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PROOF OF PATERNITY IN THE CASE OF ADDIS KETEMA SUB CITY

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ADDIS ABEBA, ETHIOPIA

JULY 2008

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CHAPTER ONE

1. INTRODUCTION

1.1 BACKGRAUND OF STUDY

Establishment of paternal filiation or proof of paternity entitles the child to maintenance allowance education and care in his/her duration of minority. Paternal filiation awards the child a maintenance allowance in the period of minority and also the period that lies beyond where the child may fall victims of circumstances that may deprive him of earning a living. Establishing filial relation to a man upholds its rights to inheritance, and when circumstance dictates binds him with a duty to provide maintenance to his father where the father lacks the means to make ends meet.

Therefore, for all the benefits that endows the child and the duty to carryout when the demand is manifested; of necessity require the child to establish paternal filiations. The effect of establishment of paternal relation in its execution is the same with all children irrespective of the manner in which it was established. One exception worth mentioning is that, relations out of marriage make it virtually impossible to fix legal responsibility for the child birth and subsequent maintenance upon the man who is unwilling to bear the burden of fatherhood with whom the mother has had a casual relationships *(Art 107(2) of RFC).*Such state of affairs of the law creates a dilemma for the girls who tend in the bars, school girls, shop girls and for that matter, to those women who happened to be commercial sex workers and also of that of office girls, which become pregnant outside of wedlock, has been the case with Addis Ketema Sub City.

The choice in most cases for the woman without husband is to give birth and then the child suffers from poverty. This is, as mentioned above largely an urban occurrence. The girl who has come to the city in search of better life and ends up working in a café, a bar or other public entertainment entities because of inability to find any other work. Such a situation renders a young woman convene with a customer whom she is usually unable to

identify later. There is also a situation where boys make them friends as a way of sexual outlets and when the girls become pregnant, these men deny their fatherhood.

As circumstances have indicated, the law will not accept the unmarried woman evidence alone in a paternity suit. If the father will not acknowledge paternity, he can not be legally adjudged responsible *(Art 125-136 of RFC)* and one can tell that, once a child is denied a father, such a happening leaves the Childs bond only to the mother *(Art .107(2)).*

> *" ... Science has invented an ingenious method*
> *To resolve problems related to paternity. This is to say*
> *That modern science is able to identify who the father*
> *of the child is, by using a method called DNA fingerprinting*
> *…the method has been perfected through time…*
> *When the technology is introduced to this country the problems*
> *That are related with paternity determination will cease*
> *To exist…" (Melese Damtie, Medico Legal Significance…*
> *Ethiopia Law Review, Vol.1, No.1, Aug 2002, commercial*
> *Printing Press, Addis Ababa.*

1.2. Statement of the Problem

The up bringing of a child by a mother and only parent has a lot of problem that influence the behavior and economic wellbeing of the child most of the time in his life. In a country like Ethiopia and particularly in an area where the economic situation and the level of development is not so lucrative, one finds it two cumber son a one person parent to provide the necessities of life to the one who is in a dire need of it. Addis Ketema Sub City is not so developed and does not provide the means as it is not readily available. Therefore, the mother of a child will be obliged to ascertain the paternal relation of the man to the child concerned whenever the possibility is there. The author of this paper has come across to observe such problem an indirect part of her work responsibilities.

Providing maintenance to a child, facilitation of its education, looking after a descent upbringing to help the child find an acceptable status in the society is not something to be achieved easily. The contribution that a father makes towards that end in quite enormous. This is therefore to shed light in regard to the Ethiopian law and practice as applied to the child born of marital and extra-marital union.

1.3. Objective of the Study

There have been many instances in the areas where this study has been under taken is quite problematic, and therefore controversial in many aspects. The objectives of this study therefore is to focus on points of establishment of paternal filiations, the approaches to the presumption of the law acknowledgment of paternity, and judicial declaration of pattering and will be highlighted as applied to real cases in life.
Incidents of bargains striking over fatherhood when the cause is open to two or more men when they claim the fatherhood to the child in question simultaneously will be extended a treatment by way of discussion.

1.4. Significance of the Study

This study like other studies is believed in enkindle further studies until such time that cases of proofing of paternity is exhaustively dealt with.

It is also the writer's belief that the study this will contribute to the cumulative knowledge already available in this regard.

It is again the author's belief that the study provides a meaningful insight that helps those parents who have not yet stepped in to claim their children to make up their mind so that they make their relationship legal.

There is a possibility for the study to convey new ideas worthy of nothing in the future amendments of respective legislations to meet requirements that surface in time.

1.5. Scope of the study

The study is intended in embrace events that have taken place within the limits of the Addis Ketema Sub City in regards to questions of filiations by way of paternal relation of a child born out of wedlock, be it in legal or irregular illusion as the circumstances dictate.

1.6. Limitations of the Study

The area called Addis Ketema Sub City is found in the heart of Addis Ababa, where one encounters all social and economic problems that prevails in the society. The problems are vast and varied and one lacks time and energy to trace materials relevant for the study where they are not readily available. The author has therefore limited the study to few available resources that are found to be exceedingly relevant to the subject matter at hand. Because recent cases were very difficult to find or lack relevance to the need where found. The author has also faced a tremendous difficulty in securing research title.

1.7. Methodology of the study

The study has been conducted based both on primary and secondary sources. Web Sites have also been surfed until the author limited herself to materials so intimate to the issue at hand. The author's personal observation has also been part of the study limiting it to the peculiarities of the case at hand.

1.8. Organization of the Study

The paper has been logically organizes in a manner so accustomed with most papers of that nature. If has the introductory part that renders an insight in to the nature and disruption of the study and the body with a logical flow from Chapter two through Chapter form a conclusion, recommendations and of course the references.

CHAPTER TWO

2. PROOF OF PATERNITY

2.1. HISTORICAL BACKGROUND

The book of law ancient to our understanding, serving both as the law of the land and eventually restricted to the law of the church, comes out to be the Fetha Nagast. Although this ancient book of law mainly reflected the wishes and aspirations of the church to which it is so significantly related.

The Feteha Negast has made it imperative for one to marry so that he gets offspring's implying the children born out of wedlock would fail to inherit the estate of their putative father in the absence of a will that favours them. (Fetha Negast, Translation from Geez by Abba Paulos, Faculty of Law, AAU-1968 Addis Ababa P.317), it rather manifested stigma of bastardy to those offspring's begotten out of wed lock.

The Feteha Negast, however, doesn't deal with questions of maternal or paternal affiliation with a perception strongly inherent in its make up those marriages of validity dominate in the society and every child born presumed legitimate.

2.2. Establishing of Paternity by Presumption

Presumption implies the establishment of paternal filiation to children born or conceived in wedlock or in irregular union. We here find in presumption that deduction drawn from known fact to the unknown. The known fact is being the state of marriage in which the mother of the child is found and the unknown being that of paternity.

2.3. Protection Given by Presumption of Paternity

Those children who are born in wedlock or in an irregular union within the statutory period of gestation or conception period of gestation or conception period are protected by the presumption of paternity under the law of filiations in Ethiopia. Although it is

difficult to determine, the date of consumption remains to be important. Therefore, *Art* 125 of the RFC of 2000 establishes presumption of the date of conception in order for the child to be protected. The period falls in a duration of time where the child must be born in more than 180 days after the celebration of marriage or, the beginning of the irregular union or, the child must be born in a period less than 300 days after the dissolution of marriage or cessation of the irregular union *(Art 128 and Art 130(2)).*

Melese Damte, has explain this further in his article ("*Medico-Legal Significance …an overview of the Civil Code*") that, Article 128(2) of the Revised Family code or its equivalent Article 143(2). "…may mean that a child born within the legally fixed period shall enjoy he presumption of consumption in marriage, and if it is born within this period no contrary evidence shall be admitted to rebut the presumption."

The presumption of paternity applies to cases of children in posthumous situations where they were born within the statutory period of conception after the death of the husband or the person engaged in an irregular union with the mother. This applies to all cases where the child is born in wedlock or in an irregular union the man being not separated by statement of divorce or cessation of the union *(RFC Art.128,53(2),148).*
Here it is worth mentioning the matter that concerns the physical separation of the spouses. At a time when the wife may have been living with a man other than the husband which time to be perceived as the conception period, the child born is presumed to be the child born as a direct effect of the marriage. This might probably give rise to a conflict of paternity if the relation between the man and the mother has resulted in an irregular union. Even in such circumstance itself the law prefers the husband to that engaged in an irregular union. *(Art 148)*

This however, holds if the latter did not conclude an agreement to regulate paternity as has been provided under article 146 of RFC.

