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PRE-TRIAL PROCEEDING UNDER ETHIOPIAN CIVIL PROCEDURE LAW: THE CASE OF KNOTA SPECIAL WOREDA COURTS

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ADDIS ABABA, ETHIOPIA

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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.

Name: Gedeyelw Ginbato

Signed: ……

Acknowledgment

First and for most I would like to say thanks to God for helping me in passing through all ups and downs in doing my paper.

Secondly my warmest and deepest gratitude goes to advisor Ato Woledemichael Missebo for his constructive criticisms and warmly welcomed approach. My thanks also go to my wife W/ro Mimi Molla and all my family for their unlimited support in doing this paper as well completion of my studies.

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INTRODUCTION

This study is conducted to analyze and identify the practical problems surrounding pre-trial under the Ethiopian civil procedure law in case of Konta special woreda. In achieving these objectives, the study analyses each and every aspects of the first hearing, pre – trial proceeding and judgment without trial. The study is based on data's from relevant laws like the civil procedure code and proclamations. The secondary data are collected from books, court publications and others. Outputs of the study indicate that there are several practical problems in courts of Konta special woreda regarding pre-trial procedure under the Ethiopian civil procedure law. Finally the paper concludes by recommending points that will help to avoid the practical problems.

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Background of the Study

Before we proceed considering pre-trial procedure under Ethiopia civil procedure law, it is preferable to say something about historically background of the civil procedure law of Ethiopia. Procedure refers to the method by which claims of person are adjudicated and by which rights, privileges and duties are determined and enforced by the appropriate legal tribunals. There are two parts of law, adjective [procedural] and substantive law. Adjective law deals with how rights, privileges and duties are enforced. Substantive law defines such rights, privileges and duties. However, the rights, privileges and duties that exist under such law will be nothing unless they can be enforced. It is the function of adjective law to ensure that such rights, privileges and duties are enforced.[1]

In other hand civil procedure means simply the procedure that is followed in civil cases.[2] A civil case is one that is instituted by a person which it may an individual or legal person[3] or even the government[4] against another for the purpose of obtaining redress for wrong allegedly committed against him. Usually he will be seeking the payment of money, although some times there may be specific relief. The person who initiates a civil case is called the plaintiff; and the person who is sued in a civil case is called the defendant. In the court proceeding there are two types of cases, civil and criminal prosecution. A

[1] Sedler, Robbert, Allen 1868, page 1
[2] Ibid
[3] Civil code of Ethiopian, 1960, Art. 451,454,455 pp 75-76
[4] Id Art 395, page, 67

prosecution is instituted by the government for the purpose of securing of obedience to its laws by punishment or correction of the law breaker.[5] And a separate body of law governs the procedure to be followed in such cases. A civil case is one instituted by an individual for the purpose of securing redress for wrong which has been committed on him, and if he is successful, he will be awarded money or other personal relief.[6]

As History of Ethiopia indicates, emperor Minilik's attempted to modernize the court structure in effect strengthened the traditional fusion of adjudication of cases and administration of justice, as he appointed in 1908 the chief justices to be the ministry of justice as well. A proclamation on the administration of justice of 1942, [7] which established a system of courts, authorized courts to promulgate procedural law with an approval of the Minster of Justice. In 1943 the high court promulgated some procedural rules, which governed action in the high court and subordinate courts.[8] These rules, on the whole, were not very detail and a number of areas of procedural law were not covered. That the lack of a comprehensive civil procedure code adversely affected the administration of justice in civil cases, and the work was been to prepare such a code in ministry of justice. The basic text of the civil procedure code was drafted by the codification department of the ministry of justice rather than foreign experts.[9] Many of the new provisions were based on precisions contained in other codes such as the Indian code of civil procedure, but the borrowing was selective. It was drafted with a view to ward improving the

[5] Penal law of Ethiopia, 2005, Art 1
[6] Cited at note 1, page 3
[7] Administration of justice proclamation, 1942, pro. No 2, Neg. Gaz. Year 1 No 1
[8] Court procedure Rule 5, 1943, leg. Not. No 33, Neg, Gaz. Year 3 No. 2
[9] Civil procedure code of Ethiopian 1965

administration of justice and providing a code of civil procedure of Ethiopia 1965 that could be effectively employed by lawyers here.[10]

The focus of this paper is to examine pre-trial proceeding under the Ethiopian Civil Procedure Law. There are two types of court proceeding. The first is pre-trial proceeding and the second is full-scale proceeding pre-trial proceeding, as the name indicates, is proceeding conducted prior to a full scale hearing of a suit. It is the first phase of a trial proceeding and it serves as a preparatory stage. Firstly, it aims mainly framing issues for the pre-trial stage. This is because the activities done by court at this stage enable it to draw a full picture of the suit and points of controversy between the parties. Secondly, it minimizes in the hearing of a case since preliminary objection raised by a party get decided at a pre-trial stage. This helps in minimizing delay of proceedings by making the court to focus on the essence of the litigation between the parties. Thirdly, it assists the court to identify undisputed facts from disputed facts and then frame issues that need the resolution of the court. The paper aims to explore the pre-trial proceeding under Ethiopia civil procedure law and the problems of its practical applications in Konta special woreda courts.

1.2 Statement of the problem

There are practical problems revolve around pre-trial procedure in the 1965 civil procedure code of Ethiopia particularly in Konta special woreda court. The main problem is related with article 70 [a] and 233 of the civil procedure code. That is there is a clear variance between those provisions and the practice regarding the situation where the defendant

[10] Cited at Not 6

in civil cases is ordered to appear with his written defence and he is absent.

The Federal supreme court of cassation bench has rendered a decision regarding the procedure that should be followed whenever the defendant is ordered to come up with his written defence and he is absent under file number 15835/2005. According to this decision of the Federal Supreme Court:-

- If the case is adjourned for hearing and the defendant is absent, it will proceed through ex-parte.
- If the case is adjourned to receive a written defence of the defendant and he is absent, the defendant only loses his rights which are related with his written defence and he will never lose his right of participation in further proceedings.

This interpretation of the Federal Supreme Court of cassation bench is binding and considered as a law for Federal and Regional Courts in the same kind of situations pursunant to article 2 (1) of proclamation number 454/2005.But, as far as my investigation is concerned there are many variances between what the law says [the aforementioned proclamation and other civil procedure code provisions] and what is practically adopted by Konta special woreda civil bench courts. The following are the variances. The judges in courts of Konta special Woreda have been rendering different decisions with similar types of issues which contradict with the provisions of the civil procedure code in a situation where a case is adjourned to receive the written defence of the defendant and he is absent. The courts render the following type of differentiated decisions:

- A decision for ex-parte proceeding
- A decision for appearance of the defendant through Arrest. [One of the surprising and funny decision not only in Ethiopia but also all over the world regarding civil cases]
- A decision which gives another opportunity for the defendant to produce his/her written defence by paying compensation to the plaintiff.

The second practical problem is related with article 73 and 74(2) of the civil procedure code. Pursuant to those provisions where the defendant appears and the plaintiff does not appear, the court should give a decision based on the admission or denial of the defendant. That is, if the defendant admits the suit, the court should render a decision based on the admission. If the defendant denies the suit, the court should dismiss the case. But, if the plaintiff has come up with sufficient cause for his non- appearance within one month and if the court believes that there is sufficient cause, it should render a decision for proceeding of the case. But practically, the courts in Konta special Woreda render a decision for proceeding of a case without examining the reasonableness of the sufficient cause. The courts simply accept the application of the plaintiff whether he has sufficient cause or not.

The third problem is on article 70(d) of the civil procedure code. According to this Article, if the summon is not served to the defendant as the result of negligence of the plaintiff, courts should decide to stricke out the suit. But, practically courts in Konta special Woreda have been deciding decide to serve another summon to the defendant and coming up with his written defence.

The fourth practical problem is regarding Article 69(2) of the civil procedure code. According to this provision whenever the suit is adjourned to receive the written defence of the defendant and both the plaintiff and the defendant are absent, the court should adjourn the case to hearing. But, courts in Konta special Woreda dismiss the case whenever both disputant parties are absent in the stage where the case is adjourned to receive the written defence of the defendant considering that it is in the stage of hearing. It is also a practical problem.

The other problem is related with Article 241 of the civil procedure code. That is contradicting this provision Konta special woreda courts hear the evidences of the disputant parties at the first hearing of the suit with out adjourning the parties after verifying the identity of the parties, reading the pleading, framing the issues for trial and checking the admission and denial of the defendant.

The last problem is, whenever there is a preliminary objection based on article 244 of the civil procedure code, the courts in Konta special Woreda record it, but not observable to see a decision based on article 245 of the civil procedure code.

Therefore, all those are practical problems regarding pre-trial proceeding under the civil procedure code in Konta special Woreda civil bench courts. All those problems merging together affect the rights of disputant parties. Additionally, these problems contribute in having unfair and delayed decisions.

1.3 Objectives of the Study

1.3.1 General Objectives

The General objective of this paper is to explain the per-trial proceeding under Ethiopian civil procedure law and the Federal Court Amendment Proclamation Number 454/2005. The paper also tries to show the variance between the procedure law regarding pre-trial procedure and court practices with views to propose better solutions.

1.3.2 Specific Objectives

The specific objective of the study is to:-

- To identify the per-trial stage proceedings and to discuss the procedures under Ethiopian civil procedure law and Federal court Amendment proclamation number 454/2005.
- Identify, practical problems of the courts in cases related with procedural law, that is:-

    - ❖ It the variance between the civil procedure law and the court practice in Knonta special Woreda.
    - ❖ Propose for significant solution with regard to the practical problems and avoid practical problems

1.4 Significance of the Study

Research paper should have some thing to contribute since it takes a lot of time money and man power. Therefore, the study contributes the following to the community:-

- The study helps the courts to examine their practical problems and to apply the out comes to the practice according the principle of to due process of law.
- The study will serve as a resource of reference to law students and researchers who want to study in this area.
- The research paper will help as a source material for teachers who lecture in the area.

