



Assessing the Practices of Illegal Land Transactions in Periphery Urban Lands of Sawla Town, Gofa Zone, Southern Ethiopia

Hizikel Banbire Belayneh (LL.B, LL.M) Lecturer at School of Law, Wolaita Sodo University, Ethiopia

Cell phone: +251910508310

Email: hizikellaw@gmail.com

Abstract

All urban and rural lands are constitutionally declared as a public property in Ethiopia. The Constitution and succeeding rural land laws strictly prohibits transfer of rural land rights by sale. Besides the statutory laws, the customary notion of Gofa people also discourages sale of land outside lineage lines. However, practically in the study areas illegal land transactions seems as a legally permitted business. Periphery urban lands become a target area of urban residents who failed to acquire a piece of residential urban land by lease. Individual unlimited holding of urban land by lease under the current lease proclamation, administration problem of periphery urban lands and conflicts during its expropriations, etc are the main problems of this study.

The objective of this study is to explore the nature and practices of illegal land transactions, its pushing factors, key actors and beneficiaries of the transactions and the roles of courts in handling transaction cases in the study areas. This study is a non-doctrinal legal research and the data presented in this study obtained from both primary and secondary sources. To gather the primary data the writer used both quantitative and qualitative approaches, and the data collection tools employed were questionnaires, interview questions and personal observations. In addition, different secondary sources were also consulted.

The results of this study indicate that uncontrolled soaring of lease prices, weak administration of periphery urban lands, minimum compensations during expropriation, internal displacements in different parties of the country because of ethnic based conflicts, construction of administrative offices for lately formed Gofa Zone, etc are identified as the main pushing factors for illegal land transactions in the study area. Illegal brokers and local officials at Kebele level are the main role players in illegal land transactions.

As a result, the writer recommends the amendment of current lease proclamation that set limitations on lease holdings an individual can hold to minimize monopolization of urban lands by a few rich individuals, fair compensations during expropriations based on newly amended expropriation proclamation, an independent law that governs periphery urban land should be enacted and its administration power should be given to the municipality.

Key terms: Periphery urban land, illegal land transaction, Kebele, Sawla, Ethiopia.

1. Introduction

Land transaction is any dealing or transfer of rights on land for consideration or gratuitously between the landholder and other involved party (*Black's Law Dictionary, 9th ed., 2009*). It includes sale, which permanently transfers ownership or corpus of property/land for consideration, rent that transfers usufruct right on land temporarily for consideration, etc transactions (*Encyclopaedia Britannica Ultimate References Suite*). It plays an important role by enabling the productive farmer who have no land or own little land, to get land by negotiation with land supplier (*Sanne et al, 2017*). The transaction may take place either in formal land markets as per the national laws and regulations governing it, or it may take place through informal means or out of legally permitted ways (*Twarabamenye and Nyandwi, 2012*). If the transaction conducts illegally like illegal subdivision, it may create unauthorized rights on land (*Achamyeleh, 2014*).

Privatization (allowing sale of land) or maintaining public ownership (prohibition of sale) was the key contesting issues between the opponents and ruling parties in Ethiopia (*Daniel, 2011*). The opponent parties argues in favour of land privatization, believing that land sale would promote economic development, as it would transfer the land to those who have the means to put it under effective use. It would also serve as collateral for landowners to get access to bank loans, promote the conservation of the land, and improve security for investment, since the existing statutory prohibitions did not practically prevented illegal transactions (*Daniel, 2011* and *Muradu, 2014*).

On the other hand, the present government and those who support its land policy, maintain that land privatization would create uncontrollable land speculations and the people could easily be taken advantage of by greedy land speculators. If land is subject to sale, individuals with capital can accumulate it and subject the mass to landlessness. This would in turn create a mass of unemployed and unemployable people flooding already overstressed urban centres (*Muradu, 2014*). To avoid this, the state should hold land as a trustee of people and prohibit its sale.

The 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution affirms:

“The right to ownership of rural and urban land, as well as all natural resources exclusively vested in the state and the peoples. Land is a common property of the Nations, Nationalities, and Peoples of Ethiopia and shall not be subject to sale or other means of exchange (Article 40(3) of the FDRE Constitution, 1995).”

