

The Scope of Article 2081 of the Civil Code: A Comment on *Negist Makonnen et al v. Ethiopian Airlines, Inc.**

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1. Synopsis of the Case

On September 5, 1961, an Ethiopian Airlines Douglas C-47A aircraft crashed during a chartered flight from Addis Ababa to Asmara. As a result, some people were killed; some others were injured. Relatives of passengers who were killed in the accident and those persons who sustained injuries brought action, under the law of air carriage, against Ethiopian Airlines, the owner and operator of the aircraft. The defendant denied liability as a carrier¹ for the aircraft was, when the accident occurred, chartered to Coronado Petroleum Corporation. The High Court of Addis Ababa however held that Ethiopian Airlines was the carrier for the purpose of the Ethiopian law of carriage by air.² Interestingly, the court also maintained that the airlines would not anyway escape liability under Article 2081 of the Civil Code as owner of the thing which caused the damage. The later dictum is the cause for this comment.

2. Comment

Article 2081 of the Ethiopian Civil Code lays down the rule regarding strict liability of owners of machines and motor vehicles. Its first paragraph reads: “the owner of a machine or motor vehicle is liable for any damage caused by the machine or vehicle, notwithstanding that the damage was caused by a person who was not authorised to operate, handle or drive the machine or vehicle.” Article 2081 belongs to Section 2 of Chapter I, Title XIII, Book IV of the Code which is titled “liability in the absence of [fault]”.³ Accordingly,

* *Negist Makonnen et al. v Ethiopian Airlines et al.*, Addis Ababa High Court Civil Case No. 701/55 E.C.

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¹ The airlines did not maintain direct contractual relationship with the claimants. As such, it thought it would not be liable as a carrier. Yet, the court reasoned it was carrier (rather actual carrier) irrespective of the absence of direct contractual relationship with the claimants. For an air law perspective of the problem in defining the carrier, see Hailegabriel, F., A Legal Appraisal of the Liability of the Actual Carrier under Ethiopian Law, in this issue of *Bahir Dar University Law Journal*, Section 2.

² See *ibid*, Section 3.1 for more on this point.

³ The authentic English version of Section 2 of Title XII of the Civil Code reads: “Liability in the absence of an offense.” Yet, there are authorities that the English version is not in line

liability for damage caused by machine or motor vehicles falls on their owner irrespective of fault.

As they are exceptions to the principle of fault based liability, Civil Code rules on liability by reason of ownership must be construed strictly.⁴ In the absence of any express rule that warrants strict liability, owners of things cannot thus be held liable extra-contractually.⁵ Applying this supposition, one would prefer to give literal meaning to the terms “machines and motor vehicles” or their Amharic equivalents “መኪኖችና ሞተር ተሽከርካሪዎች” under Articles 2081 *et seq.* And, a literal interpretation of Article 2081 of the Civil Code would most likely restrict liability to owners of motor vehicles or “ሞተር ተሽከርካሪዎች” that move on roads.⁶ A leading commentator of Ethiopian tort law posits that “motor vehicle” stands for what in Amharic is commonly known as “መኪና”.⁷ It thus appears owners of aircrafts and watercrafts (including seagoing vessels) are not subject to Article 2081.

On the other hand, one would argue such an interpretation of Article 2081 is flawed. The two important rationales behind strict liability of owners of ordinary motor vehicles remain valid vis-à-vis owners of aircrafts and vessels as well.⁸ First, aircrafts and vessels are at least as dangerous as ordinary motor vehicles. Second, owners of aircraft and vessels, like owners of buses and trucks, are relatively “better situated” to cope with strict tort

with the original French version of the draft Civil Code. According to George Krzeczunowicz an appropriate translation of Section 2 must read “liability irrespective of fault;” see Krzeczunowicz, G, *The Ethiopian Law of Extra-Contractual Liability*, Haile Selassie I University, Addis Ababa, 1970, p. 166 [hereinafter Krzeczunowicz].

⁴ See, e.g., ንጋቱ ተስፋዬ፣ *ከውል ውጭ ኃላፊነትና አላግባብ መበልፀግ ሕግ፣* ኦርቲስቲክ ማተሚያ ድርጅት፣ ኦዲስ አበባ፣ 1996 ዓ.ም., pp. 107-108[hereinafter ንጋቱ].

⁵ Article 2087, Civil Code of Ethiopia, 1960, *Negarit Gazeta*, Proclamation No. 165/1960, 19th Year, No.2 [hereinafter Civil Code].

⁶ See, e.g., Longman Advanced American Dictionary, *s.v.* “motor vehicle.” The dictionary equates motor vehicle to car and similar road vehicles. Moreover, motor vehicles are generally distinguished from, for example, aircrafts for the purpose of tort law; see e.g., Stone, F., *Liability for Damage Caused by Things*, in Tunc, A. et al. (eds.) *The International Encyclopedia of Comparative Law*, Martinus Nijhoff Publishers, The Hague, 1970, Vol. XI, Chapter 5, at §§170 and 191[hereinafter Stone].

