

University of Groningen

## The plot of the sophisticated son in law

Baerends, Els

*Published in:*  
EPRINTS-BOOK-TITLE

**IMPORTANT NOTE: You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.**

*Document Version*  
Publisher's PDF, also known as Version of record

*Publication date:*  
1986

[Link to publication in University of Groningen/UMCG research database](#)

*Citation for published version (APA):*

Baerends, E. (1986). The plot of the sophisticated son in law: old and new ways in establishing rights over land in N'zara (North Togo). In *EPRINTS-BOOK-TITLE* University of Groningen. Faculty of Arts.

### Copyright

Other than for strictly personal use, it is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), unless the work is under an open content license (like Creative Commons).

The publication may also be distributed here under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license. More information can be found on the University of Groningen website: <https://www.rug.nl/library/open-access/self-archiving-pure/taverne-amendment>.

### Take-down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

*Downloaded from the University of Groningen/UMCG research database (Pure): <http://www.rug.nl/research/portal>. For technical reasons the number of authors shown on this cover page is limited to 10 maximum.*

## The plot of the sophisticated son in law: old and new ways in establishing rights over land in N'zara (North Togo)

*Emile van Rouveroy van Nieuwaal and Els van Rouveroy van Nieuwaal-Baerends*

### INTRODUCTION

This contribution deals with the acquisition of rights to land as it arose during a land dispute settlement in N'Zara, the capital of the circonscription of Mango in Northern Togo.<sup>1</sup> The agreement was concluded according to folk land law, but was brought into the sphere of national law by the user of the land when he insisted that the land be measured by the land registry office and that a formal contract be drawn up which would later on be inscribed into the so-called *livret foncier* at Lomé (capital of Togo). Due to the unbecoming behaviour of the tenant (Daudu), the agreement was dissolved by the Justice of the Peace. The land then reverted to the person who owned it before the agreement (Issifu).

This was the state of affairs in June 1972. A land law reform which came into force in 1974<sup>2</sup>, seems to favour the tenant, because the point of departure of this reform is, that land belongs to those who can profitably exploit it. But it is doubtful whether Daudu's chances are as rosy as they seem to appear. For in the years 1976-1978 various incidents occurred at local level which undermined his position socially and which directly influenced his chances of returning to the land permanently.

After a thorough overview of the past history in which among other things the social relationships of the people concerned are touched upon, there follows a description of the dispute settlement in 1971, by the highest traditional authority in the circonscription, the Paramount Chief, and by the Justice of the Peace in 1972. This is followed by a summary of the local events until 1978 which influenced the course of the dispute. Finally we highlight a few points in this dispute which, in our opinion, are of greater importance than is apparent in this one case in the north of Togo.

## THE ANUFOM

The Anufom<sup>3</sup> constitute one of the smallest ethnic groups in Togo. According to the 1958-1960 census there were approximately 20,000 of them in Togo. They are found mainly in, and about, the city of N'zara, formerly an important trading centre. Nowadays, it is a place of far less importance and has been surpassed in various respects by Lama-Kara in the south and by Dapaón (= Dapango) in the extreme north, on the border with Bourkina Faso. N'zara itself has a population of about 10,000 of which 70% are Anufom and the remainder, Ngam Ngam, Haussa and various other groups.

The Anufõ society consists of three classes, of which membership is hereditary in the male line. The *karamom* (sing. *karamo*, learned muslim) and the *donzom* (sing. *donzo*, a nobleman, cf. Cissé 1964; Delafosse 1955: 470) are both descended from the Dyula from Mali. The class which is socially on the lowest rank but also numerically the strongest, the *ngyem* (sing. *ngye*) are descended from the Agni-Baulé (cf. Rey-Hulman 1975: 20). The *donzom* have been military and political leaders since time 'immemorial'; thus the Paramount Chief and the ward heads in N'zara belong to this class. Formerly, the *ngyem* were foot soldiers and they have devoted all their energies to agriculture. The *karamom* form a small spiritual elite from among whom the spiritual (religious) leaders like, for example, the Imam of N'zara, are chosen (see Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1974, 1985).

Conversion to Islam was initially limited to the *karamom* and a few *donzom* lineages. It was only at the beginning of this century that the entire *donzom* class and the majority of the *ngye* lineages were converted. In this respect, the picture here is identical with that which occurred elsewhere in West Africa: it was only in the 18th and 19th centuries that Islam spread beyond the elite. Nowadays, almost all the Anufom in N'zara have been converted to Islam. However, in the rural areas Islam is as yet of no consequence to the people, including the Anufom (cf. Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1976: 17).

When, at the beginning of the 19th century, the Anufom gained control over N'zara and the surrounding territory, the land was divided by the Paramount Chief and remaining military leaders, among the various patri-lineages which constituted the army. The Paramount Chief was to be explicitly informed about any transfer of the usufruct at any later stage, because he was also responsible for dividing the land. Even today, when he no longer has this responsibility, the transfer of the usufruct without the cooperation of the Paramount Chief has no legality at least in so far as land in N'zara is concerned.<sup>4</sup> For the issuing of a so-called *certificat administratif*, as we shall see, the administration also demands the cooperation of the Paramount Chief. In that way, folk law practice is sanctioned by the administration.

Through conquest the Anufom did indeed acquire usufructuary rights to the land, but they could not enter into the same supernatural relationship with the land as had been the case with the previous landowners, the Ngam Ngam (cf. Van Rouveroy van Nieuwaal 1979b). This religious bond between the original inhabitants and the land is still recognized by the Anufom, because at the request of the Anufom the original owner of the land (*ashyēfō*: *ashyē*: land; *fō*: denotes possession) makes an annual sacrifice to the earth spirits (*amoè*, pl. *amoem*), in order to ensure the fertility of the land and the welfare of its inhabitants.

