In 1949, it heard two cases involving the inheritance of subvillage headmanships and five concerning the inheritance of individual holdings. In 1950, it heard three land inheritance cases and fined the clan treasurer for misappropriating clan funds. In 1951, there were six inheritance cases, all involving individual holdings. Entries for earlier years include an allegation of misrule against a headman and a number of rulings on the clan membership of individuals. The Baisengobi of Bulaamadi have been able to maintain an effective countywide organization because their head, the heir to the rulership of the traditional kingdom, is a figure of great authority in the area who has served both as a county chief and as Kyabazinga (president) of Bubuga. Their situation is clearly exceptional. Throughout Bubuga, however, at least at the level of the local succession lineage, descent groups continue to hold tribunals whose decisions in matters of succession have important consequences for the work of the official courts of record.

Having introduced the courts, the setting in which they work, the judges who man them, and the kinds of disputes that Soga society brings before them, I now turn to the main business of this study: the analysis of the manner in which the courts manipulate legal ideas in the adjudication of disputes. I shall begin with the field of sexual relations and marriage.

12 Bulaamadi is not, however, unique; a similar situation seems to prevail in Bugabala county.

You ask why the woman is never the accused in adultery cases. But if someone were to steal your shoes, would you accuse the shoes?
—A subcounty chief

4 The Courts at Work: Husbands and Lovers

Discussion of the kinds of cases that come before the Soga courts has shown that among the important sources of litigation are marriage and, more generally, relations between the sexes. Actually, disputes arising in this field of social life are, as I have noted, responsible for an even larger proportion of cases than the review of sample casebooks would indicate, for the brief summary that appears in the casebook often does not reveal the social locus of the trouble. If the action directly concerns a breach of norms governing sexual relations or marriage, this will be obvious from the casebook summary, as for example when a father accuses a young man of seducing his daughter or a husband accuses his father-in-law of "harboring" his wife. But tensions between husband and wife, or between in-laws, may first emerge into public view not in litigation over marital or sexual norms, but rather in direct interpersonal aggression. An aggrieved son-in-law, instead of accusing his father-in-law of harboring, may instead slander him or give him a beating, in which case the matter will come before the court as an action of "the lukiiko" against the son-in-law for assault or slander, with no mention in the casebook summary of the roots of the dispute. In the full transcript of the
testimony, of course, all this will come out, but in the summaries, upon which the discussion of frequencies of types of cases has of necessity been based, such affairs tend to boil down to something like: "He is accused of spilling my name without reason"; or: "I accuse him of beating me three strokes and throwing me down without reason." Thus it is very likely that many of the types of interpersonal aggression mentioned in chapter 3 occur quite often as a result of tension between spouses, lovers, rivals, or in-laws.

That this is so is suggested by the results of a study of homicides and suicides in Busoga which Margaret Fallers and I carried out. Cases in which death has occurred are not within the jurisdiction of the African Local Government authorities; they are investigated by the Uganda national police and come before the national courts in the form of an inquest or a trial for murder or manslaughter. Our study, based upon the records of these proceedings, covered continuous series of one hundred homicides and one hundred suicides occurring between 1947 and 1954. In more than one-third (thirty-seven) of the homicides, the victim was the killer's spouse; in the remaining cases, eight victims were in-laws, five were rivals, and two were lovers, so that in all more than half the cases (fifty-two) directly involved sexual relations or marriage. Of the one hundred suicides, twenty-two seemed to have been precipitated by quarrels with spouses, lovers, or in-laws, and eight by anxiety over impotence. If Busoga, when they kill, so often do so as a result of marital or sexual difficulties, they probably commit other forms of interpersonal aggression, at least some of the time, for the same reason. Thus, behind the attempts of the courts to settle disputes arising out of breaches of marital and sexual norms, lies the threat of violence and death. An examination of the institutional setting of marriage and interfamilial relations will make it clear why this area of social life is such a fertile source of trouble for Busoga.

**Soga Marriage: The Institutional Background**

Marriage is a contract between the bridegroom and the father of the bride in which authority over the bride is transferred from the latter to the former. Although it is the agreement between the two parties concerning the transfer of authority over the woman that concludes the contract, this agreement is almost invariably accompanied by the payment of bridewealth (mucandu) and nowadays the terms of the contract, which may involve a schedule of payments over time, are often embodied in a written agreement (ndaagano). Bridewealth pay-

1. Lloyd A. Fallers and Margaret C. Fallers, "Homicide and Suicide in Busoga."
distribution of authority and however contorted they may become as a result of tension and conflict.

Although marriage is contracted between the bridegroom and the bride's father or guardian as individuals, its consequences involve other members of the two patrilineages. On the side of the bridegroom, lineage mates may assist him in collecting the bridewealth. Soga custom does not lay down fixed rules requiring certain kinmen of the bridegroom to contribute to it. But it is to his agnates and to a lesser extent to his paternal kin, that a young man is entitled to turn for assistance in assembling the required quantity of money and livestock. For his junior male siblings, who may succeed him in marriage when he dies, his bride is a potential wife. On the woman's side, her male lineage mates are potential successors to her father, upon whom may fall his responsibilities as her guardian under the marriage contract. Her children will be her baiwa—sister's or daughter's children, a category of kin for whom Basoga have a particularly warm regard. Her brothers may have been allotted the bridewealth from her marriage in order to contract marriages of their own. Her sisters may well join her as co-wives in her husband's household, for Basoga are very polygynous—frequencies of multiple marriages ranging, in the villages which I surveyed, from 30 to 50 percent—and sororal polygyny is the preferred form. In all these ways, the consequences of marriage tend to reach out from the couple immediately concerned to other members of their respective lineages.

The ceremonial practices which accompany marriage emphasize the importance of the bond thus established between the two groups. The agreement between the bridegroom and the bride's father is arrived at on a highly formal occasion known as "the introduction" (kuwandaula). Dressed in their best clothes, the bridegroom and his father visit the father of the bride, accompanied by the nkende, a friend (not a kinsman) who will act as a formal witness to the contract. Agreement having been reached, the bride is secluded until the wedding under the care of an elderly woman, who bathes and anoints her and instructs her in the duties of a wife. On the wedding day, the bride is accompanied to the bridegroom's home by her brother and her father's sister, who remain for one night to assure themselves of the bridegroom's potency and who, on the following day, must be given a token gift to "drive them away." A similar interest in the fertility of the marriage is taken by the bridegroom's actual and classificatory "mothers," who linger about the home on the wedding night amid the drinking, dance-

2. See Appendix A; and Lloyd A. Bantu Bureaucracy, chapter 4.
3. Ibid., table 11.

The Courts at Work

ing, and drumming kinmen and guests, urging the bridegroom to consummate the union.

Today in many—but perhaps most—cases these traditional observances are accompanied by Christian or Islamic ceremonies which, particularly in the case of Christians, emphasize the importance of marital stability. A standard feature of Christian weddings, particularly among the more affluent, is a tea-party reception, following the ceremony in the church. Speeches describing the duties of husband and wife in Christian matrimony are given by the fathers of the bride and bridegroom, and often by the bridegroom himself. Concern for stable marriage is also voiced in the public forum. In April 1950, the district council debated on four successive days the corrosive influence upon marriage of town life in general and the employment of women in particular. On an earlier occasion, in 1942, the council considered means of reinforcing husbands' authority over wives. Being an almost exclusively male body, the council tends to view female weakness as the chief threat to stable marriage.

This explicit concern for the maintenance of the marriage bond on the part of persons and groups external to it is reinforced by the ties between parents and children that are its natural result. The relationship between mother and child is the strongest and most emotion-laden in Soga society. Unlike the father, who is rather distant and authoritarian, the Musoga mother is protective and nurturant. Her complete responsibility for the banana garden makes her the source of sustenance and she remains its symbol long after infancy. Throughout their lives, most Basoga regard their mothers with deep and unconditional affection. The father-child bond is also strong, but for different reasons; the father is the disciplinarian and the giver of formal status in the patrilineage. Through him are transmitted rights in property. Thus, the tie between husband and wife is strengthened by their common, though rather different, ties with their children. A broken marriage means that a child is separated either from its mother, with whom its affectual ties are strong, or from its father, who gives it social status and whose authority is believed necessary to the proper development of its character.

Nevertheless, the relationship between the two spouses, and between their kringroups, is commonly one of strain and incipient conflict. A man and his wife's agnates call one another bakowana or bako, and the relationship is called bako. The strain between bako becomes apparent at weddings, where the bride's people are quick to resent and to complain about arrangements for the ceremony—these are the bridegroom's responsibility—which they consider inadequate. At one
wedding I attended, for example, an open quarrel developed over the adequacy of the motor vehicle which the bridegroom had hired to take the party to the mosque for the religious ceremony. The subcounty chief, who was a guest, had to intervene to save the situation. Often there is a last-minute argument over the bridewealth. After the wedding, the bride’s brother and her father’s sister, who have accompanied her to the bridegroom’s house, make a show of being reluctant to leave her and it is at this point that they must be given money to “drive them away.” It is this sort of conflict, which comes to the surface at nearly every wedding, that underlies the belief, held by many Basoga, that traditional marriage consisted of a kind of “theft” of the bride by the bridegroom. Elopement or wife-stealing as a regular practice would, of course, be incompatible with the negotiation of bridewealth prior to marriage, of which so much is made, and at first the contradiction seems puzzling. But observation of a number of weddings made it clear to me that an element of “theft” was, indeed, involved in even the best-arranged marriage. At the last moment the mutual attachment of the bride and her own people bursts forth, and, on some minor pretext, they may angrily accuse the bridegroom’s people of “just trying to take our daughter by force.”

What is involved here, of course, is a strain between the bond established by marriage and the rather stronger, in Soga society, bond of the lineal descent group, a strain which splits the conjugal unit and sets bakoko against each other. Partly, it would seem, in order to control the ever-present threat of conflict, relations between bakoko are supposed to be very formal and correct. There is much formal visiting and gift-giving. A man who visits his muuko should always wear the long white kana as a sign of respect and should behave with the utmost circumspection and politeness. Bakoko should not touch one another and the father of neither husband nor wife should sleep in the couple’s house. Similarly, within the household, wives should submit themselves completely to their husband’s authority and should treat them with elaborate deference. Wives may not absent themselves from the home without explicit permission, even, or perhaps especially, to visit their parents.