Article 40(4) of the Constitution grants holding right to farmers, which includes usufruct right for indefinite period. This also incorporated in federal and all regional states rural land laws, including Article 7(1) of the South Nations, Nationalities and Peoples Regional State (hereafter stated as SNNPRS) rural land proclamation number 110/2007. These laws excluded *abusus* right and allowed transfer of holding and use rights either temporarily by consideration (like rent/lease, exchange, sharecropping) or permanently without consideration (by inheritance or donation) under conditions provided by those laws.

A little legal research has been conducted on this topic in Ethiopia and they disclose that, in peri-urban lands there were high practices of disguised land sells that conduct against statutory laws. The administrative bodies have been paid less attention to control it (*Daniel, 2011* and

Muradu, 2014). However in the study area, no any legal research has been conducted on this topic and this study was limited on illegal land transaction/transfer by sale.

1.1. Statement of the Problem

Transfer of rural land rights by sale contradicts the constitutional policy of land and supremacy clause of FDRE Constitution, which stipulates that;

Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect (Article 9(1) of the Constitution).

Likewise, the 1960 Ethiopian Civil Code states that “a contract shall be of no effect where the obligations of the parties or of one of them are illegal (Article 1716 (1) of the 1960 Ethiopian Civil Code).”

Although the courts are authorized by the law to nullify illegal land transactions, in the study areas the contracting parties do not take their case before the courts to void it. High rental house prices and related challenges bother the urban residents' to look for a piece of urban land. But, its accessibility is exacerbated by tender process by which a highest bid winner get the land based on his/her bid price and the amount of advance payment he/she offers. This makes the competition very stiff and the price offered is unaffordable by the poor. Hence, the rich is the expected winner of any tender by sky-rocketing the bench mark price of urban land lease, which may drive the poor and middle income urban residents out of the game and render homeless. The lease proclamation doesn't put any legal limitation/s on the maximum limit of lease holdings that a single individual can hold. This provides an opportunity for monopolization of urban lands by few individuals (who can offer highest lease price during auction) and land speculation. The poor may be marginalized by those rent seekers. This and other related problems drive the people to engage in illegal transactions of periphery urban land in the study areas.

Thus, the main research questions attempted to answer by this study are the following:

1. How illegal land transactions are carrying out in periphery urban lands of *Sawla* town?
2. What are the main factors that push the parties to engage in illegal land transactions?
3. What are the roles courts are playing to handle illegal land transactions in the study areas?

1.2. Objectives of the study

The main objective of this study is to assess the practices of illegal land transactions and its driving forces in the study area. Its specific objectives are:

1. To assess the methods of conducting illegal land transactions in the study areas.
2. To investigate the pushing factors of illegal transactions in the study areas.
3. To explore the roles of courts in handling illegal land transactions in the study areas.

2. Methodology

This study is a non-doctrinal legal research and the data presented in this study obtained from both primary and secondary sources. To gather the reliable primary data the writer used both quantitative and qualitative approaches. The quantitative data were gathered by disseminating close-ended questionnaires to the respondents selected from three periphery urban lands of *Sawla* town such as *Gurade*, *Suka* and *Yela Kebele* (*the last administrative level of the Region as per Article 103(1) of the SNNPRS Revised Constitution, 2001*).

Based on the preliminary data, the sample household was the person who engaged in illegal land transactions as a buyer or a seller in those selected *Kebeles*. To select the target constituencies', systematic random sampling technique was applied. Every 3rd household was picked from each *Kebele* households' lists of buyer and seller. This was done after identification of the total population who engaged in the transaction, by using sampling technique developed by Cochran's (1977) as indicated on Bartlett Kotrlik and Higgins (*Bartlett and Higgins, 2001*) with the desired degree of precision for general population.

$$\text{The formula is } n = \frac{N}{1+N(e)^2}$$

Where: n designates the sample size that the researcher used for quantitative data;

N designates total households who engaged in illegal land transactions that get after finding the total number of buyers from three (3) sample selected *Kebeles* multiplying it by 2 to find the total number of seller who engaged in it;

e designates maximum variability or margin of error 5% (0.05);

1 Designates the probability of the event occurring.

$$\text{Therefore: } n = \frac{N}{1+N(e)^2} = \frac{(336 + 243 + 99)2}{1+1,356(0.05)^2} = \frac{(678)2}{3.5} = \frac{1,356}{3.5} = \underline{\underline{387}}$$

Then this sample size distributed to each *Kebele* administrations proportionally based on the number of each *Kebele* households, to ensure fair representation of the required data. Accordingly, the sample size of *Gurade, Suka* and *Yela Kebele* was 192, 139 and 56 households, that distributed based on the above mentioned formula. The survey was conducted in June 2020. Regrettably, 242 respondents returned the filled-in questionnaire.

