



**ADDIS ABABA UNIVERSITY
SCHOOL OF POST GRADUATE STUDIES
LL.M PROGRAMME IN URBAN PROPERTY AND LAND LAW**

**THE POWER OF ADMINISTRATIVE AGENCIES CONCERNING
URBAN LAND DISPUTE SETTLEMENT: THE CASE STUDY ON
DUKEM AND BURAYOU CITY ADMINISTRATIONS**

BY

REBIRA KIBRET BEYENE

FEBRUARY, 2019

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DECLARATION

I, declare that the thesis is my original work and 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.

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Abstract

Urban center is source of innovation, work or employment opportunity, access to technology and etc. For the expansion of urbanization the demand and interest of the urban land has been highly increased from time to time. This study examines and analyses the power of administrative agencies concerning urban land dispute settlement the laws and practices in Ethiopia especially in study area. Land disputes are bound to occur or available at any situation all over the world especially in our country. We cannot avoid disputes but we can reduce by putting clear legal and institutional frame work and design available right to get access to justice as remedies. The objective of the thesis is to analyze and describe the power of administrative agencies concerning urban land dispute settlement laws in Ethiopia and to compare them with the practice in order to investigate better and effective urban land dispute settlement mechanism in Ethiopia by examining the existing urban land laws and institution whether it is enough to settle urban land disputes in Ethiopia especially in the study area.

In order to identify the different disputants and cause of disputes in two towns, the writer has consulted various collected information through interviews, questionnaires and focus group discussions with different concerned bodies. Based on this it has been found that the different disputants in the study area are individual versus government, individual versus organization, individual versus individual. High demand; tenure insecurity, scarcity, greed, land policies and etc are some of sources of urban land disputes. The disputes have arisen in relation to improper termination of contract of lease, illegal possession and illegal buildings, boundary, expropriation and inheritance dispute are some of the causes of disputes in the study area.

Keywords: administrative agencies, urban land, urban land disputes, dispute settlement mechanisms, urban land dispute settlement.

CHAPTER ONE

INTRODUCTION

1:1 BACKGROUND OF THE STUDY

Now a day's globalized and modernized world urban center is source of innovation, work or employment opportunity, access to technology and etc. Many developed countries have strong land institutions, land dispute resolution mechanism and laws that protect the citizens' relationship with land and provide land administration services to secure and often guarantee land rights¹. In Ethiopia, due to the expansion of urbanization and modernization the demand and interest of the urban land has been highly increased from time to time all over the country especially at the study area. To manage and control this high demand and interest on urban land, the government provides laws in different time. The Ethiopian land tenure system is different in different regime, in this different policy legal system, the power given to administrative agencies to resolve urban land dispute is different. We can classified the power of urban land administrative agencies to settle disputes to three categories, these are before proclamation No. 47/1975 the imperial regime 47/1975 to proclamation 80/1991-Socialist Regime and post 1991- the current regime. During the emperial regime the Civil Code empowered regular court to all civil disputes including Lease of immovable in general (article 2896ff and other contract on immovable property and land.² But, in Procn.47/1975 the power of litigation on urban land and property is given to administrative agencies rather than regular court. Currently in urban center there is no such specificity of laws that guides the urban land dispute resolution mechanisms at legal framework as well as at practical cases there is no such uniformity of urban land dispute resolution mechanism. In urban center the land dispute is resolved in scattered manner by different occur or be found at various places rather than all together. This is because of lack of legal uniformity of urban land dispute settlement mechanism at national level as well as at regional and local city level.

In Ethiopia the current urban policy and laws of urban land administration are not put a laws or system of urban land dispute settlement only few the proclamation 455/2005 under article 11 stated that the urban landholder who dissatisfies with the amount of compensation, he may lodge his complaint to the administrative organ established by the urban administration to hear a grievance related to urban land holdings, if such organ is not yet established, a

¹United nations committee of experts on global geospatial information management The Application of Geospatial Information – Land Administration and ManagementUN-GGIM, 13 July 2015,http://ggim.un.org/ggim_committee.html

².see article 2896ff Civil Code of the Empire of Ethiopia, Proclamation No.165/1960. *NegaretGazeta*. year

complaint relating to amount of compensation shall be submitted to regular court having jurisdiction article 11/1&2),³. Proclamation No. 272/2002 primary jurisdiction on compensation is given to tribunal. Institution of Pleadings and Decision-making on decision to pay commensurate compensation is given to Commission (tribunal)⁴. A person dissatisfied in the decision of the Commission upon administration has the power to see and entertain issue of compensation on grievance of land clearances⁵. The new lease proclamation 721/2011 under its article 30 promises that an urban land clearing and compensation cases appellate tribunal shall be established by regions and city administrations which shall consist of not less than five members, have a power to confirm or vary or reverse a decision of appropriate body, accountable to the council of the region or city administration, be free of any influence except the law, and can order the relevant bodies to provide evidence or expert opinion.⁶ Article 30(8) of this proclamation provides that “*the Tribunal may not be governed by the provisions of the ordinary Civil Procedure Code while conducting its functions. It shall, however, be governed by expedient procedures to be issued by the region or city administration.*”⁷ Currently now the first Proclamation Urban Landholding Registration no.818/2014 is proclaimed this is new idea in history of our country as independent urban land registration law and institution, surprisingly this law also not sufficiently talks about urban land dispute settlement mechanism. Even until now a day some of the provisions of the civil code are applicable.

The above stated proclamation and provisions is gives primary jurisdiction to the tribunal to settle urban land disputes, the power of this tribunal is only on issues of regarding land clearance and amount of compensation, but if the issue of the dispute is not on land clearance or amount of compensation, the law is not yet stated or silent in this proclamation. The above laws have a gap/ limitation on issues of a power and jurisdiction to settle an urban land dispute arises other than land clearance and amount of compensation. As stated above under Article 30(8) of this proclamation provides that “*the Tribunal may not be governed by the provisions of the ordinary Civil Procedure Code while conducting its functions. It shall, however, be governed by expedient procedures to be issued by the region or city administration,* on the other hand the FDRE Constitution its article 78(4) states that “*special*

³ Expropriation of landholdings for public purposes and payment of compensation proclamation No. 455/2005 *NegaritGazeta*. Year 11, No. 43

⁴ Proclamationno.272/2002 a proclamation to provide for the re-enactment of lease holding urban lands federal *NegaritGazeta* 8 Year No.19

⁵Urban land lease holding Proclamation no. 721/2011 Federal *NegaritGazeta*.Year 18, No. 4.

⁶ibid, Art. 30(1-7)

⁷ibid

or ad hoc courts which take judicial powers away from regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.”⁸ From this statement it is clear that the FDRE constitution recognizes the establishments of an administrative tribunal which have been exercise a quasi-judicial power, but it should be follow/use legally prescribed procedures otherwise it constitutes to be unlawful for its existence. Moreover, the FDRE constitution seriously expresses supremacy of the constitution that any law, practices, or decision of any government organ which inconsistent with the constitution shall be of no effect.

1.2. Objective of Study

1.2.1. General Objectives

The general objective of the study is to investigate better and effective urban land dispute settlement mechanism in Ethiopia especially in the study area by examining the existing laws and institution whether it is enough to settle urban land disputes in Ethiopia especially in the study area. The experiences of Burayou and Dukem city Administrations are used to substantiate the legal analysis of the law on the urban land dispute settlement.

1.2.2. Specific objectives

- To identify the different disputants and cause of disputes in two towns
- To assess the current legal and institutional arrangement and their capacity to settle land disputes in the both towns.
- To assess the current legitimate power given to administrative agencies in Ethiopia especially in the study area
- To identify factor that affect better urban land dispute settlement in Ethiopia especially the study area.
- To examine challenges of legal and institutional frameworks to settle urban land disputes in Ethiopia especially in the study area.

1.3. Statement of the Problems

In Ethiopia, land disputes, both rural and urban, have been commonly occurred throughout the modern history of the country. Because of this, there have been various land dispute settlement mechanisms in the country during the Imperial Regime, the Socialist Regime and the incumbent system. This research is significant to examine urban land dispute

⁸Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995 Federal *NegaritGazeta* Year 1, No.1

settlement mechanisms by focusing on the current legal, institutional and practical aspects. The importance of better urban land dispute settlement for sustainable development effective, efficient and equitable well functioning urban land is un-debatable. In present Ethiopian regime urban land law gives more discretionary power and some un-defined powers to administrative authorities. Thus these authorities may violate or restrict rights of land holder while exercise its power, and this discretionary power may limit the rights of land holder to get access to justice. This problem is the main features of the Ethiopia especially in the study area. Those two towns are the special zone of Oromia surrounding Finfine and very near to the capital Addis Ababa and high land demand area among the towns of the region. Land conflict and disputes occurred in the two towns, some of these disputes; improper termination of lease contract, boundary disputes, land use disputes, squatter or illegal buildings, improper expropriation, inheritance and the other disputes are some disputes. Urban land is more sensitive than rural land because of scarcity of land in urban center, the actual demand and supply are un-balanced, very high urban land demand than rural land for this reason competing of interest and conflict of interest is highly occurred in urban center. Overlapping of jurisdiction over urban land dispute settlements are some of the challenges in urban center, because only the power to settle disputes on land clearance and amount of compensation is clearly given to administrative agencies, the other, that is power to entertain disputes regarding to issues of contract of lease, improper termination of contract of lease, disputes regarding urban land use and others urban land dispute settlements which have not been specifically provided on the proclamation to provide for lease holding of urban lands No. 721/2011 and other current federal and regional urban land laws are undesignated powers . The jurisdiction of most of urban land dispute settlement not specified on normative or institutional framework, how to settle disputes occurred on this area. When administrative agencies exercise their power it's different from town to town because of lack of urban land dispute settlement legal provision specifically this also make abuse of power. This is also other challenges of urban land dispute settlement in our country especially in the study areas, to address the above problems the research attempts to answer the following questions.

1.4 Research Questions

- What are urban land disputes in the study areas?
- Who are the disputants in the case urban lands in Ethiopia particularly in the study area?
- What are the causes of urban land disputes in the study area?

- Does urban land administrative authority have a full power to resolve all kinds of disputes raised on urban land? What about a power specifically not given to them?
- Are the existing law and urban land administrative agencies enough to settle urban land dispute settlement in Ethiopia in general and in the study area in particular?
- What are the challenges of legal and institutional frameworks to settle urban land disputes in Ethiopia especially in the study area?

1.5. Scope of the study

The study mainly focuses on the critical analysis and evaluation power of administrative agencies to settle urban land disputes on two towns focusing on new urban land lease holding proclamation No. 721/2011 and other federal and regional urban land law. For the sake of making the study manageable, this study has limited in scope, time and coverage areas, the study will be undertaken in Ethiopia, State of Oromia, on Burayou and Dukem town.

1.6 Significance of the Study

Some of the significance is that, to provide data for the government and others on the gaps of law and problems in the practice. This dealing with the urban land dispute settlement, in urban land lease holding Proclamation No. 721/2011 the government and community can deal in limitation of the law and institution on the land dispute settlement in urban center. The study can also be considered as an additional reliable data to the limited literature available on urban land dispute settlements in Ethiopia. The study also helps the decision maker like justice agents. The results of this study may also have an impact on the academic community, governmental and nongovernmental organizations, policy makers and the public at large.

1.7. Research Methods

This research method will make use of both primary and secondary sources. Primary sources to be studied include the New Urban land lease holding proclamation No. 721/2011, the former two urban land lease proclamations; i.e. the proclamation to provide for the lease holding of urban lands No. 80/1993 and the Re-Enactment of Urban Lands Lease Holding Proclamation No. 272/2002, Government Ownership of Urban Land and Extra Houses, Proclamation No. 47/1975 and Oromia regional national state urban land lease holding regulation no. 182/2008 e.c and some other relevant laws. Secondary sources include qualitative interviews, focus group discussions, unpublished materials, and internet sources. To show the challenges and prospects of the law, regard would be had on concerned

government and private organs. In order to arrive at reliable findings, the researcher has applied the field and desk surveying method and then collected various types of data related to the study under consideration. Review of available literature and documents, collection and analysis of both primary and secondary data has been carried out. Interviews and discussions with relevant officials of the government, private investors, and residents in person have also been held and other relevant documents have been used as a source of information.

