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LIQUIDATION OF SUCCESSION

AND PERIOD OF LIMITATION

THE LAW AND THE PRACTICE

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ID: 1020/99

ADDIS ABABA, ETHIOPIA

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# **CHAPTER ONE**

## **General Background of Labour Law**

### **1.1. Definition and Concepts of Labor Law**

Even though it is not an easy task to define labor law, it can generally be defined as a law that regulates employment relationships that mainly exist in business and industrial activities. This law is also known as industrial law or employment relations' law. It is part of the laws that regulate the relationship between an employee and an employer as well as between an employer and a number of employees.<sup>1</sup>

Employment relations embrace a complex of relationships between workers, employers, and government. It is basically concerned with the determination of the terms of employment and conditions of labour workers.

From the above definition, one can easily understand that there are two major aspects of labor law one is individual aspect and the other is collective. An employment relationship is normally initiated by contract of employment the contract that first establishes the relationship between an employer and worker.

Labour law also regulates collective aspects of relations. The collective aspect is related to relations between mass workers. For instance, an Undertaking and their employer on issues of employment. Workers have the right to collectively bargain, through their association called trade union, with their employer.<sup>2</sup>

A labor relation implies the relationship between a private employer and his employees. It is concerned with labour or work which is done in a position of subordination: i.e., control when an employee works under the command and authority of an employer.

Such is the idea of labour relations given by articles 2512 of the Ethiopian civil code of 1960; to which most labour legislation including Proclamation 42/93 refer to define this field of application.

Article 2512 of the civil code-defines contract of employment as follows

*A contract of employment is a contract where by one party, the employee ,undertakes to render service to the other party ,the employer, under the latter's direction for a determined or un determined time, services of a physical or intellectual nature ,in consideration of wages which the employer undertakes to pay him.*<sup>3</sup>

It is difficult to define the labour law as any subject directly, it will be changing the legal, political and economic conditions with change of time As such, there is no single definition accepted by different writers on labour law as they have their own views towards the economic, social and political aspects of the relations among employers, workers and the state.<sup>4</sup>

However, we can still define labour law in relation to the ideological differences prevalent in the world at different times. The very essence of labour law in socialist world is under stood as development in a socialist self management environment. In other words the introduction of social ownership (public ownership of property) essentially changed the labour relationships.

That is, the labour relation is viewed as a relationship of mutual dependency, reciprocity and solidarity between workers working with resources in social ownership.

The rights and duties stem from work under the law. Hence the employment relationship is not established by employment contract except in few cases where there is private ownership.<sup>5</sup>

## **1.2. Objective of Labour Law**

It is clear that the emergence and development of labour law occurred as a result of industrial development can be traced to the 18<sup>th</sup> century industrial revolutions which took place in Europe. This gives us an insight

and a clue to know the objectives of a labour law. Having this in mind, let us try to identify the main objective of a labour law.

The main objective of a labor law is to regulate relationships between the employer and the worker. In the early phases of development, the scope of labor law was often limited to the most developed and important industries, undertakings above a certain size, and to wage earners. As a general rule, these limitations are gradually eliminated and the scope of the law extended to include handicrafts, rural industries and agriculture, small undertakings and office workers. Thus, a body of law originally intended for the protection of manual workers in industrial enterprises is gradually transformed in a broader body of legal principles and standards.<sup>6</sup>

Every law has objectives and labour law legislations which have been in place in Ethiopia at different periods have declared their objectives in their preambles, The current Labour Law Proclamation, for example, in its preamble declares a couple of objectives. One of these objectives is to govern worker–employer relations by the basic principles of rights and obligations.

*It states, it is essential to ensure that worker employer relations are governed by the basic principle of rights and obligations with a view to enabling workers and employers to maintain industrial peace and work in the spirit of harmony and cooperation towards the all- round development of a country. It has been found necessary to guarantee the rights of workers and employers to form their respective associations and to engage, through their lawful elected representative, in collective bargaining, as well as to lay down the procedure for the expeditious settlement of Labour disputes ,which arise between workers and employers.<sup>7</sup>*

This objective can be realized by devising effective mechanism. The Proclamation, in its preamble puts different means towards the successful accomplishments of the objectives stated above. Accordingly, it has committed itself to the establishment of workers ‘and employers’

organizations to be run by representatives of the respective parties. Moreover, when disputes arise between workers and employers, the proclamation devises mechanisms for speedy and efficient settlement thereof.<sup>8</sup>

Therefore, having a labour law is extremely important to ascertain industrial peace which is crucial for the all rounded development of the country.

Generally, labour law now a days regulates the employment relationships of a large portion of population in the world. It has various elements, which can be considered as its subject matter. Matters such as individual and collective employment relations, wages, conditions of work, health and safety, social security and administration of the law are the major elements of labour law. Labour law provides rules that set the minimum labour standard; rules that regulate the establishment and activities of labor institutions, rules that devise mechanisms for state interventions and compensation.<sup>9</sup>

### ***1.3. Emergence and Historical Development of Labour Law***

The origin of labour law can be traced back to the remote past and the most varied parts of the world. The European writers often attach importance to the guilds and apprenticeship system of the medieval world. Some Asian scholars have identified labour standards as far back as the laws of **Hammurabi** and rules for labour- management relations in the laws of Manu. Latin- American authors point to the laws of the Indies promulgated by Spain in the 17<sup>th</sup> century for its new world territories. Yet, none of these can be regarded as more than anticipation with only limited influence on subsequent development. Labour law, as it is known today is essentially the child of successive industrial revolutions since 18<sup>th</sup> century. The emergence and development of labour law is the reflection of industrial development.<sup>10</sup>

When we are talking about the emergence and development of labour law, In effect we are talking about its history. Particularly the history of labour law has much to do with industrial revolution of 19<sup>th</sup> centuries.<sup>11</sup>

From the above concepts one can understand that industrial revolution has played a great role in development of labour law in general. Thus, it is very crucial to be familiar with the very concepts of industrial revolution.

***Industrial revolution:*** is a revolution that brought about development in industry in Europe during the 2<sup>nd</sup> half of 18<sup>th</sup> century and 1<sup>st</sup> half of 19<sup>th</sup> century it became necessary when customary restraints and the intimacy of employment relationships in small communities ceased to provide adequate protection against the abuses incidental to new forms of mining and manufacture on rapidly increasing scale. This had happened precisely the time when the 18<sup>th</sup> century enlightens, the French Revolution, and the political forces that set in motion that created the elements of the modern social conscience. Labour law has attained its present importance, relative maturity and worldwide acceptance only during the 20<sup>th</sup> century.<sup>12</sup>

In the early phases of development, the scope of labour law is often limited to the most developed and important industries, undertakings above a certain size, and to wage earners. As a general rule, these limitations are gradually eliminated and the scope of the law extended to include handicrafts, rural industries and agriculture, small undertakings and office workers. Thus, a body of law originally intended for the protection of manual workers in industrial enterprises is gradually transformed in a broader body of legal principles and standards. The change that was introduced by industrial revolution during this time varies in nature and type. The major changes were:

- Changes from feudal system to system of capitalism
- Change in class system in the society and
- Transformation of production system from out-working to factory.<sup>13</sup>

Prior to late 18<sup>th</sup> century the society was mainly agrarian and feudal system was the dominant one. The production system was out – working in which a person processed the production of a given goods by himself and with his own means of production. He himself also took the produced goods to the market for sale. This is called out-working system in which the person enjoyed independence. But with the emergence of capitalism due to the industrial revolution, this system of production was changed in to factory system. In factory system, there emerged relations between two persons – the one who owns the means of production and the other, who just, using his labour and the materials provided, produce certain production. As a result, two classes emerged – the bourgeoisie (the capitalist who owned the means of production) and the working classes.<sup>14</sup>

What did the emergence of modern labor law look like in various countries? The first land mark of modern labor law was the British Health and Morals of apprentices Act of 1802, sponsored by the elder Sir Robert peel. Similar legislation for the protection of young workers was adopted in Zurich in 1815 and in France in 1841. By 1848 the first legal limitation of the working hours of adults was adopted by the Landsgemeinde (citizens' assembly of the Swiss canton of Glarus. Sickness insurance and workmens' compensation were pioneered by Germany in 1883 and 1884, and compulsory arbitration in industrial disputes was introduced in New Zealand in the 1890s. The progress of labor legislation out side western Europe, Australia, and New Zealand was slow until after World War I. The more industrialized states of the United States began to enact such legislation toward the end of 19<sup>th</sup> century, but the bulk of the present labour legislation of the United States was not adopted until after the depression of the 1930s. Depression is a period of economic stress normally accompanied by poor business conditions and high un employment .<sup>15</sup>

