

Foreign National Spouse Adopting the Child of their Ethiopian Spouse: Cassation Division Decision

Description

By Dagnachew Tesfaye, Managing Partner at DMLF

The Federal Supreme Court Cassation Division on Cassation File Number 215383 on 30/05/2022 (Volume 26 pages 232-236) between Applicants 1. Mrs. Arsema Elias 2. Yergen Vandra Vade (rough translation from Amharic), Respondent-None, gave a binding decision on the fact that a foreigner spouse can adopt the child of his Ethiopian spouse, born before their marriage, who live together married under one roof in Ethiopia. As per Federal Court Proclamation Number 1234/2021, Article 10 sub-article 2, an interpretation by a Cassation Division where five judges of the Federal Supreme Court sit, is binding on all courts. A summary of the case is as follows.

The Federal First Instance Court

The case started at the Federal First Instance Court. The Applicants presented to the court for approval of an adoption contract. The first applicant is an Ethiopian national and married to the second applicant. The second applicant is a Dutch national. The Applicants live together in Ethiopia. The first applicant, the wife, has a child that is not born from her husband, the second applicant. The Applicants signed an adoption agreement to make the child of the 1st Applicant to be the adopted child of the 2nd Applicant, reserving the fact that the 1st Applicant remains the mother of the child. The child subject for adoption also uses the name of the second applicant as her father's name. The Federal First Instance Court decided the case that adoption for foreigners is prohibited by Proclamation Number 1070/2018 and hence rejected the Applicants request.

Federal High Court

The Applicants, being dissatisfied with the decision, appealed at the Federal High Court. However, the appellate court approved the lower court's position and dismissed the appeal of the Applicants.

Federal Supreme Court Cassation Division

The Applicants filed an application on the decisions of the lower courts mentioning fundamental error of law. The Cassation Division, wherein three judges of the Federal Supreme Court sit, accepted the application on the issue that whether Proclamation Number 1070/2018 is applicable to adoption of a child of one spouse by another spouse between married couples or not.

The Cassation Division where five Federal Supreme Court Judges sit entertained the case. The Cassation Division first stated the facts as mentioned in the application under the Federal First Instance Court. Based on the facts, the Cassation Division looked into the Revised Family Code Proclamation 213/2000, Article 186 sub-article 2 (mentioned wrongly as 187 in the Cassation decision)and Amendment to the Revised Family Code Proclamation Number 1070/2018. Revised Family Code Article 186 sub-article 2 allows the conduct of adoption of a child of one spouse by the other spouse.

On the other hand, Proclamation Number 1070/2018 repealed the provisions of the Revised Family Code Articles 193, 194(3)(d) and (4) and not Article 187. The Cassation Division reasoned that there is no law that prohibits foreigners and Ethiopians from joining in matrimony and bearing children. If the married spouses had a child or children prior to the marriage, there is no law that stops them from adopting the child of the other spouse.

Therefore the Applicants request to process the adoption of the child of the Ethiopian wife by her Dutch husband, maintaining the motherhood status of the wife to her child, living in Ethiopia and upbringing the child together, cannot be denied by Proclamation Number 1070/2018. The lower courts' decisions are therefore dismissed. The Cassation Division ordered the Federal First Instance Court to reopen the file and deal with the case as per the facts and the law.

Conclusion

This is a major shift in the adoption of children in Ethiopia after 2018. Government officials and government institutions give blank dismissal of adoption of an Ethiopian child when a foreigner is involved citing Proclamation Number 1070/2018. The Cassation Division proved such a dismissive assertion as wrong. Adoption of a child by a foreigner spouse of an Ethiopian national or Ethiopian origin spouse, of the child of the Ethiopian spouse existing prior to the marriage, is not prohibited by law. The blank dismissal of adoption requests when it involves foreigners by citing Proclamation 1070/2018 is considered wrong by the Cassation Division. The above Cassation Division interpretation upholds children, families, and married couples protection afforded by the FDRE Constitution Article 34.

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