

## The Effect of the Depreciation in the Value of the Sudanese Currency on Contractual Obligations under Sudanese Law

اثر إنخفاض قيمة النقود السودانية علي الإلتزامات التعاقدية في القانون السوداني

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### Abstract

This paper examines the effect of depreciation of the Sudanese currency on contractual obligations under Sudanese law through analysis of the Repealed Contract Act 1974, the Civil Transactions Act 1984, and judicial precedents. It argues that depreciation does not alter the debtor's monetary obligation and that the principle of nominalism remains applicable under both statutes. However, Sudanese courts depart from strict nominalism in cases in cases of contractual breach, adopting a hybrid approach that combines nominalism and valorism.

### المستخلص

تبحث هذه أثر إنخفاض قيمة العملة السودانية علي الإلتزامات التعاقدية في القانون السوداني من خلال تحليل أحكام قانون العقود الملغى لسنة 1974 وقانون المعاملات المدنية لسنة 1984 و أحكام القضاء ذات الصلة. وتخلص إلي أن إنخفاض قيمة النقود لا يغير من الإلتزام المالي للمدين وأن مبدأ الأسمية يظل واجب التطبيق بموجب كلا القانونين. غير أن القضاء السوداني يخرج عن التطبيق الصارم لمبدأ الأسمية عند وقوع إخلال بالعقد، متبنياً نهجاً يجمع بين مبدأ الأسمية ومبدأ القيمة.

### Introduction

In recent years, the depreciation of the Sudanese currency has emerged as a problematic phenomenon caused by many factors, including political instability. Nonetheless, under the Civil Transaction Act 1984 (CTA 1984), the monetary obligation agreed between the contracting parties remains binding and unaffected by any depreciation in the value of the Sudanese currency. Accordingly, the creditor or seller is obliged to accept the agreed amount, while the buyer or debtor is required to pay only the contractual sum, a position that has given rise to numerous disputes.

Notwithstanding this, no legislative reforms have been introduced as of the time of writing this paper.

The late Professor Al-Seddiq Mohammad Al Amin Al Dareer, has some writings that reflect the Islamic views on the effect of the change in the value of money by depreciation, on debts in general and bank loans in particular. His writings approach the issue from an Islamic perspective, with a focus on situations involving delayed debtors; these writings do not examine the Sudanese substantive laws.

The existing legal scholarship on the effect of Sudanese currency depreciation on contractual obligations remains limited. Available studies predominantly approach the issue from economic and macroeconomic perspectives, focusing on compensation mechanisms and comparative analysis between the Islamic and Sudanese law.

Consequently, this paper seeks to fill that gap by providing a comprehensive legal examination of the impact of currency depreciation on monetary contractual obligations under Sudanese law.

The paper focuses on the recurring legal questions, namely is the debtor, irrespective of the source of the obligation-whether arising from a sale, contract, lease agreement or loan- is obliged to fulfil the original monetary obligation at its nominal value, or whether the debtor should instead pay the adjusted value of the financial obligation in line with the valorism theory, which requires payment based on the real value of the currency rather than its nominal value. These questions are addressed by examining the approaches adopted under the repealed Contract Act 1973 (hereinafter referred to as the Repealed Act) and the CTA 1984, together with the relevant Judicial precedents up to April 2023, that is, before the Current War.

The paper is structured into three sections. The first section is divided into two parts: 1.1 provides a brief overview of inflation in Sudan, while section 1.2 presents a historical background of the Sudanese legal system.

The second section examines the legal treatment of currency depreciation under Sudanese law, comprising Section 2.1, which addresses the Repealed Act, and Section 2.2, which focuses on the CTA 1984. The third section examines the exceptions to Articles 82 and 285 of the CTA 1984 and consists of Section 3.1, addressing the first exception, Section 3.2, the second exception, and Section 3.3, a comparative analysis between Article 82 and other laws, followed by the conclusion.

