Provisional Military Government
of Socialist Ethiopia, Supreme Court

Civil Appeal No. 852/73
Tahsas 18/1977

Justices:- 1.
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Appellant:- Mrs. Emma Vakaro
Respondent:- Customs Administration

Having examined the case, we have rendered the following judgement.

Judgement

The appellant, in her memorandum of appeal, dated Hamle 23/1971, stated that the Von Vokiado Company had, pursuant to a judgement rendered in a separate dispute, paid Birr 14,181.03 (Fourteen Thousand one Hundred Eighty-one Birr) to the respondent. However, as this judgement was subsequently reversed by an *ad hoc* committee established to decide cases pending in the Emperor's court (*Chilot*), and the parties had agreed that the execution of this judgement should be transferred to the High Court of Addis Ababa, the appellant had begged the High Court of Addis Ababa to order the restitution of the money paid by the Company, in accordance with Article 349 of the Civil Procedure Code. The application of the appellant was served on the respondent, who raised a variety of preliminary objections, and was also made to submit his statement of defence, in full, on Ter 25/1972. The main points raised by the respondent in his defence were as follows: According to Article 349 of the Civil Prodcedure Code, the appellant should have instituted his claim in the Awraja Court of Asmara, and not in the High Court of Addis Ababa. There is not sufficient evidence to prove that Emma Vakaro has authorized the present pleader to act for her in this Court. The appointment of a pleader made before a notary is not considered valid under Ethiopian Law. The testimony given by the witnesses in respect to the inheritance and the name of the appellant is so confused that it could not be regarded as a sufficient evidence for determining the inheritance. Without producing a document evidencing the fact that she had inherited the Von Vokiado Company, the appellant could not claim the money deposited by the said Company. The relations between the Company and the deceased spouses have not been established. Even if it could be said that the appellant is the sister of Emma Vakaro, and that one may inherit the property of others by reason of relationships, the succession claim should be dismissed, on the ground that there is no reason why the appellant could, apart from the property of her sister, inherit the property of her brother-in-law, Pierro Padoli, and it stated that it could object to the succession. Moreover, the respondent stated that, as the money was deposited by the company, of its own free will, against a receipt (Model 85), and as long as this receipt was not substituted by an appropriate receipt within 6 months' period of time, it could not be used for reclaiming the money deposited by the Company.

The appellant's pleader, on his part, has stated his responses as follows:

As the issue was related to reclaiming the money in the light of the decision rendered by the *ad hoc* committee, the respondent should not be allowed to question as to the identity of the appellant in this Court. As regards the transfer of the decree for execution to the High Court of Addis Ababa, the pleader stated that the transfer was effected at the joint request of the appellant and the respondent, and that proof to this effect could be found in the file. With regard to the allegation that there was confusion in the testimony of the witnesses and the name of the appellant, the pleader insisted that the respondent's argument was unacceptable. Since the appellant was named and her pleader appointed on the basis of the law of Italy, the objection raised by the respondent was groundless. The respondent might raise his objection to the succession, if he has any objection to make, not in the High Court, but in the Asmara Awraja Court in which the judgement was pronounced. The heirs of the owners of the Company could claim the money deposited by the Company. The money was deposited not because the Company required it, but because the Court had rendered an order to that effect.

The appellant has produced a variety of documentary evidence to support his claim: these are the memorandum of association, certifying that, first, Pierro Padoli and, second, Lina Vakaro were the owners of the Von Vokiado Private Limited Company; a certified copy of the certificate of heir issued by Asmara Awraja Court in Civil Case No. 433/68, which could show that Emma Vakaro is the heir to the owners of the Company; a copy of records of proceedings in which the Supreme Court of Asmara ordered the Von Vokiado Company and two other persons to pay to the Customs Administration Birr 14, 181.03, each; and a power of attorney signed by the appellant authorizing her pleader, Mr. Soligno, to collect on her behalf Birr 14,181.03, which she said she was entitled to get, because of her being declared the heir to her sister, Lina Vakaro, and her brother-in-law, Pierro Padoli.