To collect the qualitative data the writer employed In-depth interviews and personal observations. Although the writer planned to use focus group discussions (FGDs) as one of data collection tools, conducting it become difficult because of COVID-19 pandemic the concerned bodies feared it. Reliable laws, such as the federal and SNNPRS Constitutions and rural land proclamations, and regulation of SNNPRS were also referred.

Secondary data were collected by consulting relevant literatures like books, journal articles, published researches, website, etc to get clear understanding on the issue.

3. Major Findings

3.1. Description of the study areas

Sawla town (also known as *Felege Neway*) is the main administrative seat of recently formed *Gofa Zone*, located in *Gofa Zone* of the Southern Nations, Nationalities, and Peoples' Regional State (SNNPRS). The town has a latitude and longitude of 6°18'N 36°53'E /6.300°N 36.883°E with an altitude of 1395 meters above sea level. The town was founded in 1959 during the reign of Emperor Haile Silassie. It is surrounded by *Demba Gofa Woreda*. It's located at a distance of 514 Km from Addis Ababa, 258 Km from Hawassa and 131 Km from *Wolaita Sodo* town.

3.2. Comprehending the practices of illegal land transactions in the study area

Illegal land transactions in periphery urban lands are perpetuating issue that dominate urban development process in developing countries (*Rajack R., 2009*). Studies conducted in some cities of developing countries revealed majority of urban population used to live on

illegally acquired lands. For instance, 84% in Cairo, 70% in Dare Salaam, 58% in Cebu city, 50% in Nairobi, etc live on illegally acquired periphery urban lands (*Ashenafi, 2017*).

It is the known fact that illegal land transactions are perpetuating in periphery urban lands of Ethiopia in general and *Sawla* town in particular. However, the FDRE and SNNPRS Constitution and subsequent rural land laws strictly prohibits transfer of rural land rights by sale (*Article 5(11) and 8(1, 2 & 5) of the SNNPRS rural land proclamation, 2007*).

The survey data reveal that as per the *Gofa* custom sale of land to non-lineage line is immoral, unless the seller faced some serious financial difficulty and first it offered to his lineage families'. The landholder who sale his land perceived by the community as a lazy person and visionless for his Childs' future.

Although the statutory laws and *Gofa* custom rules out illegal land transactions, in-depth interviews with *Demba Gofa Woreda* agricultural and rural development office and *Zone* department land administration experts and municipality experts reveals in periphery urban lands of *Sawla* town farmers sale parcel of their land for different reasons. Residential lands of *Gurade, Suka* and *Yela Kebele* were not registered during second round registration programs of rural lands. Because, the size of the plots are minimum than legal limits, which is half hectare (*Articles 5(11) and 8(1) of the SNNPRS proclamation, 2007 and Article 11(1(a)) of the Regulation Number, 66/2007*). But, simple facts have been registered in land registry book, which created an opportunity for local officials to easily issue fake documents to legalize illegal land transactions.

The survey data stated in the table below shows overall means the respondents' get their landholdings in the study area, though this study was limited only on transfer by sale.

Table 1: Modes of land transfers in the study area

No	Mode of acquisition	Number of respondents	Percentage
1.	Sale	66	27%
2.	Gift/donation	61	25%
3.	Government grant	57	24%
4.	Inheritance	46	19%
5.	Land exchange	7	3%
6.	Rental contract	5	2%
	Total	242	100%

Survey data, 2020

The survey data stated in the above table reveal that 27% of the respondents acquired their landholding by purchasing from farmers. 25% of the respondents get their land by gift/donation from their families. 24% obtained by government grant, 19% by inheritance, 3% by land exchange and 2% get their land by rental contracts. Therefore, among six modes of land right transfer mechanisms, illegal transactions take a lion share among others.

In-depth interviews with municipality land administrator disclose that though they did not officially identified the right holders in sample selected *Kebeles*, based on the unofficial data, majority of houses constructed in those *Kebeles* built on informally acquired lands. These are caused by weak administration of periphery urban lands by rural *Kebeles* after its incorporation to town center by the revised master plan before six years.

