



Jimma University

College of Governance and Law

School of Law

Department of Commercial and Investment Law

***ETHIOPIAN JUDICIAL FEDERALISM: EMPHASIS TO JUDICIAL POWER OF
OROMIA COURTS ON COMMERCIAL DISPUTES IN LINE OF FDRE CONSTITUTION***

BY BILAL GEMMEDI

**A Thesis Submitted in Partial Fulfillment for the Requirement of
Master's Degree in Commercial and Investment Laws (LL M)**

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Declaration

I, the undersigned, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been dully acknowledged.

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Abstract

Litigation is dominant mechanisms serving for solving commercial disputes in Ethiopia, where others such as negotiation, conciliation, commercial arbitration and similar are less developed and very limited to regulate disputes arising in domestic commercial business transactions. Such commercial litigations need to be regulated by establishing appropriate legal and institutional frameworks. Hence, having; accessible, effective, well organized and independent judiciary is very important in this regard. Governing procedural laws also need to be clear, comprehensive and consistent to relevant constitutional provisions. In the existing judicial federalism of Ethiopia, the judicial powers are constitutionally allocated to both federal and state governments on the matters related to their jurisdictions. The constitution provides that both federal and state governments are allocated powers to enact their respective laws that define the judicial jurisdiction of their respective federal and state matters without clearly demarcating their powers. However, the existing Ethiopia legal frameworks lack clarity and constitutional validity with respect to defining the elements of federal matters and state matters that underline the distinction of federal courts and state courts judicial powers, respectively. In particular some provisions federal courts proclamations and some relevant binding cassation decisions of Federal Supreme Court defining elements of federal matters by unilaterally taking selective matters including commercial and company matters to establish exclusive original judicial jurisdiction of Federal Courts. In doing so, they indirectly restrict the original judicial jurisdiction of regional state courts. These on the other hand questions the constitutionality and validity of such legal provisions of federal laws or cassation decisions.

In this doctrinal research, the paper critically examines the constitutionality of the provisions of such federal laws and relevant binding decisions. The study is conducted by analyzing relevant selected laws from the legal framework of the Federal and Oromia State governments that establish and define their respective original judicial powers over disputes involving commercial and company matters alongside with their constitutional validity and reasons justifying their impacts on the promotion of private sector commercial business activities for economic development.

Findings show that the unilateral acts of federal government manifesting superiority of federal laws over state laws within certain provisions of federal laws without constitutional grounds. Additionally legal effects of restricting the original judicial powers of States' Lower (Woreda) Courts are also unjustifiable and inappropriate, in terms of encouraging the development of commercial business activities. Because such lower state courts are locally very accessible to provide speedy and effective justice services. Such indirect restrictions by federal laws are also not in line decentralizing powers to realize judicial federalism.

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Acronyms

BO – Business Organization

EPRDF – Ethiopian Peoples Revolutionary Democratic Front

FDRE – Federal Democratic Republic of Ethiopia

FFIC – Federal First Instant Court

FHC – Federal High Court

FSC – Federal Supreme Court

Gov.t - Government

HPRs – House of Peoples Representatives

RHC – Regional High Court

RSC – Regional Supreme Court

PLC – Private Limited Company

S.C - Share Company

Keywords

Judicial Federalism, Power Allocation, Judicial Jurisdiction, Federal Matter, State Matter, Civil Suit, Commercial Litigation, Company Matter, Federal Law, Cassation Decision, State Law, Constitutionality

Chapter One

Introduction to Proposal of the Study

1.1. Background of Study

In the 1995 following the Adoption of the Constitution of Federal Democratic Republic of Ethiopia (here after FDRE Constitution) the Ethiopian government shift from earlier Unitary form of government to Federal form of government structure. The FDRE Constitution establish the Ethiopia Federal Democratic Republic Government (here after the FDRE Government) that comprise the Federal (central) Government and Regional States Government. The Constitution also allocates them the legislative, executive and judicial powers separately.

It introduces specifically the establishment of judiciary having dual structure of Courts having three levels in each of them. Therefore Federal Courts having the levels of Federal First Instance Court, Federal High Courts and Federal Supreme Courts are established at the central (federal) government level, whereas different Regional Courts having their own three levels; Woreda Courts, State High Courts and State Supreme Courts are established in each State Gov.t.

Accordingly Federal Courts and State Courts are allocated the judicial power over matters falling under their respective jurisdiction. The base of common jurisdiction of Federal Courts is federal matter and the base for state Courts jurisdiction is the respective state matter.

The Federal and States legislative bodies are allocated the power to enact laws defining and determining their judicial jurisdiction on their respective subject

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matters and they are exercising such powers in post adoption of FDRE Constitution.

How ever, the same Constitution does not provide list of what type of matters constitutes Federal Matters and what are not. Federal and State legislative bodies unilaterally define matters they assume as it fall under their respective powers without clear constitutional ground. This give rises for having federal laws or its provisions that may overlap with state legal provisions determining the specific federal or state matter as the ground of their jurisdiction.

Commercial law is the law enacted by Federal Gov.t to govern Commercial matters. The Federal Courts Proclamation¹ considers all laws enacted by Federal Gov.t as one of matters that considered as Federal Matter on which Federal Courts assume their Common jurisdiction.

Irrespective of this the State Courts also handle disputes arising from commercial matters, with regard to cause of action occur within their local jurisdiction, with their original jurisdiction.

Hence it is necessary to examine the constitutionality of relevant federal and/or states laws defining their subject matter of judicial jurisdiction in the context of existing judicial federalism of Ethiopia.

1.2. Statement of the Problem and Research Questions

Lawyers need to take great precaution in selecting competent courts and applicable laws to handle the given suits. They are expected to identify and distinguish the

¹Federal Courts Proclamation, Proclamation No. 25/1996, FED. NEGARIT GAZETTE, 2nd Year No. 3, Addis Ababa, 1996. (Here after Federal Courts Proc.)

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issue at hand whether it is Federal Matter and/or State Matter in federal form of structured countries.

The Courts having dual structure of organization, usually in Federal Country, are clearly allocated their judicial jurisdiction over specific listed matters by particular laws. Such laws provide the Original Judicial jurisdiction of federal or state courts based on general and specific provisions of Constitution underlining the division of powers among federal and state government. Failing to observe such constitutional scope of powers is not only distracting the rule of separation of powers. But also it may confuse the citizen on choosing the competent courts for their cases, contradicting applicable laws, loss of public trust on the judiciary and expansion of unconstitutionality in lawmaking, implementing and adjudicating process in a given country.

In Ethiopia judicial federalism both Federal and State Courts are constitutionally allocated the original judicial powers to exercise over their respective matters. Federal Courts are allocated powers over federal matters whereas State Courts are also allocated the judicial powers over their respective state matters. But the constitution does not define what constitutes federal matters or state matters while it leaves details to be determined by laws. This means HPRs are allocated to enact laws determining the judicial jurisdiction of federal courts by defining the elements of federal matters and at the same time state law makers are also allocated the power to enact state laws that determining the jurisdiction of their respective state courts by defining the contents of state matters.

Accordingly, HPRs enact Federal Courts proclamation No. 25/1966(Here after Federal Courts Proclamation) and other different laws containing provisions exclusively allocating Federal Courts the original judicial jurisdiction over certain

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selected matters. In particularly federal courts proclamation and some binding cassation decisions of federal supreme courts allocate disputes involving Commercial and Company Matters under the original jurisdiction of Federal Courts. However the absence of clear definition on the term federal matter or state matter in FDRE Constitution questions the constitutionality of the powers of HPRs to enact federal laws that define federal matters by allocating Federal Courts the original judicial powers on all disputes involving commercial and company matters by pay no attention to the powers of state government over the same matter that they have direct connection.

Constitutionally speaking if the given power is not expressly allocated to federal government body either exclusively or concurrently with respective state governments it is taken as residual powers of state courts.² In particularly, the Oromia Woreda State Courts are usually come across commercial disputes involving Company registered their main offices under the federal government organ and they are restricted to handle such case though it involves minor disputes by Federal Courts Proclamation and binding Cassation decisions of Federal Supreme Courts by the mere fact that these federal laws provide that such suits contain federal matters, hence state Woreda Courts have neither delegate or original powers to handle matters allocated under original jurisdiction of federal courts by federal laws. Thus this research examines to know whether such federal laws have constitutional ground to or not at all. Hence, it finds the answer for the following research questions:

- i. Are the commercial matters allocated exclusively under original judicial jurisdiction of federal courts in Ethiopian legal frameworks?

² Constitution, Proclamation No 1/1995, FED. NEGARIT GAZETTE, 1st Year No. 1, Addis Ababa, 1995. (here after FDRE Constitution), Art. 52(1)

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- ii. If so, which law provides so and what are its positive and negative aspects?
- iii. Is there any constitutional ground for the federal laws to allocate Federal Courts the original judicial powers on Commercial Matters?

1.3. Objectives of the Study

The general objective of this study is to examine the Ethiopian legal framework on judicial jurisdiction and applicable laws with respect to civil disputes arising from commercial laws. The specific features of Ethiopian judicial federalism also explored by comparing with other model federal countries. The specific objectives of the research are the following;

- To overview, the general structure of FDRE government and the allocation of powers and duties between Federal and member state governments.
- To examine the structure of Ethiopian Courts and legal frameworks determining their judicial jurisdictions.
- To examine the impacts of Federal Laws on the judicial powers of state courts with emphasis to Oromia State Courts judicial powers on specific Civil Disputes arising from commercial laws.
- To evaluate the Constitutional validity of provisions of some Federal Laws and binding decisions that determine the federal courts judicial power over what entertained under the original judicial jurisdictions of Oromia State Courts with respect to civil disputes involving commercial matters.

1.4. Significance of the Study

There are divergent understandings on the relationships that may exist among Ethiopian federal and state governments and among laws enacted by their respective law making organs. Many are understood the issues inverse to what the constitution underlying the relationship existing among federal and regional

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government non-interference with government powers of one another, respect ones powers to one another as well as mutual coordination and cooperation relationships. Accordingly, federal government and federal laws are understood as superior over state government and state laws respectively and these understandings are manifested practically in the acts of some government organs such as in the provisions of laws enacted by HPRs that decline the regional state laws if they contradicted with laws enacted by HPRs without constitutional grounds clearly providing so.

With respect to Ethiopian legal framework on allocation of original judicial jurisdiction on civil disputes involving commercial and company matters by emphasizing on Regional State Courts judicial powers this research is important for courts, lawyers and different stake holders by its critical examining the federal and regional laws having impacts on the original judicial jurisdiction of state courts over certain civil commercial disputes involving company and constitutional grounds certain provisions of Federal Courts Proclamation and relevant binding cassation decisions while they are posing some indirect restrictions on the original judicial power of state courts over similar suits involving commercial and company matters. The study is also important for states laws makers by alerting the dimension of their powers based on provisions of the constitution that allocating powers for both regional and federal governments and their scope of legislative powers with respect to regulating commercial and company matters highly connected with their respective regions.

1.5. Scope of the Study

The research examines the sources of Ethiopian laws determining judicial jurisdictions and applicable laws. It assess through Ethiopia legal framework that

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providing the legal procedures in finding and determining the competent courts and applicable laws on specific civil commercial disputes that involving company matters. It highlights on the special features of commercial litigations at both federal and states Courts.

It focused on the constitutionality of particular provisions of laws that enacted to provide details on the judicial jurisdiction claiming constitutional provisions underlying basic rules on allocation of specific powers to particular organ of federal or state government.

Further, the study covers searching examining and analyzing all legal rules in the Federal laws and Oromia state laws that establish their respective courts, defining their judicial jurisdiction and legal mechanism to solve problems that may arising from clash of laws enacted by different levels of Gov.t in the FDRE Government. it intends to searches in to the FDRE legal framework on allocation of government powers as well as model laws of other federal countries. It examines special characteristics of Ethiopian judicial federalism and Ethiopian Courts approaches to specific domestic commercial disputes containing foreign elements in the context of our Federation.

In particularly, the specific legal documents containing federal and Oromia state laws establishing and defining their respective judicial jurisdiction in generally and provisions of laws determining their judicial jurisdiction with regard to specific civil disputes involving commercial matters and the constitutionality of such laws. Accordingly it exhaustively examines the following Federal and State laws;

- Federal Courts Proclamation No. 25/1996
- Relevant Cassation decisions of Federal Supreme Court

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- The relevant provisions of the 1965 Civil Procedure Code of Ethiopia
- The Oromia Courts Reestablishment Amending Proclamation No.216/2018
- Some important provisions of the 1960 Ethiopian Commercial Code and subsequent proclamations dealing about commercial laws of Ethiopia.
- The relevant provisions of the FDRE Constitution.

