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THE NEED TO RE-VISIT THE JURISDICTION OF  
SOCIAL COURTS IN ADDIS ABABA CITY  
(THE LAW AND PRACTICE)

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I hereby declare that this paper is an original work and I take full responsibly for any failure to observe the conventional rules of citation.

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## Bibliography

- Addis Ababa city Administration Kebele Social Courts Establishing Regulations,1997, Regulation N° 2 Addis Negarit Gazeta , Year 1 No2
- Addis Ababa City Government Charter 1997 Proclamation N°87 Federal Negarit Gazeta Year3 N°52
- Administration of justice proclamation ,1942,proclamation No2 Negarit Gazeta; year 1No1
- American Bar Association, The improvement of the administration of justice ( 5<sup>th</sup> ed,1971)p-3
- Bell , Kethleen; Tribunals in the Social Service,(1993)
- Constitution of Federal Democratic Republic of Ethiopia No-1995 proclamation N°37 Negarit Gazeta,,1989 Year N°1
- Hazard ,John; The Soviet legal system (3<sup>rd</sup> e.d.1997)
- H.P leach enperg” Open air law courts of Ethiopia The National Geographic Magazine “( Volume LXV No,5 Nov,1935, page 631)
- J.C Hotten , Abyssinia and its people , 1868, page183
- Joiner, Charles W Trials and Appeals (1957)
- Kucherov,Samuel, The organs of Soviet Administration of Justice; their history and operation ( E,J. Brill, Leiden Netherlands;1970)
- Lenin ,V.I State and Revolution (N ,Y...1932)
- Local judges Proclamation of 1974;Art3(a) Proc .N° 62 Year6 N°10
- M.Perham, The Government of Ethiopia, London 1948
- SedlerRobert Alon; The development of the legal system in the Ethiopian experience (un published ), (1967)
- Simon David Messing ;The High land plateau Amahara of Ethiopia 1963 page 331
- Social Courts Establishing Proclamation of Region 14,1993 Proclamation No4 Addis Negarit Gazetta year1N°4

- Thomas Geratty “people , attitudes and problems of the lower courts of Ethiopia ; Journal of Ethiopian law volume V No 2 December 1969, page 439
- Thomas Geratty ,”people practice ,Attitude and problems the lower courts of Ethiopia , “ Jol.Eth.Low: Vol6, No2, (1969:p 778)
- Urban Dwellers Association Consolidation and Municipalities proclamation , Proclamation N<sup>o</sup>104,1976, Negarit Gazette Year 36,N<sup>o</sup>5





## **INTRODUCTION**

### **SOCIAL COURTS**

A social court can simply be defined as a place where justice can be served close to the people .In the hierarchy of courts the place of social courts is at the lowest level of the court hierarchy. The social court gets its name from social participation commonly known as popular participation.

Social courts appeared in Ethiopia in the year1989 to settle certain types of disputes related to the daily life of individual.

When the first proclamation dealing with the administration of justice in Ethiopia appeared in1942 there were courts called “Atabia Dagna”. These courts were not elected by the people. They were appointed by the state but were involved in the day to day dispensing of justices.

Social courts were established by Proclamation No.37/1989. One of the unique qualities about these social courts is the people’s election of the judges whereas in regular courts judges are appointed directly by the government. Those who believe in a government that is elected by the people see the election of social court as sign of democracy.

Some countries established the social courts system around enterprises and other established them on territorial basis.

In the former socialist countries for example these courts were established close to workers or peasants.

In western countries also there were alternative courts called the magistrate and petty session courts. In U.S.A there are courts called county courts or small claim courts. Therefore the issue of establishing of social courts at a grass roots level is not related to ideology or political tradition.

## CHAPTER ONE

### CONCEPTUAL DEVELOPMENT OF LOWER COURTS IN ETHIOPIA

A change in judicial administration is necessary whenever a certain problem occurs in the preexisting institution, So it is crucial to compare the present institutions with previous one's as to know the intended improvements.

#### 1.1 the period prior to the socialist military government

This period in the history of social courts includes three types:

- a) Trial under a tree
  - b) Decision by the land lord
  - c) The Atbia Dagna
- a) Trial under a tree;- this type of trial was exercised before 1942. It was widely used in the country and it was the traditional method. It was not limited to minor cases. All cases were brought before it and the peculiarity of this trial is that any person could become a judge of a trial under a tree.

It is not proper to use the name court for this institution .These courts do not use any regular court house and meet for trial on any suitable place or village plaza. The cases are conducted at the place where they are started . Hotten says that “ It is not an interesting sight to witness the case's court filled with suitors of all kinds , the multitudes in attendance seated on grass ,no one excluded, and the highest noble , the peasants ,standing pleading in equal terms before these judges and using entire liberty of speech”.

This type of adjudication promotes the participation of people in the judicial process. One observes the openness of the litigation and the freedom of people to express their ideas without any inhibition.

The courts do not have any hierarchical structure. In many parts of northern Ethiopia cases were conducted under three forms: Atbia Dagna, Trial under a tree and Dagna and the customary systems of other parts of Ethiopia not treated in this paper where there was settlement of dispute by local elders called “ Shemagele.”

**b) Decision by the land lord**

In this type of settlement of disputes the land lord served as an arbitrator. He was not a regular judicial officer and did not follow any procedures. He was called Dagna and mostly used his discretion in solving cases. This institution served as one way of settling local dispute arising in a particular community.

Because the Dagna is a member of the community ,his role is mainly effecting settlement rather than imposing a judgment. The procedure used may differ from one place to another. There is no common procedure of conducting litigation. Arguments before the judges were not structured by reference to substantive customary law. Litigants used their convincing skills and knowledge of local affairs to influence the results of a case .We can quote J,C Hotten.

“An Abyssinia suit is more a trial of words and skill than an elucidation of truth...”

For this reason there is a saying among the people which goes like this : don't seize the tail of the leopard but if you do,don't let it go .It means that don't go courts and face a good talker or a prominent or wealthy adversary but once you are involved fight as hard as you can. A person may not go to court even though he has meritorious cases if he is weak in oral litigation.

Often the parties presented their cases themselves and explained the issues. The judge heard both sides and rendered judgment. But in some cases the people who attend the litigation may have a say before a decision is given. So the public usually participates in the litigation. The courts undertake their work in an open place. A participant in the

litigation may be any interested passerby and the judge would give his decision after hearing the opinion of the public present in court.

These judges were appointed by the government and the government appointed these local judges on the basis of the land they possess. They were not paid by the government. They are paid by the litigants themselves usually by the party who has lost the case. As one European traveler said, the financial reward of the job was sufficient to encourage persons to become judges.

Apart from the justice of the land lord there were two other levels through which administration of justice was conducted: Meslenea and Womber. These institutions were normally above the land lord acting as judge.

