Unit Four

Recognition and Enforcement of Foreign Judgments and Arbitral Awards

Unit Objectives

By the end of this unit, students are expected to explain:

- Why Ethiopian courts do recognize and /or enforce a foreign judgment;
- The sufficiency or otherwise of Ethiopian Law of Foreign Judgment Execution in the light of other countries' experience ;
- Each of the conditions put in Art. 458 CPC to be fulfilled in order a foreign judgment to be executed in Ethiopia ;
- If there are more conditions to be fulfilled and an arbitral award is to be executed in Ethiopia; what should be considered? and
- How reciprocity should be understood in the light of Ethiopian laws

4.1 Introduction

According to the traditional scope of this subject, the third and the last division is this of Recognition and Enforcement of Foreign Judgments and arbitral awards. Unlike those of choice of juridical jurisdiction and choice of law rules, Ethiopia has got some rules of execution of foreign judgments ad arbitral awards. Note that there is no single provision dealing with the recognition of judgments.

Just for the purpose of easy reference, the legal provisions of this score are reproduced herein below. (Arts.456-461 Civil Procedure Code, herein after written as CPC).

RULES OF EXECUTION OF FOREIGN JUDGMENTS AND AWARDS

Art. 456. — Principle

(1) Unless otherwise expressly provided for by international conventions, foreign judgments may not be executed in Ethiopia except in accordance with the provisions of this Chapter.

(2) No foreign judgment shall be executed in Ethiopia unless an application to this effect is made.

(3) An application under sub-art. (2) shall be made to the division of the High Court on circuit in the Teklay Guezat (See Federal Courts Proc. No. 25/1996) where execution is to take place.

Art. 457. — Form of Application

An application for the execution of a foreign judgment shall be in writing and shall be accompanied by:

(a) a certified copy of the judgment to be executed; and

(b) a certificate signed by the President or the registrar of the court having given judgment to the effect that such judgment is final and enforceable.

Art. 458. — Conditions for Allowing Application [sic: execution]

Permission to execute a foreign judgment shall not be granted unless

(a) the execution of Ethiopian judgments is allowed in the country in which the judgment to be executed was given;

(b) the judgment was given by a court duly established and constituted ;

(c) the judgment-debtor was given the opportunity to appear and present his defence;

(d) the judgment to be executed is final and enforceable; and

(e) execution is not contrary to public order or morals.

Art. 459. — Procedure

(1) The court to which the application is made shall enable the party against whom the judgment is to be executed to present his observations within such time as it shall fix.

(2) The court shall decide whether pleadings may be submitted.

(3) In cases of doubt the court may suspend its decision doubtful points have been clarified.

Art. 460. — Decision

(1) The decision shall be made on the basis of the application unless the court for some special reason to be recorded to hear the parties at a hearing which it shall fix.

(2) The court shall at the same time decide on costs.

(3) Where the application is allowed and permission to execute is granted, the foreign judgment shall be executed in Ethiopia as though it had been given by an Ethiopian court.

Art. 461. — Enforcement of Foreign Awards

(1) Foreign arbitral awards may not be enforced in Ethiopia unless:

(a) reciprocity is ensured as provided for by Art. **458** (a);

(b) the award has been made following a regular arbitration agreement or other legal act in the country where it was made.

(c) the parties have had equal rights in appointing the arbitrators and they have been summoned to attend the proceedings;

(d) the arbitration tribunal was regularly constituted;

(e) the award does not relate to matters which under the provisions of Ethiopian laws could not be submitted to arbitration or is not contrary to public order or morals; and

(f) the award is of such nature as to be enforceable on the condition laid down in Ethiopian laws.

(2) The provisions of the preceding Articles shall apply by analogy when the enforcement of a foreign award is sought.