

THE RIGHT TO PROPERTY, IN THE EL TEJAR NEIGHBORHOOD, IBARRA CANTON, IN THE PERIOD MAY-SEPTEMBER 2022.

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ABSTRACT

The present research topic about land ownership by the tradition and sale procedure with respect to the costs of legal obligations, in the Romerillo Alto sector, El Tejar neighborhood, San Francisco Parish, Ibarra Canton, Imbabura Province in the period May-September 2022. The main objective was to diagnose the problem that was evidenced between the buyer and seller at the time of the sale based on the costs that are generated to be effective this procedure. In the development, the type of exploratory and descriptive research was used that allowed analyzing the viability of the project, consequently the qualitative research modality was executed accompanied by an interview guide addressed to a key informant. In the same way, the quantitative research modality was applied, which was launched through a questionnaire established for a group of 24 people who are part of the sample and therefore are residents of the neighborhood that has been taken into account to collect data. necessary and totally attached to reality. The results obtained were thoroughly analyzed through an interpretation prudently related to the research topic, therefore, it was concluded that there is a lack of knowledge on the part of the buyer when taking charge of the payment of the costs that arise from the legal obligations for the purpose of the property, therefore, what is determined by the regulations is not applied, for this reason it is proposed to develop a proposal according to the problem.

Keywords: sale, tradition, possession.

INTRODUCTION

The legal tenure of land by the procedure of tradition is a way of acquiring the domain of things, and consists of the delivery that the owner makes voluntarily to another person to be exercised in his own interest. Consequently the sale is a contract by virtue of which one of the parties is obliged to give a thing and the other to pay it in money, the one who contracts the obligation to give the thing is called seller, and to pay the money, buyer. The money that the buyer is forced to give for the thing sold is called price.

The obligation of the seller is to deliver the real estate to the buyer guaranteeing a peaceful possession free of expenses, as established by law through a contract of sale in which the two parties will agree to carry out the corresponding procedures, the buyer is obliged to pay the price of the thing sold at the time and place set by the contract. Article 1765 of the Civil Code of Ecuador establishes that: "The seller naturally touches the costs that were made to put the thing in a position to deliver it, and the buyer those that were made to transport it after delivery" (2005, p. 271)

However, in the place of investigation it should be emphasized that what the law dictates is not practiced, for this reason the buyer assumes the expenses with which the property is in force at the time of sale, being that the obligations of the seller are not fully assumed at the time of acquiring



the real estate. On the other hand, conflicts arise at the time of making the sale for the reason in which the buyer does not want to contract the obligations that legally correspond to the seller.

For this reason it is important to provide the necessary information according to what the law establishes about the taxes and costs of the sale that concern the seller, on the other hand there is a great contradiction in the law for what is mentioned in article 1745 of the Civil Code of Ecuador establishes that: "The fiscal or municipal taxes, the costs of the deed and any other solemnities of the sale, will be borne by the seller, unless otherwise agreed" (2005, p. 268), since if an agreement is presented between the parties the sale procedure will proceed to have the same legal validity.

METHODS

The research design that was used for the development of the conflict theme is documentary, since it allowed the collection and use of existing documents to analyze the data that support the theory of the problem studied. On the other hand, field research is defined as the collection of information, which allows us to enter our own place and have direct contact with the problem, that is, the data needed to do the research are taken in real uncontrolled environments. In the field research, it was possible to apply the data collection instruments to the key informants in the Romerillo Alto del Tejar sector, Barrio El Tejar, San Francisco Parish, Ibarra Canton, Imbabura Province, through an interview to obtain real data on the factors that generate disappointment at the time of legalizing land tenure by the procedure of tradition or sale. based on taxes or costs that the law requires to comply with. The modality of research that was carried out was qualitative because in the development of the subject of study it agreed to substantiate necessary information, since it made known the reality of its context by providing data that allow us to understand and approach the problem. Subsequently, the quantitative modality was used, which facilitated the analysis of the data on the variables in order to understand, describe, collect, constituent factors that explain their causes and effects.

