Applicability of Period of Limitation in Rural Land Disputes: Case Comment

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1. Introduction

Land has been an important socio-economic asset to the Ethiopian rural population in that agriculture employs 84 percent of the population and contributes about 40 percent to the national economy.[1] Land is a collective property of the state and the people of Ethiopia and hence not subjected to sale and exchange.[2] Farmers and pastoralists are entitled to obtain land for farming and grazing free of charge. Land related conflicts in Ethiopia are rife in that they are estimated to be in between one third and one half of all civil cases appearing in woreda courts.[3] In Amhara region only, it is estimated that such land related cases have constituted more than 70 percent of all cases

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[1] According to the 2007 Ethiopian National Housing and People's Census, rural population represented 84% of the general population. Agriculture contributed to the National GDP about 50% in the past several years but for the coming GTP II, its share is lessen to about 40% (see for example UNDP, Ethiopia: Quarterly Economic Brief, Third quarter 2014, p. 1, accessible http://www.google.com.et/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC4QFjAC&url=http%3A%2F%2Fwww.et.undp.org%2Fcontent%2Fdam%2Fethiopia%2Fdocs%2FEconomic%2520Brief-%2520Third%2520Quarter-2014.pdf&ei=iMWfVcndD4W7sQG1oJ3IDg&usg=AFQjCNGKdjJ6UZf3WGQTJ82g6VxfMBNA8w).

[2] Federal Democratic Republic of Ethiopia (FDRE) Constitution, Article 40 (3).

[3] Deininger, K, et.al, 2012, The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in Land Sector, The World Bank, Washington DC. p.104

reaching woreda courts[4]. Many rural land dispute cases reached the cassation court, and of which those related to period of limitation have created substantial impression and implication on farmers' land rights.

The Federal Supreme Court Cassation Division holds two apparently different decisions in respect of land which was claimed to be held by defendants for several years. While the court denied the application of the period of limitation (extinctive prescription) defense in respect of state land, it allowed similar defense to apply in respect of privately held land. The cassation court's decision has created confusion and stir controversy among judges of lower courts as the justification for holding different stand is neither clear nor persuasive.

The purpose of this case comment is to shed light on the concepts of both acquisitive and extinctive prescriptions and comment whether the court's decisions upheld today is really in line with the intention of the land policy that we adopt. This comment is mainly based on the different decisions delivered by the Federal Supreme Court Cassation Division (FSCCD) during the past several years. The ambiguous nature of the applicability of the period of limitation principle on landholdings and the double stands that the court holds and which discriminates between private and state holdings encourage us to prepare this comment.

[4] ILA, 2015, Assessment of the Implementation of Rural Land Laws in Amhara Nation Regional States, Institute of Land Administration, A study sponsored by the Land Administration To Nurture Development (LAND) of USAID, Unpublished.

2. Conceptualizing Prescription

2.1 Prescription defined

According to Black's Law Dictionary, period of prescription is the period fixed by local law as sufficient for obtaining or extinguishing a rights through lapse of time.[5] The principle of prescription first appeared in the Roman laws and the Romans were successful in developing two types of prescriptions: acquisitive and extinctive.[6] The difference between the two is merely the effect of lapse of time upon the right prescribed. While acquisitive prescription[7] is the acquisition of a right by lapse of time, extinctive prescription[8] is the extinction of a right by lapse of time. Extinctive prescription is not a mode of acquiring ownership, but acquisitive prescription is. Extinctive prescription is a mode of extinguishing an obligation or right in person, and is based on the principle of the limitation of actions. It is a defense through which it is generally possible to resist a claim on the sole ground that the claimant neglected for a certain period of time to exercise the action or the right on which it is based.

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[5] Garner, B.A. (ed.) 2004, Black's Law Dictionary, West, 9th ed.

[6] Johnston, D. 1999, Roman Law in Context, Cambridge University Press, Cambridge. Pp. 53-54; Sherman, C., 1911, Acquisitive Prescription: Its Existing World-Wide Uniformity, Yale School of Law *Faculty Scholarship Series.* Paper 4442, p. 143.

