# The law civil procedure I : Part 1: Chapter Two

## JUDICIAL SYSTEMS IN ETHIOPIA AND JURISDICTION OF COURTS

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- **To pass a legitimately binding decision**, courts should first of all, have **jurisdiction** over the case submitted to them.

I. **The Ethiopian Judicial System: Past and Present**

A. **The Unitary Court Structure**

- ✓ Before the end of the 19th century, there **was no formally established** and **systematically institutionalized** judicial structure in Ethiopia .
- ✓ **The 1931 written constitution of Ethiopia** considered as turning point in the **establishment of the modern judicial system.**

## Cont'd

- With the enactment of the Administration of Justice Proclamation, Proc., No. 2/1942, **six levels of courts** were set up.
- ✓ These were:
  1. The supreme imperial court,
  2. The high Court
  3. The provincial (Teklay-Gizat) Court

  **upper courts**
  4. The awraja –Gizat Court,
  5. The woreda-Gizat Court and
  6. The Mikitil woreda -Gizat Court

  **Subordinate courts**

# Cont'd

- **The Mikitil-Woreda Courts and the Teklay-Gizat Courts** were by subsequent legislation.
- The 1965 Civil Procedure Code of Ethiopia established **four levels of courts:**
  - Woreda Guezat Court,**( Art.13)**
  - Awradja Guezat Court, **(Art.14)**
  - High Court and **(Art.15)**
  - Supreme Imperial Court**( Art.11/3/, 31/2/,321/1/c/,321/2/b/).**

Cont'd

# II. The Present Dual Court Structure

- Subsequent the endorsement of 1995 FDRE Constitution a **federal state structure** was established.
- Powers are divided between the Federal and Regional Governments.
- Two sets of courts are established:
  - ✓ The Federal courts
  - ✓ The State /regional/ courts

  } Art. 79(1) of FDRE constitution
- Three layers of courts includes
  - ✓ the supreme
  - ✓ the high and
  - ✓ the first instance

  } Both federal &state level 78(2) &78(3) of FDRE constitution
- In practice regional states named **first instance courts** as **woreda courts**. *Is it constitutional?*

# Cont'd

- The Federal Supreme Court ***sits /locates/ solely in Addis Ababa***.
- The Federal High and First Instance Courts sit in Addis Ababa, Dire-Dawa and in such other places as may be deemed necessary by the HPR.
- The jurisdiction of federal high court delegate to state supreme court.(Art.80(2)
- The jurisdiction of federal first instance court delegate to states high court. ( Art.80(4)

## II. Jurisdiction of Courts: Essential Elements

## Cont'd

- Literally, jurisdiction means **authority of courts.**
- **Jurisdiction** refers to the power of a court to entertain a case.
- Jurisdiction of courts refers to the power of courts, **to hear and determine a case;** thereby, **rendering a binding judgment and decree.**
- Currently, Ethiopian judicial system has a dual court structure: one, at the ***Federal,*** another, at the ***States*** level.
- A person can legitimately institute a law suit **only in a court so empowered.**

## Element of jurisdiction

- Three essential elements that establish jurisdiction of courts.

### I. Judicial Jurisdiction

- Judicial Jurisdiction refers to the **legal competence** of the courts of **a particular nation or state** to exercise a judicial power.

# Cont'd

- The issue of judicial jurisdiction normally arises when there is a **"foreign element" .**
- A case is said to have involved a **foreign element**,
  - If either of the parties is a **foreigner** to that state;
  - The **transaction or property** is occurs or is situated outside of the territorial boundaries of the state.
- Judicial jurisdiction is the issue of private international law
- The draft document of the civil code of Ethiopia **had included issue of private international law.**
- But, that portion of the bill was not approved.
- It could not become part of the finally adopted Code.

# Cont'd

- There is **no law** in Ethiopia that specifically govern the issues of judicial jurisdiction.
- Judicial jurisdiction may be distinguished as:-
  - Jurisdiction in personam (over a person)
  - Jurisdiction in rem (over things)

## I. Jurisdiction in personam

- Ethiopian courts are held to assume judicial jurisdiction in Personam where either of the following requirements are fulfilled:

*A. National or domiciliary of the defendant ;*

*B. Consent of the party/ expressly or impliedly ;*

*C. The act which is the subject matter of the suit occurred or is situated in Ethiopia.*

## Cont'd

### A. Nationality or Domiciliary

- ✓ It is the **defendant's status** that determines judicial jurisdiction;
- ✓ The nationality or domiciliary of the plaintiff is irrelevant
- ✓ If the defendant and the plaintiff are Ethiopian nationals, the issue of judicial jurisdiction would not arise.

