

## Ownership Claim Pursuant to Resolution No. 1198 upon the Mere Opening of the Property Statement

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### ABSTRACT

This study examines the ownership claim established pursuant to Iraqi Revolutionary Command Council Resolution No. (1198) of 1977 based solely on the procedure of opening the property statement, without the existence of a written external sale contract. Following the enactment of the Iraqi Civil Code and the imposition of formal registration as a prerequisite for the transfer of real property ownership, numerous practical disputes emerged due to reliance on informal sale arrangements. Resolution No. (1198) introduced an exceptional mechanism recognizing an undertaking to transfer ownership when the beneficiary occupies the property or constructs buildings thereon. The research addresses a significant procedural and judicial dilemma arising when the parties merely initiate the statement-opening procedure before the Real Estate Registration Directorate, after which the seller retracts or refuses to complete the registration. The central issue concerns whether opening the statement constitutes a valid undertaking sufficient to establish an ownership claim under the Resolution, or whether such claims must be dismissed for lack of a formal or external contractual document. Adopting an analytical and applied methodology, the study analyzes relevant legal texts, procedural rules, and divergent judicial rulings issued by Iraqi Courts of Appeal acting in their cassation capacity. It highlights the inconsistent judicial approaches regarding reliance on the statement-opening procedure and underscores the decisive role of judicial discretion in resolving ownership disputes. The study concludes with practical findings and recommendations aimed at achieving judicial consistency and enhancing legal protection for good-faith purchasers.

**Keywords:** Opening of the Property Statement; Real Estate Registration; Iraqi Civil Law; Undertaking to Transfer Ownership; Judicial Interpretation.

### INTRODUCTION

Following the enactment of the Iraqi Civil Code in 1951 and its implementation in 1953, many practical issues arose regarding the transfer of real property ownership. The Iraqi legislator added a fourth element to the three established elements of contractual obligation—mutual consent, subject matter, and cause—namely, the element of formality. As a result, a contract for the sale of real property only becomes valid if it is made according to the legally required form, specifically registration with the competent Real Estate Registration Directorate.

Accordingly, owing to the general public's lack of awareness of this essential requirement, coupled with the high degree of mutual trust prevailing among parties in sale and purchase transactions, many practical and factual problems arose. A significant number of individuals relied on so-called "external" sale contracts, drafted outside the Real Estate Registration Directorate, typically in brokerage offices. As a result, people's rights and assets were lost due to the failure to register property with the competent authority.

This situation persisted until the issuance of Resolution No. 1198 of 1977 by the (now dissolved) Revolutionary Command Council. The resolution created an exception to the formality requirement for transfer commitment through registration at the Real Estate Registration Directorate, recognizing instead a **commitment to transfer ownership** upon occupation of the property or the construction of buildings or facilities.

Here, another practical problem has emerged in actions for the establishment of ownership. Some sales are documented through an informal external sales paper, while others are not documented at all. Instead, the seller and the buyer proceed directly to the competent Real Estate Registration Directorate and initiate the procedure of opening a statement as the first step toward completing the real estate registration process. Subsequently, the seller may retract or refuse to complete the sale of the property, resulting in the loss of the buyer's rights and funds.

### Study Problem

The problem becomes apparent when filing a lawsuit for the transfer or conveyance of real property before the competent courts. The central question is whether the court will rely on the procedure of opening the statement as constituting an undertaking to transfer ownership of real property, or whether it will dismiss the claim on the ground that the undertaking intended by the legislator in Decision No. (1198) refers exclusively to an external brokerage contract. Consequently, a clear practical procedural difficulty arises, confronting the competent courts in determining who is entitled to the property—whether the plaintiff or the defendant—based on the decision under consideration.

In this context, the judge assumes a crucial and fundamental role in determining the rightful entitlement to establish ownership of the real property, specifically whether it belongs to the seller or the buyer. This issue is particularly significant in light of the fluctuating positions of the Courts of Appeal, acting in their cassation capacity, which have issued divergent rulings and adopted varying approaches—ranging from reliance on the procedure of opening the statement as a basis for an ownership transfer claim, on the premise that it constitutes an undertaking to transfer ownership, to a complete rejection of reliance on that procedure on the ground that it does not rise to the level of such an undertaking. Undoubtedly, these rulings are reasoned in a legally sound manner and are capable of forming a judicial conviction for any reader.

Accordingly, we shall endeavor, to the extent possible, to present these decisions and comment on them whenever feasible.

### Reasons for Choosing the Topic

Several reasons underlie the selection of the topic of an ownership action based on Decision No. (1198) upon the mere opening of the statement, the most important of which are as follows:

**First:** The scarcity of specialized qualitative studies examining ownership actions from a procedural perspective, particularly given that the procedures for this type of action begin with the buyer serving a formal notice, through a notary public, upon the seller, calling upon him to complete the real estate registration procedures. If the seller fails to respond to this notice by refusing to transfer ownership, retracts from the sale, or denies the sale altogether, the buyer subsequently proceeds to file a lawsuit for the transfer of ownership or an action for the establishment of ownership. While preparing this research, we did not encounter any Iraqi scholar who has enriched this subject from a procedural standpoint; rather, only scattered studies exist, which do not satisfy the needs of the legal library for such a practical and significant topic.

**Second:** The manner of filing this action and its procedures, which begin with the statement of claim and the documents that must be attached thereto as primary annexes, foremost among which is the original statement opening document, which is presumed to be in the buyer's possession. This document must include several essential conditions to be relied upon by the competent court. The Code of Civil Procedure sets out the general framework for instituting any lawsuit, but it leaves the specific details of each action and its particularities to the court and the litigants. This action, however, possesses a distinctive importance at the time of its institution. With regard to the parties, the court must verify that both parties hold Iraqi nationality, as a foreigner has no right whatsoever to bring this action.

### Scope of the Research

The practical study of an ownership action based on Decision No. (1198) upon the mere opening of the statement necessitates that it falls within the scope of the Civil Code and the Code of Civil Procedure. Accordingly, the scope of the study is determined considering the special laws governing the subject matter, which means that it falls within the jurisdiction of the Court of First Instance and the courts of appeal competent to hear challenges in such actions, namely the Court of Appeal acting in its cassation capacity.

## RESEARCH METHODOLOGY

The subject of this research represents a serious and genuine attempt to examine ownership actions based on Decision No. (1198) upon the mere opening of the statement. Accordingly, the methodology most suited to serve this research is the analytical approach, relying on the analysis of legal texts, Decision No. (1198), and the provisions of the Code of Civil Procedure, as well as the mechanisms of their practical application before the competent courts. In addition, the applied approach will be adopted, whereby certain judicial decisions will be cited and subjected to coherent legal analysis.

