

Issues Related to the Land Registration of Claims and Judicial Decisions

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Abstract:

The Algerian legal framework mandates the registration of opening petitions for real estate claims and judicial decisions at the real estate registry. Despite this requirement, the process of depositing and registering these documents encounters several challenges. These include the refusal of the real estate registrar to accept deposits from notaries or legally qualified individuals. Failure to register the petition may be attributed to a deficiency in documentation or inadequate information, while difficulties in registering judicial decisions often arise from judges not specifying the expert's tasks clearly or the expert failing to perform adequately.

Additionally, complications may occur due to notaries improperly detailing the judicial decision or the ambiguous language used in these decisions. The roles of judges, notaries, and legally qualified individuals are crucial in addressing and preempting these challenges, as the judge can monitor the expert's performance and ensure clarity, thereby preventing oversights that might affect property designations or the identities of its current and former owners.

Keywords: Issues, Registration, Petition, Judicial Decision.

Introduction:

The Algerian legislator mandates that petitions for real estate litigation be registered with the real estate registry, as outlined in Executive Decree 76/63. Article 85 of this decree specifically requires the registration of such petitions, a requirement further supported by the Civil and Administrative Procedures Law, particularly in Articles 17 and 519.

Furthermore, the Finance Law, enacted as Law No. 18/18 on December 27, 2018, includes Article 35, which stipulates the registration of real estate claims. This law

introduces Article 16 bis, which asserts, “All petitions related to lawsuits involving real estate or registered real estate proprietary rights must be recorded in the real estate registry maintained by the competent regional real estate conservatory after being filed in the court's registry.”

Following the enactment of this law, Memorandum No. 02316, dated February 25, 2019, issued by the General Directorate of National Properties ¹, clarifies the application of Article 35 of the 2019 Finance Law. This memorandum emphasizes the necessity of registering real estate litigation petitions and assigns them registration references instead of deposit references. It reiterates the obligation to register judicial claims as required by Articles 17 and 519 of the Civil and Administrative Procedures Law and Article 85 of Decree 76/63, specifically concerning judicial claims related to real estate registration at conservatories, particularly those seeking to annul, cancel, revoke, or invalidate recorded real estate rights. However, it omits mention of modification claims as outlined in Article 519 of the Civil and Administrative Procedures Law.

Judicial decisions arising from real estate litigation are considered authoritative in establishing real estate ownership. These decisions are crucial, whether they pertain to the transfer of property, rights associated with real property, modifications, annulments, or cancellations of such rights. Changes in real estate ownership, along with judicial affirmations of such ownership, become binding on the involved parties and third parties only after the completion of the necessary registration procedures that formalize these changes.

The process of registering these judicial decisions begins with their submission to the real estate registry. At this stage, the registrar holds the authority and discretion to accept or reject the submitted decisions. While the responsibility for depositing judicial decisions typically falls to the court clerk, notaries may also assume this role when necessary.

However, the registration of these decisions often faces significant challenges that hinder the completion of the process, thereby preventing the involved parties from finalizing ownership contracts. This resistance largely arises from the registrar's reluctance to register these decisions, which carry the legal force of *res judicata*, due to various reasons.

This situation necessitates an exploration of the underlying issues encountered during the registration of claims and judicial decisions, specifically focusing on:

1. Challenges associated with the registration of judicial claims.

¹ "Memorandum No. 02316 dated February 25, 2019, issued by the General Directorate of National Properties regarding the registration of judicial decisions related to real estate litigation, Ministry of Finance."

2. Difficulties in the registration of judicial decisions.

First Section: Issues Related to the Registration of Judicial Claims

Initiating legal proceedings involves the submission of a claim, which is delineated by the Algerian legislator within the Civil and Administrative Procedures Law. The prerequisites for filing include demonstrating interest, legal capacity, and eligibility, as well as ensuring the registration of the claim petition for certain real estate disputes. Once these conditions are met, the lawsuit advances according to established legal procedures, beginning with the preparation of the lawsuit's initial petition.

Before the introduction of Article 16 bis of Order 75/74, which addresses the general land survey and the creation of the real estate registry, there was no standardized format for the opening petition, which simply included deposit references. With the enactment of this article, it became obligatory for the real estate registrar to carefully examine the format of the opening petition intended for the real estate registry.

Furthermore, it is essential to precisely designate the property in dispute¹, typically represented by survey references if the property is subject to a land survey, alongside the requirements stipulated in Article 15 of the Civil Procedures Law.² This petition must be formally registered at the appropriate registry office of the competent judicial authority, whether it pertains to a regular or administrative court.

The submission should clearly outline the facts and claims of the case, as judicial authorities are restricted from ruling beyond the litigants' requests. Afterward, the opening petition is recorded in the registry, assigned a session number and date, and officially served to the defendant by a judicial officer.

Additionally, the petition must be registered at the relevant regional real estate registry to avoid procedural dismissal of the lawsuit. This registration is mandated by the Algerian legislator as part of the legal process for initiating a lawsuit.