The High Court of Addis Ababa, having examined the arguments raised and evidence presented by the parties, held that, concerning the court's competency to entertain the case, it had the power to adjudicate the dispute which the High Court of Asmara had delegated to it, in addition to the fact that the parties agreed to that effect. Concerning the appointment of the pleader, the Court dismissed the respondent's objection on the ground that it was certified by both the Ministry of Foreign Affairs and the Embassy of Ethiopia to Italy. Moreover, since the money was paid by an order of the Court in the execution of a previous judgement, it is possible to apply to the Court with the aim of getting it back. If the Company is dissolved, the owners should claim the property of the dissolved Company, and Pierro Padoli and Lina Vakaro are known to be the owners of the Company. As regards the allegation that Model 85 is of no value beyond six months, the period, other than merely indicating the time beyond which the office intends to keep the money for itself, does not act as a statute of limitation that may preclude third parties from reclaiming their money. And concerning the naming, as it was performed consistent with the traditions of Europeans, there is no problem in it. As we have observed, the judgement of the Awraja Court, by which the petitioner was

declared the heir of her sister and brothers-in-law, and the objections raised to it should, in actual fact, and have not been lodged in this Court. Having stated that a declaration of succession is deemed illegal if rendered based on laws other than those of Ethiopia (for courts of Ethiopia are required to apply Ethiopian law), and that the judgement of the Awraja Court, in which the wife and the husband were considered as though one could become the heir to the other, is outside the spirit of Articles 844 (3) and 845 of the Civil Code, the High Court held that the applicant should acquire only the share of her sister, and not that of the brother-in-law, to the succession of whom the Government should be called.

Both parties have now appealed on this decision to this Court. Emma Vakaro's appeal rests on the fact that the decision rendered by the High Court, depriving her of the right to inherit the share of her brother-in-law, is improper; she has, in her statement of appeal, stated that she was the legal heir. The respondent has, on his part, also lodged an appeal, in Civil Case No. 890/73. The grounds of the appeal is related to the decision of the High Court, by which it, the Customs Administration, is required to pay interest to the appellant, and that it is the body responsible to receive the money (share of the appellant's brother-in-law) due to be appropriated by the Government, and not the Ministry of Finance, in whose possession the money now is. Concerning the money under contention, the appellant has stated that the decision of the High Court should be reversed on the ground that no legal heir has appeared. And in respect to the above statements put forward, the Court has not found it necessary to record the arguments of both parties and has therefore deliberately ignored them, since recording them would result in the repetition of the arguments made by them in the High Court.

The arguments and evidence presented by the parties to the dispute, in short, are as stated above. The Von Vokaido Company was, by the judgement of the Supreme Court, made to pay Birr 14,181.03, for having allegedly violated the customs regulations; that judgement was referred to and reversed by the *ad hoc* committee. Further, Emma Vakaro has, through her attorney, Soligno, asked for the restitution of the money, for Article 349 of the Civil Procedure Code provides that any money paid in the satisfaction of a judgement could be reclaimed by the payee if that judgement is reversed on appeal. The proof that Emma Vakaro has produced in support of her claim to the rights of the Company, is the judgement of the Asmara Awraja Court, declaring her to be the heir to the deceased spouses. She said she had obtained the judgement by bringing to the attention of the court that Pierro Padoli and Lina Vakaro were the owners of the Company; that, according to Italian law, if either a deceased wife or husband has no ascendants or descendants, in either paternal or maternal lines, the surviving spouse or a relative of such spouse should be called to the succession; that both spouses have no heirs from their respective lines; that Emma Vakaro, who died after Pierro Padoli, is the one upon whom the succession devolves; and that it is she (the appellant), sister of Lina Vakaro, who should, in turn, be called to her succession. The High Court, having recognized the right of the owners or their heirs to claim the property of the Company, even if dissolved, dismissed part of the claim of the appellant on the ground that it is under Italian law, and not under Ethiopian law, that a wife and a husband

