

Supreme National Court

Personal Status Circuit

Decision No.: 438/2015, issued by the Court of Cassation

Issued by the Personal Status Circuit- Supreme Court, on: 23-08-2015, presided by
Mr. /Al Bushra Osman Salih,

Dr. Sitana Abdel Galil

Member

Judge at the Supreme Court

Dr. Ahmed Mohammed Abdul Mageed

Member

Judge at the Supreme Court

Documents included in Appeal No.: 502/#/2014 –Khartoum Court of Appeal and documents included in case No.: 332/#/2015- Al Shagara Court, both registered under No.: 10/015, have been submitted.

Appellant: Ali Alsayed Ali

Respondent: Sahar Mohammed Yaqoub

“Judgment”

This is an objection by way of Cassation, submitted by advocate/ Mr. Mohammed Saleem Al Jack, on behalf of appellant/ Ali Alsayed Ali Respondent and has paid

the related fees on: 19/03/2015, objecting to the decision issued by Khartoum Court of Appeal under No.: A##/502/#/2014, issued on: 26/10/2014 and appellant took cognizance of the contested decision on:08/03/2015, therefore, the objection is admitted in form.

In subject; the facts can be summarized in that, appellant has raised his case before the Trial Court claiming recovery of the amount paid for the official engagement, amounting to SP 4500 (four thousands five hundred Sudanese pounds only), alleging that she has retreated the engagement, she ratified and alleged that retreating was from his side because he has committed certain acts contrary to Sharia principles and asked her to accompany him to a far place, where they will be alone and he denied that. Failing to prove her statement by evidence, she requested that he will be sworn under oath, which he did and the Court issued its judgment favouring his claims.

Respondent did not accept the judgment and has submitted her appeal before the Court of Appeal, which, has issued its judgment to quash the judgment decided by the Trial Court and to refer the papers back to the Trial Court to decide upon its memorandum.

The Court of Appeal stated that appellant has given the respondent some items, part of which are perishable and that the cash amount for engagement is deemed a gift, that all items that had perished or used cannot be given back, according to Hanfia school and the Court of Appeal ordered the Trial Court to work upon the contents of its memorandum.

The Appellant did not agree with the decision of the Court of Appeal, because it included certain things which were not stated by the respondent, therefore, the appellant requested the cancellation of the decision of the Court of Appeal and called for the decision issued by the Trial Court.

Reasons

After perusing the minutes, objection pleading and the decision issued by the Court of Appeal, I agree with the decision issued by the Court of Appeal, that is to quash the decision issued by the Trial Court and to refer the case back to it to proceed again.

However, I disagree with decision issued by the Court of Appeal in two (2) points:

1. Respondent did not respond to appellant's claims regarding the items presented to her by appellant for the official engagement, nor its value, the parts that have perished or used, yet, her response was directed to the reasons why the engagement was cancelled, therefore, the papers shall be referred back to the Trial Court and shall be reconsidered to hear the reply of respondent with regard to the type and value of the gifts.
2. Article (10-2) of the Personal Status Act has expressly and clearly provided that, if the right of the party who retreated the engagement is established, he shall recover the items gifted if they are still existing and their value at the time received if they perished. This express clear provision closes the door for implementing the Hanfia school principals, however, the legal provision extracted from Malykia school principals as a source of legislation shall be applied in this part.

Therefore, and based on the above, I believe, if my respected colleagues in this circuit agree, to uphold the contested judgment by referring the case back to the Trial Court, to consider the case based on this pleading and then issue its reasonable judgment to reject/quash the appeal on summary basis, and appellant shall bear the respective fees.

Dr. Ahmed Mohammed Abdul Mageed "signed"

Judge at the Supreme Court

04/08/2015

I agree with the conclusion reached by my colleague Dr. Ahmed to uphold the decision issued by the Court of Appeal to quash the judgment and to refer the case back to be reconsidered in accordance with the different reasons stated in the pleading and to reject/quash the appeal on summary basis and appellant shall bear the respective fees.

Al Bushra Osman Salih, "signed"

Judge at the Supreme Court

06/08/2015

Dr. Sitana Abdel Galil "signed"

Judge at the Supreme Court

20/08/2015

Final Order:

To uphold the contested judgment by referring the case back to the Trial Court to proceed in accordance with the different reasons stated and to reject/quash the appeal on summary basis and the appellant shall bear the respective fees.

Al Bushra Osman Salih, "signed"

Judge at the Supreme Court

23/08/2015