The petition itself must be submitted in duplicate, and Form PR6 is required to be drafted by a lawyer, a judicial officer, or the state property manager as stipulated in Instruction 2316³. Initially, this instruction exclusively identified the parties authorized to deposit petitions.

¹ "Mohammed Kenaza, 'The Registration of Judicial Lawsuits,' State Council Magazine, Issue No. 07, 2005, p. 53."

² "Article 15 of Law No. 08/09, concerning Civil and Administrative Procedures Law, previously mentioned."

³ "Instruction No. 02316, dated February 25, 2019, issued by the General Directorate of National Properties."

However, Instruction No. 05129 ¹dated May 14, 2019², expanded this authorization, including lawyers, judicial officers, state property managers, the plaintiff or their agent as per Article 14 of the Civil Procedures Law, and the director of real estate preservation as outlined in Article 10 of Executive Decree No. 91/65 dated March 2, 1991.

This decree was further amended and supplemented by Executive Decree No. 15/98 dated April 4, 2015, which pertains to the organization of external state property and real estate preservation services, reinforced by the ministerial decision dated February 20, 1999.

The petition must be logged in the deposit register on the date it is received, in accordance with Article 41 of Decree 76/63. ³A deposit receipt is then issued to the depositor, detailing the date of deposit, the registration number in the deposit register, references to the petition, and the depositor's identity (name, surname, and profession).

The register is sealed daily and endorsed by the registrar, and annually, a copy of the closed deposit registers from the previous year is archived at the registry of the competent judicial council. A fixed advertisement fee is collected at the time of the petition's registration in the deposit register, as determined by Article 353, paragraph 01 of the Civil Procedures Law, which is subject to amendments with each finance law enactment.

The real estate registrar holds significant responsibilities to oversee the submission of the opening petition within legally specified deadlines, which must not exceed 15 days from the date of deposit⁴. In their evaluation, the registrar must verify several crucial elements when a real estate claim petition is submitted:

- The property in question must be properly registered with the real estate registry, identified by specific property references.
- The opening petition must provide a detailed description of the disputed property. In the personal registration system, the property is identified by its location, boundaries, and area, as specified in Article 114 of Decree 76/63, as amended. In contrast, under the real registration system, details such as the

¹ "Memorandum No. 05129, issued by the General Directorate of National Properties dated March 14, 2019, which includes real estate publicity: judicial lawsuits and rectifications."

² "Ministerial decision dated February 20, 1999, qualifying agents of State Property Management and Land Registry to represent the Minister of Finance in legal actions, Official Gazette, Issue No. 20."

³ "See Article 41 of Decree 76/63, which states: 'The property registrar must have a deposit register where contracts, judicial decisions, and generally tables of documents submitted for the execution of publicity procedures are recorded daily and sequentially.'"

⁴ "Article 107 from the Executive Decree No. 76/63 establishing the Property Registry, amended and supplemented, Official Gazette, Issue No. 30."

cadastral section, ownership group number, and municipality must be provided, according to Article 66 of the same decree.¹

- The disputed property or real property right must not have been fully or partially transferred by the defendant or any other party involved, ensuring it has not been conveyed to another entity.
- The legal action must pertain to matters outlined in Article 85 of Decree 76/63 and Article 519 of the Civil Procedures Law, which include annulment, cancellation, or revocation of registered real property rights, while specifically excluding issues such as eviction, wall removal, or window closure.

Upon the initial submission of a real estate lawsuit, the real estate registrar is responsible for ensuring that all deposit conditions are satisfied according to the established protocols. Once verified, the registrar proceeds with the registration process, issuing the original copy to the depositor and retaining a duplicate in a designated volume with a sequential number.²

If the conditions are not met, the registrar is required to either reject the deposit or return the documents with a detailed legal explanation, informing the depositor of the specific reasons for rejection. Additionally, a financial penalty of 1000 DZD per month is imposed until the issues are resolved.

In this context, challenges associated with the deposit of the opening petition for judicial lawsuits aimed at registration become apparent. Thus, the following sections delve into these challenges in greater detail:

First Subsection: Challenges Arising from Inadequate Documentation

The necessity of registering the opening petition for a real estate lawsuit at the real estate registry is explicitly mandated by Executive Decree 76/63, which establishes the protocols for the real estate register. This requirement is further underscored in the Civil Procedures Law, particularly through Articles 17 and 519, and the Finance Law 18/18 dated December 27, 2018, which introduces Article 35.

This article mandates the registration of real estate lawsuits and introduces Article 16 bis. However, during the registration process, it often becomes evident that crucial documents or information are missing, pertaining either to the real property right in question or the defendant involved.

¹ "Houidek Osman, 'The Registration of Judicial Lawsuits Between Marginal Annotation and Publicity,' published in the International Journal of Legal and Political Research, University of El Oued, Algeria, Volume 05, Issue 02, p. 221."

² "General Directorate of National Properties, Memorandum No. 02316, dated February 25, 2019, on real estate publicity for judicial lawsuits."

