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YATAYYAQ MUGET: THE TRADITIONAL ETHIOPIAN MODE OF LITIGATION

Abera Jembere*

The body of law that was indigenous to Ethiopia and which marked a significant development in the last decades of the nineteenth century and the first three decades of this century was the regime of law known in modern legal science as Civil and Criminal Procedure laws. It was transmitted from generation to generation by oral tradition.

This procedural law included the law of evidence, which incorporated a highly sophisticated technique of interrogation and cross-examination known as *Tatayyaq Muget*. The term *Tatayyaq* literally means "be interrogated". Technically, however, it is the traditional mode of litigation in court proceedings. *Esette-Ageba-Muget*[1] was used interchangeably with *Tatayyaq* to denote features of court proceedings and the same mode of litigation. *Muget* means litigation, and includes all procedural aspects of the administration of justice.

General E.Virgin summarised his vivid eye-witness account of court proceedings conducted according to the indigenous mode of litigation of Ethiopia, in the following manner:

> The Abyssinian is a born speaker and neglects no opportunity of exercising this talent. A law-suit is a heaven-sent opening and entails as a rule a large and appreciative audience: now threatening and gesticulating, now hoarsely, whispering with shrugged shoulders, now tearfully, he tells of his vanished farthing, and points a menacing, trembling finger towards the accused.
>
> The judge in the midst of a circle of spectators, having listened to the eloquence with a grave and thoughtful

*Part-time Assistant Professor, Addis Ababa University, Faculty of Law.

> men, now invites the accused to reply. Like a released spring he leaps up, and with raised hands calls heaven to witness his innocence, then falls on one knee, rises, stands on tiptoe, drops back on his heels, shakes his fist under the nose of his adversary and approaches the judge with clasped hands, while all the time an unceasing stream of words pours from his lips.

This theatrical exposition of court proceedings shows how the *tatayyaq* mode of litigation, which forms part and parcel of the Ethiopian cultural heritage operate. Customary law, together with the *Tatayyaq* mode of litigation, had become the prevailing law in a large part of Ethiopia by 1936.

What are the major features of the institutions involved in the application of the *Tatayyaq Muget* and how does it actually operate?

I. FEATURES OF COURT PROCEEDINGS

Litigation at the initial stage was in general a voluntary and spontaneous form of arbitration. A party to a dispute was entitled by law[3] to call upon any passer-by to decide his case. If the parties to the alleged dispute were satisfied by the rulings of the "road-side" courts[4] , the matter would be considered settled. However, if a decision satisfactory to either or both of the parties could not be obtained, they would go to court, or sometimes the person who acted as a "road-side" judge would take them to the lowest official judge.

The lowest official judge could be the Chika Shum[5] or the *Melkegna*.[6] The *Chika Shum* and the *Melkegna* were basically administrative officials who exercised judicial power. The concept of separation of power was alien to the then existing society. Every government official was thus referred to as *Dagna* (judge).

The *Techiwoch* or *Korqwaris* (assessors)[7] stand next to the *Dagna* in order of importance. Some of them were selected by the contending parties, and some by the regular court from among those people attending a court session.

The third typical feature of the judicial process was *Wass* (guarantee). The most frequent forms of guarantee were as follows:

1) Yeqebeqabe Wass or Yemegazia Wass - a form of guarantee secured for maintaining good conduct in a community, and usually given by all adult males at the time of establishing a residence.

2) Yesene-Ser'at Wass - a guarantee produced by both parties at the time of initiation of a case to ensure respect and fulfilment of all procedural requirements in a case, and also to ensure the appearance of the party in question on the day fixed for hearing.

3) Yegefi Wass - a guarantee produced by a party to prove the points he alleged, and particularly where compensation was due for making undue adverse remarks about the person of an adversary.

4) Yedagnenet Wass - a guarantee produced by both parties at the initial stage of a proceeding for securing the payment of court fees by the party who lost the case.

