THE *FORMA PAUPERIS* PROCEDURE IN AMHARA REGION: AN APPRAISAL OF THE LAW AND PRACTICE

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Abstract

Forma pauperis is a procedure reserved for persons who cannot afford to pay court fees. The mechanism is devised to address the possibility of real or perceived denial of access to justice due to economic barriers. However, the use of the mechanism and the application of its underlying principles in Ethiopia, particularly in Amhara Region, is controversial. The confusion over the powers of Kebelie Social Courts and the ordinary courts in the determination of who is entitled to benefit from the forma pauperis procedure is one of the main reasons for the lack of clarity on the use of the procedure. The lack of clarity on the powers of the two institutions has led to the misuse of the procedure resulting in the undermining of the principles behind the mechanism. The present article examines the use of the forma pauperis procedure in Amhara Region and the role of Kebelie Social Courts and Ordinary Courts in the determination of such principle. The article reviews and analyses the relevant literature, laws, case reports and data gathered through interviews.The article discusses the finding that the lack of clarity on the role of Kebelie Social Courts and Ordinary Courts on the determination of who can benefit from the forma pauperis procedure is leading to the misuse of the procedure against its underlying principles. It will argue that there is a need to avoid this ambiguity on the procedure and on the concept of pauper in the region in order to apply the procedure in line with its underlying principle of avoiding the denial of access to justice due to economic reasons.

Keywords: Access to justice, *forma pauperis*, determination of pauper, jurisdiction, social courts, ordinary courts

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INTRODUCTION: GENERAL OVERVIEW

The Constitution of the Federal Democratic Republic of Ethiopia provides, under article 37 that "[e]veryone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power".

The exercise of the constitutional right to get justice through litigation before a court of law depends on the fulfillment of the requirement of the payment of the prescribed court fee.[1] While there are some exceptions where civil cases could be lodged without payment of court fee [2], the quirement of the payment of court fees is set, not only against the plaintiff, but also on the defendant who wishes to file a counter-claim against the plaintiff.[3] A statutory schedule stipulating the tariff for various cases has been in force even before the promulgation of the 1965 Civil Procedure Code.[4] Court fees are essentially payments for the judicial service the applicant receives from the court. The fees form one category of government revenue and as such could be considered as a form of tax.

The imposition of court fees also serves the purpose of deterring frivolous and groundless cases reaching the court. The applicant is reminded of the need to think twice before instituting the case and make sure it is a case he/she can win. It has also an objective of safeguarding innocent defendants, or plaintiffs in case of a counter-claim, from being dragged to court for baseless claims. While there is a possibility that a claimant may pay the required court fee and file a baseless suit, the requirement of the payment may significantly discourage the filing of such unpromising cases.Thus, imposition of court fee is aimed to regulate access to courts and reduce the congestion of the judicial system, and to cover part of the direct costs of the system, since it provides resources to finance the administration of justice, and enables equitable access to the court.[5]

[1] CIVIL PROCEDURE CODE OF THE EMPIRE OF ETHIOPIA, Neg. Gaz. Extraordinary Issue No. 3 of 1965 Addis Ababa. 1965 Decree No. 52 (hereinafter The Civil Procedure Code), Art.215 /1/

[2] LABOUR PROCLAMATION No. 377/2003, Fed. Neg. Gaz of the Federal Democratic Republic of Ethiopia, 10th year No. 12 Addis Ababa, 26 February 2004, Article161 stipulates that, no court fees shall be charged in respect of cases submitted by any worker or trade union to courts. See also AMHARA REGION COOPERATIVE SOCIETY PROCLAMATION No 220/2007, Article 35. stipulating that cooperative societies are free to pay court fee.Besides, Administrative government bodies are exempted from such fee, for the reason that such fee will return to government pocket hence, imposing court fee on such administrative bodies is meaningless than incurring a labour cost.

[3] THE CIVIL PROCEDURE CODE, Article 215/2/

[4] THE COURT FEE RULE, Legal Notice N0 177/53, Neg. Gaz. N0 15-28, July 1953. As per the COURT FEE RULE, the minimum tariff is 50 cents for a claim not exceeding 10 birr. The tariff for claims exceeding 100,000 and less than 200,000 birr is calculated by multiplying the amount of claim by 0.015 and the result will be the payable tariff. For claims exceeding 200,000 birr, the tariff will be the result of the amount of claim multiplied by 0.01. The rule also provides for fixed tariffs for claims that cannot be computed in terms of money such as an application for the dissolution of marriage.

[5] Rafael Mery Nieto, *Court Fees: Charging the User as a Way to Mitigate Judicial Congestion,*THE LATIN AMERICAN AND IBERIAN JOURNAL OF LAW AND ECONOMICS,Volume 1, Issue 1, Article 7 (2015).

While the payment of court fees is a necessary condition for accessing court services, an applicant with a promising case but lacking the resources to pay the court fees will be prevented from accessing court services. Such prevention may result in the denial of the constitutional right of access to justice[6]. Cognizant of the possible eventuality of a denial of justice for those with limited means, legal systems around the world provide for a procedure whereby applicants who cannot afford to pay the court fees may be able to file their suits without having to comply with the condition of the payment of the court fees.[7] This is the procedure known as a suit *in forma pauperis* - a mechanism by which a claimant or defendant with counter claim, is allowed to open his or her file, without a prior payment of court fee as a condition for access to justice[8].

The Ethiopian Civil Procedure Code of 1965also provides for this procedure relieving the applicant from the prior obligation of the payment of court fees.[9] Despite such stipulation of the Civil Procedure Code and the constitutional status of the right to access to justice, the practice in the determination of issue relating to the *forma pauperis* procedure by Ethiopian Courts lacks uniformity and consistency.Each regional government is constitutionally mandated to organize its own court structure[10] and the Amhara Region is one of the regional governments that established a three-tier court structure[11]. Though the Civil Procedure Code is applicable at nationwide level[12], the practice relating to suits *in forma pauperis* in Amhara Region Courts,

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[6] ተሸገር ገ/ስላሴ "et al", የፍ/ስ/ስ/ሀግ, የፌድራልና የክልል ጠ/ፍ/ቤቶች ከየ.ኤስ .ኤ.አይ.ዲ ጋር በመተባበር ባዘጋጁት የስልጠና ፕሮግራም ላይ የቀረቡ የስልጠና ጽሁፎች አዲስ አበባ (1996).

[7]Richard C. Cadwalladert, *Civil Suits In Forma Paupers*, LOUISIANA LAW REVIEW, VOLUME 1, N0.4 (May, 1993) In the law of Louisiana State,

> any person, who is a citizen of such state or who, if an alien has been domiciled for three years shall have the right to prosecute, defend all actions to which he may be a party,… whether as plaintiff, intervener, or defendant, without the previous or current payment of costs or the giving of bonds for costs if he is unable to pay because of his poverty to pay such costs or to bond for the payment of costs.

Similarly, the Indian Code of Civil Procedure (1908), Rule 8 provides that 'where a person who does not possess sufficient means to pay the prescribed court fee and fees incidental to a suit for seeking legal remedy may file in forma paupers.'

[8] Legal Aid Providers by Center for Human Rights, ASSESSMENT OF LEGAL AID IN ETHIOPIA: A RESEARCH REPORT AND PROCEEDING OF THE NATIONAL WORKSHOP, (December 2013), p 93. Accesses to justice, in many instances is used to refer to particular procedural elements of access to justice such as access to courts, the right to fair hearing, access to legal services, adequate redress, timely resolution of disputes; and, the substantive aspect of justice: the use of the legal system as a tool to achieve over all social justice; for indigent people, *forma pauperis* is not the only means to ensure accessibility of justice; they may also avail themselves of such services as pro bono and other legal aid services that could help them in the course of judicial proceedings.

[9] THE CIVIL PROCEDURE CODE, Art. 467

[10] See Article 78(3) of the FDRE Constitution, 'States shall establish State Supreme, High and First-Instance Courts. Particulars shall be determined by law'.

[11] THE REVISED AMHARA NATIONAL REGIONAL STATE CONSTITUTION, Art 67/1/

[12] Whether THE CIVIL PROCEDURE CODE has a nation-wide application or whetherregional sates are mandated to adopt their own procedural lawis not within the scope of this article. However, from the contemporary legal regime and practice it is apparent that regional states have adopted their own court establishment proclamations as they are mandated by article 78 of the FDRE Constitution. Under such proclamations, the issue of jurisdiction, mainly the material jurisdiction is addressed in a new format. Such designation clearly repealed some part of the civil procedure code pertaining to material jurisdiction.

On the other side, none of the regional states have yet adopted their own complete procedural law; rather, the civil procedure code is applicable at the national level except in some issues like jurisdiction as mentioned above. This is evident from the cassation decisions of the federal supreme court /volume 1-21/ in which state courts are bound to

herein after ARC, deviates from the procedure established in the Civil Procedure Code. This has been the cause of confusion and has given rise to a debate across the region. While the focus of the present articleis on the law and practice of the *forma pauperis* procedure in the Amhara Region Courts, it will be making references to the federal law and the practice of the federal Courts.

Hence, the objective of this article is scrutinizing the consistency between the legal regime and the court practice on the determination of suit by *forma paupers* in Amhara Region. Mainly, the applicability of *forma pauper* principle and its accord with the objective of security for access to justice will be investigated.

The article is organized in four sections. Section one of the article deals with an overview on the objective of court fee and its exception, the principle of *forma pauperis*, its definition, relation and difference with the concept of poverty. Under Section two the incorporation of the principle of *forma paupers* in Ethiopian Legal System, and its contextualization with the socio economic reality of the country is analyzed from the point of its objective of access to justice with due reference to the relevant national laws.

Section three is dealt with the issue of jurisdiction on determination of *forma pauperis*in ARC. Essentially, the statutory mandate or scope in the power of Kebelie Social Courts and ordinary courts on determination of pauper is assessed in comparison with the role practically played by such two structures of courts, and the outcome of such practice is evaluated in line with the objective of the principle aimed to be achieved. The last section deals on the conclusion and recommendation suggested.

The research for the article consulted literature review including the review and analysis of laws from other countries, relevant national and regional laws of Amhara Region, court cases of the Amhara Region Courts and some Federal Supreme Court and Cassation cases are analyzed. In addition, interviews are conducted with some judges of both ordinary and social courts, legal officers and attorneys.

