

**DUAL CITIZENSHIP IN KENYA:
A CASE FOR ITS PROVISION UNDER KENYAN LAW.**

BY DORIS W. GITHUA ©

G34/7500/2001

**DISSERTATION SUBMITTED IN PARTIAL FULLFILMENT OF THE
REQUIREMENT FOR LL.B DEGREE,**

UNIVERSITY OF NAIROBI.

SUPERVISOR: MRS. JOY ASIEMA

NAIROBI

AUGUST 2005

LIST OF STATUTES AND INTERNATIONAL INSTRUMENTS.

LIST OF STATUTES

SOUTH AFRICA

South African Constitution, 1996

USA

14th Amendment to the US Constitution

INDIA

Indian Citizenship Act , 1955

Indian Citizenship Amendment Act, 1986

Indian Citizenship Amendment Act , 1992

KENYA

The current Kenyan Constitution

The Proposed New Draft Constitution

Kenyan Immigration Act (Cap 171 Laws of Kenya)

Kenyan Citizenship Act (Cap 170 Laws of Kenya)

Law of Domicile Act (Cap 35 Laws of Kenya)

BRITAIN or UK

British Nationality and Status of Aliens Act, 1914

British Nationality Act, 1948

British Nationality Act, 1981

NIGERIA

Nigerian Independent Act, 1960

Nigerian Constitution, 1999

Nigerian Citizenship Act

LIST OF INTERNATIONAL INSTRUMENTS

The Universal Declaration on Human Rights

The European Convention on Human Rights

The African Charter on Human Rights.

The International Covenant in Economic, Social and Cultural Rights

LIST OF CASES

Nottebohm case (Liechtenstein vs. Guatemala) (1955), ICJ Rep 4 pp 22-3

Tinus-Morroco Nationality Decree case (1923)PCIJ, Series B, No. 4, pp 27

Calvin's case of 1608-7 Co.Rep. 1a

S.S Lotus case (France vs. Turkey) (1927)PCIJ, Series A, No. 10, pp 521-49

Kyokano Okimara v. Achson, United States, District CA Hawaii,(1951),99F.supp.587.

Mavromatis Palestine Concession case, (1925) PCIJ Series A No.5

Islamic Republic of Iran vs. USA (1989)ICJ Rep, order of 13 Dec. 1989

TABLE OF CONTENTS

Dedication.....	ii
Acknowledgements.....	iii
List of Abbreviations and Acronyms.....	v
List of Statutes and International Instruments.....	vi
List of Cases.....	viii

PREFACE.....	1
---------------------	----------

CHAPTER 1

THE CONCEPT OF CITIZENSHIP

1.1	INTRODUCTION.....	8
1.2	NATIONALITY.....	9
1.3	IMPORTANCE OF NATIONALITY OR CITIZENSHIP.....	12
1.4	ACQUISITION OF CITIZENSHIP.....	15
1.4.1	ACQUISITION BY BIRTH.....	15
1.4.2	ACQUISITION BY DESCENT.....	17
1.4.3	CITIZENSHIP ACQUIRED SUBSEQUENTLY.....	18
	a. Marriage.....	19
	b. Adoption and Legitimation.....	21
	c. Domicile.....	21
	d. Naturalization.....	22
1.5	LOSS OF CITIZENSHIP.....	24
1.6	THE CONCEPT OF DUAL CITIZENSHIP.....	25
1.6.1	INTERNATIONAL INSTRUMENTS DEALING WITH CITIZENSHIP.....	26
1.6.2	INTERNATIONAL INSTRUMENTS DEALING WITH DUAL CITIZENSHIP.....	28
1.7	CONCLUSION.....	31

CHAPTER 2

ADVANTAGES AND DISADVANTAGES OF DUAL CITIZENSHIP

2.1	INTRODUCTION.....	33
2.2	ADVANTAGES OF DUAL CITIZENSHIP.....	34
2.3	DISADVANTAGES OF DUAL CITIZENSHIP.....	48
2.4	CONCLUSION.....	52

CHAPTER 3

DUAL CITIZENSHIP IN THE UNITED KINGDOM AND NIGERIA: A COMPARATIVE PERSPECTIVE

3.1	INTRODUCTION.....	53
3.2	DUAL CITIZENSHIP IN THE UNITED KINGDOM: A COMPARATIVE PERSPECTIVE	
3.2.1	HISTORICAL BACKGROUND.....	54
3.2.2	SCOPE OF DUAL CITIZENSHIP.....	55
3.2.3	ELIGIBILITY OF ACQUIRING DUAL CITIZENSHIP.....	56
3.2.3.1	ACQUISITION OF UK CITIZENSHIP.....	57
3.2.4	STATUS OF MARRIED WOMEN AND CHILDREN.....	62
3.2.5	THE EUROPEAN UNION.....	63
3.2.6	BENEFITS OF DUAL CITIZENSHIP.....	63
3.2.7	LOSS OF CITIZENSHIP.....	64
3.2.8	CONCLUSION.....	64

3.3	DUAL CITIZENSHIP IN NIGERIA: A COMPARATIVE PERSPECTIVE	
3.3.1	HISTORICAL BACKGROUND.....	64
3.3.2	SCOPE OF DUAL CITIZENSHIP.....	66
3.3.3	ELIGIBILITY OF ACQUIRING DUAL CITIZENSHIP.....	68
3.3.3.1	ACQUISITION OF NIGERIAN CITIZENSHIP.....	68
3.3.4	STATUS OF ALIENS.....	71
3.3.5	STATUS OF MARRIED WOMEN AND CHILDREN.....	72
3.3.6	BENEFITS OF DUAL CITIZENSHIP.....	72
3.3.7	LOSS OF CITIZENSHIP.....	73
3.3.8	CONCLUSION.....	74

CHAPTER 4

CONCLUSION AND RECOMMENDATIONS

4.1	INTRODUCTION.....	75
4.2	CONCLUSION.....	75
4.3	RECOMMENDATIONS.....	77

	SELECTED BIBLIOGRAPHY.....	80
--	-----------------------------------	-----------

PREFACE

1. INTRODUCTION

A person's nationality is described as a continuing legal relationship between a sovereign state on one hand and the citizen on the other. Under International Law, nationality constitutes an important link between the individual and the state.

Dual citizenship means that a person is allowed to hold the citizenship of two or more countries. This means that a person may have several citizenships at a go. Consequently he may have the rights and obligations conferred by each of these countries as its citizens. These several citizenships may be of three countries, however, cases of dual or multiple citizenship are more common. The terms "dual citizenship" and "dual nationality" are now used interchangeably.

Every independent nation makes its own decision as to which its citizens will be. Therefore, nationality of a person is determined in accordance with the rules of municipal law. A person then possesses dual or multiple citizenship when more than one country recognizes them as its citizen.

Usually countries follow the common law in defining citizenship. This is based on ones decent, place of birth, naturalization or marriage. The nationality laws of every state provide the acquisition of its nationality by birth either, according to *jus soli*, that is by being born in the territory of a state; or *jus sanguinis*, that is by decent-being born of parents who are its nationals, and sometimes, according to both. These two principles will be discussed later in depth. One can also acquire nationality subsequently, by operation of law, due to the effect of certain changes in the civil status of an individual, like marriage ,adoption, legitimation, affiliation and naturalization.

Some countries in the world have liberalized their citizenship laws and adopted dual citizenship while others such as Kenya have not. Understanding the issues surrounding dual citizenship and why it should be legalized in Kenya is important.

2. BACKGROUND AND STATEMENT OF THE PROBLEM

In Kenya, whether to make provision for dual citizenship in our Kenyan Constitution or not has been the subject of much debate. This was seen more clearly in the deliberations of the delegates involved in the process of reviewing the Constitution of Kenya between 2003 and 2004. Delegates were divided into two camps. There were those for and that are against its provision in the New Constitution. It is worth noting, that Kenya has been reviewing its current Constitution for the last two years. Allowing dual citizenship has been one of these contested issues hence the debate.

The Kenyan government has frowned upon Kenyans acquiring other citizenships, because in some way or another this has shown disloyalty to the Kenyan citizenship. Kenyan citizens who do this have been perceived to be unpatriotic to their country. However, this is not the case.

Our Kenyan citizenship laws have been discriminatory to women in that Kenyan women living abroad cannot as the laws stand confer citizenship to their children born abroad. Their male counterparts on the other hand can confer automatic Kenyan citizenship to their children born in the same circumstances. Further, women who are Kenyan citizens who get married to non Kenyans automatically lose their Kenyan citizenship to embrace that of their husband since Kenya does not allow dual citizenship. These women can neither confer Kenyan citizenship to their foreign husbands nor, their children. To other Kenyan citizens who seek to acquire foreign citizenship by naturalization, they should not be denied their rights as Kenyan citizens due to the fact that they have embraced foreign citizenships.

Our current Constitution, section 97 outlaws dual citizenship. Section 97 subsection (1) specifically states that, "A person who, upon the attainment of age of twenty-one years, is a citizen of Kenya and also a citizen of some country other than Kenya shall, subject to subsection (7), cease to be a citizen of Kenya upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who was born outside Kenya, made and registered such declaration of

his intentions concerning residence as may be prescribed by or under an Act of Parliament.”

Section 97 subsection (3) also states that,

“A citizen of Kenya shall, subject to subsection (7) cease to be such a citizen if:

- a) Having attained the age of twenty- one years, he acquires the citizenship of some country other than Kenya by voluntary act (other than marriage) or;
- b) Having attained the age of twenty-one years, he acquires the citizenship of some other country other than Kenya and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intention concerning residence as may be prescribed by or under an Act of Parliament.”

The meaning of this section has been, where a Kenyan acquires foreign citizenship, he must renounce Kenyan citizenship to embrace the foreign one since if he does not renounce the foreign one, within a specified period of time; he ceases to be a Kenyan citizen. He hence visits Kenya as a tourist.

The Proposed New Draft Constitution (published on Tuesday, 23rd August 2005, by Attorney General; Amos Wako) has taken a step in chapter 4, section 21 to provide for dual citizenship when the new Constitution comes into force. Section 21 (a) of that draft states that, “ A person who is a citizen by birth does not lose citizenship by reason only of acquiring the citizenship of another country”. Subsection (b) further states that, “A person who is a citizen by birth may apply to regain citizenship, if the person has ceased to be a citizen as a result of acquiring the citizenship of another country.” This illustrates that the new Constitution that will come into force in the near future makes provision for dual citizenship to Kenyan citizens by birth only. This provision allowing dual citizenship therefore protects a citizen by birth that does not lose citizenship by reason only of acquiring the citizenship of another country; and the same person may apply to regain citizenship if the person had ceased to be a Kenyan citizen as a result of acquiring the

citizenship of another country. This is different from previous drafts of the Constitution that had been deliberated on, which were not categorical on the type of Kenyan citizen who can hold dual citizenship. However, providing dual citizenship for Kenyan citizens by birth is the first step towards allowing dual citizenship in Kenya.

The statement of the problem will therefore deal with issues surrounding dual citizenship including its advantages and disadvantages with a view that the advantages outweigh the disadvantages and Kenya should therefore, as a country allow dual citizenship.

3. JUSTIFICATION OF STUDY

This study is undertaken to try and understand the concept of dual citizenship. Not much has been written on dual citizenship except in form of bits and pieces that are scattered on various literatures dealing with citizenship and nationality. I have therefore embarked on this study to show that dual citizenship is indeed beneficial and therefore, is advantageous as compared to single citizenship. Kenya can then embrace this concept by making its citizenship laws more liberal.

This dissertation is an attempt to point out that by making provision for dual citizenship in our Kenyan Constitution or making our citizenship laws more flexible, issues of denouncing Kenyans citizenship can be tackled effectively in that; there will be no automatic loss of citizenship such as, through marriage, which was the case before. This will involve showing the attendant economic benefits of dual citizenship that is how dual citizenship impacts positively on selected areas of the government and the individual; as compared to the single system of citizenship laws, which exists today. For example with an improvement of social security due to dual citizenship, the economy of Kenya will grow thus being beneficial to the individual and the state. With dual citizenship in place Kenyans can hold positions of office in other countries. In addition they can vote and be elected in political positions of foreign states. This would help

Kenya in its domestic matters affecting it and the countries its citizens are also citizens of. This would enhance International Corporation.

According to the words of Peter Schuck, a Yale Law School Professor who has written extensively on the topic of dual nationality .He says,

“I share the sentiments that indeed the trend towards tolerance of dual nationality has coincided with enormous changes in the world during the last ten years, one of the greatest periods of migration in history.”

This shows the increasing importance to incorporate dual citizenship in our municipal laws and more particularly in our Kenyan Constitution.

It is my hope that Kenyans and the legal fraternity will appreciate the legal benefits of dual citizenship once it is legalized. It is on this note that if will endeavor to bring out its transparency in my dissertation. With more countries legalizing their citizenship laws, it would indeed be encouraging to see Kenya follow suit, as the world becomes a global village.

4. OBJECTIVES

The general objective of this study is to examine generally the advantages and disadvantages of granting dual citizenship and the issues surrounding this type of citizenship. This will include the impact dual citizenship has on the government and the individual in improving the standard of living. More specifically the study intends to:

- i) Find out who qualifies to be given the status of a dual citizenship that is, should it be selective or open ended to include all Kenyans including high-ranking government officials?
- ii) Find out the advantages and disadvantages of dual citizenship generally.
- iii) Find out what are the economic benefits of dual citizenship
- iv) Find out how dual citizenship will affect Kenya as regards its citizens and the international community. This will involve issues relating to dispute

resolution between Kenya and its citizens who are also citizens of other states. On what grounds can Kenya espouse a claim on behalf of its citizen in international law who has been injured?

- v) Find out what are the advantages and disadvantages of countries with dual citizenship laws such as Nigeria and the United Kingdom (UK). What advantages do they have as countries that Kenya can emulate?

5. HYPOTHESIS

This research is based on the following hypotheses.

1. That the introduction of a new law in Kenya will lead to a solution of some problems facing Kenyans who acquire different citizenship. Such problems include for example, Kenyan's being denied their right of Kenyan citizenship for being born in foreign countries. Also Kenyan's acquiring greener pastures abroad in foreign states are forced to renounce their Kenyan allegiance, which many have become attached to.
2. That the existing citizenship laws are inefficient, as they do not cater for emerging problems of citizenship as the world becomes a global village. The world has had to undergo enormous changes during the last ten years, one of the greatest periods of migration in history. Indeed many foreign marriages continue to take place, children continue to be born in foreign lands and more so many continue to seek domicile in other states other than their countries of birth.
3. That a new law is necessary to be able to make provision for dual citizenship to be introduced in Kenya especially by the Kenyan Constitution as the law of the land.

6. CHAPTER BREAKDOWN

This will cover an overview of the chapters.

Chapter 1 is the Introduction. This presents in brief what the whole work shall cover. It shall define the concept of citizenship, the concept of dual citizenship. This will illustrate

the origin of dual citizenship and how dual citizenship occurs. In addition, this will lay down a foundation for a comparative analysis between single citizenship and dual citizenship.

Chapter 2 will give reasons why dual citizenship should be allowed or provided for in the New Constitution. This will involve looking at the advantages and disadvantages of dual citizenship. This will give a further insight as to whether the goals sought to be adhered by application of dual citizenship as compared to single citizenship can be achieved or not.

Chapter 3 will be an attempt to study the place of dual citizenship in Kenya compared to the United Kingdom and Nigeria.. This is to illustrate how some countries, such as these have benefited from their dual citizenship laws. This is with a view of trying to establish how effectively Kenya can adopt dual citizenship and where possible, even borrow a leaf from the practice in these countries.