5) Yewurered Wass - a guarantee entered into at the time of contestation to secure the payment of a wager or bet by the loser payable on and at the time of settlement of the issue under contestation.

6) Yebesella Wass - a guarantee to secure the payment of the value claimed in a civil suit, produced at the time of pronouncement of judgement.

7) Yettelefa Wass - a subrogate guarantee to secure the appearance of the principal guarantor or the payment of the debt.

8) Yejje-Tebik Wass - a guarantee produced at any stage of a criminal proceeding to ensure the proper behaviour of a person alleged to have theatened the life of another person.[8]

The fourth and the last element of a legal process involved in this system was the institution known then as Negerefej; which pertained to a person who usually had a fair knowledge of the law, and who had agreed to represent a person before a court.

Let us now come to the crux of the matter and show how the Tatayyaq mode of litigation operated, i.e. how court proceedings were conducted at a regular court of law at all levels.

II. COURT PROCEEDING

A. Case Initiation

A court proceedings begin with securing Yesene-Ser'at Wass by both the plaintiff and the defendant. The judge would then require the plaintiff to put forward his claim. After the full claim had been stated, the defendant would be required to admit or deny it.

If the claim was denied, the legal representative of the plaintiff, moving with his stick to and from in the court room before the judge, would present the principal and side issues involved with respect to the case in hand.

The defendant, in his turn, would in like manner present his defence.

B. Wurrered Metkel: Laying a Wager or Bet

At this stage, the plaintiff lays a wager to prove his claim. The defendant may require the plaintiff to reduce the amount of the wager, for instance, from a mule to a horse. If further reduction is required, it might be reduced to "honey".[9] The defendant would then lay down the same amount of "honey" as laid by the plaintiff. Alternatively, he may admit the claim, but deny some of the assertions - as the saying goes " *ameno yemwagetwal, kerekesebet yeshemtwal*", which brings home the fact that admission may be equally as beneficial as shopping in a cheap market. If, on the other hand, the defendant intends to admit the assertion, he would respond *"Agurah tennagne"* (I concur).

If such admission is secured, the plaintiff would say:
"be agurah tennagne yetereta, mehale agedawn yetemetta" (a person who looses the litigation by admission is like a person who has been struck on his leg). He would then request that judgement be entered against the defendant. The party that invoked *"agurah tennagne"* would be required to pay one Birr as a court fee. No appeal was allowed from such a ruling.

C. Introduction of Oral or Documentary Evidence

If the defendant denied some of the facts alleged against him, the facts which were denied had to be proved. The plaintiff may therefore introduce oral or documentary evidence, or both, to prove his allegation.

After both parties had laid their bets and the issue between them had been determined, at least three witnesses from each side would be heard. The witness would openly testify before the court in the presence of the parties or their legal representatives. Where available, documentary evidence would have to be submitted to the court. At this juncture, we should appreciate the admissibility and the probative value of evidence obtained through the what was known as *Yechibette Dagna*.[10]

If, for reasons of old age or serious sickness, a witness was prevented from appearing before the court, the depositions of that witness had to be taken by a judge commissioned for this purpose, the *Yechibette Dagna*. This judge would be informed by the court as to the issues raised, and would be required to report back the testimony of the witness. This judge would therefore go to the locality where such a witness lived, together with the parties to the dispute. He would then hear the testimony of the witness in the presence of the parties, four observers selected by each party and the local *Chika Shum*. On his return, in the presence of the parties, he would report orally the testimony to the judge who had given him the assignment.[11]

If the *Yechibette Dagna* made errors in transmitting the testimony, the method of correction that was used was as follows:

> If he added to, or missed out something from what was stated by the witnesses, the interested party may state: Remember your honour: as God has endowed you with the power of memory, so let God help you to recall what has been testified by So-and-So.[12]

If the *Yechibette Dagna* held to his version, the observers would be required to give their own. Depending on which one was proved correct, either *Yechibette Dagna* would be reproved, or the party which had made the allegation would pay compensation to the *Yechibette Dagna*.