1.8 Limitation of the Study

Lack of enough literature on this areas, lack of relevant data gathered from institutions and insufficient literature is may be the limitation of this paper.

The other limitation is that the fear of respondents to provide genuine and accurate information for questions posed is the other limitation of this paper.

CHAPTER TWO

URBAN LAND DISPUTE IN ETHIOPIA

2.1 Urban Land

Proclamation No.47 of 1975 a proclamation to provide for government ownership of urban lands and extra urban houses defines the term urban lands as “all lands within the boundaries of a municipality or a town. The urban lands lease holding proclamation No. 80/1993 defines urban land as all lands within the boundaries of the town⁹. On other hand in new urban land lease holding proclamation “Urban land” means land located within an administrative boundary of an un urban center¹⁰. Generally urban land means land located in urban areas, defined as “the space characterized by parceled land and continuous built up areas in which there is actual or planned provision of infrastructure and services such as roads, electricity, draining and water supply systems and sanitation.” In Somaliland, ‘planned provision of infrastructure;’ would include any land included in the master plan issued by the urban planning office in accordance with the law and regulation. Where such master plan does not exist, it would include any land under the town plan of the land department of the local district council.¹¹ Where this does not exist, the urban characterization of the land should be established as a matter of fact, taking into account the extent to which it is built up, the development of the infrastructure and the services available. In this above definition we conclude that urban land means land located within administrative boundaries or plan boundaries of a municipality or city administration, all land found in the boundary of urban administration.

2.2 Urban Land Disputes under Ethiopian Urban Land Law

Dispute" includes any case where a person complains of and is aggrieved by the actions of another person, or any case in which a complaint is made in an official capacity or is a complaint against an official act No.2¹². When we come to Land dispute, mean a dispute over the ownership, succession, possession, lease, rent or use of land shall include disputes land. Since land is an important for human life especially in Ethiopia land is a crucial for the citizen, that has many purpose for farming, industrial development and economic services,

⁹Urban Lands Lease Holding Proclamation, Proclamation No. 80/1993.Negarit Gazeta of the Transitional Government of Ethiopia. Year 53, No. 40.

¹⁰Ibd cited above see article 5

¹¹ Land disputes available at <https://encyclopedia2.thefreedictionary.com>

¹²The united republic of Tanzania, An Act to provide for the establishment of Land dispute settlement machinery and for matters incidental thereto No 2 of 2002.

there exists conflict which is individually, in community and country wise. Land disputes are the social fact in which at least two parties are involved. The roots of which are different in interest over the property right to land, the right to use the land, to manage the land, to generate, an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. Land conflict also can be extended from the disagreement to armed confrontations where competing interests and claims have caused or threatened a break down in ordinary or even peaceful, co-existence whereas disputes are associated with distinct just sable issues which require a solution can be managed and as a matter of fact requires a third party intervention¹³

Urban land disputes also a dispute involving urban land and house shall mean a dispute over the ownership, succession, possession, lease or use of urban house and shall include disputes over the possession of urban land¹⁴. Disputes over the right of land use between land users and other organizations or persons in connection with the appropriation or withdrawal of land from the users, with the system of land management, and with the exercising of other functions of disposal and control of the land¹⁵disputes may be occur at anywhere at any place on land. Disputes are often said to be un-avoidable and in some cases beneficial but the adversarial aspects conflict can be minimized¹⁶. Land provides a major source of conflict in urban center and rural societies around the world.” Land disputes over inheritance, boundaries and holding rights between families, neighbors and communities are common in many parts of the world. All societies have developed different methods of resolution of such disputes¹⁷.As we understand from the above discussions it should be clear that disputes may be occur at anywhere at any place on land and its said to be un-avoidable, there is no dispute free society in the world our county is not different from this. Disputes are minimized by putting better strong legal and institutional framework that is good governance in land institution by technological support, upgrade and update human skill capacity.

¹³Gertrude Sackey Investigating justice systems in land conflict resolution: A case study of kinondoni municipality, Tanzania. March 2010 (In Tanzania the law of land dispute settlement is very clear and detail)

¹⁴ The Proclamation of Government Ownership of Urban Lands and Extra Houses, proclamation No,47/1975, Neg.Gaz. 34th year, No. 41, 26th July, 1975,

¹⁵ibid.

¹⁶Gertrude, Investigating Justice Systems in Land conflict resolution: a case Study of Kinondoni, Municipality, 2010, P.7, Felicia, very, co. Tanzania.

¹⁷Ibid.

2.3 The Relationship between Urban Land Administration/Management and Urban Land Dispute

In this section I try to discuss relationship between urban land Administration/Management and Urban Land Dispute and the relationship between weak Urban Land Administration and Management and urban land disputes.

Some authors have blamed land disputes in urban areas on inability of the urban managers to manage land properly to reduce land conflicts, land management need to be seen as part of a wider doctrine of land development and physical planning. In this respect, he adds that land management must entail orderly and lawful allocation, transfer, utilization, distribution and conservation of physical land in urban areas for the benefit of all the actors. On the other hand, land management as a comprehensive expression of activities aiming at established goals for the use of land. There appears to be a consensus on the aims of land management. However, urban areas are dynamic and full of uncertainties as goals keep changing¹⁸.

Land administration identifies the extent and character of localized land administration institutions, examines the process associated with their evident main driver, the intention to register land rights and transactions, and examines the nature of rights that are registrable, with attention drawn to the resulting changing status of customary rights¹⁹. Good urban land administration is better to minimize urban land disputes. The purpose is to identify the location, purpose and powers of new institutions for land administration. Formal land administration has historically been a function of central governments and at most de-cent rated to provisional and sometimes district levels²⁰. Central land administration is the norm in Zambia, Ghana, Mozambique and Zanzibar, although all but the last permissively admit customary land management at the periphery. Only Ghana has plans to consolidate this level and type of land administration but so far, without intention to endow traditional authorities with more administration powers that they currently possess²¹.

Land management also examines provision for land use planning and environmental protection within the context of decentralizing norms, developments in common property

¹⁸Luke MitaiObala the relationship between urban land conflicts And inequity: the case of nairobi.
<https://core.ac.uk/download/pdf/39669814.pdf>

¹⁹Liz, Alden, Land Tenure And Resource access In Africa, 2003, page,3, Mcpgoldies Pvt.co. London, United Kingdom.

²⁰Ibid, cited above at note 13

²¹Ibid. cited at note 18

tenure, measures designed to enhance equity in land access, and measures to protect the land interests of selected interest groups, women, orphans, pastoralists and hunter-gatherers²². As there is no single definition of land and property rights, there is also a wide range of land related resources and uses, and so far there variations in approaches to the management of land –related conflicts. The importance of reducing conflicts over land in Africa through the implementation of a functioning and registration and/or Cadastral system which need to be supported by additional preventive measures such as conflict resolution, land management²³. In this case weak urban land management and administration is the cause for urban land disputes, as well as breakdown of law and order. In recent years, land conflict management has become a global concern due to the belief that land conflicts in particular have a major impact on people especially the under privileged and the poor. Conflicts are often said to be un-avoidable and in some cases beneficial but the adversarial aspects conflict can be minimized²⁴. Land provides a major source of conflict in rural societies around the world.” Land disputes over inheritance, boundaries and holding rights between families, neighbors and communities are common in many parts of the world. All societies have developed different methods of resolution of such disputes²⁵.

As it is stated above, land conflict is the global problem that could not be avoided despite their Dispute settlement is not the same thing as conflict resolution. One is a temporary settlement of an immediate problem; the other is a long-term settlement of an underlying long-running conflict²⁶.

The causes of land dispute may be numerous but ill-defined property rights and unclear laws and inefficient court system are some of the major ones.²⁷ During this period, no thorough study was conducted on the magnitude of rural land dispute, the types of disputes, the number of cases submitted to the regular courts and customary institutions, the number of criminal cases that arose from land disputes, and the number of people who preferred forfeiting their rights or claims to going to regular or customary courts, the average time that a case would take to be disposed from its filing to its disposition by a court of law, etc²⁸. Land conflicts are

²²Urmilla, Land Related conflicts in Sub-Saharan Africa, Kwazulu, university press, 2004, p.9 Durban.

²³Ibid. p.59

²⁴Ibd cited above at note 16

²⁵Ibid. cited above at note 13

²⁶International Online Training Program on Intractable Conflict Research Consortium, University of Colorado, USA) (Year or date of access, please, if it is a web resource.)

²⁷Ibid. p.43

²⁸Ibid. p.51

the social fact in which at least two parties are involved. The roots of which are different in interest over the property right to land, the right to use the land, to manage the land, to generate, an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. Land conflict also can be extended from the disagreement to armed confrontations where competing interests and claims have caused or threatened a break down in ordinary or even peaceful, co-existence whereas disputes are associated with distinct just sable issues which require a solution can be managed and as a matter of fact requires a third party intervention²⁹.

Since land is an important for human life that has dual purpose for farming, industrial development and economic services, there exists conflict which is individually, in community and country wise. But it was “generally believed that land was the subject of numerous disputes and endless litigation. Legal protection to the rights of land in the world is almost universally accepted although the form of land tenure differs from jurisdiction to jurisdiction. Despite the presence of legal protection to land right, disputes are unavoidable in all jurisdictions of the world, including owing to various causes³⁰. As discussed in above the causes of urban land dispute may be numerous but ill-defined property rights and unclear laws and inefficient court system are some of the major ones, as well as many authors proves that land disputes in urban areas on inability of the urban managers to manage land properly to reduce land conflicts, land management need to be seen as part of a wider doctrine of land development and physical planning. In other side strong urban land institutions and laws that protect the citizens’ relationship with land and provide land administration services to minimize disputes, secure and often guarantee land rights. This become necessary to minimize disputes arises related to land and immovable property, establish transparent and accountable working system and making government services efficient and enable the possessor to enjoy the property he develops in accordance with law, in these countries, security of tenure is taken for granted. These services directly support better urban land administration and management institution that can minimize urban land disputes and land markets that underpin modern economies. Generally weak Urban Land Administration and Management can causes for urban land disputes in the world especially in our country.

²⁹Ibd

³⁰WaelZakout, Babette Wehrmann, Mika-PetteriTörhönen Good Governance in Land Administration Principles and Good Practice A practical guide to dealing with land disputes

2.4 Causes and Consequences of Urban Land Disputes

2.4.1 Causes of urban land disputes

As discussed above weak urban land institution especially weak urban land Administration and Management can causes for urban land disputes in general especially in our country the other causes of urban land disputes are high needs, greed, scarcity and others like tenure insecurity, weak land policy institution and law.

Land conflicts are indeed a widespread phenomenon, and can occur at any time or place. Both need and greed can equally lead to them, and scarcity and increases in land value can make things worse. Land conflicts especially occur when there is a chance to obtain land for free – no matter if this land is state, common or someone’s private property. Inheritance conflicts and disputes between neighbors are most often about land (and other immobile property). Tenure insecurity as a consequence of weak governance often increases land conflicts-both between individuals and between individuals and the state.³¹ When the legal and institutional is not strong in urban land it causes the urban land disputes in the country. Inadequate knowledge on land policy by the local people in the community is also the cause of land conflict. Tenure insecurity as a consequence of weak governance often increases land conflicts-both between individuals and between individuals and the state³². Tenure insecurity and weak land policy that is urban land institution and laws as a causes of urban land disputes in the world our country especially the study area is not different from this. For expansion of urbanization and modernization the demand and interest of urban land was highly increased, the scarcity of urban land very large quantity of population the state of being plentiful or prosperous the main and fundamental cause of land disputes in the world as well as in our country especially in the study area. The needs, greed, scarcity, political instability and others are the causes for urban land disputes in Ethiopia as well as in the study area

2.4.2 Consequences of urban land disputes

Instability if the urban land disputes is not properly prevented or carefully resolved it’s the source of political, social and economical instability and crisis to the government. Land conflicts often have extensive negative effects on economic, social, spatial and ecological

³¹ibd

³²ibd

development. This is especially true in developing countries and countries in transition, where land market institutions are weak, opportunities for economic gain by illegal action are widespread and many poor people lack access to land. Land conflicts can have disastrous effects on individuals as well as on groups and even entire nations. Many conflicts that are perceived to be clashes between different cultures are actually conflicts over land and related natural resources³³. As we discuss in above urban land disputes have extensive negative political, social and economical impacts. It needs carefully treatment to solve urban land disputes timely because if the urban land disputes is not properly prevented or carefully resolved it's the source of political, social and economical instability and crisis to the government and citizen.

