

TRANSFER OF OWNERSHIP OVER MOTOR VEHICLES

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Introduction

Motor vehicles fall obviously within the domain of movable things in the scheme of division of things under the Ethiopian Civil Code (the Code).¹ More specifically, they belong to the sub-domain of special movables.² This Case Comment seeks to address the question: what are the conditions required for the valid transfer of ownership over a motor vehicle under the property law of Ethiopia? The treatment of this issue requires the answer to the more general question of the requirements for the valid transfer³ of ownership in respect of

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¹Article 1127 of the Code defines a corporeal movable as a thing which has material existence and moves by itself or be moved by man without losing its individual character.

²Recognition of the division of movable things into ordinary and special can be inferred from Articles 1186/2, 2267/2 and 3047/2 of the Code. Special movables may be corporeal (e.g. motor vehicles) or incorporeal (e.g. business). The basis of this dichotomy of movable things into special and ordinary seems to hinge entirely on the wishes of the legislature. When the legislature deems it appropriate to single out a movable thing and put it in the category of special movable, that is all to it. See Article 124 of the Commercial Code of Ethiopia which treats business as a special movable. There are other laws which give special treatment to some movables. For example, TV sets, motor vehicles, construction machinery and arms are considered by separate laws as special movables. For the purposes of transfer, ships, vessels and airplanes are assimilated to immovable property in France and Louisiana. See A. N. Yiannoplous, "Movables and Immovables in Louisiana and Comparative Law," 22L.L.R. (1961-1962) at 561. Special movables are limited in number under Ethiopian property law. Business, motor vehicles, construction machinery, ships, and non-negotiable instruments, patent and trademarks are special movables in Ethiopia. See also Articles 150-205 of the Commercial Code of Ethiopia; Motor Vehicle and Trailer Regulation, Legal Notice, 1969, No 360, Year 28 No 9; Registration and Control of Construction Machinery, Article 4/1, 1999, No 177 Year 29 No 61. A ship must be registered. For the valid transfer of property rights in a ship with Ethiopian nationality, the instrument which establishes such rights must be "drawn up in a recognized legal form" and registered with ship registers. Publication must take place as well in order to set up such agreements against third parties. See Maritime Code of the Empire of Ethiopia, Articles 7-8, 45, and 50, Proc. No 164, 1960, Neg. Gaz. Year 19, Extraordinary Issue No 1. Article 341 of the Commercial Code provides that the effective transfer of registered shares requires registration. See also Articles 722 & 723 of the same Code. See Inventions, Minor Inventions and Industrial Designs, Articles 14 & 15, Proc. No 123, 1995, Nega. Gaz., No 25 Year 54. The designation of a movable as special although which ordinary movable joins the category of special movable appears to be dictated by a variety of other interests. Some movables are seen by the lawmaker as deserving special treatment because of a combination of many factors such as their economic value (e.g. aircrafts and ships), security reasons (e.g. arms) and the need to ensure continued enjoyment by debtors after such things are given in the form of security (e.g. construction machinery).

³Transfer of ownership implies the flow of a series of rights from one person to another. The series of powers a person may have over a thing includes the right to use, the right to collect fruits and the right to dispose. The term "transfer" rather means enabling the transferee to enjoy the series of rights the transferor (the owner) has been enjoying over the thing to a new owner. Transfer is a matter of empowering the transferee. The use of the term transfer excludes from the scope of this Case Comment

special movables under the extant Ethiopian property law. Part I outlines the conditions necessary for the legitimate transfer of ownership over special movables. The next part explains the legal consequences of division of movables into special movables and ordinary movables under the Ethiopian property law. The third part comments on two Supreme Court cases. Finally, conclusion and recommendation follow.

I. Requirements

The legal conditions necessary for the transfer of ownership over special movable are:

- 1) There should first be a cause, meaning the justification for transfer of ownership⁴ as exemplified by a contract of sale⁵ or donation⁶ or a testament⁷ or an order made by a court of law following court attachment or winding up of intestate succession or an expropriation order.⁸
- 2) The cause of the transfer of ownership shall be reduced into writing. This requirement that contracts pertaining to special movables must be reduced into writing is made patent nowhere in the Code. In our contract law, form is an exception; written formality is required only if the law or the parties require so.⁹ Yet there are reasons to argue that written contract is mandatory in relation to juridical acts pertaining to transfer of motor vehicles. First, reducing transactions over motor vehicles among those who involve in such transactions has become a settled practice in the sense that it is followed by at least the overwhelming majority of community of car dealers and owners, which has been observed repeatedly and regularly over a long period of time. These features, I think, have elevated such practice to the status of customary rule. If this is the case, the making of a contract pertaining to transfer of motor vehicles in writing must be a term of such

discussion about obtaining of ownership over special movables through acquisition, which is acquiring ownership via means others than transfer, for example, through the passage of time. See Article 1192 of the Code.

