

## Who May File Opposition : Cassation Bench Judgment

### Description

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### Introduction

This article summarizes the decision of the Federal Supreme Court Cassation Division regarding who has the right to file an opposition to a judgment before execution as per Article 358 of the Civil Procedure Code. The case has been between applicant Yeka Sub-city Public Prosecutor vs. respondents Mr. Abebe Bekele et al (8 people) on Cassation file no. 190307 decided on 8/12/2021. This decision of the Cassation Division is given by seven judges. The decision is a reversal of the previous decision of the Cassation Division File No 37502 Volume 8.

### Federal High Court and Federal Supreme Court

The case was first brought to the Federal High Court by the respondents against Yeka Sub-city Woreda 01 Administration Office. The respondents claim that the Yeka Sub city Woreda 01 Administration destroyed and displaced the respondents from their possession unlawfully. Hence the respondents request for compensation. The Federal High Court examined the case in the absence of the defendant. The court ordered the defendant to pay to the plaintiff the value of the different property destroyed and taken away in the amount of Birr 443,215.00 with legal interest calculated from the date the property was taken away.

The respondent i.e Yeka Sub-city Public Prosecutor Office brought an opposition claim to the judgment based on Article 358 of the Civil Procedure Code to the Federal High Court. But the court rejected the opposition to judgment stating that the main idea of Article 358 of Civil Procedure Code is in order to protect the interest of a party which was not party to a suit. The defendant was summoned to appear before the court but refused to appear. The reason that the defendant did not notify the respondent cannot be a sufficient ground to accept the opposition claim. Accordingly, the court decided that the opposition is not presented fulfilling the intention of the law on Article 358 of the Civil Procedure Code and dismissed the claim of the opponent, now applicant.

An appeal was filed to the Federal Supreme Court by the applicant. But the Federal Supreme Court confirmed the Federal High Court's decision. Then an application for Cassation was filed in protest of the decision of the Federal High Court and Federal Supreme Court decisions.

### Review by the Federal Supreme Court Cassation Bench

The applicant filed an application to the Cassation Bench stating that the applicant has the power to file opposition to any judicial organ in order to protect the rights and interests of residents. The applicant mentioned Addis Ababa City Administration Execution and Municipality Service Proclamation no.35/2004 and Proclamation no.64/2011 to back up its claim. The applicant and the defendant, though found in the same administration structure, each of us represent different interests. The Cassation

Bench on File No 37502 has given a similar interpretation. Therefore the applicant requested the Cassation bench to dismiss the conclusion reached by the lower courts as a basic error of law.

The three judges at the Cassation bench who heard the applicant. These judges accepted his argument and framed an issue to be seen by the seven judges. The issue is whether it is appropriate to dismiss the opposition despite the fact that the applicant is given by law the right to file opposition to protect the interest of the city administration.

The applicant's application has been served to the respondents. The latter gave their response stating that there is no basic error of law committed by the Federal High Court and Federal Supreme courts.

The Cassation Bench examined the case after hearing both sides. The Cassation Bench started its reasoning by stating the basic purpose of the Civil Procedure Code. Courts need a system in place to examine written arguments, listen to oral arguments, weigh evidence and interpret basic rules and reach a conclusion. In order to achieve this goal, the Civil Procedure Code sets out various rules and principles which plays an important role in ensuring that the proceeding and outcome of the proceeding are fair and eliminates unnecessary constraints. In this regard one of the provisions of the Civil Procedure Code is the regulation of the participation of interested third parties who were outside the parties named as plaintiff and defendant. This is regulated under Article 40 and 41 of the Civil Procedure Code. According to these provisions any interested third party can join a proceeding before judgment either upon application of the parties or by the initiation of the court. In case a decision or judgment is rendered by a court in the absence of these parties and the interest of such a third party is at stake, the remedy is provided under Article 358 of the Civil Procedure Code.

In order to make an opposition in accordance with Article 358, the opponent should not be party to the suit either in person or through a representative. Making an opposition to a judgment before execution is possible only if the opponent didn't know about the existence of the litigation and he/she should show that its interest is affected by a judgment that is given without its knowledge.

When one comes to the case at hand both the defendant and the applicant have the responsibility of protecting the interests of the residents of their constituency. The defendant and applicant aspire to protect the same goal. It is upto the administrative bodies to determine when receiving court summons to identify who should defend. And the Public Prosecutor could have come to court to defend the statement of claim in the first stage of the proceeding. The defendant (Yeka Sub city Woreda 1 Administration) didn't appear before the court while it was summoned to appear. The public prosecutor who is representative of the Sub city also didn't appear. The Public Prosecutor could have used Article 78 of the Civil Procedure Code if the summons were not duly served. So the Cassation concluded that the applicant's right to represent and defend the interests of the Woreda has already been represented by the defendant itself. Therefore the applicant cannot be termed as a third party that was not given the chance to participate in the proceeding that led to the judgment. The judgment cannot be opposed by the applicant as per Article 358 of the Civil Procedure Code.

The previous Cassation Bench decision on File No 37502 on Volume 8 of interpretation of Article 358 has been abandoned as the interpretation does not reflect the intention contained in Article 358. The interpretation that one government body has the right to present opposition to judgment rendered without its knowledge, even if another government body under the same administration has been party to the case, has been revoked.

## **Conclusion**

Generally, the applicant and the defendant have stood for the same interest i.e. securing the interests of their residents. The defendant has participated in the court proceedings. When a judgment disfavoring the defendant is given, the applicant cannot come to repeat the same process using Article 358 of the Civil Procedure Code. Article 358 is there to protect those parties whose interests are affected by the judgment whereby they were not parties to the case either in person or through a representative. Therefore, government bodies that represent similar interests cannot use Article 358 to oppose the judgment given against one body under their administration by another body or the public prosecutor.

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