

ADDIS ABBAB UNIVERSITY SCHOOL OF LAW AND GOVERNANCE STUDIES

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THE PRACTICE OF CONSTITUTIONAL INTERPRETATION IN ETHIOPIA: METHODS
OF CONSTITUTIONAL INTERPRETATION, SPEEDY JUSTICE, AND PRACTICAL
CHALLENGES

BY

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Declaration

I, **Kenea Yadeta Erena**, hereby declare that this thesis is my original work and has never been presented in any other institution. I also declare that where sources are used, they are duly acknowledged.

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Lists of Acronyms and Abbreviations

CCI	Council of Constitutional Inquiry
FDRE	Federal Democratic Republic of Ethiopia
FSC	Federal Supreme Court
FSCCB	Federal Supreme Court Cassation Bench
HoPR	House of people Representatives
HoF	House of Federation
NPC	National People's Congress (China)
USA	United States of America
U.S.S.R.	Union of Soviet Socialist Republic

Abstract

Constitutional interpretation refers to examining the actions of the legislative, judiciary, executive, and administrative arms of the government and to ensure that such actions conform to the provisions of the constitution. It refers to the task of safeguarding the supremacy of a constitution and keeping laws and actions of the government within the constitutional limits. Constitutional interpretation has been considered as one of the main mechanisms to protect fundamental rights enshrined in constitutions from the actions of governments.

This study examines the practice of constitutional interpretation in Ethiopia. Specifically, the study attempts to investigate the methods of Constitutional interpretation the Council of Constitutional Inquiry (CCI) and the House of Federation (HoF) practically employ in resolving constitutional disputes. To address these issues, the study employed a mixed research methodology comprising quantitative and qualitative inquiry. Cases decided by CCI and HoF have been analyzed. Moreover, interviews were made with key persons relevant in providing information that helps to answer the research questions.

The findings of the study demonstrate that CCI and HoF mainly employ textual, purposive, and holistic methods in resolving constitutional disputes. However, CCI and HoF lacked principles of constitutional interpretation. The study also reveals that the CCI and HoF have failed to decide cases within a short time as promised in the constitution.

Keywords: Methods of constitutional interpretation, principles of constitutional interpretation, Speedy trial, Council of Constitutional inquiry, House of the federation, FDRE constitution

Chapter One

Introduction

1.1. Background of the Study

Constitutional interpretation or the settlement of a constitutional dispute involves the interpretation and application of the relevant provisions of the Constitution to a set of asserted and denied facts.¹ The Constitution is the supreme law of the land and must be properly interpreted when constitutional disputes arise.²

The Ethiopian Constitution under article 83 has entrusted the House of Federation (HoF) with the power of constitutional interpretation. The Constitution also establishes the Council of Constitutional Inquiry (CCI) composed of members of the judiciary, legal experts appointed by the House of Peoples' Representatives and three persons designated by the House from among its members, to examine constitutional issues and submit its recommendations to the House for a final decision.

The 1995 Constitution of the Federal Democratic Republic of Ethiopia provides broad human rights protections in conformity with international human rights laws and principles. Nonetheless, the House of Federation, a parliamentary political organ that represents the political interests of Ethiopia's ethnic groups, is mandated to interpret the Constitution at the exclusion of the judiciary.³

Some scholars argue that the Ethiopian approach to constitutional review is a response to the counter-majoritarian dilemma. By excluding the involvement of ordinary or special courts from the business of constitutional review, the government has made it impossible for the court to usurp legislative power.⁴ The Nations, Nationalities, and people created the government to

¹ Perry (2004). "Original Intent or Evolving Constitution? Two Competing Views on Interpretation." 1(4): 14.

² Fiseha, A. (2005). "Federalism and the adjudication of constitutional issues: The Ethiopian experience." 31.

³ Chi Mgbako, M. M. e. a. (2008). "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights." 32(1): 41.

⁴ Tesfaye, Y. (2006). "Judicial review and democracy: A normative discourse on the Ethiopian approach to constitutional review." 31.

represent their interests, those groups alone should retain the power of constitutional interpretation.⁵ However, there is an ongoing debate about whether the House of Federation is an ideal institution to interpret constitutional disputes.

On top of the theoretical debate, it is also important to look into the practice of constitutional interpretation in Ethiopia. This study attempts to analyze the practice of constitutional interpretation in Ethiopia. Specifically, the study attempts to show the method/methods of constitutional interpretation CCI and HoF practically employ in resolving constitutional disputes. The study also recommends an alternative solution by drawing a lesson from the practice of constitutional interpretation in Ethiopia.

1.2. Problem Statement

The rationale for undertaking this research lies in the necessity of analyzing the practice of constitutional interpretation in Ethiopia. The FDRE constitution as provided under Article 62(1) entrust the power of constitutional interpretation to HoF. So far, 4952 cases have been filed before CCI for constitutional review out of which 80 cases have been recommended by CCI to the HoF for a final decision.

However, many works of literature argue that the HoF is not an ideal institution to interpret the constitution. Its inefficiency and political subjectivity in interpreting the FDRE Constitution, and the numerous avenues for abuse, have led and will lead to failure in protecting the fundamental rights and freedoms of citizens. The power of constitutional interpretation should be taken away from the HoF and placed with a strengthened judiciary that must undergo judicial reforms.⁶ The institutional and functional problems have made it impossible for the HoF to contribute towards effective constitutional governance.⁷

However, so far there is no sufficient empirical study to justify the same. The rhetoric arguments should be further supported by empirical pieces of evidence. This study, therefore, attempts to fill such knowledge gaps by analyzing the practices of constitutional interpretation in Ethiopia.

⁵ Ibid.

⁶ Chi Mgbako, M. M. e. a. (2008). "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights." 32(1): 41.

⁷ Tesfaye, Y. (2006). "Judicial review and democracy: A normative discourse on the Ethiopian approach to constitutional review." 31.

1.3. The objective of the study

The general objective of this study is to analyze the practice of constitutional interpretation in Ethiopia. The specific objectives of the study are:

1. To identify methods that CCI/ HoF practically employ in resolving constitutional disputes;
2. To analyze whether the practices of Constitutional interpretation in Ethiopia ensure speedy disposition of cases;
3. To identify factors that hinder CCI/ HoF to properly interpret constitutional disputes and delivering speedy justice

1.4. Research questions

The main research question of the study is to analyze the practice of constitutional interpretation in Ethiopia. The specific questions to be addressed are the following:

1. What method/methods of Constitutional interpretation do CCI/ HoF practically employ in resolving constitutional disputes?
2. Do the practices of Constitutional interpretation in Ethiopia ensure speedy disposition of cases?
3. What are the factors that hinder CCI/ HoF to properly interpret constitutional disputes and deliver speedy disposition of cases?

1.5. Scope of the Study

This study is mainly limited to analyzing the practice of constitutional interpretation in Ethiopia. The study tries to identify method/ methods of constitutional interpretation that CCI/ HoF practically employ in resolving constitutional disputes and delivering speedy justice. The study also attempts to analyze whether the practices of constitutional interpretation in Ethiopia ensure speedy justice. Uncovering factors that hinder CCI/ HoF to properly discharge their responsibilities are also within the scope of this study.

1.6. Research Design

In any research undertaking, the research design to be followed is determined by the nature of the problem statement or more specifically by the research objectives. Researchers seek to use

strong designs to strengthen the validity of their studies and to ensure that the data to be collected properly addresses the research topic being studied.⁸

A research design is a conceptual structure within which research is conducted and it constitutes the blueprint for the collection, measurement, and analysis of data.⁹ Choosing an appropriate research design is crucially important to the success of the research project and the decisions made at the designing stage of the research process so much to determine the quality of the conclusions drawn from the research results.¹⁰

This research primarily employed mixed research methodology which is quantitative and qualitative inquiry. To answer the research questions, the study emphasized the analysis of decisions of CCI/ HoF particularly those cases that CCI recommended to HoF meriting constitutional interpretations. Cases decided by CCI and HoF were analyzed to answer the first the second, and the third research questions. Moreover, interviews were made with key persons in authority and legal experts from both CCI/ HoF particularly in answering the third research question.

1.7. Data Sources

In this study, both primary and secondary data were used. Primary sources included mainly cases that have been decided by CCI/ HoF, FDRE Constitution, Proclamation No. 251/2001, Proclamation No. 798/2013. Moreover, interviews with legal experts of CCI/ HoF, Judges working in federal high, supreme, and cassation bench, as well as judges from the regional Supreme Court who are relevant in answering the research questions were considered. Besides this, primary information from legal advisors, and other experts in the field were gathered as found relevant.

As to the secondary source, data from various kinds of published and unpublished materials relevant to the study were considered. Secondary data sources like books, journals, laws, and other relevant materials from libraries and the internet were explored.

⁸ Yin, R. K. (2011). *Qualitative research from start to finish*. New York, Guilford Press.

⁹ Kothari, C. R. (2004). *Research methodology, methods, and techniques*. New Delhi New Age International (P) Ltd., Publishers.

¹⁰ Abbott, K. S. B. a. B. B. (2008). *Research Design and Methods A Process Approach*. USA, Mike Sugarman.

1.8. Significance of the Study

The result of this study can provide an insight into the practices of constitutional interpretation in Ethiopia, and hence can come up with policy recommendations. The findings of this study can contribute and complement the already existing knowledge and literature on the practices of constitutional interpretation. The study can also benefit academicians because it would serve as a basis for further research into the subject matter.

1.9. Limitations of the Study

Lack of relevant materials on the subject matter and time constraint may reduce the quality of the research. However, the researcher attempted to remedy such constraints to a lesser extent by adopting materials written in other legal systems and trying to relate to the practice of constitutional interpretation in Ethiopia. Attempts have been made in minimizing the impacts of time constraints on the quality of the research output.

1.10. Organization of the Study

The research paper is organized into five chapters. Accordingly, the first chapter provides a general introduction and overview of the study. Chapter two of the research deals with the conceptual and theoretical framework of constitutional interpretation, chapter three deals with the concept of speedy justice to position the study within the context of the existing literature. Chapter four mainly devotes for analyses of the practices of constitutional interpretation in Ethiopia to answer the research questions. Finally, chapter five concludes the study by drawing a conclusion and forwards recommendations.

Chapter Two

2. Conceptual and Theoretical Framework of Constitutional Interpretation

2:1. The Concept of Constitutional Interpretation

Written constitutions are not self-actualizing. If they are to be maintained over time, they require interpretation and adaptation to changing circumstances.¹¹ Constitutional interpretation refers to clarifying the legal content or meaning of constitutional provisions, for purposes of resolving the dispute at hand.¹² It refers to examining the actions of the legislative, judiciary, executive, and administrative arms of the government and to ensure that such actions conform to the provisions of the constitution.¹³ Legislation enacted by either the lawmaker or executive organ should be checked for compatibility with the constitution primarily to check whether such acts of government violate fundamental rights, and secondarily to keep a balance of power among organs of government themselves.¹⁴

Depending on jurisdictions, constitutional interpretation may have one or more of the following proposes: to limit governmental powers, to keep supremacy of constitutions by ensuring that all laws and decisions conform to the constitution, and to keep a balance of power in federations.¹⁵

Constitutions are interpreted because constitutions are fundamental laws that have the purpose of establishing and structuring governments, guaranteeing fundamental rights, and determining the relationship between the government and citizens.¹⁶ A constitution is also interpreted because it envisages aspirational functions by picturing the best sort of community people could attain through its constitutional arrangements and commandments.¹⁷

The provisions of constitutions, like other laws, are often ambiguous, vague, contradictory, insufficiently explicit, or even silent as to constitutional disputes that interpreters must decide.

¹¹ Goldsworthy, J. (2006). *Interpreting Constitutions*. USA, Oxford University Press.

¹² Girma, B. (2018) *Constitutional Adjudication by Parliaments: Lessons from Comparative Experience*. 12, DOI: <http://dx.doi.org/10.4314/mlr.v12i1.2>

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Girma, B. (2018) *Constitutional Adjudication by Parliaments: Lessons from Comparative*

¹⁷ Ibid.

Constitutions sometimes seem inadequate to cope with developments, which its founders anticipated, and even it can threaten principles the constitution was intended to safeguard.¹⁸ Some clauses in constitutional texts may appear in potential conflict with others to apply them to particular cases. Another reason that justifies the interpretation of constitutions may relate to omissions. Such omissions may be remedied either by amendments if it is fundamental, or by interpretation.¹⁹

2:2. Methods of Constitutional Interpretation

Constitutional theorists justify a set of prescriptions about how certain controversial constitutional issues should be decided.²⁰ Different interpreters rely on different sources, and often they differ in approach, emphasis, and outcomes. Nonetheless, scholars maintain that it is highly desirable and readily feasible for a constitutional interpreter to be coherent and consistent by striving for some measure of commensurability to fit together and weigh against each other these various sources of constitutional meaning.²¹

Interpreters can be situated along three continuums based on their fundamental orientation and understanding of the Constitution and how they go about interpreting the Constitution.²² One continuum runs between those interpreters who emphasize textualism and those who emphasize transcendence. In other words, it is about whether the constitution is the text and only the text, or whether the constitution is the text plus other sources of transcendent.²³

The second continuum of interpreters lies between those who understand the Constitution to be fixed in time and meaning and those who understand it to be changing and evolving.²⁴ The third continuum of interpreters distinguishes between those who understand the Constitution as a set of rules and those who understand the Constitution to radiate aspirations and values, like human dignity and individual autonomy.²⁵

¹⁸ Goldsworthy, J. (2009) *Constitutional Interpretation: Originalism*. 21

¹⁹ Girma, B. (2018) *Constitutional Adjudication by Parliaments: Lessons from Comparative*

²⁰ Strauss, D. A. (1999). "What is Constitutional Theory?": 13.

²¹ Baker, T. E. (2004) *Constitutional Theory in a Nutshell*. 3,

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

Other scholars argue that the controversy of constitutional interpretation revolves around whether interpreters should read Constitution according to the original intent of those who established it, or by evolving contemporary principles.²⁶

The other controversial issue surrounding constitutional interpretation relates to methods of constitutional interpretation and its institutional arrangements. From this point of view, two questions lie at the heart of constitutional interpretation: How to determine what the Constitution means? And who should decide?²⁷ In adopting more specific methodological prescriptions, constitutional theorists typically appeal to three shared criteria. These criteria are associated with (i) upholding the rule of law, (ii) promoting political democracy, and (iii) individual rights necessary for substantive justice.²⁸

The above literature shows that there is no agreement among scholars as to which method of constitutional interpretation best help in clarifying the meaning of the disputed provisions or laws and applying the same in resolving the dispute. However, there is an agreement among scholars regarding the importance of choosing and developing proper methods/ methods of constitutional interpretations that can consistently address the constitutional dispute.²⁹

Certain constitutions like the Republic of South African Constitution,³⁰ provide a detailed provision as to how the constitution be construed by the constitutional court. The constitution of the Republic of South Africa Article 39 reads:

When interpreting the Bill of Rights, a court, tribunal or forum must promote the values that underlie an open and democratic society based on human dignity, equality, and freedom; must consider international law; and may consider foreign law. When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of

²⁶ Kelso, R. R. (1994) Styles of Constitutional Interpretation and the Four Main Approaches to Constitutional Interpretation in American Legal History. 29, 115

²⁷ El-Haj, T. A. (2012) Linking the Questions: Judicial Supremacy As a Matter of Constitutional Interpretation. 89, 66

²⁸ Ibid.

²⁹ Ibid.

³⁰ Constitution of the Republic of South Africa, 1996

Rights. The Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, customary law, or legislation, to the extent that they are consistent with the Bill.

Some other constitutional systems develop a distinct constitutional interpretive system like the one in Germany that the principles of proportionality and rationality are employed where the state must satisfy to justify laws that limit basic rights.³¹ FDRE constitution either expressly or implicitly has indicated the principles of constitutional interpretation. For example, Article 13(2) of the FDRE constitution explicitly provides principles of constitutional interpretation regarding fundamental rights and freedoms. It states that the fundamental rights and freedoms specified under chapter three of the constitution are interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights, and International instruments adopted by Ethiopia.³²

Article 7(1) (2) of Proclamation No. 251/2001 also states that the House identifies and implements principles of Constitutional interpretation which it believes help to examine and decide Constitutional cases submitted to it.³³ The Article further provides that where the Constitutional case submitted to the House pertains to the fundamental rights and freedoms enshrined in the Constitution, the interpretation is made in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights, and International instruments adopted by Ethiopia.³⁴

On the other hand, even though the constitution doesn't explicitly express about the broader principles of constitutional interpretation like that of the Republic of South Africa, (except for fundamental rights and freedoms), a close looks at some provisions of the constitution, at least implicitly, the constitution has provided principles of constitutional interpretation that can guide constitutional dispute adjudication.

³¹ Germany's Constitution of 1949 with Amendments through 2012

³² Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 13(2)

³³ Proclamation No. 251/2001, Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities, Article 7(1) (2)

³⁴ Ibid.

In light of this, provisions stated under chapter two of the constitutions are relevant. As provided under Article (8-12) of the constitution, Sovereignty of the people, Supremacy of the Constitution, Human and Democratic Rights, Separation of State and Religion, and Conduct and Accountability of Government are fundamental principles of the constitution.³⁵ Since these principles are fundamental values of the constitution; they can guide constitutional interpretation.

On top of these fundamental principles, the preamble of the constitution can also help to guide constitutional interpretation. A preamble sets out the general purpose behind the substantive provisions of the constitution as well as the general aims and aspirations prompting the ordination and adoption of the constitution.³⁶ Preamble presents the history behind the constitution's enactment, as well as the nation's core principles and values. A preamble is the part of the constitution that best reflects the constitutional understandings of the framers.³⁷

A global survey of the function of preambles shows a growing trend toward its having greater binding force either independently, as a substantive source of rights, or combined with other constitutional provisions, or as a guide for constitutional interpretation. The courts rely, more and more, on preambles as sources of law.³⁸ This implies the fact that preamble can be used as a principle of constitutional interpretation. For further understanding, the dominant methods of Constitutional interpretation are presented below.

2.2.1. Textualism

The Constitution is a document containing some text or narrative arranged in sections and amendments. Textualism looks to the words of a statute and cares nothing for its legislative history.³⁹ According to textualists, the people, through their elected representatives, make laws; and the people deserve to have these laws enforced as they were written. Judges should interpret the law, not make it.⁴⁰

Textualists ground their approach in democratic theory, contending that the Constitution is best understood as reflecting the choices of "We the People." They argue that the Constitution is not

³⁵ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article (8-12)

³⁶ Orgad, L. (2010). "The preamble in constitutional interpretation." 8(4): 25.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Fish, E. S. (2016) Constitutional Avoidance as Interpretation and as Remedy. 114, 42

⁴⁰ L.Langford, C. (2017). Opportunistic Textualism in Constitutional Interpretation. USA: University of Press

meant to change with the times, but to instill long-standing values in the law.⁴¹ They believe that “reliance on text and tradition is a means of constraining judicial discretion.⁴² Some scholars acknowledge textualism’s resistance to change as its greatest strength. This view holds that textualism gives the Constitution stability and predictability, both over time and across levels of governance.⁴³

However, there are criticisms against the textual approach to constitutional interpretation. Generally, critics present three challenges to textual interpretation: The language of the Constitution has no “plain meaning”.⁴⁴ The text is neither self-determining nor self-justifying.⁴⁵ Rather, judges, lawyers, administrative agencies, and state and local governments each determine what the text means to them. There is "no surer way" to misread a document than "to read the text literally."⁴⁶

2.2.2. Originalism

Originalism, as a method of constitutional interpretation, contends that constitutional meaning is derived from the original intentions of the founders of the constitution and its amendments.⁴⁷ This approach is phrased in terms of the original intent of the framers of the original understanding of those who ratified a constitutional provision.⁴⁸ Originalists argue that original understandings and constitutional texts and past precedents continue to play an important role in interpretive practices.⁴⁹ This is because constitutions serve many purposes and among these are to provide links with a society's past and enduring commitments.⁵⁰

The arguments of originalism are based on ‘the sovereignty of the people, which claim that the will of the sovereign people expressed in adopting the constitution remains binding today.’⁵¹ If

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Kelso, R. R. (1994) *Styles of Constitutional Interpretation and the Four Main Approaches to Constitutional Interpretation in American Legal History*. 29, 115

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Clark, G. J. (2002) *An Introduction to Constitutional Interpretation*. 32

⁴⁸ Sherry, D. A. f. a. S. (2009). *Principle and Politics in Constitutional Law*. New York, Oxford University Press, Inc.

⁴⁹ Jackson, V. C. (2010) *Constitutions as "Living Trees"? Comparative Constitutional Law and Interpretive Metaphors*. 42

⁵⁰ Ibid.

⁵¹ Goldsworthy, J. (2009) *Constitutional Interpretation: Originalism*. 21

the constitution is to be changed, the consent of the electors or their representatives must first be obtained directly and expressly, and not taken for granted by a presumptuous elite purporting to read their minds or speak on their behalf.⁵²

Originalism maintains that judges have no power to interpret the Constitution except under the substantive intent of the people who created.⁵³ Under originalism, judicial review is an anti-majoritarian practice that can only be justified if based on the original public understanding of the meaning of a constitutional provision at the time of its adoption.⁵⁴ In originalism interpretation, judges must look to the text, structure, history, and purposes of the Constitution to determine the principles to apply to the circumstances of today.⁵⁵

However, originalism is criticized by many authors. Originalism is an inherently conservative interpretive method and is unlikely to be capable of flexibility demands.⁵⁶ It has no room at all for the adaptation of legal norms to social change and it is difficult or even impossible to know what the original understanding of the original intent was.⁵⁷

The historical materials and the techniques of history are not adequate to the interpretative task. Sometimes the framers did not debate the issue; sometimes they may not agree; sometimes they seemed to try to slant the materials they left behind; sometimes the text itself seems to direct the interpreter to go beyond the document.⁵⁸ The problem with originalism is that it assumes that the meaning of a provision as understood by the framers of the particular provision is a "determinate" one. This makes it difficult to capture the original meaning.⁵⁹

⁵² *Ibdi.*

⁵³ Lermack, P. (2007). "The Constitution Is the Social Contract So It Must Be a Contract ... Right? A Critique of Originalism as interpretive Method." 33(4): 44.

⁵⁴ *Ibid.*

⁵⁵ Young, E. (1994). *Rediscovering Conservatism: Burkean Political Theory and Constitutional Interpretation.* USA, North Carolina Law

⁵⁶ Grimm, D. (2011) *Constitutional adjudication and constitutional interpretation.* 16

⁵⁷ *Ibdi.*

⁵⁸ Baker, T. E. (2004) *Constitutional Theory in a Nutshell.* 3,

⁵⁹ Tesfaye, Y. (2006). "Judicial review and democracy: A normative discourse on the Ethiopian approach to constitutional review." 31.

2.2.3. Doctrinalism

This approach contemplates "past interpretations" as they relate to specific problems and tries to organize them into a coherent whole and fit the solution of current problems into that whole.⁶⁰ The more a constitutional system matures, the more its lawyers and judges look at its constitutional provisions not directly but through layers of interpretations in previous cases.⁶¹ These past interpretations purport to articulate constitutional principles in the form of rules or precedents that bind future courts.⁶² Common law tradition dictates establishing and the following precedent. Courts must be custodians of the law and to assure that the law is coherent, clear, and consistent, which in turn advances social stability and continuity. Doctrine takes shape step by step over time and is the product of the work of many minds.⁶³

2.2.4. Holistic / Structuralism

Holistic/ structural methods of constitutional interpretation argue that constitutional interpretation must be seen as a system where every component contributes to the meaning as a whole and the whole gives meaning to its parts.⁶⁴ This method of constitutional interpretation stems from the view of a unified structure of values and relationships.⁶⁵

This method suggests that the interpreters must interpret each section of the constitution concerning the other.⁶⁶ No single constitutional provision may be taken out of out of its context and interpreted by itself.⁶⁷ Every constitutional provision must always be interpreted in such a way as to render it compatible with the fundamental principles of the constitution as a whole.⁶⁸ The holistic/ structural analysis focuses not on the meaning of specific, isolated clauses, but rather on the location of the clause and its relation to the whole text. It seeks unity and coherence not only in the text but in the larger political order, the text signifies.⁶⁹

⁶⁰ Baker, T. E. (2004) *Constitutional Theory in a Nutshell*. 3,

⁶¹ Clark, G. J. (2002) *An Introduction to Constitutional Interpretation*. 32

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Goldsworthy, J. (2006). *Interpreting Constitutions*. USA, Oxford University Press.

⁶⁹ Ibid.

2.2.5. Purposive Approach

The Constitution is not an end in itself, but rather a means to some higher ends, and the purposive approach to constitutional interpretation has sought to identify and implement the basic and profound purposes of the system of government.⁷⁰ The constitutional interpreter must have a sense of appreciation for the aspirational nature of the Constitution; that it is more than a set of rules for the government, as the Preamble states, certain goals that point the nation toward an attainable good life, or a realizable vision of justice.⁷¹

The purposive approach essentially asks what the basic ‘purpose’ behind the Constitutional provision in question?⁷² What did that Article or sub-Article seek to achieve?⁷³ By asking these questions, the interpreters can then conclude what the meaning of the actual words is.⁷⁴ The essence of this approach involves identifying the core values underlying the inclusion of a particular right in the Bill of Rights and to adopt an interpretation of the right that ‘best supports and protects those values.’⁷⁵

2.2.6. Proportionality and Balancing

The principle of proportionality and balancing is employed to justify limits on democratic rights and fundamental freedoms. Three criteria must be met in applying the principle of proportionality to an infringement of a basic right. First, a statute restricting a basic right must be an appropriate means to a legitimate end. Second, the means used to limit the right must be required to achieve the law’s purpose. Finally, the burden on the right must be proportionate to the benefit secured by the law.⁷⁶ In law, the principle of proportionality and balancing arise in those cases where specific norms commanding or prohibiting specific means or actions that serve people as means, are lacking.⁷⁷

⁷⁰ Baker, T. E. (2004) *Constitutional Theory in a Nutshell*. 3,

⁷¹ *Ibid.*

⁷² Goldsworthy, J. (2006). *Interpreting Constitutions*. USA, Oxford University Press.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Schlink, B. (2011). "Proportionality in constitutional law." 22: 12.

2.2.7. Living Constitution

One axis of disagreement over constitutional interpretation is between proponents of “originalism” and proponents of the “living constitution”.⁷⁸ The "living constitution" phrase does capture the idea of the Constitution as something that grows and is subject to contest by subsequent generations.⁷⁹

The metaphor of a "living constitution," or "living tree," draws attention to origins, to roots, as well as to the possibility of growth. It implies that unlike animals that can migrate at will, plants must grow from where they begin and maintain contact with their roots for nourishment and health.⁸⁰ Hence, the living tree metaphor embraces the mixed elements of rootedness and change.⁸¹ The "living tree" metaphor links present-day constitutional decisions with a specific national past, conveying a more organic notion of constitutional interpretation.⁸²

The emphasis is on resolving contemporary issues with contemporary constitutional understandings that are the product of "past authoritative interpretations and relevant historical changes in the broader political culture."⁸³ This approach normatively plays out in a polarized debate between those who try to keep the Constitution in tune with the times and those who try to keep the times in tune with the Constitution.⁸⁴

It conveys the idea of balance (so the tree will not fall over); it avoids the inflexibility of narrowly grounded historical interpretation (structures that are too rigid break rather than bend under the pressures of time).⁸⁵ The notion of a Living Constitution gives interpreters opportunities to keep the Constitution responsive to changing social conditions. This rescue constitutional government from “the dead hand of the past,” making it serviceable to modern needs.⁸⁶

⁷⁸ Jackson, V. C. (2010) Constitutions as "Living Trees"? Comparative Constitutional Law and Interpretive Metaphors. 42

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Baker, T. E. (2004) Constitutional Theory in a Nutshell. 3,

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Jackson, V. C. (2010) Constitutions as "Living Trees"? Comparative Constitutional Law and Interpretive Metaphors. 42

Generally speaking, two ideas are associated with living constitutionalism. The first idea is that constitutional principles must be adapted to changing circumstances keeping judicial power in reserve for use against injustices.⁸⁷ The second idea is that constitutional practice should reflect changing values as well as changing circumstances.⁸⁸ However, living Constitution grows and changes from age to age, to meet the needs of a changing society is incredibly dangerous for a democratic society because it is the judges who determine those needs and find that changing law.⁸⁹

2:3. Institutional Arrangement and Constitutional Interpretation

The issue of who should interpret the Constitution has been one of the most controversial issues in constitutional law. In the United States, ordinary courts interpret the Constitution while most European countries have established constitutional courts. In France, the “Conseil Constitutionnel” is empowered to interpret the Constitution. In China and Ethiopia, the constitution is interpreted by non-court institutions.⁹⁰

2.3.1. Constitutional Adjudication by Court

The decentralized model

Over time, two models of judicial constitutional adjudication have emerged: centralized and decentralized.⁹¹ These two models emerged in different jurisdictions and have their peculiar features. The decentralized model had its origin in the United States, where judicial review remains the most characteristic and unique institution.⁹² In the United States, all judges, state and federal, can decide on constitutional issues while this task is entrusted upon constitutional courts in many European countries.⁹³

In the USA, lower courts can adjudicate constitutional issues only in concrete cases where there are real controversies. Hence, they cannot review the constitutionality of legislation in abstract,

⁸⁷ Ducat, C. R. (2009). Constitutional interpretation. USA, Wadsworth, Cengage Learning.

⁸⁸ Ibid.

⁸⁹ Moran, K. E. (2011) Comparing and Contrasting the Constitutional Approaches of Justice Scalia and Justice Breyer. 72

⁹⁰ Girma, B. (2018) Constitutional Adjudication by Parliaments: Lessons from Comparative

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

i.e., in the absence of real disputes between parties.⁹⁴ Decisions rendered by the USA Federal Supreme Court on the unconstitutionality of legislation are binding on all parties, and government organs can't apply the statute anymore. It also serves as a precedent that binds lower courts in entertaining similar constitutional issues.⁹⁵

The Centralized model

The centralized model of judicial constitutional review refers to the existence of one single organ to interpret constitutions. It emerged in Europe after World War I.⁹⁶ There is different explanations for why most European countries rejected the US model of constitutional adjudication. Part of the explanation focuses on the principle of separation of powers where judges were to have a limited role.⁹⁷

The second explanation is that European civil law countries cannot achieve legal certainty with the design similar to the decentralized system of constitutional adjudication.⁹⁸ The reasons include the existence of more than one Supreme Court that is specialized in different areas of the law and the doctrine of precedent does not serve as one of the sources of law in the civil law tradition.⁹⁹ Third, authorizing ordinary courts to refuse the application of unconstitutional legislation would create non-uniformity in constitutional questions.¹⁰⁰ A constitutional court is an independent organ of the state with the task of primarily ensuring the superiority of the constitutional norm.¹⁰¹

The system of constitutional review adopted by various African countries appears to be broadly based on these western models of either the American or European system of control, albeit with some modifications or adjustments. In some of these African states, the power of constitutional review is vested on all ordinary courts while the highest court in the system provides for the uniformity of jurisdiction¹⁰².

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Tesfaye, Y. (2006). "Judicial review and democracy: A normative discourse on the Ethiopian approach to constitutional review." 31.

In Nigeria, for example, the Constitution confers authority on the High Court, Court of Appeal, and the Supreme Court to interpret and enforce the provisions of the Constitution. Botswana, Gambia, Guinea, Malawi, Ghana, Seychelles, Sierra Leone, Tanzania, and Swaziland have also adopted a similar system of review.¹⁰³

The majority of the African countries have, however, adopted the concentrated system of constitutional review. In these systems, constitutional matters are dealt with specialized constitutional courts with specially qualified judges or by ordinary supreme courts or high courts or their special chambers in special proceedings. In South Africa, for instance, the Constitutional Court is the court of final instance on constitutional matters.¹⁰⁴

2.3.2. Extrajudicial Constitutional Adjudication

It is important to mention that the review of constitutionality of legislation by courts is not automatic. Institutional choices vary across jurisdictions. Even in the United States where there is strong judicial review, there are debates relating to whether it is compatible with democratic principles to allow the unelected judge to quash legislation enacted by representatives that have a direct mandate from the people. Some other jurisdictions have made a different arrangement by granting this power to none court institutions.¹⁰⁵

In the spectrum of institutional choice to adjudicate constitutional issues, one could find parliaments with or without legislative powers in some jurisdictions. For example in France, constitutional review is exercised by a body other than a court. The “*Conseil Constitutionnel*” composed of members appointed by three politicians: The President of the Republic, the National Assembly, and the Senate. Its whole structure is essentially political. The “*Conseil Constitutionnel*” challenges the constitutionality of a law only before it is promulgated by parliament. Hence, it is a preventive system of constitutional review.¹⁰⁶

The Imperial Constitution of Brazil enacted in 1824 was another example where the Senate was empowered to interpret the Constitution. In the U.S.S.R., the Soviet of the Union and the Soviet

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Girma, B. (2018) Constitutional Adjudication by Parliaments: Lessons from Comparative

¹⁰⁶ Tesfaye, Y. (2006). "Judicial review and democracy: A normative discourse on the Ethiopian approach to constitutional review." 31.

of the Nationalities, the two chambers of the Supreme Soviet, the highest legislative body of the Soviet Union, could rule on the constitutionality of their legislation.¹⁰⁷

There are also contemporary examples of such an arrangement. Currently, China and Ethiopia stand at odds as jurisdictions that empower a legislative and non-legislative parliament to interpret their constitutions.¹⁰⁸ The 1982 Constitution of the Peoples' Republic of China authorizes the National People's Congress (NPC) to supervise the enforcement of the Constitution. The NPC is also supported by the Standing Committee which undertakes routine tasks of the NPC.¹⁰⁹ The NPC along with its Standing Committee is the highest political organ in the state and has broad powers.¹¹⁰ Similarly, Article 62 of the 1995 Constitution of the Federal Republic of Ethiopia authorizes the HoF to interpret the Constitution.¹¹¹

Proponents of extra-judicial constitutional interpretation argue that judicial review is undemocratic. It is so because it permits unelected judges, who are accountable to nobody, to nullify the acts of democratically elected legislatures who are accountable to the public.¹¹²

However, extrajudicial interpretation of the Constitution has often been criticized as problematic, insufficient, and not authoritative.¹¹³ The nature and function of law require authoritative constitutional interpretation by the Court, an arrangement that will best safeguard the values of "settlement and stability."¹¹⁴ It is anarchic, irrational, and tyrannical.¹¹⁵ The courts are designed to be an intermediary body between the people and the legislature in order, among other things, to keep the legislature within the limits assigned to their authority.¹¹⁶ The Court is needed not merely to prevent the occasional abuse of power that arises when particular government actions

¹⁰⁷ Chi Mgbako, M. M. e. a. (2008). "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights." 32(1): 41.

¹⁰⁸ Ibid.

¹⁰⁹ Girma, B. (2018) Constitutional Adjudication by Parliaments: Lessons from Comparative

¹¹⁰ Chi Mgbako, M. M. e. a. (2008). "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights." 32(1): 41.

¹¹¹ Constitution of the Federal Democratic Republic of Ethiopia, 1995, article 62

¹¹² Grimm, D. (2011) Constitutional adjudication and constitutional interpretation. 16

¹¹³ Peabody, B. G. (1999) Nonjudicial Constitutional Interpretation, Authoritative Settlement, and a New Agenda for Research. 16, 29

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

violate constitutional provisions, but more importantly to prevent the systematic dismantling of restraints on political power through a legislative redefinition of constitutional meaning.¹¹⁷

2.3.3. Mixed Approach to Constitutional Adjudication

There is a mixed system of review whenever courts review one type of legislation and a political organ examines another type of legislation. That is the method of review adopted in Switzerland, where federal statutes can be reviewed only through the political process whereas cantonal laws can be controlled by the judiciary branch.¹¹⁸ Swiss constitution under Article 189 (1) (d) states that the Federal Supreme Court Swiss have jurisdiction over violations of cantonal (state) constitutional rights. However, Article 189(4) of the same constitution demonstrates that enactments of the Federal Parliament and the Federal Government cannot be challenged before the Swiss Federal Supreme Court.¹¹⁹

¹¹⁷ Ibid.

¹¹⁸ Switzerland constitution of 1999 with amendments through 2002, Article 189 (1) (d)

¹¹⁹ Ibid.

Chapter Three

The Concept of Speedy Justice

It is difficult to define 'Justice' in absolute terms; rather it is a relative, changing, and ever-growing concept.¹²⁰ Justice is what appears just and fair to a reasonable man is the most satisfying definition of the term Justice.¹²¹ The term 'Justice' is of imponderable import having varying meanings such as truth, morality, righteousness, equality, fairness, impartiality, law, etc.¹²²

Justice is the first virtue of social institutions, as truth is of systems of thought. Justice is the backbone and object of any civilized society and nation. The detection for justice has been an ideal in which mankind has been hopeful for generations down the line. Justice is a constitutional mandate for running legal as well as social institutions.¹²³

A good legal system should not only yield proper and just solutions but also these solutions must be had quickly had as infallibility as a human agency can guarantee.¹²⁴ Slow justice would be futile, over speedy justice, is undesirable, because the hurried justice implies buried justice, speedy disposal of cases should not be constructed to mean that cases should be disposed of quickly to the detriment of justice.¹²⁵

The dispensation of justice has little meaning if it is not delivered in a reasonably short time, strictly speaking, a delayed justice, frustrating the cause thereof, is no justice at all.¹²⁶ People want justice, pure, unpolluted, quick, and inexpensive and they have every right to receive the same. But in reality, there is a deplorably long delay in the dispensation of Justice. If Justice is not executed speedily men persuade themselves that there is no such thing as justice.¹²⁷ To be just and fair, justice must be delivered quickly because justice fails to convey any meaning in the

¹²⁰ Sarathe, A. (2019). "Speedy Justice in India in View of Delays- An Analytical Study." 7(2): 6.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Kaur, M. (2019). "Constitutional Prespective of speedy Justice in India." 5(3): 6.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Jain, A. (2002). A right to speedy justice in India. Journal Law mantra, 2(8), 17.

¹²⁷ Ibid.

right sense of its concept if it's not delivered to the person concerned within a reasonable speed¹²⁸. Moreover the need for "Speedy Justice" is also reflected by the claim of an individual concerning his Right to Life and his Right to Dignity.¹²⁹

The Concept "Right to Speedy Justice" is deep-rooted and grounded in one of the fundamental instincts of humanity.¹³⁰ The right to a speedy justice has a long history and deep-rooted policy concerns for protecting human rights from unwanted harms.¹³¹ The right to speedy justice within a reasonable time and without undue delay is considered one of the fundamental procedural rights of a person. The right to speedy justice is enshrined in the constitutions and laws of many nations and is also found in numerous international instruments.¹³²

Speedy justice is a remedial judicial system both for the accused and convicted ones. One of the most neglected aspects of the justice system is the delay caused in the disposal of the case. Procrastination of trials may sometimes result in injustice because of an unduly prolonged process much of the material evidence may perish as when witness die or situations are altered.¹³³

A justice that drags on for an unreasonably long time is not fair.¹³⁴ The right to speedy justice is a norm of international rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of basic rights and freedoms, the most prominent of which is the right to life and liberty of a person. Delay is recognized as a category of abuse of process.¹³⁵ Delays of justice may be the consequence of legal and procedural problems, but also as a result of practices which do not consider adequately the need to define priorities in clearing backlogs of cases.¹³⁶ The cardinal principle of natural justice is that 'justice should not only be done but it should be

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Osnowitz, S. (2016). "Demanding a Speedy Trial: Re-Evaluating the Assertion Factor in the Baker v. Wingo Test." 67(1): 30.

