THE LEGAL STATUS OF NON-AUTHENTICATED AND NON-REGISTERED CONTRACTS ON IMMOVABLE PROPERTY

THE LAW & PRACTICE IN ADDIS ABABA

BY

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THE LAW AND PRACTICE IN ADDIS-ABABA

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INTRODUCTION

Property rights should be protected by law to ensure its use, enjoyment and exploitation by the right holder in a manner compatible with the scope of the right granted. The system governing property rights should devise mechanisms of protection that balance the interests of society at large, the scope of the claims of different right holders and the interest of third parties.

Consequently, ensuring the protection of property rights is necessary to ascertain harmonious social relations and smooth transactions in property relations. Moreover, legally guarantying the protection of property right is a pre-condition for attracting investment and individual effort, and can serve as an incentive for development. In addition to these, developing a legal system and procedures that clearly specify the mode of acquisition, use and transfer of property can highly contribute to minimize disputes, which may arise from ambiguous claims of property rights. This may in turn have positive impacts on the judicial system by minimizing the caseload of courts, and may contribute for the efficient functioning of the judiciary.

The Ethiopian civil code has therefore, devoted a significant portion under several provisions for registration of immovable property as one part of protection rights. Accordingly, system of registration of immovable can be divided into two major categories: i.e. documents or contracts registration and title or ownership registration.

The writer of this paper concentrated himself in the documents or contracts registration to research the issue of Authentication and Registration of Contracts of immovable property, which has great significance in protection of the property right for the contracting party, third party and the public at large.
This research paper, therefore, tries to evaluate and show the origin, development and practice of Authentication and Registration with comparative overview of different legal traditions. The case is also currently the vital concern of the writer and in this research the controversial issues amongst legal scholars, professionals and judges regarding the interpretation of the relevant laws and acceptable practices are considered. To this end, this paper is designed to consist of three chapters.

The first chapter deals with the definition, origin, development and comparative overview of authentication and registration of immovable property. In this chapter, the researcher attempted to define important terms and the origin and development in the world and in our country with comparative overview of different legal traditions discussed in detail.

The authentication and registration activities are in any legal system highly related with the Notary Offices (Institutions), this role of Notary offices will discussed in chapter two.

In chapter three we discuses the main issue of the problems on non-Authenticated and non- registrated contracts of immovable property in doing so some controversial issues are raised and responded based on the laws; arguments and court decisions with authoritative interviews.

Finally, the arriving port of the writer, the conclusion and recommendation part are included with remarkable issues the writer intend to address.

Definition, Origin & Development.

**Definition**

Here, for further classification and for common understanding, there is the need to define and classify the terminologies like the word “Authentication”, “Registration”, ‘Immovable Property’, and other pertinent words.

Accordingly, “Authentication” : In its grammatical verbal form, the word Authentication can be defined as:

> Genuine; true, real, pure, reliable, trustworthy; having the character and authority of an original, duly vested with all necessary formalities and reliable as evidence \(^1\)

This statement tells us to authenticate a particular document which has probative value means that in the other way it is confirmation of correctness through affidavit, oath, disposition or any other alternative means.

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\(^1\)Black, Henry, Black’s Law Dictionary, (1990). P.132
Under similar context, the word authentication is also defined as follow:

*Authentication in the law of evidence, the act or mode of giving authority or legal authenticity to a statute, record, or other written instrument or a certified copy there or, so as to render it legally admissible in evidence or an attestation made by a propore Officer by which he certifies that a record is in due form of law, and that the person who certifies it is the Officer appointed to do.*

In this paragraph again, one can easily understand that authentication means simply an introduction of evidence that is sufficient to prove the written document that serve as evidence or the establishment of such facts by any other means provided by law.

In short, from the above alternative definitions we understand that authentication is the process of acknowledgment of the signer or affirmation that the contents which are incorporated in a particular authenticating evidences.

However, the above noted definition may not give a complete answer under Ethiopian context, though where are a most probable direct or indirect relation to Ethiopian tradition regarding to authentication.

Hence, having the noted definitions in to consideration, the recent past promulgated proclamation No 334/2003 Art.2(1) has also defined the phrase “*To Authentic a Document*” in the following manner

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3 *The Encyclopedia Americana*, (1929), Vol.20, p.73
To authenticate a document means to witness the signing of a new document by the person who has prepared such document or the person it concern and, after ascertaining that this formality is fulfilled, to sign and affect a seal on an already singed document by ascertaining its authenticity through an affidavit or specimen signature and/or seal.

This means that to authentic the document means to attest the geniuses of any deeds or writings by putting it before the public officer or other wise whose function is to administer Oaths, to attest and certify, by his hand and official seal, certain classes of document in order to give them credit it and authenticity under local or foreign jurisdiction too.

On the other hand, as the writer of this paper noted before, it is necessary to define the word “Registration” for instance, according to Black’s law dictionary “Registration” is defined as follow.

Recording, enrolling, inserting in an official register or enrollment a document certifying an act of registering before Registrar or deeds whose duty in charge of recording instruments, for instance, land title, deeds, mortgage, and other instruments affecting reality in official books provided and kept for that purpose.  

Like wise, under Ethiopian context, “To register a document” is defined in the following manner:

4. Supra at note 1, P. 1284
To register a document means to register and authenticated document by marking it with an identification number in a register prepared for the purpose and deposit a document which is required by law to be deposited with notary.\(^5\)

Here, from these alternative definitions which are noted above, one can understand that the requirement of registration of a certain documents, acts and contracts are vital and very much crucial for evidencing values and for their credibility. For instance, in the case of contracts of immovable property registration is mandatory or a must.\(^6\)

Before addressing “the origin and development of authentication and registration of contracts of immovable property”, again, it is worthy to know the extent of “Immovable Property” and its derivatives where it lies on.

In its general sense, property is much conspicuous to the average person. It is also anything that may be the subject of ownership, i.e, the rights to posses, enjoy, use and dispose of things either tangible or intangibles.

The essence of property can also be classified as “Real” and “Personal” based on their basic distinctions. Real Property generally means land and the rights associated with its ownership including houses, buildings, and/or premises etc.... where as “Personal Property” means chattels or movable properties which are not included as real property.\(^7\)


\(^6\) The civil code of Ethiopia; of 1960, proc,No,165 Neg.Gaz, 19\(^{th}\) yr No.2, Addis Ababa 5\(^{th}\) May, 1960, Art 1723 (Here after Civil..C.)

\(^7\) The Encyclopedia Americana, ( 1972), Vol.22, pp.662-663
By taking into consideration the above two broad classification of property, we can see that land, buildings, house and/or premises etc... are categorized among immovable properties under real properties as a fundamental one for all.

Similarly, BARRON’S Law Dictionary states that real property includes land and its surface, whatever is attached to it such as buildings or trees etc---, in general, the surface of the earth with everything on it, under it and over it.8

1.1.2. Origin and Development in the World.

Obviously, the origin and development of authentication and registration of contracts of immovable traced back very long time. In effect, it is imperative to address the actual place and date that origin of authentication and registration of contracts of immovable property commenced and its development come-across.

In ancient times, where few people could read and write, the transfer of property in land was accomplished by a formal ceremony. Buyer and seller appeared in the land in person, or at least with in sight of the land, the seller picked up a twig, or a cold of earth and delivered it by hand to the buyer, as a symbol of grant.9

The other practice of authentication and registration of contracts of immovable property date back to ancient Roman times under the context of ‘Notariat’ while few people learned to read and write in the society.10

10. Semithers william, W.History of French Notarial System in the university of pennsylvania, law Rev Vol.60(1912-1919)
Again, in the ancient days of the Roman empire, the interaction of the society had come very complex. The agreements that had concluded on oral base among the people felt endanger. As a result, these oral agreements were made in the presence of witnesses who were to recall what they had seen and heard. However, these agreements still were not quiet and concrete enough for proof purpose, especially, for those agreements on immovable property.\textsuperscript{11}

In this regard, however, the code of Hummrabi which is the first civil codification act in the history of mankind during the ancient Babylon state did not say clearly something about the forms of contracts of immovable property, its authentication and registration.\textsuperscript{12}

Later on, after the realization and recognition of a legal rights and obligations that should be effectively protected and implemented in the society, the relationship between the rights and the right holder have been recognized and acknowledged by an authorized organ. Besides, the realization and reorganization of legal rights and obligations, the essence of property also acknowledged as a collection of rights and interests which have been recognized by human being and there to protected by law.

Similarly, the growth of literate people and the growth of freedom of intercourse, development of commerce and organized life interaction required an agreements of immovable property to be formalized, authenticated and registered after reducing them in to writen words before the “Notari”, “Tabalrii,” or /and “Tabellions” which were acknowledged by the society and the law of the society.\textsuperscript{13}

\textsuperscript{11} Podoprigor A.A. \textit{The Basic Roman Civil Law}, kiev, (1990), pp.661-2
\textsuperscript{12} Ibid, pp.833-4
Generally, the authentication and registration of contracts of immovable property was commenced in 12th century in Europe as a customary rule. However, law of authentication and registration of real property has been adopted in 19th century. Thus, in 1858; ‘Torrens system’ of authentication and registration (ownership authentication and registration) come in to force under the title of real property in 1884 was the inventor of such system in Australia.

Gradually, this system of authentication and registration of real property (immovable property) was adopted by other countries like Algeria, Tunisia---etc.\textsuperscript{14}

On the other hand, in 1891, the old French province of Brittany come up with the rules of authentication and registration of contracts of immovable property under the name of “ Appropriances par Bandice” which was an institution that vested the system of authentication and registration of contracts of immovable property.

Again, countries like Belgium adopted French system of authentication and registration of contracts of immovable property in 1923.\textsuperscript{15}

Hence, taking in to account all the above noted gradual changes, authentication and registration of contracts of immovable property and the rights there to in a mechanism which serves for proof purpose by establishing a system of security for those who have rights over immovable property a notice for those who wish to obtain such rights to proceed with extreme caution.


\textsuperscript{15} Ibid, P.568
1.1.3. Origin and Development in Ethiopia

In respect of our country, regarding to authentication and registration of contracts of immovable property, it was in 1927 in which the first law of registration has been adopted in the law of loan, article 50 provides mortgaged property be registered in the registering of municipality if the immovable property (land, building or/and house) situates in urban area. Where the mortgaged property is found in rural area, it will be registered in the registry of shaleqa.\(^\text{16}\)

Similarly, the practice regarding to acts and documents registration including contracts of immovable property officially stated after liberation from Italian occupation. At this turning point, authentication and registration of contracts and other instruments were performed in Addis Ababa by the registrar of the high court. Around 1945G.C Kegn. Hadera Francois, who came from France was appointed to assist the registrar in the preparation of “Notarial activities’ in the high court.\(^\text{17}\)

Gradually, however, a separate unit under high court was being formed in 1970’s along with staff workers, officers, Director & Deputy director. There were also given different titles for the office, such as “Yewel Kifil” “Yewil Wana Kifle” etc.

The major functions of the said unit involved around authenticating and registering five types of instruments which were sales of immovable & vehicles, protests, power of attorneys, company statutes and all other property sales and loan agreements.\(^\text{18}\)

\(^{16}\) Dunning, H., Property Law of Ethiopia, Material for the study of Book III of the Civil Code,

\(^{17}\) Bezzawork Shimelash, The Reporter, under the tile of the legal status of our “Notaries” Vol.,No.302 (wed, June 18,2002),

\(^{18}\) Ibid
Having said all the above issues regarding to authentication and registration of immovable property in to consideration, in July 1976, the major transformation of the unit of acts and documents registration and its accountability transferred to the Ministry of Justice under the civil affairs Department by internal arrangement.\(^{19}\) In this regard, in the year 1987 the Ministry of Justice was empower in order to ensure the organization, and supervise the activities of “Notaries public office”\(^{20}\)

Again after the down fall of Military Government in 1991, the said units come under the regions justice Bureau and the case in Addis Ababa also the unit came under Region 14 justice Bureau and it also obtained a new name, that was called ‘Acts and Documents Registration main Division’ until it has been transferred to region 14 Regional court in 1994,\(^{21}\) then under Addis Ababa city Government from 1998 up to 2006 with legal support that is Regulation No 26/2001 which has been enacted by the council of Addis-Ababa city Government.\(^{22}\) And by the City Government proclamation no/2003 Art. The office Re-established as Acts & civil Status Documents Service until 2006.

However, since the Notary public office come to existence traditionally until 2003, there is no law even at national level on their appointment, territorial competency, duties and responsibilities and procedures of notarization.\(^{23}\)

Later on, the issuance of the proclamation to provide Authentication and Registration of Documents has resulted in fundamental change in the system of authenticating and registering of documents including the contracts of immovable property.\(^{24}\)

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\(^{19}\) *Supra at Note, 16, p.11.*

\(^{20}\) *The proclamation on Definition of powers and duties of executive organs of the Government of Ethiopian proc. No 8/1987, Art.8*

\(^{21}\) *The Central and Regional Executive Organs Proclamation. Proc. No 41/1993, Art. 5*

\(^{22}\) *Supra at note 16,P.111*

\(^{23}\) *Ibid,*

\(^{24}\) *A Proclamation to provide for the Authentication and Registration of Documents , proc. No 334/2003.*
Because, according to the proclamation among the documents required authenticated & registered in the offices are those that must be authenticated and registered in accordance with the appropriate law.\textsuperscript{25} i.e Contracts (documents) relating to immovable properties.\textsuperscript{26}

Having said all things about the origin and development of authentication & registration of contracts of immovable property and the development of authorized institution (Notaries Offices) are very important in the modern legal system of the world in general and in Ethiopia in particular.