### 1.1 A Brief Overview of Inflation in Sudan

The history of the change in the value of money in Sudan shows that price inflation and depreciation in the value of money began in the 1970s as an intermittent phenomenon, which was negligible and gradual. Thereafter, in the 1980s, inflation became a foreseeable consequence of the decline in the Sudanese economy.<sup>2996</sup> From the late 1980s until just before the outbreak of the Current War in Sudan, inflation and currency depreciation have profoundly influenced commercial transactions and business dealings at the local, regional, and international levels.

The political instability in Sudan since independence has had far-reaching effect on economic and social life. The value of Sudanese currency had changed several times since Independence. During the early 1970s the inflation and hence, the depreciation in the value of money was almost negligible.<sup>2997</sup> Thereafter, inflation commenced a period of rapid growth by 1978 the government received assistance from the International Monetary Fund (IMF), but the objectives of the macroeconomic program were not achieved, and the inflation rate reached 40%.<sup>2998</sup> Inflation and the deterioration in the value of the Sudanese currency continued after the over-throw of the government of the late *Ja'afar Numeiri* in 1983 (Nimeiri's regime) reaching its climax in 1996.<sup>2999</sup> The inflation rate fell in 2000 by 8%.<sup>3000</sup> However, it started to rise again in 2009 due to several factors, with depreciation reaching 45%.<sup>3001</sup>

According to the International Monetary Fund (IMF) Report of September 2017 on Sudan, the inflation rate reached 34%.<sup>3002</sup> In November 2018, the inflation was reported at 63.29%.<sup>3003</sup> **Inflation** registered at 163.3% in 2020 and 359.1% in 2021. It declined in 2022 to 77.2, but rose again during the Current War in Sudan, which started on 23 April 2024.<sup>3004</sup>

Inflation in Sudan reflects the interplay of internal and external factors.

Internal factors refer to the various economic policies adopted by the Sudanese governments from the early 1970s during Numeiri's regime (1969-1984) up to the late downfall of Omer *Al Bashir's* governing regime (1989-2019) in 2019. Since its independence in 1956, the Sudan's economy relied heavily on cotton production as the major source of foreign exchange.<sup>3005</sup> The deterioration in cotton production during Nimeiri's regime affected the country's economy and, consequently the value of money.<sup>3006</sup> Neglect of agricultural sectors and investing in oil during *Al Bashir's* regime despite some economic improvement, also contributed to currency

2996 . Haitham Al Musharaf & Fung Deng Tian, "the Causes of Sudan's Recent Economic Decline" (2014) vol2/ issue Journal of Economics and Finance,26-40<[www.isorjournals.org](http://www.isorjournals.org)>accessed January2019.

2997 In a decade it reached 20% according to Sudanese official estimates.

2998 The government with the aid of the world bank constituted the economic recovery programme 1978/9-1981/2. The World bank in Sudan < [www.worldbank.org](http://www.worldbank.org)>accessed February 2019.

2999it reached 166% Sudan central bureau of statistics. Haitham Al Musharaf & Fung Deng Tian (n335) p29.

3000 That was due to the structural reform strategy between 1996-2002 and entry of oil resources. Ibid.

3001 Those factors included drop in the oil and gas prices, global financial crisis in 2008, expansion of government expenditure and Darfur crisis. Ibid p30.

3002 <<https://www.imf.org/en/News/Articles/2017/09/27/pr17373-imf-staff-completes-2017-article-iv-visit-to-sudan>>

3003 Statista.com,<<https://www.statista.com/statistics/727148>>accessed February 2019.The rates of inflation differ from institute to another depending on the grounds of calculation of the rate and information obtained from the concerned country.

3004 [www.imf.org/en/Countries/SDN](http://www.imf.org/en/Countries/SDN)

3005 *ibid*.

