

MEDIATION OF AN ANCIENT LAND DISPUTE*

Liravi and Bekelomo are two villages in the Rigo sub-district of the Central District. The villages are separated by rolling hills covered with gum trees.

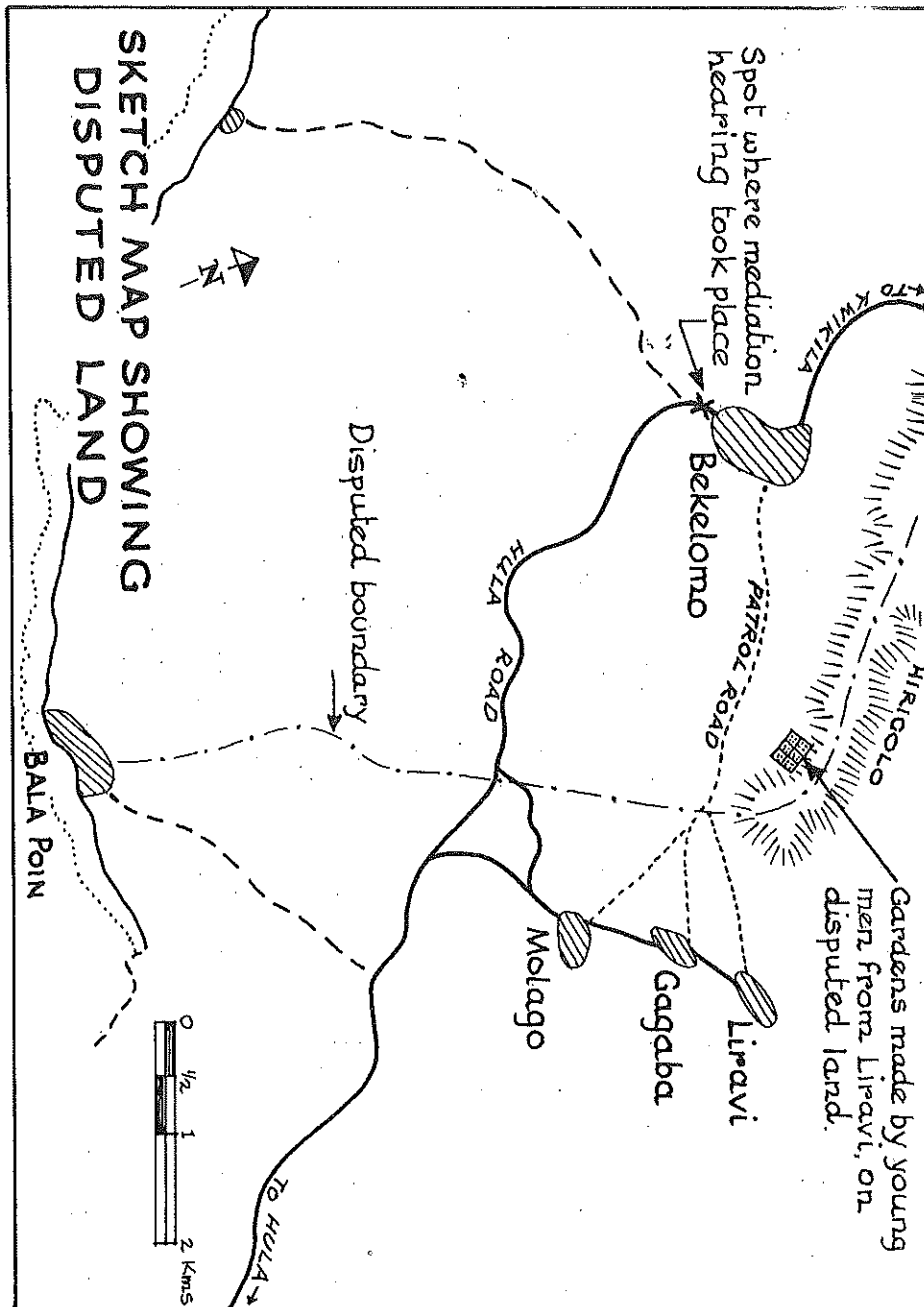
I. History of the Dispute

One morning in August 1974, Numa and Geva from Liravi village walked over the Hirigolo hill which separated their village from Bekelomo village and started clearing the bush on the slope towards Bekelomo. Numa and Geva were 'young men' in their thirties, as different from the older men who until now have controlled the allocation of land in this part of the Rigo sub-district.¹ They had planted and harvested crops on adjacent plots of land on at least one previous occasion. This had caused great consternation among the people of Bekelomo who regarded the land on their side of Hirigolo hill as theirs. It was natural this time that they would want to do something about this latest clearing of the bush. The young men of Bekelomo wanted to go and burn the land as an assertion of their claim to it. Yet, the older men restrained them, because the two villages had been at peace for many years now and their preference was for the achievement of a peaceful settlement of the dispute.