*Ethiopian courts can only entertain for instance, a case between a Russian plaintiff and a Chinese defendant-provided that the latter is domiciled here.*

***(See Arts 183-191 of the Civil Code for the detailed rules on domicile).***

# Cont'd

- Like physical person , legal person is subject to the judicial jurisdiction of Ethiopia if it is registered and acquired personality in Ethiopia.

**B. Consent of the party/ doctrine of party autonomy;**

- The nationality or domicile of the defendant can not be established, the consent of the party determine judicial jurisdiction.
- Consent may classified as :- express and implied
- Express consent – described in written form or orally.
- Implied consent- when the defendant does not raise objection about judicial jurisdiction.
- Non Ethiopians, either in nationality or domicile, can consented to choice Ethiopian courts.

***Example, two Eritrean may consented to settle dispute arise between them by Ethiopian courts***

# Cont'd

- Judicial jurisdiction that does not raised by the parties implies the parties are impliedly consented.*( Art 244 (2)(3) of the CPC)*

## III. The doing of an Act

- It refers that whether the act, which is the cause of the suit, occurred in Ethiopia . ***Example conclusion of contract, conclusion of marriage***

## B. Jurisdiction in Rem

- It means **"against the thing/property";**
- It is not against the person
- An "in rem" jurisdiction refers to the power of the court to pass a valid judgment against the property (movable or immovable; tangible or intangible) of the parties.

## II. Material /Subject-Matter Jurisdiction

- It refers to the power of the court to hear the type of case that entertain it.
- It is depended on the ***competency*** of the courts to adjudicate a case.
- During the past regimes where the form of the government was **unitary**-the issue of determining the material jurisdiction of a court was simpler.
- Because there was *a single and vertically judicial structure* and component courts were identified on the basis of ***the type of the case and/or amount of money.***
- Currently , with the **dual court structure**, determining court jurisdiction is **complicated.**

## Cont'd

- In determining material jurisdiction of courts:
  - ❖Whether the case is falling **outside the judicial power of ordinary courts or not**.
  - ❖ Determine material jurisdiction **horizontally** between the Federal and Regional matters
  - ❖Decided as to which level of court is competent, i.e., **vertically** from among a given structure to see a given case.
  - **Criteria to determine the material jurisdiction of courts in Ethiopia**
    - I. **Subject matter jurisdiction**
    - II. **Pecuniary jurisdiction**

Cont'd

# I. Subject Matter Jurisdiction

It depends on **the type of the case.**

- ✓ Identify cases falling within and outside the regular court structure, then
- ✓ Identify the type of the case fall whether the federal or regional courts

## A. Matters outside the Jurisdiction of Courts

- **Justiciable matters** are not subject to only to courts but also to any other competent body with judicial power (Art.37(1) of the FDRE constitution)
- Administrative tribunals have the power to entertain cases in some instance..( Art.78(4) deals with special and ad hoc tribunal )

*Example the Tax Appeal Commission-sees cases related to tax complaints; the Civil Service Tribunal-entertains grievances concerning civil servants; and the Labor Relations Board-competent to deal with employee-employer (labor) disputes.*

## Cont'd

- Hence, regular courts have not first instance jurisdiction in some cases.
- But , regular courts have an appellate power on decision rendered by administrative tribunal
- Some other personal and family matters are out of the jurisdiction of regular courts
- These matters are entertained by customary and religious court. Example sharia court
- Certain matters which are purely **political or administrative nature** are outside the ambit of regular courts.

