

Republic of Iraq
Federal Supreme Court
Ref. 206 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/11/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Applicant: Salma Fathalla Betris.

The Abstract of the Request

A letter from the representative of the Kurdistan Regional Government in Baghdad, number (Ain.Mim. 36252) dated 8/13/2023 and its attachments, was received by a letter from the Presidency of the Erbil Region Court of Appeal/Department of Relations and Legal Affairs, number (2/8/3152) dated 5/10/2023 and a letter. Presidency of the Kurdistan Region Court of Cassation/Expanded Panel No. (579/Expanded Panel/2023) on 4/17/2023, according to which the application submitted by the plaintiff (Salma Fathallah Boutros) was referred to this court for decision according to the jurisdiction that includes the following: (1- Determining the court competent to give preference between one of the two rulings according to the spatial jurisdiction of the property. 2- Determining the court that hears ownership claims according to the spatial jurisdiction of the property and determining the spatial jurisdiction of the property. 3- Determining the rulings that have previously been decided and which have acquired a final degree within the spatial jurisdiction of the property based on the two articles. (105 and 106) of the Evidence Law, as for the ruling of the Mosul Court of First Instance, it is not covered by the Evidence Law. Because it was issued after the rulings issued by the regional courts that have spatial jurisdiction over the property, the ruling is considered invalid for violating the spatial jurisdiction of the property. She also requested the return of her stolen rights, on the basis that the Federal Supreme Court has the jurisdiction to decide on the

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matter. The application was registered with this court under number (206/Federal/2023), and after the court conducted its audits, it issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the Presidency of the Kurdistan Region Court of Cassation/Expanded Authority referred to this court, pursuant to its letter No. (579/Expanded Authority/2023) on 4/17/2023, with its attachments, the request submitted by the plaintiff (Salma Fathallah Boutros) to decide on it according to jurisdiction, its summary includes the following: ((1- Determine the court competent to give preference between one of the two rulings according to the spatial jurisdiction of the property. 2- Determine the court that hears ownership claims and according to the spatial jurisdiction of the property and determine the spatial jurisdiction of the real estate. 3- Determining the previously decided rulings that have acquired a final status within the spatial jurisdiction of the property, based on Articles (105 and 106) of the Evidence Law), in accordance with the detail referred to in the request. This court finds that the request must be rejected for lack of jurisdiction, as the powers and jurisdictions of this court are exclusively stipulated in Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and some other special laws, and none of these powers and powers are It gives the court jurisdiction to decide on the request, especially the request to uphold the judicial rulings issued by the competent courts that have acquired a final degree or to cancel or amend them, as they are not subject to appeal and are considered evidence for all people based on the provisions of Articles (105 and 106) of the Evidence Law No. (107) of 1979. The amended, especially since the Federal Court of Cassation is a reference for weighing contradictory judicial rulings issued on one subject that has gained the degree of finality issued by the courts affiliated with the Supreme Judicial Council and the courts affiliated with the Kurdistan Region, and not this court based on the jurisdictions of the Federal Court of Cassation and its powers stipulated by law, the applicant can submit her requests for a preponderance to her, noting that this court had previously issued its decision

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No. (221/Federal/2022) on 10/10/2022 regarding the applicant's request for a preponderance dated 9/2/2022, and it also issued its decision No. (25). /Federal/2023) on 3/12/2023 and its decision No. (150/Federal/2023) on 8/1/2023, according to which the request for the preponderance request was rejected for lack of jurisdiction for the reasons referred to therein, as this court has jurisdiction under Article (93/Eighth/Alif, Beh) of the Constitution of the Republic of Iraq of 2005 is limited to adjudicating the conflict of jurisdiction between the federal judiciary and the judicial bodies of the regions and governorates not organized in a region, and adjudicating the conflict of jurisdiction between the judicial bodies of the regions or governorates not incorporated into a region, this jurisdiction does not go beyond giving precedence to the rulings issued by them, some over others, to the degree of finality, especially since the ruling issued by the Dohuk First Instance Court in Mosul, No. (10/Beh/1997) on 6/23/1997, related to the ownership of the shares belonging to the defendants, including Introduction. The application in the real estate - the subject of the lawsuit - was granted final status and was executed by registration in the competent Real Estate Registration Directorate. As for the ruling issued by the Semele First Instance Court, No. (124/Beh/2007) on 12/11/2007 regarding the applicant and the rest of the plaintiffs, it related to invalidating the real estate registration. - The subject of the case - and its previous registration was approved, and the decision gained a final degree of being supported by the competent court of appeal in its appellate capacity and was ratified in distinction to the decision issued by the Kurdistan Region Court of Cassation. As for the decision issued by the Dohuk First Instance Court No. (250/Beh/2012) on 12/13/ 2012 included the dismissal of the plaintiff's lawsuit filed in support of the aforementioned ownership decision, and the ruling acquired a final degree. As for the decision issued by the Presidency of the Dohuk Region Court of Appeal in its discriminatory capacity, No. (335/Teh.Mim./2011) On 11/21/2011, it was stated that the plaintiffs' right is limited to the claim. By returning the amount paid and not the difference in the two prices, because the sale occurred illegally, and therefore the ruling issued by the Smil Court of First Instance was overturned, No. (134/Beh/2011) on 10/18/2011, which included the ruling regarding the difference in the two prices, when the aforementioned preliminary lawsuit was returned to its court, dismissed following the above-

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mentioned details, the lawsuit petition was invalidated at the request of the plaintiffs, and therefore the ruling issued in it has no value after cassation and invalidation of the lawsuit petition. As for the ruling issued by the Semil First Instance Court, No. (320/Beh/2012) in 9/8/2013 included referring the case to the Mosul First Instance Court, but did not include a final decision in the case. Based on that referral, the Mosul First Instance Court accepted the case and issued its ruling No. (9394/Beh/2012) on 9/8/2013, which awarded compensation to the plaintiffs following the details contained therein, and it was upheld on appeal and certified by cassation, which means that there is no conflict between the rulings issued from the Mosul Court of First Instance and the rulings issued by the Kurdistan Regional Courts. There is also no contradiction between the rulings issued in the Kurdistan Regional Courts and each other due to the differences in the issues that were decided according to their details, this is what the Presidency of the Kurdistan Region Court of Cassation/Expanded Commission ruled in its decision No. (68/Expanded Commission/2017) on 7/12/2017, and due to the absence of a conflict in the provisions referred to above, this court did not decide to refer the application with its attachments to the Court of Cassation. The Federal Supreme Court decided to decide on it, and because this court did not have jurisdiction to decide on what was stated in the request, and in light of the above, the Federal Supreme Court decided to reject the request submitted by the petitioner (Salma Fathallah Boutros) for lack of jurisdiction and to notify the Presidency of the Kurdistan Region Court of Cassation/Extended Authority thereof. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 26/Rabea Al-Akhir/1445 Hijri coinciding with 8/November/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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