3006 which was due to the project administration wars besides other factors, as well as the drop in the production of other agricultural products, *ibid*

depreciation.<sup>3007</sup> Unwise investment of oil revenue, lack of investment in other sectors such as agriculture, industry, expansion of government expenditure, and corruption, collectively led to inflation again and severe depreciation in the value of money.<sup>3008</sup>

Other internal factors included excessive privatisation policy during Al Bashir regime, which aimed to enhance economic efficiency and encourage private sector contribution. Unfortunately, privatisation had adverse effects on consumers, due to the increase in the prices of basic services.<sup>3009</sup> The second civil war between the north and the south (1893-2005), which consequently led to the separation of South Sudan in 2011 as well as the discovery of oil as the major source of the country's foreign revenue, made the separation of South Sudan, significantly damaging to the economy.<sup>3010</sup>

The external factors refer to Sudan's foreign debt, and the economic embargo imposed on Sudan in 1997, which was further extended by the UN Security Council and the European Union in 2006, and only partially lifted in July 2017.<sup>3011</sup> Unfortunately, even after the overthrow of *Al Bashire's* regime, similar policy mistakes persisted. Although the new government has shifted the economic focus toward gold and other minerals instead of oil, the revenues were not effectively directed into productive sectors.

## 1.2. A Brief Background of the Sudanese Legal System

During Anglo-Egyptian rule in Sudan (1898-1956), English common law rules were applied in almost all aspects of life and enforced by English judges and administrative officials.<sup>3012</sup> Before Independence, civil matters were regulated and governed by the Civil Justice Ordinance 1900 and, later, by the Civil Justice Ordinance 1929.<sup>3013</sup> Both Ordinances were influenced by English common law, and the principle of '*justice, equity and good conscience*' was applied to all matters not covered by legislation.

The Law Commission was formed in 1966, later replaced in 1968 by five Law Commissions established under the Law Commissions Act 1968.<sup>3014</sup> Although the 1968 Act was repealed in 1969, the legal framework that existed before the 1969 revolution remained in force, including the application of the '*justice, equity and conscience*' provision alongside other laws rooted in English common law.<sup>3015</sup>

After Independence, there were no significant changes in the general application of English common law.<sup>3016</sup> The legal system largely continued to follow the English common law tradition, with minimal reforms aimed at developing a distinct national legal identity.<sup>3017</sup>

Over time, Sudanese law began to gradually depart from the strict application of English common law. Numerous laws were enacted in the 1970<sup>th</sup> including the Contract Act 1974, which was replaced by the Civil Transaction Act 1984.

In 1983, a sudden shift occurred when Sudan incorporated Sharia-based legal principles in place of the numerous laws that had previously been based on English common law foundations. This marked a fundamental transformation of the legal system and a clear departure from the earlier-influenced framework, particularly in civil law and criminal law.

## 2.1 The Legal Effect of Depreciation in Currency Under the Repealed Contract Act

<sup>3007</sup> Which occurred between 1997-2008 after introducing oil production within sectoral component of the Sudanese economy: Haitham Al Musharaf & Fung Deng Tian, (n1) 26-40.

<sup>3008</sup> *ibid* 31-32.

<sup>3009</sup> Such as electricity and telecommunication as well as loss of jobs before and after privatization.

<sup>3010</sup> In the east and South Sudan and Darfur.

<sup>3011</sup> Ahmed Z. Baharumshah, Abdalla. Sirag, N. Nor, 'Asymmetric Exchange Rate Pass-through in Sudan: Does Inflation React Differently during Period of Currency Depreciation' (vol 29 No.3 African Development Review 2017) 446.

<sup>3012</sup> Sayed Hassan Amin, Middle East Legal Systems (Royston Limited, 1985) 343.

<sup>3013</sup> Zaki Mustafa, The common Law in the Sudan (Clarendon Press. Oxford 1971) *Ibid*.

<sup>3014</sup> *Ibid*.

<sup>3015</sup> *Ibid* (n19).

<sup>3016</sup> *Ibid*.

<sup>3017</sup> *Alam Maximos v Kadiga Mohamed El Brigdar* (1956) SLJR.90, see Zaki Mustafa n(18).

The Repealed Act was the first Sudanese codified Contract Act; it was introduced to replace the Civil Code of 1971. The Repealed Act was influenced by English common law; the English judicial precedents were used as reference and guidance for the application and interpretation of the Repealed Act. In effect, most English common law principles were imported and applied. The Repealed Act was subsequently replaced by the Civil Transactions Act 1984 (CTA 1984), which remains the prevailing legislation in force up to now.