### Research Plan

The research plan is divided into three chapters, as follows:

**Chapter One:** The concept and legal nature of the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement, and its distinction from other similar actions.

This chapter is divided into three subsections, as follows:

- **First Requirement:** Definition of the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement and its conditions.
- **Second Requirement:** The legal nature of the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement.
- **Third Requirement:** Distinguishing the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement from possessory actions.

**Chapter Two:** The court having jurisdiction to hear the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement, its supporting documents, and the parties thereto. This chapter is likewise divided into three subsections, as follows:

- **First Requirement:** The court is competent to hear the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement, in terms of subject-matter and territorial jurisdiction.
- **Second Requirement:** The documents support the statement of claim in the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement.
- **Third Requirement:** The appellate court is competent to hear challenges to judgments issued in ownership actions pursuant to Decision No. (1198) upon the mere opening of the statement.

**Chapter Three:** The effects of the judgment in an ownership action, supported by practical applications.

Accordingly, this chapter is structured as follows:

**Chapter Three:** The effect of the judgment in the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement and the mechanisms of appeal.

- **First Requirement:** The effect of the judgment on an ownership action where the plaintiff resides on the property.
- **Second Requirement:** The effect of the judgment on an ownership action where the plaintiff has constructed buildings or structures on the property.
- **Third Requirement:** The mechanism for appealing judgments in ownership actions pursuant to Decision No. (1198) upon the mere opening of the statement.

Finally, the research concludes with a conclusion setting forth several findings and recommendations.

### Chapter One

#### *The Concept and Legal Nature of the Ownership Action pursuant to Decision No. (1198) upon the Mere Opening of the Statement, and Its Distinction from Similar Actions*

The first stage in initiating any scientific research is to define its subject matter and clarify its legal nature, and then to distinguish it from other legal terms or concepts with which it may be confused. Accordingly, this first chapter is devoted to addressing the issues, which necessitate dividing it into three subsections, as follows:

- **First Requirement:** Definition of the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement, and its conditions.
- **Second Requirement:** The legal nature of the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement.
- **Third Requirement:** Distinguishing the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement from possessory actions.

### First Requirement

#### *Definition of the Ownership Action pursuant to Decision No. (1198) upon the Mere Opening of the Statement, and Its Conditions*

A detailed discussion of this subsection requires dividing the analysis into two parts. First, the ownership action itself will be defined, followed by an examination of the concept of opening the statement and the conditions that must be satisfied therein to succeed in an ownership action, which must be filed before the Court of First Instance. Accordingly, this subsection is divided into two branches, as follows:

- **First section:** Definition of the ownership action pursuant to Decision No. (1198).
- **Second section:** Definition of opening the statement and its conditions.

## Section One

### *Definition of the Ownership Action pursuant to Decision No. (1198)*

The Iraqi legislator defines an action in the Code of Civil Procedure No. (83) of 1969, Article (2), as follows: (*An action is a person's request for his right from another before the judiciary*).

Jurisprudence in civil procedural law defines judicial action, in its general sense, as how individuals protect a legal status or a right. One of its most important conditions is the existence of such a right or legal status protected by law. Based on the foregoing, it is said: where there is no right, there is no action. Accordingly, an action exists or ceases to exist in correlation with the need for legal protection, which is realized through the judiciary.

The ownership action pursuant to Decision No. (1198) upon the mere opening of the statement may be defined as the action that protects a real right in immovable property, where the dispute concerns ownership itself, that is, the existence or non-existence of the real right in the property. In other words, it is the action brought by the plaintiff, as the purchaser of the property following the opening of the statement, against the defendant seller before the Court of First Instance, seeking to establish his ownership of the property pursuant to Decision No. (1198), relying in his claim on residence in the property or the construction of installations or buildings thereon.

This action is brought when the seller refrains from or delays the performance of his obligation to transfer ownership of the property to the buyer, such as when the seller refuses to accompany the buyer to the Real Estate Registration Directorate to complete the sale procedures after undertaking to transfer ownership through the opening of the statement, or refuses to respond to the formal notice served upon him by the buyer following the opening of the statement.

It is worth noting that Decision No. (1198) does not require any specific form for the undertaking to transfer ownership to prove it; thus, the agreement may be either oral or written. Nevertheless, in practice before most courts, and as commonly observed among the public, the undertaking to transfer ownership is usually documented in an external sale paper prepared by a broker, stamped with the seal of the brokerage office, indicating the identities of both parties—the seller and the buyer—and bearing the signatures of two witnesses who were present at the contractual meeting at the time of conclusion of the contract.

In this regard, the Baghdad Court of Appeal – Al-Karkh, acting in its cassation capacity, stated as follows: “(...Decision of the dissolved Revolutionary Command Council No. 1198 of 1977, as amended, did not require that the undertaking to transfer ownership be drafted in written form, as held by the Court of First Instance in its challenged judgment. Rather, for the application of the provisions of the decision, it suffices that an undertaking to transfer ownership exists, whether written or oral. Accordingly, it is decided to quash the challenged judgment and to return the case file to its court to follow the foregoing and issue the appropriate judgment...).”

From this, it may be concluded that the opening of the statement constitutes a formal procedural means imposed by law, which may be relied upon as a first step to reveal the existence of an undertaking to transfer ownership of immovable property, and consequently to succeed in an ownership action pursuant to Decision No. (1198). Likewise, reliance may be placed on an oral agreement if it is acknowledged by the defendant in the action.

## Section Two

### *Definition of Opening the Statement and Its Conditions*

The undertaking to transfer ownership may take the form of the opening of the statement, which is drafted on specially formatted paper in the form of a register, in which the competent official records the transaction and authenticates the identities of both Iraqi parties—the seller and the buyer. The document includes the property number, its description, type, and classification, the sale price, as well as the signatures and thumbprints of both the seller and the buyer. In this respect, it resembles an external sale contract drawn up outside the Real Estate Registration Directorate by a broker, or authenticated by a notary public, upon which the purchase of the property may likewise be established, on the basis that such a contract constitutes an undertaking to transfer ownership of the property.

However, in many instances, such a document is not prepared, or such a contract is not recorded, and the parties proceed directly to the Real Estate Registration Directorate as a first step toward transferring ownership of the property. We observe that where the action is brought based on the opening of the statement, or based on an external sale contract prepared by a broker, it requires the fulfillment of the ownership conditions stipulated in

Decision No. (1198) of 1977, First/(b), which provides that: “(If the beneficiary of the undertaking has resided in the property that is the subject of the undertaking, or has constructed buildings or other installations thereon without written objection from the obligor, this shall be deemed a valid cause entitling the beneficiary to acquire ownership of the property at the value specified in the undertaking, or to claim compensation in the manner outlined in paragraph (A) of this item, in addition to the value of the constructions existing at the time of repudiation)”.

