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The Federal Supreme Court (F.S.C.) convened on 10.11.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

**The plaintiff:**

Ismail Mubader Raouf - his attorney, Saddam Hussein Abdul-Jabbar.

**The defendants:**

The Speaker of the Council of Representatives / in addition to his post - his deputy, Legal Counsel Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim.

**The claim:**

The plaintiff claimed, through his attorney, that on January 31, 1981 the Expropriation Law No. (12) of 1981 was issued, which stipulates in Article (11/Second) of it that (the court invites the two parties to attend at the appointed time, and if the appropriation is more than one, or if among them is deceased, it may notify one of them and invite the rest by announcing in a local daily newspaper, according to their names contained in the last record of the property, and this is considered a notification to all partners and heirs of the deceased from them) and that the remaining of this text harmed him

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and the citizens, as it violates and contradicts the provisions of the Constitution of the Republic of Iraq for the year 2005 in Article (13/Second) thereof, which states: (It is not permissible to enact a law that contradicts this Constitution, and every text contained in the constitutions of the regions or any other legal text that contradicts it shall be considered null and void,) as well as Article (19/Third) thereof, which states (Litigation A right that is safeguarded and guaranteed to all). The expropriation law (the subject of the case) deprived him of the right to litigation and attached to the court justice a photocopy of the expropriation decision No. (98 / expropriation / 2013 on 30/6/2014) which was issued against his deceased legator, as well as a photocopy of the death certificate and the Shariaa shares dividing confirming. The death of their legator Mubadder Raouf Ismail on 10/1/2004, as well as a copy of the Rusafa Court of First Instance decision No. (98/objection/ acquisition/2013 on 12/14/2020). The Expropriation Law, and since the personality of a person begins with the completion of his birth alive and ends with his death according to Article (34/first) of the Civil Code and that the text of the article under appeal violated the Civil Law and that the litigation against the deceased is non-existent, as well as the decisions issued against him. The article under appeal violated the rules of procedure in the general procedural law (the Civil Procedures Law), which stipulated in Article (3) that each of the parties to the case should have the necessary capacity to use the rights to which the case relates, otherwise he must be represented by someone who takes his place legally. In the use of these rights, as well as Article (4) of it, which stipulated that the defendant be a litigant whose recognition would result in a judgment estimating the

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issuance of an acknowledgment from him and that he be judged or obligated to something based on an assessment of the proof of the case against him. He requested the F.S.C. to rule that Article (11/Second) of the Expropriation Law No. 12 of 1981 is unconstitutional and charged him with fees, expenses, and attorney fees. The case was registered with this court in No. (125/Federal/2021) and the legal fee was collected for it, according to what was stated in Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005 and informs the defendant of its petition and documents in accordance with what was stated in Article (2/first) of the aforementioned bylaw, and his two attorneys responded with the answer statement dated 9/21/2021, which included the following:

1. The plaintiff's claim regarding the conflict of the text under appeal with the constitutional texts mentioned by him is not true. In the expropriation law, the legislator took into account the notification procedure for the one who was expropriated from him. Or the real rights to his heirs, even if no transfer or emptying transaction has taken place in accordance with the provisions of the Civil Code and the Real Estate Registration Law.

2. The conflict between the laws on imposing the plaintiff's view does not fall within the jurisdiction of the esteemed court stipulated in Article (93) of the Constitution. For these reasons and the reasons that the esteemed court deems appropriate, he requests to dismiss the plaintiff's lawsuit and to charge him all judicial fees, expenses, and attorney's fees. After completing the procedures required by the aforementioned bylaw, a date was set for the pleading and the two parties were informed of it, in accordance with Article (2/Second) of the same bylaw above. On the appointed day, the court was formed.

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The attorney general of the prosecutor, Saddam Hussein Abdul-Jabbar, attended and attended on behalf of the defendant / in addition to his post His attorneys, Legal Counsel Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim, proceeded to plead in the presence and public. The plaintiff's attorney repeated what was stated in the lawsuit's petition and requested a ruling in accordance with what was stated in it. The defendant's attorneys replied that they were requesting dismissal of the lawsuit for the reasons stated in the regulation dated 9/21/2021 and reiterated each party's attorney has his previous statements and requests, and since there is nothing left to be said, the Court decided the conclusion of the pleading, and the court issued the following ruling in public.

