

Change of Venue: Cassation Decision

Description

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Introduction

This article summarizes the decision of the Federal Supreme Court Cassation Bench regarding the preconditions for ordering change of venue. The case has been between applicant Mr. Asheber Awude vs. respondent Southern Nation Nationalities and People's Region Welayta Zone Public Prosecutor seen on Cassation Bench File No189472 and decided on July 7, 2021.

Regional High Court and Regional Cassation Court

The case was first brought to the Southern Nation, Nationalities and People's Regional High Court by the applicant claiming change of venue. The applicant filed an application for change of venue to the High Court stating an impartial trial could not be held in the court in which the action was brought. Because the applicant said that he brought a petition against the court's president, also a petition against two other judges who were judges on the trial and they were not impartial on those pleadings. The court after hearing both sides decided that even though the applicant stated that he petitioned against the judges he didn't provide evidence that their case gets a final decision. The fact that the court's president is exercising his administrative power cannot be ground for change of venue and dismiss the case. The regional Supreme Court Cassation bench also affirms the decision of the High Court.

Review by the Federal Supreme Court Cassation Bench

Application against decision of Regional High Court and Regional Supreme Court Cassation Bench was brought by the applicant stating basic error of law was made. The Federal Supreme Court Cassation Bench examines the appropriateness of application for change of venue due to the applicant's conviction that court may not be impartial for the reason that he brought a disciplinary petition against the lower court's president. The Cassation Bench uses black's law dictionary to define change of venue. According to black's law dictionary change of venue "is the removal of a suit begun in one country or district to another country or district for trial , though the term is also sometimes applied to the removal of a suit from one court to another court of the same country or district".

In the case at hand change of venue is governed under Proclamation no. 84/1968 which was enacted in order to amend the Civil and Criminal Procedure Code. According to this Proclamation, application for change of venue in criminal cases can only be brought before hearing of evidence by the court for reasons that the court may not be impartial or the case is not ordinary nature or it is not convenient for witnesses.

After examining the case the court frames an issue stating, does the reasons that the applicant bases his claim be grounds for questioning the impartiality of the court or not? The Cassation Bench states that according to Article 78 and 79 of the FDRE Constitution judicial system in general specifically courts and judges are independent and free from any interference from any organ of the government. They will be accountable if they fail to do this. Methods for making the judicial system accountable are also provided under different laws. Among the methods that make a judge accountable include application for removal of a judge from a trial can be made if such judge cannot render a judgment impartially, request for change of venue, appeal and cassation can be mentioned. So if the applicant questions the impartiality of the President of the court, then he can ask for removal of that particular judge from the trial rather than asking for change of venue. The other thing the applicant brings as proof is reversal of lower court's decision on litigation between him and the president's relative by Cassation. The Cassation stipulated the mere fact that appellate court, or cassation reversing lower court's decision doesn't make such a decision as impartial. Appellate courts may affirm, reverse or remand the case to the lower court as per Article 337,341 and 348 of the Civil Procedure Code. Generally, even though, it is believed that the judges in the trial are not impartial, the solution will be removal of the judges from the trial and entertaining the case with other judges in the same court without change of venue. The Cassation Bench believed that this would be against the principles of the Constitution that courts are independent and impartial. Accordingly the Federal Supreme Court Cassation Bench affirms the decisions of lower courts including Regional Supreme Court Cassation Bench.

Dissenting Opinion

One judge expresses a disagreement with the majority opinion of the Cassation. The dissenting judge states that, the issue in this case should be, 'are the reasons for application for change of venue enough grounds for making change of venue?' Among the reasons for change of venue specified under Article 106(a) of the Criminal Procedure Code is whether the lower court can entertain the case impartially. So in our case the applicant specified the reasons for questioning the impartiality of Gamo Zone High Court's. So the dissenting judge believed that the request by the applicant was appropriate and the lower court which rejected the application, the Regional Supreme Court Cassation division for not correcting the decision of lower court made a basic error of law.

Conclusion

The request for change of venue has to be based on conclusive evidence. If it can be corrected by asking for the removal of that particular judge or transferring the case to another bench, then change of venue may not be ordered.

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