⁴Notice that the term used by the Amharic version of Article 1184 of the Code may be translated as “juridical act” while the English version makes mention of one type of juridical act namely an agreement.

⁵See Article 1184 of the Code

⁶ Id.

⁷ Id.

⁸Id., Article 1467/2 of the Code; though written having in mind expropriation of immovable property, this sub-article should apply to the expropriation of special movable, with the necessary change.

⁹ Id., Article 1719.

contract dictated by custom by virtue of Article 1713 of the Code.¹⁰ In the second place, there is at least one occasion whereby administrative authorities require parties to a contract in connection with transfer of motor vehicles to produce a written contract. Contracts in connection with motor vehicles are required to be authenticated by law. Such act of authentication obviously requires the production of a written document.¹¹ Thus, special law and custom require that the making of contracts concluded to transfer ownership over motor vehicles must be made in a written form.

- 3) The third condition of transfer of ownership over motor vehicles is authentication of the written contract. The written contract which is intended to transfer ownership must be authenticated means: an authorized public notary officer witnesses the signing of a document by the person who has prepared such document and followed by signing and affixing a seal by the same public notary officer or the same public notary officer signs and affixes a seal on a document signed in his absence by ascertaining its authenticity through an affidavit or specimen signature and/or seal.¹² Thus, written contracts in respect of transfer of ownership over motor vehicles must be authenticated in either of these two methods.
- 4) Issuance of certificate of title by the relevant government authority is the step which completes the transfer process. The previous title certificate issued in the name of the transferor should be surrendered to the authority for cancellation by such authority, and a new title certificate in the name of the transferee shall be issued and the car must subsequently be registered by the authority in the name of the transferee.¹³ The authority does this

¹⁰ This provision stipulates that parties to a contract are bound, among others, by such incidental effects as are attached to the obligations by custom.

¹¹ See Article 2/2 of Proc. 334/2003, *Fed. Neg. Gaz.* No. 54 Year 9, which defines a document any written matter submitted for authentication and registration. See also Article 15 of the same Proclamation. See also Articles 1727/2 and 1728/1 of the Code, which require that the written contract shall be signed by the parties and attested by at least two witnesses.

¹² See Article 2/1 of Proc. No. 334/2003.

¹³ See Article 9 of Legal Notice No 360/69. As a matter of practice, the seller (or her heirs) and the buyer have to appear in person or via their agents, before the authority in charge of registering motor vehicles, and request the cancellation of the name of the former and enter in the register of motor vehicles the name of the buyer. The pertinent law, however, does not require appearance in person of parties to transactions over motor vehicles. As matter of law, in the case of conventional transfer of title in respect of a motor vehicle, the two parties fill out and sign a form called Title Transfer Page. The buyer alone may deliver the completed Title Transfer Page along with the Car Booklet Title bearing the name of the seller to the concerned authority. Then, the concerned public authority verifies the signature of the seller; cancels the old title certificate and then issues a new title in favor of the buyer. The requirement of personal appearance has on many occasions complicated title transfer process because sellers in some cases refuse to accompany the buyer. In that case, buyers ask the concerned authority to effect them the transfer but in vain. The buyer sues the seller requesting the court to compel him to appear in person before the proper authority to facilitate the transfer process. Some five years ago, this type of litigation

upon the submission of the appropriate documents (e.g. authenticated contract, court decision or expropriation order or auction upon the completion of foreclosure sale). Once the transferee secures a car booklet title in his name, he becomes the master of the motor vehicles described in such title certificate; afterwards, it is immaterial whether or not he has secured possession of the car.

Therefore, under the existing law of Ethiopia, valid transfer of ownership over special movables generally and motor vehicles particularly requires these cumulative conditions: written, authenticated cause plus the issuance of title certificate (in the name of the transferee) by the pertinent government authority. This Comment will consider this last condition of transfer of ownership of motor vehicles because it is in connection with this requirement court litigation is often triggered.