Cont'd

## II. Federal Vs. Regional Subject-Matter

- ✓ The Federal Supreme Court has the final say on Federal matters .(Art 80(1)of FDRE constitution )
- ✓ The Regional / state Supreme Courts shall have the final authority on regional matters.((80(2) of the FDRE constitution)
- ✓ The federal and regional subject matters jurisdiction will discuss herein under as per federal court proclamation number 1234/2021 and other pertinent laws

## A. Federal subject matters

**In the first place, federal courts** shall have a common jurisdiction over:

- ❖ Cases arising under the Constitution, Federal Laws and International Treaties accepted and ratified by Ethiopia;
- ❖ Parties specified in Federal Law,
- ❖ Places specified in the Constitution or by Federal Law. Art.3 of proclamation number 1234/2021)

## Cont'd

- Parameters of subject matter jurisdiction
- The nature of the law which the case is instituted.

  -The Federal Constitution,
  - Federal laws are laws enacted by federal legislatures
  - International agreements which are adopted by HPR
- The status of the parties themselves
- The place where the case arose
- The nature or type of the case itself

# Cont'd

- The civil subject-matter jurisdiction provides under Art .5 of proclamation number 1234/2014. Some of these are:-
  - Regarding private international law;
  - Application regarding the enforcement of foreign judgment or decision;
  - involving matters of nationality;
  - Issues in relation to bankruptcy;
  - Cases to which a federal government organ is a party;
  - Cases involving the property of the federal government;
  - Cases arising between persons permanently residing in different regions,
  - Cases of involving the liability of officials or employees of the federal government in connection with their official responsibilities or duties; *( see article 15 (f) of the 1965 CPC of Ethiopia)*
  - Cases involving business organizations and associations registered with, or established by, federal government organs;

*Cont'd*

- ✓ Cases arising out of patent, literary and artistic-ownership rights;
- ✓ cases involving insurance policy;
- ✓ application for habeas corpus;
- ✓ cases involving negotiable instruments;

**Notice,** there is a discrepancy in the Amharic and English version of Art. 5(2) of proclamation number 1234/2021.

- The Amharic version stated about cases arising between persons permanently residing in different regions, regions and Addis Ababa, regions and Diredawa, Addis Ababa or Diredawa;
- The English version stated about cases involving the property of the federal government;
- There is not discrepancy cases involving insurance policy;

## B. State subject matters

State/ regional courts have subject matter jurisdiction.

The parameters are similar with the federal subject matter jurisdiction.

The parameter includes

- The state laws
- The place where the case arose
- The nature and the types of the cases

In nutshell, regional courts have subject matter jurisdiction on regional matters.

Cont'd

# Discussion question

**A.Is article 5(1) of proclamation number 1234/2021 exhaustive list or illustrative list ?**

**B. Assume Ms. Alemitu had a bus. The deriver of the car was Mr. Dengte. Mr. Abebe was traveling by the car from Debre Berhan to Addis Ababa. When he arrived at Sheno city the bus collided with other car , and Mr. Abebe was grave fully injured. Mr. Abebe institute an extra contractual liability lawsuit against Ms. Alemitu ( the owner of the car) and Mr. Dengte ( the deriver of the car) in Debre Berhan woreda court. Ms. Alemitu stated in her statement defense that the bus insured in the Ethiopia insurance company and she stated that the company to become a party pleader as per Article 43 of the civil code of Ethiopia.**

- **Discuss about the subject matter jurisdiction of the court. ( Discuss it as per proclamation number 25/96 and proclamation number 1234/2021)**

## Cont'd

**C.** Article 15(2) (f) of the 1965 CPC of Ethiopia stated that the high court has the subject matter jurisdiction on the liability of public servants for acts done in the discharge of official duties. Do you think that this subject matter jurisdiction of court is amended by proclamation number 1234/2021? If you have an access consult the above mentioned article with the Amhara national regional state courts establishment proclamation number 223/2015. Is there contradiction between federal court proclamation number 1234/2021 and the Amhara national regional state courts establishment proclamation number 223/2007 E.C about Article 15(2) (f) of the 1965 CPC of Ethiopia?

Is there a contradiction about the subject matter jurisdiction of habeas corpus federal court proclamation number 1234/2021 and the Amhara national regional state courts establishment proclamation number 223/2015?