Table 2: The forms of carrying out illegal land transactions in the study area

No	Form of the transactions	Number of households	Percentage
1	Written form	225	93%
2	Oral agreement	17	7%
	Total	242	100%

Survey data, 2020

The survey data in the above table reveals 93% of the respondents conducted the land transactions in written form that gave more confidence to the buyer, while 7% of the respondents reply as they make the transactions orally. Majority of people who engage in illegal land transactions commonly use informal documents, prepared by lawyers that attest the existence of sale contract between the parties. Since the transactions undertake in concealed form like contract for sale of fruit trees (i.e., avocado and mango), eucalyptus tree and/or house for use by the buyer, or his children and descendants forever, or for residential house construction, or land exchange contract. The things said to be sold with the land such as trees or a house may or may not exist at there. Even if they exist they are merely incidental to the sale of land, because the intent is not to alienate them but the bare land itself. The respondents said such kind of dealing as black market dealing.

Conversely, sale of private property that invested on the land by the landholder is a constitutional right. And also there are no restrictions on the sale of private property in the rural land laws of SNNPRS, unlike Oromia regional state rural land law (*Article 6(3), 2007*) in which selling of fixed assets like product of coffee, mango, avocado, papaya, orange etc shall be possible if and only if the product is sold for only three years.

An interview with *Demba Gofa Woreda* agricultural and rural development land administration experts divulge that, contracting parties' state in their dealing as the land transferred to their relative by donation or inheritance and bear witnesses to that effect. They make their contracts to be prepared by the attorney because the attorney knows the loopholes in the laws and find the way/s how to abscond the contract from invalidation. And when the attorney prepares the contract, he/she avoid the term sale to seem illegal transactions as a legal dealing and enable the buyer to get a legal title. After purchasing the land, the buyer erects a house and gets the land to be registered at *Kebele* level. Then they keep the best opportunities for its regularization, especially at the time of election or other political chaos.

An interview with land administration committee members' in sample selected *Kebeles* disclose that, the contracting parties simulates their transactions as legal dealing. They state in their contract as one party compensated the differences in land size and/or fertility in cash. Also they include heavy fines/obligation clauses/ against a party who might opt to invalidate the contract, stating therein that part of the fine would go to the state treasury and part of it to elders and the party who respected the agreement. Finally, they state in their document as they signed it by their free consent and full understanding in the presence of witnesses in both sides, which builds the confidence of the buyer. But, mostly they conclude the contract without making the seller's family member/s to sign on the document.

These various bogus names has been given to illegal land transactions with an intention to send a flawed message that land is not being traded, but the immovable property on the land is

being transacted, which are lawful under the existing laws (*Article 40 (1&7) of the FDRE and SNNPRS Constitutions and Article 8(6) of the SNNPRS rural land law, 2007*). Then, the buyer gets the land to be registered at *Kebele* level and pay land holding tax that practically makes him/her the legal holder of that parcel.

An interview with *Sawla* town municipality manager divulges the administration power of periphery urban lands between its adoptions up to allocation by lease falls in the hands of concerned rural *Kebeles* that does not enable them to administer it effectively. As a result, mostly it descends in the hands of speculators and found prone to a wide scale of illegal transactions. The speculators guess its future value and highly trade on it.

3.3. Beneficiaries of illegal land transactions

It is a common knowledge that people anticipate the enclosure of periphery urban lands to urban centre and buy it and wait for regularization. The qualitative information's obtained through interviews with key informants indicate that the main beneficiaries of illegal land transactions were brokers and local officials. When the seller sells a parcel of land, his land size minimizes and his adult son/s and/or daughter/s may not get urban land during expropriation. Also, if the transaction nullify by the court as per Article 1815 of the Ethiopia Civil Code, the parties shall as far as possible be reinstated in their position which would have existed, had the contract not been made. This legal duty obliges the seller to reimburse the payment he/she had been taken from the buyer. Except such kind of exceptional situations, the seller is a lesser beneficiary of illegal transactions of periphery urban lands.

Illegal land transaction is a risky operation to the buyer too, because if he/she falls to give some sort of corruption to local administrator/s to legalize it, he/she may face obstacles from the government authorities. To secure it the buyer should get tax receipt by paying back couples of years' tax and register as a native landholder and if it is possible get the *Kebele* identification card. And currently in the study area legalizing the squatters around the town are terrible challenges for newly formed *Gofa Zone* administration. The informants said this is because the average size of land they transact is between 200-250 curie meters.

