

Chapter Four

**Recognition and Enforcement of Foreign
Judgments and Arbitral Awards**

Introduction

- ❑ The third and the last division of conflict of laws is Recognition and Enforcement of Foreign Judgments and arbitral awards.
- ❑ The powers of a court are territorially limited; their judgments have no effect beyond the jurisdiction in which they are given unless other countries agree to accept them.
- ❑ No country will simply welcome a judgment rendered abroad and execute without any condition. That, definitely, has to be checked for, for example, its due process and whether it affects any national value or not.

- ❑ Certain types of judgment, by their nature, only require recognition. These include foreign divorce and nullity decrees. Other judgments may need both recognition and enforcement .But the court may be asked to enforce a foreign judgment, such as a maintenance order, or any judgment for damages.
- ❑ Unlike those of choice of juridical jurisdiction and choice of law rules, Ethiopia has got some rules of execution of foreign judgments ad arbitral awards.
- ❑ Note that there is no single provision dealing with the recognition of judgments under Ethiopian law.

The Rationale Behind Recognition and Execution of Foreign Judgments

- To avoid the prejudice that may arise up on parties
- To keep legitimate rights and status of a judgment beneficiary obtained under a foreign law
- To keep parties from additional costs and trouble as they may be required to bring a new suit or claim in this court
- to facilitate business transactions

Theoretical Basis for Recognition and Enforcement

- ❑ Why should a court of one country recognize and enforce a judgment of another?
- ❑ Two theoretical justifications have been advanced for the recognition of foreign judgments:
 - Based on the idea of comity and Reciprocity
 - Based on the doctrine of obligation
- ❑ the doctrine of reciprocity holds that the courts of country A should recognize and enforce the judgments of country B if country B is prepared to offer like treatment.
- ❑ The doctrine of obligation held that, if the courts of country A have properly assumed jurisdiction, then the resulting judgment should be regarded as creating an obligation between the parties which a court ought to recognize. Thus, if a foreign court orders X to pay damages to Y, then it is argued that this creates a legal obligation that may be enforced by Y as an action for debt.

Modes of Execution of Foreign Judgments

- ❑ Under international law there are two widely accepted modes concerning the execution of foreign judgments.
- ❑ in the Continental Europe and Latin American countries
 - foreign judgments are accorded enforcement only after the satisfaction of prescribed conditions and after an *exequatur* (a form of proceeding which means a retrial of the foreign judgment)
 - In the laws of such country, a foreign judgment is, therefore, not regarded as conclusive.
- ❑ Anglo-American countries:
 - Pursuant to the laws of these countries, foreign judgments are not executed as such but, are endorsed by domestic judgments, i.e. judgment by judgment.
 - Foreign judgments are accepted as conclusive provided that certain conditions provided in the laws of the country in which the judgment is sought to be enforced are satisfied.

Defenses to recognition and enforcement

- Judgment given in a way contrary to natural justice
- Judgment obtained by Fraud
- Recognition contrary to public policy
- Conflicting judgments
- A foreign judgment given in breach of an arbitration or jurisdiction clause

Execution of foreign judgments in Ethiopia

- ❑ Two methods:
 - On the basis of International treaty(agreement)
 - On the basis of on fulfillment of conditions under civil procedure code provisions
- ❑ If there is any treaty that was entered between Ethiopia and other country for recognition and enforcement of judgments of each other based on that treaty Ethiopian courts will recognize and enforce judgments obtained in that country. (Art.456)
E.g. Treaty between Ethiopia and Djibouti.

❑ In the absence of treaty, then the conditions under Art.458 must be full filled. These are:

- a) the execution of Ethiopian judgments is allowed in the country in which the judgment to be executed was given(**Reciprocity**);
- b) The judgment was given by a court duly established and constituted;
- c) The judgment-debtor was given the opportunity to appear and present his defense;
- d) The judgment to be executed is final and enforceable; and
- e) Execution is not contrary to public order or morals.”

Procedures for the Execution of Foreign Judgment

- ❑ Under Ethiopian law, no foreign judgment may be executed without the filing of an application to a court to that effect.
- ❑ The appropriate court to which an application should be made is the Federal High Court of Ethiopia.
- ❑ An Ethiopian court to which an application for execution of a foreign judgment is filed is required to enable the party against whom the judgment is liable to be executed to present his observation within such time as the court shall fix.
- ❑ The court is empowered to decide whether or not pleadings may be submitted.
- ❑ Where the application is allowed and the application to have it executed is granted, the foreign judgment is executed as though it were given by the Ethiopian court, and a decision on costs in Ethiopia may also be rendered.