Therefore, exploratory research was developed based on studies that seek an overview about a certain reality, this type of research has been carried out on a topic that has been little studied since it allowed access to general information about the appearance, characteristics and behavior. In the same way, descriptive research was used, which was responsible for describing situations and events in phenomena presented in people, groups, communities or any other subject to the corresponding analysis, since it provided information about what, how, when and where, related to the research problem. In the same way, empirical research of law or empirical legal research is aimed at seeking a rapprochement between the normative system and social reality. The synthetic analytical method refers to two inverse intellectual processes that operate in unity, analysis and synthesis. Then the inductive-deductive method is part of the research since it starts from particular premises, such as ignorance about the payment of taxes or costs related to land tenure about the legal procedure for the sale that is encouraged in the inhabitants of the neighborhood El Tejar.

The instruments that were handled in the research methods of the Empirical level are: The interview, which is a tool to collect data in an investigation that allowed the obtaining of information from the study subject through oral interaction with the researcher, which was carried out to 3 key informants with a questionnaire of 10 open questions and aims to collect real information in the Romerillo Alto del Tejar neighborhood, San Francisco Parish, Ibarra Canton, Province of Imbabura in the period May - September 2022. Consequently, the virtual survey was used, whose main objective is to obtain statistical information, in order to know the opinions of the population on land tenure.

As the sample is a subgroup of the population of interest on which data were collected in order to obtain precision and delimit the information that must be representative of the population, it is a non-probability sampling technique where not all subjects have the same probability of being part of the sample, applies to a key informant who has broad and clear knowledge about the reality presented by the Romerillo Alto del Tejar sector, Barrio El Tejar, having the position of president since 2020 belonging to the board of directors and inhabitant for 25 years ago, capable of providing deep information on different experiences of insecurity, At the same time in the survey a probability sampling was developed, in which an investigation is used where all the subjects of the population have the same probability of being part of the sample to obtain true results.

RESULTS

The results obtained through the questionnaire are:

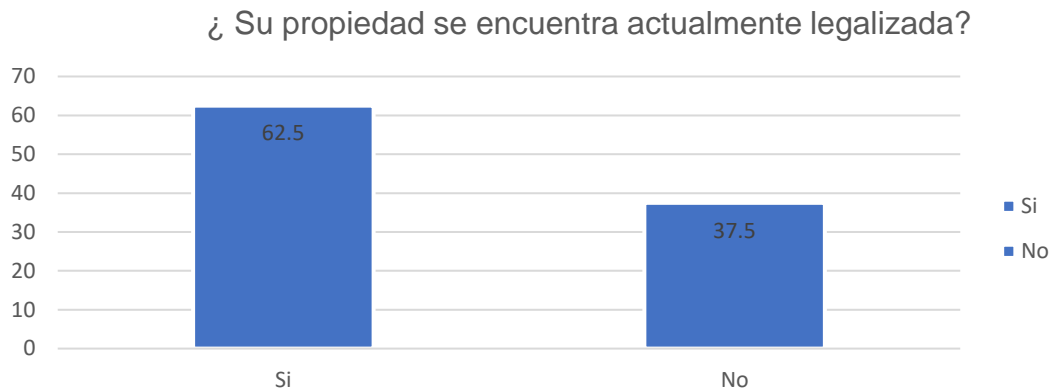


Figure 1. Currently legalized properties

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

Interpretation:

Respondents have expressed that unfortunately they live in a property that is not properly legalized, which could generate problems in the future.

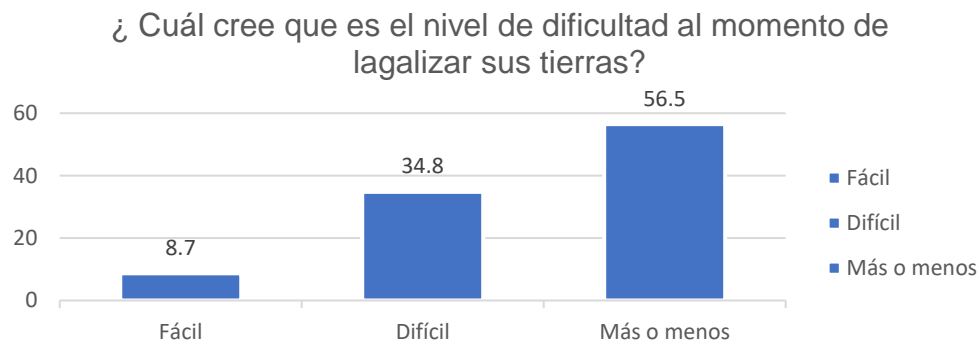


Figure 2. Level of difficulty in legalization

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

Interpretation:

From the effects obtained to the inhabitants of the Romerillo Alto Sector, Barrio el Tejar during the period May to September 2022, it is considered as a not so easy procedure since it requires many procedures and many people have ignorance when carrying out land tenure legally.

