WE WERE JUST TESTING OUR WINGS

Yacob Haile-Mariam (Ph.D.)*

Background of the Dispute with the University

It was June 1966, six senior law students at the Haile Selassie I University Law School, having competed our studies and having passed our exams were readying ourselves for one of the greatest events of our life: graduation from the Law School of Haile Selassie I University. We were in a week going to receive our LL.B. degrees, or so we thought, from the hands of none other than the Conquering Lion of the Tribe of Judah, His Imperial Majesty Haile Selassie I, Elect of God and Emperor of Ethiopia. Having been at the University for five long and exhaustive years, we were anxious to take up one of the many plum jobs awaiting us and then start enjoying the good life.

We had completely forgotten that earlier the University had proclaimed what then was called "University Service", which required all students to serve one year in different capacities, mostly as teachers in rural schools, as a requirement for graduation with bachelor's degree in all the academic disciplines. The military members and civil servants in our class who were quite few in number were exempt from the Service.

Our enthusiasm was dashed when one morning we were informed that like all other students at the University we had to serve in rural areas for a year before being awarded our degrees. The students at the other departments of the University meekly and quietly accepted their fate and readied themselves to go on the University service. Not us lawyers. We decided we were not going to accept this "injustice" lying down. After all we were no theology students who would turn the other cheek and therefore we decided not accept this program imposed on us without a fight. We were lawyers and we vowed we would fight this "injustice" all the way up to the Supreme Court if necessary. We decided to show the University officials that it was not for nothing that we had studied the law for five years, and we were fully equipped with all the arsenals our law study provided us with to fight off this "injustice".

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* Part-time Professor, School of Law, Addis Ababa University; Former Professor of Business Law, Norfolk State University; Former Senior Prosecutor for the International Criminal Tribunal for Rwanda.

So one bright morning all six of us were packed in a rickety old Volkswagen belonging to one of our colleagues, the late Girma Tadesse and headed to Lideta and filed a suit against Haile Selassie 1 University at the First Division of the High Court where Justice Buhagiar, a British Citizen of Maltese origin, presided.

The Plaintiffs

The plaintiffs were Ababiya Abajobir, Girma Tadesse, Shimellis Hussein (since deceased), Yacob Haile-Mariam, Yohannes Herouie and Zera Brook Aberra (who since has become an Eritrean citizen). Selamu Bekele who had the highest GPA in our class was scheduled to go to Harvard Law School for further studies and therefore did not join us in the suit. Neither did Ms. Alexandra Hamawi, who was a Greek citizen and therefore was exempt from the service. The case was captioned as Ababiya Abajobir, *et. al.* versus Haile Selassie I University. We decided to represent ourselves thus giving us the opportunity to test the new wings we had acquired as law students.

The Defendant's Lawyers

The University retained two top notch lawyers: Ato Bekele Nedi and Ato Teferri Berhane (who since moved to Eritrea), both graduates of McGill Law School in Canada with vast experience in litigation and thoroughly familiar with the system. Theirs was the only modern law office in the country at the time in contrast to the other law offices established by persons who became lawyers through experience or following release from long incarceration for some criminal offense where they picked up some law.

We were awed by these two gentlemen who occasionally had taught us some courses as guest lecturers. Yet a bunch of some rag tag law students taking on these highly sophisticated lawyers was like David inviting Goliath for a fight.

Plaintiff's Statement of Claims

The plaintiffs' statement of claims largely drafted by Yohannes Herouie alleged the following:

a) The University had no authority under its Charter to proclaim or legislate a one year national service under the guise as an academic requirement for qualifying for an LL.B. degree;

b) If such service is required of the students, it should be proclaimed by the National Assembly which has the constitutional authority to impose obligations on all citizens or part thereof;

c) The University cannot arbitrarily impose as a requirement for graduation a subject which is not even remotely related with the study of the law. By way of an example, wouldn't it be capricious and arbitrary to require the consumption of a certain number of bottles of beer before a student would qualify for his law degree? We argued requiring a one year service in rural Ethiopia as a condition for getting a law degree was no less absurd;

d) We the plaintiffs and the University had some tacit agreement when we first joined the University. Our agreement was that we would take a specific number of courses and pass the exams and we would be awarded our degrees as a matter of right. The University Service was not, at the time we enrolled at the University or the Law School, one of those required courses needed for qualifying for an LL.B. degree. In fact the University Service was not shown even in the class schedule, because it did not exist at the time. Making University Service a requirement retroactively for graduation was a breach of the tacit agreement we had with the University when we first joined the University or the Law School.

We therefore prayed to the Court:

a) To declare that the proclamation of a national service a.k.a. University Service *ultra vires* to the authority and power granted to the University by the University Charter or any other rules and regulations of the University;
b) To order the University to grant us our degrees during the forthcoming graduation, that is June 1966.