¹³² Gopaul, A. (2015). The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings. Law, University of South Africa. Masters: 210.

¹³³ Azad, S. A. K. (2017). "Criminal Justice System and Right to Speedy Trial: A Legal Analysis." 5(2): 6.

¹³⁴ Ibid.

¹³⁵ Gopaul, A. (2015). The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings. Law, University of South Africa. Masters: 210.

¹³⁶ Ibid.

seen to have been done' which means that those who receive justice must feel it has been done with them.¹³⁷ It is not only important that the machinery of justice works effectively and efficiently but it should also work timely in the sense that the disposal should be as speedy as is possible. Justice delayed is justice denied; which means that justice should be dispensed within a reasonable period.¹³⁸

Justice is the first virtue of social institutions, as truth is of systems of thought. Institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.¹³⁹ Being the first virtues of human activities, truth and justice are uncompromising.¹⁴⁰ These propositions seem to express human beings' intuitive conviction of the primacy of justice.¹⁴¹ If the entitlement justice is not met then a denial of social justice is asserted. Accordingly, each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.¹⁴²

There is a direct relationship between the speedy justice and human rights.¹⁴³ Human rights are rights inherent to all human beings. They define relationships between individuals and power structures, especially the State.¹⁴⁴ Human rights delimit State power and, at the same time, require States to take positive measures ensuring an environment that enables all people to enjoy their human rights.¹⁴⁵ Governments and other duty bearers are under an obligation to respect, protect, and fulfill human rights, which form the basis for legal entitlements and remedies in case of non-fulfillment.¹⁴⁶

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity.¹⁴⁷ They are expressed in treaties, customary international law, bodies of principles, and other sources of law.

¹³⁷ Junaid (2009). Speedy trial in criminal justice system India, ALIGARH. PhD.

¹³⁸ Ibid.

¹³⁹ John Rawls, A theory of Justice, 2nd edition, Harvard University press 1999

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Berega, Y. G. (2012) The Constraints to a Speedy Trial: The Case of Sidama Zone High Court.

Human rights law places an obligation on States to act in a particular way and prohibits States from engaging in specified activities.¹⁴⁸

Human rights are inherent entitlements that come to every person as a consequence of being human.¹⁴⁹ All human beings are born equal in dignity and rights. They by their being human possess certain basic and inalienable rights which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. These rights, being birthright, are, therefore, inherent in all individuals irrespective of their difference on certain grounds, such as race, religion, nationality.¹⁵⁰ They are essential for individuals as they are related to their freedom and dignity, and are conducive to physical, moral, social, and spiritual welfare.¹⁵¹

It is no surprise, then, that the right to a speedy trial within a reasonable time has been guaranteed in international law.¹⁵² This right is enshrined in international instruments such as in article 14(3) (c) of the International Covenant on Civil and Political Rights, Article 8 (1) of the American Convention on Human Rights; and article 6 (1) of the European Convention for the Protection of Human Right. Article 6(1) of the 1950 European Convention on Human Rights provides that everyone is entitled to a fair and public hearing within a reasonable time.¹⁵³

It is due to the social importance of the speedy trial, that due recognition is given to it by international human rights instruments. Long incarceration without trial is not only violative of Constitution but is also against the commitment to the Universal Declaration of Human Rights, 1948.¹⁵⁴ On 16 December 1966 at its 21st Session, the General Assembly of the U.N.O. approved resolution to this effect. Article 9(3) of part III of the resolutions runs as:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

Universal declaration of human rights(1948), in an article (2) (10), also states that everyone is entitled to all the rights and freedoms outlined in this declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.¹⁵⁵ Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him.¹⁵⁶

The International Covenant on Civil and Political Rights is an expanded hard-law version of the Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights sets a basic enforceable minimum standard for the respect of human rights around the world. The International Covenant on Civil and Political Rights an appropriate tool with which to increase judicial awareness and respect for minimum international human rights standards.

International Covenant on Civil and Political Rights in, article 14 maintains that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. Article 14(3) (c) of the convention, particularly express that all person should be tried without an undue day.¹⁵⁷

Article 5(3) of the 1950 European Convention for the Protection of Human Rights provides that everyone arrested or detained under the provisions of paragraph 1(c) of Article (5) is entitled to a trial within a reasonable time.¹⁵⁸ Article 6(1) of the European Convention provides that “in the determination of civil rights and obligations of any criminal charge against everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.¹⁵⁹ From this provision, a delay is conceived as a situation where proceedings are not concluded within a reasonable time. African Charter on Human and Peoples' Rights in its

¹⁵⁵ Universal Declaration of Human Rights, 10 December 1948, Article (2) (10)

¹⁵⁶ Ibid.

¹⁵⁷ International Covenant on Civil and Political Rights,16 December 1966, Article 14(3) (c)

¹⁵⁸ European Convention for the Protection of Human Right, 1950, Article 5(3)

¹⁵⁹ Ibid.

article 7(1) (d) stipulates that every individual shall have the right to the right to be tried within a reasonable time by an impartial court or tribunal.¹⁶⁰

In line with international Human rights instruments, the FDRE Constitution in article 20(1) maintains that accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged.¹⁶¹ Article 83(2) FDRE constitution stipulates that the House of the Federation shall, within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry.¹⁶²

The above works of the literature suggest that speedy justice is one of the fundamental rights and freedoms of a human being. The right to speedy justice has been recognized in both international and national human rights instruments. This implies that cases presented before the courts or other institutions with judicial capacity should be disposed of within a reasonable time.

¹⁶⁰ African Charter on Human and Peoples' Rights, Article 7(1) (d)

¹⁶¹ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 20(1)

¹⁶² Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 83(2)

Chapter Four

Analysis of the Practice of Constitutional Interpretation in Ethiopia

4.1. General Overview of Constitutional Interpretation in Ethiopia

So far, Ethiopia had four written constitutions. However, these constitutions either lacked a method of constitutional interpretation or ideal institutions to properly interpret constitutional disputes. The first written constitution of 1931 failed to provide provisions of constitutional review.¹⁶³ Even though the 1955 constitution provides constitutional supremacy clause indicated in article 122 of the constitution, it has failed to provide a specific organ empowered to exercise the power of constitutional review.¹⁶⁴

The 1987 PDRE Constitution empowered the Council of State to interpret the constitution but failed to develop its jurisprudence of constitutional interpretation.¹⁶⁵ The FDRE Constitution under Article 62(1) (2) empowers the House of Federation (HoF) to interpret the constitution as well as to organize the Council of Constitutional Inquiry.¹⁶⁶

Following this constitutional provision, Proclamation No.251/2001 has further defined the powers and responsibilities of the House of Federation. The House makes the final decision upon draft proposal of constitutional interpretation submitted to it by the Council of Constitutional Inquiry. As indicated in Article 7(1) (2) of the same proclamation, the house identifies and implements principles of Constitutional interpretation which it believes helps to examine and decide Constitutional cases submitted to it.¹⁶⁷ The same article further maintains that where the Constitutional case submitted to the House pertains to the fundamental rights and freedoms enshrined in the Constitution, the interpretation is made in a manner conforming to the

¹⁶³ Ethiopian Constitution of 1931 established in the reign of His Majesty Hail'e Sellassi'e I
16th July 1931

¹⁶⁴ 1955 revised Constitution of Ethiopia, Article 122

¹⁶⁵ Constitution of the People's Democratic Republic of Ethiopia,1987

¹⁶⁶ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 62 (1) (2)

¹⁶⁷ Proclamation No. 251/2001, Article 7(1) (2), Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

principles of the Universal Declaration of Human Rights, International Covenants on Human Rights, and International instruments adopted by Ethiopia.¹⁶⁸

The House starts reviewing the constitutionality of disputed laws presuming the enacted law is constitutional.¹⁶⁹ However, when the constitutionality of the law is found to be controversial, a government body that must consult the Federal or State government, depending on conditions, must explain the disputed law.¹⁷⁰ The House, before deciding on the constitutionality of the law, it may seek further explanation from the court handling the case and the parties involved in the case.¹⁷¹ The House may also before passing a final decision on constitutional interpretations, call upon pertinent institutions, professionals, and contending parties to give their opinions.¹⁷²

The final decision of the House on constitutional interpretation has a general effect which therefore has applicability on similar constitutional matters that may arise in the future.¹⁷³ As indicated under article 13 of the same Proclamation, the House passes decisions within thirty days over the recommendation submitted to it by the council of Constitutional inquiry.¹⁷⁴

Concerning the content of the decisions of the House, article 15 of the proclamation describes that the decision of the House consists of details of the constitutional issue, justification for whether the constitutional interpretation was necessary or not, and a decision it has finally made.¹⁷⁵ In the decision-making process, the House may establish a committee, drawn from its members, which shall investigate the draft proposal submitted to it by the Council of the Constitutional Inquiry and an appeal lodged against the decisions of the Council of the

¹⁶⁸ Ibid.

¹⁶⁹ Proclamation No. 251/2001, Article 9(1), Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷⁰ Proclamation No. 251/2001, Article 9(2), Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷¹ Proclamation No. 251/2001, Article 9(4), Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷² Proclamation No. 251/2001, Article 10, Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷³ Proclamation No. 251/2001, Article 11(1) Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷⁴ Proclamation No. 251/2001, Article 13 Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷⁵ Proclamation No. 251/2001, Article 15 Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

Constitutional Inquiry.¹⁷⁶ The committee may be mandated by the House to decide whether an appeal made against decisions of the Council of the Constitutional Inquiry should be presented to the general meeting of the House or not.¹⁷⁷

The decision, the decision of the House on Constitutional interpretation comes in to effect as of the date of passing of the decision.¹⁷⁸ However, the federal or the State government legislative body may be communicated within six months so that it amends, changes, or repeals the law in question before a final decision of its unconstitutionality is made.¹⁷⁹ In the next parts, the practice of constitutional interpretation in Ethiopia is presented.

4.2. The Practice of CCI/ HoF Concerning Methods of Constitutional Interpretation

This section analyses selected cases decided by the CCI/ HoF to identify the methods of constitutional interpretation that the CCI/ HoF practically employ in resolving Constitutional disputes. The main purpose of this section is to answer the first research question- What method/methods of constitutional interpretation do CCI/ HoF practically employ in resolving constitutional disputes? The majority of cases decided by the CCI/ HoF constitute the land, property, children's rights, and Job security-related disputes. Almost in all cases, the CCI and HoF employed the textual, purposive, and holistic methods of Constitutional interpretation.

4.2.1. The practice of CCI/ HoF concerning Methods of constitutional Interpretation related to Land disputes

Cases related to rural agricultural land disputes have been made by the applications of textual, purposive, and holistic methods of constitutional interpretations. This is evident in *Kassaye Eshete vs Askale Zemedkun*, *Defar Aseffa vs Dirba Ayenne*, *Tehare desta vs Genet Allene*, *Jamal Seid vs Gerad Gadisa*, *Kidanemariam tekilu vs Gebremikael Hindiyya*, *Birke Leggesie vs Black diamond PLC*, *Muyedin Yusuf vs Nazi Aliyi et al.*, *Benchamilak Dersoliny vs Abebawu*, *Asay Doyye vs Tinsaye Kutale* , *Alemitu Gebre vs Channe Dassaleny*, *Alima Mahamed vs Adem Abdi*,

¹⁷⁶ Proclamation No. 251/2001, Article 18(1), Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷⁷ Proclamation No. 251/2001, Article 18(2) Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷⁸ Proclamation No. 251/2001, Article 16(1) Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

¹⁷⁹ Proclamation No. 251/2001, Article 16(2) Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities

Kelebe Tesfa vs Ayeliny Derebewu, Mamite Seble vs Mulu Gurmu, Aliyii Dawwe vs Mahamed Adam, Abduramahan Urgessa vs Alima Tola, Fantaye Laphisa vs Adunya Demise.

For instance, *the case of Kassaye Eshete vs Askale Zemedkun* was about the rural agricultural land dispute.¹⁸⁰ The case began in the first instance court of *Menz Mamamidir* in Amhara Regional State. The first instant court ruled the case in favor of the applicant (*Kassaye Eshete*). Aggrieved with the decision, the petitioner appealed to the north Shewa Supreme Court. The Supreme Court also gave a verdict in favor of the applicant. The petitioner again appealed to Amhara Regional State and the Federal cassation bench in which both courts decided the case is not admissible. Exhausting all local remedies, the petitioner appealed to CCI stating that the decision of the courts has violated rights granted in the constitutional provisions indicated under Article 35(1) (7) and 40 (3) (7).

CCI reviewed the case in light of Amhara National Regional State's rural land administration and use Proclamation No.133/2006 and relevant constitutional provisions. The CCI concluded that the decision of the courts has violated rights of the petitioner granted under Article 35(1) (7, and 40(3) (7), and hence recommended to the House for the final decision.

However, the HoF rejected the recommendation of CCI reasoning that the courts resolved the dispute in conformity with Amhara National Regional State rural land administration and use proclamation No. 133/98 and hence the decision doesn't contradict constitutional provision 35(1) (7), 40(3) (7).

As can be seen from this case, the CCI and HoF cited to the texts of the constitution, text of the indicated proclamation, underlying purposes of the texts' of the constitution, and cumulative readings of constitutional texts and the text of the proclamation at hand. This implies both institutions employ textual, purposive, and holistic methods in addressing constitutional disputes respectively. As learned from the above case, CCI and HoF have mainly relied on Proclamation No. 133/2006. This shows that the institutions have failed to strongly base their reasoning and argumentation on constitutional provisions to justify the unconstitutionality of the disputed case.

¹⁸⁰ *Kassaye Eshete vs Askale Zemedkun*, filed complaint on 23 November 2015, finalized by CCI on , 3 August 2018 and decide by HoF on 9 October 2018

It is also evident in *Defar Aseffa vs At Dirba Ayenne*, where the CCI/ HoF employs textual, purposive, and holistic methods of constitutional interpretation.¹⁸¹ The contest between both disputants revolves around the land dispute. The applicant in this case (*Defar Aseffa*) logged a complaint against *Dirba Ayene* at Oromia regional state *Kuyu's* first instant court stating that he is entitled by law to use the land.

However, the first instant Court, High Court, and the Region's Supreme Court have decided the case against the interest of the applicant arguing based on a period of limitation. The controversy went up to the Federal Supreme Court Cassation Bench where a verdict was also given against the interest of the applicant.

Aggrieved with the decision of the FSCCB, the applicant brought the case to the attention of the CCI and HoF claiming the unconstitutionality of the decision. The CCI investigated the case against letter written from the concerned *woreda* rural land administration and use office which affirms that the applicant has been using the disputed land and hence merit the right. The CCI criticized the decision of the court reasoning that the court relied on testimonial evidence rather than relying on documentary evidence.

The CCI argued that the court should have relied on documentary evidence written from the *woreda* rural land administration and use office. According to CCI, documentary evidence is more reliable than testimonial evidence in court decisions. However, the CCI has failed to cite relevant provisions as to whether testimonial or documentary evidence is more reliable in adjudicating disputed cases.

The CCI also cited to the Oromia National Regional rural land administration and use Article 2((10), 9(2) of Proclamation No. 130/99. Based on these arguments, the CCI has recommended to the HoF for final decision stating that the decision of the Court has violated rights granted under the constitutional provision Article 40(4) which reads as:

Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession.

The HoF accepted the recommendation of CCI stating that the decision of the court undermines rights granted under constitutional Article 40(4). The HoF also argued that the decision of the court violates Proclamation 130/ 2007 Article 9(2) of Oromia National Regional Rural land

¹⁸¹ *Defar Aseffa vs At Dirba Ayenne*, filed complaint on 26 July 2016, finalized by CCI on 18 May 2018, and decided by HoF on 9 October 2018

administration and use. The HoF hence declared that the decision of the court does not affect as per article 9(1) of the constitution.

A close look at the above case indicates that CCI/ HoF employed textual, purposive, and holistic methods of constitutional interpretation. Both institutions used the text of the constitution as well as the text of the proclamation as the basis for interpreting the case at hand indicating CCI and HoF employed textual methods. The institutions have also interpreted the disputed case in the lights of the purpose behind the constitutional text (in this case, article 36 of the constitution) implying that the purposive method is employed. The institutions also employed holistic/structural methods as they have cumulatively employed constitutional provision and the indicated proclamation.

The analysis of the above case also shows that the CCI and HoF haven't sufficiently justified their reasons to invalidate the decision of the court. Both institutions merely cited the constitutional provisions without strongly justifying how the decision of the court doesn't conform to the constitutional provision and hence has no effect. The CCI argued that documentary evidence is more reliable than testimonial evidence but without referring to the relevant provisions that indicate documentary evidence prevails over testimonial evidence.

The dispute between *Wedere Tachibele vs Likke Gurmu* is about the right to use rural land.¹⁸² The complaint (*Wedere Tachibele*) lodged complaints against the respondent (*Likke Gurmu*) at East showa zone first instant court in Oromia Regional state explaining that the applicant was violated rights to use the rural land by the respondent after her husband had passed away. The complaint stated that she had been using the land until her husband had passed away even though she lived for 18 years separately from her late husband because of a healthy reason.

The first instant court passed a verdict in favor of the complaint. However, dissatisfying to the decision of the court, the respondent applied to the next levels of courts whereby the high court and the region's Supreme Court approved the decision of the lower courts. The case went up to Oromia and federal cassation benches whereby both benches reversed the decisions of the lower court on the ground of period of limitation.

The complaint brought the case to CCI for constitutional review. The CCI decided that the decision of the court violates the complaint's right but without sufficiently justifying its reasons

¹⁸² *Wedere Tachibele vs Likke Gurmu* filed complaint on 20 December, 2012, finalized by CCI on 27 March, 2016, and decided by HoF on 25 June, 2016

and arguments and also without citing to the relevant constitutional provisions to overturn the decision of the courts.

The HoF reviewed the case in light of Oromia National Regional rural land administration and use proclamation 130/99 Article 6 (16) which provides that farmers lose the right to use rural land only when they have stopped using the land for more than 2 years. The HoF also reviewed the case against constitutional provision 40(4) which reads:

Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession.

The HoF also stated in its reasoning part, the decision of the court violates article 35(7) of the constitution which reads:

Women have the right to acquire, administer, control, use, and transfer property. In particular, they have equal rights with men concerning use, transfer, administration, and control of the land. They shall also enjoy equal treatment in the inheritance of property.

The HoF, finally concluded that the decision of the court violates the applicant's right. However, the HoF has failed to sufficiently justify its reasons as to how the decision of the court which relied on a period of limitation in overturning the lower courts' decision is in contradiction to the rights entrenched in the constitution. A mere citation of constitutional provisions is not enough to justify the reasoning of the HoF to invalidate the courts' decisions. The HoF should have based its reasoning on relevant constitutional provisions than legal articles that are presumed to be left to courts.

The reasoning and argumentation of the CCI and HoF indicate that both institutions employ textual, purposive, and holistic methods in dealing with constitutional disputes. Constitutional texts and text of the indicated proclamation are used as a basis to interpret the disputed case implying the textual method has been employed. The attempts of the institutions to relate the disputed case to the purpose behind the constitutional provisions and the cumulative readings of constitutional texts and proclamations show that the CCI and HoF employed purposive and holistic methods respectively.

4.2.2. The practice of CCI/ HoF concerning Methods of Interpretation related to Property

The CCI and HoF disposed of cases related to the property through the application of textual, purposive, and holistic methods of Constitutional interpretation. This is evident in cases such as *Elisabet Abebe vs Jijjiga City administration et. al*, *Kemeriya Ahmed vs Bediredin Abdulwab*,

Fatuma Ahimde vs Husen Tufa, Shewaye Mulat vs Aregash Bedi, Tsige Mitiku vs Mesfin Shiferraw, Bogalech Aseffa vs Sime Negash, Birhanu Aseffa Vs. Fiche city administration, Hayimanot Sebisibe vs Ashenafi Aleme, Birhanu Belay vs Bole district, woreda five administration, Fetilework mengesha vs Belaynesh woldekidan, Azeb Tufa vs Alemeyehu Mengiste, Adanech Lisanework vs Shibiru Asnake, Negash Dubale vs Bole sub-city, Work Dedmos vs Seblewongel et al, Raniya Ahmed vs Dr. Ibrahim Mehamed, Six continental Hotel vs Zewditu Mesfin, Tatek H/ Mariam vs federal housing agency, Yishetu Yimam vs Yetemenye Ali, Yishetu Yimam vs Yetemenye Ali, and Amina Abdulkadir vs Kedir Mahamed et a.

For example, the dispute between *Elisabet Abebe vs Jijjiga City administration et. al.* revolves around residential homes.¹⁸³ The applicant (*Elisabet Abebe*) complained to Jijjiga city high Court claiming that the Jijjiga city administration was not willing to execute court decisions that authorize the city administration to transfer the residential home to the applicant. However, the city administration was not willing to do so. The applicant continued to take the case to Jijjiga Supreme Court but the court couldn't enforce the same.

Dissatisfying with the decision, the applicant brought the case to the attention of CCI stating that the right stipulated under constitutional provision 40(1) has been violated. After reviewing the case, the CCI goes to say lack of timely execution of court decision violates right entrenched under constitutional provision 40(1), 40 (4), and 37. The CCI also goes to say the courts have shown partiality and has violated constitutional provisions stipulated under Article 79(3) which reads as:

Judges shall exercise their functions in full independence and shall be directed solely by the law.

The CCI recommended to the HoF for the final decision. The HoF dismissed the recommendation of CCI arguing that issues related to the execution of the Court's decisions don't merit constitutional interpretation. The HoF justified that enforcing the decision of the court is within the jurisdiction of the court itself. The HoF further argued that constitutional interpretation which is the mandate of HoF is made only when government decisions and laws are in contradiction to the constitutional provision of 9(1).

¹⁸³ *Elisabet Abebe vs Jijjiga City administration et. al.* filed complaint on 12 May 2015, finalized by CCI , 10 July 2018 and decided by CCI on 9 October 2018

The HoF concluded that the recommendation of CCI doesn't fit the principles and spirit of the constitutional interpretation. The HoF ruling shows that it has used textual, purposive, and holistic approaches as it attempts to provide meaning by looking at the texts, the spirit of the Constitution as well as the cumulative readings of the constitutional provisions.

It can also be argued that the CCI shouldn't have admitted the case for constitutional interpretation for two reasons. The first reason is that all local remedies haven't been exhausted. The case hasn't been taken to the federal Supreme Court and federal causation bench for exhaustion. Concerning exhaustion of local remedies, article 5 (1) (2) of Council of Constitutional Inquiry Proclamation No. 798/2013 reads:

Any person who alleges that his fundamental right and freedom provided under the Constitution have been violated due to the final decision rendered by government organ or official may submit his case to the Council for constitutional interpretation. The issue of constitutional interpretation may be submitted to the Council when a final decision has been rendered by the government organ having the competency to decide on the claim for violation of right with the due hierarchy to consider it.

The second reason is that a matter of enforcing Courts' decisions is within the jurisdiction of courts themselves which doesn't merit constitutional interpretation. Lack of principles of Constitutional interpretation or jurisprudence might have caused this specific problem. Such practices may lead the CCI to overstep its power and hence likely to compromise rights entrenched in the constitution.

The dispute between *Kemeriya Ahmed vs Bediredin Abdulwab* relates to a residential home where *Kemeriya Ahmed* complained *Bediredin Abdulwab* stating that the home belongs to the complainant.¹⁸⁴ The complaint brought her case to the attention of the court of law which began in the federal first instant court. The respondent argued that since the age of the complaint is more than 100 years and as a result, the suit might not reflect the real intent of the complaint. The respondent claimed that the complainant's mental status must be examined.

¹⁸⁴ *Kemeriya Ahmed vs Bediredin Abdulwab* filed complaint on 31 January 2017, finalized on 24 October 2018, and decided by HoF on 9 June 2019

Reviewing the case, the lower court ruled in favor of the complaint. Aggrieved by the decision of the court, the respondent brought the case to the high court where the high court also accepted the decision of the lower court. The controversy went up to the federal supreme and cassation bench where both levels of courts reversed the decisions of first instant and federal high court justifying that the case is buried by a period of limitation. The cassation bench reasoned that the court can take legal presumption to conclude that the case is buried by a period of limitation.

Dissatisfying to the decision, the complaint brought the case to the attention of CCI for constitutional review. Reviewing the case, the CCI concluded that the decision of the cassation bench contradicts article 9(1) of the constitution. The CCI justified that the court's decision is not impartial and hence the decision of the cassation bench violates constitutional provisions granted under provision 79(3) which reads:

Judges shall exercise their functions in full independence and shall be directed solely by the law.

The CCI also argued that the cassation bench shouldn't have relied on a period of limitation that was not raised by the respondent. The CCI also goes to say the federal supreme cassation bench can only admit the case only when there is a basic error of law. The CCI hence concluded that the decision of cassation bench violates Article 80(3) of the constitution which provides:

The Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law.

Based on the above arguments, the CCI recommended to HoF for a final decision. Reviewing the case, the HoF invalidated the decision of cassation bench arguing that the decision of the court violates rights entrenched under constitutional provisions 40(1) (2) which read:

Every Ethiopian citizen has the right to ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use, and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.

The HoF also goes to affirm that the decision of the cassation bench contradicts Article 41(5) of the constitution which reads:

The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and children who are left without parents or guardians.

The HoF also stated that the decision of the cassation court violates Article 79(3) of the constitution which reads:

Judges shall exercise their functions in full independence and shall be directed solely by the law.

As can be seen from the above case, the CCI/ HoF employed the textual, purposive, and holistic/ structural methods in resolving constitutional disputes. The institutions used the text of the constitutional provision, the purpose underlying the texts, and cumulative readings of constitutional provisions suggesting that the CCI and HoF employed textual, purposive, and holistic methods respectively.

However, the HoF has failed to sufficiently justify its reasons for invalidating the decision of the court. The HoF has failed to challenge the argument of the cassation bench's argument i.e., the right of the complaint has been buried by a period of limitation. It can also be argued that article 41(5) of the constitution is not relevant for this specific case. This inefficiency might have emanated from the lack of a clear principle of constitutional interpretation.

4.2.3. The practice of CCI/ HoF concerning Methods of Interpretation related to Children Rights

CCI and HoF employed the textual and purposive method of constitutional interpretation in resolving disputes related to children's rights. This is evident in *Birhanu Regassa vs Mekerem Mitiku*,¹⁸⁵ *Child Surafel Zewudu vs Zewudu Mersha*,¹⁸⁶ *Meseret Taye vs Zebsh Gelahu*¹⁸⁷ where the HoF overturned the decisions of the court on the ground that the courts' decision violates rights granted under constitutional provision 36(1) (2) which reads:

¹⁸⁵ *Birhanu Regassa vs Mekerem Mitiku*, filed complaint on 1 July 2015, finalized by CCI on 16 August 2016, and decided by HoF on 12 October 2016

¹⁸⁶ *Surafel Zewudu vs Zewudu Mersha* filed complaint on 20 March 2013, finalized by CCI on 6 July 2016, and decided by HoF on 12 March 2017

¹⁸⁷ *Meseret Taye vs Zebsh Gelahu*, filed on 3 November, 2015, finalized by CCI on 25 September, 2017, and decided by HoF on 30 April, 2018

Every child has the right: To life; to a name and nationality; to know and be cared for by his or her parents or legal guardians; not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being; to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children. In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.

As can be seen from the above case, the argumentation of HoF indicates that the house employed textual and purposive methods. The HoF relied on constitutional text 36(1) (2) as well as the underlying purpose of the same which shows textualism and purposive methods have been employed.

4.2.4. The practice of CCI/ HoF concerning Methods of Interpretation related Access to Justice

The CCI and HoF resolved disputes related to access to justice in cases of *Ezekiel Mara vs Southern nation and nationalities road authority*¹⁸⁸, *Andinet Kebede vs Afar prosecution office*,¹⁸⁹ *Milkiyas Ayele vs Dambidollo water service office*.¹⁹⁰

The issue of *Ezekiel Mara* is about reinstatement.¹⁹¹ The Road authority fired the complaint based on misconduct. The Complaint filed against Southern nation nationalities Road Authority Office at Hawasa's first instant court claiming reinstatement. All levels of courts gave a verdict that the complaint has a right for reinstatement but the Road Authority was not willing to execute the decision of the court. The complaint brought the case to the attention of CCI for constitutional review. The CCI reviewed the case and recommended to the HoF explaining the case merits constitutional interpretation.

However, the HoF turned down the recommendation of the CCI arguing that the issue of enforcing courts' decision doesn't merit constitutional interpretation. The HoF hence concluded

¹⁸⁸ of *Ezekiel Mara vs Southern nation and nationalities road authority*, filed complaint on 28 April, 2016, finalized by CCI on 13 March, 2017, and decided by HoF on 10 October, 2017

¹⁸⁹ *Andinet Kebede vs Afar prosecution office*, filed complaint on 27 March, 2015, finalized by CCI on 12 May, 2017, and decided by HoF on 10 October, 2017

¹⁹⁰ *Milkiyas Ayele vs Dambidollo water service office*, filed complaint on, 12 November 2013, finalized by CCI on 12 October 2016, and decided by HoF on 12 March 2017

that the decision of the court doesn't violate rights embedded under article 37(1). The application of article 37(1) of the constitutional provision and the argumentation of HoF in light of the underlying purpose behind the indicated article shows that the HoF employed textual and purposive methods of constitutional interpretation.

The case of *Andinet Kebede vs Affar prosecution office* is also about reinstatement. The case started in Afar Regional State whereby the applicant filed against the Afar prosecution office justifying that he was fired from his job without due process of law and claimed reinstatement. The *Afar* prosecution responded that the applicant was fired according to the Afar National Regional prosecution administration regulation No. 12/2004 of Article 80(1) and hence rejected the case.

The controversy went up to Afar supreme court and federal cassation bench whereby the courts decided the case is inadmissible as the appeal was not presented to the court within one month. The case was presented to CCI for review. After investigating the case, the CCI recommended the decision of the court violates the right provided under Article 37(1) of the constitution. Similarly, the HoF argued the decision of the court contradicts right stated under Article 37(1) of the constitution and in effect unacceptable as per article 9(1) of the constitution. The application of constitutional articles and considering its underlying purpose, as well as the cumulative readings with the above-mentioned proclamation, inform the CCI and HoF employed textual, purposive, and holistic methods of constitutional interpretation.

The HoF also invalidated the decisions of the federal cassation bench in case of *Milkiyas Ayele vs Dambidollo water service office* reasoning that the decision of the court violates article 37(1) of the constitution. In general, the analysis of the above cases shows that the CCI and HoF employ a textual, purposive, and holistic method in resolving a constitutional dispute.¹⁹²

4.3. The Practice of Constitutional Interpretation and Speedy justice

There is a consensus among scholars that justice is one of the most important elements of human rights.¹⁹³ The dispensation of justice has little meaning if it is not delivered in a reasonably short time, strictly speaking, a delayed justice, frustrating the cause thereof, is no justice at all. People

¹⁹² Kelso, R. R. (1994) *Styles of Constitutional Interpretation and the Four Main Approaches to Constitutional Interpretation in American Legal History*. 29, 115

¹⁹³ John Rawls, *A theory of Justice*, 2nd edition, Harvard University press 1999

want justice, pure, unpolluted, quick, and inexpensive and they have every right to receive it. If Justice is not executed speedily, men persuade themselves that there is no such thing as justice.¹⁹⁴

The FDRE Constitution gives much attention to speedy justice. From this perspective, Article 83(2) of the constitution and Article 13(1) and (2) of proclamation 251/2001 is relevant. Both provisions state that:

*The House of the Federation within thirty days of receipt decides a constitutional dispute submitted to it by the Council of Constitutional Inquiry.*¹⁹⁵

This section provides a summary of selected cases decided by the HoF and analyzes them to identify whether the CCI/ HoF deliver a decision within a short time. The main purpose of this section is to answer the second research question- do the practices of constitutional interpretation in Ethiopia ensure speedy justice?

Different data sources show that the number of cases being presented before CCI/ HoF is increasing from time to time. For example, the total number of cases presented before CCI/HoF until the end of 2019 has reached 4952 out of which 80 cases were recommended by CCI to HoF meriting constitutional interpretation.

This study has analyzed 65 cases out of 80 cases presented before HoF for review. The analysis was made at three levels: time taken by CCI from the date of application up to the date of recommendation to HoF, the time taken by HoF from receiving a recommendation up to the date of delivering decisions, and the total time taken from the date of application to CCI up to the date of delivery of decisions by HoF. The following table 1, 2, and 3 displays a summary of data regarding the time taken by CCI/ HoF in deciding on cases presented before them.

¹⁹⁴ Jain, A. (2002). A right to speedy justice in India. *Journal Law mantra*, 2(8), 17.

¹⁹⁵ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 83(2)

Table 1: Summary of time taken from the presentation of cases before CCI up to the recommendation by CCI to HoF

Less than 1 year	1- 2 years	2-3 years	3-4 years	Greater than 4 Years	Total cases
12 Cases (19 %)	23 Cases (35%)	17 Cases (26%)	9 cases (14%)	4 Cases (6%)	65 cases (100%)

Source: Compiled by the researcher from CCI Data

Table 1 explains a summary of the time taken from the presentation of cases before CCI up to the recommendation by CCI to HoF. From table 1, it is understood that CCI has decided **23** cases (**35 %**) between 1 to 2 years, whereas 17 cases (**26%**) were decided between 2 to 3 years. The CCI decided 9 cases (**14%**) within 3 to 4 years. 12 cases (**19%**) were decided within less than 1 year while 4 cases (**6%**) were decided within more than 4 years. The table shows 40 cases which are nearly about (**62%**) of the total cases have been decided between 1 to 3 years. As can be seen from the annex part, three months is the minimum time frame within which the CCI decided on cases presented before it.

The time limit within which the CCI should decide on the cases presented before it is not explicitly identified either in the constitution or in the establishment proclamation of CCI. However, cumulative readings of articles of 10(3) and 12(3) of Proclamation No. 798/2013 suggest the need to decide cases within a short time. Article 12(3) of the proclamation reads:

*Unless there has been a good cause, a case before the Council may not be postponed for repeated appointments.*¹⁹⁶

Article 12(3) of the same proclamation state that the time limit within which the Council should submit its recommendation to the House of the Federation is determined by a directive to be issued by the Council. However, so far the promised directive hasn't been issued.

¹⁹⁶ Proclamation No. 798/2013, Article 12(3) A Proclamation to Re-Enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the Federal Democratic Republic of Ethiopia.

The above analysis reveals that the CCI takes a long time to investigate and presented the cases before HoF for a final decision. The next table displays summary of the time taken by HoF to decide on cases recommended by CCI for the final decision.

Table 2: Summary of Time Taken by HoF to Decide on Cases Recommended by CCI for Final Decision

Less than 1 year	Greater than 1 year	Total cases
50 cases (77%)	15 cases (23%)	65 (100)

Source: compiled by researcher from CCI data

Table 2 shows a summary of the time taken by HoF to decide on cases recommended by CCI for the final decision. As can be seen from Table 2, out of 65 selected cases, 50 cases (77%) were decided within less than 1 year whereas 15 cases (23%) were decided in more than 1 year. When compared to the time taken by CCI, a great delay is observed with CCI than HoF. However, it should be noticed that the HoF is not deciding on cases presented before it within 30 days (1 month) as promised in the constitution. As indicated in the annex part (table 2), it is only 1 case out of 65 selected cases that HoF decided within 30 days after receiving a recommendation from CCI. This practice is not in line with the constitutional promise stated under 83(2) and proclamation No. 251/2001 article 31(2) which uniformly stipulate:

*The House of the Federation shall, within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry.*¹⁹⁷

The next table provides a summary of the time taken from the presentation of cases before CCI up to decisions by the HoF.

¹⁹⁷ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 83(2) and proclamation No. 251/2001 article 31(2)

Table 3: Summary of time taken from the presentation of cases before CCI up to decision by the HoF

Less than 1 year	1-2 years	2-3 Years	3-4 Years	Greater than 4 Years	Total cases
2 (3 %)	14 (22 %)	25 (38 %)	16 (24.62 %)	8 (12 %)	65 (100%)

Source: Compiled by the researcher from CCI Data

Table 3 presents a summary of the time taken from the presentation of cases before CCI up to the decisions by the HoF. This table is very important because it shows the length of time from the date of application before CCI up to the date of the decision by HoF.

Table 3 depicts that out of **65** selected cases, **25(38 %)**, **16 (25%)**, and **8 (12 %)** cases were decided within 2 to 3, 3 to 4 years, and greater than 4 years respectively. Only **2 (3%)** cases were decided within less than 1 year. In other words, about **16 (25%)** cases were decided within less than 2 years. About **41(63%)** cases were decided between 2 to 4 years. **8 (12%)** cases took greater than 4 years to be adjudicated. Only **2 (3%)** cases were adjudicated within less than a year. This suggests that the practice of constitutional adjudication is not in line with the spirit of the FDRE constitution which demands the adjudication of constitutional dispute within a short time.

4.4. Practical Challenges that hinder CCI/ HoF in adjudicating Constitutional Disputes and Delivering Speedy Justice

Different challenges hinder CCI/ HoF in adjudicating constitutional disputes and delivering speedy justice. This section provides major challenges hindering CCI/ HoF to properly discharge their responsibilities. The main purpose of this section is to answer the third research question- What are the factors that hinder CCI/ HoF in interpreting constitutional disputes and delivering speedy justice? In answering this question, different data were analyzed and interviews were made with personnel who can provide relevant information on the same. Accordingly, the following major challenges have been identified.

4.4.1. Lack of Principles of Constitutional Interpretation

One of the major challenges that hinder CCI/ HoF to properly investigate and adjudicate constitutional disputes and delivery speedy justice relates to the lack of principles of

constitutional interpretation. Proclamation No. 251/2001 under article 7(1) state that the HoF identifies and implement principles of Constitutional interpretation which it believes help to examine and decide Constitutional cases submitted to it.¹⁹⁸

However, the house hasn't been yet developed principles of constitutional interpretation. The lack of principles of constitutional interpretation seems to have pushed the institutions to have overstepped their powers as indicated in the analysis part of the selected cases. It is evident in *Kassaye Eshete vs Askale Zemedkun*¹⁹⁹ where the CCI/ HoF relied on ordinary laws than constitutional provisions to adjudicate the constitutional dispute. It is also evident in *Defar Aseffa vs. At Dirba Ayenne*,²⁰⁰ *Wedere Tachibele vs Likke Gurmu*,²⁰¹ between *Kemeriya Ahmed vs Bediredin Abdulwab*²⁰² where CCI/ HoF merely cited constitutional provision without sufficiently justifying the reasons to resolve the constitutional dispute. It is also evident in *Elisabet Abebe vs Jijjiga City administration et. al.*²⁰³ where CCI/HoF accepted the case that would have been rejected on the grounds of non-exhaustion of all local remedies. Concerning the principles of constitutional interpretation, one interviewee argued:

There is a need to develop principles of constitutional interpretation. The principles to be developed should balance the founders' original intention and the current social, economic, and political demands. The principles should also be general so that it provides a larger space for constitutional interpretation and avoids rigidity.