³³Dr. Babette Wehrmann LAND CONFLICTS A practical guide to dealing with land disputes Eschborn 2008.

CHAPTER THREE

URBAN LAND DISPUTE RESOLUTION MECHANISMS

Under this chapter the writer provides the way the urban land dispute is settled through comparing the mechanisms that how some countries carried out the disputes that arise in their country.

In many countries, especially in Africa, land conflicts are resolved through formal and informal justice institutions each of them having its own mechanism of dealing with land conflicts. Formal institutions are those that are established by legislation while informal institutions are those local institutions that are recognized by the local communities but are not supported by legislation.³⁴

3.1. Urban Land Dispute Settlement Mechanisms

Under this topic the writer assesses different type of urban land dispute settlement mechanism that relate to administrative authorities in relation to the land dispute settlement in practical application of our country. Accordingly, proclamation No.47 of 1975 a proclamation to provide for government ownership of urban lands and extra urban houses has provided the definitions of urban lands and dispute of urban lands that shall mean to a dispute over the ownership, succession, possession, lease of use of urban house and shall include disputes over the possession of urban land³⁵. The proclamation provides nothing about dispute settlement and its mechanisms rather it provides how urban land extra houses come to be controlled under the Derge regime. Article 2(1) -2(4) of the proclamation states that, no compensation shall be paid in respect of urban lands Prohibition of transfer of urban lands³⁶. Further, the proclamation under its Article 19 provides about expropriation that says the government, by paying compensation, expropriate for public purpose an urban house held by any person, family or organization. Rather than defining some terms the proclamation is silent on the issues of urban lands dispute settlements. In Proclamation No. 272/2002 primary jurisdiction on compensation and urban land disputes is given to administrative tribunal or commission. Institution of Pleadings and Decision-making on decision to pay commensurate compensation is given to Commission (tribunal). A person dissatisfied in the decision of the Commission upon compensation issues only may appeal within 30 days as from the date of the decision, before the relevant High Court having jurisdiction over the place where the

³⁴Ibd cited above at note 16

³⁵Ibd cited above at note 14

³⁶Ibd

property in issue is situated or where such place is in Addis Ababa before the Municipal Appellate Court³⁷. Proclamation No. 80/1993 is silent about land clearance and jurisdiction on compensation or urban land disputes generally. The next is proclamation NO.721.2011 the proclamation of urban lands Lease Holding of Federal Government of Ethiopia. Undesignated powers of urban land dispute settlements which have not been specifically provided on the proclamation to provide for lease holding of urban lands No. 721/2011 and other current federal and regional urban land laws³⁸. The jurisdiction of most of urban land dispute settlement not specified on normative or institutional framework, how to settle disputes occurred on this area. This is also other challenges of urban land dispute settlement in our country especially in the study area. The proclamation under its Article 2(1) has defined the meaning of lease that it is a system of land tenure by which the right of use of urban land is acquired under a contract of a definite period³⁹. Article 2(7) provided public interest it is the use of land defined as such by the decision of the appropriate body in conformity with urban plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development⁴⁰. The dwellers are forced to request the authorities when their land use right is violated due to lack of clear, specified urban dispute resolution mechanisms⁴¹. This challenge of urban dispute settlement mechanisms shows us lack of attention to the challenges by government. Moreover, Oromia Rural Land Administration Proclamation No.130/2007 clearly provided the term and the procedure of dispute settlement mechanism in Oromia Regional state as follows. Accordingly, Conflict and dispute arising on land shall be solved: First application shall be submitted to the local Kebele Administration⁴². The parties shall elect two arbitrary [*sic*] elders each. Chairpersons of arbitration[*sic*] elders are elected by the parties or by the arbitral elders[*sic*], if not agreed arises, according to this provision, an application must first be submitted to the local *kebele* Administration. Then the disputing parties must appoint two *elderseach*⁴³. The elders will have a chairperson who is appointed by themselves, parties or the *kebele* administrator. Of course, the *kebele* administrator appoints a chairperson when both parties and then elders are not able to reach an agreement

³⁷Supra note 4

³⁸Supra note 5

³⁹ibid

⁴⁰Interview conducted with Ato Kebede Tadesse a trader in Dukem Town, at 3:00 A.M, on 5/8/2018

⁴¹Interview conducted with Ato Kelifa Adem, a trader in Burayu Town, at 5:00 A.M, on 4/7/2018

⁴²Oromia national regional state rural land administration and land use proclamation no.130/2007 *Megeleta*

Oromia year 11 No. 35

⁴³ibid

to appoint one. Once the elders are composed this way, and then they must report *the result of their work* to the *kebele* administrators within 15 days⁴⁴. It is the responsibility of the *kebele* administration to make the elders observe this time line. The reported findings of elders then must be registered by the *kebele* administration. The *kebele* administration is also required to put its seal on the copy of elders' finding and hand over it to the parties. A party who is not happy with the result reported by the elders can initiate a proceeding over the dispute in a *woreda* court within 30 days of the registration of the result in the *kebele* administration⁴⁵. The party up on shall be assigned by local *kebele* administrator. The *Kebele* Administration the *Kebele* Administration to whom the application is lodged, shall cause the arbitrary [*sic*] elders to produce the result of the arbitration [*sic*] 15 days. The result of given by the arbitration shall be registered at the *Kebele* Administration., and a sealed copy shall be given to both parties⁴⁶. A Party who has complaint on the rating[*sic*] elders has the right to institute his case to the *Woreda* court attaching the result of arbitration elders [*sic*] within 30 days as of the date registered by the *Kebele* Administration. *Woreda* court should not receive the suit if the result given by the arbitration is not attached to it. The right of further appeal to the high court is reserved for the party dissatisfied by the decision given by the *woreda* court. If the high court reversed the decision rendered by the *woreda* court, the dissatisfied party may appeal to the Supreme Court. The decision given by the Supreme Court shall be the final. Notwithstanding the provision described Sub-Article I of this Article, the parties shall have the right to resolve their cases in any form they agreed upon⁴⁷. Accordingly, the Oromia rural land dispute settlement scheme, as set out under art.16 of the proclamation, is fashioned in such a way that disputes are first to be submitted to elders before they are thrown to courts. However, the scheme makes it difficult to determine how the elders are supposed to approach disputes before them- It is not clear whether elders needs to approach the dispute as arbitrators or conciliators or in any other capacity). The other ambiguous thing in the scheme is the value of elder's findings. The scheme does not shed any light how the elder's finding (which has become binding on parties) is enforced- no clue whether it is to be enforced in the same way as contract or court judgments)⁴⁸. The ambiguity regarding the value of elders' findings arises in other situations too. If parties oppose the findings and start proceedings in a court, the scheme gives no idea how the court needs to treat the finding. All these

⁴⁴:*ibid*

⁴⁵:*ibid*

⁴⁶:*ibid*

⁴⁷:*ibid*

⁴⁸:*ibid*

ambiguities, inevitably, result in the prolonging and multiplication of litigations, in an unfair system, eroding farmers' confidence in the system and mitigating the accountability of elders and judges. In Ethiopia urban land disputes are resolved in scattered different manner some disputes are resolved by court decision and some are resolved administratively we will see as the following manner.

3.2 Comparative Analysis of Urban land dispute settlements with other country

Under this sub topic the writer provides the way the urban land dispute is settled through comparing the mechanisms that how some countries carried out the disputes that arise in their country.

Land's uniqueness stems from its fixed supply and immobility. Therefore, the nature of property right towards land is very crucial in the process of economic growth and poverty reduction. In Ethiopia, land is constitutionally state owned. The Constitution provides that the right of ownership of all rural and urban land is exclusively vested in the State and in the peoples of Ethiopia⁴⁹. This shows that land is a common property of the Nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of exchange. As stated above, in Ethiopia, land is constitutionally states owned, and developers have the right to use the land that they acquire through lease holding. A number of proclamations and regulations have been formulated that determines the value of urban land and to facilitate investment in business, residential, industry, social and other uses.

This urban land use and ownership proclamation of Ethiopia is different from other country's' proclamation. For example in Sudan the management of urban land is provided as follows:

Ultimately, land and other natural resources are managed throughout the Sudan by customary authorities, with specific rules being determined by the different customs. They could indeed represent the main instrument of land dispute resolution at little direct cost, particularly at the local rural level, as they are well known and recognized by the communities and their area of application is accepted to a certain degree. Where higher level conflicts should manifest in rural areas, the successful model of the People to People Peace Process, as well as civil society and Ngo initiatives should be strengthened, expanded and replicated, with the political will and support necessary assured by authorities and development partners. As pertains to the urban land related conflicts particularly the situation, as seen above is not so

⁴⁹Ibd cited above at note 8

clear cut. Urban centered disputes do not fit the mainly rural characteristics of the customary laws and the mechanisms available for resolving them⁵⁰.

In Sudan, the urban land management is governed by customary law that is different from Ethiopians which is governed by land use proclamation. Accordingly, in Sudan, the varied provenience of urban population, and the potential disputes that can arise, cannot be addressed by the present unconsolidated status of the various customary laws for which conflict of law mechanisms have not yet been reviewed.

A solution could be offered by the possibility to arbitrate claims with reference to common shared principles of equity, or through agreement over the law of the land as stated in the provisions of the Wealth Sharing Agreement. Among specific recommendations for addressing the delicate and stratified urban and peri-urban land issues, there could be the establishment of a mechanism similar to the Commission for Real Property Claims of Displaced Persons and Refugees that was set up after the Balcan war⁵¹. A basic reference to this experience was made above. While it was capable of re-establishing some degree of certainty as to property titles, it lacked local enforcement mechanisms, which in south Sudan are yet to be created, and necessitated enormous amounts of funding by donors. The advantage of such a commission is that it could maintain guarantees of independence and neutrality⁵².

In relation to illegal occupation or when there exists conflict of urban land, the proclamation that stated above gives solution in Ethiopia where these solutions are given in different manner in Sudan. Basing on this, the following analysis can help in comparing the complexity of the present situation in urban areas and the possible solutions that have been drawn from similar experiences.

“When land is part, if not the core, of the conflict, and when there are population movements (internally displace persons, refugees, returnees), there are likely to be conflicts over the ownership and/or occupation of land and property. Immediately after the conflict has ended many institutions are not functioning normally and therefore the normal monitoring and enforcement by the state institutions and the society, in regard to illegal occupations, is not functioning. With regard to land and housing de facto possession is often considered to be

⁵⁰Excerpt from: ‘Land and Property study in Sudan – Interim report’ – August 2004 , by Paul De Wit .(like in Ethiopia customary dispute resolution is applicable in Sudan).

⁵¹Building Hope For Peace Inside Sudan: People to People Peacemaking Process, Methodologies and Concepts Among Communities of Southern Sudan – New Sudan Council Of Churches - 2004 .

⁵²Ibid.

*sufficient. Emergency situations create opportunities for the grabbing of land, use rights (e.g. mineral rights) and property, by the poor, the rich and/or criminals. Political patronage in regard to property is extremely prevalent during conflict in regard to those in power and/or those in the resistance forces. Especially in regard to the rich and criminals, this behavior needs to be limited as much as possible, as it is very hard to solve the problem once the situation has stabilized. Groups who have been previously discriminated against May, after a change of regime, try to get their revenge, or get back previously owned properties outside of the legal process. This may involve forcing out the current occupants and/or persuading the occupants/owners to sell under duress*⁵³.