A common result is that a wife feels oppressed and tries to escape by running away to her father. The latter may accept her, and thus involve himself in conflict, and possibly litigation, with her husband; or because accepting her would involve repaying the bridewealth, he may force her back into a strife-filled existence in her spouse’s home. Husbands, for their part, are sensitive to the fact that their theoretically great authority over their wives is in reality insecure and often

flouted. In reaction, many become household tyrants. For both husbands and wives, the sexual act itself tends to become the focus of the conflict. For the rebellious wife, extramarital affairs become an assertion of autonomy against a domineering husband. For the husband whose position is threatened, intercourse with his wife becomes an act of authority. “The jealous man,” a proverb says, “does not eat; he just climbs trees”—to spy on his wife, whom he suspects of meeting lovers. When he feels his dominance slipping away, he may imagine himself to be losing his virility (and consequently may, in fact, lose it) as a result of sorcery directed against him by his wife. In the study of homicides and suicides referred to above, a number of cases were discovered in which husbands or wives had killed themselves or their spouses (in a few cases, both) immediately following sexual intercourse. It is most expressive of the obsessive anxieties and discontent that swirl around Soga marriage that the word bakoko (the in-law relationship) also denotes a paralytic disorder and that a bakoko bakoko (“sleeper of bakoko”) is an ulcer of the penis. 4

Of course the dark picture I have been painting does not portray every Soga marriage. Many men and women live happily together, overcoming the institutional contradictions of their situation. And most couples, when the strain becomes too great, simply separate. In the five villages I surveyed, between one-quarter and one-half of all marriages contracted by the men had failed, 5 and in 90 percent of these cases the bridewealth had been returned. Most fathers, apparently, are willing to assist their daughters in escaping from an intolerable marriage. It is the minority who are unable to make stable marriages and who, when conflict does arise, are unable to settle it amicably, who are the litigants in the cases to be analyzed.

It is now time to pick up the thread of my argument concerning the nature and use of legal concepts by examining a number of the concepts the Soga courts apply in order to reach authoritative decisions regarding the conflicts that arise in this troubled field of sex and marriage.

Such a concept has already begun to shape and narrow the issues by the time the accused reaches the court with his complaint, for only if he can describe his cause in a word or phrase that corresponds to a wrong recognized by the court will the court summon the accused and allow the action to proceed. Of course, since a knowledge of the system

da Dictionary.
of legal concepts is common to most adult males, and since most cases have been argued, and the issues sharpened and made more explicit, before headmen and parish chiefs before they reach the lowest court of record, most accusers arrive before the subcounty chief with a plausibly framed complaint. What is at issue, therefore, when the case comes before the court, is the reach of a well-known concept with respect to the "facts" of a given case, as these emerge from the process of litigation.

The accuser need not, however, adhere to an absolutely set verbal formula; the concept pertaining to a recognized wrong need not always be invoked in precisely the same words. The participants in the courtroom encounter are peasant litigants and part-time judges, not learned jurists trained in verbal hair-splitting. Legal language remains very close to everyday languages. Thus, a man who alleges that another has wrongfully appropriated his wife or daughter may accuse him of "seducing her away" (kumubapiza) or of "being caught with her" (kukwekibwana naye) or of "marrying her" (kgumbibirwa naye), although everyone concerned would recognize that all these accusations might be reduced to kusveni ("adultery" or "fornication"); the one word covers both, as indeed they are in the brief headings commonly used in the casebooks (see Appendix B). A husband who accuses his wife's father or guardian of wrongly keeping her usually employs the formula kumutswa aovutula ensonga ("causing her to stay without reason"), but occasionally one encounters kumukwekwa ("hiding her") and even kumubba ("stealing her"). Perhaps the best Soga example of specialized language, closely adhered to in invoking a legal concept, is the phrase kula yenko koo bebi ("eating two hens"), invariably used when a father or guardian is accused of accepting bridewealth from two different men for the same woman. The phrase is made up of everyday words, but it is strongly associated in people's minds with the courtroom context and with a particular recognized wrong.

Thus far I have used the term "legal concept" to mean "a wrong recognized by the law"—a wrong for which one man may bring another to court—and have spoken as if the problem for the court were simply to decide whether or not the "facts" of a particular case, as accepted by the court, place it sufficiently within the compass of such a concept to justify a decision in favor of the accuser. As a gross description of the overall task of the court, this is accurate enough. I have been content with it thus far because I have been concerned to isolate, within the general sphere of moral ideas, with all the various forms of social control that support them, the specifically legal concepts by means of which issues are narrowed for authoritative adjudication by courts. It is the necessity, in a society with courts of law and a legal subculture, to frame an accusation in terms of a concept that narrows and frames the issues that brings out most clearly the nature of the specifically legal. But this emphasis upon the concept embodied in the accusation oversimplifies, and may even falsify, the total process of litigation. Thought and discourse always involve the use of concepts, and the thought and discourse involved in litigation and adjudication are far from being exhausted by the bald statement that "the court's problem is to determine whether or not the facts of a case place it within the scope of a given legal concept." In the process of reaching a "yes or no" decision with respect to an accusation framed in terms of what I should now like to call a "concept of wrong" framing a cause for court action, the court must ask and answer to its own satisfaction a number of subsidiary questions, making use, in the process, of subsidiary kinds of legal concepts (Levi calls them "satellite concepts").

On the one hand, the court must determine the "facts" which it will measure against the concept of wrong invoked. Sometimes these are agreed upon, but often the evidence is wildly conflicting. The court must weigh the testimony of litigants and witnesses and for this purpose must make use of concepts of credibility which allow it to answer such questions as: Is the witness in a position to know what he says he knows? Are his interests likely to bias his testimony? What is the significance of internal inconsistency in a man's testimony? . . . of inconsistency between his testimony and his other behavior? What can a man be expected to remember, and for how long? What weight is to be given to written evidence? On the other hand, the court must make use of concepts embodying assumptions about the nature of man, society, and the nonhuman world in exploring the applicability of a particular concept of wrong to a particular set of facts as determined. It must decide such questions as: What, for purposes of this particular wrong, is a "father," a "brother," a "wife," an "heir"? What is marriage? What is a "goat" given in bridewealth? Is it the particular goat only, or one similar to it, or its money equivalent? Who has "standing" with respect to this particular wrong, so that he may accuse in terms of it? Who may be accused? What constitutes, with respect to this particular wrong, "infancy," "youth," "adulthood," "old age"? What is "force," "intention," "care"?

Like the concepts of wrong, the concepts used in establishing credibility and applicability are expressed in everyday language, not in a specialized, refined legal lexicon. What makes them legal concepts is
their use in exploring the scope of specific concepts of wrong. While they are almost never explicit about this in the sense of stating formal definitions, one frequently finds litigants offering, and judges considering for acceptance or rejection, particular concepts of persons, events, and things relevant to the concept of wrong under consideration. Examples of this were encountered in chapter I in the case of Yoweri Kipiri v. Youwu Kalwite, in which the court and the litigants made use of various concepts subsidiary to that of “harboring.” If Yoweri has repudiated Kolositi, is he still her “husband” for purposes of the law of harboring? What constitutes evidence of “repudiation”?

There is, of course, a certain arbitrariness in this distinction between “concepts of wrong” and “concepts of applicability” and “credibility.” One might say, with perhaps equal fidelity to the legal process, that the concepts of applicability and credibility simply represent fuller statements of the concepts of wrong. Thus, it might be argued, the phrase “harboring a wife without reason” is really just a shorthand tag for a wrong whose full description would embody a statement of what, precisely, the courts have found the terms “harboring,” “wife,” and “reason” to mean, together with a statement of all the kinds of testimony the courts have accepted as evidence that such an event has occurred. In a sense, the legal concept of “harboring a wife without reason” comprehends all these things.

But two considerations argue against thus collapsing the whole legal process into concepts of wrong. First, the distinction I have proposed is, I think, a useful analytic device. Particularly in a legal system as inexact about its operations as that of the Basoga, one can only discover the fuller meaning of a concept of wrong by comparing cases in which it has been invoked. Examining such cases, one discovers that some are closely contested, while others are quickly brought to an end, often by an admission of guilt or liability. The more closely contested case, as I suggested in chapter 3, is legally more interesting because it reveals more of the logic of the legal process and it is this logic that the distinction between concepts of wrong and subsidiary concepts is meant to capture. I think of the concept of wrong as having a central, or core, meaning surrounded by areas of ambiguity which give the law its “open texture.” The core meaning covers the “plain case,” the case on whose proper outcome “everyone” would agree. (There are, of course, intransigent litigants who fight on when they are “obviously” wrong, but these are easily spotted: no one takes their arguments seriously.) Cases which are not so plain are “marginal” in the sense that they do not fall clearly into the core meaning but rather involve the surrounding areas of ambiguity. Litigating them and deciding

them involves more legal work, work which one may usefully analyze in terms of “subsidiary concepts.” However Basoga may view the legal process, then, the comparison of plain and marginal cases is a means of “unpacking” the meaning of concepts of wrong.

Second, and perhaps more important, the distinction between “concepts of wrong” and “subsidiary concepts” seems more faithful to the way in which the Soga courts (and perhaps all courts) actually work. They do in fact begin with an accusation embodying a concept of wrong, briefly stated, and then, if the case is not a plain one (in which event a decision is rapidly reached without argument), they begin to explore, by questioning litigants and witnesses, the relevant questions of fact and applicability. The judges themselves would not analyze what they do in the terms I have used, perhaps—for they are quite unconscious about their work—but these terms seem helpful in capturing the kinds of questions they appear to pursue in answering, “yes” or “no,” the larger question of whether, for example, Youbu harbored Yoweri’s wife without reason.

In analyzing this process as it operates in cases arising from the field of sex and marriage, I shall not discuss all the concepts of wrong that may be invoked or all the subsidiary concepts that may come into play, for I am interested primarily in the process, rather than the full substance, of Soga law in the field. My object is not to produce a textbook of Soga law. I shall therefore focus upon a few concepts of wrong and the subsidiary concepts which their invocation commonly causes the courts to employ.

