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“BALANCING EXECUTION OF DECREES AND STAY OF EXECUTION IN CIVIL
PROCEEDINGS: THE LAW AND THE PRACTICE IN FEDERAL COURTS OF
ETHIOPIA”

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ETHIOPIA

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Declaration

This thesis is my work. All sources utilized in this work have been properly recognized and cited per recognized standards of practice. I am aware that failure to uphold the standards of academic honesty and integrity, as well as the misrepresentation or fabrication of any idea, data, fact, or source, will be sufficient grounds for disciplinary action by the university.

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List of abbreviations (Acronyms)

F.D.R.E	Federal Democratic Republic of Ethiopia
C.P.C.E	Civil procedure code of Ethiopia
F.F.I.C.E	Federal First Instance Court of Ethiopia
F.H.C.E	Federal High Court of Ethiopia
F.S.C, E	Federal Supreme Court of Ethiopia
F.S.C.C.D.E	Federal Supreme Court Cassation Division of Ethiopia
Fe. FI. Ct. F. No	Federal First Instance court file number
Fe. H. Ct. F. No	Federal High court file number
Fe. Sup. Ct. F. No	Federal Supreme court file number
C.P.R.K	Civil Procedure Rules of Kenya
C.P.R.I	Civil Procedure Rules of India
C.C.E	Civil Code of Ethiopia
F.C.P	The Federal Courts proclamation 1234/2021

Abstract

For States to build and develop a strong and respected judicial system, proper, effective, and efficient enforcement of court decisions is critical. In principle, all decrees have to be executed. However, when the interest of justice so requires, execution may be stayed by the order of the judiciary. That is why the researcher is interested in doing this thesis. The main objective of the study is to assess the legal and practical gaps associated with the stay of execution with in the federal courts.

To address these objectives the basic research questions were; why and when a stay of execution order has been given, what is the obligation of the party who applies for the stay of execution order, and what are the main challenges of a party who seek a stay of execution, Is there a gap on the law concerning stay of execution, Is it possible to balance the execution of a decree and stay of Execution And What does the practice look like in the federal courts of Ethiopia

To address these, doctrinal legal research was employed. The finding was Ethiopian civil procedure code follows a non-automatic stay of execution of order or decree. The federal court judges have a knowledge gap and lack of consistency as well as applications of the civil procedure code concerning providing a stay of execution by the rendition court. Federal courts have a problem with the lack of statistical data. The researcher has suggested the amendment of civil procedure code provisions regarding the stay of execution. And extensive job training is required especially for judges, and lawyers. And finally, to have sufficient information about the issue a data recording system regarding the stay of execution order or decree shall be demanded.

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CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

Justice makes the nation endure. Judiciary has a sacred duty to dispense justice according to the law of the state, granting each man right. Justice is administered in the nation's judicial department's courts.¹ A favorable judgment is of little worth if it is not enforced. For States to build, reinforce, and grow a respected judicial system, proper, effective, and efficient enforcement of court rulings is critical.²

Courts have authority, and they must use that authority appropriately. Properly managing the cases, litigating lawyers, and appreciating judges must have a thorough comprehension of the law. "What kind of value will remain if the judiciary is removed from the system; after all, the government cannot exist without it. It is like a solar system without the sun. Winning a case is meaningless unless and until the ultimate judgment is carried out."³

Only the execution of the decrees shows and symbolizes their significance. There is a rising view that compiles country to enforce court judgments fairly, effectively, and efficiently, as well as to defend the judiciary's independence, not only under international and regional human rights treaties but also under their constitutions.⁴

There are four types of globally accepted enforcement systems for judgments. These are:

1. Court-controlled (traditional) or (judge-controlled) enforcement systems
2. Systems with various institutions in charge of enforcing the law
3. The government's exigencies branch is in charge of enforcing the law.
4. Private or quasi-private bailiff's enforcement. The first is the earliest system of enforcing the law. Judges of the Federal Courts of Ethiopia are in charge of making the majority of decisions and enforcing them, Article 371 of the C.P.C.E deals with the act of courts' decrees from the beginning to the end. After the judgment is finalized and no stay of execution is granted by any appellate court, the court that passed it, or the court that was

¹ Walter B. Jones, Judiciary's Part in the Life of the Nation, 13 Notre Dame L. Rev. 13(3), (1937). Pp. 37-38, Available at: <http://scholarship.law.nd.edu/ndlr/vol13/iss1/3>

² Liku Worku, "Executions of Civil Judgment and the need to Reform the Enforcement System in Ethiopia" (2015), available at <https://www.abysinia.law.com/blog-posts/item/1499-executions-of-civil-judgement-and-the-need-to-reform-the-enforcement-system-in-ethiopia>

³ Ibid

⁴ Ibid

sent for execution, performs the act of execution. So, it can be concluded that Ethiopia follows the oldest /traditional/ court/ judge-controlled enforcement system.

When we come to reviewing a judgment, In Ethiopia there are three types of evaluating a judgment. The court that issued the judgment (article 333 C.P.C.E), a higher (appellate) court (article 348 C.P.C.E), and the court of cassation only on legal error can review the decision. An appeal may question the trial's procedural fairness, the soundness of the legal principles utilized, the sufficiency of the evidence to show responsibility, or any combination of these issues. In principle, there are two types of stays of Execution: those granted as a matter of course and those granted only in exceptional circumstances. Ethiopia's C.P.C.E takes the latter method.⁵ The fact that an appeal has been taken does not preclude the execution of the decree, and it is only where the appellant demonstrates that substantial loss will result if the execution does not stay that the appellate court will interfere with the execution of the decree (article 332; 333 and 334 of C.P.C.E). A stay of execution can be ordered by the appellate court, by the presidents of the two courts, by the court which rendered the decree if an application, is made to that court before the expiration of the time allowed for appeal Articles 332-334 of C.P.C.E. An appeal is a hierarchical system of checks and balances between courts; (an internal controlling mechanism); if a lower court makes a mistake, the higher (appellate) court corrects it. It improves the efficiency of the judicial system. It decreases corruption. In the same way, if the court or the appeal court does not grant a stay when one is required and the judgment is reversed, the right holder may lose his right. The winning appellant is entitled to restitution in this case, and he must submit his claim. In the first instance of court, an application for restitution was filed. That court must order such restitution and to the extent practicable, place the parties in the same situation as they would have been in if the decree or part of the decree that has been amended or reversed had not been varied or reversed. Article 349(1) C.P.C.E. This occurs frequently, especially when the property is land or a house, which might be destroyed or inflationary pressures on money are possible. Citizens are increasingly expressing their dissatisfaction with non-implemented or incorrectly performed decisions. As stated in the C.P.C.E judges shall examine execution cases carefully and effectively.

⁵ AlemAbraha and TaffeseHabte, Civil Procedure Law II Teaching Material (2009) p.110-111

1.2. Statements of the Problem

Execution is the last stage of litigation. It is the process of enforcing decrees and orders so that the decree-holder can reap the benefits of the judgment. Sometimes challenges to the court's proceedings arise because the judgment debtor may request a stay of execution or revision of the judgment on bad faith (illegal) grounds (intention).

The law forbids such unnecessary justifications for a stay of execution, but it does allow for a stay if it is necessary and the risk of loss is anticipated. Even when a party requests a stay of execution by stating that the decree is about to be reversed and that a loss is impending, the courts seldom grant such a request, and the judgment may be overturned decades later. In theory, any court's decision /decree/ is presumed to be well founded; therefore, it is expected to be fully executed, although this is not always true.

Because judgments may be erroneous, they are heard in both the appellate court and the originating court. The plaintiff can apply to the first court that issues the judgment to reinstitute Article 349/1/ C.P.C.E., between these two points, the value of money or property may increase or decrease. At the end of the day, the right holder gets nothing; he either stands with his document or gets a less sum.

Some of the problems faced by the federal courts of Ethiopia regarding the stay of executions include failure to impose a restraining order because of the trend of courts that all judgments must be executed; the problem of judge's misinterpretation, misunderstanding, and ignorance of the law. For example, Article 333 of C.P.C.E is an ignored (out of use) article most of the time.

Execution benches of Federal courts of Ethiopia lack uniformity, contrary to the law, and lack information on enforcement. Ethiopia has various databases, particularly since the implementation of enforcement benches, but they are not clear and insufficient to handle the problem. All requests for a stay of execution should be reviewed and dealt with as quickly as practicable. So, there has been great tension and justice issues in balancing the execution of judgment and the stay of execution. The researcher as a lawyer, in the Federal court, it was tried to observe, and raise problems and the issue of execution of decrees and stay of execution in the Civil Proceedings of Ethiopian Federal courts. These problems and issues initiated the researcher to conduct this study concerning the title Balancing

Execution of Decrees and Stay of Execution in Civil Proceedings; the law and the practice in the Federal Courts of Ethiopia.

1.3. Research Questions

The research questions that the study intends to address are:

1. Why and when are stays of execution orders given?
2. What are the main challenges of a party who seek a stay of execution in the federal courts of Ethiopia?
3. Is it possible to balance the execution of the decree and the stay of Execution?
4. What does the practice look like in the federal courts of Ethiopia?
5. Is there a gap in the C.P.C.E concerning the stay of execution?

1.4. Literature Review

The law of civil procedures, particularly the articles of execution and stay of execution, plays a vital role in attracting judicial attention in Ethiopia and around the world. The researcher is unable to obtain national research on this topic. "The Execution of Civil Judgments and the Need to Reform Ethiopia's Enforcement System" is a related article.⁶ But it could not directly relate to the issue at hand.

1.5. Objectives of the Study

The objectives of the study are:

- ❖ To identify major problems encountered by parties who seek a stay of execution of decrees in federal courts of Ethiopia,
- ❖ To implicate what the laws say about a stay of execution of decrees and how Federal courts are doing in practice,
- ❖ To indicate the gaps in the C.P.C.E concerning stay of Execution,
- ❖ To describe the reasons and conditions justifying on stay of execution order by a court, and
- ❖ To give recommendations on how to avoid and resolve the challenges encountered during the stay of execution of decrees in proceedings of federal courts of Ethiopia

⁶ Likuworku, supra note 2, p.5

1.6. Significance of the Study

This research will contribute both to the pursuit of knowledge and shed light on the legal and practical problems, the court, the lawyer, and the judges and presidents to identify problems related to balancing the execution of decrees and stay of execution in civil proceedings on the Execution process. Especially, it will have far-reaching importance for judges who are usually at the front of civil (execution) litigations, to identify their weaknesses in protecting the rights of individuals during the execution. It will recommend the problems identified so that any concerned body can take action to address those issues and ensure that the rights of the parties are realized. It will be used as a reference for further research on related topics. Furthermore, this research contributes to demonstrating the gap in the law.

1.7. Scope of the Study

The study is delimited both thematically and geographically. Thematically it was delimited to the execution of decrees and stay of execution. The study concerned with the execution of decrees and stay of execution in Civil Proceedings; the Law and The Practice in Federal Courts of Ethiopia deal with the legal and practical problems that exist in Federal courts of Ethiopia. Even though there are Federal courts in Dire Dawa and by the delegation in states, most of them see criminal cases, so the research is limited to Federal courts, which entertain cases in Addis Ababa City Administration only. Besides general principles and internationally accepted rules are made part of the study.

1.8. Limitations of the Study

The study faced problems with data collection while interviewing the key informants since the issue is sensitive and unable to get real-based data, hard to get presidents because time was the problem, and it tried to convince the respondents painstakingly to provide freely without hesitating. Later on, it was practical to get the needed data from these respondents.