On those pieces of land on which the patrilineal descent groups<sup>5</sup> live as a unit in the urban area, they have the exclusive right of occupation. Members of other patrilineal descent groups (or strangers) must explicitly ask for permission from the head of the maximal lineage if they wish to settle on the land of a descent group. Land has become scarce as a result of population increase.<sup>6</sup> Boundary disputes in various territories of the lineages occur frequently. Strangers like the Haussa and the Yoruba, who have enjoyed hospitality for generations on end and have also formed kinship ties with the Anufom, are now told that the land is needed for personal use and for the extension of compounds. But in such cases the authorities try to protect the strangers against these practices.

N'zara is divided into wards. There are three wards: Dyabu, Sangbana and Fomboro, in which the chief inhabitants are Anufom. The fourth ward, Zongo, is the ward of the strangers; the head of this ward comes directly under the authority of the Anufō Paramount Chief. The division of the wards can be traced back to the composition of the army, when the Anufom left their area of origin in Anō. The nucleus of each of these military units was formed by a patrilineage which belonged to the class of the *donzom*. After the conquest of the present-day N'zara, the military leaders divided the urban area and apportioned tracts to those families of free soldiers under their command and to the families of the learned muslim class.

In pre-colonial days there was, in all probability, no clear-cut division into wards. But it was a fact that numerically large patrilineages such as Dyabu, Badara, Gōnò, Kambaya and Assadoro did, and still do, exist, and each of them concluded separate alliances with other patrilineages of the same class as themselves and with the patrilineages of the free soldiers. This gave rise to certain territorial spheres of influence with the above mentioned lineages forming the nuclei. The colonial authorities turned these territories into administrative wards, with the lineages of Dyabu, Sangbana and Anfo constituting the nuclei of the wards, Dyabu, Sangbana and Fomboro respectively.

## THE DISPUTE

Kossi Issifu Mpo comes from Padori, a small village under the smoke of N'zara. He is an ex-soldier from the colonial army of the former English colony, the Gold Coast (Ghana). After his discharge from military service, round about 1960, he settled in N'zara, in the area of the patri-clan Mamshi, to which also his kin in Padori belonged. A part of this kin from Padori have resettled themselves in kinship with the patri-clan of Mamshi but recognize the head as a descendant of their founding house. They still perform various ceremonial events, such as funerals, births and marriages, within the patri-clan of Mamshi.

Disputes which cannot be internally settled with satisfaction will in the first instance be presented to the head of Mamshi and subsequently to the ward head and finally to the Paramount Chief. The situation is slightly more complicated due to the fact that Mamshi is situated on the very extended territory of the *donzo* patri-clan, the patri-clan Badara. Before land and boundary disputes reach the Paramount Chief (or ward head), they are first presented to a council of family elders from Badara. In every phase of the conflict mentioned below, the council of the lineage elders from Badara have played an important role.

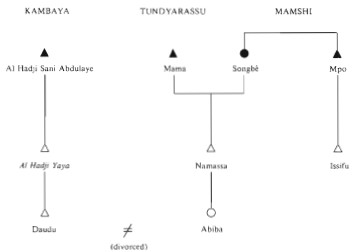
Issifu moved in with his classificatory younger brother, Yakā (father's brother's son). Both belong to the smaller lineage of Buebu-*deka*, a segment of the Mamshi patri-clan. Yakā recognized his brother as his superior. At least, he did so initially, both because of his seniority and also on account of his position as 'ancien combattant'. Afterwards, as we shall see, when the rift between them could no longer be healed, because of the dispute with Daudu, Yakā denies that his brother has any authority over him. Thus he contests the fact that Issifu is entitled to transfer the rights to lineage land to a third party or that he can stop it from being done. This is an important point in the dispute. We failed to obtain further detailed information about the kinship ties between Issifu and Yakā than is presented here. It is possible that Issifu, as is contended by Yakā, is only a guest who, in times gone by, obtained permission to settle in Buebu-*deka*, on account of his position as a soldier in the colonial army, and that his residence rights are tied up with him personally. Yakā maintains that this is disguised by Mamshi and Badara in their political opposition to the *karamo* patri-clan of Kambaya (see hereafter).

Members of the patri-clan Mamshi belong to the *ngye* class. They are granted hospitality when they settle on the land of the numerically and politically very important *donzo* patri-clan, Badara (cf. Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1979, 1980). Consequently, they maintain a client relationship with Badara, which among other things finds expression, as pointed out earlier on, in the fact that members of Mamshi first present their disputes to the lineage elders from Badara before



who was once married to Mama from the clan of Tundyarassu. The marriage between Abiba and Daudu was, however, dissolved and the woman remarried someone from Wogou, a small village in the canton of Gando to the south-east of N'zara. Nevertheless, because of this marriage relationship, Issifu was addressed by Daudu as *nshibyè*, literally: my father-in-law/my kin.<sup>8</sup>

Diagram II



On the basis of these kinship ties<sup>9</sup> with the clan of Kambaya and because of their respect for the former lineage head, the late Al Hadji Sani Abdulaye, Issifu and his brother Yakā, in the presence of another classificatory brother of Yakā, one Adam, agreed in 1968-1969 to the request by Daudu's father Yaya to cede a piece of land to Daudu on which Daudu would then be entitled to build a house. Daudu would then go and live there since the space within his own compound had become too small and he wanted more room for his family somewhere else.

Yaya, as Daudu's father, initiated the negotiations concerning the use of the land. He concluded it by giving the customary gifts, namely, 500 frs.cfa

(FF 10) and a calabash of cola nuts. These gifts also serve to confirm Issifu's rights to the land. Right from the beginning it was crystal clear that there would be no transfer of property rights nor would the land be sold to Daudu, but that he only had the usufruct, with the sole purpose of building a house for his own personal use. All parties were agreed upon this. Daudu also admitted this was so. When we ourselves, that is my wife and I, hired Daudu's house in 1971 and sent the gardener to grow some corn Daudu prevented this saying that he was afraid of getting into trouble: 'car je n'ai pas reçu la parcelle pour ça' (for I did not receive the plot of land for that purpose).