might inherit the property of one another. As Ethiopian courts are required to apply the laws of Ethiopia and not those of Italy, having declared that it would not accept the judgement by which Emma Vakaro was made to succeed, in addition to that of the moiety of her sister, to the moiety of her brother-inlaw, through her sister, upon whom the right of the former are said to have devolved, the High Court has decided that the moiety of the wife should go to the petitioner, and the other moiety of the husband, who has no one to succeed him, should be appropriated by the State.

The Supreme Court, having jointly examined the two files, has rendered its judgement to the dispute.

This Court, as it has examined the files, has become aware of the fact that Pierro Padoli and Lina Vakaro were the owners of the Company; that the owners could claim the property of the Company, although it is now dissolved; that the power of attorney which Emma Vakaro has given to her pleader, Soligno, is legal; and that the dismissal of other objections raised by the Customs Administration in the High Court is proper. However, the matter on which this Court should, in particular give its decision is the decision of the High Court relating to the judgement by which Emma Vakaro has been declared to be the heir to both Lina Vakaro and Pierro Padoli.

The dictum of the High Court, which maintains that Ethiopian courts should pass their decisions not on the basis of foreign laws, but rather on Ethiopian laws, is appropriate. For any one who examines our Civil Code, it is clear that, under Ethiopian law, a wife shall not succeed her husband, nor vice versa. The Asmara Awraja Court, by holding that Lina Vakaro could, on the basis of Italian law, succeed her husband, Pierro Padoli, has rendered a decision inconsistent with our law. It is this judgement of the Awraja Court that has served as a basis for the certificate of heir obtained by the petitioner. Yet, as long as the judgement is rendered by a competent Ethiopian court, if it is found to be a wrong judgement, there is a procedure as to how it could be criticised and reversed. If parties to a dispute allege that the judgement is illegal, the opportunity of getting it reversed is by filing their appeal against the judgement. Those who are not parties to the dispute, but who have interest in the judgement, can object to it by submitting their oppsition to the court that has rendered the judgement. Apart from these situations, if courts entertain an incidental issue concerning the legality of a judgement produced as evidence during a proceeding, and render a decision by either upholding or reversing the judgement, then the adoption of a procedure on the lodging of an opposition and the hearing of an appeal would become purposeless. While the Asmara Awraja Court has the jurisdiction to entertain a succession case, the decision by which the Court issued a certificate of heir has not been reversed on appeal, on the grounds that it is not strictly in line with the law of Ethiopia. Although the Customs Administration was not a party to the dispute, if it thinks that the certificate of heir issued had jeopardised its interests, it ought to have filed its oppcsition pursuant to Article 358 of the Civil Procedure Code.Outside of this, as has just been declared by the High Court, there is no legal ground that could enable any one to question the legality of the judgement of the Awraja Court. Hence, the assertion that the judgement of

the Asmara Awraja Court is illegal has no legal effect, other than serving as a dictum, and cannot be reversed by either the High Court or the Supreme Court. Although it is true that the judgement of the Asmara Awraja Court is illegal, as no request was made for its reversal in accordance with the law, on the consideration that the judgement, if reversed, would hamper the whole procedure, and that the advantages accruing to a reversal are less as compared with its disadvntages, and having accepted the judgement as it is; and that the petitioner (Emma Vakaro) is the heir to Lina Vakaro and Pierro Podoli, we have decided to the effect that the money (Birr 14181. 03) paid to the Customs Administration by the Von Vokiado Company be restituted to her.

Let a copy of this judgement be sent to the High Court, so as to make it aware that its judgement has been altered. Let also a copy of this judgement be sent to the Asmara Awraja Court that entertained the succession case. The parties must bear their respective expenses.

