

## KIKUYU LAND TENURE AND INHERITANCE.

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### INTRODUCTORY.

When Europeans first arrived in the Kikuyu country they found the land covered by what appeared to be a system of individual ownership, while round its borders the inhabitants were still eating steadily into the virgin forests and bringing them under the same system. In 1897 the Rev. Thos. Watson wrote from Fort Smith: "Unlike Ukambani, all the land here is owned by some one or more of the natives." In 1902 W. Scoresby Routledge, who produced in 1910 his book on the Kikuyu, settled down to his investigations at the newly-established post of Nyeri. He says: "As locusts clear a sturdy crop, so have the Akikuyu cleared the forest. . . . As far as the eye can reach, in all directions, spreads one huge garden, every square inch of which is private property with carefully marked boundaries, that have been bequeathed from father to son for generations." He estimated that along the Western border, under the Aberdares, forest to a depth of 10 to 15 miles had been brought under cultivation within the memory of people living at the time he wrote. It was recognised by Mr. Routledge that ownership was not limited to land under crops. "Fallow land," he notes, "is all in private ownership, and cannot be again brought into cultivation by any one except the owner, without his leave."

Up to about the year 1900 the Kikuyu's rights in their land, both cultivated and fallow, seem to have been fully conceded. The policy subsequently followed for some years unfortunately disregarded certain aspects of Kikuyu land tenure, and the mistakes that ensued became the prime cause of the dissatisfaction and suspicion that afterwards developed in the tribe.

Perhaps the first thorough enquiry into the Kikuyu system of tenure was that conducted by Mervyn H. Beech, a District Officer, who published a most valuable article thereon in 1917 in the *Journal of the African Society*. Mr. Beech states that he examined several thousands of witnesses in the Kikuyu (Dagoretti) District. He supplemented his personal researches by information received from District Commissioners all over Kikuyuland as far as Chuka and Mwimbi.

In 1920 Mr. John Ainsworth, Chief Native Commissioner, held a representative meeting of elders and others for the purpose of enquir-

ing into Kikuyu land claims and customs in Kiambu District. The record of this, with his conclusions, was embodied by him in a Memorandum.

The most comprehensive survey of the subject, however, is that contained in the Report of the Committee on Native Land Tenure in the Kikuyu Province drawn up in 1929. (In passing, might one be permitted to voice a regret that this important document was not made generally available to natives and others in view of the coming of the Land Commission.)

In drafting this paper I have purposely refrained from drawing upon published information in order that what I say may perhaps have some independent value.

#### HISTORICAL.

All who are familiar with the Kikuyu Reserve know that viewed from any eminence it presents the appearance of an enormous and very much ruffled patchwork counterpane. The surface of the land is covered with patches of cultivation of all shapes and sizes, in some parts packed closely together, filling a whole ridge from river to river; in other places scattered through tracts of low bush or grass-land, with here and there a sacred grove of forest trees or a great solitary *mugumo* tree. During recent years the aspect of the country has been greatly changed by the numerous plantations of black wattle grown for fuel and timber. What we have to realise is that all this land is divided up into clan and family holdings or estates. Even the apparently unutilised hillsides of bracken or stretches of thicket have their recognised owners. The swamps, even, have their claimants, while much of the virgin forest now included in Government Forest Reserves is stated by the Kikuyu to have been definitely in their possession. The boundaries between their *ithaka* or holdings, they say, can still be traced through the forest and shown by those who know. *Githaka* (pl. *ithaka*) is a Kikuyu word meaning bush or wood-land, and in relation to land tenure has come to mean also any tract of land in ownership, or, as we might say, an estate. *Ng'undu* is another word used of land in clan ownership in Northern Kikuyu

How did the land become divided up so completely into these *ithaka* or estates, large and small, some a few acres only, others perhaps 500 acres or more in extent? And how did the people who are the acknowledged owners come by their rights?