In this regard, the Baghdad Court of Appeal – Al-Karkh, acting in its cassation capacity – Civil Panel, stated:

“(…the agent of the plaintiff acknowledged, during the hearing held on 28/6/2022 before the Court of First Instance, that his client does not occupy the property that is the subject of the action, and that the property is demolished and vacant of occupants. Consequently, the conditions for the application of the provisions of Decision No. (1198) of 1977, as amended, are not fulfilled in the plaintiff’s action. Accordingly, her claim lacks a legal basis and is liable to dismissal, as held by the challenged judgment; therefore, it is decided to affirm it…)”.

From the above decision, it is evident that the competent court examines the fulfillment of the conditions outlined in the provisions of Decision No. (1198) of 1977, as amended, when an action is instituted on its basis, namely, residence in the property in such actions. Since the property was demolished and vacant of occupants, the plaintiff’s action was deemed to lack a legal basis.

## Requirement Two

### *The Legal Nature of the Ownership Action pursuant to Decision No. (1198) upon the Mere Opening of the Statement*

Based on the definition of the ownership action pursuant to Decision No. (1198) upon the mere opening of the statement in Requirement One, it can be stated that this action is **real (in rem) and substantive**, and it also falls within **real estate actions**, which are filed by way of a formal request. Accordingly, this requirement is divided into two **sections**, as follows:

- **Section One:** The ownership action pursuant to Decision No. (1198) upon the mere opening of the statement is a real estate (in rem) action.
- **Section Two:** The ownership action pursuant to Decision No. (1198) upon the mere opening of the statement is an urgent action and is filed via a statement of claim.

## Section One

### *The Ownership Action pursuant to Decision No. (1198) upon the Mere Opening of the Statement as a Real Estate (In Rem) Action*

The first distinguishing characteristic of the legal nature of the ownership action under review is that it is a **real (in rem) action**. This can be further divided into two points, as follows:

**First:** The nature of the ownership action under Decision No. (1198) upon the mere opening of the statement is **real (in rem)**. This is due to the nature of the right upon which it is based when filed, namely, the **real right**

The law defines the powers of ownership in Article (1048) of the Civil Code, which provides: “(Full ownership entitles the owner to dispose of it absolutely, in terms of the property itself, its benefits, and its use…)”

In the procedure of opening the statement, once the obligor resides in or enjoys the property subject to the action—that is, uses it or exercises ownership over it, such as by constructing installations or buildings, one of the conditions of Decision No. (1198) is satisfied. Accordingly, the claimant may obtain a favorable judgment if the remaining conditions of the opened statement are fulfilled.

Thus, the ownership action under Decision No. (1198) upon the mere opening of the statement is a **real (in rem) action** that may be filed by any person asserting a **real right**, meaning that he claims ownership of the property based on Decision No. (1198), provided that one of its conditions is satisfied. This contrasts with a **personal action**, which is based on a personal right—a relationship between two persons, creditor and debtor. Such actions can only be brought by one party to the relationship against the other, and they are analogous to personal rights, which cannot be transferred or asserted beyond the parties involved, in accordance with the principle of freedom of contract.

**Second:** The legal nature of the ownership action under Decision No. (1198) upon the mere opening of the statement, it is a **real estate action**. This characteristic arises from the **subject matter of the right** upon which the action is based, namely, the real right in immovable property, in accordance with the general rules of civil law and Article (68) of the Iraqi Civil Code.

This contrasts with an action concerning **movable property**, where the protected right pertains to a movable item rather than immovable property, or with a personal right relating to immovable property, for example, an action for eviction from a property.

## Section Two

### ***Ownership Claim Pursuant to Decision No. 1198 upon the Mere Opening of the Statement as an Urgent Action Submitted by Petition***

An ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement is characterized by an urgent nature and is instituted by means of a written application submitted to the court. The two distinguishing characteristics referred to above may be identified as follows:

**First:** An ownership claims under Decision No. 1198 of 1977, as amended, is classified as an urgent action. This means that the legal nature of this claim necessitates that it be brought before the summary (urgent) judiciary, which has exclusive jurisdiction to hear it. This is expressly provided for in the very decision under consideration, Second/(b), which stipulates that: (The actions covered by this Decision shall be deemed urgent actions).

An urgent action is one in which delay is feared to result in the loss of rights due to the passage of time, pursuant to the Iraqi Civil Procedure Law in force, Article (141/1), which provides that: (The Court of First Instance shall have jurisdiction to hear urgent matters in which delay is feared, provided that this does not affect the substance of the right).

**Second:** This urgent nature is also reflected in the determination of the method by which the action is instituted, that is, the procedural means employed by the plaintiff in an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement to establish ownership before the judiciary in the manner prescribed by law. It constitutes the procedural act by which the plaintiff submits the dispute to the court, setting out the facts relied upon and seeking a judgment in his favor. Accordingly, the action is brought by filing a statement of claim submitted to the court, containing all the particulars prescribed by law, registered in the basic case register, after which a hearing date is fixed, and the opposing party is duly notified of the date of the proceedings.

## Requirement Three

### ***Distinguishing an Ownership Claim Pursuant to Decision No. 1198 upon the Mere Opening of the Statement from Possessory Actions***

In the first and second requirements of this study, the definition and legal nature of an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement were examined. It was established that, by its nature, such a claim constitutes an urgent in rem real estate action submitted to the judiciary by way of application. In this third requirement, the distinction between an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement and possessory actions is addressed, both in terms of the basis of distinction—which is attributable to the purpose sought by the action—and the consequences of such distinction, which are manifested in the divergence of the means of protection and proof, as well as in the prohibition against combining an ownership action with a possessory action.

Accordingly, this requirement may be divided into two Sections, as follows:

- **Section One:** The basis for distinguishing an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement from possessory actions.
- **Section Two:** The consequences of distinguishing an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement from possessory actions.

## Section One

### ***The Basis for Distinguishing an Ownership Claim Pursuant to Decision No. 1198 upon the Mere Opening of the Statement from Possessory Actions***

In rem actions are divided into two types. The first comprises actions relating to rights, exemplified by the ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement. The second consists of possessory actions, such as actions for recovery of possession and actions to halt new works. The basis for distinguishing an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement from possessory actions lies in the legal characterization of each action.

Ownership is defined as (a legal status by virtue of which the owner exercises legal control over a thing), whether it concerns an in rem right or an in-person right. The legal characterization of ownership is that it constitutes a legal fact.

Possession, by contrast, is defined as (a material status by virtue of which the possessor exercises actual control over a thing, whether it relates to an in rem or an in personam right). Such material control is exercised through the performance of physical acts customarily undertaken by an owner, in a manner consistent with the nature of the right. The legal characterization of possession is that it is a material fact producing legal effects; it is not a right, but rather a cause for the acquisition of a right.

