



ADDIS ABABA UNIVERSITY
SCHOOL OF LAW & GOVERNANCE STUDIES
LL.M PROGRAM - BUSINESS LAW STREAM

**Participation of Third Parties in Arbitration Proceeding Under Arbitration &
Conciliation Working Procedure Proclamation, Proclamation No.1237/2021**

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Addis Ababa, Ethiopia

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A thesis submitted in partial fulfillment for the Award of Masters of Laws (LL.M)
at College of Law and Governance Studies, Addis Ababa University

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Declaration

I, undersigned, declare that the thesis is my original work and it has not been presented for a degree in any other University and that all sources of materials used in the thesis have been duly acknowledged.

Anbiko Jarsa

Abstract

The virtue of Arbitration is consent of contacting parties in arbitration agreement. Moreover, Arbitration has privity nature. At this juncture, modern business transaction is complicated drastically and the park of arbitration requires the participation of diverse parties that didn't not signed arbitration agreement. This is because; arbitration proceedings emanating from arbitration agreements of signatories may confront and has impact on the legal and financial interest of third parties. This calls to have some exception on the consensual and privity nature of arbitration for the sake of third parties right and interest protection. To this end, nations and international arbitral institutions set way out either by developing theories or making their laws conducive for third parties participation in arbitration proceedings. Ethiopia enacted a new Arbitration and Conciliation Working Procedure Proclamation which superficially accept third party participation in the arbitration proceedings. Nevertheless, the unanimous consent criteria from the contracting and third parties seem a four side wall that impedes participation of third parties in arbitration proceedings. Besides, under the new proclamation the provision on third party Participation failed to set specific procedure which can go with the distinctive nature of arbitral proceeding. Besides, third parties, conditions and circumstances to allow joinder and intervention of third parties aren't clearly stipulated. This work found out that the new proclamation is inimical for third party participation in arbitration proceeding. Hence, the new proclamation should be welcoming for consented third parties so as to make arbitration effective and competent. Moreover, it should incorporate provisions for third party participation which are accustomed to the unique nature of arbitration.

Key words: Commercial Arbitration, Third party participation

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List of Acronyms

AACCSA	Addis Ababa Chamber of Commerce Sectorial Association Arbitration
ACICA	Australian Centre for International Commercial Arbitration ACICA
ACWP	Arbitration Conciliation Working Procedure Proclamation
ADR	Alternative Dispute Resolution
CPC	Civil Procedure Code
DCPC	Dutch Civil Procedure Code
EACC	Ethiopian Arbitration and Conciliation Center
FAA	Federal Arbitration Act
FDRE	Federal Democratic Republic of Ethiopia
FHC	Federal High Court
FSC	Federal Supreme Court
HKIAC	Hong Kong International Arbitration Center
ICC	International Chamber of Commerce
LICA	London International Court of Arbitration
NAI	Netherland Arbitral Institute
NYC	New York Convention
RUAA	Revised Uniform Arbitration Act
SCC	Stockholm Chamber of Commerce
SIAC	Singapore International Arbitration Center
UNCITRAL	United Nations Convention on International Trade Law

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CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

The unpreventable nature of dispute among two or more parties engaged in a business or any other relationship make them in sighted about the potential problems and agreeable process to solve the existing problems.¹ This is made via consensual method of problem solving which emanated from the inherent desire of parties.² The foundation for this consensual arbitration is the arbitration agreement which is the revelation of parties consent to arbitrate and the epicenter of the whole arbitration.³ In a nutshell, the principle of contractual nature of arbitration preclude third parties to participate in the arbitration proceeding⁴ In sum Arbitration is the most common Alternative Dispute Resolution mechanism in international commercial transaction which helps to settle dispute in a very private and sealed procedure limited to interested parties⁵

As epitomized in the above paragraph the arbitration agreement, covenant of the parties, made parties in the arbitration proceeding crystal clear.⁶ In principle the question of who participates in arbitration proceedings is limited to the parties who gave their consent explicitly, signatories, to arbitrate their dispute and they are sovereign.⁷ Moreover these consented parties are free to grant the tribunal to hear their dispute, independent in choosing an arbitral institution, the jurisdictional law and how the arbitration process is conducted.⁸

Conversely, at this juncture modern business transaction both at domestic and international level are complicated drastically and require the participation of diverse parties that didn't not signed

¹ Roger S. Haydock, *civil justice and dispute resolution in the twenty-first century: mediation and arbitration now and for the future*, W. Mitch. L., 746, (2000)

² David spencer, *Essential dispute resolution*, 1, 2002

³ Emilia Onyama , *International commercial arbitration and the arbitrator's contract* , 8, 2010

⁴ Stavros Brekoulakis, *The Relevance of the Interests of Third Parties in Arbitration: Taking a Closer Look at the Elephant in the Room*, 1171, Pen. St., 113:4, (2009)

⁵ Okuma kazut ake , *Party autonomy in international commercial arbitration: Consolidation of multiparty and class wide arbitration*, Int'l & Comp. 1 , 190, (2003)

⁶ James M. Hosking, *The Third Party Non-Signatory's to Compel International o Compel International Commercial Arbitration: Doing Justice without Destroying Consent*, 4, pepp. Uni. 472 (2004)

⁷ Pursuant to the provision of article 19(1) of the UNCITRAL model law, parties are free to agree on the procedure followed by the arbitral tribunal in conducting the proceedings

⁸ Elizabeth shackelford, *party autonomy and regional harmonization of rules in international commercial arbitration*, 901, un. pitts. 67:897 (2006)

arbitration agreement.⁹ Moreover in international commercial transaction the field of dispute may not always with in a claimant and a respondent however there may be involvement of numerous parties in the dispute¹⁰ In doing so, parties who initially entered in to arbitration agreement and who are required to perform it may lack connection between them.¹¹ These parties are third parties¹² and non-signatories.¹³ The arbitration proceedings emanating from arbitration agreements of signatories may confront and has impact on the legal and financial interest of third parties that are closely related to the dispute due to the complexity nature of transactions¹⁴ It is inevitable that the arbitration proceeding between the signatories may have possible effect indirectly on the right of third parties and accordingly, it is logical to make third parties part of the proceeding so as to protect their interest.¹⁵

Recently Ethiopia enacted Arbitration and Conciliation Working Procedure Proclamation which incorporates participation of third parties in arbitration proceedings. Broadly speaking, the new Proclamation here in after ACWP Proclamation entrench two fold mechanisms for third parties involvement on dispute emanates from arbitration agreements. The first is a call for third parties to involve in the existing proceedings. This aims at precluding third parties right from being affected by arbitral tribunals decisions, prudential clause, and to make third parties liable and pay compensation for contracting parties . It requires unanimous vote of contracting and third parties to become part of the proceeding.¹⁶ The second is remedial provision which vest for

⁹ Stavros Brekoulakis, *Supra* note 4, 1169

¹⁰ Franz Schwarz and Christian Konrad, *The Vienna Rules: A Commentary on International Arbitration in Austria*, 332,2009

¹¹ Bernard Hanotiau , *Multiple Parties and Multiple Contracts in International Arbitration*,35, 2009

¹² The term third party is used in this paper in line with the new Arbitration, conciliation and working procedure proclamation as referring to , seems that , parties who has not consented to an arbitration agreement however their interests are potentially affected by the arbitral award and when the contracting parties have intention so as to take their liability and to pay compensation for them

¹³ Being non signatory is a common law notion which donates parties who never signed the arbitration agreement but owing to implied consent and agency they may either compel signatories to the agreement to arbitrate or be compelled to arbitrate Anthony M. DiLeo, *The Enforceability of Arbitration Agreements by and Against Non signatories*, 2 J. AM. ARB. 31, 33 (2003)

¹⁴ Stavros Brekoulakis, *Supra* note 4, 1169

¹⁵ *Id* at 1173

¹⁶ *Arbitration and Conciliation Working Procedure Proclamation* ,2021, s 5

third parties or contracting parties the right to object the decision of the tribunal which is rendered in default proceeding of them.¹⁷

Hence this paper focuses on participation of third parties in arbitration proceeding under ACWP Proclamation and examines the room left for third parties, Mechanism and procedure for the participation of third parties in arbitration proceeding. Moreover, it examines participation of third parties in different jurisdictions to make relevant as well as crucial take away and legal techniques that host third parties in the proceeding. Lastly, this paper recommends possible measures that need to be taken to make the new Proclamation more conducive for third parties participation and eventually increase efficiency of dispute resolution process.

1.2. Statement of the Problem

In commercial world, the involvement of commercial arbitration had developed from the desire of the actors in commercial transaction to find solution for disputes in fair, expeditious and economical manner which ultimately enable them to continue trade with confidence.¹⁸ To achieve this, parties to international commercial transaction entered in to arbitration agreement which is fundamental to arbitration proceedings.¹⁹ And again, consent which is the yellow part of the arbitration agreement, uncover the parties intention to participate in arbitration proceedings.²⁰ Third parties whose consent haven't been secured in arbitration agreement and didn't anticipate to participate in the arbitration proceeding may be victimized and their legal and financial interest might be affected, by the arbitration proceedings of consented parties.²¹

¹⁷ Id at s 8

¹⁸ Lynden Macassey, *International commercial arbitration, its origin, development and importance*, 519, Amer. Bar Asso. Jou., vol. 24, no. 7,(1938)

¹⁹ Rajveer, *Parties' autonomy in international commercial arbitration*, 1205, Int'l Jou. of Scie. & Eng. Rese. , Vol. 9, (2018)

²⁰ Sunday A. Fagbem, *The doctrine of party autonomy in international commercial arbitration: myth or reality?* 226, Afe Babalola University: j. of sust. dev. law & policy, Vol. 6: 1, (2015)

²¹ Stavros Brekoulakis, *Supra note 4*, 1169

Like in other jurisdictions ACWP Proclamation incorporated third party participation mechanisms which pave the opportunity to participate in bilateral arbitration proceedings so as to prevent the possible adverse effects.²²

In spite of the assurance of third parties participant under ACWP proclamation, the followings are problems that triggered the research.

ACWP proclamation required the unanimous consent of both contracting and third parties for the assurance of third party participation in the proceeding. To state it explicitly, when third parties request to intervene in the proceeding and either or both camps of the parties in the arbitration agreement objected third parties, the proceeding has no floor for third parties. Likewise, at the time of mandatory joinder and third party voluntary participant, the objection either from the contracting parties or from the third parties makes the proceeding only to parties in the arbitration agreement

The prevalence of consent in ACWP proclamation closed third parties chance to protect their interest in arbitration proceedings. These third parties are mere observer of the proceeding until final award is rendered, despite they produced evidence and proofed that they have clear interest to participate in the proceeding. The proclamation doesn't incorporate any mechanism for third parties to protect their interest at the time of the proceeding. Moreover, the tribunal doesn't have any role in deciding the participation of third parties in the proceeding. Simultaneous proceeding, litigation and arbitration, due to close door policies of signatory parties towards third party participant defeat the very purpose of arbitration, to solve disputes with relative low cost and short period. Parallel proceeding may give birth to conflicting award and judgment. Consequently to take part in private and public adjudication by either /both signatory parties hampers the efficiency and effectiveness of private adjudication.

²² Arbitration and Conciliation, Working Procedure Proclamation ,supra note 16, s 5

Altogether making participation of third parties part and parcel of ACWP proclamation and requiring unanimous vote for participation seems "serving the spaghetti and prohibiting the spoon"

Seemingly ACWP proclamation give chance for two types of third party participants on the arbitration proceeding. The typology mainly focuses on the interest of contracting and non-contracting parties at proceeding stage. Once the proclamation is welcoming to third parties participants, it should clearly state third party participants, the procedure and the ground for their participation in the proceeding. As its cradle, the caption of the provision focuses on intervention of third parties and a detail to some extent deals with interest of third parties potentially affected by the tribunal award. However, Participation of third parties has multi facet. The first is a party who has similar interest with the contracting parties and their interest are affected by tribunal decision, indispensable party. The second is party who has his own right or interest in the proceeding, party intervention. Thirdly, third parties sometimes called by the respondents to pay their contribution or whole indemnity for the damage that they are liable, third party respondent. Finally, there may be consolidation of several pending proceedings in to single arbitration conducted before a single arbitral tribunal.

Accordingly, due to the above problems, third party participant opt to take their cases to public courts to protect their interest, on the other hand voluntary third party participant remains silent until the signatory parties call them to pay their contribution or indemnity under public adjudication. Likewise lacks of clarity on third party participant and the ground for participation raise question on the proper accommodation of third parties participate. The four side wall because of unanimous requirement ignite doubt on the efficiency and effectiveness of the proclamation towards the accommodation of third parties participant in intertwined and complex commercial era.

1.3. Research Questions

Based on the above stated problems the following research questions are forwarded:-

1. How do the Ethiopian Arbitration and Conciliation Working Procedure Proclamation threat the participation of third parties in arbitration?

2. Does the new Arbitration and conciliation working procedure proclamation leave clear and sufficient room for third party participant in arbitration proceedings?
3. Would the unanimous consent requirement of the Proclamation for participation of third parties in the proceedings enable both third parties and signatories to protect respective rights and interest?

1.4. Objective of the Study

1.4.1. General objective - Examining and analyzing participation of third parties in arbitration proceeding under the new Arbitration and Conciliation working Procedure proclamation

1.4.2. Specific objectives: –

1. Analyzing the unanimous consent criteria for participation in line with third parties right protection under the new Arbitration and Conciliation working Procedure proclamation
2. Discussing the relevance of third parties participation to safeguard the interest of signatory parties in the arbitration agreement
3. Identifying third party participant under the new Arbitration and Conciliation working Procedure proclamation
4. Examining procedures for third party participant in arbitration proceeding.

Finally, by exploring other national jurisdictions and arbitration institutions, regarding third party participant, making best experience take away in accommodation of third party participant

1.5. Significance of the Study

The study focus on the problems associated with right and interest of third parties and signatory parties in arbitration proceeding under the new ACWP proclamation. It serves as a reference for third parties, signatory parties and arbitration institutions in resolving the case at hand. Most importantly, since the proclamation is a recent phenomenon in arbitration history of Ethiopia, the study focus on it may serve as a springboard for further studies in the area. Finally its outcome as an input for amendment of the law has worth to mention.

1.6. Scope of the Study

The scope of the study is limited to analyze participation of third parties in the arbitration proceeding under ACWP proclamation. Third parties and the ground that invites them to take part in the proceeding are examined. As its stand, besides the incorporation of third parties in the proclamation, the room left to protect the right and interest of both third party and signatory party in the proclamation are clearly analyzed. Specific cases of tribunal decision are examined. International experience concerning third parties participation in arbitration proceeding is examined.

1.7. Limitation of the Study

Materials regarding third party participant in arbitration, cases arise from the new proclamation and disposed by the tribunal concerning third party participant are scarce and hard to find. To conduct this work alongside with my fulltime duty, judge at FHC, is burdensome. However, I make maximum effort to engulf them.

1.8. Research Design and Methodology

1.8.1. Research design

It is mixed, doctrinal & non-doctrinal, research and the researcher uses qualitative method in a comparative and analytical manner to accomplish the study. This is because it is dedicate on reasons, justification or logical arguments on legal provisions of ACWP proclamation, civil procedure code, arbitration rules of other nations and international arbitration institutions' related to third party participation. Cases and interviewees response have been analyzed so as to show the practical problems on the participation of third parties in the arbitration proceeding under ACWP proclamation. Moreover, the data which is gathered through interviews, collected from document, minutes, texts relevant to the work is analyzed.

1.8.2 Sampling techniques and data gathering instruments

In selecting the interviewees, the researcher employed purposive sampling method. The total number of the population is arbitration institutions functioning in Addis Ababa, arbitrators at Addis Ababa Chamber of Commerce Sectorial Association Arbitral Institute, Ethiopia chamber

of commerce and Sectorial Association Arbitral Institute, Ethiopia Mediation and Arbitration Center. I select five arbitrators from the first and last institutions. Much credit goes to their experience and expertise in the field.

Qualitative data collection technique involving one-to-one interviews with selected respondents are conducted. The interview questions are semi structure open ended questions which enable to get the personal opinion, experience and attitude of the respondents

The data has been collected from primary and secondary sources. Primary data has been gathered mainly through in depth semi-structured interviews, legislations, tribunal cases, selected Arbitration rules of other Nations and International arbitral institutions rules. Secondary sources include books, Articles, Journals and other unpublished materials. Finally, comparative and analytical approaches have been employed in the study.

1.9. Literature Review

ACWP proclamation is an infant aged law which counts below two years since its promulgation, April 2021. The two primary laws, civil code and civil procedure code, play vital role in arbitration history of Ethiopia since their enactment due to the absence of special law in the field. Accordingly, literatures written in the area are based on these replaced laws. Take this in to account and as far as my exploration and exertion in the area there are few unpublished works in connection with third parties arbitration.

Girmachew Nigussie in his thesis Submitted for partial Fulfillment of the requirements for the LLM in Business Law at Addis Ababa University conducted a research under the title “Commercial Arbitration and Accommodation of Third Parties in Ethiopia.” His work focuses on legal regime and the practice in accommodation of third parties in Ethiopia in particular alongside international commercial arbitration and accommodation of third parties in general. Since it was accomplished before the come in to effect of the new proclamation, ACWP, made its foundation on civil code and CPC. In addition, it identifies research problems on how third parties are accommodated and the relevance of accommodating them in commercial arbitration of Ethiopia. It winds up through addressing two important issues in CPC and civil code

provisions. The rule and procedures regarding condition and circumstance in allowing joinder and intervention of third parties in arbitration proceeding as well as mechanism of challenging the award by interested third parties are not clear and well expressed. Substantive arbitration provisions of the civil code also need amendment so as to promote multiparty and multi contracts based arbitration arrangement.²³

Unlike the above, my works focus on the new ACWP proclamation. Recently provisions of civil code and CPC related to commercial arbitrations and area of the research was overthrown. So problems related to accommodation of third parties and the output of the study is part of that old legal regime. Fortunately, third parties in arbitration proceeding are addressed in the new law. But the condition or the ground for participation, the room left to join or intervene and related problems need further study and undergo in my work. Substance wise, only third parties which are part of the proceeding are part of my work despite the incorporation of remedial provision that enables to protect right of third parties after the award is rendered.

Fekadu Petros Gebremeske, lecture at Addis Ababa University, wrote article on “The Applicability of Arbitration Agreement to Third Parties under Ethiopian Law: Contradictions between Contract Law and Civil Procedure Code Law”. His work intensively examine the privity of contract, consent principle, in arbitration agreement along with modalities of participation in arbitration proceeding. Though arbitration follows similar procedure and modalities of third party participation with litigation, third parties should be part of the proceeding only when they are voluntary to join. Contrary to public courts, forced intervention of third party in arbitration is against the principle of consent in the contract. Consent of third party is compulsory despite the lack of consent from one or both parties in the arbitration agreement.

Like the above thesis this article based its analysis on civil code and CPC provisions of third party participation in arbitration. As I speak many times my work focus on problems emanates from the new ACWP proclamation, third party participant provisions, which repealed the civil code and CPC provisions related to arbitration. Unlike the two codes, the new proclamation

²³ Girmachew Nigussie, Commercial Arbitration and Accommodation of Third Parties in Ethiopia: (2018) (unpublished LLB. Thesis, Addis Ababa University, Ethiopia)

stipulate the requirement of unanimous consent of all parties to decide the fate of third parties participation in arbitration proceeding. My work will examine the room for third parties under ACWP proclamation owing to unanimous requirement.

Alemu Balcha under his article “The place of multiparty commercial arbitration under Ethiopian arbitration law” tries to discuss legal regulation of commercial arbitrations in Ethiopia focused on civil code and CPC. He examined the application of CPC in joinder, intervention, and consolidation of arbitral proceeding in multiparty disputes in connection with consensual nature of arbitration. He concludes that multi-party arbitration has not given necessary space in arbitration law of Ethiopia.²⁴ Similar to the aforementioned works, it also relies on multi party arbitration under the legal frame work of existed laws at that era. Know history is changed, Ethiopia enact separate law to solve commercial related dispute under arbitration forum. Hence my work will focus on the existing law in general and the participation of third parties in arbitration proceeding in particular. Problems associated with condition or grounds of third parties participation and the space left for third parties in ACWP proclamation is never addressed by the above aforementioned works.

To sum up my work unlike the above literatures doesn't effort on the previous law. It is devoted to fill the gap of the very recent law that deals with third parties participation in the arbitration proceeding.

²⁴ Alemu Balcha, The place of multiparty commercial arbitration under Ethiopian arbitration law, 9 No.1, Oromia L. Jou. (2020)

CHAPTER TWO

THE PARTICIPATION OF THIRD PARTIES IN COMMERCIAL ARBITRATION PROCEEDING

2.1. Notion of Arbitration

Then do the same with the virtues. Even if they are many and various, yet at least they all have some common character which makes them virtues. That is what ought to be kept in view by anyone who answers the question, "What is virtue?"

Plato, Meno, 72c-d (W.K.C. Guthrie, Trans.)

This ignites the teleological understanding on the meaning of arbitration and the shared feature of domestic arbitration, international commercial arbitration and investor-state arbitration, domain of arbitration.²⁵ Regarding definition of Arbitration various legislation and materials defined it with related concept despite the difference in expression. Some of them based the distinct character of arbitration as a base for their definition and the rest focus on the arbitration agreement as a foundation for defining it. For instance American Association of Arbitrations Guide to Commercial Mediation and Arbitration for Business People, here in after AAA arbitration is defined it as:

*"the referral of a dispute to one or more impartial persons for final and binding determination, and which is Private and confidential, designed for quick, practical, and economical dispute resolution in which Parties can exercise additional control over the arbitration process by adding specific provisions to their contracts' arbitration clauses or, when a dispute arises, through the modification of certain aspects of the arbitration rules to suit a particular dispute."*²⁶

When we see the ingredients of the definition under AAA, it focused on illustrating feature of arbitration. Among them neutral forum which accepted the referred of the dispute and rendered

²⁵ Deborah R. Hensler & Damira Khatam, *Re-inventing Arbitration: how expanding the scope of Arbitration is reshaping its form and blurring the line between private and p public adjudication*, 383, N EV. L.J. 18:381, (2018)

²⁶ AAA, *A Guide to Commercial Mediation and Arbitration for Business People*, 2013. Available at; www.adr.org (Jan. 16/2022)

final and binding decision, confidentiality, flexibility, procedures in the proceeding not as stringent like public court, and the commercial nature of the dispute are incorporated.

On the other hand, Arbitration can be defined as:

“Arbitration is a private form of binding dispute resolution, conducted before an impartial tribunal, which emanates from the agreement of the parties but which is regulated and enforced by the state” This definition qualifies the contractual nature of arbitration in instituting impartial tribunal and honoring their contractual obligation to arbitrate before the tribunal. Moreover it also gave emphasis on the involvement of state via judicial supervision and supports the enforcement of arbitral awards.²⁷

From the above definitions we can grasp that arbitration is a private consensual format and confidential proceeding. It isn't generally disclosed to the public and depends on private decision maker who are not publicly appointed. Therefore, it is time to ask the type of claims presented before this private format, arbitration.

2.2. Arbitration as a Mechanism to Resolve Trade Related Disputes

2.2.1. Commercial Arbitration

UNCITRAL Model Law on International Commercial Arbitration with amendments as adopted in 2006, here in after, UNCITRAL Model Law on International Commercial Arbitration, which is an essential legal framework for international arbitration procedure in many jurisdictions around the world, stipulates that the model law applies to international commercial arbitration²⁸ and clearly address the term commercial through illustrative approach.²⁹

²⁷ Latham & Watkins, Guide to International Arbitration, 2014, p.1, available at: www.lw.com (accessed at Jan. 16/2022)

²⁸ United Nations 1994, UNCITRAL Model Law on International Commercial Arbitration, Art 7(1)

²⁹ The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.’ *United Nations 1994, UNCITRAL Model Law on International Commercial Arbitration, Article heading at art one*

Importantly, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards hereafter the New York convention, which advocate common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and nondomestic arbitral awards, stated that the application of the convention is limited to commercial legal relationship. It empowers the respective states to define contractual disputes which have commercial nature.³⁰ Like the New York convention, European convention on international commercial arbitration applies to disputes which are international and commercial in nature. The test for definition of commercial character of the dispute before the tribunal is left to the law of the countries.³¹

2.3. Arbitration Proceeding as Battle Field: Consent of the Parties Vs.

Interest of Third Parties

The reality of international commercial disputes has dramatically changed. Before, the great majority of disputes seemed to be bipolar disputes. Presently, an important number of disputes are multiparty and even multi- polar disputes." Eduardo Silva Romero ³²

Unlike litigation, parties in arbitration don't have the right to stand in the proceedings by the mere fact that their legal interests are directly affected by resolution of the dispute. The will of the parties or the obligation to participate in the proceeding depend on valid arbitration contract signed by the parties.³³

Traditionally, arbitration is contractual and bilateral in nature which made consent to be foundation to participate in the proceedings. The privity nature of arbitration presuppose arbitration as a contractual construct which advocate consent and argue that third parties don't have right to join or intervene in the arbitration proceedings unless the existed parties give

³⁰ United Nations 1958, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. I (3)

³¹ Dominique T. Hascher, commentary on European convention on international commercial arbitration of 1961, Art. 1 (1) (c), p.510, https://cdn.arbitration-icca.org/s_commentary_on_the_european_convention_1961.pdf (accessed at Jan. 16/2022)

³² Eduardo Silva Romero, Brief Report on Counterclaims and Cross-claims: The ICC Perspective in Arbitral Procedure at the Dawn of the New Millennium: Reports of the International Colloquium of CEPANI, 73 (2005)

³³ Derek Roebuck, Mediation and Arbitration in the middle Ages, 120, 2013

consent for their participation.³⁴ Moreover, it believed that the existing parties in arbitration proceeding have sovereign power to agree arbitration with third parties since arbitral authority is limited to the term of the contract. So, neither the tribunal nor the court can order the participation of third parties in arbitration proceedings.³⁵

Conversely, in contemporary business transactions the involvement of multi contract and multi-party in international commerce request the accommodation of third parties beyond the consensual underpinning of arbitration.³⁶ As a result, the traditional nature of arbitration faced challenges owing to the sophisticated nature of modern commerce.³⁷

In other word, the nature of complex transactions isn't limited to only two parties governed by the bilateral arbitration agreement. In world of construction, the whole project is the sum total activity of contractors, engineers, architects, subcontractors, suppliers and other actors. Likewise, under umbrella of holding companies there may be so many subsidiaries.³⁸ In both situations there may be intertwined activities among different actors regardless of contractual relations between them. The disputes emanates from these multiparty commercial projects are beyond the bilateral contract of a contractor and employer or a parent company and other commercial actors though only parties in arbitration agreement are allowed to settle their dispute via arbitration.³⁹ Whereas, parties which couldn't signed arbitration agreement obliged to take their claims to public courts. In other words, several commercial actors involved in one commercial project manage their dispute in two different dispute settlement mechanisms, arbitration and public court.⁴⁰ This jurisdictional fragmentation is the outcome of bilateral arbitration agreement of signatory parties regardless of the legitimate interest of other third parties.⁴¹

³⁴ Marja Boman, *privity of contract and multi-party arbitration*, ,13,,2016 Ethiopian 1960 civil code incorporate privity of contract principle under article 1731 which stipulate the provision of a contract lawfully formed shall be binding on the parties as though they were law

³⁵ S. I. Strong, "Intervention and Joinder as of Right in International Arbitration: an Infringement of Individual Contract Rights or a Proper Equitable Measure ,922-923, 1998

³⁶ Id

³⁷ Stavros Brekoulakis, *The Effect of an Arbitral Award and Third Parties in International Arbitration: Res Judicata Revisited*, 16 AM. REV. INT'L ARB. 177, (2005).

³⁸ Id at 1168

³⁹ Id at 1169

⁴⁰ Id

⁴¹ Id at 1170-1171

As a result, Privity of contract and party autonomy in arbitration faces challenge owing to the sophisticated nature of modern commerce regarding legal and financial interest of third party in arbitration proceedings. This in turn leads to a question of how third parties could intervene or join to arbitration proceedings which have impact on their right and interest.⁴²

2.4. The Need to Accommodate Third Parties in Arbitration Proceedings

In a nutshell introducing third parties in arbitration has multi-dimensional purpose. In terms of third parties it enables them to protect their interest according to the principle of equality and fairness. Third party system in arbitration enhances the efficiency of arbitration and arbitrators can easily get the whole and clear picture of disputed issue.⁴³

A. Parties' equality and full opportunity right to present their case

The non-relevancy of third parties in arbitration is a dominant view in jurisprudence and legal discourse. Notably, this view doesn't give chance to third parties to defend their interest in the existing proceedings.⁴⁴ To this, a pragmatic and philosophical analysis that leads to consider the right of third parties to participate in arbitration proceedings could exist.⁴⁵ It is uncover that arbitral tribunal has a duty to ensure equality during the preceding between the existing parties.⁴⁶ Parties in arbitration agreement may sometimes require the participation of third parties so as to fully and properly present their claim or defense. Contracting party may lack the ability to produce their offensive or defensive case without third party participation.⁴⁷ A willing third party may be invited to participate in the proceeding even over the objection of one party so as to present possible claims and defenses. This gives third parties to get chance to prove their similar

⁴² Id

⁴³ Liu Xinger, Analysis of the third party involvement as a new development in Chinese international arbitration rules, PKU Transna. Law Rev., Vol. 4:2, 258, (2016)

⁴⁴ Stavros Brekoulakis, Supra note 4, at 1169

⁴⁵ S. I. Strong, "Intervention and Joinder as of Right in International Arbitration: an Infringement of Individual Contract Rights or a Proper Equitable Measure, supra note 13, at 978

⁴⁶ ACWP Proclamation under article 18 stipulates about equalities of parties in arbitration agreement. They have the right to heard, opportunity to present their case and treat equally throughout the proceeding

⁴⁷ S. I. Strong, "Intervention and Joinder as of Right in International Arbitration: an Infringement of Individual Contract Rights or a Proper Equitable Measure, supra note 13, at 978-979

facts in a single forum. Avoiding multiparty proceedings will help these third parties to avoid re-litigation on the same fact with different parties and additional cost.⁴⁸

Accordingly, equality of parties allows both the signatories and third parties to resolve their dispute in a single forum by avoiding piecemeal litigation, managing cases in a complete way. Arbitration will establish value of benefit when additional cost of money, time and energy is minimized through third party participation in arbitration.

B. To render justice and add value in terms of benefit

To make the door open for multiparty arbitration has reliefs to avoid dispersed litigation and arbitral proceedings. The participation of interested parties in one proceeding reduces additional cost incurred for further litigation. Moreover parallel litigation and arbitration proceeding because of the bilateral nature of arbitration endanger parties to exert more energy to manage cases wastefully. Third parties participation in existing arbitration proceedings is crucial to investigate facts in a consolidated manner and to dispose them completely. To this end, it is hardly difficult to find contradictory awards in arbitration realm. Accordingly, it is possible to say establishing third parties system in arbitration proceeding has value of justice and benefit.⁴⁹

C. As a means of maximizing efficiency

Multiple parties which have separate bilateral contract and different dispute resolution clause may connect in a single commercial project.⁵⁰ In such circumstance, it is possible to raise similar issues as a cause for dispute in more than one set of arbitration proceedings.⁵¹ The efficiency of arbitration can be maximized when these similar issues become part and parcel of an existing single proceeding.⁵² This multi-party arbitration proceeding emanates from common subject matter will avoid the existence of several bilateral proceeding. On the other hand, the existence

⁴⁸ id

⁴⁹ Liu Xinger, supra note 25, at 259

⁵⁰ Stavros Brekoulakis, Supra note 4, at 1175

⁵¹ id

⁵² Id at 176

of parallel pending cases will give birth to contradictory awards⁵³ between a third party and one of the parties in the arbitration agreement. These contradictory awards have negative effect on reliability and authority of arbitration award and ultimately resulted in loss of confidence by parties on arbitration that hold unenforceable award.⁵⁴

D. To expand arbitration domain : Effectiveness

Policy reason in the area implies the effectiveness of arbitration increases when it is an open dispute resolution mechanism whereby the interest of relevant third parties could be taken in to consideration.⁵⁵ The material scope of arbitration becomes wide when it gives due attention to legal and material interest of third parties.⁵⁶ Some commercial matters become non arbitrable because of the lack of third parties accommodation in arbitration.⁵⁷ In insolvency and intra-companies dispute for example several claims and parties to arbitration agreement could be emerged. Therefore; arbitration which isn't welcomed to third parties participant forced the lawmaker to put cases under national court jurisdiction. As a result, the material scope of arbitration become wide if it can provide for multiparty proceedings and considers the interest of all parties involved in the dispute⁵⁸

2.5. Extension of Arbitration Agreement: a Mechanism to Accommodate Third Parties

As it is expressed many times earlier, consent is noteworthy to arbitration. It is manifestation of parties' preference of private adjudication to public adjudication through arbitration agreement.⁵⁹

⁵³ Decisions which are potentially wrong, fallible decision are subjected to res-judicata. Whereas contradictory or irreconcilable awards are awards which are wrong because of their inconsistency determinations despite they have same factual and legal issue. There for wrong decisions are against the purpose of resjudicata. This is because the rationale behind resjudicata principle is the subsequent conflicting determination cannot over turn the previous decision; maintain decision's authority, when the decision determines the legal status of disputed question

⁵⁴ Stavros Brekoulakis, *The Effect of an Arbitral Award and Third Parties in International Arbitration: Res Judicata Revisited*, 16 AM. REV. INT'L ARB. 177, (2005).

⁵⁵ Stavros Brekoulakis, *Supra* note 4, at 1179

⁵⁶ *id*

⁵⁷ *id*

⁵⁸ *Id*

⁵⁹ Tibor Várady , John J. Barceló III , Stefan Kröll , Arthur T. von Mehren , *International Commercial Arbitration - A Transnational Perspective*, (7th ed.) ,85, (2019)

Obviously, it is known that only signatory parties can take their case to arbitrator and settle their dispute under arbitration forum. Nevertheless, in practice either third party seeks to take part in the arbitration proceeding or signatory parties take initiation for the participation of third parties.⁶⁰ To eliminate such dilemma, courts developed different theories that enable third parties accommodation in an existing arbitration proceeding either by extending the arbitration agreement signed by consented parties or joining non-signatories to the existing proceedings.⁶¹

2.5.1 Consent Based Theory

In this theory, the consent of third parties is extracted from contract or behavior of third parties. Contracts that connect third parties with signatory parties are the manifestations of third party's consent to be bound by arbitration agreement.⁶² Reasonable expectation to be bound and benefit from arbitration agreement referred the implicit consent of third parties to be governed by arbitration agreement. Economic relationship between signatories' and third parties, intention of both signatory and third parties during the conclusion of contract, third parties involvement and participation towards existing parties' agreement in forming a single economic reality could be used to discover the implied consent of the party. Therefore, the intention or the action of parties showed their consent to arbitrate.⁶³

Equitable Estoppel – This is a legal principle developed by the US Federal courts so as to bind third parties in the arbitration agreement. This may happen in two conditions, either in case of intertwined issues or theory of direct benefit.⁶⁴ The former is about facts which are claimed by third parties and when the claims indivisibly intertwined with contractual obligations under the agreement signed by signatory parties and both third parties and signatory parties may have some relation in common. At this time third parties strives for taking part in the arbitration proceeding.