3.4. The driving forces of illegal land transactions in the Study Area

The survey data in the table below describes some lists of pushing factors of illegal land transactions in periphery urban lands of *Sawla* town. Different questions are prepared to be filled by buyer or seller separately and it was ticked by the respondents accordingly.

Table 3: The pushing factors of illegal land transactions

No	<i>The factors that push the buyer/s to engage in illegal land transactions (132 respondents ticked it)</i>	<i>Agree</i>	<i>Disagree</i>	<i>Neutral</i>
1.	Non-inclusive lease laws that discourage poor societies	119 (90%)	3 (2%)	10 (9%)
2.	Soaring of residential land lease prices and high number of land seekers in <i>Sawla</i> town	127 (96%)	0	5 (4%)
3.	Fear of political crisis which caused displacement in Hawassa and other Ethiopian towns	68 (51%)	7 (5%)	57 (44%)
4.	Construction of different zone offices after the formation of <i>Gofa Zone</i> administration and building of Arba Minch	97 (74%)	15 (11%)	20 (15%)

	University <i>Sawla</i> campus in periphery lands of <i>Sawla</i> town			
5.	Relatively abundant supply of land to market by sellers	62 (47%)	23 (18%)	42 (35%)
<i>The factors that push the seller/s to supply land for illegal market (110 respondents ticked)</i>				
1.	Less amount of compensation during expropriations	108 (98%)	0	2 (2%)
2.	Healthcare, modern housing, children schooling, etc financial issues	89 (81%)	13 (12%)	8 (7%)
3.	Weak administration of periphery urban lands	79 (60%)	24 (18%)	29 (22%)

Survey data, 2020

As per the survey data of the above table, the following are main factors that drive the buyer to demand land from periphery urban lands in the study areas: -

- ◆ The data disclose that lease laws did not take in to consideration the economic level of poor urban residents that make low-income level urban residents and government officials landless. Because lease law did not limit the number of urban land an individual person can compete and hold, which resulted an individual to compete in unlimited places if his/her economic capacity permit. Hence, 90% of the respondents agreed that fragile government policy make traders and other economically sturdy persons to engage in lease competitions as a best business area by knocking out poor's from the competitions. This misses the very purpose of urban land development and management policy (2011) as well as other laws of Ethiopia. Because, those laws and policy ensures access to urban land to low income level urban residents and those who is unable to pay rent and pay for condominium housing programs, by regularizing the squatter's holding already under their control and make the land governance more inclusive.
- ◆ Large number of land seekers and meager supply of residential land by municipality in the study area also stated as a main factor for illegal land sales. As per the survey data, 127 buyers (96%) among 132 respondents replied as they agree on the high gap between an increasing demand of land and its low supply. As a result, residential land lease prices are sky rocketed and people opt to access land by illegal means, which is relatively fair in price. Such land deals worsen illegal squatting at the outskirts of the town, thereby fuelling the existing land administration malpractice.
- ◆ Majority of respondents (51%) agreed that internal displacement of *Gofa* people from *Hawassa* city and other Ethiopian cities and towns by ethnic conflict and other political insecurity resulted fear to built immovable property in those cities and towns.
- ◆ Among buyers 74% agreed that constructions of different offices for newly formed *Gofa Zone* administration and opening of *Arba Minch University Sawla* campus in periphery urban lands of *Sawla* town called different peoples' to buy a parcel of land and construct houses, hoping its near future enclosure to town administration centre.
- ◆ 51% of the respondents agree that landholders' supply of land for illegal market, which are relatively cheap and affordable to them attracted large numbers of low-income urban residents and other people who seek a shelter to engage on it.