The basis for distinguishing an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement from possessory actions lies in the purpose of the action. The purpose of the ownership claim under consideration is to protect ownership as an in rem right over immovable property, conferring upon the owner genuine legal control in terms of use, exploitation, disposition, and exclusivity, where the dispute concerns ownership itself, that is, the existence or non-existence of the in rem right over immovable property.

It follows from this that the ownership claim examined in this study is brought by the possessor who relies on the opening of the statement as an undertaking to transfer ownership, constituting one of the causes for the acquisition of ownership, to affirm his ownership of the immovable property and extend legal protection thereto against any person who denies, challenges, or interferes with that ownership.

## Section Two

### *The Consequences of Distinguishing an Ownership Claim Pursuant to Decision No. 1198 upon the Mere Opening of the Statement from Possessory Actions*

The consequences of distinguishing an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement from possessory actions manifest themselves in three principal outcomes, as follows:

**First:** The difference in the means of protection between an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement and possessory actions. This means that an ownership claim protects the substance of the right of ownership itself and has no concern with possession except insofar as possession constitutes one of the causes for the acquisition of ownership.

From this, it may be concluded that the ownership claim under consideration differs from possessory actions in that the former seeks to protect the right of ownership and the other in rem rights deriving therefrom in a direct manner, which necessarily entails examining the basis of the claimed right and its legitimacy. Possessory actions, by contrast, are intended solely to protect physical control (possession) regardless of its basis or legal legitimacy.

**Second:** The difference in proof between an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement and possessory actions.

Proof of an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement is established through the opening of the statement itself before the competent Real Estate Registration Directorate and in the presence of the competent official, supported by the signatures of the seller and the purchaser and two witnesses. Reliance may also be placed solely on the thumbprint, on the basis that such a fingerprint was affixed before the competent official. This means that the claim may be proven by legal or judicial presumptions, as they establish probabilities that are more likely than not.

The ownership claim under consideration may also be proven by occupation of the property or by the construction of buildings or other installations thereon. This is established through on-site personal evidence, whereby the court conducts an inspection of the property and its condition and hears testimony proving the plaintiff's occupation of the property. The court may also join a third party to the proceedings for clarification purposes, such as an engineering company that designed the property, carried out its construction, or added new structures thereto.

By contrast, proof in possessory actions requires establishing the two elements of possession (the material element and the mental element). However, in practical application, it is sufficient to prove the first, material element to infer the second, mental element, since the presumption is that a possessor holds possession on his own behalf. The material element of possession, being a legal fact, may be proven by all legally admissible means of proof, including witness testimony and presumptions.

**Third:** The prohibition against combining an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement with possessory actions.

Article (12) of the Iraqi Civil Procedure Law in force provides that:

1. The plaintiff may not combine a possessory action with a claim of ownership; otherwise, his possessory claim shall lapse.
2. In a possessory action, the plaintiff's claim of ownership shall not be heard unless he waives the possessory action.
3. A person who loses an ownership action shall not be heard in a possessory action. However, a person who loses a possessory action may institute an ownership action.
4. A judgment in a possessory action may not be based on the affirmation or denial of the right of ownership; rather, it must be founded solely on the fulfillment of its legal conditions.)

The purpose of this rule is to ensure the complete protection of possession as such, independently of the substance of the right. Judicial examination of the substance of the right may lead to a judgment against the possessor despite the establishment of possession, based on the ownership of the opposing party. This would run

counter to the very objective of possessory actions, which is, first, to repel unlawful interference and, second, to restore the parties to the state they were in before the dispute.

## Chapter Two

### *The Court Having Jurisdiction to Hear an Ownership Claim Pursuant to Decision No. 1198 upon the Mere Opening of the Statement, Its Supporting Documents, and Its Parties*

The first step in instituting an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement is to determine the court having jurisdiction to hear the action, followed by the preparation of its supporting documents and the drafting of the statement of claim. Thereafter, the parties against whom the action is to be brought must be specifically identified. Accordingly, this Chapter is divided into three Requirements, as follows:

- **Requirement One:** The court having subject-matter and territorial jurisdiction to hear an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement.
- **Requirement Two:** The supporting documents of the statement of claim in an ownership action pursuant to Decision No. 1198 upon the mere opening of the statement.
- **Requirement Three:** The mechanism for challenging the decision issued in an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement.

#### Requirement One

##### *The Court Having Jurisdiction to Hear an Ownership Claim Pursuant to Decision No. 1198 upon the Mere Opening of the Statement, in Terms of Subject-Matter and Territorial Jurisdiction*

The first stage in instituting an action is determining whether the court has jurisdiction to hear the dispute, both in terms of subject matter and territorial jurisdiction. Accordingly, this Requirement is divided into two Sections, as follows:

- **Section One:** The court having subject-matter jurisdiction to hear an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement.
- **Section Two:** The court having territorial jurisdiction to hear an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement.

#### Section One

##### *The Court Having Subject-Matter Jurisdiction to Hear an Ownership Claim Pursuant to Decision No. 1198 upon the Mere Opening of the Statement*

It is legally established that subject-matter jurisdiction to hear an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement lies with the Courts of First Instance. This is based on the Iraqi Civil Procedure Law in force, Article (29), which provides that:

(The jurisdiction of the civil courts extends to all natural and legal persons, including the government, and they shall have jurisdiction to adjudicate all disputes except those excluded by a special provision).

This is further supported by Article (32), which provides that:

(The Court of First Instance shall have jurisdiction to hear the following:

1. All actions whose value exceeds one million Iraqi dinars, actions subject to a fixed fee, actions of indeterminate value, and all actions not falling within the final jurisdiction of the Court of First Instance or the Personal Status Court. Its judgments shall be rendered at first instance and shall be subject to appeal in accordance with Article (185) of this Law. In other cases, its judgments shall be final and subject to cassation, subject to the provisions of other laws).

This allocation of jurisdiction also entails restricting courts to hearing a specific category of action such as ownership claims pursuant to Decision No. 1198 upon the mere opening of the statement—and precludes any departure therefrom. This is because subject-matter jurisdiction pertains to public order and may not be derogated from by agreement. Accordingly, any agreement by the parties to bring such an action before a Labor Court or a Court of First Instance specialized in commercial disputes would be impermissible.

It should be noted that a plea of lack of subject-matter jurisdiction may be raised at any stage of the proceedings. It may be invoked by the court of its own motion or by the parties, pursuant to Article (77) of the Iraqi Civil Procedure Law, which provides that: (A plea of lack of jurisdiction of the court due to absence of jurisdiction, or due to the type or value of the action, shall be ruled upon by the court of its own motion, and may be raised at any stage of the proceedings).