## Cont'd

**D.** Assume Mr. Challa lived in Oromia region , Arsi zone Asela City , and Ms. Abebech lived in Amhara region , north Shewa zone , menz mama midir worda. Both Mr. Challa and Ms. Abebech lived in different regions. Mr. Challa institute a law suit against Ms. Abebech to bring back his rural farm land who obtained it in 1989 from the government. The land is in Menz mama midir woreda . Is the subject matter jurisdiction is federal courts or regional courts? Which court has a power to entertain the case? *( Read cassation number 116583 which is decided in September 04,2008 E.C between applicant Ato Dereje Abebe & respondent w/ro Aynalem Nigatu). Do you agree with the decision of the Federal supreme court of Ethiopia ?*

# Cont'd

***E.*** *Assume Mr. Gemechu and W/ro Almaz concluded their marriage as per the custom of north Shewa zone of the Amhara National Regional State based on the ANRS family code 79/95 E.C. After two years conclusion of the marriage, Mr. Gemechu employed as a registrar in Oromia supreme court and he permanently reside in Adama. His wife W/ro Almaz lived herein Debre Berhan. Almaz want your advice about the subject matter jurisdiction to institute divorce lawsuit. How you advice about the jurisdiction of the court ?* *(See volume 21 of the Federal Supreme Court cassation Decision under Cassation number* 127714 )

## Cont'd

Once a case is determined as a Federal or State subject matter, the next step will be **the identification of the appropriate level of court.**

- First instance court
- High court
- Supreme court

**II. Jurisdictional Limits of Courts: Pecuniary Amount Vs. Types of Cases**

- ✓ **Jurisdictional division of courts** refers to an apportion the judicial business among the various levels of courts in the hierarchy-on the bases of the amount of money or the nature/complexity of the case.

Cont'd

- The 1965 Civil Procedure Code of Ethiopia, the Federal Courts proclamation number 1234/2021, and regional court establishment proclamation, *such as ANRS court establishment proclamation 223/2015)* deal with the division of material jurisdiction among the three levels of courts ( supreme , high and first instance court).

## A. Pecuniary Amount: Federal Vs. . States" Courts Jurisdictional Limits

## I. Federal Courts

- **The 1965 CPC of Ethiopia**

It stated about material jurisdiction of courts based on pecuniary amount *( see Art.13-15 of the 1965 CPC of Ethiopia)*

- ***Notice the pecuniary amount jurisdiction of the 1965 of CPC of Ethiopia is amended by latest laws.***

- **The federal courts proclamation number 1234/2021**

- The civil jurisdiction of the Federal high and first instance Court are stated, under its Arts 11 and 14 respectively

The jurisdictional limit of the Federal Courts is based on :

I. The amount of money and

II. The type of the case

## I. The amount of money

### A. Federal Supreme Court

- It has no first instance jurisdiction based on the amount of money.

### B. Federal High Court

- Cases involving an amount exceeding Birr 10,000,000 (Ten Million Birr)

### C. Federal First Instance Court

- Civil cases involving an amount not exceeding Birr 10,000,000 (Ten Million Birr)

*Assume Mr. Abera institute a 1,000,000 birr Loan contract on Mr. Endadelew in Federal first instance court, Bole division. In the statement of defense, Mr. Endadelew institute 20,000,000 birr counter claim on Mr. Abera. If you are the judge of federal first instance, how do you solve the material jurisdiction of the court? Do you think the material jurisdiction of the court be changed owing to the counter claims instituted by Endadelew*? *( see volume 15 of cassation number 83169 of the FDRE supreme court cassation Bench)*

Cont'd

## II. Types of cases

### A. 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; and
- Cases specified by other laws. ( Art.8 of proc. No.1234/2021)
- Appellate jurisdiction ( Art.9 of the proc. No.1234/2021)

## Cont'd

- *Federal high court decision in its first jurisdiction*
- *Decision of federal high court in variation of decision of Federal first instance court*
- *Decision of regional supreme court on federal matters in its first jurisdiction.*
- *Decision rendered by regional supreme court on federal matters which is rendered in variation of regional high court*
- *Cases specified by other laws*
- **Cassation power** *( see Article 10 of proc.no.1234/2021)*

## B. Federal High Court

- Regarding **private international law**;
- Application regarding the **enforcement of foreign judgment or decision;**
- involving matters of **nationality;**
- Issues in relation to **bankruptcy**;
- Cases of which **foreign ambassadors, consuls, representatives of IOs, foreign states are held liable or foreign nationals** who enjoys privileges and immunities and who resides in Ethiopia are parties;
- **Change of venue** from one 1st instance court to other 1st instance court\
- Appellate jurisdiction
- Cases specified by other courts

# Cont'd

- Any person who has vested interest or sufficient reason may institute a suit before the Federal High Court to protect the rights of his own or others. *( this jurisdiction was not stated under proclamation number 25/96)*
- Render decision, judgment or order in order to protect justiciable human rights specified under chapter three of the Constitution.

