

Judgment No. (2) Of (2023)
Regarding Appeal No. (4) Of (2023)

Issued by Constitutional Court
In Name of His Majesty King Abdullah II, Son of Hussein
King of Hashemite Kingdom of Jordan

Presided over by President. Mohammad Almahadeen,

And in Member ship of: Dr. Akram Mosaiedah,
Taghreed Hikmat,
Dr. Prof. Maisaa Baidoon,
"Mohammad Talal" Alhimsi,
Hani Kakeesh,
Mohammad Asaied and
Hussain Alqaisi.

In Appeal submitted by Appellant (Defendant): Raied Ribhi Mahmoud Alshami, whose (two Advocates) are: Yassir Shoqair and Ehab Shoqair, in Cassation Case No. (5723/2022), pleading unconstitutionality of Paragraphs No. (1) And (2)- Article No. (191) of Civil Procedures Code No. (24) Of 1988, claiming the inconsistency thereof with Provisions of Constitutional Articles No. (6/1 and 128/1).

Having perused all Papers, Documents and Judicial Decisions contained in File referred by Court of Cassation, in execution of Decision thereof regarding Application No. (2022/٢/4) , dated: 18/10/2022, which Decision contained the referral of the present Plea of Unconstitutionality, the pending Cassation Case No. (5723/2022), Appeal Case No. (1919/2022) – Amman Court of First Instance in the Capacity of appeal court and File of Magistrate Case No. (2186/2020)- Civil Magistrate- West Amman; it is concluded that: on 26/08/2020, Claimants (Defendants in the Application), brought Action No. (2186/2020) before Civil Magistrate Court of West Amman against Defendant (Claimant in the Application), requesting eviction of a leased Premises that has been leased for Jordanian Dinar (3146.850) per annum.

On 09/09/2021, Civil Magistrate Court of West Amman issued Decision No. (2186/2020), under which, it obliged Defendant: Raied Ribhi Mahmoud Alshami to: evict the leased Premises Subject Matter of the Case, deliver the Possession thereof empty of occupancies or belongings and pay fees, expenses and attorney fees.

Defendant appealed the said Judgment before Civil Court of first Instance in Capacity of appeal court. On 04/10/2021, where said Court decided (Decision

No. 5107/2021) that the Appeal should be allowed on the Merits, appealed Decision be revoked and Papers be remanded to Magistrate Court.

Having said Appeal revoked and remanded, on 26/01/2022, Civil Magistrate Court of West Amman, decided (Decision No. 06/2022) that Defendant Raied Ribhi Mahmoud Alashami should evict leased Premises he has leased from Claimants, deliver Possession thereof empty of occupancies or belongings and pay fees, expenses and attorney fees.

Defendant appealed said Judgment before Amman Civil Court of First Instance in Capacity of appeal court. On 20/03/2022, said Court decided (Decision No. 1919/2022) that said Appeal should be dismissed on Merits, appealed Decision be upheld and the Appellant to pay fees, expenses and attorney fees.

On 21/04/2022, Claimant submitted Application No. (1617/2022) before Court of Cassation, requesting permission of the Court to consider the Decision issued in relation to Case No.(1919/2022), issued by Amman Civil Court of First Instance in capacity of appeal court.

On 15/05/2022, Judge delegated by President of Cassation Court, dismissed the said Application.

On 19/05/2022, Defendant appealed the foregoing Appellate judgment before Court of Cassation under No. (5723/2022). On the same Date, Defendant also submitted before the same Court an Application, under which he pleaded the unconstitutionality of Articles No (191/1 and /2) of Civil Procedures Code No. (24) Of 1988, where said Application was registered under No. (4/2022/ط). Consequently, Court of Cassation referred the said Plea to the Constitutional Court.

On 28/11/2022, Attorney representing the Appellant submitted a Pleading, on which he relied on Provisions of Article No. (12/A/1) of Law of the Constitutional Court.

In fulfillment of the Purposes of Items No. (1 & 2) – Paragraph (B) of Article No. (12) of Law of Constitutional Court, Presidency of the Court submitted a copy of the referred-to Referral Decision issued by Court of Cassation, to the following Parties:

- Prime Minister,
- President of Jordanian Senate,
- President of House of Representatives, under Letters dated 30/11/2022, ending with No. (510, 511 & 512).