A segment of legal doctrine defines jurisdiction as (the authority conferred by law to adjudicate a specific dispute; the jurisdiction of a court signifies the share of cases that it is empowered to decide).



## Section Two

### ***The Court Having Territorial Jurisdiction to Hear an Ownership Claim Pursuant to Decision No. 1198 upon the Mere Opening of the Statement***

The Iraqi legislator regulates territorial jurisdiction with respect to ownership claims pursuant to Decision No. 1198 upon the mere opening of the statement in Article (36) of the Iraqi Civil Procedure Law in force, which provides that:

(An action shall be brought before the court within whose jurisdiction the immovable property is located if it relates to an in rem right; and where there are multiple properties, the action may be brought in the jurisdiction of any one of them).

A segment of legal doctrine defines the rules of territorial jurisdiction as: (those rules that determine the authority of a particular court, among courts of the same level, to adjudicate judicial disputes within a specified territorial area).

A plea of lack of territorial jurisdiction in an ownership claim pursuant to Decision No. 1198 upon the mere opening of the statement must be raised before addressing any other plea; otherwise, the right to raise it shall lapse, pursuant to Article (74) of the Iraqi Civil Procedure Law, which provides that: (A plea of lack of territorial jurisdiction must be raised before addressing the subject matter of the action; otherwise, the right thereto shall lapse).

In this regard, the Abu Ghraib Court of First Instance held as follows: (The two plaintiffs, A.A. and H.A.Kh., claimed that they had previously purchased from the defendant, F.T.A., the property constructed on plot No. 10/30, Sector M2, Al-Thaniya, for a consideration of three hundred and seventeen million Iraqi dinars, of which ten million Iraqi dinars were paid as an advance. The defendant refrained from transferring ownership of the sold property despite demand and despite the plaintiffs' occupation of the property and the construction of installations and buildings thereon ... In the minutes of the hearing dated 8/7/2021, the court decided to refer the case to the Dhat Al-Salasil Court of First Instance for consideration in accordance with territorial and subject-matter jurisdiction, pursuant to Article (78) of the Civil Procedure Law).

We observe from this decision that the action was referred from a court lacking territorial jurisdiction to hear the dispute to the court having territorial jurisdiction, namely the Dhat Al-Salasil Court of First Instance. This demonstrates that territorial jurisdiction plays a fundamental procedural role, such that failure to observe it may lead to the formal invalidity of the judgment due to non-compliance with the rules governing territorial jurisdiction in the action.

## Requirement Two

### ***Documents of the Statement of Claim in an Ownership Action Pursuant to Decision No. 1198 upon the Mere Opening of the Statement***

Among the procedural steps for filing an ownership action pursuant to Decision No. 1198, upon the mere opening of the statement, after determining the court having jurisdiction to hear the actions, the preparation of the supporting documents, and the drafting of the statement of claim. Accordingly, this requirement is divided into two sections, as follows:

**Section One:** Preparation of the documents for an ownership action pursuant to Decision No. 1198 upon the mere opening of the statement.

**Section Two:** Drafting the statement of claim for an ownership action pursuant to Decision No. 1198 upon the mere opening of the statement.

## Section One

### ***Preparation of the Documents for the Ownership (Titling) Claim Pursuant to Decision No. (1198) upon Opening the Statement***

After determining the court having jurisdiction to hear the claim—namely, the Court of First Instance—we proceed to the second step, which is the preparation of the documents of the claim. It should be noted that these documents do not, in themselves, constitute conclusive proof of ownership; rather, they fall within the scope of factual evidence or legal presumptions upon which the claimant may rely to succeed in the action.

These documents may be classified as including the open statement in the Real Estate Registration Department, which has been previously defined, and which must contain the names of both the seller and the buyer, the nature of the sold property, the amount of the consideration, and the signatures of the parties by handwritten signature and thumbprint, in the presence of two witnesses. In addition, it is necessary to include the title deed of the property, the cadastral map, the area of the property, the type of property, the external (informal)

sale contract, if any, the Sharia inheritance division (qassam shar'ī) of the seller or the buyer in the event of death, and the guardianship order for a minor in cases where the heirs, or any of them, are minors.

Accordingly, the contract is complete in all its essential elements, except for the formal requirement prescribed by law. Form No. (59), known as the opening of the statement, constitutes nothing more than the first step toward completing the procedures of real estate registration, which may extend for a period of not less than one full month.

In this regard, the Baghdad–Karkh Court of Appeal, acting in its cassation capacity, states: “(... since the statement submitted by the claimant contains complete details concerning the sale of the shares of the deceased of the defendants to the claimant in the property numbered (152/35 ‘Atifiyah), as it included (the names of the parties, the nature of the sold property, the amount of the consideration, and the signatures of the parties by handwritten signature and thumbprint, in the presence of two witnesses). Accordingly, it is deemed to constitute an undertaking to transfer ownership as required for the application of the provisions of Decision No. (1198) of 1977, as amended. The settled jurisprudence of this panel, to the effect that real estate registration transactions (Form No. 59) do not rise to the level of an undertaking to transfer ownership as required by the decision, was premised on the fact that the statement did not contain complete details of the sale transaction. Therefore, the Court of First Instance ought to have corresponded with the competent Real Estate Registration Directorate to verify the accuracy of the information contained in the statement submitted in the case subject to cassation, and thereafter to require the claimant to present comparative specimens for the purpose of conducting a comparison by specialized experts from the Directorate of Criminal Evidence Investigation, and subsequently to issue the appropriate decision in accordance with the provisions of the law in light of the results reached. Accordingly, it was decided to quash the appealed judgment and to return the case file to its court to follow the foregoing ...).”

From the above decision, it may be inferred that the recent approach of the Baghdad–Karkh Court of Appeal, acting in its cassation capacity, is to accept the opening of the statement, or Form No. (59) as it is termed in real estate registration, where it records all the details of the sale, including the seller and the buyer, the sale consideration, and the type of subject matter of the sale, and where it is endorsed with their thumbprints or signatures. The court has rightly adopted this approach to limit the invalidation of real estate sale contracts; otherwise, what purpose would prompt a seller to go to the Real Estate Registration Directorate to open a statement other than his agreement with the buyer to sell his property?