\textbf{Comparative Overview on the Need of Authentication and Registration of Contracts of Immovable Property.}

In the endeavor to evaluate the position of ‘public Notariat’ to the necessity of authentication and registration of contracts of immovable property in Ethiopia, obviously, it is vital to consult the profession in the countries which adopted the common law or civil law legal regimes alternatively.

Based on this the writer of this paper tried to see some practices of both legal systems with comparative point of view as follows.

\textbf{1.2.1. Countries in Common Law Legal System}

In most common law countries, particularly in the United States of America (U.S.A) and England (GB), the office of Notary has been empowered the function of authentication and registration of documents or deeds including contracts of immovable property under his/her licensed Notary public capacity.\textsuperscript{26}

\begin{itemize}
\item \textsuperscript{25} Ibid. Art.5/1/a/
\item \textsuperscript{26} Supra at note 6, Art.1723(1)
\item \textsuperscript{27} Viscont Simonds, \textit{Halsburr’s Laws of England}, (1959), Vol.28, pp.122-5
\end{itemize}
In the meantime, again, it is important to see what ‘authenticity’ with respect to notaries acts of a common law Notary mean. In the case of United States of America it is true that notary public has the power to certify any documents or deeds under his capacity of Notary public privately.

But, his certification has only limited probative value. For instance, in the case of contracts of immovable property (land, or/and building) sales, donation, mortgage or any other of contracts of immovable property in the United States of America has to be registered in the concerned governmental authority after its authenticity by Notary public.\(^{28}\) Because by its own concept immovable property has special and fundamental interest towards its bare owner, the subsequent holder of it, or the public at large as it holds a collection of rights in it or upon it.

Therefore, to safeguard and upheld the security towards the interest of the owner, the third parties or/and the public at large, the authentication and registration of any form of transaction of contracts of immovable property is mandatory, otherwise contracts of immovable property as between contracting parties (if any) shall be null and invalid. That is to say that, frequently, the notary public or his clerk who authenticates contracts of immovable property has appeared or may be required to testify before a court of law or/and the concerned government immovable administration authority in respect of the notarial contracts of immovable property instrument.\(^{29}\)

Hence, that is way, the notary public in the United States of America usually put a statement “The public Notary can not be liable for any matter in the contents of an instrument “\(^{30}\) at the bottom of the said instrument itself or in the form of attachment notice along with the said instrument while it carries out the function of authenticity regarding to a particular instrument or act.

\(^{28}\) Ibid.

\(^{29}\) Rodolf B. Schelesinyor, *Comparative Law* (5th ed, 1998), p.20

\(^{30}\) Show the Authenticated Documents from USA at the Archive of Authentication and Registration Office. (i.e DARO)
1.2.2. **Countries in Civil Law Legal System.**

As far as the civil law legal system is concerned the authentication and registration of contracts of immovable property like sales and mortgage contracts requires formalities in line with the pertinent laws and regulations too. For instance, in the case of France, the notary public office which is established by order of the state. This Notary office has been entitled a lot of powers and responsibilities including to draft the legal instruments and agreements under which the parties are required to ratify by virtue of relevant law, and the contracting parties intention to conclude a lawful contracts of immovable.\(^{31}\)

That means if the contracting parties have a willingness to conclude contracts of immovable property (land and/or building), their contract must be signed before Notary public so as to authenticated and registered.

On the other hand, that means any form of undertaking towards contracts of immovable property which are not authenticated and registered as deed before notary public, its acceptance is null and void. Further more, the notary public in France is duty bound to ascertain the fulfillment of formalities before it is going to authenticate and register the noted contracts of immovable property as a preliminary formalities.

Such formalities, for instance, can be birth & marriage certificate from the respective contracting parties, clearance from immovable and mortgage registry office regarding of to the subject matter of the contract (if any), require the remittal of the seller property deeds, and soon.\(^{32}\)

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\(^{32}\) Ibid.
In the same context, the notary public is also responsible to verify the contracting parties are not affected by legal disabilities, - a correct match between the immovable and mortgage registry records of the immovable property and it accessory, such as building, and the seller’s immovable property deeds, and to conduct on other extra ordinary analysis, such as analysis of mortgage status of immovable property deeds, checking of town planning requirements are not obstacle to the buyer and the buyer’s intention with respect to the particular immovable property are some of the responsibilities of the notary public.33

This shows that the public notary’s responsibilities more or less numerous and wide-ranging especially in authenticating & registering contracts of immovable property. In effect, the notary public responsibilities incorporated almost all actions required in order to ensure that the deeds which drafts by notary public will effectively address its purpose in every respect, legal, moral or otherwise too.

**In Ethiopian Legal System**

In respect of Ethiopian legal tradition, like the aforementioned broad alternative legal traditions which are known in the history of human being until now, the legal framework in authentication and registration of contracts of immovable property very much strong and mandatory like France legal system which has a root of Roman codified legal tradition.

As the writer has already discussed in the proceeding portion of this chapter regarding to contracts of immovable property Art.1723 of the civil code of Ethiopia clearly say as follows:

A contract creating or assigning rights in ownership or bare ownership on an immovable or an usufruct, servitude or mortgage of immovable shall be in writing and registered with court or notary. Any contract by which an immovable is divided and any compromise relating to immovable shall be in writing and registered with court or notary.34

From this paragraph, one can also conclude that authentication and registration of contracts of immovable property is not an option or permissible, but it is a firm stand of the existing Ethiopian legal regime. This conclusion has also supported by the recent proclaimed legislation No 334/2003. Because, the said legislation vested the power of authentication and registering documents.

Among the documents that are required to be authenticated and registered in the office of Documents Authentication & Registration at Federal or Regional level, contracts of immovable property (building, houses or otherwise) has to be authenticate and registered. Otherwise any form of contracts of immovable property shall not be valid unless it is authenticated and registered before the concerned governmental authority.

Therefore, from the above noted alternative legal frameworks and the actual practice which will be discussed in forgoing chapters of this paper, one can realize the authentication and registration of contracts of immovable property in Ethiopia in general in Addis Ababa in particular is mandatory and also universally applicable.

However, when we compare and contrast the common law legal system, particularly, the United States of America and its practice on the one hand and the civil law legal system and its practice on the other hand, France tradition though seems rigorous procedurally, the authentication and registration of contracts of immovable property is strong enough,

34. Supra at note 26
relatively secured and reliable one in order to protect the interest of contracting parties, third parties or/and the public at large, where as the United States of America tradition seems to be very loose towards the preliminary formalities, and therefore the USA tradition relatively is not secured and reliable from interest of contracting parties, third parties or/and the public at large point of view.

On the other hand, the Ethiopian tradition regarding to authentication and registration of contracts of immovable property most likely similar to that of France tradition and interesting enough in order to safeguard the interest of the contracting parties, third parties and the public at large too.

In general, in this chapter, the writer has discussed so far about contracts of immovable property and its own peculiar nature as to its bare owner, the subsequent owners or/and the public at large And also, the writer tried his best to show the definition, the origin and development with authentication and registration of contracts of immovable property from different legal tradition point of view.

Finally, the writer in the said chapter indicated directly or indirectly about immovable property as fundamental one for all and also relating the most precious resource almost for every thing, therefore, the chapter deals with the chief legal systems in the world and how they establish a legal framework so as to manage properly the function of authentication and registration of contracts of immovable property in general and the Ethiopian legal system in particular to entertain the authentication and registration of contracts of immovable property as it is a means of collective rights in itself.
CHAPTER TWO

2. The Notarial Institution and Their Role in Authentication & Registration of Contracts of Immovable Property.

In this chapter, the writer will try to address how the Notary public Office institutions look like including their setup in the world under different legal systems in general, and in Ethiopian context in particular. Because, in all circumstances the duty of authentication documents or contracts are not separate from the institution of notary’s, they are highly interacted each other. In due course again, the writer will indicate the power, function, responsibilities and liabilities of the public notary as institution and the officers as individual.

Similarly, by taking account the above noted issues considerably, the writer also will elaborate the role of public notary office which is found in Addis Ababa in order to address the contracts of immovable property on the one hand, and ascertaining the contents, other prerequisites of such contracts and the effects and significance of notarization on the other hand.

2.1 The Notarial Institutions in general

Generally speaking, nowadays, in both common law and civil law legal tradition countries, public notary offices more or less render a variety of services. Such as giving legal advices, drafting important contracts, authentication and verifying various documents or instruments etc. With regard to this, the public notary office activities become very complex, crucial and very important.

Therefore, the public notary offices as institution especially due to the wide range of human interactions and fast commercial activities, their organizational setup, power & function (duty), responsibilities and liabilities have been required to be governed by law.1

1.1.1. Organizational Set up of the Institution.

Knowingly, in common law and civil law countries, public notary offices are not part and parcel of government organs. Rather public notary office have been conferred upon licensed private (individuals) appointed by the appropriate authority or organ of the state based on determinate requirements of a well-ordered administration of justice.

The public notary is not the representative of one party (parties), but rather an independent and impartial counselor of the parties concerned. That means, the public notary must show the interests of both parties to a contract to best advantage and avoid disadvantages for one of the parties.²

The public notary offices take complete and exclusive responsibilities and liabilities for the manner in which their office services are performed. Generally, under the two legal regimes, the public notary administered or covered their cost by their clients service charge fees, in fact, regarding to the service charge fee, the civil law notary offices is comparatively high from the common law countries.³

In other issue, the case in England, the status of public notary offices as a public official emanates from his license, to exercise the public notary activities, which have been conferred by the concerned governmental authority and the power of appointment is empowered by particular governmental agency.⁴

On the other hand, it is understood that public notary offices under their private capacity conduct a variety of services whose acts encompass a wide recognition and carry out significant role in the day to day society's interaction. These interactions however, calls for state intervention by way of safeguarding the authority to notarize and regulating those institutions under their private capacity as public notary office in order to exercise notarial activities vested upon them. In framing and setting certain yardsticks as standard of competency, the state of the country through their appropriate government organ protects the public interest by ensuring engaged in public notary offices after getting the license with respective qualified profession. By now the notary public in U.S.A. officially appointed by the Government to serve the public at state territory and each state in the United State has different requirements for becoming a notary public and performing notarial activities.5

In France, as all the countries belonging to the international union of the Europe Notarial profession, the notary is both a public officer, who is granted a part of the state authority, and an independent professional. The position of public officer comes upon the notary as public officer mission, means that, the appointment of notaries is decided by the state (Ministry of Justice) and the distribution of notarial offices is also decided and supervised by the state. The independent nature of the notarial profession is identifiable through two different aspects (for the notary and for the client).6 The professional organization of the French notarial office is laid out in a legislative order dated November 2, 1945. Several structures bring to gather in the year 2000, 7,600 notaries of France, the 95 chambers whose national jurisdiction is the “department”, the 33 regional councils whose territorial jurisdiction is regional, and the high council for Notarial profession, whose jurisdiction is national.7

7. Ibid, P.36
Unlike, those legal traditions which are mentioned above, a notary, in Ethiopian context is not allowed to private individuals, instead there is a Federal and Regional notary offices, that has been established in the federal level under Federal Ministry of Justice,\textsuperscript{8} and at the regional level mostly under Regional justice Bureau. The employees of such office are civil servants and mostly relatively qualified and experienced legal professional and other supporting personals. Such professionals are governed by the pertinent laws and regulations of the civil service agencies at federal and regional level too. As mentioned above, the notary offices established in Addis-Ababa organized by one head office with four branches and Diredawa city branch shall perform their functions under the directions of the Ministry of Justice.\textsuperscript{9} The proclamation also give a recognition for the following institutions as a notary with the power of authentication documents, ’Ethiopian Embassy and Consular Offices, Ministry of Foreign Affaire, Commander of Division Force under the Ministry of Defense and Heads of Federal Prison Administration.’\textsuperscript{10}

Regarding the organizational set-up (Structure) of the Notary Offices here in Ethiopia, the proclamation states that “To implement this proclamation, Regional Administrations may organize notary offices”.\textsuperscript{11} The proclamation also give mandate to regional administrations to issue details based on the facts of their respective area.\textsuperscript{12}

\textsuperscript{8} Authentication and Registration of Documents (amendment), (2005). Proc.No.467,\textit{Neg.Gaz.}, Art2/1
\textsuperscript{9} Ibid
\textsuperscript{11} Ibid, Art.19(1)
\textsuperscript{12} Ibid, Art.19(2)
About the establishment of the Federal Notary Office the proclamation stipulated that “Addis-Ababa and Dire Dawa Cities have notary office each, and the Federal Authentication and Registrations shall be carried out by notary offices to be established in Addis Ababa and Dire Dawa cities.\textsuperscript{13}

Based on this, the office of notary under the Federal government established by proclamation No 334/2003 and its amendment proclamation No 467/2005 with its legal personality in accordance with the general directives of the ministry of justice.\textsuperscript{14} At the result of this, recently the office is re-organized itself by manpower, budget, office layout, modern technology and other capacity building activities to facilitate its mandate of authentication and registration of documents effectively.

\textit{2.1.2 Powers and Functions of the Institution}

Certainly, public notary offices entrusted a lot of powers, and duty bound to carryout a lot of function, that have varying importance to support and strengthen the justice system of given country and its administration of law. However, such powers and functions have been exercised differently in various legal systems and countries. Off course, the ultimate goal of such varying legal systems regarding their public notary office directly or indirectly have the same impact though such systems and their administration of law are not always the same.\textsuperscript{15}

\textsuperscript{13} \textit{Ibid}, Art.20

\textsuperscript{14} \textit{Supra at note 8},Art.3.