Thus a land dispute developed which was in many ways typical of disputes in the sub-district. In this part of the sub-district the land is owned by a *dougolo* clan and

* The research for this case note was carried out as part of the Law Faculty project on Administration of Justice in Papua New Guinea. As the dispute is not as yet finally settled, the names of people and places that we have used here are not the real names. We are grateful to the people of the two villages concerned, as well as to the Local Court magistrate and the Assistant District Commissioner at Kwikila for their co-operation in our research.

1 See N. Oram, "Culture, Change, Economic Development and Migration among the Hula" (1968) 38 *Oceania* 243-275, in relation to system of land tenure in Hula.



Map by courtesy of Mr. E.H. Ellwand,
Chief Cartographer, U.P.N.G.

controlled by a normally hereditary 'land controller' on its behalf. There are four *dougolos* in each village involved. In recent years the role of the *dougolo* and of the land-controller are not as strong as they used to be.² In the dispute in question the system of alliance in each village effectively made the dispute as one between the two villages rather than between the two *dougolos* involved.

The two villages had a history of conflict over the land prior to the establishment of Australian administration in the area. It appears that this particular dispute goes back at least a hundred years. A few years before the Australians arrived in the area the Bekelomo people had pushed the Liravi people off land which they then occupied and forced them towards Hula. However, subsequently peace was achieved between the two groups of people after a Bekelomo man took a Liravi bride. As a consequence the Liravi people were allowed to return and settle in their present village. Use of force to expand one's territory was not unusual before the arrival of Australians, and it is possible that the Liravi people might have done the same to the Bekelomo people in previous years. What is significant is that the arrival of the Australians stopped any further conquests or reconquests in the area and further disputes had to be settled without the use of force.

The Bekelomo people remember two previous occasions on which the same piece of land came under dispute. The first occasion arose at a time when the question was the allocation of work for the clearing of a patrol road between the two villages. On that occasion, it was reported that a patrol officer settled the dispute by drawing a line between the Hirigolo watershed and Bala Point to form the boundary to the Bekelomo land. The people remember that this was written down in "the book at Kwikila". On another occasion, the village constable is reported to have decided the issue and written it down again in favour of Bekelomo. However, the Liravi remember an occasion on which Lawrence

2 It is interesting to compare the pattern of leadership in three *dougolos*. The Liravi *dougolo* to which Numa and Geva belonged had its land-controller Gare Kasa, an old man of about 60, as its main representative in the dispute. On the other hand, the Bekelomo *dougolo* which claimed the land did not have its land-controller as its chief spokesman. This may be because the land-controller is still a fairly young man. In another Bekelomo *dougolo*, the land-controller system has broken down. People appear to make their own individual claims to the *dougolo* land.

the local interpreter had written the result down in their favour.³ In recent history jurisdiction over the dispute has been with the Native Lands Commissions, and its successor the Land Titles Commission. Neither of these tribunals has ever been called upon to determine the matter. Even if an application had been made to the Commission, it would probably not have been able to hear the dispute as the Commission was badly understaffed. In fact, at the time of writing the Commission is practically defunct as it is being replaced by the new machinery set up under the *Land Disputes Settlement Act* 1975.⁴

If the matter had come before the Land Titles Commission, it is probable that the dispute would have been regarded as one of ownership of land under custom. The Commission regards proof of conquest in pre-colonial times as proof of such ownership. If all the history mentioned above had been revealed in the course of the Commission's inquiry, it would probably have made an *in rem* decision in favour of Bekelomo. Yet, the fact that the dispute is ongoing indicates that the attempted fixing of previously fluid boundaries is not quite acceptable to the loser. As we shall see later, in the process of dispute settlement which was in fact adopted, many issues other than historical proof of ownership became of importance, and there were many features in the dispute settlement process itself which went beyond the normal concern of the western trained lawyer.