First Sub-subsection: Documentation Gaps Related to Defendant Information

The registration of the opening petition requires the inclusion of detailed information about the defendant. If the defendant is an individual, the petition must provide the person's full name, date and place of birth, father's name, residence, nationality, and occupation.¹

Despite these requirements, obtaining complete details about the defendant as prescribed by Article 15 of the Civil Procedures Law can be practically challenging. If the defendant represents a legal entity, the petition must detail its identity, including its name, legal form, and headquarters. For commercial entities, the registration number in the commercial register is required, and for associations, the headquarters and the approval decision, as delineated by Article 15 of Law 08/09, must be included.

Second Sub-subsection: Documentation Gaps Concerning Real Property Rights

The opening petition for a lawsuit must comprehensively detail the contested real property right or property. This includes specifying whether the property is industrial, rural, or urban, and whether it is built-up.

Furthermore, the petition must confirm that the real property right in question is registered at the real estate registry and adequately identified. Essential details such as the property's location, boundaries, cadastral section, ownership group number, and municipality must be meticulously specified to ensure clarity and prevent any ambiguity in legal proceedings.

Second Subsection: Issues Raised by the Subject Matter of the Lawsuit

Algerian legislation rigorously enforces the requirement to register opening petitions for lawsuits involving real estate or real property rights at the real estate registry. This regulatory framework is detailed in Executive Decree 76/63, which establishes the real estate register, where Article 85 explicitly requires the registration of opening petitions for lawsuits concerning a property or a real property right.

This mandate is corroborated by the Civil and Administrative Procedures Law, notably Articles 17 and 519, and further emphasized in the Finance Law with Law No. 18/18 dated December 27, 2018. This law introduces Article 35, which mandates the registration of all opening petitions for lawsuits involving real estate or real property rights, including the provision stated in the newly added Article 16 bis: " After an opening petition related to property or a real property right is registered at the court's registry office, it must also be recorded in the real estate register maintained by the competent regional real estate conservatory."

¹ "Article No. 62 from Decree 76-63 concerning the previously mentioned Property Registry."

Additionally, Memorandum No. 02316, issued by the General Directorate of National Properties on February 25, 2019, clarifies the enforcement of Article 35 of the 2019 Finance Law. It highlights the critical importance of registering these legal claims and assigns them registration references instead of deposit references.

However, certain lawsuits must be registered as mandated by Article 519 of the Civil Procedures Law, or they risk procedural dismissal. These include:

First Sub-subsection: Rescission Lawsuit

Rescission of contracts is governed under the Civil Law, which delineates the essential prerequisites for both requesting and adjudicating a rescission. These are articulated in Article 119, Paragraph 01 of Order No. 75/58, which amends and supplements the Civil Law: "In bilateral contracts, if one party fails to meet its obligations, the other party, after notifying the debtor, may seek either the enforcement or rescission of the contract, with the possibility of compensation in either scenario if justified." ¹

This means that if one party defaults on their contractual duties, the other party has the right to notify them to fulfill their obligations. If this notification does not lead to compliance, they may take the matter to court to request the contract's rescission based on the other party's failure to meet their obligations. This legal action serves as a protective measure, ensuring that the rights of both parties are upheld and that neither is denied the opportunity to pursue such a lawsuit.²

Therefore, the Algerian legislator mandates the registration of the opening petition at the real estate registry to inform third parties and alert potential property dealers to the ongoing dispute.

Second Sub-subsection: Annulment Lawsuit

An annulment lawsuit can be initiated if a contract lacks one or more of its essential elements or conditions for validity, irrespective of whether the contract's invalidity is deemed relative or absolute.

The registration of an annulment lawsuit is mandatory and must be filed with the appropriate real estate registry, as it affects the legal standing of the right holder. It is important to understand that registering the opening petition for an annulment lawsuit does not halt the real estate registration process but rather serves to inform the new owner and clarify the potential consequences of the court's judgment.

¹ "Saadi Mohammed Sabri, 'The Clear in Explaining Civil Law, General Theory of Obligations, Sources of Obligations, Contract and Unilateral Will,' 4th Edition, Dar Al-Huda, Constantine, Algeria, 2009, p. 348."

²² "Hamou Hassina, 'Dissolution of Contract by Termination,' Master's Thesis, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2011, pp. 31."

If the contract is annulled, it is treated as though it never existed, similar to a contract rendered void due to absolute invalidity. The parties are returned to their original positions prior to the contract's formation, in accordance with Article 103, Paragraph 01 of the Civil Law: "If a contract is nullified or annulled, the parties are restored to their previous state, and if restoration is not possible, compensation equivalent to the loss may be awarded."

Third Sub-subsection: Cancellation Lawsuit

Cancellation lawsuits typically address administrative decisions that are challenged based on their legality. Defined by Dr. Ammar Awabdi, a cancellation lawsuit is a substantive and objective administrative judicial lawsuit that is initiated by an interested party with legal standing.

This party approaches the competent judicial bodies within the state to seek the cancellation of administrative decisions deemed unlawful. In these cases, the role of the competent judge is strictly to assess the legality of the contested administrative decisions and to order their cancellation if illegality is established, thereby issuing a judicial decision that carries general and absolute force.¹

A prominent example of such a lawsuit is the action for the final cancellation of numbering, which itself represents an administrative decision open to administrative judicial review. Given that these judicial claims often aim to cancel an official administrative contract transferring real estate ownership, it is imperative to register the opening petition formally to accept the lawsuit, ensuring that third parties are informed of the legal status of the property in question.

