THE AUTHORITY OF THE CUSTOMARY DOCUMENTS IN EVIDENCING THE ESTATE PROPERTY: BETWEEN THE RECOGNITION AND DENIAL

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Abstract:

Theestate property stability and evidencing methods need a clear estate law that determines the various legal positions and creates trust for the owner. This bring about vagueness about the authority of the customary documents as evidences of property, mainly after they had been recognized in specific periods and denied in others. Thus, we shall shed light on their authority before and after 01 January 1971.

Key words: *customary document; estate property; writing; official; signature.*

INTRODUCTION:

Generally, people aim at the stability of their estate property through different methods. Inthis regard, the right to exploit and use is not sufficient to achieve the stability because the user needs to prove property against the non-owners, and because the right to estate property must be evidenced for the justice according to the applicable law. The latter is vague in Algeria and witnesses overlaps due to the instability of the estate property law, mainly if the evidence is customary, not official, which is recognizedsometimes and denied some other times. Besides, legalpositions for specific persons emerge from one time to another, leading to the suspension of some positions and the rise of many disputes.

The customary documents had been fullyevidencing documents before 01 January 1971, when the colonizer administration wanted to steal the Algerian citizens' properties. Thenin the postcolonial period, the Algerian legislator found himself facing a contradictory estate situation that he made up for through denying the authority of any customary document issued after 01 January 1971 and shifting towards the official documents in evidencing the estate property. However, after this date, there had been some laws that implicitly recognized the authority of the customary documents, bringing about contradictions in the justice and instability in the properties.

Based on what was said, this paper tackles the limits of recognizing the customary documents as evidences through shedding light on their concept and validity conditions. Besides, we focus on their range regarding the phases when they were recognized and the persons who could be faced and objected with these documents. Moreover, we identify the frame of denying these documents, based either on the will of the legislator in the light of the applicable estate policy or on the will of the legally competent persons to deny the signature, argueabout unawareness, ask for the write check, or plea concerningfalsification. In so doing, we raise the following problematic, "to what extent can the customary documents evidence the estate property in the light of their recognition and denial by the Algerian legislator?" Then, we provide suggestions that shall strengthen the stability of the estate property evidencing and the acquired legal positions.

Chapter 01: The recognition of the customarydocuments:

The Algerian legislator attempted to determine the authority of the customary documents in his endeavor to set a stable estate system after the contradicting estate situation left by the colonial regime. In this context, he insisted on the potential of evidencing the estate property with a customary document dated before 01/01/1971. However, many documentscan be submitted to the judge as customarydocuments; therefore, the justice had to identify the range of this

recognition through explaining the legal concept of the customary documents and how to distinguish them from other documents.

Section 01: The concept of the customary documents

We cannot take the authority of the customary document for granted without defining it and its validity conditions.

First: Definition of the customary document:

The Algerian legislator did not define it, leaving the task to the legal jurisprudence. The latter defines it as a contract issued by private parties outside the intervention of the public official[1]. Besides, Abd al Hafidh Ben Abida defines it as the documents that are not issued by public official, with no need for any formal condition except the signature of the parties and a fixed date[2]. In addition, some define it as the contract issued by parties without intervention of the public official to avoid the taxes and the fees of the notary, and because of the lack of the documents that prove the estate property[3]. This confirms that the customary documents are not made by a public official, unlike the official ones.

Second: The conditions of the customary document validity:

Recognizing the authority of the customary document in the estate property requires writing and signature.

1. Writing: The customary document must include a writing that shows the purpose of the document; this is obvious. However, this writing has no conditions, as any expression that shows the purpose is an evidence for or against the signing party[4]. In this context, Article 323 Bis of the civil law provides that evidencing by writing arises from the sequencing of letters, descriptions, numbers, signs, or symbols with a comprehensible meaning regardless the tool that contains it and its parties[5]. This confirms the submission of the customary document that evidencesthe estate property to the absolute will in its writing, as the writing may take different forms and languages (unless stated otherwise),writtenbydifferent parties, and by different tools.