1.6. Research Design and Methodology

This research is doctrinal research that the writer searches into; legal rules, principles, concepts or doctrines in relation to determination of judicial jurisdiction of different levels of Courts while handling commercial disputes in particularly those involve companies registered under a given level of government and operating under different jurisdictions within the territorial boundaries of the FDRE Government.

The research involves a systematic discussion, analysis and critical evaluation of relevant legal rules principles or doctrines contained in the relevant federal and state laws including binding decisions of cassation bench of Federal Supreme Court(here after FSC) in relation to allocation of judicial power over specific civil commercial suits involving company. Hence, mainly analytical approach is adopted in which the listed area of regional and federal laws and legal documents are investigated and analyzed in line with the provisions of FDRE Constitution. With regard to research methods, the writers mainly employ the qualitative method. Accordingly the constitutional ground of the laws or its single legal rules or binding decisions of court cases are examined and analyzed. Besides their constitutionality the reasons justifying the given legal provisions are also overviewed.

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The selection of areas of laws subjected to this research is made purposefully based on their relevancy to the title of research. Particularly, their constitutional bases for allocation of judicial powers and federal Courts proclamation and other federal laws that may have collaterally sort of impacts on judicial powers of state courts with respect to specific civil commercial litigations involving company as well as their constitutionality are covered by this research.

Though the regional states relevant laws and the judicial powers of state courts other than Oromia State laws and Oromia Courts respectively are included in general manner in this research the greater focus is given to comparing Oromia state relevant laws and the judicial powers of the same state Courts and related federal laws and federal courts judicial powers over similar disputes involving commercial and company matters convinced by the special features of Oromia Region that cause usual interferences with powers of one another, due to the ongoing new development in New proclamation of Oromia Courts Reestablishment amending proclamation governing specific area of allocation of judicial powers of state courts and others factors: Such as;

- *The geographical location of the region, at the center of the country and having physical contacts with other regions except Tigray Region*
- *The feature of the region by having contacts and sharing interests with Addis Ababa and Dire Dawa Cities, which are practically governed under the jurisdiction of federal government and*
- *Its relationship with Harar City, which is the capital city of Harari Region and the capital city of Eastern Hararge Zone (seat of East Hararge Zone Administration and East Hararge Zone High Court as well as other East Hararge Zone level offices of Oromia Regional Government).*

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In relation to judicial powers of Oromia Regional Courts of the two special Zones; namely Oromia Special Zones around Finfine and Adama Special Zone Courts the numbers of commercial disputes involving companies are high as compared to other states and other courts. Because, such factors made it conducive place for the specific companies to open their main office or branch office or their close location of usual place of registration of main offices of such companies to Addis Ababa City, may create favorable condition to run their businesses in these Oromia Special Zones so that these give rise to numbers of commercial disputes involving companies are brought to before the specific easily accessible Oromia Courts, Usually Woreda Courts like Adama Woreda Court, Lome Woreda Courts Ada'a Berga Woreda Courts (Bishoftu), Sabbata Hawas Woreda Court...etc.

1.7. Ethical Issues

This research is doctrinal research in which the legal regimes defining original judicial jurisdiction of federal courts and state courts in relation to commercial and company matters are critically examined. It explores on the relevant legal rules, principles and binding courts decisions based on the constitutional provisions underling allocation of specific matters. This indicates that the study does not involve persons and animals which are concerning ethical issues. But the researcher approached with the views of the surrounding lawyers, judges and legal professionals with respect to power relationship of Federal and state governments of Ethiopia and its features as well as the relationships of their respective laws with the view of getting information on their understandings on constitutional grounds of judicial federalism and power allocation irrespective of what was provided under certain provisions of federal Courts proclamation and related federal laws as well as binding decisions on regional courts judicial jurisdictions.

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1.8. Limitations

As mentioned under scope of the study this research is a kind of doctrinal research that searches in to the FDRE legal framework on allocation of government powers as well as model laws of other federal countries. It examines special characteristics of Ethiopian judicial federalism and Ethiopian Courts approaches to specific domestic civil disputes containing foreign elements in the context of a given federal country. It emphasizes on examining the legal rules that impact on judicial jurisdiction in generally and federal laws containing provisions limiting the judicial powers of state courts and regional laws governing similar matters as well as their constitutionality in particular. But, this is not fully realized for the following basic two reasons;

1. The FDRE Constitution establishes federal and state Courts and separately allocates them judicial powers based on federal matters and state matters respectively in a general manner. But it does not provide clear points of distinction on the scope of their judicial jurisdiction by defining the contents of federal matters or state matters. Instead it refers to subsequently enacted federal and state laws, in according to the last sentence of Article 78(3) of the Constitution which states as; *“Particulars shall be determined by laws”*. However, the states are not at all active in enacting their respective laws clearly and in details. This can be understood from passive reaction of many states to enact their own laws on other issues, for instance very limited states enact their own family law while many of them remain by using Civil Code Provisions and Federal Family Codes to regulate the issues. Hence many of regional states are not clearly defining their respective judicial jurisdictions sufficiently and in detail. Rather they are referring to the effective provisions of the 1965 Civil Procedure Code of Ethiopia. This challenges the researcher

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to find relevant and detailed regional laws defining the contents of the term “state matters” that underlying the judicial jurisdiction of respective state courts. Instead the state courts, usually apply the relevant provision of Federal Courts proclamation without questioning its constitutionality on allocating all matters arising from Commercial and Company matters under the original judicial jurisdiction of federal courts.

2. The existing limited regional laws are not easily accessible. The absence of necessary logistics to cover necessary costs for traveling across different parts of the Country to find updated and detailed relevant regional laws at the Seats of main offices of Regional State Governments become challenge for researcher who conduct this research by personal limited financial resources.

But, the researcher overcomes the problems that emanating from inaccessibility, unclarity and insufficiency of detailed regional laws by focusing the study on constitutionality of the provisions of federal laws and relevant binding cassation decisions of FSC together with accessible Oromia State relevant laws as well as any other relevant online resources.

1.9. Organization of the Paper

The paper contains five chapters. These chapters are divided into different sections and sub sections. Chapter one is introductory, that introduces to proposal paper of the research. The second chapter contains discussion on the general concepts of judicial federalism. It also overviews the experiences of some model federal countries on the judicial structure and power allocation alongside with the Ethiopian approach with respect to handling disputes containing issues rising contesting judicial powers (subject matters of conflict of laws).

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Chapter three provides discussion on power allocation under FDRE Government and salient features of the Ethiopian judiciary structure and allocation of judicial powers. It specifically discusses on the Federal and Oromia State's legal framework that defining their respective Courts judicial jurisdiction in line of the relevant provisions of the FDRE Constitution.

Chapter Four examines the allocation of Ethiopian judicial powers on disputes involving Commercial and Company matters. The examination will be made by giving more emphasis to the constitutionality of certain provisions of federal Courts proclamation and relevant binding decisions having effects of limiting on the original judicial powers of Oromia Regional Courts (Woreda Courts) on the specific civil disputes arising from commercial and company matters. Chapter Five provides findings, recommendations and conclusion of the paper.

Chapter Two

The Judicial Federalism: *The Case of Ethiopia*

2.1. Introduction to Allocation of Powers and Judicial Federalism

The countries usually adopt the federal form of their government structure, for different purposes. Federalism is the form of government structure in which two levels of government can exist in a given country. Mostly, it comprises one central government and different regional states (here after State) governments.

They may intend to preserve some diversities of their federation and to promote their identity, for protection of their common interests such as economic, political, and cultural and other similar interests. The powers of the government are shared among central government and member states. Thus, states are autonomous in exercising the powers allocated to them whereas powers like defending National Sovereignty foreign relation and other diplomatic activities including foreign trade relationship are usually allocated to federal government bodies. Decentralizing of powers, sharing of resources, respecting diversities, preserving identities, cooperation and coordination as well as non-interferences with the powers of one another's are aspects of the federalism, among the other.

Federal structure of government is established by a superior law that establishes the given state it-self. Such laws are usually Constitution that taken as supreme law of the land. Separation of powers and duties are the basic features of federal form of government structure. The Supreme law (the Constitution) provides the allocation of powers and duties of for both governments. The Constitution

provides the division of powers and duties among the federal and states governments as well as their branches. The structure and the powers of the judiciary are determined by, though its features may vary from country to country.

Ethiopia also adopts the federal form of government structure following the fall of the Derg Regime in 1995. Accordingly, the 1995 FDRE Constitution establishes the FDRE Government which comprises of one central (federal) government and nine regional (state) governments³. The Constitution also provides allocation of powers between these two governments. Accordingly, both have been given legislative, executive and judicial powers.⁴

It also says that both Federal and member States shall respect the powers of each other and lays down the possibilities of Federal government to delegate its powers to member states. Unless otherwise, one cannot interfere the powers allocated to the other according to the constitution.⁵

The FDRE Constitution has supremacy over any laws, customary practices, any act of organ of governments in which any of these shall be of no effect if it contravenes the provisions of the constitution. It also provides that all citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the constitution and to obey it.⁶

This does not mean that there is complete decentralization on the powers of all organs of central government and member states in all federal countries. Countries may adopt federal form of government in its general structure and at the same time centralize more of specific powers of a given organ of their

³ FDRE Constitution, Art. 50(1) and Art.47

⁴FDRE Constitution, Art. 50(1,2)

⁵FDRE Constitution, Art. 50(8,9)

⁶FDRE Constitution, Art. 9

government, if not all, for their own different purposes, which their constitution may provide. This gives for their federalism peculiar features of identification. In particular, in the organization of their judiciary, federal countries may follow the more centralization or complete decentralization approaches on their judicial powers. The literature has so far identified two kinds of federal court system; namely Unitary Judicial System and Dual Judicial System.

1. Federal System With Unitary Court Structure

Some federal Countries organize their courts in to federal and state levels but they adopt a unified scheme of administration of justice by putting the supreme central court (Federal Supreme Court) as final appellate courts over cases decided by both lower federal courts and state courts. Such Countries may have parallel structure of organs of the central and states organs of governments, but in the case of judiciary, the structure of their judiciary mostly characterized by taking unitary form in selective matters. Thus, there is single structure of judiciary that assumes the nature and form of judicial system established under unitary form of government in many aspects, in the federations having dual structures of lawmakers though not at all. Example: the judiciary of India and Canada have unitary scheme of structure.

In Canada, the Federal Supreme Court is a court of general appellate jurisdiction. Apart from the Supreme Court, there is only one Federal Court which exercises exclusive jurisdiction in matters relating to patent, trade-marks, and admiralty cases, the Court of Exchequer and Admiralty. The states (or provinces) courts are left to supply the general jurisdiction subject to review by the Federal Supreme Court. The other ever peculiar court arrangement, the power vested on the governor general in which he/she is empowered to appoint judges of the province

courts based on administrative easiness than question of sovereignty, under the Canadian constitution.⁷

The Indian federal court systems are essentially similar to that of Canada, but, the Federal Supreme Court in India exercises original jurisdiction over certain federal matters and state courts are empowered to exercise jurisdiction over any matters other than matters fall under exclusive jurisdiction of Federal Supreme Court, unlike in Canada.⁸

2. Federal System with the Dual Judiciary

According to the dual judiciary structure of judicial federalism, both state and federal governments establishes their own hierarchy of courts, in autonomous and self-contained. However, this does not imply the total departure of the federal and state courts. The state and federal courts may constitutionally be empowered to exercise concurrent jurisdiction over certain federal matters and, to the extent state courts assert jurisdiction over federal matters, their final decisions are appealable to the federal supreme courts.

The USA Federal Court system often cited as a good representative of the dual court system. Under the USA Constitution, the judicial powers of federal courts are listed, expressly. The Constitution also provides that the powers of Federal

⁷Brouillet, Eugénie, Courts In Federal Countries, John Kincaid Nicholas Aroney. Toronto: University of Toronto Press. (2017), P 135 - 161.

⁸Saxena, Manish Tewari and Rekha, "The Supreme Court of India: The Rise of Judicial Power and the Protection." John Kincaid Nicholas Aroney, Courts in Federal Countries. Toronto: University of Toronto Press, (2017), P 223 - 255. <https://www.jstor.org/stable/10.3138/j.ctt1whm97c.12>, Accessed on Sat, 18 Aug 2018 00:10:25 UTC

legislative organs are also limited from enacting matters affecting the judicial powers of state courts.⁹

The state courts are assuming courts of general jurisdiction. They exercise exclusive jurisdiction on state matters and they enjoys, subject to congressional limitation, concurrent jurisdiction over federal matters. It allocates exclusive powers to Federal courts over matters concerning copyright, patent, and disputes between different residents and the US Congress limits the powers of state courts over such federal courts exclusive powers, at the same. In addition to this, if they exercise, the final decisions of state courts, over matters fall under concurrent jurisdiction with federal courts, would be appealable to the federal Supreme Court.