It will serve society to consider their rights and duties in the process of litigation.

1.5 Scope and Limitation of the study

1.5.1 Scope of the Study

The scope of the study is concerned with the pre-trial proceeding under Ethiopian civil procedure law, the case of Konta special Woreda court. The study deliminated the law and the court practical problem in pre-trial proceeding. The paper is mainly concerned or pre-trial proceeding, specifically, first hearing, pre-trial proceeding and judgment without trial.

1.5.2 Limitation of the Study

Shortage of resources is one of the major problems that affect my study. In other hand, the willingness of the concerned offices like the Worada and High court, Colleges and University library etc. also affect my paper. Another limitation is lack of reference materials and research works on the area of civil procedure law of Ethiopia

1.6 Research Methodology

The topic of the research paper encompasses pre-trial procedure of civil issues under the 1965 civil procedure code of Ethiopia. Beside this, the

paper also deals with the practical application of pre-trial procedure in the konta special woreda courts.

In order to get information and relevant matters about the topics, this paper is based on both primary and secondary source of materials.

The primary sources are gathered from the law, i.e. the civil procedural code, proclamation.

Secondary data such as books, court practical cases and other materials which are related to the topic will be included in the paper.

1.7 Organization of the Study

The research paper have four chapters the first chapter deals with the general introduction, the back ground of the study, statement of the problem, objectives of the study, significance of the study, scope and limitation of the study, research Methodology and organization of the study

In the 2nd and the 3rd chapter the researcher used the primary and secondary sources of information to collect data. And also analyzed the collected data and defined the first terms each topics.

Lastly, the researcher briefly explained the judgment without trial in general and given the conclusion and recommendation for the identified problems.

CHAPTER TWO: THE FIRST HEARING

2.1. Definition of First Hearing

The name first hearing indicates a proceeding conducted prior a full scale hearing of a suit. It is the first phase of a trial proceeding. In other words it serves as a preparatory stage.[11]

Under this stage the plaintiff will submit his statement of claim to the registrar of the court and the registrar before passing the file to the court examine. If it fulfills the format,[12] which is the technical part of the statement of claim.

That means the plaintiff enter the file in registrar of civil suits and the registrar gives it the file number.[13]

The registrar will check whether the plaintiff pay court fee or not. Then after registering the file by giving a file number the registrar will submit to the court and the court will examine sufficiency, of the statement of claim which means it examines the content or substance of the statement of claim. This show that the court will examine the plaintiff alleges of a case of action based on a legal right that needs protections. In the process of first hearing the purpose of requirement of statement of claim is acceptable. It is to be served to the defendant together with the summons requiring him to appear with his statement of defence on

[11] Civil service college module two; p. 46
[12] Cited at note 9, Art. 222
[13] Id, Art 230

a specified day.[14] At this time the court holds what is called the first hearing.

2.2. Appearance

Appearance involves coming before the court to adjudicate the case or take any other action if deems necessary.[15] A party to a suit may not be required to appear personally at the hearing or before the court. It is provided under article 65(1) of civil procedure code in part that:

> *Any appearance, application or act in or to any court needs not be made or done by the party in person but may be made or done in accordance with the provision of the proceeding chapter provided that any such appearance, application or act shall if the court so directs, be made by the party in person, and provided further that the court shall not so direct unless it is essential for the proper determination of the suit that party should apply or act in person.*

The court, however, may directly require the personal appearance of a party, where it is essential for the proper determination of the suit. A party instead of appearing personally may appear through an agent or pleader. The court, however, has authority to require that the party appear in person and if a party who has been ordered to appear fails to appear with out good cause, it is considered as no appearance. Where there are several plaintiffs or defendants, any one of them may be authorized to appear on behalf all.[16] Such authority must be in writing and signed by the party giving, it and shall be filed with in court.[17]

[14] Id, Art 233
[15] Id, Art 69 (1)
[16] Id, Art 66 (1)
[17] Id, Art 66 (2)

Where persons are sued as partners in the name of firm, each partner must appear individually in his own name, but all subsequent proceedings continue in the firm name. So, if a partnership is sued in the firm names all the partners must properly appear individually at first hearing.[18]

This can show us, while a personal appearance is not ordinarily required the court has the power to compel the personal attendance of parties or agents where it concludes that such attendance is necessary for the determination of the question in suit. Where a party appears through a pleader, such pleader must be able to answer such questions accompanied by a person who can answer such question.[19]

Generally, the person who is ordered by court to appear must appear on the day fixed by the court and answer controversial questions. The parties are required to appear at hearing on the day fixed for the hearing of the suit, shall be in attendance in the court in person or by their respective agents or pleaders and then the suit shall be heard.[20]

2.3. Non-Appearance

On the first day of the opening of a suit, parties need not appear in person unless the court demands it. If the court order appearance to be in person, but the party fails to appear in person. It is considered as such party makes no appearance, even if some one appears on his behalf.

[18] Id, Art 67
[19] Id, Art 57
[20] Id, Art 69

The rules on non-appearance of parties apply to any proceeding, i.e. the first hearing, the trial and review. But the problem of non-appearance is more likely to arise at the first hearing. The court is not entitled to make a decision for any party who fails to appear except the non-appearance of third party defendant. The effects of non-appearance depend on a party who fails to appearances whether or not the summons is dully served on the defendant. The measure that could be taken by the court is either dismissal or striking out the suit.

2.4. Action up on Non-Appearance

The Ethiopian civil procedure code provisions on appearance are strict. One of the parties ordered by the court fails to appear and if the court does not take immediate action. Then the case would be delayed and the court would adjourns the case to later date. These will create a lot of problems to the parties and the court. If the court adjourns it to other days with out good cause, it will cause delay of justice to the disputant parties and it will also has its own influence for backlog of files in the court. Considering these and other issues the civil procedure code does not allow this.

If a party is ordered by the court to appear on a certain fixed date, he has to appear. If he or both parties fail to appear, the court will strike or dismiss the suit or it may proceed to hear the case ex-party. In our law the rules governing and actions taken an the non-appeared party differs from party to party. Which means the law takes different measures where the plaintiff, defendant and both parties fail to appear.

2.4.1. Action when the Defendant does not appear

Before the court takes any action on the defendant who fails to appear in the fixed date it should consider some basic issues. Sedler argued that "where the defendant does not appear, the first question the court must ask is whether he was duly served."[21] That is to mean it must be proved that summons have been duly served with the meaning of article 70, which governs the failure of the defendant to appear after the hierarchy of service set forth in the provisions of the code have been complained with. After summons is issued, it is collected from a court and served on defendant by the serving officer.

To be a serving officer, the only requirement is the authorization of the court. Any person authorized to serve summons can be a serving officer. At present, the practice of courts shows that, courts authorize plaintiffs themselves to serve summons to defendants.[22] And also the plaintiff must prove that he served the summons to the satisfaction of the court. If he does not do so, the civil procedure code orders the plaintiff who acts as a serving officer under obligation to serve summon on the defendant properly or other wise he will face a serious consequences.

When the plaintiff appears, but the defendant fails to appear, the measure to be taken by the court depends on whether or not the summons has been properly served to the defendant. Thus, the court should examine whether or not summons is properly served to the defendant if the defendant fails to appear. If the court finds upon examination, out that the summons has been duly served to the defendant, the suit shall be heard in the absence of the defendant. This is clearly and beautifully provided under article 70(a) of the civil

[21] Cited at note 1 P. 163
[22] Cited at note 9 Art 95

procedure code saying that; *"If it is proved that summon was duly served, the suit shall be heared ex-parte."*

According to the above provision the court hears a suit in the absence of the defendant. This is known as ex-parte hearing. The name ex-parte indicates, of, or by one side, or one party; hence partial, done for or by one party from one side.[23] Ex-parte done or made at the instance and for the benefit of one party only and with out notice to or argument by any person adversely interested; of or relating to court action taken by one party with out notice to other.[24] The civil procedure code does not explain about ex-parte hearing.

In other words ex-prate hearing involves one party only that is the plaintiff. That means it does not affect the concept of hearing. This demands the participation of both parties to suit. The defendant as received summons that notifies him of a suit and invites him to appear before a court but failed to appear. This means that an opportunity to appear before the court has been given to him. Thus, if he did not appear, the court could proceed to consider and hear a claim filed by the plaintiff. In ex-parte hearing, it does not necessarily mean that a case is to be decided for plaintiff and against the defendant. The court after considering his claim and observe his evidence and if he has a valid claim, it will be decided infavour of him; if he does not have a valid claim, it will be decided against him. To have a valid ex-parte hearing, it must satisfy certain procedural requirements.

For the purpose of ex-parte proceeding the Federal supreme court of cassation division rendered a decision on the file no 15835 based on article 70 and 223 of civil procedure code. The cassation division

[23] Black law dictionary, 1999, P.616
[24] Ibid

rendered a decision regarding a procedure that should be taken in a situation where the defendant is personally absent in a fixed date to receive a written defence.

> *If the case adjourned for hearing and the defendant is absent, it will proceed through ex-parte. If the case is adjourned to receive a written defence of the defendant and he is absent, the defendant only loss his rights which are related with forwarding of his written defence and he does not loss his right of participation in further proceeding.*[25]

This decision or interpretation of the Federal Supreme court of cassation division is binding and considered as law for other Federal and Regional courts in the same kind of situations pursuant to article 2/1 of proclamation no 454/2005 Federal courts reamended proclamation.

