

BOOK IV – JUDGEMENT, COST AND DISCONTINUANCE OF SUITS

TITLE I - JUDGMENT

Chapter 1. - General Provisions

Art. 263. - Judgment When Pronounced.

- (1) After the evidence has been concluded and the address and reply, if any, have been made, the court shall render judgment.
- (2) The court shall pronounce judgment either at once or, as soon thereafter as may be practicable, on some future day to be fixed by the court. In the latter case the court shall inform the plaintiff and the defendant of the date when judgment will be pronounced.
- (3) The court shall postpone its judgment if both parties request the court to do so.

Art. 264. - Pronouncement of Judgment in Open Court.

Judgment shall be pronounced in open court.

Art. 265. - Form and Pronouncement of Judgment.

- (1) The judgment shall be in writing, signed by the member or members of the court and pronounced by the judge or presiding judge.
- (2) In case a judge is for whatever reason, such as death, sickness, transfer or retirement, is unable to sign the judgment, the judgment may be signed by any judge of the court which gave judgment or, if such court has ceased to exist, by any judge of any court to which such court was subordinate.
- (3) A judgment, when signed, may be pronounced by a judge or judges other than those who signed it.

Art. 266. - Contents of Judgment.

- (1) The judgment shall contain:
 - (a) the names and the domicile of the parties and the names of their agents or pleaders;
 - (b) the number of the suit;
 - (c) the conclusion of the pleadings of the parties;
 - (d) the issues to be decided, the decision of the court and the reasons for the decision, including the facts on which the judgment is based;

(e) the relief to which the parties are entitled or obliged and the amount of costs incurred in the suit and by whom, or out of what property such costs are to be paid;

(f) where the judgment can be executed by the personal obedience of the judgment-debtor, the time within which it shall be executed;

(g) such particulars as are necessary to determine execution. An Appellate Court may itself give the necessary directions for the execution of its judgment or may delegate the execution thereof to the court which first heard the case; and

(h) the date of the judgment.

(2) The reasons for the decision shall be expressed sufficiently so as to enable the parties to understand the basis of the decision, as well as, in case the decision is subject to appeal, for review by a higher court.

(3) A court of first instance may not give judgment on any matter not specifically raised by the parties, but an Appellate Court may pass any judgment or make any order which ought to have been passed or made, and may pass or make such further or other decree or order as the case may require.

(4) The judgment shall express a clear order to do or to abstain from doing something or to pay a definite sum of money or to deliver a particular thing or to surrender or restore immovable property, as the case be.

Art. 267. - The Issues to be Decided and the Legal Grounds.

(1) The court shall state its decision on each separate issue unless the decision on any one or more issues is sufficient for the determination of the case.

(2) Unless the law provides for otherwise, the court shall not ground its decision and shall not give judgment on facts or issues which are not specifically raised by the parties.

(3) The court shall set forth the legal grounds for its judgment.

Art. 268. - Copies of Judgment.

(1) Certified copies of the judgment shall be furnished to the parties, on application to the registry of the court which passed it, and the date when such copy was furnished shall be set forth on the certified copies.

(2) A certified copy of the judgment issued by an Appellate Court shall be sent to the court which issued the judgment appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Chapter 2. - Irregularities and Mistakes

Art. 269. - Principle.

Unless otherwise expressly provided by law or directed by the court, where irregularities arise from non-compliance with any provision of this Code or regulations made thereunder, the court, of its own motion or on the application of either party, may set aside such proceedings either in whole or in part as irregular, or amend them or make, on such terms as it deems appropriate, such other order as may be appropriate.

Art. 270. - Correction of Mistakes.

The court may at any time on its own motion or on the application of either party, correct any clerical or arithmetical mistakes in any summons, judgment, or order, or any errors arising therein from any accidental slip or omission, and such mistakes or errors shall not be deemed to be irregularities.

Art. 271. - Application to Set Aside Irregular Proceedings.

- (1) Any party may apply to the court to set aside all or part of the proceedings as irregular.
- (2) Where the application proceeds upon several grounds, they shall all be stated together.
- (3) The application shall be made at the time when preliminary objections are taken or as soon thereafter as the applicant has knowledge of the irregularity.

Art. 272. - Decision on Application.

- (1) Where the court is satisfied that:
 - (a) an irregularity has occurred which affects the issue to be decided and has prejudiced or is likely to prejudice the applicant; and
 - (b) the applicant has not taken any new action in the proceedings after knowledge of the irregularity or has taken such action under protest,

it shall record its order setting forth its reasons for allowing the application and issue such order as it deems appropriate: Provided that the proceedings shall not be set aside wholly or in part unless the irregularity cannot be otherwise remedied and provided further that, where the proceedings are set aside in part, any action taken in the proceedings prior to the occurrence of the irregularity shall not be affected.