⁶⁰ Adyasha Samal, supra note 18, at 73

⁶¹ Extension of arbitration agreement to non-signatory parties isn't well regulated under ACWP Proclamation. Globally, UNCITRAL model law and New York convention doesn't consider extension of arbitration agreement to non-signatories. All focuses on arbitration agreement. Moreover ACWP proclamation and UNCITRAL model law incorporate participation of third parties with the blessing of contracting party. ACWP Proclamation article 6 & 40, United Nations 1958, Convention on the Recognition and Enforcement of Foreign Arbitral Awards article 2 & 5, *United Nations 2010, UNCITRAL Model Law on International Commercial Arbitration, as amended in 2013, article 1 & 17/5/*

⁶² Adyasha Samal, supra note 18, at 73

⁶³ Id

⁶⁴ Moses Margaret, *The Principles and Practice of International Commercial Arbitration*, 18, 2012

On the other hand, the latter focuses on reciprocity of right and duty arising from the contractual obligations. When third parties intentionally benefited from the contract that contained arbitration agreement, they have the duty to accept the obligation arising out of the same contract.⁶⁵ Third parties cannot have direct involvement in the conclusion, performance and termination of a contract which establish right and duties.⁶⁶

Agency - As defined in Black's Law Dictionary, "fiduciary relationship created by express or implied contract or by law, in which one party (the agent)" that is subject to principal's control "may act on behalf of another party (the principal) and bind that other party by words or actions". Regarding this, the agent may enter in to an agreement which contains arbitration clause representing the principal. In this case, though the principal is a non-signatory in the agreement which contain arbitration clause, this non-signatory principal is bound by the arbitration agreement signed by the agent.⁶⁷ Likewise A non-signatory principal allowed to require arbitration founding on the arbitration agreement incorporated in the contract that the agent signed in his/her capacity.⁶⁸

Group of companies - It is about deducing consent of non-signatory parties from its conduct and the relationship that exist in between the non-signatory party, parent company, and subsidiary company.⁶⁹ The weighty control over the other subsidiary company, which may elongate up to the capacity of appointing managers in the subsidiary company, and the organizational and financial tie between parent and subsidiary companies implies there is a tight group structure among them.⁷⁰ In some situations companies under the parent company may exchange emails, letters and invoice with the contracting party which confirms their mutual consent of them to be bond with the arbitration agreement.⁷¹ The participation of non-signatory party in the performance, termination or conclusion and in the process of contract, the tradition

⁶⁵ Id at 35

⁶⁶ Alexandre Meyniel, *That Which Must Not Be Named: Rationalizing the Denial of U.S. Courts with Respect to the Group of Companies Doctrine*, 48,2013

⁶⁷ Moses Margaret, *supra* note 49, at 36

⁶⁸ Anne White sell, "Multiparty Arbitration: The ICC International Court of Arbitration Perspective", 723, 2007

⁶⁹ Adyasha Samal, *supra* note 18, at 16

⁷⁰ Charlie Caher et al., *The Group of Companies Doctrine - Assessing the Indian Approach*, Vol. 9(2), INDIAN J ARB L, 49 (2021)

⁷¹ Id

in using shared intellectual property and common letter head are the implication of implied consent by the non-signatory party.⁷² Therefore, by inferring consents from circumstances Group of companies theory advocate the participation of parties which don't give express consent in arbitration agreement to participate in an arbitration proceeding

2.5.1. Non- Consent Based Theory

This theory is about binding and forcing third parties by the arbitration agreement of signatory parties regardless of express or implied consent of third parties. The underpinning of this theory is the nearby connection between two companies, the managerial control of one company over the other to commit fraud or misconduct with the intent to extend liability and establish accountability. In addition, third parties benefited from the contract which is subjected to arbitration, forced the beneficiary third parties to settle their dispute through arbitration.⁷³

Third party beneficiary - There are circumstances where non-signatory third party can acquire benefit from main contract which contain arbitration clause without giving any implied consent for both main contract and arbitration agreement.⁷⁴ At this time none signatory third parties may demand performance of main contract. Concomitantly, this third party bound to arbitrate the dispute which arises from the main contract.⁷⁵ The crucial point for third parties to be bound by the arbitration clause is that the benefit bestow by the main contract should be deliberate, not accidental, and at the same time the execution of main contract gives direct benefit for the third parties.⁷⁶

Veil piercing – In the contemporary world companies look for new markets across or with in jurisdictions via creation of subsidiary companies which have separate legal entities enjoying limited liability.⁷⁷ However under Corporate Veil piercing doctrine, it has exception and both are a legal entity that cannot be separated, owing to the abusive conduct and fraudulent act of one

⁷² Gary Born, *International Arbitration: Law and Practice*, 69,2012

⁷³ William H. Park, *Multiple Party Actions in International Arbitration*, 4, 2009

⁷⁴ Hosking, *Non-signatories and International Arbitration in the United States: the Quest for Consent Arbitration International*, Vol. 20, No. 3,292, (2004)

⁷⁵ id

⁷⁶ id

⁷⁷ Cathy S Krendt & James R Krendl, *Piercing the Corporate Veil: Focusing the Inquiry*, Vol.55, DENVER L. J., 2 (1978).

entity.⁷⁸ In some situations one entity which has dominance power on the regular activity of the other entity may abuse its power to commit deceit or unfairness to a third party to escape from legal or other obligations.⁷⁹

Most jurisdictions introduce the concept of lifting the corporate veil that enables an entity which has a dominant power liable for the action of the subsidiary company.⁸⁰ Therefore, the subsidiary or affiliate company can be liable for the obligation of parent company and will be bound by the arbitration agreement signed by the parent company and other contracting party.⁸¹

2.6. Third Parties Participation in Arbitration Proceeding in Different Jurisdiction and National Laws

In arbitration third parties may participate in the arbitration proceeding either of parties in the arbitration agreement may seek to add them or they initiate and request to be party of the existing arbitration proceeding. Regarding consent, the contractual and confidentiality nature of arbitration demand the consent of all parties compulsorily for the participation of third parties in the arbitration proceedings.⁸²

To this end, if all parties including third parties agreed to join or intervene in the existing arbitration proceeding, there should be no anxiety. Nevertheless, this is not always true that sometimes one of the signatory parties or a third party lacks to concord for the participation of third parties in the arbitration proceedings.⁸³ At this time there should be an umpire to accept or reject the participation of third parties in the arbitration proceeding.⁸⁴

Accordingly, Commercial arbitration procedure as a whole are regulated by various state, national laws, or rules passed by arbitral institutions. Moreover UNCITRAL arbitral procedure

⁷⁸ Robert B Thompson, *Piercing the Corporate Veil: An Empirical Study*, Vol.76 CORNELL L. Rev, 1036 (1990)

⁷⁹ Juan Marcos Otazu, *The Law Applicable to Veil Piercing in International Arbitration*, Vol.5 (2), MCGILL Jou. of Dispu. Reso., 35 (2018-2019)

⁸⁰ id

⁸¹ Richard Bamforth, Irina Tymczyszyn, Olswang, and Allan Van Fleet, Mark A Corroero, Greenberg Traurig “Joining Non-Signatories to an Arbitration: Recent Developments”, Cross-Border handbook, Vol. 2 , 10, 2008

⁸² Andrea Marco Steingruber, *Consent in International Arbitration*, 166,2012

⁸³ Simon Greenberg, Christopher Kee & Romesh Weeramantry, *International Commercial Arbitration: an Asia-Pacific Perspective*, 215- 216, 2011

⁸⁴ Id at 127

plays a pivotal role as a bench mark for different jurisdictions. It is time to examine mechanism and elements for the participation of third parties in arbitration proceeding in different national and arbitral institutions.

2.6.1. National Laws on Third Party Arbitration

2.6.1.1. SWIZERLAND: a Liberal Approach?

Switzerland addresses third parties issue in arbitration proceeding under the Switzerland rule of arbitration. Participation of third parties through intervention and joinder as well as consolidation of different arbitration proceedings is clearly stipulated.⁸⁵ Regarding third party intervention in arbitration proceeding, third parties are free to take part in the existing arbitration proceeding. None of the contracting parties can object or refuse the participation of third parties if they are willing to participate in the arbitration proceeding.⁸⁶ Equally, the rule also gives recognition to the contracting parties request for third parties participation in the existing arbitration proceedings. Either the claimant or the respondent can call third parties to participate in arbitration proceedings.⁸⁷

Besides, consolidating two pending arbitration cases is possible under the Swiss rule.⁸⁸ The rule gives discretion to tribunals to decide third parties participation in the existing proceeding and for arbitration court⁸⁹ in consolidating different arbitration suits. In consolidating arbitration proceedings the Court consults and confirms from arbitrators in addition to parties in arbitration agreements.⁹⁰ The tribunal and the court consider all relevant circumstance, the link between two cases, the progresses already made in the existing proceeding and at the same time consult with contracting and third parties in exercising its jurisdiction.⁹¹

⁸⁵ Swiss Rules of International Arbitration , 2021, art 6/1/

⁸⁶ Id at art 6/4/

⁸⁷ Id at art 6/4/

⁸⁸ Id at art 7

⁸⁹ Arbitration court in Swiss, comprised of experienced international arbitration practitioners, has the power to administer Swiss Rule under Swiss Arbitration center. It has power to render decision given under the rules. Moreover may issue guidelines and practice notes to implement and supplement the Swiss international arbitration rules either its own or via delegation

⁹⁰ Id at art 7/1/

⁹¹ Id at art 6/4/ & 7/2/

The Swiss Federal tribunal developed jurisprudence about third party participation circumstance via extension of arbitration agreement.⁹² Arbitration agreement signed between signatory parties can extend to non-signatory parties when a transfer of contract or assignment of claim to non-signatory party happened, third party interfere with the performance of the contract knowingly that the contract contain arbitration clause and when the contract is made for the benefit of third party and this third party wants to accept the arbitration agreement.⁹³ Consequently, it is possible to say that the Swiss rules are conducive for third parties arbitration. Likewise, tribunals and courts paved the road to enable third parties participation in arbitration via developing jurisprudence by extending arbitration agreement to non-signatory, third party, based on implied consent doctrine.

2.6.1.2. BELIGUM: Tribunal as an umpire for third party participation, a conservative plus?

In Belgium the mechanism of third party participation in arbitration proceeding is stipulated under the national law of the country called Belgium judicial code. Both interested third party and party in the arbitration agreement can request, intervention, and call upon joinder, the participation of third parties in existing arbitration proceedings.⁹⁴ Third party can put down their request in writing to the tribunal and the tribunal notifies the application for the parties in the arbitration agreement.⁹⁵ The fate for joinder and intervention isn't limited to the consent of

⁹² In arbitration agreement signed between the supplier and the purchaser on the construction and operation of power plant, the supplier subcontract the delivery of diesel engine to the subcontractor. The dispute arose on the main contract between the supplier and purchase which have arbitration clause. The supplier initiated ICC arbitration against the purchaser based on arbitration clause contained in their contract. Latter the purchaser request the subcontractor, third party, to join the arbitration proceeding. The ICC tribunal found that the sub-contractor should participate in arbitration proceeding due its involvement in the conclusion and execution of the contract made between the supplier and purchase which contained arbitration clause. The tribunal referred consent, impliedly, from circumstances like the participation of the subcontractor in several meeting with the purchase, the exchanges of numerous emails by the purchase on behalf of the supplier and subcontractor, Engineers employed by the sub contract appeared at the site and take part in handling technical issues and the subcontractor made direct conversation with the purchase on issues connected with engines. However, the Swiss supreme court set-aside the award rendered by ICC arbitration tribunal in stating the above circumstance couldn't succeed manifestation of implied consent. *Decision 4A_124/2020, 13 November 2020, Legal update: case report | Published on 23-Dec-2020 / Switzerland, accessed on 29 march 2023*

⁹³ Simon Gabriel, Axel Buhr, Johannes Landbrecht and Andreas Schregenberger, international arbitration in Switzerland: Law & Practice, 11 & 19, 2022, available at [practiceguides.chambers.com](https://www.practiceguides.com)

⁹⁴ Belgian Judicial code as amended provisions relating to Arbitration, 2013, art 1696- bis-1

⁹⁵ Id

contracting as well as third parties.⁹⁶ The will of parties in the arbitration agreement towards third party participation is subjected to tribunal blessing.⁹⁷ The agreement of contracting and third parties plus the unanimous consent of the arbitral tribunal is required for third party participation in arbitration proceeding. It implies that the ultimate power rests on the arbitration tribunal.⁹⁸

Accordingly, the discretion of the tribunal to render any interim or conservatory measure⁹⁹, its power to rule on its own jurisdiction and to examine the validity of arbitration agreement infer the power of the tribunal to order the participation of third parties unless otherwise agreement is made by the parties.

2.6.1.3. NETHERLANDS: A moderate approach?

Netherland's arbitration rules which are found in Dutch Civil Procedure Code here in after DCPC, addressed joinder, intervention and consolidation of arbitrations.¹⁰⁰ Third parties who have interest in the arbitration proceedings that took place in between existing parties may request to intervene in the proceedings.¹⁰¹ Likewise, an existing party may request the arbitral tribunal to implead a third person.¹⁰² Procedurally, both existing, impleader, and third party made a notice for joinder and intervention of third party shall be sent to the arbitral tribunal and the tribunal sent the copy to the respective party.¹⁰³ The participation of third parties either the intervention or joinder will be determined by the arbitrator and the same arbitration agreement can apply between existing and third parties.¹⁰⁴ Crucially, parties in the arbitration agreement can agree against participation of third parties in their arbitration proceedings.¹⁰⁵ The tribunal, in allowing the third party to participate in the proceeding shall take in to account the credibility of the request, the adverse effect of a possible judgment against third party and the effect on

⁹⁶ Id

⁹⁷ Id

⁹⁸ Id

⁹⁹ id at 1696-1

¹⁰⁰ Dutch code of civil procedure, Art 1045 & 1046

¹⁰¹ Id at 1045/1/

¹⁰² Id at 1045 a /1/

¹⁰³ Id at 1045 a /1/

¹⁰⁴ Id at 1045/1/

¹⁰⁵ Id at 1045/1/

expedite of the proceeding.¹⁰⁶ When a third party becomes party to the arbitral proceeding, the arbitral tribunal determines the further conduct of the proceeding.¹⁰⁷ Regarding consolidation of arbitration, the Netherlands arbitration act allowed the consolidation of two or more arbitration pending within or outside the Netherlands at the request of one of the parties when their subject matter is connected to each other.¹⁰⁸ The power to consolidate pending arbitration proceedings rests up on the provisional relief judge of the district court of Amsterdam.¹⁰⁹ However, no consolidation may be ordered by provisional relief judges when the parties agreed to avoid the possibility of consolidation.¹¹⁰ Moreover , the subject matter relation between/ among pending arbitration cases, the stage they reached, the possibility of irreconcilable decision due to separate proceeding and adverse effect on speedy proceeding should be considered by the provisional relief judge before ordering consolidation.¹¹¹

2.6.1.4. USA: Especially South Carolina and Utah

In the US Federation arbitration laws are found at federal and state levels. In the US International arbitration at federal level can be managed by Federal Arbitration Act, here in after FAA. This act says nothing about third party participation in arbitration, intervention and joinder. Therefore, most judicial decisions cannot accept consolidation when arbitration agreement is silent on the matter on the ground of protecting party autonomy.¹¹² But later through amendment, the revised uniform arbitration act, RUAA, come up with breakthrough in terms of consolidation.¹¹³

RUAA made parties in the arbitration agreement free to decide in their arbitration agreement either to allow consolidation or not.¹¹⁴ In the absence of preexisting agreement between parties in the arbitration agreement regarding consolidation, court, not tribunals have discretion on consolidation.¹¹⁵ Courts, before deciding consolidation of different arbitration proceeding

¹⁰⁶ Id at 1045/4/

¹⁰⁷ Id at 1045/1/

¹⁰⁸ Id at 1046/1

¹⁰⁹ Id

¹¹⁰ Id at 1046/1

¹¹¹ Id at 1046/2/

¹¹² Timothy J. Heinsz, *Revised Uniform Arbitration Act: Modernizing, Revising, and Clarifying Arbitration Law*, *Jou. of Disp. Resol.* ,12, (2017)

¹¹³ United State Revised uniform arbitration act, 2000, section 10

¹¹⁴ Id at sec. 4(a), 10(c)

¹¹⁵ Id at sec.10 (a).

consider the nature of claims, that emanate from related or similar transactions, the presence of common issues of law and fact in the proceeding, the possibility of conflicting decisions being given due to separate proceedings.¹¹⁶

To conclude, it is possible to say that RUAA introduced a balance between promoting efficiency and respecting party autonomy. Consolidations of different arbitration proceeding with similar claims enhance efficiency arbitrations. On the other hand, addressing consolidation in their arbitration agreement as a prerequisite of consolidating cases is manifestation of party autonomy.

Regarding joinder and intervention, cases have been addressed through Federal Rule of Civil Procedure. The practice for intervention in arbitration and civil litigation seems to be subjected to similar interpretation. The court orders the participation of third parties in arbitration proceedings when the interest of third parties are directly, not indirectly, affected by the arbitration. Equally, third party intervention cannot be allowed when the interest of the third party is sufficiently represented by parties in the arbitration agreement. Likewise joinder of third parties in arbitration can be entertained just as in civil litigation. For a third party to join in existing proceeding, emphasis is given to the full relief of existing party due to third party presence rather than the presence of fragmentary litigation. The existence of piecemeal litigation doesn't make third party indispensable.¹¹⁷

In South Carolina, Uniform arbitration act addresses issues of third party interests.¹¹⁸ It allows participation of third party up on the application to arbitration panel, by a party, to join the existing proceeding when some conditions are fulfilled; the participation of third party should bring complete relief for the parties in the arbitration agreement, his/her claim interest should have shown interest related to the subject matter of the arbitration, default of his participation in the arbitration proceeding obstruct his ability to protect his interest, the absence of third party in

¹¹⁶ Timothy J. Heinsz, *Revised Uniform Arbitration Act: Modernizing, Revising, and Clarifying Arbitration Law*, 13-14, (2001)

¹¹⁷ S. I. Strong, *supra* note 27, at 960

¹¹⁸ South Carolina code, title 15 chapter 48, uniform arbitration act under Article 60

the proceeding may cumbersome the obligation of parties in the arbitration agreement due to inconsistent obligation by reason of his claimed interest.¹¹⁹

As it is impliedly stated above that, third party participation in the arbitration proceeding under South Carolina uniform arbitration act can be initiated by parties in the arbitration agreement. The law doesn't require the consent of third party to take part in the arbitration proceeding. Like South Carolina law, Utah arbitration law doesn't comprise consent of third party to participate in arbitration proceeding. It requires or gives chance for third party, joinder, to be party in arbitration agreement. As a result, it impedes alien joinder from being party to the arbitration agreement and participating in the arbitration proceeding

Therefore in the US, it is possible to say that the legislative enactment is very dispersed towards third party. FAA is silent about third parties and the latter amendment of it, RUAA; address issue of consolidation and left joinder and intervention of third Party for ordinary civil procedure law. State statutes also play pivotal role in filling the gap of FAA

2.6.1.5. FRANCE

Like other nationals, Arbitration in France has international and domestic facets. In relation to this, the country's law on international commercial arbitration doesn't clearly address third party participation in arbitration proceeding.¹²⁰ Likewise, French law doesn't contain explicit provision allowing domestic courts to take part in the arbitral process. Nevertheless, the courts have the capacity or extraordinary jurisdiction to give interim relief in accordance with French Civil Procedure Law, which can go in harmony with the ultimate determination of the dispute.¹²¹ As a result, French court cases involving intervention and joinder of third party underline the holiness of the contract made by the parties and limiting the tribunal to the term of the contract.¹²² Accordingly, the following are doctrines developed by the French courts to make third parties part and parcel of arbitration agreement via extension of arbitration agreement.

¹¹⁹ Id

¹²⁰ W. Laurence Craig et al., international commercial arbitration: international chamber of commerce arbitration, 52 (1997)

¹²¹ Id at 424-425

¹²² Coleen C. Higgins, *Interim Measures in Transnational Maritime Arbitration*, 65 TUL. L. Rev. 1542, (1991)

First, under French law third parties can join the existing arbitration proceedings either as claimants or respondents based on “group of companies” Doctrine.¹²³ This Doctrine was developed by French Courts and propagates about extension of arbitration agreements to one or more companies of the same group, non-signatory third party, when the non-signatory third party take significant role in conclusion, performance or termination of the contract containing the arbitration agreement signed between original parties, signatory parties.¹²⁴ In other words, the involvement of third parties in conclusion, performance or termination of the contract containing the arbitration agreement made by the signatory parties infer the common intention of contracting parties that third parties are bound by their agreement.¹²⁵

Secondly, the French courts also developed “assignment” doctrine which insists the reflexive transformation of arbitration agreement from signatory to third party.¹²⁶ This happens when the contract signed between the parties containing arbitration agreement transfers the contractual benefit and obligation to third parties that did not have connection with the contract that bestows benefit and creates obligation.¹²⁷

Thirdly, the French courts also accept doctrine of “incorporation by reference” which focuses on third party intervention or joined third parties in arbitration proceeding by referring to arbitration clauses.¹²⁸ This is true when non-signatory parties to the original contract incorporate the arbitration clause which is part of the original contract made by other contracting parties.¹²⁹ Therefore third parties should give their full consent in incorporating the contract and its arbitration clause.¹³⁰ Any doubt by French courts towards the consent of non-signatory parties in incorporating the contract brought non-acceptance and rejection of third party participation.¹³¹

¹²³ Franz Schwarz and Christian Konrad, *The Vienna Rules: A Commentary on International Arbitration in Austria*, 333, (2009)

¹²⁴ Richard Bamforth, Irina Tymczyszyn, Olswang, and Allan Van Fleet, Mark A Correro, Greenberg Traurig, *Joining Non-Signatories to an Arbitration*, 9, (2014)

¹²⁵ id

¹²⁶ Simon Gabriel, Axel Buhr, Johannes Landbrecht and Andreas Schregenberger, *supra* note 68, at 118

¹²⁷ Hosking, *supra* note 6, at 500

¹²⁸ Id at 544

¹²⁹ id

¹³⁰ Id at 543

¹³¹ Id

In domestic arbitration, there are guiding principles of litigation under civil procedure code that are also applicable to arbitral proceedings¹³². These principles give clue for the possibility of joinder of claim that requires the participation of additional parties.¹³³ Besides, protection of third parties right at the time of default proceeding is also emphasized. Third party to become judgment creditor of the arbitral proceeding, first their right to be called, summoned, and heard should be respected.¹³⁴

2.6.2. International Arbitral Institutions on Third Party Arbitration

International arbitral rules incorporate mechanisms of third parties accommodation in arbitration. In spite of this, there is a disparity on matters like consent required for joinder, intervention and consolidation, the umpire that makes decision on third party participation and the circumstances as to which party may be joined or arbitrations consolidated. Below I try to summarize joinder, intervention and consolidation provision in selected international arbitral rule in general and consent requirement in particular

2.6.2.1. London Court of International Arbitration Rule

Third parties participation in arbitration proceeding under the London International Court of Arbitration rule here in after the LICA is covers and addresses both joinder of parties and consolidation of arbitration proceedings. The Ruler seems more liberal in relation to a third parties joinder at the request of the existing or the applicant party becomes party in the arbitration even over the objection of other existing party. In other words, the LCIA requires the consent of third party and one signatory party in the existing arbitration. The mere fact that an existing party rejects the request of a third party doesn't necessarily mean third party retreats from being part of the existing arbitration. The request of joinder may be blocked only when contrary agreement has been signed between the existing parties so as to preclude third party participation in arbitration. On the other hand, the LCIA has a blurred provision regarding the fate of intervening parties' fate when signatory parties object to their participation.¹³⁵ Conversely, it seems that the LICA follows stringent approach regarding consolidation of one or

¹³² S. I. Strong, supra note 27, at 949

¹³³ French Code of Civil Procedure, title II, art. 1460

¹³⁴ Id at art 14

¹³⁵ London Court of International Arbitral rule, 2014, Art.22 (1) (viii)

more arbitration proceedings in a single arbitration subject. It requires the unanimous consent of all parties to the arbitration. The power to consolidate cases rests up on the tribunal upon the application of any party and giving rational opportunity for the parties to disclose their views and discussion on cost and otherwise.¹³⁶

2.6.2.2. International Chamber of Commerce Rule

International Chamber of Commerce Rule of arbitration here in after ICC Rule have entrenched mechanisms of accommodating third party joinder and participation in arbitration proceedings.¹³⁷

The request for third party joinder is made by either of the existing parties to the tribunal secretary before or after nomination of any arbitrator by the ICC court.¹³⁸ The request time for joinder being before and after the appointment of arbitrator has substantial effect on the likelihood for third party participation.¹³⁹ If the request is made earlier, ahead of arbitrator appointment, the existing party may force the third party without the agreement of all party.¹⁴⁰ However, all parties, the existing & additional party, must agree unanimously when the request to join third party is made after the confirmation of any arbitrator. Regarding intervention of third parties, like the LICA, the ICC Rule doesn't contain clear provision.

Consolidation of multiple pending arbitration proceeding in to a single arbitration proceeding is well addressed by the ICC arbitration rule. The power to consolidate is given to the court. Parties' agreement and other factual requirements are basic to pass decision on consolidation of pending arbitrations.¹⁴¹

2.6.2.3. Australian Centre for International Commercial Arbitration

Australian Centre for International Commercial Arbitration here in after ACICA Rule, contains detail provisions regarding joinder and consolidation of arbitration proceedings.¹⁴² Regarding joinder, the tribunal up on the request from the existing parties or a third party, has power to

¹³⁶ Id., Art.22 (1) (ix)

¹³⁷ International Chamber of Commerce arbitration rules, 2017, .Art.7-10

¹³⁸ Id at art 7/1/

¹³⁹ id

¹⁴⁰ id

¹⁴¹ Id at art 10

¹⁴² Australian Centre for International Commercial Arbitration rule, 2021, Art.15-17

allow the participation or joinder of party in the arbitration.¹⁴³ Under this rule all parties, existing and additional parties, should give their consent explicitly for the participation of joining party.¹⁴⁴ Moreover there should be a prima facie for the joining party to be bound the arbitration agreement signed by the signatory parties.¹⁴⁵ Regarding consolidation, the rule allows consolidation of two or more pending arbitration proceedings under the rule in to a single arbitration.¹⁴⁶ Before consolidation decision is rendered, consultation among parties and arbitrator is required. The agreement of parties to consolidate pending arbitration cases, the existence of common question of law or fact on all arbitration, the compatibility of arbitration agreement are among the necessary preconditions for consolidation.¹⁴⁷

2.6.2.4. Netherlands Arbitral Institute Arbitration Rule

Netherlands Arbitral Institute of arbitration rule here in after NAI arbitration rule, give cover to third party participation, joinder, intervention and consolidation of pending arbitration proceeding.¹⁴⁸ For intervention, the third party should comply with the arbitration agreement signed between the signatory parties. The consent by third party ought to be in written form.¹⁴⁹ On the other hand, the joinder may be part of the arbitration agreement when the consent of one of the signatory party is given.¹⁵⁰ Therefore, the NAI follows unanimous consent for intervention by a party and the consent of a signatory party for joinder case. Procedurally, under NAI arbitration Rule, joinder of third party is allowed by the tribunal when the tribunal doesn't have no doubts that the joining of third party in the arbitration doesn't result in an unreasonable or unnecessary delay of the proceeding. Moreover, the possible adverse effect of the award against the interested third party will be checked by the tribunal.¹⁵¹

Regarding consolidation, NAI Rule provides that pending arbitral proceedings within or outside of the Netherlands can be consolidated in to a single arbitration proceeding at the request of the

¹⁴³ Id at art. 17.1

¹⁴⁴ Id at art. 17.1 /b/

¹⁴⁵ Id at art. 17.1 /a/

¹⁴⁶ Id at art. 16.1

¹⁴⁷ Id at art. 16.1/a/ /b/ /c/

¹⁴⁸ Netherlands Arbitration Institution arbitration rule, 2015, Art.38, 38 & art 39

¹⁴⁹ Id at art.37/1/

¹⁵⁰ Id at art.38/1/

¹⁵¹ Id at art.38/4/

parties.¹⁵² But consolidation isn't without condition. First, there shouldn't be contrary agreement among the parties on joinder or intervention of third party. Besides, consolidation may be ordered by the tribunal when it doesn't cause unreasonable delay in the pending proceeding, the two arbitral proceeding should closely be connected and consolidating them bring expedite on hearing and avoid the potential risk of irreconcilable decision due to separate proceedings.¹⁵³

2.6.2.5. Stockholm Chamber of Commerce Arbitration Rule

The Stockholm Chamber of Commerce Arbitration Rule here in after SCC Rule, integrate third party mechanisms, both joinder and consolidation, in the amended Rule. Regarding consolidation, the power to consolidate the newly started arbitration with already pending arbitration is vested on SCC Board. Consolidation is realized by the Board when the parties agree; all claims are made under the same arbitration agreement, when arbitration agreements are compatible.¹⁵⁴ In a similar manner, joinder of additional party in the existing arbitration is made by the Board in consultation with the parties. A party to an existing arbitration may request the SCC Board to join one or more additional parties to the arbitration. But time of request is decisive. A party requesting joinder is required to submit a request for joinder as early as possible because the request for joinder made after submission of a statement of defense shall not be considered unless the SCC Board decides otherwise.¹⁵⁵

Accordingly, the SCC Arbitration Rule made a departure from the principle of party autonomy since it compels an additional party to be joined to an existing arbitration without either the additional party's consent, or the consent of the opposing party in the existing arbitration. Besides, it doesn't give right to intervene for additional party in the existing proceedings. Rather, court or tribunal order joinder of additional party

2.6.2.6. Arbitration Rules of the Singapore International Arbitration Centre

Arbitration Rule of the Singapore International Arbitration Center here in after the SIAC Rules contain joinder and consolidation provisions. Regarding the former, any party seeking the

¹⁵² Id at art.39/1/

¹⁵³ Id at art.39/4/

¹⁵⁴ Stockholm chamber of commerce arbitration rule, 2017, at art. 15/1/

¹⁵⁵ Id at art.13/1/

consolidation of two or more arbitration, may file an application for consolidation to the Registrar either prior to constitution of a tribunal or awaiting the constitution of a tribunal.¹⁵⁶ The mandate to receive the application is for the SIAC Court when the arbitration tribunal isn't constituted and of the tribunal itself when it is founded. The tribunal or the court grant consolidation when all parties agreed to consolidate and other criteria listed under the law are fulfilled.¹⁵⁷

Surprisingly, SIAC Arbitration Rule follows similar procedure for joinder of additional party. A party in the arbitration proceeding requesting for additional party has two options.¹⁵⁸ The first is s/he may file an application with the Registrar of SIAC Court to grant joinder prior to constitution of the tribunal.¹⁵⁹ Secondly, s/he may apply to the tribunal waiting for its constitution.¹⁶⁰

Accordingly the court or tribunal order joinder of additional party when all parties, including the additional party to be joined, have consented to the joinder and the additional party to be joined is prima facie bound by the arbitration agreement.¹⁶¹

2.6.2.7. Hong Kong International Arbitration Center Administered Arbitration Rules

Hong Kong International Arbitration Center Administered Arbitration Rules here in after, HKIAC rules have announced both joinder and consolidation provisions. The power to decide participation of third party by way of joinder is devolved to the arbitral tribunal. The tribunal in deciding joinder takes in to account, prima facie, about additional party to be bound by the arbitration agreement.¹⁶² Either a party to the arbitration agreement or additional party may submit a request to arbitral tribunal. Consolidation of two or more pending arbitration is addressed by the Rule at the request of a party when the parties agree to consolidate, the arbitration agreements are harmonious, all claims in the arbitration made under the same

¹⁵⁶ Arbitration rule of the Singapore international arbitration center, 2016, rule 8/1/

¹⁵⁷ Id at rule 8/1/ /a/b/c/

¹⁵⁸ Id at rule 7

¹⁵⁹ Id at rule 7/1/ &/4/

¹⁶⁰ Id at rule 7/8/

¹⁶¹ Id at Rules 7.1(a), 7.8(a) & Rules 8.1(a) and 7.8(b)

¹⁶² Hong Kong International Arbitration Center Administered Arbitration Rules, 2018, rule art. 27/1/

arbitration agreement, when there are a common question of fact or law and where the claims are made more than one arbitration agreement.¹⁶³

Hence, regarding joinder HKIAC rule forces additional party to be joined in to an existing arbitration without the consent of either party in the arbitration proceeding and additional party. Nevertheless, in consolidation the parties should give their consent unanimously for the purpose of consolidating pending arbitrations in addition to other criteria mentioned above.

2.6.2.8. Third parties in UNCITRAL Model Law

The UNCITRAL Arbitration Rule which is adopted in 1985, and to which consecutive amendments have been made in 2006, 2010 and 2013, provide model commercial arbitration rules. Regarding third party participation joinder of third parties in arbitration proceeding is clearly incorporated. The claim to join in the proceeding can be made either at the request of parties in the arbitration agreement or third parties. The tribunals after receiving the request hear all parties and look at the cause for the request. Later the joinder is permitted when the joining of such parties doesn't result in prejudice to any of the parties. Moreover, the consent of opposing and additional parties isn't required for additional party to join arbitration. Regarding intervention by third party this Rule is silent. But it is preferable and logical to think that similar procedure is applied and entertained by the tribunal.¹⁶⁴ Similarly, the UNCITRAL rule doesn't contain consolidation provision yet.¹⁶⁵

Below, the author tries to make a comparative analysis on the above leading international arbitral institutes arbitration rules considering the scope of joinder and consolidation provisions, which address the party or parties applying for joinder of an additional party or consolidation of proceedings, the required consents for joinder of an additional party or consolidation of proceedings and the umpire decides the application for joinder or consolidation.

Regarding request, SIAC, HKIAC, ACICA, and UNCITRAL Rules all permit both joinder and intervention. A party to existing proceedings can request for an additional party to be joined to

¹⁶³ Id at art, 28/1/

¹⁶⁴ The 2010 UNCITRAL Arbitration Rules , supra note 28, Art.17(5)

¹⁶⁵ David D Caron & Lee M Caplan , the UNCITRAL Arbitration Rules: A Commentary, 58, 2012

the proceedings, and an additional party can request to be joined, or intervene, in the proceedings. In contrast, the ICC, SCC, and the LCIA Rules restrict requests for joinder of a party to the existing proceedings, and do not permit intervention by an additional party.

Concerning consent, under SIAC, HKIAC, ACICA, and UNCITRAL Rules, consents isn't required from either the additional party or the opposing party to the arbitration proceedings in the case of an application by an existing party for an additional party to be joined, and consents are similarly not required from the existing parties in an application by an additional party to be joined to the proceedings. As noted above, intervention by an additional party is not permitted under the ICC, SCC, or the LCIA Rules. Pursuant to the SCC Rules, in an application by an existing party, consent isn't required from either the additional party or the opposing party to the arbitration proceedings. The ICC Rules are similar, but contain the additional restriction that no consents is required for joinder of an additional party prior to the appointment of an arbitrator, but consent of all parties is required after appointment of arbitrator.

As to which tribunal or body decides the application for Joinder, the ICC Court determines all applications for joinder since joinder is a pre-arbitrator appointment issue under the ICC Rules. In conformance with SCC, LCIA, and UNCITRAL Rules, the arbitral tribunal decides all applications for joinder since joinder is a post-constitution of the arbitral tribunal issue.

SIAC, HKIAC, and ACICA Rules follow mixed approach in the sense that arbitration court determines joinder when joinder is an issue during pre-constitution of the arbitral tribunal. Equally, the tribunal decides request for joinder when the request is made at post-constitution of the tribunal.

Differently, the SIAC Rules have two fold mechanisms in deciding joinder and unique among others. SIAC Court decides joinder at the time of pre-constitution of the arbitral tribunal and when the decision is otherwise the application for joinder is brought to the arbitral tribunal during post-constitution of the arbitral tribunal.

Like joinder, international arbitral institute arbitration rules follow different approach in consolidating of pending arbitration. The ICC, SAC, SCC, SIAC, HKIAC, and ACICA Rules do not require the consent of the opposing party to the applicant party, or the parties to any of the other pending arbitrations, for consolidation of two or more arbitrations. The LCIA rules adopt two mechanisms. They require the unanimous consent of all parties and no consent is required from the opposing party where a party seeks consolidation of two or more arbitrations under the same arbitration agreement, or compatible arbitration agreements, between the same parties.

Regarding the authorized body the arbitral institution give decision on the application of consolidation under ICC, SCC, HKIAC, and ACICA Rules. On the other hand, LCIA Rules vest the power for arbitration court and arbitral tribunal in the course of pre and post constitution of arbitral tribunal respectively.

2.7. Legal techniques to accommodate third parties in arbitration proceedings

In spite of the contractual nature of arbitration, Participation of third party in the existing proceeding is inevitable. As discussed above, it has dual aspect from the participation of third parties and arbitration itself. In the former, the arbitration agreement may directly or indirectly affect the interest of third parties and require third party participation and in the latter third party participation bring effectiveness and efficiency for arbitration. Here below, I will try to discuss joinder. Intervention and consolidation as mechanisms of accommodating third parties in the existing arbitration proceeding

Joinder: - Joinder in arbitration is a procedural request by an existing party or parties in arbitration agreement to bring third party in pending arbitration. This third party isn't initially named as a party in the arbitration. A request for joinder can be made by the respondent for a third party. Claimant has also the possibility of requesting third party as additional party in the existing proceeding.¹⁶⁶ Joinder of additional parties may be requested at the early stage, before the tribunal is constituted or at a later stage of the proceeding.¹⁶⁷

¹⁶⁶ Felipe Vollbrecht Sperandio, *The Reach of the Arbitration Agreement to Parties Involved in the Same Legal Relationship*, 11 Rev. E-Mercatoria , 189 (2012)

¹⁶⁷ Voser & Schellenberg, *Multi-party and Multi-contract Arbitration Mechanisms in International Commercial*

Intervention: - Like joinder intervention is a means of becoming a part of arbitration proceeding as third party participant to the existing proceeding despite the fact that the request is made by the party itself. A third party applies to the concerned authority to participate as a claimant or respondent in the existing proceeding.¹⁶⁸ Intervention party may present its own separate claim against the claimant or the respondent when its participation in the proceeding is confirmed. Sometimes the party, intervention parties, may not have separate claim against existing parties and request the intervention so as to help one of the parties in arbitration agreement.¹⁶⁹

It is because the outcome of the proceeding will have binding effect on it. This mostly happened in construction arbitration where a subcontractor may intervene in proceedings between an employer and the main contractor in order to help the main contractor in better substantiating his claim against the employer.¹⁷⁰

Consolidation: - Consolidation is different in its nature from the above two mechanisms, it is unification of two or more arbitral proceedings.¹⁷¹ The potentially merged arbitrations are two or more than two and distinct arbitration with its own respective arbitrators. But later these separate proceeding come in to a single arbitration with a single tribunal which has the power to pass an award to all claims that have comprised in the previous detached arbitrations.

