



Laetitia Nicolazzi, Alessandro Chechi, Marc-André Renold Marc-André Renold,  
April 2018

## Case 30 Vigango - Denver Museum of Nature & Science and Kenya

*Denver Museum of Nature & Science – Kenya – Indigenous object – Post 1970 restitution claims – Criminal offence – Unconstrained initiative – Ownership – Unconditional restitution – Donation*

*On 19 February 2014, the Denver Museum of Nature & Science handed over 30 vigango - wooden statues engraved in memory of the ancestors of the Mijikenda - to the Kenyan government. The objects will be entrusted to the National Museum of Kenya while waiting for the authorities to decide whether or not to search for the particular owners of the vigango at stake.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources*

ART-LAW CENTER – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS  
[art-adr@unige.ch](mailto:art-adr@unige.ch) – <https://unige.ch/art-adr>  
This material is copyright protected.

## I. Chronology

### Post 1970 restitution claims

- In the **1980s**, many *vigango*,<sup>1</sup> sacred objects for the Mijikenda,<sup>2</sup> **transited from Kenya to the United States** where they were acquired by collectors, among them Hollywood celebrities.<sup>3</sup> Most of these sculptures were **stolen** by unemployed young Kenyans who sold them to tourist shops who in turn sold them to art dealers.<sup>4</sup> Ernie Wolfe III, owner of the Ernie Wolfe Gallery in Los Angeles, is known to have sold many *vigango*.<sup>5</sup>
- In the early **1990s**, the **Kenyan government made known its opposition** to this trend. As a result, the *vigango* trade diminished and several hundred of these objects were donated to American museums by collectors.<sup>6</sup>
- In **1990**, the actor Gene Hackman and producer Art Linson donated 30 *vigango* to the **Denver Museum of Nature & Science**.<sup>7</sup> These *vigango* have never been publicly exposed.<sup>8</sup>
- In **2003**, anthropologists Monica L. Udvardy, Linda L. Giles and John B. Mitsanze published an important article in the *American Anthropologist* newspaper deploring the *vigango* traffic and drawing public opinion on the subject.<sup>9</sup> This article also had the effect of attracting the attention of a curator of the Denver Museum who initiated research on the origin of the *vigango* held by this institution. This research led to the conclusion that the *vigango* had been **stolen from their original owners**.<sup>10</sup>
- Following this discovery, the Museum has been writing to the Kenyan government for five years to express its desire to **hand over** the 30 *vigango* of its collection.<sup>11</sup>
- **On 19 February 2014**, the 30 *vigango* in question were handed over to the Kenyan government. Upon their return to Kenya, the objects will be displayed at the National Museum of Kenya.<sup>12</sup>

<sup>1</sup> The *vigango* (*kigango* singular) are wooden statues erected by the Mijikenda on the graves of some of their ancestors when those are believed to be the cause of the troubles of the family. The Mijikenda invest a lot of money to sculpt a *vigango* and in the ceremonies to accompany their establishment to the tombs because these rituals should help to calm the spirits and save the family from misfortunes. More than mere funerary steles, these sculptures embody the spirits of their ancestors and are considered a member of the family. See BROWN, pp. 36-39, 88; and UDWARDY, GILES, MITSANZE, pp. 566-580.

<sup>2</sup> The Mijikenda population (literally the “nine tribes”) is made up of the nine tribes that are established along the Kenyan coast, northern Tanzania and the hinterland. These different tribes share the same language, the same culture and have a common history.

<sup>3</sup> MASHBERG, Denver Museum Returns Artefacts to Kenyan Government, L. 27-28.

<sup>4</sup> LACEY, L. 67-68; MASHBERG, Sending Artworks Home, but to Whom?, L. 82-86.

<sup>5</sup> LACEY, L. 27-28. See also UDWARDY, GILES, MITSANZE, p. 571 (according to these authors, this collector would be the source of 90% of the *vigango* possessed in 2003 by American museums).

<sup>6</sup> MASHBERG, Denver Museum Returns Artefacts to Kenyan Government, L. 27-29.

