

SUBSTANTIVE IMPLEMENTATION DISPUTES IN OMANI LAW "A COMPARATIVE STUDY"

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ABSTRACT

The study dealt with the issue of Implementation Disputes - which are also called implementation problems - which are considered as one of the obstacles that hinder the progress of implementation and lead to stopping the progress in it. The research problem was that Implementation Disputes is considered one of the biggest obstacles that lead to delaying implementation, and the creditor who obtains a judgment may be harmed by that.

In the first section, the research presented the provisions of substantive dispute and clarified that it is required in the dispute not to prejudice the origin of the right, that is, what has been judged. Also, the dispute must be based on a legal basis, and there should be no abuse of procedures. Therefore, the dispute will be rejected if it is not based on a legal reason, and among the legal reasons is the claim of entitlement to the property, which is filed by third parties to demand lifting the seizure of the property and claiming its ownership. Also, one of the reasons for accepting the dispute is the existence of the agreement following the judgment that prevents the execution of the judgment issued.

The second topic dealt with the substantive dispute procedures, and the research explained that the court competent to consider the substantive dispute is the execution court in Omani law, which is a court formed by a single judge, and the submission of the dispute - if it is related to real estate - entails stopping the execution procedures until the dispute is resolved unless the court decides otherwise. And if the complainant loses his case, this will result in the lapse of the order of stay of execution, with the possibility of a fine of not less than ten riyals and not more than one hundred riyals, as well as a ruling for compensation in favor of the complainant against him, if necessary.

The research also clarified that the judgments of the execution judge issued to decide on the execution issue are appealed to the Court of First Instance consisting of three judges if the value of the dispute exceeds one thousand riyals and does not exceed three thousand riyals. But if the dispute exceeds three thousand riyals, the court competent to hear the appeal is the Court of Appeal. At the conclusion of the research, a number of results and recommendations were presented that could be useful in the future.

Keywords: Substantive Implementation Disputes, Stay of Execution, Enforcement Court, Symptoms of Execution, Merit Suit

INTRODUCTION

Implementation Disputes is a claim before the judiciary and one of the symptoms that obstruct the progress of implementation procedures and affect it positively or negatively, and it is related to its conditions, premises, elements, and procedures¹. It should be noted that Substantive Implementation Disputes must not affect the verdict; As it is not an appeal against the ruling, but it is considered an objection to the implementation and its progress, for a number of reasons, some of which are formal and others are substantive, and these disputes can be submitted by the parties to the implementation or from others² Ahmed (2009).

Implementation Disputes is not related to the validity or invalidity of the judgment in question; Because this matter is in place to challenge the judgment to the higher courts, but it is related to a dispute about the implementation of the judgment or how it is implemented, and therefore the debtor either disputes that he has fulfilled what was ordered, that is, that he

implemented the judgment, or there is nothing to be enforced on him, or That the execution court carried out executive measures in violation of the provisions of the law, or that the court is implementing things that were not ruled on and were not covered by the verdict issued against him³.

Substantive dispute differs from physical obstacles in implementation; Because the latter is intended to prevent the execution of the judgment, whether it is on the part of the debtor or from others, and these obstacles can be overcome with the help of general force. As for Implementation Disputes, which obstruct the implementation of the provisions, they are legal disputes⁴.

A substantive dispute is distinguished from an appeal against a judgment; The dispute is not considered a type of grievance in the judgment being implemented, and the dispute is not considered a continuation of the confrontation between the two parties within the original litigation. Therefore, the dispute is not considered a type of objection to the validity of the judgment in form or subject matter⁵.

Research problem: The research problem is that the issue of Implementation Disputes is one of the things that hinder the implementation procedures, and this matter greatly affects the creditor who obtained a judgment that has been appealed and challenged, and when he comes to fulfill his right to implementation, he is faced with these obstacles and obstacles.

Research Objectives: This aims to know the Substantive Implementation Disputes, its provisions, the procedures that are followed until it is decided upon, and its impact on implementation.

The importance of the topic: The importance of the topic is that the topic of the research is one of the most important topics of forced execution, and there are many disputes that occurred and were dealt with by the judicial precedents that were referred to.