Inflation was, generally, negligible during the 1970s, therefore the issue of the decrease in the value of money was not expressly addressed as in the CTA 1984. Under the Repealed Act, the parties were required to perform their contractual obligations, including payment of the agreed price or repayment of a debt. Article 57 (1) of the Repealed Act provided that “each party shall perform his obligation in accordance with the terms of the contract unless he is excused from such performance by the provisions of this Act or any other law”. Debtors - irrespective of the source of the debt- relied on this article when discharging their debts, and there was a decrease in the value of money, and the seller refused to accept the tendered agreed price or the indebted sum.

The absence of express provisions reflecting the legal effect of the decrease in the value of money on monetary contractual obligation in the Repealed Act is explainable by the fact that interest was permitted under the repealed Civil Procedure Act 1974 (CPA1974).

Article 110 of the CPA1974 Act provided that “the court may judge with interest on the claim amount from the date of the issue of the claim until payment or any other date the court may deem suitable.” The legislator put a limit on the interest that would be awarded, whereas subsection (4) of the same article stipulated that interest would not be ordered unless it is claimed by the claimant in his originating writ.<sup>3018</sup> Consequently, where interest is not included in the final judgement, this omission was construed as a judicial refusal to award interest.<sup>3019</sup> This means that an aggrieved party could claim interest for delay in the repayment of any monetary obligation as compensation for losses, including depreciation in the value of money.

On the other hand, there are no express provisions in either the Repealed Contract Act or the CTA 1984 entitling the affected party to monetary depreciation to recover losses resulting from the increase or decrease in the value of money. Nevertheless, Judicial practices show that courts ordered damages for losses resulting from depreciation in the value of money in many cases. In *Sudanese Company for Car Insurance Ltd v Khidir Al Jack*,<sup>3020</sup> the Supreme Court judge stated that “in assessing damages, the court had to take into account the depreciation of the Sudanese pound and the erosion of its purchasing power, which could be observed monthly, let alone over the duration of a year.”

Similarly, in *Mohamed Ahmed Al Sir & the Government of Sudan v Um Salama Gasm Al Seed*,<sup>3021</sup> the Supreme Court considered the depreciation of the currency’s purchasing power in determining the *quantum* of damages. Again, in *Sudanese Company for Car Insurance Ltd v Zeinab Idris*,<sup>3022</sup> the Supreme Court approved the Appeal Court’s consideration of the depreciation of the currency and increase in prices when assessing damages for the plaintiff’s losses.

In light of the foregoing, it appears that under the Repealed Contract Act, parties were obliged to perform their agreed monetary obligations without considering any depreciation in the value of money. The debtor must pay the agreed price despite the currency’s depreciation, and the creditor was obliged to accept the tendered money despite its reduced value. In other words, depreciation in the value of money did not affect or alter the party’s contractual monetary obligations - the principal debt - regardless of its source. This reflects the legislator’s adherence to the principle of nominalism. However, the courts, at all levels, considered depreciation in the purchasing power of money when assessing the *quantum* of damages.

## 2.2 Civil Transactions Act 1984 (CTA 1984)

<sup>3018</sup> Article 110(2) and (3) respectively.

<sup>3019</sup> Article 110(4) of the Civil Procedure Act 1974.

<sup>3020</sup> (1977) SLJR.CA2\*

<sup>3021</sup> (1978) SLJR.CA (Supreme Court)

<sup>3022</sup>(1979) SLJR.CA

The CTA 1984, alongside other legislative instruments, was enacted as part of the Islamization programme initiated in 1983, which aimed to restructure the Sudanese and judicial framework in conformity with Sharia principles. The CTA 1984 governs and encompasses all types of civil transactions that were previously scattered across different laws. Following the elevation of Shari'ah as the primary source of law, the interpretive approach in the absence of explicit statutory provisions, becomes Shari'ah principles and the Basic of Judicial Decisions Act 1983 (1983 قانون اصول الاحكام القضائية), replacing earlier reliance on the provision of *justice, equity and good conscience*.<sup>3023</sup>

The fluctuation in the value of the Sudanese currency and its impact on parties' obligations is specifically addressed in the CTA 1984 under articles 82 and 285. The rise in inflation since 1978, together with the influence of Sharia during Nimieri's islamization programme of 1983, were the key factors behind the enactment of Article 82.