In principle, a witness was not required to tender an oath prior to giving his testimony. He would, however, be required and warned to testify the truth and only the truth.

Failing this, the party against whom the witness tesfified had the right to request the court to require the witness to tender an oath, and this was done during mass, particularly when the holy communion was offered. The witness would close

the door of a church[13] and/or hold the Holy Bible, saying:

> May He perforate me like His cross,
> May He erase me like His picture,
> May He chop me down into pieces like His flesh,
> May He spill me like His blood, and
> May He choke me up as His Altar is closed,
> If I am not telling the truth.

If he had already testified out of court, the other party may impeach the credibility of his testimony or may claim that it may not be admissible at all.

Consanguineous relationship and other relationships, such as those of filiation, godfather, adopted child, godchild and the like, were grounds that could be invoked to bar a person from testifying or to discredit his testimony.[14]

The party which called the witness would, before asking him to testify, warn him as follows:[15]

> One may go to hell after death;
> One may be reduced to bones, laying sick in bed;
> One may also be a permanent inmate of a hospital;
> All the same, one is obliged to tell the truth.

In a similar manner, defendant will advise the witness to tell the truth and ask him to testify that he did not know what was alleged by the plaintiff.

After all the witnesses had given their testimony, the party who felt that most of the witnesses had testified in his favour would pray for judgement to be entered in the following manner.

> As a threshing-ground would go to the one who prepared it, judgement should be made in favour of one who has been proven right.

There were instances where each party to the suit would claim that the testimony given stood in his favour. In such a situation, contentions were settled by mere allocation of the testimony to this or that party by the persons selected as observers. These persons were known as *Irtibe Emagne*.[16] Later on, however, a rule was enacted that required the witness who had given the testimony which had

become the object of contention to be recalled, to ascertain as to whom his testimony favoured.[17] His answer would automatically settle the matter.

D. Tatayyaq: be interrogated

In the past, parties to a civil case had no use of such legal institutions as defence witnesses. For the cause of action alleged by the plaintiff, there always lay a claim by the defendant that it should have been he who ought to have had the right to establish whether the alleged cause of action existed or not.[18]

On this point, Rev. M. Russell, commenting on this mode of litigation, wrote the following about 150 years ago:

> The lawyers stand on either side of the plaintiff and the defendant pleading in a loud tone of voice their several causes, during which process wagers of mules, cows, sheep and gold are continually laid by the orators that they will prove such and such charges contained in the libel....[19]

The exercise of such procedural right used to be invoked either by the party to the case personally, or by his counsel. Where such questions of law arose, the other party would say *Kafe*[20] or *Kettebekaye*[21]

On the day fixed for the hearing, the plaintiff, either himself or through his counsel, and before proceeding to the interrogation in accordance with the rules of the *Tatayyaq muget*, would ask whether or not the rules of procedure were correct. If the defendant's answer was in the positive, then the plaintiff would go on throwing out various questions to show the implications of the claim set forth.

The plaintiff was allowed to pose only one question at a time, and the contending party had to give a single and direct answer to every question asked. In this manner, question and answer went back and forth between the adversaries. A bet was laid down to sanction this rule of procedure. To respond anything less or more than what was required amounted to violating the rules of procedure.[22]

If one party violated this rule of procedure, he would be required to produce a guarantee for the payment of the wager made earlier. Whether or not a party had violated these rules was established by the Techewoch. Even where a party readily admitted the commission of such a fault, he nevertheless had to pay the bet.

When the plaintiff finished his questioning, the defendant would in turn start posing questions.

E. Wurd Menzat or Bela Lebelha: art of advocacy and

challenge after the examination and cross-examination of the case had been finalized and before the judge gave his decision, the parties would resort to wurd anezaz, the art of advocacy applied to convince the judge and the persons attending the court session by the use of poetry and eloquent expressions.