Both these courts may serve as a first instance courts or as appellate courts. They were engaged in a mixture of administrative and judicial duty. The jurisdictions of these three different officials: Dagna, Meselene and Womber was not fixed. One could, start a case by instituting it to the Meselene or Womber. This was the choice of the party. He will consider first the financial and other costs he may incur and may go to the nearest official usually the Dagna of course, It was usually more economical and convenient for the parties to initiate proceedings before the nearest judicial official and the practice therefore was to go from one step to the other hoping that the problem would be resolved at some stage.

The basic characteristics of these lower level judicial organs were that the procedural and substantive laws were a reflection of the local custom. Even in large cities like Addis Ababa people were allowed to bring their customary law from the country side and use them in the litigation with only minor modifications resulting from the cultural influence of life in the city.

The other basic character of these lower courts was that litigation under such judicial officials was basically spontaneous and summary.

This is because the hearing of the case took place in one sitting and the judges gave their decision immediately after hearing both parties. We can conclude that the participation of the people in administration of justice was encouraged due to the minimum delay in disposing of cases.

What we observe at this court is that the governor of the locality has the power of appointing and removing judges. This shows that there was no separation of powers between the administrative agencies and the judiciary. Judges were considered delegates of the local governor and of the emperor above him. They were delegates of men and not of the law. For this reason the independence of the officials is not guaranteed, More over there was a problem of competence in these courts. The only criteria considered for the appointment of the judges to these courts was the ownership of land and his membership of the locality. The question was how much land he possessed and not whether he had the capacity to settle disputes. Litigation was conducted on the basis of custom and with the participation of the people in the process of litigation. As a result of their knowledge of customary law and procedure and the spontaneity of litigation and the fact that the participants could complete with the judges , the litigants enjoyed the litigation and used it as a platform to gain recognition from the community.

### **C) The Atbia Dagna (1942-1974)**

In 1942 Ethiopia issued the first proclamation dealing with the administration of justice .It was a time that attempts were being made to create an efficient administration in all areas. The1942 proclamation on the administration of justice was the first proclamation to create a hierarchy of courts. This proclamation was strengthened by the promulgation of substantive and procedural laws. At the same time this proclamation served as a means of transferring the responsibility which was traditionally held by the provincial government to the central government.

Although this proclamation had reached most local areas, the institution discussed above was also in operation in view of the inadequacy of the new courts of proclamation of 1942 in terms of number and staff. In 1947 a local judge's proclamation was issued to strengthen the existing local judicial institutions. This proclamation was the instrument which put customary litigation into legal documents.

This law of 1947 established local judges who are empowered to see cases the subject matter of which does not exceed 25 ( twenty five ) Ethiopian dollars in civil matters and in criminal charge fines not exceeding 25 (twenty five) Ethiopian dollars . The composition is one judge and two assessors. The assessor has only the right to give an opinion. The decision was made by the judge. The nature of these judies is the same as the large landowner judge. The only difference is the Atbia Dagna was established by the Negarit Gazeta.

The appointment of these judges was not different from that of the large landowner judge of the period before 1942. Theses judges were also appointed based on the land they possessed. Article 7 of the proclamation states that in a place previously administrated by a chika shum , where there are no malkagna estates the judges to be appointed shall be the owners of rist gult owners or gabar land or owner of balabat land.

The Atbia dagna functions are broad and vary between rural areas and towns and between districts.

Administration of justices was improved. But there was no participation of the people in the administration of justice such as the direct election of judge. Justice was to flow from the fountain of the emperor not of the law. So the need arose, to promote the idea that justice is not to flow from the higher officials but that it shall flow from the law.

## **2 The period of the socialist Military government**

The judicial tribunals of mass organizations.

The revolution which took place 1974 brought about a new type of administration. It was a time when Ethiopia started to have direct participation in the election of judges .Since the revolution was against the previous feud- bourgeois system and it was aimed at introducing socialism , the new type of administration through the involvement of urban dwellers association was the out come of the revolution . These institutions were like the USSR comrade's courts and the popular tribunals of Cuba.

The new system organized the urban dwellers at different levels of kebele, kefitengna, and central urban dwellers association. The kebele urban dwellers elect their shengo or court in kebele general meeting. These judges settle disputes which arise in their kebele. This tribunal is one which was established for the first time to settle disputes that arise among the residents .These urban dwellers associations were established by proclamation No 47/1975. Later on this proclamation was consolidated and was replaced by another proclamation.

The tribunals were given powers and duties to hear and decide civil matters ,involving pecuniary claim of up to birr 500.00 or any dispute on property to the value up to the value up to birr 500.00 , claim of rent and service charges on houses and land within the kebele and they had jurisdiction in cases of lost things or animals, of abuse of ownership ( possession ) of land and the like. They also have jurisdiction in criminal matters regarding offences like dangerous vagrancy (Art 583), of the Penal (Code). They can see cases of offences under the code of petty offences excluding traffic violations, to examine the case of persons who submit applications to receive free services in court or from government offices and to grant certificate relating therete.

When we see the powers granted to kebele shengo one reaches the conclusion that most disputes are left to be settled by the people. The

people who elect the judges are the ones who settle their disputes among themselves.

These judicial tribunals were in their organizational set up broad mass organizations and were operating hierarchically from kebele to kefitengna, to central urban dwellers association . They were different from the other regular courts through their activity was judicial.

Any dweller who fulfills the requirements stated in the proclamation may elect or be elected as judge. In principle dwellers are also encouraged to comment and forward their views on the case at hand. But in practice this did not happen often. The proclamation stated that the tribunals shall have the power to render their own independent judgment based on law and justice. But looking at the work done by these tribunals their independence was doubtful. These tribunals were not completely independent bodies. They were often seen obeying the orders of the higher officials ,disregarding the law and the wishes of the people.

These kebeles, kefitengnas and the central urban dwellers. associations continued to operate until the promulgation of proclamation number 37/1989. This proclamation which established the social courts changed the kebele judicial tribunals into social courts .but due to the change of government in1991, this proclamation did not operate for long .And this change brought about a new structure of courts.



## **CHAPTER TWO**

### **2. The Social Courts of Addis Ababa City**

The newly established federal government gave recognition to the regional state. Each region started to promulgate its own laws by taking into consideration the laws of the central government and the customary rules of their own region.

Regional states determine their own court structure and administration of justice. This led to the duality of justice administration. The regions are subjected to the central administration as well as to their own administration.

As one of the regions in the federal system Addis Ababa city had started to have its own laws. Its administration of justice was based on the charter or constitution of the city. Addis Ababa region made laws which describe the structure of the court. This is Proclamation No.4/1993, promulgated to establish the social courts of Addis Ababa or Region.