Moreover, since the aim is toevidence the property, the document must include the core information such as the parties, the estate, and the witnesses if possible[6]. The writing may be on paper or electronic. Thus, the Algerian legislator included the electronic writing as one of the forms to express the will, taking the form of algorithms during their input in the device using the input tools, such as the keyboard, and the retrieval tools like the central processing unit. After processing data, they are written on the output devices such as the screen, CDs, or printed papers[7].

2. Signature: When a party signs a document, he shows commitment to its provisions because the signature givesforceand a legal value to the document. Therefore, the signature is a tool set by the

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[1] Omar Alloui, the property and the estate system in Algeria (the estate), Vol. 07, Houma house, Algeria, 2013, p. 146.

[2] Abd al Hafidh Ben Abida, evidencing the estate property and the estate rights in rem in the Algerian law, Vol. 07, Houma house, Algeria, 2011, p. 77.

[3]ImadEddineRehaimia, the legal tools to evidence the private estate property in the Algerian law, PhD thesis, Faculty of Laws, University of MouloudMaameri, TiziOuzou, Algiers, 2014, p. 28.

[4] The writing manual in evidencing, URL: http://www.droit-dz.com/forum/threads/3544/

[5] Article 323 Bis of Law 05/10 of 20 June 2005 supplements and complements Order 75/58 of 26 September 1975, official gazette No° 44, p. 24.

[6]BrahmiSamia, evidencing the private owned estate sale in the Algerian law, Magister thesis in the private law, Faculty of Laws, University of Mentouri, Constantine, 2008, pp. 14-15.

[7] Abd al Karim Haddar, the principle of evidence by writing in the light of the electronic documents, Magister thesisin the private law, University of Algiers 01, 2014, p. 32.

group for a person to show the will and approval of a specific writing and turn it into a legal behavior[8]. It is a very personal sign to show the will of the party[9]. In this context, the Algerian legislator limited the signature to the signature and the fingerprint, and excluded the stamp. Currently, the electronic signature is a new form defined by the French law as the set of technical procedures that allow identifying the party and accepting his commitment tothe provisions[10]. On the other hand, the Algerian legislator integrated the electronic signature through amending the civil law by Law 05/10 without identifying its concept. In this regard, he just recognized it as the conventional signature without tackling its own concepts in Article 327 of the civil law.

Section 02: The range of recognizing the authority of the customary document:

The range can be identified through the phase where the Algerian legislator recognized these documents and the parties that can be faced with them.

First: The temporal range of the authority of the customary document:

This document is authoritative within a limited phase that does not exceed 01/01/1971.At that time, no form was needed to transfer and evidence the estate property. Thus, the customary documents were authoritative to embody the principle of consensus that was inherited from the colonial period, mainly in the light of the Algerian legislator's intervention through:

-Decree 80/210 of 31/09/1980: It supplements decree 76/63 of 25/03/1976 on the establishment of the estate register, which brought about a practical issue about the possibility of registry of the customary contracts with a fixed date in the regionallycompetent estate department. In this regard, Article 88 provides that it is not possible to make registry in the estate department in case of the absence of a prior or comparativeregistry of the contract, the judicial decision, or the transfer certificate after death, to prove the right to use[11]. This is expressed by the rule of the additional effect of the registry (the prior registry principle), which means that the real estate official may register any document that transfers the estate property, as long as it does not have a fixed asset in the set of the estate cards that proves the right of the last user of the estate. In this context, the estate property is transferred in a clear way that allows identifying all the previous owners[12]. Article 03 of Decree 80/210, which supplemented Article 89 of the Decree 76-63, abolishes the 1st paragraph of Article 88 when making the primary procedure of the estate rights in rem registry in the estate register that complements according to Articles 08 to 18 of the Decree, and when the last owner is resulting from a bond that acquired a fixed date before 01 March 1961[13].

Thus, the customary contracts before 01/03/1961 gained authority in evidencing and were exempted of the prior registry, what affected the judicial application. In this context, the courts consider the validity of the customary contracts after submitting a certificate from the town hall that proves that the estate is not part of the Agricultural Revolution Fund or the estate reserves[14].

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[8]Iyed Mohamed Aref Ata Sadah, the authority of the electronic documents in evidencing (comparative study), Magister thesis in the private law, Faculty of the Higher Studies, National University of the Success in Naples, Palestine, 2009 p. 60.

[9] Ammar Alloui, op. cit., p. 146.

