

Republic of Iraq  
Federal Supreme Court  
Ref. 121 / federal / media / 2013



Kurdish text

---

The Federal Supreme Court (F.S.C.) has been convened on 5.5.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

**The Plaintiff:**

(nun. feh. ain.) – his agent the attorney (feh. ha. ain.).

**the Defendant:**

The Speaker of the Iraqi council of representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).

**The claim:**

The agent of the plaintiff claimed that on 1.7.2013 the first instant court of Baaquba decided the lawsuit no. 393/objection /2012 to compile the defendant the minister of justice being in this post to amend the transition transection on the property no.(51/44 Tukia) belong to the Inheritor of his client with his



associates, the court implement in its decision the article (74) paragraph (2<sup>nd</sup>) of the personal status law no. 188 of 1959 with its amendments. The mentioned article was issued under the law no. 72 of 1979 (third amendment law) which violates the Sharia in Surat Al-Nisa 'verse (11), in light of paragraph (2) of article (74) first instant court advanced the obligatory will over the optional will, so how can we present the will of the creature over the will of the Creator, as this is contrary to the wise sharia, the grandchildren's of a his client inheritor has got (12) shares out of (60) shares, while his children got (10) shares, also the text of article (74) violates the text of article (87) of the personal status law, he requested to repeal paragraph (2) of article (74) of the personal status law for illegality and contradicting the law. The defendant being in this post responded by requesting to dismiss the law suit according to paragraph (2<sup>nd</sup>) of article (4) of the F.S.C. law, on the argument day the gent of the plaintiff and the defendant' agents attended, the court heard the parties statements and completed its investigations and issued the following decision.

### **The decision:**

During scrutiny and deliberation by the F.S.C. it found that the plaintiff agent requested the F.S.C. to rule to repeal paragraph (2<sup>nd</sup>) of article (74) of the personal status law no.(188)



---

of 1959 for contradicting the Quran provision “Allah charges you concerning your children, for a male like the share of two females. If they are women, above two, they shall have two thirds of what he left, but if she is one, then to her a half. While for his parents, to each one of the two a sixth of what he left, if he has a child. But if he has no child and his heirs are his parents, his mother shall have a third. If he has siblings, to his mother a sixth after any bequest he had bequeathed, or any debt. Your fathers and your children, you do not know which of them is nearer in benefit to you. This is an obligation from Allah. Surely, Allah is the Knower, the Wise” verse (11) Surat Al-Nisaa. By reviewing the text of the holly verse (the only substantiation of the plaintiff), the court didn’t found in that text what prevent indicates the inadmissibility of the obligatory will over other commandments in the Qur’an text that the plaintiff cited, but the will was mentioned in it absolutely and that presenting the obligatory will over other wills is a legislative option in which the legislator established the right of the grandson to obtain his share from the legacy of his grandfather or his grandmother upon the death of his father or mother before the death of the grandfather or grandmother, provided that his share does not exceed one third of the legacy, according to paragraph (1<sup>st</sup>) of article (74) of the personal status law in force, paragraph (2<sup>nd</sup>) of

Republic of Iraq  
Federal Supreme Court  
Ref. 121 / federal /media/ 2013



Kurdish text

---

article (74) (being challenged by the plaintiff) granted it the right to advance over the rest of the commandments in fulfillment, in order to achieve the justice that the Tolerant Sharia brought. For all that the plaintiff lawsuit lost its legal and sharia substantiation which requires to dismiss it, the court decided to dismiss the lawsuit and to burden the plaintiff the fees and expenses of the defendant agents amount of (one hundred thousand) IQ.D. This decision has been issued in presence, unanimously, final and publicly on 5.5.2014.