It is perhaps more a matter of scientific interest than of practical importance to discover *how* the Kikuyu acquired their rights in the land. The fact remains that we found them in possession, and "possession being nine-tenths of the law" it is more profitable to concentrate rather on an examination of the principles and customs by which land

tenure is governed than upon theories as to their origin. On the other hand, the people themselves in some areas offer definite explanations to account for the existing system, and these may help us to understand, for instance, how the Kikuyu still claim as theirs large blocks of untouched forest or areas of grazing-land now alienated.

It is generally accepted that the Kikuyu migrated to their present habitat from somewhere down the Tana valley to the east of Mt. Kenya. This migration, one assumes, took the form of a gradual, possibly a rapid, drift rather than a mass movement. The nine clans were probably in existence before the migration reached what is now Kikuyuland. The clans did not move in a body, but in small units, the pioneers being individual hunters of game and honey-collectors. It is believed that Kikuyuland was then covered with forest from Kenya to Ngong. The central portions of the country, in what is now the Fort Hall District, may have been the first to have been permanently settled, and from thence the movement continued south and north.

Had the forest other occupants before the arrival of the Kikuyu? Here we come up against a difficulty. It lies in the blessed word "Wandorobo," that Swahili-ized Masai term which one suspects has been made to cover a multitude of sins. Its Kikuyu counterpart is *Aathi* (sing. *Mwathi*). In southern Kikuyu (Kiambu) it is stated that people called *Aathi* lived in the forest, and that the Kikuyu pioneers "bought" the forest from them. They appear to have been bushmen living under the most primitive conditions. They did not cultivate the soil, but existed mainly on the flesh of the game they trapped or shot with poisoned arrows. They also placed honey-barrels in the trees. The forest was divided between them by recognised boundaries, each family group having its own trapping-grounds. The survivors or their descendants who have been absorbed among the Kikuyu say they had a language of their own, but most of them have forgotten it. The Kikuyu advance caused numbers of them to go and take up their abode with the Masai, but others made blood-brotherhood with leaders of the Kikuyu and having thus been "adopted" by them, became cultivators, though still addicted to hunting. The late Hon. K. Dundas, writing in 1908, says these people called themselves *Okkiek* and spoke a Nilotic language, and that for a period the *Okkiek* and the Kikuyu occupied what is now the Kikuyu country together. He also states that "later arrivals" among the Kikuyu "purchased from individual *Okkiek* the right to certain pieces of land or forest."

At the other end of the country, in Nyeri District, a different story is told. Although it is generally stated by the natives that those who held the original rights over the *ng'undu*, or clan holdings, were "Aathi," these Aathi were themselves *Kikuyu*; they were Kikuyu

trappers and hunters of game—the advance-guard, as it were, of the tribe—who acquired their rights over the forest by the simple process of apportioning it out among themselves as trapping-grounds. The first man to establish traps in a given area was acknowledged to have sole rights to it for that purpose. This statement that the first people to establish *githaka* rights in the Nyeri District were Kikuyu “Aathi,” not “Wandorobo” of some different race, was made to me by elders 20 years ago and has been repeated on subsequent occasions. Differing answers may be received in different localities, however, to the question “How did your *githaka* rights originate?” From some the answer will be, “We do not know”; others may reply that the Kikuyu found the forest untenanted and simply took possession. It must be mentioned, too, that in Nyeri District, as elsewhere, there linger traditions of a pygmy people called *Gumba* or *Agumba*. In southern Kikuyu they are said to have disappeared into the ground, while in Mathira and in Ndia there is a legend that they were scared away northwards by the loud cawing of hornbills sent by a Kikuyu magician. In the Ndia country, according to information sent me by a missionary there, people say that the *githaka* rights were “bought” from these *Agumba* dwarfs.

This whole question is surrounded in mystery, and we have only the uncertain ground of conjecture to tread on. Mr. Dundas was of the opinion that the Okkiek and the *Gumba* were sections of the same people who were the dominant tribe in these parts before, and for a time after, the coming of the Kikuyu.

