



# UNIVERSIDAD ANDINA DEL CUSCO

FACULTAD DE DERECHO Y CIENCIA POLÍTICA

ESCUELA PROFESIONAL DE DERECHO



**Modalidad de Titulación con Trabajo Académico:**

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**ANÁLISIS DE EXPEDIENTES:**

**EXPEDIENTE CIVIL: PRESCRIPCIÓN ADQUISITIVA  
DE DOMINIO**

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**Para optar el título de Abogado**

**Bachiller:**

**JOSE BERNARDO MAMANI CCASA**

**Cusco-Perú**

**2019**



## PRESENTACIÓN

Señores Miembros del Jurado Examinador, tengo el alto honor de presentarme ante su distinguido colegiado, con el propósito de sustentar el presente informe para optar el Título de Abogado bajo la modalidad de TITULACIÓN CON TRABAJO ACADÉMICO, con el análisis del Expediente Civil N° 00457-2015-0-1001-JR-CI-02 sobre PRESCRIPCIÓN ADQUISITIVA DE DOMINIO.

En la primera parte de mi sustentación, expondré en forma resumida el presente caso, haciendo alusión a las principales instituciones sustantivas y procesales que contiene un proceso tramitado en la vía civil; en la segunda parte, comentaré, analizaré y criticaré, de ser el caso, el íter procesal y la forma en que se ha desarrollado el proceso materia de sustentación. El texto que presento a continuación es un breve reconocimiento panorámico de los elementos centrales del derecho material y procesal que se desarrolla en este expediente.

Al sustentar el presente trabajo, aspiro lograr una calificación aprobatoria, conforme a las apreciaciones y argumentos que serán expuestos en su oportunidad; teniendo siempre presente que el Derecho como ciencia alcanza un desarrollo permanente y dinámico.

De forma anticipada, quedo muy agradecido por vuestra predisposición a permitirme sustentar la presente, así como el tiempo dedicado a examinar el mismo.

El Bachiller.



## ABSTRACT

The first thing we must point out that the property located on Hospital Street N° 787, of the district, province, and department of Cusco, was acquired by the plaintiff's parents according to the public deed of division and partition held between the siblings: Delfina CRUZ CRUZ Vda. De GUEVARA, Celia ESCALANTE CRUZ de CHOQUE, and José Humberto CRUZ CRUZ, the latter is the father of the now plaintiff. In this Sense, the parents of the plaintiff today making use of their powers as owners, transfer ownership of a part of the property of the Hospital Street N° 787, sub-lot "A", in favor of the son Jaime Alcides CRUZ PINARES (plaintiff), on the basis of the second clause of the public deed in inheritance.

In the same order of the ideas, we must mention that on August 6, 2011, the plaintiff signed with his sister Hilda Bernardina CRUZ PINARES the swap public deed testimony, for which they exchanged their properties reciprocally, that is, the sister transfers sub-lot 787 "B" with an area of 99.00 m<sup>2</sup> valued at S/. 5.000,00, while the plaintiff transfers sub-lot "A", with an area of 98.50 m<sup>2</sup>, valued at S/. 22.441,32.

That the plaintiffs indicate that they are the owners of the property of *Litis* located in Hospital Street No. 787, together with the brothers of Jaime Alcides CRUZ PINARES (plaintiff), manifest possession in a peaceful, public, continuous, and uninterrupted manner for more than 19 years (August 6, 1994), in merit to which they made necessary and useful improvements, in order to prove continuous, peaceful and public possession.

It is also important to note that the plaintiff at the time of filing the demand for acquisition of ownership, the plaintiff it makes it on the swapped property, that is, sub-lot 787 "B". It should be noted that the property has been owned since the date of the swap contract (approximately four years ago).

We can find that the plaintiff directs the lawsuit against the legal heirs of José Humberto CRUZ CRUZ and Celia PINARES LUCERO de CRUZ, who would have the quality of CO-OWNERS of the parent property, which forces us to review the corresponding legislation as well as the jurisprudence in this respect,



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**ANÁLISIS DE EXPEDIENTES:**

**EXPEDIENTE CONSTITUCIONAL: ACCIÓN DE  
CUMPLIMIENTO**

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**Para optar el título de Abogado**

**Bachiller:**

**JOSE BERNARDO MAMANI CCASA**

**Cusco-Perú**

**2019**



## PRESENTACIÓN

Señores Miembros del Jurado Examinador, tengo el alto honor de presentarme ante su distinguido colegiado, con el propósito de sustentar el presente informe para optar el Título de Abogado, bajo la modalidad de TITULACIÓN CON TRABAJO ACADÉMICO, con el análisis del Expediente Constitucional N° 01132-2016-0-1001-JR-CI-02 sobre ACCIÓN DE CUMPLIMIENTO.

En la primera parte de mi sustentación, expondré en forma resumida el presente caso, haciendo alusión a las principales instituciones sustantivas y procesales que contiene un proceso tramitado en la vía constitucional; en la segunda parte, comentaré, analizaré y criticaré, de ser el caso, el íter procesal y la forma en que se ha desarrollado el proceso materia de sustentación. El texto que presento a continuación es un breve reconocimiento panorámico de los elementos centrales del derecho material y procesal que se desarrolla en este expediente.

Al sustentar el presente trabajo, aspiro lograr una calificación aprobatoria, conforme a las apreciaciones y argumentos que serán expuestos en su oportunidad; teniendo siempre presente que el Derecho como ciencia alcanza un desarrollo permanente y dinámico.

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El Bachiller



## ABSTRACT

That the case under study, it can be noted that the plaintiff Hugo CUSI VARGAS, is an active worker of the Cusco-South Health Service Network, and jointly that other workers requested payment of 30% of the differential bonus based on compensation total, according to Legislative Law No. 276 and Supreme Decree No. 005-90-PCM, request that was protected and recognized its liquidation through the Administrative Act, which is the subject of compliance action, admitted processing the claim, notified this and acquitted the transfer of the same, by Resolution No. 07, dated August 8, 2016, the records have been put to issue a sentence. Thus, in the considering part, and the plot line described in article 66 of the Constitutional Procedural Code, the object of this type of process will be to order the reluctant official or public authority: 1) to comply in each complete case, to a rule legal, or execute a firm administrative act. 2) expressly pronounce when the legal rules order you to issue a resolution or issue a regulation, it is also necessary to mention that for compliance with the legal standard, the execution of the administrative act and the order of issuance of a resolution are enforceable through a Compliance Process, this must have the minimum common requirements: a) be a valid mandate, b) Be a true and clear mandate, c) not be subject to complex controversy or disparate interpretations, d) be inescapable and mandatory compliance, e) to be unconditional on the other hand, it was noted that the amount whose payment the plaintiff sought was derived from the issuance of a judgment issued in a regular process, and in accordance with the provisions of article four of TUO. From the LOPJ, there is no authority, whatever its position or denomination, outside the hierarchical organization of the judiciary can be informed of pending cases before the court, in that sense it is that the lawsuit filed involves claiming compliance which is inadmissible while the plaintiff must resort to the procedural mechanisms provided for in the same process, since it is, in the essentials, a problem in the execution of a judicial mandate, so he declines to declare the inadmissibility of the constitutional demand, which is also confirmed by the highest constitutional interpreter (constitutional court).