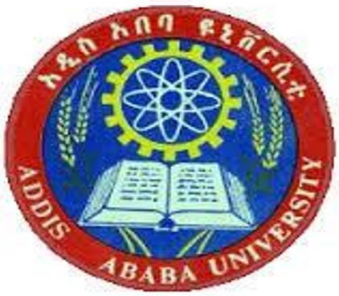

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LL.M PROGRAM IN URBAN PROPERTY AND LAND LAW

EXHAUSTION OF ADMINISTRATIVE REMEDIES FOR JUDICIAL REVIEW OF URBAN LAND CLERANCE DISPUTES IN ETHIOPIA

BY

TAMAGN BEYENE

A THESIS SUBMITED IN PARTIAL FULFILMENT OF THE REQUIRMENT OF MASTERS DEGREE IN LAWS/LL.M/

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TAMAGN BEYENE

ADVISOR

JETU EDOSA

(Asist. Professor)

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Approved by:

_____	_____
Advisor's Name	Signature
_____	_____
Examiner/Reader's Name	Signature
_____	_____
Examiner/Reader's Name	Signature

DECLARATION

I, the undersigned, declare that the thesis titled "Exhaustion of Administrative Remedies for Judicial Review of Urban Land Clearance Disputes in Ethiopia" is my original work and has not been presented for a degree at any other university, and all sources of materials used in the thesis have been duly acknowledged.

Declared by

Tamagn Beyene

_____

Signature

_____

Date

Confirmed by

Jetu Edosa *(Asist. Professor)*

_____

Signature

_____

Date

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I would like to extend my deepest gratitude to my advisor, Jetu Edosa (Assistant Professor). This thesis would not have been possible without him. I would also like to thank my wife, Rediet, who encouraged me to go back to school, gave me all the support I needed, and tolerated my impatience and absences during my study time

Abstract

Ethiopia's current urban land legislations grant administrative agencies and tribunals primary jurisdiction over disputes arising from urban land clearance. These land legislations, except for some changes made in recent revisions, have technically limited the extent to which the judiciary would review the decisions of administrative agencies and tribunals. One of these limitations is the requirement to exhaust administrative remedies before seeking judicial review of an urban land clearance decision. However, the practice shows that landholders directly take their case before a court of law, and courts are also hearing such cases. Therefore, when it comes to urban land clearance disputes, there is a need to create clarity between the jurisdiction of quasi-judicial administrative institutions and the inherent judicial power of courts in order to protect the autonomy of administrative agencies and enhance the efficiency of courts.

Key Words:

land clearance, disputes, administrative review, judicial review, exhaustion, Ethiopia.

CHAPTER ONE

1. INTRODUCTION

1.1. Background of the Study

In Ethiopia, the classification of land either falls into the rural or urban category, depending on the laws governing it. The Ethiopian urban land legal regime can be traced back to the imperial era. The emperor's desire to modernize the empire's legal framework in order to keep up with the changing circumstances of the world [1] enabled the country to have its first codified civil law in 1960. In this code, issues pertaining to immovable property and lands are scattered in different parts of the legislation. After the downfall of Emperor Haile Selassie, I, the military junta (the Derg), which came to power in 1975, enacted Proclamation No. 47/1975 to provide government ownership of all urban lands and extra urban houses with the intent to govern the urban land legal system of the time.

The Ethiopian People's Revolutionary Democratic Front (EPRDF), which deposed the Derg in May 1991, issued Proclamation No. 80/1993 during the transitional period, which declares land to remain under government ownership. However, after the promulgation of the 1995 Federal Democratic Republic of Ethiopia's Constitution (Proclamation No. 1/1995), this urban land lease holding law was repealed and replaced by the re-enactment of urban land lease holding proclamation no. 272 of 2002, which was repealed by urban land lease holding proclamation no. 721 of 2011. Besides, two laws pertaining to the expropriation of urban and rural land were also enacted in 2005 and 2019, after the enactment of the FDRE constitution.

Although these are the most important legal documents in the country's history of urban land laws, the mechanisms these laws use to resolve urban land clearing disputes vary from regime to regime. During the imperial era, disputes relating to the expropriation of urban land were set to be entertained by administrative agencies and regular courts through appeal.[2] The Derg, through

[1] Civil Code of the Empire of Ethiopia, Proclamation Number 165/1960, *Negarit Gazeta*, 19th year, Number 2, ADDIS ABABA, 5th May, 1960, Preface

[2] *Civil Code, (n* 1), Article 1472 and 1474

Proclamation No. 47/1975, has given such power exclusively to administrative agencies. [3]. However, the laws enacted since the adoption of the 1995 Constitution of the Federal Democratic Republic of Ethiopia have given government agencies final jurisdiction on the majority of the issues and first instance and appellate jurisdiction on some other matters. Specifically, the current main urban land legislation of the country, the Urban Land Lease Holding Proclamation no. 721/2011[4] and the Expropriation of Land Holdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation no. 1161/2019,[5] provide almost the same procedure for entertaining urban land grievance or disputes, relating to land clearing order.

Under articles 19 and 20 of the Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019, it is stated that a complaint relating to expropriation orders is first to be filed with the Complaint Hearing Body and then with the Appeal Hearing Council. However, a person dissatisfied with the decision of the council may lodge an appeal to the Federal First Instance Courts, in the case of Addis Ababa and Dire Dawa, and to regional High Courts, in the case of regional governments.[6] If the party dissatisfied with the court's decision has surrendered the land holding of the disputed land, the right to continue an appeal is also guaranteed [7]

With the same token, the Urban Land Lease Holding Proclamation No. 721/2011 under Articles 28, 29, and 30 provides for a person to submit his grievance relating to an urban land clearing order to the appropriate body [8], and then appeal to the Appellate Tribunal if aggrieved by the

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[3] Government Ownership of Urban Lands and Extra Urban Houses Proclamation, Proclamation no. 47/1975, *Ethiopian Provisional Military Government Negarit Gazeta*, 34th Year No. 41, ADDIS ABABA, 26th July 1975 Article 27-30

[4] Urban Land Lease Holding Proclamation, Proclamation No. 721/2011, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 15th Year No. 4, ADDIS ABABA, 18th November, 2011, Article 28-30

[5] Expropriation of Land Holdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation, Proclamation no. 1161/2019, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 25th Year No. 90, ADDIS ABABA, 23rd September, 2019, Article 19 and 20

[6] *Ibid*

[7] *Ibid*, Article 20(2)

[8] *"Appropriate Body*" means a body of a region or a city administration vested with the power to administer and develop urban land; as defined under Article 2(6) of the urban land lease holding proclamation no. 721/2011

decision of the appropriate body.[9]. The decision by the Appellate Tribunal is final, unless it is related to compensation.[10] Accordingly, the law provides for a person dissatisfied with the decision of the Tribunal on the issue of compensation to lodge an appeal with the municipal appellate court or, in its absence, with the regular high court.[11]

In this research, the main legal and institutional challenges in urban land clearing grievances/disputes is assessed in light of the legitimate power given to the administrative agencies, to entertain such disputes, under the urban land lease holding proclamation no. 721/2011 and the Expropriation of Land Holdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation no. 1161/2019.

1.2. Problem Statement

The urban land lease holding proclamation no. 721/2011 has empowered the appropriate body of a region or a city administration vested with the power to administer and develop urban land to entertain a grievance or dispute relating to urban land clearing.[12] Apparently, the law states a person served with a clearing order must submit his or her grievance to this government body and then appeal to the appellate tribunal and municipal appellate court, or, in the absence of the municipal appellate court, to the regular high court, respectively.[13]

The Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019 also provides for a complaint relating to expropriation orders, first to be filed with the Complaint Hearing Body and then to the Appeal Hearing Council and the Federal First Instance Courts, in the case of Addis Ababa and Dire Dawa cities, and to regional high courts, in the case of regional governments.[14]

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[9] *Lease Proc.* (n5), Article 29(1)

[10] Ibid, Article 29(5)

[11] Ibid, Article 29(4)

[12] *Lease Proc.* (n5), Article 28(1)

[13] Ibid

[14] *Expropriation Proc.* (n6)

In practice, however, a person served with a clearing order or whose or its land is taken by the relevant body almost always files an action in regular courts without exhausting these administrative remedies. This practice, which is a significant departure from the intent of both proclamations, is preventing major investments and public-interest projects from utilizing such disputed lands for the greater good. A restraining injunction given by the courts, accompanied by the lengthy court litigation, is consuming the time, money, and energy of the appropriate public agency and the new user of the disputed land. As a result, the high demand for urban land that necessitates an efficient, effective, equitable, and well-functioning land and landed property market is becoming unmanageable.

Therefore, this practice of taking urban land clearance disputes that are meant to be first entertained by the appropriate government body and tribunals before a court of law, under the category of claim that inherently falls under the jurisdiction of courts, needs a clear legal and institutional guideline, ending the overlapping jurisdictions of the two bodies.

1.3. Literature Review

Following the recently repealed Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005 and the Urban Land Lease Holding Proclamation No. 721/2011, various studies on urban land management in Ethiopia were conducted. Some of them are reviewed below, and are in some way related to the core idea of this study. In these reviewed studies, problems relating to urban land management are either seen in light of the Urban Land Lease Holding Proclamation or the repealed Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation and the new repealing proclamation.

Some of the provisions relating to land clearance in the Urban Land Lease Holding Proclamation and Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation are identified as limitations to land use rights in the doctoral thesis by Daniel Weldegebriel. [15] Mainly the lack of mandatory procedures relating to consulting the people before expropriation, serving prior notice, valuation of property, the lack of a resettlement and

[15] Daniel Weldegebriel Ambaye, 'Land Right and Expropriation in Ethiopian,' (PHD, Royal Institute of Technology (KTH) 2013) P. 127

rehabilitation program, and the vagueness of the term "public purpose" are identified by this researcher as major gaps in the Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation.[16] However, in his article for Ethiopia Business and Commercial Series, the researcher has withdrawn all of these gaps when it comes to the new Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019.[17]

Nathan Shiberu identifies nearly the same issues as causes of a lack of good urban land governance.[18] In this LL.M. thesis, small payments of compensation, failure to rehabilitate the effected person, the abuse of an ambiguous and broad definition of the term "public purpose" by the law, and the limited role of the courts in urban land disputes are identified as major causes of a lack of good urban governance.[19]

The provisions of the Urban Land Lease Holding Proclamation that deal with the conversion of old possessions to the lease holding system are also an area of concern in urban land management studies. The problem old possessors face at the time of conversion to the lease holding system and before converting to the lease holding system is well addressed by Esmael Keramo in his LL.M. thesis.[20] . Among other things, the limited nature of lease holding time is identified as major factor affecting tenure security of old possessors, when converted to lease holding system.[21] The expropriation mechanism set under the Urban Land Lease Holding Proclamation and the repealed Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation is also identified as less favorable to old possessors compared to lease holders. Specifically, the uncontestable power given to administrative organs up on expropriation of old possession and the contestable power given to

[16] *Ibid*, P. 174, 199, 229

[17] Daniel Wedegebriel (2020) Expropriation of Urban Property; A reflection on the New Expropriation Laws, Ethiopian Civil and Commercial Law Series, Addis Ababa University School of Law, volume 10. P. 231

[18] Nathan Shiberu, 'The Role of Urban Land Laws to Urban Good Governance: The Case of Adama' [Unpublished], Addis Ababa University (2019)

[19] *Ibid,* P. 47, 52, 55, 58

[20] Esmael Keramo, 'Tenure Security of Old Possessions and Its challenges under Urban Land Lease Holding Proclamation No. 721/2011' [Unpublished], Addis Ababa University (2019) P.26

[21] *Ibid*, P. 30

the administrative organs up on clearing of lease holdings is provided as a threat to tenure security of old possessors by the laws.[22]

While the power given to administrative organs to entertain urban land disputes are perceived as a power to be abused by some, Rebira Kibret [23] additionally questions the very capacity of this organ in entertaining urban land disputes. The researcher identifies lack of human and material resources and working procedures as major hindrances to the power of the agency. The probable partiality of the administrative organ in entertaining disputes between individuals and the government agency is also raised as a concern by the same researcher.

There is also a specific research relating to urban land use disputes settlement conducted by Jetu Edosa.[24] In this article, the researcher has deeply assed various dispute settlement mechanisms and evaluated their applicability in light of pertinent provisions of various Ethiopian laws. The applicability of Alternative Dispute Resolution (ADR) mechanisms, the power of Administrative Tribunals and formal Judicial establishments, in settling urban land disputes are the focal issues of the research. Lack of enabling legal frame work and the administrative nature of urban land dispute are also identified as basic bottlenecks in applying ADR to urban land dispute.[25] Apart from the legally recognized Administrative Tribunals, Jetu also recommends the Judiciary to have a separate bench that can analytically litigate urban land disputes.[26]

The significance of judicial protection of urban land right is less contentious issue, in land related research. Brightman Gebremichael, [27] who has argued for broader power of courts in litigating urban land disputes, has evaluated the practical problems relating to judicial enforcement of property right and urban land right. Accordingly, the researcher has assessed repeated takes of the

[22] *Ibid*

[23] Rebira Kibret Beyene, 'The Power of Administrative Agencies Concerning Urban Land Disputes Settlement: The Case Study On Dukem and Burayu City Administrations' [Unpublished], Addis Ababa University (2019) P.42

[24] Jetu Edosa, 'Urban Land Use Disputes Resolution Methods in Ethiopia,' (2020) 10 Ethiopian Civil and Commercial Law Series. p. 321

[25] *Ibid,* p.330

[26] *Ibid,* p.346

[27] Brightman Gebremichael, 'Enforcement of Urban Land Rights in Ethiopia: Analysis of Cassation Decisions of the Federal Supreme Court' 10 Ethiopian Civil and Commercial Law Series, p.289

Federal Supreme Court Cassation Division (FSCCB), on judicial power of courts in enforcing urban land rights. The developments made by FSCCB throughout its various decisions; towards inherent judicial power of courts and broader characterization of urban land dispute to enable judicial review of cases are some of the good takeaways made by the researcher.

All the studies briefly reviewed above are conducted after the enactment of the Urban Land Lease Holding Proclamation No. 721/2011. Also most of the researchers approached the urban land management problems with the same methodology, using primary, secondary, and qualitative data and above all descriptive approach. Some of the researches are limited to specific area of study (such as Adama, Dukem and Burayu towns) and some are analytical of the overall legal lacuna Vis-à-vis the practice. However, cumulative readings of these papers reveal little development of the topic overtime.

Apart from these, except for Rebira, Esmael, Jetu and Brightman who tried to address some legal and institutional challenges in urban land clearing grievances/disputes, the main focus of the rest of the researches are overall theoretical analysis of the major land laws of the country. Even Jetu and Brightman's articles, which specifically deals with urban land dispute settlement mechanisms, did not address the practical problems of taking urban land clearance disputes before court of law in light of the legitimate and exclusive power given to the appropriate government body by the Urban Land Lease Holding Proclamation no. 721/2011 and Expropriation of Land Holdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation no. 1161/2019.

Therefore, this study intends to fill this specific gap that is left uncovered by these researches and address the practical errors committed by courts, when litigating urban land clearance disputes, before administrative remedies are exhausted.

1.4. Objectives of the study

1.4.1. General Objectives

This study intends to critically analyze the mechanisms for grievance hearings and dispute settlement under the Urban Land Lease Proclamation No. 721/2011 and the Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People

Proclamation No. 1161/2019 and identify whether administrative remedies for urban land clearance grievances are exhausted before taking such disputes before a court of law.

1.4.2. Specific Objectives

- to identify the urban land clearing grievances hearing or dispute settlement mechanism under the Urban Land Lease Proclamation No. 721/2011 and the Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019.
- to assess the quasi-judicial power given to the administrative agencies under the lease and expropriation proclamations.
- to ascertain the judicial power of courts in reviewing urban land clearance disputes under the lease and expropriation proclamation.
- to evaluate whether administrative remedies for urban land clearance grievances are exhausted before taking such disputes before the court of law vis-à-vis the repeated take of the Federal Supreme Court Cassation Bench (FSCB).

1.5. Research Questions

This study will address the following questions in light of the core research problem identified:

- Under the country's current legal framework, which organ of government has the authority to hear urban land grievances or disputes?
- Can special laws take away the judicial power given to courts and assign it to administrative agencies?
- Should a person be always allowed to bring his, her, or its grievance or dispute relating to an urban land clearing order before a court of law, as long as the petition or claim is titled under the category of claim that inherently falls under the jurisdiction of courts?
- Can the administrative measure of clearing urban land qualify as interference with the land rights of the holder?

1.6. Significance of the Research

This study might be the first of its kind when it comes to dealing with the practical problems of taking urban land grievances or disputes before a court of law against the exclusive power given to the appropriate government body and without exhausting administrative remedies, in light of the Urban Land Lease Holding Proclamation No. 721/2011 and the Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019.

Therefore, the findings of this research may create awareness on the subject matter, enhance corrective measures to be taken by the pertinent body, or initiate revisions and amendments to the laws.

Specifically, this study may enhance the establishment of the institutional framework set under the law for urban land dispute settlement throughout the country. As a result, public grievances relating to urban land inaccessibility and eviction may decrease. Apart from this, urban land clearing-related grievances or disputes that are meant to be entertained by administrative agencies may not be taken before a court of law. When such cases are brought, the court may reject them on the basis of lack of jurisdiction.

Above all, the findings of this research might be important for policy, practice, theory, and subsequent research on the subject matter.

1.7. Research Methodology

The research places an emphasis on the qualitative analysis of legal rules, principles, and court decisions. Primary sources such as the 1960 Civil Code, Government Ownership of All Urban Lands and Extra Urban Houses Proclamation No. 47/1975, Urban Land Lease Holding Proclamation No. 80/1993, 272/2002, and 721/2004, lease regulations and directives enacted at regional levels, Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005, Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019, and court cases entertained at Federal First Instance Court and Federal Supreme Court Cass Bench (FSCCB)

The cases are selected based on their relevancy to the matter and their accessibility. The majority of the cases used (seven out of eight) are publicized decisions of the FSCCB. Hence, as it is difficult to access unpublicized court decisions, only one Federal First Instance Court case is used in the thesis. Furthermore, secondary sources such as books and various studies are reviewed in order to achieve the thesis's goal. Face-to-face interviews with experts and officials from the relevant land administration agency and administrative tribunal were also conducted for the study. Interviewees are selected from the administrative agency and tribunal based on the relevancy of the position they hold in those particular institutions.

1.8. Scope of the Study

The The thesis mainly focuses on the evaluation of the requirement of exhaustion of administrative remedies for judicial review of urban land clearance disputes, as it is provided under the Urban Land Lease Holding Proclamation No. 721/2004 and the Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019. In order to make the scope of the thesis manageable, the research is limited to the analysis of court cases entertained at the Federal First Instance Court in Diredawa and the FSCCB in Addis Ababa. However, as the decisions entertained by the FSCCB came from different regional and federal courts, the analysis of such cases may cover different geographical areas of Ethiopia. Besides, the paper has also briefly assessed the law and practice relating to an administrative review of an urban land clearance dispute in Adama City, Oromia regional state.

1.9. Organization of the Thesis

The thesis is organized into five chapters. The first chapter provides an introduction to the thesis. Hence, it comprises the background of the study, a problem statement, a review of basic literature, the objectives of the thesis, the main questions the research intends to answer, the significance of the research, the methodology used, the scope, organization, and limitations of the research.

The second chapter of the thesis provides an overview of urban land clearance and urban land clearance disputes in light of the lease and expropriation proclamation. Chapter three deals with the procedure and institutions provided for settling urban land clearance disputes under the lease and expropriation laws. The fourth chapter focuses on evaluating the legal requirement of

exhaustion of administrative remedies for judicial review of urban land clearance disputes in light of selected court decisions. Chapter five provides conclusions and recommendations.

1.10. Limitations of the Study

The difficulty in finding cases decided by lower courts that never made it to the FSCCD is the major limitation encountered in the writing process of this thesis. It was also difficult to find the pertinent authority or expert for an interview in most of the institutions visited during the research. Aside from the interviewees, others were hesitant to provide pertinent information.

CHAPTER TWO

Land Clearance as a Cause of Urban Land Dispute

2.1. INTRODUCTION

Regulating, managing, keeping records, determining the use, leasing, and resolving disputes relating to land and landed property are the basic tasks in land administration. Whether a piece of land in a specific jurisdiction is owned by the state, the community, or individual holders, its efficient utilization basically depends on its proper management.

In Ethiopia, where both urban and rural land is owned by the state and the people, the task of land administration and management is solely given to the state. Hence, government agencies undertake such management acts. In particular, the relevant government authority registers, allocates, leases out, and disposes of a land from its holder in accordance with the law. The act of dispossession of land by the state in any of the manners provided by the law may sometimes be a reason for a dispute between the state and the land right holder. Hence, the law needs to provide a mechanism for resolving such disputes. Apart from such acts of the state, disputes over land may also arise from disagreements between landholders with competing interests.

This chapter examines urban land disputes in general, as well as those primarily caused by the state's land clearance act, in light of the relevant legal and institutional framework.

2.2. Urban Land Disputes in General

Black's Law Dictionary defines dispute as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other."[28] In the land context, disputes typically arise when one party's use is met by a contrary claim by another. Land disputes also occur when different parties make incompatible claims of right to a specific piece of land right. But what makes a dispute over land unique is that land is the

[28] Garner, Bryan a, and henry Campbell black, Black's law dictionary (9th edn, St Paul, MN: West 2009) p. 541

most valuable resource with economic, political, and social significance.[29] Economically, land serves as a source of income and livelihood. Land plays a major role in enhancing governments' control over their subjects and the economy.[30] Some societies also consider maintaining continuous control over their land a matter of survival..[31] Therefore, a dispute over land means a threat to such values.

In the urban land set-up of Ethiopia, disputes over land have different forms and causes. Ill-managed urbanization is the root cause of urban land disputes in Ethiopia. The country has rapid urbanization and the lowest urban population at the same time.[32] Studies reveal that urban land expansion in the major cities of the country supersedes the urban population growth rate.[33] High population growth rates in general and rural to urban migration are forcing urban centers to expand informally from time to time.[34] Therefore, population growth and massive urban expansion are the major factors in urban land disputes.

Individual citizens, businesses, non-governmental organizations (NGOs), international organizations, and even government agencies may be parties to an urban land dispute. As a result, urban land disputes can arise between the land administering agency and the land right holder, as well as among land right holders.[35] A dispute between the land administering government agency and land right holders may occur because of non-performance or termination of a lease contract, the issuance or cancellation of a land holding certificate, a building permit, expropriation, compensation, resettlement, etc. On the other hand, individual land right holders might disagree because of boundaries, succession, use, transfer, and other land use-related disagreements.

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[29] John W Bruce and Sally Holt, 'Land and Conflict Prevention, Conflict Prevention Handbook Series' (6th edn, Initiative on Quiet Diplomacy University of Essex 2011).,

[30] *Ibid*

[31] *Ibid*, p.13

[32] Berhanu Keno Terfa and others, 'Urban Expansion in Ethiopia from 1987 To 2017: Characteristics, Spatial Patterns, And Driving Forces' (2019) 11 Sustainability.p.2973

[33] *Ibid*

[34] Tsegaye Tegenu, 'Urbanization in Ethiopia: Study On Growth, Patterns, Functions and Alternative Policy Strategy' (MA, Stockholm University 2010).