1.9. Methodology of the Research

In this research, the researcher employed qualitative legal research methods. The reason for choosing this approach is due to the nature of the problem intended to be addressed, to generate relevant information based on document review, and critically analyze the views of key actors and practices regarding the stay of execution. Regarding data collection, the purposive /Judgmental/ sampling method was used based on the participants' experience and other attributes to address the research question of the research.

1.10. Sources of data

To arrive at reliable and valid conclusions, the researcher employed both primary and secondary sources of data. Primary sources the researcher used include Ethiopian laws: mainly C.P.C.E, C.C.E, FDRE constitution, and other relevant laws used for analysis while the secondary sources are Literature: Books, Journals, Articles, Websites, International benchmarks, different principles, guidelines, and standards on the right of execution and stay of execution. In addition, interviews, and court cases are used as secondary data.

1.10.1. Interview

An interview is one of the data collection techniques in legal research used to generate information from individuals. The researcher takes interviews with presidents, Judges, and Lawyers, to seek information about the practical applications of the issue. In the Federal first instance court, there are eleven benches and within these benches, execution benches are established, in the federal High court, there are civil benches and at the same time, these benches entertain execution cases, in the federal Supreme Court there are also benches that entertain execution cases. Having this information, the researcher interviewed two vice-presidents of the federal high court, one first instant vice president, two judges from the first instance court, three Judges' from the federal high court, two Judges from the supreme appellate and cassation court, and four federal licensed attorneys.

1.10.2. Court Cases

The researcher referred to and analyzed cases that show problems and issues of Balancing Execution of Decrees and Stay of Execution in Civil Proceedings: The Law and the Practice in Federal Courts of Ethiopia.” To show the practical problem at hand some court

cases were selected carefully from a federal court sample and analyzed based on the basic research questions of the study. The cases were selected based on purposive sampling.

1.10.3. Data Analysis Techniques

Before analyzing the data, it was sorted out thematically in line with the basic research questions of the study. The qualitative data were collected from interviews, filed documents of court decisions made previously. The researcher tried to use triangulation techniques of data to arrive at reliable and valid results. This study is mainly qualitative and the data were analyzed using thematic analysis techniques.

1.11. Organization of the paper

The thesis is organized into four chapters. The first chapter presented the introductory concepts of the thesis, chapter two concerns the literature parts, and the third chapter of the thesis concerns the main part of the thesis about the practice of stay of execution as per the Ethiopian federal court's context and the last chapter presented the conclusion and recommendation part.

CHAPTER TWO

AN OVERVIEW OF EXECUTION OF DECREE AND STAY OF EXECUTION

2.1 INTRODUCTION

In this chapter, the various issues related to the execution of the decree and the Stay of execution were presented. Without a stay, review on appeal “would be an idle ceremony if the situation were irreparably changed before the correction could be made.” Meaningless appellate decisions not only diminished the appellate court’s basic role but also the individual’s right to judicial review.⁷

Stays are basically “a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.” Without a stay, judicial review may practically lose its effectiveness. Although the appellate court has the power to reverse the trial court's judgment, the circumstances have already altered to the point where the reversal is of little or no effect.⁸ However, with a stay, the circumstances cannot change and the reversal can have a meaningful, practical effect. This highlights the importance of stays, which ensures that the appellate court’s decision has a real-world impact. Without that meaningful effect, the appellate court’s role in the judicial process is meaningless.⁹

2.1.1. Execution of Decree in General

In civil litigation, judgment imposes an obligation on the person against whom it is rendered to perform according to its terms. But, the obligation created by a judgment is not self-enforcing, and the court may not start enforcement by its initiative. A decree that requires no immediate enforcement is sometimes called self-executing. However, if the judgment debtor refuses to comply with the decree, enforcement may be necessary.¹⁰

If a court has rendered a judgment, there will be a beneficiary of the decision as opposed to the one who is affected by the decision of the court both parties have different interests according to the judgment. The judgment debtor wishes to get the judgment reviewed by

⁷ Jill Wieber Lens, Stays Pending Appeal: Why the Merits Should Not Matter,(page 24-26)
<https://ssrn.com/abstract=2571003>

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

way of appeal so he may ask stay of execution. If there is such a possibility, on the other hand, the judgment creditor comes to the court quickly to execute the judgment.¹¹

The words 'execution' and 'enforcement' are used interchangeably. So "execution" simply means the process of enforcing or giving effect to the judgment of the court. It is the enforcement of a decree by a judicial process that enables the decree-holder to enjoy the fruits of the decree and judgment passed by the court in his favor. The execution is complete when the decree-holder gets money or other thing awarded to him by the judgment, decree, or order of the court.¹²

For the actual satisfaction of a claim, fair and effective enforcement of a court decision has a big role in the protection of human rights as in the case of a modern approach. In the modern world, effective enforcement of judgment has even more rationale than the protection of human rights. It has a significant role in promoting trade and investment, social stability and administration, rule of law, and judicial independence. Proper, effective, and efficient enforcement of court decisions is of vital importance for States to create, reinforce and develop a strong and respected judicial system.¹³

Citizens of a country, whose rights are affected look forward to states enforcing their rights. They need "justice in action" not "justice in books". Without the final realization of court judgments and other enforceable documents, citizens may well lose their respect for the system of justice and their confidence on state institutions. Therefore, the enforcement of judgment has a direct and indirect impact on the social, political, and economic conditions of the modern world.¹⁴

Decree means operation or conclusiveness of judgment. Implementation of a decree will be done only when parties have applied in that regard.¹⁵

Execution empowers the decree-holder to enjoy the products of the judgment. It is finished when the judgment-creditor or decree-holder gets cash or other thing granted to him by judgment, decree, or order.¹⁶

¹¹ AlemAbraha and TafesseHabte , Law of Civil Procedure (Teaching Material),2009 page 124

¹² Anonymous, (As Workshop List title no 134 pdf (Concept Of Execution) title NO .134 page 1 and 2

¹³ LikuWorku, "Executions of Civil Judgment and the need to Reform the Enforcement System in Ethiopia" (2015), p.6

¹⁴ Ibid

¹⁵ ch.vivek an and srinivas, addl (senior civil judge), paper presentation on execution, page 13

¹⁶ Pranjali Sharma and JyotsanaUplavdiya, All About Execution of a Decree under Order 21, India Code Of Civil Procedure page -25

Once an order is made or judgment is entered for a claimant, if the defendant fails or refuses to comply with that order or judgment, the claimant may then take further steps to enforce it. There are a variety of different methods of enforcing orders and judgments, and a choice can usually be made as to which method to employ.¹⁷

The ability to enforce or implement their judgment is the primary feature that distinguishes courts with judicial powers from other organizations or institutions. Judges should not grant broad relief that substitutes their or a litigant's views on policy for those of the legislative and executive branch authorities.¹⁸

2.2 Principles of Execution of Decree

The legislation in each State has its history and peculiarities but some basic trends may be briefly noted. The requirement prevalent in most States is that the creditor resort in the first instance to the personal property of the debtor and look to the real estate only if the personal property is insufficient. In many States, in imitation of the early New England practice, the debtor is allowed a period for redemption, the purchaser in the meanwhile receiving a certificate of sale and only receiving a sheriff's deed when the period has expired and the title has become absolute.¹⁹

There are few titles or interests today that cannot be applied, in some manner, to the claims of creditors, but the procedure by which this is accomplished is too often slow and ineffective.²⁰

2.3 Stay of Execution in General

A stay is an act of temporarily suspending a judicial proceeding through the order of a court. It is a suspension of a case or a suspension of a specific proceeding within a case. A judge may grant a stay on the motion of a party to the case or issue a stay on his or her initiative, without the request of a party.²¹

The term stay can also refer to describe any number of legal measures taken by a legislature to provide temporary relief to debtors. For example, under the Bankruptcy Code of the USA, a debtor who files for bankruptcy receives an automatic stay immediately upon filing

¹⁷ Paula Loughlin (z-lib.org), Civil Procedure 2 e, pages 625-657

¹⁸ Susan V. Demers*, the failures of litigation as a tool for the development of social

¹⁹ william h. loyd, executions at common law, university of pennsylvania law review page 366 (Article)

²⁰ Ibid p. 367(Article)

²¹ Stay - Court, Execution, Party, and Debtor - JRank Articles . Also found on, Law Library - American Law and Legal Information Free Legal Encyclopedia: Special power to Strategic Lawsuits against Public Participation

a voluntary bankruptcy petition.²² Stays play an important role in appellate judicial review but have received little academic Commentary.²³

Stay of Execution of a judgment can be defined as the postponement, halting, or suspension of a judgment of a court "If a party who has lost a lawsuit appeals against the decision, unless the judge's execution is temporarily postponed, his appeal may become nugatory or worthless."²⁴

Stays are essentially a way of ensuring that appellate courts can responsibly fulfill their role in the judicial process. Without a stay, the judicial review could become practically meaningless. The appellate court may reverse the trial court's decision, but the circumstances have already changed to the extent that the reversal has little effect. But with a stay, the circumstances cannot change and the reversal can have a significant practical effect. This highlights the importance of stays; stays ensure that the appellate court's decision has a meaningful effect. Without that meaningful effect, the appellate court's role in the judicial process is denigrated²⁵

The power to stay the execution of a judgment is an important provision incorporated in Civil Procedure Codes, as it is important to balance the interests of both the decree-holder and the judgment debtor and no person should be made to suffer because of procedural issues. However such power to stay must be used judicially and with great care to not prejudice the rights of any parties.²⁶

A stay of execution may be issued depending on the jurisdiction or topic; nevertheless, stays are frequently given during an appeal or when changes in circumstances necessitate a new trial or bankruptcy proceedings. When a stay of execution is granted in a civil dispute, the party who receives it is usually obliged to give a bond as security for reimbursing the opposing party if the stay grounds are proven to be irrelevant or the party causes undue delays.²⁷

²² Section 362(a) of the Bankruptcy Code of USA

²³ Jill Wieber Lens, Stays Pending Appeal: Why the Merits Should Not Matter, electronic copy available at: <http://ssrn.com/abstract=2571003>

²⁴ Stay of execution From Wikipedia, the free encyclopedia Jump to navigation Jump to search For the short story collection, see Stay of Execution (short story collection)

²⁵ Jill Wieber Lens ,Stays Pending Appeal: Why the Merits Should Not Matter page 25 (Electronic copy available at: <https://ssrn.com/abstract=2571003>

²⁶ stay of execution By: SudhanshuShekhar page 5 Electronic copy available at: <p://ssrn.com/abstract=2587233>

²⁷ https://www.law.cornell.edu/wex/stay_of_execution

On showing sufficient cause and the judgment-debtor furnishing security or fulfilling such conditions as may be imposed on him, the executing court shall stay execution of a decree for a reasonable time to allow the judgment-debtor to apply to the court that issued the decree or to the appellate court for an order to stay the execution.²⁸ A stay of execution is a court order that prevents the execution of a court judgment or other court order for some time.²⁹

It is frequently granted when the judgment debtor files an appeal, although a court has the authority to issue a stay of execution in any situation where the court believes it is necessary to ensure or defend the rights of the judgment debtor.³⁰

A stay can be issued automatically by operation of law, or by court order, either in response to a motion or by mutual agreement of the parties.

