

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 3/federal/2021



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 4. 7 .2021 headed by Judge Jasem Mohammad Abood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who is authorized to judge in the name of the people, they made the following decision:

The Plaintiff : Wadha Turki Adnan - her attorney, Ahmed Majid Issa.

The First Defendant: The President of the Republic of Iraq/ being in his capacity - his deputy, the head of legal experts, Ghazi Ibrahim Al-Janabi.

The Second Defendant: The Minister of Housing, Construction and Public Municipalities / being in his capacity - his deputy, the jurists Osama Ahmed Saleh.

The Claim:

The plaintiff claimed that she had previously purchased from the Mosul Municipality Directorate of the second defendant's department the property No. (4/76) Sheikh Abu Al-Ela under a fundamental purchase transaction in the year (1994) and the property mentioned in her name was registered according to the previous registration copy (the judgment fell) in the number (8 September 1994) The flogging number (728) is permanent, but the same department carried out the re-ownership procedure on the mentioned property in (1996) and it

was registered in the name of Nineveh Governorate / Mosul Municipality Directorate) according to the current registration number (33/kaf/996) lashing number (766) permanent Based on the decision of the dissolved Revolutionary Command Council No. (18515) issued on (27/8/1996), which prompted it to file lawsuit No. (1367/beh/2020), the subject of which is a claim for compensation for the confiscation of the aforementioned property and that it is still under pleading and to pay the second defendant's attorney / being in his capacity during the pleading in the aforementioned lawsuit that the decisions of the Revolutionary Command Council have the force of law and that his client's department implemented the law and that this plea agrees with the direction of the court and the review of the member of the public prosecution presented in the aforementioned lawsuit and that the decision of the Council of the aforementioned dissolved revolution leadership contradicts the provisions of Article (16) of the provisional constitution of the Republic of Iraq for the year 1970 in which the aforementioned decision was issued, and it also contradicts the provisions of Article (23/1<sup>st</sup>) of the constitution of the Republic of Iraq for the year (2005) and the fact that the aforementioned decision infringes on its rights And that it is still valid and has not been repealed by legislation, so I asked the FSC to rule the unconstitutionality of the Revolutionary Command Council Resolution (dissolved) No. (18515) issued on (27/8/1996), restoring the property to the state it was in before the aforementioned decision was issued, and charging the defendants/ being in their capacity with judicial expenses and attorney fees. The case was registered with this court in No. (3/federal/2021) and the legal fee was paid for it in accordance with Paragraph (3<sup>rd</sup>) of Article (1) of the FSC's bylaw No. (1) of (2005) the defendants/ being in their capacity are notified of the lawsuit based on the provisions of Paragraph (1<sup>st</sup>) of Article (2) of the bylaws. The first defendant's attorney/ being in his capacity responded with his draft dated 4/27/2021 with the following:

1. My client is not fit as a litigant in this case and has nothing to do with the procedures for withdrawing the plot numbered (4/76) Sheikh Abu Al-Ela and the aforementioned piece was not from the property of the Presidency of the Republic, so he requested that the case be dismissed on behalf of his client from the litigation side.

2. By looking at the case's priorities, it was not clear to us the type of constitutional violation in registering the plot in the name of the municipality of Mosul, because the registration was carried out in accordance with the law, given that it had previously been registered in the name of the plaintiff, contrary to the procedures, and it was re-registered in the name of the municipality, which is a public facility and was not assigned to a specific person and is still Registered in the name of the municipality.

3. The plot of land numbered (4/76) Sheikh Abu Al-Ela is registered under the real estate registry records in the name of the Nineveh Governorate / Mosul Municipality Directorate in accordance with the law.

4. The decisions of the dissolved Revolutionary Command Council are considered law in accordance with the provisions of Article (42) of the repealed interim constitution, and that all decisions and laws issued according to it are considered valid unless they are repealed or amended by law based on the provisions of Article (130) of the valid Constitution of the Republic of Iraq.

5. The plot numbered (4/76), Sheikh Abu Al-Ela, had previously been withdrawn because it was distributed illegally, and despite that, it was paid in accordance with the expropriation law, and that this accords with the public interest. It was transferred to the Mosul municipality by the legal way, not through confiscation, with evidence that its registration in the real estate registry records since 1996 and a long period passed. Considering the claims of those

