

# የኢትዮጵያ ፡ ሕግ ፡ መጽሐት ። JOURNAL OF ETHIOPIAN LAW

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ቦጋ ፡ ፲፱፻፶፮ ፡ ዓ . ም .

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ገዳር ፡ ፲፭ ፡ ቀን ፡ ፲፱፻፶፯ ፡ ዓ. ም. ከቀዳማዊ ፡ ኃይለ ፡ ሥላሴ ፡ ዩኒቨርሲቲ ፡ የሕግ ፡ ፋኩልቲ ፡ ከኤክስቴንሽን ፡ ክፍል ፡ ለመዝገመሪያ ፡ ጊዜ ፡ ተመርቀው ፡ ለወጡት ፡ ተማሪዎች ፡ ያደረጉት ፡ ንግግር ።

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ሕግን ፡ ሥራ ፡ ላይ ፡ ለማዋል ፡ ሰው ፡ ያስፈልጋል ። የፍትሕ ፡ ብሔር ፡ የወንጀለኛ ፡ የንግድና ፡ ሌሎችም ፡ ሕጎች ፡ እንደዚሁም ፡ በፓርላማ ፡ ተመክሮ ፡ በመንግሥት ፡ የሚታወጁትን ፡ ዐዋጆች ፡ ሥራ ፡ ላይ ፡ የሚያውላቸው ፡ ሰው ፡ ካላንጉ ፡ ከንቁ ፡ ጽሑፎች ፡ ሆነው ፡ ይቀራሉ ። አሁን ፡ ኢትዮጵያ ፡ ከዓለም ፡ ውስጥ ፡ ዘመናዊ ፡ የሆነ ፡ የሚያከራ ፡ ሕግ ፡ አላት ፡ ለማለት ፡ ያስደፍራል ። ያስደስታልም ። ንገር ፡ ግን ፡ እንደ ፡ ሕጉ ፡ መሻሻል ፡ መጠን ፡ የሕግ ፡ ባለሞያዎች ፡ በትምህርታቸውና ፡ በሥራቸው ፡ የሠለጠኑና ፡ የተጠናቀቁ ፡ መሆን ፡ አለባቸው ። የሕግ ፡ መሻሻል ፡ ያገር ፡ መሻሻል ፡ የተያያዘና ፡ የተግመረ ፡ ነው ።

በዳኝነት ፡ እውነትን ፡ መፈለግ ፡ ለሥራም ፡ ምርጥ ፡ ሰው ፡ መፈለግ ፡ ግዴታ ፡ ነው ። የሚመረጠውም ፡ ሕግን ፡ ከተማሩና ፡ ከራሳቸው ፡ ሥራቸውን ፡ ከሚያበልጡ ፡ መካከል ፡ ነው ። ጠበቃም ፡ በውነት ፡ ከሠራ ፡ ዳኛ ፡ ነው ።

ትምህርታችሁን ፡ በምትማሩበት ፡ ጊዜ ፡ እያጋጠማችሁ ፡ እተማሪ ፡ ቤታችሁ ፡ አንዳንድ ፡ ቦታ ፡ ላይ ፡ ደርሰን ፡ ተመልክተናል ። ካሁን ፡ በፊት ፡ ብዙ ፡ ጊዜ ፡ እንደ ፡ ተናገርንው ፡ ሰው ፡ ከሕግንተቱ ፡ ጀምሮ ፡ በማር ፡ የበለጠ ፡ ነው ። በኋላም ፡ በሽምግልና ፡ ጊዜ ፡ በሚገር ፡ ፈቃድን ፡ የሚያበረታና ፡ ፈቃድ ፡ እያሸነፈው ፡ ትምህርትን ፡ ለማጠራቀም ፡ የሚቻል ፡ መሆኑም ፡ በዓለም ፡ ላይ ፡ የታወቀ ፡ ነው ። ብዙ ፡ ጊዜ ፡ የተናገርንው ፡ ከንቁ ፡ ሆኖ ፡ አልቀረም ፡ አሁን ፡ እደረሳችሁበት ፡ ላይ ፡ በርትታችሁ ፡ በመማራችሁ ፡ የተናገርንው ፡ ሁሉ ፡ እድንጋይ ፡ ላይ ፡ እንደተዘራ ፡ አይቈጠርም ። እለምለም ፡ መራት ፡ ላይ ፡ በቅሉ ፡ አፍርቷል ፡ ለማለት ፡ ይቻላል ።

ይሸም ፡ ገና ፡ ወደፊት ፡ እንዲሰፋፋ ፡ ተስፋችን ፡ ታላት ፡ ነው ። እናንተም ፡ የዛሬ ፡ ተመራጭዎች ፡ ይህን ፡ በመገንዘብ ፡ የገጠማችሁን ፡ ልዩ ፡ ልዩ ፡ ችግር ፡ ሁሉ ፡ አልፋችሁ ፡ ለዚህ ፡ ደረጃ ፡ በመድረሳችሁ ፡ በጣም ፡ ደስ ፡ ብሎናል ። ሌሎችም ፡ የናንተን ፡ እርምጃ ፡ ተከትለው ፡ ትምህርታቸውንና ፡ አገልግሎታቸውን ፡ ለማሻሻል ፡ መሞከራቸው ፡ የሚያስመስግናቸው ፡ ነው ።

ሌሎችም ፡ ይህን ፡ ምሳሌ ፡ እንዲከተሉ ፡ ተስፋ ፡ የማድረግበት ፡ ነው ። በቅርብ ፡ ጊዜ ፡ ውስጥ ፡ የሕግ ፡ ዴሞራሲ ፡ የተቀበሉት ፡ ኢትዮጵያውያን ፡ ጠበቆች ፡ ቁጥር ፡ እጥፍ ፡ ሊሆን ፡ መቻሉን ፡ ስናስብ ፡ መንፈሳችን ፡ የሚረካው ፡ ወደፊት ፡ የሚመጣውን ፡ የበለጠ ፡ በብዛት ፡ እንዲገኝ ፡ ያደርገዋል ፡ በማለት ፡ ነው ። ዛሬም ፡ በመካከላችሁ ፡ ዳኞችና ፡ የሕግ ፡ አስከባሪዎች ፡ ኩፍ ፡ ባለ ፡ ቁጥር ፡ በመገኘታቸው ፡ አገልግሎታቸው ፡ ትጋት ፡ ያላየናል ።

ትምህርት ፡ በሰው ፡ ዕድሜ ፡ ውስጥ ፡ የማያቋርጥ ፡ ገበያ ፡ ነው ። ጋብቻ ፡ ሥራ ፡ መያዝ ፡ ጉጂ ፡ መውጣት ፡ በዕድሜ ፡ መቁየት ፡ እንዚህ ፡ የትምህርትን ፡ ገበያ ፡ ሊያቋርጡት ፡ ወይም ፡ እንደማይታለፍ ፡ ዕንቅፋት ፡ ሊቂጠሩ ፡ አይገባም ።

ለዚህም ፡ እናንተ ፡ ራሳችሁ ፡ ምስክሮች ፡ ናችሁ ። በትምህርት ፡ ራሳችሁን ፡ በማሻሻል ፡ ለባለጉላዩ ፡ የታቀርቡትን ፡ አገልግሎት ፡ ከማሻሻላችሁም ፡ በላይ ፡ አገራችሁን ፡ በጠቅላላው ፡ አሻሽላችኋል ፡ ለማለት ፡ ይቻላል ። እናንተ ፡ እንደዚህ ፡ ለማሻሻል ፡ ስትበረቱ ፡ በተማሪ ፡ ቤት ፡ ትምህርት ፡ እንዲገባዩ ፡ የሰበሰብናቸውን ፡ ልጆች ፡ ሁሉ ፡ ለትምህርታቸው ፡ ያጠነክራቸዋል ። ልጆቹም ፡ ተምረው ፡ በወጡ ፡ ጊዜ ፡ አባቶቻቸውን ፡ ሊነቅጁቸው ፡ እይታሉም ፤ አባቶችም ፡ የትምህርት ፡ ዕድሜያቸው ፡ ካለፈ ፡ በኋላ ፡ ተምረዋልና ፡ ይልቁኑም ፡ ሊያከብሩባቸው ፡ ይቻላሉ ።

ይህም ፡ የደረሳችሁበት ፡ ደረጃ ፡ እንደየሥራችሁ ፡ በቂ ፡ ታዋቂነት ፡ ሊሰጠው ፡ ይገባል ። እናንተን ፡ በሞያችሁ ፡ ሌላውም ፡ ሁሉ ፡ በየሞያው ፡ ራሱን ፡ የማሻሻል ፡ የትምህርት ፡ መንፈስ ፡ ሲያድርበት ፡ ( አገልጋይነቱ ፡ የተሻሻለ ፤ ራሱንና ፡ ኢትዮጵያንም ፡ ለመተቀም ፡ የሚችል ፡ ዜጋ ፡ ይሆናል ። እግዚአብሔር ፡ ወደፊት ፡ እናንተንም ፡ ያበርታችሁ ፡ ሌላውንም ፡ ተማሪ ፡ ቤት ፡ ያሰብንበትን ፡ እንዲበረታታ ፡ ያደርገው ።

**HIS IMPERIAL MAJESTY'S**  
**Remarks to the First Graduating Class of the**  
**EXTENSION PROGRAM at the FACULTY OF LAW**  
**HAILE SELASSIE I UNIVERSITY**

November 24, 1964

We are indeed pleased to congratulate this class who have today received Certificates in law from the University — and to the teachers who have made your accomplishment possible by planning, organizing and carrying out of this pioneer project.

You may rightly take great pride in your accomplishment, just as We do.

The administration of justice, in a modern state, demands well trained qualified persons at every level. The introduction of the codes and the revised Constitution of Ethiopia, as well as other legislation continuously coming from Parliament and the Government, has dramatically changed Ethiopia's legal system. The law of the Empire is now modern, complex and scientific in the sense that it has been prepared by experts after careful study. The administration of the law of the Empire increasingly demands highly trained persons.

In a real sense the development of the nation depends upon the development of our legal institutions.

The proper administration of justice requires a research for truth, therefore, the judicial function requires highly selected men. Judges shall be chosen from among those who studied law, and who sacrifice their personal interests to their duties.

An advocate who discharges his duty honestly is a judge. So the need for persons trained in law is obvious.

Thus We are pleased to learn that others are following hard upon the footsteps of this class. We are pleased to know that soon the number of Ethiopian lawyers holding a university degree in law will be virtually doubled.

We are especially pleased to see that so many judges and other civil servants and advocates are taking time to continue their education even as they continue to perform their regular daily duties.

Education is an ongoing task. The obligation to improve oneself does not cease simply because one has a regular job. This is certainly true for those who work in the administration of law and in legal counselling. We would urge that these persons must do all they can to improve, continuously, their professional capacities through further study.

Members of this graduating class: by sacrificing your time you have advanced yourselves and the nation.

We are confident that the qualification you have earned today will be recognized within the legal profession. We believe it should. We believe, too, that the professional attainment to be achieved by other students now studying law in other programs of the Law School must be recognized.

Ethiopia needs a modern legal profession just as she needs the modern legal system she is building. The one cannot exist without the other.

You — all of you who are taking University training in law — are helping in the task of building a profession.

I congratulate you. I congratulate this class: take pride in what you have done by serving with continuing zeal and loyalty the Law of Our Empire.

*Complete text as reported in the Ethiopian Herald, November 25, 1964. ed*

የኢትዮጵያ ሕግ፣ መጽሔት፣ ጠባቂዎችና፣ ደጋፊዎች ።

በሰለ፡ ኢትዮጵያ፡ የሕግ፡ አቋም፡ መሻሻል፡ ጠቃሚ፡ ደረጃ፡ መሆኑን፡ በመግመት፡ ግርማዊ፡ ቀዳማዊ፡ ኃይለ፡ ሥላሴ፡ መልካም፡ ፈቃዳቸው፡ ሆኖ፡ ግንቦት፡ ፴፡ ቀን፡ ፲፱፻፶፮፡ ዓ፡ ም፡ የኢትዮጵያ፡ ሕግ፡ መጽሔትን፡ መቋቋም፡ መሠረቱ ። መጽሔቱ፡ ሥራውን፡ እንዲቀጥልና፡ ተግባርን፡ እንዲያስፋፋ፡ ፍላጎት፡ ያደረገቸው፡ ሰዎች፡ ሁሉ፡ የመጽሔቱ፡ ጠባቂና፡ ደጋፊ፡ እንዲሆኑ፡ የመጽሔቱ፡ አዘጋጅ፡ ቦርድ፡ ጋበዘ ። በማብዛውም፡ መሠረት፡ ስማቸው፡ ከዚህ፡ በታች፡ ተዘርዝሮ፡ የሚገኙት፡ የኢትዮጵያ፡ ሕግ፡ መጽሔት፡ ጠባቂዎችና፡ ደጋፊዎች፡ ሆነዋል ።

ክቡር፡ አፈ፡ ንጉሥ፡ ቅጣው፡ ይታጠቁ፡  
የተከበሩ፡ አቶ፡ በሻሕ፡ በላይነህ፡  
የተከበሩ፡ ብላታ፡ ማትያስ፡ ህሉተ፡ወርቅ፡  
የተከበሩ፡ አቶ፡ሐጉስ፡ተወልደ፡ መድኃን  
የተከበሩ፡ ብላታ፡ ኃይሌ፡ ወልደ፡ ኪዳን፡  
የተከበሩ፡ ዶክተር፡ ዊልያም፡ ቡሐጂያር፡  
የተከበሩ፡ አቶ፡ ንጉሤ፡ ፍትሐ፡ አወቀ፡

ክቡር፡ ደሐፊ፡ ትእዛዝ፡ አክሊሉ፡  
ሀብተ፡ ወልድ፡  
ክቡር፡ ቢትወደድ፡አስፍሃ፡ወልደ፡ሚካኤል፡  
ክቡር፡ አቶ፡ ማሞ፡ ታደሰ፡  
ክቡር፡ ኩ/ለገሠ፡ ወልደ፡ ሐና፡  
ክቡር፡ አቶ፡ ሰዩም፡ ሐረጉት፡  
ክቡር፡ አቶ፡ አሰፋ፡ ገብረ፡ ማርያም፡  
ክቡር፡ ደጃዝማች፡ ብርሃን፡ መስቀ፡ ወልደ፡  
ሥላሴ፡

ክቡር፡ አቶ፡ ከተማ፡ አበበ፡  
የተከበሩ፡ የመ/አ፡ ግርማ፡ ወ/ጊዮርጊስ፡

አቶ፡ ለማ፡ ወልደ፡ ሰማያት፡  
አቶ፡ ለገሠ፡ አበበ፡  
ዶክተር፡ ማርሼሉ፡ ሎምባርዲ፡  
ሚስተር፡ ሲቲፕን፡ ሎውንስቲን፡  
ሚስተር፡ ኤን፡ ሐማዊ፡  
ሚስተር፡ ጂ፡ ሐማዊ፡  
አቶ፡ መንገሻ፡ ወልደ፡ አማኑኤል፡  
አቶ፡ መስፍን፡ በርሄ፡  
አቶ፡ መስፍን፡ ፋንታ፡  
አቶ፡ መዊኤል፡ መብራቱ፡  
አቶ፡ መኩንን፡ ተሰማ፡

አቶ፡ ሙሉጌታ፡ በሪሁን፡  
አቶ፡ ሙሉጌታ፡ ወልደ፡ ጊዮርጊስ፡  
አቶ፡ ሚካኤል፡ ፋሲል፡  
አቶ፡ ማህሙድ፡ ኑርሁ፡ ሳይን፡  
ሌ/ኩ፡ ምህረት፡ ገብረሰላም፡  
ሚስተር፡ ኬኔት፡ አር፡ ሬደን፡  
ዶክተር፡ ሳባ፡ ሀባቼ፡  
ሚስተር፡ አራኪል፡ ሳካድጅያን፡  
ሚስተር፡ ሮበርት፡ ኤ፡ ሴድለር፡  
ስኮት፡ እና፡ ስኮት፡ የሕግ፡ ጠበቆች፡  
አቶ፡ ቀንዓ፡ ጉማ፡



አቶ፡ በለጠ፡ ወልደ፡ ሥላሴ፡  
 አቶ፡ በላቸው፡ አሥራት፡  
 አቶ፡ በላይ፡ ጦንገሻ፡  
 ወይዘሮ፡ በልዩ፡ ወርቅ፡ ገብረ፡ መስቀል፡  
 ሚስተር፡ ረስል፡ በርማን፡  
 አቶ፡ በቀለ፡ ሀብተ፡ ሚካኤል፡  
 ደጃዝማች፡ በቀለ፡ በየን፡  
 አቶ፡ በቀለ፡ ተስፋዬ፡  
 አቶ፡ በቀለ፡ ናዲ፡  
 አቶ፡ በቀለ፡ ደምቤ፡  
 አቶ፡ በቀለ፡ ገብረአምላክ፡  
 አቶ፡ ቡልቻ፡ ደመቅባ፡  
 ሌ/ኩ፡ ብርሃን፡ ወልደየስ፡  
 አቶ፡ ብርሃኔ፡ ክፍለ፡ ማርያም፡  
 አቶ፡ ተረፈ፡ ገሠሠ፡  
 አቶ፡ ተፈሪ፡ ለማ፡  
 አቶ፡ ተፈሪ፡ ብርሃኔ፡  
 አቶ፡ ተፈሪ፡ ምትኩ፡  
 አቶ፡ ተፈሪ፡ ደገፋ፡  
 አቶ፡ ተሰማ፡ ጐሹ፡  
 አቶ፡ ተሰማ፡ ወልደ፡ ዮሐንስ፡  
 ባላምባራስ፡ ተሰማ፡ ወንድምነህ፡  
 ፊታውራሪ፡ ተስፋ፡ ማርያም፡ ስብሀት፡  
 አቶ፡ ተስፋ፡ ጽዮን፡ ኢያሱ፡  
 አቶ፡ ተስፋዬ፡ ከበደ፡  
 አቶ፡ ተስፋዬ፡ ዱባለ፡  
 ባላምባራስ፡ ተሾመ፡ ገታው፡  
 አቶ፡ ተሾመ፡ ኃይለ፡ ማርያም፡  
 አቶ፡ ተሾመ፡ ገብረ፡ ማርያም፡  
 ቀኛዝማች፡ ተገኘ፡ ሐበጄ፡

አቶ፡ ታደሰ፡ ተክለ፡ ጊዮርጊስ፡  
 ሚስተር፡ ማይክል፡ ቶፒንግ፡  
 አቶ፡ ኃይለ፡ ሥላሴ፡ አውላቸው፡  
 አቶ፡ ኃይለ፡ ልዑል፡ ሀብተ፡ ጊዮርጊስ፡  
 አቶ፡ ኃይሉ፡ ሸንቁጤ፡  
 ካፕቴን፡ ኃይሉ፡ አርሰዴ፡  
 አቶ፡ ነብየ፡ ልዑል፡ ክፍሌ፡  
 አቶ፡ ነጋ፡ ተሰማ፡  
 አቶ፡ ነጋሽ፡ ይፍሩ፡  
 ቀኛዝማች፡ ኑረዲን፡ ዘይን፡  
 አቶ፡ ንርአዮ፡ አ.ማይያስ፡  
 ሌ/ኩ፡ አሀመድ፡ አሚኑ፡  
 ሼክ፡ አሀመድ፡ አስማን፡  
 አቶ፡ አሊ፡ አም፡ ስበርሃቱ፡  
 አቶ፡ አመዴ፡ ለማ፡  
 አቶ፡ አማረ፡ ደግፌ፡  
 አቶ፡ አማኑኤል፡ ዐምደ፡ ሚካኤል፡  
 ሚስስ፡ ማሪካ፡ አርቫኒቶፖሎ፡  
 አቶ፡ አሰፋ፡ ሊበን፡  
 አቶ፡ አሰፋ፡ መታፈሪያ፡  
 አቶ፡ አስፍሃ፡ ካማዬ፡  
 አቶ፡ አበራ፡ ጀምበሬ፡  
 አቶ፡ አባተ፡ ወንድምአገኘሁ፡  
 አቶ፡ አክሊሉ፡ ቤተ፡ ማርያም፡  
 አቶ፡ አክሊሉ፡ አጥላባቸው፡  
 አቶ፡ አደራ፡ ፍራንሲ፡  
 አቶ፡ አድማሴ፡ ገሠሠ፡  
 አቶ፡ አድነው፡ ኃይለ፡ ሚካኤል፡  
 አቶ፡ አድነው፡ ኪያኔ፡  
 አቶ፡ አጽብሀ፡ ፋንታ፡

አቶ፡ ኢየሱ፡ ገብረ፡ ሐዋርያት፡  
 ዶክተር፡ ኢየብ፡ ገብረ፡ ክርስቶስ፡  
 ደጃዝማች፡ ኢድሪስ፡ ለጃም፡  
 ዶክተር፡ ሞሪስ፡ ጂ፡ ኤሊዮን፡  
 አቶ፡ እሸቲ፡ ብርሃኔ፡  
 አቶ፡ እንዳለ፡ መንገሻ፡  
 አቶ፡ እንዳለ፡ ወልደ፡ ሚካኤል፡  
 አቶ፡ ከበደ፡ ከልል፡  
 አቶ፡ ከበደ፡ ገብረ፡ ማርያም፡  
 አቶ፡ ካሣ፡ በዩነ፡  
 ዶክተር፡ ስታንሊ፡ ኪርቦር፡  
 ሚስተር፡ ማይክል፡ ኬንድረድ፡  
 አቶ፡ ወልደ፡ አማኑኤል፡ ወ/ማርያም፡  
 አቶ፡ ወልደ፡ ልዑል፡ ስዩም፡  
 አቶ፡ ወልዱ፡ በርሄ፡  
 አቶ፡ ውቤ፡ ወልደየስ፡  
 ሚስተር፡ ፍራንክ፡ ዲ፡ ዊንስተን፡  
 አቶ፡ ዋቅጅራ፡ ቦንሣ፡

አቶ፡ የሸዋ፡ ወርቅ፡ ኃይሉ፡  
 አቶ፡ ይልማ፡ ኃይሉ፡  
 ሌ/ኩ፡ ደማ፡ ዘንግ፡ እግዚር፡  
 አቶ፡ ደስታ፡ ገብሩ፡  
 ሚስተር፡ ጂ፡ ኤን፡ ደባስ፡  
 ባላምባራስ፡ ገመዳ፡ ኡርጌሣ፡  
 ቀኝ፡ ጌታ፡ ገብረ፡ ሐና፡ ቅጣው፡  
 ባሻ፡ ገብረ፡ መስቀል፡ ዘዩሱ፡  
 አቶ፡ ገብረየሱስ፡ ኃይለ፡ ማርያም፡  
 አቶ፡ ጌታቸው፡ አስፋው፡  
 አቶ፡ ጌታቸው፡ ክብረት፡  
 ዶክተር፡ ፊ፡ ግሪቮን፡  
 አቶ፡ ጎይቶም፡ በይን፡  
 አቶ፡ ጸጋዬ፡ ተፈሪ፡  
 ሚስተር፡ ስታንሊ፡ ፊሸር፡  
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## REPORTS

The following are twelve cases decided by the Supreme Imperial and the High Courts of Ethiopia. The Amharic judgment is official and always precedes the English. It is important to note that in those cases heard before mixed benches of both Ethiopian and foreign judges, separate opinions are written in Amharic and in English. These opinions are not translations of one another, but are independent judgments based upon common agreement among the judges as to the principles and final outcome of each case. In addition, dissents from the majority decisions are published in three of the cases immediately after the majority opinions in Amharic and in English.

ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፤

አንደኛ ፡ ችሎት ።

መኪንን ፡ ወልደየስ ፡ ይግባኝ ፡ ባይ ፤ ዐቃቤ ፡ ሕግ ፡ መልስ ፡ ሰጭ ።

የወንጀል ፡ ይግባኝ ፡ ቊጥር ፡ ፲፻፴፭/፶፬ ፡ ዓ. ም ።

የወንጀለኛ ፡ መቅጫ ፡ ሕግ — በቸልተኛነት ፡ ስለመበደል — “የሟያ ፡ ተግባር” የሚለው ፡ አነጋገር ፡ ትርጉም — የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ አንቀጽ ፡ ፳፻፳፮ ።

የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት — የክስ ፡ ማመልከቻ ፡ ዝርዝር ።

የአቀድሞ ፡ ኃጂ ፡ የኾነው ፡ ይግባኝ ፡ ባይ ፡ አውራ ፡ ጉዳዩ ፡ በደንብ ፡ በማይታይበት ፡ ወቅት ፡ ከፊት ፡ ያለውን ፡ መኪና ፡ እቀድማለኹ ፡ ሲል ፡ ፊት ፡ ለፊት ፡ ይመጣ ፡ የነበረውን ፡ መኪና ፡ ገጭቶ ፡ በተገባው ፡ መኪና ፡ ውስጥ ፡ የነበሩትን ፡ ሦስት ፡ ሰዎች ፡ በመግደሉ ፡ ክፍተኛው ፡ ፍርድ ፡ ቤት ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ አንቀጽ ፡ ፳፻፳፮ ፡ (፪) መሠረት ፡ በከባድ ፡ ቸልተኛነት ፡ ሰው ፡ ገደለኛል ፡ ብሎ ፡ በይግባኝ ፡ ባይ ፡ ላይ ፡ ፈረደበት ። ስለዚህም ፡ ይግባኙ ፡ ቀረበ ።

ውሳኔ 1 - ክፍተኛው ፡ ፍርድ ፡ ቤት ፡ ጥፋተኛ ፡ ነው ፡ ሲል ፡ የፈረደው ፡ ጸደቀ ።

፩ ፤ አውራ ፡ ጉዳዩ ፡ በደንብ ፡ በማይታይበት ፡ ወቅት ፡ መኪናን ፡ መቅደም ፡ የቸልተኛነት ፡ ጠባይ ፡ ነው ።

፪ ፤ የአንድ ፡ ሰው ፡ ለጊዜው ፡ ከነመላ ፡ አካላቸው ፡ በሱ ፡ ሥር ፡ የሚገኙን ፡ ሰዎች ፡ ቤተለየ ፡ ጥንቃቄ ፡ እንዲጠብቅ ፡ የሚጠይቅ ፡ ሲሆን ፡ በአንቀጽ ፡ ፳፻፳፮ ፡ (፪) መሠረት ፡ ይህ ፡ ሰው ፡ “ሕይወትን ፡ ለመጠበቅ ፡ የሟያ ፡ ተግባር” ይኖረዋል ። ሕይወቶች ፡ ነርሶች ፡ የእውሮፕላን ፡ ነጂዎች ፡ እና ፡ ለሕዝብ ፡ የሚያገለግሉ ፡ የተሽከርካሪ ፡ ነጂዎች ፡ የሟያ ፡ ተግባር ፡ ያላቸው ፡ ምሳሌ ፡ ናቸው ።

፫ ፤ ባለሟያ ፡ በአንቀጽ ፡ ፳፻፳፮ ፡ ፱) ፍች ፡ መሠረት ፡ “ልዩ” ተግባር ፡ የሚኖረው ፡ በሱ ፡ ዐላፊነት ፡ ለሚገኙ ፡ ብቻ ፡ ነው ፤ ለምሳሌ ፡ አንድ ፡ አሕዛብ ፡ የሚያገለግል ፡ የተሽከርካሪ ፡ ነጂ ፡ በተሽከርካሪው ፡ ውስጥ ፡ ላሉት ፡ ተሳፋሪዎች ፡ ዐላፊ ፡ እንደሆነ ።

፬ ፤ የክስ ፡ ማመልከቻ ፡ በተከላከሉ ፡ ላይ ፡ ክሱ ፡ የሚጠነክርበትን ፡ ምክንያት ፡ ካልዘረዘረ ፡ ስንኩል ፡ ነው ።

ማንበት ፡ ፮ ፡ ቀን ፡ ፲፱፻፶፪ ፡ ዓ. ም ። ዳኞች 1- አፈ ፡ ንጉሥ ፡ ታደሰ ፡ ሙንገሻ ፡ ዶክተር ፡ ዊሊያም ፡ ቦሐጅ ፡ ር ፡ አቶ ፡ ታደሰ ፡ ተክለ ፡ ጊዮርጊስ ። ይህ ፡ ይግባኝ ፡ በክፍተኛው ፡ ፍርድ ፡ ቤት ፡ በቊጥር ፡ ፳፻፶፬/፶፫ ፡ የወንጀል ፡ ነገር ፡ ጥር ፡ ፳፻ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. የካላሹ ፡ በተከሰሰበት ፡ ወንጀል ፡ በክሱ ፡ ላይ ፡ በተጠቀሰበት ፡ አንቀጽ ፡ ፳፻፳፮ ፡ (፪) በተመለከተው ፡ መሠረት ፡ ጥፋተኛ ፡ ነው ፡ ብሎ ፡ የወሰነውን ፡ ውሳኔ ፡ በዐምስት ፡ ዓመት ፡ እስራት ፡ እንዲቀጣ ፡ የፈረደውን ፡ ፍርድ ፡ በመቃወም ፡ የቀረበ ፡ ይግባኝ ፡ ነው ።

ይግባኝ ፡ ባይ ፡ በክፍተኛ ፡ ፍርድ ፡ ቤት ፡ የተከሰሰው ፡ በኢትዮጵያ ፡ ወንጀለኛ ፡ መቅጫ ፡ በቊጥር ፡ ፳፻፳፮ ፡ የተመለከተውን ፡ በቸልተኛነት ፡ የሰው ፡ መግደል ፡ ወንጀል ፡ ሠርቶአል ፡ በማለት ፡ ነው ። ይግባኝ ፡ ባይ ፡ በተከሰሰበት ፡ ወንጀል ፡ ጥፋተኛ ፡ ዝና ፡ ተገኝቶ ፡ የዐምስት ፡ ዓመት ፡ እስራት ፡ ቅጣት ፡ የተፈረደበት ፡ በቊጥር ፡ ፳፻፳፮ ፡

ንኡስ፡ ቊጥር፡ (፪) እንደ፡ ተመለከተው፡ የሌላውን፡ ሰው፡ ሕይወት፡ ወይም፡ ጤና፡ ለመጠበቅ፡ አስፈላጊ፡ ጥንቃቄ፡ ወይም፡ ልዩ፡ አስተዋይነት፡ እንዲያደርግ፡ የሚያ፡ ተግባሩ፡ የሚያስገድደውን፡ ግዴታ፡ ሳይፈጽም፡ ቀርቶአልና፡ ቅጣቱ፡ ሊከብድበት፡ ይገባል፡ በማለት፡ ነው ። ይግባኙም፡ የቀረበው፡ በዚህ፡ ፍርድ፡ ላይ፡ ነው ።

ይግባኝ፡ የተባለበትም፡ ምክንያት፡ (ሀ) ከፍተኛው፡ ፍርድ፡ ቤት፡ ይግባኝ፡ ባዩን፡ በተከሰሰበት፡ ወንጀል፡ ጥፋተኛ፡ ነው፡ ብሎ፡ የፈረደበት፡ በቂ፡ ማስረጃ፡ ሳያገኝ፡ ነው፡ (ለ) ይግባኝ፡ ባዩ፡ የተከሰሰው፡ በአንቀጽ፡ ፭፻፳፮፡ ኹኖ፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ ይግባኝ፡ ባዩን፡ በንኡስ፡ ቊጥር፡ (፪) የተመለከተውን፡ ወንጀል፡ ሠርቶአል፡ ሲል፡ ጥፋተኛ፡ ስላደረገው፡ በሕግ፡ በኩል፡ ተሳስቶአል፤ (ሐ) በንኡስ፡ ቊጥር፡ የተመለከተው፡ ልዩ፡ ጥንቃቄ፡ ተገቢነቱ፡ እንደይገባኝ፡ ባዩ፡ ባለ፡ መኪና፡ ነጂ፡ ላይ፡ ሳይኾን፡ የሚያ፡ ሥራቸውን፡ በቸልተኝነት፡ በሚሠሩ፡ ሐኪሞችና፡ ነርሶች፡ በሌሎችም፡ ይህን፡ የመሰለ፡ የሚያ፡ ሥራ፡ በአላቸው፡ ሰዎች፡ ላይ፡ ነው፡ በማለት፡ ነው ።

መዝገቡ፡ እንደሚያስረዳው፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ በቀረበለት፡ ማስረጃና፡ ምስክር፡ ያረጋገጠው፡ ኹነታ፡ ይግባኝ፡ ባዩ፡ አውቶቡስ፡ ነጅ፡ መኾኑን፡ ነሐሴ፡ ፲፩፡ ቀን፡ ፲፱፻፹፫፡ ዓ. ም. ይግባኝ፡ ባዩ፡ ቊጥር፡ 6135፡ የኾነውን፡ አውቶቡስ፡ ይነዳ፡ እንደነበረና፡ ከዐዲስ፡ አበባ፡ ፩፻፳፮፡ ኪሎሜትር፡ ርቀት፡ ቀሊቲ፡ በሚባል፡ ቦታ፡ ሰድስት፡ ሰዓት፡ ከሩብ፡ ገደማ፡ ሲኾን፡ ከወደፊቱ፡ ከሚመጣው፡ ቊጥሩ፡ 9956 ከኾነ፡ ሾልስዋገን፡ አውቶቡስ፡ ጋራ፡ እንደተጋጨና፡ በዚህም፡ ምክንያት፡ ሾልስዋገት፡ ውስጥ፡ የነበሩት፡ ሦስት፡ ሰዎች፡ መሞታቸውን፡ በአውቶቡሱ፡ ውስጥ፡ የነበሩት፡ ሰዎች፡ ግን፡ የሞት፡ አደጋ፡ ያልደረሰባቸው፡ መኾኑን፡ ይግባኝ፡ ባዩ፡ አውቶቡሱን፡ ከሌላ፡ አውቶቡስ፡ ኋላ፡ ጠጋ፡ ብሎ፡ ይነዳ፡ ስለነበር፡ በዐቧራው፡ ምክንያት፡ መንገዱ፡ በቅጡ፡ የማይታይ፡ እንደ፡ ነበር፡ ይግባኝ፡ ባዩ፡ ከፊት፡ ፊቱ፡ የሚኼደውን፡ አውቶቡስ፡ ለመቅደም፡ ሲሞክር፡ ከሙንገዱ፡ ወደ፡ ቀኝ፡ በኩል፡ ማድላቱንና፡ አውቶቡሱ፡ ቀጥታውን፡ መንገድ፡ ይዞ፡ ከሚመጣው፡ ሾልስዋገን፡ መኪና፡ ጋራ፡ መጋጨቱን፡ ነው ። ዐቃቤ፡ ሕጉ፡ ያቀረበው፡ ክርክር፡ ይግባኝ፡ ባዩ፡ መንገዱን፡ ዐቧራ፡ ሸፍኖት፡ ለዐይን፡ በትክክል፡ በማይታይበት፡ ጊዜ፡ ከፊቱ፡ የሚኼደውን፡ አውቶቡስ፡ እቀድማለኹ፡ ብሎ፡ አውቶቡሱን፡ ከሾልስዋገን፡ መኪና፡ ጋራ፡ በማጋጨቱ፡ በሾልስዋገት፡ ውስጥ፡ የነበሩት፡ ሦስት፡ ሰዎች፡ የሞቱት፡ በይግባኝ፡ ባዩ፡ ቸልተኝነት፡ ነበር፡ በማለት፡ ነው ።

በዚህ፡ በይግባኝ፡ ፍርድ፡ ቤት፡ አስተያየት፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ ይግባኝ፡ ባዩን፡ ጥፋተኛ፡ ነው፡ ሲል፡ ውሳኔ፡ በሰጠበት፡ ነገር፡ ግልጽ፡ የኾነ፡ በቂ፡ ማስረጃ፡ ቀርቦለታል ። የይግባኝ፡ ባዩ፡ ጠበቃ፡ እንዳቀረቡት፡ ክርክር፡ ምስክሮች፡ የመሰከሩት፡ ቃል፡ ተቃራኒ፡ የለበትም፡ ከሙንገዱ፡ ላይ፡ በሚነሣው፡ ዐቧራ፡ መንገዱ፡ ተሸፍኖ፡ በደንብ፡ ለማየት፡ በማይቻልበት፡ ጊዜ፡ ከወደፊት፡ የሚመጣውን፡ መኪና፡ ሳያይና፡ ሳይመለከት፡ ከፊት፡ የሚኼደውን፡ መኪና፡ ለመቅደም፡ የሚሸቀዳደም፡ መኪና፡ ነጅ፡ ቸልተኛና፡ ጥፋተኛ፡ መኾኑ፡ አያጠራጥርም፤ ስለዚህ፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ ይግባኝ፡ ባዩን፡ ጥፋት፡ በኾነ፡ የቸልተኝነት፡ ወንጀል፡ ጥፋተኛ፡ ነው፡ ሲል፡ የወሰነው፡ ውሳኔ፡ ትክክለኛ፡ ነው ።

የይግባኝ፡ ባዩ፡ ጠበቃ፡ በአቀረቡት፡ የይግባኝ፡ ማመልከቻ፡ ይግባኝ፡ ባዩ፡ የተከሰሰው፡ በቊጥር፡ ፭፻፳፮፡ በተመለከተው፡ ሕግ፡ በጠቅላላው፡ ሲኾን፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ በቊጥር፡ ፭፻፳፮፡ በንኡስ፡ ቊጥር፡ (፪) በተመለከተው፡ ቅጣትን፡ በሚያከብደው፡ ወንጀል፡ ጥፋተኛ፡ ያደረገው፡ አላገባብ፡ ነው፡ ሲሉ፡ ተከራክረዋል ። ይህን፡ በመሰለው፡ ወንጀል፡ ክስ፡ ሲቀርብ፡ ተከላከሎ፡ የሚያ፡ ተግባሩ፡ የሚያስገድደው፡



ልዩ፡ ጥንቃቄ፡ ማጥደሉን፡ በክሱ፡ ጽሑፍ፡ ውስጥ፡ ገልጦ፡ መጣ፡ አስፈላጊ፡ ነበር። በቀጥር፡ ፎጀጽ፡ በንኡስ፡ ቀጥር፡ (፩) እና፡ (፪) የተመለከተው፡ በጠቅላላው፡ ጥፋት፡ በኾነ፡ ቸልተኝነት፡ ሰውን፡ ስለመግደል፡ ወንጀል፡ ቢኾንም፡ በንኡስ፡ ቀጥር፡ (፪) የተመለከተው፡ የወንጀል፡ አሠራር፡ ጥፋተኛ፡ ኹኖ፡ የተገኘውን፡ ሰው፡ ቅጣት፡ ያከብድበታል። ዐቃቤ፡ ሕጉ፡ እንደዚህ፡ ያለውን፡ ክስ፡ ሲያቀርብ፡ ተከላኹ፡ የተከሰሰበትን፡ ወንጀል፡ ደገና፡ አድርጎ፡ እንዲያውቀውና፡ ለመከላከል፡ እንዲችል፡ ይኸው፡ ኹነታው፡ ተገልጦ፡ በክሱ፡ ጽሑፍ፡ ውስጥ፡ መጣ፡ ነበረበት። በክሱ፡ ውስጥ፡ ይህ፡ ኹነታ፡ ተገልጿል፡ ስላልተጣፈ፡ የክሱ፡ ጽሑፍ፡ ጉድለት፡ ያለበት፡ መሰሎ፡ ታይቷል። ነገር፡ ግን፡ የክሱ፡ ጽሑፍ፡ ጉድለት፡ ቢኖርበትም፡ በዚህ፡ ነገር፡ ወደፊት፡ በሚገለጠው፡ ምክንያት፡ ትክክለኛና፡ ሕግን፡ የተከተለ፡ ፍርድ፡ እንዳይሰጥ፡ አያግድም።

የይግባኝ፡ ባዩ፡ ጠበቃ፡ የአቀረቡት፡ ኹለተኛው፡ ክርክርና፡ የይግባኝ፡ ምክንያት፡ በቀጥር፡ ፎጀጽ፡ በንኡስ፡ ቀጥር፡ (፪) የተመለከተው፡ ተገቢነት፡ ጥንቃቄ፡ በማጥደልና፡ በቸልተኝነት፡ በሚሠሩ፡ ሐኪሞችና፡ ነርሶች፡ ላይ፡ ነው፡ እንጂ፡ የእውቶቡስ፡ ነጂ፡ በኾነው፡ በይግባኝ፡ ባዩ፡ ላይ፡ ተገቢነት፡ የለውም፡ በማለት፡ ነው። ጥፋት፡ ባለበት፡ ቸልተኝነት፡ የሰው፡ መግደል፡ ወንጀል፡ የሠራ፡ ሰው፡ ወንጀሉን፡ ያደረገው፡ የሰውን፡ ሕይወት፡ ከሞት፡ አደጋ፡ ለማዳን፡ የሚያ፡ ተግባሩ፡ የሚያስገድደውን፡ ጥንቃቄ፡ በማጥደል፡ የኾነ፡ እንደኾነ፡ በቀጥር፡ ፎጀጽ፡ በንኡስ፡ ቀጥር፡ (፪) የተመለከተው፡ ሕግ፡ ቅጣቱን፡ ያከብድበታል። በዚህ፡ በቀጥር፡ ፎጀጽ፡ በንኡስ፡ ቀጥር፡ (፪) የተመለከተውን፡ ሕግ፡ ሲያነቡት፡ ሕይወትን፡ ከሞት፡ አደጋ፡ ለማዳን፡ ልዩ፡ ጥንቃቄ፡ እንዲያደርጉ፡ የሚያ፡ ሥራቸው፡ ያስገድዳቸዋል፡ የተባሉት፡ ሰዎች፡ ሐኪሞችና፡ ነርሶች፡ መኾናቸው፡ በሐሳብ፡ ትዝ፡ ቢልም፡ በተባለው፡ ንኡስ፡ ቀጥር፡ የተመለከተው፡ ዐላፊነት፡ በሐኪሞችና፡ በነርሶች፡ ብቻ፡ የተወሰነ፡ አይደለም። “የሚያ፡ ተግባር፡” የሚለው፡ አነጋገር፡ ሰፊ፡ ስለኾነ፡ በሥራቸው፡ ምክንያት፡ ለሌሎች፡ ሰዎች፡ ጥንቃቄ፡ ማድረግ፡ ለሚገባቸው፡ ሰዎች፡ ኹሉ፡ ተገቢነት፡ አለው። “የሚያ፡ ተግባር፡” የሚለው፡ ቃል፡ በአውሮፕላን፡ ነጂዎችና፡ በአውቶቡስ፡ ነጂዎች፡ በሌሎችም፡ ለሕዝብ፡ የሚያገለግሉ፡ ተከርክሪዎች፡ ነጂዎች፡ ላይ፡ ተገቢነት፡ አለው። ነገር፡ ግን፡ እንደዚህ፡ ያሉት፡ ሰዎች፡ ልዩ፡ ጥንቃቄ፡ ማድረግ፡ የሚገባቸው፡ በየትም፡ በታ፡ ለሚገኘውም፡ ሰው፡ ኹሉ፡ ሳይኾን፡ በሚያ፡ ሥራቸው፡ ምክንያት፡ ግንኙነት፡ ላላቸው፡ ሰዎች፡ ነው። ማለት፡ አውሮፕላን፡ ነጂዎች፡ በአውሮፕላን፡ ለሚጓዙት፡ መንገዶች፡ አውቶቡስ፡ ነጂዎች፡ በአውቶቡስ፡ ውስጥ፡ ለሚጓዙ፡ መንገዶች፡ ነው። እነዚህ፡ የሚያ፡ ሥራ፡ ያላቸው፡ ሰዎች፡ ለማንኛውም፡ ለእግረኛ፡ መንገደኛ፡ ልዩ፡ ጥንቃቄ፡ ለማድረግ፡ ግዴታና፡ ዐላፊነት፡ የለባቸውም።

እነዚህ፡ የሚያ፡ ሥራ፡ ያላቸው፡ ሰዎች፡ ለእግረኞች፡ መንገደኞች፡ ወይም፡ ከአውሮፕላኑና፡ ከአውቶቡሱ፡ ውጭ፡ ለሚገኙት፡ የሚያደርጉት፡ ጥንቃቄ፡ ማንኛውም፡ ሰው፡ እንደሚያደርገው፡ ያለ፡ ተራ፡ ጥንቃቄ፡ ነው። እንዲሁም፡ በዚህ፡ በአኹኑ፡ ነገር፡ ይግባኝ፡ ባዩ፡ በሚያ፡ ሥራው፡ ምክንያት፡ በቸልስዋገት፡ መኪና፡ ለነበሩት፡ ሰዎች፡ በሚያ፡ ሥራው፡ ልዩ፡ ጥንቃቄ፡ ለማድረግ፡ በሕግ፡ ግዴታ፡ የለበትም። ስለዚህ፡ በዚህ፡ ምክንያት፡ ይግባኝ፡ ባዩ፡ ጥፋተኛ፡ መኾን፡ የሚገባው፡ በቀጥር፡ ፎጀጽ፡ በንኡስ፡ ቀጥር፡ (፩) በተመለከተው፡ ሕግ፡ መሠረት፡ ስለኾነ፡ ይግባኝ፡ ባዩ፡ በወንጀለኛ፡ መቅጫ፡ ደንብ፡ በቀጥር፡ ፎጀጽ፡ በንኡስ፡ ቀጥር፡ (፩) የተመለከተውን፡ ወንጀል፡ በመሥራት፡ ብቻ፡ ጥፋተኛ፡ ነው። በቅጣቱ፡ በኩል፡ ይህ፡ የይግባኝ፡ ፍርድ፡ ቤት፡ እንደተመለከተው፡ ይግባኝ፡ ባዩ፡ የሠራው፡ የቸልተኝነት፡ ወንጀል፡ ከፍ፡ ያለ፡ የቸልተኝነት፡ ወንጀል፡ ስለኾነና፡ ከባድ፡ የሞት፡ አደጋ፡ ስላስከተለ፡ በዚሁ፡ በቀጥር፡ ፎጀጽ፡ በንኡስ፡ ቀጥር፡ (፩) በተመለከተው፡ በከፍተኛው፡ ቅጣት፡ መቀጣት፡

ስለሚገባው፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ በቅጥር፡ ፩፻፳፮፡ በንኡስ፡ ቀ. (፩) በተመለከተው፡ መሠረት፡ በሦስት፡ ዓመት፡ እስራት፡ መቅጣት፡ አለበት። በጠቅላላው፡ ከዚህ፡ በላይ፡ እንደተዘረዘረው፡ ይግባኝን፡ ተቀብለን፡ ይግባኝ፡ ባዩ፡ ጥፋተኛ፡ ኹኖ፡ የተገኘበትን፡ ከባድ፡ ቅጣት፡ የሚወስነውን፡ ንኡስ፡ ቅጥር፡ (፪) ወደ፡ ንኡስ፡ ቅጥር፡ (፩) በመለወጥና፡ የእስራቱን፡ ቅጣት፡ በንኡስ፡ ቅጥር፡ በተመለከተው፡ መሠረት፡ ከፀሦስት፡ ዓመት፡ እስራት፡ ወደ፡ ሦስት፡ ዓመት፡ እስራት፡ በመለወጥ፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ የፈረደውን፡ ፍርድ፡ አሻሽለን፡ ፈርደናል።

ከፍተኛው፡ ፍርድ፡ ቤት፡ ፍርዱ፡ መሻሻሉን፡ እንዲያውቀው፡ ይጣፍላት። ይህ፡ ፍርድ፡ ዛሬ፡ ግንቦት፡ ፮፡ ቀን፡ ፲፱፻፶፬፡ ዓ. ም. በጠቅላይ፡ የንጉሠ፡ ነገሥት፡ ፍርድ፡ ቤት፡ በግልጽ፡ ችሎት፡ ተሰጠ።

SUPREME IMPERIAL COURT  
Div. 1 A

MAKONNEN WOLDEYES v. THE PUBLIC PROSECUTOR

Criminal Appeal No. 335/54 E.C.

*Penal law - - Negligent homicide - - "Special professional duty" construed - - Art. 526 P. C.  
Criminal Procedure - - Contents of Charge.*

On appeal from a judgment of the High Court convicting appellant, a bus driver, for aggravated negligent homicide under Art. 526 (2) when he overtook another vehicle without proper visibility, causing a collision in which three persons in an oncoming automobile were killed.

*Held:* Conviction and sentence revised, since no aggravation was charged or proved.

1. It is negligent conduct to overtake another vehicle without proper visibility.
2. A person has a "professional duty to safeguard life" under Art. 526 (2) P.C. when his job requires special care to safeguard persons whose physical integrity is temporarily under his care; doctors, nurses, pilots of airplanes, and drivers of public vehicles are examples of persons with such a professional duty.
3. A professional owes a "special" duty within the meaning of Art. 526 (2) P.C. only to those for whom he is responsible; the "special" duty owed by a driver of a public vehicle thus extends only to the passengers in the vehicle.
4. A charge under Art. 526 (2) P.C. that does not specify that the defendant is being charged with aggravation is defective.

Guenbot 6, 1952 E.C. (May 13, 1960 G.C.); Justices: Afenigus Taddessa Mengesha, Dr. W. Buhagiar, Ato Taddessa Tekle Giorgis: — The appellant was charged before the High Court with the offence of homicide by negligence, punishable under Article 526 of the Penal Code; he was found guilty, convicted and sentenced to the maximum period of imprisonment of five years under the second paragraph of Article 526, under which the offence of homicide by negligence is aggravated where the homicide is caused by a person who has a special professional duty to safeguard life. This is an appeal from the judgment of the High Court.

The grounds of appeal are (a) that there was no sufficient evidence on which the High Court could convict, (b) that the High Court was wrong in law in convicting the appellant under paragraph (2) of Article 526 when the charge referred only to Article 526, and (c) that the second paragraph of Article 526 is not applicable to the appellant (a driver of a bus) but is applicable only to doctors, nurses, etc. who carry out their duties in a negligent way.

The facts as found by the High Court are as follow: the appellant is a bus driver by profession; on Nehasse 11, 1953 E.C., the appellant was driving Bus No. AA 6135 and at the 126th km. on the road from Alaba Kulite to Addis Ababa; at about 15 minutes after midday, he came into collision with a car Volkswagen No. 9956 coming from the opposite direction; and as a result of this collision, the three passengers in the Volkswagen were killed. There were no fatal accidents amongst the passengers in the bus driven

by the appellant. The appellant was driving his bus behind another motor-vehicle, which was some distance in front and which was causing lots of dust rendering visibility very poor. The appellant was trying to overtake the other motor-vehicle, and in doing so, went partly on the wrong side of the road; at this time the Volkswagen, which was on the proper side of the road, collided with the bus driven by the appellant. The allegation of the prosecution is that the appellant was negligent in trying to overtake the other motor-vehicle when the visibility was poor as a result of the dust, and that the cause of death of the three passengers in the Volkswagen is due directly to the appellant's negligence.

In the opinion of this Court, there was sufficient and clear evidence on which the High Court could come to the conclusion it did. There is no contradiction amongst the witnesses, as the appellant submitted. There can be no question that it is very negligent for a driver to try to overtake another car when he has not a proper look-out of on coming traffic due to the dust. The High Court was, therefore, right in finding that the appellant was negligent.

The appellant submitted that the High Court was wrong in convicting the appellant under the provisions of the second paragraph of Article 526 when the charge referred generally to Article 526. It is essential in criminal cases that the accused should know what charge he is asked to meet; in the present case the charge does not allege that the appellant was, at the time of the offence, acting in a special professional capacity. The first and second paragraphs of Article 526 deal with the same offence, that is, homicide by negligence, but the second paragraph contains an aggravating element which subjects the offender to a higher punishment. The accused should know whether the prosecution is charging him with the aggravation and when the prosecution intends to do so, mention thereof should be made in the charge. In this respect, the charge is defective, but for reasons that will be given later, the defective charge has not in the present case led to a miscarriage of justice.

The appellant submitted as another ground of appeal that the second paragraph of Article 526 applies to doctors and nurses who carry out their duties in a negligent manner and does not apply to the appellant, the driver of a bus. The second paragraph of Article 526 provides for a higher punishment where the negligent homicide has been caused by a person who has a special professional duty to safeguard life. On reading this paragraph, the persons who first come to one's mind as having a special professional duty to safeguard life are doctors and nurses; but the said paragraph does not limit the responsibility to doctors and nurses; the word "professional" is used in the wide sense and applies to persons whose job requires special care to safeguard the life of persons whose physical integrity is temporarily under their care. The word "professional" applies to persons like the pilots of an airplane, bus drivers, and drivers of other public vehicles.

The duty of such persons is not, however, towards any person in the world; the duty of such professional persons is specially towards those persons for whom they are responsible, such as passengers in an airplane or passengers in a bus; such professional persons do not owe a special duty towards pedestrians; the duty to pedestrians or other persons not in the public vehicle is a general duty, not a special duty. Thus in the present case the appellant owed a special professional duty to the passengers in his bus, but owed only a general duty towards others outside the bus, such as the persons in the Volkswagen. For these reasons the appellant should have been found guilty of an offence under Article 526 (1) of the Penal Code, and he is hereby convicted under that provision. As to sentence, this Court considers that this is a very serious offence with serious consequences and the maximum punishment under the first paragraph of Article 526 should be inflicted and the appellant is sentenced to simple imprisonment for three years. In this sense, the appeal is allowed, and the judgment of the High Court is varied accordingly.

ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፡

አሥመራ ፡ ችሎት ፡ =

አኒበርሳል ፡ ኢንፎራንስ ፡ ኢጀንስ ፡ ትራዲንግ ፡ ኩባንያ ፡ ሲሚትድ ፡ ይግባኝ ፡  
ባይ ፤ ገብረ ፡ መስቀል ፡ ተክሌ ፡ መልስ ፡ ሰጭ ፡

የፍትሕ ፡ ብሔር ፡ ይግባኝ ፡ ቅጥር ፡ ፯/፱፮ ፡ ዓ . ም ፡

ከወል ፡ ውጭ ፡ የሚደርስ ፡ ገላፊነት—ኢንፎራንስ ፡ ሰጪ—ለተጉዳ ፡ ሰው ፡ በቀጥታ ፡ የተፈጠረ ፡ ሕጋዊ ፡  
ግዴታ—የንግድ ፡ ሕግ ፡ አንቀጽ ፡ ፮፻፳፭ ፡ ፮፻፳፮ ፡ እና ፡ ፮፻፳፭ ፡

ያልተገባ ፡ ብልጽግና ፡

ውክላ—የፍትሕ ፡ ብሔር ፡ አንቀጽ ፡ ፪፻ሐ፩፻፳፩ ፡

ጉዳት ፡ የደረሰበት ፡ ከሳሽ ፡ ጉዳት ፡ ለደረሰው ፡ በኢንፎራንስ ፡ ሰጪ ፡ ላይ ፡ ክስ ፡ አቅርቦ ፡ ተከሳሹ ፡ ኢን  
ፎራንስ ፡ ሰጪ ፡ በሌለበት ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ለከሳሽ ፡ በመፍረዱ ፡ ይህ ፡ ይግባኝ ፡ ቀረበ ፡

ውሳኔ 1- የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ፍርድ ፡ ተገለበጠ ፡

፩ ፤ የንግድ ፡ ሕግ ፡ አንቀጽ ፡ ፮፻፳፭ ፡ የሚለው ፡ ጉዳት ፡ የደረሰበት ፡ ሦስተኛ ፡ ሰው ፡ በቀጥታ ፡ ኢንፎራ  
ንስ ፡ ሰጪውን ፡ ክስ ፡ ካሳ ፡ ሊጠይቅ ፡ ይችላል ፡ ማለት ፡ አይደለም ፡ ጉዳት ፡ የደረሰበት ፡ ከኢንፎራንስ ፡ በቀ  
ጥታ ፡ ካሳ ፡ ሊጠይቅ ፡ የሚችለው ፡ ኢንፎራንስ ፡ የገባውን ፡ ሰው ፡ ክስ ፡ በሱ ፡ ጥፋት ፡ ጉዳቱን ፡ ያደረሰበት ፡  
መኾኑን ፡ በፍርድ ፡ ካረጋግጠው ፡ ወይም ፡ ኢንፎራንስ ፡ የገባው ፡ ሰው ፡ ጥፋቱን ፡ አምና ፡ የጉዳቱን ፡ ካሳ ፡ ጉዳት ፡  
ለደረሰበት ፡ ለመክፈል ፡ የተስማማና ፡ ኢንፎራንስ ፡ ሰጪውም ፡ ኢንፎራንስ ፡ በገባው ፡ ሰው ፡ መብት ፡ ተተ  
ክቶ ፡ በነገሩ ፡ ውስጥ ፡ ገብቶ ፡ ክሱን ፡ የተከላከለ ፡ ወይም ፡ ስምምነቱን ፡ የተቀበለ ፡ መኾኑን ፡ ሲያስረዳ ፡ ነው ፡

፪ ፤ የንግድ ፡ ሕግ ፡ አንቀጽ ፡ ፮፻፳፮ ፡ (፪) የሚለው ፡ ኢንፎራንስ ፡ ሰጪው ፡ በክሱ ፡ ተጠሪ ፡ ሹና ፡  
ጉዳት ፡ የደረሰበት ፡ ሦስተኛ ፡ ወገን ፡ ለሚያቀርበው ፡ ክስ ፡ በመከላከል ፡ ለመከራከር ፡ በኢንፎራንስ ፡ ውል ፡  
ውስጥ ፡ ሊዋዋል ፡ መቻሉን ፡ ነው ፡ ይህም ፡ የኢንፎራንስ ፡ ሰጪውን ፡ መብት ፡ የሚጠብቅ ፡ ነው ፡ እንጂ ፡  
ጉዳት ፡ የደረሰበት ፡ ወገን ፡ ለደረሰበት ፡ ጉዳት ፡ ኢንፎራንስ ፡ የገባውን ፡ (ተቀባይን) ዐልፎ ፡ (ዘሉ) በቀጥታ ፡  
ኢንፎራንስ ፡ ሰጪውን ፡ ለመክሰስ ፡ ይችላል ፡ ማለቱ ፡ አይደለም ፡

፫ ፤ የፍትሕ ፡ ብሔር ፡ አንቀጽ ፡ ፪፻ሐ፩፻፳፩ ፡ ለተጉዳ ፡ ሰው ፡ ለጉዳት ፡ ኢንፎራንስ ፡ የሰጠን ፡ በቀጥታ ፡  
በመክሰስ ፡ ካሳ ፡ እንዲጠይቅ ፡ መብት ፡ አይሰጠውም ፡ ምክንያቱም ፡ ኢንፎራንስ ፡ ሰጪው ፡ ኢንፎራንስ ፡  
ከገባው ፡ ጋራ ፡ ያልተከፈለ ፡ የጋራ ፡ ገላፊነት ፡ ስለሌለው ፡ ነው ፡

፬ ፤ ምንም ፡ ጉዳቱን ፡ ያደረሰው ፡ ሰው ፡ በፍርድ ፡ ቤት ፡ ቀርቦ ፡ ሳደረገው ፡ ጉዳት ፡ ካሳ ፡ እንዲከፍል ፡  
ግድረግ ፡ የማይቻል ፡ ቢኾንና ፡ ይህም ፡ ሰው ፡ ለተጉዳው ፡ ሰው ፡ ካሳ ፡ እንዲከፈል ፡ ምንም ፡ ዐይነት ፡ ስምም  
ነት ፡ ያሳደረገ ፡ ቢኾን ፡ ጉዳት ፡ የደረሰበት ፡ ሰው ፡ ከኢንፎራንስ ፡ ሰጪ ፡ ያልተገባ ፡ ብልጽግና ፡ ካሳ ፡ ሊጠ  
ይቅ ፡ አይችልም ፡ የዚህ ፡ ዐይነቱ ፡ ያልተገባ ፡ ብልጽግና ፡ ካሳ ፡ ክስ ፡ ጉዳት ፡ የደረሰበት ፡ ጉዳት ፡ አድራሹን ፡  
በፍርድ ፡ ቤት ፡ ክስ ፡ መብቱን ፡ ሳያረጋግጥ ፡ በቀጥታ ፡ ኢንፎራንስ ፡ ሰጪውን ፡ ዝም ፡ ብሎ ፡ እንዲክስ ፡ ከተፈ  
ቀደለትግ ፡ በኢንፎራንስ ፡ ሰጪውና ፡ በጉዳት ፡ አድራሹው ፡ መካከል ፡ ያለውን ፡ የኢንፎራንስ ፡ ውል ፡ ዋጋ ፡  
ማሳጣት ፡ ይኾናል ፡

ግንቦት ፡ ፮ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ . ም ፡ ዳኞች ፡- አቶ ፡ ንጉሤ ፡ ፍትሕ ፡ ዐወቀ ፡  
ዶክተር ፡ ጋዩታኖ ፡ ላቲላ ፡ ዶክተር ፡ ጃንካርሎ ፡ ፖሌራ ፡ ለይግባኝ ፡ መነሻ ፡ የኾነው ፡

ፍሬ ፡ ነገር ፡ ባጭሩ ፡ እንደሚከተለው ፡ ነው ፡- ሚስተር ፡ ሪቻርድ ፡ ኪፒር ፡ እንደ ፡  
 ኤውሮጳ ፡ አቋጣጠር ፡ መስከረም ፡ ፩ ፡ ቀን ፡ ፲፱፻፷፪ ፡ ዓ. ም ፡ ከምሽቱ ፡ ሹላት ፡ ሰዓት ፡  
 ተኩል ፡ ሲሾን ፡ በራስ ፡ ጻምጠው ፡ ጉዳና ፡ የሰሌዳው ፡ ቊጥር ፡ 62309 የኾነ ፡ መኪና ፡  
 አየነዳ ፡ ሲኼድ ፡ መልስ ፡ ሰጭውን ፡ እስከነ ፡ ቢስኪሌቱ ፡ ገጭቶት ፡ በቀኝ ፡ እግሩና ፡  
 አጽ ፡ ላይ ፡ ጉዳት ፡ ስላደረሰበት ፡ በሚስተር ፡ ሪቻርድ ፡ ላይ ፡ ክስ ፡ ስለቀረበበት ፡ በቃ  
 ኘው ፡ ስተሽን ፡ በኩል ፡ መጥሪያ ፡ ቢላክለት ፡ ወደ ፡ አሜሪካን ፡ አገር ፡ መኼዱ ፡ ስለ  
 ቃወቀ ፡ ክሱ ፡ ተሻሽሎ ፡ ከሪቻርድ ፡ ጋራ ፡ ስለአደጋ ፡ የኢንሹራንስ ፡ ውል ፡ ያደረገውን ፡  
 ይግባኝ ፡ ባዩን ፡ (የኢንሹራንስ ፡ ኩባንያ) ተከላሽ ፡ በማድረግ ፡ ለቀረበበት ፡ ክስ ፡ መጥ  
 ሪያ ፡ ደርሶት ፡ ስላልቀረበ ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በመዝገብ ፡ ቊጥር ፡ ፪፻፷፯/፷፪ ፡  
 በሌለበት ፡ ለመልስ ፡ ሰጪው ፡ የጉዳት ፡ ካሳ ፡ የኢት. ብር ፡ 1620 እንዲከፍል ፡ ስለፈ  
 ረደበት ፡ ይህ ፡ ይግባኝ ፡ ቀረበ ።

ይግባኝ ፡ ባዩ ፡ ያቀረበው ፡ የይግባኝ ፡ ምክንያት ፡ ባጭሩ ፡ የሚከተለው ፡ ነው ፡-:

፩ ፡ በመልስ ፡ ሰጪውና ፡ በይግባኝ ፡ ባዩ ፡ መካከል ፡ የሕጋዊ ፡ ግዴታ ፡  
 ወይም ፡ ግንኙነት ፡ ስለሌለ ፡ ይግባኝ ፡ ባዩ ፡ ስላደረሰው ፡ አደጋ ፡ በኅላፊ  
 ነት ፡ ሊጠየቅ ፡ አይገባውም ፤

፪ ፡ ይግባኝ ፡ ባዩ ፡ ስለ ፡ ኪፒር ፡ ሪቻርድ ፡ እንዲከራከርለት ፡ ወይም ፡ ደግሞ ፡  
 እንዲሞግታለት ፡ የሚል ፡ አንዳች ፡ ስምምነት ፡ ወይም ፡ ዋስትና ፡ አል  
 ሰጠውም ፤

፫ ፡ ከቃኘው ፡ ስተሽን ፡ ለመልስ ፡ ሰጪው ፡ ጠበቃ ፡ በተጻፈለት ፡ ደብዳቤ ፡  
 ሚስተር ፡ ኪፒር ፡ ሪቻርድ ፡ ባደረሰው ፡ አደጋ ፡ ምክንያት ፡ ይግባኝ ፡  
 ባዩ ፡ እንዲከራከርለት ፡ ይገባዋል ፡ ቢልም ፡ በመልስ ፡ ሰጪው ፡ በቀጥታ ፡  
 አደጋ ፡ ያደረሰውን ፡ ሚስተር ፡ ሪቻርድን ፡ ክሶ ፡ ባያስፈርድ ፡ ይግባኝ ፡  
 ባዩ ፡ ለሚስተር ፡ ሪቻርድ ፡ እንዲከራከር ፡ የሚያስገድደው ፡ ሕግ ፡ የ  
 ለም ። ይግባኝ ፡ ባዩ ፡ አስፈላጊ ፡ ሹኖ ፡ ያገኘው ፡ እንደኾነ ፡ በደንበ  
 ኛው ፡ ስም ፡ ሹኖ ፡ ከመልስ ፡ ሰጪው ፡ ጋራ ፡ ያከራከር ፡ እንጂ ፡ በቀ  
 ጥታ ፡ መከሰስ ፡ እንደሌለበት ፡ ራሱ ፡ የኢንሹራንሱ ፡ ውል ፡ ያስረዳል ።  
 ይህም ፡ የሚያስረዳው ፡ የኢንሹራንስ ፡ ኩባንያን ፡ መብት ፡ ለመጠበቅ ፡  
 የተሰጠ ፡ ነው ። በመጨረሻም ፡ መልስ ፡ ሰጪው ፡ ለጠቀሳቸው ፡ የን  
 ግድ ፡ ሕግ ፡ ቊጥሮች ፡ ፪፻፹፭ ፡ ፭፻፹፮ ፡ እና ፡ ፭፻፹፰ ፡ በይግባኝ ፡ ባ  
 ዩና ፡ ኢንሹራንስ ፡ ውል ፡ ለገባው ፡ በሚስተር ፡ ሪቻርድ ፡ መካከል ፡ ስለ  
 ሚመለከተው ፡ መብትና ፡ ግዴታ ፡ የሚያመለክቱ ፡ እንጂ ፡ መልስ ፡ ሰ  
 ጪው ፡ ከይግባኝ ፡ ባዩ ፡ ላይ ፡ በቀጥታ ፡ ለመጠየቅ ፡ ያለውን ፡ መብት ፡  
 አያመለክቱም ። የፍትሕ ፡ ብሔር ፡ ሕግ ፡ ቊጥር ፡ ፪ሺሕ፻፶፭፻፮ ፡ መ  
 ልስ ፡ ሰጪው ፡ ቢጠቅስም ፡ ይህ ፡ አንቀጽ ፡ ተፈጻሚ ፡ የሚኾነው ፡ በ  
 ይግባኝ ፡ ባዩና ፡ በመልስ ፡ ሰጪው ፡ መካከል ፡ ምን ፡ ዐይነት ፡ ግንኙነት ፡  
 ሲኖር ፡ መኾኑን ፡ አላስረዱም ።

በበኩሉ ፡ የመልስ ፡ ሰጪው ፡ ጠበቃ ፡ ያቀረበው ፡ መከላከያ ፡ በዐጭሩ ፡  
 የሚከተለው ፡ ነው ፡-:

፬ ፡ በንግድ ፡ ሕግ ፡ በቊጥር ፡ ፪፻፹፮ ፡ መሠረት ፡ ይግባኝ ፡ ባዩ ፡ የሚስተር ፡  
 ሪቻርድ ፡ የጥቅሙ ፡ ጠባቂ ፡ ምግዚት ፡ እንደመኾኑ ፡ መጠን ፡ ጉዳት ፡ የ  
 ደረሰበት ፡ መልስ ፡ ሰጪው ፡ በሕግ ፡ ኢንሹራንስ ፡ በገባው ፡ ሰው ፡ ላይ ፡

ክስ ፡ ሲያቀርብ ፡ ጉዳት ፡ የደረሰበት ፡ ወገን ፡ ይግባኝ ፡ ባዩን ፡ ለመክ  
ሰስ ፡ ይችላል ። ኢንፔራንስ ፡ ገቢው ፡ በሚያደርሰው ፡ ጉዳት ፡ የኢንፔ  
ራንስ ፡ ሰጪው ፡ በኅላፊነት ፡ ተጠያቂ ፡ እንደሚሆን ፡ በማንም ፡ ዘንድ ፡  
የታወቀ ፡ ነው ።

፪ ፡ ኢንፔራንስ ፡ ገቢው ፡ ሚስተር ፡ ሪቻርድ ፡ ወደ ፡ አገራቸው ፡ ስለሼዱ ፡  
ይግባኝ ፡ ባዩ ፡ በእሳቸው ፡ እግር ፡ ተተክቶ ፡ ለቀረበባቸው ፡ ክስ ፡ መ  
ልስ ፡ መስጠት ፡ እንደሚገባቸው ፡ ግልጽ ፡ ነው ።

፫ ፡ በንግድ ፡ ሕግ ፡ በአንቀጽ ፡ ፻፹፭ ፡ ይግባኝ ፡ ባዩ ፡ ኢንፔራንስ ፡ አድራ  
ጊው ፡ ላደረሰው ፡ ጉዳት ፡ ካሳ ፡ ከመክፈል ፡ ነጻ ፡ የሚሆነው ፡ ተጐጂው ፡  
ካሳውን ፡ በስምምነት ፡ ወይም ፡ በፍርድ ፡ እንዲከፍለው ፡ ያልጠየቀ ፡ እን  
ደሆነ ፡ ብቻ ፡ ነው ፡ መልስ ፡ ሰጪው ፡ ካሳውን ፡ በስምምነት ፡ ይግባኝ ፡  
ባዩ ፡ እንዲከፍለው ፡ በደብዳቤ ፡ ጠይቆት ፡ ስለአልከፈለው ፡ ክስ ፡ አቅር  
ቧል ፤ ይኸውም ፡ በንግድ ፡ ሕግ ፡ በቅጥር ፡ ፻፹፭ ፡ የተደገፈ ፡ ነው ።

፬ ፡ መልስ ፡ ሰጪው ፡ በይግባኝ ፡ ባዩ ፡ ላይ ፡ ያቀረበው ፡ ክስ ፡ ሕጋዊ ፡ ለመ  
ሆኑ ፡ በፍትሕ ፡ ብሔር ፡ ሕግ ፡ ቅጥር ፡ ፻፲፭፻፳፩ ፡ ንኡስ ፡ ቀ፡ (፩) ፡  
(፪) ፡ (፫) ፡ የተደገፈ ፡ ነው ፤ ይህም ፡ ቅጥር ፡ ማንም ፡ ሰው ፡ በተንኮ  
ልና ፡ በዘዴ ፡ የማይገባውን ፡ ብልጽግና ፡ ከማግኘት ፡ እንዲታገድ ፡ የተደ  
ነገገ ፡ ነው ።

በግራ ፡ ቀኙ ፡ በኩል ፡ የቀረበውን ፡ ክርክር ፡ ከመመርመራችን ፡ በፊት ፡ ለቀረበው ፡  
ይግባኝ ፡ ሊወሰን ፡ የሚገባው ፡ ጭብጥ ፡ ምን ፡ እንደሆነ ፡ መረዳት ፡ ያስፈልጋል ።  
ዋናው ፡ ጥያቄ ፡ ኢንፔራንስ ፡ የገባው ፡ ሚስተር ፡ ሪቻርድ ፡ በመልስ ፡ ሰጪው ፡ ቢስክ  
ሌትና ፡ በአካሉ ፡ ላይ ፡ ስላደረሰበት ፡ ጉዳት ፡ መልስ ፡ ሰጪው ፡ የኢንፔራንስ ፡ ውል ፡  
ሰጪውን ፡ በቀጥታ ፡ ለመክሰስ ፡ የሚችል ፡ መሆኑ ፡ አለመሆኑን ፡ መወሰን ፡ ነው ።

በይግባኝ ፡ ባዩና ፡ በሚስተር ፡ ሪቻርድ ፡ መካከል ፡ ስለአደጋ ፡ ዋስትና ፡ የኢንፔ  
ራንስ ፡ ውል ፡ የተደረገ ፡ ለመሆኑ ፡ በኹለቱም ፡ ወገኖች ፡ በኩል ፡ አልተካደም ። ከዚ  
ህም ፡ በላይ ፡ ሚስተር ፡ ሪቻርድ ፡ በኢንፔራንስ ፡ ውሉ ፡ መሠረት ፡ በይግባኝ ፡ ባዩ ፡  
ላይ ፡ ያለውን ፡ የመክሰስ ፡ መብት ፡ ለመልስ ፡ ሰጪው ፡ በማስተላለፍ ፡ የወከለው ፡ ለመ  
ሆኑ ፡ የቀረበ ፡ ማስረጃ ፡ የለም ።

ከዚህ ፡ በላይ ፡ የተገለጹትን ፡ ፍሬ ፡ ነገሮች ፡ ካረጋገጥን ፡ በንግድ ፡ ሕግ ፡ ስለኢንፔ  
ራንስ ፡ ውል ፡ በመልስ ፡ ሰጪው ፡ የተጠቀሱትን ፡ ቀ፡ ፻፹፭ ፡ ፭፻፹፮ ፡ ፭፻፹፭ ፡ እንመ  
ርምር ።

ቅጥር ፡ ፻፹፭ ፡ የኢንፔራንስ ፡ ሰጪውን ፡ ኅላፊነት ፡ ሲናገር ፡ “ጉዳት ፡ የደረሰ  
በት ፡ ሦስተኛ ፡ ወገን ፡ ኢንፔራንስ ፡ በገባው ፡ ሰው ፡ ላይ ፡ በፍርድ ፡ ቤት ፡ ወይም ፡ በስ  
ምምነት ፡ ጥያቄ ፡ ካላደረገ ፡ በቀር ፡ ኢንፔራንስ ፡ ሰጪው ፡ በዐላፊነት ፡ አይጠየቅም፡”  
በማለት ፡ ይደነግጋል ። ይህም ፡ የሚያስረዳን ፡ እነዚህ ፡ ሹለት ፡ ሕጋዊ ፡ ሹነታዎች ፡  
ካልተፈጸሙ ፡ ኢንፔራንስ ፡ ሰጪው ፡ በዐላፊነት ፡ አይጠየቅም ፡ ማለትን ፡ ነው ፡ እንጂ ፡  
ጉዳት ፡ የደረሰበት ፡ ሦስተኛ ፡ ወገን ፡ በቀጥታ ፡ ኢንፔራንስ ፡ ሰጪውን ፡ ከሶ ፡ የጉዳ  
ቱን ፡ ካሳ ፡ ለመጠየቅ ፡ ይችላል ፡ ማለቱን ፡ አይደለም ። ጉዳት ፡ የደረሰበት ፡ ሦስተኛ ፡  
ወገን ፡ ለጉዳቱ ፡ ካሳ ፡ የሚያገኘው ፡ ኢንፔራንስ ፡ የገባውን ፡ ሰው ፡ ከሶ ፡ በሱ ፡ ጥፋት ፡  
ጉዳቱን ፡ ያደረሰበት ፡ መሆኑን ፡ በፍርድ ፡ ካረጋገጠ ፡ ወይም ፡ ኢንፔራንስ ፡ የገባው ፡  
ሰው ፡ ጥፋቱን ፡ አምኖ ፡ የጉዳቱን ፡ ካሳ ፡ ለመልስ ፡ ሰጪው ፡ ለመክፈል ፡ ሲስ  
ማማና ፡ ኢንፔራንስ ፡ ሰጪውም ፡ ኢንፔራንስ ፡ በገባው ፡ ሰው ፡ መብት ፡ ተተክቶ ፡

በነገሩ፡ ውስጥ፡ ገብቶ፡ ክሱን፡ የተከላከለ፡ ሲሆን፡ ወይም፡ ስምምነቱን፡ ሲቀበል፡ ኢንቴራንስ፡ ሰጪው፡ በዐላፊነት፡ ሊጠየቅ፡ ይችላል። ነገር፡ ግን፡ መልስ፡ ሰጪው፡ ኢንቴራንስ፡ የገባውን፡ ሚስተር፡ ሪቻርድን፡ ከሶ፡ ላደረሰው፡ ጉዳት፡ እጥፊ፡ መኾኑን፡ አላስረዳም። እንዲያውም፡ ሚስተር፡ ሪቻርድ፡ የመከላከሉን፡ መብት፡ ለኢንቴራንስ፡ ሰጪው፡ በማስተላለፍ፡ አልዳረገውም። እነዚህ፡ ሕጋዊ፡ ኹነታዎች፡ ሳይፈጸሙ፡ ኢንቴራንስ፡ ሰጪው፡ በቀጥታ፡ ጉዳት፡ ለደረሰበት፡ ለመልስ፡ ሰጪው፡ የጉዳት፡ ካላ፡ ለመክፈል፡ ዐላፊ፡ ሊሆን፡ አይችልም። መልስ፡ ሰጪው፡ ለኢንቴራንስ፡ ሰጪው፡ ለጉዳቱ፡ ካላ፡ ጥያቄ፡ በማቅረብ፡ ብቻ፡ መልስ፡ ሰጪው፡ ዐላፊ፡ መኾን፡ አለበት፡ በማለት፡ ያቀረበው፡ ክርክር፡ በሕጉ፡ መሠረት፡ ያለው፡ ኹኖ፡ አላገኘውም።

ቀጥር፡ ፻፪፻፮፡ ንኡስ፡ ቀ. (፪) ስለ፡ ወንጀል፡ ነገር፡ ስለሚናገር፡ በዚህ፡ ጉዳይ፡ ተፈጻሚ፡ ሰላላሆን፡ ንኡስ፡ ቀ. (፩)ን፡ ብቻ፡ እንመረምራለን፡ ስለክስ፡ አመራር፡ ንኡስ፡ ቀጥር፡ (፩) ሲናገር፡ “ጉዳት፡ የደረሰበት፡ ወገን፡ በዐላፊነት፡ የሚያቀርበውን፡ የፍትሕ፡ ብሔር፡ ክስ፡ መሪ፡ ለመኾን፡ ኢንቴራንስ፡ ሰጪው፡ የተዋዋለው፡ ቃል፡ ይጸናል።” በማለት፡ ይደነግጋል። ይህም፡ ማለት፡ ጉዳት፡ የደረሰበት፡ ሦስተኛ፡ ወገን፡ ለሚያቀርበው፡ ክስ፡ ኢንቴራንስ፡ በገባው፡ ሰው፡ ስም፡ ኢንቴራንስ፡ ሰጪው፡ በክሱ፡ ተጠሪ፡ ኹኖ፡ ለመክራክር፡ የሚችል፡ መኾኑን፡ በኢንቴራንስ፡ ውል፡ ውስጥ፡ ለመዋዋል፡ ይችላል፡ ማለት፡ ነው። ይህም፡ አነጋገር፡ ቢሆን፡ የኢንቴራንስ፡ ሰጪውን፡ የመከላከል፡ መብት፡ የሚጠበቅ፡ ነው። እንጂ፡ ጉዳት፡ የደረሰበት፡ ሦስተኛ፡ ወገን፡ ለደረሰበት፡ ጉዳት፡ ኢንቴራንስ፡ የገባውን፡ ሰው፡ ዐልፎ፡ (ዘሎ) በቀጥታ፡ ኢንቴራንስ፡ ሰጪውን፡ ለመክሰስ፡ ይችላል፡ ማለቱ፡ አይደለም። የዚህ፡ ንኡስ፡ ቀጥር፡ መንፈስ፡ በተጨማሪ፡ የሚያስረዳን፡ ኢንቴራንስ፡ ሰጪው፡ ኢንቴራንስ፡ በገባው፡ ሰው፡ ስም፡ ካልሆነ፡ በቀር፡ ለምሳሌ፡ ኢንቴራንስ፡ በገባው፡ ሰው፡ ላይ፡ ጉዳት፡ ያደረሰውን፡ ሦስተኛ፡ ወገን፡ በቀጥታ፡ ለመክሰስ፡ የማይችል፡ መኾኑን፡ ነው። የኢንቴራንስ፡ ውል፡ ውጤት፡ ያለው፡ በቀጥታ፡ በኢንቴራንስ፡ ሰጪውና፡ ኢንቴራንስ፡ በገባው፡ ሰው፡ መካከል፡ ነው።

ቀጥር፡ ፻፪፻፮፡ ንኡስ፡ ቀ. (፩) ጉዳት፡ ለደረሰበት፡ ሰው፡ በቀደምትነት፡ ስለመክፈል፡ ሲደነግግ፡ “ጉዳት፡ ለደረሰበት፡ ሦስተኛ፡ ወገን፡ ኢንቴራንስ፡ ሰጪው፡ በሚከፍለው፡ ኪሣራ፡ ሒሳብ፡ ልክ፡ ካላውን፡ እስኪከፍለው፡ ድረስ፡ ኢንቴራንስ፡ ሰጪው፡ ኢንቴራንስ፡ ለገባው፡ ሰው፡ ካላ፡ አይከፍለውም።” በማለት፡ ይገልጻል። ይህም፡ ማለት፡ ጉዳት፡ ለደረሰበት፡ ሦስተኛ፡ ወገን፡ በፍርድ፡ ቤት፡ ወይም፡ በስምምነት፡ ኢንቴራንስ፡ ለገባው፡ ሰው፡ ኢንቴራንስ፡ ሰጪው፡ የሚከፍል፡ ከኾነ፡ አስቀድሞ፡ ለሦስተኛው፡ ወገን፡ የጉዳቱን፡ ካላ፡ ሒሳብ፡ መክፈል፡ ያለበት፡ ለመኾኑ፡ ነው። የዚሁም፡ ድንጋጌ፡ ሕጋዊ፡ ዐሳብ፡ እሳይ፡ ስለ፡ ቀጥር፡ ፻፪፻፮፡ በታተመው፡ ዐሳብ፡ መሠረት፡ ኢንቴራንስ፡ ሰጪው፡ የጉዳቱን፡ ካላ፡ የሚከፍል፡ ሲሆን፡ ሦስተኛው፡ ወገን፡ ማግኘት፡ የሚገባውን፡ የጉዳት፡ ካላ፡ የቀደምትነት፡ መብት፡ ለመጠበቅ፡ የተደነገገ፡ ነው።

በተጨማሪም፡ የመልስ፡ ሰጪው፡ ጠበቃ፡ የፍትሕ፡ ብሔርን፡ ሕግ፡ ቀ. ፪፻፳፩፡ ጠቅሷል። ንኡስ፡ ቀጥር፡ (፩) በዐማርኛው፡ በፍትሕ፡ ብሔር፡ ሕግ፡ የተሠረዘና፡ እርማቱም፡ በእንግሊዝኛ፡ ፍትሕ፡ ብሔር፡ ሕግ፡ በርማት፡ ክፍል፡ የተሠረዘ፡ መኾኑን፡ መገንዘብ፡ ይገባ፡ ነበር።

ይህ፡ ቀጥር፡ ስለመዳረግ፡ በንኡስ፡ ቀ. (፩) ሲደነግግ፡ “እንድ፡ ሰው፡ ከሚወሰነው፡ ዕዳ፡ የክፍያውን፡ ድርሻን፡ መክፈል፡ የሚገባው፡ ሲሆን፡ ዕዳውን፡ በውሉ፡ የከፈለ፡ እንደኾነ፡ ክርሱ፡ ጋራ፡ ዕዳውን፡ እንዲከፍሉ፡ ግዴታ፡ ባለባቸው፡ ሰዎች፡



ላይ፡ የመጠየቅ፡ መብት፡ አለው፡” በማለት፡ ያስረዳል፤ ንኡስ፡ ቀሣጥር፡ (፪) ደግሞ፡ ጥያቄውን፡ ለማቅረብ፡ በተበደለው፡ ሰው፡ መብቶች፡ እንደገባ፡ ይቈጠራል፤ በማለት፡ ይገልጣል። ይህም፡ የሚያስረዳን፡ ለምሳሌ፡ ከብዙ፡ በጥቂቱ፡ መኪና፡ ነጂው፡ ባደረሰው፡ ጉዳት፡ ከመኪናው፡ ባለቤትና፡ ከመኪናው፡ ነጂ፡ ለሚጠየቀው፡ የጉዳት፡ ካሳ፡ ወይም፡ ብዙ፡ ባለዕዳዎች፡ በአንድነት፡ ለዕዳው፡ ተጠያቂዎች፡ ሲሆኑ፡ በገቡበት፡ ግዴታ፡ ከነሱ፡ ውስጥ፡ አንደኛው፡ ብቻውን፡ ዕዳውን፡ በምሉ፡ የከፈለ፡ እንደሆነ፡ ከርሱ፡ ጋራ፡ ዕዳውን፡ እንዲከፍሉ፡ ግዴታ፡ ባለባቸው፡ ሰዎች፡ ላይ፡ ለመጠየቅ፡ መብት፡ የሚሰጥ፡ ድንጋጌ፡ ነው፡ እንጂ፡ ጉዳት፡ የደረሰበት፡ ሦስተኛ፡ ወገን፡ ኢንሹራንስ፡ ሰጪውን፡ በቀጥታ፡ ከሰ፡ የጉዳት፡ ካላውን፡ ለመቀበል፡ መብት፡ አይሰጠውም። ምክንያቱም፡ የኢንሹራንሱ፡ ግዴታ፡ በኢንሹራንስ፡ ሰጪውና፡ ኢንሹራንስ፡ በገባው፡ ሰው፡ መካከል፡ ባለው፡ ሕጋዊ፡ ግንኙነት፡ ብቻ፡ የተመሠረተ፡ በመሆኑ፡ ነው። ኢንሹራንስ፡ የገባው፡ ሰው፡ ከውል፡ ውጭ፡ በሆነ፡ ጎሳፊነት፡ ባደረሰው፡ ጉዳት፡ በቀጥታ፡ ተጠያቂ፡ የሚሆነው፡ እሱ፡ ነው። ግን፡ ለሚያደርሰው፡ ጉዳት፡ የኢንሹራንስ፡ ዋስትና፡ ስላለው፡ ኢንሹራንስ፡ ሰጪው፡ ሹነታውን፡ በመመልከት፡ በፈቅድ፡ ኢንሹራንስ፡ ስለገባው፡ ሰው፡ ሹኖ፡ የጉዳቱን፡ ካሳ፡ ጉዳት፡ ለደረሰበት፡ ሦስተኛ፡ ወገን፡ ይከፍላል፤ ለመክፈል፡ ፈቃደኛ፡ ካልሆነም፡ የገባው፡ ሰው፡ በሕግ፡ ኢንሹራንስ፡ ሰጪውን፡ ከሰ፡ እንዲከፈለው፡ ያደርጋል፡ እንጂ፡ በቀጥታ፡ ኢንሹራንስ፡ ሰጪውን፡ ኢንሹራንስ፡ ከገባው፡ ሰው፡ ጋራ፡ ያልተከፈለ፡ የጋራ፡ ጎሳፊነት፡ እንዳለባቸው፡ ቂጥሮ፡ መልስ፡ ሰጪው፡ (ሦስተኛ፡ ወገን)፡ በቀጥታ፡ ኢንሹራንስ፡ ሰጪውን፡ የመክሰስ፡ መብት፡ የለውም። እንዲያውም፡ ለምሳሌ፡ ኢንሹራንስ፡ የገባው፡ ሰው፡ ከኢንሹራንስ፡ ውል፡ ሹነታ፡ ውጭ፡ ላደረሰው፡ ጉዳት፡ ኢንሹራንስ፡ ሰጪው፡ ዐላፊ፡ የማይሆንበት፡ ሹነታ፡ ሊኖር፡ ይችላል። ስለዚህ፡ በኢንሹራንስ፡ ሰጪውና፡ ኢንሹራንስ፡ በገባው፡ ሰው፡ መካከል፡ እንዲሁም፡ ኢንሹራንስ፡ በገባው፡ ሰውና፡ ጉዳት፡ በደረሰበት፡ በሮልስ፡ ሰጪው፡ መካከል፡ ያለው፡ ግዴታ፡ በየደረጃው፡ በሚረጋገጥ፡ መብት፡ የተያያዘ፡ እንጂ፡ በኢንሹራንስ፡ ሰጪውና፡ ጉዳት፡ በደረሰበት፡ በሮልስ፡ ሰጪው፡ መካከል፡ በቀጥታ፡ የተፈጠረ፡ ሕጋዊ፡ ግዴታ፡ የለም። ኢንሹራንስ፡ ሰጪው፡ ከመልስ፡ ሰጪው፡ ጋራ፡ ስላለው፡ የመብት፡ ወይም፡ የመከላከል፡ ጥያቄ፡ ኢንሹራንስ፡ በገባው፡ ሰው፡ መብትን፡ በመዳረግ፡ ወይም፡ በማስተላለፍ፡ ግዴታ፡ የተመሠረተ፡ ነው። እንዲሁም፡ ኢንሹራንስ፡ የገባው፡ ሰው፡ በመልስ፡ ሰጪው፡ ላይ፡ ስላደረሰበት፡ የጉዳት፡ ካሳ፡ የመልስ፡ ሰጪው፡ የመጠየቅ፡ ወይም፡ የመከላከል፡ መብት፡ ኢንሹራንስ፡ ባደረገው፡ ሰውና፡ በመልስ፡ ሰጪው፡ መካከል፡ ባለው፡ ሕጋዊ፡ ግንኙነት፡ የተመሠረተ፡ መሆኑን፡ ማወቅ፡ ያስፈልጋል። ኢንሹራንስ፡ የገባው፡ ሰው፡ ላደረሰው፡ ጉዳት፡ ለሚከፍለው፡ ካሳ፡ የኢንሹራንስ፡ ሰጪው፡ የመክፈል፡ ወይም፡ ያለመክፈል፡ ግዴታ፡ የተመሠረተው፡ በሹሉቱ፡ መካከል፡ ባለው፡ ሕጋዊ፡ ግንኙነት፡ መሆኑ፡ ግልጽ፡ ነው።

ሚስተር፡ ሪቻርድ፡ ስላደረሰው፡ ጉዳት፡ የቃኘው፡ ስተሽን፡ የሕግ፡ ክፍል፡ ለይግባኝ፡ ባዩ፡ ለኢንሹራንስ፡ ሰጪው፡ የጣፈውንና፡ ይግባኝ፡ ባዩም፡ የመለሳቸው፡ ደብዳቤዎች፡ በማስረጃነት፡ ቀርቦልን፡ ተመልክተናል። በዚህም፡ ማስረጃ፡ ሚስተር፡ ሪቻርድ፡ መልስ፡ ሰጪውን፡ የወከለበት፡ ወይም፡ ይግባኝ፡ ባዩ፡ በመልስ፡ ሰጭው፡ ላይ፡ ለደረሰበት፡ ጉዳት፡ ካሳ፡ ለመክፈል፡ የተስማማበት፡ ለመሆኑ፡ ስለማይገልጽ፤ እንዲያው፡ የቃኘው፡ ስተሽን፡ የሕግ፡ ክፍል፡ ሚስተር፡ ሪቻርድ፡ ከይግባኝ፡ ባይ፡ ጋራ፡ የኢንሹራንስ፡ ውል፡ ስላለው፡ መክፈል፡ አለበት፡ ብሎ፡ በመጣ፡ ብቻ፡ ይግባኝ፡ ባዩ፡ በጎሳፊነት፡ የሚጠይቅበት፡ ምክንያት፡ ስለሌለ፡ ይግባኝ፡ ባዩና፡ የቃኘው፡ ስተሽን፡ የሕግ፡

ክፍል ፡ የተጻጻፉት ፡ ደብዳቤ ፡ ለነገሩ ፡ ማሰረጃነት ፡ ዋጋ ፡ የሌለው ፡ መኾኑን ፡ ተረድተናል ።

ሚስተር ፡ ሪቻርድ ፡ ከይግባኝ ፡ ባዩ ፡ ጋራ ፡ የኢንፎራንስ ፡ ውል ፡ ቢኖረውም ፡ በመልስ ፡ ሰጪው ፡ ላይ ፡ ለደረሰው ፡ ጉዳት ፡ በቀጥታ ፡ ተጠያቂ ፡ የሚኾነው ፡ እሱ ፡ ራሱ ፡ ነበር ። ግን ፡ ክስ ፡ ሳይቀርብበት ፡ ወይም ፡ ከይግባኝ ፡ ባዩ ፡ ከኢንፎራንስ ፡ ሰጪው ፡ ጋራ ፡ ተስማምቶ ፡ ለመልስ ፡ ሰጪው ፡ የጉዳት ፡ ካሳ ፡ እንዲከፍል ፡ ሳያደርግ ፡ ዝም ፡ ብሎ ፡ ወደ ፡ አገሩ ፡ ሽዴል ። ሚስተር ፡ ሪቻርድ ፡ በፍትሐ ፡ ብሔር ፡ ዐላፊነት ፡ የሚጠየቅ ፡ መኾኑን ፡ እያወቀ ፡ ነገሩን ፡ ሳያስወስን ፡ ዝም ፡ ብሎ ፡ ከአገር ፡ ወጥቶ ፡ እንዳይሽድ ፡ ሕጋዊ ፡ እርምጃ ፡ መውሰድ ፡ ሲገባው ፡ መልስ ፡ ሰጪው ፡ ዝም ፡ ብሎ ፡ ሰውየው ፡ ወደ ፡ አገሩ ፡ ከሽዴል ፡ በኋላ ፡ ክስ ፡ ቢያቀርብበትና ፡ ኋላም ፡ መጥሪያው ፡ ሊደርሰው ፡ የማይችል ፡ መኾኑን ፡ ሲያውቅ ፡ ዝም ፡ ብሎ ፡ በቀጥታ ፡ በይግባኝ ፡ ባዩ ፡ ላይ ፡ ክስ ፡ ሲያቀርብ ፡ ይግባኝ ፡ ባዩ ፡ ከመልስ ፡ ሰጪው ፡ ጋራ ፡ ሕጋዊ ፡ ግንኙነት ፡ ወይም ፡ ግዴታ ፡ ያለው ፡ መኾኑን ፡ አላስረዳም ። ሚስተር ፡ ሪቻርድ ፡ ስላደረሰው ፡ ጉዳት ፡ የኢንፎራንስ ፡ ዋስትና ፡ እያለው ፡ ለመልስ ፡ ሰጪው ፡ ምንም ፡ ሳያደርግለት ፡ በመሼዱ ፡ ይግባኝ ፡ ባዩ ፡ (ኢንፎራንስ ፡ ሰጪው) ፡ ያልተገባ ፡ ብልጽግና ፡ የሚያገኝ ፡ ቢመስልም ፡ መልስ ፡ ሰጪው ፡ ሚስተር ፡ ሪቻርድን ፡ ከሶ ፡ በፍርድ ፡ መብቱን ፡ ሳያረጋግጥ ፡ በቀጥታ ፡ ይግባኝ ፡ ባዩን ፡ ዝም ፡ ብሎ ፡ እንዲከስ ፡ ከተፈቀደለት ፡ በይግባኝ ፡ ባዩና ፡ በሚስተር ፡ ሪቻርድ ፡ መካከል ፡ ያለውን ፡ የኢንፎራንስ ፡ ውል ፡ ዋጋ ፡ ማሳጣት ፡ ይኾናል ።

ስለዚህ ፡ በግግድ ፡ ሕግ ፡ በቀጥታ ፡ ፪፻፱፭ ፡ ፪፻፱፮ ፡ ፪፻፱፰ ፡ እና ፡ በፍትሐ ፡ ብሔር ፡ ሕግ ፡ በቀጥታ ፡ ፪ሺሕ፻፳፩ ፡ የተደነገገውና ፡ ከዚህ ፡ በላይ ፡ በተገለጠው ፡ ትችት ፡ መሠረት ፡ መልስ ፡ ሰጪው ፡ በቀጥታ ፡ ይግባኝ ፡ ባዩን ፡ የመክሰስ ፡ መብት ፡ የሌለው ፡ መኾኑን ፡ በመረዳት ፡ የኢንፎራንሱ ፡ ውል ፡ በይግባኝ ፡ ባዩና ፡ በሚስተር ፡ ሪቻርድ ፡ መካከል ፡ ያለውን ፡ ሕጋዊ ፡ ግንኙነት ፡ ብቻ ፡ የሚመለከት ፡ ስለኾነ ፡ ሚስተር ፡ ሪቻርድ ፡ በኢንፎራንሱ ፡ ውል ፡ መሠረት ፡ በይግባኝ ፡ ባዩ ፡ ላይ ፡ ያለውን ፡ የመጠየቅ ፡ መብት ፡ ለመልስ ፡ ሰጪው ፡ ያልዳረገው ፡ ወይም ፡ በማስተላለፍ ፡ የውክልና ፡ ሥልጣን ፡ ያልሰጠው ፡ መኾኑን ፡ በመገንዘብ ፡ መልስ ፡ ሰጪው ፡ ሚስተር ፡ ሪቻርድን ፡ ከሶ ፡ ስላደረሰው ፡ የጉዳት ፡ ካሳ ፡ በፍርድ ፡ ሳያረጋግጥ ፡ በቀጥታ ፡ ይግባኝ ፡ ባዩን ፡ የመጠየቅ ፡ ሕጋዊ ፡ መብት ፡ የሌለው ፡ መኾኑን ፡ ስለተረዳን ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በመዝገብ ፡ ቀ፡ .... የሰጠውን ፡ ፍርድ ፡ ሽረናል ።

ኹለቱም ፡ ወገኖች ፡ በዚህ ፡ ፍርድ ፡ ቤት ፡ የደረሰባቸውን ፡ ወጪ ፡ ይቻሉ ፡ ብለናል።

የዚህ ፡ ፍርድ ፡ ግልባጭ ፡ ለፍርድ ፡ አስፈጻሚው ፡ ይተላለፍ ።

ይህ ፡ ፍርድ ፡ ዛሬ ፡ ግንቦት ፡ ፯ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ. ም. ኹለቱም ፡ ወገኖች ፡ ባሉበት ፡ ተሰጠ ።

SUPREME IMPERIAL COURT  
Asmara Div.

UNIVERSAL INSURANCE AGENTS TRADING CO. LTD.  
v. GHEBRE MESKEL TEKLE

Civil Appeal No. 90/56 E. C.

*Extra-contractual liability - - Insurer - - Direct liability to injured person - - Arts. 685, 687, and 688 Com. C.*

*Unjust enrichment.*

*Contractual obligation -- Subrogation - - Art. 2161 Civ. C.*

On appeal from a High Court judgment by default in favour of the plaintiff in a personal injury action brought directly against the insurer of the person who caused the injury.

*Held:* Judgment reversed.

1. Art. 685 Com. C. does not mean that an injured third party may claim compensation directly from the liability insurer of the person who caused the injury. In order to claim directly from the insurer, the injured third party must, first, establish by court proceedings or admission of the insured person that the injury resulted from the fault of the latter, and second, show that the liability insurer participated in the proceedings on behalf of the insured or has accepted an amicable settlement of the case.

2. Art. 687 (2) Com. C. safeguards the interests of the liability insurer by enabling him to represent the insured and raise defences. This does not entitle the injured third party to by-pass the insured and sue the liability insurer directly.

3. Art. 2161 Civ. C. does not entitle an injured third party to claim compensation directly from the liability insurer, since the latter is not jointly liable with the insured person who caused the injury.

4. Even though the insured person who caused an injury is not subject to service of process by local courts and has done nothing to compensate the victim, the latter has no "unjust enrichment" claim against the liability insurer; to allow such a claim without having judicially established the victim's right against the person who caused the injury would annul the insurance contract between the latter and the liability insurer.

Guenbot 7, 1956 E.C. (May 14, 1964 G.C.); Justices: Ato Negussie Fitawake, Dr. Gayatano Lattila, Dr. Giancarlo Pollera: — The circumstances which gave rise to this appeal, briefly stated, are as follows:

At 8:30 p.m. on September 1, 1962, Mr. Richard Cooper was driving a car, Lic. No. 62309, on Ras Desta Damtew Street, when he collided with the respondent, who was riding a bicycle, thereby injuring him on the right leg and arm. An action was brought against Mr. Cooper, and a summons was issued and sent to the Kagnev Station for service on him; it was learned, however, that he had left for the U.S.A. The complaint was then amended to substitute as defendant the present appellant, an insurance company by which Mr. Cooper was insured against accidents. Summons was issued and served upon the company, the present appellant, but the appellant failed to appear. The High Court, therefore, gave judgment by default, ordering the appellant to pay \$1620 compensation to the respondent.

The appeal was lodged against this judgment.

The grounds of appeal submitted by the appellant may be summarized as follows:

1. No legal relationship exists between the appellant and the respondent and, therefore, the appellant can have no responsibility for the accident that has occurred.

2. Appellant has no agreement or authorization to represent Richard Cooper in any litigation.

3. In spite of the advice of the letter from Kagnew Station to the advocate for the appellant that in an action arising from an accident the appellant must represent Richard Cooper, there is no law that requires the appellant to represent him in any litigation unless the respondent has first sued and obtained a judgment against Richard Cooper, the person who caused the injury.

The terms of the contract of insurance are clear that appellant has the right to direct the defence of the insured against the respondent, had it considered this necessary, but that it may not be sued directly. This shows that the provision is to safeguard the interests of the insurance company.

4. And lastly, respondent has referred to Articles 685, 687, and 688 of the Commercial Code. These provisions concern the rights and duties that exist between the appellant and the insured, Mr. Cooper; they do not entitle the respondent to sue the appellant directly. Respondent has also referred to Article 2161 of the Civil Code, but he failed to show the relationship that must exist between the appellant and the respondent before this Article could apply.

The reply submitted by the advocate for the respondent may be summarized as follows:

1. In accordance with Article 687 of the Commercial Code, the appellant is a guardian of the interests of Mr. Cooper, and, therefore, to claim compensation for injury done to him by an insured person, the respondent may sue the appellant; that the insurer is liable for compensation for an injury caused by the beneficiary is known by all.

2. Since Mr. Cooper has gone back to his country, appellant must reply to the complaint brought against it as a substitute for Mr. Cooper.

3. Appellant would be exempted from paying compensation in accordance with Article 685 of the Commercial Code for injury done by an insured person only if the injured person does not claim compensation, either amicably or judicially. Respondent asked appellant amicably to pay him the compensation, but because appellant would not pay, he has brought this action. This is in conformity with Article 688 of the Commercial Code.

4. The action brought by the respondent against the appellant is lawful and is in conformity with Article 2161 (1) (2) (3) of the Civil Code. This Article is intended to prevent unjust enrichment by various devices and designs.

Before commenting on the arguments submitted by both parties, we should identify the issue that has to be decided. The principal question is whether the respondent may claim compensation directly from the appellant, an insurer, for damages done to his body and bicycle by Mr. R. Cooper, an insured person.

Neither of the parties denies that a contract of insurance against accidents was entered into by the appellant and Mr. Cooper.

No evidence has been produced to prove that Mr. Cooper has subrogated the respondent to his rights of suing the appellant as provided for in the contract of insurance.

Having established the above-mentioned major points, let us proceed to examine those provisions of the Commercial Code that have been referred to by the respondent, i.e., Article 685, 687, 688.

Concerning the liability of the insurer, Article 685 provides: "The insurer who insured a liability for damages shall not pay compensation until a claim is made against the insured person with a view to amicable or judicial settlement." This means that the insurer cannot be liable until these requirements are fulfilled; it does not mean that the injured third party may claim compensation directly from the insurer.

In order that an injured third party may claim compensation from an insurer, he must establish, first of all, either by court proceedings or by the admission of the insured person, that the injury resulted from a fault of the latter, and secondly, show that the insurer participated in the judicial proceedings on behalf of the insured person or, in the case of amicable settlement, that the insurer has accepted the settlement. In this case, the respondent has not sued Mr. Cooper, the insured, and established that the injury resulted from his fault. Mr. Cooper has not subrogated the insurer by assigning to him the direction of his defence. Unless these requirements are fulfilled, the insurer may not be held liable to pay compensation directly to the injured party, the respondent. We can find no basis in law for the proposition that the insurer becomes liable to pay compensation by the mere fact that the respondent has asked him to pay.

Article 687 (2) of the Commercial Code applies to criminal proceedings; it does not apply to this case. We shall, therefore, proceed to examine Article 687 (1). Concerning the direction of a case, it provides: "Provisions may be made to the effect that the insurer shall have the direction of any civil case originating from a claim brought by the injured party." This means that in a contract of insurance, provision may be made to enable the insurer to represent the insured person in a case instituted by the injured party. Such a provision safeguards the interests of the insurer by providing him with a right to raise defences, but it does not entitle the injured third party to by-pass the insured person and sue the insurer directly. The provision of this subsection implies also that the insurer may not institute proceedings in his own name to claim compensation for injury done to the insured by a third party; it can make a claim only in the name and on behalf of the insured person. A contract of insurance has direct effect only between the insured and the insurer.

Article 688 (1) of the Commercial Code gives priority of payment to the compensation of the injured third party by providing: "No insured person shall receive compensation until the third party injured has been paid to the extent of the amount insured." This means that where the insurer has to pay on behalf of the insured person, following an amicable or judicial settlement, he must first and foremost pay the compensation payable to the injured third party. This provision is intended to give priority to the compensation payable to the injured third party; the insurer has to pay the compensation in accordance with the provisions of Article 685, as explained above.

The advocate for the defendant has referred also to Article 2161 of the Civil Code. No Paragraph 3 appears in the Amharic text of that Article, and by virtue of the Corrigenda, Paragraph 3 is deleted from the English text. Concerning subrogation, Paragraph 1 provides: "A person who has paid the whole debt although he is not bound finally to bear more than a part thereof shall be entitled to recover from those liable with him." And Paragraph 2 provides: "For the purpose of such recovery he shall be subrogated

to the victim's claim." These provisions entitle one who pays the whole debt to recover from those liable with him. For example, one who pays the whole of the compensation that can be claimed from the driver and the owner of a vehicle for injury caused by the driver can recover from the driver, and one who pays the whole of a debt for which several persons are liable can recover from the other debtors. They do not entitle the injured third party to claim compensation directly from the insurer. The obligation that arises from a contract of insurance arises solely from the legal relationship that exists between the insurer and the insured. It is the insured person himself who is responsible for the extra-contractual liability that he incurs. However, since he is insured against accidents, the insurer pays the compensation on behalf of the insured; he may pay willingly, but if he does not, the insured has the right to proceed against him in court. But the respondent, a third party, may not sue the insurer as if the latter were jointly liable with the insured. As a matter of fact, the insured could cause an injury under circumstances that would make it outside of the scope of the contract of insurance and exempt the insurer from liability. Hence, the obligation of the insurer towards the insured, and that of the insured towards the injured person, the respondent, are connected in such a way that they must be established in a particular step-by-step way. No direct legal relationship has been created between the insurer and the injured person, the respondent. The rights of the insurer, including the right to direct the defence against the respondent, are based on subrogation to, or assignment of, the rights of the insured. Similarly, the right of the respondent to claim compensation for the injury done to him by an insured person results from the legal relationship that exists between the respondent and the insured person. It is obvious that whether the insurer has to pay the compensation for an injury done by an insured person depends on the legal relationship that exists between the two.

Two letters in which the Legal Department of Kagnaw Station and the appellant corresponded regarding the injury caused by Mr. Cooper have been produced as evidence. They merely show that the Legal Department of Kagnaw Station advised the appellant that he ought to pay the compensation because Mr. Cooper was insured with him; they show neither an assignment of the rights of the insured to the injured person nor an undertaking of the insurer to pay the compensation. Hence, we find the two letters to be of no value as evidence in this case.

Although he had a contract of insurance with the appellant, Mr. Cooper himself remains the one directly responsible for the damage suffered by the respondent. However, he went home without being sued and without having arranged with the appellant to pay the compensation to the respondent. The respondent, knowing that Mr. Cooper had incurred a civil liability, should have taken the necessary steps to prevent him from going out of the country before the case was settled, but he did nothing of the kind. When he brought his action, it was after Mr. Cooper had gone home. Realizing that the summons could not be served upon him, he made the claim directly upon the appellant. But he did not establish that the appellant had any legal relationship with the respondent or any obligation toward him.

Since Mr. Cooper had an insurance policy and still went away without doing anything for the respondent to compensate for the injury that he caused him, it may appear that the insurer has obtained an unjust enrichment, but to permit the respondent to sue the appellant without having judicially established his right against Mr. Cooper would annul the contract of insurance between the appellant and Mr. Cooper.

Considering that Articles 685, 687, and 688 of the Commercial Code and Article 2161 of the Civil Code and the opinion expressed above give no right to the respondent to sue the appellant directly, and considering that the contract of insurance concerns only

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the legal relationship between the appellant and Mr. Cooper, and considering that Mr. Cooper neither subrogated nor assigned to the respondent his right to claim from the appellant, and considering that the respondent has no right to sue the appellant without having previously judicially established his rights against Mr. Cooper, we reverse the judgment rendered by the High Court.

We order each party to bear the costs of the proceedings in this Court.

A copy of this judgment shall be sent to the execution officer.

Judgment is given on Guenbot 7, 1956 E.C., in the presence of both parties.

ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፡

ስድስተኛ ፡ ችሎት ።

ዶሜኒኮ ፡ ክሮፍ ፡ ይግባኝ ፡ ባይ ፤ ኢታሎ ፡ ፎካቺያ ፡ መልስ ፡ ሰጭ ።

የፍትሐ ፡ ብሔር ፡ ይግባኝ ፡ ቅጥር ፡ ፩ሺሕ፻፶፯/፶፮ ፡ ዓ . ም ።

የውል ፡ ግዴታዎች—የጽሑፍ ፡ ማሰረጃ የመጨረሻ ፡ ስለመሆኑ—የሰው ፡ ምስክር ፡ ማሰረጃ ስለአሰመቀ በል—የፍትሐ ፡ ብሔር ፡ እንቀጽ ፡ ፩ሺሕ፻፶፯ ።

የተነጋጋሪዎቹ ፡ ሐሳብ ፡ ግልጽ ፡ የሆነ ፡ የሒሳብ ፡ መቀበያ ፡ ደብዳቤ ፡ ሒሳቡን ፡ የመዝጋት ፡ ያክል ፡ እንዲጨርስ ፡ መኾኑን ፡ ለማሰረጃት ፡ ፍርድ ፡ ቤቱ ፡ ከደብዳቤው ፡ ውጭ ፡ ሌላ ፡ ማሰረጃ ፡ ስለተቀበለ ፡ ይግባኝ ፡ ባይ ፡ ፍርድ ፡ ቤቱ ፡ ማሰረጃውን ፡ ያለእገባብ ፡ ነው ፡ የተቀበለው ፡ በማለቱ ፡ ይህ ፡ ይግባኝ ፡ ቀረበ ።

ውሳኔ ፤ - የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ትእዛዝ ፡ ተደምስሰዋል ።

፩ ፡ በአንድ ፡ ጽሑፍ ፡ ለተደረገ ፡ ውል ፡ በውሉ ፡ ውስጥ ፡ ስተጻፉት ፡ ቃላት ፡ ጽሑፉ ፡ ራሱ ፡ የመጨረሻ ፡ ማሰረጃ ፡ ነው ። በውሉ ፡ ውስጥ ፡ ስተጻፉት ፡ ቃላት ፡ ሌላ ፡ ማሰረጃ ፡ ማቅረብ ፡ አይቻልም ።

፪ ፤ አንድ ፡ ሰነድ ፡ በግልጽ ፡ የሆነ ፡ የሒሳብ ፡ መቀበያ ፡ ደብዳቤ ፡ ሲሆን ፡ ውሉ ፡ ግልጽ ፡ ባልሆነበት ፡ ወቅት ፡ የተዋዋዮቹ ፡ የጋራ ፡ ሐሳብ ፡ መፈለግ ፡ አለበት ፡ የሚለው ፡ የፍትሐ ፡ ብሔር ፡ እንቀጽ ፡ ፩ሺሕ፻፶፯ ፡ በዚያ ፡ ውስጥ ፡ ተገቢ ፡ ለመሆኑ ፡ አይቻልም ።

ግንቦት ፡ ፲፬ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ . ም ። ዳኞች ፡ - ሚስተር ፡ ጂ ፡ ዴባስ ፡ ግራዝ ማች ፡ ተሰማ ፡ ነገደ ፡ አቶ ፡ ጸጋዬ ፡ ተፈሪ ። ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በትእዛዝ ፡ ቅ . ፱፻፲፫/፶፮ ፡ አድርጎ ፡ “፩ኛ ፡ የተከሰሽ ፡ ማሰረጃ ፡ በሒሳብ ፡ በኩል ፡ ተስማምቼ ፡ ተቀብየዋለኩ ፡ ለሚሉት ፡ አብራርተው ፡ ኹነታውን ፡ እንዲገልጹ ፡ አቶ ፡ ዮሐንስ ፡ ፕሮታ ፡ በምስክርነት ፡ ይቅረቡልኝ ፡ በማለት ፡ የተከሰሽ ፡ ጠበቃ ፡ የጠየቁትን ፡ ተቀብለን ፡ አቶ ፡ ዮሐንስ ፡ ፕሮታ ፡ እንዲቀርቡ ፡ መጥሪያ ፡ ይድረሳቸው ፤ ለግንቦት ፡ ፩/፶፮ ፡ ዓ . ም . ተቀጠረ ።” ብሎ ፡ ስለ ፡ አዘዘ ፡ ሲኖር ፡ ዶሜኒኮ ፡ ክሮፍ ፡ ይግባኝ ፡ ብለዋል ።

ይግባኝ ፡ ባይ ፡ በጽሑፍ ፡ ይግባኞቻቸውን ፡ ሲዘረዝሩ ፡ በጽሑፍ ፡ የቀረበ ፡ ማሰረጃ ፡ የሰው ፡ ምስክር ፡ በማሰረጃነት ፡ ለማቅረብ ፡ የማይቻል ፡ ስለመሆኑ ፡ በአንቀጽ ፡ ፪ሺሕ፻ ፡ (፪) ፡ እንዲሁም ፡ በጠቅላላ ፡ ስለ ፡ ማሰረጃዎች ፡ አቀራረብ ፡ በመሠረት ፡ በተደነገገው ፡ ሕግ ፡ ታዝዟል ፡ እያሉ ፡ ከፍተኛ ፡ ፍርድ ፡ ቤት ፡ የሰጠው ፡ ትእዛዝ ፡ እንዲሠርዝላቸው ፡ ጠይቀዋል ።

መልስ ፡ ሰጭ ፡ ሲኖር ፡ ኢታሎ ፡ ፎካቺያ ፡ የይግባኝ ፡ ባይን ፡ ጥያቄ ፡ በመቃወም ፡ ጽሑፍ ፡ አቅርበዋል ። ተቃዋሚነታቸውን ፡ ሲዘረዝሩም ፡ “መልስ ፡ ሰጭው ፡ የቃል ፡ ማሰረጃ ፡ እንዲያቀርቡ ፡ የፈቀደላቸው ፡ የመቃወሚያ ፡ ማሰረጃ ፡ ሳይኾን ፡ በፍትሐ ፡ ብሔር ፡ ፪ሺሕ፻ ፡ በተመለከተው ፡ መሠረት ፡ የምስክር ፡ ማሰረጃ ፡ መኾኑን ፡ ይግባኝ ፡ ባይ ፡ ለተከበረ ፡ ፍርድ ፡ ቤት ፡ ያሳስባል ። በፍትሐ ፡ ብሔር ፡ ቅ . ፩ሺሕ፻፶፯ ፡ (፩)



እንደተመለከተው ፡ የአንድ ፡ ውል ፡ ኹነታዎች ፡ የማይገባ ፡ ኹኖ ፡ ሲገኝ ፡ የተዋዋዮቹን ፡ ሐሳብ ፡ መፈለግ ፡ ወይም ፡ መመርመር ፡ አስፈላጊ ፡ ይኾናል ።

መልስ ፡ ሰው ፡ የቃል ፡ ማሰረጃ ፡ አቅርበው ፡ እንዲያብራሩ ፡ የከፍተኛ ፡ ፍርድ ፡ ቤት ፡ የሰጠው ፡ ትእዛዝ ፡ በሕግ ፡ የተደገፈና ፡ የተገባ ፡ መኾኑን ፡ መልስ ፡ ሰው ፡ በትሕትና ፡ ያመለክታሉ ፤” ብለው ፡ ትእዛዙ ፡ እንዲጸናላቸው ፡ ጠይቀዋል ።

ሐምሌ ፡ ፩ ፡ ቀን ፡ ፲፱፻፷፫ ፡ ዓ. ም. (እ. ኤ. አ.) ፡ በክሮቾ ፡ ዶሜኒኮ ፡ ለኢታሎ ፡ ፎካቺያ ፡ የተጻፈ ፡ ደብዳቤ ፡ “የሒሳቡን ፡ ሚዛን ፡ አይቼ ፡ ተስማምቼበት ፡ ተቀብየዋለኹ ፡” ብለው ፡ በመካከላቸው ፡ የነበረውን ፡ ሒሳብ ፡ ሚያዝያ ፡ ፩ ፡ ቀን ፡ ፲፱፻፷፫ ፡ ዓ. ም. እስከ ፡ ሠኔ ፡ ፴ ፡ ቀን ፡ ፲፱፻፷፫ ፡ ዓ. ም. (እ. ኤ. አ.) አለመቃወም ፡ እንደተቀበሉት ፡ ያስረዳል ።

ሒሳቡን ፡ አጣርቶ ፡ ያዘጋጀ ፡ በኹለቱ ፡ ተከራካሪዎች ፡ የተመረጠ ፡ የሒሳብ ፡ ችሎታ ፡ ያለው ፡ ሰው ፡ ሲኾን ፡ በከፍተኛ ፡ ፍርድ ፡ ቤት ፡ ቀርቦ ፡ ተሰጥቶ ፡ ነበር ። አንቀጽ ፡ ፪ሺሕ፯ ፡ (፪) ፍትሐ ፡ ብሔር ፡ ሕግ ፡ በጉልሕ ፡ እንደሚያዝዘው ፡ በውሉ ፡ ውስጥ ፡ ስለ ፡ ተጻፉት ፡ ቃላቶች ፡ የሰው ፡ ምስክር ፡ ወይም ፡ የጎሲና ፡ ግምት ፡ ማሰረጃ ፡ ማቅረብ ፡ አይቻልም ፡ ይላል ።

አንቀጽ ፡ ፪ሺሕ፪ ፡ ፍትሐ ፡ ብሔር ፡ የማሰረጃ ፡ ዐይነቶችን ፡ ሲያስረዳ ፡ በጽሑፍ ፡ በምስክር ፡ በጎሲና ፡ ግምት ፡ ... ማሰረጃ ፡ ማቅረብ ፡ ይችላል ፡ ይላል ።

አንቀጽ ፡ ፩ሺሕ፶፱፩ ፡ (፩) የውሎች ፡ ውጤት ፡ ሲያስረዳ ፡ ውሎች ፡ በተዋዋዮቹ ፡ ላይ ፡ ሕግ ፡ መኾናቸውን ፡ ያስረዳል ።

አኹን ፡ በክርክር ፡ ላይ ፡ ያለ ፡ አንድ ፡ በግልጥ ፡ ይዞታውን ፡ የሚያስረዳ ፡ ጽሑፍ ፡ ነው ። ስለዚህ ፡ የጽሑፍ ፡ ማሰረጃ ፡ ስለኾነ ፡ ኹነታው ፡ ከአንቀጽ ፡ ፪ሺሕ፮ ፡ (፪) በትክክል ፡ የሚሰማው ፡ ስለኾነ ፡ ተጨማሪ ፡ የቃል ፡ ምስክርነት ፡ አያስፈልገውም ።

አንቀጽ ፡ ፩ሺሕ፶፱፩ ፡ (፪) ፡ እና ፡ ፪ሺሕ፪ ፡ የፍትሐ ፡ ብሔር ፡ በዚህ ፡ ውስጥ ፡ ሲገቡ ፡ አይገባም ። ስለዚህ ፡ ይህ ፡ ፍርድ ፡ ቤት ፡ የቀረበውን ፡ ይግባኝ ፡ በመቀበል ፡ አብራርተው ፡ ኹነታውን ፡ እንዲገልጹ ፡ አቶ ፡ ዮሐንስ ፡ ፕሮታ ፡ በምስክርነት ፡ እንዲቀርቡ ፡ መጥሪያ ፡ ይድረሳቸው ፡ (ለግንቦት ፡ ፩ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ. ም.) የሚል ፡ የሰጠውን ፡ ትእዛዝ ፡ በምሉ ፡ ሠርዘነዋል ።

ይህ ፡ ትእዛዝ ፡ በግንቦት ፡ ፲፬ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ. ም. በሊቀ ፡ መንበር ፡ ሚስተር ፡ ገብርኤል ፡ ደባስና ፡ በአቶ ፡ ጸጋዬ ፡ ተፈሪ ፡ በድምፅ ፡ ብልጫ ፡ ተሰጥቷል ። ለባለጉዳዮቹም ፡ በግልጽ ፡ ችሎት ፡ ተነቦላቸዋል ።

ኮፒው ፡ ለክ/ከፍተኛ ፡ ፍርድ ፡ ቤት ፡ በቀጥታ ፡ እንዲላክ ፡ አዝዘናል ።

[ግራዝማች ፡ ተሰማ ፡ ነገደ ፡ የተለዩበት ፡ የፍርድ ፡ አስተያየት ።]

እኔ ፡ ፪ኛው ፡ ዳኛ ፡ ግራዝማች ፡ ተሰማ ፡ ነገደ ፡ በዚህ ፡ ትእዛዝ ፡ አልተሰማማኹበትም ፤ ምክንያቱም ፡ ይህ ፡ ክስና ፡ ክርክር ፡ የቀረበው ፡ በጋራኹ ፡ ውስጥ ፡ ተቀጥረኹ ፡ በምትሠራበት ፡ ጊዜ ፡ ገንዘብ ፡ አጥፍተኹብኛል ፡ በማለት ፡ ነው ፡ እንጂ ፡ በሽርክና ፡ ወይም ፡ በማሳበረተኛነት ፡ ተዋውለን ፡ ወይም ፡ ተጸድፈን ፡ እንሠራ ፡ ነበር ፡ ተብሎ ፡ የቀረበ ፡ ክስ ፡ አይደለም ። ለዚሁም ፡ ቢኾን ፡ ሐምሌ ፡ ፩ ፡ ቀን ፡ ፲፱፻፷፫ ፡ ዓ. ም. ከይግባኝ ፡ ባይ ፡ ለመልስ ፡ ሰው ፡ በተጻፈ ፡ ደብዳቤ ፡ ለጋራኹ ፡ ዋቅም ፡ በሠሩትና ፡ በፈጸሙት ፡ አይቼ ፡ በተቀበልኩት ፡ ሥራ ፡ በምሉ ፡ የተደሰትኩና ፡ ይህም ፡ ማለት ፡ ከሚያዝያ ፡ ፩ ፡ ቀን ፡ ፲፱፻፷፪ ፡ ዓ. ም. ጊዜ ፡ ዝምሮ ፡ ሠኔ ፡ ፴ ፡ ቀን ፡ ፲፱፻፷፫ ፡ ዓ. ም. ጭምር ፡ መኾኑን ፡ እገልጻለኹ ፡ በማለት ፡ አረጋግጠውላቸዋል ። ይህ ፡ ከኾነ ፡ በኋላ ፡

ለቀረበው ፡ ክስ ፡ ይግባኝ ፡ ባይ ፡ ያቀረቡት ፡ ማስረጃ ፡ እንድ ፡ የሰው ፡ ምስክር ፡ ነው ።  
 እሱውም ፡ ተከሳሹ ፡ ሕሳብ ፡ እስብልኝ ፡ ብለውኝ ፡ እስቤላቸው ፡ ነበር ፡ ከማለት ፡ በተ  
 ቀር ፡ ከግንባራት ፡ አዋውያለኹ ፡ የሚል ፡ አይደለም ። ለዚህ ፡ ጉዳይ ፡ መልስ ፡ ሰጭ  
 ውም ፡ በቤተላቸው ፡ ስለሕሳቡ ፡ ኹለታችን ፡ በሰው ፡ ተነጋግረን ፡ የፈጸምነው ፡ አለና ፡  
 እኝሁ ፡ በዝምድና ፡ ያዩልን ፡ እቶ ፡ የሐንስ ፡ ፕሮታ ፡ ቀርበው ፡ ኹነታውን ፡ አብራር  
 ተው ፡ ያስረዱልኝ ፡ ብለው ፡ አመልክተው ፡ ፍርድ ፡ ቤቱም ፡ ለመረዳትና ፡ ለማጣራት ፡  
 ያኸል ፡ ቀርበው ፡ ያስረዱ ፡ ብሎ ፡ ነው ፡ ያዘዘው ። በከሳሽ ፡ በኩል ፡ ሰው ፡ የመሰከረ ፡  
 ሲኾን ፡ በተከሳሽ ፡ በኩል ፡ ዝም ፡ ብለኸ ፡ አፍክን ፡ አፍነኸ ፡ ተረታ ፡ ማለት ፡ ተገቢ ፡  
 አይደለም ። ለዚያውም ፡ ቢኾን ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ጉዳዩን ፡ ከጋራ ፡ ዘመዳ  
 ቸው ፡ ጠይቄ ፡ ልረዳ ፡ ብሎ ፡ ያቀደው ፡ ነገር ፡ ነው ፡ እንጂ ፡ የጽሑፍ ፡ ውል ፡ በሰው ፡  
 ምስክር ፡ ውድቅ ፡ ይኾን ፡ ብሎ ፡ አልወሰነም ፤ እቶ ፡ የሐንስ ፡ ፕሮታ ፡ ከተጠየቁ ፡  
 የጽሑፍ ፡ ማስረጃ ፡ ውድቅ ፡ ይኾን ፡ ሊባል ፡ ነው ፡ ተብሎ ፡ በግምት ፡ የተደረገ ፡  
 ጉዳይ ፡ ነው ። ኹለት ፡ ተከራካሪዎች ፡ ለተካካዳበት ፡ ጉዳይ ፡ ማስረጃ ፡ ማየትና ፡ መስ  
 ማት ፡ የተፈቀደ ፡ መኾኑን ፡ መልስ ፡ ሰጭ ፡ የጠቀሱት ፡ የፍትሐ ፡ ብሔር ፡ ሕግ ፡  
 ቊጥር ፡ ፪ሺሕ፻ ፡ የተጻፈው ፡ ያዝዛል ። ደግሞም ፡ እንድ ፡ ፍርድ ፡ ቤት ፡ ማንኛውንም ፡  
 ነገር ፡ ጠይቄና ፡ አጣርቼ ፡ ልፍረድ ፡ ብሎ ፡ ሲያስብ ፡ የይግባኝ ፡ ፍርድ ፡ ቤት ፡ ምንም ፡  
 የበላይነት ፡ ሥልጣን ፡ ቢኖረው ፡ በሐሳቡ ፡ ውስጥ ፡ ገብቶ ፡ ይህንን ፡ ጠይቀኸ ፡ ፍርድ ፡  
 ስጥ ፡ ይህንን ፡ ሳትጠይቅ ፡ ፍረድ ፡ ብሎ ፡ መምራትና ፡ ማዘዝ ፡ ተገቢ ፡ መስሎ ፡ አይታ  
 ይም ። ምክንያቱም ፡ በዋናው ፡ ነገር ፡ ተፈርዶ ፡ ካለቀ ፡ በኋላ ፡ ይግባኝ ፡ ተብሎበት ፡  
 ሲቀርብ ፡ ያላገባብ ፡ ተሠርቶ ፡ ሲገኝ ፡ ለመለወጥ ፡ ስለሚቻል ፡ ነውና ፡ የበታች ፡ ፍርድ ፡  
 ቤትን ፡ ሐሳብ ፡ በዐጭር ፡ ቀጭቶ ፡ ማስቀረት ፡ የሳሊና ፡ ወይም ፡ የሐሳብ ፡ ይግባኝ ፡  
 እንደማየት ፡ የሚያስቁጥር ፡ ነው ። ከዚህ ፡ ቀደም ፡ በዚሁ ፡ ፍርድ ፡ ቤት ፡ በጽሑፍ ፡  
 አስረጂ ፡ ላይ ፡ የሰው ፡ ምስክር ፡ ሊሰማ ፡ አይገባውም ፡ ተብሎ ፡ ቊጥር ፡ ፩ሺሕ፻፳/  
 ፶፩ ፡ የኾነ ፡ የፍትሐ ፡ ብሔር ፡ መዝገብ ፡ በከማል ፡ ስም ፡ ተከፍቶ ፡ ቀርቦ ፡ የከፍተኛው ፡  
 ፍርድ ፡ ቤት ፡ ያዘዘው ፡ በሚገባ ፡ ነው ፡ ተብሎ ፡ ታዝዞ ፡ የተወሰነ ፡ ሲኾን ፡ በዚህ ፡  
 በኩል ፡ ላለው ፡ ነገር ፡ ይግባኝ ፡ ባይ ፡ ሰው ፡ እስመስከሮ ፡ የነበረውን ፡ መልስ ፡ ሰጭው ፡  
 ያቀረበው ፡ ሰው ፡ አይጠየቅም ፡ ብሎ ፡ መከልከል ፡ መብቱን ፡ እንደመከልከል ፡ ስለሚ  
 ቈጠር ፡ ከዚህ ፡ በላይ ፡ እንደዘረዘርኩት ፡ ምናልባት ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ያላገ  
 ባብ ፡ ሠርቶ ፡ ቢገኝ ፡ በመጨረሻው ፡ ፍርዱ ፡ ይለወጣል ፡ እንጂ ፡ ለአኹኑ ፡ በሐሳቡ ፡  
 ገብቶ ፡ በዚህ ፡ ዐይነት ፡ ሠርተኸ ፡ ፍርድ ፡ ስጥ ፡ ማለት ፡ ተገቢ ፡ መስሎ ፡ ስላልታየኝ ፡  
 በትእዛዙ ፡ አልተስማማኹም ።

SUPREME IMPERIAL COURT  
Div. 6

DOMENICO CROCE v. ITALO FOCACCIA

Civil Appeal No. 1112/56 E. C.

*Contractual obligations - - Written evidence - - Conclusive effect - - Oral evidence - - Inadmissibility - -*  
*Art. 1734 Civ. C.*

On appeal from an order of the High Court admitting extraneous evidence to prove that the intention of the parties was that an unequivocal letter of acceptance of accounts should constitute a settlement of accounts.

*Held:* Order of the High Court quashed.

1. According to Arts. 2005 and 2006 Civ. C., a written instrument is conclusive evidence of the agreement therein contained, and its meaning cannot be altered by extraneous evidence.
2. Where an instrument is clearly a letter of acceptance of accounts, Art. 1734 Civ. C., which provides that common intention shall be sought where there is ambiguity in a contract, is inapplicable.
3. Communications by the parties to the drafter of a document cannot affect the clear language of the document.
4. It must be presumed that a settlement of accounts would have been mentioned in a later letter in which one party declares that he accepts the other's statement of the accounts.

Guenbot 14, 1956 E.C. (Mar 22, 1964 G.C.); Justices: Mr. G. Debbas, Grazmatch Tessemma Negede, Ato Tsaggai Tefferi: — This is an appeal against an order of the High Court (First Commercial Division) dated 12/8/56 in C.C. No. 913/55, whereby extraneous evidence was allowed to prove facts which the High Court considered had been left out of a written instrument produced as Exhibit D/1 before the High Court.

In order to understand the sense of this appeal, we will summarize the case. Appellant left for Italy and left a general power of attorney to his employee, the respondent. On the appellant's return from Italy, he asked his employee to account for the period of his absence and of respondent's administration; an accountant, Nicolas Bova, was chosen by the respondent to make accounts; Bova received documents from the respondent and based his accounts on the respondent's documents, as he testified before the High Court. He found there was a balance due by the respondent to the appellant, amounting to E.\$65,912.80. That was what we could understand from the records of the High Court; but we refrain from going into the merits of the case. On his return from Italy, the appellant wanted to revoke the general power of attorney which he had given the respondent; and in his letter of revocation dated July 1, 1963, in Italian, addressed to the respondent, the appellant made it clear that he was completely satisfied with the work done by the respondent during his absence in Italy, that he had looked at the accounts (prendere visione) and that he accepted those accounts fully as from the period

between April 1, 1962 and June 30, 1963. In the second paragraph of that letter, the appellant revoked the power of attorney of the respondent. Apparently, when the appellant claimed the balance discovered by the accountant Eova in favour of the appellant, payable by respondent, the latter refused to pay, claiming that the letter in Italian dated July 1, 1963, was a "letter of settlement" and that nothing could be due to Croce. Whereupon, Croce went to court. The High Court saw the letter in question; and in its order dated 12/8/56, under appeal here, it clearly stated that this letter could under no circumstance be considered to be a complete statement as to any settlement or agreement reached between the parties. The High Court said "It does not say anything about any possible settlement between the parties according to the accepted accounts...." And thereupon it allowed extraneous evidence of Advocate Yohannes Prota, who drafted the said letter, to testify as to whether he had any knowledge of any additional facts from the parties themselves. Wherefore this appeal.

We cannot possibly share the opinion of the High Court regarding this extraneous evidence. It certainly is not admissible, because whatever Mr. Prota would say will not and cannot possibly change the sense of this letter in Italian (Exh. D/1), which we saw and which is in no way ambiguous. This letter is clearly a letter of acceptance of accounts but is not a letter of settlement of accounts. If there should be any document to prove that Focaccia paid Croce the amount due by Focaccia, then let the respondent produce that document. A written instrument, according to Articles 2005 and 2006 of the Civil Code, is conclusive evidence, and no extraneous evidence can alter its meaning, especially when it is so clear and beyond the least shadow of ambiguity. Article 1734 of the Civil Code provides that the common intention shall be sought only when there is ambiguity in a contract; and there is certainly no ambiguity in this letter. Ato Gila, advocate for the respondent, admitted in his reply that the witness, whose evidence we do not accept, cannot possibly say what was in the minds of the parties when he drafted that letter. What the parties may have told Ato Yohannes Prota before drafting the letter in question cannot affect the sense of the said document; and if there had been any settlement in cash, or otherwise, then Ato Yohannes would not have failed to mention it in the letter he drafted.

In view of the foregoing, and particularly of the fact that there is no ambiguity in Exhibit D/1, no extraneous evidence can be admitted.

It is important to emphasize that if we allow extraneous evidence against a written instrument, which the law considers as conclusive, then litigation would have no end in the courts of law.

Under the circumstances, we allow this appeal and quash the order of the High Court dated 12/8/56 E.C., but only insofar as the hearing of evidence of Yohannes Prota is concerned.

We order that a copy of this order be immediately served on the High Court, to abide by it and to give judgment as it deems appropriate on the basis of evidence before it or any additional legally admissible evidence it may deem proper.

This order is given by majority of the Presiding Justice and Justice Tsaggai Tefferi. Our brother, Justice Grazmatch Tesemma Negede dissented and dismissed the appeal for reasons detailed in his minority opinion.

Given and delivered in open court this 14th day of Guenbot, 1956 E.C., in the presence of both parties' attorneys.

Grazmatch Tessema Negede, J., dissenting: — I disagree with the order given in this case. This was a case where the appellant-plaintiff's claim against the respondent arises from an alleged embezzlement by the respondent at the time he was working in appellant's garage. This was not a case in which a partnership was alleged to exist.

In a letter from the appellant to the respondent dated July 1, 1963, the appellant said that he had looked over the accounts of the garage for the period from April 1, 1963, to June 30, 1963, and that he was fully satisfied and had accepted the accounts. At the trial of this case the appellant called a witness in his favor. The witness testified that he did some accounting for the respondent and that he had never facilitated any contractual negotiations between the parties. In turn, the respondent moved in the trial court to call a person to testify who had acted as an arbitrator for the settlement of the accounts. The name of the alleged arbitrator is Ato Yohannes Protà. The Court accepted the motion and ordered that Ato Yohannes be called before the Court to explain the relation between the parties. When a witness is called to testify in favor of the plaintiff, it is not proper to deprive the defendant of the right to introduce evidence and thus to force him to lose his case.

Moreover, the High Court's intention was to learn about the case in depth by calling the witness, and a decision was never taken to disprove a written agreement by challenging it by oral evidence. The fear that if Ato Yohannes were allowed to testify the written evidence would be void is groundless.

Article 2002 of the Civil Code, cited by the respondent, provides that it is permissible to hear evidence on a point in dispute between parties to a contract. What is more, where a trial court thinks it best to call witnesses in order to know the case brought before it in depth, it is not proper for the appellate court, even where the power of such court over the court of first instance is taken for granted, to interfere in the proceeding of a trial to the extent of directing and ordering the trial court as to which points it should decide without seeking further evidence and which it should decide by seeking further evidence. The reason for this is that, after the case has been through the trial court and an appeal is brought over the case, the decision of the trial court may be reversed on a point where such a court has improperly proceeded or judged. If we are to speculate as to the intention of a lower court, it will be equal to hearing appeals over the conscience and intention of the judges in a lower court. In this Court, we have already upheld the decision of the High Court in *In re KEMIL*, Supreme Imperial Court C.A. No. 1088/56 E.C., where the High Court had admitted oral evidence to challenge the validity of a written instrument. Therefore, if we now refuse the petition of the respondent where the appellant's witness has already been heard in court, we would deprive him of his right. If the trial court were to err in admitting such evidence, we should consider this point later when the entire case is appealed. At this early stage, however, it seems to me improper to interfere with the work of the trial court and order it to give a judgment the way we want. For all these reasons, I dissent.

ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፡

ስድስተኛ ፡ ችሎት ።

ቫስኪን ፡ ሲሲያን ፡ ይግባኝ ፡ ባይ ፤ ጃኮብ ፡ ፎግስታድ ፡ እና ፡ ሴልሺያ ፡ ቫካርቸግያን ፡ መልስ ፡ ሰጮች ።

የፍትሐ ፡ ብሔር ፡ (ንግድ) ይግባኝ ፡ ቀጥር ፡ ፩፻፳፱፻፳፱/፶፮ ፡ ዓ. ም ።

የኩባንያ ፡ ሕግ — መፍረስ — የማጣራት ፡ ሥነ ፡ ሥርዐት ፡ ደንብ — የንግድ ፡ መዝገብ — የአባሪዎች ፡ መብት ፡ መጠበቅ — ውሳኔ ፡ ሳይፈጸም ፡ ስለመቋቋም ።

ማኅበራትኞች ፡ እንዲፈርስ ፡ በወሰኑበት ፡ ኩባንያ ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ አጣሪ ፡ በመሾም ፡ የኩባንያው ፡ ሒሳብ ፡ በሥነ ፡ ሥርዐት ፡ እንዲጣራ ፡ ትእዛዝ ፡ በመስጠት ፡ ስለፈረደ ፡ ይህ ፡ ይግባኝ ፡ ቀረበ ።

ውሳኔ 1 - ይግባኝ ፡ ተከልክሎ ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ፍርድ ፡ ጸድቋል ።

፩ ፤ የአንድ ፡ ኩባንያ ፡ መላ ፡ ማኅበራትኞች ፡ ኩባንያው ፡ እንዲፈርስ ፡ ሲሰማሙ ፤ የመፍረሱን ፡ ጉዳይ ፡ የኩባንያው ፡ አባሪዎች ፡ እንዲያውቁና ፡ በኩባንያው ፡ ላይ ፡ ዕዳ ፡ አለበት ፡ የሚሉትን ፡ ለመጠየቅ ፡ ዕድል ፡ እንዲያገኙ ፡ እንዲቻል ፡ የኩባንያው ፡ ሒሳብ ፡ ማጣራት ፡ በሥነ ፡ ሥርዐት ፡ መፈጸም ፡ አለበት ።

፪ ፤ የሒሳብም ፡ ማጣራት ፡ ጉዳይ ፡ መዝገመሪያ ፡ የኩባንያውን ፡ መላ ፡ ዕዳ ፡ መክፈልና ፡ ከዚያም ፡ ቀሪ ፡ የሾነውን ፡ ሀብት ፡ በሕግ ፡ መሠረት ፡ በማኅበራትኞች ፡ መካከል ፡ መከፋፈልን ፡ ይጠይቃል ።

፫ ፤ የማጣራቱ ፡ ጉዳይ ፡ በሥነ ፡ ሥርዐት ፡ እስከ ፡ ሚፈጸምበት ፡ ጊዜ ፡ ድረስ ፡ የንግድና ፡ የእንዳስትሪ ፡ ሚኒስቴር ፡ የኩባንያውን ፡ ስም ፡ ከንግድ ፡ መዝገብ ፡ ውስጥ ፡ አይመርዝም ።

፬ ፤ ሒሳብን ፡ በሥነ ፡ ሥርዐት ፡ የማጣራት ፡ ቁም ፡ ነገሩ ፡ የኩባንያውን ፡ አባሪዎች ፡ መብት ፡ ለመጠበቅ ፡ ስለሾነ ፤ ማንኛውም ፡ በኩባንያው ፡ እንዲከፈል ፡ የሚጠየቀው ፡ ዕዳ ፡ ሹሉ ፡ የሒሳቡ ፡ አጣሪ ፡ በቀጥታ ፡ እስከሚሾምበት ፡ ጊዜ ፡ ድረስ ፡ ለጊዜው ፡ መቋየት ፡ አለበት ።

ሐምሌ ፡ ፲፩ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ. ም ። ዳኞች ፤- ሚስተር ፡ ጂ ፡ ዴባስ ፡ ግራዝማች ፡ ተሰማ ፡ ነገደ ፡ አቶ ፡ ጸጋዬ ፡ ተፈሪ ። ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በፍርድ ፡- ቀጥር ፡ ፩፻፳፱/፶፮ ፡ አድርጎ ፡ “ፎግስታድ ፡ እና ፡ ቫስኪን ፡ ኩባንያ ፡ ሊሚትድ ፡ በሚል ፡ ስም ፡ ለሚጠራው ፡ ማኅበር ፡ ንብረት ፡ አጣሪ ፡ እንዲሆኑ ፡ ሚስተር ፡ ሳሎልን ፡ ፍርድ ፡ ቤቱ ፡ ሹም ፡ አጣሪው ፡ የማጣራትን ፡ ጉዳይ ፡ የሚመለከት ፡ የንግድ ፡ ሕግ ፡ የሚፈቅድላቸውን ፡ የአጣሪ ፡ ሥልጣናቸውን ፡ እንዲሠሩበት ፤ መልስ ፡ ሰጭው ፡ ደግሞ ፡ የዳኝነት ፡ ኪነራ ፡ በደረሰኝ ፡ ፪፻ ፡ ብር ፡ ለአመልካች ፡ እንዲከፍሉ ፤ ብሎ ፡ ስለ ፡ ፈረደ ፡ ቫስኪን ፡ ይግባኝ ፡ ብለዋል ። የይግባኝ ፡ ምክንያታቸውንም ፡ በሰፊው ፡ ዘርዘረዋል ። መልስ ፡ ሰጭም ፡ የመቃወሚያ ፡ ምክንያታቸውን ፡ ሰጥተዋል ፤ በግንቦት ፡ ፲፩ ፡ ቀን ፡ ፲፱፻፷፪ ፡ ዓ. ም. (እ. ኤ. አ.) ፡ ማኅበሩ ፡ ጉባኤ ፡ አድርጎ ፡ ሥራው ፡ እንዲቆምና ፡ እንዲጣራ ፡ ውሳኔ ፡ አድርጎ ፡ ነበር ። የንግድና ፡ የኢንዱስትሪ ፡ ሚኒስቴር ፡ በቀኑ ፡ ፩፻፷፮/፶፩ ፡ አድርጎ ፡ “ምንም ፡ እንኳን ፡ እ. ኤ. አ. ግንቦት ፡ ፲፩ ፡ ቀን ፡ ፲፱፻፷፪ ፡ ዓ. ም. በተሰጠ

የሽምግልና፡ ውሳኔ፡ መሠረት፡ የኩባንያው፡ ዲፋክቶ፡ ሒሳብ፡ የተጣራ፡ መስሎ፡ ቢታይም፡ የኩባንያው፡ ሒሳብ፡ በደንብ፡ ያልተጣራ፡ መኾኑን፡ እስታውቃለች። ለኩባንያው፡ ሀብትና፡ ዕዳ፡ በምሉ፡ ጎላፊ፡ የሚኾን፡ የሒሳብ፡ አጣሪ፡ ሹማችሁ፡ የኩባንያው፡ ሒሳብ፡ በደንብ፡ እንዲጣራ፡ እንድታደርጉና፡ የሒሳብ፡ አጣሪ፡ ኩባንያውን፡ ከንግድ፡ መዝገብ፡ ውስጥ፡ ለመፋቅ፡ ወይም፡ ለመሠረዝ፡ ጎላፊ፡ እንዲኾን፡ ይደረግ፡ ዘንድ፡ አሳስባለሁ፤ በቶሎ፡ እንዲፈጸም፡ እተማመናለሁ።” ብሎ፡ ጽፎላቸው፡ ነበር። ነገር፡ ግን፡ ምንም፡ እንኳን፡ የኩባንያው፡ ጉባኤ፡ በግንቦት፡ ፲፰፡ ቁን፡ ፲፱፻፷፪፡ እ. ኤ. አ. ሥራውን፡ እንዲያቆምና፡ ኩባንያው፡ እንዲጣራ፡ ቢወሰንም፡ ሥራው፡ ቆመ፡ እንጂ፡ ማኅበሩ፡ አልተጣራም።

ማኅበሩ፡ በማጣራት፡ ላይ፡ መኾኑ፡ በግልጽ፡ ታውቆ፡ የማጣራቱ፡ ሥራ፡ እስኪፈጸም፡ ድረስ፡ የሰውነት፡ መብት፡ እንደያዘ፡ ይቈያል።

የማኅበሩ፡ ጉባኤ፡ ለመፍረስና፡ ለማጣራት፡ ያደረገው፡ ስምምነት፡ ሕጋዊ፡ ጎይል፡ ይዞ፡ ይኾናል። እንዲሁም፡ በስምምነቱ፡ መሠረት፡ የተደረገ፡ የሙክፋፈል፡ ተግባር፡ የጸና፡ ይኾናል።

ምንም፡ እንኳን፡ እንዲህ፡ ቢኾን፡ ማኅበሩ፡ ከተመሠረተበት፡ ቀን፡ ዝምሮ፡ በጉባኤው፡ ውሳኔ፡ መሠረት፡ ሒሳቡ፡ በሚስተር፡ ሰሎል፡ ተጣርቶ፡ ባለጉዳዮቹ፡ እስከተቀበሉት፡ ቀን፡ ድረስ፡ ማኅበሩ፡ በማጣራት፡ ላይ፡ መኾኑ፡ ተቈጥሮ፡ በጋዜጣ፡ ታውጆ፡ ሕግ፡ እንደሚፈቅደው፡ እንዲጣራ፡ ነው። ስለዚህ፡ አኹን፡ ይጣራ፡ የሚባለው፡ ተከራካሪዎቹ፡ ሸሪኮች፡ ለነበሩት፡ ጊዜ፡ ብቻ፡ ነው። ነገር፡ ግን፡ በማጣራት፡ ላይ፡ መኾኑ፡ ከታወጀ፡ በኋላ፡ በቀድሞ፡ ሒሳብ፡ ያልገባ፡ የኩባንያው፡ ዕዳ፡ ሲገኝ፡ ባለአክሲዮኖቹ፡ በስምምነት፡ ዕዳውን፡ ያልከፈሉ፡ እንደኾነ፡ ኩባንያው፡ ዲፋክቶ፡ እንዳልፈረሰ፡ ተቈጥሮ፡ ምሉ፡ ሀብቱ፡ በአጣሪ፡ እጅ፡ ሹኖ፡ የማጣራቱ፡ ተግባር፡ ይፈጸማል።

አንድ፡ በሕግ፡ የሰውነት፡ መብት፡ የተረጋገጠለትን፡ ማኅበር፡ በድብቅ፡ ማፍረስ፡ መንግሥትንና፡ ሕዝብን፡ መጉዳት፡ መኾኑን፡ ማንም፡ ሰው፡ የሚያውቀው፡ ነው። በተለየም፡ ተከራካሪዎች፡ ራሳቸው፡ ዐዋቂዎች፡ ከሙኾናቸው፡ በላይ፡ ጉባኤ፡ በተደረገበት፡ ጊዜ፡ የጠበቃዎች፡ ረዳትነት፡ ነበራቸው። የሦስተኛ፡ ሰው፡ መብት፡ ስላልተጠበቀ፡ የማጣራት፡ ጉዳይ፡ እንዲፈጸም፡ ሕግ፡ ያስገድዳል። በአንቀጽ፡ ፬፻፶፭(፩)፡ (ሐ) መሠረት፡ የማኅበሩ፡ መፍረስ፡ ሹኖ፡ ሲገኝ፡ በአንቀጽ፡ ፬፻፶፮፡ መሠረት፡ የማኅበሩ፡ አጣሪ፡ ተሹሞ፡ የማጣራት፡ ተግባር፡ መፈጸም፡ አለበት። የማጣራት፡ ጉዳይ፡ እስኪፈጸም፡ ድረስ፡ በአንቀጽ፡ ፬፻፶፯(፩) መሠረት፡ ማኅበሩ፡ በማጣራት፡ ላይ፡ መኖሩ፡ ነው። ይህን፡ የሕግ፡ ውሳኔ፡ መሠረት፡ በማድረግ፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ አጣሪ፡ ሹሞለታል። ስለዚህ፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ ሕግ፡ ከሚያዝዘው፡ መሥራር፡ አልወጣም። የአኹኑ፡ ክርክር፡ ምክንያት፡ ሚስተር፡ ቫስኪን፡ በስምምነታቸው፡ መሠረት፡ ሕግ፡ የሚጠይቃቸውን፡ ግዴታዎች፡ አልፈጽምም፡ ስላሉ፡ ነው።

የክርክሩን፡ ሹኖቱ፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ በሰፊ፡ መዝገቦት፡ ስለሚገኝ፡ በድጋሚ፡ መዘርዘር፡ አስፈላጊ፡ ሹኖ፡ አልተገኘም። ከላይ፡ የተዘረዘረውን፡ ሐሳብ፡ መሠረት፡ በማድረግ፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ የሰጠውን፡ ፍርድ፡ በምሉ፡ አጽንተኛነት፡ ይግባኝ፡ ባይ፡ ለመልስ፡ ሰጭ፡ ፫፻፡ ብር፡ ኪሣራ፡ እንዲከፍሉዋቸው፡ ፈርዶንባቸዋል። ሐምሌ፡ ፲፩፡ ቀን፡ ፲፱፻፶፮፡ ዓ. ም፡ በሚስተር፡ ጉብርኤል፡ ደባስና፡ በአቶ፡ ጸጋዬ፡ ተፈሪ፡ ድምፅ፡ ብልጫ፡ ይህ፡ ፍርድ፡ ተሰጥቷል። እንደ፡ ፍርዱ፡ እንዲፈጸም፡ ግልባጭ፡ ለከፍተኛው፡ ፍርድ፡ ቤት፡ እንዲላክ፡ አዝዘናል።

[ግራዝማች ፡ ትሰማ ፡ ነገደ ፡ የተለዩበት ፡ የፍርድ ፡ አስተያየት ።]

በዚህ ፡ ነገር ፡ በፍርድ ፡ ያልተሰማማኙበት ፡ ምክንያት ፡ የማኅበሩ ፡ ጉባኤ ፡ የመፍረስና ፡ የማጣራት ፡ ያደረገው ፡ ስምምነት ፡ ሕጋዊ ፡ ጎይል ፡ ይዞ ፡ ይኖራል ፤ እንዲሁም ፡ በስምምነቱ ፡ መሠረት ፡ የተደረገ ፡ የመከፋፈል ፡ ተግባር ፡ የጸና ፡ ይኾናል ፡ ከተባለ ፡ በኋላ ፡ እንደገና ፡ ሒሳቡ ፡ ይጣራል ፡ የተባለው ፡ እነጋገር ፡ ትርጉሙ ፡ ስላልተተካከለ ፡ ቅር ፡ ተሰኝቻለች ። ከዚህ ፡ ቀደም ፡ የተደረገው ፡ ሒሳብና ፡ ክፍያ ፡ ይጸናል ፡ ከተባለና ፡ እንደጸና ፡ ይኖራል ፡ ከተባለ ፡ ወደፊት ፡ ሒሳቡ ፡ ይጣራል ፡ በማለት ፡ ፈንታ ፡ ከንግድ ፡ ሚኒስቴር ፡ መጋቢት ፡ ፲፩ ፡ ቀን ፡ ፲፱፻፺፯ ፡ ዓ. ም. በቀጥር ፡ ፩፻፱፻፳፱/፺፯ ፡ ከተጻፈ ፡ ደብዳቤ ፡ ጋራ ፡ በተላከው ፡ ማብራሪያ ፡ መሠረት ፡ ሒሳቡ ፡ ተጣርቶ ፡ ካለቀ ፡ በኋላ ፡ እንደ ፡ ደንቡ ፡ ማኅበሩ ፡ መፍረሱ ፡ በጋዜጣ ፡ ባለመውጣቱ ፡ ብቻ ፡ ወደ ፡ ፊት ፡ መዝመሪያ ፡ ሒሳቡን ፡ አጣርቶ ፡ የሚያከፍፍላቸው ፡ አስተሳሰቢ ፡ ሥልጣን ፡ በከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ተሰጥቷል ፡ ስለተባለ ፡ ምናልባት ፡ ከኩባንያው ፡ ላይ ፡ ዕጻ ፡ ጠያቂ ፡ ሌላ ፡ ፫ኛ ፡ ሰው ፡ እንዲቀርብ ፡ በጋዜጣ ፡ ይጠራ ፡ ቢባል ፡ የተሻለ ፡ በኾነ ፡ ነበር ። ስለዚህ ፡ በዚህ ፡ ብቻ ፡ ቅር ፡ ስላለኝ ፡ ተለይቻለች ።

ተከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በትውስት ፡ ተልኮልን ፡ የነበረው ፡ መዝገብ ፡ በቶሎ ፡ ይላክ ፡ ብለናል ።



SUPREME IMPERIAL COURT  
Div. 6

VASKEN SISSIAN v. JACOB FOGSTAD and SYLVIA VACHARCHGIAN

Civil Appeal No. 1271/56 E.C.

*Company law - - Dissolution - - Liquidation procedure - - Commercial register - Protection of creditors - - Suspension of execution.*

On appeal from a judgment of the High Court ordering the formal liquidation of a company dissolved by its shareholders and appointing a liquidator.

*Held:* Judgment affirmed.

1. Where all the shareholders of a company have agreed on its dissolution, the company must be formally liquidated, so that all creditors may be notified and given opportunity to present their claims against the company.

2. Liquidation involves the discharge of *all* liabilities of the company and the subsequent distribution of the remaining assets among the associates according to law.

3. Until formal liquidation has occurred, the Ministry of Commerce and Industry will not erase the name of the company from the commercial register.

4. Since the purpose of formal liquidation is the protection of the creditors of the company, all debts claimed from the company must be temporarily stayed until the final appointment of a liquidator.

Hamle 15, 1956 E.C. (July 21, 1964 G.C.): Justices: Mr. G. Debbas, Grazmatch Tessemma Negede, Ato Tsaggai Tefferi: — This is an appeal against the judgment of the High Court (First Commercial Division), dated Miazia 21, 1956, in C.C. No. 171/56, whereby the formal liquidation of the company "FOGSTAD & VASKEN CO. LTD." was ordered, and a liquidator in the person of Mr. E. Salole was appointed and vested with the powers and duties of a liquidator under the Commercial Code, subject of course to Mr. Salole accepting the appointment.

This is certainly one of the most interesting appeals we have had this year, as it deals solely with questions of law as to the necessity of liquidation of a company and the difference between the dissolution of a company and its liquidation ...

The appellant and the respondents were shareholders in equal shares in the company "FOGSTAD & VASKEN CO. LTD." Due to endless disputes, a Board of Arbitrators was seized with the matter and pronounced its award on May 18, 1962, providing for the splitting and the winding up of the company. Subsequent to the award, an Extraordinary General Meeting of the company was held; it provided for the dissolution of the company. The shareholders originally agreed to appoint Mr. E. Salole as liquidator. The appellant apparently disregarded the provisions of the law regarding liquidation of the company, and thus the respondents were compelled to petition the High Court for an order to enjoin the appellant to appoint a liquidator, or alternatively, to have a

liquidator appointed by the Court itself. The High Court granted the petition and ordered formal liquidation in accordance with the law. Wherefore this appeal...

The facts are not disputed. A company was formed between the appellant and the respondents, in which those three persons were the only shareholders. Endless disputes between the shareholders were submitted to a Board of Arbitrators under a term of reference which was finally amended on January 31, 1962. The object of the amended submission was clearly to dissolve the company, each shareholder taking a share of the assets and assuming a share of the liabilities. The shareholders had agreed to split up the company on the above basis and the award in fact decided on a scheme as to how this should be done between the shareholders, so that each shareholder could continue his business individually.

On the day the award was pronounced, an Extraordinary General Meeting of the company was held and it was resolved as follows:-

1. To cease operations of the Fogstad and Vasken Co. Ltd. and wind up the company.
2. Pending the winding up of the company, the parties divide the assets and assume the liabilities in accordance with the Award of 18 May 1962.
3. A copy of the resolution and a copy of the Arbitration Award is to be forwarded to the Ministry of Commerce and Industry, with a request of advice as to the best manner of implementing the winding up.

Regarding the above point No. 3, the Ministry of Commerce and Industry recommended that a liquidator be appointed to wind up the company (See Ministry's letter No. 196/4/55 addressed to the company and advising „formal liquidation by appointing a liquidator who shall be in charge of the assets and liabilities of the company” and Ministry's letter No. 1218/4/56 addressed to the same company and notifying it that its name has not been cancelled from the register for the simple reason that no liquidator had been appointed for liquidation).

In addition to those two letters of the Ministry of Commerce and Industry asking for appointment of a liquidator according to law, we have seen the copy of the resolutions of the Extraordinary General Meeting of 18 May 1962, whereby all three shareholders, including appellant, resolved to “cease operation of Fogstad & Vasken Co. Ltd. and *wind up the company*.” The three shareholders have signed the resolutions of the Extraordinary General Meeting. We consider it, under the circumstances, as pure loss of time to continue arguing this appeal. How could this appellant come before this Court, when he has bound himself by the final resolutions to “wind up the company.” The appellant's arguments cannot be better summarized than they were in the English version of the judgment of the High Court: “There is nothing to liquidate as the company was liquidated two years ago, and the petitioners, i.e. respondents, have received their shares of the assets and their shares of the liabilities.” From the arguments of the appellant, it seems that he has no idea what dissolution means and what the difference is between dissolution and formal liquidation of a company. Vasken Sissian is satisfied to say that he chose for himself some creditors of the company whose debts he would pay and that he took his share of the assets; and that would be all, according to him. Mr. Vasken possibly forgot that liquidation involves much more than assuming some liabilities: there is involved the discharge of *all* liabilities of the company and the subsequent distribution of the remainder — whatever it might be — among the partners or associates according to law. As was stressed in the judgment under appeal, although the company has been dissolved, it survives as an entity until the dissolution is completed

for purposes of the liquidation of the company's affairs. There could easily be additional creditors or different amounts due to the creditors, and this is brought to the notice of the liquidator by the interested creditor as soon as the liquidator makes the press advertisements according to law. That the name of a creditor has not been included in Sissian's list or that an amount listed is incorrect does not necessarily make the creditor lose his rights; neither does it absolve the parties of their obligations. That is why a liquidation is necessary and why even the Ministry of Commerce insists on it. That is why the name of a company is never struck off the commercial register unless and until a liquidator has been appointed and has liquidated all according to the terms of the law. If the parties have not included all creditors or all amounts due to them, and did not consider pending cases, that list is of no value as to final obligations and does not and cannot liberate the parties from their final obligations for the surplus or remaining balance to be paid by the company.

In this particular case, at the time of the dissolution of the company, there were pending tax appeals before the Tax Appeal Commission, and such appeals resulted in the company already dissolved being condemned to amounts much higher than foreseen by Fogstad and Vasken and stated in the list of creditors. Would that mean that Fogstad alone or Vasken alone should meet those obligations? Certainly not; the company itself shall meet those obligations through the appointment of a liquidator who will care for the assets and liabilities of the company and then officially notify the Ministry of Commerce and Industry to cancel the company's name.

In the present case, as well as in all similar liquidation cases, there are various assets and various liabilities; the shareholders cannot decide to divide the assets among themselves before the creditors have been fully satisfied; until all creditors have been satisfied, the assets of the company remain the property of the company, and the creditors may levy execution on them.

In view of the foregoing, it is clear that the agreement to dissolve the company must necessarily be followed by a liquidation and that was the aim of the resolution of the Extraordinary General Meeting of May 18, 1962. Therefore, there must certainly be a formal liquidation under a liquidator.

We therefore dismiss this appeal and confirm the judgment of the High Court. But whereas the liquidator appointed by the High Court may eventually accept or refuse the said appointment, all debts claimed from the company must necessarily be stayed, temporarily, until a liquidator is finally appointed.

The appellant shall pay the respondent E.5300 as costs.

A copy of this judgment shall be served on the High Court for execution.

Given and delivered in open court this 15th day of Hamle, 1956, in the presence of both parties' lawyers.

Grazmatch Tessemma Negede, J., dissenting: — I dissent from the majority opinion in this case. It cannot be right to say that liquidation should take place again after one has said that the agreement of the general assembly of the company in regard to the dissolution and winding-up of the company shall have force and effect and that the distribution of the assets of the company in accordance with the agreement shall be valid.\*

(\*Ed. note: The Amharic version of the majority opinion was written by Ato Tsaggai Tefferi, J., and differs from the English version, which was written by Mr. G. Debbas, J., in that it explicitly states that the agreement of dissolution and distribution of assets pursuant thereto are valid.

The majority declares that the dissolution of the company and the distribution of its assets is valid and shall have force and effect. A liquidator was appointed by the High Court after the company had been liquidated according to the instructions of the Ministry of Commerce and Industry contained in a letter dated Megabit 11, 1957 E.C., Ref. No. 1946/56, only because the dissolution of the company was not published in a newspaper as is required by law. In such a case, instead of saying that the liquidation shall take place again, it would be better to say that, the creditors of the company, if there are any, shall be notified through the newspaper to appear before court.

ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፡

፩ኛ ፡ (ሀ) ችሎት ፡

የአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ እና ፡ የእስካንሰክ ፡ ኩባንያ ፡ ይግባኝ ፡ ባይ ፡ ኮሎኔል ፡ መብራቱ ፡ ፍስሐ ፡ መልስ ፡ ሰጭ ፡

የፍትሕ ፡ ብሔር ፡ ይግባኝ ፡ ቀጥር ፡ ፩ሺሕ፷፻፷፭/፶፮ ፡ ዓ ፡ ም ፡

የሕገ መንግሥት ፡ ሕግ—ሰለ ፡ ግል ፡ ንብረቶች መወሰድ—ሥነ ፡ ሥርዐት—ይግባኝ ፡ የማለት ፡ መብት የተፈጥሮ ፡ ሀብቶች—“ሕግ” ፡ የሚለው ፡ አነጋገር—ዐዋጅ ፡ ቀጥር ፡ ፩፻፲፭ ፡ ፲፱፻፵፫ ፡ ዓ ፡ ም ፡ እናቅጽ ፡ ፭ ፡ (መ) ፡ እና ፡ ፲ ፤ የሕገ መንግሥት ፡ እናቅጽ ፡ ፵፫ ፡ እና ፡ ፵፪ ፡

የፍትሕ ፡ ብሔር ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ማስታወቂያ—ተነጋጋሪዎችን ፡ (ባለነገሮችን) ፡ ስለ መተካት ፡

የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ የመንግሥት ፡ መሥሪያ ፡ ቤት ፡ የሽንገሉን ፡ ይግባኝ ፡ ባይ ፡ ከመልስ ፡ ሰጭ ፡ መሬት ፡ ላይ ፡ ድንጋይ ፡ እየቆፈረ ፡ አውጥቶ ፡ እንዳይፈልጥ ፡ በሰጠው ፡ ትእዛዝ ፡ ላይ ፡ ይህ ፡ ይግባኝ ፡ ቀረበ ፡

ውሳኔ ፡- የክልላዊው ፡ ትእዛዝ ፡ ተሠርዞ ፡ የድንጋይ ፡ ቀፈራውና ፡ ፈለጣው ፡ ሥራ ፡ እንዲቀጥል ፡ ትእዛዝ ፡ ተሰጠ ፡

፩ ፡ አንድ ፡ ሰው ፡ ለሌላ ፡ ሰው ፡ ማንኛውንም ፡ ሥራ ፡ ሊሠራ ፡ ሲቀጠርና ፡ በዚህም ፡ ሥራ ፡ ምክንያት ፡ ለሚደርሰው ፡ የፍርድ ፡ ክስ ፡ ወይም ፡ ይግባኝ ፡ አሠራው ፡ ወይም ፡ ቀጣፊው ፡ የመከራከርን ፡ ጎሳፈነት ፡ ሲወሰድ ፡ ፍርድ ፡ ቤቱ ፡ ክሱን ፡ በሚመለከትበት ፡ ጊዜ ፡ ይሽንኛውን ፡ ቀጣፊውን ፡ ወይም ፡ አሠራውን ፡ በዚያኛው ፡ ፈንታ ፡ እንዲተካ ፡ ያደርጋል ፡

፪ ፡ በማንኛውም ፡ አኳኖች ፡ ቢሾን ፡ አንድ ፡ የፍርድ ፡ ቤት ፡ ትእዛዝ ፡ ከመሰጠቱ ፡ በፊት ፡ የፍርድ ፡ ቤት ፡ ሥነ ፡ ሥርዐት ፡ እንደሚያዘው ፡ ሁሉ ፡ አስቀድሞ ፡ ተከላሽ ፡ ስለቀረበበት ፡ ክስ ፡ ማወቅና ፡ ቀርቦም ፡ እንዲከላከል ፡ ዕድል ፡ እንዲያገኝ ፡ ያስፈልጋል ፡

፫ ፡ ዐዋጅ ፡ በሚፈቅደው ፡ መብትና ፡ ሥነ ፡ ሥርዐት ፡ መሠረት ፡ የአንድ ፡ ሰው ፡ ንብረት ፡ በመንግሥት ፡ ቢወሰድበት ፡ ይህ ፡ ሰው ፡ ንብረቱን ፡ አለሕግ ፡ ዐጣ ፡ አያስኝም ፡ (የአዘጋጅ ፡ ማሳሰቢያ ፡- “አለሕግ” ፡ የሚለው ፡ አነጋገር ፡ በሕገ መንግሥት ፡ እንቅጽ ፡ ፵፫ ፡ በእንግሊዝኛው ፡ ጽሑፍ ፡ ቀጥታ ፡ ትርጉም ፡ መሠረት ፡ “ዊዝአውት ፡ ዱው ፡ ፕሮሴስ ፡ ኦቭ ፡ ሎው” ፡ ማለት ፡ ነው ፡ “ዱው ፡ ፕሮሴስ ፡ ኦቭ ፡ ሎው” ፡ የሚለውም ፡ አነጋገር ፡ በተለይም ፡ በእንግሊዝኛ ፡ በአሜሪካዊ ፡ የሕግ ፡ አነጋገር ፡ ከፍ ፡ ያለ ፡ ፍት ፡ ሲኖረው ፡ ይችላል) ፡

፬ ፡ ዐዋጁ ፡ በሚያዘው ፡ ሥነ ፡ ሥርዐት ፡ መሠረት ፡ የመንግሥት ፡ መሥሪያ ፡ ቤት ፡ የሽንገሉ ፡ ከአንድ ፡ ሰው ፡ መሬት ፡ ድንጋይ ፡ ቆፍሮ ፡ እያወጣ ፡ ቢፈልጥ ፡ ማንኛውንም ፡ የሕግ ፡ መንፈስ ፡ አይቃወምም ፡

ነሐሴ ፡ ፯ ፡ ቀን ፡ ፲፱፻፶፯ ፡ ዓ ፡ ም ፡ ዳኞች ፡- አፈ ፡ ንጉሥ ፡ ቅጣው ፡ ይታጠቁ ፡ አቶ ፡ ጥላሁን ፡ ይመሩ ፡ አቶ ፡ ወልደ ፡ አማኑኤል ፡ መልስ ፡ ሰጪው ፡ ኮሎኔል ፡ መብራቱ ፡ ፍስሐ ፡ በሐምሌ ፡ ፲፫ ፡ ቀን ፡ ፲፱፻፶፯ ፡ ዓ ፡ ም ፡ በእስካንሰክ ፡ ኩባንያ ፡ ላይ ፡ አንድ ማመልከቻ ፡ አቀረቡ ፡

በማመልከቻቸውም ፡ እስካንሰክ ፡ ኩባንያ ፡ ከመሬቱ ፡ ላይ ፡ ድንጋይ ፡ እያወጣ ፡

ይወስዳል ፤ ይህንንም ፡ የሚያደርገው ፡ አንዳችም ፡ ሕጋዊ ፡ መብት ፡ ሳይኖረው ፡ ነው ፡ ብለው ፡ አመልክተዋል ።

በዚሁ ፡ በሐምሌ ፡ ፲፫ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ ፡ ም ፡ ኮሎኔል ፡ መብራቱ ፡ ፍስሐ ፡ ለከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በአቀረቡት ፡ የመሐላ ፡ ማመልከቻ ፡ እስካንሰካ ፡ ኩባንያ ፡ የሚሠራው ፡ የድንጋይ ፡ ማውጣት ፡ መፍለጥ ፡ ሥራ ፡ እንዲታገድላቸው ፡ ጠይቀዋል ፤ ይኸው ፡ ድንጋይ ፡ የሚወጣበት ፡ መሬት ፡ የእኔ ፡ ነው ፡ ብለው ፡ በዚሁ ፡ በማመልከቻቸው ፡ አረጋግጠዋል ።

በሐምሌ ፡ ፲፭ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ ፡ ም ፡ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በሰጠው ፡ ትእዛዝ ፡ አመልካች ፡ ኮሎኔል ፡ መብራቱ ፡ ፍስሐ ፡ ያቀረቡትን ፡ የመሐላ ፡ ማመልከቻ ፡ ተቀብለን ፡ ይህ ፡ ፍርድ ፡ ቤት ፡ ሌላ ፡ ትእዛዝ ፡ እስከ ፡ ሰጠ ፡ ድረስ ፡ መልስ ፡ ሰጭው ፡ የእስካንሰካ ፡ ኩባንያ ፡ ቫሸመኔ ፡ ወረዳ ፡ ግዛት ፡ ከሚገኘው ፡ የአመልካች ፡ መሬት ፡ ላይ ፡ ድንጋይ ፡ እያወጣ ፡ እንዳይፈልጥና ፡ በዚሁ ፡ መሬት ፡ ላይ ፡ ሌላ ፡ ማናቸውንም ፡ ሥራ ፡ እንዳይሠራ ፡ እንዲሁም ፡ መብታቸውን ፡ እንዳይነካ ፡ እንዲታገድ ፡ አዘናል ፡ ብሎ ፡ አዘዘ ።

በዚህ ፡ ትእዛዝ ፡ ላይ ፡ የአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ በጽፎ/፲፩/፶፮ ፡ ይግባኙን ፡ ለዚህ ፡ ፍርድ ፡ ቤት ፡ አቀረበ ።

የይግባኙ ፡ ማመልከቻ ፡ ለኮሎኔል ፡ መብራቱ ፡ ፍስሐ ፡ ተልኮ ፡ ኮሎኔል ፡ መብራቱ ፡ ተጠርተው ፡ መከላከያ ፡ ቃላቸውን ፡ በሐምሌ ፡ ፳፫ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ ፡ ም ፡ ሰጡ ።

እስካንሰካ ፡ ኩባንያም ፡ እኔ ፡ ድንጋይ ፡ የምፈልጠውና ፡ የማቀርበው ፡ ለአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ ነው ፡ በፍርድ ፡ ቤት ፡ መከራከር ፡ ያለበት ፡ የአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ ነው ፡ የሚል ፡ ማመልከቻውን ፡ ለዚህ ፡ ፍርድ ፡ ቤት ፡ አቀረበ ።

የአውራ ፡ ጉዳና ፡ ባለሥልጣንም ፡ የእስካንሰካን ፡ ጥያቄ ፡ ተቀብሎ ፡ ስለአውራ ፡ ጉዳና ፡ ነው ፡ የሚሠራው ፡ የኮሎኔል ፡ መብራቱ ፡ ጥያቄ ፡ የማይገባ ፡ ነው ፡ ብለን ፡ የምንከራከር ፡ እኛ ፡ ነን ፡ አሉ ።

ይህ ፡ ፍርድ ፡ ቤት ፡ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ከዚህ ፡ በላይ ፡ የጠቀሰነውን ፡ ትእዛዝ ፡ በሰጠ ፡ ጊዜ ፡ ለመልስ ፡ ሰጭ ፡ እንዲደርስ ፡ ስላላደረገና ፡ ለነገሩም ፡ ቀጠሮ ፡ ያልሰጠው ፡ መሾኑን ፡ ተመልክቶ ፡ የአውራ ፡ ጉዳና ፡ ባለሥልጣንም ፡ እስካንሰካም ፡ ያቀረቡትን ፡ የመቃወሚያ ፡ ክርክር ፡ ሰምቶ ፡ እስከ ፡ ነሐሴ ፡ ፭ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ ፡ ም ፡ እንዲወሰን ፡ አድርጎ ፡ ትእዛዙን ፡ ለከፍተኛው ፡ ፍርድ ፡ ቤት ፡ አስተላለፈ ።

የዚህም ፡ ነገር ፡ በዚህ ፡ ፍርድ ፡ ቤት ፡ የሚቀጥልበትን ፡ ቀጠሮ ፡ ለ፮-፲፱-፶፮ ፡ አደረገ ፤ በዚህ ፡ ቀን ፡ የአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ ነገረ ፡ ፈጅ ፡ ቀረቡ ፤ ኮሎኔል ፡ መብራቱ ፡ ፍስሐ ፡ ግን ፡ ሳይቀርቡ ፡ ቀሩ ።

ፍርድ ፡ ቤቱም ፡ የቀረበለትን ፡ ክርክር ፡ ተመልክቶ ፡ ቀጥሎ ፡ ያለውን ፡ ውሳኔ ፡ ሰጠ ፤ — ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በመዝመሪያም ፡ አንድ ፡ ሥራ ፡ እንዲታገድ ፡ ሲያዝ ፡ መልስ ፡ ሰጭው ፡ እንዲያውቀውና ፡ እንዲከራከር ፡ ቀጠሮ ፡ ሳይሰጥ ፡ በመቅረቱ ፡ ትክክለኛው ፡ ሥነ ፡ ሥርዓት ፡ አለመሆኑን ፡ ይህ ፡ ፍርድ ፡ ቤት ፡ ተረድቶ ፡ በጽፏ/፲፩/፶፮ ፡ በሰጠው ፡ ትእዛዝ ፡ ከፍተኛው ፡ ፍርድ ፡ ቤትን ፡ አሁንም ፡ ተከራካሪዎቹን ፡ ሰምቶ ፡ እስከ ፡ ነሐሴ ፡ ፭ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ ፡ ም ፡ ውሳኔ ፡ እንዲሰጥ ፡ አዘዘ ። ይህ ፡ ትእዛዝ ፡ ባለመፈጸሙ ፡ በዛሬው ፡ ቀን ፡ የአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ትእዛዝ ፡ እንዲሻርለት ፡ ጠየቀ ።

የእስካንስካን ፡ ጥያቄ ፡ የአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ ተቀብሎ ፡ ባለጉዳዩ ፡ እኔ ፡ ነኝ ፡ ስላለና ፡ የሚሠራውም ፡ መንገድ ፡ የአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ የሚሠራው ፡ ስለሆነ ፡ ነገሩ ፡ በእስካንስካ ፡ ኩባንያና ፡ በይግባኝ ፡ መልስ ፡ ሰጭው ፡ በኮሎኔል ፡ መብራቱና ፡ በአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ መካከል ፡ መኾኑን ፡ ፍርድ ፡ ቤቱ ፡ ተረድቶ ፡ ተቀብሎታል ።

ይህ ፡ ነገር ፡ የሚታየው ፡ ስለአውራ ፡ ጉዳና ፡ ሥራ ፡ ነገር ፡ በዐሥረኛ ፡ ዓመት ፡ ቊጥር ፡ ፩ ፡ የአውራ ፡ ጉዳናዎች ፡ ባለሥልጣን ፡ በተቋቋመበት ፡ በ፲፱፻፵፫ ፡ ዓ ፡ ም ፡ ነጋሪት ፡ ጋዜጣ ፡ ዐዋጅ ፡ ነው ። ለዚሁ ፡ ለአኹኑ ፡ ነገር ፡ የሚጠቅመው ፡ የዚሁ ፡ ነጋሪት ፡ ጋዜጣ ፡ ዐዋጅ ፡ ቊጥር ፡ ፩ ፡ (መ) እና ፡ ቊጥር ፡ ዐሥር ፡ ነው ።

ቊጥር ፡ ፲ ፡ እንደዚህ ፡ ይላል ፡ በዚህ ፡ ዐዋጅ ፡ በ፩ተኛው ፡ ክፍል ፡ (መ) እንደተመለከተው ፡ የመንግሥት ፡ ንብረት ፡ አድርጎ ፡ በግል ፡ መሬቶች ፡ ላይ ፡ ለመግባት ፡ ወይም ፡ መሬቶችን ፡ ለመውሰድ ፡ ለባለሥልጣኑ ፡ የተሰጠው ፡ መብት ፡ በማናቸውም ፡ ፍርድ ፡ ቤት ፡ እንደገና ፡ መታየት ፡ ወይም ፡ መፈቀድ ፡ የለበትም ፤ በመሬቶች ፡ ላይ ፡ ስለሚገኙት ፡ ቤቶች ፡ አዝመራዎች ፡ አታክልቶች ፡ ወይም ፡ ሌሎች ፡ የማይንቀሳቀሱ ፡ ንብረቶች ፡ ባለሥልጣኑ ፡ የወሰነውን ፡ ግምት ፡ በሚገባ ፡ መኾኑንና ፡ አለመኾኑን ፡ ወይም ፡ በመሬቱ ፡ ላይ ፡ ባለጥቅሞች ፡ በኾኑት ፡ ሰዎች ፡ መካከል ፡ ያለው ፡ የግምት ፡ አከፋፈል ፡ ይመርመርልኝ ፡ ሲል ፡ በተወሰደው ፡ መሬት ፡ ላይ ፡ ጥቅም ፡ ያለው ፡ ማናቸውም ፡ ሰው ፡ መሬቱ ፡ ባለበት ፡ አውራጃ ፡ በሚገኘው ፡ የአውራጃ ፡ ፍርድ ፡ ቤት ፡ ወይም ፡ በከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በባለሥልጣኑ ፡ ላይ ፡ ክስ ፡ ማቅረብ ፡ ይችላል ፡ ይላል ።

ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ቢሐምሌ ፡ ፲፩ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ ፡ ም ፡ የሰጠው ፡ ትእዛዙ ፡ ከዚህ ፡ ለአውራ ፡ ጉዳና ፡ ከተሰጠው ፡ ሕግ ፡ ጋራ ፡ የማይስማማ ፡ ነው ።

ከዚህ ፡ በቀር ፡ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ የሰጠው ፡ ይኸው ፡ ትእዛዝ ፡ ከፍርድ ፡ ቤቶች ፡ ሥነ ፡ ሥርዐት ፡ ደንብ ፡ ጋራ ፡ የማይስማማ ፡ ነው ።

ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በማናቸውም ፡ ምክንያት ፡ ቢኾን ፡ የቀረበለትን ፡ አቤቱታ ፡ የሰጠውን ፡ ትእዛዝ ፡ ተቀብሎ ፡ ሰው ፡ እንዲያውቀውና ፡ እንዲከላከል ፡ ማድረግ ፡ ደንበኛ ፡ የፍርድ ፡ ቤት ፡ ሥነ ፡ ሥርዐት ፡ ኹኖ ፡ ሳለ ፡ ተከላክሎ ፡ አልጠራውም ፤ የቀረበበትን ፡ አቤቱታ ፡ እንዲያውቀው ፡ አላደረገም ፤ ትእዛዝ ፡ ከሰጠ ፡ በኋላ ፡ ቢኾን ፡ ትእዛዙና ፡ የቀረበበት ፡ አቤቱታ ፡ እንዲደርሰው ፡ አላደረገም ፤ ለነገሩም ፡ ቀጠሮ ፡ አልሰጠም ። ይህ ፡ ኹሉ ፡ ከፍርድ ፡ ቤት ፡ ሥነ ፡ ሥርዐት ፡ ውጭ ፡ የኾነ ፡ አሠራር ፡ ነው ። ስለዚህ ፡ ነው ፡ ይኸው ፡ በ፲፩/፲፪/፶፮ ፡ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ የሰጠው ፡ ትእዛዝ ፡ ከፍርድ ፡ ቤት ፡ ሥነ ፡ ሥርዐት ፡ ደንብ ፡ ጋራ ፡ የማይስማማ ፡ ነው ፡ የምንለው ።

ከዚህ ፡ በላይ ፡ በጠቀስነው ፡ የአውራ ፡ ጉዳና ፡ ሕግ ፡ በከፍል ፡ ፩ ፡ (መ) መሠረት ፡ የአውራ ፡ ጉዳና ፡ ባለሥልጣን ፡ ግምት ፡ ገምቶ ፡ ለባለጥቅሙ ፡ ግምቱን ፡ ማስታወቅ ፡ ግዴታው ፡ ነው ።

ባለጥቅሙ ፡ በዚሁ ፡ ግምት ፡ ባይስማማ ፡ ለአውራጃው ፡ ፍርድ ፡ ቤት ፡ ወይም ፡ ለከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ስለግምቱ ፡ ክሱን ፡ አቅርቦ ፡ መከራከር ፡ ነው ። ፍርድ ፡ ቤት ፡ የሚገባበት ፡ ነገር ፡ ይህ ፡ ነው ። ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ግን ፡ ከዚህ ፡ ሕግ ፡ ውጭና ፡ ከፍርድ ፡ ቤት ፡ ሥነ ፡ ሥርዐት ፡ ሕግ ፡ ውጭ ፡ አቤቱታ ፡ የቀረበበት ፡ አንድም ፡ የመከላከልን ፡ መብቱን ፡ ሳይጠብቅ ፡ ከዚህ ፡ በላይ ፡ የተሰጠውን ፡ ትእዛዝ ፡ የሰጠው ፡ አላላገባብ ፡ ኹኖ ፡ አግኝተነዋል ።

የአውራጃ፡ ጉዳና፡ ባለሥልጣን፡ ለአቀረበው፡ ክርክር፡ ኮሎኔል፡ መብራቱ፡ ፍብረት፡ ሰብሐ፡ እንቀጽ፡ ሟ። ለና፡ ሟ። ሕገ፡ መንግሥት፡ ጠቅሰዋል ።

ቀጥሮ፡ ሟ። ማንም፡ ሰው፡ ንብረቱን፡ አለሕግ፡ አያጣም፡ የሚለው፡ ነው ። ከዚህ፡ በላይ፡ በጠቀሰው፡ በ፲፱፻፵፫፡ ዓ. ም. በወጣው፡ ነጋሪት፡ ጋዜጣ፡ ሕግ፡ መሠረት፡ የሚሠራው፡ ሥራ፡ ያለሕግ፡ ሊባል፡ አይቻልም ።

ቀጥሮ፡ ሟ። እንደዚሁ፡ ንብረቶች፡ ስለመውሰድ፡ (ኤክስፕሮፕራዮሽን) ነው ። ይኸም፡ ቢኾን፡ በቀድሞው፡ በ፲፱፻፵፫፡ ዓ. ም. ነጋሪት፡ ጋዜጣ፡ ሕግ፡ መሠረት፡ የተሠራ፡ ነው ። በጠቅላላውም፡ ይህ፡ የ፲፱፻፵፫፡ ዓ፡ ም፡ ሕግ፡ ከግል፡ ጥቅም፡ የጠቅላላውን፡ ጥቅም፡ ያስቀድም፡ እንጂ፡ የግል፡ ጥቅምን፡ የማይጉዳ፡ ከማናቸውም፡ የሕግ፡ መንፈስ፡ ጋራ፡ የሚሰማማ፡ ነው፡ እንጂ፡ ማንንም፡ የሚበድል፡ ሳይኾን፡ የጠቅላላውንም፡ ጥቅም፡ የሚጠብቅ፡ ነው ።

በነዚህ፡ ኹሉ፡ ምክንያቶች፡-

ከፍተኛው፡ ፍርድ፡ ቤት፡ በ፲፭/፲፩/፶፮፡ የሰጠው፡ ትእዛዝ፡ ከዚህ፡ በላይ፡ እንደገለጽነው፡ ከሕጎቹ፡ ጋራ፡ የማይሰማማ፡ ስለኾነ፡ ሠርዘነዋል ።

ከፍተኛው፡ ፍርድ፡ ቤት፡ የእስካንሰካ፡ ከባንያና፡ የአውራጃ፡ ጉዳና፡ ባለሥልጣን፡ ሥራ፡ እንዲታገድ፡ ያደረገውን፡ አንሥተን፡ የድንጋይ፡ ማውጣቱን፡ መፍለጡን፡ ሥራ፡ እንዲቀጥል፡ አዘናል ።

በትእዛዙ፡ መሠረት፡ እንዲያስፈጽም፡ የዚህ፡ ትእዛዝ፡ ግልባጭ፡ ለሻሸመኔ፡ ወረዳ፡ ፍርድ፡ ቤት፡ ይተላለፍ፡ ስለግምት፡ መጠየቅ፡ ነገር፡ ኮሎኔል፡ መብራቱ፡ የሚያቀርቡት፡ ክርክር፡ ቢኖር፡ ይህ፡ ትእዛዝ፡ አያግድም ።

ከፍተኛው፡ ፍርድ፡ ቤትም፡ በግምት፡ የሚቀርብለትን፡ ክርክር፡ ከመስማት፡ በቀር፡ በዚህ፡ ነገር፡ ይህ፡ ፍርድ፡ ቤት፡ የመንገድ፡ ሥራ፡ እንዳይሰናከል፡ ይህን፡ ትእዛዝ፡ የሰጠ፡ ስለኾነ፡ እንደገና፡ የሚገባበት፡ ነገር፡ የለም ። የዚህ፡ ትእዛዝ፡ ግልባጭ፡ ለከፍተኛው፡ ፍርድ፡ ቤት፡ ይላክ ።



SUPREME IMPERIAL COURT  
Div. IA

HIGHWAY AUTHORITY and ESKANISKA CO.  
v. MEBRATU FISSIHA

Civil Appeal No. 1665/56

*Constitutional law -- Expropriation -- Procedure -- Right of appeal -- Natural resources -- Due process of law -- Arts. 5 (d) and 10 Proc. No. 115/51 -- Arts. 43 and 44 Rev. Const.*

*Civil procedure -- Notice -- Substitution of parties.*

On appeal from an order of the High Court enjoining petitioner, a government agency, from quarrying stone from respondent's land.

*Held:* Injunction order cancelled and continuation of quarrying ordered.

1. Where a person does work on behalf of another person, and where the latter accepts the request of the former to defend or to appeal a suit in connection with such work, the Court will substitute the latter for the former as a party to the suit.
2. Under all circumstances, the Court Procedure Rules require that before a court order is given, the defendant be informed and given an opportunity to answer the complaint against him.
3. Proceedings authorized by Proc. No. 115 of 1951 do not violate Arts. 43 and 44 Rev. Const.
4. The quarrying of stone by a government agency from a person's land in accordance with a procedure established by a proclamation does not violate the provisions of the Constitution establishing stricter procedures for expropriation.

Nehasse 6, 1956 E.C. (August 11, 1964 G.C.); Justices: Afenigus Kitaw Yitateku, Ato Tilahun Yimeru, Ato Wolde Amanuel: — The respondent, Col. Mebratu Fissaha, sued Eskaniska Co. on Hamle 13, 1956 E.C.

In his complaint in the High Court, he stated that Eskaniska Co. was, without any legal right, quarrying stone from his land.

On this same day, Hamle 13, 1956 E.C., Col. Mebratu Fissaha submitted an affidavit verifying that the land where the work was being done belonged to him and requesting that an injunction be given to stop Eskaniska Co. from quarrying any stone from his land.

The order given by the High Court on Hamle 15, 1956 E.C. stated: "Considering the affidavit given by Col. Mebratu Fissaha, we have ordered that the defendant Eskaniska Co. shall not quarry any stone from the land found in Shashamene and belonging to the plaintiff until this Court gives any other order."

The Highway Authority appealed to this Court against this order.

A copy of the appeal petition was sent to Col. Mebratu Fissaha, who then appeared in this Court and gave his answer on Hamle 23, 1956 E.C.

Eskaniska Co. also submitted to this Court that, since the company is quarrying stone for the use of the Highway Authority, the appropriate party to handle any court case in this connection is the Highway Authority.

The Highway Authority also stated that, since the company is working for it, it should be the Highway Authority that explains to the Court the inappropriateness of Col. Mebratu's request.

This Court, after considering that the High Court, when it issued its order, neither informed the defendant by sending it a copy of the order nor fixed a time for the defendant to appear, sent the case back and ordered the High Court to give its final decision before Nehasse 5, 1956 E.C.

It also set Nehasse 6, 1956 E.C. as the date to review the matter in this Court. On that day the attorney for the Imperial Highway Authority was present, but Col. Mebratu Fissiha was not present.

The Court, after studying the claims of both sides, gave the following decision. The High Court should not have given an injunction to stop the work before notifying the defendant and giving him sufficient time to prepare his defence. Accordingly, on Hamle 27, 1956 E.C., this Court ordered the High Court to hear the parties and give its final decision before Nehasse 5, 1956 E.C. Because this order was not followed, the Imperial Highway Authority has applied today for the cancellation of the order of the High Court.

Considering that the Highway Authority has accepted the request of the Eskaniska Co. to be substituted as defendant and knowing that the work is being done for the Highway Authority, the Court has agreed to substitute the Highway Authority for Eskaniska Co. and to consider the dispute as being between the respondent, Col. Mebratu Fissiha, and the appellant Highway Authority.

The case must be considered under Proc. No. 115/51 by which the Imperial Highway Authority was established. The most relevant sections of the Proclamation for this case are Articles 5 (d) and 10.

Article 10 states that, as indicated in Article 5 (d) of the Proclamation, the right given to the Highway Authority to enter into or to take any private land and make it government property is not subject to review or reconsideration by any court.

If a person is not satisfied with the compensation assessed by the Highway Authority in respect of the value of houses, crops, gardens and other immovables on the land, or wants the allotment of the compensation among those having an interest in the land to be re-examined, he can apply to the Awradja Court having jurisdiction on the land or to the High Court.

As Article 5 (d) of the Proclamation states, the Highway Authority should make an estimate and make it known to the interested party.

If the interested party disagrees with such estimate, he can apply to the Awradja or the High Court and assert his right. Court consideration is required only to that extent. Since the High Court gave the order in violation of this provision and of the Court Procedure Rules, we find that the order was inappropriate.

In answer to the contention of the Highway Authority, Col. Mebratu Fissiha has relied on Articles 43 and 44 of the Revised Constitution.

Article 43 states that a person shall not be deprived of his property without due process of law.\* Any act done in accordance with the Proclamation of 1951 indicated above cannot be considered as not done in accordance with the law.

Article 44 is concerned with expropriation. Also considering this, it is done according to the Proclamation of 1951. In general, the purpose of the Proclamation of 1951 is to benefit society. Hence, any decision made under it may sacrifice the interest of an individual to that of the society.

Moreover, the order given by the High Court violates the Court Procedure Rules.

While the Court Procedure Rules require that, under all circumstances, before a court order is given, the defendant should be informed and given an opportunity to answer the complaint against him, the High Court neither summoned the defendant nor set a later time for a hearing. All this is contrary to the Court Procedure Rules, and this Court holds that the order given on Hamle 15, 1956 E.C. violates the Court Procedure Rules.

On the basis of all these reasons, since the order of the High Court given Hamle 15, 1956 E.C. violates the law, we have declared it null and void.

We have cancelled the injunction given to stop the work of Eskaniska Co. and the Highway Authority, and have ordered that the quarrying continue.

To have this order executed, a copy of the order shall be sent to Shashamene Woreda Court. This order shall not bar Col. Mebratu Fissiha from bringing an action in connection with the compensation to be given.

The High Court, apart from considering the issue of compensation, does not have any authority to consider this case further, since this Court has given this order not to delay road construction. Therefore, a copy of this order is to be sent to the High Court.

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\* Translator's note: A literal translation of the Amharic, however, is: "No one shall be deprived of his property *except in accordance with the law.*"

ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፤

ሰድስተኛ ፡ ችሎት ።

ነዲ ፡ ጎይሌ ፡ ይግባኝ ፡ ባይ ፤ ዐቃቤ ፡ ሕግ ፡ መልስ ፡ ሰጭ ።

የወንጀል ፡ ይግባኝ ፡ ቅጥር ፡ ፳፻፳፻/፶፭ ፡ ዓ ፡ ም ።

የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት — ከተበዳይ ፡ ጋራ ፡ ፅርቅ — አቤቱታን ፡ ስለማንጣት ።

የወንጀለኛ ፡ መቅጫ ፡ ሕግ — መከላከያ — ቅጣትን ፡ ስለማቅለል — ከተበዳዩ ፡ ጋራ ፡ ፅርቅ — የደም ፡ ጉግ — የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ እንቀጽ ፡ ፳፩ ።

ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በይግባኝ ፡ ባይ ፡ ላይ ፡ ቂም ፡ በቀል ፡ በማሰብ ፡ በግፍ ፡ ሰው ፡ ገድሰኝልና ፡ ጥፋተኛ ፡ ነኸ ፡ ብሎ ፡ በዐሥራ ፡ ዐምስት ፡ ዓመት ፡ እስራት ፡ እንዲቀጣ ፡ በፈረደበት ፡ ላይ ፡ ይህ ፡ ይግባኝ ፡ ቀረበ ። የይግባኙም ፡ ጥና ፡ ምክንያት ፡ ይግባኝ ፡ ባዩ ፡ ለተበዳይ ፡ የደም ፡ ጉግ ፡ ከፍሎ ፡ ስለታረቀ ፡ ከቅጣቱ ፡ ነዲ ፡ እንዲኾን ፡ ነው ።

ውሳኔ 1- ይግባኙ ፡ ተክልክሎ ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ፍርድ ፡ ጸድቋል ።

ለተበዳይ ፡ ወይም ፡ ለተበዳይ ፡ ወገኖች ፡ ጉግ ፡ በመክፈል ፡ የሚደረግ ፡ ፅርቅ ፡ ቅጣትን ፡ የማቅለል ፡ ዋጋ ፡ ሊኖረው ፡ ይችላል ።

መስከረም ፡ ፳፩ ፡ ቀን ፡ ፲፱፻፶፯ ፡ ዓ ፡ ም ። ዳኞች ፡- ሚስተር ፡ ጂ ፡ ደባስ ፡ አቶ ፡ ጎይሌ ፡ አማን ፡ ግራዝማች ፡ ተሰማ ፡ ነገደ ። ይህ ፡ ፍርድ ፡ ቤት ፡ የቀረበለትን ፡ መዝገብና ፡ የይግባኝ ፡ ባዩን ፡ ማመልከቻ ፡ መርምሮ ፡ በቃል ፡ ያመለከተውን ፡ በመዝገብ ፡ እስፍሮና ፡ ገምቶ ፡ ዐቃቤ ፡ ሕግ ፡ የሰጠውንም ፡ የመጨረሻ ፡ ሐሳብ ፡ ተቀብሎ ፡ የሚከተለውን ፡ ውሳኔ ፡ ሰጥቷል ።

ተከላሹ ፡ ነዲ ፡ ጎይሌ ፡ በኢትዮጵያ ፡ ወንጀለኛ ፡ መቅጫ ፡ ደንብ ፡ በቅጥር ፡ ፳፻፳፻ ፡ እና ፡ በ፴፯ ፡ ፴፯ ፡ እና ፡ በ፹፩ ፡ የተጻፈውን ፡ ሕግ ፡ በመተላለፍ ፡ ሐምሌ ፡ ፳፯ ፡ ቀን ፡ ፶፩ ፡ ዓ ፡ ም ፡ ከቀኑ ፡ በግምት ፡ ዐሥር ፡ ሰዓት ፡ ሲኾን ፡ በተጉለትና ፡ ቡልጋ ፡ አውራጃ ፡ ቅምቢቢት ፡ ወረዳ ፡ ቦሬ ፡ ከተባለው ፡ ቀበሌ ፡ ካልተያዘውና ፡ ካልቀረበው ፡ ዘለቀ ፡ ዱበሮ ፡ ከተባለው ፡ ጋራ ፡ ኹኖ ፡ ጉደታ ፡ ዳርጌ ፡ የተባለውን ፡ ሰው ፡ ድሬ ፡ በሬ ፡ ከተባለው ፡ ወንዝ ፡ ዳር ፡ ደፍጠው ፡ ቂይተው ፡ ያልተያዘው ፡ ተከላሽ ፡ ሚቼን ፡ በመጀመሪያ ፡ በዱላ ፡ ራሱ ፡ ላይ ፡ መትቶ ፡ ሲወድቅ ፡ ደግሞ ፡ ከግራ ፡ ጉኑ ፡ ላይ ፡ በጨቤ ፡ ወግቶት ፡ ባለ ፤ ይህ ፡ ተከላሽም ፡ በዱላ ፡ ደብድቦ ፡ ገድለውታል ፡ በማለት ፡ ክስ ፡ ቀርቦበታል ። ተከላሹ ፡ በዚሁ ፡ ወንጀል ፡ ተይዞ ፡ በተከላሽነት ፡ ከቅምቢቢት ፡ ወረዳ ፡ ፍርድ ፡ ቤት ፡ በቀረበ ፡ ጊዜ ፡ እምነት ፡ ከሕደት ፡ ቢጠየቅ ፡ ጥፋተኛ ፡ እይደለሁም ፡ በማለቱ ፡ ወደ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ተላልፎ ፡ ለዚህ ፡ ነገር ፡ ምስክር ፡ እንዲሰማበት ፡ ተደርጎ ፡

ኹለት፡ አየን፡ የሚሉ፡ ምስክሮችና፡ ፩፡ በፖሊስ፡ ጣቢያ፡ ተጠይቆ፡ ሲያምን፡ ሰምቻለኹ፡ የሚል፡ ምስክር፡ መስክረዋል።

አየን፡ ያሉት፡ ምስክሮች፡ በዚሁ፡ ሚች፡ በተገደለበት፡ ቀን፡ ከዱር፡ ከብቶቻችንን፡ እናግድ፡ ነበረና፡ ከላይ፡ ሰማቸው፡ የተጠቀሱት፡ ተከላሾች፡ ሚችን፡ በዱላ፡ ሲቀጠቅጡት፡ እይተናል፤ በኋላም፡ ወደኛ፡ እየሮጡ፡ መጥተው፡ ቆማችኹ፡ ምን፡ ታያላችሁ፡ ብለው፡ ጠይቀው፡ ጉደታ፡ ጻርጌ፡ የተባለውን፡ ገድለንዋልና፡ ለሰው፡ አትንገሩ፡ ብትነግሩ፡ እናንተንም፡ እንደሱ፡ እንገድላችኋለን፡ ብለው፡ ዝተውብን፡ ኼዱ፡ በማለትና፡ ይኸው፡ ተከላሽም፡ በሚች፡ መቃብር፡ ላይ፡ ተያዘ፡ ብለው፡ መስክረዋል።

ምንም፡ እነሱ፡ ገለው፡ በፈቃዳቸው፡ ሩጠው፡ ኼደው፡ ሰው፡ ገድለናልና፡ ለሰው፡ አትንገሩ፡ ብለው፡ አስፈራርተው፡ ተከላሹ፡ በማግስቱ፡ ለለቅሶ፡ መጥቶ፡ እዚያው፡ ተያዘ፡ ተብሎ፡ የተመሰከረው፡ ቃል፡ በልብ፡ ላይ፡ ጥርጣሬን፡ የሚጥል፡ ቢኾንም፡ ተከላሹ፡ በተያዘበት፡ ቀን፡ በትኩሱ፡ ያጥቢያው፡ ጻኛ፡ ቱሉ፡ ገመዳ፡ የተባለውና፡ እማኞች፡ ባሉበት፡ ቢጠየቅ፡ የአገዳደላቸውን፡ ምክንያት፡ ማለት፡ በመሬት፡ ነገር፡ ተጣልተውና፡ ተከራክረው፡ ተረትተው፡ ዐላባ፡ ክፈሉ፡ ተብለው፡ ሳለ፡ ለመሬቱ፡ ዐላባ፡ አህዮች፡ ተገምተው፡ ውሰድ፡ ቢባል፡ አህያ፡ አልቀበልም፡ በማለቱ፡ ከዚያን፡ ቀን፡ ዝምሮ፡ ጠፋ፡ ከተባለው፡ ከናቱ፡ ወንድም፡ ዘለቀ፡ ዱበሮ፡ ከተባለው፡ ጋራ፡ መክረው፡ ከመንገድ፡ ላይ፡ ደፍጠው፡ ቈይተው፡ አስቀድሞ፡ ዘለቀ፡ ዱበሮ፡ በዱላ፡ ራሱን፡ መትቶ፡ ሲጥለው፡ ተከላሽም፡ ከወደቀበት፡ ላይ፡ በዱላ፡ መደብደቡንና፡ ዘለቀም፡ በጨቤ፡ ወግቶ፡ መግደላቸውን፡ ከገደሉትም፡ በኋላ፡ መንደር፡ ኼደው፡ ዐረቄ፡ ገዝተው፡ መጥተው፡ ጊዜው፡ ሲጨልም፡ ሚችን፡ ከገደሉበት፡ በታ፡ ኼደው፡ እግርና፡ ራሱን፡ ይዘው፡ እየጐተቱ፡ ከወንዝ፡ አውርደው፡ መጣላቸውን፡ አረጋግጠው፡ ያመኑ፡ ስለሆኑ፡ ዐብሮት፡ ገደለ፡ የተባለው፡ ዘለቀ፡ ዱበሮም፡ ሚች፡ ከተገደለበት፡ ቀን፡ ዝምሮ፡ አገር፡ ጥሎ፡ ጠፍቷል፡ ስለተባለ፡ ገዳይ፡ ለመሆናቸው፡ ተረጋግጧል፡ ለማለት፡ ተችሏል።

ከዚህም፡ በተቀር፡ ይህን፡ ምስክሮች፡ ከመሰከሩበት፡ በኋላ፡ ይኸው፡ ተከላሽ፡ መከላከያ፡ ምስክር፡ አለኝ፡ ብሎ፡ ቈጥሮ፡ የተቈጠሩት፡ ምስክሮች፡ እንዲቀርቡ፡ በተቀጠሩበት፡ ቀን፡ የቈጠርኳቸው፡ ምስክሮች፡ ከፀገር፡ ጠፍተዋልና፡ ሌላ፡ ምስክር፡ ልተካ፡ ብሎ፡ አመልክቶ፡ ቢፈቀድለት፡ እንደሱው፡ በወንጀል፡ ተከሰው፡ በእስር፡ ቤት፡ የሚገኙ፡ ወንጀለኞች፡ ቈጥሮ፡ እነኝም፡ ቀርበው፡ ሳይመሰክሩ፡ ዘመዶቹ፡ ከሚች፡ ወገኖች፡ እንዲታረቁ፡ አድርጎ፡ ስለደም፡ ዋጋ፡ ከሮማን፡ መሬት፡ ሰጥተው፡ ታርቀውለት፡ ይግባኝ፡ ባይም፡ ዕርቁን፡ ፈቅጃለሁ፡ ብሎ፡ የቈጠራቸውን፡ የመከላከያ፡ ምስክሮች፡ መጥተው፡ ይህም፡ የመዝናኛቸውን፡ እምነት፡ የሚያጸድቅበት፡ ኹኗል።

በእውነቱ፡ የይግባኝ፡ ባዩ፡ ወንጀል፡ አሠራር፡ በዕለት፡ ጠብ፡ በተነሣ፡ እምባጓሮ፡ ሳይኾን፡ ቂም፡ በመያዝ፡ ዐስቦና፡ መክሮ፡ ያደረገው፡ አገዳደል፡ ስለኾነ፡ የከፍተኛው፡ ፍርድ፡ ቤት፡ ዕርቁን፡ ተቀብሎ፡ ቅጣቱን፡ ወደ፡ እስራት፡ ባይለውጠው፡ ኑሮ፡ ጉዳዩ፡ በሌላ፡ መልክ፡ ሊፈጸም፡ በተቻለ፡ ነበር። ስለዚህ፡ ይህ፡ ይግባኝ፡ ባይ፡ በቂም፡ በበቀል፡ ዐስቦ፡ ከአጐቱ፡ ጋራ፡ ከመንገድ፡ ላይ፡ ደፍጦ፡ ጠብቆ፡ የገደለ፡ ስለኾነና፡ ከገደሉትም፡ በኋላ፡ የሰውን፡ ልጅ፡ እንደ፡ ውሻ፡ ወይም፡ እንደ፡ አራዊት፡ ሬሳ፡ ጐትቶ፡ ከወንዝ፡ አውርዶ፡ መጣል፡ ድርብ፡ ግፍ፡ ስለኾነ፡ ከፍተኛው፡ ፍርድ፡ ቤት፡ የፈረደውን፡ የ፲፩፡ ዓመት፡ እስራት፡ አጽንተን፡ ይግባኝ፡ ባዩን፡ አሰናብተናል። ፍርድ፡ መጽናቱን፡ እንዲያውቀው፡ ለከፍተኛው፡ ፍርድ፡ ቤትና፡ ለወሀኒ፡ ቤት፡ አሃዥ ይጸፍ።

SUPREME IMPERIAL COURT  
Div. 6

NEDDI HAILE v. THE ADVOCATE GENERAL

Criminal Appeal No. 522/55 E.C.

*Criminal procedure -- Private complaint -- Reconciliation -- Withdrawal of complaint.  
Penal law -- Defences -- Mitigation of sentence -- Reconciliation -- Blood-money -- Arts. 217 and 221 P.C.*

On appeal from the High Court's judgment of conviction for cold-blooded murder and sentence of fifteen years imprisonment, the appellant based his claim for release on the fact that he had compensated and reconciled with the relatives of the deceased.

*Held:* Conviction affirmed.

1. Whereas it may well have been, under the old Penal Code of 1930, that a murderer could escape penal liability for his act by the payment of blood money, he cannot do so under the new Penal Code of 1957.

2. Art. 221 of the Penal Code of 1957 applies only to crimes punishable upon private complaint as defined in Art. 217, and a prosecution for cold-blooded murder does not depend on a private complaint.

3. Reconciliation with the relatives of the deceased may, in a murder prosecution, be taken as an extenuating circumstance in fixing the sentence.

Maskaram 21, 1957 E.C. (September 30, 1964 G.C.); Justices: Mr. G. Debbas, Ato Haile Aman, Grazmatch Tessemma Negede: — This is an appeal against the judgment and sentence of the High Court (1st criminal division) in Cr. C. No. 220/52, whereby the appellant was found guilty of murder and, in view of extenuating circumstances, was sentenced to fifteen years' imprisonment only.

The main ground of appeal is that the appellant has settled amicably and reconciled with the relatives of the deceased, and that having consequently paid them blood money and given them a piece of land for reconciliation, he should now be released from jail. That is the only argument of the appellant. On the other hand, he admits his cold-blooded murder, thus supporting two eye-witnesses who testified against him, and he does not attack the finding of the High Court to the effect that he was guilty of murder.

Ato Negga for the Attorney General strongly objected to the release of the appellant, as the reconciliation that intervened between him and the relatives of the deceased cannot be the basis for such release. He said that although the appellant could have had a chance for release after payment of blood money under the old Penal Code, he cannot under the new Penal Code of 1957. Article 221 of the Penal Code of 1957, cited by the appellant, applies only in cases of crimes punishable upon private complaint, as defined in Article 217 of the Penal Code, while a prosecution for murder does not depend on a private complaint. Under the circumstances, Ato Negga asked the Court to dismiss the appeal and confirm the sentence of the High Court.

## NEDDI HAILE V. THE ADVOCATE GENERAL

The appellant, nevertheless, begged for reconsideration of his fifteen years' imprisonment, because he reconciled with the relatives of the deceased and gave them a piece of land.

The Court finds no way out but to agree with the opinion of Ato Negga. Article 221 of the Penal Code applies only in cases of crimes punishable upon private complaint; and this is a cold-blooded murder for which the prosecution does not depend on a private complaint as defined in Article 217 of the Penal Code. Consequently, Article 221 is inapplicable and rejected by the Court. It may well be that appellant could have had a chance under the old Penal Code; but it is no longer in existence.

Upon reconsidering the period of imprisonment imposed on the appellant by the High Court, we wish to draw the attention of the appellant to the fact that he escaped the death sentence; the High Court considered his reconciliation and his youth as extenuating circumstances. We cannot see that the High Court was too firm with the appellant. The penalty it imposed was rather light; but since the respondent asked for its confirmation and did not appeal, we simply confirm it.

The appeal is therefore rejected, and the fifteen years' imprisonment of the High Court are hereby confirmed.

The High Court and Prison Authorities are to be notified in Amharic.

Given and delivered in open Court this 21st day of Maskaram, 1957 E.C., in the presence of appellant in person and Ato Negga for the respondent.

ጠቅላይ ፡ የንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፤

፩ኛ ፡ (ሀ) ችሎት ።

ዘየኑ ፡ አብደላ ፡ ይግባኝ ፡ ባይ ፤ ወይዘሮ ፡ ውባየኹ ፡ ሰማኸኝ ፡ መልስ ፡ ሰጭ ።

የፍትሕ ፡ ብሔር ፡ ይግባኝ ፡ ቊጥር ፡ ፩፻፳፻፱/፶፮ ፡ ዓ ፡ ም ።

የውል ፡ ግዴታዎች—በድር—ወለድ—በዕራጣ፡ ከሚገባ ፡ ወለድ ፡ በላይ ፡ ለመጠየቅ ፡ የሚደረግ ፡ ከሕግ ፡ ውጭ ፡ የኾነ ፡ የብድር ፡ ውል—የወለድ ፡ አግድ ፡ ውል—ከራይና ፡ ትርፍ—የፍትሕ ፡ ብሔር ፡ አናቅጽ ፡ ፪፻፳፻፱ ፡ ከ፪፻፳፻፱ ፡ እስከ ፡ ፪፻፳፻፱ ፡ ፪፻፳፻፱ ፡ ፪፻፳፻፱ ፡ እና ፡ ፪፻፳፻፱ ።

ልማዳዊ ፡ ሕግ — ወለድ ፡ አግድ ።

በወለድ ፡ አግድ ፡ የብድር ፡ ውል ፡ መሠረት ፡ ተበዳሪው ፡ በወለድ ፡ አግድ ፡ ስም ፡ ያስያዘውን ፡ ቤት ፡ እሱ ፡ ራሱ ፡ እየተቀመጠበት ፡ የቤቱን ፡ ክራይ ፡ ፪፻፱ (ሦስት ፡ መቶ) ፡ ብር ፡ በየወሩ ፡ በተበደረው ፡ ገንዘብ ፡ ወለድ ፡ ፈንታ ፡ እንዲከፍል ፡ ተስማማ ። በዚህም ፡ መሠረት ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ለአበዳሪው ፡ ለአፈረድ ፡ ይህ ፡ ይግባኝ ፡ ቀረበ ። የይግባኙም ፡ እቤቱታ ፡ በስምምነቱ ፡ መሠረት ፡ ተበዳሪው ፡ በወለድ ፡ ፈንታ ፡ ክራዩን ፡ እንዲከፍል ፡ ከተደረገ ፡ በዕራጣ ፡ ከሚገባው ፡ በላይ ፡ ወለድ ፡ መጠየቅን ፡ በጥብቅ ፡ የሚከለክለው ፡ ሕግ ፡ በሥራ ፡ ላይ ፡ ሊውል ፡ አይችልም ፡ በማለት ፡ ነው ።

ውሳኔ ፡- የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ፍርድ ፡ ተገልብጦአል ።

፩ ፤ የብድርን ፡ ውል ፡ ድጋፍ ፡ በማድረግ ፡ የሚሠራ ፡ የወለድ ፡ አግድ ፡ ውል ፡ ማለት ፡ አበዳሪ ፡ የተበዳሪን ፡ ንብረት ፡ በወለድ ፡ አግድ ፡ ስም ፡ በመያዝ ፡ ከንብረቱ ፡ የሚገኘውን ፡ ጥቅም ፡ ከራይ ፡ ወይም ፡ ትርፍ ፡ በወለድ ፡ ፈንታ ፡ ሲቀበል ፡ ነው ።

፪ ፤ ተበዳሪ ፡ ስለገዛ ፡ ራሱ ፡ ንብረት ፡ ለአበዳሪ ፡ ክራይ ፡ እንዲከፍለው ፡ የሚደረግ ፡ ስምምነት ፡ እንደ ፡ ወለድ ፡ አግድ ፡ ውል ፡ አይቈጠርም ።

በወለድ ፡ አግድ ፡ መሠረት ፡ የማይነቃነቅ ፡ ንብረት ፡ ለአበዳሪው ፡ ሊተላለፍና ፡ አበዳሪውም ፡ ከንብረቱ ፡ በሚገኘው ፡ ፍሬ ፡ ሲገለገል ፡ ይህ ፡ ሹኑታ ፡ ባራጣ ፡ የሚገባውን ፡ ወለድ ፡ ይተካል ። ተበዳሪውም ፡ ሌላ ፡ ወለድ ፡ መክፈል ፡ የለበትም ። ነገር ፡ ግን ፡ አበዳሪው ፡ ንብረቱን ፡ እከራይቶ ፡ ክራይ ፡ ከተቀበለ ፡ በተለይም ፡ የተከራየው ፡ ባለንብረት ፡ ራሱ ፡ ተበዳሪው ፡ ከኾነ ፡ በወለድ ፡ አግድ ፡ ስም ፡ አድርጎ ፡ ሕግ ፡ ከሚፈቅደው ፡ ባራጣ ፡ ከሚገባው ፡ በላይ ፡ ወለድ ፡ ለመጠየቅ ፡ አይችልም ።

ጥር ፡ ፳፱ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ ፡ ም ። ዳኞች ፡- አፈ-ንጉሥ ፡ ቅጣው ፡ ይታጠቁ ፡ ባላምባራስ ፡ ተሰማ ፡ ወንድምነህ ፡ አቶ ፡ ታደሰ ፡ ተክለ ፡ ጊዮርጊስ ። በመስከረም ፡ ፩ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ ፡ ም ፡ በተጻፈ ፡ የግል ፡ ውል ፡ የብድር ፡ ውል ፡ ተዋውለዋል ። አበዳሪ ፡ ያበደሩት ፡ ገንዘብ ፡ ፪፻፳፻፱ ፡ ብር ፡ ነው ፡ ብለው ፡ ገንዘባቸውንና ፡ በወለድ ፡ አግድ ፡ የተዋሉትን ፡ ቤት ፡ ክራይ ፡ ተከላሽ ፡ እንዲከፍላቸው ፡ ጠይቀዋል ።

ስለብድሩ ፡ አበዳሪና ፡ ተበዳሪ ፡ የወለድ ፡ አግድ ፡ የሚል ፡ ውል ፡ መዋዋላቸው ፡ እውነት ፡ ነው ። በፍትሕ ፡ ብሔር ፡ ሕግ ፡ ቊጥር ፡ ፪፻፳፻፱ ፡ የወለድ ፡ አግድ ፡ ትርጓሜ ፡ «ወለድ ፡ አግድ ፡ ማለት ፡ አንድ ፡ ባለዕዳ ፡ ግዴታውን ፡ ለመፈጸም ፡ ማረጋገጫ ፡



በማድረግ፡ ለገንዘብ፡ ጠያቂው፡ የማይንቀሳቀሰውን፡ ንብረት፡ ለማስረከብ፡ የሚገደድ  
በት፡ ውል፡ ነው።» ተብሏል።

አበዳሪዋ፡ ወይዘሮ፡ ውብአየኹ፡ ወለድ፡ አግድ፡ ያደረገውን፡ ቤት፡ ተበዳሪው፡  
ራሱ፡ ተከራይቶታልና፡ ክራዩን፡ ስለወለዱ፡ ይክፈለኝ፡ ይላሉ። የውሉ፡ ሦስተኛው፡  
ቀጥር፡ «ይህንኑ፡ በውሉ፡ መሠረት፡ ያስረከብኳቸውን፡ የቤቱን፡ ክራይ፡ ገንዘብ፡  
በወር፡ በወሩ፡ ሦስት፡ መቶ፡ ብር፡ እኔው፡ ውል፡ ሰጭው፡ ልክፍል፡ ተስማምቻለኹ።»  
ይላል።

ተበዳሪው፡ (በይግባኝ፡ ከላሽ)፡ በጥሬ፡ ብር፡ የሚከፈል፡ ገንዘብ፡ ወለድ፡ አግድ፡  
ተብሎ፡ በሕግ፡ ከተፈቀደው፡ ወለድ፡ በላይ፡ ለአበዳሪ፡ ወለድ፡ መክፈያ፡ መኾን፡  
አይገባም፤ ወለዱ፡ በሕግ፡ የተፈቀደው፡ ብቻ፡ መኾን፡ ይገባዋል፡ ብሎ፡ ተከራክሯል።

ከፍተኛው፡ ፍርድ፡ ቤት፡ ውሉን፡ ማሻሻል፡ አይቻልም፡ ተበዳሪው፡ ዘይኑ፡ አብ  
ይላ፡ እንደተዋወለው፡ ስለወለዱ፡ የቤቱን፡ ክራይ፡ ለአበዳሪ፡ መክፈል፡ ይገባዋል፡  
ብሎ፡ ፈርዷል።

ይግባኙ፡ በዚህ፡ ፍርድ፡ ላይ፡ ነው።

፩፤ የፍትሕ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ፫ሺሕ፻፳፩፡ «ወለድ፡ አግዱን፡ ያቋቋመው፡  
(የተዋወለው፡ ሰው)፡ የማይንቀሳቀሰውን፡ ንብረት፡ ከተጨማሪዎቹ፡ ነገሮች፡ ጋራ፡  
በወለድ፡ አግድ፡ ለሚይዘው፡ ሰው፡ ወይም፡ በውሉ፡ ለተመለከተው፡ ሰው፡ ማስረ  
ከብ፡ አለበት»።

፪፤ «የተባለው፡ ማስረከብ፡ እስከቂየበት፡ ድረስ፡ ወይም፡ የማይንቀሳቀሰው፡ ንብ  
ረት፡ ወደ፡ ባለዕዳው፡ እጅ፡ የገባ፡ እንደኾነ፡ ወለድ፡ አግዱ፡ የማይንቀሳቀስ፡ ንብ  
ረት፡ መያዣ፡ ውጤት፡ ይኖረዋል»፡ ይላል።

ዳግም፡ ቀጥር፡ ፫ሺሕ፻፳፩፡ (ለ)፡ «በወለድ፡ አግድ፡ የማይንቀሳቀስ፡ ንብረትን፡  
የያዘ፡ ገንዘብ፡ ጠያቂ፡ ንብረቱን፡ በወለድ፡ አግድ፡ ለሰጠው፡ ሰው፡ አንዳች፡ ክራይ፡  
ወይም፡ የርሻ፡ ክራይ፡ አይከፍልም። (፪) በተባለው፡ ንብረት፡ መገልገሉና፡ ከዚህ፡  
ንብረት፡ የሚያገኛቸው፡ ፍሬዎችና፡ ጥቅሞች፡ ለሚጠይቀው፡ ገንዘብ፡ ወለድ፡  
ኖቸው። (፫) ከዚህ፡ የሚገለገልበትና፡ ከሚጠቀምበት፡ ነገር፡ በላይ፡ ወለድን፡ የሚፈ  
ቅድለት፡ የውል፡ ቃል፡ ፈራሽ፡ ነው።» ይላል።

በቂየው፡ ልማዳችን፡ ወለድ፡ አግድ፡ ማለት፡ ገንዘብ፡ ያበደረ፡ ሰው፡ ከተበዳ  
ሪው፡ መሬት፡ ወስዶ፡ ስለ፡ ገንዘቡ፡ ወለድ፡ ከመሬቱ፡ በሚያገኘው፡ ሰብል፡ መጠቀም  
ማለት፡ ነው፤ ወይም፡ ለሚኖርበት፡ የተበዳሪን፡ ቤት፡ ሚኖርያ፡ ማድረግ፡ ነው።  
በፍትሕ፡ ብሔር፡ ሕግ፡ በቀጥር፡ ፫ሺሕ፻፳፩፡ የተመለከተው፡ ከዚሁ፡ ክልማድ፡  
ሕጎችን፡ ጋራ፡ የተስማማ፡ ነው።

በወለድ፡ አግድ፡ የተዋወለውን፡ ንብረት፡ እጅ፡ አድርጎ፡ መኖሪያ፡ ቢያደርገው፡  
ሥራውን፡ መሥሪያ፡ ቢያደርገውና፡ ራሱ፡ ቢገለገልበት፡ ለባለንብረቱ፡ ክራይ፡ መክ  
ፈል፡ የለበትም፤ ከመሬቱ፡ በሚያገኘው፡ ፍሬና፡ ጥቅም፡ ቢጠቀም፡ የገንዘቡ፡ ወለድ፡  
ፈንታ፡ ይኾናል፡ እንጂ፡ (ወለድ፡ መክፈል፡ የለበትም፡ ማለት፡ ነው፡ እንጂ)፡ በክ  
ራይ፡ ጥሬ፡ ብር፡ ቢያገኝ፡ በተለየም፡ ለተበዳሪው፡ አከራይቶ፡ በሕግ፡ ከተፈቀደው፡  
ወለድ፡ በላይ፡ የኾነ፡ ወለድ፡ በወለድ፡ አግድ፡ ሰበብ፡ ማግኘት፡ ይችላል፡ ማለት፡  
አይደለም።

ቀጥር፡ ይገረዝገዛል፡ የፍትሕ፡ ብሔር፡ ሕግ፡ ንኡስ፡ ቀጥር፡ (፩)፡ «በወለድ፡ አግድ፡ የማይንቀሳቀስን፡ ንብረት፡ የያዘ፡ ገንዘብ፡ ጠያቂ፡ ንብረቱን፡ በወለድ፡ አግድ፡ ለሰጠው፡ ሰው፡ አንዳች፡ ክራይ፡ ወይም፡ የርሻ፡ ክራይ፡ አይከፍልም ።» የሚለው፡ ቃል፡ አበዳሪው፡ በእጁ፡ አድርጎ፡ ራሱ፡ ለሚገለገልበት፡ ንብረት፡ መኾኑን፡ በግልጥ፡ ያስረዳል፡ ራሱ፡ የማይገለገልበትን፡ አይደለም ። ይኸው፡ በግልጽ፡ ይታወቅ፡ ዘንድ፡ ቀጥር፡ ይገረዝገዛል፡ የፍትሕ፡ ብሔር፡ ሕግ፡ ንኡስ፡ ቀጥር፡ (፪)፡ «የተባለው፡ ማስረከብ፡ ባይፈጸም፡ እስከ፡ ቁየበት፡ ድረስ፡ የማይንቀሳቀሰው፡ ንብረት፡ ወደባለዕዳው፡ እጅ፡ የገባ፡ እንደኾነ፡ ወለድ፡ አግዱ፡ የማይንቀሳቀስ፡ ንብረት፡ መያዣ፡ ውጤት፡ ይኖረዋል ።» አለ፡ ወደ፡ ፍትሕ፡ ብሔር፡ ሕግ፡ ከቀጥር፡ ይገረዝገዛል፡ እስከ፡ ይገረዝገዛል፡ ወደ፡ ተመለከተው፡ ሲያመራ፡ ነው ።

የፍትሕ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ይገረዝገዛል፡ መያዣ፡ የኾነ፡ ንብረት፡ ወለድ፡ የሚታሰብለት፡ ሕጋዊ፡ ወለድ፡ መኾኑን፡ ያስረዳል ። በጠቅላላው፡ ለብድር፡ ከሕጋዊ፡ ወለድ፡ በላይ፡ ለመክፈል፡ መያዣ፡ መዋዋል፡ ክልክል፡ ነው ።

በወለድ፡ አግድ፡ የተዋዋለበትን፡ ንብረት፡ እጅ፡ አድርጎ፡ ለራሱ፡ ሥራ፡ ያስያዘ፡ የተገለገለበት፡ አበዳሪ፡ ለባለንብረቱ፡ ወለድ፡ መክፈል፡ የለበትም፡ ስለ፡ ገንዘቡ፡ ወለድ፡ ይቈጠርለታል፡ እንጂ፡ ከተበዳሪ፡ ጋራ፡ ተበዳሪው፡ በራሱ፡ ንብረት፡ ወለድ፡ እንዲከፍል፡ አበዳሪው፡ የሚዋዋለው፡ ውል፡ የወለድ፡ አግድ፡ ውል፡ ተብሎ፡ ሊቋጠር፡ አይችልም ።

እንደዚህ፡ ያለ፡ ነገር፡ ቢፈቀድማ፡ በሕግ፡ ከተፈቀደው፡ በላይ፡ ወለድ፡ ለመቀበል፡ መዋዋል፡ ዐራጣ፡ ነውና፡ ክልክል፡ የተባለውን፡ ሕግ፡ በዘወርዋራ፡ መንገድ፡ አበዳሪ፡ እንዲጥሰው፡ መፍቀድ፡ ይኾናል ።

በይግባኝ፡ ከሳሽና፡ በይግባኝ፡ ተከሳሽ፡ የተዋዋሉት፡ ውል፡ የብድር፡ ውል፡ መኾኑን፡ የውሉ፡ ቃል፡ በግልጽ፡ ያስረዳል ።

የፍትሕ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ይገረዝገዛል፡ ሕጋዊ፡ ወለድ፡ በመቶ፡ ዘጠኝ፡ በተዋዋዮቹ፡ ስምምነት፡ የሚደረግ፡ ወለድ፡ በመቶ፡ ዐሥራ፡ ኹለት፡ እንዲኾን፡ ከመቶ፡ ዐሥራ፡ ኹለት፡ በላይ፡ ወለድ፡ የተዋዋለ፡ ግን፡ በመቶ፡ ዘጠኝ፡ ብቻ፡ እንዲታሰብለት፡ ይንግግናል ።

ይህ፡ ዐይነት፡ የሕዝብ፡ መጠበቂያ፡ የኾነውን፡ ሕግ፡ አበዳሪ፡ በቀጥታም፡ ኾነ፡ በዘወርዋራ፡ ሊጥሰው፡ አይፈቀድለትም፡ እንዲህ፡ ካልኾነማ፡ ባራጣ፡ ከሚገባ፡ ወለድ፡ በላይ፡ መጠየቅ፡ ክልክል፡ ነው፡ የሚለው፡ ሕግ፡ መኖር፡ ጥቅም፡ የሌለው፡ በኾነ፡ ነበር ።

በነዚህ፡ ኹሉ፡ ምክንያት፡

ከፍተኛው፡ ፍርድ፡ ቤት፡ የፈረደውን፡ ፍርድ፡ ገልብጠን፡ በይግባኝ፡ ከሳሽ፡ ተበዳሪው፡ ዘይኑ፡ አብደላ፡ ጉናፍር፡ ለአበዳሪው፡ ለወይዘሮ፡ ውብእየኹ፡ ሰማሽኝ፡ የሚከፍለው፡ ወለድ፡ በመቶ፡ ዘጠኝ፡ ብቻ፡ ነው፡ እንጂ፡ በእጁ፡ ያለውን፡ የራሱን፡ ቤት፡ ክራይ፡ በወር፡ ሦስት፡ መቶ፡ ብር፡ በወለድ፡ መክፈል፡ የለበትም፡ ብለን፡ ፈርደናል ። ጥር፡ ጳጳስ፡ ቀን፡ ፲፱፻፶፯፡ ዓ፡ ም፡ በድምፅ፡ ብልሜ፡ የተሰጠ፡ ፍርድ፡ ነው፡ እነሱተኛው፡ ድምፅ፡ የከፍተኛውን፡ ፍርድ፡ ቤት፡ ፍርድ፡ ይግፈዋል ።

በይግባኝ ፡ ባዩ ፡ ባቶ ፡ ዘይኮ ፡ አጉናፍር ፡ እና ፡

በመልስ ፡ ሰጭዋ ፡ በወይዘሮ ፡ ውብአየኹ ፡ ሰማኸኝ ፡ መካከል ፡ ስላለው ፡ ክርክር ፡ በፍርድ ፡ የተለየኹበት ፡ ከዚህ ፡ ቀጥሎ ፡ የተጻፈው ፡ ነው ፡-

፩ኛ ፡ በይግባኝ ፡ ባይና ፡ በመልስ ፡ ሰጭዋ ፡ መካከል ፡ መስከረም ፡ ፩ ፡ ቀን ፡ ፲፱፻፶፭ ፡ ዓ ፡ ም ፡ የተጻፈው ፡ የወለድ ፡ አግድ ፡ ውልና ፡ የቤት ፡ ኪራይ ፡ ውል ፡ አለ ።

በፍትሐ ፡ ብሔር ፡ ሕግ ፡ ቍጥር ፡ ፩፻፳፻፴፩ ፡ የተጻፈው ፡ በሕጉ ፡ አግባብ ፡ የተቋቋመ ፡ ውሎች ፡ በአቋቋሟቸው ፡ ሰዎች ፡ ላይ ፡ ሕግ ፡ ናቸው ፡ ይላል ፤ የወለድ ፡ አግድ ፡ ውል ፡ በሕግ ፡ የተቋቋመ ፡ ስለሆነ ፡ ኹለቱ ፡ ወገኖች ፡ ወደው ፡ የተዋዋሉትን ፡ ውል ፡ ማንም ፡ ሊአሻሽለውና ፡ ሊተረጉመው ፡ አይችልም ። በፍትሐ ፡ ብሔር ፡ ሕግ ፡ ቍጥር ፡ ፫፻፳፻፳፱ ፡ በወለድ ፡ አግድ ፡ የማይንቀሳቀስ ፡ ንብረትን ፡ የያዘ ፡ ገንዘብ ፡ ጠያቂ ፡ ንብረቱን ፡ በወለድ ፡ አግድ ፡ ለሰጠው ፡ ሰው ፡ አንዳች ፡ ኪራይ ፡ ወይም ፡ የዕርሻ ፡ ኪራይ ፡ አይከፍልም ፡ ይላል ። በድምፅ ፡ ብልጫ ፡ የተሰጠው ፡ ፍርድ ፡ በወለድ ፡ አግድ ፡ የያዘው ፡ ሰው ፡ በቤቱ ፡ ውስጥ ፡ ቢቀመጥ ፡ ኪራይ ፡ መክፈል ፡ የለበትም ፡ ቤቱን ፡ ካከራዩ ፡ በወለድ ፡ ይቆጠራል ፡ የሚል ፡ ነው ። ሰው ፡ በወለድ ፡ አግድ ፡ የያዘውን ፡ ቤት ፡ ቢአከራይም ፡ ቢቀመጥበትም ፡ ምንም ፡ ልዩነት ፡ ያለው ፡ አይመስለኝም ።

ይልቁንም ፡ ይግባኝ ፡ ባዩ ፡ ከመልስ ፡ ሰጭዋ ፡ ይበልጥ ፡ ጥቅሙንና ፡ ጉዳቱን ፡ የሚያውቅ ፡ ነጋዴ ፡ ስለሆነ ፡ ቤቱንም ፡ በወለድ ፡ አግድ ፡ ያስያዘው ፡ ቤቱንም ፡ የተከራየው ፡ ጥቅሙን ፡ አውቆ ፡ ነው ፤ በብድር ፡ ሳይሆን ፡ በወለድ ፡ አግድ ፡ በተዋዋለው ፡ ነገር ፡ የቤቱ ፡ ኪራይ ፡ ወደ ፡ ዋናው ፡ ገንዘብ ፡ ይታሰባል ፡ የሚለው ፡ አለአገባብ ፡ ነው ። ስለዚህ ፡ በከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ፍርድ ፡ ተስማምቼ ፡ በዚህ ፡ ፍርድ ፡ ተለይቻለኹ ።

ታደሰ ፡ ተክለ ፡ ጊዮርጊስ ፤

SUPREME IMPERIAL COURT  
Div. IA

ZEYENU ABDELLA v. WOBAYEHU SEMAHEGNE

Civil Appeal No. 1792/56 E.C.

*Contractual obligations -- Loan -- Interest -- Usury -- Contract of antichresis -- Rents and profits -- Arts. 2479, 3059-3083, 3080, 3117, 3121, and 3124 Civ. C.*

*Customary law -- Antichresis.*

The High Court gave judgment in favor of the lender under a loan agreement with a contract of antichresis appended; it had been stipulated that the borrower would retain the house covered by the contract of antichresis and pay rent of E\$300 in the place of interest. On appeal, the borrower argued that to give effect to this stipulation would allow an evasion of the usury rules, which are imperative, and that, therefore, the stipulation should not be enforced.

*Held:* Judgment reversed.

1. A contract of antichresis is a contract, subsidiary to a loan, by which the lender takes certain property of the borrower as security and receives the use, rents, fruits, or profits from the property in the place of interest.

2. A contract between a lender and a borrower by which the borrower agrees to pay rent for his own property shall not be deemed to be a contract of antichresis.

3. If a person enjoys the fruits of an immovable secured to him under a contract of antichresis, it replaces the interest to be paid on the loaned money and means that the borrower should not pay interest: if the lender gets money by letting the immovable, however, and particularly by letting such immovable to the borrower, he cannot collect under the guise of antichresis more interest than is permitted by law.

Ter 29, 1957 E.C. (February 6, 1965 G.C.): Justices: Afenigus Kitaw Yitateku, Balambaras Tessema Wondemench, Ato Taddesse Tekle Giorgis: — Respondent and appellant entered into a loan contract by way of a written agreement signed on Maskaram 1, 1955 E.C. The lender and the borrower entered into a contract of antichresis in respect of the loan. The respondent claimed the sum of E\$6000, which she loaned to the appellant, and also the amount of the rent for the house in accordance with the contract of antichresis between the two parties.

Article 3117 of the Civil Code, defining the term "antichresis", states: "A contract of antichresis is a contract whereby the debtor undertakes to deliver an immovable to his creditor as a security for the performance of his obligations."

The lender, Woizero Wobayehu, demands that, since the borrower has himself taken in lease the house which he undertook to deliver under the contract of antichresis, he pay her the rent for the house instead of the interest on the money loaned. Article 3 of the contract provides: "I, the debtor, have undertaken to pay the rent of the house, being the sum of E\$300, which I have delivered to the lender under the contract."

To this the appellant has answered that he, the borrower, must not pay in the guise of a contract of antichresis more money in cash than that allowed by law. He has argued that the interest must be only that amount permitted by law.

The High Court held that it is impossible to amend the terms of the contract and, therefore, the borrower, Zeyenu Abdella, according to the contract, must pay to the lender the rent instead of the interest.

From this decision the defendant appealed.

Article 3121 provides:

- (1) The person having created the antichresis shall deliver the immovable and its accessories to the creditor or such other person as has been specified in the contract.
- (2) The antichresis shall have the same effects as a mortgage until such delivery has taken place or after the immovable has been returned to the person having created the antichresis.

Article 3124 provides:

- (1) The creditor under the contract of antichresis shall pay no rent to the person having created the antichresis.
- (2) The use the creditor makes of the immovable and the fruits and profits he derives therefrom shall replace the interest on the claim.
- (3) Any provision whereby the creditor is entitled to interest in addition to such use, fruits and profits shall be of no effect.

In our customary law, antichresis meant for the lender of money to take and use the crops from the land of the borrower in place of the interest on the loaned money, or for the lender to take the house of the borrower and live in it. Article 3124 of the Civil Code is in accord with our customary law.

If a person takes in possession an immovable under a contract of antichresis and lives in it, exploits it, or uses it, such person should not pay rent to the owner of the immovable. If a person enjoys the fruits of the immovable secured to him under a contract of antichresis, it replaces the interest to be paid on the loaned money and means that the borrower should not pay interest; it does not mean that if the lender gets money by letting the immovable, and particularly by letting such immovable to the borrower, he can collect interest more than that permitted by law under the guise of a contract of antichresis.

The provision in Article 3124, Paragraph 1, which says "The creditor under the contract of antichresis shall pay no rent to the person having created the antichresis", is clearly talking about the immovable delivered to the lender and used by the lender and is not talking about an immovable that he himself does not use. Article 3121, Paragraph 2, of the Civil Code says, "The antichresis shall have the same effects as a mortgage until such delivery has taken place or after the immovable has been returned to the person having created the antichresis". This is referring us to Article 3059-3083 of the Civil Code.