Fourth Sub-subsection: Modification Lawsuit

The necessity of registration is also emphasized in modification lawsuits, as outlined in Article 519 of the Civil Procedures Law, which revises and supplements Article 85 of Decree 76/63. These lawsuits aim to modify original or derivative real property rights and must be filed within a year following the partition. Additionally, Article 515 of Law 08/09 states², "The real estate section considers lawsuits related to the annulment, rescission, modification, or revocation of rights arising from registered contracts."

In these instances, the plaintiff's goal is to modify the contract rather than to demand its complete annulment.³ Property owners may thus approach the competent judicial bodies

¹ "Ammar Awabdi, 'General Theory of Administrative Disputes in the Algerian Judicial System, The Administrative Lawsuit,' Volume 2, University Publications Office, Algeria, p. 313."

² "See Article 515 of the Civil and Administrative Procedures Law."

³ "Leila Zerouki, Hamdi Bacha Omar, 'Real Estate Disputes in the Light of the Latest Amendments and Recent Judgments,' Dar Houma, Algeria, 2015, p. 257."

to correct a specific legal status, especially in instances involving errors in ownership contracts or property registers.

The aim here is to amend the property register without seeking its outright cancellation, and since the lawsuit seeks to modify a document that was previously registered, the Algerian legislator mandates the registration of the opening petition.

Fifth Sub-subsection: Lawsuit to Revoke Rights Arising from Registered Documents

Article 732 of the Civil Code elaborates on the conditions under which it is permissible to revoke an amicable partition if one of the partitioners proves that they suffered an inequity exceeding one-fifth, with the assessment based on the value of the item at the time of the partition.

The defendant can halt the lawsuit and prevent the partition by compensating the plaintiff in cash or kind for the diminished share. Notably, the Algerian legislator requires the registration of the opening petition for lawsuits seeking to revoke such actions.

In legal jurisprudence, it is established that the registration of the opening petition for lawsuits that aim at rescission, cancellation, or revocation of rights arising from previously registered documents is considered a matter of public order. This principle allows the judge to raise such issues on his own initiative, a practice affirmed by the Council of State in Decision No. 184931, issued on March 27, 2000, by the Fourth Chamber of the Council of State.

Second Section: Issues Related to Judicial Decisions

The Algerian legislator mandates the registration of judicial decisions by the competent judicial bodies to ensure their legal effects are recognized. Articles 16 and 14 of Order 75/74 stipulate that all matters pertaining to real estate and real property rights, including judicial decisions, undergo a registration process once the judicial decision is finalized and has the force of *res judicata*.

This encompasses decisions both establishing and declarative in nature. Article 90 of Decree 76/63 delineates the required information that a judgment must contain, focusing on the technical data of the property and the associated real property rights. However, disputes and issues may emerge either at the time of depositing these decisions or following their acceptance.¹

¹ "Bouguera Lamria, 'Proof of Private Real Estate Ownership,' PhD Thesis, University of Batna, Faculty of Law and Political Science, 2015, p. 308."

This study's first part addresses the issues encountered during the deposit of judicial decisions, and the second part explores the challenges during their registration.

First Subsection: Issues Arising When Depositing Judicial Decisions

This section is divided into two subsections: the first discusses issues related to the deposit of judicial decisions that require registration, and the second addresses the lack or absence of certain crucial documents.

First Sub-subsection: Issues in Depositing Judicial Decisions Subject to Registration

The Algerian legislator has empowered the real estate registrar with a pivotal role in the registration process of judicial decisions and rulings. These are under the scrutiny of the real estate registrar, who must verify that the judicial decision being submitted includes essential data:

- The judicial decision, prepared by the judge and submitted for registration at the real estate registry, must include the identities of all parties involved, including names, surnames, birth dates and places, nationalities, domiciles, and professions. According to Article 64, Paragraph 02 of Decree 76/63, the notary must verify and authenticate these identities, following the model outlined by the Minister of Finance's decision issued on May 25. If these certifications are missing, the real estate registrar has the authority to reject the deposit and stop the registration process.
- The decision submitted for registration must precisely delineate the property in question, specifying the original ownership as affirmed by Article 66, Paragraphs one and two of Decree 76/63: "Every contract or judicial decision subject to registration in the real estate registry must clearly outline for each property its type, the municipality in which it is located, the section and plan number, its mentioned location, and details from the land survey. When a contract or decision involves a division of land ownership resulting in a change of boundaries, the property must be distinctly identified as it was before the subdivision, as well as every property resulting from this division, except in cases of subdivisions carried out according to urban planning regulations..."
- The judicial decision must also adhere to the principle of the relative effect of registration, known as the "prior registration rule," as articulated in Article 88 of Decree 76/63: "No registration action can be executed in the real estate registry if there is no prior or corresponding registration of the contract, judicial decision, or death transfer certificate proving the right of the last holder or owner, in accordance with the provisions of Article 89 below..."