Chapter 4 will deal with the conclusion and the recommendations. The study will involve stating the effectiveness of dual citizenship. What is the future of dual citizenship in Kenya? What checks and balances will be put in place to ensure effectiveness in its operation? The recommendations will illustrate how dual citizenship can complement the rights and duties of Kenyan citizens.

CHAPTER ONE

THE CONCEPT OF CITIZENSHIP

1.1 INTRODUCTION.

Citizenship is defined generally as the country in which a person is born, and has not lost or removed citizenship, or naturalized and to which that person owes allegiance and by which he or she is entitled to be protected. These include the rights and privileges a citizen enjoys in distinction from a foreigner. Nationality is often referred to as a bond between an individual and a state that establishes reciprocal rights and duties between them. A citizen therefore, is a person born or naturalized in a certain country and subject to the jurisdiction of that country. Aliens on the other hand are persons who are not citizens of a particular state. They are non-citizens or foreigners who do not enjoy the same rights and privileges as citizens of a particular state.

However, It is worth noting that, nationality is slightly different form citizenship; though often used interchangeably. Nationality creates a legal relationship between the state and the individual under international law, and is therefore the quality of belongingness to state in a person is internationally known. Citizenship on the other hand, is the sole concern of municipal law. It bestows political status upon an individual whereby a citizen enjoys freedom and political rights under municipal law.

However, citizenship and nationality mean the something only that the context in which they are used is different as above mentioned. That is to say those definitions of nationality will be used to include those of citizenship in this dissertation. In addition the mode of acquiring citizenship is the same as that of acquiring nationality. This section analyses general citizenship rules in the present day, state competence in such matters, and related consequences of affected individuals. The concept of Citizenship will be discussed in detail and more so the concept of dual citizenship. Advantages and disadvantages of holding dual citizenship will emerge with a need to redefine Kenya's identity. The draft bill or the famous Proposed New Draft Constitution is very

progressive and addresses most of the salient issues that have concerned Kenyans for a long time.¹ Dual citizenship is one of these issues articulated in section 21 of that bill.

1.2 NATIONALITY.

The bond known as “nationality” is a legal, political and social link between an individual and a state.² Under international law, nationality constitutes an important link between the citizen and the state. It establishes a continuing relationship between the sovereign state on the one hand and the citizen on the other hand.³ The fundamental basis of a man’s nationality is his membership of an independent political community.⁴ Fenwick defines nationality as, “the bond which exists and unites a person to a given state which constitutes his membership in the particular state and which subjects him to the obligations created by the laws of the state”.⁵ In the Nottebohm case,⁶ second phase, the International Court of Justice stated, that,”

“Nationality is a legal bond having its basis in a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties... conferred by the state, it only entitles that state to exercise protection viz-a –viz another state, if it constitutes a transition into judicial terms of the individuals connections with the state which made him its national”.

It may be said that the individual upon whom it is conferred is in fact more closely connected with the other state. Nationality established mutual expectations for both the state that confers it and the individual who accepts it. The state has the right to require its citizens to serve in its military forces. In addition, the state

¹ Dr. Patricia Kameri –Mbote ‘Audit & Review of Depths in Citizenship and Bill of Rights’ (Aug 2003) Katiba News –Media Development Association & Rural Urban Information Network pp 4 & 5

² William Slomanson, Fundamental Perspectives on International Law 3rd Ed. pp 176

³ See S.K. Verma, an Introduction to Public International Law, pp194.

⁴ See P.P. Balsara, Elements of Public International Law, pp47.

⁵ See Charles, G. Fenwick on International law.

⁶ Liechtenstein v. Guatemala (1955) ICJ, Rep 4 pp. 23

may also tax an individual for earnings accrued anywhere in the world. On the other hand an individual is entitled to rights, privileges and benefits of citizenship, subject to the limits set in a country's Constitution. Such include section 3 of the South African Constitution of 1996, The 14th Amendment to the US or the United States Constitution and section 13 of the Proposed New Draft Constitution. These rights include legal, political and social rights such as rights to vote and stand in office and most important of them all is the right of state protection accorded to the individual. The right of state protection means essentially, "That the home state assists its nationals or citizens when they are abroad and are being mistreated by another state or its agents."⁷ For example, a British citizen who is by a Saudi Arabian may seek Britain's assistance. The protection would materialize in the form of a British diplomatic or consular officer's inquiry or protest on behalf of the British citizen who was harassed by Saudi's conduct that violated international expectations.

The above-mentioned case⁸ involved the question if genuine link in establishing the nationality of an individual who possesses dual or multiple citizenship or nationalities. The case involved the issue of nationality of claims. A claim will fail unless it can be proved that the injured individual is a national of the claimant's state and that the individual has a genuine link with the claimant state. This theory therefore, has been used by international law to limit power of states, which turn themselves into claims agents by conferring their nationality on individuals who have no genuine link with them. It will be discussed later in this dissertation.

In this case *Nottebohm* was a German national, who owned land in Guatemala. It entered into war with Germany during World War I. He went to stay in Liechtenstein for a few weeks and acquired Liechtenstein's nationality. He automatically lost his German citizenship as German law stood at that time. He then returned to Guatemala. When Guatemala later declared war on Germany, he was interned and his property confiscated. Liechtenstein brought a claim on his behalf against Guatemala before the International

⁷ *Supra* note 2.

⁸ *Supra* note 6

Court of Justice (ICJ) but failed. The court held that there was no genuine link between Nottebohm and Liechtenstein; therefore he had no right to be protected against. However, the court did not state that Nottebohm's Liechtenstein's nationality was invalid.

Nationality of a person is determined in accordance with the rules of municipal law. In the advisory opinion in the Tinus-Morroco Nationality Decree case,⁹ the Permanent Court of International Justice opined that questions of nationality are solely within the domestic jurisdiction of a state. In this case France conferred France nationality on residents of Tunis and Morocco over a British protest on behalf of British citizens living on those territories. It was held that nationality is **not** a principle required by international law but by municipal law. This illustrates that despite, the fact that international law tries to curtail states ability to confer nationality on certain individuals nationality is determined by municipal law unless, in situations where there was a treaty obligation to confer or the inability to confer nationality under particular circumstances as it happened in this decree case.

The Hague Convention on Certain Questions relating to Conflict of Nationality Laws, (Convention on the Nationality Laws,) adopted in 1930 by the Hague codification conference, provides also in article 2 that "any question as to whether a person possess the nationality of a state shall be determined according to the law of he state."¹⁰ Article 1 of the convention further states that while" it is for each state to determine in accordance with the law who are its nationals, "and the law" shall be recognized but other states, only so far as it is consistent with the international conventions, international custom and the principles of law generally recognized with regard to nationality"¹¹

Nationality to be effective against other states, it must conform to several general principles recognized by international law. In the Nottebohm case, the court expounded the principle that for nationality to be opposed by other states or international plane, the

⁹ (1923) PCIJ series, B, no. 4 pp 27

¹⁰ Convention on Nationality of Laws of 1937, Nottebohm case op. at pp 20-21

¹¹ *Supra* note 2 pp 48

individual must be a real link and effective link, genuine connection between the states and the individual concerned.¹²

Nationality is also distinguished from rights of citizenship as earlier mentioned but the two mean one thing and the same thing. Nationality differs from domicile. Domicile is merely a de facto residence of an individual in a state with an intention to permanently settle there. However, it might also be a factor for acquiring nationality of a particular state.

1.3 IMPORTANCE OF NATIONALITY OR CITIZENSHIP.

A state is entitled to protect its subjects abroad. This was held in the famous but now obsolete Calvin's case,¹³ that allegiance and protection were correlative aspects of nationality- "*protectio trahit subjectionem et subjectio protectionem.*" Since a state is entitled to protect its citizens, abroad, neutrality is important in exercising this right. Nationality therefore is the basis of a state's right to exercise diplomatic protection abroad, where its nationals have suffered a wrong at the hands of another state.

Under Customary international law, a state is entitled to forcible intervention to protect the life and property of its nationals. This is closely related with questions of state responsibility, viz, when acts of sovereignty by a state within its own territory affect the aliens or their property, such as the denial of justice or expropriation.¹⁴

The doctrine of state responsibility rests upon two pillars, the attribution to one state of the unlawful acts and omissions of its officials and its organs (Legislative, Judiciary and Executive) and the capacity of the other state to adopt the claim of the injured party. We will consider the 2nd Part.¹⁵

¹² *Supra* note 3 pp 200

¹³ Of 1608-7 Co.Rep. 1a

¹⁴ *Supra* note 3 pp 45.

¹⁵ Malcolm N. Shaw 4th ed., (1997) International Law :Cambridge University Press pp 563 .

Nationality is the link between the individual and his state as regards particular benefits and obligations. It is also a vital link between the individual and the benefits international law. This has been well explained in earlier parts of this dissertation. Although International law is now moving to a stage whereby individuals may acquire rights free from the interposition of the state, the basic position remains that in a state led world system, it is only through the medium of the state that the individual that the individual may obtain full range of benefits available under international law and nationality is the key.

A state is under a duty to protect its nationals or citizens and it may take up their claims against other states. However, once a state takes up their claim the claim becomes that of the state. This is a result of the historical reluctance to permit individuals the right in international to prosecute claims against foreign countries, for reasons relating to state responsibility and non-interference in international affairs. This basic principle was elaborated in the Mavromatis Palestine Concession case¹⁶ the Permanent Court of International Justice pointed out that:

“By taking up the case of its subjects and by resorting to diplomatic action on international judicial proceeding on his behalf, a state is in reality asserting its own rights, its right to ensure, in the person of its subjects respect for rules of international law..”

Once a state has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of that state the state is the sole claimant.

The corollary of this is that the right of a state to take over claims is limited to interest on behalf of its own citizens or nationals. Diplomatic protection may not extend to the adoption of claim of foreign subjects.

The scopes of a state to extend its nationality to whomsoever, it wishes are, except in so far as it affects other states. In the Nottebohm case¹⁷ the International Court of Justice decided that only where there existed a genuine link between the document state and in national could the right of diplomatic protection arise.

¹⁶ (1925) PCIJ Series A no. 5 pp.12 who noted whoever ill-treats a citizen indirectly injures the state, which must protect that citizen.

¹⁷ See *supra* note 6

The nationality must exist at a date often injury, and should continue until at least the date of the award settling the claim.

Where an individual possesses dual nationality, either state of which he is a national may adopt a claim of his against a third state and it may be that the state which he has the more effective link connection may be able to espouse his claim as against that state. The test for permitting protection by a state of a national against another state of which he is also a national is the test of effectiveness. This was reaffirmed by the Iran –US Claims Tribunal, in the case of the *Islamic Republic of Iran vs. USA*,¹⁸ where the full tribunal held that it had no jurisdiction over claims against Iran by a dual national with who the ‘dominant and effective nationality’ at the relevant time was America.

Hence, in the Nottebohm case the court emphasized the territories of native of Nottebohm’s links with Liechtenstein and the strength of his of his connection with connection with Guatemala. Nottebohm had spent a very short period of his time in Liechtenstein beyond the formal naturalization process; there was no other links with the state. On the other hand he had lived in Guatemala for some thirty years and had returned there upon obtaining his papers from Liechtenstein. The court held in the absence of any genuine connection, the court held that Liechtenstein was not able to extend its diplomatic protection to Nottebohm as regards Guatemala¹⁹.

Aliens may be expelled for sufficient reasons and their home state, the state of nationality, is bound to accept them, on the other hand, nationals or citizens may not be extradited, but aliens may. Article 12 of the International Convention of Civil and Political Rights, 1966, states, “No one shall arbitrarily be deprived of the right to enter his own country.”

Furthermore, nationality is important because in times of war, enemy states are determined by either nationality. Moreover, nationality provides nominal, but not exclusive basis for the exercise of civil and criminal jurisdiction by a state, even in

¹⁸ (1989) ICJ Rep, Order of 13 Dec. 1989

¹⁹ *Supra* note 15 pp 564

Under the Kenyan Constitution²² this rule is recognized under section 87 of the same. The Proposed New Draft Constitution provides for citizenship by birth under section 16(1). It is worth noting that the Kenyan Immigration Act²³ guarantees unquestionable citizenship to children of Kenyan male abroad and inexplicitly denies automatic citizenship to children born of Kenyan mothers if at the time of birth she was resident abroad. This is discriminative since women should be treated on equal basis with the men.

In India this principle is articulated clearly in the Indian Citizenship Act²⁴ of 1955. Mere birth in India after January 26th 1950 entitled a person to be a citizen of India even though both parents were foreigners. However, this position changed through the 1986 amendment to the Act in section 3(1)(b) which provided that a person born in India after the commencement of this Act shall be a citizen of India by birth, "if either one or all his parents is a citizen of India at the time of his birth." However, children born to foreign diplomats and whose father is an enemy alien and the birth took place in enemy occupied territory, would not be entitled to Indian nationality as set in the rule provided in section 3(2).²⁵ India therefore combines both the *jus solis* and *jus sanguinis* principles. The US Constitution²⁶ provides that "all persons born in the US ... are citizens of the US."

It also extended in certain circumstances or to certain countries, to ship and aircrafts flying their flag. States have generally applied this principle to birth on ships and aircrafts registered under their flags. For example, legislation that was formally in force in Argentina referred to birth in a legation is a warship of the republic, and later legislation extends to birth in an international zone under the Argentinean flag.²⁷ This is because a

²² The current Constitution

²³ Cap 171 Laws of Kenya

²⁴ Section 3

²⁵ Article 11 of the Optional Protocol Concerning Acquisition of Nationality, adopted at the 1961 UN Conference on Diplomatic Intercourse and Immunities which exempts the members of the diplomatic mission from the laws of the receiving state regarding the nationality of that state.

²⁶ Section 1

²⁷ The countries taking this view include the United Kingdom, commonwealth countries, United States, Japan, Italy, Germany, Belgium and Norway.

ship on the high seas is assimilated to the state, the flag of which it fly's, for just as it's in its own territory, that state exercises authority upon it. This means that no other state has a right to exercise exclusive jurisdiction over the ship. This is the concept of objective territoriality set out in the S.S Lotus case²⁸ and the Law of the Sea Convention.²⁹ For example Canada cannot enter a ship belonging to France.

The flag the ship flies determines nationality of ships, as is the case with individuals. For example, a Kenyan ship will fly a Kenyan flag when on the high seas and it shall be only one flag. Children born on these ships acquire the nationality of the country the ship is from. The Kenyan Citizenship Act³⁰ states that, "For purposes of this Act, a person born aboard a registered ship or aircraft or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or as the case may be in that country." Therefore, on that breath, a child born on board a Kenyan ship is a Kenyan.

In an attempt to avoid statelessness, The International Law Commission, proposed an article which suggested that those born on ships and aircrafts are subject to the law of the state in the territory or waters or which the ship or aircraft was situated at that time.³¹ Statelessness is when an individual has no nationality. This will be discussed later in this dissertation. Where apparent conflict may arise in the course of birth on a foreign ship in territorial waters, it is tolerably clear that he child does *ipso facto* acquire the nationality of the littoral state.³²

1.4.2 ACQUISITION BY DESCENT- *JUS SANGUINS*

This is citizenship acquired by parentage or by descent being born to parents who are natural of a given state. It is reasonable enough rule that a state should bestow nationality

²⁸ France v. Turkey (1927) PCIJ, Series A No. 10 pp 521-49

²⁹ Article 97

³⁰ Cap 170 Laws of Kenya section 2(2)

³¹ The UN Convention in relation to Statelessness, Article 36- tests of flag of registration.

