorcerer.

The mgonga rises to dance again and sings, "I am the son of Baya; I have begun to reveal, I am revealing . . ." He repeats this line over and over again. The mgonga is of the clan Mwabaya, named after Baya, its founding ancestor. Before he sits down again, the mgonga looks around the crowd and selects yet another suspect, who joins the others seated in a row.

Mgonga: I am told that the mut sai (sorcerer) had a quarrel with a certain woman. I am also told that he attacks people at night. Many people here have complained that they have had sex with people at night, while they were sleeping, with people they do not know (sorcerers can perform this feat with the use of special medicines). Has there been any complaint about that here?

Spokesman: Yes. That is true.

Mgonga: But there are two people who are involved. One is not very old, and the other is much older. They are of different ages. Did the wagonga wa mburuga tell you about this?

Spokesman: This is true.

The mgonga rises to sing and dance again, and he also clasps the hands of the six suspects. He dismisses three of these with a wave of his hand. They are not the sorcerers.

Mgonga: The pepo have told me that the person who is a sorcerer stays alone in his village. There is no one else there. But there are

two people living to the west who associate with this man. The women who are here among the crowd can even tell us who the sorcerer is; most of them have been seduced by him. He has sex with nearly every woman he meets.

The koma tell me that this sorcerer should be careful, for this area is full of very well qualified sorcerers; the koma tell me to warn the sorcerer that he should stop his activities immediately because there are many other sorcerers who are better skilled than he is. If there are other sorcerers who should decide to retaliate, this sorcerer would die within a short time.

The mgonga gets up to sing and dance again, and he inspects the crowd once more, sniffing the air. He returns to state pensively into the basin for a very long time, and he whistles softly to the pepo. Finally he looks up and addresses the spokesman:

Mgonga: I have told you that the sorcerer seems to have the same body structure as you do. I think I know who he is. Do you want me to put an end to all the sorcery that is troubling this place? Are you ready for that?

Spokesman: Yes, we would like that. That is why we called you.

Mgonga: But remember, this sorcerer wears a white cap, just like the cap worn by the Muslims, and you know that the Muslims are many around here. But still this sorcerer seems to be a Muslim. But as he is shown to me by the pepo, he is drinking a lot of uchi (coconut liquor), and the Muslim religion does not allow anyone to drink coconut liquor. But he drinks it all the time. I can see that.

(Women in the crowd ululate gleefully)

The koma are directing me to a person who is a good friend of mine. I am really surprised that he is the one, and also I am surprised that I am able to catch him. For I know that he is no fool in the use of medicines. I have felt that during this ngoma he has been very difficult to catch. But I will get him anyway. (The mgonga stares into the basin)

I am very sorry. For the picture of my friend is coming onto the surface of the water. I can see him! There he is! I don't know why he has been accused of sorcery, but I will find out.

The mgonga rises, dips his hand into the basin, and walks over to the four remaining suspects. He clasps their hands, and dismisses two. He returns to the basin again for more water, returns to the two last suspects, clasps the hand of one and draws him to his feet. The mgonga retains his grip on the man's hand as he leads him to the space in front of the basin. He is wearing a green shuka and the white kofia (cap) of the Muslims.

The accused and the mgonga sit facing each other, the basin in between them. The spokesman has moved to one side. The mgonga now begins a dialogue with the accused; throughout this dialogue, the mgonga consults the surface of the basin frequently.

Mgonga: Do you remember that there was meeting in this area because the people were complaining that their heads were being shaved at night, and other strange things were happening to them at night. And the people thought that none of this could happen to them unless someone was using medicines

against them? And do you remember that the people decided to get an mgonga wa kuvoyera so that he could find the cause of all this. Do you remember such a meeting?

The Accused: I remember this meeting. I know all about it.

Mgonga: And some of you at the meeting offered money so that an mgonga wa kuvoyera could be brought.

Accused: Yes we did.

Mgonga: If you knew that these people wanted an mgonga to come here so that they could find out the person causing all the trouble, who was shaving peoples' heads at night and having sex with them without their knowing it at the time; why didn't you sit down and think, 'I know who is doing all this'? If you knew that you would be caught (at the ngoma) today, why did you go to that meeting at all? In fact, you were one of the ones who went from village to village collecting money so that the mgonga could be brought. And yet you must have known all along that you were the sorcerer.

Accused: That is not true. I was also being attacked at night. That is why I took part in the meeting.

Mgonga: (Addressing no one in particular) Why did he (i.e., the accused) not ask the exact purpose of the money that he was collecting? Why didn't he tell the people not to waste their money, that he himself was the sorcerer?

Accused: Because I did not know it myself. Even now I do not think that I am a sorcerer. Even if I were, even if I suspected myself, I certainly would not have come to this ngoma. I came here knowing that I was not the sorcerer. I do not know

how the ngoma caught me (kubwirwa na ngoma = to be caught by an ngoma). If I knew that I was the sorcerer, I certainly would not have come here.

Mgonga: You may not be the sorcerer, but you know that your general behavior causes suspicions. You have a habit of having sex with any woman you meet. Some want you but others do not. The ones who don't, well, they do not keep quiet, but go about speaking ill of you. Your secrets are known in this way. And the koma tell me that you use medicine to force these women to do what you want. This behavior of yours is bringing you problems now. I advise you to be more careful. The koma tell me that the people of this entire area know all about your behavior and they are speaking ill of you.

The koma tell me that you were not living in this area before. You moved here. Is this true?

Accused: Yes, that is true.

Mgonga: The koma also tell me that in the place where you were living before you were suspected of being a sorcerer, and an mgonga wa kuvoyera caught you at ngoma there, too. Do you know about this?

Accused: No, I do not.

Mgonga: Do you really not know, or are you trying to lie?

Accused: I can't remember.

Mgonga: I am also told that you may not really be a sorcerer, as you claim; but since all the people think that you are, you had better not make a fuss about it. Now you must prove that you are not a sorcerer. Many people have been caught by ngoma, but they still do not think that they are sorcerers. That is all

right. But I am the mgonga, and I would like to give you some advice. Since you think that I have been misled by the pepo, that can be true. It is possible for me to be misled. But for today, you are a sorcerer. If you want to clear your name, it is now up to you to go to kirahoni (kiraho, a place of ordeal) so that everyone will know that you were falsely accused today. Are you ready to do that?

Accused: I will gladly go to kirahoni, so that I can be freed from this shame. I know I am not a sorcerer. I have never had anything to do with medicine that is connected with sorcery.

Here, the dialogue between the mgonga and the accused sorcerer concludes. The mgonga now turns his attention to the crowd, and addresses the pepo with a special greeting, tyreni, which is reserved for greetings among wagonga and between wagonga and their pepo. The crowd chants the responses to the mgonga's formula questions in unison.

<u>Mgonga</u> :	<u>Tyreni, tyreni, pepo!</u>	Crowd:	<u>Pepo of Mulungu!</u>
<u>Mgonga</u> :	Who is worshipped?	Crowd:	<u>Mulungu!</u>
<u>Mgonga</u> :	Who reveals, teaches?	Crowd:	The <u>koma</u> , the <u>pepo!</u>
<u>Mgonga</u> :	<u>Humala vidzo . . .</u> Let good things come . . .	Crowd:	<u>na vidza!</u> Let them come!
<u>Mgonga</u> :	<u>He vii . . .</u> about bad things . . .	Crowd:	<u>na vishuke!</u> Let them pass away!
<u>Mgonga</u> :	<u>Lalo, crowd!</u> Have you seen the one who is disturbing this place? Do you see him? Do you know him?		

Crowd: Yes! We know him! We see him!
(Women ululate)

Mgonga: There is no person who has been accused of being a sorcerer and has been happy about it; there is no person accused of anything who has been happy about it. Is that not so?

Crowd: That is true!

Mgonga: You people called me here, and I came. I did all that you wanted me to. If you had courage to collect money to bring me here, you will know what to do about this person who is a sorcerer. Can you do something about him?

Crowd: We can do something!

An elder of the community separates himself from the crowd and speaks.

Elder: Sumilani lalo! (loosely, 'attention, crowd!')

Crowd: Hae! ('all right', or 'proceed')

Elder: Tyreni mgonga! ('greetings' to the mgonga)

Crowd: za Mulungu! ('of Mulungu').

Elder: Thank you, mgonga, for the work that you have done. We collected the money ourselves, but you have done your work and have caught the sorcerer. But it is hard for us to know what action to take. We as members of the community do not want a sorcerer living among us; we want no one who buys sorcery medicine. (The elder addresses the crowd) Do you want a sorcerer here?

Crowd: No, we don't!

Elder: Sumilani lalo.

Crowd: Hae.

The elder who has just spoken recedes back into the crowd. The mgonga has been silently studying the surface of the water in the basin.

Mgonga: I see two sorcerers who are disturbing you. There are actually many sorcerers in this area, but I said that the one in particular whom we are seeking went on a journey recently. I was not given a clear reply when I mentioned this. But it doesn't matter. When I put all the details which the pepo are giving me together, I will be able to catch the two sorcerers. They are working together; the one whom I have not yet caught is a friend of the one sitting here, but first I must consult the pepo for more information.

The mgonga places more medicine on his tongue, gets up, and circles the crowd as he sings a song. He then dances as the pepo possess him. He returns to sit and contemplate the water in the basin. As he sits concentrating, a man, drunk, separates himself from the crowd and moves to the center of the clearing. He does a burlesque of the mgonga sniffing out the sorcerer by leaning on a cane and thrusting his head in and out in the characteristic fashion. This is greeted by great hilarity from the crowd, but the mgonga seems unaware of this interlude.

The mgonga returns to an awareness of his surroundings and resumes his dialogue with the crowd.

Mgonga: The man I have caught is the sorcerer, and he is an important sorcerer. The other one is a sorcerer too, and he also

sells sorcery medicines to people. I do not think that he is as important as this one . . .

Crowd: We want him! We want him! We want the second person, even if he is very far from here, we want to get him!

Mgonga: All right . . . but if I look into my basin, the pepo are telling me that the sorcerer is not among us here. He is not among the crowd.

Crowd: Show us! Tell us where he is! Who is he?

Mgonga: I think that you should know that the second sorcerer is not far from here. He is one of you . . . he is very near here, but he did not come to this ngoma. In fact, the koma are telling me that he lives to the west of here. He lives so close that if he had come to this ngoma he would have been the first to arrive. He can hear the drums of the ngoma even now.

The mgonga prepares to lead the crowd to the house of the second sorcerer. He smears medicine on his feet, for a sorcerer can cause the mgonga to stumble on the way. The women ululate excitedly to encourage the mgonga. Finally the mgonga leads the crowd at a brisk run through the underbrush to the second sorcerer's house. The spokesman is always near the mgonga at the head of the crowd, and he has resumed his role as addressee to the comments made to him by the mgonga. The mgonga stops at several places along the way, where the drums are set up as the ngoma slowly progresses.

Besides addressing the spokesman, the mgonga sniffs the air for the telltale odor of the sorcerer, in order to ascertain the proper direction. At each stopping point, a small calabash with a carved human head is placed ahead of the mgonga to protect him from any offensive action the sorcerer might take. During one such stop, the following dialogue took place.

Mgonga: Now as we are on the road here, the sorcerer lives on the left side.

Spokesman: Yes, that is what we were told by the wagonga wa mburuga.

The mgonga suddenly leaves the brush along the road, and runs down the road; the crowd follows him, raising thick dust from the road. The mgonga suddenly stops.

Mgonga: The house of the sorcerer is just near here. It is over there.

The mgonga points to an isolated house on the left side of the road. No one appears to be at home. The mgonga circles the house, now advancing, now retreating. He finally enters the house. After about five minutes, he emerges, firmly clasping the hand of a hunched old man, who is smiling proudly. The mgonga addresses the crowd.

Mgonga: The younger sorcerer is a sorcerer, but he is not as experienced or as advanced in skill as this old one (the sorcerer nods his head in assent). This second one is worse, and although he looks old, he is very dangerous. He uses a lot

of sorcery medicines . . . he has sex with peoples' wives at night when they are under the power of his medicines. He has done this with almost every woman here. You may think that he is old, but he is really very bad.

Have you seen the people who have been disturbing you?

Crowd: We have seen them!

Mgonga: Have you seen what was told to you when you went to see the wagonga wa mburuga? Do you now know who has been shaving your heads at night, and having sex with you without your consent?

Crowd: That is true! These are the ones.

A Commentary on the Ngoma

An mgonga-who-prays, quoted above, said that he had to be the "greatest mgonga wa mburuga (of-the-calabash) of them all." It is evident from the record of the ngoma that the wagonga-who-pray indeed perform much like an mgonga-of-the-calabash: he acts as a medium, relaying information to the living from the pepo, the ancestors, and Mulungu. Similarly, like an mgonga-of-the-calabash, the mgonga-who-prays conveys information by way of a dialogue with someone who can confirm the accuracy of the information given.

But there are also differences between an ngoma and a session by an mgonga-of-the-calabash and these relate to their different functions and their different positions in the sequence of the development of a dispute.

An mgonga-of-the-calabash relates information pertaining to an offense in secret and individually. The preliminary nature of the information from an mgonga-of-the-calabash depends, from the viewpoint of the client, on the amount of knowledge already possessed by the client. A client consulting an mgonga may have already gathered information about the offense from other diviners, as well as from other sources available to him, such as gossip. The information received from the mgonga-of-the-calabash gains credence if it corroborates the facts already known; likewise, the case against the suspect strengthens as this evidence accumulates. There is some pressure among wagonga-of-the-calabash to corroborate each other's information, for their clientele among the local people is built on their reputations for accuracy -- which in this case means consistency among themselves. But it is still formally recognized that they may err -- that is, be misinformed by the pepo. There is, thus, a built-in tentativeness to their private information-giving; their method of questioning the client is more subtle, their lines of retreat are kept open. This is, of course, appropriate to their part in the cumulative process of gathering evidence.

By contrast, the public performance of an mgonga-

who-prays must be a summary and a conclusion. It is the transformation of suspicion and evidence into an accusation -- but through divination by a person who is supposed to be totally unfamiliar with the case. The testimony of an mgonga-who-prays is compared with all the facts unknown to him and previously collected from the several wagonga-of-the-calabash. It is possible for contradictions to exist, but the mgonga-who-prays is the higher-ranked mgonga, and his information is held to be more accurate. In fact, I have never witnessed the public recognition of such a contradiction. Reported instances are rare, and are nearly always related by the wagonga-who-pray themselves. In the ngoma presented above, in all instances but one, the spokesman for the clients claimed that the information agreed with the wagonga-of-the-calabash that had been previously consulted.

The authority of the mgonga-who-prays is reinforced by other factors besides his high status. The public nature of the ngoma itself as a public performance with public participation, contains some reinforcing elements. The visual props, so to speak, are very pronounced. The possession of the mgonga-who-prays by the spirits is more obvious than was the case with the mgonga-of-the-calabash. The quivering of the

body is more visible and the dances indicate exactly when the spirits enter his body. The sniffing and the running to-and-fro amidst the crowd is also a visible sign of his activity. The communication of the mgonga-who-prays with the spirits -- the pepo and the koma -- is also made obvious because it is accompanied by tangible equipment made for this purpose. Like an mgonga wa mburuga, he speaks in the passive, indicating his position as a mere voice of the pepo ("I am informed by the pepo . . ."), but his paraphernalia allows the audience to actually "see" the information being given to him. The basin filled with water and medicines, into which he peers, serves to bring the audience nearer to his visions, whereas an mgonga-of-the-calabash can see only visions in his head. The water of the basin also provides information through physical contact: the mgonga dips his hand into the basin before he "tests" hands for the characteristic cold grip of a sorcerer.

• The visibility of the divining activity is further enhanced by the sorcerer-finding costume and by the chickens and the eggs that strengthen him against the power of sorcerers.

All of these features give the ngoma a clearly theatrical quality -- a performance which, furthermore, has audience participation. The atmosphere of a session

with an mgonga-of-the-calabash is, by contrast, almost intellectual: the mgonga pits his information, skillfully and subtly, against the concentration of the client. In an ngoma, by contrast, such intellectual controls are minimized. Here, the mgonga, though questioning the client's spokesman in a similar way, in fact plays to an audience which, in turn, reacts on the spokesman. The questioning by the mgonga is less subtle, less detailed, less prolonged, and his pronouncements are more direct. Contradictions (such as the accused sorcerer's denials) rather than being dealt with tactically, are dismissed rhetorically, swept aside before an audience whose support has been secured. The more secure this support becomes, the bolder the mgonga's assertions and, indeed, the less concern by him over proof. Thus, by the end, he feels free merely to point to the old man as the more "important" sorcerer, and the accusation is immediately accepted by the crowd.

This total pattern of the ngoma -- its theatricality, its de-emphasis on evidence and logic, and its directness -- make it an appropriate accusatory performance. In the name of the client, the mgonga-who-prays in effect ignores all uneasy complexities and makes a direct, unambiguous accusation -- much as a

prosecuting attorney would do in his accusatory presentation.

Once the accusation has been made, the dialogue between the spokesman and the mgonga ceases and a dialogue between the mgonga and the accused begins. The narrowing of the accusation down to one person is a process that the accused is increasingly aware of; yet it is one that he cannot, until the very end, respond to. For the sorcerer is revealed by gradual description of his physical appearance, then his attire, then some personal details (going on a journey; being a recent immigrant in the area); he is finally accused when the mgonga compares the feel of his hand with that of other suspects. In brief, by the time the accusation is formally made, the accused has been experiencing rising anxiety and has been cowed and so to speak "softened" for the eventual confrontation in the dialogue with the mgonga -- which quickly becomes a verbal rout. The information that the mgonga presents to the accused is still received from the spirits, as the mgonga reiterates by citing his sources as the pepo and koma. Formally, the structure of the dialogue is as before; the accused sorcerer is placed in a position of evaluating the accuracy of the mgonga's information. But this is not anymore an impartial "spokesman" checking

the mgonga but an accused whose denials are clearly in his own interest. The crowd responds accordingly and the unequal contest is summed up by the mgonga in his arrogant concluding advice to the accused, "Today you are mutasai", (that is, "No matter what you may say, today you stand accused").

But the denial of guilt by the accused does present some problems to the mgonga, which the mgonga responds to in characteristic ways. First, the mgonga emphasizes that the source of his information is the spirits and koma (despite the fact that earlier in the ngoma he remarked that he personally knew the accused). Secondly, the mgonga points out that while the accused "is a sorcerer today", there is a recourse that the accused can seek: an oracle (kiraho) to prove his innocence. The mgonga, however, emphasizes that the oracle is another, separate step to take, one that does not really concern the mgonga. In essence, the mgonga admits that he could be wrong, ascribes his possible mistake to the spirits, and divorces himself from any responsibility or involvement in any further steps the accuser or accused might take. Then the mgonga proceeds to cast further doubt on the accused's denial by referring to his generally known reputation of habitually seducing women; this practice is not

sorcery, but it always arouses strong feelings among the Giriama. Finally, after his dialogue with the accused ceases, the mgonga appeals to the audience for support.

The crowd has been enthusiastic about the mgonga throughout the event, as crowds usually are at ngomas. The women in particular encouraged the mgonga by ululating frequently and singing antiphonally to the mgonga's songs. At this ngoma, the crowd is of special importance because it contains the contributors to the ngoma, the employers of the mgonga, who are thus more directly concerned with the outcome of the ngoma than a crowd would normally be. When the mgonga addresses the crowd, he does not at once give information received from the spirits, but merely appeals for support by making the sensible generalization that "No one likes to be accused", a suitable explanation for the accused's denial of guilt. The final touch in assuring the crowd's support for the mgonga comes from an extemporaneous source, an elder who emerges from the crowd and speaks about the community's dislike of sorcerers; the roused hostility of the crowd finds a ready target in the accused. Having gained crowd support, the mgonga continues to consult them about the second suspect, who has been accused by the mgonga by simply finding

him at his house. The second accused, a timid-looking old man, offers no resistance and readily admits his guilt. The alacrity of his admission is hard to explain, but he did live a hermit's life outside of a village; perhaps the accusation provided welcome attention that would have been rejected by a more gregarious person. In addition, being an admitted sorcerer would not affect his lifestyle and perhaps would bestow on him an air of importance. The mgonga seizes on the old man's admission as concrete proof of the accuracy of the ngoma by telling the crowd that he is really the worst sorcerer of the two (although earlier he said that the first was more dangerous).

The Wagonga and Sorcery

The mgonga-who-prays is the only means by which a potential accuser can acceptably expose a suspected sorcerer. After an ngoma by an mgonga-who-prays, the accuser-accused relationship is formally established, and a dispute can begin. This means that the accuser now has the right in the eyes of the public to demand that the accused rectify his wrong in an appropriate way. If the accused capitulates, the dispute ends; but the accused also has the option of denying the accusation, and the dispute may continue.

The role of the wagonga-who-pray and the wagonga-of-the-calabash in discovering "covert offenses" places them in a special relationship to sorcery. It is the intrinsic mysteriousness of sorcery that demands resort to the wagonga and partly accounts for the predominance of sorcery cases handled by these wagonga. The wagonga-who-pray are themselves the "greatest sorcerers" and thus are highly skilled in the knowledge and use of medicines, including those medicines on which spells are cast to perform sorcery. They are also skilled in diagnosing and treating sorcery-caused disease with counterreactive medicines. An mgonga-who-prays has the power to use the same medicine as a sorcerer for his defense. But a sorcerer purchases these medicines, whereas the wagonga acquire knowledge of them through their pepo who would desert them forever if the medicine were used for evil or indiscriminate purposes. Besides the wagonga-of-the-calabash and the wagonga-who-pray, the only others in Giriama society who have the right to possess sorcery medicines are the wagonga wa kuhundula, who cleanse villages of sorcery. But they are not wagonga wa kitswa (of-the-head) and thus have no pepo to desert them if they misuse their powers. The wagonga wa kuhundula, in fact, are famous for casting spells over their former customers and patients

if they do not pay the fee. The wagonga-of-the-calabash and wagonga-who-pray, then, hold a unique position in the struggle against sorcery and in sorcery cases.

The Mgonga-who-Prays in the Judicial Process

"Accusation", in the context of an ngoma of an mgonga-who-prays, means that the accused is being publicly connected with an offense. An ngoma always culminates in the exposure of an alleged offense, usually sorcery, and it is thus a major step in the ascription of guilt for a major category of offenses. But although the mgonga performs the task of accusing alleged offenders, he is not thought of as being the actual accuser but as merely acting on behalf of the person who hired him. It is this person who will assume the role of accuser if the case progresses to later stages. It is the special abilities of an mgonga-who-prays as a medium that enable him to accuse, but he has no personal interest or involvement in the case other than his transitory role at the ngoma. For all practical purposes, his role in the dispute ends when he completes the ngoma.

At the beginning of the ngoma, the accuser is only potentially that: there is, at this point, a group or

individual who only believes that he has been wronged by someone, the suspicions having been confirmed only by the wagonga-of-the-calabash. After the mgonga's public accusation of the offender at the ngoma, the accuser can now emerge formally. Enabled at last to confront the alleged offender with his offense, the accuser is free to make specific demands: that the accused cease his wrongdoing and compensate for the wrong that he has already done. If the accused sorcerer now admits his guilt, he may be required to bless (kuhasa) the sick person by spitting water into his face, after first offering this water to the ancestors. In addition to this blessing, the admitted sorcerer may be expected to do two things: he may be required to pay all the expenses incurred by the family of the victim, including the expenses of hiring the wagonga-of-the-calabash and the mgonga-who-prays. Finally, the sorcerer may be forced to take an oath by ingesting medicines and swearing that he will never perform an act of sorcery again; if he then lapses into sorcery, the oath should kill him. There is great confidence in the efficacy of these oaths, and a sorcerer who has taken such an oath is accepted back into society. The payment of compensation and any cleansing or oath-taking by the offender

are meant to have the effect of restoring social relationships to their pre-dispute state. At the time of the ngoma, however, there is no guarantee that the accused will concede his guilt, and, more frequently than not, the dispute proceeds to further stages which will be discussed at length below. But at the ngoma, the alleged offender cannot raise his voice in his defense; he stands accused for the time being. His only recourse at the time of the ngoma is either to admit his guilt or to deny it. If he denies it, he is under considerable pressure to take further action. He cannot simply let the matter rest. For the action of informing the public, and particularly the individual who has been wronged, of the offense guarantees that there will be some response on the part of the accused.

CHAPTER NINE:

CHALLENGING THE MGONGA-WHO-PRAY'S ROLE
AS IMPERSONAL ACCUSER

In this chapter we shall discuss potential changes that threaten the role of the mgonga-who-pray in the judicial process. The mgonga's accusatory function is threatened by implicating the mgonga personally in disputes, a notion that is contrary to Giriama traditions. During 1972-73, when the writer was in Kenya, the traditional role of the mgonga-who-prays was challenged before two judicial institutions: a local elders' council (kambi) and a Magistrate's Court. Although in both cases the challengers' motives were probably self-serving -- neither wished to participate in the judicial process that could result in a sorcery conviction -- the cases suggest that the mgonga-who-prays is an institution in some trouble. In addition, as will be pointed out later in the chapter, the mgonga-who-prays must be seen not in isolation but as a link in the complex chain of dispute settlement-by-divination. If the mgonga's role in this process is undermined, a traditional means by which potential offenders are first exposed is also threatened, and this in turn threatens the entire position of divination in the judicial process.

The Traditional Role of the Mgonga-who-Prays in Disputes

The mgonga publicly accuses individuals -- primarily alleged sorcerers -- who are subsequently forced to concede guilt or prove their innocence. Yet, the mgonga absolves himself of the role of accuser in several ways. During the ngoma, he repeatedly refers to the spirits as his source of information; he is a diviner relaying a message, and his accuracy or lack of it is attributed to the information he receives from the spirits. In the ngoma described in the preceding chapter, the mgonga himself admitted his fallibility by suggesting that the accused seek the decision of an oracle, which is a still higher and more venerated supernatural authority. The mgonga-who-prays also attempts to share the responsibility for his actions with lower, less prestigious supernatural authorities, the wagonga-of-the-calabash, by repeatedly asking, during the ngoma, for assurances that his information is in agreement with that previously given by the spirit mediums lower than himself. Finally, the mgonga-who-prays is shielded by the fact that he is acting on behalf of the client. He thus presents himself as being merely the jural instrument of the client, on the one hand, and the informational instrument of the spirits on the other. In sum, the mgonga-who-prays is protected

by several layers of insulation from the consequences of his actions. The deflection of responsibility from the mgonga protects his impersonal role in revealing offenders, and in doing so, enables him to participate in an unlimited number of cases, withdrawing from each one once his function has been fulfilled.

Accusing the Mgonga in Magistrate's Court:
Johanna Charo v. Sharifu Muganga¹

At an ngoma held on February 12, 1973, a prominent mgonga-who-prays, Sharifu wa Kutsui, accused Johanna Charo of being a sorcerer causing the death of Ngonyo wa Ngala.

Immediately after the ngoma, Johanna was approached by the deceased's son, Hindei, who had hired the mgonga. Hindei demanded that either Johanna pay him 1,600 shillings as death compensation (kore) or go with him to the oracle at Kaya Fungo. Johanna said that she would not go to the oracle since she was a Christian, but agreed to pay the death compensation. A date was set for the payment. The day came and went, but Johanna did not appear. When Hindei came to her home with his brothers, Johanna said that she had no intention of paying the death compensation and announced that the case was now in the hands of the Magistrate's Court.

1. Civil Suit No. 148, 1973, Magistrate's Court of Malindi.

On March 5, Johanna had filed suit in the Magistrate's Court of Malindi. The charge was defamation of character. Significantly, the defendant was not Hindei, but Sharifu, the mgonga-who-prays. Johanna claimed 300 shillings damages.