whose real estate was expropriated in violation of the law in accordance with the provisions of Article (2) of the Property Claims Commission Law No. (13) of (2010). For the aforementioned reasons, a request was made to dismiss the plaintiff's lawsuit and to charge her the expenses and attorney's fees. The second defendant's attorney/ being in his capacity in accordance with his regulations dated 04/26/2021, replied as follows: 1. The plaintiff's lawsuit is obligatory to respond to the lack of litigation. 2. The case is obligatory to respond in accordance with the provisions of Article (42/a) of the Iraqi Interim Constitution of 1970, which states that the decisions of the dissolved Revolutionary Command Council have the force of law. 3. Resolution No. (18515) issued by the dissolved Revolutionary Command Council on (27/8/1996) has been implemented in the competent real estate registration directorate, and its legal effects have been on the property that is the subject of the lawsuit. Thus, the plaintiff's lawsuit has lost its legal basis, so the request was to dismiss the lawsuit and download Plaintiff all fees and attorney's fees. After completing the required procedures in accordance with Article (2/1<sup>st</sup>) of the FSC's bylaw No. (1) of (2005), he set 4/7/2021 as the date for pleading and notifying the parties to the case according to the provisions of Article (2/2<sup>nd</sup>) of the mentioned system and in the day appointed for the pleading, the court was formed, and the plaintiff's attorney, Ahmed Majid Issa, attended, and the attorney for the first defendant, the jurist, Ghazi Al-Janabi, did not attend the second defendant/ being in his capacity, nor his representative. The attorney of the first defendant/ being in his capacity we request that the case be dismissed for the reasons stated in the answer list submitted to this court on 4/29/2021, The court viewed a true copy of the lawsuit file numbered (1367/b/2020) filed by the plaintiff before the Mosul Court of First Instance against the defendants, each of the governor of Nineveh/ being in his capacity and the director of the Mosul municipality/ being in his capacity and

that the Mosul Court of First Instance issued its decision dated 3/24/2021 considering that the lawsuit was delayed until the outcome of the lawsuit regarding the unconstitutionality of the (dissolved) Revolutionary Command Council Resolution No. (18515) on (27/8/1996). The court also reviewed a true copy of the property file that is the subject of the lawsuit and the plaintiff's representative requested the annulment of the lawsuit petition in relation to the first defendant/ being in his capacity and the inclusion of the Speaker of the Council of Representatives/ being in his capacity alongside the second defendant/ being in his capacity. The court rejected his request regarding the invalidation of the lawsuit petition against the first defendant because the case is ready for settlement. As for the inclusion of the Speaker of the Council of Representatives/being in his capacity alongside the defendant, this is a correction of the litigation against him. It was rejected the court requested his request and listened to the last statements of the plaintiff's attorney and the attorney for the first defendant. The court understood the conclusion of the pleading and issued the following ruling:

#### The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's lawsuit includes a request for ruling the unconstitutionality of the (dissolved) Revolutionary Command Council's decision No. (18515) on (27/8/1996) it also included the request for a ruling to return the property No. (4/76) Sheikh Abu Al-Ela to the condition it was in before the issuance of the aforementioned decision and upon referring to the jurisdiction of this court set forth in Article (93) of The Constitution of the Republic of Iraq for the year (2005) and Article (4) of the Court Law No. (30) for the year (2005). We find that the ruling to return real estate in respect of which decisions were issued by the (dissolved) Revolutionary Command Council to the state in which the property was before the decision was issued in it is outside the jurisdiction of this

court indicated. In the aforementioned articles, therefore, the plaintiff's request regarding the return of the property, the subject of the lawsuit, to what it was before the issuance of the (dissolved) Revolutionary Command Council Resolution No. ( 18515) on (27/8/1996), as stated in her lawsuit, is free to respond due to lack of jurisdiction, so he decided to reject her lawsuit regarding the request as mentioned by the jurisdiction, this court also considers that the two defendants/ being in his capacity are not fit to be litigants in the plaintiff's lawsuit because they are an executive body, not a legislative body. As stipulated in accordance with what was stipulated in Article (4) of the Civil Procedures Law No. (83) for the year (1969) as amended, that the defendant be a litigant whose approval will result in a judgment estimating the issuance of an acknowledgment from him and that he be judged or obligated to something based on the assessment of the proof of the case. If the litigation is in a case that is not directed, the court decides on its own to dismiss it without entering into its basis in accordance with what was stipulated in Article (80/1) of the aforementioned Civil Procedure Code. Based on the foregoing, the plaintiff's claim to demand the unconstitutionality of the (dissolved) Revolutionary Command Council Resolution No. (18515) dated (27/8/1996) is obligatory to respond from the litigation side, so the Federal Supreme Court decided to dismiss the plaintiff's suit, Wadha Turki Adnan, and charge her expenses and fees Lawyer Ghazi Al-Janabi, the representative of the first defendant/ being in his capacity and the legal employee, Osama Ahmed Saleh, the representative of the second defendant/ being in his capacity an amount of one hundred thousand dinars distributed between them in accordance with the law. And Article (4) of FSC's Law No. (30) for the year 2005 as amended by Law No. (25) for the year 2021 on 23/Dhu'l-Qa'dah/1442 coinciding with 4/ July/2021.

Signature of  
The president

**Jasem Mohammad  
Abod**

Signature of  
The member

**Samir Abbas Mohamed**

Signature of  
The member

**Ghaleb Amer Shnain**

Signature of  
The member

**Haider Ali Noory**

Signature of  
The member

**Haidar Jaber Abed**

Signature of  
The member

**Khalf Aihmad Rajab**

Signature of  
The member

**Ayoub Abbas Salih**

Signature of  
The member

**Abdul Rahman Suleiman  
Ali**

Signature of  
The member

**Diyar Muhammad  
Ali**