Continuance of chapter two

Change of Venue (Transfer of Suit) and Removal of Judges

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I. Change of Venue (ክስን ወደ ሌላ ስፍራ ስለማዛወር)

- The transfer of suit is to be ordered where there exists a problem with the proceedings in the court where the case is originally instituted. Change of venue is conduct before judgment as per article 31 of the 1965 CPC of Ethiopia.
- But as per article 2/2/ of proclamation number 84/68 change of venue is conducted before hearing of witness. This proclamation seems a draft.

Three grounds transfer of suits

- **Fair and impartial trial cannot be held in the court** where the suit was instituted .
- Where a party contends that the court in which the case is pending cannot properly handle the proceeding since the case involves **some question of law of unusual difficulty is likely to rise**
- Where the court seized of the case is found to be **inconvenient to the party** so demanding. Or for the general **convenience of the parties or witnesses** or is **expedient** for the purpose of justice

Cont’d

- **Laws About Change of Venue**

The 1965 CPC of Ethiopia *(Art.31 of the code)*

amended by

Criminal and civil procedure proclamation number 84/68 *Article (2(2*

replaced by

Proclamation number 25/96 *(Article 8(3),11(2)(d)*

replaced by

Proclamation number 1234/2021 *(Article 8(1) ,Article 11(2)(b)*

NB. Proclamation number 84/68 connotes that an application for change of venue raised before hearing of witness. In practice, however, this proclamation is neglected.

Though the 1965 CPC of Ethiopia is silent about the cost for change of venue, proclamation number 84/68 connotes that the person who apply change of venue cover the cost for the opposite litigant(s). Proclamation number 1234/2014 has a gap in cost.

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- Change of venue is not subject to appeal

  What about cassation?

Which courts have the power to decided on change of venue?

1. The Federal supreme court

- Change of venue from one Federal High Court Division to another Federal High Court Division or from Regional Supreme Court to Federal High Court regarding federal matters referred to Regional Courts by delegation. **(Art. 8(1) of proclamation number 1234/2021:**

2. The Federal High Court

- Change of venue from one Federal First Instance Court Division to another Federal First Instance Court Division or to itself, in accordance with the law; ***(Art.11(2)(b) of proclamation number 1234/2021)***

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Discussion Questions

- *Can the federal supreme court decide to change venue from regional supreme court to other regional supreme court regarding federal matters referred to Regional Courts by delegation ? For instance from Amhara National State Supreme court to Oromia National State Supreme court*
- *Can the federal high court decide to change of venue from regional high court to federal first instance court regarding federal matters referred to Regional Courts by delegation?(here proclamation number 1234/2021 seems silent)*
- *Can the federal high court decide to change venue from regional high court to other regional high court regarding federal matters referred to Regional Courts by delegation ? For instance from Amhara National State north shewa high court (located in Debre Berhan) to Oromia National north Shewa court(located in Fiche)*

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- *Is there an issue of change of venue in federal supreme court in the case it entertain in its first instance jurisdiction?*
- *What do you think about change of venue regarding regional matters?*
- *Do you think that article 31 of the 1965 CPC of Ethiopia continued applying on state matters?*
- *Discuss major changes made in the 1965 CPC of Ethiopia, the proclamation number 84/68, the proclamation number 25/96 and proclamation number 1234/2021 if there any.*
- *Which regional courts has the power on change of venue from one states first instance courts to other states first instance court, and from one states high courts to other states high courts?*
- *Consult it with the ANRS court establishment proclamation 223/2015 to know some sort of idea about change of venue.*

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- *For further knowledge see Art 31 of CPC of Ethiopia, Art 8(1) and 12(2)(b) of Federal court proclamation number*

II. Withdrawal or removal of judges (የዳኞች ከችሎት መነሳት)

▨ A judge of a Federal Court shall be removed from his bench where:

a) he is related to one of the parties or the advocate thereof by consanguinity or by affinity

b) the dispute relates to a case for whom he acts or acted as tutor, legal representative or advocate to one of the disputing parties

C) he has previously acted as judge or mediator or an arbitrator in connection with the case or the subject matter of the dispute.