4.4.2. Institutional Incompetence

Currently, HoF has 153 members. Practices show that the HoF sits twice in a year to discharge its responsibilities. Practice shows that many constitutional disputes are decided without proper deliberation. For instance, the House, in its 5th term, 3rd year and first session in 2017, has

¹⁹⁸ proclamation No. 251/2001 article 7(1)

¹⁹⁹ *Kassaye Eshete vs Askale Zemedkun*, filed complaint on 23 November 2015, finalized by CC on 3 August 2018, and decided by HoF on 9 October 2018

²⁰⁰ *Defar Aseffa vs. At Dirba Ayenne*, filed cases on 26 July 2016, finalized by CCI on 18 May 2018, and decided by HoF on 9 October 2018

²⁰¹ *Wedere Tachibele vs Likke Gurmu*, filed complaint on 20 December, 2012, finalized by CCI 27 March, 2016, and decided by HoF on 25 June, 2016

²⁰² *Kemeriya Ahmed vs Bediredin Abdulwab*, filed complaint on 31 January 2017, finalized by CCI on 24 October 2018, and decided by HoF on 9 June 2019

²⁰³ *Elisabet Abebe vs Jijjiga City administration et. al* filed complaint on 12 May 2015, finalized by CCI on 10 July 2018, and decided by HoF on 9 October 2018

passed a decision on 8 cases upon a recommendation of the CCI for meriting constitutional interpretation, and it has also rejected some 21 appeal cases for not meriting constitutional interpretation within half a day. Simply put, the House decided on issues of constitutionality of almost 30 cases in four hours duration²⁰⁴

The gatherings of its members are not suitable for a thorough discussion on constitutional interpretation. Most of its members are not legal experts. Practices indicate that argumentations of the HoF are mostly political than being legal. HoF also lacks an appropriate institutional arrangement. It has no institutional set up except at the federal level. These problems hinder the CCI/ HoF to properly enforce its decisions at different levels. The members of CCI/ HoF are also part-timers. In effect, as indicated in Table 1 above, **62 %** of cases presented before CCI has been delayed for 1 to 3 years.

The findings of this study are in line with some previous studies. Part of the reason for the HoF's inefficiency in constitutional review rests on the part-time status of the institution. The HoF is supposed to meet twice a year, and the CCI is mandated to meet four times per year, but the CCI rarely fulfills its mandate and the HoF routinely does not meet often enough to address all the issues put before it.²⁰⁵

The Ethiopian approach to constitutional review does not have characteristics that make it a good part of a well-designed constitutional system. It is not only that the House is not institutionally suited to discharge the task of constitutional interpretation, but it cannot engage in the often complex and technical arguments that any examination of the constitutionality of a law or any interpretation of the Constitution.²⁰⁶

Decisions like constitutional adjudication which is final and not appealable, and also which is applicable on similar constitutional matters that may arise in the future presupposes capable institutions. The study revealed that the institutional incompetence of CCI/ HoF has hindered the institutions to properly discharge their constitutional responsibilities.

²⁰⁴ Hassen, M. N. (2018). Methods of constitutional interpretation in constitutional dispute settlement in Ethiopia. School of law. Ethiopia, Addis Ababa. Masters: 91.

²⁰⁵ Chi Mgbako, M. M. e. a. (2008). "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights." 32(1): 41.

²⁰⁶ Tesfaye, Y. (2006). "Judicial review and democracy: A normative discourse on the Ethiopian approach to constitutional review." 31.

4.4.3. Double Membership

A double membership problem is observed in both CCI and HoF. As indicated in the article 82(2) of the constitution, the CCI comprises the President of the Federal Supreme Court, the vice-president of the Federal Supreme Court, Six legal experts, and three persons designated by the House of the Federation from among its members.²⁰⁷

This indicates that both the President and the vice-president of the Federal Supreme Court can sit over the cases that they have already decided either in the federal Supreme Court or federal cassation bench. Three persons who are designated by the House of the Federation from among its members also participate in constitutional interpretation in both CCI and HoF. Almost all members of HoF are also represented by regional councils.

The members of HoF have also a chance to decide on cases that they might have decided in their capacity of being a member of the regional council. Data from the interview indicated that the members of HoF can adjudicate constitutional disputes that they might have decided in a regional council. In general, the double membership in CCI/ HoF undermines the principle of separation of power. The constitutions of many countries strictly prohibit double membership in constitutional interpretation. For example, the constitution of Switzerland under Article 144(2) provides:

*The members of the Federal Government and the full-time judges of the Federal Supreme Court may not carry out another function of the Confederation or Canton, nor may they exercise another gainful activity.*²⁰⁸

Concerning this issue, one of the respondents said:

The double memberships in both CCI and HoF undermine the principles of separation of power which is at the heart of democratic governance. This practice should be improved if constitutional disputes are neutrally and fairly to be interpreted

²⁰⁷ Constitution of the Federal Democratic Republic of Ethiopia, 1995. Article, 82(2)

²⁰⁸ Switzerland constitution of 1999 with amendments through 2002, Article , 144(2)

4.4.4. The Bureaucratic Nature of Decision Making

One of the factors that are challenging CCI/ HoF in constitutional adjudication and delivering speedy trial relates to the bureaucratic nature of decision making. Cases presented before CCI particularly which merit constitutional interpretation at least pass through five steps to be adjudicated by HoF.

The *first* step is an investigation by the sub-inquiry committee. This committee has been established by proclamation No. 798/ 2013. According to article 24 (2) of the same proclamation the sub-inquiry committee is composed of at least three members including its chairperson who is assigned by the CCI from among its permanent serving members.²⁰⁹ The sub-inquiry committee has duties and responsibilities of organizing cases of constitutional interpretation in a manner suitable for decision making. It also identifies cases that need or not need constitutional interpretation, facts relevant for decision making, relevant laws, and decisions and, to the extent necessary, relevant experiences and submits the same to the CCI along with study based clarification.²¹⁰

The *second step* is a review and a decision by CCI. If the CCI decides the cases presented before it merits constitutional interpretation, the cases are sent to HoF for the final decision. The *third* step is a review by the Secretariat of the House of the Federation. The Secretariat of the House of the Federation has been established by Proclamation No. 556/2008. According to article 8 of the same proclamation, the secretariat of the HoF provides comment when the CCI requires the HoF for such comment on the process of interpreting the Constitution or when the standing committee requires lodged against the decision the Constitutional Interpretation is not required.²¹¹

Fourthly, the standing committee of the constitution and identity affairs review the cases before submitting it to the HoF. According to article 18(1) (2) of Proclamation No. 251/2001, the standing committee which is drawn from its members investigates the draft proposal submitted to it by the CCI and an appeal lodged against the decisions of the CCI. The committee is also

²⁰⁹ Proclamation No. 798/2013, Article 24 (2), A Proclamation to Re-Enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the Federal Democratic Republic of Ethiopia.

²¹⁰ Ibid.

²¹¹ Proclamation No. 556/2008, Article 8, A Proclamation of the Secretariat of the House of the Federation.

mandated to decide whether an appeal made against decisions of the CCI should be presented to the general meeting of the House or not.²¹²

Finally, the HoF meets twice a year to decide on the cases presented before as well as to discharge its other responsibilities. The bureaucratic nature of decision making is one of the main factors that constrain CCI/ HoF to pass decisions in a short time. The review by Secretariat of the House of the Federation and the standing committee of the constitutional interpretation and identity affairs is also unconstitutional.

It is unconstitutional because the constitution doesn't assume such an institutional arrangement. Investigating constitutional disputes and recommending to the HoF as indicated under article 84 of the constitution is the inherent power of CCI. The bureaucratic nature of decision making compounded with the exhaustion of local remedies (from first instant court up to federal cassation bench) highly compromise the right to speedy justice and expose citizens to unnecessary cost. With this, one of the respondents said:

The bureaucratic nature of the decision making of CCI/ HoF is the reflection of institutional deficiency of the same. It makes justice to delay. It also hampers constitutional development. It hinders citizens not to properly exercise their constitutional rights.

4.4.5. The Generality of Decisions of HoF

Article 15 of the Proclamation No. 251/2001 state that the decision of the HoF consist of details of the constitutional issue, justification for whether the constitutional interpretation was necessary or not, and the decision it has finally made.²¹³ However, the practice is otherwise. The HoF doesn't indicate specific rulings in its decisions. This is particularly problematic in case where the House overturns, the rulings of the courts.

²¹² Proclamation No. 251/2001, Article 18(1) (2) Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities.

²¹³ Proclamation No. 251/2001, Article 15, Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities.

The House doesn't specifically rule on what specifically the courts should do in a case whereby the House has overturned the decision of courts. In its decision part, the HoF doesn't specifically rule whether the courts undertake fresh litigation or decide otherwise. The decision part of the HoF doesn't specifically indicate the owner of the right. This is evident in the *meset Taye vs zebsh Gelaw*,²¹⁴ *Ezikel mara vs South road authority*,²¹⁵ *Andinet Kebede vs Semera city administration*,²¹⁶ *milkiyas Ayale vs Dembidolo water service office*²¹⁷ (attached in the annex part) where the HoF invalidated the decision of courts without specifically indicating how the decisions of the house are executed. Almost all respondents who were interviewed similarly explained this case by saying:

It is very difficult to execute the decision of HoF because of its generality. The rulings of the HoF don't indicate as to how the decision of the house should be executed. The HoF only decides on whether the contested case is constitutional or not without pinpointing to the specific remedy.

²¹⁴ *meset Taye vs zebsh Gelaw*, filed complaint on 3 November, 2015, finalized by CCI on 25 September, 2017, and decided by HoF on 30 April, 2018,

²¹⁵ *Ezikel mara vs South road authority* filed complaint on 28 April, 2016, finalized by CCI on 13 March, 2017, and decided by HoF on 10 October, 2017

²¹⁶ *Andinet Kebede vs Semera city administration* filed complaint on 27 March, 2015, finalized by CCI on 12 May, 2017, and decided by HoF on 10 October, 2017

²¹⁷ *milkiyas Ayale vs Dembidolo water service office*, filed complaint on 12 November 2013, finalized by CCI on 12 October 2016, and decided by HoF on 12 March 2017

Chapter Five

Conclusions and Recommendations

5.1. Conclusion

The purpose of this study was to analyze the practice of constitutional interpretation in Ethiopia. Specifically, the purpose of this study was to answer the research questions: What method/methods of constitutional interpretation do CCI/ HoF practically employ in resolving constitutional disputes? Do the practices of Constitutional interpretation in Ethiopia ensure speedy justice? What are the factors that hinder CCI/ HoF in interpreting constitutional disputes and delivering speedy justice? The mixed research method comprising qualitative and quantitative was employed to answer the research questions.

In terms of the first research question, the study result revealed that the CCI/ HoF employs textual, purposive, and holistic methods in constitutional adjudication. For instance, decisions of CCI/ HoF such as *Kassaye Eshete vs Askale Zemedkun*, *Defar Aseffa vs At Dirba Ayenne*, *Wedere Tachibele vs Likke Gurm*, *Elisabet Abebe vs Jijjiga City administration et. al.* , *Kemeriya Ahmed vs Bediredin Abdulwab*, *Andinet Kebede vs Affar prosecution office*, and *Milkiyas Ayele vs Dambidollo water service office* cases are made by applications of textual, purposive, and holistic methods of constitutional interpretations. However, these methods are inferred from the practices of CCI and HoF. Both institutions haven't yet expressly developed frameworks for the methods of constitutional interpretations.

Lack of principles of constitutional interpretation in Ethiopia has complicated constitutional adjudication. These problems have led the CCI/ HoF to overstep constitutional limits. This is evident in *Kassaye Eshete vs Askale Zemedkun*, *Defar Aseffa vs At Dirba Ayenne*, and *Elisabet Abebe vs Jijjiga City administration et. al.* where the CCI/ HoF relied on ordinary laws than constitutional provisions. Applying ordinary laws in resolving constitutional disputes is the inherent mandate of courts.

The second research question looked at whether the CCI/ HoF decide on the cases presented before it in a short time or not. In answering this question, the analysis was made at three levels: The first is the time taken from the date of application before CCI up to recommendation to the HoF, the second is the time taken from recommendation by CCI up to decision by HoF, and the

third is the time taken from the date of application before CCI up to the final decision by the HoF.

Regarding the time taken from the date of application before the CCI up to the recommendation to the HoF, the study concluded that CCI has decided 23 cases (**35 %**), and 17 cases (**26%**) within 1 to 2, and 2 to 3 years respectively. 12 cases (**19%**) were decided within less than 1 year whereas 4 cases (**6%**) took the CCI more than 4 years to decide on the cases. The data concludes that 40 cases which are nearly about (**62%**) of the total cases have been decided by CCI between 1 to 3 years. As can be seen from the annex part, three months are the shortest time within which the CCI decided on cases presented before it.

Concerning time taken from recommendations by CCI to HoF up to the decision by HoF, the data revealed that, out of 65 selected cases, 50 cases (**77%**) were decided within less than 1 year whereas 15 cases (**23%**) were disposed within more than 2 years. Comparative analysis shows that a great delay is observed with CCI than HoF. However, it should be noticed that the HoF is not deciding on cases presented before it within 30 days (1 month) as promised in the constitution. As indicated in the annex part (table 2), it is only 1 case out of 65 selected cases that HoF decided within 30 days after receiving a recommendation from CCI.

As to the time taken from the date of application to before CCI up to the final decision by HoF, out of **65** selected cases, **25(38 %)**, **16 (25%)**, and **8 (12 %)** cases were decided within 2 to 3, 3 to 4 years and greater than 4 years respectively. Only **2 (3%)** cases were decided within less than 1 year. In other words, about **16 (25%)** cases were decided within less than 2 years. About **41(63%)** cases were decided between 2 to 4 years. **8 (12%)** cases took greater than 4 years to be adjudicated. Only **2 (3%)** cases were disposed of with less than a year.

In general, the analysis of selected cases at all three levels uncovered that cases presented before CCI/HoF are not decided in a short time. The delays of decisions in constitutional adjudication are not in line with the spirit of the FDRE constitution which demands the adjudication of the constitutional dispute in a short time.

The third research question examined factors that hinder the CCI/ HoF in properly discharging their responsibilities. The study identified five major factors that are hindering the CCI/ HoF to properly discharge their responsibilities. Lack of a clear principle of constitutional interpretation,

institutional incompetence, double membership, the bureaucratic nature of decision making, and the generality of decisions of HoF is hampering the CCI/ HoF to discharge their responsibilities. The CCI/ HoF have failed to rely on constitutional provisions while reviewing and adjudicating constitutional dispute presented before the same.

The mere citation of constitutional provisions in resolving a constitutional dispute without sufficient justification and argumentation is another problem that is observed in the practices of constitutional review. Overstepping constitutional limits is also another problem. In some cases, constitutional disputes are admitted for review without exhaustion of local remedies. The CCI and HoF haven't yet developed a system to identify the borderline between the ordinary legal dispute and constitutional disputes. This study argues that the source of these problems is related to the lack of a clear principle of constitutional interpretation.

This study disclosed that the problem of constitutional interpretation in Ethiopia has been exacerbated by the institutional incompetence of CCI/ HoF. The larger gatherings of HoF are not conducive to organize in-depth consultation and deliberation. Data from interviews also indicate that since the members of HoF are politically represented, the issue of impartiality is under question. The HoF has no institutional arrangement except at the federal level. This has hindered the house to enforce its decisions. The CCI/ HoF also works on a part-time basis. This has also hindered the institutions to decide the cases in a short time.

Double membership clouds the principle of separation of power. As provided under Article 82(2) of the FDRE constitution, the president and supreme president of the federal court are the presidents and vice president of CCI respectively. Three persons are also designated by the House of the Federation from among its members. On top of this, the members of HoF are represented by regional councils. This makes the members of CCI/ HoF sit before the cases that they have already decided.

The HoF also can sit before the cases it might have already decided in its primary jurisdictions. For example, in cases like issues relating to the rights of Nations, Nationalities, and Peoples to self-determination, disputes or misunderstandings that may arise between States, division of revenues derived from joint Federal and State tax sources, Federal intervention, the HoF can site before these cases for constitutional dispute adjudication. The study generally demonstrated that double memberships of CCI/ HoF undermine the principle of separation of power.

This study also identified the bureaucratic nature of decision making is hindering CCI/ HoF to review and adjudicate the constitutional dispute in a short time. Cases particularly that merits constitutional interpretation must go through five levels of review for final decisions: Review by sub-inquiry committee, CCI, Secretariat of the House of the Federation, the standing committee of the constitution and identity affairs, and HoF.

The bureaucratic nature of decision making has constrained the CCI/ HoF to pass a decision in a short time. For example, from the application before CCI up to decision by HoF, as presented above, out of 65 selected cases, about **41(63%)** were decided within 2 to 4 years. About 8 (**12%**) cases took more than 4 years. Only 2 (**3%**) cases were adjudicated within less than a year. This practice is not in line with a promise of the FDRE constitution. The FDRE constitution demands the adjudication of the constitutional dispute in a short time.

The last factor that hinders HoF to properly review and adjudicate constitutional disputes has to do with the generality of decisions of HoF. The decision part of the HoF is too general to execute the same. This is particularly true in the case where the House overturns the decisions of courts. The HoF, in its decision part, doesn't specifically indicate how the court or other government organs execute the decisions.

5.2. Recommendations

Based on the findings of this study, the following recommendations are presented:

1. The fundamental solution to address the structural problems related to constitutional interpretation in Ethiopia is to entrusted courts. A constitutional court or regular courts can be entrusted for the constitutional interpretation. Entrusting courts the power of constitutional interpretation can address the structural problems like institutional incompetence, double membership, and political affiliation related problems. This can be attained through amending the constitutions.
2. There is a need to develop principles of constitutional interpretation. In developing principles of constitutional interpretation, fundamental principles of the constitution that are provided under chapter two of the constitution and the preamble of the same are helpful in this regard. Article 13(2) of the constitution which provides the fundamental rights and freedoms specified under chapter three of the constitution are interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia can directly be built in the

principles of constitutional interpretations. Other constitutional values embedded in the constitution can also be built into the principles of constitutional interpretation.

3. The CCI/ HoF should repair its internal inefficiencies like the bureaucratic nature of decision making, failure to decide cases in a short time, lack of appropriate institutional setup, and generality of decisions.
4. The CCI/ HoF should focus on cases that have national implications. The practices reveal that the HoF has been dealing with routine cases that haven't national significance. This problem can be addressed by developing effective working procedures.
5. Awareness creation to the concerned politicians, policymakers, members of CCI/ HoF may help in curbing problems surrounding constitutional interpretation in Ethiopia.

Bibliography

Books and Articles

- Abbott, K. S. B. a. B. B. (2008). *Research Design and Methods A Process Approach*. USA, Mike Sugarman.
- Azad, S. A. K. (2017). "Criminal Justice System and Right to Speedy Trial: A Legal Analysis." 5(2): 6.
- Chi Mgbako, M. M. e. a. (2008). "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights." 32(1): 41.
- Fiseha, A. (2005). "Federalism and the adjudication of constitutional issues: The Ethiopian experience." 31.
- Goldsworthy, J. (2006). *Interpreting Constitutions*. USA, Oxford University Press.
- John Rawls, *A Theory of Justice*, 2nd edition, Harvard University Press 1999
- Sarathe, A. (2019). "Speedy Justice in India in View of Delays- An Analytical Study." 7(2): 6.
- Sherry, D. A. f. a. S. (2009). *Principle and Politics in Constitutional Law*. New York, Oxford University Press, Inc.
- Strauss, D. A. (1999). "What is Constitutional Theory?": 13.
- Schlink, B. (2011). "Proportionality in constitutional law." 22: 12.
- Jain, A. (2002). A right to speedy justice in India. *Journal Law mantra*, 2(8), 17.
- Tesfaye, Y. (2006). "Judicial review and democracy: A normative discourse on the Ethiopian approach to constitutional review." 31.
- Treanor, W. M. (2009) *Against Textualism*. 103, 25
- Kaur, M. (2019). "Constitutional Perspective of speedy Justice in India." 5(3): 6.
- Kothari, C. R. (2004). *Research methodology, methods, and techniques*. New Delhi New Age International (P) Ltd., Publishers.

Lermack, P. (2007). "The Constitution Is the Social Contract So It Must Be a Contract ... Right? A Critique of Originalism as interpretive Method." 33(4): 44.

L.Langford, C. (2017). Opportunistic Textualism in Constitutional Interpretation. USA: University of Press

Yin, R. K. (2011). Qualitative research from start to finish. New York, Guilford Press.

Young, E. (1994). Rediscovering Conservatism: Burkean Political Theory and Constitutional Interpretation. USA, North Carolina Law

Internet Sources

Baker, T. E. (2004) Constitutional Theory in a Nutshell. 3,

Berega, Y. G. (2012) The Constraints to a Speedy Trial: The Case of Sidama Zone High Court.

Cress, N. (1989) An Analysis of Current Theories of Constitutional Interpretation. 49

Clark, G. J. (2002) An Introduction to Constitutional Interpretation. 32

El-Haj, T. A. (2012) Linking the Questions: Judicial Supremacy As a Matter of Constitutional Interpretation. 89, 66

Fish, E. S. (2016) Constitutional Avoidance as Interpretation and as Remedy. 114, 42

Gopaul, A. (2015). The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings. Law, University of South Africa. Masters: 210.

Girma, B. (2018) Constitutional Adjudication by Parliaments: Lessons from Comparative

Jackson, V. C. (2010) Constitutions as "Living Trees"? Comparative Constitutional Law and Interpretive Metaphors. 42

Grimm, D. (2011) Constitutional adjudication and constitutional interpretation. 16

Hassen, M. N. (2018). Methods of constitutional interpretation in constitutional dispute settlement in Ethiopia. School of law. Ethiopia, Addis Ababa. Masters: 91.

Goldsworthy, J. (2009) Constitutional Interpretation: Originalism. 21

Experience. 12, DOI: <http://dx.doi.org/10.4314/mlr.v12i1.2>

Jr, R. H. F. (1999). "How to Choose a Constitutional Theory." 87(3): 48.

Junaid (2009). A speedy trial in criminal justice system India, ALIGARH. Ph.D.

Kelso, R. R. (1994) Styles of Constitutional Interpretation and the Four Main Approaches to Constitutional Interpretation in American Legal History. 29, 115

Moran, K. E. (2011) Comparing and Contrasting the Constitutional Approaches of Justice Scalia and Justice Breyer. 72

Osnowitz, S. (2016). "Demanding a Speedy Trial: Re-Evaluating the Assertion Factor in the Baker v. Wingo Test." 67(1): 30.

Peabody, B. G. (1999) Nonjudicial Constitutional Interpretation, Authoritative Settlement, and a New Agenda for Research. 16, 29

Perry (2004). "Original Intent or Evolving Constitution? Two Competing Views on Interpretation." 1(4): 14.

Constitutions

1. Constitution of the Federal Democratic Republic of Ethiopia, 1995
2. Constitution of the Republic of South Africa, 1996
3. Constitution of the People's Democratic Republic of Ethiopia, 1987
4. Ethiopian Constitution of 1931 established in the reign of His Majesty Hail'e Sellassie I
16th July 1931
5. 1995 revised Constitution of Ethiopia
6. Germany's Constitution of 1949 with Amendments through 2012
7. Switzerland constitution of 1999 with amendments through 2002

Laws

1. Proclamation No. 251/2001, Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities.

2. Proclamation No. 798/2013, A Proclamation to Re-Enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the Federal Democratic Republic of Ethiopia.
3. Proclamation No. 556/2008, A Proclamation of the Secretariat of the House of the Federation.
4. Proclamation No. 556/2008, A proclamation to establish the Secretariat of the House of the Federation
5. Amhara National Regional State rural land administration and use proclamation No.133/2006
6. Oromia National Regional rural land administration and use Article 2((10), 9(2) of Proclamation No. 130/2007
7. Afar National Regional state Prosecution administration regulation No. 12/2004 of Article 80(1)
8. Universal Declaration of Human Rights, 10 December 1948, Article (2) (10),
9. International Covenant on Civil and Political Rights,16 December 1966, Article 14(3) (c)
10. American Convention on Human Rights, 22 November 1969, Article 8 (1)
11. European Convention for the Protection of Human Right, 1950, Article 5(3)
12. African Charter on Human and Peoples' Rights, Article 7(1) (d)

Interviews

1. Interview with Dr.Fasil Nahom, member of Council of Constitutional Inquiry, Senior Legal expert
2. Interview with Ato Kifletsihon Mamo, member of Council of Constitutional Inquiry, Senior Legal expert, and federal Supreme Court judge
3. Interview with Ato Million Assefa, member of Council of Constitutional Inquiry, Senior Legal expert
4. Interview with Ato Dessa Bulchaa, Oromia supreme court president
5. Interview with Ato Derejje Ayyana, federal supreme court judge
6. Interview with Ato Boja Taddesie, federal supreme court judge
7. Interview with Ato Teshome Shiferaw, Federal supreme Court cassation Bench
8. Interview with Ato Dessaleny Wayessa, head of the office of Council of Constitutional inquiry
9. Interview with Ato Getachew Ligid, a legal expert at a council of Constitutional inquiry.

Appendicies

Appendix 1: Lists of tables

Table 1: Name of Applicants, Date of Application, and Date of Recommendation by CCI

No.	Name of Applicants	Date of Application	Date of Recommendation by CCI	Time Taken by CCI for Recommendation
1	Aliyi Dawe	19 July 2011	27 March 2015	3 Years and 10 Months
2	Mamite Seble	22 May 2012	27 March 2015	2 Years and 10 Months
3	Kelebeta Tesfa	4 June 2012	23 October 2015	3 Years and 5 Months
4	Alima Mahamed	25 February 2013	13 August 2014	1 year and 7 Months
5	Wodere Tachibele	20 December 2012	27 March 2016	3 Years and 3 Months
6	Benchamilak Dersoliny	20 February 2014	6 July 2015	1 year and 5 Months
7	Azeb Tufa	15 December, 2015	20 May,2016	6 Months
8	Alemitu Gebru	5 April 2013	3 July 2015	2 Years and 3 Months
9	Milkeyas Ayele	12 November 2013	12 October 2016	2 Years and 11 Months
10	Asay Doye	16 November 2010	13 October 2015	4 Years and 11 Months
11	Surafel Zewudie	20 March 2013	6 July 2016	3 Years and 1 Month
12	Raniya Ahmed	17 March 2015	11 June 2015	4 Months
13	Birke Legessie	2 May 2014	25 December 2015	1 year and 8 Months
14	Eshetu Yimam	6 June 2014	14 April 2015	11 Months
15	Housing Enterprise	25 May 2015	8 January 2016	8 Months
16	Negash Debela	31 October 2012	16 August 2017	4 Years and 9 Months
17	Muyeddin Yunis	17 August 2014	18 July 2017	2 Years and 11 Months
18	Anna Addimasu	4 May 2015	4 September 2015	4 Months
19	Tarku Mokenin	27 June 2013	11 January 2016	2 years and 8 Months
20	Woson Alemu and Dawit Eticha	16 April 2015	16 August 2016	1 Year and 4 Months
21	Worku Dadimos	25 February 2016	16 August 2016	6 Months
22	Birhanu Regassa	1 July 2015	16 August 2016	1 Year and 2 Months
23	Adanech Lisanework	8 April 2015	20 May 2016	1 Year and 2 Months
24	Beletu Baruda	18 March 2015	3 July 2018	3 Years and 4 Months

25	Regassa Seyoum	18 June 2015	24 May 2017	1 Year and 10 Months
26	Kidanemariam Tekilu	16 December 2014	19 July 2017	2 Years and 8 Months
27	Ezekiel Mara	28 April 2016	13 March 2017	11 Months
28	Six Continental Hotels Group	5 August, 201 6	6 April, 2017	8 Months
29	Andinet Kebede	27 March 2015	12 May 2017	2 Years and 1 Month
30	Fetilework Mengesha	31 December 2015	21 September 2017	1 year and 9 Months
31	Birhanu Belay	1 June 2016	22 September 2016	3 Months
32	Birhanu Asseffaa	26 April 2016	13 September 2017	1 year and 4 Months
33	Ketefo Gebreyes	21 March, 2016	25 September, 2017	1year and 6 Months
34	Meseret Taye	3 November 2015	25 September 2017	1 Year and 11 Months
35	Hayimanot Sebsibe	25 January 2016	25 September 2017	1 Year and 8 Months
36	Chaut Organization	25 February 2016	31 October 2016	8 Months
37	Wudde Tesfahun	23 March 2016	19 July 2017	1 year and 4 Months
38	Taher Desta	17 March 2016	19 July 2017	1 Year and 5 Months
39	Kassahun Alemayehu	3 August 2016	25 November 2017	1 Year and 4 Months
40	Shewaye Mulat	19 May 2017	3 April 2018	11 Months
41	Kasaye Eshete	23 November 2015	3 August 2018	2 Years and 9 Months
42	Kokebe Yilma	10 May 2016	9 June 2017	1 year and 1Month
43	Fatuma Hamdu	12 May 2016	9 June 2017	1 Year and 1 Month
44	Elisabet Abebe	12 May 2015	10 July 2018	3 years and 2 Months
45	Defar Asseffa	26 July 2016	18 May 2018	1 year and 10 Months
46	Bogalech Aseffa	29 December 2015	3 July 2018	2 years and 6 Months
47	Jamal Seid	14 September 2015	10 July 2018	2 Years and 11 Months
48	Tsige Mitiku	17 January 2018	10 July 2018	7 Months
49	Aminat Abdulkedir	24 July 2014	19 October 2017	3 Years and 3 Months
50	Enati Belete	12 October 2015	19 July 2017	1 year and 10 Months
51	Civil service Ministry	14 March 2017	11 April 2019	2 Years and 1 Month
52	Eshetu Wubishet	8 April 2016	11 April 2019	3 Years and 1 Month
53	Fantaye Laphiso	8 April 2016	19 September 2018	2 years and 6 Months
54	Abraham G/gorgis	2 November 2016	26 September 2018	1 Year and 11 Months

55	Kemeriya Ahimed	31 January 2017	24 October 2018	1 Year and 9 Months
56	Nugusie Hadigo	21 August 2016	24 October 2018	2 Years and 3 Months
57	Yayineabeba Adamu	29 October 2015	21 November 2017	2 Years and 1 Month
58	Abduraman Urgessa	31 July 2013	11 January 2018	4 Years and 5 Months
59	Bereket Asfaw	11 November 2013	25 September 2017	3 Years and 11 Months
60	Kelemua Teferra	26 April 2016	3 July 2018	2 years and 1 Month
61	Burtukan Kuma	27 April 2016	2 August 2018	2 years and 2 Months
62	Meketa Disability Organization	4 January 2017	15 January 2019	2 years and 1 Month
63	Federal cassation court	12 July 2018	23 July 2019	1 Year and 1 Month
64	Ayalinesh Moges	18 May 2011	27 April 2018	6 Years and 11 Months
65	Gizew Dembbe	11 April 2017	31 October 2018	1 Year and 7 Months

Source: Compiled by the researcher from CCI Data

Table 2 : Name of applicants, Date of Recommendation by CCI, and Date of Decision by HoF

No.	Name of Applicants	Date of application	Date of Recommendation by CCI	Date of Decision by HoF	Time taken By HoF for decision	Remark
1	Aliyi Dawe	19 July 2011	27 March 2015	25 June 2015	3 Months	Accepted
2	Mamite Seble	22 May, 2012	27 March, 2015	25 June, 2015	3 Months	Accepted
3	Kelebeta Tesfa	4 June, 2012	23 October, 2015	12 March 16	6 Months	Accepted
4	Alima Mahamed	25 February 2013	13 August 2014	25 June 2015	11 Months	Accepted
5	Wodere Tachibele	20 December, 2012	27 March, 2016	25 June, 2016	3 Months	Accepted
6	Benchamilak Dersoliny	20 February 2014	6 July 2015	12 March 2016	8 Months	Accepted
7	Azeb Tufa	15 December, 2015	20 May, 2016	12 March, 2017	10 Months	Rejected
8	Alemitu Gebru	5 April 2013	3 July 2015	12 March 2017	1 Year and 8 Months	Accepted
9	Milkeyas Ayele	12 November 2013	12 October 2016	12 March 2017	6 Months	Accepted
10	Asay Doye	16 November 2010	13 October 2015	12 March 2016	5 Months	Accepted
11	Surafel Zewudie	20 March 2013	6 July 2016	12 March 2017	9 Months	Accepted
12	Raniya Ahmed	17 March 2015	11 June 2015	12 March 2016	10 Months	Accepted
13	Birke Legessie	2 May 2014	25 December 2015	23 May 2016	5 Months	Accepted
14	Eshetu Yimam	6 June 2014	14 April 2015	23 May 2016	1 Year and 2 Months	Accepted
15	Housing Enterprise	25 May 2015	8 January 2016	23 May 2016	5 Months	Accepted
16	Negash Debela	31 October 2012	16 August 2017	10 October 2017	2 Months	Accepted
17	Muyeddin Yunis	17 August 2014	18 July 2017	10 October 2017	3 Months	Accepted
18	Anna Addimasu	4 May 2015	4 September 2015	12 June, 2016	8 Months	Accepted
19	Tarku Mokenin	27 June 2013	11 January 2016	12 October 2016	10 Months	Accepted
20	Woson Alemu and Dawit Eticha	16 April 2015	16 August 2016	12 October 2016	3 Months	Accepted
21	Worku Dadimos	25 February, 2016	16 August, 2016	12 October, 2016	3 Months	Accepted
22	Birhanu Regassa	1 July 2015	16 August 2016	12 October 2016	3 Months	Accepted
23	Adanech Lisanework	8 April 2015	20 May 2016	10 October 2017	1 Year and 4 Months	Accepted
24	Beletu Baruda	18 March 2015	3 July 2018	9 June 2019	11 Months	Accepted
25	Regassa Seyoum	18 June , 2015	24 May, 2017	10 June, 2017	1 Month	Accepted

26	Kidanemariam Tekilu	16 December 2014	19 July 2017	10 October 2017	3 Months	Accepted
27	Ezkeil Mara	28 April, 2016	13 March, 2017	10 October, 2017	7 Months	Rejected
28	Six Continental Hotels Group	5 August, 2016	6 April, 2017	10 October, 2017	6 Months	Accepted
29	Andinet Kebede	27 March, 2015	12 May, 2017	10 October, 2017	4 Months	Accepted
30	Fetilework Mengesha	31 December, 2015	21 September, 2017	30 April, 2018	6 Months	Accepted
31	Birhanu Belay	1 June 2016	22 September 2016	30 April 2018	1 Year and 7 Months	Accepted
32	Birhanu Asseffaa	26 April 2016	13 September 2017	30 April 2018	7 Months	Accepted
33	Ketefo Gebreyes	21 March, 2016	25 September, 2017	30 April, 2018	7 Months	Accepted
34	Meseret Taye	3 November, 2015	25 September, 2017	30 April, 2018	7 Months	Accepted
35	Hayimanot Sebsibe	25 January, 2016	25 September 2017	30 April, 2018	7 Months	Rejected
36	Chaut Organization	25 February 2016	31 October 2016	9 October 2018	2 Years	Rejected
37	Wudde Tesfahun	23 March 2016	19 July 2017	9 October 2018	1 year and 2 Month	Accepted
38	Taher Desta	17 March 2016	19 July 2017	9 October 2018	1 year and 2 Months	Accepted
39	Kassahun Alemayehu	3 August 2016	25 November 2017	9 October 2018	11 Months	Rejected
40	Shewaye Mulat	19 May 2017	3 April 2018	9 October 2018	7 Months	Accepted
41	Kasaye Eshete	23 November 2015	3 August 2018	9 October 2018	2 Months	Rejected
42	Kokebe Yilma	10 May 2016	9 June 2017	9 October 2018	1 Year and 4 Months	Rejected
43	Fatuma Hamdu	12 May 2016	9 June 2017	9 October 2018	1 Year and 4 Months	Rejected
44	Elisabet Abebe	12 May 2015	10 July 2018	9 October 2018	3 Months	Rejected
45	Defar Asseffa	26 July 2016	18 May 2018	9 October 2018	4 Months	Accepted
46	Bogalech Aseffa	29 December 2015	3 July 2018	9 October 2018	3 Months	Accepted
47	Jamal Seid	14 September 2015	10 July 2018	9 October 2018	3 Months	Accepted
48	Tsige Mitiku	17 January, 2018	10 July, 2018	9 October, 2018	3 Months	Rejected
49	Aminat Abdulkedir	24 July 2014	19 October 2017	9 June 2019	1 year and 8 Months	Accepted
50	Enati Belete	12 October 2015	19 July 2017	9 June 2019	1 year and 9 Months	Accepted
51	Civil service Ministry	14 March 2017	11 April 2019	9 June 2019	2 Months	Accepted

52	Eshetu Wubishet	8 April 2016	11 April 2019	9 June 2019	2 Months	Accepted
53	Fantaye Laphiso	8 April 2016	19 September 2018	9 June 2019	9 Months	Accepted
54	Abraham G/gorgis	2 November 2016	26 September 2018	9 June 2019	9 Months	Accepted
55	Kemeriya Ahmed	31 January 2017	24 October 2018	9 June 2019	7 Months	Accepted
56	Nugusie Hadigo	21 August 2016	24 October 2018	9 June,2019	7 Months	Accepted
57	Yayineabeba Adamu	29 October 2015	21 November 2017	9 June 2019	1 Year and 6 Months	Accepted
58	Abduraman Urgessa	31 July 2013	11 January 2018	9 June 2019	1 Year and 5 Months	Accepted
59	Bereket Asfaw	11 November 2013	25 September 2017	8 October 2019	1 Years and 11 Month	Rejected
60	Kelemua Teferra	26 April 2016	3 July 2018	8 October 2019	1 Year and 3 Months	Accepted
61	Burtukan Kuma	27 April 2016	2 August 2018	8 October 2019	2 Months	Accepted
62	Meketa Disability Organization	4 January 2017	15 January 2019	8 October 2019	9 Months	Rejected
63	Federal cassation court	12 July 2018	23 July 2019	8 October 2019	2 Months	Accepted
64	Ayalinesh Moges	18 May 2011	27 April 2018	8 October 2019	1 Year and 5 Months	Accepted
65	Gizew Dembbe	11 April , 2017	31 October, 2018	8 October, 2019	11 Months	Accepted

Source: Compiled by the researcher from CCI Data

Table 3: Name of Applicants, Date of Application before CCI, and Date of Decision by HoF