³² *Ibid*

upon persons born of parents who are its nationals, even if they are born out of the state or territory.

This rule is referring to as the “blood rule”, for establishing nationality. A child of roman parents in any region under the world not under roman control was ordinarily referred to as a roman citizen.³³ In practice, in some cases the father’s nationality is a decisive factor, of a child acquiring citizenship. However, in some cases the mother’s nationality is decisive especially in cases of unmarried mothers. For example, the US, most European countries, including Germany and France have provided for this principle.

Under Kenyan law, this rule is well illustrated in the Constitution³⁴, which states that,

“A person born outside Kenya shall become a citizen of Kenya at the date of his birth if at that date his father is a citizens of Kenya.”

In addition, the Indian Citizenship Act³⁵ provides for citizenship by descent if the father of the child is a citizen of India at the time of the birth. A child born outside India to an Indian mother also enjoys the same status as an Indian citizen by descent. This has been made possible by an amendment to the said Act of 1992 which states that, If the father or mother of such a child was a citizen of India by descent, that person shall be a citizen of India if: -

- i. His birth is registered at an Indian consulate within one year of the birth or commencement of this Act, whichever is later; and
- ii. His father or mother is, at the time of his birth, in service under the government of India.

1.4.3 CITIZENSHIP ACQUIRED SUBSEQUENTLY.

Citizenship may be conferred by the operation of the law due to the effect of some charges in the civil states of the individual, like marriages, adoption legitimation, affiliation and /or naturalization.

³³ *Supra* note 2

³⁴ *Supra* note 22 in section 90

³⁵ *Supra* note 24 in section 4

A. Marriage.

The laws of majority of national were earlier based on the concept that a wife automatically gets the citizenship of husband, and that a woman marrying a foreigner would automatically lose her citizenship of origin on marriage, and cease to be citizen of the country of her birth. A married woman therefore could not confer her citizenship of birth to her children or to a foreign husband. For example, the British Nationality and Status of Aliens Act, 1914, section 10(1), was declaratory of the contemporary law in stating that:

“The wife of a British subject shall be deemed to be British subject, and the wife of an alien shall be deemed to be an alien.”

This was sometimes leading to certain hard cases of statelessness, as she may not be conferred the nationality of her husbands state,(depending with the law of that state) and she has already lost her citizenship or nationality of birth. This is the current scenario in Kenya. Under Kenyan law, the Constitution³⁶ grants married women who are married to Kenyan husbands the citizenship of their Kenyan husband so does the Indian Citizenship Act³⁷ which provides that persons who are resident in India and have been so resident for five years may become citizens of India by registration with the prescribed authority. This rule was influenced by the belief that for the advantage of the national unity of the family the woman was to acquire the nationality of her husband. Furthermore, the Law of Domicile Act³⁸ of the same states that a woman shall on marriage acquires the domicile of her husband. It further states that, the domicile of an infant female child who is married shall change with to of her husband.³⁹

³⁶ Section 91

³⁷ Section 5 (1) (c)

³⁸ Cap 35 Laws of Kenya in section 7

³⁹ *Ibid* section 9 (2)

To deal with the practical problem, The Hague Convention relating to the Conflict of Nationality laws, 1930, enabled women to maintain their premarital citizenship under certain conditions.⁴⁰ It laid down that if the national law of the wife...

“Causes her to lose her nationality or marriage with a foreigner, this consequence shall be a condition on her acquiring the nationality of her husband”.

It also provided that the naturalization of the husband during marriage shall not involve a change in the nationality of the wife except with her consent.

In order to accord sexual equality in the matter of citizenship, the United Nations General Assembly adopted a Convention on the Nationality of Married Women, 1957,⁴¹. Under this convention, state parties agree neither the celebration nor the dissolution of marriage between one of its nationals and an alien, nor shall change of nationality during marriage affect the wives nationality automatically. Moreover, the 1979 Convention on Elimination of All Forms of Discrimination against Women article 19, states: -

- a. “State parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure, in particular, that neither marriage to the alien nor change of a nationality of her husband.”
- b. State parties shall grant their women equal rights with men with respect to the nationality of their children. The Indian Citizenship, Amendment Act, 1992, has accorded women equal rights with the men regarding the nationality of their children.”

The Kenyan draft bill on the Constitution⁴² now provides that citizenship is not lost through marriage or the dissolution of marriage. In addition, the *British Nationality Act of 1981* states that a person who marries a British

⁴⁰ Articles, 8-11, of the afore said Convention.

⁴¹ See G.A. re. 1040. (XI), Jan 29, 1957.

⁴² The proposed new Constitution in section 18(2)

citizen does acquire British citizenship though, this is not automatic. When it is not automatic the person is to apply for naturalization, unless entitled to be registered as a British Citizen. Acquiring British citizenship by naturalization is a matter of discretion and depends on the applicant meeting certain conditions such as having been resident in a certain country for a number of years.

B. Adoption and Legitimation.

The laws of most states accept the change in family of an individual, whether by adoption or by legitimation, they will have the effect of creating new citizenship. The child acquires the citizenship of the adopting parents or father through legitimation. The Citizenship Amendment Act, 1992 of India has accorded women equal rights with men regarding the nationality of their children. A legal adoption is effected by an adoption order, which extinguishes the parental responsibility of the natural parents and vests it on the adopting parents. Adoption therefore serves as the legal link between both parents and the child. It creates a new legal link between the adoptive parents and the child.

Under Kenyan law this is provided for in the Domicile Act.⁴³ It states that an infant whose adoption has been authorized by a court of competent jurisdiction or a declaratory decree of such a court shall, as from the date of the order or decree, acquire the domicile of the adoptor, or where he is adopted by two spouses, he shall acquire that of the husband.

C. Domicile.

Domicile is merely a de facto residence of an individual in a state with an intention to permanently settle there. States quite often have regulative provisions for the grant of citizenship due to residence and domicile. If the natural born subjects have lost their citizenship acquired by naturalization abroad, they recover their original citizenship by fulfilling certain conditions. Similarly, where the citizenship has been conferred by

⁴³ *Supra* note 38 in section 6

marriage, and if the marriage dissolves, the person may resume his original nationality after completing certain requirements. Australian Citizenship Act section 10, if certain resident requirements have been met.

The Domicile Act⁴⁴ provides for domicile of origin. A person according to this section is deemed to have acquired this type of domicile if at the date of his birth: -

- i. If born legitimate the domicile of his father, or if born post humus the domicile which his father had at the date of his death;
- ii. If born illegitimate the domicile of his mother.

Section 8 of the above Act provides for domicile by choice. Here a person takes up the residence in a country other than that of his domicile with the intention of making that country his permanent home, or where, being resident in a country other than that of his domicile, he decides to make that country his permanent home, he shall as far as the date of so taking on residence or of such decision, as the case may be, acquire domicile in that country and shall cease to have the former domicile.

Subsection 3 of the above section allows an adult married woman to acquire an independent domicile of choice and marriage therefore shall not be a bar to this.

Section 10 of that Act provides for unity and continuity of domicile. It states that no person may have more than one domicile at any time and no person shall be deemed to be without a domicile. A person is to retain their domicile until he or she acquires another domicile.

It is worth noting that this method is not a major way of acquiring citizenship though it is one of the methods.

D. Naturalization.

This applies to other citizenship acquired, subsequent to a birth other than by descent. This is the most commonly used way of acquiring citizenship for persons who are foreigners of a certain state. This involves certain conditions being met by the

⁴⁴ *Ibid* in section 3

individual that merit him or her to become a naturalized citizen of a particular state. These include for example, being in the government service of the state one wants to be naturalized, having lived in that country for certain duration of time, good character and knowledge of the national language of the naturalizing state among others. Naturalization also may in some cases involve registration as a means of acquiring citizenship.

A state has the discretion to confer citizenship by naturalization and a person who wishes to acquire citizenship is required to give an application and it is granted if the conditions laid down by the state granting the citizenship are satisfied, "voluntarily, naturalization", and the person takes the oath of allegiance to the granting state. The requirements of prolonged residence or domicile are normally followed by all states for the purpose of naturalization.

In Kenya this method of acquiring citizenship is provided for in section 18 of the draft bill. In addition, the Constitution provides for conditions, which a person must fulfill to be a Kenyan citizen.⁴⁵ It confirms the eligibility of a person being naturalized under Kenyan law. Part II of that Citizenship Act provides for citizenship by registration.

Under Kenyan law set out in the above provisions the requirements include the following:-

- a. The person must have attained the age of 21 years,
- b. Must have a good command of the Kiswahili language
- c. Must satisfy the Minister is of good character
- d. The person must be lawfully resident in Kenya for a period of 12 months immediately preceding his application and ordinarily and lawfully resided in Kenya for a period or periods amounting to an aggregate of not less than four years in the seven years immediately preceding the said period of twelve months.

⁴⁵ This is provided for in section 92 and 93 of that Constitution. Section 92 particularly when read together with section 17 of the Citizenship Act

But from the international standpoint, the most important are residue and government service, which establishes the connection between the state and the applicant.

Nevertheless, the nationality granted by naturalization must establish a genuine link between the individual and the naturalizing state. This was held in the Nottebohm case⁴⁶ discussed earlier in this dissertation where Nottebohm was a naturalized citizen of Liechtenstein. The factors that would demonstrate genuine link worthy of international recognition by another state include a persons residence, center of interest family ties, participation in public life and the attachment shown for a particular state. A person therefore who seeks to be naturalized in any country must demonstrate the above characters.⁴⁷

1.5 LOSS OF CITIZENSHIP.

This occurs when an individual is deprived of his or her citizenship. The acts, which cause this, vary from country to country and no complete list can be drawn up. This is because each state establishes its own rules and determines the acts or omissions, which would cause loss of nationality to natural born citizens or to naturalized citizens or both.

An individual may be deprived of his citizenship due to his voluntary conduct. Citizenship may be lost in several ways. They include acquisition of a new citizenship, taking an oath of allegiance of another state, service in the armed forces and voting in foreign elections. Moreover, this applies in situations where a person acquires a citizenship of some other state by naturalization. This is by way of substitution. Article 15, (2) of the *Universal Declaration Of Human Rights* states "no person shall be deprived if the right to change his nationality." This provision however must operate under the national laws of the state.

⁴⁶ *Supra* note 6.

⁴⁷ *Supra* note 3 pp 201

A person may renounce his citizenship of a particular state in a prescribed manner by signing a deed before a diplomatic or consular officer, or a registering authority or when one attains the age of majority in some states.

In some countries where one is a dual citizen and he does an act that only citizens of the other country are entitled to he may lose his nationality. For example, if one is a dual citizen of US and Canada and he votes in an election in another country. These two countries however, do not say much as regarding loss of citizenship as a result of voting in a foreign election. For US citizens who hold dual citizenship they are allowed to vote in US federal elections but they should be careful not to lose the other citizenship especially if the other state does not allow voting in foreign elections. It is worth noting that in some countries, which require renunciation in a particular way by an individual, if the individual does not renounce he still retains the citizenship of that state. This is the case in Britain where loss of nationality, an individual has to make a formal renunciation.

1.6 THE CONCEPT OF DUAL CITIZENSHIP.

Dual citizenship arises where an individual holds the citizenship of two or more states. Due to the absence of uniformity in the nationality laws of different states sometimes a person possesses double nationality or citizenship. Such double citizenship may occur in many ways, viz, a person born in a foreign country to foreign parent's would get the nationality of that country under the principle of *jus soli*, and of the country of the parents on the principle of *jus sanguinis*. A woman may acquire the citizenship of her husband at the time of marriage and at the same time continue to possess her original nationality or citizenship.

Dual citizenship is also spewed by those nations that allow their nationals to emigrate, acquiring a new citizenship but keeping their original citizenship status. For example Mexico joined the growing number of countries recognizing dual citizenship. That means that, while an individual is a citizenship of the United States, he or she is also a dual citizen under the Mexican law.⁴⁸ Other countries, which have embraced the concept of

⁴⁸ *Supra* note 2 pp 181

dual citizenship, are Canada, the United Kingdom or the UK, and Nigeria, to mention just but a few.

There has been an attempt by international treaties or instruments to try and deal with the concept of citizenship and more so, a few multilateral or regional treaties have attempted to address this concept of dual citizenship. However, there has not been an international treaty that has comprehensively dealt with the concept of dual citizenship. The instruments dealing with citizenship will be addressed followed by those that have attempted to deal with dual citizenship.

1.6.1 INTERNATIONAL INSTRUMENTS DEALING WITH CITIZENSHIP

These instruments include: -

- 1) *The Universal Declaration on Human Rights (UDHR)*
- 2) *The Convention on Reduction of Statelessness*
- 3) *The European Convention on Human Rights.*
- 4) *The African Charter on Human Rights.*
- 5) *The International Covenant in Economic, Social and Cultural Rights.(ICESCR)*
- 6) *The International Covenant on Civil and Political Rights*
- 7) *The Convention on the Rights of the Child*
- 8) *The Declaration on the Elimination on all forms of Discrimination against Women. (CEDAW)*
- 9) *The Convention on Racial Discrimination among others.*

However, not all the instruments will be discussed here below.

The UDHR is a milestone, which calls for women's equality in all spheres of life. It also laps into the far and reaching commitment of other international instruments, including those mentioned above. It provides that every person has a right to nationality and more so children who have a right to be named.⁴⁹

⁴⁹ <www.unifem.org/gender_issues/human_rights/at_a_glance.php-CEDAW made easy.>

(accessed on 12 May 2005)

CEDAW in Article 9 provides that Governments will grant women equal rights to change or retain their nationality or citizenship and that of their children. This instrument deals with civil rights and legal status of women.

The ICESCR provides that states must undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in this instrument.

The International Convention on Reduction of Statelessness obliges its signatories to grant their citizenship to stateless persons, that is, persons who lack a nationality or citizenship of a country. These persons who are willing recipients and found within their borders state shall also not deprive its citizen their nationality if this will render the person stateless.

The International Covenant on Civil and Political Rights in Article 24 states that every child has a right to acquire a nationality.

The Convention on the Rights of the Child in Article 8 provides that every child is at all times entitled to a name, a nationality and a legal representative. It continues further to state that the child should not as a result of foster placement, adoption or any alternative regime, be deprived of his or her name, nationality or legal representatives unless the child thereby acquires a new name, nationality or legal representative. Article 21 of the same further provides for adoption as a means of acquiring citizenship. It says state parties shall recognize and permit a system of adoption and shall ensure that the best interest of the child shall be of paramount interest.

1.6.2 INTERNATIONAL INSTRUMENTS DEALING WITH DUAL CITIZENSHIP

The problem of dual citizenship or dual nationality, itself, irksome as it is to both states and individuals concerned, has not yet been settled by mass of a general international convention.

However, below are instruments that have attempted to deal with issues arising from the concept of dual nationality or citizenship. They include: -

1. The Hague Convention as Certain Questions relating to the Conflict of Nationality Laws
2. The Hague Protocols relating to Military Obligations in Certain Cases of Dual Nationality.
3. Multilateral Agreements such as, the Netherlands-Belgium Agreement
4. The European Convention on Nationality

The 1930 Hague Convention as Certain Questions relating to the Conflict of Nationality Laws was the first multilateral treaty or international instrument to address the dual nationality or citizenship. This represented a modest beginning. This treaty however did not solve the dilemma posed for the individual when two national claim that a person is their citizen. Under article 3, for example, states;

“A person having two or more nationalities may be regarded as it’s national by each state whose nationality he possesses.”