The following factors are mentioned as some of the driving forces that push the seller to supply the land to market. These are: -

- ◆ Nearly all respondents (98%) of the sellers agreed that the anticipation of public expropriation paying fewer amounts than prices paid by private land seekers pushes them to supply the land to illegal market.
- ◆ The data let know that 81% of the landholders sell their small parcel of land to meet the pressing financial needs (healthcare, modern housing, children schooling, etc). This also attracts the buyers to engage in the market. Thus, illegal land transactions are abounded and multiplied in the study areas, notwithstanding its strict outlaw by the FDRE Constitution and subsequent rural land laws (*Article 40(3) of the Constitution and Article 7(1) of the SNNPRS rural land law*).
- ◆ Regarding the land administration issues, 60% of the respondents replied that weak administration of the periphery urban lands in the study area also pushes the buyers to supply their land to illegal markets. The enclosure of transitional periphery urban lands in to urban centre by master plan without expropriating and putting it into urban land bank and letting its administration power in the hands of concerned rural *Kebele* administration also elevated illegal land transactions. Weak enforcement of government policies and laws by *Kebele* administrators creates favourable conditions for landholders to subdivide and sell their rural land rights in the study areas.

3.5. The role of key actors in illegal land transactions

Different actors are involved and play their own role in illegal transactions of periphery urban lands in the study area, like brokers and local authorities /*Kebele* officials/.

A. Brokers

Brokers are very active and motivated by speculative business. They serve as a bridge between the land buyer and seller. They control overall illegal transaction processes and negotiate the buyer and seller by determining the value of specific land, after seller's specification of its initial price. Notes of focus group discussion reveal that brokers before they began the dealing collects background data of the seller, whether he/she is the true holder of the land or not. This helps the buyer to avoid post-sale land disputes. Finally, they sign on the document as witnesses and get commission for their services.

B. Local authorities /*Kebele* officials

In-depth interview with local authorities in sample selected *Kebeles* divulge that they play a part in land administration; in policy and laws implementations as well as solving land related disputes. They serve as a watchdog of the government activities at grass roots level to secure the communities interest. In addition, they have their own code of conduct by which they take measures on residents who deviate from *Kebele* administrative decisions.

While interviews with municipality and *Woreda* land administration experts divulge that local authorities are acting as illegal brokers and they know all illegal land transactions in their *Kebeles*. Because lands are trading under their nose and they ask the buyer either he comes on by his feet or with his hands, seeing corruption as a lawful act. If the buyer answers their question accordingly, they advise the buyer to built a house and secure his land immediately by making it to be registered in his name at *Kebele* level. Then they write supportive letter to agricultural development agents (DA) for an issuance of landholding certificate in the name of the buyer and authenticate the document. This encourages the buyer/s and seller/s to engage in illegal land

transactions in periphery urban lands of *Sawla* town, assuming that government would lose the courage to demolish at mass, which may put the town in political crisis.

The informants said the other bodies that give shield for illegal land transactions in the study areas are agricultural development agents (DA) who work at *Kebele* level. Like a legal brokers, potential land buyer requests them to find land for them, because they request less commission than legal brokers. They assist the transaction using their knowledge of farmers' economic problems.

3.6. Handling of illegal land transactions by regular courts

Disputes over land rights are common in all Ethiopian courts and in courts of *Gofa Zone*, though its degree differs from court to court depending on the nature of the cases like inheritance, renting, donations, land sale transactions, etc (*Daniel, 2015*). Interview with judges of *Demba Gofa Woreda* court and *Gofa Zone* High court disclose that illegal land transactions cases are handling as per the tenets of FDRE and SNNPRS Constitutions as well as subsidiary rural land laws. Judges respond that if one of the parties who engaged in illegal land transactions takes the case before the court requesting its invalidation and disclose how it transferred to other party (via sale), the court immediately invalidates it as per Article 1808(2) of the Civil Code, which provides that:

“A contract whose object is unlawful...may be invalidated at the request of any contracting party or interested third party.”

This provision empowers the courts to identify and invalidate illegal land transactions. In-depth interview with the president and other two judges of *Demba Gofa Woreda* court disclose that occasionally illegal land transaction suits brought before the court by changing their nature. When the applicant institute a suit requesting invalidation of land sale contract, the defendants' come up with their statement of defense attaching sale of trees, house and like contract; as the land transferred forever. In such kind of cases, if the respondent proves this fact and he has been using the land for more than ten years, the court applies ten year period of limitation that embodied in the Ethiopian Civil Code Article 1845 for any invalidation claims. Because Article 1845 of the Civil Code states that: -

“An action for the invalidation of a contract shall be barred if not brought within ten years.”

