



DUAL CITIZENSHIP IN KENYA

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INTRODUCTION

Many Kenyans acquire a second citizenship for work, education, family or investment opportunities abroad. While Kenya's Constitution allows dual citizenship, many people mistakenly believe that holding two nationalities comes with no further legal obligations. In reality, dual citizenship carries certain legal responsibilities and may have important implications depending on an individual's circumstances. Recent court decisions have also clarified aspects of the law, making it important to understand what every dual citizen should know.

1. THE CONSTITUTIONAL POSITION

The Constitution of Kenya, 2010 fundamentally changed the pre-2010 position. Under Article 16, a citizen by birth does not lose Kenyan citizenship by acquiring the citizenship of another country. Article 14 defines citizenship by birth, including where, on the date of birth, either parent is a Kenyan citizen, whether the person is born in Kenya or abroad.

A person who was a Kenyan citizen by birth but lost that citizenship after acquiring

another nationality before 27 August 2010 may apply to regain Kenyan citizenship under Article 14(5) and the Kenya Citizenship and Immigration Act, 2011.

Citizenship acquired by birth enjoys the strongest constitutional protection and cannot be revoked. Citizenship acquired by registration is subject to the statutory framework and may be revoked only on the grounds and through the process permitted by Article 17 and applicable legislation.

2. MANDATORY DISCLOSURE

Section 8(3) of the Kenya Citizenship and Immigration Act requires every dual citizen to disclose the other citizenship in the prescribed manner within three (3) months of becoming a dual citizen. The Directorate of Immigration continues to direct applicants to make the declaration through the Foreign Nationals Service/eFNS portal.

The prescribed declaration commonly requires identity and citizenship records, including evidence of Kenyan citizenship and proof of the other nationality. Applicants should check the current portal requirements before filing, retain the submission acknowledgement and ensure that Kenyan passport and national identity records remain consistent.

3. WHAT CHANGED AFTER NDEGWA Vs ATTORNEY GENERAL?

In *Ndegwa v Attorney General & another, Petition No. 121 of 2019, [2024] KEHC 9991 (KLR)*, the High Court upheld the rationality and constitutionality of the disclosure obligation in section 8(3). The Court nevertheless held that section 8(4), which exposed a person to a fine of up to KES 5 million or imprisonment for up to three years, or both, was a disproportionate and an unjustifiable limitation of constitutional rights and was therefore unconstitutional.

The practical position is that the requirement to disclose dual citizenship remains in force. What the court invalidated was the criminal penalty for failing to comply, not the disclosure obligation itself. Therefore, anyone who has not made the required disclosure within the prescribed three months should regularize their records without delay rather than assume that the disclosure requirement no longer applies.

4. PUBLIC OFFICE AND LEADERSHIP RESTRICTIONS

Article 78 generally prohibits State officers or members of the defence forces from holding dual citizenship. The Constitution creates limited exceptions for judges and members of commissions, and where the second citizenship was acquired by operation of law without the person's ability to opt out. Section 31 of the Leadership and Integrity Act reinforces this framework by providing that a State officer automatically ceases to hold office upon acquiring dual citizenship.

Dual citizens considering election, nomination or appointment to public office should obtain advice at the earliest stage. The legal analysis turns on whether the position is a 'State office' as constitutionally defined, how the other citizenship was acquired, whether a constitutional exception applies and when any renunciation must become effective. A foreign renunciation application alone may not be sufficient if the other country has not completed it.

5. PRACTICAL IMPLICATIONS BEYOND CITIZENSHIP REGISTRATION

- a) **Travel and identity:** A dual citizen should keep Kenyan identity records current and when dealing with Kenyan authorities, present the appropriate Kenyan documentation. If your two countries of citizenship have different nationality laws, you should plan ahead for travel, border entry and exit requirements, and access to consular assistance, as the rules may differ between the two countries.
- b) **Land ownership:** A Kenyan dual citizen remains a Kenyan citizen. The constitutional restriction limiting non-citizens to leasehold tenure of no more than 99 years does not ordinarily apply merely because the Kenyan citizen

also holds another nationality. Corporate ownership requires a separate analysis under Article 65.

c) Employment and directorships:

Private sector employment and company directorship are not generally barred by dual citizenship. Regulated industries, national security roles, beneficial ownership filings and fit-and-proper assessments may create additional disclosure obligations.

d) Tax: Kenyan tax liability is generally determined by tax residence, source, permanent establishment and the relevant tax statute or treaty, not citizenship alone. A dual citizen may have filing duties in both countries, especially where the other country taxes citizens on a worldwide basis.

e) Succession and estate planning: Dual nationality may connect an estate to two succession, matrimonial property and tax systems. Wills, asset holding structures and grants of representation should be coordinated across the relevant jurisdictions.

f) Children born abroad: A child is a Kenyan citizen by birth if either parent was a Kenyan citizen on the date of birth. Families should document the parent's citizenship status and complete the applicable birth and passport registration processes.

g) Consular protection: The practical availability of Kenyan consular assistance may be constrained while the person is in the country of their other nationality, because that country may treat the person exclusively as its citizen.

6. COMPLIANCE CHECKLIST

- a) Confirm the legal basis and effective date of each citizenship held.
- b) File the prescribed disclosure within three months of becoming a dual

citizen. If late, regularize promptly and retain proof.

- c) Where Kenyan citizenship was lost before 27 August 2010, complete the regaining process before applying for a Kenyan ID card or passport.
- d) Check public office, security clearance and regulated sector restrictions before accepting nomination, election or appointment.
- e) Align names, dates of birth and other particulars across passports, identity documents, tax records and corporate filings.
- f) Review cross border tax residence, reporting, succession and matrimonial property implications.
- g) Obtain jurisdiction specific advice before renouncing any nationality. Renunciation may be irreversible and can affect family and property rights.

7. CONCLUSION

Dual citizenship is now a protected and commercially significant feature of Kenya's constitutional order, particularly for diaspora families and investors. The key compliance risk is no longer the mere possession of two nationalities, but incomplete disclosure, inconsistent identity records, untested assumptions about public office eligibility and failure to coordinate tax and succession planning across jurisdictions.

Individuals, employers and appointing authorities should treat citizenship status as a structured due diligence issue. Any remediation should be documented carefully, especially where a statutory deadline has passed or a public appointment is contemplated.

HOW CM ADVOCATES CAN ASSIST

Citizenship declarations and regaining applications | Public-office eligibility opinions | Immigration and identity-record regularization | Cross-border tax and estate coordination | Constitutional and administrative-law disputes.

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