There were virtually no labor legislation in Russia prior to the October Revolution of 1917. In India, children between the ages of seven and 12 were limited to nine hours of work. But, the first major advance in India

was the amendment to the Factory Act in 1922 to give effect to conventions adopted at the first session of the International Labor Conference at Washington, D.C. in 1919 .In Japan, rudimentary regulations on work in mines were introduced in 1819, by a proposed Factory Act was controversial for 30 years before it was adopted in 1911. The decisive step in Japan was the revision of this Act in 1923 to give effect to the Washington convention on hours of work in industry.<sup>16</sup>

Labour legislation in Latin America began in Argentina in the early years of the century and received a powerful impetus from the Mexican Revolution, which ended in 1971. But, as in North American, the trend became general only with the impact of the Great Depression. In Africa the progress of labor legislation became significant only from the 1940s onward .After the independence of most African countries; it has got a significant position.<sup>17</sup>

Different social, economical and political circumstances shaped the history of labour administration in various forms in different countries. What is common to all countries is that, there was no time in history where there were no labour relations. It is inconceivable to have a human society without labour and labour relations.

The modern notion of labour relations comes in to existence at much latter stage in the development of society. This is so because the notion began to be a subject of interest only when human labour gradually ceased to be an activity carried out in isolation, or in small groups limited to the members of a family or fellow handicraft workers and become an element in a more or less complex organized system of production under the spur of industrialization. The working people were drawn together as great population centers and standards regulating the new terms of work progressively established.<sup>18</sup>

As workers awareness grew and understanding that the changing condition in industrialized society and ideas of political and economic

democracy got ground, labour relations established and gradually became a recognized area of conflict and bargaining topic of general interest and fit subject of study and regulation.<sup>19</sup>

In history the first recognizable labour legislation, the ordinance of laborers, was passed in 1349 and was concerned with maintaining wages at rates to be fixed from the time by justice of the peace in England later on statute of Artificers 1562 was promulgated to prohibit conspiracies to raise wages, and prosecutions were for criminal conspiracy at common law also become more frequent as the first workers associations were formed.

These normally grew out of workmate meetings. Their main activity was the provision of friendly society benefits such as sick and funeral money and a trapping grant unemployed workers willing to move.<sup>20</sup>

Following this Combination Act 1799 and 1800 were enacted to ban strike, calling or attending a meeting for the purpose of improving conditions of employment and any attempt to persuade another person not to work or to refuse to work with another worker.<sup>21</sup>

To enforce this status, jurisdiction was given to justice of peace who could order up to three months imprisonment. The Masters and Servants Act 1823 was another powerful weapon in the hands of the employer. Since, there by an employee who was absent from service before his contract expired was punishable by up to three months hard work. There were some 10,000 persecutions per year between 1858 and 1857. Under this provision. However, these Acts were revised from time to time as the numbers of workers and workers unions increased and strengthened .For example, Workers Act of 1859 was rendered lawful to attempt with the aim of securing changes in wages of hours, peaceably and in reasonable manner, and with out threat or immoderation to persuade others to cease or abstain from work .<sup>22</sup>

The rise of the labour movement and workers struggle, increasing levels of industrial disputes and the growing recognition of the need to protect

workers started a change in the thinking of legislators who at the dawn of the Twentieth Century began to modify the substantive provisions of regulation in this area.

So, today most countries have enacted legislation on the justification of dismissal, notice before dismissal, and the payment of severance allowances. Also minimum working conditions such as shorter working hours, leave, holiday leaves and pay, etc are recognized by most countries.<sup>23</sup>

## **CHAPTER TWO**

### **Labor law in Ethiopia**

#### **2.1. Sources of labour law in Ethiopia**

Even though there is no universally accepted meaning or definition of sources of law, Labour law has its own sources that are the reflection of its rules and principles. There are two basic sources of labour law. These are:

- Primary sources or formal sources which are known as power conferring sources and
- Secondary sources or material sources.

Now let us have a bird's eye review relating to the nature of each source of labour law one by one.

**Formal source:** is a source from which a legal rule derives its force and validity. A legal rule derives its force and validity from the will or desire of the state. It is the state which enacts laws and enforces them. If legal rules were not enforced by the state; they couldn't have acquired any binding force.

The state, therefore, is the formal source of law. Indeed the will of the state is the source of every law. No rule can have authority as law unless it has received the expressed or tacit acceptance of the state.<sup>1</sup>

On the other hand, material source is the source which supplies the matter or content of the law. The material sources of law could be divided into national sources of law and international sources of law.<sup>2</sup>

#### **The National Sources of Law**

The national sources are municipal or domestic laws such as the constitution, proclamations, regulations, directives, decrees and the like. It is essential to say a few things about the constitution since it is the supreme law of the land with which other laws are supposed to comply.

**Supremacy of the constitution:** The constitution together with the international treaties, to which Ethiopia is a party, is the supreme law of the land.

*The constitution is the supreme law of the land any law customary practice or a decision of an organ of the state or a public official which contravenes constitution this shall be of no effect. There fore, all legislations, decrees, orders, judgments, decisions should be in harmony with the constitution other wise; they will be null and void. <sup>3</sup>*

Though it is clear that the constitution is made in general way however, it has provisions which are relevant to labour relations. And the Ethiopian constitution is unique in that it addresses labour issues.

The following provisions are some of the provisions that have special significance relating to labor matters. <sup>4</sup>

The FDRE constitution under Economic, social and cultural rights offer the following:

1. *Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice and any where with in the national territory.*
2. *Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.*
3. *Every Ethiopian national has the right to equal access to publicly funded social services*
4. *The state has the obligation to allocate ever increasing resources o provide to the public health, education and other social services.*
5. *The state shall pursue polices which aim o expand job opportunities for the unemployed and the poor and shall accordingly undertake programmers and public work projects.*
6. *the state shall undertake all measures necessary to increase opportunities for citizens to find gainful employment.<sup>5</sup>*

Further under right to labour

*1(a) Factory and service workers farmers, farm labourers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility ,have the right to form associations to improve their conditions of employment and economic well – being .This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests.*

*(b) Categories of persons referred to in paragraph (a) of this sub –Article have the right to express grievances ,including the right to strike .*

*(c) Government employees who enjoy the rights provided under paragraphs (a) and (b) of this sub-article shall be determined by law.*

*(d) Women workers have the right to equal pay for equal work.*

*2 workers have the right to reasonable limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays, as well as healthy and safe work environment.*

*3. with out prejudice to the rights recognized under sub-Article 1 of this Article, Laws enacted for the implementation of such rights shall establish procedures for the formation of trade unions and for the regulation of the collective bargaining process.<sup>6</sup>*

Thus we can conclude that the constitution can be taken as a source of labour law on some matters.

### **International laws or international public acts**

There are certain international conventions related to labour relations. These are mainly those conventions adopted and ratified by member states of international labour organization (ILO).Ethiopia is ILO's member state and has ratified most of ILO'S conventions .<sup>7</sup>

The main standards that the ILO issues every year could either be conventions or recommendations.

Conventions are international rules or treaties which have the force of law once they have been ratified by each member country, they will be binding as any other law of the land.

The Federal constitution of Ethiopia provides:

*All international agreements ratified by Ethiopia are an integral part of the law of the land.*<sup>8</sup> Accordingly a convention adopted by ILO, if ratified by Ethiopia will be considered as an integral part of the law of Ethiopia.<sup>8</sup>

Conventions adopted by the ILO conference are not binding up on the member states until they are fully ratified. Member states have the obligation to take all the necessary steps to make the convention effective in its internal legal system.<sup>9</sup>

The other international labour standards that are issued by the ILO are recommendations.

**Recommendations:** are international rules which are not binding but merely give advice on policies. Many recommendations are usually supplementary to conventions on same matters. They are worded in less legal language and are more elaborate.

