

**ST.MARY'S UNIVERSITY COLLEGE  
FACULTY OF LAW**

**LL.B THESIS**

**LIQUIDATION AND ISSUANCE OF CERTIFICAT OF HEIR  
UNDER ETHIOPIA LAW; LAW AND PRACTICE**

**BY: ZEWDITU BEKELE TESMA**

**ADDIS ABABA, ETHIOPIA**

**JULY 2008**

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HEIR UNDER ETHIOPIA LAW; LAW AND  
PRACTICE**

**BY: ZEWDITU BEKELE TESMA**

**ADVISOR :FILIPOS AYENALAM**

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**ADDIS ABABA, ETHIOPIA**

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**I here by declare that this paper is my original work and I take full responsibility for my failure to observe the conventional rules of citation .**

**NAME: ZEWDITU BEKELE**

**SIGNED-----**

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# **INTRODUCTION**

This senior research project is based on liquidation and issuance of Certificate of heir under Ethiopia law, relating to the law and practice. The research was undertaken in partial fulfillment of LL.B degree of the faculty of law of St. Mary's University college.

The study was carried out during the period 2007 and 2008. The findings conclusions and recommendations are based on primary and secondary source of information. The primary source of information are the decisions of courts and Ethiopian law, and the secondary one are the review of the literature on the subject matter.

This research consists of Three chapters. The main focus of this paper is to explore whether issuance of certificate of heirs includes liquidation or not and jurisdiction of courts in regard to this issue. Chapter one provides the definition of liquidation and succession, the concept of liquidation, and the proceeding of succession and liquidation under foreign law .

Chapter two explains the process of liquidation and issuance of certificate of heir under Ethiopian law which includes a description of the purpose and the role of the liquidator and the jurisdiction of courts .

Chapter three analyses the law and practice of liquidation and issuance of certificate of heir by the Ethiopia courts.

Finally based on the above discussion makes some general conclusions and recommendations for future action. This report will serve as a basis for further research.

# CHAPTER ONE

## **1. Definition and concept of succession and liquidation**

### **1.1 Definition of succession and liquidation**

#### **1.1.1 Definition of Succession**

Different books and laws define succession differently; according to Black's law dictionary<sup>1</sup> is defined as:

*" The act or right of legally or officially taking over a predecessor's office , rank or duties, the acquisition of property by inheritance under the laws of descent and distribution "*

Under French law<sup>2</sup> the definition give to the term succession is that:

*" The term succession is used commonly and correctly in two senses, It means(1), the transmission at death to one or more living persons of the estate of a deceased person; and (2) the estate which is so transmitted, In sense(1) one may say " the succession opens in favour of such and such heirs; in sense(2) one speaks of "a movable succession" or " an insolvent succession"*

M. Planiol<sup>3</sup> defined succession as:

*" As a deviating meaning the term, " Succession " also designates the total property taken by the heirs, Thus we*

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<sup>1</sup> Bryan A. Garner, Black's Law Dictionary,(seventh ed. 1999)

<sup>2</sup>Amos. S.M and Walton, F.P Introduction to French law, ( Calvendon press, offord 1963).p.289

<sup>3</sup>M. Paniol, on succession, volume 1, part I, ( Sovisina state law institution 1959)p. 494



*personality", The term succession applies both to the transferred things, and the act of transfer.*

In most legal system succession is divided in to two testate and intestate succession.

Black's Law Dictionary<sup>4</sup> defines testate and intestate succession as:

*" Testate succession is passing of property to another by will"*

*"Intestate succession, the succession of the heir at law to the property and estate of his ancestor when the latter has died intestate, or leaving a will which has been annulled or set aside".*

M Planiol<sup>5</sup> classified succession as:

*" There ate two types of succession those which devolve by operation of law are called "intestate "(ab, intestate) those which devolve by the will of the decedent are called "testate " ( testamentary) "*

Ethiopian Civil code<sup>6</sup> Art 829 (1) classified succession as:

*" The succession of the deceased may be either intestate or testate "*

According to the Civil Code of Ethiopia definition testate succession<sup>7</sup> is a succession in which the estate of the deceased person shall pass to his heirs and or legatees according to the order made in the will. Instate succession<sup>8</sup> is when the deceased leaves no will at all or a court for various reasons invalidates the will made by him and the law conducts the deceased's succession .

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<sup>4</sup> Henery compbell, Black's law Dictionary ,(Sixth ed. 1990)

<sup>5</sup> M. Planiol, on succession volume 1, (2nd part)(Lovisana state law institute 1959) p.494

<sup>6</sup> Civil code of Ethiopia ,(1960)

<sup>7</sup> Law of succession, module 1, (st Mary's college ,April 2002),p.11

<sup>8</sup> Id p.31

Under Hindu law<sup>9</sup> succession is usually divided into two: testamentary succession and intestate succession. The law<sup>10</sup> of testamentary succession deals with formalities of the will and lays down a framework of law in which a will should be made. The term<sup>11</sup> "intestate" means "a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect". The last words of the clause, "capable of taking effect" indicate that if a will made by a Hindu is found to be invalid, then he could be treated to have died intestate.

### **1.1.2 Definition of liquidation**

Black's law dictionary defines liquidation as:<sup>12</sup>

*"The act or process of setting or making clear, fixed, and determinate that which before was uncertain or unascertained payment, satisfaction, or collection; realization on assets and discharge of liabilities, to clear away a debt, winding up or settling with creditors and debtors. The setting of financial affairs of a business or individual, usually by liquidating all assets for distribution to creditors, heirs----etc"*

Thus according to the above definition liquidation in its general term involves the bringing up of assets, discharge of liabilities and the distribution of the balance to the beneficiaries. The law of succession and liquidation is specifically defined under Art 944 of the Civil Code of Ethiopia<sup>13</sup> as:

*"The liquidation of the succession . consists of, the*

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<sup>9</sup> Paras Diwan, law, law intestate and testamentary succession , (third edition , 2006), p.xiii

<sup>10</sup> Ibid

<sup>11</sup> Id P.89

<sup>12</sup> Hennery comp bell, Blacks law Dictionary, ( sixth ed, 1990)

<sup>13</sup> Civil Code of Ethiopia ,(1960)

*determination of the persons who are called to take the property in the inheritance , the determination of what it is made up, recovery of debts due to and the payment of the debits due by the succession which are eligible, and the payment of the legacies by singular title and the taking of such other steps as, are required to carry in to effect the provisions made by the deceased"*

Liquidation involves the determination of persons who are called to take the assets of the deceased, what the succession is made up of, the collection of the property forming part of the estate of the deceased, paying of certain due and liquidated debts of the inheritance and the handing over of bequests made by the deceased and to legatees by singular title.

## **1.2 Concept of liquidation and its proceedings**

Liquidation of succession involves a series of activities. The activities included the determination of the person who are called to take the property of the inheritance, the determination of what property constitutes the inheritance, the recovery of debt for which the deceased was a creditor , the payment of debt for which the deceased is a debtor etc <sup>14</sup>. As a matter of principle the liquidator must be a person who is diligent and who administers the property of the deceased as "*bonus pater familias*"<sup>15</sup>. In other words the liquidator is expected to show similar devotion to his work as his own family affair. Liquidation involves several activities, one of which is preservation and maintenance of the estate of the deceased<sup>16</sup>.

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<sup>14</sup> Law of Succession module 2 unit 1. (St. Mary's College , April 2002.), page(1)

<sup>15</sup> Id p.1

<sup>16</sup> Id p.

In case of testamentary succession an executor or administrator has the same power to sue in respect of all causes of action that survive the deceased and may exercise the same powers for the recovery of debt as the deceased had when living<sup>17</sup>.