Whatever may be the truth regarding the “Aathi,” the Kikuyu of Kiambu District, at the latest limit of the Kikuyu migration, affirm that their lands were acquired from them by a form of purchase, and some of the descendants of those who were absorbed among the Kikuyu claim to have direct knowledge of the transactions by which the forests changed hands. The “consideration” given by the Kikuyu for this transfer of *githaka* rights took the form of large number of goats and cattle, which the meat-loving Aathi proceeded to convert into mutton forthwith. Girls also were given as wives to Aathi husbands when the latter had been “adopted” by the Kikuyu, and the value of these brides was counted as part of the payment. There were other ways in which tracts of land passed into Kikuyu possession. Dr. John E. Henderson, late of the Gospel Mission, was informed of a case in which a large extent of *githaka* was handed over to a Kikuyu family as compensation for the death of one of its members who fell into a “Ndorobo” game-pit and was killed.

At the same time it is necessary to note that in northern Kikuyu over whole districts there is no record of any sort of purchase from people of another tribe. The first Kikuyu to lay claim to the forests

were themselves hunters who afterwards settled down to clear and cultivate their own trapping-grounds.

#### DESCRIPTION OF " GITHAKA " SYSTEM.

To-day the whole Kikuyu country is covered by an absolutely continuous network of *ithaka* holdings. Each of them is in the possession of a family group, a moiety of one of the nine great clans. Such a unit is called a *mbari*, or " side " (in the same way as we speak of a " branch " of a family). The clans are known as *mihiriga*. Thus a family group may be known as *Mbari ya Njuguna*, the " Side " of Njuguna. If belonging to the Achera clan, they will be described as *Achera a Mbari ya Njuguna*, that is, Achera of the Njuguna family. This patriarch may have been the grandfather or great-grandfather of the present proprietors of the *githaka*. He himself, of course, was a member of a more ancient *mbari*. Frequently such a sub-clan owns more than one piece of land in different parts of the country. The *githaka* is in the absolute ownership of the *mbari*, and over much the greater part of the Kikuyu country is inalienable. If for any reason, such as the necessity of paying blood-money to another sub-clan, a portion of the family holding were to be transferred to another group, the land would be regarded only as security for the discharge of the debt, and it would ultimately be redeemed.

The sense of family ownership is so strong and the instinct to preserve the integrity of the family *githaka* is so deep-seated that the enquirer into the system of tenure may at times find difficulty in disentangling family rights and individual rights. Under normal circumstances family control over the land remains inconspicuous, and individual rights play the more important part in the every-day life of the *githaka*. Every sub-division of the *mbari*, and every individual down to the youngest son of the youngest wife of the most junior member of the family, have their indisputable rights in their respective portions of the land. And yet every transaction concerning any modicum of the land is preceded by consultation between the members of the *mbari* whose common interests are affected.

Individual rights are established in the first instance by virtue of cultivation. It would seem that the basic principle, from the very beginnings of the *githaka* system of tenure—apart from actual purchase—has been that the first person to bring an area of land under cultivation acquires a permanent and heritable claim upon it, whether he cultivates it continuously or not.

An owner of *githaka* land assigns portions of his holding to each of his wives, if he has more than one. The sons of each wife have equal rights in all land cultivated by their mother, although the eldest son in each household, in respect of his seniority and his respon-

sibilities towards his brothers, is accorded the more privileged position. He becomes in time the head of his section of the *githaka*, and possibly the head of the *mbari*.

If there is land on the *githaka* which has never been brought under cultivation, or has remained uncultivated for a long period of time, such as land reserved for grazing or as woodland or as a place for the disposal of corpses, this becomes the joint property of the owner's sons on his death. None of it may be sold while it remains uncultivated except by agreement between them. Should one of the brothers decide to break up part of it he acquires an individual right to the portion he cultivates and afterwards he may sell his cultivation rights in the same. If the other brothers see that there is danger of his appropriating an undue share of the new land, they may protect their own interests by following his example and cultivating portions themselves. (It is of interest to note that they can preserve their shares by the expedient of giving out plots on loan to their friends to be cultivated by proxy, as it were, until such time as they wish to take it over.) But land that has long lain uncultivated may still be subject to dormant claims resulting from cultivation in times past, and even when free from these there may be pre-emptive claims upon it from members of the *mbari* who have gardens adjacent to it. The typical Kikuyu garden plot takes the form of a strip, called a *ruthanju*, or rod, and the owner has a pre-emptive right to extend his cultivation into any unclaimed land there may be at either end of his strip.