Pragmatically, the above third parties participation mechanisms could be possible when there is an agreement among all parties, signatory and third parties, and in the absence of consent when the law allows third party's participation. Furthermore, in the nonexistence of law that permit third party participation and consent criteria, the court or tribunals can give decision about third party participation.¹⁷² Nevertheless, this doesn't mean that the legal framework and practice of third party participation is uniform across the world. As discussed here and there in this work, it may vary from state to states and among international arbitral institutes.

Arbitration, 346, (2009)

¹⁶⁸ Felipe Vollbrecht Sperandio, supra note 151, at 189

¹⁶⁹ It is known as Side intervention which is a unique legal mechanism as part of intervention which is incorporated in some national legal system including Germany, Austria and Switzerland see Dimitar Kondev, Multi-Party and Multi-Contract Arbitration in the Construction Industry

¹⁷⁰ Dimitar Kondev, Multi-Party and Multi-Contract Arbitration in the Construction Industry,17, 2001

¹⁷¹ Isaak I. Dore, *Theory and Practice of Multiparty Commercial Arbitration with special reference to the UNCITRAL Framework*, 1-2, (1990)

¹⁷² S. I. Strong, supra note 27, at 947

CHAPTER THREE

THE PARTICIPATION OF THIRD PARTIES IN ARBITRATION PROCEEDINGS UNDER THE ARBITRATION AND CONCILIATION WORKING PROCEDURE PROCLAMATION

3.1. ACWP Proclamation as a Mechanism to Resolve Business Related Disputes

In Ethiopia ACWP Proclamation applies to business related disputes emanating from contractual and non-contractual relationships that are wholly or partly in existence or likely to exist in the future.¹⁷³ As I explained earlier the 1958 New York Convention requires signatory of the Convention to list commercial related dispute to be resolved via arbitration.¹⁷⁴ Accordingly, ACWP Proclamation followed arbitrable and non-arbitrable dichotomy in an indicative way.¹⁷⁵ Arbitrable cases are commercial related cases driven from contractual and non- contractual relationships of disputing parties.¹⁷⁶

Therefore it is possible to say ACWP Proclamation applies to national and international commercial arbitrations as well as to the recognition and enforcement of foreign arbitral awards which are rendered based on commercial related cases as per ACWP Proclamation.¹⁷⁷

¹⁷³ Arbitration and Conciliation, Working Procedure Proclamation, supra note 16, s 1 and 2

¹⁷⁴ UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, supra note 30, Art. I (3)

¹⁷⁵ Arbitration and Conciliation, Working Procedure Proclamation, supra note 16, s 1 and 2

¹⁷⁶ ACWP Proclamation follows illustrative approach to indicate transactions which are called commercial related matters that are subjected to arbitration, including the supply and exchange of goods or services, agreement for distribution, commercial agent, lease, construction, consultancy, engineering, license for commercial purpose, investment, finance, bank, insurance, mining; joint venture and other business organizations that are not prohibited by this Proclamation, transportation of persons and goods by air, sea and land and includes similar businesses arising from contractual or extra-contractual relations of a commercial nature

¹⁷⁷ Arbitration and Conciliation, Working Procedure Proclamation, supra note 16, s 1 and 2

3.2. The Treatment Accorded to Third Parties under Arbitration and Conciliation Working Procedure Proclamation

The hallmark of parties' taxonomy in the realm of arbitration, as signatory and non-signatory or third parties, is arbitration agreement.¹⁷⁸ Traditionally, a signatory party is a party who made the arbitration agreement according to the law and presumed to have expressly consented to resolve disputes via arbitration.¹⁷⁹ Under ACWP Proclamation arbitration, agreement should follow two format, written and Electronic, to make arbitration agreements.¹⁸⁰ Though the agreement may be made orally, by conduct or any other modalities, it should be downsized to writing and signed by the parties to the agreement and attested by two witnesses.¹⁸¹ Equally important, exchanging of information through Email and any other electronic, magnetic, optical means are mechanism of expressing consent in the arbitration agreement.¹⁸² Conversely, parties who didn't make arbitration agreement through writing or electronics format as stated in the proclamation are third parties or non-signatory parties.¹⁸³

As its stands ACWP Proclamation followed two fold mechanisms for third parties involvement in disputes emanating from arbitration agreements. The first is a call or request for third parties to involve in the existing proceedings.¹⁸⁴ The claim to participate in arbitration proceeding might be made either by third parties or the existing parties in the arbitration agreement.¹⁸⁵ The application or the quest to participate is made before the arbitral award is rendered and it should indicate the interest in the proceeding and the potential adverse effect of the award on their

¹⁷⁸ Individuals or entities may subject to hearing before arbitrators under arbitration processes without signing arbitration clauses. This is done through "Extending" arbitration clause in civil law legal system and by joining "none signatory" in Anglo-American tradition. However the both expression doesn't seems accurate in explaining the situation. The former connote to encompasses or levy duty on those who give consent to arbitrate and the latter made signature mandatory to create commitment to arbitrate despite the recognition of unsigned commitment to arbitrate in some developed legal system. William W. Park, Non-Signatories and International Contracts: An Arbitrator's Dilemma, 1, 2009

¹⁷⁹ Alexandre Meyniel, *That Which Must Not Be Named: Rationalizing the Denial of U.S. Courts with Respect to the Group of Companies Doctrine*, 3, Am.Un.Wash. CL,24(2013)

¹⁸⁰ Arbitration and Conciliation, Working Procedure Proclamation, supra note 16,s2

¹⁸¹ Id

¹⁸² Id

¹⁸³ Id

¹⁸⁴ Id at art.40

¹⁸⁵ id

right.¹⁸⁶ This aims at precluding third parties right from being affected by arbitral tribunals' decisions, prudential mechanism.¹⁸⁷ Likewise, the claim by the parties in the arbitration agreement for calling of third parties is done to shift the liability of contracting party to the upcoming third party to pay compensation on behalf of a party in the arbitration agreement.¹⁸⁸ It requires unanimous vote of contracting and third parties to become part of the proceeding.¹⁸⁹ Objection is another face of third parties' participation in arbitration after the tribunal rendered decision which is called remedial mechanism.¹⁹⁰ The objection is raised either on an arbitral award, before execution, or at the execution stage of the arbitral award.¹⁹¹ This is done by third parties who didn't take participation in the hearing stage of the tribunal and at the same time their rights are affected by the tribunal's award owing to their absence from proceeding.¹⁹²

Accordingly both prudential and remedial mechanisms incorporated under ACWP Proclamation pave the way for third parties right to be heard before the tribunal ¹⁹³ so as to protect their pecuniary interest before and after the award is rendered.

3.3. Unanimous Consent Criteria under ACWP Proclamation: a Conservative Approach?

The enactments of ACWP Proclamation come up with third parties participation in the arbitration proceeding. It gives chance for all third parties whose interests are potentially affected by the arbitral tribunal's award.¹⁹⁴ The time frame for third parties to participate in the existing arbitration proceeding is any time before the arbitral tribunal rendered final decision and between the beginning of arbitration proceeding.¹⁹⁵ ACWP also incorporates the method of third parties

¹⁸⁶ id

¹⁸⁷ id

¹⁸⁸ id

¹⁸⁹ id

¹⁹⁰ Id at 48

¹⁹¹ id

¹⁹² id

¹⁹³ FDRE constitution under article 37 and 40/1/ ensure the right to access to justice and private ownership right of any person. Third parties may exercise these rights through filing their claim on the ongoing arbitration proceeding and raising objection on the tribunal award. It is through these mechanisms that third parties ensure the protection of their private property right

¹⁹⁴ Arbitration and Conciliation Working Procedure Proclamation , supra note 16, s 5

¹⁹⁵ id

participation in ongoing arbitration proceedings. Obviously, these non-signatory parties couldn't join based on arbitration agreement, they could only join based on the application of either the third party itself or parties in the arbitration agreement.¹⁹⁶ The application of either party is compulsory for the participation of third party in the proceeding. In other words, the tribunal isn't competent enough to introduce third parties in the existing proceeding no matter how important third party might be to the case.¹⁹⁷ Above all, third party applies for intervention by requesting the blessing of the parties in the arbitration agreement. Equally, joinders may be called up on by parties in the arbitration agreement should get the consent of third parties to join the current proceeding.¹⁹⁸ All parties, both parties in the arbitration agreement & third parties, should come to terms unanimously for the participation of third parties whatever the extent of interest affected by the tribunal award or the essentiality of third party in the arbitration proceeding.¹⁹⁹

The triangular consent requirement in ACWP Proclamation advocates consent as a creature of arbitration agreement.²⁰⁰ The question here is how the third party's right can be protected when parties in arbitration agreement failed to accept third party participation in arbitration proceeding. Neither an arbitral tribunal nor a public court can entertain such kind of claim under ACWP proclamation.²⁰¹

Back to origin, the aim for the promulgation of ACWP Proclamation is to complement the right to justice (*Emphasis added*) in commercial related disputes. In doing so, the Proclamation seeks

¹⁹⁶ id

¹⁹⁷ id

¹⁹⁸ id

¹⁹⁹ የግልግል ዳኝነት እና የእርቅ አሰራር ስርዓትን ለመደንገግ ስለወጣው ረቂቅ አዋጅ የተዘጋጀውን አጭር ማብራሪያ እንደተመለከትኩት የሶስተኛ ወገኖች ጣልቃ ገብነት እና ተጠሪነት በአዋጁ ውስጥ እንዲካተት ተደርጓል በማለት በገጽ ዘጠኝ ላይ ከመጥቀስ ውጭ ሌላ ማብራሪያ የሌለው በሆኑን ይመለከቷል ፤ የሀገር ፍትህ እና ዲሞክራሲ ጉዳዮች እና የወጭ ግንኙነት እና ሰላም ጉዳዮች ቋሚ ኮሚቴዎች የግልግል ዳኝነት እና የእርቅ አሰራር ስርዓትን አስመልክቶ በቀረበ ረቂቅ አዋጅ ላይ ከአስረጃዎች ጋር ያካሄዱትን ዉይይት አስመልክቶ ህዳር 09 ቀን 2013 ዓ.ም የተያዘን ቃለ ጉባኤ ስንመለከት በተራ ቁጥር 42 ላይ በረቂቅ አዋጁ አንቀጽ 39/3/ ላይ የሶስተኛ ወገን ተጠሪነት እና ጣልቃ ገብነት በተመለከተ ሶስተኛ ወገኖች ወደ ሂደቱ መቀላቀል የሚችሉት ሶስተኛ ወገንን ጨምሮ ተዋዋይ ወገኖች ፍቃደኝነታቸውን ሲገልጹ ብቻ ነው ይላል፤ሁሉም ፈቃደኝነታቸውን መግለጽ ካልቻሉ ምን ሊሆን ይችላል ? የሚል ጥያቄ ተነስቶ ከአስረጃዎች የተሰጠ ምላሽ የሌለ መሆኑን ይመለከቷል።

²⁰⁰ Arbitration and Conciliation Working Procedure Proclamation , supra note 16, s 5

²⁰¹ Third parties failed to join the existing proceeding owing to the lack of consent by the contracting parties may raise objection against the tribunal award when its interest are affected by the award. This will be made after the award is rendered by the tribunal. Moreover, during or after the proceeding third parties may take their case to the public court exercising the constitutional right to access to justice. These are the two mechanisms stipulated under ACWP proclamation article 48/1/ & FDRE constitution article 37

to save precious time and cost of the disputing parties, maintain confidentiality of the proceeding, implement simple procedure so as to give freedom to contracting parties (*Emphasis added*) in the proceeding. Apparently, freedom should be given to parties which sign arbitration agreement. But there are third parties, non-signatory, to the arbitration agreement and their interests and rights are affected by signatory parties in the arbitration agreement.²⁰² Third parties have also the right to access to justice, arbitration, to protect their right and interest potentially affected by the tribunal's decision. This journey of third parties faces impediment by unanimous consent requirement of the proclamation.

Experienced practitioner in the field gave different arguments on issue of unanimous consent criteria of ACWP Proclamation regarding third party participation in arbitration proceeding. Some are opponent and few are proponent towards unanimous consent criteria.

Proponents' arguments; Mr. Yohannes wolde Gebrieal, arbitration director at AACCSA, gave interview based on the practice in the institution he leads and his own experience, and said that Unanimous consent criteria is logical. Arbitration is a private adjudication forum and no exception for consent of contracting parties consent. When one of the main parties fails to give its consent, AACCSA will not force the inclusion of third parties in the proceeding. Equally, third parties should give their consent to arbitrate and practically AACCSA has developed its own format called multiparty arbitration agreement. Since the Proclamation required express consent, willing third parties to arbitrate shall give their express consent in a written form. Regarding the rights and interests of third parties, they may take their case to the public court and have their rights and interests respected and protected if it is affected by the tribunal's decision.²⁰³

Mrs. Haregwoyin Ashenafi, Director of Ethiopian Mediation and Arbitration Center, argued for unanimous consent criteria. She said arbitration is consent based and the tribunal is constituted by consent of signatory parties. Third parties did not give their consent on the constitution of the tribunal. Therefore, contracting parties consent for third parties' participation in arbitration

²⁰² Preamble of Arbitration Conciliation and Working Procedure proclamation

²⁰³ Interview with Mr. Yohanis W/Gebireal, Director of AACCSA institute, on participation of third parties in ACWP Proclamation, April 2023

proceeding is necessary, confidentiality; party autonomy and privity of contract are important principles for arbitration. So Arbitration isn't an imposition it is rather consensual for both contracting and third parties. Third parties have access to justice in public court if their right and interest are affected by arbitration proceeding.²⁰⁴

Opponents' argument; Mr. Yosef Aemiro argued against unanimous consent criteria in two ways. First, when third parties apply for participation, the consent of contracting parties couldn't be a necessary requirement for third party participation. This is because the contracting parties once gave their consent when they made arbitration agreement. So, consent requirement of contracting parties when third parties request to join isn't necessary. When third parties have vested interest in the arbitration proceedings, they should join the proceeding if they request to join. Second, when third parties requested to participate either by contracting parties or the tribunal, its consent is necessary. Unless third parties give their consent to participate in the proceedings, the consent of contracting parties doesn't force it to join the proceedings. The consent of third party is fundamental. Therefore, unanimous consent criterion isn't necessary when third parties and a party to the arbitration agreement give their consent for third party participation.²⁰⁵

ACWP Proclamation, as the nomenclature tells us, is procedural law. If it is so, the ultimate goal of procedure law is to settle disputes at low cost, relatively short period of time and in fair manner. When contracting parties refuse participation of third parties, it invites public litigation. It means contracting parties continue their adjudication before the tribunal and rejected third party took the case to public court. In both case parties are similar and sometimes the cause for arbitration and litigation are similar. It result in additional costs, consume parties' time and may result in injustice when contradictory decisions are handed down. This is against the aim of procedural law²⁰⁶

²⁰⁴ Interview with Mrs. Haregewoyin Ashenafi , Director of EMAC, on participation of third parties in ACWP Proclamation, April 2023

²⁰⁵ Interview with Mr. Yosef Aemiro, Former Federal High court Judge currently he is Attorney and working as an arbitrator, April 2023

²⁰⁶ id

The remedy for third parties stipulated under article 48 is against party autonomy. The contracting party chose arbitration over public adjudication. Nevertheless, the hostility of article 40/3/, unanimous consent criteria, with voluntary third party participant forced third parties to take their case to the public court when the tribunal decision affects their right in their absence. The tribunal should manage the proceeding in full trial scale. Prohibiting voluntary third parties participant and put article 48 as remedy to protect their interest, leads contracting party to call before the public court on the same legal and factual issues. Contracting parties already gave their consent to manage the same case through arbitration. Lack of accommodating voluntary third parties will pull contracting parties to public adjudication. It is against their autonomy. Therefore to welcome third party requests circumvent this problem.²⁰⁷

Mr. Filipos Ayinalem argues that arbitration should be an alternative to court and should reduce the burden of public court. Pushing third parties with lack of consent by contracting parties become additional burden for case congested courts. It also affects the efficiency and effectiveness of Arbitration. Mr. Filipose also raises Shirea court²⁰⁸ which requires parties consent to choose the forum over the ordinary court. Once the parties gave their consent, all interested parties', third parties, join or intervene without the consent of main parties. Likewise, once contracting parties in arbitration gave their consent, third parties should join the proceeding.²⁰⁹

To reject third parties request by contracting parties has two effects. The first is to take cases to public court and the second is objecting to the tribunal's award. Both have their own disadvantage. The decision rendered by the court and the award given by the tribunal may conflict with each other. In principle, as the Proclamation states, there is no appeal right in arbitration to the public court.²¹⁰ The existences of conflicting decision with the absence of

²⁰⁷ id

²⁰⁸ FDRE Constitution under article 34/5/ allows adjudication of disputes related to personal and family law in a way that agrees with religious and customary law when parties give their consent

²⁰⁹ Interview with Mr. Philipos Ayinalem, Former Federal High court Judge currently he is Attorney and working as an arbitrator, April 2023

²¹⁰ As it is stipulated under article 49 of ACWP Proclamation, appeal against arbitral award is possible when the Contracting parties agree in their arbitration agreement. Surprisingly, contracting parties have also the right to Waive application for cassation bench via their express agreement. Therefore, appeal is an exception under ACWP Proclamation.

correction mechanism result injustice as a whole. Besides, when public courts entertain cases under article 48 in case of third parties rejection, it affects the efficiency of the tribunal. If the provision of unanimous consent criteria makes little amendment and opens the door for consented third parties, it enables the tribunal to manage the case in full trial regardless of article 48.²¹¹

Though ACWP Proclamation is progressive in incorporating third parties provision, the unanimous consent criteria make the Proclamation regressive. Third parties had wide opportunity before the enactment of ACWP proclamation. Since the Proclamation is a recent phenomenon, it ought to have given better right than the previous laws. Unfortunately, making third party participation relying on contracting parties consent, makes participation of third parties nominal and he use the Amharic proverb “እንዳያማህ ጥራጢ እንዳይበለ ግፋጢ”²¹²

Mr. Michael saw consent of the parties from two dimensions. The first is when third parties request to participation so as to protect their right and interest. In this instance, parties may not have contractual relation with contracting parties. The second groups are those which claim participation by themselves and they may have contractual relation, like insurance, with one of the parties mostly with the respondent. The former aims at protecting their right and interest and the latter aims at sharing liability and compensation with the respondent. So, in both scenarios parties have the right to access to justice. Despite the contracting parties constitute the tribunal, third parties also in need to take the advantage of arbitration, time cost and expertise. Nonetheless, consent criteria from contracting parties towards third party participation affect third parties right to justice. In his opinion the unanimous consent criteria makes third party participation practically unenforceable. The inclusion of article 40/3/ make article 40/1/ and /2/ meaningless and use the Amharic proverb “እንካ ግን አትንካ”²¹³

3.3.1. Case Analysis and Appraisal

Case One

²¹¹ id

²¹² id

²¹³ Interview with Mr. Michael Teshome, Attorney, working at EMAC, April 2023

Claimant – Ato Tewolde Tesfaye

Respondent – Ethio-India Packaging PLC

This case mainly focuses on the participation of third parties in an existing arbitration proceeding. The respondent requested intervention of third party in the proceeding between it and the claimant. The requested party was Mr sarvanan wali who is the general manager of the respondent. But the claimant refused to accept the participation of third party, Mr sarvanan wali, and his reason was simply the third party has the right to initiate his own suit in public court. Later, the tribunal sent a copy of statement of claim to the party required to intervene so as to check third party consent. As the arbitrators told me the respondent couldn't give summon to intervene because he had left the country and couldn't reach the desired party to intervene. So, desired party failed to appear and the tribunal couldn't know his consent. This case implies how the other party sees the request of third party participation. The respondent simply forced the requesting party to go to public court regardless of the merit in the case. The willingness of third party doesn't change anything despite the claimant response. The unanimous criteria advocates consent and a contracting party may reject third party participation despite its advantage to other contracting party and even for third party itself. ²¹⁴

Case - Two

Claimant- Awo Construction Business PLC

Respondent – Hibret Insurance S.C

Statement of the claimant

We had insurance policy with the respondent for which the cover include damage on the motor car/vehicle , lost, other risk trait on the vehicle and any damage resulted from the vehicle . The motor vehicle was stolen with unknown person or lost from its parking area. Hence, as per our insurance policy which was under period of insurance, the insurer is required to pay the amount of damage equivalent to 1,400,000 /One million four hundred/ birr.

Statement of respondent

²¹⁴ Ato Tewolde Tesfaye v. Ethio-India Packaging PLC (Adhoc arbi. 2023)

The respondent requested the intervention of Ghion security and cleaning service PLC which had security contractual relation with the claimant so as to protect the claimant property. Besides, the vehicle was stolen by this company employee who was under duty of guard. Therefore, the respondent requested the tribunal to call the PLC for the interest of justice.

Ruling of the tribunal

The tribunal after sent summons to intervene third party reject the claim of the respondent because of the absence of consent from intervenes, third party.

Case Analysis

The tribunal was constituted by the claimant and the respondent for the purpose of settling the dispute emanates from insurance policy. The respondent, insurer, requested tribunal to intervene third party which has contractual relation with the claimant but not with the respondent. The very purpose of requesting third party to participate in arbitration proceeding is to make it liable for the party in arbitration agreement or to pay compensation for it. But when we see the case at hand third party doesn't have any contractual relation with respondent forced to establish liability or pay compensation on behalf of it. In any case, the consent of third party was necessary to make it part of the proceeding under ACWP Proclamation. Accordingly, the tribunal rejects participation of third party due to lack of consent from third party.²¹⁵

Case Three

Claimant –Ato Tibebu Seletene Tesifayohannes

Respondent – Pan Africa real estate PLC

Intervening Party- Adissu Aseffa Bogale

Statement of claim

The respondent is a real estate company engaged in construction and sale of houses. Claimant signed sale of house contract with the respondent. The respondent had an obligation to build and

²¹⁵ Awo Construction Business PLC v. Hibret Insurance S.C (Adhoc arbi. 2023)

sell a house to the claimant. Correspondingly, the claimant agreed to pay the amount of money. The respondent failed to perform as per the contract and the claimant took the case before the tribunal asking forced performance, transfer of house to the claimant, against the respondent.

Statement of defense

The respondent denies the existence of sale contract with the claimant for the signature and the seal on the contract doesn't belong to it.

Statement of Intervention party

The intervening party requested the tribunal to allow him to participate in the arbitration proceeding conducted between the respondent and the claimant. The cause to intervene was the house that the claimant requests transfer from the respondent. The intervention claimed that the house is his personal property he bought from the respondent. Therefore, he stated in his statement that the arbitration proceeding had adverse effect on its ownership right, right on the house, without his joinder in to the case.

Tribunal decision

The respondent did not give its consent for the request of intervening party and the tribunal entered an order refusing the participation of the intervening third party.

Analysis

The cause of action for the arbitration proceeding was a house. Likewise, the reason for third party to initiate intervention was also the same house which was bought by the intervention from the respondent. From the case we can understand that the third party had vested interest on the house and the non-participation of the third party in the existing arbitral proceeding affects his ownership right. This happened due to uncooperative response of the respondent. Moreover, the participation of third party in this case helped the tribunal to identify the real owner of the house which would have ultimately brought justice. Since arbitration is a dispute resolution mechanism, to reach a fair decision should be its goal. Dispute on the same subject matter simultaneously in arbitration and litigation may bring unfairness. The unwillingness of the respondent forced third party to take its case to public court. To join as a third party in this specific case would have avoided parallel proceeding in the public court and potential conflicting

decisions between public court and an arbitral tribunal which ultimately affects the authoritativeness of tribunals' decision.²¹⁶

Case Four

Claimant – O.B.M Construction Share Company

Respondent – 1. Teakitira Engineering PLC

2. Nib Insurance Company

Statement of claim

First the case was instituted before a public court, Federal High Court file no.228756, but the Court declined jurisdiction in favor of an arbitral tribunal owing to the arbitration clause between the claimant and the second respondent. The claimant made contract with the first defendant to supply and assemble ventilator materials, electro mechanical work, for the building erected in Dire Dawa. The first respondent took 4,224,924.82 /Four million two hundred twenty four thousand nine hundred twenty four 82/100/ birr. The second respondent furnished an advance payment bond to the claimant for the amount of money it paid to the first respondent. In other word, advance payment bond, contract, was signed between the claimant and second respondent. The first respondent failed to perform its obligation. The claimant took the case to the arbitral tribunal against the respondents claiming for the payment of the above stated money jointly.

First respondent Statement of defense

The first respondent raised preliminary objection related to lack of consent to arbitrate based on arbitration agreement between claimant and the second respondent

Second respondent's Statement of defense

First, the first respondent asked the claimant to approve the improved work design that is appropriate for its electro mechanical work. But the latter failed to respond and it performed according to the design. In addition the first respondent manufactures 90% of the electro mechanical equipment in its workshop and was ready to perform its obligation.

²¹⁶ Ato Tibebe Seletene Tesifa yohannes v. Pan Africa real estate PLC, (AACCSA-AI , 2018)

Secondly, I, second respondent, gave advance payment bond with contract No. MB/2/BDACBC/7865/15 effective only for 90 days, 16/11/18 – 15/02/ 2019 G.C. The claimant had a duty to notify the second respondent when the first respondent failed to perform its duty with the agreed period. But the claimant failed to give any notice on the non-performance of its obligation by the first respondent. So, the fault rests on the claimant and the tribunal should reject its claim.

Tribunal's decision

1. Based on the objection the tribunal struck out the second Respondent.
2. The first respondent failed to perform the contract because of its own fault and it could not manufacture and make available the necessary equipment. This is proven by claimants evidences
3. The second claimant should pay 4,224,924.82/ Four million two hundred twenty four thousand nine hundred twenty four 82/100/ birr plus 9% interest

Analysis

The case stated above shows due to lack of consent the first respondent couldn't join the proceeding. The claimant and the second respondent had a contractual relationship, advance payment bond. The second respondent gave advance payment for the benefit of first respondent for the payment the latter had received from the claimant. The root cause for the advance payment was the electro mechanical work signed between the claimant and the first respondent. The claim arises from the same set of facts and circumstances, advance payment bond, therefore, as the nature and the sequence of the transaction tell us the first respondent was an indispensable party and its participation was crucial to decide the case in holistically. Moreover, it has prior knowledge about advance payment bond, contract, signed between claimant and the second respondent. The non-willingness of third party, the first respondent, to take part in the arbitration proceeding took place between the claimant and the second respondent forced the second claimant, to take its case to the public court. It took the case to Federal first instance court against the first respondent to reimburse the amount paid for the respondent.²¹⁷ Equally, FFIC gave decision against the first respondent to repay for the second respondent. The procedure for the

²¹⁷ Teakitira Engineering PLC v. Teakitira Engineering PLC, case No.293366 (Federal First instance court, 2023)

second respondent was so prolonged and additional cost was incurred for a single case. It was possible to manage the advance payment bond, contract, in one proceeding.²¹⁸

3.4. Legal Techniques Provided to Accommodate Third Parties in Arbitration Proceedings in ACWP Proclamation

The newly enacted ACWP Proclamation incorporates a provision on the intervention of third parties under article 40 which addressed the participation of third parties in existing arbitration proceedings. As I explained above, there are mechanisms or legal techniques which help to invite third parties in pending arbitration proceedings. Here below I will try to address mechanisms and matters the provision should address with regard to ACWP Proclamation.

With no exaggeration, the concept consolidation is nowhere stated directly or indirectly in the proclamation. Moreover, it is also doubted that intervention and joinder are clearly expressed in the new ACWP Proclamation. The literal reading of the provision does tell so. The mechanisms stipulated under Article 39 and 40, 41 and 43 of CPC as substitution or adding of parties, intervention of third parties and joinder of third parties respectively. Parties included under the cumulative reading of article 39 and 40 are indispensable parties whose interests and rights are affected by decisions and their exclusion results in justice in spite of their default proceeding.²¹⁹ Any interested party who isn't a party in the suit, third party, may intervene in the proceeding when s/he could show the interest lost due to s/he absence in the proceeding.²²⁰ In case of joinder of third party, a party in the suit, particularly the defendant, requests any person not party to the suit, third party, to pay contribution or indemnity to the extent of third party liability. This applies in compensation cases where similar issue of law and fact is raised. This helps to establish ultimate liability between the defendant and third party which would avoid separate suit and helps to save time and litigation cost.²²¹

Back to ACWP Proclamation provisions, article 40/1/ seems to provide for intervention. This is because the initiative to participate in the proceeding is taken by the third party and the third

²¹⁸ Nib Insurance Company v. Teakitira Engineering PLC, case No.295414 (Federal First instance court, 2022)

²¹⁹ Alan Sedler, Ethiopian Civil Procedure Law, 96-97, (1968)

²²⁰ Id at 81

²²¹ Id at 87

party at the same time has a duty to present its interest that could be affected by the arbitral award.²²² Nevertheless Article 40/2/ doesn't wholly and precisely express joinder of third parties. First claim related to compensation is raised by the claimant. The claimant asks the respondent to pay compensation for the damage s/he is liable for. As a result, the respondent requests the third party to join the proceeding to contribute for compensation and pay indemnity.²²³

It is hardly possible to find a claimant that requests a third party to join the proceeding to pay compensation on its behalf. Therefore, the expression of contracting parties in the provision doesn't make sense regarding a claimant party in terms of compensation claim. The CPC also doesn't clearly provided that this kind of compensation claim is raised by the claimant and the capacity to request third party to join the proceeding is for respondent.²²⁴ Second, strict reading of this provision, left indispensable third parties which should be made parties in the proceeding with the request of either the claimant or the respondent.²²⁵ This party is requested to join the proceeding not necessarily to pay compensation but their presence in the proceeding helps to serve the end of justice and their absence bring adverse effect on their right and interest.²²⁶

In matters which the ACWP Proclamation addresses, any third party or a contracting party can apply for joinder and intervention.²²⁷ Third parties whose interest could be affected by the arbitral award and third parties liable to contracting parties to pay compensation can be made parties in the arbitration proceeding.²²⁸ The proclamation doesn't clearly address the stage at which one may apply for joining the proceeding. But the intervening party can join the proceeding before the arbitral award is rendered.²²⁹ In both joinder and intervention, nobody, tribunal or court, doesn't have competency to decide on the application of joinder and intervention. ACWP Proclamation put the a requirement of consent in which all parties including

²²² Arbitration conciliation and working procedure Proclamation, 2021, s 5

²²³ Id at art. 40/2/

²²⁴ Civil Procedure code of Ethiopia, 1965, Negarit Gazzeta, Extraordinary issue, Decree No.52, 25th year, No.3,art.3

²²⁵ Arbitration conciliation and working procedure Proclamation, art 40/1/ & /2/

²²⁶ Alan Sedler, supra note 47,

²²⁷ Arbitration conciliation and working procedure Proclamation, art 40/1/ & /2/

²²⁸ id

²²⁹ Id at 40/2

the third party has to unanimously agree to allow a third party intervene and/or join the pending proceeding. Unless the party unanimously agreed, the justification for joinder or intervention in the proceeding isn't going to be taken in to consideration.

Accordingly, it is possible to say the Proclamation has failed to set specific procedures relating to consolidation as a whole and to some extent on joinder and intervention. Though, ACWP Proclamation allows applying provisions of the CPC that may help to implement arbitration proceedings which doesn't contradict with the provision of the Proclamation, concepts which are not mere procedural like consolidation left totally. Moreover, arbitration is a private adjudication mechanism with much distinct character despite its process has very much similar with litigation. Referring CPC provisions to arbitration isn't satisfactory.²³⁰ To some extent CPC provisions has also some ambiguity on this mechanisms, particularly, joinder of third party article 43, and FSC Cassation Bench gave series of interpretation.²³¹

3.5. Third Parties participation Procedure under ACWP Proclamation

ACWP Proclamation bespeaks of two types of third parties.²³² The first are third parties whose their right and interest are potentially affected by parties in the arbitration proceeding. These

²³⁰Id at art 79

²³¹ የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት በሰበር መዝገብ ቁጥር 79465 ፤ በቀን ጥር 14/2005 ፤ በናይል ኢንሹራንስ ኩባንያ አ/ማ እና እነ አቶ አገኘው ገረመው (ሁለት ሰዎች) ፤ እንዲሁም በሰበር መ.ቁ. 23692 ፤ በቀን ሐምሌ 03 ቀን 1999ዓ.ም ፤ በአመልካች አዋሽ ኢንሹራንስ ኩባንያ እናመልስ ሰጭዎች እነ አሊ መሐመድ መካከል በተደረገ ክርክር የፍ/ብ/ሥ/ሥ/ሀ/ቁ. 43 አስፈላጊነት ተከታታይ ክስ ሳይኖር ተያያዥነት ያላቸው ጉዳዮች በአንድነት እንዲታዩ በማድረግ የኃላፊነት መጠኑን እንዲሁም ከፋዩን ወገን በመለየት የመጨረሻ እልባት ለመስጠት ስለመሆኑ፤ በፍ/ብ/ሥ/ሥ/ሀ/ቁ.43 መሠረት ወደ ክርክር እንዲገባ የተደረገ 3ኛ ወገን በክርክሩ ሂደት ሊያነሣ ስለሚችለው የክርክር አይነትና አድማስ በተመለከተም 3ኛው ወገን ሊያነሣ የሚችላቸው የክርክር ፈርጆች በአንድ በኩል ከተከሰቱ ጋር ሆኖ ድርሻ ክፍያ ወይም ስለተከሰቱ ሆኖ የካሳ ክፍያ የመክፈል ግዴታ ያለበት መሆኑን ተቀብሎ በተከሰቱ እግር ተተክቶ ተከሰቱ ለካሳ ስላይነት የማይኖርበት መሆኑን፤ ኃላፊነት አለበት የሚባል ቢሆን እንኳን ሊከፈል የሚገባው የካሳ ክፍያ መጠን ላይ ከካሳ ጋር ንጽጽር በማድረግ መሟገት ሲሆን ፤ በሌላ በኩል ደግሞ ድርሻ ወይም ካሳ ለመክፈል ለተከሰቱ ከህግ ወይም ከውል የመነጨ ግዴታ የለብኝም በማለት መከራከር ስለመሆናቸው ፤ ድርሻ (Contribution) የሚለው ቃል የክሱ ምክንያት በሆነው ጉዳይ ከተከሰቱ ጋር የአንድነትና የነጠላ ግዴታ ያለባቸው ወገኖች ኖረው ከሰሽ በፍ/ብ/ሕ/ቁ 1897 መሠረት አንደኛውን ባለ ዕዳ ብቻ ነጥሎ በከሰሰ ጊዜ ተከሰቶ ከእኔ ጋር ድርሻውን መክፈል ያለበት ሌላ ሦስተኛው ወገን ስላለ የክርክሩ ተከፋይ ይሁንልኝ በማለት በሚያቀርበው ጥያቄ መሠረት የክርክሩ ተከፋይ እንዲሆን በማድረግ፤እንዲሁም ካሳ (indemnity) የሚለው ቃል ደግሞ ተከሰቶ በተከሰሱበት ጉዳይ ኃላፊ የምሆን ከሆነ የሚፈረድብኝ ክፍያ እኔን ተክቶ የሚሸፍን ወገን /እንደ ኢንሹራንስ ባለ ጉዳይ/ ስላለ ጣልቃ ገብቶ ይከራከራል በማለት የክርክሩ ተከፋይ እንዲሆን በማድረግና የሚመለከታቸው ወገኖች በአንድ ፋይል እንደተገናኙ ጉዳይ የሚያልቅበትን ሥርዓት በመዘርጋት ተከታታይ ክስን ለማስቀረት ታስቦ የተቀመጠ ድንጋጌ መሆኑን እንረዳለን።

²³² Arbitration and Conciliation Working Procedure Proclamation , supra note 16, s 5

parties apply to take part in the existing proceeding by themselves.²³³ The second are third parties requested by parties in the arbitration proceeding to share liability and pay compensation.²³⁴ Therefore, it seems that the former talk about intervention party and the latter about additional parties. The point here is the procedure that how third parties involved in the arbitration proceeding. Nevertheless, the proclamation has botched to set specific and special procedures that address how and when a third party be joined to the existing proceeding.

Rather it contains referral provision to use CPC relevant provision not contravene with the proclamation in entertaining arbitration proceeding.²³⁵ When we see CPC with regard to third parties it contains indispensable third party, intervention and joinder of additional parties and even provisions on consolidation of suit.²³⁶ Except in the case of indispensable party, consent isn't an issue for the participation of third parties in court proceeding. But ACWP Proclamation chant on party autonomy and required the consent of third party to participate in arbitration proceeding.²³⁷ Moreover, in litigation courts have power to decide the participation of third parties while an arbitral tribunal hasn't the power on deciding third party participation.²³⁸ Therefore, CPC doesn't seem ready to manage third party participation procedure in existing arbitration proceedings.

