

Is Serving Notice a Mandatory Requirement to Terminate Indeterminate Period Residential Lease? A Case Comment

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1. The Facts of the Case

The case, *Agency for Rented Houses v. Ato Tadele Abebe*,¹ was first filed in the Federal First Instance Court in Addis Ababa by the Agency for Rented Houses (Agency/lessor) against Tadele Abebe (lessee) who rented house no. 292/14 in the then Woreda 21 Kebele 01 from the Agency (Civil File No. 20941).² The Agency pleaded for the termination of the lease and eviction of the lessee on the ground that the lessee has not paid rent arrears and water bills, and has constructed his own house. The Agency further argued that even if the defendant did not build his own house the lessor could unilaterally terminate a residential lease according to Article 2966(1) of the Civil Code. Tadele on his part argued that the lease should not be terminated because a notice of termination was not served to him and defaulting on his obligation should only result in his transfer to another house of the Agency. The Federal First Instance Court made its decision on the case on 27 May 2003. It held that, since the lease agreement between the parties is an indeterminate period lease, the Agency cannot terminate it without

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¹ *The Agency for Rented Houses vs. Tadele Abebe*, Cassation File No. 28025, 7 DECISIONS OF THE FEDERAL SUPREME COURT CASSATION BENCH 71-73 (2009) [የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ውሳኔዎች፣ ቅፅ 7፣ የሰበር ሙ.ቁ. 28025፣ 2001 ዓ.ም. ፣ ገፅ 71-73].

² The Cassation Bench has entertained two other cases relating to residential indeterminate period lease. These cases are: *Agency for Rented Houses vs. Debritu Woldehana* and *Agency for Rented Houses vs. Aseggedech Kasahun*. However, the requirement of notice to terminate lease for indeterminate period was not the central issue in those two cases and, hence, are not of interest here. On a different note, all of the residential lease cases entertained by Cassation Bench involve the institutional renter, the Agency for Rented Houses. It may be fascinating to see why cases involving individual lessors do not appear in the Cassations Bench's decision. See *The Agency for Rented Houses vs. Debritu Woldehana*, File No. 34456, 7 DECISIONS OF THE FEDERAL SUPREME COURT CASSATION BENCH 99-102 (2009) [የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ውሳኔዎች፣ ቅፅ 7፣ የሰበር ሙ.ቁ. 34456፣ 2001 ዓ.ም፣ ገፅ 99-102] and *The Agency for Rented Houses vs. The Successor of W/ro Aseggedech Kassahun, Henok Samuel*, Cassation File No. 40336, 7 DECISIONS OF THE FEDERAL SUPREME COURT CASSATION BENCH 143-144 (2002) [የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ውሳኔዎች፣ ቅፅ 10፣ የሰበር ሙ.ቁ. 40336፣ 2002 ዓ.ም፣ ገፅ 143-144].

giving two months advance notice to Tadele and rejected the petition of the Agency to terminate the lease. The Court, however, ordered the lessee to pay unpaid arrears of birr 442.20 to the Agency.

As the Agency was aggrieved by the decision, it appealed to the Federal High Court (Civil File No. 22378). However, the Federal High Court affirmed the decision of the lower court in its session held on 01 November 2006.

2. The Decision of the Federal Supreme Court Cassation Bench

The Agency, dissatisfied by the decision of the lower courts, then submitted a petition to the Federal Supreme Court Cassation Bench³ for the reversal of the decision on the ground that the lower courts have made basic error of law in their decisions. The main issue framed by the Cassation Bench regarding the case was whether serving notice by the lessor (the Agency) to the lessee (Tadele) is a mandatory requirement for the termination of the indeterminate period residential lease between the parties. After appraising the arguments of the parties, the Cassation Bench, in its session held on 29 January 2008, ruled as follows:

The Court understood that the lease between the parties is made for an indeterminate period. A lease for an indeterminate period can be terminated at any time by giving notice according to Article 2966(1). The lessor has the right to terminate the lease at any time by giving notice. As stated above, even if the lessor has to give notice to the lessee to terminate the lease, serving notice to the lessee is not, however, a mandatory requirement to terminate the lease. If the lessee suffers damage or loss [due to termination] without advance notice, compensation may be requested; otherwise, not receiving a notice does not entitle the lessee to object termination of the lease.

... Nearly a year has passed since the respondent was sued to leave the house and until only the First Instance Court made a decision on the case. Hence, the argument of the respondent that he should not be evicted because he was not given advance notice is not acceptable. ... Generally, the decision of the lower

³ Note that interpretation of a law by the Cassation Bench are binding on both federal and regional courts at all levels including state cassation benches. See Federal Courts Proclamation Re-Amendment Proclamation No. 454/2005, *Federal Negarit Gazeta*, Year 11, No. 42, Article 2(4). Article 2(4) reads: "Interpretation of a law by the Federal Supreme Court rendered by the Cassation Division with not less than five judges shall be binding by federal or regional [courts] at all levels. The Cassation Division may, however, render a different interpretation some other time."

court that the lease should not be terminated for notice was not served is erroneous when examined in light of Article 2966(1).⁴ (Author's translation)

Accordingly, the Cassation Bench reversed the decisions of the Federal First Instance Court and Federal High Court. It then ruled that the lease agreement between the parties is terminated and ordered the lessee to vacate the house.⁵

3. Comment

The case raised an important question of whether serving advance notice to the lessee by the lessor is a mandatory requirement for the termination of a lease for an indeterminate period. As summarized in the previous section, the Cassation Bench held that pursuant to Article 2966(1) of the Civil Code, serving notice by the lessor is not a mandatory requirement to terminate a lease for an indeterminate period. The Cassation Bench also maintained that the lessee who suffers damage due to termination of an indeterminate period lease without notice can only claim damage and cannot oppose the termination of the lease.

This writer argues that the Cassation Bench's interpretation of Article 2966 is erroneous. The arguments are based on the ground (just cause) and procedure (notice) of termination of a lease for an indeterminate period, with more emphasis on the latter, and the issue of compensation decided by the Cassation Bench as the right of lessees.