Article 3080 of the Civil Code states that the rent on mortgaged property is at the rate of interest provided by law. In general, it is prohibited to create a mortgage in order to pay more than the legal interest rate.

The lender who takes delivery of the immovable of antichresis and uses it for himself shall not pay rent to the owner. The profit he derives from the thing and its use shall be deemed interest on his claim. A contract made between a lender and a borrower by which the borrower agrees to pay rent for his own property shall not be deemed to be a contract of antichresis. Were this allowed, it would amount to making a contract in order to collect interest in excess of the rate permitted by law and this would permit the lender to circumvent the mandatory provision of the law.

The terms of the contract clearly show that the contract entered into between the appellant and respondent is a contract of loan.

Article 2479 of the Civil Code provides that, by agreement of the parties, the rate of interest may be 12 per cent. But where the parties do not stipulate any rate, it shall be 9 per cent, and where it is agreed in excess of 12 per cent, it shall be only 9 per cent.

The lender may not directly or indirectly contravene such a rule made for the protection of the public. If it were not so, the rule that states that no interest shall be collected above the legal interest would be meaningless.

For all the above reasons we reverse the judgment of the High Court and decide that the appellant borrower, Zeyenu Abdella, shall pay to the respondent lender, Woizero Wobeayehu Semahegne, 9 per cent interest and not the rent of his own house, which is E\$300 per month, as interest. This is the opinion of the majority. The minority would affirm the judgment of the High Court.

Ato Taddesse Tekle Giorgis, J., dissenting:— I dissent from the majority opinion in this case for the reasons detailed below.

A contract of lease of a house and a contract of antichresis were entered into by the parties on Maskaram 1, 1955 E.C. Art. 1731 of the Civil Code states that the provisions of a contract lawfully formed shall be binding on the parties as though they were law. Because the parties have freely entered into the contract of antichresis, no one should in any way vary the provisions of the contract. Article 3124, sub-section one, states that the creditor who is in possession of immovable property under a contract of antichresis shall pay no rent or payment for agricultural products to the person who has transferred the property under the contract of antichresis.

The majority opinion decided that if the creditor under a contract of antichresis lives in the house delivered to him under antichresis he shall not pay rent to the owner of the house. But if the creditor leases the house, the rent shall be considered as interest. It is my position that it should not make any difference whether the creditor under antichresis himself lives in a house delivered to him or leases such a house to someone else.

Moreover, since the debtor under the antichresis in this case is a businessman who knows his losses and profits best, it was with full knowledge that he entered into the contract of antichresis and then rented the house which he delivered under the antichresis. The decision, therefore, that the rent of the house under the antichresis contract shall be deemed to be an interest payment on the loan for which the antichresis contract was entered was not proper. I would affirm the decision of the High Court.

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ካቶ፡ በመልስ፡ ሰጪው፡ ላይ፡ ያቀረቡት፡ አቤቱታ፡ በመሠረቱ፡ ከእውነት፡ የራቀ፡ ስለሆነ፡ እቤቱታቸው፡ ከኪሣራ፡ ጋራ፡ እንዲሰናበት፡ ብለው፡ አመልክተዋል።

በአመልካቹና፡ በመልስ፡ ሰጪው፡ በየበኩላቸው፡ የቀረበው፡ ክርክር፡ ፍሬ፡ ነገሩ፡ ከዚህ፡ እንደተዘረዘረው፡ ሹኖ፡ አመልካች፡ በዚሁ፡ በክርክሩ፡ ባለው፡ መሬት፡ አመልካችና፡ አቶ፡ ቂልጢ፡ ባልቻ፡ በ፲፱፻፴፬፡ ዓ፡ ም፡ በተጉለትና፡ በቡልጋ፡ አውራጃ፡ ፍርድ፡ ቤት፡ በተከራከሩ፡ ጊዜ፡ የአውራጃው፡ ፍርድ፡ ቤት፡ መሬቱን፡ እንዲለቅ፡ በአቶ፡ ቂልጢ፡ ባልቻ፡ ላይ፡ ቢፈርድ፡ አቶ፡ ቂልጢ፡ ባልቻ፡ ይግባኙን፡ ከሸዋ፡ ጠቅላይ፡ ግዛት፡ ፍርድ፡ ቤት፡ ቢያቀርቡ፡ የሸዋ፡ ጠቅላይ፡ ግዛት፡ ፍርድ፡ ቤትም፡ የአውራጃው፡ ፍርድ፡ ቤት፡ የፈረደውን፡ ፍርድ፡ ያጸናው፡ ለመሆኑና፡ አመልካቹም፡ በዚሁ፡ ፍርድ፡ መሠረት፡ ከ፲፱፻፴፬፡ ዓ፡ ም፡ ጀምሮ፡ እስከ፡ ፲፱፻፵፬፡ ዓ፡ ም፡ ድረስ፡ መሬቱን፡ ተረክበው፡ ሲጠቀሙበት፡ ለመቁየታቸው፡ አራተኛ፡ የአመልካች፡ ማስረጃ፡ የተባለውን፡ አቅርበዋል።

ቀጥሎም፡ አመልካች፡ ከ፲፱፻፴፬፡ ዓ፡ ም፡ ጀምሮ፡ እስከ፡ ፲፱፻፵፬፡ ዓ፡ ም፡ ድረስ፡ ተረክበው፡ ሲጠቀሙበት፡ የቂየውን፡ መሬት፡ አቶ፡ ቂልጢ፡ ባልቻ፡ በፍርድ፡ ተረትተው፡ የለቀቁትን፡ መሬት፡ በ፲፱፻፵፬፡ ዓ፡ ም፡ በጎይል፡ ገብተው፡ መሬቱን፡ በመያዛቸው፡ የተነሣ፡ አመልካች፡ በተጉለትና፡ በቡልጋ፡ አውራጃ፡ ፍርድ፡ ቤት፡ በአቶ፡ ቂልጢ፡ ባልቻ፡ ላይ፡ የወንጀል፡ ክስ፡ አቅርበው፡ ሰባት፡ ዓመት፡ ያኼል፡ በክርክር፡ ከቂዩ፡ በኋላ፡ የአውራጃ፡ ፍርድ፡ ቤት፡ ሹሉተኛ፡ የአመልካች፡ ማስረጃ፡ በተባለው፡ ፍርድ፡ መሠረት፡ በሐምሌ፡ ፱፡ ቀን፡ ፲፱፻፶፩፡ ዓ፡ ም፡ በሰጠው፡ ፍርድ፡ መሬቱን፡ አላረሰምና፡ አያስቀጣውም፤ ሣር፡ በመውሰዱ፡ ግን፡ ይቀጣበቃል፡ ተከላኮ፡ ግን፡ በነጻ፡ ይለቅቃል። ስለ፡ መሬቱ፡ ግን፡ ከዚህ፡ ቀደም፡ በፍትሐ፡ ብሔር፡ በተሰጠው፡ ፍርድ፡ መሠረት፡ ይፈጸማል፡ ብሎ፡ ፍርድ፡ ቢሰጥ፡ አመልካቹ፡ ፍርዱን፡ በመቃወም፡ ይግባኙን፡ ከከፍተኛው፡ ፍርድ፡ ቤት፡ ቢያቀርቡ፡ ከፍተኛው፡ ፍርድ፡ ቤትም፡ ሹሉቱን፡ ወገኖች፡ አቅርቦ፡ ከአከራከረ፡ በኋላ፡ በእንደኛው፡ ከላሽ፡ ማስረጃ፡ መሠረት፡ በሰኔ፡ ፲፯፡ ቀን፡ ፲፱፻፶፪፡ ዓ፡ ም፡ በተሰጠ፡ ፍርድ፡ የአውራጃው፡ ፍርድ፡ ቤት፡ የሰጠውን፡ ያጸና፡ መሆኑ፡ ታውቋል።

እንዲሁም፡ አመልካች፡ በዚህ፡ በክርክር፡ በአለው፡ መሬት፡ ከዚህ፡ ቀደም፡ በ፲፱፻፴፬፡ ዓ፡ ም፡ በተሰጠው፡ ፍርድ፡ መሠረት፡ የፍርድ፡ ማስፈጸሚያ፡ እንዲሰጣቸው፡ በሐምሌ፡ ፱፡ ቀን፡ ፲፱፻፶፩፡ ዓ፡ ም፡ በዐምስተኛው፡ አመልካች፡ ማስረጃ፡ መሠረት፡ ለተጉለትና፡ ቡልጋ፡ አውራጃ፡ ፍርድ፡ ቤት፡ ቢያመለክቱ፡ የአውራጃው፡ ፍርድ፡ ቤትም፡ በ፲፱፻፴፮፡ ዓ፡ ም፡ በተሰጠው፡ ፍርድ፡ እንዲፈጸም፡ ብሎ፡ በሰጠው፡ የፍርድ፡ አፈጻጸም፡ ትእዛዝ፡ አመልካች፡ መሬቱን፡ እንደተረከቡ፡ ማስረጃውን፡ አቅርበው፡ አስረድተዋል።

ከዚህ፡ በኋላ፡ አቶ፡ ቂልጢ፡ ባልቻ፡ ሕገ፡ ወጥ፡ በሆነው፡ ተግባር፡ እኔን፡ ለመበደል፡ ባለጋራዬን፡ ለመጥቀም፡ ከብዙ፡ ዘመን፡ ዝምሮ፡ በእጄ፡ የነበረውን፡ መሬት፡ ያለፍርድ፡ ለባላጋራዬ፡ አዛውረውብኝ፡ በአቶ፡ ታደሰ፡ መድፋ፡ ላይ፡ በወንጀል፡ መዝገብ፡ ቀጥሮ፡ ፲፱፻፶፩/፶፩፡ በዚሁ፡ በከፍተኛው፡ ፍርድ፡ ቤት፡ የወንጀል፡ ክስ፡ ቢያቀርቡ፡ ፍርድ፡ ቤቱ፡ የሚገባቸው፡ ክስ፡ በፍትሐ፡ ብሔር፡ ክስ፡ ሲቀርብ፡ ነው፡ ብሎ፡ ከአተት፡ በኋላ፡ አቶ፡ ቂልጢ፡ ባልቻ፡ በአቶ፡ ታደሰ፡ መድፋ፡ ያቀረበውን፡ የወንጀል፡ ክስ፡ በፍርድ፡ አሰናብቶታል።

ነገር፡ ግን፡ አቶ፡ ቂልጢ፡ ባልቻ፡ በየጊዜው፡ ፍርድ፡ ቤቱ፡ ከሰጠው፡ ፍርድ፡ መሠረት፡ ተወስደብኝ፡ የሚሉትን፡ በፍትሐ፡ ብሔር፡ በመጠየቅ፡ ፋንታ፡ አቤቱታ፡



ቸውን ፡ ለተጉለትና ፡ ለቡልጋ ፡ አውራጃ ፡ ገዥ ፡ ቢያቀርቡ ፡ የተጉለትና ፡ የቡልጋ ፡ አውራጃ ፡ ገዥም ፡ የተሰጣቸውን ፡ ሥልጣን ፡ መሠረት ፡ በማድረግ ፡ ከአኹን ፡ ቀደም ፡ ቂልጢ ፡ ባልቻ ፡ ይዞት ፡ ቆይቶ ፡ በወንጀል ፡ ተከሶ ፡ የረታበትን ፡ መሬት ፡ ያለፍርድ ፡ ከወሰደው ፡ ሰው ፡ መሬቱ ፡ ከነዐላባው ፡ በቶሎ ፡ እንዲመለስለት ፡ ስለ ፡ ርስቱ ፡ ግን ፡ ይገባናል ፡ የሚል ፡ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በአዘዘው ፡ መሠረት ፡ በፍትሐ ፡ ብሔር ፡ ቢከስ ፡ የማይከለከል ፡ በመኾኑ ፡ በዚህ ፡ ዐይነት ፡ በቶሎ ፡ እንዲፈጸምለት ፡ ብለው ፡ የአውራጃው ፡ ገዥ ፡ በቀጥር ፡ ፩ሺሕ፻፹፱/፮ ፡ በመጋቢት ፡ ፳፩ ፡ ቀን ፡ ፲፱፻፶፫ ፡ ዓ ፡ ም ፡ የተጻፈ ፡ ሦስተኛው ፡ አመልካች ፡ ማስረጃ ፡ በተባለው ፡ ጽሑፍ ፡ መሠረት ፡ በክርክሩ ፡ ያለው ፡ መሬት ፡ እንዲሰጥ ፡ አቶ ፡ ቂልጢ ፡ ባልቻ ፡ የተረከቡት ፡ መኾኑን ፡ በቀረበው ፡ መረጃ ፡ ታውቋል ።

በአመልካቹ ፡ በዙል ፡ የቀረቡት ፡ መረጃዎች ፡ እነዚሁ ፡ ሲኾኑ ፡ መልስ ፡ ሰጭው ፡ ለጉዳዩ ፡ ደጋፊ ፡ አድርገው ፡ ያቀረቡት ፡ ክርክር ፡ አቶ ፡ ቂልጢ ፡ ባልቻ ፡ በተከሰሱበት ፡ ወንጀል ፡ ነጻ ፡ ከወጡ ፡ በእጃቸው ፡ የነበረው ፡ መሬት ፡ በፍትሐ ፡ ብሔር ፡ ተከሰሰው ፡ መልቀቅ ፡ የሚገባቸው ፡ እንጂ ፡ ሳይከፍሉ ፡ በወንጀል ፡ መዝገብ ፡ በተሰጠው ፡ ፍርድ ፡ መሬቱን ፡ መልቀቅ ፡ አይገባም ፡ በማለት ፡ ነው ።

ፍርድ ፡ ቤቱ ፡ በክርክሩ ፡ ሰላለው ፡ ጉዳይ ፡ በፍርዱና ፡ በአፈጻጸሙ ፡ ኾነ ፡ ልዩ ፡ ልዩ ፡ የኾነ ፡ የፕሮሲጀር ፡ ጉድለት ፡ ያለበት ፡ መኾኑን ፡ ቢታወቅ ፡ ከፍርድ ፡ ቤቱ ፡ ፍርድና ፡ ትእዛዝ ፡ በኋላ ፡ አውራጃ ፡ ገዢው ፡ በማያገባቸው ፡ ለፍርድ ፡ ቤቱ ፡ ፍርድና ፡ ትእዛዝ ፡ በመሰላቸው ፡ ትርጉም ፡ ሰጥተው ፡ በመሰወጥ ፡ የሰጡት ፡ ትእዛዝ ፡ በጣም ሳያስገርመን ፡ አልቀረም ። ምክንያቱም ፡ ፍርድ ፡ ቤቱ ፡ ያደረገው ፡ የፕሮሲጀር ፡ ጉድለት ፡ አልበቃ ፡ ብሎ ፡ አውራጃ ፡ ገዢው ፡ በመጋቢት ፡ ፳፩ ፡ ቀን ፡ ፲፱፻፶፫ ፡ ዓ ፡ ም ፡ በሰጡት ፡ ትእዛዝ ፡ ጉድለት ፡ በጉድለት ፡ ላይ ፡ በመጨመሩ ፡ ነው ። ይህ ፡ አውራጃው ፡ ገዥ ፡ የሰጡት ፡ ትእዛዝ ፡ ሥልጣን ፡ ሳይኖራቸው ፡ በቀጥታ ፡ በፍርድ ፡ ቤት ፡ ሥልጣን ፡ ገብተው ፡ የፍርድ ፡ ቤት ፡ ሥራን ፡ እንደማሰናከል ፡ የሚቈጠር ፡ ስለኾነ ፡ የአውራጃ ፡ ገዢው ፡ ጣልቃ ፡ ገብነትም ፡ በሕገ ፡ መንግሥቱ ፡ አንቀጽ ፡ ፩፻፲ ፡ ለተጻፈው ፡ ሕግ ፡ አፍራሽ ፡ ኹኖ ፡ ይገኛል ። ስለዚህ ፡ ይህ ፡ አውራጃ ፡ ገዢ ፡ የሰጡት ፡ ትእዛዝ ፡ ተገቢ ፡ ስላልኾነ ፡ ከሥልጣናቸው ፡ በላይ ፡ የሰጡት ፡ ትእዛዝ ፡ ስለኾነ ፡ ትእዛዙን ፡ ሽረነዋል ። የአውራጃው ፡ ፍርድ ፡ ቤት ፡ ምክትል ፡ ፕሬዚዳንትም ፡ ሕገ—ወጥ ፡ የኾነ ፡ የአውራጃው ፡ ገዢ ፡ የሰጡትን ፡ ትእዛዝ ፡ ተቀብሎ ፡ ፍርድ ፡ ቤቶች ፡ የሰጡትን ፡ ፍርድና ፡ ትእዛዝ ፡ እንዳይፈጸም ፡ በማድረጉ ፡ እየወቀሥን ፡ በአመልካችና ፡ በአቶ ፡ ቂልጢ ፡ ባልቻ ፡ መካከል ፡ ሰላለው ፡ ክርክር ፡ ከዚህ ፡ ቀደም ፡ በተሰጠው ፡ ፍርድ ፡ ማስፈጸም ፡ እንጂ ፡ የአውራጃው ፡ ገዥ ፡ የሰጡትን ፡ ትእዛዝ ፡ መከተል ፡ የለበትም ።

ስለዚህ ፡ አመልካቹ ፡ ያመለከተውን ፡ ተቀብለን ፡ የአውራጃው ፡ ገዥ ፡ በመጋቢት ፡ ፳፩ ፡ ቀን ፡ ፲፱፻፶፫ ፡ ዓ ፡ ም ፡ በቀጥር ፡ ፩ሺሕ፻፹፱/፮ ፡ የሰጡት ፡ ትእዛዝ ፡ በሕግ ፡ ፊት ፡ ዋጋ ፡ የሌለው ፡ ስለኾነ ፡ ሽረነዋልና ፡ መልስ ፡ ሰጭው ፡ ጻኝነት ፡ በደረሰኝ ፡ ኪሣራ ፡ አንድ ፡ መቶ ፡ ብር ፡ ለአመልካቹ ፡ እንዲከፍሉ ፡ ፈርደናል ።

**HIGH COURT**  
**Addis Ababa, Com. Div. No. 2**

**GRAZMATCH WOUBE WOLDE SELASSIE v.**  
**DEJAZMATCH KEFELEW WOLDE TSADIK,**

in his capacity as Governor of Tegulet and Bulga Awradja Gezat

Civil Case No. 70/54 E.C.

*Constitution - - Independence of the judiciary - - Executive or administrative interference - - Judicial declaration of nullity of acts of interference - - Art. 110 Rev. Const.*

Respondent in his capacity as Governor issued an order to the President of an Awradja Court directing him to turn over land to a party with whom petitioner was engaged in litigation as to the question of ownership. The land was conveyed to that party pursuant to the order and petitioner filed the present suit in the High Court against the Governor to have his above order declared null and void.

*Held:* Relief granted. Order of Governor declared null and void.

1. Art. 110 Rev. Const. guarantees the independence of the Judiciary.
2. Any action of the executive or administrative authorities which interferes with the independence of the Judiciary will be declared null and void.
3. Judges should disregard unconstitutional interference with their constitutional prerogatives and adjudicate disputes solely in accordance with the law.

Megabit 10, 1954 E.C. (March 19, 1962 G.C.); Judges: Dr. W. Buhagiar, Ato Josef Tekle Mikael, Ato Mekonnen Getahun: — This is a petition by the petitioner in which he prays for a declaration that the order No. 598417 dated Megabit 21, 1953 E.C. given at Debra Berhan by the respondent in his above mentioned official capacity is null and void.

The facts, which are not denied by the respondent, are as follows:

By proper civil proceedings instituted by the present petitioner, the present petitioner was given possession of a plot of land in 1938 E.C., and from that time until 1944 E.C. he remained in possession and enjoyed the benefits of that plot of land. In 1944 E.C. a certain Ato Kiltu Balcha re-entered in possession of that land, whereupon the present petitioner caused criminal proceedings to be instituted against him, in the Awradja Court, in File No. 51/51. The Awradja Court gave judgment on Hamle 9, 1951 E.C. (Exh. P/2); in the course of the trial it was proved that Ato Kiltu Balcha, the accused, had acquired possession of the said plot of land by order of a certain judge, Grazmatch Asfaw, and for this reason the Court held that the accused could not be liable. In the judgment the Court added a rider to the effect that, with regard to the right on the land, the parties could take the necessary action for execution in accordance with the previous judgment, that is, the judgment of 1938 E.C. (Exh. P/4).

From this judgment of the Awradja Court, the present petitioner lodged an appeal to the High Court in Addis Ababa, that is, Criminal Case No. 696/51. By judgment delivered on Sene 17, 1952 E.C., the High Court dismissed the appeal holding that Ato Kiltu Balcha could not be guilty of any crime because the use of the land had been given to him by a judge; the Court also added that the case of the appellant, Grazmatch Woube Wolde Selassie, was one of a civil nature; the judgment of the Awradja Court was confirmed.

Relying on this judgment, the present petitioner lodged an application to the Awradja Court of Tegulet and Bulga requesting that the judgment of 1938 E.C. be executed in the sense that he get the possession of the land in question. This application was granted and an order for execution was issued, as a result of which the present petitioner re-acquired possession of the land.

On this change of possession of land, Ato Kiltu Balcha lodged a petition to the High Court in the former appeal file No. 696/51, in which he alleged that one Ato Taddesse Medifu, together with Ato Demissie Bedane, had transferred the land from his possession to the present petitioner and that this was done with the intention of harming him, he having had possession of this land for a long time. The High Court rejected the application, reserving to the applicant, Ato Kiltu Balcha, his right to file a civil or criminal case against the Deputy Governor, Ato Taddesse Medifu, before the appropriate court (Exh. P/5).

It seems that Ato Kiltu Balcha did not avail himself of judicial proceedings, but preferred to appeal to the administrative authorities, and as a result of his complaints, the present respondent in his capacity of Governor issued the order No. 598417 on Megabit 21, 1953 E.C. (Exh. P/3) addressed to the President of Tegulet and Bulga Awradja Court ordering him to hand over the property in question to "the judgment creditor" Ato Kiltu Balcha with all mesne profits from the hands of the "illegal possessor" with the understanding that any one who claimed a right to the property should have the right to file a civil case.

As a result of this Order, the land was transferred again to Ato Kiltu Balcha.

Now as stated above the respondent does not deny such facts; his defence is that after the criminal case, what the present petitioner should have done is to file a civil case against Ato Kiltu Balcha for the recovery of the possession of the land.

This Court cannot refrain from remarking that the whole matter regarding this plot of land has been clouded in its various stages by procedural irregularities, culminating in the Order now being challenged. Whatever procedural irregularities there may have been on the part of the courts, the Order of the respondent in this capacity as Governor dated Megabit 21, 1953, E.C. is a clear interference with the independence of the Judiciary and against Article 110 of the Constitution. Such an order is beyond the powers of a Governor or any other administrative authority and is null and void; indeed, the President of the Awradja Court to whom it was addressed should have completely disregarded it and left it to the parties concerned, that is, the present petitioner and Ato Kiltu Balcha, to challenge the validity of execution granted previously in favour of the present petitioner in a proper court of law.

For the above reasons, the petition is successful and the Order issued by the respondent under No. 598417 dated Megabit 21, 1953 E.C., is hereby declared null and void.

The respondent shall pay court fees according to receipt and costs to the petitioner of E\$100.

ከፍተኛው ፡ ፍርድ ፡ ቤት ፤

አዲስ ፡ አበባ ፡ የንግድ ፡ ፍርድ ፡ ቤት ፡ ኹለተኛ ፡ ችሎት ።

ሳካፌት ፡ ሶሴታ ፡ አኖኒማ ፡ ከሳሽ ፤ የማዕድንና ፡ የመንግሥት ፡ ንብረት ፡ ሚኒስቴር ፡ መልስ ፡ ሰጭ ።

የፍትሕ ፡ ብሔር ፡ ነገር ፡ ቅጥር ፡ ፩፻፸፭/፶፬ ፡ ዓ. ም ።

ሕገ ፡ መንግሥት — ንብረት — ስለግል ፡ ንብረት ፡ መውሰድ — ንብረቱን ፡ ስለመውሰድ ፡ የሚደረግ ፡ ሥነ ፡ ሥርዐት—የሕገ ፡ መንግሥት ፡ አኖቅጽ ፡ ፶፬ ፡ ፳፭ ፡ ፳፱ ፡ እና ፡ ፯ ፤ የፍትሕ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፩፻፳፱፻፳፩ ።

ከአመልካች ፡ ጋራ ፡ ከተዋዋለው ፡ ውል ፡ ውጭ ፡ ከወሰደው ፡ እርምጃ ፡ መልስ ፡ ሰጭ ፡ እንዲታገድለት ፡ አመልካች ፡ አቤት ፡ ሲል ፡ የሚከተሉትን ፡ ሹለት ፡ ጉዳዮች ፡ አስታወቀ ። በመዝሙሪያ ፡ አመልካችና ፡ መልስ ፡ ሰጭ ፡ በገቡበት ፡ ውል ፡ መሠረት ፡ የውል ፡ መፈጸሚያ ፡ ማስታወቂያ ፡ ለአመልካች ፡ ያልተሰጠው ፡ መኾኑን ፡ መልስ ፡ ሰጭም ፡ ለአመልካች ፡ የሰጠው ፡ የውል ፡ መፈጸሚያ ፡ ማስታወቂያ ፡ በቂ ፡ ያለመኾኑንና ፡ በውሉ ፡ መሠረት ፡ ውሉ ፡ የሚፈጸመው ፡ በውሉ ፡ ውስጥ ፡ የተጠቀሰው ፡ ቦታ ፡ «ለመንግሥት ፡ እገልግሎት» ፡ እንዲውል ፡ ያለመኾኑን (እንደዚሁም ፡ በፍትሕ ፡ ብሔር ፡ አንቀጽ ፡ ፩፻፳፱፻፳፩ ፡ መሠረት ፡ ንብረት ፡ በመንግሥት ፡ ሲወሰድ ፡ ሲፈጸመው ፡ የሚገባቸው ፡ ሥነ ፡ ሥርዐቶች ፡ ስለአልተጠበቁ ፡ አመልካች ፡ ንብረቱ ፡ በመንግሥት ፡ ሲወሰድ ፡ ታሰቦ ፡ ነበር ፡ ሲል ፡ ያለመቻሉን ፡ ነው ።

ውሳኔ 1- መልስ ፡ ሰጭው ፡ ለምን ፡ ጊዜም ፡ ጉን ፡ እንደዚህ ፡ ያለ ፡ እርምጃ ፡ እንዳይወሰድ ፡ ታግዶአል ።

፩ ፤ “ስለግል ፡ ንብረት ፡ መውሰድ (ኢክስፕሮፕሽን) ፡ በተለይ ፡ በሚወጣው ፡ ሕግ” ፡ ተብሎ ፡ በሕገ ፡ መንግሥት ፡ አንቀጽ ፡ ፶፬ ፡ የተጠቀሰው ፡ በፍትሕ ፡ ብሔር ፡ ሕግ ፡ ውስጥ ፡ የሚገኙት ፡ ስለግል ፡ ንብረት ፡ መውሰድ ፡ ሥነ ፡ ሥርዐት ፡ የተደነገጉት ፡ አኖቅጽ ፡ ናቸው ።

፪ ፤ በውል ፡ መሠረት ፡ የተደረገን ፡ ግል ፡ መብትን ፡ መንግሥት ፡ መውሰድ ፡ በፈለገ ፡ ጊዜ ፡ በሕገ ፡ መንግሥት ፡ አንቀጽ ፡ ፶፬ ፡ መሠረት ፡ ስለግል ፡ ንብረት ፡ መውሰድ ፡ በተለይ ፡ በወጣው ፡ ሕግ ፡ ማለት ፡ በፍትሕ ፡ ብሔር ፡ ሕግ ፡ የተዘረዘሩትን ፡ ሥነ ፡ ሥርዐቶች ፡ መፈጸም ፡ አለበት ።

መጋቢት ፡ ፲፫ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም ። ዳኞች 1- ዶክተር ፡ ቦሐጅያር ፡ አቶ ፡ ዮሴፍ ፡ ተክለ ፡ ሚካኤል ፡ አቶ ፡ መኩንን ፡ ጌታኹን ። የክሉ ፡ ምክንያት ፡ አመልካቾች ፡ መልስ ፡ ሰጭው ፡ ያደረጉት ፡ ውል ፡ ዘመት ፡ እስከ ፡ ተፈጸመ ፡ ድረስ ፡ እንዲጸናለት ፡ በማለት ፡ የቀረበ ፡ ክስ ፡ ነው ።

አመልካች ፡ በጠበቃው ፡ አማካይነት ፡ በጥር ፡ ጽፏ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. በጸፈው ፡ ማመልከቻ ፡ ሲያመለክት ፡ ከሳሽ ፡ ኩባንያና ፡ ተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ በመስከረም ፡ ፩ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. በተጻጻፉት ፡ ውል ፡ መሠረት ፡ ከሳሽ ፡ ኩባንያ ፡ ከተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ በሚከሊከ ፡ አደባባይ ፡ የሚገኘውን ፡ በጋራኹንት ፡ የሚጠቀም ፡ በት ፡ ቤትን ፡ ለአንድ ፡ ዓመት ፡ (ከጥቅምት ፡ ፩ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. እስከ ፡ መስከረም ፡ ፴ ፡ ቀን ፡ ፲፱፻፶፭ ፡ ዓ. ም.) ተከራይቶ ፡ ነበር ። ከሳሽና ፡ ተከሳሽ ፡ በተጻጻፉት ፡ ውል ፡ በአንቀጽ ፡ ሦስት ፡ በተጻፈው ፡ ቃል ፡ በክርክር ፡ ያለውን ፡ ቤት ፡ መንግሥት ፡ ለሌላ ፡

ሥራ ፡ ሊያውለው ፡ የፈለገ ፡ እንደኾነ ፡ ተከላሽ ፡ መሥሪያ ፡ ቤት ፡ የክራይ ፡ ውል ፡ የሚፈጸምበትና ፡ ቤቱንም ፡ የሚረከቡበትን ፡ ጊዜ ፡ ቢያንስ ፡ ቢያንስ ፡ ከኹለት ፡ ወር ፡ በፊት ፡ እስቀድመው ፡ ማስጠንቀቂያ ፡ ለከላሽ ፡ ኩባንያ ፡ እንዲጽፉለት ፡ ግዴታ ፡ ንብተው ፡ ነበር ። ነገር ፡ ግን ፡ ውሉ ፡ ግልጽ ፡ ኹኖ ፡ የተጻፈ ፡ ቢኾንም ፡ ተከላሽ ፡ ወይም ፡ መልስ ፡ ሰጭው ፡ መሥሪያ ፡ ቤት ፡ የገቡበትን ፡ ግዴታ ፡ ሳይገነዘቡ ፡ በጥር ፡ ጿ፪ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. በቀጥጥር ፡ 4731/3181/54 ፡ ለአመልካች ፡ ኩባንያ ፡ በጻፉት ፡ ደብዳቤ ፡ አመልካች ፡ ኩባንያ ፡ በጥር ፡ ፴ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. ውስጥ ፡ የተከራየውን ፡ ቤት ፡ እንዲለቅ ፡ ብለው ፡ ጽፈውለታል ። መልስ ፡ ሰጭው ፡ መሥሪያ ፡ ቤት ፡ ቤቱን ፡ እንዲለቁ ፡ ለአመልካች ፡ ይጻፍ ፡ እንጂ ፡ ቤቱ ፡ የሚፈለገው ፡ ለመንግሥት ፡ ሥራ ፡ አገልግሎት ፡ ሳይኾን ፡ ለነጋዴዎች ፡ ምክር ፡ ቤት ፡ ተሰጥቷል ፡ በሚለው ፡ ነው ። ነገር ፡ ግን ፡ ለመንግሥት ፡ አገልግሎት ፡ እንኳ ፡ ተፈልጎ ፡ ቢኾን ፡ ኑሮ ፡ ከኹለት ፡ ወር ፡ በፊት ፡ በማስታወቅ ፡ ቤቱን ፡ ለመረከብ ፡ ሲቻል ፡ የመልስ ፡ ሰጭው ፡ ጥያቄ ፡ ግን ፡ ከውሉ ፡ ውጭ ፡ መኾኑን ፡ ውል ፡ በግልጽ ፡ ያስረዳል ። መልስ ፡ ሰጭው ፡ መሥሪያ ፡ ቤት ፡ በአንድ ፡ ሳምንት ፡ ውስጥ ፡ ቤቱን ፡ ለመረከብና ፡ ቤቱ ፡ ለመንግሥት ፡ ሥራ ፡ አገልግሎት ፡ የሚያስፈልግ ፡ ቢኾንም ፡ አመልካች ፡ ኩባንያ ፡ ውሉን ፡ የሚፈጸምበት ፡ መስከረም ፡ ፴ ፡ ቀን ፡ ፲፱፻፶፩ ፡ ዓ. ም. ከመድረሱ ፡ በፊት ፡ ውሉን ፡ ለመሠረዝ ፡ አንዳች ፡ መብት ፡ የለውም ። እኹን ፡ መልስ ፡ ሰጭው ፡ መሥሪያ ፡ ቤት ፡ በጥር ፡ ፴ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. ለአመልካች ፡ ኩባንያ ፡ የጻፈው ፡ ደብዳቤ ፡ ተሸሮ ፡ ማስታወቂያው ፡ ከውሉ ፡ ውጭ ፡ መኾኑ ፡ ታውቆለት ፡ አመልካች ፡ ለዳኝነት ፡ ወጭ ፡ ያደረገውንና ፡ ሌላውን ፡ ኪሣራ ፡ ኹሉ ፡ መልስ ፡ ሰጭው ፡ እንዲከፍሉ ፡ በዚህ ፡ መሠረት ፡ ውሳኔ ፡ እንዲሰጠው ፡ ብሎ ፡ አመልክተዋል ።

ቀጥሎም ፡ አመልካች ፡ ለዚህ ፡ ለአቀረበው ፡ ማመልከቻ ፡ ደጋፊ ፡ ይኾነው ፡ ዘንድ ፡ በመሐላ ፡ የተመላ ፡ ማመልከቻ ፡ በጥር ፡ ፳፰ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. የተጻፈ ፡ እቅርቦ ፡ መልስ ፡ ሰጭው ፡ በአንድ ፡ ሳምንት ፡ ውስጥ ፡ እንዲለቁ ፡ ብሎ ፡ የጻፈለት ፡ ማስታወቂያ ፡ ስለአሰገደደው ፡ እንዲታገድለት ፡ በአስቸኳይ ፡ ትእዛዝን ፡ እዲሰጠው ፡ ብሎ ፡ ስለአመለከተ ፡ ፍርድ ፡ ቤቱም ፡ አመልካች ፡ ምሉ ፡ ያቀረበውን ፡ ማመልከቻ ፡ ተቀብሎ ፡ ፍርድ ፡ ቤቱ ፡ ሌላ ፡ ትእዛዝ ፡ ካልሰጠው ፡ በቀር ፡ መልስ ፡ ሰጭው ፡ በጥር ፡ ፳፪ ፡ ቀን ፡ ፲፱፻፶፪ ፡ ዓ. ም. ለአመልካቹ ፡ የጻፈው ፡ ደብዳቤ ፡ ከመፈጸሙ ፡ እንዲቂይ ፡ ብሎ ፡ በጥር ፡ ፳፱ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. አንድ ፡ ትእዛዝ ፡ ሰጥቷል ።

መልስ ፡ ሰጭው ፡ መሥሪያ ፡ ቤት ፡ በነገረ ፡ ፈጽ ፡ አማካይነት ፡ በየካቲት ፡ ፳፮ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. በጻፈው ፡ የመከላከያ ፡ መልስ ፡ ሲያመለክት ፡ አመልካቹ ፡ ኩባንያ ፡ ያቀረበው ፡ እቤቱታ ፡ በቅን ፡ ጎሲና ፡ እውነተኛውን ፡ መንገድ ፡ በመከተል ፡ እይደለም ፤ ምክንያቱም ፡ መልስ ፡ ሰጭው ፡ ውሉን ፡ በፈቃዱ ፡ ያላፈረሰው ፡ ስለኾነ ፡ ነው ። አመልካቹ ፡ ለማሳጣት ፡ ያሽል ፡ አቤቱታውን ፡ አቀረበ ፡ እንጂ ፡ በዚሁ ፡ ቦታ ፡ ላይ ፡ ለሕዝብ ፡ ጥቅም ፡ የሚውለው ፡ የነጋዴዎች ፡ ምክር ፡ ቤት ፡ ሕንጻ ፡ እንዲሠራበት ፡ ታስቦ ፡ ግርማዊ ፡ ንጉሠ ፡ ነገሥት ፡ የመሠረት ፡ ድንጋይ ፡ ያስቀመጡበት ፡ መኾኑን ፡ አመልካቹ ፡ ኩባንያ ፡ በግልጽ ፡ እንደሚያውቀው ፡ ሊይካድም ። በዚሁ ፡ ምክንያት ፡ መልስ ፡ ሰጭው ፡ መሥሪያ ፡ ቤት ፡ ቦታውን ፡ አስለቅቆ ፡ ለነጋዴዎች ፡ ምክር ፡ ቤት ፡ ጽሕፈት ፡ ቤት ፡ እንዲያስረክብ ፡ ከጽሕፈት ፡ ሚኒስቴር ፡ በቀጥጥር ፡ 1310/8/868/17 ፡ በተጻፈለት ፡ ማዘጋጃ ፡ የታዘዘ ፡ ከመኾኑም ፡ በላይ ፡ ተከላሹ ፡ መሥሪያ ፡ ቤት ፡ በቀጥጥር ፡ 4731/3181/54 ፡ ለከላሹ ፡ ኩባንያ ፡ የጻፈለት ፡ ደብዳቤ ፡ በፍትሕ ፡ ብሔር ፡ ሕግ ፡ በአንቀጽ ፡ ፩፻፳፱፻፳፩ ፡ እና ፡ ፩፻፳፱፻፳፱ ፡ ንሑስ ፡ አንቀጽ ፡ (፫) በተጻፈው ፡ ሕግ ፡ የተደገፈ ፡ ነው ። ተከላሽ ፡ መሥሪያ ፡ ቤት ፡ ያደረገው ፡ ጥያቄ ፡ በሚገባ ፡ ሲኾን ፡ ከላሽ ፡ በቂና ፡ የተጨበጠ ፡ ምክንያት ፡ ሳይኖረው ፡ የመሐላ ፡ ቃል ፡

አቅርቦ ፡ ቤቱን ፡ እንዲለቅ ፡ ተብሎ ፡ የተጻፈለት ፡ ደብዳቤ ፡ እንዲታገድ ፡ ስለአደረገ ፡ በግርማዊነታቸው ፡ ቤቱን ፡ ለማስረከብ ፡ የተሰጠው ፡ ትእዛዝ ፡ አልተፈጸመም ። እኹን ፡ አመልካች ፡ በማይበቃ ፡ ምክንያት ፡ ያቀረበው ፡ አቤቱታ ፡ ውድቅ ፡ ሹኖ ፡ አመልካች ፡ ኩባንያ ፡ የአሁኑን ፡ ክስ ፡ አቅርቦ ፡ በማወኩ ፡ ከፍ ፡ ያለ ፡ ኪሣራ ፡ ከፍሎ ፡ በተሰጠው ፡ ማስጠንቀቂያ ፡ መሠረት ፡ ቤቱን ፡ እንዲለቅ ፡ እንዲፈረድበት ፡ ብሎ ፡ ክርክሩን ፡ አቅርቧል ።

በከሳሽና ፡ በተከሳሽ ፡ በየበኩላቸው ፡ የቀረበው ፡ ክርክር ፡ ሐተታው ፡ ከዚህ ፡ በላይ ፡ እንደተዘረዘረው ፡ ሹኖ ፡ ከሳሽ ፡ በመስከረም ፡ ፩ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. የተጻፈ ፡ ውል ፡ ቁጥር ፡ 2167 ፡ አንደኛ ፡ ከሳሽ ፡ ማስረጃ ፡ የተባለውን ፡ የቤት ፡ ክራይ ፡ ውል ፡ አቅርቦ ፡ ከሳሽ ፡ በሚክሲኮ ፡ አደባባይ ፡ ላይ ፡ የሚገኘው ፡ ቤት ፡ መስከረም ፡ ፴ ፡ ቀን ፡ ፲፱፻፶፩ ፡ ዓ. ም. ድረስ ፡ ለአንድ ፡ ዓመት ፡ ከተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ የተከራየው ፡ መኾኑን ፡ የሚገልጽ ፡ ውል ፡ ነው ። ቀጥሎም ፡ ከሳሽ ፡ በጥር ፡ ፳፪ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. በቁጥር ፡ 4731/3181/54 ፡ ከተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ የተጻፈለትን ፡ ደብዳቤ ፡ ሹለተኛ ፡ ከሳሽ ፡ ማስረጃ ፡ የተባለውን ፡ አቅርቦ ፡ ተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ በውል ፡ ቁጥር ፡ ፪ሺሕ፩፻፳፯ ፡ በክራይ ፡ ለከሳሽ ፡ ኩባንያ ፡ የሰጠው ፡ ቤት ፡ ለነጋዴዎች ፡ ምክር ፡ ቤት ፡ እንዲሾን ፡ የጽሕፈት ፡ ሚኒስቴር ፡ በጥቅምት ፡ ፳፯ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. በቁጥር ፡ 1310/8/868/17 ፡ የተጻፈለትን ፡ ማዘዣ ፡ መሠረት ፡ አድርጎ ፡ ቤቱን ፡ ጥር ፡ ፴ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. ድረስ ፡ ለተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ እንዲያስረክብ ፡ ብሎ ፡ የጻፈለት ፡ መኾኑን ፡ የሚያመለክት ፡ ነው ።

ከዚህ ፡ በኋላ ፡ ከሳሽ ፡ በእንደኛውና ፡ በሹለተኛው ፡ ከሳሽ ፡ ማስረጃ ፡ መሠረት ፡ ፍርድ ፡ እንዲሰጠው ፡ አመልክቷል ።

እንዲሁም ፡ ተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ በበኩሉ ፡ የጽሕፈት ፡ ሚኒስቴር ፡ በጥቅምት ፡ ፳፯ ፡ ቀን ፡ ፲፱፻፶፬ ፡ ዓ. ም. በቁጥር ፡ 1310/8/868/17 ፡ ለመንግሥት ፡ ንብረትና ፡ ለማዕድን ፡ ሚኒስቴር ፡ የተጻፈ ፡ ማዘዣን ፡ አንደኛ ፡ ተከሳሽ ፡ ማስረጃ ፡ የተባለውን ፡ አቅርቧል ።

እንግዲህ ፡ ከሳሽና ፡ ተከሳሽ ፡ በእንደኛው ፡ ከሳሽ ፡ ማስረጃ ፡ መሠረት ፡ በሚክሲኮ ፡ አደባባይ ፡ ላይ ፡ ያለውን ፡ ቤት ፡ ተከሳሽ ፡ ለከሳሽ ፡ ማከራየቱና ፡ እንዲሁም ፡ ተከሳሽ ፡ ሹለተኛውን ፡ ከሳሽ ፡ ማስረጃ ፡ ለከሳሽ ፡ የጻፈለት ፡ መኾኑን ፡ ሹለቱ ፡ ተከራካሪ ፡ ወገኖች ፡ በሹለቱ ፡ ማስረጃ ፡ ላይ ፡ አልተካካዱበትም ።

ተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ በክርክሩ ፡ ያለውን ፡ ቤት ፡ ከሳሹ ፡ (ቤቱን) ፡ እንዲለቁ ፡ ያዘዘኩበት ፡ ምክንያት ፡ ቤቱ ፡ ለነጋዴዎች ፡ ምክር ፡ ቤት ፡ ስለተሰጠ ፡ ነው ፡ ለዚሁም ፡ ይደግፈኛል ፡ ብሎ ፡ ያቀረበው ፡ አንደኛው ፡ ተከሳሽ ፡ ማስረጃ ፡ ቀርቦ ፡ ስንመለከተው ፡ በዝርዝሩ ፡ ያለውን ፡ ቤት ፡ የያዘ ፡ ቦታ ፡ የተሰጠ ፡ መኾኑንና ፡ በሌላውም ፡ በኩል ፡ ለመዝገብ ፡ እያያዝ ፡ እንዲመች ፡ የቦታው ፡ ስፋት ፡ ተለክቶ ፡ ሜትር ፡ ካሬው ፡ ተገልጾ ፡ እንዲጻፍላቸው ፡ የሚገልጽ ፡ ነው ፡ እንጂ ፡ ተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ እንዳመለከተው ፡ በአስቸኳይ ፡ ቦታውን ፡ ለነጋዴዎች ፡ ምክር ፡ ቤት ፡ እንዲያስረክቡ ፡ ያልታዘዙ ፡ መኾናቸውን ፡ ማዘዣው ፡ በግልጽ ፡ ያስረዳል ።

እንዲሁም ፡ ተከሳሽ ፡ መሥሪያ ፡ ቤት ፡ በዐዲሱ ፡ በኢትዮጵያ ፡ የፍትሕ ፡ ብሔር ፡ ሕግ ፡ በአንቀጽ ፡ ፩ሺሕ፪፻፳፩ ፡ የተጻፈውን ፡ ሕገ ፡ መንግሥት ፡ ለሕዝብ ፡ ጥቅም ፡ የራሱ ፡ የኾነውን ፡ ቦታ ፡ ይቅርና ፡ ማናቸውንም ፡ የሌላ ፡ ሰው ፡ ንብረት ፡ የኾነውን ፡ ቦታ ፡ ለመውሰድ ፡ ይችላልና ፡ አንቀጽ ፡ ይደግፈኛል ፡ ብሎ ፡ ስለአቀረበው ፡ ክርክር ፡ መንግሥት ፡ ለባለንብረቱ ፡ ወይም ፡ ለተከራዩ ፡ ሰው ፡ አስቀድሞ ፡ ኪሣራውን ፡ ወይም ፡

ዋጋውን፡ ከከፈለ፡ በኋላ፡ ለመውሰድ፡ ምሉ፡ መብት፡ እንዳለው፡ አይካድም ። ይኸውም፡ አንቀጽ፡ በሕገ፡ መንግሥቱ፡ በአንቀጽ፡ ፵፬፡ እና፡ ፷፰፡ በአንቀጽ፡ ፷፱፡ እና፡ ፺፡ በተጻፈው፡ ሕግ፡ የሚደገፍ፡ ነው ።

ይኹን፡ እንጂ፡ ተከላሽ፡ በዚህ፡ ጉዳይ፡ ላይ፡ የጠቀሰው፡ የፍትሕ፡ ብሔር፡ ሕግ፡ በዚህ፡ በክርክሩ፡ ካለው፡ ጉዳይ፡ አንዳችም፡ ተገቢነት፡ የለውም፡ ምክንያቱም፡ አኹን፡ በክርክሩ፡ ያለው፡ ጉዳይ፡ ጊዜው፡ ሳይደርስ፡ ውሉን፡ አስቀድሞ፡ ለማፍረስ፡ ሲኾን፡ ተከላሽ፡ የጠቀሰው፡ አንቀጽ፡ ግን፡ መንግሥት፡ ስለሕዝብ፡ ጉዳይ፡ ስለሚወሰደው፡ ንብረት፡ የሚመለከት፡ ስለኾነ፡ ነው ።

የኾነ፡ ኹኖ፡ በከላሽና፡ በተከላሽ፡ መካከል፡ በተደረገው፡ የቤት፡ ኪራይ፡ ውል፡ በተራ፡ ቊጥር፡ በአንቀጽ፡ ሦስት፡ የተጻፈውን፡ ቃል፡ ስንመለከተው፡ ከላሽ፡ ቤቱን፡ ለመልቀቅ፡ ሲፈልግ፡ ከዐሥራ፡ ዐምስት፡ ቀን፡ በፊት፡ አስቀድሞ፡ ለተከላሽ፡ ለማስታወቅ፡ ግዴታ፡ እንደገባና፡ በበኩሉም፡ ተከላሽ፡ ቤቱን፡ እንዲለቅለት፡ የፈለገ፡ እንደኾነ፡ ከኹለት፡ ወር፡ በፊት፡ ለተከራዩ፡ ማስታወቅ፡ እንዳለበት፡ ኹለቱ፡ ተዋዋይ፡ ወገኖች፡ በየበኩላቸው፡ በዚህ፡ ዐይነት፡ ግዴታ፡ እንደገቡ፡ ውሉ፡ በግልጽ፡ ያስረዳል ።

ቀድሞውንም፡ ከላሽ፡ አቤቱታውን፡ ለዚህ፡ ፍርድ፡ ቤት፡ ያቀረበው፡ በውሉ፡ መሠረት፡ ተከላሽ፡ የኹለት፡ ወር፡ ማስጠንቀቂያ፡ ሳይሰጥ፡ ውሉን፡ በመተላለፍ፡ በአንድ፡ ሳምንት፡ ውስጥ፡ ቤቱን፡ ለምን፡ ልቀቅ፡ አለኝ፡ በማለት፡ ነው፡ እንጂ፡ በውሉ፡ በሦስተኛው፡ አንቀጽ፡ ከተጻፈው፡ ቃል፡ ውል፡ እንዲፈጸምለት፡ እንዳልጠየቀ፡ በጻፈው፡ ማመልከቻ፡ ታውቋል ።

ከላሽ፡ በአቤቱታው፡ ለውርድበጅ፡ ያኸል፡ ቤቱ፡ የተፈለገ፡ ለመንግሥት፡ ሥራ፡ ሳይኾን፡ ለነጋዴዎች፡ ምክር፡ ቤት፡ ነው፡ በማለት፡ ዐጠር፡ ያለ፡ ክርክር፡ ሰንዝረዋል ። ነገር፡ ግን፡ የመንግሥት፡ ሥራ፡ ሲባል፡ ጠቅላላ፡ ስም፡ መኾኑ፡ የታወቀ፡ ሲኾን፡ መንግሥት፡ ንግድ፡ እንዲሰፋፋ፡ አገር፡ እንዲለማ፡ ማናቸውም፡ ለሕዝብ፡ ጥቅም፡ የሚመለከተው፡ ሥራ፡ ኹሉ፡ በመንግሥት፡ መሪነት፡ የሚሠራ፡ መኾኑ፡ የታወቀ፡ ነው ። በተለይም፡ በክርክሩ፡ ያለው፡ ቤት፡ የንግድ፡ ሥራን፡ ለማከናወን፡ ይመች፡ ዘንድ፡ ፕላኑ፡ በመንግሥት፡ የተመራ፡ ለመኾኑ፡ ለማንም፡ ሥውር፡ አይደለም ።

አኹን፡ ከላሽ፡ በውሉ፡ በሦስተኛው፡ አንቀጽ፡ በተጻፈው፡ ቃል፡ መሠረት፡ መብቱ፡ እንዲጠበቅልኝ፡ በማለት፡ ያቀረበው፡ አቤቱታ፡ ሕጋዊና፡ የሚገባ፡ ጥያቄ፡ ኹኖ፡ አግኝተነዋል ።

ስለዚህ፡ ከዚህ፡ በላይ፡ በተዘረዘረው፡ ምክንያት፡ ተከላሽ፡ መሥሪያ፡ ቤት፡ በውሉ፡ በአንቀጽ፡ ሦስት፡ የተጻፈውን፡ ቃል፡ ተላልፎ፡ አስቀድሞ፡ የኹለት፡ ወር፡ ማስጠንቀቂያ፡ ሳይሰጥ፡ በአንድ፡ ሳምንት፡ ቤቱን፡ እንዲለቅ፡ ብሎ፡ ለከላሽ፡ ኩባንያ፡ በጥር፡ ፳፪፡ ቀን፡ ፲፱፻፶፬፡ ዓ. ም. የጻፈው፡ ደብዳቤ፡ ከገባበት፡ ውል፡ ተቃራኒ፡ ስለኾነ፡ ደብዳቤውን፡ ውድቅ፡ አድርገን፡ የዳኝነት፡ በደረሰኝ፡ ኪሣራ፡ ዐምሳ፡ ብር፡ ተከላሽ፡ ለከላሽ፡ እንዲከፍል፡ ፈርደናል ።

HIGH COURT  
Addis Ababa, Com. Div. No. 2

S.A.C.A.F.E.T., SOCIETA' ANONIMA v.  
THE MINISTRY OF STATE DOMAINS AND MINES

Civil Case No. 178/54 E.C.

*Constitution - - Property - - Expropriation - - Rights which are capable of expropriation - - Procedure for expropriation - - Arts. 44, 88, 89, 90 Rev. Const. - - Art. 1461 Civ. C.*

In an action for injunction, the petitioner claimed that termination notice sent by the respondent under their lease agreement was insufficient in that the notice required was not given and the termination was not for "government use" as required by the lease; similarly that expropriation proceedings under Art. 1461 Civ. C. were not properly instituted, so that the respondent cannot now claim that an expropriation was intended.

*Held:* Permanent injunction granted.

1. The Civil Code provisions setting forth the procedure for expropriation constitute the special expropriation law referred to in Art. 44 Rev. Const.

2. If the government wishes to expropriate a person's rights under a lease, it must follow the procedures set down in the Civil Code, which contains the special expropriation law enacted pursuant to Art. 44 Rev. Const.

3. A simple letter from the Minister of Pen to the Ministry of State Domains to the effect that premises should be earmarked for a certain purpose, with no mention of an existing lease, does not amount to a ministerial order to breach the lease as is required by Art. 44 Rev. Const. and by the Civil Code.

Megabit 13, 1954 E.C. (March 22, 1962 G.C.); Judges: Dr. W. Buhagiar, Ato Josef Tekle Mikael, Ato Mekonnen Getahun: — In his statement of claim, the plaintiff company stated that there was an agreement of lease entered into between that company and the defendant Ministry for premises to be used as a workshop at Mexico Square for a period of one year ending on Maskaram 30, 1955. This agreement is evidenced by Contract of Lease No. 2167 (Exh. P/1). The plaintiff also stated that by letter dated Ter 22, 1954, No. 4731/3181/54, (Exh. P/2), the defendant Ministry requested the plaintiff company to vacate the said premises by Ter 30, 1954. It is submitted by the plaintiff company that such request to vacate the premises is contrary to the lease agreement, which, in clause 3, stipulates that in case the premises are required for *Government use*, the plaintiff company is to be notified at least two months in advance for the purpose of terminating the lease and handing over the premises. The plaintiff company further states that apart from the fact that the provisions of clause 3 of the agreement have not been followed as regards the notice to be given, the purpose for which the premises are required are not "for Government use"; in fact, the letter of Ter 22, 1954 clearly states that the premises have been assigned to the Chamber of Commerce; according to the submission of the plaintiff company the Chamber of Commerce is not a Government Department. Having premised the above, the plaintiff company prayed that the defendant Ministry



be enjoined from proceeding with the request of taking over the premises on Ter 30, 1954, and also prayed for a declaration that the notice (Exh. P/2) is contrary to the terms of the agreement and therefore null and void.

By interlocutory order dated Ter 29, 1954, this Court prohibited the defendant Ministry from proceeding with the eviction until further Order of Court.

By the defence, dated Yekatit 26, 1954, the defendant Ministry did not deny the facts as alleged in the statement of claim or any of the documents produced by the plaintiff company, but, the defence stated, the order for the taking over of the said premises for use as a Chamber of Commerce was given by His Excellency the Minister of Pen, and in support of this there was submitted a letter from that Ministry to the Vice Minister of the Imperial State Domains dated November 3, 1961, Ref. No. 1310/8/868/17, (Exh. D/1). Furthermore, it was submitted in the defence that it is possible to take over the said premises under the provisions of Article 1461 of the Civil Code. Now as regards the letter from the Ministry of Pen, this amounts to a direction that the premises in question be earmarked for the Chamber of Commerce; it is not an order for the immediate possession of the premises; furthermore, nothing is stated therein regarding the present existing lease in favour of the plaintiff company; such letter therefore cannot amount to an order to the defendant Ministry to breach the agreement existing in favour of the plaintiff company.

As regards the submission of the defendant Ministry that the lease could be taken over under the provisions of Article 1461 of the Civil Code, it is true that under the Civil Code the competent authority may take action to expropriate land and that under Article 1461 expropriation proceedings may be used for terminating a contract of lease prior to the agreed term, but the Civil Code lays down a definite procedure for expropriation. This procedure, as laid down in the Civil Code, is the special expropriation law enacted in accordance with Articles 88, 89, or 90 of the Revised Constitution, pursuant to Article 44 of that Constitution. In the present case, no expropriation proceedings have been taken in accordance with Article 44 of the Constitution or the articles of the Civil Code; it cannot, therefore, be said that there has been any expropriation, since if there had been, such expropriation would have been against the Constitution.

For the above reasons, the Court holds that article 3 of the lease agreement (Exh. P/1) has not been followed by the defendant Ministry in that, even if the premises in question were required for Government use, a notice of two months is required under article 3 for the termination of the lease and the evacuation of the premises, and therefore the notice given by the defendant Ministry by letter dated Ter 22, 1954 (Exh. P/2) is illegal and of no effect.

The defendant Ministry shall pay the plaintiff company court fees according to receipt and costs of E\$100.

ከፍተኛው ፍርድ ቤት፤

አዲስ፣ አበባ፣ የንግድ፣ ፍርድ፣ ቤት፣ ኹለተኛ፣ ችሎት ።

ኤች.ቪ.ኤ.ኢትዮጵያ፣ ይግባኝ፣ ባይ፣ ያገር፣ ውስጥ፣ ገቢ፣ መሥሪያ፣ ቤት፣ መልስ፣ ሰጭ።

የፍትሕ፣ ብሔር፣ የንግድ፣ ነገር፣ ቅጥር፣ ፳ / ፶፬፣ ዓ.ም ።

ቀረጥ — የገቢ፣ ግብር — ትንሳ — የመጓጓዣ፣ ወጪ — የጽሑፍ ስምምነት — የገቢ፣ ወጪ — ዋና፣ ወጪ — ግደሻዎች፣ የገቢ፣ ግብር፣ ድንጋጌ፣ ፲፱፻፵፬፣ ዓ. ም. (ድንጋጌ፣ ቅጥር፣ ፲፱፣ ፲፱፻፵፬፣ ዓ. ም.) አንቀጽ፣ ፶፱ — የሕግ፣ ክፍል፣ ማስታወቂያ፣ ቅጥር፣ ፪፻፲፭፣ ፲፱፻፶፯፣ ዓ. ም. አንቀጽ፣ ፮ (ሀ)፣ ፮ (ለ)፣ ፮ (ረ)፣ እና፣ ፳ (ሠ) ።

፩ኛ፤ ይግባኝ፣ ባይ፣ ኩባንያ፣ ስለኩባንያው፣ ምክር፣ እንዲሰጡት፣ ከውጭ፣ አገር፣ ወደ፣ ኢትዮጵያ፣ ደርሶ፣ መልስ፣ ባለልዩ፣ ችሎታዎች፣ (ኢክስፔርቶች) ሲያስመጣ፣ ለነሱ፣ መጓጓዣ፣ ያደረገው፣ ወጭ፣ በኤክስፔርቶቹና፣ በኩባንያው፣ መካከል፣ በተደረገ፣ የጽሑፍ ስምምነት፣ መሠረት፣ ባለመደረጉ፣ ምክንያት፣ ፪ተኛ፣ ለመሥሪያ፣ መኪናዎች፣ የተደረገ፣ የግደሻ፣ ወጭ፣ ለብዙ፣ ጊዜ፣ የሚያገለግል፣ በመኾኑ፣ ዋና፣ ወጭ፣ ስለኾነ፣ እነዚህ፣ ኹለቱም፣ ወጭዎች፣ ስለታከሱ፣ እገማመት፣ ጉዳይ፣ ክንቢ፣ ላይ፣ ተቀናሽ፣ አይኾኑም፣ ብሎ፣ የታከሰ፣ ይግባኝ፣ ሰሜ፣ ኮሚቴ፣ ስለወሰነ፣ ይግባኝ፣ ቀረበ ።

ውሳኔ 1- በመዝገብ መሠረት፣ ወጪ፣ ጉዳይ፣ የተደረገው፣ ውሳኔ፣ ውድቅ፣ ኹኖ፣ ጉዳዩ፣ ለኮሚቴው፣ ተመልሶለት፣ ወጥቶበታል፣ ለተባለው፣ ነገር፣ ወጪው፣ መውጣቱን፣ ኮሚቴው፣ እንዲያረጋግጥ፣ በኹለተኛው፣ ወጪ፣ ጉዳይ፣ ደግሞ፣ የተደረገው፣ ውሳኔ፣ ውድቅ፣ ኹኖ፣ ወጪው፣ ተቀናሽ፣ እንዲኾን፣ ተወስንዋል ።

፩፤ በሕግ፣ ክፍል፣ ማስታወቂያ፣ ቅጥር፣ ፪፻፲፭፣ ፲፱፻፶፯፣ ዓ. ም. አንቀጽ፣ ፮ (ለ) እና፣ (ረ) መሠረት፣ ለኢክስፔርቶች፣ የተደረገ፣ ወጪ፣ መኖሩን፣ ለማረጋገጥ፣ በኢክስፔርቶቹና፣ ኤክስፔርቶቹን፣ ባለመጣው፣ ኩባንያ፣ መካከል፣ የጽሑፍ ስምምነት፣ መኖሩን፣ ማሳየት፣ አያገኝም ።

፪፤ በሕግ፣ ማስታወቂያ፣ ክፍል፣ ቅጥር፣ ፪፻፲፭፣ ፲፱፻፶፯፣ ዓ. ም. አንቀጽ፣ ፳ (ሠ) መሠረት፣ የዋና፣ ገንዘብ፣ ወጪ፣ ማለት፣ አንድ፣ ጊዜ፣ የሚደረግ፣ ለንግዱ፣ ወይም፣ ለሥራው፣ ማዳበሪያ፣ ወይም፣ ጥቅም፣ የሚኾን፣ ቋሚ፣ ሀብት፣ የሚያስገኝ፣ ወጪ፣ ሲኾን፣ የገቢ፣ ገንዘብ፣ ወጪ፣ ማለት፣ ግን፣ በየዓመቱ፣ የሚደጋገም፣ ወጪ፣ ነው ።

፫፤ ለንግዱ፣ ወይም፣ ለሥራው፣ ወጪ፣ የተደረገው፣ ገንዘብ፣ ወዲስ፣ ዋና፣ ገንዘብ፣ (ካፒታል) የማይመጣ፣ ከኾነ፣ ነገር፣ ግን፣ ያለውን፣ ዋና፣ ገንዘብ፣ ለማጠናከር፣ (ማለት፣ ለመሣሪያ፣ ማደሻ) የተደረገ፣ ሲሆን፣ መሣሪያዎቹም፣ ለብዙ፣ ጊዜ፣ የሚያገለግሉ፣ ወይም፣ የማያገለግሉ፣ ቢኾኑም፣ ቅሱ፣ እንደዚህ፣ ያለው፣ ወጪ፣ የገቢ፣ ገንዘብ፣ ወጪ፣ እንጂ፣ የዋና፣ ገንዘብ፣ ወጪ፣ አይባልም ።

(የዘዘጋጀው፣ ማሳሰቢያ 1- የገቢ፣ ግብር፣ ድንጋጌ፣ ቅጥር፣ ፲፱፣ ፲፱፻፵፬፣ ዓ. ም. እና፣ የሕግ፣ ክፍል፣ ማስታወቂያ፣ ቅጥር፣ ፪፻፲፭፣ ፲፱፻፶፯፣ ዓ. ም. የገቢ፣ ግብር፣ ድንብ፣ ተሠርዘው፣ በሌላ፣ ሕግ፣ ተተክተዋል ። በመዝገብ መሠረት፣ ረንታ፣ የተተካው፣ የገቢ፣ ግብር፣ ዐዋጅ፣ ቅጥር፣ ፪፻፳፫፣ ፲፱፻፶፭፣ ዓ. ም. ሲኾን፣ በኹለተኛው፣ ረንታ፣ የተተካው፣ የሕግ፣ ማስታወቂያ፣ ክፍል፣ ቅጥር፣ ፪፻፶፭፣ ፲፱፻፶፬፣ ዓ. ም. የገቢ፣ ግብር፣ ደንብ፣ ነው ። ሕጉ፣ ምንም፣ ያኽል፣ ልዩነት፣ አልተደረገበትም፣ የሕግ፣ ክፍል፣ ማስታወቂያ፣ ቅጥር፣ ፪፻፲፭፣ አንቀጽ፣ ፮ (ሀ)፣ (ለ) እና፣ ፳ (ሠ) በተተካው፣ በሕግ፣ ማስታወቂያ፣ ክፍል፣ ቅጥር፣ ፪፻፶፭፣ ውስጥ፣ እንደዚያው፣ እንደነበሩ፣ ተጽፈዋል ። በዚህም፣ በወዲሱ፣ ደንብ፣ አንቀጽ፣ ፲፮ (ሀ)፣ (ለ) እና፣ ፲፮ (ጪ) ተብለው፣ ተጽፈዋል ። የሕግ፣ ክፍል፣ ማስታወቂያ፣ ቅጥር፣ ፪፻፲፭፣ አንቀጽ፣ ፮ (ረ) በሕግ፣ ክፍል፣ ማስታወቂያ፣ ቅጥር፣ ፪፻፶፭፣ ተጽፎ፣ ባይገኝም፣ ጠቅላላ፣ ሐሳቡ፣ ከዐዋጅ፣ ቅጥር፣ ፪፻፳፫፣ አንቀጽ፣ ፲፮፣ ጋራ፣ ተመሳሳይ፣ ነው ። ኤክስፔርት፣ ሠራተኞችን፣ ስለሚመለከት፣ ጉዳይ፣ ወዲሱ፣ የሕግ፣ ክፍል፣ ማስታወቂያ፣ ቅጥር፣ ፪፻፶፭፣ ሌላ፣ ተጨማሪ፣ ሕግ፣ አንቀጽ፣ ፲፮ (ሠ) ውስጥ፣ ጨምሮአል ።)

መጋቢት፡ ፳፡ ቀን፡ ፲፱፻፶፬፡ ዓ. ም. ዳኞች፡- ዶክተር፡ ቦሐይድሮ፡ አቶ፡ ዮሴፍ፡ ተክለ፡ ሚካኤል፡ አቶ፡ መኩንን፡ ጌታኹን ። ይህ፡ ይግባኝ፡ የቀረበው፡ የታክስ፡ ይግባኝ፡ ሰሚ፡ ኮሚቴ፡ ነሐሴ፡ ፳፱፡ ቀን፡ ፲፱፻፶፫፡ ዓ. ም. የሰጠውን፡ ውሳኔ፡ ባመቃወም፡ በ፲፱፻፶፬፡ ዓ. ም. በቀጥር፡ ፺፬፡ በወጣው፡ የገቢ፡ ግብር፡ ድንጋጌ፡ በአንቀጽ፡ ፶፱ ኛው፡ መሠረት፡ ነው፡ ይግባኝ፡ ባዩ፡ ይግባኙን፡ ያቀረቡት፡ በኹለት፡ ምክንያቶች፡ ነው፡- ከነዚህም፡ ኹለት፡ ምክንያቶች፡ እንዴት፡ ይግባኝ፡ ባዩ፡ ለሚያከናውኑት፡ ሥራ፡ ከውጭ፡ አገር፡ ላስመጡአቸው፡ ኤክስፔርቶች፡ ኢትዮጵያ፡ ደርሶ፡ መልስ፡ ለመጓጓዣያ፡ ወጪ፡ የተደረገ፡ ነው፡ የሚሉት፡ የኢት. ብር. 97,538 ሲኾን፡ ሌላው፡ ደግሞ፡ ለሚሊንግሮልስ፡ (ለዐገዳ፡ መዳመጫዎች)፡ ለመግሪያዎች፡ ማደሻና፡ ለሌላም፡ ጉዳይ፡ ወጪ፡ የተደረገ፡ ነው፡ የሚሉት፡ የኢት. ብር. 122,769.50 ሒሳብ፡ ነው፡ ይግባኝ፡ ባዩ፡ ይግባኙን፡ ያቀረቡበት፡ ምክንያት፡ በ፲፱፻፶፯፡ ዓ. ም. በወጣው፡ የሕግ፡ ክፍል፡ ማስታወቂያ፡ ቀጥር፡ ፪፻፲፭፡ አንቀጽ፡ ፯(ለ)፡ ፯(ረ) በሚያዘው፡ መሠረት፡ ሊቀነስ፡ በሚገባው፡ ገንዘብ፡ ላይ፡ ይግባኝ፡ ባይ፡ ታክስ፡ እንዲከፍልበት፡ የታክስ፡ ይግባኝ፡ ሰሚ፡ ኮሚቴ፡ በመወሰኑ፡ በሕግ፡ ረገድ፡ ተሳስቷል፡ ማለት፡ ነው፡ ከዚህም፡ በስተቀር፡ ይኸው፡ የግብር፡ ይግባኝ፡ ሰሚ፡ ኮሚቴ፡ የተጠቀሰውን፡ የሕግ፡ ክፍል፡ ማስታወቂያ፡ አንቀጽ፡ ፯(ሠ)፡ በሕግ፡ መሠረት፡ በትክክል፡ አልተረገመውም፡ ወይም፡ አልሠራበትም፡ በማለት፡ ነው፡ ይህም፡ የኾነበት፡ ምክንያት፡ ይኸው፡ አንቀጽ፡ ዋና፡ ገንዘብ፡ ወጪ፡ (ካፒታል፡ ኤክስፔንዲቸር) በሚለው፡ አርእስት፡ ጠቅላላ፡ ወጪንም፡ ስለሚጠቅሰው፡ ነው፡ ይህም፡ ማለት፡ ለታክስ፡ ሊቀነስ፡ የሚገባውንም፡ ገንዘብ፡ ይጠቀልላል፡ ነው፡

ለኤክስፔርቶች፡ ስለ፡ ተከፈለው፡ መጓጓዣ፡ 97,538 ብር. ጉዳይ፡ የሒሳብ፡ ተቋጣጣሪው፡ እንዳመለከቱት፡ ስለዚህ፡ ወጪ፡ የተደረገ፡ የጽሑፍ፡ ስምምነት፡ ባለመኖሩ፡ ይህ፡ ወጪ፡ ሊቀነስ፡ አይቻልም፡ በማለት፡ የግብር፡ ይግባኝ፡ ሰሚ፡ ኮሚቴ፡ ወስኗል፡ ይህም፡ ስለ፡ ኩባንያው፡ ማለት፡ ለይግባኝ፡ ባይ፡ ሥራ፡ አገልግሎት፡ ወደ፡ ኢትዮጵያ፡ በመምጣትና፡ ከኢትዮጵያም፡ በመኬድ፡ ለተመላለሱት፡ ኤክስፔርቶች፡ የአየር፡ መጓጓዣያ፡ ወጪ፡ የተደረገው፡ ገንዘብ፡ ሊከፈል፡ አይገባም፡ ማለት፡ ነው፡

የግብር፡ ይግባኝ፡ ኮሚቴ፡ በሰጠው፡ ውሳኔ፡ ይግባኝ፡ ባዩን፡ ለእንደዚህ፡ ያለ፡ ጉዳይ፡ ስምምነት፡ ማድረጉን፡ ጠይቋል፡ ይግባኝ፡ ባዮችም፡ በሰጡት፡ መልስ፡ የቃል፡ ስምምነት፡ መኖሩን፡ ገልጸዋል፡ በዚህም፡ ጊዜ፡ የግብር፡ ይግባኝ፡ ኮሚቴ፡ በሰጠው፡ ውሳኔ፡ እንደ፡ ወንጂ፡ የሰኳር፡ ፋብሪካ፡ ያለ፡ ኩባንያ፡ የቃል፡ ስምምነት፡ ብቻ፡ ማድረግ፡ ተገቢ፡ ባለመሆኑ፡ የተጠቀሰው፡ ወጪ፡ ግብር፡ እንዲከፈልበት፡ ይገባል፡ ሲል፡ ወስኗል፡

በዚህ፡ ፍርድ፡ ቤት፡ አስተያየት፡ እንደዚህ፡ ያለው፡ ክርክር፡ የማይረባና፡ ዋጋ፡ የሌለው፡ ነው፡ ምክንያቱም፡ ለእንደዚህ፡ ያለው፡ ጉዳይ፡ ስምምነት፡ በጽሑፍ፡ መደረግ፡ አለበት፡ የሚል፡ ሕግ፡ የለም፡ ከዚህም፡ በስተቀር፡ እንደ፡ ወንጂ፡ ሰኳር፡ ፋብሪካ፡ ያሉ፡ ትልልቅ፡ ኩባንያዎች፡ ስለ፡ ሠራተኞቻቸው፡ አገልግሎት፡ የራሳቸው፡ ደንብና፡ ድንጋጌ፡ ያላቸው፡ መኾኑ፡ የታወቀ፡ ነው፡ ይግባኝ፡ ባዮችም፡ የኩባንያውን፡ ደንብ፡ አቅርበዋል፡ ከዚህም፡ በስተቀር፡ ኤክስፔርቶቹ፡ ወደ፡ ኢትዮጵያ፡ እንዲገቡ፡ ፈቃድ፡ እንዲሰጣቸው፡ ለአገር፡ ግዛት፡ ሚኒስቴር፡ የአቀረቡትን፡ ልዩ፡ ልዩ፡ ማመልከቻዎች፡ ለፍርድ፡ ቤቱ፡ አቅርበው፡ አሳይተዋል፡ ይግባኝ፡ ባዮች፡ ለኩባንያው፡ ገቢ፡ ማዳበሪያ፡ አስፈላጊ፡ ለኾኑት፡ ኤክስፔርቶች፡ ወጪ፡ ማድረጉን፡ የሚያስረዱበት፡ በቂ፡ የጽሑፍ፡ ማስረጃ፡ ያላቸው፡ ይመስላል፡ የኾነ፡ ኹኖ፡ ይህ፡ ፍርድ፡ ቤት፡ የሚመለከተው፡ ዋና፡ ተግባሩ፡ ስለ፡ ሕጉ፡ አገባብ፡ ነው፡ በሕጉም፡ መሠረት፡ የኾነ፡

እንደኾነ ፡ ገንዘቡ ፡ ወጪ ፡ ተደረገ ፡ ለተባለው ፡ ጉዳይ ፡ በርግጥ ፡ ለዚያው ፡ ወጪ ፡ መኾኑን ፡ ለማስረዳት ፡ የጽሑፍ ፡ ማስረጃ ፡ ማቅረብ ፡ አስፈላጊ ፡ አይደለም ። ስለዚህ ፡ የግብር ፡ ይግባኝ ፡ ኮሚቴ ፡ የሰጠው ፡ ውሳኔ ፡ በሕጉ ፡ መሠረት ፡ ስሕተት ፡ ስለኾነ ፡ ሽረኅዋል ።

ይግባኝ ፡ ባዮች ፡ ከፍ ፡ ብሎ ፡ የተጠቀሰውን ፡ ገዘንብ ፡ (ወጪ ፡) ለኤክስፔርት ፡ ሠራተኞች ፡ ወጪ ፡ ማድረጋቸውን ፡ ለማስረዳት ፡ ያሏቸውን ፡ ሰነዶች ፡ ኹሉ ፡ እንዲያቀርቡ ፡ ጉዳዩን ፡ ለግብር ፡ ይግባኝ ፡ ሰሚ ፡ ኮሚቴ ፡ መልሰነዋል ።

ኹለተኛው ፡ ጉዳይ ፡ ስለ ፡ ኢት. ብር. 122,769.50 ነው ። ይህ ፡ ጉዳይ ፡ በሕግ ፡ ክፍል ፡ ማስታወቂያ ፡ ቊጥር ፡ ፪፻፲፭ ፡ አንቀጽ ፡ ፩(ሠ) መሠረት ፡ ስለ ፡ ታክስ ፡ አገማመት ፡ ጉዳይ ፡ የዋና ፡ ገንዘብ ፡ ወጪ ፡ (ካፒታል ፡ ኤክስፔንዲቸር) ፡ የሚቀነስ ፡ አይደለም ። ስለዚህ ፡ ጉዳይ ፡ ክርክሩ ፡ በተጠቀሰው ፡ የሕግ ፡ ክፍል ፡ ማስታወቂያ ፡ አንቀጽ ፡ ፮(ሀ) ወይም ፡ ፮(ረ) መሠረት ፡ የተባለው ፡ ወጪ ፡ የዋና ፡ ገንዘብ ፡ ወጪ ፡ (ካፒታል ፡ ኤክስፔንዲቸር) ወይም ፡ ሌላ ፡ ወጪ ፡ መኾኑን ፡ አለመኾኑን ፡ መለየት ፡ ነው ።

ከኢትዮጵያ ፡ ብር ፡ 3,120.00 በስተቀር ፡ ከፍ ፡ ብሎ ፡ የተጠቀሰው ፡ ወጪ ፡ የዋናው ፡ ገንዘብ ፡ ወጪ ፡ መኾኑን ፡ የታክስ ፡ ይግባኝ ፡ ሰሚ ፡ ኮሚቴ ፡ አረጋግጦታል ። የታክስ ፡ ይግባኝ ፡ ሰሚ ፡ ኮሚቴ ፡ መሠረት ፡ ያደረገው ፡ የሒሳብ ፡ ተቋጣጣሪው ፡ የሰጠውን ፡ ሐሳብ ፡ ነው ።

የሒሳብ ፡ ተቋጣጣሪው ፡ በሰጠው ፡ ሐሳብ ፡ ይህ ፡ ወጪ ፡ ከፍ ፡ ላሉ ፡ ዕቃዎችና ፡ ለማደሻ ፡ ወጪ ፡ የተደረገ ፡ በመኾኑና ፡ ይህም ፡ ለረጅም ፡ ጊዜ ፡ የማይሸጥ ፡ ስለኾነ ፡ የተጠቀሰው ፡ ወጪ ፡ በየጊዜው ፡ በመቀነስ ፡ ረገድ ፡ በብዙ ፡ ዓመታት ፡ ላይ ፡ እንዲቻል ፡ ማድረግ ፡ አለበት ፡ ብለዋል ።

የሒሳብ ፡ ተቋጣጣሪው ፡ ሒሳቡን ፡ በሚመረምሩበት ፡ ጊዜ ፡ የተጠቀሱት ፡ ዕቃዎች ፡ ለብዙ ፡ ዓመታት ፡ የሚያገለግሉ ፡ መኾናቸውን ፡ የፋብሪካው ፡ መሐንዲሶች ፡ የገለጹዋቸው ፡ መኾኑን ፡ አስረድተዋል ።

የግብር ፡ ይግባኝ ፡ ሰሚ ኮሚቴ ፡ የሰጠው ፡ ውሳኔ ፡ በጉልህ ፡ እንደሚያመለክተው ፡ ከፍ ፡ ብሎ ፡ የተጠቀሰው ፡ ወጪ ፡ በሕግ ፡ ክፍል ፡ ማስታወቂያ ፡ ቊጥር ፡ ፪፻፲፭ ፡ አንቀጽ ፡ ፩(ሠ) መሠረት ፡ ለማሻሻያና ፡ ለመለወጫ ፡ የተደረገ ፡ ወጪ ፡ መሆኑን ፡ አልተገነዘበውም ። ኮሚቴው ፡ ውሳኔውን ፡ የሰጠው ፡ የታደሱትን ፡ ነገሮች ፡ ለረጅም ፡ ጊዜ ፡ የማይሸጡ ፡ ናቸው ፡ በማለት ፡ የሒሳብ ፡ ተቋጣጣሪው ፡ በሰጠው ፡ ሐሳብ ፡ መሠረት ፡ ነው ። ይህ ፡ ገንዘብ ፡ ወጪ ፡ የኾነው ፡ ለማደሻ ፡ መኾኑ ፡ የተረጋገጠ ፡ ነው ። በዋና ፡ ገንዘብ ፡ ወጪና ፡ የገቢ ፡ ወጪ ፡ መካከል ፡ ያለውን ፡ ልዩነት ፡ መገንዘብ ፡ በጣም ፡ ጠቃሚ ፡ ነው ። የነዚህንም ፡ ልዩነት ፡ ለማወቅ ፡ ልዩ ፡ ልዩ ፡ ምርመራ ፡ ማድረግ ፡ ያስፈልጋል ፤ በኹለቱም ፡ መካከል ፡ ያለው ፡ ልዩነት ፡ ይህ ፡ ነው ። የዋና ፡ ገንዘብ ፡ ወጪ ፡ ማለት ፡ አንድ ፡ ጊዜ ፡ የሚደረግ ፡ ለንግዱ ፡ ወይም ፡ ለሥራው ፡ ማጸበሪያ ፡ ወይም ፡ ጥቅም ፡ የሚኾን ፡ ቋሚ ፡ ሀብት ፡ የሚያስገኝ ፡ ወጪ ፡ ነው ። የገቢ ፡ ወጪ ፡ ማስተካከያ ፡ በፍ ዓመቱ ፡ የሚደጋገም ፡ ወጪ ፡ ነው ። ይህ ፡ ሲኾን ፡ በንግድ ፡ ወይም ፡ በሥራ ፡ ላይ ፡ የሚገኙትን ፡ መሣሪያዎች ፡ በማደስ ፡ ለንግዱ ፡ ጥቅም ፡ ይሰጣል ፡ ለማለት ፡ አይቻልም ። ሀብት ፡ ወይም ፡ ጥቅም ፡ የሚያመጡ ፡ ወይም ፡ የሚያስገኙ ፡ ነገሮች ፡ አይደሉም ። ሀብቱ ከዚያ ፡ በላይ ፡ ያለ ፡ በመሆኑ ፡ የማደሱ ፡ ሥራ ፡ ሀብቱ ፡ ለንግዱ ፡ ወይም ፡ ለሥራው ፡ በበለጠ ፡ አኳኝ ፡ በደንብ ፡ በመሥራት ፡ ገቢ ፡ እንዲያስገኝ ፡ ለማድረግ ፡ የሚረዳ ፡ ነው ። በሌላ ፡ አገላለጽም ፡ ለንግዱ ፡ ወይም ፡ ለሥራው ፡ ወጪ ፡ የተደረገው ፡ ገንዘብ ፡

ዐዲስ ፡ ካፒታል ፡ የማያወጣ ፡ ከኾነ ፡ ማለት ፡ ሕንጻውን ፡ በምሉ ፡ የማይለውጠው ፡ ከኾነ ፡ ያው ፡ ካፒታል ፡ ለመጠባበቂያ ፡ ብቻ ፡ ወጪ ፡ የተደረገ ፡ ከኾነ ፡ የገቢ ፡ ወጪ ፡ ነው ፡ እንጂ ፡ የዋና ፡ ገንዘብ ፡ ወጪ ፡ አይደለም ። ስለዚህ ፡ ከላይ ፡ በተዘረዘረው ፡ ምክንያት ፡ የግብር ፡ ይግባኝ ፡ ሰሚ ፡ ኮሚቴ ፡ በክርክሩ ፡ የተጠቀሰውን ፡ እንድ ፡ መቶ ፡ ኻያ ፡ ኹለት ፡ ሺሕ ፡ ሰባት ፡ መቶ ፡ ሠላሳ ፡ ዘጠኝ ፡ ብር ፡ ከኅምሳ ፡ ሳንቲም ፡ 122,769.50 የዋና ፡ ገንዘብ ፡ ወጪ ፡ (ካፒታል ፡ ኤክስፔንዲቸር) ነው ፡ ሲል ፡ የወሰነው ፡ በሕግ ፡ መሠረት ፡ የተሳሳተ ፡ ስለኾነ ፡ ውሳኔውን ፡ ሽረኑዋል ። ይህ ፡ ወጪ ፡ በሕግ ፡ ክፍል ፡ ማብታወቂያ ፡ ቍጥር ፡ ፪፻፲፩ ፡ በአንቀጽ ፡ ፯(ሀ) እና ፡ (ረ) መሠረት ፡ ተቀናሽ ፡ መኾን ፡ ይገባዋል ፡ በማለት ፡ ወስነናል ።

መልስ ፡ ሰጭው ፡ የዳኝነቱን ፡ በደረሰኝ ፡ ልዩ ፡ ኪማራ ፡ ኅምሳ ፡ (፶) ብር ፡ ለይግባኝ ፡ ባይ ፡ እንዲከፍል ፡ አዘናል ።

HIGH COURT  
Addis Ababa, Com. Div. No. 2

H.V.A. ETHIOPIA v. THE INLAND REVENUE DEPARTMENT

Civil Case No. 20/54 E.C.

*Taxation -- Income tax -- Deductions -- Travel expenses -- Written agreement -- Revenue expenditures -- Capital expenditures -- Repairs -- Art. 59 Income Tax Decree of 1956 (Decree No. 19/56) -- Arts. 7 (a), 7 (b), 7 (f), and 8 (e) Leg. Not. No. 215/58.*

On appeal from a decision of the Tax Appeal Committee denying deductions from income for purposes of taxation (1) for traveling expenses of foreign experts traveling to and from Ethiopia in connection with the appellants' concern, on the ground that the appellants' concern had no written agreement with the experts in respect of such expenses, and (2) for expenses for repairs of machinery, etc., on the ground that the repairs were usable for a long term and therefore constituted capital expenditure, which is not deductible.

*Held:* Decision on the first point reversed and the matter referred back to the Committee to examine appellants' documents to see whether, as a matter of fact, the expenses were incurred for the alleged purpose; decision on the second point reversed and the expenditures ruled deductible.

1. No written agreement between a concern and expert personnel is required to establish that expenses were incurred by the concern for such personnel under Arts. 7 (b) and 7 (f) of Leg. Not. No. 215/58.

2. Capital expenditure, within the meaning of Art. 8 (e) of Leg. Not. No. 215/58, is an expenditure that is made once and for all and that brings into existence an asset or advantage for the enduring benefit of the trade or business, while a revenue expenditure is one which will recur year by year.

3. Where expenses incurred in the trade or business do not bring any new capital, but are only intended to maintain existing capital, such as repairs of machinery, whether or not usable for several years, such expenses constitute revenue expenditure and not capital expenditure.

(Ed. Note: The Income Tax Decree, 1956, Dec. No. 19/56, and the Income Tax Regulations, 1958, Leg. Not. No. 215/58, have been repealed and replaced, respectively, by the Income Tax Proclamation, 1961, Proc. No. 173/61, and the Income Tax Regulations, 1962, Leg. Not. No. 258/62. The law remains substantially the same, however, Arts. 7 (a), 7 (b) and 8 (e) of Leg. Not. No. 215 are the same as Arts. 16 (a), 16 (b) and 17 (b) (v) of Leg. Not. No. 258. Art. 7 (f) of Leg. Not. No. 215 does not appear in Leg. Not. No. 258, but is substantially the same as Art. 16 of Proc. No. 173. With regard to expenses for professional personnel, Leg. Not. No. 258 added a new provision in Art. 16 (e).)

Megabit 20, 1954 E.C. (March 29, 1962 G.C.); Judges: Dr. W. Buhagiar, Ato Josef Tekle Mikael, Ato Mekonnen Getahun: — This is an appeal under Article 59 of the Income Tax Decree of 1956 (Decree No. 19 of 1956) from two points in a decision of the Tax Appeal Committee given on September 4, 1961. These two points concern an item of E\$97,538, which the appellants allege was incurred as traveling expenses of foreign experts traveling to and from Ethiopia in connection with the appellants' concern, and an item of E\$122,769.50, which the appellants allege was incurred by them as expenses of a current nature such as milling rolls, repairing machinery, etc. The ground of the appeal is that the Tax Appeal Committee erred in law in assessing the appellant to pay tax on items which are deductible under Article 7 (b) and 7 (f) of Legal Notice No. 215

of 1958 and also erred in law in the interpretation and application of article 8 (e) of the said Legal Notice in that it included ordinary general expenses as "capital expenditure" and thus included amounts which should have been deducted for purposes of taxation.

Now with regard to the item of E\$97,538, the Tax Appeal Committee considered that these expenses could not be deducted on the ground that, as the auditor pointed out, there were no written agreements concerning these expenses, that is, expenses for air passages for experts in the service of the appellant company who traveled to and from Ethiopia in connection with the work of the company. In the decision of the Tax Appeal Committee it is stated that that Committee asked the appellants whether there was any agreement about such expenses and the appellants replied that there were only verbal agreements; the Committee went on to state that taking into consideration the fact that for such an enterprise as the Wonji Sugar Factory to have only verbal agreements was unreasonable, the expenses should be subject to taxation. In the opinion of this Court, this is a poor and untenable argument. As a matter of fact, there is nothing in law which requires agreements of this nature to be in writing. Furthermore, it is well known that an enterprise of the scale of the Wonji Sugar Factory has its rules and regulations governing the terms of service of their employees, and in fact, appellants showed the Court such regulations of the appellant company. There has also been shown to the Court various applications to the Ministry of Interior regarding entry visas for the employees of the company in respect of whom such traveling expenses were incurred. It seems that the appellants have sufficient documentary evidence to show that these expenses were in fact incurred for their expert employees, who in turn are necessary for the production of the income. This Court is, however, concerned only with a point of law and as a matter of law this Court holds that no written agreement is required to establish that the expenses were incurred for the purpose alleged. On this point, therefore, the ruling of the Tax Appeal Committee is quashed as being legally untenable, and the matter is referred back to the Tax Appeal Committee to examine any documents the appellants have to satisfy the Committee that the expenses were incurred for expert personnel.

With regard to the second point, that is, the item of E\$122,769.50, there can be no question that under Article 8 (c) of Legal Notice No. 215, capital expenditure is not deductible for purposes of assessing tax. The argument in this case is whether appellants' above-mentioned expenditures were capital expenditures or other expenditures under Article 7 (a) or Article 7 (f) of the said Legal Notice. The Tax Appeal Committee held that they were capital expenditure (except for an amount of E\$3,120); the Tax Appeal Committee based itself on the opinion given by the auditor who suggested that the said expenses should be written off in a number of years in terms of depreciation because these were expenses made on goods and on repairs of a large scale, usable for a long term; the auditor also mentioned that during his examination he was told by the engineers of the factory that the said goods could be used for a number of years. It is quite clear from the decision of the Tax Appeal Committee that that Committee did not consider such expenses as being expenses incurred in improvement and alterations as laid down in Article 8 (e) of Legal Notice No. 215. Their decision was based solely on the suggestion of the auditor that the repairs were usable for a long term. There is no question, therefore, that these expenses were expenses for repairs. The distinction between capital expenditure and revenue expenditure is of great importance. Various tests may be suggested for this distinction, but substantially the distinction lies in this, that capital expenditure is an expenditure that is made once and for all and that brings into existence an asset or an advantage for the enduring benefit of the trade or business, while revenue expenditure is one which will recur year by year. Now there can be no question that any repairs which are carried out on machinery in a trade or business are an advantage to the trade but

they are not such as *bring into existence* an asset or an advantage; the asset was there already, and the repairs have the effect of enabling such asset to continue to bring income to the business, with more efficient working. In other words, where expenses incurred in the trade or business do not bring any new capital (such as the complete renewal of a building) but are only intended to maintain existing capital, they are revenue expenditure, not capital expenditure. For these reasons, the Court holds that the Tax Appeal Committee was wrong in law in deciding that the expenses of E\$122,769.50 were capital expenditure, reverses their decision on this point, and decides that such expenses are deductible under Article 7 (a) and (f).

The respondent shall pay half the court fees, according to receipt, and costs of E\$50 to the appellant.



የከፍተኛው ፡ ፍርድ ፡ ቤት ፤

አዲስ ፡ አበባ ፡ የንግድ ፡ ችሎት ።

ወይዘሮ ፡ ተናኘ ፡ ወርቅ ፡ አብዲ ፡ አመልካች ፤ የጀቱ ፡ ወርቅ ፡ ለገሰ ፡ ተቃዋሚ ።

የፍትሕ ፡ ብሔር ፡ ነገር ፡ ቀጥሮ ፡ ፪፻፪/፻፮ ፡ ዓ. ም ።

ውርስ—እንደራሴነት—የቤተሰብ ፡ ሀብት ፡ (ንብረት)—የአባትን ፡ ስልባት ፡ ወገን ፡ የእናትን ፡ ለእናት ፡ ወገን ፡ መስጠት—የዐላባ ፡ መብት—የፍትሕ ፡ ብሔር ፡ አናቅጽ ፡ ፪፻፶ ፡ ፪፻፶፩ ፡ ፪፻፶፪ ፡ ፪፻፶፫ ፡ ፪፻፶፬ ፡ እና ፡ ከ፪፻፶፪ ፡ እስከ ፡ ፪፻፶፮ ።

ሕግን ፡ መተርጎም ።

የሟች ፡ እናት ፡ የውርስ ፡ መብታቸው ፡ እንዲታወቅላቸው ፡ ባደረጉት ፡ አቤቱታ ፡ ላይ ፡ የሟች ፡ ስልባት ፡ ወገን ፡ ወንድም ፡ የኾነ ፡ ንብረቱ ፡ ከአባት ፡ ወገን ፡ የመጣ ፡ የዘር ፡ ንብረት ፡ ስለኾነ ፡ እኔም ፡ የአባቱ ፡ እንደ ራሴ ፡ እንደመኾኔ ፡ መጠን ፡ የሟች ፡ እናት ፡ ሳይኾኑ ፡ እኔ ፡ መውረስ ፡ ይገባኛል ፡ ሲል ፡ መቃወሚያ ፡ አቀረበ ።

ውሳኔ 1- የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ መቃወሚያውን ፡ አክብሮታል ።

፩ ፤ ሟች ፡ ወደታች ፡ የሚቈጠር ፡ ተወላጅ ፡ ሳይተካ ፡ ከሞተ ፡ ንብረቱን ፡ ሊወርሱ ፡ የሚችሉት ፡ ወላጆቹ ፡ ናቸው ፤ በዚህም ፡ ዐይነት ፡ ጉኝታ ፡ እያንዳንዳቸው ፡ የንብረቱን ፡ ግማሽ ፡ ለመውረስ ፡ ይችላሉ ።

፪ ፤ አባት ፡ ከወላጆቹ ፡ ቀድሞ ፡ ሲሞት ፡ ቤቱ ፡ እግር ፡ የሚተኩት ፡ ወደ ፡ ታች ፡ የሚቈጠሩ ፡ ተወላጆቹ ፡ ናቸው ።

፫ ፤ የአባትን ፡ ስልባት ፡ ወገን ፡ የእናትን ፡ ስልባት ፡ ወገን ፡ ስለመስጠት ፡ በፍትሕ ፡ ብሔር ፡ አንቀጽ ፡ ፪፻፶፪ ፡ ውስጥ ፡ የተደነገገው ፡ የግዴታቀሳቀስ ፡ ንብረት ፡ ንብረቱን ፡ ካፈራው ፡ ባለ ፡ ሀብት ፡ ሳያቋርጥ ፡ ወደ ፡ ጉልተኛ ፡ ደረጃ ፡ ትውልድ ፡ ሰኾኑት ፡ ደረጃዎች ፡ ይወርዳል ፡ የሚለውን ፡ ጠቅላላ ፡ የውርስ ፡ ደንብ ፡ ሳይከተል ፡ ልዩ ፡ የኾነ ፡ ሕግ ፡ ያቆማል ።

፬ ፤ የአባትን ፡ ስልባት ፡ ወገን ፡ የእናትን ፡ ስልባት ፡ ወገን ፡ በመስጠት ፡ ሕግ ፡ የሚተዳደር ፡ ንብረት ፡ ከአባት ፡ ወገን ፡ የመጣው ፡ ለእናት ፡ ወገን ፡ ሊተላለፍ ፡ አይችልም ፤ እንዲሁም ፡ ከእናት ፡ ወገን ፡ የመጣው ፡ ለአባት ፡ ወገን ፡ ሊተላለፍ ፡ አይችልም ።

፭ ፤ ስልባት ፡ ወይም ፡ በእናት ፡ ወገን ፡ ወራሽ ፡ የሌለ ፡ አንደኾነ ፡ ግን ፡ የሕጉ ፡ ዐላግ ፡ ዋጋ ፡ አይኖረውምና ፡ ተፈጻሚ ፡ አይኾንም ።

፮ ፤ ንብረቱ ፡ “የዘር ፡ ንብረት” ፡ ባይኾን ፡ ኑሮ ፡ ንብረቱን ፡ ሊወስድ ፡ የሚገባው ፡ ሰው ፡ የዐላባ ፡ (የራም) ፡ መብቱ ፡ እንደተጠበቀ ፡ ነው ።

፯ ፤ ማንኛውም ፡ ቤሕግ ፡ ውስጥ ፡ የተጻፈ ፡ ቃል ፡ ሲተረጎም ፡ ዋጋ ፡ ሊያስገኝለት ፡ የሚችለውን ፡ ትርጉም ፡ መስጠት ፡ አለበት ። ይኸውም ፡ የሕግ ፡ ትርጉም ፡ ደንብ ፡ አንዱ ፤ ነው ።

ኅሳር ፡ ፲፩ ፡ ቀን ፡ ፲፱፻፶፯ ፡ ዓ. ም ። ዳኞች 1- አቶ ፡ በላቸው ፡ ዐሥራት ፡ አቶ ፡ መኩንን ፡ ጌታኸን ፡ ብላታ ፡ ይሥሉቅ ፡ ተፈሪ ። አመልካች ፡ ወይዘሮ ፡ ተናኘ ፡ ወርቅ ፡ አብዲ ፡ ከአቶ ፡ ለገሰ ፡ ወርቅ ፡ እንግዳ ፡ የወለዱት ፡ ቃለ ፡ አብ ፡ ለገሰ ፡ የሚባለው ፡

ልጃቸው፡ ዘር፡ ሳይተው፡ ስለ፡ ሞተ፡ ውርሱ፡ እንዲሰጣቸው፡ ይህን፡ መዝገብ፡ ከ ፍተዋል ።

ተቃዋሚ፡ እንዳለም፡ ለማወቅ፡ በጋዜጣ፡ ጥሪ፡ ተደርጎ፡ የሚቸ፡ ወንድም፡ አቶ፡ የጆቴ፡ ወርቅ፡ ለገሰ፡ ቀርበዋል ። ተቃዋሚው፡ የሚቸ፡ የቃለ፡ አብ፡ ለገሰ፡ ንብረት፡ ከዘር፡ የመጣ፡ ንብረት፡ ስለሆነ፡ ለርሳቸው፡ እንጂ፡ ባዕድ፡ ለሆኑት፡ ለአመልካች፡ አይገባም፡ በማለት፡ አመልክተዋል ።

ቃለ፡ አብ፡ የአቶ፡ ለገሰ፡ እና፡ የአመልካች፡ ልጅ፡ መሆኑ፡ አልተካደም ። የቃለ፡ አብም፡ ንብረት፡ የመጣው፡ ከአቶ፡ ለገሰ፡ ወርቅ፡ ከፈታውራሪ፡ እንግዳ፡ ወርቅ፡ መሆኑን፡ አመልካች፡ ሚያዝያ፡ ፩/፶፮፡ በጻፉት፡ ማመልከቻ፡ ገልጠዋል ።

ሳይናዘዝ፡ የሞተ፡ ሰው፡ ውርስ፡ ከቀኑ. ጃጀጃጀ፡ እስከ፡ ቀኑ. ጃጀጃጀ፡ ባሉት፡ የፍትሕ፡ ብሔሩ፡ ሕጎች፡ ተወስኗል ።

ቃለ፡ አብ፡ ለገሰ፡ ወደ፡ ታች፡ የሚቈጠር፡ ተወላጅ፡ ሳይተካ፡ ከሞተ፡ ንብረቱን፡ ሊወርስ፡ የሚችሉት፡ ወላጆቹ፡ ናቸው ። ወላጆቹም፡ እያንዳንዳቸው፡ የንብረቱን፡ ግማሽ፡ ለመውረስ፡ ይችላሉ ። ከወላጆቹ፡ አባቱ፡ በሕይወት፡ ስለሌሉ፡ የአባትየውን፡ ድርሻ፡ የአቶ፡ ለገሰ፡ ወርቅ፡ እንግዳ፡ ወደ፡ ታች፡ የሚቈጠር፡ ተወላጅ፡ በምትክነት፡ ሊወርስ፡ ይችላል ። ተቃዋሚው፡ አቶ፡ የጆቴ፡ ወርቅ፡ ለገሰ፡ የአቶ፡ ለገሰ፡ ወርቅ፡ ልጅ፡ ስለሆኑ፡ በአባታቸው፡ እግር፡ ገብተው፡ ለአባታቸው፡ ይደርስ፡ የንብረውን፡ የቃለ፡ አብን፡ ንብረት፡ ግማሽ፡ በውርስ፡ ለመውሰድ፡ መብት፡ አላቸው ። ስለዚህ፡ የቃለ፡ አብ፡ ለገሰን፡ ንብረት፡ እኹን፡ ለመውረስ፡ የሚችሉት፡ ወይዘሮ፡ ተናኘ፡ ወርቅ፡ አብዲና፡ አቶ፡ የጆቴ፡ ወርቅ፡ ለገሰ፡ ይሆናሉ ።

ዳሩ፡ ግን፡ የቃለ፡ አብ፡ ንብረት፡ የዘር፡ ንብረት፡ ስለሆነ፡ አመልካች፡ መውረስ፡ አይገባቸውም፡ የተባለው፡ ነገር፡ ጥቂት፡ ችግርን፡ ይፈጥራል ። በፍትሕ፡ ብሔር፡ ሕግ፡ ቀኑ. ጃጀጃጀ(፩) እና፡ (፪) መሠረት፡ ለሚቸ፡ በውርስ፡ ወይም፡ በስጦታ፡ ከአባቱ፡ መሥመር፡ ወገን፡ የመጣለትን፡ የማይንቀሳቀስ፡ ንብረት፡ ለእናት፡ መሥመር፡ ወገን፡ ለሆኑ፡ ወራሾች፡ በርስትነት፡ መስጠት፡ አይቻልም ። እንዲሁም፡ ከእናት፡ መሥመር፡ ወገን፡ በተባለው፡ ዐይነት፡ የመጣለትን፡ የማይንቀሳቀስ፡ ንብረት፡ የአባት፡ መሥመር፡ ወገን፡ ለሆነ፡ ወራሽ፡ በወራሽነት፡ ለመስጠት፡ አይቻልም ። የሕጉም፡ ዐላማ፡ ከትውልድ፡ ወደ፡ ትውልድ፡ ሲተላለፍ፡ የቁየውን፡ የማይንቀሳቀስ፡ ንብረት፡ ዘመድ፡ ላልሆነ፡ ለውጭ፡ ሰው፡ እንዳይሰጥ፡ ለማድረግ፡ መሆኑ፡ የተሰወረ፡ አይደለም ። በአባት፡ ወይም፡ በእናት፡ ወገን፡ ወራሽ፡ የሌለ፡ እንደሆነ፡ ግን፡ የሕጉ፡ ዐላማ፡ ዋጋ፡ አይኖረውምና፡ ተፈጻሚ፡ አይሆንም ።

“የአባትን፡ ለአባት፡ ወገን፡ የእናትን፡ ለእናት፡ ወገን፡” የሚለውን፡ ደንብ፡ ፍጻሜ፡ ላይ፡ ከማዋል፡ አስቀድሞ፡ “የዘር፡ ንብረት፡ ወይም፡ የዘር፡ ርስት፡” የሚባለው፡ የማይንቀሳቀስ፡ ንብረት፡ የትኛው፡ እንደሆነ፡ መወሰን፡ ያስፈልጋል ። በዚህ፡ ረገድ፡ ግን፡ ሕጉ፡ ግልጥ፡ የሆነ፡ ርዳታን፡ አይሰጥም ።

ቀኑ. ጃጀጃጀ(፪)፡ “ከአባት፡ ወገን፡ አያት፡ በስጦታ፡ ወይም፡ በውርስ፡ የተገኘው፡ የማይንቀሳቀስ፡ ንብረት፡ የእናት፡ ወገን፡ ለሆነ፡ ተወላጅ፡ እንዳይተላለፍ፡ እንዲሁም፡ ከእናት፡ ወገን፡ አያት፡ የተገኘው፡ የማይንቀሳቀስ፡ ንብረት፡ ለአባት፡ ወገን፡ እንዳይተላለፍ፡ ለማድረግ፡ ከዚህ፡ በላይ፡ ባሉት፡ ከሹለት፡ ጎይሉቃሎች፡ የተነካው፡ ደንብ፡ ለሹለተኛ፡ ደረጃ፡ ትውልድም፡ ተፈጻሚ፡ ይሆናል፡” ይላል ።

“ለሹለተኛ፡ ደረጃ፡ ትውልድም፡ ተፈጻሚ፡ ይሆናል፡” የሚለው፡ እነጋገር፡ ከሌ

ሎቹ፡ የቀደሙት፡ ቅጥሮች፡ ጋራ፡ የተያያዘ፡ መስሎ፡ ስለማይታይ፡ ዐሳቡ፡ ግልጥ፡ ኹኖ፡ አይገኝም።

የትውልድ፡ ደረጃ፡ አቁጣጠር፡ በቀኑ ጅጃ፡ እና፡ ጅጃ፡ እንደ፡ ተነገረው፡ ነው። “ለኹለተኛ፡ ደረጃ፡ ትውልድም፡” የተባለው፡ በቀኑ ጅጃ፡ እና፡ በቀኑ ጅጃ፡ የተገለጠውን፡ የሚመለከት፡ እንጂ፡ አንዳንድ፡ ሰዎች፡ እንደሚያስቡት፡ “የመገዠመሪያ፡ ዝምድና፡ ደረጃ፡ ... ኹለተኛ፡ የዝምድና፡ ደረጃ፡ እየተባለ፡” በቀኑ ጅጃ፡ እና፡ ጅጃ፡ የተነገረውን፡ አይደለም። ምክንያቱም፡ ግልጥ፡ ነው። “የመገዠመሪያ፡ ዝምድና፡ ደረጃ፡” (ጅጃ፡) ልጆችን፡ የልጅ፡ ልጆችን፡ እና፡ ማንኛውንም፡ ወደ፡ ታች፡ የሚቁጠር፡ ተወላጅ፡ ሲጨምር፡ የመገዠመሪያ፡ ደረጃ፡ ትውልድ፡ ግን፡ ወላጆችንና፡ ልጆችን፡ ብቻ፡ ይመለከታል። “ለኹለተኛ፡ ደረጃ፡ ትውልድም፡” አያቶችንና፡ ልጆችን፡ ብቻ፡ ይመለከታል።

በቀኑ ጅጃ(፪) የተነገረው፡ “ኹለተኛ፡ ደረጃ፡ ትውልድ፡” የሚቁጠረው፡ ከሟች፡ ወደ፡ ላይ፡ ነውን፡ ወይስ፡ ከላይ፡ ወደ፡ ሟቹ፡ ከቅምቅም፡ አያት፡ የመጣ፡ የማይንቀሳቀስ፡ ንብረት፡ ቢኖርና፡ “ለኹለተኛ፡ ደረጃ፡ ትውልድም፡ ተፈጻሚ፡ ይኾናል፡” የተባለው፡ ከሟቹ፡ ወደ፡ ላይ፡ የሚቁጠረውን፡ ነው፡ ቢባል፡ የተባለው፡ ንብረት፡ ሟች፡ አያት፡ ዘንድ፡ ሲገባ፡ “የዘር፡ ንብረት፡” ይኾንና፡ ወደ፡ ሟቹ፡ አባትና፡ ወደ፡ ሟቹ፡ ሲተላለፍ፡ “የዘር፡ ንብረት፡” መኾኑ፡ ይቀራል፡ ማለት፡ ይኾናል። እንዲሁም፡ ከላይ፡ ወደ፡ ሟቹ፡ የሚቁጠረውን፡ ነው፡ የተባለ፡ እንደኾነ፡ ንብረቱን፡ ከአፈራው፡ ሰው፡ ወይም፡ እስከ፡ ኹለት፡ ትውልድ፡ ድረስ፡ ብቻ፡ “የዘር፡ ንብረት፡” ይኾናል፡ ማለት፡ ነው። ቀደም፡ ብሎ፡ እንደተገለጠው፡ ግን፡ የሕጉ፡ መንፈስ፡ እንደዚህ፡ አይደለም። የማይንቀሳቀስ፡ ንብረት፡ ከትውልድ፡ ወደ፡ ትውልድ፡ እየተላለፈ፡ ሲኾን፡ “የዘር፡ ንብረትነቱ፡” የበለጠውን፡ እየጠነከረ፡ ይኾናል፡ እንጂ፡ አይላም። “ለኹለተኛ፡ ደረጃ፡ ትውልድም፡...” የተባለውን፡ በእንደዚህ፡ ያለ፡ መንገድ፡ መተርጎም፡ የሕጉን፡ መንፈስ፡ መከተል፡ ኹኖ፡ አይገኝም።

“ለኹለተኛ፡ ደረጃ፡ ትውልድም፡ ተፈጻሚ፡ ይኾናል፡” የተባለው፡ አነጋገር፡ ዋጋ፡ እንዲኖረው፡ ይገባል። ማንኛውም፡ በሕጉ፡ ውስጥ፡ ተጽፎ፡ የሚገኝ፡ ቃል፡ ዋጋ፡ አለው፡ ተብሎ፡ ይታሰባል። ዋጋ፡ የሌለው፡ መስሎ፡ ሲገኝም፡ ዋጋ፡ ሊያስገኝለት፡ የሚችለውን፡ ትርጉም፡ መስጠት፡ ይገባል። ይኸውም፡ የሕግ፡ ትርጉም፡ ደንቦች፡ ከኹኑት፡ አንዱ፡ ነው።

ስለዚህ፡ በእኛ፡ አስተያየት፡ “ለኹለተኛ፡ ደረጃ፡ ትውልድም...” የተባለው፡ አነጋገር፡ ከክፍሉ፡ ዐሳብ፡ ጋራ፡ ተቀናብሮ፡ ዋጋ፡ ሊያገኝ፡ የሚችለው፡ “የዘር፡ ንብረት፡” የሚባለውን፡ ለመለየት፡ ሲያስችል፡ ነው። በዚህም፡ ትርጉም፡ መሠረት፡ አንድ፡ የማይንቀሳቀስ፡ ንብረት፡ “የዘር፡ ንብረት፡” ነው፡ የሚባለው፡ ንብረቱን፡ ከአፈራው፡ ሰው፡ እጅ፡ ወደ፡ መገዠመሪያ፡ ደረጃ፡ ትውልድ፡ ተላልፎ፡ ከዚያም፡ ወደ፡ ኹለተኛ፡ ደረጃ፡ ትውልድ፡ ሲደርስ፡ ነው። ንብረቱን፡ በአፈራው፡ ሰው፡ እጅ፡ በዕርግጥ፡ “የዘር፡ ንብረት፡” አይባልም። ንብረቱን፡ በተረከበው፡ በመገዠመሪያ፡ ትውልድ፡ እጅም፡ “የዘር፡ ንብረት፡” አይኾንም። ንብረቱን፡ በወረሰው፡ ወይም፡ በስጦታ፡ በአገኘው፡ የኹለተኛ፡ ደረጃ፡ ትውልድ፡ እጅ፡ ግን፡ “የዘር፡ ንብረት፡” ይኾናል። ያን፡ ጊዜና፡ ከዚያ፡ በኋላ፡ ቀኑ ጅጃ(፩)፡ እና፡ (፪) ተፈጻሚዎች፡ ይኾናሉ። እንግዲህ፡ ከአባት፡ ወገን፡ የመጣውን፡ የማይንቀሳቀስ፡ ንብረት፡ ለእናት፡ ወገን፡ ያለማስተላለፍ፡ ከእናት፡ ወገን፡ የመጣውንም፡ የማይንቀሳቀስ፡ ንብረት፡ ለአባት፡ ወገን፡ ያለማስተላለፍ፡ ደንብ፡ ተፈጻሚ፡ የሚኾነው፡ ንብረቱን፡ በአፈራው፡ ሰው፡ የኹለተኛ፡ ደረጃ፡ ትውልድ፡ ለሚኾኑትና፡ ለተከታዩ፡ ትውልዶች፡ ነው።

የያዝነውን ፡ ጉዳይ ፡ በዚህ ፡ ዐይን ፡ ስናይ ፡ የቃለ ፡ አብ ፡ ለገሰ ፡ ንብረት ፡ ከእያቱ ፡ በአባቱ ፡ በሆል ፡ ስለ ፡ መጣ ፡ ኹለተኛ ፡ የትውልድ ፡ ደረጃ ፡ ላይ ፡ ያለ ፡ ንብረት ፡ ኹኖ ፡ “የዘር ፡ ንብረት ፡” ይኾናል ። ከአባት ፡ ወገን ፡ በውርስ ፡ የመጣ ፡ የማይንቀሳቀስ ፡ “የዘር ፡ ንብረት ፡” ስለኾነም ፡ ለቃለ ፡ አብ ፡ እናት ፡ ለአመልካቿ ፡ በርስትነት ፡ ሊደርሳቸው ፡ አይችልም ።

“የዘር ፡ ንብረት ፡” ባይኾን ፡ ኑሮ ፡ አመልካቿ ፡ የልጃቸውን ፡ ግማሽ ፡ ንብረት ፡ ለማግኘት ፡ ይቻሉ ፡ ስለ ፡ ንበርና ፡ “የዘር ፡ ንብረት ፡” በመኾኑ ፡ ምክንያት ፡ ይህን ፡ መብታቸውን ፡ ስላጡ ፡ በቀኑ ፳፻፶(፩) የተደነገገው ፡ ተፈጻሚ ፡ ይኾንላቸዋል ።

ስለዚህ ፡ የቃለ ፡ አብ ፡ ለገሰን ፡ የማይንቀሳቀስ ፡ ንብረት ፡ በምሉ ፡ አቶ ፡ የጆቴ ፡ ወርቅ ፡ ለገሰ ፡ በርስትነት ፡ እንዲረከቡ ፡ በዚሁ ፡ በቃለ ፡ አብ ፡ ንብረት ፡ ግማሽ ፡ ላይ ፡ ግን ፡ አመልካቿ ፡ በሕይወት ፡ እስከ ፡ አሉ ፡ ድረስ ፡ የሪም ፡ መብት ፡ እንዲኖራቸው ፡ ይህም ፡ ቃለ ፡ አብ ፡ ለገሰ ፡ ከሞተበት ፡ ቀን ፡ ዝምሮ ፡ እንዲፈጸም ፡ በማለት ፡ ወስነናል ።

ባለጉዳዮቹ ፡ የደረሰባቸውን ፡ ኪሣራ ፡ ይቻሉ ።

ውሳኔው ፡ በፍርድ ፡ አስፈጻሚ ፡ በሆል ፡ እንዲፈጸም ፡ ትእዛዝ ፡ ይተላለፍ ።

HIGH COURT  
Addis Ababa, Com. Div.

TENAGNE WORKE ABDI v. YEJOTE WORKE LEGESSE

Civil Case No. 202/56 E.C.

*Successions - - Representation - - Family property - - Paterna paternis materna maternis - - Usufructuary right - - Arts. 550, 551, 842, 843, 849, and 842-856 Civ. C.*

*Statutory interpretation.*

In response to a petition by the mother of the deceased for a declaration of her successional rights, the half-brother of the deceased objected that the property in question was family property from the paternal line and, therefore, should devolve upon him as the representative of his father rather than upon the deceased's mother.

*Held:* Objection sustained.

1. Where the deceased is not survived by a descendant, his father and mother shall be called to his succession and each shall receive half of the inheritance.
2. A predeceased father shall be represented by his descendants.
3. The rule *paterna paternis materna maternis*, which is contained in Art. 849 Civ. C., provides an exception to the general successional rules in the case of immovable property that has devolved without interruption to the second degree (generation), and later degrees, from the person who first acquired it.
4. Property that is subject to the rule *paterna paternis materna maternis* shall not be transferred from the paternal line of the family to the maternal, or vice versa.
5. In the absence of an heir in either the paternal line or the maternal line, the rationale for the rule may disappear, together with its legal effect.
6. The person who would be entitled to the property if it were not "family property" is still entitled to a usufructuary interest in it.
7. It is a principle of statutory interpretation that every word of the law is to be construed in such a way as to have a meaning.

Hedar 15, 1957 E.C. (December 24, 1964 G.C.); Judges: Ato Belatchew Asrat, Ato Mekonnen Getahun, Blatta Yishack Tefferi: — Woz. Tenagne Worke Abdi petitioned the Court to declare her right to the estate of her son, Kaleab Legesse, who died intestate without a descendant.

In reply to notice given in a newspaper, the deceased's half-brother, Ato Yejote Worke Legesse, appeared and filed an objection that the inheritance should devolve on him and not on the petitioner. The ground for his objection is that the immovables constituting the succession are family property derived from the paternal line of the deceased's family, and cannot, therefore, be assigned to the maternal line.

It is conceded that the deceased was the son of the petitioner and Ato Legesse Worke

Ingida. The petitioner stated in her petition of Mizia 1, 1956 E.C. that the property of the deceased is derived from the deceased's paternal grandfather.

Questions of intestate succession are governed by Articles 842-856 of the Civil Code.

Where the deceased is not survived by a descendant, his father and mother shall be called to his succession. The father and mother shall each receive a half of the inheritance. The predeceased father shall be represented by his descendants. The respondent is the son of Ato Legesse Worke and can, therefore, represent his father. Hence Woz. Tenagne Worke Abdi and Ato Yejote Worke Legesse are the persons entitled to the deceased's succession.

The objection that the deceased's property deriving from the paternal line should not be assigned to the petitioner raises a problem. Article 849 lays down the rule "*paterna paternis materna maternis*." It is evident that the rationale for the rule is to prevent the transfer of immovable property outside natural relations. In the absence of an heir in either the paternal line or the maternal line, the rationale for the rule may disappear, together with its legal effect.

Before the rule "*paterna paternis materna maternis*" can be put into effect, one has to determine what is "family property or family land." The law does not define these terms unequivocally.

Article 849 (3) states: "The rules laid down in sub-articles (1) and (2) shall apply up to the second degree so that immovable property deriving by donation or succession from the grandpaternal line be not assigned to an heir of the grandmaternal and vice versa."

The phrase "shall apply up to the second degree" does not seem to be related to the preceding articles and, therefore, the concept is not clear.

Degree of relationship is governed by Articles 550 and 551. "The second degree" mentioned in Article 849 (3) refers to Articles 550 and 551; it does not refer to "first relationship" and "second relationship" as they are used in Articles 842 and 843. "First relationship" in Article 842 includes children, grandchildren and any other descendants, while "the first degree" (generation) includes only parents and children. "The second degree" (generation) includes grandparents, parents, and children.