- (2) Where the court considers that the conditions set forth in this Article are not fulfilled, it shall issue its order setting forth its reasons for dismissing the application, and the proceedings shall continue as though such application had not been made.

Art. 273. - Appeal.

(1) No irregularity other than one arising from an alleged want of material jurisdiction or one alleged in a judgment may be taken as a ground of appeal.

(2) Notwithstanding the previous sub-Article, an Appellate Court may, at any time on its own motion, correct any irregularity having occurred in the proceedings in which the judgment appealed from was given: provided that, where the irregularity was such as to prevent a valid judgment from being given, the proceedings in which judgment was given shall be quashed and the Appellate Court shall order the retrial of the case.

Art. 274. - Validation of Proceedings.

No proceedings in which an irregularity has occurred shall be void where there is no appeal from the judgment issued in such proceedings, or where such judgment is confirmed by the Appellate Court.

TITLE II - COSTS

Chapter 1. - General Provisions

Art. 275. - Costs.

(1) If the court decides to issue an order for costs:

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; or

(b) the court may in its discretion issue a different order.

(2) Court fees shall be on the basis of a tariff determined by the Government. For other expenses incurred, up to 100,000 Nakfas, cost shall be 4% of the amount in dispute; for incurred expenses greater than 1,000,000 Nakfas, it shall be 2%. Lawyers' expenses shall be on the basis of the official receipts. If the court deems the official receipts to be excessive, the court may determine the expense which it deems reasonable. If the amount in dispute is indeterminable the court may determine the amount of expenses which it deems reasonable.

(3) The general rule does not apply to family proceedings and to commercial proceedings between members of the same family.

(4) In deciding what order, if any, to issue for costs, the court must consider all the circumstances, including the conduct of the parties, whether a party has succeeded in part of his case, even if he has not been wholly successful, and whether any payment into court or an offer to settle has been made, which is drawn to the court's attention. In issuing an order under sub-Article (2) (b), the court shall state its reasons in writing.

(5) The conduct of the parties as referred to in sub-Article (4) includes:

(a) conduct before, as well as during, the proceedings;

- (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
- (d) whether a plaintiff who has succeeded in its claim, in whole or in part, exaggerated his claim.

Art. 276. - Bill of Costs.

- (1) Where the court has ordered the unsuccessful party to pay the costs, the successful party shall prepare an itemized bill of costs showing the expenses he has incurred in the suit.
- (2) The bill shall be filed in the court having given judgment and a copy thereof shall be served on the party liable for costs.

Art. 277. - Taxation of Bill.

- (1) On filing the bill, the court shall fix a day for considering the bill and shall summon the parties to appear on such day.
- (2) After considering the bill and hearing the parties, the court may reduce the bill as to costs which the court determines were not reasonably incurred or were not reasonable and proportionate to the amount of the suit.
- (3) Where the party entitled to costs has failed to file a bill, the court shall, after recording such, certify the costs of the other parties or may allow the defaulting party a nominal or other sum so as to prevent any other party being prejudiced by such default.
- (4) Costs shall carry interest at the legal rate as from the day of the judgment until final settlement.

Art. 278. - Compensatory Costs.

- (1) Where in any suit or proceeding, a party objects to a claim or defense on the ground that it is, in whole or in part, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and such claim or defense is subsequently disallowed, abandoned or withdrawn in whole or in part as against the objector, the court may, if it deems appropriate, and after recording its reasons for holding such claim or defense false or vexatious, issue an order for the payment to the objector, by the party by whom such claim or defense was put forward, of costs by way of compensation up to an amount not exceeding 5,000 Nakfas.
- (2) No person against whom an order has been made under this Article shall, by reason thereof, be exempted from criminal proceedings under the Penal Code with respect to any false statement made by him.

(3) The amount of any compensation awarded under this Article shall be taken into account in any subsequent suit for damages or compensation with respect to the claim or defense held to be false or vexatious.

Art. 279. - Appeal.

A party may, notwithstanding that he does not appeal from a judgment, appeal from any decision on costs made in such judgment and the decision of the Appellate Court shall be final.

Chapter 2. - Security for Costs

Art. 280. - When Security for Costs May be Required from Plaintiff.