> More over, whether the spouses are cohabiting at the time when the child was possibly conceived, Presumption of paternity goes on to apply, in that the parties are living a part as a result of an agreement,

for the fact that the low permits them to do this for a period definite or indefinite as under article 55 of RFC. Further, in this situation also the low goes on to contemplate that the spouses are performing their marital duties to each other. And therefore, if the woman happens to been a child in the span of time under consideration, the low assumes that she bore it as an effect of the sexual engagehe P vip` `@a hdq And$ `a fodledale ` cd `a `readh a` df aa`ad fpia d e` `bl`ba``in ``a p a ea` `ef fd ```ebfi`a c ``lid` ta t` b ad id ` be`dada f`th thd ar @``e

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(7 Ba @ ae fahd Nn & $!02" @a`h aeqrt) J. Eth:L.Vol. 11 P122

> This therefore indicated that although there doesn't' exist cohabitation at the time of the conception of the child; the child born in wedlock is the child of the husband of the mother. Had that not been the case, the count would not have held the child to be the child of the decreased was spite of the fact that the man was castrated at the time of the conception and birth of the child. believe the disposal of the issuer has been conducted in line with low. And there fore no further comment shall be awarded in my part. I would like to noise another cast to substantiate my proposition that a child conceived before but born after the death of the father is also protected by the presumption of paternity. Here the applicant demanded the affirmation of her paternal filiations to the decreased she stated that:

She was born from her parent's lawful marriage. As an evidence to her claim, she introduced four witnesses who testified before the court indicating that the decreased (applicant's father) and her mother were lawfully married at the time when the applicant was conceived. The witnesses went on to testify that the applicant was merely conceived

before the death of her father and immediately born after his death. They told the court that she is the child of the decreased as for as their knowledge of the case was concerned. The objector, nevertheless, stepped in to contend that the marriage that existed between the mother and the deceased father of the applicant has bee dissolved when the applicant was born. The court overruled the objection as groundless and held that "since the witnesses introduced by the applicant have testified that supports the applicants claim as that she was conceived of the deceased and was born immediately after his death, the court has accepted it. Or all these reason the applicant is declared the lawful child of the deceased." (*civil case file No. 1443/65 High court 1965 E.C ; W/o Negatua Waktola Vs Emet Desta Waktola)* unpublished.

This was a case decided rightly and does not require any further comment. The author has cited this case here to illustrate how the low protects the child of the deceased on the grounds Article 128 provides.

2.4 Legal Conflicts in Regulating Paternity

Conflict of paternity arises where the child has more than one legal father. *(Article 146*). Such a circumstance however is prevented by the low by restricting the right of a woman not to remarry within 6 months after the desolation of the previous marriage or the time of the stoppage of the irregular union. If such period is strictly observed by the mother and if she doesn't get married or engaged in an irregular union within such period, the establishment of paternity will be made with the application of the presumption of paternity.

There are times however, where the woman happens to marry or engage in an irregular union before the lapse of the period indicated under article 16 of RFC, which is 180 days in spite of the fact that there existed a restriction on the nights of the woman for one reason or another. Such a case may witness the birth of a child conceived during the period of the former marriage or irregular union.

Another situation that may give rise to such conflicts is that, where the mother lives in an irregular union and also in marriage at the same time or perhaps the mother commits her to engagements of two or more irregular unions at the same period.

In the events of such accordance the presumption paternity naturally applies to all the man involved in the affair. This applies

1. to the one who is married or is engaged in an irregular union before the lapse of the period of widowhood;
2. to the one who was the husband or the man engaged in an irregular union before the marriage was dissolved or the irregular union ended;
3. to the husband and the man engaged in an irregular union as in the case of simultaneous marriage and irregular union and
4. To those who are engaged in irregular unions with the woman simultaneously.

When such happenings take place, the conflict may be resolved by the means which the low provides, which is concluding of agreements as between the alleged fathers to regulate paternity in the absence of that paternity *(Article 146, Article 148 of RFC*)

2.5 Agreement Reached between Alleged Fathers

When conflicts in regard is regulation of paternity arises, the low provides an opportunity to resolve the conflict to those to whose the paternity of the child will be attributed by low or presumed fathers. This will be an agreement made between such presumed fathers to regulate paternity. An agreement for the regulation of paternity under the pain of nullity shall be attested by three witnesses and secure the approval of the court after conducting a hearing of the mother not prevented by some force majeure from being heard (*Art. 147 (1)(2)).* Except in the case where a mandate is given by special power of attorney to conclude such an agreement *(Article 151 (2))* the agreement for the regulation. of paternity must be made by the interested persons themselves (*Art. 151 (1*)) that however may not be concluded by legal representatives or their hairs an agreement in the regulation of paternity may not be concluded after the death of the presumed fathers or

their heirs or amount be made in cases where one or both of the presumed fathers lack capacity to conclude an agreement.

In order to protect the stability of the status of the child the low makes it mandatory that an agreement reached for the regulation of paternity not to be revocable once validly conclude. (*Article 152).* But as a judicial transaction it can be avoided or annulled on the ground of Violence (*Article 153(1) of RFC*). Therefore, a party that seeks to avoid such agreement on such a ground, has to prove that violence committed against him or her led to believe that he, one of his ascendants or descendants or his spouse were threatened with a serious and imminent danger to the life, person, honor or property *(Article 1706(1) Civil Code of 1960*). If the party that taught to annual the agreement succeeds in proving such facts, the agreement will be invalidated and the effect of such annulment or invalidation would be reinstatement *(Article 1815 (1) Civil Code of 1960).* Other than the ground here mentioned, an agreement for the regulation of paternity may not be annulled on the ground of error or fraud unless it is decisively proved that the child could not have been conceived of such person *(Article 153(2) RFC).* Thus, the party who seeks the annulment of the contract on such ground is required to prove for example: sterility or his non access with the mother within the possible period of conception that is the period included between the 300^{th} and 180^{th} days prior to the birth of the child *(Art. 153 (2), Article 168 of RFC).* If this is proved, then the agreement made will be annulled or invalidated and its effect would be re-instatement.

2.6 Legal Presumption of Paternity

Legal presumption of paternity takes place as a result of failure on the part of the presumed or alleged father to conclude regulation of paternity by way of the intervention of the low remedying the situation.

These presumptions are

1. the child shall be attributed to the husband of the mother in preference to the man who has an irregular union with the mother

2. the child shall be attributed to the husband or the man with whom the mother is living at the time of the birth in reference to the husband or the man with whom she was living at the time of conception *(Art. 148 (a) (b) RFC)*

To shed light on the matter briefly; let us take a woman who remarried before the end of her period of widowhood as provided under Article 16(1) of the revised family code. Here there is a possibility that the woman may have conceived during the former marriage as well as the next one in cases where the woman remarries before the lapse of time indicated. If we apply time of conception it might not be possible to determine in which of the marriages the child has been conceived unless the mother discloses the matter. One will therefore be with uncertainty if we apply the wordings that attribute the paternity of the child to the husband or the man who lives with the mother at the time of conception in preference to the husband or the man who lives with the mother at the time of birth of the child. To avoid such uncertainty however, it is advisable to apply that which attributes the paternity of the child to the husband or the man with whom the mother is living at the time of birth in preference to the husband or the man with whom she is living at the time of the conception.

Let us resort to a court case to illustrate the situation where the mother lived in marriage and irregular union simultaneously.

This is the case of Assegedech Wolde's father - Woldie Mamo Vs Abebech Demisse. Here the petitioner who claimed to be the father of the child demanded the affirmation of the child under consideration paternal filiation to him. In his petition he pleaded that the said child was born to him by the respondent when he was living in an irregular union with her for a long time, He also pleaded that after the birth of the child, the respondent has told him that the child in question was born to him and he accordingly had taken all the responsibilities concerning the upbringing of the child by employing a guardian who may look after the child together with the respondent in her reply denied all the allegation of the petitions and arranged that she conceived the child to her lawful husband who was employed in the army at the time and left her during her pregnancy. She further argued that when she was trying to know the where about of her husband she met the petitioner.

The woman however, admitted that she has lived in an irregular union with the petitioner at the time when the child in question was born. Nevertheless, she insisted that the child was conceived to her lawful husband.

After hearing the arguments presented by both parties the court held that in accordance with Article 751(1) of the civil code (this is in line with Article 136 (1) of the revised family code) acknowledgement of paternity has no effect founded. On the founded of the provision of this article it was not necessary to hear to witness and therefore the court rejected the petition and decided the case in favor of the respondent (Clive Case file No. 1026/69; High Court, 1969 E.C.