⁴ The Amharic version of the excerpts reads as follows:

*በአመልካችና በተጠሪ መካከል የተደረገው የኪራይ ውል ላልተወሰነ ጊዜ የተደረገ መሆኑን ተገንዝባል። ላልተወሰነ ጊዜ የተደረገ የኪራይ ውል ደግሞ ለተከራይ በሚሰጥ ማስታወቂያ በማንኛውም ጊዜ ሊቋረጥ የሚችል መሆኑ በፍ/ሕ/ቁ. 2966(1) ሥር ተመልክቷል። አኪራይ በፈለገ ጊዜ ለተከራይ ማስታወቂያ በመስጠት የኪራይ ውሉን ሊያፈርስ መብት አለው። ከፍ ሲል እንደተባለው አኪራይ ውሉን ለማፍረስ ማስታወቂያ ለተከራይ መስጠት እንደሚያስፈልገው የተመለከተ ቢሆንም ማስታወቂያ መስጠት ግን ውሉን ለማፍረስ አስገዳጅ የሆነ ቅድመ ሁኔታ አይደለም። ተከራይ ማስጠንቀቂያ ባለማግኘቱ የደረሰበት ጉዳት ወይ ከሣራ ካለ ይህንኑ ከመጠየቅ በቀር ውሉ ሊፈርስ አይችልም በማለት ለመከራከር መብት አይሰጠውም።
... ተጠሪውም በክሱ ቤቱን እንዲለቁ ከተጠየቁበት ጊዜ ጀምሮ የፌ/መ/ደ/ፍ/ቤት ውሳኔ እስኪሰጥበት ጊዜ ድረስ እንኳን ወደ አንድ ዓመት የሚጠጋ ጊዜ አልፏል። በመሆኑም ቤቱን ለመልቀቅ እንድችል ቅድሚያ ማስጠንቀቂያ ስላልተሰጠኝ ልለቅ አይገባም በማለት ያቀረቡት ክርክር ተቀባይነት የለውም። ... በአጠቃላይ የሥር ፍ/ቤት ማስጠንቀቂያ ባለመስጠቱ የኪራይ ውሉ ሊፈርስ አይገባም በማለት የደረሰበት መደምደሚያ የፍ/ሕ/ቁ. 2966(1) አኳያ ሲመረመር ስህተት የተፈፀመበት ነው። See Para. 6 & 7 of the Decision.*

⁵ See the operative part of the Decision; translation by the author.

Besides employing the textual interpretation method⁶ to analyze the relevant provisions of the Civil Code,⁷ relevant experience of other jurisdictions is explored to draw lessons.

3.1 Termination of a lease for an indeterminate period

A lease for an indeterminate period, also called non-fixed term lease or open-ended lease, is a type of lease that is made for an undetermined or undefined period.⁸ It specifies only the starting date and does not specify the end date or duration for the lease.⁹ Besides, a determinate or fixed-term lease turns into an indeterminate or non-fixed term lease when the lessee continues to enjoy the lease unopposed by the lessor after the expiry of the fixed term.¹⁰

Indeterminate or non-fixed term lease is recognized in many jurisdictions across the world irrespective of the legal system they follow.¹¹ In western and northern Europe, a non-fixed term lease is the default regime.¹² These jurisdictions include the Netherlands, Germany, Austria, Norway, Sweden and Denmark.¹³ Other jurisdictions including Japan,¹⁴ states in the U.S.A. like Michigan,¹⁵ and provinces in Canada like Alberta also recognize such lease.¹⁶

⁶ Regarding interpretation theories and tools of statutes, see Congressional Research Service, *Statutory Interpretation: Theories, Tools, and Trends*, CRS Report, (2018), <https://fas.org/sgp/crs/misc/R45153.pdf> (last visited Aug. 10, 2020).

⁷ As the meaning of the relevant provisions of the Civil Code, Articles 2966, 2965, 1821 and 1822, is unambiguous and logical, pursuant to the cardinal rule of statutory interpretation, there is no need to resort to other methods of interpretation. Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, *Negarit Gazeta*, Extraordinary Issue, year 6, no. 1, (1960). [Hereinafter Civil Code]

⁸ *Ibid.*, Art. 2927 (1) *cum. Arts.* 2965 and 2966.

⁹ For more on this see Mihret Alemayehu, *Protection of Tenure Security in Private Renting under Ethiopian Residential Lease Law: A Comparative Study*, 8(1) (BAHIR DAR UNIVERSITY JOURNAL OF LAW 1-34 (2017)).¹⁸ The literature on Ethiopian Residential Lease Law is scant.

¹⁰ Civil Code, Art. 2968(1). In such cases, the law considers the lease tacitly renewed and the lease becomes an indeterminate period lease.

¹¹ CHRISTINE WHITEHEAD, SARAH MONK, KATH SCANLON, SANNA MARKKANEN & CONNIE TANG, *THE PRIVATE RENTED SECTOR IN THE NEW CENTURY: A COMPARATIVE APPROACH* 31 (University of Cambridge, 2012) available at: <https://www.cchpr.landecon.cam.ac.uk/Research/Start-Year/2010/Private-Rented-Sector-New-Century-Comparative-Approach/Project-Report> (last visited May 15, 2020)

¹² Schmid, Christoph. U., *Tenancy Law: General Report*, p. 35, <https://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/TenancyLawProject/TenancyLawGeneralReport.pdf> (last visited Apr. 10, 2020)

¹³ *Ibid.* Some countries like France and Italy do not recognize indeterminate period lease agreements. *Ibid.*

¹⁴ Wakabayashi, Tsubasa, *Tenant's Rights Brochure in Japan*, in, MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 431 (Schmid, Christoph. U., and Dinse,

The open-ended nature of an indeterminate period lease raises the question of how it terminates. While serving notice by the lessor to terminate an indeterminate period lease is the norm, many pro-tenant states also require showing just cause.¹⁷ The requirement of notice is procedural protection whereas good cause is a substantive one.¹⁸ These requirements aim to protect tenants, generally considered the weaker party in the relationship, by ensuring sufficiently stable conditions or secure tenure.¹⁹ Generally, tenancy law aims to achieve this objective without creating an unbearable burden on landlords so that the market can still be attractive to landlords and investors.²⁰ Thus, the aim is to create socially desirable and economically efficient outcomes by balancing the interests of tenants and landlords.²¹ The social objective is to make affordable housing accessible to those who have no means to obtain it by themselves.