Research Methodology: The research relied on the descriptive research. As the nature of the research requires listing, studying and scrutinizing legal texts to find out their nature and relegating them to what has been reported from judicial precedents. The research also depends on the analytical method in order to analyze legal texts in the light of judicial precedents.

Previous studies: Scientific honesty requires saying that there are many studies that dealt with this subject, as well as some books that dealt with it listed with others, but what is new that the research presents is that this study is related to Omani law. The second thing is that this study places great emphasis on judicial precedents, as when research has a presence on the ground, it addresses a real problem. Also, this research dealt with this topic as a matter of singularity and is not included with other topics.

The binary division of this research was applied as it was divided into two sections: the first topic deals with the provisions of Substantive Implementation disputes, while the second topic deals with the procedures of Substantive Implementation Disputes.

The First Topic

Substantive Dispute Provisions

First - In substantive disputes, it is stipulated that the origin of the right should not be prejudiced:

One of the conditions of Substantive Implementation Disputes is not to prejudice the origin of the right, *i.e.*, what has been judged. If the confusion affects the origin of rights, it is in this case outside the jurisdiction of the execution court judge⁶.

This is what was confirmed by the Omani Supreme Court in one of the appeals, where it went to say that: "It is not permissible for the problematic to be based on what affects the validity of the judgment in which it is being questioned. The reason for this is that if the cause of the problem occurred before the issuance of that judgment, it would have been included in the defenses of the original case, and the complainant would not be able to return it to his opponent,

whether this defense was actually made in that case prior to the issuance of the problematic judgment or not and whether the court that issued it explicitly or implicitly addressed this order, but whether that ruling was right or wrong? For if it was said otherwise, it would be possible to renew all the disputes that were settled⁷.

The decision of the execution judge to pay the debt in installments is one of the examples of prejudice to the text of the judgment, as the installment is not considered a temporary dispute whose purpose is at the time of execution for a temporary period. Rather, it is a decision that violates the commercial law, which did not grant the court the right to respite the debtor with a commercial debt for a certain period to fulfill, or to pay the debt in installments except in Specific cases and conditions, and the issuance of the decision by the execution judge in installments has no legal basis⁸.

It should be noted that the enforcement court does not have the jurisdiction to respite the debtor or to pay the debt in installments, if the judgment has decreed that the debtor should pay the debt immediately. Also, the dispute regarding the interpretation or correction of the judgment is not within the jurisdiction of the execution court, but rather from the jurisdiction of the court that issued it, even if this order affected the implementation⁹.

Second - The Dispute must be based on a Legal Basis, and there should be no Abuse of the Procedures

Having a Legal Document

The dispute must have legal grounds on which to base it; Therefore, the problem is rejected if it is not based on a legal basis, such as the rejection of the problem submitted by one of the debtors that the judgment is jointly executed; Because the creditor is free to choose the debtor who performs the implementation against him. In addition, the execution judge does not have the task of directing the creditor to implement the judgment issued in his favor against all jointly convicted persons, but the execution is always according to the creditor's desire. The person against whom the judgment has been executed may have recourse against the rest of the jointly convicted and claim his share, and if the execution court rejects such a problem, then his refusal is based on a legal basis and agrees with the correctness of the law¹⁰.

It is a legal basis that the judgment can only be executed against an opponent in the case. And the word opponent includes the opponent in form, that is, the person whom the court considered as an opponent during the execution procedures against him, with the aim of giving him the opportunity to appear before the court as a problem, based on the court's action, in order to prove that he was not one of the opponents in the lawsuit and therefore cannot be executed Verdict against him¹¹.

Among the disputes that are based on a legal reason is the claim for entitlement to real estate, which is filed by a third party before the court that initiates the execution, claiming the invalidity of the seizure procedures because it occurred on money owned by him and not the debtor, and at the same time he is required to report his ownership of the seized property In the first session¹², the court shall decide to stop the procedures for selling the property, if the lawsuit petition includes a statement of ownership or the facts of possession, and documents supporting that are attached¹³.

