

**Cairo Economy Court**

**First Division of Appeal**

**Judgment**

**In the name of the Public**

**At the public hearing held on Thursday 28/1/2010, at Cairo Economy Court located at the Cairo Economy Court New Headquarters in Al Meraj City, Al Basateen District.**

**Presided by Counsellor Farag Abdel Ghani Gaballah**

**President of the Court**

**And members, Counsellor Khaled Mohamed Al Ghamri**

**Counsellor**

**Mohamed Ahmed Abdel Aal**

**Counsellor**

**And in the presence of Mr. Ibram Agaiby**

**Secretary**

**The Court Issued the following judgment:**

**In case No. 647 of JY1 Economy Cairo**

**Filed by:**

Mr. Essam Abdul Kadir Bin Abdul Mohsen Al Muhaidab, in his capacity as a shareholder and manager of Abdul Kadir and Sons Group, a company incorporated in the Kingdom of Saudi Arabia, with its domicile at the offices of Mr. Gamil Saeed, Attorney at Law, at 2A Taha Hussein Street, Zamalek, Cairo.

### **Against**

- 1- Dr. Moumena Abdel Wahab Kamel
- 2- Dr. Hend Mohamed Motaz Mostafa Kamel Mohamed El Sherbini
- 3- Mr. Mahmoud Abdel Megid

In their personal capacities and in their capacity as the legal representatives of Al Mokhtabar Laboratories, and they shall all be notified at the Company's headquarters at 64 Gameat Al Dowal Al Arabia Street – Mohandessin – Dokki District – Giza.

- 4- The Head of the General Authority for Investment and Free Zones, to be notified at his legal domicile – Investment Services Department – Madinet Nasr Thani – Exhibitions Land – Salah Salem Road.
- 5- The Chairman of the Egyptian Stock Exchange in his capacity to be notified at the Headquarters of the Stock Exchange at 4A Al Sherifein Street, Abdin, Cairo.
- 6- The Director of the Commercial Registration Department in his capacity at Building 106 New Al Fustat City, Old Cairo.
- 7- The Manager of Giza Commercial Registration Office in his capacity to be notified at 82 Wadi Al Nil Street – Mohandessin – Giza.

### **The Court**

After trial and document reviews and deliberations;

Whereas the facts of the case are that the Claimant in his capacity filed the case before the court by a statement of claim lodged on 2/4/2009 and requested:

First: on interim basis, and before deciding on the substance, to impose judicial custody on the Respondent Company and appointing a judicial trustee to receive the Company, its components, elements, movables, documents, bank accounts, books, and manage it and collect its dues and pay its obligations and deposit them in the Court safe until a decision is issued on the subject matter of the case.

Second: On substance: a) validity of the sale agreement dated 20/11/2007 including the sale by the Respondent of 49% of its shares in consideration of EGP 58 million as detailed in the Agreement. b) Enabling the Claimant from taking the legal and financial actions necessary and legitimate to transfer the title of shares subject of the agreement dated 20/11/2007 as indicated in the Claimant's statement of claim.

Third: compelling the sixth and seventh Respondents in their capacities to take the legal procedures to amend the commercial registration of the company subject of the agreement as indicated in the agreement dated 20/11/2007 and compelling the Respondent Company to bear the costs and attorney fees without bail.

Based on the statements that by virtue of a sale agreement dated 20/11/2007 signed by the Claimant as purchaser and the first to third Respondents as sellers, the mentioned respondents sold the shares indicated in the agreement from Al Mokhtabar Company, an Egyptian joint stock company.

It has been agreed that the sale price of 49% of the Company's shares shall be paid as follows:

- a) EGP 17 million actually paid.
- b) EGP 39 million to be paid later at the time of closing.
- c) EGP 2 million to be deposited in the escrow account for four months from the closing date to reflect the security conditions of the unpaid promissory notes #.
- d) In addition to the purchase price, the Claimant agreed to pay to the first three respondents an amount of EGP 2,451,470 at closing date.

The Claimant initiated the performance of its obligations represented in payment of EGP 17 million from the sale price as the agreement gave the Claimant company the right to the profits made by the Company subject of the agreement starting from First of October 2007, and despite the fact the Claimant performed its obligations of paying the price of the agreement, it remained waiting for the three first respondents to perform their obligation to no avail until they announced their intention not to fulfil their obligations as mentioned in the emails sent by them to the Claimant where they stated the inapplicability of the arbitration clause in the agreement.

