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on

real parties in Interest

August 2013

Parties to the suit and dimension of the suit

The real party in interest (Art 33)

This topic tries to deal with identifying the person who can sue. The topic of Art 33 in the English version discusses about **Qualification** while the Amharic version discusses about ከሳሽ የመሆን ችሎታ.Do these words impart the same meaning?

Art 33 (!)- Discusses about ordinary capacity, the ability of certain classes of persons. The infirm and the underage cannot be allowed to conduct trial.- ***This is intended to protect plaintiffs***

Art 33 (2)- here the plaintiff is required to show vested interest on the subject matter of the suit. He is expected to show his legal connection to the subject matter, his right over it. Otherwise he will not be admitted as a plaintiff - ***This is intended to protect defendants***

ባልና ሚስት ጋብቻ እንዲፈርስ ንብረትም እንዲካፈሉ ሚስት ጥያቄ አቀረበች- ጋብቻ ፈረሰ- ንብረትም ተካፈሉ- ግን ከንብረቶቹ ውስጥ ባል በጋብቻቸው ጊዜ ቦታ ለማግኘት በማሳበር የተደራጀበትን ቦታ መብቱ በተገኘ ጊዜ የመካፈል መብቷ እንዲጠበቅላት ሚስት ጠየቀች። ፍርድ ቤቱ መብቱ የበሰለ አይደለም አለ። በዚህ የሰበር አቤቱታ ቀረበ። ጉዳዩ መታየት ያለበት እንዴት ነው ? ለክሱ ምክንያት በሆነው ሃብት ላይ ከሳሽ መብት እና ጥቅም ያላት መሆኑን ማሳየት አይገባትም? መብት እና ጥቅምን ማሳየት ምን ማለት ነው? ባለመብት መሆንን presuppose አያደርግም? እንዲህ ከሆነ ገና ባልተፈጠረ መብት ላይ ጥቅም አለኝ ማለት ይቻላል?

Art 33 (3)- Showing of vested interest alone is not enough. Plaintiff must be able to show his right over the defendant, showing a ground against the defendant. i.e the plaintiff must show that the defendant is responsible for his loss or pain to be redressed. ***This is intended to protect defendants***

Cause of action - is a set of fact or combination of facts that gives a person the right to seek judicial redress or relief against another.

See the relevance of this section in matters of Assignment of rights

> Once, the right is assigned the assignor will not have the right require performance to the extent of the assignment. It will be the assignee who will have the right to require performance.

See Art 2093 of the civ.c + Ar 683 and 690 of the comm.c.

Striking out, adding or Substitution of parties (Art 40)

Purpose

To save time and cost

Ground for substitution and addition

- Bona fide mistake
- Improper mentioning of defendants
- Presence of parties important to participate

If the plaintiff discovers that he cannot get the relief he seeks without joining somebody or that he finds it that some other person and not the original

defendant that is responsible for him, he may apply **to substitute** or **add** that other person. E.g. people who live in an immovable, surety etc The court would allow the same if the error is a *bona fide* mistake. This will save honest plaintiffs from losing their claims.

Under (2) of Art 40- when the name of the defendant is improperly mentioned what will courts do? Can they strike the case? Or simply strike the improperly mentioned name by adjusting the right name and move the case forward?

The role of the court

The **court** can **add** parties on **two grounds**.

- The court **believes** that some other party **ought to have been joined** originally
- Without the presence of that other person **the suit cannot be decided**

But even if the court can do this, it must as much as possible **be restrained** not to subject the plaintiff to fight with one whom he does like to fight with. The plaintiff is **the best judge of his own case (***Dominus litus***).**

And no one can be added as a plaintiff without his will. The court cannot subject him/her

Take care- when the new party is allowed he cannot alter the nature of the suit

Representative suit

Legal representation [Art 34 (1)]

Representative suit

Representative class suit (Art 38)

A. Legal representation

Every person is presumed to be capable [Civ.C Art 196]. When the court is aware of the presence of persons under disability [Art. 33 (1)], however, it cannot permit the infirm to direct the conduct of the trial [Art 34]. It will stay the conduct of the trial until a legal representative is appointed. Doing this is not a problem when the infirm is a plaintiff. But how shall a court proceed when the infirm is a defendant?

Suspend a suit until he is represented by guardian? What happens if there is no one to assign him a guardian? How shall the court protect the interest of a plaintiff under this circumstance?

B. Representative class suit

Meaning –

Representative class suit is filed by or against one or more persons on behalf of themselves and others having the same interest.

Object –

To save time and expense to ensure a single comprehensive trial- It avoids multiplicity of suits

Conditions to be satisfied-

- Many parties
- The parties to be represented need to have same interest
- All must consent to be so represented
- Court must allow it

Same interest?

- Relief common to all
- Common grievance

E.g.

- Employees having a claim for safety measures to be in place
- An action to stop interference in the common grazing land
- Students claiming for food services to be improved