Recommendations are adopted by International Labour Conference. The conference is a kind of international parliament on labour questions. Each year in Geneva (Switzerland) labour ministers (from the governments), trade unions (from the workers) and employer's organizations convene to discuss labour matters<sup>10</sup>.

Proposal for the elaboration of the international labour standards derive from the ILO's governing Body. This is the policy making institution of the ILO. It is composed by the Tripartite constitutes. All the directives by the conference and Governing Body is executed by the international labour office.<sup>11</sup>.

So far we have been trying to see legislations which are of public nature but it is also crucial to be familiar with legislations that are of private nature which can also be classified as a source of labour law.

### **Contract of Employment**

Contract of employment is a contract in which a person (a worker) agrees to give service to another person (an employer) under the latter's direction in consideration of certain remuneration. It is in a contract that a worker and his employer conclude to establish their employment relationships.

Once the parties agreed upon the terms without violating the limitations provided by law, it plays a great role in regulating their relationships on daily basis. Therefore, contract of employment is one of the major sources of labour law. Contract of employment initiates the employment relationships between a worker and an employer and considered the first and foremost source of a labour law.<sup>12</sup>

### **Collective Agreement**

Collective agreement is an agreement between workers collectively through their trade union and their employers. It is the end result of collective bargaining process. Collective bargaining is a process of negotiation between trade union and employer on matters related to the employment relationships. When this process ends with agreement, it is called collective agreement. Once the collective agreement is concluded, it is binding up on both parties, and hence become the major sources of labour law.<sup>13</sup>

### **The Minimum Labour Standards Set by Laws**

The minimum labour standards are related to issues such as working hours, leaves, wages, safety and health, etc These standards could be provided by various laws and regulations, and are mainly the limitation to the freedom of the parties to determine the terms of their agreements. The minimum labour standards are normally provided in proclamations, regulations, directives and or even in constitutional law of the country.<sup>14</sup>

## **International Labour Standards**

International labour standards are legal instruments drawn up by the ILO's constituents (government, employers and workers) setting out basic principles and rights at work. They are either **conventions**, which are legally binding international treaties that may be ratified by member states, or **recommendations**, which are serving as non binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any convention.<sup>15</sup>

Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member states are required under the ILO constitution to **submit** them to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration of **ratification**. If it is ratified, a convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the convention in national law and practice and to reporting on its application at regular intervals. Technical assistance is provided by the ILO if necessary. In addition, representation and compliant procedures can be initiated against countries for violations of a convention they have ratified.<sup>16</sup>

## **2.2. Development of Labour Law in Ethiopia**

The gradual inseminations of capitalist relations of production into the Ethiopian society can be properly dated back to the turn of the century with Menlik's reign. The word capitalist has gone a long way by the time it started to imprint its marks on Ethiopia. Generally speaking, the turn of the century found the pre dominance of feudal relations of production in Ethiopia.<sup>17</sup>

Emperor Menilik understood that the first enemy of workers in Ethiopia was the society itself with its cultural, religious and economic prejudices.

Emperor Menilik, in his first historic legislations on labour matters said;

*“Let those who insult the worker on account of his labour cease to do so. You, by your insults and insinuations, are about to leave my country without artisans who can even make the plough. Here after, any one of you who insult these people is insulting me personally.” (Emperor Menilik’s proclamation of 1908).<sup>18</sup>*

Regarding early period of Ethiopian history Dr Punkhurst had wrote the following.

*In spite of the coins which were designed and used by Axumite civilization and in spite of the Lalibela rock-hewn churches which are clear of the existence of skilled manpower, we find no labour or any institution that could be compared to present labour organizations.<sup>19</sup>*

The Christian highland society which dominated the economic, political and cultural life of the empire for long period of time showed certain biases against some category of workers. The tanners, blacksmiths and pottery makers who constituted the core of workers organization movement in other countries were associated with evil magical power and despised. In fact, at one time it is reported that Emperor Zara Yacob killed all Goldsmiths and blacksmiths believing they constituted evil and danger to society.<sup>20</sup>

On the other hand, high land Ethiopia was historically characterized by an agrarian economy, in which many tenants used to work for few land lords i.e. Individuals, the church and the crown. Since the income of the tenants was fixed and non negotiable there was no way for the creation of employer and employees disputes. Still another category of workforce in Ethiopia was slaves .The slaves were officially accepted as the property of their masters. The owners or the masters of the slaves can dispose them as they wish.<sup>21</sup>

Therefore there were no labour disputes between the slave owners and the slaves in those days in Ethiopia. However this does not mean of course

there were no conflict between the exploited and the exploiters, which in turn would have led to industrial relations system. In the history of Ethiopia, it was during the reign of Emperor Menilik the II that positive attitude towards the dignity of laborers started to develop.<sup>22</sup>

Thus one can understand that the decree of the Emperor i.e. Menilik the I is the land mark for the recognition of human labour and the paved way to the modern industrial relations.

In Ethiopia, prior to 1944 there was no significant development in industry. Hence, one can hardly talk about labour law during this period. But it seems the government was aware of some issues related to employment. For instance, when ministries were crystallized by law in 1943, one of the powers given to the ministry of Interior was the development of schemes for reduction of unemployment and maintenance of the poor. This can not be regarded as more than anticipation, with only limited influence on subsequent development of labour law in the country.<sup>23</sup>

However, the first striking legislation on labour relations known as the Factories proclamation was issued in 1944. This proclamation gave to the Ministry of commerce and Industry the power to make rules governing the health, safety, and conditions of work in the country. These are the early issues of government concern to the labour relations in Ethiopia. Therefore, during this period, there was no significant development of labour law.<sup>24</sup>

A tremendous development of labour law in Ethiopia came only after the 1955 revised constitution. This constitution had recognized and guaranteed various rights and freedoms of citizens. For the first time in Ethiopia, the constitution guaranteed freedom of association and hence recognized the right to form association. <sup>25</sup>

*The law says that Every Ethiopian subject has the right to engage in any occupation and to that end form an association.*<sup>26</sup>

This provision of the constitution gave an opportunity for workers in the country to form their trade unions. But there was no any enabling law or procedure as to how to form, legalize and register if workers wanted to form their association.<sup>27</sup>

When the government issued the 1960 Civil Code, it partially answered these questions, which could be as a blessing to the labour law in Ethiopia. The 1960's Ethiopian Civil Code provides for:

- The formation, legalization, and registration of associations.<sup>28</sup> The minimum working conditions and standards of Employment.<sup>29</sup> However, the code has left unanswered some uncertainties in the employment relationships; For instance, the code does not say any thing as to how employees collectively bargain with their employer. In other words, the code does not provide the procedure of collective bargaining process. The Civil code though provides the minimum working conditions, kept silent on matters related to collective (industrial) employment relations. In other words, the issues of collective bargaining, collective disputes and industrial actions are not addressed by the civil code. <sup>30</sup>

Because of the uncertainties that are left by the civil code, in the 1960's there were strikes in industries throughout the country. Under this emergency situation, the Emperor issued in 1962 a Decree on labour relations, which later become a proclamation provided the following.

- The legalization and registration of trade union and employers association,
- The definition of the rights and obligations of workers and employers,
- The setting up of conflict resolution mechanism, and
- The power of Ministry of National Community development to be established by regulation.
- The minimum standards of labour conditions.

The Ministry came up with a regulation in 1964 that dealt with the minimum standards and as a result modified the provisions under the Civil Code. The 1963 Labour Proclamation favors more to the employers. With the change in ideology in 1974, the 1963 Labour proclamation was repealed and replaced by a new proclamation issued in 1975. This labour proclamation granted many rights to the workers.

Again with the change in regime in 1991, The 1975 Labour Proclamation was repealed and replaced by the 1993 Labour Proclamation. This proclamation was repealed and replaced by Proclamation No 377/2003. Both the 1993 and the present one, have tried to strike the balance between both i.e. the interests of the workers and that of the employers. Since then, it has been regulating the employment relations in economic activities.

Generally the major laws currently regulating employment relations in Ethiopia are”

- The 2002 Federal Civil servants Proclamation
- The 2003 Labour proclamation, and
- The 2003 public servants’ pension proclamation. <sup>31</sup>in addition to these, though they are not active like those mentioned above, The FDRE constitution and the 1960 Ethiopian civil code are in force relating to employment relations.