Whereas, the mentioned agreement is a full-fledged agreement as the point is the action according to the agreement which led the Claimant to file its claim with the aforementioned requests.

The Claimant, in support of its claim, submitted two exhibits of documents, the first contained a photocopy of notices addressed by the claimant to the respondents, and the second included a photocopy of the agreement subject of claim in a foreign language.

Whereas the case was presented to the preparation tribunal and the claimant appeared by representation of attorney and also the first and second respondents appeared by representation of attorney. The claimant's attorney submitted an exhibit containing the original agreement subject of the claim and submitted a memorandum of defence. The first and second respondents' attorney submitted two exhibits containing photocopy of the judgment staying the claim and a copy of a judgment considering the claim ab initio, and the second included of the schedule and a copy of the statement of claim. During the presentation of the claim, the claimant submitted the translation of the contract at the South Cairo Court, and the amicable settlement attempts to did not work and the claimant's attorney refused settlement and insisted on ending the preparation procedures and referring the claim to court for a decision.

On 31/5/2009, the preparation procedures ended and the claim was referred to court for a decision on substance.

Whereas the claim was heard before the court as stated in the minutes, attorneys appeared for both the claimant and the first and second respondents and also an attorney for the fifth respondent. At the

hearing of 20/6/2009 the claimant's attorney modified the requests to be against the first to third respondents in their capacities and not in person, and also waived the claim against the sixth and seventh respondents. The attorney for the first and second respondents submitted two exhibits of documents containing copy of the minutes of the board meeting and copy of the auditors certificate and copy of letters sent by the attorney of the first and second respondents drafted in a foreign language, and copy of a notice copied from an email, and the second exhibit contained copy of the draft agreement prepared by the claimant's lawyer and sent to the respondent for study in preparation to agree on the final versions of the agreement, and the court decided to translation of the agreement at the North Cairo Court Translation Department.

The case was deliberated, and at the hearing of 18/10/2009 the claimant's attorney submitted an exhibit containing the original memorandum, of understanding subject of claim previously submitted to the preparation tribunal to be submitted to the translation department. The attorney for the first and second respondents submitted an exhibit containing correspondence in a foreign language and Arabic and the notices, and the claimant also submitted the original translation completed at the North Cairo Court Translation Department.

At the hearing of 2/1/2020, the claimant's attorney submitted a memorandum including objections to the translation, and the attorney of the first and second respondents, at the hearing of 5/1/2010, submitted an exhibit of a literal translation they prepared. The court decided to withhold the case for judgment at the hearing and permitted the submission of memoranda within six days by lodging.

During the grace period the attorney of the first and second respondents submitted two memoranda of defence including the pleading of inadmissibility of the case and extinguishment of litigation in relation to the first and second respondents in their personal capacity due to the waiver by the claimant, and inadmissibility of the case for lack of jurisdiction of the respondent. The second memorandum included the pleading of lack of substantial jurisdiction of the court in addition to the previous pleadings.

Whereas, and with regard to the pleading made by the attorney of the first and second respondents of lack of jurisdiction of the court based on the grounds that the requests are not relevant to any of the laws within the jurisdiction of the economy court, and whereas the case is in relation to a dispute arising from an agreement on the sale of shares whether it is a complete sale or only a memorandum of understanding, however, it is eventually in relation to sale of shares of an Egyptian joint stock company, which necessarily requires the application of the laws of joint stock companies and capital market law which are within the jurisdiction of the economy court to look into according to article 6 of the economy courts law No. 120 of 2008, which means that the case is within the jurisdiction of the court, even if the matter calls for the application of another laws in addition to the aforementioned laws, which renders that pleading of no legal grounds and declined by the court.

As to the pleading made by the first, second and fourth respondents for inadmissibility of the case for being filed outside the frame set out by Law No. 7 of 2000, and whereas article 4 of the aforementioned law set an exception for the resolution of disputes from being subject to the provisions of that law, therefore as an exception from the necessity to resort to reconciliation committees stated in that law.

Those disputes include those that must be resolved or settled through judicial or administrative committees or agreed to be resolved through arbitration.

Whereas the economy courts law No. 120 of 2008 stated under article 8 thereof that each court economy shall have preparation tribunal for the disputes and claims within the jurisdiction of the court, and that tribunal has the competency to exert best efforts for reconciliation in addition to other competencies.

