

The Republic of the Sudan

The Constitutional Court

Tel. 015488955

Mazin Adil Ali Deng and others

Against

1/ Ministry of Interior

2/ Ministry of Justice

م د ق د / 153 / 2015 م

Date: 23/08/2016

**Head of Announcements Office**

Peace, mercy and blessing of God

Based on the Constitutional Court order, you are required to inform the individuals mentioned below that following submission of the petition papers to the Constitutional Court and a review by the court of the papers, it has issued the following order:

- 1- The petition is accepted on its merits and the decision of the Ministry of Interior rejecting the application for nationality on grounds that the responsible father's nationality has been withdrawn is revoked
- 2- It is decided that the applicants have the right to apply for nationality based on their mother's nationality
- 3- Parties should be notified

Thank you,

Sabri Hassan Abdalla,  
First Supervisor, Constitutional Court.

**Parties to be notified:**

- 1- Mr. Mazin Adil Ali Deng and others,- c/o Advocate Satti Mohammed Elhaj, Kashah New Building, Parliament Street, west of Khartoum District Court and east of Arbab Alagaid Mosque.
- 2- Government of Sudan – Attorney General, Ministry of Justice, c/o Counsellor Muhammed Salih Mahjoub.
3. The Legal Administration, Ministry of Interior, Buthaina

**In the name of God, the compassionate, the merciful**

**The Constitutional Court**

**م د ل ق د / 153 / 2015 م**

**Mazin Adil Ali Deng and others**

**Against**

**1- The Ministry of Interior**

**2- The Ministry of Justice**

The applicants in this case are children born in Sudan of a father from South Sudan and a mother from the north of Sudan.

The applicants applied to the Ministry of Interior to obtain Sudanese nationality. The Ministry of Interior rejected their application on the basis that they had lost the right to Sudanese nationality because the responsible father had acquired the nationality of South Sudan after the separation and had automatically lost the nationality of the Republic of Sudan.

Accordingly, the applicants filed a petition through Advocate Sati Mohammed Elhaj claiming that the decision of the Ministry of Interior violated the constitutional right of his clients to acquire Sudanese nationality, contrary to Article 7 of the 2005 Interim National Constitution of the Republic of the Sudan based on the following:

- 1- All the applicants are brothers; the second to the sixth are minors. They were born in Khartoum from a Sudanese mother. The mother's name is Saeeda Abuzaid Mohammed Docka. She holds the National Number 119-5241413.
- 2- The respondent refused to give them Sudanese nationality without providing legal justification. They were informed of the decision orally and the respondent refused to provide them with a written copy of the decision.
- 3- The above decision violated Article 7 of the 2005 constitution. The court is asked to apply Article 16(1)(b) of the Constitution Court law to issue an order to the respondent to give the applicants the Sudanese Nationality.

The case was accepted in principle on its merits and the applicants were asked to respond.

The Attorney General of Sudan replied on behalf of the respondent.

The summary of the reply is as follows:

- 1- Article 7(2)(3) of the Interim National Constitution states that:

“(2) Every person born to a Sudanese mother and father has an inalienable right to enjoy Sudanese nationality and citizenship.”

- 2- The law regulates nationality and naturalization, and does not permit nationality to be removed from a person who acquires it except by law. This shows that the constitution restricted the granting of nationality through mother by the law. The law states in Section 10(2) of the Sudanese Nationality Law 1994 as amended in 2011, that “Sudanese nationality

shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan.”

3. Section 10(3) of the law states: “Without prejudice to Section 15, Sudanese nationality shall be revoked where the Sudanese nationality of his responsible father is revoked in accordance to Section 10 (2) of this act.” Given that the applicant’s father Adil Deng acquired the nationality of South Sudan there is no violation of the constitution by the respondent but rather a correct application of the law.
4. The applicants should have challenged the provisions concerning the revocation of nationality i.e. section 10(2) and (3) of the Nationality Law 1994 as amended in 2011, instead of challenging the decision not to give nationality.

Those are the grounds on which the application was based on and the grounds on which the respondent’s reply was based.

Before going further into the subject I would like to point out that the decision which is the subject of case is not attached to the petition because it was issued orally. The respondents did not deny issuing the decision concerning the refusal of the application in their reply to the application. Accordingly, and for the purpose of Section (11)(2) of the Constitutional Court Act 2005, we consider that the fact that a copy of a written decision is not attached to the petition does not affect the case.