Other reasons for the development of some elements of industrial relations in Ethiopia were the advent of colonialism into Eritrea. During the Italian Administration in Eritrea, the Code Lavoro published in Milan in 1935 was applied by the colonial Labour office. The British subsequently introduced special Labour laws for Eritrea, the most important of which was Proclamation 126 of 1952. This proclamation had introduced 48 hours work per week, overtime rates and other provisions governing working conditions<sup>32</sup>

The gradual industrial growth in the country and Ethiopian claim back Eritrea forced Emperor Haile Selassie I to issue some form of labour

standards ,which are similar to that of Eritrea in order to avoid double standards and to appear modern rule.

On the other hand, Ethiopia's membership in the International Labour organization (ILO) the United Nations Agency committed to a tripartite (government, Employers and workers) approach to industrial relations as early as 1923 obliged the country to have labour law.

Late, after the Italian aggression, measures like reorganization of the imperial government executive organ, creation of harmonious diplomatic relations and entering into signatory commitment awards obligatory international agreements etc have brought for going capital and investment notably in the manufacturing, aviation, transport and communication, health, education, finance and economic sectors. <sup>33</sup>

Thus, the country's transformation from a traditionally feudal or agrarian type economy to capitalist-mode of economy have witnessed not only the need to design a law governing employer –workers relationship, but also showed the need to establish an organ in charge of administering labour relations, working conditions, employment and labour inspection services.<sup>34</sup>

In response to these factors, the government introduced the Factory Proclamation of 1944. The proclamation empowered the Ministry of Commerce and Industry to regulate minimum working conditions such as care for health and safety for employees at work places and regulate hours of work. By virtue of the power entrusted to him by the proclamation, the Minister of Commerce & Industry used to intervene to settle disputes between workers and employers.

Consequently, during the early 1960's, a number of legislative provisions have been proclaimed by the Imperial regime among which, Labour Relation Decree No. 26/1962, the Labour Relation Proclamation No. 210/1963,the Minimum Labour Conditions reg. No. 302/1964, the Labour

Inspection Service Order No. 37/1964 and the Labour standards Proclamation No.232/1966 can be cited.

Despite the issuance of the aforementioned laws, protection of worker's rights and securing employment benefits have been hardly possible or even denied. Thus, the general industrial relations profiles have failed to maintain industrial peace, harmony and economic progress which are common yardstick for measuring effective labour administration machinery.<sup>35</sup>

Hence, the most representative workers organization of the time, Confederation of the Ethiopian Trade Union (CETU) filed its dissatisfaction to the Imperial regime in 1962 and seriously demanded better employment and working conditions for all unionized workers. Linked with this economic demand and the corresponding call for strike, a number of CELU members and activators were detained, imprisoned or exiled. More inline with these crises, the Imperial government officially suspended CELU activities to freeze and combat legitimate strikes particularly organized by Akaki Textile, Ethio -Djibouti Railway, Diredawa Textile and Anbassa Public Transport Enterprise unions.<sup>36</sup>

Following the fall of Imperial regime in 1974 the emerging "socialist" personality of the provisional Military Administrative Council (PMAC) paved the way to nationalize private companies, foreign investment ventures, rural land and other real estate properties which were supposed to be engines for viable development of private sector.<sup>37</sup>

### **2.3. The Impact of ILO Conventions Over Labour Legislations In Ethiopia**

Before we directly go to talk about impacts of the ILO conventions It has been found to be crucial to give a clear picture about the International Labour Organization i.e. ILO

The international Labour organization/ILO/ was founded in 1919 and became a specialized agency of the United Nations in 1946. It currently has 178 member states. The ILO has a unique ‘tripartite’ structure which brings together representatives of governments, employers, and workers on an equal footing to address issues related to labour and social policy. The ILO’s broad policies are set by the **international labour conference**, which meets once a year and brings together its constituents. The conference also adopts new international labour standards and the ILO’s work plan and budget.<sup>38</sup>

Between the sessions of the conference, the ILO is guided by the **governing body**, which is composed of 28 government members as well as 14 employers members and 14 worker members. **The ILO’s secretariat, the international labour office** has its head quarters in Geneva, Switzerland, and maintains field offices in more than 40 countries. On its 50<sup>th</sup> anniversary in 1969, the ILO was awarded the noble peace prize.<sup>39</sup>

### **Significance of the International Labour Legislations**

The international Labour law organization’s conventions and recommendations establish the international legal frame work for insuring social justice in today’s global economy. Adopted by representatives of governments, employers and workers international labour standards cover a wide range of subjects including freedom of association and collective bargaining, forced labour, child labour, equality of opportunity and treatment, tripartite consultation, labour administration and inspection, employment policy and promotion vocational guidance and training, employment security, social policy, wages, working time, occupational safety and health, social security, maternity protection, migrant workers, seafarers, fishers, dock workers, indigenous and tribal peoples and other specific categories of workers. The ILO disposes of a number of unique supervisory and compliant mechanisms which ensure that international labour standards are applied.<sup>40</sup>

Therefore, all signatory states of ILO conventions or parties to ILO conventions are duty bound to strictly comply with the ILO standards so that it would help them create industrial peace and social justice in their own country. Thus, one can say that the ILO conventions and recommendations have strongly influenced the development of Ethiopia's Labour legislation to incorporate those international standards that are aimed to bring about harmonious relationships among Employers, workers and governments as well.

## **CHAPTER THREE**

### **The Problems Pertaining to the Implementation of Some Labour Law Provisions Under Proclamation No 377/2003**

#### **3.1. Problems Pertaining to Article 9 and 10**

The law puts two kinds of contract of employment that are contract of employment for an indefinite period and contract of employment for definite period or piece of work.<sup>1</sup> So let us try to see them one by one and try to identify problems that follow when they are interpreted and actually applied.

When we see contract of employment for a piece of work, under such kind of contract of employment the contract ceases to exist when the work stops. Thus, the relationship between the employer and the employee remains active until the work stops. For instance, if a certain teacher is hired in a certain college to teach for one semester the contract of employment ceases the moment the work stops. Whereas, if the teacher is hired only as a teacher without limiting the time or the type of specific work, the teacher can argue that he is employed for indefinite period of time so long as the college continues to conduct teaching.

The other kind of contract of employment is “contract of employment for definite period.” Under such contract of employment the parties i.e. the employer and employee may conclude their contract for a period of 6 months, 1 year or 2 years and such terms might be expressed in the contract so when we interpret the agreement literally, we understand that the contract will be terminated when the time specified in the contract lapses.

This issue is one of the controversial issues that exist in the labour proclamation. Because the law, on the one hand, says contract of employment can be made for definite period of time and shall be terminated when the period lapses and on the other hand conditions that

contract of employment for a definite period of time are enumerated and those which are not enumerated are considered to be contract of employment for indefinite period of time. Therefore, if the contract of employment of a worker is not included under specified conditions, the worker can argue that his contract of employment is for indefinite period of time though he concluded contract of employment for a definite period of time.

The other problem is that rules stated under Article 10 (1) benefit workers who work in state owned enterprises, offices and factory workers where as construction workers are not considered under this Article, As a result of this, workers whose work is directly related to the construction works i.e. carpenters ,builders and daily laborers can claim their right by invoking this Article and ask compensation for unlawful termination and as a result of this, the contractor even though his work by its very nature slows down or reduces its volume due to different factors such as scarcity of raw materials and other similar reasons is obliged to pay compensation. Thus, such vagueness and the non consideration of the nature of construction works under Article 9 and 10 of the same proclamation would adversely affects the interest of both Ethiopian and foreign contractors who invest in the construction sector.

Thus, in the writer's opinion the employer i.e. the contractor can terminate the contract of employment with out giving notice to the worker and the worker whose contract is terminated in such a way is not entitled to claim any benefit such as compensation or payment for the failure of notice. Unless the legislative body includes such statement in the aforementioned Articles it would be challenging for the contractors to promote their business and be competitive in the sector. And this significantly weakens the country's economy which is obtained from the construction sector.

