

Legal and Practical Aspects of Divorce, Compensation and Liquidation of Pecuniary Relation between Spouses: A Case Study in SNNPRS Courts

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Abstract

Family is the natural and fundamental unit of a society. Marriage is one of the essential ways to form a family and it is usually concluded with the assumption that it will last a lifetime. However, in reality, many marital relations end up with divorce. The legal process of divorce, at a minimum, involves filing of petition and making financial arrangements. This article examines the practices of courts regarding divorce, compensation and liquidation of property with specific reference to courts in the Southern Nations, Nationalities and Peoples' Regional State (SNNPRS) of Ethiopia. To this end, a qualitative research approach has been undertaken using case review, observation, and literature and legislative reviews methods. The overall tendency observed in the courts is that the rules governing divorce, liquidation of property and determination of compensation are not consistently applied. Most of the courts have developed their own definition of what constitutes fault and how they assess the amount of compensation. There is a wrong association between faults and modes of compensation and inconsistency in assessing the extent of the damage and its equivalent compensation that ranges from 52% to 66% of the common property for the same kind of fault. Such variations also existed in the process of liquidation of property. There are problems in identifying a personal and common property. In one case, the court makes the income obtained during the marriage a personal property, and in another case, the court decided a property, which is given to one of the spouses by donation as a common property of the spouses. In a few cases, the court decided that property, which belongs to a third party, as the common property of the spouses. In a different case, the court pends division of common property arguing that

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such properties are useful for the upbringing of children. Most decisions of the courts lack precision, which in turn expose the spouses for further litigation.

Keywords: Common property, divorce, family law, marriage, personal property

Introduction

‘Family’ has been understood as an essential element to a complete human life.¹ It is of great legal interest because of the decisive role it has historically played in raising and socialization of children and in mutual economic support of its members.² In this sense, family is considered as “the natural and fundamental unit of a society.”³ Among others, marriage is one of the ways to form a family.⁴ Moreover, the institution of marriage is found in all human societies “without which there would be neither civilization nor progress.”⁵ For this reason, several marriages are entered into with a belief that the relationship will last a lifetime.⁶ Nevertheless, several marriages end up in divorce, i.e. it may be dissolved when spouses agree to divorce by mutual consent⁷ or either or both of the spouses petition for divorce.⁸ Divorce is a personal decision, which can be done without the approval of social institutions like the church or the mosque or even with the objection of the other spouse.⁹ Since divorce ends the marital relation, to formally end

¹ Bruce W. Frier & Thomas A.J. McGinn, *A Casebook on Roman Family Law*, Oxford University Press, Inc., New York, 2004, [Hereinafter Frier & Thomas A Casebook on Roman Family Law]

² *Id.*

³ See, for example, The Constitution of Federal Democratic Republic of Ethiopia, Proclamation 1/1995, *Federal Negarit Gazette*, 1995, Article 34 (3), [hereinafter referred as, the FDRE Constitution].

⁴ Frier and McGinn, *A Casebook on Roman Family Law*, *supra* note 1, at. 25

⁵ Shoshana A Grossbard-Shechtman, *Marriage and the Economy Theory and Evidence from Advanced Industrial Societies*, Cambridge University Press, Cambridge, 2003, [hereinafter, Grossbard-Shechtman, *Marriage and the Economy Theory*].

⁶ Lloyd Cohen, Marriage, Divorce, and Quasi Rents; Or, "I Gave Him the Best Years of My Life", *The Journal of Legal Studies*, Vol.16 No. 2, 1987, p. 267 [hereinafter, Marriage, Divorce, and Quasi Rents]

⁷ See for example, SNNPRS Family Code, Article 85 (a), Proclamation No 75/2004, DEBUBE. Neg. Gaz., 9th Year, No. 8, 2004, [hereinafter, SNNPRS Family Code].

⁸ *Id.*, Art., 85(b).

⁹ Alison Clarke-Stewart & Cornelia Brentano, *Divorce: Causes and Consequences*, Yale University Press, New Haven and London, 2006, p. 12, [hereinafter, *Divorce: Causes and Consequences*].

such a relationship, it is likely pronounced by court.¹⁰ The legal process of divorce, at a minimum, involves two main steps: filing for divorce and making financial settlements.¹¹

This article examines practices of courts regarding divorce, determination of compensation and liquidation of property in line with pertinent provisions of the Revised Family Code of 'the Southern Nations, Nationalities and Peoples' Regional State (SNNPRS) of Ethiopia. This study employed doctrinal legal research method. To this end, a qualitative research approach has been undertaken using case review, observation, and literature and legislative reviews to depict the practices that courts in SNNPRS follow in handling cases that involve divorce, determination of compensation and liquidation of property. Three first instance courts and one high court from SNNPRS were selected based on purposive sampling to access family benches and courts with a larger number of family related cases. The cases analyzed in this study were selected using simple random sampling.

To meaningfully address the issues, the remaining part of this article is organized into three sections. Section 1 explicates the conceptual and theoretical foundations of divorce. Section 2 deals with issues related to compensation that follows the pronouncement of divorce. It presents the practices that courts in SNNPRS follow to determine the existence of a fault and assess compensation for the victim spouse. Section 3 uncovers the mechanisms of liquidation of property. The last section puts forward conclusions drawn from the study and outlines ways forward.

1. Divorce: Its Types and Process

Marriage presupposes, relatively, a long-term union of a man and a woman.¹² Despite this fact, several marriages break up due to divorce. A marriage will subsist if and only if both spouses are willing to continue with their union. This implies that the dissatisfaction of one of the spouses might

¹⁰ James J. Gross and Michael F. Callahan, *Money and Divorce: The First 90 Days and After*, Sphinx Publishing, United States of America, 2006, p. 21. [hereinafter, *Money and Divorce: The First 90 Days and After*]

¹¹ Clarke-Stewart & Brentano, *Divorce: Causes and Consequences*, *supra* note 9, at. 60.

¹² O.A Odiase-Alegimenlen, Same Sex Marriage at the Middle of Western Politics, *Oromia Law Journal*, Vol. 3, No.1, 2006, p. 263.

suffice to end the marital relation. In this sense, divorce is the legal dissolution of a marriage.¹³ Divorce may be fault based or no-fault based. Under no-fault divorce,¹⁴ fault need not be established in court and acts of misconduct need not be proven.¹⁵ On the other hand, when divorce is fault-based,¹⁶ one spouse asserts that the other spouse is responsible for the breakdown of the marriage.¹⁷ In this case, there is a need to produce evidence to prove that the grounds of divorce that are required by law are fulfilled. The need to prove the occurrence of grounds of divorce acts as a deterrent to divorce and reflects an understanding that marriage being a serious undertaking should not be dissolved easily.

In Ethiopia, several regional state family codes adopt no-fault divorce.¹⁸ No-fault based divorce, which is recognized in several regional state family codes, is of two kinds: divorce by mutual consent and divorce by petition. In the words of these regional state family codes, a marriage may be dissolved when the spouses agree to divorce by mutual consent and such agreement is accepted by court,¹⁹ or it may be dissolved upon petition which is made to the court by both or one of the spouses.²⁰

Under divorce by mutual consent, which would allow a husband and wife to enter into a private divorce agreement without the official involvement of a

¹³ Lloyd Cohen, Marriage, Divorce, and Quasi Rents, *supra* note 6, at. 274.

¹⁴ “The concept of no-fault divorce was also introduced early on in the communist world. Lenin’s government in Russia declared freedom of divorce soon after coming to power in 1917. It was seen as the counterpart to freedom of marriage. Both kinds of freedom were regarded as aspects of the freedom of individuals. The Russian Family Code of 1918 introduced “mutual consent of both spouses as well as the wish of one of them” as grounds for divorce. Article 18 of the Russian Family Code of 1926 carried this freedom of divorce even further by allowing that application to the Civil Registry for a letter of divorce”. See, Patrick Parkinson, Family Law and the Indissolubility of Parenthood, 18 (Cambridge University Press, New York, 2011).

¹⁵ Lloyd Cohen, Marriage, Divorce, and Quasi Rents, *supra* note 6, at. 274.

¹⁶ “Under a fault system, divorces could not be consensual and a divorce could be defended and defeated. When a fault-based system of divorce was the exclusive method of obtaining a divorce, evidence for formally proving grounds, for example, cruelty, desertion, or adultery was critical.” (See, Sanford N. Katz, Family Law in America, 78 (Oxford University Press, New York, 2011).

¹⁷ Lloyd Cohen, Marriage, Divorce, and Quasi Rents, *supra* note 6, at. 274

¹⁸ Revised Family Code, 2000, Art., 77(3) &81(3), Proclamation No 213/2000, Fed. Neg., Gaz., (Extra ordinary issue) Year 6, No. 1, 2004 [hereafter Revised Family Code], SNNPRS Family code, Article, 86(3) &90(2), Amhara Regional State Family code, 2003, Art., 88(3) & 92(2).Proclamation No 79/2003, ZIKRE HIGE, 8 Year, No. 3, 2003 [hereinafter, Amhara Regional State Family Code].

¹⁹ SNNPRS Family Code, Art.85 (a).

²⁰ *Id.*, Art. 85(b).

court, spouses can agree to dissolve their marriage without establishing any grounds for divorce.²¹ In such a case, both spouses are expected to reach an agreement on how their possessions are divided and debts will be settled as well as how their children are going to be raised and their maintenance issues.²² For some couples, settling these issues are so easy that they can accomplish it in a single meeting, but for others, it may take several meetings.²³ A mere mutual consent, which is disclosed by spouses to end their marriage, does not automatically dissolve a marriage. Rather, since family is the natural and fundamental unit of society and is entitled to protection by society and the government, the state and the society intervene and try to save the marriage.²⁴ They engage in reconciling the spouses and circumventing possible symptoms of intention to divorce. The government has also a stake over the marriage so that it exerts substantial effort to save it from dissolution through the courts.

