14. Property Law

		File No.	Year	Vol.	Pages
1	Frehiwot M. G. *v*. Mebrahtu G. & & Desta W.	81081	2013	14	191-194
2	Kirkos Sub-City Woreda 6 Admin. *v*. Alemtsehay W.	67691	2011	13	460-462
3	Taitu Kebede's Heirs *v*. Tirunesh *et al*	67011	2012	13	450-452
4	Genet S. *v*. Kirkos Sub-City Keb. 17/18 Admin. *et al*	64014	2012	13	437-440
5	Heria M. *v*. Shemsu Y.	60720	2011	11	289-292
6	Rahel Sinetsehay *v*. Mesfin Tamrat.	55081	2010	11	256-257
7	Abadit L. *v*. Zalambesa Town Admin. & Berhane Z.	48217	2010	11	249-251
8	Samuel T. *v*. Ayisha A. *et al*	43081	2010	10	232-234

Frehiwot M. G. -*v*.- Mebrahtu G. & Desta W.

Federal Supreme Court Cassation File No. 81081 (January 21, 2013)

Holding of the Court:

- A person who possesses another person's property using it for some time and incurs expenses necessary to prevent the loss or deterioration of the property, can request reimbursement from the owner only if it can be proved that the expense incurred is absolutely necessary and is done in good faith.
- Where this has not been done, judges may reduce or refuse to grant the reimbursement requested.

Articles 2168, 2169, 2171(1) and 2172(1) of the Civil Code

Cassation File No. 81081

Tir 13, 2005 E.C. (January 21, 2013)

Federal Supreme Court Cassation Division

Justices: Teshager G/Selassie, Almaw Wolie Ali Mohammed, Reta Tolosa, Mustefa Ahmed

Petitioner: Frehiwot M.

Respondent: Mebrahtu G/Medhin & Desta Woldegabir

The court has rendered the following judgment.

Judgment

The case started at the Federal First Instance Court. The current petitioner was the plaintiff in the lower court. The petitioner brought a suit against the two respondents alleging that when the latter went to the United States, the former took out a renovation and improvement permit to refurbish the house owned by the respondents in which she was living. She claimed to have spent a total of 265,815.92 (two hundred sixty five thousand eight hundred fifteen birr and ninety two cents), indicating the reasons for each expenditure. She pleaded for the ownership of the house to be transferred to her to offset the expense she has incurred and owed by the respondents.

The respondents argued that the petitioner's cost reimbursement request does not have legal ground and that the cost is exaggerated. After considering

and examining the arguments of both sides, the court found that the respondents had legal right over the house during the time of the renovation and that the petitioner did the renovation knowing that she had to give back the house to them. The Federal First Instance Court indicated that the necessity of having the renovation done was not supported by evidence and stated that it is inappropriate to pass a decision that requires the respondents to indemnify the total cost of the renovation. The Court cited Articles 2169, 2170 and 2174 of the Civil Code, and stated the need to apply the principle of equity, and passed a decree which required the respondents to pay 15,000 (fifteen thousand birr) to the petitioner.

Aggrieved by the decision, the petitioner appealed to the Federal High Court. The court upheld the decision of the lower court. This petition against the Federal High Court's decision is submitted to the Federal Supreme Court Cassation Division. The petitioner argued that the renovation has been proved and the amount spent is verified by two bodies, to be 42,338.80 (forty two thousand three hundred thirty eight birr and eighty cents) and 63,942.43 (sixty three thousand nine hundred forty two birr and forty three cents) respectively. One of these organs that estimated the renovation is a government organ, and it is wrong for the lower court to only award Birr 15,000 (fifteen thousand) based on equity without at least taking the lower cost estimate into consideration. Hence she requested for the decision of the lower court to be reversed and a decision to be made in her favour as per the claim she made at the First Instance Court.

The Federal First Instance Court did not accept the cost-reimbursement request of the petitioner because she incurred cost for renovation of the house knowing that the house was to be returned to the respondents and she did not produce evidence to prove the necessity of the renovation. The court found that the petitioner did not prove that the house would have sustained damage had the renovation not been done and did not show that she made it in good faith to keep the integrity of the house from being damaged. The Federal High Court confirmed the decision of the lower court.

Article 2169 of the Civil Code stipulates that "[t]he person who is required to make restitution shall be entitled to the reimbursement of the expenses he has incurred in preventing the loss or deterioration of the property, unless the expenses were not useful ...". Likewise, Article 2171(1) provides that "[w]here expenses incurred on the property have increased its value, the person required to make restitution shall be entitled to their reimbursement". If, however, it has been proved that this expense is incurred as a result of bad faith or where equity so requires, judges may reduce or refuse any indemnity, in accordance with Article 2172(1).

This provision outlines the criteria that are used to determine whether the expense incurred is in bad faith. The criteria include examining whether the person who claims indemnity knows or ought to have known that he is required to return the property at the time when the expense was incurred or the need to apply equity. In the light of these provisions, if an individual uses another person's property which is in his possession and during this time incurs expense to prevent the loss or deterioration of the property, he can request for the expense to be reimbursed by the owner of the property if the expense is necessary and is incurred in good faith. But, these Articles show that if the expense is proved to have been sustained as a result of bad faith, judges can reduce or totally refuse the reimbursement requested.