When the mass forming the succession has been constituted, it has to be divided among the heirs with due regard to any sums or property an heir has already and has to "return" which means, in effect, to have deducted from his share<sup>18</sup>. This division is known as the portage, and may be made by either agreement, or else by judicial procedure prescribed<sup>19</sup>. Where all the heirs are in agreement and have the necessary capacity the partition will be # friendly \$ (amiable). Usually, but not necessarily, it will be effected by a *notariat* act<sup>20</sup>.

In general liquidation is an important process in the transmission of the rights and obligations of the deceased persons to his heirs. In any legal system that grants the power of transferring rights and obligations from the deceased to the beneficiaries whether in testate or intestate succession must also guarantee that these rights are preserved and ascertained after the death of the deceased.

### **1.3 The concept and the proceeding of succession and liquidation of the heir Under foreign laws.**

#### **1.3.1 The concept of succession and liquidation and their proceedings**

##### **A. France Practice**

Under the French law. The succession is said to "open" at the death of the deceased person (*de cujust*), and that is the point of time at which his heirs are to be ascertained<sup>21</sup>. The determination of the exact time when a succession has opened is important for two reasons. One, this point in time determines the person capable to.

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<sup>17</sup> Paras, , Diwan , law of intestate and testamentary succession, third ed, 2006

<sup>18</sup> Amos, Introduction to French law, ( 1935) p. 324

<sup>19</sup> Ibid

<sup>20</sup> Amos and Walton, Introduction to French law, ( 1963) p. 313

<sup>21</sup> Amos and Walton. Introduction to French law( 1963) 290

succeed.. Just before it, or just after, a death or incapacity can exclude a person. A birth can add another member of the family. Second, at this time begins the undivided interest of the heir in the succession, and later on the declarative effect of the distribution , will go back to this moment <sup>22</sup> . The succession #opens\$ in the last, domicile of the decedent,<sup>23</sup> this is an important fact, because the place of the opening determines jurisdiction in all matters of the succession, whether between co-heirs, or between them and the legatees or creditors<sup>24</sup> . This rule does not apply in two exceptional situations: real actions take place before the court of the real property, and creditor's claims subsequent to the distribution ,are subject to the rule "**Actor sequitur formumrei**"<sup>25</sup>. Hence, the court of proper jurisdiction is that of the domicile of each heir involved.<sup>26</sup> the same applies to claims against a sole heir, brought at any time, for he is in the same situation as the co-heirs would be after the distribution<sup>27</sup>. Succession may be either (a) by operation of law when the deceased person (**de cuius**) dies intestate or (b) by the will, expressed in legal form of the **de cuius** <sup>28</sup> . Intestate succession depends primarily upon kindred or blood relationship (**Parent**), Such relationship may be found either in the direct or in the collateral line <sup>29</sup>. With regard to taking of possession of the deceased property to which the successors are entitled may be divided in to two. Entitlement to its possession depends upon the doctrine of "**La Saisine**", have the right of an heir to take immediate possession of the deceased's assets without a previous formalities, and it brings with it the corresponding obligation of unlimited liability <sup>30</sup>, the second one is for those successor who do not have **la saisined**. They need to obtain **envoi en Possession**

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<sup>22</sup> M. Planiol, on succession, vol. 3 part II,(1959) p.496

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Amos and Walton, Introduction to French law,( 1963) p.290

<sup>29</sup> Ibid

<sup>30</sup> Id p.305

(the legal possession of the succession after applying to court)<sup>31</sup>. We may assume that those with the benefit of "*La saine*" and those who obtain an *envoi* are now, entitled to take hold of the property. However there are exceptions both legal and practical to the automatic possession of the deceased's assets. The French law confers a three-fold choice upon the heir who is clothed with the *saisine* and is of full age and capacity. This are (a) acceptance pure and simple –this form of acceptance may be express, *tacit* or "*enforced*"(b) acceptance with benefit of inventory- this form is a method of preventing the confusion of the estate of the heir and declaration has to be made at the court(c), have a right to renunciation <sup>32</sup>.

For intestate succession the liquidation of the succession will be , when there are several heirs, the succession will be divided among them according their respective shares and the process by which this is done is a partition <sup>33</sup>.If the parties cannot agree, an application to the court for judicial partition will be necessary <sup>34</sup> .Where a judicial partition cannot be avoided, it is carried out by a notary designated by the court. The court designates one of its members as *judge-commissaries*<sup>35</sup>.All heirs have the right to raise objections to the report of the *judge-commissaries* and the proposed partition <sup>36</sup>. If the court approves the partition, the heirs proceed to draw lots for their shares<sup>37</sup>. Judicial partition is a long and expensive process, and M. Planiol says of it that its result is nearly always detestable <sup>38</sup>.

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<sup>34</sup>Ibid

<sup>32</sup>Id p.306

<sup>33</sup> Amos,, Introduction to French law,(1935)p.323

<sup>34</sup> Amos and Walton, introduction to French law,(1963) p.313

<sup>35</sup> Ibid

<sup>36</sup>Id p.314

<sup>37</sup> Ibid

<sup>38</sup> Amos, Introduction to French law,(1935) p.324

For testate succession: the appointment of testamentary executor will be to designated by the will one<sup>39</sup>. This executor is unpaid<sup>40</sup>. Certain powers are attributed to him by the French code<sup>41</sup>. The broadest and most important are, first the surveillance of the carrying out of the will, and secondly, the defense, as law of its validity where this is contested, and is also required in all cases to prepare an inventory of the estate, to pay the legacies, other than the legacies of immovable<sup>42</sup>. When there is no appointment of executor on the will heir or the universal legatee who is the chief beneficiary will be the most immediately concerned to see to the due administration of the estate<sup>43</sup>.

Finally there is certificate of ownership (*certificat de proprieete*) which is a document that proves ownership and subsequent right to possession of the deceased's property<sup>44</sup>. The actual possession of the asset also consists in verification of the successor who claims to be entitled to the possession of the deceased's estate<sup>45</sup>. The certificate of property proves title to the succession by attaching other document to it such as the "*act de notriete*" or inventory heading and duty paid certificate<sup>46</sup>. "*Act de notriete*" is an act to establish death and devolution of the succession<sup>47</sup>. It includes information like marriage, heirs left by the deceased, the will if any and provides all the information which is needed to regulate the succession<sup>48</sup>. It is proved by two witness supported by death certificate<sup>49</sup>. And the act *de notriete* justifies title to the succession. And when both these documents exist the inventory heading is preferable

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<sup>39</sup> Amos and Walton, introduction to French law, (1963) p.323

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Ms, Amos, Introduction to French law, (1935) p.634

<sup>45</sup> Id p.631

<sup>46</sup> Id p.635

<sup>47</sup> Id p.629

<sup>48</sup> Ibid

<sup>49</sup> Id p.627

used<sup>50</sup>. Duty paid certificate is also a certificate attached to act *de propitiare* and this certificate enables the fiscal law to prevent fiscal fraud by concealment of asset<sup>51</sup>.

The Ethiopia law of succession is similar to French law. The reason that the Ethiopian law of succession has taken from the French law the concept of liquidation and succession are the same.