(1) At any stage of a suit, both in first instance and in appeal, the court may on the application of any defendant, order the plaintiff or the joinder of plaintiff, for reasons to be recorded, to give, within the time fixed by it, security for the payment of all costs incurred and likely to be incurred by any defendant.

(2) An order under sub-Article (1) shall be made whenever it appears to the court that a sole plaintiff is, or if there are more plaintiffs than one that all the plaintiffs are, residing out of Eritrea and that that such plaintiff does not possess or that no one of such plaintiffs possess any sufficient immovable property within Eritrea other than the property in suit.

(3) Whoever is about to leave Eritrea under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called to pay costs shall be deemed to be residing out of Eritrea within the meaning of sub-Article (2).

Art. 281. - Effect of Failure to Furnish Security.

(1) Where security for costs is not furnished within the time fixed, the court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under sub-Article (1), the plaintiff may, within one month of the date of dismissal, apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security costs or otherwise as it deems appropriate, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

Chapter 3. - Suits by Paupers

Art. 282. - Suits May be Instituted by Paupers.

(1) Any suit may be instituted by a pauper on the conditions set forth in this Chapter.

(2) Whosoever is not possessed of sufficient means to enable him to pay all or part of the prescribed court fee shall be deemed to be a pauper within the meaning of sub-Article (1) and may apply for leave to sue as a pauper.

Art. 283. - Contents of Application.

- (1) An application under 282 shall be supported by an affidavit.
- 2) The applicant or his agent shall file the application together with the statement of claim.

Art. 284. - Examination of Applicant.

- (1) On the filing of an application made in proper form, the court may, if it deems appropriate, examine the applicant or his agent as to the merits of the claim and the property of the applicant.
- (2) Where the application is filed by an agent, the court may, if it deems appropriate, summon the applicant to appear for his examination.
- (3) Where the application is not made in proper form, the court may require the applicant to amend it then and there or within such time as it shall set forth.

Art. 285. - Rejection of Applicant.

The application shall be rejected where it appears from the application or upon examination required by this Code that:

- (a) the applicant is not a pauper;
- (b) there is no cause of action;
- (c) the applicant has, within two months before the filing of the application, disposed of any property fraudulently or in order to be able to apply for leave to sue as a pauper; or
- (d) the applicant has entered into any agreement with respect to the subject matter of the proposed suit under which any other person has obtained an interest in such subject matter.

Art. 286. - Evidence of Pauperism.

- (1) Where the court sees no reason for rejecting the application, it shall fix a day for receiving such evidence as the applicant may adduce, in proof of his pauperism, and for hearing any evidence which may be adduced to disprove his claim of pauperism.
- (2) Notification of the day fixed under sub-Article (1) shall be given to the opposite party not less than ten days prior to the hearing.

Art. 287. - Procedure at Hearing.

(1) On the day fixed for hearing, the court shall examine such witnesses as may be produced by either party, and may examine the applicant or his agent, and shall record the substance of their evidence.

(2) The court shall also hear any argument which the parties may wish to offer on the question whether, on the face of the application and of the evidence, if any, taken by the court, the application should be rejected.

(3) The court shall then allow or refuse to allow the applicant to sue as a pauper.**Art. 288. - Procedure When Application Granted.**

Where the application is granted, the applicant shall be given a certificate to this effect and upon the application being numbered and registered, the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay in whole or in part the court fee or other fees or charges in proceedings connected with the suit, as the court may direct.

Art. 289. - Validity of Certificate.

(1) A certificate shall be valid until the proceedings in relation to which it was issued are completed, including appeal, or until it is discharged.

(2) Nothing shall prevent a pauper from applying to the Appellate Court for leave to appeal as a pauper.

Art. 290. - Revocation of Pauper Status.

(1) The court may, on its own motion, or on the application of the defendant of which notice has been given to the plaintiff, order the revocation and discharge of the certificate where:

(a) in the course of the proceedings he fails without good cause to appear or is guilty of vexatious or improper conduct;

(b) it appears that his means are such that he should not have been permitted or ought not to continue to sue as a pauper; or

(c) he has entered into any agreement with respect to the subject matter of the suit under which any other person has obtained an interest in such subject matter.

(2) Where the plaintiff's certificate is revoked and discharged for the reasons set forth in the preceding sub-Article, the court shall order him, or any person added as co-plaintiff to the suit, to pay such fees as would have been payable if the plaintiff had not been permitted to sue as a pauper.

Art. 291. - Costs Where Pauper Succeeds.