Accordingly, the economy courts law stated the necessity to present disputes and claims arising from application of the laws within the jurisdiction of the economy courts on the preparation tribunal to attempt and settle and reconcile between the opponents before submitting the case to the court, which includes all economy disputes in the scope of the exception disputes stated under article 4 of Law no. 7 of 2000, and therefor from the submission of reconciliation requests to these tribunals which renders this request of no legal grounds and declined by the court.

With regard to the pleading by the first and second respondents of extinguishment of the dispute in their regard due to the waiver by the claimant at the hearing of 20/6/2009 and their acceptance to exit the dispute, as stated under article 141 of the Procedural Law that dropping a case is by notification from the claimant of its will to waive the dispute for a specific opponent without a decision on the substance, and the aim shall only be waiver of the dispute procedures whereby it is considered cancelled while the substantial right remains as is.



As established by the court of cassation, dropping a case is an intentional action that is invalid if defective by any acceptance defect.

It is also only presented by the claimant who must have the procedural capacity and may not be issued by the attorney unless authorized for that specifically in the power of attorney issued thereto according to article 76 of the procedural law, even though the authorization does not have to specify the case subject of dropping. Therefore, and as evident that the claimant's power of attorney, copy attached, to his lawyer No. 2081A of 2008 did not include authorising the attorney to leave this case or another which renders the attorney's request at the hearing of 20/6/2009 to drop the case against the first to third respondents in their personal capacities and the sixth and seventh respondents was made without authorisation which means that the attorney lacks the necessary capacity for that procedure and the court may not adopt it, which means that the case remains in its first form as filed and that request is rejected by the court.

With regard to the pleading by the first and second respondents of inadmissibility of the case for being filed by a party lacking capacity as the first and second respondents based on the grounds that the agreement was based on their personal capacities and the company is not involved, the court states that as it is evident that the agreement subject of the claim was sealed by the stamp of the Al Mokhtabar Company which board is presided by the first respondent while the second and third respondents are members of the same board, in addition to the fact that the aforementioned respondents are the owners of all the shares of that Company, which makes that Company part to that agreement which calls for them being part to the claim as in their aforementioned capacity, whereby the capacity and interest are both

available in them as opponents and the pleading in this regard has no legal grounds and is rejected by the court.

With regard to the remaining pleadings, these in fact are substantial pleadings related to the substance of the claim and decision on the substance of the claim is implied in those pleadings.

With regard to the interim request requesting custody on the Company, and as the purpose of that pleading is a interim procedure being imposing custody until a decision is made on the substance, therefore the benefit expected from that procedure is only relevant to the period of procedures of the claim and until a final decision is made therefore there is no need to keep the request as it cannot be studied within the period preceding the issuance of a decision on the substance from the date of filing until preparation for judgment, therefore, there is no scope to study that request due to lack of purpose.

Therefore, and as this judgment will include a definitive decision on the origin of the dispute which is the reason for the interim request and its justification, therefore this interim request has no grounds as it lacks purpose and the court rejects it.

With regard to the substance of the claim, the court states that it is legally established that an action is an intentional legal action represented in the intention to make a legal effect by expressing it whether unilateral intention was sufficient to result in that effect or requires bilateral intentions of the parties to the contract.

Accordingly, a contract is the matching of two or more intentions and identical acceptance to make a legal effect, and such must be through free will intending the expression thereof and must aim to making an effect protected by the law, which means the intention to bear the obligations of that effect.

Pursuant to the principle of the autonomy of will, individuals have absolute freedom to create any contracts they want within the limits of public order, therefore contracts are various without limitation which leads to the legislator not being able to follow all types of contracts separately to establish special provisions regulating them, therefore the legislator set out general provisions based on applying to all types of contracts where no special provisions are available, and then regulated some types of contracts which are wither more common or due to the large number of disputes concerning them and the legislator called those the named contracts.

It is established by article 150 of the Civil Law that if the wording of the contract is clear then there shall no deviation from that wording by interpreting it to identify the intentions of the parties. Clear wording is itself explanatory to the intention of its owner without any ambiguity or vagueness.

Therefore, the meaning of clear wording under Article 150 mentioned above is the clarity of the intention and not just the clarity of terms.

Considering that, interpretation of contracts must apply the evident and may not deviate from such unless an evidence to such deviation exists or if the wording indicates contradiction to the clear wording, then

the judge has the right to intervene and interpret the contract as he may deem closer to the intentions of the parties without deviating from the clear wording without ambiguity.