1. THE CONCEPT OF COURT FEE AND THE *FORMA PAUPERIS* EXCEPTION

1.1 . An Overview

As is rooted from international bill of rights and national constitutions, access to justice is more than improving an individual's access to courts or guaranteeing legal representation. It is a system in which people able to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.[13] Thus, a government should establish adequate infrastructure of justice which is equally accessible to all of its

comply with the civil procedure code pertaining to procedural issues. Hence, there is no regional law to be invokedin relation to the procedure in determination of pauper, it is argued here that the civil procedure code has a national applicability on most issues including the issue at hand.

[13] United Nations Development Programme, *PROGRAMMING FOR JUSTICE: ACCESS FOR ALL*: A PRACTITIONER'S GUIDE TO A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE, Bangkok, UNDP, 2005.

subjects. Equal access implies a procedural and substantive fairness to all subjects of a country irrespective of economic capacities[14]. Among those infrastructures, courts are the main institutions established to pursue reinstatement of infringed rights via litigation process.

However, judicial system is a very costly social institution, whose funds come almost entirely from public resources[15]. The idea that judicial systems should be financed with public funds is justified because there is a belief that justice should be free and should guarantee the "right of access" to courts of all citizens[16]. This fact and the existing environmental incentives could induce people to litigate on courts to suboptimal levels[17]. For these and other reasons, court fee is used to be imposed on litigants.

Levying court fee has its own justifications than being a barrier to access to justice. Firstly, it is aimed to secure revenues for the State and it was never its purpose to arm a litigant with a weapon of technicality against his opponent; Parties must win or lose their cases on substantial grounds and the Courts cannot be abettors[18].

Secondly, a free cost judicial system encourages levels of litigation, which is socially inappropriate, because people do not take into consideration all the costs involved in a litigation process when deciding to bring suit[19]. When costs are underestimated, because they only consider private costs, the result is that people litigate more[20]. As the rate of cases increases, it exacerbates the burden of courts, delays decisions and affects the quality of it. This, in turn, worsens administrative costs of courts spent on human and material resources.

Thirdly, as court-fee- free litigation increases initiation of frivolous suits, it indirectly tortures a defendant, psychologically, and induces him for economic and time costs. Whatever the outcome of the litigation will be, psychologically, it is not comfortable for any person to be sued from the outset. Besides, as the defendant absents from work, for attending those court adjournments, he loses economic benefits; he may incur costs for witnesses and translators; he may also incur secretary and attorney costs which become worse in case of exaggerated claims (due to the absence of proportional court fee)[21].

Therefore, levying of court fee is justifiable to enhance government revenue and to offset judicial costs by such court fee than using a tax collected from the public, which could be spent on other government expenditures. Besides, it avoids case congestion and unnecessary burden on courts which has a direct effect on the duration and quality of decisions. It also saves innocent defendants from unnecessary psychological disturbance and economic losses. For these reasons,

[14] Deborah L. Rhode, *Access to Justice*, FORDHAM LAW REVIEW,Volume 69, Issue 5, Article 11(2001)
[15] Rafael Mery Nieto, supra note 5
[16] Ibid
[17] Ibid
[18] See the preamble of Court Fees Actof Pakistan,ACT No. VII of 1870
[19] Rafael Mery Nieto, supra note 5
[20] Preamble of Court Fees' Act, supra note 18
[21] Although there is a procedural rule and usage by which the court decides on the costs of the winner party to be covered by the loser party, such may not always be granted or may not be proportional to the real costs as the court has discretion to rule total set-off on costs or to accept some part of it only.

countries have adopted their own court fee rules and tariffs based on their socio-economic realities[22].

However, strict implementation of the court fee principle on all subjects of a nation will affect the basic principle of equal access to justice, for there are some persons who can't afford the required fee. Unless such persons are treated differently, it is impossible to realize equal accessibility of justice to all persons. Therefore, a person should not be deprived of the right to sue due to economic incapacities[23]; otherwise, economically marginalized or oppressed people like fired workers, insolvent persons, individuals who don't have equal bargaining powers or financially weak etc… will not get remedy of their infringed rights provided they are obliged to pay court fee, a precondition to lodge a claim[24] Hence, it is to brake such barrier on access to justice, that destitute persons are legally relived from payment of court fees[25]. This special procedure, by which a person is privileged to lodge his claim, without payment of court fee, is denoted *suit in forma pauperis*.

Basically, *"forma pauperis"* is a Latin term, meaning "*in the form of pauper"* whichrefers to a party to a law suit who gets permission for filing a statement, often in the form of affidavit declaring the inability to pay. In fact, the state of "inability to pay" court fee depends on the amount of claim and prescribed fee. On top of that, several countries, including Ethiopia, have incorporated such principle in their laws, as a security for access to justice, though the scope of the right is subjective to the socio-economic reality of every nation.

Moreover, as it is an exceptional privilege against the obligation to pay court fee, the applicability of the principle should be strictly regulated so as to avoid its abuse and to benefit, only, those persons who deserve it. Or else, it will be inconsistent with its objective of "security for access to justice" and will affect the rationalities behind levying of the court fee.

On top of that, the issue of "*who is eligible?*" to use this exceptional privilege is a primary question to be answered. Furthermore, the parameter to be considered so as to remit a person from payment of court fee is also essential. So, to deal with these issues, initially, it is necessary to scrutinize the principle of *forma pauperis*, its relation and difference with the state of poverty.

1.2. Definition of *Forma Pauperis*

The term *pauper* is defined as "a very poor person, especially, one who receives aid from charity or public funds".[26]In many jurisdictions of today's Western democratic countries, it used

[22] See Rafael Mery Nieto, supra note 5. The earlieststatute on court fees can be tracedback in the 13th century in England to the enactment of the Statute of Gloucester during the reign of King Edward I in England. This Statute introduced a system of tariffs for use of courts. The reason for that was the need to raise funds for courts and discourage litigation (National Center for States Courts, 1975).

[23] Richard C.Cadwalladert, *supra* note 7

[24] *Jeffcoatv.Hammons*,160 Louisiana State Court , (June,1935)

[25] G. Sanjay BashiamandVishnunath,*Suits by Indigent person: A Critical Analysis under the Code of Civil Procedure,* INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS 289, VOLUME 4, ISSUE 4, OCT. – DEC. 2017

[26] HENRY C. BLACK'S LAW DICTIONARY, (6th ed), West Publishing Co. St. Paul. (1991)

to be the case that such a person 'is not permitted to vote at elections'.[27]Property ownership was a requirement to vote in many states in the US where paupers not paying taxes or are in receipt of help from the public funds were disenfranchised.[28] Such disenfranchisement of paupers is now relegated to the history books. However, some forms of disenfranchisement still persist and the denial of access to justice due to the inability to satisfy the conditions of the payment of court fees may manifest itself as a continuation of the disenfranchisement of the poor.

Identifying the poor for the purpose of the right of access to justice may be done using the general definitions of poverty in a country. The conception of poverty varies with the level of the socio-economic development of a country: the level of income, the price of goods and services and other economic, social, political and cultural factors.[29]The setting of normative standards of poverty at the national or international level is not a static exercise as it changes with changes in the national and global economies.[30]The World Bank has come up with a variable poverty line demarcating the category of persons in poverty: a person used to be categorized as poor if his daily income is below 1 dollar a day and this threshold has been raised to 1.9 dollar a day as of 2017.[31]

The state of poverty in a country could be used to determine whether an applicant is eligible to file a suit *in forma pauperis*. However, it is all down to the applicant to show that the suit cannot be filed without resorting to the right to file the suit *in forma pauperis*. A case by case, means-tested approach will have to be adopted by the court considering the application for leave to file the suit *in forma pauperis*. There will be persons who are not dependent on aid or charity from the public, for they have some means to perpetuate their life and of their families. However, the means[32]at their disposal may not be sufficient to cover for anything beyond their daily sustenance.Such are persons in retirement living on no more than their meagre pension, subsistence, farmers who depend on farming to support their families and many other sections of society who cannot afford to pay for court fees. Persons with property, but not having access to their property for various reasons may have to be considered as paupers for the purpose of securing their right of access to justice. Thus, a person may not be in a position to exercise his economic right on his property though he is the owner thereof. This may be due to a court

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[27] Max Radin, LAW DICTIONARY,(2nded), p. 244

[28] Robert J Steinfeld, (1989), 'Property and Suffrage in the Early American Republic', STANFORD LAW REVIEW, 41(2), p.335

[29]AsmamawEnquobahire, *Understanding Poverty, The Ethiopian Context,* (March 2004)Addis Ababa Ethiopia, *A paper presented at the Gambia APP Roundtable Conference, Banjul ,The Gambia,April19-23,2004*

[30] Robert J. Flik and Bernand MS Van Praag, *Subjective Poverty Line Definitions,* THE ECONOMIST 139, NR.3 (1991)p.311

[31] Poverty Line Study of World Bank (2017), http://www.worldbank.org (last visited on October 22, 2017); The state of poverty is very subjective to the socio-economic political status of every nation; for, the means of livelihood depends on the level of income along with the price of goods and services. Besides, as the rate of economic development is dynamic by its nature, it is not as such easy to determine the normative standard of poverty of a person at the international level. Nevertheless, studies by some international non-state actors like World Bank, set a standard, by which a person is used to be categorized as poor if his daily income is below one dollar and this threshold has been updated to 1.9 dollar as of 2017. Nonetheless, there is no such demarcation in Ethiopia as well as in Amhara region which the Kebelie social courts could refer to while certifying the livelihood of a person.

[32]The word 'means' denotes for any type of proprietary right including money or other property,that can be used instead of money to pay for the required court fee

injunction or an administrative measure by pubic bodies. Hence, the conception of pauper for the purpose of determining the eligibility to lodge a file *in forma pauperis* has to be broad enough to accommodate the possible variations in poverty levels at which applicants may find themselves to ensure access to justice.

Accordingly, in some jurisdictions, the word pauper is specifically defined to isolate it from other forms of poverty to accommodate the above conditions. An example is the Indian Code of Civil Procedure where the term pauper is defined in terms of insufficiency of a means to pay a court fee instead of deducing it from the general state of poverty. The Code provides that "a person who doesn't possess sufficient means to pay the prescribed court fee, or, where no such fee is prescribed, when he is not entitled to property worth one thousand rupees other than his necessary wearing apparel and the subject matter to the suit may file a suit in forma paupers.[33] Under such definitions, an applicant with a means but not sufficient to meet the requirement of the law is covered and is entitled to avail himself or herself with the right to file a suit *in forma pauperis*.[34] However, in many cases, the specific circumstances that should be considered to determine the state of sufficiency of a means of a person are still subject to the interpretation of a court of law. How much is enough for the livelihood of a person and what amount should be deducted before the extra resources available for the payment of court fees depends on the socio-economic, political and cultural realitiesof eachjurisdiction.

