# CHAPTER SIX

# FILIATIONS

# Concept of filiation

- Filiation is the relationship between a child and his/her parents, that is, both the mother and the father.
- Filiation represents the mode of establishing in law the blood relationship at the first degree only.
- Natural (blood tie) and artificial (adoption) are mode of establishing filiation.
- Filiation cannot be derogate by agreement(art 123 of RFC).

# Policy principles of filiation

- Children not to remain parentless
- Attributing a child to his/her biological parent
- Avoid several affiliation of a child
- Equal treatment of children born in and out of legally recognized relationship
- Principle of **Best Interest** of a child
- At most care shall also be taken to reduce inheritance litigation and presume weak paternity claims

# Maternal Filiation: Art 124 of RFC

- Maternal filiation answers how a child cant tie or ascertain his/her mother.
- Maternal filation is a foundation for paternal filiation.
- Maternal filiation is ascertained from the sole fact that the woman has given birth to the child.
- Birth is extrusion of the child from the mother's womb whether in a natural way or by an operation like the caesarian section.

# Continued

- Can Surrogation agreement a challenge to this birth based maternity?
- It is taking the embryo from the genetic mother will carry the baby to the period of confinement and ultimately give birth the child.
- In Ethiopia, renting womb is prohibited.
- Can maternity be contested? If court permit, presuming resulting from concrete facts that the presumed mother could not be the biological mother of the child.
- No contestation, if the child has already got a mother resulting from record of birth and which is supported by possession of status.

# Paternal filiation

- It is creating tie between child and father.
- Paternal filiation is not as simple as maternal filiation. Ascertaining paternity is a very difficult fact to proof.
- We have the following methods to ascertain father:
  - Presumption of paternity
  - Acknowledgment of paternity
  - Ascertainment of paternity by judicial declaration

# Presumption of paternity: Art 126 -130 of RFC

- The law makers have laid a very strong presumption as far as the determination a father of a child is concerned.
- a child either conceived or born in marriage or irregular union has as a father the husband or the man respectively.
- A child is deemed to have been conceived in marriage or irregular union if he/she is born after 180 days after celebration or 300 days after dissolution.

# Continued

- But in Tigray family code 90 days is taken instead of 180 days.
- Period of conception is an irrevocable presumption.
- The presumption applies even if another father name is registered in birth certificate.
- When such event happen, the birth certificate shall be corrected according the presumption rule.
- Period of gestation in absent father starts on the last day news, not the judgment day.

# Acknowledgement: Art 131-142 of RFC

- This applies If a child cannot get father in way of presumption paternity.
- Acknowledgment is an act of declaring an already existed natural filiation between the child and the man who is considering himself as father.
- It is a voluntary declaration.
- Acknowledgment can be made any time.
- Any one including a minor or judicially interdicted person can acknowledge a child

# Continued

- Acknowledgement shall be made in either of following three forms:
  - By a will made in writing
  - Before an officer of civil status
  - By a document attested by a competent authority that he is the father of the child
- Acknowledgement can be done in representation if he is not in a position to express his free and full consent and when he is dead
- Acknowledgement shall be accepted by mother.

# Continued

- If mother day, her parents shall accept.
- The child can accept if the acknowledgement is in majority.
- Several acknowledgement is impossible.
- Acknowledgement is irrevocable.
- But a minor can revoke within one year after attained majority age.
- Acknowledgement of paternity may be annulled on the ground of violence.

# Paternity by Judicial declaration: Art 143-145 RFC

- This is the third mode of establishing paternity.
- A child who does not have a father either through the operation of the presumption of paternity or by acknowledgement can have a father only if the court declares a certain man to be his father.
- The court can declare paternity in the following grounds only.

# Grounds of judicial declaration of paternity

- If woman has been a victim of rape or abduction, the rapist or abductor is father of the child.
  - Do you think the abductor or the rapist need to be criminally convicted first the court to declare paternity?
- When a man by abuse of authority, promise of marriage or by any other intentional deception seduce the mother of a child.
  - What if the boss promise to promote, recruit or transfer a job?

