

# First-of-a-kind Dubai Court of Cassation judgment - a lawyer's right to comment on court rulings

**Mosaab Th. Aly** - Senior Counsel - Litigation

m.aly@tamimi.com - Dubai International Financial Centre

Zane Anani

z.anani@tamimi.com - Dubai

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## Introduction

In a recent and first-of-a-kind Dubai Court of Cassation judgment dated 2 July 2020, the court established that a lawyer has the right to comment on court rulings and provide insight into a court's interpretation of legal rules as that commentary is considered constitutionally protected speech under UAE law. This case considers how a lawyer can express their opinion on a judgment in a journal. As part of a lawyer's practice, a lawyer is expected to analyse and comment on case law. This may involve disagreeing with the rationale of a court's decision. In this Dubai Court of Cassation judgment, the Claimants had filed proceedings against the defendant law firm after it published an article in a journal commenting on a court judgment in which one of the claimants was a party. The Claimants filed a claim requesting material and moral damages of over AED 100 million (US\$27 million) for alleged unauthorised disclosure of certain details by the Defendant. In its judgment, the Court of Cassation established the meaning of protected speech, the scope of public interest privilege and the conditions that are applied to invoke this privilege.

## The facts of the case

The Claimants filed a claim against the Defendant for allegedly publishing commentary on a court decision, in bad faith, that included unauthorised disclosure of certain details. The Claimants argued that the Defendant did this deliberately and that the Defendant should have taken more care when publishing the article. The Claimants also argued that the article commenting on the judgment was published contemporaneously with the Claimants' announcement of a major project, which the Claimants said affected its dealings with potential clients. The Claimants further maintained that the interests the Defendant aimed to achieve were of little significance, unlawful, and disproportionate to the alleged harm the Claimants suffered. According to the Claimants, this demonstrated that the article was published in bad faith with the deliberate purpose of causing harm and therefore, as alleged, was an abusive exercise of rights. The court considered the case in light of constitutional provisions relating to freedom of speech and other forms of expression.

## **Court's findings**

The Dubai Court of Cassation held that it was the intention of the legislator in the UAE to protect freedom of opinion and expression in word, deed, and other modes of expression under the basic principles of the Constitution. In its decision, the Cassation Court held that any commentary on court decisions will be of interest to specialists in the legal field. Indeed, the Court of Cassation decided that commentaries contribute to the development of current law and provide insight into how the laws in force should be interpreted...

However, according to the Court of Cassation judgment, there are conditions that must be applied when publishing commentary on a court ruling, as follows:

1. The Commentary should only concern a judgment for which all means of review have been exhausted so as to avoid suspicion of an exertion of influence on any decision on appeal;
2. The commentary should discuss the ruling's underlying principles but not discuss the panel that issued the ruling or the parties involved;
3. The commentary should be drafted by a specialist legal practitioner, and should appear in a lawful, specialised publication, in hard copy or electronic format; and
4. The commentary must accurately report, analyse, and contextualise the ruling in order to ascertain its meaning and potential implications. The commentator should then assess the ruling and draft a legal opinion outlining the facts, the reasoning of the final judicial decision and the extent of its conformity with the law, logic, and scientific and legal doctrines prevailing in society.

## ***Lawful exercise of a right***

It is further established that Articles 104 and 106 of the Civil Transactions Law embody the principle that no liability shall arise in respect of damages resulting from the lawful exercise of one's rights, including the right to comment on court rulings for which all means of review have been exhausted. The legislation describes four instances of abuse and the unlawful exercise of a right:

1. exercising a right with the sole intention of harming another. Intent may be inferred from knowingly exercising a right without legitimate interest to the detriment of another;
2. where the right being exercised is directed to achieve an unlawful purpose that is contrary to the rules of Islamic Sharia, the law, public policy or morality;
3. where the interest to exercise the right is of little significance and disproportionate to the harm that is caused to others; and
4. where the right being exercised exceeds the normal bounds of inconvenience. The burden of proof lies with the aggrieved party. It is not sufficient that the aggrieved party prove that the holder of the right perceived that harm was likely to occur by exercising his/her right as this does not in and of itself constitute a wrongful motive.

It is settled, in line with the holdings of the Court of Cassation, that inferring and evaluating the existence, or otherwise, of an abuse of rights, intent to attack, vex, and/ or harm another, interests which are of little significance and disproportionate to the harm caused to another, or an exercise of such rights beyond the normal bounds of inconveniences, are questions of fact for the trial court. The trial court must assess, within its discretion, find facts and weigh the evidence, presumptions, and documents presented in the case, provided it demonstrates an understanding of the legal issues of the case and provides sound reasoning, based on evidence, which is sufficient to sustain its decision and leads to the conclusions reached.

## ***Legitimate right to publish and comment on judgments***

In light of the above legal principles, the Court of Cassation ruled that it is clear that the article's wording complies with the regulations governing the right to comment on court rulings, based on justified grounds. The court also found that the article does not attack the panel that issued the ruling or the parties to the dispute. As such, it was held that the Claimants did not provide proof that the commentator's sole intention was to cause prejudice and/or harm.

The Court of First Instance and the Court of Appeal had previously adopted this reasoning and dismissed the Claimants' case. The Court of Cassation adopted and reiterated the reasons given by the Court of First Instance that the Defendant is a UAE-licensed firm of advocates and legal consultants with a website where they publish recent court rulings and legal principles for the purpose of disseminating legal knowledge, as evidenced by the article cited by the Claimants. The Defendant publishes court rulings in order to highlight important rulings of the local courts.

The Court also concluded that the Defendant's staff were not at fault, having exercised their legitimate right to publish and comment on news in relation to the facts before the courts, the judicial proceedings, and the rulings rendered by the Court of Cassation via a brief synopsis of the contents of the ruling which was not under a publication restriction by order of the Court. The decision being commented on was not a secret of private life deserving of protection for it was already in the public domain and freely accessible to an unlimited number of people. There was nothing on record as far as evidence or documents proving that the Defendant was at fault. The Claimants could not substantiate any of its allegations. The Court of Cassation therefore found that one of the elements in this tort cause of action was not met with respect to the Defendant, and the action lacked proper factual support and legal basis. As a result, the Claimants' case was dismissed.

## **Conclusion**

The Court of Cassation found that the law firm, in this case, exercised a lawful right to comment on final court rulings, and that the right of legal practitioners to publish commentaries on court rulings is a protected constitutional legal right provided that the publication has to comply with certain conditions that the court has indicated. The Court of Cassation also considered the importance of legal commentary to enable legal practitioners to learn and gain insight in developing areas of law. It is well established that commentaries contribute to the development of current law and provide insight into how the legal rules in force should be interpreted. The test applied by the courts for determining whether the legal commentary is protected speech also provides lawyers guidance on what they can publish.

***For further information, please contact [Mosaab Aly \(m.aly@tamimi.com\)](mailto:m.aly@tamimi.com).***