1.3. Foreign Experience on the Application of *Forma Pauperis*

As one mechanism of security for access to justice, several countries have adopted the principle of forma pauper under their laws or judicial precedents though the scope of a right in such principle and the processes of its determination differ from one country to the other. The practice in Louisiana State of America is one, among the others, selected for discussion. Louisiana had legislation allowing such suits in *forma pauperis* since 1912, but a glance at the reports or digests will convince one that it is only recently that such suits have assumed large proportions[35]. Under such act, it is provided that "any person, who is a citizen of this State, or who if an alien has been domiciled in this State for three years, shall have the right to prosecute and defend in all the courts of this State, including all the Appellate courts, all actions to which he may be a party whether as plaintiff, intervener, or defendant, without the previous or current payment of costs or the giving of bonds for costs, if he is unable because of his poverty to pay such costs, or to give bond for the payment of such costs"[36]

[33] INDIAN CODE OF CIVIL PROCEDURE, (1908), Rule 8.

[34] Law and Justice Commission of Pakistan, ENHANCING THE LIMIT PRESCRIBED TO FILE SUIT IN FORMA PAUPERIS, REPORT NO 58. p.2. For instance, a person may be entitled to or own property, but such property may not be sufficient to pay the required court fee, or he may not be in a position to exercise his economic right over his properties due tovarious reasons such as a temporary court injunction or attachment on such property which could forbid the person to sell, lease, or offer as security for loan, or an official or regulatory prohibition such as a temporary ban on transfer of title deed of a car.

[35] Richard C. Cadwallader, supra note 7

[36]Lousiana Act 156 of 1912, amended by Act 260 of 1918 and Act 421 of 1938 [Dart's Stats. (Supp. 1938) § 1400, (1932) §§ 1401-1404].

In fact, there was controversy on "which persons are entitled for such right" due to misunderstandings on the terms "citizen, domicile and resident"[37]. However, such controversy was abolished by the language of judicial interpretations whereby the practical effect of the phrase "citizen of the state" as used in various statutes and in the Constitution of the United States has been taken to mean "a citizen of the United States whose domicile is in such state."[38]
Hence, not only citizens of the United States domiciled in Louisiana, but also those aliens who have maintained a domicile within the State of Louisiana for three years, are allowed, under the Act, to sue in forma pauper.[39]

Moreover, the application for forma pauper need to be supported by affidavit and evidences that show the applicant has no capacity to pay the required court fee. Procedurally, the judge may accept the application or reject it after due examination of applicant and after opportunity is given for the opposite party to challenge the truth of the affidavit[40]. Accordingly, the act grants to impecunious litigants, seeking its benefits, the right to take advantage of it at any stage of the proceedings, and since the passage of Act 421 of 1938**,** the party allowed to proceed under the Act can do so in or out of court both in the parish where the proceedings originated and in all parishes of the state[41]. The right granted, also, extends to the services of notaries and witnesses as well as those rendered by sheriffs, clerks and court stenographers[42].

The other experience worth to mention is the Indian practice in which the principle of forma pauper is incorporated under the 1908 civil procedure code[43]. Rule I of Order XXXIII of this Code is the relevant provision where under a person who does not possess sufficient means to pay the prescribed court fee and fees incidental to a suit for seeking legal remedy is designated as a pauper and may file a suit in forma paupers. However, the expression "indigent person" has been substituted for the expression "pauper" by the amendment act of 1976.[44]

Moreover, from the stipulation of the above rule, an applicant is exempted from court fee where he is not possessed of sufficient means to pay such fees where a court fee is prescribed; and where no such fee is prescribed, when he is not entitled to property worth one thousand rupees other than his necessary wearing-apparel and the subject-matter to the suit. In both cases, the property exempt from attachment in execution of a decree and the subject matter of the suit should be excluded.[45]

Being a question of fact, the expression "sufficient means" is determined by the courts keeping in view of the above circumstances, because in many cases a person has means but not sufficient to meet requirements of law, e.g a person may be entitled to property but may nevertheless be not possessed of sufficient means to pay court fee (AIR 1929 Nag 319)[46].

[37] Harding v. Standard Oil Co., 182 Fed. 421, 423 (C.C. N.D. Ill. 1910)
[38] Ibid
[39] Richard C. Cadwallader, supra note 7
[40] Lousiana Act 156 of 1912, § 2, as amended by Act 165 of 1934, § 1 [Dart's Stats. (Supp. 1938) § 14011. 38.
[41] Richard C. Cadwallader, supra note 7
[42] Lousiana Act 156 of 1912, § 1, as amended by Act 260 of 1918, § 1, and Act 421 of 1938, § 1
[43] INDIAN CODE OF CIVIL PROCEDURE (1908), Rule 8
[44] G. Sanjay Bashiam and Vishnunath, supra note 25
[45] INDIAN CODE OF CIVIL PROCEDURE (1908), Rule 8
[46] Law and Justice Commission of Pakistan, supra note 35

Likewise, in a case (AIR 1933 Lah 528) where a person, though entitled to property which is not yet within his reach, or realizable assets not convertible into cash, it is presumed to be insufficient.[47] In these circumstances the person is said to be not possessed of sufficient means. Another Indian case law recites that in determining pauper status, property exempt from attachment in execution of a decree and the arrears of maintenance in the hand of the wife (whether spend or un-spend), being exempt from attachment, are not property which can be reckoned towards determining the question whether the person is indigent to pursue cause in suit or appeal.(AIR 1986 P & H 217.)[48]

Moreover, the application for permission to sue as an indigent person shall contain the particulars required in regarding to plaints in suits; a schedule of any movable or immovable Property belonging to the applicant with the estimated value thereof shall be annexed and shall be signed and verified[49]. It is further provided under order XXXIII of the code that if the applicant is duly made by an indigent person with proper prescribed manner, then such an application has to be scrutinized through way of inquiry by the Chief Ministerial Officer of the court; however, the court has discretion to either adopt that inquiry or even conduct an inquiry of its own.

The rule contemplates examination of two kinds namely: the examination of the applicant regarding the merits of the claim and Pauperism, and the examination of the persons, other than the applicant, which should be confined to pauperism[50]. On the first stage examination of the petition the court can reject the petition on any ground specified under rule V of order XXXIII[51]. If the petition is not so rejected, the second stage is issuance of notice to the opposite party and to the government pleader, a fixation of the date under order XXXIII rule VII for evidence regarding the application. At this stage, evidence may also be required from state machinery; for example, any revenue officer where the pauper resides can be directed to report about financial conditions of the plaintiff or petitioner[52]. In addition, the defendant or opposite party, during the pendency of the proceedings, has a right to bring on record every material to show that plaintiff is not a pauper[53]. If the application is rejected, the plaintiff is obliged to pay court fee and until

[47] Ibid
[48] Ibid
[49]INDIAN CODE OF CIVIL PROCEDURE (1908), supra note 34
[50] G. Sanjay Bashiam and Vishnunath, supra note 25
[51] The grounds are :
(a.) Where it is not framed and presented in the manner prescribed by rule 2 and 3.
(b.) Where the applicant is not an indigent person.
(c.) Where he has, within two months next before the presentation of application, disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person; Provided that no application shall be rejected if, even after the value of property disposed of by the applicant is taken into account.
(d.) Where his allegations do not show a cause of action.
(e.) Where he has entered into any agreement with reference to the subject of the proposed suit under which any person as obtained an interest in such subject matter.
(f.) Where the allegation made by the applicant in the application shows that the suit would be bought by any law for the time being in force.
(g.) Where any other person as enter into an agreement with him to finance the litigation.
[52] Law and Justice Commission of Pakistan, supra note 35
[53] Ibid

such compliance the case will not proceed. On the other side, if it is accepted, the suit will proceed in forma pauper.

There is also a provision wherein, even if the applicant allowed by the court to treat the plaintiff as an indigent person, may be revoked. Such situation may arise where plaintiff is found guilty of vexatious or improper conduct in the course of the suit or where plaintiff's means are such that he ought not to continue to sue as an indigent person or where the plaintiff has entered into an agreement under which another person has obtained an interest in the subject-matter of the suit.[54]

Where the plaintiff succeeds in the suit, the court shall calculate the amount of court fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person,such amount shall be recoverable by the state government from any party ordered by the decree to pay the same, and shall be a first charge on the subject matter of the suit.[55]

The third experience consulted is the practice in neighboring Kenya in which the principle of *forma pauperis* is recognized. The contemporary legal instrument relevant to the issue at hand is Order 33 of the Civil Procedure Rules 2010. Pursuant to this order a person may apply to a court to get leave for suit in forma pauper subject to the following criteria:

33(1)(2) the applicant must show that he is not possessed of sufficient means to enable him pay court fees for institution of the suit.
33(2) the application shall contain particulars required in regard to pleadings together with a statement that the pauper is unable to pay the fees prescribed and shall be signed in the manner prescribed for signing pleadings.
33(3) the application shall be presented to the court by the applicant in person unless he is exempted from appearance in court by Section 82 of the Act.
33(4) where application is proper and presented to court the court may examine the applicant or his agent regardless of the merits of the claim and the property of the applicant.
33(5) the court shall reject an application for permission to sue as pauper.
(a) Where it is not framed and presented in the manner prescribed in Rule 2 and 3.
(b) Where the applicant is not a pauper
(c) Where he has within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper.
(d) Where his allegations do not show a cause of action

From the above rules, the criteria to accept the application is the insufficiency of means for payment of the prescribed court fee, and it is applicant's burden to prove this fact though the defendant is given an opportunity to disprove it. Besides, the applicant is required to submit the suit along with the application for suit in forma pauper. This is meant to enable the court to evaluate, whether the suit has cause of action or not, as per rule 5(d) of the order. The other criterion is the issue of verification of the application which is required to be made personally by

[54]Law Times Journal,SUIT BY A PAUPER, August 28, 2017, available at https://lawtimesjournal.in/suit-by-a-pauper/ (last accessed 17 Sept, 2018)
[55]G. Sanjay BashiamandVishnunath, supra note 25

the applicant than by representation. However, personal nature of such application is subject to some exceptions specified under the act, reserved mainly for incapable persons. Hence, no such application verified and submitted by a delegate or attorney is accepted by the court unless the applicant is legally exempted from such obligation.