As one ponders in to this case will final that the case is typically a case of conflict of paternity that surfaced as an effect of simultaneous occurrence of marriage and irregular union. As the respondent made it clear, the child had been conceived at the time when she was living with her husband and had been delivered at the time when she was engaged in both marriage and irregular union. This happening depicted that she was living in an irregular union while her marriage was still valid.

In the light of this, the holding of the high count which was based on the acknowledgement of paternity was not in accordance with the law. The count should have disposed the case with the applying of Article 769 of the civil code or whose parallel Article 154 of the Revised Family Code. As this is not prevalent, the only alternative which is available to the court was resorting to the legal presumptions. Here therefore that which is pertinent applied. I.e. the child shall be attributed to the husband in preference to the man engaged in an irregular union with mother (In this case the petitioner)

2.7 Assignment of Paternity

As a rule children who are subject of assignment of paternity are those covered by the presumption of paternity. As an exception however, the legal father is given an opportunity by the low to assign paternity of the child by an agreement to a third party

who claims to be the father of the child. There are conditions to be fulfilled in order for the assignment of paternity be made by agreement.

1. the child must be born within 210 days from the conclusion of the marriage or the beginning of the irregular union (*Article 149(1) RFC)*
2. the child must be born more than 210 days after the dissolution of the marriage or cessation of the irregular union (Article 149 (2) RFC)
3. Another person must declare that he is the father of the child *(Art. 149 (1) RFC)*

The purpose of this assignment very likely is to have an impression of clearing of doubts of the presumed father where a third person declares that he is the father of the child. The condition for the validity of an agreement for the regulation of paternity is also applicable in the case of assignment of paternity by agreement. Therefore, under the pain of nullity, assignment of paternity by agreement must be attested by three witnesses and be approved by court after hearing the mother unless she is prevented by force measure.

An agreement for the assignment of paternity can be concluded only by the interested parties themselves *(Article 151 (1)),* the presumed father (assignor) and the person who claims to be the father of the child (assignee). Nevertheless, it can be concluded by an agent who bases a special power of attorney approved by a court *(Art. 151 (1)).* In all other cases an agreement for the assignment of paternity may not be concluded even in the name of the interested persons (assignor or assignee) by their legal representatives or by their heirs (*Article 151 (2) RFC*). As a logical follow up therefore, an agreement for the assignment of paternity can not be made after the death of the interested persons (the assigner and the assignee) or in cases where one or both fall short of capacity under the low so that reaching at an agreement is made possible.

2.8 Revocation and Annulment

With the view to protect the stability of the status of the child, the law makes it mandatory that an agreement for the assignment of paternity not to be revocable once made *(Article 152*). However it may be annulled or avoided if the consent of the parties is extorted by violence. Therefore, a party who seeks to annual or avoid such an agreement

on the ground of violence is required to prove that the violence committed against him must have led him to believe threatened with a serious and imminent danger is the life, person, honor or property *(Art. 153 (1) and Civil Code Art 1706 (1)).* Once this is proved the agreement will be annulled or avoided and the parties (assignor, assignee) will be reinstated in to their previous positions. The assignment of paternity may not be annulled on ground of error or fraud unless the assignee that is the person who claims to be the father of the child decisively proves that the child could not have been conceived of him (*Art. 153 (2)).* He is therefore burdened with the requirement of producing a proof to his non access to the mother during the possible periods of conception that is period included between the 180th and 300th days prior to the birth of the child *(Art. 153 (2) and Art 168 of RF*

CHAPTER THREE

3. CLAIMS OF CHILDREN OVER PATERNITY

3.1 Establishment of Paternity

3.1.1 Acknowledgment of Paternity

If the presumption of paternity can not be invoked, the paternity of the child may be established by acknowledgement of paternity made by the putative father *(Art 131*). Acknowledgment of paternity is an expression of the free will of a man that considers himself as the father of a certain child born or merely conceived *(Art. 132).*

Acknowledgment of paternity as an instrument of social justice can be clearly indicated by the manner in which things take place as could be manifested in the voluntary assumption of paternal duties and countering of the benefits of paternal case, maintenance and right of succession up on the child. It is indicated further, by that a more equitable solution to the problems of children born out of wedlock or irregular union is attended to, by allowing the heirs or legal representatives of the putative father to make

acknowledgement when he is deceased or is not in a position to forward his will or at a time when he is subjected to judicial interdiction.

As could be easily grasped the low does not seen to require requisite solemnities or other technicalities that may retard the progress of such institution. Therefore one could wetness that in the effort exerted towards resolving the problem of children born out of wedlock or irregular union, the institution of acknowledgment of paternity has played and perhaps will continue to play a prominent role for many years to come.

3.1.1.1. Who Makes the Acknowledgement?

Acknowledgement of filiation under our law is possible only by the father of the child. Acknowledgement is a personal act by which the acknowledger declares that the child is his son or daughter. Since it is a personal act, any one can not make the acknowledgment for the father as he pleases, except in cases provided by low. The law does not require any capacity from the putative father by whom the acknowledgment is to be made. The law recognizes the acknowledgement made by a minor, or by a person subject to judicial interdiction or in his name by a legal representative with the permission of the court upon the death if the father or when he is not in a position of manifesting his will, the acknowledgement of paternity is to be effected in his name by one of his/her parents *(Art.135)*

Acknowledgement of paternity may be effected by the mother of the child provided that it has been made on well founded ground *(Art 136(1))* father, if the mother of the child is dead or is not in a position of manifesting her will, the acknowledgement of paternity may be made by the maternal grand father or grand mother of the child (*Art 136(2))* and in default of maternal grand parents, it may be accepted by another maternal ascendant or by the guardian of the judicially interdicted person (*Art 136(3))* Any one other than those exhaustively enumerated can effect acknowledgement or if so happens will be to no avail.

3.1.1.2 Who is to be acknowledged?

Children born out of wed lock or irregular union has a juridical bond only to their mother unless acknowledgement of paternity is made in their favor or they are adopted *(Art 107(2)*). In this connection, acknowledgement of paternity can only be made in favor of these children conceived or born out of other relations other than marriage. Does this mean that these are excluded from being acknowledged as one literarily interprets the provision?

The very essence of acknowledgement off paternity is raising the status of children so that they are not left without father. If things go for worse these children will be fatherless or at best would subsequently be acknowledged by their putative fathers.

Under other circumstances, even though the child is born out of wed lock or irregular union, may not be acknowledged. This takes place where he has already been acknowledged. Nevertheless, the child found under such condition may be acknowledged provided that the preceding acknowledgment has been annulled (*Art.142)* this is because of the fact that one can not be a child of several persons at the same time. By the same, taken a child of several persons at the same time. By the same taken a child of a married woman is not subject to acknowledgment of paternity even if she has delivered the child conceiving it for some other person while in a married situation unless the presumed father has assigned the paternity of the child to such person who seeks to acknowledge his paternity to the child *(Art 149(1)).* This therefore is clear in that as far as children are born out of wedlock or irregular union except in cases of several acknowledgments, such children may be acknowledged even if they are merely conceived.

Acknowledgment of paternity during the pregnancy of the mother operates in the interest of the child in that, the child's father may be overwhelmed by the fear of probably death of his own and seeking the child to be his successor. In like manner a child that has died may be acknowledged if he had left children behind *(Art 139)* when the children of the deceased child or acknowledge may benefit in succeeding their grandfather or secure maintenance by him.

3.1.1.3. Acknowledgment of Children Born out of Adulterous Relation

The revised family law does not prohibit acknowledgement of children born out of adulterous relation and no mention of case has been made to restrict from acknowledging while the person who is bound by a lawful marriage while the marriage subsists. That as a matter of fact is put in place without any distinction as to the nature of the union made, be that adulterous or otherwise.

This is deduced from the slime of the law in treating those to be acknowledged i.e. born or conceived out of wedlock or irregular union, adulterous or incestuous children when this could be acknowledged by the father.

3.1.1.4. Acceptance of Acknowledgment of Paternity

Although acknowledgment of paternity is made by the man who claims to be the father of the child with the presumption of the law that be done in the best interest of the child, the acknowledgment of paternity will be of no effect unless it has been acknowledged, to be well found by the mother of the child (*Art 136(1))* and further acknowledgement of paternity stands to be of no effect unless it has been made after the attainment of majority of the child *(Art.137)* Nevertheless, in the absence of spelling out of their non acceptance in a period of one month, after the knowledge occurred to them, the acknowledgment is deemed to be accepted *(Art 138).* Acceptance in the sense it is applied here by no means carry the meaning to construe an agreement, and therefore, there does exist no such thing as bargaining as to the terms of acknowledgment as that may stand determined in the interest of the child who lacks capacity to give him consent to the acknowledgment made in his favor. If the mother is dead, or is not in a position of manifesting her will (a happening when she is absent or lacks consciousness) acknowledgment of paternity may

be accepted by a maternal grand mother or grandfather of the child. In the absence of all these persons the acknowledgement may be accepted by maternal ascendants of the child. Where in default of all the above persons, acknowledgments may be accepted by the guardian of the child (*Art 136(1, 2,3).*

3.2. Form of Acknowledgment

In accordance with Article 133 of tment with 4ha hqsband. The following c!se is prdsented to substantiate m1 proposition that presumption kf pa4ernity `s appdie$ to the case in acco2dance w)t` the law.