[10] Abd al Karim Haddar, op. cit., p. 53.

[11]Article 88 o Decree 76/63 supplemented and complemented on 25/03/1976 on the estate register, official gazette No° 30 of 13 April 1976, p. 508.

[12] Laila Zerrouki& Omar HamdiBacha, the estate disputes, Houma house, Algeria, 2015, p. 243.

[13] Article 03 of the decree 80/210 of 13/05/1980 that supplements and complements Decree 76/63 on the establishment of the estate register, official gazette 38 of 15/05/1980, p. 1378.

[14]HamdiBacha Omar, the protection of the private estate property, Vol. 07, Houma house, Algeria, 2009, pp. 20-21.

2. The Executive Decree 93-123 of 19 May 1993:

In order not to deprive the holders of customary contract with a fixed date from evidencing their estate properties, the Decree confirms the authority and validity of the customary contracts before 01 January 1971 without resort to the competent justice. In this line, it is sufficient to request a deposit contract that shall be registered in the estate department. It must include all the estate, the parties of the contract, and the witnesses to facilitate the regulation of the estate card[15]. Based on this, the customary contracts are exempted of the prior registry that was provided for by Article 88 of the Decree 76/63[16].

Hence, the customary contracts with a fixed date before 31 January 1971 are valid and raise effects. According to the civil law, they acquire a fixed date starting of their registration, from proving their contents in another contract issued by a public official, from the legalization by a competent official, or from the death of one of the signers or writers of the contract[17].

Second: The range of the authority of the customary document regarding the persons:

The legislator recognized the authority of the customary document in a specific period with certain conditions. Thus, we must question the relation of the authority of the document with the legal position of the person to be faced with the document.

1. The authority of the customary document for the parties of the document:

Article 1323 of the French civil law provides that any party faced with a customary document must recognize it or deny his writing and signature. On the other and, Article 327 of the Algerian civil law provides that the customary contract is issued by the parties who write or fingerprint it, as long as they do not deny the attribution[18]. This confirms that the party faced with the document must explicitly or implicit recognize it so that it gets authority like the official documents in proving the estate property between the contracting parties, until proving the opposite regarding its issuance by its signers, or regarding the validity of the mentioned details and events.

The authority of the customary document regarding its issuance by its signers: If the customary document is usedagainst its signer or writer who recognizes and does not deny it, the document is considered to be issued and signed by him. On the other hand, if he denies this, the party that uses the document for evidencing has to prove its issuance by the denying party[19].

The authority of the customary document regarding its events and details: If one of the parties explicitly or implicitly admits the events mentioned in the document, the paper gets authority and requires the parties that claim the opposite to prove their claims. However, this does not negate the possibility of contesting the content of the document, such as claiming that the sale was not paid; thus, the contester must prove his claims[20].

2. The authority of the customary document for the others:

The document parties may antedate or delay the date to avoid the Pualian action[21] by a debtor whose bond has a date before the date of the sale mentioned in the customary document. Thus, they antedate so that the sale becomes before the date of the debtor's document and, thus, cannot be contested. Or, they antedate so that the heirs do not claim the document was written during the deadly diseases. Or, they may delay it to hide the fact that one of the contractors was

[15]ImedEddineRehaimia, op. cit., pp. 30-31.

[16]HamdiBacha Omar, op. cit., p. 22.

[17] Fellah Soufiane, the practical issues in transferring the estate property, URL:https://www.asjp.cerist.dz/en/downArticle/141/2/1/6801.

[18] Article 327 of Law 05/10, op. cit.

[19]BrahamiSamia, op. cit, p. 31.

[20] Ibid, p. 32.

[21] It is a case raised by the debtor against the indebted to prove the nonpayment.

minor during the contract[22]. To avoid this, the Algerian legislator protected the others who are faced by the customary documents by Article 328 of the civil law that provides that the customary contract has no authority on the others unless the date is fixed starting from: the date of its registration, the date of proving its content in another contract issued by a public official, the date of its legalization by a competent public official, or the death of one of the writers or signers of the contract.

This was confirmed by a decision from the supreme court on 20/05/2009 No° 483177 stating that the customary contract is an evidence between its parties regarding the object and date, and cannot be used against the others unless it has a fixed date[23]. However, the fixed date in the customary contract is not related to the general policy because if the other does not contest the date of the contract, the contract comes into force against him[24].

