In the name of Allah, The Beneficent, The Merciful

The Court of Appeal

White Nile State

Sharia Circuit

Before Honorable Justices:

H. E./ Salahuddin Mahjoub Ahmed…….President.

H.E./ Ibrahim Mohammed Ali Altobji…….Member.

H.E./ Hamid Alamin Abdullah……..Member.

Al-Sadiq Ali Mohammed Hamouda/Appellant

Against

Aalia Mohammed Mahmoud/Appellee

Ruling

The facts in this request are summed up in this document submitted by Attorney/ Hawaa Saleh Abdullah on 29/6/2015, against the decision issued by H.E. Judge of the Personal Affairs – Rabak – First-Class, in which he ruled the dismissal of the appeal. And the attorney was unsatisfied, arguing that the decision was in breach of the law and was erroneous regarding its application, interpretation and understanding, and hence, she requests from us to intervening by revoking it.

Pro forma, the court earlier accepted the request and ordered that the appellee be notified for her to submit a reply, but she didn't, and thus, the request is now ready to be decided on.

The reasons put forward by the attorney in her request are as follows:

Her client submitted a Sharia Plaint against the defendant that she had traveled to the city of Neyala taking with her the plaintiff's children on 16/5/2015. Due to this, she impeded his ability to care, provide guidance and taking charge of the upbringing of children, whose ages were 7, 4 and 2 years consecutively. The attorney also pointed out that there was an alimony case by the number 151/2015 that was judged in, and in which the ruling included payment of rent for the appellee's house in Rabak-Town. Also, the appellant's request to the court was to obligate the appellee to stay as a resident in Rabak-Town but the Court of First Instance dismissed the request.

The Attorney sees that the dismissal as breaching the stipulation in Article (118) of the Personal Status Code of 1991, and that results in depriving the appellant of assuming his responsibilities as a father towards the children's supervision and upbringing. Added to that, the appellee did not get the permission [of the father] to travel to Neyal City in the company of the children. Hence, the attorney requests intervention to revoke the decision appealed against.

On the subject matter of the case, and after reviewing the submitted complaint, and the contested decision, we find that the same court had ruled in a different lawsuit, denying the father custody of the same children. The Court of First Instance maintained that the children be entrusted with her, and also ruled that she received an alimony for mothering the children, and receive an amount for house rent, and clothes allowance.

It is established that the appellee has been divorced by the appellant, and thus the decision of the court of First Instance to dismiss the complaint is in breach of the text of Article (119) of the Personal Status Code of 1991, as it stipulates that a custodian mother is not allowed to travel within the country accompanied by the children

entrusted with to her care, without permission from their father. It is however allowed for her to travel accompanied by the children to the home where she was officially bonded to him in marriage. However, that exception is governed by various conditions that the parties could not discuss in detail and thus to present evidence of what is best for the children, with consideration to the rights of the father. So, dismissing the case, without due considerations to these reasons deprives the parties from presenting their pleas.

Hence, I conclude, after the agreement of my colleagues in the circuit, that we cancel the challenged decision of dismissal of the plaint, and return the documents to the Court of First Instance to act in accordance to this memo.

Hamid Alamin Abdullah

Court of Appeal Judge

19/9/2015

Salahudin Mahjoub Sidahmed

Court of Appeal Judge

30/9/2015

Ibrahim Mohammed Ali Altobji

Court of Appeal Judge

29/9/2015

Final Decision

- Cancellation of the challenged decision of dismissal of the plaint and returning the documents to the Court of First Instance to follow the directives in this memo.

Salahudin Mahjoub Sidahmed

Court of Appeal Justice
And
Head of the Circuit