Practitioners' also give their opinion based on their experience regarding the procedure; they all agreed that ACWP Proclamation should have a clear procedure on third party participation. Practically they use CPC provisions to let third parties participation in arbitration proceeding. Though CPC provisions are capable of letting third parties participation in arbitration, the new Proclamation should clearly express third parties, the joinder and intervention party, the party call intervention or joinder party, the form third parties express their consent, the reason they intervene or join the proceeding. Especially Ato Yohannis gave emphasis on how contracting party express their consent towards third party? Would third parties be required to express their

²³³ Id at art 40/1/

²³⁴ Id at art 40/2/

²³⁵ Id at art 79

²³⁶ art 11, 40-43

²³⁷ Arbitration and Conciliation, Working Procedure Proclamation, art 40/3/

²³⁸ Arbitration and Conciliation, Working Procedure Proclamation, art 40& Civil procedure art 40- 43

consent in written²³⁹? Is the act personal? Could consent be expressed through an agent? ACWP Proclamation should address all these and other related matters.²⁴⁰ There are matters in which provisions on third parties in arbitration law should address. It include the parties can apply for third party participation, the party that can join in the proceedings, the consent requirement, the stage of the proceeding the parties apply for joinder or additional party, the umpire that decide the participation of third parties, the content of third parties application, the factor or prima facie the decision maker take in to account.²⁴¹

Thus, the provision for third party participation should consider the private, flexible as well as consensual nature of arbitration and the procedure crafted for third party participation in arbitration proceeding . The CPC Provision aren't fit enough to manage third party participation in the existing proceedings.

²³⁹ Rule of international arbitral institute which include China International Economic and Trading Arbitration Committee, CIETAC, Arbitration Rules 2014 under article 18, Free Trade Zone Arbitration Rule 2012 under article 38 and Shenzhen Court of International Arbitration, SCIA, with the new Arbitration Rules 2012 under article 35 make consent by claimant and respondent towards third party in writing and also third party give its response in writing.

²⁴⁰ Interview with Ato Yohanis W/Gebireal, Wro. Haregewoyin Ashenafi, Ato Yosefe Aemiro, Ato Philipos Ayinallem, Ato Michael, on participation of third parties, April 2023

²⁴¹ Smith, Gordon, *Comparative Analysis of Joinder and Consolidation Provisions under Leading Arbitral Rules*, *Jou. of Int. Arb.* , no. 2,176, (2018)

CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS

4.1. Conclusions

Arbitration is a private consensual format depends on private decision maker who win the willingness of signatory party. Parties consent is manifested via arbitration agreement signed between them. Undoubtedly, it is possible to say that consent is the virtue of arbitration.

Globally, as it stated in NYC and UNCITRAL model law, this private adjudication mechanism is fit for disputes which are commercial in nature and those arise from contractual or non-contractual relationships. Likewise, in Ethiopia ACWP Proclamation applies to business related disputes emanates from contractual and non-contractual relationships that are wholly or partly existed or likely to exist in the future

At this juncture modern business transactions both at domestic and international level are complicated drastically. Following this, the reality in international commercial transaction speaks the commercial transaction make a shift from bipolar dispute, a claimant and a respondent, to multiparty and multipolar dispute requires involvement of numerous parties in the dispute. These parties are parties signed an arbitration agreement to solve their dispute and third parties couldn't sign arbitration agreement but their right and interest are adversely affected by arbitration proceeding of signatory party. To protect the interest of these third parties, nationals and international arbitral institute design and incorporate third party mechanism in their laws and rules. Similarly ACWP Proclamation followed two fold mechanisms for third parties to protect their rights from being affected by signatory parties. These are prudential and remedial mechanisms. The former is call or request for third parties to involve in the existing proceedings which requires unanimous consent of the parties and the latter is done after the award is done, before or during execution stage.

As stated in the above arbitration is contractual construct. It is enforced in between contracting party, privity of contract, and non-signatory third parties don't have right to join or intervene in

the arbitration proceedings unless the existed parties give consent for their participation. Signatory parties are sovereign and autonomous in deciding third parties participation in arbitration proceeding. Neither the tribunal nor the court can order the participation of third parties. Contrariwise, privity of contract isn't without exception, since the disputes implicate the non- signatory or third parties and covered by broad arbitration clause; the proceeding should be open for third parties though they did not sign in the arbitration agreement.

In arbitration proceeding there is a battle field among the consent construct of arbitration, party autonomy, in one side and interest of third parties, non-signatory, in arbitration proceeding and the effectiveness and efficiency of arbitration as a dispute resolution mechanism in other side. As we know consent is the very founding of arbitration. Unless parties will give their consent to arbitrate, they don't force to arbitrate and signatory parties couldn't claim any right and interest from them. So, consent is hallmark for arbitration. This crucial element can be manifested by the contracting parties either expressly or impliedly. The former is about to reveal parties will to arbitrate directly in a written form. In the latter case, there is no consent in written form but the consent of non-signatory party deducted from its conduct and the relationship that exist in between the non-signatory party and signatory party. Third party beneficiary contract and group of companies doctrine developed by court jurisprudence in some national court are manifestation of implied consent. In all these circumstance, it is possible to assume that third parties know and give their consent to arbitrate under the arbitration agreement of main parties despite lack of written consent. Since ACWP Proclamation acknowledge express consent, consent in written form, it seems difficult to accept implied consent as a means to reveal parties interest to arbitrate. Therefore, parties whose consent is revealed in express or/and implied format are parties in the arbitration agreement. Nevertheless, there are parties which don't get chance to manifest their consent, expressly or impliedly, but their right and interests are potentially affected by arbitration proceeding conducted by consented signatory party. Equally important, when contracting party negotiate on their contract, they mightn't forecast or identify third parties right affected by arbitration proceeding. Similarly they mightn't incorporate arbitration clause to protect third party right and interest. This makes participation of third party in the proceeding unavoidable and the park of arbitration aren't necessarily and exclusively for signatory party. At this point

party autonomy and interest of third parties come to arbitration field simultaneously. For this purpose arbitration come up with third party participation mechanism which include joinder, intervention and consolidation of pending arbitration.

ACWP Proclamation introduces third parties participation mechanisms. Though the proclamation is novel in its kind in Ethiopian arbitration history, the provision on third party intervention and accountability, failed to set specific procedure. Among others it includes, the party that can join or intervene, whether third parties are allowed to defend other party or must defend their own interests, scope of litigation, the stage or time third parties join in the proceeding. Concepts which are not mere procedural like consolidation and indispensable party are left totally.

To make third parties join or intervene in to an arbitral proceeding according to Ethiopian arbitration law, ACWP Proclamation, it is important to have the unanimous consent from the parties to the underlying arbitration agreement and the third party to be joined. As an umpire neither the court nor the tribunal has power to decide on the request of third party participation. It solely rests up on consent of all parties. Thus, it is possible to say Ethiopian ACWP Proclamation chanting on party autonomy and follow conservative approach on third party participation.

As a general surveillance, the various national laws and international arbitral rules can be characterized as conservative, moderate and liberal or aggressive approach based on their willingness to interfere with party autonomy regarding third party participation. Accordingly, from national jurisdiction Ethiopia and Belgium follow conservative, USA and Netherland moderate whilst French and Switzerland follow liberal approach. Correspondingly, from international arbitral rules the ICC, LCIA, UNCITRAL Rules fall under conservative camp, SCC, HKIAC, ACICA Rules fall into liberal or aggressive camp and NIA follows mixed approach.

Occasionally, the participation of third party may bring blessing for both signatory parties. For example, in the case of article 40/2/ of ACWP Proclamation, the participation of third party helps the claimants to have wide opportunity to get its compensation payment either from the respondent or third parties. From the respondent side, since it has contractual relation, insurance,

with third party, third party can cover compensation wholly or partially for the claimant instead of the respondent by endorsing the liability established on the respondent. At this point participation of third parties aren't curse yet for signatory parties rather blessing. So, imposition of harsh legal rules, unanimous consent criteria under ACWP proclamation, eliminate the balance of contracting party autonomy and the interest of third party affected by the arbitration proceeding.

Crucially, there are parties which don't get chance to manifest their consent, expressly, but their right and interests are potentially affected by arbitration proceeding conducted by consented signatory party. So, third parties can protect their right and interest through participating in the proceeding as intervention party or third party defendant. When third parties right are potentially affected and at the same time they request to participate in the proceeding and accepted by a signatory party, the other party should refrain from opposing such kind of third parties from being part of the proceeding. Unfortunately, ACWP Proclamation doesn't have narrow road for such kind of third parties to participate in the proceedings.

4.2. Recommendations

ACWP Proclamation incorporates third party mechanism in arbitration. However, the unanimous consent criterion which upholds party autonomy may deny the participation of third parties in arbitration proceedings. Intrinsically, multiparty arbitration proceedings enhance the scope, efficiency, effectiveness and certainty of commercial arbitration system.

Accordingly, this writer recommends the followings;

1. ACWP Proclamation opted unanimous consent criteria for third party participation in arbitration proceedings. Likewise, it gives emphasis on express consent of contracting parties in spite of contemporary international experiences which address implied consent and interest of third parties. Nevertheless, Ethiopian ACWP Proclamation should incorporate a workable approach to the issue of third party participation in arbitral proceedings by amending the inclination of un undermine classic two party paradigm to

the realities of global multiparty transaction. The proclamation should be amended and welcomed for voluntary third parties. As such,

- 1.1. When third parties apply for intervention in which their right and interest is potentially affected by the arbitration proceeding, as per article 40/1/ of the ACWP Proclamation, consent of contracting parties shouldn't be a requirement.
- 1.2. Conversely, when either/both contracting party apply for joinder of third party in arbitration proceeding, as per article 40/2/ of the ACWP Proclamation, the consent of third party is crucial.
2. ACWP Proclamation should incorporate procedure about third parties which is cognizant with the nature of arbitration. The referral provision should be amended and incorporate at least the parties can apply for third party participation, the party that can join in the proceedings, the consent requirement, the stage of the proceeding the parties apply for joinder or additional party, the umpire that decide the participation of third parties, the content of third parties application, the factor or prima facie the decision maker take in to account. So, the law should be amended as to make expressed and detailed procedures in relation to third party participation in arbitration proceedings.
3. ACWP proclamation should clearly address joinder, Intervention as well as consolidation of different arbitration proceeding in general and ground of participation for third parties in particular. The word indemnity and compensation stated under Article 40/2/ is mostly related to the respondent which had contractual relationship like insurance with third parties. Therefore, the law should be amended as to expressly articulate third parties, conditions and circumstances to allow joinder and intervention of third parties in arbitration proceedings.

Bibliography

I. Books, Journals/ Articles and Reports

1. Adyasha Samal, *Extending Arbitration Agreements to Non-Signatories: A Defense of the Group of Companies Doctrine*, The King's Stu. Law Rev., Vol XI, 73, (2020)
2. Alan Sedler, *Ethiopian Civil Procedure Law*, 96-97, (1968)
3. Alexandre Meyniel, *That Which Must Not Be Named: Rationalizing the Denial of U.S. Courts with Respect to the Group of Companies Doctrine*, 48,2013
4. Alexandre Meyniel, *That Which Must Not Be Named: Rationalizing the Denial of U.S. Courts with Respect to the Group of Companies Doctrine*, 3, Am.Un.Wash. CL,24 (2013)
5. Andrea Marco Steingruber, *Consent in International Arbitration*, 166,2012
6. Bernard Hanotiau , *Multiple Parties and Multiple Contracts in International Arbitration*,35, 2009
7. Cathy S Krendt & James R Krendl, *Piercing the Corporate Veil: Focusing the Inquiry*, Vol.55, DENVER L. J., 2 (1978).
8. Charlie Caher et al., *The Group of Companies Doctrine - Assessing the Indian Approach*, Vol. 9(2), INDIAN J ARB L, 49 (2021)
9. David D Caron & Lee M Caplan , *the UNCITRAL Arbitration Rules: A Commentary*, 58, 2012
10. David spencer, *Essential dispute resolution*, 1, 2002
11. Deborah R. Hensler & Damira Khatam, *Re-inventing Arbitration: how expanding the scope of Arbitration is reshaping its form and blurring the line between private and public adjudication*, 383, NEV. L.J. 18:381, (2018)
12. Derek Roebuck, *Mediation and Arbitration in the middle Ages*, 120, 2013
13. Dimitar Kondev, *Multi-Party and Multi-Contract Arbitration in the Construction Industry*,17, 2001
14. Eduardo Silva Romero, *Brief Report on Counterclaims and Cross-claims: The ICC Perspective in Arbitral Procedure at the Dawn of the New Millennium: Reports of the International Colloquium of CEPANI*, 73 (2005)

15. Elizabeth Shackelford, *party autonomy and regional harmonization of rules in international commercial arbitration*, 901, un. Pitts. 67:897 (2006)
16. Emilia Onyama, *International commercial arbitration and the arbitrator's contract*, 8, 2010
17. Felipe Vollbrecht Sperandio, *The Reach of the Arbitration Agreement to Parties Involved in the Same Legal Relationship*, 11 Rev. E-Mercatoria, 189 (2012)
18. Franz Schwarz and Christian Konrad, *The Vienna Rules: A Commentary on International Arbitration in Austria*, 332, 2009
19. Franz Schwarz and Christian Konrad, *The Vienna Rules: A Commentary on International Arbitration in Austria*, 333, (2009)
20. Gary Born, *International Arbitration: Law and Practice*, 69, 2012
21. Hosking, *Non-signatories and International Arbitration in the United States: the Quest for Consent Arbitration International*, Vol. 20, No. 3, 292, (2004)
22. Isaak I. Dore, *Theory and Practice of Multiparty Commercial Arbitration with special reference to the UNCITRAL Framework*, 1-2, (1990)
23. James M. Hosking, *The Third Party Non-Signatory's to Compel International or Compel International Commercial Arbitration: Doing Justice without Destroying Consent*, 4, pepp. Uni. 472 (2004)
24. Juan Marcos Otazu, *The Law Applicable to Veil Piercing in International Arbitration*, Vol.5 (2), MCGILL Jou. of Dispu. Reso., 35 (2018-2019)
25. Lynden Macassey, *International commercial arbitration, its origin, development and importance*, 519, Amer. Bar Asso. Jou., vol. 24, no. 7, (1938)
26. Marja Boman, *privity of contract and multi-party arbitration*, 13, 2016
27. Moses Margaret, *The Principles and Practice of International Commercial Arbitration*, 18, 2012
28. Okuma Kazutake, *Party autonomy in international commercial arbitration: Consolidation of multiparty and class wide arbitration*, Int'l & Comp. L, 190, (2003)
29. Rajveer, *Parties' autonomy in international commercial arbitration*, 1205, Int'l Jou. of Scie. & Eng. Rese., Vol. 9, (2018)

30. Redfern & Hunter: Law and Practice of International Commercial Arbitration (6th ed.) ,292-294 (2015)
31. Richard Bamforth, Irina Tymczyszyn, Olswang, and Allan Van Fleet, Mark A Corroero, Greenberg Traurig “*Joining Non-Signatories to an Arbitration: Recent Developments*”, *Cross-Border handbook*, Vol. 2 , 10, 2008
32. Richard Bamforth, Irina Tymczyszyn, Olswang, and Allan Van Fleet, Mark A Corroero, Greenberg Traurig, *Joining Non-Signatories to an Arbitration*, 9, (2014)
33. Robert B Thompson, *Piercing the Corporate Veil: An Empirical Study*, Vol.76 CORNELL L. Rev, 1036 (1990)
34. Roger S. Haydock, *civil justice and dispute resolution in the twenty-first century: mediation and arbitration now and for the future*, W. Mitch. L., 746, (2000)
35. S. I. Strong, “Intervention and Joinder as of Right in International Arbitration: an Infringement of Individual Contract Rights or a Proper Equitable Measure ,922-923, 1998
36. Simon Greenberg, Christopher Kee & Romesh Weeramantry, *International Commercial Arbitration: an Asia- Pacific Perspective*, 215- 216, 2011
37. Stavros Brekoulakis, *Rethinking Consent in International Commercial Arbitration: A General Theory for Non-signatories*, *Jou. Of Int. Disp. Sett.* ,.592, (2017)
38. Stavros Brekoulakis, *the Relevance of the Interests of Third Parties in Arbitration: Taking a Closer Look at the Elephant in the Room*, 1171, *Pen. St.*, 113:4, (2009)
39. Sunday A. Fagbem, *The doctrine of party autonomy in international commercial arbitration: myth or reality?*, 226, *Afe Babalola University: j. of sust. dev. law & policy*, Vol. 6: 1, (2015)
40. Tibor Várady , John J. Barceló III , Stefan Kröll , Arthur T. von Mehren , *International Commercial Arbitration - A Transnational Perspective*, (7th ed.) ,85, (2019)
41. Timothy J. Heinsz, *Revised Uniform Arbitration Act: Modernizing, Revising, and Clarifying Arbitration Law*, *Jou. of Disp. Resol.* , 12, (2017)
42. Timothy J. Heinsz, *Revised Uniform Arbitration Act: Modernizing, Revising, and Clarifying Arbitration Law*,13-14, (2001)

43. Voser & Schellenberg, Multi-party and Multi-contract Arbitration Mechanisms in International Commercial Arbitration, 346, (2009)
44. W. Laurence Craig et al., international commercial arbitration: international chamber of commerce arbitration, 52 ,(1997)
45. William H. Park, Multiple Party Actions in International Arbitration, 4, 2009

II. Foreign Legal instruments

1. Arbitration rule of the Singapore international arbitration center, 2016
2. Australian Centre for International Commercial Arbitration Rule, 2021
3. Belgian Judicial code as amended provisions relating to Arbitration, 2013, art 1696- bis-1
4. Dutch code of civil procedure
5. French Code of Civil Procedure
6. Hong Kong International Arbitration Center Administered Arbitration Rules, 2018
7. International Chamber of Commerce Rule of arbitration,2017
8. London International Court of Arbitration,2014
9. Netherlands Arbitration Institution arbitration rule, 2015
10. South Carolina code
11. Stockholm chamber of commerce arbitration rule, 2017
12. Swiss Rules of International Arbitration , 2021, art 6/1/
13. United Nations 1958, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. I(3)
14. United Nations 1994, UNCITRAL Model Law on International Commercial Arbitration, Art 7(1)
15. United State Revised uniform arbitration act, 2000, section 10

III. Internet sources

1. AAA, A Guide to Commercial Mediation and Arbitration for Business People, 2013. Available at; www.adr.org (Jan. 16/2022)

2. Dominique T. Hascher, commentary on European convention on international commercial arbitration of 1961, Art. 1 (1) (c), p.510, <https://cdn.arbitration-icca.org/s> commentary on the European Convention,1961 (accessed at Jan. 16/2022)
3. Latham & Watkins, Guide to International Arbitration, 2014, p.1, available at: www.lw.com (accessed at Jan. 16/2022)

IV. Cases

1. Ato Tewolde Tesfaye v. Ethio-India Packaging PLC (Adhoc arbi. 2023)
2. Ato Tibebe Seletene Tesifa yohannes v. Pan Africa real estate PLC, (AACCSA-AI , 2018)
3. Awo Construction Business PLC v. Hibret Insurance S.C (Adhoc arbi. 2023)
4. FDRE Supreme Court Cassation Bench, Case No. 79465
5. FDRE Supreme Court Cassation Bench, Case No. 23692
6. Nib Insurance Company v. Teakitira Engineering PLC, case No.295414 (Federal First instance court, 2022)
7. Teakitira Engineering PLC v. Teakitira Engineering PLC, case No.293366 (Federal First instance court, 2023)

V. Ethiopian Legislation

1. Arbitration and Conciliation Working Procedure Proclamation ,2021, Federal Negarit Gazette, Proc. No 1237/2021, 27th year. No.21
2. Civil Procedure code of Ethiopia, 1965, Negarit Gazzeta, Extraordinary issue, Decree No.52, 25th Year, No13
3. Civil code of Ethiopia, 1960, Negarit Gazzeta, Extraordinary issue, Proc. No. 165,19th year, No.2
4. FDRE constitution,1995, Negarit Gazzeta, Extraordinary issue, Proc.No1,1st year, No.1
5. Parliamentary minute on Arbitration and Conciliation Working Procedure Proclamation

VI. Interviews

1. Interview with Mr. Michael Teshome, Attorney, Write book on Ethiopian Arbitration, working at EMAC, April 2023
2. Interview with Mr. Philipos Ayinalem, Former Federal High court Judge currently he is Attorney and working as an arbitrator, April 2023
3. Interview with Mr. Yohanis W/Gebireal, Director of AACCSA institute, on participation of third parties in ACWP Proclamation, April 2023
4. Interview with Mr. Yosef Aemiro, Former Federal High court Judge currently he is Attorney and working as an arbitrator, April 2023
5. Interview with Mrs. Haregewoyin Ashenafi , Director of EMAC, April 2023

Annex

የባለ ብዙ ወገን የግልግል ስምምነት

Multi party arbitral submission

የዚህ ስምምነት ፈራሚዎች በአዲስ አበባ ንግድ እና የዘርፍ ማህበራት ምክር ቤት የግልግል ተቋም አማካኝነት እየተካሄደ የሚገኝ የግልግል ጉዳይ ያለን በመሆኑ፤

Whereas signatories this submission have ongoing arbitral proceeding at the Addis Ababa Chamber of Commerce and Sectoral Associations Arbitration Institute (AACCSA AI).

በሁሉም ፈራሚዎች ዘንድ በውሳኔዎችን የተነሳው ውዝግብ በግልግል እንዲፈታ ዕንጉራዊነት ያለን እና ለዚህም ያለንን ቁርጠኝነት ለማረጋገጥም ጉዳዮችን በግልግል እንዲታይልን የይገባኛል ጥያቄያችንን፤ የተከላከሉ ክላሽኔት እና መልሳችንን ለግልግል ተቋሙ ስላቀረብን፤

Whereas all signatories are committed for the resolution of the dispute by arbitration and in order to ensure our determination, all signatories have submitted their claim, counter claim and responses to AACCSA AI),

በሌላም በኩል ፈራሚዎች የየብኩላችንን የግልግል ጻፎ በመሰየም፤ የሚጠበቅብንንም የግልግል ጻፎች አበል እና የግልግል ተቋሙን የአስተዳደር ወጪዎች ክፍያዎችን ከተቋሙ በተረበልን ጥያቄ መሰረት በተሻሻለው የምክር ቤቱ የግልግል ደንብ መሰረት የፈጸምን በመሆኑ፤

Whereas signatories have nominated our respective arbitrators and settled Arbitrators allowances and administrative expenses requested by the Institute in accordance with the AACCSA revised arbitration rules,

ይሁን እንጂ ፈራሚዎች የውዝግቡ አፈታት ካለምንም ሳንካ ተከናውኖ ተገቢውን ፍጻሜ ያገኝ ዘንድ ሁላችንም ለግልግል ስርዓቱ እና ሃይቱ ተገዢ መሆን ይቻላል፤ ዘንድ የሚከተለውን የግልግል ስምምነት በፅሁፍ አድርገናል።

Whereas notwithstanding our commitment for the resolution of the dispute by arbitration, all signatories are required to make a written submission to ensure their obedience for the system and process of arbitration,

በዚህም መሰረት የዚህ ሰነድ ፈራሚዎች እንደሚከተለው ተስማምተዋል፤

Now therefore the signatories hereunto have agreed as follow.

አንድ ጠቅላላ

የዚህ ሰነድ ፈራሚዎች በሙሉ በመካከላችን የተፈጠረውን ውዝግብ በግልግል እንዲፈታ ቢጋራ ተስማምተናል።

One General

Signatories of this arbitral submission have jointly agreed to resolve their existing disputes through arbitration.

ሁለት ስለ ግልግል ዓይነትና አካሄድ

2.1 የዚህ ሰነድ ፈራሚዎች ግልግል በምክር ቤቱ የግልግል ተቋም አማካኝነት ተቋማዊ ግልግል ሆኖ እንዲካሄድ እና ግልግልም በምክር ቤቱ የተሻሻለው የግልግል ደንብ መሰረት እንዲከናወን ቢጋራ ተስማምተናል።

Two Type and process of arbitration

2.1 Signatories of this arbitral submission have jointly agreed that the arbitration shall be conducted by the AACCSA AI and in accordance with the Revised Arbitration Rules of the Chamber.

2.2 በምክር ቤቱ የተሻሻለው የግልግል ደንብ የአማርኛ እና የእንግሊዘኛ ቅጂዎች ላይ ልዩነት ቢፈጠር ፈራሚዎች የደንቡ ረቂቅ በተዘጋጀበት የእንግሊዘኛው ትርጉም ገዢ

2.2 Where differences arise between the Amharic and English versions of the rules, signatories have agreed that the English version shall be



እንዲሆን ተስማምተናል።

controlling as the draft rules was prepared therewith.

ሦስት የግልግል ቋንቋ

የዚህ ሰነድ ፈራሚዎች የግልግል ሃይት የፈራሚዎችን ፍላጎት በሚያሟላ እና አላስፈላጊ ወጪን በሚያስወግድ መንገድ በአማርኛ እና በእንግሊዘኛ ቋንቋዎች እንዲካሄድልን ተስማምተናል።

Three language of Arbitration

Signatories have agreed that the arbitration proceeding shall be conducted in Amharic and English taking in to consideration the fulfillment of the interest and avoiding undue expenses to the parties.

አራተኛ ማጠቃለያ

የዚህ ሰነድ ፈራሚዎች ይህ የግልግል ስምምነት ከ-----2002 ደዎር ተፈጻሚ እንዲሆን ተስማምተናል።

Four Final Provision

Signatories have agreed that this arbitral submission shall be effective as of ----- 2010

ለ ወይም ስለ የኢትዮጵያ የግብርና ምርምር ኢንስቲትዩት

For and on behalf of Ethiopian Institute of Agricultural Research

ለ ወይም ስለ ምስር ኮንክሪት ዴቪሎፕመንት ካምፓኒ ኃ የተ የግል ማህበር

For and on behalf of MISR Concrete Development Company, S.A.E

ለ ወይም ስለ አዋሽ ኢንሹራንስ ኩባኔያ አክሲዮን ማህበር

For and on behalf of Awash Insurance Company S.C

ምስክሮች/ Witnesses



የክ/መ/ቁ 295414

ቀን 05/08/2014 ዓ.ም

ጻፍ፡- ፀጋ አስራት

ከላሽ፡- ንብ ኢንሹራንስ ኩባንያ -ነ/ፊጅ ሱራፊል ገዣሽን ቀረቡ

ተከሣሽ፡- ቴክትራ ኢንሺራንስ ኃ/የተ/የግ/ማህበር -ጠበቃ ማሪያ ካህላይ ቀረቡ

መዝገቡ ለዛሬ የተቀጠረው ለምርመራ ሲሆን ተመርምሮ የሚከተለው ፍርድ ተሰጥቷል፡፡

ፍ ር ድ

ለዚህ ፍርድ መነሻ የሆነው ከሣሽ ለተከላሽ በሰጠው የቅድሚያ ክፍያ ዋስትና (Advance payment bond) መሠረት ለአሰሪው ዲ.ቢ.ኤም ኮንስትራክሽን አ.ማ የክፈለውን ብር 4,995,411.28 (አራት ሚሊዮን ዘጠኝ መቶ ዘጠና አምስት ሺ አራት መቶ አስራ አንድ ከ28/100 ሳንቲም) እንዲሁም ከላሽ በክሱ ምክንያት ለግልግል ጻፍኞች የክፈለውን እበል ብር 160,000.00 በአጠቃላይ ብር 5,155,411.28 (አምስት ሚሊዮን አንድ መቶ ሃምሳ አምስት ሺ አራት መቶ አስራ አንድ ከ28/100 ሳንቲም) ተከላሽ እንዲከፍሉ ይወሰንልኝ በማለት ነሐሴ 07 ቀን 2013 ዓ.ም ዕፎ ያቀረበው የክስ እቤቱታ ነው፡፡

ባቀረበው ክስም ተከሣሽ አሠሪው የሆነው ዲ.ቢ.ኤም ኮንስትራክሽን (አ.ማ) በድሬዳዋ ከተማ ያስገነባው ሕንፃ ላይ የሚካኔካል ቪንትሊሽን ዕቃ በማስገባት ገጥሞ ለማስረከብ በቀን ህዳር 04/2011 ዓ.ም ውል የተዋዋለ ሲሆን ተከሣሽ ከአሠሪው የወሰደውን ቅድመ ክፍያ በእግባቡ በሥራ ላይ ስለመዋሉ ከሣሽ በውል ቁጥር MB/2/BDABC/7865/18 እስከ ብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ከ82/100 ሳንቲም) ድረስ የቅድመ ክፍያ ዋስትና (Advance payment bond) ሰጥቷል፡፡ ተከላሽም በገባው የግንባታ ውል መሰረት ዛፈሪህም ከላሽ ለአሰሪው በሰጠው የቅድሚያ ክፍያ ዋስትና መሰረት ክፍያ ከፈፀመ በኋላ ከተከላሽ ላይ መልሶ ገንዘቡን የመጠየቅ (Counter Indemnity) መብት



ያለው መሆኑን በ06/3/2011 ዓ.ም ከከሳሽ ጋር ውል የገባ ሲሆን አሰሪው የሆነው አ.ቤ.ኤም ኮንስትራክሽን አ.ማ ተከላሽ (የስራ ተቋራጭ) በግንባታ ውሉ መሠረት ሥራውን ባለማክናወጥ ውሉን አቋርጦ በከላሽ ላይ በጋራ በተቋቋመ የግልግል ዳኝነት መድረክ ክስ በመመስረት የግልግል ተቋሙም የግራ ቀኙን መልስ በመቀበል ካከራከረ በኋላ በየካቲት 07/2013 ዓ.ም በዋለው ችሎት ከሳሽ ለአሰሪው ብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ከ82/100 ሳንቲም) ወለድ ከልዩ ልዩ ወጪዎች ጋር ጨምሮ እንዲከፈል ውሳኔ የሠጠ ሲሆን በግልግል ተቋሙ ውሳኔ መሠረት ከሳሽ ለአሰሪው እንዲከፍል የተወሰነበትን ገንዘብ፣ ወለድ እና ልዩ ልዩ ወጪዎችን ጨምሮ ብር 4,995,411.28 (አራት ሚሊዮን ዘጠኝ መቶ ዘጠና አምስት ሺ አራት መቶ አስራ አንድ ከ28/100 ሳንቲም) ለፍርድ ባለሙያነት ለሆነው ለአ.ቤ.ኤም ኮንስትራክሽን አ.ማ ክፍያ ፈፅሟል። ስለሆነም ከሳሽ በሰጠው የቅድሚያ ክፍያ ዋስትና (Advance payment bond) መሠረት ለአሰሪው አ.ቤ.ኤም ኮንስትራክሽን የክፈለውን ብር 4,995,411.28 (አራት ሚሊዮን ዘጠኝ መቶ ዘጠና አምስት ሺ አራት መቶ አስራ አንድ ከ28/100 ሳንቲም) እንዲሁም ከሳሽ በክሱ ምክንያት ለግልግል ዳኞች የክፈለውን አበል ብር 160,000.00 በአጠቃላይ ብር 5,155,411.28 (አምስት ሚሊዮን አንድ መቶ ሃምሳ አምስት ሺ አራት መቶ አስራ አንድ ከ28/100 ሳንቲም) ክፍያው ከተከፈለበት ጀምሮ ከሚታሰብ ዘጠኝ በመቶ ወለድ ጋር እንዲሁም በዚህ ክርክር ምክንያት ያወጣውን ወጪና ኪሳራ ተከላሽ እንዲከፍሉ ይወሰንልኝ በማለት ዳኝነት ጠይቋል። በማስረጃነትም የሰነድ ማስረጃ ዘርዘር አቅርቧል።

ለተከላሽ የከሳሽ የክስ አቤቱታ ክፍ/ቤቱ መጥሪያ ጋር እንዲደርሳቸው ተደርጎ ተከላሽ ጥቅምት 01 ቀን 2014 ዓ.ም የተጻፈ የመጀመሪያ ደረጃ የክስ መቃወሚያ እና የመከላከያ መልስ አቅርቦታል።

ተከላሽ ያቀረቡትን የመጀመሪያ ደረጃ የክስ መቃወሚያ ክፍ/ቤቱ በብይን ያለፈው ሲሆን ተከላሽ በፍራ ሃገር ባቀረበው መልስም ተከላሽ ከአሰሪው አ.ቤ.ኤም. ኮንስትራክሽን ጋር ህዳር 04 ቀን



2011 ዓ.ም በተደረገ ውል በድሬዳዋ ከተማ በኮንትራክተርነት ለገነባው ንብረትነቱ የቢድቱ አዳኛ አክሲዮን ማህበር የሆነ ህንጻን የኤሌክትሮ ሜካኒካል ቪንትሌሽን ስራዎችን ለመስራት በቅድሚያ ክፍያነትም ብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ብር ከ82/100) ህዳር 10 ቀን 2011 በቼክ መቀበላቸውን በማመን ከሳሽም ተከላሽ የወሰደው ቅድመ ክፍያ በስራ ላይ ስለመዋሉ በ06/03/11 የተጻፈ የቅድመ ክፍያ ዋስትና ቦንድ መስጠቱን ያመኑ ሲሆን ከአሰሪው ጋር በተደረገው ስምምነት መሰረት የሚሰራው ስራ ዋነኛ አላማ አሰሪው በኮንትራክተርነት በድሬዳዋ ከተማ የሚያሰራውን ህንጻ ሁለት አዳራሾች የሜካኒካል ቪንትሌሽን እቃዎችን ተከላሽ ገዝቶ እና አምርቶ በመግጠም አዳራሾቹ የሚፈለገው ቅዝቃዜ (Room Temperature) ከ18-24 ዲግሪ ሴንቲግራድ) የሆነ የተመጠነ ሙቀት እንዲያገኙ ለማስቻል ነው። ሆኖም በአሰሪው በኩል ተሰርቶ የቀረበው የሜካኒካል ንድፍ (Design) እና የስራ ዝርዝር (BOQ) የተፈለገውን ውጤት ማምጣት የማያስችሉ እና ችግር ያለባቸው በመሆኑ ከአሰሪው ድርጅት ጋር የተለያዩ የቃል ውይይቶችን እና የደብዳቤ ልውውጦችን ካደረገን በኋላ ንድፉ እንዲስተካከል በመስማማታችን በተከላሽ የተሰራ የተለወጠ/ የተሻሻለ የሜካኒካል ንድፍ (Design) እና የስራ ዝርዝር (BOQ) ተልከላቸው የተወሰኑትን ለተከላሽ በላኩት ደብዳቤ ማጽደቃቸውን የገለጹ ሲሆን ቀሪዎቹንም በራሳቸው ችግር እስከ መጨረሻው ድረስ ምላሽ ሳይሰጡበት በመቅረታቸው ስራው ሳይጠናቀቅ ቀርቷል። ስለሆነም ቀደም ሲል ከሳሹ የቅድመ ክፍያ ዋስትና የሰጡበት ስምምነት ከመቀየሩም በላይ የተቀየረው ስምምነትም ሳይፈጸም የቀረው በአሰሪው ችግር መሆኑን መረዳት ይቻላል። በመሆኑም በቅድመ ክፍያ ዋስትና ቦንዱ ላይ በግልጽ እንደተመለከተው ዋስትና የተገባበት ስምምነት የተቀየረ እና ስምምነቱ ያልተፈጸመውም በራሱ በአሰሪው ጥፋት ምክንያት ስለሆነ ከሳሹ በዋስትና ቦንዱ መሰረት እንዲከፈል የሚገደድበት የህግ አግባብ የለም። በተጨማሪም በቅድመ ክፍያ ዋስትና ቦንዱ ስምምነት መሰረት ተከላሽ እንደውሉ መፈጸም ካልቻለ አሰሪው ከሳሹ በራሱ ወይም ሌላ ድርጅት ቁጥር የአንዳንድ ማድረግ እንዳለበት ቅድመ ሁኔታ የተቀመጠ ቢሆንም አሰሪው ይህንን ያልፈጸመ በመሆኑ ከሳሹ ተጠያቂ አይሆንም። በመሆኑም ከሳሹ



ለአሰሪው ለመክፈል የሚገደደው ክፍያ የሌለ ቢሆንም መክፈል አለበት እንኳን ቢባል ግዴታው በቅድሚያ ክፍያ ዋስትና ቦንዱ መሰረት የተጠቀሰውን ብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ብር ከ82/100) ብቻ ሆኖ ሳለ ያለአግባብ የክፈለውን ወለድ እና ወጪ ተከላሹ እንዲከፍለው ያቀረበው ክስ የውልም ሆነ የህግ መሰረት የለውም። ከዚህ በተጨማሪም ከላሹ በግልግል ዳኝነት በተወሰነው መሰረት ክፍያ ከፈጸመ በኋላ ክፍያው እንዲፈጸምለት ለተከላሹ በጽሁፍ ያሳወቀው ነገር የለም። በመሆኑም ምናልባት የቅድመ ክፍያ ዋስትና የተገባለትን ገንዘብ ተከላሹ እንዲከፍል የሚወሰንበት እንኳን ቢሆን በዚህ ክስ ምክንያት የወጣውን ወጪም ሆነ ወለድ ራሱ ከላሹ ከሚሸፍን ውጪ ተከላሹ የሚተካበት የህግ አግባብ የለም በማለት መልሳቸውን አቅርበዋል። በማስረጃነትም የሰው ምስክርና ከላሹ በሰነድ ማስረጃነት ዘርዘረው ያቀረቡት ማስረጃዎች እንዲያዝላቸው ጠይቀዋል።

በክስ መስማት ሂደትም የከላሹ ነገረ ፈጅ እንደ ክስ አቀራረባችን ይወሰንልን። እንዲሁም በግልግል ዳኝነቱ ላይ ተከላሹ እንዲገቡ ተደርጎ ነበር። ከላሹ የሠጠው የቅድሚያ ክፍያ ዋስትና ውል ሌላ ሰው አስገብቶ እንዲያሰራ የሚሰገድደው ስምምነት አላደረገም። ከላሹ ዋስትና የሠጠው እንደ ውሉ ካልተፈጸመ በዋስትናችን እንድንከፍል ነው። እኛ ክፍያ የፈፀምነው የግልግል ዳኝነት በወሰነው መሰረት ሲሆን ተከላሹ ወደ ግልግል ዳኝነቱ እንዲገቡ ተጠርተው ለመግባት ፍቃደኛ አልሆኑም። ከዚህ በተጨማሪ ተከላሹ እንደውሉ ስላልፈፀሙ ነው ክፍያውን የክፈለነው በማለት ተከራክረዋል። ተከላሹ በጠበቃቸው አማካኝነት ወደ ግልግል ዳኝነት ያልገባነው ጉዳዩ ስለማይመለከተን ነው። በግልግል ዳኝነቱም ጥፋተኛ አልተባልንም። ያልሰራነው በእኛ ጥፋት አይደለም። ማስጠንቀቂያ አልተሰጠንም ስለዚህ እንድንከፍል አንገደድም። ስራው በተባለው ጊዜ አልተጠናቀቀም ቢባል እንኳን በውሉ መሠረት በሌላ ሰው ሊያሰሩት ይገባ ነበር በማለት ተከራክረዋል።



በጉዳዩ ላይ የቀረበው ክርክር ይዘትና ሂደት አጠር ባለመልኩ ሲታይ ከላይ የተመለከተውን ሲመስል ፍርድ ቤቱም የቀረበውን የፅሁፍ እና የቃል ክርክር መሰረት በማድረግ በፍ/ብ/ሥ/ሥ/ሕ/ቁጥር 246 እና ተከታዮቹ ድንጋጌ መሰረት፡-

➤ ከሳሽ ለተከሳሽ የቅድሚያ ክፍያ ዋስትና መሠረት ለአሰሪው ኢ.ቢ.ኤም ኮንስትራክሽን አ.ማ ሰጥቷል ወይስ አልሰጠም? ተከሳሽ እንደውሉ ባለመፈፀሙ ምክንያት ከሳሽ የክፈለው ክፍያ አለ ወይስ የለም? አለ ቢባልስ ተከሳሽ የመክፈል ኃላፊነት አለባቸው ወይስ የለባቸውም?