The judges replied that the court strictly interprets the contracts if it state as sale of trees, houses, etc, which is legal as per the FDRE Constitution and SNNPRS rural land law (*Article 40(7) of the Constitution and Article 8(6) of the SNNPRS rural land law*). Because the law entitles the landholder to freely transfer his/her improvements on the land by his/her capital and labor to anyone. The SNNPRS rural land laws do not filled the legal gaps of selling land under the enigma of selling trees and other properties on land. Thus, the court decisions that orders the respondent to leave the land that he/she hold and uses for more than ten years is illegal and may cause social disorder. Therefore, judges said that during their examination of witnesses they investigate the mechanisms how land right transferred to the respondent and why not the applicant instituted a possessory action against respondent within ten years. Then the court decides the case in favor of the current landholder.

However, *Gofa Zone* High Court reverses such kind of decisions based on the Federal

Supreme Court Cassation Division, which invalidates any illegal land transactions without barring by period of limitation. It is applicable and binding decision on all lower court (*Federal Supreme Court Cassation Division, Volume 18*).

Furthermore, *Demba Gofa Woreda* court judges replied that they face challenges during execution of its decisions. Because in some few situations when the applicant claim invalidation of illegal land transaction and the respondent /current land holder/ fail to prove the way how he/she acquired the land in question. That means proving one of four land right acquisition mechanisms stated under Article 5(11), 8(1, 2, 5) and 11(4) of the SNNPRS rural land proclamation, i.e., either by government grant, inheritance, gift, rent or consolidation the court voids the transactions. Immediately after the invalidation decision, the buyer institutes compensation suit for all improvements he/she made on the land as per Article 1815 of the Civil Code. It states that where a contract is invalidated.... the parties shall as far as possible reinstitute in their position which would have existed, had the contract not been made.” That's why, usually the buyer retains possession of the land and execution stays until the litigation on compensation is finally settled (seller pay compensation decision to the buyer). The execution litigation takes long time that makes buyer in the meantime to continue his investment on the land and regaining of the land by the seller practically became impossible. The informants conclude that, currently most illegal land transactions disputes are not taking before regular court, but it is solved by the witness, community elders, or religious leaders in the study area.

4. Conclusion and Recommendations

4.1. Conclusion

Since 1975 the ownership of all urban and rural land was public in Ethiopia. The 1995 FDRE Constitution and all subsequent land laws also affirmed these facts and transfer of rural land by sale is strictly prohibited. The same Constitution authorizes every Ethiopian to have full right to the immovable property he/she invested and to the permanent improvements he/she brings about on the land by his/her labor or capital. This right shall include the right to sale; transfer by sale or donation; or claim compensation for it.

The findings of this paper revealed that inadequate provision of urban land by lease system caused the competition stiff and the rich person is the expected winner of any tender by sky-rocketing the bench mark price. Additionally, minimum compensations during expropriation of periphery urban land, its weak administrations, etc pushes the societies to engage in illegal land transactions in periphery urban lands of *Sawla* town. Of course, this is not strange to all periphery urban land of Ethiopia and it is common to most Third World countries. The parties conduct the transactions by simulating it as they sold trees, houses and etc investments they made on the land or stating it as a land exchange that was a legal transaction by laws. These tactical and technical systems are used to simulate the illegal land transactions and hit the state systems. The parties, brokers and local officials also protect these illegal land transactions.

Besides, the facts presented in this article reveal that the mere existence of statutory policies and laws that prohibits sale of land may not guarantee control of all land right transfers. High practices of disguised land sales in the study area tell to the Ethiopian government to revisit its land policy and laws. Because the practices resulted from ineffective implementation of existing laws by municipality and periphery urban *Kebele* administrations.

Land sale transactions cannot be barred by period of limitation, since it is outlawed by the FDRE Constitution and all other statutory laws; and if one of the parties takes the case before the court, the court is empowered by the law to nullify/void it.