3 The references to books are not easy to clarify because of uncertainty over the dates involved and the destruction of some of the records. The reference to the book at Kwikila probably means a patrol report. The village constable's decision was presumably written down in the village book kept by him. However, the normal practice was that only patrol officers could make entries. The entry by Lawrence is more confusing.

4 No. 25 of 1975. The Act was enacted as a result of the Report of the *Commission of Inquiry into Land Matters* (1973). It was assented to on 29 May, 1975. District and Local Land Courts have been established under the Act. However, the courts have not as yet (5 August, 1975) commenced to hear cases.

II. Steps Prior to the Mediation Hearing

Although under the *Land Titles Commission Act* 1962, full jurisdiction over customary land lies with the Commission, Section 15A gives power to the Local Court to make temporary occupation orders. Under Section 31 of the *Local Courts Act* 1963, a Local Court magistrate may mediate between the parties before or at any stage of a hearing. Section 31(3) enables the Local Court to embody any agreement reached in its decision. Our main focus of attention in this note is the attempt by the Kwikila Local Court magistrate to settle the dispute by mediation.

It is interesting to note the steps that led to the mediation hearing:

- (1) The Local Government councillor from a neighbouring ward attempted a mediation. This was unsuccessful because Numa and Geva were unwilling to settle the dispute although the older men appeared more favourable.
- (2) The Bekelomo people then approached the Local Court magistrate at Kwikila while he was on one of his circuits round the villages. The magistrate agreed to try and settle the dispute, but was not able to arrange a meeting. On one occasion transport was not available to take the magistrate out to the villages and on the other occasion, the Liravi people did not turn up.⁵
- (3) The Bekelomo villagers then approached Kalo, a public servant from their village working in Port Moresby. Kalo rang the Assistant District Commissioner (ADC) at Kwikila and requested that urgent steps be taken to settle the dispute as otherwise there might be breaches of the peace. The ADC's opinion was that this was not a dispute of great urgency as the villages had been at peace for many years and if it was really urgent people would approach him personally.

5 These indicate the difficulties under which legal processes operate in the rural areas of this country.

The ADC has an important role in the legal process in Kwikila. He has the powers of both a Local Court and a District Court magistrate. In addition, the day-to-day administrative control of the Kwikila local court is effectively in his hands. For example, allocation of transport, and therefore ultimately of the Local Court magistrate's circuit, is determined by him.

- (4) Members of our research team, on the information of a member of the team who comes from Bekelomo, suggested to the ADC that he try urgently to arrange for the settlement of the dispute. The ADC was of the same opinion as in relation to the request from Kalo *but* did agree to organise something.
- (5) Members of the research team then approached the Local Court magistrate who suggested that the main difficulty was transport and getting the people to turn up for the hearing. In his words, "The people have their gardens to attend to and cannot spend the day waiting for a magistrate who cannot turn up".

The research workers suggested that they would provide transport both for the magistrate and for the people so that they would turn up the next day. The magistrate agreed to this and wrote a note requesting the Liravi and the Bekelomo people to turn up at Bekelomo village the next day. The message was carried from Kwikila by a Bekelomo truck driver. As it turned out, the next day transport was provided for the Local Court magistrate from the sub-district transport pool. However, the research workers still helped in bringing in their cars villagers from Liravi to Bekelomo - a notable feat of participant observation!

III. The Mediation Hearing

A table and two chairs were placed under a shady tree close to the Hula road in Bekelomo village.⁶ On the chairs

⁶ The magistrate explained that this site was chosen because access to Liravi by road is difficult.

sat the Local Court magistrate and the proposed Village Court magistrate who is the magistrate for Bekelomo. The Village Court magistrate for Liravi was not present. On other chairs a few yards across from the magistrate sat the pastor from Bekelomo, the councillor from the ward, the councillor from a neighbouring ward, and the medical orderly. Many other people, young and old men and women sat or stood close by. Most were from Bekelomo. At first the Liravi people only sent a delegation of younger men (not including those who cleared the land) to the meeting. This was not considered satisfactory by the magistrate, who, after consultation with the Village Court magistrate, sent a car for Gare Kasa (the land-controller for the 'defendant' *dougolo*) and his son Hiri Gare, who arrived subsequently.