Is "the second degree" mentioned in Article 849 (3) to be counted from the deceased or from ascendants toward the deceased? If there is immovable property deriving from a great-great-grandfather and if we count the "degree" up from the deceased, the property becomes "family property" when it is traced back to the grandfather, but ceases to be "family property" upon passing to the deceased's father and to the deceased himself. If the degree is counted toward the deceased, it means that the property shall be considered "family property" at the second generation from the first owner of the property. As stated above, this is not in accordance with the spirit of the law. The familial nature of an immovable never weakens; it strengthens the longer it is handed down through the generations. To interpret "the second degree" (generation) in a sense that weakens the familial nature of property upon the passing of an additional generation would be to deviate from the spirit of the law.

The phrase "shall apply up to the second degree" must be given effect. Every word of the law is construed to have a meaning. If it appears to be meaningless at first, it must be construed in such a way that it has a meaning. This is one of the principles of statutory interpretation.

In our opinion, "the second degree" (generation) referred to can have meaning within the spirit of the section where it helps to determine what is "family property." According to this construction, an immovable is "family property" when it passes from the first owner to the first degree (generation) and then from there on to the second degree (generation). It cannot be considered "family property" upon acquisition by the first owner, nor upon devolution on the first degree (generation). As soon as the second degree (generation) receives the property by succession or donation, it becomes "family property." From then on, Article 849 (1) and (2) can apply. The rule "*paterna paternis materna maternis*" therefore applies to immovable property that has devolved without interruption to the second degree (generation), and later degrees, from the person who first acquired it.

The immovable property of Kaleab Legesse derives from his grandfather through his father and, in light of our discussion, is "family property." As such it cannot be assigned to the deceased's mother, the petitioner. The petitioner would have been entitled to half the property if it were not "family property" derived from the paternal line. She is still entitled to the rights reserved under Article 850 (1).

Effective upon the death of the deceased, the ownership over the immovable property of the deceased must devolve upon Ato Yejote Worke Legesse, while the petitioner keeps her usufructuary right to one half of such property.

The parties shall defray their own costs.

The execution officer shall be instructed to execute the decision accordingly.

የከፍተኛው ፡ ፍርድ ፡ ቤት ፤

አዲስ ፡ አበባ ፡ የንግድ ፡ ችሎታ ።

አቶ ፡ ተፈሪ ፡ ግዛው ፡ አመልካች ፤ ወይዘሮ ፡ መና ፡ ተቃዋሚ ።

የፍትሕ ፡ ብሔር ፡ ነገር ፡ ቅዋር ፡ ፫፻፴፱/፶፬ ፡ ዓ. ም ።

የማደጎ ፡ ልጅነት ፡ (ጉዳፈቻ) ልማዳዊ ፡ ሕግ—የሚፈጸሙ ፡ ሥርዐቶች—የግር ፡ ልጅ ።

አመልካች ፡ እገቱ ፡ ወፊሽ ፡ ሳይኖራትና ፡ ሳትኖዝዝ ፡ ሞታለችና ፡ ሀብቷን ፡ (ንብረቷን) ፡ እኔ ፡ መውረስ ፡ አለብኝ ፡ ባለው ፡ ላይ ፡ የሚችዋ ፡ የግር ፡ ልጅና ፡ በምስጢርም ፡ የማደጎ ፡ ልጅ ፡ ነኝና ፡ እኔ ፡ መውረስ ፡ ይገባኛል ፡ የሚል ፡ ሌላ ፡ ተቃዋሚ ፡ ቢቀርብም ፡ ሀብቷን ፡ አመልካች ፡ እንዲወርስ ፡ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ በሰፈረደ ፡ ፍርዱ ፡ ተጥናብኛልና ፡ ይግባኝ ፡ ቢባል ፡ ጠቅላይ ፡ የንግድ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፡ ነገሩ ፡ እንደገና ፡ እንዲታይ ፡ ወደ ፡ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ስለመለሰው ፡ ለጉላተኛ ፡ ጊዜ ፡ ቀረበ ።

ውሳኔ ፤- አመልካች ፡ እንዲወርስ ፡ ተፈረደ ።

፩ ፤ የግር ፡ ልጅነት ፡ የመፋቀርንና ፡ የቀረበ ፡ ግንኙነትን ፡ የሚፈጥር ፡ ቢኾንም ፡ ቅሉ ፡ እንደ ፡ ውርስ ፡ የመውረስን ፡ መብት ፡ ያለ ፡ የማደጎ ፡ ልጅነት ፡ ሕጋዊ ፡ መብት ፡ እይፈጥርም ።

፪ ፤ በልማዳዊ ፡ ሕግ ፡ መሠረት ፡ የማደጎ ፡ ልጅነትን ፡ ለመፍጠር ፡ የጉላተኛም ፡ ወገኖች ፡ ፍላጎትና ፡ ፈቃድ ፡ በግልጽ ፡ የሚያሳይ ፡ ሥርዐት ፡ መፈጸም ፡ አለበት ።

፫ ፤ ጉዳዩ ፡ ለሚመለከታቸው ፡ ሰዎች ፡ ማስታወቂያ ፡ ሳይሰጥ ፡ በምስጢር ፡ የሚደረግ ፡ የማደጎ ፡ ልጅነት ፡ ልጅ ፡ ለማድረግ ፡ ፍላጎትና ፡ ሐሳብ ፡ በርግጥ ፡ መኖሩን ፡ የሚያጠራጥር ፡ ሰላኾን ፡ በዚህን ፡ ጊዜ ፡ በሕግ ፡ ፊት ፡ ዋጋ ፡ ያለው ፡ የማደጎ ፡ ልጅነት ፡ አለ ፡ አይባልም ።

ጥር ፡ ፳፩ ፡ ቀን ፡ ፲፱፻፶፯ ፡ ዓ. ም ። ዳኞች ፤- አቶ ፡ በላቸው ፡ ዐሥራት ፡ አቶ ፡ መኰንን ፡ ጌታኹን ፡ ብላታ ፡ ይሥሙት ፡ ተፈሪ ። ወይዘሮ ፡ በቀለች ፡ ግዛው ፡ ኑዛዜ ፡ ወይም ፡ በሕግ ፡ ሊወርሳቸው ፡ የሚችል ፡ ተወላጅ ፡ ሳይተጠፍ ፡ ስለ ፡ ሞቱ ፡ ውርሱ ፡ ይገባኛል ፡ በማለት ፡ ወንድማቸው ፡ አቶ ፡ ተፈሪ ፡ ግዛው ፡ ይህን ፡ መዝገብ ፡ ከፍተዋል ።

ዐያሌ ፡ ተቃዋሚዎች ፡ ቀርበው ፡ ጉዳያቸውን ፡ ካመለከቱ ፡ በኋላ ፡ ውርሱ ፡ ለአመልካች ፡ ብቻ ፡ ይገባል ፡ ሲል ፡ ይህ ፡ ፍርድ ፡ ቤት ፡ የካቲት ፡ ፳፭ ፡ ቀን ፡ ፶፭ ፡ ፈረደ ።

ከተቃዋሚዎች ፡ መካከል ፡ ወይዘሮ ፡ መና ፡ ብቻ ፡ ይግባኝ ፡ ስለ ፡ አሉ ፡ ጠቅላይ ፡ ፍርድ ፡ ቤት ፡ በይግባኝ ፡ መዝገብ ፡ ቍ. ፱፻፷፱/፶፭ ፡ “የግር ፡ ልጅ” እደራረጉ ፡ በአገር ፡ ልማድ ፡ ደንብ ፡ መሠረት ፡ መኾኑን ፡ ከፍተኛው ፡ ፍርድ ፡ ቤት ፡ መርምሮ ፡ እንደገና ፡ እንዲፈርድ ፡ ሲል ፡ ጥር ፡ ፲፭ ፡ ቀን ፡ ፶፭ ፡ ስለ ፡ ወሰነ ፡ ጉዳዩ ፡ እዚህ ፡ ፍርድ ፡ ቤት ፡ ቀጠለ ።

ወይዘሮ ፡ መና ፡ የግር ፡ ልጅ ፡ መኾኗን ፡ ያስረዳልኛል ፡ ያሉዋቸው ፡ ምስክሮች ፡ ተሰሙ ፤ አመልካችም ፡ አፍራሽ ፡ ምስክሮችን ፡ አሰሙ ።



ወይዘሮ ፡ መና ፡ “እንደ ፡ ልጅ ፡ እንደ ፡ ወራሽ ፡ ቆራሽ ፡ በሚጽ ፡ ብቻ ፡ ያደጉ ፡” መኾኑንና ፡ “በሚችቷ ፡ የተዳሩና ፡ የተኳሉ ፡ ለመኾኑ ፡” ማስረጃ ፡ እንዲያቀርቡ ፡ ጠይቀው ፡ ይህ ፡ ጥያቄ ፡ በማደግ ፡ ልጅነት ፡ ጥያቄ ፡ ውስጥ ፡ አግባብ ፡ የለውም ፡ ሲል ፡ ፍርድ ፡ ቤቱ ፡ ወስኖባቸዋል ።

በጠቅላይ ፡ ፍርድ ፡ ቤት ፡ ውሳኔ ፡ መሠረት ፡ በአገር ፡ ልማድ ፡ ደንብ ፡ ወይዘሮ ፡ መና ፡ የማደግ ፡ ወይም ፡ የማር ፡ ልጅ ፡ አለመኾናቸውን ፡ መርምረናል ።

፩ኛ ፤ የተቃዋሚ ፡ (የወይዘሮ ፡ መና ፡) ምስክር ፡ ወይዘሮ ፡ ሥርጉተ ፡ ወልደ ፡ ዮሐንስ ፡ “ወይዘሮ ፡ መና ፡ ክርስትና ፡ ተነሱና ፡ ወይዘሮ ፡ በቀለች ፡ የክርስትና ፡ እናት ፡ ኾኑ፤ ተጋባዦች ፡ የተጠሩት ፡ ለክርስትና ፡ ነው ፤ ወይዘሮ ፡ በቀለች ፡ በማደግ ፡ ለመውለድ ፡ ያደረጉት ፡ በምስጢር ፡ ነው ፤ ልብስና ፡ ሻሽ ፡ መጠቀሙ ፡ አመጡላቸው ፡ (ለወይዘሮ ፡ መና)፤ “በማርና ፡ በወተት ፡ አሳድጋቸዋለች። ከዛሬ ፡ ገምሮ ፡ ልጄ ፡ አደርጋቸዋለች። ብለዋል።” ሲሉ ፡ መስክረዋል ። እኝህ ፡ ምስክር ፡ የወይዘሮ ፡ በቀለች ፡ ወላጅ ፡ እናት ፡ ናቸውና ፡ ጉዳዩን ፡ የበለጠ ፡ ሳያውቁ ፡ አይቀርም ፡ የሚል ፡ ግምት ፡ በሚገባ ፡ ዐድሮብናል ። እኝህ ፡ ምስክር ፡ “ወይዘሮ ፡ በቀለች ፡ ወይዘሮ ፡ መናን ፡ በማደግ ፡ ለመውለድ ፡ የፈለጉት ፡ በምስጢር ፡ ነው ፡” ሲሉ ፡ የመስክሩት ፡ የጉዳዩ ፡ መፍትሔ ፡ መሠረት ፡ ነው ።

ይህን ፡ “በምስጢር ፡ እንዲፈጸም ፡ ተፈልጓል።” ሲባል ፡ በወይዘሮ ፡ መና ፡ እናት ፡ የተነገረውን ፡ ቃል ፡ ፫ኛ ፡ ፬ኛ ፡ ፭ኛ ፡ የተቃዋሚ ፡ ምስክሮች ፡ ማደግው ፡ በይፋ ፡ እንደ ፡ ተነገረ ፡ አድርገው ፡ ስለ ፡ መስክሩ ፡ የወይዘሮ ፡ ሥርጉትን ፡ ቃል ፡ ሽረዋል ። የተቃዋሚዋ ፡ ወላጅ ፡ እናት ፡ ከኾኑት ፡ ምስክርና ፡ በጉዳዩ ፡ ይበልጥ ፡ ያሉበት ፡ ከኾኑት ፡ ምስክር ፡ ቃል ፡ ይልቅ ፡ የውጭ ፡ ሰዎችና ፡ በጉዳዩ ፡ ማለት ፡ በክርስትናውም ፡ ኾነ ፡ በማደግው ፡ እንደ ፡ ወይዘሮ ፡ መና ፡ እናት ፡ የሌሉበት ፡ ሰዎች ፡ ቃል ፡ የተሻለ ፡ ዋጋ ፡ ይሰጠዋል ፡ ለማለት ፡ የሚያስችል ፡ ነገር ፡ የለም ። ስለዚህ ፡ ወይዘሮ ፡ ሥርጉተ ፡ የማደግው ፡ ልጅነት ፡ በምስጢር ፡ ነው ፡ ያሉትን ፡ ተቀብለናል ።

በተቃዋሚ ፡ ምስክሮች ፡ ቃል ፡ “ወይዘሮ ፡ መናን ፡ ልጅ ፡ ያደረጉ ፡ ወይዘሮ ፡ በቀለችና ፡ ባለቤታቸው ፡ ናቸው።” ሲባል ፡ ተገልጿል ። ይህም ፡ ማለት ፡ ወይዘሮ ፡ በቀለችና ፡ ባለቤታቸው ፡ ወይዘሮ ፡ መናን ፡ በምስጢር ፡ የማደግ ፡ ልጅ ፡ አድርገዋል ፡ ማለት ፡ ይኾናል ።

በአገራችን ፡ ልማድ ፡ በሥጋ ፡ ያልተወለደውን ፡ ሰው ፡ በሥጋ ፡ እንደ ፡ ተወለደ ፡ ዐይነት ፡ ለማድረግና ፡ በሥጋ ፡ የተወለደ ፡ ቢኾን ፡ ኖሮ ፡ ሊያገኝ ፡ ይችል ፡ የነበረውን ፡ የቤተ ፡ ሰብነት ፡ መብትና ፡ ግዴታ ፡ የመውረስንም ፡ መብት ፡ እንዲያገኝ ፡ ለማድረግ ፡ በልዩ ፡ ሥርዐት ፡ ልጅ ፡ ይደረጋል ። ሥርዐቱ ፡ ተፈጽሞ ፡ ልጅ ፡ ነው ፡ ሲባል ፡ በሥጋ ፡ ከተወለደ ፡ ልጅ ፡ በመብት ፡ ግዴታው ፡ አይለይም ።

ባዕድ ፡ የኾነውን ፡ ሰው ፡ በሥጋ ፡ እንደ ፡ ተወለደ ፡ ዐይነት ፡ የሚያደርገው ፡ “ኹነታ ፡ አብዛኛውን ፡ በጋሎች ፡ ዘንድ ፡ ይገኛል፤ መጠሪያ ፡ ስሙም ፡” “ጉዲፈቻ” ነው ። በዐማራውም ፡ ሥርዐት ፡ “የማር ፡ ልጅ።” ወይም ፡ “የጡት ፡ ልጅ።” የሚባል ፡ ነገር ፡ አለ ፤ የሚያስከትለው ፡ ውጤት ፡ ግን ፡ እንደ ፡ ጉዲፈቻ ፡ ላይኾን ፡ ይችላል ። የጉዲፈቻ ፡ ልጅ ፡ የሚባለው ፡ በሥጋ ፡ እንደ ፡ ተወለደ ፡ የሚታሰበው ፡ ነው ። የማር ፡ ልጅ ፡ ወይም ፡ የጡት ፡ ልጅ ፡ ብዙውን ፡ ጊዜ ፡ በሥጋ ፡ እንደ ፡ ተወለደ ፡ አይታይም ። የማር ፡ ወይም ፡ የጡት ፡ ልጅ ፡ በሥጋ ፡ እንደ ፡ ተወለደ ፡ ዐይነት ፡ በሕግ ፡ እንዲታይ ፡ ያስፈለገ ፡ እንደኾነ ፡ ይህንኑ ፡ የሚያሳይ ፡ ግልጽ ፡ የኾነና ፡ ጥርጣሬን ፡ የማያሳድር ፡ ሥርዐት ፡ እንዲፈጸም ፡ ይገባል ።

ባዕድ፡ የኾነውን፡ ሰው፡ ልጅ፡ ለማድረግ፡ በልማዳዊ፡ ሕግ፡ ይጠየቅ፡ የነበረው፡ ሥርዐት፡ ልጅ፡ እንዲኾን፡ የሚፈለገው፡ ሰው፡ በዕርግጥ፡ ልጅ፡ እንዲኾን፡ መፈቀዱንና፡ መፈለጉን፡ የሚያመለክተውን፡ ማንኛውንም፡ አስፈላጊ፡ መስሎ፡ የታየውን፡ ነገር፡ መፈጸም፡ ነው። ይህን፡ ዐይነት፡ ሥርዐት፡ ተፈላጊ፡ ናቸው፡ የሚባሉትን፡ ደንቦች፡ እንድ፡ በአንድ፡ ዘርዘር፡ ስለማይገኝ፤ በየጉዳዩ፡ ላይ፡ ልጅ፡ ተደረገ፡ የተባለው፡ ሰው፡ በእውነት፡ ልጅ፡ ተደርጓል፡ የሚያሰኝ፡ ነገር፡ እንዳለ፡ ይታያል። በጠቅላላው፡ ሲመረመር፡ አንድ፡ አስፈላጊ፡ የኾነ፡ መሠረታዊ፡ ነገር፡ ጉልቶ፡ ይገኛል። ይኸውም፡ መሠረታዊ፡ ነገር፡ አፈጻጸሙ፡ የተለያየ፡ ኹኖ፡ ቢገኝም፡ የወላጅና፡ የተወላጅን፡ መተሳሰር፡ ሊያስገኝ፡ የሚችል፡ ሥርዐት፡ እንዲፈጸም፡ የሚያስፈልግ፡ መኾኑን፡ የሚደነግግ፡ ነው። ይህ፡ ሥርዐት፡ በሥጋ፡ እንደ፡ ተወለዱ፡ ዐይነት፡ በሕግ፡ የሚታየውን፡ ልጅ፡ ከሌላው፡ በሕግ፡ ሳይኾን፡ በስም፡ ብቻ፡ ልጅ፡ ከሚባለው፡ ሰው፡ ይለየዋል።

የወላጅና፡ የተወላጅ፡ ዐይነት፡ ሕጋዊ፡ መተሳሰር፡ ይገኝ፡ ዘንድ፡ ከኹሉ፡ አስቀድሞ፡ ጉዳዩ፡ በምስጢር፡ ሳይኾን፡ በይፋ፡ መፈጸም፡ ይገባዋል። ልጅ፡ የሚደረገው፡ ሰው፡ በሥጋ፡ የወለዱትንና፡ የሥጋ፡ ዘመዶቹን፡ ትቶ፡ በሥጋ፡ ወደ፡ አልወለዱት፡ የሚዛመድ፡ ስለሚኾን፡ የዳድው፡ ዘመዶቹም፡ ኾኑ፡ ዐዲሱ፡ ዘመዶቹ፡ ነገሩን፡ እንዲያውቁት፡ ያስፈልጋል። ዝምድና፡ በተለይ፡ ሰዎች፡ በውል፡ መልክ፡ በሚፈጥሩት፡ ጊዜ፡ በሕግ፡ ዘንድ፡ ውጤት፡ የሚያስገኝ፡ ነውና፡ ምስጢር፡ የሚኾንበት፡ ምክንያት፡ የለም። ልጅ፡ ለማድረግ፡ የፈለገ፡ ሰው፡ ነገሩን፡ በሥውር፡ ለመፈጸም፡ ከተነሣ፡ ምሉኛላነት፡ አለው፡ ለማለት፡ አያስደፍርም። በግልጥ፡ የሚፈጸም፡ ነገር፡ ለመቃወም፡ የሚፈልገውን፡ ሰው፡ ዕድል፡ ይሰጠዋል። ለምሳሌ፡ አንድ፡ ሰው፡ በሥጋ፡ ያልወለደውን፡ ልጅ፡ ለሌላ፡ ሰው፡ በጉዲፈቻ፡ ሲሰጥ፡ ቢፈልግና፡ ነገሩ፡ በምስጢር፡ ቢፈጸም፡ ልጁን፡ በሥጋ፡ የወለዱት፡ ሰዎች፡ ጉዳዩን፡ ስለሚያውቁት፡ ሊቃወሙ፡ አይችሉም። በዚህም፡ ምክንያት፡ ሕጋዊ፡ ጉዲፈቻ፡ ተፈጽሟል፡ ለማለት፡ አይቻልም። የጉዲፈቻ፡ ልጅ፡ የሥጋ፡ ዘመዶቹን፡ ትቶ፡ ዐዲስ፡ ዘመዶችን፡ ያፈራል። ይህንን፡ ኹነታ፡ የሥጋ፡ ዘመዶቹም፡ ኾኑ፡ ዐዲሶቹ፡ ዘመዶቹ፡ እንዲያውቁት፡ ያስፈልጋል። ስለዚህ፡ ምንም፡ ልጅ፡ የማድረግ፡ ሥርዐት፡ በዝርዝር፡ ባይገኝ፡ ሥርዐቱ፡ በግልጥ፡ መፈጸም፡ ይገባዋል፡ የሚባለው፡ ደንብ፡ የታወቀ፡ የተለመደና፡ የተፈቀደ፡ ይመስለናል። ልጅ፡ የሚደረግ፡ ሰው፡ ልጅ፡ ለሚያደርገው፡ ሰው፡ ብቻ፡ ሳይኾን፡ ለሌላው፡ ሰው፡ ኹሉ፡ ለባዕድም፡ ጭምር፡ ልጅ፡ የሚያደርገው፡ ሰው፡ (ለጉዲፈቻ፡ ወላጁ፡) ልጅ፡ መኾኑ፡ መታወቅ፡ ይገባዋል። አልበለዚያ፡ ለሕግና፡ ለማሳበራዊ፡ ኑሮ፡ የሥርዐቱ፡ ዐላማ፡ ባለዋጋነት፡ ሊታይ፡ አይቻልም።

የወላጅና፡ የተወላጅ፡ ሕጋዊ፡ መተሳሰርን፡ የሚያስገኘው፡ ሥርዐት፡ ሳይሠወር፡ በግልጥ፡ ተመርቶ፡ ከተፈጸመ፡ በኋላ፡ በዕርግጥ፡ የተባለው፡ ሕጋዊ፡ መተሳሰር፡ ተገኝቶ፡ እንደኾነ፡ ከተፈጸመው፡ ሥርዐት፡ ሊታወቅ፡ ይችላል። የሚያስተሳስረው፡ ልዩ፡ ሥርዐት፡ በየባህሉ፡ የተለያየ፡ ነው። በማናቸውም፡ ጠባይ፡ ቢኾን፡ በጉዲፈቻ፡ ወላጅ፡ የኾነው፡ ሰው፡ ለመውለድ፡ መፍቀዱንና፡ መፈለጉን፡ ጥርጣሬ፡ በሌለው፡ መንገድ፡ የሚያሳይ፡ ልዩ፡ ሥርዐት፡ መኾን፡ ይገባዋል። የጉዲፈቻ፡ ልጅ፡ የሚደረገውም፡ ሰው፡ ወይም፡ በዕድሜው፡ ትንሽ፡ የኾነ፡ እንደኾነ፡ የሥጋ፡ ወላጁ፡ መፍቀዱንና፡ መፈለጉን፡ የሚያሳይ፡ ሥርዐት፡ መኾን፡ ይገባዋል። አልበለዚያ፡ በዕርግጥ፡ የሚፈለገው፡ ዐይነት፡ ሕጋዊ፡ መተሳሰር፡ እንዲገኝ፡ መፈቀዱና፡ መፈለጉ፡ ሊታወቅ፡ አይቻልም።

በአንዱ፡ ባህል፡ ልጅ፡ ለማድረግ፡ የሚፈለገው፡ ሰው፡ ድግስ፡ ደግሶ፡ ሰው፡ ጋብዞ፡ ልጅ፡ ለማድረግ፡ መፈለጉን፡ ሲገልጥ፡ ሕጋዊ፡ መተሳሰር፡ ተፈጽሟል፡ ይባላል። በሌላው፡ ባህል፡ ልጅ፡ የሚያደርገው፡ ልጅ፡ የሚደረገው፡ እንደ፡ ሥጋ፡ ልጅ፡

ሊያየው፡ ከሥጋ፡ ልጁ፡ ሳይለየው፡ በቂስ፡ ፊት፡ ምሉ፡ ሲገዝት፡ ሕጋዊ፡ መተሳሰ፡ ተፈጽሟል፡ ይባላል ። ሌሎች፡ ባህሎችም፡ ሕጋዊ፡ መተሳሰርን፡ የሚያስገኙ፡ ሥርዐቶች፡ ሳይኖሯቸው፡ አይቀርም ።

የጉዲፈቻ፡ ዐይነት፡ ልጅነት፡ አለ፡ ሕጋዊ፡ ውጤቱ፡ ግን፡ የተለየ፡ ነው ። እንደ ገደ፡ ሰዎች፡ የክርስትና፡ ልጃቸውን፡ ልጄ፡ እያሉ፡ ያሳድጋሉ ። ይህ፡ ኹነታ፡ ግን፡ የክርስትና፡ ልጅ፡ የተባለውን፡ በሥጋ፡ የተወለደ፡ ልጅ፡ ወይም፡ የጉዲፈቻ፡ ልጅ፡ አያደርገውም፤ የውርስ፡ መብትም፡ አያስገኝለትም ። የክርስትና፡ አባት፡ የኾነው፡ ሰው፡ ኑዛዜ፡ ትቶ፡ እንደኾነ፡ ለክርስትና፡ ልጅ፡ ስጦታ፡ ሊያደርግለት፡ ይችላል፤ ግዴታ፡ ግን፡ የለበትም ። የክርስትና፡ አባት፡ የኾነው፡ ሰው፡ ሳይናዘዝ፡ ቢሞት፡ የክርስትና፡ ልጅ፡ ወራሽ፡ ነኝ፡ ብሎ፡ ሊጠይቅ፡ አይችልም ። ይህ፡ ቢኾን፡ ኖሮ፡ ብዙ፡ ሰዎች፡ ክርስትና፡ ማንሣቱን፡ ይተዉ፡ ነበር ።

የማር፡ ልጅ፡ ወይም፡ የጡት፡ ልጅ፡ የሚባለውም፡ ማር፡ ከሚያልሰውና፡ ጡት፡ ከሚያጠባው፡ ሰው፡ ጋራ፡ ቀረብ፡ ያለ፡ ግንኙነት፡ እንዲያደርግ፡ የተሻለ፡ አስተያየት፡ እንዲያርፍበት፡ የቤተ፡ ሰብነት፡ ስሜት፡ ዐድርበት፡ በደስታም፡ ኾነ፡ በመከራ፡ እንደ፡ ዘመድ፡ እንዲኾን፡ የሚያደርግ፡ ኹነታ፡ ነው፡ እንጂ፡ የሕግ፡ ልጅነትን፡ የሚያስከትል፡ አይደለም ። የማር፡ ልጅ፡ ወይም፡ የጡት፡ ልጅ፡ በኑዛዜ፡ ስጦታ፡ ወይም፡ ውርስ፡ ሊያገኝ፡ ይችላል፡ ተናዛዥ፡ ግን፡ ግዴታ፡ የለበትም ። የማር፡ አባት፡ (ወይም፡ እናት)፡ የጡት፡ አባት፡ (ወይም፡ እናት)፡ ካለ፡ ኑዛዜ፡ ቢሞቱ፡ የማር፡ ልጅ፡ ወይም፡ የጡት፡ ልጅ፡ ወራሽ፡ ነኝ፡ ብሎ፡ ሊቀርብ፡ አይችልም ። ይህ፡ መኾኑ፡ ቢታወቅ፡ ዐያሌ፡ ሰዎች፡ እንደዚህ፡ ያለውን፡ የማር፡ ወይም፡ የጡት፡ ልጅ፡ ኹነታን፡ ከማስገኘት፡ ራሳቸውን፡ ያግዱ፡ ነበር ። ሰዎችም፡ ዘመዶቻቸውን፡ ልጄ፡ እያሉ፡ ማሳደጋቸውን፡ ይተዉ፡ ነበር ።

የክርስትና፡ አባት፡ (ወይም፡ እናት)፡ የማር፡ ወይም፡ የጡት፡ አባት፡ (ወይም፡ እናት)፡ ቀደም፡ ብሎ፡ እንደ፡ ተነገረው፡ በግልጥ፡ (በይፋ)፡ ሕጋዊ፡ መተሳሰርን፡ የሚያስገኘውን፡ ልዩ፡ ሥርዐት፡ በመፈጸም፡ የክርስትና፡ የማር፡ ወይም፡ የጡት፡ ልጃቸውን፡ የማደግ፡ ወይም፡ የጉዲፈቻ፡ ልጅ፡ ሊያደርጉ፡ ይችላሉ ። በዚህን፡ ጊዜ፡ አስፈላጊው፡ ሥርዐት፡ ተፈጽሟልና፡ የክርስትና፡ ኾነ፡ የማር፡ ወይም፡ የጡት፡ ልጅ፡ በሕግ፡ እንደ፡ ተወለደ፡ ተቁጥሮ፡ የልጅነትን፡ መብት፡ ለማግኘት፡ ይችላል ።

ከዚህ፡ በላይ፡ የዘረዘርናቸውን፡ ጠቅላላ፡ መግለጫዎች፡ ከዚህ፡ ጉዳይ፡ ጋራ፡ በማዛመድ፡ እንቀጥላለን ።

ወይዘሮ፡ መና፡ የክርስትና፡ ልጅ፡ መኾናቸው፡ ተረጋግጧል ። ወይዘሮ፡ በቀለች፡ ዘንድ፡ ማደጋቸውም፡ ታውቋል ። ወይዘሮ፡ በቀለች፡ የወይዘሮ፡ መና፡ አክስት፡ ናቸው። የማደግ፡ ልጅ፡ ናቸው፡ የሚያሰኝ፡ ሥርዐት፡ ግን፡ ተፈጽሞ፡ አላገኘንም ። ማደግ፡ ተፈጽሟል፡ ቢባልም፡ ይህን፡ የሚያመለክት፡ ጥሩ፡ ማስረጃ፡ የለም፡ እንጂ፡ በምስጢር፡ ኹኗል፡ የተባለው፡ ብቻ፡ ዋጋ፡ ሊያሳጣው፡ ይችላል፡ ነበር ። ሕጋዊ፡ መተሳሰርን፡ ሊያስገኝ፡ የሚችለው፡ ሥርዐት፡ ተፈጽሞ፡ አልተገኘም ። በእገር፡ ልማድ፡ መሠረት፡ ወይዘሮ፡ በቀለች፡ “ወይዘሮ፡ መናን፡ ልጄ፡ ኦደርጋለኹ፡ በሥጋ፡ ልጅ፡ ዐይን፡ እመለክታለኹ፡” ብለው፡ ወይም፡ ይህን፡ መሰል፡ ጥርጣሬን፡ የማያስገባ፡ ነገር፡ ተናግረው፡ በመሐላና፡ በግዝት፡ እጽድቀውት፡ አልተገኘም ። የክርስትና፡ ድግስ፡ ስለ፡ ነበረ፡ ከድግሱ፡ በኋላ፡ ቄስ፡ “ስብሐት”፡ ቢል፡ ማንኛውም፡ ማእድ፡ ላይ፡ የሚፈጸም፡ ነገር፡ ነውና፡ ልዩ፡ ሥርዐትን፡ አያመለክትም ። ወይዘሮ፡ በቀለችም፡ የክርስትና፡ ልጃቸውን፡ ማሳደጋቸው፡ የሕግ፡ ልጅ፡ አደረጓቸው፡ የሚያሰኝ፡ አይደለም ።

እኛ : እንደሚመስለን : ወይዘሮ : በቀለች : ወይዘሮ : መናን : ክርስትና : ማንሣታ  
ቸውና : ከርሳቸው : ጋራ : ማኖራቸው : የተቃዋሚዋን : ምስክሮች : ሳያሳስት : አል  
ቀረም ።

ወይዘሮ : መናን : ወይዘሮ : በቀለችና : ባለቤታቸው : ልጅ : አደረጉ : ሲባል :  
ወይዘሮ : መና : የወይዘሮ : በቀለችን : ባለቤት : ስም : ለምን : እንዳልያዙ : አልገባንም ።

የአመልካችን : ምስክሮች : ቃል : ሰጩን : ሳናይ : እንኳ : ከተቃዋሚዋ : ምስክ  
ሮች : ቃል : ብቻ : ወይዘሮ : መና : የወይዘሮ : በቀለች : የክርስትና : ልጅ : እንጂ : የማ  
ደጎ : ወይም : ለመውረስ : የሚችሉ : የማር : ልጅ : ኹነው : አላገኘናቸውም ። ወይዘሮ :  
በቀለች : ዘንድ : ቢያድጉም : ቢኖሩም : ቢኳሉም : የመውረስ : መብት : የሌለውን :  
የክርስትና : ልጅነታቸውን : የሚለውጠው : ነገር : አይኾንም ። በአገር : ልማድ : መሠ  
ረት : ወይዘሮ : መና : ለመውረስ : የሚችሉ : የማር : ልጅ : ኹነው : አላገኘናቸውም ።

ስለዚህ : ወይዘሮ : መና : መብት : በሌላቸው : ነገር : አመልካችን : አጥላልተዋ  
ልና : አመልካች : ለምስክሮቻቸው : ያወጡትን : ገንዘብ : በደረሰች : ልክ : እንዲሁም :  
\$200 (ኹለት : መቶ : ብር) ኪሣራ : ወይዘሮ : መና : ለአመልካች : እንዲከፍሉና : አመ  
ልካች : አቶ : ተፈሪ : ግዛው : የወይዘሮ : በቀለች : ግዛው : የሕግ : ወራሽ : ስለኾኑ :  
ወይዘሮ : በቀለች : ከአዛዥ : ግዛው : እንዳለማው : በውርስ : ይዘውት : የነበረውን :  
ንብረት : ኹሉ : በስማቸው : ሊያዛውሩ : ይችላሉ : ስንል : ፈርደናል ።

ትእዛዝ : ለሚያስፈልገው : መሥሪያ : ቤት : ይተላለፍ ።

HIGH COURT  
Addis Ababa, Com. Div.

TEFFERA GHIZAW v. MENNA BEKELECH

Civil Case No. 339/54 E.C.

*Adoption - - Customary law - - Formalities required - - "Yemar lij."*

On the remand for retrial from the Supreme Imperial Court of an appeal taken to contest the High Court's declaration that petitioner is to succeed to his sister's intestate estate over one claiming to be both the godchild (yemar lij) and a secretly adopted child of the deceased.

*Held:* For petitioner.

1. Although the relationship of "yemar lij" creates intimacy, it does not create the legal rights of an adopted child, such as the right to succession.

2. To create adoptive filiation under customary law, a formality is required to clearly show the desire and consent of both parties to bring about such a bond of filiation.

3. A legally binding adoption cannot be said to exist when it is concluded secretly, because the secrecy itself throws doubt upon the desire and intention to adopt and notice is not given to interested persons.

Ter 21, 1957 E.C. (January 29, 1965 G.C.); Judges: Ato Belatchew Asrat, Ato Mekonnen Getahun, Blatta Yishack Tefferi: — This file was opened by the petitioner's request that this Court declare his right of succession to the inheritance of his sister, Woz. Bekelech Ghizaw, who died intestate without leaving behind a descendant. After hearing several objections to the petition, this Court decided on Yekatit 25, 1955 E.C. that the petitioner alone is entitled to the succession.

Out of the persons whose objections were rejected, Woz. Menna appealed, and in its decision of Ter 15, 1956 E.C. the Supreme Imperial Court, in its appeal file No. 984/55, remanded the case for retrial with a directive that the High Court should find out whether the appellant was "Yemar lij"\* to the deceased according to custom.

Pursuant to the directive from the Supreme Court, we have heard witnesses called by Woz. Menna to show that she is "Yemar lij". The petitioner's witnesses were also heard.

The Court has rejected as irrelevant the respondent's request to submit evidence to show that she was reared and given in marriage by the deceased.

We have studied whether Woz. Menna is an adopted child according to custom or merely a "Yemar lij" of the deceased. Woz. Menna's first witness was Woz. Sirgute Wolde Johannes. She testified that the deceased was Woz. Menna's godmother, that guests were invited to a baptismal banquet arranged by the deceased, that the deceased wanted to

\* Translator's note: Literally means "honey child". It is used interchangeably with "yetut lij" which literally means "breast child." "Yemar abat" and "yetut abat" respectively mean "honey father" and "breast father."

adopt the child secretly, and that the deceased gave Woz. Menna a gift of dresses and declared that she would bring her up with milk and honey like her own child. We reasonably believe that this witness, who is the respondent's mother would be in a position to know the matter best. Her testimony to the effect that the deceased wanted to adopt the respondent secretly is decisive in the issue under consideration.

Woz. Sirgute's testimony regarding the secret adoption was in conflict with that of the 3rd, 4th, and 5th witnesses, who stated that the adoption was made in public. This Court gives weight to the testimony of the first witness, who was more directly involved in the event — whether it was adoption or otherwise.

The respondent's witnesses stated that Woz. Menna was adopted by Woz. Bekelech and her husband. This means that Woz. Bekelech and her husband secretly made the respondent their adopted child.

The custom in this country requires a special formality to give an outsider a status of a child with all filial rights and obligations, including a right of succession. When the formal procedure is followed, there is no distinction for any purpose between a natural child and an adopted child.

Adoption is widely known and practised among the Galla's who call it "gudifecha". Among the Amharas there is a practice known as "Yemar lij" or "yetut lij", which may have a different legal effect than "gudifecha." A "gudifecha" child is considered for all social and legal purposes to be a child of the adopter, whereas for "Yemar lij" to be legally considered as a natural child, an explicit and unequivocal formal procedure must be followed.

To create adoptive filiation, custom requires a formality that can clearly show the desire and consent of both parties to bring about such a bond of filiation. There is no rule whereby the details of such necessary formalities are specifically set forth. The existence of adoptive filiation can be decided only from the circumstances of an individual case. There is, however, one basic general principle that holds true. This principle requires that, even if the detail of its application varies, there must always be a special formality for the creation of an adoptive filiation. This formality distinguishes an adopted child, who has the bond of filiation with the adopting family and who for all legal purposes is deemed a natural child of the adopter, from another who may be nominally and casually referred to as one's own "child" without any bond of filiation.

For a bond of filiation to exist through adoption, it is essential that a special formality be undergone publicly without reservation. Since the child leaves his family of origin to join the family of adoption, both families must know about the adoption. A bond of filiation has legal effects and, therefore, should not be kept secret, especially when created by a contract of adoption. If the adopter wants to create adoptive filiation secretly, it becomes doubtful whether he has a full desire and intention to adopt the child at all. If the adoption is made openly, that gives interested persons an opportunity to know of the situation and raise any legitimate objections. If, for instance, a person other than a natural parent of the child wants to give his consent with a view to bind a minor child in adoptive filiation with a third person, the natural parents do not have an opportunity to object to the arrangement where the contract is secretly concluded. In such a case, no legally binding adoption can be said to exist.

As stated above, an adopted child leaves his original family. Both families must, therefore, be aware of the situation.

Even if there are no detailed and specific formalities for adoption, the general principle that some formality must be openly performed seems to be a recognized and accepted principle. The person adopted must be known as an adopted child, not only to the adopter, but also to other people. Otherwise the formality of adoption misses its legal as well as social purpose.

Whether the formality for adoption has been duly and openly followed in order to create adoptive filiation can be known only from the particular acts performed. The formalities used may vary from one locality to another. Nevertheless, all have as a common factor the requirement that the adopter must perform a special formal act to unequivocally show his intention and consent to make a person his adopted child. The child or, where he is a minor, his parents acting on his behalf must also perform a formal act to clearly show their consent and desire to be bound. In the absence of such formalities, it is not possible to know whether or not there was an intention to create a legal bond of adoptive filiation.

In one locality, for adoptive filiation to exist the adopter must prepare a banquet and invite guests to declare his intention to adopt a child. In another locality, the formality is fulfilled where the adopter takes an oath before a priest vowing that he will take and for all purposes treat the child as his own. It is possible that other customs may have still other types of formalities for creating adoptive filiation.

There is another situation where people bring up their godchildren referring to them as "sons" or "daughters." This does not, however, give to godchildren the status of natural or adoptive children. It does not give the right of succession. The godfather may make a legacy in favour of his godchild, but where the godfather dies without leaving a legacy, the godchild cannot claim any right to succeed. If that were not the case, many people would have refrained from having godchildren.

"Yemar lij" is intended to create a close tie between an outsider and a family where the outsider who is made "yemar lij" is looked upon with favour by the family who is taking him in. The relationship creates intimacy and close connection whereby each party shares in the sorrow and happiness of the other. It does not, however, create a legal right to be a member of the family. "Yemar lij" may get a legacy, but the testator is not under any obligation to make a legacy in favour of his "yemar lij." Where "yemar abat" dies intestate, "yemar lij" cannot claim any right of succession. If that were not the case, many would have refrained from having "yemar lij". People would also have avoided bringing up children of their friends.

A godfather or "yemar abat" (or "yetut abat") can adopt his godchild or "yemar lij" (or "yetut lij") by performing the necessary legal formality. We will now try to relate these general observations to the case at hand.

It is established that Woz. Menna is the godchild of Woz. Bekelech, that she was brought up by Woz. Bekelech, and that Woz. Bekelech is Woz. Menna's aunt. We have not, however, found the requirement of a formality of adoption fulfilled. Even if it could be held that the formality was performed, the fact that it was performed secretly would be sufficient to make the performance invalid. Woz. Bekelech did not under oath, in accordance with customary law, unequivocally declare that she would for all purposes take Woz. Menna as her child. A priest gave a benediction after the end of the feast prepared for the baptismal occasion, but this is a customary practice that takes place at any meal and cannot, therefore, be taken as a special formality. The fact that Woz. Bekelech brought up her godchild cannot by itself give the godchild filial status.

We are of the opinion that Woz. Menna's witnesses were misled by the fact that Woz. Menna was brought up by Woz. Bekelech, who was at the same time her godmother.

When it is alleged that Woz. Bekelech and her husband adopted Woz. Menna, we fail to understand why Woz. Menna did not assume the family name of Woz. Bekelech's husband.

Even without considering the testimony of petitioner's witnesses, we found that the evidence of the respondent, apart from showing that the respondent was Woz. Bekelech's godchild, does not show that the respondent was, according to customary practices, Woz. Bekelech's adopted child. We, therefore, declare the petitioner legal heir of Woz. Bekelech, and as such, all property that the deceased inherited from Azage Ghizaw Endalemaw shall devolve on the petitioner.

The respondent shall pay the petitioner \$200 in court costs plus reimbursement of expenses incurred for petitioner's witnesses.



# አንቀጾች ።

በለኢትዮጵያ ፡ ተግባራ-ሥራ ፡ ልማቶች ፤  
መግቢያ ።

ከጀርጅ ፡ ግራፍ ፡ ሾን ፡ ባውዲሲን ፡

የኢትዮጵያ ፡ መንግሥት ፡ የተግባራ-ሥራ ፡ አማካሪ ።

፩ ። በለተግባራ-ሥራ ፡ መራራሳብ ፡ (ፖሊሲ) መነሻ ፡ ነጽፍ ።

በጀምግራፊ ፡ አቀማመጧ ፡ በወቅቷ ፡ እና ፡ በዕርሻና ፡ በማዕድን ፡ ሀብቷ ፡ ኢትዮጵያ ፡ በተለይ ፡ ዕድለኛ ፡ ነች ። በዘመናዊ ፡ አኳኋን ፡ ሼቀጦችንና ፡ ዕቃዎችን ፡ ወደአገር ፡ ውስጥ ፡ ለማግቢያና ፡ ከአገር ፡ ውጭ ፡ ለመላኪያ ፡ የሚያገለግሏት ፡ በቀይ ፡ ባሕር ፡ ላይ ፡ ምጽዋዕንና ፡ ዐሰብን ፡ የመሰሉ ፡ መጠነኛ ፡ ወደቦች ፡ ያሏት ፡ አገር ፡ ከመኾኗም ፡ በላይ ፡ በተጨማሪ ፡ ወደባሕር ፡ የሚያወጣ ፡ የመገናኛ ፡ መሥመር ፡ በስተጀብቲ ፡ በኩልም ፡ ላላት ፡ የጥርጊያና ፡ የሐዲድ ፡ መንገዶቿ ፡ በወደቦቿና ፡ በአገር ፡ ውስጥ ፡ መካከል ፡ በቂ ፡ የመገናኛ ፡ መሥመሮችን ፡ ያበረክታሉ ። ዘመናይ ፡ የጽሑፍ ፡ የኢትዮጵያ ፡ አየር ፡ መንገድ ፡ ያየር ፡ (አቪየሺን) ፡ አገልግሎቶችም ፡ መናገሻ ፡ ከተማዋንና ፡ ሌሎች ፡ ዋና ፡ ዋና ፡ ከተሞቿን ፡ በስተደቡብ ፡ ከኬንያ ፡ በስተምሥራቅ ፡ ከአደን ፡ በስተምዕራብ ፡ አፍሪቃ ፡ በኩል ፡ ከሌጎስ ፡ በስተሰሜንም ፡ ከምዕራብ ፡ ኤውሮጳ ፡ ጋራ ፡ ያገናኙዋቸዋል ። በጠቅላላው ፡ ከምድር ፡ ማእከላዊ ፡ መቀነት ፡ (ኤኳተር) ፡ መጠነኛ ፡ ርቀቱ ፡ ፩ሺሕ ፡ ኪሎ ፡ ሜትር ፡ ያኸል ፡ ኹኖ ፡ የሚወርደው ፡ የማለፊያ ፡ ዝናምና ፡ መጠነኛ ፡ ደጋ ፡ መሬቷ ፡ አቀማመጥ ፡ ካንዳንድ ፡ ዝቅ ፡ ብለው ፡ ከሚገኙ ፡ የሸለቆ ፡ ቦታዎች ፡ በቀር ፡ በዚች ፡ ካንድ ፡ ሚሊዮን ፡ ማእዘን ፡ ኪሎሜትር ፡ በላይ ፡ በኾነችው ፡ የንጉሠ ፡ ነገሥቱ ፡ መንግሥት ፡ ግዛት ፡ ውስጥ ፡ የዕርሻ ፡ የከብት ፡ ርቢና ፡ የደን ፡ ሀብቶች ፡ ሊለሙበት ፡ የሚችልባት ፡ መሬት ፡ መኾኗን ፡ ያሳያል ። ከዚህም ፡ የተነሣ ፡ ጥያ ፡ ሚሊዮን ፡ ነው ፡ ተብሎ ፡ ከተገመተው ፡ ሕዝቧ ፡ ቅጥር ፡ ውስጥ ፡ በያንዳንዱ ፡ መቶ ፡ ዘጠናው ፡ በግብርናና ፡ በገጠር ፡ ሙያዎች ፡ ላይ ፡ እንደተሰማሩ ፡ ቀርተዋል ። ይህ ፡ የሕዝብ ፡ ቅጥር ፡ ብዛት ፡ የተትረፈረፈ ፡ ነው ፡ የሚያሰኝ ፡ አይደለም ።

ኢትዮጵያ ፡ የቂየ ፡ ወግና ፡ ልማድ ፡ ያሰራቸውን ፡ የዕርሻ ፡ ዘዴዎቿን ፡ ዘመናይ ፡ ብታደርጋቸው ፡ ኑሮ ፡ ያላንዳች ፡ ክርክር ፡ በቀላሉ ፡ የአፍሪቃ ፡ የእኸል ፡ ጎተራ ፡ ልትኾን ፡ በቻለች ፡ ነበረ ። ይኹን ፡ እንጂ ፡ በዚህ ፡ ባለንበት ፡ ዘመን ፡ ኢትዮጵያ ፡ ወደ ፡ ውጭ ፡ አገር ፡ ገበያዎች ፡ የምታወጣው ፡ እኸል ፡ ልክ ፡ መጠነኛ ፡ ነው ። ነገር ፡ ግን ፡ ዕርሻ ፡ ሊኖሯት ፡ ከሚችሉት ፡ የባሕርይ ፡ ጾታዎች ፡ አንዱ ፡ ብቻ ፡ ነው ። በጥቂቱ ፡ ብቻ ፡ ከጥቅም ፡ ላይ ፡ የዋሉ ፡ አብዛኛውን ፡ ግን ፡ ገና ፡ አኹን ፡ ገሃድ ፡ የወጡ ፡ ወይም ፡ ፈጽሞ ፡ ያልታወቁና ፡ ያልተመረመሩ ፡ ከምድሯ ፡ ገጥታ ፡ በታች ፡ የተከበቱ ፡ (የተደበቁ) ፡ ትላልቅ ፡ ግምጃ ፡ ቤቶች ፡ ተነጥፈው ፡ ይገኛሉ ።

የሀገራቸውን ፡ ከፍ ፡ ያሉ ፡ የኢኮኖሚክ ፡ ሀብት ፡ ምንጮችን ፡ እና ፡ የባሕርይ ፡ ልግስና ፡ በመገንዘብ ፡ በግድ ፡ ያስፈልግ ፡ የመሰለውን ፡ ችግራቸውን ፡ — ያም ፡ ብዙ ፡ አልነበረም ፡ — ከማጥገብ ፡ በላይ ፡ ጠቅላላ ፡ የድካም ፡ ፍሬ ፡ ወይም ፡ ወለዳ ፡ (ፕሮግራም ቪቲ) ፡ መጠን ፡ ለማሳደግ ፡ ሲሉ ፡ የምግባር ፡ ዘዴዎቻቸውን ፡ ያሻሽሉ ፡ ዘንድ ፡ ምን ጊዜም ፡ ቢኾን ፡ ኗሪዎቹን ፡ የተሰማቸው ፡ ሸክም ፡ አልነበረም ። በውጭ ፡ ተጽዕኖች ፡

ግጭቶች : ወይም : ወረራዎች : እንብዛም : አለመታወካቸውና : አለመጠቃቸው : ከረዥም : ዘመናት : ገምሮ : በወረሰቸው : ኹነታዎች : ይህን : የራስ : ብቃትንና : ባለው : መርካትን : ሳያመጡባቸውም : አልቀሩ ። ስለዚህ : ለብዙ : ዘመናት : በሰሜናዊ : የዓለም : አጋማሽ : የሚገኙትን : ብዙ : አገሮች : ወደ : ኢንዱስትሪ : ልማትና : ወደ : ዓለም : ንግድ : የወረወሯቸውን : የመሰሉ : የጥድሬያ : ልማት : ባሕርያዊ : መነሻ : ምክንያቶችን : እ.ትዮጵያ : ዐጥታ : ነበረች : ዛሬም : እንኳ : ቢኾን : የኢኮኖሚክስ ስንና : የቴክኖሎጂን : ዘመን : መድረክ : አገሪቱ : ገና : መረገጧ : ነው ።

ስለዚህ : እስከቅርቡ : ጊዜ : ድረስ : “ተግባራ-ሥራ :” (እንግሊዞች : ‘ሌበር :’ የሚሉት : በኛ : ግን : ‘የአሠሪና : የሠራተኛ : ጉዳይ :’ ሲባል : የቂየው : ) ኅይለ-ቃሉ : በዘመናዩ : አተረጓጎም : እንደሚያሰማው : እና : ከዚህ : ጋራ : የተያያዘው : ማናቸውም : ጉዳይ : ኹሉ : ወደ : ብሔራዊው : መዘክር : (ኅሊና : ) የሚገባ : መደቡን : ለማግኘት : የሚጥር : ሐሳብ : ብቻ : ነበረ ። የሌሎች : አገሮች : ሕገ-መንግሥቶች : ምሉ : ምሉ : ምዕራፎች : ለይተው : የሚመድቡለትን : “ተግባራ-ሥራ :” (‘ሌበር :’ ወይም : ‘የአሠሪና : የሠራተኛ : ጉዳይ :’) የተባለውን : ነገር : አኹን : የሚሠራበት : የ፲፱፻፵፰ : ዓ . ም . የተሻሻለው : የኢትዮጵያ : ሕገ-መንግሥት : ከናካቴውም : አያውሳውም ። አንዴ : ብቻ : ስለ : ‘ሙያ :’ ይናገራል ። እንዲሁም : ምንም : እንኳ : ባለፉት : ጥቂት : ዓመታት : ውስጥ : በሠራተኞች : እደላደልና : በተግባራ-ሥራ : ክርክር : ማስታረቅ : ግንባሮች : እንዳንድ : ፍሬ : ያላቸው : ነገሮች : ቢዝግግሩም : ቅሉ : በሕዝብ : (ወይም : በመንግሥት : ) ጉዳዮችም : በኩል : የተግባራ-ሥራ : ጉዳዮችን : ሥራየ : ብሎ : እንዲያከናውን : ተለይቶ : የተቋቋመ : ሚኒስቴር : ወይም : በዐዋጅ : ሕግ : የተሠራ : አንድ : አካል : የለም ። የሀገሪቷን : የኢኮኖሚክና : የብዕል : (ሀብት : ) ምንጮችን : ለማልማት : የሰው : ሥራ : ጉልበት : (በእንግሊዝኛው : ‘ማንፓውር :’ እስካኹን : ‘የሰው : ሥራ : ኅይል :’ የተባለው : ‘የሰው : ጉልበት :’ ማለቱም : ባስኬደ : ) እስፈላጊነት : እያደገ : የሚኼድ : ባለዋጋነት : ያለው : መኾኑ : የታወቀው : በትግል : ነበረ : በመጨረሻ : ግን : ከማይመለጥባቸው : ግቦች : ላይ : ተደረሰ ።

ከዚህ : ልምድ : ውጭ : ከኾነችው : የኤሪትራ : ክፍለ-ሀገር : ላይ : ሐሳባችንን : ለትንሽ : ጊዜ : ብናሳርፍ : ሊጠቅመን : ይችላል : ይኾናል ። ባቀማመጧ : በቀይ : ባሕር : ዳር-ዳር : ከመነጠፏ : በቀር : ይህች : ክፍለ-ሀገር : ከሌላው : የኢትዮጵያ : ምድር : በጸጋውና : በሀብቱ : አሳንሶ : ባሕርይ : የለገሰላት : አገር : ነች ። ይኹን : እንጂ : ለብዙ : ዘመናት : ኤሪትራ : የቅኝ : ግዛት : ነበረች ። ከኹለተኛው : የዓለም : ጦርነት : በኋላ : ግን : በፌዴሬሺን : የሚገናኝ : ኅብረትን : የመሰለ : ልዩ : አቋም : ከነሕጉጋዊ : (ፓርላማዊ : ) ሥልጣኖቹና : ከተግባራ-ሥራ : ሕገ : ጭምር : ለኤሪትራ : ተሰየቷት : ነበረ ። እስከ : ፲፱፻፶፭ : ዓ . ም . መዝሙሪያ : ድረስ : ከናት : ሀገሯ : ከኢትዮጵያ : ንጉሠ : ነገሥቱ : መንግሥት : ግዛት : ጋራ : በምሉ : አንድላይ : አልተቀላቀለችም : ነበረ ። ከዚሁም : ምክንያት : የተነሣ : (እ . ኤ . አ . ) በ፲፱፻፶፭ : ዓ . ም . እንደገና : ተሻሻለው : ተጠቃልለው : ባንድ : መልክ : ኹነው : የኤሪትራ : የሠራተኞች : እቀጣጠር : ሥራዕ : ተብለው : ቢወጡም : ቅሉ : ነቃቸውን : ወደ : ኋላ : ኺደው : (እ . ኤ . አ . ) ከ፲፱፻፷፪ : ዓ . ም . ላይ : የሚያገኙ : እስካኹን : ድረስ : የሚሠራባቸውና : የሕግ : ውጤት : ያላቸው : የተግባራ-ሥራ : ደንቦች : በኤሪትራ : ይገኛሉ ። ይህም : ድርጊያ : ሌላ : ማስታወቂያ : እስኪወጣበት : ድረስ : ለክፍለ : ሀገር : የሚበጅ : የተግባራ-ሥራ : እስተዳደር : (የሠራተኛ : ጉዳይ : መሥሪያ : ቤት : ) ሕጉጋዊ : መነሻ : መሠረት : ኹኖ : እንዳንድ : የግርጌ : እነስተኛ : የሥራ : መጠን : (ሚኒሙም : ) ግዴታዎችን : ከማበርከቱም : በላይ :

1 (እ . ኤ . አ . ) ኖቬምበር : ፲፭ : ቀን : ፲፱፻፷፮ : ዓ . ም . በወጣው : ትእዛዝ ።

ደረጃው፡ በጣም፡ እነሱ፡ያለን፡ የተግባረ-ሥራ፡ አጠባበቅን፡ (መከለያን፡) ይሰጣል፡ ።  
 ሹኖም፡ እነዚህ፡ ድንጋጌዎች፡ በጠቅላላው፡ አእምሮን፡ በሚያረካ፡ እኳኋን፡ ውጤታ-  
 ቸው፡ ከፍ፡ ያለና፡ ፍሬያማ፡ ሹነው፡ አልተገኙም፡ የተግባረ-ሥራ፡ አስተዳደሩ፡ መጠ-  
 ነኛና፡ እነስተኛ፡ በመሆኑ፡ የቀረው፡ የንጉሠ፡ ነገሥቱ፡ መንግሥት፡ ግዛት፡ ከደረሰ  
 ባቸው፡ ጠቅላላ፡ የልክ፡ መጠኖች፡ ጋራ፡ ለማስተካከል፡ ይቻል፡ ይኸናል፡ የውጭ፡  
 አገር፡ ቅጣችን፡ በሥራ፡ ላይ፡ ከማዋል፡ ከሚነሳሉት፡ ስህተቶች፡ ለማዳን፡ ሲል፡  
 የራሱን፡ የተግባረ-ሥራ፡ ሕጉግ፡ (ሴጂስትራቲቭ) እና፡ አስተዳደር፡ ለመንደቅ፡ ከን  
 ደዚህ፡ ካለው፡ ልማድ፡ ለመማር፡ የኢትዮጵያ፡ ንጉሠ፡ ነገሥት፡ መንግሥት፡ ያደረ-  
 ገውን፡ ጥረትና፡ ድካም፡ በሚያስፈልግበት፡ ስፍራ፡ ላይ፡ እንገልጣለን፡ ።

ከጦርነቱ፡ ወዲህ፡ የተደረገው፡ ዳ፡ (ለዘብ) ያለ፡ የኢንዱስትሪ፡ እድገት፡ በተለይ፡  
 ያዳረሰው፡ እንደ፡ ዐዲስ፡ አበባና፡ እንደ፡ ዲራ፡ ዳዋ፡ ያሉትን፡ በጣም፡ ዋጋ፡ ያላቸ-  
 ዉን፡ ጥቂት፡ ከተሞች፡ ብቻ፡ ነው። ከዚህም፡ በላይ፡ ዘወትር፡ እያደገ፡ የሚሼድ፡  
 ማናቸውም፡ ዐይነት፡ የሰው፡ ሥራ፡ ጉልበትን፡ የሚጠይቁ፡ በሕዝብ፡ ባለሥልጣኖች፡  
 የሚካሄዱ፡ ሰፋፊ፡ (የፋብሪካ) መሥሪያ፡ ቤቶች፡ የኢንዱስትሪ፡ ሥራዎችና፡ የንግድ፡  
 ቤቶች፡ በከተሞችና፡ በገጠር፡ ስፍራዎች፡ ተቋቁመዋል፡ የጥጥ፡ ፋብሪካ፡ የትምባ-  
 ሆና፡ የስኳር፡ ዐገዳ፡ ተክሎች፡ የቢራ፡ ፋብሪካዎች፡ የሲሚንቶ፡ ሥራዎችና፡ የሌላ፡  
 ተግባር፡ ፋብሪካዎች፡ ተቋቁመው፡ በሺሕ፡ የሚቁጠሩ፡ ቤትና፡ ወንድ፡ ሠራተ-  
 ኞችን፡ ይዘዋል፡ ብዙ፡ ዐዲስ፡ የኢንዱስትሪ፡ መሥሪያ፡ ቤቶች፡ በመሠራት፡ ላይ፡  
 ወይም፡ ሊሠሩ፡ በጥላን፡ ላይ፡ ይገኛሉ፡ ከዚህ፡ ዐልፎ፡ ተርፎም፡ ንግድ፡ እየተስ-  
 ፋፋ፡ በመሄዱ፡ የችርቻሮ፡ ንግድ፡ ቤቶች፡ ደኅና፡ እየበዙ፡ የግንኙነት፡ መሥመ-  
 ሮችና፡ ጉዞዎች፡ ከነደባል፡ አገልግሎታቸውና፡ ከሚያስከትሉት፡ የሥራ፡ ስምሪት፡  
 ('የሠራተኛ፡ መቀጠር' የተባለውን) ጋራ፡ እየዳበሩ፡ ሺደዋል፡ ምንም፡ እንኳ፡ የስ-  
 ታስቲክ፡ ዝርዝር፡ ባይገኝም፡ ቅሉ፡ ከተለመደው፡ ባህላዊ፡ የገጠር፡ ሙያ፡ ውጭ፡ ተ-  
 ሰማርተው፡ የሚሠሩት፡ ሰዎች፡ ቊጥር፡ ከ፪፻፺ሕ፡ በላይ፡ መሆኑን፡ ሲኖርበት፡ ይኸ-  
 ውም፡ ቊጥር፡ እያደገ፡ መሄዱ፡ ግልጥ፡ ነው።

ይህ፡ የኢንዱስትሪ፡ እድገትም፡ የኢንዱስትሪ፡ እንቅስቃሴ፡ በተዘመረ፡ ጊዜ፡  
 ማናቸውንም፡ ሀገር፡ በግድ፡ እንደሚያጋጥመው፡ ያለችግር፡ መንግሥቱን፡ ፈጥሮበ-  
 ታል፡ ከቴክኖሎጂ፡ ጋራ፡ ወገጣጠሙና፡ እሱም፡ ሲመጣ፡ ችግሮቹን፡ እንደዚህ፡  
 ተጠናጥነው፡ የበዙ፡ እንዲሆኑ፡ ያደረጋቸው፡ የኢትዮጵያ፡ ለብዙ፡ መቶ፡ ከፋለ፡ ዘመ-  
 ናት፡ ከሌላው፡ ዓለም፡ ተለይቶ፡ መኖር፡ ነው። በዚህ፡ ላይ፡ ተጨማሪው፡ ችግርም፡  
 የኢንዱስትሪ፡ ልማቱ፡ በምሉ፡ ባገሩ፡ እንደመሰራጨቱ፡ ፈንታ፡ በጥቂት፡ አውራ፡  
 ቦታዎች፡ ብቻ፡ የተወሰኑ፡ የመሆናቸው፡ ዕርግጠኛው፡ ጉዳይ፡ ነው።

እንግዲህ፡ ከኢትዮጵያ፡ መንግሥት፡ ፊት፡ ተደቅነው፡ የነበሩት፡ የመዝናኛው፡  
 ደረጃ፡ ችግሮች፡ የሚከተሉት፡ ናቸው፡-

- (፩) በታላላቅ፡ ከተሞች፡ እያደገ፡ የሄደውን፡ ሥራ፡ ፈት፡ ቊጥር፡ እንዴት፡  
 አድርጎ፡ ይቀንሷል፡ ወይም፡ ቢያንስ፡ ቢያንስ፡ እድገቱ፡ እየጨመረ፡ እንዳ  
 ይሄድ፡ እንዴትስ፡ አድርጎ፡ ይከላከላል፡
- (፪) ለአሹኑና፡ ለወደፊቱ፡ እንቅስቃሴዎች፡ — ማለት፡ የኢንዱስትሪ፡ ሹነ፡  
 ወይም፡ የሌላ፡ እንዲሁም፡ የኢኮኖሚክ፡ ልማቱን፡ ሳያደናቅፋ፡ ማረጋገጥን፡  
 በሚያረጋግጡበት፡ ጊዜ፡ አንድ፡ ላይ፡ ደሞዝ፡ የሚያፈራውን፡ ወገን፡

<sup>2</sup> የኢሪትራ፡ ጋዜጣ፡ ተጨማሪ፡ ቊ፡ ፩፡ (እ.ኤ.አ.) ሚያዝያ (ግንቦት) ፳፫፡ ቀን፡ ፲፱፻፶፮፡ ዓ. ም. ።

ችግር፡ ለማቃለል — ፑሉ፡ ተገቢ፡ የሆነ፡ የተግባረ-ሥራ፡ አካሄድ፡ ግን  
ኝነቶችን፡ እንዴት፡ አድርጎ፡ ያቋቁሟል፤

(፫) በተቻለ፡ መጠን፡ ከውጭ፡ አገር፡ አማካሪዎችና፡ ርዳታ፡ ነጻ፡ የሆነ፡ ራሱን፡  
የቻለና፡ በችሎታው፡ አጥጋቢ፡ የሆነ፡ ያገር፡ ውስጥ፡ የሥራ፡ ኃይል፡ እን  
ዴት፡ አድርጎ፡ ለመፍጠር፡ ይቻላል፡ ነበረ ።

እነዚህም፡ ሦስት፡ ችግሮች፡ የተነሡት፡ እንዲያው፡ ለንግግሩ፡ ያኸል፡ ተገንጥ  
ሎና፡ ተለይቶ፡ የቀረ፡ ዝቅተኛ፡ ኢኮኖሚ፡ ወደ፡ ዘመናዊው፡ የቴክኖሎጂ፡ ዘመን፡  
የኢኮኖሚክ፡ መልካችና፡ ባህሎች፡ ባልታሰበ፡ ድንገተኛ፡ አጋጣሚ፡ መንገድ፡ በመ  
ሸጋገሩ፡ ምክንያት፡ ነው ። እነዚህ፡ ችግሮችም፡ ታስቦባቸው፡ መፍትሔያቸውን፡  
እንዴ፡ ወደማግኘቱ፡ በተጠጉ፡ ጊዜ፡ ከመዝመሪያው፡ ሊታሰብባቸውና፡ መፍትሔ፡  
ሊበጅላቸው፡ ወደሚገባቸው፡ ወደነበሩት፡ እብዛኛው፡ የረዥም፡ ጊዜ፡ ችግሮች፡ ወደ  
ሾኑት፡ አመሩ ። ይህ፡ ፑሉተኛ፡ ደረጃ፡ ችግር፡ የሠራተኞችን፡ ጤና፡ ከአደጋ፡ መት  
ረፍን፡ ጠቅላላ፡ ትምህርትን፡ የሙያ፡ መሠልጠንን፡ እና፡ የኅብረ፡ ኑሯዊ፡ (ሶሺያል)  
ዋስትና፡ (ሴኩራቲ)፡ ጣጣዎችን፡ የሚጨምር፡ ነው ።

የ፲፱፻፵፰፡ ዓመተ፡ ምሕረቱ፡ የኢትዮጵያ፡ ሕገ-መንግሥት፡ እንደዚህ፡ ያሉ  
ትን፡ ዐሳቦች፡ በግብር፡ ላይ፡ ለማሰማራት፡ መልካም፡ ግምት፡ ሊጣልበት፡ የሚገባ፡  
አጥጋቢ፡ የሆነ፡ መነሻ፡ መደብን፡ ያበረክታል ። ኢትዮጵያውያን፡ የሆኑ፡ ፑሉ፡  
በሕጉ፡ መሠረት፡ እኩል፡ ብሔራዊ፡ (ሲቪል)፡ መብቶችና፡ እኩል፡ የሆነ፡ ተጠባ  
ቂነት፡ አሏቸው ። ለያንዳንዱ፡ ዜጋም፡ የንቅስቃሴና፡ የመሰብሰብ፡ ነጻነት፡ ተረጋግ  
ጦለታል ። መያውን፡ እንዳሻው፡ በነጻ፡ ለመምረጥና፡ ማኅበሮች፡ ለመግባት፡ ያለው፡  
ያንዱ፡ ዜጋ፡ መብት፡ ሊወሰንበት፡ (ሊቀነስበት)፡ የሚቻለው፡ በሕጉ፡ ብቻ፡ ነው ።  
ለንጉሠ፡ ነገሥቱ፡ እቤቱታን፡ የማቅረብ፡ ጠቅላላ፡ መብትም፡ አለው ።

ሌላ፡ የመሪ፡ ሐሳቦች፡ ነቆች፡ የሚከተሉት፡ ናቸው፡-

(፩) የባሪያ፡ ነጻነት፡ ዐዋጅ፡ ቍ . ፳፪፡ ፲፱፻፴፱፡ ዓ . ም፡

(፪) የንግድና፡ የኢንዱስትሪ፡ ሚኒስትርን፡ በፋብሪካዎች፡ ተግባረ-ሥራን፡ ለመ  
ጠበቅ፡ የሚያስችለውን፡ ዘዴ፡ ደንቦች፡ እንዲያወጣ፡ የሚፈቅድለት፡  
የ፲፱፻፴፯፡ ዓ . ም፡ የፋብሪካዎች፡ ዐዋጅ ። ፑሉም፡ ተጨማሪ፡ ሕጎችን፡  
ለማውጣት፡ እስካሁን፡ ድረስ፡ በዚህ፡ ዐዋጅ፡ አልተጠቀሙበትም፤

(፫) የ፲፱፻፶፪፡ ዓ . ም፡ ፍትሐ፡ ብሔር፡ ዐዋጅ ። ይህ፡ እንዳንዳንዱ፡ ኤውሮጵዊ፡  
አገሮች፡ ፑሉ፡ ስለሥራ፡ ስምሪት፡ (አቀጣጠር)፡ ከወጣው፡ ጠቅላላ፡ ደንብ፡  
በላይ፡ ዝቅተኛ፡ የተግባረ-ሥራ፡ ደረጃዎችንም፡ (መጠኖችንም)፡ ይጨም  
ራል ። በተለይም፡ የፍትሐ፡ ብሔር፡ ሕጉ፡ ምዕራፍ፡ ፲፮፡ የግል፡ ሥራ፡ አቀ  
ጣጠር፡ ውሎችንና፡ የኅብረት፡ ስምምነቶችን፡ አፈጻጸም፡ የአቀጣጠር፡  
ግንኙነትን፡ ጠቅላላ፡ ዝርዝር፡ ግዴታዎችንና፡ ጠባይን፡ የሥራ፡ መፈጸሚ  
ያና፡ መነሻ፡ ምክንያትንና፡ ውጤትን፡ የዕረፍት፡ ጊዜዎችን፡ ከሥራ፡ በተ  
ቀረበት፡ ጊዜና፡ በሕመም፡ ምክንያት፡ የደሞዝ፡ አከፋፈል፡ ድንጋጌዎችን፡  
መድቧል ። ሌሎች፡ አንቀጾች፡ የሥራ፡ አደጋዎች፡ ወይም፡ ከሙያ፡ የወጡ፡  
ደዌዎችን፡ ስለሚመለከተው፡ ጉዳይ፡ የቀጣሪዎችን፡ (አሠሪዎችን)፡ ግዴታ  
ዎች፡ ያትታሉ ። ሌላው፡ ምዕራፍ፡ (፫)፡ ደግሞ፡ የሙያተኞች፡ (ሠራተኞች)፡  
ኅብረት፡ (ማኅበር)፡ ድርጅቶች፡ በተቋቋሙ፡ ጊዜ፡ ዋጋ፡ የሚኖራቸውን፡  
የማኅበሮች፡ ሕጎችን፡ ያቅፋል፤

(፩) ለጉዳዩ ፡ አስፈላጊ ፡ የኾኑ ፡ አንዳንድ ፡ የሕግ ፡ አንቀጾች ፡ ዐልፎ ፡ ዐልፎ ፡ በልዩ ፡ ሕጎች ፡ ይገኛሉ ፤

(፪) በዚህ ፡ ላይ ፡ ደግሞ ፡ ልማዳዊ ፡ ሕግም ፡ በመጠኑ ፡ ጥቂት ፡ ዋጋ ፡ አለው ።

፪ = ወደ ፡ ዘመናዊ ፡ ተግባራዊ ፡ ሕግ ፡ አቀራረብ ፡

ከዚህ ፡ በላይ ፡ ባሉት ፡ አኳኋኖች ፡ መሠረት ፡ እስከተቻለ ፡ ድረስ ፡ በሥራ ፡ ላይ ፡ ለመዋሉና ፡ ለቅጥዋሩ ፡ ሥሙር ፡ ፈሊጥ ፡ (ማሺኔሪ) ፡ ያለው ፡ የሚዳሰስ ፡ ዕርግጠኛና ፡ የተጠቃለለ ፡ የተግባራዊ ፡ ሕግ ፡ ሊሠራና ፡ ሊፈጥር ፡ ያለበት ፡ ማናቸውም ፡ ሰው ፡ ለዚህ ፡ ሲል ፡ የሚጨበጥ ፡ የሥራ ፡ ቅንጅት ፡ ስንጠረክ ፡ (ፕሮግራም) ፡ እና ፡ ተስተካክለውና ፡ ተለይተው ፡ የታወቁ ፡ መሠረተ-ሐሳቦችን ፡ ማቋቋም ፡ ይኖርበታል ።

ይህ ፡ የመዝናኛ ፡ ደረጃም ፡ ለጉዳዩ ፡ በግድ ፡ አስፈላጊ ፡ የኾኑ ፡ ሰነድ ፡ ጽሑፎች ፡ (ዶክሜንቲሽን) ፡ ወይም ፡ የስታቲስቲክ ፡ መረጃዎች ፡ ስለሌሉ ፡ በመሠረታዊ ፡ ምርምሮች ፡ ላይ ፡ በምሉ ፡ ያረፈ ፡ ተግባር ፡ ነው ። ያሉትን ፡ በዐዋጅ ፡ የወጡ ፡ የሕግ ፡ አናቅጽ ፡ ዘርዘር ፡ በየመደባቸው ፡ ከመዘርዘሩም ፡ በላይ ፡ በመልማት ፡ ላይ ፡ ካሉ ፡ ልዩ ፡ ልዩ ፡ አገሮችና ፡ አንዳንድ ፡ በኢንዱስትሪ ፡ የዳበሩ ፡ አገሮች ፡ ከሚጠቀሙባቸው ፡ የተግባራዊ ፡ ሕግ ፡ ዝግጅቶች ፡ ጋራ ፡ ተመጣጥኖና ፡ ተመዛዝኖ ፡ ነበረ ። የኢንተርናሽናል ፡ (የመላው ፡ ዓለም) ፡ ተግባራዊ ፡ ድርጅት ፡ (በየትም ፡ አገር ፡ ‘አይ. ኤል. እ.’ በመባል ፡ በኛው ፡ ልሳን ፡ ግን ፡ ‘ኢ. ተ. ድ.’ ተብሎ ፡ ሊያጥር ፡ በሚችለው) ፡ ቃል ፡ ከዳኖችና ፡ ባቀረባቸው ፡ ሐሳቦች ፡ ተጠንተው ፡ ተመርምረዋል ። ነገር ፡ ግን ፡ ይህ ፡ ኹሉ ፡ በቂ ፡ አይደለም ፤ የተግባራዊ ፡ አካሄድ ፡ ግንኙነቶች ፡ እና ፡ ሌላም ፡ በአገሪቷ ፡ ዋና ፡ ዋና ፡ ክፍሎች ፡ በኤሪትራም ፡ ጭምር ፡ እንደነበሩት ፡ ያሉ ፡ እነዚህን ፡ የመሰሉ ፡ ጉዳዮች ፡ ኹሉ ፡ አስፈላጊነታቸውም ፡ ከፍ ፡ ያለና ፡ ዋጋ ፡ ያለው ፡ ነው ። ለኢንተርናሽናል ፡ የመጠን ፡ ደረጃ ፡ ልክ ፡ የሚገባ ፡ ዋጋቸውን ፡ ሰጥቶ ፡ ለኢትዮጵያ ፡ የተለየ ፡ ፍላጎትና ፡ ችግር ፡ የሚበጅና ፡ የሚያረካ ፡ ሕግ ፡ ነድፎና ፡ ቀርጾ ፡ ለማውጣት ፡ ሰፊና ፡ ጥልቅ ፡ ምርምሮች ፡ ረዣዥም ፡ የጥናት ፡ ጉዞች ፡ ልዩ ፡ ልዩ ፡ የተግባር ፡ ስምሪቶች ፡ (ኤንቴርፕራይስስ) ፡ ጉብኝቶች ፡ እና ፡ ብዙ ፡ የሰብሰባ ፡ ንግግሮች ፡ ኹሉ ፡ ፍጹም ፡ አስፈላጊ ፡ መቅድሞች ፡ መኾን ፡ አለባቸው ። እንደዚህ ፡ ያለው ፡ ምርምርም ፡ በርግጡ ፡ የሚያጠቃልለው ፡ በተቀዳሚ ፡ ዋና ፡ ዋና ፡ ስፍራዎችንና ፡ የተግባር ፡ ዝግጅቶችን ፡ (አንደርተኪንግስ) ፡ ቢኾንም ፡ ቅሉ ፡ የጠቅላላ ፡ አቋሙን ፡ ምሉ ፡ ትይንት ፡ በቂ ፡ በኾነ ፡ አኳኋን ፡ የሚያሳይ ፡ ይመስላል ። ውጤቶቹም ፡ ስለ ፡ ሥራ ፡ ስምሪት ፡ ገበያ ፡ ስለ ፡ ተግባራዊ ፡ ግንኙነቶች ፡ አካሄድ ፡ እና ፡ ሰፊ ፡ ሜዳ-ዐቀፍ ፡ ስለኾነው ፡ የሙያ ፡ አሠላጣጠን ፡ ጉዳይ ፡ ዘዴ ፡ ማበጀት ፡ እስቸኳይ ፡ አስፈላጊነት ፡ አረጋግጥዋል ።

በዚያን ፡ ጊዜ ፡ ከላይ ፡ የተገለጠውን ፡ የምርምር ፡ ውጤቶች ፡ ተመልክቶ ፡ ወደ ፡ ሕግ ፡ ንድፎችና ፡ ድርጅቶች ፡ የሚመልስ ፡ አንድ ፡ ትንሽ ፡ ከየሚኒስቴሩ ፡ የተውጣጡ ፡ የዐዋቂዎች ፡ (ኤክስፔርቶች) ፡ ጉባኤ ፡ መንግሥቱ ፡ መርጦ ፡ አሰልፎ ፡ ነበረ ። በዚህም ፡ ረገድ ፡ ከዚህ ፡ የሚከተሉት ፡ መሠረተ-ሐሳቦች ፡ ቀስ ፡ በቀስ ፡ ብቅ ፡ እያሉና ፡ እየጉሉ ፡ ወጡ ።

(፩) የድፍን ፡ አገሯን ፡ የተግባራዊ ፡ ጉዳይን ፡ በምሉ ፡ ከነየክፍለ-ህገሩና ፡ ከነየሰፍራው ፡ የሚገባ ፡ የተግባሩ ፡ ማስፈጸሚያ ፡ ፈሊጥ ፡ ያለው ፡ አንድ ፡ ጠቅላይ ፡ ባለሥልጣን ፡ (ሚኒስቴር) ፡ እንዲቋቋም ፡

- (፪) ይኹን፡ እንጂ፡ ይህ፡ ዐላፊነት፡ ለብሔራዊ፡ ሲቪል፡ (መንግሥት፡) አገልጋዮች፡ ወይም፡ ለጦር፡ ኅይሎች፡ እንዲዘረጋ፡ እንደማይገባ፤
- (፫) የመንግሥት፡ ሠራተኞችንና፡ የሌላ፡ የሕዝብ፡ የንግድና፡ ኢንዱስትሪ፡ ተግባር፡ ዝግጅቶች፡ ሠራተኞችን፡ በደንቡ፡ መሠረት፡ እንደ፡ ግል፡ የተግባር፡ ዝግጅቶች፡ ሠራተኞች፡ ባንድ፡ ዐይነት፡ መልክ፡ ሊያዙ፡ ማስፈለጉ፤
- (፬) ሕጉንና፡ ድርጅቱ፡ ወደፊት፡ የተራመደና፡ አስተያየቱ፡ የራቀ፡ ኹኖ፡ መገኘት፡ ቢያስፈልገውም፡ ቅሉ፡ ከግብር፡ ላይ፡ ሊውል፡ የሚችልና፡ ከእውነተኛው፡ ኹነታ፡ ያልራቀ፡ ሊኾን፡ መገባቱ፤ በዚህ፡ በኩል፡ በመጨረሻ፡ ዘመናት፡ የገቢና፡ ወጪ፡ (ባጀት፡) ምንጮች፡ ሊኾኑ፡ የሚችሉትንና፡ አኹን፡ ያለው፡ የአስተዳደር፡ ሹማዎት፡ የአሠልጣጠን፡ ትምርት፡ መጠን፡ ልክ፡ አስተያየት፡ እንዲሰጠው፡ ይገባል፤
- (፭) በ(፬) የተመለከተው፡ ጉዳይ፡ ወደፊት፡ የተግባረ-ሥራ፡ ባለሥልጣኖች፡ (የሥራ፡ ስምረቶች፡ ወይም፡ የሠራተኛ፡ ጉዳይ፡ ጽሕፈት፡ ቤቶችና፡ ሌላ፡ አገልግሎቶች) በሚያቋቁሙበት፡ ጊዜ፡ በተለይ፡ ሲገነዘቡት፡ የሚገባ፡ መኾኑ፤
- (፮) አንዳንድ፡ ጉዳዮች፡ አስቸኳይ፡ ስለኾኑ፡ አንዳንድ፡ ሕግ፡ በሥራ፡ ስምረት፡ አስተዳደር፡ ላይ፡ እንዲሁም፡ ሌላም፡ በተግባረ-ሥራ፡ ግንኙነቶች፡ ላይ፡ ሕግ፡ በማውጣት፡ ሥራውን፡ መዘመር፡ ማስፈለጉ፤ ከዚህ፡ በኋላ፡ ብቻ፡ እኩ፡ ነው፡ የመጠበቂያ፡ ሕግ፡ እንቅጾችን፡ የሥራና፡ የሙያ፡ ማሠልጠኛ፡ ሌላውን፡ የኅብረ፡ ኑሯዊ፡ ኢንሹራንስ፡ ፕላኖች፡ ከቶ፡ የመሰሉትን፡ ሳንረሳ፡ — ዝቅተኛ፡ መጠን፡ ግዴታዎች፡ የመሰናዶ፡ ቅንጅት፡ (ፕሮግራም) ለማከናወን፡ የሚቻለው፤
- (፯) ሕጎቹ፡ እስተውሎ፡ (ወይም፡ ኅሊና) በቀላሉ፡ ሊረዳቸው፡ የሚችሉ፡ መኾን፡ ሲገባቸው፡ የአተረጓጎምን፡ ጥርጣሬ፡ እስከ፡ ተቻለ፡ መጠን፡ በጣም፡ ለማሳካት፡ በቂ፡ ኹነው፡ የተዘረዘሩ፡ መኾን፡ እንዳለባቸው፤ ተስተካክለው፡ የተለዩ፡ ሕጋዊ፡ መሠረተ-ሐሳቦች፡ ከአገልግሎት፡ ላይ፡ ወደሚያውሉ፡ ደንቦች፡ መልክ፡ በቲክኒካዊ፡ ምክንያት፡ የተነሣ፡ በዐዋጅ፡ የወጡት፡ ሕጋዊ፡ ጽሑፎች፡ በራሳቸው፡ ተለይቶ፡ የታወቀውን፡ ሕዝባዊ፡ ችግር፡ አማልተው፡ ሊያጠግቡ፡ ያልቻሉ፡ እንደኾነ፡ እስካስፈለገበት፡ ድረስ፡ ተጨማሪ፡ ደንቦችን፡ ለማውጣት፡ ለሚበቃ፡ ሚኒስትር፡ ሥልጣን፡ እንዲሰጥ፡ ያስፈልጋል።

## ፫ = የድርጅት፡ ጣጣዎች ።

ከላይ፡ ያለውን፡ የመሰናዶ፡ ቅንጅት፡ እንዲሠራበት፡ ካደረጉት፡ ብዙ፡ ነገሮች፡ መካከል፡ የኢትዮጵያው፡ የነገ፡ የተግባረ-ሥራ፡ እና፡ የኅብረ-ኑሯዊ፡ ንድቆች፡ የተጣሉበት፡ መሠረቶች፡ የተቋቋሙበትን፡ ዐማሽ፡ መንፈስንና፡ የመረዳዳት፡ አስተውሎን፡ ማውሳቱ፡ ብቻ፡ በቂ፡ ነው።

<sup>3</sup> በጥቅምት፡ ፲፡ ቀን፡ ፲፱፻፶፬፡ ዓ. ም. ንጋሪት፡ ጋዜጣ፡ ሻያ፡ እንደኛ፡ ዓመት፡ ቍ፡ ፫፡ ስለ፡ መንግሥት፡ አገልጋዮች፡ (ሠራተኞች)፡ በትእዛዝ፡ ቍ፡ ፳፫/፲፱፻፶፮፡ የወጣው፡ እና፡ በንጋሪት፡ ጋዜጣ፡ ሻያ፡ ኹለተኛ፡ ዓመት፡ ቍ፡ ፮፡ ማኅሻያ፡ ትእዛዝ፡ ቍ፡ ፳፭/፲፱፻፶፭፡ ዓ. ም. ፲፳፡ ፳፫፡ እና፡ ተከታዮቹ።

በመንግሥቱ፣ እቋም፣ ውስጥ፣ የተግባረ-ሥራ፣ ጠቅላይ፣ ባለሥልጣን፣ ደንበኛ፣ መደብ፣ የት፡ ነው፡ በማለት፡ ዘለግ፡ ያለ፡ ክርክር፡ ነበረ፡ ስለድርጅትና፡ ስለሥልጣን፡ ወሰን፡ በዐዋጅ፡ የወጡት፡ የኢትዮጵያ፡ ልዩ፡ ልዩ፡ ሕጎች፡ በተለየም፡ የ፲፱፻፴፱፡ ዓ.ም. ስለሥልጣን፡ እወሳሰን፡ ትርጉም፡ ትእዛዝ፡ ቍ. ፩፡ ስለተግባረ-ሥራ፡ ጉዳይ፡ ዐላፊ፡ የኾነ፡ አንድ፡ የተለየ፡ ሚኒስቴር፡ ለማቋቋም፡ አልቻለም፡ በዘወትር፡ ልማድ፡ ግን፡ የሚያጣድፉ፡ ችግሮችን፡ ለማስወገድ፡ ያኸል፡ ድርጅት፡ ወደ፡ ማቋቋሙ፡ ዐያሌ፡ ውጥን፡ እርምጃ፡ ተደርጓል፡- በዐዲስ፡ አበባ፡ ማዘጋጃ፡ ቤት፡ ውስጥ፡ እንድ፡ የሥራ፡ መደልደያ፡ ጽሕፈት፡ ቤት፡ ነበረ፡ በፍርድ፡ ሚኒስቴር፡ ውስጥ፡ ከነበረው፡ የአማካሪ፡ ጽሕፈት፡ ቤት፡ ጋራ፡ ተግባሩን፡ የሚካፈል፡ በንግድና፡ ኢንዱስትሪ፡ ሚኒስቴር፡ ውስጥ፡ አፈሲየል-ቢጢ፡ የኾነ፡ የሠራተኞች፡ ክርክር፡ አስታራቂ፡ ቦርድም፡ ነበረ፤ የዋጋ፡ መቁጣጠርና፡ ከዚያም፡ ጋራ፡ ከተዛመዱ፡ ተግባሮች፡ ጋራ፡ የተሳሰረ፡ ቀድሞ፡ ከአይ. ኤል. አ. ጋራ፡ የአፈሲየል፡ መገናኛ፡ የነበረ፡ ስለተግባረ-ሥራ፡ ጥበቃ፡ ጉዳይ፡ እንድ፡ ትንሽ፡ ጽሕፈት፡ ቤት፡ በንግድና፡ ኢንዱስትሪ፡ ሚኒስቴር፡ ውስጥ፡ ነበረችው፡ በመገመሪያ፡ ሲመለከቱት፡ የተግባረ-ሥራ፡ አስተካክሎ፡ የማከናወኑን፡ ጉዳይ፡ ጠቅላላ፡ ሥልጣን፡ ለዚህ፡ ከላይ፡ ስሙ፡ ለተጠቀሰው፡ ሚኒስቴር፡ መሰጠቱ፡ የሚገባና፡ ባሕርያዊ፡ መስሎ፡ ቢገመትም፡ ቅሉ፡ ይህ፡ ሚኒስቴር፡ የተግባረ-ሥራን፡ ጣጣ፡ ወይም፡ ችግር፡ መፍትሔ፡ ከመፈለግ፡ ጋራ፡ ፈጽሞ፡ የማይዋደድ፡ የራሱና፡ የግሉ፡ መሠረታዊ፡ ተግባር፡ ያለው፡ መሥሪያ፡ ቤት፡ ስለኾነ፡ በመጨረሻ፡ ይህ፡ ከዚያ፡ የመደልደሉ፡ ሐሳብ፡ ተሠርዞ፡ ተጣለ፡ ከዚያ፡ የመደልደሉ፡ ሐሳብ፡ የተጣለበት፡ አንዱ፡ ምክንያትም፡ የንግድና፡ የኢንዱስትሪ፡ ሚኒስቴር፡ እንደቀጣሪ፡ ወይም፡ አሳዳሪ፡ (አሠራር) ኹኖ፡ የመንግሥት፡ ሀብት፡ ለኾኑት፡ ኢንዱስትሪና፡ ፋብሪካዎች፡ ጎላፊ፡ ስለኾነ፡ ነው፡፡

የተግባረ-ሥራ፡ ጣጣዎች፡ ፍሬ፡ ነገርነት፡ ገና፡ ቀስ፡ በቀስ፡ ብቅ፡ በሚሉበት፡ ጊዜ፡ ራሱን፡ የቻለ፡ ልዩ፡ ሚኒስቴር፡ ለዚሁ፡ ጉዳይ፡ ብቻ፡ ሲባል፡ ማቋቋሙ፡ የከንቱ፡ ጥድፊያና፡ ያልበሰለ፡ ሐሳብ፡ ከመምሰሉም፡ በላይ፡ በወጪው፡ ረገድም፡ ተገቢና፡ ትክክለኛ፡ ኹኖ፡ አልተገኘም፡ የተግባረ-ሥራ፡ የሚያስከትላቸው፡ ልዩ፡ ልዩ፡ ጥቅሞች፡ በሚጠቃለሉበትና፡ በሚዋደዱበት፡ በጠቅላይ፡ ሚኒስትሩ፡ ጽሕፈት፡ ቤት፡ የተግባረ-ሥራ፡ ክፍል፡ ወይም፡ ቦርድ፡ ይጨመርበት፡ ዘንድም፡ በጣም፡ ሲታሰብበት፡ ቂይቶ፡ ነበረ፡ ነገር፡ ግን፡ ይህም፡ መፍትሔ፡ ቅሉ፡ በጣም፡ አስቸጋሪ፡ ጉዳይ፡ መስሎ፡ ተገኘ፡ በመጨረሻው፡ በዛም፡ እነሰ፡ ከዚህ፡ ጉዳዮች፡ ጋራ፡ የተዛመዱን፡ እንደጎብረ-ነሯዊ፡ በጎ፡ አድራጎት፡ እንደገጠር፡ ልማትና፡ መረጃዎች፡ (ኮኦፒሬቲቭስ)፡ የመሳሰሉ፡ ሲያከያኹድ፡ ከነበረው፡ ሕዝባዊ፡ ኑሮ፡ እድገት፡ ሚኒስቴር፡ ጋራ፡ ይህንኑ፡ የተግባረ-ሥራ፡ ጉዳይ፡ ዐላፊነቱን፡ ለመመደብ፡ ተወሰነ፡ ቂየት፡ ብሎ፡ እንደታየውም፡ ይህ፡ ትክክለኛና፡ አጥጋቢ፡ የድልድል፡ ውሳኔ፡ ሲኾን፡ ከአንድ፡ ዕርክን፡ (ደረጃ) ላይ፡ ሲደርስም፡ እኹን፡ ባለው፡ በሚኒስቴሩ፡ የዐዋጅ፡ ሕግ፡ የሥልጣን፡ መብቱ፡ ላይ፡ በተጨማሪም፡ ተለይቶና፡ ተስተካክሎ፡ ጉልቶ፡ እንደሚዘልቅ፡ አያጠራጥርም፡ ስለዚህ፡ የተግባረ-ሥራ፡ ጉዳዮች፡ በምክትል፡ ሚኒስትርና፡ በተግባረ-ሥራ፡ ዋና፡ መሥሪያ፡ ቤት፡ ያኹን፡ አቀማመጡ፡ በሚከተለው፡ መልክ፡ ኹኖ፡ በሕዝባዊ፡ ኑሮ፡ እድገት፡ ሚኒስትር፡ ግርጌ፡ ውስጥ፡ ተደራጀ፡፡

#### ፩ኛ፡ ክፍል ፤-

የተግባረ-ሥራ፡ መመጠኛ፡ ደረጃዎች፡

#### ፪ኛ፡ ክፍል ፤-

የሕዝብ፡ ሥራ፡ ስምሪት፡ (የሠራተኛ፡ ጉዳይ ፡) ጠቅላይ፡ ጽሕፈት፡ ቤት፡

\* የ፲፱፻፴፱ ፡ ዓ.ም. ትእዛዝ ፡ ቍ. ፩፡፡

- (ሀ) ሕጋዊና፡ የኢንተርናሺናል፡ ክፍል፡ (ሀ) የሰው፡ ሥራ፡ ጉልበት፡ (ኃይል፡) ክፍል ።
- (ለ) የተግባረ-ሥራ፡ ግንኙነቶች፡ (ለሠሪና፡ ሠራተኛ፡ ጉዳይ፡) ክፍል ። (ለ) የተግባረ-ሥራ፡ መለዋወጫ፡ (ለሠሪና፡ ሠራተኛ፡ አገናኝ፡) ክፍል ።
- (ሐ) የዐቃቤ፡ ተግባረ-ሥራ፡ (አጠባበቅ፡ / ጥበቃ፡) ክፍል ። (ሐ) የውጭ፡ አገር፡ ዜጎች፡ ክፍል ።

በዚህ፡ ጠቅላይ፡ መሥሪያ፡ ቤት፡ ግርጌ፡ ውስጥ፡ (የሠራተኞች፡ ክርክሩ፡ እካል፡ የዐዲስ፡ አበባ፡ የተግባረ-ሥራ፡ ግንኙነት፡ ቦርድ፡ ራሱን፡ የቻለ፡ ልዩ፡ አቋም፡ አለው፡) የየክፍሉ-ሀገሩና፡ የያንዳንዱ፡ ስፍራ፡ የየራሳቸው፡ የሥራ፡ ስምሪት፡ ጽሕፈት፡ ቤቶች፡ ይገኙበታል። እነዚህ፡ መሥሪያ፡ ቤቶች፡ በዐዲስ፡ አበባ፡ በዲሬ፡ ዳዋ፡ በአሥመራ፡ በምጽዋዕ፡ በከረንና፡ በአቆርዳት፡ ተቋቁመዋል። እንደዚሁም፡ ለጉዳዩ፡ አስፈላጊነት፡ አጥጋቢና፡ ቀልጣፋ፡ በኾነ፡ መንገድ፡ በድፍን፡ ኢትዮጵያ፡ የተግባረ-ሥራ፡ ጠቅላይ፡ መሥሪያ፡ ቤት፡ ወኪል፡ ጽሕፈት፡ ቤቶች፡ እስከሚዘረጉ፡ ድረስ፡ ቀስ፡ በቀስ፡ ሌሎች፡ ጽሕፈት፡ ቤቶችን፡ የማቋቋሙ፡ ተግባር፡ የሚከተል፡ ነው።

ይህ፡ አቋም፡ በበለጥ፡ የቀረበው፡ በ፲፱፻፶፬፡ ዓ. ም. በወጣው፡ በሕዝብ፡ ስምሪት፡ አስተዳደር፡ (የሠራተኛ፡ ጉዳይ፡ መሥሪያ፡ ቤት፡) በወጣው፡ ትእዛዝ<sup>5</sup>፡ እና፡ እነሰ፡ ባለ፡ መልክም፡ በ፲፱፻፶፬፡ ዓ. ም. ስለተግባረ-ሥራ፡ ግንኙነቶች፡ ስለአሠሪና፡ ሠራተኛ፡ በወጣው፡ ድንጋጌ፡<sup>6</sup> ነው። ሹለቱም፡ እርምጃዎች፡ ዝግጅቱ፡ ወደፊት፡ ባስተዳደራዊ፡ ድርጊያ፡ (ማስታወቂያና፡ ደንብ)፡ ወይም፡ ባንዳንድ፡ ጉዳዮችም፡ በተጨማሪ፡ ሕጉን፡ እንዲዘረጉና፡ እንዲሰፋፋ፡ ተደርገው፡ የተቀረጹ፡ ናቸው።

### ፩ ። ሕጉ፡ ያቀፋቸው፡ ጉዳዮች ።

በዚህ፡ ላይ፡ እነዚህ፡ ሹለት፡ ሕጎች፡ በተጨማሪ፡ የያዙዋቸውን፡ ጉዳዮች፡ በበለጥ፡ አትኩሮ፡ መመራመሩ፡ ማለፊያ፡ ይመስላል።

፩ ፤ የ፲፱፻፶፬፡ ዓ. ም. የሕዝብ፡ ሥራ፡ ስምሪት፡ አስተዳደር፡ (የሠራተኛ፡ ጉዳይ፡ መሥሪያ፡ ቤት፡) ትእዛዝ፡ (ቁ. ፳፮)፡ ዋና፡ ዐላማዎች፡ ለጠቅላላው፡ የኢኮኖሚክ፡ ልማት፡ የሀገሪቱን፡ የሰው፡ ሥራ፡ ጉልበት፡ ደጀኖች፡ (ሪዚርሽ)፡ አስታጥቆ፡ (ሞቢላይዝ)፡ ለማዘጋጀት፡ የሠራተኞችን፡ የሥራ፡ አከናወን፡ ወይም፡ አፈጻጸም፡ መጠን፡ ደረጃ፡ ለማሻሻል፡ እና፡ ለያንዳንዱ፡ ሰው፡ ከሚሻቸው፡ ተግባሮችና፡ ከችሎታዎቹ፡ ጋራ፡ የሚስማማ፡ ሥራን፡ ለማግኘት፡ ነው። የሠራተኛው፡ የሙያ፡ ምርጫ፡ ነጻነትና፡ የቀጣሪው፡ በገዛ፡ ፈቃዱ፡ ወድዶና፡ ተስማምቶ፡ ለሥራ፡ የመቅጠር፡ መሠረተ-ሐሳቦች፡ በምሉ፡ የተጠበቁ፡ ናቸው። በሥራ፡ አፈላለግ፡ ረገድ፡ መንግሥት፡ መልክም፡ (በኃ)፡ አገልግሎቶቹን፡ ያበረክታል፡ ይህም፡ ማለት፡ በሕዝብ፡ የሥራ፡ ስምሪት፡ አስተዳደር፡ ትእዛዙ፡ የተቋቋሙበት፡ አገልግሎቶችና፡ በዚህ፡ አንቀጽ፡

<sup>5</sup> የታኅሣሥ፡ ፩፡ ቀን፡ ፲፱፻፶፩፡ ዓ. ም. ነጋሪት፡ ጋዜጣ፡ ቁ. ፭፡ ሻያ፡ ሹለተኛ፡ ዓመት፡ ስለ፡ ሕዝብ፡ ሥራ፡ ስምሪት፡ አስተዳደር፡ (የሠራተኛ፡ ጉዳይ፡ መሥሪያ፡ ቤት)፡ የወጣው፡ ደንብ፡ ቁ. ፩።

<sup>6</sup> የነሐሴ፡ ፪፡ ቀን፡ ፲፱፻፶፬፡ ዓ. ም. ነጋሪት፡ ጋዜጣ፡ ሻያ፡ እንደኛ፡ ዓመት፡ ቁ. ፲፭።

<sup>7</sup> በዚያው፡ ገጾች፡ ፩፻፴፮፡ እና፡ ተከታዮቹ፡ ፓርላማው፡ ከተቀበለው፡ በኋላ፡ ፲፱፻፶፮፡ ዓ. ም. ነጋሪት፡ ጋዜጣ፡ ፳፻፶፡ የ፲፱፻፶፮፡ ዓ. ም. ዐዋጅ፡ ቁ. ፪፻፲፡ ተብሎ፡ በጥቅምት፡ ፳፩፡ ቀን፡ ዓመት፡ ቁ. ፫፡ የወጣው።



በ፪ኛው ፡ ክፍል ፡ የተገለጠው ፡ ነው ። በተጨማሪም ፡ አስተዳደሩ ፡ የሚከተሉትን ፡ እንዲያከናውን ፡ ይገደዳል ፡-

(ሀ) በኢትዮጵያ ፡ ውስጥ ፡ የሥራ ፡ ስምሪት ፡ አቀማመጥን ፡ እንዲያጠናና ፡ እንዲመለከት ፡ እንዲሁም ፡ ስታቲስቲኮች ፡ እንዲያዘጋጅ ፤

(ለ) የሥራ ፡ ስምሪት ፡ ሹኔታ ፡ እንዲሻሻል ፡ አስፈላጊ ፡ ሐሳቦችን ፡ እንዲያቀርብ ፤

(ሐ) በሙያ ፡ ምርጫና ፡ በሙያ ፡ መሠልጠን ፡ ሕዝቡን ፡ በተለይም ፡ ገና ፡ ወጣት ፡ ሰዎችን ፡ መምከር ፤

(መ) በጠቅላላውና ፡ በግል ፡ ኢክኖሚክ ፡ ፕላኒንግ ፡ በአማካሪነት ፡ ደረጃ ፡ መረዳዳት ፤

(ሠ) የገጠር ፡ መሰደድን ፡ ለመከላከል ፡ አስፈላጊውን ፡ እርምጃ ፡ ለማድረግ ፡ የሚገባ ፡ ሐሳብን ፡ ማቅረብ ፤

(ረ) ሥራ ፡ የሚፈልጉ ፡ ሰዎችንና ፡ ክፍት ፡ ሥራ ፡ ቦታዎችን ፡ በመዛግብት ፡ መዝግቦ ፡ መያዝ ፡ (ናቸው) ።

የሕዝብ ፡ የሥራ ፡ ስምሪት ፡ አስተዳደር ፡ ተጨማሪ ፡ ተግባሩ ፡ በሚገባበት ፡ ጉዳይ ፡ ሹሉ ፡ ለውጭ ፡ አገር ፡ ዜጎች ፡ የመሥሪያ ፡ ልዩ ፡ ፈቃዶችን ፡ መስጠት ፡ ነው ። በዚህ ፡ በአስቸጋሪው ፡ ግንባር ፡ ላይ ፡ የጠቅላላው ፡ መራራሳብ ፡ (ፖሊሲ) ፡ ዐይነተኛ ፡ መሠረተ ፡ ሐሳቦች ፡ የተነደቁት ፡ በ፲፱፻፶፬ ፡ ዓ. ም. በወጣው ፡ የሕዝብ ፡ ሥራ ፡ ስምሪት ፡ (የሠራተኛ ፡ አቀጣጠር) ፡ ትእዛዝ ፡ በ፲፭ኛውና ፡ በ፲፯ኛው ፡ እናቅጽ ፡ በመሆኑ ፡ ይኸውም ፡ በፈንታው ፡ በማናቸውም ፡ ሙያ ፡ የመሰማራቱን ፡ መብት ፡ ለኢትዮጵያ ፡ ዜጎች ፡ የወሰነና ፡ የሌሎች ፡ ዜጎች ፡ በሥራ ፡ መሰማራትን ፡ በመንግሥቱ ፡ ልዩ ፡ ፈቃድ ፡ መስጠት ፡ ላይ ፡ በማሳረፉ ፡ (ፍትሕ ፡ ብሔር ፡ ሕጉን ፡ አንቀጽ ፡ ፫፻፱፱ ፡ (፫) ይመለከቷል) ፡ እንደዚሁ ፡ የሚናገረውን ፡ የሕገ-መንግሥቱን ፡ ፅንሰ-ሐሳብ ፡ የሚያገለግል ፡ ነው ። የ፲፱፻፶፮ ፡ ዓ. ም. የውጭ ፡ አገር ፡ ዜጎች ፡ የሥራ ፡ ስምሪት ፡ (አቀጣጠር) ፡ ደንብ ፡ ተብሎ ፡ የሚጠራው ፡ የቅርቡ ፡ ጊዜ ፡ የሕግ ፡ ማስታወቂያ ፡ ለወደፊቱ ፡ የሥራ ፡ ስምሪት ፡ አስተዳደሩ ፡ ለውጭ ፡ አገር ፡ ዜጎች ፡ የመሥሪያ ፡ ልዩ ፡ ፈቃዶችን ፡ የሚሰጥበትን ፡ ወይም ፡ የሚነፍግበትን ፡ ሹኔታዎችና ፡ ምክንያቶች ፡ በበለጥ ፡ አብራርቶ ፡ ይገልጻል ። የዚህ ፡ ሕጋዊ ፡ ማስታወቂያ ፡ ተቀዳሚ ፡ ዐላማም ፡ በሀገሪቱ ፡ ትርፍ-አፍሪ ፡ የተግባር ፡ ስምሪቶች ፡ በበለጥ ፡ የኢትዮጵያ ፡ ዜጎችን ፡ በሥራ ፡ ማሰማራቱን ፡ ጉልህ ፡ አስፈላጊነትና ፡ እንደዚህ ፡ በማድረግም ፡ የጥበብ ፡ ሙያ ፡ ችሎታቸውን ፡ ለማሳደግ ፡ ነው ። ከዚህም ፡ በላይ ፡ እጅግ ፡ ቢያንስ ፡ በመዝናኛው ፡ የመቋቋሚያ ፡ ጊዜ ፡ ውስጥ ፡ በስተኢትዮጵያውያን ፡ በኩል ፡ ለአስተውሎ ፡ አጥጋቢ ፡ የሆነ ፡ ለቀት ፡ ማድረግን ፡ በሚመለከተው ፡ ጉዳይ ፡ በውጭ ፡ አገር ፡ ዜጋ ፡ ዐዋቆች ፡ የቴክኒክ ፡ ሠራተኞች ፡ እነዚህንም ፡ በመሰሉ ፡ የሥራ ፡ አቀጣጠር ፡ ረገድ ፡ በቂ ፡ መላላትን ፡ ካላሳዩ ፡ በቀር ፡ ለወደፊቱ ፡ ለልማት ፡ የሚውል ፡ የውጭ ፡ አገር ፡ ሀብት ፡ (ኢንቬስትመንት) ፡ በቀላሉ ፡ ለማግኘት ፡ ስለማይቻል ፡ አስታራቂ ፡ ሐሳብ ፡ ይኾን ፡ ዘንድ ፡ ይህ ፡ ማስታወቂያ ፡ ወጣ ። በጥቂት ፡ መደበኛ ፡ እንቀጾች ፡ ደንቡ ፡ በተገቢው ፡ ጊዜ ፡ እነዚሁኑ ፡ የውጭ ፡ አገር ፡ ሠራተኞች ፡ የሚተኩ ፡ ኢትዮጵያውያን ፡ ማሠልጠን ፡ ማስፈለጉን ፡ ያስገድዳል ።

በነዚሁ ፡ በሕዝባዊ ፡ የሥራ ፡ ስምሪት ፡ አስተዳደር ፡ ዝርዝር ፡ የተደቀኑት ፡ ጥረቶች ፡ የኢክኖሚክ ፡ መጠን ፡ ደረጃዎችን ፡ ለማሳደግ ፡ እንዲገፋፋና ፡ ይህን ፡ በማድረግም ፡ ጠቅላላ ፡ የሥራ ፡ ስምሪት ፡ ሹኔታውን ፡ እንዲረዱ ፡ ነው ። በሌላ ፡ በኩል ፡ ደግሞ ፡ ወደዚሁ ፡ ዐላማ ፡ ለመድረስ ፡ እንዲረዱ ፡ አስተዳደሩ ፡ ደረጃ-በደረጃ ፡ ያገራቱን ፡ መላ ፡

፤ ነሐሴ ፡ ፳፮ ፡ ቀን ፡ ፲፱፻፶፮ ፡ ዓ. ም. በወጣው ፡ ኃረት ፡ ጋዜጣ ፡ ፳፫ኛ ፡ ዓመት ።

ሠራተኛ ፡ ሕዝብ ፡ የሚያቅናና ፡ የሠራተኞችን ፡ ዕድሜ ፡ ጾታ ፡ እና ፡ የሙያ ፡ ችሎታቸውን ፡ የመሰሉትን ፡ ነገሮች ፡ አስፈላጊ ፡ ዝርዝር ፡ የሚገልጥ ፡ በኢትዮጵያ ፡ ውስጥ ፡ የሰው ፡ ሥራ ፡ ኃይል ፡ የሚያሳይ ፡ ምርመራ ፡ ጥናት ፡ ማዘጋጀት ፡ ዝምሯል ። ከሌሎች ፡ የታወቁ ፡ ዝርዝር ፡ ጥናቶች ፡ ጋራ ፡ የዚህ ፡ የሰው ፡ ሥራ ፡ ኃይል ፡ ጥናት ፡ ዐላማ ፡ የሙያ ፡ አሠልጣጠንና ፡ አመራር ፡ ከጥቂት ፡ ዘመናት ፡ በኋላ ፡ ሳይቋቋም ፡ ሊቀር ፡ ከማይችለው ፡ ከነጥብረ-ኑሯዊ ፡ ዋስትና ፡ (ሶሺያል ፡ ሴኩራቲ) ፡ ዝግጅቱ ፡ ጋራ ፡ እንዲሁም ፡ ይህን ፡ ለመሳሰሉት ፡ ኹሉ ፡ ጽኑ ፡ የኾነ ፡ መሠረትን ፡ ለመጣል ፡ ነው ። የሕዝብ ፡ ሥራ ፡ ስምሪት ፡ አስተዳደሩ ፡ በ፲፱፻፶፭ ፡ ዓ . ም . በወጣው ፡ ሕጋዊ ፡ ማስታወቂያ ፡ ቀ . ፪፻፳፯ ፡ መሠረት ፡ በዐዲስ ፡ አበባና ፡ በዲራ ፡ ጻዋ ፡ ተቋቁሞ ፡ እንደሚሠራው ፡ ካለው ፡ የሥራ ፡ ስምሪት ፡ አማካሪ ፡ ኮሚቴዎች ፡ በልዩ ፡ ልዩ ፡ የሥራ ፡ ስምሪት ፡ ችግሮች ፡ ላይ ፡ ተገቢ ፡ የኾነውን ፡ የምክር ፡ ርዳታ ፡ እንዲያገኝ ፡ ተስፋ ፡ ያደርጋል ። ለቀጣሪና ፡ ለሠራተኛ ፡ ክፍሎች ፡ እኩል ፡ የድምፅ ፡ አቀራረብ ፡ መብት ፡ የሚሰጥ ፡ የሦስት ፡ ወገን ፡ ቡድን ፡ ጠባይም ፡ አለው ።

፪ ፡ የረጋና ፡ ጽኑ ፡ የኾነ ፡ የተግባራ-ሥራ ፡ አካሄድ ፡ ግንኙነቶች ፡ የክለተኛው ፡ እርምጃ ፡ በፓርላማ ፡ ከፍ ፡ ባለድምፅ ፡ ብልጫ ፡ የተሠራው ፡ የ፲፱፻፶፮ ፡ ዓ . ም ፡ የተግባራ-ሥራ ፡ ግንኙነቶች ፡ (የአሠሪና ፡ ሠራተኛ ፡ ጉዳይ) ፡ ዐዋጅ ፡ ዐላማ ፡ ነው ። በሕገ-መንግሥቱ ፡ ወይም ፡ በሌላ ፡ ሕጉ ፡ በትንኹ ፡ ነካ ፡ ብቻ ፡ የተደረገው ፡ የሚከተሉትን ፡ ችግሮች ፡ የሚመለከት ፡ ነው ፡-፡

(ሀ) የአሠሪዎች ፡ ማኅበሮችና ፡ የተግባራ-ሥራ ፡ ኅብረቶችን ፡ (የሠራተኞች ፡ ማኅበሮች) ፡ ማቋቋም ፡ በፍትሕ ፡ ብሔር ፡ ሕጉ ፡ በሚገኘው ፡ በዚህ ፡ በሚሠራበት ፡ የማኅበር ፡ ማቋቋም ፡ ሕግ ፡ መሠረት ፡ ከኹለቱ ፡ ማንኛውም ፡ ወገን ፡ በነጻ ፡ ድርጅቱን ፡ (ሊያደራጅ) ፡ ሊያቋቁምና ፡ በፌዴሬሺን ፡ እየተጠቃለሉ ፡ ሊተባበሩ ፡ ይችላሉ ። በስተተግባራ-ሥራ ፡ በኩል ፡ ኹለት ፡ ዐይነት ፡ ድርጅቶች ፡ አሉ ፡-፡ በማናቸውም ፡ ከ-ነምሳ ፡ የሚበልጡ ፡ ሠራተኞች ፡ ባሉበት ፡ ማናቸውም ፡ የተቋቋመ ፡ መሥሪያ ፡ ቤት ፡ “የፋብሪካ ፡ ትክል ፡ ኅብረት ፡” እና ፡ ለጥቃቅን ፡ ተግባርና ፡ እንዲሁም ፡ ለየሙያው ፡ የግል ፡ ልዩ ፡ ችሎታ ፡ ላሏቸው ፡ (ስፔሻሊስትስ) ፡ የሚኾን ፡ “ጠቅላላ ፡ ኅብረት ፡” ሊቋቋሙ ፡ ይችላሉ ። በኹለቱም ፡ ወገን ፡ ያሉት ፡ ድርጅቶች ፡ የአባሎቻቸውን ፡ የኢኮኖሚክ ፡ ኅብረ-ኑሯዊና ፡ ትክክለኛ ፡ በኅ ፡ ምግባር ፡ (ሞራል) ፡ ጥቅምቻቸውን ፡ ለማልማት ፡ (ለማዳበር) ፡ ሊሉ ፡ እንድ ፡ በኾነ ፡ መልክ ፡ ከሌላው ፡ ወገን ፡ ጋራ ፡ በተግባራ-ሥራ ፡ ኹነታዎች ፡ ለመከራከርና ፡ ለመስማማት ፡ ሥልጣን ፡ አላቸው ። በዚሁ ፡ ሕግ ፡ መሠረት ፡ በበለጥ ፡ የፋብሪካ ፡ ትክል ፡ ኅብረት ፡ ደረጃ ፡ ያሏቸው ፡ ጉልተውና ፡ በዝተው ፡ የሚታዩት ፡ ከ-ነምሳ ፡ የተግባራ-ሥራ ፡ ኅብረቶች ፡ በላይ ፡ ባለፉት ፡ ኹለት ፡ ዓመት ፡ ጊዜ ፡ ውስጥ ፡ ተቋቁመውና ፡ ተመዝግበው ፡ ይገኛሉ ። አባሎቻቸው ፡ ከ፴ሺሕ ፡ እንደሚበልጡ ፡ ተገምቶ ፡ ታውቋል ። ቀጣሪዎች ፡ የኢትዮጵያ ፡ የአሠሪዎች ፡ ፌዴሬሺንን ፡ (እ . ኤ . እ .) በማርች ፡ ፲፱፻፷፬ ፡ ዓ . ም . አቋቋሙ ። ኹሉም ፡ ኅብረቶች ፡ እንድ ፡ ዓመት ፡ ቀደም ፡ ብሎ ፡ በተመሠረተው ፡ የኢትዮጵያ ፡ የተግባራ ፡ ሥራ ፡ ኅብረቶች ፡ ከንፌዴሬሺን ፡ (ኢ . ተ . ኅ . ኮ . ወይም ፡ ከዚህ ፡ በፊት ፡ “የኢትዮጵያ ፡ የሠራተኞች ፡ ድርጅት ፡ እንድነት ፡ ማኅበር” ተብሎ ፡ በሚታወቀው) ጥላ ፡ ግርጌ ፡ የሚረዳዱ ፡ ናቸው ።

(ለ) ሥሩቡ ፡ (የሕግ ፡ ድርጊያው) ፡ የሥራ ፡ ኹነታዎችን ፡ ለመወሰን ፡ አውራ ፡ ዘዴ ፡ ያደረገው ፡ በነጻ ፡ ወደና ፡ ፈቅዶ ፡ የሚፈጸምን ፡ የኅብረት ፡ ክርክርን ፡

(ንግግርን) ስለኾነ፡ ስለዚህ፡ ደጋግሞ፡ ይገልጣል፡ ምንም፡ እንኳ፡ የሕዝባዊ፡ ኑሮ፡ እድገት፡ ሚኒስትር፡ በሚያስፈልግበት፡ ላይ፡ የዝቅተኛ፡ ሥራ፡ ደረጃ፡ መጠን፡ ኹነታዎችን፡ ለመቀረጥ፡ (ለመወሰን) ቢችል፡ ቅሉ፡ መንግሥቱ፡ በፈንታው፡ የራሱን፡ ጣልቃ፡ ገብነት፡ ከተለመደው፡ ግብር፡ ወጣ፡ ላሉ፡ ልዩ፡ ኹነታዎች፡ ብቻ፡ ይወስነዋል።

(ሐ) በዐዋጅ፡ በጥንቃቄ፡ ተገልጠው፡ የተወሰኑት፡ በአሳዳሪዎች፡ ወይም፡ በሠራተኞች፡ የሚፈጸሙ፡ ተገቢ፡ ያልኾኑ፡ የተግባራዊነት፡ አፈጻጸም፡ የተከለከሉ፡ ናቸው። ለአጥጋቢ፡ ብሔራዊ፡ የኢኮኖሚክ፡ ልማት፡ (እድገት) ሲባል፡ የመደጋገፍ፡ መንፈስ፡ በመካከላቸው፡ እንዲኖር፡ ተስተካክሎ፡ በሚገባ፡ የተገለጠና፡ “ሰላማዊ፡ ያቋም፡ ዝንባሌ” የኹለቱም፡ ወገኖች፡ ግዴታ፡ እንዲኾን፡ ተደርጓል። ድርጅቶቹ፡ ከፖሊቲካዊ፡ ተግባር፡ እንዲርቁ፡ ይገባቸዋል። ተገቢ፡ ያልኾኑ፡ የሥራ፡ አፈጻጸም፡ ግብሮች፡ ከተግባራዊነት፡ ግንኙነቶች፡ (የሠራተኛና፡ የአሠሪ፡ ጉዳይ) ቦርድ፡ ፊት፡ ሊቀርቡ፡ ይችላሉ። ቦርዱም፡ ጉዳዩን፡ ካመዛዘነ፡ በኋላ፡ አንዱን፡ የተለየ፡ የሥራ፡ አፈጻጸም፡ ግብርን፡ ሊከለክል፡ እና፡ ውሳኔው፡ እንዲጸና፡ ለማድረግ፡ ካስፈለገም፡ የሌላ፡ ባለሥልጣኖችን፡ ርዳታ፡ ጠይቆ፡ ያስገድዳል። በዚህ፡ ጠባይ፡ አንዳንድ፡ ኹነታዎች፡ ላይ፡ ማናቸውም፡ ድርጅት፡ በፍርዳዊ፡ ትእዛዝ፡ ሊፈርስ፡ ይችላል።