H%re$ appl)cant tutor of Y.H.M in his applicatimn of meskerem 29th and megabit 21st 1├ 62 (E.C.) demande$ dhe affirmatio. of Y.H.E's paternal &aliationr to the dece`sed H.M.L. As has beej i.dicated Y.H.M was born iJ 1957 f2om weizero M.E ajd @to H.M.L. who were mapri%d from 1955 do 1960. Ato H.M.L died mn the 16th o` sene, 1961.The mbjectors (H.M.L.'s aunts) in their appl)cation of objection stated that H.M.L. w!s their nep`ew. Dhey explained thAt dur)ng the Italian inv`sion, when H.M.L wac 6 years oF age was castra4ed "y the R`yas sho cama with the Atalian3. Thus, bor the fact that hd was castrated, the laintained that h! coul$ not perborm sexual intercourse, get larried kr becet a child. His relation with M.E w!s that of m`ster and sErvant, and ther%fore Y,H.E. can not be hIs child„4hey further produced a medical cert)ficate which justified that the decreas%s (H.M,L) had been castrated. The court f2amed an issu% as to whet(e2 there existed a valid fra-e$ an iq3uer as to w(ether there existad a 6alid manage between H.M.L and M.E. the court *con#ludad that there w`s a valid marriage between H.*

.l. and M.E in the period that ext`jded drom 1955 to 1960 (E.C). THe #ourt c*itad article 740(1), 741,742 gf the civhl code of 1160 whiah ir now repeale` as a pestlt of the proclamaTion nf the reviqed Family C/de (RFC) pro .No. 213/2000 that has a co2re1po.ding Article as Art 125(1), Art 126, and Art127 re3p%c4ively; t`at holds that a child born during the marriage of a -an and a w/man, that chi,d i3 deemed t. be th% child o& the hdsband and co.sequently puled that H.M&L. *aNd M*E. we2e in the bknd* kf

mar2iage frol 1955 4o 1960 (E.C) anD Y.H.M was born in 1953 (E.C) the p%rio$ that balls wiph in tHe b/unds of thd marriage, whic(is alco proved; Y.◘.M. ir thd son of H.M.L. pursuan` po the provisiols of the code ciped.

(Civi(Case file No. 76/62, 1962 ◘ igh cke not be the father of the child, the Childs best interest has prevailed over that of the presumed father.

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So that a natural effect is produced, this implies that the law does not recognize any other form than those explicitly indicated. This would mean oral or any other informal acknowledgement does not produce any effect. One may assume that arising from certain practices like the way the father registering a child in the place of work (*the acknowledger*) in order for the child to get free or half changed medical treatment. This, I assume could be considered as written acknowledgement as the father of the child applies to the personnel department in the respective work place to secure medical treatment. Another point worth mentioning here is that the incidence in which a putative father assuming the registering of a child in his name so that the child joins a school. This may be taken to amount to a written acknowledgment of paternity as the father does it in person to the schools registry (*Art 143 (e)*)

The case presented alive demonstrates as to how an acknowledgement has been made with a registration made in the name of the father for some purpose other than that of acknowledging. The court's rule was in line with Article 143(e) of the Revised Family Code when the man (the respondent) made a claim to be the father of the child in his attempt to care for the child.

3.3 Revocation and Nullity of Acknowledgement

Acknowledgement of paternity has been indicated to be the expression of a free will of the father. Never the less at a time when the acknowledgers consent is vitiated by consent in defect, then the acknowledgement of paternity is defective. It follows from such defect that the consent of the acknowledger may be vitiated by violence (*Art. 141(1))* when the law entities the acknowledger, to annul the acknowledgement provided that it was obtained by violence and error or fraud (*Art 141 (2*)) where in this case that, facts that constitute must be decisively proved that the child couldn't have been conceived of the person who made the acknowledgement. Other than this, acknowledgement of paternity once made and accepted cannot be annulled on the ground of error fraud. Therefore, an acknowledgement who seeks to annul the acknowledgement on grounds of error and fraud will be required to prove his non access to the mother of the child with the periods included in between the 180th and 300th days before the birth of the child. This period is the most probable period of conception or, if such is not the case the acknowledger may set up for the annulment by proving his sterility. Here therefore, the law provides in very clear terms that judicial declaration of paternity based on the articles mentioned earlier will be of no effect in the case where blood examination and or other reliable medical evidence has proved to the contrary. (*Article 144 (c) of RFC*)

When one looks further, will find that as a rule acknowledgment of paternity once validly made is irrevocable, But as an exception to such rule, a minor who has acknowledged a child may revoke such acknowledgement so long as he lacks capacity or within one year after he attained majority unless his guardian her been consulted at the time he was to make the acknowledgment (*Art 140(2)*). The right of revocation, however, may be exercised by the minor only and may this be exercised by his legal representatives or his heirs.

3.4 Effect of Acknowledgement

Once validly made, acknowledgement of paternity has the effect of creating a parent child relationship between the child that is acknowledged and the acknowledges or the putative father (*Art 131*) Beside this, unlike artificial filiations created by adoption which

does not have any effect with regard to the ascendants or collaterals of the adaptor who has expressly declared to be opposed to the adoption (Art *182 (1)).* No limitation is there with respect to acknowledgement of paternity validly effected. Acknowledgement of paternity therefore produces effects even against willing relatives of the acknowledger. From this follows, for all practical purposes an acknowledged child acquires the rights which children of marriage acquire. So also for the purpose of succession whether testate or intestate, an acknowledged child qualifies as a child born of marriage or irregular union (*Article 181 of RFC; Article 842 of civil code)* thus an acknowledged child will take as a child under a will property left to the children by the deceased father. In like manner, an acknowledged child partakes of the intestate succession of the deceased as he would have been qualified for being born in manage or in an irregular union If the child of acknowledgment dies intestate, his estate would be inherited by the putative father or his heirs as would have been done so, like the way it would take place had he been born of marriage or of irregular union. (*Article 127*)

The acknowledged child has the right of claiming maintenance from the acknowledging father, in other words the acknowledger has a duty to supply maintenance to the acknowledged child *(Art. 198).* Similarly, the acknowledged child has the duty to supply maintenance to his acknowledging father in the cases where the need arises (*Art. 201*)

3.5 Judicial Declaration of Paternity

When paternity of the child can not be established by the application of the articles and materials indicated earlier i.e. where the child does not have a presumptive father attached to as marriage or an irregular union (*Article 126, Article 130(1))* or self acknowledged father (*Article 131*), the paternity of the child may be established by a judicial declaration of paternity in cases where the mother happens to be a victim of abduction or rape Article 143 (a)) and the period of conception concedes the that of abduction or rape (*Art 143 (a*)). Here, for the plaintiff (*the mother*) to obtain judicial declaration of paternity, she is required to prove such facts, and because of such facts she

availed herself to the sexual intercourse from which she concludes the child to the abductor.

Abduction of a woman however is an offense punishable with regourous imprisonment. It is described in the criminal code of FDRE as an act committed by some one with intent to marry a woman after having obtained her consent by intimidation, threat, trickery or decent. (*Art 587 (1)* of criminal Code of FDRE). As regards rape, the criminal code defines it as compelling of a woman to submit to sexual intercourse outside wed lock, whether by the use of violence or grave intimidation or after having rendered her unconscious or incapable of resistance (*Art. 620, criminal Code of FDRE)* therefore, in order for the courts to declare paternity on such grounds the woman or the mother who is the plaintiff will be required to prove these facts constituting the alleged rape or abduction.

There are instances where several persons combine to assist one another in the abduction or rape of a woman. In the circumstances such native, the code does not provide answer to the question as to who may be declared the father of the child where the act of rape being committed by the abductors one after the other and all being capable of impregnating the woman. The question being put in other words as, how would the courts declare the paternity of the child in the situations mentioned?