Many people spoke in the proceedings that followed. There was much repetition in what was said. People normally stood up to talk. The main speakers were clearly the older people, the councillors, the pastor and James, the orderly of the village medical post. The women mainly contributed asides. The Village Court magistrate-designate played a key role in assisting the Local Court magistrate. It was he who decided who should have precedence in speaking. The Local Court magistrate was a patient and careful observer. Although the hearing took almost two hours, the edited account of the hearing given below will give some idea of how things went.

The Local Court magistrate read out the complaint from Bekelomo. *Gare Kasa* (Land-Controller for the 'defendant' Liravi *dougolo*): The land has always been ours. Lawrence, the sub-district interpreter, told us that this was written down in the big book at Kwikila.

Kabe Lalai (An important man from the 'plaintiff' Bekelomo *dougolo*): We know it used to be their land, however when our people met with them at the time of the patrol road, they came to an agreement with us and thus divided the land up. Hirigolo and Bala Poin (including the disputed land) were given to the Bekelomo people. This was registered in the sub-district office. This agreement has been kept for many years until now. It is only this year that the Liravi people came over to the Bekelomo side of the mountain.

Malo Mali (A Bekelomo man from another *dougolo*): We know as well as they do that the land was not owned by anybody. However, when the administration officials came round the land was divided up. This was understood by both villages and nobody came over to our side. It was only this year that the young men came across, this has made things bad between the two villages.

James (medical orderly): Yes, way back in history this division was very well organised and each side observed the divisions very carefully.

Pastor: This kind of dispute makes things bad between us. We need to live together. The young men must learn this.

Councillor from the neighbouring ward: This dispute should not go on. If the young men from Liravi have made gardens on this side of the hill let them keep them this year. But next year, they should not make their gardens there.

Hiri Gare (Son of Gare Kasa of Liravi): This is true. We have always been at peace for a long time. But our young men do not want this. They want to start old quarrels again. We cannot do much with them.

Local Court magistrate: If everybody is agreed I will write an order that the young men can have their gardens and keep their crops this year *but* from next year this will stop.

The magistrate then wrote the basis of the compromise on paper. This paper was then signed by Gare Kasa, his son Hiri gare and his grandson Herami Hiri, from Liravi. The signatures from Bekelomo were of Gei Gei and Kabe Lalai.

The Bekelomo people then gave food gifts to the Liravi people who then went back to their village. The magistrate and the researchers were invited to eat at the Bekelomo Councillor's house.

IV. Analysis

The edited account is representative of what happened in the course of the hearing. The proceedings appeared to be friendly. What is more interesting is that very little of the full historical background was revealed during the hearing. The first part of the discussions consisted of successive statements of their position by a number of speakers from either side on the question of the original ownership of land. The interesting feature was that speakers from both villages put emphasis on what was written down in 'books', rather than on the pre-contact history of conquest and inter marriage. It may be that the presence of the Local Court magistrate made it more valuable to emphasise previous cognizance of the dispute by 'officialdom'. The meat of the proceedings, however, did not concern argument as to ownership, but discussion of how peace was to be restored between the two villages. It is here that the role of neutral men such as the pastor and the councillor from the neighbouring

ward became important. The problem was seen as one of how to minimise the conflict caused by the young men. It may be conjectured whether some understanding had been arrived at between the older people in the two villages prior to the hearing.

The mediation hearing had many features of what is considered to be 'customary' dispute settlement. Even the results had clear features of compromise. However, as elsewhere in Papua New Guinea, the dispute settlement represented a mix of traditional and non-traditional features. For example, while some of the key participants such as Gare Kasa from Liravi and Kabe Lalai from Bekelomo derived their authority mainly from sources within the local community, many had important roles because of their links with what to the villagers appears to be the 'official' system.⁷ This is clearly the case as far as the Local Court magistrate is concerned. The magistrate did not treat the case as being clearly one of exercise of his powers under the *Land Titles Commission Act*. In fact the magistrate admitted to the researchers that he was unwilling to give the agreed settlement any official status particularly because the 'real parties' - that is the young men from Liravi who made the gardens had not participated in it.

The Village Court magistrate is of particular significance because he represents the 'marriage' between the 'official' legal system and the 'unofficial' legal system.⁷ He is given official status by the Government but he is chosen precisely because he has knowledge of custom and has some sort of authority within the community to settle disputes. Yet, in this particular case he was acting in an unofficial capacity, because his appointment as a Village Court magistrate had not yet been officially confirmed.

