

Republic of Iraq  
Federal Supreme Court  
Ref. 125 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16/8/2023 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, Ayooob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Abeer Essa Mohammed – her agent the barrister Waleed Kasid Al-Zaidi.

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agents the Director-General of the legal department Sabah Jumaa Al-Bawi and the official jurist Saman Muhsin Ibrahim.  
2. Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this capacity – his agent the legal counselor Ahmed Hasan Abid.  
3. The Representative Fatima Hussein Mutaighi – her agent the barrister Raheem Hasan Khudhair.

### **The Claim**

The plaintiff claimed that the Representative (Fatima Hussein Mtighi) took the constitutional oath before the Council of Representatives as an alternative to the resigned Representative (Mona Ahmed Kazim) for the third constituency in Maysan Governorate, despite obtaining (762) votes, and she was not the highest loser in the women's quota at the governorate level, and the plaintiff believes that she is more entitled to the parliamentary seat as she represents the highest loser of votes from women at the governorate level (the first district), as she obtained (3952) votes, the performance of the

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Republic of Iraq  
Federal Supreme Court  
Ref. 125 / federal /2023



Kurdish text

Representative challenged by the validity of her membership for the constitutional oath violates Article (2/3) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 and violates the decision of the Federal Supreme Court No. (244/Federal/2022), so the plaintiff objected before the Council of Representatives to the validity of the aforementioned membership of the Representative on 2/5/2023 and the objection was registered in number (4089) and the answer did not respond despite the passage of the period of (30) days since its submission, therefore, the plaintiff asked this court to annul the membership of the third defendant (Fatima Hussein Metighi) and to oblige the Council of Representatives and the Independent High Electoral Commission to allow her to take the constitutional oath as a representative in the Council of Representatives for its fifth session. The lawsuit was registered with this court and the legal fee was collected for it and the defendants were informed of its petition and documents based on Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the internal system of the Federal Supreme Court No. (1) of 2022, the first defendant's agent replied with the reply statement dated 18/6/2023 to summarize it: that the plaintiff has run for membership of the Council of Representatives for the first circuit of Maysan Governorate, this constituency has fulfilled the women's representation of the women's quota, where (Thana Faraj Othman Al-Rubaie) was replaced by the resigned representative (Ghosoun Hamid Attia Sayed Al-Fartousi), while the third defendant (Fatima Hussein Metighi) ran for the third constituency of the governorate, and there is no legal basis for the plaintiff to claim to occupy a seat allocated for the third electoral district as long as she did not run in it, as the Independent High Electoral Commission nominated representative (Fatima Hussein Metighi) as a replacement for the resigned representative (Mona Ahmed Kazem Zayer). The Commission Law allows stakeholders to appeal the decisions of the Board of Commissioners within three days from the date of their issuance, before the discriminatory body concerned with election issues, since the plaintiff did not obtain a decision reversing the decision of the Independent High Electoral Commission to

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Republic of Iraq  
Federal Supreme Court  
Ref. 125 / federal /2023



Kurdish text

name the third defendant to replace the resigned deputy, he requested that the lawsuit be dismissed and that the plaintiff be charged all expenses. The second defendant's attorney replied in the reply dated 21/6/2023 in conclusion: that what the plaintiff claims that she is entitled to the seat as the loser with the highest votes has no legal basis, so the law did not indicate that the vacant seat was granted to the loser with the highest votes, so he requested the dismissal of the lawsuit and the plaintiff to charge the expenses. The third defendant's agent replied with two answering draafts on 21/6 and 27/7/2023, their conclusion: that a decision by the Council of Representatives not to accept the appeal is essential to accept the lawsuit, otherwise it will be rejected formally, and that the Council of Representatives Elections Law No. (9) of 2020 set new provisions for the distribution of women's quotas by dividing Iraq into (83) electoral districts and canceled all previous arithmetic methods according to the table attached to the law, as well as canceled all other laws, including the Law on the Replacement of Members of the Council of Representatives No. ( 6) For the year 2006 amended, where it is stipulated in Article (50 /1<sup>st</sup>) of the Elections Law that (no text that contradicts the provisions of this law shall apply), and therefore it is not correct to refer to the replacement law or any other law in calculating the quota, so he requested the dismissal of the lawsuit and the plaintiff to be charged with expenses and advocacy fees. After completing the procedures required by the court's rules of procedure, a date was set for the consideration of the case without pleading based on Article (31/5<sup>th</sup>) thereof, and on the specified day, the court was formed and the case began to be heard, the court checked the plaintiff's requests and her grounds and the defenses of the defendants' agents, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

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Federal Supreme Court  
Ref. 125 / federal /2023



Kurdish text

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Abeer Issa Ahmed is focused on challenging the negative decision of the first defendant to dismiss her objection to the validity of the membership of the third defendant, Representative Fatima Hussein Mittigi, and to demand a ruling to invalidate her membership, and to oblige the Council of Representatives and the Independent High Electoral Commission to allow her to take the constitutional oath in her place as a deputy in the Iraqi Council of Representatives for its fifth session, the Court finds that Article (49/4<sup>th</sup>) of the Constitution of the Republic of Iraq for the year 2005 stipulates (Fourth: The Electoral Law aims to achieve a percentage of representation of women not less than one quarter of the number of members of the Council of Representatives), while paragraph (5<sup>th</sup>) of the same article stipulates that: (The Council of Representatives shall enact a law dealing with cases of replacement of its members upon resignation, dismissal or death), article (1) of Law No. (15) of 2023, the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, published in the Iraqi Gazette No. (4730 on 31/7/2023), stipulates that ((The text of paragraph (3) of Article II of the law shall be repealed and replaced by the following: 3. If the vacant seat belongs to a woman, she must be replaced by a woman in the same constituency, regardless of exceeding the minimum representation of women in the Council)), and through the texts of the law dealt with the issue of women's representation and how to replace members of the Council of Representatives in general and replace members of the Council of Representatives from women in particular, and it came with a definitive text in the Second Amendment under Article 1<sup>st</sup>/paragraph (3) mentioned above regarding the subject of replacing the vacant seat that belongs to a woman and explicitly stipulated that, it was stipulated that the replacement should be a woman in the same constituency even if the number of women in the electoral district

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*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 125 / federal /2023



Kurdish text

exceeded the minimum representation of women in the Council stipulated in Article (49/4<sup>th</sup>) of the Constitution, and thus the plaintiff's claim is dismissable because there is nothing that prejudices the validity of the membership of the third defendant in light of what is stated in Law No. (15) of 2023 - Law of the Second Amendment to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, and for the foregoing, the court decided to dismiss the plaintiff Abeer Issa Mohammed's lawsuit and her charging the fees, expenses, and fees of the defendants' agents an amount of one hundred thousand dinars to be distributed among them following the law. The decision has been issued with majority, final, and binding for all authorities according to the provisions of Articles (52 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4/9<sup>th</sup> 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 on the session dated 28/Muharram Al-Haram/1445 Hijri coinciding 16/August/2023 AD.

**Judge**

**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**

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