## **B. Indian Practice**

Similar to French law, the succession immediately opens upon the death of a Hindu and his property vests immediately on his death on his heirs<sup>52</sup>. The succession will open and the jurisdiction has two alternatives, if at the time of his death the deceased had a fixed place within the jurisdiction or if movable or immovable property of the deceased is situated within the jurisdiction of the district judge<sup>53</sup>. Similar to others succession under Hindu law is divided into intestate and testamentary succession<sup>54</sup>. The succession to the property of a Hindu who dies intestate after the coming into force of the act, will be governed by its provisions<sup>55</sup>. Indian law differs from other legal systems in that rules of succession of a male Hindu and female Hindu dying intestate have different rules<sup>56</sup>. India's intestate succession differs from community to community<sup>57</sup>. Hindus are governed by their own law of succession, Muslims by Muslim law of succession, Parsis by the Parsi law of succession and Christians and others by their own law of intestate succession<sup>58</sup>. With regard to testamentary succession with minor exceptions or modifications, there is one law of testamentary succession which applies to all.<sup>59</sup> Like French law there is an

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<sup>50</sup> Id p.629

<sup>51</sup> Id p. 632

<sup>52</sup> Paras Diwan, law of intestate and testamentary succession .(2006) p. 89

<sup>53</sup> Paras Diwan, Private international law , (1998) 4<sup>th</sup> revised edition . p.481

<sup>54</sup> Paras Diwan, law of intestate and testamentary succession,( 2006) p. xii

<sup>55</sup> Id p.89

<sup>56</sup> Id p. 84

<sup>57</sup> Paras Diwan, Private international law , (1998) 4<sup>th</sup> revised edition . p.498

<sup>58</sup> Ibid



executor called administrator in Hindu law. Under testamentary succession an executor or administrator has the power to sue in respect of all causes of action that survive the deceased and may exercise the same power for the recover of debts as the deceased has when living<sup>60</sup>. The executor shall within six months from the court granted probate or letters of administration, give an inventory containing a full and true estimate of all the property in possession<sup>61</sup>. He has the duty to provide funds for the performance of the necessary funeral ceremonies of the deceased<sup>62</sup>. Further more he has a duty to pay other expenses, like executorships, expense, wage of servants and payment debts<sup>63</sup>. Particularly the Hindu and Muslim law, does not require appointment of any administrator in case of intestacy, as Hindus have not known anything like testamentary disposition, and what ever modern Hindu law of wills exists it is essentially modeled an English law Muslims, on the other hand, have always recognized the testamentary power though a Muslim is not allowed to dispose of his entire property, the concept of executors and administrators too have been different<sup>64</sup>. So in the matter of grant of letters of administrations in Indian law makes the distinction between Hindus, Muslims, Buddhists, Sikhs and Jains on the one side and other person on the other<sup>65</sup>

under Indian law the court given a succession certificate<sup>66</sup>. The succession certificate is neither a "decree" nor "an order"<sup>67</sup>. The succession certificate proceedings do not enable the parties to litigate the question of title to property; nor does the grant of

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<sup>59</sup> Ibid

<sup>60</sup> Paras Diwan, law of intestate and testamentary succession, (2006)p.914

<sup>61</sup> Id p.945

<sup>62</sup> Id p. 939

<sup>63</sup> Id p.945

<sup>64</sup> Paras Diwan, Private international law , (1998) 4<sup>th</sup> revised edition . p.473

<sup>65</sup> Id p. 481

<sup>66</sup> Paras Diwan, law of intestate and testamentary succession, p.990

<sup>67</sup> Id p. 986

succession certificate determine the question of title<sup>68</sup>. And is not a final adjudication as to the title on the question who is the next heir<sup>69</sup>. The object of certificate is to facilitate collection of debts<sup>70</sup>. In proceedings for succession certificate the court does not enter in the intricate question of title. It issues to the person who has the best claim and *prima-facie* title and to leave the parties to get the question of title decided by regular suit if they so desire<sup>71</sup>. For granting the certificate the first procedure is to serve a notice on all those concerned<sup>72</sup>. A copy of the notice must be posted on the court premise and the judge may order publication of the notice in the local newspapers<sup>73</sup>. Every succession certificate must contain, where it is a certificate to recover debt, the amount of debt and the name of the person from whom it is due, if the debt carries an interest, it must specify the rate of interest<sup>74</sup>.

In the countries of continental Europe and other civil law countries all matters relating to succession are governed by one single system<sup>75</sup>. This is because these countries follow the principle of unity of succession under which succession testamentary as well as intestate and all matters relating to succession are regulated by one single system<sup>76</sup>. India and other countries which follow the common law tradition adopt the principle of succession under which movables and immovable do not devolve under one single system of law<sup>77</sup>. Under Ethiopia law the rule of male and female deceased

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<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Id p.987

<sup>71</sup> Ibid

<sup>72</sup> Id p. 994

<sup>73</sup> Ibid

<sup>74</sup> Id p. 999

<sup>75</sup> Paras Diwan, Private international law, (1998) 4<sup>th</sup> revised edition . p.472

<sup>76</sup> Ibid

<sup>77</sup> Ibid

succession have no difference. Intestate and that testamentary succession there is no different law which governs from community to community. With regard to the object of succession certificate the Ethiopian law is different from Indian law. A certificate of inheritance is required for the transfer of title of real estate. At the death of a person title to real estate passes at once from the decedent to the heir. The Ethiopian court may issue a certificate of heir to the applicant indicating his entitlement to the inheritance and his share in the succession .<sup>78</sup>

### **C. German Practice**

The same as other laws in German succession may be determined by an expression of the intention of the deceased or may depend on the operation of law<sup>79</sup>. That is testamentary or intestate succession. Under testamentary disposition validity of a will compliance depends on certain formalities<sup>80</sup>. For intestate succession, it is a cardinal principle of the law of succession both France and Germany that upon the death of the deceased his estate devolves immediately upon his heirs<sup>81</sup>. But for testamentary disposition both France and Germany does not give the right to all the heirs to take immediate possession of the deceased's assets<sup>82</sup>. This draws a distinction between those who succeed by operation of law and those who succeed as beneficiaries under a will<sup>83</sup>. A testator may by his will appoint one or more executor or leave it to the discretion of some other person or of the competent probate court to make appointment<sup>84</sup>. Also may

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<sup>78</sup> Civil Code of Ethiopia ,(1960) Art. 996

<sup>79</sup> K.W. Ryan, an introduction to civil law, (1962) p. 193

<sup>80</sup> Id p .200

<sup>81</sup> Id p. 211

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> Ernest J. Schuster the principles of German Civil Law,(1907)p.620

appoint or provide for the appointment of any substitution executors, to take the place of executors who are unable or unwilling to accept the office, or who having accepted to the office, vacate it at any subsequent time<sup>85</sup>. In German the executor appointed by the court called "curator"<sup>86</sup>. The curator must be appointed on the application of any person who wishes to assert a right against the estate by judicial proceedings<sup>87</sup>. The testator may restrict the power up the executor for purpose of managing the property given to particular he is or legatee<sup>88</sup>.

The executor have right and duties .<sup>89</sup> He can a low have a right to accept or reject of his power<sup>90</sup>. Also have power to take possession of the estate, to give availed discharge for debts and dispose of any object forming part there of<sup>91</sup>. He must use proper diligence in the management of the estate and liable for any damage caused to the heirs by his willful or negligent default<sup>92</sup>. Where an executor has been appointed the partition of an estate has to be carried out by him, he must take the opinion of the co-heirs on his scheme of division before charring the same is to effect<sup>93</sup>. The testator does not appoint the executor to do partition of the estate the co-heirs must carry out the partition in accordance to German law<sup>94</sup>.