The case was heard in April 1973. Plaintiff Johanna testified first and denied being a sorcerer. She claimed that when she refused to participate in the trial by ordeal at the oracle, she was threatened with a beating if she did not, as an alternative, agree to pay death compensation. The mgonga-who-prays, who had been present when the agreement was made, testified that Johanna had admitted her guilt at the ngoma and was under no duress when she agreed to pay the death compensation. Both plaintiff and defendant produced witnesses who supported each of their conflicting testimonies. The heart of the mgonga's defense, however, was that at the ngoma he had been performing according to the customs and was merely repeating what people already knew from consulting wagonga-of-the-calabash.

On May 16, 1973, the mgonga was convicted of defamation of character. The magistrate who decided the case is a Rabai, from a society culturally close to the Giriama. In his judgement, delivered orally in Swahili and later transcribed into English, the

Magistrate declared that, "there is no dispute about Johanna's being called a witch. The defendant still feels this . . ." Rather, the Magistrate concentrated on establishing the ngoma's illegality: "The finding (of sorcery) was done by an mgonga using medicines . . . that is witchcraft or supernatural means." The Magistrate then declared that the mgonga's ngoma is illegal under the Witchcraft Act of Kenya (Laws of Kenya § 7 Cap 67). Although no wagonga-of-the-calabash were defendants in the case, the defendant relied on them in his defense. The Magistrate characterized the activities of these wagonga also as illegal witchcraft: "The finding of the killing was done in the first place by mburuga (i.e., wagonga-of-the-calabash) which is witchcraft itself." In a curious dictum, however, the Magistrate strongly supported the oracles and trial by ordeal while denigrating the role of the mgonga-who-prays: "The mgonga's (who-prays) finding is not final and conclusive proof, as the oracle has to decide finally who is a wizard (sic) and who is not." In this way, the Magistrate shifted the rationale for his decision from saying that the ngoma is illegal "witchcraft" to saying that the mgonga is unessential to the conviction of sorcerers. Thus, the Magistrate acknowledged the existence of

sorcery and furthermore endorsed the conviction of offenders through trials by ordeal. It is not clear why the oracles, which also rely on medicines and the supernatural, were not considered to be "witchcraft", while the practices of both the wagonga-who-prays and the wagonga-of-the-calabash are condemned as such.²

The case of Johanna Charo v. Sharifu Muganga was the first suit -- and the first conviction -- of an wagonga-who-prays in any Magistrate's Court in the Giriama area. The case, of course, sets a judicial precedent, substantially guaranteeing that future suits against the wagonga will end the same way. In addition, by judicially interpreting the Witchcraft Act of Kenya to include the diviners' activities, the Magistrate is giving "teeth" to the statute, and these wagonga are for the first time pronounced to be illegal.

When I asked the defendant Sharifu how he felt about his conviction, he claimed not to be worried, saying that his medicines "are stronger than any magistrate's." Faced with the prospect of future

2. Oracles are not only held to be legal by Magistrate's Courts, but they are condoned. Convictions of sorcery by oracles are unerringly upheld in court (e.g., Kahindi Karisa v. Baya Masha, Civil Case #327, 1972, Malindi Court; Bendera Wanje v. Karisa Ngala, Civil Case #338, 1972, Malindi Court).

convictions and heavy fines; however, it is probable that any mgonga-who-prays will become increasingly reluctant to perform an ngoma.

Challenging the Mgonga Before the Elders: The Case of Kahindi wa Thoya

In early 1973, at about the same time that Johanna Charo was accusing the mgonga-who-prays in Magistrate's Court, it occurred to another accused sorcerer, Kahindi wa Thoya, to respond to an accusation by attacking the mgonga. By presenting his case to a council of elders, a conservative group not obliged to implement the policy of the Kenya government, Kahindi met with failure. Nonetheless, Kahindi's challenge in itself indicated the vulnerability of the mgonga. Kahindi argued that since it was the mgonga who accused him, the mgonga should assume the role of accuser in the ensuing phases of the dispute. This strategy is at first sight a puzzling one, for it did nothing to change Kahindi's role as the accused. Its brilliance lay in what proved to be a correct assessment of the elders' reaction to the novel idea of having an mgonga continue to act as an accuser beyond the time of the ngoma.

We are considering the case of Kahindi wa Thoya for several reasons. First, by challenging the mgonga's

traditional role in the judicial process, Kahindi's action clearly defined the essential elements of that role. In the preceding chapter, the mgonga's role was analyzed through the time an accusation is made. The case of Kahindi carries the analysis a step further by presenting the consequences of an mgonga's accusation, particularly the responsibilities of the accused. In addition, the case introduces two legal authorities prominent in the Giriama judicial process: the Village Head and the elders' council. In the case of Kahindi, however, it will be seen that the Village Head is not acting in an adjudicatory capacity, but is merely a spokesman representing the interests of Kahindi's kin group. The legal authority in the case is the elders' council, but the composition of the council that adjudicated the case is atypical. Reflecting the importance of the case, the elders' council hearing it combined four local councils, summoned for the occasion by the Location Chief.

The case of Kahindi is actually a further step in a succession of disputes, each involving different offenses and participants, each growing out of a preceding offense. The first dispute involved adultery accusations; this led to ill-feeling between two

families. The atmosphere of suspicion and retaliation that followed provided a suitable setting for the accusation of sorcery against Kahindi at an ngoma. Kahindi, in turn, insisted that the mgonga assume responsibility for the accusation by participating in the next stage of the dispute, an oracle, which would prove Kahindi's guilt or innocence. Kahindi's proposal led to a third dispute, pitting Kahindi and his brother Katana against the elders of the community where they lived. The elders, who regard themselves as the guardians of Giriama customs and traditions, saw Kahindi's proposal as an attempt to subvert these customs. This final dispute, between the two brothers and the elders, is the one of primary interest here, for it involved a challenge to the customary procedure in the settlement of sorcery disputes. The challenge resulted in a reaffirmation of the role of mgonga-who-pray in the judicial process.

The principals involved in the early dispute concerning adultery are two brothers, Kahindi and Katana*, both sons of Thoya, members of the clan Mwabaya. Kahindi, who is about 40 years old, is the elder of the two brothers, and he is a subsistence cultivator planting maize as his major crop. His brother Katana, younger by about five years, is an

* personal names have been changed.

elected councillor on the Malindi and Mambui Urban Council. This urban council has its offices and meetings in the town of Malindi, but Katana the councillor lives in a nearby village with his brother Kahindi. Besides being a councillor, Katana is also the owner of a water-tap and sells water from his well to the women of the surrounding rural area.

Kahindi has two wives. His senior wife is the daughter of Doma, who is of the clan Mwandundi. Following the rules of Giriama residence, the village of Doma is inhabited by Doma and his sons, with their wives, living patrilocally. It happened that Kahindi's brother Katana seduced one of the wives of a son of Doma. The affair was discovered, and Katana duly paid the adultery compensation, malu, of fifty shillings. Katana's affair, however, caused greater rancor than would usually be the case, because of his affinal relationship with the village of Doma. One of Doma's sons, when he learned of Katana's affair, said indignantly: "Kahindi has married a 'sister' of our village, and (Kahindi's brother) Katana had sex with a woman of our village." In retaliation, one of Doma's sons seduced Kahindi's junior wife. The action was considered highly appropriate as retaliation, for the brothers Kahindi and Katana have the right to inherit each

others' wives and thus, in a sense, hold common rights over each others' wives. The seduction of Kahindi's wife was thus an injury against Katana as well.

Bitterness and apprehension began to mount between the village of Doma and the village of Katana and Kahindi. Kahindi was particularly feared, for his skill in the use of medicines was widely known, and soon it was suspected that Kahindi was using his skill to perform sorcery against the village of Doma. In particular, Doma and his wife, in-laws of Kahindi, suspected that Kahindi was using medicines that enabled him to have sex with them at night without their knowledge. This act of having sex in "the utsai (sorcery) way", with the use of medicines, is called kuonzerera, to have furtive sex with someone without their knowledge or permission. The men and women of Doma's village began waking in the morning feeling that this act had been performed on them. Their suspicion became conviction when one of Doma's sons and two of his grandchildren died after showing the diagnostic vomiting and diarrhea of kitio. One of Doma's daughters-in-law also fell ill, but, significantly, she recovered when she was removed from the tainted village.

When the deaths took place, Doma consulted several wagonga-of-the-calabash. They all concurred that "Your mutsedza (in-law) is making you sick." There are several ways to engage in sorcery: the most direct way is to instruct a medicine to kill a specific person and plant it in a likely place. A more indirect way is to engage in sex in "the sorcery way", with the use of medicine, so that the entire village becomes fatally affected by involuntary participation in a kitio sex offense -- in this case, sexual contact by agnates with the same person, who is here the sorcerer. This is the path that Kahindi was believed to have chosen. On the strength of the evidence collected from the wagonga-of-the-calabash, Doma arranged to have an mgonga-who-prays come to play his ngoma. Without hesitation, the mgonga accused Kahindi of being a sorcerer.

Within a few days after the ngoma, Doma, the accuser, approached Kahindi and requested that Kahindi pay kore (death compensation) as well as the other expenses that Doma had incurred in treating the sick members of his village. Kahindi chose to ignore Doma's request, claiming that the ngoma was of no importance, and denied flatly that he was a sorcerer.

Two weeks after the accusation, the writer, in the

company of the Location Chief, accidentally met an elder on the path. The man was carrying a piece of paper and in it were wrapped a few shillings. The elder explained that he was taking up a collection in order to hire a truck. This truck was going to be driven to Kahindi's house, his possessions and family loaded onto it, and his house burned. The elder explained that many people in the area were afraid of Kahindi, especially since he was defying the customs and refused to compensate Doma for the damage he had done as a sorcerer. The Chief tried to explain that arson was illegal, and suggested that the matter be presented to a local council of elders. This was agreed upon and word was sent to Kahindi to appear before the elders.

Some two weeks elapsed between the time that Kahindi was accused and the meeting of the elders. During this period, there had been a change in Kahindi's attitude. Before, he was content to simply ignore the fact of his accusation, but at the meeting he assumed the role of the accused and declared his wish to go to the oracle with his accusers. Kahindi's change of heart was undoubtedly brought by the realization that if he did not take appropriate action, the community was prepared to forcibly expel him from their midst.

The meeting was arranged so that, in the presence of a group of impartial elders, Kahindi's kin group could confront their counterparts from the village of the principal accuser Doma.

* * *

The elders meeting begins with the Mwabaya and the Mwandundi groups each conducting its own private and separate conference. Neither group knows what the other is discussing until the decisions are announced by each group to the entire assembly. The Mwabaya, the accused Kahindi's group, are the first to make a speech. The spokesman for the Mwabaya is Kahindi's tswe, his father's father, the leader, as the Village Head, of Kahindi's local kin group. Although Kahindi's father's father resides in another hamlet with another one of his sons, he nonetheless retains authority over all of his sons and their descendants, and represents the interests of this group to the outside.

Several things are clear from Kahindi's grandfather's opening speech at the meeting. First, the grandfather is not speaking on behalf of Kahindi, but in the interests of the wider kin group. In doing so, he not only places Kahindi in a difficult position but wields his authority to consciously misrepresent Kahindi's own stated position. He does this for several reasons.

The weightiest is that Kahindi's reputation for skill in medicines has already made him suspect -- and the public accusation by the mgonga-who-prays confirmed what his own people in fact suspected, given their own consultations with wagonga-of-the-calabash. In brief, to his kinsmen, no less than to the opposing group, Kahindi is a sorcerer. The spokesman for his own group says openly that they fear him. This situation is one in which the formal attitude -- that a sorcerer accused by an mgonga-who-prays is a sorcerer until he can prove otherwise -- is shared by all but the accused himself. The grandfather, speaking for the Mwabaya, and acting on the assumption that Kahindi is a sorcerer, proceeds to protect the interests of his kin group by offering the Mwandundi what amounts to a settlement in order to avoid what he is convinced will be the unnecessary and additional 400 shilling cost of the oracle (which the losing party pays for both sides).

The grandfather of Kahindi addresses the elders thus:

We have gone away to discuss what we of the clan Mwabaya shall tell the clan Mwandundi. We have told Kahindi not to hide anything from us. We have told him that we too are afraid of him, even though he is our own son. We have said: 'We do not hate you, but we fear that you might be a danger to us as well as to other people. Today you may have killed a Mwandundi, but tomorrow you may turn to us

and begin killing us, one after the other. So we are afraid. Will you please tell us whether you cast a spell over the Mwandundi or not.'

We told Kahindi that even we, his own relatives, the Mwabaya, went to nine wagonga wa mburuga (of-the-calabash) so that we could see if Kahindi was a sorcerer or not. And all these wagonga said that he was. So we wanted Kahindi to tell us with his own mouth whether he cast a spell or not. If he admitted being a sorcerer, then we the Mwabaya would decide how we could appease the anger of the Mwandundi, by paying compensation for the dead. Kahindi has also offered to pay for the costs of bringing the mgonga wa kuvoyera.

And Kahindi replied to us: 'I deny that I am a sorcerer. The Mwandundi are my own people; I have their daughter as my wife. They are my atsedza, my in-laws.'

Kahindi says that he is very unhappy, and is afraid that being accused of casting spells over his in-laws will ruin his relationship with them. Kahindi says that if he had the money, he would go to kiraho (an oracle) at once. But he does not have the money, and he requests that I tell the elders that he knows nothing about sorcery. He would not think of casting spells over his in-laws who, after all, are his relatives. Kahindi has told us: 'I know that when someone takes the ordeal at Kaya Fungo, if he is a sorcerer, he can die. But I assure the elders that I am ready to die . . . if I am guilty, I will die willingly.'

In response to this offer by the Mwabaya, an impartial elder raises a point that pertains to an important detail of procedure in this type of case. The elder wishes to know why, if Kahindi does not think that he is a sorcerer, he should offer to pay the Mwandundi compensation: " . . . why should he (Kahindi)

pay at this stage, when he feels that he is not wrong? . . ." Kahindi himself then clarifies this issue:

I did not say that I would pay all the expenses. It is only my tswe, my grandfather, who is saying it.

My grandfather and his brothers are afraid that the Mwandundi are so angry they will ask for all those expenses before I take the ordeal. But I do not think it is right. I think that before I am proved a sorcerer, I cannot be held responsible for any of the Mwandundi's expenses. My grandfather is misleading you. He thinks we should be ready to pay if the Mwandundi ask for their expenses. But I disagree. What I have said myself is that I, Kahindi wa Thoya, want to go to the oracle. That would prove if I am a sorcerer or not. That is all I want.

Kahindi's grandfather finally must capitulate by saying that they, the Mwabaya, were willing to take Kahindi to the oracle. But before he says this, he reiterates the damaging opinion that he personally believes that Kahindi is a sorcerer on the strength of the wagonga-of-the-calabash that he has consulted and again recites the awesome list of debts Kahindi will have to pay if he is proved a sorcerer by the oracle.

The exchange between the impartial elder, the leader of the Mwabaya, and Kahindi raises an important procedural point. After being accused of an offense, the accused may either deny his guilt or admit it. If

the offender denies his guilt, he does not pay compensation, but (as Kahindi wished to do by going to the oracle) he must prove his innocence. On the other hand, if an offender admits his guilt after being approached by his accuser, he may then be required to rectify the wrong by paying the appropriate compensation. It is not acceptable, however, for an accused simultaneously to deny his guilt and be required to pay compensation. This is what the leader of the Mwabaya tries to force on Kahindi, and the council elders question and reject it. For while there is a feeling that someone publicly accused of sorcery by an mgonga-who-prays is indeed a sorcerer until proven otherwise, the accused who denies his guilt should not pay damages if he is willing to take the necessary step to prove his innocence; namely, the ordeal. It is accepted that even supernaturally-supported accusations may be mistaken, and mistaken accusations are classed together with false accusations in that in both a compensatory fine is paid to the accused for "spoiling his name."

Thus, the rules are not entirely stacked against the accused, as it might appear when it is simply stated that once one has been publicly accused by the mgonga-who-prays, one is essentially regarded as guilty. The situation is better described by saying:

one is regarded as guilty (and therefore must pay the compensation) when one is unwilling to clear oneself (and collect compensation from one's accuser) by taking the ordeal. Refusal to take the ordeal is, in effect, the functional equivalent of pleading guilty to the public accusation. It should also be mentioned that there is also a mechanism restraining irresponsible accusations -- namely, the possibility that the oracle might exonerate the suspect and result in a fine on the accuser for "spoiling his name." This explains the numerous private and discreet consultations with the wagonga-of-the-calabash before finally deciding on holding the openly accusatory ngoma. By the same token, the other possible outcome of the ordeal -- one in which the guilt of the accused is confirmed, entailing with it a whole series of compensations to the accuser -- is an inducement to some to cut their losses, so to speak, and confess. This was the course strongly urged upon Kahindi by his relatives, who would have to contribute heavily to the payments in case Kahindi lost the ordeal. The possibility (indeed the threat) of the ordeal, with participation of both parties to the dispute in it, is thus one element that makes accusation-by-divination a viable procedure.

Caught between his accuser and a group of relatives

seeking to protect the interests of the kin group at the expense of individual interests, Kahindi in his reaction departed from custom in several ways. Kahindi's first move was to drop his grandfather as his legal representative, and adopt his younger brother Katana as his spokesman and strategist. As we shall presently see, Kahindi and his brother adopted a strategy that threatened the function of the oracle and that immediately met, understandably, with resistance.

Kahindi's New Defense Strategy

A week after Kahindi's first meeting with the elders, the group meets again as they planned. Most of those present at the first meeting are here, with important changes: none of Kahindi's kinsmen have returned except his younger brother Katana. The two Mwabaya now stand alone. As before, the meeting is regulated by the elders who initiate all the proceedings.

The Mwandundi, the accusers, are called upon to speak first:

We have come here expecting that Kahindi would bring the money needed to pay his expenses at the oracle. We also have brought the money for our own expenses, so that we the Mwandundi and Kahindi of the Mwabaya can take the ordeal together.

Kahindi: Elders, I am still ready to take the ordeal. But I think that there is really no quarrel between me and the Mwandundi. The Mwandundi went and saw the wagonga-of-the-calabash; these wagonga told them that I am a sorcerer. The Mwandundi then brought an mgonga-who-prays, who also found that I am a sorcerer. Although the Mwandundi may have their suspicions, they were not sure that I am a sorcerer until these wagonga told them.

I therefore think that it is the mgonga-who-prays who is completely sure that I am the sorcerer. And if the mgonga is so sure, I would like to go to the ordeal with him, and not with the Mwandundi.

An elder answers Kahindi: Of all the elders here, I am the oldest. I am very old. Since I was born, and from all the stories that I have heard from my father, my grandfather, and my great-grandfather, I have never heard of an mgonga wa kuvoyera who has taken an ordeal with the person he accused as a sorcerer. That is against the customs followed in these cases.

Katana: The mgonga should go. Even if he has not gone before, that is just because he has not found anyone to send him. Now he has found someone. Why do you elders persist in telling me that the mgonga should not go to the ordeal? He is the major witness (mshahidi)! He knows everything about the sorcery of my brother Kahindi. Therefore he is the most qualified person to go to the oracle.

And do not tell me that this has never happened anywhere before. One of the sayings of the wise elders is, 'whatever has never been done before, has just not yet found someone to do it.' In the Giriana customs, young men have

been forbidden to seduce the young wives of their fathers, but many young men do this anyway. That is not right, but that is what is done. Now if I want to do something that has never been done, why do you stop me?

A new elder joins the discussion: I would like the elders to warn Katana, and to tell him to follow the customs. We as elders are not ready to break and despise the Giriama customs. We are not ready to believe that 'because something has never been done, it is just because there was nobody to do it.'

We do not hate Kahindi. He says that he is not a sorcerer, and we gave him a chance to prove it by taking an ordeal. But I have never heard of an mgonga wa kuvoyera who took an ordeal. Maybe Katana should just admit that he does not want his brother Kahindi to take the ordeal at all. Because it seems that we cannot make Katana change his mind. We have heard from the Mwabaya, from Katana and Kahindi. Now I feel that we should hear from the Mwandundi.

The spokesman for the Mwandundi counters: We insist that we go to the ordeal with the Mwabaya, not with the mgonga. The Mwabaya should realize that it was not the mgonga-who-prays who went to consult with the wagonga-of-the-calabash; we the Mwandundi did! It was the mgonga-who-prays who called Kahindi a sorcerer. But the mgonga was brought by us, the Mwandundi!

Now listen, elders. I am right now, in front of all of you, calling Kahindi a sorcerer. He is a sorcerer! Now it is I, and not the mgonga, who is calling Kahindi a sorcerer. That is why Kahindi and I, a Mwandundi, should go to the ordeal together.

Now that each of the opposing groups, the Mwabaya and the Mwandundi, knows where the other stands, the elders dismiss them. The elders will now discuss the case among themselves and then call back the opposing groups to hear the elders' judgement. The Mwabaya and the Mwandundi move far away, out of earshot. One by one, the elders give their opinions. Some elders speak more than once (the elders are here numbered in the order of their speaking). Elder #1 has been selected by the other elders as the head elder of the meeting, and during the discussion he sits in the center of the circle, surrounded by the others. During the discussion, there is no formal style of speech, as there will be when the judgements are given. The elders simply take turns speaking, addressing the group in whispers.

Elder #1: Now that the Mwabaya and the Mwandundi have left, I would like each of you elders to say something, so that we shall know what to tell them when they return.

Elder #2: The Mwandundi are following the Giriama customs correctly. It is the Mwabaya who are being difficult; they are determined not to follow what we tell them.

Elder #3: Among you elders, I am young, but Katana is much younger than I am. He is trying to make us believe that our customs are useless. Why should we elders let this boy make a fool of us?

We elders must look him in the face, and tell him he is wrong! What he is trying to tell us is unimaginable, impossible, and has never, never happened, even in the time of his ancestors! Let us tell him that! If he wants to bring change, let him do it in some other Giriama world, not the one in which we are living.

Elder #4: I think that Katana is just trying to prevent his brother Kahindi from taking the ordeal at all. That is why Katana has brought the idea that his brother should take the ordeal with the mgonga: he knows that we elders will never agree to it. The only thing to do is to use force -- this very night. Take Kahindi to the ordeal by force . . . we should drag him there!

Elder #5: Think again before you use force. We should not force anyone to go the oracle. We should just tell Katana that what he wants is not right. If Katana insists that his brother go to the ordeal with the mgonga, we should say no. He should only go with the Mwandundi. If Kahindi will not go with the Mwandundi, then we shall have to ask the Mwandundi to drop the entire matter. We cannot have an ordeal just for the sake of having it. It must have meaning, and follow the rules which govern it. We should make Katana understand this. If we fail in doing this, then we will have the difficult job of persuading the Mwandundi to forget the entire matter. So I suggest that if Kahindi will not go to the oracle with the Mwandundi, then we shall tell them that there will be no ordeal at all.

Elder #6: I shall tell you something that may influence your thinking. Last night I heard some Mwandundi talking. One said that he heard that Katana was influencing his brother Kahindi not to take the ordeal with the Mwandundi. These Mwandundi said

that if their case was not properly settled, then they would still not lose. They would take action against Katana themselves.

If you elders try to persuade the Mwandundi to give up the ordeal, what do you think their actions against Katana will be?

Elder #7: Why don't we ask Katana, that if he does not want his brother to go the oracle with the Mwandundi, why doesn't he move away from this place? We do not want him to live here.

Elder #4: I think we should call the Mwandundi and the Mwabaya back, and tell them that we cannot solve their problem. There can be a settlement only if people are willing, but Katana does not want peace. He is rude. He knows what is wrong. He very well understands the Giriana customs, but he claims not to know them. People who want peace are cooperative and willing. But we as elders should admit that we can arrive at no solution in this case. We have thought of all sides to the case, and there is nothing we can do to bring you together. Katana has taken the position of defying the elders and the customs. He does not want to listen to us. So we must tell the Mwandundi to settle the problem in their own way.

Elder #1: We have discussed the matter for a long time. You are all coming to the same conclusion. You want to warn Katana very strongly, and tell him that you are completely against sending Kahindi to the ordeal with the mgonga. Your conclusion is very good. We know that what Katana wants is impossible, and yet he persists. And at the same time he knows that what he is doing is wrong..

Elder #4: Yes, Katana knows very well that it is not good to defecate on the road, but he is doing it. He is doing a bad thing, and yet he knows that it is bad. He is defiant, rude, and proud. He is only trying this because he is a councillor.

The Mwabaya and the Mwandundi are summoned back to the elders to hear the judgement. For this formal judgement, as in any judgement by the kambi, Elder Wanje (Elder #4) chooses an elder (Elder #1) to serve as his addressee, although in actuality his audience includes every man present. It is the addressee's function to be a foil for the speaker, and to keep the lengthy judgement moving by interspersing brief but spirited, frequently humorous or sarcastic, comments at appropriate pauses in the judgement. These comments tend to emphasize what the speaker has just said and have a supportive effect on the speaker. Elder Wanje wa Zomolo opens his judgement with the formal, chanted introduction, responded to by the other elders in unison.

Wanje: Sumilani kamb! (attention, elders)

Response: Hae. (a response of assent)

Wanje: Kambi mukisumila kumala vidzo na vidze . . .
(elders, when you are attentive, let us wish that good things come)

Response: . . . na vidze! (let good things come)

Wanje: Kambi, mukisumila humalago ni madzo,
kumala kudza na gadze . . . (elders,
when you are attentive, let us wish for
good words to come; let good words
come . . .)

Response: Na gadze! (let them come)

Wanje: Mai ni gaga hudzigo ga imirira viverero kumala kugoma na gagome . . . (today we are determined to end all bad things; let bad things go away)

Response: . . . na gagome. (let them go away ...)

Wanje: These people are fighting, there are two people fighting.

Elder #1: That is true.

Wanje: And when a third person comes in, he separates them.

Elder #1: Yes, he separates them.

Wanje: Even if I am very angry, to such a point that I am ready to stab someone with a panga (knife), if a third person tells me to stop, and if I am a person who thinks, I will stop. Now the issue at hand here is between the Mwabaya and the Mwandundi. They are quarrelling.

Elder #1: Yes, they are quarrelling!

Wanje: These people are fighting, and usually when there is a fight, you do not expect the people fighting to speak nicely to each other.

Elder #1: They may even insult each other!

Wanje: Now the elders have sat down, to look into this matter, so that they can settle this problem between these people who are fighting. I wish the spirits of the ancestors of my clan, to which I, Wanje wa Zomolo belong, to come here; I also wish the ancestral spirits of the clan Mwabaya, and of the clan Mwandundi, and the ancestral spirits of all the other clans of every elder who is present, to come and be with us. I want all of our

ancestors to come together here, so that my words will be as effective as possible.

Elder #1: Yes, so that your words will be effective.

Wanje: Sumilana kambi!

Elders: Hae.

Wanje: The Mwandundi are saying, 'Kahindi, you are a sorcerer, and for that reason, we must go to the oracle.'

Elder #1: Yes, we shall go to the oracle!

Wanje: The Mwabaya are saying, 'we are not reluctant to go to the oracle, but it is not the Mwandundi who have told me that I am a sorcerer!'

Elder #1: In fact, the Mwabaya say that they are ready to go to the oracle . . .

Wanje: Msenangu! (my friend)

Elder #1: (to Wanje, but in actuality slyly 'addressing' Katana directly)
Are you not a Giriama? I thought that you were a Giriama, my friend!

Wanje: (answering for Katana) Yes, I am Giriama.

Elder #1: (with sarcasm) There is not any Mwabaya who is a European! Any Mwabaya must be an African!

Wanje: (now 'addressing' Katana) Now how can you, as a Giriama, speak as though you are new to the customs of the Giriama?
Where on this earth have you ever seen an mgonga wa kuvoyera, or any mgonga, for that matter, go to take an ordeal? With a sorcerer?

Elder #1: Well it has been said here that no one has yet come to challenge that rule, but now that someone has appeared.

