

Court of Cassation - Civil & Trade Division - Number: 28 /2009

Ruling Summary Record: *The Court:* Court of Cassation *Circuit:* Civil & Trade Division *Number:* 28 *Year:* 2009 *Session Date:* 5/12/2009

The Court Panel : Ahmed Mohamed Farahat - Ahmed Mahmoud Kamel - Mounir Ahmed El Sawy - Ahmed Saied Khalil - د /ثقييل بن ساير الشمري -

Court of Cassation Civil and Commercial Circuit No 28/2009

Session Date: 12.5.2007

Appeal by Cassation No.28 of 2009 – Civil Appeal by Cassation

1-4 (Appeal by cassation – “right to appeal by cassation: judgments that cannot be appealed by cassation” – “conditions of appeal by cassation – “the powers of the Court of Cassation” – Judgment – “appealing the same by cassation: judgments that cannot be appealed by cassation” – construction of the judgment” – Public order.

1 (The eligibility of judgments to be appealed by cassation – their relation to public order – the court may decide thereon *ex meromotu* even if no party pleads the same.

2 (The fundamental procedures of the adjudication system – its connection with public order – that the Court of cassation shall ensure the observance of the same.

3 (Judgment on an application for construction – considering it a complementary part of the judgment required to be construed – its effect – its subjection to the same rules applicable to appeal by cassation against the judgment so construed – [Section 139](#) of the Procedures Law.

4 (The jurisprudence of a judgment required to be construed through the appointment of an expert without entertaining the subject-matter and without resulting in a stay of claim procedures – its effect – being non-appealable by way of cassation – [Section 3](#) of Law No. 12 of 2005 on the Conditions and Procedures of Appeal by Cassation in other than criminal provisions – the applicability of the same rule on the appealed judgment which construes the same.

1. Established jurisprudence of this Court that the eligibility of judgments for appeal by cassation is a matter of public order which the court shall decide *ex meromotu* even where none of the parties pleads the same at any of the stages of the claim.

2. Established jurisprudence of this Court that the rules of adjudication system and procedures are all related to public order, which makes it mandatory for the Court of Cassation to ensure observance thereof.

3. A construction judgment is considered, for all purposes, according to [Section 139](#) of the Procedures Law, complementary to the judgment it so construed, and shall be subject to the same rules governing such judgment in relation to the means of appeal by cassation.

4. [Section 3](#) of Law No. 12 of 2005 on the Conditions and Procedures of Appeal by Cassation, in other than criminal provisions, provides that “No appeal by cassation shall be made in regard to judgments issued before the settlement of the subject-matter unless this results in a stay of the claim proceedings”. The judgment required to be construed, which was issued at the session held on 27.1.2005, decided to appoint an expert without entertaining the subject-matter, or resulting in a stay of the claim proceedings. It cannot therefore be appealed against by way of cassation. The appealed judgment which was issued in construction thereof will be governed by the same rules on the means of appeal by cassation as those which apply to the aforesaid judgment. It therefore cannot be appealed against by way of cassation.

The Court

Having reviewed the documents, and having heard the arguments and the report read out by the Judge-Rapporteur, and after the deliberations; The facts, as revealed in the appealed judgment and other documents, may be summed up as follows:

The Appellants brought against the Respondents the civil claim No. 1584/2003 applying for the dissolution of the companies listed in the claim statement, the ascertainment of their profits and losses on an actual basis at the time of judgment, and the setting aside of) -- (company to become owned thereby. The court dismissed the claim. The two Appellants lodged an appeal No. 113/2004, dated 27.5.2005, against such judgment. The court decided to appoint an expert. The Respondents submitted an application for the construction of the decision so to depute, which was registered with the appeal court as No. 770/2008, dated 31.12.2008. The court decided on the construction of the judgment as stated in its finding. The Appellants appealed such decision by way of cassation, and the appeal was presented to this Court at the deliberations chamber, and a hearing session fixed for its consideration.

Since the eligibility of judgments for appeal by cassation is a matter of public order, the court may decide thereon *ex meromotu* even if no party pleads the same at any stage of the claim proceedings. This is because all the rules governing the fundamentals and procedures of the adjudication system relate to public order, which makes it mandatory for the Court of Cassation to observe such rules. Accordingly, and since the construction judgment is considered, for all purposes, under [Section 139](#) of the Procedures Law, complementary to the judgment it so construes, and is governed by the same rules relating to the means of appeal by cassation as those which govern such judgment, and since the provisions of [Section 3](#) of Law No. 12 of 2005 on the Conditions and Procedures of Appeal by Cassation other than in the case of criminal provisions provide that “no appeal by cassation shall be made against judgments made before the settlement of the subject-matter unless the same would result in a stay of the claim proceedings”.

According to the aforesaid, and since the judgment required to be construed, which was issued at the session held on 27.1.2005, had decided the appointment of an expert without entertaining the subject-matter or resulting in a stay of the claim proceedings, thereby precluding appealing such judgment by cassation, and whereas the appealed judgment issued in construction thereof is governed by the same rules of the means of appeal by cassation as those applicable to the aforesaid judgment; it cannot therefore be appealed by way of cassation. According to the aforesaid, it is held that such appeal by cassation is inadmissible.