At the same time, each party would endeavour to ridicule and harass the other party, by exposing some of the disgraceful deeds alleged to be committed by the opponent, and shameful events that had reputedly occurred in his family background, with a view to discrediting the adversary by making public his weak points.

The following presentation may roughly show the challenge involved:

> Tell me and I will tell you the system
> of the **Ate Ser'at**[23] and the truth of Abraham.
> Never will I speak a lie,
> but the truth and only the truth.
> On one side, the judge,.
> On the other myself,
> The judgement rendered by the judge...
> and an animal slaughtered by the knife of an Adal;
> never shall the judgement be quashed,
> and would not there be a soul to be alive.
> Daring to pay honey,
> Pulling down the enemy to his knees.
> If I have performed a bad deed,
> I regret it.
> But if I have done well,
> you should never let me fail.[24]

In a similar manner, the other party in his turn would endeavour to convince the judge and to ridicule his adversary.

These are many emotion-laden words; none-the-less they resemble the present

legal concept of judgement where opinion is given by both parties, just before the judge sums up the proceedings and renders his judgement.

The other purpose of *wurd menzat* was to win over the judge. In this regard, a **wurd** made by a certain *Basha* Mullatu Wolde Yohannes was believed to have greatly impressed *Afe-Negus* Nessibu:

> "A piece of leather thrown into the fire,
> A bed splendid with leather attire,
> So would Nessibu roast one found to be a liar,
> as the piece of leather thrown in the fire,
> Warm and soft, he is for the truth,
> keeps it in the bosom of the bed,
> that it may have warmth."[25]

Once litigation had passed the *wurd anezaz* stage, the *Techewoch* (assessors) would be asked to give their opinion in ascending order of seniority.

F. Opinion Giving and Rendering of Judgement

Techewoch or judges would tender the following catch when giving their opinion as to how the case should be disposed of:

> "Let me face my trial and let it be brought before the wronged,
> If I did anything wrong and justice is shunned.
> Let the enemies of my lord be sent to the sword,
> let those close by the lord be beheaded,
> and those afar smashed."[26]

The observers, after giving their analysis, would recommend a decision.

Finally the judge would give his reasoned judgement. He would finally say to the plaintiff or the defendant, as the case might be:

> "I have decided against you, pay court fees and the bet.[27]

This would be the end of the matter, unless and apeal was lodged to the next higher court.[28]

G. Appeal

An appeal may be based on substantive or procedural issues, including interlocutory matters. Every complaint lodged against the judgement or interlocutory decisions of a court was examined not only by judges sitting in higher courts, but also by *Korqwaris*, i.e. assessors attending the court session.

Appeals made on interlocutory order were not so infrequent as implied by Art. 184 of the Criminal Procedure Code. Whenever one of the parties felt that such interlocutory decisions would be prejudicial to the principal issue, he was justified in making an interlocutory appeal, if, for instance, on a question of title, a ruling was given as regards the mode of proving such subsidiary issues as the existence of a preemptive right in the customary law of a specific society, which would adversely affect the interest of the complainant, unless immediately addressed; then this might be considered as a justifiable ground for lodging an interlocutory appeal.

Another matter that was taken to a higher court, particularly that of the *Afe-Negus*[29], was the question of interpretation of law. The *Yeyigebal Kireker*, a dispute over who has the right to prove an allegation, and questions of interpretation of law were submitted to the *Afe-Negus*, who was assisted by the *Ras Wembers*.[30] For instruction or guidance as to how a set of facts or questions of law were to be interpreted, it was to this court that judges of lower rank had to make reference.

III. CONCLUSION

The system of litigation conducted in accordance with the rules of the *Tatayyaq Muget*, during the last century and the beginning of this century, was indigenous and unique to Ethiopia.