<sup>7</sup> MASHBERG, Sending Artworks Home, but to Whom?

<sup>8</sup> JONES, L. 28-29.

<sup>9</sup> UDWARDY, GILES, MITSANZE.

<sup>10</sup> HALPERIN, Pes, L. 6-8, 10-12.

<sup>11</sup> *Ibid.*, L. 14-15, et JONES, L. 4-5. However, opinions seem to diverge on this point, some authors being of the opinion that the museum never wished to restore the *vigango*, going against Kenya who would have asked restitution. See MUTITHI, l. 13-14, or MASHBERG, Denver museum returns artifacts to kenyan government, l. 9-11

<sup>12</sup> MASHBERG, *ibid.*, L. 7-8, 14-16.

## II. Dispute Resolution Process

### Unconstrained initiative

- Since the conservators of the Denver Museum of Nature & Science realized that the *vigango* in the museum's collection had probably been stolen, they sought to hand them over to the Kenyan government.<sup>13</sup>

## III. Legal Issues

### Criminal Offense – Ownership

- The *vigango* are the subject of many thefts because they are simply planted in the ground near the graves and they are often left unattended. In addition, the Mijikenda move several times during their life and leave behind their *vigango*. However, these are not circumstances that could justify their abduction under Kenyan law. Indeed, the Mijikenda have no intention of abandoning these *vigango*, they only respect their traditions that prohibit any movement of these sculptures. The proof is that families return occasionally to their *vigango* to perform certain rituals designed to attract the grace of the gods through their ancestors.<sup>14</sup> Therefore, it is necessary to qualify the removal of these flying sculptures as a theft even if one could be under the impression that they were abandoned or “deactivated”.<sup>15</sup>
- The government of the Republic of Kenya has never formally banned the export of *vigango* that it does not consider inalienable, unlike the Mijikenda.<sup>16</sup> Moreover, *vigango* are not considered as antiques and do not benefit from the national legislation applicable to them.<sup>17</sup> As a result, the export of these traditional objects cannot legally be considered unlawful.<sup>18</sup>
- Moreover, Kenya is neither party to the Unesco 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, nor to the 1995 Unidroit Convention on Stolen or Illegally Exported Cultural objects, and has not signed any bilateral agreement with the United States, which means that the government has no legal basis to demand the return of *vigango*.
- Only the *Mijikenda*, as private victims of a theft, could try to get the restitution of their *vigango*. Nevertheless, these actions - assuming that the *Mijikenda* have the technical, human and financial means to find, identify the objects belonging to them and to take legal action - may be hindered by limitation periods if the current owner of the property is in good faith.<sup>19</sup>

<sup>13</sup> The negotiation of the agreement was facilitated by the fact that the cities of Denver and Nairobi are partners in the Sister Cities International program. JONES, L. 18-19.

<sup>14</sup> UDWARDY, GILES, MITSANZE, p. 568.

<sup>15</sup> MASHBERG, *Sending Artworks Home, but to Whom?*, L. 82-86.

<sup>16</sup> UDWARDY, GILES, MITSANZE, p. 573.

<sup>17</sup> PFLANZ, L. 62-63; FINCHAM, p. 93.

<sup>18</sup> This situation has not been changed by the adoption of the National Museums and Heritage Act of 2006. PFLANZ, L. 70.

<sup>19</sup> In United States law, under the adage *nemo dat quod non habet*, when movable property has been stolen from its owner, it can never be the subject of a new valid title deed. However, since the original owner's action for restitution is limited in time, the *bona fide* purchaser of a stolen property may oppose such action by invoking that it is time barred (in most US states, the time limit prescription is 6 years).

Thus, it should be considered that the Denver Museum “hands over” the *vigango* to the Kenyan government.