➤ ኃላፊነት አለባቸው ቢባልስ ሊከፍሉ የሚገባው የክፍያ መጠን ስንት ነው?

የሚሉትን ነጥቦች በዋና ጭብጥነት በመያዝ የቀረበውን ክርክር አግባብነት ካላቸው ህግጋት ጋር እንደሚከተለው መርምሯል፡፡

የመጀመሪያውን ጭብጥ በተመለከተ ከሳሽ በውል ቁጥር MB/2/BDABC/7865/18 እስከ ብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ከ82/100 ሳንቲም) ድረስ ተከሳሽ አሠሪው ለሆነው ኢ.ቢ.ኤም ኮንስትራክሽን (አ.ማ) በድሬዳዋ ከተማ ያስገነባው ሕንፃ ላይ የሜካኒካል ቪንትሌሽን ዕቃ በማስገባት ገጥሞ ለማስረከብ በገባው ውል መሠረት ለወሰደው የቅድመ ክፍያ ዋስትና ቦንድ (Advance payment bond) የሰጠ ስለመሆኑ ከሳሽ በሰነድ ማስረጃነት የቀረበው የቅድሚያ ክፍያ ዋስትና ማስያዣ ውል ያስረዳል፡፡ በመሆኑም ከሳሽ ለተከሳሽ የቅድመ ክፍያ ዋስትና ቦንድ (Advance payment bond) መስጠቱ ተረጋግጧል፡፡

ከሳሽ ለተከሳሽ የቅድመ ክፍያ ዋስትና ቦንድ መስጠቱ ከተረጋገጠ ከሳሽ ድርጅት ባቀረበው ክርክር የቅድመ ክፍያ ዋስትና ያስያዝሉለት ተከሳሽ ከአሠሪው ጋር በገባው ውል መሠረት እንደ ወሉ ባለመፈፀሙ ምክንያት በግልግል ዳኝነት ተወስኖብኝ የክፈልሁትን ክፍያ ተከሳሽ ሊከፍሉኝ ይገባል በማለት ተከራክሯል፡፡ ተከሳሽ በበኩሉ ለውሉ አለመፈፀም ምክንያት ተከሳሽ አለመሆኑንና በቅድመ ክፍያ ዋስትና ቦንዱ ላይ በግልጽ የተጻፈውን የቅድመ ክፍያ ዋስትና



የተገባበት ስምምነት የተቀየረ እና ስምምነቱ ያልተፈጸመውም በራሱ በአሰሪው ጥፋት ምክንያት ስለሆነ ከሳሹ በዋስትና ቦንዱ መሰረት እንዲከፈል የሚገደድበት የህግ አግባብ ሳይኖር የክፈለው ክፍያ በመሆኑ ተከላሽ ሊከፍል አይገባም የሚል መከራከሪያ ነው በዋናነት ያቀረበው። ከዚህ አንፃር ሲታይ በግራ ቀኙ መካከል የቅድሚያ ክፍያ ዋስትና ውል መኖሩ ያልተካደ ሲሆን በመሠረቱ በሕግ አግባብ የተደረጉ ውሎች በተዋዋይ ወገኖች መካከል እንደ ሕግ የሚቆጠሩ እንደመሆናቸው መጠን ውሉን ያከበረው ወገን በውሉ ላይ ስምምነት ከተደረሰባቸው የውል ሁኔታዎች ውስጥ ያልተከበረ ወይም ያልተፈፀመለት ነገር ካለ የተጣሰው የውል ስምምነት እንዲፈፀምለት ሊጠይቅ ይችላል። ይህ አጠቃላይ የውል ህግ መርህ ሲሆን ከፍ/ብ/ሀ/ቁጥር 1731 ፣ 1757 እና 1771 ድንጋጌዎች ይዘት ለመረዳት ይቻላል።

አሁን በተያዘው ጉዳይም ከሳሽ ከተከላሽ ጋር ሕዳር 6 ቀን 2011 ዓ.ም በገቡት ውል መሠረት ተከላሽ አሠሪው የሆነው ኢ.ቤ.ኤም ኮንስትራክሽን ኢ.ማ በድራዳዋ ከተማ ያስገነባው ሕንፃ ላይ የሚካኔካል ቪንትሌሽን ዕቃ በማስገባት ገጥሞ ለማስረከብ በቀን ህዳር 04/2011 ዓ.ም በተዋዋለው ውል መሠረት ተከላሽ ከአሠሪው የወሰደውን ቅድመ ክፍያ በአግባቡ በሥራ ላይ ካላዋለ ከሳሽ እስከ ብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ከ82/100 ሳንቲም) ድረስ የቅድመ ክፍያ ዋስትና ቦንድ (Advance payment bond) የሠጠ መሆኑና ተከላሽም በገባው የግንባታ ውል መሰረት ካፈፈፀመ ከሳሽ ለአሰሪው በሰጠው የቅድሚያ ክፍያ ዋስትና መሰረት ክፍያ ከፈፀመ በኋላ ከተከላሽ ላይ መልሶ ገንዘቡን የመጠየቅ (Counter Indemnity) መብት እንዳለው ስምምነት ማድረጋቸውን ከሳሽ ካቀረቡት የሠነድ ማስረጃዎች መረዳት ይቻላል። በዚህ መሠረት ሲታይ የቅድሚያ ክፍያ ዋስትና ወይም ቦንድ (Advance Payment Bond) መሰረት የሥራው ባለቤት የማካካሽ መብቱን ለመጠየቅ የሚችለው በዋስትናው የተመለከቱትን ቅድመ ሁኔታዎች (conditions precedent) ሲሟሉ ሲሆን ይህንን የቅድሚያ ዋስትና ቦንድ የማይገቡ በፍትህ ብሔር ሕጉ በተደነገጉት የዋስትና ሕግ ድንጋጌዎች እንደመሆኑ መሠረት አሠሪው እንደ ውሉ አልተፈፀመልኝም በማለት በዚህ መዝገብ ከሳሽ የተከላሽ ሕግ ተከላሽ ጋር በግልግል ጉባዔ በመክሰስ ተከላሽ ከግልግል ጉባዔው



መውጣታቸውንና ክላሽ በዋስትና የተያዘውን ገንዘብ ከነወለዱ ለአሠሪው እንዲከፍሉ መወሰኑን በሰነድ ማስረጃነት የቀረበው የመዝገብ ቁጥሩ የግ/ዳ/ገ/መ/ቁ 001/13 የካቲት 07 ቀን 2013 ዓ.ም የተሰጠው ውሳኔ ያስረዳል። በግልግል ጉባዔው በተሰጠው ፍርድ በምስክሮች እንደተረጋገጠው ተከላሽ ምንም ስራውን አለመጀመራቸው የተረጋገጠ ሲሆን በተያዘው ክርክርም ተከላሽ ይህንን ክደው ያልተከራከሩ ሲሆን ተከላሽ በዋናነት የሚያነሳው ክርክር በአሰሪው በኩል የቀረበው ንድፍ ከተከላሽ ጋር በደብዳቤ ልውውጥ ስምምነት አድርገው በተከላሽ የተሻሻለ የሚካኒካል ንድፍ ለውጥ የተደረገ በመሆኑና አሰሪው የተወሰኑትን በማጽደቅ ለቀሪዎች ምላሽ ባለመስጠቱ ሥራው ላለመሰራቱ ተጠያቂው አሰሪው ነው የሚል ቢሆንም በተከላሽ እና በአሰሪው ሕዳር 04 ቀን በተደረገው ውል አንቀጽ ውሉን ማሻሻል የሚቻለው በፅሁፍ እንደሆነ የተቀመጠ ሲሆን ተከላሽ በዚህ ረገድ ውሉ ስለመሻሻሉ ወይም ስለመለወጡ የሚያስረዳ የሰነድ ማስረጃ ያላቀረቡ በመሆኑና በውሉ የንድፍ ለውጥ ስለመደረጉ ለከላሽ ስለማሳወቃቸው የሚስረዳ ያቀረቡት ማስረጃ የሌለ በመሆኑ በዚህ ረገድ ያቀረቡት መከራከሪያ ተቀባይነት የለውም። በመሆኑም ክላሽ በግልግል ዳኝነት ጉባዔው በተሰጠው ውሳኔ መሠረት እና በገባው የቅድሚያ ክፍያ ዋስትና መሠረት ለባለሙሉ ክፍያውን መፈፀሙ አግባብ ነው።

ሁለተኛው ጭብጥ ክላሽ ለባለሙሉት መክፈሉ አግባብ ነው የተባለ በመሆኑ ተከላሽ የክፈለውን ክፍያ የመተካት ሃላፊነት አለበት ወይስ የለበትም? የሚለው ጭብጥ ሲመረመር ግራ ቀኙ ህዳር 04/2011 ዓ.ም ባደረጉት ውል መሠረት ተከላሽ ከአሠሪው የወሰደውን ቅድመ ክፍያ በአግባቡ በሥራ ላይ ካላዋለ ክላሽ እስከ ብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ክፍለ-ግንባታ) ድረስ የቅድመ ክፍያ ዋስትና ቦንድ (Advance payment bond) የሠጠ በመሆኑና ተከላሽም በገባው የግንባታ ውል መሰረት ካፈራፀመ ክላሽ ለአሰሪው በሰጠው የቅድሚያ ክፍያ ዋስትና መሰረት ክፍያ ከፈፀመ በኋላ ከተከላሽ ላይ መልሶ ገንዘቡን የመጠየቅ (Counter Indemnity) መብት እንዳለው ስምምነት ያደረጉ ስለመሆኑ የቀረቡት ውል የሚያስረዳ በመሆኑና ተከላሽ እንደውሉ አለመፈፀሙ የተረጋገጠ በመሆኑም ተከላሽ እንደውሉ ባለመፈጸሙ ክላሽ ለባለሙሉት በደረሰኝ



ቁጥር የቅድሚያ ክፍያውን ከነወለዱ ብር 4,995,411.28 (አራት ሚሊዮን ዘጠኝ መቶ ዘጠና አምስት ሺ አራት መቶ አስራ አንድ ከ28/100 ሳንቲም) የከፈለ መሆኑን የደረሰኝ ቁጥር 0318 የሆነ መጋቢት 23 ቀን 2013 ዓ.ም የተዘጋጀ ደረሰኝ ያስረዳል። ስለሆነም በፍ/አ/ቁጥር 1940 እና 1944 (1) መሠረት ተከላሽ ለከላሽ የከፈለውን ክፍያ ሊከፍለው ይገባል። ከዚህ በተጨማሪም ከላሽ ለግልግል ዳኝነት ያወጣውን ወጪ ብር 159,000.00 ተከላሽ ሊከፍሉ ይገባል።

በአጠቃላይ ተከላሽ ከላይ በተጠቀሰው የህግና የፍሬ ነገር ምክንያት መሠረት ለከላሽ ብር 5,154,411.28 (አምስት ሚሊዮን አንድ መቶ ሃምሳ አራት ሺ አራት መቶ አስራ አንድ ከ28/100 ሳንቲም) ከላሽ ክፍያውን ለባለሙብቱ ከከፈለበት ቀን ጀምሮ ከሚታሰብ ሕጋዊ ወለዱ ጋር እንዲከፍሉ ፍርድ ተሰጥቷል።

በዚህም መሠረት የሚከተለው ተወስኗል።

ው ማ ኔ

1. ከላሽ ለተከላሽ በሰጠው የቅድሚያ ክፍያ ዋስትና መሠረት ለአሠሪው የከፈለውን ክፍያ ለተከላሽ የመተካት ሀላፊነት አለባቸው ተብሎ ተወስኗል።
2. ተከላሽ ከላይ በፍርዱ ላይ በተገለፀው መሠረት ለከላሽ ብር 5,154,411.28 (አምስት ሚሊዮን አንድ መቶ ሃምሳ አራት ሺ አራት መቶ አስራ አንድ ከ28/100 ሳንቲም) ከላሽ ለባለሙብቱ ክፍያውን ከፈጸመበት መጋቢት 23 ቀን 2013 ቀን ጀምሮ ገንዘቡ ተከፍሎ እስከሚጠናቀቅ ድረስ ከሚታሰብ 9% ህጋዊ ወለድ ጋር ለከላሽ እንዲከፍሉ ተወስኗል።
3. ተከላሽ ከላሽ በክሱ ምክንያት ያወጣውን የዳኝነት ብር 54,404.15 (ሃምሳ አራት ሺህ አራት መቶ አራት ከ15/100)፣ የቴምብር ቀረጥ ብር 25 (ሃያ አምስት)፣ ለሰነድ ትርጉም ብር 315 (ሶስት መቶ አስራ አምስት)፣ ለጽህፈት እና ልዩ ልዩ ወጪ ጉዳዩ የወሰደው ጊዜ የክርክሩን ክብደት እና የሀብት ምትኬ በማመዘዝን በቁርጥ ብር 100 (መቶ) (ህ) በድምሩ



55,744.15 (ሃምሳ አምስት ሺህ ሰባት መቶ አርባ አራት ከ15/100) ወጪ ፍርድ ከተሰጠበት ከ05/08/2014 ዓ.ም ጀምሮ ገንዘቡ ተከፍሎ እስከሚጠናቀቅ ድረስ ከሚታሰብ 9% ህጋዊ ወለድ ጋር ለከላሽ እንዲከፍሉ በፍ/ሥ/ሥ/ህ/ቁ 464(4) መሠረት ተወስኗል።

ት ዕ ዛ ዝ

1. በተሰጠው ውሳኔ ላይ ይግባኝ መብት ነው ።
2. መዝገቡ ውሳኔ ስላገኘ በዚህ መዝገብ የተሰጡ ዕግዶች ተነስተዋል።
3. መዝገቡ ውሳኔ ስላገኘ ወደ መ/ቤት ይመለስ።



የማይነበብ የዳኛ ፊርማ አለበት

ሰ/ሰ

06/8/14



228752 - 9/4/09 መዝገብ የማመዛዛት
 - Advance payment bond
 this is partial demand 90% -

የግ/ዳ/ገ/መ/ቁ 001/13

የካቲት 07 ቀን 2013

የግልግል ጉባኤ ዳኞች

- 1. አቶ መላኩ ገ/ሥላሴ ሰብሳቢ
- 2. አቶ ጀምበራ ገንጫ አባል
- 3. አቶ ተስፋዬ በተለ አባል

አመልካች:- አ.ቤ.አ.ም ኮንስትራክሽን አ/ማ *አዳኝ አይቲቲሲ*

ተጠሪዎች:- 1ኛ ተከትሎ ኢንሜንሪንግ ጋ/የተ/የግ/ማ ከከርከፍ ወ.ጪ ሆኗል።

2ኛ ጉባኤ ኢንሜንሪንግ ክ-ባንያ *ከጸሐፊው: 74ግዳ ላይ ተጠሪ*

መዝገቡ ተመርምሮ ተከታዩ ፍርድ ተሰጥቷል።

ፍርድ

ይህ ጉዳይ ወይም መዝገብ ለግልግል ጉባኤ ዳኞች ሊቀርብ የቻለው በ11/03/2012 ዓ.ም የፌዴራል ክፍተት ገዢዎች ቤት በመ/ቁ 228756 የአመልካችን እና የተጠሪዎችን ጉዳይ ተመልክቶ 1ኛ ተከትሎን ከጉዳዩ ለጊዜው በማሰናበት 2ኛ ተጠሪ ከአመልካች ጋር በግብር ወል መሠረት ጉዳዩ በግልግል ዕልባት እንዲያገኝ የሰጠውን ብድን መገኘት በማድረግ ነው። በዚህ መሠረት አመልካች በመስከረም 12 ቀን 2013 ዓ.ም በተጻፈ አቤቱታ 1ኛ ተከትሎ የሚካሄድ ሺንትሌሽን ዕቃ በማስገባትና ገጥሞ ለሥራ እንዲወልድ ለማድረግ ወል ገብቶ ትኩረት ክፍያ የብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሓያ አራት ብር ከሰማኒያ ሁለት ሳ) ተቀብሎ በገባው ወል መሠረት ሥራውን ሳይሰራ በመቅረቱና 2ኛ ተጠሪ ደግሞ 1ኛ ተጠሪ ለተቀበለው ትኩረት ክፍያ የዋስትና ባንድ የሰጠ በመሆኑ ተጠሪዎቹ በገቡት ወል መሠረት ገንዘቡን ከተቀበሉበት ጊዜ ጀምሮ ብር 4,224,924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሓያ አራት ብር ከሰማኒያ ሁለት ሳ) እንዲከፍሉ እንዲወሰንልን የሚል ሲሆን ከአቤቱታው ጋር የሰነድና የሰው ማስረጃም አያይዞ አቅርቧል።

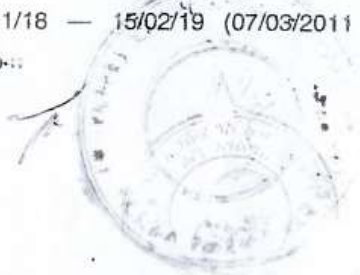
ተጠሪዎች የአመልካች ክስ ከመጥሪያ ጋር ደሲቸው 1ኛ ተጠሪ በ27/01/2013 ዓ.ም ጸፈው ባቀረቡት ባለ አንድ ገጽ አቤቱታ ላይ በግልጽ እንደሰጡት ሰነድ መልስ ሰጠው የተያዘው ተጠሪ 9 ቀናት ሲቀናት የደረሰን ከመሆኑም በላይ የ1ኛ ተጠሪ ጠበቃ ክፍል ላይ ነበርኩ ከፊልግም ጊዜ በሀመም ምክንያት ህዝብ ላይ ለገቢዎች ከመልሳችንም ጋር አያይዘን የምናቀርበው የተከሳሽ ክሳሽነት ክስ በመኖሩ ተሰጥቶ ተጠሪ/ይዘብን በማለት አመልካቱ ጉባኤውም ለሥራው መቃናት ይበጃል። እውነቱን ፍትህ ለመስጠትም ያስችላል። ብሎ በማመኑ መልሳቸውን አዘጋጅተው እንደተሰጡ ለ06/02/2013 ዓ.ም እንዲያቀርቡ ተዘል።



ይሁን እንጂ የ1ኛ ተጠሪ ጠበቃ በ27/01/2013 ዓ.ም ለጉባኤው የገለጹትን ሀሳብ ትተው በ06/02/2013 ዓ.ም በጻፉት በባለ አንድ ገጽ መልሳቸው ላይ ጉባኤው ጉዳዩን የማይት ሥልጣን የለውም። በማለት ያቀረቡትን መከራከሪያ ተተብሎ ጉባኤው በዚህ ረገድ አንድን ወገን ተገደህ በሽምግልና ጉባኤ ጉዳይ ሁሉም ይታይልህ ብሎ ማስገደድ ለግልግል ጉባኤ የተሰጠ ሥልጣን ባለመሆኑ እና ወጤቱም በሁሉም ወገን ላይ ያልተገባ ድካም እና እንግልት የሚያስከትል በመሆኑ ጉባኤው የ1ኛ ተጠሪ ጠበቃ በ06/02/2013 ዓ.ም ጽፈው ያቀረቡትን የሥልጣን ጥያቄ መሠረት በማድረግ ከክርክሩ እንዲወጡ ወስኗል።

2ኛ ተጠሪም በመስከረም 21 ቀን 2013 ዓ.ም የተጻፈ መልስ አሰረው ከ1ኛ ተጠሪ ጋር የግንባታ ውል ቢገባም 1ኛ ተጠሪ በገባው የግንባታ ውል መሠረት ለመፈጸም እንዲችል በቁጥር TE/MEP/028/18/19 በእ.ኤ.አ 18/02/2019፣ ስራዎች በአግባቡ ተሠርተው እንዲከናወን እንዲቻል፣ በቁጥር TM/MEP/021/18/19 በእ.ኤ.አ 22/12/2018 የተሻሻለ የስራ ንድፍ እንዲያደቅ በቁጥር TM/MEP/026/18/19 በእ.ኤ.አ 15/01/2019 ግንባታውን በተመለከተ የተለያዩ ደብዳቤ በ1ኛ ተጠሪ በኩል ለከሣሽ ቢጻፍም በከሣሽ በኩል በ1ኛ ተጠሪ ለተጻፈው ደብዳቤ ምላሽ በመስጠት ስራው እንዲጠናቀቅ እና ለአገልግሎት እንዲውል ማድረግ ሲገባው የግንባታ ስራውን ውል ያቀረጠው በመሆኑ ክሁ ውድቅ እንዲደረግ፣ ከሣሽ በክስ ማመልከቻው ላይ 1ኛ ተጠሪ በግንባታ ውሉ መሠረት ምንም አልፎም በማለት ውሉን በማቋረጥ 1ኛ ተጠሪ በቅድሚያ ከፍቻነት የመሆኑን ገንዘብ በሙሉ እንዲመልስ ከስ ያቀረበ ቢሆንም 1ኛ ተጠሪ ከከሣሽ ጋር እንዲያከናውን ውል ርገባበት ስራ የኤሌክትሮ መካኒካል (Electro Mechanical) ስራ ሲሆን ከሰዎች ስራ የሚከናወነው ማለትም 90% የሚሆነው ስራ የሚከናወነው በ1ኛ ተጠሪ ወርክ ሾፕ ውስጥ ነው። በዚህም መሠረት 1ኛ ተጠሪ ከሰዎች የኤሌክትሮ መካኒካል ስራዎች በወርክ ሾፕ ውስጥ ሠርቶ ያስቀመጠ በመሆኑ የከሣሽ ከስ ውድቅ ሊደረግ ይገባል።

ስላይ እንደተመለከተው እና 1ኛ ተጠሪ በሚያቀርበው ክርክር መሠረት 2ኛ ተጠሪ ኃላፊነት የለለበት መሆኑ እንደተጠበቀ 2ኛ ተጠሪ 1ኛ ተጠሪ ከከሣሽ ጋር በገባው የዕቃ አቅርቦት እና ገጠማ ውል በሁኔታ ላይ (conditional precedent) የተመሠረተ የቅድሚያ ክፍያ ፕሮጀክት ቦንድ በውል ቁጥር MB/2/BDABC/7865/15 የሠጠ ሲሆን የግንባታ ቦንድ ቆይታ በግንባታ ቦንዱ ላይ በግልፅ እንደተመለከተው ከ16/11/18 — 15/02/19 (07/03/2011 ዓ.ም እስከ 06/06/2011 ዓ.ም) ለ90 ተንብቻ ተገደሶ ነው።



ነገር ግን በከሣሽ በኩል 1ኛ ተጠሪ ከከሣሽ ጋር በገባው ውል መሠረት ካልፈጸመ በዋስትና ሰንድ ውል ተራ ቁጥር 2 መሠረት ወዲያውኑ ለ2ኛ ተጠሪ በዕቅድ ማሳወቅ ሲገባው ከሣሽ በዋስትናው የጊዜ ቆይታ ጊዜ ውስጥ ማሳወቅ ቆይቶ ክስ የመሠረተው የዋስትናው ጊዜ ከተጠናቀቀ በ01/08/2011 ዓ.ም ነው። ስለሆነም ከሣሽ 2ኛ ተጠሪ በጊዜ ገደብ የሠጠው የዋስትና ሰንድ ከተጠናቀቀ በኋላ ይክፈለግ በማለት የመሠረተው ክስ የህግም ሆነ የውል መሠረት ስለሌለው የከሣሽ ክስ ውድቅ እንዲደረግ፣ በማለት ምላሽ ሰጥቷል። ዝርዝሩ ከመዝገቡ ጋር ተያይዟል።

ጉባዔው የግራ ቀኙን ክርክር በ02/04/2013 ዓ.ም በዋለው ጉባዔ ክስ የሰማ ሲሆን በዚህ ዕለት አንደኛ ተጠሪ ተብሎ በነበረው ወል ላይ 2ኛ ተጠሪ ዋስትና መግባቱ አልተካደም። ሥራው መጠናቀቅ የነበረበት በ90 ቀን ውስጥ ሠርቶ ለማስረከብ ነበር። ኅዳር 06 ቀን 2011 ዓ.ም የተፈረመ ሆኖ እስከ ቅህሳስ 13/2011 ዓ.ም ድረስ ኮንትራክተሩ ምንም ነገር ማደርግ ለ36 ቀናት ቆይቶ ወሉን እናሻሽል በማለት የወል ማሻሻያ አስቀድሞ የተዋጠውን bill of quantity ተይሮ specification ሰወጠ ወል እናሻሽል የሚል ጥያቄ አቀረበ በዚያ ጥያቄ ላይ ከሣሽ ጥያቄውን ወድቅ አደረገበት። ምክንያቱም ብቻህን ወል ለማሻሻል ያቀረበከወ ጥያቄ ተቀባይነት የሰጠው በማለት ከሣሽ የሥራውን ንድፍም አላቀረበከም። ዕቃ አላቀረበከም። ይህን ባለመፈጸም ጋላፊነት አሉበህ። ወሉን የምትፈጸምበትን መርከብ ገብር አዘጋጅተህ በማትረብ ወሉን እንድትፈጸም በሚል ቅህሳስ 16/04/2011 ዓ.ም በጽሑፍ አስጠንቅቆታል።

ይህ ማስጠንቀቂያ ከተሰጠው በኋላ የሥራውን ንድፍ ወርክሽፕ ድርጅትም ቅህሳስ 18/2011 አቅርቦ ወደቀለት። ይኸ ከወደቀለት በኋላም የሥራ መርሀ ግብሩን አላቀረበም። ጥሬ ዕቃዎች አላቀረበም። በዚህ መሠረት ከሣሽ ጥር 02 ቀን 2011 ዓ.ም ለንብ ኢንሹራንስ ማስጠንቀቂያ ባፈ ለኮንትራክተሩም ግልባጭ ተደረገ ይርሰቅልም። በማስጠንቀቂያው ላይም ለቅድመ ዋስትና ሰንድ ለ 90 ቀን የሰጣቸው ቢሆንም 90 ቀኑ ሊያልቅ 30 ቀናት ብቻ መቅረቱን ኮንትራክተሩ ደግሞ ጥሬ ዕቃ እንኳን ያልገዛ መሆኑን በመግለጽ ኢንሹራንስ የበኩሱን እንዲወጣ ከላሽ አስጠንቅቆታል። ጥር 28 /2011 ዓ.ም የመጨረሻ ማስጠንቀቂያ ለሁለቱም ማለትም ለኮንትራክተሩና ለኢንሹራንሱ ሲሰጥ የወል ጊዜው ሊያልቅ ሰባት ቀናት ብቻ ቀርተውት ነበር። እስከዚህ ቀን ድረስ ኮንትራክተሩ ለሥራው አስፈላጊ የሆነውን ጥሬ ዕቃ እንኳ አላቀረበም።

የዋስትና ሰንድ እስከ የካቲት 06 ቀን 2011 ዓ.ም ድረስ የሚቆይ ሆኖ የወል ጊዜ ከማለቁ በፊት ከሣሽ ማሳወቅ አለበት ስለሚል የካቲት 05 ቀን 2011 ዓ.ም ጊዜው ያለቀ ስለሆነ ኢንሹራንሱ በሰጠው ዋስትና ሰንድ መሠረት ገንዘባቸውን ገባ ዓ.ም የደርግልን እንጠይቃለን



የሚል ደብዳቤ ከሳሽ ዕርጋታል። 4224924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ብር ከሰማሊያ ሁለት ሣንቲም) ገቢ እንዲያደርግ ነበር ጥያቄው የቀረበው። በመጨረሻ ያለመግባቱን በሰላማዊ መንገድ ለመፍታት ሲባል ከኮንትራክተሩ ጋር የወል ጊዜው ያለቀ ስለሆነ ለማራዘም እንዲቻል የዋስትና ዕንዳን አድስልን ፣ አራዝምልን ብለን አልተስማማንም ወሎ ካልተሻሻለ በሚል አጭም ፀንቷል።

በ2ኛ ተጠሪ በኩል ደግሞ የቀረበው መክራክሪያ በጽሑፍ ከቀረበው መልስን የማስረጃ ዝርዝር እምብዛም የተለየ ነገር ባይኖርም ወሳኝ የሆኑ ነጥቦችን ናቸው በማለት 1ኛ ዋስትና የተሰጠው የግንባታ ወሎን መሠረት አድርጎ ነው። ሁለቱ ወገኖች መግባባት ካልተፈጠረ በ30 ቀናት ውስጥ መፍታት አለባቸው ያንን በተመለከተ ከሣሽ ያደረጉት ጥረት የለም ማስረጃም አልቀረበም። ይህ በሌለበት በዋስትና ልንጠየቅ አይገባም።

2ኛ ተከላሽ 1ኛ ተጠሪ የሚያከናውነው ተግባር ህንጻ ማይሆን መካኒካል ሥራ ነው። የተሰጠው ዲዛይንና ስፔሽሊኬሽን አሁን ለሚገነባው መካኒካል ሥራ ምቹ አልነበረም። ለዚህም ነው በመልሳችን 1.2 ላይ ሥራው በአግባቡ መሥራት እንዲቻል የተሻሻለ ንድፍ ይሠጠኝ አሊያም እኔ ራሴ ባዘጋጀው በማለት ቢጠየቁም ከሣሽ ምላሽ በአግባቡ አልሰጠም ከሣሽም ዲዛይን ስርተህ እምባ ብለው 1ኛ ተጠሪ የነበረው አዘጋጅቶ አቅርቧል። ከሣሽም በኩል ተተባብሯል።

በዚህ በተሻሻለ ወራ 2ኛ ተጠሪ ለተሻሻለው ወል የዋስትና ወል ገላፊነት የለብንም።

በተጨማሪ 1.4 አጠቃላይ መካኒካል ሥራ የሚሠራው ከሣሽ ጋር ማይሆን ተከላሽ ጋር ነው የሚቀመጠው በተቋራጩ ወርክ ሾፕ ውስጥ ነው። ስለዚህ በከሣሽ በኩል ሥራው በተሰጠው ዲዛይን መሠረት የማይቻል ስለነበር በግንባታው ለዘጠኝ ለተስተጓጎል ነገር ተጠሪ ኃላፊነት የለበትም። ማንኛውም የኢንጅነር ኩባንያ ዋስትና የሚሰጠው በሁኔታ ላይ ተመስርቶ ነው ይህም ብሔራዊ ባንክ ለሁሉም ኢንጅነር ኩባንያ የተሰጠ ኃላፊነት ነው። የኢንጅነር ኩባንያ ዋስትና በጥርገኛ ወይም በፕላን አይደለም። በዚህም ለ 90 ቀናት የተሰጠ ነው። የወሎ ጊዜ ቆይታ ከ07/03/2011 እስከ 06/06/2011 ቀን ለ 90 ቀናት ብቻ ነው ዋስትና የተሰጠው ከሣሽ ተግባሩን በአግባቡ ካልተወጣ በጽሑፍ ማሳወቅ አለበት በዚህ መሠረት በ28/05/2011 ዓ.ም አይደዘናል። ይህም እንጂ ለእኛ የደረሰን በ01/08/2011 ዓ.ም ነው የደረሰን።

በ28/05/2011 ዓ.ም ተጨማሪ ማስጠንቀቂያ ሰጥተናል አሉ እንጂ ፈርመን ያልተቀረጸው ማስረጃ ቢሆንም በአግባቡ ያልተረገበ በመሆኑ የምናወቀው አይደለም። 2ኛ ተጠሪ በሰጠው ዋስትና መሠረት ተጠያቂ የሚሆነው ጥፋተኛ መሆኑ ሲረጋገጥ ነው እኛ ላይ የተገኘ ጥፋት ግን የለም። ተራ ቁጥር 2.4 ላይ በግልጽ እንደሠራረው ኢንጅነር ኩባንያዎች ተቋራጭ ሥራውን በአግባቡ አለመሥራቱን አሠራው ሲያሳወቅ ኩባንያው ሥራውን ተተባብሮ መሥራት ይችላል የነበረ ሲሆን ይህም ማስጠንቀቂያ በመሆኑም ኃላፊነትን የሚወስደው ከሣሽ ነው።



በማለት 2ኛ ተጠሪ ራሱን ለመከላከል የተከራከረ ሲሆን በከላሽ በኩልም ሲጠቃለል በተቋራጩ የተሰሩ ሥራዎች ምን ያህል እንደሆኑ የገቡት ንብረቶች ምን ምን ናቸው የሚሉት ተጣርቶ አልቀረበም። ከላሽ ወይም አመልካች ከኮንትራክተሩ ጋር በወል ጊዜ ወስጥ ባለመፈፀሙ በሰላማዊ መንገድ ለመፍታት ጥረት አድርጓል። ኮንትራክተሩ በግንባታው ቦታ ተገኝቶ በምን ዓይነት ማቴሪያል እንደሚሠራ አይቶ ተረድቶ ባለው ሙያ በቀጣይ ዕውቀት ስለነበረው የተቀበለው ነው። ሥራውን እንዴት እንደሚሠራ ዲዛይኑን እንዴት አድርጎ እንደሚሠራ display (የማግኘት ቦርድ) ላይ አቅርቦ ተወዳድሮበት ነው ያሽነፈው የህንፃው ሁኔታ ለአክትሮሜክኒካል ዝርጋታ እንደሚችል በተወዳደረ ጊዜ አግይቶ ነው። የቴክኒክ ጉዳይ በተመለከተ በተረበዘው የባለሙያ ምሥክር የሚረጋገጥ ነው ወል ከፈረመ ቤንላ አልተረዳሁትም የሚለው ሀሳብ ተቀባይነት የለውም።