Moreover, whether the applicant has committed a fraudulent act to disposes his property, before two months is also investigated by the court so as to avoid the applicant's intentional act of putting himself incapable to pay the required fee. Therefore, one's application for suit in forma pauper is evaluated by the court on the bases of the above criteria. For the sake of clarity it is worth to mention the case of *George M. Ndirangu v Kenya Revenue Authority & another*.[56]

The Applicant George M. Ndiranguis a disabled person as certified by the National Council for Persons with Disabilities. Up to May 2007 he was an employee of Housing Finance Company Limited. His terminal dues and pension were to be subjected to the income tax deductions. Under the Pensions with DisabilitiesAct 2003, persons with disabilities are exempted from the Provisions of Section 12(3) that reads: *"*An employee with disability shall be entitled to exemption from tax on all income accruing from his employment."

Before his dues were paid, the applicant had sought exemption from the Ministry of Finance who informed him that the modalities for operationalizing the provisions of the Persons with Disability Act on tax exemption on employment income had not yet been finalized, and his employer computed the terminal dues and pension. By his notice of motion, the applicant brought a suit claiming a court to declare him a pauper and to be allowed to file a suitto challenge the deductions of Kshs.1, 161,902/50 from his terminal dues.

The Kenya Revenue Authority (1st defendant) filed its grounds of opposition stating that the applicant has no cause of action against it; the application is fatally defective as the provisions of Sections 35 and 36 of the persons withdisability Act had not come into force by the time the deductions were made; the application has not complied with Order 33 of the Civil Procedure Rules 2010; the prescribed procedure for bring up an application for exemption had not yet been formulated and/or prescribed to warrant exemptions. The Director of Pensions (2nd defendant) did not file any responses to the application but during the hearing of the application, the said second defendant indicated that it would adopt the first Defendants submissions.

The court framed three issues: (1) whether the applicant has a cause of action against the intended defendants. (2) Whether the applicant is a pauper (3) whether the correct procedure has been followed in bringing the application before the court. Pertaining the 1st issue, the court held that there is cause of action against the intended defendants.

As to the 2nd issue, the court held that "no material has been placed before the court to demonstrate such allegations. Mere statements without supporting evidence cannot be used to determine such status. Nothing was placed before the court to show that the applicant lacked sufficient means to pay court fees despite the disability. The court appreciates that the applicant is disabled. It is also acknowledged that disability is not inability. Indeed the applicant was

[56] *George M. Ndirangu v Kenya Revenue Authority & another*, The High Court of Kenya at Nakuru, misc. appl. case number 355 OF 2012, 2016] eKLR

working with the disability for his former employer for twenty-seven years. It is the courts finding that the applicant is not a pauper to take advantage of the provisions of Order 33 Civil Procedure Rules 2010, having been working for twenty-seven years and paid his terminal dues less the taxed amount of Kshs.1,161,902/50 in May 2007".

Hence, from the above foreign experiences it can be understood that a suit by an indigent person or a pauper requires a close scrutiny by the court so that justice shall not be served on lines of deception and lies whereas, this privilege of nonpayment of court fees may also be revoked in certain situations.

2. THE *FORMA PAUPERIS* PROCEDURE UNDER ETHIOPIAN LAW

2.1. Contextualization of the Principle

Under Ethiopian law, there are legal[57] and practical[58] grounds by which persons who cannot afford to pay court fees are allowed to lodge their cases without payment of such fees. However, the applicability of the*forma pauperis* procedure usually depends on the general state of poverty rather than the availability of sufficient means to pay the relevant fees.[59] This is apparent from the reading of the stipulation on the Amharic version of the Civil Procedure Code. Article 467 provides:

> *1.* ከዚህ ቀጥሎ የተመለከተዉን ድንጋጌ መሰረት በማድረግ ገንዘብ የሌለዉና ለማግኘትየማይችል ድሃ ሰዉ የዳኝነት ገንዘብ ሳይከፈል ነጻ ፋይል አስከፍቶ ክስ ማቅረብ ይችላል።
>
> *2.* ድሃ መሆኑ የታወቀለት ማነኛዉም ሰዉ ለሚያቀርበዉ ክስ የሚያስፈልገዉን የዳኝነት ገንዘብ በሙሉ ወይንም በከፊል ለመክፈል የማይችል መሆኑን ገልጾ ከዚህ በላይ ባለዉ ንኡስ ቁጥር በተነገረዉ ድንጋጌ መሰረት የነጻ ፋይል ከፍቶ ክስ ለማቅረብ እንዲፈቀድለት ለማመልከት ይችላል።

On the other hand, the English version provides that:

> (1) Any suit may be instituted by a pauper on the conditions laid down in this Chapter.
>
> (2) Whosoever is not possessed of sufficient means to enable him to pay all or part of the prescribed court fee shall be deemed to be a pauper within the meaning of sub-art. (1), and may apply for leave to sue as a pauper.

As is evident from the two versions of sub-article 1 of article 467, the Amharic term "ድሃ ሰዉ" seems to represent the word 'pauper' in the English version. However, the Amharic word "ድሃ ሰዉ"is a general reference to a poor person and as such the concept of being pauper is understood as being in the general state of poverty. This conception of the pauper derived from the authoritative Amharic version has influenced the practice[60] and has the potential to limit the

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[57] THE CIVIL PROCEDURE CODE, Art. 467- 479

[58]*Federal Supreme Court Cassation Decisions. (BethelihemFarmacy plc vs Ethiopian Development Bank , Cassation File no79555, Dec 02/2005 E.C, Access Real Sate vs Gabii Investment PLC , Cassation File No117754, June8, 2008 E.C.)*

[59] Ibid

[60] Interview with Mr.BirhanieMulat and MrTadesseAssmamaw, Legal officers , North Gondar Zone High Court (Gondar, Ethiopia, August 13, 2017), …suits with no court fee are usually categorized and opened as "በደሃ ደንብ የቀረበክስ"

application of the procedure by excluding applicants without sufficient means, but not falling under the general category of persons in a state of poverty.

The conception of the 'pauper' under Ethiopian law is problematic for the simple reason that there is neither statutory nor an executive act that clearly stipulates the normative standard of the national state of poverty. While the international standards that the World Bank and the United Nations have set are applicable to Ethiopia, it is far from clear how these standards are applied to the specific national setting. Hence, the demarcation line under Ethiopian law on how to categorize persons as poor or not poor has yet to be drawn clearly. This has implications on the applicability of the procedure of *forma pauperis* in Ethiopia: a person who may afford to pay the relevant court fees may be misusing the procedure to avoid the obligation, while, on the other hand, persons who are supposed to benefit from the procedure may be precluded from using the procedure due to a narrow understanding of who is a pauper for the purposes of applying for leave to sue *in forma pauperis*.

Similarly, the phrase "ድሃ መሆኑ የታወቀለት ማንኛዉምሰዉ" *provided* under the second sub article of the Amharic version strengthens the above assertion; for, it narrows the concept of pauper to the state of poverty. However, the other phrase "ለሚያቀርበዉ ክስ የሚያስፈልገዉን የዳኝነት ገንዘብ በሙሉ ወይንም በከፊል ለመክፈል የማይችል" under the 2nd sub article is compatible with the English version "*Whosoever is not possessed of sufficient means"* according to which the concept of pauper is contextualized to a person not possessing sufficient means for the purpose of the payment of court fees than a person who falls under the category of the poor in general. Hence, the English version is more compatible with the right of access to justice; for, the concept of pauper is defined in terms of insufficiency of a means to pay court fee, than on the state of poverty.

However, the English version also has some lacunas. Firstly, it denotes under Article 467 that:

> (1) any suit may be instituted by a pauper on the conditions laid down in this Chapter.
>
> (2)Whosoever is not possessed of sufficient means to enable him to pay all or part of the prescribed court fee shall be deemed tobe a pauper within the meaning of sub-art. (1) and may applyfor leave to sue as a pauper.

From the above stipulations, sub article two implies, as if the meaning of pauper *is* given under sub article one of the provision (art. 467); however, nothing is given yet under sub article one, to show the meaning of the term. Hence, the civil procedure code didn't incorporate a direct definition of the term pauper; rather, the meaning of the term can be traced from the conditions enumerated under sub article two of article 467. From this (second) sub article it can be deduced that the state of *pauper* is described from the point of possession of *means* to *pay court fee,*than considering a means to quench the basic needs of livelihood. Here, the term*means is broadly understood to include* not only money or cash, but also any kind of movable or immovable property including jewelry or other valuable possession of any nature as it can be inferred from the form provided under the third schedule of the code[61].

[61] See the form under third schedule: Application For Leave to Sue as a Pauper (art. 468)
……. date ,.....

A key requirement underlined in the above article of The Civil Procedure Code, is the criteria of 'sufficiencyto enable the payment of the court fee'. Sufficiency of the means is to be determined by weighing the available means against the amount of the required court fee. Thus, the determination of the sufficiency of the means is directly correlated to the amount of the required court fee. Furthermore, the sufficiency of the means of such person could also be determined astotal or partial inabilityto pay. A person may only be partially relieved of the obligation and obliged to pay part of the fee where the available means so justifies. Therefore, there are possibilities where a person could be categorized as a total or partial pauper depending on the totality of his available assets at the time of lodging the application to sue *in forma pauperis*.

The Civil Procedure Codeprovides the procedural steps and techniques to be followed by the court in the determination of the application to sue *in forma pauperis*.[62] Some of the basic ones are discussed below:

I. An application with affidavit: "The application should be supported by an affidavit and made in a form given under the third schedule".[63] Affidavit is defined under Article 3 of the Civil Procedure Codeas a statement of facts in writing lawfully sworn or affirmed.[64]The affidavit should comply with the form provided under the 3rd schedule annexed to the Code where the applicant is required to mention a number of facts and statements such as his or her profession, marital status, source of income, property and its type if any, expenses, his or her dependents. This information helps the court to assess the applicant's capacity to pay the required court fee.