[35] *Ibid*

2.3. Urban Land Disputes Resolution Mechanisms

There are two types of dispute resolution mechanisms: formal and informal.[36] Common formal dispute resolution mechanisms include grievances and lawsuits.[37] A formal dispute resolution mechanism has a predetermined process and is handled by legally established institutions.[38] Hence, filing a complaint or a claim is at the center of the process.[39] On the other hand, an informal dispute resolution mechanism is *consensual,* in which the disputant tries to reach an agreement.[40] And it includes alternative dispute resolution (ADR) mechanisms such as arbitration, mediation, conciliation, or negotiation.[41] Even if there is no consensus on whether arbitration is to be considered an informal or formal process,[42] the majority of texts tend to consider it an informal mechanism that relies on the consensual submission of the disputants.

The applicability of various dispute resolution mechanisms to urban land disputes depends on the availability of an enabling legal system. A legal analysis of the Ethiopian legal system reveals the absence of an enabling environment for using ADR mechanisms to resolve urban land disputes. [43] For instance, arbitration as a means of dispute resolution is repeatedly mentioned in the codified and specific laws of the country.[44] Inferring that unless the law expressly states otherwise, a dispute is not arbitrable.[45] Accordingly, with regard to land, arbitrability of rural land disputes is provided under regional and federal rural land administration laws, and a dispute arising between an investor

[36] Thomas Barfield, 'Informal Dispute Resolution and The Formal Legal System in Contemporary Northern Afghanistan Rule of Law Program, The United States Institute of Peace Washington DC (Draft Report) April 21, 2006' (The United States Institute of Peace 2006) <https://www.usip.org/sites/default/files/file/barfield_report.pdf> accessed 4 April 2022.

[37] Sahil Arora, 'Formal and Informal Dispute Resolution - Academike' (*Academike*, 2015) <https://www.lawctopus.com/academike/formal-informal-dispute-resolution> accessed 4 April 2022.

[38] I*bid*

[39] *Barfield* (n37)

[40] *Ibid*

[41] *Ibid*

[42] Arora (n38)

[43] *Edosa* (n25)

[44] Aron Dagol, 'Notes On Arbitrability Under Ethiopian Law' (2011) 5 Mizan Law Review, PP 150-157

[45] Ibid

and leaseholder of a plot in an industrial park is also subjected to arbitration as per the industrial park proclamation.[46]

Besides, the legislation pertaining to urban land disputes in Ethiopia tends to recognize the formal dispute resolution mechanisms as the only mechanisms for setting urban land disputes. Basically, disputes arising between landholders are referred to courts, and when such disputes involve the land administering agency and the landholder, the administrative agency and tribunals play the key roles. (This is well covered in Section 2.6 of this chapter.)

2.4. Urban Land Clearance

Under the urban land lease holding proclamation, the term "land clearing" or "clearance" is used to refer to the legal process of dispossessing a land and the right over it. As a result, the term refers to the legal process of removing a person from a property. The power to dispose of urban land is granted to the body of a region or a city administration vested with the power to administer and develop urban land under certain criteria.[47] The same power is also given to the city and woreda administrations under the expropriation proclamation [48] The dispossession of urban land by the government may result from the termination of a lease contract or expropriation. There are three circumstances that may lead to the termination of a lease contract under the lease proclamation. These are failure to use the land in accordance with the law, expropriation, and expiry and non-renewal of the lease contract.[49]

However, one can understand the urban land clearing and grievance procedures provided through articles 26–31 of the proclamation, which repeatedly refer to public purpose expropriation as their sole subject matter. That is, the proclamation's clearing and grievance procedure only applies to cases of public purpose expropriation. However, in a context that can change this assumption, the law under Article 26(3) states:

> Notwithstanding the provisions of sub-article (1) of this Article, no land leasehold may be cleared, prior to the expiry of the lease period, unless the lessee has

[46] *Edosa (n25)*

[47] *Lease Proc*. (n5), Article 26(1) and 2(6)

[48] *Expropriation Proc*.(n6), Article 6

[49] *Lease Proc*. (n5), Article 25(1)

> breached the contract of lease, the use of the land is not compatible with the urban plan or the land is required for development activity to be undertaken by government.

Under this sub-article, the proclamation clearly prohibits the clearance of a leasehold, except due to public purpose expropriations, when the leaseholder has breached the lease contract and the use of the land is not compatible with the urban plan or the land is required for development activity to be undertaken by government.[50] As a result, the contrario reasoning of this article implies that the urban land clearance and appeal procedures established by articles 26–31 are applicable when the lease contract is terminated due to a breach of the contract by the lessee, the use of the land is incompatible with the urban plan, the government requires the land for its own projects, or even when the lease contract is terminated due to the expiry or non-renewal of a lease period, in addition to the case of expropriation. Articles 19(1) and (2) of the lease proclamation impose a duty on the lease holder to apply for renewal of the lease contract within ten to two years before the date of expiry and on the land administrating agency to notify its decision within a period of one year from the date of such an application[51] Besides, the law clearly provides for a leaseholder whose lease contract has expired and not been renewed to hand over the land within one year.[52] If the lessee fails to do so, the pertinent body shall initiate the clearing procedure.

2.4.1. Termination of Lease Contract for Failure to Use the Land in Accordance with the Law

The registration of a leasehold right over urban land in Ethiopia presupposes a lease contract to be signed between the leaseholder and the concerned government agency.[53] The person should enter into a lease contract in order to obtain an urban land lease holding certificate, which entitles the person to full enjoyment of use rights over the land. But the exercise of such a use right is always subject to limitations provided under the law and the lease contract. The terms of a lease contract shall always include the following: construction start-up time, completion time, payment schedule, grace period, rights and obligations of the parties, as well as other appropriate details.[54] The

[50] *Ibid,* Article 26(3)

[51] *Ibid,* Article 19(1) and (2)

[52] *Ibid,* Article 25(5)

[53] *Ibid,* Article 6(1)

[54] *Ibid,* Article 16(2)

proclamation has also set different lease periods for different uses and urban centers,[55] which are supposed to be part of the lease contract. By so doing, the lease proclamation is commanding an urban land lease contract to at least include a statement about the major legal and contractual rights and obligations of the lessor and the lessee.

Article 21(1)(a) of the lease proclamation provides for a lessee to use the land for the agreed purpose, within the agreed time.[56] According to this provision, unless otherwise the use type of the land is converted with the permission of the pertinent authority,[57] the land must be used for the intended purpose and the use time should be in line with the construction start-up time, completion time, and use time provided in the lease contract.

Consequently, the failure to use the land for the purpose for which it was designated (the use of the land is not compatible with the urban plan) [58] and the failure to commence or finish construction or the business for which the land was provided are grounds for terminating the contract by the Land Administration and Development Agency. The effect of terminating a lease contract due to the lessee's fault is that the lease down payment is returned to the lessee after deduction of costs and penalties.[59]

2.4.2. Expropriation as a Ground of Termination of Lease Contract

Expropriation under the Ethiopian legal system involves dispossessing land for public purposes upon payment of commensurate compensation. It is with this conception that Article 25(1)(b) of the proclamation empowers the land administering body to clear and take over urban lands upon payment of commensurate compensation, provided that it is in the public interest.[60]As a result, a government agency may acquire leasehold land and any property on it if the land is required for public purpose activities. The effect of the termination of the lease contract in this way is that a compensation commensurate with the loss of property on the land shall be paid to the lessee in

[55] *Ibid*, Article 18(1)

[56] *Ibid*, Article 21(1)(a)

[57] *Ibid*, Article 21(2)

[58] *Ibid*, article 26(3)

[59] *Ibid*, Article 25(3)

[60] *Ibid*, Article 25(1)(b)

accordance with the Expropriation of land holdings for public purposes, payment of compensation, and resettlement of displaced people proclamation no. 1161 of 2019.[61]

2.4.3. Non-Renewal of an Expired Contract, as a Ground of Termination of Lease Contract

The period of lease under Ethiopian law extends from 15 years for urban agriculture up to 99 years for residential use.[62] In principle, the proclamation provides for the use right over urban land to last for the lease period specified,[63] unless the lease holder's right over the land is terminated before its expiration under the two conditions specified above.

Ethiopia's urban land lease holding proclamation has a provision that allows renewal of the period of lease at the prevailing benchmark lease price of the land.[64] But it requires the fulfillment of further requirements,[65] which are essentially being set by regional state regulations and directives. The Addis Ababa City Administration Lease Regulation No. 49/2012 and Directive No. 11/2012, however, provide for the requirements that can be used to not renew the period of the lease instead of providing the requirements of renewal.[66] Accordingly, when there is a change in the structure plan, when the plot is required for public purposes, or when it is impossible to upgrade the existing development to the level of development the area requires, the period of lease will not be renewed.[67]

The law clearly defines lease expiration and non-renewal for reasons related to one of the aforementioned causes as grounds for terminating a leasehold interest in urban land.[68] The effect in such circumstances is that no compensation shall be paid[69] a and the lessee is duty-bound to

[61] *Ibid*, Article, 26(1)

[62] *Ibid*, Article 19(1) and (2)

[63] *Ibid*, Article 18(1)

[64] *Ibid*, Article 19(1)

[65] *Ibid*

[66] The Addis Ababa City Administration Land Lease Regulation no. 49/2012, article 45 and The Addis Ababa City Administration Land Lease Directive no. 11/2012, Article 61

[67] *Ibid*

[68] *Lease Proc*.(n5), Article 25(1)(c)

[69] *Ibid*, Article 19(1)

hand over the land by removing the property within a period of one year.[70] Here, the law doesn't allow the lessee to pass through the urban land clearing and grievance application process provided in the law.

2.5. Urban Land Clearing Process

As stated in the preceding sections, urban land clearing entails public purpose expropriation and lease contract termination due to lessee breach of contract, when the use of the land is incompatible with the urban plan and the land is required for government projects, as well as lease contract expiry and non-renewal. The clearing process of a specific urban land and grievances relating to such clearance are dealt with, both under the urban land lease proclamation and the expropriation proclamation. Under the lease proclamation, the urban land clearing process starts with serving the landholder with notification of the clearing order.[71] However, under the expropriation proclamation, the clearing process begins with consultation with the landholders on the type, benefits, and general process of the project for which the land is needed.[72] Besides, under the lease proclamation, the period of notice is provided not to be less than 90 days[73] and the consultation relating to public purpose expropriation, as per the expropriation proclamation, shall commence at least one year before the disposition of the land, unless the land is urgently required for investment.[74] After conducting consultation with the landholders, the pertinent city or woreda administration shall adhere to the expropriation procedures provided through articles 8(c) to 8(g).

Despite these discrepancies, the scope of application of the clearance procedure under the lease and expropriation proclamation is overlapping. As it has been noted above, the land clearing procedure under the lease proclamation also applies to the public purpose expropriation of urban land. But the question remains whether it also applies to the expropriation of old possessions or only leaseholds. Besides, the scope of application of the expropriation proclamation is also unknown. Whether it applies only to old possessions and rural lands or also to lease holdings is

[70] *Ibid*, Article 25(5)

[71] *Ibid*, Article 27(1)

[72] *Expropriation Proc*. (n6), Article 8(1)(a)

[73] *Lease Proc*.(n5), Article 27(2)

[74] *Expropriation Proc*. (n6), Article 8(1)(a) and (b)

not clear. The scope of application of both laws provided under Article 3 of both proclamations further reveals their overlapping nature.

The lease proclamation is enacted to be applicable to "all urban centers within Ethiopia with regard to urban land"[75] and the scope of application of the expropriation proclamation is "...throughout the country in rural and urban centers in matters relating to land expropriation; payment of compensation; and resettlement of landholders whose land is expropriated for public purpose"[76]. Here the point of dispute unfolds when answering the question of which of the two laws governs the expropriation of a leasehold. As far as governing leasehold is concerned, the lease proclamation is specific, and as far as expropriation is concerned, the expropriation law is specific. But, as the expropriation proclamation was enacted later than the lease proclamation, it can be inferred that the expropriation proclamation is the prevailing law. Therefore, as far as the expropriation of all lands in Ethiopia, including a leasehold, is concerned, the governing law should be the expropriation proclamation.

2.6. Urban Land Clearance Related Disputes Resolution

A dispute relating to urban land clearance emanates from the disposition act of the concerned government agency. An urban holder may feel aggrieved by the dispossessing acts of the agency. The agency may commence the land clearance process on any of the grounds provided in the above sections. However, the landholder may challenge the agency's clearance process if the substantive grounds for urban land clearance are not met and the procedural steps prescribed by law are not followed. Hence, the law has provided a process and a body before which such a dispute or grievance of a landholder should be entertained. Both the lease and expropriation proclamations have provided different processes and bodies before which such grievances should be taken. In this subsection, the legal procedures provided by both the lease and expropriation laws to entertain disputes emanating from the dispossession measures taken by the concerned government agency shall be briefly discussed.

[75] *Lease Proc*.(n5), Article 3

[76] *Expropriation Proc*.(n6), Article 3

2.6.1. Urban Land Clearance Dispute Resolution Under the Lease Proclamation

Under the lease proclamation, a leaseholder who is served with a clearance order is provided with the right to contest the order if he, she, or it is aggrieved by such an order of the land administering agency. However, such rights are not to be exercised before the judiciary. The proclamation allows the leaseholder to file a grievance with the appropriate land administering body within 15 working days of receipt of the order for legally occupied land and within 7 working days when the land is illegally occupied.[77] The land-administering body is also duty-bound to decide on such grievances and notify the party in writing.[78] An appeal against such a decision can then be brought before an Appellate Tribunal within 30 days of being notified. The appellate tribunal is also duty-bound to entertain the matter and pronounce its judgment within 30 working days.[79] And the decision of the Tribunal shall be final regarding all matters except the amount of compensation.[80] After exhaustion of these remedies, the party dissatisfied with the amount of compensation can appeal for judicial review before municipal or regional high courts after handing over the contested land to the land administering agency.[81] The question of why the law grants such power of review to the land administering agency and the tribunal exclusively on matters other than the amount of compensation is one of the themes of this chapter.

2.6.2. Urban Land Clearance Dispute Resolution Under the Expropriation Proclamation

As far as expropriation of landholding rights is concerned, the expropriation proclamation provides for another institution and procedure intended to handle grievances relating to public purpose expropriation. The bodies for hearing complaints established under this proclamation are the "Complaint Hearing Body" and the "Appeal Hearing Council.".[82] The complaint hearing body

[77] *Lease Proc*.(n5), Article 28 (1) and (2)

[78] *Ibid*, Article 28 (3)

[79] *Ibid*, Article 29(2)

[80] *Ibid*, Article 29(3)

[81] *Ibid*, Article 29(4) and (5)

[82] *Expropriation Proc*.(n6), Article 18

reviews the expropriation order served to the landholder, and the Appellate Council reviews such a judgment by the complaint hearing body.[83] Unlike land clearance-related grievances under the lease proclamation, a complaint relating to expropriation may be sought before these bodies by the landholder or a party who has a claim or interest in the property to be expropriated. A party dissatisfied with the decision of the council is entitled to file its appeal before the Regional High Courts and Federal First Instance Courts, in the case of Addis Ababa and Diredawa, on all matters.[84] Unlike the lease proclamation, a party who appeals before a court is not obliged to hand over the land at the first judicial review. However, if the party intends to appeal to the next court level after a decision is rendered on the matter by the Regional High Courts or the Federal First Instance Courts, as in the case of Addis Ababa and Diredawa, the party shall be bound to handover the expropriated land to the concerned government body.[85] The period of limitation to file expropriation order-related complaints before both the administrative tribunals and the courts is thirty days, starting from the date of the service of the expropriation order or written notice of the decision of such bodies.[86]

In general, in the urban land clearance dispute settlement process, under both the lease and expropriation laws, we have the involvement of (1) the administrating agency and (2) the administrative tribunals, which undertake an *administrative review,* and (3) the court, which undertake *a judicial review*. And these review mechanisms will be discussed in detail under Chapter 3 of this thesis, in light of the general concept of review of administrative decisions and existing practice.

[83] *Ibid,* Article 19 and 20(1)

[84] *Ibid,* Article 20(2)

[85] *Ibid,* Article 20(2)

[86] *Ibid,* Article 19 and 20(1) and (2)

CHAPTER THREE

Review of Urban Land Clearance Grievance in Ethiopia

3.1. INTRODUCTION

In the foregoing chapter, we have seen that "land clearance" under the lease proclamation refers to the legal process of dispossessing or taking a land and the rights over it from the holder. Besides, we have also discovered the legal remedies provided for a landholder dissatisfied with the land-taking decision of the agency. Accordingly, under the lease proclamation, a leaseholder aggrieved by the administrative decision of land clearance is allowed to file a grievance before the appropriate land administering body for administrative review. An appeal against the decision of the agency can then be made before an Appellate Tribunal (for administrative adjudication), and the decision of the Tribunal shall be final regarding all matters except the amount of compensation. After exhaustion of these remedies, the party dissatisfied with the amount of compensation can appeal for judicial review before the municipal or regular high courts. However, when it comes to the expropriation proclamation, the law doesn't provide for an internal administrative review of a grievance relating to an expropriation case. It instead creates two tribunals that can hear the case on first instance jurisdiction and appeal. These special administrative adjudicators are the Complaint Hearing Body and the Appeal Hearing Council. A party dissatisfied with the decision of the council is entitled to file for judicial review before the Regional High Courts and Federal First Instance Courts, in the case of Addis Ababa and Diredawa, on all matters. In general, administrative review and judicial review are mechanisms set up to entertain urban land clearance-related grievances, both under the lease and the expropriation proclamation.

The concept of administrative review and judicial review, in general and with respect to urban land clearance disputes, will be discussed in this chapter, as will the power of administrative agencies, tribunals, and courts to review an administration decision of agencies, and the organization, membership, and power of tribunals under both the lease and expropriation proclamation, in light of jurisprudence, law, and practice.

3.2. Administrative Review of Urban Land Clearance Disputes

Separation of powers as a constitutional concept is basically about the allocation of power to different institutions and the prescription of the limits of those powers.[87] And its very purpose is to prevent abuse of power by not concentrating power in the hands of one organ, to protect liberty and the rule of law, and to ensure the efficiency of government.[88] The separation of government power between the legislative, executive, and judiciary organs is believed to be the "essence of constitutionalism" and the "universal criterion of constitutional government."[89] The legislative shall have the power to enact, approve, or amend laws; the executive will enforce these laws and run the country; and the judiciary shall interpret and apply the law. However, in practice, neither of these three organs confines themselves to such limited power. The contemporary doctrine of separation of powers demands sufficient interaction, check, and balance, not organs of government "operating in isolation from each other."[90] Besides such interactions, sometimes a power enshrined in one organ might be performed by another. Several jurisdictions have delegated certain powers that are inherently vested in one organ of government to another. Hence, it is common to see when certain legislative powers are given to the judiciary and the executive: executive power is given to the legislature, and judicial power is given to the executive.

The executive organ, which is a composition of various administrative agencies, in addition to its inherent executive power, may also undertake quasi-judicial and quasi-legislative functions[91] The quasi-judicial power vested in the administrative agency usually emanates from their administrative action or decisions. As a result, grievances relating to administrative decisions or

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[87] Hilaire Barnett, *Constitutional and Administration Law* (10th edn, Routledge 1995).

[88] R. Albert, 'Presidential Values in Parliamentary Democracies' (2010) 8 International Journal of Constitutional Law 207; Magill, above n 43, as cited by Kavanagh A, 'The Constitutional Separation of Power', *Philosophical foundations of constitutional law* (1st edn, Oxford University Press 2016)

[89] M. J. C. Vile, Constitutionalism and the Separation of Powers (Oxford: Oxford University Press, 1967), 97; E. Carolan, The New Separation of Powers: A Theory of the Modern State (Oxford: Oxford University Press, 2009), 18, as cited by Kavanagh A, 'The Constitutional Separation of Power', *Philosophical foundations of constitutional law* (1st edn, Oxford University Press 2016)

[90] *Barnett* (n88)

[91] Jha, Abhishek Kumar, 'Administrative Tribunals of India': A Study in the Light of Decided Cases (January 22, 2012). Available at SSRN: https://ssrn.com/abstract=1989780 or http://dx.doi.org/10.2139/ssrn.1989780 National University of Study and Research in Law, Ranchi

actions are preferred to be settled through administrative review. The "inadequacy of the traditional judiciary to effectively decide administration-related matters, especially when it came to technicalities,[92] and the slow, costly, and overly procedural nature of formal judicial adjudication are commonly used to justify the need for administrative adjudication.[93] On the other hand, administrative adjudication is preferred for "the speedy, cheap, and decentralized decision of many cases; and the need for expert knowledge in the tribunal, whose members may include both lawyers and also other professionals or lay persons"[94] Another fact is that courts are not equipped to resolve all disputes arising from government functions, as doing so requires specialized knowledge and procedures.[95] Besides, governments need to safeguard the rights of citizens and the efficiency of their government.[96]

3.2.1. Administrative Review by Administrative Agency

Internal administrative review is made at the institutional level before the case is even channeled to administrative tribunals. Review by an administrative agency allows "a disappointed claimant to appeal adverse decisions to an authority that has the power to reverse, remand, or affirm those decisions." [97] In some jurisdictions, administrative review at the agency level is a mandatory prerequisite to an appeal before tribunals and courts.[98]

Under both the lease and expropriation proclamation, the specific administrative agency that involves itself in urban land clearance dispute settlement is the land administrating agency. This agency, especially in the case of leasehold land clearance, is clearly empowered to review its own

[92] *Ibid*

[93] *Ibid*

[94] A.W Bradley, K.D Ewing and C.J.S Knight, *Constitutional and Administrative Law* (16th edn, Pearson Education Limited 2015), p 601

[95] *Ibid*, P. 602

[96] Albert Mumma, 'The Role of Administrative Dispute Resolution Institutions and Processes in Sustainable Land Use Management: The Case of the National Environment Tribunal and The Public Complaints Committee of Kenya' (2006) 10 Land Use Law for Sustainable Development. P.256

[97] Hausman, David, Reviewing Administrative Review (January 6, 2020). Yale Journal on Regulation, Forthcoming, Available at SSRN: https://ssrn.com/abstract=2816538 or http://dx.doi.org/10.2139/ssrn.2816538

[98] Robert Thomas, 'A Different Tale of Judicial Power: Administrative Review as A Problematic Response to The judicialization of Tribunals' [2019] Public Law. P. 537-562

administrative decisions before the case is taken to the next administrative tribunal, namely the Land Clearance and Compensation Appeal Tribunal. But such an internal administrative review within the agency is not available under the expropriation proclamation. However, the administrative procedure proclamation no. 1183 of 2020, which was enacted to

> guarantee administrative justice by promoting culture of transparency and accountability through legally establishing a system of judicial review for persons who might be aggrieved by acts of administrative agencies, in their rule-making and decision-making capacities,[99]

provides for a person dissatisfied with a final administrative decision of an agency to seek a judicial review on the matter.[100] The proclamation also requires an agency to exhaust all internal remedies before seeking judicial review.[101] But exhaustion of administrative remedies is not mandatory where it's provided otherwise by the law[102] or where there is undue delay by the agency in providing remedies.[103] According to these provisions, exhaustion of administrative remedies is mandatory for judicial review or taking a case before an ordinary court of law. However, these provisions specifically and the proclamation as a whole have nothing to say about administrative matters that are assigned to special tribunals by separate laws. Therefore, exhaustion of internal administrative review before taking a case before administrative tribunals is not clearly provided under this law.