If the claim for entitlement to real estate deals only with some of the real estate that has been seized, the sale does not stop with respect to the rest of the real estate not covered by the suit. In spite of this, the execution judge may order, at the request of the concerned parties, to stop the sale with respect to all real estate if there are strong reasons justifying that order¹⁴.

However, what is meant by a third party - who files a suit for entitlement - is someone who was not a party to the case or a general or special successor to one of the parties to the case under which the judgment is being executed. The third party must be in possession of the money

under direct execution, likewise, if he is the owner of the property or the buyer, or if he is a tenant of the property¹⁵.

Not Taking Advantage of the Procedures

In some cases, the complainant may not be a party to the original lawsuit brought by the plaintiff against the defendant. It may be related to the subject matter of the case, such as filing a lawsuit by the landlord against the tenant. The complainant is a sub-tenant, so he must intervene in the case as a litigant, but his failure to intervene throughout the procedures and his appearance in the implementation as a problem in the event of a ruling against the original tenant to evict is considered an exploitation of the procedures and the court must reject his request; Because if he was serious, he would submit a request to intervene in the lawsuit, because the purpose of the intervention is to avoid repetition of lawsuits and to prevent delays in adjudicating them¹⁶.

Existence of an Agreement Subsequent to the Ruling

If there was an agreement or conciliation prior to the issuance of the ruling, then the one who adheres to this must raise it before the court that decides on the subject and not before the execution court. Therefore, any dispute rose regarding an agreement or conciliation prior to the case must be rejected.

However, if the agreement or conciliation fulfills its elements and conditions, and it is after the ruling issued in the case and one of the parties adheres to it, then the other party is not legally allowed to adhere to the ruling against it. Because the parties to the judgment may, after its issuance, agree a new binding agreement that contradicts the judgment and prevents its implementation¹⁷.

The Second Topic

Substantive Dispute Procedures

First - the court competent to hear the dispute:

The substantive dispute in implementation is considered a stand-alone litigation, and therefore it is considered a separate case for the purpose of challenging the judgment, whether by appeal or by appealing in cassation; Because any litigation between parties in which a decision is issued by a court of jurisdiction falls within the definition of a lawsuit¹⁸.

The execution judge shall decide on the substantive dispute, whether submitted directly to him or submitted to the execution record, in a session to be determined for this purpose¹⁹; it has jurisdiction to decide all Implementation Disputes²⁰.

Since execution problems are considered disputes that hinder the implementation of the judgment and must be decided upon in the implementation, the execution judge is competent to decide on these disputes, and the execution judge is not entitled to investigate the validity of the executive document; As these defenses must be paid before the ruling. In addition, that dispute must be raised before the subject judge and not the execution judge, and therefore the execution judge must rule rejecting such a dispute and not rule that he has no jurisdiction²¹.

In Sudanese law, the same court that issued the judgment is the one that implements it, and then considers its substantive disputes Ahmed (2015).

Secondly - The Court Competent to Hear the Appeal

Court of Appeal

The Court of Appeal has jurisdiction to hear the appeal against the decision issued by the

execution judge, if the value of the dispute exceeds three thousand Omani riyals, and the appeal period is seven days from the date of the issuance of the decision if it is in presence. If the judgment was in absentia, then the appeal period is calculated from the date of the announcement if the judgment was issued in the absence of the appellant, and the appeal period also applies to the case of appeal before the Court of First Instance composed of three judges whose jurisdiction is indicated below²².

If one of the parties submits a request to stay the execution because the judgment has been implemented, the dispute in this case is considered a substantive dispute and not a temporary dispute, and in this case it is appealed to the Court of Appeal if the amount exceeds three thousand Omani Riyals²³.

As for Sudanese law, the court that issued the ruling is the same one that carries out implementation, as has been indicated. If the judgment is issued by the court, the court of the third instance, the court competent to hear the appeal is the general court but if the judgment was issued by a partial judge of the second degree or first degree or the general court, the court competent to hear the appeal is the court of appeal.

The Court of First Instance Composed of Three Judges

The Court of First Instance, consisting of three judges, is competent to decide on the appeal against the decision issued by the execution judge in substantive disputes, if the value of the dispute exceeded one thousand Omani riyals and did not exceed three thousand Omani riyals²⁴.