## C. Federal First Instance Court

- ✓ Civil cases which are stated under article 3 and 5 of the proc. No. 1234/2021 , and do not vested to federal high court.
- ✓ Civil cases arising in Addis Abebe and dire dewa
- ✓ Cases specified by other laws
- ✓ Appellate jurisdiction on matters stated by other laws

## II. States/ Regional Courts

The jurisdictional limit of the State Courts is based on the amount of money and the type of the case.

States enacted laws in this regard (*Example ,see ANRS courts establishment proclamation number 223/2015*

## Cont'd

- ✓ In nutshell, courts in Ethiopia have an exclusive powers in some cases. *(Read further proclamation number 1234/2021)*

## III. Local Jurisdiction

- The rules on local jurisdiction are framed in such a way as to primarily enable one to refer the case to a particular court convenient for the parties and their witnesses, particularly, the defendant.
- The issues of local jurisdiction are encapsulated under the 1965 of the CPC of Ethiopia.

- **Resident of the defendant** – instituted in the place where the defendant actually resides or carries on business or personally works for gain.*( Art 19 of CPC)*
- **Suits against the State-** instituted in **(a) the** plaintiff resides, carries on business or personally works for gain; **(b) the** contract to which the suit relates was made or was to be ex**ecuted;** or (c) **the act giving** rise to liability occurred.*( Art.21 of CPC of Ethiopia)*

## Cont'd

- **Suit against body corporate-** instituted in the court of the place where the head office or branch is situate *( see Art. 22 of the CPC of Ethiopia)*
- **Suits regarding successions-** instituted in the court- of the **place where the** succession **was opened** *( see Art.23 of the CPC of Ethiopia )*
- **Suits regarding contracts-** instituted in the court of the place where the contract was made or was to be executed, unless some other place is mentioned in the contract.*( see Art.24 of the CPC of Ethiopia)*
- **Suits regarding immovable property-** instituted in the court of the place where such property is situate .*( see Art.25 of the CPC of Ethiopia)*
- **Immovable situate with in the jurisdiction of different courts:** instituted in any court within the local limits of whose jurisdiction any portion of such property is situate.*( see Art.26 of the CPC of Ethiopia)*
- **Suits regarding wrong to persons or movables-** instituted in the court of the place where such wrong was done.*( see Art.26 of the CPC of Ethiopia)*

## Cont'd

- **Suits regarding bankruptcy**- instituted in the principal place of business of the bankrupt is situate. *(see Art.28 of the CPC of Ethiopia)*
- **Several causes of action**- instituted in any of the courts having jurisdiction by reason of one of such causes of action. *(see Art.28 of the CPC of Ethiopia)*
- **Accessory or claim and counter-** instituted in the court **having jurisdiction** to try the principal claim where such court **has material** jurisdiction to try such accessory claim or counterclaim. *(see Art.28 of the CPC of Ethiopia)*
- **Such court shall remain** competent to try a counter claim notwithstanding that the principal claim is withdrawn, struck out or dismissed.
- In nutshell, local jurisdiction is designed to achieve handiness for the parties

***( Read from Art.19 -30 of the 1965 CPC of Ethiopia and Volume number 14 cassation number 75788 of the federal supreme court of Ethiopia cassation decision )***

Cont'd

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

### I. Change of Venue

- 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.

## Three grounds transfer of suits

- Fair and impartial trial cannot be made 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
- where the court seized of the case is found to be inconvenient to the party so demanding.

Cont'd

- *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

- 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
- 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 a written application

*See article 34 of proclamation number 1234/2021)*

## Cont'd

- 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 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

# Cont'd

- 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** *( Art.7 of CPC of Ethiopia)*

- 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.*

# Cont'd

## B. Pendency *( 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 .

## C. Consolidation of Suits *( 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.

***"Thank for attending Chapter Two"***