II. Submission of the statement of claim: the applicant should submit the statement of claimalong with the application for leave to sue *in forma pauperis.*[65] Where the court finds that the suit has no cause of action (justiciable ground) or if there will possibility to

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I (name) years old, of (address) do take oath and state as follows:
(1) I am (trade, profession or occupation).
(2) My income is E. (per month). 0' (2\ [have no income whatsoever. (here state source of income, such as: salary as an employee of .....rents or crops from land)
(3) I have no immovable property
(4) I have no movable property: I have no cattle, I have no money deposited in a bank nor cash in hand, I have no money due to me. I have no gold, jewelry, or other valuable property of any nature. (5) I pay E. as rent for the dwelling I live in. (6) I am married and I support the following children and/or dependents:(name children and/or dependents). or (3) I have the following immovable property (state area, locality and value). or (4) I have the following movable property: (mention what property such as cattle, money deposited in a bank or cash in hand gold, jewelry or other vaIuables and state the value) or (5) I pay no rent for the dwellingI live in. (6) I am not married and I do not support any dependents (or as the case maybe) (7) Apart from the interest in the suit to which my application to sue as a pauper refers (and apart from the property mentioned above), I have no other property. (signature of deponent)
Sworn and signed before me this day of …, after theabove had been read out and explained to the deponent (name)
(signature of officer)

[62] THE CIVIL PROCEDURE CODE, Art 467 – 479
[63] Ibid Art. 468/1/
[64] Ibid, Art. 3
[65]Ibid, Art 468/2/

accept the remedy claimed, the application for leave to sue in forma pauperis will be rejected, even without consideration of the issue of sufficiency of the means.Using this filtering mechanism helps avoid frivolous suits that may waste the resources of the court and potential defendants.

On the other hand, the amount of claim should be looked at so as to determine the rate of court fee that will be imposed. This, in turn, helps the court to compare, whether the available means if any, is sufficient to cover for the payment of the fee in full or partially.

III. Submission of supporting evidence: A unilateral declaration of the applicant's indigence is not sufficient to get leave to sue *in forma pauperis*. The applicant needs to support his application with evidence to show that he or she cannot afford to pay the required court fee or part thereof. In line with principles of due process and fair trial,the other party, often the respondent, should also be given a chance to challenge the application and to disprove the assertion of the applicant by producing his or her rebuttal argument with supporting evidence.[66] This will serve as another checking mechanism to determine, whether applicant's claim as to his poverty and the resultant incapacity to pay the fees is real or not.

The procedural steps and the techniques used to verify the applicant's petition for leave to sue *in forma pauperis* have a restraining effect on needless cases that could have increased the burden on the court; and, provide safeguards to the defendant from harassment and related unnecessary costs. The applicant may retreat from lodging a suit if he knows that he has no sufficient evidence or ground to win the case. On the other hand, in the course of these steps, if the court finds out that the applicant is capable of paying the court fees and the applicant proceeds with the decision to lodge the suit with payment of court fees,it has the advantage of securing revenue which the government could have lost.

At the end of the process of verifying the capacity or lack of capacity of the applicant to pay the court fees, the court will either accept the application so that the suit will be opened *in forma pauperis*.[67]It may reject the application for not meeting the criteria in which case the claimant is denied from instituting a suit, unless he pays the required court fee.[68] The court may

[66]Ibid, art. 471

[67] The extent of immunity of the pauper is not clearly demarcated under THE CIVIL PROCEDURE CODE. It is not clear from the phrase 'other fees or charges' mentioned under article 463 of the Civil Procedure Code, whether such immunity of the pauper extends to bar his liability to pay the cost incurred by the other party when the applicant loses the case. For instance, in some cases, the plaintiff may institute a suit so as to disturb the peaceful and smooth life of the defendant, or to inflict economic loss on the defendant, with the knowledge that the case has no merit. In such cases, the defendant may demand the plaintiff to furnish security for costs before the case proceeds. (article 200 of the Civil Procedure Code) Besides, although it is not always a mandatory condition, it is common for the court to order the losing party to cover the costs of the other party. (article 462-465 of the Civil Procedure Code). See Robert Allen Sedler, ETHIOPIAN CIVIL PROCEDURE, 1968, p. 391)

[68] See article 470. of THE CIVIL PROCEDURE CODE. The application shall be rejected where it appears from the application or the examination held under Art. 469 or 471 that:

(a) the applicant is not a pauper;

(b) there is no cause of action;

(c) the applicant has, within two months prior to the filing of the application disposed of any property fraudulently or in order to be able to apply for leave to sue as a pauper; or

also have the option to give a decision ordering the applicant to make a partial payment of the fees.

The Court's decision to allow leave to sue *in forma pauperis* could be challenged at anytime in the course of the hearing.It is evident from the stipulation of article 475 of the Civil Procedure Code, that there is a situation in which a person, once, entitled to open a file *in forma pauperis* could be dispaupered, in due course, by the court either of its own motion or on the application of the other party where:

> (a) In the course of the proceeding he fails without good cause to appear or is guilty of vexatious or improper conduct;
>
> (b) It appears that his means are such that he should not have been permitted or ought not to continue to sue as a pauper: or,
>
> (c) He has entered into any agreement with respect to the subject matter of the suit under which any other person has obtained an interest in such subject matter.

The above stipulations of the Civil Procedure Code enable the court to change its decisions regarding the payment of the fees where there is a discovery of a fact indicating that the applicant has acquired sufficient means or has agreed with third parties to alienate a right in the suit.

Without prejudice to the above conditions, once the applicant is entitled to sue *in forma pauperis*, he will be immune from payment of court fee, until the litigation is concluded in that particular court. Upon the completion of the case, the amount of court fee that should have been paid by the applicant is to be collected from the remedy granted, provided the judgment is given in favor of the applicant.[69]In case of a suit*in forma pauperis*, the court fee will not remain unpaid unless the applicant ultimately loses a case.

2.1. Concern of Jurisdiction: Which Court is mandated to Decide on Forma pauper?

The question of which court is empowered to accept and decideon an application for leave to sue *in forma pauperis*is not a settled issue. It is important to see the statutory provisions to determine the issue andthe Civil Procedure Code is obviously the most relevant law in this regard. The Code, under article 468 /2/, provides that the application, to get permission to sue *in forma pauperis*, should be submitted together with the statement of claim. Similarly, article 469/1/ of the Code stipulates that, on the filing of an application made in proper form, the courtmay, if it thinks fit, "examine*"* the applicant or his agent "as to themerits of the claim" and the property of the applicant. Furthermore, under article 470/b/ of the same Code, it is provided that the court to which the application is submitted might reject the application where it finds no cause of action in the statement of claim.

(d) the applicant has entered into any agreement with respect to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

[69] See Art 476 of THE CIVIL PROCEDURE CODE. Where the plaintiff succeeds in the suit, the court fee and other fees which would have been payable if the plaintiff had not been permitted to sue as a pauper shall be recoverable by the execution officer from the unsuccessful party, and shall be first charged on the subject matter of the suit.

From the above provisions of the Civil Procedure Code, it is apparent that the court which is expected to examine the application for leave to sue as pauper is the same court that examines the merit of the case whether there is cause of action in the applicant's statement of claim.[70] Hence, as per the stipulations of the Civil Procedure Code, it can be deduced that the application to get permission to sue as pauper should be submitted to and determined by the court which has statutory jurisdiction to entertain the main suit for which the *forma pauperis*procedure is sought.

However, it doesn't mean that the acceptance or rejection of the application by the court that entertained the case in the first instance will be binding on appellate courts. If the litigation continues through appeal, a fresh application to every level of appellate court should be submitted and it is to be determined at each stage whether the appeal should proceed *in forma pauperis or* with the payment of the required fees.[71]

Despite such assumptions derived from the Civil Procedure Code, there is a noticeable disparity in the practice between the federal courts and the Amhara regioncourts. When we look into the practice in federal courts, it becomes evident that the issue is addressed as per the above assumptions based on The Civil Procedure Code. The application for "*forma pauperis*" procedure is submitted, along with the statement of the claim, to the court which has the power to try the case.[72] The court will give a ruling on the application after summoning the defendant to respond on the application and after hearing the evidence, if any, from both sides. All this happens before getting into the substance of the main case. In case of acceptance of the application to sue as pauper, the suit will proceed without payment of court fee. Where the application is rejected, the applicant will be obliged to pay the court fee and the case will not proceed until such prior obligation is complied with.

The practice in the courts of the regional states diverges from the practice in federal courts. The power to organize their own court structures has been devolved to regional states by the 1991 Constitution of the Federal Democratic Republic of Ethiopia.[73] The regional states have accordingly set up their respective court structures and have started to develop their own practice reflecting the local realities. This article will focus on the practice in Amhara region.

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[70] Ibid, Article 231

[71] Ibid, Art 474(2)

[72]Federal Supreme Court cases selected and observed by the author:
Asireded Degu vs Ethiopian Insurance Corporation File No 34/91 ,Nov 8, 1993 E.c ,
GirmaAhimmed vs Addis Ababa Administration Office /4 respondents/ File No. 2138, January 24,1994 E.c ,
W/roShasheTiruneh vs Wereda 1 Kebelie Administration Office/ 8 respondents/ File No. 00387 , May 9,1992 E.c
See also Federal Supreme Court Cassation decisions*:BethelihemPharmacy plc vs Ethiopian Development Bank , Cassation File no79555, Dec 02/2005 E.c, Access Real Sate vs Gabii Investment PLC , Cassation File No117754 , June8, 2008 E.c*
In the above cases, the application for suit in*forma pauperis* along with the statement of claim is submitted to the high court which has the power to try the main case. The High Courts, after hearing both sides on the application and examining the witnesses called by both sides decided on the application. The aggrieved parties appealed to the Federal Supreme Court seeking the reversal of the decision of the High Courts. Finally, the Supreme Court, after examining the argument of the parties along with the decision of the lower courts decided on each issue of suit in*forma pauperis*.

[73] FDRE CONSTITUTION, Art. 78/3/

3- DETERMINATION OF *FORMA PAUPERIS* IN AMHARA REGION

The determination on the application to sue *in forma pauperis* in Amhara region courts does not follow the practice in federal courts where the court entertaining the main case also decides on the application. The prominent role that Kebelie Social Courts play in the determination of the *forma pauperis* procedure is what distinguishes the practice in Amhara regional state. The role of the Kebelie Social Courts emanates from the law establishing the courts in Amhara region. The establishing legislation gives Kebelie Social Courts the power to "examine and certify the means of livelihood of an applicant for free services rendered by government organs" including the services from the law courts.[74] The following section examines what the role of Kebelie Social Courts and what the practice is in Amhara region.