\textsuperscript{15} \textit{W.W. SMITMERS, “HISTORY OF THE FRENCH NOTARIAL SYSTEM” UNIVERSITY OF PENNSYLVANIA LAW REVIEW, Vol. 60 (1911-12), pp.19-20}
Regarding the powers and functions of public notary offices, public notary offices which are found in most of the civil law countries exist with a wide range of powers and functions that enables them to form to extents of an international professional organization.  

On contrary, in most common law countries, particularly in the United States of America and England, such public notary offices has little powers and functions comparatively. Having said this, the common law countries public notary offices empowered in order to function protesting activities like marine protests, banking protests. etc. Besides, such public notary offices, since the early period, have exercised and still exercise the right of administering oaths and taking declarations or affirmations. However, by far the most common activities of public notary offices are authenticating documents or deeds usually to be used abroad.

Public notary offices have also been granted to administer an oath or affirmation to signer about the truth of the contents, ascertaining the identity, ability and willingness of the maker.

Among others, these are the major powers and functions of public notary offices in most common law countries. However, each country may prescribe the manner in which such activities to be performed. The responsibilities and liabilities have been laid down in cases of failure to discharge their powers and functions vested upon them by law.

In general, the public notary offices which are found in common law countries, though, they have limited powers and functions, they are an important institutions in a day to day human activities especially in commercial and any other legal documents too.

16. It includes France, Spain, Italy, and Most Latin American Countries. The number of Countries whose members belong to UINL now number over 90.
20. Supra at note 10, p.3
Where as in the case of civil law legal systems, the public notary offices as noted before their powers and functions are often great variety and importance. The most important functions of such institutions to authentic acts and instruments which the law requires or the parties desire to be given the cachet of authenticity.21

Again, the public notary offices are entitled drafting legal instruments for consulting parties, acting as legal advisor, mediator who seek to harmonize opposing interests, perform an important function of keeping in their custody the original of the authenticated acts prepared by them.

In general, the powers and functions of public notary offices can be categorized in the following manner;

- **Family matters**: Such as marriage settlements, wills, the spouses administration of their estates
- **Real state Transactions**: Through acquisition, possession and disposition or extent of transfer of any form of property.
- **Company matters**: for instance from its formation to its liquidation. 22

Similarly, creation of mortgage, gifts, marriage contracts, various forms of last will and testaments are among others which require notarization. 23

In this regard, however, although the traditional activates of public notary office in civil law countries are listed above, they can not be by no means an exhaustive enumeration of their function. Rather, we can generally say that public notary offices are public officials who serve the public in all round sectors of legal activities including ascertain that state and/or local taxes are paid before executing any act conveying real property.


The public notary officials are also expected and empowered to do some preliminary work as regards the identity, capacity and voluntary of the parties after which they will fully describe the transaction according to the parties intention.  

Therefore, public notary offices have exclusive powers to give authenticity to their deeds and advise all parties impartially. And also, such offices are required to inform and advise all parties as mediator without representing either party rather they are duty bound for all so as to ensure the legality of transaction.

Ultimately, the requirements of any authentic act by public notary offices directly or indirectly promote security of transaction by making them more difficult for agents that do not have proper authority and persons without legal capacity to create a valid title in order to minimize unnecessary litigation.

Furthermore, the exclusive records of authentic and register acts, in turn, assures the efficient operation of a registry system on which third parties are entitled to rely. The notarial profession, in general, helps to bring legal securities to transactions specially in the areas of real estate, and the intervention of this profession ensures the protection of the rights and interests of individuals and the public at large.

Apart from the above noted, public notary offices regarding to their powers and functions, Ethiopian’s legal tradition to its public notary at federal and regional level empowered and entrusted to carry out the following notarial activities: such as;

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24. Ibid, pp. 619-623
• Authenticating and registering general, family, advocate power of attorneys, witnessing wills, contracts of properties in general whether they are movable and/or immovable under the title of sales, donation, lease, mortgage or/and otherwise,
• Authenticating and registering the memorandum and articles of association of business organizations and minutes of both business & civil organizations and association,
• To administer oath and receive affidavits and register same.
• To ascertain the legality of documents submitted for authentication
• Authenticating and registering of sample signatures, and other documents send from higher officials who deposited and from abroad via Ethiopian Embassies and ministry of Foreign Affairs of Ethiopia.
• Verify copies of documents against their originals and register same; 25

In addition, the public notary offices which are found in Ethiopia empowered to ascertain the capacity, right, and authority of persons who are about to sign or who have signed documents submitted for authentication and registration. 26

Besides, such institutions are duty bound to ascertain the legality of all documents including their morality of the contents submitted for authentication. 27 Similarly, such public notary offices have a duty to provide information upon request by authenticated and registered documents, and to conduct any other similar documents that must be authenticated and registered in accordance with the appropriate existing local laws too.

In general, unlike their minor differences, the civil law countries and Ethiopian legal tradition power & functions regarding to public notary offices about authentication and registration of documents follow almost the same.

25. Proclamation No 334/2003, Art. 4
26. Ibid, Arts 4, 14 &15
27. Ibid, Art. 13
2.1.3 Responsibilities and Liabilities of the Institution

Undoubtedly, through the magnitude varies in the alternative legal regimes; public notary offices bear responsibilities and entail liabilities for their failure to discharge their powers and functions vested up on them regardless their failure resulted from their intentional or non intentional act.\(^{28}\)

Similarly, such public notary offices responsibilities may have civil, criminal or administrative dimensions. Because those professional individuals who are found in such institutions may perform guilty of negligence or misconduct while they carry out their professional powers and functions. They may also be held liable to for contracting parties, third parties or/and the public interest damaged thereby where such damage is a result of the said professional individuals wrongful or negligent act that was the proximate cause of the damages suffered.

Such individual professionals are also liable in the cases of negligent, willful misconduct or corruption.\(^{29}\) This means that when the public notary offices neglect their responsibilities to observe particular statutary requirements, they place the interests of their clients and the integrity of the instruments notarized at jeopardy or risk. Especially, this is true, where the individual professionals' act is an intentional one, criminal laws are often violated. Besides, these who impersonate in public notary offices, those who unlawfully posses or use such institutions' seals and those who falsely notarize any documents misappropriate commits crimes under a particular statutes governing public notary offices. \(^{30}\)

As a result, the concerned state organ that has commissioned the notary has the authority to suspend, revoke or cancel the license or impose disciplinary and penalty measure up on the public notary offices or/and professional individuals who negligently performs his service or intentionally violates his responsibilities. \(^{31}\)

\(^{28}\) Supra at note 23, pp. 628 – 629
\(^{29}\) Supra at note 18, p. 277
\(^{30}\) Ibid, P. 205
\(^{31}\) Ibid.
A part from the above noted issues regarding the responsibilities and liabilities of public notary offices in the United States of America are less qualified when the status compared to their counter parts in other countries, for instance in the case of France. This less qualification makes foreign country courts to be reluctant to accept the United States of America notarial instruments.  

In this regard what worse in the United States of America, is dishonesties related to notarnal instruments do not quality the magnitude of trust traditionally given them. The public notary offices usually and commonly back date instruments and witnessed signature of people who do not appear before them personally. This is in contras a serious problems with which the responsibilities that have been taken in other countries experience. Again, public notary offices which are found in United States of America are not familiar with pertinent laws and are unaware of their responsibilities though notarial law institutions provide relevant educational services for public notary offices activities.

Finally, public notarial activities in United States of America are not competent and strong though and they are usually doubtful. Therefore, it such to be very crucial to upgrade the qualifications of notarial activities and other requirements about public notary offices' responsibilities, their liabilities and sanction for improper performances of any notarial activities.

In the case of France, however, the public notary offices must familiarize themselves and aware of the consequence of their notarial activities, and the legal effect of their act from civil or/criminal law point of view inline with their clients, third parties and the public interest at large. Such public notary offices are also required to keep the integrity of their offices for not involve in trade or business or to have any interest their in.

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32. Ibid, P. 455
33. Ibid, PP. 15-18
34. Supra at note 22, p. 61
35. Supra at note 4, P. 400
They are also forbidden for acting where there could be conflict of interest as in cases where their clients have a blood relation with them through consanguine or affinal relationship up to six degree in order to minimize on protect abuse of their power. 36

Similarly, public notary offices as in any other discipline must keep confidential all the facts that they come across with in the course of their powers and functions.37

On the other hand, however, by taking account powers and functions of public notary offices in France, there is a remedy for their professional fault. For instance, in order to secure and safeguard the interest of their clients, third parties and the public at large, the public offices are obliged to insure the pecuniary consequences of their professional activities. What is unique in France is that public notary offices are liable with all other members of the profession viz the whole members of the France public notary offices' clients.

This means that due to diversified irregularities that are performed by the public notary offices and clients suffer damage, in this case the responsibilities and liabilities of such public notary office will be transferred to insurance companies of the public notary offices and other regional and notaries guarantee fund institutions.

The responsibilities and liabilities of France public notary offices are not only civil but also there are a strict disciplinary measures and penal sanctions that could be taken by the concerned governmental authorities. 38

36. Marcel Planiol, Treatise on the Civil Law, (11th ed, 1939), vol.2 P. 64
37. Ibid
38. Supra at note 7, P. 64
In general, the France public notary system is highly qualified in terms of rich experience, educational background professional organization with a high standing, trustful and competency in their community relatively when we compare them with their counter parts in other parts of the world. For instance, in the case of United States of America.

When we come back to our public notary offices' experience regarding the responsibilities and liabilities, the proclamation No 334/2003 clearly provides mandatory provisions which states what should be done or/and what shouldn’t be done by such public notary institutions and individual public servants while they carry out their notarial activities.

The public notary offices are duty bound to give their notarial service for those people who come before them in line with the law and along with the necessary requirements. If the said institutions refuse to provide the notarial activities or services without good cause, any person who is aggrieved by such institution has the right to petition the superior organ of such public notary offices to the extent of submitting an action in a court of law. 39

Similarly individuals who are found in such institution as public servant are not allowed to provide any public notarial activities or services for their relatives by consanguinity or affinity up to the second degree. Again, such public servants are not empowered to differentiate and register any instruments including contracts of immovable property for those they are acting as agent or representation too.40

40. Ibid, Art. 6
Likewise, the public servants who are empowered to conduct notarial activities or services are required not to release any information which comes to their possession. While they carry out their notarial operation concept they are ordered by a court or a body empowered by law. This restriction discloses that any public notary servants are obliged to keep any secret what they know while they perform their daily notarial activities or services.  

In general, public notary offices and public servants who are found in such institution have an obligation to provide any notarial activities or services in line with the pertinent law. They have also the responsibility to respect the prohibitions and the duty of secrecy rules which are imposed upon them by law.

On the other hand, however, if such public notary institutions and their staff public servants violate any of the provisions of the said proclamation, they shall be subject to civil and criminal liabilities in addition to serious disciplinary measures by virtue of the pertinent laws. Besides, if such liabilities which resulted from intentional act, the punishment obviously will be aggravated.

To summarize, the responsibilities and liabilities of public rotary offices and individuals who are found in France and in Ethiopia particularly in Addis Ababa, and the punishment taken in such countries have almost identical character.

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41 Ibid, Art 8
42 Ibid, Art 32
2.2 The Role of Public Notary Office in Authenticating and Registering Contracts of Immovable Property in Addis Ababa.

In the previous section of this chapter, we have discussed about the setup of public notary institutions, their powers and functions regarding the notarial activities and services, and finally we have seen their responsibilities & liabilities whenever they fail to perform their powers and functions rested up on them by law.

In this section, the writer will try to identify the role of public notary offices while they authenticate and register contracts of immovable property. Especially, this section will answer the questions what should be the procedures and preconditions before finalizing contracts of immovable property for authentication and registration.

The last but not the least, the writer again will elaborate the result and the importance of authentication and registration of contracts of immovable property in Addis Ababa.

2.2.1 Ascertaining the Contents of Contracts

Before notarization of contracts, documents authentication and registration law, article 16 clearly obligates the public notary office to ascertain the legality of the documents or any form of contracts of immovable property. The said article also provides and statement which says "A notary shall, before authenticating and registering a document, ascertain that its contents are not illegal or immoral."\[^{43}\]

\[^{43}\] Ibid, Art. 16
Therefore, when we return back to our subject matter about "contracts of immovable property" public notary office which are found in Addis Ababa are required to find out whether the legal requirements are fulfilled, for instance, the contents of such contracts of immovable property are legal, universally accepted, are contracts of immovable property prepared based on the law etc ...have to be verified, before any form of transaction of contracts of immovable property or otherwise takes place.

In this regard, for instance, the pertinent law states that the authentication and registration relating contracts of immovable property are mandatory in order to have effect on the interest of contracting parties, third parties, and the public at large or on the validity of the contracts themselves. 44

In this respect, assignment or transfer of property rights in any immovable property held under a title issued by the concerned authority of the government have not any effect unless such assignments of contracts of immovable property and their contents are prepared and verified in writing, authenticated and registered with the authorized institutions; i.e, before the court of law or public notary office.

Accordingly, the public notary offices are duty bound to pay attention about contracts of immovable property and their contents before they are going to authenticate and register any forms of contracts of immovable property. Especially, they are obliged to confirm contracts of immovable property are prepared in a written form in addition to other extra ordinary requirement before authentication and registration of such contracts of immovable property. Otherwise, any form of contracts of immovable property and their contents which are not authenticated and registered in line with the law do not have any official recognition for their validity or received in evidence as a legal instrument in the court of law or other competent authorized institution.