7 There is a co-existence of 'official' and 'unofficial' legal systems in most areas of Papua New Guinea. The 'official' legal system is the system of courts and tribunals instituted under the 'received' law. The 'unofficial' legal system consists of the peoples' own informal legal machinery. It is not completely accurate to call all aspects of this system as 'traditional'. The legal roles and often the legal rules reflect those of the contemporary rural community. This can be clearly seen in the important informal judicial role which has (Footnote 7 continues)

The councillors do not have any official legal powers to settle disputes, but it is well known that councillors all over Papua New Guinea do unofficially settle many disputes. In this particular case the key role was played by the councillor from the neighbouring ward, perhaps because the local ward councillor was a Bekelomo man.

The local pastor also is reputed to solve many minor disputes. He has an important role because he represents the institution of religion.

The mediation hearing had a considerable impact on the people of both villages. It was suggested by some people that this was due to the opportunity given to discuss the matter and to the fact that these discussions took place in front of officials. Yet, there were some limitations in the proceedings with the result that the matter was not completely settled. The main problem was that the young men who made the gardens were not there to argue their own case. In the old days this could have been over-ridden by the power of the older men but, as Hiri Gare admitted, this was no longer the case. The younger men had more power now.

Moreover, even though many participants in the dispute settlement process derived their status from the 'official' hierarchies, they were mostly in fact acting in an unofficial capacity. It is important to note again that no order was made by the magistrate under Section 15A of the *Land Titles Commission Act 1962*.

Some months later, the frailty of the 'peace' achieved by the mediation agreement was underlined. Once again, the younger men seem to have disrupted the designs of their elders. No crops had yet been planted on the land the subject of the agreement. However, the young men from Bekelomo heard a rumour that the Liravi young men had no intention of adhering to the terms of the agreement. One young man from Bekelomo, who lived and worked in Port Moresby

7 (cont.)

often been played by councillors. Partly because of this, in the peoples' perception, the line between the 'official' and the 'unofficial' legal systems is often fuzzed. See M. Strathern, "Official and Unofficial Courts: Legal Assumptions and Expectations in a Highlands Community", (1972) *New Guinea Research Bulletin* No. 47.

but was visiting his home village, went and burnt the cleared ground. This was in the nature of an assertion of ownership rather than a destructive act, as burning is a normal preliminary to planting. So far, neither side has taken any further steps to aggravate the dispute.

V. The Land Disputes Settlement Act 1975 - the new way

Although the mediation hearing was not a complete success it promises well for the land disputes machinery which is being set up under the *Land Disputes Settlement Act 1975*. It is possible that the new machinery, by clearly recognising the links between the traditional processes and the official legal system, is likely to remove some of the weaknesses which existed in the hearing of the Bekelomo/Liravi dispute. The new system provides for a three-tier process of dispute settlement. The first tier will consist in some areas of officially appointed mediators with powers to mediate land disputes; in other places the mediation will be effected by the existing customary or 'unofficial' mediation processes.

Where 'mediation' fails the parties may resort to the Local Land Court. This court will consist of a Local Land magistrate who will be a specially appointed Local Court magistrate, and two or more Land Mediators (where these exist), or other prominent people from the area concerned. The Local Land Court will still be required to mediate between the parties where possible, and only in the absence of an agreed settlement to arrive at a decision by arbitration. Moreover, it will have power to summon witnesses and enforce any decisions that it may make. There will be a limited right of appeal from this court to the District Land Court which will consist of a single District Land Magistrate. The District Land Magistrate will be appointed from the District Court magistrates in the area.

The subtle link between the official and unofficial legal systems is also recognised in the substantive law that the new courts are to apply. The applicable law is custom. Moreover, heavy emphasis is placed on mediation. Instead of concentrating on questions of ownership of land, the range of orders available to the courts are going to be very flexible, with special provisions for land-short groups.

One can never be too sure of the effect of 'officialisation' of previously 'unofficial' processes. Such a development could result in people getting more litigious and reluctant to reach the sort of compromise which was in fact achieved in this

mediation hearing. However, it seems likely that a Local Land Court convening in the near future will retain many of the better features of the mediation hearing which we have analysed.

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