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The summary judgment decision and its impact on the final judgment in the context of Jordan

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Abstract

Summary judiciary is not a newly born judiciary, but rather it has a long history, its roots go back to the jurists of Islamic law who discussed some urgent matters such as urgent alimony and preventing the debtor from traveling, till the end of the normal judicial procedures, which are often lengthy in a way that affects the ruling on these cases, and they are many cases that are filled with judicial files in the courts and occur with many individuals within the scope of the transactions they conduct on a daily basis and relate to legal rights and transactions of very importance, accuracy and speed, including alimony cases and requesting the appointment of a trustee or guardian or placing a judicial guardianship over a particular right, all of which require justice to be expedited and expedited.

Keywords

summary judiciary, urgency case, retrial, substantive judiciary.

Introduction

One of the requirements of the proper conduct of justice is to be patient in examining the litigants' allegations, and in issuing a ruling in the case, which requires giving the litigants the appropriate dates to prove what they claim and to present their defense. On the one hand, and on the other hand, the litigation period may be prolonged and the settlement of the case may be delayed by the procrastination of the ill-intentioned litigants, so that the delay is a reason in harming the interests of the litigants, a harm that may not be avoided, and in order to reconcile the two foregoing considerations, the legislator created the "summary judiciary" system, according to which he assists the litigants with quick and enforceable judgments. These provisions place the litigants in a temporary position pending a decision on the origin of the right.

Summary judiciary has two main features, first: it does not resort to it unless there is an urgency that justifies seeking it before deciding on the merits of the case, second: it is only required to take a temporary measure. This measure is not just a precautionary measure, but rather a measure aimed at protecting one of the two litigants in the case without the other.

The study Problem

The problem of the study lies in clarifying the effectiveness of the summary judiciary and the extent of the impact of the summary judiciary's decision on the final judgment in the case. Perhaps the need for urgent judicial protection appears clearly in the cases in which the opponent deliberately delays the substantive lawsuit out of bad faith, which leads to delays in adjudicating it, which may cause damage to the interests of the rest of the opponent's damage is difficult to remedy. Also, a long time may elapse before the right holder is able to file his substantive case, or it may require some time to elapse until the case is decided, which may put the necessary means to decide the case at risk, with the death of a witness or the damage of the money in dispute.

Therefore, the summary judiciary is distinguished from the substantive judiciary, in that it has an auxiliary function for the latter. Expedited protection is granted in view of the possibility of a substantive court ruling in the future, whether the substantive case has been filed or will be filed in the future.

The urgent case is also distinguished by its independence from the substantive case, in the sense that the urgent protection is granted in the abstract, regardless of the existence of the substantive right or not, which makes the summary judiciary a temporary effect linked to the substantive case, so that it disappears as soon as a judgment is issued in it. The judgment issued for temporary alimony until the substantive alimony lawsuit is resolved, its effect ends with the issuance of a final judgment in the latter.

Study questions

- 1- What are the characteristics of the summary judiciary and the conditions of its jurisdiction?
- 2- What is the nature of the summary court decision?
- 3- What is the authority of summary decisions?
- 4- What is the effect of the summary court decision on the final judgment in the case?

Methodology

The method followed by the researcher in this research is the inductive-analytical method on which the researcher relies on reading the literature related to the topic of the research and then working on it to take what he needs from it, through his analytical study that is collected from the scientific material and put it in its appropriate place, and sometimes he adapts another different opinion or bias to one of the opinions.

Chapter One: The Concept of summary Judgment

The first topic: the definition of the summary judiciary and the wisdom of it

The first section: the definition of the Summary judiciary

Referring to the texts regulating the issue of summary justice in the Jordanian Civil Procedure Code No. 24 of 1988 and its amendments, we find that the Jordanian legislator did not define a summary judiciary within the provisions of the Code of Civil Procedure, meaning that the legislator did not define the state of urgency, but rather merely stipulated the requirement of urgency in Article 32/1 of the Code of Civil Procedures, which states that: "The judge of urgent matters is competent to rule on urgent matters in which there is fear of running out of time." Then, in the second paragraph of the same article, he enumerated some urgent matters according to the text of the law. Rather, he left this task to jurisprudence and the judiciary, and I saw that the Jordanian legislator was right in that, which makes it a legislation characterized by flexibility.

Another aspect defined it as "the real danger that looms over the right to be preserved and which must be avoided quickly, which is not usually in ordinary litigation, even if its deadlines are short, and urgency is available in every case if the urgent action is intended to prevent a certain harm that cannot be removed if it occurs."¹

A third opinion went on to say that the summary judiciary is a temporary

¹ Abdel Moneim Al-Sharqawi, Explanation of Civil and Commercial Pleadings, Second Edition 1999 p 233

judiciary that aims to provide temporary judicial protection²

Some believe that the summary judiciary was established alongside the ordinary judiciary to take quick temporary measures to preserve the interests of the litigants, without this judiciary being exposed to the origin of the disputed rights, which is an auxiliary or complementary judiciary aimed at ensuring that the objective judiciary achieves its goal³.