44. The Civil Code of Ethiopia, Art. 1723
On the other hand, the public notary offices are also duty bound to ascertain any contracts of immovable property and their contents from moral point of view before they authenticate and register such contracts in accordance with the said law.

The compatibility of contracts of immovable property and their contents are expected to be consistent not only with the law but also they are expected to be compatible with the public moral point of view. This moral requirement also can be related with or expressed in terms of public policy too. when we say some thing about moral and its extent, the public notary offices are also obliged to address directly or indirectly the historical, social, economic status, political, cultural, religious grounds, and basically the current public policies of Ethiopia in general and Addis Ababa in particular before they authenticate and register contracts of immovable property.

Hence, any contracts of immovable property and their contents should not be registered and authenticated if such contracts and their contents affect adversely the public moral to extent of public policy.

Again, the concept of moral also refers to the facts those immoral activities regarding contracts of immovable property and their contents which are repugnant to the conduct, custom or accepted practices of people.

In general, public notary offices in Ethiopia in general and in Addis Ababa in particular are empowered and duty bound to refuse in authentication and registration of those contracts of immovable property and then contents which are illegal and immoral from the country's legal frame work and its public norm and custom point of view. Therefore, such public notary offices are obliged to ascertain the legality of contracts of immovable property and their contents that should be free from illegal and immoral acts.
2.2.2 The Other Prerequisites of Contracts

In the preceding sub section, the writer dealt with the ascertaining of the legality of contracts of immovable property documents from legal and moral point of view before authentication and registration of contracts of immovable property and their contents by public notary offices.

From now on wards, the writer will justify about the requirements that should be fulfilled before authentication and registration of contracts of immovable property. Contracts of immovable property may be mainly;

- Sales contract of residential house Business building;
- Donation contract of residential house Business building;
- Mortgage contracts of residential house Business building;
- Lease contracts of residential house Business building; and
- Lease transfer right on land possessing contracts are some among other contracts of immovable property which have been brought to the public notary office in Addis Ababa for notarization. However, the public notary has a duty to ascertain the capacity and authority of contracting parties and their witnesses who appear before it in person. \(^{45}\)

In this regard, it is obliged to confirm whether the contracting parties on contract of immovable property have the right to sign on such contracts. Besides, it is empowered to conduct the necessary investigation in any way it thinks convenient to find out the truth if there are some doubtful circumstances while authentication and registration of contracts of immovable property. \(^{46}\)

\(^{45}\) supra note at 39, Art. 14

\(^{46}\) Ibid
While ascertaining the capacity and authority of contracting parties, the public notary offices is also required to address the contracting parties competence to inter in to a legally binding agreement on contracts of immovable property. Here, the public notary office has to ascertain the capacity of contracting parties that emanates from law or contract. For instance, in the case law, the contracting parties have to have free from any form of encumbrance to conclude such contracts of immovable property. Such as incapacity which is derived from law, (minority, mentally disordered (insane) person, judicially interdicted person, legally interdicted person) 47 where as in the case of contract, the authority to conclude contracts of immovable property which is derived from the power of attorney. 48

Therefore, the public notary office has a number of tasks to ascertain the contracting parties' capacity and authority before authenticating and registering contracts of immovable properties as institution.

Similarly, public notary office has to verify the consent of contracting parties while such parties conclude contracts of immovable property. At this moment, it is required to ascertain the willingness and freedom of contracting parties to inter in to an agreement to create or establish legally binding relation on contracts of immovable property before it. 49

In the mean while, the public notary office is entitled to ascertain the object of the contract. In this case, the object does not mean something that can be seen or touched, but to ascertain the obligations undertaken by the contracting parties on contracts of immovable property is possible or not well defined, unlawful or immoral which has been brought to the public notary offices. 50

47. Supra at note 44, Arts. 198,339, 340, 352, 380 & 1678
48. Ibid, Art. 2199
49. Ibid, Arts. 1678, 1679, 1680 & 1695
50. Ibid, 1711, 1712, 1713, 1714 & 1715
Under the same context, as far as the writer talks about contracts of immovable property concerned, a written form is mandatory before authentication and registration of contracts of immovable property, therefore, the public notary office is duty bound to ascertain whether there is a written form which is traditionally has been prepared or not in accordance with Ethiopian civil code before notarization.\textsuperscript{51}

In general, while authentication and registration of contracts of immovable property, the public notary office is obliged to abide by the existing general and special contract laws which have been proclaimed for contracts of immovable property. Especially, the fundamental elements for all contracts have to be observed before notarization of contracts of immovable property.

Furthermore, in the case of contracts of sale, donation, mortgage, lease and any other constraints immovable property, the following requirements have to be satisfied and cross checked by the public notary office.

For instance, in the case of:

- **Sale contract of residential house & Business building**
  - Renewed identification card of the contracting parties including their witnesses.
  - The ownership certificate or book of the seller (title deed) for the residential house or Business building;
  - Marriage certificate if the sellers are married or in case of non existence of marriage, certificate from Kebele or relevant institution that certifies the bachelor status;
  - Finance office clearance. If the seller is commercially registered;
  - Latest tax paid receipt for land & house /building/ use;
  - Contracting parties, or their agent and their witnesses are also required to appear in person before public notary offices and
  - Written form of contracts of sale has to be brought and fulfilled before notarization activities takes place.\textsuperscript{52}

\textsuperscript{51} Ibid, Arts. 1723-1725

\textsuperscript{52} Internal Directive and Information Booklet for Clients of DARO, 2005 Addis Ababa.
- Donation contract of residential house & Business building
  
  * In addition to the requirements listed out in the contract of sale the written form of contract of donation for immovable has to be prepared & the form made based on law which governing public will.\(^5\)\(^3\)

- Mortgage contract of residential house & Business building
  
  * In addition to the requirements listed out in the contract of sale, the written form of contract of mortgage has to be prepared. \(^5\)\(^4\)

- Lease contract of residential house & Business building
  
  * In addition to the requirements listed out in the contract of sale, the written form of contract of lease contract has to be prepared. \(^5\)\(^5\)

- Lease right transfer contract of land possession
  
  * In addition to the requirements listed out in the contract of sale, the prior contract document between the lessor and land administration authority, is required along with a written form of contract of lease transfer right on land possession are required. \(^5\)\(^6\)
    
    (i.e: all documents must be originals)

However, before authentication and registration of such the above noted contracts of immovable property, the public notary offices basically duty bound to cross check and verify whether the subject matter of such contracts are attached by the court injunction. \(^5\)\(^7\)

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\(^5\)\(^3\). Ibid & supra at note 44, Art.2443  
\(^5\)\(^4\). Supra at note 52  
\(^5\)\(^5\). Ibid  
\(^5\)\(^6\). Ibid  
\(^5\)\(^7\). Proclamation No 334/2003, Art.14&15
If such attachments are realized while assessment of contracts of immovable property, the said contracts alternatively or cumulatively shall not be authenticated and registered in order to protect the third parties interests, rights or/and court orders. To finalize, in this sub section, the public notary office directly or indirectly is strictly duty bound to ascertain the transferor title deed, the subject matter of the contract of immovable property is not attached by the court order, the contracting parties of the contracts of immovable property and their witnesses who are going to sign, or about to sign such contracts have the right or authority from legal or contractual, to sign the contracts of immovable property in order to safeguard the interest of contracting parties, third parties and the public at large.

2.2.3. Effects and Significances of Notarization

So far, we have dealt with how the notarization activities and services have been carried out under different legal tradition including Ethiopia experience about the authentication and registration of contracts of immovable property what looks like. However, there is a need to explain and to take due notice on the effects and significances of notarization. Thus, the writer is obligate to identify the positive impacts or the merits of notarization activates and services on the contract of immovable property from diversification point of view.

As we have discussed directly or indirectly the similarities and differences before about the two broad legal regimes, effects and significances of notarization on the contracts of immovable property in the two legal regime obviously differ though they have some recognized common goals.
Certainly, the effects and significances of public notary office in common law countries is much less than civil law countries. Because as we have said earlier, a common law public notary offices have no strong legal powers which the civil law public notary offices have relatively limited roles, effects and significances too.

However, such public notary offices have some effects and significances, especially, upon compensation, evidence, facilitating process, reducing fraud and fostering some notarization activities and services issues.\textsuperscript{58}

Where as in the case of civil law, the effects and significances of notarization much meaningful in the following aspects; especially, serving the protection and administration of justice, public notary office is responsible to preserve the administration of justice and its objectives.

While notarization of contracts of immovable property, in effect, such activities and services structure private legal relationships in such away that the interests worthy of protection or the individual parties in private legal transactions are secured. While securing of legal security, law and order, it is possible simultaneously securing the national public interests of each civil law countries.\textsuperscript{59}. Moreover, notarization process on contracts of immovable property serves for recording of such legal transactions, evidentiary values, and speedy execution effects are among other effects and significances of such public notary offices in civil law countries.\textsuperscript{60}

\textsuperscript{58} http://en.wikipedia.org/wiki/Notary-Publicbook’s
\textsuperscript{59} Supra at note 2, P.16
\textsuperscript{60} Ibid
When we come back to the Ethiopia case, in Addis Ababa in particular, the effects and significances of authentication and registration of contracts of immovable property is numerous. Hence, that is why, the importance and existence of notary office is mandatory. For instance, the preamble of proclamation No 334/2003 refers authentication and registration of documents in general, contracts of immovable property in particular provides a reliable means of evidence and therefore facilitates contractual and other interactions between/among/ persons and organizations both at national and international level.\(^{61}\) Besides, authentication and registration of such contract of immovable property ensures the availability of documents regarding such contracts of immovable property whenever they are required.

Saving clause such broad positive impact and importance, authentication and registration of contracts of immovable property have the following effects and significances. Such as;

- To facilitate the contractual relationship of contracting parties;
- To protect the interest of government on behalf of the public;
- To serve as evidence having legal acceptance and credibility;
- To have a public nature for coming generation, consecutive research and reference;
- To keep the original documents which is remain in the office;
- To teach the public how to make legal instruments and widen up the legal know how of the public;
- To minimize conflicts arising from illegal and informal contracts;
- To generate income for the city and for the country as well;
- To reduce forgery and fraud directly or indirectly;
- And, to bring confidence on contracting parties, third parties and the public at large in order to uphold the administration of justices.

\(^{61}\) proclamation № 334/2003
In this respect, H.E. Ato Hagos Woldu confirmed that the authentication and registration of contracts of immovable property in accordance with the law is a mandatory in order to address a multi dimensional objectives of the pertinent laws. As to him, the notarization activities and services regarding to the contracts of immovable property has a number of importance, especially, to adjudicate disputes relating to immovable property as between contracting parties and any other interested persons, to serve as security for the contracts of concerning the subject matter of contracts of immovable property and as a source of income collected from the people.  

Again, he added that such activities and services has a deterrence impact for those acts of illegal land possession for construction of dwelling houses or/and buildings so as to utilized the scares resource of land in Addis Ababa wisely.

In the same manner, Ato Worku Fantahun Shamiye stated that the authentication and registration of contracts of immovable property is unquestionable and is not a matter of option. Because immovable property is almost every thing relatively not only from contracting parties but also from third parties and the public at large point of view. As he said, if there is the public notary office which assures authentication and registration of contracts of immovable property directly or indirectly, it is one of a means of protection of rights; that is the right to have property which is universally and constitutionally recognized and guaranteed right.

In same context, as far as the contracting parties is concerned, hardly there is a number of adjudicating litigations at any court level between two or more persons who are involved in contracts of immovable property which have been authenticated and registered before the public notary office.

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62 H.E. Ato Hagos Woldu, Judge in Federal Supreme Court, conducted an interview, July 24, 2007
63 Ibid
64 Ato Worku Fantahun Shumiye, Legal Expert, Head; Documents Authentication Clearance and Injuncation Main Section in Documents Authentication and Registration Office under the Federal Ministry of Justices, conducted an interview, on July 20, 2007
65 Ibid
As to him, therefore, the authenticated and registered of contracts of immovable property by the public notary office has played a meaningful role in order to assist and uphold the administration of justice.\textsuperscript{66} Besides, the activities and services regarding to contracts of immovable property which have been performed by the public notary office have a great attributes for facilitating domestic and international trade transaction, especially, for those contracting parties living at different place can make and create contractual relationship directly or indirectly related with contracts of immovable property through public notary office.

In addition to this, to reducing case congestion from courts, would make a man feel convenient and trust worthiness on the act of a notary and his grievances diminished. The reduce or oblish unnecessary litigation against the document made before the notary. Statistic show us that litigation associated to notary deeds in Europe is 2\% while in the United States it is 10\%. As the information of General compendium the Documents Authentication and Registration office, this percentage in Ethiopia case is ‘almost nil.’\textsuperscript{67}

To sum up, the effects and significances of authentication and registration contracts of immovable property worth noting and has a great contribution for the attainment of fairness and equity of justice among individuals, business societies and the public at large including the government all round policies themselves.

\textsuperscript{66} Ibid

\textsuperscript{67} Tesfahun Tsegaye, The significance of modern Notary in Ethiopia,(unpublished, July, 2006), p.48
In general, in this chapter, we have discussed about how public notarial institutions established and regulated, what powers and functions that have been exercised by such public notary institutions including their responsibilities and liabilities in general. On the other hand, the said chapter already dealt with the actual experience and the role of public notary offices regarding to authentication and registration of contracts of immovable property in Addis Ababa. At the end, the chapter tried to access what should be done while ascertaining the contents, other prerequisites and the effects and significances of contracts of immovable property in a precise manner before starting the next chapter which will focus upon the problems of non-authenticated and the non-registered contracts of immovable property in its sections and subsections.
CHAPTER THREE

3. The Legal Status of Non-Authenticated and Non-Registered Contracts of Immovable Property.

3.1. The Need of Special Form with Other Legal Requirement of Authentication and Registration of Contracts of Immovable Property in Ethiopian Law.