Ethiopia has established both urban land and rural land proclamation to carry out its use and conflict management where other solves the conflicts that arise in different manners. Thus, even if land related disputes can be partially addressed through existing mechanisms and strong support from authorities and development partners, there is also to address specific needs for capacity building, infrastructure development and training. The sheer expected rate of influx of the returnee population and the important differences between urban and rural issues indicate the necessity to urgently coordinate practical approaches and specific activities for the upgrade, strengthening and capacity building of existing human resources and infrastructure as well as for the replication of successful existing practices as examined in detail below. This could be an important addition to the existing mechanisms for addressing land related disputes provided by statutory and customary norms⁵⁴. Ultimately, land and other natural resources are managed throughout the Sudan by customary authorities, with specific rules being determined by the different customs. They could indeed represent the main instrument of land dispute resolution at little direct cost, particularly at the local rural level, as they are well known and recognized by the communities and their area of application is accepted to a certain degree. Where higher level conflicts should manifest in rural areas, the successful model of the People to People Peace Process, as well as civil society and Ngo initiatives should be strengthened, expanded and replicated, with the political will and support necessary assured by authorities and development partners.

As pertains to the urban land related conflicts particularly the situation, as seen above is not so clear cut. Urban centered disputes do not fit the mainly rural characteristics of the customary laws and the mechanisms available for resolving them. Furthermore, the varied

⁵³Legal aspects of land administration in post conflict areas Dr. Jaap ZEVENBERGEN and Prof. Paul van der MOLEN, Symposium on Land Administration in Post Conflict Areas April 29 - 30, 2004 Geneva

⁵⁴Ibid.P.86

provenience of urban population, and the potential disputes that can arise, cannot be addressed by the present unconsolidated status of the various customary laws for which conflict of law mechanisms have not yet been reviewed.

Urban Lands Lease Holding Proclamation No. 721/2011 its article 30(1 and 2) provides that an appellate tribunal established by regions and city administrations which have a power to confirm, vary or reverse a decision passed by an appropriate body who has a power to administer land.⁵⁵ It is a part of an administrative or executive organ of a government, but it does not have relations with a judicial branch of government. Generally judicial power or function is the primary function of courts. As mentioned in the FDRE Constitution expressly vested judicial power, both at the Federal and State levels in courts. This goes in line with the principle of separation of state powers. However, it does not necessarily imply that only regular courts shall exercise judicial power. There are possibilities where judicial power may be delegated to other bodies falling outside the structure of ordinary courts. As can be inferred from the wordings of Articles 37(1) and 80(4 & 5) of the Constitution, such possibilities are not prohibited. To begin with the advantages, judicial power is usually delegated to administrative agencies/tribunals with the purpose to provide cheap, accessible, informal, speedy and specialized justice. Concerning the paramount advantages of administrative adjudication over adjudication by ordinary courts, (Philps, Jackson and Leopold: p886)

As we see the above discussion some of urban land dispute is resolved by the executive organ of government and some of the dispute is settled by the regular court, this type of dispute settlement at different place in a scattered manner are may the causes for abuses of power and may affects the individual rights of property. Many tribunal and committee is established under executive body this makes regular court cheeped, the executive organ has more powerful to exercise his power over urban land disputes. The committee or executive organ follows non formal law and procedure based on politics this may affect the right of citizen, it also against the principle of FDRE constitution Art.78/4which special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.

⁵⁵Cited above at note 5 See article 30(1,2)

CHAPTER FOUR

ADMINISTRATIVE AGENCIES AS URBAN LAND DISPUTE SETTLEMENT MECHANISM

4.1 Administrative Agencies

Black's law dictionary defines it as "An *administrative agency before which a matter may be heard or tried, as distinguished from a purely executive agency.*"⁵⁶ We can understand from this definition that it is an agency exercising a judicial function by hearing or trying a case. In addition to this, administrative tribunals are purely deferent from an executive organ. Cambridge Business English Dictionary also defines it as "*a legal organization that makes decisions in disagreements between two people or between a person and a government department, but which is not part of the court system*"⁵⁷. This definition at least provides four important elements, the first one is administrative tribunals are legally organized institutions to the aim of resolving disputes. Secondly, they have a power to make decisions on relating to disputant cases which presented to them. Thirdly, there should be disagreements between two people or between a person and a government department depends on different interests. Finally, administrative tribunals are not part of regular court systems. In principle, they are independent from judiciary as well as executive organ of the government. Duhaime's Law Dictionary defines it as "*An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from court, strictly so called.*"⁵⁸ It is clear that an administrative tribunal has a judicial power but it differs from regular courts.

4.2 Justifications for empowering Administrative Agencies to Settle Urban Land Disputes

The main characteristics of administrative tribunals are stated here such as it is the creation of a statute, perform quasi-judicial functions as distinguished from administrative functions, bound to act judicially and follow the principles of natural justice, required to act openly, fairly and impartially, and not bound by the strict rules of procedure and evidence prescribed by the civil procedure court.⁵⁹ So, it has a degree of flexibility to decide cases before it as it fits and there is no one level of formality or informality which is appropriate for all cases. In

⁵⁶ Garner. Bryan A.(ed.), Black's Law Dictionary (2009, 9th ed.), West. A Thomson Reuters Business, U.S. p. 52

⁵⁷ <http://dictionary.cambridge.org/dictionary/english/administrative-tribunal> last visited on 22/07/18

⁵⁸ <http://www.duhaime.org/LegalDictionary/A/AdministrativeTribunal.aspx> last visited on 22/07/18

⁵⁹ <http://www.legalindia.com/question/what-are-characteristics-of-administrative-tribunals/> last visited on 4/11/2018

many countries, administrative tribunals have developed a set of practices and procedures designed to deliver justice in its context, and aims to provide fair and just review of a broad range of administrative decisions in a flexible way for the disputants.⁶⁰

The main justifications for the establishment of administrative tribunals may be the case-load of regular court; it may follow a speedier and cheaper procedure than that afforded by regular courts, and the desire to have specific issues dealt with by persons with an intimate knowledge and experience of the problem involved.⁶¹ Moreover, non-specialized land tribunals help to free regular courts from the burden of land-related cases, decrease the time people have to invest in solving land disputes and improve decision making by persons who are more familiar with land issues.⁶² The administrative tribunals which the government sought to provide citizens with an independent and high quality forum in which appeals against decisions by administrative organs of a government could be heard in a speedy and relatively informal setting.⁶³ In my view the above statement incorporates debatable issues. For instance administrative tribunals are independent and high quality forums. If administrative tribunals may be established by the executive branch of a government, it could not be independent to see the decisions passed by one of the executive organs. However, there may be a situation in which such administrative tribunals organized by other government organs other than the executive body, in such cases they may be independent. The second issue is also similar to the above view that means if they are established by other government organs other than the executive body, they may have a possibility to acquire a necessary quality.

Administrative tribunals may have their own advantages and disadvantages. The advantages are that they deal with speedy, cheap, staffed by experts who specialize in particular areas, characterized by an informal procedure, and allowed not to use their own precedents, whereas the disadvantages are that they are not always independent of the government, some are becoming more formal, do not always give reasons, and legal aid is not generally available.⁶⁴

Exactness in legislative cannot pass statutes that are sufficiently detailed to regulate an entire subject matter. While laws provide a general outline for regulation, the agency rules and

⁶⁰ Justice Garry Downes, Practice, Procedure and Evidence in the Administrative Appeals Tribunal, Paper Presented to the Land and Environment Court Annual Conference 2011, Sydney 5 May 2011, p. 9

⁶¹ Ibid

⁶² Babette Wehrmann, Land Conflicts: A Practical Guide to Dealing with Land Disputes, GIZ, Land Management, 2008, p. 78

⁶³ By Justice Stuart Morries, The Emergence of Administrative Tribunals in Victoria, President of Victorian Civil and Administrative Tribunals, July 2003, p.4

⁶⁴ <https://www.lawteacher.net/lecture-notes/english-legal-system/admin-tribunals.php> last visited on 4/11/2018

regulations make the statutory law more exact. More specifically, the agencies fill any gaps that exist in the statutory law. Expertise administrative agencies generally employ officials who are subject matter experts in the given areas of regulation⁶⁵. As such, they are often more efficient and effective in developing rules and regulations to govern conduct in the specific area. Their expertise also provides thoroughness and consistency in the development and enforcement of business regulations. Public protection agencies often exist to regulate an area of conduct in a manner that protects the public interest. Individual and businesses do not always act in accord with the public interest.

All of these advantages relate to low cost, efficiency, effectiveness and the public interest. While administrative procedures are often burdensome agencies allow for the administration of an extremely large and complex system of regulations.

Disadvantage to settle disputes administratively are lack of legal expertise: The argument here is that, as many of the members of the panel are selected from different walks of life with no or little legal background, they may lack the requisite legal expertise to adjudicate disputes. Partiality: The fear here is that, as many or all of the members of the administrative tribunals are at the same time employees of the various offices or agencies, they might not be free from bias and partiality towards the agency. Violation of the principle of separation of powers and rule of law:⁶⁶ Adjudication is the primary business of ordinary courts. So, transferring this power to administrative agencies is argued by some authorities to be a violation to this principle. Generally lacks of legal expertise, partiality, violation of principles of separation of power are some disadvantages of administrative dispute settlements.

4.3 Comparative Analysis and Applicable Procedures for Administrative Tribunals to Settle Urban Land Dispute in Ethiopia

4.3.1 Administrative Tribunals to Settle Urban Land Dispute in Tanzania

In Tanzania various specialized courts on national, district, ward, and village levels have been established, provides for their composition, functions, and procedures by Land Disputes Courts Act of 2002 Acts No. 2.⁶⁷ So, I try to forward a short comparative analysis on applicable procedures of District Land and Housing Tribunal (DLHT) of Kinondoni

⁶⁵.Advantages of Administrative Agencies <https://thebusinessprofessor.com/knowledge-base/advantages-of-administrative-agencies/> last visited on 08/08/2018

⁶⁶The Advantages and Disadvantages of Administrative Adjudication<http://www.abysinnialaw.com/study-on-line/item/314-the-advantages-and-disadvantages-of-administrative-adjudication>

⁶⁷Ibd cited above at note 16 see p.38

Municipality in Tanzania. Part V of the Act of 2002 incorporates the District Land and Housing Tribunal (DLHT) establishment, composition, proceedings, jurisdiction, and power of the tribunal⁶⁸. The tribunal should contain at least eight members, and its proceeding is to be conducted in open session, the parties may present in person, by advocate, a relative, or authorized officer of a body corporate.⁶⁹

According to the Land Disputes Courts Acts, 2002 (No 2 of 2002) regulation Part II incorporates the District Land and Housing Tribunal dispute settlement procedures⁷⁰ such as:

- application filling by form No 1 which incorporates name, address, location of the land, nature of the dispute, the value of the property; issue summons to the defendant informing him/her of the time, date, and place; returns the original copy of the summons duly signed by the respondent; the defendant if contesting the same, files his/her written statement of defense within 21 days; if the defense contains a counter claim, the tribunal serves the applicant a copy of the claim and the applicant within 21 days is expected to file his/her defense to the defendant's counter claim; the chair man fixes a hearing date and at the commencement of the hearing, the chair man reads and explain the contents of the application to the defendant; the respondent is required to admit or deny the claim; the tribunal hears evidence on both sides; where the application is left unattended by the applicant for three months, the tribunal may dismiss it for "want of prosecution"; the chair man pronounces its judgment; a decree is issued immediately after the judgment; and if a person is aggrieved, he/she can appeal to the high court land division. Those levels of jurisdiction of land dispute institution are their own power and qualification to act or entertain the case belongs to their jurisdiction. The dispute resolution mechanisms their power and their jurisdiction are very particular in brief and easy manner. These laws are very clear and details particular it is so good for the party or institution that empowered to resolve disputes over the land because little is left for interpretation. The great details of the law have this advantage in most cases it is clear which layer of government institution or party has what land dispute resolve powers. That does not mean that there will be no disputes, but the disputes that can possibly arise in this regard have been considerably easily resolved or reduced owing to the specificity of the dispute resolution mechanism at legal framework. Similarly most writer approve that the land registration and certification has significant role to reduce land disputes, simultaneously the alternative dispute resolution mechanisms recognized by land

⁶⁸ Ibid, p.40

⁶⁹ Ibid

⁷⁰ Ibid, pp. 52-54

administration law is a basic key method to resolve disputes in peaceful manner culturally. This type of dispute resolution is more useful. The main aim of the traditional courts is dispute resolution in a manner that restores social equilibrium. The main actor in the traditional justice system is the traditional leader of the community, who is often an elder⁷¹. But in Ethiopia there is no such details specificity of laws that guides the urban land dispute resolution mechanisms at legal framework as well as at practical cases there is any such uniformity of urban land dispute resolution mechanism.