II. Legal Effects

But before one starts considering the cases, one may want to know about some of the implications of the requirement of title certificate.¹⁴ In a sharp contrast with the case of special movables, the law greatly simplifies the requirements of transfer of ownership over ordinary movables. Unlike special movables, the conclusion of a contract or testament followed by delivery completes transfer

generated a huge controversy between courts and practitioners. Some judges took the stance that the buyer had to request the authority in charge of registration of motor vehicles and should it refuse to do so, she had to file a suit against authority in a court of law; the practitioners, on the other hand, insisted that the courts had to order the seller to personally appear before the authority to effect the transfer. Some courts however accepted plaintiffs plea and ordered defendants (sellers) to make a personal appearance to speed up title transfer. See *Shiferaw Tsegaye V. Wendemu Bekele* (Sup. Ct., Civil File No 800/81 (Yekatit, 1981 E.C. Unpublished); *Lema Kebede V. Muluneh Becheri and Tadele Beyene* (Sup. Ct., Civil File 185/89, Tahessase 1991 E.C., Unpublished) *Esmail Nur V. Fikremarkos Teklu* (Federal First Instance Ct., Civil File No 1000/89, Tahessase, 1991 E.C., Unpublished)

¹⁴There are other distinctions which emanate from the division of movables into ordinary and special. One cannot acquire the ownership of special movables through possession in good faith. The belief on the part of an acquirer in the fact that the person from whom she concludes a sale contract holds title or is legitimate person to make transfer is destroyed by publicity which raises a presumption of knowledge on the part of the buyer. It appears that Articles 1161-1167 of the Code should not be invoked with regard to special movables for publicity destroys any claim of good faith on the party of a third party. Special movables are to be subjected to mortgage while ordinary movables are to be charged with pledge. See *Kebedech Tesfa V. Yoseph Andu*, (Sup. Ct. Civil File No. 1286/74, Ginbot 16, 1975 E.C., Unpublished) where the Court held that a creditor who extends loan to an owner of a motor vehicle shall have priority right, as real security holder, to be paid out of the proceeds of such motor vehicles provided the debtor-motor vehicle owner handed over to the creditor the possession of the car booklet title to evidence the real security as per their contract of loan. Simply stated, to the Court, a creditor who possesses a car booklet title bearing the name of his debtor pursuant to a contract shall be deemed to have a real security right in the car.

of ownership in respect of ordinary movables.¹⁵ Yet, mere possession of a special movable alone does not make one an owner thereof.¹⁶ As a corollary, one cannot establish the ownership of a special movable by proving mere possession. He who alleges the ownership of a given special movable must establish it by producing a certificate of title. For example, Ato K owns an automobile. He sells the car to W/rt S. W/rt S pays the full price of the car. Ato K surrenders the possession of the car to her together with a certificate of title bearing his name. W/rt S has not obtained a title certificate in respect of the car in her name. Ato K still owns the car while W/rt S is a possessor of the car. If the car causes damage to a third party, the third party may petition for the attachment of the car on the theory that the car is still part of the patrimony of Ato K. If Ato K defaults his tax or contractual obligations, his creditors may legitimately seek to attach the car he has already sold to W/rt S. Ato K may transfer, for free or consideration, the ownership of the car in question to a third party, say W/ro L. In doing so he, of course, risks a right in *personam* law suit from the first buyer. W/ro L can obtain ownership over the car provided the transfer requirements are fully complied with. In the event of the death of Ato K, his off springs may legitimately be tempted to treat such car as part and parcel of the hereditary estate of their late father. Finally, if one follows the principle that risk transfers with the transfer of ownership, the risks associated with the car Ato K sold to W/rt S remains with him. This hypo captures disputes over motor vehicles which often arise in our courts as illustrated in the two court cases examined below.

III. Case Analysis

In the case between *Habtab Tekle v. Esayas Leke and Bezabeh Kelele*,¹⁷ the issue was whether or not transfer of ownership relating to a certain car was transferred to the appellant. Bezabeh imported a car duty free. After using such car for a while, he sold it to Habtab. The contract of sale was made in writing, signed by the parties and attested by the required number of witnesses. Moreover, the contract was authenticated by and deposited with the

¹⁵See Articles 1184, 1186/1 and 1183/1 of the Code. The law desires their speedier movement in the market. A requirement to pass through longer and rigorous steps in the process of transfer of ordinary movables would be impractical and unnecessary; and that would impede their flow in commerce given their volume, number and frequent exchange of hands in a market.