Unlike termination by the landlord, the requirements for termination of an indeterminate period lease by the lessee are generally not stringent in many jurisdictions. Usually, showing cause is not required and the period of notice is shorter.

Jason, R. eds., 2014), <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>. (last visited May 12, 2019).

¹⁵ See the Michigan Truth in Renting Act (Act 454 of 1978, MCL 554.631 to 554.641), <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-454-of-1978.pdf>. (last visited Mar. 29, 2019).

¹⁶ Alberta Government, *Residential Tenancies Act Handbook for Landlords and Tenants, Residential Tenancies Act and Regulations*, (2018), pp. 27-28, <https://open.alberta.ca/dataset/a2767396-099f-43d0-932e-1ec75bf458f3/resource/15cc7bf1-89c6-4baf-9393-ce82d28f3850/download/rta-handbook-bw.pdf>. (last visited May 05, 2020).

¹⁷ Florence W. Roisman, *The Right to Remain: Common Law Protections for Security of Tenure - An Essay in Honor of John Otis Calmore*, 86 N.C. L. REV. 817, 831 (2008), available at: <http://scholarship.law.unc.edu/nclr/vol86/iss3/9> (last visited May 20, 2020) See also Schmid, *supra* note 12, pp. 10-14; SCHMID, CHRISTOPH. U., AND DINSE, JASON, R., EDs., MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE (2014),, available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>. (last visited Mar. 30, 2020)

¹⁸ *Ibid.*

¹⁹ Schmid, *supra* note 12, at 10-11, 18. For more on this see also Yee, Gary, *Rationales for Tenant Protection and Security of Tenure*, 5 JOURNAL OF LAW AND SOCIAL POLICY 35-60, 48 (1989), available at: <https://digitalcommons.osgoode.yorku.ca/jlsp/vol5/iss1/3>. (last visited May 19, 2020); Haffner, Marietta; Elsinga, Marja & Hoekstra, Joris, *Rent Regulation: The Balance between Private Landlords and Tenants in Six European Countries*, 8(2) INTERNATIONAL JOURNAL OF HOUSING POLICY 217-233, 220 (2008), available at: https://www.researchgate.net/publication/263652684_Balance_between_landlord_and_tenant_A_comparison_of_the_rent_regulation_in_the_private_rental_sector_in_five_countries/download. (last visited Mar. 29, 2020).

²⁰ Schmid, *supra* note 12, at 10-11, 18.

²¹ *Ibid.*

The rationale is the recognition of the position of the lessee as the weaker party who needs protection. Termination by the lessee is, however, out of the scope of this paper as the case at hand involved termination by the lessor.

3.1.1 Just cause

In pro-tenant jurisdictions, showing just cause is the first requirement to terminate an indeterminate period lease by the lessor.²² Just cause is a legal ground for termination of a tenancy. Usually, just cause is established when the lessee defaults on his obligations which include failure to pay rent, anti-social behavior, and damaging the leased house.²³ Causes that are not attributable to the tenant such as own or close family dwelling and change of purpose of the dwelling also constitute just cause in some jurisdictions.²⁴ Many European countries including Germany, Norway, Sweden, Denmark, Finland, and the Netherlands,²⁵ and some states in the U.S.A. such as New Jersey and the District of Colombia²⁶ fall in this category. In those jurisdictions, termination of a lease by the lessor is permitted only if there is just cause. Ensuring higher security of tenure is the priority in those jurisdictions.²⁷

However, in many jurisdictions, showing just cause is not required to terminate a periodic tenancy.²⁸ A periodic tenancy is a type of tenancy that continues after the expiry of the fixed term lease or after the expiry of the statutory minimum lease term.²⁹

²² Shelter UK, *Time for Reform: How Our Neighbours with Mature Private Renting Markets Guarantee Stability for Renters*, (2016), p. 14, https://england.shelter.org.uk/_data/assets/pdf_file/0005/1289615/Time_for_reform_FINAL.pdf. (last visited Feb. 10, 2020).

²³ *Ibid.*

²⁴ For instance, in Germany, use of the premises for himself, members of his family or of his household and inability of the landlord to make appropriate commercial use of the premises due to the tenancy contract is considered as just cause. See Cornelius, Julia, *Tenant's Rights Brochure in Germany*, in MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 323 (Schmid, Christoph. U., and Dinse, Jason, R. eds., 2014), available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>. (last visited Mar. 30, 2020).

²⁵ Shelter UK, *supra* note 22, at 7. In those European countries, a lease is normally made for an indefinite period (for life) and termination is permitted only if there is just cause. *Ibid.* European countries that do not recognize contracts unlimited in time include Portugal, Spain, Italy, Austria, France and Belgium. See Schmid, *supra* note 12, at 39.

²⁶ Florence, *supra* note 17, at 834-835.

²⁷ Schmid, *supra* note 12, at 10-11.

²⁸ Many countries in Europe and States in the USA like Michigan and Provinces in Canada like Alberta have those types of tenancies recognized in their law. See generally Schmid and Dinse, *supra* note 17; The Michigan Truth in Renting Act, *supra* note 15; and Alberta Government, *supra* note 16, at 27.

In contrast, in jurisdictions like South Africa,³⁰ China,³¹ Hong Kong,³² Japan,³³ the State of Michigan in the U.S.A.³⁴ and the Province of Alberta in Canada³⁵ showing cause is not required to terminate an indeterminate period lease. Accordingly, the lessor can terminate the lease at any time and for no cause. Freedom of contract is prioritized in those jurisdictions.