Article 82 provides that "if the subject of the obligation is the payment of an amount of money, the debtor is bound by the amount of its number thereof as mentioned in the contract without the increase and decrease in the value of this money having any effect at the time of fulfilment". The Arabic version reads "إذا كان محل الالتزام دفع مبلغ من النقود التزم المدين بقدر عددها المذكور في العقد دون أن يكون لارتفاع قيمة هذه النقود أو لانخفاضها وقت الوفاء أي أثر" Article 285 reads: "the borrower shall return the same of what he received in amount, kind and description at the end of the loan period, without consideration to any change that occurs to its value, on the agreed time and place"

"يلتزم المقترض برد مثل ما قبضه مقداراً ونوعاً وصفة عند انتهاء مدة القرض ولا عبرة لما يطرأ على قيمته من تغيير وذلك في الزمان والمكان المتفق عليهما"

Article 82 addresses monetary obligations. It provides that any increase or decrease in the value of money does not affect the parties' obligations. This means the debtor is not under any obligation to consider the changes in the value of money when he repays the debt, and the creditor is under an obligation to accept the indebted amount irrespective of its depreciation or appreciation. The wording of Article 82 is broad and nonspecific, suggesting that it applies to all contracts involving monetary obligation.

A literal interpretation of the article indicates that the exclusion of monetary depreciation extends to transactions such as sales, purchases, services, construction, dowry payments, alimony entitlements, and *zakat* etc., unless expressly excepted under the CTA 1984 or other relevant laws.

Article 82 uses the term 'fulfilment' without defining it. Judicial interpretation has confirmed that 'fulfilment' refers to performance or payment of the obligation at the agreed time; failure to do so shall constitute a breach of contract. Article 285 of the CTA addresses loans, stipulating that the borrower must return the same amount, kind and description of the loan at the agreed time and place, irrespective of changes in value.

The judicial precedents after the enactment of the CTA applied both Articles 82 and 285 of the CTA with some exceptions. Thus, in *Jamal El Din Ahmed v Mustafa Ahmed*,<sup>3024</sup> the District Court ordered the payment of Sudanese pound (sdg) 21,000 to the creditor in 1982. The creditor delayed execution until 1998, by which time the currency had severely depreciated. The Supreme Court strictly applied Article 82 and upheld the original nominal amount, without considering depreciation.

Also, in *Amna Magzoub Al Sadiq & others v Mirgany Ali Fadlala*,<sup>3025</sup> the Court of Appeal held that courts could not review the price of the property subject to the right of pre-emption on the basis of inflation, affirming that Article 82 of the CTA 1984 excludes consideration of monetary fluctuations. The court observed that inflation occurs almost daily and that courts cannot predict how long it will take to resolve disputes, which may be affected by inflation. It stated *obiter* that adjusting prices for inflation would unduly burden the courts.

<sup>3023</sup> The judicial precedents which were not contrary to Shari'ah was frequently referred to for guidance.

<sup>3024</sup> *Jamal El Din Ahmed v Mustafa Ahmed* (Unreported 2007), quoted from Dr. Abu Zar Al Gafary, *Contract and Individual Will in Sudanese Law*, (7<sup>th</sup> ed, University Press 2008). 2007, unreported case.

<sup>3025</sup> (1994) SLJR.

In *Youssef Abdel Raheem Mohamed v White Nile Project Administration*,<sup>3026</sup> the court held that price increases did not qualify as an ‘emergent matter’ under Article 117 of the CTA1984 (the doctrine of unforeseen circumstances). Rather, inflation was deemed a normal event, foreseeable in commercial dealings, and losses were therefore to be borne by the contracting parties.