¹⁶See *Ditu Tufa V. Jemal Shita* (Sup. Ct., Civil File No 666/82, Sene 1982 E.C. Unpublished); *Colonel Belayneh Mengistu V. Mugyb Seid*, Sup. Ct., Civil File No 305/86, Hidar 1987E.C. Unpublished); *Hagbes PLC V. Colonel Mulugeta* (Sup. Ct., 1986 E.C. Unpublished)

¹⁷Supreme Court, Civil File No. 570/80 (Sene 22, 1980 E.C.) See *Getaneh Agonafer V. Fantu Gutema* (High Ct., Civil File No 369/78 (Miazia, 1980 E.C. Unpublished); *Eteneh Tadele V. Berta Construction* (High Ct., Civil File No 285/80 (Gnbot 1980 E.C., Unpublished) .

appropriate government authority. The buyer paid the whole price to the seller and took delivery of the car as well as the car booklet title yet bearing the name of Bezabeh. In the meantime, Esayas, a creditor of Bezabeh secured a judgment against the latter. And Esayas in trying to enforce this judgment sought to attach the car Bezabeh sold to Habtab as such car at that time was registered in the name of his judgment debtor, Bezabeh. This led a law suit essentially between Esayas and Habtab at the High Court.

The High Court decided that the car in dispute was owned by Bezabeh, the second respondent, reasoning that in relation to special movables transfer was equivalent to the transfer of immovable property and that the person in whose name a special movable such as a car was registered and title certificate was issued was the owner thereof. As, thus, the title deed concerning the car in dispute bore the name of Bezabeh, he was the owner of the car and thus the car could be attached to satisfy the claim of the first respondent, Esayas.

Habtab appealed. The appellant (Habtab) argued that he was the owner of a car as he bought it from the second respondent (Bezabeh) paying the full price, making the contract of sale in writing, having it authenticated and deposited with the proper authority and entering into possession of the car. Habtab, the appellant, thus, claimed that the ownership of the car was transferred to him even if the title certificate relating to the car was not issued in his own name as the transfer of ownership relating to the motor vehicle was not completed because of circumstances beyond his control in particular because the second respondent was not willing to pay tax on the car in question. To the appellant, the creditors of Bezabeh such as Esayas could not attach the car to satisfy their claims for the property in dispute was withdrawn from the patrimony of Bezabeh and became part of his own patrimony. Esayas, the first respondent, on the other hand, argued that the car was attached to satisfy the debt of Bezabeh after ascertaining that the title deed still bore the name of the second appellant and that the car had to be sold to satisfy his claim against Bezabeh.

The Supreme Court reversed this decision. As per Articles 1186/2 and 1195 of the Code, the Supreme Court reasoned that he who possesses a title certificate pertaining to a special movable in his own name is presumed to be the owner. The Supreme Court proceeded to reason that the presumption laid down under Article 1195 of the Code can be set aside by contrary evidence. To the Court, under certain situations, he who is in possession of a certificate of ownership, even in his name, relating to a special movable might not be treated as an owner of such movable. To the Supreme Court, the contrary evidence is one of

the grounds mentioned in Article 1196, i.e., the title deed was not issued in accordance with the law or was issued by an authority having no jurisdiction; or the title deed was issued on the basis of an invalid act or the plaintiff acquired the ownership of the immovable after the day on which the title deed was issued. The Court stated that the appellant would have completed the process of transfer that progressed well if the second respondent had paid the required tax. The second respondent did not pay the tax on the car, which he imported duty free and which upon transfer of such type of property was required to be paid. Further, the Court stated that the contract of sale of the car took place a year before Esayas instituted debt recovery suit against Bezabeh showing that the appellant had bought the car from the second respondent well before the attachment order. Based on these considerations, the court thought that the ownership of the car had to go to the appellant.

It is submitted that the decision of the Supreme Court is wrong because the appellant did not rebut the presumption that that car belonged to Bezabhe who was in possession of the car booklet title bearing his name within the meaning of Articles 1195 and 1196 of the Code. In the decision, none of the three factors envisaged and indicated above to rebut the presumption of ownership under Article 1195 was shown to have existed. The Court considered the failure to pay tax by Bezabhe as a good cause that had to go into the determination of rebuttal factors. It was true that the failure to pay tax on the part of Bezabeh to the authorities prevented the completion of the transfer of title in respect of the car in controversy to the appellant. But that was not a pertinent element to rebut the presumption of ownership in favor of the person who is in possession of a car booklet title indicative of ownership. A judgment delivered in the absence of such rebuttal factors would contravene a straightforward legal rule; it would obviously cast doubt on the predictability of court decisions. On the top of that, the fact that the appellant bought the car in dispute from the second respondent well before the attachment order does not have any legal consequence as state of mind of an acquirer is not relevant in the case of special movables. The car in dispute was still owned by the Bezabeh in whose name it was registered with the pertinent authority. The Supreme Court should however be praised for recognizing the rule that for the purpose of transfer, special movables are similar to immovable property and that the rules designed to regulate the latter may apply, with the necessary changes, to the transfer of the former.