[7] Also known as *usucaption* by the Romans, and *Adverse Possession* by the English

[8] Also known as period of limitation and statute of limitation in civil law and common law countries respectively. The Ethiopian Civil code refers to it as *period of prescription* and *period of limitation* exchangeabley.

2.2 Purpose of prescription

The purpose and effect of prescription is to protect defendants. There are three reasons justifying such protection, namely:[9]

(a) A plaintiff with good causes of actions should pursue them with reasonable diligence;

(b) A defendant might have lost evidence to disprove a stale claim; and

(c) Long dormant claims have more cruelty than justice does in them.

Acquisitive prescription is based on the need to assure certainty and stability of ownership. As for the limitative prescription, it rests on the need to guarantee the property status of individuals and families against the disturbance caused by too-long delayed claims.[10] The only objects of acquisitive prescription can be physical property and certain immovable real rights. Extinctive prescription, on the other hand applies in general to all interests or actions.[11] In other words, extinctive prescription applies as a defense to any action that arose in law of obligations and other areas of law while acquisitive prescription fulfills a more important role in the context of law of property.

Prescription is set in many jurisdictions to protect persons against claims made after disputes have become stale, evidence has been lost, memories

[9] *Halsbury's Laws of England*, 4th edition).
[10] Aubry & Rau, Property, Vol.2, 1966, West Publishing co. Louisiana State law Institute p. 320
[11] Sherman, Supra note 6.

have faded, or witnesses have disappeared.[12] Further, it can be also said that the defendant should not live under constant insecurity because of the failure of the plaintiff to demand or exercise his/her rights.

2.3 Prescription under Ethiopian law

Both acquisitive and prescriptive prescriptions are recognized under the Ethiopian Civil Code, as well. Acquisitive prescription (usucaption) as a mode of acquiring ownership title through possession that is free, exclusive and continuous is recognized under articles 1168 and1150 of the civil code. From the reading of the code, one can easily deduce that acquisitive prescription applies in respect of property, which means to obtain a title or a right over a certain property. The code also provides various extinctive prescriptions (period of limitations) in different parts of the code.[13]

With respect to acquisitive prescription, the Civil Code under Art. 1168 (1) states that "The possessor who has paid for fifteen consecutive years the taxes relating to the ownership of an immovable shall become the owner of such immovable…." In order for acquisitive prescription (usucaption) to apply, there are two basic requirements to observe. One requirement is that the immovable must be possessed and used for 15 consecutive years. It is not clear whether the defendant should possess the land in good faith or in adversary-against the will of the owner. However, from the readings of both

[12] Encyclopedia of Britannica

[13] See for example, Art. 903, 973, 944, and 1000 (succession); Art. 1192 (corporeal chattels); Art. 1366 (servitude); Art. 1845-56 (General Contract); Art. 2023 & 2024 (debts); Art. 2143 (tort liability 2 years); and Art. 2454 (donation),

article 1147 and 1854, it may be possible to deduce that good faith is not a necessary element for prescriptions. As per Article 1147 even if someone starts as holder (which was in good faith), it is possible to act manifestly adverse and in bad faith and then entitled to benefits of prescription. Moreover, Article 1854 clearly provides that bad faith does not have effect, at least in relation to limitation periods and this suggest the general stance of Ethiopian law. On the other hand, while in the civil law countries good faith is a necessary element, in the common law it is not.[14] What matters is whether the owner has then after claimed back his property or not. The civil code simply settles with the long term usage of the land. But, one addition is that the possession and use of the property should be continuous and uninterrupted.[15] The second requirement under the law is payment of land or property tax in one's name. The defendant must show that he had been paying tax in his own name for 15 years in order to claim *usucaption* as a defense. Thus, a *usufractuary* who pays land tax in the name of the bare land owner may not claim to have acquired the ownership of the land.[16]

