

Republic of Iraq  
Federal Supreme Court  
Ref. 230 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24/10/2023 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 Plaintiff: Jassim Salih Mohammed – his agent, the barrister Faris Flaifil Raheef.

The Defendants: 1. Hamza Kareem Mohammed – his agent, the barrister Abdul Salam Khaleel Dhaif Allah.  
2. Batool Fadhil Hasan.  
3. Adnan Fadhil Hasan.  
4. Sameera Talib Mahdi.

Subject of the Request: demanding to reject the decision issued by the personal status Court in Al-Adhmiya by number (6162/Shin/2021) on 24/11/2022.

### **The Claim**

The plaintiff's agent claimed before this court and with the mediation of the Personal Status Court in Al -Adhamiya, according to his regulations dated 5/20/2023, which was met with the legal fee on 9/11/2023 and recorded with this court in the number (230/federal/2023), that the Personal Status Court In Al -Adhamiya, it had previously issued its decision in the number ((6162/Shin/2021 on 11/24/2022 - which includes the return of the lawsuit of his client (the prosecutor) for demanding the denial of the parentage of the first defendant Hamza Karim Mohamed from the deceased Karim Muhammad Abbas and the second defendant Batoul Fadel Hassan, and to attach his lineage to the third and fourth defendants)), because the decision was unfair to him and violated the provisions of Sharia and the law, he took the initiative to appeal it before this court for the following

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reasons: ((1- The decision of the Personal Status Court in Adhamiya issued on 11/24/2022 is nothing but an unjust and unfair decision and is not free of errors since it was It was built on unfounded matters, and this is considered a crime against his client by wasting his legal rights. The decision was issued in violation of Sharia and the law and without legal support. Therefore, it is considered one of the decisions that must be appealed by the Second Civil Extension Committee in the Federal Court of Cassation. The decision was based on the lack of a dispute, which is not realistic. The dispute is directed at the parties mentioned in the lawsuit since the first defendant (Hamza) is the legitimate son of his client's uncle (his father's brother, called Karim Muhammad Abbas), who is a sterile man and whose wife is barren. He took advantage of his work in the police force and started... The person called (Hamza) registered his son in an elaborate forgery since his birth from his real mother, who is currently alive, called (Samira Talib Heidi). The decision of the Personal Status Court was based on the lack of benefit for the plaintiff (Jassem Saleh Muhammad) in filing the lawsuit, this is also contrary to the truth, as the disputed inheritance belongs to his grandfather, called (Muhammad Abbas Khalaf), and that his grandfather has two sons, (Saleh Muhammad Abbas and Karim Muhammad Abbas), both of whom are entitled to a share of the estate. The court sent several notifications to the so-called (Hamza - the illegitimate heir) and his parents. However, they did not attend to avoid telling the truth and for fear of being asked to take the legal oath before the court, and under the guidance of their lawyers, to defraud the judiciary, the court did not base its decision on legal grounds when it said that the child is for the bed and the prostitute is for the restraint. This statement does not apply to the case, and it needed to conduct a DNA test for the so-called (Hamza) to determine the validity of his lineage or not, and to rely on the prosecution witnesses after taking the legal oath. To prove his lineage, a medical examination was conducted on the wife of (the plaintiff's) uncle, called (Karim), while she was still alive she was barren and had not given birth to any child in her entire life)). Based on the above, this court was requested to overturn the aforementioned decision of the Personal Status Court in Adhamiya and force it to take one of the aforementioned procedures.

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the request was submitted to overturn the decision issued by the Personal Status Court in Adhamiya No. (6162/Sh/2021) on 11/24/2022 containing the dismissal of the plaintiff's lawsuit (demanding the denial of the lineage of the first defendant, Hamza Karim Muhammad, from The deceased Karim Muhammad Abbas and the second defendant, and his lineage is attached to the third and fourth defendants) as it is unfair to him and in violation of the provisions of Sharia and the law, following the detail referred to in the application. The Federal Supreme Court finds that the application 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, none of these jurisdictions and powers grants the court jurisdiction or Committee to overturn or review rulings issued by ordinary judicial authorities, as this court is not a body competent to hear appeals therefrom, especially since the provisions contained in the Civil Procedure Law No. (83) of 1969 as amended have clarified In detail, methods for appealing judgments and decisions issued by ordinary judicial courts and the competent authorities to consider them within the necessary periods for submitting an appeal, which means that the Federal Supreme Court does not have jurisdiction or Committee to consider the request and decide on what is contained therein, in addition to the above, this court is not a body for issuing fatwas and expressing opinions, especially since the ruling issued by the Personal Status Court in Adhamiya, which is requested to be overturned, has been appealed before the Federal Court of Cassation/Personal Status and Personal Materials Articles issued its decision on the number (476/2023, sequence 539) on 1/11/2023, including the ratification of the distinguished decision and the dismissal of the discriminatory appeals, as it was appealed by way of correction, it was decided to reject the correction request by the decision issued by the Federal Court of Cassation/Personal Status and Personal Articles Committee, No. (5734/2023, serial 5713) on 4/9/2023, and due to the lack of jurisdiction of this court to decide on what was stated in the request,

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and after the above, the Federal Supreme Court decided to reject the request. The request was submitted by the plaintiff (Jassem Saleh Mohammed) for lack of jurisdiction. The decision has been issued unanimously, according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5/2<sup>nd</sup>) 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 18/Rabea Al-Akhir/1445 Hijri coinciding with 24/October/2023 AD.

**Judge**

**Jassim Mohammed Abboud**

**President of the Federal Supreme Court**

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