



The Federal Supreme Court (F S C) has been convened on 11.14.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi , Aboud Salih Al-temimi , Michael Shamshon Qas Georges, Mohammed Rijab AL-Kubaisi and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

Plaintiff: the chairman of Wadi AL-Rafidain agrarian cooperative society for poultry producers (mim.ha.sin)/ being in this capacity/ his agents the barristers (dal.waw.ain.ha) & (ain.kaf.ha) & (alif.ain.ta) either singly or in combination.

Defendant: the Minister of finance/ being in this capacity/ his agent the legal official (fa.ha.ha.).

Claim

The agents of the plaintiff claimed that the cassation committee of property disputes approved the decision of the judicial committee in the third Kharkh in number (493523) on 11.15.2006 by voiding the record of registering Wadi AL-Rafidain agrarian society/ AL-Muradiya from the Ministry of finance and re-register it by the name of Wadi AL-Rafidain with a percentage of 50 % of the project's stocks, and the plaintiff/ being in this capacity should repay the amount which he received of (175.000.000) one hundred seventy five million Iraqi dinars, and the decision became final. But the general committee in the federal cassation court on (12.28.2015) in number (42/general committee/2015), and based on the request of the public prosecutor decided (to judge with reject the case of the plaintiff the chairman of Wadi AL-Rafidain cooperative society of poultry producers/

being in this capacity, and re-posses the project to its previous state before the issuance of the committee decision, as well as for the listed amount in the decision of (175.000.000) one hundred seventy five million Iraqi dinars. Whereas the request of the public prosecutor which the general committee was based on it after the challenged decision became final of three years, it considered violates the text of clause (2nd/beh) of article (30) of the public prosecution law No. (159) for 1979, whereas the challenge for the law is a method of exceptional challenge, so, the public prosecutor is not permitted to exercise the challenge contrariwise of the legal period of challenge, according to the public prosecution law (amended). The challenged judgment if it was issued from unspecialized court, as the general committee went to this opinion, so, it should be rejected and refer the case to the specialized court in addition to that the cassation court had been convened in its general committee without pointing to the Head of the court, and the number of the judges (singular not plural) whereas the number of the judges were 20 twenty only. The aforementioned committee had rejected the challenge, which means it did not take a new about the specialties of cassation court in its decision and the judicial power. The legal periods are decisive and final, and the challenged against should not hold it, even if its exceeding makes the decision issued about the challenge violates the law. Whereas the federal cassation court had rejected the challenge of the public prosecutor formally, because it became after the legal period, therefore, it should not review the decision objectively. The judicial judgments which became final is a plea on everyone in its detailed judgments and the settling of treatments after the decisive judgments is the target of the regular legislator and the judge, especially that the challenged decision is related to (1.261) an agrarian families belongs to this society, whereas the challenged decision had been issued contrariwise the provisions of public prosecution law No. (159) for 1979 (amended), therefore, the agents of the plaintiff requested from the FSC to judge by cancelling the decision of the general committee in the cassation court (42/general committee/2015) on 12.28.2015 because it was based on several judicial violations, and took the situation back as it was before the issuance of that decision, and to burden the defendant the fees, the expenses and advocacy fees. The agent of the defendant answered according to his written draft dated on 10.24.2017 on the petition of the case, that the decision issued from the second judicial committee in case No. (493523) in 11.15.2006 was a contrariwise to the

rules of functional specialty, whereas the subject of the case is specialty of first instance courts, because it has a general principality implementing to provisions of article (29) of civil procedure law No. (83) For 1969 (amended) which is it a void decision not immunized. The aforementioned decision is not a plea to base a traces on it such as the right decision, and the it should not be regarded obligatory, and for these reasons it had been challenged for the interest of the law before the Presidency of the public prosecution and the challenge was reviewed on the general committee in the federal cassation court, which considered the highest judicial committee which authorized by law to exercise the judicial monitory on all courts, and issued its decision to reject the case of the plaintiff. Therefore, the agent of the defendant requested from the FSC to follow the decision of the general committee decision because it is the highest judicial power and to reject the case, and what listed in the draft of the plaintiff's case has no support in the law and must rejected for the abovementioned, and for another reasons. The agent of the defendant requested to reject the case and to burden the plaintiff the expenses and advocacy fees. After completing the notifications, the court called upon the two parties in the case for the pleading, and on the set date of the pleading the court was convened, and for the plaintiff/ being in this capacity his agents attended, and the agent of the defendant attended. The public in presence pleading proceeded, the agents of the plaintiff repeated what listed in the petition of the case and requested to judge according to it and to burden the defendant all the expenses and advocacy fees. The agent of the defendant repeated what listed in the answering draft dated on 10.24.2017 and requested to reject the case with burdening the plaintiff all the expenses and fees. Therefore, whereas nothing left to be said, the end of the pleading made clear and the decision issued publicly.

The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff/ being in this capacity challenges by his agents the decision No. (42/general committee/2015) which issued form the general committee in the federal cassation court on 5.28.2017 which decided to reject the case of the plaintiff / being in this capacity and re-posses the project to its situation before the issuance of the judicial committee decision, as well as for the amount mention in the decision (175.000.000) one hundred seventy five million Iraqi dinars for the reasons listed in the petition of the case.

Accordingly the FSC finds that the plaintiff in his case requesting from the FSC to judge with cancelling the decision of the general committee in the federal cassation court No. (42/general/2015) on 5.28.2015 which became final, whereas the authorities and specialties of the FSC determined in article (93) of the Republic of Iraq constitution for 2005 and in article (4) of the FSC law No. (30) for 2005 and not among these specialties cancelling the issued decisions from the general committee of the federal cassation court, therefore, the request of the plaintiff from the FSC to cancel the appeal decision issued from the general committee of the cassation court abovementioned has not a support in the constitution or the law as for the specialties of the FSC which restricted in the constitution and the law. Based on that, the case should be rejected for Non-specialty, therefore, the FSC decided to reject the case of the plaintiff/ being in the capacity for Non-specialty and to burden the plaintiff the expenses and advocacy fees for the agent of the defendant/ being in this capacity amount of one hundred thousand Iraqi dinars. The decision issued decisively and unanimously, according to provisions of article (94) of the constitution of the Republic of Iraq for 2005 and article (5/2nd) of the FSC law No. (30) For 2005, the decision made clear on 11.14.2017.