As stated on previous chapters, a contract is, irrespective of its nature and object, a set of agreements between two or more parties for the performance of a legal acts of which the law gives a full recognition; and in this legal acts the parties are free to determine the obligations each of them to be bound. The parties are also free to decide the manner in which their contract is formed. In other words, the parties are the one who determine both the nature of their obligations and the types of forms the contract is going to be formed. However, the law has made, in some circumstances, exception to the general principles of freedom of formation of contracts. Under such circumstances the laws demand the parties to state their agreements in a special format in order to have their agreement legal validity. Special format may, in this context, comprises of a written form of contract, authentication and registration. We will try to discuss on the needs of each of them on the following.

3.1.1. The Need For written Form of Contract.

Under Ethiopian law a written form of contract is a printed or hand written contract supported by a special document signed by all the parties bound by the contract and attested by two witness.¹ A written contracts are universally recognized form of contract and increasingly used in creating and establishing legal rights and obligations in the modern time. There are two conditions that call for the special form of contract as a prerequisite for the formation of contracts. Where the parties agree to follow a special form (written form) they have to abide by their agreement to apply the special form irrespective of the natures of the subject of the contract.²

¹ The Civil Code of Ethiopia, Art.1727(1)&(2)
² Ibid, Art.1719(3)
If they fail to adhere with it their contract does not have a binding effects. The legal prescription is the other condition that impose upon the parties limitation to follow the special form of the contract. Where the law prescribed special form for certain type of contracts, the parties are expected to strictly adhere with the provisions of the laws when they are going to form a contract.³ The scope of the paper is, therefore, focused on the need, nature and legal effect of the special forms that are prescribed by law.

Like any other countries that applying civil law legal system, the Ethiopian civil code provisions dealing with contract law clearly underline that as the principle no special form is required for the formation of contract.⁴ However, under special circumstances where special form is prescribed the law, then the parties are expected to comply with it. This principle has provided under Art.1719 in the following ways:

1. Unless otherwise provided, no special form shall be required and a contract shall be valid where the parties agree;
2. Where a special form is expressly prescribed by law such law shall be observed

The following are types of contracts expressly prescribed by law to be formed under special forms.

A. Contract relating to immovable ⁵
B. Contract made with a public administration ⁶
C. Contracts made for a long period of time ⁷ i.e.
  - contracts of insurance
  - contract of guarantee etc.
  - any other contract in respect of which such form is required by law.

³. Ibid Art 1719(2)
⁴. Ibid, Art.1719(1)
⁵. Ibid, Art.1723
⁶. Ibid, Art.1724
⁷. Ibid, Art.1725
These types of contracts need to be formed under written form of contract; and failing to comply with the written form will bring about the contract ineffective in a way that it does not have any legally binding acts between the contracting parties.\(^8\) Therefore written form in these cases are essential elements to constitute the validity of contract. We are trying to see the needs of written forms in different ways.

a. Legal Requirement for written Form of Contract of Immovable Property.

Ethiopian civil code dealing with the general part of contract Art.1723(1) has expressly provided that:

\begin{quote}
A contract creating or assigning rights in ownership or bare ownership on an immovable or an usufruct, servitude or mortgage of an immovable shall be in writing ...
\end{quote}

According to the provisions of the article formation of contract of immovable has to be in written form; and it is provided under the law as a condition for the validity of the contract of immovable. Therefore party’s agreement has to be written down, duly signs by contracting parties and two witnesses.

What if the parties fail to follow up such rule?

Under the special law of contract in the civil code it has been clearly provided the effect of the contracts on the parties if they did not observe the written form. A contract of sale of immovable shall be of no effect unless it is made in writing\(^9\). Therefore, writing of the contract is the basic element for validity of the contract of immovable; and if parties do not comply with the rule, then it has not legal effect in the same way as absent of expressed consent or undefined object impossible to implement. So, a written form is essential for not simply as proving value (ad probationer), but for the validity (ad validities) of the contract.

\(^8\) Ibid, Art.1720(1)
\(^9\) Ibid, Art 2877
b. Other Needs of a written Form

Apart from the legal grounds, a written form of contract has also a numbers of benefits for the parties; and the following are some of the benefits:-

- **Promoting Certainty:** it has created an environment for the parties to discuss, negotiate and bargaining over the subject matter of the contract in detail; and through the process parties may identifies and clarifying their vague ideas and consents. It helps that agreements of the parties be carefully drawn up to ascertain the right subject matter of the contracts in a way to simplifying the problem of misunderstanding of the parties.

- **Form has a cautionary as well as warning effects upon the parties.** It has create a chance for the parties to see and visualized their deeds before executing them. In effect they are evaluating the stated facts in line with the spirit of their right consents. It reminding the parties the seriousness of the agreements and the possible legal consequence if one of them fail to comply with the terms of the agreements.

- **Form has also used as a means to protect a weak party in case of disputes.** As it create the very validity of the existence of the contract, likewise it has also serve for proving the existence of the contract in a court of law in time of disputes arising between the contracting parties. Where one of the parties refuses to implement the terms of the contracts on the grounds that he denies the existence of the contract or specific terms of the agreement it has served as a security, for the other party, to demand the performance of the contract against such challenges.
3.1.2. The Need of "Special Form" (Authentication and Registration)

a. Legal Requirement

Attempt has been made, on the above, to demonstrate the need and characteristic of special form of contract (a written form) in the case of contract relating to immovable property. Here we are trying to see the importance of authentication in regarding to such contracts. The written form is not the final part of the formation of the contract under Ethiopian law. Writing a contract is the first phase of the processes and not the end of it. The written contract has to be verified and authenticated or else the contract has not any legal effect on the parties. We will see the nature and legal effects of Authentication and Registration of immovable in line with Ethiopian civil code and Authentication and Registration of documents proclamation No. 334/2003.

Under Civil Code Art. 1723(1)

A contract creating or assigning rights in ownership or bare ownership on an immovable or an usufruct, servitude or mortgage of an immovable shall be in writing and register with a court or notary.

Registration (authentication) is provided as prerequisite for the validation of the contract. As we can clearly see from the provision registration has equal binding force of law as a writing does have; and in this provision both writings and registration are become essential elements for the legal effect or validity of the contracts. The contracting parties shall comply with and give full respect for registration acts as they do in writings when they are entering into a contract relating to immovable property.
If the parties have failed to comply with the terms of the provision i.e. not having their contract register, then the contract, even if it is made in written form, does not have binding effect over the contracting parties; and any agreements, if any, existed between the parties shall not be considered as a contract but remain "...mere draft of contracts."\(^\text{10}\)

Proclamation No 334/2003 that establish for Authentication and Registration of Documents has provided that such contracts shall not have legal effect unless they are authenticated and registered.\(^\text{11}\) Hence the contracting parties, to the contract of immovable property, are so required by law to furnished their written contract with appropriate documents before the Office of Authentication and Registration of documents. Authentication is, in the contexts of the proclamation, comprises of notarial activities enumerated under Art. 4 of the proclamation; and the fact that the ascertainment (verification) of contracts made to transfer properties for which title certificate are issued under the law is included as the function of notarial activities. Therefore each and every contract, with all support documents, of immovable is expected to get through the acts of authentication process in order to get their validities and legal binding effect between the parties. Therefore authentication is special form that has required by law the contracting parties to be comply with.

The registration has taken place at the last step after the authentication of the documents has been finalized. Usually the registration of immovable property is taken place at the place where the property is located. Registration of the property is basically serve for the parties in the transferring of title over the immovable which in fact have implication on publication purpose that have legal effect in regarding to third parties.

\(^\text{10}\) Ibid, Art.1720(1)

\(^\text{11}\) Proclamation No 334/2003, Art.5(1)(a)
Under Civil Code Art. 1720(2) and (3) acts of registration prescribed for the publication or stamp duty or registration fee does not become a ground for invalidated the contract unless there is an express contrary provision of the law. In these circumstances the binding effect of such registration is limited only to the third parties.\textsuperscript{12}

In general the authentication and registration of the contract of immovable have served the interests of the public in general and a contracting parties in particular. On one hand authentication is used as a tool that ensure the parties agreements; and verify the legality of the documents attached with the contract; and finally validate and pronounce the legality of the contract; and registration has, on the other hand, used as a mechanism for the transfer of title over immovable from seller to buyer. Therefore they have a protecting devise against dishonesty of the party by way of verifying the genuine nature of the contract and the documents before making the conclusion of the contract.

They have also served as regulating mechanisms in providing with the right information that empower state agencies in identifying the right owners of immovable in case of deciding any matters that brought before them. Moreover we do not underestimate the contribution in generating revenues for the government as the form of stamp duty and service charge collecting from each contracts.

\textsuperscript{12} supra at note, 10, Art.2878
b. Other Needs of Special Form

i. Protection of Property

Property rights is a fundamental right in any democratic societies' legal system; and in acknowledging these basic rights countries have conferred a constitutional protection for the protection of property. Registration is one of the mechanisms that serve as an instrument for safeguarding rights of immovable property. Act of registration has serve as instrument that protect the owner, from any third parties claims or interventions, through identifying the true owner of the property, and hence it has a regulating effects over the transactions of parties on immovable property\(^\text{13}\).

ii. Avoiding Disputes

The main purpose of the authentication is to ascertain the right owner of the property by verifying the legality of the documents attached with the contract and validating the agreements of the parties. Authentication has provide a security for a contract by identifying any fraudulent acts or mischief of the parties at the time of the conclusion of the contracts; and these process has protect the contracting parties from any potential disputes in the future. These has also a direct effects on stabilizing and securing the commercial transaction activities relating to properties; and it has also a contributing factors for reducing disputes of contracting parties and alleviating court loads of cases of such nature substantially.

\(^{13}\) H.E. Ato MenbereTsehay Tadesse, Vice, President of Federal Supreme Court, an interview conducted, on July 26, 2007
3.2 The Main Reasons Leading to Non-Authentication and Non-Registration of Contracts of Immovable Property.

It was very recently that people become aware of the importance and legal significance of the authentication and registration acts over the contract of immovable. During the last two or three decades very few transactions of contracts of immovable were taken place through acts of authentication and registration. One can illustrate a number of reasons for a contracting party that are failing to comply with the legal requirements of authentication and registration of contract of immovable; and we will try to see the major contributing factors discouraging the parties to comply with the authentication and registration processes.

3.2.1 Lack of Awareness and Traditional Practices

In the traditional societies like of Ethiopia peoples who lived, far away from the urban, in the countryside where only few people could read and write, many transactions were made in traditional ways. Usually contracts were made orally and in some cases with having only oath as a guarantee in front of people having them as a witness.

In such strong cultural and religion attached societies activities of such nature can take place only with trust; and providing oath is serving as instruments in binding the contracting parties to their commitments; and if one of them fails to observe his oath his credibility has been lost and he is going to be considered in the societies as dishonest and fraudulent. In fear of social isolation and condemnation parties were usually bound by their oath in the implementation of the contract. In cases where the disputes arise and the parties were not able to reach to the agreement, it is more likely that the case would have been settled in the form of arbitration through the community's structure.
Even those who live in urban areas few people were aware of the requirement of the authentication and registration of contract of immovable property. Frequently transactions of parties over immovable properties were carried out only in the written form; but very few were aware of the legal significant of authentication and registration. It may perhaps due to lack of knowledge of the importance of the possible legal effects on the parties ahead in the implementation period.

### 3.2.2. Trend of Socialist Policy

Particularly in the previous regime where government political policies had strictly prohibited the ownerships of private properties, particularly in time where citizen had confiscated and strictly prohibited to have more than one house contracts of immovable of commercial nature had been very weak; and in fear of government policies any such transactions over immovable had taken place illegally in various ways and forms within the contracting parties to avoid any possible danger. Practicing such natures of transactions for long period have left its impact on for a later period even after the regime change has taken place and where the restrictions of ownerships of private property were lifted.

### 3.2.3. Lack of Capacity and Evidences for Prerequisite

Lack of relevant documents has also taken as a major contributing factor for failure to comply with the requirement of the law. Act of Notary has required the contracting parties to produced the contract with various documents attached with the contract; and such documents are, among other, includes title of ownership (certificate), Power of Attorney if the House is to someone else, Identity Card, Marriage Certificate, Payment of Tax etc. In cases where one of the parties was illegally occupied or does not have all essential documents or the documents were not genuine, the parties may conclude the contract illegally in written form as a way out of their immediate problems.
These forms of contracts in a later time especially in the implementation phase appear to create a dispute among the contracting parties. It is witness that in recent time Ethiopian Television Police Program\textsuperscript{14} had transmitted incident of fraudulent acts of contract of House made between the parties; and in that contract one of the parties, the seller does not have ownership right over the House in dispute, but cleverly misleading the buyer in to believing him as the right owner of the House and mange to sale the House. In this case the behavior of buyer has also a contributing factor for such kind of illegal contracts. Usually the price of such kind of transaction are very low that tempted any individuals; and many times in such situation the buyers are in hurry to buy a house with low prices without further challenging and verify the legality of the object of the contracts. The acts of fraud has usually discovered on the later stage of implementation of the contract. Therefore acts of authentication are protecting the parties from such problems before it has taken place.

3.2.4 Negligence of the Parties

When the parties make an agreement on immovable property they usually give much attention to the written form in the formation of their contract; and due to various reasons, partly of their negligence they appeared to delay the authentication process.