If a party files an appeal, the original court's judgment may stay until the appeal is settled.³¹

Unless ordered by the court or the appellate court, an appeal does not serve as a stay of execution.³² The courts, therefore, had to devise a means of maintaining a balance between the right of the successful party to reap the fruits of his success and the right of the losing party to appeal against the judgment.³³ This stay can only be granted after providing security or meeting the court's requirements. However, to obtain a stay of execution, the judgment debtor must present compelling evidence in court.³⁴

2.3.1 The Objective and Conditions of Stay of Execution

When a suit is pending in any court, the decree-holder and judgment-debtor can ask the court to stay the execution process if the court determines that the rights of the parties must be adjudicated by the court where the suit is pending and that unless the rights are determined, the decree cannot be executed. In addition, if either party files an appeal, the appellate court may order a stay of proceedings or a stay of implementation of the decree.

²⁸ The Federal Rules of civil procedure of India Rule 26

²⁹ Stay of execution From Wikipedia, the free encyclopedia Jump to navigation Jump to search For the short story collection, see Stay of Execution (short story collection)

³⁰ proceedings in interlocutory applications: injunctions, stay of proceedings and execution Being a paper presented by: hon. justice chinweiyizoba Justice Court of Appeal Lagos At the 2016 Induction Course for Newly Appointed Judges and Kadis held 23rd May – 3rd June, 2016) pages 25-40

³¹ Stay of execution From Wikipedia, the free encyclopedia Jump to navigation Jump to search For the short story

³² Section 230 of the Seychelles Code of Civil Procedure (SCCP) also available <https://seylit.org/sc/judgment/supreme-court/2021/401-0>)

³³ Stay of execution From Wikipedia, the free encyclopedia Jump to navigation Jump to search For the short story

³⁴ Commonwealth_Caribbean_Civil_Procedure_Third_Edition_Commonwealth page 71 -75

The goal is to safeguard the interests of both parties, namely the decree-holder and the judgment-debtor. The disputed subject matter will remain the same if the order is reversed by the appellate court, to protect the interest of the judgment debtor.³⁵ The objective of a stay of execution is to protect the interest of both parties. In case the order gets reversed by the appellate court, the disputed subject matter will remain the same.³⁶

2.3.2. Principles Governing Stay Of Execution

Those sound legal principles, which a stay applicant will have the burden to show, are:

(1) Whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure other parties interested in the proceeding; and (4) where the public interest lies.³⁷

The conditions preceding the court's order regarding the stay on the execution of the decree are 1. The application has been made without undue delay. 2. If the stay is not applied, the petitioner may suffer a significant loss. 3. The applicant has supplied security for the decree's proper execution.³⁸

The following are the main grounds for requesting a stay of execution pending appeal. A high chance of success in the appeal because there is a substantive question of law to be decided; if the judgment is executed before the appeal is resolved.³⁹ If Applicant will suffer substantial and irreparable loss and prejudice that cannot be adequately compensated by damages and would also render the appeal nugatory.⁴⁰

If the judgment is executed before the appeal is resolved, the Applicant will suffer substantial and irreversible loss and prejudice.⁴¹ If the award is substantial and when the Applicant prevails on appeal, He/she will have trouble recovering it from the Respondent.⁴² The Applicant is financially capable of settling the judgment if the decision is upheld. Also in a common law legal system the former condition that the applicant could only deny

³⁵ Civil Trials Bench Book — Enforcement of judgments Last updated: CTBB 43, MAR 21 Stay of execution

³⁶ Pranjali Sharma and JyotsanaUplavdiya, All About Execution of a Decree under Order 21, Code Of Civil Procedure

³⁷ Jill Wieber Lens , Stays Pending Appeal: Why the Merits Should Not Matter page 7 Electronic copy available at: <https://ssrn.com/abstract=2571003>

³⁸ Pranjali Sharma and JyotsanaUplavdiya, All About Execution of a Decree under Order 21, Code Of Civil Procedure

³⁹ Civil Code of Seychelles Act File [2021] SCSC 401 savoy development v sharifasalum.docxpdf icon [2021] scsc 401 scanned Savoy Development v Sharifa Salum.pdf BURHAN J <https://seylii.org/sc/judgment/supreme-court/2021/401-0>

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

the judgment creditor the "fruits of victory" when "special" or "exceptional" circumstances necessitated the imposition of a stay pending appeal no longer applies. It is sufficient for the applicant for the stay to provide a reason or an appropriate situation to justify a favorable exercise of discretion.⁴³

The petitioner bears the burden of demonstrating a legitimate reason for a stay that is equitable to all parties.⁴⁴

When there is a risk that the appeal would fail if the appellant prevails and no stay is granted, courts will usually exercise their discretion in favor of granting a stay. The court may refuse a stay if there is a possibility that the applicant's assets will be disposed of if a stay is granted.⁴⁵

The court may compel payment of the entire or a portion of the judgment money or the production of security as a condition of a stay, where there is a risk that the plaintiff may be unable to repay the money without difficulty or delay if the appeal is successful.⁴⁶

(a) The applicant's chances of succeeding on appeal. A stay may be denied if the reasons are almost negligible.⁴⁷

(b) The nature of the disputed subject matter. Whether the case's justice will be served by keeping the status quo until the appeal is finally decided.⁴⁸

(c) Whether the petitioner will be able to benefit from the appealed judgment if it is successful.

If the decision is for money and costs, whether there is a reasonable chance of obtaining these from the defendant if the appeal is successful. Except where the result will be to deprive the appellant of the means to prosecute his appeal, poverty is not a unique reason for granting a stay of execution.⁴⁹

⁴³ Civil Trials Bench Book Stay of execution Last updated: CTBB 43, MAR 21 also available https://www.judcom.nsw.gov.au/publications/benchbks/civil/stay_of_execution.html

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ John. justice chinweiyizoba, proceedings in interlocutory applications: injunctions, stay of proceedings and execution (Being a paper presented Justice Court of Appeal Lagos) At the 2016 Induction Course for Newly Appointed Judges and Kadis held 23rd May – 3rd June, 2016) page 35-37

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

2.3.4. Country Experience on Stay of Execution

A stay is issued automatically by operation of law, or by court order, either in response to a motion or by mutual agreement of the parties.

A. Stay of Execution in India

Rule 26 of Order XI contains provisions for a stay of execution of a decree. This rule lays down that the executing court shall, on sufficient cause being shown and on the judgment-debtor furnishing security or fulfilling such conditions, as may be imposed on him, stay execution of a decree for a reasonable time to allow the judgment-debtor to apply to the court issued the decree or to the appellate court for an order to stay the execution.⁵⁰

The power to stay is not the same between the court that issued the decree and the court to which it is sent for execution. A transferee court cannot award a stay based on inherent powers.⁵¹

Rule 29 provides for a stay of execution while the decree-holder and the judgment debtor are on the pending suit in court. It enacts that where a suit by the judgment-debtor is pending in a court against the decree-holder such court may, on the judgment debtor furnishing security or otherwise as it thinks fit, stay execution of the decree until the disposal of such suit.⁵²

The object of this provision is twofold, (i) to allow the judgment debtor and the decree-holder to adjust their claims against each other; (ii) to prevent multiple execution processes (ii) to stop the multiplicity of execution proceedings. For this rule to apply, there must be two concurrent proceedings in the same court. For the application of this rule, it is not enough that there is a suit pending by the judgment-debtor. Such suit must be against the decree-holder in such court. The phrase "such court" is important since it implies that the case must be pending in the same court.⁵³

The provisions of Rule 29 are discretionary rather than mandatory. This rule is based on the principle that a judgment debtor may not be harassed if he has a solid claim against the

⁵⁰ Vedant29, (Execution of Decree in Civil Court (<https://www.legalserviceindia.com/legal/article-2628-execution-of-decree-in-civil-court.html>))

⁵¹ Ibid

⁵² Civil procedure code of India Rule 29

⁵³ Vedant29, (Execution of Decree in Civil Court (<https://www.legalserviceindia.com/legal/article-2628-execution-of-decree-in-civil-court.html>))

decree-holder which is pending the decision of the court executing the decree. If the court is of the view that there is some substance in the claim, it may order for the stay of execution filed by the defendant in that case but not otherwise.⁵⁴

While exercising the discretion conferred under Rule 29, the court takes into account that a party who has obtained a lawful decree is not deprived of the fruits of that decree except for good and cogent reasons. As long as the decree is not overturned by a competent court, it stands good and effective and it should not be lightly dealt with to deprive the holder of the lawful decree of its benefits.⁵⁵

A party should not be denied the fruits of the decree obtained by him from a competent court merely because a suit has subsequently been filed for setting aside that decree. A decree passed by a competent court should be allowed to be carried out and unless a strong case is made out on compelling grounds no stay should be granted.⁵⁶ Even if a stay is granted, it must be under terms that ensure the previous decision does not become ineffective due to the lapse of time. The discretion of the court under Rule 29 has to be exercised with "very great care" and only in "exceptional circumstances". It cannot be exercised to allow a party to abuse the process of law.⁵⁷

Before the amendment in the Code in 1976, the jurisdiction to stay the execution of a decree was vested only in the court which passed the decree. Under the amendment of 1976, the executing court now has the authority to suspend not only the decree it has issued but also a decree issued by another court that has been transferred to it for execution.⁵⁸ If a party brings an appeal, the original court's verdict can stay until the appeal is settled. It is granted when the judgment debtor brings an appeal, although the court has the authority to issue a stay of execution in any situation where the court believes it is necessary to ensure the judgment debtor's rights.⁵⁹

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ proceedings in interlocutory applications: injunctions, stay of proceedings and execution Being a paper presented by: hon. justice chinweyizoba Justice Court of Appeal Lagos At the 2016 Induction Course for Newly Appointed Judges and Kadis held 23rd May – 3rd June, 2016) pages 25-40

B. Automatic Stay in Indian Civil Rules

Automatic Stay, except as specified in Rule 62(c) and (d), execution on a judgment and proceedings to execute are stayed for 30 days following its entry, unless the court decides otherwise. The language of Rule 62 has been amended as part of the general restyling of the Civil Rules to make them easier to understand and to make style and terminology consistent throughout the rules. These alterations are purely aesthetic⁶⁰

Under the new Rule 62(a), the automatic stay has been extended to 30 days. The duration was previously 14 days under Rule 62(a). The updated rule destroys the requirement to rely on inherent power to issue a stay during this time. Setting the timeframe at 30 days corresponds to the time for most civil appeals to be issued, providing a potential appellant enough opportunity to seek a stay through other means during the appeal period⁶¹

Amended Rule 62(a) explicitly recognizes the court's power to dissolve the automatic stay or to replace it with a court-ordered stay. One reason for dissolving the automatic stay may be a risk that the judgment debtor's assets will be dissipated. Similarly, it may be necessary to allow immediate enforcement of a judgment that does not require a payment of money. The court can address the possibility of immediate execution by directing the stay to be dissolved only if the judgment creditor posts security. Rather than nullifying the stay, the court may seek to supersede it by imposing a lengthier stay or requiring security⁶²

C. Automatic Stays under the New Bankruptcy Law of the USA

An automatic stay is a provision in US bankruptcy law that temporarily prevents creditors, collection agencies, government bodies, and others from pursuing debtors for money they owe for a limited period. It prevents creditors from trying to collect debts from a debtor who has filed for bankruptcy until court proceedings are completed.⁶³

Under Section 362 of the United States Bankruptcy Code, an automatic stay goes into effect the moment when a debtor files for bankruptcy. The automatic stay applies to individuals, businesses, and all of the chapters of the Bankruptcy Code. Creditors, collection agencies,