4.2. Recommendations

Based on the aforesaid findings, the author would like to recommend the following points: -

1. The legislative body should amend the current lease proclamation in order to put limitation on lease holdings that an individual can hold to minimize monopolization of urban lands by few rich individuals and land speculations. This may make the lease completion fair and creates an opportunity to the urban poor's who are currently marginalized by a few rich persons. Finally, this would minimize illegal land transactions in periphery urban lands of *Sawla* town.
2. The factors that push people to engage in illegal land transactions should be considered and responsive approach should be opted by the government. The government should have to come up with an independent periphery urban land law that governs it and its administration power should be given to the municipality after the land incorporated in to the town centre. Then, the municipality should compensate the landholders in advance or enter special contract with the landholders until the municipality give out the land for designed purpose based on the urban plan. Because the findings of this study revealed that weak administration of periphery urban land by rural *Kebeles* after its incorporation in to urban centre by master plan caused high practices of illegal land transactions.
3. *Sawla* town municipality should aware the liabilities of illegal brokers and local officials' who engaging in illegal land transactions in the study area. They should also aware the periphery urban landholders the benefits they may get by compensation during expropriation of their land as per the amended expropriation proclamation of Ethiopia.

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References

I. Books and Journal Articles

- Achamyelch Gashu, (2014): Peri-Urban Land Tenure in Ethiopia, School of Architecture and Built Environment, Royal Institute of Technology (KTH).
- Ashenafi Mehari, (2017): A Comprehensive and Critical Analysis of Illegal Land Market in Mekele Peri-urban: A Lesson to the Rapid Urbanization in Ethiopia, *Developing Country Studies*, Volume 7, No 2, www.iiste.org.
- Daniel Behailu, (2011): 'Land Use Legislation in Ethiopia: A Human Rights and Environment Based Analysis,' *Jimma University Law Journal*, Vol. 3 No. 2.

- Daniel Behailu, (2015): *Transfer of Land Rights in Ethiopia: Towards a Sustainable Policy Framework*, Eleven International publishing.
- Kironde, J. M. L. (2000): 'Understanding land markets in African urban areas: the case of Dares Salaam, Tanzania'; *Habitat international* 24.
- Muradu Abdo, (2014): *State policy and law in relation to land alienation in Ethiopia*, (Warwick, England).
- Palmer D., et al, (2009): *Towards Improved Land Governance*; FAO, *Land Tenure Working Paper*.
- Rajack R., (2009): Does public ownership and management of land matter for land market outcomes? in VL Somik, F Mila, Y Belinda, R Robin and H Jean-Jacques (eds), *Urban land markets: Improving land management for successful urbanization*, Springer, London New York.
- Said Nuhu, (2018): *Peri-Urban Land Governance in Developing Countries: Understanding the Role, Interaction & Power Relation among Actors in Tanzania*, Springer, Swedish University.
- Samuel Gebreselassie, (2006): 'Land, Land Policy and Smallholder Agriculture in Ethiopia': Options and Scenarios, Paper prepared for the Future Agricultures Consortium meeting at the Institute of Development Studies.
- Sanne Holtslag-Broekhof et al, (2017): *Understanding land transactions during land use change*, DOI: 10.1016/j.landusepol.2014.04.016.
- Twarabamenye Emmanuel and Nyandwi Emmanuel, (2012): *Understanding Informal Urban Land Market Functioning in Peri-urban Areas of Secondary Towns of Rwanda: Case Study of Tumba Sector, Butare Town*, *Rwanda Journal, Volume 25, Serious D, Life and Natural Sceinces*, (Rwanda, Kigali).

II. Laws

- The 1960 Ethiopian Civil Code
- The Federal Democratic Republic of Ethiopia Constitution, Proclamation No 1/1995; *Negarit Gazeta* Year 1, No 1
- The Federal Supreme Court Cassation Division, Volume 18, File number 100671, Nehase 7, 2007 E.C
- The Oromia National Regional State Rural Land Use and Administration Proclamation No. 130 /2007
- The South Nations, Nationalities, and Peoples Regional State (SNNPRS) Revised Constitution, Proclamation Number 35/2001.
- The South Nations, Nationalities, and Peoples Regional State, Rural Land Administration and Utilization Proclamation No.110/2007; *Negarit Gazeta* Year 13, No.10
- The South Nations, Nationalities and Peoples Regional State rural land Regulation No. 66/2007.

III. Interviews

- Interview with Land Administration expert of *Demba Gofa Woreda* Agricultural and Rural Development Office June 8, 2020
- Interview with Land Administration expert of *Gofa Zone* Agricultural and Rural Development Department June 9 & 11, 2020

Interview with *Sawla* town Municipality Head and experts, June 10, 2020

Interview with Gurade, Suka and Yela Kebele Office Holders, June 15-17, 2020

Interview with Judges of *Demba Gofa Woreda* Court and *Gofa Zone* High Court, June 18-19,
2020

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