It is for this reason that the SNNPRS courts have been spending ample time to counsel spouses to renounce their request for divorce. In this regard, the court may talk to the spouses jointly or separately as the situation demands to convince them in order to change their mind.²⁵ One may ask if spouses have the option to be heard in the public court or in camera. In most courts, divorce proceedings are conducted in public sessions. On this point, it has been observed in one of the courts in the study area that the court asked the spouses' consent to conduct the divorce proceedings in camera or in public. If one of the spouses prefers the sessions to be in camera, then the court dismisses the audience and then proceeds to persuade the spouses to withdraw their application for divorce. This helps the spouses speak out their ground of divorce in private freely and resolve their disagreements amicably.

Conversely, if the spouses insist on pursuing divorce in public sessions and the court believes that there is no possibility of renouncing their intention to

²¹ Clarke-Stewart & Brentano, *Divorce: Causes and Consequences*, *supra* note 9, at.11.

²² As rule, spouses are expected to agree on not only on the divorce but also in all its consequences. However, it is possible for spouses to agree on the divorce alone and leave the rest of the issues for the court's decision

²³ Duncan, Roderic, *A Judge's Guide to Divorce: Uncommon Advice from the Bench*, Consolidated Printers Inc., USA, 2007, p. 26

²⁴ The FDRE Constitution, Art 34(3).

²⁵ SNNPRS Family Code, Art. 91(1).

divorce, the court may direct the spouses to settle their dispute through arbitrators of their own choice.²⁶ At this stage, the court requests the spouses to mention the names of arbitrators of their choice.²⁷ The court, upon receiving the names of the arbitrators, write summons to the chairperson of the arbitration and give a direction as to how they should proceed and how long the arbitration should take. Pursuant to this direction, the chairperson submits the report including the new developments in the meeting with the spouses. However, if the attempts to persuade the spouses to withdraw their petition for divorce, or solve their dispute through arbitrators of their choice fail, the court will dismiss them giving a cooling period of not more than three months.²⁸ There are variations across the courts on the duration of the cooling periods that range from a couple of days to a month. If all these efforts bear no fruit to save the marriage, the court shall pronounce divorce within one month from the receipt of the reports of the arbitrators, or at the end of the cooling period, as the case may be.²⁹ Though these are the procedural requirements set by the SNNPRS Family Code, there are courts which go an extra length and give a chance for the spouses to solve their disagreements amicably even after the lapse of the cooling period.³⁰ Although there is no procedure requirement that compels courts to give additional chance for the spouses to solve their disagreements amicably even after the lapse of the cooling period, the courts are doing this pursuant to the constitutional provision that requires the courts to work and protect the family.³¹

Unlike divorce by mutual consent, divorce by petition does not guarantee a peaceful separation since both of the spouses or one of them may state in the petition the reasons for divorce and try to show on whose fault the marriage

²⁶ *Id.*, Art. 91(2). Unlike the 1960 Ethiopian Civil Code, the new family codes (RFC of the regional family codes have changed the roles of the family arbitrator in family disputes. According to the new family codes "the roles of family arbitrator is only that of reconciliation" (See, Tilahun Teshome, Reflections on the Revised Family Code of 2000, *International Survey of Family Law*, 153, 2002, p. 170 [hereinafter, Tilahun, Reflections on the Revised Family Code of 2000]

²⁷ SNNPRS Family Code, Art. 91(2).

²⁸ SNNPRS Family Code, Art. 91(3).

²⁹ *Id.*, Art. 91(4).

³⁰ Information obtained during the field survey through observation at Hawassa First Instance Court which took place from October to November 2015.

³¹ FDRE Constitution, Art. 34(3).

is dissolved. In this case, the court should request the spouses to agree on the conditions of divorce.³² Where the spouses could not agree on the conditions of divorce, the court shall, through arbitrators, experts appointed by it, or by any other means it thinks appropriate, decide on the conditions of divorce.³³ The conditions of divorce agreed upon by the spouses or decided by arbitrators or experts shall be submitted to the court for approval.³⁴ In this manner, after making the necessary examination of the conditions of divorce submitted to it, the court decides on conditions of divorce.

Following the divorce pronouncement by the court, if the cause of divorce is attributable to one of the spouses and where justice so requires, the court may order such spouse to make good the damage sustained by the other spouse.³⁵ Thus, a spouse who sustains damage due to the faults of the other spouse could be awarded more than half of the marital property or ten thousand *birr* contingent upon the nature of the fault committed.³⁶ The coming section highlights how compensation is awarded following divorce.

2. Compensation and its assessment under the SNNPRS Family Code

The Family Code of the SNNPRS contains the grounds on which compensation can be claimed.³⁷ The logical extension of this idea is that, in order to get the remedies available, the claimant is required to prove that the respondent has committed fault and the fault resulted in damage. And such damage should be a kind of harm recognized as fault which attracts liability. The fault, which is a ground for claiming compensation, is a breach of duty fixed by the law for spouses that imposes liability on a spouse who causes the damage and its breach is redressable primarily by awarding damages.³⁸ The family law does not cover every type of harm. In other words, the mere fact that the acts of one spouse has caused harm to another does not in itself

³² SNNPRS Family Code, Art.93 (1).

³³ *Id.*, Art. 93(2).

³⁴ *Id.*, Art. 93 (3).

³⁵ *Id.*, Art. 94 (1).

³⁶ *Id.*, Art. 95(2) (3).

³⁷ *Id.*, Art. 94(2).

³⁸ *Id.*, Arts 94, 98 and 99.

give the victim spouse a right to sue.³⁹ Compensation will be granted for reasons which are typically mentioned in the Family Code. If the claimed action does not contain a fault recognized under the Family Code, there will not be compensation. The issue is, therefore, when is compensation granted under the SNNPRS Family Code?

2.1 Compensation Following Divorce

A compensation claim arises when one of the spouses or both of them petition for divorce and mention the occurrence of a fault that drives the spouses to seek the divorce. In fact, spouses are not required to state their reasons in their divorce application. Conversely, if one of the spouses or both of them mention a reason in the petition for divorce and can prove it, s/he will be entitled to redress.⁴⁰ Damage caused to the victim may take several forms including physical injury, injury to reputation, damage to economic interests and others. To award compensation, a victim spouse must prove that the damage s/he sustains is due to the fault(s) of the other spouse. For the purpose of this sub-section, a spouse is at fault if s/he violates a personal obligation of a spouse owing to the marriage (marital obligations).⁴¹

The family law often refers to marital obligations of the spouses in very general terms. These terms (such as obligation to support, respect and assist, cohabit, obligation to owe fidelity and other) seem to be ambiguous and need comprehensive explanations to determine what conducts of the spouses are included in and excluded from the terms under discussion against which violation of the spousal obligation (occurrence of fault) can be judged. The mandate to determine whether a certain act amounts to violation of personal effect of a marriage is left for courts.⁴² However, issues of ascertaining the violation of specific personal effects of marriage have not received sufficient

³⁹ For instance, if a spouse who has agency power goes beyond this mandate, s/he will be responsible for any damage the other spouse sustains. Such spouse will be responsible for any kind of damage the other spouse sustains. However, the aggrieved spouse will be barred from claiming compensation for acts of abuse of agency power which has been performed five years before the dissolution of the marriage. *Id.*, Art. 98.

⁴⁰ *Id.* Art.94(1).

⁴¹ SNNPRS Family Code, Arts. 94(2).

⁴² The SNNPRS Family Code has empowered the Regional State Council to issue regulation (*Id.* Art. 338) that supports proper interpretation and enforcement of the Family Code. However, this has not been complied with so far. This gives the strength to argue that courts are by default empowered to give meaning for vague words of the Family Code.

attention.⁴³ If courts continue to assess compensation without ascertaining the meaning of each obligation, they will reach an erroneous conclusion. Furthermore, courts must determine whether the allegation of the spouse is a type of conduct recognized by law as a fault that warrants compensation. Hence, compensation will be granted only for reasons typically stated in the SNNPRS Family Code as a fault.⁴⁴ The logical extension of this argument is that courts could award compensation for spouses who prove the existence of a fault and resulting damage.

2.1.1 Faults Recognized by SNNPRS Family Code

As highlighted above, in "no-fault divorce" system, spouses who seek divorce are not obliged to prove the occurrence of a fault and to whom the fault attributes. In this regard, Tilahun states that "the notion of fault-based divorce has been reduced to a position of insignificance."⁴⁵ But when mentioned, the fault should be the reason and a cause of divorce to invoke it as a ground to claim compensation.⁴⁶ Thus, the spouse who sustains damage due to the faults of the other spouse could be awarded compensation corresponding to the nature of the fault committed by the other spouse.

At this juncture, it should be noted that the fault stated above should be associated with violation of the personal effects of marriage.⁴⁷ Personal obligation of spouses that marriage confers on married couples could be so many. However, the law recognizes some of the obligations that are unique to and flow from the institution of marriage. Importantly, these obligations cannot be derogated by the agreement of the spouses.⁴⁸ These are obligation to support, respect and assist, obligation to cohabit, obligation to owe fidelity, and obligation to joint management of the family.⁴⁹ A failure to comply with these personal effects of marriage amounts to a fault which

⁴³ Many of the cases examined and analyzed in this research prove that courts do not give meaning to terms, which are listed as personal obligations of spouses.

⁴⁴ This is logically inferred from the reading of Art 94 of the SNNPRS Family Code.

⁴⁵ Tilahun, Reflections on the Revised Family Code of 2000, *supra* note **Error! Bookmark not defined**.26, at. 17.