Chapter 02: Denying the authority of the customary documents:

The denial of the authority of these documents has started since 01 January 1971, when formal criteria had been introduced for the validity of the contract. In this regard, Article 12 of Order 70-91 on the notary profession provides that in addition to the contracts that must meet the official form, the contracts on transferring the estate or commercial or industrial shops must take an official form with the payment of the notary fees[25]. This shows that the estate contracts require official writing and form far from the customary writing. Hence, the customary contracts cannot be authoritative in the courts to prove the estate property, even with fixed date starting from 01 January 1971. Besides, the judge can automatically cancel the case regardless its phase because the formality is a key criterion after 01 January 1971 for the validity of the contract[26].

In this regard, the authority of the customary contracts in evidencing the property must stop starting from this date because they do not meet the legal requirements. However, the principle of contract discharge of the estate in the civil law as a general rule was not enshrined until 1988 by the issuance of Law 88-14 that supplemented and complemented the civil law[27], and transferred the content of Article 12 of Order 70-91 to Article 324 Bis of the civil law. Then, Article 29 of the estate orientation law provided that the private property of the estate and rights in rem is evidenced by an official contract subject to the rules of the estate registry[28].

Based on this, if the plaintiff submits a customary document at the court to request a judicial provision that finds for him, his request is refused because the customary behavior is null

[22] Abd al Razzak al Sanhouri, the median in explaining the new civil law, Vol. 02, the theory of commitment in general, evidencing- the effects of commitment, Vol. 03, legal publications of al Halabi, Lebanon, 2009, p. 199.

[23] Decision 483177 of 20/05/2009, journal of the supreme court, No° 1, 2009, p. 154.

[24]HamdiBacha Omar, the transfer of the estate property, Houma house, Algeria, 2013, p. 169.

[25] Article 12 of Order 70/91 of 15 December 1970 that came into force on 01 January 1971, on the notary law.

[26]ImadEddineRehaimia, op. cit., p. 33.

[27] Law 88-14 of 03/05/1988 complements and supplements Order 75-58 of 26 September 1975 on the civil law, official gazette 18 of 04 May, p. 749.

[28] Article 29 of Law 90/25 of 08/11/1990 on the law of the estate orientation, complemented and supplemented by Order 95-26 of 25 September 1995, official gazette 49 of 18 November 1990.

and has no ground[29]. In this context, despite the clear denial of the customary document, it has been subject for contradictingjudicial interpretationsin two phases, separated by the judicial decision of 18/02/1997.

1. The phase before the judicial decision of 18/02/1997:

Despite the attempt of the Algerian legislator to clarify the principle of denying the customary documents by Articles 324 Bis and 793 of the civil law, the justice did not adopt a stable attitude, mainly the judges of the commercial and marine chamber and the judges of the civil chamber. In this regard, Decision 108108 of 05/05/1995 by the civil chamber in the supreme court confirmed that when referring the two parties to the notary to finish the sale procedures, the judges have applied the law correctly and the indebted cannot claim the violation of Article 12 of Order 70/91 of 15/12/1970 that was for the public budget and the estate registryonly[30]. This shows the refusal of the officiality notion in transferring the estate property and the acceptance of the customary document, for:

***Practical reasons:** The owners, mainly in the internal regions, do not have documents that prove their property because of the colonial regime divided the private properties according to the heirs and sale provisions, and extended the state property through possession,confiscation[31], and restricting the transfer of the estate properties between the privates fearing the illegal privatization of public properties under the pretext of law[32].

***** **Legal reasons:** Paragraph 6 of Article 178 of Order 76/105 on the law of registration by the Supplementary Finance Law of 1983[33] allowed registering the customary contracts at the tax department after it had been limited to the official contracts only. This had been until 16 December 1991 when Law 91-25 on the Finance Law of 1992 abolished it. Thus, the customary contracts got a fixed date during that era, which enabled their holders to use them for evidencing, as the justice confirmed that the customary document is binding on its parties regarding the object and date, not the others unless it has a fixed date[34]. As for the customary contracts with no fixed date, Memorandum 1251 by the General Department of the National Properties confirmedon 29/3/1994 that their authority could be proved only by the justice[35].

