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SALE OF IMMOVABLE PROPERTY UNDER ETHIOPIAN LAW AND THE PRACTICE

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ADDIS ABABA, ETHIOPIA

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Submitted in partial fulfillment of the requirements for Bachelor Degree of Law (LL.B) at the Faculty of Law, St. Mary's University College.

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Statement of Declaration

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

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Introduction

Law as an instrument for social Engineering has the purpose of regulating social behaviors. Each and every human activity is almost regulated by law. The nature of unlimitedness of human needs raise to the emergence of acquiring property. From time immemorial human history reveals the fact that human beings acquire property communally. But latter due to many factors it is common to individualize those properties. The classification of property into movables and immovable is not recent phenomena. As history told us the nature of the properties by itself necessitates such classification. One who possesses a certain chattel is presumed to possess it with the intention of acquiring ownership, which is the widest of all rights enabling him for uses, abuses and fructus.

The law states that one who owns movable property in whatever means he/she possesses is presumed to be owner of a property .This does not hold true for immovable properties. Almost in all legal systems additional requirement (i.e. acquiring with a written contract and possession of title deed) is envisaged to become owner of immovable property. This paper is primary written for the purpose of evaluating the status of contract of sale of immovable property made in writing as required by the Ethiopian law of contract and not registered with the concerned court or notary and the effect of such a contract as between the parties themselves and with third party.

To this effect chapter one of the paper tires to assess the nature of property, classification of property into movables and immovable and the relevance of such classification. To this effect the methods of classification of property into common law and civil law legal systems is briefly assessed. Further more comparison is made between contract of sale like contract of donation, gift, hire-purchase, and supplies.

Chapter two of the paper is indebted with contract of sale. In this chapter contract of sale, performance of contract of sale, obligation of the seller and buyer are seen. On top of this basic requirements of contract in general and contract of sale in particular will be discussed.

Chapter three which is the main part of this paper dealt with the requirement of registration a special requirement of sale of immovable properties, the fate of unregistered contracts of sale immovable properties. In this regard the provisions of the Civil Code of 1960 the practice of Civil Law tradition (The French Case a prototype) and Common Law tradition (Germany) are evaluated. Finally conclusion and recommendation as to the practice will be assessed.

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CHAPTER ONE

PROPERTY AND NATURE OF CONTRACT OF SALE IN GENERAL

Property means "The right to possess, use, and enjoy a determinate thing (either attract of land or a chattel) the right of ownership the institution of private property is protected from undue governmental interference." [1]This shows that property allows to possess, use and enjoy goods without any governmental influences.[2] Property in the legal sense of the term however, refers to a legal (juridical) relationship of a person to a particular thing. This legal relationship reflects the rights and obligations property as juridical relationship of persons in respect to goods.[3]

Rights that are indicated and protected by law may be classified into those that have pecuniary value and those that are not assessable in monitory terms [4] include civil and political right[5] have pecuniary value consists of right that are protected by the law of obligations and the law of property. Those rights in personam as they man be claimed (exercised) against identified and specified persons be

[1] A. Garner Bryan, Black's Law Dictionary, 8th ed. P.1252
[2] I bid
[3] Roy Goode Commercial law (2nd ed England by Clay Ltd 1998)p.31
[4] Ryan KW, An introduction to the Civil Law (Sydney, Halstead press, 1962) p. 137
[5] I bid

they physical or juridical.[6] Whereas, those rights in rem that may be claimed against the whole world.[7]

1.1 Classification of Property

The classification of property into movable and immovable is an old phenomenon.[8] For instance during Justinian's period property rights were classified based on the tangibility and intangibility i.e. things which could be touched and could not be touched.[9] In the medieval time, possession of land was played a privately role in the formations of the political system of the socialites than wealth.[10] In England just like other continent the mediaeval laws categorized land another assets separately. While at this modern time the discrepancy between land and other assets are not stated precisely.[11]

Under the Ethiopian law of property divides corporeal goods in to movables and immovable.[12] Immovable are goods that can not move from place to place without losing their individual nature.[13] Movables are goods that can move by themselves or be moved by a human being from one place to another place without losing their essential nature.[14] On the basis of the mode of transfer, the Ethiopian property law divides movables in to special movables and ordinary movables on the basis of the requirement of transfer of ownership.[15] Special movables are fixed in number, motor vehicles,

[6] Roy Goode, Commercial Law p. 29
[7] I bid
[8] Supra note 4 p. 142
[9] I bid
[10] I bid
[11] I bid
[12] Civil Code of the Empire of Ethiopia 1960 proc. No. 105 .Neg Gaz., (extra ordinary Issue) year19,No.2 Article1126.
[13] H.C Dunning, property Law of Ethiopia (Haile Selassie I University Faculty of Law 1967 P.8
[14] Ibid
[15] Article 1186 (2)

ships, aircrafts, television sets, business, construction machinery and guns. The Ethiopian property law considers all other movables as ordinary movables.

1.2 Distinction between Movable and Immovable

The difference between movables and immovable property is mainly based on the fundamental physical quality of movability and immovability of a thing.[16] In this regard Ryan in his book of An Introduction of Civil Law stated that "immovable are things which have fixed situation while moveable are things which do not have the fixity and which can be displaced (moved) from one place to another."[17]

Therefore, the difference is strongly lies with movability and immovability of a thing from one area to another. According to the B.G.B Article 90 the classification of immovable comprises the land itself and certain fixtures and other corporal objects will be movable.[18]

Apart from this, in the French law movable and immovable property is mainly categorized based on their nature.[19] For instance, the land itself is an immovable by nature while all other material objects are movables by nature. As a result, in French law the division of movables and immovable property is based on the incorporeal objects or right owing to this "where the rights relate to immovable by nature or destination, there are immovable."[20] Thus, the French law the classification of property is primarily based on the nature of the goods.

[16] Supra note 13,P.6
[17] Supra note 4. P.142
[18] Ibid..
[19] Ibid, 143
[20] Ibid.

Whereas, in the German law, land is immovable and other corporal objects and accessories are movables.[21] In addition, German law does not regard incorporeal objects as "things". Thus the rules of German law are more easy and orderly. Besides, the law also considered land as essential constituent parts.[22] As a result, can not be the object of separate right and also it is firmly attached to the soil. However, if the things may detached for temporary purpose it is not considered as constituent parts. Therefore, the division into movables and immovable is mainly based on their prime importance and consideration to a certain activities.

Under Ethiopian law "all goods" are classified into movable and immovable.[23] Those things that are subject to such classification are corporal things or perceptible by the senses. Whether they are movable or immovable have material existence. Furthermore, Articles 1128 and1129 provides for incorporeal goods that are assimilated to corporeal.

