

Disclaimer: This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

In the name of Allah, the most Merciful, the most Gracious

Islamic Emirate of Afghanistan

The Secretariat

Correspondences Department

Circulars Section

Circular # 31

Date 8 January 2024 Coinciding with: 24/6/1445 HD | 17/10/1402

To: Officials the Cassations, Divisions, Appellate and Primary Courts of the Islamic Emirate of Afghanistan

May peace, mercy and blessings of Allah SWT be upon you!

And then: Numerous verdicts have been issued by the courts of the previous regime regarding certain matters. Some among those verdicts favor the plaintiff whereas some others favor the defendants. Moreover, the case has been remanded and referred to the similar court which has ruled on dismissal due to no follow up of his/her case by the petitioner. Whereas according to verdict no. 14 of Approval no. (33), dated March 14, 2023 (22/8/1444 HD) of the Supreme Court, ruling on dismissal of lawsuit is not considered a verdict. Now the question is: In regard with the cases in which ruling of dismissal of lawsuit has been issued due to no follow up followed by remand of the verdicts in the previous regime, is this dismissal of lawsuit considered, as before, a verdict?

The matter mentioned above was discussed in the meetings of High Council of the Supreme Court, held on 12 February 2024 (28/2/1445 HD) and it issued instructions based on verdict no. 3 of approval no. (4) as below: ((1- A copy each of ruling on dismissal of lawsuit based on disproof, ruling on hearing, ruling on dismissal of case and ruling on no follow up should be sent to the General Directorate of Scrutiny and Studies so that it could determine types of their enforcement or non-enforcement and that, which among those rulings on dismissal of lawsuit, is considered as a verdict and which one is not.

2- Similarly, it should identify types of enforcement and non-enforcement of ultimate and final verdicts on separation;

3- And whether a declaration or handing over a verdict without pronouncing it for the purpose of declaration is a declaration or not.))

According to the aforesaid instruction, the General Directorate of Scrutiny and Studies of the Supreme Court expressed its view that was presented to the Supreme Court's High Council meeting held on November 8, 2023 (24/4/1445 HD – 17/8/1402) about

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at www.arlo.online.

Disclaimer: This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

which the High Council issued instruction on the basis of verdict no. 4 of approval no. (10), as given below:

((1- The dismissal of lawsuit (which is post-verdict) is not the same as before (which is before the Primary court's verdict), rather the verdicts issued before the dismissal of the lawsuit are considered as verdicts; it doesn't matter whether these verdicts are remanded or otherwise not remanded. Such matters are related to the tribunal for reviewing verdicts of the previous regime. The tribunal shall review verdicts of the previous regime and keep in account the remands of the higher court of the previous regime. That is, if the verdict has no legal issue, the Secretariat of the Supreme Court shall confirm the verdict made by the previous regime in light of the procedure attached to circular no. (13), dated September 6, 2022 (10/2/1444 HD). However, if verdicts of the previous regime contained issues, the tribunal shall issue its own sharia-based verdict according to the mentioned circular.

2- In case a ruling on separation has been issued in a matter according to one of the four schools of Islamic jurisprudence by a judge of the previous regime, the verdict on separation, pronounced/declared by the court of the previous regime, is to be enforced but if the said verdict on separation is not according to one of the four schools of Islamic jurisprudence, then the verdict on separation is not to be enforced.

Correspondingly, according to the viewpoint of the General Directorate of Scrutiny and Studies of the Supreme Court, enforcement is only required when transfer occurs in the principal subject matter of the claim. However, there is no need for enforcement in judgement of dismissal and any other judgement where the principal subject matter of the claim remains in the possession of the possessor and, consequently, the said ruling only settles conflict and lawsuit.

And that it is necessary for a ruling to be pronounced verbally. Merely handing papers-of the verdict over to both parties does not constitute a ruling and it is not considered enforceable ruling either))

Therefore, the aforesaid written instruction of High Council of the Supreme Court was communicated to the Supreme Court associated Directorates, Cassations, Divisions, Appellate, and Primary Courts through this circular so that legal and Sharia proceedings will be made accordingly.

Respectfully,

Mufti Abdul Rasheed "Saeed"
Head of the Secretariat
The Supreme Court

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at www.arlo.online.