The writer of this paper is of the opinion that such cases are not very simple to tackle but that difficulty will not render the problem unsolvable. The author therefore says that the courts may resort to medical evidences to determine the paternity of the child. As a medical science is advancing in this age of ours, blood tests or the “DNA” test may prove paternity to a greater degree of accuracy. Therefore, the courts may order the application of such medical tests and on the basis of the evidence produced by such tests the declaration of the person most attributed to the child may be possible and accordingly declare such person the father of the child.

In a less complicated case where abductor or rapist is a single person, an issue that falls on the table is the manure in which court calculate the duration of pregnancy to divide whether the abductor was the due who made the plaintiff conceive the child such period, however, may be calculated by the use of analogy as presumption of paternity attached with marriages or irregular union. If such, happier to be the case where the child is conceived with in such period, the count may declare such person to be the father of the child. (*Article. 150 (1) (2*).

As regards the defers available to the defendant in such paternity suit, it is possible for the defendant to rise the defenses of non access to the plaintiff of during the period include between the 300^{th} and 180^{th} day before the birth of the child (Article 153 (21). The defendant indicated as the duration of conception or showing that the child is not born with in such period after the abduction or rape has been committed. He may also make mention of the defense that it is absolutely demonstrate may out the defendant in a favorable position in that he court may relieve him of being responsible in the suit instituted for the declaration of the paternity of the child. Never the low, the abductor will not be relived of criminal liability even if he mains the women he abducted.
be taken to amount to a written acknowledgment of paternity as the father does it in person to the schools registry (*Art 143 (e)*)

The author has found a case that elucidates an issue of irregular union that ended up in the proving of paternity.

> This was the case of Abebech Ali Vs Abebahoy Gebeyaw.
> The applicant, Abebech Ali on behalf of the child that she claimed to have given birth to it as a result of the irregular union that she had been Ato Abebahoy. She demanded the affirmation of her child's paternal filiations to the respondent. She explained that the child was born to the respondent at the time she was employed to him as a house servant. The respondent in the reply that he made to the court denied the allegation forwarded by the applicant and contended that he can not be responsible

for the paternity of the child. The applicant therefore introduced four witnesses who testified that the applicant concerned the child during the period of her employment in the respondent's house as a servant and gave birth to the child in her mother's house. The witnesses told to the court that the respondent did not have a wife and the applicant was living in the respondent's house with him as a servant at the time when she conceived the child. The witnesses further went onto testify that the respondent had accepted his paternity to the child and had been giving 15 Birr per month to the child's mother to help rear the child and later on registered the child with the clinic in which he worked so that the child gets medical care for free. More over the respondent was unable to rebut the evidence. The court therefore ruled his paternal filiations to the child on the grounds of the words of testimony given by the witnesses and the registry of the clinic has been taken as an acknowledgment of the child for it was made in his name. Further the respondent was unable to rebut the evidence presented by the applicant, Hence the court's rule. (*Abebahoy Vs Abebech Ali Civil case file No. 1015/74, High court, 1974 E.C. unpublished*).

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3.5.1. Institution of Action: By whom and When

An action for the declaration of paternity may be instituted as a rule by the mother who is the victim of abduction or rape. If the mother is dead or is unable to manifest her will the guardian of the child may bring the action (*Art 136 (2) (3)*)

That is however, a question that may be raised this in the issue whether an action for the declaration of paternity may be instituted before the defendant is convicted for his criminal act by the criminal court. Although, some definite period of time is not clearly fixed as to the institution of an action. Seemingly the time to the some share between the indicate and are the mothers delivery of the child and a little time good enough to weigh

things or in a lapse of time after the bill of the child and the criminal conviction in a criminal count with regard to the case of the abduction and shape of the mother.

3.5.2. Effects of Judgment

Judicial declaration to paternity confers on the father the duty to supply maintenance to the child. As regards other rights, the declaration has the same effect as those of ordinary modes of affiliation, as is the case with presumption of paternity and acknowledgment of patterning. As a logical follow up therefore, the filiations be it testate or intestate succession, such child has equal rights with those children whose paternity is established through presumption of paternity or acknowledgment of paternity … follows from this that in an interstate death of his in declared father the child has an equal right of share of the estate with the other children of the deceased.

So far is this chapter, have made a strenuous effort to discuss the modes by which children born out of wedlock or irregular Union establishes the paternal filiations are the father. I have dought on both items of establishment of paternity are provided by the codes to the extent of admissibly of the profs in the court. This therefore, ends my treatment of the sub joint under security.

CHAPTER FOUR

4. Proof of filiations

4.1. Possession of status

As has been indicated in the revised family code of Ethiopia, paternal filiations may be proved by the record of the birth of we child. (*Art. 154)* where in default of record of birth, paternal filiations in proved by the position of status of child *(Art 155)* although most certificates of birth produced for very many important occasions are secured much later that the bill of the person concerned the requirement to produce it is gaining momentum these days. Never the less, the record of birth that has been mentioned as the

primary means of proof has not yet secured foot hold to the extent required in this country. The matter however, is provided by the code.

The paramount mode of non-contentious proof of paternal filiations in Ethiopia therefore, is the possession of status *(Art 155).* A person has the possession of status when he is treated by the community as being the child of such man or women. The Ethiopian law, as there is no family name well established and in a kind of general use the family name does not happen to be a necessary ingredient of proving the position of status. Proof of filiation's leaver us in a position to explore various approaches. In the process of proving filiations however, what comes to mind will be the importance of possession of status in an enquiring as to who may prove one's paternal filiations by ascertaining his possession of status of a child and as to what must be proved.

Before embarking upon the discussion of proof of paternity it might be note worthy to say a few words as to what is meant by possession of status. It was expressed "possession of status is the judicial aspect of manifestation of outward appearances; the elements of possession of status are normally said to be no men (name) fractus (treatment) and fama (*notoriety*) (*Discussion of Supreme Court on Worknesh Bezabih and others Vs Yideneku.J.Eth,L.Vol.1, P 19).*

Here as has been tried show earlier what the petitioner is required to prove is the treatment and notoriety that is the fact that he is treated by the community to be child the man. Discussing this approach Krczunowitcz writes…….

> …Upon that mans intestate death the child in order to where it need only prove such treatment by producing four witnesses (this is in line with the repeated family low of 1960 of the civil code art 771 (1) which has a corresponding article in the revised family code as Art. 150 (1) a challenge can not put the child to the proof of the modes of establishment of his (her) paternal filiations under he is able to disprove the child's "Possession" of that filiations by evidence of nominally of equal strength

> … only then must the child of persisting "claims his status by demonstrating the affiliation facts. Such as e.g. and "acknowledgment" in terms of the law. (*Krczunowitcz" the Ethiopian law of filiations revisited. J.Eth.Law Vol.,11, 1980).*

This approach therefore, is of the opinion that, children born in marriage or in irregular union or born of other than these i.e. (other forms of illicit relations) can prove their paternal filiations by proving of their possession of status of a child and what they are required to prove is those treatments and notoriety (tracts and fame).

The other approach and which is a contrary my approach to this is that which agues that children who can prove them paternal filiations by the proof of possession of status of a child are those born in wed lack or in an irregular union. According to this approach … if article 770 (i.*e. Art 155 of RFC)* were interpreted

> To permit any kind of testimonial evidence to be used to establish paternity would undercut the codes apparent scheme of limiting the means of proving paternity where the child was not born or conceived in marriage or in regular union. Thus art 770 should be need as requiring that any testimony given there under must be directed to showing that the alleged father was engaged in marriage or irregular union with the mother and that man and woman this relatives and society treated the subject as a child arising from such relationship. (*Beckstron H. John, "Paternity action in Ethiopia, ten years after the clinical code, reprinted. African law studies No, 10, New York, Columbia law University, African law cater 1974, AAU faculty of Law Archives.)*

As per the approach indicated, those who can prove their paternal filiation by proving their possession of status of a child are those that are conceived or born in marriage or irregular union and what they are required to prove it that their conception or birth is

embraced in such marriage or irregular union and are therefore been extended treatment and notoriety.