This judgement was delivered on the 10th day of Tahsas 1977 by a unanimous vote, by the panel division of the Supreme Court.

Signatures of Justices:-

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THE APPLICABILITY OF FOREIGN CIVIL LAWS IN ETHIOPIA

A Case Comment on Civil Appeal No. 852/73

By Ibrahim Idris *

Introduction

The Supreme Court has, in Civil Appeal No. 852/73, stated that the decision rendered by the Asmara Awraja Court is illegal. However, realizing the fact that the decision was not reversed pursuant to the appropriate provisions of the Ethiopian Civil Procedure Code, the Supreme Court has upheld the Awraja Court's decision declaring that Emma Vakaro is the legal heir of Lina Vakaro and Pierro Padoli.

Concerning the Awraja Court's decision, the Supreme Court has included the following dictum in its judgement:

> "The dictum of the High Court, which maintains that Ethiopian courts should pass their decisions not on the basis of foreign laws, but rather on Ethiopian laws, is appropriate . . The Asmara Awraja Court, by holding that Lina Vakaro could, on the basis of Italian law, succeed her husband, Pierro Padoli, has rendered a decision inconsistent with our law." [1]

A critical analysis of this dictum of the Supreme Court goads one into raising the following questions relating to private international law.

1. Could foreign laws be applied by Ethiopian courts, to govern matters in which foreign elements are involved?
2. If foreign laws are said to be applicable in Ethiopia, what is their status as compared with Ethiopian laws?
3. What is the applicable law governing succession of movable property containing foreign elements under Ethiopian law? Is it the law of domicile or nationality?

In this case comment, an attempt is made to suggest solutions to the above three questions.

I

As regards the first question a point worth mentioning beforehand, is the fact that a court of any country is duty bound to exclusively apply the law of the forum, i.e., the law of the country in which the court is situated.

Moreover, as could be witnessed in the legislations of many countries, courts are permitted to give effect to laws of foreign countries found to be appropriate to govern cases in which foreign elements are in existence. Many Eastern and Western

European countries have, for instance, in their respective private international laws, empowered courts to apply foreign laws when found necessary. [2] However, the laws which courts would apply need not be inconsistent with the state policy and public interests of the forum. [3]

It could be for various reasons that courts of one country are made to apply the laws of another. The following may be mentioned as some of these reasons. [4]

Firstly, if a state permits its courts to give effect to applicable foreign laws, then this may be viewed as a manifestation of readiness on the part of that state that justice be rendered to cases containing foreign elements. Suppose, two Ethiopians concluded a contract involving a sale of a car, while they were in Kenya. They also agreed that the law of Kenya would be applicable in case of any dispute concerning the contract. After both parties returned to Ethiopia, one of them instituted a suit in the High Court of Addis Ababa against the other on the ground that the latter had failed to discharge his obligation. Here the law based on which the Court could resolve the dispute should be the Law of Kenya, the reason being that contracts are first of all adjudged under the law of the country which has explictly or impliedly been chosen by the parties. [5] Parties to a contract are free to agree as to what country's law should govern their contract, and their agreement is binding on them as though it was law. [6] If the Court applied the Ethiopian law, the act would undoubtedly be contrary to the interests of both contractants. Furthermore, the judgement rendered in this way could be different from that which the Court could have reached, had the law of Kenya been applied.

Secondly, the application of foreign laws to cases involving foreign elements constitutes a courtesy or respect towards the foreign country whose law is applied. Moreover, it could create a closer attachment between countries concerned, and strengthen their friendly relations.

In Ethiopia, as in so many other countries, there are no rules requiring courts to apply foreign laws. Nor are there international treaties or conventions which bind Ethiopia to give effect to foreign laws in its territory. Nor is there any specific law which prohibits the courts of Ethiopia from applying foreign laws.