After sealing the agreement, Daudu, in his capacity as clerk employed by the local administration in N'zara, sent a written request to the *Chef de la Circonscription* (District Officer, since 1981 called the Prefect) to issue him with a so-called *certificat administratif*. This document is the first step towards a series of formalities which eventually lead to the registration of rights to land in the *livret foncier* (cf. Gasse 1971) at Lomé. This *certificat* concerns the secession of rights of usufruct.<sup>10</sup>

Before the issuing of such a *certificat* can be legalized by the administration, a map must be drawn of the piece of land by the local survey department. Daudu had these measurements done and consequently levelled the land with a bulldozer. As a final touch, he placed concrete poles and planted trees in order to demarcate quite clearly his plot from Issifu's. The latter witnessed this with mounting irritation, especially since Daudu went about his business without prior consultation with him or his brothers. He interpreted Daudu's actions as overplaying his hand, as occupation of the land. Yet, at this stage, maybe on account of the difference of social class, Issifu did not care to raise the matter with Daudu. When some time later, both of them appeared before the District Officer (the Prefect) to sign the *certificat* (for Issifu a thumbprint) there still appeared no serious differences of opinion. Nevertheless, Issifu realized then already, that through this formal, and high-handed action of Daudu, the essence of the agreement had practically changed into one of transfer of ownership and that his rights (and those of his lineage) had receded. As a clerk conversant with administrative matters, Daudu, according to his own words, had, through this *certificat*, only made sure of the usufruct, partly spurred on by the increasing demand for building land in N'zara. Daudu did not add that he was aware of the fact that by measuring the land his rights to it were more secure according to the codified concepts of national law than it could ever be in terms of local folk law. Yet, Daudu backed up Issifu's statement, even in front of the Justice of the Peace (to whom he later appealed), that there was never any talk of transfer of ownership or sale of the land, and that both parties never intended doing anything of this kind.

During the negotiations with Yaya concerning the use of the land, it was determined that the plot should be made available for the building of a house



for Daudu himself. The *certificat* reads: "in order to build a house there of whatever construction". As a result the question as to whether Daudu might also rent his house was left open. In all probability, the contents of the *certificat* hardly got through to Issifu. He neither speaks nor understands French and it is debatable whether the contents of the *certificat* were properly translated. What happened in reality?

After the demarcation of the territory, Daudu had a house built with a corrugated roof. He rented out the house for the first months of 1971 to us and later to a schoolteacher from the South of Togo, who was stationed at that time in N'zara. Daudu made no attempt to move into the house himself, not even when it remained empty for several months. Issifu received not a penny from the rent.

Issifu understood Daudu's desire to regain some of the building costs, but he did not hide the fact that he found the renting of the house against the agreement. Their relations cooled; yet the class differences between them and his great respect for the patri-clan of Kambaya, restrained him from instituting proceedings against Daudu. When, however, Daudu started courting Issifu's second wife, that was the last straw. This woman is the daughter of Issifu's mother's brother and it was a marriage between cross-cousins.<sup>11</sup> The marriage between Issifu and his wife was in a very bad state. They often quarreled vehemently and the woman had left her husband on several occasions. Rumours had it, that the quarrels were due to Issifu's impotency, caused by the fact that he did not fulfill a promise made to his deceased father. Be that as it may, he had no children with her, nor with his first wife. Issifu suffered badly from this reproach and cowered from the mocking stares of those around him. The behaviour of his in-law was a slap in the face. Abudu, from the patri-clan of Kambaya, on several occasions had succeeded in bringing about a reconciliation, but when the woman ran away for the fifth time, Abudu failed to bring her back.<sup>12</sup> Also Yakā's younger brother Adam, who came over from Ghana especially for the dispute, was unable to persuade her to return to her husband's compound. She no longer wished to leave Daudu. She was, after all, pregnant and had moved in with him. After this their alliance was concluded according to Islam rituals (cf. Van Rouveroy van Nieuwaal 1976a: 149-151).

Generally Daudu's behaviour was denounced - especially by members of the house of Badara. In addition, one should bear in mind, that their relations with Daudu's father, who was to become Imam of N'zara in 1975, were bad. Therefore, members of the patri-clan of Badara exerted pressure on Issifu to finally call Daudu to task. Issifu, caught between the pressure from Badara and his respect and affection for the late Imam Al Hadji Sani Abdulaye (who died on the 14th of August 1970) and his son, Yaya, although reluctant, finally decided in March 1971 to take the case to the Paramount Chief of the Anufom (Na Tyaha Tyekura Paramount Chief of the Anufom from 6th

December 1963 to 19th September 1977; cf. Van Rouveroy van Nieuwaal, 1980, Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1979).

#### THE DISPUTE SETTLEMENT

Issifu took the dispute to the Paramount Chief Na Tyaba Tyekura who pointed out to him that, as a *kadashi* (paper/letter) was drawn up of the agreement between Issifu and Daudu, it actually fell within the sphere of the *nazara sherea*, literally the 'jurisdiction of the whites' (cf. Van Rouveroy van Nieuwaal 1976b). By this is meant the administration of justice of the *Tribunal Coutumier de Première Instance*, in short that of its chairman, the Justice of the Peace (*Juge de Paix*). There were also other reasons why the Paramount Chief wanted to avoid settling the dispute:

