

Summary
Iman Hasan Benjamin v Sudan Government
Ref. 150/2012
Prepared by the International Refugee Rights Initiative

The Constitutional Court of the Republic of Sudan issued this decision on July 3, 2014.

Issue:

Should Article 10(2) of the 1994 Sudanese Nationality Act (amended 2011) (“the Act”) be declared invalid on the grounds that it deprives the Appellant of her Sudanese nationality, a constitutional right, and deprives her of higher education, also a constitutional right?

Decision: Appeal dismissed – the impugned article should not be declared invalid.

Facts:

The Appellant, Iman Hasan Benjamin, filed a constitutional appeal against the government of Sudan seeking that Article 10(2) of the Act be declared invalid on the grounds that it deprives her of her Sudanese nationality.

The Appellant was born in the village of Wad Kaamil, a suburb of Al-Hasaheesa town, in what is now Sudan, on 5 September 1994 to a Sudanese mother. The Appellant’s father, Hasan Benjamin Daoud, worked for the police force in Al-Hasaheesa and died on 29 January 2011. According to his death certificate, Hasan was born in Juba, his nationality was Sudanese and his religion was Christianity.

In order to apply for university in Sudan, a nationality certificate and national identification number are required. When the Appellant went to apply for a nationality certificate, the Civil Registry Department directed her to the Aliens Department to register as a foreigner on the grounds that her father had become a non-Sudanese foreigner on 18 July 2011, the date of secession of South Sudan.

Analysis:

The Appellant’s Position:

Article 10 of the Act reads:

(2) Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan.

(3) 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.

The Appellant points to provisions of the Constitution and international conventions that are based on the Universal Declaration of Human Rights. Pursuant to Article

15(1) of the latter legislation: “Everyone has the right to a nationality”; and as per Article 2: “No one shall be arbitrarily deprived of his nationality.”

The Appellant also draws on precedents relating to the predecessor state and the successor state, international legal principles governing the succession of states and stipulations related to right to a nationality.

The Appellant submits that because she was denied Sudanese nationality, she lost the opportunity to apply to any Sudanese university or higher education institute.

The Respondent’s Position:

The government of Sudan, represented by the Ministry of Justice, declares that because of secession, South Sudanese subjects have become alien persons within the predecessor state. The government points to the principle of reciprocity which recognizes that South Sudan considers Northern Sudanese individuals alien persons.

The Respondent also submits that the state has provided the right to education at all levels without discrimination. The Respondent further argues that the Appellant cannot declare the impugned legislation invalid unless she has appointed herself a representative of all South Sudanese citizens.

The Respondent maintains that because the impugned legislation is a sovereign matter dictated by the supreme public interest, it is part of the public order and cannot be challenged before the courts.

The Respondent also describes the appeal as premature because the Appellant has not attached a copy of the decision of the Civil Registry appealed against and the appellant has not filed evidence indicating a decision by the Alien Persons Department.

Based on the above, the Respondent requests the court to dismiss the appeal.

The Court’s Analysis:

The court rejects the Respondent’s submission that the impugned legislation is a sovereign matter. The court points to Article 8 of the Administrative Act 2005, which defines sovereign matters, and finds that stipulations of nationality are not included. As such, the court affirms the Nationality Act is an ordinary piece of legislation that may be challenged on the grounds that it is inconsistent with the Constitution and that a finding of inconsistency may justify its partial or total cancellation.

In regards to the impugned legislation, the court finds no constitutional defect that merits its cancellation. The court finds that as a result of secession, every Sudanese who became a Southern lost their Northern Sudanese nationality. The court affirms

that this is because an individual cannot have dual nationality from the beginning. Instead, the holding of more than one nationality is a matter which comes later.

In the case at hand, the court finds that the refusal of the Civil Registry Department to grant the Appellant's nationality certificate is a normal administrative decision which may be challenged on an administrative basis up to the office of the Minister concerned. After a challenge has been made, the competent branch of the Judiciary may consider an administrative appeal. At that point, the court is authorized to have a nationality certificate produced.

Pursuant to Article 4(3) of the 1994 Nationality Act: "A person born to a mother who is Sudanese by birth shall be entitled to Sudanese nationality by birth whenever he applies for it." The court finds no evidence that the Appellant has applied for Sudanese nationality on the basis of her mother's status.

The court finds the impugned legislation is consistent with due process and does not run contrary to the 2005 Sudanese Interim Constitution and the treaties incorporated into the Constitution. The court also finds that Appellant has not been deprived of the right to education before the revocation of her father's nationality. Further, the Court declares the Appellant's claim premature because she has not filed an administrative appeal and has not made an application to obtain Sudanese nationality on the basis of her mother's status pursuant to Article 4(3) of the Nationality Act.