In German the court issued "Certificate of inheritance"<sup>95</sup>

German law a "certificate of heirs" under BGB 2353 is defined as<sup>96</sup>

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<sup>85</sup> Ibid

<sup>86</sup> Id p.635

<sup>87</sup> Ibid

<sup>88</sup> Ibid p. 641

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Id p..642

<sup>93</sup> Ibid p.647

<sup>94</sup> Ibid

<sup>95</sup> Id p. 637

<sup>96</sup> German Civil Code 1992

*" A certificate issued by the probate court to the heirs on demand relating to his right of inheritance and where he is entitled only to a share in the inheritance relating to the size of the share of inheritance".*

Such a certificate may either be issued to all the co-heirs jointly or to each of them as to his share, If the right of the heirs are restricted by the appointment of one or more executors, or made subject to the right of reversionary heirs, the fact must be mentioned in the certificate<sup>97</sup>.The certificate also specifies the names of the statutory or testamentary heirs of the deceased and the shares in which they are respectively entitled<sup>98</sup>.The certificate of inheritance serves to a certain extent the same purpose as letters testamentary. Letters of administration on petition of the probate court will issue such a certificate after a thorough investigation of facts<sup>99</sup>. The court has to be satisfied by public documents and affidavits about the death of the decedent .the identity of the heirs, there relationship to the deceased. The validity of the will and pending litigations and other heirs who died before<sup>100</sup>. When the certificate is given is in correct, the court may on the application of the true heirs or of its own motion order the return of a certificate of inheritance<sup>101</sup>. If the certificate is not returned forthwith the court may order its cancellation<sup>102</sup>. Certificate of inheritance does not constitute a final judgment or decree. It may be challenged by litigation in ordinary court<sup>103</sup>.If the law suit is successful , the certificate of inheritance has to be canceled by the probate Court<sup>104</sup> .

The only evidence which effectually protect a third party

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<sup>97</sup> Ibid

<sup>98</sup> Ibid

<sup>99</sup> Peter. H. Sand , Comparative Materials on the Ethiopia law of succession ,(1966) p. 207

<sup>100</sup> Ibid

<sup>101</sup> Ernest J. Schuster the principles of German Civil law,(1907)p.620

<sup>102</sup> Ernest J. Schuster the principles of German Civil Law,(1907)p.620

<sup>103</sup> Peter. H. Sand , Comparative Materials on the Ethiopia law of succession ,(1966) p. 207

<sup>104</sup> Ibid

action is reliance on the certificate of inheritance<sup>105</sup>. The heir's liability to the third party is limited to their share of the estate<sup>106</sup>. The Ethiopia legal system of succession is similar to German law. Succession of the deceased may be either intestate or testate<sup>107</sup>. The intestate succession is when the deceased leaves no will or for various reasons invalidates the will. A person who liquidates the deceased estate whether intestate or testate<sup>108</sup> is appointed by the court<sup>109</sup> and is called #the liquidator\$. This liquidator (s) has numerous right and duties. Finally, when the heirs (s) apply to the court to get certificate of heir, the court issues the certificate of heir of the deceased and their share of succession<sup>110</sup>. The #certificate of heirs\$ (Article 996-998) Civil Code of the Ethiopia is modeled after the certificate of inheritance of the German Civil Code of 1900( Article 2353)<sup>111</sup>. This is clear from the provisions on succession. The rules on devolution of successions correspond also to Ethiopian ideas. The way, in which the liquidation of the succession is organized in Ethiopia can receive the attention from western jurists<sup>112</sup>.

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<sup>105</sup> Peter. H. Sand , Comparative Materials on the Ethiopia law of succession ,(1966) p. 207

<sup>106</sup> K.W , Ryam an introduction to civil law ,(1962) p.217

<sup>107</sup> Civil Code of Ethiopia , (1960) Art . 829

<sup>108</sup> Id, art. 946

<sup>109</sup> Id art. 950

<sup>110</sup> Id art. 966

<sup>111</sup> Peter. H sand , Comparative Materials on Ethiopian law of Succession, (1966) P. 207

<sup>112</sup> Id P. 21 .

## Chapter two

### 2. The process of liquidation and issuance of certificate of heir Under Ethiopian law.

Under \Ethiopian law, the law of succession was introduced to enable one who dies<sup>1</sup> or is declared absent<sup>2</sup> to pass his right and obligation to another person. Succession is divided into two types: testate and intestate<sup>3</sup>. In succession two major components are important they are liquidation and issuance of certificate of heir.

#### 2.1 purpose of liquidation

The liquidation of succession is an important process in the transfer of the right and obligations of the deceased person to his heirs, liquidation operates both in testate and intestate succession<sup>4</sup>. Liquidation of the succession consists of designation of the liquidator, who is empowered by law or by the will to bring the process of liquidation in to a meaningful conclusion. The liquidation process starts at the time of the death of the person until the property of the deceased partitioned to the heirs. According to Art 944 of Civil Code of Ethiopia, liquidation involves several activities. The first point is the determination of the persons who are entitled to the succession<sup>5</sup>. Searching the will of the deceased is a very important step in determining, whether the succession is a testate or an intestate one. If a valid and uncontested will is discovered, there is no problem. The persons appointed as heirs and legatees in the will shall be a part of the succession<sup>6</sup>. If there is no will or if the will is invalidates it, the heirs shall be determined according to the rules of intestate succession. The heirs(s) must be told of the liquidation process and they have the right to accept or renounce the succession

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1 Civil Code of Ethiopian, (1960) Art 826(2)

2 Id Art .167(2)

3 Id Art 829(1)

4 Id Art 946

5 Id Art 944 (a)

6 Law of succession, module 1 unit 1 (st Mart's College, April 2002) p 20

expressly or tacitly <sup>8</sup>.

The other point is the determination of the property <sup>9</sup> that constitutes the succession. This is identified during the liquidation process. This is probably the most difficult function of the liquidator, because it involves discovery and collection of the properties of the deceased which are under the possession of the deceased as well as other persons <sup>10</sup>. The identified property will require the day-to-day administrations by the liquidator.

Before liquidation, all the rights and obligations of the succession constitute what is known as an estate. The estate is made up of the assets and liabilities of the deceased. The property of the inheritance serves as a security for the creditors of the succession pending liquidation<sup>11</sup>. Creditors of the deceased person are given protection<sup>12</sup> and have priority rights over the estate of the deceased. There may be a number of creditors who require payment of some money from the inheritance, based on an order of precedence according to law<sup>13</sup>.

After the liquidation of the succession the court issues a certificate of heir..

## **2.1 Which court has jurisdiction ?**

Under the Constitution of the Federal Democratic Republic of Ethiopia there are two types of courts: federal and state court<sup>1</sup>.

In Addis Ababa, based on Proclamation No 311/2003 and Proclamation No 408/2004 are established the Addis Ababa city courts.

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7 Ibid

8 Civil Code of Ethiopia, (1960) Art 980

9 Id Art 944,(b)

10 Law of succession, module 1, Unit 1 ( St Mary's College, April 2002), p. 20

11 Ethiopia Civil code (1960),Art 943(1)

12 Id Art 944 (C)

13 Id Art 1014

14 Ethiopian Constitution (1995) proc. No 1 Art 79(1)



Federal Courts Proclamation No 25/1996 gives power to the federal courts in civil and criminal matters. In civil matters under Article 5 of this proclamation on issuance of certificate of heir is not the jurisdiction of the federal courts. Therefore Federal Courts have not jurisdiction .The Addis Ababa City Government Revised Charter Proclamation No 311/2003 Article 41 states that the Addis Ababa city courts shall have civil jurisdiction and under Article 41(1)- "*application of succession and guardianship and or tutorship of spousal certificates* "

Based on this article the Addis Ababa City Courts have jurisdiction to give certificate of heirs. The certificate of heir<sup>15</sup> contains two important elements which are rights of inheritance and the share on the property. When an application is made to the court to succeed the deceased, the court gives a certificate of the heir which shows the right to inheritance and the share which one can get from the succession The right of inheritance serves simply a declaratory Purpose and the report of the liquidation which is prepared by the liquidator includes the determination of persons who are entitled to succeed as well as the identification of the respective shares of the heir in the estate. This shows that the declaratory judgment giving the right to inheritance and determination of the share of the heirs can not given by different courts .The issue of the case is one and both decision related to each other.