The dilemma posed was for example in relation to serving in the military service of a state. A citizens of a certain state as an individual is required to serve under the military service of that state. But, due to the fact that one is a dual citizen he or she cannot serve in the military service of both states. He or she can only serve one state hence the dilemma of which state to choose. For example, a number of Japanese-descent American citizens present in Japan at the outbreak of World War II in 1941 were forced to enter the Japanese armed forces. According to American regulations, the individuals were citizens of the US under the *jus soli*

rule; under prevailing Japanese laws they were Japanese citizens under the *jus sanguinis* rule.⁵⁰ This was the dilemma dual citizen found themselves in.

Most commonly affected in recent years have been former citizens of France, Egypt, Greece, Iran, Poland, Romania, Syria and Turkey.

Despite the above shortcoming, the 1930 treaty aforementioned did try to deal with some of the difficulties arising out of the dual citizenship. Article 5, provides that a person having more than one nationality, and such a third state shall recognize exclusively either the nationality of the country in which he is habitually and principally resident, or the nationality of the country in which in the circumstances he appeared to be most closely connected.

Relief was available in the wordings of the 1930 Hague Protocols relating to Military Obligations in Certain Cases of Dual Nationality. This treaty provides a model for avoiding competing military service claims in the case of dual nationals, to eliminate double military service for individuals who are dual nationals.

The most effective devices for avoiding inconsistent problems of dual citizenship are the various bilateral treaties that specifically address the various dual nationality problems. For example, the Netherlands-Belgium Agreement of 1954⁵¹.

The most recent Convention on dual citizenship is the 1997 European Convention on Nationality. Before this Convention was the European Convention on the Reduction of Multiple Nationalities of 1963.

The European Convention on Nationality has been the most elaborate instrument that has attempted to deal with dual nationality. It does this by recognizing this is possible to have multiple or dual nationalities. It provides for the same in Chapter IV.

Article 14 of this chapter for example, states that states shall allow: -

⁵⁰ See Kyokano Okimara v. Achson, United States, District CA Hawaii, (1951), 99F.supp.587.

⁵¹ Concerning the military service of young men possessing both Belgian and Netherlands nationality. It avoids the potential unfairness of having to serve in two armies just because an individual is a dual national military service for one nation automatically precludes military service obligation in another nation.

- i. Children who have different nationalities other than by birth to retain their nationality of birth.
- ii. Its nationals to possess another nationality where the other nationality is acquired by marriage.

But the above provision is subject to the national laws of a state as regards what may lead to loss of nationality. This means that, if a state's national or municipal law allows its nationals to hold dual citizenship then the state shall not cease to be a member of the European Union or the EU when it provides for dual nationality since the EU recognizes dual nationality or dual citizenship. This however, does not imply that those countries that do not allow dual citizenship shall cease to be members of the EU by the fact that they have not provided for dual citizenship in their municipal laws.

Article 17 of the above Convention provides for the rights and duties related to multiple or dual citizenship. It states that the national or citizens of a state party in possession of another nationality shall have, on the territory of that state party in which they reside, the same rights and duties other nationals or citizens of the other state party.

Article 21 further states, that a dual national shall be regarded to fulfill their military obligation relating to one of the state parties only. Subsection 3 of the same Article provides that state parties can have a special agreement as regards this issue.

Last but not least, Article 7 provides for loss of nationality at the incentive of the state party. These include:-

- i. Voluntary acquisition of another state's nationality by means of fraudulent conduct, false representation or concealment of any relevant fact.
- ii. Voluntary service in a foreign military force
- iii. Conduct that is, seriously prejudicial to the vital interests of the state party.
- iv. Lack of a genuine link between a state party and a citizen or national habitually residing abroad.

Finally, Article 8 provides for loss of nationality at the incentive of the individual. Here the individual can renounce their citizenship as long as they do not become stateless.

Dual citizenship is important in that the first a foremost it can remedy the problem of loss of citizenship by an individual. This is especially in the case where the individual losses citizenship by birth from home country to acquire the citizenship of a naturalizing country.

For example, this can be applicable in Kenya to avoid Kenyans citizens, especially those who have acquired it by birth, *jus soli*, who acquire the citizenship of other countries such as the United States or the United Kingdom.

Importance of dual nationality or citizenship will be discussed in length as I try to outline the advantages and disadvantages of an individual having dual citizenship.

1.7 CONCLUSION.

This chapter has tried to illustrate that citizenship is essential for every individual. It is not only useful in their home country but also in foreign countries and more so, when one is a dual citizen; in trying to define their rights pertaining each state.

According to the words of Peter Schuk⁵², he says,

"I do not think this trend on dual nationality is going to abate. I think it is going to increase. That indeed, the trend towards tolerance of dual nationality and citizenship has coincided with enormous changes in the world during the last ten years, one of the greatest periods of immigration in history,"

This are the same sentiments shared by many proponents of this concept of citizenship including myself and this is what this dissertation seeks to bring out.

Another proponent for this concept of citizenship, is David A. Martin who says,

"The proper analogy of dual citizenship and nationality is not bigamy, but rather the birth of second child. A good parent extends complete love and devotion to the infant, without diminishing all the love and devotion felt towards the sibling." ⁵³

⁵² A Professor at the Yale Law School who has written extremely on this topic of dual nationality.

⁵³ A Professor at the Virginia Law School.

The above sentiments illustrate that indeed dual citizenship is here to stay. States should therefore not bury their heads in the sand but should address the issue accordingly by allowing for the same. It is therefore, important for states; Kenya included incorporating to incorporate its provisions in their municipal laws

CHAPTER TWO

ADVANTAGES AND DISADVANTAGES OF DUAL CITIZENSHIP

2.1 INTRODUCTION

Single citizenship has and still continues to act as a setback to African countries and more so, our own country Kenya. Many Africans have left their countries to look for greener pastures abroad or overseas. This has been due to poor governance, unemployment, poor working conditions, low wages among other things. This has led to African countries, Kenya included to grapple with issues of brain drain and trading of citizenship especially in the field of athletics, which in some cases has been for hard cold cash. This has impacted negatively on the economies of these countries and the continent of Africa as a whole. This is because if these people do not leave their countries, they would remain in their countries to develop them.

Dual citizenship is important for economic, social, cultural and political reasons. The world is becoming a global village and people are intermarrying across the borders. To quote the secretary of the Kenya Socialist Democratic Alliance (KSDA), a campaign activist group on legalizing dual citizenship by the new Constitution he says "Dual citizenship is important at a time when 'internationalism' is the buzz word in many fronts of struggle".

I believe the problem of inefficiency in our citizenship laws has been known to exist in Kenya for a long time since independence. This inefficiency is due to the fact that these laws have failed to address issues of Kenyan citizens who acquire other citizenships. As far as dual citizenship is concerned the Kenyan government has resisted change for reasons that will emerge in this dissertation.

Kenyans particularly those living abroad and the civil society have expressed concern about this lethargy of the Kenyan citizenship laws, in the sense that the Kenyan government should update their citizenship laws so as to deal with increased Kenyans who are becoming citizens of other nations.

Understanding the issues surrounding dual citizenship and why the Government should grant them is necessary as this chapter tries to illustrate the advantages and disadvantages of dual citizenship.

With dual citizenship in place in our Constitution and other Kenyan laws this problems would be greatly reduced. Dual citizenship could be a remedy to these problems Kenya is facing. To show this below is a comparative analysis between the advantages and disadvantages of dual citizenship.

2.2 ADVANTAGES OF DUAL CITIZENSHIP

Advantages or benefits that accrue from dual citizenship are numerous. They include: -

- a) Broadening Kenya's economic base
- b) Financial benefits to the individual
- c) One is able to vote in both countries and seek positions in high offices.
- d) Creates a better sense of belonging yet one retains the security and stability they need to live abroad.
- e) Good values learnt from foreign countries can be incorporated in home countries.
- f) A second passport may give one access to travel in countries where ones own passport may not be of use.
- g) Pastrolist Communities that live near the East African borders may graze their cattle freely within East Africa without being harassed.
- h) Women can be allowed to confer citizenship to their children.
- i) Avoids statelessness, whereby a person has no nationality.

a) Broadening Kenya's economic base.

Dual citizenship would benefit Kenya's economy whereby it would promote trade and investment between dual citizens and their two respective countries. This would prevent brain drain by improving Kenya's economy.

Kenyan's with skilled and unskilled labour are seeking other citizenships. Careers such as teaching, engineering, medicine, especially doctors and nurses and more so Kenya's sporting industry are areas that have been greatly affected. Foreign countries are targeting

this sports industry. These countries offering better fortunes are looking for specific services such as expertise in various fields.⁵⁴ These include entrepreneurs who are likely to create new jobs.

For example in the sporting industry, Kenyan athletes continue to suffer from general lack of care. Very many of them have lost personal property and money through burglaries and robberies. Others have escaped with their lives from hands of bandits yet the culprits have never been caught and brought to book.⁵⁵ Kenyan athletes have a commodity to sell, their speed and this is what these foreign countries are targeting.

In addition, these athletes have poor training facilities and those who opt not to adopt other citizenships are forced to train in other countries such as the US. Here they incur expenses and for some they cannot afford to raise the amount required to train abroad. These athletes when approached by other countries with an offer to change their citizenship they do so without much hesitation.

Dual citizenship is important for our global economy. Millions of Kenyans abroad have contributed greatly to Kenya's economy by the money they send in here. With dual citizenship being introduced in our Kenyan laws, Kenyans living abroad can invest much more than they are doing currently. Some have asked why should Kenya expect them to invest in the country's infrastructure when they cannot be able to vote on who manages it. But if Kenya allows them to hold dual citizenship, they would be able to vote and choose a person or persons who can manage their resources. And since we are taking of rebuilding Kenya's economy let's give it all to them- the right to pay taxes and the right to actively promote interest between the two countries they freely travel and live. On average, Qatari and Bahraini athletes (who were former Kenyan athletes) contribute greatly to the economy of Kenya for that matter. Iken has been famous for having

⁵⁴ <www.privacyworld.com/auto/2-ppadan.html> - 'Getting a Second Citizenship'

(accessed on 10 July 2005)

⁵⁵ Saturday Nation 16 April 2005 - 'Athletes have to choose either Cash or Patriotism'

Kenya would also be able to earn more foreign exchange from those Kenyans living abroad that help their relatives in Kenya. There are approximately one million Kenyans living abroad, who not only remit significant amounts of foreign exchange to Kenya through aid to family members but also invest an amount which some accounts claim surpass 60 per cent of the countries foreign exchange.⁵⁷

This would indeed be the right timing to provide for dual citizenship in Kenya since the Kenyan Community Abroad (KCA) have now launched the Kenya Abroad Investment Fund during the groups annual conference held near Boston. The Minister for Planning & Economic Development Minister Peter Anyang'Nyong'o has confirmed that, as much as \$600 million (about Kshs 46 billion) is currently sent annually by Kenyan's working in other countries.⁵⁸

According to Mr. Frank Mwaniki, president of KCA Kenyan's sending money are charged up to 15 per cent in transaction fees.⁵⁹ This new fund is supposed to eliminate those charges. But with dual citizenship in place this charges would be greatly reduced. Roads and Public Works Minister Raila Odinga speaking at the same conference said that the fund could be used as a vehicle for investment in public infrastructure. He continued to say "As current leaders, we will do everything in our power to come up with creative ways through which Kenyan's abroad can own property."⁶⁰ Mr. Mwaniki explained that the fund would involve two accounts maintained by the Central bank.

Through the sporting industry, Kenyan athletes market Kenya's tourism industry when they compete for this country and win. They are able to do this because of the wide media coverage they get making Kenya a popular tourist destination area. We can therefore say that the sporting industry and more so athletics is one of the activities that have put Kenya in the world map and is one of the activities that the Kenyan government

⁵⁷ Sunday Nation 21 November 2004- '*Dual Citizenship a favor to Kenyans living abroad.*'

⁵⁸ Daily Nation 5 July 2005- '*New Investment plan for Kenyan's abroad.*'

⁵⁹ *Ibid*

⁶⁰ *Ibid*

should address seriously. With athletes changing nationalities at a very alarming rate, Kenya's popularity is likely to go down especially for its glory in long distance races and world marathons. It is indeed disheartening to see former Kenyan athletes carry away gold medals for their naturalized countries instead of Kenya. Others have even competed with Kenyan athletes only to defeat them.

With dual citizenship athletes will not have to give up their birth rights for better economic fortunes elsewhere which they cannot get in Kenya. Running for the flag, no longer counts: all young athletes are looking money first, and glory later.⁶¹ Athletics as a career is very short. The athlete is always just one injury away from retirement, and so most choose to make money first. Dual nationality or citizenship can avoid all this be it in athletics or other professions including unskilled labour.

b) Financial Benefits to the Individual

With better economic fortunes overseas, as above mentioned, many Kenyans are preferring to work in overseas countries because of financial benefits these places have to offer to them as individuals. These countries have more job opportunities and better working conditions than Kenya. However, these Kenyans many face discrimination because some jobs may be considered to be for locals who are citizens of those countries. With employment especially skilled and highly paid positions being highly restricted to citizens, individuals seeking greener pastures are left with little choice but "to convert". Such conversion gives them many benefits.

Dual citizenship can enhance getting of these benefits by ensuring that this discrimination is done with for one can become a citizen of that foreign country and still retain Kenyan citizenship. Those who face discrimination are particularly Kenyans who opt not to change their citizenship but choose to remain foreigners, for changing their citizenship would make them lose their Kenyan citizenship.⁶²

⁶¹ Daily Nation 25 April 2005-'Leave defecting Kenyan's alone.'

⁶² <www.kenyasocialist.org/station/dual%20citizenship.htm>.-Kenya Socialist Democratic Alliance(KSDA) Statement on Dual Citizenship. (accessed on 10 Jul 2005)

Foreigners are largely banned from working anywhere outside their borders. Acquiring citizenship of another country may change all that. In fact, many large multinational corporations favor employment candidates with dual passports.⁶³ Kenyans are missing out on this jobs.

Some people with dual citizenship enjoy the privilege of owning properties in both countries. They are able to purchase real estate properties for example. These are properties where locals in their home countries could not afford to purchase hence foreigners but them. Not because they are outrageously priced but because they have no money. Kenyans with other citizenships for example, can purchase properties in Kenya, which locals may not afford. Multinational companies own these properties. This would be more beneficial to Kenya than when these companies sell their products to make business more than to help the welfare of Kenyan citizens. Kenyans are less likely to be exploited by these companies if there are Kenyans involved in running them. This is due to the fact that these companies' products have exorbitant prices.

Moreover, with dual citizenship, one has the ability to purchase otherwise restricted shares in emerging foreign companies. Many foreign stocks and mutual funds are only available to local citizens of a country. This is more so in developed countries. One must present an appropriate second passport as proof of citizenship and you are home free.

It is important to realize that, the issue is not just making money abroad. It has to do with the quality of life those seeking greener pastures abroad want to have and give their children.⁶⁴ For example, with our Kenyan athletes they are promised large amounts of money together with other luxuries. Saif Saaeed Shaheen Qatar's former Kenyan world 3,000 meters steeplechase champion in an exclusive interview with the Daily Nation ⁶⁵

⁶³ *Ibid.*

⁶⁴ *Supra* note 55

⁶⁵ Daily Nation 2 June 2005-*'Saif Saaeed Shaheen: How and why I dumped Kenyan passport'*.

said he was promised a lifetime US\$1,000 (Kshs 76,000) monthly by the Qatari's .In addition, Qatar bought him a Toyota Prado and a four bedroom villa in Doha.