Second Sub-subsection: Issues with the Lack or Absence of Certain Documents

Registration of a decision follows procedures, the first of which requires depositing at the competent regional real estate registry, as stipulated by Article 90 of Decree 76/63, which mandates exclusively the individuals mentioned therein to deposit and register judicial decisions related to property.

After the deposit of judicial decisions, the real estate registrar verifies the documents. If certain documents, such as the land survey extract and the contract (cc4bis) retrieved from the land survey services, are missing or incomplete, the deposit may be rejected. A summary of the decision must be entered in the designated box.

In some instances, the decision may lack an executable form or authenticated expertise, and a measurement document may be required, particularly if the property is in a surveyed area. The real estate registration fees, which must be paid in advance, are also necessary and should reflect the property's value as assessed in the decision or based on the parties' declarations under their responsibility.

Second Subsection: Issues Arising After Acceptance of the Deposit of Judicial Decisions

In the first sub-subsection, we discuss the main issues arising after the acceptance of the deposit of judicial decisions, and in the second sub-subsection, the main issues of depositing outdated judicial decisions that establish the legality of real estate sales and issues of depositing acts that do not affect rights established by acquisitive prescription. The third sub-subsection addresses issues related to the execution concerning ambiguities in judicial decisions and errors contained therein.

First Sub-subsection: Issues in Depositing Judicial Decisions for Registration in the Real Estate Registry

Notaries have confirmed that they encounter difficulties when depositing judicial decisions, whether related to decisions approving partition or other cases specific to the registration of judicial decisions. We will address these issues in detail:

Firstly: Regarding Decisions Approving Partition

The main challenges notaries face when depositing judicial decisions related to partition are that the real estate registrar might not be able to register them despite the existence of an administrative order compelling him to carry out the settlement and complete the registration procedures. This occurs in the following scenarios:

1. The Judicial Decision Does Not Include the Valuation of Joint Property:

Joint ownership means multiple owners share one property without specified shares for each. This situation is among the most problematic when depositing judicial decisions that include the partition of joint property.¹

This is often due to the judge not specifying the tasks assigned to the real estate expert when appointed to prepare the shares, as stated in Article 724, Paragraph 02. According to this article, judges are bound to appoint an expert to appraise the joint property as a whole and each share individually, allowing the registration administration to collect its rights from each owner according to their share in the joint property.²

Even though the court appoints an expert to partition joint property and assess its value, most decisions do not specify the expert's tasks for evaluating the joint property. The legislator addressed this issue by amending Article 353, Paragraph 02 of the Registration Law, mandating that if the value is not specified in the contract or judicial decision, a sworn and signed declaratory estimate must be included in the registration document to avoid rejection.³

This means that parties must place a sworn declaratory estimate in the document prepared for registration, and the judge's decision on the partition is then registered.⁴

This legislative intervention aimed to solve this problem, facilitating individuals wishing to register partition decisions at the registration administration and register their shares at the real estate registry.

However, the implementation of this article has presented several issues for notaries and real estate registrars, as this article only referred to the real estate registration fee. The costs associated with depositing a judicial decision include registration fees, stamp duties, notarization, and real estate registration. The registration inspector must ensure that all these fees are fully paid for the judicial decision to be properly recorded.

Additionally, issues arise when judicial decisions do not specify the value of real estate properties. Notaries sometimes base registration fees on the depositor's declared

¹ "Hamdi Bacha Omar, 'Protection of Private Real Estate Ownership in Light of the Latest Amendments and Recent Judgments,' Dar Houma, Algeria, 2012, p. 135."

² "Yousefi Mohamed, El Aidy Kheira, 'The Issue of Registering the Judicial Decision Including the Division of Common Real Estate,' Real Estate and Environment Law Magazine, Issue No. 14, 2020, p. 192."

³ "Law No. 03/22, dated December 28, 2003, concerning the Finance Law for the Year 2004, Official Gazette, Issue No. 83, dated December 29, 2003."

⁴ "Law No. 17/11, dated December 27, 2017, related to the Finance Law for the Year 2018, Official Gazette, Issue No. 76, dated December 28, 2017."

property value, which is often understated to reduce fees, potentially disadvantaging the public treasury.¹

2. One of the Partners Disposing of His Share During the Lawsuit:

It is possible for a partner to dispose of their share during a lawsuit concerning the partition of joint property, resulting in the partition among co-owners. Problems arise if a partner sells their share before the court issues a judgment, leading to a situation where the buyer is not yet the legal owner. In such cases, the notary must instruct the new owner to file a third-party opposition lawsuit outside the existing litigation.

Once the judgment becomes final, the seller or original partner must compensate the new owner (buyer) as outlined in Article 381 of the Civil Procedures Code.² Since registering judgments and judicial decisions is mandatory, the judge's decision cannot be recorded until the third-party opposition lawsuit is resolved. Following this, the notary will register both the partition judgment and the judgment from the third-party opposition lawsuit.³

3. The Case of Not Specifying Common Parts in Petitions for Partition of Built Properties:

Problems frequently occur in judicial decisions made by property judges regarding the appointment of a real estate expert to partition jointly owned properties. One of the expert's key duties is to prepare a descriptive table detailing each partner's share in the property.

