

In the name of Allah, Most Gracious, Most Merciful

The Federal Supreme Court
Criminal Circuit

Before their Excellency

<u>Mahgoub Alameen Alfaki</u>	President
<u>Awad Hassan Awad</u>	Member
<u>Ambeely Babikir Ahmed</u>	Member
<u>Mosa Alneil Almekashfy</u>	Member
<u>Salah Altigany Alameen</u>	Member

The Trail of **Albra Yaseen Alfadil**
No / M T J /50/2016 / First Circuit
Judgment

The accused Albra Yaseen Alfadil has appeared before the Court of Juvenile facing an accusation under section 45-B of the Juvenile Act. The accusation was proved before the court hence the court order sending the convicted to a reformatory institute for two years. However, the Court of Appeal of the White Nile State according to the majority opinion decided that this measure is not adequate and order referring the papers to the First Instance Court to deliver the child to his father provided that the father shall sign an undertaking to the effect that he would carefully look after the child. The court recognized the victims relative right to claim compensation from the child guardian for the damage incurred by the victim. This judgment was the subject matter of an objection to the Supreme Court – Maidtrianinn States Circuit. The Supreme Court amended the measure by ordering the delivery of the child to any charity organization concerned with looking after and caring for children or any other entity of a same objectives and order the return of case papers to the First Instance Court to judge accordingly.

On behalf of the victim Advocate, Ibrahim Basheir Aljack filed this request to the court to examine and review the aforesaid judgment. The application is based on the Advocate allegation that the measure of delivering the child to charity organization would not meet the objective of reform, bearing in mind the dangerousness of the act committed by the child.

The application for review met the formal requirements according to section 188A of the Criminal Procedure Act. The proceeding is satisfied by the summon of the opponent to reply to the issues raised in the application. As on behalf of the opponent Advocate Anas Abdulrahman, I request the Court to cancel the application and uphold the court's decision since the term of the measurement itself has lapsed as a matter of subject.

It's not disputed that the child has committed an act that is considered a crime under section 45 B of the Juvenile Act. It is apparent that act was very major and dangerous despite the fact that the child was of small age at the time of committing the crime. Irrespective of the definition of the act and its grievance, the only proceeding that could be taken against the act is the order to take the necessary reformatory measure according to the provisions of the law upon conducting a social study. In such measure the interest of the child should highly be appreciated, as the end purpose is to rectify the child's behavior and reform him. Theoretically the Juvenile Law cater for this proposal, but unfortunately most of the law provisions in that regard were not applied in fact. It is worth saying that the rules and regulations required by the law to be legislated, were not enacted till now and for this reason many of the measures stipulated in the law could not be applied.

In this situation the child was subjected to a long process of litigation, which continued for 3 years from the date of filing the case on 1/6/2015. During this period the child was shifted from a

measurement to another. For that reason, I rule that the suitable measure is to deliver the child to his father to take care of him and sign an undertaking to that effect. More over its important, in my opinion, to compensate the victim under the law. The child shall incur the compensation cost if he is wealthy, otherwise it's necessary to rejoin the child's father to the proceeding of compensation.

The judgment of the Court of First Instance has ignored the issue of compensation although the victim's mother has claimed compensation, as stated in the case record. It was opened to the court of First Instance to decide upon such compensation instead of reserving the claimant right to ask for the same in a separate law process.

With respect to all above mentioned reasoning, I would express my opinion to accept the request for review and decide as follows: -

1-Substitue the measures ordered to be taken the Supreme Court White Nile river State Circuit and order the delivery of the child to his guardian to take care of him upon signing an undertaking to that effect.

2-resending the case records and papers to the court of first instance to judge on the issue of compensation

Mahjoub Alameen Alfaki

Vice Chief Justice

4/1/2018

Ambeely Babikir Ahmed

Federal Supreme Court Judge

Salah Altigani Alameen

Federal Supreme Court Judge

Awad Hassan Awad

Federal Supreme Court Judge

Mosa Alniel omer Almikashfy

Federal Supreme Court Judge

Final order

1-Delivery of the child to his guardian to take care of him upon signing an undertaking to that effect.

2-resending the court records and papers to the court of first instance to judge on the issue of compensation

Mahjoub Alameen Alfaki

Vice Chief Justice Circuit President