ADULTERY (Bwenzí): PLAIN AND MARGINAL CASES

Kunya Nyomi v. Bulubutsu: unlawful possession is adultery; ignorance is no defense

“Adultery,” a subcounty chief once told me, “is a serious matter because if we do not punish it severely in court, men will beat and spear one another over it.” This perhaps accounts for the vigor with which an accused may defend himself against the charge, even when the case is clearly a plain one, as did Bulubutsu of Kana Hugo when accused by Kunya Nyomi of Bunyama on June 27, 1950. Quickly convicted, he appealed, on tenuous grounds, to the county court of Bulamati, which, after very brief deliberation, upheld the lower court. Bulubutsu’s is the plain case that brings out rather clearly the core meaning of the concept of adultery in Soga law—a meaning, incidentally, which is sufficiently divergent from that of the English word that one should perhaps hesitate to use “adultery” to translate “bwenzí.”
Chapter 4

Bulubutu is accused of “being found with the woman Mbeiza, wife of Kunya, having put her on his bicycle. He had seduced her away and kept her for five months.” Bulubutu knows that he has been caught dead to rights, but he does what he can to defend himself:

Q: Do you agree to argue this case, in which you are charged with putting the woman Mbeiza, wife of Kunya, on your bicycle? Do you expect to win?

A: I won’t argue. I know I will lose, because I put that woman on my bicycle at Bulima and we went to Budomero and I was caught and taken to the village headman and the parish chief and they were going to take me to the subcounty chief. I asked the one who caught me, the owner of the wife, to forgive me. He asked 100 shillings of me and I agreed to give him 70 and asked him to go with me to Aliigula to borrow the money. But he didn’t have it, so while we were there Kunya said “write an agreement with me” (promising to pay). But I said I couldn’t write. Then he took my bicycle and left. My friends said I should find the money and take it to him the next morning, but when I went with the seventy shillings, I met Kunya on the road—he said it was impossible to accept it because he had already taken the matter to the subcounty chief. So I returned the money to my friend who had lent it and set out for the subcounty headquarters.

Two points are particularly significant in Bulubutu’s defense. First, he admits that he will lose the case because he has been found with the woman on his bicycle. This is enough, as many similar cases confirm, to convict him of “adultery.” It need not be shown that he had sexual relations with her, or even that he kept her in his house (though that is alleged in this case). A man with a woman on his bicycle has possession of her and that is sufficient. Is this a matter of evidence—that sexual relations have occurred or are intended—or is it a question of the definition of “beens” itself as a concept of wrong? The distinction between “concepts of wrong” and “subsidiary concepts,” whether of credibility or applicability, is, admittedly, a slippery one, but the courts’ questionings, both here and in other cases, seem to me to provide a rather clear answer. Never, in these cases, do the courts show the slightest interest in proving sexual intercourse, nor defendants in disproving it. Basoga simply assume, as part of the nature of things, that a man will have intercourse with any woman who is in his possession and who is not forbidden to him by virtue of kinship. Having control of such a woman without properly marrying her is beens, and not simply prima facie evidence of it. The bicycle, of course, by extending the range and speed of movement in the Basoga countryside, has increased the opportunities for such wrongful possession.

6. “Such as will suffice until contradicted or overcome by other evidence.” Black’s Law Dictionary.

The second point to note is that, while Bulubutu has essentially admitted his own guilt, he has sought to blacken his accuser’s character. He says that Kunya took his bicycle and he accuses Kunya of offering to accept compensation in exchange for dropping his intention to take the case to court. This is a serious, even actionable, matter, for, as the court of Bugabula county remarked, in upholding a lower court’s imposition of a fine of twenty shillings or one month’s imprisonment in a case in which a man was shown to have accepted money to drop a charge of adultery, “People who . . . assume power to demand compensation privately in cases in which the court might punish the offender more severely . . . should not be encouraged.” Bulubutu says that Kunya then double-crossed him by going to the subcounty chief before he could pay the money. The charge of asking for compensation out of court is probably false, for no such case against Kunya appears in the records of subsequent months, but such attempts to discredit an accuser by counteraccusations of immorality are common in Soga pleading, particularly when the accused has been made desperate by being caught in a plain case of wrong. In any event, the story told by Kunya, the accuser, is quite different:

Q: When did this wife Mbeiza leave your home?

A: She went on January 27, 1950. I didn’t know where she went. When I went to my in-laws’ at Bukono, I didn’t find her there; my in-law told me to look everywhere for her and said he would do the same. On June 24, I returned to my in-laws’ to find out whether she had been seen. When I arrived, my in-law said she had not, so I returned home. Yesterday, June 28, 1950, I was on my way to Budomero to buy salt, together with my friend Wamasa, when we found this man Bulubutu with my wife Mbeiza on his bicycle. We seized them and went to the village headman and the parish chief and were going to the subcounty chief when Bulubutu asked the village headman, Nabikusa, to allow him to go off privately [to relieve himself]. While doing this, he ran away, leaving his bicycle. The woman also ran away. So the village headman brought the bicycle to subcounty headquarters.

Thus, in Kunya’s account of what happened on the road to Budomero, nothing is said of settling the matter out of court and Bulubutu abandons the bicycle in his flight from justice. The case is so plain, however, that these side issues are left unexplored. It is being agreed that Bulubutu was caught with Mbeiza on his bicycle, the court quickly seizes off two possible routes of escape for the accused and moves toward a conclusion:

Q: Where did the woman Mbeiza say she was going and where she was coming from, that you should give her a lift?

7. Court v. Yalen Igunju.
A: She said she had come from Kigulu [the county to the south] and was going to Gadamuwe [in northern Buhangiro].

This is to give Bulubutu a chance to claim that Mbeiza had been on some legitimate journey—returning to her husband, perhaps, or to her parents—but Bulubutu sees no help in that direction. Then:

Q: What do you and this woman call each other?
A: There is no closeness.

A claim of kinship might legitimate the fateful bicycle journey, as will shortly be seen in other cases, but again Bulubutu has no argument to make. One final question:

Q: Had you ever seen Mbeiza before?
A: I had never seen her before yesterday.
Q: Now, when Kunya accuses you of the fault of seducing away his wife for five months up to June 20, when he caught you with her, is he correct?
A: Yes, he is correct, but I didn’t realize she was his wife.

Bulubutu’s flimsy defense has collapsed. The plea of ignorance is brushed aside and the court concludes:

It goes against Bulubutu. He himself admits that he put the woman Mbeiza on the bicycle and that he had her secretly for five months. Therefore he is assessed 100 shillings compensation, 20 shillings fine, and three months imprisonment.

Particularly in plain cases, the defense often collapses in this card-house manner with an admission of guilt. Even so, Bulubutu, in his desperation to escape the penalties imposed—which are heavy for a Musogga peasant with an annual cash income of two hundred or three hundred shillings—appeals to the county court. In his letter of appeal, he returns to a previous argument—that he hadn’t known Mbeiza was married—and adds the allegation that he was not given a fair hearing. Again, however, his defense is short-lived. The clerk of the county court reads out the transcript forwarded from the subcounty court:

Q: Do you agree that the statements just read are those you made and confirmed with your signature in the subcounty court?
A: I signed it, but I was forced. It isn’t what I said in the court.
Q: Which words were you forced to sign?
A: … that I put Kunya’s wife on my bicycle. I didn’t know she was a wife.
Q: Do you still insist in this court that you were forced to sign those words and that you didn’t say them in the subcounty court?
A: I agree that I said them and confirmed them by signing.
Q: Do you have anything to add that you didn’t say in the lower court?
A: I have something to add: My friend there, Kunya, is taking revenge on me.

We worked together as tailors at Namuwira. Because he didn’t see well, the Indian [employer] dismissed him. So he accuses me of seducing his wife

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Mbeiza. I know the case goes against me, but I plead with the court to help me by reducing the punishment.

Kunya, the accuser, is also offered an opportunity to speak, but adds only that he himself had intended to appeal against the lower court judgment on the ground that its sentence was too lenient! The county judges, however, simply confirm the previous decision.

From such a plain case as this, one learns relatively little about the logic of Soga law. Something has been learned about the core meaning of buenzi—that it means wrongfully having control over a woman in such a manner that sexual relations are possible, but that actual sexual relations need not be proved. There is also a clear indication that ignorance of the woman’s married status is no defense, since the accused’s argument on this point is ignored. It is clearly his responsibility to know her marital status. The case has also provided an opportunity to observe the desperate tactics employed by an accused in a situation in which it is clear from the outset that he has no real defense. But, precisely because the case is such a plain one, the margins of buenzi as a concept of wrong are little explored. The behavior alleged to be adulterous—carrying the woman on the bicycle—is admitted from the start, so there is no exploration of the problem of credibility. With respect to the problem of applicability, the accused offers no defense—apart from the weak and futile one of ignorance. He does not, for example, claim, as the court offers him an opportunity to do at one point, that he and the woman are related to one another in a manner that would remove their association on a bicycle from the reach of the concept buenzi. It is when such questions are raised in defense that one can see the court making those more marginal decisions that constitute the real logic of the law.

Abduala Olera v. Gaunye: a “naked” confession convicts

Consider first a case from which something additional may be learned about the problem of credibility in accusations of buenzi. This is also a relatively plain case in which the defense is not a strong one, but it is worth citing because the evidence of adultery is less direct than in the previous one. In that case, the accused was caught, and admitted to having been caught, with the woman. Here, the accused, Gaunye of Kitikuro, denies behavior which might be construed as adulterous. He is accused by Abduala Olera of Kaketa of “seducing away my wife, Tino, and being caught with her.” Gaunye defends himself thus:

Q: Do you … [admit to] seducing away Tino, wife of Abduala Olera, or will you contest it and hope to win?
A: I agree to contest it and will win... because I have never taken this woman, Tino... and I have never been caught with her, as is alleged.

Q: Do you have any evidence to show that you have never taken her and were never caught with her?
A: Yes, I have, first... that of the village headman... and also that of the policeman, D. Wamumuduire.