Wanje: Does this person want us to believe that this thing has not been done just because no one has appeared who wanted to do it? This means that there are many things, which we all know are against the customs, which could be done. I have quite a number of daughters-in-law; would it be right for me to now go and sleep with them?

Katana, you are trying to make us forget about our customs. We elders must tell you at once that we will never depart from the customs. We will not follow your wayward ideas. Because you are a son of the Giriama, we elders are pleading with you to think twice. What you ask is impossible -- not because we do not want to do it, but because it is against the traditions. Therefore, we are going to ask you the Mwabaya to agree to go to the ordeal with the Mwandundi, and not with the mgonga wa kuvoyera, as you would like to do.

Sumilani kambi. Hedu mudzambadze?
(elders, is this not what you have decided?)

Elders: Hudzambe vizho! (we have decided thus!)

Wanje: What I would like you to do is to follow the tradition that states that when an mgonga declares someone a sorcerer, it is the person who has been made sick, and the person who has cast a spell, who take the ordeal together.

If the sorcerer is proved to be a sorcerer by the ordeal, he pays death compensation to the family of the victim, as well as any other costs incurred, such as treating the sick person, and paying for any wagonga.

But if the oracle does not prove the accused to be a sorcerer, then the person who accused will have to pay the expenses for spoiling the accused's name. This is the procedure that you must follow. Sumilani kambi!

Yes, Katana, we know that you are trying to trap us. If you agreed here to go to the ordeal with the Mwandundi, the person who accused you, and not with the mgonga, we know that you would accuse us in court tomorrow. So we plead with you to forget this whole matter. We elders know that you should go with the accuser, the Mwandundi, but we know that you do not want to go to the ordeal with anyone. You well know that the elders would not allow the mgonga to go to the ordeal.

Elder #1: Yes, the elders know that you do not want to go to the oracle.

Wanje: We must ask the Mwandundi to forget everything. They may want to take the Mwabaya to the court, but that is up to them. But we ask the Mwandundi not to be angry. You the Mwandundi are not the only people who have had death in their village. You cannot bring back the dead. So try to forget it. You have also wasted money bringing the mgonga wa kuvoyera, and consulting the wagonga wa mburuga, but forget that, too.

We know, too, Katana, that you are really trying to kill the ceremony of the mgonga wa kuvoyera. For if the mgonga finds a sorcerer, but nothing is done to the sorcerer, will his sorcery have any use? Will there be any good reason to have the ceremony anymore?

So let everything stop. Whether the Mwabaya used medicines or not, we will not pursue the matter. The Mwandundi have lost a lot, but forget that too; it is normal in this world that there is a time when you lose and time when you gain.

That is what we have decided, that this case should end here and now. After all, the Mwandundi and the Mwabaya are in-laws. Why should you quarrel? You are not sure that Kahindi is a sorcerer, and Kahindi does not want to go to the ordeal. So now you should

have no more worries, no problems. Death happens. The Mwabaya will die someday too. We will all die. Death is death.

This matter is ended. It should not go beyond the borders of this mango tree. It would be very bad if the Mwandundi, after drinking some coconut liquor, should then begin thinking that we elders were too lenient. The aim of the elders is to bring peace here.

Sumilani kambi. Hedu mudzambadze?
(is that not what you have said, elders?)

Elders: Hudzamba vizho! (that is what we have said).

* * *

The meeting of the elders ended, but it was not long after that the Mwandundi took matters into their own hands. Katana sold water from a pump at his village to the surrounding villages. A few days after the meeting, the waterpipe was broken off at night. Then, on two occasions, Katana was badly beaten by the Mwandundi. A month after the elders' meeting, Katana moved from his village to a new location, across the Sabaki river. Katana retained his position as a councillor on the Malindi Urban Council, at least until the next election. As to his brother Kahindi, the accused sorcerer, for two months no one knew of his whereabouts. Word finally came that he was living in Magarini, about twenty-five miles from his village. The village of Kahindi and Katana had been effectively dispersed.

The Mgonga-who-Prays: Reaffirmation and Challenge

From the above presentation, certain points relevant to the Giriama judicial process may now be emphasized. Once a public accusation has been made by an mgonga-who-prays, setting a dispute in motion and implying that the accuser is sure enough of his case to be willing to take the ordeal, there are two alternatives left to the accused: either to accept culpability and pay the damages, or plead innocence -- which demands proof that is hierarchically superior to the divination of the mgonga-who-prays, namely, proof by ordeal. For the accused to take neither of these two steps is tantamount to a refusal to participate in the established judicial procedures and, in effect, to a defiance of public opinion about the propriety of these procedures.

Kahindi clearly wanted to avoid either alternative: he did not want to go th the oracle to take the ordeal (one suspects that he was not too convinced of his chances of passing it); nor did he want to plead guilty. When, therefore, at Katana's instigation (who was probably even more doubtful of Kahindi's chances at the ordeal), Kahindi proposed to take the ordeal but with the mgonga instead of his accusers, he was not changing customs: rather, he was refusing to participate in the Giriama judicial procedures without saying so.

Knowing that the elders could not possibly grant his request, he was insuring that he would not have to take the ordeal (which he feared) and yet be spared an admission of guilt. The elders rightly interpreted it as a challenge -- not to mere procedural detail, but to the whole structure of the Giriama judicial process. Although in public they refused Kahindi's request on grounds of "custom", their private deliberations clearly revealed their perception of the challenge; the depth of their feelings is shown by the analogy between Katana's request and "defecating in the middle of the road."

Kahindi and Katana's direct challenge was to the notion that it is the employer of the mgonga who is the accuser, and not the mgonga. This notion is crucial to the Giriama judicial process. The mgonga's relationship to it is fundamentally ambiguous: he is both a diviner (hence a reporter of truth) and a hired voice of an injured party (hence an agent of one side to an unresolved two-sided affair). This ambiguity is held under control by making him an impersonal, unwitting agent in both respects. It is accepted that he only repeats what he hears from the spirits, responsible neither for the truth nor the falsity of the message.

It is equally important, however, that he also not be held responsible in the other part of his role: that of agent of the injured party. Kahindi and Katana questioned this part of the mgonga's role by making him the legal accuser and bringing the delicately controlled ambiguity of that role up for public dissection. The elders' reaction was essentially a refusal to even discuss the matter, and the accuser's reaction was to cut off this part of the discussion by a loud (and uncustomary) direct accusation of sorcery against Kahindi.

The depth of the elders' reaction to the challenge can also be gauged by the (also uncustomary) proposals to drag Kahindi by force to the oracle. This, of course, would have been quite contrary to their primary obligation to adjudicate cases by oral argument rather than by force -- a notion the elders kept re-emphasizing in their cooler moments. But the quite uncustomary idea to use force was a reaction to an unresolvable impasse. Kahindi's proposal could not be accepted. The resulting impasse precluded the elders from performing a conciliatory role, for the elders perceived that reconciliation is impossible if disputants are "unwilling" and uncooperative -- as Katana was in this case. In effect, the elders appear to have let the

case "hang" -- by formally and sarcastically declaring that there was, perhaps, no quarrel anyway to be resolved -- and therefore, no failure on the elders' part in not resolving it. This declaration, as the elders knew, was an open invitation for the accusers to act by resorting to force. In fact, the case of Kahindi effectively illustrates the role of the elders' council as a potent legal authority, even in the face of defiance by a powerful political opponent. The elders' repeated declaration that Katana and Kahindi are wrongdoers shines clearly through their clever protests that they can do nothing. The task of the elders' council -- to adjudicate -- has been done admirably. Their decision, further, was promptly enforced, presumably by the Mwandundi and others, who punished the wrongdoers. Viewed in any other context, the Mwandundi's action would appear to be simply self-help; in this case, however, retaliation was sanctioned by the elders, representing Giriama legitimacy.

In the first case we considered, after being accused by the mgonga-who-prays, Johanna wa Charo, like Kahindi, also wished to avoid the traditional alternatives of pleading guilty or taking an ordeal. Her refusal to participate in the traditional Giriama

judicial process also evoked the possibility of self-help by her accusers: she was threatened with a beating. She then cleverly "agreed" to one acceptable alternative -- pleading guilty and paying death compensation -- but then she quietly sought the protection of a non-traditional judicial institution, the Magistrate's Court (instead of making the traditional oracle the stage of the struggle, as Kahindi did, thus maximizing both traditional resistance and his helplessness before it). In filing suit against the mgonga-who-prays, Johanna, like Kahindi, was adopting the notion that it is the mgonga -- rather than the injured party -- who is the accuser. By choosing the Magistrate's Court as the forum for her challenge, however, Johanna found ready acceptance for her proposal. The magistrate not only adopted the notion of mgonga-as-accuser, but further dismissed the mgonga's words not only as "witchcraft" but as irresponsible defamation, irrelevant to the customary procedure of assigning guilt.

Indeed, taken in isolation, the ngoma of the mgonga-who-prays does make little sense and smacks of incomprehensible "primitive" approaches to jural matters: a diviner, hired by the plaintiff, declares another person guilty -- and the person must pay

compensation or take an ordeal! But the misunderstanding would stem precisely from looking at the ngoma in isolation and not as a step in a judicial process. When viewed as part of a process, the ngoma functions as a formal public accusation, made not lightly but after serious thought and serious evidence-gathering, including repeated secret divination. The accusation is made clearly on behalf of the injured party -- hence, the protection of the mgonga-who-prays by making him an impersonal instrument of the process. The accusation is not taken as a statement of truth -- for divination can be in error. But it is taken to be a step that requires a formal response: either an admission of guilt or a declaration of innocence. The latter, however, automatically implies a willingness to take an ordeal. A lack of either of these two responses is a refusal to participate in recognized judicial procedures -- and invites publicly approved retaliation.

PART THREE: SECULAR ADJUDICATION

CHAPTER TEN:

VILLAGE DISPUTES: THE VILLAGE HEAD AS AUTOCRATIC ADJUDICATOR

In this chapter, we shall discuss the role of the Village Head (mtumia wa muji, lit. "elder of the village") in the judicial process. It will be seen that the Village Head adjudicates disputes that occur between members of the residential kin group in which he is the paramount legal authority. The structure of villages will be discussed in some detail, in order to explain the basis of the Village Head's authority, and the major sources of intra-village conflict will be analyzed. It will be shown that the Village Head's legal decisions strongly favor the primary interests of the local kin group in maintaining its continuity and residential integrity.

The Dynamics of a Hamlet Structure

The composition of Giriama hamlets depends largely on the chronological ages of the inhabitants. Although invariably consisting of close agnates, a hamlet's nucleus may be, alternatively, a father and his sons or a group of brothers. From the viewpoint of a male ego then, the hamlet head is either his father's

eldest brother or his own eldest brother, depending on his own age.

Hypothetically, ego is born in a hamlet where his father (baba), his father's elder brother (bamzhere = "elder father"), and his father's younger brother (bamhoho = "younger father") reside. His father's elder brother is the hamlet head. In the course of time, he, his brothers (ndugu) and the sons of his father's brothers (also ndugu) mature, marry, and reproduce. The hamlet becomes crowded; ego's father establishes a new hamlet nearby, and takes his sons with him: However, ego's father's elder brother remains the "head" of ego's hamlet and is now a Village Head. In time, the Village Head dies, and the position passes to ego's father, who now becomes the head not only of his own hamlet but of his deceased older brother's village and of his younger brother's hamlet also. (When a man is the head of a hamlet in addition to the one in which he resides, this in itself indicates the relatively advanced age of the generation in authority). Eventually, the older generation dies and ego resides in a hamlet with his own brothers. His oldest brother is now the hamlet head.

Besides his duty to maintain order in the hamlets

by settling disputes, the Village Head also supervises other activities such as planting crops, harvesting, and the apportioning of maize among the hamlets in the village.

Kitio: A Major Source of Village Conflict

In Chapter Five, we introduced the kitio sex offenses as a major source of intra-village conflict, for these offenses are believed to cause sickness that can afflict an entire village. As we have seen, most kitio offenses involve agnates having sexual relations with the same woman. Other kitio offenses occur between a husband and wife and are best characterized as the disregard for the intricate rules regulating ritual sexual intercourse (kuzhala). In preparation for some of the cases that will be discussed below, the rules for ritual sexual intercourse will now be discussed in some detail.

The wives in a polygynous household are ranked in order of their marriage; a wife's authority and duties within the household depend on her rank. The ranking of wives is formalized by the performance of sexual intercourse whenever the number of a man's wives is altered by death, divorce, or marriage. After the addition or the loss of a wife, a husband

must have sexual intercourse with all of his wives in the order of their marriage to him, beginning with the senior wife (muchu muzhere) and ending with the newest wife (kibomo). One wife, who had run away to her father's village, became assured of a divorce when her husband married a new wife and proceeded with the ordered sequence of ritual intercourse without waiting for his absent wife's return. Another man was instantly deserted by his wives when he consummated a marriage on the night of his new wife's arrival. His other wives claimed they were not jealous, but were fearful that they or their children would be afflicted with the disease kitio. Threatened with a mass exodus by the other village residents as well, the Village Head hired an mgonga wa kitio to cleanse the village and relieve the anxiety.

Some occasions require that a husband have sexual intercourse with only one wife. Thus, a husband must sleep with his senior wife before any other woman when the three hearthstones (figa, pl. mafiga) are installed; when the kilomo (grass "lintel") over the door of a dwelling is attached; when the ground has been broken for planting; when the first cob of maize is picked; and at the general harvest. Upon the death of a child,

the husband must sleep with the dead child's mother before any other woman, so that the mother will be "bound" to her child's spirit. Wives also have a responsibility in the rituals of kuzhala. When an occasion requires ritual intercourse, wives must not engage in adultery until their roles in the ritual are completed, or kitio will result.

The rules of ritual intercourse are complex enough to cause confusion, and there may be uncertainty as to whether a kitio offense has been committed or not.

When there was sickness in one hamlet, the inhabitants suspected kitio; as usual, they were aware of sexual liaisons, but were unsure whether any of these relationships could have caused the sickness. The uncertainty arose when a man built a new dwelling. After the skilomo, or grass "lintel" had been installed over the door, the man had ritual intercourse with his senior wife. He had four other wives, all appreciably younger than his senior wife, and they were known to be having affairs. When sickness broke out, the man (who harbored some ill feeling against his wives anyway) blamed the sickness on their sexual activities. They should have abstained, he said, until he had had intercourse with them in order to properly install the lintel. The Village Head presided over a meeting of the village

and declared: "When there is a new kilomo, the husband and his senior wife must have ritual intercourse (kuzhala). The 'younger' wives (ache ahoho) do not have to do this. Whether or not they are having sex with other men is not important."

In other cases involving a kitio offense, the Village Head may be required to censure wrongdoing in addition to proclaiming the law. In one such case, a woman's child died. After the burial, her husband should have had sexual intercourse with her before any other woman. This act should take place in a room where the child's mkamba (cloth in which babies are carried by their mothers) is laid out. In this case, the husband spent the night of the burial in another wife's room. The offended wife fled to the Village Head and complained that "my child now belongs to that other woman; I cannot mourn him." There was also fear that the sickness kitio would ensue. The Village Head called the husband and the wife with whom he had spent the night, and they denied having had any sex that night. This denial was accepted, but in his decision the Village Head said that the husband was wrong anyway: "If he did not intend to have sex with either wife that night, he should have slept on a bed alone -- that would have avoided any suspicion. He caused

mistrust." In this case, the Village Head unambiguously announced that the husband had done wrong and chastized him verbally, but he did not impose any other punishment. The absence of punishment is common in village cases, though an offender may be requested to bring food or drink, not as a punishment but as a conciliatory gesture.

Conflict in Inherited Villages

When a man dies, one of his brothers (ndugu) -- sons of his own father -- inherits his hamlet and all of his social positions (kala ufw). During his life, his wives refer to these brothers as "younger husbands" (alume ahoho) or "older husbands" (alume azhere) depending on their ages relative to that of their husband. If there are no sons of the dead man's father to inherit the wives, the wives may then be inherited by one of his father's brother's sons¹. The wives have some choice in this matter. After their husband's death, they meet privately to decide who will inherit them. A wife may elect not to be inherited; in this case, she returns to her father's or her brother's hamlet (depending on who is alive) and her bridewealth

1. As stated in Chapter Two, the mryango, the descendants of ego's father's father, is the wife-inheriting unit.

must be returned to her deceased husband's brothers. The remaining wives who do decide to be inherited, however, must be inherited (as a unit) by one man. When a man inherits his dead brother's wives, he must first have sexual intercourse with his own wives in the required order and then have intercourse with the inherited wives. If the heir cannot do this because of impotence or any other reason, another brother can do it for him. Before this ritual intercourse can be carried out, however, an mgonga wa kitio (doctor of kitio) must perform a ceremony to insure permanently that sickness would not break out, for intercourse between a man and his brother's wives -- even a dead brother's wives -- is a kitio offense.

When a man inherits his brother's wives, he also inherits the rights to any bridewealth that is received. The heir does not, however, acquire ownership or even control over any livestock or trees previously owned by the deceased. Rights in this property pass to the sons of the deceased.

Relations between a man and the residents of his inherited hamlet are frequently poor and the village is rife with disputes which the Village Head must often adjudicate. The heir to a hamlet usually does not

reside in his inherited hamlet and may be an infrequent visitor there. The heir may be aged and already possess several wives; some of his inherited wives may be young. There is often some resentment by the younger inhabitants (his brother's sons) when he exercises his marital rights and vilification when he does not, and wives that have been inherited are frequently divorced.

Avarice on the part of the heir is a frequent cause of conflict between him and his dead brother's sons. Unmarried men often depend on the bridewealth received from their sisters' marriages as a means of acquiring wives. A son may have trouble gaining access to his sister's bridewealth from his real father, who may elect to use it to procure additional wives for himself. The problem is exacerbated when a son has to deal with one of his father's brothers. Thus, in one case, an heir to his brother's wives appropriated the bridewealth and did not choose to acquire a wife for an unmarried son of the deceased. A bitter dispute broke out and the Village Head was called; he decided that the heir to the hamlet indeed had a legal right, if not a moral one, to the bridewealth. In another case, the heir to his brother's wives was accused of

selling coconut liquor tapped from trees that had been the dead man's property, while the heir to the wives of another man sold his cattle -- wealth that should have gone to the heirs to the dead men's villages. In each of these instances, the Village Head decided the case in favor of the complainants and ordered the heir to pay compensation, but, significantly, no punitive damages were awarded.

Adjudicating a Dispute in an Inherited Hamlet:
A Case Study

The case study which follows is representative of the kind of conflict that a Village Head is often called upon to resolve: a dispute between a wife and the husband who recently inherited her. It will be apparent from the text that the Village Head (who lives in his own hamlet and is the oldest brother of the accused husband) has been fully informed of the allegations privately and has heard extensive arguments from both sides prior to the public hearing. It will also be apparent that the Village Head, on the basis of his private investigations and opinions, has reached a conclusion before the dispute is even aired: that the wife's allegations of her husband's impotence should be dismissed. He begins the hearing by announcing this

decision, and carefully orchestrates the entire proceeding to support his conclusion.

The Village Head addresses the accused husband, the inherited wife who is the accuser, other inherited wives of the accused, an adult son of the husband, an adult son of the accusing wife, and two brothers of the accused. The Village Head simultaneously announces the wife's allegations and his decision that she should not have accused her husband.

Village Head: The person who died in this village was my brother and these are his wives. I am the older brother of the one who died, and of this brother (the accused) here. We are Mwamweni (the name of their clan).

Karisa, your mother (the accuser) is very wrong. She has to realize that her husband is an old man, and that she is wrong to accuse him.

You, woman, you allege that your husband is useless, that he uses his fingers instead of his penis.

The Village Head now asks the other two wives if they have any accusations against the husband. They say no. When the wife who accused her husband is asked to speak, her reply reflects the classic predicament of an inherited wife torn between leaving her children who belong to her husband's clan and being inherited by a man whom she does not particularly like.

Wife: When we were inherited by Saidi (the accused), I did not love him. But I thought that I had so many children by my former husband and I didn't want to leave them just because I didn't like my new husband. I said, 'Let Saidi marry me.'

Afterwards, I found that Saidi behaved strangely. I will ask you to ask him to stop that behavior. If he does not, he will no longer be my husband.

I had seven children with your brother who died, but five died and two are left. Doesn't that prove that I can bear children?

Village Head: That proves it.

Wife: But do you know what your brother says? He tries to have sex with me and fails. He uses his fingers. He says he won't waste his energy on something that produces nothing.

Also, once he came here and found that I was sick. He just left and went to his other village where his other wives are. If you love your wife, don't you come and see how she is? Don't you send medicine? What kind of love is this?

Now you know that every month we women have our periods. I thought that men were understanding. Once when I had my period, your brother came to my house. I said, 'I'm sorry, I'm not feeling very well.' He shouted, 'Let me see for myself! I know you are lying and just saving yourself for a man friend.'

Can you expect me to love a man who is out of his mind? I am angry about all of these things.

The wife has accused her husband of considerably more than impotence, broadening the issue by saying that her husband's behavior in general is unsuitable for a husband -- he is unsympathetic, does not adequately

care for her and is generally a boor.

The accused husband replies with the counterclaim that his inherited wives refuse him sexually.

Husband: Does my wife think that I am so strong that I even bother her during her period? I must be a bull! The truth is, many times my wives refuse me. I come to this village to sleep; I ask the mu che muzhere (senior wife) -- nothing. This wife -- nothing. The last wife -- nothing again. Who can accept being refused sex by his wives? Who?

At this point, the Village Head intervenes, addressing the husband and wife separately. First he brushes aside the wife's accusation by telling her that she really has no right to accuse; he further glosses over the accusation by presenting evidence of her husband's potency, albeit in the past. If the wife is really dissatisfied with her husband, the Village Head states, she can either commit adultery discreetly or go home and return her bridewealth.

Village Head: Woman, you should know that people paid money to bring you into the village. We know that the husband who inherited you is old, and his wives are too many for him. We know that people commit adultery, but be careful about it. A bad hen is the one who does not come back to sleep in its house at night. But the hen that goes to wander in the bush to get food and returns in the evening, there is nothing wrong with that. In the day, you can wander where you want;

but in the evening, be in your village.

What kind of woman are you to expose the shame of your husband? Why do you say that he uses his fingers? Is he a midwife? Is he trying to get a child out of you? Instead, you should consider that your husband is old, he doesn't have the strength of youth. In the morning, you should come out of your house and say, 'My husband was so strong last night that I had to fart.'

We don't want to tie you here. If you don't love your husband, go to your brother and get your bridewealth. Be frank, and tell us that you have met someone better than this old thing here.

This man is my own brother; he has his own children who are exact likenesses of him, and many grandchildren. How did he get these children? Mweni (son of the accused), you have children yourself -- have you heard at any time that your father is impotent?

Mweni: Wherever I go, people say that I look like my father. If my father has so many children, I don't see how anyone can say that he is impotent.

The Village Head now turns his attention to the accused husband and gives him advice on how to deal with problems in his hamlet:

My brother, as a husband, you must learn how to tolerate things. You cannot be a bully. When you have such a number of wives to take care of, you must be careful. When something like this comes up, do not hate the person at once. You cannot solve anything by anger. You should not be lenient, but do be firm. You must warn your wife several times. Then, if she still does not obey, you can always beat her. You

are allowed to do that. And then when she runs to her brother's village, you will be called, and you can tell them why you beat her. But don't take such steps until you know what is wrong with your wife.

Finally, the Village Head gives his decision:

I know who is wrong and who is right. My brother, you must understand that when your wives are sick, you must take care of them and be attentive. As for you, woman, you must respect your husband. Do not say that he is impotent. If you are tired of him, go to your brother, get bridewealth and bring it back; but do not accuse your husband.

Hedu hudzambadze? Is what I have said true?

Listeners: Huzamba vizho! What you have said is very true.

The case study presented above typifies the procedure followed when a Village Head adjudicates a dispute; he is the sole legal authority and discusses the case with no one else. In fact, he usually reaches his decision before the actual hearing. He does not reveal the final decision (although he alludes to it) until the testimony has been heard, but when the disputants present their claims, counterclaims and defenses before the village, their arguments seem a mere formality.

The Village Head cannot be a neutral third-party mediator. His relationship to the disputants -- always

close agnates or their wives -- precludes this and assures that he is both biased and prejudiced. His interests are those of his kin group and his attitudes towards a wife may be legitimately influenced by factors extraneous to the dispute, such as her usefulness to the group. For instance, it is in the interests of the local kin group to keep the wives of their sons in the village to look after the children, cultivate the fields, and above all, reproduce for the clan, providing the patrilineal segment with sons to reinforce it and daughters to provide bridewealth for wives.

In the case above, the Village Head deftly surmounts the difficulties of appearing to be an unbiased adjudicator while strongly favoring the accused husband. He dismisses the wife's complaint at the outset but allows the hearing to proceed. He alludes to the husband's age in a tacit admission that the wife's allegations of impotence could be true, but he calls a witness to disprove the allegation. At times, he appears to represent the accused. Above all, he builds up a public image of the situation that is both "respectable" for the two parties and advantageous to the group, and for this purpose he does not hesitate to chide both sides.

The Village Head's bias is partly explicable by the fact that the accusing wife is probably past her childbearing years. She has already borne seven children, and a son Karisa, who was at the hearing, is an adult. Also, she says that her present husband has ridiculed her failure to conceive since she was inherited. It is ironic that adult children should be presented as living proof of their parents' past fertility and potency -- such evidence being pertinent to the case at hand only as an indicator that there may in fact be no biological basis now present for the marriage. If the couple cannot live in harmony, they are told, it is up to the wife to leave. The strong message that the wife is dispensable -- in exchange for return of bridewealth -- underlies the Village Head's advice on how the couple should behave in order to preserve the marriage.

Adjudicating Marital Disputes: Alternatives to the Village Head

In the preceding case study, the Village Head advised the husband of alternative steps that could have been taken to resolve the case. When there is a conflict between husband and wife, the husband was told, the husband has the right to beat his wife into submission. The Village Head suggested that, in future,

the husband should beat his troublesome wife, and implied that a timely beating would have either stopped the trouble facing them all now, or the wife would have run to her husband's hamlet and the dispute would have possibly ended there.

Regardless of where she turns, however, a wife is unsure of support. Her own family wants her to stay married because a divorce means the inconvenience and economic hardship of paying back her bridewealth, which has long since been spent in procuring wives for their own sons. Hence, when a wife goes home to her family, she faces either outright hostility or overwhelming pressure to return to her husband. One father, speaking hypothetically, revealed a common attitude:

"When my daughter runs home, she will say what annoyed her, and my son-in-law will tell his side, and I will decide the case right then. I just say, 'My daughter, this is wrong, this is not the way you should have behaved.' "

In some cases, a wife accused of an offense by her husband may get support from an unexpected source: her mother-in-law. The mother of an allegedly wronged husband usually wants her daughter-in-law to remain in the village so as to continue to provide her with domestic help. Mothers-in-law also fear that they will

have to look after the abandoned children. Consequently, a mother-in-law will often actively protect the wife of her son.

In one case, a husband strongly suspected -- on the strength of reports from other wives -- that one of his wives had been stealing money from his house. He angrily threatened to send the suspected wife to an oracle, but his mother cleverly intervened. She retrieved the stolen money from the thieving wife, secreted it in another part of the house, "discovered" it, and revealed it to her son. She loudly announced to the hamlet at large that her son had been drunk on coconut liquor, had changed the hiding place of the money himself, and forgot where he had put it. She soundly insulted and berated her son, as mothers do in this society, and he abashedly withdrew his threat of an oracle. The wife's position in the hamlet was saved. When asked about her intervention, which everyone but her son knew about (conveniently, he had a history of drinking), the mother spoke frankly; she said that she did not want the responsibility of looking after the errant wife's six children, for the wife was certain to be "caught" by the oracle and ejected from the hamlet. The mother, motivated by reasons of her

own, had effectively settled a marital dispute before it had a chance to become serious.