1.3 Definition of Contract of Sale

A contract of sale is defined as '' a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price''[24] Black's Law Dictionary also defines a contract of sale as a contract for the present transfer of property for a price.[25]

[21] Ibid.
[22] Ibid.
[23] Article 1123 of the Civil Code
[24] Atiyah P.S, The Sale of goods, Sir Isaac Pitman and Sons Ltd. London, 1966 P..3
[25] Supra note 1 P. 1364

Therefore, the above definition clearly indicated that the transfer of property is mainly based on the agreement between the buyer and the seller. For instance, in the former definition if the seller agrees to transfer property to the buyer the property will be immediately transferred based on their price agreement. Whereas, in the later definition the transfer of property is mainly based on their agreed price between the seller and the buyer.

Under the Ethiopian Civil Code a contract of sale is also defined in such a way ''as a contract where by one of the parties the seller undertakes to deliver a thing and transfer its ownership to another party, the buyer in consideration of a price expressed in money which, the buyer undertakes to pay him''[26] In the above-mentioned definition a contract of sale is mainly undertaken to deliver the goods and transfer its property based on its expressed money which the buyer agreed up on it. Thus, to transfer property the buyer should pay to and the seller price in terms of money.

1.4. Nature of Contract of Sale

Sale is a transaction involving goods and money.[27] An individual may not produce what she/he desires. You may have certain goods but your desire to use another property is not limited to the goods you possess. Therefore, she /he must seek another goods and property in order to satisfy (enjoy) their demand. As a result, a contract of sale is vital. According to Roy Goode, in his book of ''commercial law'', a contract of sale is one of a crucial issue in exchanging goods and property.[28]

[26] Article 2266 of the Civil Code
[27] Gogna, A Text Book Of Merchantile Law (commercial Law) , S.Chand and Company Ltd 1988 P. 283
[28] Roy Goode, Commercial Law, (2nd ed England by Clay Ltd. 1995) .P. 195

In addition to this, he also expressed the importance of a contract of sale that the buyer and seller enjoy their ownership and use. However, in commercial activities the traders may not be satisfied with in their own goods, profit or losses rather the trader buy goods without intending to take physical delivery.

Contract of Sale in the Ancient Time

The sale of good is one of the antiquity business transactions existing from the time when money was first introduced to replace barter [29] Medieval English law was primarily concerned to protect real rights, and did not recognize the binding force of executory agreements if not under seal. Thus, in the early history of the common law, a bargain and sale of goods, being ineffective by itself to transfer ownership to the buyer did not as such entitle the seller to sue for the price, it was necessary for him to establish benefit to the buyer by deliver of the goods, so generating the *quid pro quo* which would ground an action in debt and which would not have been sufficiently constituted by the mere promise of performance by the seller.[30] For instance, during the ancient time the only guiding rule was the rule of *caveat emptor* the buyer carefully examines the goods before she/he purchased it. In the early history of the common law a bargain and sale of goods was difficult to transfer ownership to the buyer.[31] Thus during the ancient time in order to agree a contract of sale the buyer has to examine and look carefully the thing he purchase .

[29] Ibid P.187
[30] Ibid.
[31] Ibid.

Contract of Sale in the Modern Time

As opposed to the ancient time, a contract of sale is quite different in the contemporary period. Now a days, a contract of sale is mainly undertaken and delivered when the buyer and the seller made an agreement upon the price. In the view of this Atiyah indicates that in order to perform a contract of sale the seller and the buyer agree to deliver their property based on a price.[32]

Thus, in the modern time a contract of sale is mainly based on a price and money. Moreover, if an individual performs (undertakes) a contract of sale, she/he will be responsible and have also a kind of obligation. There was no such obligation in ancient sale. Once the subject matter of sale is delivered, and a purchase price is paid both of the contracting parties were no more responsible to one another. In this regard the Ethiopia civil code states that "the seller shall transfer the ownership of the thing to the buyer and warrant him against certain defects in the thing."[33] This clearly depicts that, at the modern time the buyer and the seller are guaranteed for their goods and property by the law i.e. the buyer is entitled for ownership upon payment of a certain amount of money stated in the contract of sale and the seller is also entitled to receive such money.

1.5. The Distinction between Sale and other Contracts

The contract of sale is different from other contracts such as, a contract of barter, gift, a contract of hire-purchase and a contract of supplies. Therefore, in the following topics we shall see the distinction between sale and other contracts.

[32] Supra note 24 P.187
[33] Article 2273(2) of The Civil Code

1.5.1.Sale verses Contract of Barter

Barter is the method of trading used in most primitive societies before the invention of money as a generally accepted medium of exchange.[34] A contract of barter is one involving the exchange of goods or services for other goods or services in which no money activity changes hands. As a result, the goods are exchanged with other goods without involving money. Furthermore, there was reciprocal transfer of equivalent sums of money especially the currencies of different countries. The exchange that is bound by the barter contract to pay a balance has the same obligation as a buyer as regards the payment of such balance.

In this kinds of transaction goods and money are exchanged with other goods and money respectively. However, the kind of the contract depends on the intention of the parties. For instance, if the parties enthusiastic the transaction as a sale the contract would be held. Whereas, if it is not interested the transaction would not be held. Thus, the contract of sale in the barter system was mainly dependent on the interest and kind of goods of the parties. In this regard, the sale of goods Act 1982 indicates that "a contract or exchange for goods (or even if goods for some other consideration such as shares or lands) in a contract for the transfer of goods with in the supply of goods and service.'' [35]

[34] Mc Kuchhal Business Law (2nd ed New Delhi 1996) P. 286
[35] Supra note 24 P.1

Therefore, the Act clearly stipulates that in the contract of barter system the goods supplied under a contract of sale is distinguished from contract of barter. In the former the property in the goods is transferred from the seller to the buyer for a price. Whereas, in the later the transaction of trade goods or service was mainly without the exchange of money i.e. exchange of goods with other goods. Apart from this if the parties envisage the transaction as a sale and use terminology more appropriate to a sale the contract would be held.[36]

1.5 .2. Sale Verses Gift (Donation)

Gift is a transfer of property without any consideration or reciprocity. In order to perform this kind of contract, the donor confers a benefit on another person there should be a will to accept on the donee[37] Therefore, the ownership of the goods is delivered to another persons without any price or consideration of reciprocity as amount of price between the donor and the donee (transferee). In view of this, the Ethiopian Civil Code Article 2427 depicts that " a donations is a contract where by a person, the donor gives some of his property or assumes an obligation with the intention of gratifying another person the donee."

Whereas, in the case of sale, the ownership of the goods is delivered to another person inconsideration of some amount of money. Besides there is also a price to transfer goods. Therefore, in order to practice contract of sale the obligation emanates from both of the contacting parties. The seller and the buyer have their own responsibilities and duties to transfer (deliver) ownership and to purchase and sell the goods.