Ethiopian residential lease law on private renting follows the latter approach in that cause is not required to terminate an indeterminate period lease. This is certainly true under the Civil Code.³⁶ Accordingly, the lessor can terminate an indeterminate period lease anytime and for no cause. However, certain aspects of government-owned houses, which were administered by the then Agency for Rented Houses, whose rights are now transferred to the Federal Housing Corporation, are governed by special laws.³⁷ The principal laws are the Agency for Government Houses Dissolution Proclamation No. 1022/2017³⁸ and the Federal Housing Corporation Establishment Council of Ministers Regulation No. 398/2017.³⁹ These laws contain certain rules that differ from the Civil

²⁹ 'Periodic tenancy' is renewed automatically with no fixed end date. It can be 'month to month' or 'week to week' tenancy depending on the frequency of rent payment. *Ibid.*

³⁰ Socio-Economic Rights Institute of South Africa, *A Tenant's Guide to Rental Housing* (30 Sep 2013), available at: <https://www.wits.ac.za/media/wits-university/faculties-and-schools/-engineering-and-the-built-nvironment/research-entities/cubes/documents/A%20Tenants%20Guide%20to%20Rental%20Housing.pdf>. (last visited Mar. 02, 2020).

³¹ Chinese rental market is unregulated following the 1998 reform and is led by the market. See Stein, G. M., Commercial leasing in China: An overview, 8 CORNELL REAL ESTATE REVIEW 26-33, at 7 & 30 (2010).

³² Research Office of the Legislative Council Secretariat, *Tenancy Control in Selected Places*, IN16/16-17, (2017), p. 2, <https://www.legco.gov.hk/research-publications/english/1617in16-tenancy-control-in-selected-places-20170707-e.pdf>. (last visited May 15, 2020).

³³ Wakabayashi, *supra* note 14, at 422.

³⁴ Michigan Truth in Renting Act, *supra* note 15.

³⁵ Alberta Government, *supra* note 16, at 27.

³⁶ Civil Code, Art. 2966. The section of the Code on lease of houses (Arts. 2945-2974) governs private renting as well as many aspects of renting of public houses.

³⁷ The Agency was established by the Agency for the Administration of Rented Houses Establishment Proclamation No. 59/1975 as amended by Agency for the Administration of Rented Houses Establishment Proclamation No. 133/1998. Proclamation No. 59/1975 as amended by Proclamation No. 133/1998 was applicable at the time the suit was initiated. It was, however, repealed, a few weeks before the Supreme Court rendered its decision, by Agency for Government Houses Establishment Proclamation No. 555/2007. Proclamation No. 555/2007 was in turn repealed by the Agency for Government Houses Dissolution Proclamation No. 1022/2017, which is the relevant law today.

³⁸ Agency for Government Houses Dissolution Proclamation No. 1022/2017, *Federal Negarit Gazette*, Year 23, No. 54, 2017.

³⁹ Federal Housing Corporation Establishment Council of Ministers Regulation No. 398/2017, *Federal Negarit Gazette*, Year 23, No. 19, 2017.

Code. An example of such a rule is the one on fixing the rent amount. Rent is generally fixed by the Corporation and not negotiable unlike in the private sector.⁴⁰ Another is on who rents these houses. These houses are rented out for government officials and employees per the decision of the government.⁴¹ Except for such aspects, the Civil Code regulates renting in government-owned houses including the issue of notice. The Cassation Bench and the lower courts rightly based their decision on the issue of notice on Article 2966 of the Civil Code.

In the case at hand, the Agency raised grounds to justify termination of the lease. The grounds were building of own house and non-payment of rent and water bills by the lessee. The lower courts ruled on the issue and ordered the lessee to pay arrears.⁴² By the time the Cassation Bench entertained the petition, the lessee had paid the arrears. Nonetheless, the Agency raised it as one of its arguments and the lessee never disputed it. Failure to pay rent by the lessee is a breach of duty. Unfortunately, the Cassation Bench did not entertain the issue of whether failure to pay rent constitutes sufficient ground to terminate the lease. In some jurisdictions, including those that are strongly pro-tenant, failure to pay rent is a sufficient ground to terminate the lease with immediate effect, without observing a period of notice. For instance, in Germany, default by the lessee to pay two months' or more rent entitles the lessor to terminate the lease by giving extraordinary notice with immediate effect.⁴³ Had the Cassation Bench grounded its decision to terminate the lease in the absence of notice on the failure of the lessee to pay rent, it may have been a better conclusion.⁴⁴ The Cassation Bench did not do so and hence it missed the point.

3.1.2 Notice

Unlike just cause, serving notice of termination is nearly universally required for the termination of an indeterminate period lease by the lessor. Notice (to quit) is defined by

⁴⁰ *Ibid.*, Art. 5(8).

⁴¹ *Ibid.*, Art. 5(2 & 7).

⁴² Para. 2 of the Decision; translation by the author.

⁴³ Cornelius, Julia and Rzeznik, Joanna, *Tenancy Law and Housing Policy in Multi-level Europe*, National Report for Germany, pp. 129 & 166, https://www.academia.edu/29211165/National_Report_for_GERMANY_TENLAW_Tenancy_Law_and_Housing_Policy_in_Multi-level_Europe (last visited June 10, 2020). However, if the landlord's demand is satisfied termination is not allowed. Moreover, the tenant has one to two weeks' time to vacate the house. *Ibid.*

⁴⁴ However, Art. 2952 of the Civil Code states that a period of notice of 30 days' should be given by the lessor to the lessee when the lease is made for a year or more and two weeks' notice when it is made for a shorter period. This suggests that it is applicable for fixed term leases and not to non-fixed term lease.

Black's Law Dictionary as "[a] landlord's written notice demanding that a tenant surrender and vacate the leased property, thereby terminating the tenancy."⁴⁵ Notice is not defined in the residential lease law section⁴⁶ as well as in the section on the lease of immovables in general⁴⁷ of the Civil Code. It is, however, possible to deduce some meaning from Article 1773(1) of general contract law. Article 1773(1), which deals with the form of notice, states: "[n]otice shall be by written demand or by any other act denoting the creditor's intention to obtain performance of the contract".⁴⁸ Notice can thus be written or oral communication. Whatever its form, a notice contains demand or request of the person serving it. From the cumulative reading of Articles 2966 and 1773(1) of the Civil Code, we can deduce that notice for termination of a lease by the lessor contains demand of the lessor for the termination of the lease and vacation of the rented house by the lessee.⁴⁹

The primary purpose of notice is the protection of lessees.⁵⁰ Notice and the ensuing notice period inform and enable the lessee to get ready about the eventualities of termination. Typically, it will enable the lessee to find a suitable new home and move out in time.⁵¹ Besides, notice serves a crucial purpose in case of termination of an indeterminate period lease. Since the duration of the lease is non-fixed, any party who wishes to terminate the lease has to communicate this fact through notice. Thus, the decision to terminate the lease and the date intended for termination are communicated to the other party through notice.⁵²

Because of its importance, jurisdictions make serving notice period by the lessor mandatory to terminate an indeterminate period lease. The difference is concerning the

⁴⁵ BLACK'S LAW DICTIONARY, 8th ed., 2004, p. 3376.