No.	Name of Applicants	Date of Application before CCI	Date of Decision by HoF	Time Taken by the HoF to pass decisions
1	Aliyi Dawe	19 July 2011	25 June 2015	4 Years and one Month
2	Mamite Seble	22 May 2012	25 June 2015	3 Years and 1 Months
3	Kelebeta Tesfa	4 June 2012	12 March 16	3 Years and 10 Moths
4	Alima Mahamed	25 February 2013	25 June 2015	2 Years and 6 Months
5	Wodere Tachibele	20 December 2012	12 June 2016	3 Years and 6 Months
6	Benchamilak Dersoliny	20 February 2014	12 March 2016	2 Years and 1 Month
7	Azeb Tufa	15 December 2015	12 March 2017	1 year and 4 Months
8	Alemitu Gebru	5 April 2013	12 March 2017	3 Years and 11 Month
9	Milkeyas Ayele	12 November 2013	12 March 2017	3 years and 5 Months
10	Asay Doye	16 November 2010	12 March 2016	5 Years and 4 Months
11	Surafel Zewudie	20 March 2013	12 March 2017	3 Years 10 Months
12	Raniya Ahmed	17 February 2015	12 March 2016	1 Year and 2 Months
13	Birke Legessie	2 May 2014	23 May 2016	2 years and 1 Month
14	Eshetu Yimam	6 June 2014	23 May 2016	2 Years and 1 Month
15	Housing Enterprise	25 May 2015	23 May 2016	1 Year and 1 Month
16	Negash Debela	31 October 2012	10 October 2017	4 Years and 11 Months
17	Muyeddin Yunis	17 August 2014	10 October 2017	3 Year and 2 Months
18	Anna Addimasu	4 May 2015	12 June 2016	1 Year and 1 Month
19	Tarku Mokenin	27 June 2013	12 October 2016	3 and 4 Months
20	Woson Alemu and Dawit Eticha	16 April 2015	12 October 2016	1 and 7 Months
21	Worku Dadimos	25 February 2016	12 October 2016	9 Months
22	Birhanu Regassa	1 July 2015	12 October 2016	1 year and 5 Months
23	Adanech Lisanework	8 April 2015	10 October 2017	2 Years and 6 Months
24	Beletu Baruda	18 March 2015	9 June 2019	4 years and 3 Months
25	Regassa Seyoum	18 June 2015	10 June 2017	1 Year and 11 Months
26	Kidanemariyam Tekilu	16 December 2014	10 October 2017	2 Years and 11 Months
27	Ezekiel Mara	28 April 2016	10 October 2017	1 Year and 6 Months
28	Six Continental Hotels Group	5 August 2016	10 October 2017	1 Year and 2 Months
29	Andinet Kebede	27 March 2015	10 October 2017	1 Year and 6 Months
30	Fetilework Mengesha	31 December 2015	30 April 2018	2 Years and 3 Months
31	Birhanu Belay	1 June 2016	30 April 2018	1 Year and 10 Months

32	Birhanu Asseffaa	26 April 2016	30 April 2018	1 Years and 11 Months
33	Ketefo Gebreyes	21 March 2016	30 April 2018	2 Years and 1 Month
34	Meseret Taye	3 November 2015	30 April 2018	2 Years and 6 Months
35	Hayimanot Sebsibe	25 January 2016	30 April 2018	2 Years 3 Months
36	Chaut Organization	25 February 2016	9 October 2018	2 Years and 8 Months
37	Wudde Tesfahun	23 March 2016	9 October 2018	2 Years and 6 Months
38	Taher Desta	17 March 2016	9 October 2018	2 Years and 7 Months
39	Kassahun Alemayehu	3 August 2016	9 October 2018	2 Years and 3 Months
40	Shewaye Mulat	19 May 2017	9 October 2018	1 Year and 6 Months
41	Kasaye Eshete	23 November 2015	9 October 2018	2 Years and 11 Months
42	Kokebe Yilma	10 May 2016	9 October 2018	2Years and 5 Months
43	Fatuma Hamdu	12 May 2016	9 October 2018	2 Years and 5 Months
44	Elisabet Abebe	12 May 2015	9 October 2018	3 Years and 5 Months
45	Defar Asseffa	26 July 2016	9 October 2018	2 Years and 3 Months
46	Bogalech Aseffa	29 December 2015	9 October 2018	2 Years and 9 Months
47	Jamal Seid	14 August 2015	9 October 2018	3 Years and 2 Months
48	Tsige Mitiku	17 January ,2018	9 October,2018	10 Months
49	Aminat Abdulkedir	24 July 2014	9 June 2019	4 Years and 11 Months
50	Enati Belete	12 October 2015	9 June 2019	3 Years and 7 Months
51	Civil service Ministry	14 March 2017	9 June 2019	2 Years and 3 Months
52	Eshetu Wubishet	8 April 2016	9 June 2019	3 Years and 3 Months
53	Fantaye Laphiso	8 April 2016	9 June 2019	3 Years and 3 Months
54	Abraham G/gorgis	2 November 2016	9 June 2019	2 Years and 8 Months
55	Kemeriya Ahimed	31 January 2017	9 June 2019	2 Years and 4 Months
56	Nugusie Hadigo	21 August 2016	9 June 2019	2 Years and 10 Months
57	Yayineabeba Adamu	29 October 2015	9 June 2019	3 Years and 7 Months
58	Abduraman Urgessa	31 July 2013	9 June 2019	5 Years and 9 Months
59	Bereket Asfaw	11 November 2013	8 October 2019	5 Years and 10 Months
60	Kelemua Teferra	26 April 2016	8 October 2019	3 Years and 4 Months
61	Burtukan Kuma	27 April 2016	8 October 2019	3 Years and 4 Months
62	Meketa Disability Organization	4 January 2017	8 October 2019	2 years and 10 Months
63	Federal cassation court	12 July 2018	8 October 2019	1 Year and 3 Months
64	Ayalinesh Moges	18 May 2011	8 October 2019	8 Years and 4 Months
65	Gizew Dembbe	11 April 2017	8 October 2019	2 years and 6 Months

Source: Compiled by the researcher from CCI Data



ቁጥር 60690/ጸ.ሪ.15/16
No. 26/10/07
Date

ሰፊ ደረጃ ጠቅላይ ፍርድቤት

አዲስ አበባ

ሰነድ የሥነ ምግባር ስርዓት ስርዓት ጠቅላይ ፍርድቤት

ፊንጮ

ጉዳይ-የምክርቤቱን ውሳኔ ስርዓት

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክርቤት በ4ኛ የፓርላማ ዘመን/5ኛ ዓመት/2ኛ መደብ ስብሰባው ወይን ወደፊት ታችኛው ዓክልበት የሕገመንግስት ትርጉም አይታዘብ መሆኑን ከሕገመንግስት ጉዳዮች አጣሪ ጉዳይ የተሰጠውን የውሳኔ ሀሳብ ተመልክቶ የመጨረሻ ውሳኔ ሰጥቷል።

የፌዴራሽን ምክርቤትን ለማስጠናቀቅ ለመጠየቅ ተግባርን ለመጠየቅ ዘመናዊ አዎንታዊ 251/1993 ዓ.ም አንቀጽ 11 እና 56 ምዕራብ ስርዓት ትርጉም ላይ የሚሰጠው ውሳኔ አጠቃላይ ውሳኔ አንድሚሰጠውና ጉዳዩ የሚመለከተው ወገኖችም ውሳኔውን የማስጠናቀቅ የመፈለግ ግዴታ አንዳለባቸው ተደንገዋል። በዚህ መሰረት በወይን ወደፊት ታችኛው ጉዳይ ሰነድ የሥነ ምግባር ስርዓት ጠቅላይ ፍርድቤት ሰነድ ስሜት የተሰጠው ውሳኔ ምክርቤቱ ታይቶ ስርዓትን የሚጸረር በመሆኑ ተፈጻሚነት አንዳይሰጠው እና ስርዓትን መብታቸው አንዳይጠበቅ ስለ ወሰደ።

በመሆኑም ወይን ወደፊት ታችኛው የትርጉም ጥያቄ ላይ ምክርቤቱ የሰጠውን የመጨረሻ ውሳኔ 4 ገጽ የተሰጠው ስለሆነ በውሳኔው መሰረት አንዳይጠበቅ እንደሚሆን የምክርቤቱ አይነትም የውሳኔውን አፈጻጸም ክትትል አንዳይደረግ አስታውታል።

ገልጻል፡-

ሰነድ የሥነ ምግባር ስርዓት ጠቅላይ ፍርድቤት

ሰነድ የሥነ ምግባር ስርዓት

ሰነድ የሥነ ምግባር ስርዓት

ሰነድ የሥነ ምግባር ስርዓት

አዲስ አበባ

ሰነድ የሥነ ምግባር ስርዓት

ጠቅላይ

የምክርቤቱ ጠቅላይ ፍርድቤት
የሥነ ምግባር ስርዓት ጠቅላይ ፍርድቤት
የሥነ ምግባር ስርዓት ጠቅላይ ፍርድቤት

የምክርቤቱ ጠቅላይ ፍርድቤት
የሥነ ምግባር ስርዓት ጠቅላይ ፍርድቤት
የሥነ ምግባር ስርዓት ጠቅላይ ፍርድቤት

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክርቤት 4ኛ የፓርላማ ዘመን፣5ኛ ዓመት፣2ኛ

መደበኛ ሰብሰባ

ሰኔ 18 ቀን 2007 ዓ.ም

አመልካች፡- ወ/ሮ ወደሬ ታችበሌ

ተጠሪ፡- ወ/ሮ ልኬ ጉርመ

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክርቤት በአመልካች የተረጋገጠውን የሕገመንግስት የትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገመንግስታዊ ውሳኔ ሰጥቷል።

ውሳኔ

የዚህ አቤቱታ መነሻ በኦሚያ ቤሔራዊ ክልላዊ መንግስት ምስራቅ ሸዋ ዞን፣በሎሚ ወረዳ ፍርድቤት በአመልካችና ተጠሪዎች መካከል የነበረ የእርሻ መሬትና ሌሎች ንብረቶች ክርክር ሲሆን የአሁን አመልካች ባለቤታቸው ከዚህ ዓለም በሞት ሲለዩ አብረው ሲጠቀሙበት የነበረውን አስራ አራት ቀርጥ የእርሻ መሬት የሟች ልጆች እንዲይጠቀሙ በመከላከላቸው እንዲያካፍሏቸው ጠይቀው የወረዳው ፍርድቤትም እንዲሳረሱ ውሳኔ ሰጥቷል።ውሳኔውም እስከ ኦሚያ ጠቅላይ ፍርድቤት ድርሶ የጸና ቢሆንም የኦሚያ ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት በሰ/መ/ቁ.117802 ለክርክሩ መነሻ የሆነውን የመሬት ይዞታና ሌሎች ንብረቶችን አስመልክቶ የበታች ፍርድ ቤቶች የአሁኗ አመልካች፣ ተጠሪና የሟች የአቶ ማሙዬ ባደግ ልጆች እንዲከፋፈሉት የሰጡትን ውሳኔ በመሻር ወስኗል።

በውሳኔውም የአሁኗ አመልካች ከሟች ከአቶ ማሙዬ ባደግ ጋር በጤና ችግር ምክንያት በስምምነት ተለያይተው አስራ ስምንት ዓመት ከቆዩ በኋላ ባለቤታቸው ከዚህ ዓለም በሞት ሲለዩ ሟች አስከምቱበት ጊዜ ድረስ በጋራ ባለይዞታነት የተመዘገቡበትንና እየተጠቀሙበት ያለን የመሬት ይዞታ በይርጋ ይታገዳል በማለት የሰር ፍርድ ቤቶችን ውሳኔ ሸርታል። የፌዴራሉ ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎትም ይህንን ውሳኔ አፅንቶታል።አመልካችም ውሳኔው ከይዞታዬ እንድረናቀል የሚያደርግ ስለሆነና በሕገመንግስቱ አንቀጽ 37 የተደነገገውን ስሰሚታረን ሊታረምልኝ ይገባል በማለት ለፌዴራሉ የሕገመንግስት ጉዳዮች አጣሪ ጉባኤ አመልክተዋል።



የሕገመንግስት ጉዳዮች አጣሪ ጉባኤም አቤቱታውን መርምሮ አመልካች አርሶ አደር ሆነው በአካባቢው እየኖሩና ሚች በሕይወት እያሉ ክርክር ካሰነሳው መሬት ከሚገኝ ምርት በሚች ባለቤታቸው ቀለብ እየተሰፈረላቸው ሲጠቀሙ መቆየታቸውና ቋሚ መኖሪያቸው ከዚያው አካባቢ መሆኑ በግልጽ እየታወቀ የኦሮሚያ ጠቅላይ ፍርድቤት ሰበር ሰሚ ችሎት ይርጋን መሰረት አድርጎ በሰጠው ውሳኔ አመልካች ከአርሻ መሬታቸው እንዲፈናቀሉ መደረጉ ሕገመንግስቱ ከቆመለት ዓላማ ውጪ በመሆኑ ጉዳዩ የህገመንግስት ትርጉም የሚያስፈልገው ነው በማለት የውሳኔ ሀሳቡን ለምክርቤቱ አቅርቧል።

ከዚህ በመነሳት ጉዳዩን ተመልክቶ የውሳኔ ሀሳብ እንዲያቀርብ የተመራለት የምክርቤቱ የሕገመንግስት እና የክልሉች ጉዳይ ቋሚ ኮሚቴ በሕገመንግስት ጉዳዮች አጣሪ ጉባኤ በቀረበው የውሳኔ ሀሳብ እና በምክርቤቱ ባለሙያዎች አስተያየት ላይ ከተወያየ ቢኃላ ጉዳዩ የሕገመንግስት ትርጉም ያስፈልገዋል በማለት ምክርቤቱ የመጨረሻ ውሳኔ እንዲሰጥበት የውሳኔ ሀሳብ አቅርቧል።

ምክርቤቱም አቤቱታውን ከቀረበው የውሳኔ ሀሳብ ጋር በማጣመር መርምሯል። እንደመረመረውም የአሁኗ አመልካች ባለቤታቸው ከነበሩት ሚች አቶ ማሙዬ ባደግ ጋር በሕመም ምክንያት ቢለያዩም በመሬት ይዳታ መብታቸው መጠቀሚያቸው ግን አልተቋረጠም ነበር። ይህ ሆኖ እያለ የአሁኗ አመልካች አርሶ አደር ሆነው በአካባቢው እየኖሩና ሚች በሀይወት እያሉ አሁን ክርክር ካሰነሳው መሬት ላይ ከሚገኝ ምርት በሚች ባለቤታቸው አማካኝነት ቀለብ እየተሰፈረላቸው በመሬት ይዳታውም ሲጠቀሙና ቋሚ መኖሪያቸውም እዚያው መሆኑ በግልፅ ቢታወቅም ባለቤታቸው የነበሩት ሚች ከሞቱ በኋላ ግን የአሁኗ ተጠሪና ልጆቻቸው መሬቱንና ከመሬቱ ከሚገኘው ምርት እንዳይጠቀሙ እንደአሰከሷቸው በሰር ፍርድ ቤቶች በፍሬ ነገር ደረጃ መረጋገጡን ምክርቤቱ ተረድቷል። በዚህም መሰረት ምክርቤቱ አቤቱታውን ለዚህ ጉዳይ አግባብነት ካለው የኦሮሚያ የገጠር መሬት አስተዳደርና አጠቃቀም አዋጅ ቁጥር 130/99 አንቀጽ 6/16/ ድንጋጌ ጋር በማገናኘብ እንደተመሰከሩ አንድ የመሬት ባለይዳታ ወይም ተጠቃሚ የሆነ ሰው በይዳታ የመጠቀም መብቱን የሚያጣው በመሬቱ ላይጠቀምበት ሁለት ዓመትና ከዚያ በላይ የቆየ ወይም በራሱ ፈቃድ ይዳታውን የተወ እንደሆነ መደንገጉን ተረድቷል። ከዚህ ሁኔታ በመነሳት ምክርቤቱ የአሁኗ አመልካች ለክርክሩ መነሻ



በሆነው እስራ ኦሪት ቀርጥ የእርሻ መሬት ይታየው የመጠቀም መብታቸውን የሚያሳጣ ሁኔታ የተፈጠረ አለመሆኑን ለማረጋገጥ ችሏል።

በጉዳዩ ላይ በፍሬ ነገር ደረጃ የተረጋገጠው እና የሆኑ ድንጋጌ ይህ ሆኖ እያለ የኦሮሚያ ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት አግባብነት የሌለውን ደርጋን መሰረት በማድረግ የሰር ፍርድ ቤቶችን ውሳኔ በመሻር የሰጠው እና የፈደራሉ ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት የተፈጸመ የሕግ ስህተት የለም በማለት ያግኘው ውሳኔ በምክርቤቱ በኩል በኢ.ፌ.ዲ.ሪ. ሕገ መንግሥት አንቀጽ 40 ንዑስ አንቀጽ 4 የኢትዮጵያ ኦሮሞ ለደሮች መሬት በነፃ የማግኘትና ከመሬታቸው ያለመነቀል መብታቸው የተከበረ ነው። እንዲሁም በአንቀጽ 35 ንዑስ አንቀጽ 7 ሴቶች በተሰይሙ መሬትን በመጠቀም፣ በማስተላለፍ፣ በማስተዳደርና በመቆጣጠር ረገድ ከወንዶች ጋር እኩል መብት አላቸው የሚለውን ሕገ መንግሥታዊ ድንጋጌ የሚቃረን ሆኖ ተገኝቷል። ቤሕገመንግስታችን አንቀጽ 9 ንዑስ አንቀጽ 1 እንደተደነገገው ማናቸውም ሕግ፣ ልማትና አሰራር፣ የመንግስት እኩል ወይም ባለሥልጣን ውሳኔ ከሕገመንግስቱ ጋር የሚቃረን ከሆነ ተፈጻሚነት አይኖረውም።

በመሆኑም በኦሮሚያ ቤሕራዊ ክልላዊ መንግስት ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት የተሰጠው እና በፈደራሉ ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት እንዲጸና የተደረገው ውሳኔ የአመልካችን ሕገመንግስታዊ መብት የጣሰ በመሆኑ በሕገመንግስቱ አንቀጽ 9/1/ መሰረት ተፈጻሚነት የለውም በማለት ምክርቤቱ በሙሉ ድምጽ ወስኗል።

ትዕዛዝ

1. በኦሮሚያ ቤሕራዊ ክልላዊ መንግስት ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት የተሰጠውና በፈደራሉ ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት እንዲጸና የተደረገው ውሳኔ የአመልካችን ሕገመንግስታዊ የመሬት ባለይዞታነት እና የተጠቃሚነት መብት የሚጥስ በመሆኑ ተፈጻሚ እንዳይሆን መወሰኑን አውቀው እንዲያስረጽሙ የቢህ ውሳኔ ግልባጭ ለፈደራሉ ጠቅላይ ፍርድ ቤት እና ለኦሮሚያ ቤሕራዊ ክልላዊ መንግስት ጠቅላይ ፍርድ ቤት ይተላለፍ።

2. የውሳኔው ግልባጭ ለአቤቱታው አቅራቢዋ ይሰጥ።





ቁጥር 609/፳፭/፲፯/፳፻፲
No
ቀን 02/02/2011
Date

ለወ/ሮ አልሳቤፕ አበበ ተወላይ ሻምበል ልሳነወርት በትሩ

ባለ-በት

ጉዳይ፡- የምክር ቤቱን ውሳኔ ስለማሳወቅ

እርስዎ የሕገ-መንግስት ትርጉም አቤቱታ ለፌዴራል ሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ማቅረብ ይቻላል።

በመሆኑም የፌዴራሽን ምክር ቤት መስከረም 29 ቀን 2011 ዓ.ም በ5ኛ የፓርላማ ዘመን 4ኛ ዓመት 1ኛ መደበኛ ጉባኤ ባቀረቡት የሕገ መንግስት ትርጉም አቤቱታ ላይ ከፌዴራል ሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ የቀረበውን የውሳኔ ሃሳብ በተመለከተ በጊላ ጉዳይ የሕገ መንግስት ትርጉም የሚያስፈልገው አይደለም በማለት የሰጠውን የውሳኔ ግልጻጭ 5/አምስት/ ገጽ ከዚህ መሸኛ ደብዳቤ ጋር አጣሪ በማድረግ ስጥተንዎታል።

ግልጻጭ



ከሰላምታ ጋር

ጊዮርጊስ ለጊዮርጊስ
ጊዮርጊስ ለጊዮርጊስ

- ለፌዴራል ሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ አዲስ አበባ
 - ለሕገ መንግስት ትርጉም እና የማኅበት ጉዳዮች ዳይሬክቶሬት
- በፌዴራሽን ምክር ቤት ጽ/ቤት

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክር ቤት 5ኛ የፓርላማ ዘመን
4ኛ ዓመት 1ኛ መደበኛ ጉባዔ

መስከረም 29 ቀን 2011 ዓ.ም

አመልካች፡- ወ/ሮ ሌልላቤጥ አበበ ተወካይ ሽምባል ልሳነወርቅ በትሩ
ተጠሪዎች፡- 1ኛ. የጅግጅጋ ከተማ የ01 ቀበሌ አስተዳደር
2ኛ. አነ አቶ ደስታ ካሳ (5 ሰዎች)

የኢ.ፌ.ዴ.ሪ ፌዴራሽን ምክር ቤት አመልካች ያቀረቡትን የሕገ መንግስት ትርጉም ጥያቄ መርምሮ
የሚከተለውን ሕገ መንግስታዊ ውሳኔ ሰጥቷል፡፡

ውሳኔ

ጉዳዩ የከተማ ቤት ባለቤትነት መብት በፍርድ ከተረጋገጠ በጋላ በአፈጻጸም ለመረከብ የቀረበ ከርክር
የሚመለከት ሲሆን፡ አመልካች በጅግጅጋ ከተማ 01 ቀበሌ በ800 ካ.ሜ ላይ የተሰሩ 5 ክፍል
ቤቶች በባለቤቷ ሚኒ ሻለቃ ሞገስ ማሪያም ስም ተመዝግቦ የሚገኝ ያልተወረሰ ቤት ለምስራቅ
ቀጠና በአደራ በመስጠት በለውጡ በአዲስ አበባ ከተማ ወረዳ 21 ቀበሌ 19 የቤት ቁጥር 435
የሆነውን የኪራይ ልዩነት በመክፈል ስንፍር አዲስ አበባ በሰውጥ የተያዘው ቤት ኪራዩ በመጨመሩ
የጅግጅጋውን ቤት ከኪራይ ቤቶች የተረከበው የሱማሌ ክልላዊ መንግስት እንዲያስረክብን በተለያዩ
አካላት በጽሁፍ ሲገለጽ 1ኛ ተጠሪ በቤቱ ውስጥ ያሉ ሌሎች ተጠሪዎች በማስለቀቅ ሊያስረክቡን
ፈቃደኛ ስላልሆነ በፍርድ ተገደው እንዲያስረክቡ እንዲወሰን ሲሉ ለሱማሌ ክልል ጂግጂጋ ዞን
ከፍተኛ ፍርድ ቤት ክስ አቅርበዋል፡፡

ተጠሪዎች በአዋጅ ቁጥር 47/87 የተወሰዱ ቤቶችን የሚመለከት ክስ የማየት ስልጣን በአዋጅ
ቁጥር 110/87 መሰረት የፍ/ቤት ላይሆነ የኪራይ ቤቶች ኤጀንሌ ነው፤ የአመልካች ልጅ አካለ
መጠን ስላልደረሰ ክስ ለማቅረብ ስልጣን የላቸውም እና ክስ በይርጋ ቀሪ ነው የሚሉ የተለያዩ
ሶስት የመጀመሪያ ደረጃ መቃወሚያዎች ብቻ በጽሁፍ አቅርበዋል፡፡

የጅግጅጋ ዞን ከፍተኛ ፍ/ቤት ተጠሪዎች ያቀረቡትን የመጀመሪያ ደረጃ መቃወሚያ ወድቅ
በማድረግ ለአመልካች ቤቶችን እንዲያስረክቡ ሲል በሙሉ ድምጽ ወስኗል፡፡ ተጠሪዎች ለሱማሌ
ክልላዊ መንግስት ጠቅላይ ፍ/ቤት ያቀረቡት የይግባኝ ቅሬታ በመጀመሪያ ደረጃ መቃወሚያዎች
ላይ የተሰጠው ውሳኔ ግድፈት የሌለበት ነው በማለት የበታች ፍ/ቤቱን ውሳኔ በማጽናት ወስኗል፡፡



አመልካች በቀን 20/07/07 ዓ.ም በተጻፈ ያቀረቡት የሕገ መንግስት ትርጉም ጥያቄ በሕገ መንግስት ጉዳዮች አጣሪ ጉባኤው የተመረመረ ሲሆን አመልካች የፍርድ ባለሙያነት መሆናቸውን ካቀረቧቸው ውሳኔዎች በረጋገጥም እንደ ፍርድ እንዲፈጸምላቸው ስለመጠየቃቸው የቀረበ አስረጂ ስለሌለ ይህን እንዲያሟሉ ሲጠየቁ፤ በጅግጅጋ ዞን ከፍተኛ ፍ/ቤት በቁጥር 784/97 በቀን 18/06/03 ዓ.ም የፍርድ ባለዕዳ የሆኑት ተጠሪዎች በ1 ወር ጊዜ ውስጥ ቤቱን እንዲያስረክቡ የተሰጠ ትዕዛዝ፣ በሶማሌ ክልላዊ መንግስት ጠቅላይ ፍ/ቤት በቁጥር 05-1-238/01 በቀን 02/12/03 እና በቁጥር 14/409/04 በቀን 16/01/04 ዓ.ም በተጻፈ የከፍተኛ ፍ/ቤቱን የአፈጻጸም ትዕዛዝ በመጥቀስ እንደፍርድ እንዲያስፈጸሙ ለጅግጅጋ ከተማ አስተዳደር እና ለጅግጅጋ ከተማ ፀጥታ ዘርፍ ጸ/ቤት የተሰጡ ትዕዛዞችን አቅርበዋል።

በተጨማሪም ከላይ ለተሰጠ የአፈጻጸም ትዕዛዝ መሻሻ የሆኑት ፍርዶች በሌሎች የበላይ ፍ/ቤቶች እንዳልተሻሩ እና እንደፍርድ መፈጸም ያልተቻለበትን ሁኔታ ለማወቅ በተደረገ ማጣራት የጅግጅጋ ከተማ አስተዳደር እና የቀበሌ 01 አስተዳደር በጋራ በጉዳዩ ላይ በመነጋገር በጅግጅጋ ከተማ አስተዳደር ከጉድባ ጸ/ቤት አድራሻ በቁጥር MM11/560/09 በቀን 03/08/09 ዓ.ም በተጻፈ ምላሽ እንደፍርድ እንዲፈጸም የአፈጻጸም መጥሪያ ወይም ትዕዛዝ ለፍርድ ባለዕዳው ባለመድረሱ እና ስለአፈጻጸሙ ምላሽ ያልሰጡ በመሆኑ ውሳኔው ሊፈጸም እንዳልቻለ ተገልጿል።

በሌላ በኩል በተመሳሳይ የክልሉ ጠቅላይ ፍ/ቤት እና የጅግጅጋ ዞን ከፍተኛ ፍ/ቤት ለቀረበላቸው ጥያቄ በጉዳዩ ላይ በጋራ በመነጋገር በክልሉ ጠቅላይ ፍ/ቤት አድራሻ በቁጥር M-G/453/09 በቀን 18/08/09 ዓ.ም በተጻፈ ምላሽ ውሳኔው አስከ አሁን ሊፈጸም ያልቻለው ቤቶቹ የመንግስት ናቸው አይደሉም የሚል ግጭትና ችግር ያሰነሳ የነበረ በመሆኑ፤ አመልካች ለብዙ ዓመታት ጉዳዩን ሳይከታተሉ እና አቤቱታ አቅርበው መዘገብ እንዲገባቸው ባለማድረጋቸው እንደሆነ ገልጿል። እንደውሳኔው እንዲፈጸም የአፈጻጸም መዘገብ በማገባቸው እንዲረከቡ እና በቤቶች ውስጥ የሚኖሩ ግለሰቦች ተለዋጭ ቤት እንዲፈለግላቸው ማድረግ መፍትሄ ሆኖ እንዳገኘው አሳውቋል።

ጉባኤውም ባደረገው ምርመራ አመልካች በጅግጅጋ ከተማ ቀበሌ 01 ውስጥ በ600 ካ.ሜ ስፍራ ተገንብተው ለሚገኙ ቤቶች ባለቤት መሆናቸውን ፍ/ቤቶች ለውሳኔያቸው መሰረት ካደረጓቸው ተገቢ ስረጃዎች እና በህግ አግዳብ በተደረገ ክርክር ከተሰጠ ፍርድ ላይ ማረጋገጥ የተቻለ ሲሆን፤ ይህ የፍርድ ባለሙያነት በይግባኝ ስሜ ፍ/ቤት ከመጽናቱ በቀር እንዳልተሻረ በዋናነት ከፍርድ ባለዕዳው እና ከፍርድ አስፈጻሚ ፍ/ቤቶች ምላሽ ማረጋገጥ ተችሏል።



ስለዚህ አመልካች በአቤቱታቸው ተጥሏል የሚሉትን ህገ መንግስታዊ መብት ያመለክቱ ባይሆንም በፍርድ ስተጠቀሰው ቤት በጉልበታቸው የተፈራ የግል ንብረት ባለቤትነታቸው ተረጋግጦ እንዲረከቡ ተወስኖ አያለ። በዚህ የግል ንብረታቸው ላይ ያላቸውን የመያዝ የመጠቀም ወይም የማስተላለፍ የንብረት መብት ከውሳኔ ባሻገር በፍርድ አፈጻጸም በሚደረግ ማስረከብ የግል ንብረት ባለቤትነት መብትን የማስከበሪያ መንገድ መሆኑ እየታወቀ ለረጅም ዓመታት የተደረገው የአፈጻጸም መዘገየት ከኢ.ፌ.ዲ.ሪ ህገ መንግስት አንቀጽ 40 ንዑስ አንቀጽ 1 የግል ንብረት መብት የሚቃረን ሆኖ አግኝተናል።

እንዲሁም ፍ/ቤቶች በፍርድ የወሰኑትን መብት ማስፈጸም የሚቻለው በተመሳሳይ ለወሰነው ፍ/ቤት ለአፈጻጸም ጥንት በማቅረብ እንደሆነ የፍትህ ብሔር ስነ ስርዓት ሆኑ በግልጽ ደንገግ ስለሚገኝ በአመልካች የቀረበላቸውን የአፈጻጸም ጥያቄ በተለያዩ ትእዛዛት፣ ውሳኔ ወይም ፍርድ እንደፍርዱ ማስፈጸም ሲገባቸው ይህን አላማድረጋቸው ከኢ.ፌ.ዲ.ሪ ህገ መንግስት አንቀጽ 37 ንዑስ አንቀጽ 1 ፍትህ የማግኘት መብት የሚቃረን ተግባር መፈጸማቸውን የሚያረጋግጥ ነው።

በመጨረሻም የኢትዮጵያ ሶማሌ ክልላዊ መንግስት ጠቅላይ ፍ/ቤት እና የጽጅጋ ዞን ክፍተኛ ፍ/ቤት አመልካች እንደፍርዱ እንዲፈጸምላቸው ሳቀረቡት የፍርድ መብት የፍርድ ባለዕዳ የሆኑት ተጠሪዎች የማይፈጸሙበት ምክንያት ካለ ቀርበው እንዲያስረዱ በማድረግ በገለልተኛነት ክርክሩን በመመርመር መወሰን ሲገባቸው፣ የአፈጻጸም መጥሪያ ወይም ትዕዛዝ የፍርድ ባለዕዳ ለሆኑት ተጠሪዎች ደርሶ ምላሽ እንዲሰጡ ባልተደረገበት ሁኔታ የተደመረውን የፍርድ ማስፈጸም ተግባር በራስ ተጎሳሽነት በማድረግ እና በጉግኔው ጥያቄ መሰረት ውሳኔው እስከ አሁን ማስፈጸም ያልቻለው ቤቶች የመንግስት ናቸው አይደሉም የሚል ግጭትና ችግር ያስገባ የገበረ በመሆኑ፣ አመልካች ለብዙ ዓመታት ጉዳዩን ሳይከታተሉ እና አቤቱታ አቅርበው መዝገብ እንዲንቀሳቀስ ባለማድረጋቸው እንደሆነ ገልጸው፣ እንደውሳኔው እንዲፈጸም የአፈጻጸም መዝገብ በማንቀሳቀስ እንዲረከቡ እና በቤቶች ውስጥ የሚኖሩ ግለሰቦች ተለዋጭ ቤት እንዲፈለግላቸው ማድረግ መፍትሄ ሆኖ እንደተገኘ የተሠጠ ምላሾች ክፍርድ ባለዕዳው ምላሽ ጋር የሚቃረን ነው።

በሌላ በኩል በፍርድ ባለዕዳው ያልተጎሳ መስራቲያን ፍ/ቤቱ በማንሳት እንደፍርዱ ላለማስፈጸም ያላየው ፈቃደኝነት ማጣት ከኢ.ፌ.ዲ.ሪ ህገ መንግስት አንቀጽ 79 ንዑስ አንቀጽ 3 ፍ/ቤቶችና ጥያቄ የጥያቄ ተግባራቸውን በመሉ ነጻነት ያገናውናሉ። ከህግ በስተቀር በሌላ ሁኔታ አይመሩም ከሚለው የጥያቄ ስልጣን በሚርቅ ሁኔታ ስተጠሪ በግልጽ በማድሳት፣ በመወገን እና በህግ



ከተቀመጠው የክርክር አመራር በመውጣት የሂደቡን አግባብ ነጻ እንዳልሆነ እና በህግ እንዳልተመራ የሚያረጋግጥ ሆኖ አግኝተናል።

ስለዚህ በጉዳዩ ላይ በየደረጃው ባሉ ፍ/ቤቶች የተሰጠው ውሳኔ ከኢ.ፌ.ዲ.ሪ ሕገ መንግስት አንቀጽ 37 ፍትህ የማግኘት እና 40 ንዑስ አንቀጽ 4 የንብረት መብቶች እንዲሁም ከዳኝነት ስልጣን ሕገ መንግስታዊ ድንጋጌ ጋር የሚጋጭ ስለሆነ ጉዳዩ የሕገ መንግስት ትርጉም ያስፈልገዋል በማለት ጉባዔው በሙሉ ድምጽ ተስማምቶ ለመጨረሻ ውሳኔ ሰፊ ደራሽን ምክር ቤት የውሳኔ ሀሳቡን አቅርቧል።

ከዚህም በመነሳት ምክር ቤቱ በሕገመንግስት ትርጉም እና የማግኘት ጉዳይ ደረጃው ጉዳይ ታይቶ እንዲቀርብ መርቶት ሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ባቀረበው የውሳኔ ሃሳብ ላይ ሰፊ ውይይት ካደረገ በኋላ አመልካች በጅምር ከተማ ቀበሌ 01 ውስጥ በስድስት መቶ ካ.ሚ ላይ የተሰሩ አምስት ክፍል ቤቶች በባለቤታቸው ሟች ሻለቃ ሞገስ ሆግርያም ስም ተመዝግቦ የሚገኝ ሆኖ በ1972 አ.ም በሰራ ምክንያት ሲሳጠር ቤቱ ለምስራቅ ቀጠና በአደራ ተሰጥቶ በባር 70 (ሰባ ብር) ተከራይቶ በሰውጥ በአዲስ አበባ ከተማ ወረዳ 21 ቀበሌ 19 የሚገኘው የቤት ቁጥር 435 ኪራቆ 160 ብር የሆነ ቤት ውስጥ የኪራይ ልዩነቱን በመክፈል ሲኖሩ ከቆዩ በኋላ የአዲስ አበባው ቤት ኪራቆ በመጨመሩ የጂግጂጋው ቤት እንዲመለስላቸው ለሚመለከታቸው አካላት ጥያቄ አቅርበው እንዲመለስላቸው የተወሰነ በመሆኑ የአሁኑን ተጠሪዎች ቤቱን እንዲያስረክቧቸው ሲጠይቁ ቤቱን ለመልቀቅ ፈታደኛ ባለመሆናቸው ለሶማሌ ክልል የጂግጂጋ ዞን ከፍተኛ ፍርድ ቤት የአሁን ተጠሪዎች ቤቱን እንዲያስረክቧቸው ውሳኔ እንዲሰጥላቸው ከስ ያቀረቡ ሲሆን ፍርድ ቤቱም ጉዳዩን አጣርቶ ቤቱ ለአሁን አመልካች እንዲመለስ መወሰኑን፣ ጉዳዩ በይግባኝ የቀረበለት የሶማሌ ክልል ጠቅላይ ፍርድ ቤትም የዞን ከፍተኛ ፍርድ ቤት የሰጠውን ውሳኔ ማጽናቱን፣ የአሁን አመልካች ቤቱን በፍርድ ቤቱ ውሳኔ መሰረት ለመረከብ የፍርድ አፈጻጸም ከስ አቅርበው የጂግጂጋ ዞን ከፍተኛ ፍርድ ቤቱም በመ/ቁ. 784/97 በ18/06/2003 ዓ.ም በዋለው ችሎት የፍርድ ባለአዳው የጂግጂጋ ከተማ ቀበሌ 01 አስተዳደር ጸሀፊት ቤት ክርክር የተነሳበት ቤት ውስጥ እየኖሩ ያሉ ግለሰቦችን በማስለቀቅ ቤቱን በአንድ ወር ጊዜ ውስጥ ለፍርድ ባለመብት እንዲያስረክብ ትእዛዝ ቢሰጥም በትእዛዙ መሰረት እንደ ፍርዱ ያልተፈጸመ መሆኑን ምክር ቤቱ ተረድቷል።

የዞን ከፍተኛ ፍርድ ቤት የፍ/ባ/ሥ/ሥ/ሕ ቁጥር 386 እና ተከታይ ድንጋጌዎችን መሰረት በማድረግ ፍርድ የሚፈጸምበትን የአሰራር ስነ ስርዓት ተከትሎ በፍርድ ቤቱ ውሳኔ መሰረት ማስፈጸም ሲገባው ይህን አሰማድረጉን ከቀረበው መዘገብ መረዳት የተቻለ ሲሆን ክርክር የተነሳበት



ቤት ለአሁን አመልካች ሊመሰስ እንደሚገባ ውሳኔ ያገኘና በይግባኝ ሰሚ ፍርድ ቤትም የእና ስለሆነ ፍርድ ቤቱ ስልጣኑን ተጠቅሞ የፍርድ ባለአዳዎች ተገደው እንደ ፍርድ እንዲፈጸሙ ማድረግ ሲገባው ይህን አሰማድረጉ በሕግ የተሰጠውን ስልጣንና ጊላፊት በሚገባ አሰመወጣቱን ያሳያል።