[36] Supra note 4 P.95

Thus, gift and contract of sale are distinguished with one another. In the former the transfer of property is without any consideration whereas, in the latter there is price to deliver the goods.

1.5.3. Sale verses Contract of Hire-Purchase

Contract of hire purchase is also another type of contract is which the owner transfers his goods on hire basis. In the contract of hire purchase there is no agreement to buy but there is only bailment of the goods. Moreover, under hire purchase agreement the goods are transferred to the hire purchaser, which agrees to transfer the property. In this kind of contract system, the hirer pays a certain amount of installments of price are paid by the hirer.[37] In this regard, the Ethiopian Civil Code Article 2412 indicates that "a hire sale is a contract where by the parties agree that the tenant of the thing will become the owner up on payment in a given number of installments." Thus, in the hire sale contract the hirer should give certain amount of money.

Even though, a contract of hire purchase is mainly performed by hire basis and also there is a similarity between the two transactions, there is a great distinction between them. For instance, in a hire purchase the property in the goods passes to the hirer up on payment of a certain fixed installments and on hire basis. Whereas, in a contract of sale property in the goods is delivered to the buyer it was after the time of the agreed contract. Moreover, the owner of the goods plays a crucial role in the contract of sale and their legal incident are quite different in hire purchase the position of the hirer is that of a bailee till he pays the last payment of the goods are transferred to the

[37] Supra note 24 P.3

hire purchase for his use at the time of the agreement using a certain fixed amount. As result, contract of hire purchase is mainly undertake on hire basis.

1.5.4 Sale verses Contract of Supplies

A contract of supplies is a contract whereby a party undertakes for a price to make in favor of the other party periodical or continuous deliveries of things.[38] Where the supplies are to be made periodically, the price for each deliver shall be fixed in accordance with the provisions of sales contract. If there is an express provision to the contrary, it operates. Regarding time of payment, price shall be due upon each periodical delivery. Where the supplies are to be continuous, the price becomes due on the usual maturity dates. If one of the parties fails to perform his obligations the contract may be cancelled where the non-performance is of importance and capable of destroying the confidence in the regularity of the performance of future obligations.

Where a provision has been made in the contract to effect that a person shall supply himself exclusively with certain things from a given supplier such person may not himself manufacture or produce things of the nature provided in the contract.[39] But they may agree otherwise. Regarding the duty of the supplier shall supply his product to a given person only, he may not directly or indirectly supply third parties with the goods of the nature provides in the contract and in the area provided in the contract and during the currency of the contract.[40]

[38] Article 2416 of the Civil Code
[39] Article 2424 of the Civil Code
[40] Article 2425 of the Civil Code

When we come to the discrepancy between contact of sale and contract of supply, in the contract of sale there is the involvement of third parties where as in the contract of supply the supplier provides the goods only and, there is no third parties engagements. Besides the supplies are periodically and continuous depends on the contact of the issue.

CHAPTER TWO

FORMATION, CHARACTERSTICS and PERFORMANCE of CONTRACT of SALE

2.1. Formation of Contract of Sale

"All consumers wishing to purchase goods or services in a commercial market, whether they become commercial undertaking, public corporations, local authorities or private individuals effect purchase in same way, they enter into contract".[41] According to Article 1678 of the civil code stated that essential elements for formation of a valid contract. Therefore, the formation of a valid contract requires the existence of certain essential elements. If these elements are not satisfied the contract becomes invalid. These essential elements of contract are capacity, consent, object, from.[42]

A. Consent

Consent is the freedom of the individual to enter in to contract.[43] It is the willingness of the parties to enter in to legal binding relation. This agreement of parties to enter into legally binding relations.[44] There are two aspects of consent. First, there must be an agreement on each detail for example, price the subject mater of the contract, place of payment, time of payment, place of delivery, etc. Secondly consent is the willingness of the parties to be bound by the agreement.[45]

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[41] Dr. Girma Gizaw, Ethiopian Contract Law General Provision P.24
[42] Article 1678 of the Civil Code
[43] Supra note 41 P.27
[44] Ibid
[45] Article 1679 of the Civil Code

There are two theories, which concern on what constitutes a contract; one theory is the will to conclude a contract that establishes a contract. What a person not willed should not bind him. If there is no will, there is no contact .Another theory is that it is the declaration of the will that establishes a contract. This means the consent of the parties must be declared, the contract is completed when the parties have expressed their agreement (declaration their intention).[46]

Consent is expressed (declared) through offer and acceptance. Offer expresses the willingness of the offeror one who takes initiative to declare his intention to the other to enter in to contractual agreement with the offeree the latter may accept or reject it.[47] Acceptance is an agreement or willingness to enter into contractual agreement.[48] If no acceptance is made, there is no contract between the two parties. Acceptance is evidence of the offeree's consent to the terms of the offer and of his willingness to be bound by them.[49]

B. Capacity

An essential ingredient of a valid contract is that the contracting parties must be competent to contract. Capacity to a contract means competency to enter in to a legal binding agreement.[50] "Every person is competent who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject."[51]

[46] Article 1681 of the Civil Code
[47] Supra note 41 P.39
[48] Ibid
[49] Ibid
[50] Dr Kappor The law of contract P. 124
[51] Ibid

As a sale contract, a contract to produce effect on all of a contracting parties (buyer and seller) the parties have to be capable to enter into acts producing legal effect. That is to say both the buyer and the seller should attain majority. All persons do not have the same legal capacity to make a contract. In some cases, the legal capacity of a person has no relation to the individual's actual ability. A person who is 17 years old, for example, may have just as much ability to make a contract as an older person. Nevertheless 17 years old is ordinarily under legal incapacity.[52]

Article 1 of the Civil Code provides that "a human person is the subject of right from its birth to its death." Once born, a human baby can acquire rights Even a child merely conceived is considered both and acquires rights wherever his interest so require provided he is born alive and viable.[53] Therefore, legal incapacity refers only to incapacity to exercise right. Every party to a contract is presumed to have a contractual capacity until the contrary is shown. Under Article 192 of the Civil Code every physical person is capable of performing act of civil life unless he is declared incapable by law. Any person who alleges the incapacity of another person shall prove that such person is under incapacity.[54]

Though as a rule, every physical person is capable, the law for one person or another declares some members or groups of society incapable. Incapacity may depend on the age (minority) mental conditions (insanity) of persons or on sentence passed on persons (judicial interdiction).

