

## Court of Cassation - Civil & Trade Division - Number: 168 /2010

**Ruling Summary Record:** *The Court:* Court of Cassation *Circuit:* Civil & Trade Division *Number:* 168 *Year:* 2010 *Session Date:* 1/11/2011

**The Court Panel :**

**Sitting of 28/12/2010**

**Contestation No. 164 of 2010 - Civil cassation**

1. It is established that the director of a limited liability company shall have full authority to manage the company unless the articles of association of the company decide his authority, and that his actions shall be binding on the company.

It is also established in the jurisdiction of this court that Articles 226 and 240 of the Commercial Companies Law No. 5 of 2002 provide that a director of a limited liability company shall have full authority to manage the company unless the articles of association of the company decide his authority and that his acts are binding on the company without him being personally liable for any obligations arising from such acts.

2. Exemption – what has been necessitated by the legislator for protection of others while dealing with the company is the inclusion of the words, “limited liability” and a statement of the capital of the company. The effect of the director’s negligence is his joint liability with the company for any of the obligations arising from such acts.

For the protection of others when dealing with a limited liability company the legislator, as an exceptional requirement, has necessitated the addition of the words “limited liability” and a statement of the capital amount, and a provision for the punishment of the director for negligence by holding him jointly liable with the company towards others. However, the court is bound in any event to verify the correct legal ruling issued between the two parties to the litigation and to apply it to the incident before it. This being the case, and taking into consideration that the preliminary ruling which is supported by the contested judgment has concluded that the company has given itself a name commensurate to its purpose, which is ..... company, but did not include the words “limited liability company” in its name in the *Murabaha* contract signed between it and the appellee, and that it has exercised its activity in the business of investment of funds for the account of others in clear violation of the law. The judgment has also concluded in its ruling that the contestants are jointly liable in their money, which liability is governed by the companies’ law as mentioned earlier. The judgment provided in the ruling has established its roots in the documents which are sufficient for supporting the ruling. Therefore, criticism of the said ruling in this regard is baseless and should thus be rejected.

### Merits of the case

On 4/7/2010 a contestation by cassation was filed against the judgment of the Court of Appeal No. 119/2009 dated 25/5/2010, by virtue of a note in which the contestants requested the acceptance of the contestation in form and subject by cassation of the contested ruling and referral of the case to the Court of Appeal for retrial by a different Jury.

On the same day the contestant delivered an explanatory memorandum.

On 11/7/2010 the appellee was informed of the contestation note. In the hearing of 23/11/2010 the contestation was produced to the Court in the counseling room and the court saw that it was worthy of consideration and decided a plea hearing.

In the hearing of 14/12/2010 the case was heard before this Circle on the basis of the records available in the hearing report, and the attorney of the appellee adhered to what he had stated in his pleading note. The Court then postponed the ruling to today’s sitting.

### The Court

After reviewing the documents and listening to the report read by the presiding judge, and after prosecution and deliberation;

Whereas the contestation has fulfilled its procedural forms;

The facts as shown from the contested ruling and all the papers may be summarized as follows:

The appellee has filed case No. 1056 of 2008 requesting an order for the two contestants and others to pay him an amount of 2,320,000 Riyals. The appellee stated that he paid this amount to ..... Company as *Murabaha* but he learned that the company is violating the provisions of the law and so he claimed recovery of this amount but the Company refused, although a guaranteed cheque for this amount is available. He accordingly filed this case. The first contestant also filed two cases related to this issue by virtue of petition No. 610 of 2008 in which he rejected the decision banning him from travelling and requested its cancellation. The court added this grievance to the similar petition. The court also produced an expert and after he delivered his report the court then ruled firstly on the original claim by obligating the company and the two contestants, jointly with others, to pay to the appellee an amount of 2,320,000 Riyals; and secondly, with respect to the grievance, the court rejected it and sustained the subject of the grievance. The two contestants and others appealed the judgment by appeal No. 119 of 2009. On 25/5/2010 the court ruled in favour of approval of the contested judgment. The two contestants contested this ruling through cassation and the contestation was produced to the Court in the counseling room and the court decided a session for reviewing it.

The contestation is based on two reasons:

- a. The court’s reasoning is defective and its inferences inadequate and a deviation from the facts established in the documents. The judgment has held the contestants jointly liable for the claimed amount whereas it is established in the documents that the appellee was aware that the company is a limited liability company, and that with respect to the paid amount the dealing was between him and the so called ....., hence any prior mistake related to their joint responsibility with the company shall be baseless. In addition, they have committed no violation that renders them liable in their own money for the debt, the subject of the claim.
- b. The ruling has not applied the correct provisions of the law to the incident, which implies that the ruling is defective and requires cassation.

This reasoning is not correct because it is established in the jurisdiction of this court that Articles 226 and 240 of the Commercial Companies Law

No. 5 of 2002 provide that a director of a limited liability company shall have full authority to manage the company unless the articles of association of the company decide his authorities, and that his acts are binding on the company without him being liable in his own money for any of the obligations arising from such acts. Also, for the protection of others when dealing with a limited liability company the legislator, as an exceptional requirement, has necessitated the addition of the words "limited liability" and a statement of the capital amount and a provision for the punishment of the director for negligence by holding him jointly liable with the company towards others. However, the court is bound in any event to verify the correct legal ruling issued between the two parties to the litigation and to apply it to the incident before it. This being the case, and taking into consideration that the preliminary ruling which is supported by the contested judgment has concluded that the company has given itself a name commensurate to its purpose, which is ..... company, but did not include the words "limited liability company" in its name in the *Murabaha* contract signed between it and the appellee, and that it has exercised its activity in the business of investment of funds for the account of others in clear violation of the law. The judgment has also concluded in its ruling that the contestants are jointly liable in their money, which liability is governed by the companies' law as mentioned earlier. The judgment provided in the ruling has established its roots in the documents which are sufficient for supporting the ruling. Therefore, criticism of the said ruling in this regard is baseless and thus should be rejected.

Therefore;  
The court rejected the contestation and obligated the contestants to bear the costs and ordered confiscation of the bail.