A close observation of the old laws of Ethiopia, as summarized above, reveals that the procedural laws were more developed than the substantive laws. This is attributable to the teachings of scholars of the *Fetha Negast*[31], to the experiences gained in the practice of the legal profession and to the traditional value attached to the practice of bringing up young men as legal apprentices in the courts of governors and in the imperial palace. The fact that litigation, at least as regards the "road-side" courts, was a voluntary and spontaneous form of adjudication has greatly contributed to making the administration of justice a civic obligation of any law-abiding citizen. This and other factors combined have succeeded in making the

traditional procedural laws relatively well developed.

NOTES

1. Esette-Ageba means betting, i.e. agreeing to pay the amount the terms of wager offered by the adversary. Shibeshi Lemma, Yettentu Esat Ageba Muget, senior research paper submitted to the Department of Ethiopian Languages, Addis Ababa University (unpublished), Law Faculty Archives,(1965 Ethiopian Calender).

2. Virgin, Eric, The Abyssinia I knew (London, Macmillan and Co. Ltd. 1956), p.91 quoted in Shibeshi Lemma, Yettentu Esat Ageba Muget. op.cit. p.2.

3. In the preamble of most of the proclaimed laws, there was a stipulation to the effect that one had the right to bring a case to a passer-by, and the passer-by had the power to act as a judge and render justice.

4. The "Road-side courts" do not follow the Tatayyaq Muget Procedure.

5. Chika Shum is a local chief.

6. Melkegna is a governor of a locality.

7. At different levels of courts, different members of Techiwoch or Korqwaris (assessors) were selected by both parties and the judge, the number varies from 6 to 8 Techiwoch.

8. All kinds of guarantees were not used in all cases.

9. This was a kind of wager paid in cash, i.e., four Birr for every bet of mar (honey).

10. A commissioned judge.

11. Mateme Selassie Wolde Meskal, Yegnam-Allou Eniwqachew (Addis Ababa, Institute of Ethiopian Studies, Addis Ababa University, 1958 Ethiopian Calender) (unpublished), p.39.

12. Ibid.

13. Closing the door of a church takes place for important matters only.

14. Interview with Fitawrari Abebe Gebre, former judge and a high government official knowledgeable about the traditional mode of litigation.

15. Ibid.

16. Assessors nominated afresh for the particular hearing.

17. Mahteme Selassie, op.cit., p. 40.

18. Ibid.

19. Russell, Michael,Nubia and Abyssinia (New York J. and J.Harpper, 1833) p.267, quoted in Shibeshi Lemma, op.cit.p.2.

20. Kafe literally means "with my mouth": technically, however, it is a request for leave to appear with a counsel; such plea entitled one to three days' grace.

21. Kettebekaye is a request for permission to appear with a counsel; it entitled one to seven days' grace.

22. Mahteme Selassie, op.cit., p. 40.

23. Atse Ser'at literally means "The law of the king". It was a way of invoking the customary principles of law that had been applied and recognized by courts as either substantive or procedural law of the country.

24. Mahteme Selassie, op.cit., pp. 40-41.

25. Interview with Bitwoded Zewde Gebre-Heyot, former high government official.

26. Mahteme Selassie, op.cit., p.39.

27. Interview with Fitawarari Abebe Gebre, cited above, at note 11.

28. The list which shows the hierarchy of regular courts prior to 1935 was as follows:

    1) The **Zufan Chilot** (Crown Court)
    2) The **Afe-Negus** Court (Court of national jurisdiction)
    3) The **Shalleka Court** (Court of the Governor)
    4) **Yekal Dagna** (District Court)
    5) **Yesir or Yafer Dagna** (court of first instance).

29. The Chief Justice.

30 Justices appointed by the central government to assist the Afe-Negus with appellate jurisdiction, sitting in six divisions to hear appeals coming from areas allotted to each of the divisions of the court.

31. The Law Book entitled The Law of the Kings. It was introduced to Ethiopia between the 15th and the 16th centuries, and incoperated into the legal system of Ethiopia in 1908 by Menelik II.