#### **2.1 Legal back ground**

##### **Source of authority**

The charter is the starting point for the current legislation in use in Addis Ababa. The status of the charter is like a constitution for the city and is given by the federal authority.

The law making body in the transitional regional self government is the council. The council is subject to the provision of Article 9 of Proclamation No.4/1993 with powers stated under part two of the same proclamation. Since one of the powers is enacting laws, it is the legislative organ, subject to the central transitional government laws,

Under this constitution, Article 24 sub article 8, the regional council of Addis Ababa has the power to establish the judicial organ. It is on the basis of the above mentioned article that the Addis Ababa Region Council enacted the proclamation to provide for the establishment of kebele administration and kebele social courts.

Thus, the social courts of region 14 ( Addis Ababa ) are established by Proclamation N<sup>o</sup> 4/1993 which is enacted by the Regional Council for Addis Ababa. This regional proclamation is published in the “Addis Negarit Gazeta”. while “ Negarit Gazeta “ is the name of the central government publisher.

In each kebele the social courts have three judges and a registrar. The people of the kebele in their general assembly elect the members of the social court. Three judges therefore would hold the court of the social courts of each kebele. The three judges have one presiding judge and other two other judges.

In rendering decisions all the three judges have the same power. The presiding judge however has certain special powers and duties . These powers and duties of the presiding judges shall be discussed in sections ahead.

The hearing of cases in the social courts is conducted in the presence of the public. Where public morality and safety requires, however the hearing is in camera. Hearing in camera is conducted for those cases which are not suitable to be heard in public or if it is against morality. Other wise the hearing in kebele social courts is conducted in the open in the presence of the public. The kebele social court has a regular room of its own. The place of hearing of the social court is in that specific kebele. The law requires social courts to have a normal place of sitting or hearing.

## **2.2 Practice of the Social Courts**

The staff composition of social courts is the judges and registrar. Unlike other judges of the regular courts these judges are elected by the people.

In each Social Court of Addis Ababa there are three judges, one alternate judge and a registrar. They compose the personnel of the social courts. In this part therefore the persons to be examined in relation to the law are these persons: we shall discuss the responsibilities and duties of these persons in detail as follows.

### **2.2.1 The Judges**

One member of staff in the social courts are the judges. The judges are elected by the people in the general assembly of the kebele community. To be elected as a judge of a social court the person should be a resident of that specific kebele. In addition he should be respected and held in esteem by the residents for his exemplary character and whose rights have not been curtailed by law. He should also be an active participant in social services. The appointment of the judges can be regarded as being in the hands of the people electing them.

The term of the judge can be shortened when the electorate loses confidence in the judge because of his failure to discharge his responsibilities and he may be removed from the office.

There are some conditions that prohibit the judges of social courts from hearing some cases. If a judge has a close relationship either in consanguinity or affinity with one of the parties or if he had a personal conflict with one of the parties or if he was previously involved as a judge or conciliator in previous occasion he can not see the case.

If the judge withdraws due to the above reasons he is replaced by an alternative judge. As far as legal knowledge is concerned, the judges of a social court do not have to be educated. Because their neighborhood character and good behavior is considered by the people in electing them there is no need for legal knowledge. On the other hand they

are required to have some education and should at least read and write Amharic.

Devotion of the judges towards their function is generally good. Questionnaires distributed to twelve plaintiffs and twelve defendants in three different kebele's show that the judges, are diligent and do their jobs properly. They were present in the kebele regular place of hearing and served the people who elected them. But this is the general case and in some cases, the litigants may return to their home without getting the service they came for. Some may also return without satisfaction by the service given by the social court. Most of the persons, on the other hand were not complaining about the judges being present at the courtroom on time.

According to Article 30 of Proclamation No 4/ 1993, the presiding judge has the power to lead the hearing. He is the representative of the court and so he proposes to the Woreda Court solutions to the problems faced by the social court, and also reports to the dwellers. In turn he will also undertake those duties that may be ordered by the Woreda Court. The presiding judge has also the responsibility to report the performance of the court to the people. As provided by Article 31 of the proclamation. Every three month, the court reports this performance to the public.

Article 30 and Article 31 of Proclamation No 4/1993 of the Addis Ababa region show that the judges of the social courts are expected to exercise their judicial activities independently of any other body. They are also expected to be free from impartiality and also for any other bias when dealing with parties. A judge while reflecting the moral temper of his time, must bring to bear on the decision the full power of his intellect, undistorted by any interest in the result.

The above article is the only provision on the independence of the judge. There is no clear provision about independence in the above mentioned proclamation. It is however clearly stated in the Proclamation

No 37/1989. The supremacy of law, rather than personal authority shall guide the judge.

Independence of judges is not only connected with the judicial function but also with the judge's personal behavior . In discussing the need for impartiality it is difficult to achieve it fully but the habit you are trained in, the people with whom you mix , lead to your having a certain class of ideas of such nature that , when you have to deal with another idea, you do not give as sound and accurate judgments as you would wish.

### **2.2.2 The Registrar**

As described in the part dealing with the composition of the social courts, the registrar is one of the members of the social court. It is stated in Proclamation No 4 / 1993 of the Addis Ababa region that the registrar is elected by the people in a similar manner as the judges .When the people elect the judges , they will also elect the registrar at the same time.

The requirements to qualify as a registrar are not provided in the law. Unlike the case of the judges the law doesn't clearly state, what requirements should be fulfilled for a person to be elected as a registrar , He should be the kebele's citizen as stated in Article 6 and 7 of the proclamation. Once the above criterion is fulfilled and the people elect a registrar in their general meeting, that person would be a registrar of that kebele's social court.

Under Article 33 of the same proclamations is given the power of the registrar. According to this article, the registrar has the power to receive a petition from a person and will open the case and present it to the attention of the social court. The registrar, therefore, is the first person to be seen by a person who comes to a social court with a legal action.

The law simply says that the registrar will receive a case and present it to the social court judges. It doesn't clearly state whether he has the right to accept or reject the case. The actual practice also implies the

same thing. The registrar simply receives whatever comes from the community. When correction in the claim is needed the public correct it with the help of the registrar. This is believed to come be good for the people, as it may encourage the people to be close to the social courts.

The registrar has also additional powers to those stated above. He has the power to deal with the execution of the decision of the social courts. He will give a copy of a decision for a matter of appeal if it is to be lodged, and he will undertake the duties given to him by the social courts.

Taking all the powers given to the registrar into consideration, the registrar should be elected with due care. The people should know who shall be their registrar and should be more careful. This is because the person to be elected as registrar should be the one who has the feeling of responsibility and care for the people he is going to serve. He should be free from bias and should maximize the interest of the people before his personal needs.

### **2.3 Rights and powers of social courts**

The right to use the powers, referred to as jurisdiction is the right given to the social court to see the case before it. According to Sedler's definition jurisdiction is a power of a court to hear and then determine a case presented to it. Jurisdiction is of three kinds.