Once they formed their contract in written form they departed from each other for long time as if the contract is finalized; and if one of the parties, usually the buyer wants or become ready, for the transfer of the title of the house or aware the legal significant of the registration of the contract, demand the other party in this case the seller to authenticate their contract before the Notary Office.

\textsuperscript{14} Ethiopian Television Federal Police Transmission Program, June 10, 2007
If the seller finds out that the current costs of the house has become much more greater than he previously transact, being tempted by a soaring price, tend to inclined to refuse the buyer request of registration; and it has become a source of dispute between the contracting parties over the performance of contract and a reason for the parties finally to end up in court of law. We can cite one pending case as an example for illustrating of such nature of contract. The disputes arises between Ato Adudga Ejigu (አቶ አዱኛ እጅጉ) and W/ro Tenaye Geleta (ወ/ሮ ጥይወ ጌለታ) Vs. Niyala Insurance S.C. The parties made their contract over the Building on July 2, 2002; and as per the agreement the sellers delivered the Building to the buyers and the buyer also paid 6.5 million ETB. to the sellers. In the time of the conclusion of the contract the seller has agreed to transfer the title of the building; and to that effect they duly appointed power of attorney who would follow up and undertake the process of transfer of title of the building on their behalf to the buyer. However, the transfer of the title has not taken place for sometime and between that the sellers made their mind up and denies the existence of contract of building made with Niyala Insurance S.C, and bring civil action against Niyala Insurance demanding the Insurance company to return back the building to them.  

3.2.5 Legal Impediment

Land can not be privately owned, and it is a public property under Ethiopia law. As the result of this any contract that have effect on the transfer of the title of the land to a private party is considered as unlawful and illegal, and it shall have no any legal binding effect on parties.

15. Federal High Court, file No 56347
To escape this legal impediment people find out their own solution that enabling them to get the "ownership" of land through the title of a contract of "house". Apparently the subject of the contract is refers to sale of a given “house”, but actually the object of the contract is land. In this case the parties can not produce the appropriate documents that satisfy the authentication and registration processes since there is no building or similar structure at the place. These days such trends have been widely practicing in the cities.

3.2.6 To Escape From Government Tax

Some time the contracting parties may enter into contract of the immovable with all documents attached with the contract. Even they exchanged all documents relevant to the House between themselves. However, they would not go and get authenticated their contract despite that they are able to produced the required documents. The main factor for not complying with acts of authentication and registration is to avoid government taxes or charges. In the beginning period where the government impose property tax, on capital transfer, i.e. 6% for Residence House and 30-35 % for Commercial Building; and as the result the costs of the houses were escalating very much and became very expensive and very little buyers were able to buy the house. Therefore in abide to escape such tax levy and charges many parties are tried to avoid their contracts from acts of authentication.
3.3. **Consequences Followed the Non-Authenticated and Non-Registered contract of Immovable Property.**

3.3.1. **Problem in Performance of the Contract**

So long as the contract of immovable has comply with the special conditions of the formation of the contract i.e. the contract has drawn up in a written form, having authenticated and registered at the respective agencies, then the contract is legal, valid and enforceable.

However, increasing numbers of contracts relating to immovable did not meet the requirement of the law or respect to the special conditions of the formation of the contract. Usually parties once they drawn up a written contract and made their due signatures alongside with the signatures of the witness, they would not getting through the other process in abide to avoid administrative hurdles and other related problems. Although the parties seems to content with the pieces of written agreement that satisfied their immediate purpose it has a potential for creating future disputes between the parties.

The disputes will arises in the performance phase when one of the parties has refused to implement the terms of the contracts or the other party is unable to satisfy about the manners and the progress of the execution of the contract, and such disputes usually has take place at a point of transfer of title or possession of the object (House). In this stage many parties were finding themselves in legal wrangling and their contract falling in limbo. So parties were seen fighting for their rights including bringing legal suit, against each other, for the performance of the contract.
3.3.2. Controversial Issues (Briefing Cases)

If the parties fail to resolve their disputes amicably; then they bring up their action in the court of laws. In the past and somehow at present time courts have been loaded with cases of such nature and it has been taken much of their time in resolving the disputes\(^\text{16}\). In this regard no clear position was taken as to determine the validity of contract of immovable property; and sometime a written contract is considered as a condition of determining of the validity of the contract; and in another time it does not unless it has to be supported by acts of authentication. Likewise these variations have further also been reflected in the academics and practitioners circles.

Some argue that a written contract is considered enough for the validity in the eyes of the law despite it fail to meet the requirement of authentication, while others strongly maintain that it does not have legal binding effect so long as it does not comply with acts of authentication. These issues had been, and in some cases still, remain a point of controversies among legal Scholars, Academician, Judges and lawyers.

The main ground of such controversies stemmed from the interpretation of the provisions of various laws in the civil code and other relevant proclamation. These unsettled issues are brought about unpredictability of the ruling of courts and uncertainty and insecurity over the contracting parties to the legal system of the country.

The core point of controversies are revolving around the legal effects of acts of authentication (registration) over the validity and the binding nature of the contract of immovable property between the contracting parties.

\(^{16}\) H.E. Ato Desalegn Berhe, President, Federal First Instance Court. An interview conducted, on July 23, 2007
Here we will trying to see the different legal opinions of the Judges in interpreting the legal provisions of contracts of immovable; and the following legal comments are carefully selected from the news papers in a believe to serve our reader explain equally both directions of opinions or arguments; and given that the comments were made by setting Judges of the Federal Courts it has also an implication on the practical application of such nature of legal disputes in court of law.

"Registration is not a prerequisite for the validity of the contract of immovable"17

His honor Ato Yosef Aemro, Current Judge at Federal High Court.

In his article, His honor Yosef Aemro states that."... Under Ethiopian civil code Art. 1678 (c) and Art. 1719 (2) Where a special form is expressly prescribed by law such form shall be observed”. He takes out the following points from the provisions of Art. 1719 and 1720.

Under Art 1719
- The contract shall be valid, under the general rule, where the parties are agree on any manners
- Where special form is expressly prescribed by law such form needed to be complied with

Under Art. 1720
- Where a special form is prescribed by law the contract is remain draft of contract until it comply with the required form
- No comply with the provisions of contracts relating to stump duty or registration fee does not bring about the termination of contract
- Unless otherwise provided by the law non-comply with the provisions of publication does not bring about the termination of the contract.

From the above legal provisions he has reached to the following conclusions

• Any agreements made between the parties is valid unless they are limited by law that prescribed a special form
• Where special form prescribed by law the parties shall comply with it
• Where such form is not complied, it became draft of contracts which does not have legal effects
• Unless it is expressly provided by the law provisions relating to stump duty or publication does not have effect on the legality of the contracts

In the context of the above legal conclusions he made his comments on the legality of contracts of immovable:-
• Contract of immovable property, under Art. 1723 shall be in written form and registered with a court or notary. In regarding to the first requirement i.e. a written form; the contract shall be formed in written form and otherwise it does not have any legal validity for the contracting parties; and the requirement of a written form has not been the subject of controversies. In his view the point of difference is in respect to the legal effect or status of registration on the contracting parties.

According to him failing to observe the requirements of written form and registration of contract has different results. Where the contract is not made in written form, it is not valid as it has the advaliditatum value over the legality of the contract. However, the contract is legally valid even if it does not comply with acts of registration as the purpose of registration is serve mere publication and tax. In support of his comments he has also tried to base his arguments on comments of like of professor René David (Page 33-34) and Jean-Marc Baissus (Page 61).
He explaining the professor Rene David' points in regarding to registration; and according to him, Rene David made clear that "...unless otherwise provided in the contrary, the contract is no invalidated on the ground that the provisions relating to tax or publication formalities do not complied with "\(^{18}\)

Further more he cited Jean-Marc Baissus comment in regarding to form in the following ways:-

"Concerning tax and publicity formalities, such as the necessity to file a customs declaration, or the registration rules linked to the sale of ... immovable, these are not as rule a formal requirement, and can not be a cause of nullity of the contract, except an express provision to the contrary. Other administrative sanctions remain open however, such as the imposition of fines, or the unenforceability of the contract in respect to third parties." \(^{19}\)

He has also clearly underlined that "there is no legal provision in any place of the body of the laws which invalidated contract not complied with the requirement of the provisions of registration or tax duty." \(^{20}\)

More over his honor Yoseph made his legal analyses over the validity of the contract in respect to a Proclamation No. 334/2003 that providing for the establishment of Authentication and Registration of Documents Article 5(1) (a), and Civil Code Art. 1720 (3) which seem to have apparent legal conflicts.

\(^{18}\) Ibid
\(^{19}\) Ibid
\(^{20}\) Ibid
In his view, under art. 5 (1) (a) the requirements of registration has strictly applied only to those documents (contracts) that are so expressly required by appropriate law to be comply with the act of registration; and such provision does not applicable the like of Art, 1720 (3) of civil code because such provision clearly states that non-compliance with tax or registration fee rules does not affect the validity of the contract of immovable.

In concluding his opinion, therefore, registration is not legally binding, and it is merely serve to ascertain the existence of the contract and increase the enforceability of the performance of the contract.

"Authentication has a legal binding effect over the contracting parties"\(^{21}\)

His honor Solomon Emeru, sitting Judge Federal High Court.

The other group are arguing the opposite to the one we discuss on the above; and claiming that registration is one of special form and non complying with it would bring the contract no-effective and non-enforceable. His honor Solomon Emeru, sitting Judge of Federal Court, made remark, in response to comment made by His honor Yoseph Aemro, on issue regarding to registration.

His remark as follow:-

First he began by clarifying the existing different nature of legal meaning of "Registration" in the context of article 1720 and article 1723; and according to him, "...the application of registration for the purpose of; tax and revenue under Art.1720 (2) of Ethiopian civil code or for the purpose of publication under Art.1720(3) are extremely different from the one authentication (registration) of a contract made with a court or notary for the purpose of ascertaining the conclusion of contract under Art. 1723(1) ..." \(^{22}\)

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\(^{22}\) Ibid
For him, the application of registration for the purpose of tax or publication has taken place following to the conclusion of the legally binding contract between the parties. Before registration and publication has taken place there must be legally binding contract in the first place; and therefore "...registration in principle is not necessary for the validity of the contract and in this case the function of registration ...is merely serve for the purposes of tax and publication that provided under Art. 1720 (2) and (3)." 23

Therefore in his conclusion he stressed that "...Art.1723(1) demanded that the contract itself shall be made before Public Notary Office or Court and it has been confirmed that such procedure is considered as essential part of the process in the formation of contact rather than formality made for mere registration of legally binding contract.

Under Art. 1723 a contract is considered finalized after the contracting parties verified their contract before Public Notary or Court. If they fail to comply with, their written contract is, under Art. 1720(1), considered as a mere draft of contract. Therefore ... under Art. 1723 contract not authenticated with Public Notary or Court in according to Art. 1723 ...it does not have legal effects even between the contracting parties."24

More over he trying to rectify the comment made by His Honor Judge Yoseph Aemro relating to Rene David’s comments; and in his remark he try to explain the right intent of the professor and criticizing the comment made by the former writer as misunderstood and misquoting the professor comment. He explaining the professors' comment made in the “commentary on Contract in Ethiopian page 33-36" in relation to registration of contract in the following ways:

23. Ibid
24. Ibid
"...if the law prescribed or the parties agreed that contract is made in written (special form) the contract has become invalid and does not have legal effect if not comply with the special form." However, according to him, the professor warn that "...Requirement of form must not confused with registration of contract, made under Art.1720 (2) and (3), for the purpose of tax or publication. "... since such registration, made for the purpose of tax or publication, is not special form essential for the formation of the contract and failing to observe them does not affect the legality of the contract." 25

In concluding his comments "contracts that falling under Art.1723-1725 are contracts, prescribed by law, to comply with the special form; and the manner in which such special forms made are enacted under Art.1723; and also Art. 1720(1) and 1678(c) provide that complying such form is compulsory for the formation of the contract." 26

We are trying to demonstrate, on the above, different view points made in relation to the nature and importance of special form over contract of immovable property. As we see there are extreme opposite view points resulted from the interpretation of legal provisions dealing with the contract of immovable. The above illustrated comments are reflected the position of existing setting Judges of Federal Court; and they have implications and practical consequences on resolving the actual cases of such nature without maintaining consistency and uniformity of our court system.

Let us see two selected Federal Court Decisions as illustrations for lack of uniformity in resolving the disputes arising from contracts of Immovable property.

25 Ibid
26 Ibid
1st case

Yosef Mola (plaintiff) V. Nedibeje Kutu (Defendant)

1. Tsega Lema &
   Joinder
2. Habtamwa Lema

The civil action is brought before the Court by the Plaintiff and the subject matter of the dispute is relating to the contract of the House which was concluded between the Plaintiff and the Defendant on February 18, 1994 Eth. The Plaintiff has brought charges against the Defendant demanding

- Registration to be made on the contract of the House between the parties on February 18, 1994 Eth.
- Defendant to deliver the House as per the terms of the contract
- Transferring of the title of the House

On the other hand, in response to the charge made against him the Defendant has brought about his legal defense; and his legal grounds are

- The contract is made in temporary, and not registered with Notary
- He did not put his signature on the contract before Notary;
- He is not forced to make his signature before Notary under Art. 1728 because he is not literate.
- Since the contract is not registered with the court or notary it has not legal validity and he is not bound by the contract to implement under Art. 1723.