In view of this reality, it becomes absurd, and therefore unacceptable, to subject to Ethiopian law cases that have no connection with Ethiopia, on the pretext that Ethiopian courts should not base their decisions on foreign laws. If the appropriate law governing a certain case is a foreign law, and if the application of such law in Ethiopia would not affect the state policy and the interests of the Ethiopian people, there is no harm in this law being applied by Ethiopian courts. In fact, the application of foreign laws by courts of Ethiopia could manifest the readiness of the state of Ethiopia to discharge its international obligation. The application of foreign laws in Ethiopia could also create a friendly tie between Ethiopia and the foreign country whose law the courts of Ethiopia would apply. Apart from this, those cases decided in Ethiopia on the basis of the applicable foreign law would command recognition in the foreign country concerned, and also in other countries.

To refrain from applying foreign laws found to be applicable would amount to rejecting the practice that has succeeded in winning an international acceptance. Furthermore, the reluctance of the Ethiopian courts to give effect to such laws may serve to foreign courts as a pretext for refusing the application of Ethiopian law within their jurisdictions, which, in the normal course of things, would have been applied.

If we examine some of the cases involving foreign elements which Ethiopian courts have decided, we could see how much our courts have striven to apply foreign laws. The case of Bendetto Verginella vs Italia Antonioni may be cited as an example. [7] In this case, when the petitioner applied to the High Court of Addis Ababa for a judicial separation, the court was able to render its judgement on the basis of the law of Italy.

Therefore, insofar as foreign laws are established to be the appropriate governing law, and if their application would not cause harm to the state policy and the interests of the people of Ethiopia, to hold that courts should not give effect to such foreign laws is liable to adverse criticism.

II

Prior to any answer as to what the status of foreign laws is in Ethiopia, it would be of immense service if we look through the practices of other countries.

What is the status of foreign laws? This question, which is concerned with whether foreign laws are regarded as questions of fact or law, is a disputed question among the laws of different countries.

In the private international laws of many European countries, including all socialist countries and many other countries such as Japan and South Korea, courts are, if faced with cases involving foreign elements, required to apply foreign laws *ex officio*. [8]

And, since foreign laws, in these countries are viewed as questions of law, courts are required to contact their respective Ministries of Justice or the Ministries of Foreign Affairs or any other appropriate bodies with a view to seeking information concerning those foreign laws they intend to apply. [9]

In the Anglo-Saxon countries, in those countries the law of which belongs to the Spanish-Portuguese legal system, and also in the law of such countries as France, foreign laws are considered as facts, and, therefore, it becomes the duty of parties to prove the content of such laws in the same way as other facts are proved. [10]

For among those countries which do not apply foreign laws *ex officio*, in countries of the continental legal system, parties to a dispute may be required to prove the existence and the applicability of foreign laws by means of written expert evidence. [11] In the laws of the countries with a common law legal system, as, for

instance, in England and the United States of America, the existence and applicability of foreign laws is proved by testimony given by expert witnesses. [12]

In Ethiopia, there are no rules which are concerned with what should be the status of foreign laws. Nevertheless, by taking into account Proclamation No. 1/1934 concerning the status of Ethiopian laws, one may venture on what should be the status of foreign laws in Ethiopia.

According to this Proclamation, issued to establish the *Negarit Gazetta* (the official gazette of Ethiopia), all laws which are applicable in Ethiopia should be published in the *Negarit Gazetta*, [13] and courts are duty bound to take judicial notice of only those laws published in the *Gazetta*. [14] Hence, by argument *a contrario*, because foreign laws are not publishable in the Gazetta, they are not exactly of the same status as the law of Ethiopia. Thus, although foreign laws may be established to be the appropriate governing law, the Ethiopian courts will not take the initiative in ascretaining the content of such foreign laws with a view to applying them to resolve a dispute submitted by parties concerned.