The outer boundaries of all the major *githaka* holdings are marked by natural features, such as a river or ravine, or by planted trees or African lilies, which once planted are said to propagate themselves for ever. Heaps of stones are also used, and in some instances large stones are sunk into the ground, and under them may be buried human hair, said to be indestructible, as proof if need be of their having been placed as boundary marks. No such permanent boundaries are fixed between the holdings of the members of the same *mbari*, nor between the holdings of *mbari* that are closely related; the boundaries are there, but not marked in any special way. The boundaries separating the territory of one sub-clan from that of another are treated with a certain measure of awe. They may not be shown (e.g. in case of dispute) without the sacrifice of a sheep. On certain occasions, notably during the ceremonies by which one generation hands on the custody of the land and tribal institutions to its successor, a kind of "riding of the marches" takes place, when *tatha*, the undigested contents of a sheep's stomach, is sprinkled here and there along the *githaka* boundaries by the elders of the district. (Natives have recently said that this ceremony continues to be carried out surreptitiously on land now in the occupation of European settlers!) A similar rite is performed when—as occasionally happens, it is said, in some parts of

the country—a new boundary has to be fixed owing to the permanent sub-division of a *githaka* or the sale of a portion.

#### DIFFERENCES IN KIAMBU DISTRICT.

Mention of this last possibility brings us to the chief difficulty confronting the student of Kikuyu land tenure, and that is the apparent differences which exist between the system as it is found in the Kiambu District and that obtaining elsewhere. Kikuyu will tell you that their land tenure customs are the same everywhere, and yet in the Kiambu District, or parts of it, they declare that *githaka* land can be, and is, sold *outright*, either by the family or by any member having a personal right to a portion thereof, and that without any reservation as to possible future redemption such as exists in every other part of Kikuyuland. The idea of absolute individual ownership is present to such an extent that requests have been made to Government from time to time for the issue of individual title-deeds.

Even so, one has been assured repeatedly that for a man to sell his patrimony without the knowledge and consent of the family was looked upon as most reprehensible and disloyal; also that anyone selling his portion of the *githaka*, with or without the consent of the rest of the family, thereby forfeited or diminished his joint-interest in the remainder of the holding. Again, even in southern Kikuyu, one is told, when the purchaser of a piece of a *githaka* desires to resell he must give the original owner or owners the first refusal. Only in the event of their being unable or unwilling to buy it back may he proceed to sell it to a third party.

There is no time to discuss other points of divergence between Kiambu District and the rest of Kikuyuland. It seems probable that the things that puzzle one may be due to the fact that this part of the country was among the last to be occupied by the Kikuyu, and up to the time of European intervention the *ithaka* acquired from the "Aathi" were so extensive that restrictions such as prevailed in the older and more thickly populated districts had not yet evolved. Responsible men have affirmed, for instance, that on the *ithaka* of this area no Kikuyu of any clan would be refused permission by the *ene*, or owners, to cultivate so long as there was room for them; and that once established, these *ahoi*, or permittees, and their descendants might not be evicted, unless for criminal practices. If they ceased to cultivate long enough for their gardens to revert to bush, their right to occupy lapsed.

#### INHERITANCE.

Let us look a little further into this matter of *inheritance*. This is a very wide and very involved subject, complicated as it is by the

custom of polygamy and other features of African social organisation. It is impossible to do more than give it a cursory glance.

I have been told that in some cases a father who has extensive *githaka* rights will divide out his land between his sons before his death. But the way in which the family heritage generally becomes divided up is through its division by the owner between his wives. Every man on buying a wife has to provide her with land to cultivate and thus provide him and herself, and later their children, with food. The children of each wife assist her in the cultivation of her gardens. When the sons grow up and marry, their wives take over portions of their mother-in-law's fields, and on their father's death the sons enter into full possession of their respective portions. This process involves no particular hardship on the mother, because as her sons marry, one after the other, the burden of supplying them with food devolves upon their wives, and so her requirements in the way of land progressively decrease. If a son finds his portion of his mother's plot insufficient for his needs after marriage, he will obtain extra land elsewhere by purchase under condition of future redemption or by gift (which is in reality a loan) from a relative or friend. If the father is still alive and has unallocated land available, the sons may be allowed to make additional gardens there; or, if a son is hard put to it to find the land he needs, the course may be followed of buying back, under the redemption system, some of the family land that has been sold to other people.