## Section Two

### ***Drafting the Statement of Claim for Ownership (Titling) Pursuant to Decision No. (1198) upon Opening the Statement***

After completing the preparation of the documents for the statement of claim, we proceed to the next step, namely drafting the statement of claim itself. In drafting this statement, I will not resort to literary skill or hypothetical formulation; rather, I will reproduce verbatim an actual statement of claim that I previously filed, and that was indeed heard by the Baghdad Al-Jadida Court of First Instance. Accordingly, a model statement of ownership claim pursuant to Decision No. (1198) upon opening the statement may be set out word for word as follows:

**To the Honourable Judge of the Court of First Instance,**

**Claimant:** N. A. A.,

**Residence:** Baghdad,

**Represented by:** His attorney, Lawyer Dr. Fatima Majid Al-Qassab.

**Defendant:** S. A. A.,

**Residence:** Baghdad.

**Subject Matter of the Claim:**

Previously, my client, the claimant, purchased the property numbered (4/14333), Section/11, Hamdi Farm, from his sister, the defendant, in the year 2015, for a consideration of fifty million Iraqi dinars, by an oral contract concluded outside the Real Estate Registration Department. A statement was opened in favor of my client in respect of the property on 4/5/2015. Furthermore, my client constructed a building on the property in the year 2016.

Despite repeated amicable demands to transfer ownership in the name of my client, the defendant has refrained from completing the real estate registration transaction. A formal notice was served upon her through the Notary Public in Al-Bayaa (evening office) under No. (16758) dated 25/6/2023, and the date 13/7/2023 was fixed for the transfer of ownership. She was duly notified thereof on 25/6/2023. It was revealed as of that date that she had opened another statement in the name of her son (F. N. N.) without affecting any withdrawal or cancellation of my client's statement.

Accordingly, I respectfully request the Honorable Court to summon the defendant to attend the hearing after serving her with a copy of the statement of claim and fixing a date therefor; to order the placement of a non-

disposal annotation on the property that is the subject of this claim; and to adjudge the transfer of ownership of the property into the name of my client pursuant to Decision No. (1198) of 1977, as amended, with the defendant bearing all fees, expenses, and attorney's fees.

With the utmost thanks and appreciation.

#### **Evidentiary Documents:**

1. A copy of the property title deed
2. A copy of the statement
3. Correspondence between my client and the construction company
4. The formal notice
5. All other evidentiary documents

**Claimant** N. A. A. **and / Attorney:** Dr. Fatima Majid Al-Qassab

#### **Third Requirement**

##### ***Challenging the Judgment Issued in an Ownership (Titling) Claim Pursuant to Decision No. (1198) upon Opening the Statement***

After having identified the court having jurisdiction to hear the claim, the documents supporting it, and the manner of drafting the statement of claim, this requirement will specify the court competent to hear appeals in ownership (titling) claims pursuant to Decision No. (1198) upon opening the statement, as well as the time limits for challenging the judgment rendered in such claims. Accordingly, this requirement shall be divided into two sections, as follows:

**Section One:** The Court of Appeal, acting in its cassation capacity, as the appellate authority competent to review judgments issued in ownership (titling) claims pursuant to Decision No. (1198) upon opening the statement.

**Section Two:** The time limit for challenging the judgment issued in an ownership (titling) claim pursuant to Decision No. (1198) upon opening the statement.

#### **Section One**

##### ***The Court of Appeal, Acting in its Cassation Capacity, as the Appellate Authority for Judgments Issued in Ownership (Titling) Claims Pursuant to Decision No. (1198) upon Opening the Statement***

By "appeal" is meant the submission of the subject matter of the claim or dispute adjudicated by the court of first instance (the Court of First Instance) to the court of second instance, namely the Court of Appeal acting in its cassation capacity, for the purpose of examining the subject matter of the claim and deciding it anew.

Pursuant to Decision No. (1198) of 1977, item Second/A, it is stipulated as follows: "(The Court of First Instance shall adjudicate the claims arising from the application of the provisions of this Decision, and its decision shall be subject to appeal by cassation before the Court of Appeal to which that court belongs within thirty days from the date of notification thereof. The decision of the Court of Appeal in this regard shall not be subject to challenge by way of correction of the decision.)"

Accordingly, this jurisdiction or authority is grounded in the applicable Civil Procedure Law, pursuant to the text of Article (34/2), which provides that the Court of Appeal shall have jurisdiction to consider the following: "(2) Appeals by cassation against all judgments rendered by Courts of First Instance acting as courts of last resort, in accordance with the provisions of the law and other laws.)"

Thus, the Court of Appeal, acting in its cassation capacity, which hears ownership (titling) claims pursuant to Decision No. (1198), constitutes the final station during the litigation. The judgment issued by it therefore becomes final and conclusive, and is not subject to any further challenge, even by way of correction of the decision.

#### **Section Two**

##### ***The Time Limit for Appealing Judgments Issued in Ownership (Titling) Claims Pursuant to Decision No. (1198) upon Opening the Statement***

Appeal time limits are intended to compel the litigant to undertake a specific procedural act, so that the dispute does not remain indefinitely pending without end. They also grant the litigant a sufficient period of time within which to lodge the appeal.

Some jurists define appeal time limits as follows: "(They constitute a period determined by law within which the judicial procedure is constrained, and they are considered one of the forms of the formal organization of procedure; accordingly, the procedure is neither valid nor productive of its legal effects unless the prescribed time limit is observed.)"

Pursuant to Decision No. (1198) of 1977, item Second/A, which provides that: “(The Court of First Instance shall adjudicate the claims arising from the application of the provisions of this Decision, and its decision shall be subject to appeal by cassation before the Court of Appeal to which that court belongs within thirty days from the date of notification thereof ...),” the time limit for appealing judgments issued in ownership (titling) claims is thirty days from the date of notification thereof.

The time limit for appealing an ownership (titling) claim pursuant to Decision No. (1198) upon opening the statement may thus be defined as follows: “(It is the mandatory period determined by the legislator, commencing from the date of notification of the decision, with a duration of thirty days. This period is a matter of public order from which no agreement to the contrary is permissible. Any appeal filed outside this period shall result in the Court of Appeal, acting in its cassation capacity, declining to examine the claim on procedural grounds, thereby forfeiting the opportunity to challenge the judgment, which then becomes final and acquires *res judicata* authority.)”

### Chapter Three

#### *The Effect of the Judgment in an Ownership (Titling) Claim Pursuant to Decision No. (1198) upon Opening the Statement, and the Mechanism of Appeal*

The effect of the judgment determines the fate of the ownership (titling) claim instituted pursuant to Decision No. (1198) upon opening the statement. The decision, which is the subject of this study, has identified one of the two grounds for succeeding in an ownership claim, namely, residence or the construction of buildings and installations. Accordingly, this chapter will address these two grounds, in addition to the mechanism for appealing the decision if the claim is dismissed. Therefore, this chapter shall be divided as follows:

**First Requirement:** The effect of the judgment in an ownership (titling) claim based on the claimant's residence in the property.

**Second Requirement:** The effect of the judgment in an ownership (titling) claim based on the claimant's construction of buildings and structures.

