

Landmark Cassation Precedent: Freedom of Religion and Faith

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In accordance with Article 18 of the International Covenant on Civil and Political Rights and Article 18 of the Universal Declaration of Human Rights, freedom of religion and faith is at the core of internationally recognised human rights. It gives every person the right to freely choose and adopt a religion and/or faith of his/her choice.

The UAE permanent constitution has affirmed this human right in Article 32. This freedom is one of the underlying pillars of the UAE community which encompasses a vast diversity of expats with a prevailing spirit of tolerance and acceptance of others.

On 19 March 2019, the Dubai Court of Cassation issued a judgment in Court of Cassation Appeal No. 330/2018 Personal Status that further affirms and safeguards this right to freedom of religion and faith.

Background

The case relates to the issue of a succession order by the Dubai Personal Status Court ('DPSC') in respect of the distribution of property in Dubai, owned by a Christian expat, following his death. A claim was brought by a Muslim lady (the 'Claimant') who alleged that the deceased had converted from Christianity to Islam, that they had married and that he lived as a Muslim until he died. If this had indeed been the case, then according to Islamic Shari'a rules, the Claimant would be entitled to the deceased's entire inheritance (as his non-Muslim heirs would have no inheritance rights).

The Claimant's claim was rejected by the DPSC at First Instance. However, the Claimant appealed against this judgment and the DPSC Court of Appeal overturned it ruling in favour of the Claimant. The heirs of the deceased appealed the DPSC Court of Appeal's judgment before the Dubai Court of

Cassation which overturned the Appeal Court's decision with the Court of Cassation ruling on the merits of the case.

Court of Cassation Judgment

The Court of Cassation stated that the crux of this case hinged on the determination of two crucial issues, being:

1. whether the deceased had married the Claimant:

On this issue, the court found that the evidence presented by the Claimant regarding the occurrence of the marriage was insufficient. Not only was she unable to provide sufficient evidence to prove that they lived as a married couple for a period of six years as she had claimed, she was also unable to produce a valid marriage certificate. The authority which she claimed had issued the marriage certificate confirmed that there was no record of the marriage certificate that she produced to the Court, so it was deemed to be a false certificate. In addition, the testimonies from her witnesses contained many irreconcilable discrepancies.

2. whether the deceased had converted to Islam:

Regarding the issue of the determination of the deceased's religion at the time of his death, the court set forth a very important principle. The court stated that "every person enjoys the freedom of religion and faith. This freedom rests primarily on the intent and will of that person, which falls within the ambit of that person's relation with his deity and it is not permissible to question this relationship as such questioning will lead to an inquiry into a person's will and intent. Such inquiry, by virtue of its nature, is impossible after that person dies. Where the belief or faith of a person may result in religious and legal ramifications that will affect the rights of others, then the only way to prove such belief or faith is by producing official documents issued by the relevant competent authorities that are sufficient to establish the belief or faith of the deceased person beyond any doubt".

The Court of Cassation ultimately determined that the right to raise matters related to religion or faith only belongs to the person whose religion or faith is in question. Therefore, after a person dies it is not possible to challenge his/her religion or faith, unless the party challenging it is able to produce the necessary official written documents to support their case. Thus, in this case, as the Claimant was not able to provide any official written documents to demonstrate the deceased's conversion to Islam, the Court held that any further inquiry into the religion of the deceased was irrelevant to the case.

Conclusion

This landmark precedent has strengthened the protection of freedom of religion and faith by ensuring that:

1. in the absence of official documentation issued by the relevant, competent authority, a deceased person's religion may not be doubted or open to interpretation for the sake of benefiting another person's religious or legal rights; and
2. the stability of the succession among the legal heirs of a deceased person is protected.

Al Tamimi & Company's [Private Client Services team](#) regularly advises on succession and inheritance matters. For further information please contact [Dipali Maldonado \(d.maldonado@tamimi.com\)](mailto:d.maldonado@tamimi.com).