# Continued

- When there is a letter or any other document that indicates in an equivocal manner that the man is the father of the child.
  - Does this include social media?
  - “Are you fine, my darling? Is our little one doing fine? Life is difficult for me here for I am always longing for you and my son. I will come soon and visit you and our baby.” can this be an evidence to be father?

# Continued

- Where the claimed father and the mother of a child have lived in continues sexual relation without having a legally recognized within the period of conception.
- The alleged father has participated on the maintenance care and education of the child in the capacity of a father.

# Prohibition action of declaration

- An action brought for declaration of paternity shall be of no effect where:
  - The mother of the child had sexual relationship with another man in the period regarded by law as the period of pregnancy unless it is proved by medical or other reliable evidence that such man is not the father of the child.
  - The claimed person could not be the father of the child because he was absent or has been a victim of accident during the period regarded by law as the period of pregnancy.
  - In case where the person claimed to be the father of the child decisively proves by blood examination or other reliable evidence that he could not be the father of the child.

# Legal Conflicts in Regulating Paternity: Art 146-153 RFC

- Legal conflicts of paternity said to exist when a specific child attributed to several persons or when more than one persons claim paternity.
- Legal conflict in regulating paternity may arise in applying legal presumption mode of paternity ascertainment.
- When such thing happens, the law first provided them an opportunity to settle it by agreement; one of them to willfully transfer paternity to the other.

# Continued

- The agreement shall be in written form, with three witness and be approved by court. The mother shall be also heard.
- In failing such agreement, the law presumes:
  - The husband or the man in irregular union whom the mother is living at the time of birth in preference to the husband or the man with whom she was living at the time of conception.
  - A preference shall be made to the husband in wedlock over a man in irregular union

# Assignment of paternity

- Assignment of paternity happens when the persons presumed to be the father make contract to give away his paternity to another man who wishes to be the father of the child.
- This can happen in the following situation only:
  - When the child is born within 210 days from the conclusion of the marriage or the commencement of irregular union and more than 210 days after the dissolution of the marriage or the termination of the union.

# Continued

- The agreement, however, need to satisfy the following formality requirements:
  - Has to be made in writing
  - Need to be supported by three witness
  - Approved by the court
  - Except in cases of *force major,* the mother of the child shall be heard in person
  - The agreement has to be made personally by the contracting parties, unless they are minors or judicially interdicted persons.
  - Representation on exceptional situations may be possible but with the approval of the court.

# Disowning: Art 167-179 RFC

- Disowning is a term applied to the act the purpose of which is to wipe out the presumption of paternity established against the husband, when he cannot be the child's father (Planiol).
- Paternity can be only contested by disowning.
- Disowning is not a unilateral action of the presumed father. It needs permission and approval of court.

# Continued

- Action of disowning can be brought to court in the following conditions:
  - He could not have sexual intercourse with the mother during the period between the 300th and 180th day before the birth of the child
  - He proves decisively that it is absolutely impossible that he could be the father of the child, e.g sterile or impotent

# Continued

- The court cannot permit disowning action by mere of there is:
  - There was infidelity of mother, adultery
  - If the child has been conceived by means of artificial insemination with written affirmation of the husband expressing his consent
- Disowning is always against child or his heirs. But mother must be jointly in suit.
- Action to disown a child has to be made within 180 days following the day the father knew or should have known the birth of the child.

# Continued

- Who can institute action of disowning? The presumed father only.
- But if he died in time given, descendants, ascendants, sister or brother in order can bring the case to court.
- In case of judicial interdicted persons, in permission of court, the guardian can institute disowning child.

# Proof of Filiation: Art 154-162 RFC

- Filiation can proved in any of the three methods:
- Record of birth (certificate of birth)
  - Any child shall be registered within 90 days
  - This is the first way to proof filiation
- Possession of status
  - A child has a possession of status when he is treated by the community as being the child of such a man or a woman.
- Action to claim filiation.