27. Federal First Instance Court, File No 67612, May 9, 1999 E.C.
The Court has examine both sides of disputes of the parties in the context of the legal provisions of contract of immovable, and in its finding the court is able to observe that "... the contract made, on February 18, 1994 Eth., between the disputing parties is undertaken under the title of temporary contract of the House ...; and the title of the House is in the name of the wife of the Defendant...; and the Defendant has only half of the share of the House ...; and it has demonstrated, according to the court, that their agreement is a mere draft of contract". The Court has also further states that "such contract is relating to contract of immovable and it need to be registered with court or Notary in accordance with Art. 1723. However, since it fails to comply with the requirements" the court has decided that "..in according to Art. 1720(1) it is not a contract, but mere draft of contract.." and, therefore, "...it is not legally binding contract."  (i.e: The whole content of the decision is Annexed)

2nd Case

Ato Eneleye Tsihay & W/ro Yesharge Ademasu (The plaintiffs) V. Ato Tadesse Teshage & Addis Ababa City, Land Administration Office (Defendants)

The case is brought before the Federal First Instance Court on the ground that the defendants fail to execute the term of the contract made on January 9, 1994 Eth., between the plaintiffs and the first defendant. The subject matter of the contract is the sale of the House; and the point of disputes is the transfer of the title of the House into the buyers names. The plaintiffs has charged

28. Federal First Instance Court, File №, 14821, September 3, 1999 E.C.
the first Defendant of refusing to transfer the title of the House, as per the term of the contract, to the name of the Plaintiffs.

the second Defendant of refusing to make registration of title of the House upon accepting the remaining payment of cost of the House

On the other hand, in response to the charge made against them the Defendants has bring about their legal defenses as follow;

the first Defendant has accepted the existence of the contract; and he expressed his readiness to cooperate and to transfer the title of the House so long as the plaintiff is going to pay him the remaining payment

the second Defendant argued that the contract is not registered with Notary Office;

and if it does not get registered with Notary Office, the Defendant is not obliged to carried out the transfer of the title of the House unless the Court has duly ordered otherwise. Therefore, the second Defendant has expressed his willingness to provide the service of the office if the Plaintiff comply with the formalities of the contract.

After examining the disputes of both parties the Court has come up with the following issues:-

1. Whether there is a cause of action against Second Defendant in a case where the contract is not registered with Notary Office?

2. Whether the first Defendant is obliged to undertake registration of the House with Notary Office?
In regarding to the first issue :- the court has found that the contract is made between the Plaintiffs and the first Defendant; and the second Defendant is not part of the contract; and therefore the court has concluded that there is no reason to oblige the second Defendant to take inappropriate payment of the contract. Moreover, according to the court, in a circumstances where the contract in dispute does not comply with the requirement of registration, prescribed by law, for the sale of immovable, there is no legal ground binding the second Defendant to entertain the request of the plaintiffs. Therefore the court has not accepted the charges brought against the second Defendant.

In regarding to the second issues:- The first Defendant does not deny the existence of the contract; and he has also expressed his readiness to implement it if the plaintiffs would give him the remaining payment of the House. In its decision the court finds out that the first Defendant has the responsibilities, under Art. 1723 of Civil Code, to register the contract with Notary Office; and hence decided that the contracting parties should authenticate the contract with Notary Office in order to the title of the house should transfer to the Plaintiffs. (i.e:- The decision is annexed)

3.4. Recent Decisions and Strong Stand of the Superior Judicial Courts Concerning the Case.

3.4.1 Decision Taken by the Federal Supreme Court.

Eyesus Beademariam (Appellant) V. Mhudin Fareis (Respondent)²⁹
The case came before the Federal Supreme Court in appealing against the decision, made on October 22, 1998 Eth. file No. 24784, of Federal High Court. The case is relating to dispute arisen between the Eyesus Beademariam hereafter called (the Appellant) and Mhudin Fareis, hereafter called (the respondent), on the sale of a House. The point of the dispute is the non-implementation of the contract over the transfer of the House from Appellant (Defendant under the lower court), to the Respondant (Plaintiff under lower Court); and the allege reason of such non-transfer is due to a challenge over the validly of the contract.

The Respondant brought legal suit against the Appellant for failing to observe the term of the contract of which the Appellant is obliged to deliver the House to the Respondant. In his part the Appellant denied the existence of the contract altogether on the ground that no legally valid contract made between them; and as the result he has rejected any responsibilities to the contract.

The Federal High Court has, after examining on the disputes and legal arguments of the parties, render its decision that the contract is legally valid; and it decided on the following

"...finds no reasons for non-execution of the contract"; and made order that “...the Appellant should deliver the House to the Respondent as per the terms of the contract of house; and the court decide that “...the house with all documents to be deliver to the Respondent”

The appeal is made against such decision of lower court.
The Supreme Court has examining the case differently; and in reaching its decision the Court tried to see closely the essential requirements of the law in the formation of contract relating to immovable property. The Court examine the general requirements of the formation of contract in view of Art. 1678 and Art.1719; and it find out that special form is, if prescribed by law, one of binding requirements under Art.1678(c); and in such situation, it has to be strictly complied with under 1719(2). The Court has underline in its legal reason that parties do not have the capacity to decide their own choice in the formation of their agreement departing from legally prescribed special form; and if they are not complied with the special form their contract shall be a mere draft of contract.

The court has find out that the nature of the contract of the parties is a contract of a house and a contract of house is falling under the legal regime relating to contract of immovable; and Art.1723 provides the nature and the manner the contract is formed. Under this articles contract of immovable "...shall be in writing and registered with a court or notary"; and hence Art.1723 is, according to the court, constitute the element of the contract defined under Art.1678; and it is different from formalities like tax stump or registration fee provided under Art. 1720(2) and 2878.

More over, the court try to examine the relation between Art. 2877 which apparently provided written contract as a sole requirement of the form of contract; and Art. 1723 which provide both written and registration as requirement of the form of contract. In its legal interpretation the court finding Art.2877 as backing and supporting to Art.1723 rather than contradicting or conflicting it.
The Supreme Court, therefore, examines the validity of the contract in line with the provision of Art. 1723; and its compliance with the requirements of the laws. In its examination it has find out that the contract, though it is written, is not registered with a court or notary as the law prescribed; and does not satisfy the requirement of the law; and finally decided that there is no legally recognize contract of house made between the parties. *(i.e:- The whole text of the decision is attached)*

**3.4.2. Decision Taken by Federal Supreme Court Cassation Division.**

*(i.e. composed of five Judges)*

**W/ro Gorfe G/Hiwot (Appellant) V. W/ro Aberash Dubarge and Ato Getachew Nega (Responsants)**

The court of cassation has rendered a decision on the dispute arisen between W/ro Gorfe G/Hiwote; and W/ro Aberash Dubarge and Getachwe Nega relating to the contract of house, on file No. 21448, 30/08/99 Eth.. In resolving their dispute, the Court has tried to see and analyses the legal requirements for the contract of immovable in terms of legal provisions cited under Art. 2877 and 2878 which dealing with particular provisions of contract of immovable in the one hand; and Art. 1723 which is dealing with the general provisions of contract on the other hand.

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30. Federal Supreme Court Cassation Division Files No 21448, April 30, 1999 E.C.
In its assessment of these legal provisions, the court has made it clear that under Art. 2877 the contract of the sale of immovable, if not made in written form, shall not have legal effect and it is void. And under Art. 2878 the sale of immovable shall not affect third parties unless it has been registered in the registers of immovable property in the place where the immovable sold is situate. According to the court, the cumulative readings of the two provisions provide that only a written form of contract (Art. 2877) is enough for having a binding effect between the parties; and registration of the contract (Art. 2878) does have effect only to the third parties. Hence according to these provisions, a written contract is enough for the sale of a house.

On the other hand, Art. 1723 (1) provides two requirements i.e. a written form of contract and registration with court or notary for the validity of contract of immovable; and these are essential elements for a contract of immovable to have a legal binding effects over the contracting parties. According to the court, the meaning of registration provided under Art. 1723 provision is quite different from the one provided under Art. 2878. The nature of registration in the context of Art. 1723(1) has call for the parties, in addition of drawing up their agreements in written form, to appear before a court or notary to authenticate and conclude their contract; in other word it is used for the validity of the contract itself and to have a binding effect over the contracting parties; whereas registration of Art. 2878 is merely serve the publication purpose which would have effect on third parties. Therefore according to the court as per Art. 1723(1) a contract of a house need to be made in both in a written form and registered with a court or notary. Hence if the contract fail to observe the provision of registration (authentication) in the context of Art. 1723(1), then under Art. 1720(1) there shall be no contracts but a mere draft of a contract which does not have effect between the parties. The court has also clearly underlined the difference of registration provided under Art. 1720(3); and that such type of registration is made after the contract is finalized; and it is only serve for the publication purpose, and not for the validity of the contract.
In order to settle the noticeable differences between the legal requirements provided under Art.,2877 (only written form is enough) and 1723 (both written form and registration are required), the court approaches was conciliatory. And on its positive conciliatory legal interpretation the court found out the two legal provisions not contradictories in terms of legal requirements for the formation of the contract; rather they are complementary each other in a way that the special provisions of contract of immovable stating the need of written form of contract and the general provision of contract in addition to a written form it highlight the need of registration (authentication) of contract.

Therefore the court has, after discussing and clarifying the legal provisions dealing with contract of immovable in detail, rendered its final decision based on facts presented before it. In concluding, the Court after having noted the contract of house is made only in written form; but not registered with notary, find out that such contract does not have a legal binding effect on the parties and therefore the existing agreement of the parties is remain a mere draft of contract. (i.e.: The whole text of the decision is attached)

We have tried to demonstrate the controversial issues arising from the legal formalities prescribed by law in the formation of contract of immovable property. The main bone of contention is lie on the legal binding nature of registration(authentication) of contract of immovable property. As we have seen on the above (both on comments and court decisions) the two sides of opposite arguments about the legal effect of registration are reflected on. One group has argued that registration has a legal binding effect over contract of immovable and if the parties do not comply with it their contract is not valid; while the other group is argued that registration is considered as mere formality that does not have any binding effect on the parties and if they do not comply it does not affect their contractual relationships. Such very opposite legal arguments originated from the interpretation of Ethiopian Civil Code, Art. 1720 and 1723 of general contract; and Art.2877 of special part of contract of immovable.
Art. 1723 (1) has clearly provided two requirements for the contract of immovable i.e.

1. The contract has to be in a written form and that;
2. The contract has to be Registered with court or notary

These two requirements are, as we have seen from the statement of the provision, mandatory and the parties must comply with them. If they do not comply with such formalities their contract is become mere draft of a contract under Art. 1720(1). Therefore in this case registration is a binding requirement for contracts of immovable.

However, we find out two legal provisions dealing with contract of immovable i.e. 1. Art. 1720(2) - (3); and Art. 2877 which seems to have apparent contradiction to the 1723(1).

First let us see Art. 1720(2) and (3)

In these sub-Art. contract of immovable shall be valid despite the fact that the parties do not comply with registration relating to stump duty or registration fee or registration relating to publication. We do not confused such registration with the one provided under Art.1723(1). The nature of registration provided Under Art. 1723(1) and Art. 1720(2) and (3) are quite different. Under Art. 1723(1) the subject of registration is a written contract and the power to registered such contract is entrusted with an organs called a court or Notary; and the aim of its function is notarial activities much more relating to acts of authentication of the validity of the contracts.

Registration provided in Art. 1720(2) and (3) is much more related to property i.e. the subject of registration is the immovable property, not the contract, and the power entrusted with such registration is not court or notary, but municipal agencies that are established and function under Art. 1553-1646. Such types of registration does not decide on the validity of the contracts as provided under Art.1637. Therefore we have to understand the word "registration" differently in the context of the two legal provisions.
The other point of controversies lie on the provisions relating to Art. 2877 of the special part of contract and Art.1723(1) of the general part of the contract. The special provision of contract of immovable Art. 2877 provided that if "a contract of immovable shall not be no effect unless it is made in writing", while the general provision of contract of immovable Art. 1723(1) provide both requirement written contract and registration. Here the writer legal argument is similar with the argument held by the Federal court.

Art. 2877 while underlining on a writing form as a requirement for contract of immovable, it does not say anything either positive or negative about registration; and in such situation we do not at least dare to say it is contradicted with the general provision of Art. 1723(1). If they do not clearly contradict each other, they are one and integrated body of law and in each sections of laws the provisions are mandatory and binding. The mandatory provisions of each sections body of laws are applied with the equal force of law. Therefore Written and Registration formalities of contract provided under 1723(1) and Written formality provided under Art. 2877 are mandatory provisions for contract of immovable, and if they do not contradicted each other, it is not a sound and a viable legal argument to held that written form is a sole requirement for contract of immovable simply on the ground that the special provision is prevail over the general one. Therefore the position of writer of the paper is both written contract and registration are two mandatory provisions prescribed by the contract law and the parties needed to comply with in the formation of contract over immovable.

3.4.3 The Effects of “ Void” and “ Voidable” Contracts

As the writer of this paper repeatedly mentioned in previous chapters and sections, if the contract of immovable does not comply with the legal formalities prescribed by the law, the contract does not have any legal effect on the contracting parties. And therefore the contract is void. As a result of the
judgment of declared void, non of the parties owe contractual obligations to the other. Both parties are free from contractual obligations that were to be not created. “No one is debtor and no one is creditor”.31

Voidable contract is a valid contract from the very beginning even if certain defect (i.e. error, mistake, duress, fraud or incapacity etc.) has with it (1704-1706). Generally, the usual remedy available to the parties of an invalidated contract is restitution. According to this general principle each party to the contract will, as far as possible, be reinstated either by restoration or compensation or by both to the position they would have held had the contract not been made.32

The civil code seem to take similar position with the above cited authorities and Art. 1815(1) of the code provides that where a contract invalidated (voidable) the parties shall as far as possible be reinstated in the position which would have existed had the contract not been made.