Conclusion

When a Village Head adjudicates a dispute, his position as the primary legal authority over the local residential kin group assures that his opinion alone is decisive. In contrast to the decision-making process of the elders' councils (see next chapter), there is no discussion; the Village Head is the sole voice of authority and his word is law.

When he presides over a case, the Village Head provides an opportunity for individuals living within this jurisdiction to accuse and have their case decided upon promptly. The Village Head's decisions are based not only on the evidence presented at the hearing, but on his own extensive prior knowledge of the dispute. Underlying rationales for legal decisions are difficult to ascertain, but it appears that the Village Head's decisions implement the interests of the residential kin group. From a functional point of view, the Village Head maintains the cohesiveness of this group by resolving conflicts. As we have seen, such resolution of conflicts does not necessarily mean a peaceful settlement but may mean the ejection (or the threat of

ejection) of a dissident kinsman or affine from the village.

The nature of the allegation and the relationship between disputants may require that the wrongdoing be precisely exposed and rectified or a split within the village may result. Thus, an accusation of a kitio sex offense potentially affects the entire village, because of the possibility of sickness spreading in the village; while disputes between brothers or fathers and sons threaten not only village structure but close agnatic relationships. In such cases, the Village Head does not hesitate to point out who is wrong and decide the case on its merits; the wrongdoer is under great pressure to comply with the decision, for non-compliance could result in ostracism by one's kinsmen. In contrast, as the case study above indicates, a dispute between husband and wife may end ambiguously. This conforms with the fact that marital relationships are unstable in this society; wives are dispensable, for it is only their progeny who provide the foundation for their husband's kin group. In addition, dissident wives have the option of returning to their natal villages and to be accepted, however reluctantly, by their own agnatic kin group.

When a Village Head fails to settle a dispute that is properly within his jurisdiction, he may relinquish all authority or assume a lesser role if the case proceeds (usually on the initiative of the accused) to a "neutral" legal authority such as an oracle or an elders' council. In the latter instance, the Village Head becomes merely the spokesman for the kin group and its interests. If a party rejects the legal authority of his kin group, he becomes a kind of outlaw, and there is little chance for him to be reinstated within the group.²

2. See below, the case of Sidi Simba (Chapter Eleven) and "A Kitio Sex Offense" (Chapter Fifteen) for the position of the accused when a dispute between close agnates proceeds beyond the jurisdiction of village legal authorities. See also above, the case of Kahindi (Chapter Nine) for the role of the Village Head before an elders' council.

CHAPTER ELEVEN :

THE ELDERS' COUNCIL IN THE JUDICIAL PROCESS

The council of elders, kambi, is traditional in Giriama society. The kambi elders are older men who, because of their individual reputations, are considered to be authorities on custom and are respected by the community. The elders' council is an institution of accusation and adjudication. At the council, an accuser formally presents an accusation, the accused replies to the charge, and the elders announce their decision. The council is neutral between the interests of the disputants; any relationship between an elder sitting on the council and a disputant is coincidental and does not affect the outcome of the case, for decisions are made by all of the elders in concert.

The elders' council's role in the judicial process is limited by the existence of other legal authorities -- principally relatives of disputants -- that perform similar functions. As we have seen, where the disputants are patrilineal relatives, the dispute is properly within the jurisdictions of the Village Head; and if they are husband and wife, or the parents. When disputants who are married or have a close kinship relationship appear before an elders' council, two related factors are certain: the village authorities

have failed to settle the dispute and the relationship between the disputants has been irretrievably broken. Such disputants resort to an elders' council in an attempt to salvage their reputation in the community or out of sheer desperation.

Elders' councils are often "courts of the first instance" -- and operate most successfully when disputants are neighbors or affines. Such disputants may illegally resort to self-help; but an elders' council, as the only legal authority common to both parties, is the preferred and frequent choice. Of the cases brought before elders' councils, quarrels between affines predominate (see table below) and primarily concern the non-payment of bridewealth debts.

Procedure in an Elders' Council

Arthur Champion, a District Officer in the British Colonial administration, observed the elders' councils of the Giriama and reported on them in his manuscript in 1914. Champion's perfunctory description of procedure at these councils agrees with my impression, with certain incidental changes brought by the passage of time. For example, the payment (kikiri) of two pots of beer and a goat to the elders as

CASES/ APPEARING BEFORE THE ELDERS' COUNCILS*

Type of Relationship Between Disputants	Types of Disputes										Total
	Sorcery	Kitko Sex Offenses	Bride-wealth Debts	Damage to Property	Assault	Theft	Rights to Children	Adultery	Total		
Husband-wife	-	-	-	-	-	-	-	-	-	-	1
Agnatic	1	3	-	-	-	-	-	-	-	-	4
Affinal	2	2	8	-	1	-	4	-	-	-	17
Neighbor	3	-	-	1	-	2	-	4	-	-	10
Stranger	-	-	-	-	-	3	-	-	-	-	3
Total	6	5	8	1	1	5	4	4	-	-	35

* This table includes only those cases that were personally observed and transcribed during 1972-73. The cases have been combined from five elders' councils. A numerical table is possible here because the accessibility of the elders' councils and the attitude of the elders permitted the recording of a sample of cases.

recompense for their hearing the case (Champion 1914:17) has been replaced by a five shilling fee (themo).

Champion also speaks of the practice of some disputants of having their cases heard by several councils of elders in different areas, until a decision favorable to them was attained by bribery (Champion 1914:18). This opportunism has been curtailed by the present requirement that accusers obtain written permission from each Location Chief for a hearing before an elders' council within the administrative location where the disputant resides. Champion also speaks of a time in Giriama history, also mentioned by my informants, when the decisions made by the kambi were enforced by the use of physical force, usually by driving recalcitrants into the isolation of the bush. The kambi elders have no such coercive power today, and the force of their decisions depends largely on the inclination of the disputants to abide by them or to enforce decisions themselves.

Councils of elders today vary little in their basic structure and the procedures they follow. The five councils which I visited regularly were composed of between four and six elders who met at least twice a week. But the council can be convened at any time,

if a dispute arises suddenly. When a council is in session, the elders sit in a line on a log or individual stools; the disputants sit on a rock before the elders, in the center of a circle created by spectators. The accuser and the accused are kept physically separated from each other by having only one disputant occupy a seat in the center of the circle or, alternatively, by having the disputants seated on separate rocks side by side to avoid eye contact and possible confrontation.

The basic procedure followed does not vary from one kambi council to another. The accuser always presents first his case to the elders, immediately followed by a reply from the accused. The accuser and the accused make lengthy opening speeches, are given complete freedom to express themselves, and attempt to reply or counter what the other has said before. Each disputant has the opportunity to answer the other at least twice, before the elders intervene and begin to play an active role. There are thus at least two speeches given by each disputant without interference by the listening elders. When the accuser and the accused are presenting their initial speeches, they are strictly forbidden to interrupt each other; if either attempts to do so, he is silenced immediately by

the elders shouting him down. The speaker singles out one elder for this address and this provides a focus for his speech. The elder addressed responds in the customary manner of silent attentiveness and a frequent nodding of the head to indicate that he is listening. At the end of each submission, there may be a brief question from any of the elders to clarify a factual point, but at this time the questions are not combative or argumentative, as they can be in later phases of the hearing.

When the opening speeches by the disputants have been completed, the elders may question each disputant at length on any point that was raised during the initial speech. After this questioning, the disputants are told to go far away from the elders, who now hold their private conference (njama). During this conference, some of the male auditors who have been seated among the spectators are free to venture an opinion, but the elders dominate. When this discussion is finished and a decision is agreed upon, the disputants are hailed back, and the themo -- the fee to the elders for listening to the case -- must be paid by each disputant or the elders would refuse to give their decision.

Bringing a case to the kambi elders is completely voluntary, and herein lies both the strength and the weakness of the elders' councils. The only motive for paying the themo fee is the desire on the part of the disputants to hear the decision, and the elders' only sanction for non-payment of the fee is the withholding of the judgement. It is these voluntary elements that keep the elders' councils in operation but they also curtail their efficiency, for a disputant sensing an unfavorable judgement may withdraw the case from the council simply by refusing to pay themo.

When the themo fee has been paid, one elder delivers the judgement. Usually the same elder, who is noticeably quite fluent, is consistently selected for this task. Though individual styles of delivery may vary considerably, usually the basic facts of the entire case are reviewed as a preface to the actual decision, given at the end of the speech. The dispute does not necessarily end there, for while the elders clearly enunciate a legal decision, they do not enforce it. Decisions of the elders are enforced by the disputant who received the favorable judgement, by an interested group, or by the loser's fear of public opinion. We have seen in the Kahindi case above (Chapter Nine) how

effectively disputants can enforce an elders' council decision.

In the past, the secret society of the Vaya, a selected group of elderly men, had the authority to both adjudicate and enforce their decisions. The Vaya met frequently and, in former times, even held the power of executing offenders¹. Complaints about individuals who consistently indulged in antisocial behavior were brought to the Vaya by close relatives, and the Vaya had the right to decide whether the offender should be killed or not. The Vaya performed this execution themselves; they usually invited the offender, together with a friend of his, to a feast in the bush. The companion was invited to avoid any suspicion on the part of the condemned man. After the offender was intoxicated on coconut liquor, his companion would excuse himself to go and urinate in the bush. The Vaya would then strangle the offender, who had been rendered almost helpless by his inebriation. Today, the Vaya do not even listen to disputes and are largely a ceremonial organization (with the exception of a small group at Kaya Fungo, who listen to testimony

1. Execution by the Vaya was referred to by the pacific phrase kuhirika milalani, "to send to where the reeds grow."

before ordeals are given).

The Case of Sidi Simba --

Part One: At the Elders' Council

The case study which follows is a segment of a dispute that took six months to resolve; subsequent developments in the dispute will be picked up in later chapters. The excerpt below takes place after Sidi Simba, a female diviner, has been accused of sorcery by an mgonga-who-prays. The victim of her alleged sorcery is her brother Ngoa, who is also a diviner. Sidi's motive for engaging in sorcery is her purported jealousy of Ngoa's divining skill and his larger clientele. Sidi's legal accuser is another brother, Nyanje wa Simba. The part of the dispute presented here illustrates well the tactics an accused sorcerer may use; unlike the strategy employed by Kahindi (Chapter Nine), we shall see that Sidi Simba's challenge of her accusation is well within the confines of Giriama tradition and, in fact, depends on it. At this point in the discussion, however, the case is given to illustrate the function of an elders' council under particular -- but not uncommon -- circumstances: a disputant is an accused sorcerer and the accuser is a close patrilineal relative. It will be seen that

deciding the guilt or innocence of sorcerers is not within the jurisdiction of an elders' council. Further, a dispute between close agnates -- here a brother and sister -- is properly within the jurisdiction of the Village Head after such an accusation by an mgonga-who-prays is made. In this case, however, after the public accusation by the mgonga, the accused took the dispute into the public domain, to an elders' council.

After being accused of sorcery, Sidi Simba chose an acceptable response: she denied her guilt but she did not discuss the measures that she would take to prove her innocence with her relatives. Rather, she took the case directly to an elders' council and declared her readiness to go to the oracle to establish her innocence. In the meantime, however, she voiced some complaints about the way in which she had been accused. At the council, she attempted to cast doubt on the validity of her accusation. Although the elders gave a decision in her favor -- that Nyanje broke procedural rules in his dealing with diviners before the accusation, the ultimate question of Sidi's sorcery remained unresolved -- and could not be resolved -- by the elders.

* * *

Sidi Simba opens the case:

One day last week, my brothers had a meeting in our village. I soon found out the topic of the meeting, for two days later an mgonga-who-prays came to our village and found that I, Sidi Simba, was a sorcerer.

When the mgonga had left, my brothers came to my house and said, 'You have been found a sorcerer, you have used medicines against our own brother Ngoa. Since you are one of us, we would like to settle the matter now. If you pay us the cost of bringing the mgonga-who-prays, everything will end.'

Now I answered my brothers that I did not just refuse to pay the money that they asked for, but that I refused because I did not accept the fact that I was a sorcerer.

Elder: Nyanje, can you answer to what Sidi has said?

Nyanje: Now I do not know why Sidi is making all of this fuss. How could the mgonga have made a mistake? He lives very far from our village. He had never met Sidi before. He never knew that one of my sisters is called Sidi Simba. Nor was the ngoma played in darkness, in a house. No. It was played in daylight, in front of hundreds of people. So for her to deny that she is a sorcerer is nothing but rudeness and defiance.

We did not want to bring this matter before the elders and make it a big thing, for after all, Sidi is our sister.

I was very surprised that Sidi has denied that she is a sorcerer, for I made sure that there would be no ill feeling: I did everything right. I consulted several wagonga-of-the-calabash who lived far away so that they would not know who we were, but I was not satisfied even then. So I went to several elders near where I live, and I gave them money to consult wagonga-of-the-calabash too. When these elders came to me with the

information that Sidi was a sorcerer, I brought an mgonga-who-prays.

Now Sidi has brought me before the elders. What does she want?

Nyanje's response to Sidi's speech emphasizes that he followed the proper procedure in accusing her by consulting several wagonga-of-the-calabash, and by procuring an mgonga-who-prays from very far away. Nyanje thus attempts to undermine Sidi's denial of her guilt by calling attention to the precise and correct steps he followed which culminated in Sidi's accusation.

Sidi: I think that all of the elders know the rules which are followed when someone wants to bring an mgonga-who-prays. A person from the sick person's village does not go; the person who goes to get the mgonga is someone who does not live in the village, is unconcerned with the matter, and knows nothing about the sickness. I was very surprised to learn that it was my brother Nyanje himself who went to get the mgonga-who-prays. Also, Nyanje consulted only one mgonga-of-the-calabash before he gave money to the others to consult two more. He should have consulted at least three or four wagonga-of-the-calabash before he called on others to help. So I will tell you, my brother, that it will not be easy for you to get any money from me.

Do not try to be kind to me by settling this matter in our village, because I am your sister. It is not wise for you to have compassion for a sorcerer! Because if I am really a sorcerer, and I give you the money you ask for, I will be very angry and try to kill you! The only thing you can do is to prove that I am really a sorcerer, and then stop me from harming any other person in our village or anywhere else.

You said that you did not want me to bring you before the elders because that would make the case more serious. But what could have been more serious than the mgonga-who-prays whom you brought? Here there are only a few people, a few elders and some other people listening to the case. But at the ngoma, hundreds of people surrounded me, and shouted that I was a sorcerer! If I could stand that, why shouldn't I be able to stand this hearing here?

You say that you are sad, because I, your own sister, have been accused of being a sorcerer. But if you had really wanted to treat me as a sister, when you first found out from the mgonga-of-the calabash that I was a sorcerer, why didn't you call my brothers and sisters and report to them that you found that I was a sorcerer? Within that small circle, you could have tried to stop me from harming the village. If I was defiant, then you could have gotten the mgonga-who-prays to come. But you never told me, 'My sister, you are doing a bad thing, and because you are my sister, I would like you to know you are spoiling your reputation.' Instead, you got an mgonga-who-prays to come without telling me, and when the mgonga came, I saw you pointing me out to him, telling him that I was the sorcerer. So how do you expect me to agree to giving you money?

Anyway, why should I try to kill Ngoa? He has no money. He is not married. He is the poorest of all the people living in the village. If I were really a sorcerer, I would have tried to kill you, Nyanje, because I would have gotten something out of it. If I killed you, your wife would go home, and then maybe I would get part of the bridewealth. But do you really think that I am stupid enough to try to kill someone when I would get nothing out of it?

Sidi's denial that she is a sorcerer rests not only

on mere protestation, but on the enumeration of Nyanje's incorrect behavior in accusing her. Sidi directly contradicts Nyanje and states that Nyanje consulted only one mgonga-of-the-calabash. Sidi also reveals that Nyanje went to get the mgonga-who-prays himself, a suspicious action in itself. The elders pursue these allegations by vigorously cross-examining Nyanje:

Elder: Is it true that you yourself went to get the mgonga-who-prays?

Nyanje: Yes, I did go myself.

Elder: Why did you go yourself? It is possible that when you went, you may have told the mgonga that Sidi was the sorcerer. You were already convinced of that, is that not so?

Nyanje: Yes.

Elder: Who can believe that when you went to get the mgonga-who-prays, you did not tell him that Sidi was the sorcerer? We still ask you, that when you went there and got the mgonga-who-prays, who did you think was the sorcerer?

Nyanje: I thought that Sidi Simba was the sorcerer.

Elder: So if the mgonga had come and caught another person, would you really have been happy with that decision?

Nyanje: I think that I would have agreed, because I did not tell the mgonga anything.

(Elders all laugh)

Elder: We have suspicions. You did not follow the correct procedure. You went to get the

mgonga yourself. You should have sent someone else.

Nyanje: I did send others to get the mgonga, but no one succeeded in bringing him.

Elder: Then what trick did you use in order to get the mgonga to come, if others could not bring him?

Nyanje: There was no trick! He came because I said I would pay his fee.

Elder: When you mentioned money, did you try to bribe the mgonga?

Nyanje: What are you saying? How has the question of bribery come in?

Elder: You have led us to suspect that you bribed the mgonga because you told us that after others were unsuccessful, you succeeded in bringing the mgonga yourself. We wonder, what made him come? Extra money? A bribe? What was it?

Nyanje: I cannot say anything more to you. You know that when someone has a person sick in his village, he is sad and desperate. He does all that he can do. He gets wagonga-of-the-calabash and the mgonga-who-prays to find out what the problem is.

Elder: We are turning to you, Sidi Simba. We want you to tell us what you want to do. When I asked you that question before, you told us that it was up to us. Why should we tell you what to do? Were we the ones 'caught' by the mgonga-who-prays? You are the sorcerer, so you must tell us what you want.

Sidi: What I want is for Nyanje to give me an ordeal. Take me to the Oracle of the Pawpaw. That will prove if I am a sorcerer or not. If I am 'caught' by the oracle, I will do whatever Nyanje tells me.

Elder: I feel that Nyanje did a very wrong thing by bringing the mgonga-who-prays himself. The accusation is wrong.

Elder: Elder, you are just making the case more difficult. Sidi wants to go to the oracle, and what she has said is right. If a person has been caught by an mgonga-who-prays, and he feels that the mgonga is wrong, the only thing to do is to go to the oracle. So let us have Sidi go to the oracle, instead of having Nyanje get another mgonga-who-prays.

* * *

When the disputants Nyanje and Sidi Simba are absent from the circle of elders, the private discussion among the elders is brief. The elders quickly agree that they should ask Sidi and Nyanje to proceed to the oracle. The elders debate whether or not they should send the disputants to an inexpensive oracle or to the "pawpaw" oracle at Kaya Fungo, given at an expensive 200 shillings each. The elders decide, for unstated reasons, that the oracle of the pawpaw is suitable.

The disputants are called back and the judgement begins, after the disputants pay five shillings themo, the fee divided among the elders for hearing the case.

The judgement begins in the usual way, with the call for attention:

Elder: Sumilani kambi!

Other elders: Hae.

The elder begins the judgement by giving a lengthy summary of the history of the case, including the

conflicting testimony of Sidi and Nyanje. He concludes with the elders' decision:

We elders believe in the mgonga-of-the-calabash, in the mgonga-who-prays, and in the oracle. We feel that Nyanje did wrong when he went to get the mgonga-who-prays himself. This mgonga should have been sent by someone from another village.

We have come to a decision. We have decided not to refuse you what each of you wants to do. Sidi Simba wants to go to the oracle. Nyanje has agreed to go also. They shall go. This is what the elders have decided.

A Commentary on the Case

The case of Sidi Simba illustrates the judicial steps taken following a deep rift between close agnates. The charge of sorcery is serious in itself, but the fact that Sidi Simba was publicly accused rather than being approached by relatives in the privacy of the village indicates Sidi's social -- and legal -- exclusion from the village. Thrust outside the confidence of the circle of her close relatives, she retaliated by bringing Nyanje before an elders' council, a clever detour on the way to seeking the oracle's decision, for there was always the chance that the elders would nullify the sorcery accusation. At the council, the bitterness between Sidi and Nyanje was obvious. Thus, despite the close agnatic relationship between them, the elders made no attempt to reconcile

brother and sister. Furthermore, reconciliation -- or any form of dispute settlement -- can occur only when the disputants accept each other's positions. Settlement was clearly impossible here, for Nyanje believed that Sidi was a sorcerer and she was steadfast in her denial.

The entire question of whether in fact Sidi is a sorcerer was not pursued by the elders, for they clearly felt that it was not in their jurisdiction to decide this matter. Sorcery is in the realm of the supernatural, and its investigation must be in the hands of the diviners and, finally, the oracle. What is in the elders' jurisdiction, and the matter that they pursue vigorously and authoritatively, relates to procedure. But even here, in the final analysis, the elders followed a non-controversial course of action. The elders verbally buffeted Nyanje for bringing the mgonga who prays, to his village himself, but they retreat from demanding that the accusation process be repeated. In their final decision, the elders affirm the only acceptable course of action: that an accused sorcerer has the right -- and also the obligation -- to take an ordeal to prove his innocence if he has denied guilt. The elders clearly recognize procedural irregularities

as a source of an mgonga-who-prays's fallibility, but rule that the validity of the accusation is not to be ascertained by them but by the oracle.

A Marital Dispute Before the Elders:
The Case of Kadzo Shungu and Ngari Yaa

When Kadzo Shungu, wife of Ngari Yaa, appeared with her elder brother before the elders' council, she did not accuse her husband of any offense; indeed, she could not, for he had done nothing that was not within his rights. He had beaten her, and when Kadzo had fled to her brother's hamlet (her father was dead), Ngari did not follow her there, as is the custom, to initiate a reconciliation. Kadzo had been with her brothers for six months when she learned that her husband was building a new house. Knowing that Kadzo would lose her position in the household if the house was initiated sexually with the other wives in the absence of Kadzo, Kadzo's older brother accompanied her to her husband Ngari's hamlet. When Kadzo, her brother, and Ngari sat down to discuss the matter, the brother remarked that "this is a sick and divided village." Ngari was enraged and chased Kadzo and her brother from his hamlet. Ngari's new house was duly built and initiated without Kadzo. It was at this point that Kadzo brought

the matter to the elders' council and petitioned them to find out why Ngari had abandoned her. She said that she still loved Ngari and wanted to return to his hamlet.

When this case reached the elders' council, it was apparent that the preferred methods of settling marital disputes had failed. Ngari had ignored the option of following Kadzo to her brother's hamlet and had rebuffed their attempt to approach him in his own. Finally, Ngari stripped Kadzo of her conjugal status by initiating his new house without her. Although Ngari had not yet demanded the return of Kadzo's bridewealth, he had thus made it clear that he did not want her back. When he appeared before the elders, Ngari announced that Kadzo's strategy in bringing him there was inappropriate, futile, and insulting.

Ngari: How can one ask for friendship by accusing before the elders? I cannot believe a woman has accused me! And worse still, my own wife! For me to be accused by my wife is unthinkable. If I consent to stay with her, she will be arrogant, for the elders put pressure on me. My staying with her would be a forced stay, not a willing one.

The elders encourage the couple to reveal the details of their problem. Although the testimony quickly reveals the particular conflict that resulted

in Kadzo's flight from the hamlet, the elders allow Kadzo and Ngari to expound on their total relationship. Their testimony reveals that Kadzo and Ngari have been married for many years. Kadzo has borne six children, all daughters, who are now married. With these daughters' bridewealth, Kadzo claims, Ngari procured several other wives: he now has seven. Kadzo, who is Ngari's third wife, says that her fecundity -- particularly in bearing daughters -- brought prosperity to the hamlet, and caused the senior wives to be jealous of her. It was Ngari's first wife, in fact, who caused the separation of Ngari and Kadzo: when Ngari returned from the fields one evening, the senior wife reported that Kadzo had beaten a junior wife. Without inquiring into the matter (as he readily admits), Ngari went directly to Kadzo and beat her. He did this, Ngari says, because he is always receiving reports that Kadzo is bossy and mistreats the junior wives.

The testimony reveals that there is a long history of conflict between Kadzo and Ngari: Ngari has beaten her before, and over the years she has sustained a broken arm and a lost tooth for her outspoken manner and defiance. As Ngari says:

When I tell her to do something, she ignores it. All the other wives obey, but she defies me. There cannot be two bulls in one village.

Kadzo counters by saying that she cannot be that defiant because, after all, she has borne Ngari six daughters. She concludes by pleading that she is now beyond her childbearing years and should be allowed to stay in the hamlet to enjoy the fruits of her labors. Ngari, however, makes it clear that he is more interested in having a peaceful hamlet and Kadzo just causes trouble. Furthermore, he says, his new house has already been initiated; alluding to the disease kitio, he says that "it would be dangerous to me and to everyone else if she goes back to the village."

Although the elders have allowed Kadzo and Ngari to speak freely, when the testimony is over, the elders have little material with which to promote a reconciliation. Kadzo and Ngari are sent away, and the elders begin their private conference in preparation for the judgement. An elder who lives near the couple provides an intimate, detailed description of the strife within the village. Compared with his contribution, Kadzo and Ngari have been speaking in generalities:

It is true that the senior wife is very jealous (of Kadzo). She feels that her husband loves this Kadzo so much that her

relationship with Ngari suffers. Also, Kadzo has given birth more. We do know that Kadzo speaks rudely to her husband and to the other wives, but the senior wife is doing all that she can to make sure Kadzo is chased from the village.

I have an idea that Ngari is being made a fool of by his other wives. When he comes from the garden, he is told many tales about Kadzo -- which are untrue -- and he beats her. Anything that goes wrong in the village is blamed on Kadzo, for she is Ngari's favorite wife. A long time ago, when the senior wife's children stole eighty shillings from Ngari, he was told that Kadzo stole it. He was going to take Kadzo to an oracle, but the senior wife stopped it somehow. Ngari just beat Kadzo and forced her to pay him the eighty shillings without any proof. It is clear that there is a movement in the village to make Kadzo hated.

The senior wife is very bad. She has used sorcery to make Ngari love only her. When Ngari goes to Kadzo, he is impotent. There is no proof of sorcery, but that is the gossip of the village. In fact, Ngari is not acting like himself; he must be under the influence of sorcery.

Another elder: Yes, Ngari must be under a spell. He has even forgotten the customs. He thinks it is impossible to bring Kadzo back after his house has been initiated. We know that even among us here, there are elders who can bring medicine and restore the order (of the wives).

The elders further conclude that in order to placate Ngari, Kadzo should be reprimanded by being told to bring Ngari an offering.

Significantly, the elders' judgement is founded

on information learned in their private conference rather than on the public testimony of the disputants. The strategy of the judgement is clever: the elder delivering the judgement sets the stage for reconciliation by equalizing the positions of Kadzo and Ngari. Knowing that Kadzo is the weaker party, he tries to strengthen her position. Thus, Kadzo is portrayed as the innocent victim of her jealous co-wives and Ngari as their unwitting instrument -- not because of stupidity, the elder hastens to say, but because his wives are blinding him with feminine wiles and sorcery. To soften Ngari's anger at being brought before the elders, the elder emphasizes that Kadzo "did not accuse her husband . . . she just came to ask the elders to restore their lost love", and requests her to give Ngari two kadzamas of coconut liquor, one rooster, and a basin of maize meal. Finally, the elder reproves Kadzo for her past behavior and advises her on how to behave in the future:

Kadzo, I have a full knowledge of your behavior, of your bitter tongue and disobedience. When you go to your husband, behave! Prove that what the people of the village say is wrong. Do not fight with the other wives: respect and be obedient to your husband, reason with him, and do not fight openly.

