

In the name of Allah, The Beneficent, The Merciful
Rabak General Court
A.S.SH/30/2015
22/2/2016

Appealing Applicant: Hisham Mohammed Ali
Respondent: Manahil Adam Idress

THE MEMORANDUM

The Personal Status Department of Rabak Court issued a judgement to reject the claim of reunion and the revocation of custody, whereas the representative of the Appealing Applicant has filed an appeal against the judgment of the judge of the Second-Degree Rank. The Appeal is acceptable in form; the judgment was issued on the 11/10/2015 and the appeal was filed on 26/10/2015; therefore, it is accepted in form as it was presented within the legal permissible timeframe.

As for the subject, the appeal is concerned with the reunion only, and it is not to include the revocation of custody, because the son (Wadhah) has passed the legal age binding him to a female custodian. Also, the appellee argues that witnesses brought in to the court by the Respondent did not offer superior evidence against the Appealing Applicant's advantage, especially since the court considered the old age of his mother. That is, despite the fact that the court did not investigate the age and status of the Appealing Applicant's mother, or whether the Applicant's status is better suited than the respondent's in parenting the son Wadhah. The Applicant made an argument based on the legal age, binding the son to a female custodian and requested on his summation of the appeal to reject the judgment of the court of the subject matter; and to issue a new judgment to include the child (Wadhah) onto his custody.

- The appellee responded through his lawyer in support of the decision of the court of the first instance, because the evidence presented by the appellant on the preference was sufficient to continue the custody of Waddah, who has sought to support this decision. In addition to this, the Tribunal explained that in the case concerning the son, Waddah exceeded the age limit of being in a woman's custody
- The woman also abandoned the custody she had of her daughter, Doha, after her divorce with the appellant. This case favored the appellant as he denied any negligence towards his daughter.
- Responding to this decision, the appellant insisted on his claim. The court then heard evidence of "suitability and befitting" from the Respondent and heard evidence to the claim of negligence from the applicant, and subsequently the decision of the court was brought to the [this] Appeal procedure.

- First and foremost, it is clear from the appeal that the Applicant ratified the judgment regarding the daughter Dhuha; the appellant approved the verdict concerning the daughter (Dhuha), and appealed the decision concerning the custody of his son Waddah. The definition of custody, as defined by article 109 G/Sh of 1991 states that: (The legal guardian is responsible for the child's; education, wellbeing and care as long as it does not conflict with the rights of the guardian or with the child's rights). This means the custody is based on favoring the wellbeing of a child; The judge is a neutral party in all cases, other than custody cases, as he is considered a third party representing the interests of the child (see legal precedent., decision 307/1993 journal 1993 page number 58). Therefore, the judge examines and investigates all matters to determine the interest of the child. In this lawsuit, it is apparent that the judge compared the characteristics of both and mother and father and decided to maintain the mothers custody of waddah, because she totally free to raise him with her family, who also share the her responsibility of caring for the children and in making sure they succeed in their studies.
- On the other hand, he is not with his mother and father and he works from morning to night, so it's clear the court does not rely solely on the age of the appellant's mother, but rather other benefits of maintaining custody.
- Therefore, based on all this, we decide to support the court's decision, with a minor direction: if the appeal is based on "benefit and negligence", then the evidence of negligence supersedes the evidence of benefit, because it is regarded as a corner stone in rejecting the custody, - see judicial precedent number 147/1995 of The Judiciary Journal for the year 1995-page number 13. And therefore, we decide on the following:

Order:

1. To Uphold the Court Decision.
2. To notify all parties.

(22/2/2016)

**Ismat Ibraheem Wahbi
Judge of the Public Court
(Official Seal of the Court)**