4.4.1 Urban Land Dispute Settlement Powers and Duties of Administrative Agencies in Ethiopia

A. During Imperial period

During the Imperial period, disputes relating to land specially amount of compensation should be entertained from the competent authority and regular courts.⁷² According the civil code, any interested person first institutes his/her claim to the competent authority.⁷³ If the latter do not accept the complaints claim relating to amount of compensation, such amount shall be decide by arbitration appraisal committee.⁷⁴ If the complaint dissatisfied by the decision of a committee, an appeal shall be instituted in the regular courts.⁷⁵ Therefore, during such period no administrative tribunals are necessary to establish to settle disputes relating to urban land.

The procedures which are applicable to settle urban land disputes lie on civil procedure code of Ethiopia. The civil procedure code its article 1(1) provides that the code is applicable to all suits pending on such day and instituted thereafter from the date of its coming into force.⁷⁶ Therefore, no other procedures are necessary that only the civil procedure code is applicable to settle urban land disputes.

B. During Derg period

According to the government ownership of urban lands and extra houses proclamation No. 47/1975 in its article 40(1) states that administrative decisions, relating to expropriation of

⁷¹Francis Kariuki Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities

⁷²Ibd cited above at note 2 see Art. 1471 and 1477

⁷³Ibid, Art. 1471

⁷⁴Ibid, Art. 1472

⁷⁵Ibid, Art. 1477

⁷⁶Civil Procedure Code of Ethiopia, Decree No. 52, 1965, Neg. Gaz. 25th year, No.3, 8th October 1965, Art. 1(1)

extra houses in urban areas, cannot be reviewed by courts of law.⁷⁷ So, the proclamation under its article 27 provided that the establishment of judicial tribunal, higher judicial tribunal, and central judicial tribunal which each of them has different jurisdiction.⁷⁸ In addition to this, the proclamation in its article 42 repeal all laws, regulations, practices, procedures including the civil code and civil procedure code which are inconsistent with this legislation. So, the applicable procedure for settling urban land dispute shall be issued by the ministry of public works and housing.⁷⁹ During such time, the ministry issued different kinds of decrees, directives and notices to implement the proclamation specific articles and including the procedures which the established courts undertaken their function.

C. During EPRDF

From legal point of view judicial power/function is the primary function of courts. As mentioned in previous chapter, the FDRE Constitution expressly vested judicial power, both at the Federal and State levels in courts. This goes in line with the principle of separation of state powers. However, it does not necessarily imply that only regular courts shall exercise judicial power. There are possibilities where judicial power may be delegated to other bodies falling outside the structure of ordinary courts. As can be inferred from the wordings of Articles 37(1) and 80(4 & 5) of the Constitution, such possibilities are not prohibited. The FDRE Constitution its article 78(4) states that “*special or ad hoc courts which take judicial powers away from regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.*”⁸⁰ From this statement it is clear that the FDRE constitution recognizes the establishments of an administrative tribunal which have been exercise a quasi-judicial power, but it should be follow/use legally prescribed procedures otherwise it constitutes to be unlawful for its existence. Moreover, the FDRE constitution seriously expresses supremacy of the constitution that any law, practices, or decision of any government organ which inconsistent with the constitution shall be of no effect.⁸¹ So, any proclamations, regulations, directives, government organ decisions, practices which contravene the constitutional principles are constitute to be no effect.

⁷⁷Ibid cited above at note 10 article 40(1)

⁷⁸ Ibid, article 27(1,2,3)

⁷⁹ Ibid, article 28(1)

⁸⁰Ibid cited above at note 47 Art 78(4)

⁸¹Ibid, Art. 9(1)

According to the Proclamation to Provide for the Re-Enactment of Lease Holding of Urban Lands Proclamation No. 272/2002 under its article 19(1) states the establishment of Clearance Order Appeals Commission by the decision of the highest organ the region or city government which have an appellate judicial power to approving, revoking, or amending the decisions of the appropriate body.⁸² The clearance order appeals commission may have not less than five members who are accountable to the council of regions or city government and it shall be free of any influence except the law.⁸³ Is it really free from any interference? One prominent opposition party states the fact that complaints and appeals regarding urban land are submitted to the executive branch on the ground that it violates citizen's right to adjudicate their case an impartial judiciary and it takes away the power of the regular courts which is given by the constitution.⁸⁴ It seems that one government organ may see its own decision on a form of complaint as well as on appellate form. So, such administrative appellate tribunals may not be independence to perform their duty freely.

The proclamation No. 272/2002 article 19(8) provides that *“the commission shall not be governed by the ordinary civil procedure code while conducting its function. It shall, however, be governed by expedient procedures which shall be determined by Regulations to be issued by Regions or City Government.”*⁸⁵ The new lease proclamation 721/2011 article 30/8 also puts the same with the above former provision proclamation No. 272/2002. In the new proclamation No. 721/2011 under article 30(5,6) gives the power to the tribunals to order relevant bodies on the cases at hands if it is necessary and power to use police forces to execute his judgment. So, the 1965 Ethiopian civil procedure code is no applicable on such administrative appellate tribunals to perform their functions. However, I try to assess and find the applicable procedures which enacted by relevant regional or city government, but any one did not prepared it and in practice they are no such power to exercise their power given to them like to order relevant body and use police forces in order to execute their decision. The above stated proclamation and provisions is gives the power to the tribunal to settle urban land disputes, but the power of this tribunal is only on issues of land clearance, land substitution and amount of compensation, but if the issue of the dispute is not on land clearance or amount of compensation, the law is not yet stated or silent in this proclamation

⁸² Ibid cited above at note 4 Art. 19(1)

⁸³ Ibid, Art. 19(3,4,7)

⁸⁴ Araya Asgedom, Salient Features of the New Ethiopian Urban Land Lease Holding Proclamation No. 721/2011 and Its Implications on the Ethiopian Economy, A master's Thesis Submitted to School of Graduate Studies of Addis Ababa University Partial Fulfillment of the requirements of Masters Degree of Law, Jan, 2013, p.105

⁸⁵ Supra note 4, see Art. 19(8)

CHAPTER FIVE

DISCUSSION OF THE RESEARCH FINDINGS

5.1 Types of Urban Land Disputes in Dukem And Burayou City Administrations

Under this title, the writer has analyzed the core types of urban land dispute through interviews and group discussion that was provided for some dwellers in the cities that affected the city dwellers (Dukem and Burayou) which some are provided categorizing based on their features. Accordingly, the study conducted on urban land dispute in the study area shows that the types of urban land disputes are similar except minor differences observed in the study areas. These different types of disputes could be categorized as private (individual), communal (Common) and government. Disputes that are categorized as private are: claims to land inheritance, claims over land possessory rights, breach of land transaction contracts, and land transfers on donation⁸⁶. Violation of urban land holders of individuals who live in the two cities by administrative agencies (authorities) are also categorized under private types of urban land dispute. Disputes that could be categorized as Expropriation of land holdings for public interest that is for the development of the country as whole. The Expropriation of the land holdings which belong to individuals/communities by federal/ regional government agency without payment of sufficient compensation or disputes on the amount of compensation could be categorized as governmental that was going on among individuals or groups and communities in Dukem and Burayou cities⁸⁷. In other cases, there was illegal land transactions were going on in the two cities that have been found to give rise to disputes and were brought to court. This illegal urban land transaction was carried out in the hidden technique of those selfish individuals to get unlawful gain violating the laws of the country and affecting government. The other category of dispute that is currently challengeable in the study area is lack of capacity, indeed competence, in the civil service is a cause of weak governance. Lack of technical and management capacity is commonly found⁸⁸. As respondents repeatedly say is problem of lack of good governance on the side of both administrators and civil servants(workers) to provide effective, fair, responsive transparent service when required for clients which as a result clients repeatedly rotate from office to office that is resulting with serious dispute among clients and office workers⁸⁹. As it is stated above, enabling policy environment suitable institutional framework with technical and partnership capabilities , improvement in service delivery in government offices are key

⁸⁶Interview conducted with AtoKebedeTadesse a trader in DukemTown,at 3:00 A.M, on 5/7/2010

⁸⁷Interview conducted with AtoKelifaAdem, a trader in BurayuoTown,at 5:00 A.M, on 4/7.2010

⁸⁸Ibd cited above at note 68

⁸⁹Ibd cited above at note 69

areas that require due attention . The problems of lack of good governance may result with negative attitude on government institutions that may leads to dissatisfaction that may take to bring the mass to stand against to government. Therefore, urban land disputes should be resolved in revising reforms following strong check and balance of government institutions.

5.2 Status of urban land disputes in the two towns

The main aim of this study to survey the cause of disputes, parties in the disputes, power to settle disputes, laws and challenges in two towns, to this end respondents were interviewed questions in order to investigate the level of urban land disputes in the study area and to explore whether there is a significance difference between the two towns or not. While discussed in the previous introduction section urban land is a crucial source of resources as well as economical growth, political and social stability. Disputes also unavoidable especially in land cases, it also has been noted that in many countries disputes over urban land and its boundaries give rise to expensive court cases and all too often lead to a breakdown in law, order and rule. Much time is taken up by the courts in resolving these matters; most importantly delays are common to resolve land related cases in the judicial system especially when the urban land administration system is not well functioning to safeguard urban land rights, urban land related disputes are more common. To observe the case in Burayou and Dukem towns the survey data is organized in the following **table below. Status of urban land disputes in relation to certification and cause.**

Se.no.	Testing tools	Responses	Measurements	
			Frequency	%
1	Main cause of urban land disputes in Burayou town	Illegal possession and illegal building	32	53.33
		Boundaries	15	25
		Inheritance	8	13.33
		Expropriations	5	8.33
		Total	60	100
2	Main cause of urban land disputes in Dukem town	Termination of contract of lease and use right	35	43.75
		Boundaries	25	31.25
		Inheritance	12	15
		Expropriations	8	10
		Total	80	100

Source: Survey data may 2018

Rank of land disputes in two towns

Rank	Burayou Town	Dukown
1 st	Illegal possession and illegal building	Termination of contract of lease and use right
2 nd	Boundaries	Boundary dispute
3 rd	Inheritance	Inheritance dispute
4 th	Expropriations	Expropriations
5 th	Termination of contract of lease and use right	Illegal possession and illegal building
6 th	Divorce	Divorce

Source Burayou city court and Dukem urban land development and management agency

In the above table the survey result the main cause of urban disputes in the Burayou town is issues related to illegal possession and illegal building of urban land, the survey also confirmed that 53.33% of the respondents reported they illegal possession and illegal

building of urban land are the main causes of urban land disputes and 25% responded they boundary disputes of urban land is the second level cause of disputes in the town, inheritance disputes and expropriation disputes other disputes occurred in the town respectively, on the other hand, majority of respondents 53.33% confirmed that the illegal possession and illegal building of urban land is very high urban land disputes in Burayou town. While in Dukem town the above survey result the main cause of urban land disputes is issues related to Termination of contract of lease and use right, this occur when the holder of urban land violates the right to use assign to them according to the land use of the town, the survey also confirmed that 43.75% of the respondents reported they termination of contract of lease and use right are the main causes of urban land disputes and 31.25% responded they boundary disputes of urban land is the second level cause of disputes in the town, inheritance disputes and expropriation disputes other disputes occurred in the town respectively, on the other hand, majority of respondents 43.33% confirmed that the termination of contract of lease and use right of urban land is very high urban land disputes in Dukem town.

