

Conflict of Law Rules in the Early 20th Century Ethiopia: A Brief Legal History



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The Ethiopian legal system is characterized by the absence of codified rules on conflict of laws. Though it cannot be considered as the exact period in which conflict of laws have emerged in Ethiopia, some elements of such rules can be found even in the early 1900s, which is long before the modern codes were developed in 1950s and 1960s.

A book written by Mersehazen Woled Kirkos titled “*Ye Hayagenawe Keflezemen Mebacha: Ye Zemen Tarik Tezetaye Kayehute ena Kesemahute 1896-1922*”[1] is a record of historical events that happened in 20th century Ethiopia. One of the records is the “Trade Agreement (1908)” that was signed between Ethiopia and France. This agreement, among others, regulates the adjudication of disputes between Ethiopian and French nationals/dependents. This short piece aims to briefly discuss the salient conflict of laws rules that are incorporated in this trade agreement.

The 1908 Trade Agreement and Conflict of Laws

The trade agreement between Ethiopia and France was signed on January 10, 1908. In this agreement Ethiopia was represented by Emperor Menelik II and Antony Klobukowski signed on the behalf of France.[2]

This agreement consists of a total of nine articles (sections) covering a range of issues, including custom tax, immigration and security matters in performance of trade between the two nations.[3] Specifically, Article 7 of the agreement

stipulates the agreed terms with respect to the adjudication of disputes, of civil as well as criminal nature, that would arise between Ethiopian and French nationals/dependents. In other words this provision was devoted to regulate questions in cases involving a foreign element.

Accordingly to the contemporary conception, it is a foreign element that triggers questions that require the application of conflict of laws. In the trade agreement a foreign element is established based on the nationality of parties to the dispute that the application of rules stated under Art. 7 of the agreement would arise in case when either one or both of the disputant parties are French nationals/dependents.

Though the provision also brought criminal matters within its scope of application, the part concerning civil cases regulates jurisdictional and choice of law matters that are part of conflict of laws. Regarding jurisdiction, the agreement states that:

Until the Ethiopian legal system is in par with the Europeans, disputes between French nationals (dependents) in civil as well as criminal matters shall be under the jurisdiction of French consulate.[4] (Translation mine)

As it can be inferred from this provision conditionally makes disputes between French nationals/dependents under the exclusive jurisdiction of France, until Ethiopian laws are harmonized with European legal frameworks. Though the provision lacks clarity as to when do Ethiopian laws would be considered to be in par with the European counterparts, Ethiopian courts wouldn't claim primary as well as secondary jurisdiction in civil cases over with both of the disputant parties are French nationals/dependents.

However, the jurisdictional stand will be changed when the dispute is between French national (dependent) and Ethiopian national (dependent). This stipulated in the agreement that reads:

If a French national (dependent) brings legal action against Ethiopian citizen (dependent), in civil and criminal matter, it shall be adjudicated by an Ethiopian judge together with a representative from French consulate.[5] (Translation mine)

As per the above quoted provision of the agreement, disputes between an Ethiopian national/dependent and French national/dependent is under the jurisdiction of Ethiopian (specialized) court. This court was later on established in the Ministry of Foreign Affairs, in the year 1920/21.[6] While this court is supposed to adjudicate disputes in a bench composed of an Ethiopian judge and a representative from French consulate; and in case of ties between the two the case shall be submitted to the Emperor of Ethiopia, for final decision.[7]

Moreover, the agreement also has a different stand regarding the choice of applicable law in case when the dispute is between an Ethiopian national/dependent and French national/dependent. As such, if one of the parties to the dispute is an Ethiopian national/dependent, the case will be disposed according to Ethiopian law. In this respect, Art 7 of the agreement reads as follows:

If the defendant is an Ethiopian national (dependent), the case shall be adjudicated based on Ethiopian law; which shall also be applicable in case when the defendant is a French national (dependent).[8] (Translation mine)

Generally, according to the trade agreement, legal disputes between French nationals/dependents in Ethiopia are under the jurisdiction of France. Cases involving disputes Ethiopian national/dependent and French national/dependent are under the jurisdiction of Ethiopian court; that shall resolve the case by applying Ethiopian laws.

However, the trade agreement is silent regarding disputes between French national/dependent and another foreign national/dependent residing in Ethiopia. Here, it is interesting to mention that despite what was clearly stated under article 7 of the trade agreement, the provision was later on started to be applicable to foreigners other than French.[9]

[1] *Mersehazen Woled Kirkos, Ye hayagenawe keflexemen Mebacha:Ye Zemen Tarik Tezetaye kayehute ena Kesemahute 1896-1922 (Amharic)*, Addis Ababa University Press, 3rd ed. (2016/17)

[2] *Id.* p.243

[3] *Id.*

[4] The Trade Agreement, Art 7, paragraph 1 (as stated , *Mersehaven supra* 1, p. 243)

[5] *Id.*, Art 7, paragraph 2

[6] *Mersehaven, supra*1, p. 242&243

[7] The Trade Agreement, Art 7, paragraph 4

[8] *Id.* Paragraph 3

[9] *Mersehaven, supra* 1 , p.245