Difficulties arise when the judicial decision fails to clearly outline the expert's responsibilities for identifying common areas of the property. This lack of clarity can hinder the registration of these judicial decisions. In such cases, notaries usually advise the parties to return to the judge to request an additional expert assessment.

This supplementary analysis is intended to identify the common areas attributable to each partner, facilitating the notary's process of registering the judicial decisions with the real estate registry.

¹ "Lakhzari Mohamed, 'Depositing Judicial Decisions for Registration at the Land Registry, Between Law and Application,' Mediterranean Dialogue, Volume 13, Issue No. 02, 2022, p. 119."

² "Article 381 from the Civil and Administrative Procedures Law states: 'Any person with an interest who was not a party or represented by the judgment, decision, or order being appealed may present an objection outside of the litigation.'"

³ "Hamdi Bacha Omar, Leila Zerouki, 'Real Estate Disputes in the Light of the Latest Amendments and Recent Judgments,' Dar Houma, 2006, p. 355."

4. Partition of Agricultural Lands:

Executive Decree No. 97490¹, dated December 20, 1997, delineates the conditions for the subdivision of agricultural lands, specifically stating that such subdivision must not occur within the boundaries of the referenced agricultural exploitation area. This decree is supported by the Agricultural Guidance Law 08/16², which enforces the protection of agricultural property and explicitly prohibits, under penalty of nullity, any partition or subdivision of agricultural lands that results in the formation of smaller plots.

Consequently, the subdivision of agricultural land necessitates acquiring a license from the Directorate of Agricultural Services at the state level where the agricultural property is situated. Partners desiring to dissolve their common ownership must initiate a lawsuit, which involves one of the common partners suing all other partners without exception.

The judge, in these cases, may utilize expert evaluations to execute the partition, adhering to the stipulations of Executive Decree 97/490. Based on this expert evaluation, the judge will issue a judgment that ensures compliance with the legal prohibition against altering the agricultural purpose of the property.

❖ Case of Insufficient Property Data:

Referring to Article 66 of Decree No. 76/63, dated March 25, 1976, which pertains to the establishment of the real estate registry, the decree specifies: "Every contract or judicial decision subject to registration in a real estate registry must clearly outline for each property its type, the municipality in which it is located, its section and plan number, the mentioned location, and what it includes from land surveys.

When a contract or decision involves a partition in land ownership resulting in boundary changes, the property must be distinctly identified as it existed before the subdivision, except in cases of subdivisions conducted according to urban planning regulations."

Consequently, depositing judicial decisions becomes straightforward when it concerns property located within areas covered by the real registration system. This process invariably requires the inclusion of a measurement document among the deposit attachments, as mandated by Article 74 of Decree 76/63.

This article states: "The designation of real estate units that are the subject of a transfer by death through a contract or judicial decision creating or confirming a real right

¹ "Executive Decree No. 97/490 dated December 20, 1990, which sets the conditions for the subdivision of agricultural lands, Official Gazette, Issue No. 84, issued on December 21, 1997."

² "Law 08/16 dated August 20, 2008, concerning the Agricultural Orientation, Official Gazette, Issue No. 46, dated August 10, 2008, p. 04."

eligible for mortgage must be according to a land survey extract, and in the case of boundary changes, according to measurement documents."¹

❖ **Measurement Document:**

According to Articles 66 and 74 of Decree 76/63, a measurement document is essential for boundary modifications. This document, which must be prepared by a land engineer accredited by land survey services, adheres to the standards set by Article 06 of the March 9, 1978, decision concerning real estate cards and land surveys for properties under the real estate registration system established by Order 75/74.

Issues with the measurement document typically arise in judicial decisions related to property partitioning following a judicial expertise that assesses the shares from the division. Since most experts lack the authority to prepare measurement documents, parties involved in the dispute must engage a land engineer to create plans based on the property inspection after the judgment is finalized.

Problems occur when there are discrepancies in the property areas. This situation necessitates coordination between the judicial decision, measurement document, and the property's pre-subdivision references. The parties, expert, and engineer must ensure consistency with the judgment, often requiring a review of the judgment to align it with the engineer's plans.²

Secondly: Issues in Depositing Judicial Decisions Concerning Real Estate Sales that Have Become Time-Barred

1. Statute of Limitations for Judicial Decisions:

The statute of limitations is a method for acquiring real estate ownership. Judicial decisions become time-barred after 15 years from the date they become enforceable, as stipulated by Article 630 of the Civil Procedures Code, which states: "The rights contained in executory documents become time-barred after a full 15 years, starting from the date they become enforceable..."

However, in practice, some real estate registrars refuse to register such decisions, like those regarding preemption and partition, claiming they are time-barred after 15 years. This is a misunderstanding of the law, as the statute of limitations for judicial decisions is not a matter of public order and thus must be declared through a judicial decision, making it mandatory for the real estate registrar to register these decisions, even if more

¹ "Hamdi Bacha Omar, 'Issues in Depositing Judicial Decisions Subject to Real Estate Publicity,' Supreme Court Magazine, Issue No. 02, 2018."