⁴⁶ See Civil Code, Arts. 2945-2974.

⁴⁷ See *Ibid.*, Arts. 2896-2944.

⁴⁸ The Amharic version uses the terms 'በግንታውቂያ ወይም በሌላ አድራጎች'.

⁴⁹ The lessee has also similar rights to terminate the lease. In fact, Ethiopian residential lease law can be categorized as liberal as it contains no meaningful protection to lessees. It does not recognize the unique disadvantages of lessees as it treats the lessor and the lessee in the same manner, as equals, who are able to reach optimum agreements through negotiation. For more on this see Mihret, *supra* note 9.

⁵⁰ Florence, *supra* note 17, at 829-831. See also Malkawi, H., Bashar, *Regulating Tenancy Relationships in Jordan: Pro-Landlord, Neutral, and Pro-Tenant*, 25(1) ARAB LAW QUARTERLY 19 (2011), available at: <http://www.jstor.com/stable/23025221> (last visited May 12, 2020).

⁵¹ The lessor has also an interest to obtain possession of his house without undue frustration. Hence, the notice period should not be too long. See Victoria State Government, *Security of Tenure – Issues Paper: Residential Tenancies Act 1997 Review – Fairer Safer Housing*, November 2015, p. 15, https://www.westjustice.org.au/cms_uploads/docs/westjustice-rta-review-security-of-tenure-submission.pdf. (last visited June 10, 2019).

⁵² The Private Rented Sector in the New Century, *supra* note 11, at 32.

duration of the notice period. Usually, the period of notice ranges from two to six months. For instance, in Austria, the minimum notice period is one month where rent is paid monthly or shorter and three months for tenancies where rent is paid longer than one month.⁵³ In England and Wales, the minimum notice period to terminate a periodic tenancy is two months.⁵⁴ In Sweden, the minimum notice period is three months.⁵⁵ In the Netherlands, the minimum notice period is three months.⁵⁶ However, the notice period increases by a month for every additional year the lease has been in place until it reaches the maximum period of six months.⁵⁷ In Japan, the notice period is six months.⁵⁸ In Germany, the minimum notice period is three months while the maximum can be up to nine months based on the length of the tenancy.⁵⁹ Accordingly, after five and eight years of occupation, the notice period becomes six and nine months respectively.⁶⁰

The importance attached to notice can be seen from the effect of its non-observance. In many jurisdictions, if notice is not served, if the notice period is shorter than what the law requires or if its form differs from what the law prescribes, termination cannot take effect. In such cases, the lessee will continue to live in the leased house. For instance, in

⁵³ Hofmann, Raimund, *Tenant's Rights Brochure in Austria*, in MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 32-33 (Schmid, Christoph. U., and Dinse, Jason, R. eds., 2014), available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>. (last visited Feb. 16, 2020).

⁵⁴ See Sparkes, Peter, *Tenant's Rights Brochure in England*, in MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 217 (Schmid, Christoph. U., and Dinse, Jason, R. eds., 2014), available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>. (last visited Feb. 12, 2020). In England and Wales, indeterminate lease terms are not recognized in their laws. There is instead periodic tenancy, which exists when assured short-hold tenancy that has statutory fixed end date of minimum six months is continued after the minimum or agreed period. *Ibid.*

⁵⁵ Bååth, Olivia, *Tenant's Rights Brochure in Sweden*, in MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 816-817 (Schmid, Christoph. U., and Dinse, Jason, R. eds., 2014), available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf> (last visited Mar. 16, 2020).

⁵⁶ See Hafida, Bounjoui & van Veen, Menno, *Tenant's Rights Brochure in the Netherlands*, in MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 589 (Schmid, Christoph. U., and Dinse, Jason, R. eds., 2014), available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf> (last visited Feb. 16, 2020).

⁵⁷ *Ibid.*

⁵⁸ Wakabayashi, *supra* note 14, at 446.

⁵⁹ Cornelius, *supra* note 24, at 324. However, if the landlord lives in the same dwelling with the tenant, the minimum notice period is twelve months. *Ibid.* See also Davies, Bill, *et al*, *Lessons from Germany: Tenant Power in the Rental Market*, Institute for Public Policy Research (IPPR) Report, (2017), pp. 14-15, <https://www.ippr.org/files/publications/pdf/lessons-from-germany-jan17.pdf> (last visited May 22, 2020).

⁶⁰ *Ibid.*

Ireland, an invalid notice of termination results in turning the tenancy into Part 4 Tenancy, which has a life of three and a half years renewable every four years.⁶¹ Further, proceeding on an invalid notice carries criminal liability for the landlord.⁶² In France, if the notice to quit is not made as per the requirements of the law, it becomes void and the lease is renewed for the same period (3 or 6 years).⁶³ In Switzerland, when the requirements of serving notice are not met, termination becomes void.⁶⁴ The rationale behind such robust rules on notice is the protection of tenure security to tenants.⁶⁵

In Ethiopia, the pertinent provision of the Civil Code on notice reads as follows:

Art. 2966. Termination of lease for indeterminate period

- (1) *Where the contract of lease has not been made for a determinate period, notice may be given by the lessor to the lessee or by the lessee to the lessor.*
- (2) *In such case, the contract shall terminate on the day when, under the contract or the law, the second term of rent becomes or would have become exigible, had notice of termination not been given.*⁶⁶

Pursuant to Article 2966(1), the lessor who wishes to terminate an indeterminate period lease has the right to do so by serving notice to the lessee. It is also true that notice of termination can be served anytime irrespective of the duration of the lease. In other words, whether the lease has been in place for a month, six months or more is

⁶¹ Jordan, Mark, *Tenant's Rights Brochure in Ireland*, in MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 379 & 389 (Schmid, Christoph. U., and Dinse, Jason, R. eds., 2014), available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf> (last visited May 26, 2020)

⁶² *Ibid.*

⁶³ Cornette, Fanny, *Tenant's Rights Brochure in France*, in MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 293 (Schmid, Christoph. U., and Dinse, Jason, R. eds., 2014), available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf> (last visited Apr. 15, 2020).