This was the incentive he got for bringing honor to his country whose national anthem was played for the first time at a global athletics event during the medal awards ceremony for Shaheen's gold in Paris.

He also adds it was due to the competitive environment in Kenya and few opportunities available locally.

Nicolas Kemboi who has no Arabic name due to the fact that he did not want any because of his Christian faith is now a Qutari. He was the 10, 000 meters champion. He confirmed in an exclusive interview with the Nation⁶⁶ that he choose Qatar for greener pastures for an undisclosed amount of money. He confirms that there they have better equipment, decent living conditions and more pocket money. These Kenyan athletes were once poor .The y depended on their parents for basic provisions, they were penniless struggling to make end meet through earnings from local competitions.

The Minister for sports Achillo Ayacko has appointed a probe team to find out why these athletes are running away but this is not enough.

There is nothing unique in being a Kenyan. Human Rights dictate that every man and woman has a right to seek and live a life that meets their own expectations.⁶⁷ Those who want to seek greener pastures should not be denied the chance and especially our Kenya athletes who succumb to the promise of lucrative pay and superb training facilities, which they do not have in Kenya.⁶⁸ They should be given a chance of retaining their Kenyan citizenship and that of their adopted countries.

Kenyan's would also benefit from government healthcare programs, free education programs among other benefits that foreigners may not have.

⁶⁶ Daily Nation 3 June 2005- '*Kemboi had injury that never was. The idea was to avoid running at the Athens Olympic Games for Kenya.*'

⁶⁷ *Ibid.*

⁶⁸ *Supra* note 56

c) Rights to vote in both countries and seek positions in high offices.

Dual citizenship grants legal protection and eligibility to participate in social security and political affairs of the country they are citizen. This means, Kenyans abroad can be elected in Kenya or in other foreign countries, which they are citizens. This has been seen in some countries that allow dual citizenship. For example in an article entitled, "Pledging Multiple Allegiance"⁶⁹, Dominicans from New York could vote in their Dominican Republic presidential elections for the first time and could also vote for a New Yorker where they were citizens of the United States too.

In the United States, one Jesus R. Galvis came from Columbia to America to do business. He built a business empire in New Jersey and got elected there to the County Council of Hackensack. He wanted to be elected to the senate. This was in 6th May 1995. He was attempting to hold two electoral offices simultaneously in two countries. He was after all a citizen of both Colombia and the U.S.A. He said, "I saw this as a good opportunity to keep some ties to the homeland there".⁷⁰ He lost however, possibly because he was attempting to hold two offices simultaneously in different countries. May be he should have ran for one electoral office at a go. Critics argued that, in holding two offices at the same time he could not represent each countries' voters well enough who had voted for him.

But the fact that a public servant from an American city campaigned for a post in a foreign government is but an example of a growing global phenomenon known as dual citizenship.

In Kenya this can be applicable where our very own Barrack Obama has now been elected to the U.S.A. senate. By the doctrine of *Jus sanguinis*, that is of descent he is a Kenyan since he is born to a Kenyan father. If dual citizenship is allowed in Kenya even though he may not stand for office in Kenya due to his position of office in the U.S.A, he would help create better economic ties between Kenya and the U.S.A. because of his citizenship.

⁶⁹ Los Angeles Times 6 April 1998-'*Pledging Multiple Allegiances*'

⁷⁰ <www.globalpolicy.org/nations/citizens/multiple.htm>(accessed on 21 June 2005)

d) Creates a better sense of belonging yet one retains the security they need to live abroad.

This could compel them to invest more skills and capital in the country as above mentioned. Dual citizenship grants legal protection and eligibility to participate in social security and political affairs of the country they are citizens. Kenyans are able to get benefits such as legal protection and the ability to participate in social security and pension programmes subsidized housing, national health programmes, scholarship programmes as well as University tuition reimbursement programmes among other items that, accordingly provide the stability that Kenyans at home benefit from as well as those abroad

Kenyans living abroad say that they love their county dearly despite seeking foreign citizenship. They have tried with no success to collect signatures to try and ask the Kenyan government to allow them to have dual citizenship.

One Mr. Gichane Muraguri, in a paper on the perspective of Kenyans living abroad presented the Bomas Draft Constitution says that patriotic Kenyans feel restricted and confined in conflict of conscience over their need to acquire foreign citizenship since their constitution does not allow dual citizenship.⁷¹ Kenyans do not acquire foreign citizenship due to their disloyalty but their need to survive.

If dual citizenship was allowed by our Constitution, perhaps Harambee stars striker Denis Oliech would not have turned down Kshs. 200 million offer from Qatar to change nationality and play for that country.⁷² The same applies to dozens of Kenya's top athletes who would not have changed nationalities in recent years seeking lucrative financial deals in the gulf countries of Qatar or Brahnian. For example Stephen Cherono now known as say Shaheen who changed nationalities to run and win the steeplechase

⁷¹ Daily Nation 19 February 2004- 'United by Birth divided by law'

⁷² *Ibid.*

gold medal for his new country Qatar at the 2003 World championship in Paris.⁷³ Others include Bernard Lagat, Olympic silver medallist who has become an American Citizen.⁷⁴

Though these people forsake Kenya for better economic fortunes, they are indeed homesick since their blood ties are broken from relatives left behind in Kenya. In addition parents in some countries have felt let down by their children's choices to change nationalities or citizenship. In some countries especially in the developed world parents have gone ahead to disinherit their children, leaving nothing behind in their wills or testaments for their children who have changed nationalities.

The African Union (AU) is calling back Black Americans to most West African States by offering them dual citizenship. This is to try and help them build bridges broken by slavery. More of these West African countries such as Ghana and Senegal are offering dual citizenship to them in exchange of economic benefits these Americans will bring to their countries.

On the other hand, Uganda does not allow dual citizenship. Many Ugandans of Asian origin who were compelled out of Uganda in 1972 are now resident in countries such as Canada, Britain and the U.S.A. They have turned their back on Uganda, not wanting to sacrifice their citizenships from the above-mentioned countries. Yet they could have had it both ways and everybody would be happy. This is because Uganda is their country of birth.⁷⁵

Uganda and Kenya can borrow a leaf from Ireland. Millions of Irishmen who have become citizens in the USA, Britain and Australia keep strong ties with their home country. Their contribution is particularly a driven investment that has made substantial

⁷³ <www.cbsportline.com/olympics/story8367403>(accessed on 12 June 2005)

⁷⁴ *Supra* note 2

⁷⁵ New Vision Kampala 21 January 2001, www.globalpolicies/nations/citizen/uganda.htm (accessed on 12 June 2005)

contribution to Ireland. In effect, the Republic of Ireland has become Europe's fastest growing economy today.⁷⁶

e) Values learnt from foreign countries could be incorporated in home countries.

Good values learnt and ideas could be borrowed and used in home countries. This was for example the case in the Dominican Republic Presidential elections of 1996 mentioned earlier in this chapter. They were considered to be the most honest and fair elections this Republic has had. This was said to be to some extent due to the Dominican Americans who participated in those elections.

f) A second passport may give one access to travel in countries where ones own passport might not be used .

This can be because of temporary or permanent travel restrictions for example, the case of Canadians who were refused permission to land in Spain some years ago during a Spanish - Canadian fishing rights dispute.⁷⁷

g) Pastoralist communities that live on the East African borders can graze their cattle within East Africa without being harassed.

These patrol communities are currently not allowed to graze in neighboring countries when there is drought in Kenya. If dual citizenship is allowed these communities would not be harassed and many livestock would be spared since one can find pasture in other neighboring countries other than Kenya.

h) Women can be allowed to confer Kenya citizenship on their children.

In Kenya including other states, women cannot confer citizenship to their husbands or children especially when these women get married to foreigners. Also in cases where their children are born in other countries other than Kenya and their parents are a single

⁷⁶ *Ibid.*

⁷⁷ *Supra* note 54

mothers. Fathers are considered to be the ones who confer citizenship on their children according to our Kenyan Constitution⁷⁸ and not women.

Consequently Kenyan husbands can confer citizenship to foreign wives but Kenyan wives cannot confer citizenship to foreign husbands. Children born of foreign husbands and Kenyan wives cannot acquire Kenyan citizenship. This is by virtue the fact that a woman loses her citizenship and acquires that of her husband upon marriage. Where the husband is a foreigner, she loses her Kenyan citizenship to acquire his citizenship.

This was illustrated in the case of Phillip Keino whose mother, Dr. Esther Keino is a nominated Member of Parliament (MP). He was born in the U.S.A when his mother was a PHD student at Harvard University. Because he was born in the U.S.A, he automatically became a citizen of that country but has grown up in Kenya. He had dual US - Kenya citizenship until he was 23 years old, when Kenya stripped him of his Kenyan citizenship.⁷⁹ His mother could not bestow Kenyan Citizenship to her son who visited Kenya as a tourist. He was later allowed to become a naturalized Kenyan citizen after the former president of Kenya, President Daniel Arap Moi intervened.

His case may have been special since he could access the high and mighty to accord him this privilege. What happens to those who do not have such privileges or access? They remain foreigners including their children. This illustrates the dilemma single citizenship possess; one which dual citizenship could attempt to solve.

Egypt as a country has gone a step further to try and permit women to confer citizenship.⁸⁰ This is in relation to passing citizenship to children born of Egyptian mothers and foreign fathers. Mothers are to be allowed to confer citizenship to their children. More than a quarter of Egyptian women are married to non - Egyptians.⁸¹

⁷⁸ Sections 89 and 91, of the current Constitution

⁷⁹ *Supra* note 71

⁸⁰ www.sovereign/citizen/2003/1103egyptwomen.html Egypt may soon Permit Women to Confer Citizenship (accessed on 12 June 2005)

⁸¹ *Ibid.*

Their children would not be entitled to state provided free medical care and education, which as foreigners they do not enjoy. Egyptian women have complained that they are born in a country which when it comes to official documents, one is treated as a foreigner. Yet, foreigners who are married to Egyptian husbands are treated as citizens.

In addition, the Jordanian Queen has given Jordanian women the same rights as men to pass on their citizenship to their children.⁸² This is in relation to Palestinian children born to Jordanian Palestinian women.

i) It avoids statelessness, that is a condition where an individual lacks a nationality

This is the lack of a nationality by an individual. It is therefore a condition whereby an individual has no nationality in any country. Such individuals do not have a home country that could, otherwise provide international protection. It occurs in instances related to accidental loss of nationality without corresponding acquisition of a new one. The problems faced by a stateless person may assume almost incredible complexity, particularly in relation to such matters as, identity of documents, travel permits and passports, work cards, marriage certificates and other examples of mass papers commonly carried by inhabitants of most states. Those affected cannot be protected as they have no nationality documents such as those mentioned above.

Loss of one's original nationality typically conferred by birth or parentage without obtaining a new citizenship renders the individual stateless. There is no state therefore that come to the aid of the individual when they are in need of diplomatic representation.⁸³

During wars or political persecutions individuals may become stateless if they have no other citizenship. However, if these individuals would be dual citizens they could not be in this situation if unless they had already renounced the second citizenship.

⁸² <www.sovereign/nation/citizen/2002/1217jordan.wm>-Jordan Queen and Citizenship Rights.
(accessed on 12 June 2005)

⁸³ *Supra* note 2 pp 182

This was highlighted in one of our local dailies⁸⁴ of a Kenyan man by the name of Mr. Sanjay Shah who did not have a nationality for over a year. He had lived for thirteen months at the Jomo Kenyatta International Airport transit terminal. He had denounced his Kenyan citizenship when he realized he was also entitled to be British Overseas Citizenship. Kenyan laws currently do not allow dual citizenship. However, Britain did not grant him citizenship as he was kicked out of Britain where he had sought citizenship. According to the Chief Passport Officer at the British High Commission in Nairobi⁸⁵, she says that when Kenya achieved independence in 1963, Sanjay did not automatically become a Kenyan citizen because none of his parents were born in Kenya. He therefore, retained the citizenship of the UK and Colonies (CUKC) status. When the British Nationality Act of 1981 came into force he had no claim of either British citizenship or British Dependant Territories citizenship. He therefore, acquired a British Overseas Citizenship (BOC).

He became a Kenyan citizen by registration in 1984 and he therefore renounced his Indian citizenship for Kenya did not allow dual citizenship. He was not required to renounce his British citizenship, as he was only 21 and not 25 as the British law stood then. When he attained the age of renunciation he did not renounce his BOC citizenship as he would automatically cease to be a Kenyan citizen for Kenya did not allow dual citizenship. When he applied for a Kenyan passport his documents showed he had renounced his Indian citizenship and was eligible to be a Kenyan citizen. He however, did not know he was a BOC and to become a Kenyan citizen he had to renounce his BOC citizenship. He therefore did not renounce his BOC status and therefore, he did not give up the status. That is why when he realized he was a BOC he decided to renounce his Kenyan citizenship to embrace that of Britain. He believed that Britain offered a better life compared to Kenya and especially for his 15-year-old son who would get a better education in Britain in the best schools there.

On 28 June this year the British High Commissioner informed Sanjay that his application had been approved. He is now a British citizen. This scenario illustrates that had Kenya

⁸⁴ Daily Nation Monday 11 July 2005 Outlook Magazine-‘No place to call home’

⁸⁵ *Ibid*

allowed dual citizenship Sanjay would not have succumbed to the events he went through. The fact that he was a dual citizen again illustrates how a second citizenship can be useful when one is stateless.

The Convention on Statelessness as mentioned in the earlier part of this dissertation, now obliges its signatories to grant their citizenship to persons who are stateless. They may also not deprive an individual a nationality if this will render the individual stateless. Therefore, it can be said that with reduction of statelessness and states having limited discretion to deprive its citizens its original citizenship, many people now hold dual citizenship for a state has limited discretion to deprive a citizen an original citizenship if he acquires another citizenship.

2.3 DISADVANTAGES OF DUAL CITIZENSHIP

Despite numerous advantages that dual citizenship has to offer, critics of dual citizenship have stated several disadvantages as stated below as follows: -

- a) It diminishes ones individual loyalty to a nation or state.
- b) Evasion of taxes and tax liability
- c) It encourages fraud and duplicity
- d) Few Kenyans practice foreign business
- e) It imposes problems as regards diplomatic protection.
- f) It may be abused to sway votes in an election
- g) There would also be competition for local jobs form aliens who become Kenyans.
- h) Terrorism
- i) It would be risky if certain officers of a Republic hold dual citizenship.

a) It diminishes ones individual loyalty to a nation or state. This shows lack of patriotism when one pledges multiple allegiances to two states. This in effect undermines the sense of shared experiences that make a nation a community. When one holds more than one citizenship or dual citizenship, by virtue of having several passports, this becomes more of a badge of convenience rather than undivided loyalty.⁸⁶

⁸⁶ *Supra* note 73

For example, with the United States (U.S.A) allowing dual citizenship, especially through their Green Card Lottery Programme, it has become an amorphous piece of real property or real estate that lacks a nationality identity.⁸⁷

An individual member of an independent political community helps to protect the community and through taxes makes contribution for the common good of the state. The obligation of each member of a community to support the state is called his allegiance.⁸⁸ Each citizen who cooperates for the defense and maintenance of the political community confidently expects in return for the fulfillment of his duties of allegiance to receive the protection of his state against injury from without.