Usucaption is usually applied on immovable[17] which in this sense refers to buildings and land.[18] However, Art. 1168 explicitly excludes rural *rist* land,

[14] In Justinian and French law while the period for usucaption for property held with good faith is 15-20 years, for those which were held in bad faith is 30 years. See for example, Aubry & Rau, *supra* note 10.
[15] Civil Code, Art. 1169, 1851
[16] Civil Code, Art.1314 (2).
[17] Although mostly applicable to immovables, acquisitive prescription can also apply to movables. For instance, Article 1192 states that the owner of a corporeal chattel shall lose his rights when he does not exercise his right for ten years for failure of not knowing its existence.
[18] Civil Code, Art. 1130.

land which is commonly owned by family in accordance with custom, from being acquired by *usucatption*. This is because, during the adoption of the code in the 1960s, most rural land (especially in northern Ethiopia) was held under the customary kinship system, which was known as *rist* system.[19] The *rist* tenure allows any member of a family to claim a land of his ancestors whenever he wishes, and he would not be denied such right irrespective of his absence from the locality or his engagement in other non farming activities.[20] *Rist* right was considered as the most sacred property institutions and that is why the Civil Code did not disturb the custom. This does not mean, however, that the rule would not be applicable to other types of land which were held under private ownership. It was well known fact that much of the urban land and the rural land found in the southern territories of the country was held under private ownership and was subjected to free transaction such as sale, mortgage and bequest.[21] A similar provision is provided under Art. 1493 that provides, "land owned by an agricultural community may not be acquired by *usucaption*." This refers to the communal land such as grazing land or other form of land resource held by the village community in common, and is not subject to sale or mortgage.[22] Furthermore, property that falls under public domain (Art. 1445-1448) may not be alienated or acquired by good faith or

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[19] Daniel W Ambaye, 2013, Land Rights and Expropriation in Ethiopia, PhD dissertation, Stockholm, p. 43.

[20] See generally Hoben, A., 1973, Land Tenure among the Amhara of Ethiopia: The dynamics of the cognatic descent, Chicago/London.

[21] Bahru-Zewde, 1991, A History of Modern Ethiopia, 1855–1974, Addis Ababa, Addis Ababa
University Press, pp. 191-192 ; PAUSEWANG, S. 1982. *Peasants, Land and Society: a Social History of Land Reform in Ethiopia,* Munchen, Weltforum-Varlag., p. 36.

[22] See Article 1489 and the following.

usucaption.[23] But, the code seems deliberately excluding from such exception state land that is found in rural or urban area. This gives us the impression that state land which might be held by squatters could be converted to private property through usucaption. After all, state land was the source of private *rist* land for many generations.[24]

As opposed to acquisitive prescription/usucaption, the Ethiopian Civil code adopts different period of limitation (extinctive prescription) clauses for different claims. The subject matter of this comment is, however, the one related to contractual relations. The general provision concerning period of limitation is stated under article 1845 of the civil code which states, "[u]nless otherwise provided by law, actions for the performance of a contract, actions based on the non-performance of an act and actions for the invalidation of a contract shall be barred if not brought within ten years." This date starts to be counted one day after the due date. It is clear that period of limitation (extinctive prescription) has in mind the protection of the defendant, for it is unfair or unwise to allow the plaintiff or claimant more than ten years to raise his claim against the defendant.

Irrespective of their difference on the effect of prescription, there are rules common to both acquisitive prescription and extinctive prescription concerning interruption[25]; establishment, enforcement and waiver[26] of both

[23] Arts. 1454 and 1456 of CC. The civil code lists those properties that may be categorized under public domain, and not state land, especially one which is found in rural or urban areas as reserve land. State land is not necessarily under public domain.
[24] See Bahiru, supra note 21, p. 191.
[25] Civil Code Art.1851 & 1852
[26] See Art. 1854-1856 of Civil Code.

types of prescriptions. As per Article 1169 of the code, those provisions related to general contract concerning period of limitation/extinctive prescription shall *mutatis mutandis* apply to acquisitive prescription.