**This are-;**

- a) Judicial jurisdiction
- b) Local jurisdiction and
- c) Material jurisdiction

Since the first one, judicial jurisdiction, is concerned with the power of the state, our concern will be with the remaining two kinds, local jurisdiction and material jurisdiction. Because these two are of importance in social courts the following section will discuss the two kinds in detail.

### **2.3.1 Kebele jurisdiction**

Local jurisdiction of a kebele social court is the ability of kebele courts to see cases concerning that specific kebele. As it can be inferred from the kebeles organization system, and as each kebele has established social courts, each kebele seems to have its own jurisdiction to hear and then determine a case which may arise among the people of that kebele. In addition, the act should be done within that kebele to be included in its jurisdiction.

Proclamation No 4 / 1993 fails to provide for the local jurisdiction of a kebele social court to hear a case. When examining the recurrent activities of the courts, it is possible to say that they have local jurisdiction to hear a case where both the defendant and the plaintiff reside, or where one of them resides in the kebele or when the subject matter of the disputes is located there, and when the offense is committed within the locality. This is often seen in the practice of the kebele social courts.

There can be in fact, a conflict of jurisdiction caused by this lack of local jurisdiction rules. Because suit may be instituted in more than one social court.

When we consider Proclamation No 37/1989, it has an article, which provides for conflict of jurisdiction. The article says that where a case is submitted to more than one social court the court to which submission is first made shall be deemed to have jurisdiction and shall decide the case. Therefore, it would have been good if Proclamation No4 /1993 included an article like this.

### **2.3.2 Material jurisdiction**

Among the three kinds of jurisdiction material jurisdiction is the second type exercised by the social courts. According to its definition, material jurisdiction refers to the power of a court to hear the kind of case that is before it. Usually, material jurisdiction is determined by money. Those matters having a higher value start from the higher court

and those matters that are less in value or having smaller importance will go to the lower courts.

The Addis Ababa region social courts have also their own material jurisdiction as provided in the region's proclamation. Article 28 of the proclamation specifically provided for material jurisdiction in civil matters and in criminal matters. Therefore, they shall be discussed as follows.

### **1 )Material jurisdiction in civil matters**

In accordance with Article 28, the social courts shall have the power to decide pecuniary claims not exceeding five hundred Ethiopian birr (500) . The article provides that the kebele social courts have material jurisdiction on any property claim involving the stated amount. The article seems to exclude those disputes on matters having estimated value. In practice, however, this law has been interpreted by the courts as if it holds for both matters. As a result, when a case that needs estimation of value is presented to the court, they continue to see the case as if they have the jurisdiction.

The kebeles jurisdiction over rents and service charges related to houses within the boundary of the kebele has created a problem . Some kebeles may decide such cases and some kebeles send the case to the next higher courts . They tend to justify the practice of sending a case to the next court by stating that the kebeles social courts, has not been entitled to give ownership certificates for houses or land . Some of them thought that the kebeles court have no jurisdiction. But the rational point is otherwise. The kebeles social courts, as stated in the proclamation, shall have jurisdiction as long as the case has a value of Birr 500.00 on property or estimated value. Other wise, the case should be brought to the woreda courts if it is above the stated amount .



## **2) Material jurisdiction on criminal matters**

The kebeles social courts were given the power to hear and decide cases , stated in Article 28 of Proclamation No4/1993 and hear and decide in first instance under the code of petty offences when referred to them by the prosecutor's office. They shall also have, in addition to the above , material jurisdiction in criminal offenses that lead to 3 months imprisonment or criminal acts that lead to a liability of up to three hundred Birr. Criminal acts which may result in imprisonment up to three months have not been frequent in the kebeles courts. It is a criminal act like theft, that was mostly found in the material jurisdiction of kebeles courts.

### **2.3.3 Decisions regarding defendants found guilty**

The judges of the social courts after hearing the case presented to them , have the power to make a decision. After the necessary evidence is considered , a decision has to be made to close the case or settle the dispute . The person who is found guilty is penalized. With regard to penalty, there is nothing stated in the proclamation. On the other hand Article 28 of the proclamation states that the social courts may penalize a person up to 3 months imprisonment or may impose 300 Birr in cases involving criminal matters.

Detailed penalties had been provided in the previous proclamation. According to it when the accused person is found guilty the court may impose a penalty according to the gravity of the offense. It may warn the offender , order the offender to make an apology to the injured person, publicize the offender's shameful act, impose fine of up to 300 birr to paid immediately or within a fixed period of time considering the means of the offender or impose a period not exceeding 15 days of compulsory labor which is related to the trade of the offender and useful to the community to be carried outside the regular working hours , impose a sentence of confinement not exceeding one month, order the offender when the offence has caused bodily harm or property damage, a

payment of compensation not exceeding Birr 500 when claimed by the injured party . In addition to the above penalties they may also impose more than one penalty prescribed where the accused is a habitual offender or is found guilty of more than one offense. They may also order the confiscation of the instrument with which the petty offense is committed when it deems it necessary in addition to the penalties prescribed above. The court may also order additional measures prohibiting the accused for a period not exceeding one month, from going to places such as public recreation centers, restaurants and bars, or other similar places where the offense was committed. The court shall take the gravity of the offense, the personal circumstances, and the levels of income and the family responsibility of the accused into consideration in finally assessing sentence.

The present proclamation, however did not provide for these penalties in detail . Most of them , except those which are not practically possible such as prohibiting the accused from going to such places as public recreations , are still operating though they are limited to birr 300 and a sentence of confinement for about 3 months.

As the personnel of the social courts are not well educated except for the seminars given to them, it would be advantageous for the functioning of the social courts if the rules and procedures regarding those penalties were clearly put in the proclamation. In doing so the problems and misinterpretation related to the law could be reduced. Since they are not stated clearly the judges are forced to use their discretionary power in interpreting the law which may cause an adverse effect on the image of the court. The people may lose confidence in the court as a result of this.

In the hierarchy of courts, the social courts lie at the bottom of the hierarchy. They handle matters which are less complicated and of minor importance. These social courts, are found below the woreda courts . As a result they are considered as first instance courts.

The social court is, required by the law to report the activities and problems of the court to the president of the woreda court . The presiding judges of the social courts, as stated in Article 31, shall perform all activity which may be ordered by the president of the woreda court. On the other hand, the woreda courts are the organs to whom the Social Courts report on their performance and the needs of the people .

When we look at the establishment of the kebeles Social Courts, they are independent organs from the kebele administrative organs. It is clearly stated in the proclamation that they are independently established as different bodies having different purposes and personnel.

These Social Courts are legally independent from the possible influence of the kebeles administrative organs. This legal independence helps the social courts to discharge their responsibilities without obstacles from another organ of the kebeles Administration.