The Federal Supreme Court Cassation Division has found the issues identified by the lower courts to be acceptable as per the power granted to it under Article 80(3)(a) of the FDRE Constitution and Article 10 of Proclamation 25/1996 [Federal Courts Proclamation]. This Division has examined the issues based on the contents and spirit of Articles 2169, 2171 and 2172 of the Civil Code. Accordingly the expense incurred by the petitioner has not been found to warrant full reimbursement. The fact that the lower court decided to award Birr 15,000 (fifteen thousand) even without taking the lower expense estimates presented before it by the two institutions requested to do so, cannot be said to be beyond the power the court granted under Articles 2171 and 2172 of the Civil Code. Hence the Division has not found fundamental error of law in the decree of the lower courts. This court has thus rendered the following decree.

Decree

1. The decisions of the Federal First Instance Court and Federal High Court are affirmed, according to Article 348(1) of the Civil Procedure Code.
2. The decisions rendered do not have fundamental error of law because they have taken into consideration the petitioner's failure to prove good faith and the absolute necessity of the renovation as stipulated under Articles 2169, 2171 and 2172 of the Civil Code.

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Signature of five justices

Source: Federal Supreme Court Cassation Division Decisions Volume 14, pp. 191-194.
Abridged translation: Tewodros Dawit

Kirkos Sub-City Woreda 06 Administration -*v*.- Alemtsehay W.

Federal Supreme Court Cassation File No. 67691 (December 26, 2011)

Holding of the Court:

A house owner's act of giving notice to a lessee (tenant) requesting the termination of the contract falls under the law of contracts, and this cannot be regarded as causing interference in the possession of another person which entails the legal remedy of possessory action by the lessee.

Articles 1149(1) and 2966(1) of the Civil Code

Cassation File No. 67691

Tahsas16, 2004 E.C. (December 26, 2011)

Federal Supreme Court Cassation Division

Justices: Hagos Woldu, Almaw Wolie, Ali Mohammed, Nega Dufesa, Adane Negussie

Petitioner: Kirkos Sub-City Woreda 06 Administration

Respondent: Alemtsehay W.

We have examined the case and rendered the following Judgment.

Judgment

The case is presented to this Cassation Division because the petitioner submits that there is basic error of law in the decision of Addis Ababa Administration Appellate Court Cassation Bench regarding possessory action.

The case was first brought by the current respondent (plaintiff at the lower court) to Addis Ababa Administration First Instance Court who filed possessory action against the petitioner. The respondent lives in Kirkos Sub-City Kebele 10, House No. 059 which is publicly owned. The petitioner (defendant at the lower court) gave the respondent written notice requiring her to deliver the house stating that she owns another house in the name of her husband. She contended that the Kebele has not ascertained whether she is married, and demanded for the cessation of the interference thereby objecting the petitioner's act of giving her notice to deliver the house.

In its reply at the First Instance Court, the petitioner argued that the notice is appropriate because its relationship with Alemtsehay is contractual, and that she has a house in Keble 02 Nefas Silk Lafto Sub-city in the name of Kiflu I. with whom she lives in wedlock and who is the father of her two children. The First Instance Court rejected the possessory action of the current respondent for cessation of interference and decided that the notice is appropriate.

The respondent appealed to Addis Ababa Administration Appellate Court which confirmed the lower court's decision. She further filed a petition to the City's Cassation Bench which reversed the decisions of the lower courts on the ground that the petitioner has not proved whether she has concluded marriage with Kiflu I.

The issue examined by the Federal Supreme Court Cassation Division is whether the decision which held that the petitioner has caused interference is appropriate.

The fact that respondent lives in House No. 059 based on the contract she has concluded with the petitioner has not been contested. The propriety of the notice given to the respondent to terminate the contract and the issue whether the petitioner will be bound by the terms of the contract are determined on the basis of the contract and the relevant legal provisions.

As stipulated under Article 1149(1) of the Civil Code, one is said to have interfered in another person's possession only if the latter's possession is deprived or interfered. The notice given by the owner of the house requesting the lessee to leave the house shows intention to terminate a contract in accordance with Article 2966(1) of the Civil Code and this cannot be regarded as an act of interference in possession. The act rather falls under a contractual relationship between the lessor and the lessee.

The relief sought by the respondent in the pleading submitted to the Addis Ababa Administration First Instance Court did not contest the legality of the petitioner's measures to terminate the contract. Nor has the respondent requested for a relief requiring the petitioner to be bound by the contract. Instead, the respondent challenged the notice on the ground that it constitutes interference in possession.

The lower court has infringed Article 182(2) of the Civil Procedure Code in examining whether the contract can be terminated while it should have rendered a decision based on the issue whether there is interference of possession. The City's Cassation Division has also erred because it rendered a decision based on the issue whether the notice given was appropriate, while it should have confined its decision to the question whether there is interference in possession. Therefore, we have found that Addis Ababa courts have made

fundamental error of law in having rendered decisions regarding the validity of the notice, which relates to an issue outside the relief sought by the respondent.

Decree

1. The decisions of Addis Ababa First Instance Court, Addis Ababa Administration Appellate Court and the City's Cassation Division are reversed.
2. The petitioner has not interfered in the possession of the respondent.
3. This decision does not deny the respondent of her right to submit her claims to the relevant authority based on the contract.