Se. No	Testing tools	Responses	Before procn. No. 721/2011		After procn. No. 721/2011	
			frequency	%	frequency	%
	Whether urban dweller respondents face urban land dispute or not, before and after lease proclamation No. 721/2011 in Burayou town?	Yes	35	77.77	3	6.66
		No	4	8.88	32	71.11
		No change	6	13.33	10	22.22
		Total	45	100	45	100

Survey data April 2018

Se. No	Testing tools	Responses	Before procn. No. 721/2011		After procn. No. 721/2011	
			frequency	%	frequency	%
	Whether urban dweller respondents face urban land dispute or not, before and after lease proclamation No. 721/2011 in Dukem town?	Yes	42	64.61	10	15.38
		No	8	12.307	40	61.53
		No change	15	23.08	15	23.08
		Total	65	100	65	100

Survey data May 2018

The survey and discussion also confirmed that the level of land related disputes are decreasing after lease proclamation come to force through time as land free holding are stopped and registered and certificated. The finding of this study approves that urban land disputes are decrease through put clear legal and institutional framework. This finding consistence with previous studies conducted in rural land certification in Tigray and Ahmara regions of Ethiopia which show that land related disputes was reduced during and after the land registration and certification. For instance, in Tigray regional state 66% reported that land related disputes decreased after certification. (Holden, Deinigeret al.2007).

Above and beyond the selected stockholder survey I discussed with Dukem town urban land development and management agency leader and Burayou city court president as a key informant concerning the incidence of land disputes. The information obtained from the discussion with city court and the secondary data collected from their office is relevant to supplement our argument.

5.3 Discussion with Dukem town Urban Land Development and Management Agencies

The power to urban land administration, management and land use are vested on urban land administration agencies they are a wider power over urban land. The power to registration, certification, and transfer of urban land is under their power.

The main causes of urban land disputes and its challenges in the town

As interview conducted with Ato Zarihun Fayera (May 2018) *the leader of Dukem town urban land management and development agency* says, in our town land inventory is done in each every land within boundary of the town, but this made inventory plots is not fully registered and certified in modern and computerized manner for this reason land disputes occurred in boundaries, possessory and others. The certification of urban land is very significant to reduce land disputes, practically in the case of Dukem town urban land certification is reduces land disputes when we compare to with uncertified one we haven't get the figure at the moment. The cause or the reason why the urban land double certification /overlapping/ is not still now unstopped is there are two reasons: the first one is that, lack of technology or un-computerized land registration and certification in the town.

The second one is that the problem of rent-seeking in our institution especially in engineers and surveyor of the office⁹⁰. According to him there is no problem of law and institution structure rather than problem of implementation of law with consist to his goal. Many studies, Articles approves this idea, corruption and land administration in Ethiopia puts that, Corruption is perceived to be a serious problem in Ethiopia, while the number of extensive studies on corruption in land administration in Ethiopia is limited, they indicate that corruption in the land sector in Ethiopia is a significant problem. The payment of bribery and informal fees also occurs in the land sector.⁹¹ This two point is the main and key point of our problem on land overlapping or double certification on one plot of land in the town, now a day we are try to identify our worker who has a conduct of rent-seeking and ethically and legally work their duties according to the law and regulation of the office. The worker who has a conduct of any corruption or rent-seeking we live out from the office or delivered to other office by the agreement and consensus with city cabinet. For the first problem we are try to start to give greater attention to Information related specified units of land and immovable property units' data concerning holding and other property rights, boundaries, areas, land uses, market and assessed values, buildings, by certifying and a computerized by data base manner.

When we conclude the above two issue currently technology is highly moderated in the world, the introduction of IT and computerization of land administration records is difficult even at international level. It requires long term political, financial and institutional

⁹⁰ Interview with Ato Zarihun Fayera *the leader of Dukem town urban land management and development agency- Dukem*(May 2018)

⁹¹ Samira Lindner, *Transparency International Corruption and land administration in Ethiopia*. Available at , slindner@transparency.org

commitment.⁹² For the purpose of the technology of urban land administration needs special qualification human power and modern technology, our county backed to late from the developed county and modern technology of the world, even our county starting involvement with modern technology of the world is exist at legal framework or institutional framework, at national level as well as at regional level. Even our law start to use the technology and modernization at legal framework and implementation, it need great effort to be effective and efficient.

The main and common problem in urban land administration institution in our country is that, as all media, people and government says corruption. It is one of the bottlenecks that affect urban land administration institution. The government to solve this problem take measure by enacting laws which poses serious penalties on those who done corruption on land. Even if this law reduces land corruption but it need radical solution by changing attitude of the leader and worker over urban land administration institution through trained personnel qualified professions statutory reform. The recognition that urban land administration particularly land titling or certification is not an end corruption and urban land disputes itself. It needs cooperation of those urban land administration institution, laws and professional skill human personnel. Awareness of the community on the laws and their rights on urban land is another important issue in the law. Institutional reforms are usually more important than statutory and regulatory reforms or the introduction of new systems and technologies. The key institutional reform is to have all cadastral processes administered within one government department.⁹³

5.4 Discussion with Burayou city court

Five main discussion points were used with the city court of Burayou about land related cases, first, a court has a full power on issues related urban land, second, how many land cases come to court, third, time taken until final decision is passed, fourth, how they accept the certificate of holding as a legal document, lastly the court has a power to invalidate a certificate given by urban land administration institution or other government institution? Based on these interrelated points the output of the discussion is presented as follows:

As interview conducted with BuzunehGutema (may 2018) *president of Burayou city court*, as a rule a city court has a power to entertain all justifiable issues and disputes with in a city including urban land disputes and land related, but there is an exceptions which the power to

⁹²Ian Williamson (2010). Best practices for Land Administration systems in developing countries'. International conference on Land reform Jakarta, 25-27 July 2000,i.williamson@eng.unimelb.edu.au

⁹³ id

adjudication is expressly given to administrative organ on issues of urban land, for example issues arises on investment dispute, expropriations, power on issues of certification and others are the issues given to administrative organ. Urban land related cases are one of the cases come to court in the city and the standard time put by the court to settle a particular land case is 3 month. However depending on how fast the required evidences are submitted to the court it would take in the court procedure from-3 to-6 months until final decision is passed. If the time taken to resolve urban land disputes is long it may affect the feeling of tenure security of urban land holders and can decrease the level of urban land security, it also an obstacles against the investment and development of the city⁹⁴.

However in the case of Burayou town, the time taken to pass decision is too long in the point of interest of land holders, the standard time put to resolve a particular land case is relatively fair compared to the above mentioned countries. In regard question how they do accept the certificate of holding in the court proceeding, they replied that the certificate holding the basic legal document to make decision. However some times when the certificate of holding does not show the rightful holder or doubtful the legality of certificate the court may obliged to order the institution who gives certificate, urban land development and management agency to refer and identify who is legally owned that land.

Lastly the court has a power to invalidate a certificate given by urban land administration institution or other government institution? The answer given to me for this question are yes because of so many reason; for instance if the certification holding is illegally holding, when the illegality of the certificate is proven by law and institution who may it concern the certificate given is invalidated by the decision of the court. It also certificate given by government authority may be invalidated by overlapping or double certification on one land, the court may be decided to the person who have a priority rights over the land. So the invalidation of the certification may be occurred in the decision based on the situation.

When we conclude the above discussion the individual person exercises his rights the right of access to justice given by FDRE constitution. According to Article 37/1 of this constitution everyone has the right to bring a justifiable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power⁹⁵. This is a good example one individual exercise his right gates access to justice because as we see the case discussion

⁹⁴interview conducted with Buzuneh Gutema *president of Burayou city court- Burayou*(may 2018)

⁹⁵Ibd cited at note 8 See article 37

above the executive organ of government abuses his power and affects the individual rights of property.

Depending on the above discussion when I ask the power of court and urban land dispute resolution AnteneYadesa and Wakuma Kusa who was an advocator at any level of court they similarly says that the urban land dispute resolution is has no clarity and specificity its resolved in a scattered manner some of disputes in administrative decision some are resolved by court decision⁹⁶. The laws itself are not clear in urban land dispute settlement it has its own gab on the way of ruling urban land dispute settlement mechanism⁹⁷.

5.5.3 Analyzing the Law and the Practice in Administrative agency to Settle Urban Land Dispute Currently in study area

A. The Law

Currently in Ethiopia there are different legislations which established administrative tribunals to settle disputes relating to urban lands. In this sub-topic I try to analyze some of them and their applicable procedures. Expropriation of Land Holding for Public Purposes and Payment of Compensation Proclamation No. 455/2005 its article 11(2) states the establishment of administrative organ by urban land administration to hear grievances relating to the amount of compensation on urban land holdings.⁹⁸ It examines the complaint presented to it and rendered a decision within a short period of time as specified by directives enacted by the region or municipalities, and communicate its decision to the parties in writing.⁹⁹ Any aggrieved party on the decision of a grievance hearing organ may lodge an appeal to the appropriate regular court or municipal appellate court within 30 days from the date of the decision.¹⁰⁰ This proclamation did not say anything about the applicable procedures used by the grievance hearing organ while performing its function, in the above legislation the appellate jurisdiction is given to the appropriate regular or municipal appellate courts. So, by analogy these regular or municipal courts may use ordinary civil procedure code of Ethiopia.

The Urban Land Holding Registration Proclamation No. 818/2014 its article 17(1) states the establishment of adjudication grievance handling tribunal to decide on complaints submitted

⁹⁶ Interview conducted with Wakuma Kusa an advocator at any level of court Addis Ababa May 2018

⁹⁷ Interview conducted with Antene Yadesa an advocator at any level of court Burayou April 2018

⁹⁸ ibd cited above at note 3 see Art. 11(1)

⁹⁹ Ibid, Art. 11(3)

¹⁰⁰ Ibid, Art. 11(4)

against adjudication decisions in the neighborhood.¹⁰¹ Any aggrieved party by the decision of urban land registration institution on cases of adjudication may appeal to the grievance handling tribunal within fifteen working days from the declaration of the completion of adjudication.¹⁰² In addition to this, both regular and municipal courts have a power of appellate jurisdiction on the decision of grievance handling tribunal.¹⁰³

Moreover, urban Land holding adjudication and registration regulation, No. 324/2014 under its part three sub-section two provides somehow a detail procedures for the application and decision making matters than the proclamation.¹⁰⁴ The grievance handling tribunal shall be established at Kebele or sector administration levels which have eight members that five of them are representatives to be assigned from the neighborhood where as three of them came from woreda or city administration.¹⁰⁵ The tribunal has a power to receive a written application with attached evidences from the aggrieved party, investigate it, render decision based on the evidences submitted to it, and to notify its decision in writing to the applicant and other concerned bodies.¹⁰⁶ Any aggrieved part by the decision of the tribunal can lodge his/her appeal to the regular court which have jurisdiction on the case at hand within fifteen days.¹⁰⁷ The appellate court shall investigate the case, render its decision, and access the decision both to the applicant and urban land registration office.¹⁰⁸ The latter oblige to implement the decision of the courts.