The elders' conclusion that Kadzo has, in fact, behaved unacceptably -- despite evidence of sabotage by her co-wives -- supports the council's conciliatory efforts. For Kadzo is eager for reconciliation and Ngari is not; and only Ngari has the power to effect a reconciliation. Kadzo is thus more amenable to being chastized and this can only improve Ngari's state of mind. Offended at being brought before the elders by his wife, Ngari must be assured that he is justified in being angry with Kadzo; he can then afford to be forgiving without danger of humiliating himself.

Ultimately, the elders' council failed. After the judgement, Ngari said that he would take Kadzo back, but that he would have to build her her own house, separate from the other wives. In the meantime, Kadzo was to continue to live in her brother's hamlet. Five months later, the situation was unchanged and the local elders doubted that it ever would.

The question remains: why did the elders handle this case at all, much less attempt a reconciliation? One answer is obvious: the elders' councils never refuse to hear a case, partly because adjudication is a lucrative source of income. Furthermore, the elders' councils are as objective as any judicial institution can be and as such do not encourage the continuation of

conflict or the rupture of relationships. Unlike a Village Head, an elders' council has no personal or group interest to protect through their legal decisions. Yet the elders' councils -- with personnel drawn from the local community -- combine objectivity with an intimate knowledge of the disputants' lives. The elders failed to resolve the conflict between Kadzo and Ngari, but it is clear that the dispute, having already bypassed other opportunities for settlement, was already insoluble when it reached the elders.

In-laws Before the Elders:

The Case of Changawa wa Ngonyo and Jivu

In this case, the decision of the elders' council provided an effective foundation for dispute settlement. The accuser, Changawa wa Ngonyo, is the father-in-law of the accused Jivu. At the council, Changawa accused Jivu of breaking a contract: when Jivu married Changawa's daughter three years earlier, he agreed to pay 3,000 shillings bridewealth. At that time, Jivu paid 2,000 shillings and agreed to pay the remainder -- called kisalire -- at a rate of 50 shillings per month. Jivu gradually paid 600 shillings, but for the last eight months, the payments had ceased. Exasperated when his repeated demands for payment fell on deaf ears,

Changawa went to Jivu's hamlet, beat him, and took his daughter back to his hamlet.

When this case appeared before the elders' council, circumstances favored a settlement by the elders. Changawa had already resorted to self-help, but it was clear that this action was futile, for Jivu simply did not have the money². A new contract was needed taking into account Jivu's present financial situation; the elders' council, as the only neutral legal authority recognized by both parties, was in a good position to negotiate a new agreement. The elders' task was further simplified by the fact that proving the breach of contract was unnecessary, for Jivu readily admitted his debt.

* * *

The elders begin by investigating an alternative solution to the problem: divorcing Changawa's daughter and Jivu. The elders ask Changawa: does he want to keep his daughter and refund Jivu the portion of the bridewealth already paid? Changawa rejects this proposition, saying that he has already spent the bridewealth that he received and it would be difficult

2. The testimony revealed that Jivu's bridewealth payments had been made by his father's older brother (his own father was dead), and that there had been a recent rift between the two, causing the father's brother to withdraw his support.

to find another husband for his daughter to provide the refund. Jivu testifies that he does not want to divorce his wife. Changawa's daughter is summoned from a nearby meadow where she has been waiting; after remaining silent with downcast eyes, she finally tells the elders that she loves Jivu and if she remains with her father, she will never marry again. Thus, the only solution acceptable to all parties is the arrangement of a new contract between Changawa and Jivu, whereby Jivu would agree to pay his debt.

When the disputants have been sent away, the elders confer and add their personal knowledge of the case to their deliberations. One elder brings out that Changawa simply does not like his son-in-law and this prompted his aggressive behavior. Changawa, in fact, had forced his daughter to marry someone else before Jivu, but she had abandoned this husband and run away with Jivu. The elders agree that Changawa is being unduly harsh in demanding the payment of the debt at this time of year, at the end of the dry season, when stores of food are almost exhausted, livestock emaciated, and the planting not yet begun.

At the judgement, the elders upbraid Changawa for beating Jivu and for his selfish and greedy motives

in breaking up his daughter's marriage. The elders, however, emphasize that Jivu is the primary wrongdoer, for he is the debtor and is obligated to pay. An elder begins the judgement.

Elder: Sumilani kambi!

This is a case between Jivu and his father-in-law Changawa wa Ngonyo. We know that in the customs, a mutsedza (in-law) is respected so much that he is not even called by his own name . . . but here we see that Jivu and Changawa are on such bad terms that Jivu addresses his mutsedza as 'Changawa'!

Changawa, we must warn you. The action you took the other day of beating your mutsedza was terrible. I am warning you. Do not fight anyone! If you have trouble, bring the matter to the elders.

Changawa, I know well that you do not like Jivu. We know that you did not want your daughter to marry him. And yet you collected bridewealth. You are only interested in money. You do not understand that although your daughter is a property, she is not like an animal. You went and acted as if your hen or your sheep had been stolen. You regard your son-in-law as a thief because he has not finished paying the bridewealth. Although you are right, the actions you took were wrong.

Now we will discuss you, Jivu. You were beaten by your father-in-law because you didn't pay the bridewealth. Do all that you can to pay it, and avoid future suffering and worries. Our decision is to make you agree, here before the elders, to begin paying the remainder of the bridewealth after the next harvest. We do not think that you will deceive the elders.

Is this what we have decided, elders?

Elders: That is what we have decided.

The disputants readily agree to this decision, and Changawa returns his daughter to Jivu in the presence of the elders by taking her hand and placing it in Jivu's.

Conclusion: Elders' Councils and the Judicial Process

The elders' councils are groups of men expert in the law. It is evident, however, that the elders draw upon sources other than the law -- or even the testimony of disputants -- when crafting their decisions. The content of the elders' private discussions prior to judgement reveals an impressive store of knowledge about disputants drawn from personal experience and gossip. The elders use this supplemental information in deciding what their decision will be -- and, most important, in plotting the strategy of their presentation so that their decision will have maximum psychological impact. Because the elders have no personal interest or stake in the outcome of the disputes before them, they thus often combine neutrality with an inside knowledge of disputants' lives. This combination places the elders in an advantageous position to settle disputes.

The elders' success in settling disputes is variable, however, and is largely predetermined by the

relationship between disputants. We have seen that when the disputants who are married or have a close patrilineal relationship appear before the elders, this in itself indicates the seriousness of the rift. In such cases, the prognosis for settlement is poor because the disputants' relatives have either failed to settle the dispute, or a disputant's distrust of his kin has caused him to look for redress elsewhere. These circumstances in turn may indicate the gravity of the alleged offense or the complete disinterest of one of the parties in preserving the relationship. Under such circumstances, the chances for settlement are slim, but not because of any inherent weakness or apathy on the elders' part. In fact, as we have seen, the elders vigorously pursue the issues regardless of the chances for settlement, and disputants speak more freely before an elders' council than they do, for example, before a Village Head.

Elders' councils are potent legal authorities -- and actually settle disputes -- when cases are within their sole jurisdiction. Thus, the elders are most effective when the disputants recognize no other common legal authority, as in the cases of Changawa, above, or of Kahindi (Chapter Nine). The elders also settle

disputes when there is no need for recourse to superior legal authority to establish guilt or innocence. In Sidi Simba, for example, the elders could not rule on the issue of alleged sorcery, for proof of this offense is a function of the oracles. However, when a disputant admits his offense (as in Changawa) or the existence of an offense can be established with evidence presented to the elders, the elders can decisively render a decision.

The elders do not enforce their legal decisions. Their decision gives the aggrieved party the right -- and the public approval -- to enforce the decision himself; if necessary by physical force, if an offender defies the decision (as in Kahindi). The elders' decision is thus a kind of public notice of disputants' rights and obligations, and community opinion is a powerful force encouraging compliance.

The elders' primary function is adjudication, and they unambiguously decide cases on their merits. Efforts at reconciliation are subsidiary to this end, but, in the interests of restoring social relationships, the elders may strengthen, though in a subtle manner, the position of a disputant to secure his cooperation, even when he is ultimately identified as the party at fault (as they did with Ngari in the Kadzo Shungu case).

PART FOUR: SEEKING SUPERNATURAL REDRESS

INTRODUCTION TO PART FOUR:

ORACLES AND MIZIMU IN THE JUDICIAL PROCESS

We have seen how disputants turn to kin and community secular adjudicators such as Village Heads and the councils of elders. It is also possible, however, for disputants to turn directly to supernatural adjudicators -- the oracles and the mizimu tree -- immediately following an accusation. In such instances, there will have been no testimony presented by either disputant before any legal authority, nor any legal decision made. Alternatively, it is also possible for either disputant to go to an oracle or to the mizimu tree if he has received a legal decision and is dissatisfied with it. Thus, these supernatural adjudicators may function either as courts of the first instance or as courts of the last resort.

The decision of the mizimu is more final and irrevocable than that of the oracles, for the spirits that dwell at the mizimu tree are seen to deliver their decisions by action -- by inflicting death on the offender. Both oracles and mizimu, being supernatural adjudicators, have greater authority and prestige -- and are more feared -- than their human counterparts.

CHAPTER TWELVE:

VIRAHO: ORACLES AND ORDEALS

The term kiraho (pl. viraho) refers to a supernatural force -- manifested by medicines -- from which decisions are received and otherwise unobtainable information is revealed. Hence, a suitable gloss for kiraho is "oracle". The decisions of an oracle pertain most often to transgressions by human beings and are expressed by making offenders sick and bypassing the innocent. Thus, when a person is "caught" by an oracle, the decision, in essence, is that he is guilty of some offense.

A person is proclaimed guilty after he reacts unfavorably to specific types of medicines. Medicines of the oracles are used in several ways. For example, medicine may be placed in a garden or a house and formally told to "catch" a thief or trespasser by making him sick. These medicines need not have physical contact with the offender; the person need only venture within the boundaries protected by the oracle and become subsequently sick to be proclaimed an offender. There are about twenty oracles of this type, depending on the different kinds of medicines and other apparatus

used, that all protect real and personal property by deterring and apprehending offenders.

In another context, an oracle decides the relative merits of disputants' claims through their physical reactions to an ordeal. There are several types of these oracles and their associated ordeals. In all of them, the participants must come into physical contact with the medicine used in each particular ordeal. This medicine, composed of leaves and roots mixed with water, is poisonous when ingested in an ordeal. The poison is not fatal (all ordeals having a fatal effect are now illegal) but it irritates the digestive tract, causing swelling, vomiting, or diarrhea in the "guilty" person. In the ordeal in which a red-hot wedge of iron is passed over the hand of the contestant, the hand is first washed with medicine, but the precise action of the medicine remains unknown. The ingredients of the medicines used in these ordeals vary, and are kept secret by the mgonga who owns the oracle and administers the ordeal.

Medicines have a widespread and varied use in Giriama society, and they are, legally, the exclusive province of the wagonga. Medicines employed for harmful purposes are, by contrast, the domain of sorcerers. The individual who administers ordeals is always a

male mgonga. Unlike the diviners, the wagonga of the oracles usually purchase the formulae for the medicines to be used in the ordeals. These formulae may be passed from father to son, but this arrangement is informal, and the ownership of the oracle is (with the exception of the Oracle-of-the-Hot Iron, which is inherited within the Mwakombe clan) not governed by rules of inheritance.

The medicine to be used in the administration of an ordeal is carefully prepared in secret by the mgonga, but it is, at that point, an inert substance. While it is the medicine that reveals an offender, or alternatively, a false accuser, by causing physical discomfort in various ways, the medicine, to become an active oracle, must be instructed (kukotera) orally by the disputants taking the ordeal.

Most frequently, ordeals are taken by both the accuser and the accused, after the accused has been fully informed of the charges against him. If he elects to deny the charges, the accused may demand to be taken to an oracle; conversely, but rarely, an accuser -- enraged by the denial and the implicit counter-charge of defamation -- may demand that he be taken there.

An ordeal, however, does not require the participation of both the accused and the accuser. In general, taking an ordeal is a voluntary act, particularly on the part of the accuser, who holds a tactical advantage by having made the accusation. For this reason, the accuser usually does not take an ordeal alone to prove the truth of his accusation. The accused, however, often takes the ordeal alone, in the absence of his accuser; this act is known as kudzagesa, or "to wash oneself", in order to prove one's innocence. Taking the ordeal alone does not diminish the validity or importance of the ordeal's outcome, and is an important defensive weapon for a person faced with an accuser who himself refuses (as he legitimately can) to take an ordeal. Finally, if the dispute has already been adjudicated, the party who has received the unfavorable verdict may appeal to an oracle and take the ordeal alone.

There are considerably more pressures on the accused than on the accuser to initiate the taking of an ordeal. He has been accused, his reputation is at stake, and a refusal to take defensive action in the face of an accusation may imply guilt. The "voluntary" nature of taking an ordeal is somewhat diminished, then, for an

accused person who is seen as tacitly admitting his guilt if he refuses to take it. The outcome of an ordeal may be the only viable defense open to him. Moreover, the freedom of choice of the accused may also be constricted by the relationship between him and the accuser. For example, an accuser may have enough authority over the accused, outside of the context of the dispute, to demand effectively that the accused take an ordeal. This is particularly the case when there are kinship ties between accuser and accused -- e.g., when they are in a husband-wife or Village Head-village resident relationship.

Supernatural help from the spirits and the ancestors is invoked before an ordeal is given, but this is viewed as help to oversee the procedures of the ordeal. The ancestors may be called upon because of their experience in administering a particular ordeal; their past wisdom is sought to give further help in the present. The spirits and the ancestors, however, are not thought to affect the outcome of the ordeal. They are not called upon to give judgement, although the invocations clearly indicate that the ancestors are believed to know, before an ordeal is given, which disputant is guilty. But the responsibility for the outcome of the

ordeal is not theirs, but the oracle's.

At the oracle, when both accuser and accused are present, the accused invariably addresses the oracle directly; he denies that he committed the offense and instructs it to inflict pain or sickness on him (depending on the type of oracle) if he is lying about his innocence. The accuser, taking the ordeal together with the accused, similarly instructs the medicine to afflict him with pain or sickness if the accusation is a false one. When neither accused nor accuser is "caught" by the oracle, the accepted interpretation of the oracle's decision is that the accused is innocent and the accuser's allegations have no foundation, but through no fault of his own. Such an interpretation is possible only when the accuser has depended on diviners whose evidence may be discredited by the superior verdict of the oracle.

Perhaps because of the speeches by the disputants addressing oracles, this type of kiraho is referred to by English-speaking Giriama as an "oath." It is not exactly accurate to label a kiraho an oath, although surface similarities to swearing an oath are apparent. The words spoken before the ordeal, however, seem to be merely a specialized form of the general practice of

exhorting medicines to activity. Thus, when one swears to speak the truth, the swearing is part of the wider context of instructing the medicine by describing the conditions under which the oracle should "catch" the speaker.

The physical reactions of the accuser and accused indicate the oracle's decision, but this decision is also verbalized by the mgonga who "owns" the oracle. Disputants' physical reactions to the ordeal as indicators of guilt or innocence cannot be arbitrary, for there would be little respect for an oracle's decision that had no basis in the realities of the situation. We have already seen that diviners claim to relay messages from the spirits; but such information is credible and acceptable because it smacks of truth, for its source is actually the diviner's personal knowledge of local lore and his clever interrogation of clients. Oracles, however, are dispersed over a wide territory; it is not unusual for disputants to travel eighty miles to receive an oracular decision. When they arrive at the oracle, then, it is probable that neither the disputants nor the facts of the case are known to the administrators of the ordeal. It will be seen, however, that the wagonga who administer the ordeals insure that all the facts of the dispute are revealed

before the ordeal is given. At the pre-ordeal hearing, both disputants present their testimony regardless of whether or not they have presented identical testimony to a previous adjudicator. The case is heard de novo.

It will be clear from the case studies presented below that the outcomes of the ordeals and hence the decisions of the oracles are consistent with the weight of the evidence. How this consistency is achieved is difficult to ascertain, but tentative explanations, admittedly based on hearsay and speculation, can be suggested. In all oracles, there is an appreciable lapse of time -- sometimes up to twelve hours -- between the presentation of testimony and the administration of the ordeal. This hiatus gives the wagonga and other elders hearing the case the opportunity to weigh the testimony and decide who is guilty. Such speculation is strengthened by remarks made by wagonga to me -- possibly out of jealousy -- about competitive oracles. Wagonga invariably assert that the decisions of the oracles that they own come straight from the oracle itself, but that other oracles are really the decisions of men. Thus, an mgonga who owns the Oracle-Which-Finds-Out informed me that the outcome of the Oracle-of-the-Pawpaw is predetermined by the mgonga, who gives a piece of poisoned fruit to the disputant

believed to be guilty, and an unpoisoned piece to the party he thinks is innocent. Conversely, the mgonga who administers the Oracle-of-the-Pawpaw told me that the mixture of coconut liquor and poisonous leaves used in the Oracle-Which-Finds-Out is given first to the party believed to be guilty, when the medicine is still potent; the leaves are not replaced with fresh ones, and the infusion is harmless when the "innocent" party drinks. There was, however, no explanation for the mechanism regulating the Oracle-of-the-Hot Iron. To the disputants, of course, the decision is the oracle's alone, but the authority of the oracle can only be strengthened if the decision is consistent with the evidence.

There are three types of oracles that we will discuss here: the Kiraho cha Papayu (the poison Oracle-of-the-Pawpaw) given at the Giriama village of origin Kaya Fungo; the Kiraho cha Mwalola (the poison Oracle-Which-Finds-Out), also administered by several wagonga scattered throughout the Giriama territory; and the Kiraho cha Tsoka (the blistering Oracle-of-the-Hot Iron). Case studies will be presented in order to describe the oracles in detail, as well as to illustrate their role in the judicial process.

The principal function of an oracle is to decide the merits of cases; its ultimate, ideal function is dispute settlement. Oracles do not differ from each other in any significant aspect, but only in relatively minor features such as the type of apparatus used. The merits of any type of case that cannot be decided by prima facie evidence can be decided by any oracle. Thus, although in the following chapters each oracle is presented with a case study, these cases can be viewed as largely interchangeable. Different types of disputes are presented to show how the details of each dispute -- such as its history, the relationship between disputants, their attitudes and motivations --- affect the outcome of the oracles and hence their "actual" role in the judicial process.

CHAPTER THIRTEEN:

THE ORACLE-OF-THE-PAWPAW

The Setting of the Oracle

The Oracle-of-the-Pawpaw is administered in the Giriama village of origin, Kaya Fungo. This fortified village, or kaya, is named after a man Bimboro Fungo, who is said to have led the few surviving Giriama to this still-secluded site after their wars with the Galla. These survivors cultivated their crops within the kaya, which extends over several acres, while the tall forest trees surrounding the kaya were never felled, affording the Giriama a natural protection. Even today, the forest surrounding the Kaya Fungo rises out of the surrounding bush like an island.

In the days of Bimboro Fungo and his immediate descendants, before the dispersal of the clans outside the kaya some eight generations ago, the Vaya, the members of the secret society, held considerable political power. As already mentioned, they adjudicated disputes; they also regulated seasonal activities such as the planting and harvesting of the maize crop.

In their role as administrators of justice, the Vaya were the owners of the secret medicine used in

the oracle called the Kiraho cha Fisi, the Oracle-of-the-Hyena. The oracle was named "hyena" because it made the stomach swell up and the "guilty" person, in his death throes, howled like a hyena. The oracle was outlawed by the Kenya colonial government.

Today, the Kaya Fungo is very sparsely populated, containing only six Vaya, together with their wives and children. They and their leader Pembe, who was chosen for his knowledge of Giriama customs, live in the traditional round huts with sloping sides thatched with long grasses. These Vaya and their families participate in the ceremony surrounding the oracle-of-the-pawpaw, although the mgonga who "owns" this oracle is not himself a member of the society of the Vaya.

The Oracle-of-the-Pawpaw, or Kiraho cha Papayu, is not a traditional Giriama oracle. In fact, the mgonga who administers it and who is the sole owner of the knowledge of its medicine's ingredients, was brought to live within Kaya Fungo only four years ago. This mgonga, Bwana Machuko, purchased the knowledge from the Kamba, who live to the north of the Giriama. The Oracle-of-the-Pawpaw was intended to replace the outlawed "Oracle-of-the-Hyena" in function and prestige. Bwana Machuko himself is known

throughout the Giriama country, and is widely praised. Disputants travel great distances to take the ordeal which he administers. A bystander at the Kaya Fungo during one visit told me that ". . . there is no other person in the whole of the Giriama country who knows the secrets and the art of giving the ordeal of the pawpaw . . . Bwana Machuko brought it to the land of the Giriama, and we are very grateful to him. He has sold it only to his son, and he has refused to sell it to anyone else, although the elders here at Kaya Fungo have tried to persuade him to do so. We think that his refusal to sell the oracle is very good, because if he sold it, it would spread throughout the entire country, and its effect would not be as important as it is now. When we sing songs when the ordeal is being given, many of the songs are in praise of Bwana Machuko for bringing the Giriama this oracle."

Bwana Machuko is a member of the clan Mukiza, one of the six original clans of the Giriama before fission proliferated the number of clans. He is a very old, ailing man with a rumbling cough deep in his chest; his failing health is, in part, the reason why the other elders of Kaya Fungo tried to persuade him to sell the oracle to a successor. His refusal has

caused ill feeling between him and the members of the Vaya secret society who live with him at the Kaya Fungo. Not a Vaya himself, Machuko speaks disparagingly about the secret society, and claims that the only difference between himself and the Vaya is that the latter will be buried in a goatskin-lined box at their death. He scoffs at the importance of this privilege by asking, "Have you ever heard of a Vaya who died and then came back to life from his box?" Bwana Machuko himself gave a sound economic reason why he refuses to sell the secrets of his ordeal:

. . . when I bought this oracle, the mgonga who sold it to me told me that I should not sell it to anyone living near my village, because owning an oracle means wealth. If I sold this oracle, it would mean that people would begin going to the other mgonga, who might sell it to yet others, and I would not get as much money. For this oracle is a source of great wealth. Since I bought it, I have become very rich. When I came to live at Kaya Fungo, Elder Pembe asked me to sell this ordeal to six other people, but I refused. I said that if I sold this ordeal to six people, what work would I be doing? That is why the elders of the Kaya and I do not get along very well; most of the money brought into the Kaya comes to me. For instance, look at this big calabash of coconut liquor. It was brought to me as a gift, not to the other elders . . .

* * *

The Case of Sidi Simba

Part Two: At Kaya Fungo

A little more than a week after the elders decided that she should go to the oracle to disprove the sorcery accusation levelled against her (cf. Chapter 11), Sidi Simba and her brother Nyanje travel to the Kaya Fungo. They approach the Kaya in a ritualized manner that all visitors must follow when they come to this sacred village. When visitors enter the narrow path that winds through the dense forest encircling the Kaya, they must remove any footwear or head covering. Midway along the shaded path, which is over a mile long, one encounters a pile of stalks of a green plant in various stages of wilting and decomposition. Visitors passing this point must pinch off a piece of this plant, which grows in profusion along the sides of the path, and place it carefully on the pile, to ensure that he will pass a restful night within the Kaya. Two-thirds of the way along the path, one encounters the first of three "thresholds" to the Kaya: broad, flat rocks imbedded flush with the soil, flanked on either side by tall, thick trees where sentries were stationed in former times to watch for marauders attempting to enter the Kaya. Visitors crossing these thresholds

are warned to step carefully, for stumbling on the stones will bring misfortune. The last threshold is located at the entrance to the Kaya Fungo.

As Sidi Simba and Nyanje wa Simba step into the clearing that is the Kaya Fungo, they pass an ancient, gnarled baobab tree. The clearing near the edge of the forest is untilled, with scattered patches of pineapple plants. The visitors pass the grass houses of the women and present themselves to the head Vaya, Pembe Bembere.

The Vaya, the secret society of elders, must be collected to hear the facts of the case before the ordeal can be given at 5 A.M. the next morning. It is late afternoon and the elders have been drinking coconut liquor steadily for hours, but they are at last collected on logs in front of the house of Elder Pembe, their leader. One of the elders, who is the clerk of the Kaya, sits with a pencil and notebook, and records the proceedings phonetically in the Giriama language, although it has no standardized writing system. An elder from Sidi Simba's and Nyanje's location, who accompanied them to the Kaya, introduces the case, and, as usual, addresses his comments to a single elder of the Kaya, who responds as the other elders listen.

Visiting elder: I have come here today with these two people who have had a quarrel.

Responding elder: Yes, they misunderstand each other.

Visiting elder: These people have come here because they are quarrelling very much!

Responding elder: Yes, these people are quarrelling . . .

Visiting elder: Both of these people have been accused of something. They want to do something that will make everyone feel that the accusations are either proved or disproved. They will accept whatever decision is made here. These people thought very hard, and then they decided that they would come here to the elders of the Kaya.

Responding elder: Yes, they thought of coming here to the elders . . .

Visiting elder: So they have come to you the elders of the Kaya, so that you can give them an ordeal. Now we are here . . .

Responding elder: And I see that you have come.

Visiting elder: I have brought a brother and a sister who are having a quarrel. I know all about this quarrel, but I have nothing more to say. I have brought them to you the elders of the Kaya, so that you can question them, and find out if they really want to take the ordeal. If so, then you can give it to them.

Elder Pembe, the leader of the Kaya elders:
As much as I would like to listen to your problem, I can see that

my fellow elders are totally drunk. Their minds are clouded with coconut liquor. So I suggest that all of you elders go and sleep it off. Tomorrow morning we will continue with the questioning, and then we will send you to the oracle.

A drunken elder: I don't see why this matter can't be discussed today; after all, is Elder Pembe drunk? Are we going to stop him from discussing this case? We should all be free here, those who are drunk, and those who are not. Those who are drunk can make their drunken contributions. Those who are not drunk can also speak. We want to know why you have come here, and whether you have enough money, and then tomorrow we shall administer the ordeal. There is no reason why this case cannot be discussed just because some people are drunk.

Another drunken elder: You are drunk. I am drunk too. Now if a fight happened to break out, wouldn't people ask if we were drunk or not? Because we are drunk, people will think that whatever decision we reach was influenced by our drunkenness. So I suggest that we follow the suggestion of Elder Pembe, that we should leave everything until tomorrow morning.

The other elders, some prone and nodding sleepily, offer no further resistance to this suggestion. Sidi Simba and Nyanje must wait until the next day to have their case heard. Nevertheless, that night strict rules must be followed in anticipation of the ordeal the

following morning. Sidi and Nyanje must sleep in the house of one of the elders; they have to sleep on their backs, with arms outstretched touching each other. This elaborate precaution insures that neither of them will slip outside during the night to attempt to bribe the elders or the administrator of the ordeal, and it also prevents them from using any medicine they may have secreted into the kaya to counteract the effect of the medicine of the ordeal. Tensions and suspicions run high in the atmosphere surrounding an ordeal, for an ordeal is resorted to only when there is an impasse in the dispute, and it reflects grim determination mixed with rancor.

On the night before the ordeal, the mgonga has his duties too. He is forbidden to have sexual relations with any woman that night. He also must get up in the middle of the night after everyone is asleep, go to every house within the Kaya that the disputants may have entered and collect earth from outside the doorways. He brings the earth back to his own house and must fall asleep with it under his bed. The earth will tell him in his dreams if either disputant engaged in any suspicious behavior which could affect the outcome of the ordeal.

Early the next morning, the disputants and the sobered elders of the Kaya Fungo are gathered in front of Elder Pembe's house. The visiting elder who has accompanied Sidi and Nyanje again begins to address the elders of the Kaya:

Visiting elder: I have come here with Sidi Simba and Nyanje wa Simba. You can note from the similarity of their fathers' names that they are close relatives.

Now Nyanje went to the wagonga wa mburuga, and these wagonga found that the sickness of his brother Ngoa was caused by the sorcery of Sidi Simba. That was not enough; Nyanje wa Simba then searched for an mgonga wa kuvoyera, and this mgonga also came and found that Sidi was casting spells over Ngoa. But Sidi Simba denies that she is a sorcerer.