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Signature of five justices

Source: Federal Supreme Court Cassation Division Decisions
Volume 13, pp. 460 – 462.
Abridged translation: EN Stebek

Taitu Kebede's Heirs v. Tirunesh *et al*

Federal Supreme Court Cassation File No. 67011 (March 20, 2012)

Holding of the Court:

The issuance of ownership certificates for immovable property should be in conformity with the proper legal procedures. Their revocation should also pursue legal procedures

Articles 1191-1198 of the Civil Code;
Articles 246-248 of the Civil Procedure Code

Cassation File No. 67011

Megabit 11, 2004 E.C. (March 20, 2012)

Federal Supreme Court Cassation Division

Justices: Hagos Woldu, Teshager G/Selassie, Almaw Wolie, Ali Mohammed, Nega Dufesa

Petitioners: Taitu Kebede's Heirs:
1. Hilina Fekadu
2. Mekdes Fekadu

Respondents: 1. Tirunesh Haile
2. Tewodros Mekonnen,
3. Arada Sub-City Kebele 03/09 Administration

The court has examined the case and rendered the following Judgment.

Judgment

The case involves title deeds of an immovable and it started at the Federal First Instance Court with the petitioners as plaintiffs. The statement of claim stated that the mother of the petitioners (Taitu Kebede) inherited House No. 615 located in Addis Ababa, Arada Sub-city, Keble 03/09, from their grandfather (Wondtegegn Belayneh). According to the petitioners, the house falls under the category of 'house allowed to be retained by the owner' (yetefekede bet) [which means a house that has not been nationalized under Proclamation No. 47/1975], and they requested for declaratory judgment about their status as heirs of their deceased mother Taitu Kebede.

Taitu, the deceased, had earlier submitted her claim of ownership to the Federal First Instance Court. Although her request was rejected by the lower

court, the Federal Supreme Court (File No. 11399) had on Yekatit 4, 1996 (February 12, 2004) decided that Taitu is entitled to own the house. She was given land holding certificate (yebota karta) No. 03/09/0673 on Meskerem 12, 1998 (September 22, 2005) and has been paying taxes for the house and the land.

The petition states that the third respondent (i.e. the Keble Administration) is still unlawfully obtaining the proceeds from rent from the first and second respondents. The latter are not willing to leave the house despite repeated notice. The petitioners requested that the first and the second respondents should either deliver the house to them or pay house rent.

In its reply to the petition, the third respondent argued that the house was nationalized based on Proclamation No. 47/1975 and stated that the petitioners have no right over the house.

The Federal First Instance Court decided that the claim for the house is based on the title deed that was given in 2005, and the request of the plaintiffs (current petitioners) is not acceptable because the landholding certificate was revoked on Megabit 12, 2002 E.C. (March 21, 2010). The appeal submitted to the Federal High Court has also been rejected.

The petition is submitted to the Federal Supreme Court Cassation Division which has examined the arguments of both parties along with the issues involved and the relevant laws. The Cassation Division has examined whether the lower courts have erred in solely basing their decisions on the revocation of the landholding certificate.

It can be noted from the lower court's decision that Taitu could on the one hand be considered as the owner of the house based on the landholding title certificate provided to her in 2005, while on the other hand the court rejected her claim over the house because the relevant Administration revoked the landholding title certificate on 21 March 2010 while the parties were under litigation.

According to Article 1195 of the Civil Code, the issuance of title certificate relating to an immovable by administrative authorities gives presumption of ownership in favour of the person who holds the title certificate. However, this presumption is rebuttable based on Article 1196 of the Civil Code by proof to the contrary where a title certificate was not issued ["in accordance with the law or without authority"]. Moreover, the relevant administrative office that fails to duly perform its responsibility in this regard incurs liability in accordance with Article 1198 of the Civil Code.

These provisions show that although the issuance of landholding title certificate entails presumption of ownership of an immovable, the presumption is not conclusive evidence. It is rather rebuttable by contrary evidence and can

be evaluated against such evidence. The procedures and rules that should be pursued in providing title deeds should apply *mutatis mutandis* to the procedures and rules of their revocation, and this can be noted from the objectives, content and spirit of Articles 1195 to 1198 of the Civil Code. Therefore, the dismissal of the case by the lower courts merely because the relevant administrative authority revoked the title certificate while the case is under litigation is not appropriate. The lower courts should have evaluated the evidence produced by both parties and they have thus erred in rejecting the claim of the petitioners solely based on the revocation of title certificate, and this is not consistent with the objectives and content of the Civil Code provisions indicated earlier.

The other argument that is raised by the petitioners is that the house which belonged to their grandparent Wondtegegn Belayneh is a house chosen and retained by the owner (yemircha bet) and was not nationalized. The third respondent on the contrary argues otherwise.

The lower courts have not framed this issue and have failed to examine the facts thereof. They should have pursued the binding interpretation in [Federal Supreme Court Cassation Division] File No. 24627 in which it was decided that the issue whether a house was nationalized or not can be decided upon by courts where the issue is presented to them.

We have therefore found the decisions of the lower courts unacceptable as they are rendered without framing and examining the issues that are relevant to the adjudication of the case in accordance with Articles 246 to 248 of the Civil Procedure Code.

The courts have arrived at decisions without framing and analyzing the pertinent issues and have thus made fundamental error of law. We have therefore rendered the following decree.