As every son born to a man has equal rights of inheritance with his brothers, the question arises, "How is it that in the course of two or three generations a *githaka* does not become divided and re-divided into such minute fragments that the system breaks down?" I have asked that question of natives, and the answer given is that the death-rate acts as regulator, and the fact that all men do not have male offspring. If a man dies without a male heir, his landed interests pass to his senior full-brother, or if he has none, then to his senior half-brother, or to the surviving heir of either of these. Thus the process of sub-division is held in check by a parallel process of reaccumulation. When a *githaka* does become overcrowded, some members of the family have of necessity to seek land elsewhere. In the old days, before the Native Reserve boundaries were fixed, they could move out to new forest areas. One alternative nowadays is to go on to European farms as squatters.

Daughters do not inherit. A girl's mother may give her a small bit of her field to cultivate, but she retains it only by the grace of her mother. She may be allowed to continue to cultivate there after marriage, but she has no sustainable right to the plot.

It is the custom for a father to give a favoured daughter a goat with which to buy wire for her personal adornment. When wire

used to be hand made by native smiths it was expensive. Now it can be bought cheap at the shops. So it happens that the father may give the girl a piece of land to cultivate in lieu of the goat. This present may be made at the time of the girl's marriage or before. She may continue to cultivate the garden after her marriage, but at any time, whether before marriage or after, the father or whoever succeeds him as the owner of the land can require her to relinquish it by compensating her with a goat.

The general rule is that a woman cannot inherit land, as such, though she may be the medium of inheritance. On the other hand, under certain circumstances a woman can sell her cultivation rights. For example, a widow with no son, or with only a young son, may sell her garden, but only to a member of the family of her late husband, that is to say, to a member of the *mbari* which owns the *githaka*. Her son, if she has one, can redeem the garden later on.

A word needs to be said about this interesting custom of land redemption. It is founded on the general principle that *Githaka ni ngwatira*—land is a loan—to everyone, that is, except male members of the owning family. They have a perpetual right in the land, not merely leave to use it. (This is why the Kikuyu find it difficult to accept the Crown as the ultimate owner of the soil. It appears to them that this infers that the land is lent to them by the Crown, even though it be "for ever," to quote the Native Lands Trust Ordinance; whereas, in the case, say, of land given up for a Government station, a road reserve or a trading site, they regard this as a loan on *their* part to the Crown!)

Land is redeemed by the return of the goats paid for it—or their equivalent. If, however, the person to whom it was sold has let it lie uncultivated, all the progeny of the goats has to be added to the number returned. It is argued that the buyer has reaped no advantage from his tenure of the land, and therefore the vendor likewise should make no profit on the transaction. When a person is evicted by redemption, or otherwise, he is allowed time to reap his produce and to remove any perennial crops, such as bananas, sugarcane or yams. If the original owner is in urgent need of the land, he may arrange to buy such permanent crops. Thus the amount payable in a redemption transaction may be augmented by the value of such crops as these. I believe it is the case that a man sometimes finds himself unable to buy back his land because he cannot afford to pay for such "improvements." The occupier is bound, however, to remove perennial crops and planted trees in the course of time and thus finally vacate the ground.

#### TYPES OF OCCUPIERS ON A "GITHAKA."

What classes of people may be found in occupation of a *githaka*?

First there are the members of the owning *mbari* and their families. They will in all likelihood have rights in more than one such *githaka*, according to the size of the *mbari* and the extent of its hereditary lands. They will certainly have cultivating rights also on other *ithaka*, including *ithaka* belonging to members of other clans. These will have been obtained through marriage relationships, by purchase, or by free permission.

