

In the name of God, The Beneficent, The Merciful
The National Supreme Court
Cassation Decision number: 496/2015 AD

The following claim issued by the appeal court of Bahri and Eastern Nile on 27/5/2015, registered under number A.S.SH/285/2015 to revoke the appeal summarily.

The appellants were informed of the court's decision on 2/7/2015 and the claim was presented on 14/7/2015, therefore, the appeal is accepted in form. As to the subject matter, the facts of the case are summarized in that claim number 738/Ghaf/2014 was presented to the court of Middle Bahri, at the department of personal status by the heirs of Abu Al Gimmah Saroor Al Faki against the heirs of Othman Al Gurashi and on the face of which their legal heir is the wife of the respondent and was still under his custody at the time of death and a legal notification had been issued under 304/2000, but did not include her and did not state her rights in the inheritance as a wife of the deceased.

The respondents' lawyer on their behalf responded by forwarding a motion to reject the claim under the pretext that the claim was way past due in accordance with article number (98) of the attached third table of the civil procedures code and in the face of the subject denies the marriage and requests the rejection of the claim.

The legal defense was rejected on the 4/5/2015.

The decision was appealed in front of the appeal court which issued the appealed aforementioned decision and the appellant's lawyers requested to revoke the decision of the court of the first instance and the decision of the appeal court and to reject the claim all together, in their defense that the appeal court had erred and therefore ignored the codes of the law which the decision was based under article (98) civil procedures, the third table, which is deemed to end the conflict, and that the respondents failed to mention in their claim to the Sharia'a decision and did not provide proof but rather based their claim on their ignorance of the Sharia'a notification which is not a legal decision since the right to inheritance is not based on Sharia'a notification but is granted by the death of one partner and that the claim was revoked of past dated if calculated from the time of death of the heirs of the deceased on 11/12/1964 and again from the time of death of the heirs of the respondents' death in 1977, furthermore, the right of past dated is applied since the issuance of the notification number 248/1978.

After reviewing the decision of the court of the first instance and the decision of the appeal court along with what was presented on the claim itself, we find that article (176) of the civil procedures code, states that the orders issued during the time of legal procedures and does not lead to a conflict shall not be sufficient ground for an appeal until the time of the issuance of a decision to end all conflicts, and the same article made clear the exempted orders which could be appealed but these orders do not include the rejection of legal defense, therefore, the rejection of legal defense and to continue with the legal procedures does not lead to end the conflict and for that, the appeal court's decision is valid, that is, to reject the claim summarily with its fees and the final opinion to my honorable colleagues.

(Signature)
Al-Bushra Othman Salih
Judge of the Supreme Court
19/8/2015

(Signature)
Abdul Hameed Mohammed Abdul
Hammed
Judge of the Supreme Court
20/8/2015

(Signature)
Dr. Ahmed Mohammed Abdul
Majeed
Judge of the Supreme Court
24/8/2015

Final Order:

"The appeal is dismissed summarily with Fees"

(Signature)
Al-Bushra Othman Salih
Judge of the Supreme Court
Head of the Bench
26/8/2015