(መ) የተግባራዊነት፡ ግንኙነቶች፡ ቦርዱ፡ እጅግ፡ አውራ፡ የኾነ፡ ሌላ፡ ዋና፡ ተግባር፡ አለው። ከኹለቱ፡ ወገኖች፡ አንዱ፡— እና፡ የሕዝባዊ፡ ኑሮ፡ እድገት፡ ሚኒስትሩ፡— የኅብረት፡ ተግባራዊነት፡ ክርክርን፡ (ግጭትን) እንዲያስታርቅ፡ ሊጠሩትና፡ ሊጠይቁት፡ ይችላሉ። ከዚህም፡ በኋላ፡ ቦርዱ፡ ክርክሩን፡ በስምምነት፡ መንገድ፡ እንዲቋርጥ፡ ይፈለጋል። እነዚህ፡ ሙከራዎቹ፡ ሲወድቁ፡ ብቻ፡ ነው፡ የዳኝነት፡ አስታራቂ፡ ተግባሩን፡ ሊፈጽም፡ የሚችለው። በሕግ፡ ጭብጦች፡ ላይ፡ ብቻ፡ ወደ፡ ጠቅላይ፡ ንጉሠ፡ ነገሥት፡ ፍርድ፡ ቤት፡ ይግባኝ፡ ሊባል፡ የሚቻልበት፡ ብይኑም፡ እንደሌለው፡ ፍርድ፡ ቤት፡ ውሳኔ፡ የሚጸና፡ ኹኖ፡ የቦርዱን፡ ውሳኔ፡ ያልፈጸመ፡ ማናቸውም፡ ሰው፡ ይቀጣል። አንዱ፡ ዋና፡ ሕጋዊ፡ አንቀጽ፡ “የግባረጃ፡ ወይም፡ የመታገሻ፡ ጊዜ” የተባለው፡ የጠቡ፡ ጉዳይ፡ ለቦርዱ፡ ከቀረበበት፡ ጊዜ፡ እንሥቶ፡ ያለው፡ የፍ፡ ቀናት፡ ዕድሜ፡ ነው። በዚህም፡ ጊዜ፡ ውስጥ፡ ሥራን፡ ለማቋረጥ፡ የሠራተኛ፡ አድማ፡ ወይም፡ በቅጣት፡ መልክ፡ ሠራተኞች፡ ገብተው፡ እንዳይሠሩ፡ አሠሪ፡ ደጁን፡ መዝጋት፡ ሕጋዊ፡ ያይደለ፡ ነው። ቦርዱ፡ አብነት፡ ወይም፡ መነሻ፡ መሠረት፡ አድርጎ፡ የሚሠራበት፡ ብዙ፡ ዋና፡ ዋና፡ የሥነ፡ ሥርዐት፡ ጉዳዮች፡ በዐዋጁ፡ ተቀረው፡ የሚገኙ፡ ሲኾን፡ እኹን፡ በዝግጅት፡ ላይ፡ ያሉት፡ ቋሚ፡ ትእዛዞችም፡ በነዚህ፡ ላይ፡ ይጨመራሉ።

(ሠ) የኅብረት፡ ክርክሮች፡ ሳይኾኑ፡ የግል፡ ተግባራዊነት፡ ጠቦች፡ የተራው፡ ሕጋዊ፡ ፍርድ፡ ቤት፡ ጉዳይ፡ እንደኾኑ፡ ቀርተዋል። በሥራ፡ ላይ፡ በሚውልበት፡ ጊዜ፡ ይህ፡ የጉዳይን፡ ለያይቶ፡ አመዳደብ፡ ችግርን፡ ሊፈጥር፡ ይችላል። ልዩነቱም፡ በርግጡ፡ ምንጊዜም፡ ያልተብራራ፡ ወይም፡ ሊረዱት፡ የማይቻል፡ ነው። ደንበኛ፡ የተግባራዊነት፡ ፍርድ፡ ቤት፡ የማቋቋሚያው፡ ጊዜ፡ በእውነቱ፡ ገና፡ የደረሰ፡ አይመስልም። ስለዚህ፡ ፍርድ፡ ሚኒስትሩ፡ ከሥራ፡ ስምሪት፡ ግላዊ፡ ውሎች፡ የሚነሡትን፡ ነገሮች፡ የሚመለከት፡ “በፍርድ፡ ቤቶች፡ ውስጥ፡ የተግባራዊነት፡ ክፍሎች፡ እንዲያቋቁም” የተግባራዊነት፡

ግንኙነቶች፡ ዐዋጁ፡ አረጋግጦ፡ ይነግራል። እንደተለመደው፡ የተግባረ-ሥራ፡  
ዋና፡ መሥሪያ፡ ቤቱ፡ ለሚፈልጉ፡ በግላዊ፡ ሹን፡ በኅብረት፡ ጠቦች፡ ወይ  
ም፡ ክርክሮች፡ የምክርና፡ የአስታራቂ፡ አገልግሎት፡ ይሰጣቸዋል፤ ነገር፡  
ግን፡ በንደዚህ፡ ባሉት፡ ጉዳዮች፡ ላይ፡ ውሳኔ፡ እንዲያደርግ፡ ለዚህ፡ እስ  
ተዳደር፡ የተሰጠው፡ ሥልጣን፡ የለም።

የተግባረ-ሥራ፡ ሕግ፡ (ኮድ)፡ ምን፡ ጊዜም፡ ቢኾን፡ ከቶ፡ ሊማላ፡ የሚችል፡  
ነው፡ ተብሎ፡ ሊገመት፡ የሚቻል፡ ከኾነ፡ ከመዝመሪያዎቹ፡ ኹለት፡ ሕጉጋዊ፡ እርም  
ጃዎች፡ ወደ፡ ተማላ፡ ተግባረ-ሥራ፡ ሕግ፡ (ኮድ)፡ መጓዙ፡ በርግጡ፡ የራቀ፡ ነው።  
ኹኖም፡ ተጨማሪ፡ ዋና፡ የተግባረ-ሥራ፡ ሕጉግ፡ በዝግጅት፡ ወይም፡ በመነደፍ፡  
(ጥላን)፡ ላይ፡ ነው።

በዚህ፡ አንቀጽ፡ ውስጥ፡ ክፍል፡ ፬፡ እንደተገለጠው፡ ኹሉ፡ አነስም፡ በዛም፡  
በሥራ፡ ስምሪት፡ ውሎች፡ ላይ፡ እንዳንድ፡ ጠቅላላ፡ መሠረተ-ሐሳቦች፡ ከነሠራተ  
ኞች፡ ከአደጋ፡ መትረፋና፡ ጤና፡ አጠባበቁ፡ የዝቅተኛ፡ ደረጃ፡ መጠኑ፡ ጭምር፡  
እንዲሁም፡ የሚዛመዱ፡ የተግባረ-ሥራ፡ ልክ፡ መጠኖችን፡ ሳይቀር፡ የፍትሕ፡ ብሔር፡  
ዐዋጁ፡ በኢትዮጵያ፡ አቋቋሚል። እንደዚህ፡ ያሉትን፡ ጠቅላላ፡ መሠረተ-ሐሳቦች፡  
ወይም፡ ከዚያ፡ በታች፡ ሊወርዱ፡ የማይገባቸው፡ ተፈላጊ፡ መጠኖች፡ ደንበኛ፡ የሠ  
ርክ፡ አመለካከት፡ ብቻ፡ ሳይኾን፡ በአገሪቱ፡ ኢኮኖሚክ፡ ፍሬ፡ ጠቅላላ፡ እድገቱ፡  
ተገቢ፡ ኹኖ፡ ከተገኘም፡ ቀስ፡ በቀስ፡ መሻሻል፡ ደግሞም፡ ለመቂጣጠር፡ ወይም፡  
በልዩ፡ ልዩ፡ ተግባር፡ እንኳ፡ የዚህ፡ ዐይነትን፡ የተግባረ-ሥራ፡ መጠኖች፡ በአገልግ  
ሎት፡ እንደዋሉ፡ የሚያረጋግጥ፡ በቂ፡ የኾነ፡ የድርጅት፡ አውታር፡ ፈሊጥ፡ ማስፈለጉ፡  
ግልጥ፡ ብሎ፡ ይታያል። ልማቶች፡ እንዳሳዩት፡ እንደሌሎቹ፡ የሚለሙ፡ አገሮች፡ ሳይ  
ኾን፡ የሥራ፡ ስምሪት፡ ችግሮች፡ የተግባረ-ሥራ፡ አካሄድ፡ ግንኙነቶች፡ በበለጥ፡  
አስቸኳይና፡ አጣጣሪ፡ መሰለው፡ ስለታዩ፡ ዐይነተኛ፡ የተግባረ-ሥራ፡ ጥበቃና፡  
ቅጥጥር፡ ግንባሮች፡ በሕጋዊነት፡ የቅድሚያ፡ ዝርዝር፡ ውስጥ፡ በመጠኑ፡ ዝቅ፡  
ብለው፡ የተቀመጡ፡ ናቸው። ነገር፡ ግን፡ በጣም፡ ወደፊት፡ ተራምደው፡ የኼዱን፡  
የተግባረ-ሥራ፡ መጠኖች፡ መለመዳቸውን፡ የሚያረጋግጡ፡ ዐያሌ፡ የተዛመዱ፡  
ሕጉጋዊ፡ ዕቅዶች፡ በኢንዱስትሪና፡ በንግድ፡ ተግባር፡ የሚገኙ፡ ሠራተኞች፡ ጤንነ  
ትና፡ ከአደጋ፡ መትረፍ፡ ጥበቃን፡ በተለይ፡ እጉልቶ፡ ከማረጋገጡ፡ ጋራ፡ በልዩ፡ ልዩ፡  
የተግባር፡ ዝግጅቶች፡ ማንኛውንም፡ ሕጋዊ፡ ቅንጅት፡ መርዳት፡ የሚችል፡ የተግባረ-ሥ  
ራ፡ ምርመራ፡ አገልግሎት፡ መቋቋሙን፡ ደምድሞ፡ የመወሰኛውና፡ የመቀረጫው፡  
ጊዜ፡ ደርሷል። በመጨረሻ፡ የተነገረውን፡ ጉዳይ፡ የሚመለከት፡ ኅዳር፡ ፳፮፡ ቀን፡  
፲፱፻፶፮፡ ዓ. ም. በወጣው፡ ሕጉግ፡ የተግባረ-ሥራ፡ ፍተሻ፡ (ስለአሠሪና፡ ሠራተኛ፡  
ጉዳይ፡ መቂጣጠር) ትእዛዝ፡ ፲፱፻፶፮፡ ዓ. ም. ሲታወጅ፡ የመዝመሪያው፡ እር  
ምጃ፡ ተደረገ፡ ማለት፡ ነው።

ለሌላ፡ ተጨማሪ፡ ሕጉጋዊ፡ ዕቅድ፡ ስለሚኾነው፡ ጉዳይ፡ የሀገሪቱን፡ የሙያ፡  
ሥራ፡ ዝግጅት፡ ገና፡ ዝማሪዎች፡ ኹነው፡ ከሚሠለጥኑት፡ የሙያ፡ ሥራ፡ ተማሪዎች፡  
ጉዳይ፡ ዕቅድ፡ አዳምና፡ ሔዋን፡ (አካለ-መጠን)፡ ላደረሱ፡ (አከሎች) ሠራተኞች፡ ትምህ  
ርት፡ እንደዚህም፡ ያሉ፡ ሌሎች፡ ጉዳዮች፡ ጭምር፡ ለማሻሻል፡ ከመዘግየታቸው፡ በፊት፡  
መፍትሔዎቻቸው፡ ተጠንተው፡ መሠራት፡ አለባቸው። ከኢኮኖሚክ፡ ልማትና፡ ከወደፊት፡  
የኢንዱስትሪ፡ የንግድ፡ ወይም፡ ከሌላ፡ የተግባር፡ ስምሪቶች፡ ጉዳይ፡ ዐይነታቸውና፡ አቋ  
ማቸው፡ የሚነሡ፡ ስለኾኑ፡ እንደዚህ፡ ያሉት፡ ሕጉጎች፡ በግድ፡ የኢትዮጵያን፡ ችግርና፡

፯ ነጋሪት፡ ጋዜጣ፡ ፳፻፱፡ ዓመት፡ ቀ. ፬፡ የ፲፱፻፶፮፡ ዓ. ም. ትእዛዝ፡ ቀ. ፴፮።

ፍላጎት፡ መከተል፡ አለባቸው ። ስለዚህ፡ አኹን፡ በመዘጋጀት፡ ላይ፡ ያለው፡ የሰው፡ ሥራ፡ ጉልበት፡ ምርመራ፡ ጥናቱ፡ እና፡ ለወደፊት፡ ዝግጅት፡ ቅያስ፡ (ፕላኒንግ)፡ የሚሾኑት፡ ሌላ፡ የስታቲስቲክ፡ መደብ፡ ጥናቶች፡ እስኪፈጸሙ፡ ወይም፡ እስኪከናወኑና፡ ዋጋቸው፡ ተለይቶ፡ እስቲታወቅ፡ ድረስ፡ ሕጉ፡ መቁየት፡ አለበት ።

በዚሁም፡ ጊዜ፡ ውስጥ፡ በተዘረጋው፡ ጉዳይ፡ ላይ፡ ለማስተንተን፡ (ለማውጣት፡ ለማውረድ)፡ እና፡ ተገቢም፡ ከሾኑ፡ ተስተካክሎ፡ የተለየውን፡ የሀገሪቷን፡ ችግር፡ በሚያጠቃልል፡ መልክ፡ የሥራ፡ ፊት፡ (ሥራ፡ ዐጥቶ፡ ነው)፡ ኢንቬራንስ፡ (መድን)፡ የዕርጅና፡ ወይም፡ የዐቅም፡ ማነስ፡ (አለመቻል)፡ ኢንቬራንስ፡ (መድን)፡ የሕመም፡ ጊዜ፡ መድን፡ እንደዚህም፡ ያሉትን፡ የሕዝቡ-ኑሯዊ፡ ዋስትና፡ ቅንጅት፡ (ሲስቴም)፡ በምሉ፡ ወይም፡ በከፊል፡ ማስተዋወቂያ፡ ሳይቻል፡ አይቀርም ። ይኹን፡ እንጂ፡ አኹንም፡ ቢሾን፡ እንደዚህ፡ ያለው፡ ዝርዝር፡ መሰናዶ፡ ቅንጅት፡ ከሹሉ፡ በፊት፡ ጠንቃቃ፡ ጥናቶችን፡ ብቻ፡ ሳይሾን፡ በዚህ፡ ረገድ፡ ለሚጨበጥ፡ ማናቸውም፡ ፍቱን፡ የወደፊት፡ ንድፍ፡ ወይም፡ ቅያስ፡ በተቀዳሚ፡ የሚያስፈልጉት፡ ልዩ፡ ልዩ፡ ዐይነት፡ መጠናቸው፡ የበዛ፡ ዕርግጠኛና፡ ፍቱን፡ የመነሻ፡ መደብ፡ ጉዳዮች፡ (ዴታ)፡ ያስፈልጋሉ ።

፳ ። ከኢንቴርናሺናል፡ (ዓለም)፡ የተግባራ-ሥራ፡ ድርጅት፡  
(አይ. ኤል. አ.) ጋራ፡ ግንኙነቶች ።

(አ. ኤ. አ.) ከ፲፱፻፳፫፡ ዓ. ም. ዝምራ፡ ኢትዮጵያ፡ የኢንተርናሺናል፡ የተግባራ-ሥራ፡ ድርጅት፡ በመሾኗ፡ ከጥንቶቼና፡ ከነባሮቹ፡ አባሎች፡ አንዷ፡ ነች ። ባንድ፡ በከተማ፡ እንደ፡ ጣልያን፡ ወረራ፡ ባለ፡ መጥፎ፡ ታሪካዊ፡ አጋጣሚና፡ ባንድ፡ ፊት፡ ደግሞ፡ የአባልነቷን፡ መብት፡ የበለጠ፡ ንቅናቄን፡ በሚያሳይ፡ ማንገድ፡ እንዳትሠራበት፡ በራሷ፡ ግል፡ የልማት፡ እድገት፡ ጣጣ፡ (ጣባይዕ) ታግዳ፡ ስለነበረ፡ አብዛኛውን፡ ጊዜ፡ በአይ. ኤል. አ. ጉዳዮች፡ ለብዙ፡ ዘመናት፡ ዳ፡ (ፈራተባ) ብላና፡ ተግብ፡ ይዛ፡ ቀርታለች ። ምንም፡ እንኳ፡ በየጊዜው፡ የመንግሥቱ፡ ወኪሎች፡ (መልእክተኞች)፡ ሊላኩ፡ ቢቻልም፡ ቅሉ፡ የአሠሪዎችና፡ የሠራተኞች፡ ማኅበሮች፡ በዚያን፡ ጊዜ፡ ገና፡ ተቋቁመው፡ ስላልነበረ፡ የአሠሪና፡ የሠራተኞች፡ ማኅበር፡ ወኪሎች፡ ባለመላካቸው፡ የተገቢ፡ መልእክተኞች፡ መገኘት፡ ግዴታዎች፡ በየዓመቱ፡ በሚሰበሰቡበት፡ የጀኔቭ፡ ዓመታዊ፡ ፕባኤ፡ ላይ፡ በሚገባ፡ የተፈጸመ፡ አልነበረም ። ከዚህ፡ ምክንያት፡ የተነሣ፡ ብቻ፡ በኢንቴርናሺናል፡ የተግባራ-ሥራ፡ ገጥታ፡ (ትይንት)፡ ላይ፡ የኢትዮጵያ፡ እቋም፡ ለብዙ፡ ዘመናት፡ አንስተኛ፡ ሹኖ፡ መቁየቱ፡ በጣም፡ የሚያስደንቅ፡ እይደለም ። የአይ. ኤል. አ. ቃል፡ ኪዳንን፡ ካጸደቁት፡ አገሮች፡ ዝርዝር፡ ውስጥና፡ እነዚህን፡ በመሳሰሉ፡ ጉዳዮች፡ ሹሉ፡ የኢትዮጵያ፡ ስም፡ አለመገኘቱም፡ ይህን፡ እርምጃዋን፡ (ዝምታዋን)፡ አጥልቶ፡ አሳይቶት፡ ነበር ።

ባንድ፡ ድርጅት፡ ውስጥ፡ አባልነት፡ ሕይወትና፡ ፍቱን፡ ዕርግጠኛነት፡ ሊኖረው፡ የሚችለው፡ ያንድ፡ ላይ፡ (የጋራ) መስጠትንና፡ መውሰድን፡ ያስከተለ፡ እንደሾኑ፡ ብቻ፡ ነው ። የኢንተርናሺናል፡ የተግባራ-ሥራ፡ ድርጅት፡ ገና፡ በመልማት፡ ላይ፡ ላሉት፡ አገሮች፡ ይህንኑ፡ ጉዳይ፡ የሚደረስበትና፡ የሚቻል፡ ያደረገላቸውም፡ ከሹለተኛው፡ የዓለም፡ ጦርነት፡ ወዲህ፡ የቴክኒክ፡ ርዳታ፡ መሰናዶ፡ ቅንጅቱን፡ ነዶ፡ በተረተረላቸው፡ ጊዜ፡ ነው ። እነዚህ፡ አገሮች፡ በየጊዜው፡ ለሚያዋጡለት፡ የድርሻ፡ ክፍያ፡ ለውጥ፡ አይ. ኤል. አ. ተመጣጣኝን፡ ልግስና፡ በመላበት፡ መልክ፡ ኢትዮጵያም፡ ቅሉ፡ በልዩ፡ ልዩ፡ አጋጣሚዎች፡ እንዳተረፈችው፡ ሹሉ፡ ለነዚያው፡ አገሮች፡ መልሶ፡ ለግሳላቸዋል ። ርዳታውም፡ የገመረው፡ አካል፡ የጎደላቸውን፡ በመያ፡ ሥራ፡ ለማቋቋም፡ የሚመችበትን፡ መንገዶች፡ መርምሮ፡ ለማጥናትና፡ የኅብረ-ኑሯዊ፡ ዋስ

ትና፡ በዙል፡ ምርመራ፡ ለማድረግ፡ በ፲፱፻፶፪፡ ዓ. ም. ክረምት፡ ወራት፡ ቀደም፡ ብሎ፡ ነበረ ። ይህም፡ ጉዳይ፡ በነዚሁ፡ ግንባሮች፡ በዙል፡ ዘለግ፡ ላለ፡ ጊዜ፡ ለሠራተኞች፡ ትምህርትና፡ ለጽሕፈት፡ ሠራተኞች፡ ማሠልጠን፡ ልዩ፡ ያዋቂ፡ ልኡካኖችን፡ በመላክ፡ ተደግፎ፡ ቄደቶ፡ ነበረ ። ጳላም፡ ወደ፡ ኤውሮጳና፡ ወደ፡ አፍሪቃ፡ የአይ. ኤል. ኤ. ልዩ፡ የትምህርት፡ ዝግጅቶች፡ በዐያሌ፡ የኾኑ፡ ኢትዮጵያውያን፡ ሹማምት፡ ተልከው፡ ነበረ ። በዚህን፡ ጊዜ፡ ደንበኛና፡ ጠቃሚ፡ የኾኑ፡ ግንኙነቶች፡ በጀጅግ፡ ካለው፡ የአይ. ኤል. ኤ. ጠቅላይ፡ ሰፈር፡ ጋራ፡ ብቻ፡ ሳይኾን፡ በላጎስና፡ በዳር-ኤስ-ሰላአም፡ ከሚገኙት፡ የድርጅቱ፡ የአፍሪቃ፡ ክፍለ-ሀገር፡ ጽሕፈት፡ ቤቶች፡ ጋራም፡ እየጠበቀ፡ ሼዶ ። ለኢትዮጵያ፡ የሕጎችና፡ የደንቦች፡ ንድፎች፡ የሚያገለግሉ፡ ብዙ፡ አስተያየቶች፡ ከጀጅግ፡ ተልከው፡ ነበረ ። አብዛኛውን፡ ጊዜ፡ የነገ፡ የተግባራ-ሥራ፡ ፈቃሾች፡ (ኢንሰፔክቲቮች) ሊገኙባቸው፡ ለሚገባ፡ ለዐሜሪካ፡ የትምህርት፡ ዝግጅቶች፡ (ኮርሰስ) ግብዣዎች፡ ከዳር-ኤስ-ሰላአም፡ ለተግባራ-ሥራ፡ ሹማምት፡ መጠላቸው ። በወዲስ፡ አበባ፡ ውስጥ፡ የሥራ፡ ስምሪት፡ ጽሕፈት፡ ቤቶችን፡ ለማቋቋምና፡ የሰውን፡ ሥራ፡ ጉልበት፡ የወደፊት፡ አመራር፡ ዝግጅት፡ ቅያስ፡ ለማደራጀት፡ አንድ፡ የአይ. ኤል. ኤ. ልዩ፡ ዐዋቂ፡ ካሥር፡ ወር፡ ለበለጠ፡ ጊዜ፡ እነሆ፡ በመድከም፡ ላይ፡ ይገኛል ። እነዚህና፡ የነዚሁ፡ ዐይነት፡ መሰሎች፡ ተጨማሪ፡ የመሰናዶ፡ ቅንጅቶች፡ በዝግጅት፡ ላይ፡ ይገኛሉ ። ከዚህም፡ በላይ፡ ከልማት፡ እድገቶቿ፡ የተነሣ፡ በአይ. ኤል. ኤ. እንቅስቃሴዎች፡ ውስጥ፡ ኢትዮጵያ፡ ልታበረክት፡ የሚገባትን፡ የሥራ፡ ክፍል፡ መገንዘብ፡ ዝምራለች ። (እ. ኤ. ኤ.) በ፲፱፻፷፪፡ ዓ. ም. በተደረገው፡ ዓመታዊ፡ ፍጆታ፡ ስብሰባ፡ ላይ፡ ኢትዮጵያ፡ በኹለት፡ የመንግሥት፡ መልክተኞች፡ ተመልካችነት፡ ደረጃ፡ የተወከለች፡ ነበረች፡ የተግባራ-ሥራ፡ ግንኙነት፡ ዐዋጅ፡ ገና፡ ባለመውጣቱ፡ የአሠሪዎችና፡ የሠራተኞች፡ ወኪሎች፡ ገና፡ አልተገኙም፡ ነበረ፡ እንዲሁም፡ የዚያን፡ ጊዜ፡ የአሠሪዎች፡ ማኅበሮችንና፡ የሙያተኞች፡ ኅብረቶችን፡ ለማቋቋም፡ ገና፡ አልተቻለም፡ ነበረ ። (እ. ኤ. ኤ.) በጁን፡ ፲፱፻፷፫፡ ዓ. ም. በ፵፯ኛው፡ ጉባኤው፡ ስብሰባ፡ ምንም፡ እንኳ፡ የመልክተኞቹ፡ ቊጥር፡ ትንሽም፡ ቢኾን፡ በአባልነቷ፡ ረዥም፡ ዘመናት፡ ውስጥ፡ ለመዝመሪያ፡ ጊዜ፡ ኢትዮጵያ፡ በሕዝባዊ፡ ኑሮ፡ እድገት፡ ሚኒስትሩ፡ በሚመራ፡ ምሉ፡ በኾነ፡ ከሦስቱም፡ ወገኖች፡ በተውጣጡ፡ መልክተኞች፡ ተወክላ፡ ነበረ ። በንግግራቸውም፡ ሚኒስትሩ፡ ተከናውነው፡ ስለነበሩት፡ ጉዳዮች፡ መሠረተ-ሐሳብ፡ ለመጥቀስ፡ ለተጨማሪ፡ አድራጎት፡ የታቀደውን፡ የወደፊት፡ ንድፍ፡ ዋና፡ ዋና፡ አቋሞች፡ አጠቃላሉ፡ ለመናገር፡ ከመቻላቸውም፡ በላይ፡ ከዚህ፡ ግርጌ፡ የተዘረዘሩትን፡ የአይ. ኤል. ኤ. አራት፡ ቃል፡ ኪዳኖች፡ እጽድቀው፡ እንደተቀበሉ፡ አሳስበዋል፡-

- (፩) የማኅበር፡ (ዕርባ) መብት፡ እ. ኤ. ኤ. ፲፱፻፷፩፡ ዓ. ም. (ቍ. ፲፩)፤
- (፪) የማኅበርተኛነት፡ ነጻነትና፡ ማኅበርን፡ ስለማደራጀት፡ መብት፡ መጠበቅ፡ እ. ኤ. ኤ. ፲፱፻፵፰፡ ዓ. ም. (ቍ. ፱፯)፤
- (፫) የሥራ፡ ስምሪት፡ አገልግሎት፡ እ. ኤ. ኤ. ፲፱፻፵፰፡ ዓ. ም. (ቍ. ፱፰)፤
- (፬) ለመደራጀትና፡ የኅብረት፡ ክርክር፡ እ. ኤ. ኤ. ፲፱፻፵፱፡ (ቍ. ፶፰)፡ ናቸው።

እነዚህ፡ ተቀብሎ፡ ማጽደቆችን፡ በግዴታዎቹ፡ የተቋቋሙትን፡ የመጠን፡ ልክ፡ ደረጃዎችን፡ ከግብር፡ ላይ፡ ለማዋል፡ አባል፡ መንግሥታት፡ የገቡባቸው፡ ግዴታዎች፡ ስለኾኑ፡ ይህ፡ አድራጎት፡ ሌሎች፡ ይህንኑ፡ የመሰሉ፡ ክንውኖችን፡ ማስከተሉ፡ አይጠረጠርም ። የኢትዮጵያ፡ መልእክተኞች፡ በዐያሌ፡ ኮሚቴዎች፡ አባል፡ እየኾኑ፡ እንዲቀመጡ፡ ተመርጠው፡ ነበረ፡ እንዲሁም፡ እኹን፡ አንዱ፡ ኢትዮጵያዊ፡ ያስተዳዳሪው፡ (የገዥው፡ ወይም፡ አዛዥ) አካል፡ ምክትል፡ አባል፡ ናቸው።

ከኢንተርናሽናል፡ ተግባራ-ሥራ፡ ጽሕፈት፡ ቤት፡ ልዩ፡ ልዩ፡ ክፍሎች፡ ጋራ፡ ስመገኘትና፡ የተጨማሪ፡ ልማትና፡ ቴክኒክ፡ ዝርዝር፡ ጉዳዮችን፡ ሰፋና፡ ዘርጋ፡ አድርጎ፡ ለመነጋገር፡ ጉባኤው፡ መልካም፡ አጋጣሚ፡ ኾነ፤ ይህም፡ ኹሉ፡ የወደፊት፡ የቀረበ፡ መረዳዳት፡ ጉዳዩን፡ የሚዘረጋ፡ ነው። ከተከናወኑት፡ ልዩ፡ ልዩ፡ ጉዳዮች፡ መካከል፡ ችሎታ፡ ላላቸው፡ የብሔራዊ፡ ባለሥልጣኖች፡ የአይ. ኤል. አ. ቃል፡ ኪዳኖችንና፡ ተጠንቀው፡ የቀረቡት፡ ሐሳቦችን፡ ስለመቀበል፡ ባለው፡ ጉዳይ፡ ረገድ፡ ዐያሌ፡ ዘመናት፡ በኢትዮጵያ፡ ያመጣበትን፡ መዘግየት፡ በተሻለና፡ ባቋራጭ፡ መንገድ፡ ለማስተካከል፡ የምትችልበት፡ ፈሊጥና፡ ዘዴ፡ ተዘጋጅቶ፡ እንዲወጣ፡ ተደርጓል።

በዚህም፡ በኩል፡ ቢኾን፡ (እ. ኤ. አ.) በ፲፱፻፷፩፡ እና፡ በ፲፱፻፷፪፡ ዓ. ም. በጸደቁት፡ ጉዳዮች፡ ከሥራ፡ ላይ፡ የማዋሉ፡ ተግባር፡ ደኅና፡ የተዘመረ፡ ሲኾን፡ (እ. ኤ. አ.) በ፲፱፻፷፰፡ እና፡ በ፲፱፻፷፱፡ ዓ. ም. የጸደቁት፡ ጉዳዮችም፡ ቀጥለው፡ ይመጣሉ። ስለዚህ፡ እሊህን፡ ጉዳዮች፡ በንቁ፡ መንፈስ፡ ለመከታተል፡ ሲባልም፡ በተግባራ-ሥራ፡ ዋና፡ መሥሪያ፡ ቤት፡ ውስጥ፡ ለድርጅቱ፡ የሚከፈሉ፡ መዋዕሎችን፡ በጊዜው፡ ከመክፈል፡ አንሥቶ፡ እስከ፡ ማሠልጠኛ፡ ዕቅዶችን፡ ማስፈጸም፡ ድረስ፡ ያለውን፡ የአይ. ኤል. አ. ግንኙነት፡ ጉዳይ፡ ብቻ፡ የሚከታተል፡ አንድ፡ ስለጉዳዩ፡ የተለየ፡ ችሎታና፡ ዕውቀት፡ ያለው፡ (ስፔሺያሊስት) ሰው፡ ተሹሟል። በዚያው፡ በስፍራው፡ ላይ፡ ተገኝቶ፡ ስለኢንተርናሽናል፡ የተግባራ-ሥራ፡ ድርጅት፡ የተለዩና፡ ጉልሕ፡ አቋሞች፡ እስፈላጊ፡ መምሪያ፡ ሐሳቦችንና፡ መረጃዎችን፡ ለመቀበል፡ ይኸው፡ ሹም፡ በዚህ፡ ዓመት፡ ውስጥ፡ ወደ፡ ጀኔቫ፡ ኪዶ፡ ለዐያሌ፡ ሳምንቶች፡ በዚያው፡ ይሰነብታል።

(እ. ኤ. አ.) በዲሴምበር፡ ፲፱፻፷፩፡ ዓ. ም. ኹለተኛው፡ የአፍሪቃ፡ ክፍለ-ሀገር፡ የኢንተርናሽናል፡ ተግባራ-ሥራ፡ ድርጅት፡ ጉባኤ፡ በዝነኛው፡ ያዲስ፡ አበባ፡ አፍሪቃ፡ አዳራሽ፡ የተከፈተው፡ በግርማዊ፡ የኢትዮጵያ፡ ንጉሠ፡ ነገሥት፡ ነበረ። በጉባኤው፡ ተካፋይ፡ ለነበሩት፡ ከሠላሳ፡ የአፍሪቃ፡ አገሮች፡ በላይ፡ — ማለት፡ መንግሥትን፡ አሠሪዎችንና፡ ሠራተኞችን፡ ለሚወክሉ፡ — መልክተኞች፡ ካደረጉላቸው፡ ንግግር፡ መካከል፡ የሚከተለውን፡ አስገንዘቡ፡—

“ባሬ፡ ሕዝቡን፡ ገመልካም፡ የኑር፡ ደረጃ፡ ለማድረስና፡ ይህንኑም፡ ደኅና፡ አድርጎ፡ ለመጠበቅ፡ የሚያገኙለው፡ ርቀዕ፡ የኾነ፡ የገቢ፡ ሀብትን፡ እከፋፈልን፡ በሚያረጋግጥለት፡ ሚዛናዊ፡ የሆኑ፡ የዕፅዮ-ኢኮኖሚክ፡ ልማት፡ እጅግ፡ በሚያስፈልግበት፡ ሰዓት፡ ላይ፡ አፍሪቃ፡ ይገኛል። እንደዚህ፡ ያለው፡ ልማት፡ ሲያንጸው፡ የሚገባው፡ ኹለቱም፡ የባሕርይና፡ የሰው፡ ምንጮች፡ ያሉ፡ ስለኾነ፡ ከገለጥንላችኹ፡ ግቦች፡ ለመድረስ፡ እንችላለን። ዘንድ፡ እነዚህንም፡ ምንጮች፡ ከሥራ፡ ላይ፡ ለማዋል፡ ዘዴና፡ ፈሊጥ፡ መፈለጉ፡ ተግባራችንና፡ ጥረታችን፡ ነው።”

ይህም፡ አንቀጽ፡ የተጣፈው፡ ቀጥራቸው፡ ሠርዝ፡ እያደገ፡ ለሚኼደው፡ ጉዳዩን፡ ጉዳያችን፡ ለሚሉት፡ ሕዝብ፡ የኢትዮጵያን፡ ተግባራ-ሥራ፡ መራሐሳብ፡ ጠቅላላ፡ ዐላማዎችን፡ ከፈት፡ ግንዱ፡ ለማድረስ፡ ሲባል፡ የተፈጸመውን፡ ወይም፡ ገና፡ ሳይፈጸም፡ የቀረውን፡ ጉዳይ፡ ኹሉ፡ ሲያስረዳ፡ ሳይችል፡ አይቀርም፡ በሚለው፡ መንፈስ፡ ነው።





# ARTICLES

## AN INTRODUCTION TO LABOUR DEVELOPMENTS IN ETHIOPIA

by Georg Graf von Baudissin  
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### I. The Background to Labour Policy

Ethiopia is particularly favoured by its geographical position, climate, and agrarian and mineral wealth. It has, on the Red Sea, two medium-sized ports suitable for modern import and export (Massawa and Assab) and further access to the sea through Djibouti. Road and rail provide sufficient communication between the coast and the interior. The modern aviation services of Ethiopian Air Lines link the capital and other cities with Kenya in the south, Aden to the east, Lagos in West Africa, and to the north, Western Europe. The good rainfall and moderate highland situation at an average distance of approximately 1,000 km. from the equator means that agriculture, stock-raising and forestry are possible throughout this Empire of over a million square kilometers, with the exception of a few low-lying valleys. Accordingly, about 90 per cent of the estimated 20 million population have remained on the land and in the rural occupations. This does not amount to overpopulation.

As Ethiopia modernises its traditional agricultural methods, it may well become an African granary; but at present its exports are modest. However, agriculture is only one part of the potential wealth. Great treasures lie below the surface, exploited on a small scale, but mostly either just discovered or not even explored.

Aware of their country's great economic resources, and of nature's generosity, the inhabitants have at no time been under any particular pressure to improve their methods of work and so raise the general level of productivity more than seemed necessary in order to satisfy their needs — which were small. The relative immunity from disturbance by external influences, quarrels or conquests, may also have contributed to this self-sufficiency and satisfaction with inherited conditions which have long prevailed. So for many years Ethiopia lacked the natural motives for a rapid development similar to that which has carried many countries in the northern hemisphere to industrialisation and world trade; and even today the country is only entering the epoch of economics and technology.

Until recently, therefore, labour, in the modern sense, and everything connected with it was an idea which had still to find its way into the national consciousness. The Revised Constitution of Ethiopia of 1955, the one now operative, does not even mention "labour", to which Constitutions in other countries devote whole chapters. It speaks only once of "occupation". Also in public affairs, there is no ministry or other statutory body dealing specially with labour questions, although in the last few years a start has inevitably been made in such fields as placement and the settlement of labour disputes. The increasing importance of manpower for development of the country's economy and

resources was only recognised reluctantly and by degrees; but finally the inevitable conclusions were drawn.

It may be of interest to spend a few moments on the exception long provided by the province of Eritrea. Apart from its position along the Red Sea, that section of the country is far less generously endowed with worldly goods than Ethiopia proper. But Eritrea was a colonial area for many years; after the Second World War it was given a special status, similar to that of a unit in a Federation, with legislative powers in several fields including labour law. Not until the end of 1962 was it fully integrated into the Empire of Ethiopia.<sup>1</sup> Consequently, there are still labour regulations effective in Eritrea going back to 1922, though they have been revised and consolidated in the Eritrean Employment Act of 1958. That measure, until further notice, provides the statutory basis for a regional labour administration, some minimum conditions of work and even a slight degree of labour protection.<sup>2</sup> On the whole, however, these provisions have not been strikingly successful; the labour administration is a relatively modest set-up which may be adjusted to the general standards achieved in the rest of the Empire at the moment. The efforts made by the Ethiopian Government to learn from such experience in building up its own labour legislation and administration in order to avoid the mistakes which stem from using foreign patterns, will be described in due course.

The industrialisation which gradually occurred during the post-war years affected almost exclusively a few of the more important cities, such as Addis Ababa and Dire Dawa. Besides a number of large establishments operated by public authorities, industrial undertakings and commercial firms sprang up in the cities and in some rural districts, creating an ever-increasing demand for all kinds of manpower. Cotton mills, tobacco and sugar plantations, breweries, cement works and other installations were established and now include a number of undertakings employing thousands of workers, women as well as men. Many new industrial establishments are being built or have been planned. Furthermore, commerce is expanding, the number of retail establishments has risen considerably, and communications and travel have intensified with all the ancillary services and employments involved. Although no statistical data are available, the total number of persons employed outside the traditional rural occupations must be over 200,000 and is noticeably increasing.

This industrial growth brought the Government up against the problems which, to some extent, every nation must face as soon as industrialisation begins. It was Ethiopia's secular introversion which so long deferred the encounter with the age of technology and made the problems more complex when the event occurred. An additional handicap was the fact that the industrialisation confined itself mainly to a few centres instead of spreading throughout the country.

The primary problems before the Ethiopian Government were:

- (1) How to reduce the unemployment which had arisen in the big cities, or at least to prevent its further increase;
- (2) How to establish labour-management relations which would be appropriate to both present and future undertakings — industrial or other — and ensure stability without hampering economic development, and at the same time meet the growing needs of the wage-earning class;

1. By Order No. 27 of 15 November 1962.

2. *The Eritrean Gazette*, Supp. No. 5, 23 May 1958.

- (3) How to produce an efficient indigenous work force which would be as independent as possible of foreign advisers and assistance.

All three questions arose, by themselves so to speak, out of the unusually sudden transition from a primitive secluded economy to the modern economic forms of the technological age. These, once thought out and brought nearer to solution, led to many other problems, mostly long-term, which ought to have been taken into account from the beginning. This second category includes problems of workers' health and safety, general education, vocational training, and social security.

The Ethiopian Constitution of 1955 provided a reasonably satisfactory framework for the transmission of such ideas. All Ethiopians have equal civil rights and equal protection under the law. Freedom of movement and assembly also are ensured to everyone. The citizen's right to choose his occupation freely and to join associations can only be restricted by legislation. There is a general right of petition to the Emperor.

Other sources of policy are as follows:

- (1) The Slavery Abolition Proclamation No. 22, 1942;
- (2) The Factories Proclamation of 1944, an enabling measure under which the Minister of Commerce and Industry can issue regulations with respect to labour protection in factories. No use has yet been made, however, of that power to issue subsidiary legislation;
- (3) The Civil Code Proclamation of 1960. As in some European countries, in addition to the general rules regarding employment, this includes a number of minimum labour standards. Particularly, Chapter XVI of the Civil Code lays down provisions on the conclusion of individual contracts of employment and collective agreements, the general contents and character of the employment relationship, the grounds for and effects of termination, holidays, absence and sickness pay. Other clauses deal with the employers' obligations in connection with employment accidents or occupational diseases. Another chapter (III) contains provisions on associations which were to take on some importance when employers' organisations and trade unions came to be established;
- (4) A few other relevant provisions were to be found in various special laws;
- (5) Customary law is also of some importance.

## II. The Approach to Modern Labour Legislation

In the above circumstances, anyone who contemplated building up a realistic and integrated body of labour legislation and creating, as far as possible, unified machinery for its application and supervision, had to work out a concrete programme and specific principles for the purpose.

The first step could only consist of basic research, since practically no relevant documentation or statistical material was on hand. Apart from a thorough inventory of the existing statutory provisions, a comparison was made with the systems of labour legislation adopted in various other developing nations and some of the industrial countries. The Conventions and Recommendations of the International Labour Organisation (I.L.O.) were also examined. But all this was not enough; just as important were effective

economic and working conditions, labour-management relations and other similar matters as they existed in the more important parts of the country, including Eritrea. Extensive investigation, long journeys, visits to various enterprises, and many conferences were all an indispensable prelude to legislation which, with all due regard for international standards, had to be shaped to meet the special needs of Ethiopia. Such a survey could of course only cover the most important places and undertakings in the first instance, but it seemed to produce a sufficiently complete picture of the general situation. Its results confirmed the urgency of measures regarding the employment market, management-labour relations, and the wide field of vocational training.

The Government then set up a small inter-ministerial group of experts which was to review the results of the survey described above and convert it into proposals for legislation and organisation. In this connection the following principles gradually emerged:

- (1) All labour matters throughout the country should be handled by *one* central authority (ministry) with appropriate regional and local machinery;
- (2) This responsibility should, however, not extend to civil servants<sup>3</sup> or the armed forces;
- (3) Employees of government and other public commercial and industrial undertakings should, as a rule, be treated on the same footing as employees of private undertakings;
- (4) The legislation and organisation should be progressive but realistic; in this connection, regard must be given to probable budgetary resources in future years and to the current level of training of administrative officials;
- (5) Item (4) must be taken into account in particular when establishing future labour authorities (employment offices and other services);
- (6) In view of the urgency of certain tasks, a start should be made with a law on employment administration and another on labour relations; only subsequently should protective provisions, minimum conditions of work and vocational training programmes be tackled — not to mention social insurance plans;
- (7) The laws must be easy to understand but detailed enough to keep doubts about interpretation down to a minimum; if for technical reasons the statutory provisions themselves could not fully satisfy the marked popular need for specific translation of legal principles into practical rules, a competent minister should be empowered as far as necessary to issue subsidiary regulations.

### III. Organisational Questions

Among the many factors that contributed to implementation of the above programme, suffice it to mention the pioneer spirit and sense of co-operation with which the foundations of Ethiopia's future labour and social structure were established.

There was a long debate as to the proper place for a central labour authority in the machinery of government. The various Ethiopian statutes on organisation and jurisdic-

3. Central Personnel Agency and Public Service Order No. 23, of 1961, *Negarit Gazeta*, 21st Year, No. 3, 20 October 1961, and Amending Order No. 28 of 1962 *Negarit Gazeta*, 22nd Year, No. 6, pp. 33 et seq.

tion, particularly the Definition of Powers Order, No. 1, of 1943, had failed to make any particular ministry responsible for labour matters. In practice several initial steps towards organisation had been taken to cover the most urgent needs: there was a placement office under the Addis Ababa Municipality; there was a semi-official Disputes Board in the Ministry of Commerce and Industry that shared the function of settlement with an advisory office in the Ministry of Justice; in connection with price control and related functions there was a small office for matters of labour protection in the Ministry of Commerce and Industry, which originally was also the official contact with the I.L.O. To give this latter Ministry general competence for labour regulation seemed at first sight natural, but this idea was finally rejected because the Ministry had its own basic function, not entirely identical with that of solving labour problems; and also because it was responsible, as employer, for a number of state-owned undertakings.

With the importance of labour problems still only gradually emerging, the establishment of an independent ministry was thought premature and also unjustified on the grounds of cost. Consideration was long given to the inclusion of a labour department or board in the Prime Minister's Office, where the various particular interests involved might have been co-ordinated but this solution seemed too cumbersome. Finally it was decided to place responsibility with the Ministry of National Community Development, which already handled some more or less related matters such as social welfare, rural development and co-operatives. As became still more evident at a later stage, this was a sound decision and at some point it will no doubt be formally reflected and confirmed by an addition to the Ministry's present statutory terms of reference.<sup>4</sup> Accordingly, the central authority for labour affairs was organised under the Minister of National Community Development, with the Vice-Minister and the Head of the Department of Labour, consisting of, but under current review:

**1st Division:****Labour Standards**

- (a) Legal and International Section.
- (b) Labour Relations Section.
- (c) Labour Protection Section.

**2nd Division:****Central Public  
Employment Office**

- (a) Manpower Section.
- (b) Labour Exchange Section.
- (c) Foreigners' Section.

Below this central establishment (in which the disputes organ, the Labour Relations Board of Addis Ababa, has a special independent position) come the regional and local employment offices. These have already been set up in Addis Ababa, Dire Dawa,<sup>6</sup> Asmara, Massawa, Keren and Agordat, and others will gradually follow in a flexible way until a network of the Labour Department's agencies covers the whole of Ethiopia.

This structure is presented mainly in the Public Employment Administration Order of 1962<sup>5</sup> and to a minor extent in the Labour Relations Decree of 1962.<sup>7</sup> Both measures are so framed that in the future the machinery can be extended by administrative action or, in certain cases, by subsidiary legislation.

4. Order No. 15, of 1957.

5. Public Employment Regulations No. 1, *Negarist Gazeta*, 22nd Year, No. 5, of 10 December 1962.

6. *Negarist Gazeta*, 21st Year, No. 18, of 5 September 1962.

7. *Ibid.*, pp. 136 et seq. Promulgated, after adoption by Parliament, as a Proclamation, No. 210 of 1963, *Negarist Gazeta*, 23rd Year, No. 3, of 1 November 1963.

## IV. Contents of the Legislation

It seems advisable here to examine the further contents of those two laws more closely.

1. The main objectives of the Public Employment Administration Order of 1962 are to mobilise the country's manpower reserves for general economic development, to improve the workers' level of performance, and to provide each one with a job corresponding to his wishes and abilities. The principles of free choice of occupation by the worker and voluntary engagement by the employer are fully maintained: the Government merely offers its good services with a view to placement, i.e., the services of the Public Employment Administration set up by the Order and described in Part III of the present article. In addition the Administration is required:

- (a) to study and observe the employment situation in Ethiopia and to compile statistics upon it;
- (b) to make proposals for the improvement of the employment situation;
- (c) to advise the public, and especially young persons, regarding choice of vocation and vocational training;
- (d) to co-operate in an advisory capacity in public and private economic planning;
- (e) to propose action to prevent rural exodus;
- (f) to maintain registers of persons seeking employment and of vacant posts.

A further function of the Public Employment Administration is to issue, in all appropriate cases, work permits to foreign nationals. The basic principles for the general policy in that difficult field are established by Articles 15 and 17 of the Public Employment Order of 1962, which accordingly reflect the constitutional concept that the right to engage in any occupation is limited to Ethiopian subjects and employment of others needs the Government's special permission (see Article 389 (3) of the Civil Code). The recent Legal Notice, called Foreign Nationals Employment Regulations of 1964,<sup>8</sup> has defined more closely the terms under which the Employment Administration shall grant work permits to foreign nationals or refuse to do so in the future. That Legal Notice is primarily designed to reconcile the obvious need for employing more Ethiopian nationals in the country's profit-making enterprises and to raise their skills correspondingly, with the expectation that certain important future investments from abroad cannot be easily obtained without sufficient flexibility on the Ethiopian side as regards reasonable concessions, with respect to the employment of foreign experts, technicians, etc., at least during the first period of establishment. The Regulations require by a number of provisions the training of Ethiopians who may replace such foreign staff in due time.

The whole idea behind those efforts made by the Public Employment Administration is to contribute to the raising of economic standards and thus to help the general employment situation. As another means to that end, the Administration has started to prepare a manpower survey in Ethiopia which is to cover, step-by-step, the whole working population of the country and to disclose essential details of such things as age, sex, and skills of the workers. Together with other data, this manpower survey is designed to lay a sound foundation for such matters as occupational training and guidance as well as any social security system which might be established after a number of years. The Public Employment Administration hopes to be advised on various sorts of employment problems by the Employment Advisory Committees as already established in Addis Ababa and Dire

8. *Negarir Gazeta*, 23rd Year, August 31, 1964.

Dawa by Legal Notice No. 267, of 1962. They have a tri-partite character which provides for equal representation of employer and worker elements.

2. The development of stable *labour-management relations* is the object of the second measure, the Labour Relations Proclamation of 1963, which was enacted by a large majority in Parliament. It deals in particular with the following problems, which had been only touched on in the Constitution or other legislation:

- (a) Formation of employers' associations and labour unions. Under the current law of association, which is found in the Civil Code, either party may organise freely and combine in federations. On the labour side there are organisations of two kinds: the "plant union", which may be formed in any establishment having more than 50 employees, and the "general union" for employees of smaller undertakings and for specialists. Organisations on either side are empowered to protect and develop the economic, social and moral interests of their members and to negotiate with the other party on labour conditions on a collective basis. On that legal basis, more than fifty labour unions, predominantly with a plant-union status, have been established and registered in the course of the last two years. Membership is estimated to be over 30,000. Employers created the Federation of Ethiopian Employers in March, 1964. All unions are co-operating under the Confederation of Ethiopian Labour Unions, (C.E.L.U.) which was founded one year earlier.
- (b) The Act stresses free and voluntary collective bargaining as the main method of determining working conditions. The Government restricts intervention on its own part to exceptional circumstances, although the Minister of National Community Development may fix minimum conditions of work where necessary.
- (c) Unfair labour practices by employers or workers, carefully defined in the Proclamation, are prohibited. The principle of co-operation is stressed in the interest of sound national economic development, and a "peaceful attitude" is made an obligation of both sides. The organisations must abstain from political activity. Unfair practices can be brought before the Labour Relations Board which, after consideration, may prohibit a particular practice and enforce its decision, if necessary, by recourse to other authorities. In certain circumstances of this character, an organisation can be dissolved by judicial order.
- (d) The Labour Relations Board has another much more important function: either party — and the Minister of National Community Development — can call it in to settle a collective labour dispute. The Board is then required first of all to attempt to settle the dispute by agreement. Only when all attempts to do this have failed may it arbitrate. The award, from which an appeal may be made to the Supreme Court on questions of law only, is enforceable in the same way as a court judgment and any person failing to comply with it may be punished. An important clause is that which provides for a "cooling-off" period of 60 days from submission of a dispute to the Board: during this time any strike or lock-out would be unlawful. Many important items of the procedure under which the Board acts are written into the Proclamation and will be supplemented by Standing Orders now in the course of preparation.
- (e) Unlike collective disputes, individual labour disputes remain a matter for the ordinary courts of law. This differential treatment may cause difficulty in

practice, and the distinction is indeed frequently unclear or misunderstood. The time for setting up a regular labour court does not yet seem to have arrived. Accordingly, the Labour Relations Proclamation states that the Minister of Justice shall "arrange for the establishment of labour divisions within the courts" to deal with cases arising out of individual contracts of employment. In practice the Labour Department provides a counselling and conciliation service, for those who desire it, in individual as well as collective disputes, but there is no power vested in that administration to take a decision on such cases.

It is of course a far cry from the first two legislative measures to a complete labour code, if a labour code can ever be considered complete. Anyway, further important labour legislation is already in preparation or is being planned.

As described under Part I herein, the Civil Code Proclamation has established certain more or less general principles on contracts of employment, including certain minimum provisions on safety and health of workers as well as related labour standards in Ethiopia. It is obvious that such general principles or minimal need not only regular review and, if justified by the general growth of the economic output of the country, gradual improvement, but also a machinery adequate to control or even ensure implementation of such types of labour standards in the various undertakings. As developments have shown, the important fields of labour protection and inspection were placed, unlike in other developing countries, relatively low on the legislators' priority list, because employment problems and labour-management relations seemed more urgent. But the time has come to finalize several related legal projects which should ensure introduction of more advanced labour standards, with a special emphasis on health and safety of the employees in industry and trade, and the establishment of a labour inspection service able to move in and help to enforce any legal arrangement in the various undertakings. Regarding the latter, a first step was made by the Legislature on December 4, 1964, when the Labour Inspection Order, 1964, was promulgated.<sup>9</sup>

As another project for legislation, solutions will have to be worked out before long to improve the country's vocational system including such matters as apprenticeship, adult workers education, etc. Such legislation will have to follow essentially Ethiopia's needs, as they result from the economic development and the kind and structure of future industrial, commercial or other enterprises. Legislation has, therefore, to wait until the manpower survey presently underway and other statistical bases necessary for thorough planning have been terminated and evaluated.

At about the same time it may be possible to reflect on and, if appropriate, to introduce fully or in part a system of social security which might include unemployment insurance, old-age or disability insurance, sickness insurance, etc., for the Ethiopian workers in a way which could cover the specific needs of this country. Again, however, such a program pre-supposes not only careful studies but also a great deal of actual data of various kinds which are the indispensable prerequisites of any realistic planning in this area.

#### V. Relations with the International Labour Organisation (I.L.O.)

Ethiopia has belonged to the International Labour Organisation since 1923 and is thus one of its oldest members. Partly because of historical events such as the Italian

9. Order No. 37 of 1964, *Negarit Gazeta*, 24th Year, No. 4.



occupation and partly because more active exercise of its membership was hampered by the peculiar character of its own development, this country remained largely aloof from I.L.O. affairs for many years. The conditions for proper representation at the annual Conference in Geneva were not fulfilled, although Government representatives could have been sent, as representative employers' and workers' associations did not yet exist. For this reason alone it is not at all surprising that Ethiopia's role in the international labour scene long remained a very modest one. This passivity was reflected in the absence of Ethiopia's name from the list of countries which had ratified I.L.O. Conventions and similar matters.

Membership in an organisation can only have life and reality if it involves mutual give and take. The International Labour Organisation made that possible for the developing countries when it evolved its many programmes for technical assistance after the Second World War. In exchange for their contributions, those countries were offered a generous equivalent, of which Ethiopia took advantage on various occasions. The assistance began in the early summer of 1960 with a survey of the possibilities of vocational rehabilitation of the disabled and an investigation of the social security field. This has been followed by missions of long-term experts, in these fields, in workers' education and in clerical training. Later several Ethiopian officials were sent to special I.L.O. courses in Europe and Africa. Useful regular contacts developed, not only with headquarters in Geneva, but also with the I.L.O. African Field Offices at Lagos and in Dar-es-Salaam. Many comments on Ethiopian draft laws and regulations were sent from Geneva. Invitations came from Dar-es-Salaam to short courses for labour officials, to be attended mainly by future inspectors. For over ten months an I.L.O. expert has been working in Addis Ababa on the establishment of employment offices and the planning of a manpower survey. Further programmes of these and similar kinds are in preparation. Moreover, as a result of developments in Ethiopia, the Nation has begun to realise the part which it ought to play in I.L.O. activities. At the 46th Annual Conference in 1962 it was still only represented by two Government representatives acting as observers; employers' and workers' representatives were still lacking, as the Labour Relations Proclamation had not yet been issued, and so the formation of employers' associations and trade unions were not yet possible. At the 47th Session of the Conference in June 1963, for the first time in the long history of its membership, Ethiopia was represented by a full, though small, tripartite delegation led by the Minister of National Community Development. The Conference heard a speech by the Minister on questions of principle in which he was able to mention what had been achieved, to outline the main features of plans for further action, and to inform the Session of the ratification of the four following I.L.O. Conventions:

- (1) Right of Association (Agriculture), 1921 (No. 11);
- (2) Freedom of Association and Protection of the Right to organise, 1948 (No. 87);
- (3) Employment Service, 1948 (No. 88);
- (4) Right to Organise and Collective Bargaining, 1949, (No. 98).

Those ratifications which mean a legal obligation of member states to implement the standards established by those conventions, will no doubt soon be followed by others. Members of the Ethiopian delegation were selected to sit on several committees, and an Ethiopian is now a deputy member of the Governing Body.

The Conference provided an opportunity for contact with the various divisions of the International Labour Office and discussion of further developments and technical details; all this will pave the way for closer co-operation in the future. Among other things

a method was worked out by which Ethiopia could best make good the delays which had occurred for a number of years in regard to the submission of I.L.O. Conventions and Recommendations to the competent national authorities.

A start has now been made with the instruments adopted in 1961 and 1962, and those of 1960 and 1963 are to come next. So that these matters may be actively pursued, a specialist has been appointed in the Department of Labour to handle I.L.O. relations only, from the regular payment of contributions to the application of training projects. This year this official will spend several weeks in Geneva for an on-the-spot briefing on all distinctive features of the International Labour Organisation.

The December 1964 meeting of the Second African Regional Conference of the International Labour Organisation in Addis Ababa's famous Africa Hall was opened by the Emperor of Ethiopia. Addressing the attending delegates from more than thirty African countries — governmental, employers' and workers' representations - His Imperial Majesty stated, *inter alia*:

"Africa today stands in a serious need of a balanced socio-economic development which will assure that equitable distribution of income which will enable the African people to attain and maintain a fair standard of living. The resources, both physical and human, which such development must build exist, and it is our task and our challenge to find the ways and means of employing those resources so that our stated goals may be obtained."

It is in this spirit that the present Article was written as a possible means to inform a growing number of interested people on what has been achieved or remains to be done in order to implement the general targets of Ethiopian labour policy.

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ወንጀሎች ።

ከፈሊጥ ፡ ግራቪን ፡

ፍርድ ፡ ሚኒስቴር ።

የ፲፱፻፶፩ ፡ ዓ ፡ ም ፡ የኢትዮጵያ ፡ ወንጀለኛ ፡ መቅጫ ፡ ቀ ፡ ፩ ፡ እንዲህ ፡ ይላል ።  
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በክሱ ፡ ምክንያት ፡ በሕዝብ ፡ ፊት ፡ በይፋ ፡ ሊታወቅበት ፡ የማይፈልገው ፡ ጉዳይ ፡ ሊኖር ፡  
በመቻሉ ፡ ወንጀሉ ፡ በአደባባይ ፡ ቢታይ ፡ የወንጀሉ ፡ ተግባር ፡ ካደረሰበት ፡ በደል ፡  
የበለጠ ፡ ጉዳት ፡ ክሱን ፡ በማንቀሳቀስ ፡ ሊደርስበት ፡ ስለሚችል ፡ ነው ። ለምሳሌ ፡  
የክሱ ፡ ጉዳይ ፡ የሚስቱን ፡ አለመታመን ፡ የልጁን ፡ ወስላታነት ፡ በአደባባይ ፡ ሸንጎ ፡  
ያወጣበት ፡ ይሆናል ። በዚህን ፡ ጊዜ ፡ የወንጀል ፡ ክስ ፡ ሊንቀሳቀስ ፡ የሚችለው ፡

በተበዳዩ፡ ፍላጎት፡ መሠረት፡ ብቻ፡ መሆን፡ እንዳለበት፡ ግልጽ፡ ነው።<sup>1</sup> የተበደለው፡ ሰው፡ ክስ፡ እንዲቀርብለት፡ በጠየቀም፡ ጊዜ፡ ቢሆን፡ መንግሥት፡ በጉዳዩ፡ የሚገባው፡ ክስ፡ በማስቀጣት፡ ብቻ፡ የከሰሹ፡ መብት፡ ደጋፊ፡ ረዳት፡ በመሆን፡ እንጂ፡ በሌላ፡ ዐይነት፡ አኳኋን፡ አይደለም። ይህም፡ በተባዳዮቹ፡ አቤቱታ፡ ብቻ፡ ሊያስቀጡ፡ የሚችሉት፡ ወንጀሎች፡ የትኞቹ፡ ዐይነት፡ ናቸው? የዚህ፡ ዐይነት፡ አቤቱታ፡ መቅረብ፡ ውጤቱስ፡ ምንድነው? የሚሉትን፡ ሁለት፡ ጥያቄዎች፡ ያስከትላል።

የወንጀለኛ፡ መቅጫው፡ ሕግ፡ ክስ፡ በቀረበ፡ ጊዜ፡ ብቻ፡ የሚያስቀጡ፡ ወንጀሎችን፡ የሚገልጽ፡ የተጠናቀቀ፡ ዝርዝር፡ አይሰጥም። እንቅጽ፡ ፪፻፲፯፡ ቢሆንም፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ በልዩ፡ ክፍል፡ ወይም፡ በሌሎች፡ ሕጎች፡ ውስጥ፡ “አብዛኛውን፡ የግል፡ በደልን፡ ነክ፡ በመሆናቸው፡ በግል፡ አቤቱታ፡ አቅራቢነት፡ ብቻ፡ ክላቸው፡ ሊንቀሳቀስ፡ የሚችለውንና፡ በግል፡ ጠቋሚ፡ ወይም፡ ጠያቂነት፡ የሚያስከስሱትን፡ ወንጀሎች፡” ለይቶ፡ የሚናገረው፡ በጠቅላላው፡ መልክ፡ ነው። በወንጀለኛ፡ መቅጫ፡ ደንብ፡ ልዩ፡ ክፍል፡ ውስጥ፡ የሚገኙ፡ አያሌ፡ ድንጋጌዎች፡ “ማናቸውም፡ . . . . . የግል፡ አቤቱታ፡ በቀረበ፡ ጊዜ፡ በ . . . . . ይቀጣል፡” ሲሉ፡ ያዛሉ። እነዚህም፡ [በአንቀጽ፡ ፫፻፳፰፡ (፪)] የቤተ፡ ዘመድ፡ የሆኑትን፡ ሠነዶች፡ ስለማጥፋት፡ [በአንቀጽ፡ ፬፻፯]፡ የግል፡ ሞያን፡ የሥራ፡ ምስጢር፡ ስለመግለጽ፡ [በአንቀጽ፡ ፬፻፱]፡ ሳይንሰን፡ የእንዳስትሪን፡ ወይም፡ ንግድን፡ ምስጢር፡ ስለመግለጽ፡ [በአንቀጽ፡ ፳፻፱፡ (፩)] አስቦ፡ ስለተደረገ፡ ቀላል፡ የአካል፡ ጉድለት፡ [በአንቀጽ፡ ፳፻፱፡ (፫)] በቸልተኝነት፡ ምክንያት፡ ስለሚደርስ፡ የአካል፡ ጉዳዮች፡ [በአንቀጽ፡ ፳፻፱፡ (፪)] የአጅ፡ እልፈት፡ [በአንቀጽ፡ ፳፻፱፡ (፬)] ስለዛቻ፡ [በአንቀጽ፡ ፳፻፱፡ (፭)] የመክሰስ፡ ወይም፡ የማዋረድ፡ ሕገ፡ ወጥ፡ ዛቻ፡ [በአንቀጽ፡ ፳፻፱፡ (፮)] የማሰብን፡ ችሎታ፡ ስለማሳጣት፡<sup>2</sup> [በአንቀጽ፡ ፳፻፳፫፡ (፩)] የወላጅ፡ ወገን፡ ልጅን፡ በድብቅ፡ ስለመውሰድ፡ [አንቀጽ፡ ፳፻፳፫፡ (፪)] የሥራ፡ ነጻነትን፡ ሕግ፡ ስለመድፈር፡ [በአንቀጽ፡ ፳፻፳፫፡ (፬)] ደብዳቤዎችንና፡ የሚላኩ፡ ዕቃዎችን፡ ስለማቋረጥና፡ ወደ፡ ሌላ፡ ስለ፡ ማዛወር፡ [በአንቀጽ፡ ፳፻፳፯]፡ መደበኛ፡ የሆነ፡ የክስ፡ አቤቱታና፡ ክስ፡ ሲቀርብ፡ የሚያስቀጡ፡ መሆናቸውን፡ ያዛል። ሆኖም፡ እንቅጽ፡ ፪፻፶፮፡ ፪፻፷፮፡ ፪፻፷፰፡ ይመለከቷል፡ [በአንቀጽ፡ ፳፻፺፫]፡ ከፍ፡ ያለውን፡ የሴት፡ ችግር፡ ወይም፡ ተገታዊነትንም፡ ምክንያት፡ በማድረግ፡ ስለሚደረገው፡ የማታለል፡ ሥራ፡<sup>3</sup> [በአንቀጽ፡ ፳፻፺፮]፡ ማሳት፡ [በአንቀጽ፡ ፳፻፺፱]፡ መልካም፡ ጠባይን፡ የሚነኩ፡ ነገሮችን፡ ለሕዝብ፡ ስለ፡ መግለጽ፡ ወይም፡ ስለ፡ ማስታወቅ፡ [በአንቀጽ፡ ፳፻፺፱] ጋብቻን፡ በተንኩል፡ በማታለል፡ ስለመፈጸም፡ [በአንቀጽ፡ ፳፻፺፱]፡ ስለሌላነት፡ [በአንቀጽ፡ ፳፻፳፭]፡ ቀላብ፡ የመስጠት፡ ተግባርን፡ ስለአለመፈጸም፡ [በአንቀጽ፡

1 “በክስ፡ አቤቱታ፡ አቅራቢነት፡ ብቻ፡ የሚያስቀጣ፡ ወንጀል፡” ማለት፡ በወንጀለኛ፡ መቅጫ፡ ሕግና፡ በሥነ፡ ሥርዐቱ፡ ውስጥ፡ እንደ፡ ተነገረው፡ በተበዳዩ፡ ወገን፡ ወይም፡ እርሱ፡ ወክሉ፡ ሥልጣን፡ በሰጠው፡ ሰው፡ ክስን፡ ማንቀሳቀስ፡ ዋና፡ መሠረታዊ፡ ጉዳይ፡ ሹኖ፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀ፡ ፪፻፶፮፡ መሠረት፡ የሚፈለግበት፡ የሕግ፡ ክርክር፡ ነው። በዚህ፡ ዐይነት፡ ክስና፡ “ጠቋሚው፡ ሳይታወቅ፡ በሚቀርብ፡ የወንጀል፡ ክስ”፡ መካከል፡ ልዩነቱ፡ በኋላኛው፡ ዐይነት፡ ክስ፡ ማንም፡ ሰው፡ በመረጃ፡ መልክ፡ ክስ፡ ሊያቀርብ፡ መቻሉ፡ ነው። እንዲሁም፡ የኋለኛው፡ ዐይነት፡ ክስ፡ የሚቀርበው፡ ለሕግ፡ አስከባሪ፡ ለማሳወቅ፡ ብቻ፡ ነው። ይህ፡ ልዩነት፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ፯፩፡ እና፡ ፯፫፡ በደንብ፡ ተብራርቶ፡ ተገልጿል።

2 በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀ፡ ፳፻፳፩፡ በተነገረው፡ ዐይነት፡ ከባድ፡ ወንጀል፡ የተፈጸመ፡ እንደሆነ፡ ምንም፡ ይህ፡ እንቅጽ፡ አብራርቶ፡ ባይገልጥም፡ ወንጀሉ፡ ከባድ፡ በመሆኑ፡ “በክስ፡ አቤቱታ፡ አቅራቢነት፡ ብቻ፡ የሚያስቀጣ፡” ክስ፡ እንዲቀርብ፡ አያስፈልግም። ምክንያቱም፡ ቅጣቱ፡ ከዐምስት፡ ዓመት፡ በላይ፡ የማይበልጥ፡ ከባድ፡ እስራት፡ በመሆኑ፡ ነው።

3 በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀ፡ ፳፻፳፭፡ መሠረት፡ “በክስ፡ አቤቱታ፡ አቅራቢነት፡ ብቻ፡ የሚያስቀጣ፡” ወንጀል፡ ቢፈጸም፡ ይህ፡ እንቅጽ፡ አብራርቶ፡ ባይገልጥም፡ ቅጣቱ፡ ከ፲፫፡ ዓመት፡ ባልበለጠ፡ እስራት፡ በመሆኑ፡ የግል፡ ክሳሽ፡ መቅረብ፡ በግዴታ፡ አያስፈልግም።

፲፱፻፳፱] : በቤተሰብ : ዘመድ : አባሎች : በኩል : ወንጀል : በተሠራ : ጊዜ : ስለሚቀርብ : ክስ [ በአንቀጽ : ፲፱፻፴፪ ] : የጋራ : የሆኑትን : ዕቃዎች : ስለመሰረቅ : [ አንቀጽ : ፲፱፻፴፫ ] : አግኝቶ : ስለመደበቅ [ በአንቀጽ : ፲፱፻፴፬ ] : የሌላ : ሰው : በሆነ : ሀብት : ያላግባብ : ስለ : መገልገል [ በአንቀጽ : ፲፱፻፴፭ ] : ወድቆ : የተገኘውን : ዕቃ : ለራሱ : ስለማድረግ [ በአንቀጽ : ፲፱፻፴፬ ] : በሰው : እርስት : ላይ : የከብት : መንጋ : ሰዶ : ስለማበላሸት [ አንቀጽ : ፲፱፻፴፭ ] (፩) በሰው : ሀብት : ላይ : ከባድ : ባልሆነ : እደራረግ : ሁከት : ስለማድረግ [ በአንቀጽ : ፲፱፻፴፫ ] : መደበኛ : ሁኔታ : (ከባድ : በሆነ : መንገድ : የሰው : ሀብት : ስለማበላሸት) [ በአንቀጽ : ፲፱፻፳፩ ] : በሕዝብ : እምነት : ስለመጠቀም [ በአንቀጽ : ፲፱፻፳፩ ] : ጥቅም : ታገኛለህ : በማለት : ሌላውን : ሰው : በመደለል : ስለማነሣነት [ በአንቀጽ : ፲፱፻፳፮ ] : አካለ : መጠን : ያልደረሱትን : ወይም : ችሎታ : የሌላቸውን : ሰዎች : ንብረታቸውን : የሚጉዳ : ሥራ : እንዲሠሩ : ስለማነሣነት [ በአንቀጽ : ፲፱፻፸፩-፲፱፻፸፮ ] : ግዙፍ : ባልሆኑ : መብቶች : ላይ : ስለሚሠራ : ወንጀል [ በአንቀጽ : ፲፱፻፹ ] : በእጭብርባሪነት : ዕዳ : ለመክፈል : ስላለመቻል [ በአንቀጽ : ፲፱፻፹፩ ] : ስለ : መክሰር [ በአንቀጽ : ፲፱፻፳፩ ] (፩) (ሀ) ] የደንብ : ተላላፊነት : መቅጫ : ሕግ ።<sup>4</sup>

ከላይ : የተዘረዘሩትን : አንቀጾች : በመተላለፍ : ወንጀል : በተፈጸመ : ጊዜ : በሕግ : የክስ : አቤቱታ : እንዲያቀርብ : ከተፈቀደለት : ሰው : በስተቀር : በሌላ : በማንም : ሰው : የክስ : ጉዳይ : ሊንቀሳቀስ : አይችልም ።<sup>5</sup> ወንጀሉ : የእጅ : ተፍንጅ : ወንጀል : የኾነ : እንደኾን : መዝሙሪያ : የክስ : አቤቱታ : ካልቀረበ : በስተቀር ፣ ፍርድ : ቤት : የሚሰጠው : የመያዝ : ትእዛዝ : ሳይኖር : አጥፊው : የሚያዝ : አይመስልም ። የወንጀለኛ : መቅጫ : ሕግ : ሥነ : ሥርዐት : በቀ : ጽፏል : እንደሚለው ።

(፩) የእጅ : ተፍንጅ : ወይም : የእጅ : ተፍንጅ : መሰል : ወንጀሎች : በተፈጸሙ : ጊዜ : ወንጀሉ : የክስ : አቤቱታ : ሳይቀርብ : (የክስ : አቤቱታ : መቅረብ : በግዴታ : ለሚፈለጉት : ወንጀሎች : ማለት : ነው) : ክስ : ሊቀርብበት : የማይችል : ካልኾነ : በቀር : ጠቋሚ : ወይም : አቤት : ባይ : (ማለት : ጠቋሚና : አቤት : ባይ : ለመረጃ : ያከል : እንጂ : በግዴታ : ለማይፈለጉበት : ሹነታ : — ወንጀለኛ : መቅጫ : ቀ : ፪፻፲፮ : ይመለከታል) : እንዲቀርብበት : አስፈላጊ : ሳይኾን : ክስ : ለማቅረብ : ይቻላል፤ እንዲሁም : (፪) እንደዚህ : ያለው : ሹነታ : በሚያጋጥምበት : ጊዜ : ፍርድ : ቤት : የሚሰጠው : የመያዝ : ትእዛዝ : ሳይኖር : በቀ : ግደ : እና : በተከታዮቹ : ቀጥሮች : መሠረት : ወንጀለኛውን : ለመያዝ : ይቻላል ። ንሑስ : አንቀጽ : (፪) በፍርድ : ቤት : ትእዛዝ : ስለመያዝ : በሚገልጽበት : ጊዜ : በጣም : ሰፊ : እነጋገር : ላይ : የተመሠረተና : እንዲሁም : በክስ : አቤቱታ : ብቻ : የሚያስቀጡ : የእጅ : ተፍንጅ : ወይም : መሰል : ወንጀሎች : በተፈጸሙ : ጊዜ : ፍርድ : ቤት : የሚሰጠው : የመያዝ : ትእዛዝ : ሳይኖር : ለመያዝ : እንዳይቻል : ለመከልከል : የታሰበ : ቢኾን : ኑሮ : ይህ : ድንጋጌ : በግልጽ : በንሑስ : አንቀጽ : (፪) ውስጥ : ክስ : እንዳይቀርብ : በተከለከለው : ዐይነት : በንሑስ : (፩) ውስጥ : በተነገረም : ነበር ።

<sup>4</sup> ቀ : ፲፱፻፳፱ : በጣም : ሰፊ : ቢኾንም : በተለይ : ፲፱፻፳፱ : ፲፱፻፷፮ : ፲፱፻፷፱ : ፲፱፻፺፱ : ፲፱፻፺፱ : ፲፱፻፺፱ : ፲፱፻፺፱ : (የግል : ሀብት : የኾነ : እንደኾነ) ጽፏል : ፲፱፻፺፱ : ፲፱፻፺፱ : ፲፱፻፺፱ : እና : ፲፱፻፺፱ : የተጠቀሱት : ወንጀሎች : ብቻ : በዚህ : ክፍል : ሥር : የሚውሉ : ይመስላል ። በወንጀለኛ : መቅጫ : ሕግ : ቀ : ፲፱፻፳፱ : (፩) (ለ) ሥር : ስለ : ተመለከተው : “በክስ : አቤቱታ : አቅራቢነት : ብቻ : የሚያስቀጣ” ወንጀል : ከላይ : በ፲፱፻፳፱ : መግለጫ : የተጠቀሰውን : ይመለከታል ።

<sup>5</sup> በክስ : አቤቱታ : አቅራቢነት : ብቻ : የሚያስቀጣ : ወንጀል : ከሌላ : ዐይነት : ወንጀል : ጋር : ቢፈጸምና : የግል : ክስ : አቅራቢ : ሳይኖር : የሕግ : አስከባሪ : ለኋለኛው : ወንጀል : ብቻ : ክስ : ሊያቀርብ : ይችላል ። በዚህም : ጊዜ : ሌላ : ወንጀል : መፈጸሙን : መግለጥ : አይኖርበትም ። ፍርድ : ቤቱም : እንደተጣማሪ : ወንጀል : አስመስሎ : ትግት : ለማከበድ : መንኻ : ሊያደርግ : አይችልም ።

ኹሉም ፡ ይህ ፡ አንቀጽ ፡ በሌላ ፡ መልክ ፡ መተርጉም ፡ እንደሚኖርበት ፡ የሚያመለክቱ ፡ ብዙ ፡ ኹነታዎች ፡ አሉ ። በመዝሙሪያ ፡ በንኡስ ፡ አንቀጽ ፡ (፪) ውስጥ ፡ “በእንደዚህ ፡ ያለው ፡ ኹነታ” ፡ የሚለው ፡ አገላለጥ ፡ በምሉ ፡ ስለ ፡ እጅ ፡ ተፍንጅ ፡ ወይም ፡ መሰል ፡ ወንጀሎች ፡ ይኹን ፡ ወይም ፡ ጠቋሚ ፡ ወይም ፡ የክስ ፡ ጎሴቱታ ፡ አቅራቢ ፡ ሳይኖር ፡ ክስ ፡ ሊቀርብባቸው ፡ የሚችለውን ፡ ማለት ፡ የክስ ፡ አቤቱታ ፡ አቅራቢ ፡ ስለማይፈልጉት ፡ ክሶች ፡ ኹሉ ፡ ማለቱ ፡ ለመኾኑና ፡ ላለመኾኑ ፡ ስላልተለየ ፡ አከራካሪ ፡ ጉዳይ ፡ ሊኾን ፡ ይችላል ። ኹለተኛ ፡ የእጅ ፡ ተፍንጅ ፡ ወንጀል ፡ በተፈጸመ ፡ ጊዜ ፡ ወንጀለኛን ፡ እጅ ፡ ተፍንጅ ፡ በመያዝ ፡ ብቻ ፡ የዳኝነት ፡ ተግባር ፡ ሊጀመር ፡ ይችላል ። ምክንያቱም ፡ በክስ ፡ አቤቱታ ፡ አቅራቢ ፡ ለሚያስቀጡ ፡ ወንጀሎች ፡ ያለ ፡ ፍርድ ፡ ቤት ፡ ትእዛዝ ፡ እንዲያዝ ፡ ማድረግ ፡ በክስ ፡ አቤቱታ ፡ አቅራቢነት ፡ በሚያስቀጡት ፡ ወንጀሎች ፡ ውስጥ ፡ ተበደልኩ ፡ ባይ ፡ ተከሳሽ ፡ እንዲኖር ፡ ያስፈልጋል ፡ ከሚለው ፡ ክስ ፡ ጋር ፡ የሚፋለስ ፡ ይኾናል ። ሦስተኛ ፡ በእጅ ፡ ተፍንጅ ፡ ወንጀል ፡ ውስጥ ፡ ፍርድ ፡ ቤት ፡ የሚሰጠው ፡ የመያዝ ፡ ትእዛዝ ፡ ሳይኖር ፡ እንዲያዝ ፡ የሚደረግበት ፡ አንዱ ፡ ምክንያት ፡ የሕዝብ ፡ ሰላም ፡ እንዳይበላሽ ፡ ወይም ፡ በባሰ ፡ ኹነታ ፡ እንዳይበላሽ ፡ ለማድረግ ፡ እንዲቻል ፡ ነው ። ኹሉም ፡ ባንድ ፡ በኩል ፡ ሲታይ ፡ ወንጀል ፡ ሲፈጸም ፡ ሲታሰብ ፡ ወይም ፡ የክስ ፡ አቤቱታ ፡ ሲቀርብ ፡ ብቻ ፡ ሊያስቀጣ ፡ የሚያስችል ፡ ወንጀል ፡ በተፈጸመ ፡ ጊዜ ፡ የሕዝብ ፡ ሰላምና ፡ ጸጥታ ፡ አይደፈርስም ። በመጨረሻ ፡ የክስ ፡ አቤቱታ ፡ ሲቀርብ ፡ የሚያስቀጣ ፡ የእጅ ፡ ተፍንጅ ፡ ወንጀል ፡ ወይም ፡ መስሎ ፡ በተፈጸመ ፡ ቍጥር ፡ ፍርድ ፡ ቤት ፡ የሚሰጠው ፡ የመያዝ ፡ ትእዛዝ ፡ ሳይኖር ፡ ወንጀለኛ ፡ እንዲያዝ ፡ ማድረግ ፡ አብዛኛውን ፡ በክስ ፡ አቤቱታ ፡ የሚያስቀጡት ፡ ወንጀሎች ፡ የተለዩበትን ፡ ምክንያት ፡ ያፋልሳል ። ይኸውም ፡ እንዳንድ ፡ ወንጀሎች ፡ በክስ ፡ አቤቱታ ፡ ብቻ ፡ እንዲቀጡ ፡ የተደረገበት ፡ ተበደልኩ ፡ ባዩ ፡ ስሙ ፡ እንዳይነሳ ፡ ከፈለገ ፡ ለመክሰስ ፡ እንዳይገደድ ፡ ሊኾን ፡ ያለፍርድ ፡ ቤት ፡ ትእዛዝ ፡ እንዲያዝ ፡ ከተፈቀደ ፡ ባልፈለገበት ፡ ጊዜ ፡ በዚህ ፡ ዐይነት ፡ ምርጫ ፡ መብት ፡ ለመጠቀም ፡ ሳይችል ፡ ነው ። ቍ ፡ ፳፩ ፡ የዚህን ፡ ዐይነት ፡ የመያዝ ፡ ሥልጣን ፡ አለመፍቀዱን ፡ የሚያረጋግጠው ፡ ከኹሉ ፡ የበለጠው ፡ ምክንያት ፡ ይህ ፡ ነው ።

ፖሊስም ፡ ኾነ ፡ ተራ ፡ ሰው ፡ ኹለት ፡ ሰዎች ፡ የዝመት ፡ ተግባር ፡ ሲፈጽሙ ፡ ቢያይ ፡ እንገታቸውን ፡ ይዙ ፡ አቅራቢያ ፡ ፖሊስ ፡ ጣቢያ ፡ ለማምጣት ፡ መቻል ፡ አለበት ፡ ተብሎ ፡ እንደማይታሰብ ፡ ሳይነገር ፡ የሚታወቅ ፡ ነው ። (የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቍ ፡ ፶ ፡ ይመለከቷል) ፡ በእንደዚህ ፡ ያለ ፡ ኹነታ ፡ ተግባሩን ፡ ከፈጸሙት ፡ ከኹለት ፡ እንዳቸው ፡ የክስ ፡ አቤቱታ ፡ ሳያቀርቡ ፡ ለመያዝ ፡ መቻል ፡ የለበትም ። ለአፈጻጸም ፡ እንዲመችና ፡ የመያዙ ፡ ተግባር ፡ በቀላሉ ፡ ሊፈጸም ፡ እንዲችል ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቍ ፡ ፲፬ ፡ በተጠቀሰው ፡ መሠረት ፡ አቤቱታ ፡ በጽሑፍ ፡ መቅረብ ፡ አይኖርበትም ። በቃል ፡ የቀረበው ፡ አቤቱታ ፡ በኋላ ፡ ግን ፡ በጽሑፍ ፡ መጽደቅ ፡ ይኖርበታል ።

በግልጥ ፡ መረዳት ፡ የሚሻው ፡ የክስ ፡ አቤቱታ ፡ መቅረብ ፡ የሚረዳው ፡ ሕግ ፡ አስከባሪ ፡ ክስ ፡ ለማቅረብ ፡ እንዲችል ፡ ነው ። ስለዚህ ፡ የክስ ፡ አቤቱታ ፡ ሲቀርብ ፡ የሚያስቀጡት ፡ ወንጀሎች ፡ በተፈጸሙ ፡ ጊዜ ፡ ፍርድ ፡ አሰጣፋ ፡ ለማስቀጣት ፡ የሚችለው ፡ የግል ፡ አቤት ፡ ባይ ፡ ብቻ ፡ ነው ፡ ለማለት ፡ አይደለም ። በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ቍ ፡ ፪፻፲፭ ፡ ይህ ፡ ሐሳብ ፡ ተብራርቶ ፡ ይገኛል ። ምክንያቱም ፡ በተለይ ፡ በእንግሊዝኛው ፡ ሳይ ፡ ተብራርቶ ፡ የዚህ ፡ ዐይነት ፡ ክስ ፡ በሕግ ፡ አስከባሪ ፡ መቅረብ ፡ እንደሚኖርበት ፡ ተገልጿል ። ዕርግጥ ፡ ነው ፡ ወደፊት ፡ እንደሚታየው ፡ የክስ ፡ አቤቱታ ፡ ሲቀርብ ፡ ስለሚያስቀጡት ፡ ወንጀሎች ፡ የግል ፡ ሰው ፡ ቀርቦ ፡ የዳኝነት ፡ ተግባሩን ፡ በጎሳፊነት ፡ ተከታትሎ ፡ ሊያስፈጽም ፡ ይችላል ። ነገር ፡ ግን ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡

ቀኑ፡ ፪፻፲፮፡ እና፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀኑ፡ ፵፡ ሕግ፡ በተጣሰ፡ ቀጥር፡ እንደሚያስገድደው፡ ኹሉ፡ ይህ፡ ሊኾን፡ የሚችለው፡ ሕግ፡ አስከባሪው፡ ራሱ፡ ክስ፡ ለማቅረብ፡ ባልቻለበት፡ ጊዜ፡ ነው። ከላይ፡ እንደተገለጠው፡ ሕግ፡ አስከባሪው፡ እስከ፡ ተቻለ፡ ድረስ፡ የክስ፡ አቤቱታ፡ አቅራቢ፡ መብት፡ ጠባቂ፡ ኹኖ፡ ይሠራል። ስለዚህ፡ የግል፡ ከሳሽ፡ ተወክሎ፡ ክስ፡ ለማቅረብ፡ የሚችለው፡ ይህ፡ አፈጻጸም፡ ሊጠበቅ፡ በማይቻልበት፡ ኹነታ፡ ጊዜ፡ ብቻ፡ ነው። የክስ፡ አቤቱታ፡ ሲቀርብ፡ ስለሚያስቀጡት፡ ወንጀሎች፡ ጉዳይ፡ ኹል፡ ጊዜ፡ ወንጀለኛው፡ መቅጫና፡ የሥነ፡ ሥርዐቱ፡ ክፍል፡ ዐብረው፡ መነበብ፡ ይኖርባቸዋል። ስለዚህ፡ የክስ፡ አቤቱታ፡ ሲቀርብ፡ ብቻ፡ በሚያስቀጡት፡ ወንጀሎች፡ የተበደሉት፡ ሰዎች፡ ፍርድን፡ ለማግኘት፡ ጉዳዩን፡ በሚያንቀሳቅሱበት፡ ጊዜ፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀኑ፡ ፪፻፳፡ እና፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀኑ፡ ፲፫፡ እና፡ ተከታታዮቹ፡ መሠረት፡ መከታተል፡ ይኖርባቸዋል።

በእነዚህ፡ የሕግ፡ ክፍሎች፡ ሊጠቀሙ፡ የሚችሉት፡ አጥፊው፡ ወጣት፡ ወንጀለኛ፡ ሊኾን፡ ብቻ፡ ነው። በዚህን፡ ጊዜ፡ የወንጀለኛ፡ መቅጫው፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀኑ፡ ፪፻፸፪፡ ሊሠራበት፡ ይቻላል። ማን፡ የክስ፡ አቤቱታ፡ ማቅረብ፡ እንዳለበት፡ ለይተው፡ የሚገልጹት፡ አንቀጾች፡ ቀኑ፡ ፪፻፲፰፡ እና፡ ፪፻፲፱፡ ናቸው። ኹኖም፡ በኋለኛው፡ አንቀጽ፡ የተጠቀሱት፡ ደንቦች፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ በልዩ፡ ክፍል፡ ውስጥ፡ ያልተጠበቁ፡ ኹነው፡ ይገኛሉ።

ስለዝሙት፡ የክስ፡ አቤቱታ፡ አቅራቢ፡ መብት፡ (ቀኑ፡ ፪፻፲፱)፡ ለቅርብ፡ ዘመድ፡ ሊተላለፍ፡ አይችልም። ይህም፡ በቀኑ፡ ፪፻፲፰፡ ከተጠቀሰው፡ የሚፋለስ፡ ነው።

በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀኑ፡ ፪፻፲፱፡ እና፡ ፪፻፲፱፡ (፪) በተወሰነው፡ መሠረት፡ ሕጉ፡ በግልጥ፡ የሦስት፡ ወር፡ ጊዜ፡ መቁጠር፡ የሚከመረው፡ ከሌላ፡ ቀን፡ ዝምሮ፡ ይኾናል፡ ብሎ፡ ካልወሰነ፡ በስተቀር፡ ማናቸውም፡ የክስ፡ አቤቱታ፡ ሲቀርብ፡ የሚችለው፡ ወንጀል፡ መፈጸሙ፡ በታወቀ፡ በሦስት፡ ወር፡ ውስጥ፡ (ምክንያቱም፡ በክስ፡ አቤቱታ፡ የሚንቀሳቀስ፡ የወንጀል፡ ክስ፡ በወንጀለኛ፡ መቅጫው፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀኑ፡ ፲፩፡ መሠረት፡ ባልታወቀ፡ ወንጀለኛ፡ ላይ፡ ሲቀርብ፡ ስለሚችል፡) ወይም፡ ወንጀለኛው፡ ማን፡ እንደኾነ፡ በታወቀ፡ በሦስት፡ ወር፡ ውስጥ፡ ነው፡ (ወንጀለኛ፡ መቅጫ፡ ቀኑ፡ ፪፻፳)። የክስ፡ አቤቱታ፡ ከቀረበ፡ በኋላ፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ በቀኑ፡ ፳፪፡ እና፡ ተከታታዮቹ፡ መሠረት፡ ፖሊስ፡ ምርመራውን፡ ይከታተላል። የፖሊስ፡ ምርመራውን፡ ውጤት፡ መነሻ፡ በማድረግ፡ ሕግ፡ አስከባሪው፡ አጠራጣሪ፡ በኾኑት፡ ጉዳዮች፡ ምርመራ፡ እንዲቀጥል፡ ያላል፡ ወይም፡ ካልመሰለው፡ ይጣባኛ፡ ሊወስድበት፡ በማይቻለው፡ ኹነታ፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀጥር፡ ፴፱፡ መሠረት፡ ክስን፡ ይዘጋል። ወይም፡ በዚሁ፡ ክፍል፡ በቀኑ፡ ፵፪፡ መሠረት፡ የሚያግድ፡ ሌላ፡ ነገር፡ ከሌለ፡ ክስን፡ ይቀጥላል። ሕግ፡ አስከባሪ፡ በአቤት፡ ባይ፡ የሚያስቀጣ፡ ክስ፡ ባቀረበ፡ ጊዜ፡ ስለ፡ ክስ፡ ማመልከቻ፡ አወጣጥና፡ በፍርድ፡ ቤት፡ ክርክር፡ ስለ፡ ማቅረብ፡ የሚከተለው፡ ሥነ፡ ሥርዐት፡ እንደቀረው፡ ኹሉ፡ በቀኑ፡ ፲፬፡ እና፡ ተከታታዮቹ፡ ወይም፡ ተስማሚ፡ ኹኖ፡ ካገኘው፡ በደንብ፡ ተላላፊነት፡ ስለሚያስቀጡት፡ ወንጀሎች፡ ከቀኑ፡ ፩፻፳፮—፩፻፸፪፡ መሠረት፡ ነው። ሹኖም፡ ሕግ፡

6 “ያለመከፋፈልን፡ ደንብ 1” መሠረት፡ በማድረግ፡ (የወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀኑ፡ ፪፻፳፪)፡ ብዙ፡ ሰዎች፡ በክስ፡ አቤቱታ፡ በሚያስቀጣ፡ ወንጀል፡ ውስጥ፡ ተከፋይ፡ ኹነው፡ ቢገኙ፡ ክስ፡ ባንፋ፡ ላይ፡ ሲቀርብም፡ ኹሉም፡ ይቀጣሉ። ወንጀሉ፡ በአቤቱታ፡ የሚያስቀጣ፡ ያልኾነ፡ እንደኾነና፡ ጥቂቱ፡ ክፍል፡ ያለግል፡ ከሳሽ፡ ሊፈርድ፡ የማይቻል፡ የኾነ፡ እንደኾነ፡ [ለምሳሌ፡ የወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀኑ፡ ፪፻፳፪፡ (፪) “ያለመከፋፈል፡ ደንብ 1” ሊሠራ፡ አይችልም።

7 በዚህን፡ ጊዜ፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀኑ፡ ፩፻፡ እና፡ በሥነ፡ ሥርዐቱ፡ በቀኑ፡ ፳፻፱፡ — ፳፻፱፡ መሠረት፡ ተበዳይ፡ ሰው፡ የበደል፡ ካሳ፡ እንዲሰጠው፡ ብቻ፡ በወንጀል፡ ክስ፡ ውስጥ፡ ተባባሪ፡ ተከራካሪ፡ እንዲኾን፡ ሊያመለክት፡ ይችላል።

አስከባሪ፡ ክስ፡ ሊያቀርብ፡ የሚችለው፡ ተበዳዩ፡ ሰው፡ ክስ፡ እንዲቀርብለት፡ የፈለገ፡ እንደሆነ፡ ነው። ተበዳዩ፡ ክሱ፡ እንዲቀጥል፡ ካልፈለገ፡ በወንጀለኛ፡ መቅጫ፡ ቊ፡ ይገኛል፡ መሠረት፡ ይህንን፡ ለማድረግ፡ መብት፡ ስላለው፡ ሕግ፡ አስከባሪው፡ ማቆም፡ ይኖርበታል።<sup>8</sup> እንደ፡ ደንቡ፡ ከሆነ፡ ተከላኹም፡ ክስ፡ በዚህ፡ መልክ፡ መቆም፡ የለበትም፡ ብሎ፡ እንደማይቃወም፡ የታወቀ፡ ነው።<sup>9</sup>

8 ይህ፣ ጉዳይ፣ በወንጀልኛ፣ መቅሜ፣ ሕግ፣ ሥነ፣ ሥርዐት፣ ውስጥ፣ በደንብ፣ የተገለጠ፣ አለመኾኑ፣ ቢታወቅም፣ የዚሁ፣ ክፍል፣ ሕግ፣ ቀ፣ ፪፻፩፣ ከዚህ፣ ግንኙነት፣ እንደሌለው፣ የታወቀ፣ ነው። በክስ፣ አቢቱታ፣ የቀረበው፣ ክስ፣ ከፍርድ፣ ቤት፣ በማናቸውም፣ ደረጃ፣ ላይ፣ ቢቆም፣ ክስ፣ መቆም፣ አለበት። ስለዚህ፣ ሕግ፣ አስከባሪው፣ ፍርድ፣ ቤት፣ ቢሰማማም፣ ባይሰማማም፣ ክስ፣ ግንኙነት፣ ይኖርበታል። ስለዚህ፣ ውጤቱ፣ ቀድሞውኑ፣ የክስ፣ አቤቱታ፣ እንዲቀርብ፣ ያክል፣ መኾኑ፣ ነው። ስለዚህ፣ በወንጀልኛ፣ መቅሜ፣ ሕግ፣ ቀ፣ ፪፻፩፣ በተገለጠው፣ መሠረት፣ ፍርድ፣ ቤት፣ ክርክሩን፣ ለመስጠትና፣ መቀሜ፣ ለመጣል፣ መብት፣ የለውም። በወንጀልኛ፣ መቅሜ፣ ሕግ፣ ሥነ፣ ሥርዐት፣ ቀ፣ ፪፻፩፣ ሥራ፣ ላይቆለስ፣ ተከላክቶ፣ እንዲለቀቅ፣ ውሳኔ፣ መስጠት፣ ይኖርበታል። (የወንጀልኛ፣ መቅሜ፣ ሕግ፣ ሥነ፣ ሥርዐት፣ ቀ፣ ፪፻፩፣ ይመለከታል)። ሌላው፣ ክስ፣ እንዲቆም፣ መብት፣ ኾኖ፣ ሊሠራበት፣ የሚችለው፣ በወንጀልኛ፣ መቅሜ፣ ሕግ፣ ቀ፣ ፪፻፩፣ መሠረት፣ ይሁ ው።



ኑን፡ ነው።<sup>10</sup> ምንም፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ውስጥ፡ በሦስተኛ፡ ሰንጠረዥ፡ በተለይ፡ የተሰጠው፡ ቅጥ፡ ባይኖርም፡ ማስረጃው፡ በቅጅ፡ ተጽፎ፡ ጉዳዩን፡ ለማየት፡ ሥልጣን፡ ላለው፡ ፍርድ፡ ቤት፡ እንዲደርሰው፡ ይደረጋል። ይህም፡ የሚረዳው፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀ፡ ፩፻፶ (፪) መሠረት፡ የግል፡ ከሳሽ፡ ክስ፡ ያቀረበበት፡ ወንጀል፡ ራሱ፡ ክሱን፡ እንዲከታተል፡ ሥልጣን፡ ስለተሰጠው፡ መኾኑን፡ ለማረጋገጥ፡ እንዲረዳው፡ ነው።<sup>11</sup>

በዚህ፡ ሹኑታ፡ ሊቀርብ፡ የሚችለው፡ ጥያቄ፡ ማስረጃው፡ ሕግ፡ አስከባሪው፡ ክሱን፡ ለመከታተል፡ ባልፈለገበት፡ ሹኑታ፡ ሹሉ፡ በግዴታ፡ አስፈላጊ፡ መኾኑን፡ ነው። በዚህን፡ ጊዜ፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀ፡ ፱፻ (፪) በተጠቀሰው፡ መሠረት፡ ለተበዳዩ፡ ከሚላከው፡ ውሳኔ፡ ቅጅ፡ ጋራ፡ ተያይዞ፡ እንዲደርሰው፡ መደረግ፡ ሊኖርበት፡ ነው፡ ወይስ፡ ተበዳዩ፡ በጠየቀ፡ ጊዜ፡ ብቻ፡ ሊሰጠው፡ ነው? ይህ፡ ማለት፡ ጥያቄው፡ ልክ፡ በቀ፡ ፵፩ (፪) ይግባኝ፡ እንደሚቀርብበት፡ ዐይነት፡ ሹኖ፡ ሲገኝ፡ ማለት፡ ነው። ምንም፡ ሕጉ፡ ስለዚህ፡ በግልጥ፡ ባይናገርም፡ በመገኘቱ ሪያ፡ የተነገረው፡ የአሠራር፡ ዘዴ፡ ሊፈጸም፡ ይገባል። ሕግ፡ አስከባሪው፡ በቂ፡ ማስረጃ፡ የለም፡ በማለት፡ እንድ፡ ጊዜ፡ ለመከሰስ፡ ፈቃደኛ፡ አለመኾኑን፡ ገልጦ፡ ክስ፡ ካቆመ፡ ተበዳዩ፡ ተነግሮትም፡ ሹን፡ ሳይነገረው፡ ክሱን፡ ቢቀጥል፡ ይህንን፡ ያህል፡ የሚያሳስብ፡ ጉዳይ፡ ሊሾን፡ አይችልም። ጉዳዩ፡ እንዲህ፡ ከሾነ፡ ተበዳዩ፡ ቢጠቀምበትም፡ ባይጠቀምበትም፡ ክሱን፡ መከታተል፡ ባቆመበት፡ ጊዜ፡ ያለ፡ አንዳች፡ ጥያቄ፡ ማስረጃውን፡ ለተበዳዩ፡ ወገን፡ የመሰጠት፡ አሠራር፡ መንገድ፡ ቢለመድ፡ ጠቃሚ፡ ነው።

ሌላው፡ ጥያቄ፡ ደግሞ፡ ማስረጃው፡ ከተሰጠው፡ በኋላ፡ የግል፡ ከሳሽ፡ ልክ፡ የሕግ፡ አስከባሪ፡ ዐይነት፡ መብት፡ ይኖረው፡ ወይም፡ አይኖረው፡ እንደሆነ፡ የሚለው፡ ነው። የወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀ፡ ፩፻፶፫ (፩) መሠረት፡ ሊኖረው፡ ይችላል፡ የሚያሰኝ፡ አስተያየት፡ ቢገኝም፡ አንዳንድ፡ ተግባሮችና፡ በተለይም፡

<sup>10</sup> በክስ፡ አቤቱታ፡ አቅራቢነት፡ በሚያስቀጣ፡ ወንጀል፡ ባይሾን፡ በሌላው፡ ዐይነት፡ ወንጀል፡ ክስ፡ ሕግ፡ አስከባሪ፡ በቂ፡ ማስረጃ፡ የለም፡ በማለት፡ ክሱን፡ ያቆመ፡ አንደኛን፡ ለተበዳዩ፡ ወገን፡ ሌላ፡ መብቱን፡ የሚያስከብርበት፡ መንገድ፡ አለው። ራሱ፡ ግላዊ፡ ክስ፡ ለማቅረብ፡ አይችልም፡ ነገር፡ ግን፡ በወንጀለኛ፡ መቅጫው፡ ሕግ፡ ሥነ፡ ሥርዐት፡ አንቀጽ፡ ፵፩ (፪) መሠረት፡ ሕግ፡ አስከባሪው፡ ክሱን፡ ለመግፋት፡ ባለመፈለጉ፡ ይግባኝ፡ አቅርቦ፡ ሕግ፡ አስከባሪው፡ ክሱ፡ ለማቅረብ፡ እንዲታዘዝለት፡ ለማስደረግ፡ መንገድ፡ አለው። የዚህ፡ ዐይነት፡ ይግባኝ፡ የሚወሰደው፡ ጉዳይ፡ በክርክር፡ ቀርቦ፡ ቢወሰን፡ ኑሮ፡ ይግባኙን፡ ለማየት፡ ሥልጣን፡ ላለው፡ ፍርድ፡ ቤት፡ ስለሆነ፡ በይግባኙ፡ ትእዛዝ፡ መሠረት፡ ሕግ፡ አስከባሪው፡ ተከራክሮ፡ ተወስኖ፡ የፍርዱ፡ ይግባኝ፡ ሲመጣ፡ ሕግ፡ አስከባሪው፡ ክርክሩን፡ እንዲቀጥል፡ ላዘዘው፡ ፍርድ፡ ቤት፡ መቅረብ፡ አይኖርበትም። ምክንያቱም፡ እንድ፡ ጉዳይ፡ አንድ፡ ፍርድ፡ ቤት፡ በዚያው፡ ሥልጣኑ፡ ሹሉት፡ ጊዜ፡ ሊያይ፡ ባለመቻሉ፡ ነው።

<sup>11</sup> ማስረጃው፡ የሚሰጠው፡ ክሱ፡ የቆመው፡ በበቂ፡ ማስረጃ፡ አለመገኘት፡ ባይሆን፡ ጊዜ፡ ብቻ፡ ስለ፡ ሹን፡ ስለተፈጸመው፡ ወንጀል፡ ዐይነት፡ ጥርጣራ፡ ሊኖር፡ ይችላል፡ ይኾናል። በዚህን፡ ጊዜ፡ ሕግ፡ አስከባሪው፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ በቀ፡ ፩፻፶፫ (፩) መሠረት፡ በተጨማሪ፡ የሚተኩ፡ ክሶችን፡ ከማቅረብ፡ የሚያግደው፡ ነገር፡ የለም። ሹኖም፡ በዚህን፡ ጊዜ፡ በምሉ፡ ወንጀሎቹ፡ በክስ፡ አቤቱታ፡ አቅራቢነት፡ የሚያስቀጡ፡ መኾን፡ አለባቸው። ስለዚህ፡ የግል፡ ክስ፡ ስለሚቀርብባቸው፡ ጉዳዮች፡ የሚሰጠው፡ ማስረጃ፡ በጣም፡ የሚያግድ፡ ወይም፡ የሚወስን፡ መኾን፡ የለበትም። ማለት፡ ሕግ፡ አስከባሪው፡ የግል፡ ከሳሽ፡ እንደሚከተለው፡ ለመከሰስ፡ እንዲችል፡ ሊፈቅድለት፡ ይችላል፡ ይኾናል። ስምሳሌ፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀ፡ ፩፻፶፫ (፩) (ዕስሶ፡ ስለተደረገ፡ ከባድ፡ የአካል፡ ጉድለት)፡ በተግባሩ፡ አፈጻጸም፡ ትግቱ፡ ሳይከብድ፡ ከሶ፡ በተጨማሪ፡ ክስ፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ቀ፡ ፩፻፶፫ (፫) (በቆልተኛነት፡ ምክንያት፡ በሰሚደረገ፡ የአካል፡ ጉዳተች)፡ በሚለው፡ ወንጀለኛውን፡ ለመክሰስ፡ እንዲችል፡ ማለት፡ ነው። ነገር፡ ግን፡ በግልጽ፡ ሊታወቅ፡ የሚሻው፡ ምንም፡ የተሰጠው፡ ማስረጃ፡ በተጨማሪ፡ በሚተኩ፡ ወንጀሎች፡ ለመከሰስ፡ የሚያስችል፡ ባይኾንም፡ በወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ ቀ፡ ፩፻፶፫ (፪) መሠረት፡ በተጨማሪ፡ በሚተኩ፡ ክሶች፡ ክስ፡ ለማቅረብ፡ ይቻላል።

በሌ ፡ አካባቢው ፡ ፍርድ ፡ ቤት ፡ መምረጥ ፡ ጉዳይ ፡ ምንም ፡ ክስ ፡ ውስጥ ፡ ባይገባ ፡ በሕግ ፡ አስከባሪ ፡ ሥልጣን ፡ እጅ ፡ ማቋቋት ፡ ተገቢ ፡ ይመስላል ። ምክንያቱም ፡ በክስ ፡ አቤቱታ ፡ የሚንቀሳቀስ ፡ ወንጀል ፡ የተፈጸመበት ፡ ቦታ ፡ አጠራጣሪ ፡ በሆነ ፡ ጊዜ ፡ (የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቍ ፡ ፩፻፪ ፡ ይመለከታል) ፤ በዚሁ ፡ ክፍል ፡ በቍ ፡ ፩፻፮ ፡ ክስ ፡ የሚሰማበት ፡ ፍርድ ፡ ቤት ፡ የመምረጥ ፡ ሥልጣን ፡ ለሕግ ፡ አስከባሪ ፡ የተሰጠው ፡ ሹኖ ፡ ሳለ ፡ በቀጥታ ፡ ለግል ፡ ከሳሽ ፡ ቢተላለፍ ፡ አደናጋሪ ፡ ሹነታን ፡ ይፈጥራል ። በሌሊት ፡ ሕግ ፡ አስከባሪው ፡ ማስረጃ ፡ በሚሰጥበት ፡ ጊዜ ፡ እዚያው ፡ ላይ ፡ ጉዳዩ ፡ የትኛው ፡ ፍርድ ፡ ቤት ፡ ሊታይ ፡ እንደሚገባው ፡ ለይቶ ፡ ቢገልጥ ፡ የሚሻል ፡ ነው ፡ ቢባል ፡ የሚያስኬድ ፡ ነው ። ይህም ፡ ትርጉም ፡ በዚሁ ፡ ክፍል ፡ ሕግ ፡ ቍ ፡ ፵፬ ፡ (፩) የተደገፈ ፡ ነው ። ምክንያቱም ፡ ሕግ ፡ አስከባሪ ፡ ጉዳዩን ፡ ለማየት ፡ ሥልጣን ፡ ላለው ፡ ፍርድ ፡ ቤት ፡ የማስረጃውን ፡ ቅጅ ፡ እንዲልክ ፡ ሲያስገድድ ፡ ስለሚያየው ፡ የገንዘብ ፡ መጠን ፡ ሥልጣን ፡ ብቻ ፡ ሳይሆን ፡ በከሳሽና ፡ በተከሳሹ ፡ እንዲሁም ፡ በቀበሌ ፡ ግዛት ፡ በኩል ፡ ሲታይም ፡ ጉዳዩን ፡ ለማየት ፡ ሥልጣን ፡ ያለውን ፡ ፍርድ ፡ ቤት ፡ ለይቶ ፡ በመግለጥ ፡ ጩምር ፡ እንዲያስታውቅ ፡ ነው ። ብዙ ፡ ፍርድ ፡ ቤቶች ፡ በአካባቢው ፡ ላይ ፡ ሥልጣን ፡ ባላቸው ፡ ጊዜ ፡ ጉዳዩ ፡ በየትኛው ፡ ፍርድ ፡ ቤት ፡ መታየት ፡ እንደሚኖርበት ፡ የመወሰኑ ፡ ሥልጣንና ፡ ኅላፊነት ፡ የሕግ ፡ አስከባሪው ፡ ብቻ ፡ መሆኑን ፡ አለበት ።

የማስረጃ ፡ ማጥናት ፡ ውጤት ፡ የግል ፡ ከሳሽ ፡ ወይም ፡ ወኪሉ ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቍ ፡ ፻፮ ፡ በተመለከተው ፡ መሠረት ፡ በማስረጃው ፡ ውስጥ ፡ ተለይቶ ፡ በተገለጠለት ፡ ፍርድ ፡ ቤት ፡ ክርክሩን ፡ የግል ፡ ከሳሽ ፡ ለማቅረብ ፡ እንዲችል ፡ ነው ። የግል ፡ ከሳሽ ፡ የክስ ፡ ማመልከቻውን ፡ ካዘጋጀ ፡ በኋላ ፡ <sup>12</sup> የክሱ ፡ ጉዳይ ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ በአንቀጾች ፡ ፩፻፱ — ፻፶፫ ፡ በተገለጠው ፡ መሠረት ፡ ይመራል ፡ ማለት ፡ ነው ። <sup>13</sup> እንደሚታየው ፡ ራሱ ፡ ክስን ፡ በሚያ

<sup>12</sup> በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቍ ፡ ፩፻፮ ፡ (፩) መሠረት ፡ በሕግ ፡ ተላላፊነት ፡ ስለሚያስቀጡት ፡ ወንጀሎች ፡ ልዩ ፡ የክስ ፡ ማመልከቻ ፡ እንዲቀርብ ፡ አያገባም ። በእነዚህ ፡ ዐይነት ፡ ወንጀሎች ፡ ክስ ፡ የሚቀርበው ፡ በሥነ ፡ ሥርዐት ፡ ክፍል ፡ በቍ ፡ ፩፻፳፮ — ፩፻፳፱ ፡ በተቃዘዘው ፡ መሠረት ፡ ይሸፍናል ። በሕግ ፡ ተላላፊነት ፡ ስለሚያስቀጡት ፡ ወንጀሎች ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ቍ ፡ ፩፻፳፩ ፡ (፩) (ለ) የሚገጥም ፡ ልዩ ፡ ጉዳይ ፡ አለ ። ይህም ፡ እንቀጽ ፡ የሚገልጠው ፡ የመሥሪያ ፡ ቤት ፡ ደንጋጊዎችን ፡ (የክፍል ፡ ሕጎችንና ፡ ዐጥጀቾችን) ፡ በመተላለፍ ፡ ጥፋት ፡ ክስ ፡ ሲቀርብ ፡ ክስ ፡ ሲቀርብ ፡ የሚችለው ፡ ሕጎችን ፡ የሚያስፈጽመው ፡ የመንግሥት ፡ መሥሪያ ፡ ቤት ፡ ወኪል ፡ በግል ፡ ከሳሽነት ፡ ሲቀርብ ፡ ብቻ ፡ መሆኑን ፡ ነው ። እንደዚህ ፡ ያለ ፡ ሹነታ ፡ ሲፈጠር ፡ ክሱ ፡ የግል ፡ ጉዳይ ፡ ነክ ፡ ባለመሆኑ ፡ በግል ፡ አቤቱታ ፡ ከሳሽነት ፡ ሊንቀሳቀስ ፡ አይገባውም ፡ የሚል ፡ አስተያየት ፡ ሲኖር ፡ ቢችልም ፡ ሕጉ ፡ በዚህ ፡ መልክ ፡ እንዲከናወን ፡ የፈቀደው ፡ ስለተጣበደ ፡ ሕግ ፡ በሰርቅ ፡ ለመፈጸም ፡ እየተቻለ ፡ ሕግ ፡ አስከባሪ ፡ ክስ ፡ በማቅረቡ ፡ ይህ ፡ እንዳይሆን ፡ እንዳያገኝድ ፡ ነው ። (ለምሳሌ ፡ ስለ ፡ ጉምሩክ ፡ ቀረጥ ፡ አከፋፈል ፡ ማለት ፡ ነው ።) ነገር ፡ ግን ፡ በዚህ ፡ ዐይነት ፡ ጉዳይ ፡ ውስጥ ፡ ችግር ፡ የሚፈጠረው ፡ ክስ ፡ ቀርቦ ፡ በቂ ፡ ማስረጃ ፡ የለም ፡ በማለት ፡ ሕግ ፡ አስከባሪ ፡ በክሱ ፡ ለመጥፋት ፡ ያልፈቀደ ፡ እንደሆነ ፡ ነው ። ምክንያቱም ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቍ ፡ ፩፻፶፪ ፡ (፩) መሠረት ፡ የግል ፡ ከሳሽ ፡ ለመክሰስ ፡ እንዲችል ፡ ሕግ ፡ አስከባሪ ፡ ማስረጃ ፡ ቢሰጠውም ፡ ስለመንግሥት ፡ መሥሪያ ፡ ቤት ፡ ወኪል ፡ የሆነው ፡ የሚከራከረው ፡ በመንግሥት ፡ ስም ፡ በመሆኑ ፡ ሕግ ፡ አስከባሪ ፡ ቢወጣም ፡ መንግሥት ፡ ያልገባበት ፡ የግል ፡ ክርክር ፡ ነው ። ለማለት ፡ እኳጋች ፡ ነው ። በቍ ፡ ፩፻፳፩ ፡ (፩) (ለ) የተመለከቱት ፡ ክሶች ፡ በእውነተኛው ፡ ፍት ፡ ከተወሰዱ ፡ በግል ፡ ክስ ፡ አቤቱታ ፡ አትራቢነት ፡ የሚንቀሳቀስ ፡ ክስ ፡ ሳይሆን ፡ እንደተረፈው ፡ በጠቋሚ ፡ የሚንቀሳቀስ ፡ ክስ ፡ ቢባል ፡ የሚሻልበት ፡ በዚህ ፡ ምክንያት ፡ ነው ። ስለዚህ ፡ የዚህ ፡ ዐይነት ፡ ጠባይ ፡ ያሏቸው ፡ ወንጀሎች ፡ ሲፈጠሩ ፡ በግል ፡ ክስ ፡ አቤቱታ ፡ አትራቢነት ፡ በሚያስከስሱት ፡ ወንጀሎች ፡ ሳይሆን ፡ እንደተረፈው ፡ ዐይነት ፡ ተቂጥረው ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ በቍ ፡ ፵፭ ፡ (፩) በተመለከተው ፡ መሠረት ፡ መፈጸም ፡ ይኖርበታል ።

<sup>13</sup> በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቍ ፡ ፩፻፳፮ ፡ መሠረት ፡ ተከሳሽ ፡ ሳይኖር ፡ ክስ ፡ ሊንቀሳቀስ ፡ አይችልም ። ሹኖም ፡ ይህ ፡ አሠራር ፡ በደንብ ፡ ተላላፊነት ፡ በሚያስቀጡት ፡ ወንጀሎች ፡ ውስጥ ፡ በግል ፡ ከሳሽ ፡ በሚመራ ፡ ክስ ፡ ውስጥ ፡ ተከሳሽ ፡ በቂ ፡ ምክንያት ፡ ሳይኖረው ፡ ሳይቀርብ ፡ ቢቀር ፡ ፍርድ ፡ እንዲሰጥ ፡ በሚፈቅደው ፡ ከሥነ ፡ ሥርዐቱ ፡ ክፍል ፡ ቍ ፡ ፩፻፳፱ ፡ (፩) ጋራ ፡ አይፋለም ። ሹኖም ፡ የዚህ ፡ የኋለኛው ፡ ደንብ ፡ ተፈላጊነት ፡ በጣም ፡ የሚያጠራጥር ፡ ነው ።

ንቀሳቅስበትም ፡ ጊዜ ፡ ቢኾን ፡ የግል ፡ ከሳሽ ፡ ስለበደሉ ፡ ካላ ፡ ጩምር ፡ እንዲከስ ፡ ይፈቀድለታል ። ወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቀ፡ ፩፻፶፬ ፡ (፫) <sup>14</sup> ይህንን ፡ ሊያደርግ ፡ የማይችለው ፡ ተከሳሹ ፡ ልጅ ፡ ሲኾን ፡ ብቻ ፡ ነው ። (የዚሁ ፡ ክፍል ፡ ሕግ ፡ ቀ፡ ፩፻፶፭ ፡ (፩) (ሀ) ይመለከታል) ።

ከላይ ፡ የተገለጸው ፡ ሐተታ ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ከቀ፡ ፵፰ ፡ ጋራ ፡ የሚፋለስ ፡ አይደለም ። ቀ፡ ፵፰ ፡ ውስጥ ፡ በግል ፡ ከሳሽ ፡ የቀረበ ፡ የክስ ፡ አቤቱታ ፡ በክርክሩ ፡ ውስጥ ፡ ተከሳሽ ፡ የከበደ ፡ ወንጀል ፡ ማድረጉ ፡ ሲረጋገጥ ፡ የሕግ ፡ አስከባሪው ፡ በማናቸውም ፡ ደረጃ ፡ ሊያቆም ፡ መቻሉን ፡ የሚገልጥ ፡ ነው ። ይህም ፡ ማለት ፡ በቀ፡ ፵፬ ፡ (፩) መሠረት ፡ በተጠቀሰው ፡ ማስረጃ ፡ ውስጥ ፡ ከተገለጠው ፡ የባሰ ፡ ክባድ ፡ ወንጀል ፡ ሲገኝ ፡ ማለት ፡ ነው ። ለዚህ ፡ የሚኾን ፡ ምሳሌ ፡ የግል ፡ ክስ ፡ ለማንቀሳቀስ ፡ እንዲቻል ፡ የተሰጠው ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ቀ፡ ፮፻፵፬ ፡ (በሌላ ፡ ሰው ፡ ሀብት ፡ ሕግ ፡ በማይፈቅደው ፡ ኹነታ ፡ መጠቀም) ፡ መሠረት ፡ ለመክሰስ ፡ ኹኖ ፡ ባለ ፡ በክርክሩ ፡ ውስጥ ፡ ይህ ፡ ሳይኾን ፡ ቀርቶ ፡ ጉዳዩ ፡ ሌብነት ፡ ለመኾኑ ፡ ማስረጃ ፡ ተገኝቶ ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ቀ፡ ፮፻፵፬ ፡ የሚያስቀጣ ፡ ሲኾን ፡ ነው ። <sup>15</sup>

ይህም ፡ ሲኾን ፡ በማናቸውም ፡ ኹነታ ፡ ሕግ ፡ አስከባሪው ፡ ቀድሞ ፡ ይህን ፡ ዐውቄ ፡ ሲኾን ፡ ኑር ፡ በቂ ፡ ማስረጃ ፡ የለም ፡ በማለት ፡ ባልለቀኩም ፡ ነበር ፡ ባለ ፡ ቀ፡ ጥር ፡ የመክሰሱ ፡ ሥልጣን ፡ እንደገና ፡ ለሕግ ፡ አስከባሪ ፡ አይመለስም ። በሕግ ፡ አስከባሪ ፡ ቃል ፡ መሠረት ፡ ክስ ፡ ሊቆም ፡ የሚችለው ፡ በክርክሩ ፡ ጊዜ ፡ የተገኘው ፡ ወንጀል ፡ ዐይነት ፡ በግል ፡ ክስ ፡ አቤቱታ ፡ ሊቀርብ ፡ የማይገባው ፡ ኹኖ ፡ በመገኘቱ ፡ ሕግ ፡ አስከባሪው ፡ በወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቀ፡ ፵፬ ፡ (፩) መሠረት ፡ የግል ፡ ከሳሽ ፡ እንዲያንቀሳቅስ ፡ ማስረጃ ፡ የማይሰጥበት ፡ ወንጀል ፡ ኹኖ ፡ ሲገኝ ፡ ብቻ ፡ ነው ። ስለዚህ ፡ ቀ፡ ፵፰ ፡ በግልጥ ፡ ባይናገርም ፡ እንድ ፡ ጊዜ ፡ የግል ፡ ከሳሽ ፡ እንዲያንቀሳቅስ ፡ ማስረጃ ፡ ከተሰጠ ፡ ወንጀሉ ፡ በግል ፡ ከሳሽ ፡ አቤቱታ ፡ ሊንቀሳቀስ ፡ የማይገባው ፡ መኾኑ ፡ እስካልታወቀ ፡ ድረስ ፡ ሕግ ፡ አስከባሪ ፡ ተመልሶ ፡ ሊገባ ፡ አይገባውም ፡ በማለት ፡ ቢተረጎም ፡ የሚሻል ፡ ነው ።

<sup>14</sup> ስለ ፡ ፍትሕ ፡ ብሔር ፡ የካላ ፡ ክስ ፡ እና ፡ የግል ፡ አቤቱታ ፡ ክስ ፡ ማንግት ፡ የፍትሕ ፡ ፍርድ ፡ ያለፍርድ ፡ በፈት ፡ ነጻ ፡ ስለመልቀቅ ፡ በፍርድ ፡ ነጻ ፡ ስለመውጣት ፡ (የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ አንቀጽ ፡ ፩፻፶፭ — ፩፻፶፬) ፡ ከላይ ፡ በተራ ፡ ቀ፡ ፮ ፡ የታተመውን ፡ ይመለከታል ።

<sup>15</sup> የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ሥነ ፡ ሥርዐት ፡ ቀ፡ ፵፰ ፡ ሕግ ፡ አስከባሪው ፡ ከባድ ፡ ወንጀል ፡ በክርክሩ ፡ ውስጥ ፡ እንዴት ፡ እንደተፈጠረ ፡ በምን ፡ መልክ ፡ ሊያውቅ ፡ እንደሚችል ፡ አይገልጥም ። ስለዚህ ፡ የሕግ ፡ አስከባሪው ፡ ወገን ፡ በማናቸውም ፡ በክስ ፡ አቤቱታ ፡ አቅራቢ ፡ በሚንቀሳቀስ ፡ ክስ ፡ ውስጥ ፡ ወኪል ፡ መላክ ፡ ሊኖርበት ፡ ነው ። ይህ ፡ ደግሞ ፡ ሊኾን ፡ የማይችል ፡ ነው ። ስለዚህ ፡ የቀ፡ ፵፰ ፡ አተረጓጎም ፡ ትክክል ፡ ከኾነ ፡ የግል ፡ ክስ ፡ ተቆርጦ ፡ የሚቆመው ፡ ሕግ ፡ አስከባሪ ፡ ለጠቅላላ ፡ ሕዝብ ፡ ጥቅም ፡ ሲል ፡ ሊከታተለው ፡ የሚገባ ፡ ወንጀል ፡ ሲገኝ ፡ ከኾነ ፡ ፍርድ ፡ ቤት ፡ በራሱ ፡ ፈቃድ ፡ ወይም ፡ በእመልካች ፡ የዚህ ፡ ዐይነት ፡ ወንጀል ፡ በክርክሩ ፡ ውስጥ ፡ ሲገለጥ ፡ ለማቆም ፡ መቻል ፡ ይኖርበታል ። ይህ ፡ ሊኾን ፡ የሚገባው ፡ በተለይም ፡ ጉዳዩን ፡ ከሚያየው ፡ ፍርድ ፡ ቤት ፡ ሥልጣን ፡ በላይ ፡ የኾኑ ፡ ወንጀሎች ፡ ለምሳሌ ፡ ቀድሞ ፡ የቀረበው ፡ የወንጀል ፡ ክስ ፡ በወረዳ ፡ ፍርድ ፡ ቤት ፡ ሊታይ ፡ የሚችል ፡ ባንድ ፡ ሰው ፡ ሀብት ፡ ያል ፡ ሕግ ፡ መጠቀም ፡ ኹኖ ፡ በኋላ ፡ በክርክሩ ፡ ውስጥ ፡ በወረዳ ፡ ፍርድ ፡ ቤት ፡ ሊታይ ፡ የሚገባው ፡ የሌብነት ፡ ክስ ፡ ኹኖ ፡ ሲገኝ ፡ አሠራሩ ፡ በዚህ ፡ መልክ ፡ ስለኾነ ፡ ነው ።

እነዚህ፡ ከላይ፡ የተገለጹት፡ አስተያየቶች፡ መብቱ፡ ወይም፡ ጥቅሙ፡ የተነካበት፡ ሰው፡ እቤቱታ፡ ሳያቀርብ፡ ክስ፡ ስለማይቀርብባቸው፡ ወንጀሎች፡ ጠቅላላ፡ ደንብ፡ ነው። ተመሳሳይ፡ ደንቦች፡ ግን፡ አብዛኛውን፡ ጊዜ፡ በሌሎች፡ ሀገሮች፡ እይንጉም። ምክንያቱም፡ ምንም፡ ወንጀሎች፡ በግል፡ እቤቱታ፡ አቅራቢነት፡ የሚያስከስሱና፡ በማናቸውም፡ ጠቋሚ፡ የሚያስከስሱ፡ ተብለው፡ ቢለዩም፡ ማናቸውም፡ ወንጀል፡ ምንም፡ ከላይ፡ ሲታይ፡ የግል፡ ሰው፡ መብትን፡ የሚነካ፡ ኹኖ፡ ቢገኝም፡ ወንጀል፡ የፈጸመ፡ ሰው፡ ኹሉ፡ በኅላፊነት፡ መጠየቅ፡ የሚኖርበት፡ ለጠቅላላው፡ ማንበራዊ፡ ኑሮ፡ ጥቅም፡ ሲባል፡ በመኾኑ፡ ነው።

በ፲፱፻፶፬፡ ዓ፡ ም፡ የኢትዮጵያ፡ ወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ የተደነገገው፡ በፊት፡ ከነበረው፡ በጣም፡ ጥብቅ፡ ነው። ይህም፡ ሊኾን፡ የሚገባው፡ ነው። እ፡ ኤ፡ አ፡ በ፲፱፻፵፱፡ ዓ፡ ም፡ በቀ፡ ፳፱፡ በወጣው፡ የሕግ፡ አስከባሪዎች፡ አዋጅ፡ ክፍል፡ ፱፡ መሠረት፡ (በግልጥ፡ ባይኾንም፡ በአኹኑ፡ ወንጀለኛ፡ መቅጫ፡ ሕግ፡ ሥነ፡ ሥርዐት፡ የተሠረዘው)፡ የወንጀል፡ ክስ፡ በሕግ፡ አስከባሪ፡ በማይመራበት፡ ጊዜ፡ ፍርድ፡ ቤቱ፡ የግል፡ ከሳሽ፡ ራሱ፡ ወይም፡ በጠበቃው፡ ርዳታ፡ እንዲከታተል፡ ይፈቅድ፡ ነበር። ይህም፡ ይኾን፡ የነበረው፡ የወንጀሉ፡ ከባድነት፡ ወይም፡ ሕግ፡ አስከባሪ፡ ለምን፡ ለመክሰስ፡ እንዳልፈቀደ፡ ሳይጠና፡ ነበር። ይህ፡ ክፍል፡ ምንም፡ በቀድሞ፡ ልማድ፡ የነበረውን፡ ተበዳይ፡ የነበረውን፡ ሰው፡ የግል፡ ተከታታይነት፡ የሚደግፍ፡ እንደነበረ፡ ግልጥ፡ ቢኾንም፡ በፍትሕ፡ ብሔር፡ ቀድሞ፡ በጉማ፡ ክፍያ፡ የነፍስ፡ ግዳይ፡ ወንጀል፡ ፍርድ፡ እንዲለወጥ፡ ይፈቅድ፡ እንደነበረው፡ ኹሉ፡ በዚህም፡ ረገድ፡ በወንጀል፡ እና፡ በወንጀል፡ ሥነ፡ ሥርዐት፡ መካከል፡ ሊኖር፡ የሚገባውን፡ ልዩነት፡ ያልጠበቀ፡ ደንብ፡ ነበር። ስለዚህ፡ ባኹኑ፡ ዘመን፡ በወንጀለኛ፡ መቅጫ፡ ሕግም፡ ውስጥ፡ ኾነ፡ በሥነ፡ ሥርዐቱ፡ ውስጥ፡ እነዚህ፡ ልዩነቶች፡ ሊጠበቁ፡ ይገባቸዋል።

## PROSECUTING CRIMINAL OFFENCES PUNISHABLE ONLY UPON PRIVATE COMPLAINT

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Article 1 of the Ethiopian Penal Code of 1957 states that "the purpose of criminal law is to ensure order, peace and the security of the State and its inhabitants for the public good." The Code achieves this purpose by laying down prohibitions from acting or obligations to act whenever it is in the general interest that one should act or refrain from acting. Whosoever commits a criminal offence by disregarding these prohibitions or obligations is answerable, therefore, to the community. Hence the principle that criminal offences are prosecuted and punished, on behalf of the public, by the State acting as the agent of the citizens. There are offences, however, which do not jeopardize the order, peace and security of the State and its inhabitants but are contrary solely to the rights of a given individual. These are offences of a purely private or personal character, the effect of which does not extend beyond the individual thereby injured. In such cases, the State, though it is generally responsible for instituting criminal proceedings whether or not the victim of the offence agrees thereto, will not carry out this duty unless the victim indicates affirmatively that he wants the offender to be prosecuted.