The writer of this essay stands in favour of such an approach. The very reason for the favoring being that, it is provided under Article 125 of the Revised Family Code, in that, unless a child is born or conceived in Wedlock or in an irregular union there are only two ways by which he can legally establish his paternal filiation. These are (1) establishment of paternal filiation through acknowledgment of paternity *(Article 131 and (2))* the establishment of paternal filiation through judicial declaration of paternity in cases where the mother happened to be a victim of abduction or rape *(Art 143(a)).* But, neither of these establishments can be proved by the testimony of witness as under *Article 155*. This is because of the fact that *Article 133* calls for a written instrument of acknowledgement and does not provide for the acknowledgement of paternity through the use of witnesses testimony except in cases of acts of notoriety contemplated by *Article 146* of the Civil Code where the mechanism of putting it into practice does not exist in the country as far as the knowledge of the writer is concerned. As regards rape or abduction judicial declaration of paternity follows the proof of facts constituting the alleged rape or abduction at the time of the conception of the child *(Article 145).*

Falling under the shade of such treatment, one who seeks to prove his paternal filiations by proof of possession of status of a child under *Article 155* is required to prove the operation facts, i.e. marriage or irregular union at the time of conception or birth, and proof of such treatments and notoriety is of a secondary importance. This means, presently of evidence of the existence of marriage or of an irregular union in relation to which the subject was treated as a child is a requisite to the finding of paternity based on *Article 155(770 of Civic Code)* [Beckstrows *"Paternity actions in Ethiopia… Africa Law Studies, N, Y. 1974, P54"*].

In summing up the writer of this essay would like to reflect an opinion by way of a reaction treatment as regards what to expect of the scope of *Articles 155, 156 and 157* where these articles should be limited to children born or conceived in wedlock or in

irregular union. If that is not the case the law limiting the modes of establishment of paternity as laid down under *Article 125* and the provisions of *Article 107 (1)(3)*; which do not recognize relations established between a man and a woman out of wedlock or out of irregular union and the issues embracing children resulting from much illicit relations would fall in question or might be rendered purposeless or runs ineffective. Not limiting the scope of *Articles 155-157(1)* may amount to be creating a mode of establishing of paternity not covered under *Article 125*.

This opinion of the writer is forwarded as a result of the findings at the time of the research in the areas designated for the purpose: namely the Addis Ketema Subcity. Although there are no absolutely peculiar characteristics to the area under consideration for it by no means an island in the sea of sub-cities that form Addis Ababa, almost all incidence that the writer encountered in the Addis Ketema Sub City reflect in one way or the other the general characteristics of the condition of the people living in Addis Ababa.

Let the writer present an encounter in regard to proof of paternity to a child a woman claimed to have given birth from an illicit relation in sex. The woman came to me seeking for legal aid.

> The name of the mother of the child is Asnaketch G.Medhin her address is Addis Keterma Sub City- particular area was kebele 16/17. The name of the child is Tewodros. I made her comfortable in my office so that she would speak her mind without fear. She told me the story in brief" I met the man in 1986 E.C. and made good friends. He was extending me a reasonably good help: paying a house rent for I didn't have the means to pay, after a while, he wanted me to sleep with him as a way of pay back for the favors he extended to me. I conceived the child two years later; he helped me during my pregnancy but disappeared after I delivered the child. I looked for him all around the places and form him eventually. He abated my anger with good works, gave me a little money and

bought the child some clothing. After a while he distanced himself from me and repudiated to be getting a child from me. Hence my institution, of an action against him. In the court he denied his paternity. Those who know our relations well are those who are related to him. I have a feeling that they will decline to witness in favor of me. Those witnesses that I am going to ask to show in court do not seem to know what the law requires. They only know of our appointment friendship.

Her mobile phone No. was 0911 810408

I brought this case to the attention of those who read this paper with the hope of reflecting how relations surface to end up in court. This is therefore to show that unless the law is made to lend itself to the rescue of those who are victims of illicit sexual relations, securing paternity relations of diversified claim would remain a different task leaving children stick to their maternal relations alone. So also courts will be congested with endless paternity suits.

In light of the writers ideas above, the limiting of the scope of those articles mentioned above is important, the attitude of living the article as they are might not be in line with the scheme of the law perhaps may not be in line with the intention of the legislature and the fear of mine is that it might result in a manifest violation of the law.

The writer here presents a case that come forward in the quest for proving paternal filiation. Here the case was of Etagehuehu Tekele and Ato Woubishet Taye Vs W/t. Neget Taye.

\…the appellants appealed against the decision of the High court that affirmed the respondents paternal fillliation to the decreased (Ato Taye) the respondent w/t Negat Taye, in the hight court Pleaded that she was born in an irregular union that had existed between the deceased (Ato Taye) and her mother (w/o Asegedech). In proving her case therefore, she adduced evidences. On the ground of the notice issued by the order of the court the appellants appeared and contended that the deceased had been Living in a lawful wedlock with the first appellant (w/o Etagegentue Tekle) until his death and had

begotten the second appellant (Ato Woubishet Taye) in the cause of the marriage. The high court solely based its decision on the testimony of the witnesses called by the appellant (the respondent). By reversing the decision of the High Court, the Supreme Court held As follows:

…In our examination of the testimony of the witnesses, we have come to realize that the witnesses have only testified that the deceased had introduced the respondent to them as his child but have not testified in accordance with the issue that Ato Taye and the mother of the respondent were living in an irregular union and have begotten he respondent. Pursuant to *Article 719* of the civil code (as the case was of the time before the revision and subsequent repeal of the family code) or as is pursuant to *Article 106(3)* of the Revised Family Code, it must be testified that the respondent was born in an irregular union that had existed between the deceased and the mother of the respondent. If testimony in this line is not adduced then pursuant to *Article 748* of the civil code *(whose corresponding article of the Revised Family Code (Article 133)* the
Deceased must have while he was alive acknowledged the paternity of the respondent in writing. Written evidence to this effect has not been produced. As we have examined the testimony of witnesses before the high court we have found that they have not testified as in directed above.

Because of these reasons, the Court sustained the appeal and held that, the respondent is not the child of the deceased.

(Civil Appeal File No. 42/72 Supreme Court 1972 EC. Unpublished)

When one comes across such court decision, will find that the court has correctly decided the case and in like manner has properly reversed the decision of the high court. Since the holding of the court is correct to my understanding or in other words, is in accordance with the law, this does not require any further comment.

I find it here to add a case so that a good grasp of the law is achieved.

The Case of Mehari Aragaw Vs Emet Gidey GebreMariam has some bearing on the law under consideration. Here the appellant forwarded his appeal against the decision of the high court that affirmed the child's paternal filliation to the appellant. The child was born out of Wedlock or in a state of illicit relation. The appellant in the high court argued that evidence to prove paternal filliation should not be allowed to prove facts other than those operative facts laid down under *Article 740 of the Civil Code* (*The corresponding Article is Article 125 of the RFC)*

> The Supreme Court raised this issue and said that this is controversial. According to the court, even if it was said that proof of paternal filliation by possession of status is possible without proof of those operative facts, it must be proved beyond reasonable doubt to the effect that the alleged Father has treated the child as his and all the community nearby and the family have treated the child as such. But in this case, the witnesses on the respondent side have not sufficiently proved to that effect. Because of this, the court reversed the decision of the High Court and held that the said child is not the child of the appellant.
>
> *(Civil Appeal File No. 880/70 Supreme Court 1970. unpublished)*

Generally, the holding of the Supreme Court is correct. But the manner in which it arrived in to the conclusion or such holding do not seem to be very correct. This is due to the fact that since the child was born out of wedlock or in an illicit relation, the only way that the one can proves his paternal relation is by proceeding into evidence the written instrument of acknowledgement but not by proof of his possession of the status of a child as the Supreme Court maintained. Therefore, the ruling of the Supreme Court that a child born out of wedlock or an illicit relation can prove his paternal filiation by proving his possession of status is not in accordance with the law.

I would like to add one more case.

This case with respect to the problem under consideration is the case of Fantaye Tamene Vs Negash Feleke.

In this case the appellant stepped in to appeal against the decision of the High Court that affirmed the Childs' Paternal filiation to the present appellant. The child was born out of wedlock or in an illicit relation. The High Court based its decision on the testimony of witnesses who testified that the appellant has baptized the said child and has designated his friend to be the "God father" of the child and the also has invited them to the feast held on the day of the baptism of the said child. In conforming the decision of High Court the Supreme Court held as follows:

> Even if the modes of establishment of paternity are limited, they can be relaxed according to the circumstances of the case. That is the child need not prove operative facts of those laid down under *Article 740* of the Civil code (*Corresponding Article 125 of RFC*). Thus if the child sufficiently proves his possession of status, will not of necessity require a written instrument. This is a proof of the possessed status and not a matter of proving the non possessed one in the present case this is clear from the submitted evidence. The appellant has already accepted the child. This fact should not be over-looked. For this reason the court dismissed the appeal.
> *(Civil Appeal File No. 936/70 Supreme Court 1970EC. Unpulished)*

In the case presented above, both the decisions of the high court and that of the Supreme Court are not correct for the same reason stated above in commenting the preceding case. What is particular about this case as compared to the preceding one is that, in this one the Supreme Court seems to have created its own made of establishment of paternity which is not covered by the law. This was done intentionally as it can be clearly seem in the holding of the Supreme Court. Since this is a violation of the law the writer of the essay would hardly accept it.