3. The Case of Ethiopia

The 1995 Constitution contains the general provisions that provides the establishment of FDRE government comprising of the federal and state governments, the separation of powers, prohibition of interferences with one another's powers, coordination and cooperation mutually relationship among federal and states government.¹⁰ It contain in particularly the provisions stating as “ the powers that are not expressly allocated to federal government either exclusively or concurrently with the state governments are reserved to the respective state government.¹¹

In relation to the judiciary, it provides the establishment of judiciary having three layers in both federal and state governments. It lists matters fall under the general jurisdiction of the federal government and reserves the unlisted one to states

⁹ NICHOLAS ARONEY and JOHN KINCAID: Courts in Federal Countries, University of Toronto Press. (2017) Available at Stable URL: <https://www.jstor.org/stable/10.3138/j.ctt1whm97c.5> and U.S. CONSTITUTION,, Fourteenth Amendment, Art. III

¹⁰ FDRE Constitution, Art. 50(8) and 51

¹¹FDRE Constitution, Art. 52(1)

government.¹² There are the Federal Courts having three levels of hierarchic (Federal First Instance Courts, Federal High Courts and Federal Supreme Court) together with the existence of State Courts having three layers of hierarchic (Woreda Courts, State High Courts and State Supreme Court), at the same time¹³.

However, the constitution does not expressly list the judicial powers it allocates to the federal Courts, unlike what it provides under general provisions. Rather it puts in the general terms stating as “federal courts are allocated the judicial powers over the federal matters” and “the states Courts are also allocated the judicial powers over states matters”.¹⁴

Thus, the FSC can review the decisions rendered by federal high courts by its regular appellate jurisdiction or over the decisions of declarative powers of State Supreme Courts, with regard to the federal matters. At the same time, the state supreme court has been given the final power to review lower courts decisions, with regard to respective state matters. If such decisions contain basic error of laws, though not final, each States Supreme Courts have been given the power of Cassation to review its own regular decisions on the same matters within the boundary of powers fall under their respective state governments, horizontally.

On the other hand, the FDRE Constitution provides concurrent jurisdictions in which state high courts and state supreme courts are delegated the powers to exercise the judicial powers of federal first level courts and federal high courts respectively.¹⁵ The same Constitution also gives the final powers of Cassation to FSC to review its own regular decisions or Cassation Decisions of State Supreme Courts, if such decisions containing fundamental error of laws.

¹²FDRE Constitution, Art. 50,51 and 502(1)

¹³FDRE Constitution, Art. 78(2 and 3)

¹⁴FDRE Constitution, Art. 50(2), 52(1) and 80(3 b)

¹⁵FDRE Constitution, Art. 80(2 and 4)

The Constitution limits the power of both federal and state courts from handling issues requiring the interpretation of Constitutional provisions. Such matters are allocated to a body known as Constitutional Inquiry under Federal government political organ, House of Federation.¹⁶

Thus, the FDRE Constitution indicates the Ethiopian judicial federalism has dual characteristic organization with its own peculiar features. The basic peculiar features of Ethiopian judicial federalism can be summarized as; Federal and State Courts are coexisting and exercising their respective powers and duties. The facts that, the FSC has final appellate jurisdiction on disputes arising from federal matters, state supreme courts are also allocated final powers over respective disputes arising from the given state matter, save for particular decisions containing fundamental error of laws or delegated federal matters, indicates that the states governments are allocated autonomous judicial powers over matters fall under their original jurisdiction and these are the manifestation of dual characteristic in which the state courts have autonomous power to give final decisions over state matters, other than decisions containing error of laws.

Though no constitutional ground manifesting normal appellate or hierarchically superior-subordinate relationship between FSC and State Supreme Courts in relation to disputes arising from state matters, the FSC has been given the cassation power to review the decisions rendered by cassation bench of State Supreme Courts over the similar matters if such decisions containing error of law. Constitutionally and legally speaking, decisions containing fundamental error of laws are the only cases demonstrating the superior- subordinate relationship between FSC and State Supreme Courts and this only rare case manifests the unitary feature in existing Ethiopian judicial power allocation.

¹⁶ Federal Courts Proc. Art. 6(3)

The FDRE Constitution neither contains provisions dealing about the limitation on the powers of federal governments to enact laws affecting the judicial powers of state courts nor defines the elements of the term federal matter or state matter to demarcate the dimension of the judicial powers of federal courts and state courts or between two or more states courts.

However, practically the HPRs enact federal laws by involving certain provisions that demonstrating the superiority of federal laws over state laws.¹⁷ For instance, the acts of HPRs by defining and determining the contents of federal laws, while they enact the specific federal laws, which may not inconsistent with constitutional allocated powers, May resulted in enacting federal laws that may over lapping with state laws. Because, the respective organs of state governments are also constitutionally empowered to enact respective state laws in the same area on state matters.

FSC Cassation Division is also fueling the problems through its binding decisions containing expansive interpretation of the term federal matters in that it usually empowers the federal courts over matters expressly unlisted under federal government powers, in a way it limits the state's original judicial powers, unlike what is provided under Article 52(1) of the FDRE Constitution.¹⁸

The absence of comprehensive and binding enacted conflict of laws that govern particular issues creating conflict or competition on the judicial powers among federal courts and state courts or between two or more states courts is also another feature manifesting our federalism.

Under this section, the study will critically examine the legal frame works determining the judicial powers of federal courts and states courts. More

¹⁷Federal Courts Proc., Art. 3, 5 and 7

¹⁸ Cassation Decision No. 97083, Vol. 18th PP 325 ff

emphasis is on the provisions of FDRE Constitution, relevant provisions federal laws and similar laws on the Oromia Regional State Courts Establishment. It is my pleasure to discuss, first, on the concepts of jurisdiction in general and judicial powers in particular before addressing the Ethiopian legal frameworks on the issues.

2.2. Jurisdiction of Courts

2.2.1. General

Jurisdiction in generally refers to the powers of government or its organs with respect to the given matter. These include the powers of federal or state governments and the powers of their respective legislative, executive or judicial organs. Jurisdiction of courts refers to the powers of judicial organ of specific government to handle the case and to give binding decision on the specific disputes. The jurisdiction of court contains three elements; judicial jurisdiction, material jurisdiction and local jurisdiction.

Judicial jurisdiction refers to the power of courts to hear and decide over the given disputes. It is about determining which country's court or which level of government's court shall have the power to handle the dispute, mostly before instituting the suit, based on the available competing countries or governments in the case of Federal Country, respectively. Since the issues of judicial jurisdiction need further discussion due to its relevancy with the topic of research, I would like to first high light on the concepts of material jurisdiction and local jurisdiction to come back again for detail discussion on judicial jurisdiction taking in to account the federal structure of FDRE government, later for our convenience of discussion.

Material jurisdiction: Once the court determines the specific disputes fall under the judicial jurisdiction of its respective government the next step is to identify

whether the specific matter fall under its first instance jurisdiction or Material jurisdiction in according to the law. The material jurisdiction refers to the legal based powers of the specific court to hear and decide over the objects of the disputes. It can be original powers or powers conferred to the federal courts and delegated to state courts. Material jurisdiction of court concerns about the competent courts in relation to its hierarchical level. Example; the material jurisdiction of the court involves choosing one particular level court among the lower court or Higher or Superior level Court.

Local jurisdiction: Once the issue of material jurisdiction is determined the next last steps in establishing the judicial power of the specific court is to identify whether the specific subject matter fall under the local jurisdiction of the court. Local jurisdiction refers to the location power of the courts to handle the specific subject matter of the dispute. It is about the geographical areas covered by the power of the specific court or the relationship of the court and the subject matter of the dispute with respect to the location of the former and the place of existence of cause of action or the choice of specific court to which a law-suit is to be submitted among two or more courts with similar level that exist under a single government, whether it is federal or state government. Such courts are defined by the law depend on their convenient for proceedings; the production of the evidences or the parties, in particularly, the defendant party.

2.2.2. Jurisdiction of Ethiopian Courts

In usual cases of civil matters, other branches of laws known as “Private International Laws or Conflict of Laws” resolve the issues of judicial jurisdiction. The competition is exists between the two or more countries’ court or in case of federal structured country, between the court of the central and state governments or between the two or more states’ court. The competition is for example,

between Court of Sudan and Court of Ethiopia or Federal Court and State Court or Court of State A and Court of State B.

Many theories establishing or limiting the judicial jurisdiction are developed. The well-known theories that underline the establishment of judicial jurisdiction are; Power theory, Fairness theory, Inadequacy theory and Forum Convenience theory.¹⁹ Similarly, certain theories also developed on the factors limiting the judicial jurisdiction. Courts reject handling the given disputes if they come across such limitations. The major grounds for a declining of jurisdiction include; forum non-convenience, pendency and austere clauses, among others.²⁰

In our cases Ethiopia still lacks the comprehensive enacted laws Private International Laws or Conflict of Laws,” resolve the issues of judicial jurisdiction. But, our courts sometimes come across with disputes involving issues of conflict of laws (issues involving foreign elements) either in their true appearance by involving the matters connected with two or more independent sovereign countries or involving foreign element assimilated matters that connected with two or more jurisdiction of governments under the Federal structured Countries. However, Ethiopia lacks the compressive enacted Conflict of Laws that remains at the new level still now; there are scattered rules of the law that found in provisions of Federal Courts Proclamation No. 25/1996, Civil Procedure Code and other laws, including the binding Cassation decisions of FSC.

The Ethiopian courts also look the previous decisions on similar cases just like the approaches of common law legal system, and develop its own distinctive experiences in relation to resolving the issues containing foreign element that

¹⁹ Samuel, T., "Toward Rationalizing Judicial Jurisdiction in Ethiopia", *Tilburg Foreign L. Rev* 195, (2000)

²⁰ *Ibid.*

connected with two or more independent sovereign countries. Accordingly, the Ethiopian approaches envisages varied but selectively applying the known models case by case in this regard. Nonetheless, the country's approaches of conflict of laws in relation to determining the judicial jurisdiction on issues containing foreign element in the context of federal country it lacks proper consideration and it treats almost all issues by assimilating with the issue of material jurisdiction instead of treating as issue of judicial jurisdiction as it is.

The acts of HPRs contained in the provisions of federal laws i.e. Article 3 and 5 of Federal Courts Proclamation and certain Cassation Decisions of FSC that affect the original judicial powers of states witness the same approaches of Ethiopian in particularly the Organs of Federal government. For example: Notwithstanding the lack of constitutionally defined terms of federal matter or state matter and lack of express provisions authorizing the federal government body to determine the content of the term federal matter or state matter while establishing and defining the federal courts jurisdiction, under Article 3, 4, 5, 6 and 7 of Federal Courts Proclamation and relevant binding Cassation Decision of FSC approached to the issues of judicial jurisdiction by assimilating them to the issue of material jurisdiction. The States laws have also similar stand on such issues.

Chapter Three

Ethiopian Legal Framework on Judicial Jurisdiction

3.1. The FDRE Constitution and Judicial Powers

The 1995 FDRE Constitution is the basic source of all powers and duties of both federal and regional governments and their organs in general, the source of judicial powers, in particular.

It contains the general provisions that provide the allocation of powers, prohibition of interferences with one another's powers, coordination and cooperation mutually relationship among federal and states government.²¹ It contain in particularly the provisions stating as “ the powers that are not expressly allocated to federal government either exclusively or concurrently with the state governments are reserved to the respective state government.”²²

Concerning the judicial powers, the FDRE Constitution introduces judicial system with dual form of court structure, one at the level of Federal Government and the other at level of Regional Governments. *(See the discussion under Chapter 3 Section C, here under)*

Article 78(1) of the FDRE Constitution provides the establishment of an independent judiciary. Sub Article 2 of the same Article states “Supreme Federal judicial authority is vested in the Federal Supreme Court. It also provides the establishment of the Federal High Court and First-Instance Courts. At the same time Sub Article 3 of the same Article provides “States shall establish State Supreme, High and First-Instance Courts and its Particulars shall be determined by law. In short the constitution provides the establishment of Federal Courts and

²¹FDRE Constitution, Art. 50(8) and 51

²²FDRE Constitution, Art. 52(1)

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its levels (First Instance, High and Supreme Courts) as well as state courts and its levels (Woreda Courts, State High Courts and State Supreme Courts).