We return to the substance of this dispute and raise the following question:

Has the right of the applicants to acquire Sudanese Nationality lapsed due to the revocation of their father’s nationality because he became a foreigner and a citizen of the Republic of South Sudan?

To answer this question we return back to the constitutional text governing this issue which is the text of Article 7 of the Sudanese Interim National Constitution of 2005 which states:

- (1) Nationality shall be the basis for equal rights and duties for all Sudanese.
- (2) Every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality... (3) ... (4) ... etc.

This text is so clear that it does not require any further explanation or interpretation. It states that every person born to a Sudanese mother or father shall have the right to acquire the Sudanese nationality because the word “or” indicates that options are being given.

In this case the father of the applicants became a foreigner and lost the Sudanese nationality automatically, but the right of the applicants to acquire Sudanese nationality based on their mother’s nationality remains, according to Article 7 of the constitution.

As it appears in the application and is not disputed by the respondents, the mother of the applicants is the Sudanese citizen Saeeda Abuzaid Mohammed Docka, the holder of National Number: 119 – 5241413. Accordingly the plaintiffs have the right to acquire Sudanese nationality.

Article 3 of the 2005 constitution established the supremacy of the Interim National Constitution. It reads as follows: “The Interim National Constitution shall be the supreme law of the land. State constitutions and all laws shall comply with it.”

Accordingly the legislature is not permitted to pass a law which contravenes the constitution or derogates from any constitutional right.

The respondents relied on Article 7(3) which states “The law shall regulate citizenship and naturalization; no naturalized Sudanese shall be deprived of his/her acquired citizenship except in accordance with the law” and came to the conclusion on the basis of that article that the constitution

restricts the granting of nationality through the mother in accordance with the law. This text is very clear as it started with the phrase “the law shall regulate” and this does not imply any blocking or prohibition. The law, as we mentioned earlier, must be consistent with the constitution and must not derogate from a constitutional right but only regulate it.

We state clearly and unambiguously that every person born to a Sudanese mother or Sudanese father shall have the right to enjoy the Sudanese nationality in accordance with Article 7 of the Interim National Constitution of 2005 and that shall not be abrogated by law or regulation.

The applicants are:

- |                            |                           |
|----------------------------|---------------------------|
| (1) Mazin Adil Ali Deng    | (2) Munzir Adil Ali Deng  |
| (3) Mayada Adil Ali Deng   | (4) Mawada Adil Ali Deng  |
| (5) Mohammed Adil Ali Deng | (6) Mu’ayed Adil Ali Deng |

They are born from the Sudanese mother Saeeda Abuzaid Mohammed Docka, the holder of the national number 119-5241413. Therefore pursuant to Article 7 of the Interim National Constitution of 2005, they have the right to obtain the Sudanese nationality based on Article 7.

Therefore, I am of the opinion that the contested decision of the Ministry of Interior, which rejected their applications for nationality relying on the nationality of their mother and which was based on the revocation of the nationality of their father, Adil Ali Deng, who had become a foreigner, should be cancelled. We decide that they have the right to request for provision of Sudanese nationality to them based on the nationality of their mother.

**Abd El-Rahman Yagoub Ibrahim**  
**Member of the Constitutional Court**  
**28/7/2016**

I agree

**Dr. Mohammed Ibrahim Eltahir**  
**Member of the Constitutional Court**  
**1/8/2016**

I agree

**Sania Elrasheed Mergani**  
**Member Constitutional Court**  
**2/8/2016**

I agree

**Dr. Haj Adam Hassan Eltahir**  
**Member of the Constitutional Court**  
**2/8/2016**

I agree

**Soumi Zidan Attia**  
**Member of the Constitutional Court**  
**3/8/2016**

I agree

**Dr. Mohammed Ahmed Tahir**  
**Member of the Constitutional Court**  
**7/8/2016**

I agree

**Dr. Wahby Mohammed Mukhtar**  
**President of the Constitutional Court**  
**10/8/2016**

I agree

The final decision

- 1- The application is accepted on its merits and the decision of the Ministry of Interior to reject the application for nationality on the grounds that the nationality of responsible father had been revoked is cancelled.
- 2- It is decided that the applicants have the right to submit their application for nationality based on their mother's nationality
- 3- Parties should be notified.

**Dr. Wahby Mohammed Mukhtar**

**President of the Constitutional Court**

**10/8/2016**