The kebeles administration cannot order the kebele social courts and vice versa. Although they are established and organized under the same proclamation, we cannot say the one is under the authority of the other. The law also provides for different organs having different responsibilities. Above all, the kebele Social Courts are responsible to the woreda court rather than to the administrative organ of the kebele. This clearly shows the independence of the social courts.

The discussion made until this point had been the establishment and organization, and other characteristics of social courts of the Addis Ababa region. The points raised so far are only seen in light of the law in general and the proclamation of the region in particular.

Therefore in the next chapter of this paper the issue related to the actual practice, conformity with the stated objective, and the general functions of these courts shall be reviewed.

## **CHAPTER THREE**

### **Functioning of Social Courts of Addis Ababa**

The function of social courts can be classified into two: The judicial and non judicial function. The judicial function is connected with civil and criminal matters . Accordingly trial, decision and execution of the decision will be the concern of the judicial function. The non- judicial function was issuance of a legal document .Some of those documents were evidence of marriage , pauperism or unemployment.

The present social courts of Addis Ababa however did not handle the criminal cases and are not offering documents of marriage, Pauperism etc. They only deal with civil cases.

The function of social courts can be studied by personal observation and by interview made with people who have been parties in litigation and from the personnel of the courts. Due to the weak documentation of kebele social courts, it is not easy to find files of cases for reference or research .A part from this, interviews were not easy to get.

#### **3.1 Judicial function of the social courts**

##### **i) Institution of claims**

In civil matters a plaintiff must bring his case to the attention of the social courts .When he bring a case his first contact will be with the registrar of social court. This practice is what normally is done in regular courts. The registrar of these regular courts is empowered to receive the petition, to examine it and finally to bring it to the attention of the court

From an interview held with kebele executives, people don't know where to start a suit as the procedure is not like the procedure in regular courts. The people usually institute suit in the kebele administrative office. The kebele administration, usually the chief executive receives the case. The kebele chief executive then sends it to the registrar.

The registrar then sends to the social courts, if the case is a difficult case or if one of the parties asks that his case be seen under the social courts. Other wise the case will be handled by the administration. This problem occurs in most kebeles.

In some social courts, the case has been presented to the proper organ. The registrar says that this happens only when the party has previous knowledge, knows that the case should be presented to the registrar.

In most places the registrar, do not examine the statement of claim as to its form or conformity to other rules.

In regular courts the registrar examines in addition to the form, whether the case complies with the proper rules relating to the filing of the statement of claim. But this is not the case in kebele social courts. The failure to do this seems to arise from the lack of rules concerning the rules on filing of statement of claim in social courts.

The proper filing procedure is not considered important by some kebele personnel. This filing procedure may help to determine the question whether or not the case belongs to the jurisdiction of the court and should be considered important.

Concerning jurisdiction, though their power is defined in the law, the kebele social courts do not refuse to receive matters which do not belong to them. If the parties bring a case to the social courts the court tries to settle the dispute without taking the jurisdiction into account.

After a claim has been lodged at the kebele administration or at the social courts, the court may issue a summons. The process of serving summons in kebele social court is not according to the civil procedure code. The claimant serves it. And in some cases the kebele administration through its personnel may serve it to the defendant .

Usually the plaintiff is sent with the summons and he serves it to the defendant. The kebele force intervenes when there is no willingness to accept the summons. Although this is not a frequent problem.

Provision on serving summons in the social courts is not found in the proclamation. An examination of the provisions of the Civil Procedure Code relating to service makes it clear that these provisions incorporate a hierarchy of methods of service, designed to insure that the defendant receives the best kind of service that is possible under the circumstances. In terms of effectiveness, the methods of service authorized by the code can be divided into four categories: personal, constructive, post and substitutes. Among the methods of service the personal method is used more often in social courts. This does not mean that the other methods do not operate in the social courts. If need arises there will be no reason to exclude them from operating. But reality and the nature of the social courts limit them to use only the first one. For one reason the person who may be sued lives not far from the kebele and may be contacted any time.

#### **ii) Hearing**

How disputes settled when both parties are present? The hearing in the first instance court has two well defined stages; the pleading and pre-trial stage and the trial stage. In social courts these are conducted together. We don't find that they function clearly and distinctly as in other regular courts.

In the process of trial, Pleading is the main part of the procedure. Pleading in social courts is not complicated. Pleading is the branch of legal science which deals with the principles governing the formal written statements made to the courts by the parties to a suit of their respective claims and defenses as to the suit. In most cases with social court we do not find the statements of defense.

The primary purpose of pleading and pre-trial stage is to determine the issues that must be decided at trial the kebele simply tries to arrange the issues and may proceed to hear it. And they try to see the disagreement and concentrate on the peaceful settlement of the dispute at hand. The parties and the court certainly know what the problem is,

and they do not waste time in clarifying the problems. They always try to see the case and resolve it promptly.

Rejection of a pleading is rarely done in the social courts. The courts don't reject a pleading on minor grounds or for reasons which justify rejection in the other regular courts. The other regular courts reject statements of claim on two grounds according Sedler: from the particulars of the statement of claim it appears to be outside the court's jurisdiction or a case, does not disclose a cause of action.

Rejection of a statement of claim, if it appears to be outside the court's jurisdiction, is sometimes done in some kebeles. These kebeles do not entertain cases which are beyond their power. but in some kebeles when the amount of the money exceeds the limit they will divide it into two so as to meet the appropriate jurisdiction requirements of kebele courts.

The second rule is a case which does not disclose a cause of action. As discussed before the primary objectives of these kebele , social courts is to settle disputes arising in their kebele . They do not worry about the cause of action. And the social courts, as they are the lower courts handle cases which are of minor importance compared to regular court

The claims are usually direct and easy to grasp. So there are no cases which might be rejected for lack of causes of action in the kebele social courts.

Based on the above the social courts hear the case immediately after the suit has been lodged. Unless the social courts are not in session, the adjournment will not take more than once. A case may be adjourned when it is instituted, but when it appears in the kebele social court for the second time it will be for a decision. This is not without exception .When the case become more complicated, the adjournment might increase. But usually the second appearance is for trial. In some cases a person may finish his case in one working day.

The duration of the hearing in the kebele social courts differs according to the case. The shortest time witnessed is 30 minutes, and in some cases it might take a longer time and the case may be adjourned until the next season of the court.

Non-appearance of a party in litigation does not prevent the social court from hearing the case. Action may be taken by the court for non appearance. But this is not taken immediately. In most cases the kebele social courts are lenient in taking action. Unless the person is a trouble maker and his presence is necessary the case is decided in his/ her absence. The effect of this is that the defendant will often lose the case and any decision made by the social court will be executed.