The elders where Sidi and Nyanje live know that the ordeal offers a decision which can satisfy both parties. They told me to bring Sidi and Nyanje here so that you elders could investigate who is right and who is wrong.

An elder:

Are these people really close relatives? Are they of one father and one mother?

Visiting elder: They are of the same father but different mothers.

Comment from a listening elder: This is the third group in two days who have been close relatives, and have come to take the ordeal. We will soon know whether the charges against Sidi are right or wrong.

Elder Pembe (to Sidi and Nyanje): Has either one of you dreamt something last night?

Nyanje: I dreamt nothing last night. Maybe my sister dreamt something, but as for me, I slept very heavily.

Sidi: I did dream that I put on a very white hando¹ and was dancing very merrily. But that is nothing special.

Clerk: You have been asked if you dreamt anything. I think you have misunderstood what we meant by 'dreaming'. It is not dreaming in the usual sense. 'Dreaming' means that perhaps yesterday somebody came here with the intention of taking the ordeal, but last night he changed his mind, and decided that it would not be a good idea for him to take the ordeal. That is what we mean by dreaming: having a changed mind. If you have changed your mind about taking the ordeal, and you want to go home, tell us, and we will stop everything.

Sidi: If that is what you mean, then I have not dreamt. I have not changed my mind. I have come here to take the ordeal, and I shall take it. I am ready for any of the effects of the ordeal, whether it is vomiting or diarrhea, or anything, I am ready.

Nyanje: I also have not changed my mind. I will take the ordeal.

Elder Pembe: The reason why I thought that I had better ask is that otherwise you may say, after taking the ordeal, that you were forced, that you would have refused if you had been asked. So if you are really ready to take the

1. A hando is an underskirt made of many strips of cloth sewed to a waistband. Worn under a colorful strip of cloth, the hando gives the effect of a bustle.

ordeal, I am ready to give it to you. You are taking it willingly.

At this point, Elder Pembe takes a kaha, a large wooden ladle with a long handle, and prepares to spit water on the disputants who are seated side by side in front of him. Sidi Simba sits erect, but Nyanje leans forward; he looks ill and one can see a large tumor on his left side. Before Pembe spits the water on the disputants, he chants at length, and his chanting is answered by the elders of the Kaya who respond in unison.

Elder Pembe begins with the familiar call for attention to an assemblage of kambi elders:

Elder Pembe: Sumilani kambi!

Elders: Hae.

Elder Pembe: Elders, when you are attentive, let good things come . . .

Elders: Let them come!

Elder Pembe: Let bad things pass away . . .

Elders: Let them pass away!

Elder Pembe: These people have come because of sorcery passed between someone and his sister. It is said that this woman sitting in front of me here is a great sorcerer. She is casting spells on her own brother. It is not people who say that she is a sorcerer; it is the wagonga who have declared that she is a sorcerer. This man complains that his brother is being killed by his own sister. Now as they have come here, let it be the end of their quarrel . . .

Elders: Let their quarrel end!

Elder Pembe: Now, as I pour water on these two people, if either of them has tried to use sorcery medicine which would stop them from being caught by the ordeal, as I pour water on them, let their medicine be ineffective. Let the person who is wrong be caught by the oracle . . .

Elders: Let him be caught by the oracle!

Elder Pembe: Let the one who is proved by the ordeal to be right, be right . . .

Elders: Let the person who is right be proved right by the ordeal!

Elder Pembe now invokes the ancestral founders of the Kaya Fungo and asks them to give help at the ordeal.

Elder Pembe: Spirit (koma) of Fungo; spirit of Kaidza; spirit of Mwambogo; let all of these spirits come near, and witness the giving of this ordeal . . .

Elders: Let them be present at the ordeal!

Elder Pembe: All of these ancestral spirits I have mentioned have for many years been watching and guiding the activities of the Kaya. So I am asking them to be present now, to help us give this ordeal in an effective manner. Let these spirits come near; let them guide the giving of this ordeal . . .

Elders: Let them give the ordeal power!

Elder Pembe: Now as they give the ordeal, let the person who is wrong shine like the moon . . .

Elders: Let him shine like the moon!

Elder Pembe: Let the person who is wrong be burnt by the sun . . .

Elders: Let him be burnt by the sun!

Elder Pembe: You people have come here because of arguments; let them come to an end . . .

Elders: Let them end!

Elder Pembe: Let the sorcerer shine . . .

Elders: Let the sorcerer shine!

Elder Pembe: If someone was treated with medicines so that he is not caught by the oracle, if he ate something that makes him immune to the oracle, let the oracle catch him, despite all of that effort . . .

Elders: Let him be caught, despite all that he did!

Elder Pembe takes water into his mouth from the ladle, and spits water three times on the outstretched arms of Sidi Simba and Nyanje wa Simba. When he has finished, Pembe resumes his chanting.

Elder Pembe: The person who is wrong should shine like the moon . . .

Elders: Let him shine like the moon!

Elder Pembe: Let the person who is wrong be burnt by the sun . . .

Elders: Let him be burnt by the sun!

Elder Pembe: Let the person who is right, let him go away from here proved right . . .

Elders: Let him be proved right!

Sidi Simba and Nyanje now leave Elder Pembe's house, and go to the house of Bwana Machuko, the mgonga who administers the ordeal. Elder Pembe remains behind, and the mgonga is given the facts of the dispute from the beginning. The separate hearings are a consequence of the ill feeling that exists between the mgonga and the other elders of the Kaya. This time, the disputants speak for themselves, while the mgonga sits on a ledge in front of his house, which is the only house in the Kaya Fungo constructed in the non-traditional way, with a wood frame plastered with mud. Nyanje and Sidi present their opposing sides of the dispute to the mgonga. In their statements both to the elders of the Kaya Fungo and to the mgonga of the ordeal, the disputants eliminate large segments of the submissions they gave to the council of elders near their village.

Bwana Machuko, the mgonga who administers the ordeal, speaks.

Mgonga: I have listened, and I have heard each one's statement. But I want to tell you that I do not know who is a sorcerer and who is not. I know neither of you. You both know much more about your problem than I do. The person who is a

sorcerer is in a better position to know if he or she is a sorcerer or not, because he knows that one day he got medicine and went and cast spells over someone. But as far as I am concerned, I know nothing about sorcery. It is only the ordeal, which I am going to administer to you, which will show us who the sorcerer is.

Sidi Simba and her brother Nyanje are led to a pawpaw tree growing at the corner of the mgonga's house. It is the green, unripe fruit of this tree which the disputants eat when they take the ordeal. Although this oracle is called the "Oracle of the Pawpaw" (Kiraho cha Papayu), the mgonga emphasized to me that it is not the pawpaw which is the important factor in the ordeal, but rather the medicine (vuo), made of a mixture of crushed leaves and water. (This mixture acts on the linings of the upper digestive tract.) During the ordeal, each disputant eats a piece of pawpaw which has been soaked in the medicine. The mgonga, or a proxy, also eats a piece of pawpaw to show that the fruit is all the same, and that it is the medicine that is really acting here. The mgonga stated emphatically in private that "You don't need to dip the pawpaw in medicine. It is the medicine that is the important thing -- a piece of meat or a banana or anything can be dipped into the medicine and the medicine will still do its work."

Nyanje begins by stretching his arm up to touch the lowest-hanging fruit with his hand. As he does so, he says:

I have come here because of the sickness of my brother who is at home in our village. The wagonga told me that Sidi Simba was the one who was casting spells on my brother. If the wagonga told me the truth, oracle (kiraho), go to the garden²! But if the wagonga did not tell me the truth, and deceived me, then oracle! Catch me!

Sidi Simba steps forward next, touches the pawpaw and says:

I have come here because I have been told that I cast spells on my brother Ngoa. If this hand with which I am touching this pawpaw is the hand which got medicine to cast spells on my own brother, please, oracle, catch me! But if people are only speaking because they hate me, if there is no truth in what they say, then oracle! Go to the garden!

The mgonga leads Sidi and Nyanje a short distance from his house to a path into the forest. At the beginning of the path is an intricate symmetrical design made of poured maize meal, placed there as food to attract the ancestors, the koma, to the ordeal. A short distance along the path, one comes to the first of two clearings. In its center are two flat stones facing each other, about four feet apart. A long, rectangular piece of coarsely woven brown cloth is laid

2. This phrase means, "oracle, do not 'catch' me."

in front of each rock. The mgonga of the oracle, carrying a green, unripe pawpaw and a bowl made of a hollowed piece of wood, stoops between the two stones. As Sidi and Nyanje stand watching, the mgonga peels the fruit and cuts it into bite-sized pieces, and drops the pieces into the bowl containing the medicine. Sidi and Nyanje now are motioned to sit facing each other on the two stones, and the wooden bowl with the pawpaw and medicine is placed between them. One after the other, they lean forward and place their fingers in the medicine and repeat essentially the same words that were spoken at the pawpaw tree. The words are addressed to the substance of the oracle, the medicine-soaked pawpaw. Each disputant speaks only for himself, directing the oracle to have an effect only on him. The words spoken place Nyanje firmly in the role of the accuser of Sidi Simba as a sorcerer, and Sidi Simba in that of the accused. The effect of the ordeal is not viewed as a punishment for the party that is "caught", but as an indication of who is speaking the truth. For the oracle exists because of the impossibility of proving or disproving, without the aid of the supernatural, that an act of sorcery has taken place. In fact, the overt intervention of human beings, except those acting

as agents of the supernatural, has been noticeably minimal during the entire process of accusation and the ascertaining of the truth. Even Nyanje, who is the accuser, must submit to the impersonal ordeal himself in the same way as Sidi and he must also bear the consequences in the same way. The accuser and the accused are, in effect, made into equal bearers of alternative versions of fact. Nyanje further emphasizes that the source of his accusation of Sidi were the wagonga, who, in turn, received their information from the spirits. The mgonga of the Kaya Fungo who administers the ordeal also emphatically separates himself from the ordeal, and places responsibility for the outcome of the ordeal directly on the medicine. In addition, when the disputants address the pawpaw and the medicine, it is emphasized that it is the oracle, rather than the mgonga, that will bear primary responsibility for the outcome of the ordeal.

* * *

Now that the disputants have personally defined the conditions under which either of them may be caught by the ordeal, the mgonga of the oracle proceeds to give instructions to Sidi and Nyanje on the act of taking the ordeal.

Mgonga: You people have come from far away. You are quarrelling with each other. But you have come here, and we are giving you an ordeal. It annoys me very much, when someone comes here and, when he is given the piece of pawpaw and is told to eat it, he spits it out, and says that it is not a pawpaw. It may taste strange, because it is unripe, but you have seen me cutting a pawpaw and putting it into this vu, this medicine. Have I not put in a pawpaw? It is true that it is unripe and may taste bitter, but it is a pawpaw.

Formerly I used to chew the pawpaw myself, to prove that it is not poisoned or tampered with. But I am toothless now, and cannot chew the pawpaw myself. Instead, I will give the pawpaw to someone else to chew, in place of me. When you first chew the pawpaw, you will feel pain, but that will last for only a short time.

Now today we want to end your quarrel once and for all. If one of you is caught by the ordeal, there should be no further misunderstanding, no quarrel. If neither of you is caught by the ordeal, there should still be no misunderstanding. If neither of you is caught, then we shall know that Sidi Simba did not cast spells, and that the mgonga wa kuvoyera and the wagonga wa mburuga deceived you, Nyanje. That is what this ordeal is meant to do: to find out who is really wrong. So if neither of you is wrong, and Sidi did not cast spells and Nyanje was led astray by the wagonga, then neither of you will be caught.

If neither of you is caught, you should not hate each other; you should have no further problems. You must begin again to search for the sorcerer who is casting spells on your brother Ngoa. So I will give the ordeal to you; I want you to chew the pawpaw properly, swallow it, and after a short time we shall know who is wrong and who is right. That is all I have to say.

A son of one of the Kaya elders comes to sit near Sidi and Nyanje, as the mgonga leaves for a moment. This helper questions the disputants, to make sure they have heard and understood what the mgonga said.

Helper: Have you heard what the mgonga said?

Sidi: Yes.

Helper: What has he said?

Sidi: He has asked us to take the pawpaw, chew it and swallow it with no fear. It is his wish that neither of us is caught by the oracle. He wants to find out who is right and who is wrong. If neither of us is caught, that means we are both right: I am not a sorcerer and Nyanje was misled by the wagonga. The mgonga of the ordeal has shown us how to take the ordeal so that when we take the piece of pawpaw, we must chew and swallow it, and not spit it out.

Helper: That is correct. Remember, if you are given the pawpaw and you spit it out, you will be fined two shillings. And please, if you feel that you have been caught by the ordeal, speak up immediately. If you tell us that you have been caught early, we can treat you, and you will be all right. If you delay in telling us, you will be sicker, the treatment will be more difficult, and you will be fined twenty shillings.

The mgonga returns to the clearing, called a pala, and he is accompanied by all the elders of the Kaya Fungo. He and the elders circle around Sidi Simba and Nyanje and sing the following song:

Makwaya came here while crying
I saw him coming while crying.

The words are first sung as a solo by the mgonga, while the elders repeat the stanza in unison. The song is repeated several times. "Makwaya" is the name of a fictitious person, meaning any person who comes to take the ordeal. The mgonga, who composed all the songs sung during the ordeal, explained to me later that Makwaya is pictured as crying, because he has been accused of being a sorcerer, and he is not happy about it:

. . . the sorcerers -- they are not happy when they come to the oracle. They know perhaps that they are sorcerers, but they don't want to admit it. If they were given the choice, they would want their sorcery to remain a secret.

When the song is finished, Sidi Simba and Nyanje are led out of the clearing deeper into the forest to a second clearing, or pala. There, they are seated, legs stretched out in front of them, arms stiffly propping them up. The mgonga takes a calabash filled with medicine, called a kidonga, places it on the heads of each disputant in turn, and chants the following words, while an elder of the Kaya simultaneously fingerpaints lines of red, black and white medicine all over the bodies of Sidi and Nyanje:

As we place medicine on the bodies of these people, we are trying to remove whatever medicine they may have taken before coming here to the Kaya. So if either of you has taken any medicine which you got from an

mgonga, so that you would not be caught by the ordeal, let all that power be removed from you now. As we cleanse (kuhundula) these people, we want them to be as pure as when they were born. They knew nothing then, nothing about medicines, and they were innocent. Let them be as newborn.

When the cleansing ceremony is over, Sidi and Nyanje, heavily striped with the multicolored medicine, are led back to the first clearing. They are seated, facing each other once again on the flat stones, and the long strips of cloth are tied securely around their eyes. Once again the elders circle around, singing a different song, and repeat the stanza,

Kithethe is going around

The Kithethe is going around;

When you go to Kaya, go with your brother . . .

The mention of a kithethe recalls a now obsolete custom among the Giriama: formerly a kithethe was an offering of food paid to an mgonga-of-the-calabash, before the use of shillings was widely adopted. The song means that the accuser has gone around to several wagonga-of-the-calabash to find out the source of his problem, and then he comes to the Kaya to confront the accused sorcerer at the ordeal. The accuser is accompanied by the person whom he trusts most, his brother.

In the middle of the song, while other elders

continue singing, the mgonga of the oracle stoops, and gives a piece of pawpaw to his helper to eat; then, he puts a piece of the fruit into the open mouths of Sidi and her brother Nyanje. The mgonga takes the right hand of Sidi and clasps it to the right hand of Nyanje. Sidi and Nyanje are bent forward, hands clasped, as they await the effect of the medicine.

Without stopping their circling, the elders of the Kaya are now joined by their wives, some with infants slung in a cloth around their backs, and all join in a final, loud medley of songs, with some lines repeated over and over:

The pawpaw of father Machuko (the mgonga)
has surprised men strong as he-goats

The pawpaw has conquered men strong as
he-goats . . .

Today I was asleep, but Kadhenge lay awake,
and he looked sad

Let us praise Bwana Machuko, for he wants
sorcerers to be killed . . .

The songs are in praise of the mgonga of the oracle, Machuko, and extoll the strength of the oracle. The oracle, say the songs, makes sorcerers fearful, worried, and sleepless, and conquers sorcerers who think they are omnipotent and stronger than the oracle.

Finally the mgonga halts the singing and stoops to examine Sidi and Nyanje. He takes their jaws in his

hand and peers at their tongues, for the effect of the medicine coating the pawpaw should make the tongue and throat swell if the person has been "caught" by the ordeal. But there is no discernible effect. Sidi and Nyanje are told to leave their places and sit in the clearing for two hours to make certain that there has been no concealment of the effects of the ordeal.

Finally the mgonga is satisfied that neither Sidi nor Nyanje has been caught. He assures them that Sidi is not a sorcerer, and that Nyanje was not lying, but was misled by the wagonga. Sidi and Nyanje are sent home with this verdict by the mgonga of the ordeal and the elders of Kaya Fungo.

* * *

Four days after the ordeal was given, Sidi and Nyanje appear before the council of elders near their home again. Sidi Simba accuses Nyanje who has not accepted the verdict of the oracle that Sidi was not a sorcerer. He has continued to spread the word throughout the community that Sidi is a sorcerer, and he also has continued to press his demand on her for the money he spent in hiring wagonga and in treating his sick brother Ngoa. An elder, after summing up the entire case, gave the following decision on behalf of the council:

We know that Sidi Simba was not caught by the oracle, and so we can conclude that she is not a sorcerer. Nyanje, if you insist that the oracle was incorrect because it did not agree with the opinion of the other wagonga whom you consulted, then we shall counter this by saying that it was in fact the mgonga wa kuvoyera who was inaccurate, rather than the oracle. For this mgonga did not come with his own ideas -- you brought him yourself, and you told him what the wagonga wa mburuga had already told you. You told the mgonga wa kuvoyera that Sidi Simba was a sorcerer.

If you say that the mgonga of the oracle is wrong, then we say that it was the mgonga wa kuvoyera who was indeed wrong. That is our verdict. Sidi Simba is not a sorcerer; we shall abide by the findings of the oracle, because the oracle is greater than the wagonga-of-the-calabash and the wagonga-who-pray.

Our decision in this case is that you Nyanje should pay Sidi Simba all of the money she spent in going to the oracle, because it has proved that she is not a sorcerer. You will also pay her one hundred shillings in damages for ruining her reputation (kutzinzira = damages for spoiling one's name). She is not as respected as she was before.

After this, you must come to a peaceful agreement, because you are relatives. Forgive each other. You have accused your sister of being a sorcerer, and you have been disproved. I ask you, Nyanje, the next time, before you accuse anyone, make sure that you have enough proof.

* * *

The elders had to do more than merely uphold the verdict of the ordeal, since Nyanje had persisted in speaking against his sister Sidi. The elders therefore imposed a punitive fine on him; but they could not

personally enforce this decision, and indeed Nyanje never did pay the fine nor the compensation to Sidi. What, then, was the final outcome of the ordeal?

Sidi Simba was found not to be a sorcerer, but her accuser Nyanje would accept neither this verdict nor the consequence of his continued hostility -- the payment of a defamation fine and fee. The fact that neither Sidi nor Nyanje was caught at the oracle prompted both to speculate privately that the other had seen wagonga and had procured medicine for immunity from the effects of the ordeal, despite the elaborate ritual precautions taken against this possibility at the Kaya Fungo.

When I visited Sidi Simba a week after the ordeal, I found her removed from her brothers' village, and living in isolation with her mother and her husband. She spoke sadly of her plight, saying that no one came to her for her services as an mgonga-of-the-calabash anymore, and that she was in desperate financial straits. She had considered suing Nyanje for compensation for the damage done to her name in Magistrate's Court, where she could file a complaint for defamation of character³. But in the end, she said, she rejected

3. It should be noted that in contrast to Kahindi wa Thoya (Chapter Nine), Sidi adheres to the traditions by acknowledging Nyanje, and not the mgonga-who-prays, as her accuser. Her stand is consistent with her position as a diviner.

this move, although she knew that the court, unlike the elders' council, had the means to enforce any decision in her favor. Instead, Sidi preferred to do things "in the Giriama way." She would go to mizimu, the tree where the spirits dwell, and ask the help of the spirits there by swearing an oath.

The Effectiveness of the Oracle

Of the institutions administered by wagonga that play a mandatory role in the unfolding of a sorcery dispute, the oracle is the most important to the defense of the accused. Both the wagonga-of-the-calabash and the mgonga-who-prays are consulted on the initiative of the potential accuser; once an accusation has been made, the accuser, so to speak, "rests". The next move is up to the accused. In choosing to defend himself rather than conceding guilt, the accused takes on the role of counter-accuser, defending his good name. The counter-accusation is that of false accusation. For this reason, at the Oracle-of-the-Pawpaw at Kaya Fungo, Sidi Simba and her brother Nyanje were placed on equal terms in their relation to the oracle: each was a bearer of a different version of truth. Each was given the opportunity, in addressing the oracle, to define the version to be offered for

testing. Sidi offered the choice that she could have either cast a spell over Nyanje or not -- and not, for example, whether or not she was a sorcerer. Nyanje offered to test the truth of his accusation as a statement -- and not, for example, whether he or someone else concocted it. In all this, the real issue that interests the opponents -- that of substantive guilt or innocence -- is not confronted directly. The oracle only answers questions posed to it, and each opponent is careful to phrase his question in a way that carries minimal risk for himself, maximum ammunition against his opponent, and, finally, room for later maneuvers.

The superiority of the oracle over the wagonga-of-the-calabash and mgonga-who-prays was demonstrated here by its reversal of the wagonga's conclusions. But the decision, like the decisions of the elders' councils, can be implemented only by the disputants themselves. The function of the oracle is to expose the truth, but, in the end, the truth remains elusive and arguable. In the case of Sidi Simba, the oracle did not settle the dispute for the simple reason that Nyanje would not accept its verdict. It is in difficult cases such as this, when stubbornness and bitterness on

the part of individual disputants prevail, that the efficacy of conflict-resolving institutions, such as the oracles, comes to a test. Ultimately, one can say that willingness to settle the dispute -- for whatever myriad and partly imponderable reasons -- is the deciding factor, for institutions can, at most, only control actions and not thoughts. In Giriama society, they cannot even control many actions: hence the impasse such as in the case of Sidi Simba. In the end, Sidi felt that she had no other choice but to resort to mizimu, the spirits of the sacred tree. Here, only one side could be right. (For the case of Sidi Simba at mizimu, see below, Chapter Seventeen).

CHAPTER FOURTEEN:

THE ORACLE-WHICH-FINDS-OUT (KIRAHO CHA MWALOLA)

Introduction

This oracle, like the Oracle-of-the-Pawpaw, came to the Giriama from the outside, purchased from the Taita, who live to the north-east of the Giriama. I do not know precisely how widespread this oracle is among the Giriama, but the wagonga who own the oracle mention the financial rewards of preventing the secret medicine used in the ordeal from becoming too widely used. The cost of coming to the oracle is 50 shillings, which makes the ownership of the oracle highly remunerative.

As with all other ordeals administered by the Giriama, it is the medicine that is identified with the oracle itself. In this case, the medicine consists of the crushed leaves of various local trees. The wagonga who own the oracle cooperate in administering the ordeal within a prescribed area, for there is a rule that the fee collected must be shared among at least three other fellow wagonga. The wagonga who own the Oracle-Which-Finds-Out are bound together by the oath of secrecy. When a new wagonga is initiated into the

secrets of this oracle, he takes an oath and swears that he will reveal the secret of the medicine to no one else without permission. If he secretly divulges any information, it is believed that he will die.

A Case Study: The Jealous Husband

One night, a husband brought his wife into the hamlet of the mgonga who administers the ordeal of the Oracle-Which-Finds-Out. The husband suspected that his wife had been committing adultery and his suspicions had led him to several actions before he decided to turn to the oracle. The husband had beaten his wife several times and she, in turn, had left him to seek asylum in the hamlet of her elder brother. As custom dictates, the husband followed his wife to the hamlet of her brother and presented the details of the dispute to him. The husband told him that he wanted his wife to admit her guilt so that he could collect adultery compensation (malu), but the wife continued to deny that she had committed adultery with anyone.

A formal accusation of the wife had thus been made in front of an appropriate adjudicator, her brother; the husband and wife assumed the roles of accuser and accused. This dispute could have ended -- as many disputes of this type frequently do -- if the wife had

admitted her guilt or the husband had been willing to have her brother decide the case. The husband indicated, however, that nothing less than the decision of an oracle would satisfy him. His wife readily agreed to take an ordeal, for she had denied her guilt, and an oracle appeared to be her only recourse in the absence of any proof.

* * *

At six o'clock in the morning, the husband and wife appear before the mgonga of the Oracle-Which-Finds-Out. The mgonga is accompanied by two other elders who also know the secret of this oracle. Together, the mgonga and the two elders will hear the facts of the dispute, mix the medicine in the seclusion of the bush, administer the ordeal, and collectively share the fee paid to them by the disputants.

The hearing before the ordeal reveals several things. First, despite the adultery accusation which has been levelled against the wife, both husband and wife speak highly of their relationship: they have been married for a long time, and profess to love each other very much. There is no question of misrepresentation on this point, for in other disputes, disputants have been quite frank about their feelings

of dislike for each other, or about the history of a bad or strained relationship.

Mgonga: Will you tell us what your problem is. Why do you need an ordeal?

Husband: This is my wife. We have been married for a number of years. We have been living nicely, but about two months ago, I saw that my wife was misbehaving. As you know, you can sometimes give your wife permission to visit a place outside the hamlet. She may go to her home. I gave my wife permission to go on a journey, and then I began to suspect something. I asked my wife if she was having a secret affair; was that why she had wanted to go away? When I asked her this, she denied it, and then I asked her whether or not I should bring an ordeal. She said that she would not mind taking an ordeal at all. That is why we have come here . . . I said, 'If you need an ordeal, then let us go to the oracle!'

Mgonga: Can you tell us how you know that your wife was having an affair with somebody? If you suspected something, you should have called your wife and asked her, 'Did you do such a thing?'

Husband: I called her and told her that I suspected that she had an affair with a certain person, but she denied it.

Mgonga: Were you sure of what you were saying, or were you speaking from rumors?

Husband: I was sure of what I was saying.

Mgonga: Can you tell us the details; how were you sure that your suspicions were correct? Did you catch her red-handed? Did someone tell you exactly what your wife had been doing?

Husband: I did not catch her, and no one came and told me anything. I just had my suspicions.

Mgonga: It seems to me that you are not sure. You may be making a false accusation. Tell us why you are so sure of your wife's guilt.

Husband: I started to suspect something, because suddenly my wife and I were not getting along. Whatever I asked her to do, she didn't want to do it. So I began thinking that she preferred to obey someone other than me. I had an idea who that someone was, so I told my wife to be honest, and tell me who she was involved with. But she denied it, and that is why I decided to come here to the oracle, to prove my suspicions.

Mgonga (to the woman): Do you have anything to say? Your husband says that you are having an affair with someone, and that you do not want to admit it.

Wife: What my husband has said is completely wrong. I know that my husband loves me very much, and I also love him. But I do not know what he is thinking at this time. He has been saying that I have been having an affair with someone, but that is not true.

Once I ran home to my brother Kingoa wa Mitsanzi, and my brother was asked by my husband whether I would admit that I was having an affair. But I told my brother that I did not know any such thing. When my husband came to my brother's hamlet the next morning, he asked my brother if I had revealed the name of the person who was my lover, or if I had admitted having an affair. But I had admitted nothing. When my husband was told this, he said 'All right, since my wife has not admitted anything, let us go home.' So he

collected me, and we went back to our village. I thought that everything had ended on that day.

When we got home, I became sick, but I was treated by an mgonga, and I recovered. Then the next week, my husband started beating me, and accusing me again that I was having an affair. Then I went back to Kingoa, my brother.

