



The Federal Supreme Court (F S C) has been convened on 3. 9. 2013 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (nun. feh. ain.) his agents (feh. ha.).

The Defendant: 1- (alif. feh. ain.) } their agent
2- (kaf. feh. ain.) } (mim. ain. sin.)
3- (shin. ta. feh.) }

The Claim:

The plaintiff's agents claimed that on a date 1/7/2013 the first instance court of Baquba sentence in the case (393/objection/2013) obliging the defendant Minister of Justice/ being in his capacity to amend the document of transfer on the property (51/44 hospice) belonging to the inheritance of his client and the defendants applied in its ruling Article (74) paragraph (2) of the Personal Status Law No. (188) of 1959 and its amendments, the mentioned article was issued under law No. (72) of 1979 (The Third Amendment Law), which is a violation of the wise law, particularly the numbered verse (11) of the Surah A- Nisaa . In light of this, the Court of First Instance provided the

obligatory will over the optional will, Whereas, the ancestral of his client had recommended to his son the plaintiff in the event of his life a third of the house in which the subject of the case, and the grudge of his client's inheritor has obtained (12) shares out of (60) shares, while his children have obtained (10) shares for each one of his male children, this is contrary to right and justice in addition to the fact that Article (74) violates Article (87) of the Personal Status Law that regulated the rights related to the inheritance, as Paragraph (3) of it stipulates (executing the commandments of the bequest and taking out a third of what remained of his money) He requested the ruling of the illegality of paragraph (2) of Article (74) of the Personal Status Law and after registering the case with this court in accordance with paragraph (3rd) of Article (1) of the bylaw, and receiving the response of the defendant's agent requesting rejection of the case for the reasons stated therein. After completing the required procedures, a day was set for the argument in which the agents of the two parties attended and the immanence and public argument commenced. The agent of the plaintiff repeated the lawsuit's petition and requested the verdict accordingly, and the defendant's agent requested the rejecting of the case because the litigation was not proceeding, and after hearing the statements of the agents of the parties, and the court has completed its scrutiny the end of argument has been made clearly and recited the operative part of the verdict is publicly on 3/9/2013.

The Decision:

After scrutiny and deliberation by the FSC found that the claim of the plaintiff's attorney includes a request for a judgment regarding the illegality of Paragraph (2) of Article (74) of the Personal Status Law No. (188) of 1959, as amended, as it contravenes the Sharia, truth and justice. It was found that the plaintiff's attorney filed a lawsuit against each of the defendants (alif) and (kaf) daughters of (feh. ain) and (shin. ta. feh.) requesting the annulled of a legal text, and that the defendants

did not qualify as litigants in the case filed before the FSC requesting the annulment of a legal text, as their approval does not entail a judgment to assess whether a declaration was issued by them, or they are judged or bound by something to assess the evidence of the case (Article 4) of the Civil Procedure Law No. (83) of 1969 and its amendments. Accordingly, the litigation is not directed, and if it is not directed, the court shall rule, even on its own initiative, to reject the case (Article 80/1) of the Civil Procedure Law. Therefore, the court decided to reject the case for not proceeding with the litigation, while charging him the expenses and the fees of the defendant's agent, lawyer (mim. ain. sin.), an amount of one hundred thousand dinars (100,000) as a immanence rule and decisively according to the provisions of article (5/2nd) of the FSC's Law and article (94) of the Constitution of Republic of Iraq 2005 with unanimously and the decision had made clear and public on 3/9/2013.