⁶⁴ Wehrmüller, Anna, *Tenant's Rights Brochure in Switzerland*, in MY RIGHTS AS TENANT IN EUROPE: TENANCY LAW AND HOUSING POLICY IN MULTI-LEVEL EUROPE 838 (Schmid, Christoph. U., and Dinse, Jason, R. eds., 2014), available at: <https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf> (last visited May 26, 2020)

⁶⁵ See Schmid, *supra* note 12, at 10-11, 18. See also Yee, *supra* note 19, at 48.

⁶⁶ The authoritative Amharic version of Article 2966 reads as follows:

ላልተወሰነ ጊዜ የተደረገ የኪራይ ውል ስለ ማለቅ

1) የኪራይ ውል የተደረገው ላልተወሰነ ጊዜ እንደሆነ አክራቶ ተከራዩን ለማስታወቅ ወይም ተከራዩ አከራዩን ለማስታወቅ ይችላል።

2) አንዲህ በሆነ ጊዜ ውሉ አለቀ የሚባለው በኪራይ ውል ወይም በሌላ ማሰሪያ ተከታዩ የኪራይ ዘመን ዋጋ በሚከፈልበት ቀን ወይም ውል ስለ ማለቅ ማስታወቁን ባይሰጥ ኑሮ ኪራይ ሊከፈልበት ይገባው በነበረበት ቀን ነው።

irrelevant.⁶⁷ Further, showing any cause, let alone just cause, is not required under the Civil Code unlike in many jurisdictions.

Article 2966(2) sets some subtle rules. The important rule is the one on the duration of the notice period, which is set in an obscure manner. The phrase in Article 2966(2): "... the contract *shall terminate on the day when ... the second term of rent ... would have become exigible*, had notice of termination not been given" determines the day the lease terminates. (Emphasis added). Here, the phrase 'the second term of rent' refers to the next term of rent or the next rent due date.⁶⁸ Accordingly, an indeterminate period lease terminates on the day when the next rent becomes due. The question then is when does the next rent become due? Article 2966(2) does not tell when the next rent becomes due and hence it does not provide the exact date on which the lease terminates. Rather, Article 2966(2) aligns the date of termination with the rent due date which is governed by Article 2951. Under Article 2951(1), the rent due date is determined by the agreement of the parties or by the law in the absence of an agreement. In this regard, the law prioritizes the principle of freedom of contract. Accordingly, the parties can agree for rent to be paid weekly, monthly or quarterly.⁶⁹ If, for instance, the parties agreed for rent to be paid weekly, pursuant to Article 2966(2), the lease terminates at the next rent due date which is a week after. If rent is paid at the beginning of each month, then the lease terminates at the beginning of the next month if notice of termination is served. However, if an indeterminate period lease agreement fails to fix the rent due date, the law determines it to be paid at the end of each month.⁷⁰ In this case, the lease terminates at the end of the next month when notice of termination is served. This rule implies there is a period of time the lessor has to wait before the lease terminates. This period is tied to the rent due date, i.e., to the time the rent is paid.⁷¹ If rent is paid weekly, the lessor has to wait for a week for the lease to terminate, and if rent is paid monthly, the lessor has to respect a month to terminate the lease.

⁶⁷ Ethiopian residential law does not thus provide minimum lease duration.

⁶⁸ The prevailing Amharic version uses the term “ተከታዩ የኪራይ ዘመን ዋጋ የሚከፈለበት ቀን”.

⁶⁹ Ethiopia does not have specialized institution to gather detailed data on rental housing. However, from personal observation it is possible to conclude that rent is commonly agreed to be paid monthly.

⁷⁰ Civil Code, Art. 2951(2).

⁷¹ Still, Article 2966(2) is not clear as to when notice should be served. If for instance rent is paid at the beginning of each month, can the lessor give notice at the middle of the month or on the last week of the month or should it always be served at the beginning of the month so that the lease can terminate at the beginning of the next month? In some jurisdictions, the notice period is counted from the day notice is served irrespective of the rent due date. However, in Germany, notice must be given within the third working day of each month. The position of our law seems that notice must be given at the rent due date so that it can terminate at the next rent due date. This would, however, make the lessor to wait until the rent due date to serve notice.

The period the lessor has to observe before the lease terminates is what is commonly called a period of notice. Although it is implicit, Article 2966(2) talks about a period of notice. The use of the word 'shall' in Article 2966(2) means that observing a period of notice is a mandatory requirement to terminate an indeterminate period lease. Accordingly, the lessor cannot terminate an indeterminate period lease without serving notice period to the lessee. As discussed above, the duration of the mandatory period of notice is equivalent in duration to the rent due date.

This line of interpretation is also supported by Article 2967(1 & 2). It states that the new acquirer of a leased house who has the right to terminate the lease "...shall observe the period laid down in Article 2966(2) ... [a]ny stipulation to the contrary shall be of no effect." (Emphasis added). The period Article 2967 states unambiguously is the period of notice the new acquirer has to wait before he terminates the lease of the newly acquired house. As discussed above, the notice period is equal in duration to the rent due date, i.e., if rent is due monthly, then the period of notice is one month. Therefore, Article 2966(2) deals with a mandatory period of notice for the termination of an indeterminate period lease.