3.1 The Amhara Region Kebelie Social Courts

The rationale for the formation of Kebelie Social Courts is stated in the preamble of the Amhara Region Kebelie Social Courts Establishment Proclamation No 20/97. The Proclamation underlines the need to realize the benefit that people living in urban and rural kebelie administration region should be able to enjoy using their democratic right to establish their own social courts in order to be 'adjudicated by their nominee judges'.[75] The preamble further highlights the need to realize the right of access to justice by which residents of a kebelie, the lowest administrative unit that is also the most immediate for residents, could be judged by an institution established within that locality and by judges elected from the community. It is thought that, such courts are more accessible to the community in terms of distance which minimizes the cost of transportation and save time and resources of litigants. It is also thought that justice will be better served as judges are members of the community who have better awareness on the facts and reality of the community and will be in a better position to decide cases based on facts that they understand better than a court in a far-away location.

Social courts are established in each Kebelie administrative unit of the Amhara region. The courtsare given the powerto entertain civil and criminal cases of involving small claims and minor offences.[76] Among the powers given to the social courts is the power to 'examine and certify the means of livelihood of an applicant for free services rendered by government organs'

[74] A Proclamation to Provide for the Establishment of Kebelie Social Courts of the Amhara National Region, PROC. NO. 20/97 ZIKRE HIG GAZ. N0 20 28TH JUNE 1997 P 2, Art. 14/2. Even though this proclamation is amended repeatedly by Proclamation No 27/98, Proclamation N0 32/98, Proclamation No 151/2008, and recently by Proclamation No 246/2017, there was no change introduced on the issue of the power to 'examine and certify the means of livelihood of an applicant for free services rendered by government organs.'The phrase 'means of livelihood of a person'under the previous proclamations is substituted by the word 'poor' under the latest proclamation, Proclamation No 246/2017.

[75]The establishment of social courts, both at the federal and regional level, was a condition, as the FDRE Constitution impliedly envisaged, under article 37 /1.The allocation of judicial power to ordinary courts and 'other competent body with judicial power', i.e, quasi-judicial organs has also been replicated under the Amhara Region Constitution article 37 which recognizes, in addition to the ordinary courts, the establishment of quasi-judicial organs such asKebelie social courts.

[76] Proclamation N0.20/97 and other amendment proclamations, supra note74

including services by the law courts.[77]The form of the certificate issued to the applicant is entitled as "evidence of being poor" (Amharic title).Anyway, Court is one of such government organs from which the free service of the courts could be applied for using such certification or evidence as the service of the law courts is one of the services that the government provides.

However, neither the first establishment proclamation nor its subsequent amendments areclear about the probative value of such certification or evidence in front of the ordinary courts of law. It is a point of contention whether the statutory mandate of Amhara Region Kebelie Social Courts, in the determination of paupers, is a conclusive court "judgment"[78] or, a mere piece of evidence.[79] A close scrutiny of the contents of the establishment proclamations, which confers such power to the Kebelie Social Courts, and the practice, in light of the civil procedure code, is necessary to have a clearer understanding of the probative value of the certificates issued by the Social Courts.

The first point that needs inquiry is the issue of"livelihood", enshrined under the first establishment proclamation and under the latter amendments. For the purpose of the issue at hand, the definition of the terminology as "a persons' means of supporting themselves; property which brings in an income; or, an estate" is adopted. Hence, what the Kebelie Social Courts investigate is whether the applicant has a means to support his or her life, and if any, the amount or type of it.

Such terminology is replaced by "evidence of poverty" of a person under the amended proclamation.[80]This implies that the evidence will designate the applicant as poor person irrespective of how the applicant's livelihood is determined.In view of that, such courts are expected to examine different types of evidences to determine the applicant's sate of livelihood or poverty. However, the certificate or evidence is being issued merely based on the testimony of two or more witnesses as per article 19(3) of the newly adopted proclamation.

Since there is no normative standard, at the national or regional level, to determine a person's livelihood or state of poverty, the Social Courts will be playing a crucial role in providing the missing standards. Neither the earliest establishment proclamations nor the latest amendments set out criteria or conditions to determine one's state of livelihood or poverty. What threshold of daily, monthly or annual income of a person should be taken as a yardstick to judge someone is poor or not? Shall we apply the threshold of 1.9 $ per day, of the World Bank in our region? Could this be consistent with the socio-economic reality of our country and region? What about a person whose livelihood depends on agricultural activities than employment or

[77]The establishment proclamation under article 14/2. Such certification may be used for free services rendered by educational institutions for free education, medical institutions for free treatment and medication, Kebelie or municipality for lease of government house, or acquisition of land free of lease.

[78] Under article 3 of THE CIVIL PROCEDURE CODE, 'judgment' is defined as the statement given by a court of the grounds of a decree or order; BLACK'S LAW DICTIONARY(8thed), defines a judgment as a court's final determination of the rights and obligations of the parties in a case,... and, includes an equitable decree and any order from which an appeal lies. Hence, if the decision of Kebelie Social Courts is considered as a judgment, ordinary courts should open a file *informa pauperis* using such decision without reviewing its probative credibility.

[79] ተሸገርገ/ስላሴ "et al", የፌድራልናየክልልጠ/ፍ/ቤቶችከዩ.ኤስ .ኤ.አይ.ዲ.ጋር በጦተባበር ባዘጋጁት የስልጠና ፕሮግራም ላይ የቀረቡ የስልጠና ጽሁፎች *supra* note 6

[80] Proclamation N0. 246/2017, Art. 7/2. *Supra*anote 74, Art. 19/3/

trade? What type and level of property ownership is considered to determine the threshold? The lack of guiding principles or standards to answer these questions makes the work of the Social courts hard. However, since the Social courts are in a better position to evaluate the state of poverty among their community, it is fair to take the determination of the applicant's poverty by the Kebelie Social Courts as real and acceptable.

The other point that needs investigation is the issue of "certification". Literally, a certificate is a document holding information needed to verify a person's legibility for a specific right[81]. Such certificates may be issued by different organs of government, like medical certificates or academic certificates. In the legal arena, there are cases by which court judgments are given in the form of certificates, particularly, short cases that are settled through accelerated procedure and rendered as declarative judgments[82]. Thence, what will be the probative value of a certification or evidence, by the Kebelie Social Courts, when such document is adduced to institute a suit (counter claim) free of charge, in front of ordinary courts? This is a crucial point that exists at the center of the debate around the issue.

On one side, if the applicant's certification by the Kebelie Social Courts is considered as a 'declarative judgment'within the spirit of the Civil Procedure Code, it will have a binding effect on the ordinary courts to open a file *in forma pauperis* without the need to review its credibility by such courts. Hence, it can be concluded that the power to decide on the issue of *forma pauperis* is taken away from ordinary courts and given to Kebelie Social Courts. The following reasons strengthen this argument:

i) Kebelie Social Courts are legally established quasi- judicial organs, which are empowered to accept such application and decide on the state of indigence of a person, after hearing evidence. The decisions they give cannot be rejected by any court, except in the form of appeal even where the court makes an error oflaw or fact violating the Civil Procedure Code. It has not been clear whether the social court judges should follow provisions of the Civil Procedure Code or not. With the amended proclamation No 246/2017, the issue seems to have been put to rest. The amended proclamation stipulates that "the social courts

[81] For instance, a medical certificate, educational certificate, birth certificate, marriage certificate are some of the types of certificates issued by the relevant administrative organs.

[82] Art. 305 of THE CIVIL PROCEDURE CODE stipulates for Issuance of certificate by the courtin mattersconcerning change of name (Arts. 42 and 43 Civil Code), refusal to draw up records or to celebrate a marriage (Arts. 139, 470 and 601 Civil Code), prior permission to sue (Arts. 369, 179 and 786 Civil Code), withdrawal of interdiction (Art. 377 Civil Code), opposition to marriage (Art. S91 Civil Code), widowhood (Art. 596 Civil Code) as well as in cases of applications to consult or to be issued with certain powers or documents or to be authorizedto depart from certain instructions (Arts. 129, 209, 239, m, 523, 528, 53S and 630 Civil Code). (3), Where an application is made for the correction or cancellation of records or entries in registers (Arts. 121, 117, 1623 and 1638 Civil Code) or for approval or confirmation (Arts. 146, 618. 633, 749, 763, 766, 767, and 804 Civil Code and Art. 441 Commercial Code or registration or certification, the court may, without further proceedings, but after having ordered such investigations as may be necessary, give such directions as are appropriate in the circumstances, or issue a certificate evidencing approval,registration or certification or endorse the fact of approval on the relevant point as acase may be, together with the date and number thereof, where appropriate.

are not bound to strictly follow provisions of The Civil Procedure code unless there are exceptional conditions".[83]

This also finds support in the decision of the Federal Supreme Court Cassation Bench reported in volume 18 file No 101345, where the Bench has ruled that a decision of a legally established court should be enforced, unless reversed by appellate court. This can be cited as a legal ground to support the argument that the decisions of the Kebelie social courts are binding and will have a conclusive probative value. This is further supported by article 31 of the Amhara Region KebelieSocial Courts Establishment Proclamation N0 20/97 and all amendment proclamations, including the latest Proclamation 246/2017, that provide for the decision of the court to be executed after 20/ 30 days unless stayed by appellate court.[84]

ii) The main purpose of establishing Kebelie Social Courts and taking away the power of the ordinary courts on minor issues, like determination on the indigence of a person, is to reduce burden of ordinary courts and to realize accessibility of justice for the residents in their own locality by judges of their own nomination. There is a chance for the defendant to contest the decision in the same social court demanding review of judgment by such court itself or by appeal to another court. Therefore, the rehearing of arguments and evidence on the issue of pauper and rejecting the decision of the Kebelie Social Courts' by ordinary courts will defeat the objective of the establishment proclamation of Kebelie Social Courts.

iii) The practice in the ordinary courts seems to support the above argument.In a number of cases, the registrar of the ordinary courts has been observed opening the file *in forma pauperis* taking the applicant's certification as pauper by the Kebelie Social Courts as a conclusive evidence.[85] The registrars of the ordinary courts usually give instructions for the file to be opened *in forma pauperis* without any other requirement other than the applicant's submission of the certification or evidence with an affidavit. Once a file *in forma pauperis* is opened, the plaintiff's legibility for such privilege will not be questioned or otherwise reviewed by the court.

