

In the name of God the most Gracious the most Merciful

**SUPREME COURT
Greater Darfur States Circuit
Criminal Circuit**

Before:

Kassim Hamid Hussain

presiding judge

Hashim Al Toum

Member

Dr. Suleiman Mohamed Shayeb

Member

No. 60/2018

Trial of Yassir Mohamed Abd Al Rasoul Mohamed

JUDGMENT

On 17/11/2017 the Mallet Criminal Court entered a judgment in respect of the criminal case No. 23/2017 cancelling a criminal proceeding registered against the accused under Article (139) of The Criminal Act of 1991, and obligated him to pay the complainant a sum of six thousand pounds, which was to be collected by civil way.

The complainant was dissatisfied with such judgment and filed an appeal before North Darfur State Appeal Court on which it adjudicated under its judgment No. 22/2017 cancelling the appeal and upholding the trial court judgment.

Against the last judgment, the accused Yassir Mohamed Abd Al Rasoul filed the present appeal in cassation on 21/11/2017.

Upon reviewing the papers, it is evident that the appellant received a copy of the appeal judgment on 14/11/2017. So, we are in the opinion of accepting the appeal in cassation formally since has been submitted within the time frame legally provided for under Articles (183) & (184) of Criminal Procedures Act 1991.

From the subject matters' point of view, and in pursuant of perusal of papers and deliberation, it is evident that Yassir Mohamed Abd Al Rasoul (the accused) was brought forward to stand a trial by reason of beating the complainant Rawdha Ahmed Omer (his wife).

At the commencement of trial proceedings, the complainant mentioned before the trial court that she had reconciled with the accused against the payment of six thousand pounds of a total compensation in her favor

The accused agreed to the conciliation and the trial court had therefore entered the contested judgment.

It is also evident that the complainant, despite the said reconciliation, had challenged the trial court judgment before North Darfur Sate Appeal Court mentioning that ((she has not waived her

rights before the court, of which the contested decision was written down in absence of her own will)).

So, the Appeal Court judgment no. 222/2017 cancelled the appeal and upheld the trial court judgment.

The last appeal in cassation, however, was brought forward before this court by the accused who nevertheless had not challenged the appeal court judgment. The reasons he raised in this appeal in cassation were not an object of hearing before the appeal court.

It might have been simply said that, the appeal in cassation is formally accepted and cancelled from the subject matter point of view, but the trial proceedings may be tacked in general and discussed in light of whatsoever written in the minutes of the trial.

No doubt the complainant then challenged the conciliation that conducted before the trial and mentioned ((she had never waived her right before the court and the minutes were written in absence of her own will)), is rather challenging the validity of the minutes.

It is understood that the minutes of the trial cannot be challenged. ((Please refer to the precedent of Government of Sudan against Deng Al Shaikh Aloya - 230/76 - Magazine 1976.))

On the other hand, the contested judgment is a reconciliation consented by parties for lifting the dispute and ending litigation between both conciliators in accordance with the provision of Article (286) of Civil Transactions Act 1984.

By virtue of the provision of Article (293/2) of the same Act, the conciliation becomes binding upon both parties thereto and a withdrawal from which may not be justified for either party or his heirs.

The same said reasons in respect of complainant are applicable to the accused, as well as the appellant may not from the legal point of view seek cancellation of the contested judgment because whoever seeks challenging whatsoever is done by his hand, his seeking is dismissed by virtue of the provision of Article (5/c) of Evidence Act 1994.

In consideration of the premises, we are in the opinion that the appeal in cassation should have to be cancelled.

Kassim Hamid Hussain Kassim
Supreme Court Judge
22/05/2018

Second Opinion:
Hashim Ibrahim Al Toum
Supreme Court Judge
22/05/2018

Third Opinion:
Dr. Suleiman Mohamed Shayeb
Supreme Court Judge
24/05/2018