It also authorizes the federal and states legislative organs to enact the laws establishing their respective courts' organization, and determining their judicial powers within the framework of the relevant constitutional provisions²³. Accordingly, the federal legislative body, house of peoples representatives (here after HPRs) allocated the power to enact the federal courts establishing laws. The States Council of peoples representatives are also constitutionally empowered to enact the laws establishing their respective judicial. For instance, HPRs enacted the Federal Courts Proclamations while the Oromia Regional State Council of Peoples Representatives (Caffee) enacted the Proclamation to provide the establishment of Oromia Courts.

The Constitution also contains provisions dealing about concurrent jurisdiction of Federal and state courts. But nothing indicate common jurisdiction over the given matter rather than providing the delegation of federal high and lower courts powers to states high and supreme courts respectively in its details.²⁴

Article 80(1) of the Constitution provides that the Federal Supreme Court has the highest judicial power over the Federal Matters whereas sub Article 2 of the same Article says; Regional Supreme Courts have the highest judicial power over state matters. The Constitution empowered FSC to give final decision over any disputes arising from federal matters in its regular powers.

Though it allocates FSC the power of cassation to review any final decisions having fundamental error of laws including powers of cassation over cassation on decisions of State Supreme Courts, it reserves the wide judicial powers to the

²³FDRE Constitution, Art. 50(1), 51 and 52(1)

²⁴FDRE Constitution, Art. 80

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states courts and the States Supreme Courts have been given the highest powers over disputes arising from respective state matters except decisions containing fundamental error of laws.²⁵

The objective of allocating FSC, with power of Cassation over final decisions of both Federal and States Supreme Courts that containing fundamental error of laws is to bringing the uniformity in interpretation and application of laws in the Country.²⁶ So that Article 80(3, a) of the FDRE Constitution allocate such final law interpreting power over limited matters.

While HPRs are given the powers to enact laws that determining the jurisdictions of Federal Courts the Regional State Councils are also given the power to enact laws that determines the jurisdiction of their states courts.²⁷ Pursuant to constitutionally allocated powers both HPRs and Regional State Councils enacted laws establishing courts and determine their jurisdiction at both Federal and states levels respectively. For instance, the HPRs enacted Federal Courts Proclamation No. 25/1996 whereas the Oromia State Councils enacted the Proclamation No. 141/2008 that provides the establishment of Oromia State Courts.

The constitution does not define what constitutes the elements of the term federal matter, but the HPRs list what they consider as federal matter in the proclamation it enacted.²⁸ This become controversial on its Constitutionality to do so or not, irrespective of the absence of provision expressly allocates them such powers under the constitution and irrespective of the Constitution silence on the power of HPRs to enact laws restricting of the judicial powers of state courts.²⁹

²⁵FDRE Constitution, Art. 80(1) and (2)

²⁶ Federal Supreme Court, Civil Cassation Case (here after Cassation Decision) No. 42239, Vol. 10, PP 350ff

²⁷ FDRE Constitution, Art. 78 (3) the last sentence

²⁸ Federal Courts Proc. , Art. 3

²⁹FDRE Constitution, Art. 52(1)

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The constitution also lacks provisions dealing about allocation of power to enact Conflict of Laws, the legal device that helps to solve disputes containing foreign elements by determining the applicable rules on choice of law in particularly in the context of competing jurisdiction among courts of states' and central government under our federal country.

To summarize, though it is introducing the establishment of the judiciary with dual structure and providing the allocation of judicial powers to federal courts and state courts depend on federal and state matters respectively, the FDRE Constitution does not define the elements contained in the term federal matter or state matter. It also does not provide limitation on the powers of federal government from enacting laws affecting the specific judicial powers of state courts unlike Article III of USA Constitution.

3.2. The Federal Laws on Judicial Jurisdiction

Federal Courts establishing laws are the laws that establish the Federal Courts and define their jurisdictions. These include; the relevant provisions of FDRE Constitution, Federal Courts Proclamation No. 25/1996, relevant binding Cassation decisions of FSC, Proclamation No. 321/2003, Federal Courts (Amendment) Proclamation; Proclamation No. 454/2005, Federal Courts Proclamation Re-amendment Proclamation, Proclamation No. 322/2003, Federal High Court Proclamation and any other federal legislation such as Commercial Registration and Business Licensing Proclamation No. 686/2010. For the purpose of our research topic the following discussion is bounded with selective provisions of the specific Federal Laws and relevant cassation decisions of FSC that have impacts on allocation of judicial powers among federal courts and state courts.

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3.2.1. The Federal Courts Proclamation No. 25/1996

The Federal Courts Proclamation No. 25/1996 contains many provisions that establish the federal courts pursuant to relevant provisions of the FDRE Constitution and it define the jurisdictions of Federal Courts by listing the elements of matter that underline the jurisdiction of Federal Courts, “federal matter”.

Federal Courts Proclamation No. 25/1996 is enacted by HPRs to establish federal courts and determine the jurisdictions of each level of them. Basically the power enacting the federal courts establishing law is emanated from constitutionally allocated powers on matters considered as federal matters, in which state governments legislative organs are also empowered similar powers, in relation to their respective state matters.

To highlight on its preamble, the proclamation provides that it is reaffirming what providing under constitutional provisions with regard to the existence of duality of Ethiopian judiciary and indicates that the source of powers of HPRs to enact the given proclamation by itself is emanate from FDRE Constitution.

It indicates as the HPRs proclaimed the given law in accordance with Article 55 (1) of the Constitution, which means the power to do so, is emanated from the same constitution, as it was expressly included in the lists of powers falling under the Federal Government’s jurisdiction.

In generally, the preamble part of the proclamation introduces nothing other than providing what the constitutional provisions lays down with regard to the legislative jurisdiction of Federal Government on one side and it indicates specifically as HPRs have the power to enact law determining the Federal Courts’

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judicial jurisdiction accordingly.³⁰ On the other side the attempts of HPRs to mean they are given expressly the power of defining the elements of federal matters individually by considering it as listed under the powers expressly allocated under Article 55(1) of the same constitution may not be acceptable.

Because the Constitution provides nothing to indicate the organs that have power to define the contents of Federal matters or State matters clearly. Rather it says that law shall determine particulars. Hence, without indicating which government (Federal or Regional) legislative body is exclusively empowered to define the contents of Federal matters or State matters

Instead, it is possible to conclude that both states and federal government bodies can determine it together. It can be also argued that such specific laws are reserved to the state governments, in accordance to Article 52(1) of the FDRE Constitution. Because the silence of the same Constitution on allocation of powers of defining the content of Federal Matters and Regional Matters implies as such powers are reserved to Regional State Councils because the scope of legislative powers of HPRs are limited to matters expressly given, either exclusively or concurrently to them under the same Constitution.

In addition to this certain provisions of the proclamation are going beyond determining Federal Courts jurisdiction by limiting judicial Powers of Regional Courts when HPRs exercise legislative powers exclusively in ascertaining the elements constituting Federal Matters.

Articles 2 up to 15 of the Proclamation are the main provisions that deal with the judicial jurisdiction of Federal Courts. These provisions establish what are considered as the elements of Federal Matters and in their effect they are

³⁰FDRE Constitution, Art. 55(1), 80(3) (a)

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hindering the Regional Courts from exercising the original jurisdiction on what considered as federal matter.

The proclamation defines elements that establish Federal Matters in the involvement of either of Federal Laws, Federal Parties or Federal Places in the given dispute. Article 2(3) says "Laws of the Federal Government" includes all previous laws in force, which are inconsistent with the Constitution and relating to matters that fall within the competence of the Federal Government as specified in the Constitution. According to Amharic Version of Article 2(3) of the same proclamation all laws that enacted by Federal Government legislative organs are considered as Federal Laws and all disputes arising from matters governed by Federal Laws fall under common jurisdiction federal courts.

Accordingly, the HPRs empowers the Federal Courts as the only Courts that enjoy original jurisdiction to handle disputes arising from laws enacted by Federal Government legislative organs through this proclamation.

It also included all laws that enacted prior to the adoption of FDRE Constitution and effective are to be considered as Federal Laws. The cumulative reading of Articles 2(3) and 3(1) of the proclamation provides that Federal Courts shall have jurisdiction over disputes based on Federal Laws that include the FDRE Constitution itself and all others that enacted under federal legislative body. Commercial Law, Labor Law, and Criminal Laws are among others. It also include all effective laws that enacted before adoption of FDRE Constitution if they are non-consistent with the provisions of the same Constitution i. e. the 1960s Civil Procedure Code, Civil Code, Commercial Code and laws that are considered as Federal Laws that are enacted by HPRs accordingly.

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Art. 2(2) of the proclamation define the phrase "Employees of the Federal Government" by including all employees, engaged in the activities of the Federal Government.

Article 3(2) also provides the second scenario, the places of permanent resident of individual disputant parties or place of registration in case of company. Hence if any parties specified under Federal Laws are involved in the dispute the parties are considered as federal parties and the dispute fall under the jurisdiction of Federal Court as it considered as federal matter.

Article 5(2) the same proclamation creates further controversy by adding another types of Federal party, permanent residences of two or more Regional States. Accordingly, if the given dispute involves the permanent residences of two or more Regional States it will be automatically fall under the original jurisdiction of Federal Courts.³¹

Article 5(3) provides as Business Organizations Registered under Federal Government body are another body that considered as Federal Parties. Hence if the suits involve a business organization registered or formed under the jurisdiction of Federal Government organ the case falls under the Federal Courts' jurisdiction.

The third ground of forming Federal matter, naming the new Place falling under federal courts jurisdiction, is also the controversial one. It dealt under Articles 3(3), 11(1) (b) and 14(2) of the same proclamation. Accordingly, Addis Ababa and Dire Dawa are taken as Federal places by the proclamation. These articles indicate that if the given cause of action arises in the administrative boundary of Addis Ababa or Dire Dawa cities the Federal Courts have been given the original

³¹ Federal Courts Proc., Art. 5(2)

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jurisdiction over the same dispute, without any constitutional ground in particularly in the case of Dire Dawa that the HPRs has not been given clear power to put Dire Dawa City as independent Administrative City or to be considered as Federal place in the way provided under Article 3(3) and 11(1) (b) of the given proclamation.

In general all places within the geographical boundary that fall under FDRE government are considered as federal places in which the federal government can exercise its powers specifically allocated in according to the constitution. Such unilateral acts of HPRs have indirectly, restricting effects on the original judicial powers of respective State Courts. Because, the latter may lose the original judicial powers, by the mere facts that HPRs include it under the list of matters fall under Federal Courts power simply through the definition of the contents of federal matter in the same proclamation, irrespective of the type of disputes and the relationship of the given subject matters and particular concerned Regional Government.

3.2.2. Relevant Binding Cassation Decisions of Federal Supreme Court

The Ethiopian Federal Supreme Court's relevant binding Cassation Decision (here after Cassation Decision) is also one of the legal sources that determining the judicial powers in existing Ethiopian legal frameworks. It is constitutionally allocated judicial power judiciary,³² though it is limited to revise decisions of lower courts containing fundamental error of laws.

Article 10(4) of the Federal Court Proclamation as re-amended in Article 2(1) of Proclamation No. 454/2005 also provide that the FSC has power of cassation to review final decisions of Federal and/or Regional supreme courts containing

³² FDRE Constitution, Art. 80

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fundamental error of laws. For instance, the constitution has not expressly gives the power to review the final decisions' of state supreme courts containing *fundamental error of facts* to the same court.

Accordingly, the legal interpretation given by such Cassation power has binding effects on all lower Federal and Regional Courts.³³

The Commercial Companies are usually engage in commercial contracts with their customers or individual traders to insure risks that may occur from either from contractual or extra contractual obligations of their customers to other third parties.

In such cases third parties usually institute civil suits for compensation against the insured individuals before local jurisdictions (in most of the cases before the lower state courts) with out involving the insurer companies.

But the companies are involved in such suits through procedure of intervention. This means such companies involve with the litigation by request of litigant parties or by the order of the court or by the request of the concerned company it self in according to Articles 40, 41, 43, 358 and 418 of Civil Procedure Code.

Once such companies are allowed to join the given suit the parties usually raise, in their defenses, the preliminary objection or at the stage of appeal, contending the competency of the state courts original jurisdiction based on Articles 3(2) and 5(6) of Federal Courts Proclamation, irrespective of the amount of the claims concerning the same company.