Abudala, however, calls upon the same two witnesses in support of his charge:

Q: Do you have evidence to show that you caught Gaunye and your wife, Tino?
A: Yes, I have [that of] the village headman, Y. Kitamirike... and the policeman, D. Wamumuduire.

Q: What do you call upon [them to say?]
A: I call upon them because they were there when Gaunye agreed that this woman, Tino, was "married" to him, but they can't testify that I caught him with her in his house.

Q: Is it true, then, as Gaunye says, that you did not catch him with your wife, Tino?
A: Yes, that is true, we didn't find the woman in his home, but we saw her afterward in the house of her father, Kagodo.

At this point, the accuser's prospects appear rather bleak. The court seems to be concentrating on the point of "catching him with the wife," and for this Abudala admits to having no evidence. The court, however, decides now to hear the witnesses, starting with Yoweri Kitamirike, the village headman:

Q: Do you agree to give testimony for these litigants, Abudala and Gaunye, who call upon you?
A: Yes... We went to the house of Gaunye and there were no wives there. Then we went into the field and we found there two wives. We asked Gaunye, "How many wives do you have?" and he told us, "I have three wives. Here are two of them. The third is the daughter of Kagodo. She has gone to his home." Hearing that, I... sent them here [to subcounty headquarters].

The policeman, Dassani Wamumuduire, tells a similar story:

A: Yes, I have testimony. On March 20, I went to the house of the village headman and we accompanied Abudala to Gaunye's house... He said he had three wives, and told us their names... Then I told him that the wife Tino, who was absent, was the wife of this Abudala. He answered, "You have caught me, but I bought that wife from Kagodo." Then we seized Gaunye and brought him here.

Now the court turns back to Gaunye, bearing down:

8. The A.L.G. has its own constabulary, distinct from the national police.
9. That is to say, he was treating her as his wife.
there is uncontroverted evidence that a man said he acted wrongly, it is assumed by the court that he did so. A “naked” confession is sufficient to convict.

The problem of credibility will be encountered again and again in more complex form as other kinds of cases are examined. The remaining adultery cases which I shall discuss are more interesting with respect to the other side of the court’s problem—that of determining the applicability of the concept buensi. In discussing the concept thus far, I have taken it to mean something like “wrongful possession or control of a woman.” In Kwuya Ngompi v. Bukutute and in Abodola Okere v. Gaunye, it is relatively clear from the start that possession of the women in question by the accused would be wrongful. They are other men’s wives and the accused, if they have appropriated the women, are assumed to have done so in order to make them sexual partners—a clear violation of the husbands’ rights. In the cases to which I now turn, however, the argument takes a different turn. The accused do not deny that they have been caught with the women. This they readily admit. Instead they argue in defense that they are related to the women in such a way that the association with them is legitimate. In two of the cases the accused claim that the women are their “sisters.” If it can be sustained, this is a sufficient defense against buensi, since the courts assume that sexual relations do not take place between siblings. Incest is known, but it is very rare and is a matter for the clan concerned rather than the regular courts. In the other two cases, the accused claim that their association with the women is legitimate because the women are rightfully their “wives.” One cannot be convicted of buensi with one’s own wife. In both these types of case, the court, in exploring and deciding upon the reach of the concept buensi, must take everyday words of relationship—“wife” and “sister”—and determine their legal meaning. Faced with the necessity to make a “yes” or “no” decision about the applicability of the concept buensi to the association between a particular man and a particular woman, the court must look beneath the ambiguities of everyday language—which uses the words “sister” and “wife” more loosely—and draw a clear line—a line which for the accused will mean the difference between guilt and innocence, between punishment and vindication.

What Is A “Sister”? Nasani Beka v. Kibikyo: lineage mates are siblings; the reliability of witnesses

I shall begin with the cases in which siblingship is alleged. The first concerns a rather reckless youth, Kibikyo of Bugulumba, Bugabula, and a woman named Kafuku, a veteran of two unsuccessful marriages. Seized in Kibikyo’s home and accused of adultery by Kafuku’s most recent husband, they claim to be “brother” and “sister,” and hence immune from the charge. There is no impropriety in a married woman’s visiting her brother’s home. If she does so without her husband’s permission, the brother might be subject to an accusation of “harboring,” but never buensi; that is assumed not to occur between siblings. The husband argues, however, that they are not so related. While a number of side issues are raised, each party attempting, as usual, to clothe himself in the garments of righteousness, it is clear from the beginning that the central question the court has to decide is whether or not Kibikyo and Kafuku are siblings for purposes of the law of adultery. In part this is a question of genealogical fact—of who begat whom and of the clan membership of the begetter. In part it is a question of the meaning of the genealogical facts, once determined to the court’s satisfaction, in the context of an adultery charge. Most of the explicit argument concerns the genealogical facts, but implicitly the courts (two are involved, since there is an appeal) must also take a clear position on the question of legal meaning.

The affair begins on April 9, 1930, when Kibikyo is accused of being “seized while having ‘married’” the woman Kafuku, wife of Nasani Beka, having spent seven days with her.” Here, first, is Kibikyo’s defense as presented by him, his witness, and the woman Kafuku:

Kibikyo: I do not agree that this case goes against me, because this woman is my sister and she came to my place today to see me because my wife had just died. This Kafuku stays in the house of our father Nabuti. When this Nasani found her at my place, he began to beat her, saying that he had caught her with me and that I had “married” her. Then Kafuku raised an alarm. When Yekemuya Igea [a neighbor] heard the alarm, he came quickly and found [Nasani] running away, but he caught him and struggled with him and finally brought him here.

Q: In your statement you claim that the woman Kafuku is your sister. Do you have testimony to show that she is your sister?
A: Yes, I have that of her father, Nabuti.
Q: ... in what way is she your sister?
A: She is my sister in the clan of Baesotoli because [my father] Bakafula died when I was still young and I was taken to Kabukye, where I grew up. When I was grown, I left there and went to Bugulumba, where I discovered that Nabuti was my clan. I grew up among the [clan of] Baesotoli, but my father was buried near Kamuli at Bulagira. Kafuku told me that Nasani was her husband, but I never visited there, nor did she come to my place (before the day Nasani discovered her there).

10. Here “married to” (kufumbirwa) is a euphemism for “having an affair with” (kapindikira). This usage is common and will be encountered again.
Nabuti: I know Nassani Beka; he is my in-law. He married my daughter Kafuko. But his wife left him. He had bought her for fourteen shillings, but I paid them back in 1949 because my daughter was staying at home. When there was a death at Kibikyo’s, she went to visit him. When [Nassani] found them, he beat her and seized both of them and took them to the headman. But long before that, Nassani had fought with his wife at my place and it was for that reason that she left him. Kibikyo is my child in the clan of Baitsoti and my brother, Baktusula of Boulonda, begat him.

Q: How long did your daughter Kafuko stay at Kibikyo’s?
A: She didn’t stay there at all. She was just arriving there the day Nassani caught her, and Nassani did not come to my place before he caught her.

Q: How do you know that Kibikyo is your child in the clan?
A: I found it out at Boulonda, at the funeral of my late brother Baktusula. Kewalyaunga of Naluwoli was the successor.

Q: Since your daughter Kafuko was married to Nassani, did she ever visit Kibikyo with her husband Nassani?
A: They didn’t visit there because Kibikyo only recently moved to Bugulumba. But Kibikyo knows me and I know him and I used to ask him to come visit me at my place.

Kafuko: I admit that Nassani Beka, who was my husband, found me with my brother Kibikyo. He seized me, saying I had “married” Kibikyo. But I rejected Nassani long ago. He bought me for fourteen shillings, but they were paid back. His things were paid back a year ago this February. Kibikyo is my brother in the clan of Baitsoti. The day I went there, there were two of us. Nassani told me to come with him and I refused and he began to beat me. Kibikyo stopped him. Then my brother raised an alarm. They seized us and brought us here.

Q: How long did you spend in Nassani’s home?
A: I spent three years there. Kibikyo did not visit there, but the way I knew he was my brother was this: Nabuti, my father, pointed him out when we were at a funeral at Nawanenda. It was the funeral of Kalongo, my brother. It was in 1949, before I had left the house of Nassani. Before that, I hadn’t known him. Since I left Nassani’s home, I haven’t remarried. This was the third time I had visited Kibikyo.

Q: Who begat Kibikyo?
A: It was Baktusula.

A diagrammatic summation of the genealogical situation, as presented by Kibikyo and his witnesses, may prove helpful at this point (see fig. 4).

Nabuti, Baktusula, and Kewalyaunga, then, are said to be “brothers” within the clan of Baitsoti. This does not necessarily mean, in Soga terminology, that they were begotten by the same man or born of the same mother; indeed, the exact genealogical relationships among them have never been made clear. The use of the term “brother,” however, indicates that they are of the same generation and the fact that they are all Baitsoti means that they are, at some point, linked by descent from a common ancestor. The fact that Kewalyaunga succeeded Baktusula and that Nabuti attended his kwabuga olumbe funeral ceremonies means that they are probably members of a single succession lineage of a depth of not more than five or six generations. The essential point, however, is that they are said to be “brothers” by patrilineal descent. If this is true, Kibikyo and Kafuko are “brother” and “sister” by patrilineal descent, or, as Soga terminology has it, “siblings of the opposite sex” (bakhinta). Such persons cannot commit adultery with each other, no matter how distant the relationship genealogically. (A fuller description of Soga kinship terminology, indicating the manner in which all these terms are used, is given in Appendix A. As will be seen in the case to be discussed next, sibling terminology is also used, in some circumstances, between persons not related in the patrilineal line, with rather different legal consequences.)

Kibikyo and his husband have also testified that Kibikyo had not, as a child, known about the patrilineal links shown in the above diagram. The story he tells is not entirely plausible. A Musoga woman whose husband dies ought to marry one of his “brothers,” preferably his “successor of the belt,” in which case her children are brought up within the lineage of their deceased father. If, as often happens nowadays, she remarries outside her deceased husband’s lineage and clan, her children remain with her while young. Sometime before puberty, they should return to their father’s people. Normally, however, even under these circumstances, quite young children are taught their kinship connections, particularly those in the patrilineal line, for in Musoga, unlike some other African societies, a child acquires his clan and lineage affiliation, with all its attendant rights and responsibilities, from his begetter, not from his mother’s husband. The
court will therefore have received Kibikyo’s account of his earlier ignorance and recent enlightenment in these matters with a certain surprise, and perhaps skepticism.