Next to these *ene*, or owners of the *githaka*, come their relations-in-law, or *athoni*, as they are called. It is the custom for a *githaka* owner to give land for cultivation to his near relations by marriage, if he has unoccupied land available. In the same way he can obtain gardens from them if he himself is short of land. *Athoni* have no right to such land; they cannot demand it. It is a matter of friendship, and they are in the same position as other friends to whom the *githaka* owner gives gardens. If a man had land available but was unwilling to give his *athoni* gardens, they would regard it as a sign that he was ill-disposed towards them. A *muthoni*, or relative-by-marriage, has no right to sell or transfer a garden given to him in this way, and he could be asked to relinquish it should the owner require it.

Besides the gardens of the *githaka* owners and their *athoni*, a *githaka* may contain plots which have been sold to people in no way related to the owning family, and who may be members of other clans. It will be understood, of course, that it is only the cultivation rights that have been sold, and such plots can at any time be bought back, even though they may have changed hands again in the meantime. A buyer of a plot may resell to another person with the knowledge and approval of the real owner; or he may give free permission to someone else to cultivate it.

A *githaka* owner can also, of course, give free permission to cultivate to whom he pleases, although he will consult his full-brothers before doing so. He is still more careful to do this before selling any land, seeing that the question of redemption will arise in the future.

People to whom land has been sold are called *aguri*, purchasers, or *andu a mburi*, those who have paid goats. Those who have been given gardens free are called *ahoi*, i.e. those who have begged permission. *Athoni* are really privileged *ahoi*. Ordinary *ahoi* may not plant permanent crops and must vacate when asked.

The sons of *athoni*, *aguri*, and *ahoi* inherit the plots acquired on the *githaka* by their parents and may retain them so long as the *ene*, or owners, are agreeable. If at any time a *muhoi* ceases to cultivate his garden and it reverts to bush his permission to occupy it lapses, and he must approach the owner afresh should he wish to recultivate. *Ahoi* occasionally give presents of beer or produce to the *githaka* owner in acknowledgment of his kindness in allowing them the use of the land.

The position regarding *ahoi* appears to be different in the Kiambu District, as already stated, and there are no *aguri*, or purchasers, except those to whom land has been sold outright.

#### BUILDING RIGHTS.

All that has been said so far has been in reference to the ownership of land and the right to use it for cultivation. Nothing has been said yet regarding occupation for the purpose of residence. A good deal could be written on this aspect of our subject, but it behoves us to be brief. In some parts of Kikuyuland, such as Ndia and Kiambu, it would appear that one may build one's house, or, if you prefer it, erect one's hut, anywhere on anyone's *githaka*; even in the middle of somebody's garden. This is the theory. In practice a person is not likely to establish himself where he is unwelcome, and consultation takes place before the decision is made. Elsewhere in the Kikuyu country a man is at liberty to build anywhere within the family *githaka*. A "raw" Kikuyu generally consults the oracles in regard to the site for a new village. If the spot selected, with the aid of a medicine-man, is in someone's garden, the owner will not object. Standing crops may be cut down, if necessary, to make room for the new homestead. If, for any reason, a man wants to build on a *githaka* belonging to another *mbari*, he can obtain a site either by permission from a member of the *mbari* or by the purchase of a plot. In the latter case, however, he can be evicted in the event of the plot being redeemed. If he obtains the site by free permission he will not be ejected unless he becomes a danger to the community; in that case it is the representatives of the community in general who take action.

Settling on another person's land does not confer the right to cultivate, and if the huts are again removed the site reverts to the *githaka* owner or other occupier of the plot.

#### CONCLUSION.

The foregoing are some of the conditions governing Kikuyu land tenure. Native law and custom is not a rigid, unadaptable thing, and while certain guiding principles are closely observed, factors such as density of population and difference of soil and climate are no doubt responsible for local variations in the customs regarding land. Local problems, too, are generally settled on a basis of mutual accommodation and conciliation. The system has worked extraordinarily well so far. The changes brought about by advancing civilisation are forcing modifications, but there is reason to hope that these will be effected without undue disturbance by the adaptable genius of the people themselves.