Under the expropriation proclamation, a person dissatisfied with an expropriation decision of an agency is not provided with the option of petitioning the authority within the agency. The available option here is to apply for an administrative adjudication outside the agency. Therefore, since whether this has an effect on the procedural rights of a person is the main question, the applicability of the administrative proclamation on the administrative due process already set by other special laws is not clear. On the other hand, those procedures under the administrative procedure laws that

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[99] Administrative Procedure Proclamation, Proclamation no. 1183/2020, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 26th Year No. 32, ADDIS ABABA, 7th April, 2020, Preamble

[100] *Ibid,* Article 51

[101] *Ibid,* Article 52(1)

[102] *Ibid,*

[103] *Ibid,* Article 52(2)

make mandatory an internal review by the concerned agency are for judicial review and not for administrative adjudication of a case by special tribunals, as is the case under the lease and expropriation proclamation. Therefore, one may argue that there is no law that clearly makes mandatory exhaustion of internal administrative review for submission of a case before the tribunals, both under the expropriation proclamation and the lease proclamation.

But the writer of these theses believes that both the lease and the administrative procedure law should be interpreted in a way that makes it mandatory, after exhaustion of internal review by the land administering agency, to take a case before the external administrative adjudicating tribunals. One reason is that the very purpose of reviewing administrative decisions within an authority is to give the deciding agency a chance to recheck and correct its own adverse decisions with little cost (as expertise and litigation fees are not involved) and within a short time. Therefore, making internal review mandatory will enable the aggrieved party to at least get a chance of reconsideration without expense and within the shortest time possible. The other logic is that the special tribunals under both the lease and expropriation proclamations are quasi-judicial bodies. They are not either judicial or administrative bodies. They are found somewhere between the two. But they still adjudicate cases. Therefore, even if the administrative procedure proclamation makes exhaustion of internal review mandatory for judicial review, the same logic should apply to administrative adjudication of cases as long as they both adjudicate cases and work towards attainment of justice.

Under the lease proclamation, the procedure and the detailed powers and duties of the land administrating agency when reviewing a grievance relating to urban clearance are not provided. The proclamation provides that the landholder served with the land clearing order file a grievance with the appropriate land administering body within 15 working days of receipt of the order for legally occupied land and within 7 working days when the land is illegally occupied.[104] When doing so, the aggrieved party alleging infringement of a right or benefit should present his, her, or its claim with evidence substantiating the cause of action.[105] The land-administering body is also

[104] *Lease Proc.(n5),* Article 28 (1) and (2)

[105] *Ibid*, Article 28(2) and (3)

duty-bound to decide on such grievances and notify the party in writing.[106] The scope of review by the agency is not set by law. However, the legality, procedural, and factual issues of the urban land clearing order should remain the main task of the reviewing authority. On the other hand, the law doesn't set a time frame within which the agency should decide on the grievance. One of the many reasons laws tend to enable administrative agencies to review their own decisions is to enhance the speedy resolution of cases. Specifically, the more cases are taken to tribunals and courts, the more their resolution tends to be delayed. Therefore, the lease proclamation should have set a time limit within which the agency should resolve the case and should also encourage the petitioner to proceed with the next step if the land administering administrative agency is unable to decide within the time limit set by the law, as is the case under the administrative procedure proclamation.

The administrative procedure proclamation allows judicial relief where there is a protracted administrative delay. As a result, the petitioner is not obliged to wait for the decision of the administrative agency but may petition before a court of law where there has been an undue delay by the agency in providing remedies.[107] Therefore, with the same logic, a landholder aggrieved by a land clearance order who petitioned for review before the agency should be allowed to proceed with the next step if the land administering agency failed to resolve and notify its decision within a reasonable time frame.

In practice, the Addis Ababa City Administration, Urban Land Clearance, and Compensation Appeal Tribunal always requires a plaintiff to present the decision given at an agency level (particularly, from the Land Development and Urban Renewal office of the concerned sub-city).[108] If a plaintiff cannot present such a decision, the appeal cannot be filed at the tribunal.[109] Especially in situations where the land development and urban renewal office is not willing to notify in writing

[106] *Ibid*, Article 28 (3)

[107] *Admin. Pro. Proc*. (n100) Article 52(2)

[108] Interview with Fikerte Negusie, 'Registrar, Head, Addis Ababa City, Land Clearance and Compensation Appeal Tribunal' (2022)

[109] *Ibid*

its decision on the grievance of the landholder, the party has no legal remedy. As a result, such cases will sometimes end up in courts of law, which have no jurisdiction.[110]

3.2.2. Administrative Review by Administrative Tribunals

3.2.2.1. Constitutional Bases of Tribunals

Administrative adjudication is carried out by tribunals that are established outside the ordinary court system when acts of public administration are questioned. These tribunals are not part of the executive or judiciary, but they are found somewhere between the administrative agencies and the courts.[111] Their nature is judicial, as they entertain cases, and also administrative, because the case that is referred to them is administrative.[112]

For the justifications provided in the above sections, it makes sense to establish special tribunals to entertain administrative cases, even if the case has already been reviewed internally by the agency concerned. However, there are times when the constitutionality of such quasi-judicial bodies or tribunals is called into question. The constitutional basis of tribunals has always been a source of contention in Ethiopia's legal system. Art. 37(1) of the FDRE Constitution states that "everyone has the right to bring a justifiable matter before and to obtain a decision or judgment by a court of law or any other competent body with judicial power."[113] On the other hand, Art. 78(4) of 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 the very outset, one can easily conclude that Article 37 (1) allows the establishment of tribunals and Article 78 (4) prohibits the establishment of tribunals, which take the place of judicial power courts and do not

[110] *Ibid*

[111] *Muma* (n97)

[112] *Kumar* (n92) P 4

[113] The Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1/1995, *Federal Negarit Gazetta of the federal democratic republic of Ethiopi*a, 1st Year, No. 1 ADDIS ABABA, 21st August, 1995, Article 37(1)

[114] *Ibid*, Article 78(4)

follow the normal legally prescribed procedures. But to understand the whole package, one needs to assess the very intent of the drafters of the Constitution.

Aschalew has plainly addressed the contentious issues pertaining to the constitutionality of administrative tribunals in Ethiopia as follows:

> The issue of tribunals was raised during the discussion of the draft constitutional provisions by the members of the Constitutional Assembly. The issue of tribunals was discussed in relation to Art. 37(1) of the draft which stated "that 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 power." It was the phrase "any other competent body with judicial power" that was a source of heated debate as participants seriously questioned as to what message was conveyed by this Phrase. The panelists who were providing answers to the questions underscored that courts are not the only state organs that entertain cases; rather, administrative tribunals, such as the tax tribunals, could accept cases and could give binding decisions." The reading of Art. 37(1) of the FDRE Constitution together with its drafting history indicate that administrative tribunals … were duly recognized by the makers of the Constitution although the Constitution does not unequivocally declare the status of administrative tribunals …. Reference to legislative intent thus shows that the words "any other competent body with judicial power" in Article Art. 37(1) of the FDRE Constitution can be interpreted as administrative tribunals …. The status of administrative tribunals was also raised during the discussion on Art. 78(4) of the FDRE Constitution which 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." As we can see from the minutes of the Constitutional Assembly, the discussion centered on the non-establishment of special or ad hoc criminal courts as those that were operating during the early years of the Dergue Regime for the purpose of punishing political dissent and armed opposition groups.
>
> The Minutes show that Art. 78(4) was not meant to ban the establishment of administrative tribunals …. Therefore, it can cogently be concluded that the FDRE Constitution gave recognition to administrative tribunals … so long as the inherent powers of the

> regular courts are not affected by the existence of particular administrative tribunals.[115]

Therefore, the Appeal Hearing Tribunal, established by the lease proclamation, the Complaint Hearing Body, and the Appeal Hearing Council, established under the expropriation proclamation to entertain a land clearance dispute in Ethiopia, have constitutional recognition and basis.

3.2.2.2. Establishment and Membership

A. Land Clearance and Compensation Appeal Tribunal under the Lease Proclamation

The administrative tribunal or adjudicating body empowered to entertain urban land clearance disputes under the lease proclamation is the "Urban Land Clearance and Compensation Appellate Tribunal," also called the "Appellate Tribunal"[116]. The regional government and city administrations of Addis Ababa and Diredawa are duty-bound to establish this tribunal. The law is silent about the administrative level at which the appellate tribunal should be established. Especially when it comes to regional states, whether such a tribunal is to be established at regional, zonal, woreda, or city level is not clear. But the law states that the tribunal's accountability is to the council of the region or the city administration. City administration being defined as the city administrations of Addis Ababa and Diredawa under the law, the proclamation clearly implies that the tribunal is to be established at a regional level. However, if the tribunal is to be established at a regional level, it can't be easily accessible. Hence, instead of taking the case before the tribunal, it will be very easy for the aggrieved party to lodge their claim with the nearest woreda or city courts.

Some regional states, instead of establishing the tribunal, have chosen to provide for an alternative urban land clearance grievance hearing body within the existing administrative structure. The Oromia Regional State, for instance, has provided for alternative administrative review of urban land clearance grievances, which is applicable until the Land Clearance and Compensation

[115] Aschalew Ashagre Byness, 'Tax Appeal Proceedings Before the Federal Tax Appeal Commission in Ethiopia: Critical Reflections' (2020) 14 Mizan Law Review.

[116] *Lease Proc*. (n5) article 30(1)

Tribunal is established in the region.[117] The regional lease laws provide for the aggrieved party to lodge his, her, or its grievance first before the land administering agency.[118] If not satisfied by the decision of the agency, the party may then lodge an appeal, first before the mayor of the specific city or before the woreda administrator[119] and then appeal to the Regional Land Administering Agency (if the city is accountable to the region) and to the Zonal Land Administering Agency (if the city is accountable to the Zonal Administration).[120] A party dissatisfied with the decision of the Zonal Land Administering Agency shall then appeal to the Regional Land Administering Agency.[121] A party dissatisfied by the decision of the Regional Land Administering Agency may appeal before the office of the president of the region, and the decision of the office of the president shall be the final administrative decision.[122]

The above appeal procedures provided by the regional state totally contradict the provisions of the proclamation. The federal government, which is responsible for enacting laws pertaining to land[123] has delegated only certain powers to the regions and city administrations.[124] In this instance, the regional and city administrations are only empowered to establish the Appellate Tribunal. However, what is done by the Oromia regional state is a complete contradiction of the power delegated to regional states by the proclamation. The region cannot establish a parallel administrative review process by redirecting the power that is given to the Tribunal. The practice also shows that cities in the region are applying this procedure to entertain all urban land-related grievances, including land clearance.[125]

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[117] Regulation enacted to Revise Oromia Urban Land Lease Regulation no, 155/2013, Regulation no. 182/2016, Article59(2)

[118] *Ibid*, Article 58(1)

[119] The Revised Oromia Urban Land Lease Directive no.4/2016, Oromia Urban Land Development and Management Agency, Feb. 2016. Article 70(2)

[120] *Ibid*, Article 70(3)

[121] *Ibid*, Article 70(4)

[122] *Ibid*, Article 70(4)

[123] *FDRE Const*.(n114) Article 51(5)

[124] *Lease proc*. (n5) Article 30(1)

[125] Interview with Yusuf Ahmed, 'Legal Expert' Adama City Administration Land Administration and Development Agency, (2022)

The Addis Ababa City Administration, on the other hand, has enacted a separate directive that intends to govern issues pertaining to urban land clearance, compensation, and grievance handling procedures.[126] This directive is enacted based on the lease proclamation and the then relevant expropriation proclamation no. 455/2005.[127] Under this directive, a person dissatisfied with the decision of the land administering agency is entitled to lodge an appeal with the Addis Ababa City Administration Land Clearance and Compensation Appeal Tribunal.[128] Further criteria and the working procedure of the tribunal are not provided in the directive.

In terms of Tribunal members, the proclamation specifies that the minimum number of members is five.[129] However, neither the proclamation nor the regional regulations and directives have dealt with the composition of members of the tribunal.

The current composition of the Addis Abeba City Administration, Urban Land Clearance, and Compensation Appeal Tribunals reveals that four members of the tribunals are from the city's Land Development and Urban Renewal Agency, Housing Development Corporation, Finance and Economic Development Bureau, and Addis Abeba Chamber of Commerce, and the remaining one member is the tribunal's president, who is an appointee legal expert.[130] The selection and appointment of all parties are undertaken by the council of the city administration.[131]

B. Complaint Hearing Body and Appeal Hearing Council under the Expropriation Law

When it comes to the expropriation proclamation, the quasi-judicial bodies intended to entertain a grievance relating to an expropriation case are two tribunals. These tribunals are the Complaint

[126] የአዲስ አበባ ከተማ አስተዳዳር ለሕዝብ ጥቅም ሲባል በሚለቀቅ መሬት ላይ ለሰፈረ ንብረት ስለሚከፈል ካሳና ምትክ ቦታ አሰጣጥ የተሻሻለ አፈፃፀም መመሪያ ቁጥር 19/2006

[127] *Ibid*, Preamble

[128] *Ibid*, Article 24 and Addis Ababa City Government Revised Charter Proclamation, Proclamation No. 361/2003, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 9th Year No. 86, ADDIS ABABA, 24th July, 2003, Article 40(4) and 49

[129] *Lese proc.* (n5), Article 30(4)

[130] *Interview with Negusie*, (n109)

[131] *Ibid*

Hearing Body and the Appeal Hearing Council.[132] The Complaint Hearing Body has jurisdiction in the first instance, and the Appeal Hearing Council has jurisdiction on appeal. As a result, a person who receives an expropriation order shall first file its case before the Complaint Hearing Body[133] and then appeal to the Appeal Hearing Council.[134] In the same way as the then-Lease Proclamation, the power to establish these two bodies is delegated to the regions and city administrations. Unlike the lease proclamation, which has nothing to say about the administrative level at which the tribunal is to be established, the expropriation proclamation grants the regional states and city administrations the power to establish these tribunals "in some of their towns as it deemed necessary."[135] However, in a way that deviates from these discretions given to regions and city administrations, the Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Council of Ministers Regulation No. 472/2020 makes mandatory the establishment of both the Complaint Hearing Body and the Appeal Hearing Council at Woreda or city level,[136] and the accountability of both tribunals is to the Woreda or city council.[137]

The practice of the Addis Ababa City Administration shows that, currently, the city administration is establishing a complaint hearing body at the sub-city level. he practice of the Addis Ababa City Administration shows that, currently, the city administration is establishing a complaint hearing body at the sub-city level.[138] Besides, the city has been using the Land Clearance and Compensation Appellate Tribunal, established as per Regulation Number 30/2002, to entertain cases under both the lease and expropriation proclamation No. 455/2005. [139] In the same vein, the city council reestablished these tribunals on February 11, 2022, based on the revised Expropriation

[132] *Expropriation Proc.* (n6) Article 18(1)

[133] *Ibid,* Article 19(1)

[134] *Ibid,* Article 20

[135] *Ibid,* Article 18(2)

[136] Expropriation of Land Holdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Council of Ministers Regulation, Regulation no. 472/2020, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 26th Year No. 61, ADDIS ABABA, 27th July, 2020, Article 40(1)

[137] *Ibid,* Article 40(3) and 41(3)

[138] *Interview with Negusie,* (n109)

[139] *A.A. Expropriation Directive*, (n127), Preamble and *Interview with Negusie,* (n102)

of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019.[140] The Tribunal is reestablished as per the directions set under the expropriation proclamation and the regulation.[141] However, it will entertain appeals emanating from the lease and the expropriation proclamation.[142] The expropriation regulation has a way-out provision that allows a landholder to take its case before the regular courts until the Complaint Hearing Body and the Appeal Hearing Council are established by regional states and city administrations.[143]

The minimum number of members of the Complaint Hearing Body is three, of whom one should be a lawyer by profession.[144] For the Appeal Hearing Council, the minimum number of members is five, and at least two of them should be lawyers.[145] However, even if it represents an advancement compared to the composition of the existing tribunal in Addis Ababa, the regulation is silent about the composition of the remaining members. The very purpose of these tribunals requires their members to have pertinent qualifications that enhance the speedy and efficient rendition of judgment on matters brought before them. Therefore, it's always crucial to define the knowledge and professional qualifications required to be a member of these tribunals. Unless otherwise, the efficiency required of these tribunals will not be realized. Therefore, besides the criteria that mandates lawyers to be members of the tribunals, a criterion that can add a person with "knowledge of public sector management and processes and an understanding of the administrative decision-making process"[146] to the tribunals should also be included in the law.

3.2.2.3. Scope of Power

[140] Hamid Awol, 2022. በአዲስ አበባ ከተማ ከመሬት ይዞታ እና ካሳ ጉዳዮች ጋር የተያያዙ አቤቱታዎችን የሚሰማ ጉባኤ ተቋቋመ. *Ethiopian Insider*, [online] Available at: <https://ethiopiainsider.com/2022/5952/> [Accessed 28 April 2022].

[141] *Ibid*

[142] *Interview with Negusie*, (n109)

[143] *Expropriation Regulation* (n137), article 39(6)

[144] *Ibid*, Article 40(2)

[145] *Expropriation proc.* (n6) Article 41(2)

[146] Administrative Review Council, Better Decisions: Review of Commonwealth Merits Review Tribunals, Report No 39 (1995) 72 [4.10]. as cited by Bannister J, Olijnyk A, and MacDonald S, *Government Accountability: Australian Administrative Law* (2nd edn, Cambridge: Cambridge University Press 2022). p.271

As it has been discussed, the ground for filing a complaint before both the land administering agency under the lease proclamation and the complaint hearing body under the expropriation proclamation is the issuance of a land clearance order by the pertinent body. The decision made by these bodies is the basis for an appeal to be lodged before the Appeal Tribunal of the lease proclamation and the Appeal Hearing Council of the expropriation proclamation.

In chapter two of this thesis, it is also stated that land clearance under both the lease proclamation and the expropriation proclamation may result from termination of the lease contract due to failure to use the land in accordance with the law, expropriation, or the expiry or non-renewal of the lease contract, whereas under the expropriation proclamation it only results from public purpose expropriation. As a result, a landholder who challenges an urban land clearance order must also challenge the grounds for the order. In other words, an aggrieved party is expected to challenge the lease contract termination, the legality of the denial of renewal of an expired lease contract, or the wrongfulness of a public purpose expropriation decision made by the pertinent government agency.

As a result, the administrative review bodies' authority under the lease and expropriation proclamation ranges from investigating the termination of a lease contract due to failure to use the land in accordance with the law to leasehold expropriation, lease contract expiry and non-renewal, and the expropriation of a land for public purposes. The expropriation-related Complaint Hearing Body is empowered to review a complaint submitted to it with regard to clearance, substitute land, compensation, and other related grounds[147] and by the same token, the Appeal Hearing Council shall review a decision made by the Complaint Hearing Body in relation to the issues decided by the Complaint Hearing Body. In exercising such power, these bodies can review both factual and legal matters and confirm, vary, or reverse a decision rendered by the administrative agency or any previous tribunal.[148]

However, the practice at Addis Ababa City's Land Clearance and Compensation Appeal Tribunal, which is empowered to entertain grievances emanating under the lease and expropriation

[147] *Expropriation Regulation.* (n137), Article 42(1)

[148] *Lease proc.* (n5), Article 30(2)

proclamation, reveals that the Tribunal has so far entertained only issues relating to the expropriation of leasehold and old possessions, and that secondly, landholders can only challenge the tribunal on issues relating to compensation and substitute land.[149] The tribunal doesn't review the legality of the expropriation measure and reverse the expropriation decision.[150] The utmost thing it will do, when it finds that the expropriation measure doesn't fulfill the due process requirement and when proper notice is not given to the landholder, is make the land administering agency pay a reasonable rent for the period of notice not given to the landholder.[151] As a result, the executive has complete control over land clearance in the city. Besides, the Tribunal has not so far received an appeal relating to the termination of a lease contract, and its limit of power to review the termination of a lease contract for reasons not attributable to public purpose expropriation has not been tested yet.[152]

3.2.2.4. Adjudication Procedure

Tribunals, by their very nature, are expected to have "simple, quick, inexpensive, and informal"[153] procedures or "the minimum of formality".[154] They are not bound by legal technicalities and procedures.[155] However, they are expected to adhere to the rules of procedural fairness.[156] Their basic difference with courts is that "tribunals have much more freedom to adopt informal procedures."[157]

The Appeal Tribunal, established under the lease proclamation to entertain land clearance grievances, has not been provided with the working procedure. The proclamation only entitles the

[149] *Interview with Negusie*, (n109)

[150] *Ibid*

[151] *Ibid*

[152] *Ibid*

[153] Judith Bannister, Anna Olijnyk and Stephen MacDonald, *Government Accountability: Australian Administrative Law* (2nd edn, Cambridge: Cambridge University Press 2022). P. 273

[154] *Ibid*

[155] *Ibid*

[156] *Ibid*

[157] *Ibid*

Tribunal not to adhere to the Civil Procedure Code when conducting its affairs.[158] But the law mandates that the Tribunal be governed by the expedient procedures to be issued by regional states and city administrations. But no regional state or city administration has issued the working procedure for the tribunal so far. As a result, the expedient method that was promised by the proclamation has not materialized yet.

Under the lease proclamation, a landholder aggrieved by the decision of the land administering agency with regard to the land clearance order has the right to lodge an appeal before the Appeal Tribunal within 30 days of receipt of the decision.[159] However, the proclamation has nothing to say if the landholder cannot file an appeal within the time limit provided for reasons beyond his, her, or its control. However, there are exceptional situations when the Addis Ababa City Land Clearance and Compensation Tribunal has allowed an appellant who produced a supporting document justifying the existence of reasons beyond their control to file an appeal.[160] Besides the hearing procedure, the right of the administrative agency to be heard is provided not only by the proclamation but also by regulations that are enacted by regional states and city administrations. As a result, when a landholder files a grievance with the Appeal Tribunal, it is unclear whether the administrative agency will be summoned to participate in the appeal hearing process. The Addis Ababa City Land Clearance and Compensation Tribunal, on the other hand, usually summons the land administering agency and conducts a full flagged hearing in accordance with the civil procedure code.[161] As far as the time limit within which an appeal tribunal is expected to render its decision is concerned, the proclamation provides for the tribunal to render its decision within 30 days of receiving the appeal.[162] But the law is still silent with regards to complex cases that may require further inquiries and extended time. The practice at the Addis Ababa City Land Clearance and Compensation Tribunal shows that cases are not being resolved in such a short time

[158] *Lease proc*. (n5), Article 30(8)

[159] *Ibid*, Article 29(1)

[160] *Interview with Negusie,* (n109)

[161] *Ibid*

[162] *Lease proc*. (n5), Article 29(2)

as the tribunal usually orders for further evidence and expertise analyses from different agencies of the city administration.[163]

When it comes to the complaint hearing body and the appeal hearing council, established under the expropriation proclamation, the regulation enacted by the council of ministers has briefly tried to give a general hint to the procedural matters pertaining to these quasi-judicial bodies. Unlike the appeal tribunal under the lease proclamation, the complaint hearing body and the appeal hearing council may use the litigation procedure under the Ethiopian civil procedure code.[164] The time limit to file a complaint on an order of expropriation before the Complaint Hearing Body is 30 days from the date of service of the expropriation order, and the time limit to file an appeal before the Appeal Hearing Council is also 30 days from receiving the decision of the Complaint Hearing Body.[165] As with the lease proclamation, there is no recourse under the expropriation proclamation and regulation if the landholder is unable to file a complaint within the time limit provided for reasons beyond his/her/its control. The way the proceedings before these bodies are conducted is not also addressed by the laws. However, the Addis Ababa city administration directive, endorsed by the city council to establish these bodies, has provided for the concerned administrative agency to be summoned by the tribunals upon receiving the complaint or the appeal.[166] If the agency fails to appear on the date specified, the hearing shall be conducted in absentia.[167] For both the Complaint Hearing Body and the Appeal Hearing Council, the time limit within which they are expected to render their decision is 30 days from the date of receiving the complaint or the appeal.