Recently, in Oromia regional national state urban land lease holding regulation No. 182/2008 e.c, article 61 and directive No. 4/2008 article 70 and 71 under this article states that the administrative urban land dispute is resolved through grievance handling tribunal properly¹⁰⁹. Moreover, directive No. 4/2008 its article 71(1,a) provides that the woreda chief administrator shall assign three members of the tribunal including the chair person of the tribunal¹¹⁰. From those two legislations it is a fact that the tribunal can be under the control of the government organ which is the registration institution. So, it cannot be independent to

¹⁰¹The Federal Democratic Republic of Ethiopia Urban Landholding Registration, Proclamation No. 818/ 2014, Neg. Gaz., 20th year, No. 25, 21th February, 2014, Art. 17(1)

¹⁰² Ibid, Art. 17(2)

¹⁰³ Ibid, Art. 17(3,4,5)

¹⁰⁴ Urban Land Holding Adjudication and Registration Regulation No. 324/2014, Neg.Gaz., 25th day of December 2014, Addis Ababa, Arts.22, 23, and 24

¹⁰⁵ Ibid, Art. 22(1,2,3)

¹⁰⁶ Ibid, Art. 23(1)a,b,c,d)

¹⁰⁷ Ibid, Art. 24(1)

¹⁰⁸ Ibid, Art. 24(2,3)

¹⁰⁹ See article 61 Oromia regional national state urban land lease holding regulation No. 182/2008 e.c, (un published)

¹¹⁰ Supra note 5, Art. 28(1, a)

render impartial decision against the registration institution. I conclude that with regard to preparing a grievance handling procedures, urban land and land related property registration and information agency is relatively appreciable than other urban land administrative institutions. But the independency of the tribunal to render impartial decision is under a risk. The new lease proclamation under its article 30 promises that an urban land clearing and compensation cases appellate tribunal shall be established by regions and city administrations which shall consist of not less than five members, have a power to confirm or vary or reverse a decision of appropriate body, accountable to the council of the region or city administration, be free of any influence except the law, and can order the relevant bodies to provide evidence or expert opinion.¹¹¹ Article 30(8) of this proclamation provides that “*the Tribunal may not be governed by the provisions of the ordinary Civil Procedure Code while conducting its functions. It shall, however, be governed by expedient procedures to be issued by the region or city administration.*”¹¹² Is there any region or city administration which issued procedures? I try to find an answer to this question from the relevant government organ. This organ is Urban Land Development and Management Office which is under the Ministry of Urban Development and Housing. I conducted an interview with Ato Bizualem Admassu who is head of the office states that he tried to ask Amhara, Oromia, SNNP Regions and Addis Ababa City Administration urban land development and management office heads any one of the region or city administration did not issue a procedure to settle urban land disputes, but only Addis Ababa City Administration urban land development and management office uses the 1965 civil procedure code of Ethiopia.¹¹³ On the other hand, the FDRE constitution states that “*special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.*”¹¹⁴ From this we infer that the regions and city administration concerned authority should violate FDRE constitutional principles as well as a new lease proclamation.

¹¹¹ *ibid*, Art. 30(1-7)

¹¹² *ibid*, Art. 30(8)

¹¹³ Interview with Ato Bizualem Admassu, A Head of Urban Land Development and Management Office under the Ministry of Urban Development and Housing, on 18 April 2018

¹¹⁴ *Supra* note 8, Art. 78(4)

B. The Practice

Then new urban land lease proclamation No. 721/2011 Article 30(8) provides that the grievance hearing tribunal may not use ordinary civil procedure of Ethiopia while conducting its function, but it may apply procedures issued by the concerned regions or city administrations.¹¹⁵ Under this to answer whether the regions or city administrations issue these procedures or not? if not, how they perform their functions? I try to find answers for these questions by conducting different interviews with different relevant officials and experts.

I conducted an interview with Ato Bizualem Admassu who is head of the Bureau told me that he tried to ask Amhara, Oromia, SNNP Regions and Addis Ababa City Administration urban land development and management office heads any one of the region or city administration did not issue a legal procedure to settle urban land disputes, but only Addis Ababa City Administration urban land development and management office uses the 1965 civil procedure code of Ethiopia, even if Addis Ababa city administration only established the efficient tribunal.¹¹⁶ An interview also conducted with W/r Zenith Ibrahim Legal Expert for Urban Land Development and Management office confirmed the above idea that she assessed the establishment of the tribunal and the issuance of the procedure in Oromia, SNNP regions and AA city administration, they proves that all of them did not provide the procedures and only AA city establish the effective tribunal others also did not do it¹¹⁷.

She adds that they respond the justification for why did not establish the tribunal. They forwarded an amusing answer for me. They responded that all grievances relating to urban land shall be resolved at the first stage by the institution itself, so no any grievance came to the tribunal in the appeal form.¹¹⁸ W/r Zenith Ibrahim disproved this fact that in a month at least four applicants who have grievances did not resolved in a year from regions as well as city administrations came to the Federal Urban Land Development and Management bureau with their application for finding a solution.¹¹⁹ The bureau investigates the applicant's case, most of them are lawful, and then the bureau communicates the concerned government organ with telephone or by formal letter for the solution of the case at hand.¹²⁰ There are also many

¹¹⁵ Supra note 5, Art. 30(8)

¹¹⁶ Ibid cited above at note 116

¹¹⁷ Interview conducted with W/r Zenith Ibrahim Legal Expert for Urban Land Development and Management office, on 19 April 2018

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ Ibid

cases reached to the Federal Supreme Court Cassation Division to find a solution which is relating to the amount of compensation paid for the value of property expropriated for public purpose. Ato Girma Kassa who provided an LLM Thesis on issues of expropriation: the law and the practice in oromia states that the practice around the Eastern Industry Zone shows that most of farmers are reluctant to appeal against the decision of administrative agency on the amount of compensation because of fear and lack of awareness.¹²¹ He conducted an interview with affected farmers also confirm that:

*The government has all the powers i.e. the court, the police, and the prosecutors are all belong to the government. We fear that there might be revenge from the authorities. We have no resource to appeal against the decision of the authorities. Even if we are able to do it there is no probability of wining the case. It is like struggling with a mountain to demolish it.*¹²²

We can assert from this quotation that there is a possibility to have many grievances in the regions or city administration against the decision of concerned urban land administrative authority, but no access to grievance handling appellate tribunal because of absence of it. Moreover, in the absence of tribunal, there is no a possibility to issue working procedure.

An interview conducted with Girmawollaga, a chair man at Dukem City Administration expropriation, compensation and other grievance tribunal told me that the tribunal was established by regulation No. 154/2005, and Oromia regional state urban land lease regulation No. 182/2008 article 61 and Oromia regional state urban land lease directive No. 4/2008 they has five member of committee including the tribunal head/chair man of it and others came from different city institutions¹²³. But before two year the tribunals or committees are not yet established in well organized manner in the city until 2008 e.c, until now this committee or tribunals are not strong and influential in the city. Their working days are 2 days in the weeks, they are no their own procedures but they uses some procedures from the above regulation and others may non formal procedure¹²⁴. It has a jurisdiction against on a decisions rendered by land institutions and compensation committee. Most of the claims lodged to this

¹²¹ Girma Kassa Kumsa, *Issues of Expropriation: The Law and the Practice in Oromia*, A master's Thesis Submitted to School of Graduate Studies of Addis Ababa University Fulfillment of the requirements of Masters of Law, nov, 2011, p. 112

¹²² Ibid, p. 113

¹²³ An interview conducted with Girma wollaga, a chair man of Administration expropriation, compensation and other grievance tribunal Dukem City, on 10 august /2018

¹²⁴ Ibid

tribunal are relates to the size of substitute of land, not given the substituted land and the amount of compensation paid or not paid¹²⁵.

He states procedures that first the complaint lodges his/her grievance against on a decision of concerned land institution in a written form with the attachment of the latter's decision within 30 days from the decision rendered. The staff member of the tribunal opens the file with the name of the plaintiff and the registrar checks it. Then after the plaintiff should have to pay the fee according to the amount of his/her claim that it's standard amount determined by the region¹²⁶. The staff members present the file to the chair man who decides the date and the time of hearing and send summon to the defendant before ten days of the hearing. After hearing conducted in due date, the judges render their decision and communicate their written decision to each party. The tribunal decisions which favor the plaintiff may have three outcomes. Some of its decisions may be implemented in land institutions; some of the institutions also lodge their appeal to the regional appellate tribunal against the decision of the above tribunal, however, most neither of the decisions implemented nor subject to the appeal by the land institutions. In this case the plaintiff again lodges the application to the tribunal for ordering the institution to implement its decision, the latter send the order to the concerned institution to present its justification why not to implement the decision. Some of institutions may accept the order and present their justification the tribunal, others did not respond for the tribunal. In the latter case the tribunal sends an order to the police that state the appearance of him/her with arresting¹²⁷. The police institutions are not willing to accepted the order and implement it. Because of such kind of long and difficult procedures for the implementation of the tribunal decisions, some of the complaints may go to the zonalhigh court to seek judgment but did not get acceptance. As a result, there are complaints relating to the size of substituted land and amount of compensation did not have solutions for ten and above years last¹²⁸.

An interview conducted with W/r Asnequ W/senbet who is private business worker and representative of 200 people those their land is expropriated and displaced from their holding land for industrial purpose in 2000from Dukem city they getssmall amount of compensation in cash on this land holding but they are not get any substituted land, but among from them 95 of the holders displaced from their residence houses but they not get substituted land¹²⁹. from 200

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Ibid

¹²⁹ An interview conducted with W/r Asnequ W/senbet who is private business worker and representative of 200 people august /16/2018 Dukem

people local farmers, among from them 26 peoples displaced to unknown area by unknown reason, From among remaining 174 people were lodged their application in to the Oromia regional appellate administrative tribunal in 2008 and they decided 140 meter square to each individual on September 2010¹³⁰. Now they are get a title deeds from Dukem city urban land development and management agency. Similarly in Burayou city administration i interview conducted with Ato Bekele Kombore who is private business worker and one of the committee of 32 people told me that in 2005Burayou city urban land development and management bureau demolished 65 people's houses as illegal without payment of compensation in cash and substituted land, but he explained that most of them had relevant documents which proves the land holders right but they has no building permit and title deeds¹³¹. Among from 65 people, some of them local farmers, by unknown reason four individuals among them have got title certificate to their holdings from Burayou city. From among remaining 32 people were lodged their application in to the Oromia regional appellate administrative tribunal in 2010 and they decided 105 meter square to each individual on September 2011¹³². Now they are get a title deeds from Burayou city urban land development and management agency.

According to the above information, I conclude that the establishment of an appellate tribunal or committee at regional level and city level under takes its function is appreciable. But there are problems which affect its performance. Such problems relates to lack of its own procedures, their decisions not implemented in due time and complaints exposed to different difficulties. Therefore, the tribunal shall branches at city and regional level effectively and prepares its own working procedures. The tribunal decisions must be implemented as other regular courts decisions or it may be subject to appeal. There is no clear what type of grievance they are empowered to entertain the case. The final my suggestion is that there must be a room for regular courts have jurisdiction on the decision of such tribunal.

An interview conducted with Kom. Dararo Bullo who is high legal experts at Grievance Resolving committee states that the committee is established at city level and it has five members two legal experts, two technical experts, one management officers, one is chair man, and it has a jurisdiction on against a decision passed by urban land institutions which are under Dukem city urban land development and management office.¹³³ He confirmed that they have

¹³⁰ Ibid

¹³¹ An interview conducted with Ato Bekele Kombore who is private business worker and representative of 32 people September /2018 Burayou

¹³² Ibid

¹³³ Interview conducted with Kom. Dararo Bullo who is high legal expert at Dukem city (grievance handling appellate tribunal), on 19 /6/2018

no any procedure which has been issued by concerned region or city administration according to the new lease proclamation, but they use non formal practice.¹³⁴ He told me that first the applicant lodge his/her grievance by filling a form number two which is prepared for this purpose, then the committee investigates the case with a group and rendered a decision.¹³⁵ If the case may not be the jurisdiction of the committee or tribunal, they communicate to the applicant their justification with a written form, other decisions first shall be sending to the city urban land development and management office head. He/she has a power to accept, reject or amend the decision of committee, then after the head of the office transfer the decision to the concerned institution for implementation.¹³⁶ Most of the decisions may not be implemented in due time, because the institutions are not voluntary to undertake the decision of the committee and the applicants may exposed to for many expenses.¹³⁷ In this case the office head tried to gather the concerned institution with the members of the grievance handling committee or tribunal to resolve the problem in a circle discussion, but this is not always, so the problem continues without permanent solution.¹³⁸ According to Zarfū Ragassa says such kind of problem may not be main problem happening in other regional cities but such kinds of problem are common in Dukem, Burayou and somewhat Sabbata and Laga Tafo city administration¹³⁹. The main reason/source of such kind of problem is rent seeking or corruption which is a danger not only the city but also the nationwide. The other my opinion is that the decision of the committee is subjected to the power of the office head to accept, reject or amend the decision. This is unacceptable practice to resolve citizen's grievance by independent quasi-judicial administrative tribunal. He/she has illegitimate power to decide on a grievance which is happening by his/hers own unlawful act.