ይሁንና አሁን የተያዘው የፍርድ አፈጻጸም ጉዳይ አልባት ማግኘት የሚገባው ጉዳዩን በያዘት እና የሰጠትን ፍርድ የማስፈጸም ስልጣን በተሰጣቸው ፍርድ ቤቶች እንጂ ሕገ መንግስቱን በሚተረጉመው የፈጠራ ምክር ቤት አይደለም። የፈጠራ ምክር ቤት ስልጣን በአ.ፌ.ዲ.ሪ ሕገ መንግስት አንቀጽ 9 ንዑስ አንቀጽ 1 መሰረት ሕገ መንግስቱን የሚቃረን ውሳኔ ሲሰጥ የሕገ መንግስት ትርጉም በመሰጠት የቤንችን ሕገ መንግስታዊ መብት ማሸነፍ እንጂ ፍርድ ቤቶች ሕገ መንግስቱን የሚቃረን ውሳኔ ባልሰጡበት ሁኔታ በፍርድ ቤቶች ስራ በመግባት የፍርድ አፈጻጸም ስራ የሚሰራበት የሕግ አግባብ ባለመኖሩ አመልካች የከፈቱትን የፍርድ አፈጻጸም ክስ ተከታትለው በውሳኔው መሰረት የማይፈጸሙላቸው ከሆነ ፍርድ ቤቶች በሚሰጡት የአፈጻጸም ትእዛዝ ላይ እስከ ፈጠራ ጠቅላይ ፍርድ ቤት ድረስ በይግባኝና በሰበር ማሳረም የሚችሉበት የሕግ ስርአት ተዘግቦት ሁኔታ ፍትህ የማግኘት መብት ተጥሷል የሚያስብል ነገር የለውም። ምክንያቱም አመልካች ጉዳዮቸው በፍርድ ቤቶች ሲታይ ቆይቶ ፍርድ ቤቶችም ሕጉን መሰረት ያደረገ ውሳኔ በመስጠታቸው ምክንያት አመልካች የፍርድ ባለመብት መሆናቸው ሲታይ ፍትህ የማግኘት መብታቸው መጣሱን አያመለክትም። ፍርድ የማስፈጸም ጉዳዩም በተመሳሳይ የሕግ ስርዓት በፍርድ ቤቶች የሚያልቅ ጉዳይ ነው።

ስለሆነም ከፍ ብሎ በተጠቀሱት ምክንያቶች የአሁን አመልካች አቤቱታ የሕገ መንግስት ትርጉም ያስፈልገዋል በማለት የሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ያቀረበው የውሳኔ ሀሳብ ከሕገ መንግስት ትርጉም መርህ እና አሳማ ጋር የሚጣጣም ሆኖ ስላልተገኘ ምክር ቤቱ የረቢውን የውሳኔ ሀሳብ ባለመተበል ጉዳዩ የሕገ መንግስት ትርጉም አያስፈልገውም በማለት መሰኘቱ።

ትእዛዝ

1. የውሳኔው ግልባጭ ለባለጉዳዩ ይሰጥ።
2. የምክር ቤቱን ውሳኔ እንዲያውቀው ለሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ይላክ።





ቁጥር 6085/2615/22
No. 24/02/09
ቀን 24/02/09
Date

ለፌዴራል ጠቅላይ ፍርድ ቤት
አዲስ አበባ
ለፌዴራል የመጀመሪያ ደረጃ ሽሪህ ፍርድ ቤት
ደሬደዋ

ጉዳይ:- የምዕብቱን ውሳኔ ስሎማሳወቅ

በአመልካች አቶ ብርሃኑ ረጋሳ እና በተጠሪ ወይን መስከረም ምትኩ መሳከል ወንበረው የሞገዚትነት ስልጣን ክርክር አመልካች ለልጅ ሞገዚት የመሆን መብቱ ተገቢ በማለት የአገመገገኝነት ትርጉም እንዲሰጥልኝ ሲሉ ለፌዴራሉ የአገ-መገንኛት ጉዳዮች አጣሪ ጉባኤ ሰኔ 24 ቀን 2007 ዓ.ም ማመልከታቸው ይታወሳል። ጉባኤውም አዘታውን መርምሮ ጉዳዩ የአገመገገኝነት ትርጉም ያስፈልገዋል በማለት የውሳኔ ሀሳቡን ለምዕብቱ ስቅርባል።

በመሆኑም ምዕብቱ ጥቅምት 2 ቀን 2009 ዓ.ም ባካሂደው የ5ኛ የሥራ ዘመን፣ 1ኛ ዓመት፣ 1ኛ መደብ ስብሰባው የአጣሪ ጉባኤውን የውሳኔ ሀሳብ በመቀበል የፌዴራል የመጀመሪያ ደረጃ የሽሪህ ፍቤት እና በየደረጃው የሚገኙ ፍርድ ቤቶች በመጨረሻም በፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት የተሰጠው ውሳኔ ተፈጻሚ እንዳይሆን በማለት የመጨረሻ ውሳኔ የሰጠ በመሆኑ የውሳኔው 6 ገጽ ተያይዞ የተሳሳተ ስልጣን የሚመልከታቸው በውሳኔው መሰረት እንደተፈጸመ ምዕብቱ አዟል።



ምዕብቱ ጋር
[Handwritten Signature]

የአጠቃላይ ጉዳዮች
የፌዴራላዊ ምክር ቤት

ግልጻዊ፡

- ለአገመገገኝነት ጉዳዮች አጣሪ ጉባኤ አዲስ አበባ
- ለአቶ ብርሃኑ ረጋሳ ባሰባት

የኢ.ፌ.ዴ.ሪ የፌ.ዴ.ሪሽን ምክርቤት 5ኛ የሰራ ዘመን፣2ኛ ዓመት፣1ኛ መደበኛ ስብሰባ

የፌ/ም/መ/ቁ/ 021/08

አመልካች፡- አቶ ብርሃኑ ረጋሳ

ተጠሪ፡- ወ/ሮ መስከረም ምትኩ

የኢ.ፌ.ዴ.ሪ የፌ.ዴ.ሪሽን ምክርቤት በአመልካች የቀረበውን የሕገ-መንግስት ትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገ-መንግስታዊ ውሳኔ ሰጥቷል፡፡

ውሳኔ

የዚህ ጉዳይ መነሻ የሕግ የሞግዚትነት ስልጣንን በተመለከተ አመልካች የሸሪዓ ፍቤት የተጠሪን የሞግዚትነት ጥያቄ ተቀብሎ በማጽደቁ ሕግን ሪያንን ለመረከብ የአረጋግጦ ፋይል አስከፍተው መጥሪያ ሲደርሱ ጉዳዩን ያወቅኩ በመሆኑ ፍቤት ቀርቤ በሸሪዓ ፍቤት ለመዳኘት ፍቃዴን ባልሰጠሁበት እና ባልተከራከርኩበት የተሰጠው ውሳኔ በሕገ-መንግስቱ አንቀጽ 31፣ አንቀጽ 36 ንዑስ አንቀጽ 1/ሌ/እና ንዑስ አንቀጽ 2 የተደነገገውን የሚቃረን ነው በማለት የሕገ-መንግስት ትርጉም ይሰጠኝ ሲሉ ሰለጣሪ ጉባኤ ያቀረቡት እቤቷታ ነው፡፡

የሕገ-መንግስት ትርጉም ጥያቄ የቀረበለት የሕገ-መንግስት ጉዳዮች አጣሪ ጉባኤ በጉደዩ ላይ ለምክርቤቱ ያቀረበው የውሳኔ ሀሳብ የሚከተለው ነው፡፡

አመልካች ሰኔ 24 ቀን 2007 ዓ.ም የተጻፈ ማመልከቻ ለጉባኤው አቅርቦዋል፡፡ በማመልከቻቸውም እኔ የክርስትና እምነት ተከታይ የሆንኩ የሙሴሊም እምነት ተከታይ ከነበረኝው ወ/ሮ ሲሆን መሐመድ ጋር ተጋብተን አሁን እድሜዎ 1 ዓመት ከ4 ወር የሆኑት ሕግን ሪያንን ወልደናል፡፡ ባለቤቱ ከሞተች በኋላ ተጠሪ የሆኑት የባለቤቱ እናት እና የሕግን ሪያን አያት የሞግዚትነት ስልጣን እንዲሰጣቸው በፌ/ዋ/መ/ደረጃ ሸሪዓ ፍቤት ጥያቄአቸውን አቅርበው ሞግዚትነታቸውን አፀድተዋል፡፡



ፍቤቱም የተጠሪን የሞገዢነት ጥያቄ ተቀብሎ ካጠየቀላቸው በኋላ ሕግን ሪፖንን ለመረከብ የአፈጻጸም ፋይል ለስክፍተው መጥሪያ ሲደርሱኝ ጉዳዩን ያወኩ በመሆኑ ፍቤት ተርቤ በሽሪን ፍቤት ለመዳኘት ፍቃድን ባልሰጠውበት እና ባልተከራከርኩበት የተሰጠው ውሳኔ በሕገመንግስቱ አንቀጽ 9 ንዑስ አንቀጽ 4፣ አንቀጽ 13፣ አንቀጽ 36 ንዑስ አንቀጽ 1/ሐ/እና ንዑስ አንቀጽ 2 ጋር የሚቃረን ነው በማለት የሕገመንግስት ትርጉም ይሰጠኝ ሲሉ ጠይቀዋል።

የጉዳዩ አመጣጥ አመልካች አሁን በሕይወት ከሌሉት ባለቤታቸው ለመለደት ሕግን ሪፖን ተጠሪ የሆኑት የሕገጥ አያት የሞገዢነት ስልጣን እንዲሰጣቸው በፈደራል የመጀመሪያ ደረጃ ሽሪን ፍቤት ጥያቄላቸውን አቅርበው የሞገዢነት ስልጣን ከተሰጣቸው በኋላ ባስከፈቱት የአፈጻጸም ፋይል አመልካች መጥሪያ ሲደርሳቸው ሽሪን ፍቤት በመቅረብ መቃወሚያቸውን አቅርበዋል።

በመቃወሚያቸውም የሕግን ሪፖን አባት የሆነው እያለ በሌሉበት ቦታ የሕግ አያት የሆኑት ተጠሪ ሞገዢት ሆነው መሾማቸው አግባብ አይደለም በማለት ለተጠሪ የተሰጠው የሞገዢነት ስልጣን እንዲሻርላቸው ጠይቀዋል።

ፍቤቱም የአመልካችን አቤቱታ ከሰማ በኋላ ተጠሪን ለሰቀርቦ ያከራከረ ሲሆን ተጠሪ የአመልካች ባለቤት የሆኑት የሕግ እናት ስትሞት ሕግን ልጅን አባት የሆነው አመልካች ራሱ ተንከባክቦ ግሳደግ ሲገባቸው ሻሽመኒ የምትኖር አሁኑ ጋር እንድታደግ የላኩ በመሆናቸው ሕግን እኔ አያቷ ዘንድ ሆኖ ብታደግ የተሸለ ነው የሚል መከራከሪያ አቅርበዋል።

ፍቤቱም የግራ ቀኙን ከርከር ከሰማ በኋላ በሽሪን ሕግ በከታብ ሙትኒል ሙሀታጅ 3ኛ ክፍል ከገጽ 452-455 የሕግ እናት ከሞተች ሕጻንን የማሳደግ ስልጣን የሚሰጠው ለእናት እናት (ለአያት) እንጂ ለእኩስነት ባለመሆኑ አመልካች ያቀረቡትን ተቃውሞ ውድቅ በማድረግ ለተጠሪ የተሰጠው የሞገዢነት ስልጣን የፀደቀ መሆኑን ከመዝገቡ መረዳት ተችሏል።

ጉባኤው የአመልካችን ጥያቄ አያይዘው ካቀረቧቸው የፍቤት ውሳኔዎች እና ከሕገመንግስቱ አንቀጽ 36 ንዑስ አንቀጽ 1 /ሐ/ እና ንዑስ አንቀጽ 2 ጋር የሚቃረን መሆኑን ያለመሆኑን መርምሯል።

በአንቀጽ 34 ንዑስ አንቀጽ 5 ላይ ሕገመንግስቱ የግልና የቤተሰብ ሕግን በተመለከተ በተከራካሪዎች ፈቃድ በሐይማኖቶች ወይም በባሕሎች ሕጎች መሰረት መዳኘትን



ለይክሰክልም፡፡ ዝርዝሩ በሕግ ይወሰናል ተብሎ የተደነገገ ሲሆን በሕገመንግስቱ አንቀጽ 78 ንዑስ አንቀጽ 5 መሰረት የሕዝብ ተወካዮች ምክር ቤት የሐይማኖትና የባሕሪ ፍብቆችን ሊያቋቁሙ ይችላሉ ተብሎ ተደንግጓል፡፡

በዚህ መሰረት የእስልምና እምነት ተከታይ የሆነው ሕብረተሰብ የሚካሄድበት የሸሪዓ ፍብቆ በአዋጅ የተቋቋመ ሲሆን የፈደራል ሸሪዓ ፍብቆችን አቋም ለማጠናከር በወጣው አዋጅ ቁጥር 188/92 አንቀጽ 4/ሀ ማናቸውም የጋብቻ፣ የቀለብ አወሳሰን፣ አካልመጠን ያልደረሱ ሕፃናት ሞግዚትነት እና በቤተሰብ ተግዳሮት ላይ የሚነሱ ጉዳዮች ላይ ባለጉዳዮች በእስልምና ሃይማኖት ሥርዓት ለመዳኘት ፈትደው እና በዚህ አንቀጽ ንዑስ አንቀጽ 2 ከላይ በተገለጹት ጉዳዮች ላይ ሸሪዓ ፍብቆች ስልጣን የሚኖራቸው ተከራካሪ ወገኖቹ በእስልምና ሐይማኖት ስርዓት ለመዳኘት ግልጽ በሆነ መንገድ በፈቃዳቸው መርጠው የቀረቡ ከሆነ ብቻ ነው ተብሎ ተደንግጓል፡፡

ይህ የአዋጅ ድንጋጌም በሐይማኖታዊ ፍብቆ ለመዳኘት ግልፅ በሆነ መንገድ በፈቃድ መርጠ መቅረብን እንደሞና መስፈርት ያስቀመጠ እንጅ የሌላ እምነት ተከታይ የሆነ ሰው በእስልምና ሐይማኖት ሥርዓት ለመዳኘት የሚከሰክል ያለመሆኑን ከአዋጁ መረዳት ተችሏል፡፡

አመልካች በአቤቱታቸው ላይ ፍብቆ የሕፃን ልጃቸው ሞግዚትነት ጉዳይ ላይ ተጠሪ ቀርቦው የሞግዚትነት ስልጣን እንዲሰጣቸው ሲጠይቁ ጉዳዩ የሚመለከታቸው አባት ፍብቆ ቀርቦው ባለተከራከሩበት ቦታ መታየቱ እና የሌላ እምነት ተከታይ ሆነው በሸሪዓ ፍብቆ ለመዳኘት ፈቃዳቸውን ባልሰጡበት ሁኔታ የተሰጠው ውሳኔ ከሕገመንግስቱ ጋር ይታረናል በማለት አቤቱታቸውን ያቀረቡ ቢሆንም ተጠሪ ለአመልካች ሕፃን ልጅ በሸሪዓ ፍብቆ ሞግዚት ሆነው ከተሾሙ በኋላ አመልካች ሕፃን ልጃቸውን እንዲያስረክቡ የአፈፃፀም መጥሪያ ሲደርሳቸው ሸሪዓ ፍብቆ በመቅረብ ተጠሪ የሆኑት የሕፃን ልጃቸው አያት በሸሪዓ ፍብቆ በተሰጣቸው የሞግዚትነት ስልጣን ማይገኙ እና ሳይከራከሩ እንዲሁም የሕፃን ልጃቸው አባት የሆኑት ራሳቸው አያሉ የሞግዚትነት ስልጣን ለአያት መሰጠቱ አግባብ ያለመሆኑን በመግለጽ ተከራክረዋል፡፡

ይህም አመልካች በመጀመሪያ መጥሪያ ቢደርሳቸው ሊያነሱ የሚችሉትን ክርክር በማንሳትና ተቃውሟቸውን በማቅረብ የተከራከሩ፣ ተጠሪም የአመልካች ተቃውሞ ላይ መልሳቸውን በመስጠት ከአመልካች ጋር የተከራከሩ መሆኑን ከመዘገቡ መረዳት የሚቻል ስለሆነ አመልካች



ከፈቃድ መስጠት ጋር አያይዘው ያቀረቡት የሕገመንግስት ትርጉም ጥያቄ ከላይ የፈጸሙ የሥነ ምግባር ፍብራሮችን አቋም ለማጠናከር ከወጣው አዋጅ አንጻር በሕገመንግስቱ አንቀጽ 34 ንዑስ አንቀጽ 5 ላይ የግል እና የቤተሰብ ሕግን በተመለከተ በተከራካሪዎች ፈቃድ በሐይማኖቶች ወይም በባሕሎች ሕጎች መሰረት መዳኘትን አይከለክልም ከሚለው ድንጋጌ ጋር የማይቃረን መሆኑን መረዳት ተችሏል።

ፍብራቱ የሰጠው ውሳኔ በሕገመንግስቱ አንቀጽ 36 ንዑስ አንቀጽ 1 /ሐ/ ማንኛውም ሕግ ወላጆችን ወይም በሕግ የማላደግ መብት ያላቸውን ሰዎች የማወቅና የእነሱን እንክብካቤ የማግኘት፣ በዚህ አንቀጽ ንዑስ አንቀጽ 2 ላይ ሕግናትን የሚመለከቱ እርምጃዎች በሚወሰኑበት ጊዜ የሕግናት ደህንነት በቀደምትነት መታሰብ አለበት ተብሎ ከተደነገገው ድንጋጌ አንጻር መርምረናል።

ተጠሪ የሆኑት የሕገጅ አያት ለፍብራት ባቀረቡት ጥያቄ መሰረት የሞገዘትነት ስልጣን ሲሰጣቸው የቻለው የሕግ አባት የሆነው አመልካች ሕግ ልጃቸውን ራሳቸው ተንከብክበው ማላደግ ሲገባቸው ከምትኖርበት ድራዳዋ ከተማ ሻሸመኒ የምትኖረው አሁኑኛው ጋር እንደታደግ በመስጠታቸው መሆኑን ከመዝገቡ መረዳት ተችሏል።

ፍብራቱም በሕገመንግስቱ ላይ የሕግ መብት ለማስጠበቅ ውሳኔ ከመስጠቱ በፊት ለሕገጅ መልካም አስተዳደግ ሲባል መግራት ያለባቸው ነጥቦች ሳይጠሩ የተወሰነ በመሆኑ ጉባኤው በሰጠው አቅጣጫ መሰረት ለትክክለኛ ፍትህ አሰጣጥ ሲባል መግራት የሚገባቸው ነጥቦች ተጠርተው እንዲቀርቡ ከጽ/ቤቱ ለሕግናት ፕሮጀክት ፊት ደብዳቤ ተፅፏል።

የሕግናት ፕሮጀክት ጽ/ቤትም ግንቦት 8 ቀን 2008 ዓ.ም በቁጥር ሃ/4-39/16019 በተሃፈ ደብዳቤ ለአመልካች ሕግ ልጅ መልካም አስተዳደግ ሲባል ሕግናት አሁን በምትገኝበት አካላትን ጨምሮ በፍብራት ተከራካሪ የነበሩት የሕግናት አባትና የሕግናት አያት የሚገኙበት አካባቢ በመሄድ ቤት ለቤት ጉብኝት እና ጉዳዩ በቀጥታ ከሚመለከታቸው አካላት ጋር የታለ ምልልስ በማድረግ ለሕግናት መልካም አስተዳደግ ሲባል በቀጣይ ሕግናት የማላደግ መብት ለወላጅ አባት ቤሰጥና ሕግናት ባለችበት አካላት ዘንድ እንደትቆይ ቢደረግ፣ ተጠሪም በሁለት ወር አንድ ጊዜ ሕግናትን እንዲያደግቡት የጉብኝት ሁኔታ ቢመቻችላቸውና አመልካች በሰራ ምክንያት ከሻሸመኒ ድራዳዋ ስለሚመላለሱ ሕግናትን ድራዳዋ ይዘው መጥተው ለተጠሪ እንዲያስገቡና ቢደረግ መልካም መሆኑን፣ በውይይቱ ጊዜ ተጠሪም ሕግናት ድራዳዋ ከተማ የአመልካች እናት ጋር



ግደግ ከቻለችና እርሳቸው በቅርብ መነብሻት ከቻሉ ሕፃና ወላጅ አባይ ጋር ብታድግ ቅሬታ እንደሌላቸው በሕፃናዎ እድገት ዙሪያ ቅር የሚላቸው ነገር እንደሌለ መግለጻቸውን በመጥቀስ መታዘዝ አስተያየታቸውን አቅርበዋል።

ጉዳዩ በየደረጃው ቀርቦላቸው የተመለከቱት ፍ/ቤቶች በኢ.ፌ.ዲ.ሪ ሕገመንግስት አንቀጽ 36 ንዑስ አንቀጽ 1 /ሐ/ እና ንዑስ አንቀጽ 2 መሰረት ሕፃናትን የሚመለከቱ እርምጃዎች በሚወሰዱበት ጊዜ በመንግስታዊ ወይም በግል የበጎ አድራጎት ተቋሞች፣ በፍ/ቤቶች፣ በአስተዳደር ባለስልጣኖች ወይም በሕግ አውጪ አካላት የሕፃናት መብትን በቀደምትነት በማሰብ (the best interest of the child) ሕፃና ግን ዘንድ ብታድግ ቡተሻለ ሁኔታ መብቷ ይጠበቃል የሚለውን አግርተው መወሰን ሲገባቸው «የሕፃና እናት ከሞተች ሕፃናን የማሳደግ ስልጣን የሚኖራቸው እያት እንጂ የአባት እህት ወይም አክሲዮን አይደለም።» በግለት የወሰኑት ውሳኔ አመልካች ከጠቀሱት የሕገመንግስቱ አንቀጽ 36 ንዑስ አንቀጽ 1 /ሐ/ እና ንዑስ አንቀጽ 2 ጋር የሚቃረን መሆኑን ጉባኤው በሙሉ ድምጽ የተሰማግበት ስለሆነ ይህ የውሳኔ ሃሳብ ለመጨረሻ ውሳኔ ለፌዴሬሽን ምክር ቤት እንዲተላለፍ በግለት ወስኗል። የሚል ነው።

ምክርቤቱም የአጣሪ ጉባኤውን የውሳኔ ሀሳብ መሰረት በግድረግ በጉዳዩ ላይ የምክርቤቱ የሕት መንግስት ትርጉምና የግንኙነት ጉዳዮች ቋሚ ኮሚቴ ያቀረበውን የውሳኔ ሀሳብ መርምሯል። በዚህም መሰረት ምክርቤቱ እንደተረዳው ክርክር በተነሳበት የገጽ አሳዲገነት ጉዳይ የፌዴራል የመጀመሪያ ደረጃ ሽሪያ ፍርድ ቤቱ ሕፃናን የማሳደግ ስልጣን የሚሰጠው ለእያት ስለሆነ ተጠሪ የሕፃን ሪፖርት የሞግዚትነት ስልጣን አላቸው በግለት የወሰነው ውሳኔ በሕገመንግስቱ አንቀጽ 36 ንዑስ አንቀጽ 1 /ሐ/ መሰረት ማንኛውም ሕፃን ወላጆቹን ወይም በሕግ የማሳደግ መብት ያላቸውን ሰዎች የማወቅና የእነሱን እንክብካቤ የማግኘት መብት አለው። እንዲሁም በአንቀጽ 36 ንዑስ አንቀጽ 2 የተደነገገውን ግለትም ሕፃናትን የሚመለከቱ እርምጃዎች በሚወሰዱበት ጊዜ በመንግስታዊ ወይም በግል የበጎ አድራጎት ተቋሞች፣ በፍ/ቤቶች፣ በአስተዳደር ባለስልጣኖች ወይም በሕግ አውጪ አካላት የሕፃናት ደህንነት በቀደምትነት መታሰብ አለበት የሚለውን ድንጋጌ የጣሰ ከመሆኑም በላይ የሕፃናን ደህንነትና ጥቅም ሊጠብቅ የሚችል ግን ነው የሚለውን ሳይረጋገጥ የሕጻንዋ አባት እያለ ለእያት የሞግዚትነት ስልጣን እንዲሰጥ የሰጠው ውሳኔ አጣሪ ጉባኤው በአገባቡ እንደዘረዘረው ከላይ ከተጠቀሰው ሕገመንግስታዊ ድንጋጌ ጋር የሚቃረን ነው።



በመሆኑም በፌዴራል የመጀመሪያ ደረጃ የሽሪን ፍርድቤት እና በየደረጃው በሚገኙ ፍርድ ቤቶች የተሰጠውና በፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት እንዲጸና የተደረገው ውሳኔ ከላይ የተጠቀሱትን ሕገ-መንግስታዊ ድንጋጌዎች የሚቃረን በመሆኑ በሕገ-መንግስቱ አንቀጽ 9 ንዑስ አንቀጽ 1 ድንጋጌ መሰረት ተፈጻሚ ሲሆን አይገባውም በማለት ምክርቤቱ በሙሉ ድምጽ ወሰኗል።

ትዕዛዝ

1. የፌዴራል የመጀመሪያ ደረጃ ሽሪን ፍርድ ቤት እና በየደረጃው የሚገኙ ፍርድ ቤቶች በሕጻኗ አስተዳደግ ላይ የሰጡት እና በፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት በሰ.መ.ቁ.111047 እንዲጸና የተደረገው ውሳኔ ተፈጻሚ እንዳይሆን መወሰኑን እንዲያውቁት ለፌዴራል የመጀመሪያ ደረጃ ሽሪን ፍርድ ቤት እና ለፌዴራል ጠቅላይ ፍርድ ቤት የምክርቤቱ የውሳኔ ግልባጭ እንዲደርሳቸው ይደረግ።
2. የሞገዚትነት ስልጣኑ ለገጸኗ አባት ሊሰጥ ይገባል በማለት ተወስኗል።
3. የፌዴራል የሕገ-መንግስት ጉዳዮች አጣሪ ጉባኤ ያቀረበው የውሳኔ ሀሳብ ተቀባይነት ጥገኘቷን እንዲያውቀው የውሳኔው ግልባጭ ይላክላት።
4. የምክርቤቱ የውሳኔ ግልባጭ ሰለቤቱታ አቅራቢው ይሰጥ።



የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክርቤት 5ኛ የፓርላማ ዘመን፣ 2ኛ ዓመት፣ 2ኛ መደበኛ ስብሰባ
ግንቦት 13 ቀን 2009 ዓ.ም

አመልካች፡- እነ ወ/ሮ ያይኔአበባ አዳሙ /5 ሰዎች/

ተጠሪዎች፡- ተጠሪ ወ/ሮ መሰረት ሃመድህን

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክርቤት በአመልካች የቀረበውን የሕገመንግስት የትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገመንግስታዊ ውሳኔ ሰጥቷል፡፡

ውሳኔ

አመልካቾች ጥቅምት 18 ቀን 2008 ዓ.ም በተፃፈ አቤቱታ ለጉባኤው ያቀረቡት ጥያቄ ተጠሪ የሟች አባታችን አቶ አዳሙ ዘገዬ ልጅ ነኝ በማለት ለፍ/ቤት ጥያቄ አቅርበው ፍ/ቤቶቹም በዘረመል (DNA) ምርመራ ውጤት ተጠሪ የሟች ልጅ ያለመሆናቸው እየታወቀ ልጅ ናቸው በማለት መወሰናቸው ከሕገ መንግስቱ አንቀጽ 25፣ 37፣ እና 40 ጋር ስለሚቃረን ትርጉም ይሰጥልን የሚል ነው፡፡

ክርክሩ የተጀመረው ተጠሪ በፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት የሟች አቶ አዳሙ ዘገዬ ልጅ ነኝ በማለት ካሰወሰኑ በኋላ አመልካቾች ይህንን ውሳኔ በመቃወም ለፍ/ቤቱ ባቀረቡት አቤቱታ ነው፡፡ በአቤቱታቸውም ተጠሪ የሚጠሩበት የአባት ስም የሌላ ሰው መሆኑ የሟች ልጅ ያለመሆናቸውን ስለሚያሳይ እና ሟች አቶ አዳሙ ዘገዬ የተጠሪ እህት የሆኑትን ወ/ሪት ብርቱካን አዳሙን ልጅ ናት በማለት በመሰሪያ ቤታቸው እና በዕድር ውስጥ ሲያሰመዘገቡ ተጠሪን መተዋቸው ልጅ ያለመሆናቸውን ስለሚያመለክት ውሳኔው ይሻርልን የሚል ነው፡፡ ተጠሪም በበኩላቸው ያቀረቡት ክርክር የሚጠሩት በአያታቸው ስም መሆኑን፣ ሟች በሕይወት በነበሩበት ወቅት አባትነታቸውን ተቀብለው ይረዷቸው እና ይንከባከቧቸው የነበሩ በመሆኑ እንዲሁም ሟች እና እናቱ እንደባልና ሚስት ወይም በህግ የታወቀ ግንኙነት ባይኖራቸውም በየታዊ ግንኙነት ለአራት አመታት በቆዩበት ጊዜ የተወለዱኩ በመሆኔ የተሰጠው ውሳኔ ሊሻር አይገባውም የሚል ነው፡፡

ፍ/ቤቱም ግራ ቀኙ ያቀረቡትን ክርክር እና ማሰሪያ ከሰማ በኋላ ተጠሪ የሟች ልጅ ናቸው በማለት ወስኗል፡፡ ጉዳዩ በይግባኝ የቀረበለት የፌዴራል ከፍተኛ ፍ/ቤት የስር ፍ/ቤት ውሳኔ የሚነቀፍበት ምክንያት የለም በማለት ወስኗል፡፡ ይህም ውሳኔ መሰረታዊ የህግ

ሰህተት አለበት በማት አመልካች ለፌዴራል ጠቅላይ ፍ/ቤት ሰበር ሰሚ ቢያቀርቡም ለሰበር አያስቀርብም በማለት ውጤት ተላልፏል። አመልካች እንደገና በፍ/ሥ/ሥ/ሕ/ቁ. 6 መሰረት ከዚህ በፊት የተሰጠው ውጤት ሀሰተኛ የምስክርነት ቃልን መሰረት በማድረግ መሆኑን የሚያሳይ ማስረጃ በማግኘታችን እንዲሁም የዘረ-መል ምርመራ ውጤቱ ሟች የተጠሪ አባት ያለመሆናቸውን የሚያሳይ ስለሆነ ጉዳዩ በድጋሚ ይታይልን በማለት የድጋሚ ዳኝነት ጥያቄ አቅርበዋል። አቤቱታው የቀረበለት የፌ/መ/ደ/ፍ/ቤትም ግራ ቀኙን ካከራከረ በኋላ አቤቱታው በህጉ ላይ የተቀመጠውን መሰረርት ስለማያሟላ ተቀባይነት የለውም ሲል ወስኗል። ይህም ውጤት እስከ ፌ/ጠ/ፍ/ቤት ሰበር ችሎት ቀርቦ አያስቀርብም በማለት ተወስኗል።

አመልካች በአቤቱታቸው ተግባሩን በማለት የጠቀሟቸው መብቶች የእኩልነት፣ ፍትህ የማግኘት እና የንብረት መብቶች ናቸው። ከመዝገቡ መረዳት እንደተቻለው በአመልካችና ተጠሪ መካከል የነበረው ክርክር ልጅነትን ስለማረጋገጥ የሚመለከት ነው። ተጠሪ ሟች አቶ አዳሙ ዘገዬ ልጅ ነኝ በማለት ካሰወሰኑ በኋላ አመልካች መቃወሚያ አቅርበው ፍ/ቤቶች ግራ ቀኙን አከራክረው ውጤት የሰጡ ሲሆን አመልካች የድጋሚ ዳኝነት ቢጠይቁም ተቀባይነት አላገኙም።

አመልካች ካቀረቡት ትሬታ እንደኛው የፌዴራል ከፍተኛ ፍ/ቤት ጉዳዩ በይግባኝ ቀርቦለት የዘረ-መል (DNA) ምርመራ እንዲደረግ ትዕዛዝ ሰጥቶ ውጤቱን በመጠባበቅ ላይ ሳለ ዳኛ በመቀየራቸው ምክንያት ስለ ዲ.ኤን.ኤ. ምርመራው እንድም ነገር ሳይጠቅስ ለይግባኝ አያስቀርብም በማለት መወሰኑ የእኩልነት መብታችንን ያጣብባል የሚል ነው። አጣሪ ጉባዔውም በጽ/ቤቱ በኩል በደብዳቤ ቁጥር 1507/08 ቀን 04/09/2008 ዓ.ም የፌዴራል ከፍተኛ ፍ/ቤት መ/ቁ 102036፣ የመዝገቡ ግልባጭ እንዲቀርብ ጠይቆ ሙሉ መዝገቡ ቀርቧል። የፌዴራል ከፍተኛ ፍ/ቤት ጉዳዩ በይግባኝ ቀርቦለት በመ/ቁ 102036 ሲመለከት ቆይቶ ሰኔ 9 ቀን 2003 ዓ.ም በአመልካች ጥያቄ መሠረት በጠ/ር መሠረት ገመድህን እና የሟች አቶ አዳሙ ወንድም አቶ ዳኛቸው ዘገዬ መሀል ዝምድና ስለመኖሩ የዲ.ኤን.ኤ. ምርመራ በማድረግ ውጤቱን እንዲገልጽ ለኢንተርናሽናል ክሊኒካል ሳቦራቶሪስ ትዕዛዝ መስጠቱን መረዳት ችለናል። ኢንተርናሽናል ክሊኒካል ሳቦራቶሪስ ሐምሌ 25 ቀን 2003 ዓ.ም ለፍ/ቤቱ በሰጠው ምላሽ ምርመራው በተጠሪ እና በሟች ወንድም መካከል ዝምድና ስለመኖሩ የሚያረጋግጥ አይደለም የሚል ነው። ፍርድ ቤቱም

ምላሹ ደርሰት መዝገቡን መርምሮ ለመወሰን ለነሐሴ 10 ቀን 2003 ዓ.ም ቀተሮ ቢሰጥም ነሐሴ 20 ቀን 2003 ዓ.ም ጉዳዩን እዲስ በማድረግ ለይግባኝ አያስቀርብም በሚል ፎርም ትዕዛዝ በመስጠት የሰር ፍርድ ቤት ውሳኔ የሕግም ይሁን የፍሬ ነገር ግድፈት የለበትም በማለት እና ይግባኙን አሰመቀበሉን በመጥቀስ መዝገቡን ዘግቷል።

የፌዴራል ከፍተኛ ፍ/ቤት የዲ.ኤን.ኤ. ምርመራ አዝዞ ውጤቱ ለፍ/ቤቱ ከቀረበ በኋላ ወደ ኋላ ተመልሶ አያስቀርብም ማሰቱ ፍ/ቤቱ ሕገ መንግሥቱን ያልተከተለ መሆኑን መረዳት የሚያስችል ነው።

በኢ.ፌ.ዴ.ሪ ሕገ መንግስት አንቀጽ 25 መሠረት ሁሉም ሰዎች በሕግ ፊት እኩል መሆናቸውን እና በመካከላቸውም ማንኛውም ዓይነት ልዩነት ሳይደረግ በሕግ እኩል ጥበቃ ይደረግላቸዋል። አሁን በተያዘው ጉዳይ አመልካቾች ለፍ/ቤቱ ባቀረቡት ጥያቄ መሠረት ፍ/ቤቱ የዲ.ኤን.ኤ ምርመራ ተደርጎ ውጤቱ ከቀረበለት በኋላ ማሰረጃዎችን በመመዘን ውሳኔ ሊያስተላልፍ ሲገባው ወደኋላ በመመለስ የሰጠው ትዕዛዝ ሕግን ያልተከተለ እና ለተጠሪ እንደክርክራቸው የተሻለ እድል የፈጠረ በአንጻሩ የአመልካቾችን መብት ያጣበበ በመሆኑ ውሳኔው የአመልካቾችን በሕግ ፊት እኩል የመታየት መብት ይቃረናል። ከዚህም በተጨማሪ ፍ/ቤቱ ያስተላለፈው ውሳኔ መሠረት ያደረገባቸውን ምክንያቶች ሳይጠቅስ እና በጉልህ መልኩ የሥነ ሥርዓት ሕጉን ሳይከተል መወሰኑ በሕገ መንግስቱ አንቀጽ 12 ላይ የተደነገገውን የግልጽነት መርህ እንዲሁም በአንቀጽ 79 ላይ ዳኞች ከሕግ ውጭ በሌላ ሁኔታ እንደማይመሩ የሰፈረውን ድንጋጌ ይቃረናል።



በተጨማሪ ፍ/ቤቱ በተያዘው ጉዳይ የዘረ- መል ውጤቱን መሰረት በማድረግ ትክክል ነው ብሎ ያመነበትን ውሳኔ መስጠት የሚችል ቢሆንም በአንጻሩ ግን በትዕዛዙ ያስቀረበውን የምርመራ ውጤት ከግምት ባለማስገባት የሰጠው ውሳኔ ያልተገባ አባት እና ልጅ ግንኙነትን የመፍጠር ዕድል ያለው በመሆኑ ይኸውም የቤተሰብን ህልውና የሚፈታትን እና በሕገ መንግስቱ አንቀጽ 34 ንዑስ አንቀጽ 3 ሽብርተኝነት የጎብረተሰብ የተፈጥሮ መነሻ ነው። ከጎብረተሰብና ከመንግስት ጥበቃ የማግኘት መብት አለው።” የሚለውን ሕገ መንግስታዊ ድንጋጌ የሚጋፋ ነው።

በመጨረሻም አመልካቾች ያቀረቡትን ጥያቄ ፍ/ቤቱ ተቀብሎ ትዕዛዝ ሰጥቶበት የዲ.ኤን.ኤ ምርመራ ውጤቱ ከቀረበ በኋላ በውጤቱ ላይ ተመስርቶ የተላለፈ ምንም አይነት ውሳኔ

ወይም ትዕዛዝ አለመኖሩ ለአመልካቾች ጥያቄ ምላሽ በመንፈግ በሕገ መንግስቱ አንቀጽ 37 ንዑስ አንቀጽ 1 ላይ አንድ ሰው በፍርድ ሊወሰን የሚችል ጉዳይን ለፍ/ቤት ወይም በህግ የዳኝነት ሰልጣን ለተሰጠው አካል በማቅረብ ውሳኔ የማግኘት መብት እንዳለው የሚደነገገውን ፍትህ የማግኘት መብት የሚጋፋ ነው።

አመልካቾች ካቀረቡት ቅሬታ አንደኛው እና ዋናው የፌዴራል ከፍተኛ ፍ/ቤት ጉዳዩ ቀርቦለት የዘረ-መል (DNA) ምርመራ እንዲደረግ ትዕዛዝ ሰጥቶ ውጤቱን በመጠባበቅ ላይ ላለ ዳኛ በመቀየራቸው ምክንያት ስለ ዲ.ኤን.ኤ ምርመራው አንድም ነገር ሳይል መወሰኑ እግባብ አለመሆኑን ማየት ተችሏል። በየደረጃው ያሉ ፍ/ቤቶችም በዘረ-መል ምርመራው ላይ ምንም ሳይሉ ግለፋቸው የግለሰቡን አባት የማግኘት መብት የሚጋፋ እንዲሁም አላግባብ አባት ያልሆነ ሰውም አባት የማድረግ ሃሳብን የሚያስከትል በመሆኑ፣ ምክንያቱም የፌዴራል ሰበር ሰሚ ፍ/ቤት የሚሰጠው ውሳኔ እንደ ሕግ የሚያገለግል በመሆኑ በተመሳሳይ ጉዳዮች ሊጠቀሱ (ሊወሰኑ) ስለሚችሉ እና መከራከሪያ ነጥብ ስለሚሆኑ ይህን አይነት ለማስቀረት እና የዲ.ኤን.ኤ ምርመራው ለፍትሕ አሰጣጥም አመች ስለሚሆን ሊታለፍ የማይገባው የዲ.ኤን.ኤ ምርመራ መታሰፍ ተቀባይነት የለውም።