- Daudu is kin to the Chief, because his father's younger brother is married to a daughter of the Chief. Consequently, Daudu addresses the Chief as 'my father-in-law' (see Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1976: 17); moreover, Daudu's mother hails from the Chief's patri-lineage;
- the house of Kambaya is one of the most important *karamò* houses in the city (at least it was at the time of the dispute);
- the Imam of N'zara is usually chosen from their midst and the candidate for this office at the time of the dispute settlement was Daudu's father, Yaya. Before their emigration from the Ivory Coast, the *donzo* leaders concluded a solemn agreement with a few *karamom* which, among other things, meant that the *karamom* with their knowledge of magic and astrology helped the *donzom*, without this implying their aspiring to political power. For their part, the *donzom* provided the *karamom* with protection without interfering in their internal disputes and matters concerning Islam. This solemn agreement prevented the Paramount Chief from judging the dispute between Issifu and Daudu in public (i.e. in his court, especially since he would also be forced to summon Yaya);
- finally, at the time of the dispute, relations between the Paramount Chief and Yaya were themselves tense:

One of Yaya's younger brothers had courted one of the rejected women of the Paramount Chief and had gone to live with her. This is a serious breach of the rule that no one should start a relationship with the wife of a Paramount Chief, irrespective of whether she is divorced from him or not. The general belief is that a man who starts a relationship with the wife of the Paramount Chief will be smitten by disease or death, if the adulterer does not leave the city *before* the death of the Paramount Chief. Moreover, Yaya's younger brother is a classificatory son-in-law of the Paramount

Chief, because one of his daughters is married to a younger half-brother of Yaya, as a result of which all the direct kin of Yaya are also kin of the Chief; and they owe him respect as 'their father-in-law'. The Chief let it be known that he no longer wished to see Yaya's brother in the palace until Yaya had put an end to the objectionable relationship. For one reason or the other, Yaya hesitated to do so.<sup>13</sup>

The Paramount Chief met Issifu half-way by considering the dispute, in camera, but not in the courtroom. In this way he signified that the dispute should be regarded as an *awuru dyòrè*, that is a dispute (*dyòrè*) in the lineage (*awuru*). In such a case litigants do not pay the costs of the suit (*le nwa*)<sup>14</sup> During the gathering, the atmosphere was tense. Yaya, generally a composed, somewhat introverted man, was irritated and ill at ease, not only on account of the *faux-pas* of his younger brother in respect to the Paramount Chief, but also because of the fact that the socially lower *ngye* (Issifu) had dared to summon him before the Paramount Chief.

The Chief too was ill at ease and wanted to get rid of the case as quickly as possible. He started with a direct attack on Yaya and Daudu: he wanted convincing proof that Issifu had rejected his wife as was averred. According to them it was Issifu himself who had dissolved the marriage. He was supposed to have said to a brother of his wife that he no longer wished to regard her as his wife. Issifu is supposed to have added that, as far as he was concerned, she 'could marry whomsoever she wished'. For these reasons Yaya did not regard the behaviour of his son as incorrect, but he did concede that Daudu publicly flaunted his visits to the woman, and thus greatly offended Issifu.

Issifu emphatically denied that he had rejected his wife. By way of evidence he advanced the fact that neither his wife's father, nor the Imam of N'zara knew about the rejection. And that would have been the least he could do. In the case of a marriage concluded according to Muslim law, it is even compulsory to inform the Imam.

None of the court members found Yaya's evidence convincing. The Paramount Chief intimated this quite clearly by asking sarcastically whether 'the fact that someone hangs out his sleeping mat to dry in the sun is sufficient evidence to assume that the husband no longer wants his wife'.

Both parties accepted the suggestion that Abudu should once again be asked to bring about a reconciliation between the couple. The court instructed Yaya to admonish his son not to continue the relationship. The reconciliation was fixed for a period of two weeks after the settlement (the end of June 1971). In December 1971 there was still no reconciliation. The woman had definitely moved in with Daudu and Issifu decided to take the dispute to the Justice of the Peace, a state court established in N'zara in 1965, in terms of the law of Judicial Organization of 12 June 1964 (cf. Van Rouveroy van Nieuwaal 1975: 5-8).

## THE TRIBUNAL COUTUMIER DE PREMIÈRE INSTANCE

When Issifu took the case to the Justice of the Peace in December 1971, it was no longer his intention to get his wife back as in June of that year, but he now wanted Daudu to be stripped of the usufruct of the land on account of his misbehaviour. After four longdrawn out sessions – sometimes adjourned because Yaya was not well, on other occasions again because the Justice of the Peace wanted to make a local inspection – judgement was pronounced on the 13th of April 1972. The official record reveals the following judgement:

- the court considered the evidence produced by Daudu to show Issifu's rejection of his wife to be inconclusive. In answer to the question of the Justice of the Peace as to whether Daudu had undertaken steps to ask the woman's father for her hand in marriage, Daudu answered negatively. This was held against him by the court;
- the court considered Daudu's attitude towards his father-in-law as improper and contrary to the norms of decency and an 'expression of ingratitude towards Issifu';
- on account of this ingratitude, the agreement between the plaintiff and the defendant should be dissolved;
- nevertheless, Daudu received permission to continue to rent the house until the rent received was equal to the appraised value of the house by the survey department in N'zara, fixed at 240,000 frs.cfa. (FF 4,400);
- for the implementation of this agreement, a commission of three men was appointed, which apart from Daudu's father Yaya, consisted of the lineage head of Badara and a member of the council of the court of the Paramount Chief; this commission was expected to supervise the rent received monthly by Daudu;
- when the amount of 240,000 frs.cfa had been fully paid, then Issifu became the owner of the buildings and usufruct once more reverted to him;
- Daudu was denied access to the premises in order to prevent the disturbance of public order.<sup>35</sup>