If the Court of First Instance composed of three judges decides on the appeal against the decision issued by the execution judge in the execution dispute, then it is not permissible to appeal in cassation against the decision except in one case, which is the issuance of the ruling in violation of another ruling previously issued between the same litigants and it has the force of the res judicata in it²⁵.

As for Sudanese law, there is no court of first instance composed of three judges, but appeals against decisions of the third instance judge in Implementation Disputes are heard by the General Court and are made up of a single judge.

Third: Suspension of Execution

If the dispute is related to the ownership of a real estate and is filed in the usual way of lawsuits, this shall result in a stay of execution, unless the court decides otherwise, and the presentation of another problem shall not result in the suspension of execution, unless the execution judge orders otherwise, but this order does not apply to the first problem presented by him, the obligor in the executive document if he did not dispute in the previous form²⁶.

This was the order of the Omani law. As for the Sudanese Civil Procedures Code, it states that a dispute in implementation does not stop execution unless the court finds that it has ordered a stay of execution for sufficient and just reasons until the dispute is resolved²⁷.

In the case in which the execution judge decides to strike out the problem, this results in the lapse of the order of stay of execution, and if the execution is suspended and the complainant does not win the case, the execution court may sentence him to a fine of no less than ten riyals and not more than one hundred riyals without prejudice to the right to compensation If it is necessary²⁸, provided that the verdict of the maximum or the minimum fine is a discretionary power of the execution judge, and the judgment for compensation presumes the existence of liability for the complainant, and the person affected by the stay of execution must claim that²⁹ Ansari (2009).

The Sudanese legislator did not stipulate the fine decided by the Omani legislator, which is imposed on whoever loses the problem, and the fine is considered very important; Because it is a punishment that did not present an argument that has no basis, and the Sudanese legislator

also did not provide for compensation for the benefit of those who were harmed from the suspension of execution due to the dispute if the liability is available to the complainant, as the Omani legislator did, and the purpose of compensation is to try to redress the harm that occurs to the harmed Execution suspended Talaat (2017).

If the decision issued by the execution judge is appealed, this order also entails suspending the execution until the appeal is decided upon³⁰.

CONCLUSION

Praise be to Allah, who enabled me to complete the research, and the conclusion contains a number of results and recommendations that were reached through the research:

1. The Sudanese law did not provide for a stay of execution when a substantive dispute was submitted, but the Omani law provided for a stay of execution in that case.
2. The court competent to consider the substantive dispute in Omani law is the Court of First Instance formed of three judges if the amount exceeds one thousand riyals and does not exceed three thousand riyals. But if the amount exceeds three thousand riyals, then the competent court is the court of appeal. As for Sudanese law, the court that issued the judgment is the same that carries out implementation. If the judgment is issued by the court, the court of the third degree, the court competent to hear the appeal is the general court. If the judgment was issued by a partial judge of the second or first degree, or the general court, the court competent to hear the appeal is the court of appeal.
3. The execution parties can agree to a new agreement after the issuance of the judgment in the litigation that was between them, and this is considered as reconciliation or a new agreement that is considered a substantive dispute if it is proven, and that this prevents the execution of the judgment.
4. Implementation Disputes is one of the things that hinder and delay the implementation procedures. This matter greatly affects the creditor who obtained a judgment that has been appealed and challenged, and when he comes to fulfill his right to implementation, he is faced with these obstacles and obstacles.
5. The Sudanese legislator did not stipulate a monetary fine - in the event of rejection of the substantive dispute - on the complainant, and this matter would lead to the exploitation of the procedures by the litigants and the disruption of the implementation procedures.
6. The Sudanese legislator did not stipulate the right of the aggrieved to be compensated from the suspension of execution as a result of the problem, in the event that liability is available to the complainant.