⁶⁰ LII / Legal Information Institute > Rule 62.Stay of Proceedings to Enforce a Judgment Federal Rules of Civil Procedure https://www.law.cornell.edu/rules/frcp/rule_62

⁶¹ LII / Legal Information Institute > Rule 62.Stay of Proceedings to Enforce a Judgment Federal Rules of Civil Procedure https://www.law.cornell.edu/rules/frcp/rule_62

⁶² LII / Legal Information Institute > Rule 62.Stay of Proceedings to Enforce a Judgment Federal Rules of Civil Procedure https://www.law.cornell.edu/rules/frcp/rule_629preamble)

⁶³ Julia Kagan, Automatic Stay, August 19, 2021 <https://www.investopedia.com/terms/a/automaticstay>

and others who violate the automatic stay can be sued by the debtor. Creditors can ask that the court lift the automatic stay if the debtor's assets are anticipated to lose significant value before the case is resolved.⁶⁴

Automatic-stay provisions protect the debtor against certain actions from their creditors, including starting or continuing court proceedings against the debtor; moving to foreclose on a debtor's property; creating, perfecting, or enforcing a lien against a debtor's property; and attempting to repossess the collateral.⁶⁵

Another goal of the automatic stay is to put all creditors on a level playing field and prevent one creditor from seizing a debtor's assets before others have had a chance to do so. Creditors are unlikely to receive the full amount they are owed once an automatic stay is in place. Instead, a proportional share of the bankrupt debtor's limited assets will be distributed to them. Chapter 9 can only be used to restructure a municipality's obligations; however, a municipality is generally defined as any "political organization, public agency, or State instrumentality."⁶⁶

The automatic stay is a legal and logical aspect of bankruptcy estate management. If the goal of equitable distribution, satisfaction, or security is to be achieved, it is necessary to prevent creditors from improving their positions through means not under the control of the bankruptcy court. Furthermore, if the fresh start is to be effective, they must also stop attempting to collect from the debtor.⁶⁷

D. Automatic stays OF Oklahoma Civil Appeals Rule

In Oklahoma, the effectiveness of a Judgment or decree on civil war is suspended automatically for ten days. Provision of civil appeal rule 1.13 states these judgments stayed automatically. The automatic stay aims to give a party time to file a new trial motion and secure approval of supersede as undertaking as aright as stated by the law without asking stay of execution. Decrees other than money relief are granted and make up the next class of decrees for which a ten-day stay of execution is permitted.⁶⁸

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Frank R. Kennedy , the automatic stay in chapter 9 cases, Journal of Law Reform [VOL. 12:1 (1978) page 48

⁶⁷ Ibid

⁶⁸ Hein on line ,civil wars: stays of execution,appellate sanctions and thenature of consensus on the utility of appellate review, 29 Tulsa L.J. 65 (1993),pages 81-85

E. Stay of Execution Pending Appeals in Kenya

The following are the principles for granting a stay of execution as outlined in Order 42, rule 6 (1) of the Kenyan Civil Procedure Rules:

No appeal shall operate as a stay of execution or proceedings under a decree or order appealed from, except the Court appealed from may order otherwise. But the Court appealed from may for sufficient cause order stay of execution of such decree or order.

Any person who is aggrieved by a stay order made by the Court from whose decision the appeal is sought may apply to the appellate Court to have the orders set aside based on an application being submitted.⁶⁹ Order 42, rule 6 (2) states that: No order for stay of execution shall be given under sub-rule (1) unless:-

A. The court is satisfied that the applicant will suffer substantial loss unless the order is made and that the application is brought without unreasonable delay; B. The applicant has given such security as the court orders for the due performance of any decree or order that may eventually be binding on him.⁷⁰The Court's jurisdiction under Rule 5(2) (b) is both original and discretionary.⁷¹In exercising its jurisdiction, the court follows two principles. For an applicant to be successful, he must not only show that his appeal or intended appeal is arguable, but also that the success of that appeal will be rendered nugatory unless the court grants him an injunction or stay, as the case may be. Before the stay orders can be granted, the appellants must satisfy the Court with the following conditions:

1. If the order is not issued, the applicant may suffer a significant loss.
2. The application was submitted on time and without undue delay.
3. The applicant has offered such security as the Court requires for the proper execution of the decree or order that may ultimately be binding on the applicant. Staying the execution of a money decree is only entertained in exceptional circumstances. It is unusual for a court to grant a stay of execution in monetary decrees, but where there are special features such as the issue or the regularity of the judgment, the fact that the amount payable under the decree

⁶⁹ Rajab Mwachia, Highlights on the Law Governing Orders for Stay of Execution Pending Appeals in Kenya, jan 30/2020(
<https://www.linkedin.com/pulse/highlights-law-governing-orders-stay-execution-pending-rajab-mwachia>)

⁷⁰ Civil Procedure Rules of Kenya, Order 42, rule 6 (2)sub-rule (1)

⁷¹ Civil Procedure Rules of Kenya, Rule 5(2) (b)

is substantial, and the fact that the plaintiff has no known assets within the jurisdiction from which the applicant can recoup in the event the appeal is successful.⁷²

2.4. Execution and Stay of Execution of Decree in Federal Courts of Ethiopia

The federal courts deal with a lot of execution or enforcement matters, and it's an area attracting a lot of attention in Ethiopia and across the world. Because execution and enforcement cases are so popular in federal courts, they've become the targets of a general goal-setting exercise aimed at reducing delays.⁷³

Federal Courts can improve their database on enforcement matters by using the data they already have and refining it to gain a better knowledge of where the problems are and who is most likely to create them.⁷⁴

Ethiopian Courts play a great role in the administration of justice. The FDRE Constitution makes clear the role of courts.⁷⁵ The Constitution's preamble declares that the Nations, Nationalities, and Peoples of Ethiopia are strongly committed to establishing a political society based on the rule of law. This shows the close relationship between rule of law and the respect for human rights and freedoms in Ethiopia. The principle of rule of law and respect for rights is ensured by the application of laws to every person by the courts.⁷⁶

R.A, Sedler, the author of the first main source of reference on Ethiopian Civil Procedure, argues that no foreign code was included as such, nor was it wholly fashioned after one; rather, it was remarkably of Ethiopian origin but others disagree with him, they say that Ethiopia's civil procedure code is mostly derived from the Indian 1908 civil procedure code, if not all, and that it is copied in the same way as earlier procedural laws.⁷⁷

So, one can see most of Ethiopia's civil procedure law relating to execution and stay of execution provisions resembles those of India.⁷⁸

⁷² Rajab Mwachia, Highlights on the Law Governing Orders for Stay of Execution Pending Appeals in Kenya, jan 30/2020(
<https://www.linkedin.com/pulse/highlights-law-governing-orders-stay-execution-pending-rajab-mwachia>)

⁷³ Uses and Users of Justice in Africa: The Case of Ethiopia's Federal Courts 5798 ,Execution of Judgments in Ethiopia (page 86-88)

⁷⁴ Ibid

⁷⁵ FDRE constitution, article 74

⁷⁶ Tesfaye Abate, Introduction to Law and the Ethiopian Legal System ,Teaching Material (2009) page 236-237

⁷⁷ AlemAbraha and TaffeseHabte Civil Procedure Law II Teaching Material (2009) p 41

⁷⁸ Ibid

The C.P.C.E under Book VI, chapter I, from Articles 371 to 466 deals with execution and stay of execution of decrees. Because these provisions cover a wide area of the civil procedure Execution of judgments is an area where the federal courts of Ethiopia have recognized a problem and are now seeking solutions. It is also an area where the Ethiopian statistics are not adequate, the creation of specialized execution benches was the first step, but it is unclear how much progress this has brought.⁷⁹

These articles set out principles, procedures, and modes of execution. When you look at these Articles, you'll notice that the institution responsible for execution proceedings is a court, and courts exclusively. In this regard, these Articles grant the power of execution to the court that issued the decree or the court to which it is sent for execution.⁸⁰

2.4.1 The Power of Courts on Execution of Decrees of Federal Courts of Ethiopia

There is no automatic execution of a decree by the court that decided it, because there are cases, for example, Arbitral awards, in which settlement is done outside the courtroom, when such a judgment is legally recognized, it should have the same effect as a court ruling.⁸¹

Reciprocal enforcement is allowed under various conventions and treaties, allowing a foreign judgment to be enforced in this jurisdiction as well as a judgment obtained in our jurisdiction to be executed in a foreign court.⁸²

⁷⁹ Ibid 88

⁸⁰ LikuWorku “Executions of Civil Judgment and the need to Reform the Enforcement System in Ethiopia” (2015), p12

⁸¹ Ibid

⁸² The Civil Procedure Code of Ethiopia,1965,Art.456/1/, Proc No, Neg. Gaz. Year, no. 3

CHAPTER THREE

THE PRACTICE OF THE FEDERAL COURTS OF ETHIOPIA IN BALANCING THE EXECUTION OF DECREES AND STAY OF EXECUTION IN CIVIL PROCEEDINGS

3.1 INTRODUCTION

This chapter is concerning the analysis and interpretations of various cases taken from the Federal Courts and key informants gathered by interviews with judges, Presidents, and attorneys. Evidence and scenarios taken from previous studies support the analysis of the study and a separate discussion session is done to see whether the findings are consistent or not with the findings of the current study at hand.

3.2. Practical Analysis

Data were collected for the analysis. The researcher interviewed seven judges of which two were females and the remaining five were male, Two from the first instance civil benches, three from federal high court appellate judges, two from the federal supreme appellate and cassation court, and also four senior federal licensed Attorneys who have civil bench experience for more than five years. In addition, the researcher interviewed two vice presidents/one male and another female/ of the federal high court, furthermore, the researcher reviewed six cases from the federal first instance court vice president's office that applied for a stay of execution. Also, nine cases from the Federal high court appellate bench and three cases from the supreme and cassation court, a total of eighteen cases were purposely selected and reviewed to assess the challenges encountered and practice for a stay of execution order under the federal courts.

3.3. The Application for Proceedings of Execution

As clearly described in the literature review part of the thesis when a person obtains a decree from a court of law against another person, his next step is to get the decree/fruit/ satisfied. Execution is the medium by which a decree-holder constrains the judgment debtor to do the command of the decree or order as the case may be. Because adjudication of a dispute in favor of a litigant in itself does not mean complete discharge of satisfaction of

the state's duties under the administration of justice. The benefits provided under the adjudication have reached the litigant.

Execution embraces all the appropriate means by which a decree is enforced and includes all processes and proceedings in aid of or supplemental to execution, it can carry out some act or course of conduct to its completion. It carries the order in operation. In the case of a money decree, it is the legal process of enforcing the judgment, usually by seizing and selling the property of the debtor. In chronological terms, execution is the final destination of what began with litigation.

In addition, there are essential elements by which a decision of a court can be termed as a decree; these are when there is a judgment has been given in a suit. Then, there must be determined the rights of the parties concerning all or any of the matters in dispute in the suit. Such determination must be conclusive and there must be a formal expression of such adjudication. The word "formal expression" means it must be deliberate and given in the manner provided by law. A decree follows the judgment and must be drawn up separately. The decrees cover various subjects like decrees to orders passed by the court, in the context of the word "Execution", the enforcement of orders passed under various other laws may also be included. It is a mechanism by which the decree-holder is enabled to obtain the benefits of the judgment. The execution is finished when the judgment creditor or decree-holder gets cash or other thing granted to him by judgment, decree, or order.