So much, then, for the defense. It is time now to hear the testimony of the aggrieved husband, Nasani Beko, and that of his witness. The court questions Nasani:

\textit{Nasani Beko:} I married the woman for fourteen shillings and have been with her since 1940. But her father called her on about December 12, 1940, because her mother, Nakeike, was ill. He said that her mother wanted to see her. From that time, she has not returned to my home. Then today, I was walking along, I found her at Kibikyo’s and I asked her, “What are you doing here?” And she replied, “This is the place where I am married.” Then I told her I was seeing her and I raised an alarm and they caught us and took us to the village chief. [In the presence] Kibikyo hurt my hand.

Q: In his statement, the accused Kibikyo claims that Kafuko is his sister. He says that she went there on that day to visit him. Now just how do you know that she married her?
A: I knew that he had married her because, on that same day when I caught him, I had been to see her father Nabuti and he said, “Your wife has disappeared.” So I went and seized him [implying that Nabuti’s alleged answer was an obvious evasion].

Q: But what is the evidence that shows that Kibikyo is not the brother of the woman, and that he “married” her?
A: I have the testimony of Petero Waiswa. He knows the clan of Kibikyo and knows that Kafuko is not his sister. He lives near Kibikyo. He knows that Kibikyo just “married” her and is not her brother.

\textit{Petero Waiswa:} I agree to give [evidence] because Nasani calls upon me and because I know the clan of Kibikyo and Nabuti. I myself know that Kibikyo is a Mwisiembondo. His father was Kiwule and his mother was a Mwisiembondo. She came from Nsame. That man Nabuti is a Mwisiembondo. His wife is a Mwisiembondo. Nabuti begat this woman Kafuko, about whom they are litigating. I know that because Nabuti is a Mwisiembondo. I know about Kibikyo because I have a brother named Amawo, with whom he used to converse at the home of Temesero Kyah at Nsame. But my brother and his Temesero are dead.

Q: If you are a neighbor of Nabuti and Kibikyo, what do you know about Kafuko’s “marrying” Kibikyo?
A: I don’t know about his “marrying” her, but the fact that he [falsey] calls her his sister shows that he “married” her [that he has something to hide].

The court has now heard two conflicting accounts of the facts. To be sure, there is much common ground. The various statements about the encounter at Kibikyo’s house, while they differ in the way self-interested observer’s accounts of the same events usually do, agree in all important respects. All take it for granted that Kibikyo and Kafuko were caught in circumstances which, if they are not siblings, amount to adultery. But on two key sets of facts there is conflict: first, Kibikyo’s case asserts, and Nasani’s denies, that Kibikyo and Kafuko are lineage siblings; second, Kafuko and her father assert that the marriage with Nasani has been dissolved by repayment of bridewealth, while Nasani denies this. If the marriage has been dissolved, of course, an accusation of adultery cannot be sustained in any case.

In its final round of questioning, the court begins with the latter point, asking Nasani:

Q: How long did your wife, Kafuko, spend in your home?
A: I spent four years with her.

Q: Is it true, as Nabuti says, that the fourteen shillings with which you paid for his daughter were paid back?
A: I was never repaid. When I seized Kafuko, she was still my wife.

This could well become a major issue. The court might call for the witnesses and written agreements that ought to be available if a properly contracted marriage has been properly dissolved. But the court drops the point; it is not, after all, part of Kibikyo’s defense. Kafuko and her father have introduced it, probably to forestall any accusation of harboring, which might well succeed even if Kibikyo cannot be convicted of adultery. Kibikyo’s case rests on the siblingship argument and it is to this that the court now turns. The court, clearly, has decided that Kibikyo is either a liar or a fool. He has confessed that until recently he did not know Kafuko was his sister, while Nasani’s witness on the genealogical issue, Petero Waiswa, sounds confident and well informed. Furthermore, Kibikyo has made some surprising statements about “visiting.” Married siblings are expected to visit one another, accompanied by their spouses; such formal visits clarify the pattern of kin relations and help control the tensions that so often develop between in-laws. But Kibikyo denies that such visits have occurred. He knows Kafuko’s husband only by hearsay, while Kafuko says she has visited Kibikyo before, presumably alone. The court’s suspicions thoroughly aroused, it therefore turns to Kibikyo, thrusting at him questions designed to reveal inconsistencies and weaknesses in his defense:

Q: Do you agree that, as Nabuti says, the man Kyewalyanga of Nalupu was the one who succeeded your father, the late Bakiula? Is he still living?
A: Yes, I agree. What Nabuti says is the truth. Kyewalyanga was the successor and he is still living and I can bring him if the court wishes.

12. Kibikyo’s account of his lineage is not necessarily wholly incompatible with that of Petero Waiswa. Kiwule, whom Petero names as Kibikyo’s “father” may well be the stepfather that Kibikyo has himself spoken of. Both accounts may well have been given in good faith.
A fair offer, Kyewalyanga's testimony would be valuable, but the court has made up its mind and as it relentlessly pursues Kibikyo, further evidence of his unreliability or stupidity is forthcoming.

Q: If you are a member of the Baisoloi [clan], can you call upon the head of the clan?
A: I can't get testimony from any of the clan heads. I might be able to call on an ordinary member, but I don't even know the head for the subcounty in which I live.

Q: Your witness, Nabuti, says that he came to know you at Bulonda—that you were his child—and that he invited you to visit him. ... But you say that Nabuti only got to know you when you moved to Bugumubya. Now who is telling the truth?
A: Nabuti has spoken the truth. I was mistaken.

Q: If you are a Matsiella, what is your totem?
A: The bushbuck.

Q: When did you begin to visit in the house of your father, Nabuti?
A: I began to visit there in 1948. I moved to Bugumubya in 1940, but at first I didn't visit [Nabuti]. I know that Kafuko was my sister when she was still married to Kirem, before she married Nasani Beko. I knew it from her father, Nabuti.

Q: If you knew Kafuko before the marriage to Nasani, then is [she] right [or wrong] when she says she first met you at Kalongo's funeral at Nalwamante in 1949, after she left Nasani?
A: No, she is not right. She has forgotten. I saw her first at Nasani's and not at the funeral of Kalongo.

The court's doubts having hardened into firm conviction, the decision is given:

The accused, Kibikyo, has lost the case. It appears from the evidence given in this court by Petero Waiswa that he "married" the wife of Nasani Beko. The evidence shows that Kibikyo is not of the clan of Baisoloi but is instead of the Baisemulondo. Although Kibikyo brought the testimony of Nabuti, who begat Kafuko, nevertheless there is conflicting evidence. His evidence is not correct. He is fined 40 shillings and will be imprisoned for three months at hard labor. Compensation of 120 shillings will be given to the owner of the wife, Nasani Beko. The wife [also] is given to Nasani.

Kibikyo is perhaps naive, but he is persistent, and so, faced with severe punishment, he appeals to the county court, addressing, as is customary, the county chief, the chairman of the court. The formal, highly deferential style is typical of such communications:

Sir, with great humility and honoring your person, I write to you to appeal my case. ... in which I was charged with seducing away Kafuko, the wife of N. Beko, and of spending seven days with her. Sir, the charge against me is not true, for these reasons: 1. That woman Kafuko is not my "wife", but rather my sister. The reason why she was found in my house was that she came to visit me because of a death. Finding her at my house, her husband,

my in-law, just wanted to fight. 2. In the case I called upon our father, the father of both of us—myself and my sister Kafuko—to show that she was my sister. And our father gave good testimony to the court. ... but they did not believe it.

Sir, my lord Gahula, do not fail to examine carefully this case in which I am accused in your court. It is a terrible thing when a person brings true evidence and is not believed. Pay particular attention to asking the husband of the wife: "Have you heard the testimony of the witness [Nabuti]? Is it true? Do you know that he is the father of this woman and Kibikyo?" It is said that only the head of the [clan] can give true evidence. But it seems to me that only if my father says he doesn't know about the relationship [between us] would the charge be true.

Sir, I am your man, Kibikyo.

The county court is more sympathetic. Having heard the lower court record read out by the clerk, it merely asks Kibikyo to confirm his testimony there:

Q: You have heard the statements read. ... Are they the ones you made in the court of Mutuba VII, and did you confirm them with your signature?
A: I have heard them and I confirm that they are true. I have nothing else to add.

Now Nasani makes use of his right to question Kibikyo:

Q: If you are sure you are the brother of my wife Kafuko, can you call upon one of my wife's sisters' spouses—who know you [to say that] you are their brother, even though I am not aware of it?

In the intervening three months, Nasani's confidence seems to have weakened. Perhaps his accusation of Kibikyo was overhasty, the ill-considered act of a suspicious husband. In any case, Kibikyo's self-confidence has correspondingly risen:

A: If I were to call upon your wife's sister's spouse, as you say, their answers would not be better than those of Nabuti, the father of both Kafuko and myself. ... He has already given evidence in the court of Mutuba VII, and that is enough.

Now it is Nasani who is on the defensive, harried by a bench which remains unconvinced of his case. After hearing him confirm his testimony in the lower court, it asks:

Q: Petero Waiswa, about whom we have heard in your evidence, of the same clan as Nabuti?
A: No. ...
Q: If [he is not, as you say, of the same clan as Nabuti, what is it that shows [that is, how can be sure] that Nabuti is not the father of Kibikyo ... and Kafuko?
A: I say that P. Waiswa has already given his evidence to the court of Mutuba VII.
Q: Besides Nabuti, the father ... of Kafuko, is there any other parent of Kafuko whom you can bring to give evidence? A: ... there is no other.
Q: Now, if you agree that there is no other parent besides Nabuti, then when Kibikyo says he is of the same clan as she ... , is he correct?
A: He is not!
Q: When you were going to seize Kibikyo ... did you first go to the headman in the usual way?
A: I did not ... I went straight to his home and caught him and my wife.