Under general contract law, there is a similar rule regarding contracts for an undefined period. Article 1821 states: "[w]here a contract is made for an undefined period of time, both parties may terminate it on notice." One can note the similarity in wording between Article 1821 and Article 2966(1), particularly, in the use of the word 'may'. However, contract law is clearer on the period of notice and its mandatory nature. Article 1822, which is captioned as 'period of notice' states:

- (1) *The party who terminates a contract shall comply with legal or customary periods of notice.*
- (2) *Where the period of notice is not fixed by the law or by custom, it shall be reasonable having regard to the circumstances.*

In both sub-articles, the word 'shall' is used, which signifies that serving a period of notice is a mandatory requirement or a prerequisite to terminate a contract made for an undefined period. It also states that when no law or custom fixes a period of notice, a reasonable period of notice must be served having the circumstances into account to terminate a contract of an undefined period. In any case, a notice period is a prerequisite to terminate a contract of an undefined period. Although Article 2966 is not explicit regarding the period of notice as Article 1822, the thorough reading of the provision reveals that notice period is a mandatory requirement too.

In the case at hand, the Cassation Bench ruled to terminate the indeterminate period lease between the parties in the absence of notice. The Cassation Bench clearly stated that serving notice is a right but not a mandatory requirement for the termination of such a lease. The Cassation Bench seems to have reached this ruling by taking the phrase in Article 2966 (1) "... notice *may* be given by the lessor to the lessee ..." on its face.⁷² It is true that in legal language, the word 'may' does not imply a mandatory requirement or a precondition; it rather shows an option for the doer. The Cassation Bench seems to have taken this literally to conclude that serving notice is not a mandatory requirement to terminate the indeterminate period lease.

This writer, however, argues that the word 'may' in the phrase "... *notice may be given by the lessor to the lessee ...*" in Article 2966(1) is understood by the Cassation Bench out of context. The contextual and logical reading of Article 2966(1) shows that what is put as an option or choice by the use of the word 'may' is not whether or not to serve notice to terminate an indeterminate period lease. The choice is whether to continue with the indeterminate period lease or to terminate it. As a lease for an indeterminate period does not have a fixed end date, the law gives the lessor (or the lessee) the right to decide on the end date of the lease. The word 'may' signifies only this option. Once the lessor opts to terminate it, then serving notice is not an option. In other words, serving notice to the lessee after the lessor exercised the right to terminate the lease is not a choice left for him to make; it is a mandatory requirement that cannot be escaped.

The expression used in Article 2966 can be contrasted with that in Article 2965 which deals with termination of a lease for a determinate period. Article 2965 states: "[a] contract of lease made for a determinate period shall terminate as of right on the expiration of the period agreed upon without the necessity of giving notice." Accordingly, a determinate lease terminates out rightly at the end of the agreed term without the need to serve notice. Article 2965 explicitly spells out that notice is not necessary to terminate a fixed-term lease. Similarly, if notice were not considered as a necessary precondition in Article 2966 too, it would be put in such an explicit manner as in Article 2965. The wording in Article 2966 is rather different and does not state that notice is not necessary or mandatory to terminate an indeterminate period lease.

Furthermore, while interpreting Article 2966, the Cassation Bench should have taken into account the nature of an indeterminate period lease itself. As discussed above, an indeterminate term lease is a type of lease that has no fixed end date the parties knew in advance. Hence, the decision of the lessor to end the lease and the date on which it has

⁷² Note that the Cassation Bench has not sufficiently reasoned out why serving notice is not a mandatory requirement.

to be ended has to be communicated to the lessee by giving advance notice. In the absence of such notice, the lessee cannot know the decision of the lessor to terminate the lease and the date to vacate the house. The nature of indeterminate term lease makes serving notice to have no substitute to terminate the lease.⁷³ The decision of the Cassation Bench to terminate the indeterminate period lease without notice has thus failed to consider this fact.

The Cassation Bench should have taken into account the purpose of serving advance notice as well. Advance notice enables the lessee to prepare for the eventuality of moving out of the rented home.⁷⁴ The lessee needs adequate time to find a suitable replacement home and to pack and move out.⁷⁵ Thus, the lessor should not only be required to give notice but also to give notice period that is adequate in duration to do all those activities. The requirement of a period of notice is a safeguard to lessees from arbitrary removal by the lessor. It aims to provide some degree of tenure security to lessees who are considered as the weaker party in the relationship.⁷⁶ The Cassation Bench's interpretation of Article 2966(1) that notice is not mandatory to terminate an indeterminate period lease and evict the lessee is against this purpose of notice.

A related issue is how the Cassation Bench understood notice. In rejecting Tadele Abebe's argument that he should not be evicted without notice, the Cassation Bench reasoned: "nearly a year has passed since the respondent was sued to leave the house and until only the First Instance Court made its decision on the case. Hence, the argument of the respondent that he should not leave the house because he was not given advance notice is not acceptable". This means due to the length of time the lawsuit for termination of the lease has taken, the lessee cannot object termination on the absence of notice from the lessor. This implies that the lessee was informed of the decision of the lessor to terminate the lease via the lawsuit. This begs the question of what constitutes notice and how notice should be served.

As discussed above, the cumulative reading of Articles 2966 and 1773(1) imply that notice of termination by the lessor can be written or oral communication containing demands of the lessor for termination of the lease. What is not clear from Article 2966 is how notice should be served. The special section on the lease of houses, the general section on the lease of immovable and the general contract law section of the Civil Code are devoid of rules on the issue. In other jurisdictions, such notice may be given

⁷³ The Private Rented Sector in the New Century, *supra* note 11, at 32.

⁷⁴ Victoria State Government, *supra* note 51, at 15.

⁷⁵ *Ibid.*

⁷⁶ For more on the rationale of tenant protection, see Yee, *supra* note 19. See also *Id.*, at 27.

through certified mail, by state agents or process servers, or hand-delivered.⁷⁷ Although Ethiopian residential lease law does not provide the manner of serving notice, the lessor can serve notice either in person or via registered mail.⁷⁸ It is, however, hard to conceive of a lawsuit as a means of serving notice to the lessee to terminate the lease. A lawsuit is a petition to a court of law for the determination of one's legal rights.⁷⁹ Notice, on the other hand, is a demand of the lessor served to the lessee, not to the court, for the termination of lease and eviction of the lessee. Normally, a petition to enforce one's right through court is taken after the required procedures including serving advance notice are taken. As discussed above, serving notice is a mandatory requirement in the absence of which indeterminate period lease cannot be terminated. Hence, the decision of the Cassation Bench to terminate the lease in the absence of notice based on the length of time the lawsuit brought for its termination has taken is erroneous and contrary to the concept and purpose of notice.

