

DUAL CITIZENSHIP FOR NAMIBIA

Does the Government of the Republic of Namibia allow dual citizenship in some form or other to its citizens under the local laws?

1. Namibian Constitution

CHAPTER 2

Citizenship

Article 4 Acquisition and Loss of Citizenship

(8) Nothing in this Constitution shall preclude Parliament from enacting legislation providing for the loss of Namibian citizenship by persons who, after the date of Independence:

- (a) have acquired the citizenship of any other country by any voluntary act; or
- (b) have served or volunteered to serve in the armed or security forces of any other country without the written permission of the Namibian Government; or
- (c) have taken up permanent residence in any other country and have absented themselves thereafter from Namibia for a period in excess of two (2) years without the written permission of the Namibian Government:

provided that no person who is a citizen of Namibia by birth or descent may be deprived of Namibian citizenship by such legislation.

2. Namibian Citizenship Act, 1990¹

26 Prohibition of dual citizenship

Subject to the provisions of this Act or *any other law*, no Namibian citizen shall also be a citizen of a foreign country.

¹ Namibian Citizenship Act, 1990 (Act No. 14 of 1990).

3. Case Law

*Poppy Elizabeth Tlboro v Minister of Home Affairs*²

"[29] [...] [C]onsider the constitutionality of section 26 of the [Namibian Citizenship] Act, 1990 ... the section prohibits Namibian citizens to also be citizens of other countries, it does so subject to "the provisions of this Act or any other law". Inasmuch as the Constitution is one of the "other" laws contemplated in the proviso to the prohibition³, the contention that the prohibition falls foul of the Constitution is clearly untenable. The prohibition is expressly made subject to the provisions of the Constitution and, therefore, no conflict can arise.

[...] Although the Constitution does not expressly allow dual citizenship, it follows naturally and logically from the implementation of its provisions and was expressly contemplated as a possibility. [...] Most or all Namibians who became Namibian citizens by birth on the date of Independence were also citizens of the sovereign States whose citizenship they held the day before. Unless they were deprived of their foreign citizenship in terms of the laws of those States, they remained citizens thereof upon Independence notwithstanding the fact that they had also automatically acquired Namibian citizenship by operation of law. Moreover, if permitted under the laws of a foreign State, Namibian citizens by birth or descent are at liberty to acquire citizenship of those States even after Independence without being at risk of losing their Namibian citizenship."

*Berker v Minister of Home Affairs and Immigration and Others*⁴

"[5] The Permanent Secretary of the Ministry deposed an answering affidavit in June 2011. [...] He also correctly acknowledged that the Ministry does not dispute the fact that section 26 of the Namibian Citizenship Act 14 of 1990 does not apply to Namibian citizens by birth or descent, given the constitutional rights of those citizens.

[6] [...] By agreement, the following order was also made on 16 November 2011 postponing the matter to 29 February 2012 and with the following further orders being made by agreement:

[...]

2. That s 26 of the Namibian Citizenship Act, 1990 (Act 14 of 1990) is in breach of art 4(8) of the Namibian Constitution as far as it is construed and applied to deprive Namibian citizens by birth or descent of their citizenship.

3. That immigration officers act unlawfully when applying the limitation of entry into, and residence in, Namibia in Part V of the Immigration Control Act, 1993⁵ to Namibian citizens.

² *Poppy Elizabeth Tlboro v Minister of Home Affairs* Case No. (P) A 159/2000 (HC).

³ Section 2 of The Interpretation of Laws Proclamation, 1920 (Proclamation No. 37 of 1920).

⁴ *Berker v Minister of Home Affairs and Immigration and Others* 2012 (1) NR 354 (HC).

⁵ Immigration Control Act, 1993 (Act No. 7 of 1993).

4. That article 21(1)(i) of the Namibian Constitution grant Namibian citizens the freedom to leave and return to Namibia without limitation subject to sub section 6 and 7 of the Act.'

4. Conclusion

Upon the proper interpretation of the Namibian Constitution as seen in the two cited cases it is clear that dual citizenship is allowed in two circumstances.

Namibian citizens who are citizens only by birth⁶ or descent⁷ may hold dual citizenship if the laws of the other country allow such dual citizenship.

End

⁶ Namibian Constitution Article 4 (1).

⁷ Namibian Constitution Article 4 (2).