Following this last exchange, which suggests that Nasani acted improperly, the court decides to alter the decision of Mutuba VII, concluding:

The applicant ... has won the case. It appears that he was not "married" to the woman Kafuko ... but that she just went to visit him as a sister ... The applicant Kibikyo brought Nabuti, the father of the woman Kafuko, and he gave testimony confirming that Kibikyo was his son in their clan of Basetuli. Because of the testimony of Nabuti ... the applicant has won the case.

Reversals upon appeal are not uncommon. Of the 189 cases that passed through the Bugabula county court in 1950, for example, more than one-third (67) were reversed by that court; of these, 4 went on to be reversed yet again, and 2 a third time, by higher courts. In 16 cases, punishments or awards of compensation were altered at some stage.

The case of Nasani Beka v. Kibikyo has been presented at this point because, in the course of deciding it, the court has said something authoritative about the legal meaning of the word "sister." Nowhere, to be sure, has the court set out a formal definition: "A 'sister' is ... ." But the arguments of the litigants and the questions and decisions of the judges all clearly proceed from the understanding that a man and a woman who call each other "sibling of the opposite sex" by virtue of descent in the patrilineal line from a common ancestor cannot commit adultery. This one case does not, of course, tell one how far, for this purpose, the word "sister" extends collaterally. I do not have the case material with which to test its limits further, though Basoga say that it extends to all members of a clan and thus to persons whose common agnatic descent is no longer traceable in collective memory, but is

15. Basoga: Parent of either sex. See Appendix A. The county court considers that Nabuti's testimony is stronger than that of Petero Waiswa and here suggests that it can only be overcome by that of another close kinsman.

merely assumed to exist by virtue of the common clan name and totem.

With respect to the problem of applicability—the problem of the meaning of "sister" in the law of adultery—Nasani Beka v. Kibikyo is a relatively plain case, which is why the problem of applicability is not explicitly argued. "Everybody knows" that a man cannot commit adultery with his sister in the patrilineal line. However, this does not fully dispose of the problem of the meaning of basetai as a concept of wrong, for not all persons who, in Soqua terminology, call each other "sibling of the opposite sex" are related in the patrilineal line. Before proceeding to a case involving the possibility of adultery between other kinds of "siblings," however, it is worth pausing briefly to discuss the handling of the problem of fact in Nasani Beka v. Kibikyo. Here the case was not at all a plain one, which is of course the reason for the concentration of the arguments upon the fact problem and for the difference between the lower court's and the appeal court's decisions. The lower court clearly decided quite early in the proceedings that Kibikyo and Kafuko were a couple of unreliable characters and that Nabuti's testimony should be discounted as biased in support of his daughter. The lower court therefore chose to believe Nasani and his witness, Petero Waiswa, even though the crucial part of the latter's testimony ("I know about Kibikyo because I had a brother ... with whom he used to converse at the home of Temmusew Kyeya ... But my brother and he are dead.") is admittedly hearsay. The appellate judges, perhaps in part because they lacked personal knowledge of the parties and in part because the passage of time had allowed passions to cool and the real merits of the arguments to emerge more clearly, decided that Kibikyo had the better case. His witness, Nabuti, was, after all, in a better position than Petero Waiswa to know that to which he testified. Furthermore, Nabuti's own personal interests in some respects ran counter to his testimony. He would naturally, perhaps, want to support his daughter's account of the affair, but by doing this he had to make himself more vulnerable to a charge of harboring if Nasani and Kafuko were, as Nasani claimed, still legally married. (This question was never litigated, at least during the following year.) Allowing Kibikyo to be convicted would have helped to take the "heat" off himself, since Kafuko's absence from Nasani's home could then be attributed to adultery instead of harboring. Kibikyo, furthermore, offered to bring a witness, Kyewalangwa, who would also be in a position to know the relevant kinship relations and who would be less influenced by the personal interests that might affect Nabuti one way or the other.
**The Courts at Work**

A. I was coming from Bugabula and night overtook me as I passed through Lokwa... I was tired and so I stopped at Yowasi's, though he wasn't at home when I arrived. The next morning, he put me on a bicycle to take me to the house of our father, Yose.

Q: From whose place in Bugabula were you coming?
A: I was coming from the house of Mukama Kiwande at Bulange.

Q: Is it true, as your husband says, that you left his home in October?
A: Yes it is. I left him.

Here the assertion of kinship rests upon kinship ties quite different from those encountered in Nasoni Beka v. Kibiko. Yowasi and Matama do not claim agnatic kinship; they are "siblings of the opposite sex," they say, because their parents married. In English terminology, they are step-siblings, as shown in figure 5.

![Diagram](image_url)

Some names not yet given in testimony have been anticipated in the diagram so that Yowasi's defense may be followed more readily. Matama says that her mother, Kale, married Yowasi's father, Kintu. As will become apparent, this was a second marriage, following Kale's earlier marriage to Yose Toli, Matama's begetter. Thus, Yowasi says that Yose Toli was the first husband of her mother," meaning Kale. The marriage of Kintu and Kale will also have followed Kintu's earlier marriage to Musubika, Yowasi's bearer. Yowasi and Matama say they were brought up together in the house of Kintu and Kale. In Soga kinship terminology, Yose Toli, Kale, Kintu, and Musubika are all "parents" to Matama and Yowasi and they are "siblings of the opposite sex" to each other. Later on, Yowasi will also claim that he is married to two other women, Musekwka and Nanwase, who are mothers to Matama in the Baisengobi clan. For this reason, Yowasi calls Matama "daughter." This, too, is quite proper in Soga terminological usage. The question for the court, however, is whether or not such "sibling" and "parent-child" relationships as these have the same force in the law of adultery as those based upon common agnatic descent.
Apart from the assertion of these kinship ties, Yowasi’s defense has consisted of building up a picture of his and Matama’s behavior which would be consistent with a sibling or a parent-child relationship. Yes, he says, he and Genatio visited each other, like proper in-laws. Matama, however, is not very helpful. Yowasi no longer visited her and Genatio, she says, “after he was grown up.” And she admits having left her husband three months earlier. Worst of all, she speaks of having traveled across the country, apparently unescorted, thereby displaying a certain carelessness toward Yowasi’s property. The court, therefore, will have formed doubts and suspicions upon which Genatio can play as, under questioning, he builds his own case:

Q: Have you heard Yowasi say in his testimony that your wife Matama is his sister?
A: Yes, I have heard, but I don’t know him and I don’t know his father, of whom he speaks [meaning Kintu].

Q: When your wife, Matama, disappeared, did you report it to the headmen?
A: Yes, I reported it to the subvillage and village headman, but I didn’t report it further [i.e., to the parish or subcounty chief].

Q: Did you visit Yowasi’s home, as he says?
A: I never visited him. I don’t know his home or his father.16

Q: This Yose Toli, of whom Yowasi speaks—did he marry [Yowasi’s] mother, Musubika?17
A: My in-law [Yose] never married Musubika. The woman he married is Kale, the real mother of Matama who bore him.

Q: How did you know that it was Yowasi who took your wife and that on that day he was going to negotiate bridewealth?
A: I found out by discovering him at my in-laws, while I was walking along on my way to the shops.

Q: But if you just saw him there, how did you know that he had come to negotiate bridewealth?
A: No [I didn’t actually know that]; I just saw him there.

Q: When your wife disappeared, did you go to your in-laws [i.e., Yose Toli] to tell them that your wife had disappeared?
A: Yes, I went there twice.

Q: Yowasi says that Matama is his sister and that he used to visit your home. How is that?
A: I don’t know that and I call upon Yose Toli. If he knows that Yowasi is the brother of Matama, then I won’t plead further.

16. Genatio does not mean to say that he literally does not know of their existence. He almost certainly does, but wishes to express his contempt for them and to reject their account of their kindship status.

17. The case (or the clerk) is apparently confused by Yowasi’s rather complicated story. Yowasi has said that his begter married Matama’s bearer; the court is asking whether Matama’s begter married Yowasi’s bearer. The effect would be either case be step-siblings, but the mistake allows Genatio to avoid answering the relevant question.

18. Again, a denial of actual knowledge, but rather a contemptuous refusal to recognize a relationship.

19. Yowasi protects himself by denying any conversation at all.

20. Again, the words are not meant literally. He means: “I haven’t had any such dealings with him.”
his father because the man Kintu married your wife and that therefore [Yowasi calls [your wife] his “mother.” How is that?

A: Kintu, the man they speak of [Yowasi’s father], just stole my wife and the villagers know that he stole her.

Q: What do you know about Eryeza?

A: Eryeza is of the Baisengobi [clan], brother of Kamu Mukama.

Q: When they seized Yowasi at your home, what did he say to you?

A: At my home, he told me nothing, except what he said in court—that is, [Matama] is his sister.

Thus Yose does not, in the end, really deny that which, on the factual side, is the heart of Yowasi’s defense: the marriage between Yowasi’s begetter and Matama’s bearer. He does, to be sure, speak of Kintu’s having “just stolen” Mushikika, but this does not necessarily mean that no legitimate marriage took place; it may well mean no more than that the loss of his wife still rankles with Yose. However, if this question were decisive, one would expect the court to seek further evidence. Instead, the judges simply ignore the point as they begin their final questioning of Yowasi:

Q: Have you heard your witness say that you are not his son and that you took another man’s wife?

A: Yes, I have heard.

Q: Except for this witness, do you have other evidence?

A: Yes, I have Eryeza.

Q: Do you call upon him because he knows that both of you have the same female parent?

A: No, because we are not children of women of the same clan [bashes].

Q: . . . what do you call upon Eryeza for?

A: I call upon him because he knows that the mother of Matama brought me up.

Again, Yowasi returns to the same point, but the court ignores it and in a very brief decision, which makes no reference to the arguments, simply finds Yowasi guilty. Genatio is awarded 100 shillings compensation and Yowasi is to be imprisoned for four months and fined 50 shillings.

Thus, Yowasi has failed to draw either his accuser or his judges into a discussion of the question of applicability upon which his defense rests. He and Matama have argued more or less explicitly that step-siblingship is “true” siblingship for the purpose of the law of adultery.

21. Mentioned earlier by Yowasi as a potential witness.
22. Recall here the tendency of a bridegroom to accuse his bridegroom of “just taking her by force,” even when a marriage has been properly contracted and celebrated.
23. All children of the women of a patrilineal descent group are bashes. See Appendix A.

