

Kingdom of Morocco

**In the name of his Majesty the King**

Decree # : 275/1  
Date : September 29<sup>th</sup>, 2020.  
Family matters case # :365/2/1/2018

On September 29<sup>th</sup>, 2020, the Chamber of Family Matters and Inheritance in the Court of Cassation decreed the following:

**Between**

Appellant : **Jane Doe**  
Residing at:  
Legally represented by Attorney.....

**And**

Respondent : **John Doe**  
Residing at:  
Legally represented by attorney.....

- *In view of* the motion for cassation filed by the Appellant through her attorney on February 5<sup>th</sup>, 2018, to appeal decision # 715, rendered by the Court of Appeal of Tangier on October 9<sup>th</sup>, 2017, docket # 246 & 273 & 422/1613/2017;
- *In view of* the counterclaim submitted by the Respondent through his attorney on October 19<sup>th</sup>, 2018 to dismiss Appellant's motion for cassation;
- *In view of* the provisions of the Civil Procedures Code of September 28<sup>th</sup>, 1974;
- *In view of* the case being at issue on July 28<sup>th</sup>, 2020 and the parties being informed thereof;
- *In view of* scheduling the case to the open hearing of September 29<sup>th</sup>, 2020;
- *In view of* calling upon the parties and their legal representatives, but were all in default;
- In view of the reporting judge's report, Mr. Nouredine Elhadri, being read, and the observations of the Assistant General Attorney, Mr. Mohamed Falahi, being listened to, mainly his request to dismiss Appellant's motion for cassation;

**Court of Cassation deliberated  
According to the law**

*Whereas* it is concluded from the file and the appellate decision that

1. Plaintiff, Jane Doe, filed on June 24<sup>th</sup>, 2016 a motion to Court of First Instance of Tangier, claiming:
  - *That* she was impregnated by Defendant, John Doe;

- *That* as result thereof she gave birth to a child, Jane Doe Little, on November 27<sup>th</sup>, 2014;
  - *That* Defendant obstinately refuses to acknowledge the paternity of said child despite the genetic expertise establishing evidence thereto;
2. Plaintiff requested the Court (i) to issue filiation and paternity order confirming that said child is Defendant's child, (ii) to order the payment of child support by Defendant in the monthly amount of 2000 MAD, and the payment of damages in the monthly amount of 2000 as of the date of birth until Defendant is legally exempted therefrom.
  3. Plaintiff submitted as evidence the child's birth certificate in Spanish and its translation into Arabic, and an expertise report by the forensic police dated October 1<sup>st</sup>, 2015;
  4. Defendant counterclaimed
    - *That* the presumed pregnancy is a result of an illegitimate relationship;
    - *That* he was convicted and sentenced therefore with one suspended month of imprisonment by Court of First Instance, docket # 278/16/2102, dated March 16<sup>th</sup>, 2016;
    - *That* the judicial practice of Court of Cassation confirms that a child who is a fruit of a fornication or rape-based pregnancy shall not be attributed to the perpetrator even if the child is biologically his, for to establish legitimate filiation certain conditions need to be met;
    - *That* the conditions necessary to establish paternity according to Article 156 of the Family Code are not met;
  5. Defendant, thus, requested Court to dismiss Plaintiff's motion.
  6. Motions were exchanged between the parties;
  7. The public prosecution requested the application of the law;

*Whereas* Court of First Instance ordered the establishment of filiation of the child, Jane Doe Little, born on November 27<sup>th</sup>, 2017 (sic), to Defendant, and the payment of 100,000 MAD, (judgment # 320, docket # 1391/1620/2016);

*Whereas* the judgment of Court of First Instance was appealed by the parties to Court of Appeal;

*Whereas* Court of Appeal (i) reversed the judgment of Court of First Instance and (ii) dismissed the motion to re-consider;

*Whereas* Court of Appeal's decision was thus challenged by Appellant in Court of Cassation on the following three grounds;

*Whereas* Respondent counter-answered Appellant's motion for cassation and requested dismissal thereof;

1. ***First ground:***

- *That* Court of Appeal's wherefores are unfounded, for Court relied on (i) the prophet's *Hadith*, and (ii) that a child born as a result of fornication shall not be attributed to the perpetrator even if the child is biologically proven to be his,
- *That* Appellant's motion is for the establishment of filiation and not paternity;
- *That* the Family Code differentiates between the recognition of filiation and acknowledgment of paternity;
- *That* jurists in their interpretation of Article 148 consider that filiation shall always be established as long as the child is born to the parent;
- *That* filiation is different from paternity only with regards to the legal and Islamic consequences thereof; mainly, the right to inheritance;

- *That* when the Family Code stipulates that maternal filiation is legitimate and paternal filiation is illegitimate, it contradicts thereby the principal of equality provided for in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights,
- *That* such stipulation renders the Family Code incompatible with the provisions of international conventions, knowing that the latter take precedence over domestic law, including the Constitution;
- *That* such stipulation is against Article 7 of the Convention on the Rights of the Child which provides for that the child shall have the right to know his parents;
- *That* filiation and paternity are two different things according to Court of Cassation's decision # 574 of November 14<sup>th</sup>, 2007, docket # 465/2006;
- *That* legitimate paternity denial as provided for in Articles 150 to 162 is not applicable in this case;
- *That* Court of Appeal invalidated a genetically established fact which is that Jane Doe Little is filiated to John Doe, Respondent, as concluded from the genetic expertise;
- *That* Court of Appeal relied on grounds that are not related to the law or *Sharia* and confused filiation with paternity;
- *That* Court of Appeal's wherefores were misplaced, thus they are defective and shall be struck out.