⁴⁶ SNNPRS Family Code, Arts.94 and 95.

⁴⁷ *Id.* Art.94(2).

⁴⁸ *Id.*, Arts. 58(2), 61(2) and 62(2).

⁴⁹ *Id.*, Arts. 58(2) to 65

warrants legal liability.⁵⁰ Hence, courts should decide the existence of a fault to warrant legal liability in the form of giving compensation by referring to the personal effects of marriage. However, there are cases where courts have imposed legal liability and compensation without verifying the occurrence of fault.

In the case of *Weyzero Meskerem Bekele v. Colonel Abebe Memihru*, the applicant alleged that the respondent abandoned her and started extra-marital relations with another woman and failed to bear household expenses.⁵¹ The applicant made it clear that she is willing to live with him if he is keen to continue with the marital relationship. The applicant alternatively requested the court to dissolve the marriage and to award an appropriate moral compensation since he rejected the offer to reconcile and be negotiated by arbitrators of their choice and became the cause of breakup of the marital relationship. The respondent too, on the other hand, blamed the applicant for abandoning the family. As a result, the court pronounced the divorce and continued examining the moral compensation claim of the applicant. After investigating the relief sought by the applicant, the court awarded 3000 *birr* moral compensation. The court interpreted the reluctance of the respondent to reconcile with the applicant as a fault and made the respondent responsible for the breakup of the marriage.

This decision of the court begs a question – does reluctance to continue with the marriage constitute a fault that entitles to get compensation under the SNNPRS family code? This does not seem to be the essence of such family code. The main aim of the law (that governs compensation that arises from failure to comply with personal obligation of the spouses) is to compensate a victim for the harm one suffers because of the breach of a marital obligation stated under SNNPRS family code. The law seems to place greater emphasis on the kinds of fault which attracts liability along its modes of redress. In the compensation assessment, the relationship or proximity between the fault and the damage arises therefrom should be given attention. In the case at hand, however, the association between the fault and the appropriate compensation is less clear. As the marriage was established by the mutual

⁵⁰ *Id.*, Art. 94(2).

⁵¹ *Weyzero Meskerem Bekele v. Colonel Abebe Memihru*, Dilla First Instance ct., File No. 09662 (Decision of 28 September, 2006 E.C).

consent of the spouses, its life span depends on the willingness of the spouses. Thus, a mere reluctance to continue in the marriage does not amount to a fault leading to liability through compensation. Despite this, the above case reveals that there are instances which are practically considered by courts as fault attracting liability.⁵² Counting a mere reluctance to continue in a marriage as a fault under the SNNPRS family code is an erroneous interpretation of the law.

The case went further when the applicant lodged an appeal on the amount of the compensation.⁵³ The appellant stated that the respondent raped her and got married while she was in grade seven forcing her to be dropped out of school and became dependent on respondent's income. In addition, the appellant submitted that she had assumed primary caretaking responsibility, fully engaged in the raising of children and hence remained unemployed. The appellant further alleged that the respondent is responsible for her school drop-out, unemployment and income situation.⁵⁴ The appellant tried to show to the court the extent of her dedication for the interest of the family and this invariably affected her future. The respondent, on his side, explained that he does not want to continue with the appellant. He contended that the amount of compensation decided by the lower court is appropriate. The appellate court finally raised the compensation to 4000 birr mentioning that the salary of the respondent appeared to be more than what was mentioned in the lower court.

The presence of fault is still contentious in this case since the applicant has not proven her claim, for instance the respondent has an extra marital relationship, with sufficient evidence. Of course, it is difficult for a married woman who was not employed outside her home and devoted her most career-productive years in the interest of the household to go to the labor

⁵² One may challenge the provisions of SNNPRS Family Code dealing with compensation. A reader may also ask: should compensation always be contingent up on the fault?

⁵³ Weyzero Meskerem Bekele v. Colonel Abebe Memihru, Gedio Zone High ct, File No. 09412 (Decision of 17 December 2006 E.C).

⁵⁴ The appellant also clarified to the court that the respondent has no reason to dissolve the marriage and he insisted to dissolve their marriage with the intent of causing damage to her. The appellant made it clear that she is still willing to continue with him in the relationship so long as he is willing and capable of administering his home.

market and search a job. There is a possibility she may not be able to get a job. It is true that non-wage-earning mothers of young children and whose responsibilities as primary caretakers limit their career choices and their development faces similar risks. It seems with this assumption that the court, considering the realities of scant property and limited earning potential that homemaker mothers may have, adopts the notion that a homemaker mother needs nominal compensation. In doing so, the court seems to ameliorate the financial pain of lost support though the court fails to establish the existence of fault in the case.

However, the court is expected to examine and determine what kind of act that constitutes fault appears in this case. It must begin by examining the cause of the breakup of the marriage and whether a violation of personal effects of marriage is involved in the case. This is because compensation is awarded if one of the spouses proves a violation of personal effects of marriage and this is solely the cause of the breakup of the marriage. The mere act of applying for divorce and reluctance to continue with the conjugal relationship would not constitute as fault and make the respondent responsible for the dissolution of the marriage. Both the trial and appellate courts look at the hodgepodge of factors, weighing them in an unspecified and unsystematic fashion and make the respondent responsible for the dissolution of the marriage. It seems, from the case, that the wife is claiming for post-divorce maintenance which is something not recognized under our family law(s).

2.1.2 The Nexus between Fault and its Modes of Compensation

It is highlighted above that a fault of a spouse is viewed from failure to comply with personal effects of marriage. It is also apparent that the remedies will be decided based on the type of fault committed by a spouse. For this reason, the law goes to categorize faults that emanate from violation of personal effects of marriage into two categories. The first category is a fault that arises from a failure to carry out one's obligation to support, respect and assist.⁵⁵ The second category of fault is a fault which arises from spouses' failure to comply with their obligation to cohabitation without a

⁵⁵ SNNPRS Family Code, Arts. 94(1) (a) cum with 95(2 and 3).

good cause or/and infidelity to each other.⁵⁶ Both categories of fault entitle an aggrieved spouse to different kinds of remedies.⁵⁷ These remedies may be compensation that does not exceed birr 10,000 or awarding a higher portion of the common property.⁵⁸ In the case where the first category of the fault is committed, a victim spouse will get compensation that does not exceed ten thousand *birr*. On the other hand, the court may award higher portion of the property to the victim from the common property in case the second category of fault is committed.⁵⁹

This shows that the kinds of compensation are deeply intertwined with the kind of fault. For this reason, when courts entertain a family case that involves a claim for compensation, it is necessary to decide whether there is a fault or not, into which category the alleged faults fall and then determine the appropriate remedy. However, not all courts are curious about these procedures. For example, in a case where a victim spouse proves a violation of the duty to respect, support and assist, courts award a higher portion of the common property. Similarly, there are cases where courts awarded a higher portion of the common property without proving that one spouse violates his/her obligation to cohabit or owe fidelity intentionally to hurt the other spouse. The following four cases may be examined to substantiate the position.

In a *Weyzero Tadelech Alaro v. Ato Gulilat Tefera* case, brought before Hawassa First Instance Court, the applicant submitted that their decent marriage of seven years was recently marred by respondent's extramarital affairs (bigamous marriage) and violation of his obligation to respect, assist and support.⁶⁰ Hence, she requested for divorce as well as ten thousand *birr* moral compensation and a higher share of the common property since the divorce is completely attributable to the defendant's fault. The defendant in his response insisted that he does not have a valid marriage with the applicant except a short-lived irregular union. He also denied the bigamous marriage and violation of his duty of fidelity. Finally, the court found out

⁵⁶ *Id.*, Arts. 94(1) (b and C) cum 95 (3).

⁵⁷ *Id.*, Arts. 95.

⁵⁸ *Id.*

⁵⁹ *Id.*, Art. 95 (3).

⁶⁰ Hawassa First Instance ct, File No. 00804 (Decision of 12 May, 2006 E.C).

that the respondent concluded a valid marriage with the applicant and bigamous marriage with another woman. Nevertheless, the court has said nothing on the claim of the applicant that says that the respondent violated his obligation to respect, assist and support. However, the court awarded the applicant 3000 *birr* and 1/8 (roughly 12%) of the communal property of the spouses. The respondent violated his obligation to cohabit and owe fidelity to his wife. For this reason it can be argued that there is sufficient reason for awarding compensation that does not exceed *birr* 10,000 or a higher portion of the common property but not both. This is because the court may award a higher portion of the property to the victim from the common property in case a spouse who violated his obligation to cohabit or owe fidelity may intentionally hurt the other spouse.

The second case was also entertained by the same court.⁶¹ In this case, the applicant alleged that she was in a marital relationship with the respondent for over 12 years. She also stated that, as time went on, the behavior of the respondent changed and he frequently threatened, and rampantly disrespected and sometimes beat her. Consequently, the applicant requested the court to award reasonable moral compensation alleging the respondent was responsible for the breaking up of the marriage.

The respondent denied the claim that he should take the blame for the breakup. He further illustrated that the applicant had extra-marital affair with another man and she usually insulted him and arbitrarily abandoned her home. The court, reviewing her inability to rebut the allegation made against her and the evidence produced to prove her allegation, decided that the applicant is the cause of the dissolution of the marriage and made her responsible for the breakdown of the marriage. In addition, the court awarded 3000 *birr* moral compensation for the respondent.

While rendering this decision, the court hardly mentioned any provision of the SNNPRS Family Code for awarding such amount of compensation to the respondent. The court neither established a nexus between the fault and the mode of compensation nor indicated the kind of fault committed by the applicant and how the compensation was computed.

⁶¹ Weyzero Chalitu Huka v. Brihanu Zewige, Hawassa First Instance ct, Addis Ketema, Div, File No 01026 (Decision of 29 September 2007 E.C).

