

Republic of Iraq
Federal Supreme Court
Ref. 74 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/5/2023 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: Ghazi Jabbar Luaibi – his agent the barrister Saib Mujbil Mohammed.

The Defendants: 1. The Prime Minister/ being in this capacity.

2. The Secretary-General of the Council of Ministers/ being in this capacity.

Their agent
the legal
counselor
Hayder Ali
Jaber

The Claim

The plaintiff claimed, through his agent, that the plot numbered (126/281) - the Tigris River was allocated to him under the dissolved Revolutionary Command Council Resolution No. (117) of 2000, and since the Council of Ministers had the power to cancel decisions that have the force of law, Resolution No. (12) of 2004 was issued, including the cancellation of the aforementioned dissolved Revolutionary Command Council decision, and the cancellation focused on suspending the effect of the decision without exceeding the plots of land allocated under it, meaning that the residential plots allocated under it remained. However, the Council of Ministers - which has an executive capacity - issued its letter No. (Qaf/6/1/31/6593 on 4/7/2005) specifying a period for the registration of land plots allocated under the dissolved Revolutionary Command Council Resolution No. 117 of 2000 until 15/10/2005, which legally means that the decision of the dissolved Revolutionary Command Council was amended by the decision of the Council of Ministers - which has an executive capacity - which violates the Constitution, whereas the Municipality of Maysan Governorate refrained from registering the aforementioned plot in the name of (the plaintiff) invoking the aforementioned Cabinet letter, so the plaintiff requested this court to cancel the

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Cabinet letter No. (Qaf/6/1/31/6593) on 4/7/2005 so that he could review the Maysan Municipality and request it to inform the Directorate of Real Estate Registration in Maysan to register that plot in his name. The lawsuit was registered with this court in the number (74/Federal/2023) and the legal fee was collected for it according to Article (21/I) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the defendants are informed of its petition and documents in accordance with item (2nd) of the same article, and their agent replied with the reply list dated 11/5/2023, its summary is his request to dismiss the lawsuit because its subject matter had already been decided by the court's decisions numbered (44/federal/2022) and (8/federal/2023), in addition to that the plaintiff's request to cancel the letter of the General Secretariat of the Council of Ministers Outside the jurisdiction of the court specified in Article (93/1st) of the Constitution, the issuance of Legislative Order No. 12 of 2004 was based on the provisions of paragraph 1 of article 26 of the Law of State Administration for the Transitional Period and the provisions of section 2nd of its annex and based on the approval of the Presidency Council and came in accordance with the provisions of the Constitution in force, as the reasons for its issuance stated that the Iraqi government wants to provide residential plots of land for all segments of society, and for the purpose of removing differences and discrimination between citizens in obtaining residential plots in line with the principle of equality among citizens, the General Secretariat of the Council of Ministers issued its letter - the subject of the appeal - in implementation of the directive issued by the Prime Minister in accordance with his constitutional powers under article 80/3rd of the Constitution to issue instructions and decisions with the aim of implementing laws, as it was issued in implementation of the provisions of Legislative Order No. 12 of 2004 and in accordance with the provisions of the Constitution in articles 14 and 16 thereof, so he requested Dismissing the lawsuit in form and substance and charging the plaintiff with the expenses, fees and advocacy fees. After completing the procedures required by the court's internal regulations, a date was set to consider the case without pleading following Article (21/3rd) thereof, and on the appointed day, the court was formed and the case began to be considered, the court reviewed what was stated in the plaintiff's lawsuit, his requests and supports, and what was stated in its regulation dated 21/5/2023, and it also reviewed the list of

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the defendants' agent and his request to dismiss the lawsuit for the reasons stated therein, and after the court completed its scrutinies, the end of the minutes has been made clear, and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Ghazi Jabbar Luaibi claimed before this court that he had previously been allocated a plot of land under the dissolved Revolutionary Command Council Resolution No. 117 of 2000, then the Council of Ministers issued Legislative Order No. 12 of 2004 canceling the said decision without mentioning the deprivation of those to whom a residential plot of land was allocated under it, then the Council of Ministers issued the letter No. (Qaf/6/1/31/6593 on 4/7/2005) specifying the duration of time for registering the plots of land allocated under the aforementioned decision of the dissolved Revolutionary Command Council, and that he was unable to register the plot of land allocated to him due to the expiry of the period mentioned in the decision of the Council of Ministers, therefore, he requested that the defendants be invited by the Prime Minister and the Secretary-General of the Council of Ministers, in addition to their functions, to plead and rule on the cancellation of the aforementioned Cabinet letter so that he could register the plot of land allocated to him. The court reviewed the answer of the defendants' agent / being in their capacity with his answering draft numbered (Qaf/2/2/68/20984 on 11/5/2023), which included his request to dismiss the lawsuit in the form that it had previously been decided under the decisions of this court (44/Federal/2022) and (8/Federal/2023) and due to the court's lack of jurisdiction, and also requested its dismissal on the merits because the letter - the subject of the appeal - came in implementation of the provisions of Legislative Order No. (12) of 2004. The court finds the plaintiff's claim admissible in terms of litigation, because the plaintiff and the defendants, being in their capacity, are legal opponents who meet the conditions of litigation and possess the legal capacity to litigate, and the court also finds that the plaintiff's interest is realized in this lawsuit in accordance with the provisions of Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, and the provisions of Article (20) of the Rules of

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Procedure of the Federal Supreme Court No. (1) of 2022, and upon examining the requests of the plaintiff who requested a ruling to cancel the Cabinet letter No. (Qaf/6/1/31/6593 on 4/7/2005), the court finds that the request for the plaintiff is outside the jurisdiction of this court for the following reasons:

1. The plaintiff bases his lawsuit on Article (6th/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2005, and that the text of the said article relates to the condition of interest in the case, and it was not a text related to the jurisdiction of the Court, and the internal rules on which the plaintiff relied in his lawsuit were canceled by the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and that item (fourth) of Article (20) thereof stipulated that the lawsuit petition include a clear statement of the contested text. The alleged text and the reasons for the violation, and the plaintiff's claim are devoid of all of that.
2. The constitutional oversight prescribed for the Federal Supreme Court extends to the laws and regulations in force only in accordance with what is stated in item (first) of Article (93) of the Constitution of the Republic of Iraq for the year 2005, item (first) of Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended, and item (second) of Article (18) of the internal regulations of the Federal Supreme Court No. (1) of 2022 and does not extend to considering the constitutionality of decisions or procedures issued by any authority, including decisions issued by the Council of Ministers, and this is what the judgment of this court has settled on in many of its decisions.
3. The plaintiff's lawsuit has focused on challenging the letter issued by the General Secretariat of the Council of Ministers No. (Qaf/6/1/31/6593 on 4/7/2005) and cancel it, which was an answer to the letter issued by the Ministry of Defense No. (3/2367 on 16/6/2005), so its consideration is outside the jurisdiction of the Court stipulated in item (third) of Article (93) Constitution of the Republic of Iraq for the year 2005 and Article (4/3rd) of the Federal Court Law No. (30) of 2005 as amended by Law No. (25) of 2005 2021, which includes the adjudication of cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority only, and did not include research into the authenticity of letters or correspondence issued by those authorities or their accessories. For all

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of the above and the request, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit (Ghazi Jabbar Luaibi) and charge him the fees, expenses, and attorney fees of the defendants' agent, the Prime Minister and the Secretary-General of the Council of Ministers, being in their capacity, the legal adviser Haider Ali Jaber, an amount of (one hundred) thousand dinars. 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) 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 10/Dhul Qaeda/1444 Hijri coinciding with 30/May/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court

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