In practice the federal courts although without jurisdiction in Addis Ababa City deal with the cases of the liquidation of successions and give decisions on the share of the inheritance. The detail will be discussed in chapter 3

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15 Civil Code of Ethiopian, ( 1960) Art 996

### **2.3 Who can be a liquidator?**

Under Ethiopian law the persons or group of persons who administer the patrimony of the deceased are called "liquidator"<sup>16</sup>. The liquidator of the deceased person may be assume power either by will or by court.

#### **2.3.1 The heir (S)**

The fact of being in heir at law entitles one to be a liquidator or joint liquidators<sup>17</sup>. A liquidator is put charge of the inheritance from the very moment of the death of a person<sup>18</sup>, as the law does not wish that the rights and obligations of the deceased be left for any time without some one being responsible for them. Where a person dies intestate<sup>19</sup>, or where there is a valid will but the appointment of liquidators has not be made<sup>20</sup>, the law designates the heirs to perform the act of liquidation from the day of death of the deceased. This day marks the transfer of the inheritance *IPSO FACTO*<sup>21</sup> (by the simple fact) to the heirs at law who are recognized as the next of kin of the deceased are assumed to be close to the deceased and to have better knowledge about the death of the deceased, the where about of his assets, the existence or the non existence of beneficiaries and other information concerning the deceased better than the court or any one else. Hence by virtue of the law the heirs are fully in charge of the inheritance.

#### **2.3.2 Judicial liquidator**

In certain situations under Art 950 and 951 of the Civil Code, the court will be in a position to designate a notary or some other person for liquidation purposes upon application of any interested person.

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16 Civil Code of Ethiopia Art 946

17 Id Art 947

31 8Id Art 826 (1)

19 Id Art. 947

20 Id Art 948 (2) (3)

21 Id Art 826 (2)

The court appoints a liquidator in a number of cases. The first case is where there are no heirs of the deceased or when some of the heirs –at –law do not wish to be involved in the liquidation or when all of the heirs renounce the succession or when no person appears is claiming to be heir<sup>22</sup>. The second case in which the court appoints a liquidator is whenever the testator has left no heirs and his succession is going to be taken by the state<sup>23</sup>. This section refers to cases when succession devolves upon the state<sup>24</sup>. The third case is when there are other reasons when any interested person applies to the court for appointment<sup>25</sup>. When we say an interested person it may refer to an heir, a prosecutor or another person<sup>26</sup>. The one case is where a testamentary executor is appointed by will, but there is doubt as to the validity of the will<sup>27</sup>. The essential point is clearly that there must be a reason for the court to entertain doubt to as to the designation of the liquidator. Once such reason is present, the appointment may be made by the court, or when there happen to be many liquidators any they do not agree on the management of the inheritance<sup>28</sup>. Third reason is where there is among the heirs ( whether they are heirs- at- law or legatees by universal title) a minor or an any interdicted person ( thus incapable under the law ) or another person who for any other reason. (For example an heir living abroad or being seriously sick in a hospital), is not in a position to look after his interest,<sup>29</sup>. The discretion of the court is thus wide as it has the power to determine the reasons which prevent the normal process of the succession Fourth, reason is where the liquidator remains inactive, is dishonest or is found to be incapable of performing his functions properly<sup>30</sup>. In such a case, the liquidator will stop exercising his functions as soon as a new one is appointed by the court<sup>31</sup>.

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22 Id Art 950(1)

23 Id Art 950 (2)

24 Id Art 852

25 Id Art 851

26 Law of succession module to Unit 1 St mary's college (April/2002) p 15

27 Civil Code of Ethiopian Art 951 (a)

28 Id Art 951(b)

29 Id Art 951 ( c )

30 Id Art 951 (d)

31 Id Art 955 (1)

### **2.3.3 Others**

- **Liquidator appointed by will**

The deceased may also have appointed someone by a will to be the liquidator of his estate after his death. In such case, the liquidator is called a testamentary executor<sup>32</sup>. If a testamentary executor is appointed, the will itself must be valid under the civil law. The testator has a power to appoint one or more liquidators in his will. He can choose the liquidator from among his heirs or he may appoint an outsider<sup>33</sup>. It is believed that the testator appoints in his will a person whom he trusts more than the liquidator appointed by someone else<sup>34</sup>.

Sometimes the will of the testator may not contain a provision that appoints a testamentary executor<sup>35</sup>. No one may have been indicated specifically in the will to be the testamentary executor, and the will has the designation of a legatee by universal title, Article 948(2) prescribes that, by virtue of the law (*ipso jure*), the designation as legatee by universal title carries with it the designation as liquidator. The designation of a legatee by universal title, or that of a testamentary executor, bars the heirs-at-law from acting as liquidators<sup>36</sup>. The testator may appoint an outsider as a universal legatee without giving any thing to his children<sup>37</sup>.

- **Liquidator appointed by heir(S)**

The other mechanism of appointing liquidators is by way of arbitrators. The testator provides in his will that in the event of a dispute between the heirs and the legatees, they may appoint one or more person to be liquidator<sup>38</sup>. The heir and the legatees may agree when a dispute arises with regard the liquidation or partition of their succession to submit their case to one or more arbitrators<sup>39</sup>.

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32 Id Art 94 8 (1)

33 law of succession module, Unit 1 (st mary's college April 2002 p.10)

34 Ibid

35 Ibid

36 Civil Code of Ethiopian ,(1960) Art 948 (2)

37 law of succession module 2, Unit 1(st. Mary collage April 2002) ,p 10

38 Civil Code of Ethiopia 1960) Art 941

This indicates that the heir or the legatees may appoint liquidators out side of them. This is true whether the succession is intestate or testate<sup>40</sup>. It is clear therefore that the heirs have the right to designate liquidators.

## **2.4 The role and task of liquidator**

Based on succession, to transfer the right and obligation of the deceased to the beneficiaries, the liquidator under the Ethiopian law have great Role. The main role and task of the liquidator is the liquidation of the succession the main duties of the liquidator is defend in Art 944 and 956 of the Civil Code. According to the these general provisions the function of the liquidator can be categorized in to three main part. These are discussed below.

### **2.4.1 Determination of the person entitled to succeed**

One of the main tasks of the liquidator is search for the will<sup>41</sup> and where there is no will be decide upon the ranking of the heirs<sup>42</sup>. To find the will of the deceased the liquidator is required to go through the documents of the deceased, especially with the notaries and the registries of the courts, where the deceased has resided<sup>43</sup>. After making the proper search, and when the liquidator comes across a will he must open the will fort days after the death of the deceased<sup>44</sup>. After finding of the will the opening of the will is made by the liquidators choice of time within one month after be discovery<sup>45</sup>. The liquidator is required to issue a publication<sup>46</sup>, to invite those entitled succeed by virtue of the law or as the result of the opening of the will .

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39 Id Art 945

40 Id Art 946

41 Id Art 262 (1)

42 Id Art 972 (1)

43 Id Art 962 (2)

44 Id Art 965 (1)

45 Id Art 965 (2)

46 Id Art 968

Then the liquidator and person presented, shall verify the validity of the will <sup>47</sup> . by considering legal formalities such as the date, signature and number of witness. The liquidator determines the heirs or legatees of the deceased and the portion of the succession based on Art 971(1).

This shows that the liquidator is has the obligation to call the beneficiaries, to search for the testate or intestate successors and then at the latest forty days after the death of the deceased to indicate to them order of partition that he envisages. In order to fulfill the above tasks the law requires the liquidator to use any sort of publication to call the interested party. The proper notification of the beneficiaries is very important because the liquidator can ascertain the real beneficiaries while allowing some parties to renounce the succession <sup>48</sup> .

#### **2.4.2 Administration of the estate**

The other main task of the liquidator is administering the estate of the deceased from the day of his appointment until the persons having a right to the succession have received the property <sup>49</sup> . Also the liquidator has a right to refuse those persons who claim rights on they don't have the properties of deceased<sup>50</sup> . He is expected to oppose those debts that are barred by any statute of limitation. From the day of his appointment the liquidator should be diligent because any damage caused to the succession because of his fault or negligence is his liability <sup>51</sup> .