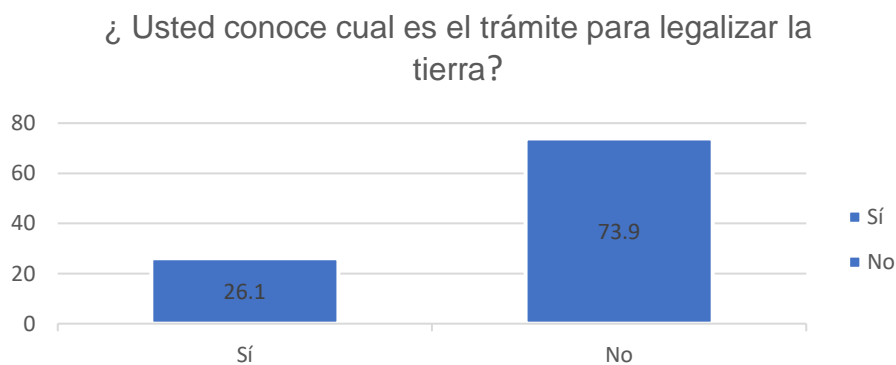


Figure 3. Procedure to legalize the land

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

Interpretation:

From the information obtained, it can be deduced that the inhabitants of the Barrio "El Tejar" do not have the necessary knowledge of how a procedure is carried out to legalize their lands, this happens in the period May 2022 to September 2022

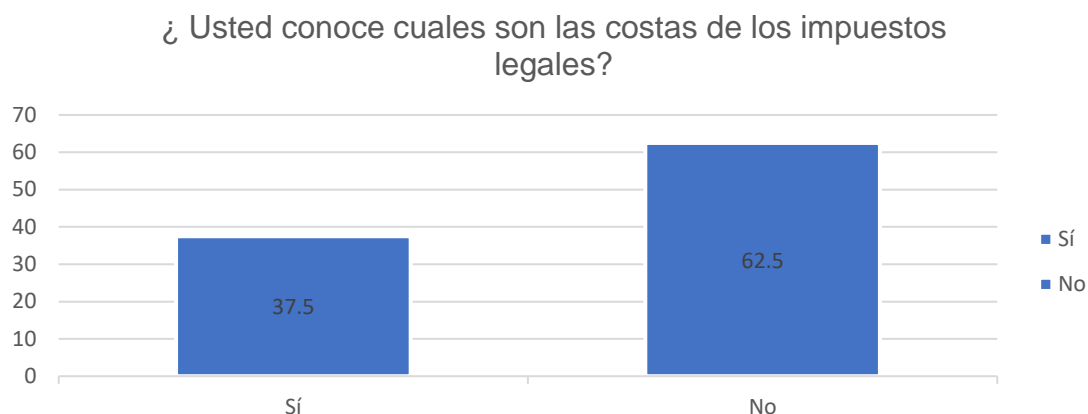


Figure 4. Knowledge of tax costs for legalization

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

Interpretation:

From the data obtained, it can be deduced that the Barrio "El Tejar" does not have the necessary knowledge to make a contract of sale and the inhabitants of this neighborhood have not done so because they do not know what steps should be followed this is given in the period May 2022 to September 2022.

Presentation and discussion of the results obtained through the interview guide

Table 1. Legalizing land

Category	Subcategory	Interview	Interpretation
Land tenure	Legalizing land	What do you think will be the procedure to legalize your land?	The key informant indicates that there is confusion when determining the due process to legalize the land, in addition to the interviewee it is indicated that there have been setbacks with the municipality of Ibarra which did not allow her to legalize her land as it should be. In this way it can be said that the municipal institutions have not provided the respective support and management on these land tenure controversies that have largely occurred due to the ignorance of the issue by the inhabitants.