According to development of French legislation, the legislator tended to increase the competence of the summary judiciary in a remarkable way, which resulted in the issuance of Decree No. 1330 of 1985, which emphasized the jurisdiction of the summary judiciary in certain cases, even if there was no state of urgency, while emphasizing that there would be no serious dispute existing at the time of the issuance of the summary judgment.⁴ In this case and other similar cases, the summary matters judge is competent without the plaintiff having to prove the existence of a state of urgency, while emphasizing that the judgment issued by the summary matters judge in this case is considered a judgment of a temporary nature and does not restrict the subject court.⁵

As for the judicial rulings in this regard, the Egyptian Court of Cassation stated that "the jurisdiction of the summary judiciary in the urgent case is based on the availability of danger and urgency that justifies its intervention to issue a temporary decision intended to respond to aggression that appears, at first glance to prevent a danger that cannot be remedied, and it is feared that it will be used if it's too late."⁶

Although our legislator did not come up with a definition of the summary judiciary, we, through the texts regulating this judiciary, and after reviewing the previous jurisprudential definitions, the researcher believes that the summary judiciary can be defined as "a branch of the civil judiciary that specializes in adjudicating urgent issues, and these are the issues that are feared over time or which the law stipulates that it is within his jurisdiction by decisions that are characterized as temporary, do not affect the origin of the right and do not have the force of the order decided before the trial court when examining the origin of the dispute.

It follows from this definition that the summary matter judge does not decide on an urgent matter on a temporary basis unless the civil judiciary in its broad sense is competent to decide on the origin of the right in it.⁷ This definition also combines the two conditions of competence of the judge of urgent matters, namely: urgency and not prejudice to the origin of the right.

The summary judiciary is distinguished from the ordinary judiciary in that it

² Mahmoud Muhammad Ibrahim, Al-Wajeez in Pleadings, Dar Al-Fikr Al-Arabi 1983 P360

³ Amina Al-Nimr, The Basis of Jurisdiction and Judgment in Urgent Cases, Alexandria Knowledge Foundation, 1967, Ahmed Abu Al-Wafa: The Evolution of the Summary judiciary in the Principles of the New Civil Trials No. 14 of 1988, published in the Journal of the Jordanian Bar Association, Nos. 12, 11, p. 1881

⁴ PERROT R., Cours en droit judiciaire; 2016, p. 241.

⁵ Cass.Com. 7/3/2019, Bull. Cour cass. Vol. 4, n 67

⁶ Egyptian civil annulment number 66/2/18 issued in 2013

⁷ Muhammad Al-Homsi, Theory of Summary judiciary in the Jordanian Civil Procedure Code 1997 p 60

has a temporary effect. The judgment of the summary judge has its effect since its issuance until the ordinary judge decides on the substantive case, and it does not in any way restrict the court to which the dispute is presented in relation to the origin of the right, even if it is the same court that it was issued, but this does not mean that the judgment of the judge of urgent matters does not have the validity of the *res judicata*⁸.

The second Section: the reason for the existence of the summary judiciary

In addition to the substantive judiciary, which seeks to confirm, amend or cancel the right or legal status, the legislator has organized a final judgment after investigating the opponents' claims that it is wrong and by providing a time slot for them to prepare the various means of defense, another form of the judiciary that provides urgent and temporary protection for those who appear The papers or the apparent situation, and without deep research and study, that his interest is worthy of protection until the court decides on the origin of the right, without being bound by what the summary judiciary has concluded.

The legislator considered that it is sufficient to resort to the ordinary judiciary and follow its procedures and deadlines, which may be unproductive in many cases, and that in order for the protection of the judiciary to be as adequate as possible, the litigants should have the opportunity to resort to the judiciary at the least possible date and at any time and without restriction in the normal procedures to obtain a decision that protects their interests Without prejudice to their right, over which the dispute still exists, to take its normal way in front of the competent courts⁹

For this reason, the Code of Procedure includes texts to ensure the achievement of this purpose and to reconcile between deliberation in resolving the dispute, and considering the necessity of speed in granting judicial protection to those who are worthy of it from litigants in order to avoid the risk of delay, as the importance of the summary judiciary emerges, as the legislator decides it as a system for granting urgent and temporary protection to litigants at risk.¹⁰

We conclude from all of this that in order to reconcile the considerations of the proper conduct of justice, and not to harm the interests of the litigants, the legislator established a summary justice system so that the litigants can obtain quick temporary procedures that will preserve their interests pending a ruling on the origin of the right.

⁸ Schalk and Kopf v. Austria, no. 30141/04, ECHR 2019.

⁹ Muhammad Abdel-Wahab El-Ashmawy, Rules of Pleadings in Egyptian and Comparative Legislation 2004 p242

¹⁰ Johan Marlley, Laws of Pleadings, Book One 2020, p213

The second topic: the characteristics of the summary judiciary and the conditions of its jurisdiction

The first section: the characteristics of the summary judiciary

The summary judiciary is not based on the idea of complete justice, but is based on immediate protection that does not gain or waste a right. The origin of the right may be affected in terms of reality in cases where the litigants are placed in a position beyond which recourse to the substantive judiciary is not feasible, so the temporary legal protection granted by the urgent judiciary is in fact final protection¹¹ The summary judiciary is a judicial act in the true sense of the word, as it issues its rulings after putting the dispute before it and supporting the apparent documents without prejudice to the origin of the matter and with rulings that can be appealed in the ways established by the law.

- 1- The summary judiciary has an auxiliary function, as it is resorted to in view of the possibility of a possible substantive ruling in the future, whether this judiciary is the result of a substantive case that has already been instituted or is awaiting its establishment, because the summary judiciary aims to ensure that the substantive action achieves its objective.¹²
- 2- The summary court case is an abstract case: that is why it is said that the summary judiciary is competent regardless of the existence of a substantive right.
- 3- The summary judiciary has a temporary effect: it arranges its effect until the substantive case is decided on. Therefore, the summary judgment issued to appoint a judicial guard ends with the issuance of a judgment on ownership of one of the litigants, while the summary judgment may sometimes lead to dispensing with filing a lawsuit¹³.