Article 2/1 of the proclamation says:

> *4 Interpretation of a law by the Federal supreme court rendered by the cassation division with not less than five judges shall be binding on Federal as well as Regional courts at all levels.*

Therefore, according to proclamation no 454/2005 which is binding on Federal as well as Regional courts at all levels. All courts must interpret according to the court of cassation bench's decision. But, as far as my personal investigation is concerned, the civil benches of Konta Special Woreda Courts did not apply the civil procedure code and the binding decision of the court of cassation interpretation. As to my investigation, there are many variances between what the law says (the aforementioned proclamation and the Ethiopian civil procedure code provision) and the practice in the courts. Regarding pre-trial proceeding

[25] ðd‰L -Q§Y FRD b@T sbR s¸ ClÖT Wœn@ãC Q{ 1, 1998, g{ 6;

and the practice adopted by Konta special woreda courts, the following variances can be observed.

The judges in court of Konta special woreda give different types of decisions on similar types of issues which contradict with the interpretation of a law by the federal supreme court rendered by the cassation division,[26] and civil procedure code, because ex-parte proceeding is order when the suit is adjourned to receive a written defence of the defendant and when he is absent.

In the case of Aregash Anjajo Vs Jebero Folla[27] the defendant Jebero Folla has been dully served the summons and the statement of claim to appear in the court with his statement of defence. But, the defendant has failed to appear in the court and the court rendered a decision to proceed with ex-parte violating and with out considering the interpretation of the federal Supreme Court cassation division and the article 2/1 of proclamation 454/2005.

The same is true in the case between Argash Adale Vs Setena Gamu[28]. So, this is not correct according to the procedure law and interpretation of court of cassation bench. The court adjourned the suit to receive the written defence of the defendant and he was absent. In this time the court should not directly proceed with ex-perte. Rather the court must adjourn the case, to hearing. The procedure of ex-parte proceeding is applicable only if the court adjourn the suit to hearing and the defendant is absent.

[26] Federal court of reamendement pro. No 454/2000 Art 2 (1), p. 3122
[27] Aregash Anjajo Vs Jebero Folla file No 02288
[28] Aregash Anjajo Vs Jebero Folla file No 02361

In condition of that the defendant only loss his right which are related with forwarding his written defence, but he should not be prevented from participation in further proceedings.

The second practical problem is reflected in the case of Ameya special Kebel Vs Dubalech Demessie and other (more than 25 defendants)[29] In this case, the defendants have been dully served the summon to appear in the fixed date. And only some of the defendants appareled, if the other defendants are absent, the court ordered to appear through arrest. The same is true in the case of Asrat Mengesha Vs Ashenafi Zerihun.[30] This decision is really one of the surprising and funny decisions not only in Ethiopia but also all over the world regarding civil case. It is because civil litigation is said to be found "in the hands of the parties."[31]

Cases, once started, will be conducted at speed and on the dates which the court thinks appropriate. The court identifies the issues to be resolved and will fix the situation which in it will resolve them. Case management by the court does not, of course, exclude case management by the parties.[32] In civil case any interested parties have the right to bring, to continue and to terminate their claims. This right is left to the parties and the court has no legal ground to give a decision on the parties to appear through arrest and to participate in his own case. Each party announces his/her appearance to the court. To do this each parties express name and tells the court for which parties she or he appears.[33] The plaintiff in civil case or the prosecutor in criminal

[29] Ameya special Kebele Vs Dubalech Demsse and other more than 25 defendants, file No 00545
[30] Aserat Mengesha Vs Ashenafi Zerihun file No 01930
[31] Paul Carrington Civil procedure statutes and rules of court, 1983, p. 7
[32] Ibid.
[33] Hang selby will in court, 2000 P. ix

case makes an opening statement to explain to the controllers raised and what remedy he/she secks.[34]

The defendant asks the court for permission to make the opening statement straight way, that is before any witnesses are called by the court.[35] Arresting the defendant to appear in the court is only applicable in criminal cases, not in civil cases. That is a difference between criminal and civil litigation. In criminal case, the case does not affect only the individual person, but also affects public interest. In criminal cases obliging parties to appear before the court through arrest to participate in court proceeding is essential. This is because criminal law regulates for general public interest. Penal prosecution is instituted by the government for purpose of securing obedience to its laws by the punishments or correction of law breaker[36] and a separate body of law governs the procedure to be followed in such case.[37]

The civil case is the one instituted by an individual for the purpose of securing readdress for a wrong which has been committed against him, and if he is successful, he will be awarded money or other personal relief. Thus, the civil case does not affect the public interest. It can only be instituted by the interest of individual parties. Therefore, the researcher does not agree with the court order to assure appearance of defendants to the court trough arrest. Because most of the time in civil suit the appearance or non appearance of the parties is left to parties themselves. They have the right to gain or loss their rights; it does not affect the public interests. In civil litigation parties have the right to follow up and to leave their own case. But in practice courts order on

[34] Ibid
[35] Ibid
[36] Cited at note 5
[37] Criminal procedure code Ethiopian, 1960

absent defendant to appear to the court through arrest is the surprising and funny decision not only in Ethiopian, but also over world regarding civil cases. The order (decision) of the court is not supported by the civil procedure law.

The third practical problem is that courts in Konta special woreda adjourn for another date where the defendant fails to appear or does not come up with his written statement of defence on a fixed date. But, as the law where the defendant fails to appear with his statement of defence or does not come up with the written statement of defence, he has already lost his rights which are related with forwarding of written statement of defence. In such situation the court should not give another opportunity for the defendant to come up with its written statement of defence, rather it should adjourn for the hearing stage.

In the case of Lemma Gebre Tsadik Vs Dubale Kocho[38] the defendant Dubale has been duly served the summons to come up with statement of defence but he was absent. And the Konta special woreda court gave an order which gives another opportunity for the defendant to forward his written defence by paying compensation to the plaintiff.

Beside to this, if the defendant argues that he has no sufficient time to come up with a written statement of defence,[39] the court should analyze and adjourn the suit for another date with out any payment of compensation to the plaintiff.

[38] Lemma G/Tsadik Vs Dubale Kocho File No 0025
[39] Cited at note 9 Art 70 (C)

2.4.2. Action when Plaintiff does not appear

When the defendant appears but the plaintiff fails to appear, the action differs from a situation when the defendant does not appear. Civil procedure code article 73 provides that:

> *Where the defendant appears and plaintiff does not appear when the suit is called for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim or part there of, in which case the court shall pass a decree against the defendant up on such admission and, where part only of the claim has been admitted, shall dismiss the suit as it relates the remainder.*

When the suit is adjourned for hearing the defendant appears but the plaintiff fails to appear the action to be taken by the court shall be dismissal of a case. The only solution in case of non-appearance of the plaintiff depends on whether or not the defendant admits the claim of the plaintiff. If he admits, the court makes a decision infavour of the plaintiff on the basis of such admission. If he denies, the court shall dismiss the case.

The defendant is not expected to defend himself on a claim of the plaintiff in the absence of the complainant. The court does not have any discretionary power to exercise where the plaintiff fails to appear before a court when the suit is called for hearing. It can not adjourn the case to another date for the hearing. That means the plaintiff's suit shall be dismissed, (because he did not appear while the defendant did). He is precluded from bringing afresh suit, of the same cause of action.[40] The only solution for the plaintiff is that he may apply, within one month

[40] Id, Art 74 (1)

from the date of the dismissal, for an order to set the dismissal. If he show that there was a sufficient cause for non-appearance, the order of dismissal may be set aside.

If the plaintiff has come up with sufficient cause for his non-appearance and the court believes that there is sufficient cause, it should give a decision for proceeding of the case. But if he does not apply with in the limited time or the court finds that there was no sufficient cause for his non appearance, he is forever barred from prosecuting the claim. Contrary to these legal issues court in Konta special woreda decided a certain case in different way. In the case of Mitiku Hail Michalel Vs Tadesse Abebe,[41] the plaintiff has been absent in the hearing stage and the court dismissed the file. Then after certain period of time the plaintiff apply to the court to setting aside the dismissal of the suit.

The court without examining the reasonableness of good (sufficient) cause and without giving a notice to the opposite party simply accepted the application of the plaintiff. The court should not simply accept the application of the plaintiff. It was expected to investigate the reasonableness of the sufficient cause and to check whether the application is presented with in one month of such dismissal or not. Additionally the courts were expected to notice to the opposite party to give his opinion regarding the application of the plaintiff. After that if the grounds of the plaintiff satisfy the court, it shall make an order setting aside the dismissal. Up on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. Otherwise if there was no sufficient cause for his non-appearance the court should not give an order to set aside the dismissal.

2.4.3. Action when the Summons was not Served to the Defendant at all due to the Negligence or Default of the Defendant

[41] Mitiku H/Michle Vs Tadese Abebe File No 002205

Where the summons was not served to the defendant at all due to the negligence or default of the plaintiff, the action to be taken by the court is stipulated under article 70(d). It provides that:

> *If it is proved that the summons was not served on the defendant or any one of several defendants through plaintiffs negligence or default, the court may adjourn the hearing or order that the suit be struck out as against any defendant not served of, incase or appeal, that the appeal be dismissed as against any respondent not served*

Thus, the court may authorize the plaintiff to be the serving officer, [42] and it is necessary to discourage any lack of diligence on his part. The defendant may appear despite the fact that he has not been served, and if he does, the suit continues. That means in civil suit at present the practice of the court shows that the serving officer usually is plaintiff. The courts authorize the plaintiffs themselves to serve summons on the defendant, and also by this authorization he has the obligation to duly serve the summons to the defendant and the court must be satisfied that the summons is duly served to defendant and should proceed to the next procedure. But it by the plaintiff's negligence the defendant is not duly served the summons the court must struck out the suit.