[163] *Interview with Negusie,* (n109)

[164] *Expropriation Regulation* (n137), Article 42(4) and 43(4)

[165] *Expropriation proc.* (n6), Article 19(1) and 20(1)

[166] *Ethiopian Insider, (n141)*

[167] *Ibid*

3.3. Judicial Review of Urban Land Clearance Disputes

Judicial review is conducted by courts,[168] as opposed to administrative review, which is conducted by administrative agencies or tribunals. From an administrative dispute perspective, the fundamental purpose of judicial review is to determine whether public authorities are acting in accordance with the laws. Hence, judicial review allows parties to challenge rulemaking actions, adjudicatory decisions, ultra-virus actions, due process considerations, abuse of administration discretions, and other administrative decisions and actions before a court of law.[169] Judicial review of administrative decisions, among other things, usually assumes that administrative remedies have been exhausted. This means administrative agencies and tribunals with primary jurisdiction should hear the matter before it's taken before regular courts.

The right to bring a justifiable matter before a court of law or any other competent body with judicial power is a constitutional right under Ethiopia's legal regime.[170] Under articles 19 and 20 of the Expropriation Proclamation No. 1161/2019, it is stated that a complaint relating to expropriation orders is first to be filed with the Complaint Hearing Body and then with the Appeal Hearing Council. However, a person dissatisfied with the decision of the council may lodge an appeal to the Federal First Instance Courts, in the case of Addis Ababa and Dire Dawa, and to regional High Courts, in the case of regional governments. If the party dissatisfied with the court's decision has surrendered the land holdings of the disputed land, the right to continue an appeal is also guaranteed.

With the same token, the Lease Holding Proclamation No. 721/2011 under Articles 28, 29, and 30 provides for a person to submit his grievance relating to urban matters such as land clearing orders to the appropriate body and then appeal to the Appellate Tribunal if aggrieved by the decision of the appropriate body. The decision by the Appellate Tribunal is final, unless it is related to compensation. Accordingly, the law provides for a person dissatisfied with the decision of the

[168] Cane, P., 2022. Judicial Review and Merits Review: Comparing Administrative Adjudication by Courts and Tribunals. In: R. Susan and L. L. Peter, ed., *Comparative Administrative Law*. Edward Elgar Publishing, p.426

[169] Samuel Freeman, 'Constitutional Democracy and The Legitimacy of Judicial Review' (1990) 9 Law and Philosophy, 341

[170] *FDRE Const*.(n114), Article 37

Tribunal on the issue of compensation to lodge an appeal with the municipal appellate court or, in its absence, with the regular high court.

The source of power for the judiciary to review an administrative decision or action is the law, which is either a constitution or any other legislation.[171] The law may also limit the reviewability of administrative decisions or actions by the judiciary. There are a number of ways legislation may limit the inherent power of courts to review administrative actions or decisions. A "finality clause" is one way of restricting the judiciary from reviewing administrative actions or decisions. In this case, the law establishes the types of inquiries that the court may conduct by including a finality clause that states that administrative decisions are not appealable and cannot be challenged or reviewed by a court of law.[172] The lease proclamation has used this technique to limit issues that are subject to judicial review. Article 29(3) states, "Decisions of the Tribunal, except those relating to compensation, on issues of law and facts, including the claim of substitute land, shall be final."[173] Therefore, with regard to urban land clearance, payment or the amount of compensation is the only issue that is appropriate for judicial determination under the lease proclamation.

Restrictions on grounds of review are another limitation to judicial review.[174] Legislation may limit reviewable grounds by granting the party dissatisfied with the Appeal Tribunal's decision the right to appeal before regular courts only on the issue of compensation, as provided in the lease proclamation[175] Besides vesting exclusive jurisdiction on specific bodies (as is the case under the Lease and Expropriation Proclamation, which exclusively grants primary jurisdiction with regard to urban land clearance disputes to the Tribunals) and prescribing a time limit beyond which there can be no application of review,[176] like Article 29(5) [177] of the Lease Proclamation and Article

[171] Mark Aronson, Matthew Groves and Greg Weeks, *Judicial Review of Administrative Action and Government Liability* (6th edn, Law Book Co of Australasia 2017), p. 28

[172] *Ibid,* p. 1058

[173] *Lease proc.* (n5), Article 29(3)

[174] *Aronson and Groves,* (n172) P.1058

[175] *Lease Proc.* (n5), Article 29(4)

[176] *Aronson and Groves,* (n172) P. 1059

[177] *Lease Proc.* (n5), Article 29(5)

20(2) [178] of the Expropriation Proclamation, which both prescribe 30 days of lodging an appeal before regular courts.

The other major setback preventing an aggrieved landholder from appealing before a regular court is the duty imposed by the laws with respect to handing over the land to the land administering agency. The landholder is required to hand over the land under the lease proclamation if he, she, or it wishes to appeal the decision of the appellate tribunal[179] and handing over the land is required under the expropriation proclamation if the party wishes to appeal the decision of the regular federal first instance court or regional high courts.[180] The reason why the lease proclamation wants an appellant to hand over its landholding might emanate from the ground of judicial review it has set. Courts are only empowered to review the decision made by the appellate tribunal with regard to the amount of compensation. Hence, as any decision that is going to be rendered by the courts with regard to compensation cannot affect the decision made by the appellate tribunal with regard to disposition, it is justifiable for the law to demand the handover of the land before further appeal.

However, when it comes to the expropriation proclamation, the grounds of appeal are not restricted. It also means the landholder may also challenge, by way of appeal, the public purposelessness of the expropriation measure,[181] and courts can also reject the expropriation decision for the same reason. Therefore, it is not justifiable for the law to require the handing over of the expropriated land as a precondition. Because if the regular court finally finds the expropriation decision doesn't fulfill the test of public purpose, no land will be taken from the holder.

Apart from the above specific limitation on the reviewability of administrative decisions, there is also a general requirement of the exhaustion of administrative remedies, which makes a rehearing of an administrative decision by administrative agencies and tribunals with primary jurisdiction a prerequisite before the case is judicially reviewed. Chapter four of this thesis is exclusively dedicated to this issue.

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[178] *Expropriation Proc.* (n6), Article 20(2)

[179] *Lease Proc.* (n5), Article 29(5)

[180] *Expropriation Proc.* (n6), Article 20(2)

[181] *Ibid*, Article 5(4)

CHAPTER FOUR

Exhaustion of Administrative Remedies for Judicial Review of Urban Land Clearance Disputes in Ethiopia

4.1 INTRODUCTION

In chapter three of this thesis, we have seen that courts in Ethiopia have no inherent power with respect to entertaining urban land clearing disputes. Hence, the statutes that provide for reviewable grounds for urban land clearance-related decisions of the administrative agency and tribunals have also provided for when and how the courts can review such grievances. The exhaustion of administrative remedies is one of the prerequisites for courts to review urban land clearance decisions.

The doctrine of exhaustion of administrative remedies in general, as well as its availability under the Ethiopian legal system, specifically under the lease and expropriation proclamation, and its application before Ethiopian courts, are reasonably scrutinized in this chapter. When doing so, the decisions of the Federal Supreme Court Cassation Division, which is mandated to review basic errors of law committed by regional cassation benches and Federal Courts[182], are critically assessed.

4.2. Exhaustion of Administrative Remedies

In administrative law jurisprudence, the relationship between the administrative quasi-judicial bodies and the judiciary is always controversial.[183] As a result, the point at which judicial relief can be sought on an administrative decision is not clear.[184] But the general rule is that any available

[182] Federal Courts Proclamation, Proclamation No. 1234/2021, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 27th Year No. 26, ADDIS ABABA, 26th April, 2021, Article 10

[183] Interim Relief and Exhaustion of Administrative Remedies: A Study in Judicial Confusion' (1973) Duke Law Journal, Vol 10, no.10 P.286

[184] *Aronson and Groves,* (n172) P. 1059

administrative remedies must be exhausted before requiring judicial intervention.[185] The consequence of this rule is that a party who wants to challenge an administrative decision may only resort to judicial review after exhausting the legally prescribed mechanisms of reconsideration before the administrative agency or a tribunal.[186] It's after following these procedures that the administrative decision will be subjected to judicial review.[187] A party who seeks judicial review directly in court without using the existing appeal mechanism will be denied.[188]

The justification for the exhaustion of administrative remedies for judicial review basically lies with the protection of agency autonomy and the promotion of judicial efficiency.[189] The idea of protecting the autonomy of agencies emanates from the thought that agencies should have the main responsibility of correcting their administrative errors, not the courts.[190] Hence, agencies should get a chance to correct their mistakes by using their experience and expertise and, more importantly, compile a file for judicial review,[191] in case the issue is not settled there. Therefore, letting the courts review the decision without exhausting the local remedy would be a premature intervention.[192] The second justification is that, if agencies can correct their decisions through the administrative review mechanism, there would not be litigation before the judiciary, and even if there is a judicial review that comes after the administrative review, the court can efficiently render a decision as the file record may be more comprehensive and contain the expertise of the agency.[193]

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[185] *Ibid*

[186] Clive Lewis, 'The Exhaustion of Alternative Remedies in Administrative Law' (2022) 51 The Cambridge Law Journal, p 138-153.

[187] *Ibid*

[188] *Ibid*

[189] Peter A. Devlin, 'Jurisdiction, Exhaustion of Administrative Remedies, And Constitutional Claims' (2018) 93 New York University Law Review, P1240-1246

[190] *Ibid*

[191] *Ibid*

[192] Jack Beatson, 'The Need to Develop Principles of Prematurity and Ripeness for Review' (1998) 3 Judicial Review, P 79-84

[193] *Devlin*, (n190), 1249

4.2.1. Exhaustion of Administrative Remedies Under Ethiopian Law

As far as administrative remedies are concerned, the current appropriate law Ethiopia has is the Federal Administrative Procedure Proclamation. Article 52 of the proclamation reads:

> *Exhaustion of Remedies*
>
> 1/ Unless otherwise provided by law, a petitioner for Judicial Review is required to exhaust all remedies available within the Agency before petitioning the court for judicial review.
>
> 2/ Notwithstanding the rule under Sub Article (1) of this Article, where there is an undue delay on the part of the agency to provide remedies, the obligation to exhaust remedies will not apply.

Therefore, judicial review of an administrative decision requires exhaustion of all available remedies within an agency under the proclamation. Under this proclamation, it is also provided that, as far as administrative decisions are concerned, a judicial review can only be sought with regard to final administrative decisions.[194] This means that if administrative review is still available, there will be no judicial review. The only exceptions where exhaustion of administrative remedies is not mandatory are where it is otherwise provided by law or where there is undue delay by the agency in rendering decisions. Therefore, in general terms, any individual who intends to sue an executive organ of the federal government or city administrations accountable to the federal government,[195] with regard to their administrative decisions should utilize either the administrative review procedures through Article 20 to Article 47 of the administrative procedure proclamation or any other available procedure prescribed by special legislation.

As previously discussed, both the lease and expropriation proclamation grant preliminary jurisdiction for entertaining disputes through administrative review and allow judicial review on appeal in the case of urban land clearance disputes. The last administrative reviewer under the lease proclamation is the Appellate Tribunal, and the Appeal Hearing Council entertains matters under the expropriation proclamation. As a result, under the lease proclamation, a party dissatisfied with the decision of the Appellate Tribunal may appeal only on the issue of compensation, whereas

[194] *Admin. Pro. Proc*. (n100) Article 51

[195] *Ibid,* Article 2(2) and 3

under the expropriation proclamation, a party dissatisfied with the decision of the Appeal Hearing Council may file for judicial review before the Regional High Courts and Federal First Instance Courts, in the case of Addis Ababa and Diredawa, on all matters.

Hence, under the lease proclamation, there are matters that are not subject to judicial review (such as lease termination and the expropriation decision of the agency), whereas all matters are reviewable by courts when it comes to matters governed by the expropriation proclamation. Apart from this, even those matters designated to be judicially reviewable presuppose the exhaustion of administrative remedies under both legislations. However, the question remains: are these provisions mandatory or procedural? Are courts and disputants in Ethiopia observing these provisions of the laws? if not why? are not easy to answer.

In U.S. administrative law, the binding nature of an exhaustion requirement is identified based on whether it is jurisdictional or non-jurisdictional.[196] In a country with a well-developed common law court precedent, the exhaustion of an administrative remedy is jurisdictional when the intent to make it so is clearly implied by the lawmaking body. And in such circumstances, the "court must first establish whether the claimant has exhausted his or her remedies before addressing the merits."[197] On the other hand, if exhaustion is non-jurisdictional or the law doesn't clearly state that an administrative remedy is jurisdictional, then a court can dispose of cases without inquiring about the exhaustion issue.[198] Under Ethiopian law, we don't have such a legal precedent or philosophy, but the binding nature of this requirement seems to be an accepted fact, as we are going to discuss hereunder. Besides, making the exhaustion of an administrative remedy a simple procedural issue that is optional to be observed will frustrate its very purpose of protecting administrative agency autonomy and enhancing judicial efficiency. Because "exhaustion determines who gets to decide what and when to protect agency autonomy."[199] and promote judicial efficiency,"

[196] *Devlin*, (n190), p.1250

[197] *Ibid*

[198] *Ibid*

[199] *Ibid*

The lease and expropriation proclamation has determined who gets to entertain a grievance and how, as it has been mentioned above. Further, the lease proclamation under Article 29(2) states the decision by the Appellate Tribunal to be final, unless it is related to compensation.[200] which means that the only legally available venue for an aggrieved party to contest issues other than payment or amount of compensation is the administrative agency. The preamble of the expropriation proclamation includes determining the grievance procedure as one of its purposes. *A*ccordingly, the law provides for the establishment of a complaint hearing body and an appeal hearing council that are empowered to review the administrative decisions made by the land administering agency. Therefore, with regard to an urban land clearance order that comes from the land administering agency, the cumulative reading of the above legal provisions under both the lease and expropriation laws and the very purpose of exhaustion shows that exhaustion of an administrative remedy is a mandatory requirement for judicial review of an urban land clearance dispute under Ethiopia's legal system. As a result, courts in Ethiopia are "courts of review, not first view" [201] in this regard.

4.2.2. Urban Land Clearance Related Court Cases in Ethiopia

The rulings of various courts in Ethiopia are not uniform in determining the appropriate body that has the power to entertain urban land clearance disputes that may arise between the land holder and the land administering government agency, or sometimes the new person the land in dispute is reallocated for. Particularly, there are decisions repeatedly rendered by the Federal Supreme Court Cassation Bench and other lower courts in conformity with the rules under the laws, and there are also decisions that contradict the law.

Cassation File No. 46220 [202] is one of the earliest and most prominent cases in which a decision is made in favor of exhaustion of administrative remedies by the FSCCB, from the perspective of

[200] *Lease Proc*. (n5) Article 29(2)

[201]*Devlin,* (n190), 1244

[202] *Municipality of Hawasa City of SNNPR V. Hawasa Debre Mehiret kidus Gebriel Gedam,* (Federal Supreme Court Cassation Division Decision), 16, Jan. 2010, Vol. 10, (Addis Ababa) Federal Supreme Court of the Federal Democratic Republic of Ethiopia, File no. 46220, P. 260-262

lease proclamation 272/2002, which has the same grievance and appeal procedure as the current lease proclamation no. 721/2011. The cause of action in this case is the plaintiff's claim to get back its landholding rights that were transferred on a lease basis to two different persons by the defendant (i.e., the Municipality of Hawasa City), which is an applicant at the FSCCB. The decision of the FSCCB is that a party aggrieved by the dispossession action of the appropriate body should lodge its grievance first before the land administering agency and appeal to the Appellate Hearing Body, as courts have no jurisdiction to entertain such matters. The same decision is also rendered under cassation file no. 114622.[203] The cassation bench in this file has clearly substantiated the fact that issues pertaining to urban land clearance are to be entertained as per the pertinent lease proclamation no. 721/2011. The court provided in its decision that the grievance procedure provided through articles 26–30 of the proclamation is to be observed and that grievances relating to urban land should be first filed with the pertinent land administering agency and then with the Appeal Tribunal. Courts can only entertain the matter after these remedies are exhausted and only on the basis of compensation.

The requirement of exhaustion of administrative remedies is also applied by the FSCCB in expropriation cases, based on the repealed expropriation proclamation [204], which provides for the same prerequisite as the current expropriation proclamation. In cassation file number 57271, the FSCCB has revoked the lower court's decision made with respect to the amount of compensation on the ground of non-exhaustion of administrative remedies under Article 11 of the proclamation.[205]

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[203] *Awal Aman Vs Aselefech Endagbe et.al,* (Federal Supreme Court Cassation Division Decision), 17, May. 2010, Vol. 20, (Addis Ababa) Federal Supreme Court of the Federal Democratic Republic of Ethiopia, File no. 46220, P. 169-173

[204] Expropriation of Landholdings for Public Purpose and Payment of Compensation Proclamation, Proclamation No. 455/2005, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 11th Year No. 43, ADDIS ABABA, 15th July, 2005, Article 10 and 11

[205] *Ethiopian Roads Authority v. Jada Biru,* (Federal Supreme Court Cassation Division Decision), 5, Jan. 2011, Vol. 11, (Addis Ababa) Federal Supreme Court of the Federal Democratic Republic of Ethiopia, File no. 57271, P. 280-281

On the other hand, there are multiple situations where the FSCCB and other lower-level courts have rendered decisions that are hostile towards the jurisdiction of these special adjudication institutions, established under both the lease and expropriation proclamations. These hostile decisions usually emanate from a mischaracterization of the dispute. In such a case, the court identifies a grievance arising from the land clearing process under a title of dispute that inherently falls within the jurisdiction of courts. Some of the cases in which the FSCCB and lower-level courts mischaracterize urban land clearance grievances are discussed below.

4.2.2.1. Urban Land Clearance Grievance as Possessory Action

In a possessory proceeding, the issue in dispute is the plaintiff's right of possession, which is instituted to recover actual possession of a property. Therefore, it's completely different from a pituitary action brought before court to obtain a judgment to recognize ownership rights over a property. According to Ethiopian Civil Code Article 1149(1), a possessor or holder deprived of such rights may demand the restoration of the thing or the cessation of any interference.[206] The Federal Supreme Court Cassation Bench, which is entitled to make a binding interpretation of laws, has set out criteria that a plaintiff in a possessory action is expected to prove in various binding decisions it has rendered. Accordingly, in a possessory action, the plaintiff must demonstrate to the court that: (1) he or she has direct or indirect possession over the thing; (2) his or her possession was lawful; (3) he or she has a better right than the defendant; and (4) there is usurpation or disturbance in fact.[207]

Most of the cases in which a claim is initiated by an urban land clearance measure of the land administering agency, but characterized by the court as a possessory action, emanate from the

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[206] *Civil Code*, (n1) Article 1149(1),

[207] *Asistant Surgent Ayano Anjelo v. Alemitu Chalebo,* (Federal Supreme Court Cassation Division Decision), 20, Nov. 2008, Vol. 9, (Addis Ababa) Federal Supreme Court of the Federal Democratic Republic of Ethiopia, File no. 36645, P. 49-50 and *Najib Negash v. Ziyad Detamo*, (Federal Supreme Court Cassation Division Decision), 4, Jun. 2009, Vol. 9, (Addis Ababa) Federal Supreme Court of the Federal Democratic Republic of Ethiopia, File no. 39940, P. 31-34

claim of the plaintiff. Plaintiff in an urban land clearance dispute seeks actual recovery of a landholding transferred to the state through any of the causes used to initiate the process of urban land clearance.In such cases, the remedy sought by the plaintiff is the recovery of the land from the land administering agency and/or the new legitimate landholder. The plaintiff usually mentions the pertinent possessory action provision of the civil code (art. 1149) and the kind of claim as possessory action in the statement of claim. Hence, courts will characterize it as such and overrule any administrative remedy exhaustion or jurisdictional preliminary objection raised by the defendant, usually the land administering agency. In the case between Desert Locus Control for East Africa and Brighton Real Estate et al., the Federal First Instance Court, the Diredawa bench has merely relied on the claim of the Desert Locus Control for East Africa, which demands recovery of its landholding from Brighton Real Estate and the Diredawa Land Administration and Development Bureau, to conclude that the court has the power to entertain the matter.[208] And finally, the court ruled that the defendants should return the land possession to the plaintiff, as the land administrative agency has no power to dispose of land that is allocated to an international organization enjoying diplomatic immunity.[209]

However, the ruling of the court on the preliminary objection and the substantive matter is legally and practically wrong, so the court's decision in favor of the plaintiff with respect to the possessory action will not reinstate the plaintiff to its previous title over the land. The plaintiff will be a mere possessor as long as the decision to cancel its landholding right is not canceled by the land administering agency. However, such an administrative decision can only be appealed through the grievance procedure outlined above.Hence, reviewing an urban land clearance decision judicially is a waste of time and resource for the litigants and the judiciary.

The FSCCB in file number 158527 has decided that the clearance measure of the concerned government authority shall not be considered an interference with property rights or a cause of possessory action, unless the decision to terminate the lease contract made by the concerned authority is revoked through the grievance and appeal procedures provided under the lease

[208] *Desert Locus Control for East Africa V. Brighton Real estate et.al*, January 3,2022, Federal First Instance Court, File Number 84628

[209] *Ibid,* p. 21

proclamation.[210] According to this ruling, a plaintiff should get back its title through the administrative adjudication process in order to seek possessory action before a court of law. Therefore, as long as the landholding right that has already been revoked by the decision of the concerned government agency is not revoked, the reinstatement decision made by the court with regard to possession will remain useless. It is for this reason that multiple appellants have tried to file an appeal at the Addis Ababa City Land Clearance and Compensation Appeal Tribunal after getting a verdict on the possessory action they brought before regular courts.[211]

On the other hand, this decision by the FSCCB contradicts its own decision that prohibits courts from entertaining urban land clearance disputes before administrative remedies are exhausted.[212] In its previous rulings, the FSCCB prohibited courts from entertaining such grievances. However, in this case, the cassation goes further to address the issue of the dispute without correcting the mischaracterization of it, ruling that there is no disruption of use and that the land administering agency's action shall not be considered a disruption.