Apart from this, if the parties plead and prove the content of foreign laws to the satisfaction of courts, in the same manner as other facts are proved, Ethiopian courts should not or could not maintain that they would not apply such foreign laws. In the case of Benditto Verginella vs Italia Antonioni, the petitioner based his claim on the laws of Italy. The High Court of Addis Ababa allowed the petitioner to prove the content of the relevant provisions of the said law, and Dr. Vetarelli, an expert on Italian law, was produced to give his expert testimony. In addition to this, the petitioner had produced the appropriate provisions of the Italian Civil Code to support his claim.

III

Before attempting to answer the third question, let us first briefly examine the practices of other countries concerning a law that governs the succession of movable property on the basis of the following two principles.

A. Unitary Principle of Succession

According to this principle, all questions relating to succession of both movable and immovable properties are governed by *the personal law of the deceased.* [15]

This principle of unitary succession has commanded acceptance in the private international laws of such countries as Italy, Netherlands, Spain, Portugal, Sweden, Egypt, Japan, and also in the laws of all East European countries with the exception of that of Romania. [16]

B. *Scission Principle of Succession*

According to this principle that has, in fact, been adhered to by the private international laws of British Commonwealth countries, the United States of America, France, Belgium, Luxumberg, Austria, Romania and many others, the laws that regulate the succession of the immovable and movable property of a deceased are

the law of the country in which *the property is situated* and that of *the personal law of the deceased* respectively. [17]

Here, there is a point worth giving attention. In the laws of those countries, whether they are adherents of unitary or scission principle of succession, all questions relating to succession of movables are determined in accordance with the personal law of the deceased. Nevertheless, as regards the definition of personal law, there is still a clear difference between laws of the countries of the continental and common law legal systems.

In the private international laws of the countries of the continental legal system such as that of France, Italy and the socialist countries, personal law is meant to be the *law of the country of which the deceased was* a national (*lex nationalis*). [18] In the common law countries such as England and the United States of America, the term personal law is understood to mean *the law of the deceased's domicile immediately preceding his death* (*lex domicilii*) [19]

Ethiopia is a country with no rules of private international law. This means shat, if we take, for instance, an issue of succession of movable property in which foreign elements are involved, there are no legislative rules capable of rendering fervice in the selection of an applicable law to decide the matter.

Nevertheless, the Supreme Court and the High Court of Addis Ababa have endeavoured to adopt principles from private international laws of foreign countries with the aim of resolving cases containing foreign elements. [20] From among these principles, the one in relation to which question no. 3, above, is addressed is that which involves the case of succession of movables.

As could be observed from various decisions rendered by the Supreme Court and the High Court of Addis Ababa, the practice in Ethiopia, as in all other countries, whether adherents of unitary or scission principle, is that all rights pertaining to succession of a movable property is determined by the personal law of the deceased For instance, the Supreme Court has, in Yohannes Frota vs W/t Tsegenesh Makonnen, favoured the personal law of the deceased as the applicable law governing succession of movables. [21] And also when a certain W/o Sofia Tessema, acting on behalf of her son, Bruno, applied to the High Court of Addis Ababa for the administration of the property of her son's father, Giuseppe Calderone, an Italian national who died on 2 February 1958, the Court rendered its decision on the issue of administration of the property in accordance with the personal law of the deceased. [22]

Concerning definition of the term personal law, Ethiopia has, again, no rules indicating which of the two known definitions its courts should follow. In view of this fact, it is possible to hold that there has really been created circumstances under which a court could select either of the two definitions.

As could be evidenced in the judgement of the Supreme Court, the case of Emma Vakaro contained foreign elements; hence, it ought to have been given special attention as compared with cases of a domestic nature. It was pointed out in the judgement that the petitioner, as well as the deceased spouses, were all

Italian nationals. As far as this case is concerned, there had emerged a conflict between the laws of Ethiopia and Italty. Thus, as soon as the court became aware of the fact that it had jurisdiction to entertain the petition of Emma Vakaro, and before making any attempt to decide on the substance, it should have ascertained the law of the country (Italian or Ethiopian law) appropriate to govern the matter. An answer could be given to this question, if and only if it was, in advance, able to answer whether Ethiopia had upheld the principle of domicile or nationality to determine questions of succession of movable property.