3. Rural Land Rights in Ethiopia

Under the current tenure arrangement, the ownership of all urban and rural land as well as natural resources is vested in the state and the people of Ethiopia. Peasants and pastoralists are guaranteed with access to land for cultivation and grazing free of charge.[27] Any property they establish on the land and any improvement they made to the land is considered as private property and subject to free transfer.[28] The existing Federal Rural Land Administration and Use Proclamation No. 456/2005 and other similar regional rural land proclamations ensure the constitutionally guaranteed land right by creating access to rural land free of charge. This land right is known as 'holding right" which provides farmers and pastoralists a right which is not restricted by time limit. [29] The bundle of rights the "holding right" endows on farmers and pastoralists are rights of use and enjoyment, lease/rent, donation, and inheritance.[30] This, in effect, is an ownership short of sale and mortgage; it is a right above possession and usufruct, but below ownership. The Constitution also guarantees landholders with security of tenure by reducing

[27] See generally Article 40(3-5) of FDRE Constitution
[28] Arts. 40(1), (2) &(7) of FDRE Constitution
[29] Art. 2(4) cum. Art. 7 of the FDRE Rural Land Administration and Land Use Proclamation, Proclamation No. 456/2005.Negarit Gazeta. Year 11, No. 44. (hereinafter referred as Proc. 456/2005)
[30] Id., Art. 2(5).

state arbitral power in taking farmers land, except in cases where the land is needed for public purpose activities.[31] In such cases, the government is entitled to expropriate the land upon advance payment of compensation commensurate to the value of the property on the land. This guarantee is implemented in practice through land registration and issuance of certificates.

Proclamation No. 456/2005 recognizes three types of landholdings under article 2 sub-articles 4, 12 & 13, namely: Private holding, communal holding and state holding. This arrangement is similar to that of the land tenure arrangement during the imperial era, except that *rist* land is changed with holding right. There was then and now communal land which is designated for common use of the local community, and state land put under the direct control and administration of the central state or local administrative bodies.

Land sale and mortgage is prohibited because of the fear that this would result in displacing farmers from their land. The government believes that state and public ownership of land is the best solution to protect the peasants against market forces. In particular, it has been argued that private ownership of rural land would lead to massive eviction or migration of the farming population, as poor farmers are forced to sell their plots to unscrupulous urban speculators, particularly during periods of hardship.[32] This shows the government does not want to see any policy measure or legal provision or court decision that exacerbates displacement of farmers from their land. For

[31] Art. 40(8) of FDRE Constitution.

[32] Daniel W. Ambaye (2012) Land Rights in Ethiopia: ownership, equity and liberty in land use rights, FIG Working Week, Rome, Italy, p. 5; see also MOIPAD. 2001. Federal Democratic Republic of Ethiopia Rural Development Policies, Strategies and Instruments (Amharic). Addis Ababa: Ministry of Information, Press and Audiovisual Department

example, the provision dealing with rent states that farmer and pastoralists may lease a size of their land “in a manner that shall not displace them.”[33] In many of the regions, rental period for crop production is restricted to few years, such as two to five years,[34] in order to avoid the problem of physical and economic displacement. This is based on the fear that farmers might be induced to rent the entire of their landholding and thereby suffer then after. In the absence of alternative urban economy (service and industry) that can absorb the rural unemployed, it would be chaotic and unwise to create possibilities that encourage massive rural urban migration.

4. Court Decisions on Prescription

In this part we shall look only into those cases that reached the Cassation Division. The decisions are generally classified into two one being that allows period of limitation/ extinctive prescription defense while the other is one that denies this defense.

In a case between *Jemal Aman vs. Tewabech Ferede*[35](herein after 69291), a case started in Guffa woreda of Arusi Zone of Oromia Region, the respondent applied in woreda court to reclaim her land which she transferred to the claimant by antichresis[36]upon reception of birr 1020. The woreda court

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[33] Art. 8(1) of Proc. 456/2005.

