

# IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 60/federal/2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 29/7/2019 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 who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: Adel, Mohamed, Huda, Nada, Amal and Shatha, sons and daughters of Ali Hussein Al-Taiaar.

The Defendant: The judge of Al-Karkh first-instant court / being in this post.

## The Claim

The agent of the Plaintiffs claimed that on (29/7/2018) Al-Karkh first-instant court has issued a decision in the case No.(1694/beh/2017) to give the landownership of the real estate No. (7/167/mim 20 Dawodi in Al-Mansour/ Al-Amirat neighborhood) to the plaintiff in that case (Sami Bashir Mahmud), according to the provision of the decision No.(1198) for 1977. The investigations that were conducted by the defendant (the judge of Al-Karkh first-instant court/ being in this post) has proved that the condition of that

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the plaintiff (Sami Bashir Mahmud) lives in the real estate or has make any buildings or facilities, whereas the landownership request in the attached case No.(74/beh/2017) was based on the condition of residence, as it clear that his residence is (fabricated), faked and contrary to the truth which revoke that case, because the actual resident of the real estate is the lessor (Triple Canopy company for security service) which is an American company as proved in the judicial disclosure dated on 23/3/2017, the challenged decision did not condition to conduct (restoration) on the real estate the requested to be propertied by the judicial according to the plaintiff claim, where the defendant (the judge of Al-Karkh first-instant court/ being in this post) has add the term (restoration) to the text of the mentioned decision, which is legislation act (amending the provision of the decision) in the second case No.(1694) that was submitted by (Sami Bashir Mahmud) against the plaintiffs (in this case) after he revoked his first case that he submitted earlier in the same mentioned subject, where he request in the case No.(1694/beh/2017) the property of the mentioned real estate for the reason of making (buildings or facilities) as the (defendant) in this case (the judge of Al-Karkh first-instant court / being in this post) was based on in contrary to the provision of the constitution to give the landownership of the real estate of the plaintiffs which is a big palace to (Sami Bashir Mahmud) the plaintiff in the case (1694/beh/2017), unlawfully in violation to the evidence and bases of the case. The agent of the plaintiff commented in his case petition that the amended of the legislative text is the addition of what it's not in it, to the challenged decision, violates the constitution and its definitely jurisdiction of the judicial authority (the council of

representative), the defendant has stated that legislative amendment in page (3) of his issued decision in the case No.(1694/beh/2017). The decision of the (dissolved) revolution command council - the subject of the discus- is general legislation and it's out of the defendant' jurisdiction and violate the provision of the constitution in article (7) of it that bind the (executive, legislative, judicial) authorities by the principal of (separation of powers), the decision of the defendant of appropriating – the real estate the subject of the case – was repealed by the court of cassation Baghdad/ Al-Karkh in it cassation capacity by the decision No.(397/legal/2018) on 10/9/2018. But the defendant (judge of Al-Karkh first-instant court) proceeded with the case rejecting the evidence of the plaintiff and making new evidence, as the experts in the construction cleared that the plaintiff (Sami Bashir Mahmud) in the case (1694/beh/2017) did not construct buildings, the agent of the plaintiff cleared in the case petition that the procedures of the defendant contradict the provisions of article (18/6<sup>th</sup>) of the constitution because he deprive (the plaintiffs) of their right to be treated fairly with their litigant in the judicial proceeding, when he deny the experts reports which is supported by the witness' testimony who wore attendance before the court, as the defendant has based on the litigant testimony (solitary) which was repealed by the experts report, specially that the plaintiff in that case (Sami Bashir Mahmud) has agreed on the experts report and didn't object on it, the agent of the plaintiffs commented that the defendant has the authority of adjudicating the mentioned dispute by fair judicial procedures between the litigant, without amending the body of the legislative text as it shown in the submitted case dossier and its attachments which support the case,