In the case of Mellesse Asefa Vs Alemayehu Kebede,[43] the plaintiff Melesse without serving the summon to the defendant appeared in the fixed date before the court. And the court gives another chance to the plaintiff to serve the summons to the defendant and coming up with written defence. This order of the court is not correspondent to the procedural law. If the court proves that there is a negligence or default, it should struck out a suit rather than giving another chance.

[42] Cited at note 9, Art 95 (1)
[43] Meless Asefa Vs Alemayehu Kebede File No 0025

2.4.4. Action when both Parties do not appear

If both parties (plaintiff and defendant) fails to appear on the date fixed for the first hearing of a suit, the court shall struck out a suit. This is the rule under civil procedure code article 69(2), stated that: *"Where neither party appears when the suit is called for hearing the court shall make an order that suit is struck out or in cases of appeal, that the appeal be dismissed."* This research has been conducted in Konta special woreda and the practice in the woreda show that most of files were struck out when both parties fail to appear un the day fixed to receive a written defence by the defendant.

In the case of Abebech Tesfaye Vs Gefero Genbero[44] the suite was adjourned to receive the written defence of the defendant and on the fixed date both of them where absent. Considering such fact the court struck out the cause. The same is also true in the case of Bakalo Albezo Vs Mengistu Meshesha litigation.[45] But the law say that striking out is applicable only on the hearing stage not in the stage to receive written defence. As it is rendered in the decision of Federal supreme court cassation division in August 9,2005 on file no 14184 the provisions of the civil procedure code from art 222-240 are applicable in relation to exchanging of statement of claim and written defence where as provisions from 241-273 are applicable in the hearing stage[46]. But, in the above cases Konta special woreda courts apply the hearing provisions in the stage of exchange of statement of claim and defence.

[44] Abebech Tesfaye Vs Gafaro Genbzo File No 01898
[45] Bakalo Albezo Vs Mengistu Meshesha file No 01963
[46] Cited at note 24 P. 52

In principle it is not difficult to consider the difference between the court's adjournment of a suit for a written defence of the defendant and proceeding of the hearing of a suit. From the implicit meaning of the law we can classify the litigation of hearing into two parts, this process requires the presence of the plaintiff and defendant. The first step of the procedure is opening of a suit, (first hearing). We can take article 241 (1) as a basic good example. According to civil procedure code article 241(1) at the date of starting of hearing of a suit, the court should identify the identity of the parties then after reading the statement of claim and written defence of the defendant. It also asks orally the defendant wether he admits or denies in his written response.

Under sub article 2 also any party appearing in person in court or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied, may be examined by the court which may, if it thinks fit, put in the course. Such examination question can be made by either party.[47] In this process we consider that, in the process of hearing of a suit the presence of the plaintiff, the defendant and other litigant parties is very important. In this process the court prepares the suit, for the full scale trial. So, the presence of the plaintiff, the defendant or the authorized parties is very important. In this process the absence of one party is a big obstacle to the litigation of a suit.

Therefore, the court adjourns the suit to hearing and if there is absence of the parties, it is important for the court to take a series measure. On civil procedure code chapter 2 (from article 241-273), all the provisions express the absence of parties and the result related to the process of

[47] Ibid

hearing the suit.[48] Any ways adjourning a suit for hearing is different from adjourning a suit to receive the written defence of the defendant. The different characters and purpose of the provisions applicable for hearing of the litigation are not applicable for written response of the defendant.

Therefore, the court should adjourn the suit to receive the written defence of the defendant. If both parties are absent the court should not immediately struck out the file. The next stage the court must follow is to adjourn the suit for hearing, and the court waits the parties, if both parties are absent the court must struck out the suit. Then, the lower courts whether, Federal or Regional have the obligation to proceed according to the binding decision of the Federal supreme court of cassation division and the Ethiopian civil procedure code.

2.4.5. Effect of Non-Appearance

First of all, we will now consider the effect of none appearance. Where there has been non-appearance, depending on who has failed to appear, there are four possibilities: the suit may be struck, the suit may be dismissed, the court may proceed ex-parte and the court may issue a default decree. In this topic we will discus, in brief, what the court is required to do as the effect of non appearance.

The first effect of non appearance is striking out the suit Thus, under article 69 (2) of the civil procedure code, where neither party appears when the suit is called on for hearing, the court shall make an order that suit be struck out, or in case of appeal, that the appeal be dismissed. It is important to take note of the fact that the rule under

[48] Ibid

article 69(2) is an obligatory provision; hence, the court does not have any discretion to make an order to the effect of non appearance other than striking or dismissing a case if both parties fail to appear. In other hand under article 70(d) it is provided that the summons was not served on the defendant or any one of several dependants through the plaintiffs negligence or default, the court may adjourn the hearing or order that the suit is struck out as against any defendant not serve or, in case of appeal the appeal be dismissed. This provision makes the plaintiff to properly serve summons on the defendant. It is proved that plaintiff is negligent in serving summons on the defendant, he faces the effect, which is striking out of his suit.

The second effect of non appearance is the suit may be dismissed. Thus, in accordance with the provision of article 73 of the civil procedure code where the defendant appears and the plaintiff does not appear when the suit is called for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the court shall pass a decree against the defendant up on such admission and, where part only of the claim has been admitted, shall dismiss the suit as it relates to the remainder.[49] When the defendant appears but the plaintiff fails to appear the effect is the court shall dismiss a case.

We will expect two alternative things from the defendant in case of non appearance of plaintiff is whether or not he admits the claim of plaintiff. The first alternative is he admits, the court makes a decision for plaintiff on the bases of such admission. The last alternative is if he denies, the court shall dismiss the case. The third effect of none

[49] Cited at note 9, Art 73 (2)

appearance is the court may proceed ex-parte hearing. The hearing of a suit in the absent of the defendant is known as ex-parte hearing civil procedure code article 70(a) provides that: *"Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing; if it is provided that the summons was duly served, the suit shall be heard ex-parte."*

It is also provided under the decision of federal Supreme Court cassation division rendered on the file no 15835 as follows: *"If the case is adjourned for hearing and the defendant is absent, the court will proceed through exparte.*[50] *According to the above provision the effect of ex-parte hearing include one party only that is the plaintiff."*

The last effect of non-appearance is that the court may issue a default decree. The word default decree (judgment) is decision based on the sole reason of absence of third party defendant.[51] Thus, in case of non-appearance of the third party defendant; the court decides that he has admitted the claim of defendant.

2.6. Effect of Struck out and Dismissal

The effect of striking out of a suit is provided under civil procedure code article 71(1), it reads as: *"Where a suit is struck out under article 69(2) or 70(d)", the plaintiff may bring a fresh suit on payment of full court fee".*

If the plaintiff appears with sufficient cause for his non-appearance he may bring a fresh suit freely from paying court fee. Article 71(2) stated that: *"Where he satisfies the court that there was sufficient cause for his*

[50] Cited at note 24, p. 61
[51] Cited at note 9, Art 76

non appearance, the court may make an order dispensing from payment of court fees and shall appoint a day for proceeding with suit."

Therefore, striking out of a suit does not restrict a party from filing a fresh suit on the same case. That means by payment of another court fee. On the other hand, if he has a sufficient cause, he can bring a fresh suit with out court fee. The effect of dismissal of suit is different from striking out of a suit. Article 74(1) of the procedure code provided that: *"Where a suit is wholly or partly dismissed under article, 73 or an appeal is dismissed under article. 69(2), 70(d) or 73 the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action."*

According to the above provision the plaintiff is prohibited from bringing a fresh suit in respect of the same cause of action. But he can apply for an order to set the dismissal aside. Sub article 2 of article 74 of the civil procedure code stated that:

> *Nothing in sub-article (1) shall prevent the plaintiff from applying for an order to set the dismissal aside with one month of such dismissal, and if he satisfies the court that there was a sufficient cause for his non-appearance the court shall make an order setting aside the dismissal up on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.*

Dismissing of a suit does prevent a party from filling a fresh suit on the same cause of action. The only thing he can prove is existence of sufficient cause. He can apply to the court to get the dismissal set aside. Unless the dismissal is lifted by a court of law, after the approval of sufficient cause the plaintiff can not bring fresh suit. The plaintiff shall apply for the setting aside of the dismissal within one month from the date an order is made by a court to dismiss a suit. And no order

shall be made to a fixed day for proceeding with the suit, unless notice of the application has been served on the opposite party.[52]

Generally, if a suit is dismissed the plaintiff can not brining a fresh suit with out proving a good/sufficient cause. In addition the application should be served to the opposite party. The court must evaluate the sufficient cause and application of the plaintiff and it should notice the opposite party to give a response on the application before proceeding the suit.

2.7. Effects of Setting Aside Exparte

It is a procedure where the defendant is absent on day adjourned for hearing and shows good cause for previous non appearance. Where the court has adjourned the hearing of the suit after making an order that it be heard ex-parte and the defendant at or before such hearing appears and shows good cause for his previous non-appearance, the court may set a side ex-parte order and hear the defendant in answer to the suit as if he had appeared on the day fixed for his non-appearance.[53]

The defendant should prove to be prevented from appearing because of good cause, the court may set aside ex-parte decision or default judgment. Article 78(1) stated that: *"any defendant against who made decree is passed or order made exparte or default hearing May, within one month of the day when he become aware of such decree or order, apply to the court by which the decree was passed or order made for an order to set it aside. "*

[52] Id, Art 74 (3)
[53] P.K. Majumdar civil procedure, 1908, P. 215

Therefore, the defendant in whose absence a case is heard and decided can also request the setting aside of ex-parte decision or default judgment. He must apply within one month, from the day he becomes aware of such decision.