In epitomizing the matter therefore, from the three cases indicated above it is possible to deduce at least two approaches. In one of the approaches some courts require the child to prove those operative facts, i.e., marriage or irregular union in order to prove his paternal filliation by the possession of status. According to this approach, unless a child is

conceived or born in marriage or in an irregular union he can not prove his paternal filliation by possession of status. The other approach is that which does not required the child to prove the operative facts. And therefore, what is required of him is to prove sufficiently his possession of status. In accordance with this approach children born out of wedlock or illicit relations can prove their paternal filliation by possession of status. Since discussion has already been made as to which of these approaches is sound in the previous discussions, there seem no need for any additional discussion or a repeat of what has been discussed.

4.2. Action to Claim Filliation

According to *Article 158,* in default of the possession of status of child, filliation may be proved by witnesses or by any other evidence. Any other evidence may amount to mean that filliation may be proved by act of notoriety which may not be instituted expect with the permission of the court given to an action of the child to claim his status. The permission of the court is secured by the child when there are presumptions or indications resulting from concrete facts enabling the court to grant permission. However, either to, no personal has been appointed to dress such acts on the basis of the so called any other evidence as are contemplated by law. Therefore, filliation by any other evidence looks purely theoretical and may hardly have any practical significance.

Theoretically, the action to claim status can only be made upon the permission of the court (Article 158 (2)) the court grants such permission only where there are presumptions or circumstantial evidence resulting from facts which are constant and sufficiently serious to enable the court to grant the permission (Article 158 (3)). The relevant fact which may enable the court to grant the permission may, for example, consists in childs' parent physical resemblance with the illegal parent on such basis, the claimant may be allowed to bring other evidences and proceed with his claim (Krczunowicz, Vol.3 P.520 J.eth.L).

The action to claim status shall not be permitted where the person whose filliation resulting from his record of birth and corroborated by a possession of status in conformity

with such record (Article 159). The action to claim status may be instituted by the child, by his guardian or his heirs. It may also be instituted by who claim to be the father or the mother of the child (Article 160).

As regards the time when the action to be instituted, it is provided that, the child may institute the action to claim status at any time during his life. The guardian of the child and the persons mentioned above may institute it only during the minority of the child. The hairs of the child may not institute the action unless the child died before the age of twenty years and they must institute it within one year after his death. *(Article 161)*

The action to claim status shall be instituted against the child where the claim is made by the mother *(Article 162 (1))* in all other cases it shall be instituted against the mother or her heirs *(Art.162 (2)).*

As has been put down above, this mode of proof of filliation is hardly realistic at least at present, it is also a little difficult in that the writer has been unable to lay hands on any one case with some degree of relevance to the matter. Therefore, sufficient it to say that this is purely a theoretical problem, the writer is obliged to leave it at that.

4.3. Acknowledgment of Paternity with a Written Form

Acknowledgment of paternity which should be effected in a written form *(Article 133)* may not be proved by producing witnesses as is implied form the provision itself. Therefore, paternal filliation through acknowledgment of paternity can only be proved by producing into evidence the written instrument of acknowledgment. As has been provided by the provisions of *Article 133,* acknowledgment of paternity results from the declaration made writing or by a document attested by any competent authority that he is the father of the child.

This being the law the writer of this essay would like to present a court case which has some bearing on the subject under consideration. Here is the case of Etagegnehu Tekle and Ato Woubishet Taye Vs Mother of student Bingyam Taye-w/o Bogalech.

This is the case where the appellants appealed against the decision of the High court that affirmed the said childs' paternal filliation to the deceased. In the high court the respondent pleaded that the said child was born by her to the deceased (Ato Taye) outside of marriage. After the birth of the child the deceased had taken all the responsibilities concerning the rearing of the child. To prove this she has introduced witnesses and photographs which has been taken by the deceased together with the child under consideration and the daughter of the deceased while he was alive. On the other hand the appellants counter argued that the deceased had lived in a lawful marriage with the 1st appellant and had begotten the 2nd appellant. They further argued that, since the respondent has not produced the written acknowledgment of paternity, her evidence was not admissible under the law. They produced the contract of marriage concluded by the decease and the 1st appellant and five witnesses to prove that the child was born to another person.

The High court based its decision on the testimony of witnesses and other evidence submitted by the respondent. The Supreme Court has confirmed the decision of the high court on the ground that, even though the deceased has not acknowledged the child in writing, the witnesses introduced by the respondent and the appellants have proved that the child has a possession of status of a child pursuant to *Article 155* and *Article 156.* As regards the photograph produced by the respondent which was kept in the hands of the 2nd and 3rd witnesses who were the "Abe Lijoch" of the deceased indicated that the picture was not taken without reason. On these grounds the Supreme Court confirmed the decision of the High Court. *(Civil Appeal File No.104/72 Supreme Court 1972 EC. unpulished)*

Both decisions of the High Court and that of the Supreme Court can not be taken as correct. The reasons being as stated in the facts of the case, the child was born outside of

wedlock i.e. in illicit relation. As has been said repeatedly earlier, such child could only prove its paternal filiation by producing into evidence the written instrument of acknowledgment of paternity. Short of this, the child can not prove its paternal filiation through acknowledgment of paternity by witnesses nor can it prove its paternal filiation by possession of status of a child. In this case the written instrument of acknowledgment is not submitted. The Camera picture produced by the respondent can not prove that the deceased has acknowledged the paternity of the child. This is due to the fact that one may have a picture with that who is not his child. Therefore, since the written acknowledgment of paternity was not submitted and since the Camera picture is not reliable to say that the deceased had acknowledged the child, due to these reasons the writer claims that the decisions of the courts are not correct and not in accordance with the law.

The following case involves the same issue. This is the case of Tadesse Abebe Vs Amsale Shiferaw: In this case, the appellant appealed against the decisions of the High Court which affirmed the said childs' paternal filiation to the appellant. The child was born out of wedlock or an illicit relation. The respondent in the High Court pleaded that the appellant after communicating the idea that he was seeking to marry her had sexual intercourse as a result of which intercourse the child was born. She further pleaded that after the child was born, the appellant had taken the responsibility towards the child by remitting money and buying clothes. After a while however, he stopped to do the same and subsequently was sued before the Kebele after which action he agreed to pay maintenance to the child. The appellant in his reply contended that since an evidence to the effect that he and the respondent lived as husband and wife was not submitted and since no written acknowledgment of paternity was submitted pursuant to *Article 133* and she should not be permitted to prove her plea by the testimony of witnesses.

The High Court based its decisions on the testimony of witnesses. Among the witnesses who have been heard, the first witness testified that when the said child had fallen ill, the appellant had come to her rescue and visited her. On the occasion of the visit however, the respondent had introduced them as the father of the child. The second witness

testified that after the appellant refused to pay maintenance to the child, she had sued him again before the Kebele, after which time he agreed to resume the payment of maintenance and had been sending 50 birr through her. The Supreme Court had also called on additional witnesses who testified that the appellant used to send money and buy clothes to the child and assist its upbringing.

The Supreme Court finally held that the appellant has not rebutted the evidence produced by the respondent i.e. the testimony of witnesses. Whereas, the respondent has sufficiently proved with the testimony of witnesses that the said child was born to the appellant, there was not any reason to reverse the decision of high court. Accordingly the Supreme Court confirmed the decision of the High Court and dismissed the appeal. *(Civil Appeal File No. 2/72 Supreme Court 1972 EC.Unpulished).*

The writer's opinion with regard this case, will not be different form the case previously death with. This is due to the fact that service, in both cases the said children were born out of wedlock or in an illicit relation; they can only prove their paternal filiation by producing in to evidence the written acknowledgment of paternity.

In this case as was the situation on the previous one, since no written acknowledgment of paternity was submitted the decision of the High Court and that of the Supreme Court (that confirmed the decision of the High Court) based on the testimony of witnesses is not correct i.e. the decision is not in accordance with the law.

The last case in regard to the fact in hand is the case of the guardian of Ayelech W.Gebriele Vs Tirunesh Tesema. In this case appeal was filed against the holding of the High Court that held that the appellant's daughter was not the child of the deceased and which accordingly rejected her application. The appellant pleaded with the High Court that the said child was born to the deceased out of wedlock. The deceased after accepting the child as his, used to buy clothes to her and paid for her education. The respondent (the wife of the deceased) in the High Court objected the pleading filed and continued that the deceased had neither paid to the education of the child nor bought closes. She further contended that since the deceased had not acknowledged the paternity of the child in

writing, the appellant should not be allowed to prove her plea with the words of witnesses.