[34] For detail comparison see Daniel, supra note 32.

[35] FSCCD, Civ. File No. 69291, Federal Supreme Court Cassation Division Decisions, Vol. 13, P. 423-425.

[36] “A contract of antichresis is a contract whereby the debtor undertakes to deliver an immovable to his creditor as a security for the performance of his obligations” (Art. 3117

decided that Jemal may keep only one third of the land in return for the money he gave her and should return two third of it to Tewabech. Thereupon, Jemal appealed to Arusi High Court which nullified the contract as invalid and decided in favor of Tewabech saying that contract of anticherisis was illegal. Up on another appeal made by Jemal, the Oromia Supreme court reversed the decision of the high court. But the current respondent, on her part, made an appeal to the Oromia Regional Supreme Court Cassation court that affirmed the decision of the High Court.

Finally, Jemal (the current claimant) appealed to the FSCCD on the grounds of basic error of law, because the lower court couldn't consider the period of limitation defense he raised in his argument. He claimed that he was using the land for eleven consecutive years (cultivation, constructed a house and planted trees on it) and as a result, Tewabech's claim was barred by period of limitation, as per Aricle 1845 of the Civil Code. The Cassation court did not consider the period of limitation objection, but rather reasoning its decision on a different ground-the exchange of money for land amounts to sale[37] of land which is against the constitution, and hence the agreement was void. The court specifically states that the Constitution vested ownership of land under the state and the people and thereby prohibited sale. Further, it declared that since article 40(4) guarantees the holder of a land from being evicted from the

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CC). Of course, it was not clear whether they had this type of agreement except it was drawn by the court itself. The agreement was to receive 1020 birr in exchange to transfer part of the land for *indefinite* period of time, which for all practical purposes looks like anichresis agreement.

[37] Again this was the assumption drawn by the court rather than being articulated or indicated in the arguments of the parties. The obscurity of the agreement made lower courts to assume it as antichresis and the cassation court as sale.

land, the holder, in this case, the current respondent could not be displaced from her land because of the contract. Therefore, the contract was declared void and the preliminary objection was rejected.

The Cassation Court changed its position in the *Shelema Negese vs. Fayissa Mengistu*[38] case (herein after referred as 69302) which was started in Nono Banja woreda and continued all the way through Jima High Court and the Oromia Supreme Court. In this case, the present respondent (Fayissa) was the plaintiff and he requested the woreda court for return of his land from the present claimant (Shelema)- the defendant in woreda court-who was in possession of the land. The defendant responded at the woreda court that he occupied the land after he bought eucalyptus trees grown on the land from the plaintiff's father who changed his address and died sometime later. The seller (plaintiff's/Fayissa's father), left the kebele soon after and started to live in another kebele, and the land had been under the control of the defendant for 12 consecutive years. The woreda court thereupon decided in favor of the plaintiff because the defendant did not deny that the land belonged to plaintiff's father. The defendant has also raised period of limitation defense since he used the land for 12 years without any interruption. However, the courts in Oromia region rejected the defense and consistently decided in favor of the plaintiff.

The Cassation court on the other, without referring to the original contract/sale of trees and thereby the land, rather focused on the issue of

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[38] FSCCD, Civ. File No. 69302, Federal Supreme Court Cassation Division Decisions, Vol. 13, P. 426-429, Tahsas 20, 2004 E.C.

period of limitation raised by the defendant/present claimant. It says that holding right of farmers is protected by Art. 40(4) of the constitution, but when this right is interfered with, and when the plaintiff wishes to bring a case, the period of limitation to bring a case against the interferer is not indicated either in the constitution or the federal and regional rural land proclamations. For this reason, the court was forced to apply article 1845 which is the general rule on period of limitation that applies to contract, and to other areas where period of limitation is not clearly given as per article 1677 of the civil code. The court, however, never mentioned nor justified the reasoning that it adopted in its previous decision, the *Jemal Aman vs. Tewabech Ferede* case where it ordered the return of the land because the source of the possession was illegal. In the present case, it may be argued, that the source of the occupation was the purchase of the trees on the land which in effect means purchase of land.[39]