The question arises as to the extent of the jurisdiction of the Jordanian courts in summary cases, if one of the parties to the case is a foreigner?

The Court of Cassation answers that by saying, "The jurisdiction of the summary judge in the consideration of temporary requests is determined within the framework of Article 27/3 of the Civil Procedure Code, and it is convened in one of the following two cases:

The first case: It is stipulated in Article 27/3, where the urgent request is submitted on the basis of the original substantive lawsuit filed against a foreigner inside the Kingdom before the Jordanian courts, where the judge of summary matters in this case is competent to consider the urgent request submitted on the basis of the substantive lawsuit because the request is related to it.

The second case: It is related to submitting the urgent request in a lawsuit filed against a foreigner outside the courts of the Kingdom. The Jordanian courts

¹¹ Lesaffer, Randall (25 June 2009). *European legal history: a cultural and political perspective*. Translated by Arriens, Jan. Cambridge in 2021, UK. pp. 85–86.

¹² Fathi Wali, *Mediator in the Civil Judiciary*, 1980 p151 item 183

¹³ Hamilton, Marci. *God vs. the Gavel*, p. 296 (Cambridge University Press 2018): "The symbol of the judicial system.

are not initially competent, but are specialized for the purposes of implementation".¹⁴

The second topic: the conditions for the jurisdiction of the summary judiciary

The convening of the jurisdiction of the summary court to consider the urgent request requires that several conditions be met, the most important of which is urgency, and not prejudice to the origin of the right so that what is required in the urgent request is a timing and temporary procedure.

Section one: the condition of urgency

Neither the Jordanian legislator nor comparative legislation defines what is meant by a state of urgency. Rather, it has determined the jurisdiction of the summary judiciary to decide on some cases and issues for which there is fear of passing time. Jurisprudence links the state of urgency with objective or impersonal elements, which are the element of time on the one hand and the nature of the dispute on the other hand.¹⁵

The urgent matters listed on the list of summary courts are described as having flexible meanings, as they face the risk of delay or slowness of litigation procedures in cases and issues that cannot wait until obtaining objective protection and a ruling upholding the objective right. the urgent matters judge deduces the state of urgency from each case separately, and its existence is not agreed upon, and it is not by the will of the opponents and their agreement, and the opponents do not have the ability to assign the status of urgency to their claim until it is accepted before the summary judiciary, because urgency is not a description, but a situation.¹⁶

Urgency is the fear of running out of time, so that if a certain time has passed, the plaintiff may suffer damage or danger resulting in the loss of his right or detraction from its value, which requires urgent protection that cannot be provided if the matter is submitted to the substantive judiciary¹⁷.

The French legislator expressed this with the imminent danger or harm and the existence of illegal acts that cause inconvenience to others, such as exposure to him in his ownership or possession, with the assignment of jurisdiction to consider these issues to the judge of urgent matters, even if there is a serious dispute about the right¹⁸

¹⁴ Jordanian Court of Cassation Judgment No. 3510 of 2022

¹⁵ Ayad Mustafa, Owaidah Nazim, *The Summary judiciary and Its Necessities in Palestine*, without edition, without publisher, 1998 p 48

¹⁶ Darawshah, Jibril Mutasem Muhammad, *The Specific Jurisdiction of the Urgent Matters Judge in a Comparative Study*, Nablus, Palestine, 2013 p13

¹⁷ PH. JESTAZ, *L'Urgence et Les Principes Classiques du Droit Civil*, Librairie générale de droit et de jurisprudence, Paris, 2016, n 326.

¹⁸ Le président peut toujours, même en présence d'une contestation sérieuse, prescrire en référé les mesures conservatoires ou de remise en état qui s'imposent, soit pour prévenir un dommage imminent, soit pour faire cesser un trouble manifestement illicite. 2017\ P123-125

The state of urgency is determined according to the nature of the dispute and the circumstances surrounding it at the time of submitting the dispute to the judge.

The disappearance of the state of urgency entails a ruling of lack of jurisdiction even before the court of second instance. As if the state of urgency ceased after the issuance of the impugned judgment by appeal to the court of second instance, the court must also rule that it does not have jurisdiction.

Time of urgency availability

Urgency must continue from the time the lawsuit is filed until the verdict is issued. If the case is filed before the summary judiciary, there is an element of urgency and then it is missing before it is adjudicated for any reason, the court must rule that it does not have jurisdiction to raise it, as long as the lawsuit has adjudicated lacks the element of urgency, as the summary judiciary is an exceptional jurisdiction intended to pay the imminent danger of the availability of urgency, which needs to be averted quickly, which is not available in ordinary litigation. Where this urgency disappears, whether at the time of filing the lawsuit or during its consideration, there is no place for its intervention, and this provision applies to the lawsuit whether it is in its first stage before the court of first instance or at the appeal stage.

Section Two: Not to prejudice the origin of the right

The summary judiciary aims to decide a quick protection for the litigants with short procedures and dates, and this requires that he perform an emergency mission or take precautionary and preventive measures based on the apparent and quick search of the litigants' evidence without using the evidence of the origin of the right to judgment¹⁹

What is meant by the origin of the right that is not affected by the summary judiciary is the legal reason that determines the rights and obligations of the litigants or their disputed legal positions.