An interview conducted with ms. Tsahay Koru who is chairman of grievance handling tribunal committee at Burayou city administration, she says similar to what the above interview with Kom. Dararo from Dukem and mr.Zarfū Oromia national regional land development and management agency the grievance handling tribunal or committee is undertaking their functions according to the above relevant legislations.¹⁴⁰ First the applicant lodge their grievance by writing at the tribunals or committee office, the grievance handling tribunal

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ Interview conducted with Ato Zarfū Ragassa who islayer of Oromia Urban Land development and management agency on 5/24/2018

¹⁴⁰ Interview conducted with ms.Tsahay Koru chairman of grievance handling tribunal committee at Burayou city administration on 5/22/2018

investigate the grievance according to the relevant legislations, render their decision and formally communicate the decisions to the land institution for the implementation in addition to posting the decision at notice board. If the applicant requests the tribunal's decision formally, the tribunal accesses the decision as the form of the request.¹⁴¹Oromia national regional complain or grievance handling regulation No. 154/2005 e.c article 14 states that the tribunal after investigating the grievance give its decision within fifteen days, but in practice the decisions are delayed in 6 months up to 2 years because the members are having their own government or private jobs and mostly they did not got permission from their office to undertake the tribunal's function although the legislations order the concerned organ to give permission for them. Secondly, the chairman of the tribunal is the executive political appointed so he/she is very busy and has no time to perform the tribunals function. Thirdly, the tribunal has no comfortable office for doing their function properly; mostly they are going to meet with the office of the chairman. Fourthly, the legislations allow the payment to the members, but not implemented as what the legislations provided. Fifth, sometimes their decisions are not clear to implement so it needs further clarification.

From the above interviews and regulations I infer that the regional regulation, directives are not more details about urban land dispute settlement mechanisms and power of tribunal rather than the lease proclamation. And the implementation and administrative urban land dispute settlement level of the two city Dukem and Burayou administration is somehow similar and progressive, however, there are problems facing the tribunal not to undertake their functions what the legislations provided. Some of these shortcomings of both city are decisions not rendered in due time, it did not communicate the applicants properly unless the latter requests, the office constraint, no permission got from their office, undertake their functions without proper payment, and sometimes unclear decisions rendered. In addition to this, the chairman of the tribunal is the concerned executive head. In my opinion it is not appropriate in two ways, first he/she is very busy and occupied work functions so he/she cannot perform the tribunals function properly, secondly, he/she is one of the high political assigned officials. So, he/she may not undertake the tribunal's function freely/independently.

¹⁴¹ Ibid

5.6 Conclusion and Recommendations

5.6.1 Conclusion

Based on the above investigation and document we get through investigation when we conclude the above study the period of imperial in civil code it empowered regular court to all civil disputes including urban land disputes like Lease of immovable in general article and other contract on immovable property and land. But, in procn.47/1975 the power of litigation on urban land and property is given to administrative agencies tribunal rather than regular court. Currently in our country urban land dispute settlement mechanism which has been solved at different place in a scattered manner, many developed countries have strong land institutions and laws that protect the citizens' relationship with land and provide urban land dispute settlement mechanism services to secure and often guarantee land rights. These services directly support land markets that underpin modern economies. Now currently urban land demand is highly increased in our county, so it need appropriate administration response to land resource, transparent and accountable system as well as strong urban land dispute settlement system supported by law and institutional framework, this will then contribute to the development and enforcement of laws and regulations on urban land dispute and tenure rights at the national level in cooperation with land administration institution and at regional bodies. Also the study concludes strong and effective urban land administration institution who implements laws and regulation efficiently is significant to reduce disputes in urban center. From the legal point of view, and other relevant documents, I understood that, the fact that institutional updates knowledge and upgrades human capacity on the urban land computerized certification necessary; awareness, knowledge and honesty for the public and to the law. Land corruption is one of the main causes of urban land disputes in our country particularly in the study area. To avoid corruption and urban land disputes it needs awareness and capacity. In addition to awareness and capacity, also it needs to make institutional cooperation in urban land administration institutional arrangement at national level and at local level, in doing so it needs financial, material and professional human recourses. Adopting technology and sustainability by modern approaches at national level as well as at regional and local level is somewhat stated, but still now is data is not organized by technology, un-computerized urban land administration and certification systems supported by legal framework at national level as well as at local level. Speculators and brokers are another problem of urban land disputes in the Oromia national regional state particularly in the study area. The proclamation and laws is gives the power to the tribunal to settle urban land disputes, but the power of this tribunal is only on issues of land clearance and amount of

compensation, but if the issue of the dispute is not on land clearance or amount of compensation, the law is not yet stated or the law has a gap. For this reason the urban land disputes are solved in different place in scattered manner. The tribunal and committee is established under executive body this makes regular court cheeped, the executive organ has more powerful to exercise disputes over urban land based on politics this may affect the right of individual. Generally in two towns' urban land disputes are reduced after lease proclamation No. 721/2011 come to force when we compare to before enactment lease proclamation when land freely allotted. Additionally both the proclamation No. 455/2005 and Proclamation No.721/2011 did not say anything about the applicable procedures used by the grievance hearing organ while performing its function, in this legislation the appellate jurisdiction is given to the appropriate regular or municipal appellate courts. So, by analogy these regular or municipal courts may use ordinary civil procedure code of Ethiopia. Moreover, the new urban lease holding proclamation to authorize regions and city administrative to issue procedures which the tribunal undertakes their functions, on the other hand it also prohibits to apply the ordinary civil procedure code. However, the study proved that no any region or city administration. But also there are other problems which affect its performance. Problem of time and working procedure, their decisions not implemented in due time and complaints exposed to different difficulties, and it did not be accessed to the public because no branch tribunals established at local level. Therefore, the regions as well as city administrations concerned government organ which has a responsibility to establish a tribunal and providing a procedures violates the new lease proclamation and also the FDRE constitution for the right of persons to hear.

All the Proclamation, regulation and directive of the urban land lease holding, Expropriation, the urban landholding adjudication and registration and all urban land administration institution legislations provide that the tribunal can be under the control of the government organ which is under executive. So, it cannot be independent to render impartial decision against the government. Some of these shortcomings are decisions not rendered in due time, it did not communicate the applicants properly unless the latter requests, the office constraint, the tribunal members haven't got permission from their office, undertake their functions without proper payment, and sometimes unclear decisions rendered by them. Therefore, I conclude that the grievance handling tribunal is not independent and cannot perform its functions impartially because the chairman is one of the high political assigned officials.

5.6.2 Recommendations

On the bases of the discussion and analysis of the finding the conclusions reached the following recommendation are forwarded.

To minimize and control urban land disputes by identifying the sources that makes the disputes may be arise and resolve the disputes by culturally or legally in technical manner timely and carefully in proper way. It needs strong accountable and well organized land administration and certification institution capacities and processes in Ethiopia particularly in the study area. To increase awareness and capacity of urban land administration institution in modern computerized land certification is necessary for effective, efficient and accountable urban land administration particularly for reducing disputes. The recognition that urban land administration particularly land titling or certification is not an end corruption and urban land disputes itself. It needs cooperation of those urban land administration institution, laws and professional skill human personnel. Awareness of the community on the laws and their rights on urban land is another important issue in the law. Institutional reforms are usually more important than statutory and regulatory reforms or the introduction of new systems and technologies.

In case of urban land dispute resolution there is no clear provision of legal framework and unclear urban land dispute resolution mechanisms except on issues of compensation or land clearance. To avoid confusion scatted manner of urban land dispute resolution or to fill gaps of law it need legal provision or guidelines for ruling urban land dispute resolution mechanisms and procedure at national level as well as at regional and local level uniformly like as rural land dispute resolution mechanism.

To empower regular courts as regular division or appellate jurisdiction rather than give the final power to the tribunal and committee established under executive organ to settle urban land disputes, because giving final power to administrative organ is restrict the rights of people rights of access to justice, which the constitution everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power by revising the provision Article 29 sub 3 of new lease proclamation No.721/2011 and article 11 sub 1 of expropriation proclamation No.455/2005. Multiplicity of administrative tribunal and committee are cheap the power of the court, this committee leads by executive organ they are not independent organ, and they are not a legal or lawyer person, also they not follow legal procedure.

To create other well organized independent and influential institution, developed by qualified science it needs, and has well practice work on urban land institution; that is urban land

administration, urban land management, urban land use and others who creating new study, new research, new ruling plan and other activities on the urban land institution at national level and at regional level under one umbrella.

Similarly the new lease proclamation article 30 relating to grievance handling appellate tribunal establishment as well as applicable procedures which are the tribunal applying shall provide revised. The amendment shall be consistent with the constitutional principles and other relevant laws. Before revision under taken, it is important to organize the discussion on the issues with the stockholders who give important inputs. It is not appropriate only to issue the relevant legislations for the regions and city administrations but also it is necessary to provide effective and efficient support to them during the implementation process of the law. Specially, by preparing and undertake a regular capacity building training for the regions and city administrations to the relevant officials and experts for the proper execution of the legislations. The concerned government organ of the regions and city administrations should be establish the grievance handling appellate tribunals independently and issue their applicable procedures to undertake their functions according to the legislation. The tribunal decisions must be implemented as other regular courts decisions or it may be subject to appeal. It is not advisable that the tribunal shall be accountable to any executive organ, but it is appropriate to protect its independency it should be under the judiciary. Moreover, the chairman of the tribunal must be out of any executive organ officials as well as experts who fulfill the requirements stipulated under the legislation.

The region and city administration concerned government organs should minimize or avoid problems facing on tribunal members during the implementation of their functions. The basic problems which shall be avoid or minimize are: decisions not rendered in due time because the members more engaged other duties.

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To be filled by beneficiaries:

Please put a tick mark (✓) for the answer in the provided box. Do not write your name.

Part I: General Background

1. Sex: Male Female Age: 20-30 31-40 41-60 More than 60
2. Marital status: Married Unmarried Divorced Widowed
3. Educational qualification: Less than or equal to 12 Diploma Degree Master
4. PhD
5. Who are the parties in the urban dispute In Dukem and Burayou Cities?
A. Individuals among themselves, B. Groups C. Government with Individuals,
D. All
6. Causes of Urban Land Disputes InDukem And Burayou: A. Land use B. Not willing to pay tax
C. Not be obedient to government officials
7. Are the existing laws containing all urban land Dispute in the region?
A. Yes B. No.
8. DO urban land laws sufficiently enough to solve all disputes that arise in the region? A. Yes B. No.
9. What are the main challenges of the urban land disputes in the study area?
A. Dispute over sharing power/jurisdiction B. Dispute on land use, lack of clear provision on urban land dispute.

Appendix B. Discussion point

10. Discussion with Burayou city court

1. A court has a full power on issues related urban land, -----

2. How many land cases come to court -----

3. Time taken until final decision is passed -----

4. How they accept the certificate of holding as a legal document, -----

5. The court has a power to invalidate a certificate given by urban land administration institution or other government institution?-----

Based on these interrelated points the output of the discussion is presented.

Discussion with Dukem city urban land development and management agency

1. What are the main causes of urban land disputes and its challenges in the town -----

2. Does urban land administrative authority have a full power to resolve all kinds of disputes raised on urban land?-----