[52] Ronald A. Anderson, Business law, South Western Publisher company P. 144
[53] Article 2 of the Civil Code
[54] Article 196 of the Civil Code

Judicial interdiction may be pronounced by the court where the health and interest of an insane person so require. Special incapacity, on the other hand, may result from the nationality of persons or from functions exercised by them.[55] According to Article 198 of the Civil Code defines a minor as a person of either sex who has not attained the full age of eighteen years. Juridical acts performed by a minor in excess of his power shall be of no effect.[56] A minor is entitled to avoid the effect of contracts concluded beyond the scope of his powers and the nullity, or avoidance of such acts may be applied for only by the minor his representative or his heirs. A minor's contract can he avoided by the minor at any time during majority or with in a reasonable time after becoming of age (attaining majority).After a lapse of such reasonable time the contract is deemed ratified and can not be avoided by the minor.[57]

C. Object

The object of a contract is the obligation undertake by the parties, not the things to which these obligations relate.[58] The object of contract of sale for example is the seller's obligation to transfer to the buyer the ownership of the thing sold and the buyer's obligation to pay the price; the thing sold movable or immovable is not object of the contract. The cause of the contract on the other hand, is the relationship of the obligations of parties to each other.

According to Article1711 of the Civil Code "the object of a contract shall be freely determined by the parties subject to such restrictions and prohibitions as are provided by law". The parties determine freely the object of the contract the obligations that each of them is to

[55] Article 184 of the Civil Code
[56] Article 3131 of the Civil Code
[57] Supra note 52 P.145
[58] Rene David, commentary on contracts in Ethiopia P. 29

undertake.[59] In accordance with Article 1712 of the Civil Code there are three categories of obligation that include in their contracts: Obligation to give, where one party undertakes to transfer all or part of the ownership to something to the other; obligations to do, where one party undertakes to act in a certain way that will benefit the other party; and obligations not to do, where a person undertakes to abstain from acting in a particular way.

The object of a contract must be defined with sufficient precision. A contract shall be of no effect where the obligations of the parties or of one of them cannot be ascertained. An obligation that is not defined by the parties cannot be defined by the courts of law. The court may not make a contract for the parties under the guide of interpretation.[60] The object of contract must be possible of performance. A contract shall be of no effect where the obligations of the parties or of one of them relate to a thing or fact, which is impossible and such impossibility, is absolute and insuperable. [61] The object of contract must be lawful. Where the obligations of parties or of one of them are unlawful or immoral, the contract ends in invalidation.[62]

D. Form

A legal system is paid to require that a contract shall be made in a certain form if it lays down the manner in which the conclusion of the contract is to be marked or recorded in order to make it binding.[63] Such formal requirement may consist of a seal, or witting, or some spoken formula, or a hand shake, or the giving of a ring or of various other similar devices .It has even been said that consideration is a

[59] Ibid
[60] Article 1714 of the Civil Code
[61] Article 1715 of the Civil Code
[62] Article 1716 of the Civil Code
[63] Treitel G.H The law of Contracts , 1995 P. 131

form, but more usually the word “form” is reserved for requirements which have nothing to do with the actual terms or contents of the agreement between the parties.[64] Contracting parties have a freedom of choosing the form of their contract unless the law specifies a special from for certain contracts. Where a special form is expressed prescribed by law, such form shall be observed. Where a special form is prescribed by law and not observed, their shall be no contract but a mere draft of contract.[65]

In addition to the stipulation of law as to the from of a contract, contracting parties may also stipulate that the contract shall be made in a special from. Under Article1721 of the Civil Code provided that “preliminary contracts shall be made in the form prescribed in respect of final contract.” This means a preliminary contract is that concluded before a final contract. The preliminary contract and the final contain two separate dealings. However, they have relations with each other. For instance, a preliminary contract may be a promise to sale on condition of fulfilling a certain obligation.[66] The contract of sale following this contract of promise is the final contract. According to Article 1723 of the Civil Code the sale of an immovable should be in writing.

In the same manner, a contract made in a special from should also have been varied in the same from. A contract which the parties agree to make in a special form are not required by law, shall not be deemed to be completed until it is made in the agreed from.[67] Any contract required to be in writing shall be supported by a special document signed by all the parties bound by the contract. Moreover, such contract must be attested by at least two witnesses. If the

[64] Ibid
[65] Article 1719-1720 of the Civil Code
[66] Article 1721of the Civil Code
[67] Article 1726 of the Civil Code

parties or any one of them is a blind person or alliterate person must be affixed to the document. Furthermore, the finger print or thumb mark of a blind of illiterate person does not have any binding effect on such person unless it is authenticated by a notary, a judge or registrar.[68]

2.2 Essential Characteristics of Contract of Sale

The definition of contract of sale reveals the following essential characteristic. [69]

Two parties: - It has been decided that the requirement that the property be transferred from one party to another means that there must be two distinct parties to a contract of sale.[70] Although the sale of goods Act contemplates two distinct parties to the contract, namely a buyer and a seller, it does not follow that the buyer cannot already be the owner of the goods, for the seller may be a person having legal authority to sell them.[71] However, if a person contract to buy his own goods from someone else, under the mistaken impression that the goods belong to the seller, it seems clear that he can recover and price paid on the ground of total failure of consideration.

Price: - The consideration for a contract of sale must be money consideration called the 'price.' The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner there by contract, or may be left to be fixed in manner there by agreed, or may be determined by the course of dealing between the parties.[72] Where the price is not determined in accordance with the foregoing provision the buyer must pay a reasonable price. A contract has been made by

[68] Article 1728 of the Civil Code
[69] Article 2266 of the Civil Code
[70] Supra note 24 P.57
[71] Ibid
[72] Supra note 27 P.291

the parties and then proceeds to explain the methods by which the price can be ascertained.[73] Under the definition of sales contract, in Article 2266 of the Civil Code contract of sale is a contract where the price is expressed in money. The requirement of a price expressed in money is meant to distinguish the contract of sale from barter.

Things: - sale is a contract whereby the seller delivers a thing and transfers its ownership to the buyer. A "thing" is the subject matter of sales contract. The "thing" as the subject matter of sales contract refers to corporeal chattels or corporeal movables and the intrinsic parts or elements of immovable, which can be separated and transferred as corporeal movable.[74]

Corporeal chattels are things, which have a material existence and can move themselves or be moved by man without losing their individual character.[75] Things which are part of the immovable that can be separated there form are considered as movables, and are the intrinsic elements of an immovable such as trees, crops on the land, and materials of building under demolition or products of quary.[76] The subject matter of a sale may relate to an existing thing belonging to the seller or might properly be the property of a third person.