## WHAT DOES THE JUDGEMENT IN PRACTICE MEAN?

Let us suppose that the house could be rented out constantly – a decided possibility in 1972 – for approximately 2,000 frs.cfa (FF 40) per month. After ten years the rent would then be equal to the appraised value of the house. But the house would be in a delapidated state long before this time, after all the walls were only made of sundried brick. Nothing would be left. After such a judgement, one could not expect Daudu to be overzealous in his maintenance of the place. He himself did not expect much rent. No one would want to rent a house, so he argued, which had just been involved in a litigation suit: 'la

maison est un bâtiment litigieux', as he himself expressed it. In addition, Issifu feared that the commission would not be able to function efficiently because of the mutually strained relations between its members. His fear proved well grounded, because the commission in fact ceased to exist as a result of mutual tensions and because one of the members became an invalid. Thrice the commission collected 2,000 frs.cfa from a tenant in 1972, and nothing thereafter. According to Issifu's notes, he maintained that on the 1st February 1978, 146,000 frs. cfa had been collected, together with 35,000 frs. cfa paid by us as rent over a period of seven months in 1971<sup>16</sup> and 6,000 frs. cfa rent for three months from the teacher from August to October 1971, after our departure. This brought the total to 185,000 frs.cfa, but Daudu called the notes of Issifu pure fantasy. He claimed there was no question of rent. After the judgement no one wanted to hire the house, except for the teacher who sought a roof over his head for a short while only. Consequently, the house fell into decay and fewer potential renters were interested in it.

Information gleaned on the basis of interviews conducted during short trips in the period 1972-1977, confirmed that after July 1971 the house was no longer let except to the teacher. However, when we returned to the Mango province in August 1977 for research into land tenure relations between the Ngam Ngam and the Anufom, the house was definitely rented out. It was in a state of delapidation, but when we returned in December of that same year, to stay in N'zara for a few months, there were stones and new building material lying around the house. It was still occupied by people, now by labourers in the employ of a French road construction company, which was based at N'zara during the construction of the north-south route Lomé-Dapaöñ.

#### WHY THE CHANGE?

As a result of the arrival of the road construction company, many foreigners were in search of housing. Rents flew sky high – sufficient reason for Daudu to improve his house. He also wanted to profit from this speculation in houses.

There is, however, another, more important reason. In June/July 1978, Yakä together with another member of his family, approached Daudu with an offer to sell the land. He is reported to have said that it saddened him to see the house falling into further decay just because his 'brother' Issifu did not want any reconciliation. They also reproached Issifu for acting under pressure from Badara, whose lineage elders were then in conflict with Yaya (see hereafter). The *contrat de vente* signed on the 2nd August 1977, reads:

*contrat de vente*

de terrain non bâti

Je soussigné Komna Adam Yaka, cultivateur à Mango (quartier Dyabu), chef de famille Komna reconnait avoir vendu une parcelle de terrain de 12a, 11 ca 96 sis à Mango (Dyabu) vers la cimètière allemande à Monsieur Yaya Daudu, commis en service au commissariat de Police de la Ville de Mango a une valeur de (40.000 frs.cfa) QUARANTE MILLE francs. Cette somme a été payée ce jour même.

	Mango, le 2 Aout 1977
l'acquéreur	le vendeur
Yaya Daudu (signature)	Komna Adam Yakā (signature)
	temoins
1e Yaya Abdulazizi	1e Komna Mamadu
2e Bulare Abudu	2e Komna Kome
	vu: le Chef Supérieur de Mango Na Tyaba Tyekura.

This *contrat de vente* was aimed at persuading the District Officer to issue the so-called *certificat administratif*. Together with the file (survey sketch, plans, etc.), the *certificat* would be sent to the *Service des Domaines* at Lomé. Here the title deed would eventually be inscribed in the *livret foncier*, the land register; and a copy dispatched to the persons concerned (see Gasse 1971). But it had not come to this yet. When Daudu showed the *contrat de vente* to us, all the signatures were missing, except those of himself and Yakā.

This offer to sell did not remain undetected by Issifu. It caused a huge row and there were said to be blows. Issifu was furious that his younger brother Yakā should so openly undermine his authority as lineage elder by negotiating with Daudu without his knowledge. In the heat of the debate, Yakā snarled at his brother that he no longer recognized him as head of the (minimal) lineage. Issifu immediately informed the head of the Mamshi patri-clan with a request to mediate. A family council was convened, but Yakā refused to cooperate. During the consultations not a word was said about the sale. When we asked why this significant point was not raised, the clan head simply shrugged his shoulders. He had it from hearsay that Yakā wanted to sell the land, but as long as he did not have it from the horse's mouth, he refused to question him about it. That would only have complicated the matter. He wondered how legitimate the contract was, since the witnesses of both the seller and the buyer were direct kin (half-brothers, same father). None of those present at the deliberations wanted to raise the question of the sale. We were given to understand in no uncertain terms that

this would only lead to an escalation of the dispute. An important fact was that Yakā no longer wished to recognize Issifu's authority. Until this day, they still live together, but Yakā has threatened to leave the house. It appears that such an unbridgeable gap between two brothers can be the basis for a split in a lineage.

#### POLITICAL OCCURRENCES

Meanwhile, at local level, various political events occurred which delayed the administrative process leading to the issuing of the *certificat administratif*. Daudu failed to present the *contrat de vente* to the District Officer. This was partly due to the frequent change of the highest administrative official during the last years: in a period of sixteen months, this official was replaced three times. This does not promote normal functioning of the administrative apparatus, certainly insofar as daily routine matters of issuing signed documents are concerned.

More important was the fact that Daudu's father, Yaya, in his capacity as Imam of N'zara, became involved in a rather delicate, political matter. Rich merchants from neighbouring Ghana were said to have tried to bribe various Imams in Togo with money, to persuade them to induce pilgrims to go to Mecca, to pray at the graveside of the Prophet for the fall of the present President of Togo, General Gnassingbé Eyadéma. This caused a commotion in Togo, and various religious leaders were subsequently stripped of their titles and removed from office. Relations between Ghana and Togo - already far from rosy because of the ever smouldering Ewe dispute (cf. Coleman 1956; Schram 1962; Viering 1969) - deteriorated further. Imam Yaya informed the then Paramount Chief, Na Tyaba Tyekura about the Ghanaian request, who at once dismissed the request for fear of official reaction. Presumably, the Imam hesitated just too long to convince the administration of his innocence. He was immediately arrested.<sup>17</sup> Eight months later, in February 1978, he was released, but had by then lost his function as Imam of N'zara. His incarceration was apparently the last straw, for ever since his appointment in 1975, there has been serious criticism levelled at him. *Karamo* lineages, as the important house of Gônò, but also segments of the house of Kambaya (from which the Imam himself came), had in the past intimated that they considered Yaya unsuitable for the office on account of the doubts about his potency to beget more children (cf. Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1976: 70 f).