Weyzero Fedila Shafi v. Ato Reshid Dalu is another case decided by the Hawassa First Instance Court in which compensation was awarded for fault which is not raised by the spouses.⁶² In this case, the applicant stated that the respondent despised, disrespected and kicked her repeatedly. The applicant further stated that the respondent was reluctant to render accounts for the income he received despite the applicant's frequent requests. Finally, the applicant requested the court to make the applicant responsible for the dissolution of the marriage and award compensation including a higher share of the common property.

The respondent, on his part, alleged that the applicant left the house without having adequate reason taking some of the properties they acquired during the relationship. Moreover, the respondent argued that the claim of the applicant is untrue and improper.

The court, from the testimony of the witnesses, concluded that the applicant was exposed to domestic violence expressed in many ways. The court further stated that the respondent neither denied nor rebutted the allegation brought against him. The court drew the opinion that allegation which was not expressly denied construed as admitted and made the respondent responsible for the breakdown of the marriage. Consequently, the court awarded the applicant 8500 *birr* moral compensation stating the failure of the respondent to respect, assist and support the applicant while they were in a marriage, and 54% of the common property of the spouses stating the failure of the respondent to cohabit.

The court's decision of making the respondent responsible for the breakdown of the marriage due to failure to cohabit seems inappropriate and has no factual basis. Neither the applicant nor the witness raised this allegation. Nowhere in the decision of the court, the issue of cohabitation was framed and analyzed either. However, the court entitled the applicant to take 54% of the common properties following the division of the communal property. This triggers the question of how the court gets the power to award 54% moral compensation in the absence of allegation and testimony on the

⁶² *Weyzero Fedila Shafi v. Ato Reshid Dalu*, Hawassa First Instance ct, File No 00716 (Decision of 17/05/06 E. C).

issue of cohabitation and proof that shows the respondent fails to cohabit to intentionally hurt the applicant.

Likewise, in another case, the court made a wrong association between the fault and its corresponding remedy.⁶³ The case was instituted by the applicant alleging that she concluded a customary marriage with the respondent in 1996. The applicant further stated that the respondent started an extramarital affair with another woman with whom he has been cohabiting. In conclusion, the applicant requested the court to award an appropriate moral compensation and declare dissolution of the bigamous marriage.

The respondent argued that there was no marriage between the applicant and the respondent except a short-lived affection. He added, in the absence of marriage between the two, the applicant has no legitimate ground to challenge the current marriage that the respondent concluded with his current wife.

Following their allegation, the court allowed them to produce their respective evidence. Based on this, the court ruled that the applicant has a legitimate ground to challenge the current marriage, and this even might be the driving factor to apply for divorce. Therefore, the court also declared the dissolution of the bigamous marriage and, based on equity, awarded 5000 Birr moral compensation to the applicant. The dissolution of the bigamous marriage strengthened the allegation that the respondent had extramarital affair. Concluding of second marriage while being bound by previous marriage proves the infidelity of the respondent. In such a case, there is a possibility that the court shall redress the victim spouse by awarding a higher share from the common property.⁶⁴

⁶³ Aberash Zegeye v.Tadele Lema, HAWASSA First Instance ct, Addis Ketema, DIV., File No. 02695 (Decision of 01/06/07).

⁶⁴ SNNPRS Family Code, Art. 95 (3).The author of this piece needs to bring one thing to the attention of the readers. A claim for divorce and compensation is instituted separately from the claim for liquidation of property. It is not procedurally possible to know and quantify existence or otherwise of common property spouses at this stage: before courts resolve the issue of divorce. The presumption seems the spouse would have some common property to be divided unless this contested in oral argument during assessment of compensation.

On the other hand, the court awarded compensation for issues, which were not raised and proved by the parties, but characterized as a fault by the court's own initiative.⁶⁵ In the case of *Ato Micheal Sujure v. Weyzero Konjit Yantsera*, the applicant alleged that he concluded marriage with the respondent in accordance with Sidama culture and remained in the conjugal relationship until this case was filed before this court. The applicant further argued that the respondent failed to comply with her duty to respect, support and provide assistance despite consistent compliance of his duties. He added that the respondent was also in some extramarital affair and hence sought for divorce as well as adequate moral compensation.

The respondent stressed that she had marital relationship with the applicant. The respondent also stated that she had neither failed to fulfill her obligation to respect, support and assist her husband nor engaged in any extramarital affair, and that she never arbitrarily abandoned her family. She added that the applicant kicked her out in the midnight from her premises and he started living with another woman, which can be regarded as a bigamous relationship.

The court examined the oral contentions and the evidence produced by both sides. The court confirmed that the applicant is bound by a marriage registered in Hawassa City Municipality with another woman than the respondent. Consequently, the court declared divorce by attributing it to the respondent's fault. As the result, the court awarded 2000 *birr* moral compensation and entitled the applicant to take 52% of the common property.

The ruling of the court is based on the fact that some of the rights and obligations of the parties defined by law cannot be waived by mutual consent. However, in awarding 2000 *birr*, the court has not properly analyzed whether or not the other personal obligations of the spouses have been violated. It is to mean that awarding monetary compensation (2000 *birr*) without properly analyzing the occurrence of fault arising from violation of personal obligations of the spouses can be compensated in monetary terms. This implies that there is a conceptual confusion in

⁶⁵ *Ato Micheal Sujure v. Weyzero Konjit Yantsera*, Hawassa First Instance ct, File No. 00804 (Decision of 12 December 2006 E.C).

establishing a nexus between the kind of violations of personal effects of marriage and the kinds of damages provided by the law.

2.1.3. Assessment of Compensation

It is said above that fault is associated with violation of the personal obligation of marriage. The issue here is if one takes insulting a spouse as violation of the obligation to respect, how much money should be awarded to the victim spouse? Would it be different if it were made in public or at home? At the same time, if one of the spouses fails to give necessary care while the other spouse gets sick and if this amounts to a violation of the obligation to support, what amount of money is given to the victim spouse? How can a court assess the amount in these and other similar circumstances?

The other point that needs discussion is the issue of compensation in kind. It is clear that the court may award “*higher portion of common properties*” to the divorcing spouse who sustains damage because the other spouse violates the duties to cohabitation and fidelity intentionally to hurt the other spouse. The most difficult part of these categories of fault is that they are hard to define. When do we say a spouse haphazardly abandoned his duty to cohabit? What if s/he changes his/her work place for a better salary? What constitutes infidelity? Does concluding a “*pseudo marriage*” for the purposes of visa processing amount to infidelity? Would it be different if one of the spouses permits the other spouse to do so? Equally important, what constitutes “*higher portion of common properties*”? Is that to mean 50+1 or 65%? What are the parameters that can be used by courts? There are variations in the decisions of the courts of different levels on these points that range from awarding the smallest remedy to the largest possible amount of compensation.⁶⁶ The absence of clear and detailed guidelines on this issue contributes to such disparities in the decisions of the courts.

Of course, the law puts a general guiding principle on compensation assessment: the courts are to assess compensation based on the gravity of the

⁶⁶ That ranges 52 to 65%. See Weyzero Tadelech Alaro v. Ato Gulilat Tefera, Hawassa first instance ct, file No. 00804 (Decision of 12 May, 2006 EC), Aberash Zegeye v. Tadele Lema, HAWASSA FIRST Instance Ct, Addis Ketema, DIV., file No. 02695 (Decision of 1st February, 2007), Weyzero Filaha Tsegaye vs. Ato. Abera Amentie, Gedio Zone High ct, file No. 10303 (Decision of 2nd November 2007 E.C).

fault and equity.⁶⁷ The underlying assumption seems that the amount of compensation that is going to be given to the victim spouse depends on the gravity of the fault. If the fault is severe, the amount of compensation is likely to be higher. If the fault is manifold, this proves the gravity of the fault and increases the amount of compensation. It could even not be absurd to argue that violation of each personal obligation of spouses should be evaluated on its own and the amount of compensation is also assessed independently. However, in practice, there are variations in the courts' decisions in this regard. The following cases illustrate the disparity in the decisions given by different courts.

In *Weyzero Abebech Assefa v. Ato Mesfine Sileshi*, the applicant stated the reason to petition divorce and indicated that the respondent violated his duty to respect, assist and support, by nagging and insulting her and he failed to have lunch with her and even failed to share the household expenses.⁶⁸ The applicant also added that the respondent failed to render an account of his income. She further alleged that the respondent made it clear to her that his need to have children has been satisfied so that he does not want to continue with her any more. Elucidating all these facts, the applicant alleged that the statements of the respondent caused her psychological trauma and instigated her to petition for divorce. Finally, she begged the court to pronounce divorce upon awarding her commensurate compensation.

On the other hand, the respondent held the applicant responsible for the divorce. He stated that the applicant nagged and threatened him every time. As a result, he got fed up with her and wanted the action for divorce to be pursued. The respondent, welcoming the applicant divorce petition, claimed moral compensation alleging the applicant is the cause for the divorce as she failed to comply with her obligation to respect, support and assist.

⁶⁷ SNNPRS Family Code, Art.95 (1) (a). For that matter, unlike the Revised Family Code (RFC), the SNNPRS Family Code clearly stipulates the existence of a nexus between the gravity of the fault and amount of compensation. Wondowosen citing Mehari claims that Article 84 of the RFC requires the need to prove the occurrence of fault on the part of the spouses to claim compensation. He extends his claim and argues that though the RFC doesn't clearly classify causes of divorce into serious and non-serious, the nature and seriousness of the cause has an effect on the division of property following divorce. See, Wondwossen Demissie, Implementation problems of the Revised Family Code, *BERCHI*, Vol. 6, 2007, p. 43).