Though, practically lower courts of the states usually reject such preliminary objections, the FSC in its power of Cassation reverses such decisions based on the mentioned provisions of the federal courts proclamation.

³³ Ibid.

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It is usual to see its interpretation, which stating that suits involving business organization registered under Federal government fall under the jurisdiction of Federal Courts, hence at least Woreda Courts have no either original or derivative powers to handle them. It also directs as the state courts that handling the same suit shall, when it aware as it is incompetent to handle them, shall immediately stop by closing the file by informing the concerned party her right to bring the case before the competent Court.

There are some cassation decisions that define the original judicial powers on the specific civil matters that involve matters assimilating to foreign elements within the context of FDRE Gov.t.

In the interpretation held in *Abay Insurance S.C vs. Ato Alemayehu Asafa* that the Civil Cassation Bench of FSC rejects lower courts decisions based on lack of judicial competency of state courts over suits involving the applicant company, which is registered under the federal government body.³⁴

The dispute started between two individuals (Ato Alemayehu Asefa vs. Ato Hailegorgis Abeje) in Wuchale Woreda Court, North Shoa Zone of Oromia Regional Government. The suit is initiated based on collision of cars of the two individual litigants in which the plaintiff lodges claim seeking the payment of total compensation 28,970.00 Ethiopian Birr from defendant, stating that the latter has extra contractual liability for the loss of the property the former sustained due to the wrong act of the driver the defendant car, in which he explained 13,970.00 Birr he loss for maintenance of his car and 15,000.00 Birr for loss of income from his car due to the same wrong act.

³⁴ Cassation Decision No. 90920, Vol. 15th, 2014

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Though nothing shows the defendant denial on the liability, requested order of intervention of Abay Insurance S.C, by indicating that the company insured the said damages to cover the claimed compensation based on the Insurance policy he signed with the company. While the company intervened with litigation it denied the liability by saying that the claim is not supported with sufficient evidence and the company is not liable to cover the loss of income in according to insurance policy.

The Woreda Court, after evaluating the case, it passed the decision it thought appropriate. The Regional High Court seen the case up on appeal and reversed the decision of Woreda Court. The Regional Supreme Court seen the case up on appeal and reversed the high court's decision and remand the case to Woreda Court to reexamine the liability of the defendant with necessary evidences on the issue framed.

Accordingly the Woreda Courts reexamining the case and held that the defendant has liability to pay compensation which was amount of 26,230.43 Birr. It also indicated in its decision that the defendant has to cover the amount other than the intervener company covered by its insurance policy.

The High Court rejects the appeal of the Company on the second decision of Woreda Court. In these ways, it lodged application to Cassation Division of FSC. The Cassation bench of the FSC finally removes all decisions of lower courts by stating reasons that the regional courts has no material jurisdiction to handle the case involving the applicant company, which was registered under the federal government jurisdiction. It also cited different legal provisions such as; Article 80(4) of FDRE Constitution, Article 5(6) of Federal Court Proclamation No.

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25/1996, Article 64(4) of Oromia National Regional Government Constitution³⁵ and Article 9 and 231 of 1965 Civil Procedure Code.³⁶

When we see the legal provisions cited in the given cassation decision in details; the Proclamation No. 25/1996 Article 5(6) and 14 are the basic legal grounds for the given decision. Article 5(6) provides that the disputes fall under the jurisdiction of Federal Courts if the given suits involve BO s that registered under Federal Government. Article 14 of the same proclamation indicates that the FFICs have jurisdiction on the given particular case. Accordingly, FFICs have jurisdiction on the given case, pursuant to this Article, because the case involves Company registered under Federal government though the Company join the litigation on pending case, irrespective of the amount/the gravity/ the company's interests. According to the proclamation, the fact that the given suit fall under the judicial power of FFICs implies that the states Woreda Courts are incompetent to handle and give valid decision on the given suit, because the latter have neither original jurisdiction nor delegated jurisdiction to exercise.

Similarly in *Africa Insurance Company vs. Inheritors of Ato Ibrahim Musaye and Said Ibrahim* the FSC Civil Cassation bench of FSC reversed the lower court's decisions, based on Art. 5(6) of the Federal Courts Proclamation No. 25/1996, stating that if the suits involving Company registered under federal government the dispute fall under the common jurisdiction of the federal courts.³⁷

FDRE Constitution Article 80(4) only indicates the lower Regional Courts that delegated to exercise Federal Courts jurisdiction are Regional High Courts, which

³⁵ Constitution of Oromia, Proclamation No. 94/2005, Proclamation Issued to Amend the 2001 Revised Constitution of Oromia Regional State, Oro, Magal. Oromia, Finfinne, 2005. (Here after Constitution of Oromia), Art. 64

³⁶ Cassation Decision No. 90920, Vol. 15th PP - 347 ff

³⁷ Cassation Decision No. 43912, Vol. 10th PP – 276 ff

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implies the Woreda Courts have no any power of delegation to exercise the jurisdiction of any Federal Courts. Hence, this Provision of the Constitution neither defines the elements of Federal Matters nor limits the Regional Courts to see this case in its original jurisdiction. The Oromia Regional State Constitution Article 64(4), nothing introduces other than what provided under Article 80(4) of FDRE Constitution. Civil Procedure Code Articles 9, 231(1) (b) provide that when the a given Court aware of the fact that it has no material jurisdiction over the given civil suit, it shall close the file according to Article 245 of the same Code and this must be done at any levels of the suit, irrespective of the failure of the defendant to rise as preliminary objection. These provisions prerequisite the existence of other constitutionally compatible laws showing the incompetency of state courts to handle the suit.

Further, Article 6(2) and 37(2) of the proclamation No. 25/1996 implies establishing of the superiority of Federal Laws over Regional Laws with regard to Courts' jurisdiction. The proclamation emphasis the same approach while this is not provided expressly in Constitution.

The decision also indicates the impacts of places of registration of Business Organizations and if companies registered under Federal Government body involved the litigation it limits the regional courts original jurisdiction, because of the mere fact of its registration, irrespective of the case of the main individual litigants during initial point of the case and the lesser amount of the claim against the company.

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3.3. The Oromia Regional State Courts Establishing Laws

It is important to highlight about Oromia Region and the specific features of Oromia State Courts and the state laws establishing courts and defining their judicial powers that attracting my focus in this research.

Oromia Region is a part of Ethiopia that stands in the first rank, compared to other Regions, by its territorial coverage and its number of population. Oromia State Government is one of member states of FDRE Government.

There are special features of Oromia Regional Government in general and the Regional Courts, in particular.

The Region found in the central parts of the country and the jurisdictional boundary of its regional government touches with all of other members of the federation except Tigray Region. It has contacts and sharing interests with Addis Ababa and Dire Dawa Cities, which are governed only under the jurisdiction of federal government, though there is the controversy on the constitutionality in case of the latter.

It has relationship with Harar City, which are the capital for Harari Regional State and the capital for Eastern Hararge Zone as part of Oromia Region (by the fact that the Seat of East Hararge Zone Administration and East Hararge Zone High Court as well as other East Hararge Zone level offices under Oromia Regional Government is inside Harar City).

In addition to this it is the home of other main commercial Cities of the country, namely; Ciro, Adama, Assella, Shashemenne, Bishoftu, Jimma, Ambo, Dukam, Sabbata, Burayu, and others.

These factors invite the regional government to come across different jurisdictional issues with both federal government and other members of the

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federation. At the same time, the Oromia State Courts, in particularly commercial Cities that found at the center of the Region and around Finfinne, Dire Dawa and Harar Cities, usually come across cases involving conflict of interests on the original judicial powers with neighbor states' courts or with federal courts.

Specifically, it is usual to come across such issues in Oromia Courts of Adama Special Zone and Oromia Special Zone around Finfinne. Because, many companies and commercial business organizations registered either under the federal government in Addis Ababa or under other state governments and running their businesses in or around the mentioned Oromia Cities, so that, when the disputes involving them arise and appear before these Oromia state Courts the parties (the defendants or intervening parties) or Federal Courts usually contending the original judicial power of State Courts to handle the disputes.

It is important to have clarity on the laws defining the regional states judicial powers that based the constitution for Ethiopia in particularly in the near future whereby the Oromia Regional Government launched economic revolutions by promoting private individuals to engage in business activities, with the view of mobilizing the regional economy growth, on establishing regional based companies. *For example; Oda Bus Share Company (S.C), Walabu Integreted Construction S.C, Faya Health Insurance S.C* are among others.

Oromia Regional State Courts are among State Courts that established based on the FDRE Constitution.³⁸ They comprise of Oromia Supreme Court, Oromia High Courts and Oromia First Instance (Woreda) Courts. Accordingly, Woreda Courts are established at all Woreda levels, the State High Courts are also established in all zones of the Oromia Region and State Supreme Courts having one central main office and three permanent benches are established and functioning. While

³⁸FDRE Constitution, Art. 78(2)

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the main office alongside with its Cassation Division seating in Finfinne, in particular place known as 6 Killo, the other three are seating permanently in Adama, Shashamane and Nekemte Cities for insuring physical accessibility to the citizens residing in all corners of the region.

Its judicial powers are also emanating, basically, from the same constitution.³⁹ Following the adoption of FDRE Constitution, the Oromia Regional Government establishes and defines the powers of Oromia Regional State Courts in both the Regional Constitution and Oromia Regional Courts Establishment Proclamations, which are amended in different time.

3.3.1. The Constitution of Oromia Regional States

The revised Constitution of Oromia National Regional State⁴⁰ alike the FDRE Constitution contains provisions that establish Oromia Regional Courts having three levels of hierarchic. The provisions of this constitution introduce no more new thing other than restating the judicial powers that the FDRE Constitution allocated to the Respective State Courts. In this regard we shall focus our discussion on Oromia Courts Establishment Proclamation which is the relevant detail regional law.

3.3.2. Oromia Courts Re-establishment Proclamation No. 216/2018

This proclamation is enacted recently by amendment of the other repealed proclamation No. 141/2008.⁴¹ It has five main parts containing some new added provisions that clarify the objectives of the given law and redefining the jurisdictions of the State's Courts. The first part of the proclamation contains provisions dealing about general matters. The second part has four sections. The

³⁹FDRE Constitution, Art. 80(2) and (3)(b)

⁴⁰ Constitution of Oromia, Art. 64(1)

⁴¹ Oromia Courts Proc., Proclamation No. 2016/22018, Oro, Magal. Oromia, Finfinne, 2018. (Here after Oromia Courts Proc.).

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first section contains provisions on re-establishment of Oromia Courts and providing their objectives. The second section contains provisions dealing about the independency of the state courts while the third section provides the provisions on organization of the same courts.

The last section of part two contains provisions on selection and appointment of regional state judges.

The third part contains provisions dealing about missions of the regional courts and redefining their jurisdictions.

Part four contain provisions dealing about principles of judicial services and their implementation. The fifth and the last part contains miscellaneous provisions dealing on the issues among others, encouraging Alternative Dispute Resolution Methods in line with the Practices of Oromo Customary Disputes Resolution, leaves for regional judges, general meeting of regional judges, pending cases and the repealed or inconsistent laws.

Comparing with the previous Oromia Courts Proclamation, the new proclamation generally introduces the new developments, with the purposes of providing more accessible, speedy and effective justice services alongside with improving and insuring the independency, accountability and impartiality of the Oromia Courts and judges, among others. In relation to our topic of discussion the contents of the proclamation can be summarized as following.

- i. It provides the grounds establishing the judicial jurisdiction of the Oromia State Courts.

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Based on the scope of powers allocated by FDRE Constitution, the Oromia State Courts shall have original judicial powers on all matters other than matters expressly allocated to Federal Courts under the FDRE Constitution.⁴²

- They can handle disputes arising within the boundary of the jurisdiction of the Oromia Regional Government.⁴³
 - Disputes involving persons residing in the jurisdiction of the Regional Government are also fall under Oromia Courts jurisdiction.⁴⁴
 - Their powers also extended to properties existing inside the jurisdiction of the Regional Government.⁴⁵
- ii. It adjusts and expands the scope of original judicial powers of Oromia Courts within the capital City of the Region and the Country, Finfinne (Addis Ababa).⁴⁶

The New Proclamation (at its initial stage) contains provisions expanding the Oromia Courts original judicial jurisdiction over disputes that may arise inside Finfinne/Addis Ababa/, with respect to matters involving the interest of Oromia Region.⁴⁷ It also defines matters involving the interests of the Oromia Region under Article 24(3) of the new proclamation.