Lack of this support or sharing it between states can be said not to be undivided loyalty to a state. In Switzerland for example, 70% of the Swiss citizens have dual citizenship. This has been greatly condemned by the Far Right People's Party, which wants parliament to repeal the dual citizenship law of 1992.⁸⁹

b) Evasion of taxes and tax liability

It is the duty of citizen to pay taxes to the state he is a citizen. Dual citizenship encourages citizens to "shop around" for a country with lower taxes. Foreigners are also subjected to more tax unlike a citizen who is not for example, subjected to stiff estate taxes. These stiff taxes are imposed on foreigners who work there.

Tax being a major source of revenue for states, mechanisms such as this that encourage evasion of taxes may not be received well by states.

c) It encourages fraud and duplicity

This would especially affect economic planning. With Kenya not having good records, corruption or fraud would be on the rise. Ghost citizens would be created for the benefit

⁸⁷ *Supra* note 63

⁸⁸ Stowell, Ellery C. International Law, Restatement of Principles pp.183

⁸⁹ *Supra* note 54

of some people in this country. Kenya has been known to have ghost workers in its Ministries such as the Ministry of Health and that of Local Government.

Kenyans can also fall prey to fraudulent lawyers or other officers, paying for passports and other documents that are never issued.

d) **Few Kenyans practice foreign business.** Dual citizenship would only benefit a selected group to people the high and mighty that can afford to trade internationally. This would not benefit majority of Kenyans.

e) **There would also be competition for local jobs form aliens who become Kenyans.** This is because; they have a higher advantage due to their knowledge, skills and technology, which they have compared to Kenyans.

f) **It may be abused to sway votes in an election.** These were *the feelings of Professor Okoth Ogendo, the Constitution of Kenya Review Commissioner rapporteur general.*⁹⁰ He says, "A presidential candidate may decide to use 'Kenyans' living abroad, who are citizens of other countries, to swing votes in his favor".⁹¹

g) **It imposes problems as regards diplomatic protection.** This may hamper efforts to provide diplomatic and considerable protection to citizens who are abroad. One of the essential duties of a countries consular and diplomatic corps is to provide protection and assistance to the country's citizens abroad. With two states offering this kind of protection, there are bound to be problems.

Where a citizen of a country is also a citizen of another country that is, a dual citizens, he can only be accorded protection by the country he is residing and not the other country. For example, the British citizens who are citizens of other countries cannot be accorded official British protection when they are in a territory of the other citizenship. If under the

⁹⁰ *Supra* note 64

⁹¹ *Ibid*

law of that country they are liable to any obligation such as military service the fact they are British citizens will not exempt them from it.

h) Terrorism

It can encourage terrorism. This would expose the country to insecurity from terrorists who wish to be Kenyans. This has been one of the greatest fears that critics of dual citizenship would rely on to dismiss the advantage dual has to offer.

However, according to the Kenya social Democratic Alliance (KSDA) which advocates for dual citizenship this does not hold water. The Secretary General says that,⁹²

"Dual citizenship will not prevent economic, immigration and other criminals from operating in Kenya if they have a strategy to do so. The argument by delegates that foreigners will take advantage of dual citizenship to spell down doom if it is introduced in the Constitution is myopic and smacks a of lack of understanding of the international situations. Kenyans abroad demand dual citizenship not for artificial reasons but because of real advantages they would get."

Terrorists have still managed to get into Kenya as evidenced in the Nairobi 1998 bombing and the Kikambala bombing which left several people dead and many seriously injured.

j) It would be problematic if not risky, when certain officers in the Republic hold dual citizenship.

For example, the President of a certain Republic, Cabinet Ministers, Chief of General staff, Force commanders just but to mention a few. This would comprise their loyalty to serving a particular state. This happened in the case where the former President of Peru Alberto Fujimori, who ruled the country from 1990 to 2000. He, was a citizen of both Peru and Japan. He was suspected of being involved in corruption and human rights abuses but could not be extradited from Japan since Japan does not extradite its

⁹² *Supra* note 62

citizens and further, there was no extraditable treaty between Peru and Japan. For extradition to be effective there must be an extraditable treaty between the two countries, the country effecting the extradition and the one seeking for the extraditable person.

14 CONCLUSION

There are 59 countries that permit dual citizenship with minimal exceptions prohibition. These include U.K, Canada, Togo and Tunisia only but to mention a few. In addition, 15 other countries permit it with considerable exceptional prohibition. Mexico, Ghana and Nigeria fall in this category. Furthermore, 35 countries permit it though the permission is very nominal. These countries include Argentina, Spain, Namibia, and Germany.⁹³

Dual citizenship is a growing global phenomenon where having more than one passport is becoming a status symbol. Dual citizenship is beneficial and has real advantages. The encumbrances it may encounter can thoroughly regulated to make it effective. This may include for example making it selective, and more so for those in government offices such as the Executive and the Legislative who may not have this privilege of having dual citizenship.

Kenya can extend this privilege to Kenyans especially those living abroad to have advantages that their counter parts in other are enjoying.

⁹³ <www.geocities.com/jusjih/dncdp.html>(accessed on 17 June 2005)

CHAPTER THREE

DUAL CITIZENSHIP IN THE UNITED KINGDOM AND NIGERIA: A COMPARATIVE ANALYSIS

3.1 INTRODUCTION

Nothing in international law prevents individuals from establishing citizenship in more than two countries. Some countries prohibit their citizens from establishing citizenship in another country or only permit it in certain circumstances. Each country has different requirements for citizenship as well as different policies regarding dual citizenship. Officially 89 countries in the world allow dual citizenship.⁹⁴

The United Kingdom(UK), for example, is one of the 89 countries that permit dual citizenship with minimal restrictions and exceptional prohibition. Nigeria is also among the 89 countries, although it is among 16 others, which permit dual citizenship with considerable exceptional prohibition.⁹⁵ The UK can be said to have adopted a “free market approach”, as compared to Nigeria that has adopted a “cradle to the grave approach” with the latter only allowing only citizens who are citizens of Nigeria by birth to hold dual citizenship. The UK on the other hand, has allowed others other than those who are its citizens by birth to hold dual citizenship.

This chapter will attempt to portray a comparative analysis between dual citizenship in Nigeria and the UK. In many aspects, these countries are similar to Kenya. The similarity being that they belong to the Commonwealth group of countries. The Commonwealth was established by the Westminster Statute of 1931, as an association comprising of the UK, and many former colonies of the Britain that are now sovereign states including those in Africa such as Nigeria and Kenya. Nigeria joined the Commonwealth in 1960 while Kenya joined the same in 1963.

⁹⁴ <www.answers.com/main/ntquery?>30.> The 2005 multiplecitizenship:info.(accesed on 17 June 2005)

⁹⁵ <www.geocities.com/gusgiw/dndep/html.>(accesed on 17 June 2005)

With most Kenyan laws having British originality, this comparative study seeks to show us that indeed dual citizenship has proved beneficial to these countries and despite few shortcomings in their dual citizenship laws, there are lessons that Kenya could very well learn from them.

3.2 DUAL CITIZENSHIP IN THE UK: A COMPARATIVE PERSPECTIVE

3.2.1 Historical Background

The UK or the UK comprises of the England, Wales, Scotland, and Northern Ireland. It is commonly called the Great Britain or Britain.

British Nationality law has its origins in the medieval times. The British Empire came into existence and there remained only a single category of nationality, that of British subjects. There had always been a distinction in the British rules in terms of the subject's of the monarch and the aliens. British subjects included not only persons within the UK but also those throughout the empire, even in the colonies, like Fiji and the self-governing dominions.⁹⁶ There was no specific law dealing with nationality or citizenship, since the law was unwritten and the written one was in several statutes.

This changed with the adoption of the British Nationality and States of Aliens Act, of 1914. This Act codified for the first time the law relating to the British Nationality. Nationality is therefore a nineteenth century concept.⁹⁷ This 1914 Act was founded on the Common law doctrine of allegiance. Allegiance was defined by Blackstone's dictionary as "the ties or ligaments which bind the subject to the king, in return for protection in the King affords the subject"⁹⁸ This is a natural and permanent allegiance owed by subjects who at Common law were persons born within the King's dominion.

Aliens, on the other hand who were within the Kings dominion owed the sovereign a local or temporary allegiance. The matter was discussed in the famous but now obsolete *Calvin's case*⁹⁹ where it was decided that 'postnati' i.e. the persons born in Scotland after

⁹⁶ *Supra* note 94

⁹⁷ See O. Hood Phillips 5th ed., (1973) '*Constitutional and Administrative law*'; London Sweet and Maxwell pp. 363

⁹⁸ *Ibid*

⁹⁹ *Supra* note 13.

the accession of James VI of Scotland to the English throne as James I, were not aliens in England. The Common law doctrine of allegiance plays no part in the new concept of Nationality. Allegiance is no longer a new source of British Nationality, although it may be a concept of it.¹⁰⁰ Acquisition of citizenship under the 1914 Act was therefore by birth or by descent – any person born out of His majesty's dominion whose father was, at the time of that persons birth a British subject. Women who married aliens automatically lost their British citizenship and acquired that of their alien husband. This changed in 1948 when the British enacted the Nationality Act of 1948. What led to this enactment was that the Commonwealth Heads of Government decided in a conference in 1948 that to embark a major change in the law of Nationality throughout the Commonwealth following Canada's decision to enact its own citizenship laws.

It was decided that the UK and self-governing dominions would each adopt a separate citizenship but retain the common status of British subject. Until then all the Commonwealth countries had a common citizenship; the British Subject system. It was no wonder that the expression 'British subject' and the expression 'Commonwealth citizen' acquired the same meaning.¹⁰¹

When the British Nationality Act of 1948 came into effect on 1st January 1949, citizens of the UK and its colonies {CUKC's} who subsequently became naturalized citizens of other countries no longer automatically lost their British Nationality.

Since that date, citizens of the UK and its colonies who became naturalized citizens of a foreign state retained their status as British subjects, citizens of the UK and its colonies, unless they made a made a formal declaration of renunciation in front of a British Consul or other parties officially authorized to accept such declarations.

This Act of 1948 introduced the concept of dual citizenship and this concept was further reinforced by the British Nationality Act of 1981, which expanded the scope of who may be a British subject.

3.2.2 Scope of Dual Citizenship

¹⁰⁰ *Supra* note 97 pp 364..

¹⁰¹ *Ibid* pp 366.

Dual citizenship seeks to accommodate British citizens born in the UK and its colonies who become citizens of foreign states. This lays down the general rules applicable to dual citizens or dual nationals, this covers persons qualified or eligible to hold dual citizenship in the UK. Furthermore, dual citizenship seeks to enable those who had lost their British citizenship such as married women and children to acquire it. Finally, it seeks to show what benefits one derives from being a dual citizen. The European Union or the EU, which the UK is a member, will also be discussed to try and illustrate that the EU allows countries with dual nationality laws and are members of the same to allow dual citizenship. This is provided for in the European Community Convention. The European Community is now the European Union.

3.2.3 Eligibility of Acquiring Dual Citizenship

This covers the various modes of acquisition of British citizenship looking at both the British Nationality Act of 1948 and the British Nationality Act of 1981 but emphasis will be placed on the latter since, it is the current law on Nationality in the UK. The 1948 Act introduced five classes of persons who may become British citizens. These were:-

1. Citizen in the UK and its colonies [CUKC's] British Colonies included.
2. Citizens of other Commonwealth countries as associated states.
3. Citizens of the Republic of Ireland who by the Ireland Act 1949 section 2 are not regarded as aliens
4. British protected persons i.e. [roughly] persons born in British protectorate, protected states or trust territories.
5. Aliens.

However, the British Nationality Act of 1981 abolished the status of CUKC's, and replaced it with three new categories of British citizenship on 1st January 1983; these are:

1. British citizen
2. British Dependant Territories Citizenship [BDC], which was, renamed British Overseas Territories Citizenship [BOTC] By the British Overseas Territories Act 2002.

3. British Overseas Citizen [BOC]

British citizens are those CUKCS, who had a close relation with the UK and its islands [Channel Islands and the Isle of Man] who possessed the right of abode under the Immigration Act of 1971.

BOTC's are those CUCK's with a close relationship with the one of the remaining colonies. Remaining colonies were, renamed Overseas Territories. BOCs are those CUKC's who were not eligible for British citizenship status or BOTCs status. Every British citizen or British Overseas Territory [BOTC] is either a British citizen or British Overseas Territory citizen [BOTC] by descent. A British citizen is a British Overseas or a British Overseas Territories citizen than by descent is a British citizen or British territory citizen through birth, adoption, naturalization or in some cases registration in the UK and its Islands or its Overseas territories.

If one becomes a British citizen or a British Overseas Territories citizen otherwise by descent he or she cannot pass on a British Nationality to any child of his or hers outside the UK or its overseas territories. But depending on ones' personal circumstances their child may be eligible for registration. British overseas citizenship [BOC] cannot generally be passed by its holders except in the limited cases to avoid statelessness or other hardship.

3.2.3.1 Acquisition of UK Citizenship

Acquisition of UK citizenship can be by:-

- a. Birth – *jus solis*
- b. Descent – *jus sanguinis*
- c. Naturalization;
- d. Registration; and through,
- e. Adoption.

These methods are universal and are described in details in the first chapter of this dissertation therefore they will not be discussed in great detail under this heading.

A. Citizenship by birth- *Jus solis*

This occurs where a child is born in the in the UK to a parent who is British citizen at the time of the birth or to a parent who is settled in the UK. If the relevant person is a father the parents must be named. This is provided for in section 1 of the British Nationality Act 1981, which was also provided for under section 4 of 1948 Nationality Act. Where a child's father enjoys diplomatic immunity and not a citizen of the UK, or the child father is an enemy alien and birth occurs in such circumstances the child cannot be a British citizen by birth.¹⁰²

B. Citizenship by decent- *jus sanguinis*

One is a citizen by descent if one of the parents is a British citizen otherwise than by descent that is by birth, adoption, registration or naturalization in the UK.

Certain rights accrue from being a British citizen by birth and by descent

They have all the political and legal rights of citizens. These include right of abode that is the right to live in and to come and go into and outside the UK. They have other rights such as voting and can stand in office that is a political office and so on.

C. Citizenship by Naturalization

Naturalization as earlier defined is a means of acquiring citizenship if one is an alien that is they are not by virtue of their birth or descent British citizens. Naturalization is now governed by section 6 of the British Nationality Act of 1981. Persons who are aliens and are of full age and capacity do this by way of an applicant to the Home Secretary. The Home Secretary may grant a certificate of naturalization and the applicant, on taking an oath of allegiance specified in the Act becomes a citizen of the UK and from the date of the certificate. Before the Home Secretary grants the certificate he must be satisfied the applicant:-

- a) Has either resided in England or Wales for three years

¹⁰² *Supra* note 97, pp 369

- b) Has either resided in the UK or been in Crown service in the UK government throughout the preceding twelve months
- c) Has either resided in the UK or colony as depending or been in Crown service under the UK government for periods amounting to not less than four years during the four years preceding the twelve months.
- d) Is of good character
- e) Has sufficient knowledge of the English language
- f) Intends to: -
 - Reside in the UK or any colony or dependency
 - Enter into as continue Crown service under an International organization of which the UK government is a member or service to the employed of a society or company established in the UK or any colony or dependency and is not subject to any restriction under Immigration Act.

A British protected person or person that is a person born in British protectorate, protected states or trust territories may be naturalized on easier terms than aliens for instead of conditions a), b) and c) supra, it is sufficient if he has been ordinarily resident in the UK or in government service in the UK throughout the preceding five years.