² "Lakhzari Mohamed, 'Depositing Judicial Decisions for Registration at the Land Registry,' Mediterranean Dialogue Magazine, Volume 13, Issue No. 02, September 2022, p. 123."

than 15 years have passed, unless there is another ruling declaring the decision time-barred.¹

2. Depositing Judicial Decisions Establishing the Legality of Real Estate Sales:

In reality, many sale contracts are found to be in violation of legal statutes, such as conducting a sale through a customary contract, contrary to Article 324 bis of the Civil Code. Previously, customary contracts were considered valid documents before the issuance of Order 70/91 on the notarization profession, a stance supported by the Supreme Court in several decisions, such as Decision No. 200454 dated October 31, 2000, which allowed customary real estate sales.

Judges now require appellants to formalize sales in a customary manner and mandate that sellers complete the sale procedures. If a seller refuses to finalize the sale despite a court judgment compelling their appearance before a notary, the buyer is not obligated to return to court. Instead, the notary should directly file the judicial decision, which validates the sale despite any initial issues, based on the doctrine of estoppel, overriding the concept of invalidity.

This requirement was substantiated by the Real Estate Chamber of the Supreme Court through numerous decisions, including an unpublished decision dated July 16, 2017, under number 892982. This decision elucidated, "As derived from the case facts, the dispute between the appellant and the heirs of the respondent concluded with the decision dated October 29, 1994, which directed both parties to formalize the customary sale contract before a notary, thereby becoming enforceable by law.

According to established legal practice, a judgment or decision that becomes enforceable assumes the legal status of a formal contract, necessitating its registration in the real estate registry. The directive to formalize the sale contract before a notary effectively amended the customary contract, transforming it into a formal contract endowed with all the effects of a legally binding contract, compelling the seller, and subsequently his general successor, to transfer property ownership by registering the contract at the real estate registry.²

The process of depositing this decision and having the notary register it at the real estate registry is part of enforcing the contract, which requires the seller to transfer ownership of the property. The seller cannot cancel the registration, as doing so would violate their contractual duty to transfer property ownership, which has already been recorded.

¹ "Hamdi Bacha Omar, 'Issues in Depositing Judicial Decisions Subject to Real Estate Publicity,' op.cit, p. 199."

² "Hamdi Bacha Omar, 'Issues in Depositing Judicial Decisions Subject to Real Estate Publicity,' op.cit, p. 200."

3. Legality of Notaries Publicizing Auction Decisions at the Real Estate Registry:

The question arises: Can a notary publicize an auction decision at the real estate registry? Although a notary might present auction decisions for registration, the Civil Procedures Law specifies in Article 762, Paragraph 02, "A judicial officer must record an auction decision at the real estate registry for its publicization within two months from its issuance date."

However, this provision appears to conflict with Article 90 of Decree 76/63 dated March 25, 1976, which established the real estate registry and defined the legally authorized persons to publicize contracts and decisions, each within their jurisdiction: "Notaries, clerks, and administrative authorities must ensure the publicization of all contracts or decisions subject to publicization drafted by them or with their assistance within specified deadlines."

As such, Article 762 of the Civil Procedures Code, which exclusively empowers judicial officers to publicize such decisions, mandates that the real estate registrar must reject the deposition of an auction-related judicial decision by a notary, as this responsibility falls under the jurisdiction of the judicial officer. Consequently, the real estate registrar is also obliged to refuse the registration process if a notary undertakes the deposition of auction decisions.

Thirdly: Issues in Depositing Judicial Decisions Concerning the Cancellation of Final Registration

Final registration is confirmed in three scenarios:

1. **First Scenario:** This scenario pertains to surveyed properties whose owners possess unregistered deeds and judicial decisions. The property registrar grants final registration if the legal document leaves no room for doubt about the ownership of the property verified therein.
2. **Second Scenario:** This concerns the transition of temporary registration to final status.
3. **Third Scenario:** For state-owned properties, they remain registered in the state's name until a legitimate owner is identified with a legal document. The rightful owner has the right to object within 15 years from when the survey documents are filed. However, under the Finance Law of 2018, which amended Article 23 bis of Order No. 75/74, properties with unknown owners are categorized as unclaimed. These properties are temporarily registered under this status for 15 years from the filing date of the survey documents, after which they are automatically registered in the state's name.

Some notaries are hesitant to file judicial decisions from administrative courts, like the Administrative Court or the State Council, that mandate the cancellation of property

registrations and re-registration in the rightful owner's name. These notaries mistakenly believe that such tasks are the sole responsibility of judicial officers.

In reality, handling decisions that annul property ownership and establish new ownership falls within the notary's responsibilities, as these tasks are not exclusively reserved for judicial officers.

Once a decision is made to annul a final property registration, the beneficiary must ensure that this decision is officially recorded by submitting it to the property registrar. The registrar then thoroughly reviews the judgment. If any issues are identified, the registrar can refuse registration with a detailed explanation. If the judgment is in order, the registrar will complete the registration process.