⁶⁸ Hawassa First Instance CT, Addis Ketema, Div., File No. 02505 (Decision of 08 June 2006 E.C).

The court required the litigants to adduce evidence to prove their respective allegations. The applicant proved her allegation to the satisfaction of the court so that the court concluded that the respondent was responsible for the breaking up of the marriage and caused damage to the applicant. The court further emphasized that the respondent pushed the applicant to seek the divorce. The court, stressing all these facts, awarded the applicant one thousand (1000) *birr* with equity. One can simply ask why the court awarded 1000 *birr* only. Is it equitable?

The marriage seemed to be under the absolute control of the respondent. However, the facts of the case revealed the violation of multiple obligations of the spouse which are indications of the gravity of the fault. It is possible to argue that the applicant proved the violation of the obligation to respect because she was insulted and nagged; obligation to support because the respondent failed to contribute to the household expenses; the obligation to joint management of family since he was reluctant to give the amount of his income and so on. These acts of the respondent seem to be intentional exclusion of the applicant from the joint management of the family. This state of affairs resulted in constant strife and repeated disagreement between the spouses. Each of these illustrations makes it clear that the acts of the respondent led the applicant to petition for divorce. However, the court failed to appreciate all these facts and circumstances and awarded a negligible amount of 1000 *birr* compensation as stated above.

In fact, the court awarded higher compensation than this in another case, which involved violation of only a single personal obligation of a spouse.⁶⁹ In *Weyzero Terefech Tamirat v. Ato Lukas Shanka*, the applicant stated that the behavior of the respondent has changed through time and he started defaming her reputation - he told people that she is HIV positive while in reality she is a heart patient.⁷⁰ The applicant stated that, by doing so, the respondent had belittled the applicant in the eyes of members of the society and involved in compromising her reputation. As a result, the applicant was

⁶⁹ Dilla First Instance ct , File No 09522 (Decision of 28 September 2006 E.C).

⁷⁰ The applicant also revealed to the court that they made blood examination pursuant to the order of this court, which proved both of them are HIV negative. With this fact, respondent, most of the time, complained as if she has been living with the virus, made false accusation on fidelity and regularly nagged her.

forced to apply for divorce with the respondent and requested the court to award moral compensation.

The respondent, on his part, denied the applicant's allegation and made the applicant responsible for the breakup of the marriage. After examining the arguments on both sides, the court also ascertained that the respondent defamed the applicant's good name as if she were HIV positive. Then, the court ruled in favor of the applicant and awarded 4000 *birr* moral compensation. Here in this case the court failed to explain clearly in its judgment which obligation(s) is/are violated to award such an amount of compensation, be it a single marital obligation or multiple obligations. The court gave such compensation without ascertaining the occurrence and severity of the fault and its corresponding compensation. Therefore, it can be said that the courts are clearly going against the spirit of the law in awarding monetary compensations.

In another instance, that is in the case of *Weyzero Girum Alem v. Dr. Sitotaw Ababa Gare*, the court found no fault on the part of the respondent but the moral compensation awarded to the respondent can be said unjustifiable.⁷¹ The applicant described in her statement of claim that she concluded valid marriage and had a decent relationship with the respondent for not less than ten years.⁷² The applicant also admitted that the respondent was very supportive of her in all situations all these years. However, she claimed that his behaviour has changed following his move to change his work place. The applicant also explained to the court that the respondent changed his place of work for the mere reason that she underwent surgical treatment in her breast and he became reluctant to live with her. So, the applicant requested the court both monetary compensation and a higher share of the common property alleging that the respondent is the cause of the breakup of the marriage.

⁷¹ Hawassa First Instance ct, file No 25632 (Decision of 21 August, 2004 E.C).

⁷² The applicant confessed that they were loyal, listened carefully and attentively to each other and stood up on her side in all situations: he exerted his maximum effort to help her recover from her illness while she was sick, and he treated her politely that showed his affection and faithfulness towards applicant until the petition is lodged to this court. The applicant further admitted that it was with the provision of a huge amount of money by the respondent that she easily got better medical treatment abroad (Thailand). Later, after a prolonged follow up treatment at Black Lion Hospital, the applicant fully recovered from cancer.

The respondent replied to all allegations made by the applicant in detail and raised his own counterclaims.⁷³ The court after examining both sides' oral litigation and the evidence produced proved that the applicant failed to comply with her obligation to respect, assist, and support and owe fidelity to the respondent. The court added that the applicant did this just to fulfill her wishes rather than to cause damage to the respondent. Finally, the court ruled out that the applicant is responsible for the breakup of the marriage and should pay 8000 *birr* as moral compensation. The ruling of the court contains conceptual confusion. On the one hand, it was proved that the applicant violated her obligation as a spouse such as the duty to respect, assist, support, and owe fidelity and others. On the other hand, the court verified that the applicant did this just to fulfill her own whim rather to cause damage to the respondent. Surprisingly, the court awarded monetary compensation for the respondent. How could this be? If the court holds such kind of position, it implies there is no fault committed by the applicant and damage sustained by the respondent so that the respondent in such a case would receive no redress. No award will be made to compensate the respondent who does not sustain damage in the eye of the court.

In the case of *Weyzero Nigist Denib v. Ato Hayimanot Tado*, the court simply awarded compensation without indicating the gravity of the fault.⁷⁴ The applicant stated that the respondent insulted and beat her regularly even while she was pregnant. In her application, the applicant required the court to award 10,000 *birr* moral compensation alleging that the respondent is the cause of divorce. The respondent was in agreement with the applicant divorce petition, however, alleged that the applicant was the cause of divorce and sought moral compensation. Both the applicant and the respondent sought moral compensation. The court continued to hear their case and got convinced that the respondent was responsible for the breakup of the marriage and awarded 5000 *birr* compensation for the applicant. Here, too,

⁷³ The respondent explained to the court that he fully carried out his personal obligations as a spouse. The respondent also made it clear that he changed his work place and lived separately with the knowledge and permission of the applicant. The respondent proved this to the court stating the fact that the applicant was communicated from the head office, with which he was working, and that she consented to the change of his work place and to live separately for three years. It is because of this he started working at Dese branch of the organization he has been working with.

⁷⁴ *Weyzero Nigist Denib v. Ato Hayimanot Tado*, Dilla First Instance ct, File No. 09497 (Decision of 12 February, 2006 E.C)

the court did not mention how it assessed the amount of compensation. It is necessary to establish the nexus between the kind of fault, its gravity and the amount of compensation though the applicant's case is clearly strong.

2.2 Compensation Claim Due to the Abuse of Power of Agency

Another instance where compensation claims are brought to court, under the family law, is concerning agency power. The issue of agency power appears in marriage and is associated with the administration of personal and common property.⁷⁵ As a rule, spouses have shared and equal powers over the administration of their communal property.⁷⁶ Additionally, the consent of the spouses is a requirement for gifts, sale or mortgage of immovable or commercial enterprises and for the alienation of any assets of the common property.⁷⁷ The consent of the spouses is a requirement for the collection of prices for the sale of common properties. While the spouses have joint and several powers of administration over the communal property, the administration of specific common properties can be assigned exclusively to one of the spouses.⁷⁸ Similarly, the other spouse subject to the authorization by the owner spouse may perform exclusively the administration of personal property.⁷⁹ The delegated spouse must act in the name of the principal spouse and within the scope of his/her power.⁸⁰ If a spouse who has agency power goes beyond this mandate, s/he will be responsible for any damage the other spouse sustains. Such spouse will be responsible in the following situations.

The first situation is when the agent exceeds the scope of agency power in the administration of common or personal property. Moreover, if one of the spouses who is mandated to administer the common property or personal property of the other spouse has performed acts which adversely affect such

⁷⁵ Zekarias Keneaa, Agency Provision of the Revised Federal Family Code of Ethiopia, (Unpublished, 2006) P. 4-5

⁷⁶ SNNPRS Family Code, Art. 75(1).

⁷⁷ *Id.*, Art. 77.

⁷⁸ *Id.*, Art. 76.

⁷⁹ *Id.*, Art. 70.

⁸⁰ Civil Code of the Empire of Ethiopia, Proclamation.No. 165/1960, *NEG. GAZ. ETA*, (Extraordinary issue) 19th Year, No. 3, Addis Ababa, 5th May, 1960, Art.2211 (2), [hereinafter, Civil Code].

spouse,⁸¹ or if failed to collect the fruits of the common or personal property or consumed them fraudulently, such spouse is responsible for any kind of damage the other spouse sustains.

The second scenario is when one of the spouses acts as an agent without having any prior authorization.⁸² Where the spouse who has performed such acts does not have the mandate or where such acts constitute acts of bad or fraudulent administration of the right of the spouse making the claim, the court may award damages to such spouse.⁸³ However, no claim for indemnity may be made due to acts which have been performed five years before the dissolution of the marriage.⁸⁴

There is a case which involves compensation claim arising from the bad administration of the common property but the court failed to give compensation.⁸⁵ The applicant in the case of *Weyzero Chalitu Huka v. Ato Brihanu Zewige* instituted the case seeking liquidation of properties following a divorce pronouncement. The applicant submitted a comprehensive list of common properties along with her application. The respondent, on his part, alleged that some of the items, which are listed in the application, are already in the possession of the applicant and she should bring them for partition. The respondent, on his counterclaim, alleged that the applicant mandated to administer *women beauty salon, which* was their common property. The respondent alleged that the applicant performed acts which adversely affect his interest as well as constituted acts of bad administration while she was mandated to administer the beauty salon. The respondent, explaining these facts, required the court to award fair compensation alleging that he sustained damage as a result of the applicant's bad administration.

The court observed that the applicant had never expressly challenged her bad administration of the women beauty salon. This amounts to an admission of her bad administration of the women beauty salon, which is a common

⁸¹ SNNPRS Family Code, Art. 98(1).