The prior consent of the injured party is required, firstly, because public interests are not at stake as the offence does not endanger the society at large, and secondly, because the institution of proceedings, against the will of the injured party, might often be more harmful to him than the commission of the offence, for it might draw the attention of society to certain facts, such as his spouse's unfaithfulness or his child's dishonesty, which are precisely what he does not want known publicly. In these situations, the institution of criminal proceedings is conditional upon a complaint first being made by the individual concerned.<sup>1</sup> Where he makes a request to this effect, the State then acts, not on behalf of the public, but as the custodian of his rights for the purpose of prosecution and punishment insofar as this is possible. This raises two questions: which are these offences so punishable on complaint and what are the effects of such a complaint being made.

The Penal Code does not specifically set out a complete list of offences punishable only on complaint and Article 217 confines itself to making reference to the Special Part of the Code or any other law defining "offences of a predominantly nature which cannot be prosecuted except upon a formal accusation or request, or a complaint in the strict sense of the term, of the aggrieved party or those claiming under him."

Many provisions in the Special Part of the Penal Code prescribe that "Whosoever... is punishable, *on complaint*, with...." These are Articles 388 (2) (destruction of documents belonging to a relative); 407 (breach of professional secrecy); 409 (disclosure of scientific,

1. The word "complaint" as used in the Penal and Criminal Procedure Codes means a request, by the injured party or those having rights from him, which is "an essential condition setting in motion the public prosecution" (Article 216 of the Penal Code). This complaint must be distinguished from an "accusation" which may be made by anyone and which, like a complaint, is "in the nature of an information" (*ibid.*), but, unlike a complaint, is "merely the occasion setting in motion the public prosecution" (*ibid.*). This distinction is clearly made in Articles 11 and 13 of the Criminal Procedure Code dealing respectively with "accusation in general" and "offences punishable on complaint"

industrial or trade secrets); 539 (1) (common wilful injury not in aggravating circumstances); 543 (3) (common injury caused by negligence); 544 (assault); 552 (intimidation); 553 (threat of accusation or disgrace); 555 (deprivation of powers of decision); <sup>2</sup> 563 (1) (ascendant abducting a child); 570 (violation of the right of freedom to work); 573 (violation of the privacy of correspondence); 587 (prescribing that all offences against the honour are punishable on complaint; see, however, Articles 256, 276 and 278); 593 (sexual offences without violence against women in distress); <sup>3</sup> 596 (seduction); <sup>3</sup> 612 (indecent publicity); 614 (fraud and deceit in marriage); 618 (adultery); 625 (failure to maintain one's family); 629 (prescribing that all offences against property committed within the family are punishable on complaint if they do not involve violence or coercion); 632 (abstraction of things jointly owned); 643 (misappropriation); 644 (unlawful use of the property of another); 645 (misappropriation of lost property); 649 (damage to property caused by herds); 650 (1) (disturbance of possession not in aggravating circumstances); 653 (damage to property in aggravating circumstances); 661 (fraudulent exploitation of public credulity); 665 (incitement to speculation); 666 (incitement of minors to carry out prejudicial transactions); 671-676 (offences against intangible rights); 680 (fraudulent insolvency); 681 (irregular bankruptcy) and 721 (1) (a) (petty offences of a private nature).<sup>4</sup>

Whenever an offence is committed in violation of any of the above-mentioned provisions, no action may be taken except at the initiative of the person qualified under the law for making the necessary complaint.<sup>5</sup> If the offence is a flagrant one, the offender may not, it seems, be arrested without a warrant unless a complaint is first made. Article 21 of the Criminal Procedure Code states (1) that, in cases of flagrant or quasi-flagrant offences, proceedings may be instituted without an accusation or complaint (in the general sense of information) being made, unless the offence is punishable on complaint (in the technical sense of the term) and (2) that the offender may in such cases be arrested without a warrant in accordance with Articles 49 ff. It may be argued that sub-article (2) dealing with arrest is as general as it could be and that had it been intended to prohibit an arrest without a warrant from being made when the flagrant or quasi-flagrant offence is punishable on complaint, this prohibition would have been expressly laid down in sub-article (2) or, like the prohibition from instituting proceedings, in sub-article (1) of the said Article 21. There are, however, a number of reasons which militate towards a different construction of this Article. Firstly, it is debatable as to whether the words "in such cases" appearing in sub-article (2) are meant to refer to all cases of flagrant and quasi-flagrant offences or only to those where proceedings may be instituted without an accusation or complaint being made, i.e., all cases where the offence is not punishable on complaint (*stricto sensu*). Secondly, when a flagrant offence is committed, justice is set in motion by the mere fact of the arrest; to allow an arrest without a warrant when the offence is punishable on complaint would be inconsistent with the principle that it

2. If the offence is committed in aggravating circumstances, as defined in Article 561, no complaint should be required (although Article 561 does not expressly so provide) owing to the seriousness of the punishment that may then be ordered (rigorous imprisonment not exceeding five years).
3. If the offence is committed in aggravating circumstances, as defined in Article 598, no complaint should be required (although Article 598 does not expressly so provide), since the punishment is then rigorous imprisonment not exceeding ten years.
4. Although Article 721 is very general, it would appear that only offences under Articles 778, 787, 794, 796-798, 805 (if private property), 806, 807, 810, 812 and 813 of the Penal Code fall within this category. As for the complaint required by Article 721 (1) (b) of the Penal Code; see note 12 *infra*.
5. If this offence is committed together with another offence not punishable on complaint, the public prosecutor may, in the absence of a complaint, prosecute only for the latter offence. He may not disclose that another offence has been committed, nor may the court increase the sentence on the ground of concurrence of offences as though the accused had also been charged with, and found guilty of, the offence punishable on complaint.

is for the injured party to set justice in motion. Thirdly, one of the purposes of an arrest without a warrant in flagrant cases is to prevent public order from being disturbed or further disturbed; yet, he who is about to commit or is committing an offence punishable on complaint does not disturb public order. Finally, to permit an arrest without a warrant when the flagrant or quasi-flagrant offence is punishable on complaint would as often as not result in defeating one of the main purposes of the complaint, that is, to avoid scandal when the injured party does not want certain things known. This is probably the strongest argument against taking the said Article 21 to mean that such an arrest is permitted. It is undesirable, to say the least, that any one, whether a member of the police or a private person (see Article 50 of the Criminal Procedure Code) should be entitled, for instance, to grab by the neck and bring to the nearest police station, *coram populo*, two persons he finds in the act of committing adultery. It seems that an arrest should not be made in such a case except by, or at the request of, the injured spouse. For obvious reasons of convenience, the complaint should then be made orally to the police, and not in writing as required by Article 14 of the Criminal Procedure Code, so that the arrest, if to be made by the police, may be made forthwith. This oral complaint should thereafter be confirmed in writing.

It must be clear that the sole purpose and effect of the complaint is to enable the *public prosecutor* to institute proceedings. It may not be held that offences punishable on complaint are offences which may be prosecuted only by the injured party. The second paragraph of Article 217 of the Penal Code states that "this form of... complaint upon which... the bringing of the *public* action depends...." The bringing of the public action obviously means the institution of proceedings by the public prosecutor. It is quite true, as will be seen later, that a private prosecution may be instituted with regard to offences punishable on complaint, but this is permissible only after the public prosecutor has found himself unable to carry out his duty to institute proceedings as he is bound by Articles 216 of the Penal Code and 40 of the Criminal Procedure Code to do whenever any breach of the law occurs. As noted above, the public prosecutor will act as custodian of the injured party's rights insofar as is possible; only when this is not possible may the injured party substitute himself for the prosecutor.

Regarding the manner in which offences punishable on complaint are to be prosecuted, the Penal Code and the Criminal Procedure Code must be read together. Thus, the person or persons against whom an offence punishable on complaint has been committed may set justice in motion by making a complaint in accordance with Articles 220 of the Penal Code and 13 ff. of the Criminal Procedure Code unless the offender is a juvenile, in which case the provisions of Article 172 of the Criminal Procedure Code will apply.<sup>6</sup> The question as to who is qualified to file a complaint is resolved by Articles 218 and 219 of the Penal Code. It must be noted, however, that the general rules contained in the latter Articles are sometimes departed from in the Special Part of the Penal Code. In cases of adultery, for instance, the right of complaint does not pass to the next-of-kin (Article 619), contrary to what is provided for by Article 218.

The complaint must be made within three months of the injured party's knowledge of the offence (as a complaint may, according to Article 15 of the Criminal Procedure Code, be made against an unknown offender) or that of the offender (Article 220 of the Penal

6. Pursuant to the rule of indivisibility (Article 222 Penal Code), if several persons are involved in the commission of one and the same offence punishable on complaint, they will all be prosecuted even though the complaint is made with regard to only some of them; if the offence is not punishable on complaint but some participants cannot be prosecuted in the absence of a complaint (*e.g.*, Article 629 (2) Penal Code), the rule of indivisibility does not apply.

Code), unless the law itself makes it clear that this period of three months begins to run from a different date, as is the case under Articles 599 and 614 (2) of the Penal Code. After a complaint has been made, a police investigation will be held as provided for by Articles 22 ff. of the Criminal Procedure Code. After considering the findings of the police, the public prosecutor, ordering further investigations in questionable cases, will either close the police investigation file with an unappealable decision (Article 39 of the Criminal Procedure Code) or institute proceedings unless there are reasons why proceedings may not or cannot be instituted (Article 42 of the same Code).

When the public prosecutor institutes proceedings with respect to an offence punishable on complaint, the ordinary provisions regarding the charge and the trial will apply (Articles 94 ff. of the Criminal Procedure Code) or, where appropriate, those regarding petty offences. (Articles 167-170 of the same Code).<sup>7</sup>

However, as the public prosecutor prosecutes only because the injured party has expressly requested him to do so, it follows that, where the complainant declares that he no longer wants the offender to be prosecuted, i.e., where he withdraws his complaint as he is entitled to do under Article 221 of the Penal Code, the public prosecutor is compelled to withdraw the charge.<sup>8</sup> The accused may not, as a rule, object to such withdrawal and demand that the case should be carried forward.<sup>9</sup>

Where, for reasons which are to be given in writing to the injured party (Article 43 of the Criminal Procedure Code) in the manner prescribed by Form V in the Third Schedule to the said Code, the public prosecutor refuses to institute proceedings with respect to an offence punishable on complaint, proceedings may nonetheless be instituted, depending on the reasons upon which this refusal is based. If the public prosecutor refuses to prosecute for any of the reasons set out in Article 42 (1) (b) - (d) of

7. According to Articles 100 of the Penal Code and 154-159 of the Criminal Procedure Code, the injured party may then apply for permission to join in the criminal proceedings with the view of merely claiming compensation for the damage arising out of the offence. See Graven, Joinder of Criminal and Civil Proceedings, 1 Journal of Ethiopian Law 135 (1964).

8. Although this case is not specifically dealt with in the Criminal Procedure Code, it should be clear that Article 122 of the said Code is inapplicable. If the complaint is withdrawn at any time before judgment, the proceedings must be discontinued and the public prosecutor must, therefore, withdraw the charge whether or not the court agrees thereto. The situation is then the same as if no complaint had been originally made. Consequently, as is provided by Article 217 of the Penal Code, the court has no power to try the offence and no penalty may be imposed. Without prejudice to the provisions of Article 141 of the Criminal Procedure Code, an order for the discharge of the accused ought to be made which will, in fact, amount to an acquittal since a new complaint may not be made regarding the same facts (Article 221 of the Penal Code). Another instance where proceedings must be discontinued as a matter of right, though on different grounds, may be found in Article 619 of the Penal Code (death of injured party in adultery cases).

9. This is without prejudice to the provisions of the last paragraph of Article 222 of the Penal Code, according to which the accused may "insist on being tried" but only when he is charged with others and the complaint is withdrawn regarding only part of the accused persons. Nothing, however, permits one to say that this is a general rule that may be invoked even when only one person is being tried for an offence punishable on complaint. It is regrettable that the accused cannot always require that the proceedings be continued so that he be found not guilty and acquitted instead of being discharged. This is of importance in view of Article 441 of the Penal Code which does not apply unless the person against whom a false accusation has been made is found to be innocent. In this connection, it should be held that, for the purposes of the said Article 441, the discharge of the person to whom the complaint relates has the same effect as an acquittal, as has been suggested in note 8 *supra*. (A similar view may be found in the *Recueil officiel des arrêts du Tribunal fédéral suisse* 72 IV 74 or *Journal des Tribunaux* 1946 IV 184.) If this were not so, the complainant could withdraw his complaint whenever he felt that the accused would be acquitted and he would then escape the application of Article 441, in appropriate cases, on the ground that technically speaking the accused was not found innocent.



the Criminal Procedure Code, his refusal is final (as it is, also, when the offence is not punishable on complaint). But if the prosecutor refuses to institute proceedings because he is of the opinion that there is not sufficient evidence to justify a conviction, that is, he considers in accordance with Article 42 (1) (a) of the Criminal Procedure Code that he is unable to prove that the offender is guilty of the offence to which the complaint relates, a remedy is available to the injured party. What then is the nature of this remedy and what are its effects?

The remedy consists of providing the injured party with a certificate specifying the offence to which the refusal relates, stating that public proceedings will not be instituted with regard to such offence, and authorising the injured party to conduct a private prosecution with respect thereto (Article 44 (1) of the Criminal Procedure Code) at his peril and at his own expense (Articles 46 and 221 of the same Code).<sup>10</sup> A copy of the certificate, for which there is unfortunately no form in the Third Schedule to the Criminal Procedure Code, will be sent to the court having jurisdiction, enabling it to ascertain, in accordance with Article 150 (2) of the Criminal Procedure Code, that the offence charged by the private prosecutor actually is the offence in respect of which he has been authorized, under the certificate, to institute private proceedings.<sup>11</sup>

The question may be asked whether the certificate is to be automatically issued upon the public prosecutor's refusal to prosecute, in which case it ought to be attached to the copy of the decision sent to the injured party in accordance with Article 43 (2) of the Criminal Procedure Code, or whether it is issued only at the request of the injured party, in which case this request ought presumably to be made within the same period of time as an appeal under Article 44 (2) of the said Code. Although the law makes no specific provision on this point, the first solution should prevail. Since the public prosecutor may, in no case, object to the institution of private proceedings after he has declined to prosecute on the ground of lack of evidence, it is of little importance whether the certificate is issued automatically or on application. This being so, the more convenient practice of giving the certificate immediately, regardless of whether the injured party intends to make use of it, ought to be followed.

Another question is whether, as of the time that he has been issued a certificate, the private complainant may exercise all the rights which the public prosecutor would have in public proceedings. Although a provision like Article 153 (1) of the Criminal

10. Where the public prosecutor refuses, on the ground of insufficiency of evidence, to institute proceedings with respect to an offence which is not punishable on complaint, a different remedy is available to the injured party. He may not be authorized to conduct a private prosecution but he may, in accordance with Article 44 (2) of the Criminal Procedure Code, appeal against the refusal and seek an order to the effect that the public prosecutor be compelled to institute public proceedings. As this order is sought from the court that would have appellate jurisdiction if proceedings were instituted, it follows that should proceedings be instituted by order of that court and the case come before the said court on appeal, the judges having made such order should disqualify themselves and not sit on the appeal, for as a rule a judge may not act twice in the same case in a different capacity.
11. Since the certificate may be issued only in cases of insufficiency of evidence, it may happen that there be doubts as to the nature of the offence committed. There should then be nothing to prevent the private prosecutor from framing a charge containing alternative counts under Article 113 (1) of the Criminal Procedure Code, provided that the offences thus charged are all punishable on complaint. Consequently, the certificate should not be too restrictive regarding the offences against which private proceedings may be instituted, and the public prosecutor might well allow the complainant to charge the offender with common wilful injury not in aggravating circumstances, under Article 352 (1) of the Penal Code, and, in the alternative, with common injury caused by negligence, under Article 543 (3) of the same Code. It must be clear, however, that the provisions of Article 113 (2) of the Criminal Procedure Code will apply even though the certificate does not reserve the possibility of framing alternative charges.

Procedure Code would induce one to answer in the affirmative, it seems more reasonable to consider that certain powers, and particularly the power to select the court having local jurisdiction, are retained by the public prosecutor even though he does not prosecute. If a reasonable doubt arises as to the place where the offence punishable on complaint was committed (see Article 102 of the Criminal Procedure Code), it should not be held that the power to direct the place of trial, which is normally exercised by the public prosecutor in accordance with Article 107 of the said Code, passes to the private prosecutor, for this might cause confusion. It should rather be held that, in such a case, the public prosecutor must, prior to issuing the certificate, decide as to the court in which the complainant will file his charge, and such court ought, therefore, to be mentioned in the certificate. This interpretation is confirmed by Article 44 (1) of the said Code which, as has been seen, compels the public prosecutor to send a copy of the certificate to the court having jurisdiction, which term does not mean only material jurisdiction but includes personal and local jurisdiction, also. Should several courts have local jurisdiction, the public prosecutor would clearly be unable to comply with this duty if it were not for he and he alone to decide in which of these courts the private prosecution would have to be conducted.

The effect of a certificate having been issued is that the injured party or his representative, as defined in Article 47 of the Criminal Procedure Code, may institute proceedings in the court mentioned in the certificate. He will frame a charge,<sup>12</sup> and the case will then proceed in accordance with the provisions of Article 150-153 of the Criminal Procedure Code.<sup>13</sup> It will be noted that even in these cases the injured party may apply to be allowed to claim compensation while at the same time conducting the prosecution (Article 154 (3) of the Criminal Procedure Code),<sup>14</sup> unless the accused is a juvenile (Article 155 (1) (a) of the same Code).

The above explanations are without prejudice to the provisions of Article 48 of the Criminal Procedure Code, according to which a private prosecution may be stayed at any stage thereof at the request of the public prosecutor, if it appears in the course of such prosecution that the accused committed a more serious offence than that for which the certificate had been issued under Article 44 (1) of the said Code. An example would

12. According to Article 108 (1) of the Criminal Procedure Code, no charge need be framed when the prosecution relates to a petty offence, in which case the provisions of Articles 167-170 of the said Code are applicable. In connection with petty offences, a peculiar situation arises under Article 721 (1) (b) of the Penal Code, which prescribes that breaches of subsidiary legislation are prosecuted upon a complaint being made by the duly authorized representative of the Government Agency transacting the business specified in the law which has been violated. Although one may be inclined to think that a complaint should be dispensed with, for these are not offences of a private nature, the purpose of this requirement may be to avoid the public prosecutor's instituting proceedings in cases where, under the law which has been violated, a settlement may be effected (e.g., customs cases). But difficulties will occur when, a complaint having been made, the public prosecutor refuses to prosecute on the ground of lack of evidence, for, if a certificate were issued under Article 44 (1) of the Criminal Procedure Code, one could hardly speak of a private prosecution since the representative of the Agency concerned would prosecute on behalf of the State. This is why it may be advisable to hold that the complaint referred to in the said Article 721 (1) (b) is not a complaint *stricto sensu*, but an accusation. Cases of this nature should, therefore, be subject to the rules regarding the prosecution of offences which are not punishable on complaint and a refusal to prosecute should be dealt with under Article 44 (2) of the Criminal Procedure Code.

13. According to Article 166 of the Criminal Procedure Code, the case may not proceed in the absence of the accused. This, however, is without prejudice to the provisions of Article 170 (4) of the said Code which permit judgment to be given forthwith if the accused fails to appear without good cause in private proceedings relating to a petty offence. The wisdom of the latter rule would appear to be questionable.

14. Regarding the trial of the civil claim and the effects of a withdrawal of complaint, conviction, discharge or acquittal (Articles 157-159 of the Criminal Procedure Code) see our article quoted at note 7 *supra*.

be if the certificate were issued with regard to an offence under Article 644 of the Penal Code (unlawful use of the property of another) and it were disclosed during the trial that the accused actually had the intention of obtaining an unlawful enrichment and should, therefore, have been charged with an offence of theft in violation of Article 630 of the Penal Code.<sup>15</sup> In this respect, it must be clear that a stay of proceedings should not be ordered whenever new evidence is produced and the public prosecutor declares that had he known such evidence before, he would not have refused to prosecute on the ground of insufficiency of evidence but would himself have instituted public proceedings. It seems that a stay of proceedings should be ordered only when it appears that the offence actually committed is such that the public prosecutor could, in no case, have issued a certificate under Article 44 (1) of the Criminal Procedure Code because this offence is *not punishable on complaint*. Although the said Article 48 does not expressly so provide, one should consider that after a certificate has been issued, the public prosecutor may not interfere in private proceedings unless the case clearly is not one in which only private interests are involved.

### CONCLUSION

These are the general rules to be followed when an offence is committed that cannot be tried except upon the request of the person whose rights or interests have been affected by the offence. Similar rules will seldom be found in other countries for, although many foreign laws provide for offences punishable on complaint, few of them authorize the institution of private proceedings, as this is deemed contrary to the principle that prosecution and punishment are not an individual but a collective concern and that a person who commits a criminal offence is answerable to the community, regardless of the fact that only one member thereof has been injured.

The system laid down in the Ethiopian Criminal Procedure Code of 1961 is much more restrictive, and rightfully so, than the one which existed previously. According to Section 9 of the Public Prosecutors Proclamation No. 29 of 1942, impliedly repealed by the Criminal Procedure Code, when a criminal case was not conducted by the public prosecutor, the court was bound to permit the injured party to conduct the prosecution, either personally or by an advocate, irrespective of the nature or seriousness of the offence or of the reasons why the public prosecutor did not prosecute. This provision, which so emphatically stressed the importance of the part traditionally played by the injured party in criminal proceedings, resulted in disregarding the fundamental differences that exist between civil and criminal liability and procedure, as did also the now abolished practice of avoiding certain criminal prosecutions by paying blood money. It is only proper that this difference should be clearly made today in the provisions of the respective Penal and Criminal Procedure Codes relating to offences punishable on complaint.

15. Article 48 of the Criminal Procedure Code unfortunately fails to specify how the public prosecutor will be informed, and this may require that the public prosecution department send a representative to attend all private prosecutions, a rather inconvenient requirement. Since the cases in which a private prosecution may be stayed are (if the suggested construction of Article 48 is correct) cases where public proceedings should have been instituted in the general interest, it should have been provided that a private prosecution may at any time be stayed by the court of its own motion or on application. This should be the case particularly when the more serious offence disclosed (such as theft, triable by an Awraja Guezat court) is outside the jurisdiction of the court trying the less serious offence charged (such as unlawful use of the property of another, triable by a Woreda Guezat court).



ሰለ : ኢትዮጵያ : ተወላጅነት : ምህላው : (ምንባር/መካን/መደበኛ : መኖሪያ : ) እና :

የተለይ : ግላዊው : ሕግ !

ከሮቤርት : አለን : ሴድለር !

በቀዳማዊ : ገይለ-ሥላሴ : ዩኒቨርሲቲ : ሕግ : ክፍል ።

## መግቢያ ።

ጸሐፊው : በዚህ : አንቀጽ : የኢትዮጵያዊውን : የተወላጅነትና : የምህላው : (ዶሚ ሳይል) ሕግ : እና : የግል : አቋም : ጉዳይን : ለመቀረጥ : (ለመወሰን) : የሚያገለግለውን : ሕግ : ለመመራመር : ተስፋ : ያደርጋል ። ምንጊዜም : ቢኾን : የውጭ : አገሩ : ሰው : በኢትዮጵያ : ደኅናግብ : (-መጥ) : ነው ። ብዙ : የውጭ : አገር : ሰዎች : ብዙ : ጊዜ : ለረዥም : ዘመናት : ከዚህ : ይኖራሉ ። ይሠራሉ : ግን : የኢትዮጵያ : ዜጎች : (ተወላጅ) : አይኾኑም ። እነሆ : እንግዲህ : ቀጥሎ : ከፍ : ያለ : የውጭ : አገር : ሕዝብ : ያለባት : ኢትዮጵያ : በተወላጅነት : ሕግ : ጣጣዎች : ማለት : ምህላዉን : ከዚህ : ያደረገው : ማን : ነው : በሚያሰኙ : ችግሮች : እና : የትኛውስ : ሕግ : ነው : የግል : ነጠላ : ሰዎችን : አቋምንና : ግንኙነቶችን : የሚዳኝ : በሚያሰኙ : ምርምሮች : ተወጥራ : ተይዛለች ። በዚህ : አንቀጽ : ያለትን : የኢትዮጵያ : ተወላጅነትን : የሚመለከቱ : የሕግ : ውሳኔዎችን : ለማቅረብ : በኢትዮጵያውያንና : በውጭ : አገር : ሰዎች : መካከል : ሊኖሩ : የሚችሉ : ሕጋዊ : ልዩነቶችን : ለመፈተሽ : ከፍትሐ : ብሔር : ሕጉ : በደንበኛ : ሰዎች : ምህላው : ላይ : የተዘረጉ : ውሳኔዎችን : ለማብላላት : እና : ሰለ : ጻፈው : (ገዢው) : የተለይ : ግላዊ : ሕግ : ጣጣዎች : ለማውጣትና : ለማውረድ : ዐቅዳለኹ ።

## ተወላጅነት ።

ኢትዮጵያዊ : ተወላጅነትን : ስለማግኘትና : ስለማጣት :

በተሻሻለው : ሕገ-መንግሥት : አንቀጽ : ፴፱ : “የኢትዮጵያ : ተወላጅነትንና : የኢትዮጵያ : ዜግነትን : ለማግኘትና : ለማጣት : የሚያስችሉ : ኹነታዎችን : ሕጉ : ይቀምራል (ይወስናል) ።” ሲል : ይናገራል ። በዚሁ : ጉዳይ : ላይ : እስካሁን : ድረስ : ባለ : ውጤት : የኾነው : ያለው : ሕግ : የ፲፱፻፴ : ዓ . ም . የኢትዮጵያ : ተወላጅነት : ሕግ :<sup>1</sup> ነው ። የ፲፱፻፷ : ዓ . ም . የፍትሐ : ብሔር : ሕጉ : ምንም : እንኳ : ስለ : ምንባር :

፲፱፻፴፩ : ዓ . ም . ሕገ-መንግሥቱ : አንቀጽ : ፲፰ ይኸው : ሕጋዊ : ውሳኔ : ዐርፎበት : ይገኛል ። የጽላይ : (ሐምሌ) ፳፭ : ቀን : ፲፱፻፴ : ዓ . ም . ሕግ ። በዚህ : አንቀጽ : ውስጥ : የምንገለገልበት : ቤሌላ : አኳኋን : ካልተመለከተ : በቀር : ግራንሪያዊውን : (ኢውሮጳዊውን) የዘመን : አቋጣጠር : ነው ።

በሚመለከተው ፡ ረገድ ፡ ውሳኔዎችን ፡ የያዘ ፡ ቢኾንም ፡ ተወላጅነትን ፡ ስለማግኘት ፡ ወይም ፡ ስለማጣት ፡ ነክ ፡ ስለኾነው ፡ ጉዳይ ፡ ምንም ፡ ዐይነት ፡ የያዘው ፡ ውሳኔዎች ፡ እንደሌሉ ፡ ልብ ፡ ማድረግ ፡ ያስፈልጋል ።

ተወላጅነትንና ፡ ዜግነትን ፡<sup>3</sup> ለመለየት ፡ ኹለት ፡ መሠረታዊ ፡ አቀራረቦች ፡ አሉ ፤ እነዚሁም ፡ የዩስ ፡ ሳንጉይኒስ ፡ (በደም ፡ ዜግነት) እና ፡ የዩስ ፡ ሶሊ ፡ (በውልደት ፡ ዜግነት) ናቸው ። በዩስ ፡ ሳንጉይኒስ ፡ (በደም ፡ ዜግነት) ልም ፡ ወይም ፡ መሠረተ-ሐሳብ ፡ መሠረት ፡ አንድ ፡ ሕፃን ፡ የትም ፡ ስፍራ ፡ ቢኾን ፡ ይወለድ ፡ የወላጆቹን ፡ ዜግነት ፡ (የወላጆቹ ፡ ተወላጅነት ፡ ሲለያይ ፡ ይበልጥ ፡ የተለመደው ፡ ያባትን ፡ ዜግነት ፡ ነው) ይቀበላል ። ለምሳሌ ፡ ያኸል ፡ ጀርመን ፡ ወላጅነትን ፡ እንደ ፡ ቄራጭ-ፈላጭ ፡ (ደም ዳሚ) ምክንያት ፡ አድርጎ ፡ ይቀበለዋል ፤ በጀርመን ፡ ይኹን ፡ ወይም ፡ በባዕድ ፡ አገር ፡ ከጀርመን ፡ ወላጆች ፡ የተወለዱ ፡ ልጆች ፡ ጀርመኖች ፡ ሲኾኑ ፡ በጀርመን ፡ አገር ፡ የተወለዱ ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ ልጆች ፡ ግን ፡ የጀርመን ፡ ዜግነት ፡ ሳይኾን ፡ የወላጆቻቸውን ፡ ዜግነት ፡ ይይዛሉ ።

በዩስ ፡ ሶሊ ፡ (በውልደት ፡ ዜግነት) ዐይነተኛ ፡ ሐሳብ ፡ ወይም ፡ ልም ፡ መሠረት ፡ ወላጆቹ ፡ የዚያው ፡ አገር ፡ ዜጎች ፡ ይኹኑ ፡ ወይም ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ ባንሩ ፡ ውስጥ ፡ የተወለዱት ፡ ልጆች ፡ የዚያው ፡ አገር ፡ ዜጎች ፡ ይኾናሉ ፤ ይህን ፡ ሥርዐት ፡ ሲያገላብጡት ፡ ወይም ፡ ሲያዘዋውሩት ፡ በውጭ ፡ አገር ፡ ከተቀመጡ ፡ ያንድ ፡ አገር ፡ ዜጎች ፡ የተወለዱ ፡ ልጆች ፡ የዚያች ፡ አገር ፡ ዜጎች ፡ አይደሉም ።<sup>5</sup> ማለት ፡ ነው ። አርጄንቲና ፡ በተለይ ፡ ወሳኝና ፡ አውራ ፡ ምክንያቱ ፡<sup>6</sup> የተወለዱበት ፡ ግዛት ፡ ከሚኾንበት ፡ አገር ፡ ውስጥ ፡ የተመደበች ፡ ነች ።

ብዙዎቹ ፡ አገሮች ፡ ከነዚህ ፡ አብዛኛውን ፡ አንዱ ፡ ወይም ፡ ኹለተኛው ፡ ጉልቶና ፡

<sup>3</sup> ከነዚህ ፡ ኹለት ፡ ቃል ፡ አገባቦች ፡ በኢንተርናሽናል ፡ ያንጋር ፡ አገባብ ፡ ፍች ፡ “ተወላጅነትን” በበለጥ ፡ ሲጠቀሙበት ፡ “ዜግነት” የራስ ፡ (የግል) ወይም ፡ የቀበሌ ፡ ስፍራ ፡ ቃል ፡ እስካከ ፡ ነው ። የቅኝ ፡ ግዛቶች ፡ ባሏቸው ፡ አገሮች ፡ ውስጥ ፡ በዜጎችና ፡ በተወላጆች ፡ መካከል ፡ ብዙ ፡ ጊዜ ፡ ልዩነት ፡ ይደረጋል ። ለምሳሌ ፡ በተባበሩት ፡ (የአሜሪካ) መንግሥታት ፡ ለሰጋታ ፡ (ግዛት) ውስጥ ፡ የተወለደው ፡ ሰው ፡ ዜጋ ፡ ከመባሉ ፡ ይልቅ ፡ ተወላጅ ፡ ተብሎ ፡ ይጠራል ። የተባበሩት ፡ (አ.) መንግሥታት ፡ ሕግ ፡ ርእስ ፡ ፳ ፡ መደብ ፡ (ክፍል) ፩፻፳፱፻፳ ፡ ለኢንተርናሽናል ፡ ሕግ ፡ አገልግሎት ፡ በዜጎችና ፡ በተወላጆች ፡ መካከል ፡ ልዩነት ፡ እያወጣም ፡ በጠቅላላው ፡ የሲልቢንግን ፡ ኖሺናሊቲ ፡ ኢን ፡ ኮምፓራቲቭ ፡ ሎው ፡ (ዜግነት ፡ በተመጣጣኝ ፡ ሕግ) ፩፻፲ ፡ ፩፻፲፭ ፡ (፲፱፻፶፮) ፡ እንደ ፡ ኢትዮጵያ ፡ የዘውድ ፡ ወይም ፡ የዙፋን ፡ መንግሥት ፡ አዳም ፡ ባለው ፡ አገር ፡ ውስጥ ፡ የሚገኙ ፡ ተወላጆች ፡ አንዳንዴ ፡ ተገዥ ፡ ይሰኛሉ ። በዚህ ፡ አንቀጽ ፡ ውስጥ ፡ እንደ ተገለገልንባቸው ፡ ግን ፡ “ተወላጅነት” እና ፡ “ዜግነት” አንድ ፡ ዐይነት ፡ ፍች ፡ አላቸው ።

<sup>4</sup> ራይሽ ፡ እና ፡ ሀገር ፡ ተወላጅነት ፡ ሕግ ፡ የጁላይ ፡ ፳፮ ፡ ቀን ፡ ፲፱፻፲፫ ፡ ዓ. ም ፡ ንሑስ ፡ አንቀጽ ፡ ፪ ። (በምዕራብ ፡ ጀርመን) በራዴራል ፡ ራፑብሊኩ ፡ ሕገ-መንግሥት ፡ አንቀጽ ፡ ፩፻፲፮ ፡ መሠረት ፡ የጀርመን ፡ ተወላጅነት ፡ ያላቸው ፡ ወይም ፡ ከነገደ ፡ ጀርመን ፡ ተወልደው ፡ እስከ ፡ ዲሴምበር ፡ (ታኅሣሥ) ፳፩ ፡ ቀን ፡ ፲፱፻፵፮ ፡ ዓ. ም. መቀበልን ፡ የተዋጁ ፡ ሰዎች ፡ ኹሉ ፡ ጀርመኖች ፡ ናቸው ። በናዚ ፡ መንግሥት ፡ ዝግጅት ፡ ትእዛዞች ፡ የጀርመን ፡ ተወላጅነታቸውን ፡ ያጡ ፡ ሰዎች ፡ ሲጠይቁ ፡ ተወላጅነታቸው ፡ እንደገና ፡ ይሰጣቸዋል ። ሌላ ፡ ውሳኔዎች ፡ ከሌሉ ፡ ዘንድ ፡ የ፲፱፻፲፫ ፡ ዓ. ም. ሕግ ፡ የተወላጅነት ፡ መሠረታዊው ፡ ሕግ ፡ ነው ። በዚሁ ፡ ሕግ ፡ መሠረት ፡ ያንዴ ፡ ጀርመኖች ፡ ከማእሰራ-ጋብቻ ፡ ውጭ ፡ የተወለዱ ፡ ልጅ ፡ ጀርመኖች ፡ እንደኾኑ ፡ ኹሉ ፡ ያንድ ፡ ጀርመኖች ፡ አባት ፡ ሕጋዊ ፡ ልጅም ፡ ጀርመኖች ፡ ነው ። በኢፔንሐይም ፡ ኢንቴርናሽናል ፡ ሎው ፡ (የኢንቴርናሽናል ፡ ሕግ ፡ ፳ኛ ፡ እትም ፡ ላውቴርጋሾት) ፡ ኮሎም ፡ ፩ ፡ ገጽ ፡ ፮፻፶፩ ፡ ያለውን ፡ ምርምር ፡ ይመለከታል ።

<sup>5</sup> ከዚያው ፡ ከኢፔንሐይም ፡ መጽሐፍ ፡ ይህ ፡ የውጭ ፡ አገር ፡ የኢፕሎማቲክ ፡ ወኪሎች ፡ ልጆችን ፡ ከተ ፡ የሚመዝገቡ ፡ አይደሉም ።

<sup>6</sup> ከዚያው ፡ ከኢፔንሐይም ፡ መጽሐፍ ።

ደምቆ፡ የሚታይባቸው፡ እድርገው፡<sup>7</sup> በተወላጅነት፡ ሕጋቸው፡ የኹለቱንም፡ ልሞች፡ ጠባቦች፡ ያወቁዋቸውና፡ የተቀበሏቸው፡ ናቸው። የተባበረው፡ የአሜሪካ፡ መንግሥታት፡ ከኹሉ፡ አስቀድሞ፡ የዩስ፡ ሶሊ፡ አገር፡ ነው። የሕገ-መንግሥቱ፡ ዐሥራራተኛው፡ ማሻሻያ፡ “በተባበረው፡ የአሜሪካ፡ መንግሥታት፡ ውስጥ፡ የተወለዱ፡ ወይም፡ ዜግነትን፡ የተቀበሉ፡ (የዜጉ)፡ እና፡ የዳኝነት፡ ሥልጣኑም፡ ተገዥ፡ የኾኑ፡ ኹሉ፡ የተባበረው፡ የአሜሪካ፡ መንግሥታት፡ ዜጎች፡ ናቸው።” ሲል፡ ያትታል። ይህ፡ ውሳኔ፡ አኹን፡ ገና፡ ዐርነት፡ (ነጻ) የወጡት፡ ኔግሮዎችና፡ ልጆቻቸው፡ ኹሉ፡ የሚሪካ፡ ዜጎች፡ እንደሚኾኑ፡ አረጋግጧል። ደግሞም፡ ባሥራዘጠኝኛው፡ መቶ፡ ክፍለ-ዘመን፡ መጨረሻ፡ ግድም፡ በነበረው፡ ወደ፡ ተባበረው፡ (አ.) መንግሥታት፡ አገር፡ ውስጥ፡ የሕዝብ፡ መግባት፡ (ኢሚግሬሽን) ከፍ፡ ባለው፡ ማዕበል፡ ጊዜ፡ ከዐዲሱ-ገብ፡ ወይም፡ ደረሰ፡ ወላጆች፡ የተወለዱ፡ ሕፃኖችን፡ ኹሉ፡ የአሜሪካ፡ ዜጎች፡ ስለአደረጋቸው፡<sup>8</sup> ይህ፡ ውሳኔ፡ ከፍ፡ ያለ፡ የዋጋ፡ ግምቱን፡ አረጋግጧል። ባንዳንድ፡ አኳኋኖች፡ በውጭ፡ አገር፡ የተወለዱ፡ ልጆች፡ የተባበረው፡ (አ.) መንግሥታት፡ ዜጎች፡ ተብለው፡ ይገመታሉ።<sup>9</sup> ሕፃኑ፡ ውጭ፡ አገር፡ ቢወለድም፡ ቅሉ፡ ጥንዱ፡ ወላጆቹ፡ የአሜሪካን፡ ዜጋዎች፡ ሲኾኑ፡ ልጁ፡ ከመወለዱ፡ ቀደም፡ ብሎ፡ ከወላጆቹ፡ አንዱ፡ በተባበረው፡ (አ.) መንግሥታት፡ ወይም፡ ባለኝታዎቿ፡ (በግዛቶቿ) ምቅማጥ፡ (ኑዋሪነት) የነበረው፡ እስከኾነ፡ ድረስ፡ ልጁ፡ በውልዱ፡<sup>10</sup> የአሜሪካን፡ ዜጋ፡ ተብሎ፡ ይቈጠራል። ከወላጆቹ፡ አንዱ፡ ብቻ፡ ዜጋ፡ የኾነ፡ እንደኾነ፡ (እንግዲያስ) ያው፡ ወላጅ፡ ልጁ፡ ከመወለዱ፡ ቀደም፡ ብሎ፡<sup>11</sup> በተባበረው፡ (አ.) መንግሥታት፡ ወይም፡ በይዘቶቿ፡ (ባለኝታዎቿ) ውስጥ፡ ለአንድ፡ ዓመት፡ ጊዜ፡ ሳያቋርጥ፡ ተቀማጭ፡ ኹኖ፡ መገኘት፡ ይገባዋል። እንደኛው፡ ወላጅ፡ የአሜሪካን፡ ዜጋ፡ ሳለ፡ ልጁ፡ ከመወለዱ፡ ቀደም፡ ብሎ፡ ላንድ፡ ዓመት፡ ጊዜ፡ ሳያቋርጥ፡ በተባበረው፡ (አ.) መንግሥታት፡ ያልተቀመጠ፡ ግን፡ በተባበረው፡ (አ.) መንግሥታት፡ ወይም፡ በይዘቶቿ፡ ውስጥ፡ ተገኝቶ፡ እንደነበረ ወይም፡ በወታደራዊ፡ አገልግሎቶች፡ ሲዳመሩ፡ ፤ ዓመታት፡ ለሚኾኑ፡ ጊዜዎች፡ ከነዚሁም፡ ውስጥ፡ ቢያንስ፡ ዐምስት፡ ዓመታቱን፡ በዕድሜው፡ ፤፬፡ ዓመት፡ ከኾነ፡ በኋላ፡ ያገለገላቸው፡ ከኾነ፡ ካገር፡ ውጭ፡ የተወለደው፡ ልጅ፡ ዜጋ፡ ነው፡ ተብሎ፡ ይገመታል። ነገር፡ ግን፡ እንደዚህ፡ ያለው፡ ልጅ፡ በዕድሜው፡ ፳፫፡ ዓመት፡ ከመምላቱና፡ ከ፤፬፡ ዓመቱ፡ በኋላ፡ ቢያንስ፡ ፭፡ ዓመታት፡ ሳያቋርጥ፡ በተባበረው፡ (አ.) መንግሥታት፡ መቄየት፡ ወይም፡ ማሳለፍ፡ አለበት። እነዚህ፡ ውሳኔዎች፡ በጣም፡ ወሳኞች፡

7 ባዘዘገገገ፡ ዓ. ም. ጥናት፡ መሠረት፡ የቆመውን፡ ወደ፡ ተወላጅነት፡ ልዩ፡ ልዩ፡ አቀራረቦች፡ እዘራዘር፡ ቢሾጥ፡ ኢንተርናሽናል፡ ሎው፡ (የኢንተርናሽናል፡ ሕግ) ፪፻፲፭ (፪ኛ፡ እትም፡ ፲፱፻፳፪) ይመለከታል። የመዝመሪያው፡ ዐይተነኛ፡ ጥናት፡ በ፳፱፡ አሜሪካን፡ ጆርናል፡ እቭ፡ ኢንቴርናሽናል፡ ሎው፡ (የአሜሪካ፡ ኢንቴርናሽናል፡ ሕግ፡ መጽሔት) ፪፻፵፰፡ ፪፻፶፮፡ (፲፱፻፵፰) ውስጥ፡ ይገኛል። ምንም፡ እንኳ፡ አንዳንድ፡ ለውጦች፡ ያለጥርጥር፡ ቢደረግባቸው፡ ቅሉ፡ ስለልዩ፡ ልዩ፡ አቀራረቦች፡ አመዳደባቸው፡ ጥናቱ፡ ጠቅላላ፡ ሕሳብን፡ ይሰጣል።

8 ምንም፡ እንኳ፡ ወላጆቹ፡ የቅባት፡ ዜግነትን፡ ለማግኘት፡ የበቁ፡ ባይኖሩም፡ በተባበረው፡ (አ.) መንግሥታት፡ እና፡ በምንግብ፡ ዚም፡ እርከ፡ ፩፻፳፱፡ ዩ. ሌ.ቢ. ፯፻፵፱ (፲፭፻፶፭)፡ በነበረው፡ ነገር፡ ጠቅላይ፡ ፍርድ፡ ቤቱ፡ በተባበረው፡ (አ.) መንግሥታት፡ ከቻይና፡ ወላጆች፡ የተወለደው፡ ልጅ፡ የተባበረው፡ (አ.) መንግሥታት፡ ዜጋ፡ ነው፡ ሲል፡ በየ፡ በዩሲ፡ ሶሊ፡ አቀራረብ፡ መሠረት፡ ልጁ፡ የተወለደበት፡ አገር፡ የዳኝነት፡ ሥልጣን፡ ተገዥ፡ እስከኾኑ፡ ድረስ፡ ማለት፡ የዲፕሎማቲክ፡ ሹማዎት፡ እስካልኾኑ፡ የወላጆቹ፡ አቋም፡ ወይም፡ ኹነታ፡ ለጉዳዩ፡ አያበፈልግም፡ (ትርፍ፡ ጉዳይ፡ ነው)።

9 ይህ፡ በተባበረው፡ (አ.) መንግሥታት፡ ሕጉ፡ ርእስ፡ ፭፡ መደብ፡ ፩፻፳፱፻፩፡ ቍልጭ፡ ብሎ፡ የወጣ፡ ነው።

10 ኘሬዚዴንት፡ ለመኾን፡ የሚበቁት፡ በውልደታቸው፡ የአሜሪካን፡ ዜጎች፡ የኾኑት፡ ብቻ፡ ናቸው።

11 የተባበረው፡ (አ.) መንግሥታት፡ ሕግ፡ (ኮድ)፡ ርእስ፡ ፭፡ መደብ፡ ፩፻፳፱፻፩ (፩) ይመለከታል።

(ጨባጮች) መኾናቸው ፡ ግልጥ ፡ (ጉልሕ) ሲኾን ፡ በተባበረው ፡ (አ.) መንግሥታት ፡ ለዜግነት ፡ ተቀዳሚ ፡ መሠረት ፡ ከዚያው ፡ መወለዱ ፡ ነው ።

ፈረንሳይ ፡ በመዝሙሪያ ፡ የዩስ ፡ ሳንጉይኒስ ፡ ልምን ፡ በጣም ፡ አጥብቃ ፡ ተከትላ ፡ ነበረ ። በፈረንሳይ ፡ ፍትሕ ፡ ብሔር ፡ ሕጉ ፡ አንቀጽ ፡ ፯ ፡ መሠረት ፡ “በባዕድ ፡ አገር ፡ ከአንድ ፡ ፈረንሳይ ፡ የተወለደው ፡ ግናቸውም ፡ ልጅ ፡ ፈረንሳይ ፡ ነበረ ።” ምንም ፡ እንኳ ፡ በሕጉ ፡ (ኮዱ) አንቀጽ ፡ ፱ ፡ ውሳኔዎች ፡ መሠረት ፡ ከአንድ ፡ የውጭ ፡ አገር ፡ ሰው ፡ በፈረንሳይ ፡ አገር ፡ የተወለደ ፡ ሕፃን ፡ ነፍስ ፡ ሲያውቅ ፡ ወይም ፡ አከልኑቱን ፡ (ዐቅሙ-አዳም) ሲያደርስ ፡ የፈረንሳይ ፡ ዜግነት ፡ ይገባኛል ፡ ብሎ ፡ ለመጠየቅ ፡ ይችላል ፡ ቢባልም ፡ ቅሉ ፡ በፈረንሳይ ፡ አገር ፡ ውስጥ ፡ ከግናቸውም ፡ የውጭ ፡ አገር ፡ ሰው ፡ የተወለደው ፡ ግናቸውም ፡ ልጅ ፡ ፈረንሳይ ፡ አይኾንም ፡ ነበረ ። ልዩ ፡ ልዩ ፡ የተወላጅ ነት ፡ ሕጎች ፡ በተሠሩ ፡ ቅጥር ፡ የፈረንሳይ ፡ አቀራረብ ፡ ለብዙ ፡ ዘመን ፡ ላይና ፡ ታች ፡ ይወጣና ፡ ይወርድ ፡ ነበረ ፡ እንጂ ፡ የፈረንሳይ ፡ ዜጎችን ፡ ቅጥር ፡ ለማዳበር ፡ ሲል ፡ የ፲፱፻፵፭ ፡ ዓ. ም. የፈረንሳይ ፡ ተወላጅነት ፡ ሕግ ፡ ኹለቱንም ፡ ልምች ፡ ደገና ፡ አድርጎ ፡ እስፋፍቶና ፡ ዘርግቶ ፡ እስቲበቃው ፡ ካገልግሎት ፡ አውሏቸዋል ። መንግሥት ፡ የተቻለውን ፡ ያከበረ ፡ የዜጎቹን ፡ ቅጥር ፡ ለማሳደግ ፡ የሚያደርገውን ፡ ድካምና ፡ ዋረት ፡ ቀልጭ አድርገው ፡ ስለሚያሳዩ ፡ ውሳኔዎቹ ፡ እስተውሎን ፡ የሚጠይቁ ፡ ናቸው ።

በአናቅጽ ፡ ፲፮ ፡ እና ፡ ፲፭ ፡ የትም ፡ ከቶ ፡ ቢወለድ ፡ ከፈረንሳይ ፡ አባት ፡ የተወለደው ፡ ደንበኛ ፡ ሕጋዊ ፡ ልጅ ፡ ፈረንሳይ ፡ እንደኾነ ፡ ያባቱ ፡ ተወላጅነት ፡ ያልታወቀው ፡ ከማንኛውም ፡ ፈረንሳዊት ፡ የተወለደ ፡ ደንበኛ ፡ ሕጋዊ ፡ ልጅ ፡ ፈረንሳይ ፡ ነው ። እንደተባበረው ፡ (አ.) መንግሥታት ፡ ልምድ ፡ ሳይኾን ፡ በወላጆች ፡ ላይ ፡ የተሟነው ፡ የመቀመጥ ፡ (መኖር) ግዴታዎች ፡ የሉባቸውም ። በፍርድ ፡ ባንድ ፡ ፈረንሳይ ፡ ወላጅ ፡ ላይ ፡ ልጅነቱን ፡<sup>12</sup> አንዱ ፡ ልጅ ፡ ሲያረጋግጥ ፡ (ሲረታ) ፡ ያረጋገጠው ፡ ባባትም ፡ ላይ ፡ ኾነ ፡ በናት ፡ ላይ ፡ ያ ፡ ልጅ ፡ ፈረንሳዊ ፡ ነው ። እንዲሁም ፡ ደግሞ ፡ አንዱ ፡ ወላጅ ፡ ፈረንሳዊ ፡ ኹናና ፡ የመዝሙሪያው ፡ ክስ ፡ የቀረበበት ፡ ወላጅ ፡ ተወላጅነት ፡ ያልታወቀ ፡ እንደኾነ ፡ በፈረንሳዊው ፡ ወላጅ ፡ ላይ ፡ ባቀረበው ፡ ክስ ፡ በሚገባ ፡ ልጅነቱን ፡ ከረታ ፡ ልጁ ፡ ፈረንሳዊ ፡ ይኾናል ፡ ማለት ፡ ነው ። በአንቀጽ ፡ ፲፱ ፡ ለመግልበጥ ፡ (ለመሻር) ቢፈቀድም ፡ ያንዲት ፡ ፈረንሳዊት ፡ እናትና ፡ የውጭ ፡ አገር ፡ አባት ፡ ደንበኛ ፡ ሕጋዊ ፡ (ከማእሰራጋብቻ ፡ የተወለደ) ልጅ ፡ ፈረንሳዊ ፡ ሲኾን ፡ የባሕርይ ፡ (ዲቃላ) ልጅነቱን ፡ ከኹለት ፡ ወላጆቹ ፡ አንዱ ፡ ፈረንሳዊ ፡ መኾን ፡ የታወቀለት ፡ ወይም ፡ ልጅነቱን ፡ በፍርድ ፡ የረታው ፡ ፈረንሳዊ ፡ ነው ። የተወለዱበት ፡ አገር ፡ ለጉዳዩ ፡ እስፈላጊ ፡ ስላልኾነ ፡ ከዚህ ፡ በላይ ፡ የሰፈሩት ፡ ውሳኔዎች ፡ በግዴታ ፡ በዩስ ፡ ሳንጉይኒስ ፡ ላይ ፡ የተመሠረቱ ፡ ናቸው ።

ደግሞም ፡ የፈረንሳዊው ፡ ሕግ ፡ የዩስ ፡ ሶሊ ፡<sup>13</sup> ብዙ ፡ ጠባዮችን ፡ የያዘ ፡ ነው ። ምንም ፡ እንኳ ፡ በግድ ፡ ፈረንሳዊ ፡ ዜጋ ፡ ባይኾን ፡ በፈረንሳይ ፡ አገር ፡ ከተወለደ ፡ አባት ፡ በፈረንሳይ ፡ አገር ፡ የተወለደው ፡ ልጅ ፡ ፈረንሳዊ ፡ ነው ። ልጅነቱን ፡ በመዝሙሪያ ፡ ካረጋገጠበት ፡ ወላጅ ፡ በፈረንሳይ ፡ አገር ፡ ውስጥ ፡ የተወለደ ፡ በኾነ ፡ ጊዜም ፡ እንደዚሁ ፡ ነው ። በፈረንሳይ ፡ አገር ፡ ከተወለደችው ፡ እናት ፡ በፈረንሳይ ፡ አገር ፡ የተወለደው ፡ ደንበኛ ፡ ሕጋዊ ፡ ልጅ ፡ (አኹንም ፡ የመግልበጥ ፡ መብቱ ፡ እንደተጠበቀለት ፡ ነው) ፡ ፈረን

<sup>12</sup> ልጅነት ፡ ዘርጋ ፡ ባለው ፡ በሰራው ፡ እስተውሎ ፡ ያንድ ፡ ልጅ ፡ ወላጅ ፡ መኾን ፡ የሚረጋገጥበት ፡ መንገድ ፡ ነው ። በጠቅላላው ፡ የኢትዮጵያን ፡ ፍትሕ ፡ ብሔር ፡ ሕግ ፡ ምዕራፍ ፡ ፭ ፡ ይመለከታል ። ደግሞም ፡ የዚህ ፡ የነገር ፡ አስካክ ፡ ልጅነት ፡ በፍርዳዊ ፡ ማረጋገጫ ፡ ይጸናለት ፡ ዘንድ ፡ ልጁ ፡ የሚያቀርበውን ፡ ክስ ፡ ሲመራመር ፡ ወይም ፡ ሊነካ ፡ ይችላል ።

<sup>13</sup> በተለይም ፡ ያ፲፱፻፵፭ ፡ ዓ. ም. የፈረንሳዊ ፡ ተወላጅነት ፡ ሕግ ፡ አናቅጽ ፡ ርዩ ፡ ር፭ ፡ ፵፱ ፡ እና ፡ ፶፪ ፡ ይመለከታል ።



ሳዊ፣ ሲኾን፣ ልጅነቱን፣ ለኹለተኛ፣ ጊዜ፣ ካረጋገጠበት፣ በፈረንሳይ፣ አገር፣ ከተወለደ፣ ወላጅ፣ የተወለደው፣ ልጅም፣ ቅሉ፣ እንደዚያው፣ ነው። በአንቀጽ፣ ፳፩፣ መሠረት፣ ተወላጅነታቸው፣ ካልታወቀ፣ ወላጆች፣ በፈረንሳይ፣ አገር፣ የተወለደ፣ ልጅ፣ ተወላጅ፣ ዝምድናው፣ ካልተገኘና፣ ያባቱን፣ ዜግነት፣ ካልተቀበለ፣ በቀር፣ ፈረንሳዊ፣ ነው።

ኹለቱም፣ ፈረንሳይ፣ አገር፣ ካልተወለዱ፣ የውጭ፣ አገር፣ ወላጆች፣ በፈረንሳይ፣ አገር፣ ሲወለድ፣ አኪልነቱን፣ በሚያደርስበት፣ ጊዜ፣ በፈረንሳይ፣ አገር፣ የሚቀመጥ፣ እና፣ በዕድሜው፣ ከ፲፯፣ ዓመቱ፣<sup>14</sup> ዝምድና፣ ከዚያው፣ ሲኖር፣ የነበረ፣ ከኾነ፣ ልጁ፣ ፈረንሳዊ፣ ነው፣ ተብሎ፣ ይታሰባል። ባንዳንድ፣ አኳኋኖች፣ የተነሣ፣ የፈረንሳይ፣ ተወላጅነቱን፣ ከመቀበል፣ ለመተው፣ ይችላል፣ ይኾናል፣ ባንዳንድ፣ አኳኋኖች፣ የተነሣም፣ ማመልከቻ፣ ጥያቄውን፣ መንግሥቱ፣ ሊቃውንት፣ ይችላል፣ ይኾናል። በዲሴምበር፣ (ታኅሣሥ) ፳፪፣ ቀን፣ ፲፱፻፷፩፣ ዓ. ም. በወጣው፣ ሕግ፣ መሠረት፣ ወታደራዊ፣ አገልግሎት፣ ለዐምስቲ፣ ዓመታት፣ መቀመጥ፣ (መኖር) ሊተካ፣ ይችላል። ደግሞም፣ እንደዚህ፣ ያለው፣ ልጅ፣ ዐቅሙ-አዳም፣ ከመድረሱ፣ በፊት፣ ለዐምስት፣ ዓመታት፣ ተቀምጦ፣ እንደኾነ፣ የፈረንሳይ፣ ተወላጅነት፣ ይገባኛል፣ ብሎ፣ ሊጠይቅ፣ ይችላል። ዕድሜው፣ ከ፲፰፣ ዓመት፣ በታች፣ የኾነ፣ እንደኾነ፣ የይገባኛል፣ ጥያቄው፣ በጠባቂው፣ (አሳዳጊው) ሊቀርብ፣ ይችላል። በዚያው፣ ባይወለዱም፣ ቅሉ፣ በፈረንሳይ፣ አገር፣ ያደጉ፣ ልጆችን፣ የሚመለከቱ፣ ልዩ፣ ውሳኔዎች፣ እሱ፣ እነሱም፣ ካንዳንድ፣ አኳኋኖች፣ የተነሣ፣ የፈረንሳይ፣ ተወላጅነትን፣<sup>15</sup> ለማግኘት፣ ይችላሉ። ፈረንሳይ፣ የዩስ፣ ሳንጉይኒስ፣ መሠረታዊ፣ ልምን፣ ይዛ፣ ሳለች፣ የፈረንሳይ፣ ዜጎችን፣ ቊጥር፣ ለማሳደግ፣ በትልብነት፣ የዩስ፣ ሶሊ፣ ጠባዮችን፣ መቀበሏ፣ ጉልሕ፣ ነው።

አንዳንድ፣ አገሮች፣ በዩስ፣ ሶሊ፣ ሌሎችም፣ በዩስ፣ ሳንጉይኒስ፣ ብዙዎቹም፣ ከኹለቱም፣ በተዋሐደ፣ ልምን፣ ስለሚገለገሉ፣ አንዳንድ፣ ነጠላ፣ ሰዎች፣ ጥንድ፣ ተወላጅነትን፣ እንደያዙ፣ መወለዳቸው፣ እንግዳ፣ አይኾንም፣ (አይደለም)። ለምሳሌ፣ ያኽል፣ የጀርመን፣ ዜግነታቸውን፣ ካላወረዱ፣ ከጀርመን-መጣች፣ (-ገቦች፣ ወይም፣ ኢሚግራንትስ)፣ በተባበረው፣ (አ.) መንግሥታት፣ የተወለደ፣ ልጅ፣ በተባበረው፣ (አ.) መንግሥታት፣ አሚሪካዊ፣ ነው፣ ተብሎ፣ ይገመታል፤ በጀርመን፣ (መንግሥት) ደግሞ፣ ጀርመናዊ፣ ነው፣ ተብሎ፣ ይታሰባል። ደግሞም፣ አንዲት፣ ሴት፣ በማግባቷ፣ በሱ፣ ብሔራዊ፣ ሕግ፣ መሠረት፣ የባሏን፣ ተወላጅነት፣ የተቀበለች፣ እንደኾነና፣ በሷ፣ ብሔራዊ፣ ሕግ፣ መሠረት፣ የራሷን፣ ተወላጅነት፣ ያላጣች፣ እንደኾነ፣ የጥንድ፣ ተወላጅነት፣ ጉዳይ፣ ሊነሣሣ፣ ይችላል። በአንዳንድ፣ አገሮች፣ አንዱ፣ ተወላጅ፣ የውጭ፣ አገር፣ ተወላጅነት፣ ሲቀበል፣ ተወላጅነቱን፣ (የፈተኛውን) እንዲያጣ፣ ያደርጋሉ፤ ሌሎችም፣ የመዝሙሪያውን ተወላጅነታቸውን፣ ሳያጡ፣ የውጭ፣ አገር፣ ተወላጅነትን፣ እንዲይዙ፣ ለተወላጆቻቸው፣ ይፈቅዳሉ። በዚህ፣ በኹለተኛው፣ ጉዳይ፣ ጥንድ፣ ተወላጅነትም፣ ሊመጣ፣ ይችላል። ወርክ፣ ብዙ፣ ጊዜ፣ ግጭቶች፣ ይነሣሣሉ፤ ለምሳሌ፣ ያኽል፣ በኹለተኛው፣ ዓለም፣ ጦርነት፣ ዘመን፣ ከባዕድ፣ ወላጆች፣ በተባበረው፣ (አ.) መንግሥታት፣ የተወለዱት፣ ልጆች፣ የወላጆቻቸውን፣ የትውልድ፣ አገር፣ ይጎበኙ፣ በነበሩበት፣ ጊዜ፣ በወላ

<sup>14</sup> የዩስ፣ ሶሊ፣ ልምን፣ አጥብቀው፣ ቢከተሉ፣ ነር፣ የትም፣ ቢቀመጥ፣ (ሲኖር) ልጁ፣ ፈረንሳዊ፣ ይኾን፣ ነበረ።

<sup>15</sup> የዲሴምበር፣ ፳፪፣ ቀን፣ ፲፱፻፷፩፣ ዓ. ም. ሕግ፣ አንቀጽ፣ ፱፩።

ጆቻቸው፡ ዜግነት፡ የተነሣ፡<sup>16</sup> ዜጎች፡ ናቸው፡ በመባል፡ በነዚያው፡ አገሮች፡ ብዙ፡ ጊዜ፡ ወደ፡ ወታደራዊ፡ አገልግሎት፡ ተመልሞለው፡ ነበረ ። ባንዳንድ፡ አገሮች፡ ለጥንድ፡ ዜግነት፡<sup>17</sup> ችግር፡ መውጫ፡ መፍትሔ፡ ለማግኘት፡ ጥረቶች፡ ተደርገዋል ።

ሌላ፡ ሊነሣ፡ የሚችል፡ ሹነታ፡ አገር-አልባነት፡ ነው ። ይኸውም፡ የሚመጣው፡ እንዴት፡ ሰው፡ በሌላው፡ አገር፡ ተወላጅነት፡ ሳያገኝ፡ ያንደኛውን፡ አገር፡ ተወላጅነትን፡ ባጣ፡ ጊዜ፡ ነው ። ለምሳሌ፡ ያክል፡ ባንዳንድ፡ አገሮች፡ ሕጎች፡ አንዲት፡ ሴት፡ የውጭ አገር፡ ሰውን፡ በማግባቷ፡ ተወላጅነቷን፡ ታጣለች፤ የባሏ፡ ብሔራዊ፡ ሕግ፡ የሱን፡ ፕወላጅነት፡ ያልሰጣት፡ እንደሆነም፡ አገር-አልባ፡ ትሆናለች ። ባንዳንድ፡ አኳኋኖች፡ አንድ፡ ሰው፡ በራሱ፡ ብሔራዊ፡ ሕግ፡<sup>18</sup> ሌላ፡ ተወላጅነት፡ ሳያገኝ፡<sup>19</sup> ተወላጅነቱን፡ ሊገፈፍ፡ (ሊጎፈግ) ይችላል ። ዝቅ፡ ብለን፡ እንደምናየው፡ ኢትዮጵያዊው፡ ሕግ፡ ከኹለቱም፡ የጥንድ፡ ዜግነትና፡ አገር-አልባነት፡ (ሹነታ) ለማምለጥ፡ የተቻለውን፡ ማናቸውንም፡ ጥረት፡ ያደርጋል ።

እንግዲህ፡ በተወላጅነት፡ እንዴት፡ ካንደኛው፡ ጋራ፡ ለማመጣጠን፡ ያሉትን፡ አቀራረቦች፡ ከተመራመርን፡ ዘንድ፡ የ፲፱፻፴፬፡ ዓ. ም. የኢትዮጵያ፡ ተወላጅነት፡ ሕግን፡ እስቲ፡ እንመልከተው ። ኢትዮጵያ፡ የዩስ፡ ሳንጉይኒስ፡ ልምን፡ አጠንከራ፡ የምትከተል፡ አገር፡ ነች ። በኢትዮጵያ፡ ውስጥ፡ ወይም፡ በውጭ፡ አገር፡ ከኢትዮጵያዊ፡ አባት፡ ወይም፡ ከኢትዮጵያዊት፡ እናት፡ የተወለደ፡ ማናቸውም፡ የኢትዮጵያ፡ ተገዥ፡

16 ጠያቂ፡ (ይገባኛል፡ ባዩ) የዚያው፡ የይገባኛል፡ ባዩ፡ መንግሥትና፡ ጥያቄው፡ የቀረበበት፡ መንግሥት፡ (የኹለቱም) ዜጋ፡ በኮነ፡ ጊዜ፡ ደግሞ፡ በመንግሥት፡ ላይ፡ በሚቀርብ፡ ጥያቄ፡ ግጭት፡ ሊነሣ፡ ይችላል ። የዚያውብክኔቪር፡ ነገር፡ የፔሩቪያ፡ መንግሥት፡ ራሱ፡ ላንድንግድ፡ ቤት፡ መድበ፡ ያወጣውን፡ ቼኮች፡ ካለማክበሩ፡ የተነሣ፡ የተቀሰቀሰውን፡ ጭቅጭቅ፡ በቋሚው፡ (ነባሩ) የዕርቅ፡ ፍርድ፡ ቤት፡ ባ፲፱፻፲፮፡ ዓ. ም. ተወስኖ፡ የይገባኛል፡ ጥያቄውን፡ የኢጣልያና፡ የፔሩቪያ፡ መንግሥታት፡ ለዕርቅ፡ ድርድር፡ ለማቅረብ፡ ተስማሙ ። የይገባኛል፡ ክርክሩም፡ ወደአንዳንድ፡ ሰዎች፡ እጆች፡ በለተላለፈ፡ ከነሱም፡ አንዱ፡ ራፋዬል፡ ካኔቪር፡ ነበረ ። ፍርድ፡ ቤቱ፡ የተሰጠው፡ የዳኝነት፡ ሥልጣን፡ ከፔሩቪያ፡ መንግሥት፡ የኢጣልያ፡ ተወላጆች፡ የሚጠይቁትን፡ ለማየት፡ ብቻ፡ ነበረ፤ ይህም፡ ማለት፡ ካኔቪር፡ የኢጣልያ፡ ተወላጅ፡ የነበረ፡ ባይሆን፡ ኑሮ፡ እዚህታውን፡ ለመስማት፡ ፍርድ፡ ቤቱ፡ ምንም፡ ዐይነት፡ የፍርድ፡ ሥልጣን፡ አይኖረውም፡ ነበረ፡ ነው ። ዜግነትን፡ ለመለየት፡ (ለመወሰን) ፔሩ፡ ዩስ፡ ሶሊን፡ በትከተል፡ ኢጣልያ፡ ዩስ፡ ሳንጉይኒስን፡ ተከትላለች ። ካንድ፡ ኢጣልያዊ፡ አባት፡ በፔሩ፡ ከተወለደ፡ ዘንድ፡ ፔሩና፡ ኢጣልያ፡ ኹለቱም፡ የየራሳቸው፡ ተወላጅ፡ ቁጠራት ። ለከባኸነቱ፡ አቋም፡ ጉዳዮች፡ ሲባል፡ በውጭውን፡ ፔሩ፡ እንደተወላጁ፡ እንዲቋቋረውና፡ በዕርቁ፡ ስምምነት፡ ትርጉም፡ መሠረት፡ የኢጣልያ፡ ተወላጅ፡ እልነበረም፡ ሲል፡ ፍርድ፡ ቤቱ፡ ቁረጠ ።

17 እንዴት፡ የሌፕሪል፡ (ሚያዝያ) ፲፪፡ ቀን፡ ፲፱፻፵፬፡ ዓ. ም. የሕጉ፡ ቃል-ኪዳን፡ ነው ። ኹለተኛው፡ ባንዳንድ፡ የጥንድ፡ ተወላጅነት፡ ጉዳዮች፡ በለወታደራዊ፡ ግድታዎች፡ የተደረገው፡ ስምምነት፡ (ፕሮቶኮል) ነው ። በነዚህ፡ ስምምነቶች፡ ኹሉም፡ አገሮች፡ ፈራሚዎች፡ እይደሉም ።

18 በናዚ፡ አገዛዝ፡ ጊዜ፡ በየይጣናቸው፡ ወይም፡ በፖለቲካ፡ ማገበርተኛነታቸው፡ የተነሣ፡ ብዙ፡ ሰዎች፡ የጀርመን፡ ተወላጅነታቸውን፡ ተነፍገው፡ (ተነሥተው) ነበረ ። ይኸውና፡ እነዚህ፡ ሰዎች፡ አገር-አልባዎች፡ ተደርገው፡ ነበረ ። ደግሞም፡ አንዳንድ፡ ተግባርን፡ (ድርጊያዎችን) ከመፈጸም፡ የተነሣ፡ ዜግነትን፡ የሚያስወርስ፡ መንገድ፡ እንዲኖር፡ አንዳንድ፡ አገሮች፡ ይደነግጋሉ፤ ዜጎችን፡ ያስወረሰውም፡ ሰው፡ አገር-አልባ፡ ሲሆን፡ ይችላል፡ ማለት፡ ነው ።

19 በቢሾፕ፡ ኢንቲርናሽናላዊ፡ ሕግ፡ ፩፻፲፪፡ (፪ኛ፡ እትም፡ ፲፱፻፷፮፡ ዓ. ም.) ያገር-አልባዎችን፡ መብት፡ ስለመጠበቅ፡ የተደረጉ፡ ሙከራዎች፡ ምርምርንና፡ በዚያው፡ መጽሐፍ፡ የተጠቀሰውን፡ ጉዳይ፡ ይመለከታል ።

(ዜጋ፡ ወይም፡ ተወላጅ) ነው።<sup>20</sup> አባትየው፡ የኢትዮጵያ፡ ተገዥ፡ የሆነ፡ እንደሆነ፡ ልጁ፡ ወዲያውኑ፡ ያላንዳች፡ ጭቅጭቅ፡ የኢትዮጵያ፡ ዜግነትን፡ ያንኛል፤ እናትየው፡ ብቻ፡ ኢትዮጵያዊት፡ የሆነች፡ እንደሆነ፡ ግን፡ ልጁ፡ በኢትዮጵያ፡ በመኖርና፡ የውጭ፡ አገር፡ ተወላጅነትን፡ አውልቆ፡ መጣሉን፡ በማስረዳት፡ የኢትዮጵያ፡ ዜጋ፡ ለመሆን፡ ፈቅዶ፡ እንዲመርጥ፡ ይገባል። እንደዚህ፡ ባደረገ፡ ጊዜ፡ ልጁ፡ በውልደቱ፡<sup>21</sup> የኢትዮጵያ፡ ዜጋ፡ እንደሆነ፡ ይቈጠራል። ካንዲት፡ ካላገባች፡ ኢትዮጵያዊት፡ ሴት፡ የተወለደው፡ ልጅ፡ ኢትዮጵያዊ፡ ይሆናል፡ ማለት፡ ነው።

ከውጭ፡ አገር፡ ወላጆች፡ በኢትዮጵያ፡ ውስጥ፡ ስለተወለደ፡ ልጅ፡ ዜግነትን፡ በመቀባት፡ ካልተቀበለ፡ (ጠይቆ፡ ካልዜገ፡ ወይም፡ ናቹራላይዜሺን) በቀር፡ የኢትዮጵያ፡ ዜጋ፡ ስለሚሆንበት፡ ወይም፡ ሊሆን፡ ስለሚችልበት፡ መንገድ፡ ምንም፡ ውሳኔዎች፡ ሕጉ፡ አልያዘም። በሌላ፡ አኳኋን፡ ሲገለጥ፡ በዚህ፡ ላይ፡ የዩኒ፡ ሶሊ፡ ፅንሰ-ሐሳብ፡ የለም፡ ማለት፡ ነው። በጠቅላላው፡ (በደፈናው) ይህ፡ ለአስተውሎ፡ የሚገባ፡ ማለፊያ፡ ነገር፡ ነው። በዚህ፡ አገር፡ ከሚኖሩት፡ የውጭ፡ አገር፡ ሰዎች፡ የሚበዙት፡ ከልዩ፡ ልዩ፡ ባህልና፡ ከልዩ፡ ልዩ፡ የጎሣ፡ እጋ፡ (ወገን) የመጡ፡ ኤውሮጳውያኖች፡ ናቸው። ከእንደዚህ፡ ያሉ፡ ወላጆች፡ የተወለዱ፡ ልጆች፡ ወዲያውኑ፡ (ያለ፡ ክርክር) እንደተወለዱ፡ እንደኢትዮጵያ፡ ዜጎች፡ እንዲቈጠሩ፡ አያሻም፡ ምናልባትም፡ እነሱ፡ ራሳቸውም፡ እንደዚህ፡ ያለውን፡ እንደተወለዱ፡ ወዲያውኑ፡ መቀላቀል፡ አይቹ፡ ይሆናል። እንደዚህ፡ ለማድረግ፡ የሚፈልጉ፡ በመቀባት፡ (የራስን፡ ትቶ፡ ሌላ፡ በመቀበል) የኢትዮጵያ፡ ዜግነትን፡ ለማግኘት፡ ይችላሉ። ይኸን፡ እንጂ፡ ደቡባዊ፡ ሱዳን፡ ሰሜናዊ፡ ኬኒያና፡ ሶማሊያ፡ ከመሰሉት፡ ክፍለ-ሀገሮች፡ ብዙ፡ ሰዎች፡ ወደ፡ ኢትዮጵያ፡ ገብተዋል። ከዳር፡ ደንበር፡ (ወሰን) ክፍለ-ሀገር፡ እንደሚኖሩት፡ ኢትዮጵያውያኖች፡ ያሉ፡ የጎሣ፡ አጋዎች፡ (ወገኖች) የወረዱ፡ ስለሆነ፡ እንደገቡ፡ በምሉ፡ (በፍጹም) ተቀላቅለው፡ ይዋጣሉ። ብዙ፡ ጊዜ፡ እንደዚህ፡ ያሉት፡ ሰዎችና፡ ውልደቻቸው፡ ከወሰኑ፡ አጠገብ፡ ከሚቀመጡት፡ ኢትዮጵያውያኖች፡ ሊለዩ፡ አይቻልም። ነገር፡ ግን፡ በሕግ፡ ፊት፡ እነሱም፡ ሆነ፡ ወይም፡ ውልደቻቸው፡ የኢትዮጵያ፡ ዜጎች፡ አይደሉም። ምናልባት፡ በነባርነት፡ (ለምንጊዜውም) በሆነ፡ አኳኋን፡<sup>22</sup> ከዚህ፡ ለመቅረት፡ ላቀዱ፡ (ላሰቡ) በኢትዮጵያ፡ ለሚኖሩ፡ ያንዳንድ፡ ተለይተው፡ የተመደቡ፡ የጎሣ፡ አጋዎች፡ አባሎች፡ እንደ፡ ኢትዮጵያ፡ ዜጎች፡ ይቈጠሩ፡ ዘንድ፡ እና፡ በኢትዮጵያ፡ ውስጥ፡ የተወለዱ፡ የነዚህ፡ ሰዎች፡ ልጆችም፡ በመወለድ፡ የኢትዮጵያ፡ ዜጎች፡ ለመሆን፡ የሚ

20 “ተገዥ” የሚለው፡ የንግግር፡ አገባብ፡ የተደረገው፡ ኢትዮጵያ፡ የዘውድ-ዙፋን፡ አገር፡ ስለሆነች፡ ነው። ለኢንተርናሽናል፡ ሕግ፡ ጉዳዮች፡ ሲሆን፡ በተወላጅ፡ በዚጋ፡ ወይም፡ በተገዥ፡ መካከል፡ ምንም፡ ልዩነት፡ እንደሌለ፡ ይገነዘባል። በኤርትራ፡ የሚኖሩ፡ ኢትዮጵያውያኖች፡ እቋም፡ የሚጻፍው፡ በዲሴምበር፡ (ታኅሣሥ) ፪ ቀን፡ ፲፱፻፶፯፡ ዓ. ም. የወጣው፡ የተባበሩት፡ መንግሥታት፡ ዐዋጅ፡ ቍ. ፫፻፶ (፱) ነው። ከውጭ፡ አገር፡ ተወላጆች፡ በቀር፡ የኤርትራ፡ ኗሪዎች፡ ሹሉ፡ የፌዴሬሺኑ፡ ተወላጆች፡ ነበሩ። እነዚህ፡ ሰዎች፡ በቀረው፡ የጉሠ፡ ነገሥቱ፡ መንግሥት፡ ግዛት፡ ሹልጊዜም፡ ኢትዮጵያውያን፡ ተብለው፡ የሚቈጠሩ፡ ስለነበሩ፡ ኤራትራ፡ ወደ፡ ንጉሠ፡ ነገሥቱ፡ መንግሥት፡ ግዛት፡ እንደገና፡ በገባች፡ ጊዜ፡ የተወላጅነት፡ ሕጉ፡ ትርጉም፡ በሚፈታው፡ አገባብ፡ ውስጥ፡ ከኢትዮጵያ፡ አባት፡ ወይም፡ ከኢትዮጵያዊት፡ እናት፡ እንደተወለዱ፡ ሰዎች፡ ሆነው፡ አንድ፡ ላይ፡ ይቀላቀላሉ፡ (ይዳመራሉ)። በተቈረጠው፡ ውሳኔ፡ መወረት፡ ኤራትራውያኖች፡ (ማለት፡ ከዚያ፡ የተወለዱ፡ እና፡ ቢያንስ፡ አንድ፡ ያገሩ፡ ተወላጅ፡ ወላጅ፡ ወይም፡ ወላጅ-አያት፡ ያላቸው፡ ሰዎች) ከፌዴሬሺኑ፡ በኋላ፡ ባለው፡ ስድስት፡ ወር፡ ውስጥ፡ የኢትዮጵያ፡ ተወላጅነትን፡ ለመያዝ፡ ሊመርጡ፡ ይችላሉ።

21 በሦስቲካዊ፡ መብቶች፡ መጠቀም፡ ረገድ፡ በመወለድ፡ ተገዥነትና፡ በሌሎች፡ መካከል፡ ልዩነቶች፡ ስላሉ፡ ይህ፡ አውራ፡ ጉዳይ፡ ነው። ዝቅ፡ ብሎ፡ በማሳሰቢያ፡ ፴፰፡ እና፡ በዐባሪው፡ ጽሑፍ፡ ያለውን፡ ምርምር፡ ይመለከታል።

22 በሌላ፡ መንገድ፡ ሲታይ፡ ምንባሩን፡ ከዚህ፡ ኢንፍራ፡ (ዝቅ፡ ብሎ) ከማስገንዘቢያ፡ ቍ. ፶፫-፳፭ና፡ ዐ፻፲፡ ጽሑፉን፡ ይመለከታል።

ያበቋቸው፡ እንዳንድ፡ ማሻሻያዎች፡ ሳያስፈልጉ፡ እይቀሩም ። ምናልባት፡ ይህን፡ ከልማድ፡ ለመውጣት፡ የሚችል፡ ልዩነት፡ በማድረግ፡ የዩስ፡ ሳንጉይኒስ፡ ልም፡ ለኢትዮጵያ፡ ደገና፡ አድርጎ፡ የበጀ፡ (የተሰማማ) ይመስላል ።

ኢትዮጵያዊ፡ ዜጋ፡ በመኾን፡ ስለሚመጣው፡ የጋብቻ፡ የደንበኛና፡ ሕጋዊ፡ የሚኾን፡ እና፡ የጉዲፈቻ፡ ውጤትን፡ የሚመለከቱ፡ ውሳኔዎችን፡ ሕጉ፡ ይዟል ። ከአንድ፡ ኢትዮጵያዊ፡ ጋራ፡ ወደ፡ ሕጋዊ፡ ማእሰራ-ጋብቻ፡ የምትገባ፡ የውጭ፡ አገር፡ ሴት፡ የኢትዮጵያ፡ ዜግነትን፡ ትይዛለች ። የውጭ፡ አገር፡ ሰውን፡ የምታገባ፡ ኢትዮጵያዊት፡ የኢትዮጵያ፡ ተወላጅነቷን፡ የምታጣው፡ የባሏ፡ ብሔራዊ፡ ሕግ፡ የሱን፡ ተወላጅነት፡ ለሲም፡ ያለበሳት፡ ወይም፡ የሸለማት፡ (የሰጣት) እንደኾነ፡ ነው ። ማንም፡ ኢትዮጵያዊት፡ በተቻለበት፡ ላይ፡ በጋብቻዋ፡ አገር-አልባ፡ እንዳትኾን፡ ይህ፡ ዋስትናን፡ ይሰጣታል፡ እንዲሁም፡ ያገቡ፡ ሴቶች፡ ባንዴ፡ ኹለት፡ ዜግነት፡<sup>23</sup> እንዳይኖራቸው፡ ለማገድ፡ ይሞክራል ።

በደንብ፡ ሕጋዊ፡ በማድረግ፡ ረገድ፡ ላይም፡ ይኸው፡ መሠረተ-ሐሳብ፡ የሚፈጸምበት፡ ነው ። በደንብ፡ ሕጋዊ፡ ያለመኾንነት፡ የሕግ፡ ፅንሰ-ሐሳብ፡ (አስተያየት) ስለሌለ፡ በደንብ፡ ሕጋዊ፡ መኾን፡ በኢትዮጵያ፡ አለመኖሩን፡ ይገነዘቧል ። አንድ፡ ልጅ፡ ተወላጅነቱን፡ በፍርድ፡ ሲያረጋግጥባቸው፡ የቻለባቸው፡ ወላጆች፡ ልጅ፡ ነው፡ ልጅነቱን፡ አንዴ፡ ካረጋገጠ፡ ዘንዳም፡ ወላጅነቱ፡ የተረጋገጠበት፡ ማግባቱ፡ ወይም፡ አለማግባቱ፡ ለጉዳዩ፡ አስፈላጊነት፡ የለውም ። እንግዲህ፡ በመወሰድ፡ ከኢትዮጵያዊት፡ እናት፡ ወይም፡ ከኢትዮጵያዊ፡ አባት፡ ጋራ፡ ሊገናኝ፡ (ሊዛመድ) የቻለ፡ ልጅ፡ ኢትዮጵያዊ፡ ነው ። ነገር፡ ግን፡ ካላገባች፡ ኢትዮጵያዊት፡ እናት፡ የተወለደ፡ ልጅን፡ የውጭ፡ አገር፡ አባቱ፡ በራሱ፡ ሕግ፡ መሠረት፡ ያወቀለት፡ (በደንብ፡ ሕጋዊ፡ ያደረገው) እንደኾነ፡ ችግሮች፡ ይነሳሉ ። አኹንም፡ ቢኾን፡ ከጥንድ፡ ተወላጅነት፡ (ዜግነት) ኾነ፡ ወይም፡ ካገር-አልባነት፡ ለማምለጥ፡ በመድከም፡ ያባትየው፡ ብሔራዊ፡ ሕግ፡ ያባትየውን፡ ተወላጅነት፡ ከነመብቶቹና፡ ጓዙ፡ ጋራ፡ ለልጁ፡ ለማሳበስ፡ የሚችል፡ የኾነ፡ እንደኾነ፡ ብቻ፡ ልጁ፡ በደንብ፡ ሕጋዊነትን፡ በማግኘቱ፡ የኢትዮጵያ፡ ተወላጅነቱን፡ እንዲያጣ፡ ሕግ፡ ይፈቅዳል ።

አንድ፡ ኢትዮጵያዊ፡ ልጅን፡ በጉዲፈቻ፡ (ጡት፡ በማጥባት) የውጭ፡ አገር፡ ሰው፡ ስለያዘው፡ የኢትዮጵያ፡ ተወላጅነቱን፡ እንዲያሳጣው፡ ምክንያት፡ አይኾንም ። እንደዚሁም፡ ይህን፡ በመገልበጥ፡ (በማዘዋወር)፡ በጉዲፈቻ፡ ልጅነት፡ በአንድ፡ ኢትዮጵያዊ፡ የተያዘው፡ ልጅ፡ ከዚሁ፡ (ብቻ) የተነሣ፡ የኢትዮጵያ፡ ተወላጅ፡ አይኾንም ። ከዚህ፡ ላይ፡ ጥንድ፡ ተወላጅነትና፡ አገር-አልባነት፡ ሊኖር፡ ይችላል ። ለምሳሌ፡ ያኸል፡ ኢትዮጵያዊውን፡ ልጅ፡ የውጭ፡ አገሩ፡ ሰው፡ በጉዲፈቻ፡ የያዘው፡ እንደኾነና፡ በጉዲፈቻው፡ (ጡት፡ በጥበው) ወላጅ፡ ብሔራዊ፡ ሕግ፡ መሠረት፡ ያባቱን፡ ተወላጅነት፡ የወሰደ፡ እንደኾነ፡ ልጁ፡ ባንዴ፡ ኹለት፡ (ጥንድ) ዜግነትን፡ ያገኛል ። እንደተባለው፡ በዚሁ፡ ዐይነት፡ መንገድ፡ ኢትዮጵያዊው፡ በጉዲፈቻ፡ የያዘው፡ ልጅ፡ ብሔራዊ፡ ሕግ፡ መሠረት፡ የቀድሞው፡ ተወላጅነቱን፡ ያጣ፡ እንደኾነ፡ የኢትዮጵያ፡ ዜግነትን፡ በመቀባት፡ ካላገኘ፡ በቀር፡ አገር-አልባ፡ ይኾናል ። ይህ፡ ሊኾን፡ የቻለበት፡ ምክንያት፡ ሕጉ፡ በተሠራበት፡ በ፲፱፻፴፬፡ ዓ. ም. ኢትዮጵያውያኖች፡ በጉዲፈቻ፡ የውጭ፡ አገር፡ ሲሆኑ፡ የመያዛቸው፡ ተግባር፡ ያነሰ፡ (ያጠጠ) ስለነበረ፡ ጥረቱ፡ ኢትዮጵያዊው ሕግን፡ የኢትዮጵያ፡ ተወላጅነቱን፡ እንዳያጣ፡ ለመከላከል፡ ኦሮ፡ ሊኾን፡ ይችላል ።

<sup>23</sup> በጋብቻዋ፡ የተነሣ፡ ብሔራዊ፡ ሕግ፡ ዜግነቷን፡ እንድታጣ፡ ያላደረጋት፡ ከኢትዮጵያዊ፡ ጋራ፡ የተጋባቸው፡ የውጭ፡ አገር፡ ሴት፡ ጥንድ፡ ዜግነት፡ ሊኖራት፡ ይችላል፡ ይኾናል ። ኹላም፡ ከኢትዮጵያ፡ በዙፊ፡ ኹኖ፡ ሲመለከቱት፡ ያገባች፡ ሴት፡ ከባሏ፡ ጋራ፡ አንድ፡ የኾነ፡ ዜግነት፡ እንዲኖራት፡ የሚፈለግ፡ ነው ።

አኹን፡ (ግን) በፍትሐ፡ ብሔር፡ ሕጉ፡ የጉዲፈቻ፡ ጉዳይ፡<sup>24</sup> በምሉ፡ ከተዘረጋ፡ ዘንዳ፡ በኢትዮጵያውያኖችና፡ በውጭ፡ አገር፡ ሰዎች፡ መካከል፡ በጉዲፈቻ፡ የመያያዙ፡ ተግባር፡ እያደገ፡ ሊኼድ፡ ይችላል፡ ይኾናል ። ምናልባትም፡ የተወላጅነት፡ ሕጉ፡ ውሳኔዎች፡ እንደገና፡ እንዲመረመሩና፡ እንዲገመገሙ፡ ያስፈልግ፡ ይኾናል ። በውጭ፡ አገር፡ ሰው፡ በደንበኛ፡ በሕግ፡ ከታወቀለት፡ ኢትዮጵያዊ፡ ልጅ፡ አቋም፡ የሚለይበትን፡ ለመመራመር፡ በያስቸግርም፡ ቅሉ፡ በውጭ፡ አገር፡ ሰው፡ በጉዲፈቻነት፡ የተያዘው፡ ኢትዮጵያዊ፡ ልጅ፡ የኢትዮጵያ፡ ተወላጅነቱን፡ እንዲያጣ፡ የማያስፈልግ፡ ሊኾን፡ ይችላል ። ይኹን፡ እንጂ፡ በጠራው፡ መንገድ፡ ሲታይ፡ በጉዲፈቻ፡ በኢትዮጵያዊው፡ የተያዘው፡ የውጭ፡ አገር፡ ልጅ፡ በዚሁ፡ ጉዳይ፡ የተነሣ፡ አገር-አልባ፡ እንዲደረግ፡ አያስፈልግም፤ የቀድሞውን፡ ተወላጅነቱን፡ ያጣ፡ እንደኾነም፡ በጉዲፈቻነቱ፡ የኢትዮጵያ፡ ተወላጅነትን፡ እንዲያገኝ፡ ያስፈልጋል ።

አንድ፡ የውጭ፡ አገር፡ ሰው፡ ለዐምስት፡ ዓመት፡ መቀመጫውን፡ በኢትዮጵያ፡ ካደረገ፡ በኋላ፡ በመቀበት፡ ዜግነትን፡ ለመቀበል፡ ይችላል ። “በብሔራዊው፡ ሕግ፡ ደንቦች፡ መሠረት፡ የምሉ፡ ዕድሜ፡ ሰው፡” በፍትሐ፡ ብሔር፡ ሕጉ፡ እንቀጽ፡ ፩፻፺፰፡ ዐ/ሥራ፡ ሰምንት፡ ዓመቱን፡ የመላ፡ ሰው፡ እንዲኾን፡ ይገባዋል ። “ለራሱ፡ ነፍ፡ የሚበቃን፡ ለማፍራትና፡ ራሱንና፡ ቤተሰቡን፡ የሚችል፡” እንዲኾን፡ ይገባዋል ። “ያማርኛ፡ ቋንቋ፡ በፍጹም፡ የሚያውቅ፡ ያለችግር፡ በቀላሉ፡ የሚናገርና፡ የሚጥፍ፡”<sup>25</sup> እንዲኾን፡ ይገባዋል ። ለመደምደሚያም፡ “ከዚያ፡ በፊት፡ በወንጀለኛነት፡ ወይም፡ ሲወርድ፡ ሲዋረድ፡ የመጣን፡ የልማዱን፡ ሕግ፡ በመጣሱ፡ ማናቸውም፡ ቅጣት፡ ያልተፈረደበት፡ (ያላገኘው)” ሰው፡ እንዲኾን፡ ይገባዋል ። ይህ፡ የመጨረሻው፡ ጥቃቅንን፡ ኾነ፡ ከባድ፡ ወንጀሎችን፡ የሚያጠቃልል፡ የወንጀለኛ፡ ሕጉን፡ ያዘጋጀው፡ ውሳኔ፡ ከወንጀለኛ፡ መቅጫ፡ ሕጉ፡ ጋራ፡ በማነጣጠር፡ (በማመስከክር) የሚታይ፡ ወይም፡ የሚነበብ፡ ነው ። ጥቃቅን፡ ወንጀሎችን፡ በመፈጸም፡ የተፈረደበት፡ ሰው፡ የቅባት፡ ዜግነትን፡ (ተወላጅነትን) ይነፈጋል፡ ብሎ፡ ማመኑ፡ ያዳግታል ። ምናልባት፡ “ወንጀል፡ ወይም፡ ሲወርድ፡ ሲዋረድ፡ የመጣ፡ የልማድ፡ ሕግን፡ መጣስ” የቃል፡ አሰካክ፡ “ማሉም፡ ኢን፡ ሴ፡” (በራሱ፡ መጥፎ፡ የኾነ) ማለት፡ በወግና፡ ልማድ፡ እንደ፡ ወንጀሎች፡ ተቈጥረው፡ በኢትዮጵያ፡ የሚያስቀጡ፡ ድርጊያዎች፡ ወይም፡ በኹሉም፡ ዘንድ፡ ጥፋት፡ ናቸው፡ ተብለው፡ የታወቁ፡ ተብሎ፡ እንዲተረጎሙ፡ ያሻል ። ይህን፡ ጉዳይ፡ የቅባት፡ ተወላጅነት፡ ማመልከቻዎችን፡ (ጥያቄዎችን) ለመቀረጥ፡ ዐላፊ፡ የኾነው፡ ኮሚሺን፡ የሚከልከው፡ ወይም፡ የሚወስነው፡ ነው ።

የተወላጅነቱ፡ ሕግ፡ ያገር፡ ግዛት፡ ሚኒስትሩን፡ የውጭ፡ ጉዳይ፡ ሚኒስትሩንና፡ ምናልባት፡ በንጉሠ-ነገሥቱ፡ የሚሾም፡ ወይም፡ የሚወክል፡ አንድ፡ ሌላን፡ “የንጉሠ-ነገሥቱ፡ መንግሥት፡ ግዛት፡ መኩንን” የሚከት፡ ልዩ፡ የመንግሥት፡ ኮሚሺን፡ እንዲኖር፡ ያዘዛል ። ኮሚሺኑ፡ ማመልከቻዎችን፡ የሚያይና፡ ጠያቂውን፡ ከፊቱ፡ አቅርቦ፡ የሚያዳምጥ፡ ነው ። ውሳኔው፡ መደምደሚያ፡ ነው ። የቅባት፡ ዜግነት፡ የተቀበለውን፡ ሰው፡ ሚስት፡ አይከትም ፤ ሚስቱቱ፡ የራሷን፡ ጥያቄ፡ ማቅረብ፡ ይገባታል ። ስለልጆች፡ ሕጉ፡ አንዳችም፡ አይልም፡ ግልጥ፡ የኾነ፡ ውሳኔ፡ ከሌለ፡ ዘንዳም፡ በድሜያቸው፡

24 የኢትዮጵያ፡ ፍትሐ፡ ብሔር፡ ሕጉ፡ ምዕራፍ፡ ፲፩ ።  
 25 ፈረንሳይ፡ ቀድሞ፡ የፈረንሳዊነትን፡ አጭም፡ ለጉዲፈቻ፡ ልጅ፡ ትንፍግ፡ ነበረ ። አኹን፡ ግን፡ እንደዚህ፡ ያለው፡ ልጅ፡ በፈረንሳይ፡ አገር፡ የተቀመጠ፡ እንደኾነ፡ የፈረንሳይ፡ ተወላጅነትን፡ ይገባኛል፡ ብሎ፡ ሊጠይቅ፡ ይችላል ። የዲሴምበር፡ ፳፪፡ ቀን፡ ፲፱፻፳፩፡ ዓ. ም. ሕግ፡ አንቀጽ፡ ፶፩ ።  
 26 ቂየት፡ ብሎ፡ እንደ፡ ኢትዮጵያውያን፡ አቋማጠር፡ መስከረም፡ ፳፭፡ ቀን፡ ፲፱፻፳፮፡ ዓ. ም. በወጣው፡ የተወላጅነት፡ ሕግ፡ ማሻሻያ፡ ያምስት፡ ዓመት፡ መቀመጥና፡ ያማርኛ፡ ችሎታ፡ እስፈላጊነት፡ በኮሚሲዮኑ፡ ሊታለፍ፡ የሚቻል፡ ነው ።

ዐሥራ ፡ ስምንት ፡ ዓመት ፡ ሲመላቸው ፡ የራሳቸውን ፡ ጥያቄ ፡ ያቀርባሉ ፡ ተብሎ ፡ ሊታመን ፡ ይገባል ።

የኢትዮጵያ ፡ ተወላጅነት ፡ ሊታጣ ፡ የሚችለው ፡ የሌላ ፡ ተወላጅነት ፡ በማግኘት ፡ ብቻ ፡ ነው ። ስለንዲት ፡ ሴት ፡ ጉዳይ ፡ ሲኾን ፡ የባልየው ፡ ብሔራዊ ፡ ሕግ ፡ ተወላጅነቱን ፡ ሊያሳብሳት ፡ ወይም ፡ ሊሰጣት ፡ <sup>27</sup> ከቻለ ፡ (ይህ ፡ ሒሳብ) ከውጭ ፡ አገር ፡ ሰው ፡ ጋራ ፡ በመጋባት ፡ (ዜግነት) ማጣትን ፡ ያጠቃልላል ። አንድ ፡ ሰው ፡ በገዛ ፡ ፈቃዱ ፡ የሌላ ፡ አገር ፡ ተወላጅነትን ፡ ሲያገኝ ፡ ወይም ፡ ሲቀበል ፡ ያዲሱ ፡ ተወላጅነቱ ፡ አገር ፡ ሕግ ፡ ባንዴ ፡ ኹለት ፡ ዜግነትን ፡ ቢፈቅድለትም ፡ <sup>28</sup> ቅሉ ፡ ኢትዮጵያዊ ፡ ዜግነቱን ፡ ያጣል ። አንዳንድ ፡ ተግባሮችን ፡ በመፈጸም ፡ ወይም ፡ ሕገ-ወጥ ፡ በኾነ ፡ ምግባር-አመራር ፡ (ከንዳክት) ላይ ፡ በመውደቅ ፡ ዜግነትን ፡ ወይም ፡ ተወላጅነት ፡ ስለማጣት ፡ ሕጉ ፡ የያዛቸው ፡ ምንም ፡ ውሳኔዎች ፡ የሉም ። ያንዳንድ ፡ ሌሎች ፡ አገሮች ፡ ሕጎች ፡ (ግና) እንደዚህ ፡ ያሉ ፡ ውሳኔዎችን ፡ ያቅፋሉ ። በፈረንሳይ ፡ አገር ፡ ምሳሌ ፡ ይኾን ፡ ዘንድ ፡ የፈረንሳይ ፡ መንግሥቱ ፡ እንዲወጣ ፡ ሲያዘው ፡ በውጭ ፡ አገር ፡ (መንግሥት) የጦር ፡ ጎይሎች ፡ የሚያገለግል ፡ ዜጋ ፡ ፈረንሳዊ ፡ ተወላጅነቱን ፡ ያጣል ። ለመፈጸሙ ፡ ካልተሳነው ፡ (ካልቻለ) በቀር ፡ <sup>29</sup> ማስጠንቀቂያው ፡ ከደረሰው ፡ በኋላ ፡ ባሉት ፡ ስድስት ፡ ወራት ፡ ውስጥ ፡ መውጣት ፡ (መተው) ይገባዋል ። ደግሞም ፡ ፈረንሳይ ፡ በትውልዳቸው ፡ ሳይኾን ፡ የፈረንሳይ ፡ ዜግነትን ፡ ያገኙ ፡ ሰዎች ፡ አንዳንድ ፡ ተግባሮችን ፡ በመፈጸማቸው ፡ ምክንያት ፡ ዜግነታቸውን ፡ የሚያጡበትን ፡ ምክንያት ፡ <sup>30</sup> ይናገራል ። እነዚህ ፡ ተግባሮችም ፡ በፈረንሳይ ፡ ውስጣዊ ፡ ወይም ፡ አፍአዊ ፡ (የውጭ) ጸጥታ ፡ ወንጀል ፡ ሠርቶ ፡ መፈረድን ፡ በፈረንሳዊው ፡ ወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ <sup>31</sup> ከ፩፻፱-፩፻፴፩ ፡ ድረስ ፡ ባለው ፡ እናቅጽ ፡ የሚያስቀጡ ፡ ወንጀሎች ፡ በመፈጸም ፡ የተፈረደበትን ፡ (ከጦር ፡ ጎይሎች) በመከዳት ፡ የተፈረደበትን ፡ ለፈረንሳይ ፡ ጥቅሞች ፡ ተቃራኒ ፡ ኹኖ ፡ በባዕድ ፡ መንግሥት ፡ አገር ፡ (ስም) ኹኖ ፡ መሥራትን ፡ ወይም ፡ ከፈረንሳይ ፡ ጠባይ ፡ ጋራ ፡ የማይሰማማ ፡ ወይም ፡ የማይዋደድ ፡ ተግባር ፡ መፈጸምን ፡ ወይም ፡ የዐምስት ፡ ዓመታት ፡ እስራትን ፡ የሚያስከትል ፡ ማናቸውንም ፡ ወንጀል ፡ ፈጽሞ ፡ መፈረድን ፡ ኹሉ ፡ ያጣቃልላል ። እነዚህ ፡ ድርጊያዎች ፡ ፈረንሳዊ ፡ ተወላጅነት ፡ ካገኙበት ፡ ቀን ፡ <sup>32</sup> እንሥቶ ፡ ባሉት ፡ ዐሥር ፡ ዓመታት ፡ ውስጥ ፡ የተፈጸሙ ፡ ሊኾን ፡ ይገባል ። ደግሞም ፡ ዜግነትን ፡ የማጣቱ ፡ ተግባር ፡ መዝሙሪያውኑ ፡ የውጭ ፡ አገር ፡ ተወላጆች ፡ ከኹነና ፡ ይህንኑ ፡ ተወላጅነታቸውን ፡ ጠብቀው ፡ ከቂዩ ፡ <sup>33</sup> የሰውየውን ፡ ሚስትና ፡ ልጆች ፡ ይከታል ።

27 በአሜሪካዊው ፡ ሕግ ፡ መሠረት ፡ አንዲት ፡ ሴት ፡ በማግባቷ ፡ ምክንያት ፡ ተወላጅነቷን ፡ ሊታጣም ። በፈረንሳይ ፡ ሕግ ፡ አንድ ፡ ፈረንሳዊት ፡ ካልቆተችው ፡ በቀር ፡ (በወንድየው ፡ ሕግ ፡ የባሏን ፡ ዜግነት ፡ ለማግኘት ፡ ካልቻለች ፡ ልትኸረውም ፡ አትችል) ፡ በጋብቻዋ ፡ የፈረንሳይ ፡ ተወላጅነቷን ፡ ይሳ ፡ ትቀራለች ። የ፲፱፻፵፭ ፡ ዓ. ም. ተወላጅነት ፡ ሕግ ፡ አንቀጽ ፡ ፻፩ ።

28 አሜሪካዊው ፡ ሕግም ፡ የሚያመራው ፡ ወደዚያው ፡ ዐይነት ፡ ውጤት ፡ ነው ። የተባበረው ፡ (ኢ.) መንግሥታት ፡ ሕግ ፡ ርዕስ ፡ ፭ ፡ መደብ ፡ ፩፻፳፱-፩፻፴፩ (ሀ) ፡ (፩) ። ይኹን ፡ እንጂ ፡ በፈረንሳይ ፡ አገር ፡ ውስጥ ፡ ወታደራዊ ፡ አገልግሎትን ፡ ለመፈጸም ፡ ከሚገቡበት ፡ ጊዜ ፡ እንሥቶ ፡ ዐሥራ ፡ ዐምስት ፡ ዓመታት ፡ እስከሚያልፉ ፡ ድረስ ፡ እንደዚህ ፡ ያለው ፡ ሰው ፡ የፈረንሳይ ፡ ዜግነቱን ፡ አያጣም ። በዚያን ፡ ጊዜ ፡ ላይ ፡ የውጭ ፡ አገር ፡ ዜግነቱን ፡ ሊተውው ፡ ይችላል ፡ ይህን ፡ ካደረገ ፡ ፈረንሳዊ ፡ ተወላጅነቱን ፡ አያጣም ። የ፲፱፻፵፭ ፡ ዓ. ም. ተወላጅነት ፡ ሕግ ፡ አንቀጽ ፡ ፱፻ ፡ ፱፭ ።

29 የ፲፱፻፵፭ ፡ ዓ. ም. ተወላጅነት ፡ ሕግ ፡ አንቀጽ ፡ ፻፮ ።

30 የ፲፱፻፵፭ ፡ ዓ. ም. ተወላጅነት ፡ ሕግ ፡ አንቀጽ ፡ ፻፭ ።

31 እነዚህ ፡ መደቦች (ከፍሎች) ፡ ሕገ-መንግሥታዊውን ፡ ቻርተር ፡ ስለሚቃወሙ ፡ ወንጀሎች ፡ የሌሎችን ፡ ብሔራዊ ፡ መብቶች ፡ ስለመንካትና ፡ በነጻነት ፡ ላይ ፡ ስለመንሣት ፡ የሚኾኑ ፡ ናቸው ።

32 የ፲፱፻፵፭ ፡ ዓ. ም. ተወላጅነት ፡ ሕግ ፡ አንቀጽ ፡ ፻፱ ።

33 የ፲፱፻፵፭ ፡ ዓ. ም. ተወላጅነት ፡ ሕግ ፡ አንቀጽ ፡ ፩፻ ።

በተባበረው፡ (እ.) መንግሥታት፡ ተግባሮችን፡ በመፈጸም፡ ዜግነት፡ ስለማጣቱ፡ ለውጭ፡ አገር፡ መንግሥት፡ ለመገዛት፡ ቃለ-መሐላ፡ መግባትን፡ ያለተባበረው፡ (እ.) መንግሥታት፡ መንግሥት፡ ፈቃድ፡ በውጭ፡ አገር፡ መንግሥት፡ የጦር፡ ጎይሎች፡ ማገልገልን፡ የተገኙት፡ ቃለ-መሐላ፡ መግባት፡ የሚያስፈልግበት፡ የውጭ፡ አገር፡ መንግሥት፡ ሥራ፡ መቀበልን፡ በውጭ፡ አገር፡ ለመምረጥ፡ ድምፅ፡ መስጠትን፡ በጦርነት፡ ጊዜ፡ (ከወታደራዊ፡ አገልግሎት) መክዳትን፡ ያገር፡ ክሕደት፡ መፈጸምንና፡ ከወታደራዊ፡ አገልግሎት፡ ለማምለጥ፡ በማቀድ፡ <sup>34</sup> ከተባበረው፡ (እ.) መንግሥታት፡ ተነሥቶ፡ መኼድን፡ (መልቀቅን) የሚጨምሩ፡ የሰፋና፡ የተዘረጉ፡ ውሳኔዎች፡ አሉ። በውጭ፡ አገር፡ የመምረጥ፡ ድምፅን፡ በመስጠት፡ ዜግነት፡ ስለማሳጣቱ፡ ጉዳይ፡ ኮንግሬሱ፡ (ምክር፡ ቤቶቹ) ያለውን፡ ሥልጣንን፡ የተባበረው፡ (እ.) መንግሥታት፡ ጠቅላይ፡ ፍርድ፡ ቤት፡ ሲደግፈው፡ አንድን፡ ሰው፡ ስለከዳ፡ ዜግነቱን፡ መክላቱ፡ <sup>35</sup> (ዕርግጥ፡ ነው፡ በመክዳቱ፡ ሊቀጣ፡ ይቻላል) ወይም፡ ከወታደራዊ፡ አገልግሎት፡ ለማምለጥ፡ ዐስቦና፡ ዐቅዶ፡ <sup>37</sup> የተባበረው፡ መንግሥታትን፡ ለቅቆ፡ በመኼዱ፡ (እኩንም፡ እንደዚህ፡ ያለው፡ ሰውንም፡ ቢኾን፡ ዜግነትን፡ በማሳጣት፡ ሳይኾን፡ ሊቀጣ፡ ይቻላል) ግን፡ ኢሕገ-መንግሥታዊ፡ ወይም፡ ሕገ-መንግሥታዊ-ያይደለ፡ ተግባር፡ ነው፡ ሲል፡ በይደል፡ ስለዚህ፡ (በመቀበት፡ ዜግነትን፡ የተቀበሉ) ዜጋዎች፡ ዜግነት፡ ማጣት፡ የሚኾኑ፡ አንዳንድ፡ ውሳኔዎች፡ በመወለድ፡ በዜጉ፡ ላይ፡ የማይፈጸሙ፡ <sup>38</sup> ስለኾኑ፡ ኢሕገ-መንግሥታዊ፡ ናቸው፡ ተብሎ፡ ተነግሯል።