Includes both 'sale' and 'an agreement to sell':- The term contract of sale is a generic term and includes both a sale and an agreement to sell. A sale may relate to an existing thing belonging to the seller, which can be delivered simultaneously with the payment of price.[77] In such circumstances, the thing is immediately transferred at the time of the contract. e.g. an outright sale on counter in a shop. Here sale

[73] Supra note 24 P. 28
[74] Articles 2266-2268 of the Civil Code
[75] Article 1127 of the Civil Code
[76] Articles 113(1) and 2268(2) of the Civil Code
[77] Supra note 27 P.284

implies immediate conveyance of property so that the seller ceases to be the owner of the good and the buyer becomes the owner thereof.[78] There is hence, 'an agreement to sell' ; the conveyance of property takes place later so that the seller continues to be the owner until the agreement to sell becomes a sale, i.e., delivery is made.[79]

2.3 Performance of Contract of Sale

The seller and the buyer are bound to perform their respective duties after the formation of the contract of sale. The seller's main duty is to deliver the goods to the buyer. Similarly, the buyer's main duty is to accept the goods and pay the price to the seller as per the terms of the contract.[80] The term "performance of the contract of sale" may be defined as the performance of the respective duties to the seller and the buyer as per the terms of the contract.[81] The delivery of the goods and the payment of their price are the concurrent conditions i.e., both. This condition should be performed at the same time. The sale of Goods Act provides that the delivery of the goods and the payment of the price are concurrent conditions, i.e., the seller should be ready and willing to deliver the goods to the buyer, in exchange for the price. And the buyer should be ready and willing to pay the price to the seller in exchange for the possession of the goods.[82] However, the parties may also agree otherwise, i.e., they may enter in to an agreement as to when the goods are to be delivered and as to when the price is to be paid.

[78] Ibíd.
[79] Ibíd.
[80] Ibíd. P. 328
[81] Ibíd.
[82] Supra note 24 P..88

2.3.1 Obligation of the Seller

2.3.1.1 Obligation to Deliver a Thing

"It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale."[83] The seller should be ready and willing to deliver the goods to the buyer as per the terms of the contract. The term 'delivery of goods' may be defined as the voluntary and lawful transfer of the possession of goods from one person to another.[84] In the case of sale of goods, the delivery should be voluntary and it should have the effect to putting the goods in the possession of the buyer.

A mode of delivery may be expressly stipulated in the contract of sale. As dispute may arise in way of handing over a thing sold, it is expected that contracting parties may reach in to agreement as to a particular mode of delivery. Thus, if a certain mode of delivery of the thing sold is predetermined a valid delivery can only be affected where the seller delivers the thing is pursuance to the handing over of a thing and it accessories in accordance with the contact. Article 1136 of the Civil Code defines accessories as anything which the possessor or owner of a thing has permanently destined for the use of such thing, the buyer is also obliged to take such steps as may be required

to him to enable the seller to carry out his obligation (to deliver a thing).[85] Delivery may be conducted in different modes, but the final effect should put the good sold at the possession of the buyer or the person he authorizes. Delivery of the thing sold may be affected in

[83] Ibid. P. 89
[84] Supra note 27 P. 329
[85] Article 2312 of the Civil Code

three ways. These are actual delivery, constructive delivery and symbolic delivery. [86]

2.3.1.2 Obligation to Transfer Ownership.

Ownership may be transferred by virtue of law or in pursuance of agreement entered in to by the parties.[87] According to the provision of the Civil Code, there are two ways of transferring ownership the law and the contract. The case where ownership will be transferred by operation of the law is found in the law of succession. Article 826(2) Civil Code provided that "the rights and obligation of the deceased which from the inheritance shall pass to his heirs and legatees, in accordance with the provisions of this Title, unless such rights and obligations terminate by the death of the deceased."

The cases where ownership may be transferred by the agreement of the parties are the contract of sale (Article 2266 Civil Code) and the contract of donation (Article 2427Civil Code).The ownership of a corporal movable is transferred to the purchaser or legatee at the time when he takes possession of the thing.[88] The purchaser or legatee may take possession of the thing directly, constructively through a third party (an agent) or he may take possession of a document representing the thing.

In order to transfer ownership of a corporeal movable, the conclusion of contract alone is not enough; the thing must be handed over to the purchaser. Thus, conclusion of a contract and delivery of the thing are the requirements for transfer of ownership under the Ethiopian law. Moreover, for the purpose of transferring by contract or will the ownership of immovable an entry in the registers of immovable

[86] Supra note 27 P.329
[87] Article 2278 of the Civil Code
[88] Article 1186(1) of the Civil Code

property is required.[89] Transfer of ownership by contract presupposes that whoever sells a thing in consideration of a price has a valid title to transfer to the buyer. That is to say, one who does not have valid title over a thing cannot transfer it to another. If the title of the transferor is defective, the title of the transferor also becomes defective. The transfer of ownership of a movable thing is effected in accordance with Article 1186 of the Civil Code when the buyer takes possession of the thing. This mode of making the buyer the owner is based on the principal that no one can transfer what he does not own.

However, a buyer may become owner of a movable thing by acquisition. This acquisition of ownership is effected pursuant to Article 1161 of the Civil Code. A party who enters in to a contract and consequently comes in to possession of the thing sold to him in good faith is deemed to have acquired ownership title by virtue of law under Articles 1161 and 1184 of the Civil Code. In such a case, it is not necessary that the seller must have ownership title. According to 1161 of the Civil Code stated that "whosoever in good faith enters for consideration into a contract to acquire the ownership of a corporeal chattel shall become the owner there of by virtue of his good faith when he takes possession of such chattel." His rights shall not be affected by the fact that the person with whom he contracted had no valid title.

Regarding the good faith of the buyer, Article 1162 of the Civil Code states that whoever acquires a corporeal movable shall be deemed to be in good faith where he believes that he is contracting with a person entitled to transfer the thing to him. The good faith of the buyer is presumed save proof to the contrary. The good faith acquirer should be knowledgeable as to the defective title of the transferor. That is to

[89] Article 1185 of the Civil Code

say, the buyer has to purchase the property with an innocent belief that the seller is an owner. According to Article 1163 of the civil code the good faith acquirer has to be in good faith at the time of the possession of the thing he purchased from an owner. Good faith must exist at the time of entry was not entitled to transfer the ownership shall be of no effect where such discovery occurs after he entered in to possession.

2.3.1.3 Obligation of Warranty

The thing sold should be free of any form of defect. The seller undertakes certain obligations incidental to the transaction concerning the nature and quality of goods sold. When these obligations arise by virtue of an express statement to conduct and relate to the title, nature or the quality of the goods being sold and when they actually induce the sale, the obligations are called warranties.[90]

Where a sale is based on the description of the good or sample, the seller is under obligation to furnish goods that conform to the description or to the sample. A warranty, therefore, is a guaranty by sellers with respect to the goods they sell. Moreover, certain obligations are imposed upon sellers by law. These obligations are know as implied warranties. Hence, warranties may be express or implied.[91]

An express warranty is an affirmation of a fact or a promise made by the seller to the buyer concerning the nature of goods. A promise of this sort becomes the basis for the contract; that is, the buyer has

[90] Supra note 27 P. 305
[91] Ibid P. 299

purchased the goods on a reasonable assumption that the goods were as stated by the seller.[92] It usually takes the form of a written or oral statement but may sometimes result from the seller's conduct. Implied warranty is imposed by the operation of the law. In many cases, the law requires that the seller provide certain minimum standard or quality and performance even if no explicit promises or representation are made at the time of the sale.