⁸² *Id.*,

⁸³ *Id.*, Art. 98(2).

⁸⁴ *Id.*, Art. 98.

⁸⁵ *Weyzero Chalitu Huka v. Ato Brihanu Zewige*, Hawassa First Instance Ct, Addis Ketema div., File No. 1468 (Decision of February, 2006 E.C.).

property of the spouses. This makes it clear that the respondent proved the applicant's performance that adversely affected his interest. In this scenario, it is true that the applicant is responsible for any kind of damage the respondent sustained. Keeping this in view, the court overlooked the legitimate right of the respondent to get compensation and simply decided that the *women beauty salon* is the common property of the spouses and hence subject to partition. The court only entertained the division of common property *per se* disregarding the relief sought by the respondent.

2.3 Compensation Claim Due to Unlawful Enrichment

The last part that deals with compensation under SNNPRS Family Code is related to unlawful enrichment.⁸⁶ The idea of unlawful enrichment arises from the circumstances where a person derives gain from the work or property of another without just cause.⁸⁷ Therefore, a person who gets such benefit without valid grounds is required to indemnify the person at whose expense s/he has enriched himself.⁸⁸ The beneficiary of the unlawful enrichment should compensate the victim who suffered loss unlawfully to the extent s/he has benefited from his/her work or property of another.⁸⁹ Similarly, in the case where a spouse proved that the personal property of the other spouse or their common property has been misused at the expense of the other spouse's personal property, such spouse has the right to claim compensation.⁹⁰

In one case, a personal property of a spouse has been misused at the expense of their common property though the court dismissed the claims of the applicant. The applicant instituted the suit to request liquidation of common properties following a divorce pronouncement.⁹¹ The applicant submitted a list of common properties which includes a house and five dwelling rooms along with rental income derived therefrom. The applicant claimed that both the houses and dwelling rooms are communal property. The applicant

⁸⁶ SNNPRS Family Code, Art. 99.

⁸⁷ Civil Code, Art. 2163.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ SNNPRS Family Code, Art. 98.

⁹¹ Weyzero Abayinesh Anjelo v. Ato Balikachew Abatineh, Hawassa First Instance ct, File No 01559/05 (Decision of 22 April, 2005 E.C.).

explained that the house was built before marriage but renewed during the marriage, so it should be considered as common property. The rooms were built during the marriage so that they are the common property of the spouses. On the other hand, the respondent argued that both the house and the rooms were made before the conclusion of the marriage with the applicant so that they are the personal property of the respondent.

The court, criticized the inconsistencies observed in the testimonies of the respondent's witnesses, and ruled that the house is the personal property of the respondent whereas the rooms are the common property of the spouses. Although there is an actual change in the house that is affirmed by the witnesses, the court overlooked the renewal of the house arguing that it is inconsequential. However, it can be argued that the personal property of the respondent was unlawfully used as the common property of the litigants. At least, the applicant has the right to get damages since the house of the respondent was unlawfully renovated by the common properties of the litigants.⁹²

In other words, a spouse who sustains damage due to the acts of the other spouse will be entitled to some kind of remedy proportional to the damage. Nevertheless, a spouse who is entitled to the damages, especially spouses who are awarded compensation in kind, should wait for the process of liquidation of property. Now, one may raise a question: is establishing of fault and determination of compensation come along with a pronouncement of divorce? Moreover, is it sound to determine the amount of compensation without having any knowledge about the common property? According to the procedure the courts follow, establishing fault and determination of compensation come along with a pronouncement of divorce. It can be argued that when determining the specific percent of the property that can be awarded to the victim spouse in the form of compensation in kind, the court should know the quantity of the common property, the value of the percentage they award converted to real property. This is because sometimes even a difference of one percent may mean a lot particularly when the total

⁹² The SNNPRS family code does not define what constitutes unlawful enrichment. In this case, nothing shall affect to cross-refer the relevant provisions of the civil code that deals with unlawful enrichment. Article 2162 of the civil code reads as follows: "Whosoever has derived a gain from the work or property of another without just cause shall indemnify the person at whose expense he has enriched himself to the extent to which he has benefited from his work or property."

value of the common property is high. Nevertheless, if the court determines compensation before liquidation, it cannot have accurate information about the existing common property and this may adversely affect the quality and fairness of the decision.

3. Liquidation of Pecuniary Relation between the Spouses

Divorce does not only dissolve the legal status of spouses but also dissolves financial issues that have existed between couples.⁹³ As the personal effects of marriage automatically cease when the court pronounces divorce, pecuniary effects of marriage remain an issue in court. This leads to liquidation of property which is one of the most important components in the divorce process. Liquidation of property focuses on issues concerning distribution of marital assets following the divorce. In this part, a detailed examination will be made regarding the rules that can be used to divide the property rights of divorcing spouses and how these rules are put in practice in courts of the study area.

Liquidation of property, in the first place, is made in accordance with the contract of marriage if any.⁹⁴ In the absence of a contract of marriage or if the contract of marriage is invalid, the court requires the spouses to mutually agree on the sharing of the jointly owned property. If the spouses agree on the distribution of their communal property, liquidation of property can be made in accordance with the agreement that could be entered into by the spouses.⁹⁵ If the spouses reach an agreement to divide all their property, they must provide a description of which spouse will receive which property. This also applies to the property that may have already been divided. If the spouses have already divided the property or it is only in one spouse's name, they must still tell the court which spouse will get which property and the value of that property. This is mainly done just to check the equitability of the property distribution between the spouses.⁹⁶ On the other hand, if they do not have a contract of marriage and/or fail to solve this issue amicably, it

⁹³ Wendy Mantle, *The Handbook of Separation and Divorce*, Routledge Publisher, London and New York, 1996, P. 26, [hereinafter, *The Handbook of Separation and Divorce*]

⁹⁴ SNNPRS Family Code, Art. 96(1).

⁹⁵ SNNPRS Family Code, Art. 96(1).

⁹⁶ *Id.*, Art. 101.

will be liquidated in accordance with pertinent provisions of the SNNPRS Family Code.⁹⁷ This means that the ownership by a husband or wife of a given property, be it a house, shares or money in a bank can be determined by the court.⁹⁸ Hence, the process of liquidation of the property has a number of phases ranging from identification of personal and common property spouses have to partition of common property.

3.1 Identifying the Common and Personal Property

The first task of liquidation of property starts with identifying the common and personal property of spouses. The mere fact of marriage should not affect the rights of property owners or the right to continue acquiring property for the use and benefit of the individual spouse. Spouses can have the right to continue acquiring property for the use and benefit of the individual spouse during a marriage in relation to property to which they can show sole legal or beneficial title. In fact, the law takes presumption that all property shall be deemed to be common property (otherwise called marital property which the spouses earned and acquired during marriage⁹⁹) even if it is registered in the name of one of the spouses.¹⁰⁰ Consequently, marital property (community property), as the case may be, is divisible while the personal property of the spouses, on the other hand, is retained by the spouse who has the title.¹⁰¹

Therefore, spouses are expected to list out their personal and common property along with their evidence that proves their ownership allegations. There might be disagreement in listing personal and common property of the spouses. One of the spouses may list out some of the property under the common property category and the other spouse may contest this. Perhaps, after several years of marriage, it could be even difficult to ascertain who owned what before marriage and the separate assets brought into the

⁹⁷ *Id.*, Art. 96(2).

⁹⁸ Wendy Mantle, *The Handbook of Separation and Divorce*, *supra* note 93, at. 26.

⁹⁹ Emily Duskow, *Nolo's Essential Guide to Divorce*, 1st edition., Consolidated Printers, U.S.A, P., 2006, p. 212 [hereinafter, Duskow, *Nolo's Essential Guide to Divorce*]

¹⁰⁰ SNNPRS Family Code, Art. 72(1).

¹⁰¹ John DeWitt Gregory, The ALI Property Division Principles: A Model of Radical Paternalism, in Robin Fretwell Wilson (eds.), *Reconceiving the Family: Critique on the American Law Institute's Principles of the Law of Family Dissolution*, Cambridge University Press, New York., 2006, p. 166

marriage from those acquired during the marriage.¹⁰² If there is disagreement in the process of discovering “who owns what”, there are two considerations that can be used to determine this: the time when and how spouses acquired the property.¹⁰³

As a result, all property, which a spouse acquired before or at the time of concluding the marriage, remains his or her own property.¹⁰⁴ At the same time, all property, which a spouse has acquired during marriage through gifts or inheritance, also remains his or her own property.¹⁰⁵ Moreover, those properties the spouses make personal property by their contract of agreements are also personal property of such spouses.¹⁰⁶ Furthermore, property acquired by onerous title during a marriage shall also remain personal property provided that the property is approved by the court to remain the personal property of such spouses.¹⁰⁷

On the other hand, all property that has been acquired by either spouse during the marriage, with the exceptions of gifts and inherited property, is marital property, regardless of in whose name the property is held.¹⁰⁸ In this sense, the communal property includes all goods gainfully acquired by the spouses either separately or together in the course of their marriage. These also include the fruits or income derived from the goods they own personally or jointly or acquired by personal effort.¹⁰⁹ So, only either the property which is acquired by the spouses after their marriage by succession or donation, or the property that the spouses possess on the day of their marriage is excluded from the communal property.¹¹⁰ This implies that to

¹⁰² Clarke-Stewart and Brentano, *Divorce: Causes and Consequences supra* note 9, at. 62.

¹⁰³ SNNPR state Family Code, Art.66 to 72

¹⁰⁴ *Id.*, Art. 66.

¹⁰⁵ *Id.* See also Doskow, *Nolo's Essential Guide to Divorce, supra* note 99, at. 214.