Where the plaintiff succeeds in the suit, the court fee and other fees which would have been payable if the plaintiff had not been permitted to sue as a pauper shall be recoverable by the execution officer from the unsuccessful party, and shall be first charge on the subject matter of the suit.

Art. 292. - Bar of Subsequent Applications.

An order refusing to allow the applicant leave to sue as a pauper or revoking his certificate shall be a bar to any subsequent application of the like nature by him with respect to the right to institute the same suit, but the applicant shall be at liberty to institute a suit in the ordinary manner with respect to such right, provided that he first pays the costs, if any, incurred by the opposite party in opposing his application for leave to sue as a pauper.

Art. 293. - Pauper Becoming Possessed of Means.

A pauper becoming possessed of means in the course of the proceedings in relation to which a certificate has been issued or within ten years of having been issued therewith shall forthwith inform the court which issued the same and shall, where he fails so to inform the court be deemed to be guilty of an offence contrary to the Penal Code.

Art. 294. - Costs.

The costs of an application for leave to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

TITLE III - DISCONTINUANCE OF SUITS AND PAYMENT INTO COURT

Chapter 1. - Compromise

Art. 295. - Principle.

- (1) The parties may, by a compromise agreement relating to all or some of the matters in issue, terminate a dispute with respect to which a suit has been instituted.
- (2) Without prejudice to the provisions of this Title, the provisions of the Civil Code shall apply to compromise agreements, in particular as regards the effect of, appeal from and invalidation of such agreements.

Art. 296. - Making of Compromise Agreement.

- (1) A compromise agreement may at any time be made by the parties at the hearing or out of court, on their own motion or upon the court attempting to reconcile them.
- (2) The court may, on the application of the parties, indicate to them the basis on which a compromise agreement may be made.

Art. 297. - Contents of Compromise Agreement.

- (1) A compromise agreement shall contain
 - (a) the name and place of the court in which the suit is pending;
 - (b) the title of the action and the number of the suit;
 - (c) the name, description, place of residence and address for service of the parties; and
 - (d) the matters to which the agreement relates.
- (2) The compromise agreement may settle all accessory matters, in particular as regards costs, damages and execution.

Art. 298. - Recording of Compromise Agreement.

- (1) Where a compromise agreement is made at the hearing, it shall be reduced to writing and signed by the parties and the court shall thereupon enter it in the case file after being satisfied that its terms are not contrary to law or morals.
- (2) After entering the compromise agreement in the case file the court may, on the application of the parties, give judgment in terms of such agreement.
- (3) Where a compromise agreement is made out of court, the court shall be informed thereof and the plaintiff may apply to the court for permission to abandon the claim.

Chapter 2. - Withdrawal and Abandonment

Art. 299. - Principle.

- (1) The plaintiff may, as against all or any of the defendants, withdraw the suit or wholly or partly abandon his claim.
- (2) The defendant may, as against all or any of the plaintiffs, confess judgment or wholly or partly abandon his defense.
- (3) The abandonment of a claim or a defense, but not the withdrawal of a suit, shall preclude further proceedings between the same parties in respect of the subject matter of that claim or defense.
- (4) The other party may, subject to the court's discretion, object to the withdrawal of the suit.
- (5) The costs caused by a party's withdrawal or abandonment shall be paid by that party.
- (6) Where the court rejects the objection to withdrawal of the suit under this Article, in any new suit the party who withdrew the suit shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Art. 300. - Extinction of Cause of Action.

Where at any stage of a suit it is proved to the satisfaction of the court that the cause of action no longer exists, the court, shall, on such terms as to costs as it deems appropriate, dismiss the suit and record an order setting forth its reasons, to that effect.

Chapter 3. - Payment into Court

Art. 301. - Deposit by Defendant of Amount in Satisfaction of Claim.

(1) The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

(2) Notice of the deposit shall be given through the court by the defendant to the plaintiff, and the amount of the deposit shall, unless the court otherwise directs, be paid to the plaintiff on his application.

Art. 302. - Deposit Accepted as Satisfaction in Part.

(1) Where the plaintiff accepts the amount deposited as satisfaction in part only of his claim, he may prosecute his suit for the balance.

(2) Where the court decides that the deposit by the defendant was in full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Art. 303. - Deposit Accepted as Satisfaction in Full.

(1) Where the plaintiff accepts the amount deposited as satisfaction in full of his claim, he shall present to the court a statement to that effect, and such statement shall be filed and the court shall pronounce judgment accordingly.

(2) In directing by whom the costs of each party are to be paid, the court shall apply the provisions of this Book.