

*In the name of Allah, The Beneficent, The Merciful*

**The Judiciary  
Supreme Court of Kordofan State  
Criminal Circuit**

**Before Honorable Justices:**

**H.E./Dalya Basheer Siraj.....President**

**H.E./Adam Ismail Adam.....Member**

**H.E./Abulkarim Ahmed Jofoun.....Member**

**Trial of**

**Hawlia Mohammed Musa and another**

**No M A/DWK/FG//14/2017**

**Ruling**

First opinion;

- On 1/9/2016 in the criminal lawsuit – summarily - /236/2016, the Ghibesh First Class Court ruled the acquittal of the two accused (1) Hawlia Mohammed Musa (2) Musa Muhammed Musa of the charges against them under Article (151) of the Criminal Code of 1991, and ordered their immediate release.
- The plaintiff did not accept that ruling and submitted an appeal to the Court of Appeal in West Kordofan which accordingly issued ruling number ASG/DA//541/2016 dismissing the appeal, pro forma on 6/10/2016.
- On 29/11/2016 the plaintiff submitted an examination request to this circuit, and since examination requests as are not, as stated in Article 188 C, restricted by a specified time limit the request is accepted pro forma.

## **As for The Subject**

Justifications for the request;

The court erred in acquitting the two accused persons without considering the circumstantial evidence and the presumptive evidence indicating that it was the first accused himself who had climbed over the wall of the house of the second accused. The attorney then explained in great detail the subject of the circumstantial evidence, and conclusively requested the revocation of the Court of First Instance, and that we decide what we see appropriate.

## **The Facts**

Facts indicate that the accused/ Holeyá is a divorcee living with her 7 children in her own house. Suspicions were raised that the accused Musa Mohammed Musa was in an illegitimate affair with the accused Holeyá. This prompted the plaintiff and prosecution witnesses to stalk her so that they could, as he alleged, (catch her red-handed). On the date of pressing charges, the plaintiff called the prosecution witnesses and told them that the accused was in Holeyá's house. When they got there, according to their accounts, they saw the accused running away, wearing only a vest and shorts; accordingly, they went in and asked the accused to hand them the accused man's clothes, but she denied having any man with her, not the accused or any other one. So, they tracked the accused and caught him, and the police began procedures against all the accused and brought them to the court, where the contested ruling was issued.

Having reviewed all the documents and the decision in the request to the Court of Appeal which had the appeal request dismissed pro forma number .../14/2017, as it was submitted outside the specified time limit.

That decision was correct, and although the Court of Appeal had the means to block the request under Article (188), it did not do so, because the authority to examine the case is not exercised by the higher courts, unless there was a prerequisite for that. And as contained in the records, I do find correct the decision by the Court of appeal not to use

the article power; this is because the accused were not caught, as it was stated in the Court of First Instance, in an indecent position; and there was no evidence to prove that the accused was inside First Accused Holeyá's house. The witnesses alleged that the Second Accused fled the house in a vest and shorts, but no clothes were found in the house of the First Accused, Holeyá. Also, it wasn't proved that the Second Accused, when he was arrested, was wearing a vest and shorts or barefooted, as alleged by the witnesses. It is obvious that the charges were based on doubts and suspicions about the conduct of the Accused Women. If the Accused had actually been in Holeyá's house, how come he could escape from three witnesses? Instead, it was indeed established that the Accused was present at the house of defense witnesses (1) and (2) doing some work. And, in the absence of any evidence that connects the Accused Persons to the crime, I see that the decision by the Court of First Instance, to acquit the two accused persons conforms with correct letter of the law, which prompt me to dismiss the request. And if my colleagues agree, I decide:

- 1- Rejection of the Request
- 2- Presenter to be Notified.

**Dalya Basheer Siraj**  
**Supreme Court Justice**

**12/1/2017**

**Second opinion:**

I agree

**Abdulkarim Ahmed Jofoun**  
**Supreme Court Justice**

**17/1/2017**

**Third opinion;**

I agree

**Adam Ismail Adam**

**Supreme Court Justice**

**22/1/2017**

**Final Ruling;**

- 1- Rejection of Request**
- 2- Parties are to be notified.**

**Dalya Basheer Siraj**

**Head of Criminal Circuit**

**National Supreme Court.**

**Greater Kordofan States Circuit**

**23/1/2017**