

Judge: Abebe Butasha

Plaintiff: Defend the Environment - ቁም ለአካባቢ: Attorney Amanuel Dibabe – Present

Defendant: Hawassa City Urban Development and Construction Bureau— Absent

The file is examined and the following decision has been rendered.

JUDGMENT

The reason of this judgment is the petition, dated January 28th 2022, filed by the plaintiff as a civil case relating to environmental pollution against the Defendant concerning the Hawassa City Administration Tula Sub-city Chafe Koti Jebesa Kebele commonly referred to as “Qoshe” which is a waste dumping site. The Qoshe landfill has been utilized by the city to dispose waste over several years as a result of which there has been large quantity of waste. However, there are several residents of the city living in the neighborhood who are vulnerable to pollution from the solid and liquid wastes which is causing health risks to the residents and people who pass by the area.

The plaintiff alleged that the waste is causing respiratory problems on the neighboring residents and vulnerable groups (children and elderly people) who are unable to go outdoors for fresh air. This is further putting challenges to the social interactions and undermining the economic activities in the area. Furthermore, the plaintiff argues that the garbage dumped is of a large quantity with higher elevation which may eventually lead to more risks of creating harm and flooding accidents affecting the health, life and properties of the surrounding residents.

Hence the residents and the plaintiff organization on several occasions demanded the Hawassa City Administration and other pertinent authorities including the defendant in a written submission that waste should no longer be disposed on the area and the dumping site should be relocated to alternative sites thereby the authorities discharge their legal mandate of protecting the health and wellbeing of fellow citizens. As a result, even though all the concerned authorities admitted to the fact that the waste dumping site is creating health and safety risks to residents they had all failed to act as per the promises they made on several occasions. As a result of the failure of the concerned authorities the risk of public health problem has been exacerbated.

The plaintiff argues that the residents of the area and the passersby have the right to live in safe and healthy environment in accordance to the FDRE Constitution Article 44 sub-article 1 and relevant International Human Rights Conventions signed by Ethiopia. However, the situation is in breach of such constitutional rights of the citizens and Article 3 of the Environmental Pollution Control Proclamation No. 300/2002. Accordingly, any party commits an offense if he/she fails to maintain environmental safety standards and causing risks and damage to public health by polluting the environment. The plaintiff asserts that the defendant is thus responsible for causing risks to public health and undermining environmental safety.

Thus, the plaintiff issued final warning letter with a Reference Number DTH/016/14 dated 16/02/2014EC (Oct 26th 2021) addressed to the defendant demanding that the office should rectify the problem; however, the office failed to act accordingly. Following the failure of the defendant to observe its responsibilities, the plaintiff issued a petition to the Hawasa City Environmental Protection and Climate Change Office with Ref No. DTH/093/14 dated 15/03/2014EC (Nov 24th 2021) to use its legal power and take administrative measures to resolve the conditions in accordance to Article 12 of Proclamation No. 300/2002. As a result, the plaintiff has been forced to file this court case.

Therefore, the plaintiff requested the court to order the banning of utilizing the waste dumping site located at the Hawassa City Administration Tula Sub-city Chafe Koti Jebesa Kebele commonly known as “Qoshe”; to restore the polluted dumping site to its initial condition; and to recognize the rights of the plaintiff and victims to claim actual and/or moral damages against res-judicata.

Then the court ordered the defendant to submit its statement of defense. However, even though the defendant subscribed to the court summon, the defendant failed to appear at court. Thus, the court has passed the right of the defendant to submit its statement of defense and adjourned the case for oral argument. However, the defendant failed to appear before the court. Then, the court proceeded in the absence of the defendant.

Thence, court identified the major issues of the case, accordingly: whether the defendant cause public health risks on residents and passersby? If the defendant caused the public health risks, is it responsible to ban dumping of waste at the stated site? Is the defendant accountable to restore the polluted environment to the initial conditions?

