

In the name of God the most gracious the most merciful

**NATIONAL SUPREME COURT
Cassation Decision No. 148/2016**

Issued by the 1st Personal Status Circuit of the Supreme Court on 08/03/2016 presided by Abdul Rahim Abd Al Seed and membership of Fayza Ibrahim Zain Al Abdin and Rabab Mohamed Mustafa the judges of the Supreme Court.

The papers of the Appeal No. 335/2015 were submitted by Omdurman Appeal Court and papers of the case No. 125/Cassation/2015 were submitted by Bahri Court registered under No. 652/cassation/2015.

Appellant: Aisha Fatah Al-Rahman Hamed
Respondent: Maher Ali Doukah

FACTS

With regard to the case No. 125/2015 before South Omdurman Personal Status Court, the Court decided to dismiss the request submitted by the plaintiff for issuing a confession of judgment.

The plaintiff was dissatisfied with the decision, and so she has appealed it before the Appeal Court. The latter issued its decision No. 304/2015 cancelling the appeal.

The present appeal in cassation was therefore brought forward before us the charges of which have been paid on 13/12/2015. Since we failed to find whatsoever acknowledging the appellant's notification of the date of the decision the object of the appeal in cassation, we decided to accept it formally.

The facts conclude that the appellant filed the case under the above number claiming for fault-based divorce from the defendant because he abused her mother in a manner that is not fit for her and impermissible from Sharia point of view.

In his reply to the claim the defendant admitted the abuse pleading that it was a response to her mother's abuse towards him.

The court decided to hear the evidence over the fact that the harm is not fit for her and impermissible from Sharia point of view.

The plaintiff requested the court for delivering a confession of judgment by reason of the defendant's admission of the abuse.

The Court has therefore rendered its decision as shown herein above.

The contested decision does not fall within the orders which may be challenged as it is assumed to be a decision not ending the litigation as contained in the decision of the Appeal Court, and we therefore decide to cancel the appeal in cassation.

It has been observed that the decision of the Appeal Court cancelled the appeal in cassation. It should be noted that the decisions and orders which cannot be appealed will be cancelled formally. So the Appeal Court must observe this in future.

Rabab Mohamed Mostafa Abu Qusaisa
Supreme Court Judge
02/03/2016

Nevertheless the decision issued by the trial court is not ending the litigation as mentioned in the Appeal Court which has, however, accepted the Appeal formally and cancelled the subject matter. This is impermissible but will not affect the validity of its judgment eventually. I therefore agree with my colleague Rabab over the cancellation of the appeal in cassation along with charges thereof.

Abdul Rahim Abd Al Seed
Supreme Court Judge
03/02/2016

I agree and believe that no need for any addition.

Fayza Ibrahim Zain Al Abdin
Supreme Court Judge
07/03/2016

Final Order:

1. The appeal in cassation is to be cancelled along with charges thereof.

Abdul Rahim Abd Al Seed
Supreme Court Judge
03/02/2016