Yaya, however, with the help of the Paramount Chief, Na Tyaba Tyekura, still managed to succeed his father as the fourteenth Imam of N'zara, since the settling there of the Anufom from the Ivory Coast (cf. Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1976: 75). This ap-

pointment immediately led to a schism in the patri-clan Kambaya and a boycott of the Friday prayers in the Great Mosque in Kambaya, built by Yaya's father, Al Hadji Sani Abdulaye.<sup>18</sup> This, among other things, led to people refusing to invite Yaya to precede them in the prayers said for a deceased person. This social boycott was a bitter pill to swallow.

Another event which went against Daudu, was the fall from office of the Paramount Chief Na Tyaba Tyekura. Apart from other irregularities the Paramount Chief was accused of accepting bribes when settling disputes. Opponents from his own ranks, supported by members of other patrilineages, among them the house which according to Anufò constitutional concepts could produce the Paramount Chief, managed to discredit him with the Head of State.<sup>19</sup> He was put out of office from 19th September 1977, while Yaya was still in detention. His opponents managed to secure the succession of the Paramountcy and three months later one Anzumana<sup>20</sup>, of the patri-clan Sangbana, became the new Paramount Chief. This group also appointed a candidate from their own ranks as Imam.<sup>21</sup> However, this appointment too led rather quickly to vehement conflict, this time between the new Paramount Chief Anzumana and the District Officer. Shortly after the appointment of the new Imam the District Officer positioned himself at the exit of the Friday Mosque used by the new Imam. When the service was over on Friday at one o'clock, he loudly asked the new Paramount Chief Anzumana 'who gave him the authority to choose and appoint the new Imam'. Anzumana considered this an untoward interference by the administration in local religious affairs, and called in the help of the President of the Republic, General Gnassingbé Eyadéma. The latter immediately dismissed the District Officer.

It is understandable why Daudu left the case with Issifu alone during his father's term of imprisonment. After all, he had little choice, since, apart from his father, the lineage head of the patri-clan Kambaya was also incarcerated. If he had persisted with the signatures, it would have been held against him in his own circles. That meant that in April 1978 no other signatures appeared on the *contrat de vente*, except those of Daudu and Yakã, not enough to approach the District Officer with a request to issue the *certificat administratif*. Also he could not expect the new Paramount Chief Anzumana to be well disposed to the son of the deposed Imam Yaya and to append his signature to the contract of sale.

These factors imperilled Daudu's chances of becoming the owner of the plot of land, in terms of national law. He, however, draws hope from the recently implemented land law reform.<sup>22</sup> The adage of this national law reform is after all: *distribuer la terre à ceux qui peuvent l'utiliser*. Daudu had been true to the adage by using the soil. To what extent the land law reform will really be of help to him, only time will tell. It would be beyond the bounds of this article to go into every detail of this law reform.



## SUMMARY

The above dispute is an illuminating example of the *selective use* of legal systems and the administration of justice for different purposes. Issifu called in the Paramount Chief to force Daudu to stop meddling with his wife, while before the Justice of the Peace, his main demand was the dissolution of the agreement concerning the use of land. This selective use of judicial avenues, is one of the consequences of the legal pluralism which still exists in many countries.<sup>23</sup> In this situation, different systems of law are applied in different law courts, each representing various systems of law and culture. In such cases, it is obvious that men and women won't hesitate to play the various law courts against one another, in their search for as favourable a settlement as possible. In the meantime, they (i.e. the litigants) mobilize the courts to increase their power - if any - over their opponents (cf. Silliman 1981: 90). It is a situation which is described elsewhere in this reader for Indonesia, but which is equally known in other parts of Africa (cf. R. E. S. Tanner 1970: 35-49; K. von Benda-Beckmann 1981). It is an understandable strategy, but not very acceptable in terms of judicial certainty, because the question arises as to which law of which judge is the prevailing law. On the other hand, these manipulations have the advantage that a certain control is exercised over the actions and decisions of the operative law courts (cf. Griffiths 1977).

In addition, this dispute illustrates that two completely different judicial matters - that of adultery and of a land dispute - in customary law cannot be separated. Neither the Paramount Chief nor the Justice of the Peace could circumvent this, although one would expect the latter judicial authority to act differently, for he is trained to separate matters. But the approach of both judges differed greatly. Thus, the Paramount Chief falls back on the *certificat administratif* in order to avoid involvement in an internal quarrel and to obviate a bitter conflict with important persons in the city such as the Imam. As a result of the manifold 'interest' he has with the persons involved in this case, he would rather not try it. By way of evidence for this, there is the fact that the Paramount Chief tries the dispute in the passage of the palace which is not accessible to everyone. Furthermore, the Paramount Chief limits himself to a condemnation of Daudu's behaviour. He cannot completely avoid this on account of the flagrant transgressions of the rule that a man may not have any contact with the wife of his (classificatory) father-in-law. Only in guarded terms does he raise the question between Yaya and himself, a tension which has arisen as a result of a relationship regarded by the Chief as undesirable and adulterous between his ex-wife and the younger classificatory brother of Imam Yaya (a matter not raised before the Justice of the Peace). The Paramount Chief has, however, on several occasions given indications of his disapproval - the sarcastic remarks directed towards Yaya and Daudu are evidence of this - but he still does not succeed in forcing Yaya to say that he

would put pressure on his son to break off his relationship with Issifu's wife. Class differences play an important role throughout and here especially. Daudu belongs to the *karamom* and Issifu is a *ngye*, recently converted to Islam. In matters concerning women, the *karamom* often exploit their social ascendancy. In this case the Paramount Chief appears to collide with Daudu on this, on the basis of purely personal interests - his desire to avoid a head-on confrontation with one of the important *karamò* houses, in casu, the patrilineal clan of ex-Imam Yaya, and consequently, he tries to get rid of the dispute as quickly as possible.