Second Sub-subsection: Issues with Depositing Judicial Decisions Declaring Transactions Ineffective

Certain property registrars decline to deposit judicial decisions that declare transactions ineffective, on the grounds that these decisions do not constitute the establishment or report of real property rights. They contend that since the judge has ruled the sale contract between the seller and the transferee as ineffective, it does not necessitate registration. This interpretation is flawed.

Furthermore, a judicial decision declaring a transaction void must be recorded in the property card's burdens section. This entry signifies the transaction's ineffectiveness as a formal encumbrance, leading to the property's seizure and public auction sale.

Third Sub-subsection: Execution Issues Related to the Ambiguity of Judicial Decisions and Errors Contained Therein

Property registrars often face significant challenges in executing judicial decisions due to ambiguities in the verdict or the presence of material errors within the decision itself, or discrepancies between the reasoning and the verdict.

Ambiguities in a verdict can arise from various issues, such as unclear property descriptions, inconsistent reasoning, or vague directives about transferring or re-establishing property ownership without specifying the exact registered sections.¹

According to Article 287/01 of the Civil Procedures Code, a material error in a judicial decision is when there is incorrect representation of a fact or an oversight of a fact. Corrections typically address errors in identifying parties, while interpretations focus on clarifying the identity of the parties or the decision's ruling, which is crucial for proper execution.

¹ "Hamza Lahwel, 'The Ambiguity of the Language of Real Estate Judicial Decisions as One of the Execution Issues,' *Al-Ihya Magazine*, Volume 22, Issue No. 30, 2022, p. 737."

Judicial decisions with ambiguous language create significant challenges for notaries, particularly those involving sales with retrospective effects. These decisions are often rejected for registration if a buyer under a customary contract requests court validation of the sale, leading to decisions such as: "The court affirms the validity of the sale and directs the parties to complete the sale with the notary; if any party fails to attend, this decision will act as the contract and be registered."

The interpretation that this decision "serves as the contract and be registered" implies that the notary should directly record and register the decision as a contract, which complicates the registration if the seller lacks the original ownership contract or sold the property as an heir.

To improve clarity and facilitate the notary's execution of the decision, it is recommended to revise the wording to: "The court has ruled on the validity of the obligation and directs the parties to finalize the sale procedures with the notary in accordance with applicable laws."

This revised formulation helps the notary by clarifying whether the ownership contract should be obtained or if compensation claims should be pursued if the property was sold by someone other than the rightful owner.

To mitigate delays in executing judicial decisions, the General Directorate for National Property Management has instructed property registrars through Circular No. 689 dated February 12, 1995, that if a judicial decision deposited at the property registry lacks the necessary information as required by real estate registration regulations (such as precise identification of the property, ownership origin, etc.), the registrar may refer to the rationale provided in the decision or to accompanying documents, such as the expert's report and plan submitted by the notary.

However, if it is impossible for the registrar to do so, the depositor must be directed to the court that issued the decision or judicial order to remedy the deficiencies. This could be accomplished by filing a suit for interpretation or to correct a material error. Despite these legal avenues, which assist in executing the decision or order, they contribute to further delays due to the time required to resolve these issues.

Notaries, when approached by a citizen to deposit a judicial decision and noticing ambiguity or material error, direct them to the courts for interpretation or correction before depositing it in the property registry. This proactive approach helps to avoid the rejection of the deposit by the property registrar, ensuring smoother execution of judicial decisions.

Conclusion:

This study highlights the complexities involved when a property registrar receives a petition or a judicial decision from a notary or any legally qualified person for the

deposit of documents at the property registry. Such submissions inherently constitute a request to register these documents and annotate them in the property card series. For the registration process to be efficient and successful, all legal conditions must be meticulously met in both the lawsuit petition and the judicial decision sought to be registered.

However, the process of depositing lawsuit petitions and judicial decisions introduces several challenges, particularly concerning the property registrar's refusal to accept them from notaries or legally qualified individuals. Common reasons for this refusal include the lack of necessary documents or information.

Additionally, challenges with judicial decisions may arise due to the judge's failure to precisely define the expert's tasks or the expert's failure to perform adequately. Complications may also emerge from notaries improperly documenting the contents of the judicial decision or due to the ambiguity of the judicial verdict itself.

To effectively overcome these obstacles and prevent their recurrence, the roles of judges, notaries, and legally qualified individuals are crucial. The judge is responsible for supervising the expert's performance and must be vigilant to prevent oversights that could obscure the correct designation of the property or its new and old owners. To streamline this process further, several recommendations are proposed:

1. There is a necessity to review and possibly revise the powers granted to property registrars in examining petitions and judicial decisions. This review should aim to clearly define the circumstances under which rejections may occur, ensuring that these are based on substantive legal grounds rather than procedural oversights or ambiguities.
2. The verdict of a judicial decision must include precise and explicit language to avoid any ambiguity or confusion. Clear wording is essential for the smooth registration of the decision at the property registry, ensuring that the parties involved do not need to file additional lawsuits for interpretation.

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