

Republic of Iraq
Federal Supreme Court
Ref 21/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/2/2024 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 Plaintiff: Abas Abdul tus Ta'in.

The Defendant: Head of the Iraqi Council of Representatives / being in this capacity - His agents the official jurists/ Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed in the petition that on 17/8/2023, the Wasit Court of Appeal in its original capacity as the second authority issued its decision. Issue (37/S/2023) confirming the decision of the Court of First Instance of Taj El-Din No. (124/B/Retrial/2023) on 18/5/2023, which included the rejection of his request for retrial of the ruling decision (90/B/2021) on 5/4/2021, issued by the same Court of First Instance, which includes his obligation to lift the encroachment on the property numbered (16 District 11 Kafifan North), and his request for retrial was based on paragraphs (4,2,1) from Article 196 of the Civil Procedure Law No. 83 of 1969, however, the courts of first instance and appeal dismissed his lawsuit for losing the legal basis, and on 25/9/2023, the Court of First Instance of Taj El-Din issued its decision No. (77/Beh/2023) containing the dismissal of his lawsuit against the defendants, the Minister of Justice and the Minister of Agriculture, being in this capacity, in which the ruling was requested to oblige the

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observation of the real estate registration in Taj al-Din, and the Directorate of Agriculture in Wasit, correcting the locations of the map of the district (11 northern kafifan) currently approved by them, and matching it with the original cadastro map deposited with the General Authority for Survey and prepared a copy of it on 19/12/2022, and marked with the coordinates of the boundary between plot (16) and the plaintiff's plot (12/74), the Court of First Instance based its decision to dismiss his lawsuit on several legal articles, including the text of Article (140/II) of the Evidence Law No. (107) of 1979, and that the legal texts that were applied are contrary to the Constitution of the Republic of Iraq for the year 2005, in Articles (2/1st/Alif, Jim, 46 and 27/I), as they contradict the constants of the provisions of Islam and contradict his right to benefit from the area adjacent to plot (16) of (4200 m²), which obligated to lift the constructions he constructed. on them, and handing them over to other people by the change in the original county map and calculating area of its node depending on the river which is not indicated on the original cadastro map, It is also new and there are no priorities for it, and the area (4200 m²) is part of the area of his contract according to the evidence, written declarations and paper map and applied by the original electronic map, which prevented the submission of the surveyors of agriculture and the title deed, which led to its restriction by legal texts the subject of the appeal - reject of his claims and restriction of his right to use the entire area of his contract and prejudice the essence of his right, and that he did not exceed plot (16) according to the original cadastro map approved by the General Authority for Survey issued in February 1933, which led to the application of the texts - the subject of the challenge to violate the inviolability of State property and property rented from the State, And that the judge of the Court of First Instance went to the application of Article (22/2nd) of the Evidence Law,

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which stipulates that (the certificate of nationality, patent, court rulings, real estate registration records and what is by virtue thereof) shall be considered as official bonds), under the illusion that the records in the Real Estate Registration Department are more important than the cadastro maps approved by the General Authority for Survey, as is clear in Article (25/2) of the Real Estate Registration Law No. (43) of 1971, Which states (the registration of the property is based on the cadastro settlement map), and that the texts - the subject of the challenge - of the Code of Civil Procedure stipulated for the permissibility of appeal by retrial that fraud is done by the litigants, The convicted person must obtain a written declaration of forgery, and whereas fraud and prevention of the submission of the map and its application of the original electronic map did not occur due to his opponents, and that he submitted written declarations confirming the inaccuracy of the excretion maps at the Real Estate Registration Department, the lack of strictness of the text of Article (140/Second) of the Evidence Law, so the plaintiff asked this court to bring and check copies of the case files (37/Sin/2023), (124/Beh/Retrial/2023), (77/Beh/2023) and (427/Beh/2022) and to rule on the invalidity and constitutionality of the legal texts in paragraphs (4,2,1) of Article (196) of the Civil Procedure Law No. (83) of 1969, which was applied in the lawsuit (37/S/2023 and 124/B/Retrial/2023) and the ruling on the invalidity and constitutionality of the text of Article (140/Second) of the Evidence Law No. (107) of 1979, which was applied in the lawsuit (77/Beh/2023) and the judgment canceling the decision (37/Sin/2023) on 17/8/2023, issued for the Wasit Court of Appeal in its original capacity and the two decisions (124/Beh/Retrial/2023) on 18/5/2023 and (77/Beh/2023) on 25/9/2023 issued by the Court of First Instance of Taj El-Din, and charging the defendant/ being in this capacity expenses and fees. After registering the