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

Table 2. Importance of legalizing land

Category	Subcategory	Interview	Interpretation
Land tenure	Importance of legalizing land	How important do you think it is to legalize land? Why?	According to the response obtained through the interview, the key informant states that it is very important to legalize the land since there are many future problems that are very uncomfortable and complex, in addition to being relevant to own, use and dispose of certain thing that constitutes its object.

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

Table 3. Ignorance to legalize land

Category	Subcategory	Interview	Interpretation
Land tenure	Knowledge of the procedure to legalize the land	Do you think that the people who live in Barrio El Tejar do not know the procedure and procedure to legalize the land? Why?	The key informant in the development of the interview recognizes that there are many people living in Barrio El Tejar who do not know how to legalize the land, which is why they have their properties without public deed.

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

Table 4. Contract of sale

Category	Subcategory	Interview	Interpretation
Buying and selling and tradition	Knowledge about the subject	What does a sales contract mean to you?	Madam President said that the contract of sale is until you get the necessary means because sometimes you do not have disposition a contract of sale is made, that is, until you acquire a loan or gather the money in a period of time, until that makes a contract that is valid as a deed then makes the transfer and there it is terminated, Then he announced that a contract is made between two people to transfer a real estate in exchange for money to the person who wants to acquire it.

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

Table 5. *Land legality*

Category	Subcategory	Interview	Interpretation
Buying and selling and tradition	Land legality	How do you think the land that is currently owned by your neighbors was obtained?	The key informant was able to state that from the beginning there has been setback in obtaining land due to the issue of legalization, since there are currently properties without public deeds and others have been obtained by inheritance without having legalized the documents that certify their legitimacy. Therefore, it is evident that the inhabitants do not know how to legalize their properties.

Source: Rashell Criollo, Carolina Ormaza, Verónica Girón, 2022.

DISCUSSION

One way to obtain the domain of the thing is through the tradition that takes effect with the contract of sale, it can also be pointed out that it is essential to have and be in accordance with the payment of the obligations of law that are established, which allows the real estate to be legally sold without any prejudice. In article 1765 of the Civil Code of Ecuador it states that: "The seller naturally touches the costs that were made to put the thing in a position to deliver it, and the buyer those that were made to transport it after delivery" (2005, p. 121). Therefore, the one described in the law emphasizes that the seller has the obligation to pay the payment that derives from the sale of the thing in order to be delivered, and then that the buyer takes possession makes use and consequently acquires the responsibilities generated by the good.

However, in the Romerillo Alto sector, Barrio El Tejar according to the investigation it has been observed that there is a large number of properties for sale, which their owners make use of the contract of sale to make the sale of the real estate effective, which in most cases presents the problem in which the buyer ends up paying the obligations of law that legally correspond to the seller, Therefore the effect of this contradiction that is generated by the ignorance that the buyer has in relation to what is stipulated in the Law.

Finally, it can be deduced based on the results obtained with respect to the survey and interview that there is a great lack of knowledge as to what is established in the law on taxes and costs that legally must be fully applied, taking into account that the owners of these properties take advantage of the lack of information so that they benefit directly and fulfill their own interests without taking into account the Feasibility of the buyer at the time of the acquisition of the sale.

CONCLUSIONS

In short, it can be noted that through the diagnosis it was determined that the main cause why the inhabitants of the Romerillo Alto del Tejar sector, Barrio el Tejar do not carry out the corresponding procedure to legalize their properties, since they do not know what is the procedure they must follow, they have also stated that there are several taxes to pay and that this process is also quite slow.

It is concluded that the State and the entities in charge such as the municipality should place more emphasis on formal property rights when carrying out the procedures of adjudication of the land and be expressly recognized by the State that can be protected through legal means is fundamental for



an effective administration, these rights have value when their fulfillment can be demanded allowing to protect the recognized rights of a person against the actions of others.

Finally, it is recommended that what is established in the law are rules that allow territorial organization so that no right is affected, therefore, the knowledge of these laws must be transparent at the time of any purchase and sale process.

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