### **iii) Trial**

Trial essentially involves the introduction of evidence to the trier of facts. Accordingly in the trial process the production of evidence is very important. Since the social courts do not have any formal procedure, it is only their behavior which can be discussed here.

The social courts usually try to examine the case and the parties in formally and the statement of defense may be oral. No formal procedure exists as in the other regular courts.

Evidence consists primarily of the testimony of witnesses and documents and other physical proof. Production of evidence is frequently related to the testimony of witnesses. The testimony of witnesses however is not carefully seen in detail. Since the cases which are presented to the social courts are already known to the kebele social courts examination of witnesses is brief. This is because the social court judges have knowledge of the facts. They have possibility of knowing the cases and the parties, for they belong to the kebele.

As is normal in the other regular courts, the pleading does not present in advance the list of names of witnesses. The witnesses are called for testimony during the trial at random.



The court is given broad powers with respect to examination of witnesses and the production of documents at the trial. Since there is no procedure as to the examination of witnesses, the court uses its discretionary powers in examining witnesses.

Unlike the other regular courts, the social courts are not expected to commit themselves to the adversary system of litigation. They do not require the litigants or their lawyers, if any, to present their case in writing. Once the claim is lodged, the litigation could be made orally.

And since it is done in a very short time, except for some cases, making it in writing would not be suitable. In some kebeles one of the judges jots down what has been said by the litigants orally. No other method has been observed. But this practice has its own problem.

The judge may understand the oral defense or claim of the person in a way that the plaintiff or the defendant never contemplated.

#### **iv) Judgment and decree**

Judgment is not a simple task in the decision of a case. It needs attention. The effect is not simple. Judgment is an act which should be given due care.

In social courts also, although the case is one of minor importance, judgment in such cases can not be simple. The judgment affects the dwellers of the kebele, particularly the losing party. Parties come to court with certain facts. Both parties present what they think is true.

Both parties present what may help them in the process of litigation. In simple cases where the other party has no ground of defense, judgment might be simple. But almost all cases are not of such type. Most cases are matters which put the judge in a certain difficulty. Both parties come with contradictory facts. So courts face dilemmas in settling such disputes. In most cases the courts sides with the party who comes with better evidence and relatively better argument.

According to interviews made with some kebeles such problems are not very serious in social courts. This is because litigants are known

to each other, but also know the personal of the courts .They can observe many things from their environment. And the judges may reach at an opinion whereby they can not be blamed for an unjust decision. Secondly the social court's judgment is usually of arbitration and conciliation type. It doesn't usually take a stand. But still the act of judging needs due consideration and carefully attention to the consequences . They may be occasions when an innocent person may pay damages for a thing he didn't do.

Judgment is normally given on a matter that has been raised by the parties and put in issue. The social courts may not give decisions on matter which has not been raised by the parties. Social courts judgment not being like in the other regular court, usually do not impose a penalty. They settle dispute peacefully and so the problem does not a rise frequently.

As one of the kebele social court judges said that they primarily try to solve the dispute peacefully.

Sometimes, the courts send the disputants to the Shemageles for conciliation to settle their disputes peacefully. It is when this is not possible that the social courts proceed to impose a penalty.

Judgment in the social court is given in a short period of time .If may be rendered even in the day of the trial. In most social courts no adjournment is made. In most of the cases the three judges decide on cases having the same stand and no dissenting opinion is observed even though the law permits it. The reason for the non- existence of the dissenting opinions seems that:

The cases under the social courts are of minor matter and not complicated.

- Even though one judge may not agree with the decision made, since no record is made of a dissenting opinion, we cannot clearly get the dissenting opinion of judges.

- Due to the non – familiarity with the work of judging, some judges do not know the usefulness of dissenting opinion, particularly when the case is appealed from.

The right to appeal in the kebele social court is widely exercised. In matters which involve relatively more sensitive cases, like matters concerning house rents they are usually appealed to the next higher court.

#### **V) Execution of decision in the kebele social court.**

To execute a decision is the power of the registrar. Strictly applying the law, one may say that the registrar should execute the decision in matters where execution by the kebele social court is necessary. All decisions of the kebele social court need not be executed. There are matters which the parties themselves may execute. Therefore the intervention of the kebele , through the registrar as the law says , in situations where the parties may not be able to execute the decision themselves is important .

Proclamation No 4 says that this function should be made by the registrar . But this is not true when one consider the kebele practice.

The execution is made and controlled by the kebele administration. In the process of execution in the social courts, the decree is executed by the kebele administration. The social court passes the decision and the kebele administration receiving the decree tries to execute the decision.

Execution is essentially a separate proceeding. It is not a simple extension of decision. It needs its own proceeding. The kebele administration, through its organ and when ever necessity arises, goes to the place where execution is to be made. Since many cases are of minor importance, there is no reason why execution could not be undertaken, In fact , sometimes the losing party may not be willing to co-operate in executing the decision, but in such cases the kebele administration may take its own measures so as to execute the decree. But this is done

only if the person does not appear and he is not willing to execute the decision.

Unusual conditions are observed in execution in some kebeles. In one kebele the execution was done in the kebele office. Both parties came to the kebele on Saturday. The person against whom the decision is given comes to the kebele office and pays the money to the person who has won the case. In this particular case the kebele social court itself was the executive body. Nevertheless, the power to execute is with the kebele administration and not under the social courts.

Execution proceeding may not be necessary when the judgment debt or satisfies the decree voluntarily. But on other hand if he does not satisfy the decree voluntarily, the other party may be forced to apply to the social courts for the execution. But application for the execution is not usually found in the kebele social courts. This reveals that there is no problem in the execution of decree in the kebele social courts.

Up to now what we have tried to see is cases mostly concerned with civil matters. Though the social courts deal mostly with civil matter, they also see criminal matters. These criminal matters are rare and most of them are sent to the social courts by woreda court prosecutors although this does not happen today as often as it did under the formal social courts.

Generally, the functions of the kebele social courts are not conducted according according to strict procedure . They are simply done by the kebele social courts personnel using a great deal of discretionary power. But this discretionary power is useful in settling disputes which arise among the kebele dwellers. The non- judicial functions of former social courts are now performed fully by the kebele resident's service department.

### **3.2 participation of the people in the court.**

The function of the kebele social courts is undertaken with participation of the people in the court litigation.

Participation of the people in the litigation, which is a recent idea in the administration of justice, was primarily practiced in the socialist countries. Participation of the public is the product of the socialist state.

It was designed to serve the socialist socio economic formation. Participation of the people in the judicial process may be seen through different angles. First, it may signify the participation of the people in the election of the judges. This in a sense means that the people are recruiting their own judges. A part from this participation might be seen broadly so as to include the participation of the peoples not only in the election process but also in the litigation process that is forwarding ideas which might be useful to the case. The judges' discretionary power to accept or not to accept the ideas is in their hand. But presumably they will accept the idea if they find it useful.