A warranty obligation so imposed by law is an implied warranty.[93] In connection with the transfer of ownership, Article 2282 of the Civil Code, makes it clear that the seller warrants the buyer against any total or partial dispossession of the thing sold and delivered. In addition to warranty against dispossession, the seller warrants the buyer that the thing sold conforms to the contract and is not affected by defects.

2.3.2 Obligation of the Buyer

2.3.2.1 Obligation to Pay the Price

It is the duty of the buyer to pay the price of the goods he has bought or agreed to buy and in the absence of contrary agreement; he is not entitled to claim possession of the goods unless he is ready and willing to pay the price in accordance with the contract.[94] If no time is fixed for payment, the price is due immediately on the conclusion of the contract, provided that the seller is ready and willing to deliver the goods.[95] Unless otherwise agreed, the seller is not bound to accept payment in anything but cash, and if he does accept payment by bill

[92] Supra note 52 P. 356
[93] Ibid P. 280
[94] Supra note 24 P. 259
[95] Ibid

of exchange he is entitled (in the absence of agreement to the contrary) to retain the goods until the bill is met. But if the seller accepts payment by a bill not maturing immediately, he must be taken to have agreed to allow the buyer credit and can not claim to retain goods. Consideration in sales contract is expressed in terms of money. There are ways of ascertaining prices.

- ***Price fixed by the contract***- The contracting parties is free to determine the object of their contract. Thus, the seller and the buyer are free to agree on a price to be paid.
- ***Price valued by a third party***- It is possible that the contracting parties conclude a contract and agree that the price be valued by third party.[96]
- ***Price fixed by weight***- Where, in the contract of sale, price is to be fixed by weight, the parties shall weight the thing and determine the price. It is the net weight that is taken in to account.
- ***Current price***- If the parties indicate that the price be determined by the market, the price to be effective is the one prevailing at time and place where delivery takes place.[97]
- ***Price at which the seller normally sells***- If it is difficult to ascertain the price by any of the above method, and the subject matter relates to a thing which a seller normally sells, then the parties are deemed to have concluded the sale at the price normally charged by the seller having regard to the time and place where delivery is to take place.[98] The obligation of the buyer to take any step provided by the contract or by custom to arrange for or guarantee the payment price.

[96] Article 2271 (1-2) of the Civil Code
[97] Article 2306 of the Civil Code
[98] Article 2307 of the Civil Code

2.3.2.2 Obligation to Take Delivery

It is duty of the buyer to accept and pay for the goods in exchange for the deliver of the goods by the goods by the seller.[99] We have seen that the general rule is that is for the buyer to take delivery of the goods from the seller's place of business and not for the seller to send the goods to the buyer. We have also seen that the time of delivery of the goods by the seller, or the time at which he is to have the goods ready for collection, in prima facie of the essence, but that the time for payment is prima facie not of the essence.[100] The general rule seems to be that this is no more of the essence than the time of payment and consequently, the buyer's failure to take deliver of the goods at the time agreed does not by itself justify the seller in forth with disposing of them to someone else.

But, in accordance with ordinary principles of contract law, if the buyer accompanies his failure to take delivery with words or conduct which justify the seller may accept the repudiation and he is then free to resell the goods and to sue the buyer for damage for non-acceptance. According to Article 2313 of the Civil Code stated that the buyer is required to take such steps as are necessary to enable the seller to carry out his obligation to deliver the thing. If the buyer does not appear at the place agreed and on the time stipulated for delivery, he bears the risk of loss of damage to the thing after he is put in default. He is also likely to bear the expense incurred for the preservation of the thing. In addition to the obligation to pay price and to take delivery, the buyer is bound by any other obligation imposed upon him by the contract of sale and law.[101]

[99] Supra note 24 P. 263
[100] Ibid
[101] Article 2303 of the Civil Code

CHAPTER THREE

THE LEGAL REQUIREMENTS OF SALE OF IMMOVABLE PROPERTY

According to Article 1130 of the Ethiopian Civil Code stated that "land and buildings shall be deemed to be immovable. Land is a typical immovable. When it comes to building there are authorities who argue that the term building should not be limited to refer to building property so called dwelling houses, stores, sheds, bridges, dams etc. When we talk of transfer of ownership of immovable, we are referring to the transfer of ownership of buildings particularly private dwelling houses. This is because land is no more under the ownership of individuals[102] but they only have use right.[103] If a person does not have ownership right over a certain thing, then he can not dispose of it. Both land and dwelling houses are immovable.

3.1 Formal Requirement

In principle there are no formal requirements for the conclusion of any contracts.[104] The agreement of parties is sufficient to form a contract. This principle however is set a side in two cases. Where the law requires that a particular contract be made in a special form and where the parties themselves have provided that their contract will be concluded in a particular form. [105]

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[102] The Federal Democratic Republic of Ethiopia Constitution, 1995, procl. No1. 1st year, No.1 Fed. Neg. Gaz. Art.40(3)

[103] Ibid Article 40(6)

[104] Article 1719 of

[105] Rene David, Commentary on Contracts in Ethiopia P.33

Under the Ethiopian Civil Code stated that "contracts creating or assigning rights in ownership or bare ownership on an immovable shall be in writing and registered with a court or notary."[106] In the first place, the contract must be made in writing and secondary that contract should be registered either with the court or notary public.
The special contact provision, particularly contract of sale of an immovable is required to be made in writing otherwise the contract entered into by the parties will not have effect.[107] The requirement of written formality here is required even between the parties themselves so contract of sale of an immovable property is among which the law requires a particular contract to be made in a special form.

Making a contract of sale of an immovable in writing is not enough. There is a further requirement which the law needs to be fulfilled, that is, the registration of that contract.[108] According to Article 1723(1) of the Civil Code stated that "a contract creating or assigning rights in ownership on an immovable shall be in writing and registered with a court or notary." So there is a cumulative requirement that is writing and registration. The registration of the contract with in court or notary public is to have effect on third parties. If this is so, it does not seem that registration of contracts is a validity requirement.