The prevailing trend in the French judiciary makes the issue of whether or not the urgency clause is a matter of fact that the judge is not subject to the oversight of the Court of Cassation, although the elicitation of the urgency clause must be based on justifiable reasons, which necessitates the supervision of the Court of Cassation for that.²⁰

The general rule is that the basis for the jurisdiction of the summary judge is the cases whose effect may expire, which results in the presence of an urgency and the matter is presented to the Court of Urgent Matters, and that what is required is a temporary measure that is not characterized by being decisive in issuing the

¹⁹ Johan Lavor, *Explanation of the Code of Civil and Commercial Procedures, Part One*, without edition, 2019. P133

²⁰ Cass.and Civ Bull, Cour Cass. 2012 Vol. 2, p10

final judgment, and it is agreed upon within the scope of the case. The summary assessment is an assessment of the consideration for the dispute or the harm inflicted on the victim.

The urgent protection provided by the summary judiciary is characterized as temporary, and produces only a temporary effect, and some describe it as exceptional. In all cases, it does not substitute for substantive protection or executive protection. Therefore, the protection required of the summary judge is the immediate and temporary protection without prejudice to the origin of the right in dispute, meaning that the requested is just a temporary procedure, pending a decision on the origin of the right, without having the authority to decide on it, because it is outside the scope of his jurisdiction.

And if preventing the summary judge from discussing the subject matter of the dispute also requires preventing him from examining and examining the litigants' documents and papers related to the right in dispute in depth, but that does not preclude him from examining these papers and documents in an accidental search that he feels, what at first sight is likely to be the right thing in the matter. The request presented to it. Permission for the summary judge to search and examine the litigants' documents, to the extent that allows him to know the nature of the dispute, substantive or temporary. If he has the right to examine the documents submitted as an exception, but he may not go beyond that, in order to prejudice the origin of the right.

If the judge finds that it is not possible for him to decide on the urgent request without prejudice to the origin of the right, as if the dispute between the two parties is serious, so that temporary action can only be taken by interpreting the agreements concluded between them, which is a judgment on the origin of the right, then he must rule that he has no jurisdiction even if the procedure is temporary, but he must realize that the condition of urgency does not exist²¹

If the previous conditions are met, and a state of urgency is found, and what is required is to take a temporary measure to protect the right without prejudice to the origin of the right and to address its subject matter, the jurisdiction falls to the judge of urgent matters, who has the right to issue his decision on the request, even if this decision results in permanent damage that cannot be removed or reverted when the decision is issued in topic suit.

The second topic: influence of the summary judiciary on the final decision

As the judgments issued in summary cases are considered valid judicial decisions as soon as they are issued and in accordance with the nature of these judgments.

²¹Jack smith, Practical problems in the summary judiciary, edition 2, 2020 p265

The first Section: the implementation of summary decisions

There is no special text related to the implementation of summary judgments in Jordan, and in the absence of a special provision in Jordanian law, it is necessary to refer to the general rules, including Article 152 of the Civil Code. Precautionary detention, travel ban, or any precautionary measures prior to filing the lawsuit were as if they were not, if the plaintiff did not file the lawsuit to prove his right within eight days from the day following the issuance of that decision, and that the president of the court or his delegate as well as the urgent matters judge must take the necessary measures To cancel the effect of that decision, which means that summary decisions must be implemented within eight days.

Urgent judgments in Jordan are not implemented through the Execution Department, because the text of Article 9 of the Execution Law states, "It is not permissible to enforce bonds forcibly as long as appealing them is permissible unless the expedited execution is stipulated in the law or ruled by it." Registry Road where employees direct official books.

And the necessary correspondences and notifications to the competent authorities. If a decision is issued to seize a plot of land, an account balance, or a vehicle, the Land Department, the bank, or the Drivers and Vehicles Licensing Department shall be addressed to place the seizure sign. In the Public Security Directorate to prevent the debtor from leaving the country. The same applies to the summary judgment appointing a trustee or a judicial receiver on a joint property or company.²²

Section Two: Methods of Appealing Summary Decisions

The summary judgment, even if it is temporary, does not affect the origin of the right, but it is considered a judicial judgment in the legal sense. The legislator has specified a way to appeal the summary judgments, and the appeal may be directed to the court's decision or the procedures. An example of the first case is that the court erred in extracting the facts or estimating them, or overstepped the application of the law to the facts extracted, and an example of the second case is that the court is not competent Considering the case, or that one of the litigants is not qualified to litigate, or the judgment is not pronounced publicly, and here the judgment must be appealed, and the judgment is appealed in the following ways:

First: Appeal

It is an ordinary way of appeal that states that have followed the principle of litigation take on two levels. What is meant is that the convict can re-submit the dispute a second time before a court of a higher degree than the court that issued the judgment²³

Article 176 of the Jordanian Civil Code affirmed the permissibility of

²² Samir Muhammad Al-Mahadin, Powers of the Urgent Matters Judge, Comparative Study, Master's Thesis, Department of Private Law, Faculty of Law, Middle East University, 2014 p93

²³ .Dr. Ibrahim Naguib Saad, Private Judicial Law, Mansha'at Al-Maaref, 1st Edition, Alexandria, Egypt, 1973

appealing summary judgments, as it decided in the second paragraph, "Decisions issued in urgent matters may be appealed regardless of the court that issued them. The President of the Court of Cassation or whoever he authorizes to do so." Likewise, Article 170 of the Civil Procedure Code stipulates that "It is not permissible to appeal against judgments issued during the course of the case, and the litigation does not end with it except after the issuance of the judgment that terminates the entire litigation, with the exception of decisions issued in the following issues:

1- Urgent matters. Although the established principle in civil procedures is that judgments issued during the course of the case may not be appealed and the litigation does not end until after the issuance of the judgment ending the litigation, with the exception of summary judgments and cases specified in Article 170 of the same law, and that summary judgments are subject to the ordinary appeal method. At the Court of Appeal, whether issued by the President of the Court of First Instance, or whoever he delegates, or whoever takes his place in his capacity as a judge of urgent matters, or on behalf of the conciliation judge or the trial court, if the request is submitted to him by subordination, and whether the decision was to accept the request or reject it, that the text of Article 176 of the Civil Procedure Code stated Absolutely, and since the principle in summary cases is that they should be examined carefully, unless the court or the summary judge decides otherwise, this principle applies to the review of summary cases on appeal, pursuant to the text of Article 190 of the Civil Code, which states that "the established rules apply to the appeal." before the Court.

The appeal shall be submitted by an appellate statement in the same manner as is followed in ordinary judgments if it is submitted to the Registry of the court that issued the appealed judgment in order to submit it with the case papers to the court to which it is appealed, in accordance with the conditions prescribed in the text of Articles 180 and 181, bearing in mind that the consideration of the appeal, as we said earlier, is in accordance with The rules and procedures followed before the Court of First Instance. The statement of claim or request must include all the details stipulated in Article 181 of the Civil Code, which are²⁴:

- 1- The name of the appellant, his representative, and the address of the notification.
- 2- The name of the respondent, his representative, and the address of the notification
- 3- The name of the court that issued the appealed judgment, its date and the number of the case in which it was issued.
- 4- Mention all the reasons for appeal in the list in a concise manner and free of controversy in separate and numbered items.

Requests

- 1- The dates of appeal in the appeal regarding summary decisions are arranged in the text of Article 178 of the Civil Code in its second paragraph, which

²⁴ Dr. Ajjad Thamer Al-Dulaimi, Provisions of Waiver and Invalidation of the Petition and its Legal Effects, House of Legal Books, 1st Edition, Cairo, Egypt, 2010

states, "The period for appeal is ten days for decisions subject to appeal under the provisions of Article 170 of this law." Among the issues identified by Article 170 of the Civil Code in its first paragraph.

- 2- The deadline for appeal is one, whether with regard to summary decisions issued by the summary judge or those considered by the trial judge in an accessory capacity. A period of ten days following the date of its issuance or notification, and without waiting for a ruling in the matter, in accordance with the text of Article 170. To look into the matter of the dispute²⁵.
- 3- The same applies to urgent requests that are filed independently.

Effect of appeal and judgment

The Court of Appeal shall abide by the jurisdiction decreed for the summary judiciary, which is to verify the availability of urgency and not to prejudice the origin of the right and the integrity of the procedures.

With regard to the judgment in the summary decision, the Court of Appeal, if it appears to it that the list of appeal was submitted within the legal period and that it meets the required conditions, then, according to Article 188 of the Civil Code, upholds the appealed judgment if it appears to it that it is in accordance with the rules and the law, with a list of the reasons on which it was based in rejecting the reasons for the appeal. The objections are clear and detailed.

And if it appears to it that in the procedures and transactions carried out by the appealed court there are some deficiencies in form or in substance, or that the decisions it issued are in violation of the principles and the law, it shall rectify what was mentioned by reform. And that in itself is in agreement with the law, I issued the decision to support it.²⁶

The Court of Appeal, upon issuing the final decision, shall address the reasons for the appeal in all clarity and detail.

Annulment of the appealed judgment ruling dismissing the case for lack of jurisdiction, because the case is adjudicated, for the passage of time, for lack of validity of the litigation, or for any formal reason that requires the Court of Appeal to decide to return the case to the Court of First Instance to consider the matter.

Second: Appeal against Cassation

Article 176/2 of the Code of Civil Procedure No. 14 of 2001 states that "decisions issued in urgent matters may be appealed regardless of the court that issued them. Whosoever authorizes him to do so." The legislator permitted the appeal against the decisions of the Court of Appeal in urgent matters by way of cassation, with the permission of the President of the Court of Cassation or whoever he authorizes to do so.

²⁵ Dr. Ahmed Abu Al-Wafa, Theory of Defenses in the Law of Pleadings, 5th Edition, Mansha'at Al-Maaref, Alexandria, Egypt 2005 p65

²⁶ Dr. Ahmed El-Sayed El-Sawy, Mediator in Explanation of the Civil and Commercial Procedures Law, 1st Edition, Cairo, Egypt, 2009 p34.

In this regard, the Court of Cassation ruled, "It is legally established, in accordance with Articles 191 and 196 of the Code of Civil Procedure, that it is acceptable to appeal before the Court of Cassation in the judgments issued by the courts of appeal in cases valued at more than ten thousand dinars, within thirty days from the day following the date of its issuance, if As for the other appellate judgments, the appeal in cassation is not accepted except with the permission of the President of the Court of Cassation or his authorized representative, and every cassation not submitted during the cassation deadline is rejected in accordance with Article 172 of the Code of Procedure Civil law, which stipulates that failure to observe the deadlines for appeal in judgments results in rejecting the appeal in form, and the court decides to reject it on its own.²⁷

As for the appeal procedures, the list of cassation is submitted to the Court of Appeal, which issued the judgment, to submit it with the case papers to the Court of Cassation after the notifications are made.