The third important case, *Kuta-ber Woreada kebele 13 Administration vs. Habtu Molla* (71204)[40], was initiated in Kuta-Ber Woreda of the Amhara Region. The current respondent was working as security guard for the Ethiopian Roads Authority (ERA) when the road from Kuta-Ber to Delanta was constructed in 1973 E.C. The claimant lived for the past 29 years in a house which was given to him by the company (ERA); upon its completion of the road, ERA gave him the house as a compensation for his work. Now the

[39] See for example Article 1133 of the Civil Code which says trees and crops shall be intrinsic elements of the land, and until they are separated, they are considered as part of the land. And the fact that the seller of the trees left the area for good by moving to another kebele shows that the intention or agreement was sale of the land.

[40] FSCCD, Civ. File No. 71204, Federal Supreme Court Cassation Division Decisions, Megabit 10, 2004 E.C. Unpublished.

claimant asked him to surrender the land on which the house was constructed, since the land is required for other public purpose activity. The respondent, on the other, claimed that the land was given to him as compensation and since he lived there for 29 years without interruption, the action should be barred by period of limitation. The woreda court rejected the defense on the basis that the land was occupied illegally. The defendant appealed to the South Wello High Court which decided in his favor by stating that the claim was barred by period of limitation as pert article 1168(2) and 1845 of the civil code. This was again confirmed by the region's Supreme Court. The claimant appealed to the cassation court stating that period of limitation should not be applied to an illegally occupied land.

The Cassation court however reasoned its decision on a different ground. In summary, it articulated that according to the existing federal and regional rural land proclamations, land can be acquired only through government grant, bequeath from family, or through lease arrangement, and no other means. Also the federal and regional constitutions equally showed that land is not subject of sale or exchange. In this case, receiving land as compensation by the respondent from ERA was declared by the court as illegal and unconstitutional. Since the object of the contract concluded by ERA and the respondent was illegal, the contract is said to be void and the respondent could not raise period of limitation as a defense. But the court did not refute why the period of limitation and usucaption arguments raised by the respondent were not accepted except that the current laws do not allow the modality of land acquisition. What is more, the court has failed to comment

on the fact that the land was acquired long before the current legislations and constitutions. The respondent received the house together with the land from ERA during the previous government (Derg), and had been using it for 29 years. The court invalidates the agreement based on the current laws, why not those laws operational by that time? More surprisingly, the court did not clarify whether article 1168 or article 1845 could be applied in respect of state land or not. While in the previous case (69302), the court focuses on the period of limitation irrespective of the source of acquisition that is, in my opinion purchase of land, in here it prefers to focuses on the source of acquisition. It is not clear why the court usually avoids or fears to apply usucaption or period of limitation in respect of state land once the right is stalled.

In *Gishe Woreda Land Administration and use office vs. Getu Terefe*,[41] the Land Administration office (claimant) brought a case against Ato Teshome Tefera and the current respondent (Wro Getu Tefera) to return back the land they inherited from their father, because they had already in their possession enough land.[42] Ato Tefera claimed that he had no land under his possession, and as a result, he was excluded from the litigation that continued between the current disputants. The current respondent (Wro. Getu Terefe) defended in the woreda court saying that the land belonged to her since she used it for more than 15 years, and also because she was entitled to inherit it. The woreda court decided in favor of the present claimant and ordered the return of six

[41] FSCCD Civ. File No. 93013, Federal Supreme Court Cassation Division, Tir 30, 2006E.C. Unpublished.

[42] It is not known whether their holding in the beginning was above the legally prescribed maximum holding which is 7 hectares.

land plots, which were under her control, to the claimant. The current respondent appealed to the North Shewa High Court, but without success. Then, she appealed to the Amhara Supreme court Cassation Division which accepted her appeal and decided on her behalf based on FSCCD Case No. 69302 that barred cases based on period of limitation when they are instituted after 10 years.