2.8. Sufficient Cause

The researcher of this paper could not come up with the real definition of what it means by "sufficient cause." It is left to judges to determine what sufficient cause is. It depends on a case by case consideration of the application. "Sufficient cause" has potential to bring about delay in trial of a suit. "Sufficient causes" is subjective and it always depends on case by case consideration of circumstances. The word "sufficient causes" is mentioned in the Ethiopian civil procedure code in more than one provision. It provides that the plaintiff may continue that his claim with out paying the court fees, if there was "sufficient cause" for his non appearance.[54]

In other provision, it is provided that the plaintiff may have the order of dismissal set aside, if he satisfies the court the existence of "sufficient cause" for his non-appearance. It is also provided that in case of ex-parte decree has been passed against the defendant or a default decree against a third party defendant, the decree may be set aside, if he shows that he was "prevented by sufficient cause from appearing"[55].

Therefore, "sufficient causes" depend on a case by case and the court should find with in the meaning of civil procedure code Art 71 (72, 74(2) and art. 78.

[54] Cited at note 9, Art 71 (2)
[55] Id, Art 78 (2)

CHAPTER THREE: PRE-TRIAL PROCEEDING

3.1. Activities to be done at Pre-trial Proceeding

Pre-trail proceeding is different from trail proceeding. Before trial stage of proceeding is done no possibility to give a decision at pre-trial proceedings, then the court shall carry out trial proceedings, which is known as a full-scale hearing of suits. Trial stage of hearing of a suit amounts to the last phase in hearing a suit, since a decision given at its end. At trial proceedings, the court goes into considering the merit or substance of litigation between the parties.

But pre-trial stage of hearing of a suit the court limits to some incidental issues related to a case and does not touch the subject matter of litigation between the parties. Our topic is not concerned on the difference between trial and pre-trial proceeding of a suit. It focuses on the activities done at pre-trial proceeding. It decribes that the pre-trial proceeding is done without the order and procedure on production of evidence and investigation.[56] This activities are done by a court at the first date of the opening of the suit. Thus it could enable us to identify the stage involved in the flow of litigation process until issues are framed.

The purpose of this pre-trial proceeding is, primarily to frame issues for full scale hearing of a suit.[57] This is because the activities done by the court at this stage enable to draw a full picture of the suit and point out the controversy between the parties. The other advantage is to

[56] Id, Art 259
[57] Id, Art 246

minimize complication in the hearing of a suit since preliminary objection raised by a party may be decided at pre-trial proceeding. It also helps in minimizing delay of proceedings by making the court to focus on the essence of the litigation between the parties. Lastly, it assists the court to identify undisputed facts from disputed facts and then frame issues that need the resolution of the court.

The activities to be done at pre-trail proceedings are stated in Article 241 to 256 of our civil procedure code. These activities include verification of parties, reading of pleading, examination of parties, ruling on preliminary objection and framing of issues for trial stage. Those all the above activities to be carried out in pre-trial stage are stated under Article 241(1), of our civil procedure code as indicated below:

> *At the first hearing of the suit the court shall, after verifying the identity of the parties if they appear in person, read the pleadings and ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the statement of the other party and as are not expressly or by necessary implication admitted or denied by the party against when they are made.*

These activities are discussed separately in the following terms:

3.1.1. Verification of Parties

Frequently in any civil litigation, you may not know the proper formal names of parities, Parent Corporation, or subsidiaries: where they are incorporated or licensed to do business or the type of relationships to their parties.[58] You need to know this information for a Varity of

[58] Thomas Amout Pre-trial, 2005, P. 205

purposes, relating to jurisdictional and joinder issues.[59] You will also need to learn the identity of all agents and employees and other relationship to the party. Interrogatories are the best method for getting this information.[60]

At a pre-trial stage of hearing of a suit, a court first ensures the identity of parties.[61] Also it verifies whether or not the parties in person or representatives appeared before a court. This is because any body can not appear before a court on behalf of a party. A party must appear in person if the court orders to that effect or represented by appropriate representative stipulated by the rule of civil procedure code of Ethiopia.[62] That means the court must ensure that a proper representatives appear, by demanding the representative to produce letter of authorization.

3.1.2. Reading of Pleading

After verification of parties the next activity is reading the pleading.[63] That is the statement of claim and statement of defence. The purpose of reading the pleading helps both parties to understand clearly, their pleadings. The Amharic version of the civil procedure code requires only read the statement of defence.[64] The researcher of this paper do not agree with this provision. Because, it is a gap of our civil procedure code. Reading only statement of defence is not equally clear to both parties. Courts usually read statement of claim and defence after

[59] Ibid
[60] Id, P. 206
[61] Cited at note 9, Art 241 (1)
[62] Civil procedure code of Ethiopian, 1965
[63] Cited at note 60
[64] Ibid

verification of the disputant parties. Such kind of experience has its own role is clarifying the disputed issue and in filling the gap of the law.

3.1.3. Examining of the Parties

One of the important activities to be done at pre-trial hearing of a suit, after reading of pleading is that the court proceeds to examine the parties as to what they expressly or impliedly admit or deny the suit or part of it.

This is provided under Article 241 (1) of the civil procedure code. It is stated that:

> *Any party appearing in person present in court or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the court which may, if thinks fit, put in the course of such examination questions suggested by either party.*

This examination is done orally and does not involve the examination of witnesses of the parties nor does it include the investigation of documentary evidence. The question purposed whether each parity or his pleader admits or denies the allegations of fact in the pleading of the party. However, the court has the power to examine the party at the time of pre-trial hearing of a suit and record whatever is not said in the statement of claim or the statement of defence.

If the court investigates that the defendant has not denied or expressly admitted a particular allegation of the statement of claim, the court may give to him a second chance to defend orally. The court will specifically ask him whether he intended to admit that allegation is

deemed denied. The court must record all admissions and denial which form part of the record.[65]

Where a party appear in the first hearing and if there is total admission partial admission, or total denial as a result of oral examination there, in different legal effects will follow in each case. The above issues stated under Article 242 of civil procedure code is as following:

> *Any party may, when the opposite party has been notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the case the party, or has made admissions of fact during the examination held under Article 241, apply to the court for such judgment or order as he may be entitled to upon such admissions, with out waiting for the determination of any other question between the parties and the court may there upon make such order on give such judgment as it thinks fit.*

If there is total admission as a result of oral examination, the court shall make a decision without demanding the plaintiff to prove the case. That means the total admission by the defendant brings an end to the litigation between the parties. it is different in criminal cases. The admission by an accused, however, is considered to be one evidence and does not bring an end to the litigation.[66] In pre-trial proceeding in civil case the party in whose favor the admission is made can apply to get a decision on part admitted. The other one is if there is total denial then the court proceeds to frame issues and proceeded to trail stage of a suit. But, as far as the observation which is made by the researcher of this paper there is a variance between the provisions of the civil procedure code and the practical application regarding pre-trail proceeding in the Konta special woreda civil benches. For instance, in

[65] Id Art 241 (4)
[66] Criminal procedure code, 1960, Art 134 (2)

the case of Admasu Gudeta Vs Utee Gudeta[67] involving 1400 birr the court ordered the defendant to come up with two copies of his written statement of defence and the defendant appeared with the order of the court.

The court without reading the statement of claim and statement of defence and adjourning the case to other day has directly entered in to in the hearing stage. The court even does not frame the disputed issues with the undisputed. The researcher observed all these practical problems are made in the selected court. In the pre-trial stage before directly driving into the hearing stage the court must prove that whether the disputant parties exchange statement of claim and defence or not and it should adjourn the case to hearing. Pursuant to Article 241 of the civil procedure code after the court examine the identity of parties, it should read the statement of claim and defence. Then it should orally examine whether the parties admit or deny facts alleged the admitted. And, if there is total admission or partial admission of fact, it should give a decision without considering evidences to the admitted facts. Where there is denial of facts in the case, the court should frame issues and adjourn the case to the trial stage to consider evidences in the other date.

3.1.4. Decision on Preliminary Objection

Preliminary objection may be raise in oral examination of the parties to a suit. Preliminary objection may be raised with a view not going in to the merit of the case. The purpose of preliminary objection is attacking a suit and get it rejected at pre-trial hearing of a suit. Preliminary objection is an incidental issue related to a case since it is made for the

[67] Addimasu Gudeta Vs Utee Gudeta file No 01390

making the court not consider the merit of a case. At pre-trial proceeding the parties raise objection in accordance of Article 244 (2) of civil procedure code, sets forth certain preliminary objections, and when such objections are fulfilled, the court is required to proceed to rule un such objections.

In the Article 245 (1) of civil procedure code provided that: *"The court shall decide any objection taken under Article 244 after hearing the opposite party and ordering the production such evidence as may be necessary for the decision to be made".*

This means the court before giving the decision on objection, shall give an opportunity to opposite party to reply to the objection made by a party. The purpose of this response of the other party is to enable court to make a proper decision. It is important to court direct to hear the opposite party, order the production of such evidence as may be necessary and render a decision on the objection.[68] If the result of the objection is sustained, it makes an order dismissing or striking out the suit, depending on the nature of the objection.