Third: The objection of others

It is one of the unusual ways to challenge judgments. The legislator has dealt with this type of appeal in Articles 206: 211 of the Civil Procedure Code and in Article 34 of the Magistrates Courts Law, which corresponds to Article 266 of the Syrian Code of Procedure, which states that "every person has the right to He was not a litigant in the case, nor represented or involved in it, to object to a ruling that infringed his rights."²⁸

Retrial

The opinions of the jurists differed about the extent to which summary judgments can be challenged by retrial or (request for consideration) as it is called in Egyptian law. A group went to the permissibility of appealing final or final summary judgments by retrial. This group relies on the following arguments:

- 1- The texts contained in this method of appeal are generally received
- 2- The summary judgments are judgments in the legal sense.
 - 1- When appealing for a retrial, the court hearing the appeal shall abide by the procedures and powers of the summary judge, including the availability of a state of urgency and the absence of prejudice to the origin of the right²⁹
 - 2- As for the other party, it considers that it is not permissible to appeal by retrial in summary judgments, and they are justified in that:
 - 1- Urgent judgments are considered temporary judgments issued in conservatory matters and the aggrieved party has the right to request their amendment or cancellation by the same summary judge when there is a change in the material facts of the request or in the positions of the legal litigants for one or

²⁷ court of cassation judgment No. 1084 of 2022

²⁸ Mohamed Abdel Latif, the summary judiciary 2003, p234

²⁹ Jack Fransoi , the meaning of competence 2020, p211

both of them, or to resort to the trial court to decide the origin of the right

2- The appeal by way of a retrial or a request for reconsideration is not permissible except when there are no other ways to appeal the judgments, and this refers to the final judgments in the matter.

We are for the second opinion, because Article 213 of the Civil Procedure Code has permitted the appeal for a retrial in the judgments that have gained the power of the case in question, while the summary judgment does not have this power.

The second topic: The nature of the summary court decision and its impact on the final judgment

The first section: the nature of summary decisions

Urgent judgments or decisions are judicial decisions. They are issued based on a dispute between the parties and from a judicial authority and according to the principles followed in the law. Summary decisions are temporary, dictated by absolute necessity and emergency danger. Nothing, and on this basis, these decisions are not characterized by generality and continuity, and that they are not a temporary treatment pending the establishment of the final treatment, or they are a temporary solution awaiting the original solution.

Nevertheless, these provisions may remain for a long period as long as the right that was issued to preserve it was not submitted to the trial court for any reason. The judgment for judicial custody of joint funds due to the state of commonality, although temporary in nature, may continue for a long period if the dispute remains between the parties. The partners did not file a screening case before the competent court³⁰ or even if a case was filed, but no final judgment was issued.

Distinguishing an urgent decision from what is suspected

Distinguishing between an urgent request and a temporary state order

The importance of segregation appears to respond to the opinion that goes to the jurisdictional work judiciary, and thus the temporary order as one of its forms and its inclusion with urgent work within one sect called the temporary judiciary.

A temporary order is an order on a petition issued to take a temporary measure, which takes the form of a precautionary measure (order to place a precautionary seizure or seizure of what the debtor has with others - order to seize the objects of a disputed estate) or non-preservative (order to shorten a hearing date, a distance date, or a lawsuit entry). When the legislator intervened in temporary issues.³¹

³⁰ Mohamed Mahmoud Ibrahim, the briefer in pleadings without mentioning the edition, Cairo 2006, p420

³¹ Dr. Ahmed Khalil, Civil Trials, Al-Halabi Human Rights Publications, without mentioning the edition, Beirut, Lebanon, 2005 p132

The summary case is a tool for the judge's exercise of his judicial function, and his issuance of a summary judgment in it is an embodiment of urgent judicial action. As for the temporary order, it is - with other forms of the so-called orders on petitions, and orders of appreciation - a tool for the judge to perform his guardianship function, as it is issued under the general jurisdiction that the judge kindly exercises, including taking a temporary measure, precautionary or not.

Some have given the court work of the judge a judicial nature, and we have responded to the arguments of this theory, and we have concluded that the guardianship work is distinguished by its own nature, which does not mix with the nature of the judicial work. In the range of judicial works, the legislator took into account this different nature of the two works, and decided for each of them its own rules, whether with regard to its jurisdiction, the procedures for its issuance, or the decision issued in it.

The reason for deciding the temporary orders system is due to the fact that it contributes to achieving surprise or surprise - in many cases - with the other party (such as a precautionary seizure order), because it is issued within 24 hours of submitting a petition to the judge, which he cannot achieve through an urgent case. If the temporary order does not have any validity, it can be canceled or amended with the knowledge of the person who issued it. However, the summary judgment enjoys full authoritativeness - with regard to the urgent dispute in which it was issued, even if it is valid related to the remaining circumstances and facts in which the judgment was issued.³²

From this quick presentation, it becomes clear to us that urgent judicial action is distinguished from the temporary state order, and that the attempt to confuse them or combine them into one sect is not based on the nature of matters and the facts of things, as well as its uselessness, and the absence of a place for it.