therefore he requested to (judge by the unconstitutionality of the amendment of the body of the legislative text of the decision (1198) for 1977 provisions, and to compile the defendant / being in this post by that. The defendant (the judge of Al-Karkh first-instant court/ being in this post) has replied to the case petition with the answering draft dated on 20/6/2019 that is addressed to the president of the F.S.C. stated in it ((the plaintiff (Sami Bashir Mahmud) has already initiated the case No.(1694/beh/2017) on 6/6/2017 against the defendants (Adel Ali Hussein, Mohamed Ali Hussein, Hussein Ali Hussein, Huda Ali Hussein, Amal Ali Hussein, Ragad Ali Hussein, Maiada kazaal Najy, Shatha Ali Hussein, Nada Ali Hussein) claiming the ownership of their shares in the real estate No.(267/7/mim20 Dawodi) which is a residential house according to the provision of the decision No.(1198) for 1977, the argument in that case was held in that date, as the court complete its investigation, it issued it decision No.(1694/beh/2017) on 29/7/2018 which rule that the plaintiff shall have the ownership of the defendants shares in the real estate No.(267/7/mim20 Dawodi), that decision was repealed by the decision of the presidency of Baghdad cassation court/ AlKarkh federal/ cassation committee/ civil committee/ no.(397/legal/2018) on 19/9/2018, as stated in the cassation decision (the court has heard the personal evidence regarding the events of the alleged documents, and it did not probability these evidence according to the provision of article (82) of the law of evidence no.(107) of 1979, and the case still under consideration by that court. Accordingly the decision that the plaintiffs has based their case on before the F.S.C. was already repealed the presidency of Baghdad cassation court/ federal Karkh/

cassation committee/ civil committee/ no(397/legal/2018) on 19/9/2018, and the case was returned to (Al-Karkh first-instant court), the two parties was informed and the argument was held again, and the court is about to –complete its procedures and investigations as follow up of the cassation decision- accordingly the judgment decision that the plaintiffs has based on when submitted the case before the F.S.C. has already repealed and no longer has a legal existence, therefore the defendant/ being in this post requested to reject the case from the points of litigation and objectivity as the repealed court decision has stated the court legal opinion by adjudicating the subject of the case submitted before it, and didn't amend or legislate any legal text therefore again the case the plaintiffs case is out of the F.S.C. jurisdictions that is stipulated in article (93) of the constitution and article (4) of the F.S.C. law No.(30) for 2005, and it have no legal, formal or objective substantiation. After the case was registered according to paragraph (3<sup>rd</sup>) of article (1) of the F.S.C. Bylaw, and completing the required procedure according to paragraph (2<sup>nd</sup>) of article (2) of the mentioned bylaw, the date 29/7/2017 was set to proceed with the argument, the court convened and the agent of the plaintiff the attorney Hesham Ali Mohammed, the defendant judge of Al-Karkh first-instant court/ being in this post didn't attend despite the informed, the court decided to continue with the argument with his absence. The agent of the plaintiff repeated the case petition and requested to judge according to it, and he commented that the defendant add the term (restoration) to the text of the decision and that is out of his jurisdictions but is jurisdiction of the legislative authorities, also stated that the case still undecided after it was

repealed by the court of cassation in its cassation capacity, and the case still proceeding. The court scrutinized the case petition and found that its judgment is completed so the argument has closed and issued the following decision.

### The Decision

During scrutiny and deliberation by the F.S.C., the court found that the plaintiffs has challenged the constitutionality of the amendment that the defendant judge of Al-Karkh first-instant court/ being in this post has made when considered the landownership request case no.(1694/beh/2017) which was initiated by the plaintiff Sami Bashir Mahmud based on the decision of the dissolved revolution command council no.(1198) for 1977 in the decision that he issued in that case, the defendant has replied requesting to reject the case because the judge that he issued in the initial case was repealed by cassation and no longer has legal existence, and the case still proceeding and undecided. The F.S.C. found by that and by the statement of the plaintiffs' agent in the session dated 29/7/2019 that the decision that he based on, and stated that the defendant has amended the decision of the dissolved revolution command council by adding the term (restoration) was repealed and no longer exist, and the initial case still proceeding, therefore the plaintiff case must be rejected from this point and from the point of litigation also, as the judge that issue the judgment can not be persecuted, but his decisions and judgment can be challenged by the law, or to follow the methods of complaint against the judges stipulated in articles (286, 292) of the Civil Procedure law no.(83) for 1969. According to that the case lake it constitutional and legal substantiation, and

decided to reject it and to burden the plaintiffs the expenses. The decision has been issued decisively and unanimously according to the provisions of article (94) of the constitution, and article (5) of the F.S.C. law No.(30) for 2005, and issued publicly on 29/7/2019.

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