ስለሆነም ምክር ቤቱ በጉዳዩ ላይ በሰጠው ከተወያየ በኋላ የአጣሪ ጉባኤው የውሳኔ ህሳብን ተቀብሎ ፍ/ቤቱ የዘረ-መል ምርመራ ውጤትን ፈትሾ እና መዘና የመጨረሻ ውሳኔ ስላልሰጠ እንደገና ተመልክቶ የመሰለውን የመጨረሻ ውሳኔ እንዲሰጥ ምክር ቤቱ በሙሉ ድምጽ ወሰኗል።



1. በፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት የተሰጠውና በጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት እንዲጸና የተደረገው ውሳኔ የአመልካችን ሕገመንግስታዊ መብት የሚደረር በመሆኑ ተፈጻሚ እንዳይሆን መወሰኑን አውቆ የዘረ-መል ምርመራን ተቀብሎ ከመረመረ በኋላ የመሰለውን ውሳኔ እንዲሰጥ ጉዳዩ የተመሰሰ መሆኑን እንዲያውቀው የዚህ ውሳኔ ግልባጭ ለፌዴራል ጠቅላይ ፍ/ቤት ይደረሰው።

2. የውሳኔው ግልባጭ ለአቤቱታ አቅራቢው ይሰጥ።

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የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ
ሪፐብሊክ
የፌዴራሽን ምክር ቤት



The House of Federation
OF
The Federal Democratic Republic
of Ethiopia

ቁጥር አ/ቁ/ፋ/ፎ/ገ/ፊ/2/207
No.
ቀን 01/04/2009
Date

ለፌዴራል ጠቅላይ ፍርድ ቤት
አዲስ አበባ
በአግራ ብሔራዊ ክልላዊ መንግሥት ጠቅላይ ፍ/ቤት
ባህር ዳር

ጉዳይ፡- የም/ቤቱን ውሳኔ ሸኚ ደብዳቤ ስልግሪም

በአመልካች የሕግን ስራፊል ዘውዱ እናት አሙሃይ ገ/አ/የሰሰ እና በተጠሪ አቶ ዘውዱ መርኛ መካከል በነበረው የአባትነት ይታወቅልኝ ክርክር አመልካች የልጅ ሕግን ስራፊል ዘውዱ አባትነት የግወቅት መብቱን የሚፃረር ውሳኔ በፍርድ ቤቶች ስለተሰጠ የሕገመንግስት ትርጉም እንዲሰጥልኝ በግለት ለፌዴራል የሕገ-መንግስት ጉዳዮች አጣሪ ጉባኤ መጋቢት 14 ቀን 2005 ዓ.ም ማመልከታቸው ይታወቃል። ጉባኤውም አይተታውን መርምሮ ጉዳዩ የሕገመንግስት ትርጉም ያስፈልገዋል በግለት የውሳኔ ሀሳቡን ለም/ቤታችን አቅርቧል።

በመሆኑም ም/ቤቱ መጋቢት 3 ቀን 2008 ዓ.ም ባካሌደው የ5ኛ የፓርላማ ዘመን፣ 1ኛ ዓመት፣ 2ኛ መደበኛ ስብሰባው አጣሪ ጉባኤውን የውሳኔ ሀሳብ በመቀበል የመጨረሻ ውሳኔ ሰጥቶ የነበረ ሲሆን በቁጥር ፌዴም/ም/አ/ፊ/2/160 በቀን 20/07/2008 ዓ.ም በተፃፈላቸው ደብዳቤ ላይ የተጠቀሰው የመሬት ክርክር የሚለው በሰውነት ስለሆነ ታርሞ ጉዳዩ የአባትነት መታወቅ በመሆኑ በዚህ አግባብ የታረመ መሆኑን እንገልጻለን።



ከሰዓምታ ጋር

የፌዴራል ጠቅላይ ፍርድ ቤት
ምክር ቤት

- ግልጻዎ፡**
- ለሕገመንግሥት ጉዳዮች አጣሪ ጉባኤ
አዲስ አበባ
 - ለአግሆይ ገ/አ/የሰሰ
ባለቤት

የኢ.ፌ.ዴ.ሪ የፌዴሬሽን ምክርቤት 5ኛ የፓርላማ ዘመን፣1ኛ ዓመት፣2ኛ

መደበኛ ስብሰባ

መጋቢት 3 ቀን 2008 ዓ.ም

አመልካች፡ የህግ ስራ-ፈል ዘውዱ እናት አሙሃይ ህ/አ/የ/ሰ/ሰ

ተጠሪ፡-አቶ ዘውዱ መርኛ

የኢ.ፌ.ዴ.ሪ የፌዴሬሽን ምክርቤት በአመልካች የቀረበውን የሕገመንግስት የትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገመንግስታዊ ውሳኔ ሰጥቷል።

ውሳኔ

የዚህ ጉዳይ መነሻ አመልካች መጋቢት 14 ቀን 2005 ዓ.ም በተፃፈ አቤቱታ በሕገ-መንግሥቱ አንቀጽ 35 የተመለከተው የሕፃናት መብትና ኢትዮጵያ ያህዲቶችን የዓለም አቀፍ የሕፃናት መብት ስምንትን የሚጥስ የፍርድ ቤት ውሳኔ በልጅ በሕፃን ስራ-ፈል ዘውዱ ላይ ስለተላለፈ ይህ እንዲታረም በማለት የሕገ-መንግሥት ትርጉም እንዲሰጣቸው አቤቱታ በማቅረባቸው ነው።

የሕገመንግስት ትርጉም ጥያቄ የቀረበለት የሕገ-መንግስት ጉዳዮች አጣሪ ጉባኤ ለምክርቤቱ ያቀረበው የውሳኔ ሀሳብ የሚከተለው ነው።

የጉዳዩም ፍሬ ሃሳብ አመልካች ጠ/ሮ አሙሃይ ህ/አ/የ/ሰ/ሰና አቶ ዘውዱ መርኛ በተባለው ግለሰብ መካከል በተደረገው የግብረ ሥጋ ግንኙነት ምክንያት ሕፃን ስራ-ፈል ዘውዱ ስለተወለደ የተጠሪ አባትነት ይረጋገጣልኝ በማለት አመልካች በሰሜን ኅንደር ከፍተኛ ፍብይት ክስ የመሰረቱ ሲሆን ተጠሪም ክሱን ስለካደ አመልካች የሰው ምስክር አቅርባ ምስክሮቹ ከተጠሪ ጋር የቅርብ ግንኙነት የነበራቸውና በኋላም ሕፃኑ የተወለደ መሆኑን መስክረዋል።ተጠሪም በራሱ በኩል የሰው ማሰረጃ አቅርቦ አሰምቷል። ምስክሮቹም ተጠሪና አመልካች ኅረቢታዎች እንደነበሩና ብር 1000(አንድ ሺ ብር) በሰጠታ መስጠቱን እንደሚያውቁ እንጂ ሌላ ግንኙነት መኖሩን እንደማያውቁና ግን የልጁን አባትነት አለመቀበሉን መስክረዋል።



የከፍተኛው ፍ/ቤትም ግራ ቀኙን በዚህ ሁኔታ ካከራከረ በኋላ የአመልካችን አቤቱታ በመቀበል ተጠሪ የልጁ አባት ነው ብሎ ወሰኗል። ተጠሪም በውሳኔው ቅር በመሰኘት ለአማራ ክልል ጠቅላይ ፍ/ቤት ይገባኝ ጠይቆ ጠቅላይ ፍ/ቤቱም የተጠሪ አባትነት በግሰረጃ አልተረጋገጠም ሲል የከፍተኛውን ፍ/ቤት ሸር ተጠሪን በነፃ አሰናብቷል። አመልካቻም ለክልሉ ጠ/ፍ/ቤት ሰበር ችሎት አቤቱታ ብታቀርብም በተቀመጠው ጊዜ ገደብ ቅሪታዋን አላቀረበችም በማለት አቤቱታውን አልተቀበለውም። በመቀጠል ለፌዴራል ጠ/ፍ/ቤት ሰበር ችሎት አቤቱታ ብታቀርብም የተፈፀመ የሕግ ስህተት የለም በማለት አቤቱታዋ ውድቅ ሆኗል።

የአመልካች ቅሬታም የአማራ ክልል ጠቅላይ ፍ/ቤት ጉዳዩን በይግባኝ በሚያይበት ጊዜ ተጠሪው በሀሰት አመልካች በአካባቢው የለችም በማለት እኔ በሌለሁበት ጉዳዩ እንዲታይ አድርጎ ማሰወሰኑን፣ ተጠሪ በከፍተኛ ፍ/ቤት መልስ ሲሰጥ የዘረ-መል (DNA) ምርመራ እንዲደረግ ሲያመለከት እኔም ተስማምቼ አያለሁ ፍ/ቤቱ አላገባብ ይህን ጥያቄ ማለፍ፣ የይግባኝ ሰሚ ፍ/ቤትም ይህንን ሳያጣራ የሰር ፍርድ ቤት ውሳኔን መሻሩ፣ እንዲሁም የተሰጠው ውሳኔ "in the best interest of the child" የሕፃኑን መሰረታዊ መብትና ጥቅም የሚለውን ዓለም አቀፋዊ መርህ፣ የሚታረንና የሕፃኑን ወላጆቹን የማወቅና ከእነሱም እንክብካቤ የማግኘት መብት በሕገ-መንግሥቱ አንቀጽ 36 ንዑስ አንቀጽ 1(ሐ) እና ንዑስ አንቀጽ 2 የተመለከተውን የሚገረር ነው የሚል ነው።

ፍሬ ሃሳቡ ከዚህ በላይ እንደተዘረዘረው ሲሆን "ተጠሪ አገባሻለሁ ብሎኝ የግብረ ስጋ ግንኙነት አድርገን ከዚህ የተነሳ ሕፃን ሱራፊል ስለተወለደ የልጁ አባትነት ይታወቅልኝ" ስትል አመልካች ከሰ የመሰረተች ሲሆን ተጠሪ በበኩሉ ይህን ክዷል። ሆኖም አመልካች ከወለደች በኋላ ተጠሪው ብር 1000 በቅንነት ሰጥቻለሁ፣ የእኔና የልጁ ደም ተወሰደ የዘር-መል ምርመራ እንዲደረግልኝ" ሲል በከፍተኛ ፍ/ቤትም ሆነ በይግባኝ ሰሚው ጠቅላይ ፍ/ቤት ቅሬታውን አቅርቧል። በመጀመሪያ ደረጃ ጉዳዩን የተመለከተው የአማራ ክልል የሰሚን ጎንደር ዞን ከፍተኛ ፍ/ቤት በአመልካች በኩል የቀረበው የሰው ምስክር በቂ ነው በማለት የዘረ-መል ምርመራውን ሳያዝ የልጁ አባት ነው ብሎ ወሰኗል። ይግባኝ ሰሚው ጠቅላይ ፍ/ቤትም በመጀመሪያ ደረጃ ፍ/ቤት የቀረበውን ማሰረጃ በቂ አይደለም ብሎ ውሳኔውን ሙሉ በሙሉ ውድቅ በማድረግ ተጠሪ በቅሬታው ባመለከተው መሰረት የዘረ-መል(DNA) ምርመራ እንዲደረግ ትፅዋህ ሳይሰጥ ቀርቷል።



ውሳኔው በሕገ-መንግሥቱ አንቀጽ 36 ንዑስ አንቀጽ 2 ላይ የተመለከተውን ማንኛውም ሕፃናትን የሚመለከቱ እርምጃዎች ሲወሰዱ በመንግሥታዊ ወይም በግል በጎ እድራት ተቋሞች፣ በፍርድ ቤቶች፣ በአስተዳደር ባለሥልጣኖች ወይም በሕግ አውጭው አካላት የሕፃናት ደንንነት በቀደምትነት መታሰብ አለበት የሚለውን ድንጋጌ እንዲሁም ኢትዮጵያ ባለደቀቸው የተባበሩት መንግሥታት የሕፃናት መብቶች ስምምነት አንቀጽ 4 መሠረት በስምምነቱ ዕውቅና ያገኙትን የሕፃናት መብቶች ተግባራዊ ለማድረግ አስፈላጊ የሆኑ የሕግ የአስተዳደርና ሌሎች ፅርምጃዎችን ሁሉ ተዋዋይ አገራት መውሰድ ያለባቸው የሚለውን በሚቃረን መልክ የተሰጠ ውሳኔ ነው።

የክልሉ ጠቅላይ ፍ/ቤት ሰበር ሰሚም የአመልካች አቤቱታ ማቅረቢያ ጊዜ አልፎታል ብሎ አቤቱታውን ወድቅ ማድረግ በሞገዚቷ ስህተትና በሥነ-ሥርዓታዊ ጉዳይ የሕፃንን ሕገ-መንግሥታዊ መብት የሚጥስ ውሳኔ መሰጠቱ የሕፃንን መሰረታዊ መብትና ጥቅም የሚጎዱና በሕገ-መንግሥቱ አንቀጽ 36 ንዑስ አንቀጽ 1 ፊደል(ሐ) እና ንዑስ አንቀጽ 2 የተደነገገውን ሕፃናት ወላጆቻቸውን የማወቅና ከእነሱም እንክብካቤ የማግኘት መብት የሚጥስ ስለሆነ ጉዳዩ የልጁን ሕገ-መንግሥታዊ መብት በሚያስጠብቅ መልኩ ታይቶ ውሳኔ ሲሰጥበት ስለሚገባ የሕገ-መንግሥት ትርጉም የሚያስፈልገው ነው በማለት ጉባኤው በሙሉ ድምፅ ተሰማምቶ ጉዳዩ ለመጨረሻ ውሳኔ ለፈጅራሽን ምክር ቤት እንዲተላለፍ በማለት የውሳኔ ሃሳቡን አቅርቧል የሚል ነው

ምክርቤቱም የአጣሪ ጉባኤውን የውሳኔ ሀሳብ መሰረት በማድረግ በጉዳዩ ላይ የምክርቤቱ የሕገ-መንግሥት ትርጉምና የማንነት ጉዳዮች ቋሚ ኮሚቴ ያቀረበውን የውሳኔ ሀሳብ ተመልክቷል። በዚህም መሰረት ምክርቤቱ እንደተረዳው የሕጁን ስራፈል ወላጅ እናት ሕጁን ከአቶ ዘውዱ የተወሰደ በመሆኑ አባትነቱ እንዲረጋገጥለት በሰሚን ጎንደር ዞን ከፍተኛ ፍርድቤት ክስ ካቀረበች በኋላ ፍርድቤቱ በአመልካች በኩል የቀረበው የሰው ምስክር በቂ ነው በማለት ተከሳሹ የልጁ አባት ነው ብሎ ቢወሰንም ደግሞ ሰሚው የክልሉ ጠቅላይ ፍ/ቤት በከፍተኛው ፍ/ቤት የቀረበው ማሰሪጃ በቂ አይደለም ብሎ ውሳኔውን ሙሉ በሙሉ ወድቅ በማድረግ ተጠሪ በቅሬታው ባመለከተው መሰረት የዘረ-መል(DNA) ምርመራ እንዲደረግ ትዕዛዝ ሳይሰጥ ቀርቷል። አመልካቹም ለክልሉ ጠ/ፍ/ቤት ሰበር ችሎት አቤቱታ ብታቀርብም በተቀመጠው የጊዜ ገደብ ቅረታዋን አላቀረበችም በማለት አቤቱታውን አልተቀበለውም።



ይሁን እንጂ የሕጻናትን ጉዳይ በተመለከተ በሕገመንግስቱ አንቀጽ 36 ድንጋጌዎች መሰረት ፍርድ ቤቶችም ሆነ ሌሎች የመንግስት አካላት ሕጻናትን የሚመለከቱ እርምጃዎች በሚወሰዱበት ጊዜ የሕጻናት ደህንነት በቀደምትነት መታሰብ እንዳለበት በአሰጣጥ ሁኔታ ተመልክቶ እያለ የክልሉ ጠቅላይ ፍርድ ቤት ተጠሪ የሕጻን አሳት አይደለም በማለት ሲወስንና የሰበር ችሎታም የአመልካችን አቤቱታ በጊዜ ገደብ ምክንያት ወድቆ ማድረግ የሕጻንን ሕገ-መንግሥታዊ መብት የሚጥስ እና የሕጻንን መሰረታዊ መብትና ጥቅም የሚጎዳ ሆኖ ተገኝቷል።

በመሆኑም በሕጻን ሱራፌል ጉዳይ ላይ በአማራ ብሔራዊ ክልላዊ መንግስት ጠቅላይ ፍርድቤት የተሰጠው ውሳኔ በሕገ-መንግሥቱ አንቀጽ 36 ንዑስ አንቀጽ 1 ፈደል(ሐ) እና ንዑስ አንቀጽ 2 የተደነገገውን ሕጻናት ወላጆቻቸውን የማወቅና ከእነሱም እንክብካቤ የማግኘት መብት አላቸው የሚለውን ድንጋጌ የሚቃረን ስለሆነ በሕገ መንግስቱ አንቀጽ 9 ንዑስ አንቀጽ 1 ድንጋጌ መሰረት ተፈጻሚነት ሊኖረው አይገባም በማለት ምክርቤቱ በሙሉ ድምጽ ወሰኗል።

ትዕዛዝ

በአማራ ብሔራዊ ክልላዊ መንግስት ጠቅላይ ፍርድቤት ተሰጥቶ በፌዴራሉ ጠቅላይ ፍርድቤት ሰበር ሰሚ ችሎት እንዲጸና የተደረገው ውሳኔ ሕገ-መንግስቱን የሚቃረን በመሆኑ ተፈጻሚነት እንዳይኖረው የተደረገ መሆኑን አውቆ የክልሉ ጠቅላይ ፍርድቤት የሕጻንን መሰረታዊ መብትና ጥቅም በሚያስጠብቅ መልኩ እንዲወስን የውሳኔው ግልባጭ እንዲደርሰው ይደረግ።

የፌዴራሉ የሕገመንግስት ጉዳዮች አጣሪ ጉባኤ ያቀረበው የውሳኔ ሀሳብ ተቀባይነት ማግኘቱን እንዲያውቀው የዚህ ውሳኔ ግልባጭ ይላክለት።

የምክርቤቱ የውሳኔ ግልባጭ ለአቤቱታ አቅራቢዋ ይሰጥ።



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፌዴሬሽን ምክር ቤት



The House of Federation
of
The Federal Democratic Republic
of Ethiopia

ቁጥር
No. ከ.ዲ.ፌ.ቪ/አ/ፊ/13/25
ቀን
Date 6/9/2010

ለሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ
አዲስ አበባ፡-

ጉዳዩ፡- የምክር ቤቱን ውሳኔ ሰለግሳዎች

የፌዴሬሽን ምክር ቤትን ለማጠናከርና ሥልጣንና ተግባርን ለመዘርዘር በመጣው አዋጅ ቁጥር 251/1993 አንቀጽ 11 እና 56 ምዕራብ ዘንግ መንግስት ትርጉም ላይ የሚሰጠው ውሳኔ አጠቃላይ ውጤት እንደሚኖረውና ጉዳዩ የሚመለከታቸው ወገኖችም ውሳኔውን የማክበር እና የመረጃም ገደታ እንዳልሰጡ ተደንገዋል።

የኢ.ፌ.ዴ.ሪ የፌዴሬሽን ምክር ቤት በ4ኛ የፖርባማ ዘመን 5ኛ ዓመት 2ኛ መደበኛ ስብሰባ የአቶ መሰረት ታዩ ባቀረቡት የሕገ መንግስት የትርጉም አሰጣጥ መንገድን ከሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ የተረበውን የውሳኔ ስብሰባ ተመልክቶ የመደረገው ውሳኔ ሰጥቷል።

በመሆኑም የአቶ መሰረት ታዩ የትርጉም ጥያቄ ላይ ምዕራብ ዘንግ የሰጠውን የመደረገው ውሳኔ 6 ገጽ ከዚህ መሻኛ ደብዳቤ ጋር አባሪ በማድረግ የተላኩት ስለሆነ በውሳኔው መሰረት እንዲፈጸም አስታውታል።

ግልጻ፡-

- ለፌዴራል ጠቅላይ ፍ/ቤት
አዲስ አበባ
- ለሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ
አዲስ አበባ
- ለአማራ ክልል ጠቅላይ ፍ/ቤት
ዓድርጅር
- ለፌዴሬሽን ምክር ቤት ጽ/ቤት
በፌዴሬሽን ምክር ቤት
- ለሕገ መንግስት ትርጉምና የግንኙነት ጉዳዮች ዳይሬክቶሬት
በፌዴሬሽን ምክር ቤት ጽ/ቤት



ከሰላምታ ጋር

[Handwritten Signature]
የፌዴሬሽን ምክር ቤት
የግልጻዊ

የኢ.ፌ.ዴ.ሪ የፌ.ዴ.ሪሽን ምክርቤት 4ኛ የፓርላማ ዘመን፣5ኛ ዓመት፣2ኛ

መደበኛ ስብሰባ

ሚያዚያ 22 2010 ዓ.ም

አመልካች፡- አቶ መስረት ታዩ

ተጠሪ፡- ወ/ሮ ዛብሽ ገላው

የኢ.ፌ.ዴ.ሪ የፌ.ዴ.ሪሽን ምክርቤት በአመልካች የቀረበውን የሕገመንግስት የትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገመንግስታዊ ውሳኔ ሰጥቷል፡፡

ውሳኔ

ጉዳይ ለሕገ መንግስት ትርጉም ምርመራ ሊቀርብ የቻለው አመልካች ጥቅምት 23 ቀን 2008 ዓ.ም ለጉባኤው ጽፈው ባቀረቡት አቤቱታ መነሻነት ነው፡፡ጉዳዩ የንብረት ክርክርን መነሻ ያደረገ ሲሆን፡፡

በመጀመሪያ ደረጃ ያየው የማቻክል ወረዳ ፍ/ቤት ከተጠሪ ክፍስ ታዩ ምህረቱ ጋር በነበራቸው የባልና ሚስት ንብረት ክርክር በአማኑኤል ከተማ ቀበሌ 01 የሚገኝ ከኢትዮጵያ ንግድ ባንክ በጨረታ ገዢ ስመ ንብረቱን በስሜ ያዩርኩት አንድ ክፍል ቤት እንደዚሁም የግሌ የነበሩ የቀንድ ክብቶች የባልና ሚስት የጋራ ንብረት ናቸው በሚል የወረዳው ፍ/ቤት በመወሰኑ ነው፡፡በወረዳው ፍ/ቤት ውሳኔ መብቱ ስለተነሳ በፍ/ቤ/ስ/ስ/ሕ/ቁ. 358 መሰረት ወደ ክርክሩ ገብቼ ተከራክረዋል፡፡

በዚህ ክርክር ቁስ ታዩ ምህረቱ በሰጡት መልስ አምነው የተከራከሩ ሲሆን ተጠሪ ግን እከራከሪዎቹ ንብረቶች ከጋራ ንብረት ወጪ ተደርጎ የተገዙ በመሆኑ የቀድሞ ውሳኔ ሊፀና ይገባል ሲሉ ተከራክረዋል፡፡



አመልካች ባቀረቡት አቤቱታ ተጠሪ ከቁስ ታዩ ምህረቱ ጋር በነበራቸው የጋብቻ የንብረት ክፍፍል ክርክር በአማካኝነት ከተማ ቀበሌ የሚገኝ ከኢትዮጵያ ንግድ ባንክ በጨረታ ገዛቹ ስመ ሀብቱን በስሜ ያዞርኩትን አንድ ደጃፍ ቤት እንደዚሁም የግሌ የነበሩት የቀንድ ከብቶችን የባልና ሚስት የጋራ ንብረት ነው በሚል የማቻከል ወረዳ ፍ/ቤት የሰጠው ውሳኔ ሊሰርዝ ይገባል ሲሉ ቅሬታቸውን አቅርበዋል።

ቁስ ታዩ ምህረቱ በሰጡት መልስ አምነው የተከራከሩ ሲሆን ተጠሪ ግን አከራከሪዎቹ ንብረቶች ከጋብቻችን የጋራ ንብረት ወጪ ተደርጎ የተገዙ በመሆኑ ንብረቶቹ የጋራ ሊባሉ ይገባል፤ የቀድሞ ውሳኔ ሊፀና ይገባል ሲሉ ተከራክረዋል። ግራ ቀኙንክርክር እና የሰውና የሰነድ ማስረጃዎች የተመለከተው ይኸው የወረዳ ፍ/ቤት አመልካች አከራካሪውን ቤት በገዛበት ወቅት ለአካለ መጠን ያልደረሰ መሆኑ በመጥቀስ በራሱ የሸያጩ ውሉን ሊዋዋል እንደማይችል በመጥቀስ ውሉ ከመሰረቱ ፈራሽ ነው ብሏል። እንደዚሁም የሸያዮ ውሉ የ3ኛ ወገን መብት የነካ በመሆኑ ፈራሽ ነው ብሏል።

እንደዚሁም አመልካች አከራካሪውን ቤት ለመግዛት የሚያስችል ሀብት ናርት ንብረቱን ስለመግዛቱ አላስረዳም በማለት ንብረቱን ተጠሪ እና ከላይ በስም ተጠቃሹ የቀድሞ ባለቤታቸው በእዳ ምክንያት ንብረታቸውን ባንክ ሲይዝባቸው በአመልካች ስም ከራሳቸው የጋራ ሀብት አውጥተው ያስገዙት የጋራ ንብረታቸው እንጂ የአመልካች የግል ሊባል አይችልም በማለት አከራካሪዎቹን የቀንድ ከብቶችም በተመለከተ ከተጠቃሹ ጋብቻ የጋራ ሀብት ውጭ ተደርጎ የተገዙ በመሆኑ የባልና ሚስቱ የጋራ ናቸው በማለት ቀድሞ የሰጠውን ውሳኔ በማፅናት ወስኗል።

በጉዳዩም ላይ በአመልካች ይግባኝ የተረበለት የምስራቅ ነጃም አስተዳደር ዞን ፍ/ቤት የሰር ፍ/ቤት አመልካች የደረገውን የቤት ግዢ ውል በተመለከተ የደረሰበትን ድምዳሜ በመንቀፍ ውሉ ፈራሽ ሲሆን የሚችለው አካለ መጠን ያልደረሰ ልጅ ጥቅም በሚጎዳ መልኩ በተደረገ ጊዜ መሆኑን በመጥቀስ በሌላ በኩል አመልካች ባቀረባቸው



በሰነድ ሆነ በሰው ማስረጃዎች በሚገባ ያሰረዳ መሆኑን በመጥቀስ እንደዚሁም እክራካሪዎቹን የቀንድ ከብቶችም በተመለከተ አመልካች ባቀረባቸው ሁለት የውል ሰነዶች እና የሰው ማስረጃዎች በሚገባ ያሰረዳ መሆኑን በመጥቀስ በዚህ ረገድ የሰር ፍ/ቤትን ውግኔ በመሻር ወስኗል።

በጉዳዩ ላይ በተጠሪ ይግባኝ የቀረበለት የክልሉ ጠቅላይ ፍ/ቤት ይግባኝ ሰሚ ችሎት አያስቀርብም ሲል በተጠሪ የሰበር አቤቱታ የቀረበለት የክልሉ ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት ጉዳዩን አስቀርቦ ከመረመረ በኋላ የሰር ፍ/ቤትን ውግኔ በመሻር እና የወረዳው ፍ/ቤት ውግኔ በማጽናት ወስኗል።

በጉዳዩ ላይ አመልካች የሰበር አቤቱታ የቀረበለት የፌዴራሉ ጠቅላይ ሰበር ሰሚ ችሎት ጉዳዩን አስቀርቦ ከመረመረ በኋላ አመልካች እክራካሪውን ቤት ለመግዛት የራሱን የሃብት ምንጭ የተጠቀመ መሆኑ በሰር ፍ/ቤት አልተረጋገጠም እንደዚሁም አንድ ሰው የንብረት ባለሃብት የሚሆነው በጉልበቱ በፈጠራ ችሎታው ወይም በገንዘቡ ንብረት ያፈራ ሲሆን እንጂ በሰው ስለተመዘገበ ብቻ የግሉ ሊሆን አይችልም በማለት የሰር ፍ/ቤትን ውግኔ በማጽናት ወስኗል።

ከላይ ጸንቶ ባለው የአመልካች ባቀረቡት አቤቱታ ፍሬ ሃሳብ ተጠሪ ከቁስ ታዩ ምህረቱ ጋር በነበራቸዉ የጋብቻ የንብረት ክፍፍል ክርክር በአማኑኤል ከተማ ቀበሌ

1 የሚገኝ ከኢትዮጵያ ንግድ ባንክ በጨረታ ገዝቼ ስመ ሀብቱንም በሰሚ ያዞርኩት አንድ ደጃፍ ቤት እንደዚሁም የግል የነበሩት የቀንድ ከብቶችን የባልና ሚስት የጋራ ንብረት ነው በሚል የማቻከል ወረዳ ፍ/ቤት ወስኖ ነበር።

ውሳኔውን መብቱን ነክቷል በሚል በፍ/ሥ/ይ/ሕ/ቁ 358 ወደ ክርክሩ ገብቼ እንድከራከር ጠይቆ ብክራከርም አመልካች በወቅቱ እጸን በመሆኑ ውል መዋዋል አይችምል እንደሁም ንብረቶቹ የተገዙት በባልና ሚስቱ ገንዘብ ነው በማል



ንብረቶቹን የባልና ማሰቱ የጋራ በማድረግ የተሰጠውን ውሳኔ በመጨረሻ በመጽናቱ በሕገ መንግስቱ ያለኝን የንብረት መብት ይጥሳል ሲሉ ቅሬታቸውን አቅርበዋል።

ጉባኤው በተረበሰበት እቤቱታ መነሻ ጉዳዩን ምርምሯል።

በተያዘው ጉዳይ በፍ/ቤቶች በነበረ ክርክር ተጠሪ አክራካሪውን ቤት በተመለከተ ቤቱ በባንክ ዕዳ ምክንያት ሲሸጥ ወጪው ከቀድሞ ባለቤታቸው አቶ ታዬ ምህንቱ ጋር ከነበራቸዉ የጋብቻ ሀብት ወጪ በማድረግ በአመልካች ስም ቤቱ የተገዛ መሆኑን እንደዚሁም በተመሳሳይ አክራካሪዎቹ የቀንድ ክብቶችም ከተጠቀሰው የጋብቻ የጋራ ሀብት ወጪ ተደርጎ የተገዙ መሆናቸውን በመጥቀስ ንብረቶቹን በጋብቻ ውስጥ ረተፈሩ ስለሆነ የጋራ ይባሉልኝ የሚል ክርክር አቅርበዋል።

ፍ/ቤቶችም ግራ ቀኙን አክራካሪው በዋናነት አመልካች አክራካሪዎቹን ንብረቶች ከራሱ የሀብት ምንጭ ወጪ አድርጎ ስለመግዛቱ አሳስረዳም በሚል ምክንያት ላይ በመመስረት ንብረቶቹን የተጠሪና የቀድሞ ባለቤታቸው አቶ ታዬ ምህንቱ በጋብቻ ውስጥ የተፈሩ የጋራ ሀብት ናቸው በማለት መወሰናቸውን መረዳት ይቻላል።

ሆኖም ግን ፍ/ቤቶች ተጠሪ የቀድሞ ባለቤታቸው አቶ ታዬ ምህንቱ በአንድ በኩል የሚፈለግባቸውን የባንክ ዕዳ መክፈል አቅቷቸው አክራካሪው ቤት በጨረታ ሊሸጥ የቻለ መሆኑን አረጋግጠው በሌላ በኩል አክራካሪውን ቤት ለመግዛት የሚያስችል ገዢብ አቅም ኖሯቸው ከጋራ ሀብታቸዉ ወጪ አድርገው አክራካሪውን ቤት ገዝተዋል ሲሉ መደምደማቸውን ስንመለከት የተጠቀሰው ምክንያትና ድምዳሜ አብረው የሚሂዱ አለመሆናቸውን መረዳት የሚቻል ሲሆን ይልቁንም ፍ/ቤት የተጠቀሱት አክራካሪው ቤት ከተጠቃሹ የጋብቻ ሀብት ወጪ ተደርጎ ያልተገዛ መሆኑን ያስረዳል ለሚል ድምዳሜ የቀረበ ነው።

በተጨማሪም ፍ/ቤቶች በተለይ አክራካሪው ቤት ከተጠቃሹ ጋብቻ የጋራ ሀብት ወጪ ተደርጎ የተገዛ ነው ብለው እንደወሰዱት ግምት እንኳ በሆነ ዕዳዉን ቀድሞውኑ



በቀጥታ መክፈል እየቻሉ ባለመክፈል ንብረታቸውን እንዲሸጥ በመፍቀድ በተዘዋዋሪ በአመልካች ስም ቤቱን የመግባታቸው ድርጊት ተጠሪ ከቀድሞ ባለቤታቸው ጋር በመሆን ህግን በተቃረኝ መልኩ አንዳች ኃላፊነት ለመሸሽ ወይም ለሕገ ወጥ አላማ ሲሉ የከወኑት ተግባር ነው።

በመሆኑም ተጠሪ ከቀድሞ ባለቤታቸው ጋር በመሆን በፈጸሙት ህግን የተቃረኝ ተግባራቸው ተጠቃሚ ሊሆኑ የሚገባ አይደለም። ተጠሪና የቀድሞ ባለቤታቸው ህግን ባልተቃረኝ መንገድ አከራካሪዎቹን ንብረቶች በፈቃዳቸው ከጋራ ንብረታቸው ወጪ በማድረግ አካለመጠን ባልደረሰ በአመልካች ስም ገዙተዋል። ብሎ መነሳት ነምክንያታዊነት እና ሕገ መንግስታዊ መሰረት ካለው የሕፃናትን ጥቅም በቀደምትነት ከማክበር መርህ ጋር የሚቃረን ይሆናል።

በሌላ በኩል አመልካች በተለይ አከራካሪውን ቤት ስመ ሁብቱን በስሙ አድርጎ ማስረጃውን ይዞ የሚገኝ ሆኖ እያለ በዚህም በፍ/ሕ/ቁ 1195 መሰረት አንድ የማይንቀሳቀስ ንብረትን ስመ ሁብቱን በስሙ በማድረግ ማስረጃውን በእጁ ያደረገ ሰው የንብረቱን ባለቤት እንደሆነ የሚገመት ሰለመሆኑ ተደንግጎ እያለ፣ እንደዚሁም ይህንን ድንጋጌ ተከትሎ በሚገኘው አንቀጽ 1196 መሰረት የቀረበ ግምቱን ሊያስተባብል የሚችል ክርክርም ሆነ ማስረጃ በሌለበት አልያም ሌላ ሕጋዊ ምክንያት በሌለበት ሁኔታ ፍ/ቤቶች አከራካሪዎቹ ንብረቶች አንድ አካለ መጠን ያልደረሰ ልጅ ንብረት ከሚያፈራባቸው መንገዶች በአንዱ የተገኙ ንብረቶች ስለመሆናቸው መነሻ ግምት በመያዝ በተቃራኒው ሕግ በሚፈቅደው አግባብ ተጠሪ ማስተባበሪያ ማቅረብ አለማቅረባቸውን መመርመር ጉዳዩን መመልከት እየተገባቸው በተቃራኒው አመልካች ስለመብታቸው እንዲያስረዱ ግዴታን በመጣል መወሰናቸውን የሕፃናት የተሻለ ጥቅም ለማስጠበቅ በሚረዳ መልኩ ውሳኔ የሰጡ አለመሆናቸውን የሚያረጋግጥ በመሆኑ ።



ውሳኔው በኢ.ፌ.ዲ.ሪ ሕገ መንግስት አንቀጽ 36 (2) ሕፃናት የሚመለከቱት እርምጃዎች በሚወሰዱበት ጊዜ መንግስታዊ ወይም በግል የበጎ አድራጊነት ተቋሞች፣ በፍርድ ቤቶች፣ በአስተዳደር ባለሥልጣኖች ወይም በሕገ አውጪ አካላት የሕፃናት ደህንነት በቀደምትነት መታሰብ አለበት። በሚል የሰፈረው ሕገ መንግስታዊ ድንጋጌ እንደዚሁም በሕገ መንግስቱ አንቀጽ 40 የሰፈረውን የንብረት መብት ድንጋጌ የሚቃረን በመሆኑ በሕገ መንግስቱ አንቀጽ 9/1/ መሰረት ተፈጻሚነት የለውም በማለት ምክር ቤቱ በሙሉ ድምጽ ወስኗል።

ትዕዛዝ

1. የፌደራል ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት የሰጠው ውሳኔ አግባብ አለመሆኑን ምክር ቤቱ የሕገ መንግስት ትርጉም በመስጠት ተቀባይነት የለውም ብሏል። የፌደራል ጠቅላይ ፍ/ቤት እና የአማራ ክልል ጠቅላይ ፍ/ቤት እንዲያውቁትና እንዲያስፈጽሙ ይደረጋቸው።
2. የሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ያቀረቡት የሕገ መንግስት ትርጉም ያስፈልገዋል የውሳኔ ሀሳብ ም/ቤቱ በሰጠው የሕገ መንግስት ትርጉም ተቀባይነት ያገኘ መሆኑን እንዲያውቁት ውሳኔው ይደረጋቸው።
3. የውሳኔው ግልባዎ ለአመልካች ይደረጋቸው።





ቁጥር 694/ሕጋ/2022
No
ቀን 29/02/2022
Date

ለፌዴራል ጠቅላይ ፍ/ቤት
አዲስ አበባ
ለደቡብ/ቡብ/ሕዝቦች ክልል ጠቅላይ ፍ/ቤት።
ሀዋሳ
ለአቶ ሕዝቅኤል ማራ
ባለቤት

ጉዳዩ፡- የምክር ቤቱን ውሳኔ ሰለግሳዎት

የፌዴራሽን ምክር ቤትን ለማጠናከርና ሥልጣንና ተግባሩን ለመዘርዘር በወጣው አዋጅ ቁጥር 251/1993 እንቀጽ 11 እና 56 ምዕራብ በሕገ መንግስት ትርጉም ላይ የሚሰጠው ውሳኔ አጠቃላይ ውጤት እንደሚኖረውና ጉዳዩ የሚመለከታቸው ወገኖችም ውሳኔውን የማክበር እና የመፈጸም ግዴታ እንዳለባቸው ተደንግጓል።

የኢፌዴሪ የፌዴራሽን ምክር ቤት በ5ኛ የፖርታል ዘመን 3ኛ ዓመት 1ኛ መደበኛ ስብሰባ የአቶ ሕዝቅኤል ማራ ባቀረቡት የሕገ መንግስት የትርጉም አቤቱታ መነሻነት ከሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ የቀረበውን የውሳኔ ሀሳብ ተመልክቶ የመጨረሻ ውሳኔ ሰጥቷል።

በመሆኑም የአቶ ሕዝቅኤል ማራ የትርጉም ጥያቄ ላይ ምዕራብ የሰጠውን የመጨረሻ ውሳኔ 10 ገጽ ከዚህ መሸኛ ደብዳቤ ጋር አባሪ በማድረግ የተሳካላችሁ ሰለጦን በውሳኔው መሰረት እንዲፈጸም አስታውቃለሁ።



ከሰላምታ ጋር
[Handwritten Signature]