The grounds of preliminary objection are provided under Article 244 (2) of our civil procedure code is as following below:

> *The court lakes jurisdiction: the suit is resjudicata , the suit is pending in other court; the other party is not fuilifed for acting in the proceeding prior permission to sue has not been obtained, when this is required by law, the suit barred by limitation and the claim is subject to arbitration or has been compromised.*

The grounds of objection are not these only. Because of it stated that with in Article 244(1) by the word 'such as,' which indicates that other grounds, can be used as preliminary objection. Certain preliminary

[68] Cited at note 9, Art 245 (1)

objections are required be raised within limit of time fixed by the law. This is stated in article 244 (3) of our civil procedure code as: *"Where there are objections under this Article, they shall all be taken together and any objection not taken at earliest possible opportunity shall be deemed to have been waived, unless the ground of objection is such as to prevent a valid judgment from being given."*

Any ground of preliminary objection shall be raised at earliest possible opportunity. The researcher of this paper does not find what is meant by clear indication of the earliest possible opportunity. Any way preliminary objection may be raised any time before framing of issues. This is because once the issues are framed, it will be referred to and trial stage a party loses the opportunity to raise a preliminary objection. If a party at the time of first hearing of a suit fails to raise them at the possible opportunity, it will be deemed that the opportunity to raise an objection is waived[69]. But, all preliminary objection can not be waived. There are certain preliminary objection that can not be waived. For example, lack of material jurisdiction can be raised at any time before judgment. [70] In the case of lack of material jurisdiction when and as soon as a court is aware that it has not material jurisdiction to try a suit, it shall proceed in accordance with Article 245(2), (dismisses the case).

The same approach must be followed when there is a problem of lack of capacity,[71] prior permission to sue, and pendency.[72] On the above grounds of objection the party as well as the court exceptionally raise with out limitation of the time. It can not be waived even if the

[69] Id, Art 244 (3)
[70] Id, Art 9 (2)
[71] Id, Art 34 (2)
[72] Id, Art 8 (1)

defendant fails to raise the objection at earliest possible opportunity since it relates to the power of the court to give a valid decision.

The other objections are these that can be waived if not raised by a party at the earliest possible opportunity. Such as period of limitation, res judicata and arbitration/compromise under grounds of these objection.[73] Once the objection has been sustained, there is no opportunity for the plaintiff to file a fresh suit. Were an objection on any other ground is sustained, the plaintiff may not be precluded from bringing a fresh suit and an action other than dismissal may be required. In such case the court is required to strike out the suit and/or makes such order as it thinks fit.[74]

If the claim has been compromised, the court should give judgment in terms of the agreement. Where the parties have agreed to submit the claim to arbitration, the courts should order the performance of the arbitral submission.[75] If a suit is pending in another court, the courts should issue an order striking out the suit and advise the plaintiff that he should sue his claim in that court where the is pending.[76]

Generally, all these objections are allowed to be made for the interest of the parties. If the parties fail to raise them at proper time, it will be that presumed they are not willing to benefit from them. Then, unless the parity raises these objection, the court is not entitled to make a ruling on them by its own initiation.

But, what is practically applicable in Konta special woreda courts is different from what the law says. It is clearly observed in the case

[73] Id, Art 244 (2)
[74] Id, Art 245 (2)
[75] Cited at note 3, Art 3344
[76] Cited at note 9, Art 245 (3)

between Mitiku Haile Mikale Vs Tadesse Abebe.[77] In this case the defendants Tades Abebe simply object the claim with out any ground and the court without recording the objection and requesting the response of the plaintiff reject the objection. This is really contradictory with Article 244 and 245 of the civil procedure code of Ethiopian.

3.1.5. Framing of Issue

The last one of the activities done at pre-trial stage is framing issue for the trial stage. This is stated under Article 246 (1) of civil procedure code as folows: *"After preliminary objections, if any, have been decided, the court shall ascertain upon what material propositions of fact or of law the parties are at a variance, and shall there upon proceed to frame and shall record the issues on which the right decision of the case appears to depend."*

The court after examination of parties and ruling on preliminary objection, if any, the court proceeds to sort out the main points of controversy between the parties, which is necessary for the decision of the court at trial stage.

The purpose of framing of issues, at the first hearing of a suit, is to avoid unwanted delay of justice at the trial stages. It helps to draw a full picture of the suit and points of controversy between the parties. The trial will be limited to the issues that the court frames at this stage. The definition of issues stated is under Article 247 of civil procedure code as:

> *Issues raise when a material proposition of fact or of law is a farmed by one party and denied by other party. Material*

[77] Mitiku Haile Mikale Vs Tadese Abebe File No 02205

> *propositions are those propositions of fact or of law which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.*

Issues are points of controversy or disagreements over which parties fails to agree. That means where the occurrence of one fact alleged by one party is denied by other.[78] Each material proposition affirmed by one party and denied by other shall form the subject of a distinct issue[79]. There are two types of issues: These are issue of law, and issue of facts. Where both of issue of fact and law arise in the same suit and the court gives an opinion that the case or any part there of may be disposed of on the issue of law only, it will try those issues first, and for that purpose may, if it thinks fit, post-pone the settlement of the issue of fact until after issue of law is determined.[80] The researcher of this paper does not found a clear demarcation between the issue of law and issue of fact.

The court must find out, if there are issues raised when a party alleges some fact or law and this proposition is denied by other party. For example, a plaintiff alleges that defendant has failed to perform the contract and as result he has suffered damages and as a result he/she may require to recover damages and specific performance. The defendant may argue that there is no valid contract between them. He may also deny that plaintiff has suffered damage. In case of the above example the court has to determine whether there is valid contract or not between the parties. According to the above examples, whether there is a valid contract or not is an issue of law. If there is a valid contract, whether plaintiff has suffered damage or not is issue of fact.

[78] Cited at note 9, Art 247 (1)
[79] Id, Art 247 (3)
[80] Id, Art 247 (4)

Then, the court, after finding issue of law and facts, must resolve issue of law and facts which are raised by the parties. Both the plaintiff and defendant are required to state all their evidence, i.e., documentary and witnesses in their pleadings.[81] Because of a material proposition of fact that is alleged by one party and is denied by other,[82] the party who alleged the preposition will be required to prove by the evidence he has already mentioned in his pleading. Some times, the issue of fact may not need to be decided it the issue of law is decided if the negative. We are considering in the above example if the court finds that there is no valid contract between them, there no need to hear the evidence on the issue of law that has disposed of the case.

3.1.6. Material from Which Issues May be Framed

The court may frame of the issues from different sources: on the time of framing of the issue, the court have to look carefully the allegation in the pleading; the content of documents produced by either party: or any person on their behalf,[83] or made by pleaders of such parties in the course of the examination. The major source courts frame issues for trial is the pleadings submitted to the court by the either parties. That means the plaintiff submit the statement of claim[84]. And the defendant also submits the statement of defance[85]. The court by comparing the content of the pleadings, frames the point of controversy between either parties. The next source is the admission, or denials made during the oral examination.[86] During the oral examination, the court investigates the parties as to what they expressly admit or deny. In this time parties may rise new facts that were not included in their pleadings. The purpose of this is that the court clearly determines the real issues between either parties.

[81] Id, Art 247 (1)
[82] Id, Art 137 (1)
[83] Id, Art 248
[84] Id, Art 222
[85] Id, Art 234
[86] xl¥yh# ¦/Yl@ m¬sb!Ã DRJT 1998, g{ 86

The third sources from which the court may frame issue is documents produced by both parties are to be likely to be happen, to produce all the documents on which they rely on during the pre-trial stage. This source is mostly used when a court is not in a position to frame the issues between the parties. That means pre-trial is not a stage to consult the evidence produced by the parties. The court has the power to demand the appearance of whiteness or any person and examine them as the suit between the parties before framing the issue.[87]

The court is under obligation to frame issues.[88] But in our civil procedure code there is exception to this obligation. Because a court is not compelled to frame issue when the defendant makes no defence.[89] If the defendant does not produce his statement of defence, there is a possibility to proceed with a case if the defendant can defend himself during the oral examination. Because of oral hearing is the constitutional rights of the parties.[90]

Framing of issue can be done not only by a court, but also by a parties to a suit. The disputant themselves can frame issue and refer them for trial. This rights of parties to frame issues is limited to certain question of fact and law which are to be decided between either parties. In addition, the parties are obliged to make their agreement on framed issues in writing.[91] The court has the power to amend and strike out issues. This power is given to the court under Article 251 of civil procedure code as follows:

[87] Cited at note 9, Art 249
[88] Id, Art 246 (1)
[89] Id, Art 246 (2)
[90] Ethiopian constitution, 1995, Art 20 (1)
[91] Cited at note 9, Art 252

> *The court may at any time before judgment amend the issues or frame additional issues on such terms as it thinks fit, and all such amendment or additional issues as may necessary for determing the maters in controversy between the parties shall be so made or framed.*

If there is wrongly framed issue by the court at the first hearing of a suit, the court has a full power at any time before judgment to strike any issue that appear to be wrongly framed or introduced. And also has power to amend the issues it framed and frame new and additional issues. The purpose why this power is given to the courts is to help them in clearly determing issues. This is all about framing issue for trial stages. There is also a variance here between the procedural law and the practice in Konta spcial woreda courts. In the previous case between Admasu Gudeta Vs Utee Gudeta,[92] the court does not indentitied the issue in the pre-trial stage rather it consider the disputed issue in the trial stage. Such kind of experience in the identification of issues will contribute to waste the time of the court and it also cause unexpected expense for the disputant parties.

Considering such kind of draw backs the law requires identification of issues to be done at the pre-trial stage.

[92] Cited at note 66

CHAPTER FOUR: JUDGMENT WITHOUT TRIAL

4.1 Judgment with out Trial

Most of the time, 'Judgment on the merits' implies that it must have been passed after contest and after evidence has been introduced in by both parties.[93] But, judgment on pre- trial is an exception since it is made with out a trial of the suit. In some of the situations it is possible to make a decision at pre-trial stage of a suit and the court may not proceed to investigate the evidences and hearing the testimony of witness which is produced by both sides.