RECOMMENDATIONS

1. We recommend the Sudanese legislator to include a provision suspending implementation when a substantive dispute is submitted; Because in the event that the execution is not suspended and continued until the implementation is completed, then after that a judgment is issued in the substantive dispute in favor of the applicant, it may result in the impossibility of restoring the situation to what it was before the implementation.
2. We recommend to the Sudanese legislator that there be a specific judge for implementation, who is a single judge, and his judgments are appealed according to a financial quorum to be determined by the Chief Justice.
3. If the parties to the litigation agree after the issuance of the judgment, this order will prevent the execution of the judgment issued in favor of the plaintiff.
4. We recommend that the Sudanese and Omani legislators make provisions for expeditious adjudication of Implementation Disputes and give priority to Implementation Disputes over other cases; So as not to delay the settlement of it to the creditor's harm.
5. We recommend the Sudanese legislator to stipulate a financial penalty for the complainant in case the substantive dispute is rejected; this is so as not to submit substantive disputes that have no basis.
6. We recommend that the Sudanese legislator include a provision in the Civil Procedures Law 1983 that stipulates compensation in favor of the party affected by the stay of execution issued by the execution court in the event of a dispute in the implementation, if there is liability for the complainant, and the purpose of this is to redress the damage that he may be exposed to affected by the suspension.

FOOTNOTES

1. Dr. Ahmed Sayed Mahmoud. (2015). The origins of forced execution in the omani civil and commercial procedures law, University book house, Al Ain, UAE, 317.