Decree

1. The decisions of the Federal First Instance Court and the High Court are reversed in accordance with Article 348(1) of the Civil Procedure Code.
2. The Federal First Instance Court is instructed to frame the relevant issues in accordance with the analysis made in this judgment and examine the evidence of both parties. The case is, in accordance with Article 343(1), remanded to the Federal First Instance Court for trial

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Signature of five justices

Source: Federal Supreme Court Cassation Division Decisions
Volume 13, pp. 450 – 452.
Abridged translation: EN Stebek

Genet Seyoum v. Kirkos Sub-City Kebele 17/18 Administration *et al*

Federal Supreme Court Cassation File No. 64014 (March 7, 2012)

Holding of the Court:

After judicial decision by a lower court based on title certificate, the revocation of title certificate by the administrative authority during an appellate litigation cannot lead to the immediate dismissal of the case. The party against whom the landholding certificate is revoked can contest the legality of the action, and courts can examine the validity and legality of the administrative act.

Articles 1195, 1195, 1206 of the Civil Code; Article 40 (1) (2) of the FDRE Constitution;
Article 345(1)(b) of the Civil Procedure Code

Cassation File No. 64014

Yekatit 28, 2004 E.C. (March 7, 2012)

Federal Supreme Court Cassation Division

Justices: Hagos Woldu, Almaw Wolie, Ali Mohammed, Nega Dufesa, Adane Negussie

Petitioner: Genet Seyoum

Respondents: 1. Kirkos Sub-City Kebele 17/18 Administration
2. Amelework Mulate
3. Bahre W/Giorgis

We have examined the case and rendered the following Judgement.

Judgment

The case involves the request of the petitioner (plaintiff at the lower court) for the return of her house based on her claim which was initially brought to the Federal First Instance Court.

Dr. Genet's statement of claim states that she was a political refugee outside Ethiopia while the Dergue was in power, that she has obtained title deed for her house located in Kirkos Sub-City in 1985 EC (1993) under No. 15/31238 from the Ministry of Urban Development and Houses. She contested

the first respondent's act of giving numbers 268, 269 and 270 to her house and renting it to three persons including the second and third respondents. Moreover, the statement of claim submits that the first respondent collects rent from the houses and is unwilling to deliver it to her. The first respondent had submitted a preliminary objection mainly by arguing that the house was nationalized in accordance with [Proclamation No. 47/1975] and requested for the dismissal of the case.

The Federal First Instance Court rejected the preliminary objections, examined the merits of the case, and decided that the petitioner is the owner of the house thereby ordering the respondents to deliver the house to the petitioner. The respondents appealed to the Federal High Court and the first respondent submitted additional evidence. The court reversed the lower court's decision stating that the title deed which was submitted by the petitioner as evidence for her claims has been revoked. The petitioner's appeal to the Federal Supreme Court was also rejected.

This petition is submitted against these decisions. The petitioner stated that the Federal High Court has not taken Article 345(1)(b) of the Civil Procedure Code into account when it admitted evidence and she requested that this error of law be corrected. The Cassation Division has examined the issue whether it was proper for the title deed to be revoked while the parties were under litigation. The petitioner argued that she has neither received a house in replacement nor has she received compensation which is the *modus operandi* in relation with houses that are nationalized.

When a plaintiff institutes a statement of claim in accordance with Article 222 of the Civil Procedure Code, the law, i.e. Article 223 of the same Code requires the submission of the list of witnesses and documentary evidence, and the original and authenticated copies of the documents. Article 234 imposes the same requirements for the respondent. With regard to documents, in particular, Article 137(3) of the Civil Procedure Code requires the litigating parties to annex them before the date of trial. It provides that no document shall be received unless it is annexed with the pleading. The exception to this rule is the court's recognition of serious and adequate cause envisaged under Article 256 of the Civil Procedure Code.

The other possibility is that the court may of its own motion or on the application of any of the parties admit additional evidence based on Articles 345 and 145(1) of the Civil Procedure Code.

As stated above, the Federal High Court rejected the petitioner's right over the house based on the additional evidence of the first respondent that it has admitted based on Article 345(1)(b) of the Civil Procedure Code. It stated that the admission of the new evidence is necessary for proper adjudication.

However, the decision does not indicate whether the petitioner was given the opportunity to contest the validity of the revocation of the title deed after the judgment of the First Instance Court.

A person who has a title certificate issued by an administrative authority is presumed to be the owner by virtue of Article 1195 of the Civil Code. Reading this provision in conjunction with Article 1196 indicates that the presumption is not conclusive. In other words, the issuance of title certificate cannot be regarded as conclusive evidence. The presumption embodied in Article 1195 is a rebuttable legal presumption under the circumstances stated in Article 1196.

On the other hand, if the revocation of the title certificate is contested, decision should be given after examining whether the revocation is lawful, and the mere claim that the title certificate is revoked does not render it valid unless the issue is argued upon. The security of property rights enshrined in Articles 40(1) and 40(2) of the Constitution will be violated if it is held that the person whose holding certificate is revoked by an administrative organ does not have judicial recourse.

Petitory action by an owner based on Article 1206 of the Civil Code should not be set aside without adequate scrutiny and the plaintiff should be allowed to submit arguments. The Civil Procedure Code entrusts courts with the responsibility of finding out truth by pursuing appropriate procedures in the admission of evidence. This shows that judicial decisions should be given through due process, in the absence of which the judgement does not become tenable at law.