These situations are evasive denial, judgment on admission, parties not at issue, failure to produce evidence, parties at issue and agreement on issue. Under the above situations courts give decision at first hearing of a suit, in whole or in part, with out a full scale hearing of a suit. Let as observe each and every where decision may be given before trial stage as follows:

4.1.1 Evasive denial

In the statement of defence, where the defendant denies an allegation of fact, he must deny it directly and not evasively; this is stated under article 235, of our civil procedure code.
It provides that:

> *Where a defendant denies an allegation of fact in the statement of claim, he shall not do so evasively, but answer the point of substance and if an allegation is made with divers circumstance, every allegation of fact in the statement*

[93] Concise law dictionary, 2006, P. 635

> *of claim, it not denied specifically or by necessary implication, or stated to be not admitted in the statement of defence, shall be taken to be admitted except as against a person under disability: provided that the court may in its discreation require any fact so admitted to be provide other wise than by such admission.*

With in this under standing a specific denial of any fact stated in the statement of claim which is not admitted is required by the law.[94] In other hand the defendant who does not deny specifically any fact stated in statement of claim is deemed to have admitted. The allegation are not specifically denied are deemed to be admitted. It shall not be sufficient for a defendant in his statement of defence to deny generally.

Denial in general term of denial is called evasive denial. For example, the defendant saying that, in his statement of defence "I am not responsible" is deemed to be an evasive denial. This type of denial is not considered as a fact to be denied.[95] The other way of evasive denial is where in a suit for the recovery of money the defendant claims to set - off against the plaintiffs any ascertained sum of many legally recoverable by him from the plaintiff is not exceeding the pecuniary limits of the jurisdiction of the court, and both parties fill the same character as they fill in the plaintiffs suit. The defendant shall in this statement of defence give the particulars as to the debt sought to be set – off.[96]

4.1.2 Judgment on Admission

Before directly considering admission it is better to say something about admission. Admission may be given orally in written for or

[94] Cited at note 9, Art 234 (e)
[95] Id, Art 235 (1)
[96] Id, Art 236

contained in electronic form, which suggests an inference as to any fact in issue or relevant fact, and which is made by any of the person and under any circumstance.[97] The term "admission" in s.70, Indian evidence act relates only to the admission of the party in the course of the trail of suit, and not to the attestation of a document by the admission of the party executing it.[98] Any party to a suit may give notice, by his pleading, or other wise in writing, that he/she admits the truth of the whole or any part of the case of any other party.[99] It is provided that any admission made in pursuance of such notice is deemed to be made only for the purpose of the particular suit, and not as admission to be used against the party on any other occasion or in favor of any person other than the party giving the notice.[100]

With regard to judgment on admission, it is provided under article 242 of civil procedure code of Ethiopia provided that:

> *any party may, when the opposite party has given notice, by his pleading, or other wise in writing that he admits the truth of the whole or any part of the case of other party, or has made admissions of fact during the examination held under Art 241, apply to the court for such judgment or order as he may be entitled to upon such admission, with out waiting for the determination of any other question between the parties and the court may there upon make such order or give such judgment as it thinks fit.*

In the process of the litigation, party may make an admission in his pleading or during the oral examination.[101] The court can not frame the issue for trial. Because the fact is admitted by defendant, and he does not raise any issue in the pleading. The plaintiff has no obligation to

[97] Cited at note 1, P. 32
[98] Ibid
[99] Cited at note 52, P. 229
[100] Id, P. 230
[101] Cited at note 9, Art 241 (1)

introduce evidence to prove that allegation. That means, if the party makes a whole admission, the court should give decision with out the need to waiting for the trial proceeding of a suit since the whole admission of a suit is conclusive and brings end to the litigation between both parties. In the process of litigation if there is however, partial admission of a party may apply for a decision on the part admitted at first hearing of a suit or may wait until the part denied is decided upon by the court a the trial proceeding of a suit.[102]

4.1.3 Parties not at Issue

If the parties in the suit are not an issue of the court may pronounce judgment at the first hearing. Thus, under Art 254 (1) it is stated that: "*Where after preliminary objections, if any, have been decided, it appears that the parties are not at issue any question of law or fact, the court may at once pronounce judgment.*"

The primary purpose of the pleadings and proceedings at pre-trial stage is to develop the suit for trial. It follows that if, a result of such proceedings, there do not appear to be any such issues; the court may pronounce judgment at the pre-trial stage.[103] In relation to this the court is expected to evaluate the legal sufficiency of diefence: if the defendant admits all the allegation of the statement claim in his statement of defence at the time of written response or oral examination at the pre-trial proceeding. In such situation the defendant losses its affirmative defence since he is not at issue with the statement of the claim.

[102] Id, Art 242
[103] Id, Art 254 (1)

On the other hand, unless and other wise the plaintiff clearly and specifically shows each and every of his interests (rights) against the defendant on his statement of claim. There is nothing expected as a response on the statement of defence of the defendant. The court doesn't need to order the production of evidence for full scale hearing of a suit, but the court have the power to pronounce the decision in pre-trial stage,[104] in favour or against one of the parties in the process of litigation. Then, in such conditions if the parties are not at issues of fact or law, the court shall not frame issue. And the court shall not wait the suit to trial stage and it has to give decision at pre-trail stage.

4.1.4 Failure to Produce Evidence

Disputant parties are always expected to produce all relevant evidences in relation to the dispute at issue. Other wise, it will affect their right to produce evidence in the second time.

Considering to this Art. 256 of civil procedure code of Ethiopian provided that:-

> *Where evidence which should have been produced in accordance with Art 137 or 249 is not so produced due to the default of either party, the court may at once pronounce judgment or may, for good cause to be recorded, adjuring the hearing on such terms at to costs or other wise as it thinks fit. Where a suit found upon a negotiable instrument, and its is provide the instrument is lost, and an indemnity is given by plaintiff, to the satisfaction of the court, against the claims of any other person upon such instrument, the court may at once pronounce such judgment as it would have pronounced it the instrument had been produced.*

In the process of litigation the parties or their pleader shall produce evidences at first hearing of a suit, all the documentary evidence of every description in their possession or power, on which they intend rely,[105] and the court shall receive the documents so produced which

[104] Ibid
[105] Id, Art 137 (1)

shall be accompanied by an accurate list thereof.[106] In the pre – trial stage the plaintiff must attach certain annexes to the statement of claim. These are a list of the witness to be called by him at trial together with their address and the purpose for which they are to be called a list of documents on which he relies to specifying in whose possession such documents are found.[107] If he has no document or witness to produce, he must file a declaration to that effect.[108] Sedller argues that: *"The purpose of this requirement is to let the defendant know what witness the plaintiff will call and on what documents he will rely so that the defendant can prepare rebuttal evidence."*[109]

For the purpose of these, no document which should be but is not annexed to or filed with pleading or produced at the first hearing shall be received at a later stage in the suit on behalf of the party who should have so annexed, filed or produced it.[110] When a party fails to parties evidences fail to the produce due to the default of either party, no entry of the list of witnesses madly by the party the court have two alternatives. The first one is, if the parties have no good cause the court may at once pronounce judgment. Secondly for good cause to be recorded, the court may adjourn the hearing on such terms as to cost or other wise as it thinks fit.[111]

4.1.5 Parties at Issue

At the time of pre – trial of a suit, when parties are at issue, as a rule the court should refer the case to full scale trial proceeding. But the

[106] Id, Art 137 (2)
[107] Id, Art 233 (1) a)
[108] Id, Art 233 (1) c)
[109] Allen, Sedler, Ethiopian civil procedure 1968 Page 129
[110] Cited at not a Art, 137 (3)
[111] Id, Art 256 (1)

court in certain conditions may decide the suit at the pre trial though the parties are at issue.

In this regard Art 255 (1) of the civil procedure code provides that:

> *Where the parties are at issue on some question of law on the of fact, and issues have been framed by the court as herin before provided, if the court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from produced at determine such issues.*

According to the above provision the court makes of a decision at pre – trial hearing of a suit, while parties are at issue depending on the fulfillment certain requirements. The requirements include that the court should be convinced that no further evidence or argument than the parties have already submitted to the court and evidence produced is to determine the issue. Then the court believes sufficient to decide then the court believes that no in justice will result from making a decision with out waiting a full scale hearing of a suit.[112] That means, if the court found that the, issues is sufficient for the decision, the court may pronounce judgment accordingly.[113]

4.1.6 Agreement on issue

The last one is the court make a decision at pre-trial stage of a suit in a situation when parties are reached at agreement on issues. In the process of litigation, where the parties agreed as to the question of fact or law to be decided between them, they may state the question in the

[112] Id, Art 255 (1)
[113] Id, Art 255 (2)

form of an issue and enter into an agreement upon the finding of the court in the affirmative or negative of such issue.[114] For instance, a sum of money specified in the agreement or to be ascertained by the court may be agreed to be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,[115] or some property specified on the agreement and in dispute (in the suit) shall be delivered by one of the parties to the other of them, or as that other may direct or one or more of the parties shall do or abstain from doing some particularly act specified in the agreement and relating to the matter in dispute.[116]

Where the court is satisfied that such an agreement has been made, that the parties have a substantial interest in the decision, i.e. , they are the parties with a vested interest in the subject matter of the suit or against whom a claim has been asserted, and that the issue is fit to be decided, the court shall try the issue and render a decisions as if the issue had been framed by the court. Upon the determination of the issue, the court pronounces judgment in terms of the agreement.[117]

Considering the issue at hand courts can give a decision on the pre – trial stage of the suit with out waiting for full scale trail stage of the suit. The court can render a decision on the pre – trial stage in cases of evasive denial, admissions, parties not at issue, and parties at issue, agreement on issues, failure to produce evidence and on other issues. Having decisions on the pre-trial stage has the advantage of not only speed trial but also it saves unnecessary wastage of time, money and energy of the court and the parties. In respect to this, as far my

[114] Id, Art 252 (a)
[115] Id, Art 252 (b)
[116] Id, Art 252 (c)
[117] Id, Art 253 (2)

interview with president of Konta Special Woreda courts[118] has explained that: *"Most of the decision of the woreda court are given after the pre – trial stage and pre- trail decisions are given only and only if the defendant admits what is alleged by the plaintiff."*

According to the researcher of this paper such kind of experiences has their own influence in the back lock of files to court and it also affect the time, energy and money of not only courts but also the disputant parties. There fore, as much as possible courts should adopt the experience of giving decision in the pre – trial stage, if conditions allow to do so.