The current claimant on its turn appealed to the FSCCD which entertained the case since it believed on the existence of fundamental error of law. The FSCCD in Case file No 93013 argued that its previous decision (69302)[43] was misquoted by the Amhara Supreme court cassation division. It states that the previous decision on period of limitation has been applied in respect of private holder who had failed to claim his inheritance right for more than ten years. On the other hand, in the current case (93013), the claimant who failed to exercise its right is a land administration organ, not an individual and the previous case may not be applied to this case. The court argued that land administration power is entrusted on regional governments and this right may not be barred by limitation despite the user's control of the land for longer period without any disturbance. This means, a land administration institution may force or sue a landholder to surrender the land any time it thinks necessary irrespective of the fact that the person put the land under his control for many years. This would affect tenure security since long time settlement or issuance of certificate would not protect the holder of the land.

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[43] Shelema Negese vs. Feyissa Mengistu

In the same vein, the court held similar decision in a case between *Checkol Kume vs. North Achefer Land Administration office*, FSCCD File No.96203.[44] In this case, the claimant pleaded to the cassation court that lower courts decided in favor of the respondent by ordering the return of land which had been under his possession for 16 years and for which he had received land certificate. The claimant indicated that he received the land during the redistribution period and certificate was issued for him then after and hence the respondent's claim should be barred by limitation. The respondent, on the other hand, without denying the facts raised, said that the land was originally acquired illegally, and it has the right to reclaim and cancel the certificate. The cassation court again argued that as a land administration institution, its right of state land reclamation could not be barred by limitation. It further declared that the fact that period of limitation concerning reclamation of state land is not indicated under federal and state rural land laws shows that the intention of the legislator is to provide the institution unlimited right.

5. Comments

From the above decisions one can gather several conflicts in the court's opinion. In the first case (69291), the court rejected the period of limitation argument on the basis that the source of the land acquisition was unconstitutional or illegal and thereby the agreement was void, even if the land remained for several years in the hand of the party who raised period of limitation argument.

[44] FSCCD Civ. File No. 96203, Federal Supreme Court Cassation Division, Miazia 9, 2006E.C. Unpublished.

Even though one may accept this argument, the court immediately changed its stand in the second case (69302) where the party argued on the basis of period of limitation where the land was acquired through purchase of trees on the land. Purchase of trees and control of the land for several years does not amounted as purchase of land for the court. But, the reading of article 1133 of the CC shows that "trees…shall be an intrinsic element of the land until they are separated therefrom." This means, the sale of trees on the land (without cutting or separating from the ground) amounts to transfer of land as well, which should be considered as unconstitutional on the same basis as the previous decision. But, the court preferred to ignore this fundamental element and jumped to another argument which is period of limitation. In adopting period of limitation argument, the court reasoned that because neither the constitution under article 40 nor the federal/regional rural land administration proclamations include a provision on period of limitation, the court was forced to cite article 1677(2) cum 1845 to apply period of limitation. Article 1677(2) generally states that the provisions of the general contract may *mutatis mutandis* be applied to certain obligations arising out of non-contractual basis. As a result, article 1845 which is the general rule of period of limitation concerning contractual matters was applied by the court to deny the claimant of the land from demanding land requisition, since the land was under the control of the defendant for more than ten years. Again one may be persuaded by this reasoning except that the court lacks consistency on the "source" of land acquisition argument it raised before.

What is even more interesting comes in the third case (71204) where the respondent had controlled the land for 29 years. In this case, the land administration organ, i.e., the claimant reclaimed the land because the land was transferred to the respondent illegally. The court disregarded its previous decision on period of limitation and reached its decision on rather different ground. The court again returned back to its "source" reasoning it followed in the first case (69291). It states that the way the respondent received house/land from ERA was illegal based on the current constitution and rural land proclamations. This reasoning is flawed because the court uses the laws retroactively to invalidate land acquired before 20 years.[45] How could it be possible to undone land received during the Derg era based on the current law; if that is the case, then logic requires us to condemn as illegal all land purchased during the imperial era.