2. ***Second ground:***

a. *First part thereof:*

- *That* Court of Appeal violated the Constitution, in the sense that the Constitution stipulates that whenever domestic laws are incompatible with the international conventions ratified by Morocco, the latter shall take precedence, and thus, Court should have relied on, and applied, in its wherefores the international conventions and not the domestic laws incompatible therewith;
- *That* Court of Appeal's understanding of Article 7 of the Convention on the Rights of the Child contravenes the preamble, and is contradictory to the judicial jurisprudence which enforces the pre-eminence of international conventions and treaties over domestic laws;
- *That* Court of Appeal's decision was not based on such pre-eminence, it is thus in violation of the law, and is, therefore, subject to cassation;

b. *Second part thereof:*

- *That* Court of Appeal infringed Article 77 of the Code of Obligations and Contracts when regarded the damages sought by Appellant as illegal and in contrast with the same Article;
- *That* Court of Appeal (i) considered the actus reus of the wrongdoing to be the childbirth and, as such, Appellant is the sole responsible thereof, (ii) considered such actus reus to be in violation of the law that prohibits any sexual intercourse outside marriage institution, resulting in a victim, in this case, it was the child;
- *That* the father cannot be acquitted from assuming the responsibility of his daughter whether she was attributed to him via paternity or filiation;
- *That* the child is entitled to child support and damages, but not inheritance;

- *That* the harm inflicted on Appellant is manifested in (i) the birth of the child, and responsibility assumed thereof, especially after Respondent denied his relationship to the child who is a result of his act and wrongdoing;
- *That* Article 77 of said code holds responsible the perpetrator, providing that the harm inflicted was a direct consequence of the perpetrator's act;
- *That* the harm in this case is inflicted in both the mother and the child, and, therefore, the child shall be entitled to child support and damages;

3. ***Third ground:***

- *That* Court of Appeal abused its powers, for Court's decision entailed more than was requested in the motion;
- *That* Court of Appeal thereby transcended its functional jurisdiction which is that to adjudge within what was demanded only;
- *That* the motion was for the certification of the biological filiation between the father and daughter who is his blood as confirmed by the trusted genetic expertise;
- *That* Court of Appeal's decision should have confirmed the results of the expertise and should have, therefore, sentenced the father to acknowledge his daughter;
- *That* it was within the jurisdiction of the Court if it chooses so, to decide that such acknowledgment shall have no related consequences, mainly, inheritance;
- *That* Court of Appeal's decision was, thus, incorrect, giving right therefore to Appellant to file a motion for cassation;

**Court of Cassation's response to Appellant's grounds**

- *Whereas* the subject matter of the motion for cassation shall be legal, otherwise, the motion shall be dismissed;
- *Whereas* the Moroccan Constitution stipulates in its preamble that the international conventions duly ratified by Morocco shall have supremacy, once published, over domestic legislations, and this, with respect for the provisions of the constitution, the laws of the kingdom, and immutable national identity; and that such legislations should be made compatible with said conventions;
- *Whereas* the Constitution stipulates expressly in Article 32 that the family established on the legitimate matrimonial relation shall be the core of the Moroccan society;
- *Whereas* Article 148 of the Family Code stipulates that the 'illegitimate filiation to the father does not produce any of the effects of legitimate filiation', thus, Appellant's motion for illegitimate biological filiation order is not justified legally nor according to Sharia;
- *Whereas* Court of Appeal's wherefores were based on the fact that (i) the relationship between the parties was illegitimate, (ii) the child resulting from fornication shall not be attributed to the perpetrator even if the child is biologically proven to be his, for the biological relationship has no effect whatsoever, (iii) the child is considered a stranger to Respondent and shall not be entitled to any damages, for the child is a fruit of an illegitimate act of which the mother is a part thereof, (iv) the provisions of Article 32 of the Constitution refer to the equality in civil rights and other rights entitlement but only within the limits set forth by the legislator;
- *Whereas* Court of Appeal's decision, is, therefore, well founded and respectful to the provisions of the constitution;

- *Whereas* Court of Appeal has, therein, applied the law and the jurisprudence, which is regarded as law;
- *Whereas* such jurisprudence considers (i) that the child resulting from fornication shall be attributed to the women irrespective of the reason of the pregnancy, be it a result of legitimate relationship, suspicion of adultery or fornication, and (ii) that the child shall have no relation to the father neither in terms filiation nor in terms of paternity;
- *Whereas* Court of Appeal has justified its decree according to the law and was not in violation of what was claimed in the motion for cassation;
- *Thus* the motion for cassation is groundless;

**THEREFORE**

**The Court of Cassation hereby dismisses the motion for cassation and order Appellant to pay the legal fees hereof;**

In witness whereof, this decree was rendered on the aforementioned date in the open hearing held in the ordinary hearing chamber of the Court of Cassation of Rabat:

The Court was composed of:

- |   |                            |
|---|----------------------------|
| ○ Mohamed Bennezha                                  | President                  |
| ○ Nouredine Haddari                                 | Reporter                   |
| ○ Omar Lamine, Abdelghani Al Ider and Latifa Arjdal | Members                    |
| ○ Mohamed Falahi                                    | Assistant General Attorney |
| ○ Fatima Oubhouch                                   | Court's Clerk              |

President: Follow a signature

Reporter: Follow a signature

Court Clerk: Follow a signature