4.2.2.2. Urban Land Clearance Grievance as an Administrative Contract Dispute

The termination of a lease contract for any of the reasons specified by law is one reason for the relevant agency to initiate urban land clearance. The agency may terminate the lease contract when there is a breach of the contract by the lessee, the use of the land is not compatible with the urban plan, the government needs the land for its own projects, or the lease contract is not renewed on its expiration date. The grievance mechanism provided under the law also applies to such situations. However, the FSCCB, in its decision rendered under file number 77175, qualifies lease contracts as administrative contracts and grants the power to entertain disputes pertaining to

[210] *Zeyeneba Hassan V. Bishoftu City Land Development and Administration Agency et.al*, (Federal Supreme Court Cassation Division Decision), 4, Feb. 2019, Vol. 24, (Addis Ababa) Federal Supreme Court of the Federal Democratic Republic of Ethiopia, File no. 158527, P. 187-190

[211] *Interview with Negusie,* (n109)

[212] *Hawasa City v. Hawasa Gebriel Gedam*. (n196)

administrative contracts to the City Courts of Addis Ababa[213], as it is provided under the Charter of the city.[214]

It is true that one of the contracting parties in an urban land lease contract is commonly an administrative authority. This administrative authority acts on behalf of the government and leases out the land to the land user through a contract of lease. Contracts concluded by the administrative authorities usually fall into two categories: administrative contracts or private law contracts (ordinary civil contracts).[215] Hence, such contracts concluded by administrative authorities can be subject to either private law rules or administrative law rules.[216]

The administrative contract law provisions of Ethiopia are found in articles 3131–3306 of the civil code.[217] At the beginning, the law declares all contracts that are concluded by an administrative authority to be governed by this part of the code.[218] However, it qualifies the applicability of the administrative law only where the contract has the nature of an administrative contract.[219] Furthermore, Article 3132 specifies the criteria for determining what constitutes an administrative contract. It reads;

> A contract shall be deemed to be an administrative contract where:
> (a) It is expressly qualified as such by the law or by the parties; or
> (b) It is connected with an activity of the public service and implies a permanent participation of the party contracting with the administrative authorities in the execution of such service; or
> (c) It contains one or more provisions which could only have been inspired by urgent considerations of general interest extraneous to relations between private individuals.[220]

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[213] *American University of Ethiopia v. Addis Ababa City Administration et.al*, (Federal Supreme Court Cassation Division Decision), 5, Aug. 2012, Vol. 13, (Addis Ababa) Federal Supreme Court of the Federal Democratic Republic of Ethiopia, File no. 77175, P. 599-602

[214] *A.A Revised Charter*, (n129), Article 41(1)(d)

[215] Tecle Hagos Bahta 'Conflicting Legal Regimes Vying for Application; The Old Administrative Contracts Law or the Modern Public Procurement Law for Ethiopia' (2017), 04, African Public Procurement Journal, P.7

[216] *Ibid*

[217] *Civil Code*, (n1), Article 3131-3306

[218] *Ibid*, Article 3131(1)

[219] *Ibid*, Article 3131(2)

[220] *Ibid*, Article 3132

Even if it is not provided under the urban land lease proclamation, the Addis Ababa city administration lease regulation (which is the same throughout all regions as the standard regulation was drafted by the Ministry of Construction and Urban Development), under Article 24, clearly states that a contract of lease be governed by the rules of the Civil Code governing administrative contracts, but without prejudice to the provisions of the proclamation and the regulation itself.[221] Therefore, a lease contract is expressly qualified as an administrative contract by law, in accordance with Article 3132(a) of the civil code. Hence, in addition to the provisions of the urban land lease proclamation and regional lease regulations and directives, the provisions of the civil code (art. 3131–3306) dealing with administrative contracts shall also be applicable to urban land lease contracts.

However, the issue in the case decided by the FSCCB is an urban land clearance grievance caused by the respondent's lease agreement termination measure for the applicant's failure to use the land in accordance with the lease agreement. And the lease proclamation has provisions dealing with such grievances. As a special law, this proclamation should prevail over the Civil Code provisions. Therefore, the decision made by the FSCCB in this matter is in contradiction to the prevailing lease proclamation.

This part of the thesis has neither the intent nor the capacity to cover all decisions made for and against the grievance procedure provided under the lease and expropriation proclamations. However, its intent is to show that such decisions that characterize urban land clearance disputes as any other dispute that falls under the inherent jurisdiction of regular courts are against the very desire of the laws that give primary jurisdiction to administrative agencies and tribunals. Administrative review in general is promoted to enhance administrative agency autonomy by correcting its own errors and promoting the efficiency of the judiciary. Besides its informality, convenience, speedy decision-rendering capacity, and required expertise, this makes it more favorable. However, there are some intellectuals who argue in support of courts taking a broader view of their jurisdiction.

[221] *A.A Lease Regulation* (n67), Article 24

Brightman, [222] for example, advocates for courts to play a larger role in urban land disputes. As a result, he regarded repeated decisions of the Federal Supreme Court Cassation Bench (FSCCB) on a broader characterization of urban land disputes to enable judicial review of cases as a good takeaway that can improve the efficiency with which property rights are protected.[223] But such arguments do not take into account the value attached to land in the face of lengthy and expensive court litigation that has unpredictable outcomes and lacks a legal base.

[222] *Gebremichael*, (n28) p.289

[223] *Ibid*

CHAPTER FIVE

Conclusion and Recommendations

5.1. Conclusions

Ill-managed urbanization is the root cause of urban land disputes in Ethiopia. The country has rapid urbanization and the lowest urban population growth at the same time. Studies reveal that urban land expansion in the major cities of the country supersedes the urban population growth rate. High population growth rates in general and rural-to-urban migration are forcing urban centers to expand informally from time to time. As a result, the major factors in urban land disputes are population growth and urban expansion, which necessitate administrative measures to improve the effective utilization of urban land, and a competing claim over land in urban centers.

Land disputes in cities can arise between the land administering agency and the land right holder, as well as among the land right holders themselves. A dispute between the land administering government agency and land right holders may occur because of non-performance or termination of a lease contract, the issuance or cancellation of a land holding certificate, a building permit, expropriation, a clearing order, compensation, resettlement, etc. On the other hand, individual land right holders might disagree because of boundaries, succession, use, transfer, and other land use-related disagreements.

The main theme of the thesis is the conflict between the government agency in charge of land administration and land rights holders. when it is specifically caused by an urban land clearance decision or action of the land administering agency. Land clearing or clearance refers to the legal process of dispossessing a land and the right over a land, from its holder. Urban land clearance by the government agency may result from an expropriation decision or termination of the lease contract caused by the failure to use the land in accordance with the law, the use of the land is not compatible with the urban plan, the land is required for development activity to be undertaken by the government, or the expiry or non-renewal of the lease contract.

Therefore, when the appropriate body initiates the repossession process for any of the reasons provided above, the landholder may feel aggrieved by such a decision or action. The expropriation proclamation no. 1161 of 2011, which applies to all cases of expropriation of rural and urban land,

and the lease proclamation no. 721 of 2004, which applies to all urban lands in the country, set out the procedure as well as the institutional and legal framework in which such landholders can seek redress.

The Urban Land Lease Holding Proclamation No. 721/2011 under Articles 28, 29, and 30 provides for a person to submit his grievance, relating to an urban land clearing order, to the appropriate body and then appeal to the Land Clearance and Compensation Appellate Tribunal, if aggrieved by the decision of the appropriate body. The decision by the Appellate Tribunal is final, unless it is related to compensation. Accordingly, the law provides for a person dissatisfied with the decision of the Tribunal on the issue of compensation to lodge an appeal with the municipal appellate court or, in its absence, with the regular high court.

By the same token, in articles 19 and 20 of the Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019, it is stated that a complaint relating to expropriation orders is first to be filed with the Complaint Hearing Body and then with the Appeal Hearing Council. However, a person dissatisfied with the decision of the council may lodge an appeal to the Federal First Instance Courts, in the case of Addis Ababa and Diredawa, and to regional High Courts, in the case of regional governments. If the party dissatisfied with the court's decision has surrendered the land holding of the disputed land, the right to continue an appeal is also guaranteed.

Hence, under both the lease and expropriation laws, we have the involvement of bodies undertaking an administrative review and a judicial review. Administrative review is undertaken both at the agency level and by administrative tribunals. The land-administrating agency is empowered to review its own administrative decisions pertaining to urban land clearance before the case is taken to the next administrative tribunal, namely the Land Clearance and Compensation Appeal Tribunal. But such an internal administrative review within the agency is not available under the expropriation proclamation.

However, under both proclamations, there exists an administrative review at the tribunal level. Under the lease proclamation, a party aggrieved by the decision of the land administering agency may lodge its appeal before the Land Clearance and Compensation Appeal Tribunal, and under the expropriation proclamation, complaints relating to expropriation orders may be filed with the Complaint Hearing Body and then appealed to the Appeal Hearing Council. Under the Ethiopian

legal system, even if the constitutional base of tribunals remained contentious, these tribunals have constitutional recognition and a constitutional base. Under the lease and expropriation proclamation, the administrative reviewing bodies have the authority to investigate the termination of a lease contract due to failure to use the land in accordance with the law, leasehold expropriation, expiry and non-renewal of the lease contract, and public purpose expropriation of a land. Procedurally, they are not bound by legal technicalities and procedures under the civil procedure code. However, they are expected to adhere to the rules of procedural fairness.

Judicial review of urban land clearance disputes is conducted by courts. The source of power for the judiciary to review an administrative decision or action is the law, which is either a constitution or any other legislation. The law may also limit the reviewability of administrative decisions or actions by the judiciary. One of these limitations is the obligation to exhaust administrative remedies, which makes a rehearing of an administrative decision by administrative agencies and tribunals with primary jurisdiction a prerequisite before the case is judicially reviewed. The consequence of this rule is that a party who wants to challenge an administrative decision may only resort to judicial review after exhausting the legally prescribed mechanisms of reconsideration before the administrative agency or a tribunal. The basic justifications are that it would be a premature intervention to let courts review an administrative decision without letting agencies correct their mistakes by using their experience and expertise; if agencies can correct their decisions through the administrative review mechanism, there would not be litigation before the judiciary; and even if there is a judicial review that comes after the administrative review, the court can efficiently render a decision as the file record may be more comprehensive and contain the expertise of the agency.

Under Ethiopian law, the concept of exhaustion of an administrative remedy exists under different legislations. The lease and expropriation proclamation also provide the same prerequisite of exhaustion of remedies at the administrative agency and tribunal levels before the urban land clearance grievance is taken before a court of law. The last administrative reviewer under the lease proclamation is the Appellate Tribunal, and the Appeal Hearing Council entertains matters under the expropriation proclamation. As a result, under the lease proclamation, a party dissatisfied with the decision of the Appellate Tribunal may appeal only on the issue of compensation, whereas under the expropriation proclamation, a party dissatisfied with the decision of the Appeal Hearing

Council may file for judicial review before the Regional High Courts and Federal First Instance Courts, in the case of Addis Ababa and Diredawa, on all matters. Hence, under the lease proclamation, there are matters that are not subject to judicial review (such as lease termination and the expropriation decision of the agency), whereas all matters are reviewable by courts when it comes to matters governed by the expropriation proclamation. Apart from this, even those matters designated to be judicially reviewable presuppose the exhaustion of administrative remedies under both legislations.

This is what the law says in relation to taking urban land clearance cases before a court of law, but in practice, as we have some rulings of Federal Courts that are in conformity with the law, there are also cases where decisions of various Federal courts, including the FSCCB, are not in conformity with the law. In a separate decision, the cassation bench clearly stated that issues pertaining to urban land clearance must be handled in accordance with the grievance procedures outlined in the lease and expropriation proclamation. Hence, courts can only entertain the matter after the administrative remedies are exhausted by the bodies under the law.

On the other hand, there are multiple situations where the FSCCD and other lower-level courts have rendered decisions contradicting the jurisdiction of these special adjudication institutions, established under both the lease and expropriation proclamations. Courts are entertaining urban land clearance disputes by mischaracterizing them as disputes that inherently fall under their jurisdictions. Cases reviewed in this thesis reveal urban land clearance disputes being mischaracterized as possessory action and administrative contract issues by the FSCCB and even lower courts. However, such decisions that characterize urban land clearance disputes as any other dispute that falls under the inherent jurisdiction of regular courts go against the very desire of the laws that give primary jurisdiction to administrative agencies and tribunals. Administrative review is promoted to enhance administrative agency autonomy in correcting its own errors and promote the efficiency of the judiciary in general. Besides its informality, convenience, speedy decision-rendering capacity, and required expertise, this makes it more favorable. The speedy and less formal process of the administrative tribunal makes it favorable when seen in light of the value attached to land as a community and the lengthy and most expensive regular court litigation that has unpredictable outcomes.

5.2 Recommendations

The following recommendations are forwarded, on the basis of the theoretical, legal, and practical analysis made herein above, with respect to urban land clearance dispute settlement mechanisms provided under the Urban Land Lease Holding Proclamation No. 721/2011 and the Expropriation of Land Holdings for Public Purposes, Payment of Compensation, and Resettlement of Displaced People Proclamation No. 1161/2019.

1. The dispossession or urban land clearance process, which is basically carried out by the land administering agency, should be reviewed through the legally provided process, primarily by the administrative agency itself and tribunals, and secondarily by regular courts.
2. Provided that administrative remedies are exhausted, regular courts in Ethiopia should be empowered to review every decision of administrative agencies and tribunals rendered in relation to urban land clearance. Hence, their power of review should not be limited to the issue of compensation, as provided under the lease proclamation.
3. Land administering agencies should raise awareness about the legally prescribed grievance mechanism so that landholders can exercise their rights and avoid filing grievances in court before exhausting available administrative remedies.
4. The practice shows that the land administering agency that entertains urban land grievances from the set is not providing its decision in writing, which is needed to appeal before the Appeal Tribunals. Therefore, the laws should allow the landowner to petition the tribunal when there is undue delay on the part of the agency.
5. Administrative tribunals under the lease and expropriation proclamations are not yet established in some regions. Some regional states are even delegating the power given to tribunals to their regular administrative institutions, which lack the required expertise. Therefore, in order to efficiently undertake the very purpose of these laws, regional states need to establish the legally prescribed tribunals.
6. Courts should have the required land law expertise at the registrar level and establish a special land litigation bench that exclusively deals with urban land clearance cases. Further, the courts should ensure that the available administrative remedies are exhausted before

accepting these applications directly filed before them without exhausting the available administrative remedies.

7. The House of Representatives, which enacted the land-related laws, should aggressively work to inform and educate the land administering agencies, administrative tribunals, courts, and the public at large about the purpose and objectives of the grievance hearing procedure before it drowns under the lease and expropriation proclamations.

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Interview with Fikerte Negusie, 'Registrar, Head, Addis Ababa City, Land Clearance and Compensation Appeal Tribunal' (2022)

Interview with Yusuf Ahmed, ‘Legal Expert’ Adama City Administration Land Administration and Development Agency, (2022)

Appendices

Desert Locus Control for East Africa V. Brighton Real estate et.al, January 3,2022, Federal First Instance Court, File Number 84628

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT

ቁጥር.....
No.
.....ቀን ፳፻.....ዓ.ም
አዲስ አበባ/Addis Ababa

የመዝገብ ቁጥር 84628

ታሕሳስ 25 ቀን 2014 ዓ.ም.

ዳኛ፡- ሳሙኤል አለማየሁ

ከሳሽ፡- የምስራቅ አፍሪካ የበረሀ አንበጣ መከላከያ ድርጅት (Desert Locust Control Organization for Eastern Africa) - ጠበቃ አድምጠው በለጠ ቀረቡ

ተከሳሽ፡- ብራይተን ሪልስቴት ኃላፊነቱ የተወሰነ የግል ማኅበር - ጠበቃ ታማኝ በየነ ቀረቡ

ጣልቃ ገብ፡- የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ - ጀማል ኢብራሂም ቀረቡ

- ከሳሽ፣ ነሐሴ 05 ቀን 2013 ዓ.ም. በተሻሻለ የክስ ማመልከቻ፣ በይዞታው ላይ በተከሳሽ እንደተፈጠረ የገለፀው ሁከት ይወገድ ዘንድ እንዲወሰንለት የሚጠይቅ ክስ በተከሳሽ ላይ በመመስረቱ ምክንያት ይህ መዝገብ ተከፍቷል። ክስ ማመልከቻው ጋር አባሪ አድርጎ ባቀረበው የማስረጃ ዝርዝር መግለጫ፣ ክርክሮቼን ያስረዱልኛል፣ ያላቸውን የሰነድ ማስረጃዎቹን እና ምስክሮቹን ዝርዝር ገልጿል። ክሰነድ ማስረጃዎቹ መካከል አራቱን ክክስ ማመልከቻው ጋር አቅርቧቸዋል፤ ሁለቱን ደግሞ፣ በፍርድ ቤቱ ትዕዛዝ ካለበት እንዲቀርቡ እንዲደረግለት ጠይቋል።

- ተከሳሽ፣ መስከረም 21 ቀን 2014 ዓ.ም. በተሻሻለ የመልስ ማመልከቻ፣ ክሳሽ ባቀረበበት ክስ ላይ የመጀመሪያ ደረጃ መቃወሚያዎችን አንስቷል፤ የጉዳዩን ሥረ ነገር በተመለከተ መልስ ሰጥቷል፤ በፍትሐ ብሔር ሥነ ሥርዓት ሕግ ቁጥር 43 ላይ በተደነገገው መሠረት፣ ጣልቃ ገብ ወደ ክርክሩ እንዲገባ እንዲታዘዝለት ጠይቋል። ከመልስ ማመልከቻው ጋር አባሪ አድርጎ ባቀረበው የማስረጃ ዝርዝር መግለጫ፣ ክርክሮቼን ያስረዱልኛል፣ ያላቸውን የሰነድ ማስረጃዎቹን እና ምስክሮቹን ዝርዝር ገልጿል፤ የሰነድ ማስረጃዎቹንም ከመልስ ማመልከቻው ጋር አቅርቧቸዋል።
- ጣልቃ ገብ፣ ነሐሴ 12 ቀን 2013 ዓ.ም. በተሻሻለ ማመልከቻ፣ በክሳሽና ተከሳሽ መካከል የተነሳው ክርክር እሱንም እንደሚመለከተው በመግለፅና ሙሉ ክርክሩን በማቅረብ፣ በፍትሐ ብሔር ሥነ ሥርዓት ሕግ ቁጥር 41 ላይ በተደነገገው መሠረት በጉዳዩ ጣልቃ ገብቶ ለመከራከር እንዲፈቀድለት ጠይቋል። ከማመልከቻው ጋር

አባሪ አድርጎ ባቀረበው የማስረጃ ዝርዝር መግለጫ፣ ክርክሮቹን ያስረዱልኛል፣ ያላቸውን የሰነድ ማስረጃዎቹን ዝርዝር ገልጿል፣ የሰነድ ማስረጃዎቹንም ከማመልከቻው ጋር አቅርቧቸዋል። ፍርድ ቤቱም፣ ጥቅምት 18 ቀን 2014 ዓ.ም. በዋለው ችሎት በሰጠው ትዕዛዝ፣ ጣልቃ ገብ በጉዳዩ ጣልቃ ገብቶ እንዲከራከር ፈቅዶለታል።

- ከሳሽ፣ ሕዳር 07 ቀን 2014 ዓ.ም. በተፃፈ ማመልከቻ፣ ጣልቃ ገብ ባቀረበው አቤቱታ ላይ የመጀመሪያ ደረጃ መቃወሚያ አንስቷል፣ የጉዳዩን ሥረ ነገር በተመለከተ ዝርዝር መልስ ሰጥቷል፣ ከመልስ ማመልከቻው ጋር አባሪ አድርጎ ባቀረበው የማስረጃ ዝርዝር መግለጫ፣ ከክስ ማመልከቻው ጋር አባሪ አድርጎ ባቀረበው የማስረጃ ዝርዝር መግለጫው ላይ ዝርዝራቸውን የገለፃቸው ማስረጃዎቹ፣ ጣልቃ ገብ ላቀረበው አቤቱታ መልስ በሰጠበት ማመልከቻ ላይ ላነሳቸው ክርክሮቹም ማስረጃዎቹ እንደሆኑ ገልጿል።
- ተከሳሽ፣ በፍትሐ ብሔር ሥነ ሥርዓት ሕግ ቁጥር 43 ላይ በተደነገገው መሠረት፣ ጣልቃ ገብ ወደ ክርክሩ እንዲገባ እንዲታዘዝለት ጠይቆ የነበረ እንደመሆኑ መጠን፣ የተከሳሽ ጠበቃ፣ ጥቅምት 18 ቀን 2014 ዓ.ም. በዋለው ችሎት፣ ጣልቃ ገብ ያቀረበውን አቤቱታ ተከሳሽ እንደማይቃወመውና በፅሑፍ መልስ መስጠት እንደማይፈልግ ለፍርድ ቤቱ ገልፀዋል።
- ፍርድ ቤቱ፣ ሕዳር 09 ቀን 2014 ዓ.ም. በዋለው ችሎት ክሱን ሰምቷል። በመቀጠልም፣ ከሳሽ የተቋቋመበትን ኮንቬንሽን፣ እንዲሁም ከሳሽ ከኢትዮጵያ መንግስት ጋር የተፈራረመውን የዋና መሥሪያ ቤት ስምምነት ከሳሽ እንዲያቀርብ ትዕዛዝ ሰጥቷል። ከሳሽ በበኩሉ፣ በዚያኑ ዕለት፣ ከሳሽ የተቋቋመበትን ኮንቬንሽን እና ከሳሽ ከኢትዮጵያ መንግስት ጋር የተፈራረመውን የዋና መሥሪያ ቤት ስምምነት ሰነዶች ለፍርድ ቤቱ አቅርቦ ከመዝገቡ ጋር እንዲያያዙ ተደርጓል።

ጉዳዩ ተመርምሮ፣ የሚከተለው ፍርድ ተሰጥቷል።

ፍ ር ድ

የምስራቅ አፍሪካ የበረሀ አንበጣ መከላከያ ድርጅት (Desert Locust Control Organization for Eastern Africa) ፣ ማለትም ከሳሽ፣ (ከዚህ በኋላ ድርጅት ወይም ከሳሽ እየተባለ ይጠቀሳል) እንደ አውሮፓውያን አቆጣጠር ኦገስት 20 ቀን 1962 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ነሐሴ 14 ቀን 1954 ዓ.ም.) በኢትዮጵያ፣ በፈረንሳይ፣ በሶማሊያ ሪፐብሊክ፣ በታንዛኒያ፣ በኬንያ እና በዩጋንዳ መንግስታት መካከል በአዲስ አበባ ከተማ

በተፈረመና በድጋሚ እንደ አውሮፓውያን አቆጣጠር በሴፕቴምበር ወር 2012 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር በመስከረም ወር 2005 ዓ.ም.) በጅቡቲ፣ በኤርትራ፣ በኢትዮጵያ፣ በኬንያ፣ በሶማሊያ፣ በሱዳን፣ በታንዛኒያ እና በዩጋንዳ መንግስታት መካከል በተፈረመ የተሻሻለ የምስራቅ አፍሪካ የበረሀ አንበጣ መከላከያ ድርጅት ማቋቋሚያ ኮንቬንሽን አማካይነት የራሱ ሕጋዊ የሆነ ሰውነት ኖሮት የተቋቋመ እና ስማቸው ከላይ የተጠቀሰው ስምንቱ ሐገራት አባል የሆኑበት አለማቀፍ ድርጅት ነው።