**Third Requirement:** The mechanism for appealing the judgment in an ownership (titling) claim pursuant to Decision No. (1198) upon opening the statement.

#### First Requirement

##### *The Effect of the Judgment in an Ownership (Titling) Claim Based on the Claimant's Residence in the Property*

The claimant's residence in the property that is the subject of the claim may be established by all legally recognized means of proof regulated by the legislator in the Law of Evidence No. (107) of 1979. Thus, the claimant in an ownership (titling) claim pursuant to Decision No. (1198) upon opening the statement may prove his residence by means of an official document. The Law of Evidence has defined official documents in Article (21/First) as follows: “(Those in which a public official or a person charged with a public service records, in accordance with the legally prescribed forms and within the limits of his competence, what has been carried out by him or what has been stated by the concerned parties in his presence.)”

On this basis, this requirement shall be divided into two sections, as follows:

1. **Section One:** Methods of proving residence in the property for the purpose of adjudicating an ownership (titling) claim pursuant to Decision No. (1198).
2. **Section Two:** Judicial applications in ownership (titling) claims pursuant to Decision No. (1198) based on residence in the property.

#### Section One

##### *Methods of Proving Residence in the Property for Adjudicating an Ownership (Titling) Claim Pursuant to Decision No. (1198)*

The claimant in an ownership (titling) claim pursuant to Decision No. (1198) may establish his residence in the property of proof regulated by the Iraqi legislator. These include written evidence, namely official documents, as well as ordinary (private) documents. The Iraqi legislator defines an ordinary document in the Law of Evidence No. (107) of 1979, Article (25/First), as follows: “(First—An ordinary document shall be deemed to have been issued by the person who signed it unless he expressly denies the handwriting, signature, or thumbprint attributed to him.)” It is required that such a document bear a fixed date.

Accordingly, the claimant's residence in an ownership (titling) claim pursuant to Decision No. (1198) may be proven by official and ordinary documents. It may also be established by testimony (personal evidence) and by admission. Furthermore, residence in the property may be proven through urgent inspection and expert examination. The court may refer the case to experts to seek their assistance in matters whose determination

requires technical expertise, defining their mandate to include reviewing the case file—its statement of claim, defensive and responsive pleadings, and all preliminary documents—and determining the duration of residence in the property and whether such residence has been continuous. The court may also, of its own motion, refer the ownership claim to experts, or do so at the request of the litigants.

## Section Two

### ***Judicial Applications in Ownership (Titling) Claims Pursuant to Decision No. (1198) Based on Residence in the Property***

The Al-Kadhimiya Court of First Instance issued a decision adjudicating the transfer of ownership of the shares in the property numbered (— Al-Salam) to the defendant, on the ground that the claimant had sold all of his shares in the property for a received consideration in the amount of seven million five hundred thousand Iraqi dinars. The decision stated as follows:

“(In light of the foregoing, and upon the fulfillment of the conditions for ownership transfer and the application of the provisions of Decision No. (1198) of 1977, as amended, the Court has decided to adjudge the transfer of ownership of the claimant R. H. G.’s shares to the defendant M. H. G. in the property numbered (— Al-Salam), which devolved to him by inheritance from their deceased predecessor G. Y., and to notify the competent Real Estate Registration Directorate to record the same in its registers after the judgment acquires finality, and to charge the defendant with the fees, expenses, and attorney’s fees ...)”

From the foregoing, it is evident that the prevailing judicial approach tends toward granting ownership merely upon occupation of the property, in application of Decision No. (1198) of 1977, as amended.

## Second Requirement

### ***The Effect of the Judgment in an Ownership (Titling) Claim Based on the Construction of Buildings and Structures by the Claimant***

After a property is sold by means of an external (informal) sale document or merely by an oral contract, and a statement is opened at the Real Estate Registration Directorate, the buyer, considering himself the new owner, may sometimes proceed to construct buildings and structures on the property he has purchased. The improvements carried out by the buyer (the new owner) may constitute serious and persuasive ground before the court for granting ownership pursuant to Decision No. (1198). At times, an ethical or moral impediment may be the reason for not reducing the external contract to writing, despite residence in the property or the construction of buildings and installations. This may be demonstrated through certain judicial decisions. Accordingly, this requirement shall be divided into two sections, as follows:

## Section One

### ***Methods of Proving the Construction of Buildings and Installations in an Ownership (Titling) Claim Pursuant to Decision No. (1198)***

The construction of buildings and installations may be proven by all means of proof, including admission, expert examination, and inspection. Perhaps the decision of the Mosul Court of First Instance in the details of the case below, together with the decision of the Presidency of the Federal Nineveh Court of Appeal, constitutes the best evidence in this regard, as follows:

“(The two claimants alleged that the defendants had sold all of their shares in the property numbered (— Ninawa Quarter) for a received consideration for ten million dinars, and that they had established structures on the said property without any written objection, and that, due to the defendants’ refusal to transfer ownership, they requested a judgment transferring ownership of the said property to them jointly in equal shares, and charging the defendants with the costs. Following the public adversarial hearing, the Mosul Court of First Instance issued its judgment dismissing the claim and charging the claimants with the costs. Thereafter, the Court issued the following decision:

**Decision:**” This is because the term *real property* as used in clause (First/B) of the decision of the dissolved Revolutionary Command Council No. 1198 of 1977 was stated in absolute terms, without any qualification restricting it to a specific category of real property, such as residential property. Consequently, the Court of First Instance is required to oblige the plaintiff to specify the nature of the improvements he claims to have carried out, in a detailed list, to hear the defendants’ responses thereto, and thereafter to instruct the appointed judicial expert to determine whether such improvements fall within the legal description of buildings and structures or not, the date on which they were effected, and whether they postdate the undertaking to transfer ownership or not. The court must then render its judgment considering these findings. Since the Court of First Instance failed to adhere to the foregoing legal approach in its contested judgment, it was therefore decided to quash it and to return the case file to the competent court to proceed in accordance with the above-outlined course of action ....

## Section Two

### *The Moral Impediment to Proof in an Ownership Claim Pursuant to Decision No. 1198*

The essence of the moral impediment in ownership claims pursuant to Decision No. 1198 lies in the mutual trust between the seller and the purchaser, whereby kinship, a working relationship, or friendship compels them not to formalize the contract of sale in writing. Instead, they proceed directly to opening a statement (Form No. 59) before the competent Real Estate Registration Directorate. This type of sale, in which the moral impediment stands as a barrier to written proof of the legal transaction, may be established by proof, particularly testimonial evidence. From our personal perspective, the most important and clear evidence of the conclusion of a real estate sale contract in an ownership claim is the opening of the statement before the competent Real Estate Registration Directorate; otherwise, what purpose would be served by this step, in which the sale of the property is recorded before the competent official?