This is so because Finfinne is not only the capital city of Ethiopia, but also it is a part and parcel of Oromia as well as the seat of Oromia Regional Government and the capital city of the same Region. Thus, the Oromia Regional Government has main offices of its Executive, Judiciary and Legislative organs in Finfinne

⁴² Oromia Courts Proc., Art 24(1- a)

⁴³ Oromia Courts Proc., Art. 24(1) c

⁴⁴ Oromia Courts Proc., Art, 24(1 - C)

⁴⁵ Ibid.

⁴⁶ Oromia Courts Proc., Art. 24(2)

⁴⁷ Ibid

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that includes the Seat of the Main Office of Oromia Supreme Court as provided under the Regional Constitution.⁴⁸ The FDRE Constitution also recognizes the special interests of the Oromia Regional State over the same City, though such interests are still not detailed by the specific laws.⁴⁹ It is obvious that the Oromia Regional Government can have specific interests on disputes that may occurred in the given City with regard to matters connected with its main offices, the officials, workers serving the given offices and the region at all. Accordingly, the New Proclamation provides the legal base for establishment of the Original judicial powers of Oromia Courts to handle such disputes that involve the interests of the Oromia Region.⁵⁰

iii. It redefine the material jurisdiction of the Oromia Courts

The New proclamation increases the scope of first instance material jurisdiction of Woreda Courts on both Civil and Criminal matters. Accordingly a number of matters fall under the first instance jurisdiction of the Regional High Courts, under the repealed proclamation are lowered to Woreda Courts. Thus, the Woreda Courts are allocated powers to handle civil disputes of pecuniary values that estimated up to one million Birr in case of moveable property and three million Birr in case of immovable property.⁵¹

The Regional High Courts are designed to handle a very few state matters in their Original jurisdiction and they have appellate jurisdiction over Woreda Courts decisions and the decision of other quasi judicial organs by leaving the wide first instance jurisdiction to Woreda Courts. As the same time the Supreme Court of

⁴⁸ Constitution of Oromia, Art. 2(3)

⁴⁹ FDRE Constitution, Art. 47

⁵⁰ Oromia Courts Proc., Art. 24(3)

⁵¹ Oromia Courts Proc., Art. 31(1)

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the Region also have wide bases of formal appellate jurisdiction and cassation powers over final decisions containing fundamental error of law.

- iv. It gives legal effect for unanimous cassation decisions of the Regional Supreme Court

The Cassation Decision of Oromia Supreme Court which will be rendered unanimous by five Oromia Supreme Court judges including the president and vice president of the same court have legal binding effects on all lower regular Courts of the state.⁵² But they are not binding if such decisions are reversed by the cassation decision of FSC on the bases of fundamental error of laws.

Though our discussion is bounded to matters related with the research topic (provisions of the proclamation that dealing with the issues of judicial jurisdiction) the new proclamation also contains other new and important provisions.

In general when we see this new proclamation alongside with the specific provisions of the pertinent federal laws and relevant binding cassation decisions of FSC based on their Constitutional foundations the Oromia Courts Proclamation only limit the judicial powers of the respective Courts with regard to matters that the FDRE Constitution exclusively and expressly allocate under the judicial power Federal Courts. The proclamation does not take in to consideration the provisions of Federal courts proclamation and other Federal laws that have, without having constitutional grounds, the effects of indirect restriction on the judicial power of the state courts.

Thus, declining the state courts judicial power on the base of disputes arising from Federal Laws, disputes arising from specific places, disputes involving the

⁵² Oromia Courts Proc., Art. 29 (1)

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permanent residents of different regions or disputes involving BO s registered under Federal Gov.t body has no legal recognition under Oromia Courts Proclamation unlike that of the specific discussed provisions of the pertinent federal Courts Proclamation and the relevant binding cassation decisions of FSC.

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4.1. Introduction to Commercial Disputes

Commercial business activities are business activities carried out by class of society known as trader. Its purpose is profit making and persons can be assumed legally as trader if they involves in commercial business activities as professional (permanently engaging in profit making activities). Activities are deemed commercial, according to Ethiopian commercial law, when a person permanently (usually) carried out such activities for the purpose of gaining profit. Our law provides list of commercial activities in Commercial Code Article 5 and the provisions of subsequently enacted proclamations. Persons (whether physical or juridical) who permanently (usually) carryout business activities for the purpose of gaining profit is also known as traders.⁵³

Commercial dispute settlement Mechanism is the method of solving disputes arising in commercial business activities. There are different kinds of commercial dispute settlement mechanisms. These mechanisms include among others, Negotiation, Mediation /Conciliation/, Commercial Arbitration and Litigation.

Negotiation and Mediation usually require debtor parties' voluntary enforcement while Commercial Arbitration and Commercial Litigation can be enforceable by courts in case of absence of consent of the debtor parties to perform the obligation.

⁵³ Commercial Code, Proclamation No. 166/1960, Empire of Ethiopia, **Neg. Gaz.**, 19th Year, No. 3, 1960, Addis Ababa.(here after Commercial Code), Art. 5 and 10

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Commercial Arbitration is based on prior consent of the parties and carried out by private arbitrators i.e. arbitral tribunals in prior established institutions or ad hoc which being established following the existence of disputes or up on commercial arbitration agreement, whereas commercial litigation can be understood as Courts proceedings to resolve disputes appearing before them. It is courts proceedings and its final decisions are legally enforceable irrespective of the parties' refusal to perform it. In other word, Commercial litigation is a method used to resolving commercial disputes before Courts of law. It is adjudication of civil disputes in which the government organs (Courts) handling disputes and give binding decisions over them.

Most of commercial litigations are taken place at the domestic levels of Courts. If commercial disputes contain trans-boundary issues (international feature) they are solved by mechanisms such as Negotiation, Conciliation and Arbitration depend on the legal sources of the commercial transaction in most of the case. Hence, commercial disputes arises from domestic transactions are solved by litigation in most of the case, in particularly within Ethiopia. Commercial disputes are disputes arising out of commercial activities based on commercial contract.⁵⁴

4.2. Ethiopian Legal Frameworks Determining Judicial Jurisdiction on Commercial Disputes

Civil disputes involving commercial and company matters require attentions to maintaining the special features the study discuss in our above discussion. This does not mean that the judicial powers of the particular state government are limited on disputes involving these matters.

⁵⁴ Commercial Code, Art. 5

Ethiopian Legal Frameworks Determining Judicial Jurisdiction on Commercial Disputes

4.2.1. The FDRE Constitution

Under this sub-section the study examines the specific legislative powers constitutionally allocated to HPRs in defining the jurisdiction of Federal Courts with respect to disputes arising from commercial matters.

The legislative powers of HPRs are listed under Article 55 of the Constitution. Accordingly, HPRs expressly allocated legislative powers such as; to enact Labour Code, Penal Code, and Commercial Code among others.

The rationale behind the constitution for allocating HPRs with such exclusive powers of enacting the mentioned civil laws⁵⁵ does not for excluding the involvement of state government in their own powers of implementing and adjudicating. Rather the Constitution allocates HPRs the power to enact Commercial Code and other listed laws that have national wide application⁵⁶ implies the motivation of the country to insure the uniformity in terms of regulation of commercial business activities.

Further, given the fact that these powers are not expressly allocated as exclusive to federal government, one can easily understand that nothing restrict the organs of state governments to implement and interpret such laws in according to the same constitution and the practice witnessed it.

Thus, for instance, by the mere facts that such powers are listed under exclusive legislative powers of HPRs, the constitution neither exclusively allocates the federal courts nor it excludes State Courts from handling the disputes arising from

⁵⁵ FDRE Constitution, Art. 55(4)

⁵⁶ Ibid.

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commercial matters in their original judicial powers expressly, in according to Article 52(1) of the FDRE Constitution.⁵⁷

4.2.2. The Federal Courts Proclamation and Binding Cassation Decisions

Under this subsection we will see among others the relevant provisions of Federal Courts establishing laws such as the provisions of Federal Courts Proclamation No. 25/1996 that specifically deals about judicial powers of federal courts, the relevant binding Cassation Decisions of FSC and relevant provisions of other federal laws in relation to definition of judicial powers on commercial litigations involving company.

In according to the general principles laid down under Article 3 of the Federal Courts Proclamation No. 25/1996, which is enacted by HPRs in post adoption of FDRE Constitution⁵⁸ all laws enacted by HPRs are federal laws and regional courts lack the original jurisdiction to handle suits arising under federal laws.

Secondly, Articles 3(2) and 5(6) of Federal Courts proclamation define the original judicial power of federal courts in relation to matter involving the business organization registered under the jurisdiction of organ of Federal Government.⁵⁹ Accordingly, if the given dispute involves business organization, including company, that was registered under the jurisdiction of a given organ of federal government, the state courts' original judicial power is restricted by federal law, irrespective of the places of the company's business operation or irrespective of the place of the occurrence of the disputes or irrespective of the

⁵⁷ FDRE Constitution, Art. 55 (6)

⁵⁸ Federal Courts Proc., Art. 3(1)

⁵⁹ Federal Courts Proc., Art. 3(2) and 5(6)

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lesser amount of the rights or duties for which the given company involved in the suit.⁶⁰

Thirdly, the Federal Courts proclamation also establishes the original jurisdiction of Federal Courts based on the place where cases arising from. It considers as Federal Place. Thus the proclamation considers Addis Ababa and Dire Dawa City as Federal places. In according to the proclamation, disputes arising within these two cities fall under Federal Courts original jurisdiction.⁶¹ In this case though the issue of Addis Ababa City Administration and its tied with federal government is partly provided under the FDRE Constitution⁶² the proclamation is introducing or naming Dire Dawa as new place in which the federal courts are exclusively allocated the judicial jurisdictions, which is controversial on its ground of constitutionality.

The federal courts proclamation also establishes and defines federal courts judicial powers based on the parties place of resident. According to Article 3(2) and 5(2) of the proclamation if the disputes involve parties permanently resides in the different regional states, the case will fall under the original jurisdiction of federal courts.⁶³

Articles 7 and 32(2) of the Federal Courts proclamation provide the inapplicability of the provisions of other procedural laws which may include the provisions of states Courts Proclamations on matters covered by Federal Courts proclamation or if they are inconsistent to the provisions of Federal Courts proclamation. These two provisions have an impact of making the federal courts proclamation superior

⁶⁰ Cassation Decision, Civil Case No. 97083, Vol. 18th PP 325 ff

⁶¹ Federal Courts Proc., Art. 3(3)

⁶² FDRE Constitution, Art. 47

⁶³ Federal Courts Proc., Art. 3(2) and 5(2)

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over any states laws because any provisions of the state courts establishing laws are inapplicable by the mere facts that matters are covered under the given federal proclamation or they are contradicted with the provisions of federal courts proclamation, irrespective of inquiring their constitutionality. They strength in particularly, Article 3, and 5 of the given proclamation by forcing state courts to apply them instead of respective state laws that may contradicted with them.

To sum up, in relation to commercial and company matters, though state high and supreme delegated over certain powers of lower level federal courts, the provisions of Federal Courts Proclamation allocates the original judicial powers to Federal Courts, so that the states Woreda Courts are restricted from handling matters allocated by the federal Courts under federal courts jurisdiction, according to this federal proclamation.

The cassation decisions rendered by FSC either based on the provisions of the Federal Courts Proclamation No. 25/1996 that the study discussed above under this chapter or based on their own standing interpretations under its power of cassation. It gives many decisions that have effects of establishing and defining or limiting the judicial powers both federal and state courts. All decisions the study examined under chapter three are The Ethiopian Federal Supreme Court relevant binding Cassation Decision (here after Cassation Decision) are also one of the legal sources that determining the judicial powers in existing Ethiopian legal frameworks. It is the power allocated to federal government body, judiciary, having the constitutional bases, though limited in giving decisions having legal power over certain decisions of lower courts (regional and federal judicial body

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other than cassation division of FSC itself) containing fundamental error of laws.⁶⁴

The interpretation given in Cassation Decision, *Ga'atico PLC Vs. Tigray Region Roads Construction Enterprise* the FSC interpreted the power of Federal Courts it established in former decisions expansively by including the litigant branch company, which was registered under the given State office of Trade and Industry by the mere fact that the main office of the company is registered under federal government.⁶⁵

I do not accept that the scope of power of cassation or binding cassation decisions extending to the extent of creating new law on allocating judicial powers to the federal courts in a way it restricts the judicial powers of state courts by going beyond interpreting the existing rules. Because, the HPRs are not given expressly the power to define the content of the term “Federal Matter” while empowered to enact the federal Courts proclamation in according to the FDRE Constitution.⁶⁶

In other case which appeared before Oromia Regional Supreme Court Cassation Bench, *Obbo Gazu Bekele Vs. Adde Zebditu Makuria Ingidaa and Nayile Insurance S.C* the Cassation Division of Oromia Supreme Court reversed the decision of its regular bench in majority vote by stating that the regional courts lack jurisdiction to handle the case, because it involved the second respondent, which is company registered under Federal Government body and amount of

⁶⁴ FDRE Constitution, Art 80

⁶⁵ Cassation Decision No. 97083, Vol. 18th, 2015, PP - 326 ff

⁶⁶ FDRE Constitution, Art 52(1)

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claim, to imply as the dispute involved the federal subject matter exceeding the power of delegation of states high court, where it started.⁶⁷

In the decision the suit is initiated in the high court of Oromia Special Zone Around Finfinne up on the claim of the first respondent she lodged against the applicant by claiming the total compensation of Birr 614,507.73 due to loosed and future damages because of physical injury she sustained by the defendants car accident. The defendant requesting the order of intervention against the second Respondent, Insurance Company, by stating that it covers the payment of 40,000.00 Birr based on their insurance policy.