### **The decision:**

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff was challenging the unconstitutionality of Article (11/2) of the Expropriation Law No. (12) for the year 1981 for the reasons stated in the aforementioned lawsuit petition, the most important of which is that Article (19/Third) of the Constitution of the Republic of Iraq for the year 2005 it indicated that the right to litigation is safeguarded and guaranteed to all, and that the expropriation law deprived the plaintiff of the right to litigate in the expropriation case numbered (98/expropriation/2013), in which the decision dated 06/30/2014 was issued, which stipulated the expropriation of an area of (5) and (5) dunams of the real estate No. (13/15/Saba Abkar) from the possessor of them, including Mubadr Raouf Ismail, who died before filing the aforementioned expropriation lawsuit, and according to the legal

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Qassam presented by the plaintiff and No. 2625 on 12/14/2004, where the court reviewed all the documents presented above as well One of the reasons for the lawsuit was the violation of the contested text of the rules of procedures contained in the Civil Procedures Law No. (83) of 1969, especially Articles 3 and 4 of it, because the expropriation lawsuit was filed against his while he was dead despite the fact that his personality ended in death according to Article (34/First) of the Civil Code, and the court reviewed the answer of the defendant's attorney, in addition to his position dated 9/21/2021, and when reflecting on the requests and defenses of the two parties, this court finds that the legislation of any legal text is supposed to target it to achieve public interests estimated by the legislator and finds The appropriate legal formula to achieve these interests and according to what he deems fit within the constitutionally empowered authority, and he finds from this authority only constitutional restrictions that the legislator must not liberate from or deviate from. And from the court's examination of the contested text in this case, which is Article (11/Second) of the Expropriation Law No. 12 of 1981, which states (the court invites the two parties to attend at the appointed time, and if the property owner is more than one, or there is a deceased among them It may notify one of them and invite the rest by announcing it in a local daily newspaper, according to their names mentioned in the last register of the property, and this is considered a notification to all partners and heirs of the This court finds that the legislator appropriately used his authority to legislate, because one of the objectives that the legislator wanted to reach in this text is to simplify the expropriation procedures in a way that ensures the speedy completion of the expropriation process to enable the state

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departments to achieve their purposes and implement their plans and projects according to what is stated with the reasons for this The law and that the contested text and this formula created a reasonable means for the notification to reach the concerned persons (property owners and owners of disposal rights), as the notification of one of the partners in the property is a legal presumption to notify the rest of the partners supported by publishing in a local daily newspaper, which are sufficient procedures to reach knowledge of the existence of an expropriation case Concerning the real estate, and other guarantees that support access to knowledge of the owners of the real estate, the subject of the expropriation case, are the subsequent procedures stipulated by the law, which are stated in Article (13/first and second) of the law, which necessitated the procedure for examining the property in the presence of the representative of the possessor and of those representing the possessor of them, and consequently The contested text does not conflict with the right of litigation guaranteed by Article (19/Third) of the Constitution of the Republic of Iraq for the year 2005 As for the conflict of this text (i.e. the contested text) with the general provisions for notification contained in Articles (13 to 28) of the Civil Procedure Code No. (83) of 1969, it is not considered an argument in ruling unconstitutionality because the specific restricts the general, From all of the foregoing and by request, this court finds that the plaintiff's lawsuit is devoid of its constitutional support and is obligatory to respond. The Federal Supreme Court decided to dismiss the plaintiff's lawsuit, Ismail Mubadder Raouf, and charge him with fees and judicial expenses and attorney fees for the defendant's attorney, in addition to his post as legal advisor Haitham Majed Salem and legal employee Saman

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Republic of Iraq  
Federal Supreme Court  
Ref. 125 / Federal / 2021



Kurdish text

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Mohsen Ibrahim, an amount of one hundred thousand dinars, distributed according to the legal ratios, and the decision was issued unanimously as a final and binding for all powers, based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5) of the Federal Supreme Court Law No. (1) of 2005 as amended By Law No. (25) of 20 21 And understand it publicly on 4 Rabi' al-Akhir 1443 AH corresponding to 10/11/2021 AD.

**Signature of  
The president**

*Jasem Mohammad  
Abbood*

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