In, *Asnakech W/Mariam V. Alemayehu Ahmed*,¹⁸ the respondent sold his car to another person. The contract of sale of the car was duly made in writing, signed by the parties, attested by witnesses as well as authenticated by and deposited with the proper authority. Buyer paid the price of the car to the seller, perhaps, too. Alemayehu delivered the possession of the care as well as the necessary documents including the title certificate bearing his name to the buyer. The employee of the buyer caused fatal accident against the son of the applicant, Asnakech, with the car under consideration.

Asnakech sued Alemayehu, among two other parties, at the Federal First Instance Court on the basis of Article 2081/1 of the Code which, in part, stipulates: *The owner of a ... motor vehicle shall be liable for any damage caused by the ... vehicle, notwithstanding that the damage was caused by a person who was not authorized to ... drive the vehicle.* What is envisaged here is liability irrespective fault; strict liability is the basis of this sub-article. The only thing that a person should do to be liable under this clause is to be an owner of a motor vehicle. The ownership test is the condition required to tag him as tortuously liable. Asnakech wanted the Court to hold Aleamyehu liable for the death of her son and pay damages as claimed. This first instance court held that Alemayehu should not be held liable as he transferred liability associated with the car to the buyer at the time of the sale of such car which caused the accident. Unhappy with this decision, Asnakech appealed to the Federal High Court, which confirmed the decision of the lower court.

Then the woman filed a petition for cassation with the Federal Supreme Court. One of the main issues framed by the Supreme Court was: who was the owner of the car that caused the accident at the relevant time (the moment of the accident), the seller or the buyer? The Supreme Court held that transfer of ownership in relation to motor vehicles is not complete until a car booklet title is issued in the name of the buyer. To the Supreme Court mere possession of a motor vehicle does not make one an owner of the same under Ethiopian law. The car sold to a third party being registered in the name of Alemayehu at the critical time, he shall be treated at the true owner of such car. Transfer of ownership over the car was initiated and advanced to some stages but not completed at the time of the occurrence of the accident. The Court held that if Alehayehu was taken as the owner of the motor vehicle, the principle of strict liability should apply to his case pursuant to Article 2081/1 of the Code.

¹⁸ *Chilot Zena Mestehet*, Vol. 1 No. 2 (Sup. Ct. Cassation File No. 24643, Hamle 29, 2000 E.C.) at 9-10.

It is submitted that the decision of the Supreme Court in the second case considered above is correct both seen in light of the letter and spirit of the existing legal regime on the matter. The reasoning of the Supreme Court is quite instructive as it carefully documents the various pertinent laws in the area of transfer of ownership over motor vehicles. The decision also has clarified the rationale behind the special treatment the law accords to motor vehicles. And more generally the judgment is pertinent for the appreciation of the basis of and rationale behind the division of movables into special and ordinary in the legal system of our country.

Conclusion

Our courts should bear in mind the full implications of the dichotomy of movables into special movables and ordinary movables built implicitly in the Code and explicitly in special laws. Legislative intervention might be appropriate to consolidate and clearly state the various rules pertaining to transfer of special movables particularity and special movables generally. In this connection, it has been suggested as follows: *The acute problem regarding the right of the non-complying buyer and that of the levying creditors of the seller can easily be remedied if the legislature takes a clear position. It should not leave this delicate issue open to absolute court discretion lest it may lead to arbitrariness and abuse since courts decisions are found to be inconsistent even with the same jurisdiction. Total reliance on courts` interpretation of Leg. Not. No 360/69 does not seem to be a lasting solution. The legislature either has to clearly rule that the buyer of a motor vehicle can not acquire a right which can be raised as a defense against third parties unless the right is evidence by title certificate book or it has to provide that the contract of sale of motor vehicles does not produce effect as against third parties unless it is registered*¹⁹

¹⁹Yazachew Belew, *The Law and the Practice Relating to Sale of Motor Vehicles in Ethiopia*, Addis Ababa University, Faculty of Law, April, 1998, Law library, Unpublished) at 63-66.