Earlier, the Supreme Court and the High Court of Addis Ababa had rendered a number of decisions in which they defined the term personal law to mean the law of domicile. [23] For instance, in Yohannes Prota vs W't Tseganesh Mekonnen and in succession matters of Giuseppe Calderone, the courts accepted the law of domicile to be the appropriate law, and maintained that matters of succession relating to movable property should be resolved on the basis of this law. In this respect, the position taken by our courts is similar to that favoured by the countries of the common law legal system.

Thus, the Asmara Awraja Court, to which the case of Emma Vakaro was referred, could, following the practices of the Supreme Court and the High Court, have chosen the law of domicile as an appropriate governing law to determine the matter of succession. And, in order to ascertain the law of domicile of the deceased persons, it would, therefore, become necessary to choose between Ethiopia and Italy as the country in which they domiciled immediately preceding their death. If Ethiopia was taken to be the domicile of the deceased, it should have been the Ethiopian law, based on which the question of whether or not Emma Vakaro would succeed to the property of the deceased should be resolved. If Italy was regarded as their domicile, the applicable law would be the Italian law.

On the other ahnd, as the Ethiopian law is not under the influence of the common law legal system, the doctrine of precedence, according to which courts are bound by previous decisions considered authoritative, is alien to Ethiopia. Hence, it could not be maintained that the Asmara Awraja Court should define the term personal law in the same way as the Supreme Court and the High Court of Addis Ababa defined it. Instead, if the Awraja court understood the term personal law to mean the law of the nationaltiy, and, the deceased being Italians by nationality, the succession case of Emma Vakaro would have been resolved in accordance with the law of Italy. Consequently, there would be no room available to attack the decision on the ground that the Court had applied Italian law instead of Ethiopian law.

CONCLUSION

If there is a certain event the happening and the consequences of which are exclusively limited to Ethiopia, it must be the Ethiopian law based on which Ethiopian courts should render decision on any action relating to the event. But where ourts are faced with cases in which foreign elements are involved, before attempt-

ing to decide on the substance of the cases and immediately after ascertaining jurisdiction, it is important to determine the applicable law governing the cases.

Indeed, it is the task of private international law to guide courts as to what procedures to follow when they are confronted with cases containing foreign elements.

As Ethiopia is a country with no rules of private international law, courts may not know or find it difficult to know what special procedures to follow in deciding matters in which foreign elements are involved. The succession case of Emma Vakaro is a good example of such a situation.

Although insofar as Proclamation No. 1 of 1942 is concerned, foreign laws may be considered as having no status of law, there is no specific law which precludes Ethiopian courts from giving effect to such laws. Thus, since foreign laws are regarded, at least as facts, they should be applied in Ethiopia provided that they are pleaded and proved by the parties concerned, and that their application does not jeopardise the state policy and the interests of the Ethiopian people.

Because of the absence of private international law rules in Ethiopia, it is also difficult to distinguish the law based on which questions concerning movable property should be determined. Nevertheless, we argue that Ethiopia could have no choice other than to uphold the personal law principle that has, in fact, commanded wide acceptance among the laws of all countries adhering to the principle of both unitary and scission principle of succession. However, the problem that, demands urgent consideration concerns the choice to be made between the two definitions attributed to the term personal law. And, in view of the absence of rules defining the term, the courts are at liberty to choose either of the two definitions, i. e. the law of domicile or the law of nationality.

To sum up, it is very important to adopt rules of private international law for Ethiopia which could enable courts to show what special precautions they should take when confronted with cases in which foreign elements are involved. Indeed, it is with the aid of rules of private international law that solutions are sought for those questions raised in this case comment, and all other related questions.