በድርጅቱ የማቋቋሚያ ኮንቬንሽን ላይ፣ ድርጅቱ ካውንስል እንደሚኖረው፤ በካውንስሉ ስብሰባ ላይም፣ የድርጅቱ አባል ሐገራት እያንዳንዳቸው፣ ተለዋጭ ልዑክና እና ሌሎች ባለሙያዎችና አማካሪዎች ሊኖሩት በሚችል፣ አንድ ልዑክ አማካይት፣ እንደሚወከሉ፤ የካውንስሉ አባላት፣ ከመካከላቸው ለአንድ አመት የጊዜ ገደብ እንዲያገለግሉ የሚመርጧቸው አንድ ሊቀመንበርና አንድ ምክትል ሊቀመንበር ድርጅቱ እንደሚኖሩት ተመልክቷል።

በተጨማሪም፣ በድርጅቱ የማቋቋሚያ ኮንቬንሽን ላይ፣ የድርጅቱ ዋና መቀመጫ ኢትዮጵያ ውስጥ እንደሚሆን ተመልክቷል። ስለዚህ፣ ድርጅቱ እና የኅብረተሰባዊት ኢትዮጵያ ጊዜያዊ ወታደራዊ መንግስት፣ እንደ አውሮፓውያን አቆጣጠር ጁን 07 ቀን 1977 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ግንቦት 30 ቀን 1969 ዓ.ም.) የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) በአዲስ አበባ ከተማ ተፈራርመዋል። የኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር፣ እንደ አውሮፓውያን አቆጣጠር ጁላይ 21 ቀን 1999 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ሐምሌ 11 ቀን 1991 ዓ.ም.) ለድርጅቱ በዓፈለት ደብዳቤ፣ በድርጅቱና በኅብረተሰባዊት ኢትዮጵያ ጊዜያዊ ወታደራዊ መንግስት መካከል እንደ አውሮፓውያን አቆጣጠር ጁን 07 ቀን 1977 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ግንቦት 30 ቀን 1969 ዓ.ም.) የተፈረመው የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) የፀና መሆኑን አስታውቆታል።

በድርጅቱና በኢትዮጵያ መንግስት መካከል እንደ አውሮፓውያን አቆጣጠር ጁን 07 ቀን 1977 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ግንቦት 30 ቀን 1969 ዓ.ም.) የተፈረመው የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) አንቀፅ 2 ላይ፣ ድርጅቱ በኢትዮጵያ ውስጥ የራሱ ሕጋዊ ሰውነት እንደሚኖረው ተመልክቷል። በስምምነቱ አንቀፅ 3 ላይ ደግሞ፣ የኢትዮጵያ መንግስት ድርጅቱ ዋና ፅሕፈት ቤቱን ወይም ቅርንጫፍ ፅሕፈት ቤቶቹን ለመገንባት የሚያስፈልገውን መሬት፣ ለ60 ዓመታት ፀንቶ በሚቆይና በአመት ብር 1.00 ብቻ በሚከፈልበት የሊዝ ውል አማካይት፣ ለድርጅቱ እንደሚሰጠው፣ ሆኖም

ድርጅቱ በመሬቱ ላይ የሚገነባውን ሕንፃ መግዛት ለሚፈልግ ሰው መሸጥ እንደሚችልና የኢትዮጵያ መንግስት ደግሞ ሕንፃውን የመግዛት የቅድሚያ መብት እንደሚኖረው ተመልክቷል።

በሌላ በኩል ግን፣ የዋና መሥሪያ ቤት መቀመጫ ስምምነቱ (HEADQUARTERS AGREEMENT) አንቀፅ 11 ላይ፣ ድርጅቱ ከኢትዮጵያ መንግስት የወንጀል፣ የሲቪል እና አስተዳደራዊ ጉዳይ ሥልጣን የተከለለ እንደሚሆን (ወይም በሌላ አገላለፅ የዲፕሎማቲክ ከለላ እንደሚኖረው) እና የድርጅቱ ሊቀመንበር ይህንን ከለላ በፅሑፍ ካላነሳው በቀር፣ በኢትዮጵያ ውስጥ በየትኛውም ቦታ የሚገኙና የሚንቀሳቀሱም ሆነ የማይንቀሳቀሱ የድርጅቱ ንብረቶች እና የንብረቶቹ አካል የሆኑ ነገሮች፣ በኢትዮጵያ መንግስት አስተዳደራዊም ሆነ የፍርድ ተቋማት (ፍርድ ቤቶችን ጨምሮ) ገደብ እንደማይደረግባቸው፣ በተለይም ደግሞ እንደማይፈተሹ፣ እንደማይታገዱ፣ እንደማይያዙ፣ በመንግስትም ጭምር ቢሆን፣ እንደማይወረሱ ተመልክቷል።

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የኢትዮጵያ መንግስት፣ በድሬዳዋ ከተማ ቀበሌ 02 የሚገኝና 122,300 ካሬ ሜትር (12.23 ሔክታር) የሚሆን ስፋት ያለውንና ክላሽ አሁንም ድረስ በእጁ አድርጎ እየተገለገለበት የሚገኘውን መሬት ለክላሽ ሰጥቶታል። ስለዚህ፣ በጎበረተሰባዊት ኢትዮጵያ ጊዜያዊ ወታደራዊ መንግስት የሐረርጌ ክፍለ ሀገር ድሬዳዋ ከተማ አጠቃላይ የከተማ ነዋሪዎች ምክር ቤት፣ ክላሽ የዚህ 122,300 ካሬ ሜትር (12.23 ሔክታር) የሚሆን መሬት ባለይዞታ መሆኑን የሚያረጋግጥና ቁጥሩ 2161 የሆነ የከተማ ቦታ ይዞታ ምስክር ወረቀት ጎዳር 27 ቀን 1976 ዓ.ም. ለክላሽ ሰጥቶታል።

ነገር ግን፣ የድሬዳዋ አስተዳደር ካቢኔ ሚያዚያ 17 ቀን 2011 ዓ.ም. ባደረገው ስብሰባ፣ በክላሽ እጅ የሚገኘው መሬት ከደረጃ በታች የለማ መሆኑን በመግለፅ፣ መሬቱ ወደ መሬት ባንክ እንዲገባ እንዲገባ ወስኗል። የድሬዳዋ አስተዳደር ካቢኔ ያሳለፈውን ውሳኔ ተከትሎ፣ የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ፣ ማለትም ጣልቃ ገብ፣ ግንቦት 23 ቀን 2011 ዓ.ም. ለክላሽ በፃፈለት ደብዳቤ፣ በክላሽ እጅ የሚገኘውና 122,300 ካሬ ሜትር (12.23 ሔክታር) የሚሆን ስፋት ያለው የመሬት ይዞታ ለተሻለ ልማት እንዲውል ወደ መሬት ባንክ የገባ መሆኑንና በዚህም የተነሳ ጎዳር 27 ቀን 1976 ዓ.ም. ለክላሽ ተሰጥቶት የነበረውና ቁጥሩ 2161 የሆነው የከተማ ቦታ ይዞታ ምስክር ወረቀት እንዲመክን መደረጉን አሳውቆታል።

የድሬዳዋ አስተዳደር ካቢኔ፣ ከላይ በተገለፀው መልኩ፣ በከሳሽ እጅ የሚገኘውና 122,300 ካሬ ሜትር (12.23 ሔክታር) የሚሆን ስፋት ያለው የመሬት ይዞታ፣ ከደረጃ በታች የለማ ነው፣ በሚል ምክንያት ወደ መሬት ባንክ እንዲገባ ከመወሰኑ ጥቂት ወራት ቀደም ብሎ፣ ታሕሳስ 21 ቀን 2011 ዓ.ም. ባደረገው ሌላ ስብሰባው፣ በሪልስቴት የንግድ ሥራ ዘርፍ ላይ ለተሰማራውና ለሥራው ማከናወኛ የሚሆን መሬት እንዲሰጠው ለጠየቀው ብራይተን ሪልስቴት ኃላፊነቱ የተወሰነ የግል ማኅበር፣ ማለትም ተከሳሽ፣ 21 ሔክታር የሚሆን ስፋት ያለው መሬት እንዲሰጠው ውሳኔ አሳልፎ ነበር።

ስለዚህ፣ ጣልቃ ገብ ግንቦት 29 ቀን 2011 ዓ.ም. ከተከሳሽ ጋር በገባውና ለሰባ ዓመታት ያህል ፀንቶ በሚቆይ የሊዝ ውል አማካይነት፣ ወደ መሬት ባንክ እንዲገባ ውሳኔ ከተላለፈበትና 122,300 ካሬ ሜትር (12.23 ሔክታር) ከሚሆነው የከሳሽ መሬት ውስጥ፣ 8,121.2 ካሬ ሜትር የሚሆነውን መሬት ተከሳሽ የሪልስቴት ግንባታ ለማከናወን እንዲጠቀምበት ፈቅዶለታል። ተከሳሽ በበኩሉ፣ የመሬቱን የሰባ አመት ሊዝ ጠቅላላ ዋጋ በድምሩ ብር 8,519,138.80 ለጣልቃ ገብ ሊከፍል ተስማምቷል፤ ከዚህ የሊዝ ዋጋ ውስጥም፣ ብር 1,703,827.76 የሚሆነውን በቅድሚያ ከፍሏል፤ ቀሪውን ደግሞ፣ ከግንቦት 29 ቀን 2014 ዓ.ም. አንስቶ፣ የባንክ ወለድን ጨምሮ፣ በየአመቱ ብር 248,758.853 እየከፈለ፣ እስከ ግንቦት 29 ቀን 2043 ዓ.ም. ድረስ ባሉት የሰላሳ አመታት ጊዜ ውስጥ ከፍሎ ለማጠናቀቅ ተስማምቷል። የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮም፣ ተከሳሽ የዚህ 8,121.2 ካሬ ሜትር የሚሆን መሬት ባለይዞታ መሆኑን የሚያረጋግጥና ቁጥሩ መል/ለ/5497 የሆነ የሊዝ የክተማ ቦታ ምስክር ወረቀት ሰኔ 04 ቀን 2011 ዓ.ም. ለተከሳሽ ሰጥቶታል።

የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ፣ ማለትም ጣልቃ ገብ፣ ግንቦት 23 ቀን 2011 ዓ.ም. ለከሳሽ በፃፈለት ደብዳቤ፣ በእጁ የሚገኘው 122,300 ካሬ ሜትር (12.23 ሔክታር) መሬት ወደ መሬት ባንክ እንዲገባና በስሙ የተመዘገበውና ቁጥሩ 2161 የሆነው የክተማ ቦታ ይዞታ ምስክር ወረቀት እንዲመክን የተደረገ መሆኑን ለከሳሽ ካሳወቀው በኋላ፣ ከሳሽ እንደ አውሮፓውያን አቆጣጠር ጁን 11 ቀን 2019 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ሰኔ 04 ቀን 2011 ዓ.ም.) ለኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር በፃፈው ደብዳቤ፣ የጣልቃ ገብ ድርጊት የኢትዮጵያ መንግስት ከድርጅቱ ጋር የተፈራረመውን የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) የሚጥስ ስለመሆኑ የሚኒስቴር መሥሪያ ቤቱ ለድሬዳዋ አስተዳደር እንዲሳውቀው ጠይቆታል። የኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር በበኩሉ፣ ሐምሌ 02 ቀን 2011 ዓ.ም. ለጣልቃ ገብ በፃፈለት ደብዳቤ፣ ከሳሽ

የዲፕሎማቲክ ከለላ ያለው ድርጅት መሆኑ ከግምት ውስጥ ገብቶ፣ ኃላፊነቱን ለመወጣት እንዲረዳው፣ ለጉዳዩ ትኩረት ተሰጥቶት፣ ችግሩ መፍትሔ እንዲያገኝ እንዲደረግ ጠይቆታል።

የድሬዳዋ አስተዳደር፣ ግንቦት 10 ቀን 2013 ዓ.ም. ለኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር በዓለስት ደብዳቤ፣ በክላሽ እጅ በሚገኘውና ወደ መሬት ባንክ እንዲገባ በተወሰነው መሬት ምትክ፣ 9,614.08 ካሬ ሜትር የሚሆን ተለዋጭ መሬት ለክላሽ ማዘጋጀቱን ገልጿል። ግንቦት 18 ቀን 2013 ዓ.ም. ለኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የግብርና ሚኒስቴር በዓለስት ደብዳቤውም እንደዚሁ፣ በተሻሻለው የድሬዳዋ ከተማ ማስተር ፕላን መሠረት የክላሽን ይዞታ ወደ ሌላ ስፍራ ለማዛወር ያለውን ሐሳብ አሳውቆታል።

በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የግብርና ሚኒስቴር እንደ አውሮፓውያን አቆጣጠር ጁን 15 ቀን 2021 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ሰኔ 08 ቀን 2013 ዓ.ም.) ለድሬዳዋ አስተዳደር በዓለስት ደብዳቤ፣ ክላሽ አለማቀፍ ድርጅት መሆኑንና ከኢትዮጵያ መንግስት ጋርም እንደ አውሮፓውያን አቆጣጠር እስከ 2030 ዓ.ም. (2022/2023 ዓ.ም.) ድረስ ፀንቶ የሚቆይ ስምምነት ያለው መሆኑን በመግለፅ፣ ጉዳዩ የድሬዳዋ አስተዳደርንም ሆነ ድርጅቱን በሚጠቅም መልኩ በድርድር እንዲፈታ አሳስቧል። በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር ደግሞ፣ እንደ አውሮፓውያን አቆጣጠር ጁን 22 ቀን 2021 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ሰኔ 15 ቀን 2013 ዓ.ም.) ለክላሽ በዓለስት ደብዳቤ፣ የድሬዳዋ አስተዳደር በክላሽ እጅ የሚገኘውን መሬት በመውሰድ ሌላ ተለዋጭ ቦታ ለክላሽ ለመስጠት የወሰነው፣ የድሬዳዋ ከተማ በአመታት ጊዜ ውስጥ ያለፈበትን ፈጣን ለውጥና የከተማውን ነዋሪዎች ፍላጎት ግምት ውስጥ በማስገባት የተዘጋጀውን የከተማውን አድገት ፕላን መሠረት በማድረግ እንደሆነ ከገለፀለት በኋላ፣ ድርጅቱ ከድሬዳዋ አስተዳደር ጋር በመተባበርና በእጁ የሚገኘውን መሬት በመልቀቅ፣ ወደ ተዘጋጀለት ምትክ ቦታ እንዲዛወር ጠይቆታል።

የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ፣ ማለትም ጣልቃ ገብ በበኩሉ፣ ሰኔ 18 ቀን 2013 ዓ.ም. ለክላሽ በዓለስት ደብዳቤ፣ በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የግብርና ሚኒስቴር እና በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር ባሳሰቡት መሠረት፣ በአስራ አምስት ቀናት ውስጥ በእጁ የሚገኘውን መሬት እንዲለቅና አዲስ ወደተዘጋጀለት መሬት እንዲዘዋወር ክላሽን ጠይቆታል፤ ክላሽ በዚህ መሰረት የማይፈፅም ከሆነ ደግሞ፣ የከተማን ቦታ በሊዝ ስለመያዝ በወጣው አዋጅ ቁጥር 721/2004

በተሰጠው ሥልጣን መሠረት፣ መሬቱን የማስለቀቅ አርምጃ የሚወስድበት መሆኑን አሳስቦታል።

በሌላ በኩል፣ የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ የካሳ ገማች ኮሚቴ ሐምሌ 27 ቀን 2013 ዓ.ም. ባደረገው ስብሰባ፣ በክሳሽ እጅ በሚገኘውና 122,300 ካሬ ሜትር (12.23 ሔክታር) የሚሆን ስፋት ባለው የመሬት ይዞታ ላይ የሚገኙት ግንባታዎች ዋጋ ግምት ብር 4,295,477.69 መሆኑን ወስኗል። ጣልቃ ገብ በበኩሉ፣ ሐምሌ 29 ቀን 2013 ዓ.ም. ከተሣፈ ደብዳቤ ጋር፣ በክሳሽ እጅ በሚገኘው መሬት ላይ የሚገኙት ግንባታዎች ዋጋ ግምት ብር 4,295,477.69 ስለመሆኑ የተወሰነበትን የካሳ ገማች ኮሚቴ ስብሰባ ቃለ ጉባኤን አባሪ አድርጎ ለድሬዳዋ አስተዳደር ከንቲባ ፅሕፈት ቤት ልኮታል፤ የደብዳቤው ግልባጭና የካሳ ገማች ኮሚቴው ውሳኔውን ያሳለፈበት ስብሰባ ቃለ ጉባኤ፣ ለክሳሽ ጭምር እንዲደርስለው ተደርጓል።

የድሬዳዋ አስተዳደር ከንቲባ ፅሕፈት ቤት ደግሞ፣ በክሳሽ እጅ ከሚገኘውና 122,300 ካሬ ሜትር (12.23 ሔክታር) የሚሆን ስፋት ካለው መሬት ውስጥ፣ 8,121.2 ካሬ ሜትር የሚሆነውን መሬት ለሪልስቴት ግንባታ እንዲጠቀምበት ለተፈቀደለት ብራይተን ሪልስቴት ኃላፊነቱ የተወሰነ የግል ማኅበር፣ ማለትም ተክሳሽ፣ ሐምሌ 29 ቀን 2013 ዓ.ም. በዛፈለት ደብዳቤ፣ በክሳሽ እጅ በሚገኘው የመሬት ይዞታ ላይ የሚገኙት ግንባታዎች ዋጋ ግምት እንደሆነ የተገለፀውን ብር 4,295,477.69፣ በከንቲባው ፅሕፈት ቤት ስም በተከፈተውና ቁጥሩ 4115 በሆነው የባንክ ሒሳብ ገቢ እንዲያደርግ ጠይቆታል። ተክሳሽም ገቢ እንዲያደርግ የተጠየቀውን ብር 4,295,477.69፣ ወደ ከንቲባው ፅሕፈት ቤት የባንክ ሒሳብ ገቢ አድርጓል።

የድሬዳዋ አስተዳደር የመሬት ልማት ባንክና ከተማ ማደስ ፅሕፈት ቤት በበኩሉ፣ በክሳሽ እጅ የሚገኘውን መሬት ከክሳሽ እጅ ለማስለቀቅ አርምጃ መውሰድ ጀምሯል። ከመሬቱ ውስጥም፣ 8,121.2 ካሬ ሜትር የሚሆነውን መሬት ከክሳሽ እጅ ወስዶ፣ የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ ለሪልስቴት ግንባታ መሬቱን እንዲጠቀምበት ለፈቀደለት ብራይተን ሪልስቴት ኃላፊነቱ የተወሰነ የግል ማኅበር፣ ማለትም ተክሳሽ፣ አስረክቦታል። ተክሳሽ በበኩሉ፣ በመሬቱ ላይ የሪልስቴት ግንባታ ለማከናወን የሚያስችለውን ተግባር መፈፀም ጀምሯል።

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ክሳሽ በዚህ መዝገብ በቀረበው የክስ ማመልከቻው ላይ፣ በእጁ በሚገኘውና 122,300 ካሬ ሜትር (12.23 ሔክታር) ስፋት ባለው የመሬት ይዞታ ላይ፡- ለድርጅቱ ሥራ የሚውሉ

ቢሮዎች፣ ለአንበጣ መከላከል አገልግሎት የሚውሉ ኬሚካሎች የተቀመጡባቸው የኬሚካል መጋዘኖች፣ ምርምር የሚደረግባቸው ላቦራቶሪዎች ከነመሣሪያዎቻቸው፣ የነዳጅ ስቶር፣ ጥልቅ የውኃ ጉድጓድ፣ ለፊልድ ስራ የሚውሉ ቁሳቁሶች የተቀመጡበት መጋዘን፣ የተሽከርካሪዎች ጋራዥ እና የአረንጓዴ ልማት ስፍራዎች እንዳሉበት፣ ነገር ግን፣ በድርጅቱና በኢትዮጵያ መንግስት መካከል እንደ አውሮፓውያን አቆጣጠር ጁን 07 ቀን 1977 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ግንቦት 30 ቀን 1969 ዓ.ም.) በተፈረመው የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) መሠረት፣ ድርጅቱ ለ60 ዓመታት ፀንቶ የሚቆይ የንብረትና ይዞታ መብት እያለው፣ በእጁ በሚገኘው መሬት ላይ የሚገኙ ግንባታዎች ዋጋ ግምት ብር 4,295,477.69 ስለመሆኑ የተወሰነበት የካሳ ገማች ኮሚቴ ስብሰባ ቃለ ጉባኤ እንደደረሰው፣ ተከሳሽ ደግሞ፣ ከነሐሴ 4 ቀን 2013 ዓ.ም. አንስቶ፣ በልዩ ኃይል ወታደሮች ታጅቦ፣ በመሬቱ ላይ የግንባታ ግብዓት መገልበጥ መጀመሩንና የከሳሽን ግንባታዎች ለማፍረስ ቁሳቁሶችን ማስገባቱን፣ ከሳሽም ጉዳዩን ለድሬዳዋ አስተዳደር ከንቲባ እና ለሌሎች የፀጥታ አካላት ቢያመለክትም፣ አስተዳደራዊ ውሳኔ ነው፣ በማለት ሁከቱን ሊያስቆሙለት እንዳልቻሉ ገልጿል። ቀጥሎም፣ ተከሳሽ በይዞታዬ ላይ እየፈጠረው ያለውን ሁከት እንዲያስወግድና ለወደፊቱም መሠል የሁከት ተግባር ከመፈፀም እንዲቆጠብ ፍርድ ቤቱ ይወስንልኝ፣ በማለት ጠይቋል።

ተከሳሽ በበኩሉ፣ ከሳሽ አለማቀፍ ድርጅት በመሆኑና በፌደራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ እና 11/2/ሀ ላይ በተደነገገው መሠረት፣ አለማቀፍ ድርጅቶችን የሚመለከቱ ጉዳዮችን የመዳኘት ስልጣን ለፌደራል ከፍተኛ ፍርድ ቤት የተሠጠ በመሆኑ፣ እንዲሁም ከሳሽ ለተሻለ ልማት እንዲውል በሚል ምክንያት በእጁ የሚገኘውን መሬት እንዲለቅ የሚጠይቅ ማስጠንቀቂያ ሲደርሰው፣ መሬቱን እንዲለቅ በተላለፈው ውሳኔ ላይ ቅሬታ ካለው፣ የከተማን ቦታ በሊዝ ስለመያዝ በወጣው አዋጅ ቁጥር 721/2004 ላይ በተደነገገው መሠረት፣ ቅሬታውን ለሚመለከተው አካል ማቅረብ፣ የሚመለከተው አካል በሚሰጠው ውሳኔ ቅር ከተሰኘ ደግሞ፣ ይግባኙን ለከተማው ይግባኝ ሰሚ ጉባኤ ማቅረብ የሚችል ከመሆኑ በቀር፣ ጉዳዩን በቀጥታ ለፍርድ ቤት ማቅረብ የማይችል በመሆኑ፡- ይህ ፍርድ ቤት ጉዳዩን የመዳኘት ሥልጣን የለውም፣ የሚል የመጀመሪያ ደረጃ መቃወሚያ አንስቷል። የጉዳዩን ሥረ ነገር በተመለከተ ደግሞ፣ ተከሳሽ መሬቱን ያገኘሁት፣ የድሬዳዋ አስተዳደር ካቢኔ ታሕሳስ 21 ቀን 2011 ዓ.ም. ባደረገው ስብሰባ ባሳለፈው ውሳኔ መሠረት ሲሆን፣ መሬቱን ለመጠቀም የሚያስችለኝን የሊዝ ውል ከድሬዳዋ አስተዳደር መሬት ልማትና ማኔጅመንት ቢሮ ጋር ተፈራርሜያለው፣ የመሬቱን የለባ አመት የሊዝ ዋጋ በድምሩ ብር 8,519,138.80 ለመክፈል