[106] Article 1723 of the Civil Code
[107] Article 2877 of the Civil Code
[108] Interview with W/ro Rehela Abas, Federal First Instance Court, Lideta Sena 9,2000E.C

3.2 Registrations as a Requirement in the Transfer of Immovable

Registration transferred ownership of immovable properties are an indispensable acts which have got different purposes in various jurisdictions. Registration of immovable properties can be attained either for the intention of validating juridical acts or for mere publicity. However, when it is conducted, it should not be negatively affected both the contract parties. Incomplete registration of validity juridical acts can not have any impact between the contracting parties. Whereas, publicity juridical acts would not be binding between the parties unless the act giving rise to transfer is registered

It would be pretty good to look at the law of French and Germany, so ask to vividly illustrate the sole purposes of registration in juridical acts. For example, in French "ownership in immovable passes as result of the contract alone without any additional requirement of registration."[109] Nevertheless, publicity in to the transfer of title to immovable introduces as a result of subsequent legislation's .[110]This fact has been also claimed by Ryan as follow.[111]

> *In the first place publication is conceived as a means of setting conflicts between successive transferees by according preference to the one who first registers the act of transferring the property. And second, it is regarded as having the role of giving the picture of the various interests, which exist over the property to the administration and to individuals.*

[109] Ryan K.W, An Introduction to the Civil Law,(Sydney Holstead, 1962) P.173
[110] Ibid
[111] Ibid

As we understand from Ryan's claim the essence of registration helps to achieve the record of individual right that exist over a particular immovable. Moreover, it needs to establish priority among transferees from a single transferor.[112] For instance, if A sells his/her immovable property to B and C at the same time and if C register in advance C will have a full legal right to be considered as owner of the immovable since he/she makes the registration a head of B. Whereas the aborted negotiation between A and B will not have any impact against C since he accomplishes the act of registration it first hand. Unlike French law, the German law subjects alteration of rights over immovable to additional condition of registration.

Thus, according to German law registration is not a means for securing priority of ownership rights; rather it is a prerequisite for the alteration of rights over immovable. Hence the German law seems a little bit interesting due to the fact that registration of acts is "where the agreement is to convey land (an immovable) it must be declared in the presence of both parties before a land registry official a local court (Amtsgerient) a notary or certain public Authorities (Article 925 B.G.B)"[113]

Whereas, according to Ethiopian's law the act of transferring immovable properties have been stated ambiguously in the civil codes. Consequently , scholars , lawyers and judges are always in confusion to determine as to what transfer acts are prerequisite for validating or for mere publicity .Thus, law is much concerned about situation which doesn't have a direct impact against the two contracting parties. In fact, the law verify that "An entry in the registers of immovable property shall be required for the purpose of

[112] Ibid P. 174
[113] Ibid 175

transferring by contract or will the ownership of immovable property[114]. However, it doesn't pin point the fate of juristic acts, which should be taken for unregistered immovable. In spit of these facts in Article 1195 of the civil code it has been stated that the issuance by the administrative authority of title deed to the effect that a given immovable shall raise a presumption that such person is the owner of such immovable. Yet, such a claim has its own short come since if only over emphasizes the juristic acts of registration of ownership rather than registration of immovable transactions.

According to Ethiopian's law if a special form expressly provided by law for a contract, the form will be observed .[115] Where as if the form is not observed there will not be any contract but a mere draft.[116] The law highly poses that a contract, which attains for the purpose of transferring ownership immovable required special prescribed form in atypical juridical acts.[117] What is required as for as Article 1723 provision is that alters ownership has not only be in written form but also it has to be registered in the court or notary.

At this junction one may raise some logical questions such as; Is in Ethiopian registration considered as one of validity requirement as Germany law or it is mere publicity like a French law? Do unregistered contracts of transferring parties or it is simple serves as a warning or giving preference when third parties are involved? In the line with Article1723(1) of the civil code it has been strongly underlined that the act of a mortgage should not create any impact except for the day it has to be involved in the register of immovable

[114] Article 1185 of the Civil Code
[115] Article 1719(2) of the Civil Code
[116] Article 1720(1) of the Civil Code
[117] Article 1723(1) of the Civil Code

properties .The above idea further strengths that a mortgage should be effective ten years from the day when the entry was made. [118]

In Article 3052 and Article 3058 (1) it has been also revealed that registration is the crucial aspects for the validity of the contract of mortgage. According to the continuation Article 1723(1) servitude should not have as impact on the parties unless it has included in the registration of immovable.[119] The weakness of this article is that it doesn't reveal the possible effects of the two contracting parties.

However, Article 1364 of the civil code seems as explicitly due to the fact that it reveals the overall impacts of ownership on a single immovable. As to such article the possible danger is that the purchaser may not familiar with the burden, which associated servant land. Furthermore, the existence of difficulties may aggravate the complexity and expense during transfer of the land. The claim can justify the general problem of ensuring publicity especially during the creation and transfer of rights in rem. In fact, in modern system it can be achieved by requiring the registration of ownership and encumbrances of immovable.

The law on the sale of immovable asserted that "the sale of an immovable shall not affect third parties unless it has been registered in the registers of immovable property where the immovable sold is situate"[120] This provision clarify the effect of unregistered sale contract on immovable properties which happens against third parties. The contract form is stipulated under Article 2877 of the civil code. As to such article the sale contract of immovable properties will

[118] Article 3058 of the Civil Code
[119] Article 1364 of the Civil Code
[120] Article 2878 of the Civil Code

not have an impact unless it has been made orally. From the way Articles 2877 and 2878 of the civil code stipulation one can possibly argue that the formal requirement of validity in the contract should be forwarded in the contract in written form. The above idea also strengthen by Article 1723(1) of the civil code. However, according to such article the effects of unregistered sale contracts should take place against third party rather than in between the two contracting parties. Thus we can infer that unregistered sale contracts will have an impact against contracting parties until the third parties rights are involved in to the immovable the contract which are exist between the former parties will not have an impact unless the immovable are registered.

Even though it mentioned the importance of registration Krzeczunowicz [121] tries to disprove it as follow:-

> *Lack of registration with a court or notary of the written contracts contemplated by this Article does not affect their validity between the parties(Article 1720(3).But rights on an immovable purported to be granted to a party by a non-registered contract can't prevail over incompatible rights granted to a third party a later but registered contract---.*

According to this commentary registration would be invaluable when the question of plurality arises on certain properties on some juridical acts. As a result disputes may brake out due to priority of claims on certain immovable. However, when such disagreement arises, the act of registration would be a mandatory actions. Otherwise it can be

[121] G.Krzeczunowiz, Formation and Effects of Contracts in Ethiopian Law, (A.A.U. Faculty of Law, 1983) P.75

considered as a formal requirement since it can not result the invalidation of the contracts.

According to Krzeczunowicz, registration is a matter of publication because he tries to substantiate his idea by referring Article 1720(3) of the Civil Code, which provides "unless otherwise provided, a contract shall be valid not withstanding that prescribed measures of publication have not been complied with".