In the case under consideration, the admission of additional evidence on the revocation of the petitioner's title certificate on Yekatit 16, 2001 E.C. (February 23, 2009) does not in principle violate Article 345(1)(b) of the Civil Procedure Code. However, concluding that the petitioner does not own the house without examining the legality of the revocation and the evidence regarding the ownership of the house is found to have error of law because it has not pursued the Civil Procedure Code provisions as shown earlier and has not considered the content and spirit of Articles 1195 and 1196 of the Civil Code.

The decisions of the lower courts should thus be reversed, and the legality of the revocation of the petitioner's title deed and the issue regarding who owns the house should be examined, thereby rendering it necessary to remand the case to the lower court. Accordingly the following decree is rendered.

Decree

1. The order of the Federal Supreme Court (File No. 58891, dated October 22, 2010 and the decision of the Federal High Court (File No. 78798), dated March 31, 2010 are reversed based on Article 348(1) of the Civil Procedure Code.
2. The case is remanded to the Federal First Instance Court in accordance with Article 343(1) of the Civil Procedure Code so that it can examine the petitioner's title deed, the legality of the first respondent's act of revocation of title deed on 16 Yekatit 2001 E.C. (February 23, 2009), and the issue of who owns the house by allowing the parties to present their respective evidence and arguments.

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Signature of five justices

Source: Federal Supreme Court Cassation Division Decisions
Volume 13, pp. 437 – 440.
Abridged translation: EN Stebek

Heria M. -*v*.- Shemsu Y.

Federal Supreme Court Cassation File No. 60720 (May 23, 2011)

Holding of the Court:

- Sale of immovable property without valid title of ownership shall not be protected irrespective of the buyer's good faith and even if the sale is made at the notary by using fraudulent documents presented by the seller.
- Buyer of an immovable from a person whom he knows is not authorized to sell it cannot be considered as having good faith, and has no ground for legal protection.

Articles 1195, 1196, 2882-2884 of the Civil Code

Cassation File No. 60720

Ginbot 15, 2003 E.C. (May 23, 2011)

Federal Supreme Court Cassation Division

Justices: Hagos Woldu, Almaw Wolie, Ali Mohammed, Nega Dufesa, Adane Negussie

Petitioner: Heria Mohammed Girgibo

Respondent: Shemsu Y.

Judgment

The case involves sale of a house by misrepresenting identity of names and a forged document. The current petitioner obtained judgment from the Federal First Instance Court after which the current respondent filed an opposition to the judgement [before its execution] in accordance with Article 358 of the Civil Procedure Code.

The respondent has obtained landholding certificate and is in possession of the house based on sale of House No. 1413 in Woreda 25, Keble 04. The sale was made at the notary on Hamle 25, 1998 EC (August 1, 2006). The respondent knew that the petitioner is the judgment creditor regarding the house only after he saw the notice posted at the gate on Ginbot 3, 2001 EC (May 11, 2009). He requested that the court decision issued on Miazia 8, 1995 EC (April 16, 2003) be revoked and his ownership be confirmed.

In her reply to the respondent's opposition to judgment, the current petitioner stated that the respondent cannot oppose the judgment noting that her ownership is established by court of law. The petitioner stated that the house was sold to Mudi Y. by Heria M. I. [who used her namesake]. The petitioner argued that Mudi Y. (who also had obtained landholding certificate) should have given the house to the petitioner according to court decisions rather than selling it to the respondent. She contended that valid title cannot emerge from Heria M. I.'s sale who does not have ownership rights, and then from Mudi Y. who had no valid title.

The lower court decided that the respondent bought the house from Mudi Y. and a landholding certificate is issued in his name. It set aside its former decision that had confirmed the petitioner's ownership by citing Article 360(2) of the Civil Procedure Code and stating that unless the administrative authority which issued landholding certificate cancels the certificate's validity, the respondent should be considered owner of the house. The Federal High court did not accept the petitioner's appeal and confirmed the lower court's decision after examining the arguments of both parties.

In a petition submitted to the Federal Supreme Court Cassation Division on Meskerem 20, 2003 (September 30, 2010), the petitioner stated that the lower courts have erred in deciding in favour of the respondent merely because he produced a title certificate which is obtained through a chain of two sales without valid titles. She indicated that the house belongs to her and the respondent has bought the house from a person who does not have valid title, and that the courts have erred in failing to consider Articles 1195 and 1196 of the Civil Code while rendering decisions.

The Cassation Division has examined the arguments of both parties and observed the following:

On Miazia 8, 1987 EC (April 16, 1995), the petitioner filed a suit against (1) Mudi Y., (2) Lieutenant Sisay M., (3) Siga Meda Terara Residential Houses Cooperative, (4) Kemal H., and (5) Heria M. I. The Federal First Instance Court examined the evidence from both sides and decided that Mudi took possession of the house from a person [Heria M. I.] who does not have valid title and that the sale was conducted by using forged document. It found that the contract of sale between Heria M. I. and Mudi Y. is void and ordered Mudi Y. to return the house to the petitioner [former plaintiff].