ከላሽ እና ኮንትራክተሩ ያሻሻሉት ወል የለም። ከላሽ በተደጋጋሚ ሲያስጠነቅቅ የነበረው ወል ለማሻሻል የሚያበቃ ምክንያት የለም። በአቀረብከው መሠረት በወል ጊዜ ወስጥ አጠናቅቆ እንጂ የምናሻሻለው ነገር የለም። ከላሽ በተደጋጋሚ ሲያሳወቅ ሲያስጠነቅቅ የነበረ በመሆኑ ኃላፊነቱን ወደ ተጠሪው አስተላልፏል። በኮንትራክተሩ በኩል ወሎን ለመፈፀም ጥረት አልነበረም። ኢንጅነራንሱ ደግሞ በወሎ ጊዜ ወስጥ ሥራው አልተሠራም ብለን እየሳወቅን እያለ ኮንትራክተሩ ሥራውን ለመሥራት ባይችልም ኢንጅነራንሱ በራሱ ወስዶ የሚሠራበት ምክንያት የለም። ይህንን ሥራ ልሥራ ብሎ ጠይቆ አያወቅም። ለኢንጅነራንሱ ሲሰጡ የነበሩ ደብዳቤዎችን በተመለከተ ደረሰኝ የሰጠበት በመሆኑ የተሳሳተ ምላሽ ተገቢ አይደለም። የጥሰትና የገደብ ጭነት ብቻ ነው። ሰላሳ ቀን ሲቀረጹ ስዕት ቀን ሲቀረጹ ማስጠንቀቂያ አደርገናል። ኢንጅነራንሱም ተቀብሎናል። ክስ ሲቀርብ ኮንትራክተሩ የሠራው ነገር አልተቀናነሰም። ቢሉም የወል ማለቂያ ላይ ግን ጥሬ ዕቃ አለማግኘቱን ከገበያ ወስጥ ማጣቱን ደብዳቤ ዕሳል። በዚህ አንፃር ለገለልተኛ ሰው ሃይ ይቅይራኝ የማለትም ቢሆን ተቀባይነት የለውም በማለት ክርክር ተጠቃሷል።

የግራ ቀኑ የጽሑፍና የቃል ክርክር ቃል ስቃል በሚባል ደረጃ ከላይ የተመለከተው ሲሆን ከክርክሩ ጉባዔውም ተደረገ የተባለው ወል ያልተፈጸመው በማን ምክንያት ነው? ይህ ከሆነ ደግሞ ወጪው ምን ይሆናል? የሚሉትን ጭብጦች ይዞ መዝገቡን መርምሯል።

አመልካችና 1ኛ ተጠሪ የነበረው እና ከዚህ ክርክር በብይን የተሰናበተው በኅዳር 04 ቀን 2011 ዓ.ም ወል መግባቱ አልተካደም 2ኛ ተጠሪ ደግሞ 1ኛ ተጠሪ ለገባው ወል በ07/03/211 ዓ.ም 1ኛ ተጠሪ ለተቀበለው ትድመ ክፍያ ብር 4,224,924.82 (አራት ሚሊዮን ስምንት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሓያ አራት ብር ከሰማሪያ ሁለት ሳ) ዋስትና ገብቷል። ይህ ለላሽን በተከራካሪ ወገናች ስራ ለማጠናቀቅም። በዚህም ተጠሪዎች ክፍያ የብር 4,224,924.82 (አራት



ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሓያ አራት ብር ከሰማሊያ ሁለት ሳ) ተቀብሎ በገባዉ ዉል መሠረት 2ኛ ተጠሪ ደግሞ 1ኛ ተጠሪ ለተቀበለዉ ትድሚያ ክፍያ የዋስትና ቦንድ የሰጠ በመሆኑ ገንዘቡንም የተቀባበሉ መሆኑንም በተመለከተ የተካካዱበት ነገር የለም።አክራካሪዉ ነጥብ 1ኛ ተጠሪ የነበረዉ ዉል ተዋዉሎ ትድሚ ክፍያዉን ከተቀበለ በኋላ በተዋዋለዉ መሠረት ሥራዉን ሳይጀምር የዲዛዩን ለዉጥ ይደረግ የሚለዉና በአመልካች በኩል ደግሞ ምንም ዓይነት ለዉጥ ሊደረግ አይገባም የቀረበዉ ስፔሲፊኬሽንም ሆነ ዲዛዩን ክበቁ በላይ ነዉ በሚል ሲሆን በዚህ ሳቢያ የዉል ጊዜዉ እየተጠናቀቀ በመሆኑ በዉል ጊዜ ዉስጥ ማስረከብ ሲገባዉ ምንም ያልፈፀመ መሆኑን በመግለፅ ለኢንሹራንስ በዉል ግዴታ መሠረት ምንም ያልተፈፀመ መሆኑን እንገልጻለን በማለት ጥር 28/2011 ዓ.ም ተገልፀዎት። የዋስትና ቦንዱ እስከ የካቲት 06 ቀን 2011 ዓ.ም ድረስ የሚቆይ ሆኖ የዉል ጊዜ ከማለቁ በፊት ከሣሽ ማሣወቅ አለበት ስለሚል የካቲት 05 ቀን 2011 ዓ.ም ጊዜዉ ያለቀ ስለሆነ ኢንሹራንሱ በሰጠዉ ዋስትና ቦንድ መሠረት ገንዘባችንን ገቢ እንዲያደርግልን ጠይቀናል የሚል ነዉ።ኢንሹራንሱ ወይም 2ኛ ተጠሪ በበኩሉ ምንም የደረሰኝ ማስጠንቀቂያ የለም የሚል ሲሆን የግራ ቀኝን ማስረጃ በመስማት መርምሯል።

የ2ኛ የቀረቡት ጌቶህን አበበ ዐጋሰ ዉል ከተፈረሰ በኋላ የዉሉ አካል ሆኖ የተገለፀዉ የሥራ ዝርዝር፣ ንድፎች አሉ። እነኚን ወደ ሥራ ከመግባቱ በፊት ግዴቱ ላይ በምን ዓይነት ዓይነት ዓይነት ይከናወናል የሚለዉን ለማጣራት ምርት ከመመሪቱና ዕቃ ግዢ ከመፈፀሙ በፊት በቦታዉ ላይ ተገኝተን ከኔ በተጨማሪ ከነ ቤር መሆንዲስ ከአሠሪዉ ግዴቱ ላይ ካለ መሆንዲስ በጋራ ለማየት ችለናል።በአየነዉ ጊዜ ዉስጥ መሠረታዊ የሆኑ ችግሮች ንድፍ ላይ ያለዉና ያየነዉ ነገር ሥራ ለማሠራት የማያስችል ሆኖ አግኝተነዋል። ከነኚህ ዉስጥም 1ኛ በጣሪያዉ ላይ እንዲቀመጡ የተወሰኑ ማሽኖች በቆርቆሮ ላይ የተቀመጡ ስለሆነ የሚያሳይ ግልፅ ነገር የለም።- ከብደትን በተመለከተ ጣሪያዉ ስለመሸከሙ የተረጋገጠ ነገር የለም።

በ2ተኛነት የተመለከተነዉ ከጣሪያዉ ወደ አዳራሹ የሚገባዉ የአየር ቱቦ የሚያሳልፍ ሆኖ በንድፍ ላይ አላገኘንም ሌላ ተጨማሪ ችግር በሥራ ዝርዝሩ ላይ የቀዘቀዘዉ አየር እንዳይባክን የሚያደርጉ Insulator (መሸፈኛ) አልተገለፀም።

ስለዚህ የኛ ንድፍ እንዲስተካከል መተማመን ላይ ደርሰን ንድፉን በአሠሪዉ በኩል ተስተካክሎ እንዲቀርብና ሥራችንን እንድንቀጥል ተነጋግረናል።አማካሪዉ ንድፉን በኮንትራክተሩ በኩል ተዘጋጅቶ እንዲቀርብ ተስማማን ሃላፊነቶችን ሳይሆንም ለሥራዉ መቀላጠፍ ወበደን አስፈላጊዉን የንድፍ ሥራ በአዲስ መልኩ ወይም መጠነኛ ለዉጥ ተደርጎ ተሠጧል። ለዚሁም የዋጋ ዝርዝር አብሮ የተዘጋጀዉ ደብዳቤ ማሸኑ ከጣሪያ ወደ ጎን ክቦቅ እና በዝርጋታዉ ላይ



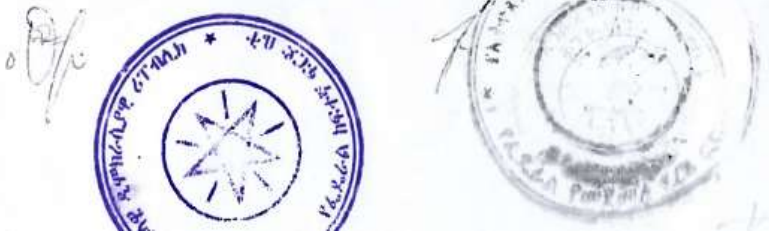
ለወጥ ፈጥሯል። የሥራ ዝርዝር ላይ ያሉትን ዕቃዎች መጠን ሊያበዛም ሊቀንስም ይችላል ዋጋም ይቀይራል።

ይህንን የሥራ ዝርዝር የያዘ የተሻሻለ ንድፍ ለአሠሪው ባቀረብን 2ኛ ቀን ላይ ማስጠንቀቂያ ደረሰን። አማካሪውን በግል ብቃወመውም ወላችን ላይ ያለው ሃላፊነት በግልፅ አልተቀመጠም። ማንኛውም ነገር ቢኖረን የምንገናኘው ከአሠሪው ጋር ነው።

አሠሪው በደብዳቤው የጠቀሳቸው ሁለት መሠረቶቹ ነገሮች ናቸው፡- 1ኛው ኮንትራቱ ላይ የተቀመጠውን የሥራ ዝርዝርም ሆነ ዋጋ መቀየር መብቶችሁ አይደሉም። 2ኛ በተዋዋልነው ኮንትራት መሠረት ሥራችሁን ቀጥሎ የሚል ነው።

ከዚህ በኋላ ደብዳቤው እንደደረሰኝ የመረዳዳት ችግር ያለ ስለመሆኑን በአካል አሠሪው ቢሮ ሄድኩኝ ሥራ አስኪያጁን እና የፋይናንስ ተጠሪውን የሚይዙ መሆንዳሉን አገኘሁና ዝርዝሩን አስረዳሁዋቸው። ያለውን ስራ ተነጋግሮ መሥራት ሲቻል ማስጠንቀቂያ መጻፍ ተገቢነት የለውም ይኸው ማስጠንቀቂያ ለኢንፎርቴሽን ግልባጭ መደረጉም ቢሆን የእኛን መልካም የሥራ አፈጻጸም የሚያጎድፍ ነው በማለት ተነጋግረን እግረ መንገድ ግን እኛ በያዘነው፡- ኤሌክትሮ ሚኒስቴር ሥራ ላይ በተለይ በዘርፉ የልምድ ማነስ እንዳለ ተረዳሁ። የእኛ ሥራ አጠቃቀም ሥራ ነገሩን አጣርተን የምንሠራው እንደሌለው የሲቪል ሥራ አይደለም። የወረቀት ሥራዎች ከላይ ለኛ ሥራው ቀላል ነው በሚል ተነጋግረን ከተስማማን ሁለት ቀን በኋላ ሌላ ደብዳቤ ሃረፈን። የቀረባችሁትን ተመልክቶን የወርክ ሾፕ አንዱን ብቻ አዕድቀው ላኩልኝ። ከዚያ በኋላ ተገታተሎ የዕቃዎቹ ጓይነቶች ላኩልን ብለው ሳምጥል ላኩን ከሌላ ተቀብለንታል ብለው ከ15 ቀን በኋላ መልስ ሰጡን። መሀል ላይ ኢንሲሊቭን ላይ ዘርዝሩ በሰፊነት ከአማካሪው ጋር ሌላ ክርክር ወሰን ገብተው በመጨረሻ ኢንሱሊቭን ተቀብለናል ብለው ፕሮጀክት ወል የማቋረጥ ጊዜ 13 ቀን ሲቀረጹ ደብዳቤ ሃፋልን። እስከወሉ መቋረጥ ጊዜ ድረስ ያልተመለሰ ነገር ደግሞ አየር ማስወጫና ማስገቢያ ተብለው የተቀመጡ ማሽኖች ችግር ይፈጥራሉ ሁለቱንም አንድ ላይ ተላቅሰን ብንጠቀም ይሻሻል ባልናቸው አስተያየት ላይ መልስ አልሰጡንም። የተቀበሉትን የሥራ ዝርዝር አስመልክቶ እንድንፅፍ ያለውን የዋጋ ሰዉጥ መነጋገር ወይም አይቶ መቀበል አለመቀበል ነበር።

የኮንትራት ጊዜ አቆጣጠር ላይ ችግር ወላችን ዘጠና (90) ቀን ነው። የወል ማቋረጡ ደብዳቤ የደረሰን ቀኑ ሳይደርስ ነው። አንድ አሠሪ ለወጡን ከተስማማ የጊዜ ሰዉጥን የዋጋ ሰዉጥን አብሮ ማያያዝ ይጠበቅበታል። የፕሮጀክቱ መንተት ምክንያት የሆነው አሠሪው እንጂ ተቋራጩ አይደሉም። እነኚህ መንተቶች በአግባቡ በሰሎ ሌላ ተቋማት 60 (ስልሳ) ቀን ተጨማሪ ይፈልጋል። ሌላው በወላችን መሠረት አለመግባቱን ለመፍታት በ30 (ሠላሳ) ቀን



ወ.ስጥ በሥላሳዊ ንግግር ይፈቅዱ ቢልም አሠረው ይህን ተተብሎ ተወያይቶ ችግሩን ለመፍቅት ፈቃደኛ አልሆነም። በማለት መስክር ተመልሷል።

የአመልካች ምስክርነት አምስት ሲሆኑ በጉባኤው አመልክቶ ሁለት ምሥክር ያቀረበ ሲሆን በዚህም መቃወሚያ ስላልነበር የቀረቡት ሶስት ምሥክርነት አንዲሰሙ ተደርጓል። የአመልካች 1ኛ ምሥክር አቶ አዲሱ ብርሃኑ የተባሉት ምሥክር በሰጡት ቃል ጨረቅው ከመወጣቱ በፊት ኮንስትራክሽን ክፍል ኃላፊ ነበርኩ ጨረቅ አወጣን በህገ መሠረት የብቃት ግምገማ ተደርጎ በዋጋም ዝቅተኛ ያቀረቡት ቱክትራ ኢንጅነሪንግ ለሥራው አጫናቸው በሂደት ቅድሚያ ከፋይ ጠየቁን ቅድሚያ ክፍያው 30% ቢሆንም በማኔጅሚንት ወስነን ከወጭ የሚመጡ ዕቃዎችን ከግምት በማስገባት 50% እንዲከፈላቸው ተወሰነ። በዚያ መሠረት ስቅጤን ማግኘት አለብኝ ብለው ድራግላ ላይ ሌላ ሥራ አላቸው እኔ ልሂድና ልመልከት ከአንድ ሳምንት በኋላ ሄዳለሁ አሉ። በወቅቱ አልሂደም መዘግየቱ የተፈጠረው በዚህ ጊዜ ነው። ከዚያ ሄደው አይተው መጥተው ንድፍ መከሰስ አለብኝ አሉ። ይኼ የኛ ማንዴት አይደለም እኛ ሦሥተኛ ወገን ነን። የሀንጻው ባለቤት ቢፍቱ አዲኛ ቢዘነስ አ/ማ ነው። እነርሱ ደግሞ አማካሪ ኤም ኤች ኮንስትራክሽን ተጥሯል ኤም ኤች በዚህ ጉዳይ ላይ የቀረበው ዲሳይን ትክክል ስለሆነ በመጀመሪያ ኤም ኤች ባዘጋጀው መሠረት ተጥሎ አልገን። አቶ ጌቅሁን አቶ መሐንደር የኤም ኤች ኢንጅነሪንግ ኃላፊ ጋር ተነጋግረው ባለመስማማት ተለያዩ። በጥገና ሥራውን ተዋወልን ወደ ሥራ እንደገቡ የሚያቀርቡት የዕቃ ናሙና እንዲያቀርቡ በደብዳቤ ጠይቀን ያቀረቡትን ናሙና ለኤም ኤች ኢንጅነሪንግ አቅርበን አፀደቁት በፀደቀው መሠረት ሥራው ይቀጥላል ብለን አሳወቅናቸው ከዚያ ወደሥራ እንዲገቡ ተስማምተናል። ይህ ካዘቃ በኋላ አቶ ጌቅሁን መጥተው የጥሪ ዕቃ እጥረት አለብኝ አሉ። ይህ ለሥራው ምክንያት አይሆንም ካሉበት ወደ ሥራ ግብ አለን። እየሠራሁ ነው ብለው ወርክሾፕ እየተመረቱ ነው አሉ ከወጭ የሚገባው የቅዝቃዛ መሆኑን አሳዩን ወይም አሳውቀን አልናቸው ሊያሳወቁን አልቻሉም። በጉምሩክም በኩል ያደረጉት ድርድር ወይም ትዕዛዝ የለም።

የሀገር ወ.ስጥ ምርትን በተመለከተ እየተመረቱ ነው ቢሉም ወደ ወርክ ሾፕ አቶ ፀጋዬ ለማ አቶ ድንቃ አብይዬ አቶ መስፍን የሚባል መሆንዳስ ጋር ሄደው የተመለከቱት ባይ ወርክ ሾፕ ነው። በሌላ ቀንም አቶ ጌቅሁንን ያዘው ሄደው ያሳይዋቸው ነገር የለም። በዚህ መሠረት ሥራው በአግባቡ እየሄደ ስላልሆነ በደብዳቤ አሳወቅናቸው። ከዚያ በዚህ ሂደት ላይ ለምን ደብዳቤ ገፋቸው የሚል ቅሬታም ነበራቸው። ከደብዳቤው በኋላ የተደረገ ንግግር ከአቶ ጌቅሁን እና ከንብ ኢንጅነሪንግ ጋር ተደዋወለን ተነጋግረን ለኢንጅነሪንግም ደውለን በፖሊሲ ግርጌ ባለው ስልክ አነጋግራለሁ። በመጨረሻ ሥራውን ለናቋርጥ ነው በማለት ለቅንጣት ለና



ለኢንሹራንስ አሣወቅን በድጋሚ 10 ቀን ሲቀረጹ ለኢንሹራንስም ሆነ ለኮንትራክተሩ አሳወቅን በመጨረሻም ለኢንሹራንስ በወሎ መሠረት ስላልተፈፀመ ገንዘቦችንን ተመሳሽ አድርጉልን ብለን ገልፀናል።

አቶ ጌቶሁን ያለሁት ድራዳዎ ነው። ሥራውን ለመጨረስ ቀኑን አራዝምልኝ ብለው ጠየቁ በዚሁም መሠረት ሃሳቡን ይገዙ በማኔጅመንት ላስወስን እርሳም አንዱ በሮ ገብተው ይቆዩኝ ብዬ ወደ ማኔጅመንቱ ገባሁ። ማኔጅመንቱም ጋር ተነጋገርን ማኔጅመንቱም አቶ ጌቶሁን ሥራውን የሚሠራ ከሆነ ጊዜ እናራዝምላት በባንክ ጋራንቲ ተጨማሪ ጊዜ እንስጥ በአማራጭ ኢንሹራንስ ቢያደርጉም ችግር የለውም ከወጭ የሚመጣው በወር ከ15 ቀን እናራዝም ብንልም አቶ ጌቶሁን ሀሳቡን አልተቀበሉም። ዋናው ወል በነበረበት 3 ወር ይሆናል። ኢንሹራንሱን ደግሞ ለማደስ ፈቃደኛ አይደሉም። በማለት የመሰከረ ሲሆን 2ኛ ምስክርአቶ ድንቃ አብድዬ የአቢኤም ኮንትራክቲንና በቴክኖሎጂ ኢንጅነሪንግ ኃላፊ/የተ/የግ/ማ መካከል በድራዳዎ ከተማ ቢፍቱ አዳኛ ለሚያሠራው ሥራ ቴክኖሎጂ መሥሪቤቱን አሟልቶ ወል ተዋጥሏል። ቅድመ ክፍያ በወሎ መሠረት አራት ሚሊዮን አካባቢ ተክሏል። ቅድሚያ ክፍያ ሲሰጣቸው ኢንሹራንስ (ንብ) አምጥተው ተቀበሉ ቴክኖሎጂ በወሎ መሠረት ወደ ሥራ ይገባል ተብሎ ሲጠበቅ ወሎ ቀኑን ጠብቆ እየሂደ እንዳልሆነ አወቅን። የሚያስረድሉ ነገሮች ሂደቱን እንገምግም ነበር ከመሆንዳላች ጋር እየተወያየን እንሠራ ነበር በኋላ እንደ ድርጅት ሰው ስናጣ ቀን እየቆጠረ መባቤ። ስወዴውን እየነገርንወ ወደ ማስጠንቀቂያ ኢንሹራንሱን ማንቃት ጀመርን የተሰጠው ቀን እያለቀ ስለሆነ ስወዴውን በደብዳቤ ጠየቅን ግልባጭ ለኢንሹራንሱም አደረግን ደብዳቤ ገበ አድራሻ ገበ አድርጌ የምመጣው እኔ ነኝ ደብዳቤውን የማደርሰው የሥራ ዘርፌ ስለሆነ ሳይሆን ለሥራው ትኩረት በመስጠት ነው። ሥራውን ቴክኖሎጂ ለመፈፀም የነበረውን ዝግጅት በተመለከተ ሲጠየቁ አንድ ሁለቱ በቃል ሥራ ጀምረናል። እያሉ እንነጋገር ነበር እስቲ ወርክሾፑን እንደወ ብለን ወርክ ሾፑ ስንሄድ ወርክሾፑ ሥራ የሌለው የቆየ እና ለአቢ ኤም የሚሆን የተዘጋጀ ሥራ የለም። ያለውን ነገር ለማቃለል ለመረዳዳት ምን እናድርግ ብለን ብናራዝምልም ጊዜ ብንስጥም ብለን ስንጠይቅ ይኼ ዕቃ ገበያ ላይ የለም ይሉን ነበር በማለት በአብዛኛው ከ1ኛ ምሥክር ጋር የሚመሳሰል ምሥክርነት ሰጥተዋል አመልካችም ምሥክር ይበቃኛል በማለቱ ጉባዔው በመተጠል ወደ ምርመራ ገብቷል።

በዚሁ መሠረት ሥራው አስመሰራቱን አመልካች በማረጋገጥ 1ኛ ተጠሪ ለነበረውም ሆነ ለ2ኛ ተጠሪ ማስጠንቀቂያ ሰጥቷል ወይስ አልሰጠም? 1ኛ ተጠሪ በሥራ በታወ ያስገባው የግንባታው ግባዓት ምን እንደሆነ ምን ያህል ሥራ እንደተከናወነ እስንምቶ አቅርቧል? ወይስ አላተረበም? የሚሉ ጭብጦች በጉባዔው የተያዙ "ለግንባታው መቀረጥ ጥቅቱ የማን ነው?" የሚሉ ጭብጦች በጉባዔው ላይ ሲሆን የመጀመሪያው የማስጠንቀቂያ ጉባዔ በዓመለከት



ምንም እንኳ 2ኛ ተጠሪ አልደረሰንም ቢሉም ምስክር ሆነው የተረቡት አቶ ጌታሁን ማስጠንቀቂያ እንደተጻፈላቸውና በግልፃዊ ለ2ኛ ተጠሪ መደረጉ አግባብ አስመሆኑንና በዚህም መሰረት ተጠሪ መሥክረዋል። የአመልካች 2ኛ ምስክር ከአንድም ሁለቱ በእጅ ለ2ኛ ተጠሪ ያደረሰ መሆኑን መሥክሯል። በተጨማሪም በ2ኛ ተጠሪ በኩል ማስጠንቀቂያ ፈርመን የተቀበልንበት የሰም ቢሉም ጉባዔው አወነተኛ ፍትሕ መስጠት ይቻላል ዘንድ በአመልካች ጠበቃ እጅ የሚገኝ ኢንሹራንስ ፈርሞ የተቀበለበት አስረጅ ያለ መሆኑን ማዩት እና መገንዘብ ስለተቻለ በዚህ ረገድ 2ኛ ተጠሪ ማስጠንቀቂያ አልደረሰንም ሲል የተረበው መከራከሪያ ተገቢ ሆኖ አላገኘውም።

በተጨማሪም 2ኛ ተጠሪ አጥብቀው ሲከራከሩ የነበሩት 1ኛ ተጠሪ በዎርክሾፕ ወስጥ ያስገቡት ንብረት ይገመት በማለት የጠየቁትም ቢሆን ምስክር ሆነው የተረቡት የ1ኛ ተጠሪ ድርጅት ባለቤት ወርክሾፕ ወስጥ ቀድሞ ምንም እንደማይሰራ ሥራው ቀድሞ የሚጠናቀቀው በወረቀት መሆኑን ያስረዱ ከመሆኑም በላይ የከሳሽ ምስክር ወርክሾፕን ሁለት ጊዜ የገበኙት ሲሆን ምንም ዓይነት ለሥራው የሚያገለግሉ ግብአቶች ያልነበሩ መሆኑን ገልጿል የመሰከሩ በመሆኑ 1ኛ ተጠሪ ሥራውን ያልጀመሩት በመሆኑ ከኃላፊነት የሚያጠባ እንዳት ምክንያት የለም። በመሆኑም አመልካችና 2ኛ ተጠሪ ጉዳያቸው በግልግል አንዲታይ በ07/03/2011 ዓ.ም ያደረጉትን ውል እና የፍ/ብሔር ሕግ አንቀጽ 3312 አንዲሁም የፌዴራል ጠቅላይ ፍርድ ቤት ስበር ሰሚ ችሎት በቅጽ 5 በመ/ቁ 25912 በገጽ 343 ላይ የሰጠውን አስገዳጅ ወሳኔ መሠረት በማድረግ አመልካች ብር 4224924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ብር ከሰማኒያ ሁለት ማጉሮም) ይከፈሉን በማለት የጠየቁትን ዳኝነት 2ኛ ተጠሪ ኃላፊነቱን የወሰዱ በመሆኑ ይህንንም ኃላፊነት ለወጡ ይገባል በማለት ጉባዔው በድምጽ ብልጫ አረጋግጧል። በመሆኑም ተከታይ ወሳኔ ተሰጥቷል።

ወሳኔ

1. 2ኛ ተጠሪ ወይም ተከሳሽ በክሱ የተጠየቀውን ክፍያ ብር 4224924.82 (አራት ሚሊዮን ሁለት መቶ ሃያ አራት ሺ ዘጠኝ መቶ ሃያ አራት ብር ከሰማኒያ ሁለት ማጉሮም) ለአመልካች ወይም ለከሳሽ ሊከፍል ይገባል።
2. 2ኛ ተጠሪ በክሱ ላይ በተገለጸው ገንዘብ ልክ ከ28/05/2011 ዓ.ም ጀምሮ ተከፍሎ እስካሁን ጊዜ ድረስ 9%በባንክ በሚታሰብ ወሰድ እንዲከፍል ተወስኗል።



የግልግል ዳኞች:

- 1) አቶ ሁሴን ይመር
- 2) አቶ ተፈራ ወንድሙ
- 3) አቶ ፍቃዱ ያሚ

ከሳሽ: አዋ ኮንስትራክሽን እና ቢዝነስ ኃላ/የተ/የግ/ማህበር -----ጠበቃ አቶ ቢንያም ተርፋ ቀረቡ
 ተከሳሽ: ሀብረት ኢንሹራንስ አ.ማ.-----ነገረ ፈጅ መንግስተአብ ገ/ዳዲቅ ቀረቡ

ጉባኤው በዛሬው አለት የተሰየመው ለነሀሴ 7 ቀን 2014 ዓ.ም. የነበረው ቀጠሮ ከአትሌቶች አቀባበል ጋር ተያይዞ መንገድ በመዘጋቱ ምክንያት ለዛሬ በመዘወሩ ነው።

ከሳሽ የቴምብር ቀረጥ የተመታበትን የክስ ማመልከቻ አንድ ኮፒ አቅርቧል።

ከሳሽ ከላይ በተራ ቁጥር 3 ላይ ለተሰየመው የግልግል ዳኛ ተገቢውን የአበል ክፍያ ከፍሏል።

ትእዛዝ

- 1. ለቀረበው ክስ መነሻ የሆነው የመድን ውል የታደሰው ከጥቅምት 20 ቀን 2013 ዓ.ም. ጀምሮ ሲሆን የግልግል ስነስርዓት አዋጅ ቁጥር 123/13 ደግሞ የወጣው በመጋቢት 24 ቀን 2013 ዓ.ም. ነው። በአዋጁ አንቀጽ 77(1) መሰረት ይህ አዋጅ ከመውጣቱ በፊት የተፈረመው የግልግል ስምምነቶች አዋጁ ከመውጣቱ በፊት በነበሩ ህጎች እንደሚገዙ ይደነግጋል።
- 2. ተከሳሽ በፍ/ብ/ሀ/ስ/ስ/ቁ 43 መሰረት ባቀረበው አቤቱታ ግዮን የጥበቃና የጽዳት እገልግሎት ኃላ/የተ/የግ/ማህበር ወደ ክርክሩ እንዲገባ ጠይቋል። ስለሆነም ጉባኤው በዚህ አቤቱታ ላይ ትእዛዝ ከመስጠቱ በፊት ይሄው ድርጅት በከሳሽ እና ተከሳሽ መሀከል በግልግል ጉባኤው ለየተደረገ ባለው ክርክር ለመግባት ፍቃደኛ መሆን ያለመሆኑን እንዲገልጽ ታዟል። ለግንዛቤ ይረዳው ዘንድ ከሳሽ ያቀረበው ክስና ተከሳሽ የሰጠው መልስ እንዲደርሰው ታዟል።

ለነሀሴ 28 ቀን 2014 ዓ.ም. 4:30 ተቀጠረ።

የግልግል ዳኞች:

- 1) አቶ ሁሴን ይመር
- 2) አቶ ተፈራ ወንድሙ
- 3) አቶ ፍቃዱ ያሚ

ከሰነድ: አዋ ኮንስትራክሽን እና ቢዝነስ ኃላ/የተ/የግ/ማህበር -----ጠበቃ አቶ ቢንያም ተርፋ ቀረቡ
 ተከሰሽ: ህብረት ኢንሹራንስ አ.ማ.-----ነገረ ፈጅ አቶ ኤሊያስ መሀመድ ቀረቡ

ጉባኤው በነሀሴ 14 ቀን 2014 ዓ.ም. በሰጠው ትእዛዝ መሰረት የግድን የጥበቃና ጽዳት አገልግሎት ኃ/የተ/የግ/ማህበር በቁጥር ግ/3745/14 በ24/12/14 ዓ.ም. ለጉባኤው የጻፈውን 2 ገጽ መለስ የድርጅቱ የ50 አለቃ ሽመልስ ሳህላማሪያም አቅርበው ከመዝገቡ ጋር ተያይዟል። ተመሳሳይም በችሎት ለግራ ቀኙ ደርሷል።

የድርጅቱ የሴኩራቲ መምሪያ ሀላፊ እንደሆኑ የገለጹት የ50 አለቃ ሽመልስ ሳህላማሪያም የጥበቃ ድርጅቱ በዚህ መዝገብ እየተካሄደ ባለው ክርክር ለመግባት ፈቃደኛ አይደለም በማለት ለችሎቱ ገልጸዋል።

ትእዛዝ

- 1. ተከሰሽ በፍ/ብ/ሀ/ስ/ስ/ቁ 43 መሰረት ወደ ክርክሩ ጣልቃ እንዲገባ ጥያቄ ያቀረበበት የግድን የጥበቃና ጽዳት አገልግሎት ኃ/የተ/የግ/ማህበር ለጉባኤው በሰጠው መልስ «በጉባኤው እየተደረገ ባለው ክርክር ጣልቃ የሚጋብዝ ምክንያት አለ ብለን እናምንም» በማለት መልስ ሰጥቷል።
- 2. ደብዳቤው ለጉባኤው ይዘው የቀረቡት የድርጅቱ ሰራተኛም ድርጅቱ በዚህ መዝገብ እየተካሄደ ባለው ክርክር ጣልቃ ገብቶ ለመከራከር ፈቃደኛ ያለመሆኑን ገልጸዋል። በመሆኑም ተከሰሽ በፍ/ብ/ሀ/ስ/ስ/ቁ 43 መሰረት ያቀረበውን አቤቱታ ጉባኤው አልተቀበለውም።
- 3. በፍ/ብ/ሀ/ስ/ስ/ቁ 241 መሰረት ተገቢውን ማጣሪያ አድርጎ የግራ ቀኙን ክርክር በችሎት ለመስማት ለጳጉሜ 01 ቀን 2014 ዓ.ም. በ4:00 ተቀጠረ።



አንድከራከር ይፈቀድልኝ በማለት አመልክተዋል። ለጣልቃ ገብ አቤቱታቸው በማስረጃነት የሸያጭ ውል የቦታ ካርታ ከተከላከለ ጋር የተደረገ የግንባታ ሂደት ውል፤ የቦታ አቀማመጥ የሚያሳይ ሰነድ፤ የከፍተኛ ደረሰኝ በሰነዱ ማስረጃነት ያቀረቡ ሲሆን የሰው ምስክርኝም ቆጥረዋል።

የጣልቃ ገብ አቤቱታው ከማስረጃው ለግራ ቀኝ ተከራካሪ ወገኖች ደርሷቸው መልስ ሰጥተዋል። ተከላከለ በጣልቃ ችሎት ቀርቦው በጣልቃ ገብ አቤቱታው ላይ የጽሑፍ መልስ መስጠት እንደማይፈልጉ በመግለፅ በቃል ባስመዘገቡት የጣልቃ ገብ አቤቱታውን አልቃውም ጣልቃ ገብ ጣልቃ ገብተዉ ይከራከሩ ብለዋል።

በሌላ በኩል ከላከኝ በጣልቃ ገብ አቤቱታው ላይ በ26/6/2010 ዓ.ም. በተጻፈ መልስ ዝርዝር መልስ አቅርበዋል። የመልሱም ይዘት የአሁን ጥልቃ ገብ በ9/10/2009 ዓ.ም ገዝቻሉ የሚሉት ቤት በ10/1/2007 ዓ.ም. (sep 20/2014) ከተከላከለ ጋር የግዢ ስምምነት ተፈፅሟል የተባለው ብሎክ 1-5 የቤቱ አይነት 250 E በመሆን በሚጠራው ጅምር ቤት ላይ ነው፤ ጣልቃ ገብ ገዝቻሉ የሚሉት ቤትና ከላከኝ ተከላከለ የምንከራከርበት ቤት የተለያዩ በመሆናቸው ወይም በብሎክ P AB 1 # 6

Type - E በሆነው ቤት ላይ ጣልቃ ገብ መብትና ጥቅም የላቸውም፤ የሊዝ ውሉም ከላከኝ የሚከራከሩበት ቤት ጅምር ቤት መሆኑን እያመለከትንም፤ ጣልቃ ገብ ከተከላከለ ጋር ያደረገት የቤት ግዢ ስምምነት የራሳቸው ውል እንጂ ከላከኝን እያመለከትንም። በጣልቃ ገብና በተከላከለ (sep 2014) በ10/1/2007 ዓ.ም. ተፈረመ በተባለው የጅምር ቤት ሺያጭ ውል ስምምነት እንቅፅ 10 መሠረት ጥልቃ ገብ የሊዝ መብት የባለቤትነት መብት የሚኖረው ተከላከለ ቤቱን ስርጉ ስለሚጠናቀቁ ካሳወቀበት ቀናት ጀምሮ ባሉት 90 ቀናት ውስጥ ጣልቃ ገብ ሲረከብ በመሆኑ በዚህ መሠረት ስመ ሀብቱ በሰማቸው

አልተመዘገቡም፤ ቤቱን ካልተረከቡ በስተቀር መብት ወይም ጥቅም ሊኖራቸው አይችልም። የሊዝ መብት ውሉ የተፈፀመ የፌደራል ከፍተኛ ፍ/ቤት በመ/ቁ 137389 እንዳይሸጥ እንዳይለወጥ ቢታገደበት ጊዜ ስለሆነ ሕጋዊነትና አስገዳጅነት የለውም፤ የሊዝ ውሉ የቴምበር ቀረጥ ያልተከፈለበት፤ የቁጥር አሰጣጥም አጠራጣሪና ከተለመደው አሰራር ውጭ የሆነ በሚመለከተዉ አካል በካርታው ጀርባ ላይ ማህተምና ፊርማ የሌለበት ስለሆነ ገብነቱ የሰነዱን ሕጋዊነት ያጣራልኝ