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There is little disagreement about the facts: Yowasi was, he admits, caught with the woman. Yose, for his part, admits (and Genatio has said he will accept Yose’s testimony on the matter) that some sort of marriage took place between Yowasi’s father and Matama’s mother. There is some argument as to whether Yowasi behaved toward Genatio as a true in-law would, but this is peripheral. For the central argument is not about the facts, but rather about the reach of the relevant concept of wrong—bashes—with respect to the facts, and this argument turns on the reach of the subsidiary concept of siblingship. The court implicitly rejects Yowasi’s claim that he and Matama are siblings under the law of bashes by simply ignoring this claim and by offering him the opportunity to claim other grounds for siblingship with Matama. (“What is your clan and what is Yose’s clan?” “Do you call upon Eryeza because he knows that both of you have the same female parent?”) But Yowasi’s argument is never explicitly rejected. Yowasi, however, remains undaunted. In the county prison, he composes a letter of appeal to the county chief, setting out his argument again. Such letters of appeal provide the closest approach to an explicitly argued brief known to the lawyerless courts of Busoga. In the preceding case, Kibikyo succeeded with such a document. Yowasi will fail, but in his effort to persuade the appeal court of the merits of his defense, he comes as close as a Musoga can to explicitly legal argument.

First, he asserts that Genatio, when he found him and Matama in Yose’s courtyard, jumped to an unwarranted conclusion without stopping to consider other possible explanations of their presence there:

when he arrived at his in-law’s house, he did not begin by asking him where his wife, who had left him long before, had been and why she was now seen [at Yose’s]. Nor did he ask Yose about the man [Yowasi] he found in the house of his in-law. . . . Nor did he ask the reason that brought me to that courtyard, nor my relationship to it, nor my relationship to his wife Matana, nor the reason why I put her on my bicycle to bring her there. . . . He and his in-law admit this in their testimony. . . . He agrees that no one told him that . . . I had gone to negotiate my marriage and be introduced. And his witness, his in-law, agrees that I did not go to be introduced. . . . So when I say that he accuses me without reason, am I not right? I was a visitor. A person’s relatives are many. How do you know when you find a person in the courtyard of your in-law whether or not he is related to that house? . . . There was nothing with which he caught me going to in-laws. There was no accompanying party, no goods, no shillings, no hens or salt or tobacco—things people give as presents. . . . When I say that he is no longer with his wife . . . that caused him to act without thinking, am I not right?

24. The formal presentation of the bridegroom to the bride’s people.
Chapter 4

Next, Yowasi attacks the motives of his accuser and his accuser's witness:

Genatio knows me well, but in his testimony he denies [it] for these reasons: Both Kale and Kintu have died and he is therefore no longer interested in that courtesygay. He wants to get money from me. And he fears a case because he beat me and intended to spear me. . . . His in-law, Yose, is the same with him. . . . He wants money from me. I am not his child in his clan. He does not care if I am in danger. . . . His evidence supports me. He does not say I went there to negotiate bridewealth, as Genatio claims. He only confines the court by denying [that he knows] me and by saying that my father, Kintu, took his wife and didn't marry her in the right way. But it isn't so. The late D. Kidiiri was the first to marry her and the bridewealth was paid back to Yose. My father married her when she rejected the suitor [of Kidiiri] and the bridewealth was paid to the brothers of the deceased. . . . I go into this matter of Yose and my father to explain why, although his evidence supports me, he says my father spoiled his home.

Finally, Yowasi comes to the core of his argument about the meaning of "sister":

The [lower] court bases itself on the argument that the girl is not a relative to me, but it forgets the custom (copies) of the nation. It is well known that there is not just one kind of relationship and one kind of respect between people. And it is a mistake to think that because I am not of the same clan as a woman, or of the same maternal parentage, I can marry her. This is not true. It should not be forgotten that blood brothers become clansmen and call each other "real brothers." Kale, who bore Matama, was married to my father, and her daughter grew up in the household. . . . Why shouldn't I call her "my sister"? [Furthermore], I am married to two princesses—Musoka and . . . Namwasi. Would I not fear to add a daughter to her mothers? They are truly of the same stigma. . . . So now I call Matama "my sister" and "my daughter." How can I make her my wife? . . . I wanted to bring my witness to show that my father, Kintu, married the mother of Matama and that he married her in the proper way and did not steal her, as Yose says. . . . But the court did not accept this.

When the case comes before the county court, on March 27, 1950, both litigants confirm the testimony given in the lower court. Then one of the judges questions Yowasi:

Q: I have heard in your appeal that you called for a witness in the court of Musakali, but that this was not agreed to. Now, have you brought your witness?
A: I haven't brought him, because the evidence of Yose [is sufficient].

Perhaps Yowasi has by now lost heart; perhaps his witness is not available. In any case, the county court confirms the lower court's decision:

The appellant pleads that this woman Matama is his sister, but there is no true evidence that Matama is a sister. For that reason, he is defeated.

It is significant that the court insists on treating what is essentially a question of the reach of a concept as if it were a simple question of fact, in spite of Yowasi's clear posing of the conceptual issue in his appeal. ("It is well known that there is not just one kind of relationship . . . between people.") What is quite apparent to the outside investigator, to Yowasi, and probably in this case, at least, to the judges themselves—that the court has ruled upon the meaning of "sister" in the law of adultery—is left entirely implicit. It has not said explicitly "persons who call each other 'sibling of the opposite sex' by virtue of their parents' marriage alone are not immune from accusations of adultery," although only by inferring such a conclusion can one understand the court's behavior. The court simply says: "Matama is not Yowasi's sister," although if their parents were married and if they grew up together in the same household—"facts" which are not really denied by their accusers—Basoga would agree that they are "siblings of the opposite sex" in everyday speech, even if not for purposes of the law of adultery. There could be no better illustration of the invidious implicitness with which Basoga reason with legal concepts.

This decision is typical. While courts occasionally rise to conceptual issues more explicitly than in this instance, especially as will be seen, in areas in which the law is changing, they seem to avoid doing so whenever they can. Here the accused's argument in his appeal was unusually explicit, but it was not a strong argument. Most people would agree that step-siblingship is not a bar to buensi. Yowasi's argument is therefore merely clever; it does not challenge the judges intellectually.

What is a "Wife"?

I have not explored all the legal boundaries of the word "sister" in relation to adultery. It has been discovered that siblings by patrilateral descent cannot, in the eyes of the A.I.G. courts, commit buensi; while
step-siblings can. As the discussion of Soga kinship terminology in Appendix A indicates, the word for “sibling of the opposite sex”—muwannina—has another important referent: it also applies to all children of the opposite sex of women of one’s mother’s patrilineal descent group. It includes mother’s sisters’ children, mother’s brothers’ daughters’ children, mother’s brothers’ sons’ daughters’ children, and of course, maternal half-siblings. Sexual relations with any of these is incest and hence, I suspect, persons so related are immune to charges of buwenz. in the official courts. This question, however, I shall have to leave unexplored; in any case, the essential point has been made: The legal concept of wrong buwenz classifies kinship in a way different from that of the ordinary, everyday language of kinship.

The same point arises with respect to the word “wife.” A man accused of buwenz may argue in defense that the woman in question is his wife. But, like “sister,” “wife” has many referents, some of which exclude adultery, while others do not. There are actually two words: mukazi and mukyala. Unconverted, the first means “woman,” the second “lady.” “Mukyala also means “Mrs.” In the possessive, both also mean “wife” (e.g., mukazi washe or mukyala washe: “my wife”). In both of the cases to be discussed next, the men accused of adultery are quite correct, so far as everyday usage goes, in speaking of the women concerned as “wives.” The legal consequences in the two cases are, however, quite different.

Mikaihi Magino v. Sabani Kafuko: a valid marriage excludes adultery

The first case may be dealt with quite summarily, as, indeed, it was by the court. On February 18, 1931, Sabani Kafuko comes before the court accused of “marrying” a woman named Kiyigo, who has a husband, Mikaihi Magino of Buwawira, Buseki. Sabani’s defense is simple:

Sabani: I agree to contest the case and I expect to win. I paid 264 shillings, 6 hens, and 10 goats as bridewealth for her. I paid these to Ntumba, and he can confirm it.

Mikaihi Magino’s case is also straightforward:

Mikaihi: I say that I will win because she is my wife and I paid 62 shillings, 1 cow, 17 goats, and 7 hens as bridewealth for her and it is now two years since the accused stole her from my home. The bridewealth was handed over to Ntumba, the one whom he has mentioned as his witness. My witnesses, who

Q: can prove that she is my wife and that I paid these things as bridewealth, are Mukasa, Feneriko, Munuto, Firiikia, and Wairuma.

Q: Were the witnesses you mentioned present on the day you paid Ntumba the bridewealth?
A: Yes, they were present.

Q: Apart from the witnesses, did you write anything?
A: Yes, we wrote agreements.

The next to be called is, of course, Ntumba:

Ntumba: I am a witness for Sabani because I refunded 104 shillings, 2 goats, and 1 hens to Mikaihi ... and when I called him to fetch the remainder, he refused. Then, after a time, someone came to me to tell me that Mikaihi had found his wife in another man’s home.

Q: You have said that you paid back a part of the bridewealth, but did you make a written agreement [about the repayment]?
A: He gave me an agreement, but it was destroyed when my house was burned.

The court has heard quite enough. Ntumba, the woman’s father, does not deny that he contracted with Sabani for her, though he argues that he was justified in doing so because the earlier marriage had been dissolved by repayment of bridewealth. Whatever else may be true, therefore, Sabani is innocent of buwenz because, in the words of the court’s decision: “his in-law, Ntumba, has agreed that he was the one who allowed [him] to marry her.” For Ntumba, this is not the end of the matter. The court adds: “The father of the woman will be accused of eating two hens.” Sec Case no. 42 of 1931. Ntumba’s fate will be taken up later in connection with the discussion of “eating two hens” as a concept of wrong. For the present, Mikaihi Magino v. Sabani Kafuko provides one clear boundary of the meaning of “wife” in the law of adultery. A man cannot commit adultery with a woman who is his “wife” as a result of a marriage validly contracted with her guardian. If a conflicting contract has been made, it is the guardian who is responsible.

