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Cassation File No. 21448

Petitioner: Wzo. Gorfe G/Hiwot
Respondents: 1) Wzo Aberash Dubarge
2) Getachew Nega

Failure to authenticate contract of sale of immovable property before a court or notary and the failure to register its transfer in the Register of Immovables. The effects of such failure (to authenticate the contract and registration of transfer) on the validity of the contract. Whether failure to authenticate the contract at the notary or court renders it non-binding between the parties who concluded the contract. (Arts, 1723, 2877 and 2878 of the Civil Code)

In a suit brought before the First Instance Court, the present Petitioner claimed partition of a house owned by her deceased father and the deceased's wife (i.e.1st Respondent). The decision of the First Instance Court to this effect was contested by the 2nd Respondent on the ground that part of the property had been sold to him by the 1st Respondent and the deceased . The petitioner challenged the validity of the written document that embodies the sale. The court heard testimony of the parties and other evidence, and decided that there was a valid contract of sale of part of the property. The petitioner appealed against this decision to the High Court, but her appeal was rejected. Hence this petition has been submitted to the Cassation Division of the Federal Supreme Court contending that the sale of the immovable property is invalid .

Held

1. *The judgments of the two lower courts have been reversed.*
2. *The contract of sale presented by the 2nd Respondent is hereby rejected as being invalid under Articles 1723 and 2878 of the Civil Code.*

The sale of immovable property, to be valid, must be made in writing and be authenticated before a notary or a court as per Article 1723 of the Civil Code. Article 2878 of the Civil Code states the effect non-registration at the place the property is situated and this is different from the requirement of authentication embodied under Article 1723. Arts 2877 and 2878 are not special provisions that can prevail over Article 1723, but these provisions should be interpreted in synchrony. These provisions should be read together and in light of legislative intent and therefore the requirement of authentication before the notary or a court as embodied in Article 1723 is binding thereby rendering the contract of sale in the case at hand mere draft that is non enforceable. ■

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