### **3.2. Problems Pertaining to Article 3/3 (b)**

The law states that the council of ministers may, by regulations, determine the inapplicability of this proclamation on employment relations established by religious or charitable organizations.<sup>2</sup>

Even though the law gives authority to the council of ministers to issue regulation relating to the exclusion of employment relations established by religious or charitable organization not to be governed by labour proclamation that is currently enforce. So far, there is no regulation issued by the council of ministers which excludes those institutions mentioned above. As a result of this, unless such regulation is issued, the law is not clear as to whether cases arising from these religious institutions are to be governed by the same proclamation or not. Thus, still it is not clear whether this proclamation is applicable up on a church and its priests.<sup>3</sup>

It has been very controversial whether to apply the current labour law provisions by different courts that entertain cases arising from labour disputes. However, very recently the Federal Supreme Court cassation bench under the file No 18419 has given decision pertaining to the matter. And this decision is binding upon other lower courts so that they should follow the decision for future cases which are similar to the decision.<sup>4</sup>

The decision divided church workers in to two. On the one hand, workers who render secular services such as secretaries, cashers, drivers guards and the like. On the other hand, peoples who give spiritual services i.e. priests, pastors', deacons and the like.

Those who render secular services are considered to be governed under the labour law proclamation so long as the council of ministers does not issue regulation as to exclusion. Where as, those who render spiritual services are excluded. By so doing, the decision of the Federal Supreme Court cassation bench left the discretion for the churches themselves. It is to mean that the decision gave permission to solve their disputes either by contractual agreements or by their own rules and regulations.<sup>5</sup>

The intention behind this decision is to protect the government bodies even the court itself not to interfere over the matters of the church. In accordance of the law.<sup>6</sup>

However, in the writer's opinion the problem still exists because no one can make sure as to how far efficient they are to prepare rules and regulations that regulate relationship among them since preparing such kind of rules and regulations pre supposes legal expertise. In addition to this, the law does not put any expressed alternative mechanisms as to how they settle problems. They are also denied the right of justice or the right to take their case to a court of law under such circumstance where there is no agreement between the disputants. Thus, even if the constitution protects the government not to involve over such matters, in the writer's opinion, entertaining cases in order to bring justice should never be considered as interference. Therefore the law maker should setup a better mechanism in order to alleviate such confusions from their grass root level.

### **3.3. Problems Pertaining to Art 24/1**

According to Article 24/1 "contract of employment shall terminate on the expiry of the period or on the completion of the work where the contract of employment is for a definite period or piece of work.

This Article states about lawful termination of contract of employment. It states that contract of employment terminates when the time for a given work lapses or where the work is completed.

Despite the fact that this Article seems free of problem relating to works that specify definite period for the termination of a given work, when we see it in light of construction works the phrase "when the time for the specific work lapses." is problematic. It is because the work of construction by its very nature slows down gradually due to the scarcity of supply of raw materials and other reasons. Thus unlike other kinds of works, it doesn't cease its operation at once. In addition to this, usually

the construction cites for a given contractor are many and thus one can not say that the work is completed unless other wise delivery of the work of construction is completely made.

Therefore, the Article doesn't consider such complex nature of the work of construction and it doesn't allow or leave any room for the contractor to terminate contracts when the work slows down and thus, the contractor is obliged to pay compensation to the worker who alleges the existence of unlawful termination of contract of employment on the ground stated above i.e. unlawful termination of contract of employment. Thus Procl 377/2003 Art24/1 ought to be amended in such a way that it considers the work of construction. And protects the interest of contractors.

#### **3.4. Problems Pertaining to Art 30/1**

Even though this Article shows what the nature of the work of construction is, Pursuant to Article 29 the employer can reduce workers when the work slows down with out the need to follow provisions stated under it. The way that such statements are put affects the interest of the independent contractor In addition to this, the replacement of the term 'termination by "reduction" merely shows that the employer doesn't have to follow the rules that are stated under Article 29. However, the rules stated under Article 39 i.e. severance pay and payment for the non observance of notice still remain in force. Thus, the term reduction under the same Article should be amended in such a way that the employer can terminate the contract due to the reduction or slow down of the construction work. Because the state of termination by the employer can be considered as a lawful termination that is to be included in Article 10 and Article 24/1 of this proclamation.

#### **3.5. Problems Pertaining to Art, 39**

To begin with, the purpose of severance payment is to alleviate the consequent need for economic readjustment and to recompense the employee for certain losses attributable to the dismissal.

It is also very important to analyze the issue whether severance pay is paid in all cases of termination of the contract of employment or not. Article 39/1 of 2003 states that.

**A worker who has completed his probation**

- Where his contract of employment is terminated because the undertaking ceases operation permanently due to bankruptcy or for any other reason.
- Where his contract of employment is terminated by the initiation of the employer against the provision of law.
- Where he is reduced as per the condition described under this proclamation.
- Where he terminate his contract because his employer did things which hurts the workers human honor and moral or the thing done by the employer is deemed as an offence under the penal code.
- Where he terminate his contract because the employer being informed of the danger that threatens the security and health of the worker did not take measures. or
- Where his contract of employment is terminated because of reason of partial or total disability and is certified by medical board shall have severance pay from the employer.<sup>7</sup>

This enumeration is an exhaustive list of grounds on which the severance payment is paid to worker in case of termination of contract of employment. According to this Article, a worker can not claim for severance payments when he or she terminates the contract on his or her own fault or on his or her own will or up on his /her retirement and other cases. In addition to this, the following amended new provisions i.e. (g), (h) and (I) of proclamation No 494/2006 are added to sub Article 1 of Article 39.

g.) where he has no entitlement to a provident fund or pension right and his contract of employment terminated up on attainment of retirement age stipulated in the pension law;

h). where he has given service to the employer for a minimum of five years and his contract of employment is terminated because of his sickness or death or his contract of employment is terminated on his own initiative provided that he has no contractual obligation, relating to training, to serve more with the employer.

i). where is contract of employment is terminated on his own initiative because of HIV/AIDS

Out of this, the writer's focus will be on the part that says where he has given service to the employer for a minimum of five years and his contract of employment is terminated because of his sickness or death or his contract of employment is terminated on his own initiative provided that he has no contractual obligation, relating to training, to serve more with the employer.<sup>8</sup>

The Ethiopian workers confederation strongly opposed this provision during the draft step and after its promulgation.<sup>9</sup> For example, an authority states that the right of severance payment for a worker who terminates the contract on his own will <sup>10</sup> but the current labour proclamation prohibits this. Such provision violates the right of workers.<sup>11</sup> They are opposed to such provisions before the enactment but the legislator enacts it on his own way. With out considering the interest of workers. Thus, in the writer's opinion the ground for severance payment in accordance with Article 39(1) of 2003 Labour Proclamation is not fair. Out of which only the three amended sub Articles i.e. (g), (h) and (I) especially h and I are fair and correct because they tend to consider the worker's interest to obtain severance payment. However, the remaining Articles that are enumerated under Article 39(1) did not put employers and workers in equal footing thus the appropriate organ should take proper consideration so as to amend such provisions in such a way that they also protect the interest of workers equally with the interest of the employers.

### **3.6. Problems Pertaining to Article 40**

Even though conditions of severance payment are enumerated under Article 39 of proclamation no 377/2003, this Article doesn't say any thing about the way or mechanism of payment and as a result of this Article 40 is put to show how payment should be paid when severance payment is effected.

In the case of a worker who has served for more than one year, payment shall be increased by one-third of the said sum referred to in sub –Article one of this Article for every additional year of service, provided that the total amount shall not exceed twelve month's wage of the worker.<sup>12</sup>

Under the above Article though the law doesn't seem to be smooth, there is a problem when it is interpreted or when the payment is effected. For instance, some say that if a worker's salary is 900 birr and if he works in an organization for a period of three years. For the first year he will be paid 900 birr and for the second year birr 900 plus 300 and for the third year birr 900+300 and the total sum will be  $900+1200 +1200= 3300$  birr and it is when calculation of payment is effected according to sub 2 of Article 40.

Where as others interpret it in such a way that for the first year the worker will be paid 900 birr and 300 birr is added for the remaining two years each and the sum will be  $900+300+300=1500$  birr Thus. When we see the actual practice it is very problematic since there is no uniform and similar interpretation as to the calculation of payment. The law making body would have put it in figures or in a way that any person can understand and interpret it in a similar way.

### **3.7. Problems Pertaining to Art 43**

In spite of the fact that the construction work has its own uniqueness relating to other works, this nature of uniqueness is not considered and supported under Art 10 as a result of this there is no explicit provision as to the time and the phrase **when the work completes**. Doesn't show and address the gradual reduction of the work.