በማለት መልስ ሰጥተዋል። እንዲሁም የሊዝ ውሉ ከቅን ልቦና ወጭ የተደረገ ነው፤ የከላከለ ተከላከለ አለመግባባት በሽምግልና እንዲታይ ነግረናቸው እያለ በ13/02/2009 ዓ.ም በሽምግልናው ላይ አልተገኘም፤ እግዱም ሰኔ 3/2009 ዓ.ም ለከርከር መነሻ በሆነው ቤት ላይ ሲደረግ የእግዱን ኮፒ ለጣልቃ ገብ በምስክርኝ ፊት ሰጥተናቸው መብት አላኝ ካሉ ጣልቃ እንዲገቡ ነግረናቸው ጣልቃ አልገቡም። ከነሁሌ ወር 2008 ዓ.ም. አንስቶ በከላከለ ተከላከለ መካከል የተካሄደ ያለውን ከርከር በሚገባ እያውቁ፤ 1 ዓመት ከ6 ወር በኋላ ጣልቃ ለመግባት መጠየቃቸውም ሆነ እግድ እያለበት ቤቱን (የሊዝ መብቱን) ገዝቻሉ ማለታቸው ከትን ልቦና ውጭ ስለሆነ ጣልቃ ሊገቡ አይገባም በማለት በጽሑፍ ተከራክረዋል።

የጣልቃ ዳኝነትም የጣልቃ ገብ አቤቱታን ከሕግና ማስረጃ አንጻር በመመርመር ጣልቃ ገብ በፍ/ሥ/ሥ/ቁ 41 መሠረት ከርከር ውስጥ ለመግባት የሚያስችል መብትና ጥቅም አላቸውን? ይህንን መብትና ጥቅም መኖሩን አስረድተዋል ወይ የሚለውን ጉዳይ እንደሚከተለው መርምሮታል።

የጣልቃ ዳኝነት በጣልቃ ገብ በተጠየቀው በከላከለ ተጠናክሮ ከርከር አየተደረገበት ሰላላው ቤት የቀረቡት የሰነድ ማስረጃዎችን ተመልክቷል። ከዚህ አኳያ ከላከኝ ባቀረቡት የቤት ግዢ ውል ሚያዚያ 23 ቀን 2005 ዓ.ም በተደረገው ውል አንቀጽ 1 ላይ የገዙት ቤት ብሎክ ፒኤቢ 1 # 6 የቤት አይነት A/Block PAB 1 # 6 House TYPE E/መሆኑ ተመልክቷል፤ ጣልቃ ገብ ገዝቻሉ ያሉት ቤት ደግሞ በካርታ ቁጥር ቤ 12/16/2380/00 የቦታው ስፋት 250 ካሬ ሜትር የሆነው



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በኢትዮጵያ የንግድና የዘርፍ ማኅበራት ምክር ቤት
የግልግል ማዕከል
አዲስ አበባ

- የግልግል ዳኞች :-
1. ጌታሁን ወርቁ
 2. ተስፋ ቸኮል
 3. አቤይ ደግፌ



ከላሽ:- ጥበቡ ሰለጠነ.....ከጠበቃ ዳንኤል ጋር ቀርቦዋል
 ተከላሽ:- ፖን አፍሪካ ሪልስቲት ኃ.የተ.የግ.ማኅበር..... አልቀረቡም
 የመ/አመልካች:- አዲስ አበባ..... አልቀረቡም

የግልግል ጉባኤው መዝገቡን ሰገራ የቀጠረው ለፍርድ ሲሆን ጉዳዩን መርምሮ ተከታዩን ፍርድ ሰጥቷል።

ፍርድ

ይህ መዝገብ ከተዘጋ በኋላ ሊከፈት የቻለው የመቃወም አመልካች አስቀድሞ በዚህ የግልግል ጉባኤ በተሰጠው ፍርድ ላይ መብቱ ተነክቶብኛልና ፍርዱ እንዲሻርልኝ በማለት የመቃወም አቤቱታ ስላቀረቡ ነው።

በመቃወም አመልካች የካቲት 20 ቀን 2011 ዓ.ም ጽፈው ባቀረቡት ዝርዝር የመቃወም አቤቱታ ላይ ቀደም ሲል PAB 1#6 የቤቱ አይነት E በሚል ይታወቅ የነበረውን የክፍለ ከተማው አስተዳደር ካርታ በሚሰጥበት ጊዜ የሽንሻኖ መለያ ቁጥር PAB- 25 በማለት የሰየመውን ሰኔ 9 ቀን 2009 ዓ.ም ከተከላሽ ጋር ባደረገው የሊዝ መብት ሽያጭ ውል ስምምነት በተከላሽ ስም ተመዝግቦ የሚገኘውን የሊዝ መብት የሊዝ ቁጥር ድ-175/98 የሆነውን በሊዝ ዋጋ ብር 6,255,600 (ስድስት ሚሊዮን ሁለት መቶ ሃምሳ አምስት ሺህ ስድስት መቶ ብር/ የተገዛውን በካርታ ቁጥር ቦሌ.12/56/4/16/2380/00 ተመዝግቦ በቦሌ ክ/ከተማ ቀበሌ 12 የቤት ቁጥር አዲስ የሆነ ስፋቱ 250 ካ.ሜ የሚሆነውን ይዞታ በብር 1,350,000/አንድ ሚሊዮን ሶስት መቶ አምሳ ሺህ ብር/ የገዛሁ ሲሆን ክፍያውን በወቅቱ ከፍየ ይዞታውንና አስፈላጊ ሰነዶችን ተረክቤያለሁ።ይዞታውን ከተረከብኩ በኋላ በይዞታው ላይ ከፍተኛ መዋለል ነዋይ በማፍሰስ B+G+2 የሆነ ቤት የሰራሁ ሲሆን ከአዲስ አበባ ከተማ አስተዳደር መሬት ልማትና ማኔጅመንት ቢሮ በካርታ ቁጥር ቦሌ 12/56/4/14/2380/1764/01 በሰሜ የተመዘገበ የይዞታ ማረጋገጫ ካርታ ተሰጥቶኛል። በመሆኑም በትን ልቦና ይዞታውን ገዝቼ ቤት የገነባሁ ስለሆነ በኢ.ፌ.ዲ.ሪ ህገ መንግስት 40 መሰረት በግል ገንዘብ በራሴ ወጭ የገነባሁት የዚህ ቤት ባለቤት ስለሆነኩ በሌለሁበት ክርክር ተደርጎ የግልግል ጉባኤውን ተከላሽ ላክላሽ የመቃወም አመልካችን ንብረት የሆነ ቤት መጋቢት 15 ቀን 2010 ዓ.ም በተደረገው ሰነድ

ያስረክብ ሲል የሰጠው ውሳኔ እንዲሻርልኝ፤ ወጪና ኪሳራ ዝርዝር የማቅረብ መብቱ እንዲጠበቅልኝ በማለት የመቃወም አቤቱታ አቅርቦዋል። በማስረጃነትም ልዩ ልዩ ሰነዶችን ያቀረቡ ሲሆን የሰው ምስክሮችንም ቆጥረዋል።

የመቃወም አመልካች ያቀረቡት የመቃወም አቤቱታና ማስረጃ ለከላሽና ተከላሽ ደርሷቸው የየበኩላቸውን መልስ አቅርበዋል። ከላሽ ባቀረቡት መልስ ክስ የቀረበበት የመቃወም አመልካች ገዛሁት የሚሉት ቤት PAB1-5 TYPE 250 E የተለየ ቤት መሆኑን ገልፀው በመቃወሚያነትም የመ/አመልካች በፍ/ሥ/ሀ/ቁ 41 ጣልቃ የገቡ ተከራካሪ ስለሆኑ በፍ/ሥ/መ/ቁ 358 እንደገና መከራከር አይችሉም፤ በፍ/ሥ/ሥ/ሀ/ቁ 41 አስቀድሞ የታየ ጉዳይ እንደገና በፍ/ሥ/ሥ/መ/ሀ/ቁ 358 ድጋሚ መታየቱ የፍ/ሥ/ሥ/ሀ/ቁ 5 ን ይጣረሳል የሚሉ መቃወሚያዎችን አቅርበዋል።

በፍሬ ነገር ክርክር ረገድ ከላሽ በሰጡት መልስ በቤቶቹ ላይ የብሎክ ቁጥር ይሰጥ የነበረው ተከላሽ ብቻ ነው፤ ግር በሚፈፀምበት መስከረም 15 ቀን 2007 ዓ.ም የመቃወም አመልካች ከተከላሽ የገዙት ቤት BLOCK PAB 1-5 HOUSE TYPE 250 E መሆኑ እየታወቀ በምን አይነት መመዘኛ በ15/19/2010 ዓ.ም ካርታ ሲሰጥ ቤት ቁጥር 1#6 ወደ ቤት ቁጥር 25 እንደተቀየረ አግባብነቱ አልታወቀም። የጽሑፍ ውል በፍ/ሀ/ቁ 1722 መሰረት ሊሻሻል የሚችለው በጽሑፍ ብቻ ስለሆነ ድርጊቱ አግባብነት የለውም። የፌ/ክ/ፍ/ቤት በመ/ቁ 116914 በሆነ በ30/12/2004 ዓ.ም እና በ24/4/2009 ዓ.ም እና በፌ/ክ/ፍ/ቤት በመ/ቁ 137389 በሆነ በ25/02/09 እንዲሁም ይህ ጉባኤ ሰኔ 3 ቀን 2009 ዓ.ም በሰጠው የፀና እግድ ትእዛዝ እያለ እግዱን በመጣስ በ15/09/10 ዓ.ም ካርታ መውሰዳቸው በወንጀል ከማስጠየቅ አልፎ እግድ በመጣስ የተገኘው ማስረጃ መብት የሚያስገኝላቸው አይደለም በማለት መልስ ሰጥተዋል። በመከላከያ ማስረጃነትም የሰውና የሰነድ ማስረጃዎችን አቅርበዋል።

ተከላሽ በበኩላቸው በመጋቢት 17 ቀን 2011 ዓ.ም በሰጡት መልስ ለክርክሩ መነሻ የሆነው ቤት በተከላሽ በራሱ ተገንብቶ ተጠሪ ራሱ PAB 1#6 የቤት አይነት E ሲል ስይሞት ቆይቷል። መሬት አስተዳደር ቤቱን ሲሸነሽን የሸነሻና ቁጥር PAB -25 በሚል ይህንኑ ቤት ቤት የለየው ሲሆን ይህ ይዞታ ቦሌ 12/56/4/16/2380/00 በሚል በቦሌ ክ/ከተማ ቀበሌ 12-ስፋቱ 250 ካ.ሜ በሆነው ይዞታ የንብረት ባለቤትነት ማረጋገጫና ምዝገባ ፅ/ቤት በተደረገ የቤት ሽያጭ ውል ለአሁን የመቃወም አመልካች ተሸጧል፤ ስመ ሀብቱም ተላልፏል፤ በስማቸውም አዲስ ካርታ አውጥተዋል፤ ከላሽ ሲከራከሩበት የነበረው ቤት ይሄው ቤት ነው በማለት መልስ አቅርበዋል። በመከላከያ ማስረጃነትም የመ/አመልካች ያቀረቡት ማስረጃዎች መሉ በመሉ እንደራሱ ማስረጃዎች እንዲቆጠሩላት ጠይቋል።

የግራ ቀኙን የጹሁፍ ክርክር ከላይ የተመለከተው ሲሆን የግልግል ዳኝነት ጉባኤው ክስ መስማት በማከናወን የቃል ክርክር አድርጎ ከጨረሰ በኋላ በከላሽ የተነሱ መቃወሚያዎችን በተመለከተ በ03/09/2011 ዓ.ም በሰጠው ብይን መቃወሚያዎቹን ውድቅ አድርጎ ወደ ፍሬ ነገር ክርክር በመግባት ጭብጦችን ይዞ መዝገቡን መርምሯል።

ከግራ ቀኝ ክርክር የተያዙት ጭብጦች

1-የመቃወም አመልካች ይዘውት የሚገኘው ቤት ቁጥር BLOCK PAB 1#6 HOUSE TYPE 250 E የሚለውና ወደ ቤት ቁጥር PAB-25 ቁጥሩ የተቀየረው ቤት ላይ ህጋዊ የባለቤትነት መብት ያቋቋመው ማነው?

2- በአዲስ አበባ ከተማ ቦሌ ክ/ከተማ በቀደመው ቀበሌ 17 የረር ጎሮ መንደር ሳይት ላይ ተከላሽ የገነባውን PAB 1#6 የቤት አይነት አ/ E የሆነ ቤት እና ስመ ሀብቱን ለማዛወር ከሚያስፈልጉ ተዛማጅ ሰነዶች ጋር ተከላሽ ለከላሽ እንዲያስረክባቸውና ከላሽ ያለባቸውን ቀሪ ክፍያ ብር 339,380(ሶስት መቶ ሰላሳ ዘጠኝ ሺህ ሶስት መቶ ሰማንያ ብር/ ለተከላሽ ይክፈሉ ሲል የሰጠው ውሳኔ ሊሻር ይገባል ወይስ አይገባም?

የሚሉት ጭብጦች ሲሆኑ የግልግል ጉባኤው እነዚህን ጭብጦች ከህግና ማስረጃ እንዲሁም ከቀረበው ክርክር አንጻር እንደሚከተለው መርምራቸዋል።

የመጀመሪያውን ጭብጥ በተመለከተ ክርክር በቀረበበት ቤት ላይ ህጋዊ ባለቤትነት ያቋቋመው ማነው የሚል ነው። የመቃወም አመልካች በዋናነት የሚያቀርቡት ክርክር ቤቱን በሊዝ ሽያጭ መብት ገዝቼ በራሴ ወጭ ገንብቼ ካርታ በስሜ ያመጣሁበት የቅን ልቦና ገዢ ስለሆንኩ ፍርድ የተሰጠበት ቤት ቁጥር PAB 1#6 ካርታ ሲሰጥ PAB-25 ተደርጎ የሺንሻኛ ቁጥር ተሰጥቶት በስሜ በካርታ ቁጥር 12/56/4/14/2380/1764101 ካርታ ያገኙበት ቤት ስለሆነ ቤቱ የከላሽ ቤት አይደለም በማለት ነው። ይሁንና የመቃወም አመልካች መስከረም 2007 ዓ.ም ባደረጉት የቤት ግዢ ስምምነት ላይ ከተከላሽ የገዙት ቤት ብሎክ PAB 1-5 House Type 250E መሆኑ በግልፅ ተመልክቶ ባለበት ሁኔታና ይህንኑ ውል ራሳቸው በመቃወም አመልካች በማስረጃነት አቅርበው ባለበት ሁኔታ በሽንሻኛ ወቅት PAB 1#6 የተባለውን ቤት ከተከላሽ በውል ያልገዙትን ቤት ቁጥሩ ተቀይሮ እንዴት የራሳቸው የግል ንብረት እንዳደረጉት ያስረዱበት ሁኔታ የለም። በአንጻሩ ከላሽ ባቀረቡት የቤት ግዢ ውል ማስረጃ የመቃወም አመልካች ከተከላሽ ጋር ምንም አይነት የቤት ግዢ ውል ከማድረጋቸው በፊት በ23/08/2005 ዓ.ም በተደረገ የቤት ግዢ ስምምነት ውል PAB 1#6 የሚለውን ቤት ከተከላሽ መግዛታቸውን አስረድተዋል። ከዚህ በተጨማሪ ጉዳዩን ለማጣራት የግልግል ጉባኤው የሰማቸው የመቃወም አመልካችና የከላሽ ምስክሮች በተመሳሳይ መልኩ እንዳስረዱት የአሁን የመቃወም አመልካች ቤቱን ያገኙት (የያዙት) መሰረት ወጥቶለት፤ ኮለን ተሰርቶለትና የተለያዩ የግንባታ ደረጃዎች ተደርገውለት መሆኑን ከሰጡት የምስክርነት ቃል መገንዘብ ይቻላል። ይህ የሚያመለክተው ቤቱን ገዝተው ክፍያ ከፍለው የተገነባላቸውን ቤት ቁጥር Block PAB 1#6 House Type 250 E አስቀድመው ከላሽ በውል ገዝተውት እያለ የአሁን የመቃወም አመልካች ቤቱን መያዛቸውን ነው። በተለይም አቶ አዲስ አበፋ በምስክርነት ቀርበው በ2008 ዓ.ም ቤቱን እየሰሩ ባለበት ጊዜ ከላሽ መጥተው ቤቱ የእሳቸው መሆኑን እንደገለጹላቸው ስላስረዱ ምንም እንኳ በመስከረም 2007 ዓ.ም ባደረጉት ውል የገዙት ቤት PAB 1-5 የሚል ቢሆንም በተግባር የያዙት PAB 1#6 የሆነውን ቤት መሆኑን መገንዘብ ይቻላል። በተጨማሪም ሽንሻኛ ሲደረግ ይህም ቤት ቁጥር PAB 1#6 ወደ ቤት ቁጥር PAB-25 ተቀይሮ ለመቃወም አመልካች ካርታ

Three handwritten signatures and a circular official stamp of the Ministry of Urban Planning and Construction of Addis Ababa.

የተሰጠበት መሆኑን በመቃወም አመልካች ይዘውት የነበረው ቤት PAB 1#6 መሆኑን የሚያረጋግጥ ነው።

በሌላ በኩል በመቃወም አመልካች በመስከረም 2007 ዓ.ም ከተከላከለ ጋር ባደረጉት ውል ቤቱን የሚገነባው ተከላከሎ እንደሆነ በጽሁፍ ውል ላይ ተመልክቶ ባለበት ሁኔታ ይህንን ውል በተቃረኑ መልኩ ይህ የጽሁፍ ውል በሌላ የጽሁፍ ውል በፍ/ሀ/ቁ 1722 መሰረት ባልተሻሻለበት ሁኔታ የቤቱን ቀሪ ግንባታ በራሳቸው ወጭ ገንብቻለሁ ማለታቸው ከውሉ የሚቃረን ሆኖ አግኝተነዋል። ከላኝ ከተከላከለ ላይ አስቀድመው በውል በገዙት ቤት ላይ በመቃወም አመልካች ከተከላከለ ጋር ባደረጉት የግዢ ውል ወጭ አውጥተው ከሆነ ተከላከሉን ከሚጠይቁ በቀር አስቀድሞ የተደረገውን ውል ቀሪ የሚያደርገው አይሆንም። ከላኝ ከተከላከለ ጋር ከመቃወም አመልካች በጊዜ ቅድመ ሁኔታ ቀድመው የቤት ሽያጭ ውል ገብተው፣ በውሉ በተመለከተው የክፍያ ሁኔታ ቅድሚያ ብር 600,000 ክፍለው፣ በተለያዩ ጊዜያት የተሰራውን የግንባታ ስራ እየሰጡ፣ የዲዛይን ማሻሻያ ላይ አስተያየት እየሰጡ፣ በውሉ መሰረት ክፍያዎችን ለተከላከለ በተገቢ ጊዜ በመክፈል ቤቱን ያስገቡ መሆናቸውን የግልግል ጉባኤው ከቀረቡት ማስረጃዎች ለመገንዘብ ችሏል። ስለሆነም አስቀድመው በከላኝና በተከላከለ በ20/08/2005 ዓ.ም በተደረገ ውል Block PAB 1#6 የሆነውን ቤት ከላኝ አስቀድመው የገዙት ቤት ስለሆነ፣ ይህ ውል እስካልፈረሰ ድረስ በፍ/ሀ/ቁ 1731 መሰረት የፀና ውል ሆኖ ግንኙነታቸውን የሚገዛ በመሆኑ፣ በቤቱ ላይ ውል ተደርጎበት እያለ በአንድ ንብረት ላይ የቀደመው ውል ሳይፈርስ ተጨማሪ ውል በመፈፀም አንድን ንብረት ለብዙ ሰዎች የሚሸጥበት አግባብ ስለሌለ፣ በመቃወም አመልካች በመስከረም 2007 ከተከላከለ ጋር ያደረጉት ውል በከላኝና ተከላከለ መካከል የተደረገውን ውል የሚሸር ሆኖ አላገኘውም። ስለሆነም ከላኝ በ23/08/2005 ዓ.ም ያደረጉት የቤት ግዢ ውል ህጋዊና ተፈጻሚነት ያለው ስለሆነ ከላኝ ከተከላከለ የገዙትን Block PAB 1#6 Type 250 E የሆነውን ቤት የሸጠው ቁጥር PAB-25 የሚል ተሰጥቶት በመቃወም አመልካች ስም የተመዘገበውን ቤት የከላኝ ንብረት መሆኑ ተረጋግጧል። ከላኝ ከተከላከለ ጋር ያደረጉት የቤት ግዢ ውል ቤቱ ከመገንባቱ በፊት የተደረገ የሪል ስቴት አይነት ውል መልክ ያለው ሲሆን የመቃወም አመልካች ያደረጉት የቤት ግዢና ሊዝ ሽያጭ ውል ግን ማናቸውም አይነት መደበኛ የቤት ሽያጭ ውል በሚደግርበት መልክ የተፈጸመ ሆኖ ስላገኘው ከላኝ ገና ሳይጀመር ከምንም አንስቶ ክፍያ ክፍለው ባስገቡት ቤት ላይ በመቃወም አመልካች ከኋላ መጥቶ ባለንብረት የሚሆንበት አግባብ የለም።

እንዲሁም የመቃወም አመልካች የፍ/ቤትና የግልግል ዳኝነት ጉባኤው እግድ በተሰጠበት ቤት ላይ በሊዝ ግዢ አማካይነት ካርታ ማግኘታቸው ብቻ ከፍ/ሀ/ቁ 1195 እና 1196 ድንጋጌ አኳያ ካርታው የተገኘበት ሁኔታ ተገቢ ካልሆነ ካርታው ሊሰረዝ እንደሚችል በመደንገጥ፣ እንዲሁም የፌደራል ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት በቅፅ 11 በሰበር መዝገብ ቁጥር 60720 በሰጠው ትርጉም በስማቸው ካርታ ማግኘታቸው ብቻ ካርታው በአግባቡ አስከፊተገኝ ድረስ የቤት ባለቤት እንደሚያደርግ ገዢና አስገዳጅ ትርጉም ስለሰጠበት፣ የቤት ቁጥር PAB-25 ቤት ከላኝ አስቀድመው የገዙት ቤት ስለሆነና ግልግል ጉባኤው እግድ ሰጥቶበት ባለበት ሁኔታ በመቃወም አመልካች በዚህ በታገደ ቤትና ይዞታ ላይ ካርታ ማውጣታቸው ህገወጥ ተግባር በመሆኑ በዚህ



ቤት ላይ በመቃወም አመልካች ያወጡት ካርታ የቤት ባለቤት መብት የሚያስገኝላቸው ባለመሆኑ በመቃወም አመልካች ቤት ቁጥር Block PAB 1#6 House Type 250 E በሚል ስያሜ የሚታወቀውንና ወደ ቤት ቁጥር PAB-25 ስያሜው የተቀየረውን የመቃወም አመልካች ይዘውት የሚገኘውን ይህንን ቤት ለከላሽ ሊያስረክቡ ይገባል በማለት የግልግል ዳኝነት ጉባኤው ፍርድ ሰጥቷል።

2ኛውን ጭብጥ በተመለከተ አስቀድሞ የግልግል ጉባኤው የሠጠው ፍርድ ሊጸድቅ ይገባል ወይሆን አይገባም የሚለው ከመጀመሪያው ጭብጥ በመነሳት መልስ የሚያገኝ ነው። በዚህ መሰረት ከላሽ አከራካሪ የሆነው ቤት ባለቤትነታቸው በማስረጃ በመረጋገጡ በግልግል ጉባኤው አሁን የተደረሰበት መደምደሚያ ጉባኤው ቀድሞ ከደረሰበት መደምደሚያ ጋር ተመሳሳይ ነው። በመቃወም አመልካች ቀደም ሲል የግልግል ዳኝነት ጉባኤው የሰጠውን ፍርድ የሚያሰለውጥ ክርክርና ማስረጃ በማቅረብ የተሻለ መብት እንዳላቸው ስላላስረዱ ያቀረቡት የመቃወም አቤቱታ ወድቅ ሆኗል።

ትእዛዝ

1. ተከላሽ በአዲስ አበባ ከተማ ቦሌ ክ/ከተማ በቀድሞው ቀበሌ 17 የረር ጎሮ መንደር ሳይት ላይ የገነባነው Block PAB 1#6 የቤት አይነት E የሆነ ቤት ስም ሀብተን ሰማዛወር ከሚያስፈልጉ ተዛማጅ ሰነዶች ጋር ለከላሽ እንዲያስረክቡ ቀሪ ያልተከፈለውን ክፍያ ብር 339380/ሶስት መቶ ሰላሳ ዘጠኝ ሺህ ሶስት መቶ ሰማንያ ሺህ ሶስት መቶ ሰማንያ ብር/ ከላሽ ለተከላሽ ይክፈሉ ሲል የግልግል ዳኝነት ጉባኤው በ15/7/2010 ዓ.ም የሰጠውን ፍርድ አዕድቋል።
2. ወጪና ኪሳራ ግራ ቀኝ ይቻቻሉ።
3. በመጋቢት 19 ቀን 2011 ዓ.ም በፌዴራል ከፍተኛ ፍርድ ቤት በአፈጻጸም መዝገብ ቁጥር 214138 የተያዘው አፈጻጸም እንዲታገድ ይህ ግልግል ጉባኤ የሰጠው እግድ ትእዛዝ እንዲነሳ ታዟል።
4. መዝገቡ ተዘግቷል። መዝገብ ቤት ይመለስ።



በከላሽ አቶ ጥበቡ ሠለጠነ እና በተከላሽ ፓን አፍሪካ ሪል እስቴት ጋ/የተ/የግ/ማህበር መካከል ባለው የፍ/ብሔር ክርክር ጉዳይ በግልግል ጉባዔ የተሰጠ የእግድ ትእዛዝ

የግልግል ጉባዔ ዳኞች





- ጌታሁን ወርቁ
- ተስፋ ቸኮል
- አብይ ደግፌ

ትእዛዝ

ከላሽ ሚያዚያ 25 ቀን 2009ዓም በተጻፈ አቤቱታ በቦሌ ክ/ከተማ በቀድሞው ቀበሌ 17 የረር ጎሮ መንደር የሚገኝ የተከላሽ የግንባታ ሳይት ላይ ብሎክ PABI# 6 የሆነ የቤቱ አይነት E የሆነ መኖሪያ ቤት ተከላሽ ለሶስተኛ ወገን ለማስተላለፍ በእንቅስቃሴ ላይ ስለሆነ ይህ ቤት እንዳይሸጥ እንዳይለወጥ ታግዶ እንዲቆይ ትእዛዝ እንዲሰጥለት አቤቱታ አቅርቧል ። ተከላሽም ከላሽ ባቀረበው አቤቱታ ላይ አስተያየቱን ያቀረበ ሲሆን ያቀረበው አስተያየትም ተከላሽ ለማልማት ከመንግስት የተረከበው ይዞታ ከ30000 ካሬ ሜትር በላይ ሲሆን ይህ ይዞታ አሁን ድረስ ሳይከፋፈል ስለሚገኝ ከላሽ ገዢዎቻው የሚሉትን ይዞታ ተለይቶ ስለማይታወቅ አቤቱታው ውድቅ ይደረግልን ፣ጉባዔ እግድ የሚሰጥ ከሆነ በተከላሽ ላይ ቢያንስ የብር 1000 000 ጉዳት ስለሚደርስበት ከላሽ ይህን ገንዘብ ዋስትና እንዲያስይዙ በማለት አስተያየቱን አቅርቧል።

የግልግል ጉባዔውም የግራቀኙን ክርክር መርምሮ ትእዛዝ ሰጥቷል። እንደመረመርነውም በፍ/ብ/ሥ/ሥ/ሕ/ቁ 154 መሰረት ተከላሽ ለክርክሩ ምክንያት የሆነውን ንብረት ለሌላ ሰው ለማስተላለፍ ያሰበ፣ ያቀደ መሆኑ የተረጋገጠ ከሆነ ፍ/ቤቱ ተከላሽ ይህን እንዳይፈጽም አስፈላጊ የሆነ ትእዛዝ እንደሚሰጥ ተደንግጓል። ከላሽ ከላይ የተጠቀሰውን ቤት ተከላሽ እንዲያስረክብኝ በማለት ክስ አቅርበው በክርክር ላይ ይገኛል። ይህ የተጀመረው ክርክር የመጨረሻ ውጤቱ ሳይታወቅ ተከላሽ ይህን ክርክር የተነሳበትን ቤት ለሌላ ሰዎች ወገን

1/2/09

የኢትዮጵያ የንግድ እና የዘርፍ ማህበራት

ምክር ቤት የግልግል ማዕከል

አዲስ አበባ

የግልግል ዳኞች 1ኛ ጌታሁን ወርቁ

2ኛ ተስፋ ፕኮል

3ኛ አቢይ ደግፌ

ከላሽ -----አቶ ጥበቡ ሰለጠነ ተስፋ-ቴሐንስ

ተከላሽ-----ፓን አፍሪካ ሪል ኢስቴት ኃ/የተ/የግ/ማህበር

ፍርድ

ከላሽ ሕዳር 10 ቀን 2009 ዓም ጽፈው ባቀረቡት የክስ ማመልከቻ ተከላሽ በአዲስ አበባ ከተማ አስተዳደር በቦሌ ክ/ከተማ በቀድሞ አጠራር ቀበሌ 17 ኅሮ መንደር በሚል አካባቢ በተረከበው መሬት ላይ ቤት እየገነባ በመሸጥ ስራ ላይ የተሰማራ ፍቃድ ያለው ድርጅት በመሆኑ ከ22/06/2005 ዓ.ም ጀምሮ ተፈጻሚ የሚሆን የአዲስ ቤት ግዥ ስምምነት በ23/08/2005 ዓ.ም ተፈራርመናል። በውሉ መሰረትም ተከላሽ ውሉ በተፈረመ በ7 ወራት ጊዜ ውስጥ ቤቱን ገንብቶ ለማሰረከብ እና ከላሽ ደግሞ የገንባታ ወጭውን በ4 ጊዜ በሚፈጸም ክፍያ ሁኔታ አጠቃልቶ ለመክፈል የተሰማማን ቢሆንም ተከላሽ የተለያዩ ምክንያቶችን በመፍጠር ግንባታውን በውሉ ላይ በተመለከተው ጊዜ ባይጀምርም እና የክፍያ ማስታወቂያ ለከላሽ ባያሳውቅኝም ከላሽ በ06/06/2006 ዓ.ም በደረሰኝ ቁጥር 00963 በሆነ ብር 616,620 /ስድስት መቶ አስራ ስድስት ሺህ ስድስት መቶ ሃያ ብር/ እና በዚህ እለት ተከላሽ በራሱ የእጅ ጽሁፍ በጻፈልኝ ማስታወሻ ብር 147,949/አንድ መቶ አርባ ሰባት ሺህ ዘጠኝ መቶ አርባ ዘጠኝ/ በድምሩ ብር 764,569 /ሰባት መቶ ስድሳ አራት ሺህ አምስት መቶ ስድሳ ዘጠኝ ብር/ ክፍያ ፈጽሟልሁ። ተከላሽ ቤቱን ሊያሰረክበኝ

1

ባለጠያቂ ክ14/03/2008 ዓ.ም እስከ 23/12/2008 ዓ.ም ድረስ ቀሪ ሂሳብ ያለብኝን ለመክፈል እና ቤቱን እንዲያስረክበኝ በስልክ እና በኢሜል ጥረት ያደረኩ ቢሆንም ተከላኝ ፈቃደኛ ሳይሆን ቀርቷል። እንዲሁም በ03/01/2009 ዓ.ም የተጻፈ ማስጠንቀቂያ ቀሪ ያልክፈልኩት የግንባታ ወጭ ካለ እንድክፍልና ቤቱን እንዲያስረክበኝ ያሳወቁት ቢሆንም ተከላኝ በ04/01/2009 ዓ.ም ማስጠንቀቂያውን ተቀብሎ ምላሽ አልሰጠኝም። በተጨማሪም በድጋሚ በ04/02/2009 ዓ.ም በተጻፈ ማስጠንቀቂያ በግራቀኞችን የተፈጠረውን አለመግባባት ለመፍታት በከላኝ በኩል የራሴን ገላጋይ አቶ ዘውዱ ከበደ የተባለ የመረጥኩ መሆኔን በማሳወቅ ተከላኝ በእሱ በኩል የሚመርጠውን ገላጋይ እንዲያሳውቀኝ እና በ13/02/2009 ዓ.ም ግዮን ሆቴል ከቀኑ 10 ሰዓት እንድንገናኝ አሳውቄው ነበር። ተከላኝ በቁጥር ፓን 08/09 በቀን 11/02/2009 ዓ.ም በተጻፈ ደብዳቤ በግራቀኞችን መካከል የተፈረመ የቤት ግዥ ውል ባለመኖሩ ገላጋይ ዳኛ መምረጥ እንደማይችል ገልጸልኛል።

ስለሆነም በግራቀኞችን መካከል በ23/08/2005 ዓ.ም በተደረገ አዲስ ቤት ግዥ ውል መሰረት ተከላኝ በአዲስ አበባ ከተማ ቦሌ ክ/ከተማ በቀድሞው ቀበሌ 17 የረር ነጭ መንደር ሳይት ላይ የገነባውን ፕሎክ PAB #6 የቤት አይነት ኢ/E/ የሆነ ቤት እንዲያስረክበኝ፣ የሰም ሁብቱን ለማዛወር የሚያስፈልጉ ተዛማጅ ሰነዶች እንዲያስረክብ እና ቀሪ ክፍያ ብር 191,431 /አንድ መቶ ዘጠና አንድ ሺህ አራት መቶ ሰላሳ አንድ ብር/ እንዲረከብ እንዲወሰንልኝ፣ በክሱ ምክንያት የወጣ ወጭ የጠበቃ አበል 10 በመቶ፣ የዳኝነት፣ የቴምብር ቀረጥና ሌሎች ወጭዎች በመጨመር ከነወለዱ እንዲከፍል እንዲወሰንልኝ በማለት ዳኝነት ጠይቀዋል። በማስረጃነትም የሰነድ ማስረጃዎችን አያይዘው ያቀረቡ ሲሆን እንዲሰሙላቸው የፈለጉት ምስክሮችንም ስም ዘርዝረው አቅርበዋል።

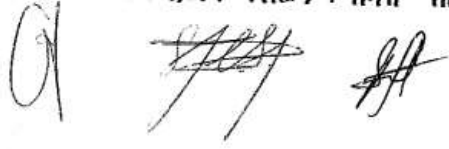
የግልግል ጉባዔው ከላኝ ያቀረቡት ክስና ማስረጃ ለተከላኝ ደርሶት መልሱን እንዲያቀርብ ትእዛዝ ሰጥቶ ተከላኝም በ11/04/2009 ዓ.ም የተጻፈ የመጀመሪያ ደረጃ መቃወሚያ እና መከላከያ መልስ አቅርቧል። ተከላኝ ሁለት የመጀመሪያ ደረጃ መቃወሚያዎችን በማቅረብ የተከራከሩ ሲሆን የመጀመሪያው መቃወሚያ የውሉ አንቀጽ 14 መሰረት በማድረግ በግራቀኞች የተፈጠረውን አለመግባባት በመጀመሪያ በንግግር እና በውይይት ለመፍታት ጥረት የሚደረግ ሲሆን ይህ የማይሳካ ከሆነ ደግሞ ግራቀኞችን ተስማምተን በምንመርጠው አስማሚ/ Mediator or Concilitor/ ጉዳዩን ለመፍታት ከላኝ ጥረት ሳያደርጉ ክስ