Husband: As for me, there is nothing that I will do if the oracle catches me or not. I just want to know if my suspicions are correct. If the oracle proves that my wife has done wrong, then she will still be my wife. If the oracle proves that I am the one who is wrong, then, too, she will still be my wife. I do not intend to use this oracle as an excuse to divorce my wife. If it is confirmed that my wife is having an affair with somebody, then I will just follow the usual procedure -- I will collect malu and forgive my wife.

The combination of a strong marital relationship, the absence of any evidence, and the wife's insistence that she be given an ordeal -- these are not lost on the elders listening to the pre-ordeal presentation of the case. They praise the husband for saying that he does not want a divorce but only the truth and the clearing away of any suspicion. The elders persistently press the wife to make the same declaration, which she eventually does, and further emphasize that it is their wish and purpose to reconcile the couple.

Mgonga: This man has spoken well. He just wants to clear away the suspicions he has of his wife. We should make sure

that the wife has the same attitude as her husband. For this oracle is only something that confirms the truth. We can, of course, try to see what should be done to the person who is wrong, but the question of divorce should not enter into the discussion.

We should look into this matter to make sure that these people solve their problem in a friendly way. This case should end when all the suspicions are cleared away; it should go no further. They just came here to clear away suspicion. The question of divorce should not enter in -- it is not something that we would like to hear spoken of. We want to see these people united, rather than each of them going his separate way.

An elder speaks to the wife:

Now, woman, your husband's statement was very good. But you have gone too far by saying that if you were caught by the oracle you were ready to be sent to your parents. If you were not caught by the ordeal, you also said that you would do something -- it sounded like a threat to us. It worries us. We hoped that you had come here to finish your quarrel. When the suspicions are settled, that should be the end of it. Our aim is to ensure that everything is finished here.

Wife:

Thank you, elder, for your fatherly advice. I said at the beginning that I loved my husband very much. And I know that he loves me. But I think that he has a lot of jealousy in him. He knows that I have not been well for a long time. I have a disease. He knows that -- it has been a private matter between me and my husband. And my sickness has prevented me from having sex with my husband for almost two

months now. He knows this. Now, if I have not been able to have sex with him, how could I go and have it with someone else? I was very surprised, for this reason, to hear my husband's accusation of me.

Elder: Now what you have said is very good. But you know that we men are a suspicious lot. When someone sees his wife being greeted by someone nicely, he begins to have all kinds of suspicions. The other day we had a case similar to yours here. The woman spoke so nicely, just as you are doing. And we thought that she was right, and we told her husband that he should stop the whole matter; we asked him why he was continuing to insist on the ordeal. But the husband said that we should have the ordeal. And do you know what happened? After three minutes, the ordeal caught the woman who had been speaking so well! That is why we cannot go by the good speeches that are made here.

* * *

After the hearing, the mgonga of the oracle and the elders leave the village and go into the bush, where they will collect the leaves necessary to make the medicine for the ordeal. It is said that incantations are recited around the mgonga as he prepares the medicine, but this ritual is private and inaccessible to outsiders, as is the preparation of the medicine used in any of the ordeals.

Two hours pass, and the mgonga and the elders

return from the bush with the medicine. The medicine is contained in an mboko, a small elongated calabash used for drinking coconut liquor. The mgonga pours coconut liquor over the crushed leaves in the bottom of the calabash. As he pours in the coconut liquor, the mgonga stirs the mixture and chants to the medicine.

Mgonga: This is mwalola; I bought it from someone called Maleja. Maleja sold this oracle to me, Kashuru wa Jefwa and Winji wa Mae. We want you, kiraho, to really show us. You have been effective for many years. I have used you many times to tell me the truth. I would like you to tell me today who is speaking the truth -- whether the woman is speaking the truth that she has not had an affair with somebody; or whether the man is speaking the truth that his wife is having an affair with someone somewhere. Tell us who is right.

The husband takes the ordeal first. He is handed the mboko calabash, and he "instructs" (kukotera) the medicine before he drinks:

I have a quarrel with my wife. I suspect that she is having an affair with somebody. If my suspicions are true, let the oracle go to the garden. But if my suspicions are wrong, then let the oracle catch me.

An elder takes a piece of cloth and holds it over the husband's eyes as he puts the calabash to the husband's lips. As the husband drinks, he is cautioned

to drink slowly.

The calabash containing the same leaves is filled with coconut liquor again, and the wife, in her turn, instructs the medicine:

I am drinking this kiraho. If the accusations made against me are true, let the kiraho catch me. If they are not, then let the oracle go to the garden.

She is then blindfolded as she drinks.

After the medicine has been ingested, the observation period starts. The husband and wife are seated on wooden stools, side by side, at the far end of the clearing in the middle of the mgonga's village. The mgonga and several elders, including those who participated in the giving of the ordeal, sit on the opposite side of the clearing. They drink coconut liquor, weave baskets, and speak in low voices as they await the results.

The Oracle-Which-Finds-Out acts as an intoxicant. The person who is caught behaves as if drunk -- stumbling, talking wildly and incoherently, sometimes vomiting, urinating, and defecating uncontrollably. To see if someone has been "caught", the elders call to the person to cross the clearing and come to speak a few words, and watch for the stumbling gait or the slurring speech.

Half an hour after the ordeal has been given, the elders call to the wife to approach them. She walks slowly towards them and stands. She is asked how she feels. She replies that she feels well. The husband is then summoned, with the same result. This is repeated four times, over a period of almost three hours. Finally the husband, seated on his wooden stool, leans over and vomits. His brother, who is seated among the elders, rushes to him and they speak briefly in private. Then, the husband, supported by his brother, approaches the elders. His eyes are bloodshot. He says: "I have been caught by the oracle."

The elders rise, and the mgonga brings out some medicine to take away the harmful effects of the ordeal. This treatment is called kuzikiha kiraho. The mgonga seats the husband on a stool, takes a palmful of the antidote from a small wooden bowl, and pours some of it down the husband's throat. While he is doing this, the women of the mgonga's village circle around the husband as they sing songs about how surprised sorcerers are when they are caught by the ordeal, and how hard the mgonga works to reveal sorcerers. The mgonga pours the remainder of the medicine over the husband's head and feet. The ordeal is over. Nothing

more is said to the disputants, and they prepare to cross the Sabaki river to return to their village.

The aim of the mgonga and the elders to settle this dispute by reconciling the couple had been achieved. The husband and wife were both happy that their quarrel was over and, several months after the ordeal, were living together peacefully.

Successfully Resolving a Dispute:

The Tasks of the Wagonga and the Oracle

"The Case of the Jealous Husband" illustrates the role that wagonga must assume before the ordeal is administered, in order to insure the oracle's effectiveness. In several ways, the task of the wagonga is ambiguous: they must hear all of the evidence of the case, and yet ultimately reduce the testimony to a single issue that can be decided by the oracle. Thus, the history of the disputants' marital relationship is examined, but finally, the question is narrowed down to whether adultery has been committed or not. The wagonga give opinions on the strength of the evidence, and yet emphasize that the final judge is the oracle. Thus, the wagonga speak disparagingly of the accuser's flimsy evidence, and yet caution the accused that although she has spoken well, the oracle will discern any subterfuge. Finally, the wagonga must mentally

prepare the disputants for the decision. The wagonga's task in this regard is two-fold: they must prepare the disputants to accept the decision and to forego any ill feeling that an "either/or" judgement can generate.

In "The Case of the Jealous Husband", the wagonga addressed themselves to the case at hand, but in doing so declared that the ideal role of the oracle in the judicial process should be dispute settlement: "Our aim is to ensure that everything is finished here." The oracle's decision could have "settled" this case either by reconciliation or by divorce, depending on the disputants' respective attitudes towards the decision. Although an ascription of guilt to one of the disputants was inevitable, throughout the pre-ordeal hearing the elders stressed that, regardless of the decision of the oracle, reconciliation, not retribution, was the most desirable result of the ordeal. In addition to the wagonga's persuasiveness, reconciliation was possible here because the disputants were predisposed to it; their marriage was a strong one, and they appeared eager for the relationship to continue.

CHAPTER FIFTEEN:

THE ORACLE-OF-THE-HOT IRON (KIRAHU CHA TSOKA)

Introduction

The Oracle-of-the-Hot Iron, or the Kirahu cha Tsoka (tsoka = the wedge of hot iron) is a Giriama oracle which is found, with variations, among other African peoples. Among the Giriama, the ordeal of the hot iron is administered by the blacksmiths (musanyi) who are also wagonga. The craft of blacksmithing is restricted to one clan, the Mwakombe. Members of the Mwakombe clan today say that this duty of making weapons and domestic tools out of iron was conferred upon them by the Vaya elders in the early days of the Kaya Fungo, when all the clans of the Giriama lived together. At that time, it is said, each clan was assigned a specific task to perform for the welfare of all of the Giriama.

Although not all members of the clan Mwakombe are blacksmiths, those who emphasize the involuntary nature of "owning" the oracle connected with being a blacksmith. First of all, the ownership of the oracle, which actually consists of knowing the formula for the medicine used in the ordeal, is strictly inherited from father to son. All of the wagonga who administer this

ordeal inherited the oracle from their fathers, and at present have sons who work as their apprentices or as independent practitioners. Before the ordeal is administered, the mgonga, i.e., the blacksmith, invokes the aid of God (Mulungu) and the ancestral spirits, the koma. Aid is solicited, however, only from selected ancestral spirits -- from those male ancestors (for only males own this oracle) who have been wagonga of the ordeal themselves.

Not all males of the clan Mwakombe who are blacksmiths are also wagonga of the ordeal so intimately connected with the craft, and they are bound to their trade by more than inheritance. If wagonga-blacksmiths do not practice blacksmithing, they become physically sick until they renew the practice. This sickness is an indication of the involuntary nature of being an mgonga of the Oracle-of-the-Hot Iron, and recalls the sickness that afflicts other kinds of wagonga when they stop practicing.

It is the medicine used in the ordeal that is thought to be the oracle, as it is in the case of all the other oracles. In the Oracle-of-the-Hot Iron, the mgonga mixes special leaves with water to form a vu, and each disputant addresses this medicine and instructs it to catch him if he is wrong. According to the

wagonga of this ordeal, it is the words spoken to the medicine smeared on the hands of those taking the ordeal that influence the hot wedge of iron to burn the hand or not; without the act of instructing (kukotera) the medicine, the hot iron will burn the skin indiscriminately.

A Kitio Sex Offense in Its First Phases:
The Village Head and the Elders' Council

The case which follows provides a detailed description of an Oracle-of-the-Hot Iron, as well as material for a subsequent analysis of the function of the oracle in dispute settlement. This dispute, because it concerned the welfare of the entire village, first came to the attention of the Village Head who could not resolve the conflict; it then proceeded to an elders' council and then, finally, to the Oracle-of-the-Hot Iron.

* * *

The hamlet where the dispute originated is a large one, composed of three brothers, with their wives and unmarried children, and their sons with their wives and children. The alleged offense is adultery between a man and his brother's wife, who had been previously accused, before the Village Head, of

the same offense. Now, a fresh outbreak of disease suggested that the kitio sex offense had been repeated. When the pair was brought before the Village Head, they steadfastly denied that they had resumed their affair. The sternness of the Village Head failed to elicit an admission of guilt. The hamlet was paralyzed with fear that kitio¹ would kill them all and plans were made to abandon the hamlet. In desperation, the Village Head brought the case to the elders. At the elders' council, the Village Head remained the leader and spokesman for the hamlet. Now, however, he was not acting in the capacity of an adjudicator but as the accuser. The Village Head addresses the elders:

- I am the elder of the village, and I know the problems of the village hamlets. One day there was a sickness in one of the hamlets. The son of my son started vomiting and having diarrhea. He died. We went to the mgonga wa mburuga, who told us that there was a kitio in the village, because my younger unmarried son had had an affair with his elder brother's wife. My brothers and I called my younger son and my older son's wife, and we asked them about this. They admitted it. So we asked my younger son to give malu (adultery compensation) to his

1. It will be recalled that kitio is also the name of the disease caused by committing proscribed sexual activities.
2. The "sons" mentioned here are not this elder's actual sons, but are the sons of one of his brothers.

elder brother. This was done. Then we had to bring a sheep to the hamlet and slaughter it, so that the hamlet would be cleansed (kuzizinya) of the disease.

But recently, the wife of one of my other sons became sick. She left our village immediately and went to her parents' village. While she was sick, my son was not allowed to visit her. Her parents told us that there was a kitio in our hamlet, and that they were afraid that if their daughter returned to our village, she would die.

Before long, another child, a female of our village, became sick with vomiting and diarrhea, and she died. Again we went to an mgonga wa mburuga, and he told us that there was a kitio in one of our hamlets again. We asked my younger son and the wife of his elder brother if they had resumed their affair. This time, they denied it.

We do not know whether they are telling the truth or not. If they have not resumed their affair, how can another kitio have come into the hamlet, and yet the hamlet has been cleansed?

An elder questions the woman who is accused of committing the sex offense.

Elder: Did you really have sex with your husband's brother?

Woman: Yes, I did.

Elder: Did your husband's brother give adultery compensation to your husband?

Woman: Yes.

Elder: Did an mgonga come with a sheep to cleanse the village?

Woman: Yes.

Elder: If the hamlet has been cleansed, why is the hamlet again afflicted with disease? Is it true that you have never resumed your relationship with your husband's brother?

Woman: We have not resumed it.

Elder: They what caused the death of the second child?

Woman: I do not know.

Elder, to the accused brother: Have you had sex with this woman again?

Brother: No.

The elders decide that since the accused man and woman deny continuing their affair, an oracle is appropriate. They have been accused on the strength of several events: their past admission of adultery, the recurrence of the disease kitio in the hamlet, and the assessment by the mgonga-of-the-calabash that the disease is again a kitio, caused by sexual misconduct. These events have formed a sufficient basis on which to accuse, but given the adamant denials of guilt by both accused, the truth must be ascertained by the oracle. Lacking anything but circumstantial evidence, the elders recognize that they cannot successfully adjudicate this dispute themselves. Thus, they have no choice but to send the accused pair to the oracle. At this point, the Village Head ceases to be an active participant, for the accused have defied his opinion that they are guilty even in the presence of the elders. It is now up to the accused to prove their innocence, and this they must do alone.

The Accused Appeal to the Oracle-of-the-Hot Iron

In the middle of the field is a blacksmith's shelter, called a chanda, constructed of wooden poles slung with roughly woven cloth. A protective kiraho made of iron and covered with medicine is erected over the chanda, to inflict deadly disease on any thieves who might attempt to steal the many tools left for repair within the shelter. Inside the shelter, the blacksmith's muscular son is energetically working goatskin bellows to build up the fire.

The mgonga, a frail old man, questions the accused parties before giving the ordeal to them.

Mgonga: You, woman, why have you come here?
What do you want?

Woman: I have come here because I once had sex with the brother of my husband, my mulumangu muhoho (lit. "younger husband").

Mgonga: And then?

Woman: My 'younger husband' paid adultery compensation to my husband, and he also brought a goat to 'cleanse the Hamlet.

Mgonga: Didn't you repeat the affair with your younger husband after that?

Woman: No. We did not do it again.

Mgonga: Look here. I want you to be frank. Don't be afraid of me. Tell me the truth. Otherwise, you will get into trouble. This is an oracle, but it is not the kind of oracle that you think. It is dangerous. That is nothing but fire. And it can burn you. I am the mgonga

here, and even I cannot touch it. I have to use a handle in order to hold the iron. So don't think that it is something to play with. If someone has given you medicine and told you, 'Don't worry, I'll treat you so that you will not be burned', you were deceived. That fire is very hot. You may not even recover from your burn, so be very careful. Don't lose the use of your hand for nothing. If you did something wrong, then just admit it. But if you are ashamed to admit it, remember that that fire can burn your hand.

Woman: I did not do anything. If I had, I would not have come here, I would have admitted it a long time ago. When I had sex with my husband's younger brother the first time, I was not brought to any mgonga like you; I just admitted it. Then I knew that everything was known, so what was the point of hiding it? But now, because I am sure that I have done nothing wrong, I will take the ordeal.

Mgonga: All right.

The accused man is now brought and similarly questioned.

Man: No, I did not have sex with this woman again. I did it only once, and I learned my lesson. I am ready to take the ordeal.

Mgonga: You boy, be careful. This woman is very beautiful. I think you must have gone back to her. No one can taste honey once.

Man: No, Bwana Mgonga, I did it only once. I have not done it since.

Mgonga: All right, I will leave this place now, and when I get back, I will know the truth.

The mgonga of the ordeal later stated that he had to question participants before the ordeal to know exactly why they have come to take it and to be sure that no force had been used to bring people to the ordeal.

The fire is getting hotter now, and sparks scatter with each blow of the bellows. While the son of the mgonga continues working the bellows, another son removes the tsoka, a triangular wedge-shaped piece of iron, from the fire with tongs and hammers it, smoothing and flattening it, and returning to the fire for further shaping. Finally, the son hammers the iron wedge into a groove at the end of a thick, whittled piece of wood, giving it a handle. The tsoka is then returned to the fire.

The mgonga himself appears, holding a hollow calabash with a liquid in one hand and some leaves in the other. He rolls the leaves between his hands, bruising and crushing them, and drops them into the liquid to make the vu, the medicine. As he mixes the vu with his hand, squeezing the leaves between his fingers, he calls the ancestral spirits of the ordeal to come near, addresses the medicine, and instructs it

to do its duty:

Mgonga: Koma (spirit) of Thoya! Koma of Pande! Come near and listen. These two people had an affair some time ago, but they had an mgonga who came and cleansed the hamlet. But now children are dying in that hamlet. The elders of the village do not believe that these two people have not repeated their affair. Now they have come to prove whether or not they have continued their affair.

Oracle (kiraho!), I know you will tell the truth. Burn the person who is wrong; don't burn anyone who is not wrong . . . show me those who are right, and those who are wrong.

The mgonga now leans forward, and takes the wedge of iron, the tsoka, by its wooden handle from the fire. Murmuring inaudibly to himself, he strokes the glowing iron quickly over the top of his own hand, glistening with the wetness of the medicine. The iron hisses as it touches the mgonga's wet hand and is replaced in the fire. (Later, the mgonga explained that he asks the oracle in this way to show him who is right and who is wrong; when he mentions the name of the guilty person, he feels strong heat, but the iron will feel cooler at the mention of an innocent person's name).

The woman comes forward first, dips her right hand into the medicine, and says:

I am accused of having an affair with my husband's younger brother. I know that I did this once, but I have not done it since. If I have repeated the act, let the oracle

catch me, but if I did not, then let the oracle go away from me, let it go to the garden!

The mgonga takes the iron from the fire, and firmly grips the woman's right hand, wet with the medicine. He tries to stroke her hand with the iron, but she jerks away. Her mother-in-law, looking angry, steps out of the crowd, puts a cloth over her daughter-in-law's head, and holds her arm tightly as the mgonga tries again. This time he succeeds in brushing her with the tsoka, and she is released.

The accused man steps forward and speaks as he dips his hand in the medicine:

I am accused of having an affair with the wife of my older brother (mukuluwangu). I did it, but that was a long time ago. I paid him adultery compensation (malu) and the hamlet was then cleansed. Now if I did it since, let the oracle catch me. But because I know that I did not do it, let the oracle go to the garden!

The man extends his right hand and lets the hot iron pass over him without flinching.

The mgonga escorts both the accused to the circle of elders who came to help decide if the participants have been caught by the oracle or not. White blisters have appeared on both the hands of the accused, and the elders, together with the mgonga, agree that they have been "caught" by the oracle.

Dispute Settlement by Village Fission

Such was the conclusion of the oracle, but how did this result affect the dispute and the disputants? Despite the fact that both the mgonga and the elders decided that the two had been caught, the accused adulterers steadfastly continued to deny that they had resumed their affair. They rejected the verdict of the oracle. Because of this, the hamlet site (chengo, pl. chengo) was abandoned, and its residents dispersed to found new, separate hamlets. The fission corresponded to groupings of fathers with their own sons, with the result that each new hamlet contained as its nucleus a single elder and a group of brothers. The Village Head of the disease-ridden, abandoned hamlet, in giving his rationale for this fission, said that the stubbornness of the two accused adulterers in denying their guilt meant that they would continue to threaten the entire village. This elder had inherited the wives of his dead brother; he now abandoned them and moved with only his sons by his original wives to another site.

While the Oracle-of-the-Hot Iron itself did not "settle" this particular dispute by restoring relationships to their pre-dispute order, it fulfilled the function of giving an unequivocal decision -- in this

case, that the accused pair was guilty. By continuing to deny their guilt, the pair indicated indifference both to the decision of the Village Head and to the oracle. On the other hand, whether their actions were justified or not, the actions of the hamlet residents showed their conviction that the accused pair was guilty and their acceptance of the oracle's decision. In the end, the oracle did, in fact, settle the dispute by putting an end to continued fruitless accusations and further hostilities.

CHAPTER SIXTEEN:

ORACLES AND THE RESOLUTION OF DISPUTES

The Jurisdiction of the Oracles

In the absence of any prima facie evidence, such as witnesses or even circumstantial evidence, the guilt or innocence of the accused must be revealed by supernatural means; the oracles, like the diviners, do this. The oracles, however, are a higher authority than the diviners, and this authority is appropriate to the stage the dispute has entered when an ordeal is taken, namely, after open confrontation between accuser and accused.

Today, there is no set rule governing the selection of a specific oracle for any particular dispute. The elders complain about this, and recall that in the past, the elders had the authority to specify which oracle was to be consulted. The elders believe that the present freedom of choice by disputants accounts for the comparative disrespect given the oracles. The elders also suspect that freedom of choice allows the disputants to immunize themselves to the medicines used in the ordeals by procuring special antidotal medicine beforehand.

The dispute discussed in the context of the Oracle-of-the-Pawpaw was a sorcery dispute, and this is a

representative type of dispute for this particular oracle. However, this does not imply that the Oracle-of-the-Pawpaw deals exclusively with sorcery cases. It is true that on each of the several occasions that I witnessed this particular ordeal, a sorcery case was being tried. When queried about the meaning of this pattern, or if indeed there was any pattern, the wagonga and the other elders assured me that while accused sorcerers predominated, accused thieves and adulterers, on occasion, also took this ordeal, although such smaller transgressions tend to go to other, less expensive oracles. Conversely, the wagonga who administer the Oracle-of-the-Hot Iron and the Oracle-Which-Finds-Out assert that accused sorcerers do come to take their ordeals but rather infrequently. Thus, for the Oracle-of-the-Hot Iron and the Oracle-Which-Finds-Out, the adultery and kitio sex offense, that we selected in the case studies, are representative.

TYPES OF CASES THAT APPEAR BEFORE ORACLES
(During 1972-1973)

	Sorcery	Kitio Offenses	Adultery	Theft	Total
Oracle-of-the-Pawpaw	12	0	3	0	15
Oracle-Which-Finds-Out	0	4	8	5	17
Oracle-of-the-Hot Iron	4	6	6	7	23
Total	16	10	17	12	55

Figures in the table include cases that were observed by me at the oracles, but data from case histories and interviews predominate. The twelve-month time period is approximate. The table shows the frequencies of different types of cases at the different oracles. A type of case that is conspicuously absent from the sample is debt, possibly because supernatural proof of indebtedness is never necessary. In the most prevalent type of debt, the delayed payment of the entire bridewealth cost, Giriama always arrange to have neutral parties representing both sides to witness the financial agreements that are made. If a dispute later arises and one party disagrees about the terms, the witnesses can be called. In any case, the mere existence of a debt implies a knowledge, by debtor and creditor, of the arrangement.

Economic considerations play an important part in choosing which oracle to consult -- one chooses one whose cost is commensurate with the penalty of the offense. It makes little economic sense for one accused of petty theft, or for an adulterer (who may have to pay 100 shillings as compensation), to select the Oracle-of-the-Pawpaw which costs 200 shillings to each disputant (in 1972, one U.S. dollar was worth 7 shillings); there are less expensive oracles available.

On the other hand, an accused sorcerer faces considerable financial loss if found guilty; the obligation to pay the death compensation (kore) alone is 1,500 shillings; hence the accused sorcerer is more willing to risk the payment of 200 shillings in return for a possibly favorable verdict of the prestigious Oracle-of-the-Pawpaw.

But the connection between sorcery and the Oracle-of-the-Pawpaw is not merely a matter of relative costs. At the Oracle-of-the-Pawpaw, the songs sung when the ordeal is being given all pertain to sorcerers, the activities of sorcery, and the power of the mgonga in conquering sorcerers, even when the case does not involve sorcery. The suggestion that this perhaps occurs because the overwhelming number of cases appearing before the Oracle-of-the-Pawpaw have to do with sorcery is not convincing, for at the Oracle-Which-Finds-Out, few sorcery cases are heard, yet the ritual songs still pertain exclusively to sorcery. The mgonga of the Oracle-of-the-Pawpaw attempted to explain this by saying that all offenses are, in fact, similar in nature, and that the most serious offenses are really not very different from sorcery:

We sing the same songs, regardless of the type of case. You may not be a sorcerer, but if you are brought here, you are as bad as a sorcerer. It may be that you are not a sorcerer, but if you have stolen something, or slept with someone's wife, these are also kinds of sorcery.

This statement expresses literally the idea that sorcery is the common denominator of all serious offenses, and it is also consistent with the tendency for accused sorcerers to have engaged in antisocial behavior prior to their being accused.

The Place of the Oracles in the Judicial Process

The stated purpose of all oracles which have been discussed is the same: to find out the truth. This "truth", however, is actually narrowed down considerably, in the course of questioning, to mean who committed a wrong, or to be more precise, whose version of events is correct. In all of the oracles, the medicine acts on the one whose version is wrong -- in effect, on the offender, be he the accused or the accuser, and "goes to the garden" on behalf of the individual whose version is correct. In instances when the accused takes the ordeal alone, it is his offense that is exposed when he is "caught" and a false accusation when he is not. A false accusation, as we have seen, is regarded as an offense, and when an oracle decides

that the accusation has no merit, it simultaneously decides that the accusation is false and an offense, and the stage is set for the innocent party to counter-accuse his former accuser for the damages of "spoiling the name". In such instances, the oracle has indeed revealed the "truth" but it has not settled the dispute; rather it has set into motion another formal dispute.

Finally, the truth revealed by the oracle must be accepted by both disputants if the dispute is to be settled. It is clear from the case studies that the accuser (as in the sorcery case of Sidi Simba tried by the Oracle-of-the-Pawpaw) as well as the accused (as in the Kitio Sex Offense case tried by the Oracle-of-the-Hot Iron) may refuse to accept the judgement of the oracle. This in turn results in the severance of relationships and the prolongation of the disputes. In contrast, in the case "The Jealous Husband" (tried by the Oracle-Which-Finds-Out), both the accuser and the accused accepted the verdict of the oracle, and the dispute was amicably settled by the outcome of the ordeal.

The formal ideology of the oracles expresses the desire not only to reveal the truth but to end the dispute. In the "Oracle-of-the-Pawpaw", the long

incantation before the ordeal repeatedly called for the "Quarrel to end . . . for good things to come . . . for bad things to go away" The mgonga of this oracle expressed the wish that the disputants cease quarrelling after the oracle had given its decision; the mgonga of the "Oracle-Which-Finds-Out" expressed a similar wish. Put in formal terms, the ultimate function of the oracles in the judicial process is seen by the Giriama to be dispute settlement. But whether the oracles perform this function largely depends on the attitudes which the disputants bring to the oracle with them; such attitudes, of course, are difficult for an investigator to ascertain and analyze. There may be, for instance, a confirmed belief in one's innocence on the part of the accused; or, alternatively, there may be in the mind of the accuser immense hatred and hostility accumulated from the often long and expensive process of evidence-gathering before an accusation is made and an ordeal taken. Either attitude may prevent the acceptance of an oracle's outcome.