Based on these appellate judgments, Sudanese courts generally regard depreciation in the value of money as outside the scope of the doctrine of unforeseen circumstances. This position is justified on the basis that depreciation of the Sudanese currency is a recurrent and foreseeable aspect of daily commercial life.

### 3.1 First Exception to the literal meaning of Article 82

The strict application of articles 82 and 285, respectively - strict application of nominalism principle - was departed from in the leading case of *Al Mubarak Engineering Business v the University of Khartoum*,<sup>3027</sup> the Supreme Court established that, article 82 applies only where there is no breach of contract or the contract is not rescinded. The court interpreted the term ‘fulfilment’ in Article 82 to mean performance at the agreed maturity date.

According to the facts of the case, the respondent (plaintiff at first instance) contracted with the appellant, (defendant at the first instance) to execute electrical work at its workshop. The respondent paid him an amount of Sudanese pound (SDG) 99,840 out of a total contract value SDG166,400 between 5 March 1980 and 8 December 1981. The appellant executed only 10 per cent of his contractual obligation. The respondent issued a claim against the appellant claiming the paid money and compensation of twenty million Sudanese pounds and other remedies. The Court of First Instance ordered repayment of the value of the amount paid by the claimant, not its nominal value, justifying its decision on the decrease in the value of money. The court referred to the value of the Sudanese pound against the US dollar in 1981 and 1995. It concluded that the value of SDG 83,200 (the amount paid after deducting the value of the executed work) was equivalent to SDG 44 million on the date of decision date. Nevertheless, it ordered twenty million as per the claimant’s request.<sup>3028</sup> The appellant appealed on the basis that the judgement contravened Article 82 of the CTA1984. The Court of Appeal reduced the compensation to SDG three million. The respondent appealed, and the Supreme Court upheld the First Instance Court’s. The Supreme Court held that Article 82 applies in cases where the contract remains in effect; however, where the contract is rescinded, the matter is governed by the principles permitting compensation.

The appellant then petitioned the Revision Division of the Supreme Court, arguing that the decision was inconsistent with Article 82, Shari’ah principles, constituted *riba* (interest). The appellant also requested the application of article 82 because the obligation in question qualifies as a debt. The Review panel held that “violation of Shari’ah rules” refers to conclusive rules expressly mentioned in the Qur’an and Sunna. As neither source explicitly addressed this issue, there was no justification to revise the decision as being contrary to Sharia. The court found that, consideration of the increase in the purchase power of foreign currency as a reference point for assessing damages was not *riba* but merely a measure of compensation for losses.

The panel referred to *Mohamed Ahmed Al Sir v Um Salama, Gasm Al Seesd*,<sup>3029</sup> where fluctuation in currency value was treated as a valid criterion for assessing damages.<sup>3030</sup>

It held that Article 82 applies only where the contract is not rescinded. Once rescinded, the matter is governed by Article 128(1) of the CTA 1984, which deals with breach of contract”. The review panel affirmed the First Instance Court and the Supreme Court decisions, which ordered repayment adjusted to the currency’s value against the US dollar. It observed: ‘what is required is to achieve justice and eliminate losses resulting from recovery procedures, as per article 6 of the CTA’. It has also confirmed that this approach complied with Articles 128(1) and 131 of the CTA and did not violate Article 82.<sup>3031</sup>

<sup>3026</sup> (1992) SLJR.

<sup>3027</sup> (1997) SLJR.8.

<sup>3028</sup> The court was of the opinion that, the compensation of the twenty million exceeds the value of other requests which included the loss suffered due to the closure of the workshop and the labours’ salaries.

<sup>3029</sup> (1977) SLJR.44.

<sup>3030</sup> The Supreme court also referred to *General Company for Insurance v Saeed Hassan*, (1977) SLJR. 44.

<sup>3031</sup> Article 128(1) provides for rescission of contract as well as compensation, if necessary. Article 131 deals with consequences of rescission, it provides for restitution of the contracting parties to their original position as before the contract and if this is impossible, then order of compensation.