ግልጻዩ

- ለሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ አዲስ አበባ
- ለፌዴራሽን ምክር ቤት ጽ/ቤት
በፌዴራሽን ምክር ቤት
- ለሕገ መንግስት ትርጉምና የማንነት ጉዳዮች ዳይሬክቶርት
በፌዴራሽን ምክር ቤት ጽ/ቤት

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክርቤት 5ኛ የፓርላማ ዘመን፡3ኛ ዓመት፡11ኛ መደበኛ ስብሰባ
መስከረም 30 ቀን 2010 ዓ.ም

አመልካች፡- አቶ ሕዝቅኤል ማራ

ተጠሪዎች፡- የደቡብ ቡድን/ኮሌግ መንግሥት ባለስልጣን

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክር ቤት በአመልካች የቀረበውን የሕገመንግስት የትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገ መንግስታዊ ውሳኔ ሰጥቷል፡፡

ውሳኔ

አመልካች ሚያዝያ 17 ቀን 2008 ዓ.ም የተሃፈ ማመልከቻ ለጉባኤው አቅርቦዋል፡፡ በማመልከቻቸውም ሙስና ሙስኝነትን በዜግነት ድርሻየ በመታገል ከ20 ቢሊዮን ብር በላይ በሙስና የተጠረጠሩበትን ጉዳይ ለመንግስት በማሳወቁ በደረሰብኝ በደል ጉዳዩን ለፍ/ቤት አቅርቤ የተወሰነልኝን ፍርድና በሙስና ትግል መነሻ የተሰጠኝን የሕግ ክለሳ የሚያስፈልግ ባለመኖሩ ከሰራና ደሞዝ መታገድ ከሕገ መንግስቱ አንቀጽ 37፡13 (1)፣ 78(1) እና 80 (1) ጋር ይቃረናል በማለት ትርጉም ይሰጠኝ ሲሉ ጠይቀዋል፡፡

የጉዳዩን አመጣጥ በአጭሩ ለንመለከተው አመልካች ተጠሪ በሆነው መሰሪያ ቤት የሕግ አገልግሎት ኃላፊ ሆነው እየሰሩ እያለ ተጠሪ ከሕግ ውጪ የሰራ ውሌን አቋርጧል በማለት ያልከረሳቸውን ከፍያ ከፍሎአቸው ወደ ስራቸው እንዲመልሳቸው በስር የሐዋሳ ከተማ የመጀመሪያ ደረጃ ፍ/ቤት በተጠሪ ላይ ከስ መስርተዋል፡፡

ጉዳዩን የተመለከተው የመጀመሪያ ደረጃ ፍ/ቤትም አመልካችና ተጠሪን ካከራከረ በኋላ ተጠሪ አመልካችን ያሰናበታቸው ከሕግ ውጪ ስለሆነ ወደ ነበሩበት የሰራ መደብ እንዲመለሱ እና ያልተከረሳቸው ከፍያ እንዲከረሳቸው ወስኗል፡፡ ውሳኔው እስከ ፌዴራል ጠቅላይ ፍ/ቤት ደርሶ ውሳኔው ፀንቷል፡፡

ጉዳዩ በፌዴራል ጠቅላይ ፍ/ቤት ደርሶ ውሳኔው ከፀና በኋላ አመልካች ፍርድ እንዲፈፀሙላቸው ጉዳዩ በተጀመረበት የሐዋሳ ከተማ የመጀመሪያ ደረጃ ፍ/ቤት የአረጋግፆ ፋይል ከፍተው ከተጠሪ ጋር የተከራከሩ ሲሆን ተጠሪ አመልካች ወደ ቀድሞው የሕግ አገልግሎት የሰራ ኃላፊነታቸው እንዲመለሱ የተወሰነላቸው ቢሆንም የሕግ አገልግሎት ኃላፊ የሰራ መደብ በሹመት ሆኖ ስለመጣ በሰራ መደቡ ላይ ሊመደቡ አይችሉም በማለት



ያቀረበውን ከርከር ፍቤቱ ተቀብሎ አመልካች እንዲመደቡ በሚጠይቁበት የቀድሞ የሥራ መደብ በሆነው የሕግ አገልግሎት ኃላፊ ላይ መመደብ አይችሉም በማለት ትእዛዝ ሰጥቷል።

አመልካች በዚህ የአረጋገጥም ትዕዛዝ ቅር በመሰኘት ጉዳዩን ለክልሉ ሰበር ሰሚ ፍቤት ያቀረቡ ሲሆን ፍቤቱ አመልካች ከተጠሪ መ/ቤት የተሰናዱት ከሕግ ውጪ መሆኑ ተረጋግጦ ወደ ስራቸው እንዲመለሱ ከተወሰነ በኋላ በአረጋገጥም ደረጃ የአመልካች የቀድሞ የሥራ መደብ የሆነው የሕግ አገልግሎት ኃላፊ የሥራ መደብ በሹመት የሚሰጥ ነው በማለት ተጠሪ ያነሳው ከርከር ፍርድን ላሰመረጠም አዲስ ያቀረበው መከራከሪያ ሃሳብ ነው።

ሰለዚህ ተጠሪ በፍርድ መሰረት አመልካች ወደ ቀድሞ የሕግ አገልግሎት ኃላፊ ስራቸው መልሶ ያልከፈላቸውን ከፍተኛ ጥቅም ጥቅም በመከፈል እንደ ፍርድ ይፈጸም በማለት ወስኗል። ይህ የአረጋገጥም ውሳኔ በፌዴራል ጠቅላይ ፍቤት ሰበር ታይቶ በውሳኔ ፀንቷል።

አመልካችም በአረጋገጥም ላይ በተወሰነላቸው መሰረት ፍርድ እንዲፈጸምላቸው በድጋሚ የሰር ፍቤትን የጠየቁ ሲሆን ፍቤቱ በቅፅ 13 የሰበር መ/ቁ 69471 በሥራ ላይ በሌለ መዋቅር መሰረት የተሰጠ ፍርድ ማስፈጸም አይቻልም በማለት ትርጉም የተሰጠበትን ውሳኔ በመጥቀስ ለአመልካች የተፈረደውን ፍርድ ማስፈጸም አይቻልም ብሎ ብይን ሰጥቷል።

አመልካችም በአረጋገጥም ላይ በተሰጠው ብይን ቅር በመሰኘት ጉዳያቸውን ለፈ/ጠ/ፍቤት ሰበር ሰሚ ችሎት ያቀረቡ ሲሆን ችሎቱ የአንድ የፍርድ ይዘት አሻሚ ሆኖ ተገቢ ያልሆነ ከርከር እንዳይነሳ ተገቢው ሙግት በሰርአቱ ተርፎ ከተጠናቀቀ በኋላ ፍርድ እንዲት ሊሰጥ እንደሚገባው እና ምን ምን ሁኔታዎችን ማካተት እንዳለበት በፍ/ብ/ሥ/ሥ/ሕ/ቁ 182 እና 183 በግልፅ ተደንገገዋል።

ይህ የፍርድ አሰጣጥ ስርአት ጉዳዩን በመጀመሪያ ደረጃ ለሚመለከተው ፍርድ ቤትም ሆነ ለሌላ ፍርድ ቤቶች ተፈጥረዎት ያለው ነው። የፍትሕ ብሔር ሥነ ሥርዓት ሕግ የፍርድ አሰጣጥ ሥርዓት ለአሰሪና ሰራተኛ ጉዳዮችም ተፈጥረዎት ያለው ስለመሆኑ አዋጅ ቁጥር 377/96 እንቀፅ 190(2) እና ከሌሎች ድንጋጌዎች ይዘት የምንገነዘበው ሲሆን የአሰሪና ሰራተኛ ጉዳይን የሚመለከት የዳኝነት ለካል ደግሞ የአንድን የሥራ ክርክር ውጤት በተመለከተ ዳኝነት ሲሰጥ መሰረት ሊያደርጋቸው የሚገባቸውና ተለይተው ሊወሰኑ



የሚገባቸው የመፍትሔ ዓይነቶች በአዋጁ አንቀጽ 39 እና በተከታይ ድንጋጌዎች ተመልክተዋል።

በዚህ አግባብ የተሰጠ ፍርድ ደግሞ በፍ/ብ/ሥ/ሥ/ሕ/ቁ 378 እና 372 መሰረት ስልጣን ያላቸው የአፈፃፀም ችሎቶች ስለ ፍርድ አፈፃፀም የተዘረጉትን በመከተል የሚፈፀም ነው። በማለት አመልካች ወደ ስራቸው እንዲመለሱ የተሰጠው ውሳኔ ከደንብ ቁጥር 126/2008 ሀ(5) ድንጋጌ አንፃር መፈፀም ያለበት የሕግ አገልግሎት የሰራ መደብ በአዲሱ አደረጃጀት ምክንያት ወደ ተለወጠው የሕግ ድጋፍ የሰራ ሂደት ባለቤት የሰራ መደብ እንዲመለሱ በማድረግ ሳይሆን ለዚህ የሰራ መደብ ተመጣጣኝ የሆነ የሰራ መደብ ላይ ተመድበው መብትና ጥቅም እንዲያገኙ በማድረግ ነው በማለት የቀድሞ ፍርዱን በማሻሻል ወሰኗል።

አመልካችም መሠረኛ በተወሰነላቸው ውሳኔ መሰረት ፍርዱ እንዲፈፀምላቸው በስር ፍ/ቤት የአፈፃፀም ፋይል አስከፍተው ከተጠሪ ጋር የተከራከሩ ሲሆን ፍ/ቤቱ አመልካች መመደብ አለብኝ በማለት በሚጠይቁት የሕግ አገልግሎት ኃላፊ ተመጣጣኝ የሆነ የሰራ መደብ ላይ ተመድበው እንዲሰሩ ከተወሰነላቸው በኋላ ከተጠሪ መ/ቤት በዲሰፒሊን ከሰራ የተሰናበቱ በመሆኑ ጉዳዩን በይግባኝ ለመመልከት ስልጣን ላለው ለመደበኛ ፍ/ቤት ማቅረብ ይችላሉ። በማለት አመልካች ወደ ስራ ለመመለስ ካቀረቡት አቤቱታ ጋር አያይዘው ያቀረቡትን ጥያቄ ባለመቀበል የወሰነ መሆኑን ከመዝገብ መረዳት ተችሏል።

ጉዳዩ የሕገ መንግስት ትርጉም እንዲሰጥበት ለጉባኤው የቀረበበት ምክንያት ከአሰሪና ሰራተኛ ክርክር ጋር ተያይዞ የፈ/ጠ/ፍ/ቤት ሰበር ሰሚ ችሎት ቀድሞ አመልካች ወደ ሕግ አገልግሎት የሰራ ኃላፊነታቸው እንዲመለሱ የሰጠውን ውሳኔ በማሻሻል አዲስ በተለወጠው የሰራ መደብ ተመጣጣኝ በሆነ የሰራ መደብ ላይ ተመድበው መብትና ጥቅም እንዲያገኙ በማለት ከተወሰነ በኋላ ይህ ፍርድ እንዲፈፀምላቸው የሰር ፍ/ቤትን ሲጠይቁ አመልካች ከተጠሪ መ/ቤት በዲሰፒሊን የተሰናበቱ ስለሆነ ጉዳዩን በይግባኝ ለመመልከት ስልጣን ላለው ለመደበኛ ፍ/ቤት ማቅረብ ይችላሉ። በማለት መዝገብ በብይን መዝጋቱ ከሕገ መንግስቱ አንቀጽ 80(1) አንቀጽ 37 ጋር የሚቃረን መሆኑን ያለመሆኑ ተመርምሯል።

እንደተመረመረውም አመልካች ከተጠሪ መ/ቤት ሕገ ወጥ በሆነ መንገድ የሰራ ውላቸው የተቋረጠ መሆኑ በፍርድ ቤት ተረጋግጦ ወደ ስራቸው እንዲመለሱ ከተወሰነላቸው በኋላ ከየካቲት ወር 2008 ዓ.ም ጀምሮ ተጠሪ በቃል ከሰራ አገዶ ያሰናቧቸው መሆኑን



ለጉባኤው ያመለክቱና ይኸው አቤቱታቸውን በቃላት መሆኑ ለፌዴራል ሰበር ሰሜ ችሎት አቅርበው ተጠሪ መልስ እንዲሰጥበት ተጠርቶ ባለመቅረቡ አመልካች ያመለክቱት አቤቱታ ተቀባይነት ማግኘቱን የፌዴራል ሰበር ችሎች ከሰጠው ትእዛዝ መረዳት ተችሏል።

አመልካች ወደ ሰራቸው እንዲመለሱ ተወስኖ ወደ ሰራቸው ተመልሰው ድጋሚ ከተጠሪ መሆኑ ደኞዝ ተክልክለው በቃላት እስከታገዱበት ጊዜ ድረስ እንዲመደቡ የተወሰነላቸው የሰራ መደብ በሹመት የሚሰጥ ስለሆነ ሊመደቡ አይገባም በማለት ተጠሪ የሚያቀርበው ክርክር የፌዴራል ጠ/ፍ/ቤት ሰበር ሰሜ ሰኔ 06 ቀን 2008 ዓ.ም በዋሉ ችሎት አመልካች ወደ ሕግ አገልግሎት የሰራ ኃላፊነታቸው እንዲመለሱ የሰጠውን ውሳኔ በማሻሻል አዲስ በተሰጠው የሰራ መደብ ተመጣጣኝ በሆነ የሰራ መደብ ላይ ተመድበው መብትና ጥቅም እንዲያገኙ በማለት የመደረገው ውሳኔ ሰጥቶ የወሰነ መሆኑን ከመዝገቡ መረዳት ተችሏል።

የፌዴራል ሰበር ሰሜ ችሎት የመደረገውን ውሳኔ እስኪወስን ድረስ አመልካች ከየካቲት ወር 2008 ዓ.ም ጀምሮ በቃላት ከሰራ ታገደው ደኞዝ የተክልክሉ ሲሆን የመደረገው ፍርድ ከተሰጠ በኋላ ፍርዱ እንዲረጸምላቸው የጠየቁት የሥነ ምግባር ከተማ የመጀመሪያ ደረጃ ፍ/ቤት ፍርዱን ለማሰረጸም ተጠሪ የሆነውን መሆኑን አስቀርቦ ሲጠይቅ አመልካች ከታህሳስ 18 ቀን 2008 ዓ.ም ለ5 ተከታታይ የሰራ ቀናት፣ ከየካቲት 13 ቀን 2008 ዓ.ም እስከ 21 ቀን 2008 ዓ.ም በአጠቃላይ ለ13 የሰራ ቀናት ከሰራ ስለቀሩ ሰኔ 23 ቀን 2008 ዓ.ም በተገፈ ደብዳቤ በዲ.ሲ.ፒ.ሲ.ን ከሰራ ተሰናብተዋል በማለት ያቀረበውን መቃወሚያ ተቀብሎ ሰበር ሰሜ ችሎት በመደረገው የወሰነውን ውሳኔ ሳይቀበል መዝገቡን በባይን የዘጋው መሆኑን ከመዝገቡ መረዳት ተችሏል።

በሕገ መንግስቱ አንቀጽ 80 ንዑስ አንቀጽ 3/ሀ/ የፌዴራል ጠቅላይ ፍ/ቤት መሰረታዊ የሆነ የሕግ ስዙተት ያለበትን ማናቸውንም የመደረገው ውሳኔ ለማረም በሰበር ችሎት የማየት ስልጣን ይኖረዋል። ዝርዝሩ በሕግ ይወሰናል ተብሎ በተደነገገው መሰረት የፌዴራል ፍ/ቤቶች አዋጅን እንደገና ለማሻሻል የወጣ አዋጅ ቁጥር 454/97 አንቀጽ 2 ንዑስ አንቀጽ 4 ላይ የፌዴራል ጠቅላይ ፍ/ቤት ከአምስት ያሳነሱ ዳኞች በተሰየሙበት የሰበር ችሎት የሚሰጠው የሕግ ትርጉም በየትኛውም ደረጃ በሚገኝ የፌዴራል ወይም የክልል ፍ/ቤት ላይ አስገዳጅነት ይኖረዋል ተብሎ ተደንገገዋል።



የፌዴራሉ ጠቅላይ ፍ/ቤት በሕገ መንግስቱ ላይ በተሰጠው ስልጣን መሰረት በአመልካች ጉዳይ ላይ የመጨረሻ ውሳኔ ከሰጠበት በኋላ አመልካች የሰር ፍ/ቤት ፍርድን እንዲያስፈጸምላቸው ሲጠይቁ ፍርድን ማስፈጸም ሲገባው የመጨረሻው ውሳኔ በሰበር ደረጃ ከተወሰነ በኋላ አመልካች በዲሲፒሊን ተሰናብተዋል የሚለውን የተጠሪ መ/ቤት ክርክር በመቀበል ፍርድን ሳያስፈጸም መዝገቡን በብይን መሠረት ሕገ መንግስቱ ለፌዴራሉ ጠቅላይ ፍ/ቤት ከሰጠው ስልጣን ጋር እና በሕገ መንግስቱ አንቀጽ 9 ላይ ከሕገ መንግስቱ የበላይነት ጋር እንዲሁም በሕገ መንግስቱ አንቀጽ 37 ላይ ከተደነገገው ፍትሕ የማግኘት ሕገ መንግስታዊ መብት ጋር የሚቃረን መሆኑን ጉባኤው በሙሉ ድምፅ የተስማማ ስለሆነ ይህ የውሳኔ ሃሳብ ለመጨረሻ ውሳኔ ለፌዴራሉን ምክር ቤት እንዲተላለፍ የሚል ነው።

ምክር ቤቱ የኢ.ፌ.ዲ.ሪ. ሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ያቀረበውን የውሳኔ ሀሳብ ከኢ.ፌ.ዲ.ሪ. ሕገ መንግስት ድንጋጌዎች ጋር በማገናዘብ መርምሯል፤ እንደመረመረውም አመልካች እቶ ሕዝቅኤል ማራ ከተጠሪው መሰረያ ቤት ያለ አግባብ ተሰናብዶላቸው በማለት በሀዋሳ የመጀመሪያ ደረጃ ፍርድ ቤት ከስ ያቀረቡ ሲሆን ፍርድ ቤቱም ግራ ቀኙን አክራክሮ የመሰሪያ ቤቱን ጫላ በመሻር አመልካቹ ወደ ስራ እንዲመለሱ፤ ደኞዎና ጥቅማጥቅም እንዲከፈላቸው ወስኗል፤ ይህ ውሳኔ በበላይ ፍርድ ቤቶችም ጸንቷል።

በመሆኑም የአሁን አመልካች በውሳኔው መሰረት እንዲፈጸምላቸው ሲጠይቁ ቀደም ሲል ሲሰሩበት የነበረው የህግ አገልግሎት ሃላፊ የሰራ መደብ የሹመት የሰራ መደብ እንዲሆን በመወሰን በዚህ የሰራ መደብ ላይ አመልካችን መመደብ እንደማይችል ተጠሪው መሰሪያ ቤት ለፍርድ ቤቱ አስረድቷል። ይሁንና በተደረገው ማጣራት ተጠሪው መሰሪያ ቤት አመልካቹን በሌላ የሰራ መደብ ላይ መደብ ሲያሰራቸውና ደኞዎም ሲከፍላቸው መቆየቱ ተረጋግጧል።

አመልካች በፍ/ቤት ያገኙትን ውሳኔ በፍ/ቤት እስከ መጨረሻው በአፈጻጸም ሂደት ማስፈጸም ሲገባቸው ወደ ሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ በመሄድ በአቋራጭ ለማስፈጸም የሂደብት አካሄድ ተዘጋጅቶ የለውም። የሕገ መንግስት ጉዳዮች አጣሪ ጉባኤም ጉዳዩን ተቀብሎ ከተመሰከተ በኋላ የሕገ መንግስት ትርጉም ያስፈልገዋል በማለት የውሳኔ ሀሳብ በማቅረብ አልነበረበትም።



ሆኖም አመልካቹ በሹመቱ የሰራ መደብ ላይ መመደብ አለባቸው በማለት በአፈጻጸም መዝገቡ እስከ ፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ድረስ በመውሰድ ውሳኔ እንዲሰጥ ማድረጋቸውን፣ ለአጣሪ ጉባኤው ሚያደያ 17 2008 ዓ.ም የሕገ መንግስት ትርጉም አይቅርታ ማቅረባቸውን፣ የፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ሰኔ 6 2008 ዓ.ም በዋለው ችሎት አመልካቹ የሹመት የሰራ መደብ በዘንድ የሕግ ድጋፍ የሰራ ሂደት ባለቤት የሰራ መደብ ላይ ይመደቡ ማለት ተዘጊ እንዳልሆነ ገልጾ አመልካቹ ቀደም ሲል ይሰሩበት ከነበረው የህግ አገልግሎት ሃላፊ የሰራ መደብ ጋር ተመጣጣኝ በሆነ የሰራ መደብ ላይ ሊመደቡ ይገባል በማለት የቀድሞ ውሳኔውን በማሻሻል መወሰንን እንዲሁም በዚህ ውሳኔ መሰረት እንዲፈጸምላቸው ለህዋላ ከተማ የመጀመሪያ ደረጃ ፍርድ ቤት የአፈጻጸም ክስ ያቀረቡ ሲሆን ተጠሪው መሰሪያ ቤት አመልካቹ በየካቲት እና በመጋቢት ወር 2008 ዓ.ም ከሰራ ገቢታቸው በመቅረታቸው በዲሲፕሊን ከሰራ የተሰናበቱ መሆኑን ለፍርድ ቤቱ ያስረዳ በመሆኑ ፍርድ ቤቱ በዲሲፕሊን ጉዳዩ ላይ ይገባኝ ማቅረብ እንደሚችሉ በመገለጽ መዝገቡን መዘጋቱን ከቀረበው መዝገብና ከተደረገው ተጨማሪ ማጣራት መገንዘብ ተችሏል።

አመልካቹ በተለያዩ ጊዜ ጉዳያቸውን በየደረጃው ለሚገኙ የክልሉ እና የፌደራል ፍርድ ቤቶች በማቅረብ ውሳኔ አገኙት ለያለ አጣሪ ጉባኤው የህዋላ ከተማ የመጀመሪያ ደረጃ ፍርድ ቤት ውሳኔ የአመልካችን ፍትህ የማግኘት ሕገ መንግስታዊ መብታቸውን እንዲሁም የፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎቱ የሰጠው ውሳኔ አለመፈጸሙ የሕግ የበላይነትን የሚቃረን ነው በማለት የሕገ መንግስት ትርጉም ያስፈልገዋል በማለት ያቀረበው የውሳኔ ሀሳብ አግባብ ሆኖ አላገኘውም።

በመሆኑም በአ.ፌ.ዴ.ሪ ሕገ መንግስት አንቀጽ 37 ንዑስ አንቀጽ 1 ማንኛውም ሰው በፍርድ ሊወሰን የሚገባውን ጉዳይ ለፍርድ ቤት ወይም ለሌላ በሕግ የዳኝነት ስልጣን ለተሰጠው አካል የማቅረብና ውሳኔ ወይም ፍርድ የማግኘት መብት እንዳለው ተደንግጓል።

ስለዚህም አመልካቹ ጉዳያቸውን በየደረጃው ላሉ ፍርድ ቤቶች እያቀረቡ ውሳኔ ማግኘታቸው እየታወቀ ፍትህ የማግኘት ሕገ መንግስታዊ መብታቸው ተገደል በሚል የአመልካች አይቅርታ የሕገ መንግስት ትርጉም ያስፈልገዋል በማለት የሕገ መንግስት



ጉዳዮች አጣሪ ጉባኤ ያቀረበው የውሳኔ ፀሳብ ተቀባይነት የሰውም በግለት ምክር ቤቱ በሙሉ ድምጽ ወሰኗል።

ትዕዛዝ

1. የደ/ብ/ብ/ሕዝቦች ፍ/ቤት እሰክ ክልልና ፈደራል ጠ/ፍ/ቤት ሰበር ሰሚ ችሎት ውሳኔ ምክር ቤቱ የሕገ መንግስት ትርጉም በመስጠት ሸርታል።
2. የሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ያቀረቡት የሕገ መንግስት ትርጉም ያስፈልገዋል የውሳኔ ፀሳብ ምክር ቤቱ በሰጠው የሕገ መንግስት ትርጉም ተቀባይነት ያላገኘ መሆኑን እንዲያውቁት ውሳኔው ይደረሳቸዋል።
3. የደ/ብ/ብ/ሕዝቦች ጠቅላይ ፍ/ቤት ም/ቤቱ የሰጠውን ውሳኔ እንዲያስፈጽም ይደረሰው።
4. ፈደራል ጠቅላይ ፍ/ቤት ም/ቤቱ የሰጠውን ውሳኔ እንዲያስፈጽም ይደረሰው።
5. የውሳኔው ግልባጭ ለአመልካች ይደረሳቸዋል።



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፌዴሬሽን ምክር ቤት



The House of Federation
of
The Federal Democratic Republic
of Ethiopia

ቁጥር 69/፳፭/5/266
No
ቀን 29/02/2010
Date

ለፌዴራል ጠቅላይ ፍብት
ኮሚሽን
ለአፋር ክልል ጠቅላይ ፍብት
ለአፋር ክልል ፍትህ ቢሮ
ቤመራ
ለአቶ አንድነት ከበደ
ባለቤት

A

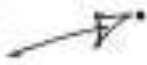
ጉዳዩ፡- የምክር ቤቱን ጠቅላይ ስልጣን

የፌዴሬሽን ምክርቤትን ለማጠናከርና ሥልጣንና ተግባርን ለመዘርዘር በመጣው አዋጅ ቁጥር 251/1993 አንቀጽ 11 እና 56 ምዕራብ በሕገ መንግስት ትርጉም ላይ የሚሰጠው ጠቅላይ አጠቃላይ ውጤት እንደሚኖረውና ጉዳዩ የሚመለከታቸው ወገኖችም ጠቅላይ የምክር ቤት እና የመፈጸም ግዴታ እንዳለባቸው ተደንገዷል።

የኢሊደራ የፌዴሬሽን ምክር ቤት በ5ኛ የፖርላማ ዘመን 3ኛ ግድብ 1ኛ መደብ ስብሰባ አቶ አንድነት ከበደ ባቀረቡት የሕገ መንግስት የትርጉም አዘብታ መነሻነት ከሕገ መንግስት ጉዳዮች አጣሪ ጉዳይ የቀረበውን የጠቅላይ ጠቅላይ የመጨረሻ ጠቅላይ ስጥታል።

በመሆኑም አቶ አንድነት ከበደ የትርጉም ጥያቄ ላይ ምዕራብ የሰጠውን የመጨረሻ ጠቅላይ 3 ገጽ ከዚህ መሸኛ ደብዳቤ ጋር አጣሪ በግድረገ የተሳካላቸው ስልጣን በጠቅላይ መሰረት እንዲፈጸም አስታውታል።

ጉልባዎ



- ለሕገ መንግስት ጉዳዮች አጣሪ ጉዳይ ኮሚሽን
- ለፌዴሬሽን ምክርቤት ጽ/ቤት
- በፌዴሬሽን ምክርቤት
- ለሕገ መንግስት ትርጉምና የግንኙነት ጉዳዮች ዳይሬክቶሬት
- በፌዴሬሽን ምክርቤት ጽ/ቤት



ከሰጠው ጋር
የሰጠው ጠቅላይ
የፌዴሬሽን ምክርቤት ሥልጣን

ጉዳዮች አጣሪ ጉባኤ ያቀረበው የውሳኔ ሀሳብ ተቀባይነት የለውም በማለት ምክር ቤቱ በሙሉ ድምጽ ወሰኗል።

ትዕዛዝ

1. የደ/ባ/ባ/ሕዝቦች ፍ/ቤት እስከ ክልልና ፈደራል ጠ/ፍ/ቤት ሰበር ሰጧ ችሎት ውሳኔ ምክር ቤቱ የሕገ መንግስት ትርጉም በመስጠት ሸርታል።
2. የሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ያቀረቡት የሕገ መንግስት ትርጉም ያስፈልገዋል የውሳኔ ሀሳብ ምክር ቤቱ በሰጠው የሕገ መንግስት ትርጉም ተቀባይነት ያላገኘ መሆኑን እንዲያውቁት ውሳኔው ይደረጋቸው።
3. የደ/ባ/ባ/ሕዝቦች ጠቅላይ ፍ/ቤት ም/ቤቱ የሰጠውን ውሳኔ እንዲያስፈጽም ይደረገዋል።
4. ፈደራል ጠቅላይ ፍ/ቤት ም/ቤቱ የሰጠውን ውሳኔ እንዲያስፈጽም ይደረገዋል።
5. የውሳኔው ግልባጭ ስለመልካች ይደረጋቸው።



የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክር ቤት 5ኛ የፓርላማ ዘመን፣3ኛ ዓመት፣1ኛ መደበኛ ስብሰባ መስከረም 30 ቀን 2010 ዓ.ም

አመልካች፡- አቶ አንደነት ከበደ አድራሻ አፋር ክልል ሰመራ ከተማ

ተጠሪ፡- የአፋር ብሔራዊ ክልል ፍትህ ቢሮ

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክር ቤት በአመልካች የቀረበውን የሕገ መንግስት ትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገ መንግስታዊ ውሳኔ ሰጥቷል፡፡

ውሳኔ

ጉዳዩ ለሕገ መንግስት ትርጉም ሊቀርብ የቻለው አመልካች መጋቢት 7 ቀን 2007 ዓ.ም ጽፈው ባቀረቡት አቤቱታ መነሻነት ነው፡፡ ጉዳዩ በዲሲፕሊን ምክንያት ከተሰጠ የሰራ ሰንብት ውሳኔ ጋር በተያያዘ የተነሳ ክርክርን የሚመለከት ሲሆን መነሻውም አመልካች በአፋር ብሔራዊ ክልላዊ መንግስት ፍትህ ቢሮ በዐቃቤ ሕግነት በቋሚነት ተቀጥረው በክልሉ የሰነዶች፣ ጠበቆችና ግዘብራት ምዝገባ ዓቃቤ ህግ በመሆን ሲያገለግሉ የክልሉ ዓቃቤያን ህግ አስተዳደር ጉባኤ በሥነምግባር ጥፋት ምክንያት ከሰራ እንዲሰናበቱ የወሰነ መሆኑን በመግለፅ በቁጥር 1769/75 በቀን 10/10/2005 ዓ.ም በተፃፈ ደብዳቤ አመልካችን ከሰራ በግንዱ ነው፡፡

አመልካችም ጉዳዩ እንደገና እንዲታይላቸው ለክልሉ ፍትህ ቢሮ ዐቃቤያን ሕግ አስተዳደር ጉባኤ ቢያመለክቱም ጉባኤው በክልሉ ዐቃቤያን ሕግ መተዳደሪያ ደንብ መሰረት አንድ ጊዜ የሰጠውን ውሳኔ በድጋሚ የግድግዳ ስልጣን የለውም በማለት ዘገብቷል፡፡ አመልካች አሁንም ለክልሉ ጠቅላይ ፍ/ቤት ይግባኝ ቢጠይቁም የይግባኝ ግቅረቢያ ጊዜ አልፎታል በማለት ይግባኙን አልተቀበለውም፡፡ የፌ/ጠ/ፍ/ቤት ሰበር ስሜ ችሎትም በጉዳዩ ላይ የተፈፀመ የሕግ ሰውነት የለም በማለት የአመልካችን አቤቱታ ወድቅ በማድረግ ወሰኗል፡፡

የአመልካች ጥናት ሕጋዊ መሰረት በክልሉ ዐ/ሕግ መተዳደሪያ ደንብ መሰረት ጥፋት ቢኖርብኝም ከስ ቀርቦብኝና ከሱ ደርሶኝ መልሰና መከላከያዬን አቅርቤ ሳልከራከር በቀላጢ ደብዳቤ ብቻ ከሰራ ተሰናብተሃል ተብዬ መታገዴ በሕገ መንግስቱ አንቀጽ 37/41 እና 42 የተመለከቱትን መብቶቼን የሚቃረን ነው የሚል ነው፡፡



ጉባዔውም የቀረበውን አቤቱታና የተሰጠውን ውሳኔ እንደተመለከተው አመልካች የዲሲፕሊን ክስ ቀርቦባቸው ክስ ደርሷቸው ተከራክሮ ውሳኔ ስለመስጠቱ የሚገልፅ ነገር ባለመቅረቡ አመልካች ክስራቸው የተሰናበቱት በእግባቡ ነው ወይስ ሕገ መንግስቱን በሚቃረን መልኩ ነው የሚለውን ጉዳይ ለማግራት የክልሉ ፍትህ ቤር ይህንን መረጃ እንዲልክ በደብዳቤ ቁጥር አጠገ/148/12/07 በቀን 01/12/2007 ዓ.ም በደብዳቤ ቁጥር 1351/07 በቀን 01/06/2008 ዓ.ም እና በደብዳቤ ቁጥር 1351/07 በቀን 09/03/2009 ዓ.ም የጠየቀ ሲሆን የክልሉ መንግስት ፍትህ ቤር በደብዳቤ ቁጥር 491/09 በቀን 20/03/2009 ዓ.ም የተጻፈ 7 ገጽ የያዘ የውሳኔ ግልባጭ ያሰውን ለጉባዔው ልኳል።

ከተላከው መረጃ መረዳት እንደተቻለው የክልሉ ፍትህ ቤር የዕቃቢያን ሕግ አስተዳደር ጉባዔ 1ኛ መደበኛ ስብሰባ ቃል ጉባዔ፣ ግንቦት 21 ቀን 2005 ዓ.ም ባደረገው ስብሰባ ውሳኔ ላይ 6 ሰዎች አመልካች በማሰጠንቀቂያ እንዲታላቁ፣ ሰባት ሰዎች ደግሞ እንዲባረር ድምጽ የሰጡና እንደ ሰው በድምጽ ተለቅቦ የወሰኑ መሆኑን ያሰረዳል።

ከዚህ ስብሰባ በኋላ የክልሉ ፍትህ ቤር ደብዳቤ ቁጥር 1769/05 በቀን 10/10/2005 አመልካች በፈጸሙት የሥራ ኃላፊነት በእግባቡ አለመውጣት እና በታየባቸው የኪራይ ስብሰባነት አመልካክት የዕቃቢያን ሕግ አስተዳደር ጉባዔ ከሥራ እንዲሰናበቱ የወሰነባቸው መሆኑን የሚገልጽ ደብዳቤ ጽፏል።

በተጨማሪም በደብዳቤ ቁጥር 101153/2006 በቀን 26/7/2006 ዓ.ም አመልካች ጉዳዩ እንደገና እንዲታይባቸው ለዕቃቢያን ሕግ አስተዳደር ጉባዔ ያቀረቡት አቤቱታ ጉባዔ እንደ ጊዜ የወሰነውን ነገር በድጋሚ የማየት ስልጣን ስለሌለው አቤቱታው ተቀባይነት ያላገኘ መሆኑን የሚገልጽ ደብዳቤ ተያይዟል። አመልካች በክልሉ ዕቃቢያን ሕግ አስተዳደር ጉባዔ ውሳኔ ቅር በመሰኘት ለክልሉ ጠቅላይ ፍቤት ይግባኝ ቢጠይቁም በእንደ ወር ጊዜ ውስጥ አላቀረቡም ተብሎ በይርጋ ውድቅ ተደርጓል።

የአፋር ክልል አቃቢያን ሕግ አስተዳደር ደንብ ቁጥር 12/2004 እንቀጽ 80/1/ መሠረት የዲሲፕሊን ክስ የቀረበበት ግንኛውም ዕቃቢ ሕግ መከላከያ መልሱን አዘጋጅቶ መቅረብ እንዲችል የቀረበበትን ክስ በህርህር የሚገልጽ የክስ ጽሑፍ፣ ክስን ለማረጋገጥ የቀረበበትን ማሰረጃ፣ መልስ የሚሰጥበትን ቀንና ዕቃ ከሚያመለክት መጥሪያ ጋር እንዲደርሰው ማድረግ የመብሉቱ ኃላፊነት እንደሆነ ይገልጻል።



ከጉዳዩ ለመረዳት እንደተቻለው የአቃቤያን ሕግ አስተዳደር ጉባዔ ቃለ ጉባዔ አመልካች መከሰሳቸውንም ሆነ ከሱ በአግባቡ ደርጊቸው ተርቦው መከራከራቸውን አይገልጽም። ጉዳዩ እንደገና እንዲታይላቸው አቤቱታ ቢያቀርቡም ተቀባይነት አላገኘም። አመልካች በግያውቁትና ክስ ባልተረበባቸው እንዲሁም የመከላከል መብት ባልተጠበቀላቸውና ከውሳኔ በጀመረው ስነ ስርዓት ከስራ እንዲታገዱ መደረጋቸውን መረዳት ይቻላል።

ስለዚህ የአፋር ክልል ፍትህ ቢሮ አቃቤያን ሕግ አስተዳደር ጉባዔ ግንቦት 21 ቀን 2005 ዓ.ም አመልካች ከስራ እንዲታገዱ ወስኖ በደብዳቤ ቁ. 1769/05 በቀን 10/10/2005 ዓ.ም አመልካችን ያሳወቀው የክልሉን የአቃቤ ሕግ አስተዳደር ደንብ ቁ. 12/2004ን ያልተከተለና በሕገ መንግስቱ አንቀጽ 37 መሠረት ፍትህ የግግሃት መብትን የሚቃረን ነው። የአመልካችን ሕገ መንግስታዊ መብት የጣሰ ስለሆነ በሕገ መንግስቱ አንቀጽ 9/1 መሰረት ተፈጻሚነት የለውም በግልጽ ምክር ቤቱ በሙሉ ድምጽ ወስኗል።

ትዕዛዝ

1. የአፋር ክልል ፍትህ ቢሮ በአቃቤያን ሕግ አስተዳደር ጉባዔ ግንቦት 21 ቀን 2005 ዓ.ም አመልካች ከስራ እንዲታገዱ በደብዳቤ ቁ. 1769 በቀን 10/10/2005 ዓ.ም አመልካችን ያሳወቀው የክልሉን የአቃቤ ሕግ አስተዳደር ደንብ ቁ. 12/2004ን ያልተከተለና በሕገ መንግስቱ አንቀጽ 37 መሠረት ፍትህ የግግሃት መብትን የሚቃረን በመሆኑ ይህ አስተዳደር አዋጅ ውሳኔና የአፋር ክልል ጠቅላይ ፍ/ቤት እና የፌዴራል ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት የሰጡት ውሳኔን ምክር ቤቱ የሕገ መንግስት ተትርጉም በመሰጠት ሸሮታል።
2. የሕገ መንግስት ጉዳዮች አጣሪ ጉባዔ ያቀረቡት የሕገ መንግስት ትርጉም ያሰፈሉ ጥያቄ የውሳኔ ሀሳብ ምህቤቱ በሰጠው የሕገ መንግስት ትርጉም ተቀባይነት ያገኘ መሆኑን እንዲያውቁት ውሳኔው ይደረጋቸዋል።
3. የአፋር ክልል ፍትህ ቢሮ ውሳኔው መሻሩን እንዲያውቁት ይደረጋቸዋል።
4. የአፋር ክልል ጠቅላይ ፍ/ቤት ም/ቤቱ የሰጠውን ውሳኔ እንዲያሰፈጽም ይደረገዋል።
5. ፌዴራል ጠ/ፍ/ቤት ም/ቤቱ የሰጠውን ውሳኔ እንዲያሰፈጽም ይደረገዋል።
6. የውሳኔው ግልባጭ ለአመልካች ይደረጋቸዋል።