Participation of the people in the administration of justice in the social courts of Addis Abeba ceases at the election of the judges. Participation of the people after election is non existent. In most cases with some exceptions, the litigation is under taken only by the parties in front of the social court judges. Person who came to the social court as litigants, as witnesses, or as accused stay out of the court room until they are called by the court for their own case. The people are not involved in the litigation process. They prefer to stay out than to hear cases in the kebele social courts.

The reason for this is many. One of the reasons is that the people are not allowed to give their opinion. The kebele officials mistrust, the people who came to kebele and for this reason individuals do not want to appear in kebele social courts . The belief that justice is to flow from the fountain of the power holder is still prominent in the minds of many individuals. There is always fear whenever one meets an official.

An interview with a defendant in a kebele court strengthened the above idea. The person said that whenever I go there to for a certain

purpose I do not feel comfortable so that unless there is no choice , I don't wish to go to kebele at all.

The second reason is that the kebele administrative organ or the social court personnel do not encourage the people to participate in the litigation. In some kebeles it was observed that judges were asking the people to stay out of the court room.

Considering such conditions together with the previous conception of kebele justice's administration prevalent during the last regime, the kebele court room has become like an investigation room of the police rather than a place where justice is administered. It does not have the spirit of a court room. One can say that after the people had participated in the election of the social courts judges, their participation is hardly there and hence one can say that there is no participation in the process of litigation.

The participation of the people in the election process is not as it should be. The reason is that the people do not come to the election center unless there is fear or they are interested in the election. As to the fear it is better these days than it had been before. The present day problem in the election is that the people think that going to elect kebel administration and judge is meaningless. Most of the interviewed individuals do not realize election in their absence will determine their cases.

The judge sits in the court room not only to see matters which may come from the persons who elected them but also to see matters from the persons who don't elect him. .

The emergence of such courts is not a new phenomenon as it was discussed in the previous chapters. Higher and advanced participation could not be expected from the people. The people's way of thinking about the kebele, the conduct of the personnel of the courts and all other conditions can be improved in the future. Though participation of the people in the social court is hardly there, it doesn't mean that social

courts are unnecessary. Times may change and improve the conditions which will make these courts true representatives of popular opinion .

As far as the law is concerned, the proclamation to establish these courts does not have provision as to the participation of the people. But the previous proclamation to establish social courts clearly required participation of people with the view to promote justice. One may say that having such a provision really make a change. A term or a phrase put in law is kind of declaration as to its existence. The people may come and be able to participate in the kebele social courts. if a provision is included in the proclamation. On the other hand, by having such provision in the proclamation one may be encouraged to exercise it without any fear.

## **CHAPTER FOUR**

### **4 Importance and actual problems of the social courts**

In the history of Ethiopian administration of justice social courts is new. They emerged as a result of an attempt to establish socialist Ethiopia. Though it was called by the name of 'Fird shengo' it is the proto- type of what is known as social court. The former Fird Shengo was acting just like the present time social courts.

Improvements in the social courts have been made with a change in the power of the courts. Due to the complexity of human relation the changes do not completely eradicate all the problems. Even though the social courts have many problems. They have a significant role in justice administration. Among these is the fact that they try to involve the people in the court .There is also utilization of knowledge and local realism and finally they have a role facilitating peaceful settlement of disputes .

#### **4.1 Knowledge of facts and local relations**

A judge may give sound decisions, not only when he knows the procedural and substantive laws, but also when he knows the existing case properly. A judge should have to know the matter properly to give an opinion concerning the case at hand. The knowledge of the case at hand may be acquired from different sources. It could be acquired from witnesses, from the parties, claims and responses, or from the perception of the situation. Most of the time the court's try to settle the disputes peacefully.

A judge of kebele social court is a member of the kebele. In most cases the people found in a kebele spend most of their time in their kebele. Living in the place where the dispute may arise helps the judges to collect the necessary facts without sitting in the court. Besides he may know, about the case by taking, into consideration the conduct of the



parties in their kebeles, this enables the judge to know about the case outside the court room.

Utilization of knowledge of local relations is highly used in the kebele social courts. They may not be persuaded as the other regular court may be production of false evidences.

In the practicing of dispute settlement the kebele social courts have a better position than the regular courts. And they take a shorter time to conclude cases.

As discussed in chapter three, the function of social courts is more inclined to arbitration and conciliation rather than rendering judgment. They usually try to settle dispute by compromise.

#### **4.2 Duration of trial**

Decision given in a possible short time makes people happy in respective of winning or losing . Because of the short time used both parties are satisfied. Speed in trial is not always true in Ethiopia. Delay occurs due to the nature of the case or the act of the judges. Since there is no strict procedure as to the hearing and decision rendering, we come across with almost no adjournment in most cases. They hear the case and may give decisions immediately if the case is found to be easy.

Above the social courts are the residents of the kebele. This condition gives the opportunity to residents, to change the judge who is incapable. This power of correction of social courts satisfies the litigants.

#### **4.3 Importance of finance**

Social Courts in addition to the condition indicated above, have a great importance in terms of financial implication.

Responsibility of kebele resident's .As far as their case in handled by the social courts, the people can save the money which they could spend in regular litigation. There is no cost for the people to bring their cases to the kebele social courts .This facility on the other hand will encourage people to come to the social courts. As fare as the court treats the wealthy and the poor equally, there is no fear of the burden of cost lying

the poor. As a result, the people do not hesitate to bring their cases to these courts.

#### **4.4 Difficulties faced by kebele social courts**

There are always strengths and weakness in any institution. The social courts are not an exception. Institutions do not always fulfill their objectives as perfectly as should. This is the normal weakness of any institution. Usually the problems may arise either from the formation of the institution or caused by the personnel of the institution. This problem of social courts shall be discussed as follows.

##### **4.4.1 problems caused during inception**

These are problems that arise as a result of the formation of the social courts. Two major problems could be shown in relation to this formation, problems related to empowerment and problem related to participation.

##### **4.4.2 problem related to empowerment**

As we have seen in the proclamation the empowerment of the social courts to hear and decide on cases is limited its or jurisdiction is limited . If it is a civil matter it used to be up to 500 Birr but under the present social courts it is up to 5000 Birr. Whereas the previous social courts handled criminal case up to a fine of 300 Birr criminal cases under the present law can not be seen by the Addis Ababa social courts.

In addition there is also a problem in the working hours of judges. Since the judges are not full time judges they are not always available, although the kebele administration is always open at regular working hours.

As a result of this the kebele administration itself handle cases .The kebele executive and the kebele manager are handling cases .

We can conclude that administration justice falls in the wrong hands in a person who should not be involved. Taking this situation into consideration ,one can reach the conclusion that these social courts are not reliable It is necessary to conclude that if the kebele executives

and managers see cases social courts are not fulfilling their roles as given by law.