Based on the above interpretations of the law and the current practice in the courts, it can be argued that the certification of applicant's state of poverty by the Kebelie Social Courts is a conclusive decision enforceable by the ordinary courts. It then follows that in Amhara Region,

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[83] THE REVISED SOCIAL COURTS ESTABLISHMENT AND DETERMINATION OF ITS POWERS AND DUTIES, Proclamation N0. 246/2017, Art. 7/2. Supra note 74

[84] In the Amharic version of the proclamation, it is shown as 20 days while the English version indicates 30 days.

[85] The following are some examples of cases opened *informa pauperis* based on the decisions of the Kebelie Social Courts: *Adugna Gilet vs EneFiqireteGetachew North Gondar zone High Court file NO. 0113802, TeshomeAlemaYehu vs EneZenebuBirhanu North Gondarr Zone High Court file NO 0114879, BirhanAgidew Vs EneWerqineshBiru, South Gondarr Zone High Court file NO 46069, w/roYalemwerqSimegn vs Gondar Zuriawereda Health Offiece, Ethiopian Insurance corporation, Amahara Region Supreme Court file No 0123942,WerequBerihune vs EneAbayMuluAmahara Region supreme court file No 387094, w/rozinashwerqu vs AtoBihonegnAragaw, EneselamBihonegn Gondar Town Wereda Court file No 0127897, Alemuwerqu vs YeshanewTakele, Eastern Gojam zone HuletEjunNesiewereda Court file No. 0128964 , SefinewBirhanu vs Atirsaw Yehunie Estern Gojam Zone high court, file No 0130431, Amsalu Adane vs Sofiya Mohammed & Jemal Mohammed, North Wollo Zone high court, file No 22702.*

The practice of takingcertificates issued by KebelieSocal Courts as conclusive is common. Interview with MrBirhanieMulat and MrTadesseAssmamawlegal officers, in North Gondar Zone High Court, supra note 60.

the power to determine on the issue of the *forma pauperis* procedure is effectively taken away from the ordinary courts and handed over to Kebelie Social Courts.

Nevertheless, the other side looking of the issue of such certification or evidence will lead to conclude to the opposite of the above assertion. This counterargument as to the probative value of the Kebelie Social Courts' decisions takes the decisions as any ordinary evidence that can be challenged at any time. This argument insists on the issue of 'certification', for the livelihood or state of poverty of a person, by Kebelie Social Courts, could not have an effect of judgment beyond evidentiary role; such certificate or evidence should not be taken as conclusive and sufficient, by itself, to permit the applicant to open a suit *in forma pauperis* in ordinary courts; rather the credibility of the certificate should be re-tested by the ordinary courts and could be rebutted by producing counter evidence. The reasoning to support this line of argument is presented as follows:

I-The Certification by The Kebelie Social Courts Doesn't Comply with The Principle of Pauperism Under The Civil Procedure Code:

The *forma pauperis* procedure is an exceptional procedure for the specific category of applicants who are economically incapable to pay the required court fee, as a condition for access to justice. As such, it should be regulated to avoid its abuse. Incidents of abuse of the certification are commonly observedas there are enormous conditions by which Kebelie Social Courts issue certificates of poverty recklessly to help the applicant, based on family, blood or consanguineal relations, marital relations, socio-economic and religious relations, or in corrupted ways[86].If such certification is taken as conclusive binding judgment, courts are likely to be flooded by baseless and exaggerated suits regardless of their merit[87]. This exacerbates the burden of courts and affects the quality of court decisions. It will also affect the amount of government revenue as persons who should have paid the service charge are unfairly exempted.[88] In addition, this may harass the defendant and his/her possible exposure to needless expenses.[89] This is why filtering mechanisms and criteria are set under articles 467-479 of the Civil Procedure Code to verify whether the applicant is immune from the payment of the court fee or not.

Thus, to ensure the exemption is given to those who deserve it, it will be necessary to check whether the certification of the poverty of a person by Kebelie Social Courts is given in the right way. This may not be possible if the certification is taken as a conclusive judgment. It is, thus, argued that the process of issuance of the certificate should be re-assessed by the court entertaining the substantive claim against the objectives of the Civil Procedure Code of which some are listed below:

A- Hearing for the Defendant

[86] From the observation by the author during training programs for Kebeleie Social Court judges in different weredas, revealed that the certification of one's livelihood is highly exposed to abuse.
[87] Interview with Mr. Peterson Ambaw, who served as Judge in the High Court of South Wollo Zone, and North Gondar Zone high courts and currently serving in the Amhara Region Supreme Court. (Gondar, Ethiopia, 10 August 2017)
[88] Ibid
[89] Interview with MrAsefaBezabih, Senior Private Lawyer in Amhara Region. (Gondar, Ethiopia, 5 August 2017)

The Kebelie Social Courts need to give a chance to the other party,the defendant, to submit his objections, if any, and should hear arguments and evidence of both sides before ruling on the application for the certification.[90] However, what happens in practice in case of application for certification of livelihood is different: only the applicant lodges his witnesses to the Kebelie Social Courts; and, the decision is given after hearing only the applicant's witnesses, without notifying the defendant on the application[91]. Using such decision as evidence, supported by affidavit, the applicant submits his suit to the ordinary court which has power to try the case. Then, the registrar of such court instructs the file to be opened *in forma pauperis*. A suit *in forma pauperis* is in effect opened using such certificate or evidence form the Social Courts without giving a chance to the defendant to challenge it.

Nevertheless, article 471 and 472 of the Civil Procedure Code requires the hearing of both sides and the examination of their evidence before the decision on the application of *forma pauperis* procedure. As discussed above, the reason for summoning the other party in the determination of the application for the *forma pauperis* procedure is to verify the reality of the applicant's incapacity to pay the required court fee, and to avoid abuse of the procedure. The process ofthe determination of applicant's request for the certificate of livelihood or state of poverty by Amhara Region Kebelie Social Courts is not consistent with the procedural rule under the Civil Procedure Code. In order to make the process fair to both parties, such certification of applicant's livelihood or state of poverty by Kebelie Social Courts should not have an automatic effect of judgment (decision) and should be considered as a mere piece of evidence that can be challenged by the defendant in the court hearing the suit.

B- Credibility of Decision Rendered Without Consideration of Claim

As is stipulated under article 468 /2/ of the Civil Procedure Code, the application for *forma pauperis* should not only be attested by affidavit but it should also be accompanied by the statement of claim. This is necessary to enable the court to evaluate the applicant's ability to pay court fee by comparing his means with the amount mentioned in the statement of claim. According to article 467/2/ of the Civil Procedure Code, the 'sufficiency of applicant's means' is relative to the amount indicated in the statement of claim.

However, the practice shows that the application lodged to Kebelie Social Courts contains neither the statement of claim nor mention the type of claim.It simply describes only the

[90] See Article 21 of Proclamation 20/97 and other proclamations, *supra* note*74*

[91] For instance, in the following court cases evidence of pauper has been given to the plaintiff by the Kebelie Social Courts without calling the defendant, and files *informa pauperis* have been opened in the ordinary courts based on the decisions of Kebelie Social Courts as conclusive evidence.
EnekelekayMekonen vs Enechekulabirhnau , North Gondar zone high court file No 0134254, EneshwaneshAmbesie vs w/rotibereihEmbaqom , North Gondar zone high court file no 0126604, EngidawLaqew . vs Eyayatesefaye , South Gondar zone high court file No 47137., Birhanumekonen vs Debretabor university South Gondar zone high court file No 49228, BirhanAgidew Vs EneWerqineshBiru,SouthGondarr Zone High Court file NO 46069, w/roYalemwerq Simegn vs Gondar Zuria wereda Health Offiece, Ethiopian Insurance corporation, Amahara Region Supreme Court file No 0123942, WerequBerihune vs EneAbaymulu, Amahara region supreme court file No387094 w/ro Zinash Werqu vs AtoBihonegn Aragaw, Ene selam Bihonegn Gondare Town Wereda court file NO 0127897; other Kebelie Social Courts, which the author had a chance to observe during lawyering activities, issue the pauper evidence to courts without calling the defendant.

state of "poverty" of the applicant and the name of his witnesses.[92] Therefore, the amount and type of the claim is not factored into the determination of the issue at all. The applicant's livelihood or state of poverty is determined merely based on the testimony of witnesses of applicant.[93] Kebelie Social Courts routinely decide the state of livelihood or poverty of a person as indigent provided his witnesses testify to that effect.However, given the lack of any clear standard on the poverty demarcation, it is naïve to conclude the certification by Kebelie Social Courts as a conclusive court decision sufficient to allow the applicant to sue *in forma pauperis*.

There is yet another basic reason not to take the certification by Kebelie Social Courts as final conclusive decision. The concept of *forma pauperis* under the Civil Procedure Code is different from the concept of the state of poverty usually determined in the Kebelie Social Courts. As discussed above, the concept of *forma pauperis* in the Civil Procedure Code is mainly focused on the "insufficiency of the means" to pay the court fee, not the absolute poverty of a person. A person need not be absolutely poor to be legible for the *forma pauperis* procedure.

The issue is not whether the applicant is just poor or not, but whether the applicant has an opportunity to pay court fee by using his or her available asset at that particular time.[94] Since the word "means" under the Civil Procedure Code refers to the applicant's opportunity at the time of application to pay the required court fee using all his proprietary right, the general state of poverty of the applicant may not be relevant. It may as well result in the denial of access to justice.[95] Therefore, it can be concluded that the process followed by the Kebelie Social Courts on determination of livelihood or poverty of an applicant does not meet the criteria of the Civil Procedure Code. It then follows that the certification by Kebelie Social Courts should not be taken as a conclusive binding decision.

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[92] Gondar University Law School Annual Executive Report 2016/17/ Budget Year, June 2017 /unpublished/, Training for Kebelie Social Court judges is one of the various community service projects carried out by University of Gondar. Such training had been delivered by a team of law school instructors for the past few years. The training had been given for social court judges of severalKebelies in Amhara Region. In the course of the training, the trainees are invited to disclose the ways and experiences of their judicial activities on various issues. The author discussed with the trainers the information obtained from trainees as well as the experience observed in private lawyering service. The practice directly observed by the author coupled with the feedback obtained from trainers revealed that the amount and type of claim is not usually mentioned on the application for certificate of livelihood or state of poverty and the judges will not consider such issue while the applicant's means of livelihood or state of poverty is determined.