On 08/12/2022, Letter of Prime Minister dated 20/12/2022 to which Statement drafted by President of Legislation Bureau dated 08/12/2022 was

attached, was received. The said Statement indicated that Provisions of Civil Procedures Code No. (24) of 1988 As Amended, which have been pled unconstitutional, are in consistency with the Constitution and that, Grounds of Appeal do not apply thereto.

Prime Minister decided that Statement issued by Legislation and Opinion Bureau should be regarded as the answer thereof to the said Appeal, in fulfillment of Provisions of (12/B/2) of Law of the Constitutional Court.

Court received no more pleadings regarding the said Appeal and considered it in the light of Article No. (14) of Law of the Constitutional Court.

As to Merits:

Having conducted perusal and deliberations and discovery of legislative Provisions that have been pled unconstitutional, the Court concludes the following:

First: Article No. (191) of Civil Procedures Code No. (24) of 1988 as amended, stipulates:

1. Irrespective of any provisions of any other Jordanian Law, Appeals before Court of Cassation regarding judgments delivered by Courts of Appeal as to claims exceeding, in value, the amount of JD 10,000, are accepted within thirty days starting from the day next to issuance date, in case they are judgments in presence or judgments deemed in presence, or, within thirty days starting from the day next to service date thereof, in case they are judgments on merits or judgments in absentia,
2. No other appellate judgments may not be subject to appeal by cassation unless under approval by President of Court of Cassation or a person who is delegated by President of said Court.

Additionally, Appellant decried the inconsistency of the abovementioned two Paragraphs with Article No. (6/1) of Constitution, which stipulates (Jordanian Citizens are equal before Law. All have same rights and under same obligations, irrespective of their race, language or religion.); and Article No. 128/1 of Constitution, which stipulates (Laws issued under present Constitution for purpose of regulating rights and liberties, may not affect the essence or foundations of said liberties.)

Whereas legislations issued by both Legislative and Executive Authorities in form of laws and regulations, must be issued on constitutional grounds, then, no pleas of unconstitutionality are to be upheld unless there is a crystal clear conflict between the provision pled unconstitutional and a Constitutional Provision.

It is prescribed that Constitutional judicature in its core, is a control over constitutionality of legal provisions, which control provides protection for provisions of constitution, not convenience for legal provisions enacted by

legislator and that, the control of Constitutional judicature is confined to the legitimacy in exclusion of control over legislative policies.

Accordingly, control exercised by Constitutional Court, is confined to revealing how much laws and regulations are conflicted with provisions and essence of Constitution.

It is established by Constitutional Judicature and Jurisprudence that Equality provided for by Article No. (6/1) of the Constitution, realizes under conditions of Generality and Abstraction in legislations regulating rights and obligations. Consequently, such Equality is not a mathematical one, as legislator, under his discretionary powers and for the sake of public interest, is able to set out conditions, on which individual would be equal before law, so as to whenever such conditions apply to a group of people, they would be equal before it due to similarity of the legal positions and conditions thereof.

Whereas Constitution has placed responsibility of enacting laws and regulations that regulate procedures of litigation before courts on Legislative Authority, legislator is authorized to choose between alternatives available thereto, in order to realize public interest; and whereas legislator also has set out special provisions for appealing judgments delivered by courts, which conditions vary according to value or type of actions brought and according to provisions of the two Paragraphs pled unconstitutional, therefore, said two Paragraphs are neither in conflict with constitutional purposes nor in violation of their scopes. Therefore, Plea of Unconstitutionality thereof should be dismissed.

Accordingly, the Court dismisses said Plea of Unconstitutionality of the two Paragraphs No. (1 & 2) of Article No. (19) Of Civil Procedures Code No. (24) Of 1988.

Present Judgment has been handed down on: Rajab 30th, 1444 H,
Corresponding to: 21st, February, 2023, A.D.

Member
Taghreed Hikmat,

Member
Dr. Akram Mosaiedah,

Vice President
Mohammad
Almohadeen

Member
Hani Kakeesh,

Member
"Mohammad Talal" Alhimsi,

Member

Member
Hussain Alqaisi

Member
Mohammad Asaied