Conclusion & Recommendation

Conclusion

Procedure refers to the method by which claims of persons are adjudicated and by which rights, privileges and duties are determined and enforced by appropriate legal tribunals. There are two classes of law, adjective (Procedural) and substantive law. Adjective law deals with how right, privileges and duties are enforced. Substantive law defines such rights, privileges and duties. However, the rights, privileges and duties that exit under such law will be nothing unless they can be enforced. It is the function of adjective law to ensure that such rights, privileges and duties are enforced.

In the court proceeding there are two types of cases, civil and criminal prosecution. A prosecution is instituted by the government for the purpose of securing of obedience to its laws by punishment or correction of the law breaker. A separate body of law by the name criminal procedure law governs the procedure to be followed in such

[118] Interview

cases. A civil case is instituted by an individual for the purpose of securing redress for wrong which has been committed on him, and if he is successful, he will be awarded money or other personal relief.

Civil producer means simply the procedure that is followed in civil cases. A civil case is one that is instituted by a person against an individual or legal person or even the government for the purpose obtaining redress for wrong allegedly committed against him. Usually he will be seeking the payment of money, although sometimes there may be specific relief. The person who initiates a civil case is called the plaintiff; and the person who is sued in a civil case is called the defendant.

There are two types of court proceeding i.e., pre-trial proceeding, and the full scale proceeding. This paper has discussed pre – trial proceeding. As the name indicates pre-trial proceeding is a proceeding conducted prior to a full-scale hearing of a suit. It is the first phase of trial proceeding and it serves as a preparatory stage. It firstly, aims mainly at framing issue for the trial stage. This is because the activities done by court at this stage enable it to draw a full picture of the suit and points of controversy between the disputant parties. Secondly, it minimizes compilations in the hearing of a case since preliminary objection raised by a party get decided at pre-trial stage. This helps in minimizing delay of proceedings by making the court to focus on the essence of the litigation between the parties. Thirdly, it assists the court to identify undisputed facts from disputed facts and then frame issues that need the resolution of the court.

We have thoroughly considered each and every activity which is exercised during the pre-trial proceeding under civil producer law. In

doing so we have also realized that there are several practical problems surrounding pre – trail proceeding in Konat Special Woreda Civil benches. Most of the real cases that we have observed also prove that there is a practical problem in Konta Special Woreda in implementing the provisions of the civil procedure code relating to pre-trial proceeding.

One of the basic practical problems is related with Art. 70 (a) and 233 of the civil procedure code. That is, there is a clear variance between those provisions and the practice regarding the situation where the defendant in civil cases is ordered to appear with his written defence and he is absent. Considering this problem the Federal Supreme Court cassation bench has rendered and decision regarding the procedure that should be followed whenever the defendant is ordered to come up with his written defence and he is absent under file Number 15835. According this decision of Federal Supreme court:-

- If the case is adjourned for hearing and the defendant is absent, it will proceed through ex-parte.
- If the case is adjourned to receive a written defence of the defendant and he is absent, the defendant only loses his rights which are related with his written defence and he will never lose his right of participation in further proceedings.

This interpretation the Federal Supreme court of cassation bench is binding and considered as a law for other Federal and Regional courts in the same kind of situations as pursuant to Art. 2 of proclamation number 454/2005. But, as we have observed under chapter two and three of this paper there are many variances between what the law says (the aforementioned proclamation and other civil procedure code provision) and what is practically adopted by Konta special Woreda

Civil bench courts. The following are the variances: The judges in Konta Special Woreda render different types of decisions with similar type of issues which contradict with the provisions of the civil procedure code in a situation where a case is adjourned to receive the written defence of the defendant and he is absent.

The courts render the following type of differentiated decisions in similar type of issues.

- A decision for ex-parte proceeding
- A decision for appearance of the defendant through arrest. (One of the surprising and funny decision not only in Ethiopia but also over the world regarding Civil Cases)
- A decision that gives another opportunity for the defendant to produce written defence by paying compensation to the plaintiff.

The second practical problem is related with Art 73 and 74 (2) of the civil procedure code. As pursuant to those provisions where the defendant appears and the plaintiff does not appear, the court should give a decision based on the admission or denial of the defendant. That is, if the defendant admits the suit, the court should render a decision based on the admission. If the defendant denies the suit, the court should dismiss the case. But, if the plaintiff has come up with sufficient cause for his non-appearance within one month and if the court believes that there is sufficient cause, it should render a decision for proceeding of the case. But, practically the courts in Konta Special Woreda render a decision for proceeding of case without examining the reasonableness of the sufficient cause. The court simply accepts the application of the plaintiff whether he has sufficient cause or not.

The third problem is relating to Article 70 (d) of the civil procedure code. According to this article, if the summon is not served to the defendant as a result of negligence of the plaintiff, court should decide strick out of the case. But, practically courts in Konta Special Woreda decide to serve anther summon to the defendant and coming up with written defence.

The fourth practical problem is regarding Article 69 (2) of the civil procedure code. According to this provision whenever the suit is adjourned to receive the written defence of the defendant and both the plaintiff and the defendant are absent, the court should adjourn the case to hearing. But, courts in Konta special woreda dismiss the case whenever both disputant parties of the defendant considering that is in the stage of hearing. It is also practical problem.

The other problem is related with Article 241 of the civil procedure code. That is contradicting this provision Konta special woreda courts hear the evidence of the disputant parties at the first hearing of the suit with out adjourning the parties after verifying the identity of the parties, reading the pleading, checking the admission and denial of the defendant and framing the issues for trial. The last problem is whenever there is a preliminary objection based on Article 244 of the civil procedure code, the court in Konta special woreda record it, but it is not observable to see a decision based on Article 245 of the civil procedure code.

There fore, these are practical problems regarding pre-trial proceeding under the civil procedure code in Konta special woreda civil bench courts. As all we know procedural law plays a remarkable role in implementing the right and duties of the whole society which are

embodied and secured in the substantive laws. But, having these several practical problems in the rights of disputant parties will contributes for the back lock of court files. This by itself also affects the justice system of the country. Additionally, this problem contributes in having unfair and delayed decisions.

Recommendations

Even though the researcher of this paper concentrate on the problems of pre – trial (civil procedure) in Konta special woreda, there may be similar types of practical problems in other Regional courts or even in the Federal courts. Considering the magnitude and governess of the problems discussed in the paper, the researcher recommends the following in avoiding the problems around pre-trial procedure.

- **On the part of Woreda courts**:- before rendering a decision on a certain disputed issue, courts should carefully observe the civil procedure law, proclamations, regulations and directives and relate it with the case at hand.
- **On the part of the Regional high court:-** since the high courts have the power to correct the problems of the woreda courts in the appellate system, there will be an opportunity to observe pre – trial and other problems of woreda courts. Beside reversing and approval of the woreda court decisions the high courts should positively criticize and share their experience to the woreda courts where there are procedural problems. Management teams of the high courts should make sure that whether the proclamations, regulations and directives are accessible to woreda courts or not.
- **On the part of the Regional Supreme Court**:- the regional supreme court is an over all governing body over the regional high court and regional woreda courts. Considering this power

the regional Supreme Court should prepare short and long term trainings not only on pre-trial procedure but also on other laws (issue). The management terms of the regional Supreme Court should require the high court and woreda courts to forwarded annual, bi – annual and monthly reports on the practical applicability of the laws and problems around the high court and woreda courts. In doing so it can supervise the high courts and woreda courts and avoid the problems.

- **On the Part of Regional Supreme Court Council of Judges' Administration:** - this organ is responsible in the nomination and supervision of judges. In doing so, it should specifically consider the academic qualification, experience, ethics and other qualification of judges. Having such kind of supervision will avoid problems that would come from the side of personality of judges.
- **On the Part of Federal Supreme Court:-** Proclamation number 454/2005 declares that decision of the Federal Supreme court of cassation bench are binding and considered as a law to lower courts of Federal and Regional state. To have such kind of effect in the Federal and Regional courts accessibility of proclamations, decisions of the federal supreme court of cassation bench, reference materials etc is a determinate factor. But, as far as my investigation in Konta Special woreda there is shortage of proclamations regulations, directives and binding decisions of Federal Supreme Court cassation bench. Therefore, to avoid this kind of problem the Federal Supreme Court should as much as possible compiles all the binding decisions and make it accessible to the Regional courts.
- **On the part of House of Peoples Representative:-** since the House of Peoples Representative is the organ that is vested with power of making and amending laws, it should consider the

backwardness of the 1965 civil procedure code of Ethiopian and enact a new modern law that will provide a speedy trial and avoid the legal problems.

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