2. The precedent of Al-Baqir Makki v. Paradise, Muhammad Karam Allah, (1993). *Sudanese Judicial Judgments Journal*, 147.
3. The precedent of Hawa Ahmed v. Taher Musa, (1998). *Sudanese Judicial Judgments Journal*, AD, 157.
4. Appeal No. 18/2016 session on Monday 30/1/2016 AD, a set of judgments issued by civil departments of the Supreme Court and the principles extracted from it in the period from 1/10/2016 to 30/6/2018, the seventeenth and eighteenth judicial year, issue of the Technical Office of the Omani Supreme Court, 721.
5. Ibid, same topic.
6. Appeal No. 1231/2016, session on Monday, 13/3/2017 AD, a set of judgments issued by the civil departments of the Supreme Court and the principles drawn from them in the period from 1/10/2016 to 30/6/2018 AD, the seventeenth and eighth judicial years Ten, Publication of the Technical Office of the Omani Supreme Court, 201.
7. Appeal No. 1078/2016, session on Monday, 26/3/2018 AD, a set of judgments issued by the civil departments of the Supreme Court and the principles drawn from them in the period from 1/10/2016 to 30/6/2018 AD, the seventeenth and eighth judicial years Ten, Publication of the Technical Office of the Omani Supreme Court, 314.
8. Appeal No. 713/2016 session on Tuesday 26/12/2017 AD, a set of judgments issued by the civil departments of The Supreme Court and the principles extracted from it in the period from 1/10/2016 to 30/6/2018 AD, the seventeenth and eighteenth judicial year, issue of the Technical Office of the Omani Supreme Court, 1161.
9. Dr. Ahmed Abu Al-Wafa, Execution Procedures in Civil and Commercial Matters, (2009). *University Press, Alexandria, Republic of Arab Egypt*, AD, 353-361.
10. Appeal No. 11/2007 High Commercial, Session 14/3/2007, Deliberation chamber judgment issued by the supreme court circuits for five years 2005-2009 AD, Issued by the technical office of the omani supreme court, 140.
11. The precedent of Muhammad Abd al-Qadir Halib v. Surur Muhammad Ramli and others (1974). *Journal of Judicial Judgments. The sudanese 1974 the sudanese encyclopedia of research and judicial cases*, prepared by the technical office of the sudanese judicial authority, 2005 AD.
12. Dr. Talaat Yousef Khater, (2017). *Provisions of forced execution in the sultanate of oman*, University Book House, Al Ain, UAE, AD. 344.
13. Article 408 of the Omani civil and commercial procedures law, promulgated by royal decree no. 29/2002.
14. Article 409 of the Omani civil and commercial procedures law, promulgated by royal decree no. 29/2002.
15. Dr. Al-Ansari Hassan Al-Nidani, *Direct execution of executive bonds*, New University House, Alexandria, Republic of Arab Egypt, (2009). 297-302.
16. The precedent of Fathia Ahmed Izz El-Din against the heirs of Mirghani Ahmed, (MA/CT/164/1980 AD), *Journal of Judicial Judgments -The Sudanese 1980, The Sudanese Encyclopedia of Research and Judicial Cases*, prepared by the Technical Office of the Sudanese Judicial Authority, 2005 AD.
17. Metwally Muhammad Suleiman v. Muhammad Ahmad al-Sayyid (MA/CT/237/1975), (1975). *Sudanese Judicial Judgments Journal*, 147
18. Na'amiya Jabra Mousli's precedent against Qataki Salim Janbart (MA/CT/38/ 1974 AD), *Sudanese Judicial Judgments Journal* 1974 AD, *The Sudanese Encyclopedia of Research and Judicial Cases*, prepared by the Technical Office of the Sudanese Judicial Authority, 2005 AD.
19. Article 363 of the Omani civil and commercial procedures law promulgated by royal decree no. 29/2002. The first paragraph of Article 235 of the Sudanese Civil Procedure Code of 1983 AD.
20. Appeal No. 703/2016, session on Monday, 13/1/2017 AD, a set of judgments issued by the civil departments of the Supreme Court and the principles drawn from them in the period from 1/10/2016 until 30/6/2018 AD, the seventeenth and eighteenth judicial years, Publication of the Technical Office of the Supreme Court of Oman, 623-624
21. The first paragraph of Article 235 of the Sudanese Civil Procedure Code of 1983 AD. Appeal No. 703/2016, session on Monday, 13/1/2017 AD, a set of judgments issued by the civil departments of the Supreme Court and the principles drawn from them in the period from 1/10/2016 until 30/6/2018 AD, the seventeenth and eighteenth judicial years, Publication of the Technical Office of the Supreme Court of Oman, 623-624
22. Article 339 of the Civil and Commercial Procedures Law, promulgated by Royal Decree No. 29/2002.
23. Appeal No. 562/2016 session on Monday 21/12/2015 AD, a set of judgments issued by the civil departments. The Supreme Court and the principles extracted from it in the period from 1/10/2014 to 30/6/2016 AD, the fifteenth and sixteenth judicial year, issue of the Technical Office of the Omani Supreme Court, 358.
24. Article 339 of the Omani Civil and Commercial Procedures Law, promulgated by Royal Decree No. 29/2002. Appeal No. 882/2015 session on Monday 21/12/2015 AD, a set of judgments issued by the civil departments, The Supreme Court and the principles extracted from it in the period from 1/10/2014 to 30/6/2016 AD, the fifteenth and sixteenth judicial year, issued by the Technical Office of the Omani Supreme Court, 113.
25. Article 363 of the Omani Civil and Commercial Procedures Law promulgated by Royal Decree No. 29/2002.
26. The second paragraph of Article 235 of the Sudanese Civil Procedure Code of 1983 AD.
27. Article 365 of the Omani Civil and Commercial Procedures Law promulgated by Royal Decree No. 29/2002.
28. The second paragraph of Article 235 of the Sudanese Civil Procedure Code of 1983 AD.

29. Dr. Ali Hadi Al-Obeidi, (2009). Rules of Forced Execution in the Sultanate of Oman, Modern University Office, Alexandria, Arab Republic of Egypt, 86.
30. Article 339 of the Omani Civil and Commercial Procedures Law promulgated by Royal Decree No. 29/2002

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- The precedent of Naamiya Jabra Mosli v. Qataki Salim Janbart (MA/CT/38/ 1974 AD), *Sudanese Judicial Judgments Journal* 1974, *Sudanese Encyclopedia of Research and Judicial Cases*, prepared by the Technical Office of the Sudanese Judicial Authority, (2005 AD).
- The precedent of Muhammad Abd al-Qadir Halib v. Surur Muhammad Ramli and others (MA/CT/325/1974), *Journal of Judicial Judgments* 1974, *Sudanese Encyclopedia of Research and Judicial Cases*, prepared by the Technical Office of the Sudanese Judicial Authority, (2005 AD).