

# Court of Cassation Judgment – The importance of valid legal service

by Ahmed Allouz - a.allouz@tamimi.com - Dubai International Financial Centre  
Rami Abdellatif - a.abdellatif@tamimi.com -

April 2012

Introduction: Focus is often placed on the subject matter of a case and its claim and grounds without giving consideration to certain procedural details such as the service of process which, ultimately, serves the foundation of the case and its launching point.

It is therefore always important to observe those procedures as even a minor procedural error could destroy a case and ruin any progress made. The case in question illustrates the importance of legal process.

## Facts of the case

The Claimant and Defendant were partners in several companies and have various companies which they independently own and run. As a result of their various relationships, the parties entered into a final account agreement as representatives and directors of specific companies whereby one of Defendant's companies agreed to pay the sum of AED 30,000,000 to Claimant and Defendant agreed to personally pay those sums, if and only if he resigned his position as director of the company required to make payment under the agreement.

Upon flying into the UAE, Defendant was suddenly arrested pursuant to a final court decision issued against him. It subsequently transpired that Claimant had sued the Defendant in his personal capacity for AED 18,000,000.

A case summary is set out below:

- Claimant filed a claim Defendant without his knowledge using an incorrect residential address;
- Following inquiries as to the Defendant's address it emerged that he was out of the country at the time so the court decided to serve him notice by publication (in an official newspaper);
- The Claimant filed documents in court indicating that the Defendant had resigned from his position as director of the company thereby becoming personally liable to pay the amounts under the agreement;
- The Dubai Court of First Instance issued its ruling, holding the Defendant liable to pay said sum on the strength of the documents filed by the Claimant
- The Claimant served the Defendant notice of the ruling by publication based on an earlier service by publication and because of the fact that he was out of the country;
- Appeals to the Courts of Appeal and Cassation became time barred after the lapse of 30 days from the date of service

Despite the fact he was time barred, the Defendant appealed the ruling arguing that the service of notice of the ruling and the writ of execution upon Defendant and service of the statement of claim was invalid as well as an irregularity in the ruling itself, having been issued on the basis of a material misrepresentation on the part of Claimant.

The Defendant argued before the Appeal court that the Civil Procedure Law sets out a specific procedure for service of notice of rulings and statements of claim. This step-by-step procedure is to be followed strictly in order to ensure the service is considered valid.

Article 152 of the Civil Procedure Law states that “Unless otherwise provided by law, the time limit for challenging rulings starts to run the day after the ruling was made or from the date on which notice of the ruling was served upon the judgment debtor if the judgment debtor failed to attend any of the hearings that were scheduled in the proceedings and did not file a defense memorandum.” Paragraph three of Article 152 states with regard to the method of service of notice of rulings that: “Notice of rulings shall be served upon the person of the judgment debtor or at his domicile or place of work.”

Paragraph Three clearly and explicitly sets out the procedure to be followed when serving notice of rulings. A ruling would need to be served either:

- Upon the person of the judgment debtor; or
- At the domicile of the judgment debtor, either upon him personally or upon any spouse, relative, or in-law living with him if service cannot be performed on the person of the judgment debtor; or
- At his place of work, either upon him personally, or upon the person who appears to be in charge of the place or an employee of the establishment; or
- By publication, in a widely circulated UAE daily newspaper in Arabic and another newspaper published in English, if necessary, after taking all the above steps and failing to serve the judgment debtor in person or at his domicile or place of work, as detailed above, and no spouse, relative, or in-law of the judgment debtor living with him at his domicile and no employee at his place of work accepting service, once the court has verified that the person to be notified has no known domicile or place of work

In light of the steps taken to serve notice of the ruling, it was argued that the steps had not been completed correctly because Defendant was served notice of the ruling by publication after no residential address could be found and inquiries revealed that he was out of the country. Pursuant to the Law, an attempt should have been made to perform service at his residential address or, failing that, his place of work. It was further argued that the extract from the Naturalization & Residency Department which the Claimant produced as evidence of the Defendant’s departure from the UAE contained particulars concerning the Defendant as well as the name of his sponsor and his place of work. The extract also indicated that his residence visa was still in effect. Therefore, in accordance with the Law, an attempt should have been made to perform service at his place of work

The Court of Appeal said that the appeal was time barred and dismissed it in form. In its reasoning, the Court of First Instance opined that service had been properly performed by inquiring of the Defendant’s address in the UAE and failing to find one. The Court confirmed that there was no point in conducting further inquiries given the statement from the Naturalization & Residency Department that the Defendant was out of the country and any attempt to serve him in person would be futile.