2. The phase after the issuance of the judicial decision of 18/02/1997:

After the judicial attempt to end the contradiction between the commercial and civil chambers in the supreme court, which was confirmed by facing file 136156 on 18/02/1997 that stated that it is legally applicable that any optional sale, sale promise, or waiver of a commercial shop even based on a condition or issued by another contract, must be evidenced by an official document. In addition to the contracts that must have an official form according to the law, the contracts of transfer of estate property, estate rights, commercial and industrial shops, and any of

[29] Majid Khalfouni, registry of the estate behaviors in the Algerian law, Vol. 01, Houma house, Algeria, 2018, pp. 40-41.

[30] Order 108108 of 05/05/1995, unpublished.

[31]NacerEddineSaaidouni, studies in the estate property, the national institution for the books, Algeria, 1986, p. 57.

[32]ImadEddineRehaimia, op. cit., pp. 34-35.

[33] Law 83-03 of 25/06/1983 on the Supplementary Financial Law of 1983, official gazette 11 of 25/06/1983.

[34] Mohamed Laachache, the legal protection of the private property in Algeria, PhD thesis in Laws, University of MouloudMaameri, TiziOuzou, 2016, p. 257.

[35] Laila Zarrouki&HamdiBacha Omar, op. cit., p. 246.

their items must respect the official form. In case the contract is void, the two parties return to their pre-contract state[36].

Thus, there is a new phase thatshows an explicit denial of the authority of the customary documents and enshrines the officiality in the estate transactions to protect the rights of the contractors and the state that had so long been deprived of important fiscal revenues due to the customary contracts. Thus, the investment and the evidenced legal document make the basis of the future estate policy and the reason for the justice intervention[37], mainly after Order 75-74 of 12/01/1975 on land survey and the establishment of the estate register that requires the official contracts in accordance with Article 12 of the notary law. This is seen in Decision 197347 of 28/06/2000 that provided that the officiality is necessary in all the contracts of the estate property transfer according to Article 12 of Order 91-70 whose content is integrated in Article 324 Bis 1 and Article 16 of Order 47-75[38].

Thus, Decision 18/02/1997 showed a new notion that had never been discussed, as the judge had been abolishing the customary documents without tackling the situations of the parties. In this regard, if the customary documents do not have the force of establishing, amending, abolishing, or transferring the estate rights, all the estate transactions based on these contracts are void according to "the fruit of the poisonous tree" doctrine[39].Thus, the estate property right in a customary document may be claimed and recovered by the seller at any time.

Section 02: The denial of the authority of the customary document based on the will of the litigants:

The customary document may include all the legally required elements such as writing and signature, but has no authority as it can be denied by denyingthe signature, claiming unawareness, asking for write check, or making a plea concerning falsification.

First: denying the signature: If the defendant explicitly denies his handwriting or signature, he denies the authority of the whole or part of the document[40]. This confirms the necessity of existence of the customary document and its recognition to prove the estate property. This is confirmed by the decision of the supreme court 85535 of 27/05/1992 that states that "the customary contract is legally valid as long as its signer or writer does not deny his handwriting or signature. Because the contester in this case denies the sale by the customary contract and just speaks about the debt, the judges who obliged the litigants to discharge the sale in the official form have turned a blind eye towards Article 323 Bis and did not look for the truth. Thus, their ruling is void"[41]. Consequently, denying the authority of the customary document is not enough to abolish the contract. However, there are cases where the denier of the signature may plea concerning falsification, such as when the signature is legalized by a competent notary because the legalization grants thedocument an official nature[42].

Second: plea concerning the unawareness: The authority of the customary document may be abolished if the heirs of the signer make an oath confessing that they do not know that the

[36] Decision 136156 of 18/02/1997, the judicial journal, No° 01, 1997, p. 10.

[37]SaoussenBousbiaat, the efficiency of the customary contracts with fixed date in cleaning the estate property in Algeria, journal of the human sciences, No° 43, June 2015, p. 214.

[38] The decision of the estate chamber 197347 of 28/06/2000, journal of the judicial jurisprudence, 2004, special issue, Vol. 02, p. 258.