3.2 The Issue of Compensation

The second point worth commenting on is the issue of compensation decided by the Cassation Bench as the right of lessees. The Cassation Bench held that the lessee could only request compensation for the damage suffered because of termination of an indeterminate period lease without being given notice.⁸⁰ This conclusion of the Cassation Bench is however unfounded. Neither the special section on lease of house nor the section on lease in general of the Civil Code provides compensation as a remedy for termination made by the lessor without notice.⁸¹ In contract law, compensation is provided as a remedy for breach or non-performance of a contract.⁸² Termination of a contract is not a breach or non-performance of a contract. It is one means of extinguishing contractual duties.⁸³ Hence, the issue of damage cannot arise in case of

⁷⁷ Most countries in Europe and the Americas follow this approach. See, for instance, Cornette, *supra* note 63, at 293. In the U.S.A., there is what is called "process servers" who serve legal documents including notice to quit.

⁷⁸ To the writer's knowledge, there is no state agent or institution to serve notice in civil matters in Ethiopia. Under the Criminal Procedure Code, the police serve summons to suspects. Under Art. 364(1) of the Civil Procedure Code, notice can be served by affixing the same in some conspicuous place and by publication in newspapers.

⁷⁹ Black's Law defines a lawsuit as "[a]ny proceeding by a party or parties against another in a court of law." BLACK'S LAW DICTIONARY, *supra* note 45, at 4499.

⁸⁰ Para. 6 of the Decision; translation by the author.

⁸¹ See Civil Code Arts. 2945-2974 and Arts. 2896-2944, respectively.

⁸² See Civil Code Arts. 1771 & 1790 *cum* Arts. 1821 & 1822. Generally, Arts. 1771-1805 talks about non-performance while Arts. 1819-1824 deals about termination.

⁸³ See Civil Code Arts. 1806-1856.

termination when done as per the requirements of the law. The procedure required to terminate contracts for an undefined period is to provide a period of notice, which may be set by the law, custom or set reasonably in the absence of both.⁸⁴ A party can thus lawfully terminate a contractual relationship by providing the required period of notice with no duty to compensate whatever loss the other party may face due to discontinuation of the relationship. Now, the Cassation Bench interpreted Article 2966 that the lessor can terminate an indeterminate term lease without notice. If, according to the interpretation of the Cassation Bench, the law allows termination without notice, there is no reason for the lessor to compensate the lessee for any damage incurred because of a lawful act.

The Cassation Bench might have made this decision to protect lessees. However, lessees are better protected when arbitrary termination of a lease is prohibited by entrenching the right of lessees to a period of notice. The requirement of a period of notice is a procedural due process right widely employed to protect tenants in many jurisdictions.⁸⁵ Accordingly, the lessor must serve advance notice of termination to the lessee before a proceeding in a court of law for termination of the lease and eviction of the lessee is initiated.⁸⁶ Otherwise, the lease cannot be terminated and the lessee continues to live in the rented house.⁸⁷

Further, requiring lessees to prove damage suffered due to termination of the lease by the lessor without notice is burdensome for the lessees. It is costly, time-taking and gives the lessor more power over lessees.⁸⁸ Hence, it will not be effective protection. Moreover, compensation is requested after moving out, i.e., after the lessee suffered all the ordeals of removal from their rented home and after all the insecurity suffered. Pecuniary compensation may not always adequately compensate for the loss in this type of relationship. Some scholars argue that loss of a home can cause harm beyond economic harm for a home “represents things that money itself can't buy place, position, relationship, roots, community, solidarity, status.”⁸⁹ Thus, the decision of the

⁸⁴ Civil Code, Arts. 1821 & 1822.

⁸⁵ For instance, in the Netherlands, although compensation for termination is provided as a remedy in some cases, it does not include when termination is made by the lessor without notice. See Hafida & van Veen, *supra* note 56, at 589. For further reading on the issue, see Schmid and Dinse, *supra* note 17. It details tenant and landlord laws of European countries. See also Florence, *supra* note 17, at 831.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.* see also text accompanying notes 61-65.

⁸⁸ Yee, *supra* note 19, at. 40-41.

⁸⁹ Bell, H., Deborah, *Providing Security of Tenure for Residential Tenants: Good Faith as a Limitation on the Landlord's Right to Terminate*, 19 GA. L. REV. 483, 530 (1985).

Cassation Bench, which inappropriately sought to replace the requirement of notice with compensation,⁹⁰ weakens the protection afforded to lessees by the law.

4. Conclusion

In *Agency for Rented Houses v. Tadele Abebe*, the Cassation Bench ruled, by interpreting Article 2966(1), that serving advance notice by the lessor is not a mandatory requirement to terminate an indeterminate period lease. This is, however, a flawed judgment reached based on a wrong understanding of the provision. The contextual reading of Article 2966, the nature of the lease and the purpose of advance notice dictates that serving notice is a mandatory requirement to terminate an indeterminate period lease. Since an indeterminate term lease does not have an agreed end date, the end date has to be communicated via notice. What is optional under Article 2966(1) is whether to continue with the lease or to terminate it. Once the lessor decides to terminate the lease, serving notice is a mandatory requirement. Further, the duration of the notice period is fixed by Article 2966(2) to be equivalent to the rent due date which may be determined by the agreement of the parties or by the law. The requirement of notice is a procedural due process right that aims to protect lessees. It enables the lessee to prepare for the consequences of termination. However, the interpretation of Article 2966(1) by the Cassation Bench, which is binding on lower courts,⁹¹ erodes this right. Hence, reinstating the right of lessees to a period of notice through revision of the decision⁹² or legislation is of paramount importance.

* * *

⁹⁰ See Para. 6 & 7 of the Decision; translation by the author.

⁹¹ See Federal Courts Proclamation Re-Amendment Proclamation No.454/2005, *supra* note 3, Article 2(4).

⁹² *Ibid.*