In contrast, the Justice of the Peace has much freer hand than the Paramount Chief and, contrary to the former Judges of the Peace, he has a far less strictly formal interpretation of his task as judge (cf. Van Rouveroy van Nieuwaal 1976a: 194-200). He does not hesitate to stretch the extra-contractual matter concerning Issifu's wife, so that it also touches upon the question of the use of the land. He devotes a fair amount of time to it by stating expressly in his consideration that the reprehensible behaviour of Daudu is a serious breach in terms of folk law. Here, it is the national judge and not the local judge, who, in the spirit of folk law, deals with and tries to find a solution for the dispute as a whole.

It is still questionable to what extent the unacceptable behaviour of Daudu towards Issifu was crucial in the final analysis, for Issifu's dissolving the agreement concerning the land. Issifu had repeatedly stated that the fact that Daudu rented the house out to a third party without prior consultation and in no way shared the rent with him, was a source of constant irritation. This shows similarities with the case which we have discussed elsewhere (cf. Van Rouveroy van Nieuwaal 1976a: 121), in which a young man borrowed a gun from his mother's brother, went hunting with it regularly, sold the game on the market, but never gave a morsel of it to his uncle. Public opinion turned against the young man. If Daudu had given a small sum to Issifu regularly, this would have been interpreted as appreciation of the fact that he had been allowed usufructuary rights and a recognition of the rights of Issifu's lineage to the land. This could have been the central issue for Issifu but neither judicial authorities paid attention to this particular aspect.

#### NOTES

1 Ex-Sansanné-Mango, renamed N'zara in 1974. A circonscription, or province, is called from 1981 onward a "préfecture".

2 Official Journal of Togo of 16 March 1974, pp. 113-115.

3 Or Tyokossi/Tchokossi as called by the administration and the surrounding population groups; see also Prost 1981.

4 An ex-soldier experienced this when he thought he could go straight to the District Officer for a *certificat administratif*, without informing the Paramount Chief. Na Tyaba Tyekura. The

District Officer refused to issue the *certificat* if he did not have formal proof that the Paramount Chief was aware of the transfer of the land. The case dragged on for months, because the ex-soldier was at logger heads with the Chief and therefore refused to inform him of the transfer. There was some progress in this matter only after our mediation. After the reconciliation, the *certificat* was promptly issued.

5 The most important social unit is the patrilineal descent group, the *awura*, with a depth extending to five or six generations. For an extensive discussion of this concept see Van Rouveroy van Nieuwaal 1976a: 101-111.

6 By the arrival of foreigners, but also because inhabitants from the surrounding rural areas have settled in the urban areas since the nearby national wild game reserve Nabalgu was closed off in 1972 to inhabitants.

7 For the exchange of women between the various classes see Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1975a.

8 See for the kinship terminology of the Anufom Van Rouveroy van Nieuwaal 1976a: 120-249.

9 *Ashibyéya*, see Van Rouveroy van Nieuwaal 1976a: 144.

10 This *certificat* reads:

Je soussigné (Issifu), propriétaire et domicilié à Mango, certifie avoir fait don à Monsieur Daudu, commis à la conscription de Mango une parcelle de terrain quadrilatère irrégulier d'une superficie égale à douze ares onze centiares, quatre vingt seize (12a/11ca/96) pour construire une maison d'habitation sis au quartier Dyabu. Le terrain est limité au Nord et à l'Ouest par la propriété de Monsieur Issifu, au Sud par une rue non dénommée et à l'Est par une rue non dénommée. Le terrain serait la propriété de Monsieur Daudu et il pourrait faire n'importe quelle construction là-dessus.

Le donateur

Monsieur Issifu  
(thumb print)

Facquéreur

Monsieur Daudu  
(signature)

11 *Saraba ni byésò ba* = a child (*ba*) of a woman (*ba*) and *ni* (a child) of a man (*byésò*); a marriage between cross-cousins is looked upon as a marriage of preference.

12 Also Abudu will benefit from a reconciliation, because Issifu and his brothers have threatened to take away their sister Nadana and her children from him if he does not succeed in persuading the woman to return to Issifu. But Issifu's threat can't mean much because Abudu realizes that Issifu does not wish to incur the wrath of his deceased uncle his father's younger brother and the father of Yakä, who at the time had himself given Nadana in marriage to the patrilineage of Kambaya. He who acts against the will of an ancestor, runs the risk of being taken to task by his ancestors. He can be condemned by his ancestors *ashyèngu dyorè*, literally: a sentence (*dyorè*) under the ground (*ashyè*). The outcome of this consultation between the ancestors is called a *namando*, a curse/punishment. See: Van Rouveroy van Nieuwaal 1976a: 123.

13 In fact a similar dispute to that between Daudu and Issifu is involved here: the Paramount Chief and the adulterer were also kin.

14 Called *je*. For a sketch of the court-hall see Van Rouveroy van Nieuwaal 1976b; Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1975b, 1981.

15 A not unnecessary provision, since Daudu has repeatedly said that he would tear off the corrugated roof with violence if the valuation of the house is not higher.

16 According to local standards the rent was too high but then, a foreigner often pays far too much. During the sessions of the Justice of the Peace, Daudu disputes the fact that this income must not be noted as rent, because he had come to an agreement with us that this amount would not be made over to him, but would be used for improvements to the house. This did indeed happen.

