



REPUBLIC OF NAMIBIA

OFFICE OF THE OMBUDSMAN

Tel: (061) 207 3215

Fax: (061) 22-6838

E-mail: erakow@ombudsman.org.na

Enquiries: Mrs. E. Rakow

Our Ref:

Your Ref:

The Director

Office of the Ombudsman

Private Bag 13211

Windhoek

NAMIBIA

11 March 2015

To whom it may concern

Dear Sir/Mam

RE: INTERPRETATION ON AQUISION AND LOSS OF NAMIBIAN CITIZENSHIP BY BIRTH

1. The above refers. The short legal opinion here-under is the understanding of the Office of the Ombudsman of the current legal position of persons who are Namibian citizens by birth.
2. The position of persons born in Namibia and who therefore can claim citizenship by birth is that they can never loose that citizenship unless they formally renounce same. In this regard we refer to the interpretation that was given to this type of citizenship by our Namibian High Court in ***Thloro v Minister of Home Affairs 2008 (1) (NR) 97 (HC)*** by Justice Maritz with Justice Mainga concurring. We quote from that specific judgement:

“ *The automatic acquisition of Namibian citizenship by birth may not be otherwise regulated or derogated from by an Act of Parliament. Parliament may not deprive individuals of Namibian citizenship by birth – not even if, after the date of Independence, they have acquire the citizenship of any other country, or served in the armed forces of such a country without permission of the Namibian government or if they have taken up residence in such a country and absented themselves thereafter from Namibia for a period of more than 2 years without such permission. The only manner in which persons falling within this category may be deprived of Namibian citizenship is by voluntary renunciation in a formal deed to that effect.* “

3. It is therefore the position in Namibia that you are entitled to have more than one citizenship as a Namibian citizen if you acquired your citizenship by being either born a Namibian (or in the then South West Africa) or by being a direct descendant of a Namibian citizen (citizenship by descent). These two types of citizenship are different in this regard from other types of citizenship as it allows the holder of Namibian citizenship obtained in either of these manners to hold more than one citizenship.
4. This was also the opinion expressed by the Namibian High Court by Justice Smuts in ***Iris Regina Le Roux v The Minister of Home Affairs and Immigrations and 2 others*** which was delivered on 6/6/2011. In his very short judgement he said the following:

“ *In view of the decision of Maritz, J (as he then was) in Thloro v Minister of Home Affairs 2008 (1) (NR) 97 (HC), it will be not necessary for me to grant the Constitutional relief sought. He held that there is an automatic acquisition of citizenship for those born in Namibia. They cannot be deprived of that, even if they have acquired citizenship of another country. The prohibition contained in s 26 is subject to the Act and other laws. The latter category includes the Constitution which entrenches the right to citizenship to those born in Namibia. I respectfully agree with the approach of Maritz, J in that judgment which I am also bound to follow (in the absence of finding that it was clearly wrong; on the contrary, it is in my view, correct). It would appear from the Attorney-General’s affidavit that this approach has also been accepted by the Government. Ministry officials need to act in accordance with the legal advice of the Attorney-General.* “

5. The Namibian Constitution provides for various forms of Namibian citizenship under article 4 –
 - (1) citizens of Namibia by birth:
 - (2) citizens of Namibia by descent:
 - (3) citizens of Namibia by marriage:
 - (4) Citizenship by registration
 - (5) Citizenship by naturalisation

Although the Namibian Parliament is not precluded from enacting legislation for the loss of Namibian citizenship by persons who after the date of Independence acquired the citizenship of any other country, (article 4(8)) the article contain the following provision in relation to such legislation:

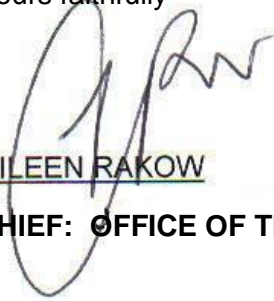
“ *provided that no person who is a citizen of Namibia by birth or descent may be deprived of Namibian citizenship by such legislation* “

6. From the interpretation of the Constitution and the reading of the two above mentioned Namibian cases it must be clear that persons who are Namibian citizens by birth and by descent can not loose their Namibian citizenship by virtue of obtaining the citizenship of another country in addition to their Namibian citizenship, unlike the other three types or forms of Namibian citizenship and it therefore goes without saying that a person may possess Namibian Citizenship simultaneously with any other

Citizenship if the latter is allowed in the country from which the Namibian Citizen wish to obtain citizenship.

7. Please do not hesitate to contact the writer here-of for any additional information.

Yours faithfully

A handwritten signature in black ink, appearing to read 'ER', is written over the typed name 'EILEEN RAKOW'.

EILEEN RAKOW

CHIEF: OFFICE OF THE OMBUDSMAN