The respondents appealed to the Federal High Court individually. Mudi Y.'s appeal (File No. 20831) was rejected on Hamle 2, 1995 EC (July 9, 2003). The appeal submitted by Kemal and Heria M. I. was accepted by the Federal High Court (File No. 21687) on Megabit 5, 1999 EC (March 14, 2007), but was later reversed upon the petitioner's appeal to the Federal

Supreme Court which referred the case to the Federal High Court in File No. 29978 (on Sene 11, 2000 EC, i.e. June 18, 2008). On Megabit 23, 2001 EC (April 1, 2009) the Federal High Court confirmed the decision that was originally rendered by the Federal First Instance Court. The petition of Kemal H. and Heria M. I. submitted to the Federal Supreme Court Cassation Division was rejected on Gibot 10, 2001 EC (May 18, 2009), File No. 45100.

The respondent's argument is that he has in good faith bought the house based on a contract of sale made at the notary [Documents Authentication and Registration Office] and that he has obtained landholding certificate. He does not claim to have built the house, nor does he contest the ownership that the petitioner has over the house.

It is proved that Mudi Y. bought the house from Kemal H. and Heria M. I. who used forged documents. Mudi Y. obtained a landholding certificate in his name and sold the house to the respondent based on a contract concluded at the notary.

Article 1195 of the Civil Code stipulates that a person who receives title deed from the relevant authority shall be presumed as the owner of immovable property. When such a person sells the property to another person, the sale cannot be regarded as illegal. However, the legal presumption embodied in Article 1195 of the Civil Code is not conclusive evidence because it can be rebutted by any other evidence that can prove the existence of the conditions stated under Article 1196. Even if a person who produces landholding certificate from the relevant authority is presumed to be the owner of a house, Article 1196 clearly shows that the presumption can be refuted if it can be proved that the title certificate was given outside the rules, procedures and authority thereof.

Mudi took possession of the house and passed it over to the current respondent after having bought it from persons without valid title who used forged documents as indicated by court decisions at various levels. There is thus no legal ground to consider the sale made by Mudi to the respondent as valid. The fact that the respondent has concluded the contract at the notary cannot legalize a contract which is initially unlawful. A contract relating to an immovable shall not be granted legal protection merely on the ground of good faith.

Where a person without valid title sells property with warranty to the buyer, the rightful owner has recourse against the seller as embodied in Articles 2282-2284 of the Civil Code. Mudi was aware that he does not have a valid title over the house since Hamle 2, 1995 EC (July 9, 2003), and it was with this awareness that he sold the house on Hamle 25, 1998 EC (August 1, 2006). He has not also given warranty to the buyer. There is no legal ground

to accept the validity of the sale made to the respondent by the seller who sold the property after having known the court decisions against various persons who had court litigation with the petitioner. In sum, the mere fact that the sale of the house under dispute is made at the notary and that the respondent is now in possession of landholding certificate shall not render the contract valid as long as the seller did not have valid title at the time of sale. We have thus found that the [Federal High Court's] decision which rejected the petitioner's claims involves error in law. We have accordingly rendered the following decree:

Decree

1. The decision rendered by the Federal First Instance Court on Tikimt 10, 2002 E.C., i.e. October 20, 2010 (File No. 04917) and confirmed by the Federal High Court on Sene 29, 2002, i.e. July 6, 2010 (File No. 88537) are reversed in accordance with Article 348(1) of the Civil Procedure Code.
2. The respondent does not have legal right over the house in dispute. The petitioner is the owner of the house.

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Signature of five justices

Source: Federal Supreme Court Cassation Division Decisions
Volume 11, pp. 289 – 292.
Abridged translation: EN Stebek

Rahel S. -*v*.- Mesfin T.

Federal Supreme Court Cassation File No. 55081 (October 28, 2010)

Holding of the Court:

The act of a judgment debtor who transfers property to his child who cannot be presumed to have earned it through labour, creativity, enterprise or capital is not legally tenable. Such fraudulent alienation of property is meant to evade execution of judgment and its validity can be challenged.

Articles [1995 and 1996(1)] of the Civil Code;
Article 40(2) of the FDRE Constitution.

Cassation File No. 55081

Tikimt 18, 2003 E.C. (October 28, 2010)

Federal Supreme Court Cassation Division

Justices: Tegene Getaneh, Hagos Woldu, Birhanu Amenew, Almaw Wolie, Ali Mohammed

Petitioner: Rahel S.

Respondent: Mesfin T.

We have examined the case and rendered the following judgment.

Judgment

The petitioner claimed that there is fundamental error of law that should be corrected in the order rendered by the Federal First Instance Court and the Federal High Court. The petitioner, a judgment creditor, has requested that the respondent's house be sold to settle the debt he owes her. The house is transferred to and registered in his daughter's name. The petitioner requested that the judgment debtor has done this transfer of title to evade execution of the judgement on the property and demanded that the house be sold to settle the debt.

The First Instance Court's order stated that the execution of judgement is requested on a house not registered under the debtor's name but under the name of Maramawit Mesfin. Moreover, the Federal High Court dismissed the petitioner's appeal by invoking Article 337 of the Civil Procedure Code.

Rahel S. brought her petition to this Cassation Division requesting that the judgment debtor has transferred his property to his daughter who is a minor, and she sought the error of law to be examined and corrected. The respondent argued that the house belongs to Maramawit Mesfin, and stated that it can be verified by a contract and various receipts.

The Order of the lower court shows that the ownership title of the house was transferred to the respondent's daughter when there were efforts to recover the debt. The girl in whose name the house is registered is a child.