⁷ ንጋቱ, *supra* note 4, p. 115.

⁸ For more on the rationale behind strict liability see, e.g., Krzeczunowicz, *supra* note 3, p. 38.

liability. Besides, a broader definition of vehicle may include not only automobiles, buses and trucks but also spacecrafts.⁹

In his commentary on the Ethiopian tort law, George Krzeczunowicz argues the rules of Articles 2081-2084 are different from their Continental counterparts in being neither “too sweeping” nor “too vague.”¹⁰ Put in other words, the Ethiopian law on strict liability applies in a more restrictive and definite manner than the French or Egyptian law does. Notwithstanding this, Krzeczunowicz is of the opinion that the rules on strict liability of owners of machines and motor vehicles are capable of extended application. He mentions the possibility of extending the rules of Article 2084 to, for example, collusion between animals or animals and motor cars.¹¹ He even maintains that Articles 2081 *et seq.* concern motor vehicles that move on land, air, and even sea.¹² Yet, he denies the applicability of Article 2084 to vessels which, according to him, are “motor vehicles that move on the sea.”¹³

In *Negist Mekonnen et al v Ethiopian Airlines, Inc et al.*, the High Court of Addis Ababa appeared to agree with the extended applicability of Articles 2081 *et seq.* As briefly noted in the synopsis of the case, the court expressly stated the relevance of Article 2081 of the Civil Code in determining the liability of aircraft owners for damages on third parties. Of course, the court applied the law on carriage by air as it was satisfied by the existence of contractual relationship between the air carrier and the claimants. But, it was ready to apply the provisions of Articles 2081 *et seq.* had the parties been contractually unrelated.

Even though it appears to offend the literal interpretation of machines and motor vehicles, efforts to extend the scope of applicability of Articles 2081 *et seq.* of the Civil Code are commendable. From a theoretical perspective, the extended application of Article 2081 to aircraft and vessel fosters the continued viability of the rationale for strict liability rules of

⁹ A legal definition of vehicle includes “any conveyance used in transporting passengers or things by land, water, or air.” See Black’s Law Dictionary, 8th ed., s.v. “vehicle”

¹⁰ Krzeczunowicz, *supra* note 3, p. 41.

¹¹ *Ibid*, p. 46.

¹² See Krzeczunowicz, G., *The Ethiopian Law of Compensation for Damage*, Commercial Printing Enterprise, Addis Ababa, 1977, pp. 170 and 238 [hereinafter Krzeczunowicz on Compensation].

¹³ *Id.*, p.238; Note that the Maritime Code contains provisions governing collusion between sea going vessels; see Articles 229-238, Maritime Code of Ethiopia, 1960, *Negarit Gazeta*, Proclamation No. 164/1960, 19th Year, No.1 [hereinafter Maritime Code].

Section 2 of Chapter I, Title XIII, Book IV of the Code. Limiting the scope of Article 2081 to only ordinary motor vehicles that move on land would make the “dangerousness of the thing” and “the relative financial capacity of the owners” justifications indescribable. Put in other words, the justifications for strict liability of owners of ordinary vehicles would not remain forceful unless aircraft and vessels are subject to Article 2081 in the same manner as automobiles and Bajaj – which are usually less dangerous than their maritime and aerial equivalents.

From a practical point of view as well, a liberal interpretation of Article 2081 affords individuals who sustain damage caused by aircrafts and vessels the protection of the Civil Code. This is very important since one would not get similar redress based on other laws. The Maritime Code regulates collision between vessels at sea.¹⁴ Yet, it does not expressly provide for strict liability of ship owners.¹⁵ Even if it does, it will not apply as regards vessels operating in land waterways.¹⁶ Similarly, there are no legislations that regulate surface damage¹⁷ and collisions involving aircrafts. Therefore, the interpretation of

¹⁴ See Chapter 1, Title V of Maritime Code.

¹⁵ Instances resulting in the liability of shipowner are mainly governed by Articles 78 *et seq.* of Maritime Code. Yet, the Code does not expressly provide for strict liability of shipowner. Of course, Article 81 entitles the shipowner to limit liability by reason of ownership, possession, etc. One would however hardly find a Maritime Code provision that strictly makes the owner liable. Since it is generally agreed that no one would be held strictly liable unless there is an express statutory provision, one cannot hold the shipowner strictly liable under the Maritime Code unless Article 81 is taken as an implicit recognition of strict shipowner liability (e.g. Krzeczunowicz appears to agree with this, see Krzeczunowicz on Compensation, *supra* note 12, p. 238). But, strict liability of the shipowner has traditionally been alien to maritime tort law; see, e.g. Selvig, E., Towards Strict Shipowner Liability: Recent Trends in Norwegian Law on Maritime Torts, *Journal of Maritime Law & Commerce*, Vol. 33, 1970-1971, p. 384 *et seq.* [hereinafter Selvig].

