

Important Procedure on ADR: Cassation Decision

Description

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Introduction

The Federal Supreme Court Cassation Division on Cassation File No 196228 on June 2,2021 passed a binding decision on the circumstances where by an agreement made through alternative dispute resolution mechanism is accepted for execution by a court of law.

Background

The case is between applicant Ato Demise Odda and respondent Ato Assefa Worku. The parties had concluded a compromise agreement on 26/11/2017 for demolition by the respondent of the party wall on or before 7/2/2018 and in case of failure, a penalty of ETB 40,000 shall be paid to the other party. The applicant sued the respondent for failure to respect the terms of the agreement and for the respondent to be penalized and forcefully perform his obligations under the agreement.

First Instance, Appeal and Cassation at Oromia

The case was filed at Oromia High court by the applicant. The suit by the applicant was for performance of obligation on the agreement and for the payment of the penalty. The respondent presented objections stating the case cannot be presented as a new suit rather execution should have been sought. For the facts of the case, the respondent asserted that he has performed his obligation contained in the agreement. The High Court said the respondent did not demolish the wall on the date mentioned on the agreement but on 9/11/2019. As a result the court rejected the objections of the respondent and ruled in favor of the applicant. The respondent is ordered to pay the penalty and clear the area. The appeal by the respondent to the Oromia Supreme Court was not accepted. So the respondent filed an error of law application to the Oromia Supreme Court Cassation Division.

The Oromia Supreme Court Cassation bench after accepting the application by the respondent and the response by the applicant decided the case based on the fact that the the parties had concluded a compromise agreement in which case not a direct court suit but an execution file should have been opened. The opening of a suit by the applicant was not acceptable procedure and the court quashed the rulings of the lower courts by majority vote. However the court kept the applicant's right to file an execution case based upon the compromise agreement. Dissatisfied by the ruling, the applicant presented his application to the Federal Supreme Court Cassation Bench. The respondent was also summoned to give his response.

Federal Supreme Court Cassation Division

The Federal Cassation Court on its judgment looked into the details of how alternative dispute resolution mechanisms are structured under the Ethiopian Civil Code. Parties to an agreement either by themselves or through a third party mediator can reach an agreement and this agreement can be presented for execution by a cumulative reading of Article 3312 and 3324 of the Ethiopian Civil Code. The court said that the agreement of the parties is mediation as per Article 3318 and following articles of the Civil Code. The fact that Article 3312 state that '*as between the parties, the compromise shall have the force of res judicata without appeal*' is a relevant provision for the case in dispute.

Thus a resolution of a dispute by the parties by themselves or by the help of a third party is considered a final binding ruling. Hence a new suit cannot be filed to a court on those mediated terms of the agreement. However, for the agreement to have the power of a judgment that can be presented for direct execution, the agreement should first be presented and approved by a court of law as per Article 277 of the Ethiopian Civil Procedure Code.

The agreement between the applicant and respondent was not presented and approved by a court as per Civil Procedure Code Article 277. Thus the Oromia Cassation Court's ruling of a direct execution of the agreement and not a new claim was not in line with the scope of the Civil Code provision of Article 3312 and the behavior of the agreement of the parties. Therefore the Federal Cassation court reversed the Oromia Cassation Court's judgment and concluded that the applicant's suit followed the correct procedure and so it should be decided on the merits.

Conclusion

Any agreement by two or more parties either by themselves or with the help of a mediator or conciliator shall not have the effect of a judgment that can be presented for execution unless otherwise such agreement has been presented and approved by a court of law first. Such out-of-court mediated or compromise agreements are binding agreements between the parties but do not qualify as judgments that can go directly to execution. The party or parties that would like to enforce the agreement should present a new claim citing the agreement as an evidence.

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