According to Article 40(2) of the Constitution, a person becomes an owner of property produced by his labour, creativity, enterprise or capital. The mere fact that the house that was registered under the name of the respondent and his wife Alem Z. has now been registered under their daughter's name does not lead to the conclusion that their daughter becomes an owner. This rather shows the respondent's attempt to evade payment of debt by transferring the house to his daughter.

Ethiopian law does not allow a judgement debtor to evade the execution of his debt by transferring property to his child who is a minor and then act in the capacity of a guardian and a tutor to administer, sell and exchange the same property. It can be observed from Articles [1995 and 1996] of the Civil Code that a creditor can challenge the validity of acts to execute debts where the debtor, in fraud of the creditor's rights, alienates property. We have thus found fundamental error of law in the decisions which should not have dismissed the petitioner's request that the transfer of the house to the respondent's minor child, Maramawit is fraudulent as it has the objective of evading the execution of debt.

Decree

1. The orders of the Federal First Instance Court and the Federal High Court are reversed.
2. The case is referred to the Federal First Instance Court in accordance with Article 343(1) of the Civil Procedure Code so that it shall execute the respondent's debt through auction sale of the house that was previously registered under the names of the respondent and his wife, and which is currently registered under the name of Maramawit.

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Signature of five justices

Source: Federal Supreme Court Cassation Division Decisions
Volume 11, pp. 256 – 257.
Abridged translation: EN Stebek

Abadit L. v. Zalambesa Town Administration & Berhane Z.

Federal Supreme Court Cassation File No. 48217 (October 13, 2010)

Holding of the Court:

A statement of claim about improper revocation of landholding and ownership of a house can be adjudicated in courts. It shall not be considered as a purely administrative function outside the jurisdiction of courts.

Articles 37 and 79(b) of the FDRE Constitution;

Article 4 of the Civil Procedure Code

Cassation File No. 48217

Tikimt 3, 2003 E.C. (October 13, 2010)

Federal Supreme Court Cassation Division

Justices: Tegene Getaneh, Hagos Woldu, Birhanu Amenew, Almaw Wolie, Ali Mohammed

Petitioner: Abadit Lemlem

Respondents: 1. Zalanbesa Town Administration;
2. Berhane Zerefe

We have examined the case and rendered the following judgment.

Judgment

The case started with the current petitioner as plaintiff regarding her claim over a house. She was allocated land at Zalanbesa Town and she built a house with the money she received from the Zalanbesa Town Administration and her own money. Her statement of claim shows that the land and the house were registered in her name, and she contested the first respondent's act of taking her house and giving it to the second respondent.

The first respondent submitted preliminary objections and a statement of defence on the merits of the case. The preliminary objections stated that the petitioner was given the land and monetary support to build the house because her house was destroyed due to the [Ethio-Eritrean] war. This was based on the government's administrative decision so that persons under such

circumstances could be given land and monetary support for building their houses. The preliminary objections noted that the termination of her entitlement was an administrative decision which should not be adjudicated by a court. With regard to the merits of the case, the first respondent stated that the petitioner's request to the Administration was not accepted because it discovered reasons which do not entitle the petitioner to get land and monetary support. The second respondent also replied that he has received the property based on the decision of a public administrative organ and he asked for the dismissal of the petitioner's request.

The court that initially adjudicated the case decided that the house should be returned to the petitioner. The second respondent appealed to the Tigray Supreme Court which reversed the lower court's decision by stating that the case should be examined and decided administratively and that it does not fall under the jurisdiction of courts. Abadit's petition to Tigray Supreme Court Cassation Division was also rejected. A petition is brought to the Federal Supreme Court Cassation Division against this decision.

Due to the destruction of their houses as a result of the war, 969 (nine hundred and sixty nine) dwellers were living in plastic tents. The rehabilitation scheme designed by a committee of various organs established by the government devised criteria regarding persons who deserve assistance. It was decided that each person will be given land and Birr 25,000 (twenty five thousand) in three instalments. It was confirmed that the petitioner was displaced due to the war, was living in plastic tent, and was given landholding certificate. She has built a house by using the Birr 7,500 (seven thousand five hundred) which she received as the first instalment of monetary support, plus her own Birr 7,000 (seven thousand). The house was nearly complete except roofing.

In principle, adjudication at the federal or regional levels is the power of courts as enshrined in Article 79(b) of the Constitution of the Federal Democratic Republic of Ethiopia. Yet, Article 37 of the Constitution shows that the power of courts in this regard is not absolute. The joint reading of Articles 79(b) and 37 of the Constitution shows that courts have jurisdiction only where a case involves justiciable matter.

According to Article 37(1) of the Constitution, "Everyone has the right to bring a justiciable matter" to courts, and "to obtain a decision or judgement by court of law or any other competent body with judicial power". The phrase "or any other competent body with judicial power" in Article 37(1) of the Constitution and the stipulation in Article 4 of he Civil Procedure Code show that any justiciable matter can be adjudicated by courts unless it is expressly stated as the function of another organ.

The petitioner's claim is that her house and landholding is unduly taken away from her and she is claiming that her property right be respected. There is no law which forbids such cases to be adjudicated by courts. No organ is expressly entrusted with the task of adjudicating the case. Therefore it is not a case that should be administratively decided; it is rather a justiciable matter which should be decided by court. We have found fundamental error of law in the reversal of the lower court's decision by the appellate court which considered the case as an administrative matter. We have thus decided the following.