¹⁶ The scope of the Maritime Code is limited to seawater only; see Hailegabriel, F., *Maritime Law Teaching Material*, JLSRI, Addis Ababa, 2008, pp. 4-5.

¹⁷ See, e.g., Krzeczunowicz on Compensation, *supra* note 12, p. 170; special regulation of “air-to-ground” damages has been in place since at least the Civil Aviation Proclamation, 2008, *Federal Negarit Gazeta*, Proclamation No. 616, Year 15, No. 23 [hereinafter Civil Aviation Proclamation]. Article 70(1), Civil Aviation Proclamation reads: “Any aircraft operator, while the aircraft is in flight, shall be liable for damage caused by the aircraft or the operation thereof, or caused by the fall of any person or object aboard the aircraft or attached to the aircraft, which results in the death, personal injury or damage to property of a third party on the ground.” For the purpose of this proclamation, an aircraft is considered to be in flight “from the moment when the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation.” In the

Article 2081 as a general strict liability rule on the realisation of danger from various instruments of transport is realistic.

Also, recent developments in aviation and maritime law underline the appropriateness of the approach to carefully broaden the scope of Article 2081 of the Civil Code. There have been calls for strict or unlimited liability of aircraft owners and ship owners.¹⁸ In view of that, the French Civil Code's Article 1384 – the equivalent of Article 2081 of Ethiopian Civil Code – has been “reinterpreted” with a view to extend the scope of strict liability for damage caused by the action of things.¹⁹

All in all, owners of motor vehicles assume strict tortious liability for damages on third parties. Though the meaning of motor vehicles may be divisive, there are judicial and academic authorities that the provisions of Articles 2081 *et seq.* apply in wider instances than a literal interpretation would permit. Therefore, liability for damages caused to third parties falls on owners of car, aircraft and vessels, provided however they move by motor.²⁰

case of forced landing, the aircraft is considered to be in flight “until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard;” see Article 2(29). Apart from damages caused by the fall of the aircraft, damages resulting from the fall of any person or object aboard the aircraft or attached to the aircraft are covered. The liability is attached to the aircraft operator, who may not necessarily be the owner (see Article 2(7)). Obviously, the Proclamation's rule on liability of aircraft operator applies in a defined context. It is thus submitted that the provisions of the Civil Code on extra-contractual liability apply vis-à-vis issues not clearly or adequately governed by the Proclamation. For instance, the Civil Code becomes handy in clarifying (1) whether the liability of the operator under Article 70 of the Civil Aviation Proclamation is unlimited and (2) whether the operator would be escape liability up on proof of “fault of the person who suffers damage.”

¹⁸ See, e.g., Popp, A.H.E., Limitation of Liability in Maritime Law –An Assessment of its Viability from a Canadian Perspective, *Journal of Maritime Law & Commerce*, Vol. 24, 1993, pp. 335 *et seq.*; Selvig, *supra* note 18, pp. 383 *et seq.*; Abeyrante, R., Liability for third party damage caused by aircraft –some recent developments and issues, *Journal of Transport Security*, Vol. 2, 2009, pp. 91 *et seq.*

¹⁹ See, e.g., Selvig, *supra* note 18, p. 387; Esmein, P., Liability in French Law for Damages Caused by Motor Vehicle Accidents, *The American Journal of Comparative Law*, Vol. 2, No. 2, 1953, pp. 157-158.

²⁰ Unless propelled by motor, one must not bring every conveyance used in transporting passengers or things under the definition of vehicles; Krzeczunowicz agrees with the inclusion of ships under Article 2081 of the Civil Code “if moved by a motor.” (Krzeczunowicz on Compensation, *supra* note 12, p. 238, footnote 17). Incidentally, note that the strict liability of shipowners, unlike that of owners of aircraft and ordinary motor vehicles, is limited to the amount set in Article 86 of the Maritime Code (Article 81 *cum* 86,

Meanwhile, Article 2084 of the Civil Code, which adopts the proportionate fault principle regarding collision liability in land context, could *mutatis mutandis* be applied to collisions that occur on the air and in inland waterways.

Conclusion

The Addis Ababa High Court's decision to extend the application of Article 2081 to owners of aircraft is sound and far reaching in the sense that it plays down the uncertainty generated by literal interpretation of Article 2081 of the Civil Code. Most importantly, it serves as an official reminder that Article 2081 could be applied far and wide without, of course, seriously compromising the legislative intent to restrict the application of Section 2 of Chapter I, Title XIII, Book IV of the Code to instances expressly provided for in the law.

Maritime Code). Krzeczunowicz has in the 1970s mentioned the benefits of introducing comparable limitation cap as regards aircraft owners' non-fault liability; see Krzeczunowicz on Compensation, *supra* note 12, p. 171.