Zakaliya Yande v. Amadi Simola: widow inheritance

Zakaliya Yande v. Amadi Simola raises more complex issues. Amadi is accused by Zakaliya of “seducing away my wife, Kalegere, with whom I caught him, having kept her for two months.” There is really no disagreement about the “facts.” It is common ground that Amadi and Kalegere have, indeed, been living together and there is uncontested evidence that Amadi properly calls Kalegere my wife.” It is also common ground that Zakaliya has earlier contracted a valid marriage for Kalegere with her father. How this tangled state of
affairs arose becomes clear as soon as Amadi and his witness come before the court on October 27 to build his defense:

Amadi: I agree to plead and I will win because the woman with whom I was seized is my wife. My brother Zefaniya married her and then died. When he died I was made successor, but I was not present. I was far away in Lunka and when I delayed returning, Zakaliya took my wife. I do not know him. He is not of my clan. The sixty shilling and six hens were never paid back.

Q: After you succeeded your brother, did you at any time "marry" that woman? 24
A: I didn't "marry" her because I was in Lunka from the time she left her husband's grave until Zakaliya married her. And she herself told me that the reason she married him was that I hadn't returned.

Q: Then you asked the woman and she told you she had been married?
A: Yes. . . .

Q: What did you do when she told you she was married?
A: I did nothing.

Q: That is to say, when Zakaliya seized you for the offense of stealing [his wife], he was right?
A: He was right. 25

Q: When you returned and learned that your wife was married, did you go to your in-laws?
A: I didn't go.

Q: Do you have witnesses to testify that that woman was your brother's wife?
A: I have Walwalo and my in-laws Enrikoko Beka.

Walwalo: I agree to testify for Amadi whom I [as lineage head] placed as successor to his deceased brother. But when his brother died, he did not come because he was ill with the lakedi sickness, 26 so I gave another the task of shaving. 27

Q: When Amadi returned, did you introduce him to his in-law and did you show him his wife?
A: I didn't take him there.

Q: After you had completed the kwabuya olumbe funeral ceremonies for your son, how long did the woman remain in your home?
A: I don't know how long she stayed because after I had installed the successor, I returned to my home, leaving her there. 28

Q: Did you know that the girl had been married to Zakaliya?
A: I knew [it].

20. Here "to marry" means "to claim as a sexual partner."
21. Amadi is not admitting bensei, merely that he took the woman. He still claims a right to do so.
22. Syphilis Bukek is the area to the northeast of Bunza. Like so many other peoples, Bseias attribute syphilis to foreigners.
23. The significance of this will be explained below.
24. The court's question implies that the lineage head should have looked after the widow until the successor claimed her. By his answers to this whole series of questions, he admits to having been extremely negligent with respect to his duties. His lineage mates might well proceed against him in a lineage tribunal under those circumstances. I do not know whether or not this occurred.

The basis of Amadi's defense is the custom of widow inheritance, which in turn must be understood in the context of the corporateness and solidarity of the lineage. In this case, a lineage is defending its rights in a woman for whom one of its members has paid bridewealth (see fig. 6).

The head of the succession lineage, Walwalo, testifies that he, on behalf of the lineage, installed Amadi as Zefaniya's successor. The testimony of a lineage head on such a matter carries much weight; in any case, the other side does not contest it. Now as successor, Amadi has, in custom, first claim on Kalegere. He would normally, as part of the kwabuya olumbe ceremony, have spent a night with her and then they would have shaved each other's heads as a sign that the mourning for Zefaniya was finished. Since Amadi was away and incapacitated, Bulu served in his place—a perfectly acceptable procedure, since it is not simply Amadi as an individual, but rather the whole lineage group, that possesses rights in Kalegere by virtue of the payment of bridewealth for her. All members of the lineage of Zefaniya's generation, including Amadi and Bulu, have called her "my wife" ever since she and Zefaniya were married, in recognition of the fact that the wives of a man's brothers are, by the customs of succession and widow inheritance, potential wives to him. Again, the pattern is plain in the account.
of Soga kinship terminology given in Appendix A. The problem faced by the court, however, is that of deciding how much of this complex of custom is legally significant, and under what circumstances. In particular, does Amadi's succession to his brother make Kalegere his wife in the sense of placing his cohabitation with her beyond the reach of the concept *buenzi*—even though a valid marriage has been contracted for her by a man outside the lineage? In pursuit of answers to these questions, the court calls Kalegere's father, Eneriko Beka:

Q: For whom do you agree to give evidence?
A: I give it for Zakaliya . . . because he married my daughter Kalegere.

Q: What did Zakaliya give you as marriage wealth?
A: He gave me one cow and twenty shillings.

Q: When Zakaliya married that girl, had she not been married before?
A: Yes, but the man she married before, Zefaniya Wabiga, died.

Q: Who succeeded your in-law?
A: No one succeeded [except that at] the *konbya olumbe* it was Bulu.

Q: After the *konbya olumbe* did they not shave?
A: They shaved; Bulu was the one who shaved.

Q: Amadi says that it was he who succeeded his brother Zefaniya. How do you answer that?
A: I don't know that Amadi; I've never seen him.

Q: When you gave Zakaliya your daughter how long had she been in your home?
A: She had spent two years in my home and she had spent three years with Zakaliya.

Again the court, like that in *Genatio Magino v. Youasi Malivo*, has little difficulty with the facts, about which there is substantial agreement. As usual, the decision is terse and skeletal, but it does recognize that both arguments have some substance and it is perhaps for this reason that Amadi's punishment is less severe than that given to others convicted of *buenzi* in previous cases:

The accused, Amadi Simola, has lost the case. It is true, as he claims, that he succeeded his brother, Zefaniya, but he did not marry her for five years after her husband died. However, Amadi did not receive his bridewealth. He will be imprisoned for two months and will pay twenty shillings compensation to the accuser.

33. kalegere has said above that Zakaliya gave one cow for her. She has also said that Zefaniya paid twenty goats, whereas Amadi claims in his testimony that Zefaniya gave sixty shillings and six hens. Since the amount of the bridewealth is not under litigation, all this is unimportant. In part, at least, the differences are due to the Soga habit of expressing sums in equivalent value in different media. Baseo have not yet become accustomed to expressing all sums in terms of money. Part of the difference may also be due simply to Kalegere's ignorance. She is herself not a party to the bridewealth contract.

35. Again, not a literal denial of knowledge, but rather a rejection of a claim.

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There is no need to follow the case to the county court on appeal. Amadi's letter of appeal simply repeats his arguments given in testimony and nothing new emerges from the arguments in the county court, which simply confirms the lower court's decision. Only the first trial, therefore, need be considered.

The court has concluded that at the time of Zefaniya's death Amadi did indeed have a right to claim Kalegere as a wife by virtue of widow inheritance properly carried out by the lineage. It suggests that he still has a claim on the bridewealth which Zefaniya paid for her—though this would require a separate action for debt. But because both Amadi and his lineage mates failed to assert their claim upon Kalegere for several years and allowed her to marry again without taking action—the court is the point of much of the court's questioning of both Amadi and the lineage head, Walwalo—Amadi's claim on Kalegere as a sexual partner, though not necessarily his claim on the bridewealth, has been extinguished. He has become subject to conviction for *buenzi* by asserting his claim too late. Thus the meaning of "wife" in the law of *buenzi* may be affected by the passage of time. This element in Soga legal reasoning will be encountered again in connection with claims to land.

This chapter has been concerned primarily with the manner in which, in the application of a concept of wrong to particular sets of circumstances, the courts are required to take certain everyday kinship terms and give them specifically legal meanings, thereby making distinctions which everyday kinship language does not make. There are perfectly good reasons, in the logic of kinship, why step-siblings should be called "siblings": If one calls one's father's wife "mother," it is logical to call her children "siblings." Similarly, if all one's brother's wives are potentially one's own wives, it is logical to call them "wives." But kinship terminologies do not—perhaps cannot—recognize all the institutionalized similarities and differences in behavior among kinmen. Legal reasoning, with its necessity to reach simple "yes" or "no" decisions with respect to the applicability of concepts of wrong, must sometimes make distinctions that everyday kinship language can leave ambiguous. In the cases considered in this chapter, the courts

37. A certain vagueness remains here; it is not clear whether the substitution of Bulu for Amadi in the concluding phases of the *konbya olumbe* affected the court's decision. Information given by informants suggests that this is a legitimate practice and the court, in its decision, emphasizes the passage of time as the decisive element.

38. See chapters 6 and 7.
39. See Appendix A.
have ruled that a man may freely associate with only certain kinds of “sisters” and certain kinds of “wives” without placing his actions within reach of the concept *bozenzi*. In the following chapters, the courts’ application of other concepts of wrong will be seen to involve them in giving special legal meaning to other terms of everyday speech.

It is always found that when someone’s daughter has disappeared she can be found in the father’s home.
— a father, accused of harboring

How should one assess the loss of a wife—by the month or the week or the day? He has the use of the brideweight, as well as her work in producing food.
— a husband, accusing his father-in-law of harboring

5

In-laws at Odds:
Harboring, Eating Two Hens,
Divorce, Brideweight Debt

Soga marriage is an ambiguous bond, easily loosened but not so easily broken. Men and women begin their lives together with divergent lineage loyalties and with a relationship which, by formal, public definition, is extremely asymmetrical. For the woman, who must trade the affection and respect of sister- and daughterhood for wildly subordination in the forbidding environment of her husband’s community, discontent and rebelliousness come easily, especially during the early months or years before the compensations of motherhood have strengthened and softened her ties with her husband’s people. But the mutual alienation which so often follows marriage is not readily resolved by amicable separation. A contract, involving others, has been entered into and a substantial payment has been given and must be returned.

Like most aspects of Soga marriage, the opportunities for its dissolution are very asymmetrically distributed between husband and wife. While her husband may simply dismiss her at will, a woman’s ability to escape from an unhappy union depends upon her husband’s agreement to part with her and upon her father’s willingness—and ability—to repay. When escape is blocked, a common consequence is an