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Case Afo-A-Kom – Furman Gallery and Kom people

Furman Gallery – Kom people/people Kom – Indigenous object/objet autochtone – Pre 1970 restitution claims/demandes de restitution pre 1970 – Ad hoc facilitator/facilitateur ad hoc – Diplomatic channel/voie diplomatique – Negotiation/négociation – Criminal offence/infraction pénale – Due diligence – Ownership/propriété – Conditional restitution/restitution sous condition – Sale/vente

The Afo-A-Kom is a wooden sculpture sacred to the Kom people, a tribal population of Cameroon. In 1966, it was stolen and subsequently sold to a New York art dealer. In 1973, the Cameroon Government was informed of the location of the Afo-A-Kom and immediately requested the possessor, the Furman Gallery, to return it. Eventually, the Gallery sold the Afo-A-Kom to a businessman, who returned it to the Kom people.

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

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I. Chronology

Pre 1970 restitution claims

- **1966:** The Afo-A-Kom (literally, the Kom thing) was **stolen** from Ngumba House, Laikom, a village of the Kom Kingdom, a tribal population of approximately 30,000 people in the north part of Cameroon. The man who stole the statue sold it in a town in East Cameroon for \$100; then the Afo-A-Kom was exported and later sold to an American art dealer, which, in turn, sold it to the New York-based Furman Gallery.
- **1973:** A Kom scholar recognized the Afo-A-Kom at Dartmouth College, where it was on loan from the Furman Gallery. Cameroon officials, upon learning it was on exhibition at Dartmouth, demanded the **restitution** of the sculpture. Aaron Furman, who operated the Furman Gallery, initially refused to give it back, but then consented to its return after a group of institutions and businessmen agreed to cover his expenses.¹

II. Dispute Resolution Process

Ad hoc facilitator (Warren Robbins of the Museum of African Art in Washington) – Diplomatic channel – Negotiation

- When the Cameroon Government contacted the Furman Gallery requesting the restitution of the Afo-A-Kom in 1973, Aaron Furman refused and claimed that he had acquired the sculpture in good faith.² Obviously, the refusal was motivated by the fact that he wanted to profit from his investment. It was reported that he put the statue on sale for \$60,000, whereas he had bought it for \$25,000.³
- Following publicity about the discovery, a number of experts in African art commented on the case. They emphasized that the Afo-A-Kom was a cultural treasure that ought to be returned to the Kom Kingdom. In addition, Furman was met with pressure from the State Department of the United States, the Cameroon Embassy in Washington, D.C., and several institutions and businessmen, including Warren Robbins (representative of the Museum of African Art of Washington), Lawrence Gussman (businessman and president of the Schweitzer Hospital in Gabon), the Warner-Lambert Pharmaceutical Company and the

¹ Fred Ferretti, “Sacred Carving Reappears,” *St. Petersburg Times*, October 30, 1973, accessed January 26, 2012, <http://news.google.com/newspapers?nid=888&dat=19731030&id=6vdRAAAAIBAJ&sjid=IXMDAAAIBAJ&pg=7139,5626152>.

² Ibid.

³ “Sacred African Statue on Its Way Back Home,” *Jet*, December 13, 1973, accessed January 26, 2012, http://books.google.ch/books?id=V7EDAAAAMBAJ&pg=PA63&lpg=PA63&dq=Afo-A-Kom+Furman+Gallery&source=bl&ots=bKdJeUc_Go&sig=e0X46TzrHPS-WP6eX-D8JfMN6TE&hl=fr&sa=X&ei=cWgiT4uRCsKq-gakz5nTCA&ved=0CEQQ6AEwAw#v=onepage&q=Afo-A-Kom%20Furman%20Gallery&f=false.

Buffalo Museum of Science. These institutions and private individuals volunteered to buy the sculpture and to return it.⁴

- The Cameroon Embassy was determined to obtain the restitution of the Afo-A-Kom. In an emotional press conference, Thaddeus Nkuo, the cultural attaché of the Embassy explained that the Afo-A-Kom “is beyond money, beyond value. It is the heart of the Kom, what unifies the tribe, the spirit of the nation, what holds us together. It is not an object of art for sale, and could not be”.⁵ However, it is not clear whether the public opinion in support of the return of the sculpture had been mobilized by Cameroon authorities or by the press.
- Eventually, Furman informed the King of Kom that “arrangements for the permanent return of the Afo-A-Kom to its homeland have been under discussion”. As a result, Furman sold the statue to Lawrence Gussman, who even flew to Cameroon to return the Afo-A-Kom.⁶ It was reported that Furman’s decision was mainly brokered by Warren Robbins, who played a central role in the whole process as a facilitator.⁷