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case with this court No. (21/Federal/2024) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his agents replied with the reply regulation dated 23/1/2024, according to which they requested the dismissal of the lawsuit, as the legal texts - subject to the challenge - are among the legislation in force based on the provisions of Article (130) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that (the legislation in force shall remain in force, unless repealed or amended, in accordance with the provisions of this Constitution), It is not considered a violation of the constitutional provisions referred to by the plaintiff because it relates to organizational matters aimed at achieving a balance between the interests of the parties to the lawsuit, in addition to that it represents a legislative option, and that the plaintiff's claim expresses his conviction and view of the provisions of the law, and that what the plaintiff aspires to requires legislative intervention if its reasons and conditions are met. After completing the procedures required by the Court's Rules of Procedure, a date has been set for the pleading in accordance with Article (21/3rd) thereof, The parties shall be informed of it, and the court was formed, and the plaintiff attended and attended. The plaintiff repeated what was stated in the petition and requested a judgment accordingly, the defendant's agents answered and requested to reject of the lawsuit for the reasons stated in the list attached to the lawsuit papers, the court noted that the plaintiff submitted an application dated 17/1/2024, he hereby requested the creation of an incident lawsuit to challenge the constitutionality of Articles (217) of the Code of Civil Procedure and (13/1st/Beh/1) of the Judicial Organization Law No. (160) of 1979, as amended, the court decided to reject the acceptance of the incident

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lawsuit because what is stated in it is not closely related to the lawsuit pending and filed by him, and since the court has completed its scrutinies, the end of the argument has been made clear and the court issued the the following decision :

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the summary of the lawsuit of the plaintiff Abbas Abdel Tus Tain is the ruling on the constitutionality of paragraphs (4, 2, 1) of Article (196) of the Civil Procedure Law No. (83) of 1969, as amended, and Article (140/2nd) of the Evidence Law No. (107) of 1979, As well as the judgment to annul the decisions (37/Sin/2023 on 17/8/2023 issued by the Wasit Federal Court of Appeal in its original capacity), (124/Beh/retrial/2023 dated 18/5/2023 and 77/Beh/2023 dated 25/9/2023 issued by the Court of First Instance of Taj al-Din) for the reasons detailed in the statement of claim referred to above in the preamble to this decision, the court finds through access to the reasons stated by the plaintiff that must answer the lawsuit according to what is believed, which is the violation of the texts above to the provisions of Articles (2 / first /Alif, Jim and 27 / first and 46) of the Constitution, the court finds that this belief of the plaintiff has no place or constitutional basis considered, because paragraphs (1, 2 and 4) of Article (196) of the Code of Civil Procedure came specific to the cases in which it is permissible to retry judgments issued by courts of appeal or first instance or courts First instance in the last degree or personal status courts, even if these judgments obtained the definitive degree, Article 140/second of the Evidence Act No. 107 of 1979, ruled that the expert's opinion does not restrict the court and may rule otherwise, provided that it indicates in its judgment the reasons for its disagreement with the expert's opinion, All

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these provisions contained in the contested texts do not contradict the constants of the provisions of Islam or the principles of democracy and have nothing to do with the sanctity of public funds and the constitutional duty to protect them, On the contrary, this court considers that these provisions were consistent with the constitutional provision contained in Article (19/3rd and 4th) of the Constitution of the Republic of Iraq for the year 2005, where it guaranteed the right to litigation in fair legal procedures, and these texts have been approved by the Constitution in force based on Article (130) thereof, According to what the defendant's attorneys pleaded in addition to his job in their regulations dated 23/1/2024, in which they requested to reject of the lawsuit, In view of the above, the Federal Supreme Court decided as follows:

First: Reject the lawsuit of the plaintiff Abbas Abdel Tus Ta'in regarding the challenge to the constitutionality of paragraphs (1, 2 and 4) of Article (196) of the Civil Procedure Law No. 83 of 1969, as amended, and Article 140/2nd of the Evidence Law No. 107 of 1979, as amended, for lack of constitutional violation.

Second: Reject the plaintiff's lawsuit Abbas Abdel Tus Ta'in regarding the rest of the requests contained in the lawsuit petition for lack of jurisdiction.

Third: The plaintiff shall charge the fees, expenses and attorneyship fees of the defendant's agents, the Head of the Council of Representatives, in addition to his job an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No.

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(25) of 2021. The decision has been made clear on 30/Rajab/1445 AH corresponding to 11/February/2024 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

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