[39]Moussouni Abd al Razzak, the protection of the estate property right in the Algerian law, Magister thesis, Faculty of Laws, University of AbiBakrBelKadi, Telemcen, 2008, p. 56.

[40]BrahmiSamia, op. cit., p. 30.

[41] Decision 85535 of 27/05/1992, the judicial journal of 1994, No° 03, p. 14.

[42]ImadEddineRehaimia, op. cit., p.24.

handwriting or signature is made by the party from which they inherited the right[43]. This is confirmed by the civil chamber in Decision 33054 on 06/02/1985 that states, "The customary document isconsidered as legally issued by its signer as long as he does not deny his handwriting or signature. As for his heirs, they may swear they do not know that the handwriting or signature is made by the party from which they inherited the right. Thus, ruling against this principle violates the law. Because the contester in the present case submitted a customary contract of buying the estate under dispute from his dead father, the judges who decided to divide the estate without considering the customary contract and without asking the oath of the heirs, who denied their father's handwriting or signature, have violated the law. Thus, the contested ruling is void"[44].

Third: write check: It takes place at the civil court to confirm the validity of the writing and the signature in the customary documents and end the potentials of denial. It may be a secondary or original case according to the new administrative and civil law, whose paragraph 3 of Article 164 provides that it is possible to submit a case of write checkof the customary document as an original case at the competent court[45]. In both cases, the judge orders making the write check as required by the case through comparing the document, hearing witnesses, or seeking the expertise of an expert. However, if the case is submitted to the penal justice, the civil judge must suspend the case until the settlement of the public case[46].

Fourth: plea concerning falsification: The official document issued by a notary may be contestedfor falsification even though it has all the guarantees that make it uncontestable. In this regard, the customary documents may be contestedconcerning falsification because they are less authoritative and are not strong until proving the opposite[47]. As a result, what is plea as to falsification? And what is its effect on denying the authority of the customary document?

1. Plea concerning falsification of a customary document: This can take place through the civil or penal justices.

***Plea concerning falsification at the civil justice:** This may take place through a secondary or original case.

- **The secondary falsification case:** It is raised through submitting a memorandum to the judge who considers the original case. The memorandum includes the evidences of the defendant to prove the falsification[48]. The litigants are the contractors. This case may even concern the official documents, unlike the write check, which concerns only the customary documents.

- The original falsification case: The previous civil procedures law did not explicitly tackle the possibility of plea concerning falsification in an original case. Rather, Article 176 of Law 09-08 on the administrative and civil procedures states that if the customary document is subject to an original case of falsification[49], the aspects of falsification must be shown to meet the criteria of the cases, respecting the other procedures of the write check that suit the nature of the potential of estimating the plea concerningfalsificationin the original case.

*** Plea concerning falsification at the penal justice:** Submitting the case to the civil justice revolves around the validity of the customary document while to the penal justice aims at

[43] Abd al Hafid Ben Abida, op. cit., p. 77.

[44]The decision of the civil chamber 33054 of 06/02/1985, the judicial journal of 1992, No° 04, p. 16.

[45]Paragraph 03 of Article 164 of Law 09-08 of 25 February 2005 on thee administrative and civil procedures, official gazette 21 of 23 April 2008, p. 16.

[46]Jamel Nejimi, the crimes of falsification in the Algerian penal law, Houma house, Algeria, 2013, p. 292.

[47]Ammar Alloui, op. cit., p. 147.

[48] Article 180 of Law 09-08, op. cit.

[49] Article 176 of Law 09-08, op. cit.

criminalizing and sanctioning the commissioner of falsification. Thus, the falsification of the customary documents is a crime if it meets theseconditions:

*** The material condition: It includes the following elements:**

- The customary document: The document is any written material that conveys a notion or meaning from one person to another, regardless its substance, type, language, and signs[50]. In this regard, the falsificationcrime must be about a customary document, not an official, commercial, or administrative document that shows a right[51] because it is a document by natural persons far from any public official.

- Change of the truth: The consensual addition or deletion from a customary document by its signers to correct a statement is not falsification, as it does not change the truth[52]. Besides, damaging the value of the document such as deleting the writing is not falsification[53]. In this regard, falsification according to the law is:

- Imitating the writing or signature.
- Adding conventions, texts, commitments, or conclusions to the document after its signature.
- Adding or deleting the conditions, recognitions, or events provided by the document.
- Personification[54].