ተስማምቻለው፤ ከዚህ የሊዝ ዋጋ ውስጥም፣ ብር 1,703,827.76 የሚሆነውን በቅድሚያ ከፍያለው፤ እንዲሁም በመሬቱ ላይ የሚገኙት ግንባታዎች ዋጋ ግምት እንደሆነ የተገለፀውን ብር 4,295,477.69 ከፍያለው፤ በአጠቃላይ፣ መሬቱን የያዝኩት በሕጋዊ መንገድ ተሰጥቶኝ እንጂ፣ በሕገወጥ መንገድ አይደለም፤ ስለዚህ ከሳሽ ያቀረበብኝ ክስ ውድቅ ሊደረግ ይገባል፣ ሲል ተከራክሯል።

ጣልቃ ገብም እንደዚሁ፣ ለክርክሩ መነሻ የሆነው መሬት በ1976 ዓ.ም. ለከሳሽ ሲሰጠው፣ ቦታው የድሬዳዋ ከተማ ዳር ስለነበረ፣ ከሳሽ አንበጣ ለመከላከል የሚያከማቸው ኬሚካል በከተማው ነዋሪዎች ላይ የሚያስከትለው ችግር አይኖርም፣ ተብሎ ታስቦ ነበር፤ ሆኖም አሁን ቦታው የከተማው መሐል ሆኗል፤ በቅርቡ በተጠናው የቦታ አጠቃቀምና መዋቅራዊ ፕላን መሠረት፣ ቦታው ለኬሚካል ማከማቻነት ሊሆን የማይችልና በአግባቡ እንዲለማ ያልተደረገ በመሆኑ፣ የደሬዳዋ አስተዳደር ካቢኔ ቦታው ለሪልስቴት ግንባታ እንዲውልና ለከሳሽ ምትክ ቦታ እንዲሰጠው ወስኗል፤ በዚህ ውሳኔ በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የግብርና ሚኒስቴር እና በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር ጭምር ተስማምተዋል፤ የከተማን ቦታ በሊዝ ስለመያዝ በወጣው አዋጅ ቁጥር 721/2004 ላይ በተደነገገው መሠረት፣ ጣልቃ ገብ የከተማውን ቦታ የመቆጣጠርና የማስተዳደር ሥልጣን አለው፤ ስለዚህ ጣልቃ ገብ፣ በሕግ መሠረት፣ ለክርክሩ ምክንያት የሆነውን ቦታ የሪልስቴት ግንባታ እንዲያከናውንበት ለተከሳሽ ፈቅዶለታል፤ በመሆኑም፣ ከሳሽ አለአግባብ ሁከት እንደተፈጠረበት አስመስሎ ያቀረበው ክስ ትክክል አይደለም፤ ውድቅ ሊደረግ ይገባል፣ በማለት ተከራክሯል።

ከሳሽ በበኩሉ፣ ለክርክሩ ምክንያት የሆነውን መሬት ለከሳሽ የሰጠው የኢትዮጵያ መንግስት እንጂ፣ የድሬዳዋ አስተዳደር መሬት ልማትና ማኔጅመንት ቢሮ አይደለም፤ ከሳሽ በዘጠኝ ሐገራት ስምምነት የተቋቋመ አለማቀፍ ድርጅት ከመሆኑም በላይ፣ በድርጅቱና በኢትዮጵያ መንግስት መካከል እንደ አውሮፓውያን አቆጣጠር ጁን 07 ቀን 1977 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ግንቦት 30 ቀን 1969 ዓ.ም.) በተፈረመው የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) ላይም፣ ድርጅቱ ከኢትዮጵያ መንግስት የወንጀል፣ የሲቪል እና አስተዳደራዊ ጉዳይ ሥልጣን የተከለለ እንደሚሆን (ወይም በሌላ አገላለፅ የዲፕሎማቲክ ከለላ እንደሚኖረው) እና የድርጅቱ ሊቀመንበር ይህንን ከለላ በፅሑፍ ካላነሳው በቀር፣ በኢትዮጵያ ውስጥ በየትኛውም ቦታ የሚገኙና የሚንቀሳቀሱም ሆነ የማይንቀሳቀሱ የድርጅቱ ንብረቶችና የንብረቶቹ አካል የሆኑ ነገሮች፣ በኢትዮጵያ መንግስት አስተዳደራዊም ሆነ የፍርድ ተቋማት ገደብ እንደማይደረግባቸው፣ በተለይም ደግሞ

እንደማይፈተሹ፣ እንደማይታገዱ፣ እንደማይያዙ፣ በመንግስትም ጭምር ቢሆን፣ እንደማይወረሱ ተመልክቷል። ኢትዮጵያ ያፀደቀቻቸው (የፈረመቻቸው) አለማቀፍ ስምምነቶች ደግሞ፣ የሐገሪቱ ሕግ አካል እንደሆኑ በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገመንግስት አንቀፅ 9 ንዑስ አንቀፅ 4 ላይ ተደንግጓል፤ የድሬዳዋ አስተዳደር ካቢኔ ባሳለፈው ውሳኔ ላይ፣ በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የግብርና ሚኒስቴር እና በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር ጭምር የተስማሙበት ከሆነም እንኳን፣ ከሳሽ ካልተስማማ በቀር፣ የይዞታ ማረጋገጫ ምስክር ወረቀቱ ሊመክንም ሆነ፣ ይዞታው ሊወሰድበት አይችልም፤ በአሁኑ ወቅት በመጋዘናችን ውስጥ ኬሚካል የለም፤ በቦታው ላይ ያለው የከሳሽ ንብረት ከመቶ ሚሊዮን ብር በላይ የሚገመት ሆኖ ሳለ፣ ጣልቃ ገብ አራት ሚሊዮን ብር ብቻ ግምት እንዳለው መግለፁ አግባብ አይደለም፤ የጣልቃ ገብ ድርጊት ሕግንና የኢትዮጵያ መንግስት በፈረመው ስምምነት መሠረት ለከሳሽ የተሰጠውን የዲፕሎማቲክ ከለላ የሚጥስ ነው፤ በመሆኑም፣ የከሳሽ ይዞታ ሊከበርና የተፈጠረበትም ሁከት ሊወገድ ይገባል፣ በማለት ተከራክሯል።

ስለዚህ ምላሽ ሊያገኙ የሚገባቸው ጭብጦች፡-

1. ይህ ፍርድ ቤት ከሳሽ ክስ ያቀረበበትን ጉዳይ የመዳኘት ሥልጣን አለው ወይስ የለውም?

2. ተከሳሽም ሆነ ጣልቃ ገብ፣ በከሳሽ እጅ የሚገኘውን መሬት ከከሳሽ እጅ ለመውሰድ የሚያስችላቸውና የሥራቸውን አደራረግ የሚፈቅድ ለራሳቸው የሚናገርላቸው መብት አላቸው ወይስ የላቸውም?

የሚሉ ናቸው።

<u>የመጀመሪያውን ጭብጥ በተመለከተ</u>

ከሳሽ፣ ከላይም እንደተገለፀው፣ በጅቡቲ፣ በኤርትራ፣ በኢትዮጵያ፣ በኬንያ፣ በሶማሊያ፣ በሱዳን፣ በታንዛኒያ እና በዩጋንዳ መንግስታት መካከል በተፈረመ የምስራቅ አፍሪካ የበረሀ አንበጣ መከላከያ ድርጅት ማቋቋሚያ ኮንቬንሽን አማካይነት፣ የራሱ ሕጋዊ የሆነ ሰውነት ኖሮት፣ የተቋቋመና ስማቸው ከላይ የተጠቀሰው ስምንት ሐገራት አባል ያሆኑበት አለማቀፍ ድርጅት ነው።

በፌዴራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ ላይ በተደነገገው መሠረት፣ የአለማቀፍ የዲፕሎማቲክ ሕጎችና ልምዶች፣ እንዲሁም ኢትዮጵያ አባል የሆነችባቸው ሌሎች አለማቀፍ ስምምነቶች እንደተጠበቁ ሆነው፣ የውጭ ሐገር አምባሳደሮች፣ ቆንስላዎች፣ የአለማቀፍ ድርጅቶችና የውጭ መንግስታት ወኪሎች (representatives of international organization, foreign states) ተጠያቂ በሆኑባቸው ወይም/እና ልዩ መብትና ጥበቃ ያላቸው በኢትዮጵያ ውስጥ የሚኖሩ የውጭ ሐገር ሰዎች (የውጭ ሐገር ዜጎች) ተከራካሪ በሆኑባቸው የፍትሐ ብሔር ጉዳዮች ላይ፣ የፌዴራል ፍርድ ቤቶች የዳኝነት ሥልጣን ተሰጥቷቸዋል።[1] እነዚህን አይነት የፍትሐ ብሔር ጉዳዮችን በመጀመሪያ ደረጃ የመዳኘት ሥልጣን፣ ከፌዴራል ፍርድ ቤቶች መካከል አንዱ ስለሆነ፣ የፌደራል ከፍተኛ ፍርድ ቤት ተሰጥቷል።[2]

ይህ የፌደራል የመጀመሪያ ደረጃ ፍርድ ቤት ደግሞ፣ የፌደራል ከፍተኛ ፍርድ ቤትና ሌሎች አካላት የዳኝነት ሥልጣን ያገኙባቸውን (በፌዴራል ከፍተኛ ፍርድ ቤት እና ሌሎች አካላት የዳኝነት ሥልጣን ሥር የሚወድቁ) እና በድሬዳዋ ከተማ ውስጥ የሚነሱ የፍትሐ ብሔር ጉዳዮችን የመዳኘት ሥልጣን የለውም።[3] ስለዚህ ይህ ፍርድ፣ የውጭ ሐገር አምባሳደሮች፣ ቆንስላዎች፣ የአለማቀፍ ድርጅቶችና የውጭ መንግስታት ወኪሎች (representatives of international organization, foreign states) ተጠያቂ የሚሆኑባቸውን ወይም/እና ልዩ መብትና ጥበቃ ያላቸው በኢትዮጵያ ውስጥ የሚኖሩ የውጭ ሐገር ሰዎች (የውጭ ሐገር ዜጎች) ተከራካሪ የሚሆኑባቸውን የፍትሐ ብሔር ጉዳዮችን የመዳኘት ሥልጣን የለውም።

ነገር ግን፣ ከላይ ክስ የመሠረተበትና በዚህ መዝገብ ለፍርድ ቤቱ የቀረበው ጉዳይ፣ የውጭ ሐገር አምባሳደር ወይም ቆንስላ ወይም አለማቀፍ ድርጅት ወይም የውጭ መንግስት ወኪል (representative of international organization, foreign state) ተጠያቂ የሆነበት

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[1].የፌደራል ፍርድ ቤቶች አዋጅ፣ 2013 ዓ.ም.፣ አንቀፅ 5/1/ሠ፣ አዋጅ ቁጥር 1234፣ ፌዴራል ነጋሪት ጋዜጣ፣ 27ኛ ዓመት፣ ቁጥር 26፣

[2].የፌደራል ፍርድ ቤቶች አዋጅ፣ 2013 ዓ.ም.፣ ከላይ በተራ ቁጥር 1 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 5/1/ሠ፣ 11/1/ሀ፣

[3].የፌደራል ፍርድ ቤቶች አዋጅ፣ 2013 ዓ.ም.፣ ከላይ በተራ ቁጥር 1 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 14፣

(በተጠያቂነት የተከሰሰበት) ወይም/እና ልዩ መብትና ጥበቃ ያለው በኢትዮጵያ ውስጥ የሚኖር የውጭ ሐገር ሰው (የውጭ ሐገር ዜጋ) የሚከራከርበት ጉዳይ አይደለም፡፡ ጉዳዩ በከሳሽ እጅ የሚገኘውን የመሬት ይዞታንና በይዞታው ላይ ተከሳሽ ፈጥሮታል፣ የተባለውን ሁከት የሚመለከት ነው፡፡

ተከሳሽ፣ ይህ ፍርድ ቤት ክሳሽ ክስ ያቀረበበትን ጉዳይ የመዳኘት ሥልጣን የለውም፣ በማለት ከሚከራከርባቸው ምክንያቶች አንዱ፣ በፌደራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ እና 11/2/ሀ ላይ በተደነገገው መሠረት፣ አለማቀፍ ድርጅቶችን የሚመለከቱ ጉዳዮችን የመዳኘት ስልጣን የተሰጠው ለፌደራል ከፍተኛ ፍርድ ቤት ነው፣ የሚል ነው፡፡

ነገር ግን እዚህ ላይ ልብ ሊባል የሚገባው ነገር፣ የፌደራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ ድንጋጌ የአማርኛው ቅጂ፣ ከአዋጁ አንቀፅ 11/2/ሀ ጋር ተጣምሮ ሲነበብ፣ አለማቀፍ ድርጅቶችን የሚመለከቱ ጉዳዮች የሚዳኙት በፌደራል ፍርድ ቤቶች መሆኑና ከፌደራል ፍርድ ቤቶች መካከል ደግሞ፣ እነዚህን ጉዳዮች በመጀመሪያ ደረጃ የመዳኘት ሥልጣን ለፌደራል ከፍተኛ ፍርድ ቤት የተሰጠ መሆኑን የሚደነግግ ይመስላል፡፡ ነገር ግን የድንጋጌው የአማርኛ ቅጅ ብቻ ሳይሆን፣ የድንጋጌው የእንግሊዘኛ ቅጂ ጭምር ሲነበብ፣ በፌደራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ እና 11/2/ሀ ላይ በተደነገገው መሠረት፣ በፌደራል ፍርድ ቤቶች የሚዳኙት እና ከፌደራል ፍርድ ቤቶች መካከል አንዱ የሆነው የፌደራል ከፍተኛ ፍርድ ቤት በመጀመሪያ ደረጃ የዳኝነት ሥልጣኑ የሚዳኛቸው ጉዳዮች፣ አለማቀፍ ድርጅቶችን በቀጥታ የሚመለከቱ ጉዳዮች ሳይሆኑ፣ አለማቀፍ ድርጅቶችን የሚወክሉና የዲፕሎማቲክ ጥበቃ/ከለላ ያላቸው ግለሰቦችን የሚመለከቱና እነዚህ ግለሰቦች ተጠያቂ የሚሆኑባቸውን (በተጠያቂነት የሚከሰሱባቸውን) ጉዳዮች እንደሆነ መገንዘብ ይቻላል፡፡

በመሠረቱ፣ የፌደራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ ድንጋጌ ዋነኛ አላማ፣ የእነማን፣ ወይም በሌላ አገላለፅ የምን አይነት ሰዎች፣ ምን አይነት ጉዳይ በፌደራል ፍርድ ቤቶች እንደሚታይ መደንገግ ሲሆን፣ በአዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ ድንጋጌ የአማርኛው ቅጂ ንባብ መሠረት መታየት የሚኖርበት እንኳን ቢሆን፣ ከአለማቀፍ ድርጅቶች በተጨማሪ፣ በፌደራል ፍርድ ቤቶች እና ከፌደራል ፍርድ ቤቶች መካከል ደግሞ በፌደራል ከፍተኛ ፍርድ ቤት የመጀመሪያ ደረጃ የዳኝነት ሥልጣን ጉዳያቸው የሚዳኘው ሌሎች ሰዎች እነማን እንደሚሆኑ ተዘርዝሮ ተገልጿል፡፡ እነዚህ ሌሎች ሰዎች፣ አምባሳደሮች፣ ቆንስላዎች፣ የውጭ መንግስታት ወኪሎች ወይም/እና ልዩ መብትና ጥበቃ ያላቸው በኢትዮጵያ

ውስጥ የሚኖሩ የውጭ ሐገር ሰዎች (የውጭ ሐገር ዜጎች) ናቸው። እነዚህ ሰዎች ደግሞ፣ የተፈጥሮ ሰዎች ወይም ግለሰቦች እንጂ፣ በሕግ ሰውነት የተሰጣቸው ድርጅቶች ወይም ተቋማት አይደሉም።

ፍርድ ቤቱ፣ በፌዴራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ ላይ የተዘረዘሩትና፣ ከአለማቀፍ ድርጅቶች በቀር (በአማርኛው ቅጂ ንባብ መሠረት ከተወሰደ)፣ በፌዴራል ፍርድ ቤቶች እና ከፌዴራል ፍርድ ቤቶች መካከል ደግሞ በፌዴራል ከፍተኛ ፍርድ ቤት የመጀመሪያ ደረጃ የዳኝነት ሥልጣን ጉዳያቸው የሚዳኘው ሁሉም ሰዎች የተፈጥሮ ሰዎች ወይም ግለሰቦች የመሆናቸውን ነገር፣ ከአዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ ድንጋጌ የእንግሊዘኛ ቅጂ ንባብ ጋር በአንድ ላይ ሲያገናዝበው፣ አለማቀፍ ድርጅቶችን የሚመለከቱ ጉዳዮች፣ ከሌሎች በሕግ ሰውነት ከተሰጣቸውና የዲፕሎማቲክ ጥበቃ/ከለላ ካላቸው ድርጅቶች፣ ለምሳሌ ኤምባሲዎች፣ ጉዳዮች ተለይቶ፣ የዲፕሎማቲክ ጥበቃ/ከለላ እንዳላቸው ግለሰቦች ጉዳይ፣ በፌዴራል ፍርድ ቤቶች እና ከፌዴራል ፍርድ ቤቶች መካከል ደግሞ በፌዴራል ከፍተኛ ፍርድ ቤት የመጀመሪያ ደረጃ የዳኝነት ሥልጣን እንዲዳኝ ተደንግጓል፣ ለማለት አልቻለም።

በዚያ ላይ፣ በአዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ የአማርኛው ቅጂ ንባብ መሠረት ቢወሰድ እንኳን፣ በፌዴራል ፍርድ ቤቶች እና ከፌዴራል ፍርድ ቤቶች መካከል ደግሞ በፌዴራል ከፍተኛ ፍርድ ቤት የመጀመሪያ ደረጃ የዳኝነት ሥልጣን የሚዳኘው፣ አለማቀፍ ድርጅት ተጠያቂ የሚሆንበት (በተጠያቂነት የሚከሰስበት) ጉዳይ እንጂ፣ አለማቀፍ ድርጅት ተከራካሪ የሚሆንበት ሁሉም አይነት ጉዳይ አይደለም። በዚህ መዝገብ ለፍርድ ቤቱ የቀረበው ጉዳይ ደግሞ፣ አለማቀፍ ድርጅት የሆነው ከሳሽ ተጠያቂ የሚሆንበት (በተጠያቂነት የተከሰሰበት) ጉዳይ ሳይሆን፣ ከሳሽ ራሱ፣ በእጁ በሚገኘው የመሬት ይዞታ ላይ ተከሳሽ ፈጥሮታል የሚለው ሁከት እንዲወገድ በመጠየቅ ክስ የመሠረበትና ይዞታን የሚመለከት ጉዳይ ነው።

ስለዚህ ፍርድ ቤቱ፣ ተከሳሽ የፌዴራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀፅ 5/1/ሠ/ እና 11/2/ሀ ላይ የተደነገገውን መሠረት፣ አለማቀፍ ድርጅቶችን የሚመለከቱ ጉዳዮችን የመዳኘት ስልጣን የተሰጠው ለፌዴራል ከፍተኛ ፍርድ ቤት በመሆኑ፣ ይህ ፍርድ ቤት ከሳሽ ክስ ያቀረበበትን ጉዳይ የመዳኘት ስልጣን የለውም፣ በማለት ያቀረበውን ክርክር አልተቀበለውም።

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የከተማን ቦታ በሚመለከት በኢትዮጵያ ውስጥ ባሉ ማናቸውም ከተሞች ተፈፃሚነት ባለውና[4] የከተማን ቦታ በሊዝ ስለመያዝ በወጣው አዋጅ ቁጥር 721/2004 ላይ በተደነገገው መሠረት፣ እንዲሁም በመላ ኢትዮጵያ በከተማም ሆነ በገጠር ተፈጻሚነት ባለውና[5] ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን በወጣው አዋጅ ቁጥር 1161/2011 ላይ በተደነገገው መሠረት፣ የከተማ ቦታን ለማስተዳደርና ለማልማት ሥልጣን የተሰጠው የክልል ወይም የከተማ አስተዳደር አካል፣[6] እንዲሁም አግባብነት ያለው የፌደራል አካል፣ የክልል አስተዳደር ወይም በክልል አስተዳደር ካቢኔ ለሕዝብ ጥቅም ሲባል መሬት የማስለቀቅ ውሳኔን የማሳለፍ ሥልጣን በውክልና የተሠጠው የከተማ ወይም የወረዳ አስተዳደር እና አዲስ አበባ አስተዳደር እና የድሬዳዋ አስተዳደር፣[7] ከቦታው ወይም ከመሬቱ ስሚነሳው ንብረት ተመጣጣኝ ካሣ በቅድሚያ እንዲከፈል በማድረግ፣ የከተማ ቦታንም ሆነ የገጠር መሬትን፣ ለሕዝብ ጥቅም አንዲውል ለማድረግ፣ ከባለይዞታው የማስለቀቅና የመረከብ ሥልጣን ተሠጥቷቸዋል።[8] በድሬዳዋ ከተማ የአስተዳደር

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[4].የከተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ አንቀፅ 3፣ አዋጅ ቁጥር 721፣ ፌዴራል ነጋሪት ጋዜጣ፣ 18ኛ ዓመት፣ ቁጥር 4፣

[5].ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን የወጣ አዋጅ፣ 2011፣ አንቀፅ 3፣ አዋጅ ቁጥር 1161/2011፣ ፌዴራል ነጋሪት ጋዜጣ፣ 25ኛ ዓመት፣ ቁጥር 90፣

[6].የከተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ከላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 2/6/፣

[7].ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን የወጣ አዋጅ፣ 2011፣ ከላይ በተራ ቁጥር 5 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 5/1/ እና /5/፣ 6፣

[8].የከተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ከላይ በተራ ቁጥር 4 ላይ የተጠቀሰ፣ አንቀፅ 26/1/፣ ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው

ክልል ውስጥ የሚገኝን የከተማ ቦታን የማስተዳደርና የማልማት ሥልጣን ደግሞ፣ ከከተማው አስተዳደር አስፈፃሚ አካላት መካከል አንዱ ለሆነው የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ፣ ማለትም ጣልቃ ገብ፣ ተሰጥቷል።[9]