Then, the plaintiff was then ordered to present their witnesses to testify. Accordingly, the plaintiff had three witnesses, namely Mr. Firew Ayele, Mr. Getu Teklu and Mr. Weldesemayat Alancho who proceeded to testify to the court under oath. All the three witnesses stated that the “dry” waste dumping site commonly known as Diaspora Sefer is not really a “dry” waste dumping site and that there has been chemicals disposed by Hospitals and Clinics as a result of which they are unable to reside in the locality. They stated that residents are forced to evacuate their residences due to environmental pollution. The witnesses testified stating that they are currently faced with risks of respiratory infection such as Asthma and Sinus. The witnesses stated that there is no any person interested to buy their houses and that the banks are not willing to grant them loans to acquire and move to another residence. Though we have notified the pertinent administrative offices and got their promise that they prepared dumping site at Tula, they failed to act according to their word in shifting the dumping site to another location causing significant health risks to residents living closer to the area.

The witnesses also stated that they submitted their claims to regional Environmental Protection and Climate Change Bureau, the Health Bureau, and Hawassa City Administration offices. Following this, the City Administration formed a committee consisting of experts from the aforementioned offices to visit the site and conduct research on the and to report on the issue. The committee that visited the site consists of Mr. Niguse Kakawa, Mr. Zekarias Chala, Mr. Memgistu Markos and Mrs. Asnakech Tamene. The witnesses have unanimously testified that the committee has found that the environment in the site has been polluted because of the waste dumped and suggested the relocation of the site. They also stated that people are currently facing risks of respiratory infection such as Asthma and Sinus. They also stated that children are facing health problems because of the waste dumping site. Since dead animals are dumped at the site, the bad smell is causes respiratory problems to residents. In addition to health problems, the waste dumping site resulted in economic problems against the residents. A request of support consisting of 14 pages has been submitted by the residents in which they requested the plaintiff to act on their behalf and get a lasting solution for them is enclosed with court file.

A two pages letter demanding decision requesting the defendant to take necessary measures was submitted by the plaintiff before submitting this case to the court that is attached to the Case file dated on 16/02/2014 (October 26th 2021) with letter number DTH/016/14. In addition, a photocopy of the two pages letter has been attached in which the defendant

submitted an application letter to the authority dated 15/03/2014 (November 24th 2021) in letter reference number DTA/093/14 and as per article 256 of the Civil Code. We have seen the 31 pages of the letter and notice submitted by the court. According to the request submitted by the residents of the diaspora area of Hawassa city, a research team was formed to investigate the issue on 07/01/2011 E.C (September 17th 2018) and their finding is the fact that the health and life of the local people are in danger. Thus, as the court examines the issue with the law which stipulates the rights of all citizens to live in a clean and safe environment that is enshrined under Article 44(1) of FDRE Constitution.

Coming back to the case, the court confirmed from the evidences presented, testimonies of the witnesses and report of the field visit to the site, it found out that the neighboring residents of Diaspora Sefer/village near the waste dumping site are unable to reside in the locality and suffer from health problems and the waste resulted in economic and social problems on the residents.

The court has confirmed that the residents filed petition requesting the defendant to execute its legal duty and protect their constitutional right to live in healthy and safe environment while the defendant failed to protect their health and safety. Therefore, this court herein orders the defendant to stop dumping of waste at the location from now on pursuant to Articles 44(1) and 9(1) of the FDRE Constitution and Article 3 of the Environmental Pollution Control Proclamation No. 300/2002.

DECISION

The court has passed a decision that the defendant should stop dumping wastes at the dumping site in Hawassa City Menaheria Sub-city in Diaspora vicinity commonly known as *Qoshe* from now on pursuant to Articles 44(1) and 9(1) of the FDRE Constitution and Article 3 of the Environmental Pollution Control Proclamation No. 300/2002.

Since the waste has been dumped in this area for long time that caused pollution, it is decided that the defendant shall restore the polluted site to its initial conditions.

ORDER

- The right to appeal by the grieved party is intact.
- Both parties shall cover their own cost and losses.
- This decision does not prevent residents of the area anytime in the future from claiming compensation as per the relevant Civil Code provisions for the damage sustained as a result of waste dumping at the area.
- The file is closed.

An invisible signature of the judges