About the application of execution, who can make an application for execution was asked and an interviewee responded that an application for execution could be made by the decree-holder himself/herself.⁸³ His /her lawyer, his/her legal representative if the decree-holder is dead. Any person has been claiming under the decree-holder⁸⁴.

When the decree is passed, the court is approached to proceed based on an application for execution. So where a decree-holder dies, pending the execution proceedings, his heirs can be substituted without a succession certificate⁸⁵.

Furthermore, the application for execution can be made only against the judgment debtor if he/ she is alive or against legal representatives of the judgment debtor⁸⁶. What are the

⁸² Interview with Mr. Sheferaw Abebe ,Mr.Tekil Tadesse and Mr.Mehari G/medhin/ Federal High Court /Judges

⁸⁴ The Civil Procedure Code of Ethiopia, 1965,Art.49/50,Proc.No, Neg. Gaz. Year, no. 3

⁸⁵ The Civil Procedure Code of Ethiopia,1965,Art.49,Proc.No, Neg. Gaz. Year, no. 3 also Melaku Birhanu vs Tigistu W/Yohanese/ federal first instance court file number 180474

decrees that may be executed that were inquired from the respondents and the decree of a court against which no appeal has been made shall be executed after the expiry of the period? Where a decree is reversed or modified on appeal, the only decree capable of execution is the appellate decree, except where the appellate judgment simply dismisses the appeal. The general rule that the appellate decree alone is to be executed, does not apply and the court should look at the later decree for information on its contents.

The code sets down different methods of execution. After the decree-holder files an application for execution of the decree, the executing court can implement execution.

Hence, payment executed by going through every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by detention in the civil prison of the judgment debtor or by the attachment and sale of his property, or by both. Here the code of civil procedure of India is different from Ethiopia because the court shall not order arrest or detention in the civil prison of a woman's execution of a decree that holds money. A decree related to specific movable property executed was asked in a case when the decree is for any specific movable property. Then after, the execution can take place in any of the following made. These are by seizure and delivery of the property, by the detention of the judgment debtor, through the attachment of his property, and by attachment and detention both⁸⁷.

Generally, an executing court is not required to go behind the decree and it has to execute the decree as it is. It, however, can examine the issue of whether the decree was passed by a court without jurisdiction and may not execute the decree if it finds so. All questions (including questions relating to the right, title, or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relating to the adjudication of claim or objection shall be dealt with by the court dealing with the claim and not by a separate suit. The court satisfies all the claims and objections rose; allows the claim or objection and releases the property from attachment either wholly or to such extent as it thinks fit, or disallows the claim or objection. Continue the attachment subject to any mortgage, charge, or other interest in favor of any person, or pass such order, as in the circumstances of the case it deems fit. Concerning resistance to sale, remedies are provided if there is any resistance to sale.

⁸⁶ The Civil Procedure Code of Ethiopia, 1965, Art. 49, Proc. No, Neg. Gaz. Year, no. 3 also Melaku Birhanu vs Tigistu W/Yohanese/ federal first instance court file number 180474

⁸⁷ The Civil Procedure Code of Ethiopia, 1965, Art., 50, Proc. No, Neg. Gaz. Year, no. 3

3.4 Discontinuance of the Applications of the Decree of Executions

The applications of the decree execution and/or judgment can be discontinued when there is an order of stay of execution or the parties solve their issue by other means.⁸⁸ Another important point is that a decree passed by a court without jurisdiction is a nullity and its invalidity can be set up whenever and wherever it is sought to be enforced even at the stage of execution. A defect of jurisdiction whether pecuniary or territorial strikes at the very authority of the court to pass a decree and such a defect cannot be cured even by the consent of the parties.

3.4.1 A Stay of Execution in Federal Courts of Ethiopia

Stay of execution is one of the grounds on which discontinuance of execution order could be made. It can be used Where the party against whom a decree for the specific performance of a contract, restitution of conjugal rights, or an injunction or any other.⁸⁹ When the Court has found the rights of parties are required to be adjudicated the suit is pending and unless the rights are to be determined, the decree cannot be executed in such circumstances, Court can stay the execution proceeding.⁹⁰ The C.P.C.E had almost originated from the Indian Civil Procedure law even though they have amended the automatic stay of execution from fourteen days to thirty days on the 1908 amended civil procedure Rule of India.⁹¹

The Ethiopian civil procedure law has not been amended up to now and there is no single article that describes an automatic stay of execution. The US new bankruptcy law also proclaims automatic stay of execution by expressing the aim of the article. Besides, when an appeal has been filed by the parties, the appellate court may either order a stay of proceedings or stay on the execution of the decree. The objective is to protect the interest of both parties. In case the order gets reversed by the appellate court, the disputed subject matter will stay the same.

The conditions preceding the court's order regarding the stay on the execution of the decree⁹²: include application has been made without unreasonable delay; the applicant

⁸⁸ Interview with Mr. Filipose Ayenalem, and Mr. Sintayehu Zeleke federal licensed Attorneys, may/2022

⁸⁹ Interview with Mr. Sintayehu Zeleke, Yohanes Wana federal licensed Attorney, may/2022

⁹⁰ Ibid

⁹¹ 1908 The Federal Civil Procedure Rule of India

⁹² The case between appellant W/ro Zewdnes Debebe and respondents optics Teck international business file no 260878

might suffer from a substantial loss unless such a stay is applied; Security has been given by the applicant for the due performance of the decree.

Case Reviewed

The case between appellant W/ro Zewdnesch Debebe and respondents' optics Teck international business and others was litigated within the federal high court Lideta Bench appellate division. The case was initiated in the federal first instance court Lideta Bench. The court pronounced judgment in favor of the respondent. The unsatisfied party /appellant/ prepared memorandum of appeal and presented it to the federal high court with a federal high court file number 260878. Before the appellant opened the appeal the judgment creditor/respondent/ opened an application for execution of the decree within the federal first instance court. Because of these, the court ruled and ordered the judgment debtor/appellant/ to satisfy the judgment for the judgment creditor.

3.4.2 Competency to Order Stay of Proceeding or Execution

C.P.C.E from articles 332-336 specified the competent organs responsible for the stay of proceeding or execution. These are the appellate court, the court rendering the judgment or the president of the appellate court, or the president of the court who passed the decree or proceeding.

3.4.2.1 Reviews of judgment

The judgment rendered by the court of first instance court may sometimes be exposed to review for different reasons. Depending on the reason behind the revision of the judgment, the court of rendition, the appellate court, or the court of cassation may revise the judgment of the court of rendition.

A. Reviews by Courts of Rendition:

As clearly stated in the literature, where an application is made for a stay of execution of an appealable decree or order before the expiration of the time allowed for appealing therefrom, the court which passed the decree or made the order may on sufficient cause being shown order the execution to have stayed.⁹³ However, the whole four Attorneys were interviewed and responded on the stay of execution, and all of them agreed that in all cases the rendition court was not willing to provide a stay of execution order or even most of them don't know

⁹³ The Civil Procedure Code of Ethiopia, 1965, Art. 333, Pro .No, Neg. Gaz. Year, no. 3

it. In addition, from a total of interviewed federal court judges only (four judges of the total nine) know that the rendition court has the power to order a stay on their judgment but others i.e. five judges don't know it.

So, the data obtained in the research indicated that the court rendering the execution order or proceeding has not willing to order a stay by reasoning that the court could not order to stay its decree or proceeding.⁹⁴ This is a clear practical gap in the knowledge of the law of Judges. Because the law empowers the court which passes the decree or proceeding to stay of execution of their own judgment/decree/, some judges even could not know the existence of the law, though they know, they don't want to apply the existing procedure.

B. Reviews by Appellate Courts

The appellate court may grant a stay of execution. By the same train of thought, as the case is not within the appellate court's jurisdiction before an appeal has been taken; the case is not within the appellate court's jurisdiction, and it should not order a stay even if the unsuccessful party assures the granting of a stay of execution, and it should not authorize the setting aside of an execution that has already occurred.⁹⁵The Ethiopian civil procedure code article 332 clearly shows that federal appellate courts can order a stay of execution or order when a legally sufficient cause is presented. But in practice, the interviewee answered that the federal court appellate judges follow unwritten law that is if the judgment debtor asks stay of execution they say that without the investigation of the case they did not allow a stay of execution. Even if they ask to see the execution order of the court after the money withdraws from the bank stay of execution has no or little value. Even when they allow a stay of execution they fix the guarantee arbitrarily.⁹⁶

C. Reviews by Court of Cassation

In a court of cassation both Federal and State Courts, a party may make an application for revision in the Court of Cassation, only after he/she has exhausted all his rights of appeal. Moreover, unlike the appellate court, the court of cassation only reviewed the decision of the lower courts if it has an error of law, not an error of fact.

Case Reviewed

⁹⁴ Interview with Mr. Sintayhu Zeleke, federal licensed advocate, may/2022

⁹⁵ R.A, Sedler, Ethiopian Civil Procedure, Haile Sellasie I University, Addis Ababa (1968) p 233

⁹⁶ Interview with Mr.Sintayhu Zeleke, and Mr .Mikiyas federal licensed advocates, may/2022

In the case between the appellant W/ro Zewditu Debebe and the respondents' optics international PLC (2 persons)⁹⁷, the appellant opened a memorandum of appeal to the federal high court 7th bench commercial bench. However, the judgment creditor opened an execution application to the court passed the judgment. By attaching the execution notice the appellant claim stay of execution order for the appellate court. Then the appellate court stayed of execution order by attaching security of 50,000 Ethiopian birrs without any assessment from officials.

No database in federal courts shows the applications for a stay of execution have been Accepted or denied due to legal reasons. Though the problem of rejecting a stay of execution is critical on the ground as if it is considered an unwritten law or a policy, almost all lawyers responded during the interview. Especially there is a great tendency that judges of the federal high court to execute their all judgments fully.

Case Reviewed

In the case between the judgment creditor Masresha Hussein Ebrahim and 4 others, the judgment debtor the Ethiopian federal housing corporation with a federal first instance court execution file number 80973, the federal first instance court Kirkose bench ordered the CEO of the judgment debtor to be arrested until the corporation delivered the house to the judgment debtors. Because of this order, the lawyers of the judgment debtor applied a stay of execution order for the vice president of the federal first instance court. After the vice president considered the arrest order as an irreversible loss if it was executed before presenting the appeal. The vice president ordered a stay of execution only for 2 days with attaching security of 1000 Ethiopian birr. In this case, the administrative stay of the execution order has been made for two days which was very short. Because as provided in the above literature review part, this order was made for giving the judgment debtor time to the preparation of the memorandum of appeal and presenting it to the appellate court. Two days were not sufficient to prepare a memorandum of appeal and presented it to the appellant court. This is mainly because, despite the memorandum of appeal prepared by the judgment debtor, there is a need for time for the case to be fully attached by the rendition court authentication of documents and sent to the appellate court as well as the appellate court may not immediately open the appeal and presented for the presiding judge for review

⁹⁷ Zewdinesh Debebevs Optics international PlcFederal high court file number 260878

Persons litigated before the courts of law have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their defense, and to obtain the attendance of and examination of witnesses on their behalf before the court.⁹⁸ However, C.P.C.E doesn't put the mechanism that the respondent could present its stand for the order of stay of execution.