The Nayile Insurance Company intervened, following the order of the high court in according to Art. 43 of the Civil Procedure Code, denying the amount of compensation it responsible to pay by indicating that its liability is emanating from third party insured policy that exceeding 15,000.00 Birr. The high court decide, after evaluate the case, that the defendant has liability to pay 593,731.73 birr, of which the company has to cover pay 15,000.00 Birr while the rest has to be paid by defendant for the plaintiff.

Following the appeal lodged by the defendant, the regular division of Oromia Supreme Court sees the case decided by upholding the liability but decreasing the amount of compensation 300,000.00 Birr.

The defendant lodged the application for the Cassation Bench of Oromia Supreme Court. But the given cassation bench dismissed the lower Courts decisions stating that the regional high court lacks any power to see matter fall under federal courts jurisdiction that involves subject matter of Birr 614,507.73 by citing the above

⁶⁷ Oromia Supreme Court, Civil Cassation Decision, Case No. 241044,(Unpublished), 2017

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mentioned binding Cassation decision of FSC, *Abay Insurance S.C Vs. Ato Alemayehu Asafa* as a legal ground for its decision.⁶⁸

In other unpublished FSC Cassation decision on *the Member of Board of Directors and Gimb Gabaya S.C. Vs. 60 Share Holders among the total 500 shareholders* the FSC⁶⁹ the majority vote reversed the lower courts decisions by explaining that Adama Woreda Court (that first handle the case) has no jurisdiction on cases involving the company. In This case even the place of registration of the given company is confusing that while its main office registered under Oromia Berua of Trade and Industry and its main objective is to conduct commercial transaction inside big stores and different shops it is building in the center of Adama City of Oromia, its trade name registration is approved under Federal government body.⁷⁰ It also invites for another topic of research for those interested to examine the law and practices on Commercial registration, Trade name registration and Company name registration. But for the purpose of the topic at hand the given cassation decision show us the FSC restricts the original judicial powers of state court in its decision by majority vote on power of Cassation, by the mere fact that the suit involves company, irrespective of the absence of clarity(confusion) on its place of registration.

4.3. The Oromia State Courts Establishing Laws

As we have discussed under chapter three, the establishment and allocation of judicial powers of Oromia Courts, as one of the organ of state Gov.t, are provided under the FDRE Constitution.

⁶⁸ Civil Cassation Case No. 90920, Vol. 15th , 2014, PP 347 ff

⁶⁹ Civil Cassation Decision No. 13064 (unpublished), 2017

⁷⁰ Ibid.

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In addition to the Revised Constitution of Oromia the Oromia State government also enacted Oromia Courts establishing Proclamation No. 216/2018(here after Oromia Courts Proclamation) and other similar laws to define powers and functions of Oromia Courts in details.

The provisions of Oromia Courts Proclamation and the relevant provisions of FDRE Constitution are the valid legal source to define the original jurisdiction of the regional courts rather than the provisions of federal courts proclamation or certain binding Cassation decisions of FSC that can be challenged if they lack constitutional ground.

The scope of the powers of particular organs of the Gov.ts and principle determining the relationship of federal Gov.t bodies and the respective state Gov.t bodies are also provided under FDRE Constitution.⁷¹

The FDRE Constitution under Articles 50(7), 78(3) and 79(7) as well as Article 80(2) provides the original judicial powers of regional courts over the respective state matters. (See the discussion under Chapter Three Section B, Sub-Section 2 - (03-c).

Accordingly, Oromia Courts have legal grounds, consistent with provisions of FDRE Constitution to handle matters that are not expressly allocated to federal courts under the same constitution by their original jurisdiction over disputes that the region has interests. These include civil disputes arising from commercial matters and matters involving Companies irrespective of the sources of laws governing them or their places of registration or the discrepancy of the permanent residence Regions of disputant parties.

⁷¹FDRE Constitution, Art. 50(8)

Chapter Four

Findings, Recommendation and Conclusion

5.1. Findings

The study shows that the FDRE Constitution establishes both federal and state governments and it allocates Legislative, Executive and Judicial powers for both of them. In relation to judiciary, the Constitution establishes the dual structure of Courts that contains Federal and Regional State Courts having three layers of hierarchy (First Instance /Woreda/ Courts, High Courts and Supreme Courts) similarly at both levels of governments.

Notwithstanding the issues of final decisions containing fundamental error of laws, which may be reviewed by cassation division of FSC, the constitution allocates the final judicial powers for federal Supreme Court and State Supreme Courts on federal matters and state matters respectively.⁷²

But the constitution leaves the details to be determined by subsequently enacted laws.⁷³ This means, in according to the cumulative reading of Article 50(2) and 78(3), the legislative power of defining and determining the judicial jurisdiction of federal courts is allocated to HPRs whereas the legislative power to define and determine the judicial jurisdiction of state courts allocated to the respective regional states' council of peoples representatives.

In other word though the FDRE Constitution has no provision that provides clear definition on the term *federal matter* or *state matter*, the HPRs is given the power

⁷²FDRE Constitution, Art 50(7) and 80(3) (a)

⁷³FDRE Constitution, Art. 50(2) and 78(3)

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to define the judicial jurisdictions of Federal Courts (Federal Matter) whereas the regional states' councils are also given the legislative power to define their respective judicial jurisdictions (state matter) by the same constitution.⁷⁴

Accordingly, the HPRs enacted the detailed federal laws that determine the federal Courts judicial powers to define what constitutes federal matters. These include Federal Courts Proclamation No. 25/1996; Proclamation No. 454/2005; Federal Courts Proclamation Re-amendment Proclamation No. 322/2003 and relevant binding Cassation Decisions of FSC as well as other federal law such as Commercial Registration and Business Licensing Proclamation No. 686/2010 that contain provisions impacting the determination of judicial powers in the country. In particularly some provisions of the Federal Courts Proclamation No. 25/1996 and relevant binding cassation decisions of FSC are specific sources of federal law that defining federal courts jurisdictions.

The state councils of peoples representatives are also enacted their respective state laws by defining the jurisdiction of their related courts. Similarly the Caffee Oromia enacted the Oromia Courts Proclamation and the ongoing New amendment on Oromia Courts Proclamation also prepared with this view.

Thus the research findings indicate that the Federal Courts Proclamation define the ingredients of federal matters based on the involvement of Federal Laws, places governed under bodies of federal government, suits involving disputant parties permanently reside in different regional states or suits involving business organizations or companies registered under the federal organs of the

⁷⁴FDRE Constitution, Art 78(3)

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government. Certain binding Cassation decisions of FSC are also expanding the jurisdictions of federal courts through interpretation.⁷⁵

However, these have negative impacts on the legislative powers on the original judicial powers of state governments contrary to the relevant provisions of the FDRE Constitution. In particular, the given federal government legal sources have limiting effects on the original judicial powers of state courts including Oromia State Courts over specific disputes involving commercial and company matters as followings:

- In pursuant to Article 3(1-a) of the Federal Courts Proclamation, the mere facts that disputes arising from the Commercial Law (one of federal laws)⁷⁶ empowers federal courts to have original jurisdiction over the same disputes. This is indirectly limiting the power of state courts from handling similar disputes by their original judicial powers. Though the constitution expressly allocates express legislative power to HPRs to enact commercial code that have applicable across the whole country it doesn't expressly limit the judicial and executive powers of state governments to apply such federal laws, while the latter discharge their duties. The Constitution also neither expressly allocate the federal Courts an exclusive original judicial power over disputes involving commercial and company matters nor it restrict states judicial powers from exercising their original judicial jurisdiction on similar matters.
- In according to Article 5(2) of Federal Courts Proclamation, in relation to suits between parties permanently residing in the different regional governments

⁷⁵ Cassation Decision No. 97083, Vol. 18th PP 325 ff

⁷⁶ FDRE Constitution, Art 55(4); Federal Courts Proc., Art. 2(3)

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allocating the original judicial jurisdiction only to federal courts also lacks express Constitutional ground.

- At the same time, Article 5(6) of the given Proclamation and Cassation decision of FSC⁷⁷ also put indirect limitation over the judicial powers of state courts with regards to disputes involving business organizations (companies) by the mere fact that their main branch office are registered under the federal government bodies whereas they are carrying out their businesses in all parts of the country in particularly under the lower administration units of state governments that play roles for the growth of commercial activities and expansion of companies by creating conducive environment in providing the companies the buildings for their branch offices and shelter for their employees, social needs such as water, security and other needs.
- Considering the status of Addis Ababa and Dire Dawa Cities Administration as full members of FDRE government under some federal laws beyond what provided under the FDRE Constitution also lack the constitutionality.⁷⁸ Though the issues of Addis Ababa City Administration are partly dealt under the same Constitution, considering Dire Dawa City Administration as having equal status with a full member of the federation as well as treating as equal to Addis Ababa as specific place that fall under solely the power of federal government and putting the disputes arising from the same place as the exclusive judicial power of the federal courts is indicating the unconstitutionality of the given provision of federal courts proclamation. Further such restriction and interference of federal government bodies on the states' powers in generally and on the states' judicial powers in particularly in the absence of express authorization of the constitution are also contradicted

⁷⁷ See Civil Cassation Case No. 97083, Vol. 18th, 2015, PP 326 ff

⁷⁸ Federal Courts Proc., Art 14(2), 36

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with constitutional principles that establish the possible features of relationship existing between the federal and state governments', which are coordination and cooperation with non-interferences of powers of one another in according to Article 50(8) of the FDRE Constitution.

- Notwithstanding the places specified under the constitution (Addis Ababa) the acts of HPRs in naming new specific places (Dire Dawa) as places governed by only federal government body,⁷⁹ due to the mere fact of establishing federal Courts' jurisdiction also lacks constitutional ground.⁸⁰ Because, there is no any express provision in the FDRE Constitution that dealing about Dire Dawa City to be governed solely under federal government and it lacks too any constitutional ground to assume equal status and be treated as Addis Ababa City Administration. Furthermore, considering Addis Ababa and Dire Dawa Cities Administrations, as full member of the federation has also no constitutional ground. Because, the Constitution, besides providing the existence of nine full member states of the federation, it clearly provides the procedure in which a new member state will be added to or leave from the membership of federation⁸¹ and these two Cities are not get the status of member of the federation in according to the constitutional procedure till now.
- In according to Articles 6(2) and 7 of the Federal Courts Proclamation making the state laws ineffective if they are inconsistent with the provisions of the federal courts proclamation is also contradicted with Article 50(8) of the FDRE Constitution that provides the principles underlining power relationship among federal and state governments. Because, without the existence of clear constitutional provision that limit states power over the given matters these

⁷⁹ Federal Courts Proc. , Art 3(3)

⁸⁰ FDRE Constitution, Art 49

⁸¹ FDRE Constitution, Art. 39

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provisions of the proclamation indicate that federal law override the state laws if the latter contradicted with provisions of the former. But under Articles 50 up to 80 of the FDRE Constitution both federal and state governments as well as their respective bodies are allocated powers separately, and as per Article 52(1) of the same Constitution unlisted powers are also left for respective state government.⁸² Hence, federal laws that enacted by HPRs having restricting effects on States legislative and judicial powers on matters not clearly allocated to only federal government bodies are accordingly unconstitutional.