The court has established that clarity in Article 150/1 of the Civil Law is the clarity of intention and not only the clarity of the term, as each contract phrase may in itself be clear but contradicts among itself, whereby the court, while looking into those documents, may not rely on the meaning of each independent phrase but must be based on the entirety of wording as an independent component.

Therefore there is no reason for interpretation except when there is ambiguity.

Interpretation of the contract is looking into the common intention of the parties by clarifying the meaning of the phrases through elements being rules that indicate and specify the clearing of the ambiguity and removing the contradiction in the vague wording. Of these elements used for interpretation is the nature of transaction, integrity and trust between the parties and the norm in transactions, in addition to the meaning of the entirety of the wording of contract and the circumstances of the contract and manner of implementation as set out in the second paragraph of article 150 of the civil law. In the event there is doubt about a contract phrase, it shall then be interpreted in favour of the debtor. And the debtor is the party who has liability under a provision stated by the wording subject of ambiguity qualifying for interpretation, as the party restricted by a condition is considered the debtor and therefore doubt shall be interpreted in his favour.

Whereas it established under article 418 of the Civil Law that sale is a contract compelling the seller to transfer to the purchaser the ownership of something or another material right in consideration for a financial price.

One of the most important characteristics of sale contract is transferring the right of ownership of something in consideration of monetary consideration. A sale contract is a contract of acceptance that has no specific form except in exceptional cases like sale of a ship, and other sales where the legislator set out a special form and as long as there is agreement on the sale and the sold item and the price then sale is concluded.

Dr. Abdel Razek Al Sanhoury, in volume 4, page 51 and the following sees that agreement by the parties could mean one of three things:

First: the parties to the sale are in agreement on a full final sale, and this is called a preliminary sale which is a complete sale.

Second: the parties mean by their agreement to conclude a promise of sale and the sale does not take effect except by a written official or unofficial paper and such promise can be by one or both parties.

Third: both parties did not intend either a full sale as in first or a promise to sell as in second, but rather intended to prepare a project for sale setting out the preliminary conditions provided that the sale is concluded afterwards. In that event that project is not obligatory to either party and either can refrain from concluding the contract and the other party may not force the other to conclude it through court.

Whereas and as evident from the provisions of the contract subject of dispute based on the translations exhibited and specifically the translation by the North Cairo Court Translation Department with regard to the provisions agreed to be translated correctly based on the objections made by the parties to such translation. The court concluded some provisions that were not significantly challenged, and the court found them sufficient for the interpretation of the nature of the contract and the extent of its effectiveness. And as evident from that translation that the parties agreed that the claimant buys from the first three respondents their shares in Al Mokhtabar as per the provisions in the memorandum of understanding. Article four of the agreement included the obligations of the purchaser and what he shall pay in consideration of that sale, and also agreed that the purchase price will be subject to any contradictions that will be specified in light of the results of the due diligence. The end of that clause stated the termination of that memorandum of understanding immediately in the event the parties do not agree on a final sale price. Further, article five included the parties' agreement to sign the sale and purchase agreement within the period mentioned in the agreement/ article fourteen stated that in the event there is no agreement to the opposite in writing by the parties then the memorandum of understanding shall remain effective until one of the following occurs:

a) Signing the sale and purchase agreement; or

b) Agreeing in writing on terminating the memorandum of understanding, and article fourteen included the purchaser's entitlement to terminate the agreement by the provisions mentioned in that paragraph.

Therefore, and based on those aforementioned articles which totally lacked any objections to its translation indicating that this is a full-fledged sale, as the parties agreed to the possibility of its termination in a number of events including not agreeing on a final sale purchase as in article four, and also the termination under article one, four, fourteen and the last entitled the purchaser to terminate the agreement according to provisions mentioned in the articles. Whereas, sale is the obligation of the seller to transfer the ownership of something or a material right to the purchaser in consideration of a monetary return, and as that agreement did not express the mutual intention of the parties to finally make that effect as long as the agreement assumed the possibility of terminating it or termination for reasons mentioned therein, which contradicts with the characteristics of sale contracts and its results and therefore cannot be considered a full sale.