የከተማን ቦታ በሊዝ ስለመያዝ በወጣው አዋጅ ቁጥር 721/2004 ላይ በሚገኙት ድንጋጌዎች መሠረት ከሆነ፣ የከተማ ቦታ ይዞታ ለሕዝብ ጥቅም በሚል ምክንያት እንዲለቀቅ ሲወሰን፣ ይዞታውን የሚለቅበት ጊዜ፣ ሊከፈለው የሚገባው የካሣ ገንዘብ መጠን እና ሊሰጠው የሚችለው ምትክ ቦታ ስፋትና አካባቢ ተጠቅሶ የማስለቀቂያ ትዕዛዝ ለባለይዞታው በጽሁፍ የሚሰጠው ሲሆን፣[10] የማስለቀቂያ ትዕዛዝ የደረሰው ወይም ትዕዛዝ በተሰጠበት ንብረት ላይ ያለ መብቱ ወይም ጥቅሜ ይነካብኛል የሚል ማንኛውም ሰው፣ ትዕዛዙ በደረሰው በአስራ አምስት የሥራ ቀናት ውስጥ፣ ያለውን አቤቱታ ከዝርዝር ምክንያቱና ማስረጃው ጋር አግባብነት ላለው አካል፣ ማቅረብ ይችላል።[11] አግባብነት ያለው አካልም፣ የቀረበለትን አቤቱታ በአግባቡ በማጣራት ውሳኔ መስጠትና ውሳኔውን ለአቤቱታ አቅራቢው በጽሁፍ ማሳወቅ አለበት። የቀረበው አቤቱታ ተቀባይነት ያላገኘ ከሆነም፣ ምክንያቱ በግልፅ በውሳኔው ውስጥ መገለፅ ይኖርበታል።[12]

የሚቋቋመውበትን ሁኔታ ለመወሰን የወጣ አዋጅ፣ 2011፣ ከላይ በተራ ቁጥር 5 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 4/2/፣ 8/1/ሰ፣ 11፣

[9].የድሬዳዋ አስተዳደር አስፈፃሚና ማዘጋጃ ቤት አገልግሎት አካላትን እንደገና ለማቋቋም እና ተግባርና ኃላፊነታቸውን ለመወሰን የወጣ አዋጅ፣ 2008 ዓ.ም.፣ አንቀፅ 58/2/፣ አዋጅ ቁጥር 43፣ ድሬ ነጋሪት ጋዜጣ፣ 8ኛ ዓመት፣ ቁጥር .....፣

[10].የከተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ከላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 27/1/፣

[11].የከተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ከላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 28/1/፣

[12].የከተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ከላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 28/3/፣

አግባብነት ያለው አካል በሰጠው ውሳኔ ቅር የተሰኘ አቤቱታ አቅራቢ፣ ውሳኔው በደረሰው ሰላሳ ቀናት ውስጥ ይግባኙን በአዋጁ መሠረት ለተቋቋመው ይግባኝ ሰሚ ጉባዔ ማቅረብ ይችላል።[13] ጉባዔውም የቀረበለትን ይግባኝ በሰላሳ የሥራ ቀናት ውስጥ መርምሮ ውሳኔ መስጠትና የሰጠውን ውሳኔም ለተከራካሪ ወገኖች በጽሁፍ ማሳወቅ ይጠበቅበታል።[14] በካሣ ክርክር ላይ ካልሆነ በስተቀር፣ ምትክ ቦታን ጨምሮ፣ በሌሎች በሕግም ሆነ በፍሬ ነገር ክርክሮች ላይ ጉባዔው የሚሰጠው ውሳኔ የመጨረሻ ሲሆን፣[15] ጉባዔው ካሣን በሚመለከት በሰጠው ውሳኔ ላይ ቅር የተሰኘ ተከራካሪ ወገን፣ ውሳኔው በደረሰው በሰላሳ ቀናት ውስጥ ለሚመለከተው የክተማ ይግባኝ ሰሚ ፍርድ ቤት ወይም የክተማ ይግባኝ ሰሚ ፍርድ ቤት በሌለበት ቦታ ደግሞ፣ ለሚመለከተው መደበኛ ከፍተኛ ፍርድ ቤት ይግባኝ ማቅረብ ይችላል።[16] ይግባኝ የቀረበለት ፍርድ ቤትም፣ ይግባኙ በቀረበለት በሰላሳ የሥራ ቀናት ውስጥ ውሳኔ መስጠት ይኖርበታል። የፍርድ ቤቱ ውሳኔም የመጨረሻ ይሆናል።[17]

ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን በወጣው አዋጅ ቁጥር 1161/2011 ላይ በሚገኙት ድንጋጌዎች መሠረት ከሆነ ደግሞ፣ የመሬት ይዞታ ማስለቀቂያ ትዕዛዝ የደረሰው ወይም እንዲለቀቅ ትዕዛዝ በተሰጠበት ንብረት ላይ መብቱ ወይም ጥቅሜ ተነካብኝ የሚል ማንኛውም

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[13] የክተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ክላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 29/1/፣

[14] የክተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ክላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 29/2/፣

[15] የክተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ክላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 29/3/፣

[16] የክተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ክላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 29/4/፣

[17] የክተማን ቦታ በሊዝ ስለመያዝ የወጣ አዋጅ፣ 2004 ዓ.ም.፣ ክላይ በተራ ቁጥር 4 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 29/6/፣

ተነሽ፣ ትዕዛዙ በደረሰው በሰላሳ ቀናት ውስጥ አቤቱታውን፣ በዚሁ አዋጅ ቁጥር 1161/2011 አንቀጽ 18 ንዑስ አንቀጽ 1 መሠረት ለሚቋቋመው አቤቱታ ሰሚ አካል ማቅረብ ይችላል።[18] አቤቱታ ሰሚው አካልም፣ የቀረበለትን አቤቱታ ከመረመረ በኋላ፣ በሰላሳ ቀናት ውስጥ ውሳኔ በመስጠት ለተከራካሪ ወገኖች በጽሑፍ ያሳውቃል።[19] በአቤቱታ ሰሚው አካል በተሰጠው ውሳኔ ቅር የተሰኘ ወገን፣ አቤቱታውን በዚሁ አዋጅ ቁጥር 1161/2011 አንቀጽ 18 ንዑስ አንቀጽ 2 መሠረት ለሚቋቋመው ይግባኝ ሰሚ ጉባኤ፣ ውሳኔው በጽሁፍ ከደረሰው ቀን ጀምሮ፣ በሰላሳ ቀናት ውስጥ ማቅረብ አለበት።[20] ይግባኝ ሰሚ ጉባኤው በሰጠው ውሳኔ ቅር የተሰኘ ወገን ደግሞ፣ ውሳኔው በጽሁፍ ከደረሰው ቀን ጀምሮ በሰላሳ ቀናት ውስጥ፣ ይግባኙን ለክልል ከፍተኛው ፍርድ ቤት፣ ቦታው በአዲስ አበባ እና በድሬዳዋ ከተሞች ውስጥ የሚገኝ ከሆነ ደግሞ፣ ለፌደራል የመጀመሪያ ደረጃ ፍርድ ቤት ማቅረብ ይችላል።[21] ሆኖም፣ ውሳኔ ከተሰጠ

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[18] ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን የወጣ አዋጅ፣ 2011፣ ከላይ በተራ ቁጥር 5 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 19/1/፣

[19] ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን የወጣ አዋጅ፣ 2011፣ ከላይ በተራ ቁጥር 5 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 19/2/፣

[20] ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን የወጣ አዋጅ፣ 2011፣ ከላይ በተራ ቁጥር 5 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 20/1/፣

[21] ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን የወጣ አዋጅ፣ 2011፣ ከላይ በተራ ቁጥር 5 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 20/2/፣

በኋላ ይግባኝ ማለት የሚፈልግ ከሆነ፣ ክርክሩን መቀጠል የሚችለው፣ ቦታውን ካስረከበ በኋላ ነው።[22]

በዚህ ጉዳይ ግን፣ ከሳሽ በተከሳሽ ላይ ክስ የመሠረተው፣ ተከሳሽ በይዞታዬ ሥር የነበረውን መሬት በመውሰድ፣ በመሬቱ ላይ የግንባታ ግብዓት በመገልበጥና የከሳሽን ግንባታዎች ለማፍረስ ቁሳቁሶችን በማስገባት፣ ሁከት ፈጥሮብኛል፣ በሚል ምክንያት ሲሆን፣ ተከሳሽ በይዞታዬ ላይ ፈጥሮታል፣ የሚለውን ሁከት እንዲያስወግድ እንዲወሰንበት ጠይቋል። በቀጥታ በራሱ እጅ ወይም ነገሩን ይዞ ብቻ በጠባቂነት ባቆየለት በሌላ ሰው አማካይነት በእጁ አድርጎ ሲያዝበት የነበረ ይዞታው[23] የተወሰደበት ወይም በይዞታው ላይ ሁከት የተነሳበት ሰው ደግሞ፣ የተወሰደበት ነገር እንዲመለስለት ወይም የተነሳው ሁከት እንዲወገድለት፣ እንዲሁም ስለደረሰበት ጉዳት ኪሳራ እንዲሰጠው (ካሣ እንዲከፈለው) በፍርድ ቤት ዳኝነት መጠየቅ ይችላል።[24] ይዞታውን ወስዷል ወይም ሁከቱን አንስቷል ተብሎ የተከሰሰው ሰውም፣ የሥራውን አደራረግ የሚፈቅድ ለእርሱ የሚናገርለት መብት መኖሩን በፍጥነትና በማይታበል ዓይነት ካላስረዳ በቀር፣ የተወሰደው ነገር ለከሳሹ እንዲመለስ ወይም የተነሳው ሁከት እንዲወገድ ፍርድ ቤቶች ትዕዛዝ ይሰጣሉ።[25]

ስለዚህ፣ ተከሳሽ በከሳሽ እጅ የነበረውን መሬት የወሰደው፣ በመሬቱ ላይም የግንባታ ግብዓት መገልበጥና የከሳሽን ግንባታዎች ለማፍረስ ቁሳቁሶችን ማስገባት የጀመረው፣ በሕግ አግባብ እና ይህንን ለማድረግ የሚያስችለው የሥራውን አደራረግ የሚፈቅድ ለእሱ የሚናገርለት መብት ያለው መሆን አለመሆኑን፣ ፍርድ ቤቱ የጉዳዩን ሥረ-ነገር በመመርመር፣ ተገቢውን ትዕዛዝ የሚሰጥበት መሆኑ እንደተጠበቀ ሆኖ፣ ከሳሽ የጠየቀው፣ ተከሳሽ በይዞታዬ ላይ ፈጥሮብኛል፣ የሚለውን ሁከት እንዲያስወግድ እንዲወሰንለት እስከሆነ ድረስ፣ ይህ ፍርድ ቤት፣ ይህንን

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[22] ለሕገ-ወጥ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን የወጣ አዋጅ፣ 2011፣ ከላይ በተራ ቁጥር 5 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ 20/2/፣

[23] የፍትሐ ብሔር ሕግ ቁጥር 1140፣ 1141፣

[24] የፍትሐ ብሔር ሕግ ቁጥር 1149/1/፣

[25] የፍትሐ ብሔር ሕግ ቁጥር 1149/3/፣

ዓይነቱንና ሁከት እንዲወገድ ይወሰንልኝ፣ የሚል ጥያቄ የያዘ ክስ ተቀብሎ የመዳኘት ሥልጣን አለው::[26]

ለማጠቃለል፣ ይህ ፍርድ ቤት ከሳሽ ክስ ያቀረበበትን ጉዳይ የመዳኘት ሥልጣን አለው፣ ከሚል መደምደሚያ ላይ ፍርድ ቤቱ ደርሷል:: ስለዚህ ከሳሽ ክስ ያቀረበበትን ጉዳይ ፍርድ ቤቱ የመዳኘት ሥልጣን የለውም፣ በማለት ተከሳሽ ያነሳውን የመጀመሪያ ደረጃ መቃወሚያ ውድቅ አድርጎታል::

ሁለተኛውን ጭብጥ በተመለከተ

ከላይ እንደተገለፀው፣ የከተማን ቦታ በሚመለከት በኢትዮጵያ ውስጥ ባሉ ማናቸውም ከተሞች ተፈፃሚነት ባለውና የከተማን ቦታ በሊዝ ስለመያዝ በወጣው አዋጅ ቁጥር 721/2004 መሠረት፣ እንዲሁም በመላ ኢትዮጵያ በከተማም ሆነ በገጠር ተፈጻሚነት ባለውና ለሕዝብ ጥቅም ሲባል የመሬት ይዞታ የሚለቀቅበት፣ ካሣ የሚከፈልበት እና ተነሺዎች መልሰው የሚቋቋሙበትን ሁኔታ ለመወሰን በወጣው አዋጅ ቁጥር 1161/2011 መሠረት፣ የድሬዳዋ አስተዳደር ካቢኔም ሆነ፣ የድሬዳዋ አስተዳደር አስፈፃሚ አካል የሆነውና በድሬዳዋ ከተማ የአስተዳደር ክልል ውስጥ የሚገኝ የከተማ ቦታን የማስተዳደርና የማልማት ሥልጣን የተሰጠው የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ፣ ማለትም ጣልቃ ገብ፣ ከቦታው ወይም ከመሬቱ ለሚነሳው ንብረት ተመጣጣኝ ካሣ በቅድሚያ እንዲከፈል በማድረግ፣ በድሬዳዋ አስተዳደር የሥልጣን ክልል ውስጥ የሚገኝን የከተማ ቦታንም ሆነ የገጠር መሬትን፣ ለሕዝብ ጥቅም እንዲውል ለማድረግ፣ ከባለይዞታው የማስለቀቅና የመረከብ ሥልጣን ተሠጥቷቸዋል::

በዚህ ጉዳይም፣ የድሬዳዋ አስተዳደር ካቢኔ ሚያዚያ 17 ቀን 2011 ዓ.ም. ባደረገው ስብሰባ፣ ከላይ የተጠቀሰውና በከሳሽ እጅ የሚገኘው 122,300 ካሬ ሜትር (12.23 ሔክታር) መሬት ከደረጃ በታች የለማ መሆኑን በመግለፅ፣ መሬቱ ወደ መሬት ልማት ባንክ እንዲገባ ወስኗል:: የድሬዳዋ አስተዳደር ካቢኔ ያሳለፈውን ውሳኔ ተከትሎ፣ የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ፣ ማለትም ጣልቃ ገብ፣ ግንቦት 23 ቀን 2011 ዓ.ም. ለከሳሽ በፃፈለት ደብዳቤ፣ በከሳሽ እጅ የሚገኘውና 122,300 ካሬ ሜትር (12.23 ሔክታር) ስፋት ያለው የመሬት ይዞታ ለተሻለ ልማት እንዲውል ወደ መሬት ባንክ የገባ መሆኑንና በከሳሽ ስም

[26].የፌደራል ፍርድ ቤቶች አዋጅ፣ 2013 ዓ.ም.፣ ከላይ በተራ ቁጥር 1 ላይ የተጠቀሰ የግርጌ ማስታወሻ፣ አንቀፅ

14/2/፣

የተመዘገበውና ቁጥሩ 2161 የሆነው የከተማ ቦታ ይዞታ ምስክር ወረቀት እንዲመክን የተደረገ መሆኑን አሳውቆታል። በሌላ በኩል ደግሞ፣ 9,614.08 ካሬ ሜትር የሚሆን ተለዋጭ መሬት ለክሳሽ አዘጋጅቶለታል፤ በክሳሽ እጅ በሚገኘውና 122,300 ካሬ ሜትር (12.23 ሔክታር) ስፋት ባለው መሬት ላይ የሚገኙት ግንባታዎች ዋጋ ግምት ብር 4,295,477.69 መሆኑን ወስኗል።

ነገር ግን ክሳሽ፣ ዋና መቀመጫው በኢትዮጵያ ውስጥ የሚገኝ ከመሆኑ በቀር፣ በጅቡቲ፣ በኤርትራ፣ በኢትዮጵያ፣ በኬንያ፣ በሶማሊያ፣ በሱዳን፣ በታንዛኒያ እና በዩጋንዳ መንግስታት መካከል በተፈረመ የተሻሻለ የምስራቅ አፍሪካ የበረሀ አንበጣ መከላከያ ድርጅት ማቋቋሚያ ኮንቬንሽን አማካይነት የራሱ ሕጋዊ የሆነ ሰውነት ኖሮት የተቋቋመና ስማቸው ከላይ የተጠቀሰው ስምንት ሐገራት አባል የሆኑበት አለማቀፍ ድርጅት ሲሆን፣ ድርጀቱ ከኢትዮጵያ መንግስት ጋር እንደ አውሮፓውያን አቆጣጠር ጁን 07 ቀን 1977 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ግንቦት 30 ቀን 1969 ዓ.ም.) በተፈራረመው የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) አንቀፅ 11 ላይ፣ ድርጅቱ ከኢትዮጵያ መንግስት የወንጀል፣ የሲቪል እና አስተዳደራዊ ጉዳይ ሥልጣን የተከለለ እንደሚሆን (ወይም በሌላ አገላለፅ የዲፕሎማቲክ ከለላ እንደሚኖረው) እና የድርጅቱ ሊቀመንበር ይህንን ከለላ በፅሑፍ ካላነሳው በቀር፣ በኢትዮጵያ ውስጥ በየትኛውም ቦታ የሚገኙና የሚንቀሳቀሱም ሆነ የማይንቀሳቀሱ የድርጅቱ ንብረቶችም ሆኑ የንብረቶቹ አካል የሆኑ ነገሮች፣ በኢትዮጵያ መንግስት አስተዳደራዊም ሆነ የፍርድ ተቋማት ገደብ እንደማይደረግባቸው፣ በተለይም ደግሞ እንደማይፈተሹ፣ እንደማይታገዱ፣ እንደማይያዙ፣ በመንግስትም ጭምር ቢሆን፣ እንደማይወረሱ ተመልክቷል። ድርጅቱ ከኢትዮጵያ መንግስት ጋር የተፈራረመው ይህ የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) ደግሞ፣ በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገመንግስት ላይ እንደተደነገገው፣ የኢትዮጵያ ሕግ አካል ነው።[27]

ስለዚህ፣ ምንም እንኳን የድሬዳዋ አስተዳደር ካቢኔም ሆነ የድሬዳዋ አስተዳደር አስፈፃሚ አካል የሆነውና በድሬዳዋ ከተማ የአስተዳደር ክልል ውስጥ የሚገኝ የከተማ ቦታን የማስተዳደርና የማልማት ሥልጣን የተሰጠውና የድሬዳዋ አስተዳደር መሬት ልማት እና ማኔጅመንት ቢሮ፣ ማለትም ጣልቃ ገብ፣ ከቦታው ለሚነሳው ንብረት ተመጣጣኝ ካሣ

[27] የኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገመንግስት አዋጅ፣ 1987፣ አንቀፅ 9/4/፣ አዋጅ ቁጥር 1፣ ፌደራል ነጋሪት ጋዜጣ፣ 1ኛ ዓመት፣ ቁጥር 1፣

በቅድሚያ እንዲከፈል በማድረግ፣ በድሬዳዋ አስተዳደር የሥልጣን ክልል ውስጥ የሚገኝን የከተማ ቦታንም ሆነ የገጠር መሬትን፣ ከቦታው ለሚነሳው ንብረት ተመጣጣኝ ካሣ በቅድሚያ እንዲከፈል በማድረግ፣ ለሕዝብ ጥቅም እንዲውል፣ ከባለይዞታው የማስለቀቅና የመረከብ ሥልጣን ቢኖራቸውም፣ በክሳሽ ይዞታ ሥር የሚገኝን መሬት ከክሳሽ ማስለቀቅና መረከብ የሚችሉት ግን፣ መሬቱን በሚመለከት፣ የኢትዮጵያ መንግስት ከድርጅቱ ጋር እንደ አውሮፓውያን አቆጣጠር ጁን 07 ቀን 1977 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ግንቦት 30 ቀን 1969 ዓ.ም.) በተፈራረመው የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) መሠረት ለድርጅቱ የተሰጠውን ከለላ (ወይም በሌላ አገላለፅ የዲፕሎማቲክ ከለላ) የድርጅቱ ሊቀመንበር በፅሑፍ ያነሳው እንደሆነ ብቻ ነው።

ተክሳሽ እና ጣልቃ ገብ ደግሞ፣ የድሬዳዋ አስተዳደር ካቢኔ ሚያዚያ 17 ቀን 2011 ዓ.ም. ባደረገው ስብሰባ፣ ከላይ የተጠቀሰውና በክሳሽ እጅ የሚገኘው 122,300 ካሬ ሜትር (12.23 ሔክታር) መሬት ከደረጃ በታች የለማ መሆኑን በመግለፅ፣ መሬቱ ወደ መሬት ባንክ እንዲገባ የወሰነውና ጣልቃ ገብ ደግሞ ከመሬቱ ውስጥ ከፊሉን ለተከሳሽ የሰጠው፣ ድርጅቱ ከኢትዮጵያ መንግስት ጋር እንደ አውሮፓውያን አቆጣጠር ጁን 07 ቀን 1977 ዓ.ም. (እንደ ኢትዮጵያውያን አቆጣጠር ግንቦት 30 ቀን 1969 ዓ.ም.) በተፈራረመው የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) አንቀፅ 11 ላይ በተመለከተው መሠረት፣ የድርጅቱ ሊቀመንበር፣ በመሬቱን በተመለከተ፣ በስምምነቱ መሠረት ለድርጅቱ የተሰጠውን ከለላ (ወይም በሌላ አገላለፅ የዲፕሎማቲክ ከለላ) በፅሑፍ ስላነሳው መሆኑን የሚያሳይ ማስረጃ ማቅረብ ቀርቶ፣ የድርጅቱ ሊቀመንበር ከለላውን አንስቶታል፣ የሚል ክርክር እንኳን የላቸውም። በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የግብርና ሚኒስቴር እና በኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የውጭ ጉዳይ ሚኒስቴር፣ የድሬዳዋ አስተዳደር ካቢኔ ባሳለፈው ውሳኔ መስማማታቸው ብቻውን በራሱ፣ ከላይ በተጠቀሰው የዋና መሥሪያ ቤት መቀመጫ ስምምነት (HEADQUARTERS AGREEMENT) ስምምነት አማካይነት ለክሳሽ የተሰጠውን ከለላ (ወይም በሌላ አገላለፅ የዲፕሎማቲክ ከለላ) ሊያስቀርበት የሚችል አይደለም።

ስለዚህ ፍርድ ቤቱ፣ ተክሳሽም ሆነ ጣልቃ ገብ፣ በክሳሽ እጅ የሚገኘውን መሬት ከክሳሽ እጅ ለመውደስ የሚያስችላቸውና የሥራቸውን አደራረግ የሚፈቅድና ለራሳቸው የሚናገርላቸው መብት የላቸውም፣ ከሚል መደምደሚያ ላይ ደርሷል። የሚከተለውንም ውሳኔ አሳልፏል።

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT

ቁጥር.....
No.
.....ቀን ፳፻.....ዓ.ም
አዲስ አበባ/Addis Ababa

ው ሳ ኔ

1. ተከሳሽና ጣልቃ ገብ፣ በድሬዳዋ ከተማ ቀበሌ 02 በሚገኘው፣ ቁጥሩ 2161 በሆነው የከተማ ቦታ ይዞታ ምስክር ወረቀት በከሳሽ ስም በተመዘገበውና 122,300 ካሬ ሜትር (12.23 ሔክታር) በሚሆነው የከሳሽ የመሬት ይዞታ ላይ የፈጠሩትን ሁከት እንዲያስወግዱ፣ ተከሳሽም መሬቱን ለከሳሽ ለቀለት እንዲወጣ ፍርድ ቤቱ ወስኗል።

2. ከሳሽ፣ ተከሳሽ እና ጣልቃ ገብ በክርክሩ ምክንያት ያወጡትን የየራሳቸውን ወጪ ራሳቸው ይቻሉ።

መዝገቡ ተዘግቷል። ወደ መዝገብ ቤት ይመለስ።

የማይነበብ የዳኛ ፊርማ አለው

ት/ክ

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