The second section: the authority of summary decisions

The principle is that the summary decision is authoritative, so the litigants cannot file a second lawsuit on the same subject in which an urgent decision was issued with the intention of reaching a decision that prevented or amended the first decision, and the judge cannot do that, provided that this argument is subject to the consistency of facts and the legal positions of the litigants. If there is a change, modification, or change in the material facts or the legal positions of the two parties, the parties to the dispute may then file a second lawsuit with the aim of canceling or amending the first summary decision. In this regard, the Court of Appeal decided in its decision No. 699/2 Urgent Matters "that summary judgments are judicial decisions and not jurisdictional, and therefore they are binding on the litigants and restricted to the judge who The judgment was issued temporarily without prejudice to the origin of the right, and therefore it is not permissible for

³²Ahmed Muslim, *The principles of Pleadings and Judicial Organization*, Arab Thought House, without mentioning the edition, Cairo, Egypt, 1963 p 245

him to withdraw from it unless there is a change in the facts of the material case or the legal position of the litigants. The litigants are to be new, created after the first judgment required to be amended. Rather, their existence is sufficient even if it occurred before the first judgment required to be amended, as long as it was not brought before the judge at that time to decide whether to accept or reject it.³³

The judge, at the request of the litigants, may issue temporary or summary judgments in the summary case brought to him, and it shall be considered in accordance with the rules and conditions to which the summary judiciary is subject in the Procedures Law. On the other hand, the summary judiciary is based on the idea of granting urgent protection to the parties to the conflict. It offers judicial protection, even if it is temporary, but it produces effects that reassure the litigants about their interests and helps to resolve the issue of the dispute in a way that satisfies their instinct for justice.

A dispute arose as to the extent to which this ruling enjoys the authority of the decree in the precise technical sense of the concept of authenticity, and we present the following to that dispute:

The first trend: the temporary or urgent judgment lacking the authority of the res judicata:

The judiciary is independent in estimating the extent to which the conditions of the summary case are met in what is submitted to it to issue a temporary or summary judgment, and its reasons should not be based on establishing the right or not, but rather its role is limited to balancing and weighing the possibilities without defining an opinion on the origin of the right, provided that its judgment is based on justified reasons lead to the end result.

Part of the jurisprudence has gone to the fact that the temporary rulings that precede the decision on the subject of the dispute do not have the authority of destroying the decreed in the strict technical sense of the concept of authenticity, and this trend is based mainly on:

1- The provisional rulings that precede the ruling on the subject matter to decide on temporary issues do not touch the essence of the dispute. It is a preventive role that prevents or exacerbates the damage. Its protection is only temporary so that the substantive judiciary can intervene and extend its affirmative protection to the right in question.

2- The provisional provisions are only temporary measures whose effect ends either with the disappearance of the state of danger that required his intervention, or by the issuance of substantive judicial protection, i.e. affirmative protection with respect to these rights. Possibility, and therefore the summary judiciary is not allowed to touch the subject of the right or the origin of the dispute, and does not base its judgment on the basis of the existence or absence of the right, but rather on what appears from the surface of the papers and what the judge infers from the circumstances of the case.

1.Dr. Ahmed Meligy, Encyclopedia of Commentary on the Pleading Law, Judges Club Edition, Eighth Edition, Volume 2, Cairo, Egypt, 2010 p 346

3- "Insisting" on attributing authenticity to temporary rulings is not supported by legislative texts, nor is it supported by the technical bases on which the authoritative attribution depends. Rather, this would lead to results that contradict the well-known authoritative system and thus affect the judicial organization itself.³⁴

The second trend: acquisition the summary judgment the pretext of the res judicata

Another trend in jurisprudence says that temporary or summary judgments possess the argument of the litigated order in the precise technical sense of the meaning of the argument known in the pleadings law and is based mainly on:

1- The provisional judgments possess the pretext of the res judicata in the strict technical sense, and that the provisional judgment grants judicial protection.

2- The temporary lawsuit, by its nature, contains the element of possibility, whether with regard to the right or the legal position or with regard to the assault on it. His decision is not on the basis of the existence of the right or the transgression, but on the basis of the possibility of this existence. The judge decides, in light of the existing circumstances when considering the temporary case, the amount of judicial protection required to aid the litigants. This does not mean that the temporary ruling does not possess the authority of the res judicata, but it means that the judicial protection granted under the temporary ruling is that the change of circumstances leads to a change in the cause.³⁵

3- The function of the temporary or summary judiciary is not a confirmation, amendment or cancellation of the right or a legal center capable of issuing a final judgment, but rather it is an abstract means of preserving evidence if the case is brought up again to the ordinary judiciary.

The researcher opinion

Where the summary judgment has a temporary argument and this argument remains as long as it's temporary cause still exists, and if the reason ceases, the argument ceases. The judgments issued by the judge of summary matters are temporary judgments that do not have the evidence of an irrevocable decree regarding the origin of the right, and the trial court is not obligated to take the reasons on which the summary judgment was based, and this is a clear matter and does not seem to contradict the idea of the argument in its content. By that, the work of the summary judiciary represents a distinct aspect of judicial protection, which is not based on definitively confirming the existence of the right.

The chosen solution is that the temporary or urgent judgment enjoys the pretext of the res judicata in the precise technical sense known in the Pleadings

³⁴ Dr. Ahmed Hindi, Commentary on the Pleadings Law in the Light of Cassation Judgments and Jurisprudence Opinions, Part 1, i 1, Dar Al-Jamaa Al-Jadida, Alexandria, Egypt, 2018 p35- 36

³⁵ Adam Wahib Al-Nadawi, The Philosophy of Litigation Procedures, Higher Education Press, Baghdad, Iraq, 1988 p86

Law for the judgments issued to settle the matter. Although it is a temporary argument, the reason for its existence or not is limited to the reason for its issuance, but it grants independent judicial protection to a dispute raised between the litigants. It is a judicial protection that stands alone to ward off harm to the right or precaution to preserve it, and it is a protection expressed by a real argument necessitated by the nature of the temporary dispute in which the judgment is issued in a way that does not affect the origin of the right or constitutes an obligation to the substantive judiciary, which remains the priority in issuing the final judgment. This argument cannot be denied or the protection granted by the Court of Urgent Matters ruling may not be denied if there is no material or legal change in the argument of the two parties. The argument of a temporary judgment is an argument by which the rights are relatively stable until they disappear with the disappearance of their reasons or the issuance of a judgment on the merits of the case.