FOOTNOTES

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1. The Supreme Court is wrong to consider that the Asmara Awraja Court had based its judgment on the law of Italy. It was the Ethiopian law which the Awraja Court took into account for the purpose of delivering the judgment. However, by erroneously understanding the Ethiopian law, this Court rendered a judgment as though Emma Vakaro could claim the property of her brother-in-law, through her sister. It should be born in mind that, according to Ethiopian law, a wife cannot inherit the property of her husband.

2. I. Zajtay, "The Application of Foreign Law". *International Ecyclopedia of Comparative Law* Vol. III. Chapter 14, pp. 9-29.

3. The Civil Code of the Soviet Union and the Union Republics, 8 December 1961, Art. 128; Private International Law of Hungary, 1 July 1974, Art. 7; Private International Law of Czechoslovakia, No. 97/1963, Art. 36; The Civil Procedure Code of Bulgaria, 1952, Art. 306; Private International Law of Poland, 1965, Art, 6; The Civil Code of Egypt, 1948, Art.28; The Civil Code of Greece 1940, Art. 33 etc.

4. O. Kahn Freund, *General Problems of Private International Law* (1976), pp. 318 - 320.

5. M. Wolf, *Private International Law*, 2nd Edition (1950), pp. 413-421,

6. Art. 1731 (1) of the Ethiopian Civil Code reads as follows: "The provisions of a contract lawfully formed shall be binding on the parties as though they were law."

7. Benditto Verginella vs Italia Antoniani (High Court of Ethiopia), Civil Case No. 905/50 (unpublished).

8. Civil Procedure Code of GDR. Art. 293; Civil Procedure Code of Hungary (Art. III), 1952) Art, 200; Polish Private International Law, para. 1, Art. 39; the decisions of the Italian Court of cassation of April 13/1959, 29 January 1964 and 16 February 1966; Treaties of Montevideo of 1889 (as revised in 1940), Additional Protocol, Art. 2; Bustarzante Code (Treaty of Havana of 1928, Art, 408; Civil Code of Peru of 1936, Art. 12; and the Practices of courts of Japan and South Korea, etc.

9. I. Szaszy, *Private International Law in the European People's Democracies* (1964), pp. 147-152

10. *Ibid.*, p. 150.

11. G.R. Delaume, *American-French Private International Law* (2nd edition, 1961), p. 172.

12. S.C. Cheshire, Private International Law, 6th edition, (1961), pp. 131-135.

13. Proclamation to Establish Negarit Gazetta Proclamation No. 1/1942, Art. 2.

14. *Ibid.*, Art. 5.

15. Atle Grahl-Madsen, "Conflict Between the Principle of Unitary Succession and the System of Scission", *International Comparative Law Quarterly*, Vol. 28, para, 3 (October 1979), pp. 600-602

16. I. Szaszy, pp. 366-379.

17. Atle Grahl-Madsen, pp. 602-604.

18. Crepeau, *Elements d'une Introduction au droit international privat comparé* (1965), p. 26.

19. M. Wolf, pp. 567-568.

20. Hallock vs. Hallock (Supreme Court), Civil Appeal Case No. 247/50 (unpublished); Alfred Pastori vs Mrs. Aslanidis and George Aslandidis (Supreme Court), Civil Appeal Case No. 338/47 (unpublished).

21. Yohannes Prota vs. W/t Tsegenesh Mekonnen (Supreme Court, Civil Appeal Case No. 638/49 (unpublished).

22. In the matter of Giuseppe Calderone (High Court of Addis Ababa), Civil Case File No. 63/50 (unpublished).

23. Zevi vs. Zevi (Supreme Court), Civil Case Appeal No. 1109/56 (unpublished); Shatto vs Shatto (Supreme Court), Civil Appeal Case No. 784/56 (unpublished); and Zissos Vs. Zissos (Supreme Court), Civil Appeal Case No. 654/56 (unpublished)