A citizen by Naturalization becomes a full citizen just like those who have citizenship by birth or descent and has therefore all political and legal right of a citizen by birth or descent. However, this certificate of naturalization is renewable. Reasons for revocation may occur if the certificate was obtained by fraud, false representation, or concealment of any material fact or the person has by his conduct shown himself to be dishonest to Her majesty or has traded with the enemy during any war or (unless the effect of deprivation would be to render that person stateless), or has sensed not less than twelve months imprisonment within the years of naturalization.

A naturalized person therefore is not to be deprived of citizenship unless the Home Secretary is satisfied that it is not conducive to be a citizen of the UK and colonies and in the case of continuous residence abroad, a person against whom an order is proposed to be made may refuse that the case be referred to a committee of inquiry.

However, as we look at the concept of nationalization of indeed important to look at the status of aliens since aliens are the ones who get naturalized or acquire citizenship by this method.

Status of Aliens.

Under Common law aliens had no public or private rights. The rules were gradually relaxed by state and a more liberal attitude on the parts of the Common law courts. By the end of sixteenth century it was recognized that aliens in the King's dominion owed a temporary and local allegiance. Friendly aliens could now bring personal actions such as trespass and debt and could own personal property including leaseholds.¹⁰³

Friendly aliens are citizens of countries with which the crown is not at war. They have the right to enter into contracts, to own and dispose of personal property and to bring and defend actions. They may now own and dispose of real property.¹⁰⁴

Resident aliens owe allegiance to the Crown, and are subject to the general law and to the criminal law. They do not enjoy the parliamentary or the local government franchise, that is to represent the people, they may not sit in either House of Parliament or hold any public office but, they may be employed in any other civil capacity under the Crown outside the UK as under a certificate issued by the a member of with the treasury approval. They also are subject to movement restrictions with regard to employment in the armed forces, the civil service in this country, and the merchant navy; jury service, the ownership of British ships; holding a pilot's certificate; change of name; and taking part in certain industrial Activities.

Enemy aliens are citizens of countries with which the Crown is at war, were at one time right less, unless exceptionally they were here with the license of the king.¹⁰⁵

"Enemy" came to mean any person whether a British subject or not, who voluntarily resided or carried on business in an enemy country.

¹⁰³ *Supra* note 97 pp 370

¹⁰⁴ *Ibid* pp. 367

¹⁰⁵ *Ibid*

An enemy alien in this sense cannot enter into contracts by English law, and contracts entered into with him before the war is suspended for the duration of the war. "Enemy character" is largely of importance in relation to corporation, and in relation to offences under the trade and enemy act.

An enemy alien cannot bring an action in the alien courts; if he was plaintiff in an action before the war, this is because the enemy cannot be given the advantage of enforcing his rights with assistance with the sovereign with which he is at war.

On the other hand, an alien enemy can be sued during the war, as that permits British subjects or friendly aliens to enforce a few rights with assistance of the sovereign against the enemy, and if sued justice demands that he appeals, for he is entitled to have the case decided according to the law and therefore to have the error of the court of the first instance corrected.

D. Citizenship by Registration.

This is the fourth mode of acquiring citizenship in the UK.

A person makes an application to the Home Secretary to be to be registered as a citizen of the UK and its colonies; others may be so registered at his discretion. Those eligible for registration or otherwise are: -

- i. A citizen of a commonwealth who is patrial that is, has the right of abode. This is a person who for the previous five years has been a resident of the UK or engaged in relevant employment that is Crown service under the UK government or an International organization of which the UK government is a member, or employed by a society or company established in the UK.
- ii. A woman who has been married to a citizen of the UK or its colonies;

The Home Secretary has the discretion to register a citizen of the UK and its colonies an application made to him, any citizen of the Commonwealth who satisfies the Home Secretary that he is of good character and has sufficient knowledge of English or welsh language and that he intends to reside in the UK or it colony, or to enter and continue in relevant employment, as noted above, provided that for the previous five years he has been ordinarily resident in the UK or engaged in relevant t employment.

It is worthy to note that a person who acquires citizenship by this method may be deprived of citizenship by order of the Home Secretary if he is satisfied that registration is got through means of fraud, false representation or the concealment of any material fact, and it is not conducive to the public good that the person should continue to stay in the UK or be citizen. This person concerned is entitled to have their case referred to the committee of inquiry called the deprivation of citizenship committee.

E. Adoption

An adopted child acquires the nationality of his or her adopting parents. If the parents are dual citizens, the child also acquires the same citizenship.

3.2.4 Status of Married Women and Children.

Previously under the 1914 Act, a British woman lost her citizenship and British Nationality if she married an alien, or if her husband became an alien after marriage.

Later amendments provide that she could retain her British nationality;

- i. If on marrying an alien she did not acquire his Nationality
- ii. If on her husband's becoming an alien she made a declaration of retention of her British Nationality or did not acquire her husband's Nationality or citizenship.

The position now is therefore is that a British woman who marries an alien retains her British citizenship unless she chooses to renounce the same. This is the most important part in this dissertation, of British women who married aliens. However, we will also look into the other side of the coin where the alien woman marries a British national or citizen. This woman does not ipso facto acquire citizenship, but may do so by registration or naturalization, but the most important part of this dissertation is the former.

A child who's born in the UK is a UK citizen if either his or her married parents or unmarried mother is a British citizen¹⁰⁶

Children born in the US whose fathers or either parents are British citizen may also be British citizen by descent. This applies to children born after December 31, 1982.¹⁰⁷

¹⁰⁶ Standley Kate, 2nd ed.,(1997) Family law- Citizenship and Immigration pp 29

In respect to the current UK laws, such children cannot lose their status of British citizenship without making formal declaration of denunciation or renunciation after reaching the age of 18 years.

According to the Home Secretary, office, which effect of 5th October 1998, children are required to hold their own passports, instead of being included in the family member passport. Children already included in a British family passport will not be affected until the holder's passport is replaced.¹⁰⁸

However, if the person concerned after reaching full age exercises certain rights and privileges connected to his second citizenship, loss of the UK citizenship may result.

3.2.5 The European Union

The European Convention made up of European countries recognizes dual nationalities or dual citizenship. This is provided for in this chapter IV of the same. It therefore recognizes the various modes through which one may acquire citizenship and more so children and women.¹⁰⁹

3.2.6. Benefits of Dual Citizenship

There are many benefits that dual citizens enjoy.

- i. Firstly they can leave and enter the UK at any time without any restrictions.
- ii. They have the right of abode and may return and reside in the Britain any time, regardless of the fact that they are dual citizens. This right of abode applies to all British citizens including those naturalized or registered. They are not therefore subjected to regulation and control as some who are not partials who require leave to enter the UK which may be given for a limited or indefinite period and may be subject to conditions restricting employment and occupation.

¹⁰⁷ <www.britainusa.com/corr/ar/dualnationality.asp> –Dual nationality for Children (accessed on 20 June 2005)

¹⁰⁸ Ibid.

¹⁰⁹ Discussed earlier in chapter one as the European Community Convention on Nationality.

- iii. They as citizens have the full due process rights in the UK Constitution. That be that they enjoy the Parliamentary or Local Government franchiser, and they may sit in either House of Parliament and may hold any public office.
- iv. UK citizens may sponsor their immediate relatives, that is either a spouse, unmarried minor children and parents for immigration without waiting for visas to become available.
- v. UK citizens can hold UK and United States' passports since they are dual citizens of those countries. These passports often facilitate trade abroad. They may travel abroad without worrying about protecting their residency.
- vi. UK citizens cannot be exported or extradited.
- vii. Only UK citizen athletes are eligible to qualify for the UK Olympic team.
- viii. UK citizen spouses are entitled to substantial deductions from the estate taxes.
- ix. Citizens may receive social security benefits such as free health and free education facilities.
- x. They can be employed on any civil capacity under the British government inside or outside the UK. They may be employed into the armed forces, the civil service, the merchant navy, and jury service. They may in addition own British ships, can hold pilot certificates, can change names and take part in certain industrial activities.

3.2.7 Loss of Citizenship

Citizenship may be lost by deprivation in case of naturalized citizens and citizens by registration if a citizen contravene any requirement.

The British Nationality Act 1981 section 40 provides for loss of Nationality by renunciation to the Home Secretary. The individual must renounce their citizenship before the Home Secretary.

3.2.8 Conclusion.

The UK is an elaborate example of how dual citizenship can be applicable. This concept of citizenship dates back too 1948, when it was introduced y the British Nationality Act of that year as earlier mentioned in this chapter. British dual citizenship has applied from

then to date in the UK and has remained a workable solution for its citizens who find they are holding other citizenships. This has worked because of tight controls through stringent measures they have put for non-British citizens, more so through the 1971 Immigration Act, which controls and regulates movement of the people in and out of the UK.

3.3 DUAL CITIZENSHIP IN NIGERIA: A COMPARATIVE PERSPECTIVE.

3.3.1 Historical Background.

Dual citizenship in Nigeria has taken a 'cradle to the grave' approach. This is because it has been recently introduced in their 1999 Federal Constitution of Nigeria and Nigeria therefore has no specific laws compared to the UK dealing with dual citizenship other than the supreme law of the land, the Constitution that provides for the Nigerian citizenship and the Nigerian Citizenship Act. This is different as compared to the UK where as we have seen above, the concept has now become an accepted way of life for the British citizens for the UK adopts a more liberal approach.

However, despite the dual citizenship being specifically provided for in the 1999 Constitution, this concept existed as early as 1960 for status of a citizen of the UK and colonies or a British protected person who continued to attach his UK citizenship even when he became a Nigerian citizen.

Nigeria became independent from the British in 1960. This will be discussed later below including who is eligible for dual citizenship in Nigeria, and what benefits the dual citizens have enjoyed by being dual citizens of Nigeria and other states.

Nigerian nationality is therefore, a concomitant of the birth of the Nigerian state.¹¹⁰ Before independence, Nigeria subsumed under the British rule for the purposes of diplomatic relations; in consequence of this, its natives bore the status of British citizen in international law¹¹¹

¹¹⁰ See B.O. Mwabueze(1964) '*Constitutional law of the Nigerian Republic*': London Butterworths, pp331

¹¹¹ *Ibid*

Under the British law, a native of Nigeria was either a citizenship of the UK and colonies (if he was born in the former colony of Lagos) or his father was a citizenship otherwise than by descent, or a British protected person born in the former protectorate of Nigeria, or his father was born in Nigeria.¹¹²

3.3.2 Scope of Dual Citizenship

Nigeria as compared to the UK has only one class of nationals that is, citizens for although it accepts a special status for Commonwealth citizens, it does not recognize them as its citizenship. The Nigerian Independent Act, 1960 as above mentioned provided that a person born in Nigeria shall cease to be citizenship of UK and other colonies, or a British protected person, upon becoming a Nigerian citizen, he nevertheless does not cease to be so if he, his father or his father's father:¹¹³

- a. Was born in the UK or a colony, a protectorate, or a protected state or a UK trust territory outside Nigeria; or
- b. Was registered as a citizenship of the UK and its colonies outside Nigeria; or
- c. Became a British subject by reason of the annexation of any territory included in a colony outside Nigeria; or
- d. Is a woman whose husband has not ceased from being a citizenship of the UK and her colonies outside Nigeria.

However, this status of a dual citizenship was short lived, as one was required to renounce his citizenship of that other country when he or she obtained the age of 21 years. Section 13 of the Constitution of Nigeria of 1963 provided, inter alia, that,

“Any person who upon attainment of the age of 21 years was a citizenship of Nigeria and a citizenship of some other country other than Nigeria shall cease to be a citizenship of Nigeria upon the attainment of the age of 21 years.”

¹¹² The British Nationality Act 1948. Note particularly a Nigerian born in the UK and colonies (outside the former colony of Lagos) or in a Protectorate, protected state or trust territory (outside Lagos) was also a citizen or a protected person as the case might be.

¹¹³ Supra note 110 pp 333

Nigeria now does recognize the status of dual citizenship in its current constitution¹¹⁴ in chapter three of the same and more especially section 28, of that Constitution¹¹⁵. This means now that it is acceptable to hold dual citizenship and one need not renounce that when they reach the age of 21 years. Section 28 subsection 18(2)of that Constitution states that:

“Subject to their provisions of this section, a person shall forfeit forthwith his position of being a Nigerian citizenship if not being a citizenship of Nigeria by birth he acquires or retains the citizenship or Nationality of another country other than Nigeria of which he is not a citizen.”¹¹⁶

Any registration of a person or any one who is or at the grant of a certificate of naturalization to a person who is a citizenship of a country other than Nigeria at the time of such registration commencement upon effective renunciation of the citizenship in five months from such registration to grant”

As regards sub-section 1 of the above section, Nigeria does recognize dual citizenship of its citizens that has acquired Nigeria citizenship by birth and are therefore Nigeria citizens by birth. If they acquire citizenship of other countries other than Nigeria, they can retain their Nigerian citizenship and do not have to renounce it as it was the case before the 1999 Constitution came into effect.

It is clear from the subsection 2 that a person must renounce citizenship of another country within five months if he is to be registered or naturalized as a citizenship of Nigeria and holds citizenship of another country.

The above section indicates clearly that one can hold dual citizenship in Nigeria as has been illustrated. This is a positive step with regards to Nigerian citizenship especially those who have acquired other foreign citizenship and have Nigerian citizenship by birth. These citizens can still retain their Nigeria citizenship and hence their roots. Kenya can emulate Nigeria and do the same especially to enable Kenyan citizens by birth who have

¹¹⁴ 1999 Constitution of the Federal Republic of Nigeria.

¹¹⁵ *Ibid*

¹¹⁶ www.ngex.com/nigeria/constitution- dual citizenship in Nigeria.(accessed on 21 June 2005)

acquired citizenship of other foreign countries or nationalities to retain their Kenyan citizenship. Kenya can allow dual citizenship in relation to its citizens who are citizens by birth before granting dual citizenship to those who acquire Kenyan citizenship by other methods other than by birth.

3.3.3 Eligibility of Acquiring Dual Citizenship

This illustrates the various modes through which citizenship is acquired in Nigeria. These include citizenship by: -

1. Birth;
2. Descent;
3. Naturalization;

Nigeria, as earlier mentioned, it has only one class or citizenship, compared to the UK which has several for although it accords special status to commonwealth states, It does not recognize them as its citizens. This is provided under the 1999 Constitution of the Federal Republic of Nigeria, sections 25 to 27 of the same.

3.3.3.1 Acquisition of Nigerian Citizenship.

The mode of acquisition of Nigerian citizenship include citizenship:-

- a. By birth
- b. By descent;
- c. By registration;
- d. By Naturalization.

A. Citizenship by birth-*Jus soli*

This is referred to citizenship *jus soli*. This is provided under section 25 of the 1999 Federal Constitution of Nigeria.

A person acquires this type of citizenship if his parents or grand parents belonged to an indigenous community of Nigeria by the date of independence¹¹⁷ therefore every person born in Nigeria became a Nigerian citizenship by October 1960, provided that one of his parents or grand parents was also born in Nigeria and he was a citizen of the UK and Colony or a British protected person on 30th September 1960¹¹⁸ a person born in Nigeria after 3rd September, 1960, also becomes a Nigerian citizens by birth unless:-

- a. Neither of his parents was Nigerian, and his father possessed an immunity from any suit and legal process as is accorded to an enemy of a sovereign state accredited to Nigeria or;
- b. His father was an enemy alien and the birth occurred in a place under the occupation of the enemy.

Although the paramount criterion is solely by birth in this type of citizenship, it is also necessary to consider the factor of descent.