- Causing harm: Changing the truth is falsification if it causes harm or the possibility of harm physically or morally[55]. Decision 559251 of 22/10/2008 by the penal justice provided that the confirmation of the material criterion in falsification raises the harm, even the moral[56]. Thus, the harm is necessary.

*** The moral criterion:** We cannot imagine a falsification crime of a customary document for no penal purpose and knowledge about the crime[57] to change the truth and prove a wrong event[58]. Besides, we cannot imagine committing falsification without intention of fraud that manifests in the use of the forged documents[59].

2. The effect of plea concerning falsification in the authority of the customary document:

The effect takes a complimentary path regarding the validity of the document and the sanction against the commissioner of the falsification. In this regard, the civil judge may refuse the case of falsification if it is not grounded, keeping the authority and evidencing force of the document, or may deny the validity of the document and ask its deletion or amendment. The ruling

[50] JamelNejimi, op. cit., p. 393.

[51] Abd al Aziz Saad, the crimes of falsification, dishonesty, and use of forged documents, Vol. 06, Houma house for publication, Algeria, 2013, p. 52.

[52] Ahmed Mohamed Saleh, the scientific problematic of falsification in the Egyptian judicial system, journal of law and business, Vol. 08, August 2016, p. 150.

[53] Mohamed SobhiNedjm, explaining the penal law (private section), Vol. 06, university publications office, Algeria, 205, p. 31.

[54] Article 216 of Law 06-23 of 20/12/2006 supplements and complements Order 66/156 of 08/06/1966, official gazette 84 of 24/12/2006, p. 21.

[55] Mohamed SobhiNedjm, op. cit., p. 23.

[56] Decision of the penal chamber 559251 of 22/10/2008, journal of the supreme court, 2008, No° 02, p. 373.

[57] Abd al Aziz Saad, op. cit., p. 54.

[58] Ahmed Mohamed Salah, op. cit., p. 158.

[59] JamelNejimi, op. cit., p. 527.

must be written on the margin of the falsified document[60]. As for the penal judge, he rules a sanction of 01 to 05 years of prion with a monetary fine between 20000 to 100000 DA, in accordance with Article 219 of the penal law[61].

CONCLUSION:

Upon this study on the authority of the customary documentsin the estate property, we discussed the concept, conditions, and range of the customary document regarding the persons and phases, and its denial by the will of the legislator or the litigants. Findings show that:

1. The customary document is made by its parties far from the public official. It draws its authority from the writing and signature. It has no authority on the others unless it has a fixed date, in accordance with Article 328 of the civil law.
2. The recognition of the authority of the customary document went through two phases. The 1st started with Decree 80/210 of 13/09/1980 requiring the resort of the parties to the justice to evidence the authority of the document while the 2nd started with the Executive Decree 93-123 of 19 May 1993 that insisted on the authority of the customary document with a fixed date without resort to justice.
3. The recognition of the authority of the customary contracts by the Algerian legislator was during a limited period until the issuance of the old notary law 70/91 that came into force on 01 January 1971, when the denial of the authority had started.
4. Despite the explicit denial of the authority of the customary contract and the adoption of the officiality principle after 01 January 1971, some practical issues and laws that implicitly recognize the authority of the customary document hindered the application of this denial until the issuance of the judicial decision 136156 of 18/02/1997 that insistedon the officiality in the estate transactions.
5. The Algerian legislator allowed denying the authority of the customary document through denying the signature and the writing, claiming unawareness by the heirs, asking for write check, and arguing with plea concerning penal and civil falsification.

Basedon what was said, we recommend that:

1. It is necessary to coordinate the estate, financial, and the civil law in determining an attitude towards the authority of the customary documents issued before 01 January 1971.
2. The jurisprudence must be unified in the cases about the authority of the customary documents.
3. The fiscal laws must be amended and the costs of estate registration must be reduced to encourage people to make official contracts and spread stability in the state transactions, mainly that the use of the customary contracts is still common in the underdeveloped regions.
4. It is necessary to enact laws that bridge the legal gaps and the practical issues resulting from the recognition of the customary documents in a given period and its denial in another.

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