

# Cassation Decision on Requirements of an Agreement made in an Irregular Union

## Description

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### Introduction

The Federal Supreme Court Cassation Division on Cassation on File No. 185895 dated 24/02/2021, passed a binding decision as to whether an agreement on property of the man and woman made during an irregular union that lasted more than three years is required to be presented to court for approval, in order for such an agreement to have legal effect.

### Background

The case is between applicant W/ro Alemitu Gonfa and respondents who are successor of Ato Birhanu Degafa. W/ro Alemitu and Ato Birhanu were in an irregular union relationship without concluding a valid marriage for more than ten years, starting in 1994 and ending in 2008. During this period, the applicant and Ato Birhanu managed to own a house registered in the name of the applicant. Ato Birhanu also made an agreement with the applicant on 27/11/2012 that made the contentious house for the case, the personal property of W/ro Alemitu Gonfa. They also stated that the house was constructed and bought by the personal money of W/ro Alemitu. This agreement was signed in front of elders as witnesses. The heir of Ato Birhanu opposes this agreement by stating that the agreement was not approved before a court of law in light of family law. Since the house came into existence during the period of the irregular union, the house is common property of both Ato Birhanu and W/ro Alemitu, they argued.

### First Instance, Appeal and Cassation at Oromia

The case was filed at Finfine Zuriya Oromia Special Zone High Court by the respondent. The suit by respondents was to take half of the property, including the house of their father, from the common property. The applicant responded that the house is her personal property, not common property, by producing the agreement that was made with the deceased Ato Birhanu. The agreement made by Ato Birhanu states that the house is the personal property of W/ro Alemitu and was also constructed with her personal money. The Respondent objects to the agreement by stating that the agreement has not been approved by a court of law according to family law. Hence, the agreement has no legal effects. They argued the house is common property of both. Finfine Zuriya Oromia Special Zone High Court, after reviewing the case with relevant laws, decided that the house is personal property of W/ro Alemitu Gonfa according to the agreement made with Ato Birhanu. The court ordered the applicant to take half of other assets other than the house. By opposing the decision of Finfine Zuriya Oromia Special Zone High Court, the respondent filed an appeal to the Oromia Supreme Court.

The Oromia Supreme Court, after accepting the application by the respondent and then the response by the applicant, decided the case. The court argued that if an irregular union lasted for more than three years, the union created common property between people who lived in this union according to

Oromia Regional State Family Law. The Oromia Supreme Court also added that in this case, the respondent and Ato Birhanu lived in the union for 10 years. Hence common property was created. With regard to the agreement concluded between the deceased Ato Birhanu and the respondent, the court argued that the agreement has to be approved by the court in accordance with Oromia Family Proclamation 83/96 Articles 89. But in this case, the agreement was not approved by the court of law. So the court decided the agreement has no legal effect. The house is the common property of both people. And the court reversed the decision of the lower court by making the house common property.

The applicant, by opposing the decision of the Oromia Supreme Court, applies to the Oromia Supreme Court Cassation Bench by stating the Supreme Court has committed an error of law by applying the formality set for marriage to an irregular union. The Oromia Supreme Court Cassation Bench decided in support of the decision of the Oromia Supreme Court by arguing there was no error of law committed.

### **Federal Supreme Court Cassation Division**

The applicant filed to the Federal Supreme Court Cassation bench an application opposing the decisions of the Oromia Supreme and Cassation Court decisions. The content of the applicants application consists of arguments such as the house in contention is in the name of the applicant, the deceased has not contributed any money for the house and signed an agreement attesting the house is the personal property of the applicant. The Oromia Supreme Court decision reversing the High Court decision is wrong. Thus, the error of law committed by the Oromia Supreme Court needs to be rectified. The Cassation bench screened the case and has framed the issue of whether an agreement signed between irregular union couples need to be approved by a court of law as married spouses. Hence, the respondents were called to submit their response. On the respondents' response they argued that their deceased father and the applicant lived for 15 years, their deceased father added money of his own with the compensation money the applicant received for eviction, bought a plot of land and built the house in contention. There is no agreement signed stating the house is the applicant's property. If there is an agreement, that agreement is not registered in court of law. Therefore, they argued the final decision of the Supreme Court of Oromia was correct. The applicant also gave a reply. The applicant further explained her application.

The Federal Supreme Court Cassation Bench, after reviewing the facts of the case and relevant family law provisions, by a majority decision of four judges, decided the case. The court argued that the Oromia Family Code Proclamation No 69/1995 Article 132 and 133 state that if a man and a woman live for more than three years in an irregular union, the properties they acquire shall be common properties, unless otherwise an opposing evidence is produced. When there is common property, the liquidation of the common property shall follow that of the marital liquidation of property provisions. Article 89 declares that agreements made during marriage have no legal effect unless otherwise the agreement is approved by a court of law.

Cassation bench argues that any agreement made during an irregular union or marriage has to be approved by a court of law. The law provides such a legal requirement to prevent undue influence made by one party on the other during the agreement making process. Requirement of approval ensures that the requirement of approval by the court of law is also to ascertain whether the agreement is based on the free will of the agreement maker. Legislative bodies also provide such a legal requirement to protect the parties from undue influence during the process of agreement. This legal

obligation also works for irregular unions. The Federal Cassation Bench decided that the agreement made by the deceased was defective since it was not approved by the court of law. The Federal Cassation Bench by majority vote decided in support of the conclusion reached by the Oromia Supreme Court and the Oromia Supreme Court Cassation Bench. Hence, the court has decided that the house is common property of both Ato Birhanu and W/ro Alemitu since the agreement made with regard to the house was not approved by the court of law.

From among the five judges of the Federal Supreme Court Cassation bench, one judge argued holds a dissenting opinion. The dissenting judge argues that the requirement of approval of agreement by the court of law is only for spouses who have concluded valid marriage, and not for people who live in irregular unions without concluding valid marriage. According to this judge, the Family Law of Oromia Region on Article 132 doesn't specifically state the requirement of approval of an agreement by court of law. Rather the law upholds the agreement of the man and woman in the irregular union. Therefore there is no mandatory law that obliges agreement made by people who live in irregular unions for more than three years to go to court for approval of the agreement. Thus the judge argued the requirement of approval is the rule set for marriage, not for irregular unions.

## **Conclusion**

An agreement made by spouses or couples during marriage or irregular union of more than three years, with regard to their property, should be approved by a court of law. The law imposes such an obligation to protect the parties from any undue influence and to make sure parties make the agreement with their full consent by requiring them to approve the agreement before a court of law. Legislators also provide such legal requirements to protect the rights of the parties from any violence and undue influence. Hence, for people who lived in an irregular union for more than three years, to make a valid agreement with regard to their common property, such agreement has to be approved by a court of law.

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