III. Legal Issues

Criminal offence – Due diligence – Ownership

- The most important issue at stake in this case was the alleged good faith of Aaron Furman. Furman’s lawyer said that his client “bought the object in good faith from an established firm that had been buying and selling African art for 20 years”.⁸ Instead, it appears that the provenance of the Afo-A-Kom and the responsibility of the thieves were not discussed.
- It is well known that in the 1970s art professionals still operated on a “don’t ask, don’t tell” standard. Therefore, the fact that Furman bought the sculpture from a reputable seller does not necessarily entail that he was in good faith. He should have proved that he took steps to investigate the origin of the sculpture, whether it was legally dealt with, and the status of the transferor. In light of current standards, however, art professionals are required to abide by the higher standards of conduct established by statutory norms as well as the codes of ethics adopted by their associations or international organizations. Apart from the UNESCO International Code for Dealers of Cultural Property of 1999 and the ICOM’s Code of Ethics of 2004, it is worth mentioning the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995 (“UNIDROIT Convention”). Its Article 4(4) constitutes a useful codification of an international standard of diligence for a flexible assessment of the circumstances of the acquisition: “In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the

⁴ John H. Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts* (Alphen aan den Rijn: Kluwer Law International, 2007), 364-365.

⁵ *Ibid.*, 364.

⁶ Fred Ferretti, *Afo-A-Kom; Sacred Art of Cameroon* (New York: The Third Press, 1975), 105.

⁷ *Ibid.*

⁸ Fred Ferretti, “Sacred Carving Reappears,” *St. Petersburg Times*, October 30, 1973, accessed January 26, 2012, <http://news.google.com/newspapers?nid=888&dat=19731030&id=6vdRAAAAIBAJ&sjid=IXMDAAAIBAJ&pg=7139,5626152>.

character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances”.

IV. Adopted Solution

Conditional restitution – Sale

- The Afo-A-Kom was returned to the Kom people and Furman was compensated for his expenses.⁹
- In 1985, a major exhibition of art from Cameroon, including the Afo-A-Kom, travelled to several United States museums, setting to rest rumours that it had been stolen again. In effect, some were sceptical about the return of the sculpture arguing that it was likely to disappear again or deteriorate irreparably.¹⁰

V. Comment

- The case of the restitution of the Afo-A-Kom illustrates the symbiotic dialectic between material and non-material heritage, that is, the “emotional” attachment between cultural heritage and the identity of communities and peoples.¹¹ Artworks are recognized as intermediaries of their inherent or associated intangible values. This aspect is intensified in the case of religious art. Hence, in case of theft, what thieves gain is outweighed by what the victims lose.¹²
- Although the Afo-A-Kom was far from being considered Africa’s greatest piece of art, this 5 feet tall sculpture, carved in iroko wood, was sacred to the Kom people. It represented a man standing behind a small throne, holding a sceptre and wearing a crown. Its original location was with 2 female statues, displayed once a year to symbolize the royal dynasty, the “enthroning” of the king¹³ and the political and religious heritage of the Kom people. Therefore, the effect of its disappearance on the people of Kom was profound. They behaved

⁹ John H. Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts* (Alphen aan den Rijn: Kluwer Law International, 2007), 365.

¹⁰ Ibid.

¹¹ Daniel Shapiro, “Repatriation: A Modest Proposal,” *New York University International Journal of Law and Politics* 31 (1998-1999): 98-99.

¹² Jumana Farouky, “Spirited Away: Art Thieves Target Europe’s Churches,” *Time*, January 21, 2008, 36.

¹³ John H. Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts* (Alphen aan den Rijn: Kluwer Law International, 2007), 364.

as if an integral part of their spiritual life was gone. It was reported that when they talked about the lost Afo-A-Kom “their voices drop and their eyes become moist”.¹⁴

- In this perspective, it is useful to note that Article 5(3) of the UNIDROIT Convention provides that the “court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs [...] the traditional or ritual use of the object by a tribal or indigenous community”.
- True, from a strict museological standpoint, conservation is an absolute priority. There is no merit in returning art objects if they are subsequently likely to deteriorate irreparably or to end up in private collections in another country. Hence, it is argued that restitution of cultural objects should not be opposed only if it can be reasonably expected that the conditions required for their conservation can be met. However, this approach does not seem applicable to indigenous peoples’ cultural heritage. As a matter of fact, tribal art is not supposed to be “appreciated”, but used for rituals and ceremonies according to the custom of the community of origin. Hence, an object-centric approach seems unsound when used to define art or culture independently from humans and their history. It is pointless to pursue preservation for the sake of the objects and not for the sake of the people for whom they have a meaning.¹⁵

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¹⁴ Fred Ferretti, “Sacred Carving Reappears,” *St. Petersburg Times*, October 30, 1973, accessed January 26, 2012, <http://news.google.com/newspapers?nid=888&dat=19731030&id=6vdRAAAAIBAJ&sjid=IXMDAAAIBAJ&pg=7139,5626152>.

¹⁵ Tolina Loulanski, “Revising the Concept for Cultural Heritage: The Argument for a Functional Approach,” *International Journal of Cultural Property* 2 (2006): 215-216.

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