

In the name of Allah, The Beneficent, The Merciful

The Court of Appeal

White Nile State

Sharia Circuit

Before Honorable Justices:

H.E./Salahudin Ibrahim Hasanain.....President

H.E./Osama Kamal Omer.....Member

Abu Sofyan Mohammed Yousif.....Member

Abdulahdi Adam Idriss/ Appellant

Against

Awatif Alneel Yousif/ Appellee

No.../117/2016

The Ruling

- The appeal is by the above-mentioned was submitted by his lawyer, Attorney/ Hawaa Saleh Abdullah, against the decision by The Second Court of Rabak in accordance with the procedures of memorandum no. ...13/2016, upholding the ruling by the Court of First Instance issued in the proceedings of action no 316/2016 on a Parentage Alimony, previous and forthcoming.
The appeal is based on the following reasons;
- 1- The decision depended on the witnesses' testimonies, although they did not meet the defendant (appellant) in five years; that was

why they failed to determine his job or his income, and definitely, his livelihood today is different than that of five years before.

- 2- The Court of First Instance decided on the previous alimony, without hearing any evidence about the financial well-being of the defendant.
 - 3- The Court of First Instance decided on a house rent amount although the defendant owns a house in Aamireya, Omdurman, [and thus the lawyer] requested intervention.
- The appeal had been accepted earlier in form, and we ordered that the appellee reply, through attorney/ Mohammed Ahmed Izzadin who maintained that [original] decision was correctness hence, the request becomes valid to be subjectively decided on.

In the subject matter of the appeal, after having reviewed the records of the preliminary case and the ruling ensued, and all the reasons and the elements supportive of the decision of the Public Court of Rabak, I decide: In regards to the current alimony and its estimate, I see that it is appropriate, according to the defendant's confirmed income and the needs of the children in custody, which necessitates upholding this decision. In regard to previous alimony, the financial well-being of the father is condition to be considered, and the period should not exceed the past six months. on revising the decision by the Court of First Instance, I found that it was decided that both previous and forthcoming alimonies were to be considered payable as of the date of the ruling; and this is incorrect. In addition to this, the Court of First Instance did not check the financial well-being of the defendant. Hence, with the agreement of my two honorable colleagues in the circuit, I see upholding the parentage alimony and its estimated sums,

and that the documents to be returned to the Court of First Instance for further investigation about the previous alimony demanded.

Salahudin Ibrahim Hassanain

Court of Appeal Judge

6/11/2016

Osama Kamal Omer

Court of Appeal Judge

6/11/2016

Abu Sofyan Mohammed Yousif

Court of Appeal Judge

6/11/2016

Final Ruling

- 1- Upholding the ruling regarding parentage alimony and returning the documents to the Court of First Instance for further investigation about the previous alimony, according to what is contained in this memorandum.
- 2- Notifying the appellant with the decision.

Salahudin Ibrahim Hassenain

Court of Appeal Judge

Head of the circuit

7/11/2016

In the name of Allah, The Beneficent, The Merciful

Public Court of Rabak

.../13/2016

9/6/2016

Between

Abdulhad Adam Yassin / appellant

Versus

Awatif Alneel Yousif / appellee

Ruling

On 21/4/2016, Attorney/ Hawaa Saleh Abdullah submitted this appeal against the ruling by the Court of Personal Status in Assalaya on 6/4/2016, in the presence of the plaintiff against the defendant for a parentage alimony to her children fathered by him (Israa (13) and Abdulbaggi (18) amounting to 500 pounds each as a previous and forthcoming alimonies as of to date 3/2/2015 for food; also, another 500 for clothing, equally divided between them every 4 months as of 3/2/2016; and a house-rent amount of 300 pounds, monthly as of 3/2/2016; and ordering him to deliver and allowing her to borrow. Hence, this appeal she submitted on behalf of the ruled-against, and the ruled-for was notified and she is represented by Attorney Mohammed Ahmed Izzadin, who submitted the memorandum of reply.

As for the procedural Formality the request meets the prerequisites of Articles 157/172/174 of the Law of procedures of 1983 amendment of 2009 and thus meets requirements of capacity of the court that delivered the ruling, all in compliance with the specified time-limit.

On the Subject matter, the request disagrees with the estimation made by the Court of first Instance, and finds it too much, as it was

based on the statements by witnesses who did not know what the appellee's job was, and did not meet with him in five years. He is financially unable to pay what he was ordered to pay, or what was reported in the investigation about his income. Added to that, he had other commitments towards another wife with four children. Also, he owns a house in Alaamireya neighborhood in Omdurman that was ready for occupation, thus the lawyer asked us to intervene and cancel the decision.

On the other hand, the representative of the appellee insists on upholding the decided sums and believes they are suitable and in conformity to the principles of equity. Regarding the defendant's house, he argues by questioning why the defendant had failed to allocate the property to them, before the legal action.

Hence, after reviewing all documents and the reasons presented by both parties, we decide to uphold the ruling determining the sums of the alimony, because;

- It is known that the alimony is prescribed by Sharia, to be paid by the breadwinner to the caretaker of the dependents, i.e. the wife, children or relatives and should cover food, clothes, housing and other living expenses. And the truth is in Allah's words (to provide for them and clothe them in a proper manner.) with due consideration to standards and criteria for estimation. as Allah says (Allow them to reside where you reside, according to your means.) This should be while bearing in mind the economic situation which varies according to place and time.
- The mechanism for estimating the sums decided by the court depends largely on testimonies of those close to the dependents, as experts who can testify to the concerned parties' realistic needs; they are not witnesses to prove a specific fact that could lead the judge to decide according to what they stated.

- As for the investigations presented about the alimony payer's income, it is merely complementary and not binding. This means, the norm is that the experts' opinion, who do not have to be necessarily close to the alimony payer, or have met him before, for as the aim of their testimonies is that they provided an estimation of the needs of the dependents.
- Regarding the house, if the father has already parted with the mother, why would he force her to lodge in his house, described as ready-to-occupy, in order to care for his children? In my opinion, the issue of the house is only entered to counter the claim of renting a house, and that is neither logical nor objective. Had he mentioned that he had another house in the same neighborhood for the need of his children, we would have cancelled the decision in this regard.
- In conclusion, the ruling was correct and the estimated sums are appropriate, and that they were fully deserved, and if demanded years earlier in accordance of what sharia prescribed for them, they will be mostly affordable in current economic realities and needs of living expenses, for the dependents of this age. And that is in conformity with the aims of the legislator stipulated in Articles (65) and onwards; (81) and (82) of the law of Personal Status of 1991.
- Thus, implementing the stipulation of Article (187/1/A) of the Civil Procedures Code of 1983, amended 2009, we decree the following ruling;
 - Dismissing the request of appeal.
 - Upholding the whole of the ruling by the Court of First Instance.
 - Notifying the parties.

Dr. Abdulfattah Mohammed
Judge of Public Court – Rabak.