ዜግነትን፡ ስለማጣት፡ በሌሎች፡ አገሮች፡ ሕጎች፡ ላሉት፡ ውሳኔዎች፡ እነዚህ፡ የሚገልጹና፡ የሚያብራሩ፡ ናቸው። ከዚህ፡ በፊት፡ ተስተካክሎ፡ እንደተነገረው፡ በኢትዮጵያዊው፡ ሕግ፡ እንደዚህ፡ ያሉ፡ አንዳችም፡ ውሳኔዎች፡ ከቶ፡ የሉም። ምናልባት፡ እንደዚህ፡ ያሉት፡ ውሳኔዎች፡ ከኢትዮጵያዊው፡ የተወላጅነት፡ ፅንሰ-ሐሳብና፡ ያደረገውንም፡ ቢያደርግ፡ የማናቸውንም፡ ኢትዮጵያዊ፡ አገር-አልባነት፡ ካለመፈለጉ፡ ጋራ፡ የማይዋደዱ፡ (የማይሰማሙ) በመኾናቸው፡ ይኾናል። እንግዲህ፡ ሕጉ፡ እኩን፡ እንዳለው፡ ኢትዮጵያዊ፡ ተወላጅነት፡ ሊታጣ፡ የሚችለው፡ በገዛ፡ ፈቃድ፡ ያንዱን፡ ሌላ፡ አገር፡ ተወላጅነት፡ በመቀበል፡ ወይም፡ በጋብቻ፡ የሌላ፡ አንዱን፡ አገር፡ ተወላጅነት፡ በማግኘት፡ ወይም፡ ደንበኛ፡ ሕጋዊነትን፡ በማፍራት፡ ብቻ፡ ነው።

የተወላጅነቱ፡ ሕግ፡ ዜግነቱን፡ ላጣ፡ ኢትዮጵያ፡ መልሶ፡ የማግኘቱን፡ ተግባር፡ በጣም፡ ቀላል፡ ያደርግለታል። ያንዱን፡ ሌላ፡ አገር፡ በመቀበል፡ ዜግነቱን፡ ያጣ፡ ኢትዮጵያዊ፡ ሊያደርገው፡ የሚያስፈልግ፡ ኢትዮጵያ፡ ተመልሶ፡ ለንጉሠ-ነገሥቱ፡ መንግሥት፡ (አገር፡ ግዛት፡ ሚኒስቴር፡ ሳይኾን፡ አይቀርም) እንደገና፡ እንዲቀበሉት፡ ጥያቄውን፡ ማቅረብ፡ ብቻ፡ ነው። ጥያቄውንም፡ የሚያስነፍግ፡ ምንም፡ ዐይነት፡ አስተያየት፡ ሊኖር፡ አይችልም። እንደዚሁ፡ ደግሞ፡ ከውጭ፡ አገር፡ ሰው፡ ጋራ፡ በመጋባታ፡ ዜግነቷን፡ ያጣች፡ ሴት፡ ጋብቻው፡ በፍቺ፡ በመለያየት፡ ወይም፡ በሞት፡ ሲፈርስ፡

<sup>34</sup> የተባበረው፡ (እ.) መንግሥታት፡ ሕግ፡ (ኮድ)፡ ርእስ፡ ፮፡ መደብ፡ ፪፻፳፱፻፳፩።  
<sup>35</sup> በፔሬዝና፡ በብራውኔል፡ መካከል፡ ፫፻፶፮፡ ዩ. ኤስ. ፵፬፡ (፲፱፻፶፮)።  
<sup>36</sup> በትሮፕና፡ በዳለስ፡ መካከል፡ ፫፻፶፮፡ ዩ. ኤስ. ፳፻፲፩፡ (፲፱፻፶፮)።  
<sup>37</sup> በኬኔዲ፡ እና፡ በሚንዶዛ-ማርቲኔዝ፡ መካከል፡ ፫፻፳፱፡ ዩ. ኤስ. ፪፻፵፬፡ (፲፱፻፷፭፡ ዓ. ም.)።  
<sup>38</sup> በሽናይዴር፡ እና፡ በራስክ፡ መካከል፡ ፳፱፡ የጠቅላይ፡ ፍርድ፡ ቤት፡ ፈፃሚነት ( አስተዋጭ) ፪፻፳፯፡ (፲፱፻፷፱)፡ በተወለደበት፡ አገሩ፡ ለሦስት፡ ዓመት፡ በመቀመጥ፡ በመቀበት፡ የዜገውን፡ ዜጋዊ ዜግነት፡ እንዲያጣ፡ ሕገ-መንግሥቱ፡ በሚፈቅደው፡ መንገድ፡ ኮንግሬስ፡ ሲያዝ፡ አይችልም፡ ሲባል፡ ተብሎ፡ በውልደታቸው፡ ዜጎች፡ የኾኑትን፡ ይህ፡ ጭበጣ፡ (ውሱንነት) የማይነካቸው፡ ስለ፡ ኾነ፡ የፍትሕን፡ ተገቢ፡ አፈጻጸም፡ የሚያቃውስ፡ የማይገባና፡ ትክክለኛ፡ ያልኾነ፡ በማበላለጥ፡ መለየት፡ ነው፡ ሲል፡ ፍርድ፡ ቤቱ፡ አጥብቆ፡ አብራራ።

ምንባሯን፡ በኢትዮጵያ፡ ያደረገችና፡ እንደገና፡ እንዲቀበሏት፡ የጠየቀች፡ እንደሆነ፡ ኢትዮጵያዊ፡ ዜግነቷን፡ እንደገና፡ ልታገኝ፡ ትችላለች። ቀደም፡ ብሎ፡ እንደተገለጠው፡ በሕጋዊ፡ ጋብቻ፡ ከእንዲት፡ ኢትዮጵያዊት፡ ተወልዶ፡ የባዕድ፡ አባቱን፡ ዜግነት፡ የያዘ፡ ልጅ፡ በኢትዮጵያ፡ ውስጥ፡ በመኖርና፡ ያባቱን፡ ተወላጅነት፡ እውልቅ፡ በመጣል፡ ኢትዮጵያዊ፡ ዜግነትን፡ እንደገና፡ ሊያገኝ፡ ይችላል። ደንበኛ፡ ሕጋዊ፡ በመሆን፡ ያባቱን፡ ተወላጅነት፡ ባገኘ፡ ልጅ፡ ላይ፡ ይህ፡ ሐሳብ፡ አይፈጸምበትም። ኢትዮጵያዊ፡ ተወላጅነት፡ እንደገና፡ በሚገኝበት፡ ላይ፡ እንደዚህ፡ ከመገመት፡ ይልቅ፡ ሰውየውን፡ በትውልዱ፡ ኢትዮጵያዊ፡ ተገዥ፡ ነው፡ ማለት፡ ይቀላል።

ለማጠቃለሉ፡ ዜግነትን፡ ለመከለል፡ (ለመወሰን) ኢትዮጵያ፡ የዩኒ፡ ሳንታይኒስ፡ ልምን፡ ትከተላለች። ምናልባት፡ አባቶቻቸው፡ የውጭ፡ አገር፡ ሰዎች፡ ቢሆኑም፡ ቅሉ፡ በጉዛቸው፡ ከኢትዮጵያውያኖች፡ የዘር፡ ገንዳ፡ አጋዎች፡ ጋራ፡ አንድ፡ ዐይነት፡ ከሆኑት፡ የተወለዱ፡ ልጆች፡ በቀር፡ ይህ፡ አቀራረብ፡ በፍጹም፡ አጥጋቢ፡ ነው። የተወላጅነቱ፡ ሕግ፡ ጥንድ፡ ተወላጅነትን፡ ወይም፡ አገር-አልባነትን፡ ለመከላት፡ ይሞክራል። ስለውጭ፡ አገር፡ ሰዎች፡ በመቀባት፡ መዜግ፡ የሚሆኑ፡ ውሳኔዎች፡ አሉ። ኢትዮጵያዊ፡ ዜግነት፡ ሊታጣ፡ የሚችለው፡ ያንዱን፡ ሌላ፡ አገር፡ ዜግነት፡ በመቀበል፡ ወይም፡ በጋብቻ፡ ወይም፡ ደንበኛ፡ ሕጋዊ፡ በመሆን፡ ብቻ፡ ነው። ከታጣ፡ በኋላ፡ ግን፡ ኢትዮጵያዊ፡ ዜግነትን፡ መልሶ፡ ማግኘቱ፡ አስቸጋሪ፡ አይደለም። በደፈናው፡ የ፲፱፻፴፬፡ ዓ. ም. የተወላጅነቱ፡ ሕግ፡ ለኢትዮጵያ፡ የዛሬ፡ ችግሮቿ፡ ደገና፡ የሚበጅ፡ ይመስላል።

**በትውልድና፡ በዚህ፡ ኢትዮጵያዊ፡ ዜጎች፡ መካከል፡ ያሉ፡ ልዩነቶች፡**

በትውልድና፡ በዚህ፡ ዜጎች፡ መካከል፡ ሊኖሩ፡ የሚችሉ፡ ልዩነቶች፡ የሚገኙት፡ በፖሊቲካዊ፡ መብቶች፡ ግንባር፡ በኩል፡ ብቻ፡ ነው። የተሻሻለው፡ ሕገ-መንግሥት፡ አንቀጽ፡ ፴፰፡ በብሔራዊ፡ (ሲቪል) መብቶች፡ በመጠቀም፡ ረገድ፡ በኢትዮጵያውያኖች፡ (የኢትዮጵያ፡ ተገዦች) መካከል፡ ምንም፡ ልዩነት፡ አይኑር፡ ይላል። በፍትሐ፡ ብሔር፡ ሕገ፡ አንቀጽ፡ ፫፻፱፻፱(፪) መሠረት፡ ብሔራዊ፡ መብት፡ ማለት፡ በመፈጸም፡ (በማድረግ) በአገሪቱ፡ መንግሥት፡ ወይም፡ አስተዳደር፡ ማናቸውንም፡ ተካፋይነትን፡ የማያስከትል፡ ነው።<sup>39</sup> ሲባል፡ ተወስኖ፡ ተተርጉሟል። ለዚህ፡ ዜጎች፡ የፖሊቲካ፡ መብቶችን፡ በማከናወን፡ (በመፈጸም) ረገድ፡ አንዳንድ፡ ገደባዎች፡ (ወሰኖች) አሉባቸው።

በሕገ-መንግሥቱ፡ አንቀጽ፡ ፶፭፡ መሠረት፡ ለሕግ፡ መምሪያ፡ ምክር፡ ቤት፡ እንደራሴዎች፡ ዕጩዎችን፡ ለመምረጥ፡ ድምፅ፡ መስጠት፡ የሚችሉ፡ በትውልድ፡ የኢትዮጵያ፡ ተገዥ፡ የሆኑ፡ ብቻ፡ ናቸው። እንደዚሁ፡ ደግሞ፡ በአንቀጽ፡ ፶፮፡ መሠረት፡ የሕዝብ፡ እንደራሴዎች፡ በትውልዳቸው፡ የኢትዮጵያ፡ ተገዦች፡ እንደሆኑ፡ እንደዚሁም፡ በአንቀጽ፡ ፳፻፫፡ መሠረት፡ የሕግ፡ መወሰኛ፡ አማካሪዎች፡ በትውልዳቸው፡ የኢትዮጵያ፡ ተገዦች፡ መሆን፡ እንደሚገባቸው፡ ይወስናል። ዳኞች፡ በትውልድ፡ ኢትዮጵያዊ፡ ተገዦች፡ መሆናቸው፡ ቀርቶ፡ ኢትዮጵያዊ፡ ዜጎች፡<sup>40</sup> እንደሆኑ፡ እንኳ፡ የሚያስገድድ፡ አንዳች፡ ግዳጅ፡ የለም። በሕገ-መንግሥቱ፡ አንቀጽ፡ ፳፯፡ መሠረት፡ በተወለደበት፡ ጊዜ፡ ወላጆቹ፡ የኢትዮጵያ፡ ተገዦች፡ ካልሆኑ፡ በቀር፡ ማናቸውም፡ ሰው፡ ሚኒስትር፡ ለመሆን፡ አይችልም፤ ካልነበሩ፡ የሱ፡ በትውልድ፡ ኢትዮጵያዊ፡ መሆን፡ ትርፍና፡

<sup>39</sup> እንደዚህ፡ ያለውን፡ ተካፋይነት፡ የሚያስከትሉ፡ መብቶች፡ በሚያመች፡ አኳኋን፡ የፖሊቲካ፡ መብቶች፡ ተብለው፡ ሊጠሩ፡ ይቻላል።

<sup>40</sup> በፍርድ፡ ሥራ፡ በኩል፡ ለመቼም፡ በለሚያበረረጉት፡ ግዳጆች፡ በተሻሻለው፡ ሕገ-መንግሥት፡ አንቀጽ፡ ፳፻፩፡ ተለይተው፡ በመመደብ፡ ተገልጠዋል።



ዋጋ ፡ የሌለው ፡ ጉዳይ ፡ ነው ። ይኹን ፡ እንጂ ፡ ወላጆቹ ፡ በትውልድ ፡ የኢትዮጵያ ፡ ዜጎች ፡ እንዲሁ ፡ የሚያስገድድ ፡ አንድም ፡ ነገር ፡ የለ ፡ በተወለደበት ፡ ጊዜ ፡ የዜጉ ፡ እስከሆነ ፡ ድረስ ፡ ከዜጉ ፡ ወላጆች ፡ አብራክ ፡ የወጣው ፡ ልጅ ፡ ሚኒስትር ፡ ለመሆን ፡ ባለመብት ፡ ነው ። በነዚህ ፡ ጉዳዮች ፡ ካልሆነ ፡ በቀር ፡ በትውልድና ፡ በዜጉ ፡ የኢትዮጵያ ፡ ተገዦች ፡ መካከል ፡ ምንም ፡ ዐይነት ፡ ልዩነት ፡ የለም ።

በኢትዮጵያ ፡ ተገዦችና ፡ በውጭ ፡ አገር ፡ ሰዎች ፡ መካከል ፡ ያሉ ፡ ልዩነቶች

በምዳንዳ፡ አገር ፡ በመብቶች ፡ መጠቀም ፡ ረገድ ፡ ሆነ ፡ በግዴታዎች ፡ መፈጸም ፡ ረገድ ፡ በዜጎችና ፡ በውጭ ፡ አገር ፡ ሰዎች ፡ መካከል ፡ ልዩነቶች ፡ አሉ ። ይህም ፡ በኢትዮጵያ ፡ ያለ ፡ ዕርግጥ ፡ ነገር ፡ ሲሆን ፡ ልዩነቶቹ ፡ ጉልህ ፡ በመሆናቸው ፡ ከባድ ፡ የሆነን ፡ የችሎታ ፡ ዐቅም ፡ ማጠር ፡ ቀንበሮችን ፡ በውጭ ፡ አገር ፡ ሰዎች ፡ ላይ ፡ <sup>41</sup> ለመጫን ፡ የተሞከረ ፡ አይደለም ። ይህም ፡ መንፈስ ፡ እንደሚከተለው ፡ በፍትሕ ፡ ብሔር ፡ ሕጉ ፡ አንቀጽ ፡ ፫፻፱፻ ፡ የተገለጠ ፡ ነው ፡-

(፩) በብሔራዊ ፡ መብቶች ፡ በመጠቀምና ፡ በመብት ፡ መገልገል ፡ የችሎታ ፡ ዐቅም ፡ በሚመለከተው ፡ ረገድ ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ ከኢትዮጵያ ፡ ተገዦች ፡ ጋራ ፡ በፍጹም ፡ ተቀላቅለውና ፡ በነሱም ፡ ዐድረው ፡ እንደ ፡ ኢትዮጵያውያኖች ፡ ይቈጠራሉ ።

(፪) በሥራ ፡ ላይ ፡ ሲያውሏቸው ፡ በአገሪቷ ፡ መንግሥት ፡ ወይም ፡ አስተዳደር ፡ ተካፋይነትን ፡ የማያመጡ ፡ (የማያስከትሉ) መብቶች ፡ ሹሉ ፡ ብሔራዊ ፡ መብቶች ፡ ተብለው ፡ ይታሰባሉ ።

(፫) በዚህ ፡ አንቀጽ ፡ ውስጥ ፡ የውጭ ፡ አገር ፡ ሰው ፡ በኢትዮጵያ ፡ ውስጥ ፡ እንዲሠራ ፡ ፈቃድ ፡ ስለመስጠት ፡ ተወስነው ፡ ለመውጣት ፡ የሚችሉ ፡ ልዩ ፡ ሹነታዎችን ፡ የሚጉዳ ፡ አንዳችም ፡ ነገር ፡ የለም ።

ሲሆንም ፡ ቅሉ ፡ አንቀጽ ፡ ፫፻፱፻ ፡ በኢትዮጵያ ፡ ተገዦችና ፡ በውጭ ፡ አገር ፡ ሰዎች ፡ መካከል ፡ ልዩነት ፡ ከሚያደርጉት ፡ ሌሎች ፡ የሕገ-መንግሥቱና ፡ የሕግ ፡ (ኮድ) ፡ ውሳኔዎች ፡ ጋራ ፡ በማስተያየት ፡ ሊነበብ ፡ (ሊታይ) ፡ የሚገባው ፡ ነው ። አውራ ፡ ሕጉጋዊ ፡ (ዐዋጅ-ወጥ ፡ ሕግ) ወሳኝነቱ ፡ ወይም ፡ ጨባጭነቱ ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ በንጉሡን ፡ ገሥቱ ፡ ትእዛዝ ፡ <sup>42</sup> መሠረት ፡ ካልሆነ ፡ በቀር ፡ የማይንቀሳቀስ ፡ ንብረት ፡ ሊኖራቸው ፡ አይችልም ፡ በሚለው ፡ ነው ። ደግሞም ፡ ይህ ፡ ከዐምሳ ፡ ዓመት ፡ ለሚልቅ ፡ ጊዜ ፡ የመጠቀም ፡ ወይም ፡ ለጊዜ ፡ ሞት ፡ ለሚፈጸም ፡ <sup>43</sup> (ይህንኑ) መሳይ ፡ ጥቅም ፡ መብቶች ፡ ላይ ፡ የሚሠራ ፡ ነው ። የውጭ ፡ አገሩ ፡ ሰው ፡ እንደዚህ ፡ ያለውን ፡ ንብረት ፡ በስድስት ፡ ወራት ፡ ውስጥ ፡ ወዳንድ ፡ ኢትዮጵያዊ ፡ እጅ ፡ ሊያዛውር ፡ ይገባል ፡ በተቀረ ፡ ንብረቱ ፡ ተገቢው ፡ የችሎታ ፡ ዐቅም ፡ ባላቸው ፡ ባለሥልጣኖች ፡ ተይዞ ፡ እንዲሹጥ ፡ ይኾናል ። <sup>44</sup>

<sup>41</sup> በነጋሪት ፡ ጋዜጣ ፡ ጽኑዋሪ ፡ (ጥር) ፴፩ ፡ ቀን ፡ ፲፱፻፵፪ ፡ ዓ. ም. በወጣው ፡ ያ፲፱፻፵፪ ፡ ዓ. ም. ፍትሕ ፡ አስተዳደር ፡ ዐዋጅ ፡ በኢትዮጵያውያንና ፡ በውጭ ፡ አገር ፡ ሰዎች ፡ መካከል ፡ ግፈኛና ፡ ኢርትዓዊ ፡ የሆነ ፡ ልዩነትን ፡ የሚያመጣ ፡ ማናቸውንም ፡ ሕግ ፡ ከሥራ ፡ ላይ ፡ እንዳያውሉ ፡ ፍርድ ፡ ቤቶች ፡ መከልከላቸውን ፡ ማውሳቱ ፡ ፍራ ፡ ያለው ፡ ነገር ፡ ነው ።

<sup>42</sup> የኢትዮጵያ ፡ ፍትሕ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፫፻፳፫ ፡ እንደዚሁም ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ የዕርሻ ፡ ሠራተኞች ፡ መረዳጃ ፡ (ማንበር) ፡ አባሎች ፡ ሲሆኑ ፡ አይችሉም ፡ በአክቶበር ፡ (ጥቅምት) ፳፮ ፡ ቀን ፡ ፲፱፻፳፭ ፡ ዓ. ም. በወጣው ፡ ነጋሪት ፡ ጋዜጣ ፡ የርሻ ፡ ሠራተኞች ፡ መረዳጃ ፡ ደንብ ።

<sup>43</sup> የኢትዮጵያ ፡ ፍትሕ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፫፻፶፫ ።

<sup>44</sup> የኢትዮጵያ ፡ ፍትሕ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፫፻፶፩-፪ ።

ተለይተውና፡ ተስተካክለው፡ ተመድበው፡ ለውጭ፡ አገር፡ ሰዎች፡ ጉዳይ፡ የሚሾኑት፡ የፍትሕ፡ ብሔር፡ ሕጉ፡ አናቅጽ፡ ከ፪፻፱፱-፪፻፺፫፡ ድረስ፡ ያሉት፡ ብቻ፡ ናቸው።

በኢትዮጵያ፡ ተገዢዎችና፡ በውጭ፡ አገር፡ ሰዎች፡ መካከል፡ ያሉት፡ ሌሎች፡ ልዩነቶች፡ በሕገ-መንግሥቱ፡ ውስጥ፡ ሰፍረው፡ ይገኛሉ። እውነት፡ ነው፡ የውጭ፡ አገር፡ ሰዎች፡ ለምርጫ፡ ድምፅ፡ መስጠት፡ ወይም፡ የፖሊቲካ፡ ቦታ፡ (ሥራ፡ ወይም፡ ጽሕፈት፡ ቤት) መያዝ፡ አለመቻላቸው፡ የተረጋገጠ፡ ነው። በአንቀጽ፡ ፵፯፡ እያንዳንዱ፡ ኢትዮጵያዊ፡ ተገዢ፡ በማናቸውም፡ ሙያ፡ ተሰማርቶ፡ ለመሥራት፡ መብት፡ አለው፤ የፍትሕ፡ ብሔር፡ ሕጉ፡ አንቀጽ፡ ፫፻፹፱ (፫) እንደሚያመለክተውም<sup>45</sup>፡ በውጭ፡ አገር፡ ሰዎች፡ ረገድ፡ (ከቶ) እንደዚህ፡ አይደለም። ሰላማዊ፡ ስብሰባ፡ ለማድረግ፡ መብት፡<sup>46</sup> ወይም፡ በድፍን፡ የንጉሡ-ነገሥቱ፡ መንግሥት፡ ግዛት፡ ያልተጨበጠ፡ (ውሰጥነት፡ የሌለው) የመንቀሳቀስ፡ መብት፡ ያላቸው፡<sup>47</sup> ኢትዮጵያዊ፡ ተገዢዎች፡ ብቻ፡ ናቸው። ማንኛውም፡ የኢትዮጵያ፡ ተገዢ፡ ከንጉሡ-ነገሥቱ፡ መንግሥት፡ ግዛት፡ ውጭ፡ ለመሰደድ፡ (ለቅቆ፡ እንዲወጣ)<sup>48</sup> ሊገደድ፡ አይችልም፡ ይኸውም፡ ለውጭ፡ አገር፡ ሰዎች፡ የማይቸር፡ መብት፡ መሆኑ፡ የተረጋገጠ፡ ነው። ለመደምደሚያ፡ ማንኛውንም፡ የኢትዮጵያ፡ ተገዢ፡ ለውጭ፡ አገር፡ (መንግሥት) አሳልፎ፡ መስጠት፡ አይቻልም፤ ሌሎችን፡ አሳልፎ፡ መስጠት፡ የሚቻለውም፡ ለውጭ፡ አገር፡ መንግሥት፡ አሳልፎ፡ የመስጠት፡ ውል፡ በመሰለው፡ የኢንተርናሽናል፡ ስምምነት፡<sup>49</sup> እንደተገለጠው፡ ነው። እነዚህን፡ ከደጅ፡ አድርጎ፡ እኩልና፡ ትክክለኛ፡ የሕጎች፡ ጠባቂነት፡ የንግግር፡ ነጻነት፡ የፍትሕ፡ ተገቢ፡ አፈጻጸም፡ ለንጉሡ-ነገሥቱ፡ አቤት፡ የማለት፡ እና፡ በወንጀል፡ ለተከሰሱ፡ የተሰጡ፡ ዋስትናዎች፡ የመሰሉት፡ ሹሉ፡ ማለት፡ ሕገ-መንግሥቱ፡ መድን፡ ሹኖ፡ ያረጋገጣቸው፡ ሌሎች፡ መብቶች፡ ሹሉ፡ ለዜጎች፡ እንደተሰጡ፡ እንዲሁም፡ ለውጭ፡ አገር፡ ሰዎች፡ የተሰጡ፡ መብቶች፡ ናቸው። ከዚህ፡ ጋራ፡ የተያያዘው፡ ጉዳይ፡ የውጭ፡ አገር፡ ሰዎች፡ ከወታደራዊ፡ አገልግሎት፡ የታደጉ፡ (የተተዉ)<sup>50</sup> መሆናቸውን፡ መገንዘብ፡ ማስፈለጉ፡ ነው። በደፈናው፡ በኢትዮጵያ፡ ውስጥ፡ የውጭ፡ አገር፡ ሰዎች፡ የሕጉን፡ ምሉ፡ ጠባቂነትንና፡ ዜጎች፡ አግኝተው፡ የሚጠቀሙባቸውን፡ አብዛኞች፡ መብቶች፡ ኑረዋቸው፡ የሚጠቀሙባቸው፡ መሆኑ፡ ጉልሕ፡ ነው።

ከዚህ፡ ላይ፡ ስለውጭ፡ አገር፡ ሰዎች፡ ሕግ፡ ሌላ፡ ውሳኔዎች፡ አንድ፡ ቃል፡ መጣል፡ ያስፈልጋል። የውጭ፡ አገር፡ ሰዎችን፡ ስለመመዝገብ፡ የወጣው፡ ዐዋጅ፡<sup>51</sup> በንጉሡ-ነገሥቱ፡ መንግሥት፡ ግዛት፡ ተቀማጭ፡ የሆኑትን፡ የውጭ፡ አገር፡ ሰዎች፡ ሹሉ፡ እንደደረሱ፡ (እንደገቡ) በ፴፡ ቀናት፡ ውስጥ፡ ከተገቢው፡ ባለሥልጣኖች፡ ዘንድ፡ እንዲመዘገቡ፡ ያስገድዳል። ባዲስ፡ አበባ፡ ከሕዝብ፡ ጸዋታ፡ ዲሬክተሩ፡ ዘንድ፡ እንዲመዘገቡ፡ ይገባቸዋል፤ በማንኛቸውም፡ ሌሎች፡ ስፍራዎች፡ ግን፡ ከፖሊስ፡ የበላይ፡ ተጠባባቂ፡ (አዛዥ) ዘንድ፡ እንዲመዘገቡ፡ ይገባቸዋል። ይኸውም፡ በፅድሜ፡ ከዐሥራ፡ ስድስት፡ ዓመት፡ በላይ፡ በሆኑት፡ ሰዎች፡ ሹሉ፡ ላይ፡ የሚፈጸም፡ ነው። ምዝገባው፡ በያመቱ፡ እንዲታደስ፡ ይገባል።

45 ለውጭ፡ አገር፡ ሰዎች፡ የሥራ፡ ፈቃደኝን፡ ማውጣት፡ ነክ፡ ስለ፡ ሾነው፡ ሕግ፡ በሴፕቴምበር፡ (መስከረም፡ በኛ፡ ነሐሴ፡ ነው) ፩፡ ቀን፡ ፲፱፻፷፪፡ ዓ. ም. በወጣው፡ ነጋሪት፡ ጋዜጣ፡ ያ፲፱፻፷፪፡ ዓ. ም. ትእዛዝ፡ ቁ፡ ፳፮፡ ምዕራፍ፡ ፻፺ን፡ ይመለከታል።

46 የኢትዮጵያ፡ የተሻሻለው፡ ሕገ-መንግሥት፡ አንቀጽ፡ ፵፭።

47 የኢትዮጵያ፡ የተሻሻለው፡ ሕገ-መንግሥት፡ አንቀጽ፡ ፵፮።

48 የኢትዮጵያ፡ የተሻሻለው፡ ሕገ-መንግሥት፡ አንቀጽ፡ ፵፱።

49 የኢትዮጵያ፡ የተሻሻለው፡ ሕገ-መንግሥት፡ አንቀጽ፡ ፶።

50 የኢትዮጵያ፡ ተገዢዎችና፡ የሌሎች፡ ግዴታዎች፡ በተሻሻለው፡ ሕገ-መንግሥት፡ አንቀጽ፡ ፷፬፡ የሰፈሩ፡ ናቸው።

51 በኤፕሪል፡ (ሚያዝያ) ፳፱፡ ቀን፡ ፲፱፻፵፱፡ ዓ. ም. ነጋሪት፡ ጋዜጣ፡ ያ፲፱፻፵፱፡ ዓ. ም. ዐዋጅ፡ ፶፭።

ባኹኑ ፡ ጊዜ ፡ የውጭ ፡ አገር ፡ ሰዎችን ፡ ስለማባረርና ፡ ስለማስወገድ ፡ የሚመለከት ፡ የተጠቃለለና ፡ የተማላ ፡ ሕግ ፡ የለም ። ማንኛውም ፡ የውጭ ፡ አገር ፡ ሰው ፡ የማይፈለግ ፡ ነዋሪ ፡ (ተቀማጭ) ነው ፡ ብሎ ፡ ያገር ፡ ግዛት ፡ ሚኒስትሩ ፡ በወሰነ ፡ ጊዜ ፡ የመኖሪያ ፡ ፈቃዱን ፡ ሊፍቅጡት ፡ ለሚችሉው ፡ ለውጭ ፡ ጉዳይ ፡ ሚኒስትሩ ፡ ያስታውቃል ። ከዚያ ፡ በኋላ ፡ ስለውጭ ፡ አገር ፡ ሰውየው ፡ መባረር ፡ <sup>52</sup> ያገር ፡ ግዛት ፡ ሚኒስትሩ ፡ አስፈላጊውን ፡ ያክናውናል ። በወንጀለኛ ፡ መቅጫው ፡ ሕግ ፡ እንቀጽ ፡ ፩፻፶፩ ፡ ወንጀሉ ፡ ተገልጦበት ፡ የሦስት ፡ ዓመት ፡ ወይም ፡ ከዚያ ፡ በላይ ፡ ተራ ፡ እስራት ፡ የተፈረደበትን ፡ ወይም ፡ የለመደ ፡ ሕግን-ጣሽ ፡ በመኾን ፡ በተወሰነ ፡ ስፍራ ፡ እንዲቆይ ፡ የተፈረደበትን ፡ ወይም ፡ ዐላፊነት ፡ ሳይሰማው ፡ (ሸውዶት) ወይም ፡ በክፊል ፡ ብቻ ፡ ዐላፊነት ፡ እየተሰማው ፡ ሕግን ፡ መጣሱ ፡ የተለየ ፡ ዕውቀት ፡ ባለው ፡ ሰው ፡ (ኤክስፔርት) አስተያየት ፡ ሲሰጥ ፡ ሥርዐታዊ ፡ ኑሮ ፡ (ጸጥታ) አደገኛ ፡ መኾኑ ፡ የተረጋገጠበት ፡ <sup>53</sup> የውጭ ፡ አገር ፡ ሰውን ፡ ለጊዜው ፡ (ለተወሰነ ፡ ጊዜ) ብቻ ፡ ጉኑ ፡ ወይም ፡ ለምንጊዜም ፡ (ለነባር ፡ ወይም ፡ ቋሚ) ከንጉሡ-ነገሥቱ ፡ መንግሥት ፡ ግዛት ፡ እንዲወገድ ፡ ፍርድ ፡ ቤት ፡ ሊያዝዝ ፡ ይችላል ። ስለመባረር ፡ የተጠቃለለና ፡ የተማላ ፡ ሕግ ፡ ፓርላሚንት ፡ ቢሠራና ፡ እንዲባረሩ ፡ ትእዛዝ ፡ የወጣባቸው ፡ ሰዎች ፡ በፍርድ ፡ እንዲታይላቸው ፡ ቢደረግ ፡ ማለፊያ ፡ ነበረ ። ድንገተኛ ፡ አጣዳፊ ፡ (አስቸኳይ) ኹነታዎች ፡ ሊለዩ ፡ (ወይም ፡ ከዚህ ፡ ውጭ ፡ ሊኾኑ) ይችላሉ ። በምንም ፡ አኳኋን ፡ ቢኾን ፡ በወንጀል ፡ ቅጣት ፡ በሚመጣው ፡ ካልኾነ ፡ በቀር ፡ ሊያስባርራቸው ፡ ስለሚችሉት ፡ ምክንያቶች ፡ ባኹኑ ፡ ጊዜ ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ እንዲያውቁት ፡ አልተደረገም ፡ (አልተገለጠላቸውም) ።

እንግዲህ ፡ ስለ ፡ ኢትዮጵያዊ ፡ ተወላጅና ፡ ስለ ፡ ውጭ ፡ አገር ፡ ሰዎች ፡ አቋም ፡ የሚመለከተውን ፡ ሕግ ፡ ውሳኔዎች ፡ ካወጣን ፡ ካወረድን ፡ ዘንድ ፡ የኢትዮጵያ ፡ ዜጎች ፡ ሳይኾኑ ፡ መካናቸውን ፡ ከዚህ ፡ ወዳደረጉት ፡ ሰዎች ፡ እስቲ ፡ አስተውሎአችንን ፡ እናዞር።

## ምህላው

የምህላው ፡ ፍች 1- ምህላውና ፡ ምቅማጥ ፡ (መቀመጫ ፡ ስፍራ) ውሱን ፡ ትርጓሜ ፡

ያንድ ፡ ሰው ፡ መቀመጫ ፡ ቦታ ፡ (ምቅማጥ) ያለበት ፡ ስፍራ ፡ ነው ። በሕግ ፡ ፊት ፡ ምቅማጥ ፡ ማለት ፡ አንድ ፡ ሰው ፡ ቋሚ ፡ አድርጎ ፡ የሚቀመጥበት ፡ ቦታ ፡ (ስፍራ) <sup>54</sup> ነው ። በኢትዮጵያ ፡ አንዱ ፡ ሰው ፡ ባንድ ፡ ቦታ ፡ ሦስት ፡ ወር ፡ በኖረ ፡ ጊዜ ፡ መቀመጫ ፡ ቦታውን ፡ ከዚያው ፡ እንዳደረገ ፡ <sup>55</sup> ይታሰባል ። ላንዳንድ ፡ ጉዳዮች ፡ (ለምሳሌ ፡ ላጥቢያ ፡ የፍርድ ፡ ሥልጣን ፡ ወሰን ፡ ሲባል) ምቅማጥ ፡ ሕጋዊ ፡ ብሂል ፡ (ፍች) ሲኖረው ፡ ሲችል ፡ በተረፈ ፡ በጠቅላላው ፡ ሕጋዊ ፡ ንክኪ ፡ (ግንኙነት) አይደለም ።

ምህላው ፡ (መካን) ከመቀመጫ ፡ ቦታ ፡ በኹለት ፡ በኩል ፡ የተለየ ፡ ነው ። አንደኛ ፡ ምህላው ፡ ራሱን ፡ የቻለና ፡ በቂ ፡ የኾነ ፡ ዕንስ-ሐሳብ ፡ ነው ፤ አንድ ፡ ሰው ፡ ዐያሌ ፡ መቀመጫ ፡ ቦታዎች ፡ ሊኖሩት ፡ ይችላል ፡ ይኾናል ። <sup>56</sup> እንጂ ፡ ባንድ ፡ በተለየ ፡ ጊዜ ፡ ውስጥ ፡

<sup>52</sup> በኤፕሪል ፡ ፩ ፡ ቀን ፡ ፲፱፻፵፪ ፡ ዓ. ም. ነጋሪት ፡ ጋዜጣ ፡ ያ፲፱፻፵፪ ፡ ዓ. ም. ዐዋጅ ፡ ፴፯ ፡ ይህ ፡ ሥራ ፡ የውጭ ፡ አገር-ገብ ፡ ነዋሪን ፡ (እሚግሬሺንን) ፡ ይጻፍል ።  
<sup>53</sup> በንደዚህ ፡ ባለው ፡ ጉዳይ ፡ ላይ ፡ ፍርድ ፡ ቤቱ ፡ ጉዳዩ ፡ ከሚከታቸው ፡ የመንግሥት ፡ ባለሥልጣኖች ፡ ጋራ ፡ እንዲመከከር ፡ ያስፈልገዋል ።  
<sup>54</sup> የኢትዮጵያ ፡ ፍትሕ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፩፻፶፩ ።  
<sup>55</sup> የኢትዮጵያ ፡ ፍትሕ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፩፻፶፩ (ዘ) ።  
<sup>56</sup> የኢትዮጵያ ፡ ፍትሕ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፩፻፶፮ (፩) ።

ሲኖረው፡ የሚችል፡ አንድ፡ መካን፡<sup>57</sup> ብቻ፡ ነው። ይህ፡ የመጨረሻው፡ ሐሳብ፡ ባንድ፡ በተለየ፡ መንግሥት፡ ሕግ፡ መሠረት፡ ባንዱ፡ (በተወሰነው) ጊዜ፡ ሲኖረው፡ የሚችለው፡ አንድ፡ ምንባር፡ ብቻ፡ ነው፡ እንደማለት፡ ሊቈጠር፡ ይገባል። ከዚህ፡ ግርጌ፡ እንደምናየው፡ ኹሉ፡ ልዩ፡ ልዩ፡ መንግሥታት፡ የተለያዩ፡ የምህላው፡ ፅንሰ-ሐሳቦች፡ አሏቸው። ሊትዮጽያ፡ አንድ፡ ሰው፡ መደበኛ፡ መኖሪያውን፡ በኢትዮጵያ፡ ማድረጉን፡ በኢትዮጵያው፡ ፍትሐ፡ ብሔር፡ ሕግ፡ ውሳኔዎች፡ መሠረት፡ ልታየው፡ (ልትፈታው) በችላል፡ ፈረንሳይ፡ ደግሞ፡ ያንኑ፡ ሰውዬ፡ በፈረንሳይ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ ውሳኔዎች፡ መሠረት፡<sup>58</sup> ምህላውን፡ በፈረንሳይ፡ አገር፡ እንዳደረገ፡ አድርጋ፡ ልትመለከተው፡ ትችላለች። ይኹን፡ እንጂ፡ እነዚህ፡ መጣኝ፡ ኹነታዎችን፡ በመገንዘብ፡ አንድ፡ ሰው፡ ባንድ፡ በተለየ፡ ጊዜ፡ አንድ፡ ምህላው፡ ብቻ፡ ሲኖረው፡ ይችላል። ኹለተኛ፡ ምህላው፡ ቋሚነትን፡ (ነባርነትን) ጠባይን፡ ይከታል፡ (ያመለክታል)፡ አንድ፡ ሰው፡ የሚቀመጥበት፡ እና፡ “በነባርነት፡ (የምንጊዜም)” — የተለያዩ፡ ፍችዎች፡ (ትርጉሞች) ያሉት፡ ቃል፡ ነው — ከዚያ፡ ለመኖር፡ ዐቅዶ፡ ጥቅሞቹን፡ ያቋቋመበትና፡ ያሰረረበት፡ ቦታ፡ ነው። ነገር፡ ግን፡ ሐሳብን፡ ለማጠቃለል፡ ምህላው፡ “በነባርነት፡ (ቋሚ፡ በኾነ፡ አኳኋን)” ከዚያው፡ ለመኖር፡ ዕቅድ፡ ጋራ፡ የተጋባ፡ ባንድ፡ የተለየ፡ ቦታ፡ መቀመጥን፡ ያስፈልገዋል፡ ማለት፡ እንችላለን።

በፍትሐ፡ ብሔር፡ ሕግ፡ መሠረት፡ ምህላው፡

የፍትሐ፡ ብሔር፡ ሕግ፡ አንቀጽ፡ ፩፻፱፫፤ “ያንዱ፡ ሰው፡ መደበኛ፡ ቦታ፡ ቋሚ፡ በኾነ፡ አኳኋን፡ ከዚያው፡ ለመኖር፡ በማቀድ፡ የተግባሩን”<sup>59</sup>፡ እና፡ የጥቅምቹን፡ አውራ፡ መቀመጫ፡ ያቋቋመበቱ፡ ቦታ፡ ነው” ይላል። በዚህ፡ ግግግር፡ አሰካኩና፡ አቀማመጡ፡ “ነባርነት፡ (ወይም፡ ቋሚ፡ ወይም፡ ምንጊዜም)” የሚለውን፡ ቃል፡ አፍታቶ፡ መወሰንና፡ መተርጎም፡ ስለሚገባን፡ “በነባርነት” የሚለው፡ ቃል፡ “ያልተወሰነ፡ የጊዜ፡ ክፍል፡ ጊዜ” ተብሎ፡ እንዲፈታ፡ ተደርጓል። “ለመመለስ፡ ያልተረጋጋ፡ (የሚሰፍፍ) ዕቅድ” ተብሎ፡ ሊጠራ፡ የሚችለው፡ አንድን፡ ሰው፡ መካከን፡ ከዚህ፡ ከማድረግ፡ ለማንድ፡ በቂ፡ ምክንያት፡ እንዲኾን፡ አያስፈልግም። ለምሳሌ፡ ያኸል፡ ቤተሰቡን፡ እንደያዘ፡ አንድ፡ ግሪክ፡ ነጋዴ፡ ወደ፡ ኢትዮጵያ፡ ይመጣና፡ ከበድ፡ ያለና፡ የጎላ፡ መንቀሳቀሻ፡ ሀብት፡ (ካፒታል) ባንድ፡ የንግድ፡ ሥራ፡ ይከታል፡ (ያገባል) ብለን፡ እስቲ፡ እናስብ። በቃኝ፡ ብሎ፡ በፈቃዱ፡ ከሠርክ፡ ሥራው፡ ተለይቶ፡ በሚያርፍበት፡ ሰዓት፡ (ሪታየር) ወደ፡ ግሪክ፡ አገር፡ ለመመለስ፡ ያቅዳል። ያቅደው፡ በኢትዮጵያ፡ ውስጥ፡ ላልተወሰነ፡ ጊዜ፡ ለመቄየት፡ ስለኾነ፡ ምንባሩ፡ በኢትዮጵያ፡ እንደኾነ፡ ይገመት፡ ዘንድ፡ ያስፈልጋል።

57 የኢትዮጵያ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ አንቀጽ፡ ፩፻፱፮።  
 58 በላንዱ፡ ሰው፡ ምህላው፡ እያንዳንዱ፡ መንግሥት፡ በራሱ፡ ሕግ፡ መሠረት፡ እንዲወሰን፡ ይገባዋል። በቡኪኖስ፡ እና፡ በቡኪኖስ፡ መካከል፡ የፍትሐ፡ ብሔር፡ ነገር፡ ቀ. ፱፻፸፯/፱፻፺፫፤ “በግሪክ፡ ሕግ፡ አቤት፡ ባዩ፡ በግሪክ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ አንቀጽ፡ ፶፬፡ መሠረት፡ መካከን፡ በኢትዮጵያ፡ እንዳደረገ፡ ሰው፡ የመቀጠሩ፡ ሀልው፡ በኢትዮጵያ፡ ሕግ፡ መሠረት፡ በምንም፡ መንገድ፡ መካከን፡ በዚህ፡ እንዳደረገ፡ ሰው፡ መቆጠሩን፡ የሚያመለክት፡ አይደለም። ከላይ፡ እንደተመለከተው፡ ይህን፡ ይዘት፡ ሊቋርጥ፡ የሚችለው፡ የኢትዮጵያ፡ ሕግ፡ ብቻ፡ ነው።” ሲል፡ የከፍተኛው፡ ፍርድ፡ ቤት፡ አመልክቷል። ደግሞም፡ አኔስሌይን፡ በሚመለከተው፡ (፲፱፻፳፮) ፩፡ ቻንሰራ፡ ፪፻፶፪፡ ምንም፡ እንኳ፡ በፈረንሳይ፡ ሕግ፡ መሠረት፡ የፈረንሳይ፡ ምህላው፡ አንዳገኘ፡ ባይገመትም፡ ቅሱ፡ በብሪታንያ፡ የመካን፡ ፅንሰ-ሐሳብ፡ መሠረት፡ አንድ፡ የብሪታንያ፡ (እንግሊዝ) ተገዥ፡ መደበኛ፡ መኖሪያውን፡ በፈረንሳይ፡ አድርጓል፡ ሲል፡ የይግባኝ፡ ፍርድ፡ ቤቱ፡ የወሰነውን፡ ይመለከታል።  
 59 “ተግባር” የተባለው፡ ቃል፡ አገባብ፡ ሥራ፡ ስምሪት፡ ተብሎ፡ እንዲፈታ፡ ያስፈልጋል።

ይህ ፡ የመካን ፡ አተረጎም ፡ እንደሚከተለው ፡ በተነገረው ፡ የፍትሐ ፡ ብሔር ፡ ሕጉ ፡ አንቀጽ ፡ ፩፻፹፬ ፡ የተደገፈ ፡ ነው ፡-

“(፩) ያንዱ ፡ ሰው ፡ ደንበኛ ፡ መቀመጫው ፡ ባንዱ ፡ ስፍራ ፡ በሚኾንበት ፡ ላይ ፡ በዚያው ፡ ስፍራ ፡ በነባርነት ፡ ለመቀመጥ ፡ ዐቅዷል ፡ ተብሎ ፡ ይገመታል ።

(፪) በቂና ፡ አጥጋቢ ፡ በኾነ ፡ ቀጥጥ ፡ ባለ ፡ ትክክለኛ ፡ መልክ ፡ እና ፡ በተለመደው ፡ ደንበኛ ፡ የነገሮች ፡ መንገድ ፡ መሠረት ፡ የነገሩ ፡ መኾን ፡ ውጤትን ፡ የሚያገኝ ፡ ካልኾነ ፡ በቀር ፡ ይኸው ፡ የተባለው ፡ ሰው ፡ የገለጠው ፡ ተቃራኒ ፡ ሐሳብ ፡ እንደ ፡ ቁም ፡ ነገር ፡ አይገመትም ።”

ለምሳሌ ፡ ይኾን ፡ ዘንድ ፡ ያምስት ፡ ዓመቱ ፡ ውል ፡ ከተፈጸመ ፡ በኋላ ፡ ካገር ፡ ለመውጣት ፡ ዐቅዶ ፡ በዐምስት ፡ ዓመት ፡ ውል ፡ ለመሥራት ፡ አንድ ፡ ሰው ፡ ወደ ፡ ኢትዮጵያ ፡ የመጣ ፡ እንደኾነ ፡ መቀመጫውን ፡ በዚሁ ፡ ቢያደርግም ፡ ቅሉ ፡ ምህላውን ፡ በኢትዮጵያ ፡ አደረገ ፡ አይባልም ። ዐቅዱ ፡ በቂና ፡ አጥጋቢ ፡ በኾነ ፡ መልክ ፡ የተስተካከለ ፡ ስለኾነ ፡ የተረጋገጠው ፡ ኹነታ ፡ ማለት ፡ ያምስቱ ፡ ዓመት ፡ ውል ፡ መፈጸም ፡ በሚደርስበት ፡ ጊዜ ፡ የሚከናወን ፡ ነው ። በሻቶ ፡ እና ፡ በሻቶ ፡ መካከል ፡ በነበረው ፡ ነገር <sup>60</sup> ፡ የንጉሠ-ነገሥት ፡ ጠቅላይ ፡ ፍርድ ፡ ቤቱ ፡ አናቅጽ ፡ ፩፻፹፫ን ፡ እና ፡ ፩፻፹፬ን ፡ አንድ ፡ ላይ ፡ አስተባብሮ ፡ በመተርጉም ፡ “በነባርነት” ማለት ፡ ላልተወሰነ ፡ የጊዜ ፡ ክፍል ፡ ነው ፡ ሲል ፡ ውሳኔውን ፡ ደመደመ ። ምህላዉ ፡ ያጠያየቀው ፡ ሰውዬ ፡ “ያደን ፡ ወይም ፡ የስፖርት ፡ ጉዞ ፡ አስተናባሪና ፡ አሰናጅ” (ሳራሪ ፡ እውትፈቱር) በመኾን ፡ የግል ፡ ሥራውን ፡ (ተግባሩን) በዚሁ ፡ የሚያካሄድ ፡ እና ፡ በኢትዮጵያ ፡ ውስጥ ፡ ለስድስት ፡ ዓመታት ፡ የተቀመጠ ፡ ሰው ፡ ነበረ ። አንድ ፡ ቀን ፡ አገሪቱን ፡ ለቅቆ ፡ ለመሄድ ፡ የሚችል ፡ (የአሜሪካ ፡ ዜጋ ፡ ስለነበረ) ነው ፡ በማለት ፡ (አንዱ ፡ አባል ፡ ጻኛ ፡ ሲለይ) የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ የጋብቻ ፡ ፍቺ ፡ የማጽደቅ ፡ አቤቱታውን ፡ ከለከለው ። ስለዚህ ፡ “በነባርነት ፡ ኢትዮጵያ ፡ ለመኖር ፡ አላቀደም” ሲል ፡ ፍርድ ፡ ቤቱ ፡ ነገሩን ፡ ቈረጠ ። ይህን ፡ ውሳኔ ፡ በመገልበጥ ፡ የንጉሠ-ነገሥት ፡ ጠቅላይ ፡ ፍርድ ፡ ቤቱ ፡ “መጪውን ፡ ጊዜ ፡ አጥብቆና ፡ አትኮሮ ፡ አስቀድሞ ፡ በመመልከቱ ፡ የድምፅ ፡ ብልጫው ፡ በርግጡ ፡ ተሳስቷል” ሲል ፡ በየነ ። በኢትዮጵያ ፡ ስለሚቀመጥና ፡ ሥራውን ፡ በዚሁ ፡ ሰላደረገ ፡ የአንቀጽ ፡ ፩፻፹፬ ፡ እምነት ፡ (ሐሳብ) ከሥራ ፡ ላይ ፡ ይውላል ። ተቃራኒውን ፡ ዐቅድ ፡ የሚያረጋግጥ ፡ ጉልሕ ፡ ማስረጃ ፡ ከሌለ ፡ ዘንዳም ፡ የታወቀው ፡ ወይም ፡ የተገለጠው ፡ እምነት ፡ ስለማይታጠፍ ፡ (ስለማይፋቅ) መካከን ፡ በኢትዮጵያ ፡ እንዳደረገ ፡ ሰው ፡ ይቈጠራል ። ኢትዮጵያ ፡ ለጥቂት ፡ ዘመናት ፡ ኮሮ ፡ የነበረውና ፡ ተግባሩን ፡ በዚሁ ፡ አቋቁሞ ፡ የነበረው ፡ የግሪክ ፡ ዜጋን ፡ ነክ ፡ የኾነው ፡ የዚሶስ ፡ እና ፡ ዚሶስ ፡ ነገርም <sup>61</sup> ፡ እንደዚሁ ፡ ያለ ፡ አንድ ፡ ዐይነት ፡ ውጤት ፡ ያገኘ ፡ ጉዳይ ፡ ነው ።

የፍትሐ ፡ ብሔር ፡ ሕጉ ፡ ወደ ፡ ምህላው ፡ አቀራረብ ፡ የፍትሐ ፡ ብሔር ፡ ሕጉ ፡ ከመውጣቱ ፡ በፊት ፡ በፓስቶሪ ፡ እና ፡ በአስላኒዲስ ፡ መካከል ፡ በተነሣው ፡ ነገር <sup>62</sup> ፡ የንጉሠ-ነገሥት ፡ ጠቅላይ ፡ ፍርድ ፡ ቤቱ ፡ የበየነው ፡ እንደሚያስረዳው ፡ ቀድሞ ፡ ከነበረው ፡ አቀራረብ ፡ ጋራ ፡ በጣም ፡ የተለያየ ፡ ነው ። መካከን ፡ የተጠያየቁበት ፡ ሰውዬ ፡ በ፲፱፻፲ ፡ ዓ. ም. ወደ ፡ ኢትዮጵያ ፡ የመጣ ፡ የግሪክ ፡ ተወላጅ ፡ ነበረ ። ሥራውን ፡ ከዚሁ ፡ ያቋቋመና ፡ በዚሁ ፡ ሚስት ፡ ያገባ ፡ ሰው ፡ ነበረ ። በዚያው ፡ ጊዜ ፡ ውስጥ ፡ ወደ ፡ ግሪክ ፡ አገር ፡

60 በኢትዮጵያ ፡ ሕግ ፡ መጽሔት ፡ ሾሉም ፡ ፩ ፡ ቀ. ፡ ፲፮ ፡ ፩፻፲ ፡ የወጣው ፡ ፍትሐ ፡ ብሔር ፡ ይግባኝ ፡ ቀ. ፡ ፮፻፹፪/፲፮ ።

61 የፍትሐ ፡ ብሔር ፡ ይግባኝ ፡ ቀ. ፡ ፮፻፹፫/፲፮ ።

62 የፍትሐ ፡ ብሔር ፡ ይግባኝ ፡ ቀ. ፡ ፲፱፻፳፯/፱፻ ።

ዐያሌ፡ ጉብኝቶችን፡ አድርጎና፡ በጣም፡ ሲታመም፡ ወደዚያው፡ የሼደ፡ ሰው፡ ነበረ፤  
ከዳነም፡ በኋላ፡ እንደገና፡ ወደ፡ ኢትዮጵያ፡ ተመልሶ፡ ነበረ። ከመሐላ፡ ኮዛዜው፡  
ፍርድ፡ ቤቱ፡ በኢትዮጵያ፡ ሕግ፡ ሳይሾን፡ በግሪክ፡ ሕግ፡ መሠረት፡ ዋጋ፡ ያለው፡  
ሰለሚሾን፡ እና፡ እሱ፡ ራሱም፡ በዐዲስ፡ አበባው፡ የግሪክ፡ ቆንሲል፡ እንዲተዳደር፡  
ሰለመራ፡ በግሪክ፡ ሕግ፡ እንዲዳኝ፡ ያቀደው፡ ነው፡ ሲል፡ (ፍርድ፡ ቤቱ) ጉዳዩን፡  
ቂረጠ።

ፍርድ፡ ቤቱ፡ መካኑ፡ በኢትዮጵያ፡ አልነበረም፡ ሲል፡ ወሰነ። እንዲሁ፡ ሰው፡  
መካን፡ ለማግኘቱ፡ ወይም፡ ላለማግኘቱ፡ መመጠኛው፡ (መፈተኛው) “ከትውልድ፡  
አገሩና፡ ከሕጋቹ፡ ከልማዱ፡ ሹሉ፡ ራሱን፡ በፍጹም፡ በሚገነጥል፡ መልክ፡ ለይቶ፡  
ዐዲሱን፡ አገር፡ ቋሚ፡ ቤቱ፡ (ሀገሩ) ለማድረግ፡ ዐቅዶ፡ የግል፡ ሕግ፡ ጉዳይን፡ በሚመ  
ለከተው፡ ረገድ፡ ነባር፡ በሾነ፡ አኳኋን፡ ላዲሱ፡ አገር፡ ሕጎችና፡ ልማዶች፡ ራሱን፡  
ተገኘ፡ ለማድረግ፡ በማቀዱ፡ ላይ፡ ነው።” አለ። ብሪታንያዊውን፡ አቀራረብ፡ በመ  
ከተል፡ ፍርድ፡ ቤቱ፡ የሚከተለውን፡ አጥብቆ፡ አረጋገጠ።

(፩) የመቀመጥ፡ ጊዜ፡ ርዝማኔ፡ ምንም፡ እንኳ፡ የማያቋርጥ፡ ቢሾንም፡ ቅሉ፡  
የምህላዉ፡ መለወጥን፡ (ሐሳብ) ለማምጣት፡ (ለማስከተል፡ ወይም፡ ለማቋቋም) በቂ፡  
ምክንያት፡ አይደለም።

(፪) የምህላው፡ ለውጡ፡ በጉልሕ፡ ሲረጋገጥ፡ ሲገባው፡ እንዲሁም፡ ከምህላው  
ትውልድ፡ በመለወጥ፡ ጉዳይ፡ ለማረጋገጥ፡ (ለማሳየት) የሚያስፈልገው፡ ማስረጃ፡  
በምርጫ፡ (በፈቃድ) ምህላው፡ ከሚያስፈልገው፡ ማስረጃ፡ የላቀና፡ የበለጠ፡ ከብደት፡  
እንዲኖረው፡ ያስፈልጋል። ሰውዬው፡ በኢትዮጵያ፡ ውስጥ፡ የምርጫ፡ (የፈቃድ)  
መካን፡ ማግኘቱን፡ የሚያሳይ፡ በቂ፡ ማስረጃ፡ አልነበረም፡ ሲል፡ ፍርድ፡ ቤቱ፡ ጉዳ  
ዩን፡ ደመደመ። በዚህም፡ ሳለ፡ ያንኑ፡ “የግሪክ፡ አናዎር፡ መንገድን” ሳያቋርጥ፡ በመ  
ቀጠሉ፡ ምህላዉን፡ በኢትዮጵያ፡ ውስጥ፡ ለማግኘት፡ ዐሳብ፡ (ዕቅድ) አልነበረውም፡  
ሲል፡ ፍርድ፡ ቤቱ፡ አጥብቆ፡ አረጋገጠ።

በሕጉ፡ (ኮዳ) መሠረተ፡ ውጤቱ፡ በጉልሕ፡ የተለየ፡ ይሾናል። ሰውዬው፡ ሹለቱ  
ንም፡ የተግባር፡ ስምሪቱንና፡ የሠርክ፡ የተለመደ፡ ደንበኛ፡ ምቅማጡን፡ በኢትዮጵያ፡  
አድርጎ፡ የነበረ፡ ነው። እንግዲህ፡ የሚታመነው፡ መካኑ፡ በኢትዮጵያ፡ መሾኑ፡ ነው።  
የተባለው፡ ቢባል፡ (እንዲያው፡ ዘልሎ፡ ተስፋ፡ ቢደረግ) እንኳ፡ ወደ፡ ግሪክ፡ የመመ  
ለሱ፡ ዕቅድ፡ “የሚንሳፈፍ፡ (የነሲብ)” ነበረ፡ ሹነታው፡ በመድረሱ፡ ወደ፡ ግሪክ፡  
አገር፡ የሚመለስበት፡ የተቂረጠ፡ ሹነታም፡ አልነበረም። እንዲያውም፡ ከዚሁ፡  
ዐረፈ፡ (ሞተ)። ስለዚህ፡ በነባርነት፡ ከዚሁ፡ ለመኖር፡ የማቀዱን፡ እምነት፡ የሚፍቅ፡  
አንድም፡ ማስረጃ፡ አይኖርም፡ በዛሬው፡ ጊዜ፡ ቢሾን፡ ኑሮም፡ እንደዚህ፡ ያለው፡ ሰው፡  
ምህላዉን፡ በኢትዮጵያ፡ እንዳደረገ፡ በተቂጠረ።

የሕጉ፡ (ኮዳ) መደበኛ፡ (ክፍሎች) ፩፻፱፫፡ እና፡ ፩፻፱፬፡ እና፡ ፍርድ፡ ቤቶች፡  
ያኖሩባቸው፡ ትርጉሞች፡ እንደሚያስረዱት፡ አንድ፡ ሰው፡ ከዚሁ፡ በኖረና፡ በሠራ፡  
ጊዜ፡ መካኑን፡ እንዲያገኝ፡ የኢትዮጵያው፡ መሠረተ-ሐሳብ፡ ይመርጣል፡ (ይፈቅዳል)።  
ይኸውም፡ ይታወቅ፡ ዘንድ፡ በዚሁ፡ የሚቀመጡ፡ እና፡ የተግባር፡ ስምሪታቸውን፡  
ወይም፡ የሥራ፡ ስምሪታቸውን፡ በዚሁ፡ ያደረጉ፡ የውጭ፡ አገር፡ ሰዎች፡ የጠራ፡ እና፡  
የተስተካከለ፡ ተቃራኒ፡ ዕቅድ፡<sup>63</sup> ከሌለ፡ ልክ፡ እንደ፡ ኢትዮጵያ፡ መደበኛ፡ ነዋሪዎች፡  
ይቂጠራሉ።

በስተሌላ፡ በኩል፡ ደግሞ፡ አስፈላጊው፡ ዕቅድ፡ እስካለ፡ ድረስ፡ በዚሁ፡ መካኑን፡ ለማ  
ግኘት፡ ሲባል፡ ላንድ፡ ማናቸውም፡ ሰው፡ የተቂረጠ፡ የጊዜ፡ ልክ፡ ከዚህ፡ እንዲያላ

<sup>63</sup> የኢትዮጵያ፡ ምህላው፡ ለማግኘት፡ ምንም፡ ዐይነት፡ ሥነ-ሥርዐቶች፡ አያስፈልጉም።

ልፍ፡ መግባትን፡ ሕጉ፡ (ኮዱ) አያስፈልገውም ። ምናልባት፡ በዋይት፡ እና፡ በቴንኦንት፡ መካከል፡ <sup>64</sup> እንደነበረው፡ ነገር፡ በመሰለው፡ ላይ፡ የኢትዮጵያ፡ ፍርድ፡ ቤቶች፡ ከዚያው፡ ጉዳዩን፡ ከቂረጠው፡ የአሜሪካ፡ ክፍለ-ሀገር፡ ግዛት፡ ፍርድ፡ ቤት፡ ከደረሰበት፡ ውጤት፡ ላይ፡ ይደርሱ፡ ይኸናል ። ምህላዉ፡ ያከራከረው፡ ሰውዬ፡ ቤቴን፡ በ‘ሀ’ ግዛት፡ (መንግሥት) ሺጦ፡ ከሚስቱ፡ ጋራ፡ ወደ፡ ‘ለ’ ግዛት፡ ወደ፡ ዐዲስ፡ ቤት፡ ሼደ ። ከዚያም፡ በፊት፡ አንዳንድ፡ ተንቀሳቃሽ፡ ንብረትን፡ ወደ፡ ‘ለ’ ግዛት፡ አስተላልፎ፡ (አንጉዞ) ነበረ ። ሚስቱ፡ ስትታመም፡ (ታምማ፡ ስትወድቅ) በ‘ለ’ ግዛት፡ የቂየው፡ አንድ፡ ቀን፡ ያሽል፡ ነው ። ወዲያውኑ፡ ወደ፡ ‘ለ’ ግዛት፡ ለመመለስ፡ ስላቀደ፡ ከዘመዶች፡ ጋራ፡ ወደምትቂይበት፡ ግዛት፡ ‘ሀ’ ወሰዳት፤ ጤናዋ፡ ሲሻሻል፡ ሚስቱቱም፡ ወደ፡ ‘ለ’ ግዛት፡ እንድትመለስ፡ ዐስቧል ። ባልየው፡ በ‘ሀ’ ግዛት፡ እንዳለ፡ በድንገት፡ ዐረፈ ። በ‘ሀ’ ግዛት፡ ፍርድ፡ ቤት፡ መካከን፡ በ‘ለ’ ግዛት፡ አግኝቷል፡ ሲባል፡ ተበየን ። ምቅማጥ፡ ከዚያው፡ ነበረው፡ በግዝፈተ-ሥጋው፡ ከዚያው፡ ነበረ፡ በነባርነት፡ ከዚያው፡ ለመኖር፡ ዐቅዶ፡ ነበረ ። እንደኛው፡ ላይነጣ፡ የተደረበ፡ ተገጣጣሚ፡ እንድላይ፡ የሾነ፡ ምቅማጥ፡ እና፡ በነባርነት፡ ከዚያው፡ ለመኖር፡ ዐሳብ፡ ነበረ ። በሕጉ፡ (ኮዱ) መሠረት፡ ባንድ፡ ሰው፡ ላይ፡ መቀመጫውን፡ በኢትዮጵያ፡ ለማድረግ፡ የሚጣልበት፡ ማንኛቸውም፡ የጊዜ፡ ክፍል፡ ግዴታ፡ ስለሌለ፡ በኢትዮጵያም፡ ቢኾን፡ ቅሉ፡ ከንዚያው፡ ያለ፡ ዐይነት፡ ውጤት፡ ላይ፡ ይደረስ፡ ነበረ፡ ማለት፡ ነው ።

ከዚህም፡ በላይ፡ በሕጉ፡ መሠረት፡ ሰውየው፡ የተወሰነና፡ የተለየ፡ የሠርክ፡ መኖሪያ፡ ስፍራ፡ እንዲኖረው፡ የሚያስፈልግበት፡ አንዳችም፡ ግዴታ፡ የለም ። በሕጉ፡ አንቀጽ፡ ፩፻፸፯፡ መሠረት፡ አንዱ፡ ሰው፡ ዐያሌ፡ ምቅማጦች፡ ሊኖሩት፡ ይችላሉ ። “ባንዱ፡ ስፍራ፡ ደንበኛ፡ ምቅማጥ” የተባለው፡ የንግግር፡ አገባብ፡ አንቀጽ፡ ፩፻፹፬፡ እንደ፡ ተጠቀመበት፡ በኢትዮጵያ፡ ባንድ፡ በተለየ፡ ክፍል፡ ውስጥ፡ ምቅማጥን፡ ከማመልከት፡ ይልቅ፡ እንዲያው፡ በደፈናው፡ ምቅማጥን፡ በኢትዮጵያ፡ ማድረግን፡ እንዲያመለክት፡ ያስፈልጋል ። እንግዲህ፡ በያንዳንዱ፡ ስፍራ፡ በሆቴሎች፡ እየተቀመጠ፡ ባንዱ፡ የጊዜ፡ ክፍል፡ ውስጥ፡ ባዲስ፡ አበባ፡ በሌላው፡ የጊዜ፡ ክፍል፡ ውስጥ፡ በጉንደር፡ እና፡ ባንደኛው፡ የጊዜ፡ ክፍል፡ ውስጥ፡ በጂማ፡ አንዱ፡ ሰው፡ የተቀመጠ፡ እንደኾነ፡ በንጉሠ-ነገሥቱ፡ መንግሥት፡ ግዛት፡ በማንኛቸውም፡ ክፍል፡ <sup>65</sup> ቋሚ፡ ወይም፡ ነባር፡ ምቅማጥ፡ ባይኖረውም፡ ቅሉ፡ መደበኛ፡ መኖሪያውን፡ በኢትዮጵያ፡ እንዳደረገ፡ ይታሰባል ።

64 ጳጳ፡ ምዕራብ፡ ቪርጂኒያ፡ ሬፖርቲር፡ (መግለጫ) ፳፻፺፡ ፮፡ ሌባዊ ፡ (ደቡብ-ምሥራቃዊ) ሬፖርቲር፡ (መግለጫ) ፳፻፺፡ (፲፭፻፳፭) ።

65 ይህን፡ ጉዳይ፡ ስለሚያስከትሉ፡ ነገሮች፡ እና፡ በዚያው፡ ግዛት፡ መካከን፡ ያገኘ፡ ሰውን፡ ስለመደገፍ፡ በማርክስ፡ እና፡ በማርክስ፡ መካከል፡ ፳፻፡ የፈዴራል፡ ሬፖርቲር፡ (ደ. ኤስ. ተዘዳሪ፡ ፍርድ፡ ቤት፡ ተፈሪ) ፫፻፳፩፡ (፲፭፻፺፮) የነበረውን ፤ እና፡ በዊናንስ፡ እና፡ በዊናንስ፡ መካከል፡ ፪፻፳፡ ማሳሹሊትስ፡ ሬፖርትስ፡ ፫፻፹፭፡ ፯፻፡ መስጣዊ ፡ (ሰሜን-ምሥራቃዊ) ሬፖርቲር፡ ፫፻፺፱ (፲፱፻፺፯) ይመሰክራል ።

የሕጉ፡ አንቀጽ፡ ፩፻፳፭፡ አንድ፡ ሰው፡ የጥራ፡ (የባሕርይ) ሙያ፡ ሥራውን፡ ባንድ፡ ቦታ፡ ሲፈጸም፡ እና፡ የቤተሰብ፡ ወይም፡ የዐብሮ-ትሯዊ፡ (ሶሼያል) ሕይወቱን፡ በሌላ፡ ስፍራ፡ ሲያሳልፍ፡ አጠራጣሪ፡ ኾነታ፡ ቤንጣ፡ ምህላዉ፡ በኋለኛው፡ ስፍራ፡ ነው፡ ተብሎ፡ ይታሰባል፡ ይላል ። እንደዚህ፡ ያለው፡ ኹናቱ፡ መካከን፡ ያከራከረው፡ ሰው፡ የተገባር፡ ሥራው፡ በ‘ሀ’ ግዛት፡ ኹናት፡ ከነቤተሰቡ፡ የሚኖረው፡ በ‘ለ’ ግዛት፡ የኾነበት፡ ጉዳይ፡ ኹለት፡ የአሜሪካ፡ ፍርድ፡ ቤቶችን፡ አጋጥሞቸው፡ ነበረ ። የ‘ሀ’ ግዛት፡ ፍርድ፡ ቤት፡ ምህላዉን፡ በዚያው፡ ያደረገ፡ ነው፡ ሲል፡ በደራንስ፡ መሬት፡ ፩፻፺፭፡ ኒው፡ ጄርሲ፡ ኢዩይት፡ (ርትዕ) ሬፖርትስ ። ፪፻፳፭፡ ፩፻፳፡ አትላንቲክ፡ ሬፖርቲር፡ ፪፻፳፡ (፲፱፻፴፱) ጉዳይ፡ ወሰነ፡ የ‘ለ’ ግዛት፡ ፍርድ፡ ቤት፡ መካከ፡ በ‘ለ’፡ ግዛት፡ ውስጥ፡ ነው፡ ሲል፡ በደራንስ፡ መሬት፡ ፫፻፱፡ ፔንሲልቬንያ፡ ሬፖርቲር፡ ፩፻፺፮፡ ፩፻፳፻፡ አትላንቲክ፡ ሬፖርቲር፡ ፫፻፫፡ (፲፱፻፴፱) ጉዳይ፡ ወሰነ ። በኢትዮጵያ፡ ጉዳዩ፡ በጉልሕ፡ ኹነታ፡ በአንቀጽ፡ ፩፻፳፭፡ ውሳኔዎች፡ ተብራርዶ፡ የተቋረጠ፡ ነው ።

በአናቅጽ፡ ፩፻፹፫፡ እና፡ ፩፻፹፬፡ መሠረት፡ ያለው፡ ዐሳብ፡ ምህላው፡ ማፍራት፡ ከመባል፡ (ከመኾን) ይልቅ፡ በኢትዮጵያ፡ ለመኖር፡ ማሰብ፡ ሊኾን፡ ይገባል። እነዚህ፡ መደቦች፡ አንዱን፡ ሰው፡ በርግጡ፡ ከሌላ፡ ማንኛቸውም፡ ሰፍራ፡ ሲኖር፡ በቀላሉ፡ አንድ፡ ክፍል፡ በዚሁ፡ በመከራዬት፡ መካንን፡ እንዳያገኝ፡ ያግዱታል፡ (ይከለክሉታል)። በኪርቢ፡ እና፡ በቻርልስተን፡ ከተማ፡ መካከል፡ እንደተነሣው፡ ባለነገር፡ የቀረበውን፡ ኹነታ፡ ያስተውሏል። ለሕጋዊ፡ ጉዳዮች፡ ሲባል፡ ወገኑ፡ በ‘ሀ’ ግዛት፡ ምህላውን፡ ለማግኘት፡ ፈለገ። ከዚያው፡ ያንድ፡ ሆቴል፡ ክፍል፡ ይከራይ፡ እንጂ፡ አልተጠቀመበትም፡ (አልኖረበትም)፡ በ‘ለ’ ግዛት፡ ባለው፡ ቤቱ፡ መኖሩን፡ ቀጠለ። በ‘ሀ’ ግዛት፡ ለመኖር፡ ምኞት፡ (ሐሳብ፡ ወይም፡ ዕቅድ) ከቶ፡ ስላልነበረው፡ መካኑ፡ በ‘ለ’ ግዛት፡ እንደኾነ፡ ቀርቷል፡ ሲባል፡ ተወሰነ። በንደዚህ፡ ባለው፡ አኳኋን፡ በነባርነት፡ በዚሁ፡ ለመኖር፡ ምንም፡ ሐሳብ፡ ስላልነበረ፡ በሕጉ፡ አንቀጽ፡ ፩፻፹፫፡ መሠረት፡ ከንደዚሁ፡ ካለው፡ ውጤት፡ ላይ፡ ይደረሳል።

አንቀጽ፡ ፩፻፹፯፡ ላለመመለስ፡ ዐቅዶ፡ የቀድሞውን፡ ምህላዉን፡ ይልቀቅ፡ እንጂ፡ ዐዲስ፡ መካኑን፡ ገና፡ ባላገኘ፡ ሰው፡ የሚነሣውን፡ ችግር፡ የሚመለከት፡ ነው። አንድ፡ ምህላዉን፡ በኢትዮጵያ፡ አድርጎ፡ የነበረ፡ የግሪክ፡ ተወላጅ፡ ወደ፡ ግሪክ፡ አገር፡ ተመልሶ፡ በነባርነት፡ ከዚያው፡ ለመኖር፡ ይወስን፡ እስቲ፡ እንበል። ኢትዮጵያን፡ ለቅቆ፡ ይኼ ዳል፡ ግን፡ ግሪክ፡ አገር፡ ሳይደርስ፡ ይሙት፡ እንበል። እንግዲህ፡ ጣጣው፡ በጊዜ፡ ዕረፍቱ፡ ጊዜ፡መደበኛ፡ መኖሪያው፡ የት፡ መኾኑ፡ ነው። የኢትዮጵያ፡ መካኑን፡ ለቅቋል፡ ግን፡ በግዝፈተኙ ሥጋው፡ (በባሕርይው) ከዚያ፡ ስላልነበረ—ዕቅድ፡ ወይም፡ ዐሳብና፡ በባሕርይ፡ መገኘት፡ አልተጋጠመም፡ ማለት፡ ነው። የግሪክ፡ ምህላውን፡ ገና፡ አላገኘም። በንደዚህ፡ ያለ፡ አጋጣሚ፡ ኹነታ፡ ብሪታንያዊ፡ ፍርድ፡ ቤቶች፡ ሰውየው፡ የጥንቱን፡ መካኑን፡ ማለት፡ በተወለደ፡ ጊዜ፡ የነበረውን፡ ምህላው<sup>67</sup>፡ እንደገና፡ መልሶ፡ ያገኛል፡ ሲሉ፡ ይበይናሉ፡ (ያምናሉ)። ይኸውም፡ ብዙ፡ ብሪታንያውያን፡ መካናቸውን፡ በቅኝ፡ ግዛቶች፡ አድርገው፡ ከኖሩ፡ በኋላ፡ በርጅና፡ ዘመናቸው፡ ወደትውልድ፡ እገራቸው፡ ይመለሱ፡ ከነበረበት፡ ከቅኝ፡ ዘመናት፡ ጊዜ፡ የቂየ፡ ቅሬት፡ ሊኾን፡ ይችላል። እንደዚያ፡ ያለው፡ ሰው፡ ሲሞት፡ ምህላዉ፡ በእንግሊዝ፡ አገር፡ ኹኖ፡ የተገኘ፡ እንደኾነ፡ የመሬት፡ (ርስት) ንብረቱን፡ አከፋፈልን፡ የሚወስነው፡ ከቅኝ፡ ግዛቱ፡ ሕግ፡ ይልቅ፡ የብሪታንያዊው፡ ሕግ፡ ነው። በስተሌላ፡ በኩል፡ ደግሞ፡ የአሜሪካ፡ ፍርድ፡ ቤቶች፡ ዐዲሱን፡ እስቲያገኝ፡ ድረስ፡<sup>68</sup> የቀድሞ፡ መካኑን፡ እንደያዘ፡ ይቂያል፡ ሲሉ፡ ይወስናሉ። ኢትዮጵያ፡ የኋለኛውን፡ አቀራረብ፡ ትከተላለች፤ በፍትሐ፡ ብሔር፡ ሕጉ፡ አንቀጽ፡ ፩፻፹፯፡ መሠረት፡ አንድ፡ ሰው፡ በሌላ፡ ቦታ፡ ምህላዉን፡ እስተሚያደርግ፡ ድረስ፡ ምንባሩን፡ ባቋቋመበት፡ ቦታ፡ ያለውን፡ እንደያዘ፡ ይቂያል።

ያገባች፡ ቤት፡ ጋብቻው፡ ጸንቶ፡ እስከቂየ፡ ድረስ፡ በፍርድ፡ ወይም፡ በሕግ፡ ውሱን፡ በመኾን፡<sup>69</sup> ያልተወሰነ፡ (ያልተነካ) ካልኾነ፡ በቀር፡ የባሏ፡ ምህላው፡ ይኖራታል፤ የተለየ፡ ምቅማጥ፡ ለማግኘት፡<sup>70</sup> ብትችልም፡ ቅሉ፡ የተለየ፡ መደበኛ፡ መኖሪያ፡

66 ፳፪፡ አትላንቲክ፡ ሬፖርተር፡ ፳፻፵፭፡ (ኒው፡ ሐምፕሺር፡ ጠቅላይ፡ ፍርድ፡ ቤት፡ ፲፱፻፲፮)።  
 67 በውድኒ፡ እና፡ በውድኒ፡ መካከል፡ (፲፭፻፳፱) ሕግ፡ ሪፖርትስ፡ (መግለጫዎች)፡ ፩፡ ኢስቢ፡ እና፡ ዲፒ፡ ፳፻፵፩።  
 68 በጆንስ፡ ጉዳይ፡ ፩፻፲፪፡ አይላጥ፡ ሪፖርትስ፡ ፳፭፡ ፩፻፳፪፡ ባሕርይ፡ (ስሜን-ምዕራባዊ) ሪፖርተር፡ ፳፻፳፯፡ (፲፱፻፳፭)።  
 69 የኢትዮጵያ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ አንቀጽ፡ ፩፻፳፱።  
 70 በተባበረው፡ (እ.) መንግሥታት፡ እና፡ በሌላ፡ ጥቂት፡ አገሮች፡ ውስጥ፡ የቅርቡ፡ ጊዜ፡ ዝንባሌ፡ ጋብቻው፡ በሚቀጥልበት፡ ጊዜም፡ እንኳ፡ ሚስቱ፡ የተለየ፡ መካኑን፡ እንድታገኝ፡ መፍቀዱ፡ ነው። የኢትዮጵያ፡ ወደ፡ ምህላው፡ አቀራረቢ፡ እንደዚያው፡ ወደ፡ ዜግነት፡ አቀራረቢ፡ ያለ፡ ነው።



ለማግኘት፡<sup>71</sup> አይቻላትም ። ራሱን፡ ገና፡ ነጻ፡ ያላወጣ፡ ኢአኪል፡ የጠባቂው፡ ምህላው፡<sup>72</sup> ይኖረዋል ። እሱም፡ ቢኾን፡ ቅሉ፡ የተለየ፡ ምቅማጥ፡ ሊኖረው፡ (ሊያገኝ)<sup>73</sup> ይችላል ። እንድ፡ እክብ (በፍርድ፡ የተወሰነ፡ ሰው) በታከበበት፡ (በተወሰነበት) ጊዜ፡<sup>74</sup> የነበረውን፡ መካን፡ ይይዛል፤ ምንም፡ እንኳ፡ እሱም፡ ቢኾን፡ የራሱን፡ ግል፡ ምቅማጥ፡<sup>75</sup> ሊያገኝ፡ (ሊኖረው) ቢችል፡ ቅሉ ።

ለማጠቃለል፡ ያኸል፡ የኢትዮጵያ፡ ምንባርን፡ ስለማግኘት፡ ሕጉ፡ በጣም፡ ጉልሕ፡ ነው ። ግልጥ፡ በኾነ፡ ማሰረጃ፡ በተቃራኒ፡ ዕቅድ፡ እምነቱ፡ ካልተሻረ፡ እና፡ ከኢትዮጵያ፡ መልቀቃቸውም፡ ሊደርስ፡ በሚችል፡ ኹነታ፡ የታጀበ፡ ካልኾነ፡ በቀር፡ ደንበኛ፡ ምቅማጣቸውን፡ በዚሁ፡ ያደረጉ፡ ሰዎች፡ ምንባራቸውን፡ በዚሁ፡ ያደረጉ፡ ናቸው፡ ተብሎ፡ ይታመናል ። ይህም፡ ማለት፡ ላልተወሰነ፡ ጊዜ፡ ከዚሁ፡ የሚኖሩና፡ የሚሠሩ፡ ሰዎች፡ በኢትዮጵያ፡ ፍርድ፡ ቤቶች፡ ዘንድ፡ ምንባራቸውን፡ ከዚሁ፡ እንዳደረጉ፡ ይቈጠራሉ፡ ነው ። ሕጉ፡ ግልጥ፡ የሚኾንበት፡ ህልው፡ (ርግጠኛ፡ ጉዳይ)፡ አኹን፡ አስተውሎአችንን፡ ወደምንመልስበት፡ ነገር፡ ወደሚዳኘው፡ የተለይ፡ ግላዊ፡ ሕግ፡ ጉዳዮችን፡ በሚወስኑት፡ ነገሮች፡ ላይ፡ ትልቅ፡ የኾነ፡ ተገቢ፡ ትርጉም፡ አለው ።

## የተለይ፡ ግላዊው፡ ሕግ፡

የችግሩ፡ (የፕሮብሌሙ) ጠባይ፡

በሕጋዊ፡ ዝግጅቶች፡ ኹሉ፡ አንዳንድ፡ ጉዳዮች፡ በግል፡ የተለይ፡ ሕግነት፡ ይከለላሉ፡ (ይወሰናሉ) ። የግል፡ የተለይ፡ ሕግ፡ ስንል፡ ያንዱ፡ አገር፡ (መንግሥት) ነጠላው፡ ግላዊ፡ ሰው፡ አንዳንድ፡ ግንኙነቶችን፡ በመምሥረት፡ የተሳሰረቸው፡ ማለታችን፡ ነው ። የሰውን፡ አዳም፡ ጉዳዮችን — ማለት፡ ለማግባት፡ የችሎታ፡ መብት፡ አለውን፡ የልጆቹ፡ መብቶች፡ እነየቱ፡ ናቸውን፡ እና፡ መሰል፡ ጉዳዮች፡ የኾኑትን — ፍርድ፡ ቤቱ፡ እንዲወስን፡ ይገባዋል ። እንደዚህ፡ ያሉ፡ ነገሮችን፡ የሚወስነው፡ ሕግ፡ የተለይ፡ ግላዊ፡ ሕጉ፡ ተብሎ፡ ይጠራል ። በብዙ፡ አገሮች፡ የተለይ፡ የኾነው፡ ግላዊ፡ ሕግ፡ የተንቀሳቃሽ፡ ሀብት፡ (ንብረት) ውርሻ፡ ጉዳዮችን፡ ኹሉ፡ ይወስናል ። በግላዊ፡ የተለይ፡ ሕግ፡ የሚወስኑት፡ ጉዳዮች፡ በያንዳንዱ፡ አገር፡ (መንግሥት) የግል፡ ኢንቴርናሽናላዊ፡ ሕግ፡ ደንቦች፡ ወይም፡ አንዳንዴ፡ የሕጎች፡ ግጭቶች፡ ተብለው፡ በሚጠሩት፡<sup>76</sup> ውስጥ፡ ይገኛሉ ። ለተለይ፡ ግላዊ፡ ሕግ፡ ለምሳሌ፡ ያኸል፡ ያገሩ፡ ዜጋ፡ የኾነው፡ ሰው፡ ያገሩ፡ ሕግ፡ ወይም፡ ሰውየው፡ መደበኛ፡ ኑዋሪ፡ ለኾነበቱ፡ አገር፡ ሕግ፡ የሚመለከቱትን፡ የሚወስነው፡ ሕግ፡ ነው ።

ባለንበት፡ ባኹኑ፡ ጊዜ፡ የግል፡ ኢንቴርናሽናል፡ ሕግ፡ ያልተዘጋጀ፡ በመኾኑ፡ ህልው፡ ችግሩ፡ በኢትዮጵያ፡ የተጠናጠነ፡ ኹኗል ። ስለግላዊ፡ ኢንቴርናሽናላዊ፡ ሕግ፡

71 የኢትዮጵያ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ እንቀጽ፡ ፩፻፳፭ ።

72 የኢትዮጵያ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ እንቀጽ፡ ፩፻፺፱ ።

73 የኢትዮጵያ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ እንቀጽ፡ ፩፻፳፭ ።

74 የኢትዮጵያ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ እንቀጽ፡ ፩፻፺፱ ።

75 የኢትዮጵያ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ እንቀጽ፡ ፩፻፳፭ ።

76 ኢንፍራ፡ (ዛቅ፡ ብሎ) እንደምናየው፡ በኢትዮጵያ፡ የተለይ፡ ግላዊ፡ ሕግ፡ ያዳምንና፡ የተንቀሳቃሽ፡ ሀብት፡ ውርሰት፡ ጉዳዮችን፡ ይዳኛል ።

በፍትሐ ፡ ብሔር ፡ ሕጉ ፡ ረቂቅ ፡ ተዘጋጅተው ፡ የነበሩት ፡ ውሳኔዎች ፡ በመጨረሻ ፡ ሕጉ ፡ ተሠርቶ ፡ በወጣ ፡ ጊዜ ፡<sup>77</sup> አልተጨመሩም ፡ ነበረ ፡ እነዚህ ፡ የሕግ ፡ መሰናዶች ፡ (ኮዲፊኬሺን) እስቲዘጋጁ ፡ ድረስ ፡ ጉዳዩ ፡ በተቋረጠ ፡ ነገር ፡ ሕግ ፡ (የቀደመ ፡ ውሳኔ) መሠረት ፡ መወሰን ፡ ይኖርበታል ። በጉዳዩ ፡ የኢትዮጵያ ፡ ነገሮችን ፡ ከመገምገማችን ፡ በፊት ፡ በዚህ ፡ ጉዳይ ፡ ሌሎች ፡ አገሮች ፡ የያዙዋቸውን ፡ አቀራረቦች ፡ እስቲ ፡ እንመርምር ።

ወደሚገኘው ፡ (ወደሚገኘው) የተለይ ፡ ግላዊ ፡ ሕግ ፡ አቀራረቦች ፡

እንዲቀና ፡ (እንዲያመች) ሲባል ፡ የፍትሐ ፡ ብሔር ፡ ሕግ ፡ አቀራረብ ፡ የጋራ ፡ ልማዳዊው ፡ ሕግ ፡ (ኮሞን ፡ ሎው) አቀራረብና ፡ የላቲን ፡ አመሪካዊው ፡ አቀራረብ ፡ ተብለው ፡ ሲጠሩ ፡ ወደሚችሉ ፡ ሦስት ፡ ኮለል ፡ ብለው ፡ ተለይተው ፡ የተመደቡ ፡ ጻፏ ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ ጉዳይ ፡ አቀራረቦች ፡ ተይዘዋል ።

ምንም ፡ እንኳ ፡ አንዳንድ ፡ ወደምህላው ፡ ፊታቸውን ፡ ቢያዘሩም ፡ የብሔራዊ ፡ (ፍትሐ)ሕግ ፡ አገሮች ፡ የሾኑት ፡ በትንሹም ፡ ሽን ፡ በትልቁ ፡ ተወላጅነትን ፡ የሚገኝው ፡ የተለይ ፡ ግላዊ ፡ ሕግን ፡ እድርገው ፡ ተቀብለውታል ። ለምሳሌ ፡ ያቨል ፡ የፈረንሳይ ፡ ፍትሐ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፫ ፡ “ስለ ፡ ሰዎች ፡ ሹነታና ፡ መብቶች ፡ የሚመለከቱ ፡ ሕጎች ፡ ምንም ፡ እንኳ ፡ በውጭ ፡ አገር ፡ የሚቀመጡ ፡ ቢሆኑም ፡ ቅሉ ፡ ፈረንሳይ ፡ ሰዎችን ፡ (ሹሉ) ይዳኛሉ” ሲል ፡ እንዲሁም ፡ የፈረንሳይ ፡ ግላዊ ፡ ኢንቴርናሽናል ፡ ሕግ ፡ ደንቦች ፡ በፈረንሳይ ፡ አገር ፡ የሚቀመጡ ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ የተወላጅነታቸው ፡ ሕግ ፡ ነው።<sup>78</sup> ሲል ፡ ያጸናል ። የኢጣልያው ፡ ፍትሐ ፡ ብሔር ፡ ሕግ ፡ አንቀጽ ፡ ፲፭ ፡ “የሰዎች ፡ አቋምና ፡ የችሎታ ፡ መብት ፡ እንዲሁም ፡ የቤተሰብ ፡ ግንኙነታቸው ፡ (ጉዳያቸው) የሚጻፈው ፡ በሰዎቹ ፡ (በራሳቸው) ሕግ ፡ ነው።<sup>79</sup>” ሲል ፡ ያትታል ። የግሪክም ፡ ሕግ<sup>80</sup> ፡ የሒንዲያ ፡ ሕግ<sup>81</sup> ፡ የባልጌሪያ ፡ ሕግ<sup>82</sup> ፡ እንዲሁም ፡ የብዙ ፡ ሌሎች ፡ ኤውሮጳዊ ፡ አገሮች ፡ እና ፡ የብሔራዊውን ፡ (ፍትሐ ፡ ብሔር) ሕግ ፡<sup>83</sup> የሚጠቀሙበት ፡ አገሮች ፡ ሕግ ፡ ውጤት ፡ ያው ፡ ነው ።

በተወላጅነት ፡ የመጠቀምን ፡ ምክንያቶች ፡ ስንመረምር ፡ ምክንያቶቹ ፡ ታሪካዊ ፡ ማለት ፡ የዝግጅቱን ፡ ንድፈ-ሐሳባዊ ፡ (ቴዎራቲካል) ጠባይ ፡ ሲከተሉ ፡ የሚችሉ ፡

77 ዲቬድ ፡ ፍትሐ ፡ ብሔር ፡ ሕግ ፡ ለኢትዮጵያ ፡ ፴፮ ፡ ቴሌዶን ፡ ሎው ፡ ፊዚው ፡ (የቴሌዶን ፡ ሕግ ፡ መጽሐት) ፻፳፮፮ (፲፱፻፳፫) ።

78 ፕላኒየል ፡ ትራቲስ ፡ እን ፡ ሲቬል ፡ ሎው ፡ (በፍትሐ ፡ ብሔር ፡ ሕግ ፡ ሳይ ፡ ምርምር ፡ ቅንጅት ፡ ፻፳፱፱ ፡ (፲፱፻፶፱ ፡ እንግሊዝኛ ፡ ትርጉም) ፡ ምርምርን ፡ ይመለከታል ።

79 ምክንያታዊ ፡ የኢጣልያው ፡ የሕጎች ፡ ግጭት ፡ ደንቦች ፡ ፳፭ ፡ ቴሌዶን ፡ ሎው ፡ ፊዚው ፡ (ቴሌዶን ፡ የሕግ ፡ መጽሐት) ፳ ፡ ፳፭ (፲፱፻፶፱) ምርምርን ፡ ይመለከታል ።

80 ኒኮሎታውሎስ ፡ የግል ፡ ኢንቴርናሽናላዊ ፡ ሕግ ፡ ባዲሉ ፡ የግሪክ ፡ ፍትሐ ፡ ብሔር ፡ ሕግ ፡ ፳፫ ፡ ቴሌዶን ፡ የሕግ ፡ መጽሐት ፡ ፻፶፱፱ ፡ ፻፶፱፱ (፲፱፻፵፱) ምርምርን ፡ ይመለከታል ።

81 ድርባንግ ፡ ኮንፍሊክት ፡ እፍ ፡ ሎውስ ፡ ኢን ፡ ሪሰንት ፡ ኢስት ፡ ፍርጊያን ፡ ትራቲስ ፡ (የሕጎች ፡ ግጭት ፡ በቅርቡ ፡ ጊዜ ፡ የምሥራቅ ፡ ኤውሮጳውያን ፡ ስምምነቶች) ፡ ፭ ፡ አሜሪካን ፡ ጆርናል ፡ እፍ ፡ ኮምፓራቲቭ ፡ ሎው ፡ (የሕግ ፡ ማስተያያዝ ፡ አሜሪካዊ ፡ መጽሐት) ፻፶፱፱ ፡ ፻፶፱፱ ፡ (፲፱፻፶፮) ምርምርን ፡ ይመለከታል ።

82 ኢቢድ ፡ (ከዚያው) ።

83 ፩ ፡ ራቤል ፡ የሕጎች ፡ ግጭት ፡- (እንግሊዝኛ/አመጣጣኝ ጥናት) ኮምፓራቲቭ ፡ ስቴዲ ፡ ፻፶፫-፻፶፯፻፶፯ (፳፱ ፡ እትም ፡ ፲፱፻፶፮) ይመለከታል ። ደግሞም ፡ ምክንያታዊ ፡ ስፕራ ፡ (ከሳይ) ማሳሰቢያ ፡ ቀ. ፡ ፳፱ ፡ ይመለከታል ።

ወይም፡ እንዲያው፡ የሚዳሰስና፡ የሚጨበጥ፡ ፍሬን፡ የሚሰጡ፡ (ፕራክቲካል) ምክንያቶች፡ ሲኾኑ፡ ይችላሉ ። በኢጣልያው፡ ሕግ፡ ላይ፡ አስተውሎውን፡ በመጣል፡ ባጀገረዋል፡ ዓ. ም. ፍትሐ፡ ብሔር፡ ሕግ፡ መሠረት፡ የተወላጅነትን፡ መሠረተ-ሐሳብ፡ ይዞ፡ መቁየት፡ ከኹለት፡ ምክንያቶች፡ የተነሣ፡ ነው። እንዲሁ፡ ታሪካዊ፡ ሲኾን፡ ሌላው፡ ፖሊቲካዊ፡ ምክንያት፡ ነው፡ ሲል፡ እንዲሁ፡ ጸሐፊ፡ አስተያየቱን፡ ሰጠ <sup>84</sup>። የተወላጅነት፡ ልም፡ እጅግ፡ በበለጥ፡ የዳበረው፡ (የለማው) በኢጣልያ፡ የመተባበር፡ እንቅስቃሴ፡ ዘመን፡ ማንኛውን፡ በተባለው፡ አንድ፡ ኢጣልያናዊ፡ እጅ፡ እንደኾነ፡ ያመለክታል ። የማንኛውን፡ ዐይነት፡ የሐሳብ፡ ምርምር፡ ሕግ፡ የተለይ፡ ግላዊ፡ እንጂ፡ ግዝእታዊ፡ (የምድር፡ ግዛት፡ ስፋት) አይደለም፤ ለተወሰኑ፡ ሰዎች፡ የተሠራ፡ እንጂ፡ ለተወሰነ፡ የምድር፡ ግዛት፡ አይደለም። <sup>85</sup> ነበረ ። በሌላ፡ አነጋገር፡ ሲመለከቱት፡ እንደ፡ ሰው፡ የትም፡ ቢቀመጥ፡ (ቢኖር) <sup>86</sup> ብሔራዊ፡ ሕትን፡ እንደያዘ፡ ይዞራል፡ ነው ። ይኸውና፡ በተለይ፡ ግል፡ ጉዳዮች፡ የሚዳኘው፡ ከምህላዊ፡ ይልቅ፡ ብሔራዊዉ፡ ሕግ፡ ነው ። ደራሲው፡ (ሐሳቡን፡ አመንጨው) እንዳመለከተው፡ የፖሊቲካ፡ ምክንያቱ፡ “በመሰረዱ፡ ግርጌ፡ ከካያ፡ ዓጮት፡ ለበለጠ፡ ጊዜ፡ ከመጠን፡ በላይ፡ ፈንድቆ፡ በነበረው፡ ብሔራዊ፡ (ናጂናሊስቲክ) ሰሜት፡ አብነት፡ እምነቶች፡ (ይክትሪንስ)።” ላይ፡ የቆመ፡ ነው ። እነዚህን፡ አብነታዊ፡ እምነቶችም፡ እንደሚከተለው፡ ከረዥም፡ በትንሹ፡ ከብዙ፡ በጥቂቱ፡ አድርጎ፡ ያጠቃልላቸዋል፡-

“የወጣውን፡ (ውጭ፡ አገር፡ የኼደውን) ተወላጅን፡ ለመዳኘት፡ ያለውን፡ መብቱን፡ አንድ፡ መንግሥት፡ የተወ፡ (የለቀቀ) እንደኾነ፡ የበላይ፡ ገዥ፡ ፈላጭ-ቁራጭ፡ ሥልጣኑን፡ (ሶቬሪይንቲ) አውልቆ፡ መጣል፡ ይኾንበታል፡ እንዲሁም፡ ይህ፡ (ኹነታ) ቢገለበጥ፡ ወይም፡ ቢዟዟ፡ ተቀባዩ፡ አገር፡ ለሱ፡ ያልተሠሩትን፡ ሕጎች፡ የፈጸመበት፡ እንደኾነ፡ አገሩን፡ ትቶ፡ የወጣውን፡ ሰው፡ (ኤሚግራ) መንግሥት፡ የበላይ፡ ገዥ፡ ፈላጭ-ቁራጭ፡ ሥልጣኑን፡ መጣስ፡ ይኾንበታል፤ ለመደምደሚያም፡ አገሩን፡ ለቅቆ፡ የወጣው፡ ሰው፡ ካባት፡ (ከናት) አገሩ፡ ጋራ፡ የሚኖረው፡ ሕጋዊ፡ መተሳሰሪያ፡ ለብሔራዊ፡ ወግና፡ ሥርዐቶች፡ (ኢኒስቲቲዩሺንስ) ታማኝነቱን፡ ማዳበሪያ፡ ይኾን፡ ዘንድ፡ ያለውን፡ የሚጨምር፡ ነው ።”

እንግዲህ፡ በስተሌላ፡ መንገድ፡ ሲመለከቱት፡ በውጭ፡ አገር፡ የሚኖሩ፡ ኢጣልያውያንን፡ በኢጣልያኑ፡ ሕጎች፡ ማሰሩ፡ (ተጠያቂ፡ ማድረጉ) በኢጣልያ፡ በጣም፡ የሚጠቅማት፡ ነበረ፡ ማለት፡ ነው። በጣልያን፡ አገር፡ ለሚቀመጡ፡ የውጭ፡ አገር፡ ሰዎችም — መቸም፡ ቀጥራቸው፡ በጣም፡ ያነሰ፡ ነበረ — እንደዚሁ፡ የመሰለ፡ አያያዝ፡ እንዲደረግላቸው፡ ዐጸፋው፡ ጠየቀ ።

አንዱ፡ ሌላ፡ ደራሲ፡ በግሪክ፡ ሕግ፡ ላይ፡ ምርምሩን፡ ሲጥል <sup>87</sup>፡ ወደ፡ ልዩ፡ ልዩ፡ ያለም፡ ክፍለ-ሀገሮች፡ የሚወጡ፡ (በኢትዮጵያም፡ ቅሉ፡ ቀጥራቸው፡ በቂ፡ ጉላት፡ ያለው፡ አሉ) ቀጥራቸው፡ ከፍ፡ ያለ፡ የግሪክ፡ ተወላጆች፡ ስላሉ፡ እና፡ “በዚ

<sup>84</sup> ከላይ፡ ማስገንዘቢያ፡ (ማሳሰቢያ) ቀ. ሩ፬፡ በምክንያታዊነት፡ ገጽ፡ ፩፪ ።

<sup>85</sup> በስታምቢርግ፡ ኬሊስ፡ አን፡ ከንፍሊክትስ፡ (በጥቂቶች፡ ላይ፡ ያሉ፡ ነገሮች) ፩፡ (የጀገረዋል)፡ የማንቲኒን፡ ንድፈ-ሐሳብ፡ ምርምር፡ ይመለከታል ።

<sup>86</sup> ከዚህ፡ ወጣ፡ ያለው፡ ልማድ፡ ሰውየው፡ በሚቀመጥበት፡ አገር፡ (መንግሥት) የሕዝብ ሰላማዊ፡ ሥነ፡ ሥርዐት፡ (የሕዝብ፡ ጸጥታ) የመንግሥቱ፡ ሕግ፡ እንዲፈጸም፡ በሚያስፈልግበት፡ ብቻ፡ ላይ፡ ነው። እነዚህ፡ የፈረንሳይ፡ ፍትሐ፡ ብሔር፡ ሕግ፡ እንቀድ፡ ፫፡ “የፖሊስና፡ የሕዝብ፡ ጸጥታ፡ ሕጎች” በግዛቱ፡ ውስጥ፡ ያሉትን፡ ኑዋሪዎች፡ ኹሉ፡ ይዳኛሉ፡ ሲል፡ ያትታል ።

<sup>87</sup> ከላይ፡ ማስገንዘቢያ፡ ቀ. ሩ፮፡ በኒኮሌቶፖውሎስ፡ ገጽ፡ ፪፻፺፩ ።

ያው ፡ መቀጠሉ ፡ ራስን-ማትረፈያ ፡ (ማዳኛ ፡ ወይም ፡ መጠበቂያ) የተባለውን ፡ የተወላ ጅነቱን ፡ ዝግጅት ፡ (ሲስቴም) ወደ ፡ መተው ፡ ለመምራት ፡ (ለመውሰድ) ከዚህ ፡ የበለጠ ፡ በቂ ፡ ገይል ፡ ያለው ፡ ሌላ ፡ ማናቸውም ፡ ምክንያት ፡ ሊኖር ፡ ” አይችልም ፡ ሲል ፡ ያትታል ፡ ይህ ፡ በውጭ ፡ አገር ፡ የሚኖሩ ፡ ተወላጆችን ፡ የተለይ ፡ ግላዊ ፡ አቋምን ፡ ለመቁጣጠር ፡ የመሻቱ ፡ ጉዳይ ፡ ፖሊቲካዊ ፡ ፍልሰፍና ፡ እምነትን ፡ (አይዲዮሎጂ ፡ ወይም ፡ ሐሳብ ፡ ቅንጅትን) ሳያወላውሉ ፡ አጥብቆ ፡ ከመከተሉ ፡ እንኳ ፡ ተቀዳሚነት ፡ አለው ፡ ለምሳሌ ፡ ያክል ፡ ሓንግሪንና ፡ ባልጌሪያን ፡ በመሰሉ ፡ የሶሺያሊስት ፡ መንግሥታት ፡ መካከል ፡ ያሉ ፡ ስምምነቶች ፡ ተወላጅነትን ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ መነሻ ፡ መሠረት ፡ አድርገው ፡ ይዘውታል ፡ አንዱ ፡ ጸሐፊ ፡ በዚህ ፡ ስምምነት ፡ ላይ ፡ አስተያየቱን ፡ ሲጥል <sup>88</sup> ፡ የተወላጅነቱን ፡ ልም ፡ እንደገና ፡ ማጽደቁ ፡ “የሚያስደንቅ ፡” እና ፡ ከሶሺያሊስት ፡ ንድፈ-ሐሳብ ፡ ጋራ ፡ የማይሰማግ ፡ ነው ፡ ይላል ፡ “በዚህኛው ፡ ወይም ፡ በዚያኛው ፡ ሶሺያሊስት ፡ አገር ፡ ኮምሬድ ፡ (በሶሺያሊስት ፡ ወይም ፡ በኮሚኒስት ፡ አገሮች ፡ የነፍስ-ወከፍ ፡ ርስ-በርስ ፡ መጠራሪያ ፡ ‘ገድዶ ፡’ እንደማለት ፡ ቅጽል ፡ ነው) ላይ ፡ የዚህን ፡ ወይም ፡ የዚያኛውን ፡ ሕግ ፡ እንዲፈጸምበት ፡ ማድረጉ ፡ ለጉዳዩ ፡ እግባብ ፡ የሌለው ፡ የማያስፈልግ ፡ ትርፍ ፡ ነገር ፡ አይኾንምን ፡” ሲል ፡ ይጠይቃል ፡ ውጤቱን ፡ “ከቶ ፡ በማይጣሰው ፡ የያንዳንዱ ፡ ሶሺያሊስት ፡ መንግሥት ፡ የበላይ ፡ ገዢ ፡ ፈላጭ-ቂራጭ ፡ ሥልጣን ፡” መሠረት ፡ ለመግለጥ ፡ ሲቻል ፡ የሚቀመጡባቸው ፡ በሌላ ፡ የሶሺያሊስት ፡ አገሮች ፡ ቢኾንም ፡ እንኳ ፡ ቅሉ ፡ ካገር ፡ ውጭ ፡ (ከወሰን ፡ ድንበር ፡ ወዲያ) የሚቀመጡ ፡ ተወላጆችን ፡ ለመቁጣጠር ፡ መሻቱ ፡ ከፍ ፡ ያለ ፡ ይመስላል ፡

ለመጨረሻ ፡ ካገር ፡ ውጭ ፡ የሚቀመጡ ፡ ቅጥራቸው ፡ የበዛ ፡ ተወላጆች ፡ ያሏቸው ፡ አገሮች ፡ የዜጎቻቸውን ፡ ግላዊ ፡ አቋም ፡ በተለየም ፡ በጋብቻ ፡ እና ፡ በቤተሰቡ ፡ ረገድ ፡ በባዕድ ፡ የሕግ ፡ ቅንጅት ፡ ከነባዕድ ፡ ሐሳቡ ፡ ይዳኙብናል ፡ ብለው ፡ ሊፈሩ ፡ ይችላሉ ፡ አንዱ ፡ ጸሐፊ ፡ ቢልጂግ ፡ ሆላንድና ፡ ሉክሳንቡርግ ፡ የተወላጅነት ፡ ቅንጅትን ፡ (ሲስተም) <sup>89</sup> የተከተሉበትን ፡ ምክንያት ፡ ለይቶ ፡ ሲያወጣ ፡ “ብዙ ፡ ምሥራቃዊ ፡ አገሮች ፡ በፍጹም ፡ የተለየ ፡ የጋብቻ ፡ እና ፡ የወላጅ-የልጅ ፡ ዝምድናዎች ፡ አስተያየቶች ፡” በላሏቸው ፡ ነው ፡ ሲል ፡ ያስተውላል ፡ ምህላውን ፡ በነዚያ ፡ አገሮች ፡ ላደረጉት ፡ ዜጎቻቸው ፡ ጥንድ ፡ (ድርብ) ጋብቻ ፡ (በጋሚ) ወይም ፡ ይህን ፡ የመሰለ ፡ ጉዳይን ፡ ሕጋዊ ፡ ነው ፡ ብለው ፡ የምዕራብ ፡ አገሮች ፡ እንዲቀበሉ ፡ አያስፈልግም ፡ በሰዚህም ፡ ለተለይ ፡ ግላዊው ፡ ሕግ ፡ የሚኾነው ፡ ከምህላው ፡ ይልቅ ፡ የተወላጅነቱ ፡ ሕግ ፡ ሊኾን ፡ ማስፈለጉ ፡ እንዲጸና ፡ ሲል ፡ ይተቻል ፡

ብዙ ፡ አገሮች ፡ ተወላጅነትን ፡ እንደየተለይ ፡ ግል ፡ ሕግ ፡ መሠረት ፡ አድርገው ፡ የተቀበሉበት ፡ እንደዚህ ፡ ለመሰሉት ፡ ምክንያቶች ፡ ሲሉ ፡ ነው ፡

እንግሊዝንና ፡ የተባበረው ፡ የአሜሪካ ፡ መንግሥታትን ፡ ምህላውን ፡ እንደየተለይ ፡ ግላዊ ፡ ሕግ ፡ መሠረት ፡ አድርገው ፡ እንዲቀበሉት ፡ ያደረጉዋቸው ፡ ወይም ፡ የመረዋቸው ፡ የዚሁ ፡ ዐይነት ፡ ግምገማች ፡ ናቸው ፡ የአንግሎ-አሜሪካ ፡ ሕግ ፡ ግጭቶች ፡ በመዠመሪያ ፡ በሐብር ፡ ይዘጋጁ ፡ (ይውጡ) እንጂ ፡ ከዚያ ፡ በኋላ ፡ ባሉት ፡ ጊዜያቶች ፡ በአሜሪካው ፡ የሕግ ፡ ምሁር ፡ ጆሴፍ ፡ ስቶሪ <sup>90</sup> ፡ ጽሑፎች ፡ እጅግ ፡ የላቀውን ፡ የመንቀ

<sup>88</sup> ከላይ ፡ ማስገንዘቢያ ፡ ቁ. ፳፩ ፡ በድርብገግ ፡ ገጽ ፡ ፪፻፶፮ ፡  
<sup>89</sup> ሜይጂርስ ፡ በግል ፡ እንቴርናሺናላዊ ፡ ሕግ ፡ ላይ ፡ የቤኔሉክሱ ፡ (ቤልጅግ ፡ ሆላንድና ፡ ሉክሳንቡርግ ፡ አንድ ፡ ላይ ፡ የሚጠሩበት ነው) ቃል-ኪዳን ፡ ፪ ፡ ሕግን ፡ የማስተያያው ፡ (ማንጣጠሪያው) አሜሪካዊ ፡ መጽሔት ፡ ፩-፪ ፡ (፻፱፻፱) ፡  
<sup>90</sup> ከላይ ፡ ማስገንዘቢያ ፡ ቁ. ፳፭ ፡ በስቃምበርግ ፡ ገጽ ፡ ፫ ፡ ያለውን ፡ ምርምር ፡ ይመለከታል ፡

ሳቀሻ፡ ገይሉን፡ ያገኘው፡ የግዝእታዊነትን፡ ንድፈ-ሐሳብ፡ ተከትሏል። የግዝእታዊነት፡ ንድፈ-ሐሳብ፡ ፍሬ፡ ነገሩ፡ የያንዳንዱ፡ መንግሥት፡ ሕጎች፡ በአገሩ፡ ወሰን፡ ከልሎች፡ ውስጥ፡ እንጂ፡ ከዚያ፡ ውጭ፡ አይጸኑም፡ ነው። ሰዎች፡ ብሔራዊ፡ ሕጋቸውን፡ ተሸክመው፡ አይንከራተቱም፤ ይልቁንስ፡ የሚኖሩበት፡ አገር፡ ሕጎች፡ ተገዥ፡ ናቸው፡ እንጂ። ስለዚህም፡ ዳኚው፡ የተለይ፡ ግላዊው፡ ሕግ፡ ከተወላጅነቱ፡ ሕግ፡ ይልቅ፡ የሰውየው፡ ምህላው — ከዚያው፡ ለመቅረት፡ ዐቅዶ፡ የነበረበቱ፡ ቦታ፡ ማለት፡ ነው — ሕግ፡ ነው።

ከዚህም፡ በላይ፡ በቅኝ፡ ግዛቶች፡ ውስጥ፡ ካልኾነ፡ በቀር፡ ከሌላው፡ ጋራ፡ ሲመጣጠን፡ ከእንግሊዝ፡ አገር፡ ውጭ፡ የሚቀመጡ፡ እንግሊዛውያን፡ ጥቂት፡ ነበሩ። በቅኝ፡ ግዛቶችም፡ ውስጥ፡ የሕግ፡ ቅንጅቱን፡ የጨበጠችው፡ ወይም፡ የምትቁጣጠረው፡ እንግሊዝ፡ ነበረች፤ እስፈላጊ፡ መሰሎ፡ በሚታያት፡ ላይ፡ የብሪታንያውን፡ ሕግ፡ በብሪታንያ፡ ተወላጆች፡ ላይ፡ መፈጸሙን፡ ለማረጋገጥ፡ ትችል፡ ነበረ። እንደዚሁም፡ ምህላውን፡ እንደገዥ፡ የተለይ፡ ግላዊው፡ ሕግ፡ በማድረግ፡ የአሜሪካ፡ ግዛቶች፡ (አገሮች፡ ወይም፡ መንግሥቶች) ቀጥረው፡ ከፍ፡ ባለው፡ ከውጭ፡ አገር-መጠች፡ ላይ፡ የቀጥጥር፡ ከንዳቸውን፡ ለማሳረፍ፡ ቻሉ፤ መቸም፡ ዛሬም፡ ቢኾን፡ ቅሉ፡ መደበኛ፡ መኖሪያቸውን፡ ከአገር፡ ውጭ፡ ያደረጉ፡ አሜሪካውያን፡ ጥቂቶች፡ ናቸው።

ጥቂቱ፡ የላቲን፡ አሜሪካ፡ መንግሥታት፡ የተቀላቀለ፡ ቅንጅትን፡ ይከተላሉ። ምህላዎቻቸውን፡ በዚያው፡ ባደረጉ፡ የውጭ፡ አገር፡ ሰዎች፡ ላይ፡ የዚያው፡ ያገሩ፡ ሕግ፡ ይፈጸምባቸዋል — እስከዚህም፡ ድረስ፡ የጋራ፡ ልማድ፡ ሕግ፡ (ኮምን፡ ሎው፡) አቀራረብን፡ ይከተላሉ። ይኹን፡ እንጂ፡ በሌላ፡ አገሮች፡ መደበኛ፡ መኖሪያቸውን፡ ያደረጉ፡ ተወላጆቻቸውን፡ ግላዊ፡ ግንኙነቶቻቸውን፡ ለመዳኘት፡ የሚጠቀሙበት፡ ብሔራዊ፡ ሕግን፡ ነው። በቺሌ፡ በኮሎምቢያ፡ በኤኩዋዶር፡ በኮስታሪካ፡ በኤልሳልቫዶር፡ በፔሩ፡ በቪኔዙዊላ፡ እና፡ በሜክሲኮ፡<sup>91</sup> የተያዘው፡ አቀራረብ፡ ጥቂት፡ በመለዋወጥ፡ ይኸው፡ ነው። ይህ፡ የፍትሕ፡ ብሔራዊ፡ ሕግ፡ አገሮችን፡ ዐላማ፡ (ምንባራቸውን፡ በውጭ፡ አገር፡ ያደረጉ፡ ተወላጆቻቸውን፡ መቁጣጠሩን፡ ማለት፡ ነው፡) ያከናውናል።

በግል፡ ኢንቴርናሺናላዊ፡ ሕግ፡ ላይ፡ በንድፍ፡ የቀረበው፡ ረቂቅ፡ ከዐምስት፡ ዓመታት፡ በላይ፡ መደበኛ፡ መኖሪያቸውን፡ በፈረንሳይ፡ አገር፡ ያደረጉት፡ የውጭ፡ አገር፡ ሰዎች፡ አቋማቸውና፡ የችሎታ፡ መብታቸው፡ በፈረንሳይ፡ ሕግ፡ እንዲጸኝ፡ በማድረግ፡ ሲወርድ፡ ሲዋረድ፡ የመጣውን፡ አቀራረብ፡ የሚያሻሽል፡ ነው። በሌላ፡ ማንኛቸውም፡ ስፍራ፡ ምህላዎቻቸውን፡ ያደረጉ፡ ፈረንሳውያን፡ በፈረንሳይ፡ የተለይ፡ ግላዊ፡ ሕግ፡<sup>92</sup> ተጠያቂ፡ ወይም፡ ተገዢ፡ መኾናቸውን፡ ይቀጥላሉ።

ቀጥረው፡ ከፍ፡ ያለ፡ ዜጎቿ፡ ምንባራቸውን፡ በውጭ፡ አገር፡ ላደረጉባት፡ አገር፡ እና፡ ቀጥረው፡ ከፍ፡ ያለ፡ የውጭ፡ አገር፡ ሰዎች፡ መደበኛ፡ መኖሪያቸውን፡ ላቋቋሙባት፡ አገር፡ ምናልባት፡ እንደዚህ፡ ያለው፡ አቀራረብ፡ የሚበጃት፡ ይኾናል። ቢኾንም፡ በመንግሥታት፡ መካከል፡ ክፋ-ፈቃድን፡ (-ስሜትን) የሚፈጥር፡ እንጂ፡ የሚረዳ፡ አይደለም፤ እንድ፡ መንግሥት፡ መካካቸውን፡ በውጭ፡ አገር፡ ላደረጉ፡ ዜጎቹ፡ የተለይ፡ ግላዊ፡ ሕግ፡ የተወላጅነት፡ ሕግ፡ እንዲኾን፡ ያስፈልጋል፡ ብሎ፡ ካመነበት፡ እንኪያውስ፡ በራሱ፡ ዜጎች፡ ላይ፡ ሊፈጽመው፡ የገለጠውን፡ ቀጥጥር፡ በዜጎቻቸው፡ ላይ፡ ሌሎች፡ መንግሥታት፡ ያንኑ፡ እንዲፈጽሙ፡ መንፈግ፡ አይገባውም።

91 ናዴልማን፡ ዘ፡ ከየትሺን፡ አፍ፡ ፈሺዢን፡ አፍ፡ ዘ፡ ባስትማንተ፡ ኮድ፡ (የባስትማንተን፡ ሕግ፡ ስለማሻሻል፡ ያለው፡ ጣጣ)፡ 95፡ የአሜሪካ፡ የኢንቴርናሺናል፡ ሕግ፡ መጽሔት፡ [የፍጥፍ፡ (የፆቶፍ፡)]።  
92 አንቀጽ፡ 85።

ዳኚ ፡ የኾነው ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ በኢትዮጵያ ፡

ከዚህ ፡ በፊት ፡ እንደተነገረው ፡ ለተለይ ፡ ግላዊ ፡ ሕግ ፡ የሚኾኑ ፡ ሕጉጋዊ ፡ (በዐዋጅ ፡ የተነገሩ) ውሳኔዎች ፡ በኢትዮጵያ ፡ የሉም ። ከዚህ ፡ ቀደም ፡ በጉዳዩ ፡ ላይ ፡ ፍርዳዊ ፡ ውሳኔዎች ፡ ማለት ፡ እንዳንዱ ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ መሠረቱ ፡ ተወላጅነት ፡ ነው ፡ እያሉ ፡ ሲበይኑ ፡ ሌሎችም ፡ ምህላው ፡ ነው ፡ እያሉ ፡ ሲወሰኑና ፡ በኹለቱም ፡ መንገዶች ፡ ሲጓዙ ፡ ዌይተዋል ። የዚህ ፡ አንቀጽ ፡ ደራሲ ፡ ላወቃቸው ፡ ጉዳዮች ፡ ከሚኾኑት ፡ ነገሮች ፡ ውስጥ ፡ ኹለት ፡ የከፍተኛው ፡ ፍርድ ፡ ቤት ፡ ውሳኔዎች ፡ ዳኚ ፡ የኾነው ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ የተወላጅነቱ ፡ ነው ፡ ሲሉ ፡ ወሰኑ ። በፔርጂኔላ ፡ እና ፡ በአንቶኒያኒ ፡ መካከል <sup>93</sup> ፡ አቤት ፡ ባዩ ፡ ኢጣልያዊ ፡ ተገዥ ፡ ኹኖ ፡ ምህላዉ ፡ መቸም ፡ በኢትዮጵያ ፡ የኾነው ፡ ከሚሰቱ ፡ ጋራ ፡ ፍርዳዊ ፡ መለያየት ፡ ትእዛዝ ፡ እንዲያገኝ ፡ ጠየቀ ፡ (ፈለገ) ። ፍርድ ፡ ቤቱ ፡ እንዳተተው ፡ ፍርዳዊ ፡ መለያየት ፡ የተባለው ፡ ወግና ፡ ሥርዐት ፡ ኢኒስቲትዩሽን) ለኢትዮጵያዊው ፡ ሕግ ፡ የታወቀ ፡ አይደለም ። ኢጣልያዊው ፡ ሕግ ፡ ሲፈጸም ፡ ይገባል ፡ ሲል ፡ ፍርድ ፡ ቤቱ ፡ በየነና ፡ ፍርዳዊ ፡ መለያየቱን ፡ አዘዘ ። ኢጣልያዊውን ፡ ሕግ ፡ የፈጸመበት ፡ ምክንያቶች ፡ እንደሚከተሉት ፡ ነበረ ፡-