Despite these individual variations, which are inevitable because oracles deal with individuals, the oracles maintain their ideology of finding out the

truth and causing hostilities to cease. Some disputes are in fact settled immediately following the verdict of an oracle, and these successes allow the ideology of the oracles to prevail. In addition, the oracles, which implicate both parties, provide on the one hand a check on irresponsible accusations (because the "false" accuser -- that is, the one unsupported by the oracle -- would be liable for the costs of the ordeal and a fine for defamation) and, on the other hand, an encouragement to those accused who have a bad conscience to settle before incurring additional costs by insisting on an oracle and losing the decision. Hence the importance of the oracles -- as both actuality and possibility -- to the entire judicial process.

CHAPTER SEVENTEEN

MIZIMU: THE ULTIMATE ADJUDICATOR

The mizimu is the place¹ where the pepo, servants and messengers of the Sky-God Mulungu live. The spirits of the sacred tree are supernatural adjudicators, believed to inflict death on offenders.

The accuser comes to the mizimu to contact these spirits through a medium, the mgonga wa mizimu, in order to remedy a wrong or to force the fulfillment of an obligation. The accuser seeks a judgement against an alleged offender who will not admit his guilt or provide a remedy for any type of offense: theft, an outstanding debt, adultery, sorcery or even a false accusation, which, as we have seen, is also considered to be an offense. Assuming the role of accuser (regardless of his previous role in the dispute), the party that visits mizimu may seek redress without giving any formal notice to the accused that he is going. A party may visit mizimu if he feels, after the dispute has been fully aired before one or more judicial institutions, that he has not received an adequate remedy.

1. Strictly speaking, mizimu is a plural noun meaning "spirits". In Giriama speech, however, the particular tree where these spirits dwell is referred to as mizimuni, the locative form of the noun meaning "where the spirits dwell".

When he visits mizimu, the accuser verbalizes his accusation to the spirits and then goes home to await their decision. If the accused is guilty, he or one of his relatives is struck dead. If the accuser's case is judged by the mizimu to have no merit, then he himself faces death. There are some characteristic signs that a disease has been caused by mizimu. As the mgonga-of-the-mizimu states it, a death caused by mizimu is unexpected:

A person may be walking on the road, and suddenly he stumbles and falls down dead, usually with blood appearing at his mouth. When someone falls down like that, with no previous disease, and within a week, another person in that family (i.e., resident in the same village) dies, then you will know that it is mizimu. After one person dies, another will die after the sixth day. Then they will go to mgonga wa mburuga, who will say, 'This is mizimu.'

The mgonga-of-the-calabash will also disclose the offense that prompted the guilty person or his accuser to seek the decision of the mizimu, and the offender will be under great pressure to admit his guilt and settle the breach in whatever manner is appropriate.

Like the pepo who serve the wagonga-of-the-calabash and other wagonga-of-the-head, the pepo of mizimu cannot communicate with ordinary human beings, but must use an mgonga² as a medium. The descriptions by

2. The mgonga wa mizimu, like the mgonga-who-prays, mgonga-of-the-calabash, and mgonga-of-finding, is an mgonga wa kitswa (an mgonga-of-the-head).

wagonga wa mizimu of their selection by the pepo are similar to the accounts given by the other wagonga-of-the-head. As one mgonga-of-the-mizimu related:

The pepo are the ones who tell you what kind of mgonga you are; if you are mgonga-of-the-calabash, the pepo will come when you rattle your calabash. If you are an mgonga-of-the-mizimu, the pepo will come to you in a dream, and tell you to go to mizimu and burn incense³, and the pepo will come to you. But all, I have to do is go to the mizimu and call to the pepo, and they will come to me. Each mgonga has his own type of pepo -- there are the pepo of the wagonga wa mburuga, and the pepo for the wagonga wa kuvoyera; and there are the pepo for the wagonga wa mizimu. They are all different.

Once you become sick, if that sickness is connected with becoming mgonga, you will not be sick for a long time. The pepo will come to you at night in a dream or even during the day, and you will fall into a trance -- and then the pepo will tell you the task that they have selected you to do.

Another mgonga wa mizimu stated that the pepo wa mizimu just decided to like him, and visited him in a dream; the pepo led him to a huge tree, which they wanted to make their home. They told the future mgonga that they thought that he could serve them, if he agreed to follow their instructions. The pepo instructed him to clear the area around the tree, and to burn incense when he wanted to summon the pepo. The next day, the future mgonga did these things, and that night the

3. The burning of incense by some wagonga-of-the-mizimu is probably the result of Muslim influence along the coast.

pepo came to thank him in a dream. The mgonga emphasized that a dream caused by a visitation of the pepo is unlike other dreams, which you forget upon awakening; when pepo come to an mgonga in a dream, he remembers it in all its detail the next day. The new mgonga may receive his instructions in nightly dreams for a month, before he becomes a practicing mgonga:

That is when and how you acquire the pepo wa mizimu -- it is just a matter of theiR liking you, and choosing you. And they make you their servant.

After the selected man becomes mgonga-of-the-mizimu, he must keep the tree that is the home of the pepo in good order, clearing all the accumulated debris from under the branches. The mgonga must also make constant offering of food and drink to the pepo. During the months of June and July, when the maize crop comes in, the mgonga of the mizimu cannot eat any of the maize himself until he has left some cobs in offering at the mizimu for the pepo. The mgonga realizes that any food left at mizimu will be eaten by animals, but he believes that these animals are actually the pepo in animal form:

The maize is the pepo's food. It may be eaten by an animal who eats maize, but we believe that animal is actually the pepo. If I leave meat here (at mizimu) it will be eaten by an animal who eats meat; wari (maize meal) will be eaten by animals who eat wari . . .

if I give a feast here, I can't start eating unless I bring some of the food to mizimu -- then I can start eating myself. So I become their servant, and I even must give them their food. I must listen to their instructions, always.

Before a client can come to mizimu to make a request of the pepo through the mgonga, he must first inform the mgonga of his intention to visit mizimu, for the mgonga must make special preparations. If the client is to come to mizimu the next day, neither the mgonga nor the client can drink liquor on the previous night, nor can they have sex with any woman. The mgonga goes first to the mizimu alone early in the morning, informs the pepo that he and a person with problems will be visiting, and asks them to listen to them and then do what they think is right. The client visits the mizimu with the mgonga and, through him, tells the pepo his problems and leaves for home. After the mizimu has satisfied the client's request, the client must return to the mizimu with whatever reward, in the form of a food offering, he has decided on: a chicken, a sheep, a cow, or a goat. The animal will be killed near the mizimu and cooked there. There will be a big feast for the people in the mgonga's village; some of the meat will be laid at the base of the mizimu, so that the pepo can share in the feast.

When visiting with the wagonga-of-the-mizimu, one is struck by the outwardly more personal relationship and the instant communication these wagonga have with their pepo, compared with the other wagonga-of-the-head. Approaching the mizimu, the mgonga pauses at the entrance to the mizimu -- a break in the bush encircling the tree -- and calls out the traditional greeting one gives in seeking entrance to the dwelling of any living person. He calls, "Hodie! Hodie! Hodie!" This reinforces the impression that the mizimu is indeed inhabited, and that one must seek permission to enter as one would to anyone's home. The clearing under the tree is in semi-darkness, with light filtering through the dense foliage. As to the tree itself, it is not a baobab, which is a commonly found tree on the Coast: baobab trees do not have spreading, trailing branches said to be necessary to the privacy of the dwelling of the pepo of mizimu. Rather, the mizimu is often a centuries-old mango, immense in girth, and encircled by gnarled vines themselves the size of deformed, full-grown trees. At the base of the tree lie rotting maize cobs, some broken pottery vessels, and the clean animal bones from past offerings to the pepo. Once inside the mizimu clearing, it is no more possible to see out than it was, on one's approach, to see in.

Some wagonga-of-the-mizimu frequently use incense in calling for the pepo; others speak directly to the pepo, saying that since the pepo dwell at the mizimu, there is no need to summon them. The mgonga begins to address the pepo immediately upon entering the mizimu. The one-sided conversation is in the Giriama language (unless the mgonga is Muslim and addresses the pepo in Swahili sprinkled with some Arabic words). The speech is earnestly directed skyward, directly up the center of the tree trunk. The mgonga pauses frequently in his monologue to receive answers -- unheard by the observer -- from the pepo; throughout this, the impression of a dialogue is skillfully maintained. The atmosphere in the mizimu is one of reverence, for while the mgonga speaks to the pepo, the pepo speaks to Mulungu. If an accuser wishes to visit death on the offender (or on one of the offender's close relatives), he must bring a red rooster and a coconut to the mizimu; the head of the rooster is wrung off and the coconut is broken. The pepo will interpret the blood of the rooster that has been collected in the coconut as a sign that the offender must be killed. In a few days, if the offender, who is said to be warned of his offense in a dream, still refuses to capitulate, he or a relative is struck dead by bleeding from the mouth.

Relatives of the deceased will seek the advice of wagonga-of-the-calabash. If the mgonga tells them that their close relative committed an offense and that the aggrieved party went to mizimu, the clients will seek out the accuser to rectify the wrong in whatever manner appropriate. They will also beg him to return to the mizimu to give the offering that he promised if the offender were apprehended, so that the sanction may be abrogated.

The Decision to go to Mizimu

Sometimes the elders, faced with a defiant offender after they have given a decision, will tell the accuser to go to mizimu, for there is nothing that men or reason can further do. Most of the time, however, the decision to go to mizimu is made privately, often after other attempts to seek justice have failed. One such case concerned the non-repayment of bridewealth to the husband of an estranged wife; for bridewealth proper (mali) is refundable in full to the husband upon the dissolution of the marriage. In this case, a man's daughter had married, and he duly received mali for her from her husband. But the daughter did not get along with her husband, and eventually left him and returned to her parents. She did not wish to re-marry, while

her husband pressed for the return of his bridewealth, so that he could get another wife. The father of the girl claimed that the husband could not get his bridewealth returned until the daughter remarried, for the father had long since "consumed" the bridewealth and was not in a position to repay it. He also had no other daughters whose forthcoming marriages promised to supply the needed amount. The girl had no intention of remarrying, which she emphasized by remaining at home and producing children in the absence of a husband. Her ex-husband was still entitled to these children, but he could not claim custody and the possible economic advantage from them until they were grown sufficiently to be independent of their mother.

The major point here is that, by Giriama rules, a husband is entitled to the return of his bridewealth regardless of whether his wife has remarried. The girl was also behaving in what is to the Giriama an anti-social manner by refusing other husbands and producing children. The husband finally went to mizimu, after accusing the father-in-law several times, unsuccessfully, before the elders' council. The husband told his problem to the pepo. Within a week, the mother of his wife died and, in the next week, one of her brothers died. The father of the girl went to an mgonga-of-the-

calabash and was told that his son-in-law had gone to mizimu because he had been unable to collect the mali owed to him. The father of the girl then inquired at the mizimu and was also told that the ex-husband had indeed been there recently. As the mgonga stated it:

They (the father of the girl and his brothers) went to me, and I assured them that their in-law (mutsedza) had been here. The father of the girl and his brothers then promised the pepo of the mizimu that they would pay back the bridewealth, and they gave a date for the repayment right there at mizimu. The date was four months in the future, and when the son-in-law was informed, he agreed to the date. I then asked the pepo of the mizimu to lift their punishment, and there were no more deaths in that village. After four months, the husband got his mali back, and everything was settled. That is one example I can give of how the mizimu can affect you. That is why people are more afraid of mizimu than they are of anything else.

In other instances, individuals who believe they have been falsely accused and forced unfairly to capitulate to their accusers may also go to mizimu, for a false accusation is in itself an offense, punishable by a compensatory fine for "spoiling one's name". Unfounded accusations most frequently concern adultery: as mentioned above, a husband can attempt to sue a suspected adulterer on the flimsiest of evidence. If a man suspects his wife of committing adultery, he sends her to collect the adultery compensation (malu)

on his behalf from the suspected adulterer. The wife frequently assents, although she may in fact be innocent, because she may be beaten by her husband until she agrees. A man, faced with the possibility of being also beaten if he does not comply, may be forced to pay malu, although he may have done nothing. In this case, he may go to mizimu and, acting as the accuser, tell the pepo to punish the unjust husband. In the meanwhile, fearing just such an event, the woman may leave her husband. As an mgonga-of-the-mizimu stated:

Women fear that the innocent man may go to mizimu to punish the one who accused him falsely. It is not that she does not love her husband any longer, but she fears the consequences of mizimu, which could afflict her or her children, if she remains a part of her husband's village. If she leaves, the people remaining in the village may be affected, but she will not be. Divorces are often caused by this fear of mizimu, if a wife has been unjustly accused of adultery.

Another case in which one party sought redress at the mizimu is already familiar to the reader: the case of Sidi Simba. Here, however, the visit to mizimu came not as a first response to a wrong, nor as a response to an unjust accusation. Rather, it came as the culmination to a prolonged dispute marked by several unsuccessful attempts at settlement by other means.

The Case of Sidi Simba
Part Three: At Mizimu

It will be recalled that Nyanje wa Simba's sorcery accusation of his sister Sidi Simba was judged by the oracle to be unfounded. When Sidi Simba and Nyanje took the ordeal together, Sidi was found to be innocent of sorcery, but Nyanje rejected the decision of the oracle. Sidi was in a desperate situation. She still had the cloud of a sorcery accusation hanging over her; Nyanje persistently reiterated his allegations, although both the oracle and the elders' council had stripped him of this right. As in a western society, an accusation and an appearance in court -- here, before the oracle -- may leave a pall of suspicion over the accused, even after acquittal. In Sidi Simba's case, the situation was even worse, for doubt was cast even over her acquittal.

It cannot be known precisely if or when Sidi Simba went to mizimu, but she let it be known that she was going. At mizimu, she would ask the spirits to make the final decision and kill her if she were a sorcerer, or kill Nyanje if he had accused her falsely. At mizimu, both could not be right. At the time of the ordeal at Kaya Fungo, it had been apparent that Nyanje was very ill; he was emaciated and had a large tumor on his side.

Now, a month later, he was dead. Word went around the villages that either Sidi Simba had indeed been a great sorcerer and killed Nyanje in revenge, or that the spirits of the mizimu had given their fatal verdict against Nyanje, a false accuser.

The case of Sidi Simba thus remained an ambiguous one from start to finish, including its finale in Nyanje's death. As for the dispute, it was finally settled only by Nyanje's death. From the Giriama point of view, the settlement of the dispute had finally fallen into the hands of the spirits of mizimu, who had rendered a final, even if still hidden, justice.

The case of Sidi Simba is an instructive one, for it had run the entire gamut of institutions which deal with disputes of its type in Giriama society, showing the acceptable ways in which individuals must deal with their institutions and the weaknesses inherent within the institutions. The mizimu exists in part for the kind of impasse that was reached in Sidi Simba's case. The belief that the spirits of mizimu had intervened provided an explanation for the ending of a hopeless dispute which in fact was, and could only be, settled by the death of one of the disputants. Otherwise, the dispute seemed destined to continue indefinitely.

Conclusion

We have seen that the mizimu is a court of last resort from the point of view of both the accuser and the accused. The dispute can be taken no further, for the purported manifestation of the mizimu's verdict of guilt -- death -- is immutable. Although mysterious death is subject to investigation, if the cause of death is established as the work of the mizimu (largely through the opinions of diviners), the decision of mizimu is not challenged. For this reason, the mizimu is an effective means of dispute settlement, particularly when the dispute has reached an impasse. In fact, because it is firmly believed that the mizimu can inflict death on either the accuser or the accused, depending on who is right, an accuser does not seek this type of redress casually while the accused regards this possibility with great trepidation. Thus, the accuser's very act of going to mizimu indicates that he is convinced that he has been wronged. The strength of such an attitude in itself presages the end of a dispute, and accounts for the fact that the mere threat of going to mizimu causes anxiety and may be enough to elicit the desired response from the accused.

PART FIVE: CONCLUSION

CHAPTER EIGHTEEN

It has been said that African systems of dispute settlement are informal, that is, lacking in procedural norms, and weak on substantive rules by which wrongdoing can be ascribed. This emphasis seems to have originated in the belief that settlements in these societies are reached, not by the adjudication of issues but by compromise and reconciliation. Such arguments stress that in many African societies overriding political considerations (that the strong will prevail) or underlying social requirements (such as the need for peace and social harmony) prevail over the need to determine the "truth".

We accept that any judicial institution -- in any society -- exists to settle disputes and, at the same time, to minimize strife and discord in the society. Thus, a judicial system that unambiguously ascribes wrongdoing -- as in the case of the Giriama -- must also have mechanisms that not only guard against irresponsible or facile decisions but also provide an opportunity for disputants to be reconciled after blame has been allocated. The Giriama judicial system accomplishes these sometimes conflicting tasks by

placing restraints on the formal emergence of disputes and on the judicial institutions themselves.

Thus, as we have seen, Giriama disputants frequently cannot make a public accusation or present a case for adjudication without going through an exhaustive process of gathering evidence, specifically from diviners called wagonga-of-the-calabash. Significantly, the gathering of "evidence" from diviners is mandatory before the most serious and potentially divisive accusation (that of sorcery) can be made, and it is essential before making accusations of other alleged offenses where prima facie evidence is lacking. Careful evidence-gathering by the potential accuser is encouraged in two ways: by the possibility that the accused will prove his innocence by receiving a favorable judgement when the case is adjudicated and subsequently sue his accuser for defamation ("spoiling the name"), or by the possibility that the accused will seek the decision of the mizimu, which is believed to kill a false accuser. In addition, the quality of the "evidence" offered by the wagonga-of-the-calabash is maintained by the competitive pressure placed upon them; hence, their "evidence" must corroborate that of other diviners and be firmly anchored in the client's own perception of the situation. As we have seen,

successful diviners achieve this feat by cleverly interrogating clients and carefully cataloguing their knowledge of local affairs.

Any possible capriciousness of the judicial process -- in either accusation or adjudication -- is guarded against by a complex system of checks and balances. Thus, the "evidence" of the wagonga-of-the-calabash can be disproved by a higher-ranking diviner, the mgonga-who-prays; and the accusation made by an mgonga-who-prays can be nullified by the decision of an oracle. Decisions made by legal authorities, such as the Village Head or the elders' councils, can also be overturned by the decision of an oracle. Carried to the farthest possible extreme, a disputant dissatisfied with all methods of adjudication may ultimately appeal to the mizimu. Acceptance of this complex system -- even while preventing irresponsible accusations -- provides Giriama disputants with the confidence that somehow redress will be obtained, and this serves to discourage self-help, a clearly disruptive extra-judicial measure.

Given the assertion that Giriama judicial institutions operate largely to ascribe wrongdoing to one of the parties, some questions arise as to the effectiveness of the institutions: where do they get their authority?

how do they maintain the impartial, impersonal role essential to the task of ascribing wrongdoing? how do they offset the divisiveness produced by the existence of adversaries and the ascription of guilt? We have seen that several institutions are believed to be the instruments of supernatural forces that are both feared and respected; thus, the wagonga-of-the-calabash and the wagonga-who-pray are believed to be chosen by the spirits and the Sky God Mulungu and merely relay information to the living. The decisions of the oracles are also believed to have a supernatural origin, for it is the medicine representing the oracle that "acts" on the disputants and indicates the decision. The workings of the mizimu are unknown and unquestioned. The mgonga of the mizimu does nothing but conduct an invisible "dialogue" with the spirits; the spirits then "act", equally invisibly, by striking down an offender. The identification of all these institutions with a supernatural force of some kind bestows a kind of unquestionable authority on them that urges compliance; but, at the same time, the human instruments are admitted to be imperfect, and errors in the transmission of messages can take place. By purportedly depending exclusively on their spiritual sources, the wagonga are further relieved of the responsibility for making

mistakes, for, as with other anthropomorphic attributes ascribed to them, the spirits are believed to be capable of error. In this way, the wagonga personally escape the wrath of angered disputants and retain the impersonality that enables them to be involved in one case after another.

The source of the secular adjudicators' authority and immunity is harder to define. The Village Head's legal authority comes from his position as the leader of the local kin group, the mryango, and ultimately from the ancestors; his position is ascribed by his place in the patriline of succession. In giving a legal decision, therefore, he need not dilute his authority by consulting others; his authority is his social position, and hence his impartiality is assured. In addition, he expresses his apparent objectivity by framing legal decisions that are consistent with the interests of the kin group. The elders' councils also avoid being implicated in disputes (with the possible threat of retaliation by disputants and the erosion of authority) by appearing to be neutral and by minimizing the importance of the individual elders who make up the council. Thus, the elders' conferences are conducted well out of the disputants' earshot, where agreements, dissents, and a great deal of personal information about

the disputants are heard from the elders. The majority opinion prevails and the decision that is announced is presented as being unanimous. The elders symbolically present a united front by chanting in unison after the decision has been given: "That is indeed what we have decided."

Giriama legal institutions thus have the authority and the immunity from suspicion when they ascribe wrongdoing, but, if left at this point, their decisions would be potentially divisive and this must be counteracted in some way. Ill feelings and anger between disputants following a dispute must ultimately be quelled by the disputants themselves, but the legal authority can encourage reconciliation by providing a suitable atmosphere. Giriama institutions that adjudicate have -- with the exception of mizimu -- an ideology not only of settling disputes, but of effecting amicable agreements. The formal chants given before the judgements of the elders' councils and the Village Heads call for "good things to come, and for bad things to pass away." Sometimes, as in the elaborate incantation before the ordeal of the pawpaw begins, the spirits and the ancestors are called upon to aid in making "good things come." Although the formal chants call for an end to

hard feelings, the efforts made by adjudicators to promote reconciliations vary. But when adjudicators attempt to reconcile the disputants, they try to extract an agreement, before the judgement is given, that social relationships will be restored. We have seen this cajoling take place at the elders' councils, at the oracles, and even before the Village Head, when general advice is given on how to live together peaceably. The timing of this advice -- after the disputants have presented their testimony, but before the actual decision is given -- is significant, and reflects the understanding that a legal decision may exacerbate hard feelings by continuing to pit one disputant against the other.

* * *

Returning to the broader issue of patterns of African dispute settlement in "state" and "non-state" societies -- issues raised in the introduction to this study -- it is difficult to decide whether we can say about the Giriama what has been said about other "stateless" societies, namely, that in them "moots, oracles and self-help" have displaced "organized, neat systems of law" of the states (Bohannan 1965:40). The implication appears to be that in "stateless" societies,

dispute settlement is somewhat chaotic, or that, at the least, rules of law have to be rather flexible. Thus, among the Arusha, as described by Gulliver (1963), the relative positions of disputants in the social structure, with their accompanying abilities to gather vociferous supporters, decide who will prevail. And even in some African states, such as that of the Barotse, as described by Gluckman (1955), cases do not appear to be decided on the facts but on the social relationships that exist between disputants. Yet, in another African state, Busoga (Fallers 1969), adjudication focuses exclusively on ascribing wrongdoing, and seems to be little concerned with dispensing justice and conciliating disputants. Are the Giriama merely to be added to the list of African legal systems that are worth noting because they are "different" in yet another way?

The problem, as we have said, seems to be posed in terms of elements associated with the two polar types of "state" and "non-state" organizations. On the one hand, we are asked to think of courts endowed with the means of enforcing their decisions; they are, therefore, free to judge cases entirely on their merits and to hand down decisions that clearly ascribe guilt. This

does not mean that the ascription of guilt is necessarily totally impartial; thus, the courts may be influenced by those in power and favor them as they reflect the realities of socio-political relations. At the other end of the polarity, we are asked to think of acephalous and segmented societies. Here, judicial bodies lack any powers of enforcing their decisions; they will therefore settle cases by mediation and compromise -- and this precludes clear ascription of guilt -- or the cases will be left to be resolved directly by the existing balance of power between the parties. While the two polar types are logical, two crucial elements in them -- enforcement of decisions and clear ascription of guilt -- may, however, operate in ways different from those that are implicitly postulated. Here, our Giriama study becomes suggestive, for the Giriama are an acephalous, segmented society, whose judicial institutions possess no direct powers of enforcement and whose judicial process nevertheless emphasizes very strongly the determination and unambiguous ascription of guilt.

First, on the question of enforcement. The Giriama judicial institutions -- the village legal authorities, the elders' councils and the various oracles -- are there to determine the "truth" and the litigants are

expected to settle according to that truth. Refusal by the party that has been found guilty to settle accordingly becomes an additional grievance for the other party, which may then resort to the mizimu and to self-help. But this refusal to abide by the established procedures is also an offense against the community at large and the consequences of this may be grave. Thus, the community -- sometimes (as in the case of Kahindi and Katana) even including one's own clansmen -- will allow harassment and self-help by the other party and may actively support them. These are not, to be sure, formal enforcement mechanisms. What the judicial institutions do is to signal, so to speak, to the community that its accepted procedures for insuring peace are being defied and this by itself shifts the balance of political forces in this segmented society against the offender. Thus, as other writers have stressed, the resolution is indeed political and responds to the existing balance of forces. The Giriama case shows, however, that the dynamics of this balance may be such that they support the procedures and decisions of the judicial institutions.

The second question is that of ascription of guilt in a segmented society. The logic behind the polar types discussed above appears to assume that the

ascription of wrongdoing by a legal institution is incompatible with reconciliation and compromise, the dominance either of ascribing wrongdoing or of reconciling being attributed to political dynamics or to the need for social harmony.

We would suggest that there is no inherent incompatibility between ascribing wrongdoing and reconciling disputants; indeed, a combination of the two may be essential to much effective dispute settlement. In our study of the Giriama through detailed analysis of case material, in which the verbatim arguments of the disputants and the responses of the legal authorities are examined, it becomes clear that disputants present enough facts for the legal authorities to judge both the mood of the disputants and the issues of the case. Attempts may be made to "soften" disputants, where feasible, so that when a decision is given the stage has been set both for its acceptance and the possible reconciliation of disputants.

A certain proportion of reconciliations following disputes is essential for society to survive, and unabated dissension would indeed destroy the "permanent" relationships on which, Gluckman (1955) writes, societies such as the Giriama are built. It has been

shown that Giriama judicial institutions have the ideology of settling disputes amicably; that is, however, invariably combined with an unambiguous ascription of wrongdoing. Lacking the means of enforcing legal decisions in complicated cases, Giriama judicial institutions appear to compensate for this weakness by making the supernatural the source of the decision. But this, in turn, creates special problems. The method of learning the "truth" from the supernatural is based on divination, essentially an "either/or" method, allowing little room for nuances and resulting in an unambiguous ascription of guilt. Any subsequent attempts to reconcile the parties must deal with this fact. The Giriama deal with it, first, by drastically narrowing down the question to be asked of the supernatural, thus reducing the dispute to a simple and single issue which can appropriately be dealt with through divination, but which represents only part of the total complex problem. This leaves the nuances of the case out of the divinatory procedures that result in the ascription of guilt. But the nuances are dealt with before the decision is sought from the supernatural. It is during the preliminary questioning that the sting is taken out of the eventual ascription of guilt. At this time, each side is blamed for its respective failings and for not seeing the other party's point of

view and legitimate grievances. Both sides are exhorted to become reconciled, whatever the verdict, and non-acceptance of the verdict is pronounced in advance to be an offense against the community. Thus, when the supernatural verdict finally comes in, ascribing guilt unambiguously, it is clear that the loser is wrong but on a rather narrow question, while the winner is not blameless in many matters that are germane to the whole issue, even if peripheral to the narrow question decided by the oracle.

In brief, then, the Giriama successfully combine reconciliation of parties with an uncompromising ascription of guilt by two related devices. First, they narrow the scope of the guilt to a single, simple question that is easily decided by the oracles and results in ascribing guilt. Secondly, in the very process of narrowing down the scope of the question through interrogation, discussion, and moralizing, the community -- speaking through the council of elders -- shows to both sides that each is to blame in many matters relevant to the issue and that this imposes on them the need to reconcile regardless of who wins when guilt is formally ascribed.

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