### 3.2 Second Exception to the Literal Meaning of Article 82

The second exception to Article 82 arises where the agreed currency of payment is a foreign currency, later converted into local currency, and the debtor fails to fulfil the repayment obligation. In the Supreme Court case of *Aboud Abdel Wahab v Ahmed Ali Daleel and Others*,<sup>3032</sup> the appellant (the claimant at first instance) gave the first respondent US \$14,000 to import a truck for him. The respondent failed to perform, and the appellant sued. The second respondent undertook to repay the money or its equivalent in Sudanese pounds but also failed to do so. The Court of First Instance ordered payment of US \$14,000 or its equivalent value on the date of payment. The Court of Appeal affirmed the first instance decision but held that the evaluation date would be 1991 (the execution date). The appellant challenged this, arguing he would suffer loss due to the depreciation of the Sudanese pound between the date of payment and 1991. The Supreme Court upheld the First Instance Court, stating that, for economic and regulatory reasons, repayment in US dollars might not be possible. It affirmed that it had become both judicial and commercial practice to require repayment in Sudanese pounds at the exchange rate on the payment date. Otherwise, creditors would face severe losses, resulting in unjust enrichment of debtors.

This position was reaffirmed in 2017 in *Prodomix Company (appellant) v Al Hilalain Soap Factory (Prodomix case)*,<sup>3033</sup> in that case, the court held that, if a debt is not paid immediately or deposited into the court's account on the judgment date, and the payment currency subsequently deteriorates, the debt must be settled based on the currency's value at the actual payment date, according to the exchange rate set by the agencies authorised by the Bank of Sudan.

These cases demonstrate that judicial precedents support the principle of nominalism for timely payment of monetary obligations, obliging debtors to pay the same nominal sum agreed. However, where breach occurs and the continued application of nominalism would result in inequity or prejudice to the creditor, courts invoke the theory of valorism. This allows adjustment of monetary obligations, consistent with the maxim and *Hadith* "la darar wa la dirar" and Article 6 of the CTA.<sup>3034</sup>

### 3.3 Comparison Between Article 82 and Other Laws

Article 82 of the CTA aligns with both English Common law and Islamic law, particularly with the views of classical jurists who support the application of the nominalism principle in the repayment of debts irrespective of their source.

Under English common law, the agreed sum must be paid without regard to depreciation in the value of money between the contract date and the maturity date.<sup>3035</sup> This position is justified on the basis that the contracting parties bear the risk of currency fluctuations during the contract period; in the absence of any contrary term, it is assumed that the parties agreed both to the amount and the time of payment; therefore, the risk of currency depreciation is borne by them.<sup>3036</sup>

From an Islamic law perspective, any addition to the principal debt is considered *riba* (usury), which is strictly prohibited. Nevertheless, some Islamic schools' jurists permit compensation for delay in repayment in limited circumstances- for example, where a solvent debtor wilfully delays payment without a valid excuse.<sup>3037</sup>

### Conclusion

Based on the leading judicial precedents and judgments, it is concluded that the jurisprudence of the Sudanese courts reflects a hybrid approach that draws upon both the nominalism principle and the valorism theory, while maintaining compliance with Islamic law, which strictly prohibits the

<sup>3032</sup>(1997) SLJR. 120.

<sup>3033</sup> (2017) SLJR.

<sup>3034</sup> Al Mubarak case (n 32)

<sup>3035</sup> Charles Proctor, Mann on Legal Aspect of Money, (6<sup>th</sup> edn Oxford University Press 2000).

<sup>3036</sup> *ibid*

imposition of interest. This approach, if consistently and properly applied, may be regarded as a reasonable and contextually appropriate solution — particularly in the absence of a unified regional or international monetary index and the abandonment of the gold standard.

Additionally, due to the continuous and rampant depreciation in the value of the Sudanese currency, the absence of anticipated legal reform due to the current war in Sudan, and the prohibition of interest, it is advisable that parties protect themselves against the risk of currency fluctuation by inserting an escalation clause or re-evaluation clause to mitigate losses resulting from depreciation in the value of money.<sup>3038</sup>

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<sup>3038</sup> Hirschberg E, The Impact of Inflation and Devaluation on Private Legal Obligations (Bar Inn University 1971).  
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