

CASSATION DECISION ON ADMINISTRATIVE PROCEDURE PROCLAMATION 1183/2020

Description

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Introduction

This article summarized the cassation decision of the Federal Supreme Court Cassation Division on File No 220042 rendered on 9/12/2022. The case has been between Applicant W/ro Hana Solomon Zenebe and Respondents (1) W/ro Asnakeh Wolde G/mariam and (2) Yeka Sub city Land Development and Management Bureau. The case concentrates on the application of the procedure of the Federal Administrative Proclamation No 1183/2020 on administrative decision making process before any request of cancellation of title deed certificate in courts of law.

Federal First Instance Court

The case was first filed to the Federal First Instance Court. The applicant was the plaintiff and the respondents were the defendants. The applicant in an amended claim presented on 28/4/2021 requested the court for revocation of title deed certificate issued by the 2nd respondent to the first respondent on a property located in Yeka Sub city W.06 House No 1168 plot size 692sq.m. The applicant claimed she acquired the property through donation from her late mother. However, the applicant argued the 2nd respondent gave illegally a title deed certificate to the 1st respondent on the 692sq.m on 3/2/2012 with title deed No. Yeka/172834/04. Thus the applicant requested the court for revocation of the title deed certificate.

The 1st respondents gave a statement of defense arguing that the respondent acquired the property through inheritance of her late father and brother. Thus the claim of the applicant is not supported by evidence and the request for revocation of the title deed should be dismissed.

The 2nd respondent has also given a statement of defense. The second respondent argued that it gave the title deed certificate based on Directive 17/2006 and following the right steps including posting a request for any opposition to come forward. There was nobody that came opposing the issuance of the title deed certificate. It further argued that it issued the title deed certificate having seen the necessary documents of the 1st respondent. On the other hand, the 2nd respondent said to the court that the applicant doesn't have vested interest on the property under question.

The Federal First Instance Court has heard witnesses and seen the file from the land administration office. The court reached the conclusion that the title deed certificate granted to the 1st respondent should not be revoked and made a judgment in favor of the 1st respondent.

Federal High Court

The applicant has appealed to the Federal High Court. However, the appellate court did not accept the appeal.

Federal Supreme Court Cassation Division Three Judges

The Applicant presented an application to the Federal Supreme Court Cassation division stating the lower courts committed fundamental error of law in their ruling of her case. As a result the applicant requested the dismissal of the lower court's decisions due to the reason that the lower courts did not investigate the necessary files concerning the property and corresponding evidence to the property properly.

The three judges of the Cassation Division after examining the applicant's application, found merit in the fact that proportionality and measurement of the land holding, evidence presented from AA City Land Administration and Development Bureau on the matter were disregarded by lower courts. Thus the applicant's case has merit for further examination and the application is seen by five judges of the Cassation Division.

Federal Supreme Court Cassation Division of Five Judges

Consequently, the respondents were invited to present their responses on the application of the applicant and on the accepted merit of the applicant's case as reiterated by the cassation division three judges. The 1st respondent presented her written response. The 1st respondent argued that the AA City Land Development and Management opposes the way the applicant acquired her title deed certificate and not the one in question. Therefore the lower court decision has no basic error of law and should confirm the lower court's decision.

The 2nd respondent on his part argued that the title deed certificate issued for the 1st respondent and for that matter for the applicant were as per the AA Land Development and Management Bureau. The Applicant's claim is not about inheritance but cancellation of title deed certificate, and such a request cannot be entertained by this court. Hence the 2nd respondent requested for the lower court's decision to be confirmed.

The Applicant also gave a counter-response. The applicant contends by strengthening her application.

The Cassation Division rendered its judgment based on the Federal Administrative Procedure Proclamation No 1183/2020. The court stated that the applicant's application was presented to the lower court at the time when the Administrative Procedure Proclamation was effective. The Proclamation provides the procedure for how administrative decisions are requested and how dissatisfied persons on an administrative decision can take the matter to court.

In the case at hand, the applicant requested for revocation of the title deed certificate. The power to give or cancel title deed certificates rests upon the land administration office. Cancellation of title deed certificate is an administrative decision. For such matters, administrative decisions have to be sought first. If there is a complaint on the administrative decision, Article 43 and 44 of the Administrative Procedure Proclamation provide for complaint procedure. If still there is dissatisfaction, then an appeal to the Federal High Court can be adhered to. However, the applicant has come to court without exhausting available remedies as indicated in the Proclamation. Previously, the Cassation Division had rendered on File No 220582 on 5/7/2022 a similar decision. Therefore, the Federal First Instance Court should have first evaluated the case as to whether it has jurisdiction to see revocation of title deed certificate in light of the Proclamation and dismiss the case for lack of jurisdiction. The appellate court should have also said the lower court doesn't have jurisdiction to entertain a case of revocation of title deed certificate and corrected the error. Thus, the Cassation Division dismissed the Federal First

Instance Court and appellate courts' decisions. The Cassation Division reserved the right for the applicant to follow up her case based on the procedure of the Proclamation.

Conclusion

The request of revocation of title deed certificate is a matter of administrative decision. As an administrative decision, the procedure of how administrative decisions are requested, complained and appealed are stated in the Federal Administrative Procedure Proclamation No 1183/2020. One cannot present such a matter directly to court without exhausting the necessary remedies and a lower court should reject such a claim for matters of jurisdiction.

Though the final conclusion of the Cassation Division is correct, there is a discrepancy between what the cassation division three judges frame as an issue and the conclusion reached by the five judges of the Cassation Division. Article 28(3) of the Federal Court Proclamation No 1234/2021 provide as follows: *"When the Cassation Division to which the application is referred concludes upon examination of the application that the case has a merit, it shall frame issue and send the same with the Cassation application and summon to the respondent to reply in writing."* This shows the fact that the 5 judges of the Cassation Division will not be limited and deterred by the framed issue of the 3 judges of the Cassation Division. For the disputant parties, the fact that the 5 judges of the Cassation Division may go beyond the framed issue, will leave these parties not know where the case will be headed. As a result the disputing parties shall be pushed to write and argue their response and counter response beyond the "framed issue or issues". Indirectly, "framing an issue" will become unnecessary. This will contradict the law.

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