Even though the law shows the nature of slowdown of this specific work it still doesn't clearly indicate about the termination of the worker and the term reduction is not made in such a way that it replaces termination. Such things force labour courts to give different decisions when they adjudicate cases relating to the aforementioned issue. And this makes the court's decision unpredictable. Thus, the worker is entitled to obtain benefit which is a sum equal to his wages which the worker would have obtained if the contract of employment has lasted up to its date of expiry or completion provided. However, that such compensation shall not exceed one hundred eighty times the average daily wage in the case of unlawful termination. What we can understand from this statement is that though the worker works for a period not exceeding 2 or 3 months he is entitled to obtain a benefit that is mentioned above. This significantly affects the financial capacity of the contractor and weakened its financial strength.

Thus, If the worker is entitled to get compensation he must work for a period of 5 years and his contract must be terminated un lawfully under such and only such conditions the person can get compensation.<sup>13</sup> If this Article contains such kind of statement both Ethiopian and other Foreign Investors who are engaged in the construction sector will be encouraged and there will also be industrial peace and harmonious Employer-worker relationship. Especially, in the area of construction. Which is currently blooming in Ethiopia at an increasing rate.

### **3.8. Problems Pertaining to Art 138 and 139**

The law clearly puts that the labour division of the regional first instance court shall have jurisdiction to settle and determine individual and other similar labour disputes.<sup>14</sup>and similarly Art 139 of the same proclamation the labour division of the regional court which hears appeals from the regional first instance court have the jurisdiction to hear and decide among other matters on appeal submitted from the labour division of the regional first instance courts. In accordance with Article 138 of the

proclamation and the decision of the court on appeal submitted as per sub Article 1 of Article 139 shall be binding and final.

In addition to this, the law states that the labour division for the Federal high court shall have jurisdiction to hear and decide on appeals against the decision of the board on question of law in accordance with art 154 of this proclamation and the decision of the court under sub Article 1 of this Article shall be final.<sup>15</sup>

Although Ethiopian labour law provides for the establishment of a separate labour court the actual establishment of such courts is limited to Addis Ababa and Amhara region.<sup>16</sup>

Individual labour disputes which are large in number are under the jurisdiction of the regional first instance court. However, in Addis Ababa and Dire Dawa individual labour disputes are heard by Federal first instance courts. Federal high court is also serving as appellate court. In the labour law, no jurisdiction is given to federal first instance court and appellate jurisdiction for Federal high court except to reviewing the decision of Labour Relation Boards which is limited to the issue of question of law.

Basically the most final objects that are needed to be achieved by the establishment of labour courts were:

- To provide adequate machinery for speedy settlement of industrial disputes,
- To be inexpensive,
- To be free of technicalities which require long procedures that are very difficult for workers who can not afford payments for lawyers.<sup>17</sup>

When we relate this objective with the Ethiopian labour law one can raise the following questions. The first question which comes to the picture is the question of jurisdiction of Federal First Instance courts to entertain labour cases because as we have tried to review the aforementioned Articles they do not have even a single statement as to the power of

Federal First Instance courts to entertain cases arising from labour disputes. Thus, the law and the application seem to be different and the writer is of the opinion that Federal Courts which entertain labour disputes are exercising their power either by way of a mere custom or tradition or beyond their power.

The second question is that whether the machinery is adequate or not. The answer is the machinery has certain deficiencies and can not be considered adequate. This is because separate labour courts are not established in most Administration Regions.<sup>18</sup> court proceedings are devoid of technicalities.

The third question is whether the cases are concluded speedily. Here also the answer is a definite 'No'. It is common knowledge that the delay in disposal of cases is alarming. For example there are 2524 pending cases as of the end of the year 1999 Ethiopian calendar in Addis Ababa First Instance Labour Division .i.e. Menagesha, Kera, Yeka and Old Air port. <sup>19</sup>

There are cases which remain pending from two months to six years in the Federal First instance Courts of Addis Ababa. <sup>20</sup> while sixty days are the time set to give decision for labour division of Regional First Instance Courts.<sup>21</sup> The reasons for the non observance of the dead line set by labour legislation for the courts are complexity of the cases, lack of efficiency in the courts, shortage of labour division courts and absence of labour division courts in most regional administration. Absence of formal conciliation and mediation or arbitration bodies have also contributed to increase case load of the courts which in turn resulted with inability to render decisions within the time set by law.<sup>22</sup> From these problems, one can safely conclude that there are many tasks expected from the appropriate government bodies i.e. Ministry of Labour and Social Affairs (including Regional Bureaus), Ministry of Justice, Regional Bureau of Justice and others to make policy considerations. And above all, the law maker should take proper consideration to amend the aforementioned provisions so as to make them more clear and free of legal gaps.

## **Conclusions and Recommendations**

### **Conclusions**

These days the importance of labour legislations to bring effective settlement of industrial disputes and create harmonious relationship between the employers and workers become indispensable.

To achieve this end, it would be essential to look for proper means and mechanisms. Even though, there are various ways that help solve the prevalent problems, the major one falls up on different labour legislations that are clear ad free of confusion.

In this paper, The writer tried to identify problematic provisions such as, provisions dealing with employment contracts for definite and indefinite time, provisions with regard to religious organizations, provisions that deal with construction works, severance payment provisions and provisions relating to the Jurisdiction of Labour Courts and other problematic provisions are discussed and their consequence up on the parties i.e. the employer and the employee are also shown.

Thus, all workers and employers, and their representatives that fall under the jurisdiction of labour law need to be aware of its content and related regulations. This extends beyond knowing what the law actually says but it includes an understanding of the fundamental purpose and intent of its main Articles. In addition to workers and employers, other parties also should know about the content of labour legislation and this includes primarily Judges, Lawyers, contractors who are engaged in the construction sector and other areas, potential investors, law students and the public at large. Information on labour legislation must also be made available to all interested parties concerning judicial decisions and Arbitral awards.

Even though, rules, principles, and minimum standards for both working conditions and the working environment are established by laws and regulations. Such regulations have to be made clear to any ordinary person and be free of confusion.

## **Recommendations**

In order to prevent or reduce labour disputes and correct some problems observed in labour law and its implementation, the writer recommends the following.

1. The law making body before promulgating laws should consult with concerned executive bodies such as Ministry of Labour and Social Affairs/MOLSA/and other organs so as to identify problematic areas and come up with proper, clear and attainable legislations.
2. The area of the labour law that regulates the power of Federal and Regional Court's jurisdiction should be revised in order to match up the law and the practice.
3. To comply with the Labour law and facilitate speedy labour dispute disposal, it is necessary to establish labour division of first instance courts at least in Woredas where Industries are relatively concentrated. And also special training should be given to Judges on the activity of labour courts and on the futures of industrial disputes before their appointment as Judges of labour court and for those who are already assigned.
4. Ministry of Labour and Social Affairs /MOLSA/in cooperation and consultation with employers, organizations and trade unions and other interested parties should play a role in encouraging improved workplace cooperation, not only by legal intervention, but also through information, advice, encouragement and the demonstration of successful cases.
5. The role of workers participation in labour dispute prevention should get due consideration of MOLSA and the legislator.
6. The Ministry of Labour and Social Affairs should discharge its responsibility of collecting and compiling National Labour

statistics through developing the information system with the cooperation of Regional Bureaus. and finally

7. Since we are living in the fast changing world the House of Peoples Representative/HPR/ has to put mechanisms with which labor laws are amended as the situation may be.

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## **DECLARATION**

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

Name \_\_\_\_\_

Signature \_\_\_\_\_

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## **CHAPTER THREE**

### **3. PERIOD OF LIMITATION VIS-À-VIS LIQUIDATION OF SUCCESSION**

#### **3.1 WHAT DOES THE LAW SAY?**

One of the major points of dispute in Civil Law of Ethiopia in general and Ethiopia law of succession in particular is the issue of period of limitation in relation to liquidation of succession. Though the law of succession includes period of limitation provisions for some questions, it fails to provide a clear period of limitation provisions for some of them.

The part of the civil code which makes the appointment of a liquidator and the liquidation of the succession of the deceased's estate mandatory, do not include any declaration concerning the time where the succession of the deceased could not be liquidated. However it includes provisions that govern the modality of liquidation of the succession.