Similarly, Rene David,[122] in his draft of the Civil Code of 1960 commenting about registration as follows:

> *Requirement of form must not be confused with tax requirement as registration that may be required by the law at the conclusion of the contracts. Unlike formal contracts requirements of the tax laws usually are not sanctioned by invalidation of the contract in question. Non-compliance with them results in other sanctions (fines, impossibility to enforce the contract through the courts, etc) that are stated in the statutes concerned. Article 1720(2) states this rule, which is of great importance with respect to international contracts. Similarly failure to comply with requirement of publication, such as the copying or mention of a contract in a public registrar, does not lead to the invalidation of the contract*

As to Rene David, registration is not such a formal requirement that the failure of it can not be sanctioned by invalidation. Rather non-compliance with this requirements results in fines or impossibility to enforce the contract in the court of law. However, he has to put a proviso as to the effects that when the law gives an express contrary provision, it would result in the invalidation. This contrary provision

[122] Supra note 105 P..32

can be exemplified by the mortgage provision discussed above which requires registration as a condition of validity.

In spite of these facts the intention of legislation is not applicable nowadays. But one can grasp its concept from Article 1645 of the Civil Code which provides " where in default of a registration of an act in the registers of immovable property, the right of a person may not be set up against third parties.". This provision also states the effect of unregistered acts against the third parties. However, it doesn't say anything about the effect of unregistered acts up on the contracting parties. Thus unregistered acts are with no effect of invalidation of the contract according to this proviso, Article 1645(1). Where as this does not mean that registration is a useless acts.

Conflicts between parties rises in courts due to a formal requirements of immovable. In fact writing a formal requirement in transferring of ownership against immovable cannot be seen as disputable factor. What is a disputable according to Ethiopians law around courts and among academicians and scholars is that as to what registration of contracts against immovable should be consider as one of validation requirements. At this juncture it is wise to look in to the practice our courts follows as to the status of contracts of sale of immovable properties not registered in court or notary. This is inconsistency in interpreting the provision of Article 1723(1) and Article 2878 of the Civil Code.

Case 1

File No 21784

Date of decision Tir 30/05/1998E.C

Appellate 1. MuluShewa Tefera

2. Zewdinesh Belay

Respondents 1. Habte Zerga

2. Kebebush Deborka

The case is holding that failure to register a contract of sale of immovable properties leads to invalidation of the contract as between the parties. But the Federal Supreme Court case holds that such a type of contract has legal effect as far as it is concluded in front of witnesses and decided by reversing the decision of the Federal High Court.

Case 2

File No 00131

Date of decision Tikmit 15/02/2000E.C

Plaintiff W/ro Meten Matias

Defendant 1. Addis Ababa City Administration Union of cooperative Work

2.Addis Ababa City Administration works and urban Development

3. Ato Tekeste Yemanebirhan

The case holds that a contract of sale of immovable properties not registered in court or notary is binding among the parties. In this decision the court orders the concerned government authorities to transfer the house ownership of the house to the buyer even though the contract is non-registered. From these decisions and personal

opinion of judges, lawyers and other legal professional there is no uniform application of the rules. There is diversity in interpreting the law. But the decision of the cassation division of Federal Supreme Court is binding and Courts should follow such a type of decision is similar law cases.

3.3. Effects on Registration of Immovable Property

A registration of an immovable property is making all transactions relating to a certain immovable systematically available to the public through a certain public authority. Articles 1553-1646 of the Civil Code provide for matters to be registered, where to be registered the structure duties and powers of the person in charge of registration and the legal consequence of registration. For example as per Article 1567, what are to be registered in the registers of immovable property are all acts whether their source be public or private which purport to create, modify or establish ownership. Further those acts, which purport to create or extinguish rights in rem such as usufruct, habitation, pre-emption or promise of sale of mortgage, are to be registered. Article 1570-1586 provide for acts to entered in the registers of immovable property.

The legal consequences of effecting registration are set forth under Article 1561-1564 and Articles 1637- 1646. Articles 1553-1646 dealing with the several aspects of registration of immovable property have been suspended perhaps mainly because of economic constraints by Article 3363 (1). In their place Article 3363(2) provides that Articles 3364-3367 should be applicable.

Thus Articles 3364, 3365 and 3367 provide that “the customary rules” must be complied with in other that various real rights may be against third parties.”

COCLUSION AND RECOMMENDATION

Property is the right to possess, used and enjoy a determinate time. In the history of mankind the unlimited human needs gives rise to the emergency of communal and private ownership of property. Classification of property in to movables and immovable is not contemporary issue. From the time of Roman law such classification is common. The very purpose of classification is for regulation of transactions in relation to properties.

The Ethiopian law as an integral part of the Civil Law legal system follows the criteria of movability as a criteria of classification. But then for the purpose of acquiring ownership special movables are assimilated with immovable under the 1960 Civil Code. A contract of sale is a contract where by the seller transfers or agrees to transfer the property in goods to the buyer for a price. Transfer of ownership and payment of a fixed amount of money, which is "price", are the basic elements of contract of sale. The fact that the payment is effected in money, the existence of payment in exchange and the presence of transfer of ownership are basic features, which distinguish sale from other contract. Consent, capacity, and form and object are the main requirements to be fulfilled for the existence of valid contract of sale.

But then, the Ethiopian Law of property and contract of sale envisages additional criteria requirement of registration in front of court or notary for the existence of valid contract of sale, which is binding for third parties and among the contracting parties themselves.

There is discrepancy as to the interpretation of Article 2878 and 1723(1) of the Civil Code .There exists different decisions as to the status of contract of sale not registered in a court or notary. The practice of courts and opinion of legal professions shows that some courts decide that such types of contracts are valid as far as the contracting parties are concerned .But they have no legal effect for third parties. Some courts hold that such contracts are not valid they are mere drafts of contracts. Leave alone third parties they did not bind the contracting parties themselves.

The writer of this paper recommended the following points:-

- As the purpose of law is regulation of the social behavior .There should exist united application of law. The legal system should be predictable fair and equitable. Parties in a civil litigation should expect a definite out come of their case. The duty of Judge in a civil litigation is applying the law in books this is the basic feature of civil law legal system .On the other hand when the law (written law) is not clear Judges should interpret of laws based on principles of interpretation of laws.

- In this particular issue the cassation division of the Federal Supreme Court renders a binding decision. The decisions of the court are binding and courts should follow the same interpretation in adjudicating similar cases in the future. So the prevailing and valid understanding should be that for result in the existence of valid contract of sale of immovable properties registration is basic requirement. Courts should follow similar and uniform application of the law i.e. decision of the cassation division of the Federal Supreme Court.