Furthermore the liquidator to is obliged to administer the estate of the deceased. Some of this administrative tasks are drawing an inventory of the assets and liabilities of the succession <sup>52</sup> , providing maintenance , education for those beneficiaries whose

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47 Id Art 969 (1)

48 Id Art 976

49 Id Art 1003

50 Id Art 1011(b)

51 Id Art 961 (1)

52 Id Art 1005 (1)

property he is handling <sup>53</sup>, performing all acts and instituting all actions necessary to prevent the property,<sup>54</sup> demand payment of what is due to the succession<sup>55</sup>, determine which debts are due (liquidated or mature debts), and demand payment from the debtors. After receiving the payment the liquidator is authorized to give to the debtor who has settled his debt to the necessary receipt <sup>56</sup>. Additionally the liquidator have a duty that are required in property maintaining the estate of the deceased.

### **2.4.3 Payment of debts of succession**

One of the main task of the liquidator is payment of debts of the succession. Under this there are several activities included :- the first one is debts of the deceased the debts that originated in the inheritance, mainly those of the legatee by individual title, debts that arises as a result of administration and liquidation of the estate of the liquidation.

Under the second one, the liquidator in paying those debts of the deceased should follow the order specified under Article 1014 of the Civil Code. In order to comply with this mandatory provision the liquidator has to take all the necessary steps to call upon the creditors of the succession first <sup>57</sup>. The liquidator can invite the creditors after pace of residence of the deceased<sup>58</sup>, by means of publicity and notices<sup>59</sup>. After proper publication he should also grant the creditors a three months time to bring about claims against the succession<sup>60</sup>. From this we understand that there are different kinds of debts that may be imposed on the succession depending on the type of the debts, creditors have the rights on the property of the inheritance. This indicates that some credits have a priority right over other credits <sup>61</sup>.

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53 Id Art 1005 (2)

54 Id Art 1011(a)

55 Id Art a012 (1)

56 Id Art 1012 (2)

57 Id Art 1017 (1)

58 Id Art 1017 (2)

59 Id Art 1018 (1)

60 Id Art 1018 (2)

61 law of succession module , unit 2 (St Mr's college April 2002) p,53

Finally, The liquidator shall follow the instructions given to him by the deceased or by the court <sup>62</sup>. In this respect the powers given by the code to the court are such that it can not only give instructions to the liquidator ( and this obviously include limiting his powers ) , but also after the instructions it has given or given by the deceased to the liquidator. There is a reason for this. Apart from giving instructions the court has good reasons to modify the instruction it gives <sup>63</sup>. In order to pay the debts, the liquidator must follow the hierarchy of debts stitched by law, because there may be a number of creditors who require payment of some money form the inheritance <sup>64</sup>.When the estate left by the deceased is not sufficient to recover all the recovery all the debts. the liquidator may prefer to pay usually secured creditors before the other classes of creditors. So long as the creditors are on an equal footing, the rule of pro-rata distributions is applied in proportion to the amount of claim of each of them <sup>65</sup>.

## **2.5 Issuance of Certificate of heir**

### **2.5.1 definition of certificate of heir**

A certificate in its most general and widest sense has been defined as:

*# A certain assurance of that which it states, a declaration in writing, an authoritative , attestation, a written, given assurance that a thing has or has not been done, that a fact exists, a written testimony to the truth of any fact, the usual and customary method of indicating what has and what has not been done*<sup>66</sup>

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62 Civil Code of Ethiopian, (1960) Art 957(1)

63 Id Art 957 (2)

64 law of succession module 1, Unit 1, ( St Mary's College April 2002) p. 19

65 Id module 2, Unit o 59

66 Corpus Juris Secundum ,(1942) Vol .14 p .111



The black's law dictionary <sup>67</sup>. defines this term as –

*# a written assurance, or official representation that some act has or has not been done or some event occurred or some legal formalities has been complied with, a written assurance made or issuing from some court, and designated as a notice of things done there is or as a warrant or authority to some other court Judge or officer a statement of same fact in a writing signed by the party certifying a declaration is writing which is by law made evidence of the truth of the facts states for all or for certain purpose. A document certifying that one has fulfilled the requirements of and many practice. in a field "*

The German Civil Code defines the certificate of inheritance as <sup>68</sup>.-

*#A certificate issued by the probate court to the heirs on demand relating to his light of inheritance and where he is entailed only to a share in the inheritance relating to the size of the share in inheritance\$*

Under the Ethiopia law of succession to transfer the estate of the deceased, the court issues # certificate of heir\$. According to Art 996(1), the certificate of heir is defined as:

*#An heir may apply to the court to be given a certificate of heir of the deceased and share of the succession---\$*

From the first two definitions we can see that once a certificate is issued, the person who is in possession of such a certificate is protected with regard to the statement specified therein. This certificate serves as certification, confirmation of the correctness of the facts stated in the document.

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67 Henery Compbell, Black's law dictionary ,( Sixh ed ) 1990

68 German Civ, C, BGB, (1942) Art 2353

Under the other two definitions of Ethiopian and German law we can understand that a certificate of heir in both of them is similar in that it indicates a comprehensive document that is issued to provide for one's entitlement to inheritance and his share in the succession. The # Certificate of heirs (Article 996-998) of the Ethiopian Civil Code is modeled after the certificate of inheritance of the German Civil Code of 1900 (Article 2353)<sup>69</sup>.

### 2.5.2 issuance of certificate of heirs

Under Ethiopian law, the court issues a certificate of heir, to transfer the estate of the deceased to the rightful beneficiaries. The certificate of inheritance establishes *prima facie* proof about the testate or intestate succession of the decedent<sup>70</sup>.

In the case of testate succession, heirs or the liquidator are required to produce the will so that the court would verify the validity of the will<sup>71</sup>. Then the court issues a certificate that shows the status of heir<sup>72</sup>.

In case of intestate succession, the persons who claim a right to the succession are required to prove their relation to the deceased<sup>73</sup>.

In Ethiopia once the applicant is issued with a certificate of heir indicating his entitlement to be heir and his share in the succession it will enable the beneficiary to prove ownership of the estate of the deceased in his possession and to transfer the ownership or possession to a third party. Whatever the heir performs in such a capacity can not be impugned<sup>74</sup>.

A person who possesses a certificate of heir will have the right to demand transfer of the deceased's property in favor of him. This indicates that a certificate of heir imposes an obligation against all persons who come in contact with the true beneficiary.

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69 Peter H. Sand, Comparative Materials on Ethiopian law of succession, (1966), p 207

70 Id p. 207

71 Id p. 44

72 IBid

73 IBid

74 Civil Code of Ethiopia (1960), Art. 997(1)

When a person gets a certificate of heir without a valid title or without a better title to success, the heir has a right to institute an action against such person to invalidate the certificate. This action is called *petitio haereditatis*<sup>75</sup>. After entertaining the case, the court can order the cancellation of the certificate of heir it issued<sup>76</sup> and then the heir must return the certificate<sup>77</sup>. If the heir is unable to return it, the court may order him to give appropriate securities to ensure that he will not use the certificate<sup>78</sup>. This shows that the certificate of heir protects the true heir (S). The # Certificate of heir protects the third party who *bona fide* relies on the contents of the certificate<sup>79</sup>.

According to Art 305(3) of the Civil Procedures Code a certificate of heir is a matter that is dealt with under accelerated procedure. This article requires the court to make all the necessary investigation in confirming or approving what is stated under the certificate and whenever need arise require before issuing the certificate the applicant to produce evidence.