Ababiya delivered the oral argument in English for the benefit of the presiding judge Justice Buhagiar who did not understand Amharic. The Court at the time had a full time interpreter with impaired eyesight and yet amazed everybody with his eloquence and precision of his interpretation, not to talk of the elegant figure he cut with the three pieces suit he sported everyday without fail.

Defendant's argument

Counsel for the defense forwarded the argument that the Court was not competent to determine what academic requirement for a law degree is and

what is not. The sole judge of this should be the University and the University alone which has the competence and the requisite knowledge for determining what the input for a law degree should be including the number of hours needed to complete it. Counsel for defense therefore argued that the Court had no subject matter jurisdiction and therefore the plaintiffs' claims should be dismissed with cost

The Decision of the Court and the Consequence thereof

Three days before the date of graduation, the Court handed down its decision ruling that the University under the Charter or otherwise had no authority to proclaim or legislate a University Service requiring students to serve in rural Ethiopia for a year as an academic requirement for earning a law degree. Hence the Court declared the proclamation of the University Service *ultra vires* to the authority granted to the University by the Charter and therefore null and void. The judgment was read in the open Court and set aside for signature in the judges' chambers. However, the signing of the decision apparently fell by the wayside and the judges left for the day without affixing their signatures to the decision. Since there were only three days left for awarding the degrees we prevailed on the Registrar Ato Senbeta to take the decision of the judges to their respective homes and have them sign it, which he did- an unfortunate act which would cost him his job later. We then rushed the decision to the Ministry of Justice and caught the Minster Ato Mamo Tadesse, a French educated lawyer himself, when he was about to leave for the day. We served on him the decision and then ran to the University to catch President Kassa Wolde Mariam before he left for the day. We arrived at the University and caught President Kassa at the door of his office and asked him to talk to us. He was obliged and we all went back to his office and to his surprise we served on him the decision of the Court. Though President Kassa deep at heart knew that the judgment will not be executed, he nevertheless seemed to be contented that his students could sue the University and could win. Indeed this mode of behavior was quite different from what President Kassa was used to with the students of Haile Selassie I University, which usually was mass demonstrations and protests. He immediately told us that the University will appeal to the Supreme Court and have the decision reversed and we better get ready to go to our respective places of assignments.

Short lived Joy and Pride

The joy and pride we felt the day the Court handed down its decision was indescribable. Our victory was an affirmation that now we were lawyers in

earnest and could tackle the world of litigation. Though they never expressed it, the faculty at the Law School was very happy and Professor Paul who had become Academic Vice-President was secretly overjoyed over the fact that his first batch of students could sue and win a major case all by themselves.

However our jubilation was to be short lived: victim of the total absence of judicial independence in the country, a fact that is plaguing us to this day. A day before graduation Justice Buhagiar and Ato Denekew, the presiding judge and the right bench respectively, were unceremoniously dismissed from the bench and Ato Senbeta from the office of the Registrar. The fact that the judges signed the decisions in their respective houses was regarded as judicial misconduct warranting their dismissal from the bench. With the exception of some Italian judges in Asmara, with the dismissal of Justice Buhagiar the influence of the British jurisprudence which had begun with the brief British administration of the judiciary after the Italian occupation came to an end.

The University Administration then warned us that if we do not fulfill the University Service we will never be awarded our degree. So Yohannes Herouie, Zera Bruk Aberra and Yacob Haile-Mariam were assigned to the Asmara Attorney General's Office and the High Court and the others were assigned to the Attorney General's Office in Addis Ababa. Apparently the University appealed to the Supreme Court and the decision was reversed without summoning the Respondents and giving them their day in Court-one among much blight in the judicial system of Ethiopia.

Conclusion

Was the decision of the Court correct? Ladies and Gentlemen, lawyers may differ in their opinion. But in hindsight and after so many years of experience in the law my personal opinion is contrary to what used to be when I was a young and inexperienced lawyer. My present position, which I believe is a correct one, is that the Court was not competent to examine and determine what is academic requirement and what is not in a University setting. Such a determination should exclusively be within the competence of the University which is better informed on academic matters than the Court. To insist that the Court is better informed in matters of academia than a University and could determine what is academic requirement and what is not would border on judicial arrogance, of which

Courts are guilty of some times because of the finality of their decisions and the tremendous power they wield over litigants.

The Court should also not have forgotten the practical experience the students would acquire which would enhance the students' understanding of the society they were meant to serve and in fact even give them better perspective and relevance of the discipline they had studied. This is a very important component of an education and therefore the Court should have given some weight to this incontrovertible fact. In my opinion the Court erred in assuming jurisdiction and then declaring the National Service as *ultra vires* to the authority granted to the University by the Charter and therefore null and void. The substantial chasm that exists between now and the time the decision was handed down on my part may be attributable to age and experience where normally as time goes by one is guided less by passion and more by reason and objectivity.