There is also another line of argument mentioned by the court on certain level but boldly asserted in its two latter decisions (93013 and 96203). This argument states that land administration power is given to regional land administration organs which among others entrusts them with protecting state land from illegal land grabbers. This means, they may demand clearance of illegal land grabbers from state land in order to protect and conserve or put the land to the best interest of society.[46] However, it is not clear whether land acquired in such a way may be successfully defended when the government

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[45] Even if the source of land acquisition in many parts of the region is the land redistribution carried out in two different periods (1983 & 1989 E.C), land distribution was not held in this particular area. The land administration organ has neither argued on such basis.

[46] See also articles 52(5)(d); 89(5) of the FDRE Constitution and Article 17 of the Proclamation 456/2005 that gives the power of land administration to regional states.

fails to claim it back within a given period of time. As already mentioned above, under the civil code, only properties which fall under "public domain" and another, categorized as "agricultural communal land" which are exempted from rule of usucaption. Whether state land is also exempted from this rule is not clear. The cassation court, nonetheless, presumed it from the silence of the laws. In the last case (96203), it says that the fact that period of limitation is missing from the constitution and the federal and state rural land laws show that the intention of the legislator was not to limit the state (land administration organ) from reclaiming its land whenever it thinks necessary. While in its previous decision (71204) it reasoned that absence of period of limitation in both the constitution and rural and legislations may be reconstructed from Art. 1677 and 1845, in the last case, absence of the rule means, its complete disregard. It means since period of limitation is not included in the law, the land administration organ is not needed to be bounded by period of limitation. Why is that the same situation (absence of period of limitation) open to two different meanings for two bodies, unless the court has forgotten its own previous decision? Where does the court found that land administration organ is free from such restriction or state land cannot be acquired through usucaption?

The other point is that the court in nowhere tried to argue in favor or against the rule of usucaption even if period of limitation and usucaption are two sides of the same coin. What is the reason that article 1168 is totally evaded by the court, even if it is raised by parties in their defenses; the court has neither accepted nor rejected the arguments related to usucaption. There was a

perfect scenario in the last two cases where the landholders argued that they used the land for more than 15 years and for which they received landholding certificates. This means they had been paying tax for all this period and relied on the reliability of the certificates. They cited article 1168 as a defense, but the court had just evaded it and simply refused to entertain the argument. The fact that land certifications may be easily cancelled after so many years because the land administration claims that the land was held illegally or the certificate was granted mistakenly means every person is under the risk of losing his land. This definitely will create tenure insecurity unless the power of the land administration organ can be restricted by lapse of some time. This encourages the land administrations organs not to be diligent in protecting state land on timely basis.

6. Concluding remarks

The above decisions of the FSCCD consistently show that there is no predictability in the court's decision and this creates persistent confusion in lower courts. Even regional supreme courts could not understand the FSCCD interpretation so as to follow it in their future similar decisions, and that is why we see similar cases having been repeatedly reaching the cassation court. The justification for discriminatory interpretation of the period of limitation in respect of private and state landholdings seems blurry, since the protection provided under article 40(3) of the constitution equally applies to both state and individual landholdings. It is not clear whether the concept of "public domain" under the civil code should similarly apply to rural state land as well. This line of argument becomes problematic since it is not clearly ruled out

either in the legislations or the court's rulings. Unless it is indicated by legislation that state land cannot be held through adverse possession, it would be unjustified to protect the power of land administration organ's power of state land reclamation from period of limitation.

In the meantime, the court rather need to strive to the stability of property rights once certificate is issued for them, and an established property should not be disturbed because of the indolence of land administration organs who failed to discharge their responsibilities on time. In this regard, the use of usucaption in relation to rural land may be helpful. In this way it is possible to ensure the constitutional protection of common ownership of land by the people and a clear guidance which is known and predictable is necessary to be included in our rural land proclamations.