¹⁰⁶ SNNPR state Family Code, Art.51(1).

¹⁰⁷ *Id.* Art.67.

¹⁰⁸ Contrary reading of article 66 of the SNNPRS Family Code and article 72(1) of the SNNPRS Family Code

¹⁰⁹ *Id.*, Art. 71(1).

¹¹⁰ *Id.*, Art. 66.

determine which property belongs to which spouse, it is necessary to have regard to its origin or its nature.¹¹¹

Therefore, the courts handle "who owns what" matter upon proper examination of the evidence produced to prove the same. However, there are anomalies in the court's determination of certain property as personal or common property. The following cases reveal this.

Ato Zelalem Tariku v. Sosina Zewudu is a case where the applicant claimed a house and the income derived therefrom, to be their common property.¹¹² The respondent, on his part, challenged the allegation of the applicant and alleged the house is his personal property explaining that he got the house from his parents' through inheritance. Then, examining the testimony of the witnesses and the evidence produced, the court confirmed that the respondent got the house through succession and decided the house is a personal property of the respondent. The court also decided that the income derived from the house amounts to personal property of the respondent. The court stated that if the house is decided to be the personal property of the respondent, there is no reason why the income that is derived therefrom could become common property of the spouses. This is an apparent deviation from the law, which clearly makes all income derived from personal efforts of the spouses and from their common or personal property common property.¹¹³ The source of the income (be it from the personal or common property) is irrelevant so long as the respondent derives the income during the marriage.

On another case, entitled *Weyzero Brihanie Teklemariam v. Ato Sefe Horsa*¹¹⁴ the court made a wrong inference and decided personal property of

¹¹¹ In some states, for instance, USA, a whole body of law has developed to give courts guidance in determining whether assets are personal (separate) or (marital common property). "Courts have come up with three concepts: tracing, commingling, and transmutation. Tracing of assets consists of determining the source of the asset, that is whether the asset was acquired through inheritance, gift, or by the use of marital funds. Commingling takes place when separate funds are brought into the marriage but are mixed with other assets so as to be untraceable. Transmutation of an asset is the term used to describe the change in character of the property from separate to marital or from marital to separate, usually accomplished by use, gift, or contract"(See, Sanford N. Katz, Family Law in America, Oxford University Press, New York, , 2011, p. 88

¹¹² Dilla First Instance ct, File No 09036 (Decision of March, 2006 EC).

¹¹³ SNNPRS Family Code, Art. 66.

¹¹⁴ Dilla First Instance ct, file No 09901 (Decision of 29 June 2006 E.C).

the respondent as common property. The cause of the application was a house and vegetables from the courtyard of the house. The applicant claimed that both the house and vegetables should be decided as the common property of the spouses. On the other hand, the respondent, alleging the fact that he got the house and vegetable garden as well as the vegetables in it through donation, claimed them to be his personal property. To support his argument, the respondent produced the contract of donation that shows he got the house and the vegetables in the courtyard through the donation. The court made it clear on its judgment that the registration of the donation contract in the name of the respondent does not prove that he is the sole owner thereof. Hence, the court decided that the house and vegetables in the courtyard are common property of the applicant and the respondent.

The provision that governs donation demands that all property that spouses acquire during their marriage by donation shall remain their personal property.¹¹⁵ The other way of saying this is found in another provision too which says ‘unless otherwise stipulated in the act of donation, property donated conjointly to the spouses shall be common property’.¹¹⁶ By implication, if the donation is made expressly to one of the spouses, it amounts to a donation made for the exclusive advantage of such a spouse. However, the court argued that the registration of the donation contract in the name of the respondent *per se* does not prove that he is the sole owner thereof. However, it is an indication that the donation is made expressly for the respondent. Incidentally, one can even challenge the ruling of the court in the sense that what type of evidence is supposed to be produced to show that the donation is made for the advantage of one of the spouses. One may ask which law authorizes the court to dispute the written donation agreement and accept the testimony of the witnesses who attested inconsistently.

Surprisingly, in another case, the court decided the property of a third party as the common property of spouses for the mere reason that the respondent has a full (complete) power of agency over a property.¹¹⁷ The application was filed seeking partition of common properties following a divorce

¹¹⁵ SNNPRS Family Code, Art. 66.

¹¹⁶ *Id.* Art.71(3).

¹¹⁷ Weyzero Zewudinesh Bayu v. Ato Mesay Masiresha, Hawassa FIC Addis Ketema, div., file No. 02101 (Decision of 19 February 2006 EC)

pronouncement. The applicant listed several items as communal property and requested the court to divide the same. However, the respondent was particularly interested in the motor vehicle and 6-gram gold. The applicant claimed that the motor vehicle is common property whereas the respondent argued that the motor vehicle belongs to a third party. The respondent proved his agency power over the motor vehicle by producing a document that shows his power of attorney registered in the public notary.

With this proof of third party's ownership right over the motor vehicle, the court decided the motor vehicle is the common property of the spouse and the motor vehicle should be sold and the proceeds thereof should be apportioned between the litigants. The court stated three points for its decision. The first is the absence of a third party intervention claiming ownership title over the motor vehicle until the court has rendered decision. Second, the court doubts the agency power of the respondent—the court doubts the respondent's extensive power over the motor that ranges from the right to use to the right to dispose of. According to the court, such power, the respondent has acquired over the motor reveals that the respondent seems to have "ownership" right over the motor vehicle as the legitimate owner of a motor vehicle does have. The court added that the scope of the power of respondent implies that the respondent has the ownership right of the motor vehicle rather than administering the motor vehicle through his power of attorney. Accordingly, the court decided that the motor vehicle is the common property of the spouses. This decision requires readers of the case to raise the following questions. Is it illegal to give a full-fledged agency power to a third party? Is it enough to doubt one's power of agency by mere fact that the agent has broader delegation? It is true that the law takes presumption that all property acquired by the spouses during marriage should be communal property regardless of in whose name the property is registered. This presumption holds true in the case where either of the spouses is unable to show that the property is acquired prior to marriage, by a gift from a third party or belongs solely to one of them. However, in the case at hand, the respondent shows that the motor vehicle belongs to a third party and that is confirmed by the agency power registered by the competent authority. Why did the court argue on the reverse? How does the court make property that belongs to a third party common property of the spouses?

Concerning the six grams of gold jewelry, the court decided that it is the personal property of the applicant although it was bought during the marriage. The court was of the opinion that the jewelry was bought solely for the beautification of the applicant, and it was understood that it was the personal property of the applicant.

3.2 Retaking of Personal Property

The second step, in liquidation of property process, is retaking of the personal property.¹¹⁸ This means that each spouse who proves that s/he is the sole owner of a given property has the right to retake the same in kind. Spouses only have rights in relation to property to which they can show legal or beneficial title. This is the assumption that the mere fact of a marriage should not affect the rights of property owners or the right to continue acquiring property for the use and benefit of one of the spouses. This is to mean that each spouse has complete control over his/her personal property during and after marriage. The logical extension of this argument is if there is a proof as to the alienation of a personal property of one or both of the spouses and that the price thereof has fallen in the common property, s/he has the right to withdraw therefrom beforehand in proportion to his/ her contribution. Once the issue of identifying which one is personal and which is common property, retaking of personal property is not such a contentious issue. Once this stage is carried out, the next step is a partition of common property. This can be done after debts are discharged to the creditors if there are any.¹¹⁹

3.3 Settling Debt(s)

The third step, in liquidation of pecuniary relation between spouses, is to check the existence or otherwise of debt, and discharging the debts if there are any. Hence, the spouses must disclose all debts, regardless of who will be responsible for that. The court will determine which spouse is responsible to pay the debt(s) and other obligation(s) after considering any agreement (if there is any) which has been made between contracting parties. The issue is which debt is personal debt and which is common? Common debts are those

¹¹⁸ SNNPRS Family Code, Art. 97.

¹¹⁹ SNNPRS Family Code, Art. 100.

debts which are incurred by the spouses individually or jointly for the following purposes: debts incurred (a) to fulfill the livelihood of the spouses and their children¹²⁰ or (b) in order to fulfill an obligation of maintenance to which both the spouses or one of them is bound are common debts of the spouses.¹²¹ Besides, those debts which are acknowledged to be common debts of the spouses by the court at the request of either of the spouses or creditors are also described as common debts of spouses.¹²²

These debts are debts incurred in the interest of the household. Hence, the debts, which have been incurred, by both husband and wife for the common life shall be paid out of the common property.¹²³ In addition to that, if there is a debt incurred by either spouse or both spouses conjointly, and such debt is confirmed by judicial decision, or acknowledged by the spouses, such debt shall be paid before the partition of property.¹²⁴ The creditor may satisfy these debts from the jointly held property unless the spouse who owes the debt committed fraud, and the creditor was not acting in good faith. The personal property of a spouse is not available to creditors of the other spouse. However, if the jointly owned property is not enough to pay the debts, it must be recovered from the individually owned property. Even if the court orders one spouse to pay certain debts after divorce or legal separation, creditors may seek payment from the other party if the party ordered to make the payments does not have sufficient assets or files for bankruptcy.¹²⁵

To show the practices in this regard, I want to present the case between W/ro Chalitu Huka and Brihanu Zewige.¹²⁶ The applicant instituted the suit seeking liquidation of properties following a divorce pronouncement. The applicant submitted a comprehensive list of common properties along with her application.

¹²⁰ *Id.*, Art. 80 (a).

¹²¹ *Id.*, Art. 80 (b).

¹²² *Id.*, Art. 80 (c).

¹²³ *Id.*, Art. 79 (b).

¹²⁴ *Id.*, Art. 100.

¹²⁵ *Id.*, Art. 79 (2).