ለማትረብ አይችሉም የሚል ነው። በሁለተኛ ደረጃ የቀረበው መቃወሚያ የግልግል ተቋሙ ጉዳዩን የማየት ስልጣን የለውም በማለት ነው። ተከላኝ ፍሬ ጉዳዩን በተመለከተ ያቀረቧቸው መከራከሪያዎች በግራቀኛቸው መካከል የቤት ግዥ ውል ስምምነት የለም በማለት ክዶ የተከራከረ ሲሆን በከላኝ በኩል የቀረበው ውል በውሉ ላይ የሰፈረው ፊርማና ማህተም እንዲመረመርለትም ጠይቋል። በ2ኛ ደረጃ ያቀረበው መከራከሪያ በውሉ አንቀጽ 2/ለ/ መሰረት ከላኝ ውሉ በተፈረመበት ጊዜ በ23/08/2005 ዓ.ም የቅድመ ክፍያ ብር 286,800 /ሁለት መቶ ሰማንያ ስድስት ሺህ ስምንት መቶ ብር/ እና ከዚህ በኋላ መፈጸም የነበረባቸው ክፍያዎችን አልፈጸሙም። ተከላኝም ከራሱ ገንዘብ በማውጣት ቤቱን ገንብቶ የማስረከብ ግዴታ አልገባም። ከላኝ በውሉ አንቀጽ 2 መሰረት መፈጸም የነበረባቸውን ክፍያዎች በወቅቱ ባለመፈጸማቸው ከላኝ የውል ጥሰት እንደፈጸሙ ተቆጥሮ በውሉ አንቀጽ 13 መሰረት ውል ፈራሽ ሆኗል። ከላኝ በደረሰኝ ቁጥር 0093 እኤአ በ13/02/2014 ፈጽሜአለሁ ያሉት ክፍያ የተከላኝ ካሼሪ ይህን ክፍያ የተቀበሉት በከላኝ በተሰጣቸው መተማመኛ ጉዳዩን ባለመረዳት የተፈጸመ እንጅ የተከላኝ ሃላፊዎች በሰጡት ፍቃድ ባለመሆኑ ተከላኝ ይህን ክፍያ አያውቀውም። ክፍያው ተፈጽሟል ቢባል እንኳ ውሉ ከፈረሰ በኋላ በመሆኑ ተቀባይነት የለውም። በነጭ ወረቀት ተከፈሏል የተባለውን ክፍያ ተከላኝ ይህን ገንዘብ አልተቀበለም ። በሌላ በኩል በከላኝ በኩል ከተከላኝ ጋር ተደርጓል በማለት የቀረበውን የሰልክና የኢሜል ልውውጥ ተከላኝ የሰልክ እና የኢሜል ልውውጥ ከከላኝ ጋር አላደረሁም፤ ተደርጓል ከተባለ እንኳ በግለሰቦች መካከል የተደረገ በመሆኑ ተከላኝን የሚመለከት አይደለም በማለት ተከራክሯል። እንዲሁም ከላኝ ከ22/06/2005 ዓ.ም ጀምሮ የሚጸና ውል በ23/08/2005 ዓ.ም ተፈራርመናል ቢልም ውሉ የኃልዮሽ የሚሰራበት አግባብ ስለሌለ የግልግል ጉባዔው የከላኝን ክስ ውድቅ በማድረግ በክርክሩ የወጡ የጠበቃና ሌሎች ወጭዎች ተከላኝ እንዲተካ እንዲወሰንለት፤ ይህ የሚታለፍ ሆኖ ተከላኝ ቤቱን ገንብቶ ማስረከብ አለበት ከተባለ የወቅቱን የገበያ ዋጋ ግምት ውስጥ በማስገባት ከላኝ የወቅቱን የገበያ ዋጋ እንዲከፍል በማለት መልሱን አቅርቧል። በማስረጃም እንዲሰሙለት የሚፈልጋቸውም ምስክሮችን ስም ዘርዘሮ አቅርቧል። ተከላኝ ላቀረበው መልስም ከላኝ በ26/04/2009 ዓ.ም የተጻፈ የመልስ መልስ ያቀረቡ ሲሆን ከመዝገቡ ጋር ተያይዟል።

የግልግል ጉባዔውም የግራቀኙ የጽሁፍ ክርክር ከተጠናቀቀ በኋላ እና በተከላከሉ በኩል በቀረቡት ሁለት መቃወሚያዎች ላይ ግራቀኙን ካከራከረ በኋላ በ14/08/2009ዓ.ም በዋለው ጉባዔ በተከላከሉ በኩል የቀረቡ መቃወሚያዎችን ውድቅ በማድረግ ብይን ሰጥቷል። በመቀጠልም የሚከተሉት ሶስት ጭብጦች በመያዝ የግራቀኙ ክርክር ሰምቷል።

1ኛ በግራቀኙ መካከል ውል አለ ወይስ የለም ? ፣ 2ኛ ከላሽ በውሉ መሰረት ግዴታውን ፈጽሟል ወይስ አልፈጸመም? እና 3ኛ ጭብጥ ተከላከሎ ቤቱን ሊያሰረክብ ይገባል ከተባለ የወቅቱ የገበያ ዋጋ ግምት ውስጥ መግባት አለበት ወይስ የለበትም? የሚሉ ጭብጦች ናቸው።

የመጀመሪያውን ጭብጥ በተመለከተ በከላሽ በኩል የቀረበው መከራከሪያ ተከላከሎ በግልጽ ፊርማውን እና ማህተሙን ከዶ ስላልተከራከረ እና በአንድ በኩል ውል የለም በማለት እና በሌላ በኩል ደግሞ ውሉ ፈራሽ ሆኗል በማለት መከራከሩ እርስ በእርሱ የሚጣረስ ክርክር በመሆኑ በፍ/ብ/ሥ/ሥ/ሕ/ቁ 235 መሰረት እንዳመነ ይቆጠራል። ተከላከሎ ውሉ ፈራሽ ሆኗል በማለት ያቀረበው ክርክር ውሉ ለመፍረሱ የቀረበ ማሰረጃ የለም። ውሉ ፈርሶ ቢሆን ኖሮ ተከላከሎ በ06/06/2006 ዓ.ም ከከላሽ ክፍያ ባልተቀበለ ነበር፤ የተቀበለውን ክፍያ ቢሆንም በውሉ አንቀጽ 13/2/ መሰረት ቅጣት ቀንሶ ቀሪውን ክፍያ ለከላሽ መመለስ ነበረበት ተከላከሎ በውሉ ላይ በተመለከተው የክፍያ ደንብ መሰረት ያልፈጸምኩት ተከላከሎ የግንባታ ይዞታውን ባለመረከቡ እና እንደ እኔ ተመሳሳይ ቤት ገዥዎች ጋር በመሆን ከተከላከሎ ጋር በመወያየት ክፍያው እንዲዘገይ በማድረግ ነው። ይሁን እንጅ ይህን ለማካካስ በ06/06/2006 ዓ.ም ብር 616,620 በደረሰኝ ቁጥር 0093 እና በነጭ ወረቀት ማስታወሻ ብር 147,947 ፈጽሟል። የገበያ ዋጋውን ግምት ውስጥ በማስገባት ከላሽ መክፈል አለበት በማለት በተከላከሉ በኩል የቀረበውን መከራከሪያ ግራቀኛችን የሚገዛን ውሉ በመሆኑ ተቀባይነት የለውም በማለት ተከራክሯል። በተከላከሉ በኩል የቀረበው መከራከሪያ ደግሞ ውል አለ የለም የሚለውን በውሉ ላይ የሰፈረው ፊርማ እና ማህተም እንዲመረመርልኝ ጠይቄ እንዳመንኩ የሚቆጠርበት ሁኔታ የለም። ከላሽ በውሉ ላይ በተቀመጠው የአከፋፈል ደንብ መሰረት ግዴታውን ባለመፈጸሙ ተከላከሎ የውል ጥሰት እንደፈጸመ ተቆጥሮ ውሉ ፈራሽ ሆኗል። ከላሽ ክፍያ እንዲዘገይ በተከላከሉ በኩል ተደርጓል ያለውን በጽሁፍ የተደረገውን ውል በቃል የሚሻሻልበት ሁኔታ ስለሌለ ተቀባይነት የለውም፤ ከላሽ በውሉ



መሰረት ክፍያ አለመፈጸሙን ሰላሳው ግዴታቸውን ባለመውጣቱ ውሉ ፈራሽ ሆኗል በማለት ተከራክሯል።

የግልግል ጉባዔው በጭብጥነት የያዘውን ነጥቦች ለማረጋገጥ በከላሽ በኩል በ23/08/2005 ዓ.ም ተደረገ የተባለው አዲስ ቤት ግዥ ውል ስምምነት ውሉ ላይ የሰፈረው ፊርማ በፎረሲንክ ምርመራ ትክክለኛነቱን ለማጣራት የተከላሽ ድርጅት ስራ አስኪያጅ ፊርማ ናሙና እንዲሰበሰቡ ካደረገ በኋላ ሚያዚያ 23 ቀን 2005 ዓ.ም ተደረገ የተባለውን የቤት ግዥ ውል እና የፊርማ ናሙናዎችን ለፌዴራል ፖሊስ ኮሚሽን የወንጀል ምርመራ ቢሮ የፎረንሲክ ምርመራ ዳይሬክቶሬት በመላክ እንዲጣራ አድርጓል። የፎረንሲክ ምርመራ ውጤቱም በውሉ ላይ የሰፈረው ፊርማ የተከላሽ ድርጅት ስራ አስኪያጅ ፊርማዎቻቸው ተብለው ለማሳሰብ ከተላኩት የፊርማ ናሙናዎች ጋር ተመሳሳይ መሆናቸውን በማረጋገጥ በቁጥር ፌ.ፎ.ሰ 1-44/42/890/10 በቀን 30/02/10 ዓ.ም በተጻፈ ደብዳቤ ለግልግል ጉባዔው ገልጿል። በተጨማሪም የግልግል ጉባዔው ግራቶች የዘረዘሯቸውን ምስክሮች አቅርበው እንዲያሰሙ ትእዛዝ ሰጥቶ በ14/04/2009 ዓ.ም በዋለው ጉባዔ ምስክሮችን የሰማ ሲሆን ተከላሽ ምስክሮቹን ማሰማት አልፈልገም በማለቱ ምስክር የማሰማት መብቱ ታልፎ የከላሽ ምስክሮች ብቻ ተሰምተዋል። በዚህ መሰረት 1ኛ የከላሽ ምስክር አቶ ፍሬው ሰለጠነ በ2000 ዓ.ም የካቲት ወር ከላሽ ቤት ሲገዛ በውሉ ላይ መፈረማቸውን እና ውሉ ሲፈረም አቶ መቅደም እና ጸሃፊያቸው የነበሩ መሆናቸውን ፣ ውሉ ከተፈረመ ከ6 ወር በኋላ ቁፋሮ መጀመሩን፣ በ2008 ዓ.ም ከተከላሽ ጋር አቶ መቅደምን ለማነጋገር ቢሯቸው ድረስ ሄደው አቶ መቅደም ከላሽ ብር 147,000 ክፍልና ቀሪውን ግንባታው ሲጠናቀቅ ትክክላለህ ሲለው የሰሙ መሆኑን፣ በነሀሴ 19 ቀን 2008 ዓ.ም ከከላሽ ጋር እና 2ኛ ላይ ከተጠቀሰው ምስክር ጋር በመሆን አቶ መቅደም ጋር ሄደን ያናገርናቸው ሲሆን አቶ መቅደምም የክፈልከውን ዋጋ ታሳቢ በማድረግ ሌላ ቤት ገንብቼ አስረክብሃለሁ ካልፈክ ግን መክሰሰ ትችላለህ በማለት ለከላሽ የነገሩት መሆኑን መስማታቸውን መስክረዋል። 2ኛ የከላሽ ምስክር አቶ ዘውዱ ከበደ ደግሞ ጥር ወር 2008 ዓ.ም ከከላሽ ጋር ለሎምፒያ አካባቢ የሚገኘው አቶ መቅደም ቢሮ ለማናገር የሄዱ መሆኑን እና አቶ መቅደም ቤቱን በ6 ወር ውስጥ ገንብቼ አስረክባለሁ ሲሉ የሰሙ መሆኑን፣ ከላሽ አቶ መቅደምን አናገርልኝ ብሎኝ ከአቶ ፍሬው ጋር ከላሽን ጨምሮ ተከላሽን ለማናገር ከተከላሽ ላይት የሄዱ መሆኑን እና ተከላሽም በክፈልከው ዋጋ ጨምረህ

በገበያ ዋጋ ቤት የሚያሰረክበው መሆኑን ይህን ካልፈለገ ግን መክሰስ ትችላለህ በማለት ለከላሽ መናገሩን መስክሯል።

በአጠቃላይ የግራቶች ክርክር ከዚህ በላይ በቀረበው መሰረት የተደረገ ሲሆን የግልግል ጉባዔውም የተያዙ ጭብጦችን ግራቶች ካቀረቧቸውን ክርክሮች ፣ ማሰራጀቻዎች እና ከሌሎች አግባብ ጋር በማገናዘብ መርምሯል። እንደመረመርነውም የመጀመሪያውን ጭብጥ በተመለከተ በግራቶች መካከል ውል አለ ወይስ የለም የሚለውን ስንመለከት ከላሽ በግራቶችን መካከል በ23/08/2005 ዓ.ም የተፈረመ አዲስ ቤት ግዥ ውል ስለመኖሩ ያሰረዳልኛል በማለት እኤአ ግንቦት 1 2013 ወይም በ23/08/2005 ዓ.ም የተፈረመ በእንግሊዝኛ የተጻፈ ውል ከነትርጉሙ በማሰራጀት ያቀረበ ሲሆን ተከላሽ በበኩሉ በዚህ ውል ላይ የሰፈረው ፊርማና ማህተም በፎረንሲክ ምርመራ ትክክለኛነቱ እንዲረጋገጥለት ጠይቋል። ከላሽ ከዚህ ጋር በተገናኘ ተከላሽ በግልጽ በውሉ ላይ የሰፈረው ፊርማ እና ማህተም ክዶ ያልተከራከረ በመሆኑ እና በሌላ በኩል ደግሞ ውል የለም በማለት እየተከራከረ ውሉ ፈርሷል የሚል ክርክር ማቅረቡ እንዳመነ ይቆጠራል በማለት ይከራከራል። ተከላሽ በውሉ ላይ የሰፈረው ፊርማ እና ማህተም በፎረንሲክ ምርመራ ትክክለኛነቱ እንዲረጋገጥለት ጠይቆ እያለ ውሉን እንዳመነ የሚቆጠርበት አግባብ ባለመኖሩ ከዚህ አንጻር በከላሽ በኩል የቀረበውን መከራከሪያ ጉባዔው ባለመቀበል በፍ/ብ/ሕ/ቁ 2008 መሰረት በውሉ ላይ የሰፈረው ፊርማና ማህተም እንዲመረመር ትእዛዝ ሰጥቷል። በዚህ መሰረት ሚያዚያ 23 ቀን 2005 ዓ.ም በግራቶች በተደረገው የቤት ግዥ ውል ላይ በውሉ ላይ የሰፈረው ፊርማው የተከላሽ ድርጅት ስራ አስኪያጅ መሆኑ የፎረንሲክ ምርመራ ውጤቱ አረጋግጧል። ከፎረንሲክ ምርመራ ውጤቱ በተጨማሪ በከላሽ በኩል የቀረቡ ሌሎች የሰነድ ማሰራጀቻዎችና የምስክሮች ቃልም በማገናዘብ ስንመረምረው ከላሽ በደረሰኝ ቁጥር 0093 በሆነ ብር 616,620 ለተከላሽ ክፍያ የፈጸመበት የተጨማሪ እሴት ታክስ የእጅ በእጅ ሽያጭ ደረሰኝ የተከላሽ ድርጅት መሆኑ በተከላሽ ያልተካደ በመሆኑ እና ውሉ በተፈረመ ጊዜ በእማኝነት የፈረመ 1ኛ የከላሽ ምስክር ግራቶች ውል ሲዋዋሉ የነበሩ መሆኑን፣ የተከላሽ ድርጅት ስራ አስኪያጅ ጋር ጉዳዩን ለመፍታት የከላሽ ምስክሮች ከከላሽ ጋር በተደጋጋሚ የሄዱ መሆኑን እና የተከላሽ ድርጅት ስራ አስኪያጅ የነበሩትም አቶ መቅደም አበራ ከላሽ በከፈለው ክፍያ ላይ ተጨማሪ ክፍያ በመፈጸም በገበያ ዋጋ ሌላ ቤት ገንብተው ለማሰረክብ ፍቃደኛ መሆናቸው መናገሩን የሰሙ መሆኑን

አስረድተዋል። ከሳን ክፍያ የፈጸመበት ደረሰኝ እና የምስክርታ ቃል ክፍረሰንክ ምርመራ ውጤቱ ጋር በማገናዘብ ሲታይ በግራቶች መካከል ሚያዚያ 23 ቀን 2005 ዓ.ም የቤት ግዥ ውል መደረጉን ጉባዔው አረጋግጧል። ስለሆነም ተከላሽ ውል የለም ሲል ያቀረበውን ክርክር ጉባዔው አልተቀበለውም።

ሁለተኛው ጭብጥን በተመለከተ ተከላሽ ከሳን በውሉ ላይ በተቀመጠው የክፍያ ደንብ መሰረት ክፍያ ባለመፈጸሙ የውል ጥሰት እንደፈጸመ ተቆጥሮ ውሉ ፈራሽ ሆኗል በማለት የተከራከረ ሲሆን ከሳን በበኩሉ በውሉ መሰረት ክፍያ አለመፈጸሙን በማመን ክፍያ የዘገየው በተከላሽ ጥፋት ነው በማለት ይከራከራል። በሌላ በኩል ከሳን የሚከራከረው ክፍያው ዘገይታል ከተባለ እንኳ ተከላሽ በፍ/ብ/ሕ/ቁ 1771 እና 1772 መሰረት ለከሳን ማስጠንቀቂያ የመስጠት ግዴታ እያለበት ይህ ባልሆነበት ሁኔታ ውል ተሰርዟል ሊባል አይችልም በማለት ተከራክሯል።

የግልግል ጉባዔው ይህን የግራቶች ክርክር ግራቶች በ23/08/2005 ዓ.ም ካደረጉት አዲስ ቤት ግዥ ውል ስምምነት እና በፍትሐብሔር ሕገ ስለውሎች የተደነገጉትን ድንጋጌዎች ጋር በማገናዘብ መርምረናል። ግራቶች በ23/08/2005 ዓ.ም ያደረጉት ውል አንቀጽ 2 መሰረት ከሳን ውሉ በተፈረመበት ጊዜ ተጨማሪ እሴት ታክስን ሳይጨምር የቤቱን ዋጋ 30 በመቶ የቅድሚያ ክፍያ ብር 286,800 መክፈል እንዳለበት ሌሎች ክፍያዎችን ደግሞ ከተከላሽ ማስታወቂያ በደረሰው በ15 ቀናት ውስጥ መክፈል እንዳለበት ተመልክቷል። በግራቶች የታመነው ጉዳይ ከሳን በዚህ በውሉ ላይ በተቀመጠው የክፍያ ደንብ መሰረት ክፍያ ያልተፈጸመ መሆኑን ነው። ከሳን ክፍያው በውሉ መሰረት ያልተፈጸመው በተከላሽ ጥፋት ነው በማለት ሲከራከር ተከላሽ ደግሞ ከሳን ይህን ግዴታውን አለመወጣቱ የውል ጥሰት በመሆኑ በውሉ አንቀጽ 13 መሰረት ውሉ ፈራሽ ሆኗል በማለት ይከራከራል። በፍ/ብ/ሕ/ቁ 1784-1789 ውል የሚሰረዝባቸውን ደንቦችን የያዙ ድንጋጌዎች ሲሆኑ ከዚህ ከሕገ ድንጋጌዎች መረዳት የሚቻለው አንደኛው ተዋዋይ ወገን በውል የገባውን ግዴታ ሳያከብር ሲቀር ሌላኛው ወገን እንደነገሩ ሁኔታ ጥያቄውን ፍ/ቤት በማቅረብ ወይም ከራሱ ከውሉ በሚመነጭ መብት ተጠቅሞ ውሉን የመሰረዘ መብት የሚኖረው መሆኑን ነው ። ከውል ከራሱ በተገኘ መብት ውል የመሰረዘ መብት ተዋዋይ ወገኖች የሚያገኙት በውሉ ውስጥ የውል መሰረዣ ቃል ሲኖር እና ለዚህ ቃል ተግባራዊ ለመሆን የተዘረዘሩ ሁኔታዎች ተሟልተው ሲገኙ እንደሆነ ከፍ/ብ/ሕ/ቁ 1786-89 የተደነገጉት ድንጋጌዎች መረዳት

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ይቻላል። በተመሳሳይ ሁኔታ በፍትህ ቤቱ ሕግ 5ኛ መጽሐፍ ላይ ስለሽያጭ ውሎች በተደነገገው ክፍል አንቀጽ 2348/1/መሰረት ገዥው የሽያጭ ዋጋውን ለሻጭ ሳይከፍል የቀረ እንደሆነና በውሉ ላይ ሻጭ ውሉን የመሰረዝ መብት ያለው መሆኑ ከተገለጸ ሻጭ ውሉ ተሰርዟል በማለት ለገዥ ወዲያውኑ የማሳወቅ መብት ያለው መሆኑ ተደንግጓል። በአጠቃላይ ከዚህ ከሕግ ድንጋጌ መገንዘብ የሚቻለው አንደኛው ተዋዋይ ወገን ግዴታውን በውሉ መሰረት ካልፈጸመ በውሉ ላይ ውሉን ለመሰረዝ መብት የተሰጠው ተዋዋይ ወገን ይህን መብቱን የሚሰራበት መሆኑን ወይም ውሉ እንዲቀጥል የሚፈልግ መሆኑ የእሱ ምርጫ በመሆኑ ይህን ውል የመሰረዝ ፍላጎቱን ግዴታውን ላላከበረው ወገን ማሳወቅ ያለበት መሆኑን ነው። ከዚህ ውጭ አንደኛው ተዋዋይ ወገን በውል የገባውን ግዴታ ባለመፈጸሙ ብቻ ውሉን መሰረዝ መብት የተሰጠው ተዋዋይ ውሉን የሰረዘ መሆኑን ካላሳወቀ ውሉ እንደተሰረዘ ድምዳሜ የሚወሰድበት አግባብ የለም። ተከላሽ የውሉን አንቀጽ 13 በመጥቀስ ከላሽ ክፍያውን በውሉ ላይ በተቀመጠው የክፍያ ደንብ ባለመክፈሉ ይህ የውል ጥሰት በመሆኑ ውሉ ፈራሽ ሆኗል በማለት የተከራከረ ቢሆንም ውሉን የሰረዘ ለመሆኑ ለከላሽ ያሳወቀው ለመሆኑ ያቀረበው ማሰረጃ የለም። በውሉ አንቀጽ 13 ላይ የተመለከተው ከላሽ በውሉ ላይ የተቀመጠውን ግዴታ ካልተወጣ የውል ጥሰት እንደፈጸመ ተወስዶ ተከላሽ ውሉን የመሰረዝ መብት ያለው መሆኑን የተመለከተ ቢሆንም ተከላሽ ግን ይህን መብቱን የተጠቀመ ለመሆኑ ያቀረበው ማሰረጃ የለም። ከዚህ ይልቅ ተከላሽ በውሉ ላይ በተቀመጠው የክፍያ ደንብ መሰረት የቅድሚያ ክፍያ ውሉ ሲፈረም ባይቀበልም ዘግይቶ ቢሆንም በ06/06/2006ዓ.ም በደረሰኝ ቁጥር 0093 ብር 616,620 መቀበሉ ይህም ውሉን የመሰረዝ መብቱ የተወደ መሆኑን የሚያሰረዳ ነው። ተከላሽ ከዚህ ክፍያ በኋላ ሌሎች ቀሪ ያልተከፈሉ ክፍያዎችንም እንዲከፈለው ማሳወቅ ያለበት ቢሆንም ይህን ለማድረግ ያቀረበው ክርክር የለም። በሌላ በኩል ከላሽ በደረሰኝ ቁጥር 0093 ብር 616,620 መክፈሉ እና ቀሪውንም ክፍያ ተከላሽ እንዲቀበለው እና ቤቱን እንዲያሰረክበው የጽሁፍ ማስጠንቀቂያ መስጠቱ ከእሱ በኩል የሚጠበቅበትን ግዴታውን ለመወጣት ዝግጁ መሆኑን የሚያሰረዳ ነው። ግራቶኑ በ23/08/2005ዓ.ም ያደረጉት ውል አንቀጽ 9 ተከላሾች ውሉ በተፈረመ በ 7ወራት ጊዜ ውስጥ ቤቱን ገንብቶ የማሰረክብ ግዴታ ያለበት መሆኑን የተስማሙ ቢሆንም ተከላሽ በ06/06/2006 ዓ.ም በደረሰኝ ቁጥር 0093 ብር 616,620 ከተቀበለበት ጊዜ ጀምሮ ከላሽ የጽሁፍ ማስጠንቀቂያ እስከሰጠበት 03/01/2009 ዓ.ም ድረስ ባለው ጊዜ እንኳ በውሉ የገባውን ግዴታ ለመፈጸም ያሳየው ፍላጎት የለም። ተከላሽ

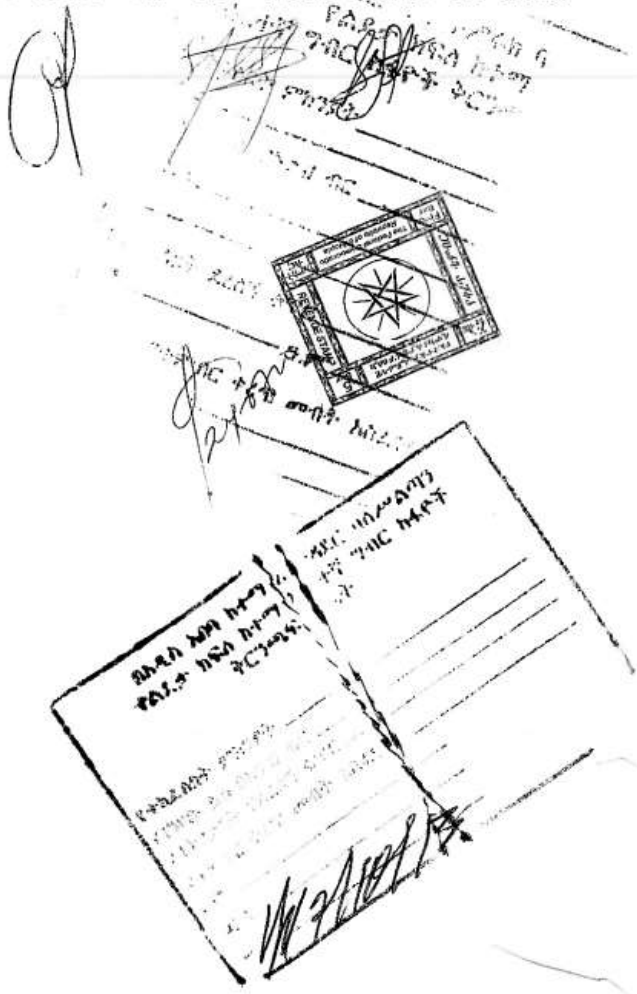
ከከላሽ ለተሰጠው ማስጠንቀቂያ በ11/02/2009 ዓ.ም በጻፈው መልስ በግራቶች መካከል የተደረገ የቤት ግዥ ውል የሌለ መሆኑን ያሳወቀው መሆኑ ሲታይ ተከላሽ በውል የገባውን ግዴታ የመፈጸም ፍላጎት ነበረው ብሎ ለመደምደም አይቻልም። በሌላ በኩል የከላሽ ምስክሮች በተደጋጋሚ ከከላሽ ጋር በመሆን ተከላሽን ቤቱን እንዲያስረክቡ ከላሽ ቢሯቸው ድረስ በመሄድ የጠየቁ መሆኑን እና ተከላሽም ዋጋ ጨምሮና ቤት ገንብቼ ላስረክብህ ማለቱን የሰሙ መሆኑን አስረድተዋል።

ስለሆነም በተከላሽ በኩል ውሉ ፈርቧል በማለት የቀረበው መከራከሪያ የሕግ ድጋፍ የሌለው ሲሆን ከላሽ ግዴታውን የተወጣ ለመሆኑ እና ቀሪ ግዴታውንም ለመወጣት ዝግጁ መሆኑን ከተከላሽ በተሻለ ሁኔታ ያስረዳ በመሆኑ የግልግል ጉባዔው አረጋግጧል። ስለሆነም ተከላሽ በውሉ መሰረት ግዴታ እንደውሉ ላለመፈጸሙ በመረጋገጡ ተከላሽ በውሉ መሰረት የገባውን ግዴታ የመፈጸም ሃላፊነት አለበት። በፍ/ብ/ሕ/ቁ 2329 መሰረት ገዥ በውሉ ላይ ያለው ግዴታ እንዲፈጸምለት ሻጩን ያስጠነቀቀ እንደሆነ ሻጭ በፍርድ ሃይል ተገዶ መፈጸም ያለበት መሆኑን ይደነግጋል። ስለዚህ ተከላሽ ሚያዚያ 23 ቀን 2005 ዓ.ም በግራቶች በተፈረመው የቤት ግዥ ውል መሰረት በውሉ ላይ ገንብቶ ለማስረከብ የተስማማውን ቤት ለከላሽ የማስረከብ ሃላፊነት አለበት በማለት ፍርድ ሰጥተናል።

ሶስተኛውን ጭብጥ በተመለከተ ተከላሽ ለከላሽ ቤት ማስረከብ ካለብን ከላሽ የገበያ ዋጋውን ያገናዘበ ክፍያ መፈጸም አለበት በማለት የተከራከሰ ሲሆን ተከላሽ ለውሉ አለመፈጸም ጥፋተኛ የሆነ ራሱ በመሆኑ በጥፋቱ ለመጣ ተጨማሪ ወጭ ከላሽ የሚከፍልበት አግባብ ግራቶች ካደረጉት ውል ላይ የተመለከተ ነገር የለም። ስለሆነም ተከላሽ ይህን አስመልክቶ ያቀረበውን ክርክር ጉባዔው አልተቀበለውም። በሌላ በኩል ግራቶች በ23/08/2005 ዓ.ም ያደረጉት ውል አንቀጽ 2 ላይ የቤቱ ዋጋ ብር 956,000 /ዘጠኝ መቶ አምሳ ስድስት ሺህ ብር/ እንደሆነ የተገለጸ ሲሆን ከላሽ ከዚህ ዋጋ ውስጥ በደረሰኝ ቁጥር 0093 ብር 616,620 ለመክፈሉ በመረጋገጡ ከጠቅላላ ከቤቱ ዋጋ ላይ ይህ የተከፈለው ገንዘብ ተቀንሶ ቀሪ ያልተከፈለ ብር 339,380 /ሶስት መቶ ሰላሳ ዘጠኝ ሺህ ሶስት መቶ ሰማንያ ብር/ ከላሽ ለተከላሽ እንዲከፍል ተፈርዷል። በከላሽ በኩል በነጭ ወረቀት የተከፈለ ብር 147,947 የተባለውን ተከላሽ ክዶ የተከራከረ ሲሆን ከላሽም ይህን ለመክፈሉ ሕጋዊ ማስረጃ ባለማቅረቡ ጉባዔው አልተቀበለውም።

ውሳኔ

1. ተከላሽ በአዲስ አበባ ከተማ ቦሌ ክ/ከተማ በቀድሞው ቀበሌ 17 የረር ጎሮ መንደር ሳይት ላይ የገነባውን ፕሎክ PABI#6 የቤት አይነት አ/ዩ/ የሆነ ቤት እና የሰም ሀብቱን ለማዛወር ከሚያስፈልጉ ተሞግጅ ሰነዶች ጋር እንዲያስረክብ እና ቀሪ ያልተከፈለውን ክፍያ ብር 339,380 /ሶስት መቶ ሰላሳ ዘጠኝ ሺህ ሶስት መቶ ሰማንያ ብር/ ከሻሽ እንዲከፍል ተወስኗል።
2. የጠበቃ አበል ክስ የቀረበበትን ገንዘብ 10 በመቶ ብር 95,600.00 /ዘጠና አምስት ሺህ ስድስት መቶ ብር/ የአስተዳደር ወጭ እና ለገላጋይ ዳኞች የተከፈለ በአጠቃላይ ብር 48000/አርባ ስምንት ሺህ ብር/፤ ለቴምብር ቀረጥ፣ትርጉም እና ሌሎች ወጭዎች በቁርጥ ብር 2000 /ሁለት ሺህ ብር/ ተከላሽ ለተከላሽ እንዲከፍል ተወስኗል።



ህዳር 28 ቀን 2015 ዓ.ም

የግልግል ጉባዔ ዳኞች፤- ፊልጶስ ዓይናለም

ታምራት ኪዳነማሪያም

ሁሴን ይመር

ከሳሽ፡- አቶ ተወልደ ተስፋዬ ጠበቃ. ቴዎድሮስ ሙሉጌታ

ተከሳሽ፡- ኢትዮ ኢንድያ ፓኪኛንግ ኃላየተ/የግ/ማህበር ጠበቃ. አብደላ ዓሊ

መዝገቡ ለዛሬ የተቀጠረው በአዋጅ ቁጥር 1237/2013 በጉዳዩ ተፈጻሚነት ላይ የተከሳሽን አስተያየት ተቀብሎ በጣልቃ ገብነቱ ጉዳዩ ብይን ለመስጠት ሲሆን በተከሳሽ በኩል በመዝገቡ የጽሁፍ ክርክር ያቀረብነው የቀድሞውን ሕግ መሰረት በማድረግ በመሆኑ አዋጁ በጉዳዮችን ተፈጻሚ እንዲሆን አንስማማበትም፤ በቀድሞው ሕግ መሰረት ክርክር እንዲመራልን በማለት አስተያየታቸውን ሰጥቷል።

ግልግል ጉባዔውም በጣልቃ ገብነቱ ክርክር ጉዳዩ የሚከተለውን ብይን ሰጥቷል።

ብይን

ከሳሽ እ.ኤ.አ ሐምሌ 6/2012 ዓ.ም ላቀረበው የክስ አቤቱታ ተከሳሽ እ.ኤ.አ ነሐሴ 12 ቀን 2022 በሰጠው መልስ ቁጥር 2-2-3 ሥር በገጽ 7 የተከሳሽ የቀድሞ ሥራ አስኪያጅ የነበሩትና ለክሱ ምክንያት የሆነውን ውል ከከሳሽ ጋር የተፈራረመበት Mr sarvanan wali በግልግል ጉባዔው ክርክር ጣልቃ ገብተው እንዲከራከሩ እንዲፈቀድለት አመልክቷል። ከሳሽ በተከሳሽ አቤቱታ ላይ አስተያየቱን እንዲሰጥበት ተፈቅዶለት ከሳሽ ራሱን የቻለ ክስ ከሚያቀርብ በስተቀር በግልግል ጉባዔው እንዲገቡ የሚፈቅደበት ምክንያት የለም በማለት ተቃውሟል።

በአዋጅ ቁጥር 1237/2013 አንቀጽ 40 መሰረት በግልግል ጉባዔ በሚደረግ ክርክር ሦስተኛ ወገኖች ጣልቃ ገብተው እንዲከራክሩ የሚደረገው ተከራካሪ ወገኖች እና ጣልቃ ገቡ ሲሰማሙበት ብቻ መሆኑን ተደንግጓል። የአዋጁ ተፈጻሚነት በነጋሪት ጋዜጣ ከታተመበት

መጋቢት 24 ቀን 2013 ዓ.ም ጀምሮ ሲሆን በከላሽና በተከላሽ መካከል ለክርክር ምክንያት የሆነው ውል የተፈረመው እ.ኤ.አ በጥር 25 ቀን 2021 በመሆኑ አዋጁ በጉዳዩ ላይ ተፈጻሚነት አይኖረውም። በቀድሞው የህግ ሥርዓት ደግሞ ጣልቃ የመግባትን ጉዳይ ግራ ቀኞች እንዲስማሙበት የሚያስገድድ ድንጋጌ የለም። ጉዳዩ የሚወሰነው ለፍትሕ አስጣጥ በማረዳ መልኩ በግልግል ዳኞች ሥልጣን ነው። ሰለሆነም በተከላሽ ጥያቄ መሰረት የቀድሞው ሥራ አስኪያጅ ሥማቸው ከላይ የተጠቀሰው የከላሽና የተከላሽ የጽሁፍ አቤቱታዎች ደርሷቸው በጉዳዩ ገብተው ለመከራከር ፈቃደኛ የሚሆኑ ቢሆን ጣልቃ ገብተው እንዲከራከሩ ብይን ተስጥቷል።

ትዕዛዝ

የከላሽና የተከላሽ ሙሉ የጽሁፍ አቤቱታዎች መልሶችና የመልስ መልሶች ከነማስረጃቸው ከግልግል ጉባዔው መጥሪያ ጋር ደርሷቸው በጉዳዩ ጣልቃ በመግባት ፍቃደኛ መሆን አለመሆናቸውን እንዲያረጋግጡና ፍቃደኛ የሚሆኑ ከሆነ መልሱና ማስረጃቸውን ይዘው እንዲቀርቡ ታዘዟል መጥሪያው በተከላሽ በኩል እንዲደርሳቸው ታዘዟል።

ከተባለ በኋላ ተከላሽ በጉባዔው ሰለ መጥሪያ አደራረሱ ሲጠየቅ ጣልቃ እንዲገቡ የተጠየቁት ግለሰብ ከኢትዮጵያ ውጭ መሆናቸውን፣ አድራሻቸውን ለማግኘት የማይችሉ መሆኑን በመግለጽ የጣልቃ ይግባልኝ ጥያቄ አቤቱታቸውን ማንሳታቸውን አርጋግጠው የጉዳዩ ክርክር እንዲቀጥል አመልክተዋል።

በዚህ መሰረት ግልግል ጉባዔው የግለሰቡን ጣልቃ መግባት ጉዳዩ ቀሪ አድርጎታል።

የግልግል ዳኝነቱን መርሃ ግብር ለመፈራረም እና ክሱን ለመስማት ለታህሳስ 7 ቀን 2015 ዓ.ም 8 ሰዓት ተቀጠረ።

ታምራት ኪዳነማርያም ፊልጶስ ዓይናለም ሁሴን ይመር