3.5. The Power of Courts on Stay of Execution of Decrees in Federal Courts of Ethiopia

A judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. There are three ways of reviewing a judgment. These are reviewed before the court; which rendered the judgment, before an appellate court, and before the court of cassation. In other words, judicial reviews are a challenge to how a decision has been made, rather than the rights and wrongs of the conclusion reached. It is not concerned with the conclusions of that process and whether those were 'right', as long as the right procedures have been followed.

There are two approaches concerning granting a stay: These are granting a stay of course and granting a stay only in exceptional circumstances. The civil procedure code of Ethiopia adopts the latter one.⁹⁹The fact that an appeal has been filed does not preclude the execution of the decree, and it is only where the appellant shows that substantial loss will result if execution has not stayed that the appellate court will interfere with the execution of the decree.¹⁰⁰

3.6 Stay of Execution

3.6.1 Conditions for Stay of Execution in Federal Courts of Ethiopia

The conditions for granting a stay must be strictly adhered to. When the applicant becomes aware that the opposing party is starting to achieve execution, he must apply soon. The impact of a stay of execution is like pressing the pause button. It allows the Court to consider the grounds of why the stay should be granted. Enforcement action will continue if the stay is lifted, unfortunately, but most of the time the application for a stay can spin into a long period.

⁹⁸ Article 20 (3) of FDRE constitution

⁹⁹ R. A Sedler, Ethiopian Civil Procedure, Haile Sellasie I University, Addis Ababa (1968) p.234

¹⁰⁰ The Civil Procedure Code of Ethiopia, 1965, Art.332, Proc.No, Neg. Gaz. Year, no. 3

An application for a stay of execution order or an appeal has been filed does not stop the proceedings or prevent the decree from continuing. Execution can only stay if there is proof of substantial loss if the stay is not granted, as well as if the appellant provides security for the decree's performance.

The court or presiding judge may grant a stay only if the court or presiding judge is satisfied with conditions that (1) substantial loss may result to the party applying for the stay unless the order is made, (2) the application has been made without unreasonable delay, and (3) money has been deposited, security given, or a surety produced by the applicant, guaranteeing the due performance of the decree that may eventually be binding upon him.

Security is one of the conditions put as a requirement to order a stay of execution decree or order. Where an order is made for the execution of a decree or order from which an appeal is pending, the appellate Court may, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or order for the payment of the value of the such property and the due performance of the decree or order of the appellate Court. So, the standard of setting the average value of security will be determined by the presiding judge or president. In practice, the considerations taken into account would be the time taken for deciding the case. The president determined the amount of security from 10,000-15,000 Ethiopian Birr. Federal appellate judges sometimes may ask for a grant of up to a million arbitrarily

3.6.2 Stay by the Presidents of the Rendition Court or Appellate Court

Nothing in Art.332 shall prevent the President of the Appellate Court, and nothing in Art. 333 shall prevent the President of the court, which passed the decree or made the order from granting a stay of execution for a period not exceeding fifteen days. The president of the appellate court, if the case is before the appellate court, as well as the president of the court that issued the decree if no appeal has been filed, may grant a temporary stay for not more than 15 days. Even though the law does not give any clue about how many times the presidents give it. However, if the appeal is not decided or a new stay order is not obtained before the end of the period, the execution of the decree will continue. As a result, an application for a stay of execution cannot be considered after the order has been carried out. Restitution will be the way out.

From the total of 10 cases presented for the vice president's office of the federal high court, only 2 of the applications requested for a stay of execution were refused to provide a stay of execution, and others ordered a stay of execution. The amount of guarantee is arbitrary. However, there is no clear statistical data concerning the total cases presented by the president of the federal first instance court vice president's office.

The law failed to specify the time how many times the president of the rendition court or appellate court has the power to give a 15 days stay of execution order. However, from practice, a request for a stay of execution application is presented to the president or vice president of the court when no memorandum of appeal is presented to the appellate court or the memorandum of appellee opened but referred to judge/s/. But when the appeal is presented to the judge, it is all about whether the presiding judge orders a stay of execution or not, the president has no power to order such types of instructions

3.6.3. Stay by the Appellate Court

The appeal shall not operate as a stay of executions under a decree or order appealed from, except the appellate Court may order the execution of a decree-holder of an appeal having been preferred from the decree, but the Appellate Court may for sufficient cause order stay of execution of a decree.

In the same way, where an application is made for a stay of execution of an appealable decree before the expiration of the time allowed for appeal, the court which passed the decree can in sufficient cases grant the execution to stay.¹⁰¹ If the case is before the appellate court, the president of the appellate court, as well as the president of the court that issued the decree if no appeal has been filed, may grant a temporary stay for not more than 15 days.¹⁰²

The conditions for granting a stay must be strictly adhered to. The applicant must make the application as soon as he knows that the other party is attempting to get an execution. The applicant may use any of the following means to guarantee the decree's performance – depositing money, providing security, or producing a surety, but the court must be convinced that the method used will ensure performance.¹⁰³ The parties must be heard on the

¹⁰¹ The Civil Procedure Code of Ethiopia, 1965, Art. 333, Proc. No, Neg. Gaz. Year, no. 3

¹⁰² The Civil Procedure Code of Ethiopia, 1965, Art. 334, Proc. No, Neg. Gaz. Year, no. 3

¹⁰³ The Civil Procedure Code of Ethiopia, 1965, Art. 335/1/, Proc. No, Neg. Gaz. Year, no. 3

application, even if the court may grant an ex parte order of stay pending the application's hearing if the application is supported by an affidavit.¹⁰⁴

The more challenging question is when a substantial loss will result in the party seeking the stay. If the decree is executed and it is subsequently reversed, the party obtaining execution is required to provide restitution. As a result, the appellant will not ordinarily suffer a substantial loss as a result of the execution.¹⁰⁵

For example, if the judgment creditor executes on a bank account or the crop owned by the appellant, and the decree is reversed in a court of appeal, he will be obliged to restore the money in the account or to pay the value of the crop. The same is true concerning shares of a private limited company, because, the respondent could be required to refund the value of the shares.¹⁰⁶ Also if the property is a house and the judgment creditor destroys it before the appeal, because of rejection of the stay of execution of the decree, then irreversible harm will occur.

When a claim by the judgment debtor against the decree-holder is pending in any court, the court that issued the decree may stay the decree's execution on such terms as security or otherwise as it sees suitable until the pending suit is resolved, the court has the authority to stay the execution until the pending suit is resolved.¹⁰⁷

It should be known that the other suit can be pending in any court and need not be stopped in the court which issued the decree. But, only the court, that issued the decree, has the power to stay execution; execution may not be stayed by the court in which the other suit was filed. Following the filing of an application for execution, the court that executes the judgment must follow a specific procedure.¹⁰⁸

On the other hand, if the respondent were to execute on the appellant's living house or land, the appellant would be forced to find another place to reside or would be unable to operate his land in the meanwhile. It has been held that in cases involving immovable property, the

¹⁰⁴ The Civil Procedure Code of Ethiopia, 1965, Art. 335/2/, Proc. No, Neg. Gaz. Year, no. 3

¹⁰⁵ The Civil Procedure Code of Ethiopia, 1965 Art. 335, Proc. No, Neg. Gaz. Year, no. 3

¹⁰⁶ R.A, Sedler, Ethiopian Civil Procedure, Haile Sellasie I University, Addis Ababa (1968) p.233

¹⁰⁷ The Civil Procedure Code of Ethiopia, 1965, Art. 337, Proc. No, Neg. Gaz. Year, no. 3

¹⁰⁸ . Supra note 114, p.125

disturbance of the possession of the necessary will result in substantial loss, and a stay has been ordered.¹⁰⁹

This should be the case in Ethiopia, given the strong bonds that people have with their land. Sometimes the usage the applicant makes of the property may determine whether a substantial loss will result if the applicant has a vehicle that he utilizes for his business, he will suffer a significant loss if the vehicle is taken away from him. However, if he solely uses the car for personal trips, it has no economic value, and if execution is allowed, he will not suffer a substantial loss a stay is not to be granted of course.¹¹⁰

Furthermore, where an appeal is pending and an order for execution has been made, the appellate court may, for the sufficient reason shown, direct the respondent to post security for the restitution of any property taken in execution or the payment of the value of the property. If the assets of the respondent are not such that it is clear he can make restitution or return the money, such an order should be made.¹¹¹

Even though the applicant's request for a stay of execution has been denied, he or she may still be able to apply to the court that orders the respondent to post security. It has also been held that where the respondent posts security for restitution in the event the decree is reversed, there is no substantial cause justifying a stay of execution. However, where property distinctive such as land is involved, the posting of security by the respondent should not be sufficient to prevent the award of a stay. Apart from that, there is no need to impose the stay if the court is satisfied that the respondent will be able to make restitution and has posted security.¹¹²

The court to which the decree is transferred for execution cannot suspend execution except to grant a temporary stay so that, an application for a stay can be made to the transferring court. It is bound by any order passed by the transferring court, although it may deal with the property as to which it has issued an order of execution.¹¹³

¹⁰⁹ R.A ,Sedler, Ethiopian Civil Procedure, Haile Sellasie I University, Addis Ababa (1968) p 233

¹¹⁰ Ibid

¹¹¹ The Civil Procedure Code of Ethiopia 1965,Art.336,Proc.No, Neg. Gaz. Year, no. 3

¹¹² The Civil Procedure Code of Ethiopia,1965,Art.336,Proc.No, Neg. Gaz. Year, no. 3

¹¹³ The Civil Procedure Code of Ethiopia, 1965,Art.376/1/, Proc. No, Neg. Gaz. Year, no. 3

3.7. Time of Presenting Stay of Execution

In the normal course of things, the time when the stay of execution is requested from the competent organ is not specified in C.P.C.E. However, from the practical point of view stay of execution is requested at any time which may be before presenting an appeal or during the appellate litigation when the judgment creditor initiates an application for execution.

The primary purpose of the commandment of retention is to ensure that the appellant does not file a memorandum of appeal to the court following the judgment or be required to do so before the complaint is heard. This was made mainly to give the judgment debtor time to the preparation of a memorandum of appeal and present it,¹¹⁴ within a period specified in the law¹¹⁵.

Concerning the above issue, an interviewee was asked “why do you provide a stay of execution order to the judgment debtor? As per the interviewee, the purpose of the stay of execution order is to prevent irreversible harm to the debtor when the execution order is executed as per the judgment¹¹⁶. However, in a practical sense; there is no uniform applicability of the law by judges of Ethiopia's federal courts. They believe they can give a stay after they investigate and decide to hear the appeal. In some cases, a stay of execution is ordered after the judgment creditor presents an application for execution, and in others in addition to an opening application for execution, the judgment debtor is expected to fulfill the mandatory execution order e.g. Withdrawal of money from a bank, and if it is enforced as per the order the judgment debtor will cause irreversible lose¹¹⁷. Furthermore, justice will not be distorted, especially since there may be a condition of an appeal to overturn the sentence, or improve it; and it is better to keep the sentence in place for good and justice.¹¹⁸

3.8. Challenges of Parties who seek a Stay of Execution in Federal Courts of Ethiopia

In requesting a stay of execution, there are some challenges identified in the research. The main challenges of parties related to execution and stay of execution of decrees, especially a party who seeks a stay of execution. In the modern world, effective judgment enforcement is more rational than human rights protection which plays an important role in

¹¹⁴ The Civil Procedure Code of Ethiopia, 1965, Art.376/1/, Proc. No, Neg. Gaz. Year, no. 3

¹¹⁵ Interview with Mr. Gizaw H/mikael /federal first instance court judge/, June 2022

¹¹⁶ Interview with Mr. Sintayehu Zelekeam and Mr. Yohanes Wana /federal licensed advocates, may/2022

¹¹⁷ Ibid

¹¹⁸ Ibid

fostering trade and investment, social stability and administration, rule of law, and judicial independence.