Furthermore, the contract cannot be a promise of sale whether that promise is unilateral or bilateral as a promise of sale assumes the existence of a full offer by one of the parties or both to effect the sale if the other party agrees on the same intention in the form of acceptance to the offer while that contract did not include a final sale purchase in its provisions rather the provisions included possibility of not agreeing which would result in termination or expiry and also gave the purchaser the right to not complete the deal as mentioned in the contract through which the court infers that the offer and acceptance in the contract are incomplete which means that it cannot be considered a promise of sale.

Further, the contract cannot be a sale with down payment, because in that case the contract would have stated that the purchaser has the obligation to return double the amount paid thereby, which was not

included in the contract. The court sees that the nature of this contract according to the common intentions of the parties derived from the meanings of its wording. Looking into that meaning and provisions of the contract in total as one integrated unit and in light of the nature of the transaction and the common norm in such transactions and the circumstances and manner of implementation, means that this is an unnamed contract arising from the modern commercial transactions which are characterized by several effects and parties and relativity to large corporate bodies, whereby the sales in relation to those parties are not completed in one phase rather in a number of phases starting with negotiations and preliminary agreements reaching the signing of memoranda of understanding on the headlines of the deal without getting into the details which are later completed until final signature. This is the common norm in such transactions, specifically for the transaction subject of claim, even though that the chain of intentions in this event by virtue of the contract included offer and acceptance by both parties, however, in relation to the details of the transactions, these were not completed and it can be said that the contract is only a contractual phase of various phases that complete the final contract, and such completion is completed by the final phase of the final agreement.

However, even though this contract is not deemed in its nature as a final sale, however, by signing it, it resulted in bilateral obligations on both parties within the limit of that phase only and such obligations are necessarily obligatory on the parties and results in the contractual obligations, as such agreements shall not be wasted even if in only one of the contractual phases.



As it was evident to the court that this contract even though does not represent a final sale but rather a contractual phase including validity and contractual elements, the court believes that this contract is correct and results in the bilateral obligations of the parties within the limits of that contractual phase only, which renders the claimant's request to validate the agreement of no legal grounds and the same is decided by the court. As to the claimant's request of enforcement of the contract as final sale and enabling the claimant to take the legal actions necessary to transfer the ownership of shares, the court inferred that this contract, even though correct, is not a complete sale but rather only a contractual phase of a number of phases that have not been completed, and the contract is only relevant to the intentions of the parties and agreeing on general provisions without details of the agreement. The contract included the right to terminate and assumed that not agreeing to a final sale purchase of the shares is a matter ceasing the enforcement of sale, therefore the enforcement of the sale to transfer the ownership is not evident in the documents, rather the existence of this claim is evidence that there is no final agreement on those matters, which renders the request to enforce this contract and transfer of ownership of no legal grounds as they are matters subject to a final contract and were not agreed on and therefore it cannot be deemed enforceable. Therefore, the court declines this request, and it points out that there is contradiction between the correctness of the contract and its unenforceability, as the court's decision of validity of the contract is only applicable to the obligations agreed on in the contract however they do not mean that it is a final sale and the enforceable obligations are only those within the limits of the contractual phase completed, and not the future phases that were not completed, however the

enforcement of the contract declined by the court is in relation to a final contract which was not present in the case.

With regard to the request of enforcement, as the enforcement is only related to the provisions subject to compulsory enforcement and the court's decision of validity of contract without enforceability is only prescriptive and cannot be enforced by compulsion which renders the request for interim enforcement of no grounds and declined by the court.

As to the costs and fees, the court decides that they shall be borne by both the claimants and the respondents from the first to the third as both have failed in some of their requests, provided that its distributed equally among them pursuant to article 186 of the procedural law and article 187 of the advocacy law.

### **Therefore**

#### **The Court decided:**

First: declining the pleading made by the first to third respondents of lack of criterial jurisdiction of the court to hear the case.

Second: declining the pleading made by the first, second and fourth respondents of inadmissibility of the case for being filed through other manners than those set out by the law.

Third: rejecting the pleading made by the first and second respondents of extinguishment of the case by dropping in their personal capacities.

Fourth: rejecting the pleading made by the first and second respondents of inadmissibility of the case for being filed against incapacitated parties in their personal capacities.

Fifth: declining the interim request to impose custody on Al Mokhtabar.

Sixth: in substance of the claim, the validity of the contract (understanding) dated 20/11/2007 between the claimant and the first three respondents. The court rejected all other requests and compelled the claimant and the first three respondents to equally bear the costs and EGP 100 in attorney fees.

Secretary

President of the Court