¹²⁶ Weyzero Chalitu Huka v. Brihanu Zewige, Hawassa First Instance Ct, Addis Ketema, div, File No 1468 (Decision of 12 February 2007 E.C).

The respondent further claimed that he, with the written authorization of the applicant, borrowed one hundred thousand Birr (100,000) from Wegagen Bank. Moreover, when the date was due, the spouses were not in a position to settle the debt so they again borrowed the same amount of money from an individual named Ato Asrat Bala, which was used to settle the debt they owed the bank. However, although they cleared their debt they had borrowed from the bank, the later debt was not paid until the case was filed before this court. Therefore, the respondent requested the court to decide the debt as a common debt of the spouses and such debt to be paid before the partition of the common properties.

The court observed that the applicant had never expressly denied the debt, and this amounts to her acknowledgement of the debt as a common debt. Hence, the court decided that the debt was a common debt of the spouses and had to be discharged from the common property before partition. The decision was in line with the law.

3.4. Partition of Common Property

Once courts have identified common properties of spouses by following steps stated above, the remaining part is the partition of such common property to the spouses. Therefore, property, which is itemized as common property of the spouses, must be divided between the two following the divorce pronouncement. In spite of this requirement, in one case, the court ruled out the division of property after all the above stages (in liquidation of pecuniary relation between spouses) have been completed.¹²⁷

In this particular case, the appellant, aggrieved by the decision of the lower court, brought the case to the High Court. The lower court, which initially entertained the case, identified the common and personal property of the appellant and respondent. Following the identification of the personal and common property of the parties, the lower court empowered the respondent to maintain and administer some of the common property. The lower court decided that the property is not subject to division of property since it is very useful for the upbringing of their children. The appellant lodged his appeal

¹²⁷ Ato Akililu Worku v. Weyzero Fantaye Ashenafi, Gedio zone High ct, File No. 09622 (Decision of 12 June E.C).

dissatisfied by the decision of the lower court. The appellate court reversed the decision of the lower court arguing that division of property should not be associated with the upbringing of their children. This decision of the appellate court seems sound and appropriate when we see it in line with the pertinent provision of the SNNPRS Family Code that deals with the partition of property.

3.4.1 *Partition in Kind*

It is true that spouses are equal during and at the time of divorce. The logical extension of this fact is spouses will be equally entitled to the fruit of their marriage at the time of divorce. Similarly, common property of the spouses should be divided equally between the spouses regardless of their contribution to acquire the common property.¹²⁸ The issue here is as to how this can be done. In this regard, the SNNPRS Family Code promotes an equal and in-kind division of matrimonial assets, i.e. each asset essentially be divided in kind and into two halves.¹²⁹ The SNNPRS Family Code gives courts an enormous discretion to allocate all the property of the spouses as the court sees fit.¹³⁰ This shows that the court may award the property to one of the spouses and a cash payment to the other spouse.¹³¹ In this case, utmost care shall be taken to give each spouse things which are most useful to him and the assets which are received by each spouse are equal in value.¹³² Where it is not possible to divide such common property equally, the inequality of shares in kind shall be set off by the payment of sums of money. Still one can question what most useful means. Is using the property before divorce a sufficient condition to say that the property is most useful to a spouse who has been using the property? Is it associated with the professional background of the spouse? How can we resolve such matters if

¹²⁸ Tilahun, Reflections on the Revised Family Code of 2000, *supra* note 26, at. 13.1

¹²⁹ SNNPRS Family Code, Arts.101 and 102(1).

¹³⁰ This can be reasonably inferred from Article 102 of the family code which reads as follows. "(1) As a rule, partition shall be made in kind in such a way that each spouse receives some property from the common property. (2) Where it is not possible to divide such Common Property equally under Sub-Article (1) of this Article, the inequality of shares in kind shall be set off by the payment of sums of money.(3) The utmost care shall be taken to give each spouse things which are most useful to him." See *Id.*, Art. 102.

¹³¹ SNNPRS Family Code, Arts. 102

¹³² Barbara Stark, *International Family Law: An Introduction*, Ashgate Publishing Company, USA, 2005, p. 117

both spouses prove that the property is most useful to both of them? Some of these issues will be explained in the coming subsection.

3.4.2 Selling the Common Property and Divide the Proceeds Equally

It should be noted that the court may divide the common property in kind if such division is practical as well as there is a mechanism to set off the inequalities. This part assumes that common property of the spouses does not always require division in kind. Certain property may not necessarily be divided into half practically owing to the nature of the property.¹³³ This is to mean if there is certain property which is difficult or impossible to be divided and if the spouses do not agree as to who shall have that property in his share, such property shall be sold and the proceeds thereof shall be divided between them.¹³⁴ If the spouses do not agree on the condition of sale, and, if one of them so requires, the sale shall be made by auction.¹³⁵ The important point is as to when a given property can be said to be difficult to be divided. Is that seen from the difficulty of giving normal uses upon division? Who should decide this – the spouses or the court? Would the mere disagreement of the spouses make the property difficult to divide? How can we differentiate *difficult to divide* and *impossible to divide* property? Can we apply these expressions interchangeably? This is the main point of contention among legal practitioners.

In *Weyzero Etenesh Kasa v. Ato Wolidie Fenta*'s case, the court tried to answer some of the above questions.¹³⁶ The appellant lodged his appeal to the appellate court pursuant to his dissatisfaction with the decision of the lower court concerning the division of the house that had been decided to be the common property of litigants. The lower court, in its decision, rendered that the market value of the house, which is a subject of the appeal, should be estimated again and the respondent can maintain the house if she is capable to pay half of the estimated value of the house. The appellant expressed that the respondent, driven by bad motives, pressed the expert who

¹³³ *Id.*

¹³⁴ *Id.*, Art. 103(1).

¹³⁵ *Id.*, Art. 103(2).

¹³⁶ Gedio zone High ct, File No. 09019 (Decision of 15September 2006 E.C).

was in charge of valuing the house to underestimate the value of the house. The appellant also argued that if the current estimated value of the house is believed to be proper, the appellant could pay half of the value of the house and maintain it for him. He further argued that if he is obliged to accept the current underestimated value of the house as the market value of the house and compelled to take half of the value of the house, it amounts to violating his right to equality after marriage. The respondent, on her part argued, that it is the appellant who pressed the house to be sold and price to be allocated between the two. The respondent added that it was proved by the lower court that the house does not give its normal uses if it is divided in kind and requested the appellate court to reaffirm the decision of the lower court.

The appellate court identified the contentions of the spouses. The appellate court explained that the family law provides three mechanisms of how to partition common property that can take place in a sequential order. The first one is to divide the property by the agreements of the parties. In the absence of agreements, the property should be partitioned in kind. If the property is impossible to divide in kind and the parties are not able to divide property through an agreement, it should be sold by auction.¹³⁷ After making such an extensive explanation, the appellate court believed that the house could not give its normal use if it is divided in kind. With this conclusion, the court decided that the house is impossible to be divided in kind. At the same time, the court made clear that the spouses failed to reach an agreement on who can take the house and set off inequality of shares in kind. Up to this assertion, the appellate court revised the decision of the lower court (that made the respondent maintain the house if she was capable to pay half of the estimated value of the house) and decided the house to be sold by auction and the proceeds thereof should be divided to the parties. This decision was in line with the stipulations of the law.

Conclusion

Marriage, an essential way to form a family, is established with a belief that the relationship will last a lifetime. Despite this fact, several marriages end

¹³⁷ In this regard, Wonwossen has said the following "the court should decide by itself, in consultation with experts if necessary, whether the property is divisible or not instead of leaving this question to the parties." See Wonwossen, *supra* note 67, at. 40.

in divorce. The legal process of divorce involves filing for divorce and making financial arrangements whether it is fault based or not. The RFC and SNNPS Family Code, which incorporate no-fault divorce, do not require a spouse who seeks divorce to prove the occurrence of a fault and to whom the fault is attributed. The family laws (both the RFC and the regional states) state that mentioning the reasons for divorce is optional and give the discretion for the spouses. Though mentioning the occurrence of fault is not a compulsory requirement, it will be considered in the case where courts entertain divorce application that involves compensation claim under the SNNP regional family code.

When courts entertain a divorce petition, which involves compensation claim, they must decide a type of fault that is involved in the case. This is because the kind of compensation is deeply intertwined with the kind of fault. However, there are cases which are decided by the court without such considerations. Numerous examples of this kind are to be found in different courts' judgment, for example, in the case where a victim spouse proves a violation of the duty to respect, support and assist which should be redressed by monetary compensation but the court awards compensation in kind. At the same time, there are dissimilarities on various levels of courts' decisions in determining the extent of damage the claimant sustains and its corresponding compensation. This variation ranges from awarding the smallest remedy to the extent of giving the maximum amount of compensation for similar damage. The absence of clear detailed guidelines on this issue that can be used by courts is the main reason for such variations.

Such variations also exist in the liquidation process. In one case, the court considered the income obtained during the marriage as personal property although the law considers such kind of income as common property. In another case, the court decided property which was given to one of the spouses by donation as the common property of the spouses. In another case, the respondent proved that the property belongs to a third party and such was confirmed by the agency power registered with the competent organ but the court decided such property was the common property of the spouses. Still in another case, the court pended the division of common property arguing that such property was very useful for the upbringing of their children. The

appellate court reversed the decision of the lower court arguing that division of property should not be associated with the upbringing of their children. The author of this article argues that the inconsistencies observed in the courts would be corrected through two mechanisms. The first one is through intensive on job training. The main aim of the training is to enhance the overall knowledge, attitude, and experiences of the judges so as to ensure the full implementation of the family code. The second one is enacting detailed regulations that give directions on how the courts should assess compensation following dissolution of marriage. This would help to ensure consistency and predictability in divorce, compensation assessment and liquidation of property decisions.