## **2.6 Does issuance of certificate of heir Included liquidation ?**

Under the Civil Code of Ethiopia (Art 996-998) the provision relating to certificate of heir is modeled after the certificate of inheritance of the German Civil Code of 1900 (Art 2353)<sup>80</sup>.

The certificate of inheritance in German law is defined as in the previous section:-

*“ A Certificate issued by the probate court to the heirs or demand relating to his right of inheritance and where he is entitled only to share in the inheritance relating to the size of the share in inheritance ”*

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75 Id Art. 999

76 Id Art.998(1)

77 Id Art.998 (2)

78 Id Art. 998 (3)

79 Peter. H . Sand , Comparative Materials on Ethiopian law of Succession, ( 1966) p. 207

80 Ibid

According to Art 996(1) of the Civil Code of Ethiopia certificate of heir is defined as:

*“An heir may apply to the court to be given a certificate of heir of the deceased and the share of the succession which he is called to take ”*

The Amharic version Sated as:-

“.....  
.....  
.....”

The German Certificate of inheritance is those more similar to the Ethiopian certificate of heir.

The Amharic version on certificate of heir seems more clear then the English version and provides that the certificate of heir shall contain two basic element. One is on the certificate of heir who have entitled to succeed the deceased person must be indicate. The other element is their share in the succession which shall be included are entitled to the inheritance must include it. The Amharic and English versions provide if as “---a Certificate of heir of the deceased and the share of the succession ...”, “... ..  
.....”

This indicates the two element shall be included in the certificate of heir. One can not give one with out the other element. Once the certificate of heir is issued indicating his entitlement to the heir and his share in the succession. The heir shall have all the rights stated in the certificate<sup>81</sup>. Accordingly such certificate will enable the beneficiary to prove ownership of the estate of the deceased in his possession and to transfer the ownership if in position and acts performed in capacity might nor be impugned<sup>82</sup>.

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81 Civil Code of Ethiopian ,(1960) Art. 997(1)  
82 Id Art. 997 (2)

A person who possesses the certificate of heir shall have the right to demand a transfer of the deceased's property in favor of him. Therefore the certificate imposes an obligation against all persons who come in contact with the active subjects of the beneficiary. If the certificate issued does not contain a statement of the element of the heir's share in the succession, they can not claim transfer of property of the deceased, because their share is not specified clearly. The entitlement to be heir of the deceased alone is not enough and does not impose an obligation.

The court issues the certificate of heir and the liquidation process is begun. The liquidator shall determine all the beneficiaries, the debts due to the estate, and establish the testate and intestate successors who are willing to accept the succession and the respective shares of the succession<sup>83</sup>. The liquidator's duties which include identification of the beneficiaries and the assets of the deceased with the share of the heirs in the succession is the basis for the issuance of certificate of heir. The court must receive evidence regarding the applicant's claim under Article 996(2) of Civil Code of Ethiopia based on this Article the type of evidence that should be produced by the applicant is left to the discretion of the court. The procedural matter required to be fulfilled in issuing certificate of heir are based on Article 305(3) of the Civil Procedures Code and is dealt under accelerated procedure. This Article requires the court to make all the necessary investigations. The court may require the applicant to produce evidence<sup>84</sup>. This accelerated procedure helps the court to decide for the hearing of certain kinds of cases speedily and without a full-scale trial, because the nature of the case requires an immediate disposition<sup>85</sup>.

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<sup>83</sup> Id Art. 956

<sup>84</sup> Civil procedure Code of Ethiopia, Art., 303(3)

<sup>85</sup> Robert Allen Sedler, Ethiopian Civil procedure, (1968) p. 381

From the above discussion we have seen that the court issues a certificate of heir containing the two established facts of the right of inheritance and the share of the person entitled to the succession. So the issuance of certificate of heir can be considered to be the liquidation of estate of the deceased .

## **Chapter Three**

### **3. law and practice of liquidation and issuance of certificate of heir in Ethiopia**

#### **3.1 Jurisdiction of the courts on issuance of certificate of heir**

As discussed above, according to Art.996 (1) Civil Code of Ethiopia, issuance of certificate of heir designates the heir and their share in the succession. These two facts are contained in the certificate of heir. Pursuant to Proclamation No 361 /1995 Article 41/1/h an application for a certificate is the jurisdiction of the Addis Ababa city courts.

Under current practice the Addis Ababa city courts and federal courts both receive cases of succession. In the succession of Ato<sup>1</sup> Anebasawdem Yohanes and sister Mesbewark Yohanes, the Addis Ababa City Court gave a decision confirming they are heirs of the deceased, ato Belenseged Yohanes as from Megabit 15, 199. This decision does not indicate the share of each heir in the succession. An applicant simply applies to the court to be named heir of the deceased. The court gives a decision as to being heir according to Art 844(2) of the Civil Code of Ethiopia.

The same parties <sup>2</sup> brought a petition against W/O Menbere Ayelaw to the Federal First Instance Court asking for liquidation of succession and a decision on their share, The court after investigating the report of the

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<sup>1</sup>. Content of decision for certificate of heir petitioned by Ato Anebasawdem yehanese and sister Mesbewark yehanese, ( civil file No 5528/98, genbote 51 1998) , ( unpublished) , Annex 4

<sup>2</sup> The content of decision for certificate of heir petitioned by Ato Anebasawdem yehanese and sister Mesbewark yehanese , ( Civil file No 72558, Mayza 30,2000) (in published) Annex 5

liquidation approved the report.

From the above case the Addis Ababa City Court gave a decision as the heir ship for declaratory purposes and the Federal First Instance Court gave a decision separately approving of the report of the liquidator on the respective shares of the succession. In practice, The Federal Courts are therefore receiving cases on succession with out having jurisdiction.

In the succession of W/O Teyeba Ademe,<sup>3</sup> the Addis Ababa City Court gave a decision confirming the right of guardianship of the child of the deceased W/O Gemela Hasen and the right of succession of the child Fuad Kedere. The court also approved the report of the liquidation which was liquidated by the heirs. The Addis Ababa City Court issued a certificate of heir by passing a decision based on Art 996/1/. This court entertained the case based on its lawful jurisdiction. The example shows that in practice the decision on the certificate of heir and succession also received by the Addis Ababa City Court which has a jurisdiction.

From the above discussion we can conclude that, the applicant can petition any court and succession is are not based on lawful jurisdiction.

### **3.2 Problem related to liquidation and issuance of certificate of heir**

According to the above discussion the Addis Ababa City and Federal Courts handle cases of succession by issuing certificate of heir and federal

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<sup>3</sup> The content of decision for certificate of heir petitioned by W/O Teyeba Ademe ( Civil file No1209/ 00, Genbot 8/2000( un published) Annex 3

Courts with out having jurisdiction have given decisions on succession. Based on Article 996(1) of the Civil Code discussed in chapter two the certificate of heir is confirmation of the right of inheritance and the share of heirs in the succession. The Federal Courts deal with the succession case separately by accepting the liquidation of the successions only. This indicates that the applicants will be required to have two files for one case in two courts and to waste their time and to make unnecessary expense. They can not get a decision in due time, because the applicant will apply to the Addis Ababa City Court to become heir then apply to the Federal courts to liquidate the estate and to know their share in the succession. Petition for certificate of heir to two courts indicates that the courts do not give a decision of succession based on Art 996/1/ and Proclamation No 361/95 Article 41/1/ /h and act contrary to the legal provisions.

In the succession of W/O Tenaye Wangeaw <sup>4</sup> the legatee of the deceased W/O Tewabech Tsegay applied to the Addis Ababa First Instance City Court to be named successor by will of the deceased. The court approved the will of the deceased, and the succession of Ato Tamerate Ganba , Ato Gezhaye Ganba, Ato Wendemu Ganba and w/rt Deberitu Ganba the children of the deceased Ato Ganba Gemachue. The same court gave a decision only on heir ship. From the above case we can see clearly that for the testate and intestate succession, the court passed a decision for the inheritance of the deceased without including the liquidation and the share of each parties in the secession.