- (፩) አቤት ፡ ባዩ ፡ ኢጣልያዊ ፡ ተገዥ ፡ ስለነበረ ፤
- (፪) መልስ ፡ ሰጪዋም ፡ ኢጣልያዊት ፡ ተገዥ ፡ ስለነበረች ፤
- (፫) ጋብቻው ፡ የተከበረውና ፡ የተፈጸመው ፡ ኢጣልያዊው ፡ ሕግ ፡ በሚፈቅደው ፡ መሠረት ፡ ስለነበረ ፤
- (፬) ለፍርዳዊ ፡ መለያየት ፡ የሚኾን ፡ ውሳኔ ፡ በኢትዮጵያዊው ፡ ሕግ ፡ ውስጥ ፡ ስላልነበረ ፤ እና ፡
- (፭) ኢትዮጵያዊ ፡ ሕግ ፡ ለጉዳዩ ፡ የሚያገለግል ፡ አንዳች ፡ ውሳኔ ፡ ባላደረገበት ፡ ላይ ፡ በውጭ ፡ አገር ፡ ሰዎች ፡ መካከል ፡ በሚነሡት ፡ ነገሮች ፡ የውጭ ፡ አገር ፡ ሕግ ፡ ልሞችን ፡ በግብር ፡ ላይ ፡ ማዋሉ ፡ የኢትዮጵያው ፡ ፍርድ ፡ ቤቶች ፡ ልማድ ፡ ስለነበረ ፡ ነው ።

ይህ ፡ ምርምር ፡ አቤት ፡ ባዩ ፡ ምህላዉን ፡ በኢትዮጵያ ፡ አድርጎ ፡ የነበረ ፡ ሰው ፡ መኾኑን ፡ ህልው ፡ ችላ ፡ ይለዋል ፤ ከዚያም ፡ በላይ ፡ የውሳኔው ፡ ውጤት ፡ ለኢትዮጵያ ፡ ዜጎች ፡ የማይገኘው ፡ መድኃኒት ፡ አቤት ፡ ባዩ ፡ በኢትዮጵያ ፡ ውስጥ ፡ አገኘ ፡ ነው ።

ሌላ ፡ እንደዚሁ ፡ ያለ ፡ ውጤት ፡ ያገኘው ፡ አንድ ፡ ነገር ፡ ባለጉዳይ ፡ ወገኖቹ ፡ ምህላዋቸውን ፡ በኢትዮጵያ ፡ አድርገው ፡ በነበሩት ፡ የግሪክ ፡ ዜጎች ፡ ካትሶውሊስ ፡ ከካትሶውሊስ ፡ ጋራ ፡ <sup>94</sup> ተነሥቶ ፡ በነበረው ፡ ላይ ፡ ነው ። ከድታው ፡ ከመጪዱ ፡ የተነሣ ፡ አቤት ፡ ባዩ ፡ ፍቺን ፡ ፈለገ ። ፍርድ ፡ ቤቱ ፡ በተከራካሪ ፡ ወገኖቹ ፡ ብሔራዊ ፡ ሕግ ፡ መሠረት ፡ ሲወሰን ፡ ይገባል ፡ ሲል ፡ በየነና ፡ በግሪኩ ፡ ፍትሐ ፡ ብሔር ፡ ሕግ ፡ የተመሠረተ ፡ ፍቺን ፡ አዘዘ ። አንድሪያምፓናና ፡ ከአንድሪያምፓናና ፡ ጋራ <sup>95</sup> እና ፡ ዜርቮስ ፡ ከዚርቮስ ፡ ጋራ <sup>96</sup> በነበሩት ፡ ነገሮች ፡ በኢትዮጵያዊው ፡ ሕግ ፡ (ባለጉዳይ ፡ ወገኖች ፡ ምህላዋቸውን ፡ ከዚሁ ፡ ያደረጉ ፡ ነበሩ) እና ፡ በተወላጅነታቸው ፡ ሕጉ ፡

<sup>93</sup> ፍትሐ ፡ ብሔር ፡ ነገር ፡ ቍ. ፪፻፭/፱ ።

<sup>94</sup> ፍትሐ ፡ ብሔር ፡ ነገር ፡ ቍ. ፪፻፶/፱፩ ።

<sup>95</sup> ፍትሐ ፡ ብሔር ፡ ነገር ፡ ቍ. ፪፻፵፩/፱፪ ።

<sup>96</sup> ፍትሐ ፡ ብሔር ፡ ነገር ፡ ቍ. ፪፻፶፪/፱፪ ።

መካከል ፡ ግጭት ፡ ሰላልነበረ ፡ ፍርድ ፡ ቤቱ ፡ ጉዳዩን ፡ አላብላላውም ፡ ከውሳኔም ፡ አልደረሰበትም ፤ በዚህኛው ፡ ሹን ፡ በዚያኛው ፡ መንግሥት ፡ በኹለቱም ፡ ሕግ ፡ መሠረት ፡ ቢሹን ፡ አቤት ፡ ባዩ ፡ ፍቺን ፡ ለማግኘት ፡ ባለመብት ፡ ነበረና ፡ እነዚህ ፡ ነገሮች ፡ የፍትሕ ፡ ብሔሩ ፡ ሕግ ፡ ከጸናበት ፡ ቀን ፡ በፊት ፡ የተወሰኑ ፡ ነገሮች ፡ መሾናቸውን ፡ እንዲገነዘቡት ፡ ያስፈልጋል ፡ ከዚህ ፡ ግርጌ ፡ እንደምናየው ፡ በሕጉ ፡ (ኮዱ) መሠረት ፡ ፍርድ ፡ ቤቶች ፡ ብዙ ፡ ጊዜ ፡ ፍቺን ፡ ለመወሰን ፡ ሲባል ፡ ፍርዳዊ ፡ ሥልጣንን ፡ አያጠልቁም ፡ (አይዙም) ።

በስተሌላ ፡ በክል ፡ ደግሞ ፡ የንጉሠ-ነገሥት ፡ ጠቅላይ ፡ ፍርድ ፡ ቤቱ ፡ በኹለት ፡ ነገሮች ፡ ላይ ፡ ምህላው ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ መሠረት ፡ ይሹን ፡ ዘንድ ፡ ወስኗል ። በዮሐንስ ፡ ፕራታ ፡ እና ፡ በወ/ት. ጸጋይነሽ ፡ መኩንን ፡ መካከል ፡<sup>97</sup> በተነሣው ነገር ፡ ፍርድ ፡ ቤቱን ፡ ያጋጠመው ፡ ሹነታ ፡ ምህላዉን ፡ በኢትዮጵያ ፡ እንዳደረገ ፡ የሞተ ፡ የኢጣልያ ፡ ዜጋ ፡ ጉዳይን ፡ ነበረ ። በኢጣልያ ፡ አገር ፡ ሚስት ፡ አግብቶ ፡ ከሷ ፡ የተወለዱ ፡ ልጆችን ፡ የተወ ፡ ሰው ፡ ነበረ ። ካንዲት ፡ ኢትዮጵያዊት ፡ ጋራም ፡ ዐብሮ ፡ ኑሮ ፡ ከሷ ፡ ደግሞ ፡ በኢጣልያዊ ፡ ሕግ ፡ መሠረት ፡ ከሕግ ፡ ውጭ ፡ (ዲቃላ) የሚቈጠሩ ፡ ልጆችን ፡ ተወ ። በኢጣልያዊ ፡ ሕግ ፡ መሠረት ፡ ዲቃሎች ፡ (ከማእሰራ-ጋብቻ ፡ ውጭ ፡ የተወለዱ ፡) ካባታቸው ፡ ለመውረስ ፡ አይችሉም ። በኢትዮጵያ ፡ ሕግ ፡ መሠረት ፡ የሕግ-ውጭ ፡ ልጅነት ፡ ፅንሰ-ሐሳብ ፡ (ኮንሴፕት) ከቶ ፡ ያልታወቀ ፡ ነው ። አባትነት ፡ እስከታወቀ ፡ ድረስ ፡ በዚህ ፡ ጉዳይም ፡ ላይ ፡ አባትነት ፡ ታውቆላቸው ፡ ነበረ ፡ ልጆች ፡ ሹሉ ፡ ካባታቸው ፡ እኩል ፡ ይካፈላሉ ። ኢጣልያዊው ፡ ሕግ—የተወላጅነቱ ፡ ሕግ ፡ ማለት ፡ ነው—ከሥራ ፡ ላይ ፡ ቢውል ፡ ኑሮ ፡ ኢጣልያዊው ፡ ልጆቹ ፡ ብቻ ፡ ይወርሱ ፡ ነበረ ። ኢትዮጵያዊው ፡ ሕግ—የምህላዉ ፡ ሕግ ፡ ማለት ፡ ነው—ከሥራ ፡ ላይ ፡ ሲውል ፡ ልጆቹ ፡ የሹኑት ፡ ሹሉ ፡ ኢጣልያውያንና ፡ ኢትዮጵያውያን ፡ እኩል ፡ ይካፈላሉ ። የንጉሠ-ነገሥት ፡ ጠቅላይ ፡ ፍርድ ፡ ቤቱ ፡ ምህላው ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ መሠረት ፡ ነው ፡ ሲል ፡ ወስኖ ፡ ኢትዮጵያዊው ፡ ሕግ ፡ እንዲፈጸም ፡ አደረገ ። የፍርዱ ፡ እንግሊዝኛው ፡ ብሂል ፡ የሚከተለውን ፡ ይገልጣል ፡-

“እነሆ ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ የጃቹ ፡ የተወላጅነት ፡ ሕግ ፡ ወይም ፡ በሞተበት ፡ ጊዜ ፡ የነበረው ፡ የምህላዉ ፡ ሕግ ፡ ሊሹን ፡ ይችላል ። ከነዚህ ፡ ሹለቱ ፡ ሕጎች ፡ የትኛውን ፡ እንደሚከተሉ ፡ የሚነድቅ ፡ ሥራዕ ፡ (በፓርላሜንት ፡ የወጣ ፡ ሕግ) በኢትዮጵያ ፡ ካለመኖሩም ፡ በላይ ፡ (ከዚህ ፡ ቀደም) የተቋረጡት ፡ ነገሮች ፡ እንደኛውን ፡ ሕግ ፡ ወይም ፡ ሌላውን ፡ በመከተል ፡ የጸኑ ፡ አልበነረም ። ይሹን ፡ እንጂ ፡ የቅርቡ ፡ ጊዜ ፡ የሰው ፡ ልጅ ፡ ሕግ ፡ ፍልስፍና ፡ አዝማሚያ ፡ ወደ ፡ ምህላው ፡ ሕግ ፡ አጋድሏል ። በኛ ፡ አስተያየት ፡ የምህላው ፡ ሕግ ፡ የቀድሞ ፡ ተወላጅነቱን ፡ ሳይለቅ ፡ ምንባሩን ፡ በተለየ ፡ አገር ፡ ባቋቋመ ፡ ሰው ፡ የተቀሰቀሰ ፡ ፍርዳዊ ፡ ሹነታዎችንና ፡ ግንኙነቶችን ፡ ለመጻኘት ፡ በይበልጥ ፡ በቂና ፡ ተገቢ ፡ ነው ። ስለዚህም ፡ የምህላው ፡ ሕግ ፡ የግል ፡ አቋም ፡ ጉዳዮችን ፡ ሹሉ ፡ የሚዳኝ ፡ ሕግ ፡ እንዲሹን ፡ ይገባል ፡ ስንል ፡ እናስባለን ።”

ይህን ፡ ነገር ፡ ተከትለው ፡ አልፍሬዶ ፡ ፓስቶሪ ፡ ከሚሰስ ፡ አስላኒዲስና ፡ ጆርጅ ፡ አስላኒዲስ ፡ ጋራ ፡<sup>98</sup> በነበረው ፡ ነገር ፡ ላይ ፡ ይሹው ፡ ተፈጽሞበት ፡ በባልና ፡ ሚስት ፡

97 ፡ ፍትሕ ፡ ብሔር ፡ ይግባኝ ፡ ቀ. ፪፻፴፮/፵፪ ።  
98 ፡ ፍትሕ ፡ ብሔር ፡ ይግባኝ ፡ ቀ. ፪፻፴፮/፵፪ ።

መካከል ፡ የንብረት ፡ መብቶች ፡ ጉዳይ ፡ በተወላጅነቱ ፡ ሕግ ፡<sup>99</sup> ከመዳኘቱ ፡ ይልቅ ፡ በጋብቻው ፡ ምህላው ፡ ሕግ ፡ ይዳኛል ፡ ሲባል ፡ ተበየን ።

በተለየም ፡ የፕራታ ፡ ነገር ፡ ውጤት ፡ በኢትዮጵያ ፡ ምህላውን ፡ እንደተለይ ፡ ግላዊ ፡ ሕግ ፡ መሠረት ፡ ማድረጉን ፡ ለገሊና ፡ ሚዛን ፡ ተሰማሚነቱንና ፡ ተገቢነቱን ፡ ከለል ፡ አድርጎ ፡ ያሳያል ። ምህላዎቸውን ፡ በኢትዮጵያ ፡ ያደረጉ ፡ ቊጥራቸው ፡ ከፍ ፡ ያለ ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ እሉ ፤ ኢትዮጵያ ፡ የውጭ ፡ አገር ፡ ሰዎችን ፡ በጣም ፡ ደገና ፡ አድርጋ ፡ ስለምታስተናብርም ፡ አብዛኛውን ፡ ጊዜ ፡ በትውልድ ፡ አገራቸው ፡ ሊያገኙ ፡ ከሚችሉት ፡ ዕድሎች ፡ የሚበልጥ ፡ በሚቀርቡላቸው ፡ በዚህች ፡ አገር ፡ ብዙ ምቹ ፡ ዘመን-ኑሮዎቸውን ፡ (ሕይወታቸውን) በዚሁ ፡ ለማሳለፍ ፡ መምረጥ ፡ ችለዋል ። ቀደም ፡ ብለን ፡ እንዳየነው ፡ በኢትዮጵያውያንና ፡ በውጭ ፡ አገር ፡ ሰዎች ፡ መካከል ፡ ያሉት ፡ ሕጋዊ ፡ ልዩነቶቹ ፡ ጥቂቶች ፡ ናቸው ። ምህላዎቸውን ፡ በሌላ ፡ አገሮች ፡ ያደረጉ ፡ የኢትዮጵያ ፡ ዜጎች ፡ ቊጥር ፡ በጣም ፡ ያነሰ ፡ ነው ። ምህላዎቸውን ፡ በዚሁ ፡ ያደረጉት ፡ የውጭ ፡ አገር ፡ ሰዎቹ ፡ ሕይወታቸውን ፡ በዚሁ ፡ ይኖራሉ ፡ በሙያ ፡ ተግባራቸው ፡ ይሰማራሉ ፡ በዚሁ ፡ አገር ፡ አግብተው ፡ ይወልዳሉ ፡ ይከብዳሉም ። የነዚህን ፡ ሰዎች ፡ እቋምና ፡ የማይንቀሳቀስ ፡ ሀብታቸውን ፡ ውርስ ፡ በማደላደል ፡ (በመመጣን) እና ፡ በመቁጣጠር ፡ ኢትዮጵያ ፡ አውራ ፡ (ብርቱ) ጥቅም ፡ አላት ። አህጉራዊው ፡ ኤውሮጳ ፡ ተወላኔትን ፡ እንደግል ፡ የተለይ ፡ ሕግ ፡ መሠረት ፡ የቈጠረበት ፡ አውራ ፡ ምክንያት ፡ በዚያው ፡ ምህላዎቸውን ፡ ካደረጉት ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ ቊጥር ፡ ይልቅ ፡ በውጭ ፡ አገር ፡ የሚቀመጡ ፡ ቊጥራቸው ፡ በጣም ፡ የበዛ ፡ የራሳቸው ፡ ዜጎች ፡ ስላሏቸው ፡ የዜጎቻቸውን ፡ እቋም ፡ ለመቁጣጠር ፡ ስለፈለጉ ፡ ነው ። በሌላ ፡ አነጋገር ፡ የሚዳኘው ፡ ሕግ ፡ ደንብ ፡ ተቀርፆ ፡ የሚወጣው ፡ በምንም ፡ ዐይነት ፡ ባላነሰ ፡ አኳኋን ፡ ያንኑ ፡ ደንብ ፡ በሥራ ፡ ላይ ፡ በሚያውለው ፡ አገር ፡ ጥቅም ፡ መሠረት ፡ ነው ፡ ማለት ፡ ነው ። ኢትዮጵያ ፡ ጥቅሙዋን ፡ ልትጠብቅ ፡ ያስፈልጋል ፡ ስለዚህም ፡ ምህላውን ፡ እንደተለይ ፡ ግላዊ ፡ ሕግ ፡ መሠረት ፡ ልታደርገው ፡ ይገባል ። ቀደም ፡ ብሎ ፡ እንደተገለጠው ፡ በፍትሐ ፡ ብሔሩ ፡ ሕግ ፡ መሠረት ፡ ምህላው ፡ በቀላሉ ፡ ይለያል ፤ እንዲህ ፡ ከሾነ ፡ ዘንድም ፡ ከምህላው ፡ ይልቅ ፡ ተወላጅነትን ፡ መለየቱ ፡ ይቀላል ፡ በማለት ፡ ተወላጅነት ፡ እዲመረጥ ፡ አይገባም ። ከረዥሙ ፡ በትንሹ ፡ ከብዙው ፡ በጥቂቱ ፡ ፍሬ ፡ ነገሩን ፡ ለማጠቃለል ፡ የተለይ ፡ ግላዊው ፡ ሕግ ፡ ሰውየው ፡ ተወላጅ ፡ ከሾነበቱ ፡ ይልቅ ፡ ምህላውን ፡ ያደረገበቱ ፡ ቦታ ፡ ሕግ ፡ እንዲኾን ፡ ማስፈለጉን ፡ የኢትዮጵያው ፡ ፍርድ ፡ ቤቶች ፡ እንዲያጸኑ ፡ እነሆ ፡ ሐሳብ ፡ ቀርቧል ።

እንደፍቺ ፡ የመሰለውን ፡ የቤተ-ሰብ ፡ እቋም ፡ ጉዳዮችን ፡ ለመወሰን ፡ የኢትዮጵያው ፡ ፍርድ ፡ ቤቶች ፡ የፍርድ ፡ ሥልጣንን ፡ ስለሚያገኙበት ፡ አኳኋን ፡ የሚናገር ፡ ዐብሮ ፡ የሚዘምት ፡ እኩል ፡ የሾነ ፡ ተጫፋሪ ፡ ጉዳይ ፡ አለ ። ከተከራካሪ ፡ ወገኖቹ ፡ አንዱ ፡ ምህላውን ፡ ከዚሁ ፡ ያደረገ ፡ ካልሾነ ፡ በቀር ፡ ፍርድ-ቤቶቹ ፡ የፍርድ ፡ ሥልጣንን ፡ እንደማያገኙ ፡ ተወስኗል ። ሐሎክ ፡ ከሐሎክ ፡ ጋራ<sup>100</sup> ፡ በተነሣው ፡ ነገር ፡ ፍቺን ፡ ፈላጊው ፡ በኢትዮጵያ ፡ አየር ፡ መንገድ ፡ የተቀጠረ ፡ አሜሪካዊ ፡ ነበረ ። ከዚህ ፡ የነበረው ፡ ለተወሰነ ፡ የውል ፡ ዘመን ፡ ሹኖ ፡ ምህላው ፡ በተባበረው ፡ (እ.) መንግሥታት ፡ አላባማ ፡

<sup>99</sup> በዚያ ፡ ነገር ፡ ተከራካሪ ፡ ወገኖቹ ፡ ምህላዎቸውን ፡ በኢትዮጵያ ፡ አድርገው ፡ እንዳልነበረ ፡ ፍርድ ፡ ቤቱ ፡ ማግኘቱን ፡ ይገነዘቧል ። ከላይ ፡ ማስገንዘቢያ ፡ ቊ. ፳፪ ፡ ያለውን ፡ ምርምርና ፡ ዐጻቢ ፡ ጽሑፉን ፡ ይመለከታል ። በፍትሐ ፡ ብሔር ፡ ሕጉ ፡ መሠረት ፡ አሹን ፡ ምህላዎቸውን ፡ ከዚሁ ፡ ያደረጉ ፡ ሹነው ፡ ይገኛሉ ።

<sup>100</sup> ፍትሐ ፡ ብሔር ፡ ይግባኝ ፡ ቊ. ፪፻፵፱/፱ ።



ግዛት፡ ውስጥ፡ ነበረ ። በአላባጣ፡ ሕግ፡ መሠረት፡ የፍቺ፡ ውሳኔን፡ ለማግኘት፡ ቢያንስ፡ ያንድ፡ ዓመት፡ ባንዱ፡ አገር፡ መቀመጡ፡ ለፍርድ፡ ቤቶቹ፡ ፍርዳዊ፡ ሥልጣንን፡ ለማስጠለቅ፡ በቂ፡ ነው፡ ሲል፡ ተከራካሪ ። የንጉሠ-ነገሥት፡ ጠቅላይ፡ ፍርድ፡ ቤቱም፡ በፍጹም፡ ተገቢና፡ ትክክለኛ፡ በሆነ፡ አካላት፡ በኢትዮጵያ፡ የአላባጣ፡ ፍርድ፡ ቤቶች፡ ለጉዳዩ፡ አስፈላጊ፡ ያይደሉ፡ ትርፍ፡ ነገሮች፡ ናቸው፡ ሲል፡ በየነ ። መቀመጥን፡ እንደፍቺ፡ ፍርዳዊ፡ ሥልጣን፡ መሠረት፡ የሚያደርግ፡ በፓርላሜንት፡ የወጣ፡ ሕጉን፡ ከሌለ፡ ዘንድ፡ ለፍርድ፡ ቤቱ፡ ሲባል፡ ቢያንስ፡ ከተከራካሪ፡ ወገኖቹ፡ አንዱ፡ ምህላዉን፡ በኢትዮጵያ፡ ያደረገ፡ እንዲሆን፡ ያስፈልገዋል፡ ሲል፡ ፍርድ፡ ቤቱ፡ በየነ ። ከዚህም፡ የተነሣ፡ አቤቱታውን፡ ሳይቀበሉ፡ እንዲዘጋ፡ ተደረገ ። ፍርድ፡ ቤት፡ አቤት፡ ባዩን፡ ምህላዉን፡ በኢትዮጵያ፡ አድርጎ፡ ባላገኘበት፡ በኮኪኖስ፡ እና፡ በኮኪኖስ፡ መካከል፡<sup>101</sup> በተነሣው፡ ነገርም፡ እንደዚሁ፡ ካለ፡ ውጤት፡ ላይ፡ ተደረሰ ። ባያሌ፡ ሌላ፡ ነገሮች፡ ፍርድ፡ ቤቱ፡ ፍርዳዊ፡ ሥልጣንን፡ ለማያዝ፡ ቢያንስ፡ ከተከራካሪ፡ ወገኖቹ፡ አንዱ፡ ምህላዉን፡ በዚህ፡ ያደረገ፡ መሆኑን፡<sup>102</sup> አለበት፡ ሲል፡ ደጋግሞ፡ አረጋግጧል ። በሕጉ (ኮዱ) መሠረት፡ ጋብቻው፡ እስተቋየበት፡ ድረስ፡<sup>103</sup> የሚሰቲቱ ምህላው፡ የባልየውን፡ ስለሚከተል፡ አኹን፡ ባልየው፡ ምህላዉን፡ በኢትዮጵያ፡ ያደረገ፡ ሰው፡ እንዲሆን፡ የሚገባ፡ መሆኑ፡ መገለጥ፡ ያስፈልገዋል ። ፍርድ፡ ቤቶቹ፡ ፍርዳዊ፡ ሥልጣንን፡ የሚያገኙት፡ በምህላው፡ መሠረት፡ ብቻ፡ ስለሆነ፡ እና፡ ምህላው፡ የተለይ፡ ግላዊ፡ ሕጉ፡ መሠረት፡ የሚሆን፡ ስለሚመስል፡ በፍቺ፡ ክሶች፡ የሚያገለግለው፡ ኢትዮጵያዊው፡ ሕግ፡ ብቻ፡ መሆኑ፡ ከዚሁ፡ ይከተላል ።

ደግሞም፡ ይህ፡ እንደዚህ፡ እንዲሆን፡ ያስፈልገበቱ፡ የሥነ-ሥርዐት፡ (ፕሮሴዱራል) ምክንያት፡ ነው ። በፍትሕ፡ ብሔሩ፡ ሕግ፡ ውሳኔዎች፡ መሠረት፡ የፍቺ፡ ነገሮች፡ ገና፡ ሲነሡ፡ (ሲወጡ) በፍርድ፡ ቤቶች፡ ከመሰማታቸው፡ ይልቅ፡ በመዝናኛሪያ፡ በቤተ-ሰቡ፡ ገላጋዮች፡ (በቤተ-ዘመዱ፡ ሽምግልና፡ ጻዎች) እንዲታዩ፡ ይገባል ። ከጋብቻ፡ የሚነሡ፡ ችግሮች፡ መዝናኛሪያ፡ ለቤተ-ሰቡ፡ ገላጋዮች፡ ሊቀርቡ፡ ሲገባ<sup>104</sup>፡ እንግዲህ፡ የፍርድ፡ ቤቱ፡ ተግባር፡ ፍቺ፡ ተነግሮ፡ (ተወሰነ) ወይም፡ አልተነገረ፡ መሆኑን፡<sup>105</sup> መወሰን፡ ነው ። በወ/ሮ. ዠማነሽ፡ አማረ፡ እና፡ በአቶ፡ ተፈራ፡ ወልደ-ዐማኑኤል፡ መካከል፡<sup>106</sup> በተነሣው፡ ነገር፡ ጠቅላይ፡ ንጉሠ-ነገሥት፡ ፍርድ፡ ቤቱ፡ እንደገለጠው፡

“ፍቺውን፡ በሚመለከተው፡ ጉዳይ፡ ረገድ፡ ፍትሕ፡ ብሔሩ፡ ሕግ፡ ሊፈጽመዋቸው፡ የሚገቡን፡ አንዳንድ፡ ደንቦችን፡ መሥርቷል ። ከኹሉ፡ አስቀድሞ፡ በጋብቻ፡ ኑሮዋቸው፡ ባበሮቹ፡ (በተጋቡት፡ ሰዎች) መካከል፡ የሚነሡትን፡ ችግሮች፡ ኹሉ፡ የሚያቀርቡባቸው፡ የቤተ-ሰብ፡ ገላጋዮች፡ ተብለው፡ የሚጠሩ፡ የሰዎች፡ እከባ፡ እካልን፡ ፍትሕ፡ ብሔር፡ ሕጉ፡ አቋቁመዋል ። . . . የፍቺ፡ ጥያቄ፡ መቅረብ፡ የሚገባው፡ ለቤተ-ሰቡ፡ ገላጋዮች፡ ነው ። የፍቺው፡ ጥያቄ፡ ለቤተ-ሰቡ፡ ገላጋዮች፡ እስተቀረበበት፡ ጊዜ፡ ድረስና፡ እነሱም፡ ውሳኔያቸውን፡ እስተሰጡበት፡ ጊዜ፡ ድረስ፡ ለፍቺ፡ የሚ

101 ፍትሕ፡ ብሔር፡ ነገር፡ ቊ. ፪፻፸፮/፶፪ ።

102 ከላይ፡ ግስገንዘቢያ፡ ቊ. ፶፫፡ ፳፫፡ ፳፫፡ ፳፫፡ ከአንቀጽ ፯፡ ጋራ ። ከላይ፡ ግስገንዘቢያ፡ ቊ. ፶፫፡ ፳፫፡ ካትሰውሊስ፡ ከካትሰውሊስ፡ ጋራ ። ከላይ፡ ግስገንዘቢያ፡ ቊ. ፶፫፡ አንድሪያም፡ ፓናና፡ ከአንድሪያም፡ ፓናና፡ ጋራ ። ከላይ፡ ግስገንዘቢያ፡ ቊ. ፶፫፡ ፳፫፡ ፳፫፡ ከዚርቮስ፡ ጋራ ።

103 የኢትዮጵያ፡ ፍትሕ፡ ብሔር፡ ሕግ፡ አንቀጽ፡ ፪፻፶፱ ።

104 የኢትዮጵያ፡ ፍትሕ፡ ብሔር፡ ሕግ፡ አንቀጽ፡ ፪፻፶፮ — ፪፻፶፭ ።

105 የኢትዮጵያ፡ ፍትሕ፡ ብሔር፡ ሕግ፡ አንቀጽ፡ ፪፻፶፱ ።

106 ፍትሕ፡ ብሔር፡ ይግባኝ፡ ቊ. ፪፻፸፮/፶፫ ።

ኾን ፡ ምንም ፡ የዳኝነት ፡ ሥልጣን ፡ ለፍርድ ፡ ቤቱ ፡ የለውም ። ይኹን ፡  
እንጂ ፡ በገላጋዮቹ ፡ ፍቺ ፡ መነገሩን ፡ ወይም ፡ አለመነገሩን ፡ ፍርድ ፡ ቤቱ ፡  
ለመወሰን ፡ ይችላል ።<sup>107</sup>

ሕጉ ፡ (ፍትሐ ፡ ብሔሩ) ምህላዋቸውን ፡ በዚሁ ፡ ላላደረጉ ፡ ሰዎች ፡ ልዩ ፡ እያያዝ ፡  
እንዲያገኙ ፡ ምንም ፡ ዐይነት ፡ ውሳኔ ፡ አልሠራም ፡ ፍርድ ፡ ቤቱም ፡ ለነሱ ፡ ሲል ፡ ከተ  
ለመደው ፡ ተለይቶ ፡ የወጣ ፡ ነገርን ፡ (ልዩ ፡ እስተያየትን) በሕጉ ፡ ውስጥ ፡ ሰክቶ ፡  
(ከትቶ) ሊያነብ ፡ አይገባውም ። የቤተ-ሰብ ፡ ገላጋዮችን ፡ መመደብ ፡ (መሾም) ወይም ፡  
የቤተ-ሰቡ ፡ ገላጋዮች ፡ በሌሉበት ፡<sup>107</sup> ነገሩን ፡ መስማት ፡ መቀጠል ፡ ለፍርድ ፡ ቤቱ ፡  
ከአእምሮ ፡ ሚዛን ፡ የራቀ ፡ ጉዳይ ፡ ይኾንበታል ። በከኪኖስ ፡ ከኮኖስ ፡ ጋራ ፡<sup>108</sup> በተነ  
ሣው ፡ ነገር ፡ ፍርድ ፡ ቤቱ ፡ እንደገለጠው ፡ እንደዚህ ፡ ያሉት ፡ ሰዎች ፡ የፍቺ ፡ ጥያቄያ  
ቸውን ፡ ለምህላዋቸው ፡ (ለቀበሌዎቻቸው) ፍርድ ፡ ቤቶች ፡ ማቅረቡ ፡ ለአእምሮ ፡ ሚ  
ዛን ፡ የሚሰማማ ፡ ነው ።

ከብዙው ፡ በጥቂቱ ፡ ከረዥሙ ፡ በትንኹ ፡ ፍሬ ፡ ነገሩን ፡ ለማጠቃለል ፡ ባልየው ፡  
ምህላዉን ፡ በኢትዮጵያ ፡ ያደረገ ፡ ካልኾነ ፡ በቀር ፡ ፍርድ ፡ ቤቶቹ ፡ የፍቺ ፡ አቤቱታ ፡  
አይሰሙም ፤ ባልየው ፡ ምህላዉን ፡ ከዚሁ ፡ ያደረገ ፡ ሰው ፡ ከኾነ ፡ ግን ፡ ሚስቲቱም ፡  
በዚሁ ፡ እንደኾነች ፡ ይገነዘባል ። በኢትዮጵያ ፡ ፍቺ ፡ በፍርድ ፡ ቤቱ ፡ ከመታየት ፡  
ይልቅ ፡ በቤተ-ሰቡ ፡ ገላጋዮች ፡ ሊታይ ፡ ይገባዋል ። ዕርግጥ ፡ ነው ፡ የቤተሰቡ ፡ ገላጋ  
ዮች ፡ ነባሩን ፡ (ቋሚውን) ኢትዮጵያዊ ፡ ሕግ ፡ ከሥራ ፡ ላይ ፡ እንዲያውሉት ፡ ይገባል ።  
በፍቺ ፡ ከስ ፡ ጉዳዮች ፡ መደበኛ ፡ መኖሪያቸውን ፡ በዚሁ ፡ ባደረጉ ፡ የውጭ ፡ አገር ፡  
ሰዎች ፡ መካከል ፡ ፍርድ ፡ ቤቶቹ ፡ ተወላጅነትን ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ መሠረት ፡  
አድርገው ፡ የተቀበሉት ፡ እንደኾነ ፡ የቤተ-ሰቡን ፡ ገላጋዮች ፡ ማለፍ ፡ ይኖርባቸዋል ።  
ፍርድ ፡ ቤቶቹም ፡ እንደዚያ ፡ እንዲያደርጉ ፡ የሚያስፈልግበትን ፡ ምክንያት ፡ ማየትም ፡  
አዳጋች ፡ ነው ፤ ከዚህ ፡ በፊት ፡ ለተገለጡት ፡ ምክንያቶች ፡ ሲባል ፡ ምህላዋቸውን ፡  
በዚሁ ፡ ያደረጉ ፡ ሰዎች ፡ ለተወላጅነታቸው ፡ ሕግ ፡ ተዳኝ ፡ ከመኾናቸው ፡ ይልቅ ፡  
ለኢትዮጵያው ፡ ሕግ ፡ ተገዥ ፡ እንዲኾኑ ፡ ያስፈልጋል ። ይህን ፡ አቀራረብ ፡ የተከተሉት ፡  
እንደኾነ ፡ በፍቺ ፡ ከስ ፡ ጉዳይ ፡ ላይ ፡ የውጭ ፡ አገር ፡ ሕግን ፡ የመፈጸሙ ፡ ጣጣ ፡ አይኖ  
ርም ። እንግዲህ ፡ ለፍቺ ፡ ጉዳይ ፡ የዳኝነት ፡ ሥልጣን ፡ ሊኖር ፡ የሚችለው ፡ በምህላው ፡  
መሠረት ፡ ብቻ ፡ ነው ፡ በሕጉ ፡ (ኮዱ) መሠረትም ፡ ፍቺ ፡ ሊነገር ፡ ወይም ፡ ሊወሰን ፡  
የሚገባው ፡ በፍርድ ፡ ቤቶቹ ፡ ከመኾኑ ፡ ይልቅ ፡ በቤተ-ሰቡ ፡ ገላጋዮች ፡ ነው ።

<sup>107</sup> ይኹን ፡ እንጂ ፡ ባንዳንድ ፡ ሹነታዎች ፡ የቤተ-ሰብ ፡ ገላጋዮችን ፡ መሾም ፡ የሚወስድ ፡ ፍሪን ፡ የማይ  
ሰጥ ፡ መስሉ ፡ በሚታይበት ፡ ጊዜ ፡ ፍርድ ፡ ቤቱ ፡ ፍቺውን ፡ ሊወሰን ፡ ይችላል ። ፎርቲ ፡ ከፎርቲ ፡  
ጋራ ፡ ፍትሐ ፡ ብሔር ፡ ነገር ፡ ቀ. ፡ ፩፻፸፱/፱፮ ። በዚያ ፡ ጉዳይ ፡ ላይ ፡ ከተከራካሪ ፡ ወገኖቹ ፡ አንዱ ፡  
እድራሻው ፡ ጠፍቶ ፡ ነበረ ፡ ጠቅላይ ፡ የንጉሡነገሥት ፡ ፍርድ ፡ ቤቱ ፡ የገላጋዮቹ ፡ ድምፅ ፡ ብልሜ ፡  
ፍቺውን ፡ በመንፈጋቸው ፡ ተሳስተው ፡ ነበረ ፡ ሲል ፡ የበየነበቱን ፡ ዜጁ ፡ ከዚጁ ፡ ጋራ ፡ የነበረውን ፡  
ፍትሐ ፡ ብሔር ፡ ይግባኝ ፡ ቀ. ፡ ፩፻፹፩/፱፮ ፡ ይመለከታል ። ስለዚህ ፡ ፍቺውን ፡ የፈቀደውን ፡  
ያነሰ ፡ ድምፅ ፡ መግለጫ ፡ አይደቀም ።

<sup>108</sup> ከላይ ፡ ማስገንዘቢያ ፡ ቀ. ፡ ፩፻፩ ።

## መደምደሚያ ።

በዚህ ፡ አንቀጽ ፡ ተወላጅነትን ፡ ምህላውን ፡ (ምንባርን/መደበኛ ፡ መኖሪያን/መካንን) እና ፡ ዳኚ ፡ የኾኑ ፡ የተለይ ፡ ግላዊ ፡ ሕግን ፡ የሚመለከቱን ፡ የኢትዮጵያ ፡ ሕግ ፡ ለመመራመር ፡ ተሞክሯል ። ያ፲፱፻፴ ፡ ዓ. ም. ተወላጅነት ፡ ሕጉ ፡ የኢትዮጵያ ፡ ተወላጅነትን ፡ የሚያስገኙትንና ፡ የሚያሰጡትን ፡ ግዴታዎችንና ፡ ኹነታዎችን ፡ ይነድቃል ። የፍትሕ ፡ ብሔሩ ፡ ሕግ ፡ የምህላውን ፡ ፍች ፡ አወሳሰን ፡ (ትርጉም) በጉልሕ ፡ ከልሎ ፡ (ወስኖ) ፡ ከዚህ ፡ የሚቀመጡና ፡ የተግባር ፡ ስምሪታቸውን ፡ ወይም ፡ የሥራ ፡ ስምሪታቸውን ፡ በዚህ ፡ ያደረጉ ፡ የውጭ ፡ አገር ፡ ሰዎች ፡ በመጪው ፡ ሰዓት ፡ በተወሰነ ፡ ጊዜ ፡ ኢትዮጵያን ፡ ለቅቆ ፡ ለመኼድ ፡ ጉልሕ ፡ የኾነ ፡ ዐሳብ ፡ ከሌላቸው ፡ የኢትዮጵያ ፡ ነባሮች ፡ (መደበኛ ፡ ኑዋሪዎች) ኹነው ፡ የሚቋጠሩ ፡ የመኾናቸውን ፡ ሕጉን ያወጡ ፡ ዕቅድ ፡ ኮለል ፡ አድርጎ ፡ ያሳያል ። ምንባራቸውን ፡ በዚህ ፡ ያደረጉትን ፡ ቀጥር ፡ ከፍ ፡ ከማለቱ ፡ ጋራ ፡ ሲያስተያይቅ ፡ ለአእምሮ ፡ ሚዛን ፡ በጣም ፡ ተገቢና ፡ ማለፊያ ፡ የኾነው ፡ የቅርቡ ፡ ጊዜ ፡ ውሳኔዎች ፡ አዝማሚያ ፡ ምህላውን ፡ የተለይ ፡ ግላዊ ፡ ሕግ ፡ መሠረት ፡ ወደሚደረግበት ፡ መንገድ ፡ መኾኑን ፡ ያመለክታል ። የተለይ ፡ ግል ፡ ኢንቴርናሽናላዊ ፡ ሕግ ፡ በሚዘጋጅበት ፡ (ኮዲፋይድ) ሰዓት ፡ ምንባር ፡ የተለይ ፡ ግላዊ ፡ ሕጉ ፡ መሠረት ፡ መኾኑን ፡ የሚያሳይ ፡ ውሳኔ ፡ በሕግ ፡ መሰናዶው ፡ (ኮዲፊኬሺን) ውስጥ ፡ እንዲጨመርበት ፡ ያስፈልጋል ።



# NATIONALITY, DOMICILE AND THE PERSONAL LAW IN ETHIOPIA

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## INTRODUCTION

In this article the writer hopes to explore the Ethiopian law of nationality and domicile and the law applicable to determine matters of personal status. In Ethiopia the foreigner has always been welcome. Many foreigners live and work here, often for many years, but do not become Ethiopian nationals. A country with a large foreign population is thus faced with questions of nationality law, questions of who is domiciled there, and questions of what law shall govern the personal status and relations of individuals. In this paper I propose to present the existing provisions of law relating to Ethiopian nationality, review such legal distinctions as exist between Ethiopians and foreigners, discuss the provisions of the Civil Code that cover the domicile of natural persons and to deal with the question of the governing personal law.

## NATIONALITY

### Acquisition and Loss of Ethiopian Nationality

It is provided in Article 39 of the Revised Constitution that "the law shall determine the conditions of acquisition and loss of Ethiopian nationality and of Ethiopian citizenship."<sup>1</sup> The existing law on the subject is the Ethiopian Nationality Law of 1930,<sup>2</sup> which is still in effect. The Civil Code of 1960, it should be noted, contains no provisions with respect to the acquisition or loss of nationality, though it does contain provisions relating to domicile.

There are two basic approaches to determination of nationality and citizenship,<sup>3</sup> that of *jus sanguinis* (nationality by blood) and *jus soli* (nationality by birth). Under the principle of *jus sanguinis*, a child takes the nationality of his parents (where the parents are of different nationality, it is usually the nationality of the father) irrespective of where the child was born. Germany, for example, has adopted parentage as the decisive factor; children born of German parents are German whether born in Germany or abroad while

1. The same provision is contained in Article 18 of the Constitution of 1931.

2. Law of July 24, 1930. Throughout the article the Gregorian calendar will be used unless otherwise indicated. However, Ethiopian cases are cited to the Ethiopian Calendar.

3. Of these two terms, "nationality" is used more in an international context and "citizenship" in a local context. Distinctions between citizens and nationals are frequently made in countries that have colonial possessions. For example, a person born in a possession of the United States is called a national rather than a citizen. United States Code, Title 8, Section 1408. For purposes of international law, there is no distinction between citizens and nationals. See generally, Silving, *Nationality in Comparative Law*, 5 *American Journal of Comparative Law* 410-415 (1956). Nationals of a country having a monarchical form a government such as Ethiopia are sometimes called subjects. As used in this article, "nationality" and "citizenship" have the same meaning.

children of foreigners born in Germany are not German nationals but take the nationality of their parents.<sup>4</sup>

Under the principle of *jus soli*, children born in a nation, whether the parents be nationals or foreigners, become nationals; conversely, children born to its nationals residing abroad, are not nationals.<sup>5</sup> Argentina is classified as a nation in which the territory on which the birth occurs is the exclusive determining factor.<sup>6</sup>

Many nations recognize elements of both principles in their nationality law, with one or the other usually predominating.<sup>7</sup> The United States is primarily a *jus soli* nation. The Fourteenth Amendment to the Constitution provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States...." This provision insured that all the newly emancipated Negroes and their children would be American citizens. This provision also proved of great value during the large wave of immigration to the United States in the late nineteenth century, as all the children born in the United States of newly arrived immigrant parents would be American citizens.<sup>8</sup> Children born abroad are considered citizens of the United States in certain circumstances.<sup>9</sup> Where both parents are American citizens, the child, though born abroad, is considered an American citizen by birth<sup>10</sup> so long as one parent had a residence in the United States or its possessions prior to the birth of the child. If only one parent is a citizen, that parent must have been a resident in the United States or its possessions for a continuous period of at least one year prior to the birth of the child.<sup>11</sup> Where one parent is a citizen who did not reside in the United States for a continuous period of one year prior to the birth of the child, but was present in the United States or its possessions or served in the military services for periods totaling 10 years, at least 5 of which were after attaining the age of 14, a child born abroad is considered a citizen. But such a child must, prior to attaining the age of 23 and after the age of 14, spend at least 5 years continuously in the United States. It is clear that these provisions are very restrictive, and that the prime basis of citizenship in the United States is birth there.

France originally followed the *jus sanguinis* principle very strictly. Under Article 10 of the French Civil Code "every child born of a Frenchman in a foreign country was French." A child born in France of a foreigner was not French, though under the provisions of Article 9 of the Code a child born in France of a foreigner could upon attaining

4. Reich and State Nationality Law of July 27, 1913, paragraph 4. Under Article 116 of the Constitution of the Federal Republic (West Germany) all persons who possessed German nationality or who were accepted as refugees of German stock as of 31 December 1937 are Germans. Persons who lost German nationality by the acts of the Nazi regime are regranted this nationality upon application. In the absence of other provisions, the Law of 1913 is the basic nationality law. Under that law the legitimate child of a German father is German, as is the illegitimate child of a German mother. See the discussion in Oppenheim, *International Law* (8th ed., Lauterpacht). Vol. 1, p. 651.
5. Oppenheim, *ibid.* This would not, of course, include children of foreign diplomatic representatives.
6. Oppenheim, *ibid.*
7. For a listing of the different approaches toward nationality based on a 1935 study see Bishop, *International Law* 415 (2d ed. 1962). The original study will be found in 29 *American Journal of International Law* 248, 256 (1935). Although some changes no doubt have been made, the study gives a general idea as to the distribution of the different approaches.
8. In the case of *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), the Supreme Court held that the child born in the United States of Chinese parents was a citizen of the United States, though at the time the parents were not eligible to become naturalized citizens. Under the *jus soli* approach the status or condition of the parents is irrelevant as long as they are subject to the jurisdiction of the state in which the child was born, i.e., they are not diplomatic officials.
9. This is set forth in United States Code, Title 8, Section 1401.
10. Only American citizens by birth are eligible to become President. Constitution of the United States, Article II, Section 1(5).
11. See United States Code, Title 8, Section 1401 (5).

majority claim French nationality. The French approach fluctuated over the years as different nationality laws were enacted, but the French Nationality Law of 1945 extensively employed both principles in an effort to increase the number of French nationals. The provisions are interesting, as they demonstrate an effort by a nation to obtain as many nationals as possible.

Under Article 17 and 18, the legitimate child born of a French father is French irrespective of where he was born, as is the legitimate child of a French mother where the father's nationality is unknown. Unlike the United States, there are no residence requirements imposed on the parents. Where a child first establishes filiation<sup>12</sup> against a French parent, whether the father or mother, that child is French. So too, if one parent is French and the nationality of the parent against whom the first filiation action is brought is unknown, the child becomes French upon successfully maintaining an action of filiation against the French parent. Under Article 19, subject to an option to repudiate, the legitimate child of a French mother and foreign father is French, as is the natural child recognized by or successfully filiated against parents, one of whom is French. The above provisions are essentially based on *jus sanguinis*, as the country of birth is irrelevant.

The French law also contains many elements of *jus soli*.<sup>13</sup> Where a child is born in France of a father who was born in France, though not necessarily a French national, that child is French. The same is true when the parent against whom filiation was first established was born in France. The legitimate child born in France of a mother also born in France is French, subject to his right of repudiation; so is the child of a parent born in France when that parent is the one against whom filiation was established the second time. Under Article 21, the child born in France of parents whose nationality is unknown is French unless he is filiated and takes the nationality of the filiated parent.

Where the child was born in France of foreign parents, neither of whom was born in France, the child is considered French upon attaining majority if he is then residing in France and has been residing there since the age of 16.<sup>14</sup> He may decline French nationality in certain circumstances, and in certain circumstances the government may oppose the petition. Under the Law of 22 December 1961, military service can be substituted for the five year residence. Such a child can also claim French nationality prior to reaching majority if he has resided in France for five years. If he is under the age of 18, the claim can be made by his guardian. There are special provisions relating to children who were raised in France, though not born there; under certain circumstances they can acquire French nationality as well.<sup>15</sup> It is clear that France, while retaining the basic principle of *jus sanguinis*, has adopted many elements of *jus soli* in an effort to increase the number of French nationals.

Since some states use *jus soli* and others *jus sanguinis* and many a combination of both, not infrequently individuals are born with dual nationality. For example, a child born in the United States of German immigrants who had never renounced German nationality would be considered American by the United States; the same child would be considered German by Germany. Dual nationality may arise also if a woman takes her husband's nationality upon marriage under his national law, but does not lose nationality under her national law. Some states provide that a national loses nationality

12. Filiation in the broad sense is the process by which the parentage of a child is ascertained. See generally Civil Code of Ethiopia, Chapter 10. The term may also refer to an action brought by the child for a judicial declaration as to his parentage.

13. See particularly Articles 23, 24, 44 and 52 of the French Nationality Law of 1945.

14. If the principle of *jus soli* were strictly followed, the child would be French irrespective of where he was residing.

15. Law of 22 December 1961, Article 55.

by accepting foreign nationality; others permit their nationals to take on foreign nationality without losing original nationality. In the latter case, dual nationality may also result. Conflicts frequently arise; for example, during the Second World War, when children born in the United States of alien parents were visiting the home nation of their parents, they were often conscripted into military service in those countries on the ground that they were nationals because of the nationality of their parents.<sup>16</sup> Efforts have been made by some nations to resolve the problem of dual nationality.<sup>17</sup>

Another condition that may arise is statelessness. This results when a person loses the nationality of one state without acquiring nationality in another. For example, under the laws of some states a woman loses nationality by marrying a foreigner; if her husband's national law does not give her his nationality, she is stateless. In certain circumstances a person may be deprived of his nationality by his national law<sup>18</sup>, without acquiring another nationality. <sup>19</sup> As we will see, Ethiopian law makes every effort to avoid both dual nationality and statelessness.

Now that we have considered comparative approaches to nationality, let us look at the Ethiopian Nationality Law of 1930. Ethiopia follows strictly the principle of *jus sanguinis*. Any person born in Ethiopia or abroad whose father or mother is an Ethiopian is an Ethiopian subject. <sup>20</sup> If the father is an Ethiopian subject, the child automatically acquires Ethiopian nationality, but if only the mother is an Ethiopian, the child must affirmatively elect to become an Ethiopian national by living in Ethiopia and proving that he is divested of his foreign nationality. Such a child, upon doing so, is to be considered an Ethiopian subject by birth.<sup>21</sup> A child born to an unmarried Ethiopian woman would, of course, be Ethiopian.

The Law contains no provisions by which a person born in Ethiopia of foreign parents is or can become an Ethiopian national except by naturalization. In other words,

16. Another conflict may arise as to claims against a government where the claimant is a *National* both of the claiming state and the state against whom the claim is made. In the *Canevaro Case*, decided by the Permanent Court of Arbitration in 1912, the Italian and Peruvian governments agreed to submit to arbitration claims arising out of the failure by the Peruvian government to honor certain checks issued by that government to a firm. The claim passed into the hands of certain persons, one of whom was Rafael Canevaro. The tribunal was given jurisdiction only to consider claims of Italian nationals against the Peruvian government; thus, if Canevaro were not an Italian national, the tribunal would have no jurisdiction to hear his claim. Peru followed *jus soli* to determine nationality while Italy followed *jus sanguinis*. Since he was born in Peru of an Italian father, both Peru and Italy would consider him their national. The court held that for purposes of his status as a claimant, Peru had the right to consider him as its national and that he was not an Italian national within the meaning of the arbitration agreement.
17. One is the Hague Convention of April 12, 1930. Another is the Protocol on Military Obligations in Certain Cases of Double Nationality. Not all countries are signatories to these agreements.
18. During the Nazi regime many persons were deprived of German nationality because of their religion or political associations. These people were thus rendered stateless. Also, certain countries provide for forfeiture of nationality by the commission of certain acts, and the person who thus forfeits his nationality may become stateless.
19. See the discussion of attempts to provide protection to stateless persons and the material cited therein in Bishop, *International Law* 414 (2d ed. 1962).
20. The term "subject" is used, since Ethiopia is a monarchy. Note that for international law purposes there is no distinction between a national, citizen or subject. The status of Ethiopians living in Eritrea is governed by Order No. 6 of 1952, *Negarit Gazeta*, September 11, 1952. Under Section 9 of that Order, it is provided that all inhabitants of the territory of Eritrea, except persons possessing foreign nationality, are Ethiopian nationals. All inhabitants born in Eritrea and having at least one indigenous parent or grandparent were also declared to be Ethiopian nationals. However, if such persons possessed foreign nationality, they could renounce Ethiopian nationality within six months of the date of the Order. If they did not renounce, they were declared to lose their foreign nationality. The terms of that Order are identical with the United Nations Proclamation establishing the Federation. See United Nations Proclamation No. 390 (4), December 2, 1950.



the concept of *jus soli* does not exist here. On the whole this is sound. The great majority of foreigners living here are Europeans — coming from a different culture and a different ethnic group. Children born of such parents should not automatically be considered as Ethiopian nationals and probably would not desire such automatic assimilation. Those that desire to do so can obtain Ethiopian nationality through naturalization. However, many persons from areas such as the southern Sudan, northern Kenya and Somalia have entered Ethiopia. They belong to the same ethnic groups as Ethiopians living in the border areas and upon entry, become fully assimilated. Such persons and their children are often indistinguishable from the Ethiopians residing near the border, but technically neither they nor their children are Ethiopians. Perhaps some modification should be made to provide that members of certain specified ethnic groups who live in Ethiopia with the intention to remain here permanently<sup>22</sup> should be considered Ethiopians and that children of such persons born in Ethiopia are Ethiopian subjects by birth. With this possible exception, the principle of *jus sanguinis* seems well-suited to Ethiopia.

The Law contains provisions with respect to the effect of marriage, legitimation and adoption upon Ethiopian nationality. A foreign woman who enters into a lawful marriage with an Ethiopian takes on Ethiopian nationality. An Ethiopian woman who marries a foreigner loses her Ethiopian nationality only if the national law of her husband confers his nationality upon her. This insures that no Ethiopian woman will become stateless by marriage and, where possible, tries to prevent married women from having dual nationality.<sup>23</sup>

The same principle is applicable with regard to legitimation. Note that legitimation does not exist in Ethiopia, because there is no legal concept of illegitimacy. A child is the child of parents against whom filiation is established; once established it is irrelevant whether the parent against whom the filiation was established is married to the other parent. Thus, the child filiated against an Ethiopian mother or father would be Ethiopian. But, if a child born to an unmarried Ethiopian woman would become legitimated by a foreign father under his law, problems would arise. Again, in an effort to prevent either dual nationality or statelessness, the Law provides that such a child loses his Ethiopian nationality by the legitimation only if the national law of the father confers the father's nationality upon the child with all attendant rights.

Adoption of an Ethiopian child by a foreigner does not cause the child to lose his Ethiopian nationality. Conversely, a child who is adopted by an Ethiopian does not thereby acquire Ethiopian nationality. Here, dual nationality and statelessness are possible. For example, if an Ethiopian child is adopted by a foreigner and under the national law of the adoptive parent the child takes on the nationality of his father, such a child would acquire dual nationality. By the same token, if a child adopted by an Ethiopian loses his former nationality under his national law, he would be stateless unless he acquired Ethiopian nationality by naturalization. It may be that at the time the 1930 law was enacted, the adoption of foreigners by Ethiopians was rare and the concern was to prevent an Ethiopian child from losing his Ethiopian nationality. Now that adoption is fully covered by the Civil Code,<sup>24</sup> adoptions between Ethiopians and foreigners may increase. Perhaps the provisions of the Nationality Law should be reconsidered. It may be that an Ethiopian child adopted by a foreigner should not lose his Ethiopian nationality, though it is difficult

21. This is important, as there are distinctions in the enjoyment of political rights between subjects by birth and others. See the discussion, *infra* at note 38 and accompanying text.

22. In other words, domiciled here. See the discussion, *infra* at notes 53-62 and accompanying text.

23. A foreign woman married to an Ethiopian might have dual nationality if her national law did not cause her to lose her nationality as a result of the marriage. Still, it is desirable from Ethiopia's standpoint that a married woman have the same nationality as her husband.

24. Civil Code of Ethiopia, Chapter 11.

to see why he should be in a different position from an Ethiopian child legitimated by a foreigner. But clearly a foreign child adopted by an Ethiopian should not be rendered stateless thereby; if he loses his former nationality, then he should obtain Ethiopian nationality by the adoption.<sup>25</sup>

A foreigner may become naturalized after five years of residence in Ethiopia. He must be "of full age according to the regulations of the national law," which would be 18 under Article 198 of the Civil Code. He must be "able to earn his living and to provide for himself and his family." He must "know the Amharic language perfectly, speaking and writing it fluently." <sup>25a</sup> Finally he "must have not previously been condemned to any punishment for crime or breach of the common law." The latter provision must be read in light of the Penal Code, which has codified the penal law and which includes petty as well as serious offenses. It is difficult to believe that a person convicted of a petty offense should be denied naturalization. Perhaps the term "crime or breach of the common law" should be interpreted to include crimes "*malum in se*," that is, acts that traditionally were punishable as crimes in Ethiopia or are generally recognized as wrongful. This matter would have to be determined by the Commission charged with passing on naturalization applications.

The Nationality Law provides for a special government Commission comprising the Minister of the Interior, the Minister of Foreign Affairs and another "dignitary of the Empire," presumably to be appointed by the Emperor or His designee. The Commission is to examine the application and hear the applicant in person. Its decision is final. Naturalization does *not* extend to the wife of a naturalized person; she must make her own application. The Law says nothing about children, and in the absence of express provision, it must be assumed that children would have to make their own application upon reaching the age of eighteen.

Ethiopian nationality may be lost only by the acquisition of another nationality. In the case of a woman, this would include loss by marriage with a foreigner, providing his national law conferred his nationality upon her.<sup>26</sup> Where a person voluntarily acquired another nationality, he would lose his Ethiopian nationality, even though the law of the state of his new nationality permitted dual nationality.<sup>27</sup> The Law contains no provisions dealing with loss of nationality through commission of certain acts or engaging in unlawful conduct. The laws of some other nations contain such provisions. In France, for example, a national who serves in the Armed Forces of a foreign state despite an order to quit from the French government loses his French nationality. He must quit within six months after the receipt of notice unless it is impossible for him to do so.<sup>28</sup> France also provides that certain acts of persons who have acquired French nationality *other than by birth* will cause them to lose their nationality.<sup>29</sup> These acts include the conviction for a crime against the internal or external security of France, conviction for crimes punishable

25. France formerly denied an adopted child the status of a Frenchman. But now such a child can claim French nationality if he resides in France. Law of 22 December 1961, Article 55.

25a. Under a later amendment to the Nationality Law, 25 Maskaram, 1926 E.C., the requirements of five years of residence and fluency in Amharic may be waived by the Commission.

26. Under American law a woman does not lose her nationality by marriage. Under French law a woman keeps her French nationality upon marriage unless she repudiates it, and she cannot repudiate it unless she is able to acquire her husband's nationality under his law. Nationality Law of 1945, Article 94.

27. American law is to the same effect. United States Code, Title 8, Section 1481 (a) (1). In France, however, such a person does not lose his French nationality until fifteen years have elapsed from the time he was eligible to perform military service. He may repudiate his foreign nationality during that time, and if he does so, he will not lose his French nationality. Nationality Law of 1945, Articles 87, 88.

28. Nationality Law of 1945, Article 97.

29. Nationality Law of 1945, Article 98.

under Articles 109-131 of the French Penal Code,<sup>30</sup> condemnation for desertion, acting on behalf of a foreign government contrary to the interests of France or incompatible with the quality of a Frenchman, or conviction for any crime which is subject to punishment of five years of imprisonment. These acts must have occurred within ten years from the date of acquisition of French nationality.<sup>31</sup> The loss of nationality also extends to the wife and children of such a person providing that they were originally of foreign nationality and have retained such foreign nationality.<sup>32</sup>

In the United States, there are extensive provisions dealing with loss of citizenship by the commission of acts, which include taking an oath of allegiance to a foreign state, serving in the armed forces of a foreign state without permission of the United States government, accepting employment for a foreign government where an oath of allegiance is required, voting in an election in a foreign state, desertion in time of war, committing treason and departing from the United States with the intention of avoiding military service.<sup>33</sup> The United States Supreme Court has upheld the power of Congress to provide for loss of citizenship by voting in a foreign election,<sup>34</sup> but has held that it is unconstitutional to deprive a person of his citizenship for desertion<sup>35</sup> (he could, of course, be punished for desertion) or for leaving the United States with the intention of avoiding military service<sup>36</sup> (again, such a person could be punished, but not by loss of citizenship). Certain provisions dealing with loss of citizenship by naturalized citizens were declared unconstitutional, since they were not applicable to citizens by birth.<sup>37</sup>

These are illustrative of the provisions relating to loss of nationality contained in the laws of other nations. As stated previously, no such provisions exist in Ethiopian law. It may be that such provisions would be inconsistent with the concept of Ethiopian nationality and the desire to prevent the statelessness of any Ethiopian, no matter what he has done. As the law now stands then, Ethiopian nationality can only be lost by the voluntary acquisition of another nationality or the obtaining of another nationality by marriage or legitimation.

The Nationality Law makes it very easy for an Ethiopian who has lost Ethiopian nationality to reacquire it. All that is necessary for a person who has lost Ethiopian nationality by acquiring another is for him to return to Ethiopia and to apply to the Imperial Government (presumably to the Ministry of Interior) for re-admission. There is no discretion to deny the application. So too, a woman who has lost her nationality through marriage to a foreigner may re-obtain Ethiopian nationality upon dissolution of the marriage by divorce, separation or death if she becomes domiciled in Ethiopia and applies for re-admission. As pointed out earlier, a child born of an Ethiopian mother in a lawful marriage who takes on the nationality of the foreign father may reacquire Ethiopian nationality by living in Ethiopia and divesting himself of the paternal nationality. Apparently this is *not* applicable to a child who acquires his father's nationality through

30. These sections cover the crimes against the Constitutional Charter, violations of the civil rights of others and attacks against liberty.

31. Nationality Law of 1945, Article 99.

32. Nationality Law of 1945, Article 100.

33. United States Code, Title 8, Section 1481.

34. *Perez v. Brownell*, 356 U.S. 44 (1958).

35. *Trop v. Dulles*, 356 U.S. 811 (1958).

36. *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1960).

37. In *Schneider v. Rusk*, 84 Supreme Court Reporter 1187 (1964), it was held that Congress could not constitutionally provide that a naturalized citizen lost his citizenship by residing for three years in the country of his birth. The court emphasized that native born citizens were not subject to this restriction and held that the discrimination was so unjustifiable as to violate due process.

legitimation. Where Ethiopian nationality is reacquired, the person is considered an Ethiopian subject by birth rather than by naturalization.

In summary, Ethiopian follows the principle of *jus sanguinis* to determine nationality. With the possible exception of children born in Ethiopia whose parents, though foreigners, are of the same ethnic stock as Ethiopian groups, this approach is fully satisfactory. The Nationality Law tries to prevent dual nationality or statelessness. There are provisions relating to the naturalization of foreigners. Ethiopian nationality can only be lost by taking on another nationality or through marriage or legitimation; but once lost, Ethiopian nationality is not difficult to regain. On the whole, the Nationality Law of 1930 seems well-suited to Ethiopia's present needs.

### Distinctions between Ethiopian Subjects by Birth and by Naturalization

Such legal distinctions as exist between subjects by birth and subjects by naturalization are found only in the area of political rights. Article 38 of the Revised Constitution provides that there shall be no discrimination amongst Ethiopian subjects with respect to the enjoyment of all civil rights. A civil right is defined under Article 389 (2) of the Civil Code as one, the exercise of which does not imply any participation in the government or administration of the country.<sup>38</sup> There are some limitations on the exercise of political rights by naturalized subject.

Under Article 95 of the Constitution, only Ethiopian subjects by birth may vote for candidates for the Chamber of Deputies. So too, under Article 96, Deputies must be Ethiopian subjects by birth, and under Article 103 Senators must be Ethiopian subjects by birth. There is no requirement that judges be Ethiopian subjects by birth or even that they be Ethiopian subjects.<sup>39</sup> Under Article 67 of the Constitution, no one may be a Minister unless his parents were Ethiopian subjects at the time of his birth; if they were not, it is immaterial that he was an Ethiopian subject by birth. There is no requirement, however, that his parents be Ethiopian subjects by birth, so that the child of naturalized parents is eligible to be a Minister as long as they were naturalized at the time of his birth. With these exceptions, there is no distinction between Ethiopian subjects by birth and by naturalization.

### Distinctions between Ethiopian Subjects and Foreigners.

In every nation there are distinctions between nationals and foreigners both in terms of enjoyment of rights and performance of duties. While this is true in Ethiopia as well, the distinctions are such that it is clear that there is no attempt to impose serious disabilities upon foreigners.<sup>40</sup> This spirit is reflected in Article 389 of the Civil Code, which provides as follows:

- (1) Foreigners shall be fully assimilated to Ethiopian subjects as regards the enjoyment and exercise of civil rights.
- (2) All rights the exercise of which does not imply any participation in the government or administration of the country shall be considered to be civil rights.
- (3) Nothing in this Article shall affect such special conditions as may be prescribed regarding the granting to a foreigner of a permit to work in Ethiopia.

38. Rights which imply such participation may conveniently be called political rights.

39. The requirements for appointment to the judiciary are set forth in Article 111 of the Revised Constitution.

40. It is interesting to note that under the Administration of Justice Proclamation of 1942, *Negarai Gazeta*, January 31, 1942, the courts are prohibited from giving effect to any law that makes harsh and inequitable distinctions between Ethiopians and foreigners.

Article 389, of course, must be read in light of the other provisions of the Constitution and Code that do make distinctions between Ethiopian subjects and foreigners. The main statutory restriction is that foreigners may not own immovable property here except in accordance with Imperial Order.<sup>41</sup> This is also applicable to rights of usage for a period exceeding fifty years or a like interest terminable on death.<sup>42</sup> A foreigner must dispose of such property to an Ethiopian within six months; otherwise the property will be seized and sold by the competent authority.<sup>43</sup> Articles 389-393 are the only articles of the Civil Code specifically dealing with foreigners.

The other distinctions between Ethiopian subjects and foreigners are contained in the Constitution. Of course, foreigners cannot vote or hold political office. Under Article 47, every Ethiopian subject has the right to engage in any occupation; this is not true of foreigners, as the provisions of Article 389 (3) of the Civil Code indicate.<sup>44</sup> Only Ethiopian subjects have the right of peaceable assembly<sup>45</sup> and the right of unrestricted movement throughout the Empire.<sup>46</sup> No Ethiopian subject may be banished from the Empire,<sup>47</sup> a right that, of course, cannot be accorded to foreigners. Finally, no Ethiopian subject may be extradited; others may be extradited only as provided by an international agreement such as an extradition treaty.<sup>48</sup> With these exceptions, all other rights guaranteed by the Constitution, such as equal protection of the laws, freedom of speech, due process, petition to the Emperor and all the guarantees afforded to criminal defendants, are given to foreigners as well as subjects. In this connection, it should be noted that foreigners are exempt from military service.<sup>49</sup> All in all, it is clear that foreigners in Ethiopia enjoy full protection of the law and most of the rights enjoyed by subjects.

At this juncture a word should be said about the other provisions of law relating to foreigners. The Foreigners Registration Proclamation<sup>50</sup> requires all foreigners resident in the Empire to register with the appropriate authorities within 30 days of arrival. In Addis Ababa they must register with the Director of Public Safety; elsewhere they must register with the Superintendent of Police. This is applicable to all persons above the age of sixteen. The registration must be renewed annually.

At present there is no comprehensive law relating to the deportation and expulsion of foreigners. When the Minister of Interior decides that any foreigner is an undesirable immigrant, he is to notify the Minister of Foreign Affairs, who may cancel his resident permit. Then, the Minister of Interior is to arrange for the deportation of the foreigner.<sup>51</sup> Under Article 154 of the Penal Code, the court may order the expulsion from the Empire either temporarily or permanently of a foreigner who has been convicted of crime and has been sentenced to a term of simple imprisonment of three years or more, or who is a habitual offender sentenced to internment, or who is an irresponsible or partially responsible offender recognized by expert opinion as a danger to public order.<sup>52</sup> It

41. Civil Code of Ethiopia, Article 390. Likewise, foreigners may not be members of a Farm Workers Cooperative. Farm Workers Cooperative Decree, *Negarit Gazeta*, October 27, 1960.

42. Civil Code of Ethiopia, Article 393.

43. Civil Code of Ethiopia, Articles 391-2.

44. For the law with respect to the issuance of work permits to foreigners see Order 26 of 1962, Chapter VI., *Negarit Gazeta*, September 5, 1962.

45. Revised Constitution of Ethiopia, Article 45.

46. Revised Constitution of Ethiopia, Article 46.

47. Revised Constitution of Ethiopia, Article 49.

48. Revised Constitution of Ethiopia, Article 50.

49. The duties of Ethiopian subjects and others are contained in Article 64 of the Revised Constitution.

50. Proclamation 57 of 1944, *Negarit Gazeta*, April 29, 1944.

51. Proclamation 36 of 1943, *Negarit Gazeta*, April 30, 1943. This act governs immigration.

52. In such a case the court should consult the competent public authority.

would be desirable if Parliament would enact a comprehensive law relating to deportation and providing for judicial review for persons ordered deported. Emergency situations could be excluded. In any event, at present foreigners are not advised of the circumstances in which they can be deported except as incident to punishment for crime.

Now that we have considered the provisions of the law relating to Ethiopian nationality and the status of foreigners, let us turn our attention to those persons who, while not citizens of Ethiopia, are domiciled here.

## DOMICILE

### The Meaning of Domicile: Domicile and Residence Defined

A person's residence is the place where he has his habitation; legally, residence means the place where a person normally resides.<sup>53</sup> In Ethiopia, when a person lives in a place for three months, he is deemed to have his residence there.<sup>54</sup> While residence may have legal significance for certain purposes, e.g., local jurisdiction, it is not, on the whole, a significant legal contact.

Domicile differs from residence in two respects. First, domicile is a unitary concept; a person may have several residences,<sup>55</sup> but only one domicile at a given time.<sup>56</sup> The latter statement must be taken to mean that he may only have one domicile at a time *under the law of a particular state*. As we will see, different states have differing conceptions of domicile. Ethiopia may find that a person is domiciled in Ethiopia in accordance with the provisions of the Ethiopian Civil Code; France may find that the same person is domiciled in France under the provisions of the French Civil Code.<sup>57</sup> With this qualification, however, a person can have only one domicile at a given time. Secondly, domicile denotes an element of permanency; it is the place where a person resides and has established his interests with the intention of living there "permanently" — a term which also has different meanings. But we may say as a general proposition that domicile requires residence in a particular place coupled with the intention to live there "permanently".

### Domicile under the Civil Code

Article 183 of the Civil Code provides that "the domicile of a person is the place where such person has established the principal seat of his business"<sup>58</sup> and of his interest with the intention to reside there permanently." We must define the word "permanently" in this context, and it is submitted that "permanently" should mean "for an indefinite period of time." What may be called a "floating intention to return" should not be suffi-

53. Civil Code of Ethiopia, Article 174.

54. Civil Code of Ethiopia, Article 175 (2).

55. Civil Code of Ethiopia, Article 177 (1).

56. Civil Code of Ethiopia, Article 186.

57. Each state must decide where a person is domiciled in accordance with its own law. As the High Court pointed out in *Kokkinos v. Kokkinos*, Civil Case No. 471/52: "The fact that the petitioner may at Greek law be considered as domiciled in Ethiopia under article 54 of the Greek Civil Code does in no way imply that he would have to be considered as domiciled here according to Ethiopian law. As already mentioned, it is Ethiopian law alone that determines this point." See also *In re Amesley* [1926] 1 Chancery 692, where the Court of Appeal held that a British subject was domiciled in France under the British conception of domicile, though under French law she would not be deemed to have acquired a French domicile.

58. The term "business" should be construed to mean employment.

cient to prevent a person from acquiring a domicile here. For example, let us assume that a Greek merchant comes to Ethiopia, brings his family with him, and invests substantial amounts of capital in a business. He plans to return to Greece when he retires. He should be considered domiciled in Ethiopia, as his intention is to remain in Ethiopia indefinitely.

This interpretation of domicile is buttressed in Ethiopia by the provisions of Article 184 of the Civil Code, which provide as follows:

- (1) Where a person has his normal residence in a place, he shall be deemed to have the intention of residing permanently in such place.
- (2) An intention to the contrary expressed by such person shall not be taken into consideration unless it is sufficiently precise, and it is to take effect on the happening of an event which will normally happen according to the ordinary course of things.

For example, if a person came to Ethiopia to work on a five year contract, intending to leave after the expiration of the five years, he would not be domiciled in Ethiopia, though he has his residence here. The intention to leave is sufficiently precise and will take place upon the happening of a definite event *i. e.* the expiration of the five years. In the case of *Shatto v. Shatto*,<sup>59</sup> the Supreme Imperial Court construed Articles 183 and 184 and concluded that "permanent" meant for an indefinite period of time. The person whose domicile was in question was a "safari outfitter," carrying on his private business here, and had been resident in Ethiopia for six years. The High Court (with one member dissenting) denied his petition for homologation of divorce on the ground that he was not domiciled here, as he might some day leave the country (he was an American citizen); therefore, it concluded that he did not "intend to live in Ethiopia permanently." In reversing the decision, the Supreme Imperial Court held that "the majority was certainly wrong to foresee too much the future." Since he was residing in Ethiopia and had his business here, the presumption of Article 184 applies; in the absence of clear evidence of contrary intention, the presumption was not rebutted, and he was deemed domiciled in Ethiopia. To the same effect is the case of *Zissos v. Zissos*,<sup>60</sup> involving a Greek national who had lived in Ethiopia for some years and whose business was here.

The approach toward domicile under the Civil Code is vastly different from the earlier approach, at least as evidenced by the holding of the Supreme Imperial Court in the case of *Pastori v. Aslanidis*,<sup>61</sup> decided before the Code. The person whose domicile was in question was a Greek national who came to Ethiopia in 1910. He established a business here and was married here. He made a number of visits to Greece during that time and went there when he was seriously ill; he returned to Ethiopia after he was cured. The court concluded from his testamentary will that he intended it to be governed by Greek law, since it would be valid under Greek law, but not under Ethiopian law, and since he directed that it be executed by the Greek consul in Addis Ababa.

The court held that he was not domiciled in Ethiopia. It said that the test of whether a person acquired a domicile was whether "he intended to make the new country his permanent home in such a way as to detach himself completely from his country of origin and from its laws and customs and to subject himself permanently, as regards personal law, to the laws and customs of the new country." In following what is apparently the British approach, the court emphasized the following:

- (1) length of residence, even though continuous, is not sufficient to establish a change of domicile;

59. *Civil Appeal No. 784/56*, 1 *Journal of Ethiopian Law* 190 (1964.)

60. *Civil Appeal No. 633/56*.

61. *Civil Appeal No. 338/47*.

(2) change of domicile must clearly be proved, and the burden of proof required to show a change from the domicile of origin is greater than in the case of a domicile of choice. The court concluded that there was not sufficient evidence to show that the person had acquired a domicile of choice in Ethiopia. It emphasized that he continued his "Greek way of life" here and thus did not have the intention to acquire an Ethiopian domicile.

The result would clearly be different under the Code. He has both his business and his normal residence in Ethiopia. The presumption then is that he was domiciled in Ethiopia. The intention to return to Greece was "floating" at best, and there was no fixed event, upon the happening of which he would return to Greece. In fact, he died here. Therefore, there would be no evidence to rebut the presumption that he intended to live here permanently, and today such a person would be considered domiciled in Ethiopia.

Ethiopia's policy, as evidenced by Articles 183 and 184 of the Code and the interpretations the courts have put upon them, favors a finding of domicile when a person lives and works here. This insures that foreigners residing here and having their business or employment here shall be deemed to be Ethiopian domiciliaries absent a clear and precise intention to the contrary.<sup>62</sup>

On the other hand, the Code does not require that a person must have spent any particular amount of time in Ethiopia in order to acquire a domicile here, as long as the necessary intent is present. Presumably the Ethiopian courts would reach the same result in a case such as *White v. Tennant*<sup>63</sup> as did the American state court that decided the case. The person whose domicile was in question sold his home in State A and moved to a new home in State B with his wife. Previously he had shipped some movable property to State B. He was in State B about a day when his wife became ill. He took her back to State A, where she would stay with relatives intending to immediately return to State B; the wife would return to State B when her health improved. The husband died suddenly while still in State A. It was held by the court in State A that he had acquired a domicile in State B. He has his residence there, was physically present there, and had the intention of living there permanently. There was a concurrence of residence and the intention to live there permanently. Since there is no requirement under the Code that a person have his residence in Ethiopia for any period of time, the same result should be reached in Ethiopia.

Moreover, there is no requirement under the Code that the person have a fixed place of abode in Ethiopia. Under Article 177 of the Code, a person may have several residences. The term "normal residence in a place," as used in Article 184, should refer to residence in Ethiopia rather than residence in a particular part of Ethiopia. So, if a person lived part of the time in Addis Ababa, part of the time in Gondar, and part of the time in Jimma, staying in hotels in each place, he should be deemed domiciled in Ethiopia, though he does not have a permanent residence in any part of the Empire.<sup>64</sup>

62. No formalities are required to obtain an Ethiopian domicile.

63. 31 West Virginia Reports 790, 8 Southeastern Reporter 596 (1888).

64. For cases involving this question and holding that the person acquired a domicile in that state, see *Marks v. Marks*, 75 Federal Reporter (U.S. Circuit Court, Tennessee) 321 (1896); and *Winans v. Winans*, 205 Massachusetts Reports 388, 91 Northeastern Reporter 394 (1910).

Article 185 of the Code provides that where a person performs the work of his calling in a place and passes his family or social life in another place, he shall in case of doubt be deemed to have his domicile in the latter place. Such a situation confronted two American state courts, where the person whose domicile was in question had his business in State A and lived with his family in State B. The court in State A held that he was domiciled there, *In re Dorrance's Estate*, 115 New Jersey Equity Reports 268, 170 Atlantic Reporter 601 (1934); the court in State B held that he was domiciled in State B, *In re Dorrance's Estate*, 309 Pennsylvania Reports 151, 163 Atlantic Reporter 303 (1932). The question is clearly resolved in Ethiopia by the provisions of Article 185.



The intention under Articles 183 and 184 must be the intention of living in Ethiopia rather than the intention of acquiring a domicile. These sections would prevent a person from acquiring a domicile in Ethiopia simply by renting a room here while actually living elsewhere. Consider the situation presented in a case such as *Kirby v. Town of Charleston*.<sup>65</sup> For legal purposes the party wanted to acquire a domicile in State A. He rented a hotel room there, but never used it and continued to live in his house in State B. It was held that his domicile remained in State B, as he never had the intention to live in State A. The same result would be reached under Article 183 of the Code, since in such a situation there was no intention to live here permanently.

Article 187 deals with the problem that arises when a person has left his former domicile with the intention not to return, but has not yet acquired a new domicile. Let us say that a Greek national who has been domiciled in Ethiopia decides to return to Greece and live there permanently. He leaves Ethiopia, but dies before he reaches Greece. The question is where he was domiciled at the time of death. He has abandoned his Ethiopian domicile, but has not yet acquired a Greek domicile, since he was not physically present there — the intention and physical presence have not coincided. In such a situation English courts have held that the person reacquires his domicile of origin, that is, his domicile at the time of his birth.<sup>66</sup> This may be a relic from colonial days when many Englishmen were domiciled in the colonies and were returning home in their old age. When such a person died, if he were found domiciled in England, English law rather than colonial law would determine the distribution of his estate. The American courts, on the other hand, have held that the person retains his former domicile until he acquires a new one.<sup>67</sup> Ethiopia follows the latter approach; under Article 187 of the Civil Code, a person retains his domicile in the locality where it was established until he establishes his domicile in another place.

A married woman has the domicile of her husband as long as the marriage lasts unless he is affected by judicial or legal interdiction;<sup>68</sup> it is not possible for her to acquire a separate domicile,<sup>69</sup> though she may acquire a separate residence.<sup>70</sup> An unemancipated minor shall have the domicile of his guardian,<sup>71</sup> though he too may acquire a separate residence.<sup>72</sup> An interdicted person retains his domicile at the time of his interdiction<sup>73</sup>, though he also may acquire a residence of his own.<sup>74</sup>

In summary, the law is very clear with respect to the acquisition of Ethiopian domicile. Persons having their normal residence here are presumed to be domiciled here unless this presumption is rebutted by clear evidence of contrary intent, and their leaving Ethiopia is to take place upon the happening of an event that is likely to occur. This means that persons living and working here for an indefinite time will be held by the Ethiopian courts to be domiciled here. The fact that the law is clear has great significance in the

65. 99 Atlantic Reporter 835 (New Hampshire Supreme Court 1916).

66. *Udny v. Udny*, [1869] *Law Reports*, 1 Sc. & Div. 441.

67. *In re Jones*, 192 Iowa Reports 78, 182 Northwestern Reporter 227 (1921).

68. Civil Code of Ethiopia, Article 189.

69. The recent trend in the United States and in some other countries has been to permit the wife to acquire a separate domicile even during the continuance of the marriage. Ethiopia's approach to domicile is the same as her approach to nationality.

70. Civil Code of Ethiopia, Article 178.

71. Civil Code of Ethiopia, Article 190.

72. Civil Code of Ethiopia, Article 178.

73. Civil Code of Ethiopia, Article 190.

74. Civil Code of Ethiopia, Article 178.

determination of the question of the governing personal law, to which we now turn our attention.

## THE PERSONAL LAW

### The Nature of the Problem

In all legal systems certain questions are determined by the *personal law*. By personal law we mean the law of a state with which an individual has some connection. The court must decide which law determines matters of a person's status — does he have the capacity to marry, what are the rights of his children and the like. The law that determines such questions is called his personal law. In many states personal law determines all questions of succession to movable property. The questions that are determined by personal law are found in each state's rules of private international law, or conflict of laws, as it is sometimes called.<sup>75</sup> It is that law which decides what state's law is looked to for the personal law, e.g., the law of the state of which the person is a national or the law of the state where the person is domiciled.

The problem is complicated in Ethiopia by the fact that at present the private international law has not been codified. The provisions of the draft Civil Code dealing with private international law were not included in the final enactment.<sup>76</sup> Until such time as this codification takes place, the question will have to be determined by case law. Before considering the Ethiopian cases on the subject, let us look at the approaches other nations have taken to this question.

### Approaches toward the Governing Personal Law

Three distinct approaches have been taken toward the question of governing personal law, which, for purposes of convenience, may be called the civil law approach, the common law approach and the Latin-American approach.

Civil law countries have by and large adopted nationality as the governing personal law, though some are turning toward domicile. For example, Article 3 of the French Civil Code provides that "the laws relating to the condition and privileges of persons govern Frenchmen, although residing in a foreign country;" and the French rules of private international law hold that the personal law of foreigners residing in France is the law of their nationality.<sup>77</sup> Article 17 of the Italian Civil Code provides that "the status and capacity of persons and family relationships are governed by the law of the State to which the persons belong."<sup>78</sup> To the same effect is Greek law<sup>79</sup>, Hungarian law<sup>80</sup>, Bulgarian law<sup>81</sup>, and the law of many other European countries and countries that employ the civil law.<sup>82</sup>

75. It has been held in Ethiopia, as we will see *infra* that personal law governs questions of status and succession to movables.

76. David, A Civil Code for Ethiopia, 37 *Tulane Law Review* 187 (1963).

77. See the discussion in Planiol, *Treatise on the Civil Law* 181 (English Trans. 1959).

78. See the discussion in McCusker, The Italian Rules of the Conflict of Laws, 25 *Tulane Law Review* 70, 75 (1950).

79. See the discussion in Nicoletopoulos, Private International Law in the New Greek Civil Code, 23 *Tulane Law Review* 452, 455 (1949).

80. See the discussion in Drobing, Conflict of Laws in Recent East European Treaties, 5 *American Journal of Comparative Law* 487, 489 (1956).

81. *Ibid.*

82. See I Rabel, *The Conflict of Laws: A Comparative Study* 113-115 (2d ed. 1958). See also McCusker *supra*, note 78.

In examining the reasons for using nationality, we find that such reasons may be historical, may follow from the theoretical nature of the system, or may be quite practical. In commenting on Italian law, one writer observed<sup>83</sup> that the retention of the nationality principle in Italy under the 1942 Civil Code was due to two reasons, one historical, the other political. He points out that the nationality principle was most fully developed by an Italian, Mancini, during the time of Italy's unification. Mancini's thesis was that law is personal and not territorial, that it is made for a given people and not for a given territory<sup>84</sup>. In other words, a person carries his national law with him irrespective of where he resides.<sup>85</sup> Thus in personal matters, national law rather than the law of domicile governs. The political reason, according to the author, lies in the "intensely nationalistic doctrines of more than twenty years under Mussolini." He summarized these doctrines as follows:

"It would be an abdication of sovereignty if a State renounced its right to govern its national who has emigrated; conversely, it would be a violation of the sovereignty of the emigré's nation if the receiving nation should apply to the emigré laws not made for him; finally, legal ties of the emigré with his fatherland contribute to his fidelity to national institutions."

In other words, it was strongly in the interest of Italy to bind Italians living abroad by Italian laws; reciprocity demanded that the same treatment be accorded to foreigners — far fewer in number — who happened to reside in Italy.

Another author, commenting on Greek law,<sup>86</sup> points out that Greece has a large number of nationals who emigrate to various parts of the world (there is a substantial number in Ethiopia) and that, therefore, "no reason could be strong enough to lead to the abandonment of the nationality system, the continuation of which was considered as a measure of self-preservation." This desire to control the personal status of nationals residing abroad even takes precedence over consistent adherence to political ideology. For example, treaties between socialist states such as Hungary and Bulgaria retain nationality as the basis of personal law. One writer, commenting on this treaty,<sup>87</sup> says that the reaffirmation of the nationality principle is "astounding" and inconsistent with socialist theory. He asks "is not the application of this or that form of socialist law to a comrade of this or that socialist state rather irrelevant." While the result could be explained on the basis of the "inviolable sovereignty of each socialist state," nonetheless, it seems that the desire to control nationals residing abroad is great, even if they are residing in other socialist states.

Finally, nations with a large number of nationals residing abroad may fear that the personal status of these persons will be governed by an alien legal system, with alien ideas, particularly as to marriage and the family. One writer, in pointing out why Belgium, The Netherlands and Luxembourg have followed the nationality system,<sup>88</sup> observes that "many Eastern countries have quite different conceptions of marriage and parent-child relationships." He says that western states should not accept bigamy or the like as legal for its citizens domiciled in those nations; consequently, it must hold that the personal law should be that of nationality rather than domicile.

83. McCusker, *supra* note 78, at p. 72.

84. See the discussion of Mancini's theory in Stumberg, *Cases on Conflicts* 5 (1956).

85. The only exception would be when the public policy (*ordre public*) of the state where a person resided demanded that its law be applied. Thus, Article 3 of the French Civil Code provides that "the laws of police and public security bind all the inhabitants of the territory."

86. Nicoletopoulous, *supra* note 80, at p. 455.

87. Drobing, *supra* note 80, at p. 496.

88. Meijers, *The Benelux Convention on Private International Law*, 2 *American Journal of Comparative Law* 1-2 (1953).

It is for reasons such as these that many nations have adopted nationality as the basis of personal law.

The same type of considerations have led England and the United States to adopt domicile as the basis of personal law. Anglo-American conflicts law followed the territoriality theory, first developed by Huber, but given its greatest impetus in later times by the writings of Joseph Story, an American jurist.<sup>89</sup> The essence of the territoriality theory was that the laws of each nation had force within the boundaries of that nation, but not without. Persons did not carry their national law with them; rather they were subject to the laws of the state where they lived. Consequently, the governing personal law was that of a person's domicile — the place where he was with the intention to remain — rather than his nationality.

Moreover, there were comparatively few Englishmen residing outside of England except for the colonies. And England controlled the legal system in the colonies; thus, she could insure the application of English law to British nationals where she deemed this desirable. Likewise, by using domicile as the governing personal law, the American states exercised control over the large number of foreign immigrants: few Americans are domiciled abroad, even today.

A number of Latin-American states follow a mixed system. Local law is applied to foreigners domiciled there — to this extent they follow the common law approach. However, national law is used to govern the personal relations of their nationals domiciled in other countries. With variations, this approach is taken in Chile, Colombia, Ecuador, Costa Rica, El Salvador, Peru, Venezuela and Mexico.<sup>90</sup> This accomplishes the goal of civil law countries, namely, control of nationals domiciled abroad.

The proposed French Draft on Private International Law, which has not yet been adopted, would modify the traditional approach by providing that foreigners domiciled in France for more than five years would have their status and capacity governed by French law. Frenchmen domiciled elsewhere would continue to be subject to French personal law.<sup>91</sup>

Such an approach is suitable, perhaps, for a country having a large number of its citizens domiciled abroad, and a large number of foreigners domiciled there. Still, it cannot help but cause ill-will among nations; if a nation believes that personal law should be that of nationality for its nationality domiciled abroad, then it should not deny to other nationality the same control over their citizens that it purports to exercise over its own.

### The Governing Personal Law in Ethiopia

As stated previously, there are no statutory provisions dealing with personal law in Ethiopia. In the past, judicial decisions have gone both ways on the question, some holding nationality and others holding domicile to be the basis of personal law. Of the cases dealing with the question that are known to the author two High Court decisions held that nationality was the governing personal law. In *Verginella v. Antoniani*,<sup>92</sup> the petitioner, an Italian subject admittedly domiciled in Ethiopia, sought a decree of judicial separation from his wife. The institution of judicial separation, according to the court, was not known in Ethiopian law. The court held that Italian law should apply and ordered the judicial separation. Its reasons for applying Italian law were as follows:

89. See the discussion in Stumberg, *supra* note 84, at p. 3.

90. Nadelman, *The Question of Revision of the Bustamante Code*, 57 *American Journal of International Law* 384 (1963).

91. Article 27.

92. Civil Case No. 905/50.

- (1) the petitioner was an Italian subject;
- (2) the respondent was also an Italian subject;
- (3) the marriage was celebrated in accordance with Italian law;
- (4) there was no provision in Ethiopian law dealing with judicial separation; and
- (5) it was the practice of the Ethiopian courts to apply principles of foreign law in matters between foreigners where Ethiopian law makes no provision for the matter.

This reasoning ignores the fact that the petitioner was domiciled in Ethiopia; moreover, the result of this decision is that the petitioner receives a remedy in Ethiopia that is not available to Ethiopian subjects.

Another case to the same effect is *Katsoulis v. Katsoulis*,<sup>93</sup> where the parties were Greek nationals domiciled in Ethiopia. The petitioner sought a divorce on grounds of desertion. The court held that the case should be decided according to the national law of the parties and ordered a divorce based on the Greek Civil Code. In the cases of *Andriampanana v. Andriampanana*<sup>94</sup>, and *Zervos v. Zervos*,<sup>95</sup> the court did not reach the question, since there was no conflict between Ethiopian law (the parties were domiciled here) and the law of their nationality; the petitioner was entitled to a divorce under the law of either state. It should be noted that all these cases were decided prior to the effective date of the Civil Code; as we will see, under the Code the courts will not usually take jurisdiction to decree a divorce.

Two Supreme Imperial Court cases, on the other hand, have held that domicile should be the basis of personal law. In *Yohannes Prata v. W/T Tsegainesh Makonnen*,<sup>96</sup> the court was confronted with a situation of an Italian national who died domiciled in Ethiopia. He was married to a woman in Italy and left children by her. He lived with an Ethiopian woman and also left children by her, who would be considered illegitimate under Italian law. Under Italian law illegitimate children cannot inherit from the father. Under Ethiopian law the concept of illegitimacy is unknown. All children inherit equally from the father, as long as paternity is established, and here paternity was admitted. If Italian law—the law of nationality—were applied, the Italian children alone would inherit. If Ethiopian law—the law of domicile—were applied, all children, Italian and Ethiopian, would share equally. The Supreme Imperial Court held that domicile was the basis of personal law and applied Ethiopian law. The English version of the judgment states the following:

"Now the personal law may be either the law of nationality of the deceased or the law of his domicile at the time of his death. There is no enacted law in Ethiopia to lay down which of these two laws is to be followed and decided cases have not been consistent in following one law or the other. The recent trend of jurisprudence, however, has been in favour of the law of domicile. In our opinion the law of domicile is more adequate to govern the juridical situations and relationships given rise to by a person who has established his domicile in a particular country without giving up his original nationality; we consider, therefore, that the law of domicile should be the law governing all matters of personal status."

This case was followed and applied in *Alfredo Pastori v. Mrs. Aslanidis and George Aslanidis*,<sup>97</sup> which held that the question of proprietary rights between husband and

93. Civil Case No. 250/51.

94. Civil Case No. 441/52.

95. Civil Case No. 154/52.

96. Civil Appeal No. 638/49.

97. Civil Appeal No. 338/47.

wife was governed by the law of the matrimonial domicile rather than the law of nationality.<sup>98</sup>

The result in the *Prata* case, particularly, demonstrates the soundness of employing domicile as the basis of personal law in Ethiopia. There is a large number of foreigners domiciled in Ethiopia; Ethiopia is very hospitable to foreigners and many have chosen to spend their lives here, where the opportunities open to them are often greater than in the country of their nationality. As we saw earlier, the legal distinctions between Ethiopians and foreigners are few. There are far fewer Ethiopians domiciled in other countries. The foreigners domiciled here live their lives here, engage in business here, marry and produce children here. Ethiopia has a strong interest in regulating the status of these persons and the succession to their movable property. A prime reason for continental nations employing nationality as the basis of personal law is that they have many more nationals residing abroad than they do foreigners domiciled there and want to control the status of their nationals. In other words, the rule as to governing law is in no small part fashioned on the basis of the interest of the country applying the rule. Ethiopia should protect its own interests and thus use domicile as the basis of personal law. As pointed out earlier, domicile is easily determined under the provisions of the Civil Code; therefore, nationality should not be chosen on the ground that it is easier to determine than domicile. In summary, it is submitted that the courts of Ethiopia should hold that the personal law should be the law of the place where a person is domiciled rather than the law of the state of which he is a national.

There is a collateral question, which relates to the circumstances under which the courts of Ethiopia will take jurisdiction to determine matters of family status such as divorce. The courts have held that they will not take jurisdiction unless one of the parties is domiciled here. In *Hallock v. Hallock*,<sup>99</sup> the party seeking a divorce was an American employed by Ethiopian Airlines. He was here on a term contract and was domiciled in the State of Alabama in the United States. He contended that under the law of Alabama residence in the state for at least one year was sufficient to confer jurisdiction on the courts to issue decrees of divorce. The Supreme Imperial Court quite correctly held that what the Alabama courts would do was irrelevant in Ethiopia. The court held that in the absence of legislation by Parliament establishing residence as a basis of jurisdiction to divorce, the court would require that at least one of the parties be domiciled in Ethiopia. Consequently, the petition was dismissed. The same result was reached in *Kokkinos v. Kokkinos*,<sup>100</sup> where the court found that the petitioner was not domiciled in Ethiopia. In a number of other cases, the court, in taking jurisdiction, emphasized that at least one of the parties was domiciled here.<sup>101</sup> It should be pointed out that now the husband must be domiciled in Ethiopia, since under the Code the wife's domicile follows that of the husband as long as the marriage subsists.<sup>102</sup> Since the courts will take jurisdiction only on the basis of domicile and since it appears that domicile will be the basis of personal law, it follows that in divorce actions only Ethiopian law will apply.

There is also a procedural reason why this should be so. Under the provisions of the Civil Code cases of divorce must be heard initially by the family arbitrators rather than the courts. Difficulties arising out of marriage must first be submitted to the family

98. Note that in that case the court found that the parties were not domiciled in Ethiopia. See the discussion, *supra* note 61 and accompanying text. Under the provisions of the Civil Code they would now be found domiciled here.

99. Civil Appeal No. 249/50.

100. Civil Case No. 477/52.

101. *Verginella v. Antoniani*, *supra* note 92; *Katsoulis v. Katsoulis*, *supra* note 93; *Andriampanana v. Andriampanana*, *supra* note 94; *Zervos v. Zervos*, *supra* note 95.

102. Civil Code of Ethiopia, Article 189.

arbitrators,<sup>103</sup> and the role of the court is to decide whether or not a divorce has been pronounced.<sup>104</sup> As the Supreme Imperial Court pointed out in the case of *W/O Jamanesh Amare v. Ato Teferra Wolde Amanuel*:<sup>105</sup>

"As regards the question of divorce, the Civil Code has established certain rules which must be complied with. In the first place, the Civil Code has established a body of persons called the family arbitrators to whom all difficulties arising between the spouses during marital life must be submitted.... Petitions for divorce must be submitted to the family arbitrators; and until such time when the petition for divorce has been submitted to the family arbitrators and when the latter have pronounced their decision, the Court has no jurisdiction to deal with divorce; the Court can, however, decide whether or not a divorce has been pronounced by the arbitrators."

The Code makes no provision for special treatment for persons not domiciled here, and the court should not read an exception for them into it. It would be unsound for the court to appoint family arbitrators or to proceed to hear the case in the absence of family arbitrators;<sup>106</sup> as the court pointed out in the case of *Kokkinos v. Kokkinos*,<sup>107</sup> it is more reasonable for such persons to petition the courts of their domicile for the divorce.

In summary, the courts will not hear a petition for divorce unless the husband is domiciled in Ethiopia; note that if the husband is domiciled here, the wife is also. Divorce in Ethiopia must be handled by the family arbitrators rather than the court. Of course, Ethiopian substantive law must be applied by the family arbitrators. If the courts used nationality as the basis of personal law in divorce actions between foreigners domiciled here, it would have to by-pass the family arbitrators. It is difficult to see why the courts should do so; for the reasons indicated previously, foreigners domiciled here should be subject to Ethiopian law rather than to the law of their nationality. If this approach is followed, there will be no question of applying foreign law in a divorce action. Jurisdiction to divorce then exists only on the basis of domicile, and under the Code divorce must be pronounced by the family arbitrators rather than the courts.

## CONCLUSION

In this paper an attempt has been made to discuss the Ethiopian law relating to nationality, domicile and the governing personal law. The Nationality Law of 1930 sets forth the conditions for the acquisition and loss of Ethiopian nationality. The Civil Code clearly defines domicile and demonstrates legislative intention that foreigners residing here and having their business or employment here shall be deemed Ethiopian domiciliaries absent a clear intention to leave Ethiopia at a definite time in the future. The recent trend of decisions would indicate that domicile is to be the basis of personal law, which is very sound in view of the large number of foreigners domiciled here. At such time as private international law is codified, a provision to the effect that domicile is the basis of personal law should be included in the codification.

103. Civil Code of Ethiopia, Articles 725-728.

104. Civil Code of Ethiopia, Article 729.

105. Civil Appeal No. 101/56.

106. However, in some circumstances, where the appointment of family arbitrators is impractical, the court may decree the divorce. *Forti v. Forti*, Civil Case No. 174/55. In that case the whereabouts of one of the parties was unknown.

See also *Zevi v. Zevi*, Civil Appeal No. 1109/56, where the Supreme Imperial Court held that the majority of the arbitrators had erred in denying the divorce. Therefore, it confirmed instead the report of the minority of the arbitrators granting the divorce.

107. *Supra* note 100.





## ጊዜያዊ ፡ አከራካሪ ፡ ጉዳዮች ።

የፍትሐ ፡ ብሔር ፡ ቊጥር ፡ ፯፻፶፭ ፡ ፯፻፷፩ ።

ከጀርጅ ፡ ከሸቶኖቪች ፡

በቀዳማዊ ፡ ኀይለ ፡ ሥላሴ ፡ ዩኒቨርሲቲ ፡ የሕግ ፡ ፕሮፌሰር ።

(አባትነት ፡ በፍርድ ፡ የሚገለጥበት ፡ ሹነታ ፡ በቊጥር ፡ ፯፻፷፩ ፡ ተወስኗል ።  
አባትነትን ፡ በፍርድ ፡ ከማስታወቅ ፡ የተለየ ፡ ሌላ ፡ መደገፍችን ፡ ለማስገኘት ፡ የሚያጋጥሙ ፡ ችግሮች) ።

በፍትሐ ፡ ብሔር ፡ ሕግ ፡ ተደንግጎና ፡ የጠቅላይ ፡ ንጉሠ ፡ ነገሥት ፡ ፍርድ ፡ ቤት ፡ ወይዘሮ ፡ ወርቅነሽ ፡ በዛብኸና ፡ እቶ ፡ ይደነቁ ፡ በተካሰሱበት ፡ ጉዳይ ፡ በቅርብ ፡ ጊዜ ፡ ፍርድ ፡ ሲሰጥ ፡ የሕጉን ፡ መንፈስ ፡ አብራርቶ ፡ እንደገለጠው ፡ [የኢትዮጵያ ፡ ሕግ ፡ መጽሔት ፡ ሸሊዩም ፡ ፩ ፡ (፲፱፻፶፯ ፡ ዓ. ም.) ፡ ገጽ ፡ ፲፯ ፡ ይመለከቷል] የዝምድና ፡ ሕግ ፡ የከረረ ፡ ሹኖ ፡ በመገኘቱ ፡ በአንዳንድ ፡ የኢትዮጵያ ፡ የሕግ ፡ ተመራማሪዎች ፡ ዘንድ ፡ ዐሳብ ፡ አሳድሯል ። የዚህ ፡ መግለጫ ፡ ዋና ፡ ዐላማ ፡ ፍርድ ፡ ቤቱ ፡ በሰጠው ፡ በቂ ፡ ማብራሪያ ፡ ላይ ፡ ተጨማሪ ፡ መግለጫ ፡ ለመስጠት ፡ ሳይኾን ፡ በቊጥር ፡ ፯፻፶፭ ፡ የተወሰኑት ፡ ሹነታዎች ፡ ባለመፈጸማቸው ፡ የልጅዋን ፡ አባት ፡ በፍርድ ፡ ለማሳወቅ ፡ ያልቻለች ፡ እናት ፡ በሌላ ፡ ረገድ ፡ የሚኖራትን ፡ ሕጋዊ ፡ መደገፍች ፡ ለመመርመር ፡ ነው ።

በዚህ ፡ ጽሑፍ ፡ የሚከተሉትን ፡ ጥያቄዎች ፡ ባጭሩ ፡ እንመረምራለን ፡- (፩) ስለ ፡ አባትነት ፡ (፪) ስለ ፡ ካሳ ፡ (፫) ስለ ፡ ልጅ ፡ ማሳደጊያ ፡ ቀለብ ፡ ረገድ ፡ ምን ፡ ዐይነት ፡ መደገን ፡ ሊኖር ፡ ይችላል?

(፩) ስለ ፡ አባትነት ፡-

የልጁ ፡ እናት ፡ ልጁ ፡ በተዘነሰበት ፡ ወራት ፡ የመጠለፍ ፡ ወይም ፡ የመደፈር ፡ ሥራ ፡ ካልደረሰባት ፡ በቀር ፡ በፍትሐ ፡ ብሔር ፡ ሕግ ፡ ቊጥር ፡ ፯፻፶፭ ፡ መሠረት ፡ አባትነት ፡ በፍርድ ፡ እንዲገለጥ ፡ ለማድረግ ፡ አይቻልም ። ከነዚህ ፡ ከሹለቱ ፡ ሹነታዎች ፡ የተለየ ፡ ሌላ ፡ ሹነታ ፡ ሊኖር ፡ እንደማይችል ፡ ቊጥር ፡ ፯፻፷፩ ፡ በግልጽ ፡ ያስረዳል ። (እንዲሁም ፡ በቊጥር ፡ ፯፻፷፩ ፡ የተወሰነውን ፡ ይመለከቷል) ። ለምሳሌ ፡ በተንኮል ፡ ወይም ፡ በሌላ ፡ ዘዴ ፡ የግብረ-ሥጋን ፡ ተግባር ፡ እንድትፈጽም ፡ የማሳሳት ፡ ሹነታ ፡ ቢያጋጥም ፡ ወይም ፡ የተወለደው ፡ ልጅ ፡ የኔ ፡ ነው ፡ ብሎ ፡ በቃል ፡ ብቻ ፡ የማመን ፡ ሹነታ ፡ ቢያጋጥም ፡ አባትነትን ፡ በፍርድ ፡ ለማሳወቅ ፡ ሕጋዊ ፡ ዋጋ ፡ አይኖረውም ፡ ማለት ፡ ነው ። እንዲት ፡ አመልካች ፡ በቊጥር ፡ ፯፻፶፭-፯፻፷፩ ፡ መሠረት ፡ መደገን ፡ ለማግኘት ፡ ካልቻለች ፡ አባትነትን ፡ በፍርድ ፡ በማስታወቅ ፡ ሳይኾን ፡ ምናልባት ፡ በሌላ ፡ ረገድ ፡ መደገን ፡ ሊኖራት ፡ ይችላል ፡ እንደኾነ ፡ መመርመር ፡ ይኖርብናል ። ከውጭ ፡ አገር ፡ ሕግና ፡ የፍርድ ፡ ቤቶች ፡ ውሳኔ ፡ እንደምንረዳው ፡ አባትነትን ፡ በፍርድ ፡ ከማሳወቅ ፡ የተለየ ፡ መደገን ፡ ለማስገኘት ፡ የሚቻልበት ፡ ብዙ ፡ ሕጋዊ ፡ መንገድ ፡ አለ ። ለምሳሌ ፡ እንዳንድ ፡ ሹነታዎች ፡ በጥፋት ፡ ላይ ፡ የተመሠረተ ፡ ኅላፊነት ፡ በመፍጠር ፡



የኅሊና፡ ግዳጅ፡ መከላከያ፡ ሲኾን፡ እንደሚችል፡ የፍትሐ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ጀጢሕጀጃጃ፡ (፩) ያማልዳል። ኹኖም፡ የፍትሐ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ጀጢሕጀጃጃ፡ ጀጢሕጀጃጃ፡ እና፡ ጀጢሕጀጃጃ፡ የሚያዙትን፡ በመዝለል፡ የኅሊና፡ ግዴታን፡ ወደ፡ ሕጋዊ፡ ግዴታነት፡ ለውጦ፡ ለመቀበል፡ ይቻላል፡ ለማለት፡ አዳጋች፡ ነው። አንዳንድ፡ የፈረንሳይ፡ ፍርድ፡ ቤቶች፡ አንዱን፡ ዐይነት፡ ግዴታ፡ በሌላው፡ መተካት፡ ወይም፡ ማደስ፡ (ኖቬሺን) ባይኖርም፡ አባት፡ ነው፡ ሊያሰኝ፡ የሚችል፡ ኹነታ፡ ባልተረጋገጠበት፡ ጊዜ፡ እንደ፡ ቀለብ፡ የሚሰጥ፡ ካሳ፡ ለመቀረጥ፡ እንደሚቻል፡ ያመለክታሉ። (ኤንሲክሎፔዲ፡ ዳሎዝ፡ ቀ፡ ፲፫፡ እና፡ በውስጡ፡ የተጠቀሱትን፡ ጥቅሶች፡ ጥምር፡ ይመለከታል)። ይህ፡ ዐይነት፡ ውሳኔ፡ በኢትዮጵያ፡ ሕግ፡ ትክክለኛ፡ ፍርድ፡ መኾኑ፡ ያጠራጥራል። በፈረንሳይ፡ አገርም፡ ቢኾን፡ ለከላሽ፡ እናት፡ የልጅ፡ ማሳደጊያ፡ ቀለብ፡ የማግኘት፡ መድኃኒት፡ ለማሰገንት፡ ፍርድ፡ ቤቶቹ፡ የሚጠቀሙባቸው፡ ዘዴዎች፡ ትክክል፡ አይደሉም፡ የሚል፡ ትችት፡ ይሰማል። (ለምሳሌ፡ “ማዞድ፡ ሌሶ፡ ዴ፡ ድርዋ፡ ሲሺል፡ ቶም፡ ፩፡ ቀ፡ ፱፻፷፫፡ እና፡ ቀ፡ ፱፻፹፪፡ ይመለከታል)። በቅርብ፡ ጊዜ፡ ታውጆ፡ በወጣው፡ የፍትሐ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ፯፻፷፩፡ እና፡ ፯፻፷፩፡ ግልጽና፡ አስገዳጅ፡ በኾነ፡ ግይለ-ቃል፡ የተነገረውን፡ በመዝለል፡ በእነዚህ፡ ዘዴዎች፡ ለመጠቀም፡ በኢትዮጵያ፡ በጣም፡ አስቸጋሪ፡ ይኾናል። በጋራ፡ ልማድ፡ ሕግ፡ (የኰመን፡ ሎው)፡ በአህጉራዊው፡ ኤውሮጳ፡ ሕግ፡ (ኩንቲኔንታል፡ ሎው) እና፡ በኢትዮጵያ፡ የትርጉም፡ ደንብ፡ መሠረት፡ ሕጉን፡ ለመለወጥ፡ ሥልጣን፡ ያለው፡ የሕግ፡ ምክር፡ ቤት፡ ብቻ፡ ነው። (የፍትሐ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ፩፻፷፫፡ “በአርርቲኖሪ” — እንዲያውም፡ ከዚያ፡ በጠነከረ፡ ወይም፡ በክረረ፡ ምክንያት — ትርጉም፡ እንዲሁም፡ በ፲፱፻፶፯፡ ዓ. ም. በኹለተኛው፡ የኢትዮጵያ፡ ሕግ፡ መጽሔት፡ ገጽ፡ ፫፻፲፩፡ ላይ፡ ከጄ. ክሸችኖቪች፡ “ስለ፡ ኢትዮጵያ፡ የሕግ፡ ትርጉም፡” የተጣፈውን፡ ይመለከታል)።

- (ሰ) በሰዎች፡ ዘንድ፡ በይፋ፡ የታወቀ፡ ኹኖ፡ ሳለ፡ በሕግ፡ ያልታወቀ፡ ዝምድና፡ በኢትዮጵያ፡ ሕግ፡ ሊኖረው፡ የሚችል፡ ውጤት፡ በፍትሐ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ፩፻፹፩፡ ተገልጿል። ኹኖም፡ በቀጥር፡ ፩፻፹፩፡ የተመለከተው፡ ሕጋዊ፡ ውጤት፡ ቀለብን፡ የሚመለከት፡ አይደለም። ነገር፡ ግን፡ በፍትሐ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ፯፻፵፩፡ እና፡ ፯፻፷፡ ስለ፡ ወደ-ገብነት፡ ኅብረቶች፡ (ከጋብቻ፡ ውጭ፡ በግብረ-ሥጋ፡ ስለ፡ መኖር፡) በተመለከተው፡ መሠረት፡ ሕጋዊ፡ ዝምድና፡ ለመመሥረት፡ ይቻላል። የዚህም፡ ዐይነት፡ ዝምድና፡ በፍትሐ፡ ብሔር፡ ቀጥር፡ ፩፻፷፡ መሠረት፡ ቀለብ፡ የመስጠት፡ ግዴታን፡ ያዘለ፡ ነው።

### ማጠቃለያ ።

የፍትሐ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ፯፻፶፰፡ የሚያዘው፡ ኹነታ፡ ካልተፈጸመ፡ የልጅዋን፡ አባት፡ በፍርድ፡ ለማሳወቅ፡ የምታመለከት፡ እናት፡ ፍርድ፡ ልታገኝ፡ አትችልም። በምትኩ፡ ሊኖራት፡ የሚችል፡ መድኃኒት፡—

- (ሀ) ጉዳዩ፡ አግባብ፡ ያለው፡ ሲኾን፡ የግዙፍ፡ (የሚጨበጥ) ወይም፡ የኅሊና፡ ጉዳት፡ ካሳ፡ ወይም፡ ኹለቱን፡ ዐይነት፡ ካሳ፡ አጣምሮ፡ መጠየቅ፤

- (ለ) ግንኙነቱ፡ የወደ-ገብነት፡ ኅብረት፡ አለ፡ የሚያሰኝ፡ ኹነታ፡ ያስከተለ፡ እንደኾነ፡ እናት፡ ለልጅዋ፡ ቀለብ፡ ለመጠየቅ፡ መብት፡ አላት፡ (የፍትሐ፡ ብሔር፡ ሕግ፡ ቀጥር፡ ፯፻፲፩፡ ለራሷ፡ ቀለብ፡ እንዳታገኝ፡ ያግዳታል)።



# CURRENT ISSUES

## CIVIL CODE ARTICLES 758-761: SIDE ISSUES

(*Paternity claims barred by Article 761 of the Civil Code: The problem of substitute remedies.*)

### INTRODUCTION

Some members of the Ethiopian legal profession are concerned about the severity of our codified law of filiation which has been comprehensively restated in *Workinesh Bezabih v. Yidenekou*, recently decided by the Supreme Imperial Court and reported in Volume I of the Journal of Ethiopian Law (1964) at page 17. Rather than adding to that luminous opinion, this note is concerned predominantly with certain side issues raised by the situation of a deserving mother-claimant who does not satisfy the strict conditions required by Article 758 of the Civil Code for a judicial declaration of the paternity of her child. The text below constitutes a succinct analytical exploration of the following question:

What remedies, if any, may still be available in such a situation with respect to (1) paternity, (2) damages, and (3) aliments?

### PATERNITY

There are no remedies with respect to a declaration of paternity under Article 758 of the Civil Code in circumstances other than those of rape or abduction. Article 761 expressly prohibits the consideration of other circumstances, e.g., seduction or admission (see also the prohibitions under Article 721 of the Civil Code). Remedies, if any, available to a claimant denied recovery under Articles 758-761 of the Civil Code may lie *not* with respect to a declaration of paternity, but with respect to offences, faults, or acts which are not grounds for a declaration of paternity.

Consequently, we have to explore, *outside* the domain of declaration of paternity, the possibilities of giving redress to a claimant failing or likely to fail in her suit for a declaration of paternity of her child. There is ample scope for such redress and precedents in its favour exist abroad. Some remedies may lie clearly in Tort (see the discussion below under *Damages*), while others are argued for, with scant clarity, by the protagonists of "alimentary" or "quasi-alimentary" redress (see the discussion below under *Aliments*).

### DAMAGES

If the defendant's conduct, not amounting to abduction or rape (Articles 558 and 589 of the Penal Code), constitutes a seduction in terms of Article 596 of the Penal Code or constitutes any other penal *offence*, a claim for damages can be based on Article 2035 of the Civil Code.

If, without amounting to an offence, the defendant's *fault* merely consists of conduct contrary to good morals, a claim for damages can be based on Article 2030 of the Civil Code in its Amharic and French versions. The English version of this Article is wrong in that "offence" should read "fault" and "public morality" should read "good morals." Article 2030 will allow damage-redress whenever the case of a mother-claimant denied recovery under Articles 758-761 shows a minimum of merit. But fornication alone, without other blamable conduct, is insufficient to ground any claim (Article 721 of the Civil Code).

In appropriate cases, *moral* damages may be awarded over and above the material ones on the basis of either Article 2107 or 2114 of the Civil Code in the Amharic-French versions. The English version of both seems wrong:

- (a) Article 2107 (compare 2038) deals with a "repulsive" variation of what should perhaps be termed battery rather than assault.
- (b) Article 2114, in the French version, speaks not of assault but of "atteinte à la pudeur" and (apart from rape) of "acte contraire à la pudeur." It also quite clearly contemplates moral reparation, which the English version does not. Article 2114 requires a penal conviction prior to damage-awards. So the French master-versions of the Civil and Penal Codes might have to be collated to find the penal counterparts for this provision, without which its object, moral damages, cannot be attained. Such counterparts should presumably be sought in Articles 590-595 of the Penal Code dealing with "sexual outrage."

Where the defendant's illegal or immoral conduct (e.g. an unfair seduction) was due to his intent to injure, Article 2106 (compare 2032) of the Civil Code may alone suffice to ground a claim for moral damages.

## ALIMENTS

Can redress be given in the form of aliments or (maintenance,) under Article 808 of the Civil Code? The answer clearly is in the negative, unless the required relationship (in our case paternity) is specifically established in the ways prescribed. These ways are more limited in Ethiopian law than in the French law, which recognizes, for example, seduction or admission as sufficient grounds for a declaration of paternity (see French Civil Code, Article 340, as of July 15, 1955). Two points remain for discussion:

- (a) Even without the establishment of paternity, French courts sometimes impose an alimentary obligation by *circuitous* methods (see *Encyclopedie Dalloz*, Droit Civil, Tome 1, Aliments, No. 63-77), which we shall now illustrate in terms of Ethiopian law. A defendant's conduct not amounting to the formal acknowledgment required by Article 748 of the Civil Code, but otherwise clearly recognizing his probable paternity (statements, acts of supporting the child, etc.) may be alleged to constitute an actionable novation of a non-actionable moral obligation to maintain the child. Moral obligations are recognized as to their defensive effect by Article 2166 (1) of the Civil Code. But we could hardly imply an acceptance and conclusion of their novation in view of the strict requirements of Articles 1682, 1826, and 1828 of the Civil Code. Still more questionable are some French decisions which, even in the absence of such "novations," award compensation in the nature of quasi-alimentary (revisable) obligations in cases of non-established paternity (*Encyclopedie*

*Dalloz, ibid.*, No. 13, including further reference). The aforementioned circuitous methods of alimentary relief are widely criticized as illogical (e.g., Mazeaud, *Leçons de droit civil*, Tome I, No. 963. See also No. 982). They would be exceptionally disruptive in Ethiopia in view of the recent restrictive purposes clearly and mandatorily expressed in Articles 761 and 721 of the Civil Code, and whose change, therefore, lies in the power of the legislator alone by the interpretative canons of the Common Law, the Continental Law and the Ethiopian Law alike (Article 1733 of the Civil Code *a fortiori*: see G. Krzeczunowicz, "Statutory Interpretation in Ethiopia), I Journal of Ethiopian Law (1964) at page 318).

- (b) In Ethiopian law the only effect given to non-legal (notorious) filiation is that of Article 584 of the Civil Code, which does not concern aliments. But Articles 745 and 708 of the Civil Code (concerning irregular unions) greatly facilitate the establishment of presumptive *legal* filiations which do carry alimentary duties in terms of Article 808 of the Civil Code.

### CONCLUSION

A mother-claimant who does not satisfy the requirements of Article 758 of the Civil Code has *no* other possibility to obtain a judicial declaration of paternity of her child. Her *substitute* remedies are:

- (a) in fit cases, to claim damages for material and/or moral harm to herself;
- (b) where the intercourse has initiated an "irregular union," to claim aliments for the child (not for herself: see Article 711 of the Civil Code). (since in such case the child "has a father" Article 758 becomes inapplicable even if there was rape). She has no other possibility to recover aliments.

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# የኢትዮጵያ ሕግ መጽሐፍት JOURNAL OF ETHIOPIAN LAW

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