#### IV. Adopted Solution

##### Unconditional restitution – Donation

- On 19 February 2014, the Denver Museum of Nature & Science officially handed over - or “donated” according to whether Kenya had or had not claimed these items - 30 *vigango* to the Government of the Republic of Kenya. The ceremony was chaired by Denver Mayor Michael Hancock and the Kenyan government represented by Kenyan ambassador to the United States, Ms. Jean Kamau, accompanied by a delegation from Nairobi.<sup>20</sup>
- The details of the agreement were not disclosed but it appears that the Denver Museum has paid all the costs, including the \$10,000 bill for the amount needed to repatriate the *vigango* to Kenya.<sup>21</sup>
- On their return to Kenya, the objects will be entrusted to the National Museum of Kenya. The authorities, however, do not yet seem to have decided whether to search the original owners of the *vigango*, whether the objects will be exhibited in a museum, or whether they will quietly let them decompose pursuant to the Mijikenda tradition.<sup>22</sup> The first of these options (the search for the original owners) is a huge task because they do not have title deeds, rarely own photos and there is no inventory. However, very few specialists are able to sculpt *vigango* and each has one has their own style, which may permit to identify the author of the statue<sup>23</sup> and thus determine more precisely where the object comes from.
- Note that even if the *vigango* are returned to their original owners, they will not be able, according to the traditions of the Mijikenda, to play their protective role.<sup>24</sup>

#### V. Comment

- Experts estimate that more than 400 *vigango* are now in American museums.<sup>25</sup> Out of this significant number, only about 60 have been repatriated to Kenya thanks to the efforts of anthropologists Monica L. Udvardy, Linda L. Giles and John B. Mitsanze. Indeed, on 20 June 2007, the Illinois State Museum in Springfield and the Hampton University Museum in Virginia each handed Kenyan authorities a *kikango*.<sup>26</sup> The same month, 9 *vigango*, this time part of a collection of Hollywood private art (that of Lewis and Jay Allen) were also given to the Kenyan government.<sup>27</sup> Finally, in January 2014, the State University of California handed

<sup>20</sup> MURIITHI, L. 5-7.

<sup>21</sup> HALPERIN, PES, L. 16-18.

<sup>22</sup> MASHBERG, Sending Artworks Home, but to Whom?, L. 16-20.

<sup>23</sup> BROWN, p. 38.

<sup>24</sup> GILES, UDVARDY, MITSANZE, L. 80.

<sup>25</sup> UDVARDY, GILES, L. 75; MASHBERG, Sending Artworks Home, but to Whom?, L.24.

<sup>26</sup> MASHBERG, Sending Artworks Home, but to Whom?, L: 62-64; UDVARDY, GILES, 2011, L. 1-12.

<sup>27</sup> UDVARDY, GILES, L. 62-66.

its 27 *vigango* to Kenyans. These restitutions seem to be part of a broader movement of repatriation of indigenous objects, pushed by the importance given today to tribal objects that have a spiritual character, among which are objects created by Native Americans such as those of the Hopis or Apache.<sup>28</sup>

- These “restitutions” were not dictated by any legal basis but rather by ethics or “cultural justice” justice, as put by Derek Fincham.<sup>29</sup> It seems that the institutions now take into account the fact that for the Mijikenda, the theft of one of their *vigango* amounts to a sacrilege<sup>30</sup> that will bring misfortune to the concerned family and descendants. Proof is given by the fact that some thieves engage in counter-rituals.<sup>31</sup> As the curator of the Denver Museum very rightly put it: “*Museum stewardship today is not just about things but also people, and not just about preserving cultural objects in the cultural survival of living communities.*”<sup>32</sup>
- While waiting for new ethical or legal rules to discourage *vigango* traffic and thus make the theft of these objects purposeless, the Mijikenda resort to local initiatives to combat this scourge. For example, they erect them in tar instead of simply planting them in the ground and the sculptors began to create *vigango* for commercial sale to prevent the theft of real sacred *vigango*.<sup>33</sup>

## VI. Sources

### a. Bibliography

- BROWN Jean Lucas, Mji Kenda Grave and Memorial Sculptures, *in African Arts*, Vol. 13, No. 4 (August 1980), pp. 36-29 and 88.
- FINCHAM Derek, Justice and the Cultural Heritage Movement: Using Environmental Justice to Appraise Art and Antiquities Disputes, *in Virginia Journal of Social Policy and the Law*, Vol. 20:1, autumn 2012, pp. 44- 95.
- UDVARDY Monica L., GILES Linda L., MITSANZE John B., The Transatlantic Trade in African Ancestors: Mijikenda Memorial Statues (*Vigango*) and the Ethics of Collecting and Curating Non-Western Cultural Property, *in American Anthropologist*, Vol. 105, No. 3 (September 2003), pp. 566-580.