The Defendant appealed to the Court of Cassation on the basis of error in the application and interpretation of the law and flawed reasoning, focusing on two procedural aspects:

The Court of First Instance erred in disregarding the plea that service of notice of the ruling had not been completed correctly and relying simply on an attempt to serve notice at the residence of Defendant when there was no attempt to serve him at his place of work despite a work address having been established from the documents on file.

There was no correlation between serving the Defendant with the ruling by publication and the fact of his presence out of the country at the time. There is no requirement under the Civil Procedure Law that service always be performed upon the person of the judgment debtor. Service of notice of a ruling is valid if made upon a spouse or relative or relative by marriage living there and if he does not find the person required to be served at his place of work he must deliver the copy at that place

to a person declaring that he is concerned in the management of that place or that he is an employee therein. The purpose of service would be realised in such case even if the judgment debtor is out of the country. The documents confirm that the Defendant has a valid residence visa and frequently travels to the UAE. Therefore he has a work domicile in the UAE.

Thus, from a legal standpoint, an attempt should have been made to serve Defendant with notice of the ruling at his place of work before resorting to service by publication which should be used in exceptional circumstances after carrying out proper inquiries and first attempting service in the manner prescribed by law.

The Court of Cassation found in the Defendant's favour by accepting the plea in question and confirming that there was in fact no correlation between serving Defendant with the ruling by publication and the fact he was out of the country at the time. Further, the Court of Cassation stated that the extract from the Naturalization & Residency Department contained particulars concerning Defendant as well as the name of his sponsor and his place of work. The extract also indicated that his residence visa was still valid, which means that he had not left the UAE permanently. Therefore, pursuant to the law, an attempt should have been made to perform service at his place of work. The Court of Cassation held that all notification procedures that had been previously taken for serving the judgment on the Defendant was null and void. Therefore, the appeal period was still open. The Court of Cassation revoked the appealed judgment and referred the case back to the Court of Appeal for consideration of the merits.

The Defendant maintained his argument before the Court of Appeal that service of the statement of claim was invalid and that service of notice in proceedings was marred by the same procedural and legal deficiencies as service of notice of the ruling. Since the Court of Cassation categorically held that service of notice of the ruling was invalid, so too is service of notice in proceedings under the same rationale. Other substantive pleas raised before the Court of Appeal include forgery of the documents which were submitted and ruling against a party having no capacity.

The Court of Appeal ultimately declared the Court of First Instance ruling null and void due to an irregularity in service of the statement of claim and ordered that Claimant bear the fees, costs, and advocate's fees

The Court of Appeal on remand from the Court of Cassation accepted the appeal in form and declared that the time limit for appeal had not expired.

#### Requirements for Valid Service

Proceeding to the merits, the Court of Appeal took up the plea with regard to invalid service of the statement of claim and set out a number of legal principles which could be summarized under the following points:

- Through the Court of Cassation's consistent rulings, it is settled that service of a statement of claim or court ruling by publication in the press should be made in exceptional circumstances meant to address specific circumstances where any attempt to serve a party in person or at his original or elected domicile or place of work would be futile. The party requesting service may opt for this alternative only after exhausting all means necessary to locate his opponent's domicile or place of work in order to serve him with the statement of claim or ruling.
- It is established that no litigation shall arise between parties if an invalid service of the statement of claim has been served upon the defendant who has failed to attend court in person or by proxy
- Failure to effect proper service by the time of issue of the first instance ruling precludes litigation of the claim without any subsequent step in the proceedings being capable of rectifying the situation
- Hence, when invalid service of the statement of claim is in evidence before the Court of Appeal, the court would simply declare the first instance ruling as invalid without proceeding to adjudicate

the merits so as not to deprive the party invoking irregularity in service of the statement of claim from the two stages of judicial process which is a principal tenet of the judicial system that cannot be violated by the court.

In light of the above principles and their application to the matter in dispute, the Court of Appeal concluded that there was an invalid service of the statement of claim for the following reasons:

- It is clear that the process server attended Defendant's premises at the address indicated in the statement of claim but found no one there. Hence, service was not performed at Defendant's domicile.
- Upon inquiring about the Defendant's address, the Investigation Department reverted with an address comprising a telephone number and post office box number, advising that Defendant was employed by a company in the Emirate of Dubai and that no attempt had been made to serve him with the statement of claim at that address;
- A letter was then sent to the Naturalisation & Residency Department which replied that Defendant had a complete work address but was out of the country. A manuscript note was made on the reply to the effect that Defendant's residence visa was valid. Defendant was not served at said address

Therefore, Defendant's service by publication without having exhausted the other means for service mentioned above was void particularly given the fact that his address according to the above inquiries is different from his address in the statement of claim and he has a valid residence visa. It follows that Defendant's plea alleging invalid service of the statement of claim is well founded in the law and worthy of acceptance.