Article 960 (2) provides that the liquidator should come up with the outcomes of his work six months after the death of the person whose property is being liquidated or in the time where the court requested him to do so.<sup>1</sup> In the very first provision of the law of succession, which is article 826, it is declared that a succession of the deceased opens at his principal residence.<sup>2</sup>

This provision conveys the message that succession opens immediately at the death of person. The provision under article 966 of the civil code which declares the will of the deceased could be pronounced in relation to the order of

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<sup>1</sup> Article 960 (2) of the Civil Code

<sup>2</sup> Article 286 (2) of the Civil Code

the deceased proves that succession could be opened even before the funeral of the deceased took place.<sup>3</sup>

According to article 972 the liquidator should inform the interested person to the succession the manner how he considers that the succession should devolve. And this information should be given, at the latest, forty days after the death of the deceased.<sup>4</sup> A detailed assessment of this and other provisions shows that duration of liquidation is limited by law.

But there is no clear provision in the law which provides the period of limitation by which a suite for the liquidation should be instituted. Because of this, petitions for the liquidation of succession are instituted in courts long periods of time after the death of the deceased. And period of limitation debates on such cases of liquidation of succession are raised when the petitions for such effect are raised, let us say 15 or 20 years after the death of the deceased. So does it mean a petition for liquidation of succession could be raised any time? Does it mean there is no period of limitation prohibiting the applicant not to raise the question? Does it mean the right of heirs of the deceased to liquidation of succession will not expire through the passage of time?

The provision of the civil code that is repeatedly being inferred by judges of all levels of court and legal practitioners is article 1000. Can article 1000 answer these above questions? A discussion relating to this provision follows.

Article 1000 of the civil code is a continuation of article 999 which provides that where a person without a valid title has taken possession of the succession the true heirs may institute an action of “*petition heredities*” against such person to have his status of heir acknowledged and obtain a restitution of the property of inheritance.

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<sup>3</sup> Article 960 of the Civil Code

<sup>4</sup> Article 972 (2) of the Civil Code

Article 1000 is a provision which is dedicated to provide a period of limitation for instituting an action of “*petitio hereditias*.” Under sub article 1 it says that an action of “*petitio hereditias*” shall be barred after three years counted from the time where the plaintiff became aware of his rights and taking possession of inheritance by the defendant.<sup>5</sup>

This means once some one who claims to be a true heir becomes aware of the fact that he has right and once he becomes aware of the fact that the property is in possession of some one who is not a heir, then he must institute a case before the court in and only in three years period. In other words, the right of the person who claims to be a true heir expires three year after he became aware of his rights and of the fact that the property is in possession of a person without a valid title.

The second sub article of the same article declares that the right of “*petitio hereditias*” shall be absolutely barred after fifteen years from the date of the deceased or the day when the right of the plaintiff could be enforced.

The message communicated by this sub-article of article 1000 is that once fifteen years lapsed after the death of the deceased, the right of the persons who claim to be heirs to institute “*petitio hereditias*” is absolutely barred.<sup>6</sup>

This means whether the persons who claimed to be true heirs became aware of their rights or not; and whether the persons discovered the fact that other person without a valid title is in possession of the estate of the succession or not does not matter. Once 15 years passed after death of the deceased then the right of “*petitio hereditias*” expires.

As we can understand from the above discussion article 1000 of the civil code deals with the issue of “*petitio hereditias*”, which is an action which can be

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<sup>5</sup> Article 1000(1) of the Civil Code

<sup>6</sup> Article 1000(2) of the Civil Code

brought to the attention of the court only when the property is in possession of “*a person without a valid-title*” And in “*petitio hereditias*” the plaintiff who is someone who claims to be a true heir of the deceased applies to the court for the restitution of the property. And the issue under this article is whether the one who is “without a valid title” should return the property to the one who claims to be “the true heir”

Therefore it is the view of the writer that article 1000 does not deal with whether the estate of the succession of the deceased should be liquidated or not.

Then which provision of the civil code gives more sense to deal with the period of limitation issues in liquidation of succession?

The other provision that is repeatedly being cited by legal practitioners is article 974 of the civil code. Is it the right provision to deal with the issue?

Article 974 of the civil code is a continuation of article 973 which is entitled *action of nullity*. Under the article whosoever present or represented at the opening of the will declares his intention to apply for the nullity of the will or to impugn the order of partition proposed by the liquidator. Such declaration must be made in writing and should be notified to the liquidator, the court or the arbitrators within fifteen days. <sup>7</sup>

The message of this article is that a person who was present at the opening of the will can make an objection regarding what is contained in the will or regarding the order of partition proposed by the liquidator. This declaration of intention to apply for the nullity of the will or to impugn the order of partition proposed by the liquidator is valid only as long as it is communicated to the liquidator itself, the court or arbitrators and as long as it is made in fifteen days from the opening of the will.

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<sup>7</sup> Article 973 of the Civil Code

There is a sub-article which is found in the Amharic version of the civil code but not included in the English version of the civil code. This sub-article i.e., Article 973(3) provides that after the declaration of applying for the nullity of the will or to denounce the proposal of the liquidator, the one who made such declaration should file the actual application to the court or the arbitrators.<sup>8</sup>

What is provided under sub article 2 of article 973 is only the “declaration of intention to apply.” Therefore such person who declared his intention must file the actual application contesting the contents of the will or the proposal of partition made by the liquidator. This application must also be made to the court or the arbitrators.

Moreover, the one who is going to apply is not free to make the actual application whenever he wants to. The law put a limitation on this right to application. According to Article 973(3), this application can be made only within three months counted from the date where the declaration of intention to apply is made.

In other words, once a person who was present or represented at the opening of the will declared his intention to apply for the nullity of the will or for the denunciation of the proposal of partition made by the liquidator, then he should make the actual application within three months.

As article 973 talk about the declaration of application of persons who were present doing the opening of the will.

Sub article one of the article provides that with regard to persons who were not present nor represented at the opening of the will, the period provided under Article 973 shall being to run from the day when the liquidator informs them of the order of partition proposed by him.

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<sup>8</sup> Article 973(3) of the Amharic version of the Civil Code.

Therefore, if someone was not present nor represented during the opening of the will, then the fifteen days period, where he can make the declaration of intention to apply for the nullity of the contents of the will or to denounce the order of partition proposed by the liquidator, starts counting from the day where he became aware of such order of partition through the communication by the liquidator. When the liquidator informs him of the order of partition then the person can declare his intention to apply within fifteen days from this information. Once he declared his intention to apply, he should make the actual application within three months from the date of declaration, according to article 973(3) of the Amharic version of the civil code

The provision that is being invoked by legal practitioners and even judges to answer the question whether liquidation of succession can be barred by period of limitation or not is the second sub-article of article 974.

This sub article declares that the validity of a will and the order of partition proposed by the liquidator may in no case be contested after five years from the day of the opening of the will or, if there is no will, five years from the death of the deceased.

The message in this sub article, i.e. Article 974 /2/ is that once it is five years from the date of opening of the will or from the date of the death of the deceased in case of no will, it does not matter whether the person was present at the opening of the will or not, and whether the one not present was informed of the order of partition by the liquidator or not.

As it can be understood from the reading of the above discussion and the reading of the articles, one can conclude the Article 973 & 974 assume a situation where liquidation of succession is conducted and the liquidator proposed an order of partition proposed by the liquidator. If one has an objection against it and where

1. There is will and he was present or represented during the opening of the will, he must first declare his intention of apply to contest the contents of the will or the proposal of the liquidator in fifteen days from the day of opening and must file the actual application in three months from the day of the declaration.
2. There is will and he was neither present nor represented during the opening of the will, he must first declare his intention to apply to contest the order of partition proposed by the liquidator fifteen days from the date where he was informed of the order of partition by the liquidator, and he must file the actual application three months from the day where the declaration was made.
3. When there is no will, then five years from the date of the death of the deceased.

Therefore, as all the sub articles of both article 973 and 974 apply on cases where liquidation of succession is conducted, it is the view of the writer that the articles do not apply to cases where suites for liquidator of succession are filed to the court and an objection of period of limitation is raised.