<sup>28</sup> MASHBERG, Sending Artworks Home, but to Whom?, L. 50-54.

<sup>29</sup> FINCHAM, p. 45.

<sup>30</sup> MASHBERG, Sending Artworks Home, but to Whom?, L. 1.

<sup>31</sup> GILES, UDVARDY, MITSANZE, L. 62-64.

<sup>32</sup> KOONS, L. 7-9.

<sup>33</sup> UDVARDY, GILES, MITSANZE, pp. 571-572.

## b. Media

- MURIITHI Bmj, US Returns Controversial Artefact to Kenya, *in* Daily Nation, 25th of February 2014 (<http://www.nation.co.ke/news/US-returns-controversial-artefacts-to-Kenya/-/1056/2214554/-/uy8qt2/-/index.html>) (consulted 21st of March 2014).
- JONES Corey H., Denver Museum to Return Sacred Totems to Kenya, 20th February 2004 (<http://www.cpr.org/news/story/denver-museum-return-sacred-totems-kenya>) (consulted on 21st of March 2014).
- KOONS Michele, Sacred Carved Memorial Statues Return to Kenya, 20th of February 2014 (<http://www.dmns.org/science/museum-blog/Post/?nid=19616>) (consulted on 21st of March 2014).
- MASHBERG Tom, Denver Museum Returns Artefacts to Kenyan Government, *in* The New York Times, 19th of February 2014 ([http://www.nytimes.com/2014/01/04/arts/design/denver-museum-to-return-totems-to-kenyan-museum.html?\\_r=0](http://www.nytimes.com/2014/01/04/arts/design/denver-museum-to-return-totems-to-kenyan-museum.html?_r=0)) (consulted on 16th of March 2014).
- HALPERIN Julia, PES Javier, US Museum's About-Face on Restitution, *in* The Art Newspaper, Issue 254, February 2014 (<http://www.theartnewspaper.com/articles/US-museums-aboutface-on-restitution/31684>) (consulted on 21st of March 2014).
- MASHBERG Tom, Sending Artworks Home, but to Whom?, 3 January 2014, *in* The New York Times (<http://www.nytimes.com/2014/01/04/arts/design/denver-museum-to-return-totems-to-kenyan-museum.html>) (consulted on 21st of March 2014).
- UDVARDY Monica, GILES Linda, Looted Memorial Statues Returned to Kenyan Family, June 23rd 2011 (<http://www.savingantiquities.org/looted-memorial-statues-returned-to-kenyan-family/>) (consulted on 21st of March 2014).
- LACEY Marc, The Case of the Stolen Statues: Solving a Kenyan Mystery, *in* The New York Times, April 16 2006 ([http://www.nytimes.com/2006/04/16/world/africa/16artifacts.html?pagewanted=all&\\_r=1](http://www.nytimes.com/2006/04/16/world/africa/16artifacts.html?pagewanted=all&_r=1)) (consulted on 21st of March 2014).
- PFLANZ Mike, Theft of Sacred *Vigango* Angers Kenyan Villagers, *in* The Christian Science Monitor, 2 March 2006 (<http://www.csmonitor.com/2006/0302/p05s01-woaf.html>) (consulted on 22nd of March 2014).
- GILES Linda, UDVARDY Monica, MITSANZE John, Cultural property as Global Commodities – The Case of Mijikenda Memorial Statues, 2003 (<http://www.culturalsurvival.org/publications/cultural-survival-quarterly/cultural-property-global-commodities-case-mijikenda>) (consulted on 22nd of March 2014).