For States to build, enforce, and develop a strong and respected judicial system, proper, effective, and efficient enforcement of court decisions is vital.¹¹⁹ As clearly mentioned in the regional and international human rights instruments or conventions are considered human right that applies to natural individuals' regarding their possessions.¹²⁰

Ethiopia's law starting from the F.D.R.E constitution protects the right to property which states that every Ethiopian citizen has the right to private property ownership unless otherwise provided by law in the public interest.¹²¹ Also, everyone has the right to bring a justiciable matter to Courts and to get a decision or judgment from a court of law or any other competent body with judicial power.¹²² Judges have to operate their functions in full independence and shall be guided entirely by the law.¹²³

The C.C.E gives the widest right to a person over a thing, which may be movable or immovable or tangible or intangible.¹²⁴ Although its procedures were based on common law principles Procedural codes are based on the British version of the common law system (for the Civil Procedures Code, as translated through the Indian CPC), but adopted that model in the 1960s without keeping up with subsequent changes.¹²⁵F.C.P 1234 / 2021 gives power to Federal Courts, that Federal Courts shall have jurisdiction over Cases arising under the Constitution, Federal Laws, and International Treaties accepted and ratified by Ethiopia.¹²⁶ Courts are also duty bonded by this proclamation that they shall apply the civil procedure code concerning matters not provided for under the Proclamation in so far as they are not inconsistent there.¹²⁷

As stated above, the court has discretion power concerning the weighing of considerations such as the balance of convenience and the competing rights of opposing parties.¹²⁸ The

¹¹⁹ LikuWorku, "Executions of Civil Judgment and the need to Reform the Enforcement System in Ethiopia" (2015),p.12

¹²⁰ AA Berle, 'Property, Production and Revolution' (1965) 65 Columbia Law Review 1

¹²¹ The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc No 1 Neg. Gaz. Year 1, no.1A.40/1/

¹²² The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc.No 1, Neg. Gaz. Year 1, no. 1A37/1

¹²³ The Constitution of the Federal Democratic Republic of Ethiopia, 1995 Proc. No 1, Neg. Gaz. Year 1, no. 1 79/3/

¹²⁴ The Civil Code Art 1204 and 1205

¹²⁵ Linn Hammergren, and SintayehuMitiku, Uses and Users of Justice in Africa: The Case of Ethiopia's Federal Courts. page 10

¹²⁶ The Federal Courts proclamation 1234/2021 Art.3/1/

¹²⁷ The Federal Courts proclamation 1234/2021 Art.7/1/

¹²⁸ paper presented by: justice chinweiyizoba, proceedings in interlocutory applications: injunctions, stay of proceedings and execution 23rd May – 3rd June, 2016) page 35-37

following challenges were taken from the literature part of the research and analyzed in its practice with the federal courts of Ethiopia.

The applicant's chances of succeeding on appeal: from the cases researcher reviewed more than (11 out of 18 cases) of its stay of execution provided before the hearing takes place or the judge found errors of law or fact that need to be investigated and in the remaining cases stay of execution ordered after the judges found an error that needs investigation. Also, the amount of the guarantee is fixed arbitrarily .Fe.Su.Ct. files no.228132 (Mrs.Werkaferaw Kebde VS Dashen Bank Aksion P.LC.). and 229598(Tana Tefaro Agro.Industry VS Dashen Bank.). Fe. H. Ct.file no. 276290(Natnael Berhanu VS Betiret International P.L.C.) ,260878 and 273466 are some examples of unduly treated. However, whatever the stage of a case stay may be denied if the chance of success is almost negligible.¹²⁹

3.9 Balancing Executions and Stay of Execution of Decree in Federal Courts of Ethiopia

3.9.1 Legal Framework

This topic reviews legal provisions, constitutional rights, and the main challenges of parties related to execution and stay of execution of decrees, especially a party who seeks a stay of execution. In the modern world, effective judgment enforcement is more rational than human rights protection. It plays an important role in fostering trade and investment, social stability and administration, rule of law, and judicial independence. For States to build, enforce, and develop a strong and respected judicial system, proper, effective, and efficient enforcement of court decisions is critical.¹³⁰The right to property/or ownership /is most of the time considered a human right that applies to natural individuals' regarding their possessions.¹³¹ Article 17 of the Universal Declaration of Human Rights acknowledges the property right.¹³² Also In Protocol 1, article 1, of the European Convention on Human Rights, natural and legal persons have the right to "peaceful enjoyment of their possessions," subject to the "general interest or to secure the payment of taxes."¹³³The FDRE constitution protects the right of property which states that Every Ethiopian citizen has the right to

¹²⁹ Interview with Mekuriya Alemu federal licenced Attorney, June 23/2022/

¹³⁰ Liku Worku, "Executions of Civil Judgment and the need to Reform the Enforcement System in Ethiopia" (2015), p.8

¹³¹ A.A Berle, 'Property, Production and Revolution' (1965) 65 Columbia Law Review 1

¹³² Universal Declaration of Human -Rights"un.org.Article17. 1) Everyone has the right to own property alone as well as in association with others.

¹³³ The European Convention on Human Rights, Protocol 1, article 1

private property ownership unless otherwise provided by law in the public interest.¹³⁴ And also everyone has the right to bring a justiciable matter to and to get a decision or judgment by, a court of law or any other competent body with judicial power.¹³⁵ Judges have to operate their functions in full independence and shall be guided entirely by the law.¹³⁶

Ethiopia adopted a civil law system for its substantive laws after rewriting its basic statutes in the 1960s. The Civil Code of Ethiopia gives the widest right to a person over a thing, which may be movable or immovable or tangible or intangible.¹³⁷ Although its procedures were based on common law principles Procedural codes are based on the British version of the common law system (for the Civil Procedures Code, as translated through the Indian CPR), but adopted that model in the 1960s without keeping up with subsequent changes.¹³⁸

The Ethiopia Federal Courts Proclamation 1234 / 2021 gives power to Federal Courts, that The Federal Courts shall have jurisdiction over Cases arising under the Constitution, Federal Laws, and International Treaties accepted and ratified by Ethiopia¹³⁹ The courts are also duty bonded by this proclamation that they shall apply the civil procedure code concerning matters not provided for under the Proclamation in so far as they are not inconsistent therewith.¹⁴⁰

The impact of a stay of execution is like pressing the pause button. It allows the Court to consider the grounds of why the stay should be granted. Enforcement action will continue if the stay is lifted unfortunately, sometimes the application for a stay can spin into a long period.¹⁴¹

In general, Ethiopia has relatively a strong tradition of court controlled enforcement system.

According to a comparative study, pure judicial or controlled enforcement has a poor track record for efficiency. Excessive court involvement appears to slow the enforcement process.¹⁴²

¹³⁴ The Constitution of the Federal Democratic Republic of Ethiopia,1995,Proc.No 1, Neg. Gaz. Year 1 no. 1.Art.40/1/

¹³⁵ The Constitution of the Federal Democratic Republic of Ethiopia,1995,Proc.No 1, Neg. Gaz. Year 1, no. 1.art 37/1

¹³⁶ The Constitution of the Federal Democratic Republic of Ethiopia,1995,Proc.No1,Neg.Gaz.Year 1, no.1.Art. 79/3/

¹³⁷ The Civil Code Art 1204 and 1205

¹³⁸ Linn Hammergren, and Sintayehu Mitiku, Uses and Users of Justice in Africa: The Case of Ethiopia's Federal Courts. page 10

¹³⁹ The Federal Courts proclamation 1234/2021 Art.3/1/

¹⁴⁰ The Federal Courts proclamation 1234/2021 Art.7/1/

¹⁴¹ Wex. Cornell, "Stay of execution"Law School. Retrieved 17 October 2021

¹⁴² Ibid

Cases Reviewed

No.	File No.	Name of Litigants	The court or president ordered a stay of execution	Amount of money attached as a surety	Reason presented
1	12026	W/ro Meron Girma and Mr. Anuar Harur	Vice president of the federal first instance court	10,000 birr	For a stay of the execution order of 6 months
2	87587	W/ro Wudie Melkamu vs Etataribu and others	The v/president of the first instance court	500 birr	For presenting appeal
3	80973	Masresha Hussein vs federal Betch corporation	Vice president of the first instance court	1000 birr	For a stay of arresting the CEO of the judgment debtor
4	113990	Orbit Engineering construction vs ZTA technology solution PLC	Appellate court/federal high court/	50,000 birr	For a stay of arresting the manager of the judgment debtor
5	228132	Workaferahu Kebedevs Dashin Bank s.c	Federal Supreme Court	The court did not accept the petition. No surety	For avoiding irreversible lose
6	229598	Birtu Faro Industry PLc VC Dire Dawa city administration	Federal Supreme Court	The court did not accept the petition. No surety	For avoiding irreversible lose
7	276290	Natnael Birhanuvs Betret International plc	Federal High Court	The court stops execution	Not available

				because of the federal supreme court order	
8	273466	Rahel Hagosevs Dr. Messay Tekele Yohannes	Federal High Court	The court stopped execution due to the order of the federal supreme court order	Not available
9	99642	Tera Construction vs Ato Michaelo Legesse			

Source data collected by the researcher /2022

From the above table, it could be understood that the court of rendition or appellate court does not have a consistent amount of money to be attached as a surety. Sometimes very low other times very high arbitrarily.

However, in the case when the stay of execution decree or order requested for improper implementation or enforcement of the judgment led to an appeal then the amount would extend to 1,000,000 Eth. Birr.¹⁴³. The amount of security for the presiding judge is not the same as for presidents. Because judges were not using the assessment rather they determined based on the existing case arbitrarily. From the cases reviewed, the researcher has obtained from 500-1,000,000 Birr and was put as security for the stay of execution order or decree.¹⁴⁴

In addition, the court may require payment of the entire judgment sum or the provision of security as a condition of the stay. This is the "usual practice" of staying judgments.¹⁴⁵

The parties must be heard, although the court may, on application supported by affidavit, because the morality of the people becomes law from time to time¹⁴⁶

The court, which passes a decree, may on the application of a decree-holder send it for execution to another court under the following circumstances:¹⁴⁷ firstly, if the person against

143 Ibid

144 Orbit engineering construction plc. Vs. ZTA technology solution (federal high court file no.113990)

145 Ibid

146 The Civil Procedure Code of Ethiopia,1965,Art.333/335,Proc.No, Neg. Gaz. Year, no. 3

147 The Civil Procedure Code of Ethiopia,1965,Art.372,Proc.No, Neg. Gaz. Year, no. 3

whom the decree is passed actually and voluntarily resides or carries on business or personally works for gain within the jurisdiction of such other court. Secondly, if the person does not have property within the local limits of the jurisdiction of the court, which passed the decree sufficient to satisfy such decree and has property within local limits of the jurisdiction of such another court. Thirdly, if the decree directs the sale or delivery of immovable property situated outside the localism it soft the jurisdiction of the court, and lastly if the court, which passed the decree considers any other reason to be recorded in writing the decree should be executed by such other court.¹⁴⁸ The interviewee of Attornies Mr. Sintayehu, Mr, Yohanes, and Mr.Filipose answered the questions presented to them, they answered that there is a trend and tendency of federal courts especially appellate not willing to give a stay of execution assuming that all the judgments are correct so have to be executed. Or they follow unwritten law as a policy that before the hearing of the appeal they don't want to give a stay of execution. Also when the judgment is money the execution court orders to withdraw the money from the bank appellate courts used to ask the judgment debtor to show the court order, ones the order is given to the bank without a quick stay of execution the money withdraws from the bank. From this, we can conclude that in principle all judgments are presumed correct and have to be executed, but this is not always true. For this reason, there are articles in the civil procedure law articles to stay executions by the original court, the appellate court even the president is allowed to stay the executioners. Even as it is stated in the literature part of this thesis, some laws oblige courts to stay executions automatically. One can understand the vital use of the articles of stay of Execution, whereas, as stated above even if there is no single article in C.P.C.E states about the automatic stay of Execution like that of India and Oklahoma, Articles of stay of Execution are not used effectively, For e.g.the interviewee Attornies as well as judges confirm that Article 333 of C.P.C.E is out of use. the amount of guarantee fixed arbitrarily and appellate courts are not doing well. There is also no means of Knowing the data of the accepted and rejected a stay of execution of judgments for Courts.