In this regard, the Baghdad–Karkh Court of Appeal, in its capacity as a court of cassation (Civil Panel), issued a noteworthy decision in which the court relied on the mere opening of the statement as a basis for ownership, as follows:

#### **The Decision:**

After examination and deliberation, it was found that the cassation appeal was submitted within the statutory time limit and contained its grounds; therefore, it was decided to accept it in form. Upon reviewing the contested judgment dated 1/8/2022, it became evident that it was incorrect and contrary to the provisions of the law. This is because the statement submitted by the plaintiff includes complete details of the sale of the shares of the deceased predecessor of the defendants to the plaintiff in the property that is the subject of the lawsuit, as it contained (the names of the parties, the description of the sold property, the amount of consideration, and the signatures of the parties by signature and thumbprint, in the presence of two witnesses). Accordingly, it is deemed to constitute an undertaking to transfer ownership as required for the application of the provisions of Decision No. 1198 of 1977, as amended. Although the settled jurisprudence of this panel has held that real estate registration transactions under Form No. 59 do not rise to the level of an undertaking to transfer ownership required by the decision, this was premised on the assumption that the statement does not include complete details of the sale transaction. Therefore, the Court of First Instance should have corresponded with the competent Real Estate Registration Directorate to verify the accuracy of the information contained in the statement submitted in the case that is the subject of the cassation appeal, and thereafter required the plaintiff to present comparative specimens for the purpose of conducting handwriting and fingerprint comparison by specialized experts at the Directorate of Criminal Evidence Investigation, and then to issue the appropriate decision in accordance with the provisions of the law in light of the results reached. Accordingly, it was decided to quash the contested judgment and to return the case file to its court to proceed in accordance with the foregoing ...).

#### **Third Requirement**

### *The Mechanism for Challenging a Judgment in an Ownership Claim Pursuant to Decision No. 1198 Based Solely on the Opening of the Statement*

A judicial judgment constitutes the final judicial outcome and the embodiment of the sought-after truth, beginning with the initiation of the dispute and the conduct of its procedures and culminating in the judgment pursued by the claimant. Such a judgment may be rendered either in favor of or against the claimant; consequently, if the judgment is issued against him by dismissing his claim, he may thereafter seek to challenge it. Accordingly, this requirement is divided into two branches, as follows:

#### *First Branch: Challenging an Ownership Decision Pursuant to Decision No. 1198 before the Court of Appeal in Its Cassation Capacity*

The competent court to hear a challenge after the conclusion of the first-instance stage is the Court of Appeal in its capacity as a court of cassation. Accordingly, the time limit for filing an appeal as specified by Decision No. 1198 of 1977 is thirty days, commencing from the date of issuance of the decision. It may therefore be stated that the legislator has confined challenges to ownership claims pursuant to Decision No. 1198 to recourse to the Court of Appeal. Practical judicial decisions further reinforce this position, including the decision of the Baghdad–Karkh Court of Appeal in its cassation capacity, which stated:

“After examination and deliberation, it was found that the cassation decision sought to be corrected was issued in an ownership claim instituted pursuant to the provisions of Decision No. 1198 of 1977, as amended by Decision No. 1426 of 1983. Since clause (Second/A) of the aforementioned decision stipulates that the Court of First Instance shall adjudicate claims arising from the application of its provisions, and that its decisions shall be subject to cassation before the Court of Appeal to which that court is affiliated within thirty days from the date of

notification thereof, and since the decision of the Court of Appeal in this regard is not subject to challenge by way of correction of the decision, it was therefore decided to dismiss the request for correction in form and to register the paid securities as final revenue to the treasury....”

### ***Second Branch: Judicial Applications in Cassation Appeals in Ownership Claims Pursuant to Decision No. 1198***

In a practical, illustrative decision issued by the Baghdad–Karkh Court of Appeal in its cassation capacity, the court stated:

“...since the two parties acknowledged during the session of 9/11/2022 that the remaining balance of the sale consideration amounted to three million Iraqi dinars, and that they were prepared to complete the procedures for transferring ownership upon its payment, and thereafter disputed the amount of the remaining balance of the sale consideration; and since an acknowledgment constitutes binding proof against the acknowledger (Article 67 of the Law of Evidence), and the acknowledger is bound by his acknowledgment and may not retract it (Article 68 of the Law of Evidence); the court was therefore required, in order to verify the seriousness of the parties in implementing what they had agreed upon in the aforementioned session, to oblige the plaintiff to deposit the remaining balance of the sale consideration, amounting to three million Iraqi dinars, into the court treasury as a trust for the account of the defendant, and thereafter to grant her an appropriate period to complete the procedures for transferring ownership, so as to enable the court to proceed with the case in light of the results reached. Accordingly, it was decided to quash the contested judgment and to return the case file to its court to proceed in accordance with the foregoing ...).

## **FINALLY: CONCLUSION WITH A SET OF FINDINGS AND RECOMMENDATIONS**

### **Findings:**

First: If the purchaser’s claim is established through his acknowledgment, together with the fulfillment of the other conditions for ownership, and the judge issues a judgment confirming the validity and enforceability of the contract, the resulting ownership decision may be enforced before the Real Estate Registration Directorate by registering the property in the name of the plaintiff after the decision has acquired finality.

Second: The undertaking to transfer ownership may consist of the opening of the statement, which is prepared on specially formatted paper in the form of a register in which the competent official records and verifies the identities of both Iraqi parties, the seller and the purchaser, and notes the property number, its description, type and category, the sale price, as well as the signatures and thumbprints of both the seller and the purchaser. In this respect, it resembles an external sale contract drawn up outside the Real Estate Registration Directorate before a broker or certified by a notary public, upon which the purchase of real property may also be proven, on the basis that such a contract document constitutes an undertaking to transfer ownership of the property.

Third: An ownership claim pursuant to Decision No. 1198 based solely on the opening of the statement is of an expedited nature and is submitted by way of a written application to the court.

### **Recommendations:**

The recent approach adopted by the Karkh Court of Appeal, in its cassation capacity, is to recognize the opening of the statement—also known in real estate registration practice as Form No. 59—where it contains all the details of the sale, including the identities of the seller and purchaser, the consideration, and the nature of the property sold, and is endorsed with their signatures or thumbprints. The court has acted appropriately in adopting this approach to limit the invalidation of real property sale contracts; otherwise, what reason would induce a seller to attend the Real Estate Registration Directorate to open a statement other than his agreement with the purchaser to sell his property? It is therefore recommended that this approach be unified across all Courts of Appeal, in their cassation capacity, throughout Iraq, to prevent fluctuation and inconsistency in judicial decisions, and to avoid the dispersion of judicial approaches between recognizing and denying ownership based on the opening of the statement.

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