[93] Ibid.

[94]See FEDERAL SUPREME COURT CASSATION BENCH DECISION, Volume 20, *Access Real Estate V Gabi Investment P.L.C.* Cassation File N0 117754. (8/10/2008 E.C.), p.66

[95] The case of MrWerquBerihun, File N0. 01909. Gondar Town Administration 1st Instant City Court reversed the Decision of The Arbegnoch Sub City Social Court in Gondar town. The applicant was a known rich person owning a villa, a building and a truck besides other properties. He later became a debtor of several lenders and finally under criminal and civil suits were brought against him for failing to pay the money he borrowed and due to issuance of a cheque without sufficient deposit. In due course, all of his properties were under court injunctions. While in this situation,MrWerquBerihunwants to sue two individuals who bought his building in a mischievous way so as to get back his building. But, he had no sufficient money to pay for the court fee. Due to the court injunctions, he had no opportunity to use his properties to get money. He then applied to the Kebelie Social Court for issuance of indigence certificate. However, the judges rejected his application though his application was supported by documents of court injunctions on his properties and witnesses. The reasoning of the Kebelie Social Court was, the applicant is a publicly known rich person in the Kebelie. However, such ruling missed the concept of pauper under the Civil Procedure Code.

C. From the Point of Statutory Mandate

As is discussed on the previous section, article 468 /2/ of the civil procedure code provides that "the application, to get permission of suit by forma paupers, should be submitted together with the statement of claim", *i.e,* the suit (emphasis added). Similarly article 469/1/ of this code stipulates that, "on the filing of an application made in proper form, the courtmay, if it thinks fit, examine the applicant or his agent as to the merits of the claim and the property of the applicant". Besides, under article 470 /b/ of the same code, it is provided that, "the court to which the application is submitted might reject the application provided there is no cause of action on" the suit (emphasis added) .

From the above provisions of the civil procedure code, it is apparent that the court which is expected to examine whether the case has merit, or whether the case has cause of action or not, is the court which has power to see the suit. Therefore, as per the stipulations of the civil procedure code, it can be deduced that the application to get permission of *forma pauperis* should be submitted to and determined by the court which will try the case. Hence, the effect of certification for applicant's livelihood or poverty by the Kebelie Social Courts should not be conceived as conclusive court decision than as ordinary evidence which could be rebutted by counter evidences.

If not, it leads to conclusion that the provisions of the civil procedure code, regarding the issue of *forma paupers*, is repealed by the establishment proclamation; for, any law contrary to such proclamation is stipulated as inapplicable, under article 35 of the 1st establishment proclamation N0 20/97; and, the same is declared on further amendments, including article 32(2) of the latest proclamation No 246/2017. This poses a question on the rationality of repealing a procedural law, which has a nationwide applicability in nature, by regional law, because the principle of *forma pauperis* and the detailed procedural rules for its determination are enshrined under the civil procedure code, than in the regional proclamation of Kebelie Social Courts. Besides, it has also its own incidental effect on the uniformity and predictability of court proceedings in a national level as the practice in federal courts is different.

II. From Point of Court Practice

As has been mentioned above, the practice in Amhara Region seems to assert that the Kebelie Social courts are decision makers than the ordinary courts, on the issue of determination of *forma pauperis*, for it is usual to open a file in *forma pauperis*by ordinary courts without any consideration, provided the application is supported by a certificate issued from the Kebelie Social Courts.[96] However, there is a situation that defeats this conclusion when the defendant (the other party) opposes the credibility of the certificate or evidence. In fact, once the applicant's sate of livelihood or poverty is determined by the Kebelie Social Courts, neither the registrar nor the judge/s/ of the ordinary court are considering the issue of applicant's incapacity to pay the court fee, rather a file is being opened without fee, and summon is issued to defend on the main suit, than on the issue of pauper. In addition, from the provisions of the civil procedure code, opposition on issue of pauper is a distinctive issue that should be settled before the opening

[96] See the court cases,supranote 85

of a file for the main suit.[97] Hence, it should be separately seen, than merged with the statement of defense.

Despite such procedural rule, the other party usually contends on the opening of the suit in forma paupers[98]. Such opposition is usually raised as preliminary objection of the main suit, insisting on deprivation of his right to be heard and for procedural inconsistencies mentioned above. Thereafter, the ordinary courts are seen to hear both parties on such opposition on the issue of pauper, usually as preliminary objection, and may hear the evidences so as to confirm or reject the opposition[99]. Hence, there are practical situations, though is rarely, in which the applicant's certification of pauper-ship, by Kebelie Social Courts, is rejected by the trial court and obliged to pay court fee, otherwise the case will not proceed.[100]

From such point of practice, it is hardly possible to conclude that the value of certification or evidence, by the Kebelie Social Courts, pertaining one's state of livelihood or poverty, amounts to a court decision, conclusive by itself for enforcement. This implies that such certification or evidence is not sufficient to have a binding effect on the ordinary courts and its probative value is considered as ordinary evidence; its credibility is rebuttable by other evidence.

This is the point to assert that the practice is apparent on both sides of argument which ultimately becomes the cause of confusion and controversy. On the one hand, The Kebelie Social Courts are perceived as decision makers on issue of pauper; for, files are opened in ordinary courts *in forma pauperis* based, only, on such certification or evidence without reconsideration, irrespective of its inconsistency to the civil procedure code. On the other side, it is usual to see retrial and rejection of such certificate or evidence, though rarely, by the ordinary courts when its credibility is objected by the other party and is disproved by counter evidences; but, such reconsideration of the credibility of the certificate or evidence is conducted only when it is objected by the defendant (other party) and is inconsistent to the civil procedure code.

Moreover, the ordinary courts will not consider the issue of pauperism unless it is opposed by the defendant, which implies that the issue of pauperism is left to the defendant and the ordinary courts are reluctant to play their mandate in determination of pauper, because the government has interest on the payment of court; unnecessary evading of court fee affects its financial interest and causes case congestion which adversely affects the quality and schedule of decisions. So, ordinary courts are not only mandated to decide on the issue of pauper, but also are responsible to control abuse of the principle and safeguard the public revenue.

CONCLUSION AND RECOMMENDATION

Since the procedure of *forma pauperis* is a mechanism to waive the obligation to pay court fees to ensure access to justice for persons who may not afford to pay the fees. The applicant's legibility for such immunity should be determined pursuant to the provisions of the

[97] THE CIVIL PROCEDURE CODE, Art. 471
[98] See the court cases, supra at 85 and 93
[99] *Alem Tegen Vs Syno Hydro Construction Corporation North Gondar zone high court, file N0. 134516*
[100] *Aweke Wenedie Vs Ethiopian Road Construction Corporation, North Gondar Zone high court file N0.0134516,*

Civil Procedure Code.[101] The applicant's economic incapacity should be evaluated, not only from the point of his assets, but also, relative to the amount of the claim, as the criterion is "sufficiency rather than possession of a means". As is evident from the Civil Procedure Code, the state of economic incapacity of the applicant should be decided by the court which will try the case so as to implement the principle consistent with the objective of access to justice.

Accordingly, this article argued that the practice pertaining determination of an application to sue *in forma pauperis* under federal courts complies with the Civil Procedure Code while the practice in Amhara Region diverges from the principles of the Civil Procedure Code. The examination of the applicant's indigence is carried out by the Kebelie Social Courts in Amhara Region, and the ordinary trial courts seem to have relinquished their role in the process of determination of the application for leave to sue *in forma pauperis* unless the defendant opposes.

The reasons for reserving the process of proof and determination of one's indigence for Kebelie Social Courts are reducing the burden of the ordinary courts, ensuring access to justice as the applicant's indigence is determined by the judges nominated by the applicant's community and reducing the cost of the application in terms of time and other resources. However, these purposes cannot be achieved with the practice in Amhara Region. The practice is open for abuse asapplicants who can afford to pay the required court fees are certified as indigent enabling them to evade the duty to pay the court fee.[102]

The article pointed out that though a file could be opened *in forma pauperis* based on the certificate issued by Kebelie Social Courts, the ordinary courts re-evaluate the certificate in cases where the defendant objects. Such reassessment of the issue of *forma pauperis* is duplication and will defeat the objectives of establishment of Kebelie Social Courts. The objective of reducing the burden of the ordinary courts by transferring the power to decide on the *forma pauperis* application to the social courts is not achieved when the ordinary courts are engaged in reassessing the certificates issued by the social courts.

The article has revealed that the establishment proclamation of kebelie social courts is silent on the probative value of the certification by social courtswhen it is brought to the ordinary trial courts. There is no clear provision on the procedural guidelines to be followed by the Social Courts in determination of such issue even though it is amended repeatedly. The Kebelie Social Courts are not normally bound to follow strict procedural rules of the civil or criminal procedure code.[103] This poses a question on the credibility of the decisions given by such courts.

Following the discussion of the several issues arising from the law and practice on *the forma pauperis* procedure in Amhara Region, the article suggests the following three remarks:

First, the article suggests that the establishment proclamation of kebelie social courts needs to be amended so as to avoid the inconsistency with the civil procedure code pertaining jurisdiction to decide one's legibility for the privilege of *forma pauperis*. It is evident that there is

[101]THE CIVIL PROCEDURE CODE, Art 468 – 479
[102] Seethe court cases, *supr*a note 87 and 91
[103] Proclamation No.246/2017 Art. 7(2), supra note 74

a grave abuse of the principle when the mandate is left to kebelie social courts and duplication in case when ordinary courts are rehearing the issue. So the law needs to address these problems.

The article suggests that it is better to avoid the involvement of Kebelie Social Courts on the determination of the *forma pauperis* procedure. The mandate should totally remain within the ordinary courts as per the rules of the Civil Procedure Code. In doing so, the application for leave to sue in *forma pauperis* should be directly lodged to the ordinary courts where the statement of claim is lodged and where the other party will have the right to challenge the applicant's petition to sue as a pauper.

Furthermore, in the ordinary court proceedings, the acceptance or rejection of application to sue *in forma pauper* should be determined on the basis of the sufficiency of available means to pay the required court fee than on the basis of the general state of poverty of the applicant.