#### **4.4.3 Problems of active participation.**

Social courts are known for encouraging that the people actively participate in the courts. Their peculiar nature is the participation of the people actively in the litigation process. And this can be done in two ways. First, the law may state that the people have the right to participate, to forward their ideas and to ask questions. But the law fails to give details. The second method is for the kebele social courts and the kebele administration to encourage the people to participate in the litigation, so that they could feel it is their own affair. This important activity should be done by both the law and the social courts. Its name only can not suffice to call it a Social Court. It should show its peculiar nature which may makes it social.

#### **4.4.4 Problem created by the personnel of the kebele**

Questions of judicial independence is not only a matter of being under the supervision of the executive but also the question may arise because of weakness of the judges .

In the social courts of Addis Ababa the independence of the judges is related to the personal qualities of the person who has assumed the position.

The independence of the judiciary derives from political philosophy and is included in the FDRE Constitution and an attempt is made to insulate the judges from executives and administrative pressure of , and other external pressure.

The judgment of social courts may be affected directly by pressure of the neighborhood. One may have a closer contact with a judge than the other party. This can affect the decision given by the judge.

#### **4.4.5 Problems in the implementation of laws**

The people found in most Kebles do not know of the existence of the social courts. Therefore, they do not come to elect the judges. From

interviews and observations it is possible to conclude that kebele dwellers do not actively participate in the social court system.

The other major problem is that most people do not know where to bring their dispute .They are not able to distinguish whether they should lodge their claim in the kebele administration of the social courts. For this reason there is a practical problem in most of the kebeles. There is no clear demarcation between the administrative organ and the judicial organ. When the executive interferes it may hamper the independence of the judges.

## **Conclusions and Recommendations**

Social Courts are judicial institutions established to hear and dispose of minor cases. Beginning with their name, these organs play an important role in various countries throughout the world. Usually these courts are structured as the lowest level courts.

Among the reasons for creating social courts are enhancement of public participation through the promotion of the idea of self administration, by bringing the courts close to the society. The educational role of helping to promote social ethics and promote a smooth and peaceful neighborly relationship and encouraging communication and reconciliation is another purpose.

In the history of Ethiopian administration of justice such institutions appeared for the first time on 1946 through the establishment of the Atbia Dagna. Towards the end of the Dergue regime in 1989, the term social courts was directly introduced to identify these organs, and this name is still used at the present time throughout the country.

The social courts of Addis Ababa are among these. The House of People Representatives promulgated a proclamation to empower the city council to establish social courts through law. Based on such law, the council also enacted regulations.

Nevertheless, the legislation is not free from defect. Primarily these courts are not envisaged by the FDRE constitution of 1995. They may be subject to corruption by engaging in private initiative hence the law of the city council must be revised or re-visited.

From the perspective of the proclamation enacted by the house of people representatives, the presence of right of appeal is not clear.

The house must revise such appeal provisions so that the people can lodge their appeal to the ordinary courts of law pursuant to Article 20(6)

of the FDRE constitution. Then the question is how should such an appeal operate?

In my opinion, I don't think that there should be a re-trial before the upper level court. This would defeat the major purpose of the creation of the social courts, which is relieving the ordinary courts from their excessive burden. Hence, it is better to involve them at the stage of receiving grievances from the decisions of the social courts. But there is one sensitive issue which may arise. The social courts do not follow the normal procedural law. In most cases, they decide by equity, for they do not even have the knowledge of the law. If the appellate court is going to question the absence of procedure, it may lead to all decisions being revised. Thus it shall be important for the appellate judge not to consider conformity with the procedure rules as being indispensable for the final resolution of the case. If the social courts have dealt with the subject matter, non-compliance with procedure should not be a ground of reversal of the decision.

In fact it may also be possible to remand the case to the social court itself with some directions.

What we have said up to now would enable the social courts to maintain their legal status. However, rectification of their practical problems is needed. Due consideration should be given towards promoting the legal knowledge of the judges of the social courts. It is evident that judicial practice of any sort requires academic or practical legal training. In this regard, the courts are suffering from lack of competence in understanding the law, in complying with the procedural rules, and thereby give erroneous decisions. To combat such problems, it is necessary to arrange many workshops.

Obliging the social courts to report to the first instance court and discuss with the judges whatever legal matters are deemed pertinent may help to improve the situation. There should also be arranged certain mechanisms of giving elementary legal training to the judges after they

are assigned as a members of the courts. The senior students of law found in different universities can extend their assistance in this respect. This scheme may also give the students opportunity to practice what they learned in class theoretically, and develop their capacity to deal with the reality out of the campus.

Once the personnel of the social courts have improved their legal knowledge and skill, other practical problems such as exercising power in excess of jurisdiction and problems related to enforcement by other organs may be reduced.

What is more is that the transparency aspect must be taken into account if the social courts are to attain the purpose for which they were established. There should be mechanisms and wide opportunities for the involvement of the public in the administration of justice before these institutions, which may be taken by various responsible bodies starting with judges themselves. The Addis Ababa city administration council must fix a uniform date and time of proceedings throughout the courts preferably outside working days and hours. This may not affect the judges much for, as I have proposed herein above, the students would get at least, some pocket money for the service they are rendering. The kebele administration shall also do what is necessary to have the public attend the proceedings and actively participate.

I hope that with the realization of these improvements, the society would continue to have the social courts in the administration of justice.

## **Acknowledgment**

First of all, what shall I render unto the Lord for his benefit towards me? I can say only thanks unto God for his unspeakable gift. The same is to his mother, Virgin Merry – (Ps 116, 12, Con 9:15)

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## **Bibliography**

### **I Books**

1. Sedler, Robert Allen. The development of the legal system the Ethiopian Experience ,(un published ), (1967)
2. Ville ,M,J.C Constitutionalism and Separation of Powers
3. Lenia, V.I State and Revolution ( N.Y.1932)
4. Hazard, John The soviet Legal System
5. Hotten ,J.C Abyssinia and its people (1886)

### **II Addis Abba city Administration Kebele social courts establishing Regulation, 1997, Regulation No2 Addis Negarit Gazeta ,Year 1 N° 2**

1. Addis Ababa city government Charter 1997 Proclamation N°87 , Federal Negarit Gazeta year 3 N° 52
2. Constitution of Federal Democratic Republic of Ethiopia 1995 proclamation 1989 proclamation N°37, Negarit Gazeta, Year N°1
3. Social courts establishing proclamation of Region 14 ,1993 proclamation N° 4 Addis Negarit Gazetta year 1 N° 4
4. Urban Dwellers Association Consolidation and Municipalities Proclamation , Proclamation No104,1976, Negarit Gazetta year 36, N° 5