A contract is said to be void when essential elements that is required for the formation of valid contract is absent. (There is not valid contract from the very beginning).

Therefore, according to Art. 1720(1) states that where a special form is prescribed by law and not observed there shall be no contract but a mere draft of a contract. A “mere draft” of a contract has no binding effect which are made with out the observance the formality requirement of the law are considered inexistent from the beginning. Since the agreement itself has not attained the status of contract it is impossible to entertain by the provisions of contracts, but the way out to return back help the provisions of non-contractual liability & unlawful enrichment. (Art 2162 –2178 Civil Code)

32 ibid.pp-424-425
3.4.4 Current Development of the Status of Authentication and Registration of Immovable Property

For the past decades, and to some extent currently, the issues of Authentication and Registration in regard to contract of immovable have become controversial among Legal Scholars, Lawyers and Judges. Each has their own arguments in interpreting legal provisions dealing with contract of immovable. The controversies are not limited on legal theories and it has implication on the practical disposition of disputes in court of law. In these we tried to illustrate how such controversies incredibly reflected in the decisions of the courts.

The fact that the recent trends of Supreme Court decisions seems to convince on the importance of authentication in the formation of contract of immovable and they made decision that has effects as precedent to other federal and regional courts.33

As we have seen, on the above on 3.4.2., the Court of Cassation has made decision on the acts of authentication in respect to contract of immovable. And in that decisions the court has found out that contract if not comply with acts of authentication, despite written one, does not have legal effect on the contracting parties. These decisions have a binding effect for other similar cases come before court of law. It is a landmark decision that would ultimately resolve and change the long controversies and inconsistencies over the issues of the legal effects of authentication and registration once and for all. The decision of the court of cassation has a binding effect on all courts with similar cases. A proclamation No.454/2005 Art.2/4 provide that "interpretation of law by the Federal Supreme Court rendered by the cassation division ...shall be binding on Federal and Regional Courts at all levels...."

Therefore in our cases such decision of Court of Cassation shall have a binding effect to all levels of lower courts; and if any disputes of parties, over the validity of contract of immovable regarding to acts of authentication, shall be treat in similar ways as it does at court of cassation. It may some what help to resolve the long controversies and instability of dispositions of court cases.

More over, the proclamation No. 334/2003 provides that documents that are prescribed by law to be authenticated and registered shall not have a legal effect unless they are complied with acts of authentication and registration\(^\text{34}\). This legal provision has also further strengthening the position of the decision of the court.

Attempt has been made to verify the individual position of court officials over recent direction of court in resolving of such disputes. In doing so the writer of the paper has conducted an interview with Federal Court Officials about the legal status of authentication in respecting to contract of immovable; and their legal assessments are the following:

His Excellency **Ato. Meneberetsehay Tadesse**, Vis-President of Federal Supreme Court, has underline the importance of authentication of contract of immovable; and in his respond "property rights is basic rights for human being, next to human rights; and immovable property has great value than other types of properties and such property needed registration for providing maximum securities for the rights of ownerships. Registration is a tool for securing rights of property of high values. According to him , ...acts of authentication is a prerequisite for applying registration..." and; authentication is serving as "...identifying the right owners of the property and ascertain time and mode of transfer .."and in concluding his remark his excellency stress that since it provide security of the contract, acts of authentication should be promoted and enforceable\(^\text{35}\).

\(^{34}\) Proclamation no 334/2005, Art. 5(1), (a)

\(^{35}\) Interview provided by H.E. Ato Meneberetsehay Tadesse, on July 26, 2007
His Excellency **Ato Hagos Weldu**, Current Judge of Federal Supreme Court, has also made similar comments, in response to interview made, on the importance of authentication in the formation of contract of immovable and as well the implementation therefrom. He states that authentication "...provide security for property, create trust among communities in protecting the interests of the parties and third parties, reduced loads of such nature of cases in courts of law." And he has similarly stress every parties should have to comply with in the formation of contract of immovable.

His Excellency **Ato Desalegn Berehe**, President of Federal First Instance Courts has made clear that the contract of immovable should authenticated in order to avoid unnecessary disputes that consume much of court time. In his remark he stress that '...since currently the Federal Court of Cassation Division made decision that has a binding effect for similar cases ..." and such contracts that not comply with the requirement of authentication have not been entertain any more.

The above view points have identified the importance of authentication and recognized the legal binding effect of authentication. These positions of Court Officials have also supported with the federal Supreme Court and court of cassation devisions that have legal binding effects over other courts.

Therefore, based on the justifications, opinions and clarifications given by the Judges & officials of the Federal Courts in different level mentioned above, and the clear interpretation of the relevant provisions of the civil code the writer of this research paper has in position with the argument which states that authentication and registration of contracts relating to immovable property is a validity requirement.

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36 Interview provided by H.E. Ato Hagos Weldu, on July 24, 2007
37 Interview provided by H.E. Ato Desalegn Berhe, on July 23, 2007
Conclusion and Recommendation

As I have tried to discuss so far, the nature of contract of immovable in the context of legal provisions and practical application of laws in interpretation and practical court of law, although the general principle under the law of contracts is the freedom of the parties as to the form of the contract, there are few exceptions which binds the parties to follow a certain type of formats.

The provision of the law on contracts relating to immovable property is one of the few exceptions to the general rule. It requires the parties to the contract to make the agreement in writing and have it registered or authenticated before a court or a notary. The provision has been a subject of debate and discussion amongst legal scholars, professionals and judges. The divisive issue basically focused on the requirement of registration and authentication and some have been arguing that registration or authentication is just a publicity issue and it is not a requirement for the validity of the contracts. Therefore it only affects the relationship of the parties with the third parties and failure to fulfill this requirement doesn’t affect the binding nature of the contract on the parties to the contract. This line of argument stick to the wording of article 2877 of the civil code which seems to limit the requirement to the written form only, and Art.1720(2) and (3) which, according them, the requirement of registration give only purpose of publication and government tax.

The other line of argument is that the law, under article 1723(1), is clear on the requirements of contracts relating to immovable property. It clearly required the parties to written form and a registration or authentication of the contract before a court or a notary in addition to the written form. This emanates from the significance of juridical acts relating to immovable property. Article 2877 does not rule out the requirement of registration or authentication.
It simply emphasizes on the writing requirement without stating anything that contradicts what is stated under article 1723(1) as a formal requirement. Other provisions that state the irrelevance of fiscal provisions and stamp duties etc. for the validity of the contract do not rule out the requirement of authentication or registration as a matter of fact stamp duty or registration fee effected after valid contract is formed.

The writer of this research is in favor of the second line of argument which states that authentication or registration of a contract relating to immovable property is a validity requirement and not a mere publicity requirement. The argument is also supported by the recent decisions of the federal supreme court and the court of cassation division. These decisions especially the decision taken by the cassation division were actually given after I started to write this paper.

The Federal Supreme Court Cassation Division is empowered to give a binding interpretation of the law according to proclamation no 554/2005, and lower courts are bound to follow it. These recent decision will bring to an end all the debates surrounding the formal requirement in relation to contracts relating to immovable. Therefore, I will forward the following recommendations that will be helpful in the handling of contracts relating to immovable property.

- Judges are entrusted with the power of interpreting the law and that the way they interpret specific provision will have an influence on the way the society behaves. The debates surrounding the requirement of article 1723(1) reached to its climax due to lack of uniformity in the interpretation and application of the legal provision in the court of law, judges gave different and contradictory interpretation to it.
However, the court of cassation has given a final and binding ruling on article 1723(1) and other relevant provisions which best protects the interest of the public at large and the state, judges at any level of the court must maintain a uniform stand in dealing with similar cases relation to contracts relating to immovable property which makes authentication and registration a requirement of validity of the contract.

- Legal scholars and Practitioner should lead and advise the public the legal significance of authentication in the formation of contract of immovable. In doing so, they would guiding the public to follow up the direct direction and protect from any potential treats in the period of implementation of the contract. They would help also to the contracting parties in the direction of having the contract registered or authenticated, because it is the preferred way of interpreting article 1723(1) in protecting the interest of the contracting parties, third parties and the public. Since the Supreme Court of Cassation division has given clear and binding decision without leaving any room for hair splitting, it is no more ethical to confuse the public by creating any other line of argument that rules out the significance of authentication and registration in relation to contracts relating to immovable property.

- Administrative bodies involved in the registration or authentication of contracts relating to immovable property or all other governmental organs which, by the nature of their work, require the submission of a contract relating to immovable must teach or guide the public to have a contract relating to immovable property registered or authenticated before a court or a notary.
It is also the practice of the administrative organs, that encourage the public to act in accordance with the law and they must discourage the submission of unregistered or un authenticated contracts relating to immovable.

- One of the reasons why the parties to the contract fail to have their contracts registered on time is delay on the part of pertinent administrative organs to issue a title deed and title certificate to the owners of immovable property. Title deed or title certificate is the most important requirement the seller has to present before a notary to have the contract authenticated and registered. As I have indicated in this research, parties to the contract relating to immovable property, most of the time agree on a written form only pending the issuance of the title deed. This will bring about further disagreement between the parties when the issuance of the title deed is delayed because their un authenticated contract is no more than a mere draft. So, administrative organs involved in the issuance of title certificate and transfer of title of immovable property must efficient, modernized their system to give a speedy response to request of title certificate or transfer of title.

- Notary offices in different parts of the country must avoid unnecessary Bureaucratic bottlenecks and hurdles, instead, they must facilitate the process of authentication and registration of contracts relating to immovable should be efficient, smooth and modernized. So that the public could be encouraged to have its contracts registered or authenticated to fulfill the requirements of the law.
Unpredictability of processes emanating from unnecessary bureaucratic hurdles are some of the factors that push the public to evade the requirement of the law. So, Notary Offices must make the requirements of authentication and registration clear in a manner understandable to any member of the public, set up a predictable process that gives to speedy response to any legal and reasonable request of authentication & registration. They must also teach the public about the effects of non-authentication and non-registration of contracts of immovable property in any media available to the public.
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2. **TABLE OF LAWS**

- The Central and Regional Executive Organs, 1993, Proc. № 41, *Negarit Gazeta*, 52nd Year, №: 26
3. OTHER MATERIAL SOURCES

- A Document that shows Civil Law Legal Tradition includes France, Spain, Italy, and Most Latin American countries. The number of countries whose members belong to UINL now number over 90
- The Authentication Documents from U.S.A at the Archive of Authentication and Registration of Documents Office (DARO)
- Federal Supreme court Cassation Division File No 21448, April 30, 1999 E.C.
- Federal Supreme court File No 22359, February 13, 1999 E.C.
- Federal High Court File No 56347, March 6, 1999 E.C.
- Federal First Instance Court File No. 67612, May 9, 1999 E.C.
- Federal First Instance Court File No. 14821, September 3, 1999 E.C.

4. ELECTRONIC SOURCES

5. LIST OF INTERVIEWEES

➤ H.E. Ato Meneber Tsehay Tadesse, Vice President of The Federal Supreme Court.
➤ H.E. Ato Hagos Woldu, Judge in Federal Supreme Court.
➤ H.E. Ato Desalegn Berhe, President of Federal First Instance Courts.
➤ Ato Worku Fantahun, Legal Expert, Head; Documents Authentication Clearance and Injunction Main Section in Documents Authentication and Registration Office Under the Federal Ministry of Justice.

6. ANNEX

➤ Federal Supreme court Cassation Division File № 21448, April 30, 1999 E.C.
➤ Federal Supreme court File № 22359, February 13, 1999 E.C.
➤ Federal First Instance File № 67612, May 9, 1999 E.C.
➤ Federal First Instance Court № 14821, September 3, 1999 E.C.
አስታbestos - ከወረዳ ከቁጥር
ECO ከጭወቹ የሚስታወች እና የጭወቹ ከጭወቹ ይችሉ በፋክ ይህ ይህ የተሰጠ ከጭወቹ ያለን ይህ ከጭወቹ ይዘት ይደረጉባል ይግባኝ ያለ የጭወቹ ያደርጉ ከጭወቹ ይገባል ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባል ያለን የጭወቹ ይገባኝ ያለ የጭወቹ ይዘት ይደረጉባላ
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(2) Any contract by which an immovable is divided and any compromise relating to an immovable shall be in writing and registered with a court or notary.
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1. የተረከብ የወረüğች ውቁር ውር ያስጠቃቸው ውርስ 06823 ማስ ከ14 ቀን
1996 የሰናካ ውስጥ በማረጋገሩ የተረከብ ውቁር ውር ያስጠቃቸው ውርስ 33751 ማስ ከ14 ቀን 1997 ያስጠቃቸው ይስ በኋላ ይስ ከፋሽ

2. የተጋጠቃቸው ውጭ ከ24 ቀን ውጭ 09 ቀን ውርስ 011 ማስ ከላ የስርር
ናው ያስጠቃቸው 116992 ይህም ያስጠቃቸው ውቁር 25 ቀን የሰናካ
023/385 ማስ የስርር ያስጠቃቸው ውቁር ያስጠቃቸው ውርስ ከፋሽ ከ14 ቀን.
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1. ይንወ ይታወቂ ወን ዓ/ብ/ሸ/ሄ/-nine ቀ. 348(1) ዋወን ቀ.
2. 

3. 

Т.и.

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