The Supreme Court reversed the decision of the High Court in its holding it said that "Since the said child was an illegitimate child of the deceased she can only established her paternal filiation if her alleged father acknowledged her in writing. So the High Court had erred in hearing the testimony of witnesses."

(Civil Appeal Case No. 1394/72, Supreme Court 1972. E.C. Unpublished)

According to the Court, the written instrument acknowledgment may not be of necessity written by the acknowledger and have the school where the said child used to learn although it is not entrusted to testify these types of matters, there was no any reason why such document which was found in the registry of governmental institution which was or presumed to be neutral should not have fallen to the category of documents that fall under *Article 133 of RFC* or *(148 of the Civil Code repealed)* the court finally held that "if paternity claims should be decided in accordance with the merits of the case and of the objective reality, there was no any reason to reject such evidence." According the court sustained the appeal.

In the treatment of the case above the Supreme Court seems to have made a broader interpretation of *Article 133* which lays down the rule that the declaration may not be made with a view that it produces the effects of acknowledgment of paternity. This appears to be sound and more or less resolves the practical problems which courts often encounter.

In summarizing therefore, from the cases demonstrated above, one can draw a concluding remark indicating that there are three approaches on which the courts used as stepping stone in the rendering of solutions to the problems that pose before them. The first approach is that of accepting the testimony put up by the witnesses as something that proves acknowledgment. This approach mainly refers to the high court. The second approach is that which requires the proof to be tabled in a manner undisputed so that the alleged father poses as one who has accepted the child factually. This approach therefore,

is seen as that which is equivalent to written evidence. This amounts to what is generally known as “Demonstrative Acknowledgment. The third approach is that” which requires the written instrument to be produced in order to prove that paternal filiation is established through acknowledgement of paternity.

The writer in her part here favors the third approach i.e. the one that requires a written instrument as a way of proving paternity. The reason for taking this approach is the belief in my part that the written instrument is deliberately chosen to serve some definite purpose, that being the discouraging of the competence of adultery, bigamy, prostitution and the like thereby encouraging lawful marital engagements. Besides, the judge presiding over such cases or before whose table such cases is presented is supposed to apply the law and not to enact laws. But, if on the contrary judges happen or courts go on to violate the law; such measure may bring about disastrous consequences. In the light of such circumstances then, in so far as the law remains in place unchanged or an amended, courts would apply the law appropriately rather than violating the law in the guise of adjusting it to the practices accustomed in passing judgments. These suffuse to conclude the discussion on this part.

4.4. Proof of Facts Constituting Rape and Abduction at the Time of Conception

According to *Article 143* Judicial declaration of paternity may be obtained in the cases where the mother has been the victim of abduction or rape at the time of conception of the Child or, where the mother has been the victim of seduction accompanied by abuse of authority, promise of marriage, or any other similar act of intentional deception or, where there exist letters or other documents written by the claimed father which unequivocally prove paternity or, where the claimed father and the mother of the child have lived together in continuous sexual relation, without having a legally recognized relation in the period regarded by law as the period of pregnancy. Together with these conditions, where the person claimed to be the father of the child has participated in the maintenance, care and education of the child in the capacity of a father. These are the situations exclusively covering the requirement for such declaration. *Article 145* of the revised family code indicated that a judicial declaration of paternity shall not be demanded or made in any

other case. These articles of the Revised Family code has a more or less reconcilable Articles in the Civil Code as *Art 160 and 161*. This is brought in here to compare as to how a case was decided then. The law in regard to declaration of paternity has been clearly indicated but, there are times when courts deviate from the rules provided. This is demonstrated in the following case:

Yohannes Abera Vs Momina Frehana. As could be summarized from the file; the appellant forwarded its appeal against the decision of the High Court that affirmed the Childs' paternal filiations to the appellant. The respondent in this case pleaded to the High Court, that after their acquaintance with the appellant, he used to urge her through letters that he sent to her and also physically availing himself to convince her to have sexual intercourse. Ever since she submitted to his demands they have lived in an irregular union during which time the child under consideration was born. The appellant however, denied all allegations to the High Court and contended that he was not anywhere nearby at the time in which the respondent claimed to have conceived and gave birth to a child also the time in which the respondent claimed to have conceived and gave birth to a child. Nevertheless, he denied to have lived in an irregular union with her.

After hearing to the testimony of witnesses and exposed the letters submitted by the respondent, the High Court held that the letters written by the appellant to the respondent which were decorated with different colures and pictures and the convincing love terms included there in were no less than rape and abdication. Since the appellant had not submitted any evidence to the effect that the child was not born during the period where the alleged abduction and rape had been committed he was presumed to have lived with the respondent and had begotten the child.

The Supreme Court reversed the holding of the High Court on the ground that the respondent had not sufficiently proved the existence of an irregular union between the woman and the appellant at the time when the child was conceived and no acknowledgment of paternity was made. The letters produced by the respondent did not prove that the appellant had acknowledged the paternity of the child. The Letters

produced by the respondent did not prove that the appellant had acknowledged the paternity of the child. As regards the findings of the High Court maintaining that the respondent had been abducted or raped was dismissed by the Supreme Court on the ground that it was contrary to the law as the fact that abduction or rape are criminal offenses that presuppose violence which act renders the respondent to appear before a criminal court for the offence committed before any other step follows as a direct effect of the criminal before any other step follows as a direct effect of the criminal conviction. And therefore, institution of paternity suit would have resulted following the criminal conviction by criminal court which was not the case in this incidence. Because such prerequisite did not take place in order for the case to be treated accordingly, the Supreme Court sustained the appeal and held that the child under consideration was not born to the appellant. *(Civil Appeal File No. 1589/72, Supreme Court 1972 EC. Unpublished)*

Here the writer of this paper is of the opinion that the Supreme Court has correctly reversed the holding of the high Court and rightly decided the case leaving no chance to comment on the decision made. This case has been presented here so that it indicates as to how courts in some isolated cases misinterpret the law or end up with unsound interpretation.

Conclusion

Children begotten as a result of marital or extra-marital or i.e. irregular union secure equality of legal status which can be observed in all legal status which can be observed in all legal practices that has undergone from the time the Fethan Negast has been the law of

the land up to the present time . There is however, restriction imposed by the law on those concerned to ascertain their status by way of proof. The restriction is largely caused by the conditions under which claims of filial relations are brought more often than not, for inheritance purposes. When one looks in finds that courts ruling filial relation cases, one finds that courts minimize the strain of legal requirements. For instance, witnesses at times are not seriously demanded to indicate all elements of possession of status when they testify their knowledge of the case under courts consideration.

There are instances where testimonials made by witnesses by maintaining that an alleged father treating the child as though it was his own, taken to be evidences of acknowledgement where the law required it in a valid manner of ascertaining paternity. A man who is validly married to a woman without a marriage validly concludes stand on the same footing when it comes to proving presumption of paternity. The two men are seen as husbands to the women in their respective relations

The law provides that maternity can be proved by the mere giving of birth to the child where also paternity can be proved by the mere possession of status without any further mode of relation proving as regards affiliation. There is however requirement of the women stepping forward to indicate the man as the father of the child born. There is however requirement of the woman stepping forward to indicate the man as the father of the child born. This instance nevertheless in subject to affirmation by the ascendants of the mother in cases where the mother dies or turns insane. The guardian of the child in like manner plays the role of ascertaining paternity relation in the absence of ascendants.

Paternal relations can be extended to or awarded to a man by a kind of agreement reached between several men who came forward claiming paternity over a child. In a situation where there appear a fraudulent acknowledgment of paternity is made, can only be annulled by presenting decisive proof to the impossibility of paternity without which the acknowledgement will remain infact.

The features of the law of filiations, as per the understanding of the writer, is seriously embedded in the maintenance of the stability of the family in all its forms be it a valid marriage or that of irregular union and the safe guarding of the best interest of child.

. Recommendation

It is high time that the relation that a woman and a man make between them be governed by some kind of law, and that law will bind them to be responsible for the children that come as a result of that relation was it legal.

It has been seen on a compile of cases that denial is acknowledge this children on the past of men has rendered many children fatherless. Therefore, as development has brought about very deferent changes as regards ascertain of paternity the Ethiopian family law has to embrace the DNA test in its methods of proof. This is what is believed by another to club the situation that prevails with fatherless children.

The Ethiopia family law now is meant to govern the region of Addis Ababa and Diredaw. As regards, the family relations,. It is very likely that it be amended and updated to accommodate relations that one family changes with new developments in the society.

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