148 Hein Online Panel III: Enforcement of Foreign Judgments, 1986 ARIZ. JINT1& COMP. L. 52 (1986).

CHAPTER FOUR

4. Conclusions and Recommendations

4.1 Conclusions

The power to stay the execution is an important provision enshrined in the C.P.C.E, as it is important to balance the interests of both the decree-holder and the judgment debtor and no person should be made to suffer because of procedural issues. However, such power to stay must be used judicially and with great care to not prejudice the rights of any parties.

The power to stay of execution order or decree may be either by the judge who gives the judgment by himself or the president of the court of rendition or appellate court or by the appellate bench. The presidents of the first instance court and the president of the high court both can give the stay order only for 15 days an unlimited time; it aims to give the judgment debtor time to prepare of memorandum of appeal. In addition, the order is given when the judgment debtor furnishes securities. In the federal first instance v/president court, the amount of security differs from case to case. most of the time from 1, 000-15,000 Birr. In the Federal High court, most of the time fix arbitrarily from 10,000-15,000 Birr, And sometimes a high amount of up to a million, so it becomes another way of rejecting the application, because the judgment debtor may not find that amount of money at that time. In the federal high court as well as the Supreme Court there is no uniform standard or professional estimation most of the time considered by the judges.

The courts of rendition or appellate court are also empowered to order a stay of execution of a decree. However, most rendition courts don't understand that they have the power to order a stay of execution for their execution order which is a practical and critical gap in the knowledge of the law of Judges as well as advocates of the federal courts of Ethiopia it brings the court's failure to implement the existing law.

The proceeding of the stay of execution order takes place in ex-partite proceedings, the presence of the judgment creditor or respondent may not be demanded before giving a stay of execution. For the president's office when it presents with confirmation of affidavit, the presence of the respondent is not relevant. But when the application is presented without an affidavit the presence of the respondent or judgment creditor will be required. But the value

of the affidavit is not the same as in the early times so the law has a gap in this case. However, the courts have no consistent applications of laws in this respect. It also observed problems of the federal courts concerning recording the application for a stay of execution for the president's offices as well as for the courts.

This cannot be done not only by legislation but also by better case management. Justice rushed brings justice crushed. Expressing dissatisfaction at the pace of courts to dispose of cases It was concluded that the judgments and orders issued during the process of the dispensation of justice should be free from all doubts. In general, it was considered that the impacts of a stay of execution could have impacts on the economy, social, and political aspects of the country as well as the justice system. The Ethiopian Civil Procedure law had almost originated from the Indian Civil Procedure law, even though they have amended their law especially they amend and give granted automatic stay of execution. They amended their law because they know the validity of the stay of execution whereas the Ethiopian civil procedure law has not been amended up to now and there is no single article that describes an automatic stay of execution.

4.2 Recommendations

Based on the findings of the study, the following recommendations are made:

- ❖ There must be training for Judges and Attorneys adequately, particularly training related to improving the execution procedure and ensuring the effective implementation of the law. Training should cover areas such as regional and international best practices; the economic aspects of enforcement actions; appropriate roles of judges and respect for the judgment creditors and debtors' due process rights.
- ❖ Federal Courts Judges of Ethiopia have to balance the execution of decree and stay of Execution according to the C.P.C.E.
- ❖ The C.P.C.E has inadequate provisions and its old-fashioned approach was often mentioned in the context of execution proceedings. Even the power of the president can give a stay of execution for fifteen days, but there is no answer in the Law for how many times they can give this stay of execution. Also, there is a prohibition of arrest or detention of women in the execution of a decree for money women are exempted from imprisonment; Therefore, the legislature tries to include amended

legislations that are compatible with the current technological advancement and growth of the world, especially the need to have speedy justice for the business to be more competitive both in terms of time as well as in terms of cost. For instance, there should be an effort to revise the existing law of execution and stay of execution proceedings. Even in India the origin of C.P.C.E modifies /India's Federal Rules 1908/ and extends the length of the automatic stay of execution by operation of law, such as rule 62/a/. Thus, Ethiopia has to modify her stay of execution law articles even an automatic stay of execution has to be allowed for some cases e.g. House

- ❖ Besides, there should be a way of responsibility for judges and advocates for their deliberate ignoring of the law.
- ❖ The Federal Courts should update the database of the institution to know the real figure of the problem and the progress.
- ❖ When Judges of Federal courts give an order of stay of execution by attaching security to be predictable they have to get a little bit of assessment of cases. And if security is not necessary they should not ask.

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List of Interviewees

1. Mr.Teklit Yimesil (Federal High Court Vice President)
2. Mrs.Tenagne Tilahun (Federal High Court Vice President)
3. Mr.Tesfaye Neway (Federal First Instance Court Vice President)
4. Mrs.Lelise Desalegn (Federal Supreme Court Judge)
5. Mrs.Martha Teka (Federal Supreme Court Judge)
6. Mr.Tekil Tadesse (Federal High Court Judge)
7. Mr.Mehari G/Medhin (Federal High Court Judge)
8. Mr.Getnet Medina (Federal High Court Judge)
9. Mr.Shiferaw Abebe (Federal High Court Judge)
10. Mr.Gizaw H/Michael (Federal First Instance Court Judge)
11. Mr.Filipos Aynalem (Attorney At Law And Consultant, Former Federal Court Judge)
12. Mr.Sintayehu Zeleke (Attorney At Law And Consultant, Former Federal Court Judge)
13. Mr.Mekuria Alemu (Attorney At Law And Consultant, Former Public Prosecutor)
14. Mr.Yohanes Wana (Attorney At Law And Consultant,)

Cases Reviewed:

1. Meron Girma vs Anuar Harur (2017) federal first instance court file number 12026
2. Workaferaw Kebede vs Dashin bank S.c //2022/ federal supreme court file no. 228131
3. Birtu Jero industry plc vs Diredawa city administration/2022/ federal supreme court file no.229598.
4. Masrsha Hussien Vs federal housing corporation(2018) federal first instance court file no.80973.
5. Tachawit Dessalegn and others vs universal specialty clinic (2017) federal first instance court file no.89505.
6. Orbit engineering plc vs ZTA technology solution plc (2019) federal high court file no.113990.

7. Eyasu captain vs Tena adam, Saroma, and friends general partnership (2017) federal high court file no.275836
8. Zewdneshe Debebe vs optics international plc (march 29/2020) federal high court file number 260878
9. Melaku Birhanu vs Tigistu w/yohanes /22/11/2021/ federal first instance court file number 280474
10. Siraj Kemal and others vs Bogale Girma /2020/ federal high court file number 243415
11. Wudie zeleke vs Etatu Arkeb and others (2018) federal first instance court file number 87587
12. Tera Construction vs Ato Michaelo Legesse Federal Supreme Court Cassation division decision file number 99642

Interview questions prepared for presidents

1. If a judgment is given before the appeal and if an appeal is filed after the judgment, what is the purpose of a stay of execution?
2. If the judgment is given by the judges in the first argument at a court where you preside over, how frequently do you get asked to stay the judgment for the time being? What are the results?
3. On average, how many of the petitions submitted to you regarding the stay of execution of a case that has been submitted for an appeal hearing in the court you preside over? have you allowed and how many have you denied? For the ones, you did allow, what starting point did you use to estimate the security/deposit amount? For the ones you didn't allow, what were your reasons?
4. What case is a litigant who submits a petition to be suspended without judgment required to explain?
5. When does it become mandatory for the two disputing parties to appear before the court during a request for a stay of judgment without execution? Why?
6. Is there any statistical information and report that can be ordered by the courts regarding the petition to stay the execution of the judgment and the acceptance or rejection of the application?
7. What factors do you think could prevent the proper implementation of the law for a stay of execution?
 - A. Law interpretation problems by Courts?
 - B. A gap in the law?
 - C. Supreme Court cassation decisions?
 - D. Ethical problems of disputing parties/ lawyers?
 - E. If you have a different opinion, please let me know.
8. What remedies would you suggest for these problems?

Interview questions prepared for judges

1. If a judgment is given, before the appeal and in the judgment if an appeal is filed. What is the purpose of the law of stay of Execution?
2. If you give a judgment in the first argument in the trial, how often will you be get asked to stay your verdict? What were the results?
3. On average, how many of the petitions that were presented stay of execution of the judgment before the judgment was executed in case of submitted for an appeal hearing in the court you preside over have you allowed, and how many have you denied? that you are bothering about? For the ones you did allow If so, what did you use as a starting point for estimating the amount of the collateral/deposit? If it is forbidden For the ones you did not allow, what were your reasons?
4. What is the issue that a litigant who submits a petition to stay of execution without judgment has to explain?
5. In a situation When it is requested that a judgment be suspended without execution, of the judgment, Is the presence of the two disputing parties mandatory? Why?
6. Do you believe that the courts are the entertaining stay of execution of the judgment following the law? Do you believe that the principle of fairness and equality (BALANCE) set by the constitution is respected? Why?
7. What do you think could be the reasons for improper implementations of the law to stay a judgment from being executed properly?
 - A. Courts' interpretation problem?
 - b. A gap in the law?
 - c. cassation decisions?
 - d. Ethical problems of Disputing parties/lawyers / Judges ?ethics problem?
 - e. The problem of presidents?
 - F. If you have a different opinion, please let me know.
8. What solutions would you suggest as a solution to these problems?

Interview Questions for lawyers converted from Amharic

1. What do they believe to be the purpose of the execution of the law under the Law of Justice?
2. Who has violated the authority to grant the law of justice under the Law?
3. If they point to the main reasons for the execution gratification?
4. Do they believe that courts have no jurisdiction over the Law when it comes to forbidding the stumbling blocking of an act? Why?
5. Do they believe the two sides should argue when the horizontal corner of execution is asked? Why?
6. If the courts explain to me the harm of excuses for not granting a stubborn offer? Do they believe that there is a chance that they will not know? How?
7. Do they believe that the corners of the law are being enforced by the law?
8. The procedure and the procedure of a F/Housing Dispute, which is set by the Law
9. Do they believe that the principle of fairness and equality (BALANCE) is close? Why?
10. What are the following reasons for the lack of interpretation of the courts? The gap in the law? The broken wrecks? A problem of conduct? The problem of arguments on the disputed side? If you have a different opinion, would they mention it to me?
11. What is the idea of a solution to problems?

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