

The National Supreme Court

Personal Status Circuit

Cassation Decision No: 473/2015

Issued by the Personal Status Circuit- The National Supreme Court, on 12/08/2015 , headed by Mr. Al Bushra Osman Salih, Adul Hameed Mohammed Abdul Hameed – Judge of the Supreme Court (member) and Dr. Ahmed Abdul Mageed- Judge of the Supreme Court (member).

Appeal No.: 225/#/2015- Khartoum North Court of Appeal- and case No.: 15/#/2015 Al Halfaya Court, were submitted and registered under No.: 33/cassation/2015

Appellant: Ashraf Abdel Bari Mutawakil

Respondent: Khadija Ahmed Mohamed

“Judgment”

- This objection has been submitted against the decision issued by the Khartoum North Court of Appeal on 28/06/2015, under No.: #/225/2015, to cancel the decision issued by the Trial Court and to issue a new judgment deciding on the rejection of the case.

The appellant has taken cognizance of the decision issued by the Court of Appeal on 12/07/2015 and the objection has been submitted on 13/07/2015, hence the objection is admitted in form, as to subject, the facts are summed up in that, case No.: 15/#/2015, has been submitted by the plaintiff/ Ashraf Abdel Bari Mutwakil against the defendant/ Khadija Ahmed Mohamed, before Al Halfaya Personal Status Court, claiming that, the defendant was his ex-wife, they had their son/

Abdel Bari, 8 years old, who is now with him and there is a judgment in the favor of the defendant deciding that, the child shall be placed in her custody, that till now he did not deliver the child to her, where she has registered execution against him to receive the child and due to some developments, which is that the defendant got married to a foreigner, an Egyptian, and she resides with him in Kassala, he requests a stay of execution and an amendment of the judgment.

The attorney of the defendant replied that, this case is premature, because the child is with the plaintiff, therefore, there is no point in raising this case, that the court has no jurisdiction to stay the execution and he requests that the case should be cancelled. In subject, he admits the previous marriage, that the child was not delivered to the defendant and execution is pending, that defendant got married to an Egyptian, that she does not reside in Kassala, but she has just travelled to visit her sister and she resides in Halfaya with her father and her mother is ready to take care of the child- subject of the custody and she is more better to that because plaintiff travels outside Sudan often.

On 26/03/2015, the Trial Court issued its judgment in the presence of the parties that the child Abdel Bari, seven years and half remains with him.

The judgment was contested before the Court of Appeal, which has issued the above-mentioned judgment. Appellant requests that the judgment issued by the Court of Appeal shall be cancelled and replaced by a judgment that upholds the decision issued by the Trial Court to let the child stay in his custody and under his care. The reasons for the objection included that, the Court of Appeal when it stated that, the case did not include any reason that justifies proceeding thereon, what reason it can find better than that, the child has overgrown the age when he can be under a female custodian, that his mother custodial has gotten married to a foreigner and the Court has mentioned that, annulment of the judgment is within the jurisdiction of the Courts of Appeal, while the cases related to custody is marked with the idea that the judge can reconsider the case more than one time, that the issued judgment does not lead to conflict of judgment, yet it is of the heart of the law.

After perusing the judgment issued by the Trial Court, the decision issued by the Court of Appeal and the objection petition, we find that, plaintiff claims stay of execution and annulment of the judgment, the Trial Court should not have admitted the claim and it should have rejected the petition because the child is in the hands of the applicant and the judgment has confirmed what is actually confirmed, therefore, the judgment is not sound. With regard to the previous judgment, it shall be executable if it becomes final, however, the Trial Court has no right to annul it nor to interfere in the execution. As to the developments, they are new reasons for a new case to receive the child if he is with her and are not reasons to annul a previous judgment or to stay the execution.

The investigation to identify the best of the child is conducted in cases of withdrawal of custody or delivering the child - subject of custody - from the hands where he is, therefore, the judgment issued by the Court of Appeal is sound and valid, and accordingly; the objection shall be cancelled on summary basis and the appellant shall pay the fees, if my colleagues have no objection.

Al Bushra Osman Salih “signed”
judge of the Supreme Court
09/08/2015

Adul Hameed Mohammed Abdul Hameed “signed”

Judge of the Supreme Court

11/08/2015

Dr. Ahmed Abdul Mageed

Judge of the Supreme Court

10/08/2015

Final order:

The objection shall be cancelled on summary basis and the appellant shall pay the fees.

Al Bushra Osman Salih “signed”

Judge of the Supreme Court

Head of the Circuit

12/08/2015