ቁጥር ፳፻፶፭/፳፻፲፱/፳፻፲፱
 No. 20107/2008
 ቀን 2010/7/2008
 Date

ለፌዴራል ጠቅላይ ፍርድ ቤት
 አዲስ አበባ

ለአርግጥ ብሔራዊ ክልላዊ መንግሥት ጠቅላይ ፍ/ቤት
 ፈንፊኔ

ጉዳዩ፡- የምዕቤቱን ውሳኔ ስለግሳወቅ

በአመልካች አቶ ሚካኤል አየሁ እና በተጠሪ የደምቢያሎ ከተማ የመጠየ ውኃ አገልግሎት ድርጅት መካከል በዝብረው የሥራ ክርክር አመልካች ሕገ-መንግስታዊ መብቱን የሚጸረር ውሳኔ በፍርድ ቤቶች ስለተሰጠ የሕገመንግስት ትርጉም እንዲሰጥልኝ በግለት ለፌዴራል የሕገ-መንግስት ጉዳዮች አጣሪ ጉባኤ ሕዳር 23 ቀን 2006 ዓ.ም ግመልዘታቸው ይታወሳል። ጉባኤውም አይታወቅም መርምሮ ጉዳዩ የሕገመንግስት ትርጉም ያስፈልገዋል በግለት የውሳኔ ሀሳቡን ለምዕቤታችን አቅርቧል።

በመገንጠም ምዕቤቱ መጋቢት 3 ቀን 2008 ዓ.ም ብሔራዊ የ5ኛ የፓርላማ ዘመን፣ 1ኛ ዓመት፣ 2ኛ መደበኛ ስብሰባው አጣሪ ጉባኤውን የውሳኔ ሀሳብ በመተባበል የመሠረሻ ውሳኔ የሰጠ በመሆኑ የውሳኔው 7 ገጽ ተያይዞ የተባላቸው ስልጣን የሚመለከታቸው የውሳኔው መሰረት እንድትፈጽሙ ምዕቤቱ አዟል።



ከመሳምታ ጋር

 መሪው ሪፎር ሰዲ
 የፌዴሬሽን ምክር ቤት
 የሕግ ጋራ

- ገልጻል፡**
- ስሕገመንግሥት ጉዳዮች አጣሪ ጉባኤ አዲስ አበባ
 - ለአቶ ሚካኤል አየሁ ባለቤት

የኢ.ፌ.ዲ.ሪ የፌዴራሽን ምክርቤት 5ኛ የፓርላማ ዘመን፣1ኛ ዓመት፣2ኛ

መደበኛ ስብሰባ

መጋቢት 3 ቀን 2008 ዓ.ም

አመልካች፡- አቶ ሚኒክታህ አየሰ

ተጠሪ፡ የደምቢዶሎ ከተማ የመጠጥ ወሃ አገልግሎት ድርጅት

የኢ.ፌ.ዲ.ሪ የፌዴራሽን ምክርቤት በአመልካች የቀረበውን የሕገመንግስት የትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገመንግስታዊ ውሳኔ ሰጥቷል።

ውሳኔ

የዚህ አቤቱታ መነሻ በኢ.ፌ.ዲ.ሪ ሕገ መንግሥት አንቀጽ 37 (1) 'ማንኛውም ሰው በፍርድ ሊወሰን የሚገባውን ጉዳይ ለፍርድ ቤት ወይም ለሌላ በሕግ የላኝነት ስልጣን ለተሰጠው አካል የማቅረብና ውሳኔ ወይም ፍርድ የማገኘት መብት አለው ።' በሚል ተደንግጎ የሚገኘው ድንጋጌ ተጥቧል በማለት በአቶ ሚኒክታህ አየሰ አቤቱታ አቅራቢነት የሕገ መንግሥት ጉዳዮች አጣሪ ጉባኤ ትርጉም ያስፈልገዋል በማለት የውሳኔ ሀሳብ ለምክር ቤቱ በማቅረቡ ነው።

የሕገመንግስት ትርጉም ጥያቄ የቀረበለት የሕገመንግስት ጉዳዮች አጣሪ ጉባኤ ለምክርቤቱ ያቀረበው የውሳኔ ሀሳብ የሚከተለው ነው።

አመልካች ገዳር 23 ቀን 2006 ዓ.ም ለጉባኤው ጽፈው ያቀረቡት አቤቱታ ፍሬ ሃሳብ ተጠሪ ድርጅት ከመንግሥት መዘወትነት ተሰውጦ በፀርድ የሚተዳደር ኢንተርፕራይዝ ሆኖ እያለ ካለአንዳች ምክንያት ከስራዬ እና ደሞዜ ሰላፊናተለኝ ከሴን ወረዳ ፍ/ቤት አቅርቤ ነበር። ፍ/ቤቱም ወደ ስራዬ እንድመለስ እና የተለያዩ ክፍያዎችን በጥቅል ብር 19,630(አስራ ዘጠኝ ሺህ ስድስት መቶ ሰላሳ) ብር እንዲክፍለኝ ወሰኛ ውግኔውን የቁለም ወለጋ ዞን ክፍተኛ ፍ/ቤት ቢያፀናውም የእርሜያ ክልል ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት



ተጠሪ መ/ቤት የመንግሥት መ/ቤት ስለሆነ የሰር ፍ/ቤቶች ጉዳዩን ለማየት ሥልጣን የላቸውም በማለት ውሳኔያቸውን በመሻር የሰጠው ውሳኔ በአኅ-መንግሥቱ የተሰጠኝን ፍትህ የማግኘት እና የመሰራት መብቱን ይጥሳል ሲሉ ቅሬታቸውን አቅርበዋል።

ጉዳዩን በመጀመሪያ በአመልካች ክስ አቅራቢነት የተመለከተው የሰዩ ወረዳ ፍ/ቤት ግራ ቀኙን በማክራክር በመ.ቁ. 13251 መ.ገቢት 8 ቀን 2003 ዓ.ም በሰጠው ውሳኔ ተጠሪ በእርግጥ ክልል የመንግሥት ሰራተኞች አዋጅ ቁጥር 61/94 አንቀጽ 70 እና 71 መሰረት ጉዳዩን በይግባኝ አይቶ የመጠሰን ስልጣን ያለው የእርግጥ ክልላዊ መንግስት የመንግስት ሰራተኞች አስተዳደር ፍርድቤት ነው በሚል ያቀረበውን መቃወሚያ ውድቅ አድርጎታል። ፍርድቤቱ የቁለም ወሊጋ ዞን ሲቪል ሰርቪስ እና መልካም አስተዳደር ጽ/ቤት ከአመልካች በቀረበለት ቅሬታ መሰረት በደብዳቤ ቁጥር 375/SSBG-55/03 ታህሳስ 11 ቀን 2003 ዓ.ም. በተገፈ ደብዳቤ አስፈላጊውን መመሪያ ስተጠሪ መሰጠቱን በመጥቀስ ይህ አካል ። የመንግሥት አካል እና ከእርግጥ ሲቪል ሰርቪስ ኮሚሽን እና መልካም አስተዳደር ባገኘው ውክልና ለሰራተኞች መብት የተቋቋመ ከሆነ ይህ የአዎን ከሳሻ(ተጠሪ) ከአኅ ለግባብ ውጪ ከሰራ የተገለለው እልባት እንዲያገኝ የሰጠው መመሪያ ይህ ፍ/ቤት በአዋጅ ቁጥር 61/1994 አንቀጽ 73/2/መሰረት ለማሰፈጸም ስልጣን አለው።። በማለት ተጠሪ በተቅሶ ብር 19,630(አስራ ዘጠኝ ሺህ ስድስት መቶ ስለሳ ብር) ልዩ ልዩ ከፍያዎችን እንዲከፍል እና አመልካችን ወደ ስራው እንዲመልስ ሲል ወስኗል። ውሳኔውን የቁለም ወሊጋ ዞን ከፍተኛ ፍ/ቤት አስቀርቦ ከመረመረ በኋላ አጽንቶታል።

ጉዳዩን በሰበር የተመለከተው የእርግጥ ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት በመ.ቁ. 128890 የካቲት 19 ቀን 2004 ዓ.ም በሰጠው ውሳኔ አዋጅ ቁጥር 61/94 አንቀጽ 73/2/ በሚያዘው መሰረት የወረዳው ፍ/ቤት ስልጣን የእርግጥ ክልል የመንግሥት ሰራተኞች አስተዳደር ፍ/ቤት የሰጠውን ውሳኔ ማሰፈጸም እንጂ የቁለም ወሊጋ ዞን ሲቪል ሰርቪስ እና መልካም አስተዳደር የፃፈውን ደብዳቤ የሚመለከት አለመሆኑን በመጥቀስ በተጠሪ ድርጅት ስን ምግባር ኮሚቴ ተሰጥቶ የነበረው ውሳኔ በመንግሥት ሰራተኞች አስተዳደር ፍ/ቤት ባለመሻሩ እና የወረዳው ፍ/ቤት ጉዳዩን በቀጥታ መመልከትም የማይችል መሆኑን በመጥቀስ የሰር ፍ/ቤቶችን ውሳኔ በመሻር ውሳኔውን ሰጥቷል።

የእርግጥ ክልል ሲቪል ሰርቪስና መልካም አስተዳደር ቢሮ ለቁለም ወሊጋ ዞን አስተዳደር ሲቪል ሰርቪስና መልካም አስተዳደር አመልካችን ይመለከታል በሚል በቁጥር BA18/M-



98918/1/2 በቀን 30/11/2004 የአስተዳደር ፍብርት ዳኛ በሚል በተረፈው ደብዳቤ ተጠሪ ድርጅት «በራሱ በጀት የሚተዳደር እና መዋቅሩም ከመንግሥት መ/ቤት የተለየ እና በዐርድ የሚተዳደር ስልጣን በአዋጅ ቁጥር 16/89 የመንግሥት ኢንተርፕራይዝ ለማቋቋም በጠየቀው አዋጅ የሚተዳደር መሆኑን ተረጋግጥኛል።። በማለት ጉዳዩን የማየት ሥልጣን እንደሌለው ታልታል።።

አመልካች ከላይ የተጠቀሰውን ደብዳቤ በመያዝ ከሳቸውን ለቁለም ወለጋ ዮን ክፍተኛ ፍብርት ቢያቀርቡም ፍብርቱ በመ.ቁ.090319 በቀን 20/02/05 በሰጠው ውሳኔ የእርሚያ ጠቅላይ ፍብርት ሰበር ሰሚ ችሎት በጉዳዩ ላይ ስልጣን ያለው የአስተዳደር ፍብርቱ ነው ቢልም የአስተዳደር ፍብርቱ ግን ከላይ የተጠቀሰው ደብዳቤ ስልጣን የኔ አይደለም ማለቱን በመጥቀስ ጉዳዩ የአሰሪና ሰራተኛ ጉዳይ በመሆኑ ስልጣን የወረዳው ፍብርት ነው በማለት የአመልካችን መብት በመጠበቅ ወስኗል።።

የሰዩ ወረዳ ፍብርት ፕሬዚዳንት ለአመልካች « ባለቤት» በሚል ኅዳር 6 ቀን 2005 ዓ.ም በግፍት ደብዳቤ አንደኛ ቀደም ሲል ፍብርታችን አመልካች ወደ ሰራ እንዲመለሱ ወስኖ የነበረ በመሆኑ መልሱን ጉዳዩን ለማየት የሚደግፈን ሕገ የሰዩውታላተኛ የእርሚያ ጠቅላይ ፍብርት ሰበር ሰሚ ችሎት የሰጠው ውሳኔ እስካልተሻሻረ ድረስ የእርሚያ ክልል ሲቪል ሰርቪስና መልካም አስተዳደር ቤር በሰሩ ለተዋቀረው መ/ቤት በጸረው ደብዳቤ በማሳወቅ ብቻ ጉዳዩን ተቀብለን ለማየት አንችልም በማለት እንደፈታም አመልካች በጉዳዩ ላይ የእርሚያ ጠቅላይ ፍብርት መመሪያ እንዲሰጥበት መጠየቅ እንደሚችሉ በማሰጠን ዘብ ምላሽ ሰጥተዋል።።

የእርሚያ ጠቅላይ ፍብርት ቀደም ሲል ውሳኔውን በሰጠበት በመ.ቁ. 128890 ላይ አመልካች በፍ/ሥ/ሥ/ሕ ቁጥር 6 መሰረት አዲስ ማሰሪያ እንዳገኘ ጠቅሰው ያቀረቡትን ማመልከቻ በመቀበል ጥር 20 ቀን 2005 ዓ.ም በሰጠው ውሳኔ አመልካች አገኘው ብለው ያቀሩበት ማሰሪያ። የሲቪል ሰርቪስ ፍብርት እና መልካም አስተዳደር የመልሰ ሰጪውን (የአሁን አመልካች) እና የአሁን ተጠሪን ጉዳይ በተመለከተ የሚታየው በወረዳ ፍብርት ላይ ነው እንጂ እኔ የማየት ስልጣን የለኝም በማለት የሰጠውን መመሪያ መሆኑን ይህ ችሎት አይቋል።። በማለት ማሰሪያውን ከፍ/ሰ/ሰ/ሕ/ቁ. 6 አንጻር በመመርመር አመልካች እና ተጠሪ ፍብርት ቤቱ ስልጣን አለው የለውም በሚለው ሲከራከሩበት የነበረ እና የሚያውቁት ነገር መሆኑን በመጥቀስ እንዲፈታም የተጠሪ ሕገወጥ ድርጊት ስለመኖሩ



የቀረበ ግሰረጃ የለም በማለት የአስተዳደር ፍብቄ ስልጣን የሌላም ግለቱ የራሱ ውሳኔ ከመሆኑ ባሻገር የሚሰጠው መመሪያ ይህ ችሎት ከዚህ በፊት ሰጥቶት የነበረውን ውሳኔ መሰረቱን የሚያስለውጥ አይደለም በማለት ወሰኗል። በተጨማሪም አመልካች እንኛቻለው ያሰውን አዲስ ግሰረጃ ግሰረጃውን ባገኘ በአንድ ወር ጊዜ ውስጥ ያሳቀረበ በመሆኑ ተቀባይነት የለውም በማለት ውሳኔውን ሰጥቷል። አመልካች ተግባራዊ ሲሉ የጠቀሱት የሕገ-መንግሥቱ ድንጋጌ አንቀጽ 37/1/ ን የተመለከተ ፍትህ የማግኘት መብት ነው።

ፍትሕ የማግኘት መብት በሕገ-መንግሥቱ አንቀጽ 37/1/ ማንኛውም ሰው በፍርድ ሊወሰን የሚገባውን ጉዳይ ለፍርድ ቤት ወይም ለሌላ በሕግ የዳኝነት ሥልጣን ለተሰጠው አካል የማቅረብና ውሳኔ ወይም ፍርድ የማግኘት መብት አለው። ። በሚል ተደንገኖ የሚገኝ ነው። በተያዘው ጉዳይ አመልካች፣ ተጠሪ ከሰራ ገበያዬ አረናቅሎኛል ሲሉ ክፍተውን ለፍብቄት አቅርበው ጉዳዩን የተመለከቱት የወረዳና ይግባኝ ሰሚ ፍብቄቶች አመልካች ወደ ሰራ ገበያቸው እንዲመለሱ እና ያልተከፈላቸው ልዩ ልዩ ክፍያዎች እንዲከፈሉላቸው ሲሉ ወሰነዋል።

ጉዳዩን በሰበር የተመለከተው የኦሮሚያ ክልል ሰበር ሰሚ ችሎት አመልካች የመንግሥት ሰራተኛ መሆናቸውን ጠቅሶ የሰበር ወረዳ ፍብቄት የመንግሥት ሰራተኛን በተመለከተ የመንግሥት መብቱ የሰነ-ምግባር ኮሚቴ የሚሰጠው ውሳኔ ለመንግሥት ሰራተኞች አስተዳደር ፍብቄት ቀርቦ የአስተዳደር ፍብቄቱ የሚሰጠው ውሳኔ ለአረጋጋም ሲቀርብለት ከማሰራጀት በቀር ጉዳዩን በቀጥታ ተቀብሎ መወሰን እንደማይችል በመገለጹ የወረዳና ይግባኝ ሰሚ ፍብቄቱን ውሳኔ በመሻር ወሰኗል።

አመልካች የኦሮሚያ ክልል ሲቪል ሰርቪስና መልካም አስተዳደር ቤር ለቄለም ወለጋ ዞን አስተዳደር ሲቪል ሰርቪስና መልካም አስተዳደር አመልካችን በሚመለከት በሃፈው ደብዳቤ ጉዳያቸውን ማየት እንደማይችል መገለጹን በመረዳታቸው ጉዳዩን ለዩኑ ከፍተኛ ፍብቄት አቅርበዋል። የዩኑ ከፍተኛ ፍብቄትም የክልሉ ጠቅላይ ፍብቄት በጉዳዩ ላይ ስልጣን ያለው የመንግሥት ሰራተኞች አስተዳደር ፍብቄት ነው ቢልም የአስተዳደር ፍብቄቱ ግን ስልጣኑ የመደበኛ ፍብቄት ነው ማለቱን በመጥቀስ ጉዳዩን አስተድሞ ማየት ያለበት የወረዳው ፍብቄት ነው በማለት ወሰኗል።



አመልካች ጉዳዩን ለወረዳው ፍብይት ይዘው ቢቀርቡም የወረዳው ፍብይት ፕሬዚዳንት በየፍት ደብዳቤ የክልሉ ጠቅላይ ፍብይት ሰበር ሰሚ ችሎት ውሳኔ ባልተለወጠበት እንደዚሁም ጉዳዩን በድጋሚ ለማየት የህግ አገባብ በሌለበት ጉዳዩን ማየት እንችልም በማለታቸው አመልካች በደብዳቤ ጉዳያቸው እንዲይታይ ተከልክሏል። አመልካች በፍ/ሥ/ሥ/ሕግ ቁጥር 6 መሰረት የአስተዳደር ፍብይቱ ስልጣን የለኝም ማለቱን በመጥቀስ አዲስ ማሰሪያ እንዳገኙ በመገለጫ ለክልሉ ጠቅላይ ፍብይት ጉዳዩ በድጋሚ እንዲታይላቸው ቢያቀርቡም አይታዩቸው የድንጋጌውን መሰፈርት አያሟላም በሚል ተቀባይነት አላገኙም።

ተጠሪ መቤት የኦሮሚያ ክልል ምክርቤት " የከተሞች የመጠጥ ወገ እና ፍላጎ አገልግሎት ድርጅቶች ማቋቋሚያ አዋጅ ቁጥር 78/1996። ተብሎ በሚጠቀስ አዋጅ እንደዚሁም አዋጁን ተከትሎ በወጣ። የኦሮሚያ ከተሞች የመጠጥ ወገ እና ፍላጎ አገልግሎት ድርጅት ማቋቋሚያ ደንብ ቁጥር 40/1997። ተብሎ በሚጠቀስ ደንብ አንቀጽ 3 ስር በተራ ቁጥር 57 ላይ ተጠቅሶ የተቋቋመ እና በአዋጁ አንቀጽ 20 የፋይናንስ /የገንዘብ ምንጮች በሚለው ርዕስ ስር "ድርጅቱ በራሱ ገቢ ይተዳደራል፤ የድርጅቱ የገቢ ምንጮች፣ ወጪ ሽያጭና ክፍላጎ አገልግሎት ስራዎች የሚገኙበባቸው የሚገኙበባቸው ለእርዳታና እና በስጦታ የሚገኙ ንብረትና ገንዘብ በከተማው አስተዳደር የሚመደባለትና ከግናቸውም ከተለያዩ የገቢ ምንጮች የሚገኙ ወጪ አገልግሎቶችን ለማቋቋምና ለማስፋፋት የክልሉ መንግስት አቅማቸውን አጥንቶ አስፈላጊውን ድጋፍ ሊያደርግላቸው ይችላል"

በሚል ተደንገን የሚገኝ ሲሆን ከድንጋጌው መረዳት እንደሚቻለው ድርጅቱ በሙሉ ወይም በክፍል ሊባል በሚችል መልኩ ከመንግሥት በሚመደብለት በጀት የሚተዳደር አይደለም። በክልሉ የመንግሥት ሰራተኞች አዋጅ ቁጥር 61/94 አንቀጽ 2/2 መሰረት አንድ ድርጅት የመንግሥት መቤት ሊባል የሚችለው በሙሉ ወይም በክፍል ከመንግሥት በሚመደብለት በጀት የሚተዳደር ሲሆን ነው። በመሆኑም ተጠሪ በአደረጃጀቱ ጥምር በመንግስት መቤትነት የሚመደብ አይደለም። አመልካችም በክልሉ የመንግስት ሰራተኞች አዋጅ የሚሸፈኑ የመንግሥት ሰራተኞች ተብለው ሊጠቀሱ የማይችሉ በመሆኑ የክልሉ የመንግሥት ሰራተኞች አስተዳደር ፍብይት ጉዳዩን ተቀብሎ ያለመዳኘቱ ባግባቡ የሆነ ነው። የቁልም ወለጋ ዞን ሲቪል ሰርቪስ እና መልካም አስተዳደር ጽ/ቤት አመልካችን እንደ የመንግሥት ሰራተኞች በመቁጠር ለተጠሪ መመሪያ መሰጠቱ በተሳሳተ መንሻ ላይ የተመሰረተ ነው።



የሰዮ ወረዳ ፍ/ቤትም አመልካችን እንደ የመንግሥት ሰራተኛ በመቁጠር የቁለም ወለጋ ዞን ሲቪል ሰርቪስ እና መልካም አስተዳደር ጽ/ቤት የሰጠውን መመሪያ እያሰፈጸምኩ ነው ቡሂያ የአመልካችን ክስ በቀጥታ በመቀበል የሰጠው ውሳኔ፤ እንደዚህም የቁለም ወለጋ ዞን ከፍተኛ ፍ/ቤት የወረዳን ፍ/ቤት ውሳኔ በማጽናት የሰጠው ውሳኔ በተሳሳተ መንሻ ላይ የተመሰረተ ውሳኔዎች ናቸው።

የኦሮሚያ ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎትም አመልካች ቤክግ የመንግሥት ሰራተኛ ሊባሉ የማይችሉ ሆኖ ላለ የሰር ፍ/ቤቶችን የተሳሳተ መንሻ ባለማረም አመልካችን እንደ መንግሥት ሰራተኛ በመቁጠር የሰር ፍ/ቤቶችን ውሳኔ በሌላ አገባብ በመሻር የሰጠው ውሳኔ አመልካችን ላልተገባ ውጣ ውረድ የዳረገ እና ፍትህ የማግኘት መብታቸውን ያጣበበ ነው። በመሆኑም አመልካች በፍርድ ሊወሰን የሚችል ጉዳያቸውን ለመደበኛው ፍ/ቤትም ሆነ ለክልሉ መንግሥት ሰራተኞች አስተዳደር ፍ/ቤት አቅርበው ማስወሰን ያልቻሉ በመሆኑ ቤክግ መንግሥቱ አንቀጽ 37/1/ የተጠቀሰው ፍትህ የማግኘት መብታቸው ተገቢል። በመሆኑም ጉዳዩ የከገ መንግሥት ትርጉም የሚያስፈልገው ነው በማለት ጉባኤው በሙሉ ድምፅ ተሰማምቶ ይኸው ጉዳይ ለመጨረሻ ውሳኔ ለፌዴሬሽን ምክር ቤት እንዲተላለፍ በማለት የውሳኔ ሃሳቡን አቅርቧል የሚል ነው።

ምክርቤቱም የአጣሪ ጉባኤውን የውሳኔ ሀሳብ መሰረት በማድረግ በጉዳዩ ላይ የምክርቤቱ የሕገመንግስት ትርጉምና የማንነት ጉዳዮች ጳሚ ኮሚቴ ያቀረበውን የውሳኔ ሀሳብ ተመልክቷል። በዚህም መሰረት ምክርቤቱ እንደተረዳው በዋናነት የሰዮ ወረዳ ፍ/ቤት የቁለም ወለጋ ዞን ሲቪል ሰርቪስ እና መልካም አስተዳደር ጽ/ቤት የሰጠውን መመሪያ እያሰፈጸምኩ ነው ቡሂያ የአመልካችን ክስ በቀጥታ በመቀበል ያሳለፈው ውሳኔ ጉዳዩን በይገባኝ ያየው የቁለም ወለጋ ዞን ከፍተኛ ፍ/ቤት የሰር ፍ/ቤትን ውሳኔ ማጽናቱ በተሳሳተ መንሻ ላይ የተመሰረተ ውሳኔ መሆኑን እና የኦሮሚያ ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎትም አመልካች ቤክግ የመንግሥት ሰራተኛ ሊባሉ የማይችሉ ሆኖ ላለ የሰር ፍ/ቤቶችን ለህተት ባለማረም አመልካችን እንደ የመንግሥት ሰራተኛ በመቁጠር የሰር ፍ/ቤቶችን ውሳኔ በመሻር የሰጠው ውሳኔ የግለሰቡን ፍትሕ የማግኘት መብት ያጣበበ ውሳኔ ነው። አመልካችም በፍርድ ሊወሰን የሚችል ጉዳያቸውን ለመደበኛ ፍርድቤትም ሆነ ለመንግስት ሰራተኞች አስተዳደር ፍርድቤት አቅርበው እንዳያሰወሰኑ መደረጉን መረዳት ይቻላል።





ቁጥር
No. 6095/የ.ፊ.ደ.ፌ/394
ቀን
Date 23/11/2011

በፌዴራል ጠቅላይ ፍርድ ቤት

አዲስ አበባ

ለጠ/የ ተመርጦ አሰጣጥ ጠቅላይ ማኅበር

ደብዳቤ

ጉልበት የምክር ቤቱን ውሳኔ ለልማት

የኢ.ፌ.ዲ.ሪ. ፌዴሬሽን ምክር ቤት በኢ.ፌ.ዲ.ሪ. ልገ መንግሥት አንቀጽ 62 ንዑስ አንቀጽ 1 እና አንቀጽ 63 ንዑስ አንቀጽ 1 ዙፋኑ ስልጣን መሰረት ልገ መንግሥታዊ ክርክርኝን አይቆ ልገ መንግሥቱን በተመርጦ ጠቅላይ ማኅበር።

ምክር ቤቱን ለማስገናኘት ስልጣንና ተግባርን ለመዘርዘር ዘመን ለዎጅ ቁጥር 251/1993 አንቀጽ 11 ንዑስ አንቀጽ 1 እና አንቀጽ 56 መሰረት ምክር ቤቱ የግሰጠው ውሳኔ አጠቃላይ ውጤት እንደሚኖረው እና ጉልበት የሚመለከታቸው ወገኖችም ውሳኔውን የግንክርና የመፈጸም ገደብ እንዳልሰጡ ተደንግጧል።

ስለዚህም የፌዴሬሽን ምክር ቤት በጌ 02 ቀን 2011 ዓ.ም በ5^ኛ የፓርላማ ደመን ፈ^ኛ ዓመት 2^ኛ መደበኛ ንብረት የጠ/የ ተመርጦ አሰጣጥ (ጠቅላይ) ማኅበር አሰጣጥ ጠቅላይ ማኅበር ስርዓት አዘጋጅ ላይ በፌዴራል ልገ መንግሥት ጉልበት አሳይ ንብረት የቀረበውን የውሳኔ ግብዓት ተመልክቶ የሰጠውን የመፈረሻ ውሳኔ 4/ አራት ገጽ ከዚህ መሆኑ ይቀጥላል ስለዚህም ምክር ቤቱ ውሳኔ መሰረት እንዲፈጸም አስታውቋል።



ከሰጣታ ጋር

ጠቅላይ ማኅበር ማኅበር
የፌዴሬሽን ምክር ቤት

ገልጻዊ



በፌዴራል ልገ መንግሥት ጉልበት አሳይ ንብረት
አዲስ አበባ

- ለልገ መንግሥት ትርጉምና የግንኙነት ጉልበት ዳይሬክቶሬት
በፌዴሬሽን ምክር ቤት ደብዳቤ

የኢ.ፌ.ዴ.ሪ የፌዴራሽን ምክር ቤት 5ኛ የፓርላማ ዘመን

4ኛ ዓመት 1ኛ መደበኛ ጉባዔ

መስከረም 29 ቀን 2011 ዓ.ም

አመልካች፡- ወ/ሮ ካሳይ አሸቴ

ተጠሪ፡- የህገን ዕድ ታምራ ሞግቢት ወ/ሮ አሰክላ ዘመድኩን

የኢ.ፌ.ዴ.ሪ ፌዴራሽን ምክር ቤት አመልካች ያቀረቡትን የሕገ መንግስት ትርጉም ጥያቄ መርምሮ የሚከተለውን ሕገ መንግስታዊ ውሳኔ ሰጥቷል

ውሳኔ

ጉዳዩ ቢጋብቻ በፊት የባለይዘታነት መጠት የተገኘበት የገጠር ይዞታ መራት ይኖራል፤ የሚመለከት ሲሆን የአሁን ተጠሪ የሚች ወላጅ አባቱ አቶ ታምራ ወ/ጌርቆስ የሆነ ያሰነዘቢ

በውርስ ሊተላለፍልኝ የሚገባ የገጠር የአርሻ መራት፤ ቤቶች እና ባዕር ዛፍ አመልካች ስለያዙ ሰቀው እንዲያሰረክዱኝ በማለት በሞግቢታቸው በኩል በአማራ ቤሔራዊ ዘልላዊ መንግሥት ሰሚን ሸዋ ዞን ለመንዝ ማማ ምድር ወረዳ ፍርድ ቤት ላቀረቡት ከስ የአሁን አመልካች ተጠሪው የሚች ልዩ መዋገን ስለማላውቅ እና የቤተሰብ አባል ስላልሆነ የገጠር የአርሻ መራት፤ ንብረትና ህብት ልጠየቅ አይገባም፤ ሚችን ለ17 ዓመታት በመንዘብክባና በመሞር ስለቆየሁ ከክል መጠን ካልደረሱ የጋራ ልጆቻችን ጋር ብቻ ወራሾች ሃን በማለት መልስ ሰጥተዋል ።

የወረዳው ፍርድ ቤት ክርክሩን የሰውና የሰንድ ማሰረጃ በመመልከት ይዞታዎቹን ሚች አቶ ታምራ ወ/ጌርቆስ ከአመልካች ጋር ከመጋቢታቸው በፊት የያዙት መሆኑን፤ በ1990 ዓ.ም ከተጋቡ በኋላ እና ከ1997 ዓ.ም በተደረገው የመራት ተጠሪም ሆነ ከዚያም በፊት አመልካችን የጋራ የይዘታው ባለመጠት እንዳላደረጉባቸው አረጋግጧልሁ ስለዚህ አመልካች በመራቱ ላይ ምንም አይነት መጠት የሌላቸው በመሆኑ የሚች አቶ ታምራ ወ/ጌርቆስ ልጆች የሆኑት የአመልካች ሁለት ልጆች እና ተጠሪ መሪዎችን ተረክበው አኩል እንዲካፈሉ ሲል ወስኗል። ውሳኔው በክልሉ ይገባኝ ሰሚ ፍቅር የሆነ ሲሆን፤ ጉዳዩን በሰበሮ የተመለከቱት የክልሉና የፌዴራል ሰበር ሰሚ ችሎቶች ለሰበሮ እያሰተርጩም በማለት መዘገቡን ይገባቸዋል።



አመልካች ይህንን ውሳኔ በመቃወም ህዳር 13 ቀን 2008 ዓ.ም በተጻፈ የሕገ መንግሥት ትርጉም አቤቱታ ለሕገ መንግሥት ጉዳዮች አጣሪ ጉባዔ አቅርቦዋል። ጉባዔውም ጉዳዩን በመመርመር ለአማራ ብሔራዊ ክልላዊ መንግስት የገጠር መራት አስተዳደርና አጠቃቀም ቢር ደብዳቤ በመጻፍ ማስረጃ እንዲቀርብ በጠየቀው መሠረት ከጽ/ቤቱ በቀን 03/08/08 ዓ.ም በቀጥታ አካላዊ/መ/960/08 በተጻፈ ደብዳቤ "አመልካች ከሚከራከሩባቸው መራቶች ሌላ መራት የሌላቸው መሆኑን፣ ሚች ለተጠሪ ቀሰብ መክፈላቸውን እንደማያውቁ፣ መራቱን እንዲካፈሉ የተወሰነው ለሚች ሦስት ልጆች መሆኑን፣ መራቱን በ1983 ዓ.ም ሚች በድልድል ሲያገኝ ከአመልካች ጋር ጋብቻ እንዳልነበራቸው፣ በ1997 ዓ.ም የይዞታ ማረጋገጫ ደብተር ለባለይዞታዎች ሲሰጥ ቢጋብቻ ውስጥ ቢሆኑም አመልካች በጋራ ባለይዞታነት አለመመዘገባቸውን፣ ከቀበሌው አስተዳደር ጽ/ቤት ከቀበሌው አካባቢ ጥበቃ መራት አስተዳደር እና አጠቃቀም ጽ/ቤት የቀረበሰት መሆኑን ማረጋገጫ አግኝቷል

ጉባዔው በተጨማሪ ባደረገው ማጣራት የክልሉ የገጠር መራት አስተዳደርና አጠቃቀም አዋጅ ቁጥር 133/98 እና የማስረጃው ጸደቀው መመሪያ ውስጥ መራት በጉልበት፣ በመኖርጠር ችሎታ ወይም በካርታ ለሚገኝ ሳይሆን የተፈጥሮ ሀብት በመሆኑ የባለቤትነት መብቱ የመንግሥትና የህዝብ ስለሆነ እና ቢጋብቻ ውስጥ ተጋቢዎች የመራትን ምርታማነትና ውጤታማነት በማሻሻል በመጨመር እና በመሰወጥ የሚያስፈልጉት አስተዋጽኦ በምን ለግባብ ታይቶ በተሰይ ሴቶችን በሚጎዳ ሁኔታ ከጋብቻ በራት የተገኘ የገጠር ይዞታ መራት የግል ሆኖ እንደሚቀየል የተደነገገበትን ምክንያት ለመረዳት የክልሉ ምክር ቤት አዋጁን ሲያወጣ በረቀቅ ሕጉ ላይ ያደረገውን የውይይት ቃለ ጉባዔ ምላሽ የሚሰጥ ሆኖ አስማማኝቱን።

የክልሉ የገጠር መራት አስተዳደርና አጠቃቀም ጽ/ቤት በቀን 22/06/2009 ዓ.ም በቁጥር ሀ/መ/አ/አ/ቤ/412/199-01 በጻፈው ምላሽ ሕግ አውጭው አካል ለጥያቄው ምላሽ ቢሰጥ ተገቢነት እንደሚኖረው በመግለጽ የሕጋዊ ተፈጻሚነት ለሁሉም የታዎች በመሆኑ ሴቶችን ባቻ በተሰይ እንደማይጎዳ የሌቶችን ጥቅም ለማስከበርና የተፈጥሮ ሀብትን ከወንዶች ጋር በእኩል ተጠቃሚ ለማድረግ በአዋጁ አንቀጽ 5 ንዑስ አንቀጽ 6 እንደተካተተ፣ በመራት ላይ የግል፣ የጋራ እና የወል የባለይዞታነት መብት ተብሎ የተቀመጠው አርሶ አደሮች በመራት ላይ ያላቸው የባለቤትነት ስሜት ጎልቶ በተፈሰገው መልኩ መራትን ማልማትና መንከባከብ ለማስቻል መሆኑን እና የመራት ጥበት እየተባባሰ በመምጣቱ የመራት መጋራትን በመኖራት ማክበራዊ ፋይዳ ያለውን ቢጋብቻ መተሳሰር በማመናመን ያልተፈለገ፣ አገናኝሆኖ ሥነ-



ምክር ቤቱ በሕገመንግስት ትርጉም እና የማንነት ጉዳይ ጭረ ስሜት ጉዳይ ታይቶ እንዲቀርብ መርቶት የሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ባቀረበው የውሳኔ ሃሳብ ላይ ስራ ወይይት አድርጎል። ከጉዳዩ አመጣጥ መረዳት የሚቻለው አመልካች ኮሚሽን ጋር ባልና ሚስት መሆናቸው ባይነድም በጋብቻ ውስጥ በንብረት ጊዜ ይጠቀሙበት የነበረው ይህ ክርክር የተነሳበት መራት ኪጋብቻ በፊትም ሆነ በጋብቻ ቆይታ ወትት በይዘታነት የተመዘገበው በሚች ስም የነበረ መሆኑን ያሳያል። በአማራ ብሄራዊ ክልላዊ መንግስት የገጠር መራት አስተዳደርና አጠቃቀም አዋጅ ላይ በግልፅ እንደተቀመጠው ተጋቢዎች ከጋብቻ በፊት የነበራቸውን የግል የመራት ይዘታ በጋብቻ ውስጥ አባረው በሚኖሩበት ወትት ክፈለጉ አቀላቅለው በሁለቱ የጋራ ይዘታነት በአንድ የይዘታ ደብተር መጠቀም ካልፈለጉ ደግሞ በየግል ይዘታቸው መቀጠል እንደሚችሉ ይደነግጋል። በተያዘው ጉዳይ ላይም ሚሽ ኪጋብቻ በፊት የነበራቸውን የግል የመራት ይዘታ በጋብቻ ወትትም ጭምር በግል ይዘታቸው አስመዘገበው የቆዩ መሆኑን የሚያመለክት ነው። የዚህ ሃይንቲ የመራት ይዘታ ደግሞ በፍቺ ወይም በውርስ ወትት መራቱ በይዘታነት ላይመዘገበው ተጋቢ የመሆን ውጤት ይኖረዋል።

በዚህ በመገሰት አመልካች ኮሚሽን ጋር ባልና ሚስት በመሆናቸው ብቻ ኪጋብቻ በፊት ሚሽ ያገኙትን እና አመልካች ያልተመዘገቡበትን ይዘታ መራት ግማሹን እንዲካፈሉ በአጣሪ ጉባኤው የቀረበው የውሳኔ ሀሳብ ሕገ መንግሥቱንና ሕገ መንግሥቱን ተከትሎ የውጣውንና የክልሉን የመራት አጠቃቀም እና አስተዳደር አዋጅ እና ደንብ የሚቀረን ሆኖ ተገኝቷል።

ስለሆነም በመደበኛ ፍ/ቤቶች የተሰጠው ውሳኔ ኪሕን መንግሥቱ አንቀጽ 35 ንሑስ አንቀጽ 1 እና 7 እንዲሁም አንቀጽ 40 ንሑስ አንቀጽ 3 እና 7 ድንጋጌዎች ጋር የሚቀረን ባለመሆኑ ምክር ቤቱ ጉዳዩ የሕገ መንግስት ትርጉም አያስፈልገውም በማለት ወስኗል።

ትእዛዝ

1. የውሳኔው ግልባጭ ለባለጉዳዩ ይሰጥ።
2. የምክር ቤቱን ውሳኔ እንዲያውቀው ለፈደራል ሕገ መንግስት ጉዳዮች አጣሪ ጉባኤ ይላኩ።

