



The Federal Supreme Court had been convened on 2/12/ 2014, headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman, and Aad Hatif Jabbar who authorized in the name of the people to judge and they made the following decision :

Appellant: (Kha.Alif.Jim.)- his agent the barrister (Mim.Feh.Nun.)

The Appellee: the decision of AL-Adhamiya court of first instance decision, dated on (29/10/2014)

The Claim:

The defendant- the appellant- (Kha.Alif.) presented, in case No.(1747/Beh/2009), a request to AL-Adhamiya court of the first instance on (29/10/2014). He requested to delay the case until the result issuance of case No.(112/Federal/2014) which initiated by himself before the Federal Supreme Court challenging the article (15) from the law of estate lease No.(87) for 1979 (amended). The FSC accepted his case based on the court's bylaw but the judge of AL-Adhamiya court of the first instance decision on 29/10/2014 to reject the request claiming that the case type is share heritage removing and it had been settled. Now, it is under the executive procedures so the request has no substantiation from the law. The appellant challenged the decision before FSC according to his appellate draft on (15/11/2014) because he is not convinced. He requested to annul the decision because of the listed reasons.

The Decision:

During scrutiny and deliberation by the FSC, it found that the appellate challenge was presented during the legal period so it was formally accepted. During reviewing the appellate decision, the court found it is right and it fits with the law because AL-Adhamiya court of the first instance decided in the aforementioned decision according to its decision on 28/2/2010 to remove the sharing of heritage No.(9/45) from the district (22) Raghibah Khaton by selling it in the public bidding and distributing its price among the partners according to their stocks. The Court started its executive procedures in preparation of selling the estate as the issued decision in the case. The partners who live in the estate announced their willingness to stay in the estate after the selling according to the article (15) from the law of estate lease No.(87) for 1979. The appellant requested according to the request No.(29/10/2014) from the judge of AL-Adhamiya court of the first instance to delay the case until the result



issuance of case No.(112/Federal/2014) which initiated by himself before the Federal Supreme Court challenging the article (15) from the law of estate lease No.(87) for 1979 (amended). After returning to the article (4) from the FSC bylaw No.(1) for 2005, the FSC found that ((if one of the courts requests from the FSC to decide in the legitimacy of a text from a law, legislative decision, regulation, instructions or an order on the basis of defense of one of the litigants of the unconstitutionality, the litigant shall charge to present this defense in a case, and after having collected its fee the court decides in the acceptance of the case, if it accepts the case it shall send it with the documents to the FSC to decide in the defense of the unconstitutionality and to take a decision to delay the origin case for a result, but if the court rejects the defense, its decision of rejection will be able to be challenged before the FSC.)). The defendant, the appellant, didn't present a challenge against the constitutionality of the article (15) from the law of estate lease No.(87) for 1979 (amended) when the case was tried before AL-Adhamiya court of the first instance and the case was settled and the decision became final. After the court completed a big part from its executive procedures to sell the estate, he presented a request to delay the case until the result issuance of the case he initiated before the FSC challenging the article (15) from the aforementioned law. So, the condition that requested by the article (4) from the FSC bylaw is not available in the appellant request which required to reject the case and the decision that issued by the judge of AL-Adhamiya court of the first instance based on his executive capacity can be challenged as complaint and appeal and based on what formulated by the law of execution No.(45) for 1980 (amended). For the above, the court decided to reject the challenge and to ratify the challenged decision and to burden the appellant the fees of the appeal. The decision issued unanimously on 2/12/2014.