17 From conversations with administrative and police officials, we know that the administration were of the opinion that Imam Yaya had acted in good faith and had no hand in the plot. For this reason there was no official prosecution. They only wanted to set an example by depriving him of his freedom of movement through detention at the police bureau, where he enjoyed a reasonable amount of freedom.

18 See our film *Muslims in Mango*, 1974 (1985).

19 Compare in this respect the manner in which the Anufò chief Na Byema Asabyè was deposed in 1896 during the German colonial rule. Cf. Van Rouveroy van Nieuwaal 1976a: 75.

20 See our film *In Search of Justice*, 1981.

21 For the role of the Paramount Chief in the choice and appointment of the Imam, see Van Rouveroy van Nieuwaal and Van Rouveroy van Nieuwaal-Baerends 1976: 70.

22 Cf. Bachellet 1975, Berthelet 1979, Ducat 1975, Van Rouveroy van Nieuwaal 1979.

23 For the concept dichotomy see, among others, Baxi 1979, Marasinghe 1979, Burman 1979 and Van Rouveroy van Nieuwaal 1979.

## REFERENCES

Bachellet, M.C.J.

1975 *Système Foncier au Togo: Législation Agro-foncière et Domaniale*, Programme des Nations Unies et de Développement St.-TOG 69/007, Rome.

Baxi U.

1979 'Peoples' Law, Development, Justice', *Verfassung und Recht im Uebersee* 12: 97-114.

Benda-Beckmann, K. von

1981 'Forum Shopping and Shopping Forums; Dispute Processing in a Minangkabau Village in West Sumatra', *Journal of Legal Pluralism* 19: 117-159.

Berthelet, J.

1979 'Un Exemple de Contre-Réforme Agraire au Togo', *Le Monde Diplomatique* 1979: 11-13.

Burman, S.

1979 'Use and Abuse of the 'Modern' versus 'Traditional' Law Dichotomy in South Africa', *Verfassung und Recht im Uebersee* 12: 129-142.

Cissé, Y.

1964 'Notes sur la Société des Chasseurs', *Journal de la Société des Africanistes*, 34: 150-156.

Coleman, J.S.

1956 *Togoland*, International Conciliation Vol. 289, New York: Carnegie Endowment for International Peace.

Delafosse, M.

1955 *La Langue Mandingue*, Vol. 2, Paris.

Ducat, M.

1975 'La Réforme Agro-foncière Togolaise', *Recueil Penant* 749: 291-297.

Gasse, V.

1971 *Les Régimes Fonciers Africains et Malgache*, Librairie Générale de Droit et de Jurisprudence, Paris: Pichon, Durant Auzias.

Griffiths, J.

1977 'A Review of "A la Recherche de la Justice"', Ph.D. of Van Rouveroy van Nieuwaal', *African Law Studies* 17: 100-117.

Marasinghe, M.L.

1979 'Kambian Law and British Colonial Law: A Conflict of Tradition and Moderncy, An Early State of Colonial Development in Sri Lanka', *Verfassung und Recht im Uebersee* 12: 115-128.

Prost, R.P.

1981 'D'où Vient l'Appellation Tyokossi?', *Notes Africaines* 1981: 197-199.

Rey-Mulman, D.

1975 'Signification Sociale d'un Rituel Féminin: Le Kurubi chez les Tyokossi du Nord-Togo' *Journal de la Société des Africanistes* 45: 19 ff.

Rouvcroy van Nicuwaal, Emile van

1975 'Droit Moderne et Droit Coutumier au Togo', *Recueil Penant* 747: 5-13.

1976a *A la Recherche de la Justice: Quelques Aspects du Droit Matrimonial et de la Justice Coutumière au Nord-Togo*, Leiden, Hasselt.

1976b 'La Justice Coutumière au Nord-Togo', *Recueil Penant* 751: 35-70.

1979a 'Unité ou Diversité du Droit; Bases Juridiques du Droit Coutumier au Togo', *Verfassung und Recht im Uebersee* 12: 143-158.

1979b 'Terre au Nord-Togo; Quelques Aspects de la Relation Feodale Anufô - Ngam Ngam en Matière Foncière au Nord-Togo', *African Perspectives* 1: 143-151.

1980 'Chieftaincy in Northern Togo', *Verfassung und Recht im Uebersee* 13: 119-123.

Rouvcroy van Nicuwaal, Emile and Els van

1974 *Muslims in Mango*, 35 min. film, distributed by the Foundation for Film and Science, Utrecht, Holland.

1975a 'To Claim or Not to Claim; Changing Views about the Restitution of Marital Payments among the Anufom in Northern Togo', *African Law Studies* 12: 98-118.

1975b *Shera; Dispute Settlement at the Court of the Paramount Chief of the Anufom*, 24 min. film, distributed by the Foundation for Film and Science, Utrecht, Holland.

1976 *Ti Anufô. Un Coup d'Œil sur la Société des Anufom au Nord-Togo*, Leiden, Hasselt.

1979 *A Toad in the Courtyard* 23 min. film, distributed by the Foundation for Film and Science, Utrecht, Holland.

1981 *In Search of Justice; Dispute Settlement among the Anufom in Northern Togo*, 52 min. film, distributed by the Foundation for Film and Science, Utrecht, Holland.

1985 *Muslims in Mango: Some Aspects of the Islam in N'Zara, North Togo*, Occasional Paper, Leiden: Africa Study Center.

Scheam, J.

1962 *Togo*, Berlin.

Silliman, G.S.

1981 'Dispute Processing by the Phillipine Agrarian Court', *Law and Society Review* 16: 89-117.

Tanner, R.E.S.

1970 'Selective Use of Legal Systems in East Africa', in: R.E.S. Tanner, *Three Studies in East African Criminology*, Uppsala: Scandinavian Institute of African Studies.

Viering, E.

1969 *Togo singt ein neues Lied*, Erlanger Taschenbücher Vol. 10, Erlangen: Verlag der Ev-Luth. Mission.