B. Citizenship by Descent-*Jus Sanguinis*

This is also called citizenship *jus sanguinis*. It applies to person whose parent is a citizen of Nigeria, yet him he is born outside Nigeria. A person born outside of Nigeria became a Nigerian citizenship on 1st October 1960 if:

- a. He was a citizenship of the UK and its colonies or a British protected person on 30th September 1960, and;
- b. His father was born in Nigeria and was a citizenship of the UK, and its colonies or a British protected person on 30th September 1960.

In addition, a person born outside Nigeria after 30th September 1960 becomes a Nigerian citizenship by birth if his father is a citizen of Nigeria otherwise by descent.

C. Citizenship by Registration.

Under this mode of citizenship, there are two categories of people who may be registered as citizens of Nigeria upon application made to the appropriate authorities and the

¹¹⁷ *Supra* note 114.

¹¹⁸ *Supra* note 110 pp 330

Federal Minister. Different conditions apply in respect to each, but an applicant in every case must make a written declaration of his willingness to renounce any other nationality or citizenship and must take the oath of allegiance.

The following are entitled to be registered as Nigerian citizenship by mere application without more:

- i. A person who was born in Nigeria and having the status of a citizen of the UK, and colonies or a British protected person on 30th September of 1960, but who did not become a citizen of Nigeria on October 1st 1960, because neither of his parents nor any of his grandparents was born in Nigeria, provided the application was made before October 1st 1960.
- ii. A person born after September 30th, 1960 outside Nigeria of a father who is a Nigerian citizen by descent only;
- iii. A woman who is or has been married to a person who is a Nigerian citizenship by birth or by descent or, who would have been such but for his death before October 1st 1960, but the woman must hereby be a citizen of the UK and colonies or a British protected person.
- iv. A woman who is a citizen of the UK and colonies or a British protected person and is or was and is or was married to a Nigerian citizen by registration under the (i) above or who but for his death before October 1st 1960 could have been entitled to be registered under (i) above if in the first case application is made within 12 months (or such extended period as the Minister may allow) after her husbands registration and in the latter case before October 1st 1962.
- v. Any person who on September 30th 1960 became a citizen of the UK and her colonies by naturalization or registration in Nigeria under the provisions of the British Nationality Act, 1948, provided that the application for registration was made before October 1st 1960.

The second category of persons who may be registered as citizens of Nigeria are persons accorded the status of Commonwealth citizens, these are inter alia the UK and Colonies, Canada, Australia, Tanzania, Ghana, and Uganda, citizens of the Republic of Ireland, and

British protected persons. A person in this category to be registered must satisfy the Minister that:-

- i. He is of good character;
- ii. He has a clear intention of his desire to be a Nigerian citizen and to stay in Nigeria;
- iii. He has a sufficient knowledge of a language in current use in Nigeria.
- iv. He is to take an oath of allegiance prescribed on the 7th schedule in the 1999 Constitution, which states that a person must have resided in Nigeria for a period of 15 years or resided continually for a period of 12 months, and during a period of twenty years preceding the 12 month period have resided in Nigeria.

This is the mode of acquisition of citizenship is provided for in section 26 of the 1999 Constitution of Nigeria, which is the current Constitution in place in Nigeria.

D. Citizenship by Naturalization.

This applies only to alien who if of full age and capacity may upon application to the Minister be naturalized as a Nigerian citizen if they meet the following qualifications:

- i. He has made has made a written declaration of his willingness to renounce any other citizenship or any other nationality and take the oath of allegiance;
- ii. He is of good character;
- iii. He has adequate knowledge of a language current in use in Nigeria;
- iv. He has ordinarily been resident in Nigeria for a period continuous of 12 months; immediately preceding the date of application;
- v. He has been ordinarily resident in Nigeria for a period of 15 years during which a period of seven years immediately preceding the 12 month period referred to in 1) above under (iv) above, and;
- vi. He satisfies the minister of his intentions, if naturalized, to continue to reside permanently in Nigeria.

3.3.4 Status of Aliens

An alien¹¹⁹ is a person who is not a citizen of Nigeria, a Commonwealth citizen other than a citizen of Nigeria, a British protected person or a citizen of the Republic of Ireland. He doesn't, like any other ordinary citizen of Nigeria, enjoy full legal capacity and privileges bestowed by law. However, unlike a citizen, aliens have no duty of allegiance to the state. Protection as a non-citizenship is entitled to when he is within the country not outside it, and his duty of obedience is also correspondingly limited.

Alien's right to enter Nigeria at any time is also restricted for they are non citizens, unless they are under a permit issued by the immigration department. Aliens are also restricted in movement and residence as is stated under the immigration, Control of Aliens Regulations Act, of 1963.

3.3.5 Status of Married Women And Children.

Nigerian women married to aliens do not automatically lose their Nigerian citizenship as since the 199 constitution of federal Nigeria, allows them to hold their Nigerian citizenship of both and that of a foreign country hence qualify as dual nationals and citizens under that constitution and so does their children.

3.3.6 Benefits.

1. In general citizen of Nigeria enjoys full legal capacity, which entitles him to all the rights and privileges as conferred by law; these include inter alia being employed in the civil service by the government, even though the government's nigerianisation policy requires that non Nigerian citizens should not be employed when there are Nigerians who are competent and well qualified to perform the same job.

¹¹⁹ See Constitution of the Federation of Nigeria of 1963, section 17 (1)

2. A citizen is entitled to the protection of the state when both within and without the state or its territories and in ... he must exercise his duty of allegiance to the state;
3. He can, in addition to interest in land, acquire a freehold interest in the land. An alien can only acquire a leasehold interest in land after 99 years. And then only with permission of the government in whose territory the land is situated.¹²⁰ This does not apply to a citizen.
4. A citizen has no disability in respect to entry onto Nigeria, residence, movement, occupation and other Activities.
5. He may never be extradited or deported out of the country as a citizen of Nigeria as Nigeria does not do so for its citizens.

3.3.7 LOSS OF CITIZENSHIP.

One may lose Nigerian citizenship by either deprivation or denunciation.

Under deprivation, a Nigerian citizen, other than a citizen by birth, may be deprived of his citizenship if¹²¹:-

- a. He acquired a Nationality of another country by a voluntary and found Act other than by marriage;

¹²⁰ *Supra* note 110 pp 336

¹²¹ *Ibid* pp 334.

- b. He has claimed in a foreign country or in a commonwealth country any right any right available to him under the laws if that country being a right accorded exclusively to citizens of that country;

- c. If he has shown in himself or by an Act to be disloyal or disaffected towards the government of Nigeria.

As for renunciation, a citizen of some other commonwealth state or a national of a foreign country may renounce his foreign citizenship by making a declaration to be registered, after which the person ceases to be a Nigerian citizen.¹²²

3.3.8 CONCLUSION.

Nigerian dual citizenship law compared to that of the UK is still not open to other types of citizenship other than that by birth, that is those who hold other foreign citizenship, yet have Nigerian citizenship by birth are the only ones so far being accorded these rights and not naturalized or registered citizens.,

This is a good starting point to enable the country to deal with genuine cases of its citizens who are citizens by birth and who also happen to hold the citizenship of other foreign states.

It is evident that Nigeria does allow its citizens by birth to hold dual citizenship and Nigerian women married to aliens can retain their citizenship of Nigeria without losing their Nigerian citizenship. Nigeria now is moving towards dual citizenship in a better way.

¹²² *Ibid* pp 375

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 INTRODUCTION

This dissertation has attempted to present the case for allowing dual citizenship and emphasizes the need for Kenya to liberalize its laws on citizenship.

This chapter therefore, concludes this dissertation with the high spirit of having dual citizenship provided for in our Kenyan laws. This will therefore illustrate the recommendations to be put in place to ensure that the same is include or provided for in our Kenyan laws which includes first and foremost in the Constitution which is the law of the land.

The chapter of this study seeks therefore, to explore possibilities that in the long run aim towards giving a Kenyan citizenship that is readily acceptable to all Kenyans and more so, that of dual citizenship which has remained a salient issue for a long time.¹²³ It is important that dual citizenship should not just be a dream but a reality to many if not, all Kenyans.

4.2 CONCLUSION

This dissertation has attempted to define the concept of dual citizenship and has tried to distinguish it from that of citizenship generally. This has shown that dual citizenship relates to analysis in which issues are examined from the point of view of citizens and that of non-citizens or aliens. However, it is clear that, it is usually natural citizens or citizens by birth and more so women married to aliens who are mostly affected by this concept of dual citizenship. This is because they are the ones who find themselves holding dual citizenship by birth and that of marriage. In addition, there are also Kenyan women who give birth to their children while abroad. As we have seen these women have been discriminated in conferring automatic citizenship to their children as compared to

¹²³ *Supra* note 1

their male counterparts in the same scenario yet they do confer automatically Kenyan citizenship to their children born abroad.

We have demonstrated the advantages that can accrue from being a dual citizen as compared to disadvantages. In this study we have demonstrated that indeed the advantages of dual citizenship outweigh the disadvantages. These benefits indeed show that dual citizenship would benefit Kenya's economy and more specifically the Kenyan citizen as an individual.

The sports industry and especially, the field of athletics has been widely neglected and in the near future Kenya might lose its glory of having the world runners as its citizens. The declaration by the minister of Sports Achilo Ayacko to bar the athletes who have embraced other citizenships from training in Kenya is not enough. Neither is setting a probe team to investigate why the athletes are changing nationalities to embrace other foreign ones. One can therefore conclude that single citizenship is to some extent stifling our sporting industry and it is high time Kenya embraced dual citizenship.

A significant part of this dissertation concerned itself with an analysis in specific countries of the concept of dual citizenship. The idea was to discuss the current situation in each of these countries before attempting to explain what is desirable in Kenya for purposes of implementing this concept of dual citizenship. A major area of discussion was the legal sphere. Democracy, justice and decency dictate that the female gender and the male gender are equal. Society must therefore, commit itself to re-socialization where men and women will increasingly accept one another as equal human beings and partners. Women and especially married women should be allowed to confer their Kenyan citizenship to their children and more specifically those married to foreigners.

In light of this conclusion high-ranking government officers such as Cabinet Ministers should be allowed to hold dual citizenship but, the same should be regulated. Kenya should also not deprive its citizen its citizenship since they have embraced that of another country. This has been illustrated by the Convention on Statelessness, which has put stringent measures for states to deprive their citizens of citizenship.

Globalization dictates that people move, trade and reside in different parts of the world other than their country of birth. States must therefore, commit themselves to accept that their citizens are becoming citizens of other countries and hence make speedy reforms in their laws to reflect the concept of dual citizenship. This is not a dream, but a reality that must be achieved if we are to build a more democratic, just and equitable society. Checks and balances are to be put in place to ensure that this comes to pass. Below are recommendations, which can be considered to ensure dual citizenship is put in place and is well, implemented in Kenya.

4.3 RECOMMENDATIONS

The recommendations are as follows: -

1. Amend the Current Constitution among other Kenyan laws dealing with citizenship.

These laws include *inter alia* The Citizenship Act and The Immigration Act. This amendment would reflect the position of the Constitutional draft bill. The new law should be a detailed provision regarding dual citizenship and how the same should be proved.

2. In future a Dual Citizenship Act should be passed to provide a concrete and precise law on dual citizenship after the same has been provided for in the Constitution.
3. Other continents should emulate Europe and come up with a regional convention or agreement that recognizes dual citizenship.
4. People should be allowed acquire foreign nationalities without automatically losing their Kenyan citizenship. But this should be subject to certain limitations and more so for people who are in high-ranking positions in the government. This does not mean that they should not hold dual citizenship but it should be thoroughly regulated.

5. The Constitution should impose an obligation on the state to eliminate and discourage all laws, policies and practices, which discriminate against women. This should aim at strengthening the Constitutional guarantee on gender equality including the guarantee of equality of citizenship.
6. Those who have lost their Kenya citizenship should be allowed to regain the same.
7. On the issue of taxation Kenya should enter into bilateral treaties or agreements with countries where its citizens are also citizens. This would help as regards the issue of double taxation. The new law should reflect the mode of payment of taxes of a dual citizen.
8. Regarding the sporting industry the Minister for sports should ensure that the incentives they award Kenyan athletes are enough. They should ensure they have the required training facilities.
9. His docket together with that of Immigration should ensure there are enough government policies for sportsmen that would make the sportsmen financially stable. The government should do this by educating them regarding how they can exploit their intellectual property rights such as trademarks to earn a better living. This can be done by the government approaching renowned athletes such as, Paul Tergat and Catherine Ndereba to market Kenyan sportswear. Kenya should however, ensure that it deals with counterfeiting that may adversely affect their products. The sports administration in Kenya pertaining athletes should also be reformed.
10. There should be mass sensitization and public awareness campaigns through legal aid and lobby groups, which the government should use to educate Kenyans about dual citizenship. This is important as everyday Kenyans get to travel and reside in new environments.

The question of the protection of foreign nationals or citizens of a state is one of the issues in international law most closely connected with the different approaches adapted to international relations by the west and the third world countries.

SELECTED BIBLIOGRAPHY

BOOKS

1. Slomanson W.R 3rd ed., (1999) *Fundamental Perspectives on International Law*: West Thomson Learning
2. Brownlie I. 4th ed.,(1990)*Principles of Public International Law*: Clarendon Press Oxford.
3. Robert Jennings, Arthur Watts 9th ed.,(1996) *Oppenheims International Law: Peace Vol 1 Part 2-4* :Addison Wesley Publishing Co.
4. Verma S.K.(2004)*An Introduction to Public International Law* :Prentice_Hall of India Pvt.Ltd.
5. Balsara P.P(1955) *Elements of Public International Law*
6. Hall Stephen,(1995) *Nationality, and Migration Rights & Citizenship of the Union*: Martinu Nijhoff Publishers Dordrecht London.
7. Nanjira Don Daniel D.C (1972) *The Status of Aliens in East Africa: Asians & Europeans in Tanzania, Uganda, and Kenya*: Preager Publishers New York.
8. O.Hood Phillip 5th ed.,(1973)*Constitutional & Administrative Law*: London Sweet & Maxwell
9. Mwabueze B.O (1964) *Constitutional Law of the Republic of Nigeria*: London Butterworth.
10. Gerhand Von Glahn 7th ed., (1995) *Law Among Nations, An Introduction to Public International Law*: the Macmillan Company.
11. Standley Kate,2nd ed., (1997)*Family Law- Citizenship and Immigration*: Macmillan Publishing Company.
12. Ellery C Stowell, (1931) *International Law: A Restatement of Principles in Conformity with Actual Practice*: H.Holt
13. Kivutha Kibwana(2000) *Law & The Quest for Gender Equality in Kenya*: CLARION(Centre for Law and Research International)
14. Shaw ,M.N.,4th ed., (1997) *International law* :Cambridge University Press

JOURNALS AND ARTICLES

1. Dr.Patricia Kameri-Mbote 'Audit & Review of Depths in Citizenship and Bill of Rights' (Aug 2003) *Katiba News- Media Development Association & Rural Urban Information Network*
2. Dr Patricia Kameri-Mbote 'Gender Considerations in the Constitution Making: Endangering Women's rights in the legal process.' (2003) *University of Nairobi Law Journal*.

INTERNET SOURCES

1.International Instruments-available at

http://www.unifem.org/gender_issues/human_rights/at_a_glance.php.(accessed on 12 May 2005)

[http://www.unifem.org/documents/CEDAW_made_easy-Question & Answer Booklet](http://www.unifem.org/documents/CEDAW_made_easy-Question%20&Answer_Booklet.pdf).(accessed on 12 May 2005)