To make it specific Articles 3, 5(2 and 6), 14(2) 35(2), 36 and 37(2) of Federal Courts Proclamation have negative effects on original judicial powers of State Courts by allocating original judicial powers only for federal courts over matters taken as federal matters by restricting the original judicial powers of State Courts and totally restricting the judicial powers of states lower and easily accessible courts (Woreda Courts)including Oromia Woreda Courts from handling such matters in generally and from civil suits involving commercial and company matters in particularly. Because, in according to the specified provisions of the Federal Courts Proclamation all States' first level courts (Woreda courts) cannot handle such suits either by original judicial powers. They can't handle specific disputes involving commercial and company matters also by powers of delegation due to the absence of any constitutional and legal grounds allocating them delegate powers over matters fall under original judicial powers of federal courts, though such disputes involve minor issues. State High Courts and State Supreme Courts are the only state courts delegated to handle Federal Matters on behalf of Federal First Instance Courts and Federal High Courts respectively in this regard.⁸³

⁸²FDRE Constitution, Art 50(1, 2 and 8)

⁸³FDRE Constitution, Art 80 (2 and 4)

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In relation to relevant binding Cassation Decisions of FSC most of the decisions are based on the provisions of the Federal Courts Proclamation that have restricting effects on the original power of state courts as the study discussed above. Because of unconstitutional from their legal bases by their restricting effects on the judicial powers of state courts, unconstitutionally such decisions are also lacking the constitutionality. Further the Cassation Decision of FSC that manifests expansive interpretation of the provisions of federal courts proclamation that have restricting effects on the states' judicial powers, the study discussed above in favor of federal courts also lacks clear authority in the constitution. Because, it is allocated the powers of interpretation of the provisions of the law, not to enact new laws by passing decisions that may contradicting with Articles 50, 51, 52 and 78 of the FDRE Constitution. These provisions of the constitution underline the allocation of powers among federal and state governments other than giving binding interpretation depend on the existing laws within the scope of powers expressly allocated to federal government bodies, in according to Article 52(1) of the same constitution.

Nevertheless, the practices of state laws and the States Woreda Courts reveal that Woreda Courts are legally allocated some minor disputes arising from federal laws such as criminal laws and deciding them by interpreting Criminal Code They also handle many commercial minor disputes by their original judicial powers and decide them by applying existing commercial laws. So that Federal Courts Proclamation's indirect effects of restricting the power of State Courts from exercising their original jurisdiction on commercial disputes involving companies matters by applying federal commercial laws lack constitutional grounds.

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It is also illogical and unreasonable to put all matters arising from Federal Laws including commercial laws under the exclusive judicial jurisdiction of Federal Courts and limiting original judicial powers of state courts from handling civil suits containing commercial and company matters.

Practically speaking the limited resources and professional man powers in the level of federal government makes the existing Ethiopia Federal Government incapable to implement all federal laws in all corners of the country through only its executive and judicial organs. Hence the indirect limitation of federal laws over original judicial powers of Oromia Courts from handling civil suits involving commercial and company matters in according to Articles 3, 5, 6, 7, 14(2), 35(2), 36 and 37(2) of Federal Courts Proclamation as well as Cassation Decisions of FSC that based on the given provisions of the same proclamation lack constitutional ground, so that the Original judicial powers of Oromia Courts over suits of commercial and company matters should not be affected by such provisions of federal courts.

Unlikely to to the specific discussed provisions of federal courts proclamation and related cassation decisions findings indicate that State governments are now days starting to look the constitutionality of certain powers that are allocated in the law enacted by HPRs as exclusive powers of Federal Gov.t bodies. They are widening the scope of their powers they are guaranteed by the FDRE Constitution.

These can be understood, for instance, from the enactment of Oromia Courts proclamation No. 216/2018 by the Gov.t of Oromia.

The New Oromia Courts Proclamation also define the Oromia Courts original judicial jurisdiction based on the FDRE Constitution, in terms of the cause of actions occurred in Oromia, persons and properties existing in the same region,

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irrespective of what was provided under Articles 3,5 and 6 of Federal Courts Proclamation or related binding cassation decisions of FSC.

5.2. Recommendation

The study indicated that how certain provision of Federal Laws and particular binding Cassation decisions of FSC have negative impacts on states original judicial powers as they have restricting effects on the states original judicial powers that lack constitutional grounds.

One can argue that the proclamations enacted by HPRs or some Cassation decisions of FSC are helping to avoid the possible overlap on legal bases of the original jurisdictions of federal and state courts on the same specific subject matter in the absence of comprehensive enacted Conflict of Laws (Private International Law) for Ethiopia. But the FDRE Constitution is the supreme law of the land and the source of every power of federal and regional governments. Hence any legislative, executive and judicial powers of both federal and states governments need to have constitutional grounds.

In particularly, Article 52(1) of the FDRE Constitution indicates the Federal government bodies need to have express constitutional authority to claim as they are exclusively allocated original judicial powers over specific matters including civil suits arising from commercial and company matters. Unless otherwise, the mere fact that the HPRs allocated exclusive legislative power to enact Commercial Code does not mean that it expressly allocates the federal government bodies powers other than legislative power (the exclusive executive and judicial powers) for the implementation of commercial laws in all over the country.

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The indirect restrictions of Federal Laws by totally prohibiting the States Woreda Courts from handling what the federal laws considers as federal matter, irrespective of the existence of direct connection of the respective regional state with the given commercial and company matter, may not be taken as only unconstitutional but also it is unjustifiable.

Unlikely, Woreda Courts are allocated first instance jurisdiction to handle some minor cases arising from the mentioned federal laws in their respective state governments' laws.⁸⁴ Example: some criminal cases and decide by interpreting Criminal Code, which is enacted by HPRs. Many cases, which are relatively minor cases in nature, that are involving suits arising from federal laws such as labor laws, criminal laws and commercial laws for example, issues arising from minor disputes of renting of some commercial buildings in Adama appear and handled by original jurisdictions of Adama Woreda Court.

There is no constitutional provision expressly limits the jurisdiction of Regional Courts to interpret and apply Federal Laws when they exercise their original jurisdiction. Nothing makes different in cases of civil matters, so that prohibiting Regional Courts from exercising their original jurisdiction on civil matters including commercial disputes involving companies that governed by federal laws has no constitutional grounds and it is illogical to put all matters governed by Federal Laws under the exclusive jurisdiction of Federal Courts accordingly.

Allocating these judicial powers to Woreda Courts has its own contribution to insure the accessibility of justice services. Woreda Courts are located at the lower levels of Administration to Countryside, the nearest places in the geographical locations of the main resources of the country (natural resources of raw materials

⁸⁴Oromia Courts Proc. Art. 31

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and labor resources) and the place where communities demanding the of industrial productions reside.

If the nearest local courts are allocated the appropriate judicial powers on civil suits involving commercial and company matters alongside with the fulfilling the necessary infrastructures, the private individual investors including companies can be attracted by accessibility of justice services and engage in commercial business activities in the all corners of the country. Easily accessible and competent courts also plays great role to insure the availability of peace and security and implementation of every laws.

The Woreda Courts are also, now days, having relatively important numbers of legal professionals with better law educational levels and they are competent enough to handle disputes involving commercial or companies, in relation to, at least, matters allocated under the jurisdiction of Federal First Level Courts in according to existing federal courts laws. As far as the allocation of powers concerned the provisions of FDRE Constitution underlines it by allocating them for both federal and state governments.

However the Constitutionally validity of provisions of the Federal Courts Proclamation, by their effects of indirect restrictions on the powers of state courts in general and Woreda Courts in particular are questionable. Because the constitution clearly provides the powers of federal government and says that unlisted powers are reserved to state governments⁸⁵. In relation to Commercial Civil Suits involving company, there is no any constitutional provision that expressly allocate them solely under the powers federal courts, unlike the given provisions of federal courts proclamation. The cassation decisions of FSC either

⁸⁵ FDRE Constitution, Art. 50,51 and 52(1)

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based on the given provisions of federal courts proclamation or of its own motivation, have no constitutional ground if they limit the original powers of state courts with respect to suits involving commercial and company matters. Decentralizing courts power is also a part of decentralizing over all government powers that indicates the existence of dual structure of judiciary or judicial federalism.

Thus allocating Woreda courts with the appropriate judicial powers in relation to matters that are not constitutionally restricting their powers are justifiable as they form parts of realizing the powers of states government and their organs in the given federalism.

States Woreda courts are, when they are allocated the appropriate judicial powers over the given issues, they contribute more in the promoting the development of commercial business and the company as well. The availability of effective disputes settlement mechanisms (Courts) in the nearest area is also important factor that may attract private investors to engage in domestic commercial businesses.

In the cases of our country where there are limited and underdeveloped commercial dispute settlement methods, other than litigation, the accessibility of competent courts is very necessary. Because it attract investors to invest their capitals by establishing industries or by buying raw materials, to find available markets, in the whole parts of the country or physically present to provide professional services moving to local areas.

The enactment of comprehensive law governing issues of conflicts of laws that provide the judicial jurisdiction and applicable laws among federal courts and

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state courts or among the courts of two or more states within the powers constitutionally provided is also necessitated at this moment.

To sum up equipping the Oromia States Woreda Courts with necessary legal grounds providing them the appropriate judicial powers to enable them handling disputes involving commercial and company matters to regulate the increasing commercial business activities in the region based on the FDRE Constitution is necessary irrespective of the indirect limitation by limited provisions of Federal Courts Proclamation. This also have contribution in decentralizing the original powers unconstitutionally held solely by federal government for realization of our federalism.

5.3. Conclusion

The FDRE Constitution is the supreme law of the land. It establishes the Federal and States governments having legislative, executive and judicial organs. It is the basic source of powers and duties of both governments as well as their respective organs. It allocates the legislative, executive and judicial powers for the governments at both federal and state levels.⁸⁶ It also provides the principles underlining the relationship between federal and states government in which each of them shall respect each other and no interferences with the powers of one another. It lays down the possibilities of federal government to delegate its powers to member states. Unless otherwise, one cannot interfere the powers allocated to the other according to the constitution.⁸⁷

Being the supreme law of the land, any act of organs of governments shall be of no effect if it contravenes with the provisions of the constitution and alongside

⁸⁶FDRE Constitution, Art. 50(1,2)

⁸⁷FDRE Constitution, Art. 50(8,9)

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with the duty to respect and the organs of governments has also the duty to insure its implementation.⁸⁸ Unlikely certain provisions of Federal Courts Proclamation and relevant cassation decisions of FSC that establish legal bases for original judicial powers of federal courts have restricting effects on original judicial powers of state courts. At the same time such provisions (decisions) of federal government bodies put restrictions on states original judicial powers with regard to civil commercial disputes involving companies. For these matters the powers of States Woreda Courts are totally restricted by these federal laws from handling the listed federal matters including disputes arising from federal laws such as commercial disputes and disputes involving company. These negative impacts of federal laws are however lacking constitutional grounds and may be taken as unconstitutional in according to Article 52(1) of the FDRE constitution.

Even though, the constitutionality of federal laws are not challenged significantly, in the past decade due to existence of single dominating ruling political parties at both levels of federal and state governments, that controlled by EPRDF, the state governments are, now days, starting to adjust their laws in line with scope of powers they constitutionally allocated. They are starting using wide powers reserved for them by the mere facts of constitutional silence in particular matter.⁸⁹

The measure taken by Oromia Regional Government in preparing the New proclamation of Oromia Courts reestablishment amendment proclamation, which is at the last stages, in this time likely to be approved in the coming very few months reveals the possible challenge on federal laws that are not in line with the provisions of the constitution.

⁸⁸FDRE Constitution, Art. 9

⁸⁹FDRE Constitution, Art. 52(1)

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Additionally, though the federal laws restrict them from exercising either original jurisdiction or jurisdiction of delegation as discussed above under this chapter, their practices reveal that Woreda Courts are handling suits involving certain matters that are designated as federal matter by federal courts proclamation or by FSC Cassation Decisions.

Besides reforming the existing laws, in assimilating with the FDRE Constitution having constitutionally appropriated mechanisms is vital for Ethiopia. Enacting comprehensive Private International Law, by involving concerning bodies, is also very important to encounter or minimize problems emanating from Conflicts of laws leads to choice of forum or choice of applicable rules and similar possible challenges on competing interests of federal and state governments with respect to allocation of specific powers in the Country in general and judicial powers to handle disputes arising from commercial and company matters in particular.

Thus the new developments in the New Amendments of the Oromia Courts Reestablishing Proclamation containing provisions that will empower the Oromia Courts to exercise the original judicial powers in all matters that involve the interests of the Oromia Region including civil disputes arising from commercial and company matters so far as it involves the interest of the given region and within the scope of constitutionally recognized regional government judicial powers over matters, which are not exclusively allocated to similar federal government body or over matters that are not expressly allocated concurrently to federal and state governments based on Article 52(1) of the FDRE Constitution.

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