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4. the content of decision for certificate of heir petitioned by W/O Tenaye Wangeaw (Civil file Na 449/2000)

Tahsas 10, 2000 ( unpublished ) Annex 2



On the other hand on the succession of W./ro Teyeba Ademe <sup>5</sup>,The Addis Ababa City Courts decided applying Art.996(1) of the Civil Code by approving the right of inheritance and the respective shares of succession in the certificate of heir.

The court practice indicates inconsistent decisions and is contrary to relevant laws.Furthermore. Art 996/1/ of the Civil Code is not applied properly.

The main problem relating to Art 996 of the Civil Code of Ethiopia is that a separate decision on inheritance is given without including the share in the succession. The Court decision will be simply declaratory because the heir's share is not specified in the decision. The decision will be a non- executable decision. The other problem will be, the court decision only indicates inheritance and will oblige the applicant to open another file to know his respective share in the succession by liquidation of the estate. The applicant pays another court fee and wastes time.

For example on the succession of W/rt Selamwit Grma,<sup>6</sup> the decision confirms the report of liquidation<sup>7</sup>

The first file established the inheritance of the deceased. Only the second file approves the report of liquidation. The same court passed two decisions which can be concluded under one decision on based Article 996(1) of the Civil Code .

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5. the content a decision for certificate of heir petitioned by w/O Teyeba ademe, (Civil file No 1209/2000, gunbot 8,2000) (unpublished) Annex 3

6 the content of a decision for certificate of heir petitioned by W/at Sleamwit germa and Ebrahim grama, ( Civil file No 709/98 miazia 6/1998 ( unpublished) Annex 11

7. the content of decision for certificate of her, ( unpublished) by w/rt Selamawte germa and Ebrahim germa ( Civil file No 1491/99 Tehisas 22,0000) (unpublished) Annex 10

This indicates that not only the court but the applicants also are not aware of the law.

One of the main functions of the certificate of heir is to transfer the ownership of the deceased's property to the heir. In relation to this banks are responsible to transfer the money of deceased to the heir based on the certificate of heir which clearly indicates their share. We have discussed above that in the majority of cases the court issues a declaratory decision which does not indicate the share of the heir. Because of this the Commercial Bank of Ethiopia had a problem for example in the case of succession of plaintiffs Shalke Etaferhu Desse and w/t Fekert Nebrate v<sub>s</sub> defendants Commercial Bank of Ethiopia and Ato Getachaw Desse and w/t Herut Desse<sup>8</sup>. The litigation shows that first the court passed a decision confirming the right of inheritance of the plaintiffs and for the first and second defendants to separately apply for liquidation. Based on this decision the Commercial Bank of Ethiopia paid the money to the defendants only. The plaintiffs instituted a case at the Federal First Instance Court against the bank to be paid their share of money. The court decided the Commercial Bank of Ethiopia including other defendants are jointly liable to pay to the plaintiffs their share in the succession with interest including other expenses. The other example is succession of Plaintiffs Ato Gerema Shewa at law V<sub>s</sub> Defendant Commercial Bank of Ethiopia<sup>9</sup>. The plaintiffs instituted the case at the Federal First Instance Court against the defendant. Based on the declaratory court decision the bank refused to pay the money to the plaintiff.

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8 Shalke Etaferhu Desse Vs Ato Getachaw Desse and others , (F.F .I.Crt Civil file No 00228,Sene 29, 1996)

( unpublished ) Annex 7

9. Ato Geremeshwa Atlaw Vs Eth. Com . Bank , (F.F .I. Crt Civil file No 41033,Hemele 9, 1996 )

( Unpublished) Annex 6

The Court decided that the bank is not required to pay the money to plaintiff before liquidation of succession.

In the first example the bank was required to pay money before liquidation. The second example shows the bank is not required to pay. This shows that declaratory decisions of inheritance before liquidation create confusion and risks for the banks and other similar public institutions which are which are holed property of the decreased.

In order to solve this problem the banks have developed internal directives to regulates the payment of succession and have stated that without liquidation they will not pay.

Declaratory decisions given indicating the status of heir involve the determination of status of child and death of the parents. This normally under Art 129 and 130 the civil Code of Ethiopia should be handled by records civil status. But this institution has not established.

There fore in the process of administrating succession, the courts are playing the role of officer of civil status and giving evidence of filiations and death.

In the succession of W/ro Berka Bekele and others<sup>10</sup>, after the court passed a decision confirming the right of guardianship and the right of succession the applicants applied to the court <sup>11</sup> to get a copy of the decision addressed to the Social Security Agency, the Kebele and other executive bodies. This decision is useful for the above institutions, indicating the death of the parents and the filiations of the applicant entitling them to get the benefit of the pension and to get certain services like house for rent from the Kebele -- ---etc.

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<sup>10</sup> the content a decision for certificate of heir petitioned by w/ro Berka Bekele and others, (Civil file No 211/00) Tahisas 2, 2000), ( unpublished) Annex 8

<sup>11</sup> petition by w/ro Berka Bekele and others (on Tahisas 8, 200) Annx 13

In the succession of W/ro Deberitu Fisial and others <sup>12</sup>, the court in a similar way after passing a decision confirming the right of succession permitted the parties <sup>13</sup>, to get a copy of the decision addressed to the Social Security Agency, for Kebele and other executive bodies.

The above two cases indicate that the courts are involved in administrative work rather than simply on law of succession.

### **3.3 Conclusions and recommendations**

From the above study we understand that the Ethiopian court issuing a certificate of heir do not take account of Article 996(1) of the Civil Code of Ethiopia, which clearly shows the decision should include determination of the heir and their share in the succession. There is no uniform practice in the courts. Some courts passed decision by including the above two facts, Some courts also passed simply a declaratory decision which may not be executable. The declaratory decision which includes only the determination of the status of heir violates the civil code.

This practice have several consequences. It makes for confusion in banks and other similar public institutions which hold the property of the deceased.

Declaratory decisions further require other decisions which includes the liquidation. It takes time. adds court fee, and causes other expenses.

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<sup>12</sup> the content of a decision for certificate of heir portioned by w/ro Debitru Fisial and others ,  
( Civil file No 1639/99, Hidar 30, 2000) ( unpublished) Annex 9  
<sup>13</sup> petition by Wro Debitru Fisial and others ( on Hidar 30, 2000) Annex 12

In the liquidation process, one of the important tasks of the liquidation is to identify the successor, and then to determine their share. Currently most of the certificates of heir issued by the court do not contain the share of the beneficiaries. This results in unnecessary litigation and affects the efficiency of the courts. The beneficiaries and creditors are faced with the risk of losing their benefits .

The other problem is the A.A city courts and federal courts entertain the same matter. The federal court with out having jurisdiction passed decisions on it. In the same case the two courts may give their own decision and it will be a question of which court decision will be executed first.

Based on the above conclusion this section attempts to make some recommendations.

The certificate of heir should be issued as prescribed in Article 996(1) of the Civil Code, which incorporated both the rights of determination of the heirs and their share in the succession.

The current practice of issuing certificate of heir before liquidation leads to conflicts of interest among claimants of succession. Therefore it is recommended that the process of liquidation be commenced before certificate of heir is issued.

The Federal courts should not deal with issuance of the certificate of heir without having jurisdiction.

Finally there is an urgent need of establishing a strong notary public in Ethiopia as stipulated in Civil Code which records, birth, death, and other similar matters. This establishment of such a public body will have an added advantage of relieving the court from administrative work involved in the issuance of certificate of heir.

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