The validity of the summary judgment before the trial court

The summary judgment has no effect on the judgment of the trial court when it considers the origin of the dispute, and it does not have the power of the *res judicata* before it, but it may amend or change it, and it may not consider it. If he does not want to hear his testimony again, he has the right not to consider the testimony given before summary judge³⁶

An exception to this is the rulings issued in requests to prove the case, as they and the reports of the experts will always remain considered by the trial court when ruling on the origin of the right, and to say that they are considered because the trial court is not obligated to take into account the reports of the experts who were appointed by rulings issued before the decision on the matter and for the purpose of First, it may not take into account the reports of experts appointed by the summary judiciary if it notices that they are untrue, contradictory to the truth, lack of performance of the task entrusted to them, or other defects.³⁷

The inadequacy of the argument for summary judgments before the trial court is enshrined in Article 33 of the Code of Civil Procedure in its third paragraph, which states, "The decision to accept the petitioner's request in urgent matters is pending the substantive case and until a decision is made."

Extent of the summary judgment argument against others

Urgent judgments do not bind only the litigation parties, and its effect extends to the successors of this litigation party is a self-evident matter, and its effect does not extend to others. On the temporary legal conditions assigned to him or disregarding its implementation, taking into account the penalties for

³⁶ Thiery Frondoin, *Comprehensive in Civil Actions and Procedures*, 1st Edition, Paris, 2018, Volume2 p47

³⁷ Ahmed Abu Al-Wafa, *Theory of Judgments* 2017. p503

obstructing the implementation of judicial rulings.³⁸

If a summary judgment is issued placing the precautionary attachment on the funds of a person who was not a party to the litigation and has no capacity in it, then this judgment shall not be an argument against him, and he may submit a request to the summary judge to reverse his decision.

Conclusion

The Pleadings Law, besides the “substantive judiciary” specialized in adjudicating the subject of the dispute, regulates another type of judiciary called “provisional or urgent justice,” which aims to prevent a type of temporary protection until the substantive ruling is issued on the origin of the right. The lawsuit that aims to obtain a temporary judiciary is called the “temporary lawsuit” and it differs from the substantive lawsuit in terms of the conditions and effects arising from it. Likewise, the temporary judiciary, although it is sometimes similar to some of the acts of the guardianship, is related to a previous legal bond whose existence it bears and aims to ensure its temporary protection. The temporary judiciary is not based on the idea of complete justice, but rather it is based on the idea of immediate and temporary protection that does not waste rights or ensure them in a definitive and decisive manner. Therefore, it can be said that the temporary or urgent judgment is the one that is issued urgently in temporary or urgent issues for which it is feared that the time will pass without prejudice to the origin of the right that leaves the concerned parties to struggle for it before the objective judiciary.

Recommendations

1. Establishment of new departments for courts specialized in summary justice to be dedicated to all cases that are available it contains the conditions of urgency to facilitate the task of the litigants as well as the judges, both in courts of First Instance or in Magistrates’ courts.
2. Establishment of a preparatory section in each court or urgent circuit of advisors to take the responsibility to prepare the urgent case for the court or the competent department and make a report preliminary to be presented in the case file, indicating whether there is a state of urgency or not within a period of time doesn’t exceed two weeks.
3. Conducting specialized courses in summary justice for judges who choose to work in summary courts so that their rulings come with legal rules and to make it easier for litigants to know the course of their cases.
4. Assigning law faculties to teach summary justice as a separate course from the procedural law course.

³⁸ Elias Abu Eid, *The Principles of Civil Trials between Text, Ijtihad and Jurisprudence*, Volume 1, Part 1, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2004

Results

- 1- The legislator organizes the summary judiciary alongside the substantive judiciary, and it specializes qualitatively in urgent matters that are referred to it in order to grant the litigants under its consideration the provisional or summary judgment.
- 2- The legislator stipulated that in order to issue a provisional or summary judgment, the element of urgency should be present, meaning that there is a fear of the possibility of harm to the right or the objective legal position assuming its existence if the plaintiff does not obtain the required temporary protection.
- 3- It is not sufficient for the issuance of summary judgments to fulfill the condition of urgency. Rather, the provisional judgment must be required without prejudice to the subject matter of the dispute.
- 4- The temporary or summary judgment enjoys the causality of the litigated order in the precise technical sense known in the Procedure Code for the judgments issued for adjudication on the matter, but it is a temporary authority, and the original case judge is not bound by the judgment issued by the judge.
- 5- Summary judiciary is not a newly born judiciary, but rather it has a long history, its roots go back to the jurists of Islamic law who discussed some urgent matters such as urgent alimony and preventing the debtor from traveling.
- 6- Since summary judgments are provisions in the legal sense, the judge or judges of summary matters, first and foremost, must take into account the necessity of justifying these provisions.
- 7- In light of the legislative amendments by creating administrative courts as a successor to the Supreme Court of Justice, it is necessary to establish legislative rules that define the nature and conditions of urgent cases before the administrative judiciary in order to ensure a balance between the interests of individuals and the public interest and unification of their terminology.

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