Decree

1. The decision of Tigray Region Supreme Court Appellate Division (File No, 23281 dated Ginbot 14 2000 E.C.: May 22, 2008) that was confirmed by a majority opinion of the Tigray Supreme Court Cassation Division File No. 25845 dated Tir 28, 2001 E.C. (February 5, 2009) are reversed in accordance with Article 348(1) of the Civil Procedure Code.
2. The petitioner's request regarding the improper takeover of her house and landholding is an issue that should be decided by courts and cannot be settled by administrative decision.
3. As the case can be adjudicated in court, it is remanded to Tigray Region Supreme Court Appellate Division in accordance with Article 343(1) of the Civil Procedure Code so that it can render its decision by examining whether the Zone Court's decision on the merits of the case had related the evidence produced by both parties with the relevant laws.

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Signature of five justices

Source: Federal Supreme Court Cassation Division Decisions
Volume 11, pp. 249 – 251.
Abridged translation: EN Stebek

Samuel T. - *v.* - Ayisha A. *et al*

Federal Supreme Court Cassation File No. 43081 (May 14, 2010)

Holding of the Court:

Possessory action by a person not residing in the house or by a person who is not in actual control thereof is inadmissible.

Articles 1206 and 1149 of the Civil Code

Cassation File No. 43081

Ginbot 6, 2002 E.C. (May 14, 2010)

Federal Supreme Court Cassation Division

Justices: Hirut Mellsse, Teshager G/Selassie, Taffesse Yirga, Almaw Wolie, Ali Mohammed

Petitioner: Samuel Tonoro

Respondents: Ayisha Argessa *et al*

The court has rendered the following judgment.

Judgment

The case was commenced by a suit respondents filed with the lower court requesting an injunction against petitioner who allegedly obstructed them from renovating the house which had been under their possession since 1957 E.C. In his reply to the suit, the petitioner argued that the house belongs not to the respondents but to the parents of his spouse who, upon going abroad, authorized his spouse to administer the house as agent; that the house was first rented to the spouse of first respondent whom petitioner allowed to live in the house for free until he died in 1995 E.C. Petitioner further argued that the house has never been in the possession of respondents and he has not caused any nuisance.

The Woreda Court stated the fact that the first respondent's actual control over the house has been established by the testimony of witnesses and ruled that the petitioner shall cease the interference. The petitioner appealed against the decision but the appeal was rejected by the Kembata and Tembaro Zone High Court; likewise, his petition to the Cassation Division of the SNNPR Supreme Court was rejected.

In his cassation petition submitted to the Federal Supreme Court Cassation Division, the petitioner argued that the legal action brought by the first respondent more than 15 years after she had left the area should have been barred. Petitioner also reiterated that sufficient documentary evidence has been adduced to prove the fact that the house belonged to the parents of his spouse who authorized her to administer the house when they travelled abroad. He pointed out that the respondents had never lived in the house and requested for reversal of the decisions of the lower courts. The cassation petition was accepted with a view to determine whether the subject matter of the dispute should be handled by the competent court or, should this be overruled, to determine the propriety of the ruling that petitioner has interfered with the possession of respondents.

In the suit they brought against the petitioner in the lower court, respondents alleged that petitioner interfered with their possession by obstructing the renovation of a house. They also stated that they have been in actual possession since 1957 E.C. Petitioner, on his part, argued that the house belongs to the parents of his spouse; that respondents lived in another place, and the house has never been under their possession.

It is evident from Article 1149 of the Civil Code that a person whose possession is interfered with or who is deprived of his possession may require the cessation of the interference or restoration of the thing. Accordingly, the respondents who have brought action alleging interference by the petitioner have to prove that the property interfered with is under their possession and their possession has actually been interfered with.

Possession, as defined under Article 1140 of the Civil Code, consists in the actual control which a person exercises over a thing; hence, respondents bear the burden of proving the fact that they have been in actual control of the disputed house. In the course of the proceeding, we have come to realize that the spouse of first respondent had been living in the house until 1995 E.C., and the house was not in the possession of the respondents thereafter as it was rather held by another person (holder). Respondents have also admitted this fact in their response to the cassation petition; the same fact has been affirmed by the witnesses who testified before the appellate court that first respondent, who resided in Alaba city, occasionally came to check out the house. All this shows that respondents neither lived in the house nor exercised actual control over it; hence, they had no right to bring legal action under Article 1149.

We have thus found out that the issue in the dispute pertains to who the owner of the disputed house is, thus requiring a petitory action, rather than interference with possession. The decisions of the lower courts are thus found to involve fundamental error of law; hence, the following decree has been rendered:

Decree

1. The decision rendered by the Woreda Court in File No. 00928 on Yekatit 28, 2000 E.C (March 7, 2008), the decision of the Kembata Tembaro Zone High Court (File No. 02325) rendered on Hamle 17, 2000 E.C, (July 24, 2008) and the decree issued by the SNNPR Supreme Court Cassation Division (File No. 23840) on Hidar 23, 2001 (December 2, 2009) have all been reversed.
2. The possessory action brought by respondents is inadmissible.

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Signature of five justices

Source: Federal Supreme Court Cassation Division Decisions
Volume 10, pp. 232 – 234.
Abridged translation: Dr. Dereje Zeleke