This may, however, not applicable where a judge has previously acted as a judge of lower courts or appellate court in the process of remand;

d) he has a case pending in court with one of the parties or the advocate

e) other sufficient reason in which injustice may be done

✓ *Who apply for removal of judge?*

- The party in law suits apply for withdrawal of judge in a written application ***(See article 34 of proclamation number 1234/2021)***

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- Where a judge is sitting **alone** he shall either withdraw or refer the matter for decision to **another division of the same court.** Where **there is no other division** the application shall be referred to the court in which appeal lies from the decision of the court.
- Where the judge is sitting with other judges, the matter shall be decided by the other judges who sit in the same division. *The is no clarity under article 34(5) of the proclamation number 1234/2014* ***(Amharic and English version)***
- The decision to another division of the same **court shall be final with no appeal.**
- If the application is dismissed, the costs shall be borne by the applicant irrespective of the outcome of the case.

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- Where a party makes an application without good cause, the court may, in addition to dismissing the application, impose a fine not less than 1000 Birr and not exceeding 3000 Birr.
- But, where the applicant makes a hateful application with the intention of defaming or damaging his honor or delaying the proceedings, the court may impose a fine not less than 3000 Birr and not exceeding 7000 Birr.

❁**Conflicts of Jurisdiction: Priority, Pendency and Consolidation of Cases**

Cont’d

- As a rule, a single cause of action may not be instituted and/or tried by more than one court at a time.
- It is to avoid inconsistent judgments on a single case

A. Priority (ቀደምትነት) *(Art.7 of CPC of Ethiopia)/ in different courts there are opened file.*

- The question of priority arises when a plaintiff institutes two or more suits on the same cause of action in different courts.
- *Where a suit may be instituted in anyone of several courts, the court in which the statement of claim was first filed should have jurisdiction and the suit shall be pending in such court.*

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- *Example, let assume that Gedlu is claiming to return a loan based on the loan contract from a defendant where the loan contract was concluded in Debre Berhan and performed in Adiss Ababa. In this case , Gedlu has the possibility to institute his pleading both in Debre Berhan and Addis Ababa. If the amount does not exceed 10,000,000 birr, he has the possibility to bring the case in federal first instance court that located in Addis Ababa or in ANRS North Shewa Zone high court trough delegation power. Likewise, if the amount of loan exceed 10,000,000 birr, Gedlu has the possibility to institute the case in federal high court which is located in Addis Ababa or in ANRS supreme court North Shewa Cluster in its delegation power.*
- In such a situation, if Gedlu institutes a case in both courts, it will result in the
  - ***harassment of the defendant to defend his case in both areas ,***
  - ***inconsistence of judgments,***
  - ***Difficult to execute inconsistence judgments***

  To avoid this problem, the rule of priority is essential.

B. Pendency በቀጠሮ ላይ ስለሚገኙ ክሶች *(Art.8 of CPC of Ethiopia)*

- while a suit is pending in a court, another suit is also filed in another court over the same cause, that would give rise to the problem of pendency .
- To avoid this problem, the Civil Procedure Code has provided **a rule on pendency**.
- When the court is aware that another **similar case is already instituted in another court** between **the same parties**, it will **dismiss the suit** or it may direct the parties to **apply for consolidation.**
- **NB.** Ethiopian court is not prevented from entertaining a case that is already pending **in a foreign court**.

C. Consolidation of Suits ክሶችን ስለማጣመር *(Art.11 of CPC of Ethiopia)*

Consolidation of suits-is a situation where the claims of both parties are separate while the matter in issue in one suit is closely related to a suit pending in another court.

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- **Consolidation** is a procedure that is applied when two or more suits pending in different courts or the same court and between the same parties give rise to **similar issues and are to be decided in different courts**.
- Where there is a question of pendency, then, both suits will be consolidated under the procedure of consolidation .
- An application for consolidation shall be made to **the High Court**, where the suits are pending in courts which are **all subordinate** thereto, or to the **Supreme Court**, where one or more of the courts in which the suits are **pending is** a division of the **High Court** on circuit.

"Thank for attending Chapter Two"