The other provision involved by many legal practitioners to solve the question whether there is period of limitation for liquidation of succession or not is article 1845 of the civil code. This article which is found under the part of the civil code dealing with law of obligations states that unless the otherwise is provided by law, actions for the performance of a contract, actions based on the non-performance of contract and actions for the invalidation of the contract shall be barred if not brought within ten years.<sup>9</sup>

This provision obviously applies between parties who have had a previous contractual obligation and therefore it is the belief of the writer that it is

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<sup>9</sup> Article 1845 of the civil code

irrelevant for liquidation of succession, despite the fact that it is involved by a considerable number of legal practitioners.

### **3.2 THE PRACTICE: CASE ANALYSES**

In order to have a clear view about the practice relating to the issue of barring liquidation with period of limitation, it is important to have a look at cases decided by courts regarding the issue. As the cassation division of the federal Supreme Court is the upper most court in the hierarchy of courts in Ethiopia, the writer prefers to see cases that are decided by this court. Besides, as the decision of the cassation court has an effect of a precedent, the decisions have a force of law.

The first case that will be discussed herein under is a case between the Applicant Ato Demis Tibebelessie and the Respondent Ato Tewodros Tibebelessie and decided on Megabit 25, 2000 E.C by cassation court with file no 32013. The case started of the Federal First Instance court when the plaintiff (who is a respondent in this case), applied that their father died and he is a true heir but because the estate is in possession of the defendant (who is the respondent in this case) he requested the court to appoint a liquidator who can liquidate the succession.<sup>10</sup>

The defendant said the right of the plaintiff to request the liquidation of the succession is barred by period of limitation as it is raised eight years after the death of the deceased. The Federal First Instance court decided that the right of the plaintiff is not barred by period of limitation. The Federal High court approved the decision of the First Instance court despite appeals from the

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<sup>10</sup> Ato Demis Tibebelessie Vs Ato Tewodros Tibebelessie decided on Megabit 25, 2000 E.C by cassation court with file no. 32013

defendant. It is then that the file was brought to the attention of the cassation division of the Federal Supreme Court. <sup>11</sup>

The judges at the cassation court argued that article 1000 of the civil code which was cited by lower courts to apply for disputes between two heirs, applies for disputes between a true heir and someone who is not a true heir.<sup>12</sup>

The court argued that article 974(2) stipulates that the order of partition made by the liquidator could not be contested in any way five years after the death of the deceased.

The court argued as the respondent assumes the title of a liquidator immediately at the death of his father based on Article 947. Therefore, he identified the estate and put that into his possession. However, the claim to have a share in the estate of succession eight years after the death of the deceased to request is barred by the five years period of limitation.

In the following lines, the judgment of the court reads that the request of the respondent to have the succession liquidated is barred by limitation both under the three years period of limitation provided by Article 1000/1/ and the five years period of limitation provided by Article 974/2/.

This decision of the court fails to provide the exact provision of the civil code that applies to the issue of period of limitation *vis-a-vis* liquidation of succession. It rather cites two provisions without deciding which provision applies and making them both applicable. What would be the case if a petition for the liquidation of succession is filed four years after the death of the deceased? It is going to be barred based on article 1000/2/ of the code? Or is it going to be allowed based on article 974?

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

The other case that deserves discussion is the case between Applicant Ato Anteneh Adera and the respondents W/ro Tizita Zewdie (et al.) before the cassation division with file no 39831 and decided on Hamle 2, 2001 E.C.

The case was first filed at the Federal First Instance court by the plaintiffs (the respondents in this case) requesting the court to establish a liquidator to liquidate the succession of their deceased grandmother. The defendant (who is the applicant in this case) objected saying the claim of the plaintiffs is barred by limitation as it was brought 25 years after the death of the deceased. The Federal first Instance court entertained the case despite the objection of the defendant and appoints liquidator of succession.<sup>13</sup>

The Federal high court ruled on the case, following an appeal, and decided that so long as there is no provision of the law determining the period of limitation of cases brought for liquidation of succession, the claim is not barred by period of limitation.

The case was brought to the attention of the cassation court by objecting this decision of the high court. The applicant invoked article 1845 of the civil code and claimed that the request of appointing a liquidator is barred by limitation.

The court argued, when deciding which provision is applicable to period of limitation in liquidation of succession, that Article 1000 (1) governs a situation where the heir, after the liquidation is completed and certificate of heir is issued, found out that the estate of the succession is in possession of someone else. In such cases the heir should claim the property within 3 years from the day where he became aware of the fact. The court further argued that sub

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<sup>13</sup> Ato Anteneh Adera Vs W/ro Tigist Zewdie (et al.), Cassation Division of Federal Supreme Court. file no 39831 and decided on Hamle 2, 2001 E.C.

article 2 of Article 1000 provides the period of limitation but is applicable when a dispute arises between heirs. <sup>14</sup>

This argument of the court seems illogical when seen against the provision of Article 1000 which clearly talks about “*petitio hereditatis*” which is a claim for the return of a property from “a person without a valid title” who has taken possession of the property.

The court further argued that since the goal of liquidation is determining the share of each heir, the file for liquidation of succession should be filed within three years based on the article 1000/1/. Based on this argument the court rejected the decision of the lower courts saying the claim for the liquidation of succession should not be barred by limitation.<sup>15</sup>

This decision of the court, being the latest decision of the cassation division of the Federal Supreme Court, serves as a precedent. And therefore it is a binding rule that applications submitted to the courts after three years from the date of the death of the deceased are barred by period of limitation!

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<sup>14</sup> Ibid

<sup>15</sup> Ibid

## **CHAPTER FOUR**

### **4. CONCLUSION AND RECOMMENDATIONS**

The branch of law which governs the manner in which the rights and duties of the dead person or the one declared absent should pass is known as the law of succession.

The Ethiopian law of succession is found in Title V, Book II of the Ethiopian Civil Code. Provisions under Article 825-1000 govern the manner in which, and of course, to whom the rights and duties of a dead person or of a person who is declared absent, pass to his/her heirs.

The Subject matter of the law of succession covers two areas- testate and intestate succession. When a person dies without leaving a will or when a court invalidates the will for various reasons, the succession is said to be intestate. In such a case the distribution of the estate will be in accordance with the operation of the law rather than the preference of the deceased.

Testate succession is a branch of the law of succession which deals with the devolution and transmission of the estate of the deceased person according to his will.

Whether the succession of a deceased is testate or intestate, the law requires that the succession must be liquidated. This has been provided by the succession law of Ethiopia under Article 942 of the civil code as “So long as the succession has not been liquidated it shall constitute a distinct estate”

Liquidation is the most decisive and important for the succession process, but there is a misunderstanding among court, legal professionals and among interested persons like heirs and legatees concerning some of its activities.

There is a dispute regarding liquidation of succession of a person who died in Addis Ababa falls under the federal courts or the Addis Ababa city court. Though the Cassation Division of the Federal Supreme Court ruled on the issue, there still remains dissatisfaction among legal practitioners.

According to the judges at the cassation court suits regarding the issuance of the certificate of heir should be instituted before the Addis Ababa city court and it is not the power of the city courts to liquidate the succession or to appoint liquidators. The cassation court ruled that the federal first instance court have the jurisdiction to see cases concerning the appointment of liquidator.

There is also a dispute regarding the issue whether liquidation is a formality requirement or a mandatory process. Though the law is clear regarding the issue there is a problem of uniformity among courts.

The major source of dispute in liquidation of succession is the issue of period of limitation. Though the law of succession includes period of limitation provisions for some questions, it fails to provide a clear period of limitation provisions for some of them.

It is the opinion of the writer that the articles that are widely invoked by judges at different levels of courts and legal practitioners, Articles 1000 and 974 are not directly related to the issue and therefore they are not applicable for the case at hand.

However, because the most recent ruling of the cassation division of the federal supreme court of Ethiopia decided that claims regarding liquidation of succession are barred by period of limitation of not brought within three years and because the decision of this court has a binding effect as a precedent, then the writer is of the belief that a three years period of limitation applies to claims for liquidation of succession.

There appears to be lack of uniformity in the decision of courts regarding this particular issue. There must be a mechanism whereby this uniformity is reached, especially at the cassation level. It can be done by organizing panel discussions, seminars, and trainings for judges and assistant judges at different levels. The uniformity gives confidence for lawyers and the general public and it will render the law predictable.

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